

AmCham China

中 国 美 国 商 会

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

2019 AMERICAN BUSINESS IN CHINA

2019美国企业在中国

2019 AMERICAN BUSINESS IN
CHINA WHITE PAPER

2019 年度美国企业在中国
白皮书

Unless otherwise indicated, all charts are from the 2019 AmCham China *Business Climate Survey*.
若无特别说明，文中所有图表皆来自于中国美国商会2019年度商务环境调查。

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Chairman's Message

2018 was a year of striking contradictions in US-China relations. On the one hand, China celebrated the 40th anniversary of the Party meetings that launched the process of reform and opening of China's economy—a process that was closely linked to the establishment of formal US-China diplomatic ties at the beginning of the following year. Four decades later, China's economy is the second largest in the world, and China is the leading manufacturer of some of the world's most technologically-advanced products. AmCham China recognizes and applauds China's extraordinary accomplishments in lifting millions of its citizens out of poverty and growing its middle class. The U.S.-China trade and investment relationship has played no small part in China's economic success.

On the other hand, throughout 2018, the US and China engaged in a tariff-driven trade dispute initiated by the US administration and intended to motivate the Chinese government to address long-standing US concerns regarding China's state-led economic development model and barriers to market access faced by US businesses. China's trade practices—coupled with geopolitical considerations—have led the US government to take a firmer approach with respect to multiple aspects of the US-China relationship.

Many of our members have been negatively impacted by—and are not necessarily supportive of—the use of tariffs as a tool in the current US-China trade negotiations. At the same time, we understand that any true resolution of the current dispute requires addressing the structural issues discussed across these many pages that have long hindered importation of US goods and services and operations of US businesses in China. Unfortunately, previous bilateral dialogues and other mechanisms have not generated the results that are needed to sustain healthy, balanced, and mutually beneficial economic relations between our two countries.

At this critical time, we are publishing our 21st annual *White Paper*—a comprehensive analysis of China's economic policies and practices impacting foreign trade and investment. We have been gratified by the close attention US and Chinese policy makers have paid to the *White Paper* in past years. In this edition, we have endeavored to offer a comprehensive set of recommendations for both sides as they work towards greater mutual understanding and successful resolution of our many outstanding concerns.

Underlying the recommendations included in this *White Paper* are common themes that have led us to identify three priority policy goals that we will be sharing throughout the year with officials from both governments.

The first priority is **Restoring Trust through Concrete Actions Leading to Greater Transparency, Predictability, and Evenhandedness in Regulatory Processes**. Inconsistent or unclear regulations and uneven enforcement remain the number one challenge for AmCham China members. The stability and predictability provided by a transparent and evenhanded regulatory environment will be important for the continued growth of the Chinese economy—boosting the confidence of both domestic and foreign investors that their businesses will enjoy the impartial protection of law, and also aiding the government in its fight against corruption. At present, the gap between policy as stated and as enforced remains significant.

The second priority is **Promoting Development through Policies of National Treatment and**

主席致辞

2018年是中美关系矛盾突出的一年。一方面，中国庆祝改革开放40周年，而改革开放进程与次年初中美正式建交又密切相关。四十年后，中国成为世界第二大经济强国，也是世界上一些技术最先进产品的领先制造商。中国美国商会认可并赞赏中国在帮助数百万中国公民摆脱贫困和壮大中产阶级方面取得的非凡成就。中美贸易和投资关系对中国经济的繁荣起到了重要作用。

另一方面，2018年全年，美国和中国卷入了一场由美国政府发起的以关税为主的贸易争端，意在促使中国政府解决美国长期以来对中国国家主导的经济发展模式和美国企业面临的市场准入壁垒的担忧。中国的贸易行为，加上地缘政治方面的考虑，导致美国政府在中美关系的多个方面采取了更为坚定的态度。

以关税作为当前中美贸易的谈判工具，使商会的许多会员都受到了负面影响，而且他们并不支持这种做法。与此同时，我们认为要想真正解决当前的争端，就必须解决这些长期阻碍美国商品和服务进口、以及美国企业在华经营的结构性问题。遗憾的是，以往的双边对话和其他机制并没有产生维持中美两国之间健康、平衡和互惠的经济关系所需要的结果。

在这一关键时期，商会发布了第21期年度《美国企业在中国白皮书》（以下全书简称《白皮书》）——对中国影响对外贸易和投资的经济政策和实践进行了全面分析。我们对中美两国政策制定者近年来对《白皮书》的密切关注感到欣慰。此外，我们努力提出多方建议，增进双方相互了解、促进许多悬而未决的问题顺利解决。

《白皮书》中的建议基于共同的主题，这些主题使我们确定了三个政策重点，我们将在全年与两国政府官员分享这些目标。

第一：通过具体行动重建信任，从而提高监管过程的透明度、可预测性和公平性。商会成员面临的最大的挑战仍然是法律法规不一致或不明确，以及执法不公平。透明、公平的监管环境带来的稳定性和可预测性，对中国经济的持续增长至关重要，这将增强国内外投资者的信心，相信企业将受到法律的公正保护，并协助政府打击腐败。目前，政策制定和政策执行之间的差距仍然很大。

第二：通过国民待遇政策和竞争中立促进发展。强调国民待遇和竞争中立的政策有利于整个经济，而不仅仅是外企，并有助于进一步推动创新和增长。鉴于目前双边关系的紧张局势以及从双边关系中获得的利益尚未得到充分平衡，这些政策尤其重要。

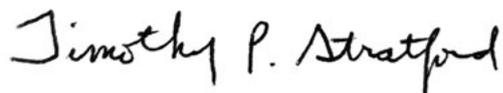
第三：通过实施促进全球合作和保护知识产权促进创新。创新具有连锁反应，为中美两国经济带来广泛利益。我们坚信，为实现创新目标，中国不仅要开放实体经济大门，也要开放数字化大门，让信息更加自由地跨境流动。经验表明，创新是在制定技术中立标准的环境下，在广泛

Competitive Neutrality. Policies that emphasize national treatment and competitive neutrality benefit the entire economy – not just foreign enterprises – and help to drive greater innovation and growth. They are particularly important now given the current tensions in the bilateral relationship and the sense that benefits derived from the relationship have not been sufficiently balanced.

A third priority is **Stimulating Innovation through Policies that Promote Global Cooperation and Intellectual Property Protection.** Innovation has ripple effects that bring broad benefits to the economies of both China and the US. We strongly believe that to realize its innovation goals, China should open its digital as well as its physical doors to allow information to flow more freely across borders. Experience shows that creativity is the product of diverse ideas blended in an environment where technology-neutral standards are set based on broad participation and protection of intellectual property.

AmCham China members volunteer countless hours to share their experiences, build consensus within industry cohorts, draft the 40 chapters, and painstakingly wordsmith the final product—in English and Chinese. To these volunteers I want to express my special appreciation. I am very proud to be affiliated with them, the lifeblood of the Chamber. Particular gratitude goes to Les Ross, chair of our Policy Committee, who again this year worked tirelessly to ensure that we have the most substantive and well-written publication possible. Thanks must also go to Katie Beck and her team for their work over many months to produce a *White Paper* that meets AmCham China's demanding standards.

So whether one studies this year's *White Paper* from A to W (or from "Agriculture" to "Work Safety and Emergency Management"), or to investigate specific topics, we hope that the 2019 AmCham China White Paper will once again be an important tool facilitating mutual understanding and advancing our bilateral economic relationship.

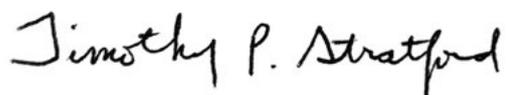


Timothy Stratford
Chairman, AmCham China
April 2019

参与和保护知识产权的基础上，多种思想融合的产物。

商会会员自愿花费无数的时间，分享自己的经验，在行业内建立共识，起草了 40 个章节，最终完成了该《白皮书》（中英文）。我想对这些志愿者致以最诚挚的感谢。我为能与他们相识感到自豪，他们也是商会的根基。尤其要感谢的是商会政策委员会的主席罗斯先生，今年他又一次孜孜不倦地工作，以确保白皮书内容详实，言之有物。还要感谢 白晓白和她的团队，正是他们数月来的努力，才完成了符合中国美国商会高标准、严要求的《白皮书》。

无论是按照目录顺序通读（即从农业到工作安全和应急管理），或是深入研究具体话题，我们都希望《白皮书》能再一次成为促进相互理解、推进双边经济关系的重要工具。



中国美国商会主席

夏尊恩

2019 年 4 月

Part One:
Business Climate Overview
商务环境综述

A Changing US-China Trade and Investment Relationship

Introduction

2018 was a seminal year for the US-China relationship. As the two largest economies in the world, the US and China remain intertwined through trade and investment, but trust between the two nations has plummeted. The US business community in China, so long an advocate of good bilateral relations, can no longer be relied upon to be a positive anchor. Pressure on the economic relationship is coming from the trade deficit, tariffs, and longstanding challenges for US companies in China that have often been the focus of these pages: extensive market access barriers, protectionism, an opaque regulatory system, and discriminatory enforcement, among other practices that have created an uneven playing field for US companies operating in China. These factors, together with geopolitical and other considerations related to differences in our political systems and values, have led the US government to adopt a harsher approach towards US-China economic relations.

2018 marked the 40th anniversary of China's *Reform and Opening Up*, China's program of economic development that began in 1978 with a combination of gradual free-market reform and an opening to foreign trade and investment. The reforms initiated in 1978 unleashed China's economy, which averaged annual GDP growth of over 9% through 2017, lifted an estimated 800 million people out of poverty, and made China's economy (estimated to be US \$12 trillion in 2018) the second largest in the world. By all economic measures, *Reform and Opening Up* has been a success. China's success, however, means that it can no longer credibly defend protectionist policies on the grounds that it is still a "developing country" and that special dispensations granted when it joined the WTO in 2001 are still warranted.

China's economy is described by China's leadership as a "socialist-market economy with Chinese characteristics," a term used by the government to broadly and freely capture the mixture of private and public activity that powers the Chinese economy. Free market reforms have enabled the growth of a vibrant private sector, yet state-owned enterprises (SOEs) under Chinese government policy play an increasingly important role in many sectors of the economy. The result is an economy that now differs, sometimes significantly, from other economies in many respects, even though China presents itself as a model for other developing countries to follow.

2018 also marked a deep shift in the US-China bilateral relationship. An investigation conducted by the US Trade Representative (USTR) under Section 301 of the US Trade Act of 1974 (Section 301 Report) and released in March 2018 (and updated in November 2018) accused the Chinese government of unfairly intervening in the operations of US companies in China, failing to protect intellectual property (IP), and inducing companies to forcibly handover their technology and innovation as a precondition for doing business in China. The Trump administration used the Section 301 Report as justification to engage in an escalating trade dispute with China.

Amidst the ongoing trade dispute, the National People's Congress (NPC) in March 2019 passed the new *Foreign Investment Law*. The Law provides for the first time in statutory form that no administrative departments will force the transfer of technology through administrative means, and that foreign-invested enterprises (FIEs) will be permitted to participate equally in standards setting processes. AmCham China welcomes this legislative effort to improve the investment climate for foreign investment but remains concerned that many of the provisions are general in nature and do not sufficiently address the persistent concerns of foreign businesses in China.

In that spirit, the 21st edition of the *American Business in China White Paper* now explores cross-cutting, industry-specific, national and regional issues faced by AmCham China's member companies in 2018 and early 2019. Each chapter offers practical recommendations for addressing these challenges that will, if implemented, benefit both foreign companies and the Chinese economy as a whole. We hope that this year's *White Paper* will serve as a constructive tool for both the Chinese government and US administration as they work to reorient the bilateral relationship and resolve these issues.

40th Year of Reform and Opening Up

At a celebration to mark the 40th anniversary of *Reform and Opening Up* towards the end of 2018, President Xi Jinping committed to further economic opening, noting that "China cannot develop itself in isolation from the world, and the world needs China for global prosperity." Similar statements were echoed throughout the year. In April 2018 at the

变幻莫测的中美经贸关系

引言

2018年是对中美关系未来发展影响深远的一年。美国和中国是世界上最大的两个经济体，两国贸易和投资往来密切，但两国之间的信任却一落千丈。虽然在华的美国商业团体一直以来倡导良好的双边关系，但也不再报喜不报忧。美中经济关系面临的挑战来自贸易逆差、关税以及在华美国公司长期面临的挑战（也是本书一直关注的焦点）：无处不在的市场准入壁垒、保护主义、不透明的监管体系和歧视性执法等等。这些做法意味着在中国经营的美国企业面临的是不公平的竞争环境。此外，与地缘政治及两国政治体制及价值观方面的差异，美国政府开始更加严厉地看待美中经济关系。

2018年是中国改革开放40周年，这一经济发展计划始于1978年，结合了逐步实现市场自由的改革和对外贸易及投资的开放。1978年启动的改革释放了中国经济的活力。截至2017年，中国年均GDP增长超过9%，约8亿人脱贫，中国经济（2018年估值为12万亿美元）也成为了世界第二大经济体。纵观所有经济手段，改革开放都取得了成功。然而，中国的成功也意味着它不能再以“发展中国家”自居来捍卫保护主义政策，也不能再声称2001年加入世贸组织时获得的特殊豁免仍然是合理的。

中国领导层将中国的经济描述为“具有中国特色的社会主义市场经济”，政府用这个术语来广泛自由地形容私有和公有领域的活动，正是这种公私结合推动着中国经济的进步。自由市场改革激发了私有领域的活力和发展，但国有企业依据国家政策正在许多经济领域中发挥着日益重要的作用。所以，虽然中国将自己作为其他发展中国家可以效仿的榜样，但现在中国经济在许多方面与其他经济体有所不同，甚至是显著不同。

中美双边关系在2018年也发生了深刻变化。美国贸易代表（USTR）根据1974年美国贸易法案301条款（301

条款报告）进行调查，并于2018年3月发布（并于2018年11月更新），报告指责中国政府不公正地干预在华美国公司的运作，未能保护其知识产权，并以强制公司转让其技术和创新作为在中国开展业务的前提。随后，特朗普政府以“301调查”报告为由，不断升级与中国的贸易争端。

在持续的贸易争端中，全国人民代表大会（全国人大）于2019年3月通过了新的《外国投资法》。该法首次以法定形式规定，行政部门不得通过行政手段强制要求技术转让，允许外商投资企业平等参与标准制定程序。中国美国商会（商会）欢迎这项改善外国投资环境的立法，但仍然担心许多条款是一般性的，并没有充分解决外国企业在中国的长期担忧。

本着这种精神，第21版《美国企业在中国白皮书》探讨了2018年和2019年初商会会员企业所面临的跨领域的、行业的、全国性和地区性问题。每一章都提出了应对这些挑战的实用建议，如果得以实施，将使外国公司和整个中国经济受益。我们希望今年的《白皮书》能够成为中国政府和美国政府调整双边关系过程中的一个建设性工具，并有助于解决双方的共同关切。

改革开放40周年

2018年底，在纪念改革开放40周年的活动中，习近平主席强调要进一步推动经济开放，指出“中国的发展离不开世界，世界的繁荣也离不开中国”。这一年都反复出现类似的说法。2018年4月，在海南博鳌亚洲论坛上，中国领导人宣布了一揽子金融改革措施，以进一步开放汽车、造船、航空和金融领域，包括将证券、基金管理、期货和人寿保险的外资所有权上限提高到51%，并承诺到2021年，其中一些部门允许100%的外资所有权。中国改善商业环境的努力也得到了一些国际组织的肯定。在世界银行2019年的《营商环境报告》中，中国的排名从78上升至46，首次进入前50名。

Boao Forum for Asia in Hainan Chinese leaders announced a package of financial reforms to further open the automotive, shipbuilding, aviation, and financial sectors, including raising foreign ownership caps in securities, fund management, futures, and life insurance to 51%, and committed to allowing 100% foreign ownership in some of these same sectors by 2021. China's efforts to improve the business environment were acknowledged by several international organizations. In the 2019 *Ease of Doing Business Report* from the World Bank, China's ranking rose from 78 to 46, entering the top 50 for the first time.

In March 2018 the Chinese government announced a significant organizational restructuring that would take place throughout 2018, the impacts of which are still beginning to unfold. With the goal of making the government "better-structured, more efficient, and service-oriented," and following a series of mergers and establishment of new offices, the State Council now oversees 26 ministries and commissions. This is a decrease from the early 1990s when China had 43 ministries and commissions, and only slightly more than the 25 after the last reorganization in 2013. The reorganization strengthens the power of the Communist Party (the Party) over the government. The newly-created National Supervision Commission assumed responsibilities previously held by the Ministry of Supervision as well as the Party's Central Commission on Discipline Inspection (CCDI). The Party's United Front Work Department absorbed the State Administration of Religious Affairs and several other functions performed by government bodies. The Party Leading Small Groups, particularly those that oversee reform, cybersecurity, economics, and external affairs, will continue to drive policy planning.

AmCham China welcomes efforts to streamline China's bureaucracy and make it more professional, but notes that it is still too early to assess the full effects of the reorganization. We also hope that well-established administrative procedures, lines of communication, and day-to-day operations will not be adversely affected by these changes.

During a busy 2018 diplomatic schedule that included hosting the Boao Forum for Asia in April, the Shanghai Cooperation Organization Summit in Qingdao, and the third summit of the Forum on China-Africa Cooperation (FOCAC) in September, Shanghai played host to the first ever China International Import Expo (CIIE) in November. The six-day trade expo was attended by thousands of Chinese buyers and foreign companies. It was billed as an opportunity for China to demonstrate its leadership of global commerce and its open markets. AmCham China welcomed the gesture but noted that without structural changes to the protectionist trade barriers currently standing in the way, the CIIE was unlikely to make a significant difference for member companies.

Tension in the Bilateral Relationship

In 2018 US-China bilateral relations faced some of the most significant challenges in recent memory. Following the USTR's Section 301 and 232 investigations into China's trade practices, the United States imposed a series of tariffs eventually covering US \$200 billion of Chinese imports by the end of 2018. China responded with tariffs on US \$60 billion of US goods (because of the bilateral trade deficit, the US is able to impose tariffs on a broader range of products). President Trump also signed into law new provisions designed to improve the monitoring of foreign investments in the United States and control the flow of outbound technology.

The costs of the trade dispute are still being borne out. China's official GDP growth rate in 2018 was 6.6%, its slowest in roughly 28 years. The government has projected the 2019 GDP growth rate at between 6.0% and 6.5%, impressive growth for an economy of China's size, but still slowing. Moreover, there are longstanding concerns that China has been over-reporting its GDP growth for the past decade, up to 1.7 percentage points annually by one estimate. Thus, economic growth in 2018 may be even lower than reported.

According to the 2019 *AmCham China BCS*, tariffs are impacting business operations through higher manufacturing costs and lower customer demand. Nearly one-quarter of US businesses reported they were "delaying or canceling investment decisions" or adjusting their "supply chains by seeking to source components and/or assembly outside of the US." Notably, however, 35% of respondents reported "no impact" from tariffs on their business strategies.

The US business community faces an increasingly challenging and uncertain policy environment with pressures brought on by the trade conflict in addition to longstanding challenges with respect to a level playing field for foreign and domestic companies. President Trump has often spoken of his desire to reduce the trade deficit with China and sees tariffs as one way to achieve that goal. The fact that the US has been willing to endure the disruptions caused by the trade dispute indicates that this approach is about more than simply reducing the deficit. It reflects how seriously US government officials view China's forced technology transfers, discriminatory economic policies and cybertheft.

AmCham China has consistently reaffirmed its opposition to tariffs as a method to resolve the trade dispute, not only because of the obvious and immediate harm caused by tariffs but also because member companies often face operational disruptions from non-tariff barriers. Thus, we welcomed the announcement during the December 2018 meeting between Presidents Trump and Xi at the G20 Summit that both sides were instituting a 90-day pause on increasing tariffs to create an opportunity for continued negotiations. AmCham China acknowledges that any satisfactory agreement between the US and China designed to create a level playing field based on "competitive neutrality" will need to address structural

2018年3月，中国政府宣布了一项重大的组织结构调整措施，将在2018年展开，而这一举措的影响仍在不断显现。为了使政府“结构更好，效率更高，服务更好”，政府进行了一系列的合并，建立了新办公室，国务院现在负责监督26个部委，相比20世纪90年代初期的43个部委有所减少，仅略高于2013年重组后的25个。重组加强了共产党对政府的权力。新成立的国家监察委员会承担了监察部以及党的中央纪律检查委员会之前的职责。党的统战部吸收了国家宗教事务局和政府机构的其他一些职能。党领导小组，尤其是监督改革、网络安全、经济和对外事务的小组将继续推动政策规划。

商会欢迎精简中国官僚机构并使其更专业化的努力，但要指出的是，现在评估重组的全面效果还为时尚早。我们也希望这些变化不会对行之有效的行政程序、沟通渠道和日常运作产生不利影响。

2018年的主场外交活动密集，包括4月举办的博鳌亚洲论坛、青岛上海合作组织峰会、9月中非合作论坛第三次峰会，以及11月在上海举办的第一届中国国际进口博览会（CIIE）。数千名中国买家和外国公司参加了为期六天的贸易博览会。它被视为中国展示在全球商业及其开放市场的领导地位的机会。商会对这一姿态表示欢迎，但要指出，如果目前阻碍发展的贸易壁垒没有结构性变化，进博会不太可能会对会员企业带来重大影响。

双边关系紧张

2018年，美中双边关系面临近年来的一些重大挑战。根据美国贸易代表办公室对中国贸易惯例的第301和232条调查，美国在2018年底加征了一系列关税，最终覆盖了2000亿美元的中国进口产品。中国对600亿美元的美国商品征收关税（因为双边贸易逆差，美国能够对更多种类的产品征收关税）。特朗普总统还签署了新的条款，旨在改善对美国外国投资的监测并控制出境技术的流动。

贸易争端的实际影响仍有待观察。中国2018年的官方GDP增长率为6.6%，是约28年来最低。政府预计2019年的GDP增长率在6.0%至6.5%之间，对中国经济规模来说是很惊人的增长率，但是仍在放缓。此外，外界一致担心中国在过去十年中高报其GDP增长率，有估计称每年高达1.7个百分点。因此，2018年的经济增长率有可能还要低于报告水平。

根据2019年商会《中国商务环境调查报告》，关税会提高制造成本，降低客户需求，从而影响业务运营。近四分之一的美国企业表示他们在“推迟或取消投资决策”或通过寻求在美国境外采购零部件和/或装配来调整其“供应链”。但值得注意的是，35%的受访者表示关税对于他们的商业战略“没有影响”。

美国商界面临着越来越具挑战性和不确定性的政策环境，他们面临着贸易冲突带来的压力，以及外国和国内公司寻求公平竞争环境的长期挑战。美国特朗普总统经常谈到他希望减少与中国的贸易逆差，并将关税视为实现这一目标的一种方式。美国一直愿意忍受贸易争端造成的影响，表明这种做法不仅仅只是为了减少逆差。它反映了美国政府官员对中国强制技术转让、歧视性经济政策和网络盗版的重视程度。

商会一直重申反对将关税作为解决贸易争端的方法，不仅是因为关税造成的明显和直接的损害，而且因为会员企业经常面临非关税壁垒造成的运营中断。特朗普总统和习近平主席在2018年12月的20国集团峰会期间会后宣布双方在90天内暂停提高关税，以便为持续谈判创造机会，我们对此表示欢迎。商会承认，中美要想达成双方都满意的、以“竞争中立”为基础的公平竞争环境的协议，就必须解决结构性问题，如强制技术转让、知识产权盗窃和中国基于国家支持的歧视性经济政策和国内保护主义。

虽然中国重申更广泛开放市场的承诺让美国商会备受鼓舞，但这些承诺是否能够或者如何转化成可行的政策仍有待观察。2018年很多关于进一步开放的声明都是在重申之前的承诺。习主席在进博会的讲话虽然高屋建瓴，但并不具体，针对今年的实施项目很少。在以下内容中，我们将探讨外国企业在中国的长期担忧。

不确定环境下的商业前景

美国公司在中国面临的仍然是不确定的营商环境，并对投资前景的乐观情绪减弱。这些变化在很大程度上是受到双边关系紧张的影响，但是公司也面临来自本地公司的竞争。商会2019年2月发布的2019年《中国商务环境调查报告》反映了商会会员多元化的情绪。尽管全球政治和经济环境不确定性增多、中国经济放缓，但69%的受访企业仍表示盈利（低于2017年的73%），另有21%的受访企业收支平衡。盈利能力因行业而异（图1）。

issues like forced technology transfer, IP theft, and China's discriminatory economic policies based on state support and domestic protectionism.

While AmCham China is encouraged by China's reaffirmation of commitments to opening its markets wider, it remains to be seen how or if such commitments will become actionable policy items. Many announcements of further opening in 2018 were reiterations of earlier promises. President Xi's speech at the CIIE was vague and non-specific, with few actionable implementation items for the year. In the sections below we explore the persistent concerns of foreign businesses in China.

Business Outlook in an Uncertain Environment

US companies continue to face an uncertain operating environment in China and decreasing optimism about their investment outlook. These changes are influenced in large part by tensions in the bilateral relationship, though companies also face increasing levels of competition from locally-owned firms. AmCham China's 2019 *Business Climate Survey Report* (BCS), released in February 2019, reflects the sentiments of AmCham China's diverse membership base. Despite greater uncertainty in the global political and economic environment and a slowing Chinese economy, 69% of respondents were profitable (down from 73% in 2017), and another 21% broke even. Profitability varied by sector (Figure 1).

China nevertheless remains an important global investment destination among member companies. Close to 42% reported China is a "top-three" investment priority (up from 37% in 2017), while 20% ranked it as a "First Priority" (down from 22% in 2018). Close to 80% of AmCham China members reported the quality of China's investment environment is "improving" (38%) or staying the same (41%), though just over 20% reported it as "deteriorating."

Close to 63% of companies in the Technology and R&D-intensive industry reported China as a top-three investment priority, compared with only 51% in 2017, reflective of that sector's dynamic nature. Over half of respondents from each of the Resources & Industrial, Consumer, and Services sectors continued to rank China as a top-three investment priority, although the number of respondents in the Services sector reporting China as a "first priority" investment destination fell from 27% in 2017 to 18% in 2018.

Nevertheless, the business outlook for US companies in China gradually shifted from one of cautious optimism to cautious pessimism in 2018. Optimism about China's domestic market growth, competitive pressure, cost competitiveness, potential profitability, and regulatory environment all declined. Notably, over 60% of respondents are "pessimistic" or "slightly pessimistic" about US-China relations over the near term. Almost

32% of respondents are not planning new investments or may even decrease investments in China in 2019.

Opportunities in the China Market

In a growing market as large as China, there are always commercial opportunities. Companies are predominantly focused on "growing their core business" (79%), "launching new products and services" (59%), and "targeting new customer segments" (47%). Fewer than 2% are planning to retreat from the China market. As with years past, the growth in "domestic consumption/rise of an increasingly sizeable and affluent middle class" remains the top opportunity for businesses in China. "Ongoing economic and market reforms" is reportedly the second most promising market opportunity. Though not reflected among the top three market opportunities because of its narrower focus, many respondents chose "healthcare reforms, such as 'Healthy China: 2030'" as an important emerging market opportunity.

Persistent Challenges Remain

Longstanding, persistent challenges continue to hinder the ability of US firms to conduct business in the Chinese market. The fact that many of the challenges highlighted in the 2019 BCS and in this year's *White Paper* have been raised for many years speaks to disappointment with the lack of progress in the bilateral relationship and are reflected in the concerns raised by the US Government during the ongoing trade negotiations. Many challenges stem from market access restrictions, which inhibit the business operations of over half of our survey respondents; challenges which are particularly acute in the Technology and Other R&D-intensive sector, with over 75% of members reporting issues.

On one hand, members feel China welcomes foreign investment because it grows GDP and brings jobs, tax revenue, and positive publicity. On the other hand, many members feel China welcomes foreign investment only if it serves China's own industrial policy goals. They find that Chinese policymaking is driven by domestic protectionism and is inconsistent with China's WTO commitments.

As has been the case for the past three years, in the 2019 report "inconsistent regulatory interpretation and unclear laws & enforcement" is again the number one challenge facing members (55% of respondents). Similarly, longstanding challenges of "rising labor costs" (48%) and a shortage of qualified employees (28%) are among the top five challenges facing business. Notably, "rising tensions in US-China relations" (45%) and "increased competition from privately-owned Chinese companies" (29%), which were included in the BCS for the first time, made the top five challenges list. The table on the next page displays an expanded list of the top 10 challenges facing member companies in China.

然而，中国仍然是会员企业重要的全球投资目的地。将近 42% 的受访者表示中国是三大投资目的地（2017 年为 37%），而 20% 将其列为“首要投资目的地”（低于 2018 年的 22%）。近 80% 的商会成员报告称，中国投资环境的质量正在“改善”（38%）或保持不变（41%），只有超过 20% 的人表示环境在“恶化”。

在技术和研发密集型行业中，近 63% 的公司将中国列为三大投资目的地之一，2017 年这一数字仅为 51%，这反映了该行业的变化。超过一半的资源工业、消费者和服务行业的受访者继续将中国列为三大投资目的地之一，不过服务行业的受访者表示中国是“首要”投资目的地的比例从 2017 年为 27% 降低到 2018 年的 18%。

尽管如此，2018 年美国企业在中国的商业前景逐渐从谨慎的乐观态度转向谨慎的悲观态度。对中国国内市场增长、竞争压力、成本竞争力、潜在盈利能力和监管环境的乐观情绪均有所下降。值得注意的是，超过 60% 的受访者对近期中美关系持“悲观”或“略微悲观”态度。几乎 32% 的受访者没有新投资计划，甚至可能在 2019 年减少在中国的投资。

中国市场的机遇

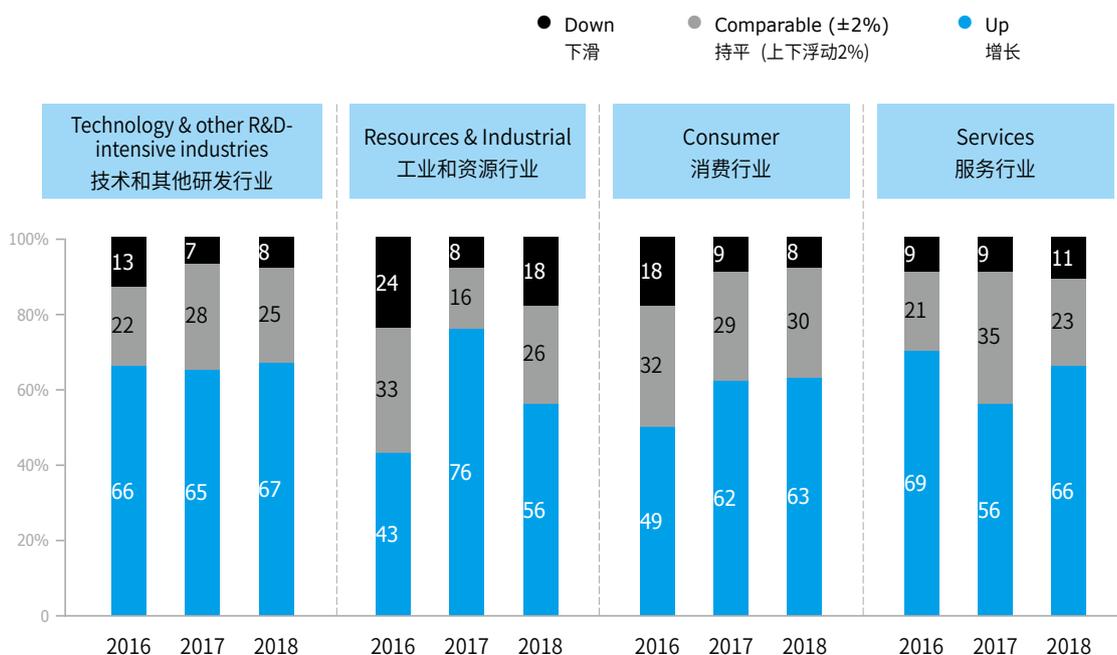
在像中国这样不断增长的大市场中，总会有商机。公司主要关注“发展核心业务”（79%），“推出新产品和服务”（59%）和“瞄准新客户群”（47%）。只有不到 2% 的公司计划退出中国市场。与过去几年一样，“国内消费的增长 / 日益庞大和富裕的中产阶级的崛起”仍然是企业在中国的最大机遇。据报道，“正在进行的经济和市场改革”则位列第二大机遇。虽关注范围较窄，未被包括在前三大市场机遇之中，但许多受访者仍旧选择了“健康中国 2030”等医疗改革为重要的新兴市场机遇。

长期的挑战仍然存在

长期存在的挑战持续阻碍美国公司在中国市场开展业务的能力。事实上，中国美国商会发布的《2019 中国商务环境调查报告》和今年的《美国企业在中国白皮书》中强调的许多挑战已经提出多年，这些挑战表现出了对双方关系缺乏进展的失望，同时美国政府与中方正在进行的贸易谈判中也表达了同样的担忧。许多挑战源于市场准入限制，这些限制抑制了超过一半的受访者的业务运营；技术

Figure 1. How does the estimated 2018 revenue of your China operations compare with 2017 results?

图 1. 2018 年贵公司在华业务的经营收入预计与 2017 年相比有何变化？



Top 10 Challenges facing American Business in China, 2018 2018 年在华美国企业面临的十大挑战		
1	Inconsistent regulatory interpretation and unclear laws & enforcement 法律法规解释执行不一致 / 不明确	55%
2	Rising labor costs 劳动力成本增加	48%
3	Rising tensions in US-China relations 中美关系日益紧张	45%
4	Increased competition from privately owned Chinese companies 来自中国私营企业的竞争加剧	29%
5	Shortage of qualified employees 缺少合格的员工	28%
6	Regulatory compliance risks, including insufficient lead-time to comply with new regulations 监管合规风险, 包括合规准备时间不足	24%
6	Chinese tariffs on US goods 中国对美国商品加征关税	24%
8	RMB Volatility 人民币波动	23%
9	Industry overcapacity 行业产能过剩	22%
10	Difficulty obtaining required licenses 获取相关许可证困难	19%

IP and innovation protections also remain longstanding concerns for the US business community in China, despite the fact that many members believe the Chinese market is leading in emerging technology adoption, including artificial intelligence, 5G and autonomous driving. Members

recognize that China has made progress in IP protection over the past few years. The 2018 *International IP Index* from the US Chamber of Commerce acknowledges improvements in patent and copyright protection and enforcement, and a growing recognition and upholding of IP rights across different levels of government.

Nevertheless, in the 2019 BCS close to 35% of respondents say a “lack of sufficient IP protection” prevents them from increasing innovation in China, up from around 32% in 2017. Over 90% of respondents state that internet restrictions and an inability to access certain globally-available software impairs the competitiveness of their operations in China, and 27% report that the increased restrictiveness of cybersecurity policies reduces corporate innovation in China. Over half of respondents concede that the risks of “IP leakage and data security” are greater in China than elsewhere.

AmCham China welcomes the successful development of IP courts in China and the creation of a new national court to handle IP appeals following a proposal submitted to the NPC in October 2018. We hope to see the judicial system continue to develop, while at the same time the role of administrative bodies (e.g., the newly created China National Intellectual Property Administration, “NIPA”) in the resolution of IP disputes is reduced.

While a growing share of members feel foreign companies are treated equally in comparison with local companies (48% in 2018 versus in 40% in 2016), market access, regulatory enforcement and government financial support/subsidies constitute the main concerns with respect to unfair treatment.

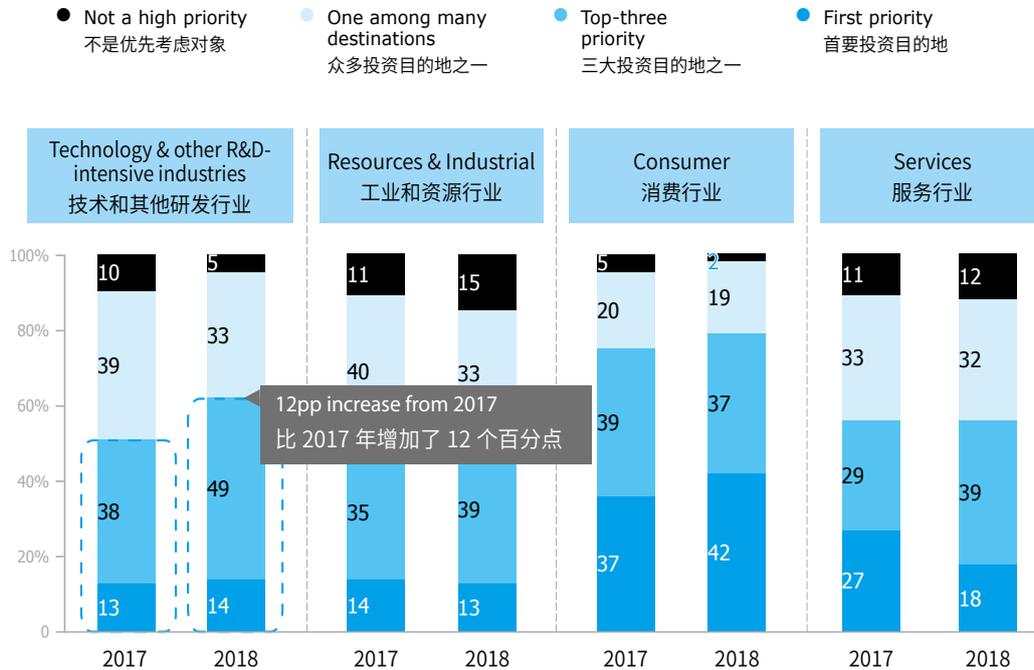
The AmCham China BCS paints a complex picture of opportunities laced with significant challenges in the world’s second biggest economy. Member companies are clear that improvements in regulatory transparency and greater market access would have the greatest impact on their investment decisions. At the same time, they would like to see the US government advocate more strongly for a level playing field (47%), engage in results-oriented government dialogues (33%), and apply investment reciprocity (31%).

AmCham China’s 2019 Policy Priorities

The opportunities and challenges just discussed provide the framework for AmCham China’s 2019 Policy Priorities. While the following chapters of the *White Paper* provide many specific and detailed recommendations, our policy priorities establish an overarching framework under which the more specific recommendations can be understood. We believe that any actions to address the imbalances in the US-China relationship or achieve a comprehensive negotiated outcome in the ongoing negotiations is best solved by keeping these issues in mind.

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

中国在贵公司近期的全球投资计划中的重要性如何？



和其他研发密集型行业面临的挑战尤为严峻，超过 75% 的会员反映了此问题。

一方面，会员企业感到中国欢迎外国投资，因为其为国内生产总值带来了增长，同时带来了就业、税收和积极的宣传。另一方面，许多会员企业认为，只有在符合中国自身产业政策目标的前提下，外国投资才会受到中国的欢迎。企业发现，中国的决策是由国内保护主义推动的，这与中国的 WTO 承诺不一致。

与过去三年的情况一样，在 2019 年的《报告》中，“法律法规解释执行不一致 / 不明确”再次成为成员面临的头号挑战（占总受访者的 55%）。同样，“劳动力成本增加”（48%）和“缺少合格的员工”（28%）等长期挑战也位列企业面临的五大挑战之中。值得注意的是，“中美关系日益紧张”（45%）和“来自中国私营企业的竞争加剧”（29%）首次出现在营商环境调查中，成为五大挑战之一。表 1 显示了中国成员公司面临的十大挑战列表。

虽然许多会员企业认为中国市场在采用新兴技术方面处于领先地位，包括人工智能、5G 和自动驾驶，但知识产权和创新保护仍然是美国商界在中国的长期担忧。会员企业认识到，过去几年中国在知识产权保护方面取得了进展。

美国全国商会 2018 年国际知识产权指数指出了中国在专利和版权保护及执法方面的改进以及不同级别政府对知识产权的认可和保护日益增加。

然而，在《2019 中国商务环境调查报告》中，接近 35% 的受访者表示中国“缺乏足够的知识产权保护”对他们继续创新提出挑战，比 2017 年的 32% 有所增加。超过 90% 的受访者称互联网限制和无法访问某些全球可用的软件会损害其在中国的运营竞争力，27% 的受访者表示，网络安全政策的限制性越来越严重，使得企业在中国的创新减少。超过一半的受访者承认，中国的“IP 泄漏和数据安全”风险大于其他地区。

商会欢迎中国知识产权法院的成功发展，以及应 2018 年 10 月向全国人大提交的一项提案所新设立的处理知识产权上诉的国家法院。我们希望看到司法系统继续发展，同时行政机构（如新成立的中国国家知识产权局）在解决知识产权纠纷方面的作用能够有所减弱。

虽然越来越多的会员公司认为外国公司与本地公司相比受到平等对待（2018 年为 48%，而 2016 年为 40%），但市场准入、监管执法和政府财政支持 / 补贴是他们针对不公平待遇的主要担忧。

Restoring Trust through Concrete Actions Leading to Greater Transparency, Predictability, and Evenhandedness in Regulatory Processes

It is important to acknowledge that the process of building trust in the US-China relationship that formally began in 1979 itself took several decades. Today, the Chinese economy is the world's second largest with a technological capacity that rivals the US in several sectors. In this context, US companies are understandably less accepting of Chinese government policies and practices that provide competitive advantages to their domestic competitors, especially when those competitors generally enjoy full access to the US market. Following many years of bilateral discussions when commitments were often made and not fully implemented, restoring trust will require concrete, measurable actions from both sides. The stability and predictability provided by a transparent and evenhanded regulatory environment will be important for the continued growth of both foreign and domestic businesses in China, and we urge the Chinese government to take further steps to adopt a more fully inclusive and accountable process for the formulation and implementation of laws and regulations. Despite progress, China still ranks only 78 out of 126 countries for regulatory enforcement in the 2019 *Rule of Law Index* from the World Justice Project.

To restore trust in the bilateral relationship, we recommend the Chinese government:

- Both governments prioritize bilateral communication at the working level and with strong business community engagement on both sides, as well as high-level dialogue.
- Commitments to meaningful reform include clear benchmarks, timelines and intensive monitoring to ensure lasting changes to China's legal and regulatory architectures and impartial implementation of laws and regulations.
- Transparency be improved by releasing formal findings and case histories of anti-monopoly and other compliance-related investigations.
- The use of "window guidance" be eliminated and public directives be released instead.
- Written explanations be provided whenever administrative agencies deny or provide conditioned approvals for license applications or other approval applications, or when they fail to adhere to decision deadlines provided for in relevant laws and regulations.
- Foreign companies be given equal opportunity to participate in the drafting and review of relevant laws and regulations, including ensuring draft "comment periods" are provided with reasonable timelines and made public far enough in advance to ensure full participation by the domestic and foreign business communities.

Promoting Development through Policies of National Treatment and Competitive Neutrality

Policies that emphasize national treatment benefit the entire economy – not just FIEs. We believe that government policy should place all parties in China – including both domestic and international – on an even, competitive footing. Enacting a policy of "competitive neutrality" is especially important given the increasing scrutiny facing the US-China commercial relationship and the questions being raised internationally about the greater market access enjoyed by Chinese companies overseas compared to the access FIEs have in China. And yet:

- China's restrictive investment regime blocks investment in key industries. China's average tariff level (9.9%) is nearly three times higher than the US (3.5%).
- China's licensing and approval regimes forestall or deny market access even in nominally open sectors.
- Informal practices and other non-tariff barriers such as anti-trust and standard-setting processes, and lengthy customs licensing procedures, limit US companies' ability to compete equally in the market.
- China has shown a distressing propensity to retaliate without legal justification against FIEs and imports from particular countries which are perceived to have displeased China.

To promote creation of a truly level playing field, we recommend that:

- Foreign investors be provided treatment no less favorable than the best treatment offered to any domestic Chinese company, whether private, state-owned, or state-controlled.
- Laws and regulations, enforcement activities, approval processes, procurement preferences, and other requirements that treat foreign entities, products, and services less favorably than domestic firms be eliminated.
- Market openings be implemented in more sectors, particularly areas in which previous commitments have already been made, 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 subject to the same terms and conditions.
- The Chinese government substantially narrow its foreign investment Negative List, bringing it in line with those in other advanced economies.
- National security reviews and "secure and controllable" technology requirements be narrowly applied and not used for economic protectionism or in support of industrial policy.
- The Chinese government reduce overcapacity, fully declare subsidies, and eliminate those that are

《中国商务环境调查报告》展示了世界第二大经济体面临重大挑战和机遇的复杂局面。会员公司清楚，监管透明度的提高和更大的市场准入将对其投资决策产生最大的影响。与此同时，他们希望看到美国政府更有力地倡导公平竞争（47%），参与以结果为导向的政府对话（33%）并实施投资互惠（31%）。

商会 2019 年政策重点

商会 2019 年政策重点是基于刚才讨论的机遇和挑战。虽然《美国企业在中国白皮书》的以下章节提供了许多具体和详细的建议，但我们的政策重点是一个总体框架，在该框架下可以理解更具体的建议。我们认为，任何解决中美关系失衡或在正在进行的谈判中取得全面谈判结果的行动，都最好要牢记以下三点。

通过实际行动重建信任，从而提高监管程序的透明度、可预测性和公平性

美中于 1979 年正式建交，两国建立信任就花了几十年的时间，认识到这一点很重要。今天，中国已跃居世界第二大经济体，其技术能力在多个领域都可与美国相媲美。在这种情况下，美国公司自然不太能接受中国政府为其国内竞争对手提供竞争优势的政策和做法，尤其这些竞争对手通常能够自由进入美国市场。多年双边讨论经常是作出承诺却未充分执行，所以恢复信任将需要双方采取具体的、可衡量的行动。透明和公正的监管环境所提供的稳定性和可预测性对于国内外企业在中国的持续增长至关重要，我们敦促中国政府采取进一步措施，采取更全面、可追溯的法律法规制定和实施流程。虽然有所进展，但在 2017-2019 年法治指数中，在监管执法这一项，中国在 126 个国家仍然只排第 78 名。（数据来源：世界正义工程）

为了恢复对双边关系的信任，我们建议中国政府：

- 采纳明确的基准、时间表和密集监控机制，以确保中国法律和监管架构的持久变革以及法律和法规的公正实施。
- 为外国公司提供平等参与起草和审查相关法律、法规和标准的机会，确保草案“公开征求意见期”有合理的时间表，并提前公布，以确保国内外商界的充分参与。
- 通过发布反垄断和其他相关合规调查的正式调查结果和历史案例来提高透明度。

- 不再使用“窗口指导”。
- 当行政机构拒绝提供或提供有条件的许可证申请或其他批准申请时，应提供书面解释。

以国民待遇和竞争中立政策促进发展

强调国民待遇的政策有利于整体经济 – 而不仅仅是外商投资企业。我们认为，中国的政策应该把国内外各相关方置于一个平等、有竞争力的基础之上。制定“竞争中立”政策尤其重要，因为美中商业关系面临越来越严格的审查，国际上对于中国企业在海外相比外商投资企业在享受更宽松的市场准入也提出了疑问。然而：

- 中国限制性投资制度阻碍了对重点行业的投资。中国的平均关税水平（9.9%）几乎是美国的三倍（3.5%）。
- 即使在名义上开放的行业，中国的许可和审批制度也阻止或拒绝市场准入。
- 非正规做法和其他非关税壁垒，如反垄断和标准制定程序，以及冗长的海关许可程序，都限制了美国公司在市场上平等竞争的能力。
- 令人沮丧的是，中国倾向于在没有法律理由的情况下报复外商投资企业以及限制从某些引起中国不满的特定国家进口。

为促进创造一个真正公平的竞争环境，我们建议：

- 向外国投资者提供的待遇不低于中国国内公司享受的最佳待遇，无论是私企，国企还是国家控制企业。
- 清理对国内企业待遇优于外企的法律法规、执法活动、审批程序、采购偏好和其他要求。
- 在更多部门实施市场开放，特别是已经作出承诺的领域，以实现更加平衡的投资关系。如果中国企业可以在美国投资，美国公司应该能够在相同的条款和条件下在中国进行同样的投资。
- 中国政府大幅缩短其外国投资负面清单，与其他发达经济体保持一致。
- 国家安全审查和“安全可控”技术要求仅用在有限的范围内，不用于经济保护主义或支持产业政策方面。
- 中国政府减少过剩产能，全面申报补贴并取消不符合 WTO 标准的补贴，同时废除其他促进不正当竞争的政策。

Examples of a Lack of Reciprocity in the Bilateral Investment Relationship

There are many examples of unfair treatment of US companies in China due to investment limits, restrictive regulations, selective enforcement, and procurement barriers. The examples listed below are certainly not exhaustive, but they illustrate the market access and reciprocity challenges that contribute to the lack of a level playing field.

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 in production of passenger and commercial vehicles is capped at 50%, and the number of joint ventures per investor is capped. Foreign equity caps are not scheduled to be removed until 2022.	Foreign investment in the automobile industry is permitted without an equity cap.
Banking and Capital Markets	Foreign mutual fund firms are subject to a 51% equity cap that is not scheduled to be raised to 100% until 2021.	Foreign mutual funds are not subject to an equity cap.
Healthcare Services	Foreign investment in medical institutions is capped at 70%. Foreign-invested hospitals are banned from opening new hospital branches.	Foreign investment in medical institutions is permitted without an equity cap.
ICT	Foreign firms are subject to 50% ownership caps in value-added telecommunications sectors, such as cloud computing.	Foreign investment in the provision of cloud services is permitted without an equity cap.
Insurance	Foreign investment in life insurance is subject to a 51% equity cap as of 2018, which is not scheduled to be removed until 2021.	Foreign investment in the insurance industry is generally permitted without an equity cap, but some states impose restrictions based on government ownership.
Legal Services	Foreign law firms cannot hire Chinese lawyers to practice Chinese law.	Chinese law firms can hire US lawyers and practice US law in the US.
Media & Entertainment	Foreign-owned companies cannot distribute films in China without restrictions. The Chinese government schedules film release dates and foreign films are subject to revenue-sharing agreements which mandate that 75% of revenues must remain with Chinese film production companies.	Chinese companies can distribute films in the US without restrictions and can determine their own release dates.
Retail & E-commerce	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.

双边投资关系缺乏对等的例子

由于投资限制、限制性法规、选择性执法和采购障碍，美国公司在中国受到不公平待遇的例子很多。下面列出的例子当然不是详尽无遗的，但它们展示了市场准入的挑战和缺乏对等性所导致的不公平的竞争环境。

行业	中国	美国
农业	禁止外国投资生物技术作物育种，种子生产和商业化。	允许外国投资生物技术，没有股权上限。
汽车	外国公司必须与中国合作伙伴组建合资企业，客运和商用车生产的外国股权上限为 50%，每个投资者的合资企业数量有上限。外国股权上限在 2022 年之前不会取消。	允许外国投资汽车行业，没有股权上限。
银行业和资本市场	外国共有基金公司的股权上限为 51%，直到 2021 年才计划上调至 100%。	外国共有基金不受股权限制。
医疗服务	医疗机构的外国投资上限为 70%。外资医院禁止开设新的医院分支机构。	允许外国投资医疗机构，没有股权上限。
信息和通信技术	外国公司在增值电信领域的所有权上限为 50%，例如云计算。	允许外国投资提供云服务，无股权上限。
保险业	从 2018 年起，外国人寿保险投资股权上限为 51%，直到 2021 年才计划撤销。	允许外国投资保险业，一般没有股权上限，但一些州根据政府所有权实施限制。
法律服务	外国律师事务所不能聘请中国律师来执业中国法律。	中国律师事务所可以聘请美国律师并在美国执业美国法律。
媒体和娱乐业	外资企业不能无限制地在中国发行电影。中国政府安排电影发行日期，外国电影受制于收益分享协议，该协议规定 75% 的收入必须留在中国电影制作公司。	中国公司可以不受限制地在美国发行电影，并可以自行确定发行日期。
零售和电子商务	地方政府经常强迫外商独资零售商在其管辖区内设立独立的法人实体，对这些公司增加税收和行政负担。	没有任何常见做法会给外国零售商带来更高的税收和行政负担。

通过全球合作和保护知识产权促进创新

创新产生连锁反应，为中国和美国的经济带来广泛的益处。研发活动是在中国运营的国内外企业的重要活动。然而，只有在公平的竞争环境中才能实现持续的创造，要依据法律平等地保护知识产权，不管是书面规定还是实践，对外国和国内公司都是如此。中国要实现其创新目标，就要加强基础设施并开放其机构，使信息更自由地流动。创

造力是多种想法在一定环境下的结合，包括广泛参与下制定的技术中立标准以及知识产权免受盗取。

- 尽管中国的知识产权保护制度在过去十年结束时有了显著改善，但知识产权保护水平此后一直停滞不前。2018 年，在知识产权保护方面，中国在 125 个国家中仅排名 52。（2018 年国际产权指数）
- 除了知识产权保护之外，网络安全相关政策的限制性

non-WTO compliant, and remove other policies that promote unfair competition.

Stimulating Innovation through Policies that Promote Global Cooperation and Intellectual Property Protection

Innovation has ripple effects that bring broad benefits to the economies of both China and the US. Research and development (R&D) activities are a critical activity for both domestic and foreign companies operating in China. Sustained creativity, however, can only be realized on a level playing field with equal protection of IPR under law – both on paper and in practice – for foreign and domestic companies alike. To realize its innovation goals, China needs 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 technology-neutral standards are set with broad participation and IP is protected from theft.

Although China's IP protection regime improved significantly towards the end of the last decade, the level of IPR protection has since stagnated. In 2018 China still ranked only 52 of 125 countries with respect to IP protection. (The International Property Rights Index, 2018)

In addition to IP protection, increased restrictiveness of cybersecurity-related policies constitutes a significant barrier (27%) to increasing innovation in China. (2019 BCS).

We recommend that:

- The Internet be promoted as a platform for global interaction and restrictions on cross-border data flows such as those proposed in the *Cybersecurity Law* be limited to encourage international collaboration and innovation.
- The successful development of IP courts be continued and the power of administrative bodies (e.g., NIPA) to investigate and punish infringement be balanced alongside the continued development of IP courts.
- A clear, unified system of penalties be established to deter IP theft including through cyber-enabled means.
- Ensure standards development Technical Committees are open to FIEs in practice (as stated in the 2019 *Foreign Investment Law*) so that they can participate on an equal basis with domestic companies. Standards development processes should seek to bring China's domestic standards in line with internationally-accepted standards and best practices.

We believe government policy should help all parties in Chinese society. This is especially important given the increasing scrutiny of the US-China commercial relationship and the questions being raised internationally about the greater market access enjoyed by Chinese companies overseas compared to the access foreign-invested companies have in China.

加强也是在中国加大创新的重大障碍（27%）。（2019 中国商务环境调查报告）

我们建议：

- 让互联网成为全球互动的平台，《网络安全法》中限制跨境数据流动仅应用于有限范围，以此鼓励国际合作和创新。
- 继续推动知识产权法院的工作的成功开展，与此同时，平衡行政机构（如国家知识产权局）调查和惩罚侵权行为的权力。
- 建立明确，统一的处罚制度，以阻止知识产权盗窃，包括通过网络手段。
- 确保标准制定技术委员会在实践中对外商投资企业开放（如 2019 年《外商投资法》所述），以便他们能够与国内公司平等参与。标准制定过程应力求使中国的国内标准符合国际公认的标准和最佳实践。

我们认为政府政策应该帮助中国社会各界 – 包括消费者、农民和私营公司。这一点尤其重要，因为美中商业关系面临的审查日益严格，国际上对于中国企业在海外相比外商投资企业在中国享受更宽松的市场准入也提出了疑问。

2019 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 the 2018 AmCham China *White Paper*.

The progress rating indicates our members' perception of the level of progress – either high, moderate, or low – achieved by relevant government officials in addressing the priority challenge designated in each chapter of the 2018 *White Paper*. The final column indicates each chapter's priority recommendation for 2019.

Chapter	2018 Recommendation	Progress Rating	2019 Recommendation
Agriculture			
<i>Chinese Government</i>	Improve the sustainability and competitiveness of Chinese agriculture by opening the industry up to foreign investment in seed technology, modern agricultural processing, and bulk transportation.	Moderate Progress	Improve the competitiveness and sustainability of Chinese agriculture by further opening the industry up to foreign investment in agricultural biotechnology, modern agricultural processing, and bulk transportation.
<i>US Government</i>	Work with Chinese officials through any official or unofficial dialogues to address trade and investment restrictions faced by US agricultural producers.	Moderate Progress	Strengthen communication with the Chinese government, explore space for cooperation, and resume the normalization of bilateral trade between the US and China.
Automotive Industry			
<i>Chinese Government</i>	Provide enterprises with more opportunity to participate in discussions and submit opinions at the early policy drafting stages, so that policies and standards can meet market needs and better facilitate the development of the market and the industry.	Low Progress	Allow enterprises (both domestic and FIEs) greater opportunity to participate in policy and regulatory development and submit comments during early stages of policy development, to enable these policies to better address market need and facilitate sustainable energy development.
Banking and Capital Markets			
<i>Chinese Government</i>			
• <i>Bond Market</i>	Further align market practice to global standards and establish a corporate trustee structure to further protect investors.	Moderate Progress	Further improve the Bond Connect scheme by allowing financial firms' foreign entities to serve as Bond Connect market makers.
• <i>Commercial Banking</i>	Accelerate market opening to allow foreign banks' greater participation.	Moderate Progress	Remove all quotas in the banking sector, including on foreign debt.
• <i>Credit Rating</i>	Implement CRA opening up across markets and products.	Moderate Progress	Remove or ease foreign ownership restrictions on foreign-affiliated CRAs.
• <i>Securities</i>	Eliminate ownership caps for securities JVs with further consideration of securities JVs business scope expansion, JV partner qualification, foreign investor qualification, and offshore infrastructure leverage.	Moderate Progress	Remove market access barriers that, in practice, make it more difficult for US securities companies to benefit from market opening measures and to operate onshore in general. These barriers include licensing restrictions for securities JVs and financial eligibility requirements for majority owners of securities JVs.
• <i>Custodian Service</i>	Modify CSRC Administrative Measures for Securities Investment Fund Custody Business to allow foreign branches to provide the full scope of custody services.	Moderate Progress	Allow foreign bank branches in China to offer full custody service to domestic securities investment funds.
• <i>Asset Management</i>	N/A	N/A	Release implementation rules for the asset management sector to clarify how to set up a foreign majority-owned joint venture.

2019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2018年及2019年《白皮书》各章节提出的主要建议。

相关政府官员积极应对2018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企业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2019年《白皮书》各章节的主要建议。

章节	2018年白皮书主要建议汇总	进展评价	2019年白皮书主要建议汇总
农业			
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。	有所进展	进一步允许外资投资农业生物技术、现代农业加工和粮食散货运输，从而提高中国农业的竞争力和可持续性。
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贸易和投资限制。	有所进展	加强与中国政府的沟通，探索合作空间，使中美双边贸易继续正常化。
汽车制造业			
中国政府	政策制订和起草的早期阶段，给予企业更多参与讨论、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。	进展缓慢	政策制订和起草的早期阶段，给予企业更多参与讨论、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	进一步调整市场惯例使之符合全球标准，建立公司受托人结构以进一步保护投资者。	有所进展	通过允许金融公司的外国实体作为债券通造市商，进一步改善债券通计划
• 商业银行	加快市场开放，让外资银行更多参与。	有所进展	取消银行业的所有配额，包括外债。
• 信用评级	在市场和产品上实施信用评级机构开放。	有所进展	取消或放宽对外资信用评级机构的外国所有权限制。
• 证券	进一步考虑证券合资企业的业务范围扩张，合资伙伴资格，外国投资者资格以及境外基础设施杠杆等，取消证券合资企业的所有权上限。	有所进展	取消那些实际上使美国证券公司更难从市场开放措施中获益并在整体上更难在境内运营的市场准入障碍。这些障碍包括证券合资企业的发牌限制以及证券合资企业的大多数所有者的财务资格要求。
• 托管服务	修改中国银监会第12号通知和中国证监会“证券投资基金托管业务管理办法”，允许外资分行提供全面的托管服务。	有所进展	允许在华的外资银行分行为国内证券投资基金提供全面托管服务。
• 资产管理	N/A	N/A	发布资产管理行业实施细则，明确如何设立外资控股的合资企业。

Chapter	2018 Recommendation	Progress Rating	2019 Recommendation
Civil Aviation			
<i>Chinese Government</i>	Adopt a national ATFM framework that incorporates a SWIM system and CDM procedures for air traffic control, airline, and airport experts to enable growth and efficiency through enhanced system management that also alleviates delays.	No Rating Provided	Increase efforts to adopt an integrated national ATFM framework that incorporates a SWIM system and CDM procedures for air traffic control, airline, and airport experts to enable growth and efficiency through enhanced system management that also alleviates delays.
Civil Society			
<i>Chinese Government</i>	Update and expand the list of PSUs and provide clear procedures and better incentives for government entities to act as PSUs.	Low Progress	Update /expand the list of PSUs and provide clear procedures and better incentives for government entities to act as PSUs.
<i>US Government</i>	Continue to reiterate strong and abiding concerns regarding the <i>Overseas NGO Law</i> in exchanges with relevant government stakeholders in China. [US Department of State]	Low Progress	Continue to reiterate strong and abiding concerns regarding the <i>Overseas NGO Law</i> in exchanges with relevant government stakeholders in China. [US Department of State; Department of Labor; Environmental Protection Agency]
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 are allowed to attend meetings and investigations of all three agencies, alongside local counsel, to implement China's JCCT commitment.	Low Progress	Focus on genuine competition issues (and do not take into account trade and national security issues as part of SAMR's review process). Remain impartial between domestic companies and their foreign competitors.
Compliance			
<i>Chinese Government</i>	Provide clear definitions and explanations of legal requirements that directly impact compliance. For example, clear definitions in the final version of the AUCL regarding commercial bribery and companies' liability for their employees' behavior will assist companies with developing and enforcing robust and practical programs for commercial bribery compliance.	Low Progress	Provide clear definitions and explanations of legal requirements that directly impact compliance. For example, clear definitions in the final version of the AUCL regarding commercial bribery and companies' liability for their employees' behavior will assist companies with developing and enforcing robust and practical programs for commercial bribery compliance.
<i>US Government</i>	Engage in bilateral dialogue in-depth exchanges to support the implementation of transparent and predictable regulatory systems, and a common understanding of compliance tools and objectives.	Moderate Progress	Engage in bilateral dialogue and in-depth exchanges to support the implementation of transparent and predictable regulatory systems, and a common understanding of compliance tools and objectives.
Customs			
<i>Chinese Government</i>	Remove or improve the stated time limits for preliminary adjudication.	Low Progress	Remove or improve the stated time limits for preliminary adjudication.
Direct Sales			
<i>Chinese Government</i>	Revise the <i>Direct Sales Regulation</i> as soon as possible by relaxing restrictions on compensation for direct sales agents and allowing compensation to be based on the aggregate volume of the sales team under a direct sales agent, provided it is based on sales volume and not on the number of sales agents recruited. [MOFCOM, SAMR, and the State Council]	Low Progress	Revise the <i>Direct Sales Regulation</i> as soon as possible by relaxing restrictions on compensation for direct sales agents and allowing compensation to be based on the aggregate volume of the sales team under a direct sales agent, provided it is based on sales volume and not on the number of sales agents recruited. [MOFCOM, SAMR, and the State Council]
Education			
<i>Chinese Government</i>	Chapter not contributed in 2018	N/A	Consistent with the past 40 years of <i>Reform and Opening Up</i> , continue to design, implement, and legislate policies to promote a more open, accessible, and sustainable education sector.
<i>US Government</i>	Chapter not contributed in 2018	N/A	Continue to implement US-China bilateral exchange programs in education, culture, and humanities among others, which benefit students and higher education institutions of both countries.

章节	2018年白皮书主要建议汇总	进展评价	2019年白皮书主要建议汇总
民用航空			
中国政府	启用全国空中交通流量管理框架，包括关于空中交通控制、航空公司和机场专家的全系统信息管理体系和协同决策体系，通过减少延误的强化系统管理来促进增长和提高效率。	未提供评价	进一步采用综合性的全国空中交通流量管理框架，包括关于空中交通控制、航空公司和机场专家的全系统信息管理体系和协同决策体系，通过减少延误的强化系统管理来促进增长和提高效率。
公民社会			
中国政府	更新 / 扩大业务主管单位名录，同时为担任业务主管单位的相关政府机构制定明确的程序及设立更好的激励措施。	进展缓慢	更新 / 扩大业务主管单位名单，同时为担任业务主管单位的相关政府机构制定明确的程序及设立更好的激励措施。
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]	进展缓慢	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、劳工部、国家环境保护局等]
竞争法规			
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	关注真正的竞争问题（在国家市场监督管理总局审查的过程中不考虑贸易和国家安全问题）。在国内企业与外国竞争对手之间保持公正。
合规			
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。	进展缓慢	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	参与双边对话，深入开展交流，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。	有所进展	参与双边对话，深入开展交流，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。
关税和贸易			
中国政府	删除或改进预判决的规定时限。	进展缓慢	删除或改进预判决的规定时限。
直销			
中国政府	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。[商务部、国家市场监督管理总局、国务院]	进展缓慢	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。[商务部、国家市场监督管理总局、国务院]
教育			
中国政府	2018 年未提供	N/A	根据过去 40 年改革开放的经验，继续设计、实施和立法政策，促进教育部门更加开放、更具可持续性。
美国政府	2018 年未提供	N/A	继续执行美中之间达成的一系列教育人文交流的协议，这对两国的高等院校及年青学生皆有益。

Chapter	2018 Recommendation	Progress Rating	2019 Recommendation
Environment			
<i>Chinese Government</i>	Chapter not contributed in 2018	N/A	Establish clear national guidelines for environmental compliance and publish the rules online to make them accessible to both companies and regulators. We urge the government to work to improve the technical capability of inspectors and regulators and provide at least 60 days advance notice before requiring production capacity reductions or shutdowns. We also encourage all provincial and local environmental authorities to publish regulatory requirements and make regulatory material easily available to relevant companies.
<i>US Government</i>	Chapter not contributed in 2018	N/A	Share environmental protection best practices and technologies where relevant with your Chinese counterparts. Encourage them to adopt international, scientifically-grounded emissions standards and adopt BACTs/BATs to reduce emissions.
Express Delivery Services			
<i>Chinese Government</i>	Establish a uniform security regulation framework at the national level for the EDS industry. Clarify the responsibilities of the various regulatory bodies and standardize regulatory measures across the country.	Moderate Progress	Establish a uniform security regulation framework at the national level for the EDS industry. Clarify the responsibilities of the various regulatory bodies and standardize regulatory measures across the country.
Food and Beverage			
<i>Chinese Government</i>	Make good use of industry associations or the foreign chamber platform to create more public-private partnerships or bilateral communication channels to develop and implement regulations and standards, so as to adopt the best international practices and advanced technologies from non-governmental stakeholders.	Moderate Progress	Utilize existing platforms offered by organizations like AmCham China to develop Public-Private Partnerships or regular platforms for dialogue to encourage the sharing of international best practices and technology.
<i>US Government</i>	Enhance communication between corresponding US government agencies, industry associations and US enterprises operating in China, and organize more seminars and forums to bring together industry experts to share their international experience and best practices for the Chinese government.	No Rating Provided	Strengthen communication between relevant US government authorities, industry associations, and US enterprises in China. Increase opportunities to involve all parties in seminars, dialogues, and workshops related to international expertise and best practice urgently in demand across the Chinese government.
Government Procurement			
<i>Chinese Government</i>	Focus on addressing the remaining gaps in China's fifth revised GPA offer and accelerate negotiations toward accession to the GPA in 2018. [MOFCOM, MOF, SASAC]	Low Progress	Submit a new GPA offer that addresses the remaining gaps in its 2014 revised offer and accelerate negotiations in order to complete its accession to the GPA in 2019. [MOFCOM, MOF, SASAC]
<i>US Government</i>	Recommendation not provided in 2018	N/A	Work with the EU and the other GPA parties to encourage and facilitate China's GPA accession in 2019.
Healthcare Services, Medical Devices, and Pharmaceuticals			
<i>Chinese Government</i>			
<i>Healthcare Services</i>	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.	Low Progress	Remove restrictions and limitations on foreign-invested hospitals under the "temporary regulation" including: a ban on new hospital branches, the requirement to report each branch separately for tax purposes, restrictions on the number of hospitals that foreign employees can work for, and the minimum bed number requirement for hospital accreditation.

章节	2018年白皮书主要建议汇总	进展评价	2019年白皮书主要建议汇总
环境问题			
中国政府	2018 年未提供	N/A	商会敦促中国政府制定明确的环境合规国家指导方针，并在网上公示，供企业和监管机构查阅。我们敦促政府努力提高检查员和监管人员的技术能力，并在要求减产或停产前至少提前 60 天发出通知。我们还鼓励所有省级和地方环保部门公布监管要求，并让相关公司更加便利地获得监管材料。
美国政府	2018 年未提供	N/A	与中国同行分享环保的最佳实践和技术。鼓励他们采用以科学为基础的国际排放标准，并采用最佳可用控制技术和最佳可用技术来减少排放。
快递服务			
中国政府	期待在国家层面加快建立快递行业安全监管统一领导框架，明确监管主体，统一全国监管措施。	有所进展	期待在国家层面加快建立快递行业安全监管统一领导框架，明确监管主体，统一全国监管措施，并制定包括安检设备在内的、各部委共同认定的统一技术标准。
食品饮料			
中国政府	在政策及标准制定过程中充分利用商协会平台，创建公私合作项目或定期交流机制，鼓励国际先进经验及技术的分享。	有所进展	在政策及标准制定及执行过程中充分利用如中国美国商会等商协会平台，开展公私合作（PPP）项目或定期交流机制，鼓励分享国际先进经验及技术。
美国政府	加强美国政府相关主管部门、行业协会等与在华美企的交流，针对中国政府亟需了解的国际经验、最佳实践等，增加由各方参与的研讨机会。	未提供评价	加强美国政府相关主管部门、行业协会等与在华美企的交流，针对中国政府亟需了解的国际经验、最佳实践等，增加由各方参与的研讨机会。
政府采购			
中国政府	重点缩小以上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 2018 年加入《政府采购协定》。[商务部、财政部、国资委]	进展缓慢	重点缩小以上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 2018 年加入《政府采购协定》。[商务部、财政部、国资委]
美国政府	2018 年未提供	N/A	商会敦促美国政府与欧盟和其他 GPA 参加方合作，鼓励和促进中国在 2019 年加入 GPA。
医疗卫生服务、药品和医疗器械			
中国政府			
医疗服务	为外资医疗机构设定优惠税率，并允许管理公司合并医疗中心的帐户用于报税。	进展缓慢	取消《暂行条例》对外商投资医院的限制，包括：禁止新建医院分支机构，要求各分支机构单独申报税务，限制外籍员工可以工作的医院数量，以及认证医院所需的床位数量。
医疗设备	进一步调整当前各级招标采购模式，以确保患者通过所有质量和疗效合格的药品的公平竞争获得高质量药物。	进展缓慢	通过允许推荐医疗设备标准，而不是强制标准来促进行业创新。商会希望医疗器械行业能够了解如何解决这一重叠问题，与全国人大立法委员会保持一致。

Chapter	2018 Recommendation	Progress Rating	2019 Recommendation
<i>Medical Devices</i>	Further adjust the current tender-bid procurement model at all levels to ensure fair competition and patient access to high-quality, approved drugs.	Low Progress	Promote industry innovation by allowing medical device standards to act as recommended guidelines rather than mandatory standards. The medical device industry is prepared to work with the NPC Legislative Council to resolve regulatory overlaps.
<i>Pharmaceuticals</i>	Imported drugs, like domestic drugs, should be classified according to their level of innovation.	Moderate Progress	Establish data protection, patent link and patent period compensation systems as quickly as possible. Encourage innovation through effective protection of IP rights. Clarify both time limits and the process of protection for pharmaceutical products, in particular for innovative and therapeutic biological products.
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	Rescind policies designed to acquire intellectual property from foreign companies as a prerequisite for market entry and increase enforcement against companies that illegally procure technology from foreign companies.
<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	Formulate new controls on emerging and foundational technologies with a focus on those technologies that are not already widely available in China or being readily supplied from non-US sources and limit the list of covered emerging and foundational technologies to those technologies that can be realistically controlled.
<i>Both Governments</i>	Recommendation not included in 2018 <i>White Paper</i> .	N/A	Assist US and Chinese entities in strengthening their compliance efforts through education and training activities to ensure they do not run afoul of US national security and foreign policy interests.
Human Resources			
<i>Chinese Government</i>	Explore more innovative approaches to Disability Fund contributions, such as allowing enterprises to use funds from the Disability Fund to support charitable initiatives that will help educate and equip disabled people with employable skills.	Low Progress	Explore more innovative approaches to support people with disabilities such as allowing enterprises to use resources from the Disability Fund to support charitable initiatives, improve workforce training and reeducation for people with disabilities that meets market needs, and establish mechanisms that connect businesses and people with disabilities looking for hire.
Information and Communications Technology and Cybersecurity			
<i>Chinese Government</i>	The implementing rules and regulations for the <i>Cybersecurity Law</i> should not go beyond the scope of the Law, as stated within its original text.	Moderate Progress	The definition of CII should be clarified and made applicable only to a specific and relatively narrow category of information infrastructure, emphasizing but not going beyond its fundamental connection to national security.
<i>US Government</i>	Promote cooperation with Chinese agencies in international forums for standard setting and encourage the adoption of international standards in China.	Moderate Progress	Promote cooperation with Chinese agencies in international forums for the development of frameworks for ethical uses of AI, as well as for standard setting, and encourage the adoption in China of international standards and ethical frameworks.
Insurance			
<i>Chinese Government</i>	Remove all foreign ownership caps on insurance companies and intermediaries.	Moderate Progress	Issue detailed implementing measures describing how foreign equity caps can be raised to 51% for business operating in the insurance industry.

章节	2018年白皮书主要建议汇总	进展评价	2019年白皮书主要建议汇总
药品	建议将进口药品同国产药品一样，按照创新程度进行分类。	有所进展	尽快建立数据保护、专利链接和专利期补偿制度，切实保护知识产权，鼓励创新；明确保护时限和流程；明确包含创新治疗用生物制品。
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	废除以向外国公司收购知识产权为进入中国市场先决条件的政策，加大对非法从外国公司购买技术的公司的打击力度。
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	制定对新兴技术和基础技术的新管控措施，重点关注那些在中国尚未广泛获得或随时可从非美国供应商获得的技术，并将所涵盖的新兴技术和基础技术的清单限制为可以实际控制的技术。
对两国政府	2018年未提供	未提供评价	商会鼓励两国政府加大力度，通过教育和培训活动，协助两国实体加强合规，确保其不违反美国国家安全和外交政策利益。
人力资源			
中国政府	探索更多创新的残疾人就业保障金征收方法，例如允许企业使用保障金的资金来支持慈善倡议，以帮助教育残疾人并使其接受就业技能培训。	进展缓慢	探索支持残疾人的更多创新方法，例如允许企业利用残疾人基金的资源支持慈善活动，改善劳动力培训和残疾人教育，满足市场需求，并建立连接企业和残疾人的机制寻找雇用。
信息和通讯技术以及网络安全			
中国政府	《网络安全法》的实施规则不应超出原始案中表述的范围	有所进展	应明确定义关键信息基础设施，只适用于特定和相对狭义的信息基础设施类别，强调但不过分强调其与国家安全的基本联系。
美国政府	促进与中国机构在国际标准设定论坛上的合作，鼓励在中国采用国际标准	有所进展	推动与中国机构在国际论坛上开展合作，制定人工智能伦理应用框架和标准，鼓励中国采纳国际标准和伦理框架。
保险			
中国政府	取消所有外资股东在寿险公司及其附属机构中持股的上限规定。	有所进展	出台详细的实施措施，说明如何将经营保险业的企业的国外股权上限提高至51%。
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，无论被剽窃商标的知名度如何，都应以此为依据。	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。

Chapter	2018 Recommendation	Progress Rating	2019 Recommendation
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, regardless of how well-known the pirated mark is.	Moderate Progress	Make the filing of a trademark in bad faith a clear basis for invalidating trademarks filed by third parties, regardless of how well known the pirated mark is.
<i>US Government</i>	Share best practices from US federal and state trade secrets laws and national trade secrets 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>	Work to ensure minimal disruption to the operation of market forces when promoting industrial policy goals and eliminating all direct and indirect forms of discrimination against foreign investors in industrial policies and the tools used to implement them.	Low Progress	Work to ensure minimal disruption to the operation of market forces when promoting industrial policy goals and eliminating all direct and indirect forms of discrimination against foreign investors in industrial policies and the tools used to implement them.
Legal Services			
<i>Chinese Government</i>	Revise current regulations to allow foreign law firms to hire and admit PRC-qualified lawyers to their partnerships without requiring them to suspend their PRC lawyer's license when they join a foreign law firm.	Low Progress	Any Draft Regulations on the administration of China offices of foreign law firms and any restrictions imposed therein should be transparent and be published for public comments before promulgation and implementation. Any restrictions on foreign law firms' advice on China law business matters should be reasonable and practical.
<i>US Government</i>	Negotiate with China to revise current regulations, in order to allow international law firms in China to enjoy the same benefits as Chinese law firms operating overseas.	Low Progress	Negotiate with China to revise current regulations in order to allow international law firms in China to enjoy the same benefits as Chinese law firms operating overseas. This request has appeared in the <i>White Paper</i> for many years, however instead of progress foreign firms are facing greater restriction.
Machinery Manufacturing			
<i>Chinese Government</i>	Make air pollution control policies and implementations more transparent and consistent to ensure the normal operations of the machinery / manufacturing industry.	Moderate Progress	Consider replacing the current subsidy system with a tax credit regime based on current global norms and ensure the level playing field for FIEs.
Media and Entertainment			
<i>Chinese Government</i>	Reduce non-tariff and market access barriers to entry for all types of foreign media and entertainment. Any delay in doing so risks a rise in support for the imposition of reciprocal restrictions on Chinese media and entertainment in the United States.	Low Progress	Remove market access barriers to allow 100% foreign ownership of film and television production and distribution companies and online video services companies.
<i>US Government</i>	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 eliminating quotas for foreign films.	Low Progress	Work with China to review the investment restrictions on US companies in the media and entertainment sector, with the goal of providing greater market access for US companies.
Northeast China			
<i>Liaoning Government</i>	Continue to hold round-table events with foreign businesses to discuss regulatory and operational challenges, in order to find practical solutions for addressing the most concerning issues outlined in this chapter.	Moderate Progress	Continue round-table events with foreign businesses regarding the regulatory and operational challenges they face and continue to identify practical solutions to address them.
<i>US Government</i>	The US Consulate in Shenyang should continue to reach out to local governments in more collaborative and creative ways in order to help US business find solutions to the challenges raised in this chapter. Such moves will also simultaneously benefit the broader economy. By acting as a liaison between foreign businesses in Northeast China and the respective government agencies, the US Consulate will make a positive impact on the business environment.	Moderate Progress	The US Consulate in Shenyang should continue to reach out to local governments in more collaborative and creative ways to help US businesses find solutions to the challenges raised in this chapter.

章节	2018年白皮书主要建议汇总	进展评价	2019年白皮书主要建议汇总
投资政策			
中国政府	努力确保在促进其产业政策目标的同时，尽量减少对市场运行的影响，并消除针对外国投资者在产业政策和实施手段上所有直接或间接形式的区别对待。	进展缓慢	努力确保在促进其产业政策目标的同时，尽量减少对市场运行的影响，并消除针对外国投资者在产业政策和实施手段上所有直接或间接形式的区别对待。
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	任何关于外国律师事务所中国办事处的管理规定草案及任何限制要求必须公开透明，并在颁布实施前公开征求意见。对外国律师事务所就中国法律事务提供咨询的限制政策应该合理切实。
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。	进展缓慢	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。几年来白皮书多次提出此要求，但目前外国公司面临更加严格的没有限制。
机械制造业			
中国政府	使空气污染控制政策和实施更加透明和一致，以确保机械制造业的正常运行。	有所进展	考虑以基于当前全球规范的税收减免制度取代目前的补贴体系，确保外资企业享有公平的竞争环境。
媒体和娱乐业			
中国政府	减少针对各类外国媒体和娱乐项目进入中国市场的非关税壁垒，和对外国媒体提供商的市场准入壁垒。推迟降低非关税和贸易壁垒，有可能会增加美国对中国媒体和娱乐的互惠限制。	进展缓慢	取消市场准入壁垒，允许外商全资控股设立影视制作、发行公司和从事网络视听节目服务。
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，并取消外国电影配额制度。	进展缓慢	与中方政府合作，消除美国企业在中国媒体和娱乐领域的投资限制，以确保开放的市场准入机制。
中国东北			
辽宁省政府	继续与外国企业举行圆桌会议，讨论监管和运营方面的挑战，以便为解决本章节所概述的问题找到切实可行的解决方案。	有所进展	继续与外国企业举行圆桌会议，讨论他们所面临的规章制度和运营方面的挑战，并继续找出切实可行的解决办法来解决这些问题。
美国政府	美国驻沈阳领事馆应继续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。这些举措还将同时惠及整体经济。美国领事馆作为东北地区外国企业与各政府机构之间的联络人，将对商业环境产生积极影响。	有所进展	继续推动中美在油气领域的长期合作。将所有能源商品（原油、液化天然气和石油产品）排除在未来任何关税和非关税贸易壁垒之外。

Chapter	2018 Recommendation	Progress Rating	2019 Recommendation
Oil and Gas, Energy, and Power			
<i>Chinese Government</i>	Pursue policy changes and advance the legislative reforms necessary in the oil & gas sector to expand access to upstream acreage, remove restrictions, increase permitting efficiency, and provide fiscal and taxation incentives to attract upstream IOC investors.	Moderate Progress	Continue to promote long-term cooperation between China and the US in the oil and gas sector. Exclude all energy commodities (crude oil, LNG, and petroleum products) from any future tariff and non-tariff trade barriers.
<i>US Government</i>	Identify and encourage opportunities to share US 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 innovations, resulting in the successful development of unconventional resources.	Low Progress	Identify and encourage opportunities to share US best practices with relevant Chinese government and business entities. For example, expand access for Chinese firms to upstream acreage, resources, and midstream infrastructure in the US, as well share best practices about how data transparency and information sharing are important for attracting investment and technological innovation and the development of unconventional energy resources.
<i>Both Governments</i>	Increase dialogue between the two governments and industry to advance cooperation on renewables, including in the areas of wind, solar, energy storage, and ethanol fuel.	No Rating Provided	Promote and maintain platforms for open dialogue and knowledge sharing through existing industry platforms like ECP and OGIE, regardless of external tensions in the broader bilateral relationship.
Real Estate			
<i>Chinese Government</i>	Create a platform for closely monitoring the status of decentralized markets to avoid oversupply in certain areas.	Low Progress	Create a platform for closely monitoring the status of decentralized markets to avoid oversupply in certain areas.
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 the whole of China.	Moderate Progress	Regulate the retail industry, including both “brick and mortar” and online retailers, under a unified regulatory system that is marked by consistent enforcement of regulations nationally.
Shanghai			
<i>Shanghai Government</i>	Issue detailed regulations to carry out the <i>Supporting Guidance for Foreign R&D Centers</i> that provides support for foreign R&D in Shanghai.	Moderate Progress	Fully implement the reform and opening policies outlined in Shanghai’s <i>100 Measures</i> , which will help improve the business environment for both local and foreign companies and make Shanghai more attractive as an international economic, financial, trade, shipping, and R&D center.
Southwest China			
<i>Chengdu & Chongqing Government</i>	Enhance transparency in financial services, including a reliable credit rating system.	Moderate Progress	Allow foreign and domestic firms (including FIEs) to participate equally in procurement opportunities by encouraging purchasing guidelines that give weight to quality considerations. If subsidies must be continued, ensure that foreign companies are allowed equal, fair and reciprocal access to any sector-specific subsidies.
Sports			
<i>Chinese Government</i>	In addition to investing in sports infrastructure, research and review the variety of international sporting initiatives that have encouraged an organic, grassroots interest in sports.	Moderate Progress	Consistent with previous negotiations under the JCCT, direct the NCAC to amend and enforce the Copyright Law to ensure broadcasting organizations hold a copyright and full intellectual protection over the sports live streams that they produce.
<i>US Government</i>	Recommendation not provided in 2018.	N/A	Continue to advocate with your Chinese counterparts for the incorporation of the recognition of copyright in sports live streaming to encourage domestic and foreign investment in China’s sports media industry.

章节	2018年白皮书主要建议汇总	进展评价	2019年白皮书主要建议汇总
石油、能源和电力			
中国政府	实行政策变革并推进油气行业所需的立法改革，以扩大上游矿区的市场准入，取消限制，提高发放许可的效率，并采取财税激励措施来吸引上游的国际石油公司投资者。	有所进展	继续推动中美在油气领域的长期合作。将所有能源商品（原油、液化天然气和石油产品）排除在未来任何关税和非关税贸易壁垒之外。
美国政府	寻求机会并鼓励与中国政府有关部门分享最佳的实践经验。例如，通过开放上游矿区和资源、中游基础设施的准入以及公开相关数据，美国吸引了高额投资并促成了技术创新，非常规资源因此得以成功开发。	进展缓慢	寻找并鼓励创造机会与中国相关政府和企业分享我们的最佳实践。例如，扩大中国企业进入美国上游地区、资源和中游基础设施的机会，分享数据透明度和信息共享对吸引投资、技术创新和非常规能源开发的重要性的最佳实践。
两国政府	加强两国政府与业界关于推进可再生能源合作的对话，其中涉及的领域包括风能、太阳能、能源存储和乙醇燃料等。	N/A	不管外部双边关系多么紧张，双方政府要通过中美能源合作项目和中美油气产业论坛等现有行业平台，促进和维护开放对话和知识共享平台。
房地产			
中国政府	建立相关平台去密切监控去中心化的市场状况并避免在某些领域出现供过于求的情况	进展缓慢	创建平台，密切监控分散零售市场状况，避免某些地区和城市的供应过剩。
零售业和电子商务			
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），统一全国的执法标准。	有所进展	在全国范围内持续执行监管规定的统一监管体系下，对零售业进行监管，包括“实体店”和在线零售商。
上海			
上海市政府	制订《科创中心建设意见》的实施细则，为上海的外资研发中心提供支持。	有所进展	全面实施上海市政府的“扩大开放100条”行动方案中提出的改革开放政策，这将有利于改善本地和外国公司的经商环境，使上海成为更具吸引力的国际经济、金融、贸易、航运和研发中心。
中国西南			
成都市和重庆政府	提高金融服务的透明度，包括可靠的信用评级体系。	有所进展	通过鼓励重视质量因素的采购指导方针，允许国外和国内公司（包括外资企业）机会均等地参与采购。如果必须继续实施补贴，确保允许外国公司平等、公平和互惠地获得特定行业补贴。
体育			
中国政府	除了投资体育基础设施之外，研究和审查各种各样的国际体育活动，这些活动激发了人们对体育运动的健康而广泛的兴趣。	有所进展	按照此前中美商贸联委会谈判结果的要求，指导中国国家版权局修订并执行著作权法，确保广播机构对其制作的体育直播节目拥有版权、享受充分的知识产权保护。
美国政府	2018年末提供	N/A	继续与中国同行共同倡导认可体育直播的著作权，鼓励国内外对中国体育媒体产业进行投资。

Chapter	2018 Recommendation	Progress Rating	2019 Recommendation
Standards and Conformity Assessment			
<i>Chinese Government</i>	Officially broaden recognition of international SDOs to include any organization that follows the WTO/TBT principles on international standards development.	Moderate Progress	Adopt existing global technical standards in their complete form whenever available in order to ensure full harmonization and avoid creating domestic national standards or standards deviating from prevailing global standards. Moreover, when adopting international standards, Chinese regulatory agencies should work with relevant industries and subject-matter experts to ensure that international standards adopted are properly interpreted and applied.
Tax Policy			
<i>Chinese Government</i>	Make the unilateral and bilateral APA programs more easily accessible to multinational taxpayers operating in China at the level of both local and central tax authorities.	Low-to-moderate Progress	Make the APA and MAP programs more easily accessible to multinational taxpayers operating in China at the level of both local and central tax authorities, including on issues such as processes and timing, communication with applicants, renewal requirements, refunds, and foreign exchange.
Tianjin			
<i>Tianjin Government</i>	Ensure appropriate policies, including their enforcement, are applied equally to all companies. Direct more efforts toward public education related to new enforcement initiatives, such as recent efforts to improve air quality and other environmental issues; transparency, in regulations and enforcement, will not only help members to plan efficiently, but will also bring sustained innovation and best practices that can benefit the entire city.	Moderate Progress	Facing slower growth and declining business sentiment, the government should revitalize its efforts to attract and retain foreign investment in Tianjin. An appropriate mix of policies is needed for Tianjin to remain competitive with other locations in China. Policies that help attract human capital and investment should take priority.
Visa Policy			
<i>Chinese Government</i>	Consider accepting original documents instead of notarized ones for work authorization applications in special conditions.	Moderate Progress	Standardization of ABC Category worker requirements, especially for tax purposes. Provide clearer guidance and flexibility with respect to penalties related to enforcement of tax requirements for Category A foreign workers.
<i>US Government</i>	Congress should abolish discriminatory per-country caps on employment-based green cards.	Low Progress	No recommendations provided.
Work Safety			
<i>Chinese Government</i>	Chapter not published in 2018.	N/A	Encourage industry associations, research institutes, and the business community to provide policy research and consultation, support development of draft regulations and standards in a more organized and disciplined manner, and develop advanced emergency equipment and technologies.
Wuhan			
<i>Hubei and Wuhan Governments</i>	Expand the current strategy of attracting and retaining senior management talent.	Moderate Progress	Expand current strategies to attract and retain senior management talent. This includes expanding platforms for universities and companies to work together on developing talent and allowing university professors to work with companies.
<i>US Government</i>	Provide greater clarity and transparency for Chinese investors seeking to invest in the US.	Moderate Progress	Engage with the Chinese government, including the Wuhan municipal government, to explore opportunities for foreign investment in Central China and organize opportunities for US companies to explore investments through visits and local interaction.

章节	2018年白皮书主要建议汇总	进展评价	2019年白皮书主要建议汇总
标准、认证和合格评定			
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WTO/TBT关于国际标准制定原则的标准制定机构。	有所进展	在任何可能的情况下，采用现有的全球技术标准的完整形式，以确保完全标准化，并避免制定国内国家标准或标准偏离现行的全球标准。此外，在采用国际标准时，中国监管机构应与相关行业和学科专家合作，确保所采用的国际标准得到适当的解释和应用。
税收政策			
中国政府	使地方和中央税务机关层面的跨国纳税人更容易获得单边和双边预先定价安排计划。	稍有进展	让地方和中央税务机关的跨国纳税人更容易参与预约定价安排和相互协商程序项目，包括程序和时间、与申请人的沟通、续签要求、退税和外汇等问题。
天津			
天津市政府	确保合适的政策，包括其在执行上对所有企业都一视同仁。加强关于新措施的公共教育工作，比如近期为改善空气质量以及其他环境问题所做的工作。提高政策和执行的透明度不仅可以帮助会员企业更好地制定规划，还可以带来有益于整个城市的持续创新，取得最佳效果。	有所进展	面临增长放缓和企业信心下降情况，政府应该重拾其吸引和留住外商对天津投资的努力，天津需要适当的政策组合吸引人才和投资，以保持与中国其他地区的竞争力。帮助吸引人力资本和投资的政策应优先考虑。
签证政策			
中国政府	考虑在特殊情况下，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。	有所进展	ABC三类外籍人士的分类要求标准化，特别是在税务方面。就与执行A类外国的税务规定有关的处罚提供更明确的指导和灵活性。
美国政府	国会应取消国别分配工作绿卡的歧视性制度。	进展缓慢	未提出建议。
安全生产			
中国政府	2018年未提供	N/A	鼓励行业协会，研究机构和企业界在提供政策研究和咨询，以更有组织和更有纪律的方式支持起草法规和标准以及开发先进的应急设备和技术方面发挥积极作用。
武汉			
湖北省和武汉市政府	拓展当前吸引和留住高级管理人才的策略。	有所进展	扩大现有战略，吸引和留住高级管理人才。这包括扩大大学和企业合作的平台，共同开发人才，并允许大学教授在企业工作。
美国政府	为寻求在美国投资的中国投资者保障明确性和透明度。	有所进展	与包括武汉市政府在内的中国政府进行合作，探讨在华中地区的外商投资机会，并通过访问和当地互动为美国企业探索投资机会。

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

Civil Society

Introduction

A robust non-profit sector can contribute significantly to addressing China's broader sustainability challenges for the benefit of the Chinese people. Social, non-profit, inter-governmental, and non-governmental organizations (NGOs) 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 for implementing sustainability and community engagement initiatives.

The non-profit sector also provides a wide range of social benefits. These benefits include helping to provide an educated and healthy workforce; protecting the environment; promoting food and nutrition security and advocating for food safety; expanding access to services in areas like health and finance; developing productive employer-labor relations; fostering active community engagement 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. As China's rapid growth has produced many economic, social, and environmental challenges, civil society can and does make positive contributions to China's continued sustainable development.

Recent Developments

China's *Law on the Management of Foreign NGO Activities Within Mainland China* (Overseas NGO Law) took effect on January 1, 2017. Its impact over the first two years of implementation has been profound. Only a small proportion of the nearly 10,000 foreign NGOs said by the National People's Congress to have been conducting activities in China on the eve of the Law's passage have succeeded in obtaining police permission to engage in projects or make donations in China. Those which have obtained permission to operate, either by

registering a representative office or obtaining permits for "temporary activities," report significant ongoing administrative costs to fulfill reporting requirements and, in some cases, frequent police requests for detailed oral reports about their operations. The absence of key definitions in the Law and the lack of detailed implementing regulations issued by the Ministry of Public Security (MPS) has allowed provincial police bureaus to develop their own, widely inconsistent and unwritten interpretations. Many foreign NGOs that want to register and meet the Law's qualifications remain unable to do so because there are too few legally designated government sponsors ("Professional Supervisory Units"), and even those which are designated are reluctant to sponsor them and in some cases even refuse to meet. Some foreign foundations have stopped making grants to Chinese domestic NGOs because they find the Law's demands too onerous or simply confusing; other foreign NGOs have quietly halted interactions with Chinese partners for the same reason. Foreign civil society collaboration with their Chinese peers has shrunk, exactly how much is unmeasurable because there is no yardstick for measuring such information.

As of December 31, 2018, 362 foreign NGOs had registered a total of 439 representative offices (some organizations have more than one representative office). These included 107 offices for U.S.-based organizations, more than from any other country or region. The pace of new registrations slowed during 2018, with 103 additional organizations and 134 additional offices registered, compared to 259 organizations and 305 offices registered during 2017. While foreign chambers of commerce, trade promotion organizations and industry associations dominated the roster of representative offices in 2017, their share fell to 47% of the total during 2018 as more charitable, development, research, social policy and other kinds of traditional NGOs succeeded in obtaining government sponsors and registering.

In addition, during 2018, foreign NGOs obtained permits to conduct 840 "temporary activities", up from 509 in 2017. Trade and business-oriented groups have been much less active on this front: of the total 1,349 permits issued for activities during 2017-2018, all but 36 were issued to non-trade, non-business-oriented organizations.

Some NGOs that registered representative offices also obtained "temporary activity" permits, either before

公民社会

引言

强 大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。社会组织、非营利组织、政府间组织以及非政府组织（NGOs）在促进可持续商业发展方面发挥着至关重要的作用：① 为企业和政府提供独立的责任担当方和专业知识；② 与当地社区的企业和政府合作，为实施可持续发展和社区参与活动提供支持和服

务。非营利组织还提供各种各样的社会价值。具体包括：提高劳动力的教育和健康水平、改善和保护环境、提高食品营养和倡导食品安全、扩大医疗和金融等服务行业的准入、发展有助于提高生产力的劳资关系、通过志愿服务推动社区的积极参与、向边缘化群体提供社会服务、支持政府对合规的监督等。

在美国和其他许多国家，有着悠久的慈善传统，也因此拥有活跃的公民社会组织。它们通过与政府和企业高效开展合作，解决本地和全国性问题。中国经济的快速发展产生了诸多经济、社会和环境挑战，而民间团体可以并已经对中国的可持续发展做出积极贡献。

最新进展

2017年1月1日，《中华人民共和国境外非政府组织境内活动管理法》（《境外非政府组织法》）正式生效。其实施的头两年已经造成深刻影响。近一万家据全国代表大会称在该法通过前夕已在华开展活动的外国非政府组织当中，只有一小部分从公安部门成功取得了在华参与项目或进行捐赠的许可。那些通过注册代表处或获准进行“临时活动”而取得许可证的非政府组织，据报花费了大量持续性的行政支出以达到报告要求，并且在某些情况下，地方公安部门经常要求它们提供有关其运营情况的详细口头报告。由于该法对关键概念缺乏定义，中国公安部也未

制定详细的实施条例，使得各省级公安厅局纷纷对该法自行推出各不一致、不成文的解读方式。许多希望注册并符合《境外非政府组织法》资格的外国非政府组织依然无法注册，因为法律指定的政府主办单位（即“业务主管单位”）为数太少，甚至那些被指定的单位都不愿意指导境外非政府组织，某些情况下还拒绝与后者会谈。有些外国基金会已停止向中国国内的非政府组织提供资助，因为这些基金会认为《境外非政府组织法》的要求过于繁琐或令人费解；其他外国非政府组织出于相同原因也悄然停止了与其中方合作伙伴的业务。外国民间团体与中国同行的合作已经萎缩，萎缩多少却是无法估量，因为并没有计算上述信息

的标准。截至2018年12月31日，362家外国非政府组织登记了共计439个代表处，有些组织有一个以上代表处。其中美国非政府组织的办事处有107个，比其他任何国家或地区都要多。2018年期间，注册新组织或办事处的速度放缓，新注册的组织仅有103家，办事处134个，而2017年新注册的组织有259家，办事处305个。尽管外国商会、贸易促进组织和行业协会雄踞2017年代表处名单，但随着越来越多的慈善、发展、研究、社会政策和其他类型的传统非政府组织成功获得政府业务指导并获准注册，它们的份额在2018年下降到总数的47%。

此外，2018年期间，虽然外国非政府组织获准举办了840场“临时活动”，高于2017年的509场，但贸易和商业组织在这方面的活跃度明显低于从前：在2017至2018年期间开具的1349个活动许可当中，除了38个以外，其余都发给了非贸易及非商业组织。

一些注册了代表处的非政府组织要么在完成注册之前就取得了“临时活动”许可，要么就把这类许可作为它们在核准年度计划以外或登记地点范围以外的地方开展项目的手段。考虑到这些重叠情况，在2017至2018两年期间，共有720个外国非政府组织登记了办事处或获批进行临时

completing registration or as a means of carrying out programs in places outside their approved annual plan or geographic scope of registration. After accounting for such overlaps, a total of 779 foreign NGOs either registered an office or were approved for temporary activities during the two-year period 2017-2018. Yet on April 28, 2016, Deputy Director of the NPC Standing Committee's Legislative Affairs Commission Zhang Yong told a news conference that nearly 10,000 foreign NGOs were organizing activities in China. If that is the case, then implementation of the Overseas NGO Law has cost China the contributions of more than 9,000 foreign NGOs.

Foreign NGOs, including corporate foundations, have been integral to the operations of many AmCham China member companies. Through corporate foundations registered as NGOs in the US, many members have worked with foreign or local industry associations, universities, environmental organizations, science and technology institutions, and other Chinese institutions for purposes of information sharing, research, market development, and innovation. Both foreign foundations and other NGOs play a critical role in guiding and implementing business sustainability and community engagement activities of many commercial enterprises, both foreign and domestic.

Ongoing Regulatory Issues

During its first two years of implementation, the Overseas NGO Law has forced many in the foreign business community working with Foreign NGOs to suspend their support of local community activities. At the end of 2018, only one US corporate foundation had registered a representative office under the Overseas NGO Law, while four others had obtained permission to conduct “temporary activities.”

These problems seem to stem from the design of the Overseas NGO Law itself rather than from its implementation. Implementation was entrusted to the MPS and specialized offices in the ministry's provincial-level bureaus. For much of 2017, foreign NGOs generally found the newly-established Office of Overseas NGO Administration in the Beijing Municipal Public Security Bureau and its counterparts in other jurisdictions to be professional, accessible and responsive. Foreign NGO staff were able to obtain prompt guidance about paperwork and filing procedures by contacting the offices by telephone, social media, and in person.

Yet despite flexible implementation, by the end of 2018, many implementing regulations had yet to be issued, resulting in inconsistent interpretations and practices from one province to another. Moreover, none of the provincial police bureaus have published written guidance setting out their interpretations. This has added to general confusion on the part of foreign NGOs without mainland offices that have tried to decide if and how they should try to conduct programs in mainland China. AmCham China encourages

the MPS to collaborate with the foreign NGO community to better understand the obstacles NGOs face operating in China and to release updated implementing regulations to clarify the Overseas NGO Law.

Nevertheless, AmCham China acknowledges MPS officials face a steep learning curve in understanding the breadth of foreign NGO operations in China and are still in the process of determining how the Law applies to different foreign NGOs. After the Overseas NGO Law had been in effect for a few months, the police began modestly expanding the list of approved Professional Supervisory Units (PSUs), or official sponsors that foreign NGOs must have in order to register operations on the Mainland. The police also observed a *de facto* grace period with respect to foreign NGOs that already had offices in China: as long as these NGOs were in the process of registration the police did not require them to close their offices in 2017. This grace period was extended into 2018.

Some of the police NGO administration offices provided training and information sessions for PSUs, universities, and foreign and domestic NGOs. As the majority of organizations affected by the Law are located overseas and do not have China offices, however, there is an urgent need for China's overseas embassies and consulates to hold similar training and information activities or make officials knowledgeable about the Law publicly available in overseas posts. In addition, the MPS online portal for submitting applications under the Law has no English-language information. AmCham urges the MPS to make its portal bilingual in recognition of the fact that the site is used primarily by foreign organizations.

Two years after the passage of the NGO Law most significant obstacles encountered by NGOs remain beyond the capacity of local police bureaus to solve. These include the following:

Professional Supervisory Units

Although the list of eligible PSUs has been expanded, obtaining PSU sponsorship remains the single biggest obstacle to registration for foreign NGOs. Many eligible PSUs are unfamiliar with the work of foreign NGOs, consider them a political risk, and/or lack any incentive to take on the additional work of supervising them. PSUs are not offered any additional staff or budgets to handle the extra work, and some have said that they lack the capacity to take on more than a few foreign NGOs. Moreover, several suitable PSU candidates have not been included on the approved list. Organizations such as the Chinese Academy of Governance, Chinese Academy of Social Sciences, and the Development Research Center of the State Council, which work on a wide range of policy and program areas and have greater experience interacting with foreign NGOs, are still not allowed to serve as PSUs.

Even after successfully registering, many NGOs have found

活动。而在 2016 年 4 月 28 日，全国人大常委会法制工作委员会副主任张勇在一次新闻发布会上表示，有近一万家外国非政府组织在中国组织活动。如果情况属实，那么《境外非政府组织法》的实施使得中国损失了超过 9000 个外国非政府组织。

包括企业基金会在内的外国非政府组织，已经成为中国美国商会（商会）许多成员公司不可或缺的组成部分。通过在美国注册为非政府组织的企业基金会，许多成员与外国或当地行业协会、大学、环境组织、科学技术机构和其他中国机构在信息共享、研究、市场开发、创新方面开展合作。外国基金会和其他非政府组织对许多国内外商业企业在指导和实现企业可持续性和社区活动参与方面均发挥着关键作用。

现存监管问题

在实施的头两年，《境外非政府组织法》已迫使许多与外国非政府组织合作的外国商界人士暂停当地社区活动。截至 2018 年底，只有一家美国企业基金会在《境外非政府组织法》下注册了代表处，而另外四家仅获准开展“临时活动”。

这些问题似乎源自于《境外非政府组织法》的设计本身，而不是执行产生的问题。执行任务被委托给公安部和省公安厅局的专门机构。外国非政府组织均认为在 2017 年的大部分时间里，北京市公安局以及其他行政辖区公安部门新成立的境外非政府组织管理办公室非常专业、容易沟通、回复及时。外国非政府组织工作人员通过电话、社交媒体和面谈等方式，从上述办公室获得了有关文书准备和备案程序的及时指导。

尽管该法执行灵活，但截至 2018 年底，《境外非政府组织法》实施细则尚未出台，导致各省市的解读和做法不一致。此外，各省级公安部门均未发表书面指导意见。书面实施细则的缺乏会增加那些还没有在中国大陆设立办公室的外国非政府组织的困惑，后者需要决定是否应该及如何在中国大陆开展项目。商会支持中国公安部与外国非政府组织团体的合作，以便更好地了解非政府组织在中国运作面临的障碍，并发布最新的实施条例来阐明《境外非政府组织法》。

尽管如此，商会理解公安部官员在短期内需掌握外国非政府组织在华业务范围的不易，并且仍在斟酌该法律如

何应用于不同的外国非政府组织。在《境外非政府组织法》生效几个月后，公安部门开始适度扩增业务主管单位（PSU）名单，或曰政府主办单位名单，这是外国非政府组织在中国大陆注册运营必须挂靠的单位。公安部门还给予尚未依法注册但事实上在境内已有办公室的外国非政府组织一段宽限期：只要这些非政府组织仍在办理注册，公安部门就不会要求它们在 2017 年关闭办公室。这个宽限期已延长到 2018 年。

有些公安部门的境外非政府组织管理办公室为业务主管单位、大学和国内外非政府组织举办了培训和信息交流会议。然而，由于该法律影响到的绝大多数组织都位于海外且没有中国办事处，因此需要中国驻外使领馆举办类似的培训和信息交流活动。此外，公安部的境外非政府组织提交申请的“办事服务平台”门户网站没有英文界面，考虑到该网站的主要用户是外国组织，商会希望公安部考虑提供双语界面。

在《境外非政府组织法》通过两年后，非政府组织遇到的大问题仍然超出了当地公安部门的管理权限。这些问题包括以下几点：

业务主管单位

尽管有资格的业务主管单位名单已经增加，但找到一家业务主管单位仍然是外国非政府组织注册的最大障碍。许多有资格的业务主管单位并不熟悉外国非政府组织的工作，认为这些组织有政治风险，没有任何主观愿望去承担监督外国非政府组织这一额外工作。业务主管单位也没有任何额外的工作人员或预算来处理增加的工作量，有些单位表示它们只有能力担任几家外国非政府组织的业务主管。此外，一些合适的业务主管候选单位没有被列入批准名单。例如，国家行政学院、中国社会科学院、国务院发展研究中心等机构，长期致力于广泛的政策和规划领域研究，与外国非政府组织有更多的合作经验，但仍未获准担任业务主管单位。

即便按照《境外非政府组织法》注册之后，许多境外非政府组织发现每年需要花费数周时间与他们的业务主管单位汇报“工作计划”，然后才能落实项目。对许多非政府组织而言，平衡与业务主管单位的关系，同时在华开展项目，变得越来越具挑战性。一些业务主管单位要求被其管理的外国非政府组织在其项目中做出重大更改。更有甚者，尽管法律上不允许业务主管单位收取主管费用，一些非政府组织发现注册后，其业务主管单位仍希望分享该非

they must then spend weeks each year negotiating a “work plan” with the supervising PSU before they can implement programs. For many NGOs it has become increasingly challenging to balance relationships with the PSU while simultaneously conducting programs in China. Some PSUs have required foreign NGOs to make significant changes in their programs. Moreover, although PSUs are not legally allowed to charge fees in return for sponsorship, some NGOs have found after registration that the PSU expects to share in the NGO’s program funds.

Unclear and Time-Consuming Requirements for Temporary Activity Permits

Some foreign NGOs seeking approval for temporary activities have found the application preparation process to be almost as expensive and time consuming as preparing an application to register a representative office. Both procedures require certifying and translating the foreign NGO’s past and current articles of incorporation and by-laws, which often takes several months. When the foreign NGO’s Chinese partner seeks written approval from its own PSU, the PSU has complete discretion to refuse without providing a reason. The final stage requires the Chinese partner to file the temporary activity permit application with the police, but foreign NGOs have found inconsistencies across provinces in this phase. Police in some provinces have accepted filings for projects that include activities in multiple provinces, as long as the Chinese partner is based in their jurisdiction; police in other provinces have refused to accept multi-province filings, requiring foreign NGOs to either restrict their projects to a single province or establish partnerships and undertake filings in multiple provinces.

Unclear or Ambiguous Language

Many of the key terms in the Overseas NGO Law are undefined. Such vagueness creates uncertainties for the foreign NGOs to decide how they structure and implement their programs in China. Foreign NGOs already invest significant staff time and resources communicating with the PSB before they receive definitive guidance. Even though the Law is in the second year of implementation, it remains unclear what foreign NGO activities are required to obtain pre-approval. MPS and its provincial branches have open-ended discretion when interpreting the Law. No consensus on approval requirements currently exists, for example, on foreign NGOs holding small-scale or private events or participating as an expert consultant in projects organized and funded by another entity. These are just two of many possible scenarios that lack clear guidance under the Law.

NGO Financing

Article 21.3 of the Overseas NGO Law allows foreign NGOs to fund its activities in China from three sources: ❶ “funds from a lawful overseas source”, ❷ “interest on bank deposits

within the territory of China,” and ❸ “other funds obtained by legal means within the territory of China.” The Overseas NGO Law prohibits foreign NGOs from “engaging in or financing profit-making activities,” another undefined concept. Police in some provinces have interpreted this to mean foreign NGOs cannot work with Chinese companies or receive payment for services provided, even if the proposed programs would be nonprofit. In addition, it remains unclear if joint marketing activities between companies and NGOs (e.g., “a portion of the product sales would go to support a charitable cause”) are permitted in the context of the Overseas NGO Law.

The Overseas NGO Law bars foreign NGOs from fundraising in China. This is currently being interpreted as meaning foreign NGOs cannot passively receive financial support from Chinese companies or foreign-invested enterprises in China, whether from their Corporate Social Responsibility (CSR) programs or other corporate funding channels. As a result, an important source of funding for foreign NGO operations in China has been cut off. It is increasingly difficult to raise funds abroad for programs in China, given that most foreign donors want to see their donations implemented in their own communities. The fundraising prohibition has also been interpreted as prohibiting companies in China from providing in-kind donations (非现金捐赠) to foreign NGOs. This creates legal uncertainty for companies that previously made generous donations of equipment, software and advertising space to foreign NGOs.

The first legitimate source of funding, “funds from a lawful overseas source,” has been interpreted by relevant financial authorities to cover money transferred into China from the NGO headquarters overseas. Despite their practical limitations, interpretation of such funding sources and interest on bank deposits within the territory of China is straightforward. There is greater legal uncertainty, however, around funding source ❸ other funds obtained by legal means within the territory of China. Foreign NGO’s representative offices cannot fundraise in China, but police in some provinces have told NGOs they can receive revenue in exchange for services. In practice, demand for foreign NGO expertise is high in China, including from: Chinese government ministries, Chinese NGOs, international organizations, and private companies with CSR portfolios. Services-for-revenue has created a new series of challenges. All entities operating in China, including foreign NGOs, are required to obtain a tax receipt (Fapiao) from the tax authorities before they can legally generate revenue. Currently, many foreign NGOs have found local tax authorities reluctant to issue tax receipts before receiving instructions from the central State Administration of Taxation, which creates unnecessary delays and administrative burdens.

These fundraising complications mean that currently funding source ❶, that is funds transferred directly from foreign NGO headquarters, is the only practical source of funding for many NGOs in China. This is inconsistent

政府组织的项目资金。

临时活动批准程序要求不清楚且耗时

一些寻求批准临时活动的外国非政府组织发现，申请准备过程几乎与申请注册代表处一样成本高昂且耗时。这两种程序都需要证明、翻译该组织过去和现在的团体章程细则，通常需要几个月。而当该外国非政府组织的中方合作伙伴向自己的业务主管单位申请书面批准时，该单位完全可以无理由拒绝。办理批准程序的最后一步要求中方合作伙伴向公安部门提交临时活动备案申请，但外国非政府组织发现，不同省份对于这一步骤的处理存在差异。只要中方合作伙伴在其管辖范围内，一些省份的公安部门已经接受在多个省份开展活动的项目备案；但其他省份的公安部门则拒绝接受多省备案，要求外国非政府组织要么将项目限定在一个省份，要么与多个省份一一建立合作关系，并在相关省份均进行备案。

措辞不清或模糊

《境外非政府组织法》中的许多关键术语都没有定义。这种模糊不清为外国非政府组织决定如何在华设置人员组织架构构成和执行项目制造了不确定性。在获得明确指导之前，外国非政府组织已经投入大量的工作人员时间和资源与其业务主管单位进行沟通。尽管《境外非政府组织法》已施行第二年，但尚不清楚该法要求外国非政府组织的哪些活动提前取得批准。公安部及其省级下属机构在解读该法方面具有开放式的自由裁量权。比如，外国非政府组织举办小规模或私人活动、外国非政府组织以专家顾问的身份参与由另一实体组织和资助的项目，该法目前尚未就上述情形的批准要求形成共识。以上仅是在《境外非政府组织法》下缺乏明确指导的许多可能情景中的两个例子。

非政府组织的资金来源

《境外非政府组织法》第21条第3款允许境外非政府组织在中国境内的活动资金包括以下三个来源：①“境外合法来源的资金”；②“中国境内的银行存款利息”；③“在中国境内合法取得的其他资金”。《境外非政府组织法》规定境外非政府组织“在中国境内不得从事或资助营利性活动”，但并未定义该概念。一些省份的公安部门已经把这解读为外国非政府组织不能与注册为公司的国内

机构合作，或者就提供的服务收取任何费用，即使这些合作项目是非营利的。此外，尚不清楚《境外非政府组织法》是否允许企业与非政府组织联合开展营销活动（例如，“该产品销售额的一部分将用于支持某个慈善项目”）。

《境外非政府组织法》禁止外国非政府组织在中国境内进行募款。目前这一条款也被解读为禁止外国非政府组织被动接受中国企业或在华外商投资企业的资金支持，无论是通过企业社会责任项目方式还是通过企业的其他筹资渠道。因此，这种做法切断了外国非政府组织开展中国业务的重要资金来源。现在越来越难为中国的项目筹集海外资金，因大多数外国捐助者希望看到捐款项目在他们社区执行。上述禁止募资的法律条文也被解读为禁止在华企业给外国非政府组织提供非现金形式的捐赠。这对于此前给外国非政府组织慷慨捐赠过设备、软件、甚至广告位的企业来说，添加了法律方面的不确定性。

第一个合法的资金来源，“来自境外合法来源的资金”，被相关金融部门解读为涵盖从非政府组织海外总部转移到中国的资金。尽管这种解读存在局限，但此类资金来源和中国境内银行存款利息这两类资金来源的含义还算是直截了当的。与此相比，上述第三个资金来源“在中国境内合法取得的其他资金”就存在更大的不确定性。外国非政府组织的代表处不能在华募捐，但被告知可以通过交换服务来获得收入。在实践中，中国对外国非政府组织的专业性需求很高，包括中国政府部委、中国非政府组织、国际组织、具有企业社会责任的民营公司等。用服务换取收入的方式带来了一系列新挑战。在华运作的所有实体，包括外国非政府组织，都必须从税务机关取得报税收据，也就是发票，才能合法产生收入。目前，许多外国非政府组织发现，地方税务机关在得到国家税务总局指示之前都不愿意开具发票，这造成了不必要的拖延和行政负担。

上述资金来源方面的复杂情况意味着目前第一种资金来源，也就是从外国非政府组织总部直接转移过来的资金，是中国许多非政府组织唯一的实际资金来源。这与《境外非政府组织法》所写的内容不一致。商会促请中国当局明确并统一关于外国非政府组织在华资金来源方面的规定。

with the Foreign NGO Law as it is written. AmCham China encourages the Chinese authorities to clarify and streamline the regulations governing foreign NGO fundraising in China.

Recommendations

For the Chinese Government:

- **Update/expand the list of PSUs and provide clear procedures and better incentives for government entities to act as PSUs.** [MPS, State Council, NPC]
- Simplify the documentation required for a temporary activity permit application and require Chinese partner PSUs that withhold approval to provide a written explanation within 30 days. [MPS, State Council, NPC]
- Clarify ambiguous language in the Overseas NGO Law and publish clear and consistent implementing guidelines. The process of drafting implementing guidelines should be open and allow foreign NGOs and their Chinese partner organizations to participate. [MPS, State Council, NPC]
- Make clear the regulations around NGOs “engaging in or financing profit-making activities” or providing services for fees. Allow tax authorities to process relevant tax documentation in a timely manner so foreign NGOs can raise revenue through legally-approved channels. [MPS, State Council, PSU]
- Provide English-language versions of important guidance and announcements on the MPS web portal for filing representative office registration and temporary activity permit applications; conduct more outreach activities with foreign NGOs and their Chinese partners to provide updated information about how police are to interpret and apply the Law, including overseas where foreign NGOs that engage in “temporary activities” in China have offices. [MPS]

For the US Government:

- **Continue to reiterate strong and abiding concerns regarding the Overseas NGO Law in exchanges with relevant government stakeholders in China.** [US Department of State; Department of Labor; Environmental Protection Agency; etc.]

建议

对中国政府：

- 更新 / 扩大业务主管单位名单，同时为担任业务主管单位的相关政府机构制定明确的程序及设立更好的激励措施。[公安部、国务院、全国人民代表大会]
- 简化申请临时活动许可所需的文件，并要求中方合作伙伴的业务主管单位在拒绝批准活动后的30天内，向被拒绝方提供书面说明。[公安部、国务院、全国人民代表大会]
- 阐明《境外非政府组织法》中模糊的表述，并发布清晰一致的实施细则。起草实施细则的过程应该开放，使外国非政府组织及其中方合作单位能够参与其中。[公安部、国务院、全国人民代表大会]
- 明确非政府组织“参与或资助营利性活动”或提供收费服务的规定。允许税务机关及时处理相关税务文件，以便外国非政府组织可以通过合法批准的渠道增加收入。[公安部、国务院、业务主管单位]
- 在公安部门户网站上提供英文版本指导意见和公告，以便于注册代表处和申请临时活动许可；为外国非政府组织及其中方合作伙伴开展更多的宣传活动，包括对在华参与“临时活动”的外国非政府组织在海外对其当地办事处也提供公安部门解读和应用法律方面的最新信息。[公安部]

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、劳工部、国家环境保护局等]

Competition Law

Introduction

2018 marked the tenth anniversary of China’s Anti-Monopoly Law (AML). Over the past decade, there has been some progress in enforcement of the AML, including improvements in the efficiency of merger review. There have been investigations into 165 monopoly agreement cases and 55 abuse of dominance cases. Chinese authorities have imposed fines exceeding RMB 11 billion over the same period. Many key concerns remain, however, including continued entanglement of industrial policy interests in merger enforcement and abuse of dominance investigations, and insufficient transparency regarding competition complaints and investigations. Moreover, US companies have often been the subject of abuse of dominance cases brought forward by relevant authorities.

Significantly in 2018, China’s three antitrust enforcement agencies, previously housed within the National Development and Reform Commission (NDRC), the State Administration for Industry and Commerce (SAIC) and the Anti-Monopoly Bureau of the Ministry of Commerce (MOFCOM), were consolidated into one institution under the State Administration for Market Regulation (SAMR). This consolidation should help reconcile the historically divergent (yet overlapping) enforcement activities of the NDRC and SAIC, and in turn bring improved consistency to the application of the AML.

Regulatory Updates

Merger Review

AmCham China commends SAMR’s continued efforts to further improve the efficiency of its merger review process. Between 2008 and 2018, MOFCOM reviewed approximately 2,500 cases of which 40 were approved with conditions (remedies), and the volume of cases reviewed continued to increase in 2018, when SAMR received 444 notifications. Despite this increase, SAMR has reduced overall review time for simplified procedure cases and has reduced the time for completeness review prior to acceptance for all cases.

Simplified Procedure Review

The simplified procedure continues to play an important role in reducing the length of merger review. As illustrated in the table below, almost all cases notified in the simplified procedure review are cleared in Phase 1 and the average length of review is less than 20 days from case acceptance.

MOFCOM Simplified Review Cases from 2015 to 2018

	2015	2016	2017	2018
% Cleared in Phase 1	89%	94%	97%	99%
% Cleared in Phase 2	9%	6%	3%	1%
% Cleared in Phase 3	2%	0%	0%	0%
Refile	1	0	1	0
Average Review Days	31	24	21	16
Median Review Days	27	24	21	15
Longest Review	278	85	66	75
Shortest Review	11	11	11	10

While rules for the simplified review procedure establish certain standards for transactions that may qualify for simplified procedures, SAMR nevertheless retains broad discretion in determining whether to accept cases for the simplified procedure. SAMR has broad discretion over transactions that in SAMR’s view may potentially impair market entry, technology innovation, consumer interest or otherwise negatively impact the state’s economic development, which are not clearly defined under the rules. SAMR’s discretion and lack of clarity in accepting cases for the simplified review procedure have led to exclusion of many cases that

竞争法规

引言

2018年是中国《反垄断法》颁布十周年。过去10年，《反垄断法》执法取得了一些进展，包括并购审核效率的提高。政府对165起垄断协议案和55起滥用支配权的案件进行了调查。与此同时，中国有关部门已处以超过110亿元人民币的罚款。然而，许多重点问题仍然存在，包括并购执法和滥用支配权调查中盘根错节的产业政策利益，以及竞争投诉和调查缺乏透明度。另外，美国企业时常成为有关部门调查滥用市场支配地位的对象。

此前中国的三个反垄断执法机构分别隶属于国家发改委（NDRC）、国家工商行政管理局（SAIC）和商务部反垄断局（MOFCOM），在2018年，这三家执法机构合并为国家市场监督管理总局（SAMR）下属的一个机构。此次合并将有助于协调国家发改委和国家工商总局历来存在的分歧（或重叠）的执法活动，从而提高《反垄断法》应用的一致性。

最新进展

合并审核

商会赞赏国家市场监督管理总局对提高其合并审核流程所作出的持续努力。在2008到2018年期间，商务部审核了将近2500起案件，其中40起案件带附加条件（补救措施）被批准，2018年审批量继续增加，国家市场监督管理总局收到444份通知。尽管审批量增加，国家市场监督管理总局针对简化流程的案件减少了整体审核时间，并减少了在接受所有案例之前进行完整性审核的时间。

简化流程审核

简化流程继续对减少合并审核时间起着重要作用。如下表所示，简化流程审核中收到的所有案件基本上在第一阶段就已经结案，审核的平均期限为受理案件之日起20天以内。

商务部简化了2015-2018年审核的案件

	2015	2016	2017	2018
% 第一阶段结案率	89%	94%	97%	99%
% 第二阶段结案率	9%	6%	3%	1%
% 第三阶段结案率	2%	0%	0%	0%
重新上诉	1	0	1	0
平均审核天数	31	24	21	16
中位审核天数	27	24	21	15
最长审核	278	85	66	75
最短审核	11	11	11	10

然而，国家市场监督管理总局在接受简化审核程序的案件时，过于谨慎，缺乏明确性，导致许多最初看来符合简化程序的案件被排除在外。这延长了无争议交易的审查程序，并在商界造成不确定性，从而可能导致许多无争议的案件按照普通程序上诉，以避免任何拖延的风险。商会鼓励国家市场监督管理总局采用明线规则来确定简化程序的标准，并就国家市场监督管理总局如何在受理此类流程的案件时行使自由裁量权发布详细指南。

条件决策

虽然简化流程减少了符合条件的案件的审核时间，但普通流程案件的审核时间却越来越长（尤其是需要补救措施的案件）。较长的审核期限增加了企业为获得批准而做出让步的可能性。2018年4个有条件批准的案件中，从最初提交申请到决策之日，每个案件的审核时间都超过了365天，包括：拜耳/孟山都案（463天），依视路/陆逊梯卡案（428

initially appeared to qualify for the simplified procedure. This lengthens the review procedure for non-controversial transactions and creates uncertainty in the business community which may result in many non-controversial cases being filed under the ordinary procedure in order to avoid any risk of delay. AmCham China encourages SAMR to adopt bright-line rules for determining eligibility under the simplified procedure and to publish detailed guidelines regarding how SAMR exercises its discretion in accepting cases for such procedure.

Conditional Decisions

While simplified procedure has reduced review time for qualifying cases, ordinary procedure cases face increasingly longer reviews (especially those requiring remedies). Longer review periods increase the possibility that companies may offer concessions to get approval. Each of the four conditionally approved cases in 2018 required more than 365 days in review from initial filing to decision date: (*Bayer/Monsanto* (463 days), *Essilor/Luxottica* (428 days), *Praxair/Linde* (412 days), and *UTC/Rockwell Collins* (372 days)). In 2017, over half of such reviews lasted for more than 300 days, including two cases that were reviewed for over a year. By contrast, prior to 2017, only four other cases (*Western Digital/Hitachi*, *Glencore-Xstrata*, *Marubeni-Gavilon*, *MediaTek/MStar*) in the history of the AML required reviews lasting over 300 days. Notably, Qualcomm's acquisition of NXP, first launched in 2016, was abandoned in July 2018 after a regulatory deadline was passed with no approval from relevant authorities.

While these conditional decision cases have raised complex competition concerns, many have also been entangled with domestic industrial policy goals as well as external political considerations. In particular, response times for important industry stakeholders consulted by SAMR, including other ministries and concerned trade associations, now routinely extend beyond the timelines specified by SAMR, delaying review. AmCham China hopes that SAMR will implement effective mechanisms to minimize delays in consultation responses.

The conditional merger decisions in 2018 are summarized below:

Monsanto/Bayer

On March 13, 2018, MOFCOM approved the merger of Bayer and Monsanto. MOFCOM raised competition concerns in the markets for vegetable seeds and non-selective herbicides in China, and in the global markets for corns, soybeans, cottons, and rapeseed traits, as well as digital agriculture. MOFCOM found that Bayer and Monsanto were important competitors in the research and development (R&D) of relevant traits, and in the field of digital agriculture. Thus, post-transaction there would be a reduction in competition in R&D which could lead to a slowdown in innovation and

delayed launches of new products. MOFCOM required Bayer to divest its global businesses for vegetable seeds, non-selective herbicides, and corn, soybean, cotton, and rapeseed traits. It also required the merged entity to allow all Chinese agricultural application developers to connect their software with the merged entity's digital agricultural platform on FRAND terms, and to allow all domestic users to register and employ the merged entity's digital agricultural products and applications within five years after entry into the Chinese market.

Luxottica/Essilor

On July 25, 2018, SAMR approved the merger of Essilor International and Luxottica Group. SAMR was one of only two antitrust regulators, (the other being the market regulator in Turkey) to impose conditions amongst the twenty jurisdictions which reviewed the transaction. SAMR raised competition concerns in the wholesale markets for optical lenses, optical frames, sunglasses, and the retail market for glasses products in China given that the merged entity would have high combined shares for China's mid-high-end optical lenses (40-45%), low-end optical lenses (30-35%), and high-end sunglasses (35-40%). Almost all other regulators by contrast determined that the low increases in shares would not materially affect competition and approved the transaction unconditionally. SAMR also considered brand loyalty and market entry barriers as additional "plus" factors enhancing market power. Most other jurisdictions found brand reputation not to be important and no (or limited) market entry barriers. Relying on margin ratio analysis, SAMR also found the merged entity would be likely to engage in bundling or tying practices, whereas other jurisdictions found limited possibility of implementing such practices and harming retailers or customers. SAMR required the parties not to engage in bundling or tying, not to impose exclusive conditions or restrictions upon Chinese retail stores, to offer glasses and trademark licensing on FRAND terms, not to sell glasses below cost, and to offer the STARS distribution program to glasses retailers only with SAMR's approval.

Linde/Praxair

On September 30, 2018, SAMR approved the merger of Linde and Praxair. SAMR found the transaction was likely to result in competition concerns in the global markets for helium, inert rare gas mixture, fluorine-containing rare gas mixture, and hydrogen chloride rare gas mixture, and the markets for liquid oxygen and liquid nitrogen in Guangdong. To remedy these concerns, SAMR required the divestment of helium assets and transfer of helium-related customer contracts, divestment of Linde's stakes in four joint ventures (JVs) located in Guangdong, as well as provision of assistance to Chinese buyers in the transportation of helium, and commitment to supply the Chinese market with inert rare gas, fluorine-containing rare gas, and hydrogen chloride rare gas mixtures at reasonable prices

天)，普莱克斯 / 林德案 (412 天)，联合技术公司 / 罗克韦尔柯林斯国际公司 (372 天)。2017 年，超过一半此类案件的审核时间持续 300 天以上，其中两起案件审核时间超过一年。相比之下，2017 年之前，《反垄断法》要求审核 300 天以上的案件只有 4 起 (西部数据 / 日立，嘉能可 / 斯特拉塔，丸红株式会社 / 高鸿控股，联发科技 / 晨星半导体)。尤其需要注意的是，2016 年，高通开始收购恩智浦半导体公司，然而 2018 年 7 月，监管截止日过后，仍没有得到相关部门的批准，高通因此放弃了收购。

这些条件决策案件引发了复杂的竞争担忧，许多案件也与国内产业政策目标纠缠不清。目前，国家市场监督管理总局咨询的重要行业利益相关者，包括其他部委和有关行业协会的反馈时间，经常超过管理总局规定的时间节点，导致审核延迟。商会希望管理总局能采取有效机制，将咨询反馈的延误最小化。

2018 年条件合并决策总结如下：

孟山都 / 拜耳

2018 年 3 月 13 日，商务部批准了拜耳和孟山都的并购。商务部对中国市场的蔬菜种子和非选择性除草剂，全球市场的玉米、大豆、棉花、油菜籽，以及数字农业的竞争，表示担忧。商务部发现拜耳和孟山都在相关性状的研发和数字农业领域是重要的竞争对手。因此，交易后研发领域的竞争将会减少，这可能导致创新放缓，新产品的发布推迟。商务部要求拜耳退出其蔬菜种子、非选择性除草剂以及玉米、大豆、棉花和油菜籽的全球业务。同时要求合并后的实体允许所有中国农业应用程序开发人员根据《公平及合理非歧视性》(简称“FRAND”)条款，将其软件与合并后实体的数字农业平台连接起来，允许国内用户在进入中国市场五年内，注册并使用合并实体的数字农业产品和应用。

陆逊梯卡 / 依视路

2018 年 7 月 25 日，国家市场监督管理总局批准了依视路国际和路陆逊梯卡集团的并购。国家市场监督管理总局是仅有的两家反垄断监管机构之一，(另一家是位于土耳其的市场监管机构)，在审核交易的 20 个司法管辖区实施条件。鉴于合并后的实体将在中国中高端光学镜片 (40–45%)、低端光学镜片 (30–35%) 和高端太阳镜 (35–40%) 的市场份额中占据较高的份额，光学镜片、光学镜框、太阳镜的批发市场，以及眼镜产品的零售市场引发了国家市场监督管理总局对竞争的担忧。相比之下，几乎所有其他

监管机构都认为，股价的低涨幅不会对竞争产生重大影响，并无条件批准了此次交易。国家市场监督管理总局还认为，品牌忠诚度和市场准入壁垒是增强市场实力的额外“加分”因素。大多数其他司法管辖区认为，品牌声誉并不重要，没有(或有限的)市场准入壁垒。根据利润率分析，国家市场监督管理总局还发现，合并后的实体可能会进行捆绑销售或搭售业务，而其他司法管辖区则认为，这种做法的可能性有限，而且会损害零售商或客户的利益。国家市场监督管理总局要求双方不得进行捆绑销售，不向中国零售店强加排他性条件或限制，根据 FRAND 条款提供眼镜和商标许可，不得低于成本价销售眼镜，且只能在获得国家市场监督管理总局批准后，才能将 STARS 分销计划提供给眼镜零售商。

林德 / 普莱克斯

2018 年 9 月 30 日，国家市场监督管理总局批准了林德和普莱克斯的合并。国家市场监督管理总局发现，这笔交易可能会在全球氮、惰性稀有气体混合物、含氟稀有气体混合物、氯化氢稀有气体混合物市场，以及广东液氧和液氮市场引发竞争担忧。为了消除这些担忧，国家市场监督管理总局要求转让氮资产，转让与氮相关的客户合同，转让林德在广东的四家合资企业的股份，协助中国买家运输氮，并承诺以合理的价格和数量，及时、稳定地向中国市场供应惰性稀有气体、含氟稀有气体、氯化氢稀有气体混合物。

联合技术公司 / 罗克韦尔柯林斯国际公司

2018 年 11 月 23 日，国家市场监督管理总局批准了联合技术公司收购罗克韦尔柯林斯公司。国家市场监督管理总局发现，此次交易可能会导致以下产品全球细分市场的竞争，包括可调式水平稳定器致动器，油门弧座配件，舵制动踏板装置，机翼防冰系统，氧气生成系统、航空电子设备、机舱、二次飞行控制驱动，冰探测系统、发电系统、消防系统、大气数据传感器、大气数据计算机、综合大气数据系统。除了评估重叠市场的横向竞争，国家市场监督管理总局考虑了在几个“邻近”市场中损害企业集团的理论，发现双方存在捆绑的动机：① 罗克韦尔柯林斯的航空电子设备与联合技术公司的机舱、二次飞行控制驱动、冰探测系统、发电系统、防火系统和其他机电装置；② 罗克韦尔柯林斯的空气数据电脑与联合技术公司的空气数据传感器，和集成空气数据系统。为了消除国家市场监督管理总局的担忧，双方承诺出让：(i) 罗克韦尔柯林斯的可调式水平稳定器致动器、飞行员控制系统(包括油门弧座配件，

and volumes in a timely and stable manner.

UTC/Rockwell Collins

On November 23, 2018, SAMR approved the acquisition of Rockwell Collins by United Technologies Corporation (UTC). SAMR found that the transaction was likely to result in competition concerns in the global segments for trimmable horizontal stabilizer actuators (THSA), throttle quadrant assemblies (TQA), rudder brake pedal units (RBPS), wing ice protection systems, oxygen generation systems, avionics, nacelles, secondary flight control actuation (SFCA), ice detection systems, power generation systems, fire protection systems, air data sensors, air data computers, and integrated air data systems. In addition to assessing horizontal competition in overlap markets, SAMR considered conglomerate theories of harm in several “neighboring” markets, finding that the parties would have incentives to bundle and tie: ❶ Rockwell Collins’ avionics with UTC’s nacelles, SFCA, ice detection systems, power generation systems, fire protection systems, and other electromechanical devices, and ❷ Rockwell Collins’ air data computers with UTC’s air data sensors and integrated air data systems. To remedy SAMR’s concerns, the parties committed to divest (i) Rockwell’s THSA, pilot control systems (including TQA and RBPS) and SMR technologies (including wing ice protection systems), and (ii) UTC’s R&D programs for aircraft oxygen generation. The parties also committed not to tie or bundle “neighboring” products in China without justification, and to supply the A664 integrated air data system to Chinese customers on FRAND terms, while maintaining consistent levels of R&D investments and not reducing data transmission interoperability and accessibility.

Ramping Up of Gun-Jumping Fines

In 2018, SAMR imposed gun-jumping fines in 15 cases, more than double the six cases in 2017. Of these 15 cases, two-thirds (ten cases) involved foreign companies and 46.6% (seven cases) concerned the establishment of a joint venture. Interestingly, 40% (six cases) involved transactions that had occurred over five years ago, suggesting significant SAMR focus on retroactive detection of gun-jumping violations. For example, during or around the *Linde/Praxair* merger review, SAMR also investigated Linde for failure to notify three JV transactions – one with Shanghai Huayi Energy Chemical, a second joint venture with Dahua Group, and a third with Guangzhou Iron and Steel. All three cases concerned gun jumping violations that occurred in 2012. The concurrence of the merger review and gun-jumping investigations in this case could suggest a pivot towards a more unified approach whereby the review and enforcement divisions of SAMR have increased levels of coordination.

AmCham China applauds the consistent and more unified approach to enforcement of gun-jumping violations, as well as the continued (and timelier) publication of gun-jumping decisions. Nonetheless, AmCham China continues to recom-

mend that SAMR improve its practice of publishing written enforcement decisions in a fully reasoned manner. While published decisions must protect confidential business information of the undertakings concerned, they should be sufficiently detailed to provide guidance on SAMR’s interpretation of the AML (and other relevant laws) and thereby improve legal certainty and educate companies about compliance. Further guidance to clarify SAMR’s interpretation of “control” with respect to the establishment of JVs and minority stake acquisitions would bring increased clarity.

The importance of transparency is illustrated in the context of gun-jumping cases concerning JVs and minority stake acquisitions. In the penalty decision against Tianjin Haiguang Advanced Technology Investment (Tianjin Haiguang) and Advanced Micro Devices (AMD), SAMR imposed a fine of RMB 150,000 upon each of the undertakings concerned for failure to notify two JV transactions. The two parties agreed to establish two JVs, but it is unclear from the decision why SAMR found AMD had acquired control over the second JV where it acquired only a 30% stake.

Similarly, on August 30, 2018, SAMR fined GEM (Wuhan) Urban Mining Resources Industrial Park Development RMB 300,000 for failure to notify its acquisition of a 30% stake in GHM Auto Parts Remanufacturing. GHM Auto Parts Remanufacturing is a company co-established by GEM, Honest, and Mitsui. On November 20, 2017, GEM (Wuhan) signed a stock transfer agreement with Honest to acquire its stake in the target. Post-transaction, GEM, GEM (Wuhan), and Mitsui were to own 45%, 30%, and 25% stakes, respectively, in the target. SAMR concluded that the filing thresholds were triggered by the turnover of GEM and Mitsui, meaning that SAMR found joint control between the two parties. In this context, undertakings would significantly benefit from further clarity on the applicability of Article 20 in JV (and other similar) situations and control principles to be applied more generally in this case.

Implementation of Remedies

In 2018, SAMR lifted the restrictive conditions imposed in three cases: *Henkel/Tiande*, *GE/Shenhua* and *MediaTek/MStar*. SAMR also published its decision to fine Thermo Fisher for non-compliance with the restrictive conditions imposed upon *Thermo Fisher Scientific/Life Technologies*. AmCham China welcomes the publication of these decisions and hopes that SAMR will continue to improve transparency in its supervision and monitoring work.

Lifting of Conditions/Remedies

Henkel/Tiande

In February 2012, MOFCOM imposed conditions on a JV established by Henkel and Tiande, requiring Tiande to supply ethyl cyanoacetate to all customers on FRAND terms and restricting Tiande from offering the JV better supply

舵制动踏板装置)以及 SMR 技术(包括机翼防冰系统);

(ii) 联合技术公司的飞机氧气生产研发项目。双方还承诺,在没有正当理由的情况下,不在中国捆绑销售或搭售“邻近”产品,根据 FRAND 条款,向中国客户提供 A664 综合航空数据系统,同时保持一致的研发投入水平,不降低数据传输的互操作性和可访问性。

加大偷步操作处罚力度

2018 年,国家市场监督管理总局对 15 起偷步操作案件处以罚款,比 2017 年 6 起案件的 2 倍还要多。在 15 起案件中,2/3 (10 起)涉及到外国公司,46.6% (7 起案件)对建立合资公司表示担忧。有趣的是,40% (6 起)的案件涉及到发生在 5 年多以前的交易,表明国家市场监督管理总局重点追溯以往的偷步操作案件。例如,在林德/普莱克斯合并审核期间或前后,国家市场监督管理总局对林德未公告三家合资企业的交易进行了调查—其中一笔交易是与上海华谊能源化工有限公司,与大华集团成立第二家合资企业,第三笔是与广州钢铁股份有限公司。这三起案件都与 2012 年发生的偷步操作违法事件有关。合并审核和偷步操作调查同步进行可能意味着,通过加大国家市场监督管理总局的审核和执行部门的协调力度,向更统一的方法转变。

商会赞赏打击偷步操作违法行为所采取的一致的、统一的努力,以及对偷步操作决策的持续(及时)公布。然而商会仍然建议国家市场监督管理总局以充分合理的方式发布书面执行决议。虽然已公布的决策必须保护有关企业的机密商业资料,这些决策应足够详细,对国家市场监督管理总局关于《反垄断法》(和其他相关法律)的解释提供指导建议,以便提高法律的明确性,加强企业的合规教育。进一步指导并明确国家市场监督管理总局对设立合资企业的“控制”和收购少数股权的解释,以提高清楚度。

透明度的重要性在有关合资企业和少数股权收购的偷步操作案件中得到了体现。在对天津海光先进技术投资有限公司(天津海光)和美国 AMD 半导体公司的处罚决定中,国家市场监督管理总局针对未公布的两笔中外合资经营企业交易处以 15 万元罚款。双方同意设立两家中外合资企业,但尚不清楚为何国家市场监督管理总局发现 AMD 获得了第二家合资企业的控制权,而该合资企业只获得了 30% 的股份。

同样的,在 2018 年 8 月 30 日,国家市场监督管理总局对格林美股份有限公司(GEM)处以 30 万元人民币,因其未就收购 GHM 30% 的股权进行公布。GHM 是由 GEM、Honest 和 Mitsui 共同成立的公司。2017 年 11

月 20 日,GEM(武汉)与 Honest 签署股权转让协议,收购目标公司股权。交易完成后,GEM, GEM(武汉)和 Mitsui 分别拥有目标公司 45%,30%,和 25% 的股权。国家市场监督管理总局的结论是,申报门槛是由 GEM 和 Mitsui 的成交量触发的,这意味着国家市场监督管理总局发现了双方之间的联合控制。在这方面,进一步明确第 20 条在合资企业(和其他类似的)的适用性,以及在这种情况下更普遍适用的控制原则,将使企业大大受益。

补救措施的实施

2018 年,国家市场监督管理总局取消了三起案件的限制性条件:汉高/天德化工,通用/神华,以及联发科技/晨星半导体。国家市场监督管理总局还发布了处罚赛默飞世尔的决定,原因是赛默飞世尔科学/生命技术未遵守相关的限制性条件。商会欢迎上述决定的公布,并希望国家市场监督管理总局继续提高其监管和监督工作的透明度。

解除条件/补救措施

汉高/天德化工

2012 年 2 月,商务部对对汉高和天德成立的合资企业提出了条件,要求天德以公平、合理、非歧视的条款向所有客户供应氰乙酸乙酯,限制天德向合资企业提供更好的供货条件,以及与合资企业共享竞争信息。2017 年 7 月,双方申请取消这些条款,2018 年 2 月 1 日,国家市场监督管理总局批准了申请。该决定表明汉高已经将其在合资公司的股份转给了天德,以及天德在氰乙酸乙酯市场上的市场占有率不断下降。

联发科技/晨星半导体

2013 年 8 月,商务部对联发科技和晨星半导体的合并实施保留的单独条件。2017 年 11 月,双方向国家市场监督管理总局申请取消合并的条件,2018 年 2 月 9 日,商务部批准了申请。商务部发现,双方液晶电视主要控制芯片的总市场份额有所下降,新的竞争者已经进入相关市场,成为有效的竞争约束。此外,双方的下游客户对产品的依赖减少—一些中国电视制造商目前采用由中国供应商生产的芯片。取消限制条件还将避免双方重复其研发工作,从而节省成本。

通用/神华

2011 年 11 月,商务部有条件地批准了通用和神华设立的合资公司,以允许水煤浆气化技术在中国使用。这些条

terms and from sharing competitive information with the JV. In July 2017, the parties applied for removal of these conditions and on February 1, 2018, SAMR granted its approval. The decision noted that Henkel had transferred its share in the JV to Tiande and the diminishing market power of Tiande in the market for ethyl cyanoacetate.

MediaTek/MStar

In August 2013, MOFCOM imposed a hold separate condition on the merger between MediaTek and MStar. In November 2017, the parties applied to MOFCOM for removal of the conditions on their merger and on February 9, 2018, MOFCOM granted its approval. MOFCOM found that the combined market shares of the parties in LCD TV main control chips had declined and new competitors had entered the relevant market and were acting as effective competition constraints. Further, the downstream customers of the parties had become less reliant on the parties' products – certain Chinese TV manufacturers now incorporated chips manufactured by Chinese suppliers. The lifting of the hold separate would also prevent the parties from duplicating their R&D efforts, saving costs.

GE/Shenhua

In November 2011, MOFCOM conditionally approved a JV established between GE and Shenhua for the purposes of licensing coal water slurry gasification technology in China. The conditions required Shenhua not to use (or restrict) the supply of raw coal as a tool to force customers to use the JV's technology. In November 2017, the parties applied for removal of this condition and on August 22, 2018, SAMR announced its approval. SAMR found that new competitors had entered coal water slurry gasification in China due to reduced barriers to entry, lowering the parties' combined market shares.

Conditions/Remedy Enforcement

Thermo Fisher Scientific/Life Technologies

On January 31, 2018, MOFCOM fined Thermo Fisher RMB 150,000 for failure to comply with the conditions imposed in its acquisition of Life Technologies. MOFCOM had required Thermo Fisher to decrease the catalog prices of SSP kits and SDS-PAGE Protein Standards sold in the Chinese market by 1% annually while not reducing the discount offered to dealers. In 2016, the discount offered by Thermo Fisher did not meet the requirements of the conditions. Thermo Fisher explained that its non-compliance was inadvertent, caused by a restructuring of the business divisions and IT issues resulting in a transitional error. When determining the level of the fine, SAMR took into account several mitigating factors including the fact that Thermo Fisher took immediate measures to rectify the situation, offering compensation to Chinese distributors between May and August, 2017 and also that the failure had minimal impact on Chinese distributors and competitors.

National Security Review

It is understood the NDRC and MOFCOM are leading an overhaul of China's national security review, which was implemented based on State Council Circular 6 in 2011. Under the current review system, a national security review filing applies only to a merger or an acquisition (including both equity and asset acquisitions) involving a Chinese company (or its domestic assets) as the target / one merging party, and a foreign investor as the acquirer / the other merging party. Although only limited light has been shed on the current drafting process, the business and legal community in general expects that the new regime may significantly expand following enactment of the *National Security Law* in 2015. Were this to happen, a greater number of foreign investment deals may be captured under the new regime, which may potentially impact the merger review system under the AML. As such, the interplay between competition, industrial policy, and national security implications should be closely monitored in 2019.

Recent Conduct Enforcement Activities

During 2018, the newly consolidated SAMR focused its efforts on investigating conduct in the gas, electricity, water supply, petroleum, healthcare, education, finance, tobacco, and funeral industries. In the first three quarters of 2018, SAMR opened 12 new monopoly agreement cases and 11 new abuse of dominance cases, covering pharmaceuticals, automobiles, electronics, semiconductors and materials.

Anti-Competitive Conduct

Price fixing

Aligned with its enforcement efforts into the pharmaceutical and active pharmaceutical ingredients sector, SAMR fined three firms RMB 6.25 million in early December 2018. SAMR found that Chengdu Huayi Pharmaceutical Excipients Manufacturing, Sichuan Jinshan Pharmaceutical, and Taishan Xinning Pharmaceutical exchanged market information, production and sales information, and discussed concerted price hikes from October 2017 to February 2018. SAMR ordered the three firms to immediately stop the anti-competitive acts, confiscated their illicit gains of RMB 6.58 million, and imposed a fine of 4% of each firm's 2017 sales.

On June 11, 2018, SAMR fined four Shenzhen tugboat companies RMB 12.9 million for price fixing, fining Yantian Tugboat RMB 5.75 million, Alliance Tugboat RMB 3.96 million, Chiwan Tugboat RMB 2.44 million, and Dachan Bay Tugboat RMB 689,651 (4% of each firm's sales in the previous year). The four companies operated in direct competition around the Port of Shenzhen and coordinated service charge increases at the same time.

In 2018, SAMR also investigated price collusion in the

件要求神华不得使用（或限制）原煤供应，迫使客户使用合资企业的技术。2017年11月，双方申请取消这一限制条件，2018年8月22日，国家市场监督管理总局宣布批准该申请。国家市场监督管理总局发现，随着准入壁垒减少，新的竞争者已经进入中国水煤浆气化市场，从而降低了双方整体的市场份额。

条件 / 补救措施执行

赛默飞世尔科学 / 生命技术

2018年1月31日，商务部对赛默飞世尔处以15万元的罚款，因为后者在收购生命技术的过程中未能遵守相关限制条件。商务部要求赛默飞世尔在中国市场销售的SSP试剂盒和SDS-PAGE蛋白标准产品的目录价格每年下调1%，同时不降低向经销商提供的折扣。2016年，赛默飞世尔提供的折扣未能符合条件要求。赛默飞世尔表示，其违规行为是无意的，由业务部门的重组和IT问题导致的过渡性错误。在确定罚款数额时，国家市场监督管理总局考虑了几个减轻处罚的因素，包括赛默飞世尔立即采取了措施纠正违规行为，在2017年5月至8月期间向中国经销商提供了补偿，以及此次违规对中国经销商和竞争对手的影响微乎其微。

国家安全审核

据了解，国家发改委正在牵头对国家安全审核进行全面检查，国家安全审核基于2011年国务院第6号通知实施。根据现行的审核制度，国家安全审核的申请只适用于涉及中国公司（或其国内资产）作为目标 / 合并方的合并或收购，以及作为收购方 / 另一合并方的外国投资者。尽管目前的起草过程只得到了有限的了解，但商界和法律界普遍预计，随着2015年《国家安全法》的颁布，新体制的实施范围可能会显著扩大。如果出现这种情况，在新体制下，可能会有更多的外国投资交易被捕获，可能对《反垄断法》下的合并审查制度产生潜在影响。因此，2019年应密切监督竞争、产业政策和国家安全影响之间的相互作用。

执法行动最新进展

2018年，新成立的国家市场监督管理总局集中精力调查天然气、电力、供水、石油、医疗、教育、金融、烟草和殡葬行业的经营情况。2018年前3个季度，国家市场监督管理总局处理了12起新的垄断协议案，和11起滥用支配权案件，涵盖制药、汽车、电子、半导体和材料行业。

反竞争行为

价格垄断

2018年12月初，国家市场监督管理总局对三家企业处以625万元人民币的罚款，以配合对药品和原料药行业的执法力度。国家市场监督管理总局发现，成都华邑药用辅料制造有限责任公司，四川金山制药有限公司和台山市新宁制药有限公司互相交换市场信息，产品和销售信息，讨论从2017年10月到2018年2月协调一致的价格上涨。国家市场监督管理总局责令三家公司立即停止反竞争行为，没收违法所得658万元，并对每家公司处以2017年销售额4%的罚款。

2018年6月11日，国家市场监督管理总局对四家深圳拖船公司处以1290万元的罚款，原因是后者进行价格垄断，对深圳盐田拖轮有限公司处以575万元的罚款，对联盟拖船处以396万元的罚款，对赤湾拖船处以244万元的罚款，对大铲湾拖船处以689,651元的罚款（每家公司上一年度销售额的4%）。这四家公司围绕深圳港口展开直接竞争，同时提高服务费。

2018年，国家市场监督管理总局还调查了中国动态随机存取存储器（DRAM）芯片市场的串通定价行为，并接到制造商的投诉，指出中国动态随机存取存储器的价格正在上涨。2018年5月，国家市场监督管理总局对贤泽电子，三星电子和海力士半导体进行了突击调查，并于2018年6月对全球半导体观察进行了检查。

转售价格控制

2018年，关于如何评估转售价格控制的解释，法院和国家市场监督管理总局之间一直以来的分歧在中国仍然存在。商会强调了最新的转售价格控制案例法，并鼓励国家市场监督管理总局和法院更好地协调中国转售价格控制的处理和评估。

根据国家市场监督管理总局要求，转售价格控制按照“禁止和豁免”的方式审核，这是由于《反垄断法》规定第13条（横向协议）和第14条（纵向协议）所列的协议本身就是垄断协议，除非第15条的豁免规则适用。然而，中国法院普遍采用“理性规则”分析转售价格控制案件。中华人民共和国最高法院知识产权法院的法官最近发现，《反垄断法》第15条提供的纵向协议豁免范围不够全面，面对转售价格控制的正当理由，可能会导致滥用执法和过度惩罚。

2018年1月12日，上海市物价局对GN通信处以231

dynamic random-access memory (DRAM) chip market in China, having received complaints from manufacturers that DRAM prices in China were increasing. SAMR carried out dawn raids on Micron Technology, Samsung Electronics, and SK Hynix in May 2018 and on DRAMeXchange in June 2018.

Resale Price Maintenance (RPM)

In 2018, the longstanding divergence continued in China between the interpretation of the courts and SAMR on how to assess RPM. AmCham China highlights below recent RPM case law and encourages SAMR and the courts to better reconcile the treatment and assessment of RPM in China.

According to SAMR, RPM arrangements are reviewed under a “prohibition plus exemption” approach, as the AML determines that the agreements listed in Article 13 (horizontal agreements) and Article 14 (vertical agreements) are per se monopoly agreements, unless an exemption under Article 15 applies. Chinese courts have, however, generally applied a “rule of reason” analysis in RPM cases. Judges on the Intellectual Property Court of the Supreme People’s Court recently observed that Article 15 in the AML provides an inadequate range of vertical agreement exemptions, which may therefore lead to abusive enforcement and excessive penalties in the face of valid justifications for RPM arrangements.

On January 12, 2018, the Shanghai Municipal Price Bureau fined GN Communications RMB 2.31 million (3% of sales of the relevant products in 2016) for alleged price-related vertical restraints with respect to the sale of Jabra earphones. GN Communications had since February 2014 entered into agreements to fix or restrict local resale prices. On the same day, the Shanghai regulator also imposed a fine of RMB 2.37 million (5% of sales of the relevant products in 2016) on two local subsidiaries of Eastman Chemical for allegedly fixing the resale prices of turbo oils.

In March 2018, the Jiangsu Provincial Price Bureau fined a distributor of Vivo mobile phones RMB 6.9 million (1% of the unidentified distributor’s revenues in 2016) for RPM. On January 26, 2018, SAMR fined Petro China RMB 84.06 million (6% of 2016 sales) for restricting the minimum resale price for compressed natural gas to 13 downstream companies in Harbin, Qiqihar, and Daqing.

Two private plaintiffs failed to prevail in RPM lawsuits in Chinese courts. Wuhan Hanyang Guangming Trading sued Hankook Tire for setting minimum resale prices, but the Shanghai Intellectual Property Court held that the alleged conduct did not violate the AML, finding that declining ex-factory prices, minimum resale prices, and retail prices of Hankook Tire’s products in 2012-2016 were in line with the general trend in the market. Interestingly, Hankook Tire had previously been fined for RPM by the Shanghai Municipal Price Bureau in April 2016.

On August 2, 2018, the Guangdong High People’s Court dismissed an appeal filed by Dongguan Hengli Guochang Electrical Appliance Store, a retailer, regarding its claims against two distributor defendants, Dongguan Shengshi Xinxing Gree Maoyi Trading (Dongguan Shengshi) and Dongguan Heshi Electrical Appliance (Dongguan Heshi), for alleged RPM. Specifically, the Court noted that vertical agreements restricting prices, as prescribed in Article 14 of the AML, should not be deemed as monopolistic if they do not restrict or exclude market competition. Such agreements should also be analyzed from three perspectives: the competition landscape in the market, the market position of the defendant(s), and the purposes and results of the agreements restricting prices.

Outside private litigation, however, one Chinese court did uphold a provincial price bureau’s RPM penalty decision. Hainan Yutai Feed Technology (Yutai) was fined RMB 200,000 by the Hainan Price Bureau for entering into RPM agreements in 2014 and 2015, although such agreements were never implemented. Yutai appealed the decision to the Haikou Intermediate People’s Court, which overturned the decision, finding that the RPM agreements did not eliminate or restrict competition given Yutai’s market share and scale of operations. The Hainan regulator appealed the Haikou Intermediate People’s Court’s decision to the Hainan High People’s Court. The High Court upheld the regulator’s decision, holding that fixing the prices of products resold to a third party amounts to a monopoly agreement and that once the regulator proves the concerned contracts are RPM agreements the company must prove the applicability of one of the exemptions in Article 15. The High Court also distinguished this case from private litigation, in that an administrative enforcer’s antitrust penalty decision is not premised on the agreement having an impact of eliminating or restricting competition. Yutai applied in October 2018 to the Shenzhen Circuit Court to reexamine the Hainan High Court’s decision which was handed down in December 2017.

AmCham China recommends that China reconcile the divergence between administrative agencies and courts with respect to the assessment of RPM, as well as the potential divergence that may emerge among different courts on the same issue, and in general apply a “rule of reason” analysis to vertical agreements which is in line with practice in other jurisdictions.

Abuse of Dominance

In 2018, there were notable abuse of dominance investigations and court actions targeting both foreign and domestic firms. Increasingly, we have seen competition complaints by foreign firms against Chinese domestic firms, and by smaller Chinese domestic firms against large Chinese heavyweight firms.

For instance, with respect to foreign firms, SAMR continues to investigate Microsoft for alleged abuse of dominance in

万元人民币的罚款（2016年相关产品销售额的3%），原因是后者涉嫌在销售捷波朗耳机方面实施与价格有关的垂直限制。自2014年2月以来，GN通信已签署协议，确定或限制当地转售价格。同一天，上海监管部门也对伊士曼化工当地两家子公司处以237万元人民币的罚款（2016年相关产品销售额的5%），原因是这两家公司涉嫌控制涡轮机油的转售价格。

2018年3月，江苏省物价局 Vivo手机经销商处以690万元人民币（占该经销商2016年收入的1%）的转售价格控制罚款。2018年1月26日，国家市场监督管理总局对中国石油天然气集团公司处以罚款8406万元人民币（占2016年销售额的6%），原因是该公司将压缩天然气最低转售价格限制在哈尔滨、齐齐哈尔和大庆的13家下游企业。

两家私营企业在法院转售价格控制的诉讼中败诉。武汉市汉阳光明贸易有限责任公司起诉韩泰轮胎，指控后者制定最低转售价格，但上海知识产权法院裁定，上述行为并未违反《反垄断法》，法院发现，2012-2016年韩泰轮胎产品的出厂价格、最低转售价格、零售价格下降趋势与市场总体趋势一致。有趣的是，2016年4月，韩泰轮胎曾因转售价格控制被上海市物价局罚款。

2018年8月2日，广东省高级人民法院驳回了东莞市恒力国昌电器有限公司对两家经销商——东莞盛世鑫兴格力茂艺贸易有限公司（东莞盛世）和东莞和世电器有限公司（东莞和世）提起的转售价格控制上诉。具体而言，法院指出，《反垄断法》第14条规定，限制价格纵向协议如果没有限制或排除市场竞争，就不应被视为垄断。这些协议还应从三个方面进行分析：市场竞争格局、被告的市场地位、限制价格协议的目的和结果。

然而，在私人诉讼之外，中国法院确实支持省物价局的转售价格控制处罚决定。海南裕泰饲料科技有限公司（简称“裕泰”）因在2014年和2015年签订转售价格控制协议而被海南省物价局罚款20万元人民币，尽管这些协议从未实施过。裕泰向海口中级人民法院提起上诉，法院推翻了之前的裁决，认为转售价格控制协议并没有消除或限制竞争，因为裕泰的市场份额和经营规模并不大。海南省监管机构针对海口中级人民法院的判决向海南省高级人民法院提起上诉。高级法院维持了监管机构的决定，认为控制转售给第三方的产品的价格相当于垄断协议，一旦监管机构证明相关合同是转售价格控制协议，裕泰就必须证明第15条豁免条款之一的适用性。高等法院还将此案与私人诉

讼区分开来，因为行政执法人员的反垄断处罚决定并不以具有消除或限制竞争影响的协议为前提。2018年10月，裕泰向深圳巡回法院申请重新审查海南高级人民法院2017年12月作出的判决。

商会建议中国协调行政机关与法院在转售价格控制评估方面的分歧，以及不同法院在同一问题上可能出现的分歧，并针对纵向协议采用“理性分析”规则，这与其他司法管辖区的实践相符。

支配权滥用

2018年，出现了明显针对外国和国内企业的支配权滥用以及法院诉讼的情况。商会越来越多地看到外国公司对中国当地公司的竞争投诉，以及规模较小的中国当地公司对中国大型公司的竞争投诉。

例如，对于外国公司，国家市场监督管理总局继续调查微软涉嫌滥用其在兼容性、捆绑和文档认证方面的支配地位。自2014年国家工商管理总局突击检查微软在北京、上海、广州和成都的办公室以来，微软一直在接受调查。

同样值得注意的是，京东指控阿里巴巴滥用其支配地位，使用排他性合同。这些投诉表明，中国企业正在积极利用竞争法，在可能的情况下，追查中国大型企业。

关于国有企业，2018年4月19日，国家市场监督管理总局授权湖南省市场监督管理局（简称“市监局”），就国家电网湖南省电力有限公司及其分支机构涉嫌滥用市场支配地位展开调查。据称，国家电网湖南省电力有限公司（及其分支机构）强迫湖南省水电协会500多家成员公司（包括发电站在内）根据地理位置或从某些供应商购买发电数据采集设备。此外，由于国家市场监督管理总局在电力行业所作出的努力，本年初，湖南省市监局发现湖南当地信息技术监管机构滥用行政权力对发电公司实施反竞争政策。这表明，国家市场监督管理总局加大了对滥用行政行为和国有企业的打击力度。

司法进展

鉴于今年上半年国家市场监督管理总局的努力，2018年公布的立法方面的进展较少。不过，国家市场监督管理总局于2018年9月以自己的名义重新发布了一套合并审核指南，包括以下内容：

- ① 经营者集中审查通知指导意见；
- ② 经营者集中审查简单案件通知指导意见；

relation to problems with compatibility, bundling and document authentication. Microsoft has been under investigation since 2014 when SAIC raided Microsoft's offices in Beijing, Shanghai, Guangzhou, and Chengdu.

It is also worth noting that JD.com has alleged that Alibaba abused its dominance by using exclusivity contracts. These complaints demonstrate that Chinese businesses are actively using competition laws, where possible, to pursue large Chinese companies.

With respect to state-owned enterprises (SOEs), SAMR, on April 19, 2018 authorized Hunan AIC to investigate State Grid Hunan Electric Company (State Grid Hunan) and its branch institutions for alleged abuse of dominance. It is alleged that the State Grid Hunan (and its branch institutions) forced over 500 member companies of the Hunan Provincial Hydropower Association, which included power generation stations, to purchase power generation data collection devices based on their geographical location or from certain suppliers. Moreover, and related to SAMR's efforts in the electricity and power sectors, at the beginning of this year Hunan AIC found that local information technology regulators in Hunan had abused their administrative power by imposing anti-competitive policies on power generation companies. This demonstrates an increased crackdown by SAMR on abusive administrative conduct and on SOEs more generally.

Legislative Progress

Given the SAMR consolidation efforts in the first half of the year, there were fewer published developments on the legislative front during 2018. Nevertheless, SAMR re-published a set of merger review guidelines in its own name in September 2018, including:

- ① *Guiding Opinions on Notification of Concentrations of Undertakings;*
- ② *Guiding Opinions on Notification of Simple Cases for Concentrations of Undertakings;*
- ③ *Guiding Opinions on Documents and Materials in Notifications of Concentrations of Undertakings;*
- ④ *Guidelines for Handling Review of Notifications of Concentrations of Undertakings;*
- ⑤ *Guiding Opinions on Regulating Case Names of Notifications of Concentrations of Undertakings;*
- ⑥ *Explanations on Implementing the Notification Form of Concentration of Undertakings; and*
- ⑦ *Model Monitoring Trustee Mandate.*

The changes in these republished guidelines are mostly very minor but notifying parties can now directly submit their filing materials to SAMR's Anti-Monopoly Bureau (whereas previously they would need to submit to MOFCOM's Administrative Services Center which could create delay).

Although not yet published, it is understood that the Anti-monopoly Commission (AMC) of the State Council approved four antitrust guidelines in December 2018, including guidelines on competition enforcement in the automobile sector, intellectual property rights (IPR), leniency applications, and commitments. SAMR is expected to publish these guidelines soon in 2019. The competition enforcement department of NDRC (before the consolidation) was understood to be taking the lead in drafting these guidelines; the IPR guideline was a joint effort with MOFCOM, SAIC and the former State Intellectual Property Office (SIPO), which was renamed the China National Intellectual Property Administration (NIPA) and put under SAMR in August 2018 as part of the government reorganization. Besides these four, the other two guidelines that are currently being drafted relate to exemptions and calculations of fines and illegal gains.

In 2018, SAMR also made progress on legislative drafts, including the November 5, 2018 draft *Interim Provisions on Administrative Penalty Procedures in Market Regulation* (the Draft Procedural Provisions) and the related *Interim Measures for Administrative Penalty Hearings in Market Regulation* (the Draft Hearing Measures). As SAMR explained in the accompanying notice, the draft rules are both a reflection of the progress that China has made in administrative penalty legislation and law enforcement practice in recent years, as well as an integration of the existing procedural rules administered by the different regulatory agencies that have now been consolidated under SAMR. To avoid conflict with procedural rules concerning violations of the AML, Article 77 of the Draft Procedural Provisions clarifies that the anti-trust-specific provisions apply.

Recommendations

For the Chinese Government

- **Focus on genuine competition issues (and do not take into account trade, political and national security issues as part of SAMR's review process). Remain impartial between domestic companies and their foreign competitors and avoid allowing industrial policy interests to play a role in AML enforcement and abuse of dominance investigations.**
- Follow the bright-line rules for determining eligibility under the simplified procedure and publish detailed guidelines regarding how SAMR exercises its discretion in accepting cases. Continue to provide speedy reviews under the simplified procedure for merger review.
- Improve transparency regarding competition complaints and investigations, including the release and implementation of clear guidelines on AML enforcement and a commitment to publish written

- ③ 经营者集中审查文件和材料指导意见；
- ④ 经营者集中审查通知审核处理指导意见；
- ⑤ 经营者集中审查通知案件名称管理指导意见；
- ⑥ 经营者集中审查通知形式执行解释；
- ⑦ 模范监督受托人授权。

这些重新发布的指导意见的大部分改很小，但通知方现在可以直接向国家市场监督管理总局下属的反垄断局提交备案材料，而此前需要向商务部行政服务中心提交备案材料，且可能会造成延误。

尽管尚未发布，据了解，国务院反垄断委员会（AMC）于2018年12月批准了四项反垄断指导意见，包括汽车行业竞争执法指导意见、知识产权指导意见、宽容处理申请意见和承诺意见。国家市场监督管理总局预计将于2019年发布这些指导意见。国家发改委竞争执法部门（合并之前）牵头起草这些指导意见；知识产权指导意见由商务部、国家工商管理总局和前国家知识产权办公室（之后更名为国家知识产权局）共同撰写，作为政府重组的一部分，2018年8月被纳入国家市场监督管理总局。除了以上四个指导意见，还有另外两个关于豁免和罚款和非法所得罚款计算的指导意见正在起草中。

2018年，国家市场监督管理总局在法律草案方面也取得了进步，包括2018年11月5日的《市场监管中行政处罚程序暂行规定》（程序规定草案），和相关的《市场监管行政处罚听证暂行办法》（听证办法草案）。国家市场监督管理总局在附加通知中做出了解释：法律草案是中国在行政处罚立法和执法方面进步的体现，也是国家市场监督管理总局所包含的不同监管机构现有程序法规的整合。为避免与违反《反垄断法》程序规则发生冲突，《程序法规草案》第77条明确了反垄断具体规定的适用性。

建议

对中国政府：

- 关注真正的竞争问题（在国家市场监督管理总局审查的过程中不考虑贸易和国家安全问题）。在国内企业与外国竞争对手之间保持公正，避免让产业政策利益影响《反垄断法》执法和滥用

支配权调查

- 遵循“明线规则”，根据简化的程序确定资格，并公布有关国家市场监督管理总局如何在受理案件中行使自由裁量权的详细指南。继续按照简化的合并审核程序提供快速审核。
- 提高竞争投诉和调查的透明度，包括发布和实施有关《反垄断法》执法的明确指南，承诺以充分合理的方式发布书面执法决定，并保障被审查或调查公司的正当程序权利。允许国内外企业充分参与滥用支配权、垄断协议和行政垄断的立法草案。
- 发布正式指南，明确符合外国资质的律师（即在外国律所工作，符合中国资质的律师）和外国顾问可以参加国家市场监督管理总局的会议和调查，并与本地顾问一起，履行中美商贸联合委员会对中国的承诺。
- 发布补充指导意见，协调行政机关与法院、不同法院在同一问题上的分歧。

enforcement decisions in a fully reasoned manner and guarantee due process rights of companies under review or investigation. Allow foreign and domestic businesses to participate fully in draft legislation relating to abuse of dominance, monopolistic agreements, and administrative monopolies.

- 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 SAMR, alongside local counsel, to implement China's commitments under the US-China Joint Commission on Commerce and Trade (JCCT).
- Reconcile the divergence between administrative agencies and courts, and different courts, on the same issues by releasing additional guidance. Improve coordination between different ministries and implement a clear timeframe for feedback from relevant ministries and departments when consulted by MOFCOM to avoid potential delays in the merger review process.

Compliance

Introduction

AmCham China member companies face challenging and complex compliance concerns in China because of the opaque nature of the Communist Party of China's (CPC) influence on government policies, as well as historically weak regulatory transparency. As has been well documented, US firms in recent years have been subjected to an increasingly broad array of investigatory actions under China's growing number of regulatory and enforcement measures. Such actions include without limitation regular investigations by authorities under the Anti-Unfair Competition Law (AUCL). From the viewpoint of US firms these actions often appear to be conducted for the purpose of benefiting China's domestic industrial policy goals or the particular interests of Chinese competitors.

More recently, new data compliance, data localization, and data privacy rules have been implemented without taking into account the cross-border operational needs of foreign companies, which has begun to have an increasingly serious impact on many US companies. Close to 46% of AmCham China member companies surveyed in our 2019 *Business Climate Survey* responded that they felt less welcome in China than in 2017, and 34% reported no change. Notably, among technology and other R&D-intensive firms, 54% felt they were "slightly" or "much" less welcome than before.

We strongly urge the Chinese authorities to abide by the principles of fairness and transparency with respect to the implementation of laws, regulations, and rules. China's rapid evolution has reached a stage where it asserts that it is now on the verge of opening most of its markets to full and fair competition, with equal treatment for all businesses operating within its borders. It is also a time when China is increasingly claiming global leadership, a role which depends on the exercise of fairness and transparency.

Recent Developments and Ongoing Regulatory Issues

Anti-Corruption Compliance

China's anti-corruption campaign continued in 2018, which

was also an important year of political transition. In early 2018 a new National Supervision Commission (NSC) was created to spearhead anticorruption efforts. The NSC is a state institution at a level comparable to the State Council, the Supreme People's Court (SPC), and the Supreme People's Procuratorate. Following the decision to form the NSC, the National People's Congress (NPC) also enacted the new *Supervision Law*, which enumerated the powers of the NSC and outlined procedures to be followed in the course of supervision work in order to ensure due process.

Corruption not only entails potential civil and criminal liability, but may also tarnish a firm's reputation, damaging its business both in China and internationally. It is essential that companies operating in China adhere to local laws and regulations, as well as overseas anti-bribery laws in their home jurisdictions, in order to avoid penalties and reputational damage. We fully recognize that US companies and citizens must comply with local Chinese laws and regulations, as well as the US *Foreign Corrupt Practices Act*. Below, however, are some of the key corruption-related concerns 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 similar risks found in China's rapidly evolving commercial and legal environment.

Anti-Bribery Law Enforcement

The NSC is set to exercise a broad range of powers to supervise, investigate and discipline persons who have public duties, including Party officials, civil servants, personnel engaged in public affairs, and other officials. According to the Central Commission for Discipline Inspection (CCDI) and the National Supervisory Commission, 240,000 officials were punished for discipline violations in the first half of 2018.

By establishing the NSC, the Chinese government has sought to build an integrated and more independent supervisory system by consolidating powers previously spread across certain judicial authorities (the procuratorates) and administrative authorities (supervision departments and corruption prevention bureaus), as well as the disciplinary inspection divisions of the Communist Party of China (CPC) under the NSC. The Chinese government is working hard to ensure the full integration of the NSC into the political and

合规

引言

由于中国共产党对政府政策的影响力不够明确，以及历来监管不够透明，中国美国商会（商会）的会员企业在中国面临具有挑战而又复杂的合规问题。如前所述，中国不断增加监管和执法措施，导致近年来美国企业面临越来越多的更为广泛的调查行动。这些行动包括但不限于政府部门根据《中华人民共和国反不正当竞争法》所进行的定期调查。从美国企业的角度看，这些行动的实施似乎是为实现中国的国内产业政策目标，或是为中国竞争者的特有利益考虑。

最近，新的数据合规、本地化和隐私保护法规均开始实施，但这些法规并没有考虑到外国企业的跨境运营需求，已经对美国企业的在华运营不断构成严重影响。在商会2019年度《商务环境调查报告》中，近46%的商会会员企业表示，它们感觉在中国的受欢迎程度相比2017年有所降低，34%认为没有变化。值得注意的是，在技术和其他研发密集型公司中，54%的公司认为它们比以前“不怎么”受欢迎或“大不”受欢迎了。

因此，商会促请中国政府遵守法律法规实施的公平性和透明度。现在的中国经过快速发展，多次强调要进一步开放市场、促进全面公平竞争，并对在其境内运营的所有企业一视同仁。现在也正是中国越来越多地展现全球领导力的好时机，这一作用有赖于公平性和透明度的执行。

最新进展及现存监管问题

反腐败法规

2018年中国继续进行反腐，这一年也是政治过渡的重要一年。2018年初，中国成立了一个新的国家监督委员会，以带头开展反腐败工作。国家监督委员会是一个与国务院、最高人民法院和最高人民检察院平级的国家机构。继成立

国家监督委员会的决定之后，全国人民代表大会也颁布了新的《监督法》，其中规定了国家监督委员会的权力，并列明了监督工作过程中应遵循的程序，以确保正当程序。

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遵守当地法律法规，及中国司法管辖区实施的反海外贿赂法，避免遭受处罚或名誉受损。商会充分认识到美国公司和公民必须遵守中国的法律法规和美国的《反海外腐败法》。以下是商会会员企业提出的部分与腐败有关的关键问题，但并未涵盖所有问题。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类似风险保持警惕。

反贿赂法律的实施

国家监督委员会旨在行使广泛的权力来监督、调查和惩戒公职人员，包括公务员、从事公共事务的人员和其他官员。根据中央纪律检查委员会和国家监督委员会的统计，2018年上半年，24000名官员因违纪受到惩罚。

通过设立国家监督委员会，中国政府计划通过巩固先前分散在某些司法机关（检察院）和行政机关（监督部门和反贪污腐败局）以及国家监督委员会下属的中共纪律检查部门的权力，以建立一个统一而更加独立的监督体系。中国政府正在努力确保将国家监督委员会全面融入政法体系（公共安全、检察、司法）。鉴于国家监督委员会成立后监督委员会与检察机关之间调查权力的重叠，全国人大常委会于2018年10月修订了《刑事诉讼法》，调整了检察机关的调查权力，使其与国家监督委员会的调查权力相吻合。这些变化是在2018年逐步进行的，随后可能会颁布实施细则以支持这些变化。还有待观察的是得到强化的反腐政府基础设施将会如何影响美国公司，以及它们是否会受到纪律检查。

鉴于中国持续加大反贿赂执法力度，商会会员支持中

legal system (public security, procuracy, judiciary). In light of the overlap of investigative powers between supervision commissions and procuratorial offices as consequence of the creation of the NSC, the NPC Standing Committee amended the *Criminal Procedure Law* in October 2018, adjusting the investigation powers of procurators so that they are aligned with those of the NSC. These changes were made gradually during 2018 and it is likely that implementation regulations will subsequently be promulgated to support the changes. It remains to be seen how US companies will be impacted by the enhanced anti-corruption government infrastructure and whether foreign-invested enterprises (FIEs) will be subject to disciplinary inspections.

In light of China's continuing focus on anti-bribery law enforcement, AmCham China members support additional clarity and consistency in regulatory enforcement and in the scope of responsibilities held by central- and local-level supervision commissions. 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, and a robust, balanced legal and regulatory environment improves the effectiveness of compliance programs, bringing confidence to such investors.

Amended Anti-Unfair Competition Law

The amended AUCL went into effect on January 1, 2018. Enforcement of the AUCL falls under the newly-established State Administration for Market Regulation (SAMR). In March 2018 China carried out a significant governmental reorganization, substantially adjusting the organization and distribution of power among government ministries. The original State Administration for Industry and Commerce (SAIC) was merged into SAMR, which now functions in part as the consolidated anti-trust enforcement and pricing supervision authority.

SAMR in May 2018 initiated a nationwide five-month campaign against unfair competition, with a focus on commercial bribery in the pharmaceutical, medical devices and education sectors. This campaign, waged until October 2018, was tended to implement Article 7 of the AUCL, which redefined commercial bribery. The new definition of "commercial bribery" removed language relating to "purchase and sale of goods" present under the previous version of the AUCL. The updated definition broadly covers all types of transactions whereby any business operator, by offering money, goods or through other means, seeks to obtain a "transaction opportunity" or "competitive advantage." The definition of "bribe-taker" was also clarified to an employee of, or trusted entity or individual acting on behalf of another party to the transaction, or a third-party entity or individual that "has influence over the transaction." Moreover, bribes given to third party entities or individuals authorized by the business counterparty and third parties that have influence over the underlying transactions are also expressly prohib-

ited. For the first time, the AUCL now explicitly prohibits bribery through third parties.

During the campaign, certain domestic pharmaceutical and medical devices companies were investigated and subject to administrative fines for violations of Article 7. One feature of this campaign illustrative of the new regulatory interpretation was that regulators treated payments of speaker fees through medical associations as commercial bribery. There is no indication that US companies were specifically targeted in the campaign; however, foreign companies would do well to review the types of administrative decisions and penalties meted out by regulators during the campaign, which could signal future enforcement trends. AmCham China urges SAMR to publish binding guidance and interpretations regarding the scope of commercial bribery, and to ensure that enforcement campaigns are transparent and made public.

US Foreign Corrupt Practices Act and Other Corruption Laws

AmCham China member companies have continued to prioritize compliance with the Foreign Corrupt Practices Act (FCPA) and other corruption laws. Companies strive to design compliance and training programs to address risks. In-house professionals working to ensure a foreign company's global compliance face the difficult task of harmonizing different demands to address both global and local requirements, however. Meanwhile, the US Department of Justice announced a "China Initiative" in November 2018 which includes a component for identifying FCPA cases involving Chinese companies that compete with American businesses. Whether such initiative will trigger similar actions or other reactions by the Chinese government against US companies remains to be seen.

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. With respect to international norms, the UN Convention Against Corruption, enacted in 2005 and with over 140 country signatories (including China), covers five main areas: prevention, criminalization, international cooperation, asset recovery, and technical assistance. The effect of corruption on economic development, a level playing field for all businesses and individuals, organized crime, and the rule of law among other elements are emphasized in the Preamble. China criminalized the act of bribing foreign officials and officials of international organizations with the 8th Amendment to the Criminal Law, enacted May 1, 2011. To date, few if any cases against Chinese companies or individuals charged with overseas corruption and bribery have been prosecuted or publicized.

Third-Party Compliance

Compliance with anti-bribery and anti-corruption (ABAC)

央和地方各级监管委员会监管执法和职责范围的进一步明确度和一致性。这些努力应包括对法治关键组成部分的支持，包括对透明度、解释的一致性和正当程序。外国投资者在投资时依赖于确定性和公平性，稳健、平衡的法律和监管环境提高合规计划的有效性，提升投资者信心。

《反不正当竞争法》修订版

2018年1月1日，《反不正当竞争法》修订版生效。该法由新成立的国家市场监督管理总局实施。2018年3月，中国进行了重大的政府机构重组，大大调整了政府各部门的权力组织和分配。原国家工商总局合并为国家市场监督管理总局，现在部分作为综合反垄断执法和价格监管机构履行职责。

国家市场监督管理总局于2018年5月在全国范围内开展了为期五个月的反不正当竞争活动，重点针对制药、医疗器械和教育领域的商业贿赂行为。这项运动一直持续到2018年10月，意在实施《反不正当竞争法》第7条，该条款重新定义了商业贿赂。根据新的定义，“商业贿赂”扩大到包括“所有交易”，而不仅仅局限于“购买和销售商品”。“受贿者”的定义也予以明确，包括信托实体的员工，或者信托实体或代表交易另一方行事的个人，或“对交易有影响的第三方实体或个人”。此外，还明确禁止向业务对手方和对交易有影响的第三方实体或个人行贿。这是《反不正当竞争法》首次明确禁止通过第三方间接行贿。

在反不正当活动期间，某些国内制药和医疗器械公司被调查，并因违反第7条而受到行政处罚。该活动所体现的新的监管解释的特征是监管机构将通过医疗协会支付给发言人的费用视为商业贿赂。没有迹象表明该活动专门针对美国公司；但是，外国公司会仔细回顾监管机构在反不正当竞争期间的行政决策和处罚类型，因为这可能预示着未来的执法趋势。商会促请国家市场监督管理总局发布有关商业贿赂范围的具有约束力的指导和解释，并确保执法活动透明公开。

美国《反海外腐败法》及其他反腐败法

商会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。然而，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。同时，美国司法部于2018年11月宣布了一项“中国计划”，其中包括一个识别涉及与美国企业竞争的中国公司的反海外腐败法案件的组成部分。该计划是否会引发

中国政府针对美国公司的类似行动或其他反应还有待观察。

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。在国际规范方面，2005年颁布并由140多个缔约国（包括中国）参加的“联合国反腐败公约”涵盖了五大领域：预防、刑事定罪、国际合作、资产追回和技术援助。其中，“序言”强调了腐败对经济发展的影响，为所有企业和个人提供公平的竞争环境，有组织犯罪以及法治等构成要素。中国根据2011年5月1日颁布的《刑法修正案（八）》将贿赂外国官员和国际组织官员的行为定为犯罪。迄今为止，很少有针对被控海外腐败和贿赂的中国公司或个人的案件被起诉或公开。

第三方合规

第三方反贿赂反腐败合规也是商会会员公司重点关注的领域。这其中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。中国国内商业伙伴必须制定合规计划，防范反腐败法规造成的重要风险。在新的反不正当竞争法下，第三方合规是至关重要的，尤其是因为修订后的反不正当竞争法明确禁止通过第三方间接行贿。商会赞赏中国2018年在合规法规和政策方面所取得的积极进步。2018年8月，中国标准化研究院起草的《合规管理体系指南》生效。11月份，国有资产监督管理委员会（国资委）发布了《中央企业合规管理指引（试行）》。商会会员公司鼓励监督国有企业的机构，包括国资委、中央纪律检查委员会和新成立的国家监督委员会，继续改进国有企业合规计划。商会还鼓励国家市场监督管理总局根据《反不正当竞争法》确定商业贿赂的第三方范围和替代责任范围。

网络安全法

2017年6月1日起实施的《网络安全法》是一项综合性法律，涉及网络安全的所有主要方面，包括网络系统和设施、网络产品和服务、实名注册、网络攻击、加密、数据本地化、数据隐私和关键信息基础设施的保护等。其中，关键信息基础设施受到《网络安全法》严格的监管。哪些实体（包括外资企业）将被视为关键信息基础设施这个重中之重的问题仍有待解决。此外，《网络安全法》和相关的执行规则或标准对“网络运营商”（即所有通过网络运营的实体）施加了繁重的合规义务。此外，鉴于执行条例和标准还尚待最终确定，与数据本地化和跨境数据转移安全

by third parties is also a major concern for AmCham China member companies. These include the activities of sales channel distributors and resellers, vendors, agents, consultants, customs brokers, and supply chain partners. It is essential that Chinese domestic business partners develop compliance programs that address the key risks highlighted by corruption laws. Third-party compliance is critical in particular because the amended AUCL now explicitly prohibits bribery through third-parties. AmCham China acknowledges positive developments with respect to compliance regulations and policies in 2018. The *Guidance for Compliance Management System* drafted by the China National Institute of Standardization became effective in August. The State-owned Assets Supervision and Administration Commission (SASAC) issued the *Compliance Management Guidance for State-owned Entities* (SOEs) in November. AmCham China member companies encourage the agencies that oversee SOEs, including the SASAC, the Central Discipline Inspection Commission, and the newly-created NSC, to continue improvements in SOE compliance programs. AmCham China also encourages SAMR to define the scope of third party and vicarious liability regarding commercial bribery under the AUCL.

Cybersecurity Law

China's *Cybersecurity Law*, which took effect on June 1, 2017, is an omnibus law that addresses all major aspects of cybersecurity, including network systems and facilities, network products and services, real-name registration, cyber-attacks, encryption, data localization, data privacy and protection of critical information infrastructure ("CII"). The *Cybersecurity Law* subjects CII to stringent regulatory requirements. The all-important issue of which Chinese entities, including FIEs, will be deemed CII is still to be resolved. Further, the *Cybersecurity Law* and related implementing rules or standards impose onerous compliance obligations on "network operators", namely all entities that operate via networks. Obligations in connection with data localization and cross-border data transfer security assessment remain unclear, as implementing regulations and standards have yet to be finalized. Based on the draft implementing regulations, network operators are subject to burdensome compliance obligations.

The *Cybersecurity Law* and other mandatory data-related rules have broad scope and stipulate rigorous requirements for data collection, storage and transfer. This has created significant compliance challenges and uncertainty for both domestic and foreign companies in a large number of industry sectors. Many core concepts of the Law, such as "network operators", "important data", "CII" and "personal information," are defined broadly and vaguely, meaning they are prone to being interpreted subjectively in relation to law enforcement. There is a risk that the undefined authority of enforcement agencies will result in repeat inspections, while inconsistent compliance standards of different enforcement agencies will add to the compliance burden of network operators. The security review provisions also give the Chinese govern-

ment access to many companies' core intellectual property. AmCham member companies are concerned whether their IP, trade secrets and other confidential information will remain confidential in this environment. There are concerns that the *Cybersecurity Law* will give the Chinese government broader surveillance powers in the commercial field than necessary. AmCham China members are also concerned that the data localization provisions and restrictions on cross-border data transfers could cause foreign companies to leave the China market altogether. Members also note that the requirements for network products and services to be "secure and controllable" are likely to be used to promote the purchase of domestic products and services over comparable and even superior foreign products.

Data Policy Compliance

China recognizes the relationship between the security and controllability of data and national security. Over the past two years, China has been developing a comprehensive legal regime that sets parameters for data security and privacy within mainland China. This regime consists of both the *Cybersecurity Law* and other regulations, rules, and standards adopted before or after the *Cybersecurity Law*, which creates compliance challenges for multinational corporations (MNCs) and small and medium-sized FIEs alike. In addition to compliance challenges MNCs will likely be in a much more difficult position if they are subject to investigations by law enforcement agencies in their home jurisdictions which require disclosure and cross-border transmission of relevant data with respect to their China operations. The legal regime focuses on the control of data through data localization and data export security assessments, as well as on the protection of data privacy by regulating the collection, storage, use, processing, and sale of personal data.

To implement the requirements as outlined in the general legal regime, the Cyberspace Administration of China (CAC), industry regulators, local governments and standardization institutions have begun to issue more sector-specific and local draft regulations and standards. If enacted in their current form, these draft regulations and standards will create onerous data compliance obligations for companies with cross-border operations. In addition, as part of its efforts to strengthen cybersecurity, China is reforming its decades-old encryption regulation regime and issued the Draft *Cryptography Law* in 2017 (discussed below). If implemented in its current form, such Law will further restrict foreign participation in the encryption sector and create uncertainties for compliance in the import and use of foreign encryption.

Data Privacy

Chapter Four of the *Cybersecurity Law* addresses the protection of personal information. Compliance with data privacy laws is complicated by the fact that statutory requirements relating to data privacy protection are found in existing laws

评估有关的义务仍不清楚。根据实施条例草案，网络运营商承担着繁重的合规义务。

《网络安全法》和其他强制性的数据相关规则覆盖面广，对数据的收集、存储和传输都有严格的要求。这为大量行业领域的国内外企业带来了重大的合规挑战和不确定性。法律的许多核心概念，如“网络运营商”、“重要数据”、“关键信息基础设施”、“个人信息”等，均定义广泛而模糊，这意味着在执法过程中容易出现主观解读的情况。有一种风险是，执法机构权责不清可能导致重复检查，而不同执法机构的合规标准不一，增加了网络运营商的合规负担。此外，通过执行安全审查可能使中国政府获得许多公司的核心知识产权。商会会员企业担心在这种环境下，它们的知识产权、商业秘密和其他机密信息是否仍将保密。此外，《网络安全法》赋予中国政府在商业领域的超出所需更广泛的监控权力。商会的会员还担心，数据本地化的规定以及对跨境数据传输的限制将会导致外国公司离开中国市场。同时，会员也注意到对网络产品和服务的“安全可控”的要求也可能促使消费者选择购买国内的产品和服务而非同等的甚至更优质的外国产品。

数据政策合规

中国认识到数据的安全性和可控性与国家安全之间的关系。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。这一新机制包括网络安全法和其他相关法规、规则以及网络安全法存在前后的标准，为跨国公司和外国中小型企业带来了合规难题。除了合规方面的挑战，如果跨国公司在其所在国受到执法机构的调查，它们的处境可能会困难得多。执法机构要求披露跨国公司在华业务的相关数据，并跨境传输相关数据。该机制注重通过数据本地化和数据出口安全评估来控制数据，以及通过管理个人数据的收集、存储、使用、处理和销售来保护数据隐私。

为贯彻执行法律机制规定的要求，国家互联网信息办公室、行业监管机构、地方政府和标准化机构已开始发布更多的行业规范和地方性法规草案。如仍以目前的形式实施，这些法规育标准草案将为跨境运营的公司带来繁重的数据合规责任。此外，为了加强网络安全计划，中国正在改革其数十年的加密监管制度，并在2017年发布了《加密法草案》（论述如下）。如果以目前的形式执行，这类法律将进一步限制外国参与加密领域，并在进口和使用外国加密方面造成不确定性。

数据隐私

《网络安全法》第四章阐述了保护个人信息。国家和省/市两级现行的法律法规以及司法解释都对数据隐私保护提出了法定要求，令隐私合规更加复杂。这些法律法规的要求在某些地方是不一致的。例如，《网络安全法》将“个人信息”定义为“可以单独使用或结合其他信息来识别自然人的信息”，而最高人民法院和最高人民检察院解释定义的“个人信息”包括“反映了一个特定的自然人活动的信息”。

《网络安全法》也在现有要求的基础上增加了一些新的要求或特例。假如个人信息泄露、损坏和丢失，网络运营商必须及时告知客户。重要的是，为了防止政府机构在其监管活动过程中滥用个人数据，负责网络安全监督管理的官员必须保护机密的个人信息和隐私，不得泄露、出售或非法向第三方提供此类信息。

数据本地化

中国历来不存在综合性的数据本地化政策。然而，数据本地化要求一段时间内却存在于某些行业中。2006年，中国出台了电子银行业的措施，要求企业在中国保留有服务器。2011年，中国颁布了一项禁止离岸分析、处理或存储中国个人财务信息的法律。2013年，中国颁布了新的信用报告规则，要求所有中国公民的信用信息在中国处理和存储。2014年，中国颁布了新规则，要求将健康和医疗信息只能存储在中国。2015年，中国发布了包括本地化要求在内的保险业行政法规草案。2016年，中国加快通过数据本地化立法工作，包括制定新规则，迫使参与基于互联网地图服务的公司在本地存储数据，以及制定有关在线发布的规则，这些规则要求涉各类中国在线出版位服务所用的所有服务器都必须设置在中国。特别是，中国的反恐法要求互联网电信公司和其他关键信息基础设施运营商将数据存储在中国服务器上并向政府机构提供加密密钥。离岸数据的任何移动都必须经过“安全评估”。

《网络安全法》规定，关键信息基础设施运营者在境内运营过程中产生和收集的个人信息和重要数据应存储在中国大陆。在将此类数据传输到境外前，必须进行安全评估。为执行此类要求，国家互联网信息办公室于2017年发布了公布了《关于跨境转移个人信息和重要数据的安全评估草案》（安全评估草案）三个草案版本。此外，2017年5月27日和8月30日，中国标准化管理委员会和国家质量监督检验检疫

and regulations at both national and provincial/municipal levels, as well as in judicial interpretations. The requirements contained in these laws and regulations are inconsistent in certain places. For example, Article 76 of the *Cybersecurity Law* defines “personal information” as “information that can be used separately or in combination with other information to identify a natural person,” while interpretations issued by the SPC and the Supreme People’s Procuratorate define the scope of “personal information” to include information that “reflects the activities of a particular natural person.”

The *Cybersecurity Law* adds some new requirements or exceptions to existing requirements. In the event of leakage, damage or loss of personal information, network operators must now notify data subjects in a timely fashion. Importantly, to prevent abuse of personal information collected by government agencies in the course of their supervisory activities, officials in charge of cybersecurity supervision and management must safeguard confidential personal information and privacy, and are prohibited from divulging, selling or illegally providing such information to a third party.

Data Localization

Historically, China has not had comprehensive policies regarding data localization. Data localization requirements have, however, existed in certain sectors for some time. In 2006, China introduced measures for the e-banking sector that require companies to keep their servers in China. In 2011, China introduced a law that prohibits off-shore analyzing, processing or storage of Chinese personal financial information. In 2013, China enacted new rules regarding credit reporting that requires all credit information on Chinese citizens to be processed and stored in China. In 2014, China enacted new rules that require health and medical information to be stored exclusively in China. In 2015, China released draft administrative regulations for the insurance industry that included localization requirements. In 2016, China accelerated the passage of data localization legislation, including creating new rules to force companies involved in Internet-based mapping services to store data locally as well as creating rules regarding online publishing that require all servers used for a broad range of services involved in online publishing in China to be located in China. In particular, China’s *Counter-Terrorism Law* requires internet telecommunication companies and other CII providers to store data on Chinese servers and provide encryption keys to government authorities. Any movement of data offshore must undergo a “security assessment.”

The *Cybersecurity Law* stipulates that personal information and important data generated and collected by the operators of CIIs in the course of domestic operation be stored within mainland China. A security assessment must be conducted before transmitting such data outside China. To implement such requirement, the CAC in 2017 published three draft versions of the *Measures for Security Assessment of Cross-border Transfer of Personal Information and Important*

Data. In addition, on May 27 and August 30, 2017, the Standardization Administration of China (SAC) and the General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) (now merged under SAMR as of March 2018) jointly issued a draft *Voluntary National Standard for Security Assessment* in connection with cross-border data transfers (Draft Security Assessment Guidelines). The Draft Security Assessment Guidelines, although not compulsory, provide stakeholders with guidance on conducting security assessments for cross-border data transfers. Further, the Draft Security Assessment Guidelines define important concepts such as “personal information,” “important data,” “domestic operation,” and “cross-border transfer”. Questions remain, however, about the scope of “important data” and how to implement such restrictive security assessment compliance requirements.

Compared with other jurisdictions which impose data localization requirements, current data localization requirements in China, when combined with state security requirements, are indicative of a policy trend that goes beyond what is found in other advanced industrialized countries. Such policies could hinder China’s efforts to be a global leader in innovation, which generally depends on the free flow of information. Companies that transfer data across borders need to follow developments with regard to data localization closely to ensure that they are in compliance with relevant regulations.

Cryptography Law

In April 2017, the State Cryptography Administration (SCA) released a draft *Cryptography Law* (draft Cryptography Law). If enacted in its current form, this will restructure and tighten China’s regulation of cryptography. The draft *Cryptography Law* broadly defines encryption as items or technologies that apply specific transformations to data for purposes of encrypted protection or security certification. AmCham China member companies are concerned that the absence of defined exemptions will generate uncertainty regarding the licensing of foreign encryption and urge the SCA to provide specific exemptions in the Law or other implementing regulations.

The draft Cryptography Law classifies encryption into three categories: core cryptography, normal cryptography, and commercial cryptography. Core cryptography and normal cryptography are used to protect state secrets, while commercial cryptography is used to protect information that does not contain state secrets. The draft *Cryptography Law* does not provide clear definitions of these three categories, however, which could give rise to confusion in enforcement.

The draft *Cryptography Law* appears to establish significant regulatory requirements applicable to the import, sale, and export of mass-marketed ICT products containing commercial cryptography. Article 2 states that the scope of the Law applies to “scientific research, development, sales, import & export, testing, certification, use and supervision and management of cryptography.” This is inconsistent with the foundational

疫总局（自 2018 年 3 月起已并入国家市场监督管理总局）联合发布了与跨境数据转移有关的自愿性国家安全评估标准（安全评估准则草案）。安全评估准则草案虽然不是强制性的，却为利益攸关方提供了进行跨境数据转移安全评估方面的指导。此外，安全评估指南草案定义了诸如“个人信息”、“重要数据”、“国内运营”和“跨境转移”等重要概念。但是，有关“重要数据”的范围以及如何实施此类限制性安全评估合规性要求的问题仍然存在。

与实施数据本地化要求的其他司法管辖区相比，中国的数据本地化要求与国家安全要求似乎表明中国有可能制定超出世界其他先进工业化国家标准的数据本地化政策。这些政策可能阻碍中国成为创新领导者的步伐，因为创新往往取决于信息的自由流动。提供跨境服务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。

密码法

2017 年 4 月，国家密码管理局发布了一项密码法草案。如果以目前的形式实施，这将重建并加强中国的密码监管。《密码法草案》广义地定义密码为因密码保护或安全认证对数据进行特定转换的信息或技术。商会会员企业担心，如果没有指定豁免，将会导致外国密码许可的不确定性，因此会员敦促国家密码管理局在法律或实施条例中提供具体豁免的信息。

密码法草案将密码分为三类：核心密码、普通密码和商业密码。核心密码和普通密码是用来保护国家机密的，而商业密码则用来保护不包含国家机密的信息。但是，《密码法草案》确实未对这三个类别进行了明确的定义，可能引起关于执行方面的混乱。

《密码法》草案似乎确立了适用于含商业密码的大规模销售的 ICT 产品的进口、销售和出口的重要监管要求。第 2 条规定，该法适用于“科研、开发、销售、进出口、测试、认证、密码使用、监督和管理”。这与世界半导体理事会（WSC）的基本原则不一致。根据 WSC 的基本原则，“为防止对贸易实施不必要的限制，具有密码功能的产品用于，或将广泛被用于……除非在狭隘和合理的情况下，否则不应将其作为一般事项予以监管”。此外，“该草案似乎没有认可 2000 年 3 月中国国家密码管理委员会办公室的承诺，即 1999 年密码法规的适用范围限于密码为“核心功能”的信息通信技术。

《密码法》草案还要求对关键信息基础设施密码进行评级，并对影响或可能影响国家安全的密码产品和服务进

行国家安全审查。在中国的信息设施和体制的多层次保护计划下，关键信息基础设施的安全要求必须达到三级或以上，这就需要中国国内的密码技术。商会会员担心，这些要求的累积效应将进一步限制外资参与商业密码行业。这可能会迫使关键信息基础设施的外资企业仅使用中国的密码技术，这可能与现有体系不兼容，也表示了这些公司的安全担忧。

此外，《密码法》草案规定，电信业务经营者和互联网服务供应商应在人民检察院、公安机关或国家安全部门的要求下提供解密支持，以解决涉及国家安全或刑事调查的问题。商会会员企业担心，要求解密支持可能需要公司在公共环境中提交受保护的数据或密码密钥等信息，会员企业也敦促推行保护知识产权的条款。

产业政策

“中国制造 2025”一直是中美贸易争端和 2017 年开始并持续至 2019 年初的当前谈判的重点议题之一。到 2018 年夏季，中国领导层开始认识到，推广“中国制造 2025”计划的努力遭到主要贸易伙伴的反击，尽管该计划事先就得以充分论证而且也是异常透明。因此，2018 年 6 月，中宣部发布通知，淡化并减少媒体提及“中国制造 2025”，同时依靠政府部门发言人来传达信息：“中国制造 2025”被曲解了并且不构成威胁。这些行动一直持续到 2018 年底。尽管措辞上有所变化，但政府对国内产业政策目标的支持很大程度上仍然有增无减。习近平主席（“中国制造 2025”就是在其领导下启动的），曾多次发表公开和私下声明，称中国需要以比以前更加迫切的方式提高其技术自给自足的能力。

与此同时，中国政府似乎也承认外国投资仍至关重要，至少在近期和中期内如此。2019 年 3 月出台并通过《外国投资法》就强调了这一点。该法预计于 2020 年 1 月生效，目前外国公司正着力于实施细则以及中国将如何选择 – 或拒绝 – 确保对内外资和知识产权保护予以平等对待。商会正在深入跟进和参与这些问题。

很显然，中国的外国公司继续面临更严格的安全法规，这在《国家安全法》、《网络安全法》和相关数据合规措施中都可见一斑，这些法律措施中许多都能起到实际支持中国产业政策目标的效果。因此，外国公司可以预期，如果要进入中国市场，尤其是“中国制造 2025”计划中列出的关键部门，它们会在共享技术和与国内公司合作中继续面临压力。

World Semiconductor Council (WSC) principle that states: “to prevent unnecessary restrictions on trade, products with cryptographic capabilities that are, or will be, widely available and deployed ... should not be regulated as a general matter except in narrow and justifiable circumstances.” In addition, the Draft *Cryptography Law* does not appear to recognize the March 2000 commitment by the General Office of China’s State Encryption Management Commission that limits the applicability of the 1999 encryption regulation to ICT for which encryption is their “core function.”

The Draft *Cryptography Law* also requires that the cryptography applied to CIIs be graded, and that encryption products and services that impact or may impact national security are subject to national security review. Under China’s Multi-Level Protection Scheme (MLPS) for information facilities and systems, CIIs are subject to Level III or higher security requirements under MLPS, which in turn requires that domestic Chinese cryptography be applied. AmCham China members are concerned that the cumulative effect of these requirements will further restrict foreign participation in the commercial cryptography industry. This could force FIEs operating as CIIs to use Chinese cryptography, which may be incompatible with existing systems or present security concerns.

In addition, the Draft *Cryptography Law* imposes obligations on telecommunications business operators and internet service providers to provide decryption support upon request from the Supreme People’s Procuratorate or the local Public Security Bureau apparatus for issues related to national security or criminal investigation. AmCham China member companies are concerned that the requirement for decryption support may require companies to submit protected data or information such as encryption keys in a public environment and urge the introduction of provisions that protect IP in these circumstances.

Industrial Policy

Made in China 2025 (MIC 2025) has been among the major issues of focus during the US-China trade dispute and ongoing negotiations beginning in 2017 and continuing in early 2019. By summer 2018, the Chinese leadership began to realize that prior, well-documented, and surprisingly transparent efforts to promote MIC 2025 were backfiring with key trading partners. As such, in June 2018 the CPC Propaganda Bureau issued notices to downplay and reduce any mention of MIC 2025 in the media while relying on government bureau spokesmen to communicate that MIC 2025 had been misinterpreted and is not a threat. Those actions continued through the end of 2018. Despite the change in rhetoric, government support for domestic industrial policy goals continued largely unabated. President Xi Jinping, under whose leadership MIC 2025 was launched, on a number of occasions has made both public and private declarations about the need for China to enhance its technological self-sufficiency in a manner even more urgently than previously expressed.

At the same time, there also appears to be an acknowledgment by the Chinese government that foreign investment remains critical, at least over the near to medium term. This was underscored by the introduction and passage of the *Foreign Investment Law* in March 2019. Slated to go into effect in January 2020, foreign companies are now focused on the development of implementing regulations and how China will choose – or not – to guarantee equal treatment of foreign and domestic investment and IP protection. AmCham China is deeply involved in monitoring and engaging on these issues.

It is clear that foreign companies in China continue to face stricter security laws epitomized by the *National Security Law*, the *Cybersecurity Law*, and related data compliance measures, many of which have the defacto effect of supporting China’s industrial policy objectives. Therefore, foreign companies can expect continued pressure to share technology and to partner with domestic firms if they are to enjoy access to the Chinese market, especially in key sectors outlined in the MIC 2025 initiative.

Recommendations

For the Chinese Government:

- **Provide clear definitions and explanations of legal requirements that directly impact compliance. For example, clear definitions in the final version of the AUCL regarding commercial bribery and companies’ liability for their employees’ behavior will assist companies with developing and enforcing robust and practical programs for commercial bribery compliance.**
- Restrict enforcement power regarding commercial bribery to provincial and municipal-level AICs, publish binding guidance and interpretations on commercial bribery and provide support additional clarity and consistency in regulatory enforcement and in the scope of responsibilities held by central- and local-level supervision commissions.
- Acknowledge that foreign businesses in China often feel unwelcome and unjustifiably targeted under regulatory and enforcement provisions, including provisions in the AUCL. A central government directive reinforcing the mandate to provide equal treatment under the law may help to combat this. Many foreign businesses place a heavy focus on and devote significant resources to compliance, which is not generally recognized by local enforcement authorities.
- Provide national treatment to investors in China through a transparent, consistent, and 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

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反商业贿赂指南与解释，支持中央和地方各级监管委员会监管执法和职责范围的进一步明确度和一致性。
- 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，遭到无理由的责难。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可。
- 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。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。

对美国政府：

- 参与双边对话，深入开展交流，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。

National Party Congress.

- Improve transparency in the drafting, implementation, and enforcement of laws and regulations, in order to strengthen confidence in the predictability and consistency of the legal and regulatory environment. Harmonize national and local regulations, as well as different sector-specific regulations on data privacy to increase regulatory consistency.

For the US Government

- **Engage in bilateral dialogue and in-depth 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

2018 was a milestone year for the General Administration of Customs of China (China Customs). The hard work of China Customs was epitomized by the integration of operations across various customs bureaus. Premier Li Keqiang chaired two executive meetings of the State Council aimed at optimizing the business climate at China's ports of entry. Continued implementation of the *Work Plan on Optimizing the Business Environment at Ports and Promoting Cross-border Trade Facilitation* included:

- Continued reform to integrate the national customs clearance process by creating a new supervisory mechanism; and
- Improved supervision and service optimization through the application of updated technology.

In the 2019 World Bank *Ease of Doing Business Report*, such were the improvements that China's global ranking with respect to "the time and cost of trading across borders" rose 32 places from 97 to 65. The average time for completion of the import clearance process reportedly fell to 50.1 hours by November 2018, down from 97.4 hours in December 2017. These reductions exceeded previous government targets to cut processing times by one-third.

Nevertheless, measured against global standards and customs procedures in other developed countries, there is room for improvement. Continued improvement in the customs process will promote trade, enhance China's international competitiveness, and boost economic development.

Recent Developments and Ongoing Regulatory Issues

Intelligent Customs

"Intelligent customs" is about the application of new technologies and management methods to optimize customs clearance procedures. These technologies today include the Internet of Things, Artificial Intelligence (e.g., Deep Learning, machine learning, image analysis), Big Data,

and new equipment (e.g., unmanned aerial vehicles, smart glasses). Enhanced management techniques are focused on upgrading customs administration systems and streamlining clearance procedures.

The field of intelligent customs has become a strategic goal of the World Customs Organization and customs agencies around the world as a vehicle to improve international trade and economic exchange.

AmCham China is pleased to see that China Customs has taken meaningful steps towards implementation of intelligent customs technologies and practices in recent years, yet more can be done to widen the scope of implementation. We recommend China Customs reinforce the adoption of intelligent customs as a strategic priority and promote its systematic adoption in accordance with a clearly defined action plan.

Two-step Declaration

In December 2018 China Customs convened a number of multinational corporations (MNCs) to discuss the implementation of a "two-step declaration" and the associated needs of the business community.

AmCham China appreciates the efforts of China Customs to improve the efficiency of the customs clearance procedure and enhance the business environment, and to do so with the participation of the business community. AmCham China fully supports these steps as beneficial for both MNCs and regulators. To increase the applicability of a two-step declaration, AmCham China member companies recommend:

- Eligibility for the two-step declaration should consider a company's corporate track record (e.g., credit history);
- China Customs should permit the otherwise required general declaration cash deposit to be optional or should exempt MNCs with a favorable credit ratings and history from having to pay such deposit. For any MNCs or enterprises which violate the regulations or fail to pay associated taxes on time, the resulting penalty should remove them from the two-step declaration, negatively impact their credit ratings, and promulgate reasonable administrative penalties;

海关和贸易

引言

2018年，是中国海关历史上具有里程碑意义的一年，是海关深度整合、真抓实干的一年。李克强总理两次主持国务院常务会议研究优化口岸营商环境工作，中国海关积极落实《优化口岸营商环境促进跨境贸易便利化工作方案》其中着重于：

- 全面深入推进全国通关一体化改革，构建新型海关监管机制；
- 强化监管优化服务，加大科技创新应用，为进一步优化口岸营商环境做出了显著的贡献。

在世界银行最新发布的《2019年营商环境报告》中，中国的整体排名大幅提升，其中跨境贸易排名由97名升至65名，跃升32名。据报道，到2018年11月完成进口清关程序的平均时间从2017年12月的97.4小时降至50.1小时。这些减少超过了政府将处理时间缩短三分之一的目标。

与此同时，通过与其他国家贸易便利化的程度的比较，中国美国商会（商会）也看到中国的贸易便利化程度仍有上升的空间。商会认为，继续加大力度提供贸易便利化水平、争取较为领先的地位，对继续提升中国的国际竞争力、优化产业布局、促进经贸发展将起到至关重要的作用。

最新进展及现存监管问题

智慧海关

智慧海关，就是通过现代新兴科学技术和方法（物联网技术、人工智能（深度学习、机器学习、影像分析等）、大数据、无人机、智能眼镜等）的运用，建设全新的海关管理系统和全新的通关模式，在有效实现海关各项管理职能的同时，最大限度满足企业对进出口货物高效、便捷、经济的通关需求。

智慧海关，是世界海关组织、全世界各国海关近年来共同努力的方向，极具战略意义。智慧海关的推进，不单将极大程度提升我们本国的贸易便利化水平，也将大大促进国与国之间贸易互通、经贸往来。是国家和企业双赢的好事，更是全球化、各国协同发展的保障。

商会欣喜地看到，近年来，中国海关已经开始做了很多有意义的尝试，商会认为步子还可以更大、范围还可以更广。商会建议中国海关把智慧海关作为重要战略方向之一，从全局出发、通盘考虑，进一步加大步伐、系统地、有计划地推进。

两步申报

2018年12月，海关总署综合业务司召集跨国公司就“两步申报”的实施与需求进行调研。

商会对海关积极提高通关效率，改善营商环境，尤其是积极听取企业意见的举动表示赞赏，相信这必将是一项令海关和企业双赢的举措，同时会员企业也希望：

- “两步申报”的实施范围充分考虑企业诚信等级；
- 希望海关考虑在“概要申报”环节不要强制企业缴纳保证金，或对于资信良好的企业免于缴纳，对于违规或未按时缴纳税款企业海关可以终止其采用“两步申报”模式、降低企业资信等级等方式、行政处罚等方式进行惩戒；
- 对部分跨国企业而言，现行的通关模式完全满足其进口业务需求，希望允许企业根据内部管控能力或有关因素自主选择申报模式；建议明确两步申报的时间间隔，同时参考美国海关做法，若第一步申报的内容与实际货物有差异，允许企业在第二步申报时进行更正。希望“两步申报”可以适用于所有贸易方式。

- At present, the current customs clearance procedure satisfies the import needs of some MNCs. MNCs and other enterprises should be permitted to independently choose the customs declaration procedure to follow based on their individual needs;
- The length of time MNCs have to complete the two-step declaration should be clearly defined. We suggest following the practice of US Customs and Border Patrol: if the first-step declaration ultimately differs from the actual goods being imported, MNCs should be allowed to make corrections during the second-step declaration;
- The two-step declaration should apply to all modes of trade.

Uniform Law Enforcement and Supervision

In 2017 China achieved full coverage of the "single window," allowing cross-border traders to submit all relevant documents to a single entity. The next steps to further streamlining customs management lay in uniform enforcement and supervision. In particular, alignment of supervisory standards among China's ports, encouragement for inter-departmental cooperation in customs law enforcement and supervision, permitting mutual recognition of supervision results between departments, and further optimization of customs clearance procedure. Under current import and export procedures, businesses still encounter inconsistent customs clearance document requirements, policy interpretations, and law enforcement standards.

In 2018, AmCham China was pleased that the customs and quarantine inspection procedures were further consolidated. We urge China Customs to continue to standardize and integrate port operations and customs clearance procedures throughout the country. In that regard, China Customs should create national standards to allow for mutual customs recognition among China's ports. **China Customs should quickly disseminate implementing regulations following the publication of any national standards to reduce the potential for inconsistent interpretation at different ports of entry.**

In line with feedback from AmCham China, the Shenzhen Port Authority has recently been accepting the electronic inspection and quarantine certificate more frequently, but often with inconsistencies in the formatting of submitted certificates. Building on the foundation laid by the national rollout of the single window, we recommend continued progress towards nationally standardized customs clearance requirements so that businesses can standardize operations and optimize their supply chains.

Authorized Economic Operator System

Following support from the Chinese government, in recent years China Customs has made progress on development of the Authorized Economic Operator (AEO) system.

Increased AEO facilitation would be greatly beneficial to MNCs transnational supply chains, customs clearance procedures, trade facilitation, and global economic growth. To date, China has successfully signed AEO mutual recognition agreements with more than a dozen countries, but we hope that more countries (in particular the US) will join. Expanding AEO mutual recognition should make customs processes more convenient and lower customs inspection rates. Following reform of customs and quarantine inspections in 2018, customs inspection fees have fallen substantially, but fees associated with original entry / exit inspections and quarantine inspections remain high (for instance, the 2018 fee rate was as high as 20%). We urge that authorities to unify inspections standards, enforcement, and costs.

Optimization and Reform of the Customs Clearance System

In 2018, both the second phase of the Golden Gate Project (an e-government initiative to link customs points through a national data exchange system and promote paperless trade), and H2018 made significant progress. These projects are helping to bring China's paperless customs clearance procedure in line with international standards. They facilitate trade and reduce costs, significantly improve port clearance efficiency, and continue optimizing the customs administration process. AmCham China strongly supports the continued efforts of China Customs to reform the customs clearance system. We urge that the deployment of these reforms be done in ways that minimize the disruptive impacts on business operations.

Along those lines, AmCham China members hope for increased participation in early stages of the design, testing, and trial of the new system. Early participation and feedback from AmCham China members will help to minimize the potential for operational disruptions.

AmCham China members have found the operation of the customs clearance system to be generally stable. There have been cases, however, during periods of scheduled system upgrade or maintenance as well as cases of sudden, unexpected technical failures, when customs clearance procedures are delayed for varying lengths of time adversely affecting the movement of goods. This is particularly troublesome for industries and enterprises that operate under time-sensitive conditions.

AmCham China recommends that emergency response and support measures be made available to creditworthy enterprises (such as those with advance certification) or those who have previously cleared customs. This would minimize the impact of customs system failures on businesses' customs clearance operations. Advance notifications or announcements with details about system upgrade schedules would also be an effective method to allow enterprises to make emergency arrangements as early as possible.

执法统一性

2017年“单一窗口”建设已覆盖全国，而各口岸间统一监管标准、不同部门之间配合监督执法，互认监管结果，优化通关流程，是下一阶段形成具有国际竞争力的管理体制机制的重要抓手。目前企业在进出口实践过程中仍会遇到各口岸通关文件要求不一，政策解读以及执法尺度把握不尽一致的情况。

2018年关检合并，商会看到海关积极推动“查检合一”和“多查合一”，希望海关能够继续完善口岸作业规范标准，真正实现全国通关一体化。全国统一标准，加强各口岸之间的互认。对于新的政策或者需要释义的部分，从总局的层面给出指引或解读。

有会员企业反馈，深圳口岸已启用电子版检验检疫证书，出证效率较高；格式文件种类较少且统一。建议在前期单一窗口全国覆盖的基础上，推广先进工作经验，统一各口岸通关要求，便于企业从供应链最优方案的角度进行标准化操作，开展进出口业务实践。

AEO 制度

近年来，中国海关在推进 AEO 制度过程中，取得了喜人的成果，也很好地响应了国家大力建设信任体系的号召和改革。

商会建议，跨国企业都是跨国供应链模式，出台更多的 AEO 便利措施，将大大推动通关便利，促进贸易便利化，推动全球经济发展。目前为止，中国已经与十几个国家成功签署了 AEO 互认协议，希望中国能与更多的国家达成 AEO 互认（例如，美国等），并给予 AEO 企业更多、更有获得感的通关便利，比如：更低的海关查验率等。2018 年关检合一后，原海关查验率有很大程度降低，但原出入境检验检疫查验率仍然居高不下（比如去年出入境检验检疫查验率多达 20%），希望统一标准、统一执法。

海关通关系统的优化和改革

2018 年，金关工程二期成果累累，H2018 也在紧锣密鼓地展开，为实现先进的与国际接轨的无纸化通关模式，有效促进加工贸易转型升级，大幅提升口岸通关效率，降低贸易成本，进一步优化海关监管与服务起到了相当的推动作用。商会非常支持中国海关继续致力于海关通关系统的各项改革和优化，也希望各项系统改革的部署和实施过程中，尽量降低对企业们带来的影响。

商会希望更多、更早地参与到新系统的设计、测试、试运行的过程当中，这样能更好地避免新系统推出后一些未曾预期情况的发生，把对企业的日常运营的影响降到最低。

系统稳定性方面，目前，海关系统的运行总体而言较为正常，但是，当海关系统需要升级维护或出现突发性故障或不稳定的时候，企业的通关就会短时间停滞或变缓，从而影响企业的收发货，尤其对通关时效要求较高的行业和企业，影响较大。

商会建议：海关进一步加强海关通关系统的稳定性，对通过海关认证的高诚信企业（例如，高级认证企业）在有紧急需求的情况下，提供紧急响应和支持措施，把海关系统故障对企业通关运作造成的影响降到最低，也可以提前通知或公告系统升级的时间表，使企业可以尽可能地提前做好应急安排。

海关加工贸易及保税货物管理政策

近年来，中国海关大力推行加工贸易改革，取得了很多喜人的进展，“工单核销”、“信用核销”、“企业自核”等等新核销管理模式的推出，具有里程碑意义。

在优化的同时，挑战依然存在，一些现行的管理理念和法规要求有待进一步改进和完善。在现有的加工贸易制度下，企业仍然需要投入较大的人力、物力、财力来管理和运作他们的加工贸易账册、减免税设备以及生产用易耗品等保税货物，所谓“花大力气只是为了证明自己无罪”，尽管如此，不少企业（即便是高诚信的海关高级认证企业）仍然不可避免地会存在加工贸易货物或保税货物企业账册和海关账册的差异、面临补税甚至罚款的尴尬局面。

商会希望和中国海关一起探讨如何开拓一个全新的、更简便合理的方法来帮助这些诚信资质良好的企业改变这个局面，把关务运作和合规运作的负担降到最低。对于诚信资质好的企业，尤其是位于海关特殊监管区域内的企业，建立“信任机制”，充分利用、依靠这些企业完善的内部 ERP 管理系统和内控机制来支持加工贸易手册的管理与核销、减免税保税设备的管理与核销及生产用易耗品的管理。帮助守法诚信的企业，把合规的额外负担和风险降到最低。

海关特殊监管区域的整合

目前全国有各种海关特殊监管区域（综保区，出口加工区，保税区，保税物流园区等等），各有不同的政策、要求、流程和系统，对跨国企业来说，在各地的工厂或公

Customs Management Policy on Processing Trade and Bonded Goods

In recent years, China Customs has vigorously rolled out reforms to process trade with satisfying progress. The introduction of new management modes such as "work order verifications," "credit verification," and "enterprise self-verification" is of great significance.

Despite efforts to optimize the process thus far, challenges persist, and some existing management concepts and regulations need further improvement. Under the current system to process tradeable goods, enterprises need significant manpower, materials, and financial resources to manage and operate their processing trade manual, duty-free equipment, and bonded goods (such as consumables for production), something that can be described as "making great efforts only to prove their innocence." Nevertheless, many enterprises (even certified and creditworthy enterprises) are still required to pay past due taxes and fines when differences between enterprise accounts and customs accounts for processing tradeable goods or bonded goods arise.

We hope to develop more convenient and reasonable ways to help creditworthy enterprises minimize the burdens from customs operations and compliance. We encourage the development of mechanisms such that creditworthy enterprises, especially those located in the Special Customs Supervision Area, can be allowed to rely on their sophisticated internal Enterprise Resource Planning (ERP) systems and internal mechanisms to manage and verify the trade processing manual, duty-free, and bonded equipment as well as the management of consumables for production. This can help law-abiding and creditworthy enterprises minimize the burdens and risks associated with compliance.

Integration of Customs Special Regulatory Areas

At present, there are a wide variety of Special Customs Supervision Areas in China (e.g., comprehensive bonded zone, export processing area, bonded area, bonded logistics park), which vary in policy orientation, requirements, regulatory processes, and systems. MNCs must align their internal procedures and management to meet differing local requirements, which adds time-consuming administrative tasks and complicates management processes. AmCham China urges the Chinese government to integrate these Special Customs Supervision Areas into one area with unified policies, procedures and standards. We recommend that the procedures be aligned with international standards.

Voluntary Disclosure

In 2016 China Customs issued the *Measures for Implementation of the Customs Audit Regulations* (Order No. 230) which officially defined policies of voluntary disclosure (when enterprises voluntarily report any actions that violate customs

in exchange for leniency). At present, Order No. 230 is relatively general, lacking clear provisions, operational details, and regulatory guidance for enterprises and local customs departments. Consequently, many enterprises fail to take advantage of prior disclosure (protecting them from penalty for proactively reporting inaccuracies in customs declarations), which creates additional risk and potential compliance costs. There have been instances where an enterprise has discovered a human error inaccuracy in its customs report and proactively taken steps to inform the relevant customs authorities and apply for correction. Their applications have been declined, however, with varied and inconsistent justifications.

The presence of the terms "lesser" punishment and "mitigated" punishment in Order No. 230 underscore China Customs support for voluntary disclosure. In practice, however, AmCham China believes there are no clearly defined criteria or basis for mitigated punishments or leniency. The same or similar violations receive different punishments from China Customs, leading to a pattern of inconsistent law enforcement.

The scale of global operations of many MNCs require them to place a premium on compliance, risk management, and prevention activities. Inconsistent enforcement of laws may create a pattern of noncompliance, hindering business operations.

AmCham China urges China Customs to improve the practice of voluntary disclosure by enacting viable, detailed, and clear implementing regulations to reduce inconsistent interpretation at provincial and local levels and allow voluntary disclosure to operate as an effective risk mitigation tool.

Express Delivery Industry

Facilitating Trade

To accelerate the customs clearance process of Express Category B (Personal Goods) we recommend:

- Simplifying the customs declaration reporting procedure and allow natural persons or their proxies to declare Class B shipments electronically, thereby reducing the number of accompanying documents to optimize the clearance process.
- China Customs and related government departments implement improved digital information sharing and networking techniques to enhance identification of Category B goods rather than relying on the third-party certification agencies, which creates additional operating expenses for many enterprises.
- Raising the value limit on Category B express shipments to meet market demand. At present, Category B express shipments are limited to a value of RMB 800 or more (from Hong Kong, Macao and Taiwan), and RMB 1000 or more (from all other countries) per shipment.

司按照不同的要求来设置内部流程、实施不同的内部管理，非常耗时耗力，也加大了管理的难度。

商会希望国家能考虑把不同种类的海关特殊监管区域整合成一种，统一政策、统一流程、统一标准，也可以更好地与国际接轨。

主动披露

2016年中国海关发布了海关总署230号总署令《海关稽查条例实施办法》，正式以法规形式对主动披露做出了规定。目前，主动披露的法规还比较宽泛，缺乏明确规定，缺乏操作层面的细节，企业和各地海关都面临缺乏法规指导性意见的局面，以至于有较多的来自企业的主动披露都没法进行下去，给企业的合法合规管理带来了额外的风险、甚至额外的成本。例如，企业在海关申报环节，由于人为疏忽，错报了申报数量，而且是较大的数量级的差别，企业事后发现后向海关主动披露该申报错误并申请改单（更改申报数量），但由于种种原因，海关通常不予受理，企业面对巨大的申报差异、进退两难。

法规中的“从轻处罚”和“减轻处罚”，体现了海关对主动披露的鼓励原则，但从实践看，商会觉得有关从轻和减轻的具体幅度、标准和依据还是不够明确，各海关对同类事项的处理结果存在差异，执法统一性的原则没有充分体现出来。

跨国企业普遍非常重视合法合规，风险管理和防范也是商会会员管理和运作的重中之重。有风险却规避不了的情况，往往会引发企业的担忧和不安。

商会促请中国海关能够进一步完善主动披露制度，出台可操作性的、详细的、明确的指导性法规和要求，便于企业和各地海关参照执行，使“主动披露”真正成为企业更好地管理、规避合规风险的有效途径。

快递行业相关诉求

促进快件行业贸易便利化

提升快件B类（个人物品）的通关便利性：

- 建议简化申报程序，允许自然人或其代理人以无纸化方式对B类快件自行申报，减少随附单证，以优化通关流程。
- 建议海关与其它政府之间实现信息联网来实现B类快件的个人身份验证，以简化流程及减轻企业因委托

第三方认证机构而产生的额外运营成本。

- 目前B类快件的申报限值为1000元人民币（非港澳台国家或地区）或800元人民币（港澳台地区），建议提高B类快件的限值，以期符合市场对于进境物品的需求。

优化快件C类的申报要求：

- 建议对于C类（低值类）进出境快件简化归类、设置统一的税率，与国际上对于低值应税类快件的通关模式接轨，以提高通关效率及改善营商环境。
- 建议制定C类进出境快件退运申报流程及管理要求。
- 提高C类快件的限值，便利通关。

全面实施进出境货物提前申报模式：

- 建议扩大进出境货物提前申报的范围，目前仍有部分口岸无法实现进境或出境货物的提前申报。

政策法规实施方面：

- 建议政策、法规发布前提前进行对外公示，并允许企业提交意见及建议。
- 建议政策、法规发布后给予3-6个月的准备期，以便于企业在内部系统开发、客户沟通与服务、操作流程调整、财务支出等方面做好充分准备。

系统稳定性：

- 尽量减少因为系统升级维护对企业运营的影响。建议系统升级维护时间定在对业务影响较小的时段。
- 系统升级维护要通过官方渠道提前通知企业。
- 系统升级维护时现场海关应采取人工验放，保证物流畅通。

国际转运中心

目前针对转运中心这样的监管还没有清晰明确的监管政策或法规，无论是《海关法》、《快件监管办法》、《海关监管区管理暂行办法》都没有对于转运中心有明确的规定。海关在20年前曾经制定了“过转运”的政策，但是已经远远不能满足企业业务需求和转运中心的运营需要，造成法规和制度建设滞后于业务需求和市场发展的需要。我们期待将转运中心问题纳入改革进程。特别是中央政府正在大力推进自由贸易港的建设，按照自贸港的概念，将准

To streamline the declaration requirements of express delivery Category C goods, we recommend:

- Simplifying the classification of category C (low-value) inbound and outbound shipments, establishing a uniform tax rate, bringing Category C express clearance procedures in line with international customs clearance standards to improve customs efficiency and enhance the business environment.
- Formulating customs declaration procedures and management requirements for Category C inbound and outbound express mail return shipping.
- Increasing the value limit of Category C shipments to improve the convenience of customs clearance.

Regarding full implementation of inbound and outbound cargo declarations, we recommend:

- Expanding the number of ports of entry equipped to process early declarations of inbound and outbound goods. At present, some ports still do not recognize early declarations.

Policy and Regulation Implementation Process

To streamline the implementation of new laws, regulations, and policies, we recommend that the relevant authorities:

- Publicize draft policies and regulations well in advance of their issuance for public comment to allow enterprises enough time to prepare responses.
- Permit grace periods of three to six months following newly-enacted policies and regulations to allow enterprises sufficient time to adapt their internal systems and customer communications and services, as well as align their operations and expenditures to meet compliance expectations.

System Stability

To ensure minimal disruption to business operations, we recommend that the relevant authorities:

- Minimize the impact of system upgrades and/or maintenance on business operations. We suggest that upgrading and maintenance take place at times that have the least impact on businesses.
- Notifications of planned system upgrades and/or maintenance should be communicated to enterprises through official channels and sufficiently in advance of the event itself.
- During upgrades and/or system maintenance, the authorities should provide on-site, human-led inspection and clearance to allow customs procedures to continue largely uninterrupted.

International Transshipment Center Policies

At present, there are no clear policies or regulations governing China's international transit/transshipment centers. None of *the Customs Law, the Express Regulations, or the Interim Measures for the Administration of Customs Supervision Zones* provide sufficient regulatory guidance. China Customs enacted the "pass-through" policy 20 years ago, however, it is currently failing to meet the needs of both the business community and transshipment centers.

AmCham China recommends prioritizing regulatory reform for transshipment centers within the reform process. China's central government is accelerating the construction of free trade ports (FTPs) and zones (FTZs), including on Hainan Island and in Shanghai. FTPs allow goods to be freely stored, exhibited, dismantled, refitted, repackaged, reorganized, processed and manufactured free of corporate income tax.

International transshipment centers are located in and around major aviation hubs and can flexibly adapt to the tenants of FTPs. We believe that the operational structure of the FTP offers a model to reform international transshipment centers in China, reduce current operational restrictions, maximize efficiency, and act as a centerpiece for reform of the customs system.

Recommendations:

For the Chinese Government

- **Remove or improve the stated time limits for preliminary adjudication.**
- China Customs should undertake further reform, especially focusing on high tech research and innovation.
- Increase the stability of the customs clearance system and provide better emergency response support measures.
- Ensure that standards are unified and information asymmetries reduced along the lines of the international trade "single window."
- Encourage China Customs to unify declaration procedures regarding the classification of bonded warehouse goods and Tax Regulations and reduce the complexity of business management.
- Encourage China Customs to create a rapid processing platform for enterprises to correct mistakes as soon as possible and make foreign exchange payments more efficient.
- Optimize the customs clearance process for the express delivery industry.

许在自由港内开展货物自由储存、展览、拆散、改装、重新包装、整理、加工和制造等业务活动,真正实现“一线放开、二线安全高效管住”的理念。而国际转运中心正是位于各大航空枢纽的核心区域,具有契合自贸港理念的优势,可以利用改革的契机摆脱过去对于中心的一些束缚,彻底发挥中心的优势和效能,为海关改革和自贸港建设起到示范作用。

建议

对中国政府:

- 删除或改进预判决的规定时限。
- 鼓励海关采取进一步措施,扩大机遇,对创新型高科技进行更深入,更务实的研究。
- 提高通关系统的稳定性,提供更好的应急和支持措施。
- 在国际贸易“单一窗口”的基础上,确保统一标准和减少信息不对称。
- 鼓励海关总署统一保税仓库货物分类申报和税收规定,降低企业管理的复杂性。
- 鼓励海关总署尽快创建一个快速处理平台,使企业尽快纠正错误,以加快外汇支付。
- 优化快递行业通关流程。

Environment

Introduction

Environmental issues are an increasingly important area for AmCham China member companies both in terms of business opportunities and compliance challenges. The regulatory landscape has shifted dramatically in recent years, with increasingly stringent environmental standards and greater emphasis on environmental enforcement.

AmCham China strongly welcomes the Chinese government's renewed focus on environmental protection and sustainable development, and our members share many of the same goals and values. Following particularly serious air pollution in the winter of 2013, Premier Li Keqiang declared a "war on pollution" before the National People's Congress in 2014. National action plans were formulated to control air pollution (2013), water pollution (2015) and soil pollution (2016). In 2015 the government updated the Environmental Protection Law for the first time since its passage in 1989. The revised law provided regulators with a greater array of tools to enforce environmental regulations. Recent data from 2018 on air pollution levels in major cities found significant reductions in air pollution levels over the past four years, indicating that China is making progress in its battle against pollution.

As with any expansive policy implementation, however, there are challenges. The strict focus on curbing pollution has raised challenges for member companies with respect to compliance, uneven enforcement, and supply chain disruptions. Other issues like waste management and disposal remain longstanding challenges for many members.

Many AmCham China member environmental concerns are captured in the 2019 *Business Climate Survey* (BCS), where "inconsistent regulatory interpretations and unclear laws & enforcement" remains the top business challenge for members for the fourth consecutive year. On the other hand, AmCham China believes that with respect to environmental issues, there is strong interest in improving environmental conditions across both AmCham China members and the Chinese government and a commitment to working together. With many AmCham China members reporting "rising domestic consumption" as a key market opportunity in China, understanding and complying with

environmental regulations will play an important role in business operations.

Environmental Compliance and Enforcement

Stringent standards and regulations

At the 18th National Congress of the Communist Party of China (CPC) in November 2012, environmental protection and sustainable development were elevated to high-level policy priorities. AmCham China members have since seen an unprecedented focus on the fight against pollution, reflected in frequent new regulations and increased environmental law enforcement and supervision.

During the first half of 2017, China's environmental authorities issued fines totaling RMB 610 million nationwide, a 131% increase year-on-year (y/y). The now-renamed Ministry of Environment and Ecology (MEE) initiated a campaign to "name and shame" violators, publishing the names of 158 enterprises classified as "serious violators" in the first quarter of 2018. According to a speech by the then-Minister of Environmental Protection at the 2018 National Environmental Protection Work Conference, China introduced more than 450 national environmental standards to promote environmental protection over the five-year period 2013-2017.

AmCham China welcomes these developments and believes establishing clear standards for emissions and environmental protection is of central importance (for discussion of NR4 emission standards, please see the Machinery and Manufacturing chapter of this White Paper). There remain challenges, however, with respect to the existing standards framework:

- **Crude enforcement of regulations.** Crude enforcement places excessive administrative burdens on compliant companies, disadvantaging them compared to their polluting neighbors. In some provinces, during periods of heavy pollution, all factories in certain industries must limit or halt production, regardless of their level of compliance with existing standards. Blanket bans on production disrupt business operations to the detriment of downstream customers and at great cost to the busi-

环境

引言

无论是在商业机会还是合规挑战方面，环境问题对中国美国商会（商会）会员企业来说都是一个日益重要的领域。近年来，随着环境标准越来越严格，政府对环境执法的力度加大，监管格局发生了巨大变化。

商会热烈欢迎中国政府重新恢复对环境保护和可持续发展的关注，商会会员也抱有許多共同的目标和价值观。继 2013 年尤为严重的空气污染之后，李克强总理在 2014 年全国人大会议上宣布“向污染宣战”。国家出台了一系列行动计划以治理大气污染（2013），水污染（2015），和土壤污染（2016）。2015 年，政府对 1989 年通过的《环境保护法》进行了首次修订。修订后的法律为监管机构提供了更多工具来执行环境法规。2018 年主要城市空气污染程度的最新数据显示，过去四年，空气污染程度显著下降，表明中国在治理污染方面取得了进展。

然而，与任何扩张性的政策实施一样，挑战也随之而来。聚焦治理污染也给会员公司带来了各种挑战，包括合规问题、执法不均，和供应链扰乱。废物管理和处理等其他问题对许多会员来说仍然是长期要面临的挑战。

许多商会会员所担忧的环境问题，都涵盖在 2019 年《中国商务环境调查报告》中，其中监管解释不一致、法律和执法不明确，已连续第四年成为会员面临的最大的商业挑战。另一方面，商会认为，在环境问题上，商会会员和中国政府对改善环境状况有着强烈兴趣，并承诺携手合作。许多商会会员表示，“国内消费不断增长”是中国一个重要的市场机遇，理解和遵守环境法规将在企业经营中发挥重要作用。

环境合规和执行

严格的标准和规则

2012 年 11 月，在中国共产党第十八次全国代表大会上，环境保护和可持续发展被提升到高级别政策优先事项。自此，商会会员们看到了中国对污染治理前所未有的关注，主要体现在新法规频繁出台，环保执法监督力度加大。

在 2017 年上半年，中国环保部门在全国范围内开出的罚单总额达 6.1 亿元人民币，同比增长 131%。2018 年第一季度，环保部更名为生态环境部，发起“点名批评”行动，公布 158 家“严重违规”企业名单。根据当时的环境保护部长在 2018 年全国环境保护工作会议上的发言，2013—2017 年，中国出台了 450 多项国家环境标准，促进环境保护。

商会欢迎中国政府取得的进展，并认为制定明确的排放和环境保护标准至关重要（有关国四排放标准的相关讨论，请参阅机械制造章节）。然而，现有标准架构仍然面临挑战。

- **粗暴执法。**粗暴的执法给合规企业带来了过重的行政负担，与污染环境的其他企业相比，这些企业处于不利地位。在某些省份，在严重污染期间，某些行业的所有工厂都必须限制生产或停产，无论他们的合规水平是否符合现有标准。全面禁止生产扰乱了企业运营，损害了下游客户的利益，并使企业自身付出了巨大代价。企业经营突然关停产生的成本，也可能导致负面的环境后果。
- **国家和省级层面执法不平衡。**在中国各地，国家环境法的执行依赖于省级和地方政府。商会会员发现，中国一线城市和工业园区的环境监管机构知识丰富、专业度很高。然而，在主要城市和城市地区以外，对现有的环境法规和技术标准缺乏统一的执行和理解。商会会员发现，地方环境保护官员在监督合规时，经常

nesses themselves. Surprise shutdowns can also lead to negative environmental outcomes resulting from the costs of sudden shutdowns of business operations.

- **Uneven Enforcement between National and Provincial Levels.** Across China, national environmental laws rely on provincial and local governments for enforcement. AmCham China members have found environmental regulators in China's Tier I cities and industrial zones to be knowledgeable and professional. Outside of major cities and urban areas, however, there is a lack of uniform implementation and understanding of existing environmental regulations and technical standards. AmCham China members have found that local environmental protection officials are frequently unfamiliar with the latest versions of environmental regulations when monitoring compliance.
- **Redundant or unreasonable standards for specific industries.** In some instances domestic environmental standards are unreasonably strict, far exceeding requirements in other advanced economies and in some cases not even technically feasible. For example, strict emission standards enacted across the Synthetic Resin Industry impose strict wastewater discharge limits for firms engaged in the production of synthetic resin. These standards set the level of phosphorus permitted in wastewater discharges so low (around 1 mg/ml) that downstream wastewater treatment plants have been forced to adjust the composition of their wastewater treatment agents to comply. Regulations should instead be adopted that allow companies to individually manage wastewater discharges in line with their technological capacity and the capacity of downstream wastewater treatment plants. The central government should fully engage with industry stakeholders when designing environmental standards to maintain a nuanced regulatory approach.

In response to these challenges, AmCham China suggests Chinese authorities should:

- **Promote National Standards.** Publish clear environmental standards and regulations online in one location online to make them accessible to all businesses and regulators. We also encourage the government to implement a negative list system to make clear that companies are not liable for violating regulations that have not been published. A lack of clear national environmental regulations creates opportunities for unequal enforcement of environmental compliance regulations between domestically- and foreign-invested companies, often to the detriment of AmCham China members' supply chain management and business operations.
- **Implement industry standard best practices.** Ensure that permit-granting regulatory authorities fully consider "best available control technologies" (BACTs) and "best available techniques" (BATs) to minimize emissions when granting operation permits. BACTs

encourage the use of technologies that maximize emissions reductions subject to regulations mandated by national law and are often determined on a case-by-case basis by authorities. BATs are particularly important as they include consideration of energy efficiency when designing environmental protection standards. A current example of where BATs could improve environmental regulation is with respect to Volatile Organic Compounds (VOCs) emission limits. Current domestic regulations have forced companies to implement Thermal Oxidizer or Regenerative Thermal Oxidizer (TOX/RTO) technology to burn VOCs. While they are effective at reducing VOC emissions, the use of TOX/RTO consumes more energy and ultimately emits greater levels of other harmful substances like carbon dioxide and nitrous oxide into the environment than other available VOC emissions-control technologies. AmCham China urges authorities to consider industry-standard best practices to develop emissions regulation. Adapting or integrating new technology comes at great cost to the business community and it is often unclear which (if any) technical standards have been applied to determine specific local efficiency standards.

- **Adopt grace periods.** Implementation of new environment policies should provide appropriate transition periods to maintain a stable regulatory environment. For example, the rapid implementation of new contamination standards for imported scrap materials, beginning in 2018 and with more standards planned to enter into force in 2019, left exporters scrambling to find new markets while Chinese manufacturers struggled to replace raw material inputs. AmCham China urges the Chinese government to adopt longer, more consistent grace periods between implementation and enforcement of new environmental regulations. The length of such grace periods should vary depending on the severity of the regulatory change and be set in consultation with relevant stakeholders.
- **Reform tax rebates.** Current environmental tax rebates are based on quarterly emissions monitoring. The costs associated with hiring third-parties to monitor emissions on a short-term basis far exceeds the available tax benefits and thus disincentives participation.

Waste Management Challenges

Solid waste

The 12th Five-Year Plan provided three principles for the industrial solid waste treatment sector: reduction, improved resource utilization, and safe disposal. *Made in China 2025* and related implementing documents have established national recycling targets, including a goal to recycle 350 million metric tons of primary resources annually by 2020. Other targets include reaching a 73% resource utilization rate for the processing, recycling, and reuse of solid waste.

不熟悉最新的环境法规。

- **特定行业标准冗余或不合理。**在某些情况下，国内环境标准过分严格，远远超过其他发达国家的标准，在某些情况下甚至在技术上也不可行。例如，国家针对整个合成树脂行业制定了严格的排放标准，对生产合成树脂的企业施加了严格的废水排放限制。这些标准将废水中允许排放的磷水平设定得很低（约为1毫克/毫升），以至于下游污水处理厂不得不调整其废水处理剂的成分以符合标准。相反，应该采用法规，允许企业根据自己的技术能力和下游污水处理厂的能力，对废水排放进行单独管理。在制定环境标准时，中央政府应与行业利益相关者充分接触，以保持细致入微的监管方式。

为应对这些挑战，商会建议中国政府应：

- **推广国家标准。**在网上发布明确的环境标准和法规，公示所有企业和监管机构。我们还鼓励政府实行负面清单制度，明确企业对未公布的违规行为不承担责任。缺乏明确的国家环境法规，为国内和外资企业不平等的环境合规执行创造了机会，这往往损害了商会会员的供应链管理和企业经营。
- **执行行业标准的最佳实践。**确保负责授予许可证的监管机构在发放许可证时，充分考虑“最佳可用控制技术”（BACTs）和“最佳可用技术”，将排放降到最低。“最佳可用控制技术”鼓励使用最大限度减少排放的技术，且符合国家法律规定，这些法规往往是当局根据个别案例制定的。“最佳可用技术”尤其重要，这是由于在设计环境保护标准时考虑到了能源效率。目前“最佳可用控制技术”改善环境法规的一个案例是：挥发性有机化合物（VOCs）排放限制。目前国内的法规已经迫使企业采用热氧化剂或再生热氧化剂（TOX/RTO）技术来燃烧挥发性有机物。虽然能有效减少挥发性有机化合物的排放，但使用热氧化剂或再生热氧化剂消耗了更多能量，与其他可用的挥发性有机物排放控制技术相比，最终排放到环境中的其他有害物质会更多，例如二氧化碳，一氧化二氮。商会敦促有关部门考虑制定行业标准的最佳做法，以制定排放法规。改变或集成新技术会给商业界带来巨大的成本，且往往不清楚哪些（如果有的话）技术标准被用来确定为具体的当地效率标准。
- **设立宽限期。**新环境政策的实施应提供适当的过渡时

期，以维持稳定的监管环境。例如，进口废料新污染标准的迅速实施，于2018年开始，2019年将实施更多标准，从而导致出口商争先恐后地寻找新市场，而中国制造商艰难地寻找可替代的原材料。商会敦促中国政府在执行新的环境法规时采取更长的、更一致的宽限期。这种宽限期的长度应视监管改革的程度而有所不同，并应在与相关利益相关者协商后确定。

- **改进出口退税。**目前的环境退税基于季度排放监测。雇佣第三方监管短期排放所产生的成本远远超过了现有的税收优惠，并打击了参与度。

废物管理面临的挑战

固体废物

“十二五”规划首次提出，减排、提高资源利用率和安全处理是我国工业固体废物处理领域的三大原则。《中国制造2025》及相关实施文件确立了国家回收目标，包括到2020年每年回收3.5亿吨主要资源的目标。其他目标包括达到73%的固体废物处理、回收和再利用资源利用率。

美国在华制造业如今面临着越来越严峻的挑战，包括缺乏合格的垃圾处理服务供应商，固体废物法规执法不均，以及缺乏清晰的政策指导。这些挑战导致了合规方面的挑战和更高的企业运营成本。

中国工业危险废物处理能力有限，只能处理全国工业固体废物总量的一小部分。2016年，危险废物的利用率和处理率仅为79%，意味着估计有1100万吨未经处理的危险废物没有得到妥善处理。目前，只有少数几家国有废物处理公司获得了处理所有固体废物产品的许可证，而大多数企业仍被限制在有限的允许范围内。由此产生的废物处理行业的人为垄断导致了处理能力的不足。因此，如果不能在规定的期限和数量存储限制内处理危险废物，会员企业的经营将中断或停止。在更广泛的企业范围内开放危险废物处理资格，可能有助于提高废物处理能力。

商会会员认为，政府缺乏协调一致的政策来支持国家层面的危险废物处理。2019年，中国政府发布了创建10个“无浪费”试点城市的试点计划。该计划将持续到2021年，旨在尽量减少固体废物，同时最大化利用率和安全处理。我们鼓励政府发布详细的实施计划，允许该试点项目制定可在全国范围内实施的固体废物处理最佳方案。

US manufacturing businesses in China now face increasingly tougher challenges stemming from a lack of qualified waste service suppliers, inconsistent enforcement of solid waste regulations, and a lack of clear policy guidance. These challenges have resulted in compliance challenges and higher operational costs for businesses.

China still has limited industrial hazardous waste treatment capacity and is only able to treat a tiny proportion of the country's total industrial solid waste. In 2016, the hazardous waste utilization and disposal rate was only 79% meaning that an estimated 11 million metric tons of unprocessed hazardous waste were not being disposed of properly. At present, only a handful of state-owned waste processing companies are licensed to handle the full spectrum of solid waste products, while the majority are limited to a narrow scope of permitted categories. The resulting artificial monopoly in the waste processing industry has led to a lack of sufficient processing capacity. Consequently, member company business operations are disrupted and often halted when they are unable to dispose of hazardous waste within the regulated time period and quantitative storage limits. Opening hazardous waste disposal qualifications to a broader range of companies may help to increase waste disposal capacity.

AmCham China members feel there is a lack of coordinated government policy to support hazardous waste disposal at the national level. In 2019 the Chinese government released plans for a pilot program to create 10 pilot “no-waste” cities. The program, set to run through 2021, aims to minimize solid waste while maximizing utilization and safe disposal. We encourage the government to release detailed implementing plans and allow this pilot program to develop solid waste disposal best practices that can be implemented nationwide.

In addition to an existing plethora of environmental inspections, many companies are subject to both scheduled and random waste treatment inspections that can significantly raise business costs associated with waste treatment in heavily affected areas. Again, members have experienced situations where limited processing capacity has resulted in higher costs. AmCham China urges the government to extend, support, and increase municipal industrial waste collection capabilities.

2020 Waste Sorting Initiative

A March 2017 State Council directive now requires 46 directly administered municipalities and provincial capital cities to separate all waste into four categories: ordinary, recyclable, organic, and hazardous. This policy is planned to be rolled out nationwide, although the timeline is uncertain. This policy could have significant impacts on operations across many heavy waste-generating industries, including hotels and tourism, retail, industrial and commercial office parks, and residential housing complexes. These industries have few formal established systems for sorting waste consistent with these regulations, potentially exposing them to new

liability. To date few details have been released (Guangzhou and Shanghai have released initial plans) regarding which government bureaus and departments will be responsible for oversight of this law and few definitive guidelines are available to allow businesses to begin to adjust their operations. AmCham China urges the government to clarify the details on planned oversight and implementation this year and provide an appropriate transition period for implementation to provide member companies with enough time to meet compliance expectations.

Ban on Recycled Imports

China's ban on 24 types of imported solid waste, first announced in 2017 and enacted on January 1, 2018 has affected global recycling chains, with downstream effects for companies in China and the US. Further strict contamination standards imposed on waste materials not explicitly banned (contamination levels were set to 0.5% or lower) has effectively banned many from going to China anyway. Consequently, many waste management companies, particularly of paper and plastics, have experienced supply disruptions and significant price volatility. In the US, the loss of the China market has led some states to drop bans on plastics going to landfill. Chinese paper producers, long dependent on imported recycled materials for production of paper, packaging, and tissue, have been forced to look elsewhere or pay higher prices.

On the one hand, this decision may improve China's environmental protection efforts and force the US to sustainably address the huge volumes of plastic waste that are produced domestically. On the other hand, the standards set by China for other imported materials are unrealistic, and significantly differ from industry standards defined by the US Institute for Scrap Recycling Industries (ISRI). AmCham China urges both sides to work together to establish a compromise, enabling recycling markets in both countries to find an arrangement that minimizes disruptions to global recycling and furthers sustainable waste disposal techniques.

Extended Producer Responsibility

The *Extended Producer Responsibility (EPR) Plan*, announced by the State Council in December 2016 is currently slated to go into effect in 2020. Moreover, in 2018 the MEE issued a number of amendments to the country's Solid Waste Law, which included creating EPR programs for electronic and electrical products. As written, the EPR Plan mandates that manufacturers must integrate the environmental costs associated with the entire product life-cycle into the price of their products. This includes product design, consumption, recycling, and waste disposal. To date, few implementing details have been released publicly beyond initial reduction and recycling targets. AmCham China urges the Chinese government to provide details on the proposed EPR framework as soon as possible.

除了现有的过多的环境检查，许多公司都要接受定期和随机的废物处理检查，这可能会使导致地区的废物处理成本大幅上升。会员企业再次经历了处理能力有限所导致的成本增加。商会敦促政府扩大，支持和提高城市工业废物收集能力。

2020 废物分类计划

2017年3月，国务院的一项指令要求46个直辖市和省城市将所有废物分为四类：普通的，可回收的，有机的，危险的。这项政策计划在全国范围内推广，尽管时间还不确定。这项政策可能会对许多产生大量废物的行业造成重大影响，包括酒店及旅游、零售、工商办公园区、住宅小区等。这些行业几乎没有正式建立符合这些规定的废物分类系统，从而可能面临新的责任。到目前为止，关于由哪个机关和部门负责监督该法律的实施，所公布的细节还很少（广州和上海已经公布了初步计划），允许企业开始调整其经营的明确指导方针也很少。商会敦促政府明确今年计划的监督和执行细节，并为计划实施提供适当的过渡期，以便为会员企业提供足够的时间，达到合规要求。

禁止回收进口

中国于2017年首次发布，2018年1月执行的24种固体废物进口禁令，影响了全球回收链，对中国和美国的企业产生了下游效应。对未明令禁止的废物（污染水平被设定为0.5%或更低）所实施的更严格的污染标准，有效禁止了许多废物进入中国。因此，许多废物管理公司，特别是纸张和塑料的废物管理公司，都遭受了供应中断和价格大幅波动。在美国，中国市场的损失导致一些州取消了对塑料垃圾填埋的禁令。长期以来，中国造纸企业一直依赖进口可回收材料生产纸张、包装和纸巾，如今被迫将目光转向别处，或支付更高的价格。

一方面，这一决定可能会改善中国的环境保护工作，迫使美国以可持续的方式处理国内产生的大量塑料垃圾。另一方面，中国对其他进口材料的标准是不现实的，而且与美国废品回收行业协会（ISRI）制定的行业标准有显著差异。商会敦促双方共同努力，找到一个折衷方案，使两国的回收市场最大限度地减少对全球回收的干扰，并进一步发展可持续废物处理技术。

延伸生产者责任制

延伸生产者责任制，由国务院于2016年12月提出，目前计划于2020年生效。此外，2018年生态环境部发布了一系列国家《固体废物法》修正案，包括创建电子电器产品延伸生产者责任制。该制度要求，生产者必须将与整个产品生命周期相关的环境成本整合到产品价格中，包括产品设计、消费、回收和废物处理。迄今为止，除了最初的减排和回收目标，很少有具体的实施细节被公开发布。商会敦促中国政府尽快提供拟议的延伸生产者责任制框架的细节。

延伸生产者责任制具有在制造业和资源行业建立最佳实践方案的潜力。例如，固体废物管理行业将受益于延伸生产者责任制对以下内容的定义：①哪一方负责处理固体废物的费用 ②确保以上费用的承担方获得资金 ③支持建设固体废物收集网络和加工单位。

在中国，延伸生产者责任制在家用电器和电器回收方面收效明显，但还未涵盖家具、生活用品、建筑材料、服装纺织品、食品快递包装、快递服务废弃物等其他消耗品。一个统一、全面的，监管所有成品的延伸生产者责任制监管体系，可以为投资创造新的机遇，并为生产商合规创造一个公平的竞争环境。

碳排放交易计划进展

从2013年开始，中国在北京，天津，上海，重庆，湖北，广东和深圳启动了碳排放交易计划（ETS）试点项目。2017年1月，国家发改委发布了全国《碳排放交易计划规划（57通知）》，详细阐述了建立全国碳交易体系的计划。2018年12月，碳排放交易计划在全国范围内推出，虽然其活动目前限于电力部门。虽然商会赞赏中国政府在全国范围内推动碳排放交易计划所取得的进展，但我们注意到，碳排放交易计划最初的目标是覆盖八大主要行业：石油化工、化工、建材、钢铁、有色金属、造纸、电力、航空。上述八个行业的碳排放交易计划被延迟到2020年。考虑到计划延迟，商会主张为企业提供一个适当的过渡期来实施该计划，且碳排放信用应基于行业基准，而不是当前的排放水平，这将使排放量最高的企业获得更多的信用。这种做法使企业在短期内不愿进行技术升级以减少排放，而且使采用先进环保技术的外国企业处于不利地位。

EPR has the potential to establish best practices across the manufacturing and resource industries. For instance, the solid waste management industry will benefit from EPR clearly defining ❶ which parties are responsible for the costs involved in solid waste treatment, ❷ ensuring access to capital for those responsible for bearing those costs, and ❸ supporting the construction of solid waste collection networks and processing units.

In China, EPR is well established in household electronics and appliance recycling, but it does not yet cover other consumables such as furniture, daily use items, construction materials, clothing and textiles, food delivery packaging, and express delivery service waste. A unified, comprehensive EPR regulation system governing all manufactured products could create significant new opportunities for investment and a level playing field for producer compliance.

Emission Trade Scheme Progress

Beginning in 2013 China launched its Emissions Trade Scheme (ETS) pilot programs in Beijing, Tianjin, Shanghai, Chongqing, Hubei, Guangdong, and Shenzhen. In January 2017, the NDRC published a national ETS plan (Circular 57) detailing plans for a national Carbon Trading System. This was followed by the launch of a nationwide ETS in December 2018, although its activities are currently restricted to the power sector. While AmCham China commends the progress towards launching a national-wide ETS scheme, we note that ETS was originally intended to cover eight major industries: petrochemicals, chemicals, building materials, iron and steel, non-ferrous metals, paper, power, and aviation. ETS implementation across all eight sectors has been delayed to 2020. In light of the delay, AmCham China advocates for an appropriate transition period for companies to comply with implementation, and for ETS credits to be based on industry benchmarks rather than current emissions rates, which would result in the highest emitters receiving more credits. This approach disincentivizes companies from making technological upgrades to reduce emissions in the short-term and disadvantages foreign companies that employ advanced environmental technology.

Evolving Soil Environmental Regulations

The *Soil Pollution Prevention and Control Law*, in effect January 1, 2018, represents a logical next step in a long list of regulations and government notices concerning soil and groundwater contamination that have been introduced over the last few years. In 2016, the State Council published the *Soil Pollution Prevention and Control Action Plan* (known as the “Soil Ten Plan” because of its ten articles) laying out a three-year plan for “soil environment quality investigation.” In May 2018 the MEE published the *Soil Environmental Management Rule on Industrial and Mining Sites* (Order No.

42) which required businesses and facilities on defined government “supervision lists” to conduct environmental impact assessments (EIA) on soil and groundwater contamination resulting from any expansion or modification to existing facilities or upon the closure of a manufacturing site. These EIA reports must be to be uploaded to a national database and made publicly available. Where levels of contamination are detected, investigation, risk assessment, risk control, and cleanup operations are to be carried out. AmCham China supports these efforts to improve the regulation of soil quality. We urge the Chinese government to clarify the rules for liability in soil contamination cases, and simultaneously develop the market for environmental liability insurance.

Recommendations

For the Chinese Government:

- Establish clear national guidelines for environmental compliance and publish the rules online to make them accessible to both companies and regulators. We urge the government to work to improve the technical capability of inspectors and regulators and provide at least 60 days advance notice before requiring production capacity reductions or shutdowns. We also encourage all provincial and local environmental authorities to publish regulatory requirements and make regulatory material easily available to relevant companies.
- Establish an environmental credit system that incentivizes and rewards both foreign- and domestically-invested companies with a long track record of compliance with domestic environmental regulations. Compliant companies would not be required to shut down operations in heavily polluted areas when pollution control becomes a priority.
- Encourage companies to integrate waste reduction strategies at both the product design and processing stages to encourage greater resource recycling. AmCham China recommends that authorities adopt clear recycling standards, especially for non-hazardous materials, and expand EPR guidelines to improve waste reduction.
- Consult with relevant stakeholders to develop a long-term plan to upgrade and expand industrial and hazardous waste treatment facilities that addresses the unequal regional distribution of these facilities and upgrades substandard existing facilities. AmCham China urges the government to extend, support, and increase municipal industrial waste collection capabilities.

不断变化的土壤环境法规

于2018年1月1日生效的《土壤污染防治法》，在过去几年颁布的一系列关于土壤和地下水污染的法规和政府通知中，代表迈出了合理的一步。2016年，国务院发布了《土壤污染防治行动计划》（由于包含十个条款，而被称为“土十条”），制定了“土壤环境质量调查三年规划”。2018年5月，生态环境部发布了《工矿企业土壤环境管理规定》（第42号令），要求企业和设施被列入政府规定的“监管名单”，从而对因扩建或改造现有设施而造成的土壤和地下水污染，或者工厂关停进行环境影响评估，这些环境影响评估报告必须上传到国家数据库，并向公众发布。在检测到污染程度后，应进行调查、风险评估、风险控制和清理工作。

商会支持中国政府为改善土壤质量监管做出的努力。我们敦促中国政府明确土壤污染案件责任规则，同时发展环境责任保险市场。

施。商会敦促政府扩大、支持和提高城市工业废物收集能力。

对美国政府：

- 与中国同行分享环保的最佳实践和技术。鼓励他们采用以科学为基础的国际排放标准，并采用最佳可用控制技术和最佳可用技术来减少排放。
- 继续于中国政府相关部门合作，针对2018年中国禁止进口24种固体废物所造成的回收供应链中断寻找合理的解决方案。

建议

对中国政府：

- 商会敦促中国政府制定明确的环境合规国家指导方针，并在网上公示，供企业和监管机构查阅。我们敦促政府努力提高检查员和监管人员的技术能力，并在要求减产或停产前至少提前60天发出通知。我们还鼓励所有省级和地方环保部门公布监管要求，并让相关公司更加便利地获得监管材料。
- 建立环境信用系统，对长期遵守国内环境法规的外资和内资企业进行激励和奖励。污染防治成为优先事项时，合规公司将不会被要求关闭污染严重地区的业务。
- 鼓励公司在产品设计和加工两个阶段整合废物减少策略，促进资源回收。商会建议有关部门采取清晰的回收标准，尤其针对无害材料，并扩大延伸生产者责任制的指导方针，以推进减少废物。
- 与相关利益相关者协商，制定升级和扩大工业和危险废物处理设施的长期计划，解决这些设施在区域上分布不均的问题，并升级现有的不合格设

For the US Government

- **Share environmental protection best practices and technologies where relevant with your Chinese counterparts. Encourage them to adopt international, scientifically-grounded emissions standards and adopt BACTs/BATs to reduce emissions.**
- Continue to work with Chinese Government counterparts to find reasonable solutions to the recycling supply chain disruptions caused by China's decision to ban imports of 24 types of solid waste in 2018.

Government Procurement

Introduction

Government procurement in China remains an area of great concern for AmCham China. While China has made some progress in recent years with the introduction of regulations designed to bring greater transparency and accountability to government procurement, China has yet to fulfill its promise to accede to the World Trade Organization (WTO) Agreement on Government Procurement (GPA). While there are encouraging signs, such as the addition of government procurement provisions in the 2019 *Foreign Investment Law*, new laws and regulations, including the *Cybersecurity Law*, have introduced additional uncertainties into government procurement.

AmCham China is concerned over the slow pace of China’s accession negotiations. Since applying for GPA accession and submitting its initial offer in December 2007, China has submitted six offers; the latest revised offer submitted four years ago - in December 2014. In April 2018, President Xi announced that China would accelerate the process of its accession to the GPA. During 2018 meetings of the WTO Committee on Government Procurement (GPA Committee), China again reaffirmed its intention to submit a new market access offer that would include comprehensive improvements, in particular relating to coverage of sub-central government entities and state-owned enterprises (SOEs). In its annual report for 2018, the GPA Committee reported that parties had “encouraged China to speed up its accession process” by submitting its promised new offer as soon as possible, “taking account of the outstanding requests for improvement.” AmCham China urges the Chinese Government to submit a new GPA offer that addresses the gaps in its last offer and to accelerate the negotiations with the aim of concluding its accession to the GPA in 2019.

Opening China’s government procurement market to foreign competition is in China’s own interest. Doing so would provide Chinese Government entities with access to the goods and services of the GPA parties, enabling them to acquire high quality, state-of-the-art goods and services at competitive prices. Joining the GPA would also provide China with tools to combat local protectionism and corruption and strengthen the rule of law in China.

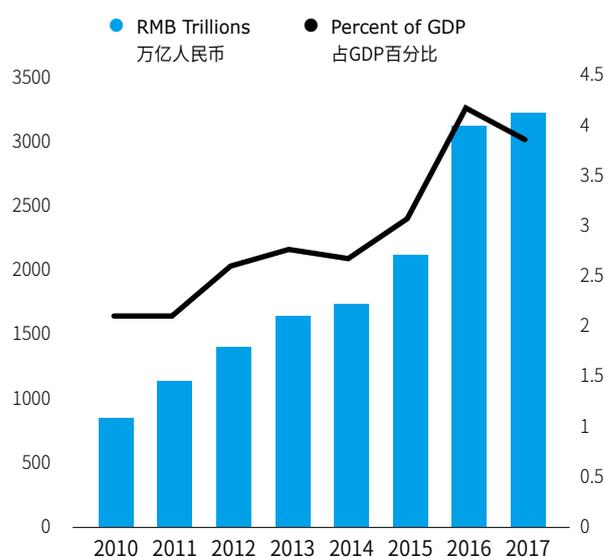
China’s GPA accession would allow it to fulfill its WTO commitment and enable it to participate in the continued development of international procurement standards and practices. It would also constitute an opportunity for China to advance its commitment to, and support of, the multi-lateral trading system. China’s accession would allow U.S. firms to participate in China’s government procurement on a transparent, predictable and non-discriminatory basis.

China’s Government Procurement Market

In 2018, the WTO conducted its 7th biennial Trade Policy Review (TPR) of China. According to data China provided in the TPR, the total value of China’s government procurement increased significantly since its previous TPR in 2014, rising from RMB 1.73 trillion in 2014 to RMB 3.11 trillion (approximately US \$456 billion) in 2016. This amount represents only 4.2 % of China’s GDP, in contrast to rates of 10-15% seen in

China’s Government Procurement Market, 2010-2017.

中国政府采购市场，2010-2017.



Source: WTO, Ministry of Finance
 源自：世贸组织、财政部

政府采购

引言

中 国美国商会(商会)仍然高度关注中国政府采购。尽管中国近几年通过制定规章制度改善了政府采购的透明度和职责划分,取得了进步,但是中国未履行加入世贸组织时就《政府采购协定》作出的承诺。虽然中国政府释放了一些鼓舞人心的信号:如在2018年起草的《外商投资法》里增加政府采购的规定,但包括《网络安全法》在内新的法律法规仍增添了额外的不确定性。

商会对中国人世谈判进展缓慢表示关切。自2007年12月申请加入《政府采购协定》并提交初始出价以来,中国已提交6份出价;2014年12月即四年前提交了最新修改版出价。2018年4月,习主席宣布中国将加快加入《政府采购协定》进程。在2018年世贸组织政府采购委员会会议上,中国再次重申有意提交一份新的市场准入协议,其中将包括全面改善市场准入条件,特别是在涉及地方政府实体和国有企业方面。在2018年的年度报告中,《政府采购协定》委员会报告称,各方“考虑到尚未解决的改进要求”,已“鼓励中国加快其入世进程”,尽快提交承诺的新提议。商会敦促中国政府提交一份新的《政府采购协定》,以弥补上一份《政府采购协定》的不足,并加快谈判进程,争取在2019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能得到《政府采购协定》参加方的商品和服务,获取质高价优、最先进的商品及服务,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,还可以加强中国的法制建设。

中国加入《政府采购协定》,将有助于履行入世承诺,并能够参与到国际采购标准和实践持续发展的进程中。这也将是促进中国履行其多边贸易体制承诺的机会,对美国企业而言,中国的加入将使它们在透明、可预测和非歧视的基础上参与中国政府采购。

中国政府采购市场

2018年,世界贸易组织对中国进行了第7次两年一次的贸易政策审议(TPR)。贸易政策审议的中国数据显示,自2014年贸易政策审议以来,中国政府采购总额显著增加,从2014年的1.73万亿元增加到2016年的3.11万亿元(约4,560亿美元),仅占中国GDP的4.2%,而大多数国家的占比为10-15%。经济合作与发展组织(OECD)成员国的政府采购占GDP的12-13%,而欧盟估计其28个成员国的采购占GDP的16%。(见左图)

财政部提供的最新数据显示,2017年中国政府采购总额为3.2万亿元人民币(约合4,660亿美元),仅占当年GDP的3.9%。在TPR报告中,WTO秘书处表示,中国“比例相对较低”,可能是由于其采购数据排除了国有企业承接的重要基础设施项目。与2016年的评估一样,地方政府继续占据中国政府采购的95%。

中国加入《政府采购协定》

中国于2001年12月加入世贸组织时,有意加入《政府采购协定》,并迅速提交一份令人满意的市场准入要约,提供其根据《政府采购协定》采购的产品。中国最终于2007年开始了加入进程。自中国宣布加入《政府采购协定》17年来,中国加入《政府采购协定》仍然是一个非常重要的问题。《政府采购协定》委员会在其2018年年度报告中指出,类似2016年和2017年的报告,采购委员会“仍然认为,中国在互相认可、合适的条件下加入《政府采购协定》,无论对于《政府采购协定》、世贸组织还是世界经济来说都意义非凡;也是对其他新兴经济体的一个重要信号。

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。以下是中国2014年GPA提案和现有参加方相关的简要总结:

- 中国清单的永久性门槛与两个或多个参加方一致;

most countries. Government procurement in Organization of Economic Cooperation and Development (OECD) countries is between 12% and 13%, while the European Union has estimated that procurement accounts for 16% of GDP across its 28 member states.

More recent data provided by the Ministry of Finance (MOF) report the total value of China's government procurement to be RMB 3.2 trillion (approximately US \$466 billion) in 2017, still accounting for only 3.9 percent of GDP in that year. In the TPR Report, the WTO Secretariat suggested that China's "relatively low ratio" may be due to the exclusion of important infrastructure projects undertaken by state-owned enterprises (SOEs) from its procurement data. Local governments continued, as in the 2016 review, to account for 95% of China's government procurement.

China's GPA Accession

When China became a WTO Member in December 2001, it declared its intention to become a party to the GPA and swiftly table a satisfactory market access offer of the procurement it would cover under the Agreement. China finally commenced its accession process in 2007. Seventeen years since China's declaration of its intent, China's GPA accession remains an issue of great importance. The GPA Committee noted in its 2018 Annual Report, as it had in its 2016 and 2017 reports, that it "remains of the view that China's GPA accession, on mutually agreeable and appropriate terms, is a matter of significance for the Agreement, for the WTO, and for the world economy; and an important signal for other emerging economies."

In its 2014 GPA offer China has moved closer to the level of coverage offered by existing GPA parties. Below is a brief summary of China's 2014 GPA proposal relative to that of existing parties:

- China's 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, but its offer falls short of parties with more comprehensive coverage;
- China's services offer follows most parties in its use of a positive list;
- On construction services, however, China's offer falls short of the comprehensive coverage offered by other parties;
- The proposal includes several troubling exceptions, such as the right to deviate from the principle of

national treatment when a specific procurement may "impair important national policy objectives," or the right to impose domestic content requirements. Moreover, China seeks the application of transitional measures to delay full implementation of the GPA agreement as "a developing country," which is troubling given the advanced state of its economy.

China's Domestic Procurement Regime

Performance Assessment of Government Procurement

In July and September 2018, respectively, the Central Committee of the Communist Party of China and the State Council jointly released the *Guiding Opinions on Promoting the Third-party Performance Assessment of the Government Procurement of Services* (Guiding Opinions) and the *Opinions on Adopting the Performance Management of Budgets in All Aspects* (Opinions). According to the Opinions, government budgets for revenues and expenditures at all levels will be subject to performance management assessments. Government procurement as financed by the general public budget will also be subject to performance management assessments. The Guiding Opinions encourages third-party performance assessment of all government procurement of services to ensure that the procurement is economical, standardized, efficient and fair. The MOF announced plans for pilot assessment programs in selected regions in 2018-2019.

Joint Disciplinary Actions in Government Procurement

On November 20, 2018, the National Development and Reform Commission (NDRC), the People's Bank of China, MOF, MOFCOM, the State Administration for Market Regulation (SAMR), the State Taxation Administration (STA) and other administrative authorities jointly released the *Memorandum of Understanding on Taking Joint Disciplinary Actions Against Seriously Dishonest Entities and Persons in the Area of Government Procurement*. According to the Memorandum, if any supplier is in breach of the *Government Procurement Law* and other relevant regulations, MOF will record the supplier's name in the national credit information system and restrict their access to commercial activities.

Giving Priority to Energy-Saving Products and Equipment

As required under the *Energy Conservation Law* (2018), the *Provisions for Energy-Conservation of Public Institutions* (2017) and the *Circular Economy Promotion Law* (2018), government procurement shall give priority to products and equipment that are energy-saving and environmentally-friendly and may not purchase products and equipment being phased out for environmental reasons. Agencies that

- 其中央政府实体范围与《政府采购协定》参加方基本相当，但排除了国防实体；
- 中国所界定的次中央政府实体和其他实体同样列明采购实体的与《政府采购协定》参加方基本相当，但其提供的覆盖范围不及协议参加方广泛全面；
- 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；
- 然而，在工程服务方面，中国的清单内容远不及《政府采购协定》参加方那样广泛全面；

该出价清单中的几项例外情况令人担忧。例如，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，或有权强制实施采购项目的本国比例。此外，中国采取过渡性措施，以“发展中国家”的身份推迟全面实施《政府采购协定》。考虑到中国目前较高的经济地位，这种做法令人困惑。

中国国内采购制度

政府采购的表现评估

2018年7月和9月，中国共产党中央委员会和国务院联合发布了“关于促进第三方性能评估的政府采购服务的指导意见”（指导意见）和“关于全面采用预算绩效管理的意见”（意见）。根据《意见》，各级政府收支预算将接受绩效管理考核。由一般公共预算资助的政府采购也将接受业绩管理评估。《指导意见》鼓励对政府采购的各项服务进行第三方绩效考核，确保采购经济、规范、高效、公平。财政部宣布了2018-2019年在部分地区开展试点评估的计划。

政府采购的联合惩戒

2018年11月20日，国家发展与改革委员会、中国人民银行、财政部、商务部、国家市场监督管理总局、国家税务总局和其他行政管理部门共同发布《关于对政府采购领域严重违法失信主体开展联合惩戒的合作备忘录》。根据《备忘录》，如果供应商违反了《政府采购法》等相关规定，财政部将在国家信用信息系统中记录供应商名称，并限制其从事商业活动。

优先发展节能产品和节能设备

根据《节能法》（2018年）、《事业单位节能规定》

（2017年）和《循环经济促进法》（2018年）的要求，政府采购应当优先采购节能环保的产品和设备，不得采购因环境原因淘汰的产品和设备。不遵守这些要求的机构可能受到行政处罚或纪律处分。商会很高兴看到在政府采购决策中更加优先考虑环境因素，但敦促政府根据国际最佳实践制定行业特定的环境标准（详情请参见《白皮书》环境章节）。

2018年《外商投资法（草案）》

2014年，《外商投资法》首次进入国务院立法计划（当时为《外国投资法》）。2019年3月15日，全国人大正式通过并颁布了《外商投资法》。该法首次涵盖了政府采购。2019年《外商投资法》第16条规定，中国政府应保障外商投资企业公平参与政府采购活动，在中国境内的外商投资企业生产的产品在政府采购制度下享受平等待遇。商会赞赏中国政府的举措并将持续密切关注该法案的施行。

建议

如上所述，中国宣布加入《政府采购协定》已经17年了。中国应通过加入《政府采购协定》来证明自己向世界贸易组织的承诺。商会敦促中国政府进一步努力，在互惠的基础上开放政府采购市场，并与《政府采购协定》的其他46个世贸组织成员在2019年加入《政府采购协定》。中国应该借此机会来为其他14个在加入世贸组织议定书中作出类似承诺的世贸组织成员树立正面典范。此外，中国加入《政府采购协定》也将激励世界贸易组织的其他成员加入该诸边协定。

对中国政府：

为此，我们敦促中国政府提交一份新的《政府采购协定》（GPA）出价清单，弥补2014年修订后《政府采购协定》中存在的不足，并加快谈判进程，争取在2019年完成《政府采购协定》的加入。商会促请中国政府与GPA参加方全面合作，解决这些不足并就GPA参加方的要求进行改进。

- 中国应该取消其倡导的为期两年的过渡门槛，鉴于其经济的发达程度，不应宣称自己为GPA的

fail to comply with such requirements may be subject to administrative penalties or disciplinary action. AmCham China is pleased to see greater priority being given to environmental considerations in government procurement decisions but urges the government to develop industry-specific environmental standards in line with international best practices (see White Paper environmental chapter for further discussion).

2019 Foreign Investment Law

The *Foreign Investment Law* has been included in the legislative agenda of the State Council since 2014. On March 15, 2019 the National People's Congress enacted the *Foreign Investment Law*. For the first time, the Law includes reference to government procurement. Section 16 of the 2019 Law provides that the Chinese Government shall guarantee foreign-invested enterprises fair participation in government procurement activities, and that the products manufactured by foreign-invested enterprises within the territory of China shall receive equal treatment under the government procurement regime. AmCham China appreciates the step and will continue to monitor implementation closely.

Recommendations

As noted above, it has been 17 years since China declared its intent to accede to the GPA. China should demonstrate its commitment to the WTO by completing its accession to the GPA. AmCham China urges the Chinese government to make further efforts to open its government procurement market on a reciprocal basis with the US, as well as with the other 46 WTO members that are parties to the GPA by completing its accession in 2019. China should also take the opportunity to serve as a positive model to the 14 other WTO Members that made similar commitments in their protocols of accession to the WTO. China's accession to the GPA would also incentivize other WTO Members to seek membership in this plurilateral agreement.

For the Chinese Government:

To this end, we urge the Chinese government to submit a new GPA offer that addresses the remaining gaps in its 2014 revised offer, as identified below, and accelerate negotiations in order to complete its accession to the GPA in 2019. AmCham China urges the Chinese Government to work with GPA parties to address these deficiencies and other improvements requested by GPA parties.

- China should withdraw its proposed two-year transitional thresholds and its claim to developing

country status under the GPA given the advanced state of its economy.

- With respect to its sub-central coverage, AmCham China recommends the Chinese Government cover all of its most important provinces. For example, Sichuan, a large, economically significant province in the Southwest is absent from China's last offer. In addition, China should also include less-developed provinces where substantial government investment is currently taking place, such as Qinghai and Gansu.
- A revised GPA should include major SOEs that procure regularly for governmental purposes (i.e., not for commercial sale or resale purposes, or for use in the production or supply of goods or services for commercial sale or resale). Furthermore, AmCham China encourages the Chinese Government to clarify its position on SOEs by first issuing a clear directive confirming that SOE purchases are non-government procurements that are based solely on commercial considerations. This would be in line with China's commitments regarding commercial independence of SOEs in the Working Party Report included in its Protocol on Accession to the WTO. Then, China could expand GPA coverage to include major SOEs that participate in procurement for governmental purposes.
- If China insists on basing its services and construction coverage on a positive list, our members suggest that China engage in dialogue with US industries through AmCham China in order to ensure meaningful coverage. Services that China should consider covering that are of importance to U.S. 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
 - Accounting, auditing, and bookkeeping services and services related to management consulting
- Our members recommend China withdraw the following exceptions that will hinder completion of its accession:
 - Its reservation of the right to deviate from the principle of national treatment when a specific

发展中国家。

- 就其次中央覆盖，商会建议中国政府覆盖所有重要省份。例如，四川，作为一个位于中国西南部的经济大省，却没有出现在中国的最后一个提议中。此外，中国还应覆盖青海和甘肃等政府目前正在大举投资的欠发达省份。
- 修订版《政府采购协定》应将出于治理目的而定期进行采购（如不以商业销售或转售为目的，或不用于以商业销售或转售为目的的生产或服务）的大型国有企业纳入实体清单。此外，商会建议中国政府通过以下方式明确自己对国有企业的立场。第一：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。该条例符合中国在加入世贸组织工作方报告中，有关国有企业商业独立性的承诺。第二：扩大政府采购实体范围，将出于治理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。
- 如果中国坚持以正面清单的形式列明采购服务的范围，商会会员恳请中国政府通过中国美国商会与美国企业开展对话，从而合理地划定范围。中国应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、银行业及电子支付服务
 - 全部工程、机械、设备安装、设计服务及建筑相关咨询服务
 - 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
 - 房地产服务业
 - 零售和电子商贸服务业
 - 会计、审计、记账服务业以及管理咨询相关服务业
- 商会成员建议中国取消下列妨碍其完成加入的例

外情形规定：

- 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规定。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。
- 其提出的政府采购项目的本国比例、补偿或技术转让规定。
- 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，但如果适用于省级工程，则会严重缩小次中央实体的采购项目范围。

《政府采购协定》不允许申请加入国在加入协议后推迟履行《协定》，因此，我们也鼓励中国不再要求在加入后推迟全面执行《协定》。

对美国政府：

- 商会敦促美国政府与欧盟和其他 GPA 参加方合作，鼓励和促进中国在 2019 年加入 GPA。

procurement may “impair important national policy objectives” because such an open-ended exclusion would render China’s coverage unpredictable and subjective.

- Its proposed domestic content requirements, offsets, or transfer of technology provisions.
- Its exclusion of construction services “using special funds of the central government” from sub-central coverage. The scope of this restriction is unclear and could significantly undermine sub-central coverage if it applies to construction undertaken in the provinces.

China is also encouraged to withdraw its request to delay its overall implementation of the agreement for multiple years after accession, as the GPA provides no authority for an acceding country to delay its entire implementation of the agreement after its accession.

For the US Government

- **AmCham China urges the US government to work with the EU and the other GPA parties to encourage and facilitate China’s GPA accession in 2019.**

High-Tech Trade Promotion and Export Controls

Introduction

In 2018, the US trade deficit with China reached US \$382 billion, the highest in over a decade and the US and China engaged in an escalating dispute over trade practices. Escalating import duties between the two countries stemmed from a US investigation under Section 301 of the Trade Act of 1974 into whether China's policies related to technology transfer, intellectual property, and innovation discriminates against, burdens, or restricts US commercial opportunities.

Despite the trade frictions, the US remains the largest market for Chinese exports and China is the third largest importer of US goods behind Canada and Mexico. Bilateral trade in goods between the US and China grew from US \$147 billion (RMB 910 billion) in 2002 to almost US \$636 billion (over RMB 4 trillion) in 2018. Amidst the ongoing trade dispute, the US has put forward legislation that could allow for export controls on cutting-edge technologies, the addition of a high-profile Chinese entity to the US Entity List, and changes to the scope of review US foreign investment transactions subject to review by the Committee on Foreign Investment in the United States (CFIUS).

AmCham China encourages both China and the US to collaborate with industry and government experts to address issues concerns on both sides about export control and high-tech transfer. We urge China and the US to minimize restrictions on technology-sharing to those technologies that have a clear rationale and can be realistically controlled. We urge any necessary restrictions on the basis of national security be clearly and narrowly-defined. Technology sharing and development has benefits for the economies of both countries and broad strokes to restrict these exchanges will only be detrimental for global growth and development.

Recent Developments and Ongoing Regulatory Issues

US Export Controls

In 2018 the US enacted the *Export Control Reform Act* (ECRA) as part of the *National Defense Authorization Act* for

Fiscal Year 2019. The ECRA tasked the US Department of Commerce with establishing appropriate controls on the export, re-export or transfer (in-country) of “emerging” and “foundational” technologies.

On November 19, 2018, the US Bureau of Industry and Security (BIS) with the Department of Commerce released an advance notice of proposed rulemaking (ANPRM) seeking public comment on criteria for identifying emerging technologies deemed essential to US national security. Comments on this ANPRM are designed to help the US Government identify and classify relevant emerging technologies, which is ultimately expected to lead to proposed rules for new Export Control Classification Numbers (ECCNs) on the Commerce Control List (CCL). A similar notice and comment period, and subsequent rulemaking, is expected to take place for “foundational” technologies in 2019.

AmCham China hopes that the US, in formulating new controls on emerging and foundational technologies, will focus on those technologies that are not already widely available in China or being readily supplied from non-US sources and limit the list of emerging and foundational technologies to those technologies that can realistically be controlled.

Education and Training

Amidst impending changes to Chinese and US export control laws and regulations, including the ECRA in the US and China's draft *Export Control Law* (discussed below), education and training are increasingly important for companies to safely and legally continue to engage in high-tech trade between China and the US. Bringing together qualified commercial importers and exporters working on trade deals and educating them on export controls and compliance can be an effective path to increasing China-US high-tech trade. In addition, a growing number of domestic Chinese companies have expressed an interest in learning about internal control processes to enhance their own compliance. Education and training can also help focus government-to-government discussion on the primary issues, such as US license processing times and criteria, impending changes to the US Control Lists, and the draft Chinese *Export Control Law*.

AmCham China has previously facilitated educational semi-

高科技贸易促进和出口管制

引言

2018年，美国对华贸易逆差达到3820亿美元，达到10多年来最高水平。中美两国在贸易实践方面的争端不断升级。美国根据《1974年贸易法》第301条，针对中国技术转让、知识产权和创新方面的政策是否歧视、阻碍或限制美国的商业机会进行了调查，导致了两国进口关税的增加。

尽管存在贸易摩擦，但美国仍是中国最大的出口市场，是美国商品的第三大进口国，仅次于加拿大和墨西哥。中美双边货物贸易额从2002年的1470亿美元（9100亿人民币）增长到2018年的近6360亿美元（超过4万亿人民币）。在持续不断的贸易争端中，美国提出立法，允许对尖端技术进行出口控制，在美国实体清单上增加备受关注的中国实体，以及变更美国外国投资委员会（CFIUS）审查的美国外国投资交易审查范围。

中国美国商会（商会）鼓励中美两国与行业和政府专家合作，解决双方在出口控制和高科技转让方面所担忧的问题。我们敦促中国和美国针对理由正当，且可以实际控制的技术，将其技术共享的限制降至最低。我们敦促以国家安全为基础的任何必要限制都应给出明确具体的定义。技术共享和发展对两国经济都有好处，广泛限制技术交流只会损害全球增长和发展。

最新发展和现存监管问题

美国出口管制

2018年，美国颁布了《出口管制改革法案》（ECRA），作为2019财年国防授权法案的一部分。《出口管制改革法案》要求美国商务部对“新兴”和“基础”技术的出口、再出口或转让（在国内）建立适当的控制。

2018年11月19日，美国产业与安全局联合商务部发布了《建议规则制定预先通知》，就确认对美国国家安全至关重要的新兴技术的标准公开征求意见。对《建议规则制定预先通知》的意见旨在帮助美国政府识别并分类相关新兴技术，从而对《商业管制清单》中新的《出口管制分类号》提出建议规则。类似的通知和评论期，以及随后的规则制定，预计将在2019年针对“基础”技术实施。

商会希望，美国在对新兴和基础技术制定新的管控措施时，也会将重点放在那些在中国尚未广泛应用的技术上，或从美国以外的国家稳定供应的技术，并将新兴技术和基础技术的清单限制在可以实际控制的技术。

教育和培训

在中美出口管制法律法规即将修改之际，包括美国的《出口管制改革法案》和《中华人民共和国出口管制法（草案征求意见稿）》（见下文），教育和培训对于企业安全合法地继续从事中美高科技贸易越来越重要。针对合格的商贸进出口商，统一进行出口管控和合规教育，可作为增加中美高科技贸易的有效途径。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。教育和培训也有助于两国政府关注讨论主要问题，例如美国许可证办理时长和标准，美国管控清单即将做出的更改，以及《中华人民共和国出口管制法（草案征求意见稿）》。

商会此前曾为美国出口商、中国进口商和政府官员举办有关合规的教育研讨会，以期将合规风险最小化。然而，由于受制于美中两国政府的预算限制而无法定期进行交流。商会敦促中美两国政府寻求机会，建立一个平台，使两国政府和行业代表能够公开合作，解决出口管控问题，确定提高中国企业收购美国控制的大宗商品能力的基准，以及促进中美两国企业携手努力，共同引领技术进步，造福两国人民。

nars for US exporters, Chinese importers, and government officials on compliance to minimize regulatory risks. Current US and Chinese government budgetary restraints, however, pose a challenge to maintaining a consistent rhythm around these exchanges. AmCham China urges both the Chinese and US governments to seek opportunities to establish a platform where government and industry representatives from both countries can openly work together to address export control concerns and determine baselines that would enhance the ability of Chinese companies to acquire US-controlled commodities. AmCham China also encourages US and Chinese companies to work together to lead mutual technology development for the benefit of both countries.

Entity List

BIS has increased the number of Chinese entities on the Entity List over the past few years. On October 30, 2018, BIS announced an amendment to the *Export Administration Regulations* (EAR) by adding one entity which was determined by the US Government to pose a significant risk of becoming involved in activities contrary to the national security or foreign policy interests of the US. This entity is Fujian Jinhua Integrated Circuit Company, Ltd. also known as JHICC.

The addition of Fujian Jianhua demonstrates how important it is for companies to understand the types of activities that can lead to being added to the Entity List. Therefore, AmCham China would like to see greater effort by both the US and Chinese governments to promote education and assist US and Chinese entities to strengthen their compliance efforts to ensure that they do not run afoul of US national security and foreign policy interests.

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 China has found that such restrictions provide little benefit to national security. AmCham China therefore requests that the US government review US export control policies and controls in light of indigenous availability in China, especially in formulating the new controls on emerging and foundational technologies.

This would also apply to products available in China from non-US firms. AmCham China continues to stress that restricting the export of US items to China when equivalent items can be freely or easily exported from another country does not benefit US national security. In addition, there is a secondary negative impact on US companies from the loss of potential 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 China therefore requests the US government align as closely as possible with other multilateral export control regime members when making revisions to the emerging and foundational technologies control lists.

Chinese Export Controls

Chinese Regulatory Reform

In June 2017 the Ministry of Commerce (MOFCOM) released for public comment China's long-awaited draft *Export Control Law*. It will be the first law in China specifically addressing export controls. We appreciate China's commitment to providing regulatory transparency by releasing the draft and trust that the Chinese government will pay close attention to public comments.

AmCham China, in conjunction with AmCham Shanghai and the US Chamber of Commerce, submitted comments on the draft Export Control Law, the key points of which are as follows:

- We urge that the focus of the draft *Export Control Law* be confined to regulating the export of items for the purpose of preventing the proliferation of nuclear, chemical, and biological weapons and the delivery systems capable of delivering such weapons.
- We hope that China will include controls on conventional weapons in alignment with the Wassenaar Arrangement.
- We emphasize the importance of focusing on non-proliferation and national security concerns in the Export Control Law and eliminating references to such terms as "economic development" and "industrial competitiveness."
- We recommend that, in the process of formulating a dual-use list, the competent authorities utilize a similar alpha-numeric designation as used in many other countries' export control regimes based on the nature of the product (i.e., type of commodity, software, or technology and its respective technical parameters).

Although there is no clear timeline for finalizing the law, it will be helpful if MOFCOM clarifies key questions from industry during the draft hearing process, perhaps through a seminar, conference, or release of official Frequently Asked Questions (FAQs). It is also important for MOFCOM to offer easily accessible export control enquiry channels at both the central and provincial/city levels for industry to have access to timely feedback and guidance.

Diversification of Dual-Use Items

The lack of transparency in China's export control laws and regulations continues to raise concern regarding the diver-

实体清单

美国产业与安全局在过去几年大幅增加实体清单上中国实体的数量。2018年10月30日，美国产业与安全局公布了《出口管理条例》修订案，增加了一个被美国政府认定有重大风险，可能参与违反美国国家安全或外交政策利益活动的实体。该实体为福建晋华集成电路有限公司（JHICC）。

福建晋华集成电路有限公司被列入出口管制实体清单表明，对于公司来说，了解可能导致被列入实体名单的活动类型十分重要。因此，商会希望看到中美两国政府在促进教育和帮助两国实体加强合规方面做出更大的努力，确保这些实体不会与美国的国家安全和外交政策利益相冲突。

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。商会发现，此类限制对国家安全几乎没有好处。因此，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，特别是在制定对新兴和基础技术的新管控措施方面。

这也适用于非美国公司在中国销售的产品。商会希望继续强调，在同等商品可以自由或很容易从其他国家出口的情况下，限制美国商品对中国的出口，不利于美国的国家安全。此外，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，对美国企业再次造成影响。

中国每从美国以外的企业进口一种产品，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，商会要求美国政府在修订新兴技术和基础技术管控清单时，与其他多边出口控制机制成员尽可能地保持一致。

中国出口管制

中国监管改革

2017年6月，商务部发布了期待已久的《中华人民共和国出口管制法（草案征求意见稿）》，征求公众意见。这将是第一部专门针对出口管制的法律。我们赞赏中国通过公布草案兑现提供监管透明度的承诺，并相信中国政府将密切关注公众意见。

商会联合上海美国商会和美国全国商会，针对《中华

人民共和国出口管制法（草案征求意见稿）》提交评论，要点如下：

- 我们敦促将《中华人民共和国出口管制法（草案征求意见稿）》的管制出口重点限制在防止核武器、化学武器和生物武器扩散的物项，以及能够运载此类武器的运载系统。
- 我们希望中国根据《瓦森纳协定》对常规武器实施管控。
- 我们强调《出口管控法》应重点关注防扩散和国家安全问题，避免提及“经济发展”和“产业竞争力”等措辞。
- 我们建议，在制定两用物项清单的过程中，主管部门应使用与许多其他国家出口管制制度中使用的类似的字母-数字名称，这些名称根据产品的性质（如商品种类、软件或者技术及其相应的技术参数）制定。

虽然该法律草案的最终完成时间并未确定，商务部在听证会审议过程中，如能通过研讨会、会议或发布官方常见问题解答等方式，对行业提出的关键问题进行澄清，将大有裨益。此外，商务部还应在中央和省市两级提供便利的出口管制咨询渠道，使行业能够及时得到反馈和指导。

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：有武器扩散与恐怖主义历史的实体和国家）。商会促请中国官员主动与美国政府及其他国家政府沟通，明确出口管制程序，尤其是关于执行方面。

此外，商会敦促中国在国有实体中明确区分民用和军用项目，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。商会还敦促中国考虑取消从外国公司获取知识产权，并以此作为进入中国市场的先决条件的相关政策，并加大对非法从外国公司购买技术的公司的打击力度。

加入多边体系

由于中国尚未加入具有影响力的多边体系，中国的管制清单与主要多边清单均不一致，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，从而增加美国向中国的高科技出口。商会建议中国政府能够

sion of items to harmful end-users or end-uses (e.g., entities and countries with a history of proliferation and terrorism). AmCham China recommends that Chinese officials reach out to the US government, among others, to clarify export control procedures, especially as they relate to enforcement.

In addition, AmCham China urges China to clearly distinguish its civilian and military programs in state-owned entities, to ensure that dual-use items are not diverted from civil to military programs thereby constraining high-tech commercial trade. AmCham China also urges China to look at rescinding policies designed to acquire intellectual property from foreign companies as a prerequisite for market entry and increase enforcement against companies that illegally procure technology from foreign companies.

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 aligned with the major multilateral lists, particularly the Wassenaar List. Full membership would put China on a par with its biggest trade partners and increase high-tech exports from the US to China. AmCham China recommends that the Chinese government actively pursue membership in these multilateral export control regimes, in particular the Australia Group and the Missile Technology Control Regime, while also taking an active leadership role in the multilateral regimes of which it is already a member.

dational technologies with a focus on those technologies that are not already widely available in China or being readily supplied from non-US sources and limit the list of covered emerging and foundational technologies to those technologies that can realistically be controlled.

For Both Governments:

- **AmCham China encourages greater efforts by both governments to assist US and Chinese entities in strengthening their compliance efforts through education and training activities to ensure they do not run afoul of US national security and foreign policy interests.**
- Establish a vehicle where government and industry representatives from both countries can openly collaborate to address export control concerns and determine baselines that would enhance the ability of Chinese companies to acquire US-controlled commodities and allow US and Chinese companies to develop technology together for the benefit of both countries.

Recommendations

For the Chinese Government:

- **Rescind policies designed to acquire intellectual property from foreign companies as a prerequisite for market entry and increase enforcement against companies that illegally procure technology from foreign companies.**
- Consider carefully industry comments on China's Draft *Export Control Law*.
- Revise Chinese export control lists to more closely align with the multilateral lists, both in structure and in language, and seek to join additional multilateral export control regimes.
- 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.

For the US Government:

- **Formulate new controls on emerging and foun-**

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

对中国政府：

- 废除以向外国公司收购知识产权为进入中国市场先决条件的政策，加大对非法从外国公司购买技术的公司的打击力度。
- 仔细考虑行业对《中华人民共和国出口管制法（草案征求意见稿）》的意见。
- 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，并寻求加入更多的多边出口控制机制。
- 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。

对美国政府：

- 制定对新兴技术和基础技术的新管控措施，重点关注那些在中国尚未广泛获得或随时可从非美国供应商获得的技术，并将所涵盖的新兴技术和基础技术的清单限制为可以实际控制的技术。

对两国政府：

- 商会鼓励两国政府加大力度，通过教育和培训活动，协助两国实体加强合规，确保其不违反美国国家安全和外交政策利益。
- 建立两国政府和行业代表公开合作机制，解决出口管控问题，确定增强中国企业收购美国控制的大宗商品能力的底线，以及促进中美两国企业携手努力，共同引领技术进步，造福两国人民。

Human Resources

Introduction

Finding and retaining talented personnel remains a critical component of any business's long-term strategy. Today's global economy is highly integrated, fostered by the rapid transmission of information, resources, and people enabled by technology. Underscoring greater freedom of movement in today's globalized world, an estimated 244 million people (3.3% of the world's population) in 2018 lived and worked outside the country in which they were born according to the International Organization of Migration (IOM). With more and more people willing to look for work outside of their home countries, the pressure is growing for corporations to attract and retain such globalized talent.

In order to remain competitive within a China market that is shifting towards high-skill, technology-intensive sectors, companies in China need a comprehensive talent plan. Such a plan should consider best practices in the areas of recruitment, diversity and inclusion, training, compensation and benefits, and employee retention.

Recent Developments

Hong Kong, Macau, and Taiwan Residents on the Mainland no Longer Need Work Permits

On July 28, 2018 the State Council issued the *Decision to Cancel a Batch of Administrative Licensing Matters*, followed by the Ministry of Human Resources and Social Security (MHRSS)'s *Decision on Abolishing Hong Kong, Macau and Taiwan Employment Regulations on the Mainland* on August 23, 2018 (Order No. 37). Together these decisions eliminated requirements for Hong Kong, Macau, and Taiwan (HMT) residents working on the mainland to hold Work Permits. HMT residents can now handle human resources and social security-related matters with their mainland residence or travel permit, as well as other valid ID cards. Furthermore, they can provide proof of employment in mainland China with their business licenses, employment contracts, salary payment certificates or social insurance payment records.

New policies have been officially launched and implemented

in Shanghai, Beijing, and Guangzhou to enable employment of HMT residents in mainland China. Many AmCham China members are global enterprises with established operations in greater China. AmCham China welcomes these reforms to simplify the procedures for employing HMT residents in mainland China and promote the flow of talent between the mainland and HMT. AmCham China urges MHRSS to regularly publish progress reports through its official channels to increase public awareness, familiarity, and acceptance of these new policies. This will ensure consistency in policy implementation nationwide and avoid unnecessary complications arising from incomplete information.

AmCham China also recommends extending these policies to all foreign workers on the mainland, including for handling, changing, extending or canceling Work or Residence Permits. Relevant authorities should consider further reform of regulations pertaining to foreign workers in mainland China, including, for instance, how employers can reconcile the five-year limit on Work Permits with labor contracts that do not have a similar five-year limit.

Revised Individual Income Tax

On October 1, 2018 China's new Individual Income Tax Law (IIT) came into effect. The changes, and their respective effects, include:

- The four main categories of income (wages/salaries, labor remuneration, royalties, and concession/franchise payments) are now regulated under a comprehensive collection regime for the first time;
- The minimum threshold for individual income tax liability has been raised from RMB 3,500 to RMB 5,000 per month (RMB 60,000 per year). Consequently, a greater proportion of worker incomes will be tax-exempt so they will enjoy a larger take-home salary, a generally positive outcome.
- For the first time, the IIT includes six special individual income deductions (for children's education, continuing education, medical treatment for serious diseases, housing loans, rent, and elderly care), which should offer equal opportunities to further reduce an employee's individual tax burden. For corporations and enterprises the unified tax collection process is more compli-

人力资源

引言

寻 找和留住人才、员工和管理层仍然是任何企业长期战略的关键组成部分。今天，借力于信息、资源和技术赋能人员的快速传播，全球经济高度整合。国际移民组织认为，今天的全球化世界强调更大的行动自由，据估计，2018年，约有2.44亿人（占世界人口的3.3%）在他们出生国之外的地方生活和工作。随着越来越多的人愿意在本国之外寻找工作，企业吸引和留住全球化人才的压力会越来越大。

目前，中国市场正在向高技能和技术密集型行业转变，为在中国市场保持竞争力，中国企业需要一个全面的人才计划。该计划应考虑招聘、多元化与包容、培训、薪酬福利以及员工保留等领域的最佳实践。

最新进展

取消港澳台人员在内地就业许可

2018年7月28日，国务院印发《关于取消一批行政许可事项的决定》，取消港澳台人员在内地就业许可。8月23日，人力资源社会保障部颁布《关于废止〈台湾香港澳门居民在内地就业管理规定〉的决定》（人力资源社会保障部令第37号），废止《台湾香港澳门居民在内地就业管理规定》（劳动和社会保障部令第26号）。为进一步做好港澳台人员在内地（大陆）就业有关工作，在内地（大陆）求职、就业的港澳台人员，可使用港澳台居民居住证、港澳居民来往内地通行证、台湾居民来往大陆通行证等有效身份证件办理人力资源社会保障各项业务，以工商营业执照、劳动合同（聘用合同）、工资支付凭证或社会保险缴费记录等作为其在内地（大陆）就业的证明材料。依法维护港澳台人员在内地（大陆）就业权益，为港澳台人员在内地（大陆）就业营造良好环境。

新政策已经正式推出。并在上海、北京、广州等地得到落实。由于中国美国商会（商会）中的大部分企业都是全球化企业，其中不少企业还有大中华区的架构配置，这项措施简化了台港澳人员来大陆就业和发展的手续，极大地推动两岸三地的人才流动，交流互访以及相互学习共同促进。商会促请人力资源和社会保障部通过官方渠道定期发布进展报告，提高公众对该政策的认识、熟悉程度和接受程度。这将确保各地区政策落实的一致性，避免因错误信息和误解造成的不必要的不确定性。

另外商会也建议把该政策延伸至其他外籍人员工作居住证、就业证的办理、延期、变更及注销；并制定出更清晰的政策衔接，例如就业证的五年上限如何与劳动合同发的无固定期限保持一致。

修改个人所得税法

2019年1月1日起修订后的《个人所得税法》正式实施。这些变化及其各自的影响包括：

- 工资薪金、劳务报酬、稿酬和特许权使用费等四项劳动性所得首次实行综合征税。
- 个税起征点由每月3500元提高至每月5000元（每年6万元）。免缴个税的职工人数增加了，这意味着职工到手的工资多了，大大地提升了员工劳动积极性，对企业的发展带来积极影响。
- 首次增加多项专项附加扣除，真正体现量能课税的公平原则，进一步降低个税税负。对企业而言，综合征税征缴程序较复杂；对综合管理的要求较高，难度较大；成本较高。商会建议征缴流程制定越清晰简洁越好。在征求意见后，尽早公布政策，以便企业提前准备。
- 优化调整税率结构。综合收入仍按七波段累进制度征税（从3%降至45%）。低税率级距扩大（更多的纳税人现在可以获得较低的税率），较高的频段保持不变。

cated, requiring more costly management. AmCham China recommends that the corporate collection process be made as clear and concise as possible. Any revisions to the policy should be made open to public comment and promulgated as soon as possible so that enterprises have time to prepare; and

- The tax rate structure has been adjusted. Comprehensive income is still taxed under a seven-band progressive system (from 3% to 45%), but the lower bands have been expanded (more tax-payers can now qualify for the lower rates). Higher bands remain the same. These changes should benefit middle-income workers the most. As employees will now see more take-home pay, corporations should benefit from lower employee turnover.

Phased Reduction of Social Insurance Rates and Social Security Reforms

To further reduce labor costs and enhance the business environment, MHRSS and the Ministry of Finance (MOF) announced that as of May 1, 2018 the period to continue the phased/gradual reduction of social insurance contribution rates would be extended for another year, with specific details to be determined individually by provinces, autonomous regions, and municipalities.

Reducing the corporate pension contribution rate has been a priority of the Party Central Committee and the State Council for some time. Since 2015, MHRSS has reduced the social insurance contribution rate four times (social insurance includes pension, medical, unemployment, maternity and work-related injury insurance). The overall social insurance contribution rate in all has declined nearly 10% (from 41% to 37.25%). Cumulatively, these changes have saved businesses approximately 315 billion RMB in total.

AmCham China welcomes the above policy changes, which have reduced the costs of social insurance born by enterprises and helped level the playing field between foreign and domestic enterprises. Reduced social insurance fees have helped promote supply side structural reform, improve the business environment, boost employment through start-up enterprises, and contribute to more sustainable socio-economic development.

Therefore, AmCham China members urge the government to continue to gradually reduce the corporate pension contribution rates in acknowledgement of the fact that foreign-invested enterprises (FIEs) have paid their taxes in full and in line with relevant regulations. Further reductions should not affect the operations of AmCham China members nor do we anticipate they will affect the level and normal adjustment of employee pension benefits and adjustments.

Ongoing Regulatory Issues

Labor Costs

Rising labor costs continues to rank among the most difficult challenges faced by AmCham China members. In the 2019 AmCham China *Business Climate Survey*, 48% of respondents cited rising labor costs among the leading challenges to their business in China. Throughout the year, average wage growth in China was 6.4% (y/y) across all industries. The high-tech sector experienced the highest wage increase (7.1% y/y in 2018). According to an AON Hewitt survey, following the overall slowdown of economic growth in China, we should expect to see a slowdown in wage growth in 2019 in the China labor market, including the high-tech industry. Wage gaps between Tier I and Tier II regions fell, driven by more rapid wage growth in Tier II cities. Notably, wage growth in traditionally “blue collar” jobs was faster than that of “white collar” jobs.

As discussed above, the new IIT regime reform reduces both the individual and corporate tax burden. In the first month of implementation, October 2018, according to the State Taxation Administration (STA), in the first month of implementation alone the total tax burden fell by RMB 31.6 billion. Tax payments across the manufacturing sector fell by RMB 5.85 billion in October alone, accounting for 19.3% of the total decrease according to the STA.

While the IIT reform reduces personal income taxes, it is set to increase corporate social security payments and obligations. Higher social security costs will squeeze the profits of small-and-medium-sized (SME) businesses. At the same time, greater security benefits could make SMEs a more attractive employment proposition, allowing them to draw in top talent and compete with larger corporations. The new social security payment structures increase operating costs for joint ventures in China, which will increase supply chain costs for foreign firms.

Due to uncertainties in the macroeconomy, AmCham China expects to see workers become more cautious in the job market and to favor stability over mobility. We expect businesses to focus more on upscaling the skills of current employees and raising organizational efficiency.

Disability Employment

On March 15, 2017 MOF issued the *Notice of the Ministry of Finance on the Cancellation and Adjustment of Some Government Funds* (Circular No. 18), which was followed by the April 2018 *Notice on Reducing the Collection Standards for Some Government Funds* (Circular No.39). Under Circular No. 39, on April 1, 2018, the upper limit for charging employment security funds for disabled employees was reduced from three times to two times the average local wage. The new policies also adopt a transparent and standard calculation to assess annual payments owed to the Disabled Person’s Employment

这些变化应该使中等收入工人受益最多。对企业来说，员工实际到手的收入更多了，有利于企业职工的队伍稳定性。

阶段性降低社会保险费率及社保改由税务征收

为进一步降低企业用工成本，增强企业发展活力，根据有关规定，人社部、财政部印发通知，自2018年5月1日起，阶段性降低社会保险费率的期限再延续一年。具体方案由各省（区、市）研究确定。

适当降低企业养老保险的费率一直都是党中央和国务院的重要决策，自2015年以来近三年的时间，人社部先后降低或者阶段性降低了社会保险费率4次（社会保险包括养老金，医疗，失业，生育和工伤保险），总体的社保费率从41%降到了37.25%，总体的幅度接近10%，已累计减少降低企业成本约3150亿元人民币。

以上政策的出台为商会旗下的一直以来都正规缴纳各种保险的企业带来了更多公平性，并确实减轻了企业负担。这几年降费对推动供给侧结构性改革，对增强企业的活力，促进就业创业，对经济社会持续稳定健康发展起到了积极的作用。

所以说，继续阶段性的降低企业养老保险的费率及社保由税务征收不会影响到商会旗下的外资企业的正常运行，因为一直以来外资企业都是按照社保规定足额按时缴纳，同时也不会影响到员工个人养老金待遇的水平和正常的调整。

现存监管问题

劳动成本

商会会员企业所面临最艰难的挑战之一是劳动力成本上涨继续居高不下。2019年商会《营商环境调查报告》显示，48%的受访者认为劳动力成本上涨是他们在华业务面临的最大挑战。全年中，所有行业的中国平均工资增长率为6.4%。高科技行业继续保持最高工资增长率（2018年同比增长7.1%）。根据怡安翰威特公司的调查，在中国经济增长整体放缓之后，我们预计2019年中国劳动力市场（包括高科技产业）的工资增长将放缓。由于二线城市工资增长较快，一线和二线城市之间的工资差距下降。值得注意的是，传统意义上“蓝领”岗位的工资增长速度比“白领”岗位要快。

2018年10月，中国政府宣布了一项新的个人所得税制

(IIT)，对所得税制度进行了重大改革。总体而言，这些改革减轻了个人和公司的税务负担。在实施的第一个月，从2018年10月开始，制造业个，根据国家税务局的统计，仅在实施的第一个月，总税负就减少了人民币316亿。仅10月份，整个制造业的税收就减少了人民币58.5亿元，占减税总额的19.3%。

除了减轻税负外，个人所得税制还增加了企业社会保障支付和义务。正如目前所写的那样，这些改革将挤压中小企业的利润空间。与此同时，这些改革也可以使中小企业的就业更具吸引力，使他们能够吸引顶尖人才并与大公司竞争。无论如何，新的社会保障支付结构所带来的成本负担将影响外国公司的合资伙伴，这将反映在供应链成本的上升。

由于宏观经济的不确定性，商会希望员工在求职时会更加谨慎和保守些并能更加看重劳动力市场的稳定而不是流动性。同时企业应更多地关注提高现有人才技能和提高组织效率。

残疾人士就业

自2017年3月15日财政部发布了《财政部关于取消、调整部分政府性基金有关政策通知》（财税[2017]18号）之后，根据党中央、国务院决策部署，财政部印发了《关于降低部分政府性基金征收标准的通知》（财税[2018]39号），旨在进一步减轻社会负担，支持实体经济发展。该通知明确自2018年4月1日起，将残疾人就业保障金（简称“残保金”）征收标准上限由当地社会平均工资的3倍降低至2倍。在执行残保金的征收过程中采用透明、统一的公式去计算。计算考虑了雇用残疾员工的实际数量，地方政府基准，这些基准要求公司员工分配给雇用残疾人的比例（大多数城市为1.5%，北京为1.7%，上海为1.6%），以及城市的平均工资。

商会赞赏中国政府在残疾人保障金上避免对企业增加财务压力和负担的进一步举措，同时也认可中国政府在推动、支持残障人士就业的坚定决心。商会更认识到利用残疾人就业保障金这一杠杆达到推动和支持残障人士就业的不足。因此建议从政策导向、教育培训、就业机制三个角度入手，达到政府与企业与残障劳动者的多方联动效应，以真正地有效推动残障人士就业问题的解决，进一步营造残障人士和谐就业环境的目的。

Security Fund (Disability Fund). The calculation takes into consideration the actual number of hired employees with disabilities, local government benchmarks which mandate the percentage of a company's workforce allocated to hiring people with disabilities (set at 1.5%, in most cities, 1.7% Beijing and 1.6% in Shanghai), and the average salary in the city.

AmCham China appreciates the Chinese government's efforts to avoid increasing social security obligations of businesses associated with the Disability Fund. We also recognize the Chinese government's firm commitment to supporting employment of people with disabilities. AmCham China notes, however, that increasing employment of people with disabilities cannot be achieved through the Disability Fund alone.

We recommend supporting collaborative efforts between government, the private sector, and individual workers with disabilities in three areas: policy support, education and training, and employment. This collaborative effort will generate better employment opportunities for people with disabilities.

Policy Support

In October 2015, the *Use and Management of Disabled Persons' Employment Security Fund* came into effect. While this policy focuses on how to appropriately collect contributions for the Disability Fund, it lacks provisions on how the Disability Fund can be used. Moreover, for companies that meet government-designated employment thresholds for employing people with disabilities, we suggest adopting additional incentives through the Disability Fund. For example, our members support efforts to encourage companies to recruit people with disabilities by reducing assessments for the Disability Fund or by refunding a portion of assessments levied on that company if a certain percentage of the workforce consists of employees with disabilities.

Education and Training

People with disabilities seeking employment often face additional challenges developing skillsets required to meet employer's needs. We recommend adaptation of available education and training opportunities to meet the different challenges posed by individual disabilities and mapped to specific occupational skills in demand. The existing education and training model is designed to support the hiring of people with disabilities in part-time or temporary jobs. We urge that this mindset shift to provide training that expands their professional, technical, and managerial abilities to qualify them for full-time, professional positions.

Employment Opportunities

To promote the employment of people with disabilities, it is absolutely critical to create effective recruitment channels. In today's economy there are two main modern business recruitment methods: on-campus recruitment aimed at university

graduates, and social recruitment, aimed at employees with work experience and already in the labor force.

Both channels fail to identify and recruit talented people with disabilities. We suggest that the relevant government departments and social organizations, such as the China Disabled Person's Federation (CDPF), establish a mechanism for companies and enterprises to reach out to, identify, and recruit suitable candidates with disabilities.

Pollution and Employee Retention

At the October 2017 National Congress of the Communist Party of China, President Xi Jinping advocated "speeding up ecological system reform and building a beautiful China." AmCham China acknowledges the unprecedented importance given by the CPC and the Chinese government to environmental protection and "meeting people's ever-growing demands for a beautiful environment." From a human resources perspective, protecting the environment, controlling pollution, and building a beautiful China is not merely a political, economic, and social issue, it has direct impacts on talent retention.

Businesses are faced with the continuous challenge of attracting and retaining talented employees. China is currently faced with a shortage of senior management, professional, and technical personnel. To alleviate this shortage, it is critical to attract foreign high-end talent, overseas Chinese, and returning graduates to China. Chinese nationals returning to China from overseas often report air pollution as one of their biggest grievances. Air quality is also one of the top concerns for overseas scientists considering working in China.

Overseas senior talent based in China have begun to relocate outside China because of health risks from environmental pollution and poor air quality. In the past few years, AmCham China members have noticed a similar trend with mid-level or senior Chinese employees recruited domestically but then electing to emigrate; pollution constitutes a major factor in their decision. Many businesses must offer higher salaries or additional benefits to retain key talent. As such, we recommend that the government continue to prioritize improving air quality and reducing pollution in Beijing, Shanghai, and other megacities with many foreign workers.

Labor Skills Shortage and Professional Development Programs

China's stock of human capital, which includes investments in both health and education, has grown markedly over the past several decades (see the education chapter). According to the new Human Capital Index from the World Bank, which considers measures of health and education (like years of formal schooling, test scores, and the probability of survival to age five), China ranks 46 among 157 countries measured in the index. It scores higher based on its income

政策倾斜

《残疾人就业保障金征收使用管理办法》自 2015 年 10 月施行，其核心主要集中在如何征收残疾人就业保障金上，缺少如何使用保障金的具体规定及相关的监管机制。同时，对于达到残疾人就业标准的企业，商会建议就残疾人就业保障金应采取一定措施予以鼓励，比如以减免、返还保障金的方式鼓励企业招录残障人士。

教育培训

提高残障人士职业技能以符合企业的用人用工需求，是残疾人就业困难的核心问题。我们建议可以根据残障类型的不同，有针对性地进行职业技能提升为目的的教育培训体系改进，以满足企业的实际需求而提高残障人士就业的可能性。同时，应当转变思维定势，破除残疾人就业以辅助性、临时性岗位为主要目标的教育培训模式，强化残疾人专业技术能力、管理能力的提升，全面提高残障人士在管理岗位、专业技术岗位、工勤辅助岗位等多种岗位均有就业成功的可能性。

就业机制

推进残障人士就业的另外一个关节点是如何形成企业招录残障人士的有效渠道。现代企业的人才招聘主要有两种，一种为校园招聘，主要面向高校招聘大中专毕业生；另外一种为社会招聘，主要是面向社会招聘具有一定工作经验的员工。

这两种主要招聘渠道所面临的问题是无法有效地寻找相关残障人士的人才库。商会建议有关政府部门及社会团体，比如人力资源与社会保障部门及残疾人联合会能够协调搭建残障人士的平台和机制，帮助企业开拓招录残障人士的有效渠道，以便于企业能够快速有效地在校园和人才市场上寻找到合适的残障人士。

环境污染对人才管理的影响

在 2017 年 10 月举行的中国共产党第十九次代表大会上，习总书记在题为《决胜全面建成小康社会夺取新时代中国特色社会主义伟大胜利》的报告中将“加快生态文明体制改革，建设美丽中国”作为十三个章节之一进行了深入的阐述。商会意识到中国共产党和政府已经将保护环境和“满足人民日益增长的优美生态环境需要”提到了前所未有的高度予以重视。从企业人力资源管理的角度出发，保护环境、治理污染和建设美丽中国，不仅仅是政治、经

济和社会问题，同时也是一个关系到人才管理的问题。

人才管理最为受到关注的两项工作作为人才吸引和人才保留。从人才吸引的角度出发，如何吸引外籍高端人才进入中国就业，如何吸引海外华人华侨及留学人员回国是解决国内高级管理人才和高级专业技术人才的相对短缺状态的重要方式。“海归”在国内最不满意的事情非空气污染莫属，而海外科学家最关心的问题之一就是中国的空气质量。

对于已经来到中国工作的外籍高端人才，由于环境污染问题和空气质量对于本人及家属健康的影响而选择离开中国的情形时有发生。同样的，企业经过不断努力培养起来的本土中高端人才也在近几年出现了移民海外的倾向，其中影响本土人才外流的一个重要因素就是环境污染对人才及家属身体健康的影响。另一方面，企业也迫不得已地提供额外薪资补贴的方式进行人才保留，造成了企业面对着额外的财务压力和负担。最后，我们建议政府能否考虑优先改善北京和上海超大城市的空气质量，毕竟是吸引国际人才较多的地方。

劳动技能短缺和专业发展计划

中国的人力资本存量，包括对健康和教育的投资，在过去几十年中显著增长（见教育章节）。根据世界银行的新人力资本指数，该指数考虑了健康和教育的衡量标准，如多年的正规学校教育、考试成绩和到出生后可活到五岁的概率，中国在该指数衡量的 157 个国家中排名 46。根据其收入水平，其得分高于预期，并高于东亚 - 太平洋地区的平均水平。^{iv} 该指标表明中国成功地满足了其多数人口的基础教育和健康需求。另一个重要趋势是妇女进入劳动力市场。据估计，中国 43% 的劳动力是女性。^v 就性别而言，中国人力资本指数得分女性略高于男性。

中国经济需要的不仅仅是基础教育。企业需要熟练劳动力来继续促进增长，创造就业机会并提高生产力。大量熟练劳动力可以促进技术应用和创新，而减少技能分配上的不平等也可以减少收入的不平等。

根据 2018 年光辉国际进行的一项研究估计，到 2030 年，中国将面临各个经济部门的技能短缺 - 即使是那些目前存在熟练劳动力过剩的领域，如制造业。该报告发现，到 2030 年，由于预计的熟练劳动力短缺，中国在技术、媒体和通信领域的收入将减少 440 亿美元。与此同时，金融和商业服务业将可能减少 1470 亿美元，而目前面临劳动力过剩的制造业预计将减少 700 多亿美元的收入。

level than would be expected and higher than the average across the East Asia-Pacific region. This metric suggests China is successfully meeting the basic education and health needs of much of its population. Another important trend has been the entry of women into the labor force. An estimated 43% of China's labor force is female. China's Human Capital Index score is slightly higher for females than males.

China's economy needs more than just basic education. Businesses require skilled labor to continue to enhance growth, create jobs, and boost productivity. Large pools of skilled labor can facilitate the adoption of technology and innovation, while reducing inequality in the distribution of skills can also reduce income inequality.

A 2018 study by Korn Ferry estimated that by 2030, China's workforce will shrink by 20 million and China will face skills shortages across multiple sectors of its economy, even those areas which currently enjoy skilled labor surpluses, such as manufacturing. The report found that by 2030 China could generate US \$44 billion less income in technology, media, and telecommunications sectors because of the expected shortage of skilled labor. Meanwhile, the financial and business services sector would lose out on a potential US \$147 billion, and manufacturing, an industry with a surplus of labor, is projected to lose income of more than US \$70 billion.

As China's economy continues to become more sophisticated, these are among some of the highest potential growth sectors in the economy. If the labor market cannot generate the necessary skills domestically, China will have to look abroad to find the right skilled labor. An influx of foreign, high-skilled labor will have implications for China's welfare system and social insurance programs.

Just as China needs skilled labor to power the digital economy, artificial intelligence (AI) and automation will also bring changes to the workforce. According to PwC, the adoption of AI technologies may generate unemployment in certain sectors of the Chinese economy, despite having the potential to boost overall job growth; estimates by PwC and McKinsey respectively have suggested that between 26% and 51% of jobs in China could be displaced by AI and related technologies over the next few decades. At the same time the need for businesses to leverage AI and related technologies is only going to grow. AI technologies represent an opportunity for many companies to stimulate productive growth and compensate for rising labor costs. Moreover, China's rising middle class (more than 400 million people) is increasingly comfortable using technology applications to make purchases and obtain services.

Considering the uncertainty around the timing and extent of workforce displacement from AI-related technologies, skills development and retraining programs will become even more important for companies to maintain their competitive edge. Various public and private institutions in China have already begun piloting programs to prepare and retrain workers for the

digital economy in customer service, jobs that require foreign languages, and leveraging the skills of employees with disabilities. Sharing best practices from these pilot projects would be of great benefit to many companies who want to offer their employees professional development skills and training.

Bearing in mind the current and projected talent shortages in key high-skill sectors of the economy, companies will be competing to attract and retain high-quality employees. The work environment, company values and ethical standards, and competitive salaries and benefits will become increasingly important. One likely outcome will be a rise in generous compensation packages being offered among positions in the most in-demand sectors.

Companies will increasingly need to define and offer career progression opportunities for talented employees. Building a fluid organizational structure and moving staff between divisions, geographies, and projects is one way to support career development while building a collaborative environment that promotes continual learning. Companies should also consider strategies to retrain or "reskill" employees to meet the changing demands of the digital economy. Leveraging online training programs, university partnerships, national and provincial government programs, scholarships and funding, and creating effective peer-to-peer or mentor networks can be low-cost, effective professional development services.

Recommendations

For the Chinese Government:

- **Explore more innovative approaches to support people with disabilities such as allowing enterprises to use resources from the Disability Fund to support charitable initiatives, improve workforce training and reeducation for people with disabilities that meets market needs, and establish mechanisms that connect businesses and people with disabilities looking for hire.**
- Consider extending the new Work and Residence Permit policies for HMT residents to all foreign workers in China.
- Support research and market analysis on China's current labor shortages and skill mismatches to identify key industries facing shortages of talent and support public-private retraining and reskilling programs, particularly those focused on the digital economy.
- Consult with industry stakeholders before issuing new laws and regulations and their interpretations, especially those adding to labor costs.
- Consider prioritizing solutions to Beijing and Shanghai's air quality issues in order to attract and retain more global talent.

随着中国经济变得更加复杂，这也是促进经济潜在增长最快的因素之一。如果国内劳动力市场无法获得必要的技能，中国将不得不到国外寻找合适的熟练劳动力。外国高技能劳动力的涌入将对中国的福利制度和社会保险计划产生影响。

正如中国需要熟练的劳动力来推动数字经济，人工智能和自动化也将带来劳动力的变化。普华永道认为，人工智能技术的应用虽然有可能推动就业的整体增长，但也可能在中国经济的某些部门产生失业现象；普华永道和麦肯锡的各自的预测已经表明，未来几十年，中国 26% 至 51% 的就业岗位可能被人工智能和相关技术所取代。同时，企业利用人工智能和相关技术的需求只会增加实现增长。人工智能技术为许多公司提供了一个刺激生产增长和弥补劳动力成本上升的机会。此外，中国正在崛起的中产阶级（超过 4 亿人）越来越轻松自如地使用技术来进行采购和获得服务。

考虑到人工智能相关技术取代劳动力在时间和程度存在不确定性，技能发展和再培训计划对于公司保持竞争优势只会愈加重要。中国的各公私机构已经开始试行计划，在客户服务和不同语言方面为数字经济准备和再培训员工，并利用残疾员工的技能。分享这些试点项目的最佳实践对于许多想为员工提供职业发展技能和培训的公司来说大有裨益。

若能时刻将关键高技能经济部门目前和将来的人才短缺纳入决策考量，公司将竞相吸引和留住高质量的员工。工作环境、公司价值观和道德标准以及有竞争力的薪酬福利将变得越来越重要。一个很可能的结果将是大多数需求部门在职位中提供更多丰厚的薪酬方案。

公司将越来越需要为有才能的员工确定和提供职业发展机会。在创立一个促进继续学习的协作环境的同时，建立流动的组织结构，使员工跨部门、跨地域和跨项目流动是支持职业发展的一种方式。公司还应考虑员工留任或再培训策略，以满足数字经济不断变化的需求。利用在线培训计划、大学合作伙伴关系，国家和省级政府计划、奖学金和资助，以及创建有效的对等网络或指导网络，可谓低成本而有效的职业发展服务。

建议

对于中国政府：

- 探索更多支持残疾人的创新方法，例如允许企业利用残疾人基金的资源支持慈善活动，改善劳动力培训和残疾人教育，满足市场需求，并建立连接企业和寻找工作的残疾人的机制。
- 考虑将香港澳门台湾居民的新工作和居留许可政策扩展到中国的所有外籍工人。
- 支持中国目前劳动力短缺和技能不匹配的研究和 market 分析，以确定面临人才短缺的关键行业，支持公私合作再培训和再培训计划，特别是那些专注于数字经济的计划。
- 在发布新的法律法规，特别是有关增加劳动力成本的内容及解释之前，向相关行业进行咨询。
- 考虑优先改善北京和上海的空气质量问题，以吸引和留住更多的全球人才。

Intellectual Property Rights

Introduction

The *Memorandum on the Actions by the United States Related to the Section 301 Investigation* (Memorandum) issued by President Trump on March 22, 2018 initiated the process that has since resulted in three rounds of tariff increases under Section 301 of the Trade Act of 1974. The Memorandum outlined policies of “economic aggression” aimed at US and other foreign companies, including policies and laws that have resulted in large-scale technology and intellectual property (IP) transfer to support China’s industrial policy goals. The Section 301 investigation and subsequent trade dispute cast a spotlight on longstanding foreign technology licensing restrictions faced by US and other foreign companies. These include requirements that indemnity risks be borne by foreign technology transferors, requirements that prohibit foreign licensors from restricting Chinese licensees from modifying or making improvements to licensed technology, and requirements that improvements to licensed technology belong to the party making the improvement. AmCham China is hopeful that current negotiations between the US and China will address these longstanding issues in a way that results in policies and legislation to level the playing field for US companies engaged in technology licensing into China.

While the Section 301 investigation, sanctions and ensuing negotiations between the US and China have rightfully highlighted longstanding IP issues of concern to US and other foreign companies, AmCham China members have observed several improvements over the last year despite the somber tone that has tended to pervade coverage of IP and China in 2018 and early 2019. In the pharmaceutical industry new Regulatory Data Protection (RDP) periods of six and 12 years were introduced for pharmaceutical products and therapeutic biologics products respectively (see Healthcare Chapter). In March 2019, the State Council revoked certain provisions of the Administration of Technology Import/Export Regulations (TIER) (Administrative Order No. 709), namely Article 24(3), 27, and 29. Article 24(3) required foreign technology owners to compensate the corresponding Chinese party (licensee, assignee, or JV partner) against any infringements of third-party IP Rights. Article 27 stated that technology improvements belong to the party making the improvement, without any opportunity for the parties to allocate the rights by contract. Article 29 established the

prohibited terms of technology import contracts. AmCham China welcomes the removal of these provisions as an opportunity to share technology according to terms agreed upon by both parties and to appropriately mitigate risk through contract.

Nevertheless, in the 2019 AmCham China Business Climate Survey, “a lack of sufficient IP protection” was the main challenge preventing companies from increasing innovation in China. This chapter will outline some of those improvements, as well as some persistent and new concerns relating to IP that affect both foreign and domestic companies operating in China

Recent Developments and Ongoing Regulatory Issues

Restructuring of the Government and Courts

AmCham China welcomes the efforts by the Chinese government and the Supreme People’s Court (SPC) to restructure the government agencies that oversee IP, as well as China’s court system. AmCham China members are hopeful that recent restructuring efforts will increase efficiency of implementation and enforcement of IP laws, regulations and administrative measures, and increase consistency and transparency in judgments issued by the IP courts and tribunals. Along these lines, AmCham China members are encouraged by the creation of the State Administration for Market Regulation (SAMR), which sits directly under the State Council and has consolidated supervision authority over aspects of IP administration that previously fell within the ambit of the State Administration for Industry and Commerce (SAIC), the Administration for Quality Supervision Inspection and Quarantine (AQSIQ), the China Food and Drug Administration (CFDA) and other government agencies.

The restructuring under SAMR included the incorporation of the Trademark Office (TMO) into the State Intellectual Property Office (SIPO), creating what is essentially China’s first joint patent and trademark authority. SIPO has since been renamed the China National Intellectual Property Administration (NIPA). As currently conceived, NIPA is responsible for a wide range of IP-related functions. In addition to administrative oversight over patents, NIPA’s

知识产权

引言

2018年3月22日，美国特朗普总统发表《美国关于301条款调查的行动备忘录》，开启了自1974年《贸易法》301条款以来的三轮关税上调进程。备忘录概述了针对美国和其它外国公司的“经济侵略”政策，包括大规模技术和知识产权转让的政策和法律来支持中国的产业政策目标。特别提到了《中国制造2025》，“301调查”及其引发的贸易纠纷，突显出美国和其它外国公司长期以来面临的外国技术许可限制。其中包括外国技术转让方承担赔偿风险，禁止许可方限制被许可方修改或者改进许可技术以及许可技术的改进属于改进方的要求。中国美国商会（商会）希望，目前的中美谈判能通过立法和制定相关政策解决这些长期存在的问题，为从事技术许可进入中国的美国企业创造公平的竞争环境。

“301调查”、制裁以及随后的中美谈判凸显了美国和其他外国公司长期关注的知识产权问题，尽管在2018年和2019年初，关于知识产权和中国的报道普遍笼罩着阴郁的氛围，在过去一年里，商会会员仍然看到了一些改善。在制药行业，为期6年和12年的新的监管数据保护（RDP）周期分别应用于制药产品和治疗性生物制品（见医疗保健章节）。2019年3月，国务院撤销了《技术进出口管理条例》（第709号行政令）第24条第3款、第27条、第29条的若干规定。第二十四条第3款要求外国技术所有者就侵犯第三方知识产权的行为向中方（许可拥有者、受托人或合资伙伴）作出赔偿。第27条规定，技术改进成果属于做出改进的一方，双方不得通过合同来分配权利。第29条规定了技术进口合同的禁止条款。中国美国商会对取消这些条款表示欢迎，这也提供了一个机会，使双方根据商定的条款共享技术，并通过合同适当降低风险。

然而在《2019中国营商环境调查报告》中，“缺乏足够的知识产权保护”是阻碍企业在中国增加创新的主要挑战。本章将概述其中一些改进，以及与知识产权相关的长

期存在的以及新的问题，这些问题也会影响在中国运营的内外资公司。

最新进展和现存监管问题

政府和法院重组

商会赞赏中国政府和最高人民法院为重组监管知识产权的政府机构以及中国的法院系统所作的努力。商会会员希望最近的重组工作能够提高知识产权法律、法规和行政措施的执行力度和执行效率，并加强知识产权法院和法庭判决的一致性和透明度。商会会员对国家市场监管局的成立深受鼓舞。该局直属国务院，并对以前属于国家工商行政管理局范围内的知识产权管理方面进行了统一监督，其中包括国家质量监督检验检疫总局、中国食品药品监督管理局等政府机构。

2018年，中国还启动了一项相当激进的重组计划，将商标局纳入国家知识产权局，创造了基本上是中国第一个联合专利和商标权威。国家知识产权局后来更名为中国国家知识产权局（CNIPA）。正如它目前所设想的那样，负责与广泛知识产权相关的功能。除了对专利的行政监督外，中国国家知识产权局的监督权还延伸到地理标志的管理和执行（以前由国家质检总局管理）以及商标的管理和执行（以前由国家工商总局管理），但是，版权管理仍属于中国国家版权局，该版权归新闻出版总署所有。

随着中国国家知识产权局对专利和商标资源的统一和集中，商会希望看到专利行政执法的改善，以及地方市场监督管理部门同时执行专利和商标权的机会。在撰写本文时，政府承诺的精简和高效的行政执法仍然可期，但商会希望这些愿望将体现在来年更多的资源和更有力的执法工作上（包括因严重或重复侵权而增加发行惩罚性罚款）。

2019年1月1日，最高人民法院设立了一个新的知识产权部门，商会也因此受到鼓舞，该部门由四个部门组成，

oversight authority extends to the administration and enforcement of geographical indications (previously administered by AQSIQ) as well as for the administration and enforcement of trademarks (previously administered by the China Trademark Office under SAIC). The administration of copyright will, however, remain with the National Copyright Administration of China (NCAC) which falls under the authority of the General Administration of Press and Publication (GAPP).

With the unification and concentration of patent and trademark resources under NIPA, AmCham China hopes to see improvements in patent administrative enforcement, as well as the opportunity for local Market Supervision Administration (MSA) authorities to consolidate enforcement of both patent and trademark rights. As of this writing, government promises of streamlined and efficient administrative enforcement remain aspirational, but AmCham China is hopeful that the investment of greater resources and more ambitious enforcement efforts will result in an increase in enforcement action and fines for egregious and repeat infringers.

AmCham China is also encouraged by the recent establishment of a new IP division in the SPC on January 1, 2019. This new division consists of four departments and will hear appeals related to invention patents, trade secrets, antitrust claims, computer software, information communication designs, and new plant varieties. In the jointly-issued *Opinions on Several Issues in Enhancing Reform and Innovation in Hearing Intellectual Property Cases* (Opinions), the Party Central Committee and the State Council sought to enhance the protection of IP rights and address demands from stakeholders to streamline and enhance judicial resources with a focus on IP. AmCham China welcomes a number of the proposals outlined in the Opinions, including the publication of IP guiding cases by the SPC, a commitment to raise the quality and consistency of judicial opinions, as well as calling for an increase in damages awarded for IP infringement to better reflect the value of IP rights.

In addition, AmCham China applauds commitments to better allocate the burden of proof in IP cases, increase the number of qualified IP judges to address current resource constraints, and establish five new IP tribunals in Shenzhen, Zhengzhou, Tianjin, Changsha and Xian.

2018 Legislative Updates

Several noteworthy legislative, administrative, and judicial developments in 2018 include the following:

- Enactment of the *E-Commerce Law* (August 2018), which came into effect on January 1, 2019.
- Promulgation of the *Provisions of Application of Law regarding Preliminary Injunctions in Intellectual Property Disputes* (November 2018), which came into effect on January 1, 2019.

- Publication of the *10 Big Intellectual Property Cases and 50 Model Intellectual Property Cases* by the SPC (April 2018).
- Publication of “*Model Cases*” by various higher courts and IP courts (April 2018).
- Promulgation of the “*Opinions on Several Issues in Enhancing Reform and Innovation in Hearing Intellectual Property Cases*” (February 2018).

Trademarks

Online Counterfeiting

The new E-Commerce Law became effective January 1, 2019. The new law does not deviate significantly from the draft law that was circulated in 2017 and discussed in AmCham China’s 2017 *White Paper*, save for a few minor additions. Some noteworthy elements of the new law are as follows:

- Article 43 sets out the procedures that an operator of an e-commerce platform must take after receiving a statement of non-infringement from an online business operator, provides a 15-day period during which an IP holder can file a civil or administrative complaint against an online business infringer after receiving a statement of non-infringement, and provides that the e-commerce platform operator is permitted to terminate any take-down measures it may have imposed on an online business if no such complaint is received within such 15-day period
- Article 83 is an entirely new provision that penalizes e-commerce platform operators for failing to take action against online business operators that harm consumers’ legitimate rights and interests, review qualifications of the online business operators or fulfill their obligation of guaranteeing safety.
- Articles 82 and 84 (as well as new Article 83) raise the penalties on e-commerce platform operators that fail to take action against infringing online business operators or that impose unreasonable policies or prices on online business operators. It introduces a penalty range of RMB 50,000 to RMB 500,000 (up from the prior maximum of RMB 200,000) and, if the violation is serious, RMB 500,000 to RMB 2 million (up from RMB 200,000 to RMB 500,000).

While this new law signifies major progress in the Chinese government’s approach to the application of trademark law in Chinese e-commerce markets, the law still leaves unaddressed some of the concerns raised in the 2018 *White Paper*. AmCham China members remain concerned about ambiguity concerning what amount and type of evidence is sufficient to be considered “prima facie” evidence and thus trigger the take down measures for IPR holders under Article 42 (and trigger the 15-day limit for online business platforms under Article 43). In addition, the provisions may still allow

并将审理与发明专利、商业秘密、反垄断索赔、计算机软件、信息通信设计和新植物品种有关的上诉。在共同发表的《关于加强知识产权案件改革创新若干问题的意见》（《意见》）中，中共中央和国务院寻求加强知识产权保护 and 解决利益相关者的需求，以知识产权为重点，精简和加强司法资源，商会赞赏《意见》中提出的一系列建议，包括最高人民法院公布的知识产权指导性案例，提高人民法院发布意见的质量和一致性的承诺，并要求增加对于知识产权侵权的损害赔偿金，以更好地反映知识产权的价值。

此外，商会赞赏一项明确承诺即致力于更好地分配知识产权案件的举证责任，增加合格知识产权法官的数量，以解决目前的资源限制，并在深圳、郑州、天津、长沙和西安设立五个新的知识产权法庭。

2018 年立法更新

2018 年度中值得注意的立法、行政和司法进展如下：

- 2018 年 8 月，颁布《电子商务法》，并于 2019 年 1 月 1 日生效。
- 2018 年 11 月，发布《关于知识产权纠纷初步禁令的法律适用规定》，自 2019 年 1 月 1 日起施行。
- 2018 年 4 月，最高人民法院发布《十大知识产权案例》和《50 个知识产权示范案例》。
- 2018 年 4 月，各高等法院和知识产权法院发布《示范案例》。
- 2018 年 2 月，发表《关于加强知识产权案件审理改革创新若干问题的意见》。

商标

网络侵权

新的《电子商务法》于 2018 年 8 月颁布，并于 2019 年 1 月 1 日生效。新法律与 2017 年《白皮书》中讨论的法律草案没有明显差异，除了一些小的补充。新法律还应注意以下细节：

- 第四十三条规定，电子商务平台的运营商在收到在线业务运营商的非侵权声明后必须采取的程序，即知识产权权利人可以提交民事或行政诉讼的 15 天时间期限，在收到非侵权声明后对网上侵权行为提出投诉，并规定电子商务平台运营商可以在该 15 天期限内终止其对

在线业务可能采取的任何撤销措施。

- 第八十三条是一项全新的规定，即对损害消费者合法权益的网络运营商未采取行动、未审查网络运营商资质、未履行安全保障义务的行为的电子商务平台运营商进行惩罚。
- 第八十二条、第八十四条（以及新的第八十三条）规定对未采取措施打击侵犯网络经营行为的电子商务平台经营者，或者对网络经营企业实施不合理的政策、价格的，处以罚款。处罚范围为 5 万元人民币至 50 万元人民币（原最高 20 万元人民币），情节严重的，处以 50 万元人民币至 200 万元人民币（原最高 20 万元至 50 万元人民币）。

尽管这部新法律标志着中国政府在中国电子商务市场应用《商标法》方面取得了重大进展，但该法仍未解决 2017《白皮书》中提出的一些担忧。商会会员仍然担心，目前对何种数量和类型的证据足以被视为“初步证据”存在歧义，从而引发了《中华人民共和国知识产权保护法》第四十二条规定的对知识产权持有者采取的措施（以及《中华人民共和国知识产权保护法》第四十三条规定的对在线商务平台的运营商的 15 天限制）。此外，如果电子商务平台运营商提供了薄弱的、部分的或伪造的证据来证明自己没有侵权行为，该规定仍可能允许电子商务平台运营商避免撤下程序。尽管如此，第八十三条规定的增加以及第八十二至第八十四条规定的处罚范围的增加似乎有助于解决这些问题，因为它们给电子商务平台运营商施加了额外的压力，敦促他们以良好的商业诚信运营，并进一步采取措施保护好知识产权持有人。第八十三条规定如何在实践中发挥作用仍然是一个悬而未决的问题，商会将会对此密切关注。

最后，新增加的 15 天期限令人担忧。虽然对知识产权持有人施加压力以便及时回应投诉或诉讼，但对于外国知识产权持有人来说却是令人烦恼的，因为他们几乎不可能在如此短的时间内提交必要的文件来提起民事诉讼。（考虑到至少有几份此类文件必须在美国或其他国家进行公证和合法化）。商会了解所颁布的法律旨在平衡品牌所有者和平台运营商的利益，但认为电子商务法的最终版本还有很多不足之处，甚至可能激励和鼓励侵权者。商会将密切关注法律如何影响其会员品牌所有者的执法工作。

正如 2018 年《白皮书》指出，网络侵权仍然是一个严重的问题，侵权者有许多方法可以规避法律。例如，寻求

e-commerce platform operators to avoid performing take-down procedures if online business operators provide weak, partial or fabricated evidence to prove their lack of infringement. Nevertheless, it appears that the addition of Article 83, as well as the increased range of penalties defined in Articles 82-84, may help to resolve these issues as they put additional pressure on e-commerce platform operators to operate their platforms in good faith and take further measures to protect IP holders. How Article 83 will function in practice remains an open question, and one AmCham China will be watching closely.

Finally, the newly added 15-day limit is worrisome. While placing pressure on IP holders to respond with a complaint or lawsuit in a timely manner, it is vexing for foreign IP holders because it will be next to impossible for them to produce the necessary documents to file a civil complaint in such short period of time (considering that at least several of such documents will have to be notarized and legalized in the US or another foreign country). AmCham China understands that the law as promulgated was intended to balance the interests of brand owners and platform operators but believes that the final version of the *E-Commerce Law* leaves much to be desired and could even potentially incentivize and embolden infringers. AmCham China will be closely watching how the law impacts enforcement efforts of its member brand owners going forward.

As noted in the 2018 *White Paper*, online counterfeiting is still a serious issue and numerous methods are available to infringers to circumvent laws. For example, a trademark infringer who seeks to register a large number of trademarks can avoid detection by filing under the name of an acquaintance or under their company name, a simple task that can be completed without leaving any hard evidence which can then be used to implicate them in any court proceedings. In addition, the benefits from these recent improvements primarily benefit the owners of well-known brands who can invest significant resources in regularly monitoring e-commerce platforms and proactively petition those sites to take down links to infringing products.

Online counterfeiting remains a longstanding problem that is unlikely to improve without continued and persistent government attention and engagement with industry stakeholders. As such, AmCham China urges the Chinese government to continue to address this important and pressing issue by adopting the following measures in particular:

- Continue to apply pressure on e-commerce platforms to implement strict, transparent, and user-friendly policies regarding notice-and-take down processes and repeat offenders (preferably adopting simple two or three-strike rules).
- Encourage e-commerce platforms to adopt best practices to make it easier to identify counterfeiters and to remove links posted by sellers without prima facie evidence of authorization, and to make

it more difficult for counterfeiters to operate under multiple false identities.

- Encourage e-commerce platforms to cultivate a culture of IP protection and 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).
- Strike a balance between bringing timely claims and protecting the rights of foreign IPR holders by extending the 15-day limit to a timeframe more suitable for foreign IPR holders.

Oppositions

Under the amended *Trademark Law*, which became effective on May 1, 2014, there is no right of appeal within the Trademark Office (TMO) under NIPA if an opposed trademark is allowed to register. According to current opposition procedures, 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 for review by the Trademark Review and Adjudication Board (TRAB) to invalidate the trademark.

As stated in the past five *White Papers*, AmCham China members remain concerned that current opposition procedures continue to favor the applicants of third-party trademarks filed in bad faith absent an improvement in the quality of the TMO's examination of oppositions. AmCham China members continue to report that the quality of TMO decisions has not significantly improved, particularly in issues related to the filing of identical trademarks in bad faith.

Since 2017, however, there has been a shift in the approach of courts and IP tribunals in regard to bad faith filings, suggesting the possibility of future changes. AmCham China is particularly encouraged by a few developments, including:

- the collective review of cases involving the same offender accused of filing in bad faith;
- expediting or prioritizing the review of cases involving bad faith; and
- efforts to align TMO review standards with those of the TRAB and the People's Courts.

AmCham China strongly recommends that SAMR continue these efforts to improve the procedures for handling oppositions in the TMO. We recommend that the Chinese government further strengthen the tools available to small and medium-sized enterprises (SMEs) that are less well-known in the Chinese market to effectively challenge pirate filings of their trademarks by third parties and a deeper alignment of review standards between the TMO, TRAB and the courts.

注册大量商标的商标侵权人可以通过以熟人的名义或其公司名称提交申请来避免被发现，这是一项简单的程序，可以在不留下任何可以用于在法庭程序中都涉及他们的证据。此外，这些新的改进将主要有益于知名品牌的所有者，他们可以投入大量资源定期监控电子商务平台，并主动请求这些网站取消与侵权产品的链接。

网络侵权是一个长期存在的问题，如果没有政府持续不断的关注和行业利益相关者的参与，这个问题不太可能得到改善。为此，商会促请中国政府继续通过以下措施解决这一重要而紧迫的问题：

- 继续对电子商务平台施加压力，以实施严格、透明和友好用户的关于通知和取消流程以及重复违规者的政策（最好采用简单的两条或三条规则）。
- 鼓励电子商务平台采用最佳做法，使其更容易识别仿冒者，并在没有初步授权证据的情况下删除卖家发布的链接，使仿冒者更难以在多个虚假身份下运作。
- 鼓励电子商务平台培养保护知识产权的文化，并采取积极措施，加大仿冒者在其网站上列出产品的难度（例如，对大量供应商建立随机的知识产权授权审核制度）。
- 在及时提出索赔和保护外国知识产权持有者之间取得平衡，将 15 天的期限延长到外国知识产权持有者能够更加坚持的期限。

异议

修订后的《商标法》自 2014 年 5 月 1 日起生效。若经否决的商标被允许注册，在商标局 (TMO) 内将无权提起上诉。根据目前的异议程序，如果对手在商标局之前败诉，经否决的商标将被注册。败诉方对裁定不服的，必须向商标评审委员会 (TRAB) 申请复审，裁定该商标无效。

正如过去五年中的《白皮书》所述，商会会员对目前的异议程序持续表示忧虑，因为除非商标局审查异议的质量得到改善，否则它将继续有利于恶意提交的第三方商标申请人。商会会员也仍然反映商标局决策的质量没有显著提高，特别是在与恶意提交相同商标有关的问题上。

不过，自 2017 年以来，法院和知识产权法庭在受理恶意申请的方面出现转变，这表明未来可能会发生积极变化。商会对以下几项进展感到特别欣慰：

- 对涉嫌恶意提交的同一罪犯的案件进行集体审查；

- 加快或优先审查涉及恶意的案件；
- 努力使商标局审查标准与商标评审委员会、人民法院的审查标准保持一致。

商会强烈建议国家市场监管局继续努力改进处理商标局异议的程序。并建议中国政府进一步加强有利于中国市场知名度较低的中小企业（的措施，以有效地挑战第三方对其商标的海盗申请，并更深入地协调审查商标局、商标评审委员会与人民法院之间的标准。

企业名誉侵权

中国企业注册和使用含有外国著名商标的企业名称的情况并不罕见，但地方管理部门通常不愿处理注册商标与企业名称之间存在冲突的案件。2014 年《商标法》对商标注册人提出了诉讼事由，商标作为企业名称使用，容易误导公众，构成不正当竞争。商会会员希望，2018 年 1 月 1 日生效的新的《反不正当竞争法》将简化处理这些案件的程序。特别是第十八条，如果侵权人未能自行进行适当的非侵权变更，则赋予地方行政当局将侵权企业名称改为数字代码的权力。

恶意诉讼

2014 年《商标法》第七条规定，商标注册申请人必须遵循诚实信用原则。商会赞赏在 2014 年《商标法》中增加了诚信义务条款，在之前的五版《白皮书》中，商会担心第七条并未被列为反对或无效的独立理由，而且这一条款在商标局和商标评审委员会面前的异议和无效宣告程序中的实际效果存在不确定性。

商会会员对看到越来越多的人支持各种法院和机构审理商标案件的不诚实行为感到备受鼓舞。为此，商标局在处理恶意注册商标方面表现得尤为明显。越来越多的商标局案件（这一趋势在 2018 年有所加速）将《商标法》第七条规定的“商标注册和使用应当遵循诚实信用原则”作为恶意诉讼的基础。第七条的诉讼事由补充了第三十条的规定，该规定要求商标管理机构驳回“不符合本法有关规定”的商标。

此外，商会对最高人民法院根据《商标法》第四十四条对恶意申请表示不赞成并支持对恶意申请采取先发制人行动的理由表示赞赏。2018 年 6 月，北京市高级人民法院决定维持对“Neiyin”一案的判决。在本案中，商标盗版者抢先注册了原告自 2013 年以来一直在使用的某一商

Enterprise Name Infringements

It is not uncommon for Chinese companies to register and use enterprise names that incorporate famous foreign trademarks, but local administration authorities have generally been reluctant to handle cases involving conflicts between registered trademarks and enterprise names. The 2014 *Trademark Law* provides a cause of action for registrants of trademarks that are not well known when the use of that trademark as an enterprise name is liable to mislead the public and otherwise constitute unfair competition. AmCham China members are hopeful that the new *Anti-Unfair Competition Law* (AUCL), which came into effect January 1, 2018, will simplify the process of handling these cases. Article 18 in particular gives local administrative authorities the power to change the infringing enterprise's name to a numerical code if the infringer fails to make appropriate non-infringing changes on its own accord.

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. AmCham China welcomed this addition of an obligation of good faith in the 2014 Trademark Law. In the last five *White Papers*, AmCham China expressed concern however, that Article 7 was not listed as independent grounds for opposition or invalidation, resulting in uncertainty as to the practical effect of this provision in opposition and invalidation proceedings before the TMO and the TRAB.

AmCham China members continue to be encouraged by the growing support among various courts and agencies adjudicating trademark cases with respect to bad faith causes of action. Such support is particularly apparent in how the TMO deals with trademarks filed in bad faith. An increasing number of TMO cases (a trend which accelerated in 2018) have invoked Article 7 of the *Trademark Law*, which provides that “applications for registration and use of trademarks shall comply with principles of honesty and good faith” as the basis for a bad faith cause of action. Such an Article 7 cause of action is supplemented by Article 30 that requires the TMO to reject any trademark that “does not conform to the relevant provisions of this Law.”

In addition, AmCham China was encouraged by the SPC's express disapproval for bad faith filings and support for causes of action against preemptive filings by bad faith filers on the basis of Article 44 of the *Trademark Law*. This was reflected in its decision to uphold the ruling of the Beijing High People's Court in the “*Neiyin*” case in June 2018. In this case, a trademark pirate preemptively registered a certain trademark that had been in use by the plaintiff since 2013, and which blocked the plaintiff's trademark application filed later. Upon review of the case, the SPC upheld the plaintiff's position and invalidated the defendant's trademark under Article 44, which provides: “[a] registered trade-

mark shall be declared invalid by the trademark office if ... its registration is obtained by fraudulent or other illegitimate means.” The SPC decision is noteworthy in that it confirmed that “other illegitimate means” pertains to “any measure or act, other than direct deceit or fraud, that disturbs the order of trademark registration, impairs the public interest, misappropriates public resources or seeks unjust benefits.” AmCham China hopes that this decision ushers in a period in which Article 44 will be more consistently applied in favor of the victims of preemptive registrations before the TRAB and the Beijing IP Court going forward.

AmCham China was moreover encouraged by NIPA's issuance of a draft document entitled *Several Provisions on the Regulation of Applications for Trademark Registration* (Draft Provisions) in February 2019 that is intended to address some of the issues around bad faith filing discussed immediately above. This document is particularly noteworthy as it potentially allows for the review and rejection of trademark applications filed in bad faith at the examination stage and introduces a mechanism for stakeholders to file petitions to NIPA for the special handling of trademark pirates. The Draft Provisions are fraught with significant ambiguity, but AmCham China members applaud NIPA's efforts to enhance the tools available to brand owners to address the issue of trademark piracy. AmCham China looks forward to promulgation of an updated version of the Draft Provisions in 2019 that clarifies the procedures for the blacklisting of trademark pirates, and provides efficient tools for the handling of egregious trademark piracy directed at SMEs and other brand owners with trademarks that are known in their home markets but have little or no fame in the PRC.

Copyright

AmCham China was disappointed to see no significant legislative developments regarding copyright law in 2018. Thus, the issues raised in the 2015-2018 *White Papers* continue to be relevant. These issues consist of limitations on 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. As we stated in the 2018 *White Paper*, we urge that both the *Copyright Law* and *Criminal Law* be revised to provide effective deterrence against software piracy. In addition, we encourage the Chinese government to continue in its efforts to develop an effective amendment to the Copyright Law. We continue to recommend as we have in the past that such amendments consider the following:

- Preserve the previously proposed amendment provisions for higher statutory damages and reallocated burden of proof;
- Revise the *Copyright Law* specifying that commercial use of unlicensed software is an infringement of reproduction rights. Such specification is critical for deterring unlicensed software use by enterprises as well as fostering the development of

标，阻碍了原告随后提出的商标申请。根据《商标法》第四十四条，最高人民法院在审理案件时，坚持原告的立场，宣告被告的商标无效。值得注意的是，最高人民法院的裁决确认，“其他不正当手段”属于“扰乱商标注册秩序、损害社会公共利益、挪用公共资源或者谋取不正当利益以外的任何措施或者行为”。商会希望这一决定将开启一个新时期，在此期间，《商标法》第四十四条将更坚定一致地适用于商标评审委员会和北京知识产权法院预先登记的受害者。

最后，中国国家知识产权局于2019年2月发布了《关于商标注册申请管理的若干规定》（征求意见稿），旨在解决上文讨论过的一些诚信备案问题。特别值得注意的是，该文件可能允许在审查阶段对恶意提出的商标申请进行审查和驳回，并引入了利益攸关方向国家知识产权局提出申诉的机制，要求对商标侵权行为进行特别处理。条款草案具有明显的模糊性，但商会会员对中国国家知识产权局加强品牌所有者可用措施以解决商标盗版问题的努力表示赞赏。2019年，商会期待能看到一个更新版本的规定得以颁布，澄清商标海盗的黑名单的程序，并针对中小企业和其他在国内市场很少或根本没有名声的品牌所有者的商标提供有效的措施来处理严重的盗版商标

版权

商会对于2018年《著作权法》没有新的进展表示失望。因此，2015年-2018年《白皮书》中提出的问题仍然具有现实意义。其中包括对法定损害赔偿的限制、不合理的证据高门槛、企业终端用户盗版软件的普遍现象以及中国当局拒绝起诉预装盗版软件的行为。正如商会在2018《白皮书》中所建议的，我们促请中国政府修订《著作权法》和《刑法》，以有效遏制软件盗版。此外，商会鼓励中国政府继续努力制定有效的《著作权法修正案》。商会将一如既往地建议这些修正案应考虑下列事项：

- 保留先前提议的关于增加法定损害赔偿和重新分配举证责任的修正案条款；
- 修改《著作权法》，明确未经授权的软件的商业使用是对复制权的侵犯。这样的规范对于阻止企业使用未经许可的软件以及促进云计算的发展至关重要。对云计算的低效保护可能会阻碍云时代软件产业的发展。

商业秘密

保护商业秘密的规定，目前主要存在于《拍卖法》和《刑

法》中，通过《合同法》、《劳动法》和《劳动合同法》等法律的各种规定而存在。没有独立的《商业秘密法》。尽管《拍卖法》在2017年进行了修订，做出了新的改进，旨在进一步促进商业秘密保护并遏制侵犯者，但商会仍然感到失望，因为商业秘密所有者必须满足的沉重举证责任尚未得到解决，外国企业在有效实施商业秘密保护方面仍面临重大障碍。

根据2018《白皮书》中的建议，商会将持续提倡制定与其他知识产权法律相对应的独立《商业秘密法》，并鼓励中国法院制定书面指导方针，在民事和刑事诉讼中保护商业秘密。这些具体准则对于解决以下问题极其重要：

- 法院在批准或否决针对被告侵权人房屋的证据保全令时，需要考虑的具体因素；
- 投诉人证明商业秘密的“不为人知”部分所需的初步证据；
- 在原告拥有的商业秘密与被告使用的技术相似但不相同的情况下，判定侵权的法律标准。

专利

立法进展

2018年12月，《专利法修正案（草案）》（以下简称草案）由第十三届全国人大常委会第七次会议进行了第一次审议。该草案：

- 大幅提高故意侵犯、假冒专利的赔偿和罚款额；
- 规定了侵权人配合提供相关资料的举证责任；
- 规定网络服务提供者将对网络专利侵权承担连带责任；
- 新设专利开放许可制度；
- 规定了发明人或设计人合理分享职务发明创造收益的激励机制；
- 新增创新药品发明专利期限补偿制度；
- 新设外观设计专利申请国内优先权制度，并将外观设计专利权的保护期由现行专利法规定的十年延长至十五年。

商会欢迎草案的大部分的修改，但是仍对其中部分条款的修改表示关注。本次草案的最大亮点在于规定对故意侵犯专利权、情节严重的，可以在按照权利人受到的损失、侵权人获得的利益或者专利许可使用费倍数计算的数额一

cloud computing. Inefficient protection for cloud computing can hamper development of the software industry in the cloud era.

Trade Secrets

Regulations that protect trade secrets still exist primarily in the AUCL and the *Criminal Law* although several provisions are also found in the *Contract Law*, *Labor Law*, and *Employment Contract Law*. There is no stand-alone Trade Secrets Law. Although the AUCL was revised in 2017 with new provisions that seek to further improve trade secrets protection and deter infringement, AmCham China remains disappointed that the heavy burden of proof that an owner of a trade secret must meet has yet to be addressed. Foreign businesses still face significant obstacles to effective enforcement of trade secrets protection.

As proposed in the *2018 White Paper*, AmCham China continues to recommend the creation of a stand-alone trade secrets law in correspondence with laws governing other IP rights, as well as to encourage the courts to establish written guidelines on the protection of trade secrets in civil and criminal litigation. Such specific guidelines are necessary to address the following:

- The specific factors for a court to consider when granting or denying an evidence preservation order against the premises of an accused infringer;
- The prima facie evidence required for a complainant to prove the “unknown to the public” element of a trade secret; and
- The legal standard for finding infringement in cases where the trade secrets owned by a complainant and the technology used by the defendant are similar but not identical.

Patents

Legislative Developments

In December 2018, the Draft *Amendment to the Patent Law* (Draft Amendment) was submitted to the Standing Committee of the National People’s Congress (NPCSC). The Draft Amendment would:

- Significantly increase damages and fines for willful patent infringement and counterfeit activity;
- Stipulate the burden of proof on accusers;
- Clarify that network service providers bear joint responsibility for network-based patent infringements;
- Establish a new patent open license system;
- Create an incentive mechanism for patent inventors and designers to reasonably share the profits stemming from the invention;

- Provide for the design of an innovative drug compensation system that lasts for the duration of the patent rights; and
- Address design patent rights for the first time, with the design patent term to be extended from ten to 15 years.

While AmCham China welcomes many of the proposed changes, other issues remain unaddressed. Importantly, the Draft increases the financial penalties for willful infringement of patent rights. The amount of compensation owed is determined within a range of one to five times the calculated losses suffered by the patentee, the benefits obtained by the infringer, or a multiple of the patent license fee.

In situations where it is challenging to calculate the exact compensation owed, the range of discretionary compensation that can be imposed by the court system would be increased from a range of RMB 10,000 to RMB 1 million to a range of RMB 100,000 and RMB 5 million. Although AmCham China welcomes the increase in statutory damages for patent infringement, the provisions in the Draft Amendment are neither reasonable or practicable. According to the Draft Amendment, damages for patent infringement are applicable only for “willful patent infringement” and “infringement with serious circumstances.” It is challenging to define and operationalize “serious infringement,” limiting its effect in practice.

The Draft Amendment would provide new provisions for patent administration and enforcement. NIPA would be authorized to handle patent infringement upon request of the patent owner or other interested party. The local IP Offices may handle patent infringement disputes upon request of the patent owner or an interested party within their jurisdiction and may jointly adjudicate cases relating to the same patent. Multiple cases of infringement on the same patent in different regions are to be handled together by higher level patent offices.

AmCham China recognizes China’s determination to crack down on patent infringement. We recommend, however, that the role of administrative agencies (like NIPA) in patent enforcement be reduced. The Draft Amendment gives administrative departments, especially local offices, more enforcement power, but we fear that this may lead to local protectionism that inhibits development of an equal IP protection system. In addition, AmCham China believes judgements related to patent infringement (especially invention patents) involve highly complex technical issues. Local patent administration offices lack professional staff and resources, which may lead to unsatisfactory or non-compliant dispute resolution. Therefore, enabling qualified IP courts to adjudicate and enforce patent rights is crucial.

Draft Amendment Article 6 would include new provisions for inventors/designers to share property incentives by, for

到五倍内确定赔偿数额。

在难以计算赔偿数额的情况下法院可以酌情确定的赔偿额，从现行专利法规定的1万元到100万元提高为10万元到500万元。尽管商会赞同在专利法中规定侵犯专利权的惩罚性赔偿责任，以及大幅提高侵犯专利权的法定赔偿金，但是，商会仍然认为目前草案的规定不够合理且可操作性不强。草案规定承担专利侵权惩罚性赔偿责任的前提条件有两个，一为故意侵犯专利权，二为情节严重。而商会认为，无论从理论角度还是从实践角度来看，侵权情节严重的标准均难以界定和把握，从而导致专利侵权惩罚性赔偿责任在司法实践中难以适用、无法真正落地。

商会注意到，在专利行政执法方面，草案增加了规定：国务院专利行政部门可以应专利权人或者利害关系人的请求处理在全国有重大影响的专利侵权纠纷；管理专利工作的部门应专利权人或者利害关系人的请求处理专利侵权纠纷，对在本行政区域内侵犯其同一专利权的案件可以合并处理；对跨区域侵犯其同一专利权的案件可以请求上级人民政府管理专利工作的部门处理。

尽管商会认可中国在打击专利侵权方面的决心和所作的努力，但是商会认为行政机关以行政裁决的方式介入私权保护应当是逐步弱化甚至取消的，而不应当是更为强化。本次草案赋予专利行政部门特别是地方专利行政部门更大的权利，这可能造成地方保护主义抬头，不利于知识产权的保护和发展。此外，商会认为，与商标等类型的知识产权不同，侵犯专利权（尤其是发明专利权）的判断是相当复杂的，往往涉及较为复杂的技术问题，而专利行政主管部门尤其是地方行政部门往往缺乏相应的专业人员和资源，因此可能导致争议解决过程更为复杂，甚至导致进一步的争议，所以，更强更健全的司法保护才是解决问题的根本办法。

此外，商会还注意到，草案在第六条新增了关于发明人或设计人合理分享职务发明创造收益的激励机制的规定，即“实行产权激励，采取股权、期权、分红等方式，使发明人或者设计人合理分享创新收益，促进相关发明创造的实施和运用”。商会认为该修改弊大于利。在专利法第十六条已经规定了被授予专利权的单位应当对职务发明创造的发明人或者设计人给予奖励的情况下，草案还增加该“产权激励”的内容容易导致误解，发明人或设计人会误认为实行产权激励措施是必须的，因此将导致发明人或设计人与所在单位之间产生不必要的矛盾，不利于营造良好

有序的知识产权环境。商会建议删除该处修改内容。

遗憾的是，本次草案仍未解决现行专利制度中一直存在的一大短板，即专利无效程序、专利行政诉讼程序以及专利侵权民事诉讼程序的特殊设置方式导致的循环诉讼、案件久拖不决、维权成本大、周期长等诸多弊端。商会认为应当从立法层面彻底解决上述问题，否则难以改变目前中国实际存在的维权难的突出问题。

2019年3月15日，全国人大正式通过并颁布了《外商投资法》。

商会注意到，该外商投资法草案第二十二条规定：国家依法保护外国投资者和外商投资企业的知识产权，保护知识产权权利人和相关权利人的合法权益，鼓励基于自愿原则和商业规则开展技术合作。外商投资过程中技术合作的条件由投资各方协商确定，行政机关及其工作人员不得利用行政手段强制转让技术。

商会对于中国在加强保护外商投资企业的知识产权方面所采取的上述措施表示赞赏，但同时对于上述条款中“行政机关及其工作人员不得利用行政手段强制转让技术”的规定表示担忧。

商会认为，行政机关及其工作人员除了可能利用行政手段来强制外商投资企业转让技术之外，还有可能利用其他公权力的影响力来迫使外商投资企业转让技术。因此，如果法律条文仅禁止利用行政手段强制转让技术，而不禁止其他可能的手段将会导致外国投资者和外商投资企业的知识产权无法得到实际有效的保护。

司法进展

2018年10月26日，第十三届全国人大常委会第六次会议审议通过了《全国人民代表大会常务委员会关于专利等知识产权案件诉讼程序若干问题的决定》，其中规定由最高人民法院审理专利等专业技术性较强的知识产权上诉案件，包括：不服发明专利、实用新型专利、植物新品种、集成电路布图设计、技术秘密、计算机软件、垄断等知识产权民事案件的第一审判决、裁定而提起上诉的案件；以及不服专利、植物新品种、集成电路布图设计、技术秘密、计算机软件、垄断等知识产权行政案件的第一审判决、裁定而提起上诉的案件。2018年12月29日，第十三届全国人大常委会第七次会议任命最高人民法院知识产权法庭庭长、副院长、审判员。

instance, adopting equity, options or dividends to encourage them to share profits and promote use of new inventions and creations. AmCham China believes that Article 6 will do more harm than good. Article 16 of the *Patent Law* already stipulates that the entity granted patent rights must reward the inventor/designer of service inventions or creations. Moreover, the use of the term "property incentive" could lead the inventor/designer to believe such incentives are mandatory, thereby raising the likelihood of disputes. AmCham China therefore recommends that Article 6 be deleted.

Unfortunately, some important shortcomings in the current patent system remain unresolved in the Draft Amendment. For example, a lack of clarity around patent invalidation procedures, patent administrative proceedings and special arrangements for patent infringement civil proceedings remain unresolved. Additional shortcomings stemming from the high cost of protecting patent rights and maintaining patent rights over the long term remain unchanged. AmCham China believes that these problems need to be addressed through legislation lest full development of China's system of patent rights protection continue to be hindered.

The *Foreign Investment Law* was enacted by the NPC on March 15, 2019.

Article 22 of the *Foreign Investment Law* stipulates that the State shall protect the IP rights of foreign investors and foreign-invested enterprises (FIEs) in accordance with law, protect the legitimate rights and interests of IP rights holders and related parties, and encourage technical cooperation based on voluntary principles and commercial rules. The specific conditions for such technical cooperation are to be determined by the parties involved. Article 22 explicitly prohibits Chinese administrative organs and their staff from using administrative means to force the transfer of technology.

AmCham China appreciates these steps taken by the Chinese government to strengthen the protection of IP rights of FIEs. We are concerned however about the clause that states, "no administrative department or its staff shall force any transfer of technology by administrative means."

AmCham China believes that administrative organs and their staff can and do leverage public powers other than administrative means to compel technology transfer. If the legal provisions only explicitly prohibit the use of "administrative means" and fail to cover other possible means of forced technology transfer, effective protection of the IP rights of foreign investors and FIEs will continue to be hindered.

Judicial Developments

On October 26, 2018, the NPC adopted the *Decision of the Standing Committee of the NPC on Several Issues concerning Judicial Procedures for Patent and Other IP Cases* (the Decision). According to the Decision, when one party lodges a first-in-

stance appeal if not satisfied with the initial ruling on an IP-related civil case involving professional technologies (including invention patents, utility model patents, new plant varieties, integrated circuit designs and computer software), the SPC shall hear the appeal. On December 29, 2018, at the seventh session of the 13th NPC Standing Committee, the President, Vice-President, and Judges of the IP Court under the SPC were appointed.

AmCham China recognizes China's efforts in establishing an SPC IP court, unifying the criteria for adjudicating IP cases, reducing the propensity for interference by local officials, and strengthening IP protection within the court system.

At the same time, AmCham China is deeply concerned about the potential for a flood of first-instance appeals at the SPC IP court to overwhelm the limited number of judges, consequently lengthening the appeal period and creating a backlog of appeals and cases. We urge the SPC to introduce more practical measures to address these concerns.

On December 13, 2018, the SPC issued the *Provisions on Several Issues Concerning the Application of Law in Examining Cases Involving Act Preservation in IP Disputes* (Act Preservation Provisions), which contains 21 provisions covering:

- Procedural rules, including the subject of the application, the court with jurisdiction, specific matters in the application, review procedures, and the reconsideration process;
- Substantive rules detailing the factors to be considered in determining the necessity of action preservation, and the validity period of any related action preservation measures;
- The identification of lawsuits where action preservation was incorrectly filed and compensation applied, or where action preservation measures were discontinued; and
- How to handle applications concurrently filed for preservation or where the case is connected to a previous interpretation, as well as administrative matters like application fees.

AmCham China recognizes that act preservation regulation may support IP protection in the court system. We believe that act preservation regulation should play a role, but its implementation is currently insufficient. AmCham China urges the Chinese courts to implement the promulgated act preservation provisions in ongoing cases, otherwise they risk simply becoming window dressing.

Administrative Developments

In December 2018 the National Development and Reform Commission (NDRC), People's Bank of China (PBOC), SPC and Ministry of Finance (MOF), along with 37 other departments and entities, jointly issued the *Memorandum of*

商会认可中国在设立最高人民法院知识产权法庭、统一知识产权案件裁判标准、减少地方保护干预、加强知识产权司法保护等方面所做的努力。

但是与此同时，商会对于可能出现的大量第一审上诉案件涌入最高人民法院知识产权法庭而审判人员相对不足，从而导致案件审理周期拉长甚至积压的情况深表担忧。商会期待最高人民法院的进一步切合实际的举措。

2018年12月13日，最高人民法院发布了《最高人民法院关于审查知识产权纠纷行为保全案件适用法律若干问题的规定》（以下简称行为保全规定）。该行为保全规定共21条，主要包括四个方面内容：

- 程序性规则，包括申请主体、管辖法院、申请书及载明事项、审查程序、复议等；
- 实体性规则，包括行为保全必要性的考量因素、行为保全措施的效力期限等；
- 行为保全申请有错误的认定及因申请有错误引发的赔偿诉讼的管辖、行为保全措施的解除等；
- 同时申请不同类型保全的处理、申请费等其他问题。

商会认可该行为保全规定在加强知识产权司法保护方面所可能带来的积极效果，认为该行为保全规定确能起到一定的规范作用，但其在司法实践中的真正实施仍然有待进一步考量。商会希望中国法院在实际审理案件过程中能够真正将该行为保全规定落在实处，以免使其成为“花瓶”制度。

行政进展

2018年12月，国家发展改革委、人民银行、最高法院、财政部等38个部门联合印发了《关于对知识产权（专利）领域严重失信主体开展联合惩戒的合作备忘录》（以下简称合作备忘录）。联合惩戒对象为知识产权（专利）领域严重失信行为的主体实施者。

知识产权（专利）领域严重失信行为则包括：重复专利侵权、不依法执行、专利代理严重违法等行为。跨部门联合惩戒措施则包括：限制政府性资金支持，对政府性资金申请从严审核或降低支持力度，限制补贴性资金和社会保障资金支持，依法限制其作为供应商参与政府采购活动等。

商会对此联合惩戒的行政措施表示欢迎，但是同时认为该合作备忘录的内容过于笼统、形式化，实操性不强。

商会希望合作备忘录所涉及的各部门出台与合作备忘录的相应规定匹配的实际操作规程文件，以使联合惩戒措施能够真正起到实效。

2018年9月6日，国务院常务会议审议通过《专利代理条例（修订草案）》，并将自2019年3月1日实施修订后的《专利代理条例》（以下简称条例）。新条例降低了专利代理机构以及专利代理师的执业准入门槛，简化了设立专利代理机构的行政审批程序，增设了对小微企业、无收入、低收入群体的专利代理援助服务，并加强对“黑代理”的遏制和打击。

商会对于降低专利代理机构以及专利代理师的执业准入门槛这一举措深感担忧。商会认为此举将会加剧中国专利代理行业从业人员良莠不齐的乱象。专利领域不同于商标等其他知识产权领域，其涉及很强的技术性，专利代理从业人员的技术水平将直接影响专利质量。商会建议国家知识产权局采用其他合理方式激励更多高级人才从事专利代理工作以缓解当前专利代理人才短缺的问题，而不是饮鸩止渴，通过降低专利代理机构以及专利代理师的执业准入门槛来解决问题。

2018年8月，国家知识产权局发布了《关于开展申请相关政策专项督查的通知》，启动了专利资助政策专项督查。此次督察重点主要包括：

- 严格专利资助范围。对于专利申请的资助范围仅限于获得授权的专利申请，对于未授权的国内专利申请，不应给予任何形式的财政扶持；
- 限定专利资助标准，避免超额资助。专利资助对象所获得的各级资助总额不得高于其缴纳的官方规定费用和实际发生专利代理服务费总额；
- 严厉打击非正常专利申请。

商会对于国家知识产权局的上述限制财政资助、打击非正常申请的措施和计划表示赞赏，认为此举可在一定程度上减少低质量专利申请以及非正常专利申请，对于整体提升专利质量和改善知识产权环境能够起到一定的积极作用。

在国家知识产权局专利审查工作方面，商会仍然对审查官大量使用“本领域公知常识”和“惯用技术手段”来拒绝发明专利申请创造性的审查方式表示担忧。商会促请国家知识产权局对于审查官所采取的不提供实质证据证明而主观臆断的审查方式予以纠正。

Cooperation in Jointly Punishing Seriously Dishonest Parties in IP (Patent) Field (Joint Punishment Measures).

“Seriously dishonest” behaviors include repeated patent infringement, non-compliance with existing laws, and major violations of the regulations of the patent agency. Proscribed punishments include limiting government financial support, strict examination of government-supported funding applications, restricting access to subsidized social security funding and participation in government procurement activities.

AmCham China welcomes the Joint Punishment Measures but believes, they are overly general, formal and unrealistic. We urge the departments detailed in the MOU to issue implementing regulations and operating procedures that align with the provisions of the MOU to ensure that the Joint Disciplinary Measures are more effective.

The amended Draft Patent Agency Regulations, promulgated by the State Council on September 6, 2018, will come into effect on March 1, 2019. The regulations relax patent agent/agency qualifications, simplify the examination and approval process to establish patent agencies, and offers legal services in patent law for small-and-medium sized enterprises (SMEs) and low-income groups, and increases efforts to curb the activity of unauthorized patent agents.

AmCham China is deeply concerned about the reforms that relax the restrictions on practicing patent agencies and patent agents. It will contribute to a proliferation of low-quality agents and agencies in the industry. Patent law is highly technical and demanding. AmCham China recommends that NIPA pursue other, long-term methods to meet industry demand and ensure a supply of talented patent professionals. The current reform offers only temporary relief and does not address the underlying issues.

In August 2018, NIPA issued the *Notice on the Special Supervision of Application-Related Policies* and initiated special supervision procedures for patent support policies. In particular, the Notice:

- Limited the scope of patent coverage. The scope of funding is limited to authorized patent applications and no funding is to be given to unauthorized patent applications;
- Clearly defined the range of available patent funding. The total amount of funding received by the patentee may not exceed the total amount of fees paid by the patentee and the total amount of fees paid for patent agency services; and
- Promulgated measures to crack down on improper or illegal patent applications.

AmCham China appreciates the efforts of NIPA to restrict financial support and crack down on improper or irregular

applications. These measures will reduce low-quality and irregular patent applications and enhance the quality of China’s IP environment.

With respect to NIPA’s patent examination efforts. AmCham China is still concerned about the widespread use of “common sense in the field” and common technical terms by examiners to reject patent applications for inventions. We urge NIPA to reduce and eventually eliminate the seemingly subjective and ad-hoc patent examination methods used by patent examiners that result in rejections without sufficient evidence for the rejection.

Recommendations

For the Chinese Government:

- **Make the filing of a trademark in bad faith a clear basis for invalidating trademarks filed by third parties, regardless of how well known the pirated mark is.**
- Adopt proactive measures to make it more difficult for an online infringer to counterfeit a trademark and extend the length of time in which foreign companies must submit counterclaims against infringing owners of online websites.
- 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 legislation, streamline, and clarify procedural rules among courts, and restrain administrative agencies from requesting unnecessary disclosure of proprietary trade secrets information.
- 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.**

建议

对中国政府：

- 明确恶意提交商标是使第三方提交商标无效的依据，无论盗版商标的知名程度如何。
- 采取积极措施，加大网络侵权者假冒商标的难度，延长外国公司对侵权网站所有人提起反诉的时间。
- 加快《著作权法》和《刑法》改革，明确企业终端用户盗版行为的刑事责任，加大对盗版行为的民事救济力度，明确将商业使用盗版软件定为犯罪行为。
- 对现行商业秘密保护法进行全面审查，简化和明确法院程序规则，约束行政机关要求不必要的专有商业秘密信息披露。
- 强化对专利纠纷司法程序，以及规避扩大专利法修正案中的专利行政执法。

对美国政府：

- 分享《美国联邦和州商业秘密法》以及《国家商业秘密战略》的示范性操作。

Investment Policy

American companies doing business in China have long been a part of China's development story, and we are proud of our contributions to China's economy and its rise on the world stage. Nevertheless, 2018 was a complex year for American investors in China. Our members have long advocated for maintaining strong economic relations between the United States and China and continue to do so amidst heightened economic tensions between the two countries. They hope that the current negotiations between our two governments will lead to meaningful structural reforms that will address longstanding concerns of the American business community in China and put the US-China economic relationship on a more sustainable footing. AmCham China and its members stand ready to support the Chinese government in undertaking deeper procedural and substantive reforms in the coming years. This includes a willingness to provide substantial input and guidance on foreign investor needs and international best practices as the government develops implementing regulations and policies required by the country's new Foreign Investment Law, passed in March 2019.

While there have been a number of improvements in the environment for foreign investment—and the promises of more reforms to come—longstanding business challenges persist. According to the 2019 AmCham China *Business Climate Survey*, market access restrictions and a lack of regulatory transparency and unclear laws and enforcement continue to pose significant challenges for our members. Our members continued to point to challenges related to intellectual property—including IP risks and involuntary technology transfer—and expressed reservations about the increasing restrictiveness of Chinese cybersecurity policies and requirements to comply with unique Chinese technical standards.

The use of a range of policy tools to carry out industrial policy imperatives set out by the Chinese government creates an uneven playing field for foreign companies competing against domestic companies and goes to the heart of concerns about the compatibility of China's economic system with international norms. Our members have played, and continue to play, an important role in advancing China's goal of creating an innovation-led economy. The use of industrial policy, however, to artificially promote domestic technologies and firms over their foreign coun-

terparts makes China's economy less competitive and also disincentivizes foreign investment.

When it comes to metrics such as transparency, fair competition, market access, and intellectual property rights, Chinese investors in the US currently enjoy significantly better treatment in the US than American investors do in China. This asymmetry has led to growing calls in the US and in other jurisdictions for trade and investment policies towards China based on principles of reciprocity.

Ultimately, AmCham China believes that a strong Chinese economy is necessary for a strong American—and global—economy. As China attempts to transition to an innovation-led economy—in which global expertise, research & development (R&D) collaboration, supply chains, and technology are critical—resolving the concerns of foreign investors in China, who are amongst the greatest advocates of mutually beneficial Sino-US engagement, will be of increasing importance. We encourage the Chinese government to expand dialogue with the foreign business community in China and take concrete steps to address these longstanding concerns.

Inbound and Domestic Investment

AmCham China members and other foreign investors continue to make significant contributions to the Chinese economy. The Ministry of Commerce (MOFCOM) has reported that in 2018, foreign investment in China grew by 3% in US dollar terms, with 69.8% growth in the number of new foreign-invested enterprises established in the country over the previous year.

At the 19th National Congress of the Communist Party of China (CPC) in March 2018, President Xi Jinping expressed a commitment to further opening the Chinese market to foreign investors. "Opening brings progress," he said, "while closing will necessarily lead to backwardness." He added that "all businesses registered in China will be treated equally." President Xi continued the theme of promoting openness and a better environment for foreign investment at the April 2018 Boao Forum for Asia, announcing progress towards some market opening commitments, particularly in the financial sector. The 2018 CPC Economic Work Conference held in December 2018 further asserted China's

投资政策

在 中国开展业务的美国公司长期以来一直是中国发展的一部分，并为对中国经济的腾飞和中国在世界舞台上的崛起做出的贡献而感到自豪。不过，2018 年对在华美国投资者来说是复杂的一年。我们的会员长期以来一直主张维持强劲的中美经济关系，并在两国经济紧张局势加剧的情况下仍是如此。他们希望两国政府目前的谈判能够带来有意义的结构性改革，解决美国商界在中国的长期关切，并使中美经济关系朝更可持续的方向发展。中国美国商会（商会）及其会员愿意支持中国政府在未来几年进行更深层次的结构性改革和实质性改革。同时，政府在制定 2019 年 3 月通过的新《外商投资法》所要求的实施细则和政策之时，商会也愿意就外国投资者需求和国际最佳实践提供建设性的意见和建议。

虽然中国的外商投资环境已经有了一定改善，并且未来会有更多的改革，但是长期的商业挑战仍继续存在。根据 2019 年商会《中国商务环境调查报告》，市场准入限制、监管缺乏透明度以及不明确的法律和执法仍会给我们的会员带来重大挑战。我们的会员再次提到与知识产权相关的挑战，包括知识产权风险和非自愿技术转让，并对中国越来越严格的网络安全政策和遵守独特的中国技术标准的要求持保留态度。

中国政府采用一系列政策工具来实施产业政策规定，为与中国公司竞争的外国企业制造了不公平的竞争环境，这正是会员担忧中国经济体系与国际规范是否兼容的关键。我们的会员始终并将继续在中国创建创新型经济过程中发挥重要作用。然而，利用产业政策人为地推动国内技术和企业发展优于外国技术和公司的发展，这样会使中国经济竞争力下降，抑制外商投资。

就透明度、公平竞争、市场准入和知识产权等指标而言，美国的中国投资者目前在美国享受的待遇比美国投资者在中国的待遇要好很多。这种不对称导致美国和其他司法管辖区越来越多地呼吁对中国实施基于对等原则的贸易和投

资政策。

总而言之，商会认为强大的中国经济对美国 and 全球经济保持强劲增长至关重要。随着中国向创新型经济转型，全球专业知识、研发合作、供应链和技术至关重要，解决外商投资者在中国的担忧，将变得越来越重要，因为他们也是中美互惠互利的最主要推动者。商会鼓励中国政府扩大与中国外国商界的对话，采取具体措施来解决这些长期存在的问题。

外来投资和国内投资

商会会员和其他外商投资者继续为中国经济做出重大贡献。根据商务部通报的 2018 年商务工作及运行情况，2018 年，中国实际使用外资以美元计算增长了 3%，与 2017 年相比，全年新设外资企业数量增长了 69.8%。

在 2018 年 3 月的中国共产党第十九次代表大会上，习近平主席承诺进一步向外国投资者开放中国市场。他说，“开放带来进步，封闭必然落后。”并补充道，“对在中国境内注册的各类企业一视同仁、平等对待。”习主席在 2018 年 4 月博鳌亚洲论坛上再次提到了对外国投资开放，并为其创造更好的环境，宣布了一些市场开放承诺的进展，尤其是在金融领域。2018 年 12 月举行的中央经济工作会议进一步表示中国有意改善市场准入，全面实施基于准入前国民待遇加负面清单的体系，保护外国企业在中国的合法权益，尤其是知识产权，允许外商独资企业在更多领域开展业务。商会会员完全赞同习主席关于外商投资和公平竞争重要性的看法，并继续寻求这些原则在实际政策和实践中得到更全面的实施。

新《外商投资法》

今年《白皮书》是在全国人民代表大会于 2019 年 3 月 15 日通过《外商投资法》的背景下出版的。新法将于 2020 年 1 月 1 日生效，取代过去数十年管辖外商投资的三部法律。

intention to improve market access, fully implement a system based on pre-establishment national treatment with a negative list, protect the legitimate rights and interests of foreign businesses in China—particularly when it comes to intellectual property rights—and allow wholly foreign-owned enterprises to operate in more areas. AmCham China members fully agree with President Xi on the importance of foreign investment and fair competition and continue to seek greater implementation of those principles in actual policy and practice.

New Foreign Investment Law

The big story as this *White Paper* goes to print is that the National People’s Congress (NPC) passed a new, comprehensive Foreign Investment Law on March 15, 2019. The new law will enter into effect on January 1, 2020, replacing three laws that have governed foreign investment in the country in recent decades: the *Wholly Foreign-Owned Enterprises Law*, the *Sino-Foreign Equity Joint Venture Law*, and the *Sino-Foreign Contractual Joint Venture Law*. While the law did not eliminate the potentially discriminatory distinction between foreign-invested and Chinese companies, it nevertheless has the potential to usher in meaningful reform and a more level playing field—depending on the content of its implementing regulations and their enforcement.

The new *Foreign Investment Law* implements a pre-establishment national treatment regime in which foreign investments not falling into exceptions set out in a foreign investment negative list are to be afforded largely the same treatment as purely domestic investments. Among other things, these foreign investments may be undertaken without obtaining foreign investment approvals—previously applicable to all foreign investments—and are subject instead to a more procedural record filing requirement. Investments included on the foreign investment negative list—other than those categorized as “prohibited”—are subject to market entry review.

The new law sets out high-level parameters for four systems responsible for managing foreign investment: ❶ a market-entry review system, ❷ an information reporting system, ❸ a system for processing foreign investor complaints, and ❹ a national security review system. A 2015 draft of the Foreign Investment Law contained significant detail on each of these systems, but much of that detail has been removed for various reasons including, potentially, to make it easier to pass the law.

The implementation of a foreign investment market entry review mechanism, based on the aforementioned negative list approach, has been underway nationwide since late 2016. Therefore, the contours of the new law’s market entry review system are already understood. The market entry review mechanism for foreign investment, as it has been implemented to date, is discussed in greater detail in the section “Foreign Investment Negative List and Streamlining of

Ministry of Commerce (MOFCOM) Investment Approvals” below.

Detailed provisions regarding information to be reported by foreign investors, criticized by some investors as being unduly burdensome, have been removed from the final version of the law, which provides only that foreign investors must report investment information to MOFCOM through two systems operated by the State Administration for Market Regulation (SAMR): the Enterprise Registration System and the Enterprise Credit Information System. Provisions stipulating the content and frequency of the required information reporting are no longer included, but the new law specifies penalties for a failure to report.

The new system for handling foreign investor complaints could provide an important channel for foreign investors to address pre-establishment and post-establishment concerns. The new law, however, leaves unclear which government agencies will be responsible for managing complaints, how the system would work, and whether the system’s resolution of complaints would be binding. Some of these issues were addressed in greater detail in the 2015 draft.

The final version of the law also maintains the requirement of national security reviews for foreign investments that affect or might affect national security, but removes provisions including those detailing the process and criteria for such review. Instead, the details are left to new *Regulations on the National Security Review of Foreign Investment* that are currently being drafted. The new law does specify that the national security review decision is final and not subject to appeal.

Until more details are released regarding the mechanics of each of these systems, it will be difficult to assess the impact of the law. AmCham China and its members recognize that some comments from the foreign business community appear to have been taken into account after a second draft was circulated in December 2018. We encourage government agencies to do more to involve AmCham China and its members as they develop regulations to implement the new law. Seeking such input may be particularly important given the very short timeline set by the government to have the implementing regulations issued by the time the new law goes into effect on January 1, 2020.

Beyond the mechanics of the new legal regime, much attention was paid to the attempt of the law’s drafters to explicitly address longstanding concerns of foreign investors. Among other things, the law indicates that industrial policies will be used to equally support foreign-invested enterprises (FIEs) and purely Chinese-invested enterprises, and promises: equal participation for FIEs in standard-setting, fair competition in government procurement, equal treatment of the products and services offered by FIEs, free remittance of contributions, profits, capital gains, IP royalties, and compensation and indemnities out of China in RMB or foreign

《外资企业法》、《中外合资经营企业法》和《中外合作经营企业法》。虽然《外商投资法》并没有消除外资企业与中国企业可能存在的歧视性差别，但是，根据实施条例的内容及其执行情况，该法有可能会带来有意义的改革和创造更公平的竞争环境。

新的《外商投资法》实施了一项准入前国民待遇制度，其中不属于外商投资负面清单所列的例外情况的外商投资将与纯国内投资待遇基本相同。其中一点是，这些外商投资可能会在没有获取外商投资批准的情况下就可以开展，并且他们现在面临的更多是程序性的记录备案要求，这之前适用于所有外商投资。外商投资负面清单中的投资需要面临市场准入审查，禁止投资领域除外。

新法规定了管理外商投资四个制度的高级参数：① 市场准入审查制度，② 信息报告制度，③ 处理外国投资者投诉的制度，以及④ 国家安全审查制度。2015年《外国投资法（草案）》仍具有关于这些制度的大量细节，但由于各种原因（包括更容易获得通过），大部分细节已被删除。

基于上述负面清单的管理模式，外国投资市场准入审查机制的实施自2016年底开始在全国范围内开展。因此，新法的市场准入审查制度的大致情况已经较为清晰。迄今为止已实施的外商投资市场准入审查机制将在下文“外商投资负面清单和商务部投资审批简化”一节中详细讨论。

关于外国投资者报告信息的详细规定，被一些投资者批评为过度繁琐，已从法律的最终版本中删除，该法仅规定外国投资者必须通过国家市场监督管理总局负责的两个系统向商务部报告投资信息：企业登记注册制度和企业信用信息公示系统。新法中不再包括规定信息报告的内容和频率的条款，但包括对未报告的处罚。

处理外国投资者投诉的新制度可以为外国投资者提供解决准入前和准入后问题的重要渠道。然而，新法对于负责管理投诉的政府机构、系统运作方式和系统的投诉解决方案是否具有约束力则规定不明。2015年草案中则更详细地讨论了上述问题。

该法的最终版本仍保留了对影响或可能影响国家安全的外商投资进行国家安全审查的要求，但删除了包括详细说明审查程序和标准的条款。相反，详细信息将留待目前正在起草的新的《外商投资国家安全审查条例》。新法律明确规定国家安全审查决定是最终决定，不得上诉。

在政府公布关于上述制度的更多细节之前，很难评估

该法的影响。商会及其会员认识到，在2018年12月发布第二份草案后，外国商界的一些建议似乎已被考虑在内。商会鼓励政府机构采取更多措施让商会及其会员参与制定法律实施细则的过程中。鉴于《外商投资法》将于2020年1月1日开始正式实施，政府制定实施条例的时间很短，寻求此类建议可能尤为重要。

除了新法建立的机制外，我们也非常关注法律起草者希望解决外商投资者长期关注的问题的努力。比如，该法规定，产业政策将平等支持外国投资企业和中资企业，并承诺：外国投资企业平等参与标准制定；内外资企业公平参与政府采购招投标；对外国投资企业提供的产品和服务给予平等对待；用人民币或外币将捐款、利润、资本收益、知识产权使用费以及赔偿和赔偿金免费汇出中国等等。此外，一些条款旨在缓解外国投资者对强制技术转让的担忧。法律要求技术合作要基于“自由意愿和商业规范”，禁止通过行政手段强制技术转让，并要求行政当局及其人员对在工作中获取的外商投资者和外资企业的商业秘密予以保密。

商会及其会员对于新法认识到这些担忧表示欢迎，这很可能是，或者一定程度上是中美之间正在进行的经济谈判推动的结果。但在看到实施细则、实施方法以及各级政府官员的行动之前，我们对于评估新法的影响持谨慎态度。我们还注意到，虽然它在某些方面采取了国民待遇原则，但仅仅通过一部法律管理外商投资也为其他方面一定水平的差别待遇留有了空间。

全国版外商投资负面清单

从2015年底开始，中国政策制定者开始探索对中国国内市场投资管理实施负面清单模式的可能性，这样所有投资（国内和国外），只要不是负面清单上明确限制或禁止的，都可认定为允许投资。2016年3月，国家发展和改革委员会和商务部联合发布了一份试点负面清单，在四个省级管辖区域进行测试：天津、上海、福建和广东（注意，这也是首批建立自由贸易试验区的四个省级管辖区）。2017年11月，该试点项目增加了11个省级管辖区。2018年12月21日，市场准入负面清单（2018年版）发布，供全国范围实施。

这份全国范围的负面清单旨在作为市场准入禁令或限制的全面和排他性清单，适用于中国所有投资者，无论是绿地投资、现有投资项目扩展、兼并和收购，还是其他形式的投资活动。清单上的每个项目都应基于中国法律法规的相应规定，且未列入负面清单的法律法规限制将被删除。

currency, and more. Furthermore, several provisions seek to assuage foreign investor concerns regarding forced technology transfer. The law calls for technological cooperation to be based on “free will and commercial norms,” prohibits forced technology transfer through administrative means, and requires administrative authorities and their personnel to keep confidential the trade secrets of foreign investors and FIEs obtained during the performance of their duties.

AmCham China and its members welcome the acknowledgment of these concerns in the new law—possibly motivated, at least in part, by the ongoing economic negotiations between China and the US. But we also remain cautious about assessing the impact of the law before seeing if and how its provisions are realized through implementing regulations and the actions of officials at all levels of government. We note, also, that although it moves towards a national treatment approach in some respects, the mere existence of a separate law governing foreign investment ensures a level of differential treatment in other respects.

Nationwide Investment Negative List

Beginning in late 2015, Chinese policymakers began to explore the possibility of implementing a negative list approach toward the management of investment in China’s domestic market, such that all investment (domestic and foreign) would be considered permitted unless explicitly restricted or forbidden on negative list(s). In March 2016, the National Development and Reform Commission (NDRC) and MOFCOM jointly issued a pilot Negative List to be tested in four provincial-level jurisdictions: Tianjin, Shanghai, Fujian, and Guangdong (note that these are the same four jurisdictions that hosted the first Pilot Free Trade Zones (PFTZs)). In November 2017, an additional 11 provincial-level jurisdictions were added to the pilot program. On December 21, 2018 the *Market Access Negative List* (2018 Version) was issued for nationwide implementation.

This nationwide Negative List is intended to serve as a comprehensive and exclusive list of market access prohibitions or restrictions that apply to all investors in China, whether engaged in green-field investments, expansions of existing investment projects, mergers and acquisitions, or other forms of investment activity. Each item on the list is to be based on corresponding provisions of Chinese laws and regulations, and restrictions in laws and regulations not listed on the Negative List are to be eliminated. If a type of investment falls within the parameters of an item on the Negative List, investors will need to consult underlying laws and regulations to understand the scope and applicability of the restriction. Investments in unlisted areas should not be subject to licensing or approval requirements for market access.

The 2018 nationwide Market Access Negative List also incorporates the Guidance Catalogue for Industrial Structure Adjustment (which categorizes investments as encouraged,

restricted, and to be eliminated, and is currently being further updated by NDRC), and incorporates the first ten articles of the Catalogue of Investment Projects Subject to Government Approval, which lists fixed asset investment projects subject to government approval.

Foreign Investment Negative List and Streamlining of MOFCOM Investment Approvals

The Negative List approach in the context of foreign investment was first piloted in China’s PFTZs. In September 2016, the National People’s Congress Standing Committee (NPCSC) passed amendments to the country’s core foreign investment laws, followed by corresponding implementing regulations, paving the way for the national roll-out of these investment reforms. As discussed above, these reforms are now an important component of the new *Foreign Investment Law*.

Now that a nationwide investment negative list for domestic and foreign investors has also been promulgated (see previous section), foreign investors will need to consult both that list and a separate list for foreign investment that imposes additional restrictions on foreign investors (i.e., a list of deviations from the national treatment available to Chinese investors). In addition to listing areas in which foreign investment is restricted or prohibited, the foreign investment Negative List also plays an important role in determining which investments require foreign investment approval, or foreign investment market entry review, from MOFCOM or its local counterparts. Investments not included on the foreign investment Negative List may now bypass this specific approval requirement—which, before October 1, 2016, applied to all foreign investments—and instead submit a simpler record filing (other additional investment approval requirements applicable for some sectors are unaffected and remain in effect). When these procedural reforms were first implemented in October 2016, they applied only to green-field investments. In July 2017, they were expanded to cover mergers and acquisitions as well as strategic investments by foreign investors into Chinese publicly listed companies.

The foreign investment negative list currently in effect is the *Special Management Measures on the Access of Foreign Investment* applying on national-wide basis except for FTZs (FI Negative List) (2018 Version), issued in June 2018. The 2018 FI Negative List lists areas restricted or prohibited to foreign investment and includes other restrictive measures such as equity caps and senior management requirements. Compared with the 2017 foreign investment negative list (then a component of the 2017 Foreign Investment Catalogue), the 2018 list decreases the number of line items from 63 to 48. The 2018 FI Negative List also includes a previously announced timetable for openings in the automotive and financial sectors. Some of the reduced restrictions on the 2018 list represent genuine market access openings, while others simply reflect the restructuring of the catalogs.

如果某类投资符合负面清单上项目的参数，投资者需要参考基础法律法规来了解限制的范围和适用性。未列入清单领域的投资不应受到市场准入的许可或批准要求的约束。

2018 年全国《市场准入负面清单》还纳入了《产业结构调整指导目录》（该目录将投资分类为鼓励投资、限制投资、待淘汰投资，目前正由国家发改委进一步更新），并纳入了《政府核准的投资项目目录》的前十条，该目录里列出了政府批准的固定资产投资项目。

外商投资准入负面清单和商务部投资审批简化

外商投资背景下的负面清单模式首先在中国的自贸区进行试点。2016 年 9 月，全国人大常委会通过了对国家核心外商投资法的修订，并制定了相应的实施细则，为全国推进这些投资改革铺平了道路。如上所述，这些改革现在是新的《外商投资法》的重要组成部分。

鉴于针对国内外投资者的全国版投资负面清单也已经公布（见上一节），外国投资者需要查阅该清单和对外国独资者施加额外限制的外商投资独立清单（即与中国投资者可获得的国民待遇不同的清单）。外商投资负面清单除了列出限制或禁止外商投资的领域外，其在确定哪些投资需要商务部或当地对商务部门的外商投资审批或外商投资市场准入审查方面也发挥着重要作用。外商投资负面清单中未包括的投资现在可以绕过这一特定的批准要求，只用提交更简单的记录备案（适用于某些领域的其他额外投资批准要求不受影响并保持有效）。在 2016 年 10 月 1 日之前，该条款适用于所有外商投资。当这些程序改革于 2016 年 10 月首次实施时，它们仅适用于绿地投资。2017 年 7 月，范围扩大到包括并购以及外国投资者对中国上市公司的战略投资。

目前实施的外商投资负面清单是 2018 年 6 月发布的《外商投资准入特别管理措施》，在全国范围实施，自贸区除外（外商投资负面清单）（2018 年版）。2018 年外商投资负面清单列出了限制或禁止外商投资的领域，并包括其他限制性措施，如股权上限和高级管理要求。与 2017 年外商投资负面清单（当时是 2017 年外商投资目录的一部分）相比，2018 年的清单中细列项目数量从 63 个减少至 48 个。2018 年的外商投资负面清单还包括之前公布的汽车和金融领域开放时间表。2018 年名单减少的一些限制意味着真正的市场准入开放，而其他一些只是目录的重组。

如上所述，外商投资的负面清单方法首先在中国的自

贸区进行试点。寻求投资自贸区的外商投资者应该参考单独的自贸区负面清单，而不是外商投资负面清单。新的自贸区负面清单已于 2018 年 6 月发布。

商务部释放的信号是 2019 年将进一步实现市场准入自由化，商会及其会员希望该信号是采取重大措施，实现外国和国内投资待遇更加公平的真正承诺。

来自香港和澳门的投资者负面清单

与其他外商投资者相比，来自香港和澳门的投资者可能会获得一定的优惠待遇，并且必须要另外查询单独的补充负面清单来确定此类机会。2017 年 6 月，中国内地和香港特区政府签订了《内地与香港关于建立更紧密经贸关系的安排投资协议》（CEPA），根据该协议，香港投资者在中国大陆的投资将享受国民待遇（与内地投资平等待遇）和最受欢迎的待遇（至少跟中国其他贸易和投资伙伴同样有利的待遇），协议附件中列出的不符措施除外（即“香港负面清单”）。香港负面清单包含 16 项针对在中国内地的香港投资者的保护例外情况（请注意，中国大陆投资者在香港并无例外）。CEPA 投资协议包括两方政府承诺在非歧视的基础上向对方的投资者提供某些保护。

2017 年 12 月，中国大陆和澳门特区政府签订了类似的 CEPA 投资协议。香港和澳门的投资协议于 2018 年 1 月 1 日生效。

根据 2018 年外商投资负面清单和自贸区负面清单，如果 CEPA 和中国大陆与香港或中国大陆和澳门之间的相关协议为符合条件的投资者提供更优惠的待遇，则适用更优惠的待遇。

鼓励外商投资某些行业和地区

虽然负面清单突出了对投资的限制，但中国也概述了鼓励外商投资的行业和地区。2017 年《外商投资目录》的第一部分列出了中国政府鼓励外商投资的 348 个地区。请注意，2018 年外商投资负面清单仅替换了 2017 年《外商投资目录》的“负面清单”部分，而 2017 年《外商投资目录》的“鼓励投资”部分仍然有效。一旦确定后，“鼓励投资”部分将被下文提到的《鼓励外商投资产业目录》取代。其他文件，如《中西部地区外商投资优势产业目录》，表明政府鼓励在经济欠发达的中西部地区的外商投资。此目录于 2017 年 3 月更新，比 2013 版新增 139 项。

2019 年 2 月 1 日，国家发改委和商务部发布了《鼓励

As stated above, the Negative List approach for foreign investment was first piloted in China's PFTZs. Foreign investors seeking to invest in the PFTZs should consult a separate PFTZ negative list, rather than the FI Negative List. A new PFTZ negative list was issued in June 2018.

AmCham China and its members hope that signals from MOFCOM that 2019 will see further market access liberalizations represent a genuine commitment to making significant strides toward a greater equality of treatment of foreign and domestic investment.

Negative List for Investors from Hong Kong and Macau

Investors from Hong Kong and Macau may receive certain preferential treatment compared to other foreign investors and must additionally consult separate supplemental Negative Lists to identify such opportunities. In June 2017, the mainland Chinese and Hong Kong SAR governments entered into the *Closer Economic Partnership Arrangement Investment Agreement* (CEPA) under which investments by Hong Kong investors in mainland China are to be provided with national treatment (equal treatment with their mainland counterparts) and most favored treatment (treatment at least as beneficial as that provided to China's other trade and investment partners), except for non-conforming measures listed in an annex to the agreement (i.e., the "Hong Kong Negative List"). The Hong Kong Negative List contains 16 exceptions from these protections for Hong Kong investors in mainland China (note that there are no exceptions for Chinese investors in Hong Kong). The CEPA Investment Agreement includes commitments by both governments to offer certain protections to investors from the other region on a non-discriminatory basis.

The mainland Chinese and Macau SAR governments entered into a similar CEPA Investment Agreement in December 2017. Both the Hong Kong and Macau investment agreements went into effect on January 1, 2018.

Under both the 2018 FI Negative List and PFTZ Negative List, if the CEPA and related agreements between mainland China and Hong Kong or mainland China and Macau provide more favorable treatment for eligible investors, that more favorable treatment would apply.

Encouraging Foreign Investment in Certain Industries and Regions

While Negative Lists highlight restrictions on investment, China also outlines industries and regions where foreign investment is encouraged. Part I of the 2017 Foreign Investment Catalogue contains a list of 348 areas in which foreign investment is encouraged by the Chinese government. Note that the 2018 FI Negative List only replaced the "Negative List" section of the 2017 Foreign Investment

Catalogue, while the "encouraged" sections of the 2017 Foreign Investment Catalogue are still valid. The "encouraged" sections will be replaced by the *Catalog of Industries for Encouraging Foreign Investment*, mentioned below, once finalized. Other documents, such as the *Priority Industries Catalogue in the Central and Western Regions*, indicate foreign investments that are encouraged in the less economically developed central and western parts of China. This catalogue was updated in March 2017 and contains 139 more items than its 2013 version.

On February 1, 2019, NDRC and MOFCOM issued the draft *Catalog of Industries for Encouraging Foreign Investment* for public comment. The draft catalogue has two chapters. The first chapter is intended to replace the "encouraged" sections of the 2017 *Foreign Investment Catalog*. The second chapter is intended to replace the *Priority Industries Catalog in the Central and Western Regions*, which encourages investment in various sectors in 22 provinces in central and western China.

AmCham China members welcome these efforts to develop a more comprehensive and transparent framework for investment in China. We hope that the various lists will be kept up to date and that officials will not informally or arbitrarily apply additional restrictions.

We emphasize that many types of investments open to Chinese investors in the US are not open to American investors in China. In the spirit of equal treatment and reciprocity, AmCham China members encourage the Chinese government to further reduce the market access restrictions contained on these negative lists and allow foreign investors the same degree of investment freedom that Chinese investors enjoy when investing in the US.

Outbound Investment

As net capital outflows increased and China's foreign exchange reserves fell, the Chinese government began, in 2017, to take multiple steps to enhance and tighten the regulation of outbound investment. Outbound investment requires verification or approval from both NDRC and MOFCOM. State-owned enterprises (SOEs) must obtain an additional approval from the competent state-owned assets supervision administration before going to NDRC and MOFCOM. NDRC and MOFCOM procedures have both been modified since 2017.

State Council Guidance and Updated NDRC Outbound Investment Measures

In August 2017, the State Council issued guidance that categorized various forms of outbound investment as "encouraged," "restricted," or "prohibited." The guidance contained limited information as to how particular types of investment would be encouraged or restricted. The guidance did, however, specifically indicate that a subset of "restricted"

外商投资产业目录》草案，征求公众意见。目录草案有两章。第一章旨在取代 2017 年《外商投资目录》中的“鼓励投资”部分。第二章意在取代《中西部地区外商投资优势产业目录》，该目录鼓励在中国中西部 22 个省份的各个部门进行投资。

商会会员欢迎这些为建立一个更全面和透明的中国投资框架的努力。我们希望各种清单能够持续更新，同时官员不会随意实施额外的限制。

我们强调，很多对在美国的中国投资者开放的投资类型都不对在美国的中国投资者开放。本着平等、对等的精神，商会会员鼓励中国政府进一步减少这些负面清单上的市场准入限制，并让外国投资者在华享受中国投资者在美国享受的同等投资自由。

境外投资

随着净资本流出增加，中国外汇储备下降，中国政府于 2017 年开始采取多项措施加强和收紧对外投资监管。对外投资需要国家发改委和商务部核准或批准。国有企业在国家发改委和商务部之前，还必须获得国有资产监督管理部门的额外批准。自 2017 年以来，国家发改委和商务部的程序都进行了修改。

国务院指导意见和国家发改委对外投资措施更新

2017 年 8 月，国务院发布指导意见，将各种形式的境外投资分类为“鼓励清单”、“限制清单”和“禁止清单”。该指导意见针对特定类型投资的鼓励或限制方式包含信息有限。然而，该意见明确指出了一部分“限制性”投资，具体指的是对敏感国家或地区的投资、对“房地产、酒店、电影院、娱乐或体育俱乐部”的投资，以及对“在中国境外设立的没有具体商业项目的私募股权基金和投资平台”的投资，这些投资将要接受国家发改委“核查和审批”程序的严格审查。

2017 年 8 月份的指导意见一部分是由国家发改委新的境外投资规则实施，详见《企业境外投资管理办法》（《国家发改委境外投资办法》）、《境外投资敏感行业目录》和国家发改委“关于发布《企业境外投资管理办法》配套格式文本”通知。《国家发改委境外投资办法》于 2018 年 3 月 1 日生效，取代了国家发改委自 2014 年实施的境外投资规则。它们简化并解决了境外投资审批流程中的某些低效问题，包括：

- 对价值超过 3 亿美元的境外收购项目进行实质性工作之前，对外投资者向国家发改委提交项目信息报告并收到确认（所谓的“路线图”），这一要求已取消；
- 允许投资者在项目签署后 / 结束前期间接受国家发改委的“备案”或验证审批流程（将国家发改委的审查更加整齐地纳入标准交易流程），以及
- 允许当地企业直接向中央发改委提交敏感项目申请，而不是要求省级发改委审查。

这些措施还扩大了受监管活动的覆盖范围，包括由中国实体或国民控制的非中国实体进行的敏感或大型投资（即价值超过 3 亿美元的投资）。此外，《国家发改委境外投资办法》制定了新机制，强化了现有机制，使政府能够监督境外投资，包括新增的报告要求。

《国家发改委境外投资办法》和《境外投资敏感行业目录》中的敏感投资行业（即《国家发改委境外投资办法》中规定需核准和审批程序的境外投资行业）包括的内容要比 2014 年境外投资规则中认定的更为广泛，部分原因是上文提到的 2017 年 8 月国务院指导意见中列举的项目。值得注意的是，2014 年被视为敏感的一些项目（如大规模土地开发和输电线路和电网）不再被归类为敏感项目。

商务部信息共享平台

商务部对中国境外投资的核准和审批程序仍受本部 2014 年《境外投资管理办法》（《商务部境外投资办法》）的管辖。为了更好地协调中国对外投资的信息共享，2018 年 1 月，商务部和另外六个政府部门，包括中国人民银行、国有资产监督管理委员会和国家外汇管理局，共同发布了《对外投资备案（核准）报告暂行办法》（《商务部境外投资报告办法》）。这些措施描述了中国境外投资者要报告的信息类型，并建立了七个部门之间共享信息的平台。此外，各部门可能会共同惩罚未履行报告义务的投资者。

国家发改委未参与此《办法》的制定，故境外投资者必须单独遵守其报告要求。

收紧国有企业境外投资

国有企业的境外投资受到中国政府的更严格监管。2017 年 1 月，国资委发布《中央企业境外投资监督管理办法》，再次强调未经国资委批准，禁止中央企业开展主营业务以外的投资。《办法》还规定，国资委将发布一个新的负面行业清单，限制或禁止中央企业在这些行业的境外

investments—specifically, investments in sensitive countries or regions, investments in “real estate, hospitality, film cinemas, entertainment or sports clubs,” and investments in “private equity funds [and] investment platforms established outside the territory of China without concrete commercial projects”—would be subject to heightened scrutiny through NDRC’s “verification and approval” process.

This August 2017 guidance was implemented in part by new outbound investment rules from NDRC, set out in the *Administration Measures for Outbound Investment by Enterprises* (NDRC Outbound Investment Measures), the *Catalog of Sensitive Industries for Outbound Investment*, and the *Circular of NDRC on Issuing Accompanying Templates for the Administrative Measures for Outbound Investment of Enterprises*. The NDRC Outbound Investment Measures went into effect on March 1, 2018 and replaced NDRC’s previous outbound investment rules from 2014. They streamline and address certain inefficiencies in the outbound investment approval process, including by:

- Eliminating the requirement that an outbound investor file a project information report with NDRC and receive confirmation thereof (a so-called “roadmap”) prior to beginning substantive work on an outbound acquisition project valued at more than US \$300 million;
- Allowing investors to undergo NDRC’s “record-filing “or verification and approval process during the post-signing/pre-closing period of a project (fitting NDRC’s review more neatly into standard deal processes); and
- Allowing local enterprises to directly submit applications for sensitive projects to the central-level NDRC instead of also requiring provincial-level DRC review.

The measures also expand the coverage of regulated activity to include sensitive or large investments (i.e., investments greater than US\$300 million in value) made by non-Chinese entities under the control of Chinese entities or nationals. Further, the NDRC Outbound Investment Measures set out new mechanisms and fortify existing mechanisms that enable the government to supervise outbound investment, including newly added reporting requirements.

The sensitive industries for investment included in the *NDRC Outbound Investment Measures* and the *Catalog of Sensitive Sectors for Outbound Investment* (i.e., the industries in which outbound investments are subject to the verification and approval processes set forth in the NDRC Outbound Investment Measures) include a broader range of industries than those treated as sensitive under the 2014 outbound investment rules, in part due to the inclusion of the items enumerated under the August 2017 State Council guidance, as mentioned above. Notably, some items that were treated as sensitive in 2014 (such as large-scale land development

and power transmission lines and power grids) are no longer categorized as sensitive.

MOFCOM Information Sharing Platform

MOFCOM’s verification and approval procedure for Chinese outbound investment is still governed by the ministry’s 2014 *Outbound Investment Administration Measures* (“MOFCOM Outbound Investment Measures”). In order to better coordinate information sharing regarding Chinese outbound investment, MOFCOM and six other government authorities—including the People’s Bank of China (PBOC), the State-Owned Assets Supervision and Administration Commission (SASAC), and the State Administration of Foreign Exchange (SAFE)—jointly issued the *Interim Measures for the Reporting of Outbound Investments Subject to Record-Filing or Approval* (“MOFCOM Outbound Reporting Measures”) in January 2018. These measures describe the types of information to be reported by Chinese outbound investors and establish a platform for sharing information among the seven authorities. In addition, the authorities may jointly penalize investors that fail to meet their reporting obligations.

NDRC is not a party to this joint effort, so outbound investors must separately comply with its reporting requirements.

Tightening of Outbound Investment by SOEs

Outbound investments by SOEs are regulated even more tightly by the Chinese government. In January 2017, SASAC issued the *Administrative Measures on the Supervision of Central SOE Outbound Investment*, reemphasizing a prohibition against central SOE investments outside of their main lines of business without SASAC approval. These measures also provide that SASAC is to issue a new Negative List of industries in which outbound investment by central-level SOEs is restricted or prohibited. That negative list has yet to be published. Local SASAC counterparts may implement similar rules for SOEs under their jurisdiction. In June 2017, the Ministry of Finance (MOF) issued measures aimed at reducing financial risk in outbound investments.

State-Owned Enterprise Reforms

For many years, the Chinese government has been working to reform SOEs in order to make them more efficient and competitive. SOEs once played dominant roles in the economy and in the provision of social services, but now provide only one-third of China’s economic output and 16% of the country’s jobs, while accounting for an outsized share of corporate debt. Among other things, the Chinese government has been trying to corporatize the SOE sector by restructuring central SOEs into joint stock and limited liability companies. In late July 2017, the State Council announced that all central SOEs (except those in cultural and financial industries) would complete this type of corporate restructuring by the end of 2017, and a SASAC official stated

投资。该负面清单尚未公布。地方国资委可以对其管辖范围内的国有企业实施类似的规则。2017年6月，财政部发布了旨在降低境外投资财务风险的措施。

国有企业改革

多年来，中国政府一直致力于国有企业改革，使其更具效率和竞争力。国有企业曾经在经济和提供社会服务方面发挥主导作用，但现在只提供中国经济产出的三分之一和国家就业的16%，但是其占公司债务的比例过大。其中，中国政府一直尝试通过将国企重组为股份制和有限责任公司来公司化国有企业。2017年7月下旬，国务院宣布所有中央国有企业（文化和金融行业除外）将于2017年底完成此类企业重组，2018年1月，一名国资委官员称该目标已基本实现。2018年3月，李克强总理确认，国资改革扎实推进，公司制改革基本完成。

国有企业的公司制改革使得私人资本进入中国国有企业。自2016年底以来，监管机构在推进混合所有制（混合公共和私有制）国有企业改革方面取得了重大进展。2016年11月，国家发改委和国资委选择了9家中央国有企业作为混合所有权试点。2017年3月开始的第二轮增加了另外10家中央国有企业。第三轮开始于2018年，共有31家国企参与，其中10家央企，21家地方国企。中国领导人也推动国有企业之间的合并，希望合并可以减少低效现象。这些努力已经产生了重大影响。值得注意的是，2017年8月，包括阿里巴巴，百度，腾讯和京东在内的14家中国公司购买了国有电信巨头中国联通的120亿美元的股票。虽然外国投资者获邀参与其中一些混合所有制公司，但外资参与混合所有制公司的程度尚不清楚。

根据过去的官方声明，混合所有制改革只是过渡，进一步是更大规模的国企改革，这样政府不再担任国企的管理角色，而仅仅是股东。私人投资者（包括外国投资者）将有机会帮助重组国企管理并实施各种市场化改革，使国有企业更精简，更有利可图，更具市场竞争力。

商会继续支持政府的国企改革工作，并希望其未来能够允许私人资本的参与达到更高水平。国有企业的结构改革以及政府从公司治理角色向公正监管机构转变将创造更高效、公平和有竞争力的市场环境。随着改革努力的推进，商会的会员将继续寻求平等的机会和平等的外商投资待遇。除了投资，我们的会员还可以为国有企业带来宝贵的管理和战略专业知识。

国家干预投资环境的目标：产业政策与国家安全

中国政府正积极管理中国私人投资环境（以及中国在海外的投资），以推动产业政策目标的实现，并保护其广泛的国家安全利益，然而这两个目标有时难以区分。

虽然中国已经摆脱了整个经济体的生产配额和其他苏联式的中央计划，但中国仍然将高级别的、强调政府发展重点的产业政策放在中心位置，并提供指导和激励措施，以实现这些目标。这些产业政策有多种形式，包括国家五年计划、地方和行业特定的计划和政策，以及中期和长期计划。随着中国政府寻求“提升中国的产业发展的价值链地位”，它越来越注重高科技产业的发展。通过“中国制造2025”，“互联网+”和“下一代人工智能发展计划”等产业政策文件和倡议，中国政府形成了一系列战略，使中国成为高科技制造业、数字经济和人工智能领域的世界领导者，使中国企业在国际上具有竞争力。中国实施这些战略的产业政策工具除了造成市场扭曲之外，还可能导致对外国投资者的歧视，并削弱他们对中国市场的热情。这些担忧已经有所增加，因为中国推动了一系列重点高科技产业的发展，包括新能源汽车、自动驾驶系统和人工智能。

鉴于中国更加注重高科技发展，外商投资者已经看到实现国家安全和产业政策目标两个因素叠加所产生的影响。商会会员长期以来一直担心以安全的名义歧视外国技术，例如2007年首次起草的《信息安全等级保护管理办法》（《办法》），要求中国的信息系统评级在一定敏感性水平以上，来使用由国内全资或受控实体制造且其核心技术或关键部件仅包含国内知识产权的信息安全产品，这只是其中一条。最近的立法只是进一步加深了此类担忧。新的《网络安全法》于2017年6月生效，其中一些语言复制了《办法》，只不过是在网络安全领域。其他法律法规引入了“安全可控”的标准（或其中的一些变体），最为人所知的是2014年底和2015年初发布的银行业指导意见，后来由于外国公司和政府的担忧而被撤回。政府通过此类要求来促进使用具有国内知识产权的技术。中国的法律法规也越来越多地纳入数据本地化要求，这可能会使跨国公司从中国转移数据出去变得复杂。政策制定者目前正在起草法规和国家标准，以建立跨境数据传输机制，来根据《网络安全法》的要求对跨境数据流动进行管理。此外，许多中国法律法规要求在中国开展业务的实体在国家安全和刑事调查背景下，向中国公安机关提供含糊不清的“技术支持”。

in January 2018 that this goal had largely been met. In March 2018, Premier Li Keqiang confirmed stated that the SOE corporatization effort was mostly complete.

This corporatization of the SOE sector has allowed the introduction of private capital into Chinese SOEs. Since late 2016, regulators have made significant progress in advancing mixed-ownership (mixed public and private ownership) SOE reforms. In November 2016, NDRC and SASAC selected nine central-level SOEs for pilot mixed-ownership initiatives. Another 10 central-level SOEs were added in a second round beginning in March 2017. A third round began in 2018 with 31 SOEs participating—10 at the central level and 21 at local levels. Chinese leaders have also promoted mergers between SOEs, hoping that consolidation will reduce inefficiencies. These efforts have already had a significant impact. Notably, in August 2017, a group of 14 Chinese companies including Alibaba, Baidu, Tencent, and JD purchased \$12 billion worth of shares in state-owned telecom giant China Unicom. Though foreign investors have been invited to participate in some of these mixed-ownership companies, the degree of foreign participation in mixed-ownership companies is unclear.

According to official statements in the past, mixed-ownership reforms are meant to be a transitory step toward greater overall SOE reform that would allow the government to step away from a managerial role in SOEs and become, simply, a shareholder instead. Private investors (including foreign ones) would have space to help restructure SOE management and institute various market-oriented reforms to make SOEs leaner, more profitable, and more market-competitive.

AmCham China continues to support the government’s SOE reform efforts, and hopes that it will, in time, become more ambitious in allowing for greater participation of private capital. Structural reforms of SOEs and the transition of the government from a corporate governance role into that of an impartial regulator will lead to a more efficient, fair, and competitive market landscape. Our members seek equal opportunities for and treatment of foreign investment as the reform effort moves forward. Beyond investing, our members can also bring valuable managerial and strategic expertise to the SOE sector.

Goals of State Intervention in Investment Environment: Industrial Policy & National Security

The Chinese government actively manages the environment for private investment in China (and Chinese investment abroad) in order to promote its industrial policy goals and address broadly defined national security interests—two purposes that can be difficult to distinguish at times.

Although it has moved away from economy-wide production quotas and other hallmarks of Soviet-style central plan-

ning, China continues to give a central place to high-level industrial policies that reaffirm the government’s development priorities and provide guidance and incentives in order to pursue them. These industrial policies take a wide variety of forms, including the national five-year plan, local and industry-specific plans and policies, and medium- and long-term plans. As the Chinese government seeks to move China’s industrial development “up the value chain,” it is increasingly setting its sights on developing high-technology industries. Through industrial policy documents and initiatives such as *Made in China 2025*, *Internet +*, and the *Next Generation Artificial Intelligence Development Plan*, the Chinese government outlines a series of strategies to make China a world leader in high-tech manufacturing, the digital economy, and artificial intelligence, and to make Chinese companies competitive internationally. Beyond creating market distortions, Chinese industrial policies and the tools used to implement them can lead to discrimination against foreign investors and dampen their enthusiasm for the Chinese market. These concerns have risen as China has promoted a number of priority high-tech industries, including new energy vehicles, autonomous driving systems, and artificial intelligence.

As China’s aims become more high-tech, foreign investors have seen an increased co-mingling of national security rationales and industrial policy goals. AmCham China members have had long-standing concerns about discrimination against foreign technology in the name of security, such as with the “Multi-Level Protection Scheme” (MLPS) first drafted in 2007, which requires Chinese information systems graded as above a certain level of sensitivity to, among other things, use only information security products that are manufactured by domestically wholly-owned or controlled entities and whose core technologies or critical components contain only domestic intellectual property. Recent legislation has only compounded and extended these concerns. The new *Cybersecurity Law*, which went into effect in June 2017, contains language replicating the MLPS approach in the cybersecurity context. Other laws and regulations have introduced a “secure and controllable” standard (or some variant thereof)—most famously banking sector guidelines issued in late 2014 and early 2015 that were later withdrawn due to the concerns of foreign companies and governments—through which they require or otherwise promote the use of technologies with domestic intellectual property. Chinese laws and regulations also increasingly incorporate data localization requirements that may complicate the ability of multinational companies to transfer their data out of China. Policymakers are currently drafting regulations and national standards to establish a cross-border data transfer mechanism that will regulate cross-border data flows as required by the *Cybersecurity Law*. Moreover, many Chinese laws and regulations require entities with operations in China to provide vaguely defined “technical support” to Chinese public security authorities in the context of national security and criminal investigations.

自 2011 年以来，国家安全审查已成为中国外商投资审批程序的一个特点。从这一年开始，由国务院和商务部牵头的中国政府一直在建立外国对内并购的安全审查制度，外商投资者将获得对某些类型中国目标的实际控制权（即涉及敏感的军事和国防事务、重要的农产品、能源和资源、基础设施、运输服务、关键技术和大型设备制造）。该系统与美国外商投资委员会在美国进行的外商投资安全审查相似，但范围更广，定义更不明确（实质上和程序上）。

2015 年，国务院办公厅颁布了适用于自贸区的特殊国家安全审查规则，将国家安全审查制度的覆盖范围扩大到并购以外，还包括绿地投资。同年颁布的《国家安全法》中有一项总体规定，要求“国家应建立国家安全审查的监管机构和机制，对外商投资、具体项目和关键技术、网络信息技术产品和服务、建设项目，以及影响或可能影响国家安全的其他重大事件和活动开展国家安全审查，以便有效预防和解决国家安全风险”（第 59 条）。为进一步落实本规定的要求，相关政府机构可以颁布适用于特定行业 and 产品的更详细规则。例如，《网络安全法》对可能影响国家安全的网络产品和服务的采购规定了安全审查要求。这些安全审查要求的确切性质以及如何在实践中实施这些要求仍不清楚。

在本章接近开头部分讨论的新《外商投资法》将国家安全审查制度作为管理外商投资的几个关键制度之一，但没有提供实施的相关细节。

限制的范围有明确界定，且不用于促进产业政策目标。

- 允许市场力量在对外资中发挥决定性作用。
- 继续对国有企业进行结构性改革，转变政府职能从公司治理者的角色转变为公正的监管机构。允许外国公司和私人资本平等参与改革进程。

建议

- 在推进产业政策目标和消除行业政策及实施中对外国投资者的所有直接和间接歧视时，确保将对市场力量运作的干扰降到最小。
- 征询商会会员企业的意见与建议，尽快发布《外商投资法》的相关实施细则，以明确回应外国商界和商会在公众意见征询期提出的问题，其中包括国家安全审查范围，行业特定法规凌驾于其它较为宽泛的法律之上，以及草案中许多条款缺乏细节的问题。
- 进一步减少负面清单中的市场准入限制，允许外国投资者在投资中国时享有与中国投资者投资美国相同的投资自由度。确保国家安全相关规则和

Since 2011, national security reviews have become a feature of China's foreign investment approval process. Starting in that year, the Chinese government, led by the State Council and MOFCOM, has been putting into place a system for security reviews of foreign inbound mergers and acquisitions in which a foreign investor would gain actual control over certain types of Chinese targets (i.e., those related to sensitive military and national defense affairs, and important agricultural products, energy and resources, infrastructure, transportation services, critical technologies, and large equipment manufacturing). This system is similar, but 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.

In 2015, the State Council's General Office issued special national security review rules applicable in PFTZs expanding the coverage of the national security review system beyond mergers and acquisitions to include greenfield investments as well. 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, as well as other major events and activities that affect or may affect national security, so as to effectively prevent and resolve national security risks" (Article 59). To further implement the requirements of this provision, relevant government agencies may issue more detailed rules applicable to specific industries and products. For example, the *Cybersecurity Law* imposes security review requirements for the procurement of network products and services that might affect national security. The exact nature of these security review requirements and how they will be implemented in practice is still unclear.

The new *Foreign Investment Law*, discussed near the beginning of this chapter, includes the national security review system as one of several key systems for managing foreign investment, but does not provide additional details regarding implementation.

member companies to clarify issues raised by the foreign business community and AmCham China during the public comment period. These include the broad scope of proposed national security reviews, the opportunities for broad legal protections to be overridden by industry-specific regulations, and the lack of details in many draft Articles.

- Further reduce the market access restrictions contained in the Negative Lists and allow foreign investors the same degree of investment freedom that Chinese investors enjoy when investing in the US. Ensure that national security-related rules and restrictions are narrowly tailored and not used to promote industrial policy objectives.
- Allow market forces to play a decisive role in outbound investment.
- Continue structural reforms of SOEs and the transition of the government from a corporate governance role into that of an impartial regulator. Allow for equal participation of foreign firms and private capital in the reform process.

Recommendations

- **Work to ensure minimal disruption to the operation of market forces when promoting industrial policy goals and eliminate all direct and indirect forms of discrimination against foreign investors in industrial policies and the tools to implement them.**
- Issue relevant implementing regulations in support of the new *Foreign Investment Law* as soon as possible in consultation with AmCham China

Standards and Conformity

Introduction

China continued reform of its standards system in 2018. The revised *Standardization Law of the People's Republic of China (Standardization Law)*, adopted by the National People's Congress (NPC) on November 4, 2017, came into effect on January 1, 2018.

China also launched a far-reaching government reorganization in March 2018 that culminated in the creation of the State Administration for Market Regulation (SAMR). The Standardization Administration of China (SAC) and the Certification and Accreditation Administration of China (CNCA), formerly under the General Administration of Quality Supervision, Inspection, and Quarantine (AQSIQ), are now under SAMR. As a market super-regulator, SAMR assumed varying levels of administrative responsibility for standardization, certification and accreditation, as well as for market supervision, anti-monopoly behavior, price supervision, intellectual property rights, and business licenses, among others.

The revised *Standardization Law* has created a solid legal foundation for China to deepen the reform of the standardization system at all levels. AmCham China welcomes the foundation laid by the new Law and hopes that the creation of SAMR will improve China's regulatory oversight. It introduces market-driven reforms and group-level standards, unified mandatory standards, and reduced the number of recommended standards.

These reforms and initiatives notwithstanding, AmCham China remains concerned about China's commitment to the use of and alignment with international standards, which is a critical enabler of global trade and investment.

The *Standardization Law* requires further reform. This is reflected in its failure to follow international standard setting principles of the World Trade Organization Agreement on Technical Barriers to Trade (WTO/TBT), the possibility that group standards can and will be superseded by industry standards, and the continued preference for domestic standards. There are also concerns about the distortions caused by domestic subsidies, and a lack of conventional copyright protection language in the *Standardization Law*. AmCham China continues to urge that these issues be resolved and

that China adopt existing international standards absent solid justification for the use of local alternatives.

Moreover, in 2018 China also formally launched China Standards 2035, a broad-based initiative designed to leverage the Belt and Road Initiative (BRI) to promote China's influence through standards development and leadership. AmCham China urges that foreign enterprises and member companies be allowed to participate equally and share their expertise in this initiative to promote Chinese standards internationally. In March 2019 China adopted the *Foreign Investment Law* which provides for equal participation for foreign and domestic companies in standards-setting processes. Set to come into effect on January 1, 2020, AmCham China urges full implementation of the Foreign Investment Law as written with equal participation by foreign companies in standards setting and the opportunity to participate in and provide feedback on China Standards 2035.

China's Standardization and Conformity Assessment Institution Reform

The new *Standardization Law* proposes a series of steps to transform the administration of China's standards system. On March 21, 2018 the Chinese government launch a sweeping government reorganization through the *Deepening Party and State Institutional Reform Plan (Institutional Reform Plan)* to make government more efficient.

The *Institutional Reform Plan* created SAMR in part to implement the *Standardization Law*. SAMR absorbed the regulatory duties for standards and qualifications previously borne by the General Administration of Quality Supervision, Inspection and Quarantine of China (AQSIQ), as well as the responsibility for conformity assessment. The *Institutional Reform Plan* retained the SAC and CNCA.

The *Regulations on the Functional Configuration, Internal Institutions and Staffing of SAMR* (the Regulations) were published on September 10, 2018 through the China Institutional Development Network. The Regulations helped to clarify jurisdiction issues, division of responsibility, and administrative functions of China's standardization and conformity assessment bodies.

标准

引言

2018年，中国继续推进并落实其标准体系的改革。《中华人民共和国标准化法》（标准化法）经过20个月对初版（1988年）修订草案的三次公开征求意见和三次修改讨论，最终于2017年11月4日第十二届全国人民代表大会常务委员会会议上通过，2018年1月1日执行。

2018年3月，中国启动了影响深远的政府重组，创建了国家市场监督管理总局（以下简称“市场监管总局”）。原先隶属于国家质量监督检验检疫总局的中国标准化管理委员会与中国认证认可监督管理委员会也划归该总局。作为一个市场超级监管机构监管不同级别的行政责任标准化，认证认可，以及市场监管、反垄断行为、价格监管、食品和药物安全、知识产权、和营业执照核发等。随后的改革还催生了新的管理委员会，负责监督中国标准的发展进程。

修订后的《标准化法》为中国各级标准化制度深化改革奠定了更为坚实的法律基础。中国美国商会（商会）欢迎新法律奠定的基础，并希望国家市场监督管理总局（SAMR）的成立将改善中国的监管监督。这引入市场化改革和团体标准，统一强制性标准，收缩推荐行标准。

尽管有这些改革和举措，商会仍对中国的承诺并与国际标准接轨感到担忧。国际标准是全球贸易和投资的关键推动者。

新的《标准化法》有待继续改进的地方，表现在未引入世界贸易组织《技术性贸易壁垒协定》（WTO/TBT）有关国际标准制定原则，行业标准对团体标准可能产生的抑制，地方标准的扩权，政府资助可能引起的扭曲，没有引入标准版权保护问题等。商会希望这些问题能够得以解决，并希望中国采用现有国际标准，而不是使用本土替代标准。

此外，2018年，中国还正式启动了“中国标准2035”，这是一个广泛的倡议，旨在利用“一带一路”倡议，通过制

定标准和发挥领导作用，提升中国的影响力。商会促请外国企业和会员公司平等参与，分享他们的专业知识，在国际上推广中国标准。2019年3月，中国通过了《外商投资法》，规定外资企业和国内企业平等参与标准制定过程。商会将于2020年1月1日起实施《外商投资法》，鼓励外国企业平等参与标准制定，并有机会参与并对中国标准2035作出反馈。

中国标准化与合格评定机构改革

新的《标准化法》提出了一系列改革中国标准体系管理的措施。2018年3月21日，中国政府通过深化党和国家机构改革计划（简称机构改革计划），全面启动政府机构改革，提高政府运行效率。

在《机构改革方案》下组建了市场监管总局，部分是为了贯彻《标准化法》。国家市场监督管理总局并入原国家质量监督检验检疫总局的大部分职责，包括标准与合格评定职责，对外保留国家标准化管理委员会、国家认证认可监督管理委员会这两块牌子。

2018年9月10日，“国家市场监督管理总局职能配置、内设机构和人员编制规定”在中国机构编制网发布，该规定明确了中国标准化与合格评定机构新的归属、职责、功能与定位。

标准化方面，在保留“国家标准化管理委员会”牌子同时，成立了两个新的司级行政单元：标准技术管理司和标准创新管理司，承担标准相关职责。

标准技术管理司负责拟订标准化战略、规划、政策和管理制度并组织实施。承担强制性国家标准和推荐性国家标准（含标准样品）。协助组织查处违反强制性国家标准等重大违法行为。承担国务院标准化协调机制的日常工作。承担全国专业标准化技术委员会管理工作。

In addition to retaining the SAC, the Regulations created two new department-level units: the Standards Technical Management Department and the Standards Innovation Management Department.

The responsibilities of the Standards Technical Management Department consist of developing, planning, and implementing new standards and management systems. This department assumed responsibility for overseeing both mandatory and recommended national standards (including reference samples). It assists in organizing investigations and administering punishments for clear violations of mandatory national standards. The department also assumed responsibility for the State Council's day-to-day work on standards coordination, in addition to managing the national professional standardization Technical Committees.

The Standards Innovation Management Department directs, supervises, and coordinates industry and local standards and oversees group and enterprise standards activities. It is responsible for publicizing, implementing, and promoting national standards. Moreover, the SIMD manages national item codes, product barcodes and corporate logos as well as tasks related to China's social credit scores of national legal persons and other organizations. Finally, it coordinates participation in the activities of the International Organization for Standardization (ISO), the International Electrotechnical Commission (IEC) and other international and regional standardization organizations, and is responsible for compliance and adoption of advanced international standards.

With respect to conformity assessment, the CNCA was retained, while two new administrative units were established: the Certification and Supervision Department and the Accreditation, Inspection, and Testing Supervision Department.

The Certification and Supervision Department formulates certification and standards assessments, guides development of the certification industry, and assists in the investigation of certification violations. The organization also participates in certification and conformity assessment activities of international and regional organizations.

The Accreditation, Inspection, and Testing Supervision Department formulates and implements inspection of supervision and management systems. It coordinates testing and inspection activities and oversees development of the testing and inspection industry. It assists in the investigation of standards violations. The department also participates in accreditation and testing to conform with international and regional organization standards activities.

AmCham China welcomes the reform of China's standardization and conformity assessment institutions and the establishment of new division-level administrative units, which helps define the roles of regulatory authorities in stan-

dardization and conformity assessment, defines the scope of the government's standardization activities, and clarifies the extent of the "government's return to the market."

These reforms reflect China's decision to allow the market to play a decisive role in standardization and conformity assessment, which continues trends seen by AmCham China members over the past few years. AmCham China appreciates China's progress and hopes that China continues down this path in the future.

Integration of Certification, Accreditation, Inspection and Testing Activities

In June 2018 SAMR and CNCA, which oversees administration, coordination, and oversight of China's testing and accreditation activities, jointly issued the *Notice on Reforming and Adjusting the Compulsory Product Certification Catalogue and Implementation Method* (2018 Announcement No. 11). The Announcement reduced the number of product categories in the certification catalogue from 160 to 141. The Announcement permitted the use of self-declaration certifications instead of third-party certification for 20 kinds of products assessed to be of generally good quality and minimal safety risks. These products include audio and video equipment, information technology equipment, low-voltage electrical appliances, low-power motors, electric welders, household and other accessories, motor vehicles and non-specific safety accessories.

In September 2018 the State Council further reduced the *Industrial Product Production License Management Catalog*, simplified examination and approval procedures, canceled production licenses for 14 industrial products, and delegated management authority for four types of industrial products to the quality and technical supervision departments of provincial and municipal governments (under the Market Supervision and administrative departments).

At the same time, several product categories were converted to compulsory product certification status. The categories include explosion-proof electrical and gas appliances (domestic gas stoves, domestic gas rapid water heaters, gas water heaters, large refrigerators with a calibration volume of more than 500L). AmCham China appreciates China's adoption of these reforms which we anticipate will lessen the administrative burdens on industry.

At the November 2018 Expo Forum, SAMR Minister Zhang Mao emphasized the need to intensify the reform of standards inspection and testing, further open the market and strengthen competition, and promote continued integration of certification, accreditation, inspection and testing procedures.

AmCham China welcomes China's attention to certification and accreditation, reform of inspection and testing, efforts to deepen "standards distribution services," streamline the

标准创新管理司负责协调、指导和监督行业、地方标准化工作。规范、引导和监督团体标准制定、企业标准化活动。开展国家标准的公开、宣传、贯彻和推广实施工作。管理全国物品编码、商品条码及标识工作。承担全国法人和其他组织统一社会信用代码相关工作。组织参与国际标准化组织、国际电工委员会和其他国际或区域性标准化组织活动。组织开展与国际先进标准对标达标和采用国际标准相关工作。

合格评定方面，在保留“国家认证认可监督管理委员会”牌子的同时，成立两个新的司级行政单元：认证监督管理委员会和认可与检验检测监督管理委员会，承担认证认可和检验检测职责。

认证监督管理委员会拟订实施认证和合格评定监督管理制度。规划指导认证行业发展并协助查处认证违法行为。组织参与认证和合格评定国际或区域性组织活动。

认可与检验检测监督管理委员会拟订实施认可与检验检测监督管理制度。组织协调检验检测资源整合和改革工作，规划指导检验检测行业发展并协助查处认可与检验检测违法行为。组织参与认可与检验检测国际或区域性组织活动。

商会注意到，中国标准化与合格评定机构改革通过设立新的司级行政单元，明确了标准化与合格评定领域政府所需要扮演的角色，界定了政府标准化的活动范围，理清了“政府的归政府、市场的归市场”这一边界，扭转了多年来中国标准化与合格评定领域中政府职能与市场功能混合作用状态下的政府介入泛化现象。

这是中国在标准化与合格评定领域落实“市场起决定作用”的具体行动。商会赞赏中国这一进步，并希望中国今后持续落实到位。

推动认证认可、检验检测一体化改革

2018年6月，国家市场监管总局、认监委联合发布《关于改革调整强制性产品认证目录及实施方式的公告》（市场监管总局公告2018年第11号），认证目录产品种类从160种减至141种；同时，对其中音视频设备、信息技术设备、低压电器、小功率电动机、电焊机、家用和类似用途设备、机动车辆及安全附件等领域20种质量稳定、安全风险较低的产品，允许企业运用自我声明评价方式替代第三方认证。

2018年9月，国务院进一步压减工业产品生产许可证管理目录和简化审批程序，取消14类工业产品生产许可证

管理，将4类工业产品生产许可证管理权限下放给省级人民政府质量技术监督部门（市场监督管理部门）。

同时将防爆电气、燃气器具（家用燃气灶、家用燃气快速热水器、燃气采暖热水炉）和标定容积500L以上大冰箱（制冷设备产品冷柜单元中家用冰箱冷柜产品）等三类产品转为强制性产品认证管理。商会赞赏中国采取以上改革措施，帮助减轻企业负担。

2018年11月，国家市场监管总局张茅局长在进博会论坛上指出，要加大检验检测改革力度，强化市场开放与竞争，推动认证认可、检验检测一体化改革。商会欢迎中国推动认证认可、检验检测一体化改革，切实深化“放管服”，精简优化强制性、准人类制度，公开各项国家统一推行认证制度的目录和准入条件，这将有助于提高中国制造产品的质量，进一步推动中美贸易。

同时，商会希望了解中国推动认证认可、检验检测一体化改革更具体、更详尽的落实措施，期望能实际参与到这一改革开放进程中。

商会促请中国采用检测检验认证的最佳国际实践作法，包括：

- 将规则制定者、裁判员和运动员的角色分开；
- 有效地解除现代服务业的禁锢；
- 让市场发挥主导作用，与
- 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。

商会相信，为了推动认证认可、检验检测一体化改革，还需要采取其他切实有效的措施，包括加快中国强制性产品认证（3C）的认证机构资质对外资开放的步伐，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、健全的认证认可、检验检测制度。

“中国标准化2035”战略

“中国标准化2035”是由原国家质检总局（2018年3月合并到国家市场监督管理总局）于2017年发起的国家赞助计划，于2018年2月正式启动，并在“面向未来的标准化战略和创新政策——以中国，美国和欧洲使用标准的方式促进全球合作”大会上公开宣布。

mandatory and access-type system, and publicize investment catalogues and conditions for access to encourage a more unified implementation of the certification system. These actions will improve the quality of China-made products and promote US-China trade.

At the same time, AmCham China is working to understand China's specific and detailed implementation measures for reform of certification and accreditation, inspection and testing, and hopes to actively and meaningfully participate in the continuing reform and opening up process.

AmCham China urges the Chinese government to adopt international best practices with respect to certification, including:

- Clearly separating the roles of regulators, industry referees and industry participants;
- Removing certification restrictions and constraints that restrict a variety of modern service industries;
- Allowing the market to play a leading role; and
- Providing manufacturers with a greater number of options to meet testing and certification requirements of the Chinese market.

We believe it is essential to improve certification, accreditation, inspection and testing procedures. These include accelerating the pace of opening China's Compulsory Certification (3C) bodies to foreign investment and participation, as well as allowing foreign-invested testing institution certificates to satisfy the requirements of domestic regulations for all products and allowing foreign or foreign-invested institutions to become 3C certification bodies. This way all stakeholders will be able to participate equally in building a fair and equitable certification, inspection, and testing system.

China Standards 2035

China Standards 2035 is a state-sponsored program initiated in 2017 by AQSIQ (merged into SAMR in March 2018). It was officially implemented in February 2018 and publicly announced at the "Future-oriented standardization strategies and innovation policies: the way China, the US, and Europe use standards to promote global cooperation" conference held in Beijing on November 28, 2018.

This conference was attended by a number of international standardization bodies, including ITU; European standards organizations including The European Committee for Standardization (CEN), European Committee for Electrotechnical Standardization (CENELEC); and national standards organizations from Germany (DIN, DKE), UK (BSI), France (AFNOR) and the US (ANSI).

In light of the launch of China Standards 2035, AmCham China continues to encourage China to adopt international standards. Furthermore, we urge China to adhere to

established principles of international standards development and apply due process in the implementation of the *Standardization Law*. Our members urge China, like all major industrialized nations that are WTO signatories, to implement its WTO/TBT commitments as a basis for legal and policy standardization frameworks. The WTO/TBT requires that standards developed by a country adhere to provisions in cases 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 industry standards, except where doing so would be ineffective or inappropriate. In addition, before adopting a standard, standardization institutions must allow a period of at least 60 days for the submission of comments on draft standards by interested parties within the territory of a WTO member.

AmCham China rejects any attempt to only partially adopt international standards without reasonable justification. Previous attempts to do have created unnecessary confusion, led to duplicative and inconsistent standards, and made implementation more cumbersome. Unique domestic standards not only restrict market access and erect artificial trade barriers on imported products and technologies, they also impede the entry of Chinese products and technologies into the international market. This inhibits the ability of Chinese firms to enter global markets. Requiring products to be designed and produced in line with China's unique standards only increases the time and expense of production for foreign, domestic, upstream and downstream stakeholders in manufacturing, research and development, and design.

AmCham China recommends that the Chinese government adopt international standards in lieu of creating domestic standards whenever possible, absent solid justification for the use of local alternatives. If, however, certain standards require modifications for the Chinese context, transparency during the standards formulation process is crucial. Explanations should be provided for any standards that are adjusted. When adapting these standards, the Chinese government should consult international experts and stakeholders. Chinese regulators should work with international experts to ensure consistency in the interpretation and application of those standards.

China Standards 2035 was organized by the China Academy of Engineering, the leading professional industry organization. Program participants include key standardization bodies such as the China Electronic Standardization Institute, China National Institute of Standardization, China Academy of Information and Communication Technology, as well as industry-specific standardization institutes. The program was intended to develop a long-term strategy for reform of the standardization system under the principle of "increasing quality and efficiency, encouraging innovation-driven growth and promoting open and cooperative development."

The program is comprised of four sub-programs:

该会议于 2018 年 11 月 28 日在北京召开，吸引了国际标准化机构的广泛参与，包括国际电信联盟和欧洲标准机构，如：欧洲标准化委员会 (CEN)、欧洲电子技术标准化委员会 (CENELEC)、来自德国的国家标准组织 (DIN、DKE)、英国的国家标准组织 (BSI)、法国的国家标准组织 (AFNOR) 以及美国国家标准组织 (ANSI)。

商会继续鼓励中国在推行“中国标准化 2035”战略时采用国际标准。此外，商会促请中国坚持国际标准开发活动的制定原则，在实施《标准化法》时采用正当程序。商会会员促请中国像所有主要工业化国家一样成为世贸组织签署国，将其世贸组织 / 技术性贸易壁垒承诺作为法律和政策标准化框架的基础。世贸组织 / 技术性贸易壁垒要求，在存在或即将完成国际标准的情况下，一个国家制定的标准必须遵守规定。国际标准必须全部或部分地作为国家或工业标准的基础，除非这样做是无效或不适当的。此外，在通过一项标准之前，标准化机构必须有至少 60 天的时间让有关方面在世贸组织成员的领土内就标准草案提出意见。

商会反对部分不合理地采用国际标准，此举不但会造成混乱，导致标准重复，而且使实际执行更加困难。对于全球化的市场和产品，独特的中国标准限制了市场准入和对进口产品和技术的贸易壁垒，也阻碍了中国产品和技术进入国际市场。这影响了中国企业的全球化。符合中国独特标准的产品本地化设计和生产，将增加生产商之间的生产时间。这些企业包括国内外企业，以及制造业、研发设计机构等上下游利益相关者。

商会建议，只要可能，政府应该采用国际标准，而不是制定单独的标准。但是，如果某些标准确实需要根据中国的情况进行调整，则应在制定过程中提供更大的透明度，并解释为什么需要中国特色的标准。此外，在调整这些标准时，中国政府应征求国际专家和利益攸关方的意见。同时，中国监管机构应与国际专家合作，确保在这些标准的解释和应用方面得到支持。

中国标准 2035 项目由领先的专业行业组织——中国工程院组织。项目参与方包括中国电子标准化研究所、中国标准化研究院、中国信息通信技术研究院以及特定行业的研究所以等重点标准化机构参与。旨在制定一项长期战略，推动具有特定目标的标准化体系改革，其原则是“提高质量和效率、鼓励创新驱动增长、促进开放、合作和共享发展。

该项目由四个子项目组成，包括：

- 中国标准化战略定位和目标的综合研究
- 中国标准化架构，措施和评估研究
- 支持高质量发展的标准化架构战略研究
- 军民融合标准化发展研究

商会非常有兴趣与相关政府机构协商，以更好地了解中国标准化 2035 计划的进展情况。商会赞赏标准化战略设定旨在支持中国走向更开放的经济承诺。商会促请政府和标准制定相关机构，允许中国美国商会会员公开和全面参与中国标准 2035。商会担心，如果没有外国公司或外商投资企业的全面与平等参与，中国标准 2035 的继续发展可能导致推广国内技术，而歧视外国替代产品的结果。

采用国际标准和正当程序

《中国标准化法》和《战略规划》表明，中国将积极参与国际标准化活动，鼓励与国际标准接轨。但是，它没有很好地介绍国际标准制定的原则，没有很好地采用国际标准来履行 WTO/TBT 的承诺，也没有采取正当程序的做法。

中国政府及其行业越来越多地接受了一系列国际标准。约 75% 的中国国家标准 (GB、国标) 是采用国际标准化组织 (ISO)、国际电工委员会 (IEC) 和国际电信联盟 (ITU) 的标准派生或制定的。各类行业标准也广泛采用国际标准。此外，中国积极参与 ISO、IEC、ITU、ASTM、ASME、UL、IEEE 等机构的相关标准制定工作。商会认识到中国在这些组织中发挥的作用，并赞赏中国继续参与这些组织。

中国标准与国际标准的一致性，不仅有利于政府“中国制造”议程的国际化，也有利于中国“一带一路”建设的实施。中国企业明白，政府将适应国际标准发展进程，适应中国国情和市场需求。

承认全球行业认可的标准制定组织 (SDO) 为国际标准制定组织 (SDOs)

现行标准化法律、法规和惯例对国际标准的承认是肤浅的，继续坚持只承认 ISO、IEC 和 ITU 的传统做法。事实上，随着中国经济的全球化，中国市场对国际标准的认可和接受已经超越了 ISO、IEC 和 ITU。从实践的角度来看，任何政府、个人或 SDO 团体都不能单独领导所有技术的标准开发及其在全球市场的应用。

- Comprehensive Study on China Standardization Strategic Positioning and Objectives;
- China's Standardization Architecture, Measures and Evaluation;
- Researching Standardization Architectures to Support High-Quality Development; and
- Research on Standardization Development to Support Civil-Military Integration.

AmCham China has a strong interest in consulting with relevant government agencies to better understand the progress to date around China Standards 2035. On one hand China Standards 2035 reflects China's commitment to continue moving toward a more open economy, however AmCham China urges the government and relevant standards-setting bodies to allow the open and full participation of AmCham China members. AmCham China is concerned that continued development of China Standards 2035 absent full and equal participation of foreign companies or FIEs could result in the promotion of domestic technology while discriminating against foreign alternatives.

Adoption of International Standards and Due Process

The new *Standardization Law* and China Standards 2035 demonstrate China's willingness to participate in international standardization activities and continue to integrate with international standards. Neither the Law nor the program, however, clearly align with established principles of international standards development, nor have they made good use of existing international standards to fulfill China's WTO/TBT commitments. They do not demonstrate a clear commitment to due process.

China's government and its industries have increasingly embraced a number of international standards. Approximately 75% of China's domestic standards (GuoBiao, IS) are derived from or developed by adopting standards from the ISO, IEC or ITU. International standards are also widely used in the development of a number of industry-specific standards. China's regulators increasingly participate in the activities of the ISO, IEC, ITU, ASTM, ASME, UL, IEEE, and other standards development-related institutions. AmCham China recognizes China's growing role in these organizations and applauds its continued participation.

Aligning China's domestic standards with common international standards will support China's domestic economic development and international initiatives, including BRI. Domestic companies operating in China should understand conforming to international standards will require the government to adapt China's domestic market conditions and needs.

Recognition of Disciplined Standards Development Organizations as International SDOs

The *Standardization Law* and current regulations and practices largely treat international standards as superficial, traditionally adhering only to standards issued by ISO, IEC, and ITU. In reality, however, the recognition and acceptance of international standards extends beyond ISO, IEC, and ITU. Practically speaking, no government, individual or group of standards development organizations (SDOs) can lead standards development for all technologies and their application in the global market alone.

It is essential that regulators consider all globally-recognized SDOs on a par with international standards-setting bodies. AmCham China recommends that regulators base their decision about adopting a particular standard using internationally-accepted principles of standards development and due process, including open participation, transparency, impartial voting rights, and consensus. The technical quality and market relevance of a given standard, defined by its acceptance in the marketplace, should be ascribed particular importance. In accepting these SDOs and following these principles for adopting standards, our members 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.

AmCham China therefore strongly urges the Chinese government to broaden its official 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. Our members are confident that private, US-based SDOs meet these qualifications and encourage the Chinese government to engage with and accept these SDOs on the same basis as it does with the ISO, IEC, and ITU.

On March 21, 2017, the General Office of the State Council issued a notice on the implementation of the key tasks of the *Deepening Standardization Reform Plan (2017-2018)* (GOSC [2017] No. 27), which clearly allows for establishment and implementation of an enterprise standardization "pioneer" system.

In July 2018, SAMR, NDRC, Ministry of Science and Technology (MOST), Ministry of Industry and Information Technology (MIIT), Ministry of Finance (MOF), Ministry of Ecology and Environment (MEE), Ministry of Transport (MOT), and People's Bank of China (PBOC) jointly issued the *Opinions on Implementing a Pioneer Enterprise Standards System* (National City Supervision Standard [2018] No. 84). The enterprise standard "Pioneer" system aims to promote the supply and quality of Chinese products and services through standards leadership. The system is based on

监管机构需要将所有全球公认的 SDOs 视为国际标准制定机构。商会还鼓励监管机构根据国际公认的标准制定和正当程序原则制定标准，包括参与公开，流程透明，投票公正和协商一致。特别是应该重视市场中用户所接受的标准的技术含量和市场相关性。在接受这些 SDOs 并遵循采用标准的原则时，商会会员认为中国政府不仅要改进其标准化体系，还要提升中国技术和产品在全球市场中的竞争力。

因此，商会促请中国政府将其对 ISO，IEC 和国际电联以外的国际标准制定组织（SDO）的官方认可扩大到任何遵循 WTO/TBT/1/Rev8 第九章中规定的“流程透明度，参与公开，投票公正和协商一致，市场相关性和有效性，标准一致性和考虑发展中国家利益的六大原则的团体组织。商会会员相信，美国基于 SDOs 的组织符合这些资格，并鼓励中国政府在与 ISO，IEC 和 ITU 相同的基础上参与和接受这些 SDO。

2017 年 3 月 21 日，国务院办公厅关于印发贯彻实施《深化标准化工作改革方案》重点任务分工（2017-2018 年）的通知（国办发〔2017〕27 号），通知中明确了建立实施“企业标准领跑者”制度。

2018 年 7 月，市场监管总局、发展改革委、科技部、工业和信息化部、财政部、生态环境部、交通运输部、人民银行等八部门联合印发《关于实施企业标准“领跑者”制度的意见》（国市监标准〔2018〕84 号）。企业标准“领跑者”制度旨在通过标准引领，促进中国产品和服务的供给和质量的提升。该制度以企业产品和服务标准自我声明公开为基础，通过标准化技术机构、行业协会、产业联盟、平台型企业等第三方评估机构开展企业标准水平评估，确定企业标准“领跑者”的制度。培育目标领域主要侧重于消费品、装备制造、生产性和生活性服务以及新兴产业领域。该制度提出了全面实施企业产品和服务标准自我声明公开、确定实施企业标准“领跑者”的重点领域、建立领跑者评估机制、发布企业标准排行榜、形成企业标准“领跑者”名单、建立企业标准“领跑者”动态调整机制 6 项任务。

2018 年 11 月，市场监管总局办公厅关于印发《2018 年度实施企业标准“领跑者”重点领域》的通知。通知明确了企业标准“领跑者”制度的工作机构是中国标准化研究院。其主要负责：

- 建立企业标准“领跑者”专家委员会；

- 统一公示评估机构所形成的企业标准排行榜；
- 负责企业标准领跑者统一信息平台的建设运营；
- 标准评估机构的建设、运营和动态管理；
- 协助政府部门研究激励政策与监督机制；
- 推动大型卖场和电商平台等采信企业标准“领跑者”评估结果。

2018 年企业标准“领跑者”重点领域、产品为：空气净化器、洗衣机、电冰箱、空调、木家具、头戴式耳机、光伏发电产品、台灯、陶瓷砖、坐便器、针织内衣。

团体标准

最新修订的标准化法中，一个主要变化是标准的制定由政府推动改为由社会团体主导进行。根据标准化法，只有“依法登记成立的社会团体”才有资格制定团体标准。目前，团体标准的制定工作仍然由民政部进行严格监管。在团体标准真正获得市场认可之前，需要降低合法制定机构的门槛。此外，团体标准与其他几类标准的关系尚需进一步明确。从监管的角度来看，由政府推动制定的行业标准对行业仍有巨大的影响力。因此，团体标准要想在市场上与其他标准展开竞争，目前还有很长一段路要走。

尽管国内团体标准与联盟标准在诸多方面存在不同（例如制定程序、制定角度和实施方式），但标准化法纳入团体标准化的相关内容表明，中国正在致力于切实建立一个市场化的标准体系。这是中国为实现标准体系现代化迈出的积极一步。另外，中国标准化研究院发布了《团体标准化第一部分：良好行为指南》和《团体标准化第二部分：良好行为评价》，这两份标准文件的制定主要参考借鉴了美国国家标准学会发布的《基本要求》和美国标准制定机构的认定规范。尽管这两份文件都是自愿性标准，但为中国推进市场化标准制定程序奠定了基础。今年初，国家标准委发布了《团体标准管理规定》正式版，其中要求社会团体制定明确的知识产权管理制度，及时披露必要专利相关信息。但无论这两份团体标准化文件还是管理规定都没有明确给出团体标准转化为国家标准和行业标准的实现机制和具体程序。可以确信，一些团体标准将转化为国家标准或行业标准。而有关部门也正在考虑建立快捷程序，以利于团体标准向国家标准和行业标准转化。

国家标准委去年发布的《强制性国家标准管理办法（征

self-declaration of corporate product and service standards. Enterprise level standards assessments are conducted by technical institutions, industry associations, industry alliances, platform-based enterprises, and other third-party evaluation agencies to determine enterprise “Pioneers.” The system targets standards for consumer goods, equipment manufacturing, life services, and other emerging industries. The system proposes to fully implement the self-disclosure of enterprise product and service standards by determining key features of “Pioneer enterprises,” establishing a “Pioneer” evaluation mechanism, issuing corporate standards rankings, forming a “Pioneer” list of corporate standards, and establishing a dynamic adjustment mechanism based on six tasks that must be fulfilled in order to be considered corporate standards leaders.

In November 2018, SAMR’s General Office issued the *2018 Annual Implementation of Enterprise Standards “Pioneers” in Key Areas*. Per the Notice, the body charged with overseeing the enterprise standard “Pioneers” system is the China National Institute of Standardization (CNIS). It is responsible for:

- Establishing an enterprise “leaders” expert committee;
- Developing the list of corporate standards;
- Creating a singular information platform for standards “leaders;”
- Construction, operation, and dynamic management of standards evaluation agencies;
- Assisting government departments in studying incentive policies and supervision mechanisms; and
- Promoting the standards evaluation results of large retail stores and e-commerce platforms “pioneers.”

In 2018, the product areas of enterprise standard “Pioneers” were: air purifiers, washing machines, refrigerators, air conditioners, wood furniture, headsets, photovoltaic power products, table lamps, ceramic tiles, and toilets.

Social Organization Standards

One of the major developments in the revision of the *Standardization Law* is the decentralization of the standards development process to allow social organizations to play a greater role in standards drafting. According to the *Standardization Law*, however, only “legally licensed social groups” can participate in the development of social organization standards. The current process is still strictly regulated by the Ministry of Civil Affairs (MCA). Lower thresholds for the definition of “legally licensed social groups” is needed before the organic development of social organization standards can really begin in earnest. The relationship between social organization standards and other categorized standards needs to be more clearly defined. Government-backed industry standards still have an extremely strong regulatory influence over the industry. Consequently, there is still a

way to go before social organization standards are able to compete in the market.

Although China’s social organization standards differ from those established by SDOs in many ways (they go through a different process and have different applications), the inclusion of social organization standardization in the revised *Standardization Law* underscores China’s commitment to a more market-driven system, seen as a positive step for the modernization of the standards system in China. CNIS has also released the *Social Organization Standardization-Part 1: Guidelines on Good Practice* (2016) followed by the *Social Organization Standardization-Part 2: Evaluation of Good Practice* (2018), which are modelled after ANSI’s *Essential Requirements* and accreditation of US-based standards developing organizations. Although these standards are voluntary, they create the foundation for a market-driven standards development process in China. In 2018, the SAC released the updated *Administrative Regulations on Social Organization Standards*, including provisions requiring social organizations to include clear intellectual property policy and applicable standard-essential patent (SEP) information. While it is clear that some social organization standards will be converted into national standards or industry standards, neither the document nor the management regulations clearly outline the mechanisms and specific procedures to follow in order to translate group standards into national and industry standards. A “fast-track” process is under consideration as one method to convert social organization standards to national standards and sector standards.

AmCham China recognizes the draft 2018 *Administrative Measures for Mandatory National Standards* released by the SAC, which points out that the conversion of social organization standards into mandatory national standards still first needs to undergo a mandatory national standards approval process. How this provision will be implemented in practice when finalized, or how social organization standards will interact with existing national and industry standards remains uncertain. It is important that any “fast track” guidelines be clear, concise, and detailed and the conversion process be well administered to prevent formation of low-quality standards or standards for SDOs that do not follow international best practices.

Recommendations

For the Chinese Government:

- **Adopt existing global technical standards in their complete form whenever available in order to ensure full harmonization and avoid creating domestic national standards or standards deviating from prevailing global standards. Moreover,**

征求意见稿)》明确规定,团体标准转化为强制性国家标准,仍需采用强制性国家标准制定程序,商会对此表示认同。然而,该条文具体如何实施,团体标准在其他国家标准、行业标准制定过程中如何发挥作用,这些都尚未明确。商会认为,重要问题是应确保制定的快捷程序指南清晰明确,对程序进行有效的管理,以免出现制定的标准质量低下或对不符合国际最佳实践的标准进行符合性声明。商会赞赏国家采取的鼓励所有标准机构按照 WTO/TBT 规定制定标准的做法。

建议

对中国政府:

- 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。并且,在采用国际标准时,中国监管机构应当与相关行业和学科专家合作,确保对采用的国际标准做出适当的解释和应用。
- 在新的《标准化法》和《外商投资企业参与我国标准化工作的指导意见》的法规下,更加密切地监督各技术委员会及其分委会与标准工作组的活动,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。
- 鉴于新的《标准化法》明确强制性标准免费公开并鼓励部分推荐性标准的免费公开,中国需要更加注重标准版权的保护。
- 正式将对国际标准制定机构的认可范围扩大至其他遵循 WTO/TBT 关于国际标准制定原则且已为全球行业普遍认可的标准制定机构。
- 明确团体标准制定的规则和要求,遵循参与公开、流程透明、投票公正和协商一致的国际通行做法,防止特殊利益团体滥用规则。

when adopting international standards, Chinese regulatory agencies should work with relevant industries and subject experts to ensure that international standards adopted are properly interpreted and applied.

- Under the regulations of the new *Standardization Law* and *Guiding Opinions*, monitor the activities of the Technical Committees (TC) and their subcommittees more closely to ensure that FIEs are allowed to participate in all phases of standard-development activities on an equal basis with domestically-invested enterprises, as stipulated in the March 2019 *Foreign Investment Law*.
- Pay greater attention to the protection of the copyright of standards, particularly as the new *Standardization Law* clarifies which mandatory standards are to be published without charge and encourages the free and open disclosure of some recommended standards.
- Officially broaden the 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 for the development of social organization standards and follow an open, transparent, and consensus-based in line with international practice to prevent abuse by special interests.

Tax

Introduction

China's tax policies in 2018 were influenced by changes in the macro-economic environment. Rather than simply increasing tax revenues, the State Taxation Administration (STA) enacted policies to encourage foreign investment and stimulate the domestic economy. The STA expanded the scope of a reinvestment tax incentive initially released at the end of 2017, making it available to a larger pool of foreign investors. Under the expanded incentive, foreign investors can defer withholding taxes on their earnings from China if they reinvest those earnings into qualified Chinese projects. In addition, the STA has expanded domestic rules on treaty qualifications to enable greater opportunity for foreign investors to enjoy reduced tax treaty withholding rates. Finally, the recent individual income tax (IIT) reform reduces the tax burden of many Chinese individual taxpayers. These measures are welcome developments for foreign companies in China.

While there were several welcome policies to the tax architecture in 2018, challenges remain for US multinational taxpayers operating in China. Some are longstanding challenges including the lack of sufficient transparency around the bilateral advance pricing arrangement (BAPA) program, barriers to access for certain tax incentive programs, and regulatory hurdles to avoid cross-border double-taxation. Others are more recent. For instance, while the IIT reform increases after-tax income for Chinese individual taxpayers in lower-income brackets, it does not address chronically high IIT levels for Chinese employees in high-income brackets. Starting from 2022, the IIT reform will repeal some existing allowance-related IIT relief provisions for expatriates working in China and replace them with measures less likely to reduce individual tax levels. These policy challenges ultimately increase the operating costs for multinational corporations doing business in China and may diminish future foreign investment levels. We recommend that STA take concrete steps to address these issues in the near future.

Recent Developments

Individual Income Tax Reform

In August 2018 the 7th amendment to the PRC Individual Income Tax (IIT) Law was approved by the Standing Committee of the National People's Congress (NPCSC). The IIT Law went into effect on January 1, 2019, although the increased standard deduction and new tax brackets for salaries and wages went into effect on October 1, 2018. In December 2018, the State Council released the final implementation regulations for the amended IIT Law, which also went into effect on January 1, 2019.

The changes to the IIT system aim to reduce the tax burden, increase personal income, and boost consumption for middle-and low-income taxpayers. Unlike previous amendments that only adjusted standard deductions or modified the tax brackets for salaries and wages, the new tax reforms bring fundamental changes to China's IIT system:

- Introduced the internationally recognized "183-day" test for determining whether an individual is a Chinese tax resident, which will make it much easier for a non-China-domiciled individual to be considered a Chinese resident for tax purposes;
- Replaced the "five-year rule" with a "six-year rule" and adaptation of the rule to the new definition of a tax resident;
- Consolidated the previous four categories of income (i.e., salaries and wages, remuneration for independent services, author's remuneration, and income from royalties) into a single new category called "comprehensive income;"
- Broadened the lowest three tax brackets for salaries and wages;
- Increased the standard deduction, repealing the additional deduction (notably available to foreign individuals) for salaries and wages, and introducing additional itemized deductions (i.e., expenditure on children's education, dependent parents, continuing education, medical expenses for critical illnesses, and housing mortgage interest or housing rent);
- Introduced a new IIT assessment and filing regime,

税务

引言

2018年我国税收政策受到宏观经济环境变化的影响。国家税务总局制定税收政策并非仅以税收收入为主要目标，而是致力于鼓励外国投资、刺激国内经济。针对2017年底发布的鼓励境外投资者境内再投资的税收优惠政策，2018年国家税务总局进一步扩大了优惠范围，惠及更多外国投资者。按照新优惠政策的要求，如果外国投资者将从中国获得的收益再投资于满足要求的中国项目，可以延迟上缴股息收益的预提税。此外，国家税务总局还增加了境外投资者享受国内税收协定的机会，将使更多外国投资者在从境内获得股息收入时有可能按照相关税收协定享受低于国内税法规定的预提所得税扣缴税率。最后，近期开展的个人所得税改革减轻了许多中国个人纳税人的税收负担，受到在华外企的普遍欢迎。

尽管2018年税收体系出台的一些政策很受认可，但在华经营的美国跨国纳税人仍面临挑战。其中一些挑战由来已久，如双边预约定价安排(BAPA)计划缺乏足够的透明度，一些税收优惠计划存在准入障碍，纳税人在为避免跨境双重征税过程中遇到的来自规章方面的困难。其他最新挑战例如，个人所得税改革虽然提高了中国低收入阶层个人纳税人的税后收入，但没有为中国高收入阶层员工解决长期存在的过高税务负担问题。个人所得税改革在2022年起始将废除现有针对在华工作外籍人士的与一些津贴相关的个人所得税优惠条款，取而代之的是一些减税降费效果弱的其他措施。上述政策方面的挑战最终会增加跨国公司在华经营的运营成本，并可能减少未来的外国投资。商会促请国家税务总局能尽快采取具体措施来解决这些问题。

最新进展

个人所得税改革

2018年，《关于第七次修改〈中华人民共和国个人所

得税法〉的决定》经全国人大常委会表决通过。《个人所得税法》于2019年1月1日起生效，但是新的个税起征点和薪金税率等级已于2018年10月1日起生效。2018年12月，国务院发布修订后的《中华人民共和国个人所得税法实施条例》（以下简称“实施条例”），将自2019年1月1日起与新个人所得税法同步施行。

此次个人所得税改革旨在降低税务负担、增加个人收入、促进中低收入阶层消费。不同于以往的数次税法修正，本轮改革不再单纯地关注工薪所得起征点（即基本减除费用标准）、薪金税率等级的调整，新的税制改革给中国的个人所得税制度带来了根本性的变化。

- 明确引入了“居民”的概念，并对无住所个人采用国际通行的“183天”标准以判定其是否成为中国的税务居民，降低了无住所个人构成中国税务居民的标准；
- 将无住所个人符合条件的境外所得免征个人所得税的“五年规则”升级为“六年规则”，并调整该规则使其适应新税法下的“居民”定义；
- 将之前4种所得分类：工资薪金所得、劳务报酬所得、稿酬所得、特许权使用费所得合并成“综合所得”项目进行征税；
- 扩大工资薪金所得的最低3档税率级距；
- 提高工资薪金所得的基本减除费用标准，取消附加减除费用（原适用于外籍个人），增加子女教育支出、赡养老人、继续教育支出、大病医疗支出、住房贷款利息或住房租金专项附加扣除；
- 确立新的个人所得税纳税申报制度，对居民个人的综合所得采取预扣预缴与汇算清缴相结合的征收方式；
- 新增离境税款清算要求；
- 明确多部门信息共享，在个人所得税信用信息系统中纳入合规记录；

notably an annual assessment and filing requirement for the comprehensive income of resident individuals;

- Introduced a tax clearance requirement upon emigration;
- Enhanced information-sharing among government departments and the inclusion of IIT compliance records in the individual credit rating system; and
- Introduced anti-avoidance rules.

Foreign workers working in China, regardless of their tax residency status, can enjoy eight tax-exempt allowances for housing, language training, children's education, meals, laundry, relocation costs, home leave, and onshore and offshore business travel. The tax-exempt allowances for housing, language training, and children's education will only be available until December 31, 2021. Beginning January 1, 2022, foreign workers will no longer be eligible for these three tax-exempt allowances. This will significantly increase the tax burden for foreign workers and translate into higher operating costs for companies dispatching foreign workers to China.

Updated Guidance on Interpretation of Tax Treaties

On February 12, 2018, the STA issued guidance, known as STA Bulletin [2018] No. 11 (Bulletin 11), that updates and modernizes guidance previously issued in 2010 on the interpretation of the provisions in China's tax treaties, known as Guoshuifa [2010] No. 75 (Circular 75). While 2010's Circular 75 was issued in the specific context of the China-Singapore Double Taxation Treaty, it has generally been applicable to all of China's agreements that contain similar provisions.

Bulletin 11 took effect on April 1, 2018 and contains changes to the interpretation of the following articles in China's treaties: permanent establishment (PE), shipping and air transport; entertainers (artists) and sportspersons; and eligibility of partnerships for treaty benefits.

The key points of guidance provided by Bulletin 11 on PE and partnership issues include the following:

- The aggregate six months within any 12-month period in relation to the furnishing of services should be interpreted to mean 183 days in the aggregate within any 12-month period; and
- A place where educational and teaching activities are carried out by a China-foreign cooperative education institution without legal personality or under a China-foreign cooperative education project can give rise to a PE under a tax treaty or arrangement.

Eligibility of Partnerships and other Comparable Entities for Treaty Benefits

Bulletin 11 provides guidance on partnerships and other comparable entities:

Chinese partnerships

China will treat income of a Chinese partnership as flowing through to the foreign partners. Therefore, the foreign partners (if residents of relevant contracting states) should be entitled to benefits under the relevant treaties with respect to their share of the income generated by the partnership, provided that their share of income is also treated as income of the foreign partners in the relevant contracting states.

Foreign partnerships

- A foreign partnership (that is not effectively managed in China) is considered a non-resident enterprise (i.e., "non-flow through entity") for Chinese enterprise income tax purposes.
- A foreign partnership will be entitled to treaty benefits only if it is considered a resident of the other contracting state under the relevant treaty, unless the treaty provides otherwise.
- If a foreign partnership cannot prove that it is liable to tax in the other contracting state by reason of its domicile, residence, place of establishment, place of management or any other criterion of a similar nature, it will not be considered a resident of the contracting state to access the treaty benefits, even it has submitted a residence certificate issued by the competent tax authorities of the contracting state.

New Rules for Beneficial Owners

On February 3, 2018, STA published new rules, known as Bulletin 9, on the concept of the beneficial owner (BO) of income for purposes of obtaining benefits under China's tax treaties. Bulletin 9 expands the ways in which a non-resident can achieve BO status, but it also revises the negative factors in ways that will make it more difficult for non-residents to obtain tax treaty benefits.

Bulletin 9 will apply to tax payment or withholding obligations that arise on or after April 1, 2018 and provides welcome clarification on various aspects of the rules regulating BO status.

For a non-resident to qualify for reduced withholding tax rates on dividends, interest, and royalties under China's tax treaties, the non-resident must be considered the BO of the income. Since 2009, the STA has issued several sets of guidance that address the concept of a BO and the requirements to qualify for BO status. Circular 601 published in 2009 defined the term BO and clarified factors that should be

- 新增个人所得税反避税条款。

在中国工作的外籍人士，不论其税收居民身份如何，均可享受住房、语言培训、子女教育、伙食、洗衣、搬迁费、探亲、境内外出差等八项免税补贴。在2021年12月31日前可以享受住房、语言培训和子女教育的免税补贴。自2022年1月1日起，外籍个人不再享受住房补贴、语言训练费、子女教育费津补贴免税优惠政策。这将显著增加外籍个人的税收负担，并为派遣员工到中国的公司带来更高的运营成本。

对税收协定条文的最新解释

2018年2月12日，国家税务总局（以下简称“税务总局”）发布了2018年第11号公告（以下简称“11号公告”），对国税发[2010]75号文件（即“关于印发《〈中华人民共和国政府和新加坡共和国政府关于对所得避免双重征税和防止偷漏税的协定〉及议定书条文解释〉的通知”，以下简称“75号文”）中的部分内容也进行了修改。虽然75号文是对中国和新加坡税收协定作出的解释性规定，但实际上它亦被用来解释中国与其他国家签订的税收协定或安排中的类似条款。

11号公告的规定涉及税收协定中的常设机构、海运和空运、演艺人员（艺术家）和运动员条款的解释变更，以及合伙企业适用税收协定等事项。该公告自2018年4月1日起施行。

11号公告中关于常设机构和合伙企业的重点内容简要梳理如下：

- 常设机构条款中关于劳务活动构成常设机构的表述为“在任何十二个月中累计超过六个月”的，按照“在任何十二个月中累计超过183天”的表述执行。
- 不具有法人资格的中外合作办学机构，以及中外合作办学项目中开展教育教学活动的场所构成税收协定缔约对方居民在中国的常设机构。

合伙企业的协定适用

11号公告对合伙企业及其他类似实体适用税收协定的问题作了如下指导：

中国合伙企业

中国将把合作企业的收入视为流入外国合作企业的收入。因此合伙人为税收协定缔约对方居民的，该合伙人在

中国负有纳税义务的所得被缔约对方视为其居民的所得的部分，可以在中国享受协定待遇。

外国合伙企业

- 依照外国（地区）法律成立的合伙企业，其实际管理机构不在中国境内，但负有企业所得税纳税义务的，是中国企业所得税的非居民企业纳税人（即“非税收穿透实体”）。
- 对于上述外国合伙企业，只有当该合伙企业是缔约对方居民的情况下，其在中国负有纳税义务的所得才能享受协定待遇，但税收协定另有规定的除外。
- 外国合伙企业如不能证明其根据缔约对方国内法，因住所、居所、成立地、管理机构所在地，或其他类似标准，在缔约对方负有纳税义务，则即使缔约对方税务主管当局以享受协定待遇为目的开具了税收居民身份证明，也不能充分证明该合伙企业为税收协定意义上的缔约对方居民以享受协定待遇。

受益所有人新规

2018年2月3日，国家税务总局发布了《关于税收协定中“受益所有人”有关问题的公告》（国家税务总局公告2018年第9号，以下简称“9号公告”）。9号公告扩大了非居民成为受益所有人的范围，并对“受益所有人”的判定标准等进行了修订，使之更为严格。9号公告适用于2018年4月1日及以后发生纳税义务或扣缴义务需要享受税收协定待遇的事项，并明确了受益所有人管理规定的相關方面。

非居民必须是股息、利息和特许权使用费的受益所有人，才能享受税收协定下的预提税优惠税率。自2009年以来，国家税务总局已经发布了一系列文件来明确“受益所有人”的概念和要求。2009年发布的601号文解释了受益所有人的概念并列举了在评估非居民是否符合受益所有人身份时应考虑的因素。2012年发布的30号公告进一步明确了受益所有人的判定因素，并引入了“上市公司”安全港规则，允许将在缔约对方上市的公司或由在缔约对方上市的公司直接或间接持有的缔约对方居民直接认定为受益所有人。

9号公告废除了601号文和30号文的部分规定，并对原文件中的“受益所有人”的判断标准、安全港规则以及税收居民身份证明的要求等进行了修订。

considered when assessing whether a non-resident qualifies as a BO. Bulletin 30, published in 2012, clarified the determination of BO status and introduced a “listed company safe harbor,” which gave automatic qualification as a BO to recipients that are listed companies in the treaty partner jurisdiction or that are held by listed companies in the treaty partner jurisdiction.

Bulletin 9 repealed certain aspects of Circular 601 and Bulletin 30 and amended the rules on the determination of BO status, the safe harbor, and the requirement to produce a tax residence certificate.

BO Status

Circular 601 contains seven factors considered by the tax authorities in determining whether a “recipient” of China-source income is a BO under a tax treaty. The presence of these factors can result in the denial of tax treaty benefits. As stipulated in both Bulletin 9 and Bulletin 30, all negative factors, not merely one factor, must be analyzed in their totality when determining BO status.

Bulletin 9 modifies and consolidates these factors, so there will be only five negative factors after April 1, 2018. The modifications to the first and second factors will make it more difficult for a non-resident to obtain BO status.

Safe Harbor Rule

As noted above, Bulletin 30 introduced a safe harbor for listed companies in the other contracting state that derive China-sourced dividend income. Bulletin 9 expands the scope of the safe harbor to include dividends received by:

- The government of the other contracting state;
- Individuals residing in the other contracting state; and
- Any recipient that is wholly owned, directly or indirectly, by one or more persons described in bullets one to three, and any intermediary shareholders who are residents of China or the other contracting state in situations where the shares are held indirectly.

In these cases, the recipient of the dividends will be deemed to be the BO of the dividends and it will not be necessary to assess the five negative factors mentioned above.

Expanded Pathway to Qualify as a BO

Bulletin 9 allows a path for a recipient of dividends to qualify for tax treaty benefits if it is 100% owned, directly or indirectly, by a shareholder that can meet BO requirements, even when the recipient itself does not qualify for safe harbor or as a BO, if certain requirements are met. This will increase opportunities for a non-resident to enjoy treaty benefits.

Bulletin 9 requires that the shareholding percentage in the

safe harbor rules and the above rules be met at all times during the 12 consecutive months before the dividends are received, which reflects the requirement for shareholding continuity.

Tax residence certificate

Bulletin 9 requires that the tax residence certificate must certify the residence status for the year in which the income was received, or for the previous year. According to Bulletin 9, even if a recipient of China-source income is considered the BO, the tax authorities can still invoke the “main purpose test” under a tax treaty or the general anti-avoidance rule (GAAR) in domestic tax law to deny treaty benefits.

New Rules on Deferral of Withholding Tax on Dividends Paid to Foreign Investors and Reinvested in China

With a view to encouraging and expanding foreign investment in China, the government announced in December 2017 (Circular 88) and January 2018 (Bulletin 3) that the 10% withholding tax on profits distributed by a Chinese resident enterprise to a foreign investor will be deferred if the profits are used to invest in domestic projects encouraged by China. The deferral applies until the foreign investor disposes of the reinvestment in China.

In September and November 2018, the Chinese Government authorities issued Circular 102 and Bulletin 53, which replaced Circular 88 and Bulletin 3, respectively. Circular 102 expanded the scope of possible reinvestments, and Bulletin 53 clarified the rules for determining whether the conditions relating to the form and route of the reinvestment are satisfied.

Circular 102 and Bulletin 53 both apply retroactively from January 1, 2018, while Circular 88 and Bulletin 3 are applicable to reinvestments of profits made during the period of January 1 to December 31, 2017. Foreign investors qualifying for the deferral, but which already have paid withholding tax on distributed profits, may apply for the deferral and request a refund of the tax paid within three years from the date the tax was paid.

The above circulars provide a relatively lenient policy for foreign investors to enjoy tax deferral benefit on their dividends, sending a strong signal that the Chinese Government is committed to attracting and retaining foreign investment in the country.

It appears, however, that although Bulletin 53 slightly relaxes the route requirement for appropriate reinvestments, the one-day back-to-back remittance might still represent an impediment for certain investors. Furthermore, in a situation where a foreign investor uses Chinese-sourced dividends as consideration to purchase the equity of a Chinese company from a foreign seller, China’s foreign exchange rules may prevent the profit-distributing enterprise from directly

“受益所有人”身份的判定

原 601 号文规定了税务机关判定受益所有人身份的七项因素，这些因素可能导致申请人无法享受协定待遇。因为 9 号公告延续了 30 号公告的精神，明确规定判定受益所有人身份时应当综合考虑多个不利因素。

9 号公告整合并修订了这些不利因素，使其从七项减少至五项（2018 年 4 月 1 日起），同时修订后的第一项和第二项不利因素提高了“受益所有人”判定标准的刚性。

“安全港”规则

如前所述，30 号公告针对上市公司取得股息所得引入了“安全港”规则。9 号公告将安全港范围扩大至以下几类取得股息所得的申请人：

- 缔约对方政府；
- 缔约对方居民个人；
- 缔约对方居民且在缔约对方上市的公司；申请人被第（一）至（三）项中的一人或多人直接或间接持有 100% 股份，且间接持有股份情形下的中间层为中国居民或缔约对方居民。

上述申请人从中国取得的所得为股息时，可不根据 9 号公告第二条规定的五项因素进行综合分析，直接判定申请人具有“受益所有人”身份。

拓宽“受益所有人”认定途径

9 号公告规定了当直接或间接持有申请人 100% 股份的人符合“受益所有人”条件，且属于规定的两种情形之一的，不满足安全港规则及受益所有人条件的申请人仍可以借助其股东的受益所有人身份享受协定待遇，这将大大增加申请人享受协定待遇的机会。

9 号公告要求在安全港规则下以及上述两种情形下，相关持股比例在取得股息前连续 12 个月以内任何时候均达到法定要求，这反映了对权益连续性的要求。

税收居民身份证明

9 号公告明确要求税收居民身份证明应能证明取得所得的当年度或上一年的申请人或其股东的税收居民身份。根据 9 号公告，申请人即使具有受益所有人身份，税务机关仍然可以利用税收协定中的主要目的测试条款或国内税收法律规定中的一般反避税规则，否定申请人的税收协定

待遇。

境外投资者以分得利润再投资递延纳税新规

为鼓励境外投资者在华投资，国家在 2017 年 12 月和 2018 年 1 月出台激励措施（88 号文和 3 号公告），如果中国居民企业向外国投资者分配利润，且利润用于投资鼓励中国鼓励的国内项目上，暂不征收 10% 预提所得税直到外国投资者不再在中国再投资。

2018 年 9 月和 11 月，财政部、国家税务总局等部委联合又发布了 102 号文和 53 号公告，分别取代了原 88 号文和 3 号公告。102 号文扩大了再投资范围，53 号公告进一步明确明确了投资方式和投资路径等要求。

102 号文和 53 号公告自 2018 年 1 月 1 日起施行，有追溯性。88 号文和 3 号公告适用于 2017 年 1 月 1 日至 12 月 31 日期间利润的再投资。境外投资者可以享受暂不征收预提所得税政策而未实际享受的，可在实际缴纳税款之日起三年内申请追补享受该政策，退还税款。

上述文件对于境外投资者享受递延纳税政策的条件制定得较为宽松，释放出中国对于吸引和留住外资的积极信号。需要注意的是，53 号公告虽然在一定程度上放宽了对资金路径的要求，但一日内完成上述资金划转对于一些投资者来说仍比较困难。

另外，对于实践中由于外汇管制原因导致的境内利润分配企业无法将股息作为其境外股东的股权收购款项直接汇往境外股权转让方账户，进而使股东无法享受再投资递延纳税政策的情形，51 号公告似乎并未提供十分有效的解决途径。同时，一些实践中的事项还有待澄清（例如，预提税的退税是否必须在中国进行再投资，或者在哪些情况下，以前暂停的预提税将重新征收）。

商会促请政策制定者考虑出台更多的后续执行文件，以有效解决上述问题，使得更多的外国投资者能够享受到这项优惠。

进口产品的消费税问题

根据国家税务总局公告（2012）第 47 号《国家税务总局关于消费税有关政策问题的公告》和国家税务总局公告（2013）第 50 号《国家税务总局关于消费税有关政策问题补充规定的公告》，一些产品在国内生产环节不需要缴纳消费税，而在进口环节，由于中国现行的统一系统内没有适当子类别，需要缴纳消费税。从而使国内和进口同一产

remitting the dividends to the foreign seller. As a result, the foreign investor will fail the route requirement and will not be eligible for deferral. Bulletin 53 does not address this situation. Meanwhile, some practical issues remain unclear, such as whether a refund of withholding tax must be reinvested in China, or in which situations previously suspended withholding tax will be recaptured.

AmCham China recommends that policymakers issue implementation guidance to address the above issues so that more foreign investors will benefit from this incentive.

Consumption Taxes for Imported Products

The *Notice of the STA on Consumption Tax Related Rules (2012) No. 47* (Notice No. 47) and the *Notice of the STA on Supplementary Rules for Consumption Tax (2013) No. 50* (Notice No. 50) state that some products manufactured in China are not subject to consumption tax. When these products are imported, however, a consumption tax (CT) is levied as there is no proper sub-code to categorize them under the current harmonized system in China. This has led to differential tax rates being applied to the same product when it is produced in China versus when it is imported, which is not conducive for levelling the playing field in China. We urge relevant government agencies, including the STA, General Administration of Customs (GACC) and Ministry of Finance (MOF), to work together to identify a proper solution for this issue, so that relevant import enterprises can enjoy the same treatment as in-country producers.

Consumption Tax Double Taxation

According to the prevailing CT deduction policy, when taxpayers purchase taxed raw materials to be used in the continuous production of taxable finished goods, only CT paid on prescribed raw materials can be deducted in the CT calculation for finished goods. The CT cannot be deducted if the raw material is not on the prescribed list, which means that the raw material is subject to double CT.

At the same time, there is no clear CT regulation governing imported, taxed raw materials used for commissioned processing. Consequently, the import CT cannot be deducted after the commissioned processing, which results in double CT on the imported raw materials. AmCham China urges STA to relax the CT deduction conditions to prevent double taxation.

Ongoing Regulatory Issues

Enhancing Research and Development and Innovation Tax Incentives

Recent years have seen continuous improvements to Chinese innovation tax policies, including the R&D super deduction, High and New Technology Enterprise (HNTE), and Advance Technology Services Enterprise (ATSE) incentives.

These incentives have been enhanced or expanded over the past year, along with:

- Corporate Income Tax (CIT) expensing for advanced equipment investment (for items costing less than RMB 5 million);
- A raised ceiling for staff education expense deductions, special IIT treatment for 'breakthrough bonuses' to scientists, as well as enhanced venture capital (VC) tax incentives.

While these constitute significant progress toward support of Chinese enterprises' transition to higher value-added activity, a range of additional improvements is available to make the incentives more accessible, useful, and effective.

STA Announcement [2017] No. 40 and Circular [2018] No. 64, regarding the R&D super deduction, helped to clarify a broader scope of expenses eligible for the super deduction, encompassing costs of technical and support staff, share-based incentive schemes and staff benefits, costs of failed or aborted R&D projects, and domestic and overseas outsourcing. Potential expenses are still unduly restrictive in multiple aspects and AmCham China recommends the following:

- **Allow all industries to access the super deduction.** Several industries are on the "Negative List," and thus entirely excluded from accessing the super deduction. These include wholesale/retail, accommodations/catering, leasing and business services, and entertainment. Given the avowed policy intent to shift the economy towards services, AmCham China urges that such limitations be reconsidered.
- **Start-ups need R&D tax incentives to deliver cash refunds.** Innovative, early-stage start-ups generally run significant losses and are not in a position to monetize R&D super deductions. In contrast, other developed countries offer a cash refund mechanism to address cash flow constraints faced by these start-ups. We recommend that China consider similar mechanisms.
- **Progressive rates steer support to innovative start-ups.** Support for innovative small firms can be maximized through enhanced deductions for initial expenses (e.g., Hong Kong's 300% deduction for the first HKD 2 million in R&D expenses, and a 200% deduction for the remainder). Given the State Council's planned CIT rate reduction to 10% for firms with annual profits of less than RMB 3 million, such incentives become increasingly important.

2018 also saw welcome policy improvements for HNTE incentives, including the extension of loss carry-forwards from five to ten years as laid out by Caishui [2018] No. 76. Formal clarification that the 3-year rolling basis calculation will be used to evaluate whether the HNTE R&D expense to revenue qualification criterion has been met were also

品的税负不平衡，不利于公平竞争。商会建议税务总局、海关总署和财政部等相关部门能够加强协商并找出妥善的解决方案，让相关进口企业能够享受和国内同类产品生产企业的同等待遇。

征收双重消费税问题

根据现行消费税抵扣政策，纳税人以外购应税消费品用于连续生产应税产品时，只有规定的应税消费品才可以抵扣消费税。如果原料不在规定名单中，即使该原料已征收消费税也不得抵扣，这意味着该原料会被征收双重消费税。

同时，对于进口应税消费品后用于委托加工的消费税处理，并无明确法规规定，导致进口应税消费品用于委托加工环节无法抵扣，等同于征收双重消费税。针对上述情况，商会建议税务总局等相关部门能够放宽抵扣条件，避免产品被征收双重消费税。

现存监管问题

加强研发、创新税收优惠

近年来，我国创新税收政策不断完善，先后出台了研发费用加计扣除，高新技术企业（HNTE）、先进技术服务企业（ATSE）优惠等政策，并在过去一年不断改善补充，主要体现在以下方面：

- 投资先进设备的企业所得税（500 万元以下项目）；
- 提高员工教育费用扣除的上限，给予科学家“突破性奖金”特殊个人所得税待遇，加强风险投资税收优惠。

虽然上述措施有力地支持中国企业向更高附加值转型，但政府仍有必要采取一系列其他改进措施，使优惠政策更普适、切实、高效。

国家税务总局 40 号公告（2017）和 64 号文（2018）涉及研发费用加计扣除，明确规定扩大申请加计扣除的归集范围，涵盖技术人员、辅助人员的成本，股份激励计划、员工福利，失败或流产的研发成本，来自国内外的外聘人员。但潜在支出在多个方面仍存在过度限制，商会建议：

- 允许所有行业获得加计扣除。“负面清单”上的一些行业完全被排除在加计扣除之外，如批发 / 零售、住宿 / 餐饮、租赁和商业服务以及娱乐。鉴于中国政府公开表示要将经济向服务业转移，商会提请重新审议限制行业。

- **初创企业需要研发费用税收优惠来返还现金。**处于早期阶段的创新型初创企业通常会出现巨额亏损，没有条件从研发加计扣除中获利。相比之下，其他发达国家则利用现金返还机制，解决初创企业面临的现金流限制。商会建议中方考虑建立类似机制。

- **累进利率引导支持创新型初创企业。**通过增加初期开支的扣除额（例如，香港第一笔 200 万港币研发开支的扣除额为 300%，其余开支的扣除额为 200%）可最大化支持创新小型企业。鉴于国务院计划将年利润低于 300 万元人民币的企业的企业所得税税率下调至 10%，这类优惠措施变得越来越重要。

2018 年，高新技术企业优惠政策也得到改善，如财税（2018）76 号规定将亏损结转年限从 5 年延长至 10 年。此外，还正式明确，将使用 3 年滚动基准计算来评估高新技术企业研发费用与收入资格标准是否符合要求。商会建议进行以下改革，进一步完善这些政策：

- **集团级高新技术企业适用规定。**目前高新技术企业以独立法人为基础适用规定，导致一些企业无法享受优惠。虽然集团作为一个整体可能满足高新技术企业的资格标准，但在研发和其他公司职能（包括销售、制造）分布在集团内部的情况下，任何单个实体都不可能满足所有要求。企业可能会因此以降低商业效率的方式组织运营，所以评价标准应以集团为基础。此外，商会建议中国政府引入企业所得税集团整合的总则，推动业务运营及集团高效构建。
- **将高新技术企业优惠扩展到所有行业。**目前只向“受鼓励”行业提供优惠。考虑到新数字技术、人工智能（AI）和自动化正在推动整个经济的转型，优惠范围过于严格，应取消优惠限制。
- **扩大对高新企业的进项增值税退税。**2018 年，进项税额结转退税新政策在限定行业的企业范围内实施。如果高新企业大量前期投资导致进项税额结转，那么进项税额结转退税新政策应推广到所有高新企业（最好是扩展到其他企业），帮助企业应对现金流挑战。

跨界集团内部重组减免资格面临的困难

第 59 号文中另一个有争议的问题是集团重组税务特殊处理资格的获取。59 号文只允许三种类型的跨境重组选择适用特殊性税务处理规定。分别是：

welcome. AmCham China recommends the following reforms to further improve these policies:

- **Group-level HNTE applications.** The current application of HNTE rules apply on a separate legal entity basis which unnecessarily frustrates access to the incentive. While the group as a whole might meet HNTE qualifying criteria, no individual entity may meet all of the requirements in cases where R&D and other firm functions (including sales and manufacturing) are distributed across the group. As enterprises may therefore be confronted with either structuring their operations in a commercially suboptimal manner or foregoing HNTE relief, a group-basis evaluation criteria should apply. Moreover, AmCham China recommends that the Chinese Government introduce general CIT group consolidation rules to facilitate business operations and efficient group structuring.
- **Expand the HNTE incentive to all industries.** Incentives are currently offered only to “encouraged” industries. This is unduly restrictive given the manner in which new digital technologies, artificial intelligence (AI), and automation are driving an economy-wide transformation. This limitation should be dropped.
- **Expanding input VAT refund to HNTEs.** In 2018, a new policy to refund carry-forward input VAT was implemented across a limited range of enterprises in defined industries. Providing that large upfront investments incurred by HNTEs lead to significant input VAT carry-forwards, this treatment should be extended to all HNTEs (and preferably beyond) to assist with cash flow challenges.

Difficulties Qualifying for Cross-Border Intra-Group Restructuring Relief

Another contentious issue revolves around qualifying for group restructuring relief under Circular 59. Circular 59 permits earmarking of only three types of cross-border reorganization to receive tax deferral treatment. These three occur when:

- A non-resident enterprise transfers its equity in a resident enterprise to a directly and wholly owned non-resident subsidiary (non-resident to non-resident). Relief will be granted on the condition that such a transfer does not allow the non-resident subsidiary to access a more preferential China treaty withholding tax (WHT) rate on capital gains on a (hypothetical) further transfer of the resident enterprise’s shares. Furthermore, there must be no actual transfer by the non-resident subsidiary within the three years following the reorganization transaction;
- A non-resident enterprise transfers its equity interest in a resident enterprise to a directly and wholly owned resident subsidiary (non-resident to resident);
- A resident enterprise contributes assets or equity

interests to its directly and wholly owned non-resident subsidiary (resident to non-resident). In a resident to non-resident transaction, even if the resident enterprise meets the criteria for special tax treatment under Circular 5, it must still report the built-in gains of the assets or equities contributed to the offshore entity. These can, however, be reported over a period of ten years (partial deferral), as opposed to recognized immediately in the absence of special tax treatment.

AmCham China considers intra-group restructuring relief for cross-border transactions to be of crucial importance and strongly urges that the qualifying conditions be further adjusted to allow restructurings possessing clear commercial justification and which meet basic restructuring criteria of both continuity of ownership and continuity of business.

The STA has been aware for some time of a range of unnecessary limitations on tax relief granted to cross-border transactions. Progress on new guidance has been sporadic since 2010, with no resolution to date. In the current domestic and global economic environment enterprise cross-border operations more frequently involve restructuring and reorganizing, upgrading their business models, adjusting supply chains, and increasing organizational efficiency. AmCham China urges timely and significant relaxation of the conditions for cross-border intra-group restructuring relief. To provide for more flexibility under Circular 59 for cross-border restructuring, the following conditions should be loosened:

- Reduce the group holding test (i.e., the shareholding requirement between equity transferor and transferee) down from the current 100%. AmCham China recommends 80%;
- Allow for relief on “upstream” subsidiary-to-parent asset and share transfers, rather than only on transfers from parent to subsidiary;
- End the practice of holding cross-border corporate mergers amongst offshore holding companies (either upstream or laterally) to the group holding test percentage (currently 100%). This requirement cannot realistically be satisfied under normal business operations. Other qualifications, which are more commercially realistic, should be considered in place of this requirement.

Mandatory Reporting Rules for Tax Advisors

In parallel with many other countries, China recently established mandatory reporting requirements that impact tax advisors. Notable recent international examples include the OECD’s Base Erosion and Profit Sharing (BEPS) Action Plan 14, the European Union’s (EU) Mandatory Disclosure Rules, and the United Kingdom’s (UK) Disclosure of Tax Avoidance Schemes (DOTAS) rules. While the policy intent is clearly to deter the promotion of mass market tax schemes and obtain

- 非居民企业向其 100% 直接控股的另一非居民企业转让其拥有的居民企业股权（非居民转让给非居民），没有因此造成以后该项股权转让所得预提税发生变化，且转让方非居民企业在 3 年（含 3 年）内不转让其拥有受让方非居民企业的股权；
- 非居民企业向与其具有 100% 直接控股关系的居民企业转让其拥有的另一居民企业股权（非居民转为居民）；
- 居民企业以其拥有的资产或股权向其 100% 直接控股的非居民企业进行投资（居民对非居民）。即使居民企业符合 5 号文的特殊税收待遇标准，居民对非居民的交易也必须报告其向境外实体投资的资产或者股权的内含收益。但是，上述内容可以在十年内（部分延期）报告，而不是在没有税务特殊处理的情况下立即予以承认。

商会认为，跨境交易集团内重组免税至关重要，因此强烈促请进一步调整资格条件，确保重组体现明确、合理的商业目的，并符合所有权和经营连续性的基本重组标准。

近期，国家税务总局意识到，跨境交易的税收减免存在一系列不必要的限制。自 2010 年以来，新指导方针收效甚微，截止目前还未产生任何决议。在当前国内外经济环境下，企业跨国经营常常涉及企业重组、业务模式升级、供应链调整及提升组织效率。商会促请各方及时大幅放宽集团内部跨境重组减免条件。为使第 59 号文为跨境重组创造更大灵活性，应放宽以下条件：

- 降低当前集团控股 100% 的比例要求（即，股权出让方与受让方之间的持股比例要求）。商会建议放宽到 80%；
- 允许“上游”子公司将资产和股份转让母公司时获得减免，而不仅仅是母公司对子公司的转让可以获得特殊税务处理；
- 终止离岸控股公司（无论是上游还是横向）之间进行跨境企业并购以集团控股比例（目前为 100%）为准则的做法。正常的业务操作无法达到此要求。应考虑其他更切实的替代方案。

税务顾问的强制性报告规定

与其他许多国家一样，中国近期制定了和税务顾问息息相关的强制性报告要求。国际上值得注意的是经合组织（OECD）的税基侵蚀和利润分享（BEPS）行动计划 14 号、

欧盟的强制性披露规定，以及英国的避税计划披露规定。制定政策的目的是阻止大众市场纳税方案的推广，并获取足够的信息迅速终止这些方案，但商会担心，中国的新规定过于宽泛。

2017 国家税务总局第 13 号和 49 号公告规定提供涉税专业服务的会计、税务、和律师事务所需要向税务机构提供他们的客户信息，包括服务费用、客户税收金额问题、涉税服务人员姓名，以及涉税专业服务协议；如果相关部门要求，公司需要按照要求提交税务咨询记录。相对于其他国家主要以避税为目的而制定强制性披露规定，中国的规定过多，最终可能导致当局收集的信息用途有限（引发对信息处理的担忧）。商会建议进一步调整和限制这些规定。

完善预约定价安排（APA）和相互协商程序（MAP）机制

12 月 6 日，国家税务总局发布《2017 年中国预约定价安排（APA）年度报告》，指出中国预约定价安排项目继续稳步推进。国家税务总局投入大量资源、精力确保项目遵守经合组织相互协商程序（MAP），两项机制都是由国家税务总局同一团队负责。国家税务总局 64 号公告（2016），和 6 号公告（2017）税收指导政策因此得以补充，也促进了中国达到防止税基侵蚀和利润转移（BEPS）行动 14 号文件要求改善接入争端解决机制并提高其有效性的最低承诺标准。虽然取得可喜进展，但是仍然可以采取一些有效实施措施确保预约定价安排和相互协商程序机制能够优化税收机制和报告：

更好地控制预约定价安排流程和时间： BEPS 行动 14 号最低标准要求承诺在 24 个月内完成双边预约定价安排的审查和谈判流程。商会建议国家税务总局采取以下有效措施来实现目标：

- 加强企业集团中单独负责中国实体的较低级别税务机构之间的协调，集团希望建立本国和中国的双边预约定价安排。目前，有关当局之间临时性的协调存在着一些问题，可能与预约定价安排工作处于不同的进展阶段。
- 为纳税人提供更加明确的信息，便于了解预约定价安排程序每一阶段的预期时间。预约定价安排程序包括六个阶段：提交申请前的会议、意向、分析和评估、正式申请、谈判和签署，以及监督实施。由于税务机关的资源限制和内部协调问题，纳税人有时会发现自

sufficient information to close them down rapidly, AmCham China is concerned that China's new rules are overly broad.

The relevant rules, contained in 2017 STA Announcements 13 and 49, provide that accounting, tax, and law firms which provide tax-related professional services need to provide information on their clients and engagements to the tax authorities, including on service fees, client tax amounts in question, and names of service personnel, and require such firms to be in a position to hand over tax advice notes when requested by the authorities. When compared to requirements in those countries adopting mandatory disclosure rules, which are aimed primarily at tax avoidance, China's proposed rules are excessive and may end up providing the authorities with information of limited use (notwithstanding the information handling concerns raised). AmCham China advises further adjustments and limitations to these rules.

Refining the APA and MAP Regimes

As noted in the STA's *China Advance Pricing Arrangement (APA) Annual Report of 2017*, released on December 6, 2018, steady progress continues to be made under China's APA program. The STA has committed substantial new resources to the program alongside efforts to comply with OECD Mutual Agreement Procedure (MAP), handled by the same team at STA. This complements updates to relevant tax guidance policies provided by STA Announcement [2016] No. 64 and Announcement [2017] No. 6 and underpins China's efforts to meet its BEPS Action 14 minimum standard commitments on improving access to and effectiveness of dispute resolution mechanisms. While this signifies encouraging progress, there are a number of practical implementation steps that could be taken to ensure that the APA and MAP regimes optimize the tax regime and reporting:

Better control of APA process and timing: The BEPS Action 14 minimum standard includes a commitment that the review and negotiation processes for bilateral APAs be completed within a 24-month period. We recommend that the STA take useful steps to meet this goal by:

- Better coordination between lower-level tax authorities responsible for separate China entities within a corporate group, where the group is seeking a bilateral APA between its home country and China. Currently, issues exist around the ad hoc nature of coordination between relevant authorities, which may be at different stages of advancement with the APA work.
- Providing taxpayers with clearer information on the anticipated timing of each stage of the APA process, which consists of six stages: pre-filing meetings, intention, analysis and appraisal, formal application, negotiation and signing, and supervision of implementation. Due to resource limitations of the tax authority and internal coordination issues, taxpayers sometimes find themselves 'marooned' at a particular stage of the process, unsure of when the authorities will issue

a formal notice allowing them to proceed to the next stage. We recommend that after receiving the taxpayer materials for a given stage, the authorities inform the taxpayer of the anticipated time frame for completion of that stage, allowing the taxpayer to plan accordingly.

APA renewals and profitability requirements. Under existing rules, where a taxpayer's weighted average operating profits (calculated over the 3- or 5-year APA validity period) has fallen beneath the median of the interquartile range agreed in the APA, then the taxpayer will not be eligible for renewal of the APA. It is not clear whether this is an indefinite exclusion or simply a temporary suspension. AmCham China notes that clarification would be helpful.

As a related matter, current APAs rules require that for any given year in which profit falls below the calculated interquartile range, it must be adjusted to the median of the agreed range. It would be more reasonable to allow for adjustment up to the top-end of the lower quartile and allow for adjustments to be made so that the requisite profitability target is met over the 3- to 5- year validity of the bilateral APA.

- **MAP refunds:** In practice, MAP refunds are extremely challenging to obtain from the Chinese tax authorities. Consequently, in negotiations where there is discussion on applying an APA to the MAP period, the inability to obtain MAP refunds makes negotiations with the competent authorities very challenging to conclude. We recommend that the STA address this refund issue.
- **Foreign exchange:** There are significant issues arising from the complications of processing foreign exchange transactions resultant on TP adjustments, whether consequent on an audit, MAP or APA. The work-arounds available (e.g., service charges) give rise to unnecessary additional tax leakages (e.g., VAT). The STA and other governmental authorities should address this as part of their wider "whole of government" coordination efforts.

Recommendations

For the Chinese Government:

- **Make the APA and MAP programs more easily accessible to multinational taxpayers operating in China from both local and central tax authorities, including on issues such as procedures and timing, communication with applicants, renewal requirements, refunds, and foreign exchange. [STA]**
- Monitor tax reforms in other major industrial countries and consider updating China's tax regime in

己在流程的某个特定阶段“孤立无援”，不确定主管部门何时会正式通知他们进入下一个阶段。商会建议，主管部门在收到某一阶段的纳税人资料后，通知纳税人预计完成该阶段的时间范围，以便纳税人做出相应计划。

双边预约定价安排续订和盈利能力要求：根据现行规定，如果纳税人的加权平均营业利润（在双边预约定价安排的3年或5年有效期内计算）低于双边预约定价安排商定的四分位区间的中位值，那么纳税人将没有资格续签预约定价安排，目前尚不清楚是无限期拒绝受理续签还是暂时中止。商会建议明确作出规定：

与此相关的是，现行预约定价安排规定如果企业当年利润在四分位区间之外，可以将其调整到四分位区间中位值。如果能够允许调整至下四分位数的最高水平，并允许调整，以便在双边预约定价安排的3至5年有效期内达到要求的盈利目标，则更加合理。

- **相互协商程序退税：**实际上，从中国税务机关获得相互协商程序退税极具挑战性。因此，在讨论将预约定价安排适用于相互协商程序阶段，由于无法获得相互协商程序退税，因此很难同主管当局谈判并达成结果。建议国家税务总局解决此问题。
- **外汇：**税收政策调整会引发复杂的外汇交易，进而产生审计、相互协商程序、预约定价安排等方面的重大问题。现有的变通方案（如服务费）会导致不必要的额外税收流失（如增值税）。国家税务总局和其他政府机构应将此问题纳入“政府整体”协调努力的目标之一。

- 改善并扩大研发和创新税收优惠范围，如研发加计扣除，高新企业、先进技术服务企业以及风险投资等优惠政策。消除跨境集团内部重组特殊税务处理资格的障碍。（国家税务总局）
- 2021年后，继续为外籍人士提供住房、语言培训和子女教育方面的免税补贴，或采取至少同样有效的替代减免措施。（国家税务总局）
- 修改税务顾问的强制申报规定，减少收集、分享过多不必要信息造成的管理负担。（国家税务总局）

建议

对中国政府：

- 让地方和中央税务机关的跨国纳税人更容易参与预约定价安排和相互协商程序项目，包括程序和时间、与申请人的沟通、续签要求、退税和外汇等问题。（国家税务总局）
- 关注其他主要工业国家的税改进程，考虑适时对中国税制进行调整，以应对全球税收制度变化趋势。（财政部、国家税务总局）

response to global trends. [MOF, STA]

- Improve and expand access to R&D and innovation tax incentives, such as the R&D super deduction, HNTSE and ATSE incentives, and VC incentives. Remove barriers to qualify for cross-border intra-group restructuring relief. [STA]
- Continue tax-exempted allowances for housing, language training, and children's education after 2021 for expatriates or adopt alternative relief measures that are at least as effective. [STA]
- Revise mandatory reporting rules for tax advisors to lessen the administrative burden of collecting and sharing excessive and unnecessary information. [STA]

Visa

Introduction

Generally speaking, there have been positive improvements in the visa application system in the past few years. AmCham China wishes to commend the relevant authorities for making the system more transparent and easier to navigate. We do, however, have some suggested improvements for consideration to streamline the visa process and enhance the ability of companies to get access to a broader pool of foreign talent which will benefit China's growth. Part of the streamlining process should include standardization of procedures on a national basis to eliminate confusion. Several recommendations follow below.

Recent Developments: China Visas

National Policy for Foreign Work Permit Application: Implementation Updates

The new national policy for Foreign Work Permit applications tightened the requirements for Work Permit renewals and clarified the consequences for foreigners in breach of the terms of their Work Permits.

30-Day Requirement for Work Permit Renewal

We are pleased that there has been clarification of the relevant procedures based on input from the foreign business community. Although first listed under the regulations of the Foreign National Work Authorization Program initiated in April 2017, beginning in February 2018 the State Administration of Foreign Experts Affairs (SAFEA) and the local Foreign Experts Bureau's (FEBs) under SAFEA mandated that Work Permit renewal applications must be filed at least 30 days prior to the expiration of existing permits.

We appreciate the Chinese government's efforts to standardize the process for Work Permit renewal. AmCham China notes, however, that in some cases companies were not aware of the 30-day requirement and started the renewal process late, delaying the ability of their foreign employees to continue working in China uninterrupted. AmCham China would appreciate the Chinese government's support

in publishing and disseminating information about the 30-day Work Permit renewal period more widely in English.

We suggest when foreign employees receive their valid Work Permit they also receive an information card that clearly states Work Permit renewal procedures, timelines and expectations. AmCham China would be pleased to assist the relevant department to draft the appropriate text for such a card. This will reduce the potential for any misunderstandings and support the important work of visa officials.

Tax Payments for Category A Foreigner Work Permit Application

China's Foreign National Work Authorization Program launched in April 2017 classifies foreign workers into three categories based on a scored assessment:

- **Category A:** "high-end talent," including scientists, technical experts, and international entrepreneurs;
- **Category B:** Foreign professionals under the age of 60, who hold at least a bachelor's degree and have at least two years of relevant experience;
- **Category C:** Foreign workers who engage in temporary, seasonal, non-technical or service-related work.

Foreign workers can qualify for a Category A Work Permit by meeting any of six criteria, one of which is that they must pay at least a set amount of total income tax annually. Currently, there exist varying interpretations nationwide about the documentation required to prove foreign workers income tax payments meet Category A requirements. We suggest that standardization will be helpful to officials responsible for determining eligibility.

In Beijing, there is a clearly defined threshold that must be met or exceeded. In other parts of China, the minimum tax requirements are less defined, and are sometimes based on a commitment letter from the employment-sponsoring entity which simply guarantees the amount of tax to be paid on an individual basis rather than meeting a universal threshold.

The failure of foreign companies to pay the correct tax can lead to severe penalties including firms being blacklisted from hiring foreigners and bans on new Work Permits for

签证

引言

总 来说，过去几年签证申请制度有了积极的改善。在有关部门的努力下，签证体系更加透明化且易于操作，对此，中国美国商会（商会）非常赞赏。不过，我们也提出了一些改进建议，希望能简化签证流程，提高企业获得更多外国人才的能力，这将有利于中国的经济增长。简化流程包括制定国家层面的标准流程，以消除模糊信息。建议如下：

最新进展：中国签证

有关外国工作许可申请程序的全国性政策：最新政策执行

新的外国工作许可申请政策收紧了工作许可续签的要求，并明确了外国人违反工作许可条款的后果。

工作许可证续签之 30 天规定

我们欣喜地看到，有关流程已根据国外商业界的意见得到澄清。虽然首次列入 2017 年 4 月启动的《外国人来华工作许可服务指南》，2018 年 2 月首次实施，国家外国专家局（外专局）以及下属的地方外国专家局规定，工作许可证续签申请必须在现有许可证期满前至少 30 天提出。

商会赞赏中国政府为规范工作许可证续签流程所做的努力，但同时指出，在某些情况下，有些公司并不知晓 30 天期限的要求，导致续签流程开始较晚，耽误了外国雇员继续在华工作。如中国政府能支持以英文更广泛地发布和宣传有关 30 天工作许可证续签的信息，商会将不胜感谢。

商会建议，外籍员工收到有效的工作许可证时，也能收到一张信息卡，卡上清楚地说明工作许可证的续签流程、时间安排和预期结果。商会很乐意协助有关部门起草卡片的内容。这将减少误解的发生，同时对签证官的重要工作

给与支持。

A 类外国人工作许可证申请纳税要求

《外国人来华工作许可服务指南》于 2017 年 4 月推出，根据评分将外籍员工分为三类：

- **A 类**：“高端人才”，包括科学家、技术专家、国际企业家；
- **B 类**：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；
- **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。

外国雇员可以通过满足六个标准中的任何一个来获得 A 类工作许可证，其中一个标准是必须每年至少缴纳一定数额的所得税总额。目前，关于证明外籍员工缴纳的所得税符合 A 类要求的证明文件，全国各地有不同的解释。商会认为，将解释标准化会有助于相关官员确定资格授予。

在北京，申请人必须达到或超过一个明确的税额才能获得 A 类许可证。而在中国的其他地区，最低税额的要求没有那么明确，有时基于就业担保机构的承诺书，而承诺书只是简单保证个人缴纳的税额，而不是达到一个统一的标准。

如果外国公司未能如数缴纳税款，可能会受到严厉的惩罚，包括被列入黑名单，禁止聘用外国人，以及禁止有问题的员工在申请续签工作许可证时获得新的工作许可证。为了解决这些严厉处罚可能造成的误解，并改善税收合规，商会建议：

- 全国所有城市均采用北京目前使用的模式，该模式明确规定了 A 类工作许可证的最低所得税起征点。从而提前消除关于个人是否达到许可证要求的疑惑。
- 如批准获得 A 类工作许可证的外籍员工的所得税未达

the employees in question when they seek to renew. To address potential misunderstandings stemming from these strict penalties and improve tax compliance, AmCham China recommends:

- All municipalities nationwide adopt the same model as currently applied in Beijing, which clearly defines the minimum tax threshold required for Category A Work Permit. This will eliminate any question of whether an individual qualifies or not in advance.
- If, after the approval of a Category A Work Permit, a foreign worker's income tax does not reach the minimum required threshold, rather than being subject to penalties, we recommend that the worker be automatically removed from Category A and be allowed to apply for a Category B Work Permit (except in cases of outright fraud). This would streamline the visa process without penalizing companies or individuals unnecessarily because their income tax payments did not meet the required threshold.

The tax thresholds for Category A visas have also become less clear because of China's revised Individual Income Tax (IIT) legislation that came into full effect in 2019. Due to a new calculation method, it appears that actual tax paid may be lower in the first half of the year than in the past but will be higher in the second half of the year. On that basis, we suggest that in the event an applicant has significantly differing monthly tax amounts over a tax year, that the tax calculation for Work Permit purposes be based on the total annual tax paid divided by 12.

Introduction of New Visa on Arrival Regulations

The new Foreign National Work Authorization Program has made it easier for foreign nationals to obtain work authorizations in mainland China. Eligible foreign nationals working in Shanghai, Beijing, Guangzhou, Shenzhen, and Dalian are exempt from entry visa requirements prior to arrival. Instead, after obtaining a work authorization letter, eligible foreigners can travel to China and obtain a Z visa (work visa) or valid entry visa at their port of entry. Relevant approvals, issued by the Port Office prior to arrival in China, are still required to complete the Visa on Arrival (VOA) process.

AmCham China welcomes the streamlined VOA process because eligible foreigners no longer need to surrender their passport for 4-6 business days at the Chinese embassy/consulate in their home country before traveling to China and may receive a valid entry visa upon arrival. We recommend that these processes be expanded nationally and beyond the cities identified above.

Document Authentication Procedures

Foreign workers are required to provide substantial documentation to prove their qualifications when applying for a

Work Permit. Documents include letters from the applicant's most recent employer, the applicant's highest academic degree certificate (diploma) and a criminal background record issued by the authority in the applicant's home country. The criminal background record and the academic diploma must be authenticated by the Chinese Embassy or Consulate in the applicant's home country.

Certain overseas education diplomas can now be authenticated online through the Ministry of Education (MOE) and submitted alongside work permit applications. Due to a lack of English-language instructions, however, it remains difficult for foreign applicants to complete the authentication process through the MOE's Chinese-language website. We urge the Chinese government to provide English-language instructions for foreign applicants or advise where existing English instructions (if any) can be found.

Moreover, AmCham China members have found that acceptance of notarized academic diplomas by authorities is not consistent nationwide. For example, the FEB in Beijing accepts notarized copies of original degree certificates. FEB's in other provinces, meanwhile, have rejected notarized copies of academic diplomas, claiming instead that they need to see the original diploma alongside the notarized copy in order to verify the authenticity of the copy. It is highly unlikely that individuals will bring their diplomas to China, and this imposes an additional administrative burden. Relevant authorities may or may not be aware that employees of foreign companies are normally subjected to background checks in their home country to verify personal information including education history. It is equally unlikely that a company would send personnel overseas if their education has not been verified in advance.

AmCham China urges all relevant authorities and departments adopt a standardized procedure to accept notarized copies of academic diplomas regardless of whether they were notarized in the US or China.

R-Talent Visa

To encourage international experts to come to China, the Ministry of Foreign Affairs (MOFA), SAFEA and Ministry of Public Security (MPS) jointly issued R-Talent Visa (R Visa) implementation measures in March 2018. The R Visa is awarded to "high-level" foreigners with technical skills deemed in demand across China. It is part of a government-led effort to encourage greater exchange by leading international entrepreneurs, researchers, and leaders with the Chinese market. AmCham China supports the R visa as another long-term visa option for foreigners to obtain visas for up to ten years.

Work Permit Exemption for Hong Kong, Macau, and Taiwan Residents

As of August 2018, residents of Hong Kong, Macau, and

到规定的最低起征点，我们建议将该员工自动从 A 类许可证中除名，并允许其申请 B 类工作许可证，而不对其进行处罚（公开欺诈的情况除外）。这将简化签证流程，避免由于个人所得税未达到要求，而对个人或公司进行不必要的处罚。

由于中国修订后的《个人所得税法》(IT) 于 2019 年全面生效，A 类签证的所得税起征点也变得不那么明确。由于采用了一种新的计算方法，上半年实际缴纳的税款可能比以前低，但下半年缴纳的税款会比之前高。在此基础上，我们建议，如申请人在一个纳税年度内每月的税款有显著差异，则工作许可证的计算应以每年所缴税款总额除以 12 为基础。

新落地签证规则

新的《外国人来华工作许可服务指南》使外国人在中国大陆获得工作许可证更加容易。在上海、北京、广州、深圳和大连工作的外国人，如符合条件，在入境前可以免签。获得工作授权书后，符合条件的外国人可以前往中国，在其入境口岸获得 Z 签证（工作签证）或有效入境签证。在抵达中国之前由港务局签发的相关批准，仍然需要完成落地签手续。

商会欢迎简化的落地签证流程，因为符合条件的外国人在前往中国之前，不必再到中国驻该国使领馆交验护照，并等待 4-6 个工作日来获得有效的落地签证。我们建议在全国推广以上流程，而不只局限于上述城市。

文件验证流程

外国工人在申请工作许可证时，必须提供大量文件做资格证明，包括申请人最近的雇主往来信件，申请人最高的学历证书（文凭）和由申请人所属国家有关部门出具的犯罪背景记录。犯罪背景记录和学历证书须经申请人所属国家中国使领馆的认证。

某些海外教育文凭现在可以通过教育部在线认证，并与工作许可证申请一起提交。然而，由于缺乏英文说明，外国申请人仍然难以通过教育部的中文网站完成认证流程。我们敦促中国政府为外国申请人提供英文说明，或告知现有的英文说明的出处（可能情况下）。

此外，商会会员发现，中国各地接受公证学历的情况并不一致。例如，北京外专局接受学位证书原件的公证件。而其他省份的外专局，拒绝接受学位证书的公证件，并声

称公证件和文凭原件都要提供，以核实公证件的真实性。然而个人将文凭带到中国的可能性非常小，这将会增加额外的管理负担。有关部门可能知道（或不知道），外国公司的雇员通常在其母国接受背景调查，以核实包括教育背景在内的个人信息。如果员工的学历没有得到事先核实，公司也不可能将他们派往海外。

商会敦促所有相关机构和部门采用标准化流程，接受学历证书的公证件，无论学历证书在美国还是中国公证。

人才签证

为鼓励国际专家来华工作，外交部、国家外国专家局、公安部于 2018 年 3 月联合发布《R- 人才签证实施办法》。R 签证颁发给掌握中国所需技能的“高端人才”。这是政府主导工作的一部分，旨在鼓励领先的国际企业家、研究人员和领导人与中国市场进行更多的交流。商会支持将 R 签证作为外国人获得 10 年长期签证的另一种选择。

香港、澳门及台湾居民的工作许可证豁免

自 2018 年 8 月起，在中国大陆工作的港澳台地区 (HMT) 居民无需获得工作许可。但在中国大陆工作的港澳台居民必须另外完成居住登记，并被鼓励申请中国大陆居住证。

可选大陆居住证

2018 年 9 月，国务院发布了一项新的港澳台居民居住证件——大陆居住证。大陆居住证有效期为 5 年，持证者无需获得工作许可证。

商会对港澳台居民工作许可证豁免政策表示赞赏，这为外国公司提供了更广阔的人才库。

国家移民管理局及相关移民政策

公安部于 2018 年 4 月宣布成立国家移民管理局——负责外国人出入境的新的政府机构。这一举措整合了此前由一个部门下的多个政府机构共同承担的外国移民责任。

商会对国家移民管理局的成立表示欢迎，并将其作为在华美国企业的中央移民管理局。虽然新成立的国家移民管理局网站提供了有用的移民信息，大多数内容仍然以中文显示，商会促请国家移民管理局同步公布英文移民信息。

144 小时过境免签电子系统

2018 年 11 月，上海移民局推出了一项新的在线申请和

Taiwan (HMT) working in mainland China are longer required to obtain a Work Permit. Instead, HMT residents wishing to work in mainland China must complete a separate residence registration and are encouraged to apply for a mainland Residence Card.

Optional mainland Residence Card

In September 2018 the State Council launched a new optional residence document available to HMT residents, the *Mainland Residence Card* (MRC). The MRC is valid for five years and cardholders are not required to obtain a Work Permit.

AmCham China welcomes the work authorization exemption policy for HMT residents because it offers foreign companies access to a larger pool of talent.

National Immigration Administration and Related Immigration Policies

The MPS announced the creation of the National Immigration Administration (NIA) in April 2018, a new government agency responsible for entry and exit of foreign nationals. This move consolidates foreign immigration responsibility previously spread across several government agencies under one authority.

AmCham China welcomes the NIA's creation as the central immigration authority for US companies doing business in China. While the new NIA website is already a useful immigration resource, most of the content is Chinese-language only and AmCham China urges the NIA to publish immigration resources in English as well.

Channel Use for 144-Hour Visa-Free Transit

In November 2018 immigration authorities launched a new online application and E-channel option for 144-hour visa-free transit in Shanghai. Eligible travelers can apply online and streamline the immigration clearance process via E-channel entry at Pudong and Hongqiao International Airports in Shanghai only.

AmCham China supports expansion of the 144-hour visa-free transit exemption to new locations in China. We recommend that Chinese authorities expand use of the pre-arrival registration and E-Channel passage to all other locations across China to streamline entry procedures under the transit visa exemption.

The E-Channel is maintained by the General Station of Immigration Inspection and helps travelers avoid long queues at the border. Foreign travelers using the E-channel receive a paper "Statement of Travel Records," printout, which has the same authority as regular entry and exit passport stamps administered by immigration authorities.

Chinese immigration authorities often confirm official entry into China through a passport entry stamp when foreign travelers exit mainland China. To avoid any potential confusion or delay, AmCham China recommends the authorities add a sign at immigration to inform visitors to retain their "Statement of Travel Records" for the duration of their stay in China and be prepared to show it when exiting.

Ongoing Regulatory Issues: Chinese Visas

Visa Conversion

AmCham China recognizes that the Foreign National Work Authorization Program implemented in April 2017 has introduced new regulations to allow foreign workers to obtain legal employment in mainland China. Under these measures, entry and exit authorities in Beijing, Shanghai, Guangzhou, and Shenzhen now provide visa conversions for foreign employees. After obtaining a Notification of Work Permit (NWP), qualified foreign employees can apply for a temporary residence permit from within China with the NWP and a valid business or tourist visa.

Previously, foreigners in China who received an NWP were required to leave and apply for a Z visa from their home country. These changes have greatly shortened the time required to onboard foreign employees, which is appreciated. AmCham China encourages the Chinese government to expand and standardize visa conversion services nationwide.

Processing Period for Residence Permits

Throughout 2018, the processing time for Residence Permits continued to vary by province, ranging from five to 15 working days. It takes five days in Tianjin, seven days in Shanghai, ten days in Beijing, and 15 days in Dalian and Changchun. Residence Permit applications require the applicant to surrender their passports to the relevant local entry and exit authorities for the duration of the processing period.

AmCham China has received considerable feedback from member firms about the problems related to forcing foreign workers to surrender their passports for up to three weeks. It is highly inconvenient for normal business operations given the substantial documentation already required to verify the applicant's qualifications.

The problem is worse when extending a Residence Permit, since less information is required but extensions still can take up to 15 days and require passports to be surrendered again, preventing applicants from leaving China for normal business.

AmCham China urges the Chinese government to shorten the Residence Permit application processing time to seven calendar days nationwide.

电子通道服务，可在上海 144 小时过境免签。符合条件的旅客只需在上海浦东国际机场和虹桥国际机场通过电子通道在线申请，简化了通关手续。

商会支持将 144 小时过境免签扩大到中国其他城市。我们建议中国有关部门将入境前登记和电子通道扩大到全国各地，以简化过境免签入境手续。

电子通道由上海出入境边防检查总站维护，帮助旅客避免在边境排长队。使用电子通道的外国旅客会收到纸质的“旅行记录声明”打印件，与移民局管理的普通出入境护照印章具有相同的权限。

当外国游客离开中国大陆时，中国移民局通常会通过护照入境章来确认是否正式进入中国。为了避免任何潜在的混乱或延误，商会建议有关部门在入境处增加一个标志，告知游客在中国停留期间保留其“旅行记录声明”，并在出境时出示。

现存监管问题：中国签证

签证转换

商会表示，2017 年 4 月实施的《外国人来华工作许可服务指南》出台了新的规定，允许外国员工在中国大陆合法就业。根据这些措施，北京、上海、广州和深圳的出入境管理部门现在为外国雇员提供签证转换服务。在取得《工作许可证通知书》后，符合资质的外籍雇员可以凭该通知书和有效的商务 / 旅游签证，申请临时居留许可证（必须在 10 日内发起申请）。

在此之前，在中国的外国人如果获得了《工作许可证通知书》，就必须离开中国，并从其所属国家申请 Z 签证。这些变化极大地缩短了外籍员工到岗的时间，对此我们深表谢意。商会鼓励中国政府在全国范围内扩大和规范签证转换服务。

居留许可证办理时间

2018 年全年，各省办理居留许可的时间仍然存在差异，从 5 个工作日到 15 个工作日不等。天津需要 5 天，上海 7 天，北京 10 天，大连和长春需要 15 天。居留许可证申请办理期间，申请人须向当地出入境管理部门交验护照。

商会收到了来自会员公司的大量反馈，涉及外国员工被迫交出护照长达三周的问题。考虑到为了验证申请人的

资格已经提交了大量文件，这种做法对正常的企业经营非常不便。

办理居留许可证续签时，这一问题更为严重。尽管所需信息较少，但续签的手续可能长达 15 天，并要求再次上交护照，使申请人无法离开中国进行正常业务。

商会促请中国政府在全国范围内，将居留许可证申请办理时间缩短到 7 个自然日。

“超龄”员工和新毕业生

我们感谢有关部门在过去一年为 60 岁及以上的外国公民提高了工作许可证审批的灵活性。如之前《白皮书》所述，外国商界经常担心的一个问题是，可能存在的年龄限制不够明确，而这些限制阻碍了资深员工在中国获得工作许可证。在许多发达国家，没有强制退休年龄，尽管美国人享有全部社会保障福利的年龄是 66 岁。商会建议，只要一个专业人士是合法就业的，并且符合相关税收规定，他获得工作许可的能力就不应该受到年龄限制。

应届毕业生在获得工作许可方面也面临困难，因为他们往往缺乏所需的两年相关工作经验。这一要求不仅限制了当地雇主雇用年轻外国人才的能力，而且由于对外国毕业生在华就业前景的人为限制，也不利于他们在中国学习。虽然硕士或更高学位的学生可以享受免签，商会建议中国政府考虑将该政策扩大到包括近期从国内外大学获得学士学位（或以上）的毕业生。这样的改革可以通过获得更多的人才，使国内外的公司都受益。

影响企业经营的一个相关问题是，由于签证要求，目前无法短期雇用实习生。为有前途的学生或应届毕业生提供为期 3-6 个月的带薪或无薪实习是全球企业的普遍做法。我们建议考虑针对这类人群作出更多的规定，以便更符合全球惯例。

建议

对中国政府：

- ABC 类员工要求的标准化，特别是在税务方面。就 A 类外国员工税务相关的处罚提供更明确的指导和灵活性。
- 扩展国家移民管理局网站，支持英语材料和资源。

Older Workers and New Graduates

We thank the relevant authorities for improved flexibility in Work Permit approvals for foreign nationals age 60 and above in the past year. As documented in previous editions of the White Paper, one of the frequent areas of concern among the foreign business community is the lack of clarity around potential age restrictions which prevent senior employees from obtaining Work Permits in China. In many developed countries, there is no mandatory retirement age, although full Social Security benefits in the US are realized at age 66. Our recommendation is that as long as a professional individual is legally employed and compliant with relevant tax and related regulations, there should be no age restriction or limit on their ability to obtain a Work Permit.

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 a local employer's ability to hire young foreign talent, it also creates disincentives for prospective foreign students to study in China because of artificial limits to their post-graduation employment prospects in the country. Although waivers are available for those with a master's or higher degree, we recommend that the Chinese government consider expanding the policy to include recent graduates with a bachelor's degree (or above) from domestic and overseas universities. Such reform will benefit both domestic and foreign companies by expanding their access to talented hires.

A related area which affects business operations is the current inability to hire interns on a short-term basis due to visa requirements. It is a common global corporate practice to provide paid or unpaid internships to promising students or recent graduates for a period of 3-6 months. We recommend that additional regulations regarding such persons be considered in order to be more in line with global practices.

- Expand currently restricted domestic visa conversion procedures nationwide to simplify the process of hiring qualified foreigners from within mainland China.
- Expand the number of ports of entry offering a 144-hour visa-on-arrival.

Recommendations

For the Chinese Government:

- **Standardization of ABC Category worker requirements, especially for tax purposes. Provide clearer guidance and flexibility with respect to penalties related to enforcement of tax requirements for Category A foreign workers.**
- Extend the NIA website to support English-language materials and resources.
- Clarify senior age-related requirements for foreign hires, reconsider employment requirements for new graduates and consider a new visa category that allows companies to hire interns on a paid or unpaid basis.

- 明确对外籍员工的年龄相关要求，重新考虑对应届毕业生的就业要求，并考虑新的签证类别，允许企业雇佣带薪或无薪实习生。
- 在全国范围内扩大目前受限制的国内签证转换流程，以简化从中国内地聘用合格外国人员的流程。
- 扩大提供 144 小时落地签证入境口岸的数量。

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

Agriculture

Introduction

AmCham China would like to congratulate the government of China for the progress in the agriculture sector beginning in 2018. Over the past 12 months China expanded the authority of the Ministry of Agriculture and Rural Affairs (MARA) (formerly the Ministry of Agriculture), captured by the release of 2019 document No. 1 to better reflect the government’s focus on rural development and the elimination of rural poverty. China’s overarching agricultural policy continues to focus on modernizing the industry and encouraging innovation while simultaneously ensuring food security and safety.

During 2018 AmCham China members witnessed several important events:

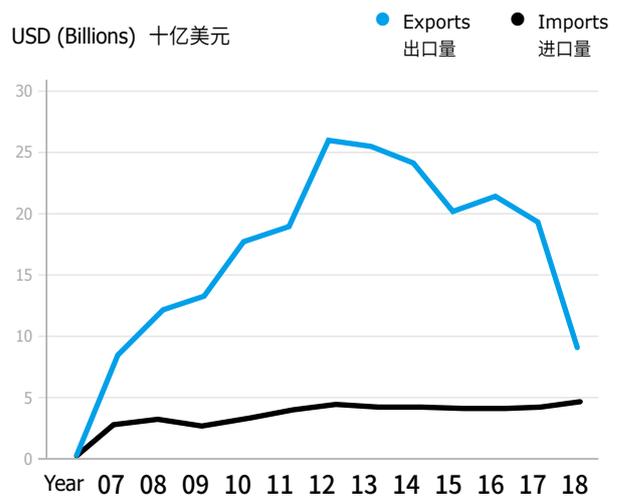
- Ministry of Commerce (MOFCOM) and National Development and Reform Commission (NDRC) jointly published the Special Administrative Measures (Negative List) for Foreign Investment Access (2018 version) and Free Trade Zone (FTZ) Special Management Measures (FTZ Negative List) for Foreign Investment Access (2018 version). Similarly, MOFCOM and NDRC published a Negative List in July 2018, which replaced the earlier Guiding Catalogues on Foreign Investment and removed additional sectors from investment restrictions.
- Continuous improvement in China’s crop variety registration following amendment of the *Seed Law* in 2016.
- The Chinese government announced the consolidation of anti-monopoly enforcement responsibilities previously residing in three agencies MOFCOM, NDRC, and State Administration for Industry and Commerce (SAIC)), under the newly established State Administration for Market Regulation (SAMR), which should streamline antitrust enforcement.

Despite economic tensions created by the uncertainty of US-China relations, China’s economy grew by an estimated 6.6% in 2018, in line with government expectations, but the slowest rate since 1990. Chinese citizens continue to exhibit strong demand for high-quality, safe and nutritious food.

Agricultural trade between China and the US faltered in 2018 (Figures 1 and 2). US companies exported US \$9.1 billion of agricultural products to China, a year-on-year decline of over half as much as 2017. Trade tensions between China and the US have taken a toll on the agricultural industry in both countries. In July, the US government introduced 25% tariffs on US \$34 billion of Chinese imports. In response, China imposed 25% tariffs on US \$34 billion of imports from the US that heavily targeted agricultural products including soybeans, sorghum, red meat, fruits, and produce. Tariffs imposed by both the US and China in August 2018 on an additional US \$16 billion of goods raised the total of import tariffs on goods to \$50 billion imposed by each country.

Figure 1. US Agricultural Trade (Imports and Exports) to China

图 1. 美国对华农业贸易（进出口）



Source: US Census Bureau Trade Data
 源自：美国人口普查局贸易数据

As a central pillar of the trading relationship, the agricultural industry in both countries bears the brunt of deteriorating trade relations. These actions will have longstanding ramifications should the tensions continue. Additional American tariffs went into effect in September 2018 on US \$200 billion of Chinese products including consumer goods,

农业

引言

中国美国商会（商会）祝贺中国政府从 2018 年开始在农业领域取得的进展。在过去的 12 个月里，中国政府扩大了农业农村部（前农业部）的权限，而 2019 年中央一号文件的公布则更好地反映了政府对农村发展和消除农村贫困的关注。中国的总体农业政策继续以工业现代化和鼓励创新为重点，同时确保粮食保障与安全。

2018 年，商会会员见证了几个重要事件：

- 商务部和国家发展和改革委员会（发改委）联合发布了《外商投资准入特别管理措施（负面清单）（2018 年版）》和《自由贸易区（自贸区）外商投资准入特别管理措施（自贸区负面清单）（2018 年版）》。同样，商务部和发改委于 2018 年 7 月公布了负面清单，取代了早期的《外商投资指导目录》，并将其他部门从投资限制中删除。
- 自 2016 年《种子法》修订以来，中国不断改进作物品种登记。
- 中国政府根据新成立的国家市场监督管理总局的规定，宣布巩固此前属于商务部、发改委和国家工商行政管理总局等三个机构的反垄断执法责任，这将简化反垄断执法。

尽管中美关系的不确定性造成了经济紧张局面，但 2018 年中国经济仍增长了 6.6%，符合了政府预期，但增长率却是 1990 年以来最低的。中国民众继续对优质、安全和有营养的食品表现出强烈的需求。

2018 年中美之间的农业贸易摇摆不定（图 1 和图 2）。美国公司向中国出口了 91 亿美元的农产品，同比 2017 年减少了超过一半。中美贸易紧张局势已经对两国的农业造成了影响。7 月，美国政府对 340 亿美元的中国进口产品征收 25% 的关税。作为回应，中国对美国 340 亿美元进

口产品征收 25% 的关税，这些进口产品主要包括大豆、高粱、红肉、水果等农产品。2018 年 8 月，美国和中国对另外 160 亿美元的商品征收关税，此举将两国对商品征收的进口关税总额增加至 500 亿美元。

作为贸易关系的中心支柱，两国农业在贸易关系恶化带来的影响中首当其冲。如果紧张局势继续下去，这些行动将产生长期后果。2018 年 9 月美国对包括消费品在内的 2000 亿美元中国产品另行征收的关税生效，而中国于 9 月份宣布的对应的关税现已影响近 90% 的美国农产品出口。由于中国目前是美国第二大农产品市场，随着中国使其农业进口基地多样化，持续征收关税将导致美国市场份额下降。

虽然商会会员公司仍然对其与中国农业的长期合作关系充满信心，但也对中美之间的贸易紧张局势深感担忧。商会希望两国之间的贸易紧张局势能够缓和，并打算与中国和美国的农业进行合作，以帮助确保商业伙伴关系保持强劲。商会还打算继续支持中国的农业现代化目标，为中国消费者提供价格实惠、更加健康、更加可持续的食粮产品。

现存监管问题

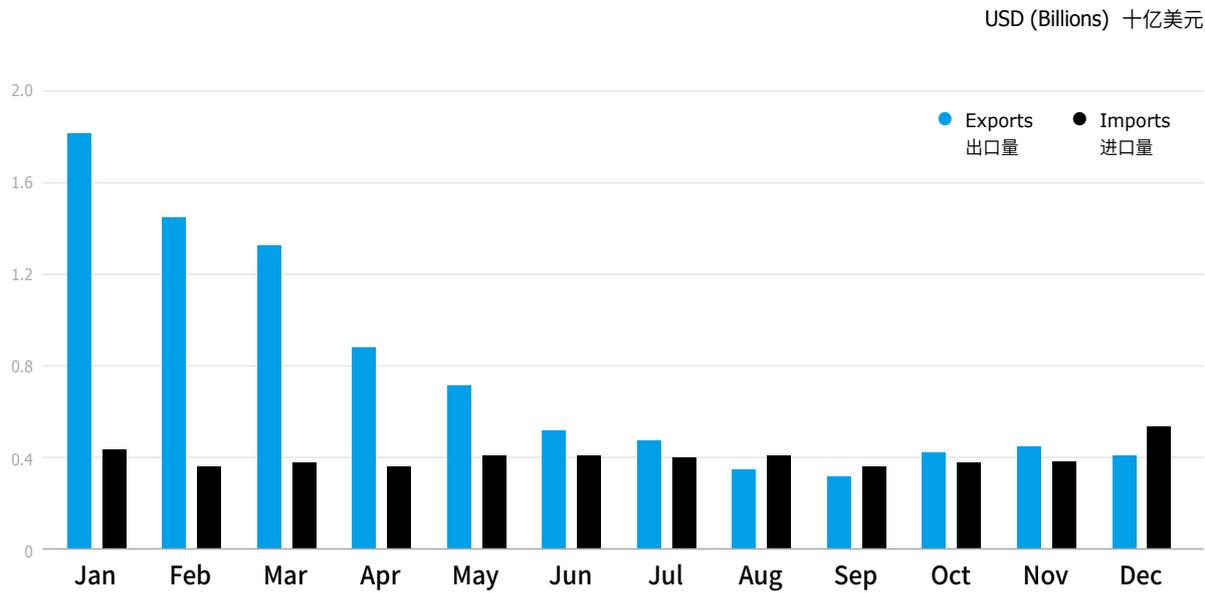
种子产业

市场准入挑战

商会欣喜地看到与早期的《外商投资指导目录》相比 2018 年负面清单中减少了对农业的限制。特别是，新的自贸区负面清单进一步将外商投资在小麦和玉米育种及种子生产中的股权上限从 49% 提高至 66%。现在可以由外国投资者控制小麦和玉米作物品种育种及种子生产。商会建议将自贸区的政策扩展到国家层面，建议政府进一步放宽对外商投资在小麦和玉米新品种选择和育种方面的限制。

Figure 2. Monthly US Agricultural Trade with China in 2018

图 2. 2018 年美国与中国的农产品月贸易量



Source: US Census Bureau Trade Data
 源自：美国人口普查局贸易数据

while reciprocal Chinese tariffs announced in September now impact nearly 90% of US agricultural exports. As China is currently the second-largest market for US agricultural products, sustained imposition of these tariffs will cause the US market share to fall as China diversifies its agriculture import base.

Though AmCham China member companies remain confident in their longstanding partnerships with the Chinese agricultural industry, we are deeply concerned about trade tensions between China and the US. AmCham China hopes to see a de-escalation in trade tensions between both countries and intends to work together with Chinese and US agricultural industries to help ensure that business partnerships remain strong. AmCham China also intends to continue supporting China’s goal of agricultural modernization and ensuring affordable, healthier, and sustainable food products for Chinese consumers.

Ongoing Regulatory Issues

Seed Industry

Market Access Challenges

We are encouraged to see restrictions on the agricultural industry in the 2018 *Negative List* be reduced in comparison to the earlier *Guiding Catalogues on Foreign Investment*. In particular, the new FTZ *Negative List*

further increased the equity cap on foreign investment in wheat and maize breeding and seed production from 49% to 66%. Breeding of wheat and maize crop varieties and seed production can now be controlled by foreign investors. AmCham China recommends the policies of the FTZ be extended to the national level and the government further relaxes restrictions on foreign investment in the selection and breeding of new varieties of wheat and maize.

The 2018 *Negative List* and the FTZ *Negative List* still prohibits foreign investment in “genetically-modified (GM) varieties breeding and GM seed production,” however. Prohibiting foreign investment in these areas will not only limit competition and efficiency but is detrimental to China’s goals for innovation and modernization of the agricultural sector. We urge the Chinese government scale back this provision from “prohibited” to no more than “restricted” to allow joint ventures to engage more widely in seed technology innovation and crop production. This recommendation is also particularly salient in light of ChemChina’s takeover of Swiss pesticides firm Syngenta in 2016, a move that should lead to a reduction of barriers to foreign investment in this sector.

Import and Export of Seed and Breeding Material

AmCham China saw continuous improvement in China’s crop variety registration following amendment of the *Seed Law* in 2016. Our member companies believe significant

然而，2018年负面清单和自由贸易区负面清单仍禁止外国投资“转基因品种育种和转基因种子生产”。禁止外国投资这些领域不仅会限制竞争和效率，还不利于中国农业部门创新和现代化目标的实现。商会促请中国政府将这一规定从“禁止”降级至“限制”，以允许合资企业更广泛地参与种子技术创新和作物生产。这一建议对中国化工集团2016年收购瑞士农药公司先正达一事中也尤其显而易见，该举措应该会减少在该领域的外国投资壁垒。

种子和育种材料的进出口

商会注意到，自2016年《种子法》修订以来，中国在不断改进作物品种登记。商会会员认为，种子和育种材料进出口法规仍亟待重大变革，以简化冗长且复杂的审批程序。这将减少商会会员因冗余的审批，知识产权植物检疫认证和许可处理缓慢以及不明确的政策指导和指令而面临的延误。

为研究目的而进行的种子出口对跨国公司而言过于复杂。例如，如果使用国内种质，则禁止从中国进口种质。即便不使用国内种质，申请和批准程序也模糊不清、冗长拖沓，且批准率非常低。

同时，一般进口流程需要获得省级种子管理机构多个部门和农业农村部的审批。这样的批准过程延缓了跨国公司与当地种子行业之间的技术交流和科研合作的步伐，阻碍了新品种的研发。

假种子与知识产权保护

种子行业是技术与研究密集型行业，这使得有效的知识产权保护对其成功至关重要。知识产权保护不力一直是制约中国种子产业发展的主要障碍。品种作假和假种子是进口和国产种子共同存在的问题。商会认识到，中国政府，包括农业农村部、公安部和国家市场监督管理总局，正在努力通过加强知识产权法律保护，为种子行业的创新创造有利的环境。

商会会员希望继续与中国有关政府机构密切合作。商会促请中国政府对植物品种保护（PVP）侵权实施更严厉的处罚，作为保护育种者PVP权利的有效方式。商会还建议提供更多的知识产权工具以全面保护创新。具体建议为：

- 将实质派生品种（已经被水稻作物品种试验过）应用于更多的种子类型，如玉米；
- 将保护商业秘密应用于种质资源以保护育种创新权；

- 向创新生物技术产品而非单一植物品种授予恰当的专利权；
- 应引入分子检测方法帮助作物免受病虫害；
- 应建立种子知识产权信用体系，更好地管理种子研发知识产权，加强植物品种保护执法。

农药行业

农药登记数据互认（MAD）计划

2017年中国修订了国内农药法规。根据农业农村部对新法规的解释，要在中国注册国际生产的农药，外国企业必须指定一个农业农村部批准的实体在中国进行所有登记测试。截至2017年11月1日，农业农村部已停止受理由境外实验室在登记程序中发布的经济合作与发展组织（经合组织）-非临床研究质量管理规范（GLP）报告。这些报告支持经合组织的数据互认计划，该计划规定，在农药经一个数据互认签约国测试和批准后，视为被所有方认可。因此，农药登记机关可以免除在其他国家生成的相关优质数据的国内登记要求。对于数据互认计划，中国正处在讨论中但尚未加入。

因此，外国企业现在必须与中国实体一起开展登记测试，每次登记费用为人民币二千万至三千万，并且还需要额外的登记程序（可能又需要三到四年时间）。中国现在是世界上不按照数据互认计划受理农药登记数据的仅有的几个国家之一，并要求所有登记测试都在其境内进行。商会促请农业农村部与行业利益相关者和相关国际组织合作，加入数据互认计划，并促请停止要求外国农药重复登记。在这方面，商会注意到中国政府机关正在通过受理海外临床试验结果来加速创新药物登记。因此，商会也敦促农业农村部研究国家药品监督管理局的经验。

仅供境外使用农药的登记管理

2017年6月21日颁布的《农药登记管理办法》第48条规定“仅供境外使用农药的登记管理由农业部另行规定”。但是到目前为止相关规定尚未出台，这对相关国内农药生产商和全球农药供应链带来了操作上的不确定性。鉴于2019年之后所有的仅供境外使用的登记证都将到期（确切有效期取决于许可证持有人），商会会员担心这会影响到出口农药的持续生产，从而对国内制造商在国外的竞争力产生负面影响，并给严重依赖中国农药行业并可能为中国市场生产粮食的农户在农药供应方面带来危害。

changes to regulations governing import and export of seed and breeding materials are necessary to streamline lengthy and complex approval processes. This will reduce the delays AmCham China members face from redundant required approvals, slowly processed intellectual property (IP) phytosanitary certifications and permits, and unclear policy guidance and directives.

Exporting seeds for research purposes is overly complicated for multinational corporations (MNCs). For instance, germplasm exports from China are prohibited if domestic germplasm is used. Even when domestic germplasm is not used, the application and approval procedure is unclear, lengthy and protracted, and is characterized by very low approval rates.

Meanwhile, the general import procedure requires approvals from multiple authorities in provincial seed administration agencies as well as MARA. Such approval procedure slows technology exchange and research cooperation between MNCs and the local seed industry, hampering new variety development.

Counterfeit Seeds and Intellectual Property Protection

The seed industry is technology and research intensive, making effective IP protection critical to its success. Weak IP protection has been a major barrier to the development of China's seed industry. Variety violation and counterfeit seeds are common problems for both imported and domestic seeds. We recognize that the Chinese government, including MARA, the Ministry of Public Security (MPS), and SAMR, are working to create a favorable environment for innovation in the seed sector by strengthening IPR legal protections.

AmCham China members would like to continue to work closely with relevant Chinese government agencies. We urge Chinese authorities to impose more severe penalties on Plant Variety Protection (PVP) infringements as an effective way to protect breeders' PVP rights. AmCham China also recommends the provision of more IP tools to provide comprehensive innovation protection. We recommend:

- Apply Essentially Derived Varieties (EDV), which are already being trialed by rice crop varieties, to more seed types like corn;
- Trade secret protections should be applied to germplasm products to protect breeding innovation rights;
- Proper patent rights should be granted to innovative biotech products which are not individual plant varieties;
- Molecular detection methods should be introduced to help protect crops from pests and disease;
- An IP credit system for seed companies should be established to better manage IP rights over seed development and enhance PVP enforcement.

Agrochemical Industry

Mutual Acceptance of Data (MAD) Program for Pesticide Registrations

China revised its domestic pesticide regulations in 2017. According to MARA's interpretation of the new regulations, to register an internationally-produced pesticide in China, the foreign enterprise must appoint a MARA-approved entity to conduct all registration tests in China. As of November 1, 2017, MARA has stopped accepting OECD-Good Laboratory Practice (GLP) reports issued by overseas laboratories in the registration procedure. These reports support the OECD's Mutual Acceptance of Data (MAD) program, which provides that after a pesticide has been tested and approved by one MAD signatory, it is deemed accepted by all. Therefore, pesticide registration authorities can waive domestic registration requirements for relevant, good quality data generated in other countries. China is in discussions but has yet to join the MAD program.

Consequently, foreign enterprises must now conduct registration tests with a China-based entity, at a cost of RMB 20-30 million per registration, and face an additional registration procedure that can stretch out an additional three to four years. China is now one of the only countries in the world that will not accept data for pesticide registration under the MAD program and requires all registration tests to be conducted within its territory. AmCham China urges MARA to work with industry stakeholders and relevant international organizations to join the MAD program and stop requiring duplicative registrations of foreign pesticides. We note in this regard that Chinese government authorities are accelerating the registration of innovative drugs by accepting overseas clinical test results. AmCham China therefore also urges MARA to study the experience of the National Medical Products Administration (NMPA).

Registration Management of Only-For-Export Pesticide

Article 48 of the "Measures for the Administration of the Pesticide Registration," published on June 21, 2017, stated that "Registration Management of Only-For-Export Pesticides will be stipulated separately by the Ministry of Agriculture." To date, these regulations have yet to be introduced. This creates operational uncertainty for both domestic pesticide manufacturers and global pesticide supply chains. Considering that all pesticide registration licenses for exports will expire in 2019 (the exact expiration date depends on the license holder), AmCham China members are concerned this could affect continued production of export pesticides, negatively impacting the competitiveness of domestic manufacturers in foreign markets and endangering access to pesticides for farmers who rely heavily on the Chinese pesticide industry and may produce food intended for the Chinese market.

商会促请农业农村部尽早公布相关规定。若最终法规迟迟不出台，有必要采取暂行办法在实施上对农药制造商和贸易商予以指导。

类似物的非法添加

2018年，中国监管机构在全国使用的几种农药中检测出化学类似物。而根据《中国农药管理条例》，这些类似物与农药标签上标识的活性成分具有类似特征，存在化学类似物可认定这些农药为“假农药”。但商会会员发现，在地区层面，对于这些化学类似物的存在是否违反法律上持有不同的解释，因此，这要取决于相关法律程序和处罚规定。

商会鼓励农业农村部与省级政府和行业协会进行协调，就国内农药中存在的非法类似物的处理方式制定统一的实施办法。

生物技术

具有生物技术特征的商品面临监管和许可问题

2018年，具有生物技术特性的作物商品的监管审批程序几乎没有取得进展，也未有新批文发出。生物技术商品审批上的不断拖延严重阻碍了全球农业创新。商会也对于监管机构在进口生物技术产品安全审批上越来越多的重复数据本地化要求表示担忧。商会鼓励农业农村部采用更灵活的数据本地化要求，即要考虑到产品在中国的预期用途，而非对数据要求施加限制和搞“一刀切”。

2017年，对现有生物技术法规进行了几项新的修订。这些修订取消了将国内研究作为申请进口安全证书的先决条件，也取消了与生物技术产品进口审批相关的申请和试验费用要求。虽然商会会员对中国政府减轻公司行政和财务负担的意图表示欢迎，但也相信这些修订会进一步降低国内研究要求提供机会，因为这些研究是中国特有的，对进口安全证书也不必要。如果采用这些修订时没有规定明确的过渡期或制定详细的实施条例，则会给商会会员公司带来运营上的重大不确定性。商会促请农业农村部明确由这些新修订产生的监管程序变化，并在与所有利益相关方进行透明、公开的磋商后制定实施细则。

商会还注意到，原产国的出口审批仍然是申请生物技术产品进口安全证书的必要前提。这导致原产国审批和中国审批之间存在明显的时间滞后。商会鼓励农业农村部允许公司在出口审批待批的情况下申请中国进口安全审批，

以加速这些产品进入中国市场。

除了获得进口安全证书外，农业农村部还要求农产品贸易商为运往国外的每批生物技术产品货物获得生物安全证书。这些附加审批是多余的。2018年，商品贸易商为获得装运许可证其生物安全证书申请的拒绝率增加，这加大了商品贸易业务的巨大成本并给贸易业务带来了不确定性。商会促请农业农村部提供一套明确的标准来指导此申请流程的文件编制。

饲料行业

青贮评估标准

据估计，自1949年中华人民共和国成立以来，已有约140种青贮玉米品种登记在案。由于《中国青贮玉米标准》以干物质产量为主，这些品种受到不合理的评价方法和标准的影响，这些评估方法和标准也不符合现代乳业的做法。商会呼吁中国根据2015年中共中央1号文件规定采用科学的青贮玉米品种评估标准，以推动“饲料用粮”，继续促进中国饲料工业的发展。

对饲料进口的批准

饲料添加剂和原料首次出口到中国需要经过政府审批程序，饲料添加剂和原料需在农业农村部备案，其他的产品安全性评估和生产商在海关总署备案。

农业农村部和海关总署的注册程序冗长而复杂，通常需要数年才能完成。这阻碍了新技术进入中国的粮食生产供应链，减少了中国农民对重要饲料添加剂的选择，包括重要的抗生素替代品，从而削弱了国内饲料和粮食安全。

商会敦促进行程序改革并缩短时间，方法是允许公司同时向农业农村部和海关总署提交相同文件。商会进一步建议，由海关总署来监督管理进口饲料添加剂和原料的风控。

农业加工与运输

并购审核

商会希望市场监督管理总局采取措施提高监管透明度。商会敦促市场监督管理总局公开发布更多有关具体并购案例决策的信息，并在并购审核流程中发布反垄断原则清单供考虑，以便公司更好地准备申请文件。过去常见的冗长而不透明的并购审核为商业界带来了无意义的不确定性。

AmCham China urges MARA to release the relevant rules as early as possible. In the continued absence of final regulations, interim measures are necessary to guide pesticide manufacturers and traders on implementation.

Addition of Illegal Pesticide Analogues

In 2018, Chinese regulatory agencies detected traces of chemical analogues in several pesticides used throughout China. While these analogues have similar properties to the active ingredients identified on the pesticide label, according to national Chinese regulations on pesticide management, the presence of chemical analogues classifies these pesticides as “fake.” AmCham China members have found, however, differing interpretations at the regional level as to whether the presence of these chemical analogues violates the law and is therefore subject to relevant legal procedures and penalties.

AmCham China encourages MARA to coordinate with provincial governments and industry associations to develop unified implementing measures on how to deal with the presence of illegal analogues in domestic pesticides.

Biotechnology

Regulatory and Permit Issues Facing Commodities with Biotech Traits

The regulatory approval procedure for crop commodities with biotech traits made little progress in 2018. No new approvals were granted. Continued delays in approving biotech commodities severely inhibits global agricultural innovation. AmCham China is also concerned by the increasing number of repetitive data localization requirements imposed by the regulatory authorities with respect to safety approvals for imported biotech products. AmCham China encourages MARA to adopt more flexible data localization requirements that take into consideration the product’s intended use in China, rather than imposing restrictive, “one-size-fits all” data requirements.

In 2017 several new amendments to existing biotech regulations were issued. These amendments removed in-country studies as a precondition for applying for import safety certificates, and removed application and trial fee requirements for biotech product import approvals. While our members welcome the Chinese government’s intention to reduce the administrative and financial burden on companies, we also believe the amendments provide opportunities to further reduce the requirements for in-country studies which are unique to China and are considered redundant to import safety certificates. When these amendments are adopted without a clear transition period or detailed implementing regulations, they add significant operational uncertainty for AmCham China member companies. AmCham China urges MARA to clarify the changes to the regulatory procedure resulting from these new amendments and establish implementing rules after a transparent, open consultation process

with all stakeholders.

AmCham China also notes that export approvals from the country of origin are still a required precondition to apply for import safety certificates for biotech products. This leads to significant time lags between approval by the country of origin and approval in China. AmCham China encourages MARA to allow companies to apply for China import safety approval while the export approval is under consideration to expedite the entry of these products into the China market.

In addition to acquiring an import safety certificate, MARA also requires agricultural commodity traders to obtain a biosafety certificate for each individual shipment of biotech products abroad. These additional approvals are redundant. In 2018 the rejection rate for biosafety certificate applications for shipment permits filed by commodity traders increased at great cost and uncertainty for commodity trading businesses. AmCham China urges MARA to provide a clear set of criteria to guide document preparation for this application process.

Feed Industry

Silage Evaluation Standards

It is estimated that about 140 silage corn varieties have been registered since the founding of the People’s Republic of China in 1949. Due to China’s Corn Silage Standards, which focus on dry matter yield, these varieties are subject to unreasonable evaluation methods and standards that do not correspond to the practices of the modern dairy industry. AmCham China members call on China to adopt scientifically-based evaluation standards of silage corn varieties in line with Document 2015 No. 1 of the Communist Party of China (CPC) Central Committee to promote “food grain to feed” in order to continue the development of China’s feed industry.

Feed Import Approvals

Feed additives and ingredients exported to China for the first time are required to undergo a government approval process that involves registering these products with MARA and additional product safety evaluations and producer registration with the General Administration of Customs (China Customs).

The MARA and China Customs registration procedures are lengthy and complicated, often taking years to complete. This discourages new technology from entering China’s food production supply chain and reduces the options available to Chinese farmers for important feed additives, including important antibiotics alternatives, thereby undermining domestic feed and food safety.

AmCham China urges that the procedure be reformed and the timeframe shortened by allowing companies to submit the same documents simultaneously to both MARA and

散货运输

高昂的运输、装运和物流成本削弱了中国农产品的全球竞争力。商会很高兴看到中国力争到 2020 年将跨省运输的散装粮食比例提高到 50%。

铁路和卡车运输是目前散装运输的主要形式，但它们受到有限运力的限制。低成本的综合物流解决方案，如用于沿美国主要河流运输的驳船系统，可能是一种可行的替代方案。商会会员很乐意与中国同行分享经验。

牛肉和猪肉贸易

由于中国对各种安全营养蛋白来源的需求不断增长，中国成为世界上最大的牛肉和猪肉进口市场，预计中期的进口量将同比增长近 50%。然而，由于对市场准入的多重限制，美国牛肉的市场份额预计仅为 1%。

由于 2018 年 8 月在中国部分地区爆发非洲猪瘟，中国对进口猪肉的需求很可能会迅速增加。今年运送到中国的猪肉的价值将为 34 亿美元左右。美国猪肉的份额将不到 10%。

中国目前对美国食品药品监督管理局和《食品法典》批准的 β 受体激动剂和合成激素残留物实行零容忍。对这些兽药的限制导致出口到中国的猪肉生产升本显著增加。为了使中国消费者能够以合理的价格接触到更广泛的猪肉供应商，商会敦促中国认可《食品法典》对这些产品的最大残留限量从而接受国际兽药残留标准。

减少国内消费者获取安全和多样化蛋白质来源的其他障碍包括牛肉可追溯性要求不合理，对可进口的牛肉产品范围的限制以及禁止使用美国农业部食品安全检验局 (FSIS) 的替代健康证书。

农业机械

农机补贴

自 2004 年以来，补贴和其他优惠政策推动了中国农业机械设备的销售，降低了中国粮食生产的总体成本。商会特别赞赏 2018 年发布的新补贴政策，该补贴政策将进口农业机械列入补贴清单，提高了农业生产效率。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，所以各省的补贴政策不尽相同。因此，农业机械制造商与各个省份合作时必须遵循不同政策。商会建议各省级

机构采取统一的省级补贴政策，以营造健康的商业环境，提高农业效率。

排放法规

商会欢迎《非道路移动机械及其装用的柴油机第四阶段排放法规》(国四) 尽快发布。商会支持法规执行的严格性和一致性，以确保整个行业的公平竞争环境。国四排放认证测试与以前的国三认证测试相比时间紧、要求严，企业的准备时间大幅增加。我们要求农业农村部简化鉴定流程，以便制造商能够按时向客户交付清洁高效的产品。在国四排放法规生效后，商会敦促生态环境部确保执法的严格性和一致性，提供指导方针，以避免因执法部门理解不同而导致的含糊不清或主观解读。

建议

对中国政府：

- 进一步允许外资投资农业生物技术、现代农业加工和粮食散货运输，从而提高中国农业的竞争力和可持续性。
- 简化中央和省级种子和育种材料进出口审批程序，推动中国种子品种的研发。
- 简化农业生物技术监管流程及相关的审核时间表。定期并按照确定的计划期限开展相关的认证程序。按照国际公认的做法采用数据互认计划。允许申请人在与世界其他地方申请同一时间提交申请，取消多余的进口安全审批。
- 继续在整个农业供应链中采用科学的评估标准，例如，在评估青贮玉米品种、牛肉和猪肉进口的过程中，并简化审批程序，让中国农民获得更多的抗生素替代品。
- 鼓励各省实施统一的农机补贴，提高效率，简化农业机械鉴定流程，以便在有限的准备时间内满足国四排放标准。

对美国政府：

- 加强与中国政府的沟通，探索合作空间，使中美双边贸易继续正常化。

GAC. We further recommend that GAC oversee supervision risk control of imported feed additives and ingredients.

Agricultural Processing and Transportation

Merger & Acquisition (M&A) Review

AmCham China would like to see that SAMR take steps to improve regulatory transparency. We urge SAMR to release more information publicly about specific M&A case decisions and issue a list of antitrust principles under consideration during the M&A review process so companies can better prepare filing documents. The lengthy, opaque M&A review common in the past created much unhelpful uncertainty for the business community.

Bulk Transportation

High transportation, shipping and logistics costs impairs the global competitiveness of China's agricultural products. AmCham China is glad to see that China aims to increase the portion of cross-provincial grain movement handled in bulk to 50% by 2020.

Railway and truck transportation currently comprise the major forms of bulk transportation, but they are inhibited by limited capacity. Low-cost, integrated logistics solutions such as barge systems, which are used for transport along major US rivers, could be a viable substitute. AmCham China members would be pleased to share their experience with their Chinese counterparts.

Beef and Pork Trade

China's growing demand for a wide range of sources of safe and nutritious protein has resulted in China becoming the world's largest import market for beef and pork, and imports are expected to grow nearly 50% year-on-year over the medium term. Due to multiple restrictions on market access, however, US beef's market share is expected to be roughly a mere 1%.

China's demand for imported pork is likely to increase rapidly due to the outbreak of African Swine Fever in parts of China in August 2018. Pork shipments to China this year will be valued at about \$3.4 billion. US pork's share of that will be less than 10%.

China currently has zero tolerance for residues of FDA and Codex approved beta agonists and synthetic hormones. These veterinary drug restrictions add significant production costs to both beef and pork exports to China. To enable Chinese consumers to have access to a wider range of pork suppliers at reasonable cost, AmCham China urges China to embrace international standards for veterinary drug residues by recognizing Codex MRL's for these products.

Other impediments that reduce the domestic consumers

access to safe and varied protein sources include unreasonable traceability requirements for beef, limitations on the range of beef products that can be imported, and a ban on the use of USDA Food Safety Inspection Service (FSIS) replacement health certificates.

Agricultural Machinery

Agricultural Machinery Subsidies

Since 2004 subsidies and other favorable policies have powered sales of agricultural mechanization equipment in China, reducing the overall cost of food production domestically. AmCham China particularly appreciates the new subsidy policy released in 2018, which added imported agricultural machinery to the subsidy list. Provincial agricultural authorities have substantial autonomy regarding subsidy implementation, and policies differ from province to province. As a result, agricultural machinery manufacturers must work with all provincial authorities responsible for subsidy enforcement. AmCham China urges authorities to adopt consistent provincial-level subsidy policies in order to foster a healthy business environment and improve farming efficiency.

Emission Standards

AmCham China welcomes the release of the long-awaited Non-road Mobile Machinery and Diesel Engine Stage IV emission regulation (NR4) and supports stringent and consistent enforcement of the regulations to ensure a level playing field for the whole industry. The new NR4 emission certification test is much more intensive than the previous NR3 certification test, requiring significantly longer preparation on behalf of the manufacturer to meet each requirement. We ask MARA to simplify the homologation process so manufacturers can deliver clean and efficient products to customers on time. After the NR4 emission regulation becomes effective, AmCham China urges the Ministry of Ecology and Environment (MEE) to ensure strict and consistent enforcement and provide implementing guidelines to clarify regulatory standards to minimize the opportunity for inconsistent interpretation by different regulatory bodies.

Recommendations

For the Chinese Government:

- **Improve the competitiveness and sustainability of Chinese agriculture by further opening the industry up to foreign investment in agricultural biotechnology, modern agricultural processing, and bulk transportation.**
- Simplify the approval procedure for the import and

- 公平互惠地考虑中国对肉类、鱼类和农产品（包括熟制禽肉、苹果、梨和鲶鱼）的市场准入要求；
- 通过官方或非官方双边对话与中方官员合作，解决美国农业生产商所面临的贸易和投资限制。

export of seed and breeding materials at both the central and provincial levels to advance the development of seed varieties in China.

- Streamline the agricultural biotech regulatory process and associated review timeframes. Relevant certification proceedings should be conducted periodically and according to a defined, scheduled timeline. Adopt the MAD Program in line with internationally-recognized practices. Allow applicants to make submissions at the same time as applications elsewhere in the world and eliminate redundant import safety approvals.
- Continue to adopt scientific evaluation standards across the agricultural supply chain, such as in the evaluation of silage corn varieties, beef and pork imports, and allow Chinese farmers greater access to alternatives to antibiotics by streamlining the approval procedure.
- Encourage the consistent implementation of agricultural machinery subsidies across provinces to raise efficiency and simplify agricultural machinery homologation processes to meet NR4 emission standards with limited preparation time.

For the US Government:

- Strengthen communication with the Chinese government, explore space for cooperation, and resume the normalization of bilateral trade between the US and China.
- Consider Chinese requests for market access for meat, fish, and produce, including cooked poultry, apples, pears, and catfish in a fair and reciprocal manner.
- Work with Chinese officials through official or unofficial bilateral dialogues to address trade and investment restrictions faced by US agricultural producers.

Automotive

Introduction

2018 was an extremely challenging year across the automotive industry. According to the China Association of Automobile Manufacturers (CAAM), production and sales of automobiles in 2018 totaled 27.81 million and 28.08 million respectively; down 4.16% and 2.76% year-on-year (y/y). Sales of passenger vehicles, estimated to be 23.7 million in 2018, were down by 4.08% y/y. In the second half of 2018, the automotive market saw negative sales growth for six months in a row, the first sustained negative growth in China's automotive industry in 28 years. Slowing sales of traditional automobiles were somewhat offset by growth and development of new energy vehicles (NEVs). In the first 11 months of 2018, both the production and sale of NEVs exceeded 1 million, increases of 63.6% and 68% y/y. In the whole of 2018, nearly 1.26 million NEVs were sold, representing a year-on-year increase of 61.7%.

CAAM attributed negative automotive industry growth to a combination of slowing macroeconomic growth, declining consumer confidence, stricter environmental regulations and faster anticipated implementation of new emission standards, stock market downturn, and US-China trade frictions. The Ministry of Industry and Information Technology (MIIT) had noted that in 2017 China's automobile production and sales volume reached a total of 29.4 million and that continued rapid growth would be difficult to sustain. The experience of automobile manufacturers in 2018 suggests lower market growth may become the norm. According to CAAM's 2019 estimates, China's automotive market will see flat growth in 2019, with estimated automobile sales to reach 28 million in all of 2019.

To continue developing the traditional automotive industry requires new impetus. Mobile travel, autonomous driving, digitization, and electrification are all catalyzing transformation of the automotive industry.

The *Medium and Long-term Development Plan of the Automobile Industry* released in 2017 defined the development of NEVs and intelligent and connected vehicles (ICVs) as the future of the Chinese automobile industry. The automotive industry is at something of an inflection point, facing a rare series of challenges and opportunities. Existing challenges posed by

a dependency on fossil fuels and associated vehicle emissions are now coupled with new challenges from NEVs and ICVs and the new business models their production is encouraging. Some of these challenges result from complex research and development (R&D) and technology investments needed to build these vehicles. Others, perhaps more importantly, stem from an outdated regulatory framework not well adapted to the business operations necessary for this changing automotive landscape. AmCham China urges the Chinese government to improve its governance capabilities to address these changes.

2018 marked the 40th anniversary of China's economic *Reform and Opening Up*. The automotive industry in 2018 enjoyed significant opening, particularly in reduced import tariffs and increased foreign equity caps, two crucial issues. Since July 1, 2018, China has lowered the vehicle tariff rate to 15% and the tariff rate on automotive spare parts to 6%. The 2018 *Negative List for Foreign Investment Access* (2018 Negative List) removed restrictions on foreign investment equity for special vehicles and NEVs. In 2020, foreign equity caps for commercial vehicles will be abolished, followed by removal of foreign equity caps in companies producing passenger vehicles by 2022. The *Administrative Provisions on Investment in the Automobile Industry* (the Provisions) released in December 2018 simplified registration procedures for auto investment projects and delegated more authority to local governments to administer these projects. AmCham China congratulates the Chinese government on the progress of *Reform and Opening Up* and urges implementation of what President Xi has repeatedly emphasized, i.e., "China's door of opening will open up, it will not be closed and will only open wider."

Recent Developments and Ongoing Regulatory Issues

Management of the Automobile Industry Under Reform and Opening Up

In 2018 the Chinese government relaxed regulation of the automotive industry through steps like clarifying the timetable for removing foreign equity investment caps and the number of permitted automobile joint ventures (JVs), reducing the number of restrictions in the Negative List

汽车制造业

引言

对于汽车行业来说，2018年是极其严峻极具挑战的一年。根据汽车工业协会发布的信息显示，中国汽车2018年产销分别为2780.92万辆和2808.06万辆，同比下降4.16%和2.76%。乘用车下滑幅度更甚，2018年全年销量2370万辆，同比下降4.08%。截至到2018年底，汽车市场已经连续6个月出现销量负增长。2018年中国汽车行业的负增长是28年来，即1990年以来的首次负增长。但是，新能源车发展势头良好。新能源汽车产销量在前11个月，双双突破100万辆大关，比上年同期分别增长63.6%和68%。2018年共销售125.6万辆，同比增长61.7%。

关于首现负增长的原因，中国汽车工业协会将其归结于多个因素叠加，包括宏观经济增速回落、消费信心走低、环保治理加严、排放标准提前实施、股市低迷、中美贸易摩擦等。中国工业与信息化部副部长辛国斌指出，2017年，中国汽车产销量已达2940万辆，基数大，高速增长难以持续。从目前形势看，中国汽车产销高增长时期已过，低增长或成未来发展常态。根据中国汽车工业协会近期发布的2019中国汽车市场预测数据，2019年中国汽车市场将停止增长，预计全年汽车销量为2800万辆，与2018年持平，即零增长。

汽车行业的传统增长模式已经难以为继，需要发展新的增长点。移动出行、自动驾驶、数字化、电动化等方面，都在加速驱动汽车行业的变革。2017年发布的《汽车产业中长期发展规划》将新能源汽车和汽车智能化、网联化定为中国汽车产业的主要发展方向。中国汽车产业转型升级面临难得的历史挑战和机遇。与此同时，燃油发动机带来的油耗排放挑战仍然存在，而新的问题又伴随着新能源车、智能网联汽车的发展和新的商业模式而不断涌现。这其中不但有技术、产品本身的研发和生产问题，更是有现行法律法规不能适用于新业态发展变化所面临的挑战。汽车产

业发展出现深刻变化。中国美国商会（商会）希望中国政府提高政府治理能力，更好地迎接新的机遇和挑战。

2018年是中国改革开放四十周年。汽车行业也享受着政策开放的红利。进口关税降低和汽车股比放开，关系着汽车行业发展的两个核心问题同时向前迈进了一大步。自2018年7月1日起，中国将进口汽车整车关税税率下调至15%，进口汽车零部件关税税率降至6%”。根据《外商投资准入特别管理措施（负面清单）》（2018年版），2018年取消专用车、新能源汽车外资股比限制；2020年取消商用车外资股比限制；2022年取消乘用车外资股比限制，同时取消合资企业不超过两家的限制。2018年12月发布《汽车产业投资管理规定》，进一步简政放权，汽车整车和其他投资项目均由地方发展改革委员会部门实施备案管理。商会祝贺中国政府在改革开放中取得的成绩，希望开放政策在落实时，贯彻执行习总书记多次强调的“中国开放的大门不会关闭，只会越开越大”。

最新进展和现存监管问题

在改革开放中进一步完善汽车行业管理

在进一步改革开放的大背景下，中国政府已经采取了一些举措放松对汽车产业的管制，比如明确了取消汽车合资企业股比和数量限制的时间表，发布了2018版《外商投资准入特别管理措施（负面清单）》和《自由贸易试验区外商投资准入特别管理措施（负面清单）》，降低了进口汽车和零部件的关税等。

商会及会员企业赞赏这些政策改变。同时，也期望中国政府进一步提高政策的透明度、连续性和可预见性，建立协调一致的政策要求，并加快新技术政策法规制定。

透明度

在政策和标准制订过程中，企业与政府实际上是一个

(2018 Version) and the *Free Trade Zone Negative List (2018 version)*, and lowering tariffs on imported automobiles and spare parts.

AmCham China appreciates these policies. At the same time, we ask the Chinese government to continue improving the transparency, continuity, and predictability of its policies, establish coordinated and consistent policy requirements, and accelerate the formulation of policies and regulations to govern emerging technologies for the automotive sector.

Transparency

Enterprises and government regulators form a collective community responsible for standards and policy development. Enterprises are willing to work with government to solve policy challenges and share the burden of implementation. At the same time, they ask that the government fully consider their opinions and perspectives. The government can more extensively solicit industry opinions, including those of foreign-invested enterprises (FIEs), during the early stages of policy and rule formation. When open for public comment, we recommend that the government provide feedback on any comments submitted by the public. If draft laws are revised based upon this feedback and appear in the final draft version, the government should communicate this and make laws open once again for comment.

AmCham China recommends that the Chinese government give Chinese enterprises and FIEs greater access to early drafts of new policies, including incorporating them into any demonstrations or feasibility studies, so that new policies maximally contribute to healthy industry development and meet market needs. During implementation, we ask government authorities to listen to the voice of industry and respond accordingly.

Notably, on March 15, 2019, the National People's Congress (NPC) passed a revised *Foreign Investment Law*. The Law stipulates that "the State guarantees that foreign-invested enterprises shall participate in the formulation of standards in an equal manner according to law." Participation in standards setting has been a request of AmCham China for many years and we are glad to see this finally permitted under law. At the same time, AmCham China urge this participation be implemented in practice as soon as possible.

Continuity and Predictability

The development and production of automobiles requires long-term planning and investment. AmCham China urges the Chinese government to formulate and disseminate related policies and planning documents at least three years in advance. AmCham China urges the government to consider the level of the automotive industry's development and the overall market environment alongside FIE production capacity to ensure a sufficient transition period for FIEs to make necessary adjustments.

Currently, NEV subsidy policies are adjusted annually and implemented upon release. This is not helpful with respect to production planning processes and undermines the operations of the entire industry, increasing R&D and production costs. In recent years, for example, the continuing increase in technical specifications for battery energy density has increased the accident rate of NEVs. AmCham China recommends that the Chinese government refrain from revising technical standards for NEV subsidies on an annual basis to improve policy continuity and predictability.

Coordinated and Consistent Policy Requirements

In China, several government departments are responsible for regulating the automotive industry nationally, alongside additional local policy requirements. Such fragmented regulation is not conducive to the industry's development. AmCham China calls on China to strengthen coordination to establish a consistent policy environment.

We recommend coordinating and integrating similar policies and regulations. For example, with respect to NEVs, there exists a national subsidy policy, a purchase tax exemption policy, a vehicle and vessel tax exemption policy, and a double-credit administrative provision. The technical requirements for each of these policies differ, leading to three different catalogs in operation: the recommended catalogue of NEVs (the national subsidy catalog), the purchase tax exemption catalog, and the vehicle and vessel tax exemption catalog. Industry enterprises are required to deal with each policy separately. While we are pleased that applications for the purchase tax exemption and the vehicle and vessel tax exemption can be submitted together, we note that the respective catalogs have yet to be merged yet. We hope for continued, rapid integration in the near future.

In addition, we recommend that the Chinese government unify policies and regulations at the central and local levels while eliminating local requirements. For example, local catalogs governing licensing NEVs, local road-test requirements for ICVs, and implementation times vary for the *Non-Road Diesel Engine Tier VI Emission Regulations (NR4)*. Automobile production benefits from economies of scale; accordingly, it is essential to establish an acceptable nationwide policy. This is especially important during the present early stages of NEV and ICV development.

Accelerate the Formulation of Policies and Regulations for Emerging Technologies

New energy sources, new modes of communication, and new forms of travel are developing rapidly, affecting the traditional automotive industry. Regulators are balancing the need to formulate new regulations to govern the emergence of these technologies with resolving inconsistencies between existing policies and technological development.

AmCham China recommends that the Chinese government

共同体。企业愿与政府一起面对挑战、分担政府的压力；同时也希望政府更加充分地考虑企业的意见和诉求。例如，政策、标准草案起草前期阶段，能够广泛征求企业的意见，包括外资企业；在草案征求公众意见阶段，也应该对企业 and 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。

商会建议中国政府在政策制订和起草的早期阶段，比如论证和可行性研究阶段，就给与在华企业更多参与讨论、反馈意见的机会，让政策、标准符合市场需求，有利于行业的健康发展。在执行过程中，如果遇到问题，希望政府部门能倾听行业呼声，及时对政策、法规进行修订。

2019年3月15日，全国人大通过了《中华人民共和国外商投资法》。本法规定“国家保障外商投资企业依法平等参与标准制定工作”。请求参与标准法规制定是商会多年来的诉求。尽管这个权利在多年呼吁后才获得，但商会对此一进步也表示赞赏。同时，商会也希望这一权利能尽快得到落实。

连续性和可预见性

考虑到汽车产品开发、生产的长周期性，商会希望政府至少提前三年制定并公布和产品相关的政策和规划要求。在制定政策过程中，商会促请政府充分考虑行业发展水平和市场总体环境，结合企业实际生产能力，给与足够的过渡期，让企业有充分的时间做出调整。

比如，新能源汽车的补贴政策每年都要调整，而且政策发布后马上就实施。一方面不利于企业的产品开发和生产规划，另一方面给整个行业运营带来不稳定性，增加研发和生产成本。特别是近年来技术指标的调整，如电池能量密度不断提高，使新能源车安全事故增加。商会建议政府不要每年修订新能源汽车补贴的技术标准，提高政策的连续性和可预见性。

建立协调一致的政策要求

中国有多个政府部门对汽车行业进行监管，同时也存在一些地方性的政策要求。这种政出多门、地方执行不一致的情况不利于行业发展。商会呼吁中国加强跨部门、跨地区的协调，建立一致性的政策环境。

一方面，协调、整合相似的政策法规。比如在新能源汽车方面，有国家补贴政策、免购置税政策、免车船税政策、双积分管理规定等等，这些政策里的技术要求又不尽相同，

因此就有了新能源车型推荐目录（国家补贴目录）、免购置税目录、免车船税目录等，企业也需要分别应对每一个政策。商会高兴地看到，免购置税和免车船税可以合并申请了，是一个积极进展，但目录还没有合并。我们希望未来有更多这方面的整合。

另一方面，建议统一中央和地方的政策、法规要求，取消地方性要求。比如，地方新能源目录和免费牌照政策、各地智能网联汽车路试要求、不同的国六实施时间等等。汽车是规模效应非常强的产品。建设全国统一市场，制定全国通行的政策要求非常重要。特别是对处在启动阶段的新能源汽车和智能网联汽车来讲，这一点尤为重要。

加快制定新技术相关的政策法规

汽车行业正在面临技术变革，新能源、智能网联、共享出行等新技术、新业态快速发展。监管机构也面临着如何加快制定新技术相关的政策法规，解决现有政策和技术发展不一致的问题。

商会建议政府尽快出台2021-2025油耗要求及双积分管理政策，开放自动驾驶车辆高速公路测试；同时，本着技术中立的原则，给企业合规提供一定的灵活性，创造一个宽松的法规环境。为进一步解决法律法规的更新落后于技术创新的矛盾，建议对智能网联、自动驾驶等发展比较快的技术提供许可豁免机制（如，汽车企业不必要取得正式牌照以发展这类技术），鼓励新技术应用。

未来，随着数字技术的不断发展，汽车产业和互联网等产业将高度融合，跨界合作需要新的管理方式。各传统汽车行业主管部门之间，以及互联网等其他行业主管部门之间，需要在政策制定和执行过程中加强沟通和协调，共同推动行业技术创新。

排放标准

2018年6月，国家生态环境部与市场监督管理总局联合下发了《重型柴油车污染物排放限值及测量方法（中国第六阶段）》（国六标准）公告，此标准规定2020年7月1日起，所有生产、进口、销售和登记注册的城市车辆应符合国六标准要求，2021年7月1日起，所有生产、进口、销售和登记注册的重型柴油车应符合国六标准要求。根据后续发布的《国务院关于印发打赢蓝天保卫战三年行动计划的通知》，2019年7月1日起，重点区域、珠三角地区、成渝地区将提前实施国六排放标准。蓝天保卫战通知提及的区域如京津冀、广州、深圳等地都已经陆续出台文件指

introduce fuel consumption requirements (2021-2025), dual credit management policies, and open self-driving vehicle test highways as soon as possible. At the same time, we recommend that the government enact new regulations with a degree of flexibility to ease corporate compliance burdens and create a level, technology-neutral regulatory environment. To continue addressing the challenge of appropriately regulating emerging technologies with minimal delay, we recommend that the government exempt ICV, self-driving and rapidly-other developing technologies from licensing requirements (such that companies would not have to procure a formal license for development of these technologies) to encourage their development.

In our increasingly digital world, the automotive industry and the Internet/digital sector will be increasingly integrated in the future. New management methods will be required to manage cross-border cooperation. Strengthened communication and coordination between the competent authorities overseeing the traditional automobile industry and those responsible for the digital sector will be necessary to jointly promote technological innovation.

Emission standards

In June 2018, the Ministry of Ecology and Environment (MEE) and the State Administration for Market Regulation (SAMR) jointly announced *Limits and Measurement Methods for Pollutants from Heavy-Duty Diesel Vehicles (China VI)* (Tier VI Standard). The Tier VI standard specified that beginning July 1, 2020 all urban vehicles produced, imported, sold or registered must meet the requirements defined under the Tier VI Standard. Furthermore, beginning July 1, 2021, all heavy-duty diesel vehicles produced, imported, sold or registered are to comply with the requirements of Tier VI Standards. According to the subsequent *Notice of the State Council on Issuing the Three-Year Action Plan for Winning the Blue Sky Defense War*, as of July 1, 2019, areas such as the Pearl River Delta region and the Chengdu-Chongqing region will be required to implement the Tier VI Standard in advance of national implementation. The areas mentioned in the Blue Sky Defense Warfare Action Plan, such as Beijing, Tianjin, Guangzhou, Shenzhen and other places, have successfully issued documents to guide the implementation time of light-duty vehicles. Other regions, that is, regions and cities not mentioned in the Notice, have not yet specified a time plan.

We suggest that MEE issue guidance documents with specific implementation plans regarding Tier VI Standards as soon as possible, to allow existing production and certification standards to adapt. Such advance notice will reduce the complexity associated with adapting products for Tier VI standards and improve the effectiveness of these regulations.

In addition, with respect to any vehicle (engine) emission standards already released or scheduled to be released, AmCham China recommends that relevant regulatory

departments conduct sufficient testing and coordination to avoid situations where existing emission requirements are actually stricter than the proposed requirements for new and existing vehicles under development.

In order to ensure effective implementation of Tier VI Standards, the national Tier VI fuel standards and Tier VI diesel standards were released in December 2016, with the mandate that fuel meeting Tier VI standards must be supplied nationwide beginning January 1, 2019. AmCham China notes, however, that the quality of fuel supplied across the country still varies. The quality of diesel fuel supplied, especially in remote areas, is still below national requirements. Continuing to use substandard fuel will increase engine failure rates and hinder the implementation of Tier VI Standards. Our members recommend that in addition to ensuring fuel quality at state-owned refineries, China continue to strengthen supervision of fuel quality, continue upgrading private enterprises and eliminating less competitive ones, and comprehensively ban informal refineries and “black gas stations” so that emission standards can be effectively implemented.

Marine Engines Emissions

In August 2016, MEE and the State Administration of Quality Supervision, Inspection and Quarantine (now under SAMR) jointly released *Limits and Measurement Methods for Pollutants from Marine Engines in China (China I and II)*, which came into effect on July 1, 2018. The division of labor between the MEE and the China Classification Society (CCS) regarding marine engine emissions is unclear, however. AmCham China urges MEE and CCS to clearly define their responsibilities within the framework of monitoring emission standards nationwide.

Fuel Consumption Regulations

The fifth stage (Tier V) of regulations governing enterprises’ average fuel consumption and new NEV credit quotas, policies being developed by Ministry of Industry and Information Technology (MIIT), are underway. A series of fuel consumption testing standards in support of these policies is also underway. The operating tests used to determine fuel consumption standards are under review, which may result in fuel consumption targets for Tier V being determined by tests used to determine Tier IV standards. This may affect the technical requirements for NEV subsidy policies (e.g., the mileage range of electric vehicles and plug-in hybrid energy vehicles (PHEVs)) and the number of certification tests automobile producers are required to conduct. Such uncertainty will increase administrative burdens.

AmCham China recommends that the regulatory authorities make clear which operating test cycles will be used under the policies on enterprises’ average fuel consumption and NEV credits (Tier V), as well as future policies on NEV subsidies, NEV model certification tests and other relevant

导轻型汽车国六排放实施时间。但是其它区域，即通知中未提及的区域和城市，还没有明确具体时间的实施方案。商会建议生态环境部尽快颁发国六具体实施方案的指导性文件，并充分考虑企业产品及认证的准备周期。这样可以减少行业在产品准备方面的复杂性并且有效提高政府法规实施的有效性。

另外，对于已发布和计划发布的在用车（机）排放标准，商会建议相关部门进行充分的技术论证，避免已经发布的部分在用车标准要求超过在用车辆当年所需满足的新车标准要求。

为确保国六标准的有效实施，国家第六阶段车用汽油标准和车用柴油标准已于2016年12月发布，并确定2019年1月1日起全国开始供应第六阶段的燃油。但是，商会注意到全国各地燃油供应的质量仍然不一，有些地区柴油供应质量甚至远远低于国家规定的标准，尤其是偏远地区，这将造成发动机故障率提高，给国六排放标准的实施带来巨大挑战。商会会员企业建议国家持续加强燃油质量的监管，除确保国有炼油企业的燃油质量，大力促进民营企业的升级改造和淘汰落后，坚决取缔不正规的地炼厂和“黑加油站”，这样才能确保排放标准得到有效实施。

船用发动机排放

2016年8月，国家生态环境部（生环部）和国家质量监督检验检疫总局（现国家市场监督管理总局）联合发布了《中国海洋发动机排放污染物（第一阶段和第二阶段）的排放限制和测量方法》，该标准2018年7月1日生效，但在实施过程中，生环部和中国船级社（CCS）对船用发动机排放监管的职责和分工不明确，商会督促生环部和中国船级社（CCS）明确职责和分工，同时在全国范围内严格执行排放标准。

燃油消耗量法规

由工信部主导制定的第五阶段企业平均燃油消耗量与新能源积分配额管理政策正在进行中。用于支持该政策的一系列燃油消耗量试验标准也处于关键阶段。由于油耗测试方法所采用的工况测试循环将发生变化，可能造成在原有测试工况循环下确定的第五阶段油耗目标值，新能源车补贴政策技术条件（例如纯电动车和插电式混合动力车的纯状态下续航里程），以及汽车企业车型认证试验次数发生变化，从而给企业带来负担。

商会建议尽快明确包括第五阶段企业平均燃油消耗量

与新能源积分政策，未来新能源车补贴政策以及新能源车车型核准试验等相关政策标准所采用的工况测试循环类型。

商会建议尽快完成并发布第五阶段企业平均燃油消耗量与新能源积分政策，保持该政策的延续性以及合理性。基于目前针对第五阶段全国新能源车产能的估算，制定政策中的单车积分，建议延续第四阶段的单车积分核算方法。应允许企业自由结转以及借贷积分，并允许所有企业间自由交易。

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：

智能网联汽车的发展亟需公共道路的测试

在中国现行《道路交通安全法及道路交通安全法实施条例》政策法规框架条件下，不允许在高速公路上进行测试活动。测试是车辆研发的关键一步，现行法规阻碍了自动驾驶技术的应用与发展。商会建议权威机构加强与其他国家决策者及立法者的沟通，以获得更多的经验来领导加速自动驾驶相关的立法活动，考虑相应地修改《道路交通安全法》中的内容。

明确针对汽车行业数据和信息安全的具体要求

《网络安全法》及相关配套法规如《个人信息和重要数据出境安全评估办法》（征求意见稿）中，限制了跨国的数据交流，但并未给出明确的受限制数据传输的定义。出于研发和将来智能汽车自主学习的目的，内资、合资和外资汽车企业在智能网联汽车方面都必然存在与境外的数据交换，如基于交通信息数据的自动驾驶算法迭代与升级等。商会会员建议放开不涉及国家安全信息、个人信息需脱敏处理的基于智能网联汽车研发的数据传输，尽快推动相关标准草案的进程并发布终稿，在制定相关车联网信息安全标准时更多听取外资车企的意见。另外，为促进汽车网联化的发展，在目前阶段，避免将车联网划为关键信息基础设施。

高精度地图使用与地理信息收集

目前中国自动驾驶用的高精度地图必须由自然资源部指定的机构进行空间位置的保密技术处理（偏转加密处理），但这不能满足自动驾驶研发的需求，且地图偏转和偏转插件以及禁止高程表达等信息显示会导致无法达到自动驾驶

policies and standards.

We recommend issuing the policy on enterprises' average fuel consumption and NEV credits (Tier V) as soon as possible. It is also necessary to formulate a policy for bicycle credits based on current estimates of NEV production capacity (Tier V). We suggest the authorities carry over the calculation of bicycle credits under Tier IV regulations. Enterprises should be allowed to carry-over, lend or trade credits freely among one another.

Intelligent and Connected Vehicles

In order to accelerate the development of China's ICV market, AmCham China recommends the following measures:

ICV Development Needs Public Road Testing

Under the existing *Road Traffic Safety Law*, tests of self-driving cars on the expressway are not allowed. Testing is critical for vehicle R&D. Current regulations impede the application and development of autonomous driving technology. We recommend that the authorities strengthen their interactions with policymakers in other countries learn how to adapt and facilitate legislation for self-driving vehicles and consider modifying the *Road Traffic Safety Law* accordingly.

Clarify Requirements For Data and Information Security in the Automotive Industry

The *Cybersecurity Law* and supporting regulations such as the *Provision on the Security Assessment for Personal Information and Important Data to Be Transmitted Abroad* (draft for comment) regulate cross-border data exchanges, but do not clearly define what data are restricted for transmission. To support R&D and intelligent vehicle self-learning, domestic firms, JVs, and FIEs in the automotive industry inevitably have normal data exchanges with countries overseas, including regular exchanges about upgrades to self-driving algorithms based on the latest traffic information and data. Our members recommend that the authorities release cross-border data exchange regulations for ICV R&D that does not involve anonymized personal information that could be deemed relevant to national security, draft relevant data standards and publish the final versions as soon as possible, and consider the opinions of FIEs when developing information security standards that could affect development of the "Internet of Vehicles (IoVs)." We recommend that the authorities not classify IoVs as "critical information infrastructure," which will hinder its development.

High-Precision Map Usage and Geographic Information Collection

Currently, high-precision maps for autonomous driving can only be handled by an agency designated by the Ministry of Natural Resources (MNR) for spatial security processing and

navigation considerations. These regulations fail to meet the R&D needs of self-driving vehicles, rendering many maps being unfit for use. Current restrictions on some information displays necessary for map navigation, including additional plugins for map deflections, and restrictions on displaying elevated terrain, prevent current navigation systems from meeting precise requirements of the automatic driving system for the map. Overall, these restrictions create challenges for autonomous vehicles to accurately pinpoint their location, which is a safety risk.

According to China's *Surveying and Mapping Law*, survey and mapping activities to collect geographic information are limited to companies with certified surveying and mapping qualifications. Technology upgrades to self-driving algorithms requires accumulating large amounts of data on road conditions and road tests in order to improve the algorithmic technology powering self-driving vehicles. Currently, data collected by companies in the course of testing their self-driving vehicles is at risk of violating existing laws and regulations.

AmCham China recommends revising the *Survey and Mapping Law* to allow companies to use high-precision maps with reasonable deflection technology that meets the needs of autonomous driving R&D and to collect and upload geographic information needed for updating and constructing new maps.

Establish a Standards System in Line with International Practices

The standards regime in China limits the development of new technologies. It is critical to identify and systematically remove these as early as possible to facilitate the development of ICVs. These obstacles can be addressed by either modifying/correcting current standards or allowing exemptions for new technologies.

The EU and countries in North America are currently drafting specific technical standards and guidelines for ICVs. Considering the cross-sector and cross-discipline complexity of ICVs, we strongly encourage the Chinese government and industrial organizations to participate in the discussion of formulating international laws and regulations for ICVs while simultaneously developing domestic standards that are harmonized with international standards. At the same time, precautions should be taken to prevent different departments from drafting the same/similar regulations and over regulation. We encourage the promulgation of recommended standards for ICV operation rather than mandatory minimum safety requirements. We also urge implementation of transparent, nationality-neutral industrial policies in order to promote industry development.

系统对地图的精度要求，使得车辆在某些情况下难以准确定位从而造成严重的安全隐患。

按《测绘法》规定，收集地理信息的测绘活动仅限于有合法测绘资质的公司，自动驾驶的算法迭代升级需要基于道路测试积累的数据进行机器学习与驾驶策略的研发，于现行的法规，车厂在进行道路测试中收集的数据，将有违法风险。商会建议调整测绘法的相关要求，允许企业基于自动驾驶研发需求的（未偏转）合理偏转的高精度地图使用与基于动态地图生态建设目的的地理信息收集、上传活动。

建立符合国际惯例的标准体系

中国现有标准部分限制了新技术的发展。应尽早系统地确定和清除现有的标准障碍，以便推动智能网联汽车的发展。这些障碍可以通过修改 / 修正目前的标准来解决，也可以通过允许新技术的豁免实现。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，商会期待和促请中国政府以及产业组织参与国际上法规制定流程的讨论，制定与国际标准统一的技术标准，同时避免多部门起草同样 / 类似标准，避免过度监管，旨在创建推荐性标准，而不是规定最低安全要求的强制性规定。商会促请实施透明、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

车辆数字化业务需要从发动机和整车 / 整机上采集发动机、车辆及位置数据，用于车联网分析、产品改进及客户服务，此类信息收集、传输和处理需要取得增值电信业务资质中的“B21- 在线数据处理与交易处理业务”。此资质尚未对外开放，合资公司申请也需要经过比国内公司更严格的审批流程。商会会员建议放松这类业务的股权比例限制，例如在自贸区或一些试点区域内允许外资控股或独资的企业进入上述领域。

促进汽车消费

促进皮卡市场进一步发展

2016年，工信部、发改委和公安部先后发文在河北、辽宁、河南、云南、湖北、新疆开展皮卡进城试点工作，2018年以来，皮卡市场又迎来了一系列利好政策。自2018年1月1日起，GB7258标准中取消了皮卡车身喷字、贴反光条的约束。

2016年，工信部、发改委和公安部先后发文在河北、辽宁、河南、云南、湖北、新疆开展皮卡进城试点工作，2018年以来，皮卡市场又迎来了一系列利好政策。自2018年1月1日起，GB7258标准中取消了皮卡车身喷字、贴反光条的约束。同时，交通部自2019年1月1日起，取消了总质量4.5吨及以下普货车道路运输证和驾驶员从业资格证的要求，为用户提供便利并节省了部分车检的费用。

2017年，中国皮卡车型销量突破41万辆，实现18.7%的增长。不难看出，皮卡将成为最有增长空间的细分市场，这对于进入微增长时代的中国汽车市场来说，称得上新的发力点。全面放开皮卡车进城限制作为供给侧改革的一部分，将会增强市场的有效供给，对于提升民生幸福指数，推进城乡创新运输管理和现代物流建设，推动城乡融合发展的意义重大。

下一步，商会会员希望政府继续释放积极信号，扩大皮卡进城的试点范围，尽快全面放开皮卡进城限制。

开放和扶持二手车市场

2018年两会期间，国务院总理李克强在政府工作报告中提出，将全面取消二手车限迁政策，目前大部分应当取消二手车限迁的省份都已经发文取消了“二手车限迁政策”。在政策的驱动下，2018年1-8月，全国二手车累积交易829.66万辆，累计同比增长13.12%。跨区流通达到24.92%。

商会感谢商务部和地方政府为活跃二手车交易所做出的努力，但在实际执行过程当中，仍有个别城市的政策还没有完全的落地，还有部分取消限迁的城市，再次拒绝二手车迁入。政策的不确定性使得二手经纪人和消费者都无法确定到底哪些地方已经实实在在地落实了取消限迁政策，阻碍了二手车交易的顺利开展。因此，商会希望商务部促请地方政府彻底落实取消限迁政策，并逐渐在全国范围内全面取消限迁政策。

此外，为促进新能源汽车市场的发展，商会希望商务部可以协调限购城市，取消新能源二手车销售的年限限制。自由的二手车流转环境，既有利于促进新车销售，又可以作为二手车消费者提供多样化的选择。

Relax Restrictions on Foreign Investment Access for Value-Added Telecommunications Businesses and Commercial Internet Information Providers

Digital vehicles need to collect data on engine performance, vehicle position, and complete vehicle/machine data to support IoV analysis, product improvement, and customer service.

To collect, transmit, and process this data companies are required to obtain a value-added telecommunications business license ('B21 - Online Data Processing and Transaction Processing Business' license) which remains restricted for foreign investment. Applications for joint ventures are subject to a more stringent approval process when compared with domestic enterprises. AmCham China members recommend relaxing the foreign equity cap on such business, for example, by allowing foreign-controlled or wholly foreign-owned enterprises (WFOEs) to operate in Free Trade Zones (FTZs) or some pilot locations.

Promoting the Automobile Consumer Market

The Pickup Truck Market

In 2016, MIIT, the National Development and Reform Commission (NDRC) and the Ministry of Public Security (MPS) jointly launched pilot programs allowing pickup trucks on the road in Hebei, Liaoning, Henan, Yunnan, Hubei, and Xinjiang. In 2018, Standard GB7258 (which regulates construction and safety standards for cars on the road) removed restrictions on reflective strips on pickup trucks. Meanwhile, as of January 1, 2019, the Ministry of Transportation (MOT) has canceled road transportation permits and driver qualification certificates previously required for cargo vehicles weighing 4.5 metric tons or less, which reduces vehicle inspection costs.

In 2017, the sales volume of Chinese pickup trucks exceeded 410,000, an increase of 18.7% (y/y). Pickup trucks are becoming a promising market growth segment in the Chinese automotive market. Under the umbrella of supply-side structural reform, lifting restrictions on pickup trucks in urban areas will improve supply, improve transportation and logistics management, and promote more integrated urban and rural development.

We also recommend that the government continue to support pilot programs that allow pickup trucks to operate in a greater number of cities and fully remove restrictions on pickup trucks in cities as soon as possible.

The Used Vehicle Market

During the Two Sessions Conference in March 2018, Premier Li Keqiang proposed as part of the Government Work Report that current policies restricting the movement of used vehicles between cities and rural locations be completely abolished. Many provinces followed suit by abolishing this regulation last year. The cumulative number of sales of used vehicle across the country totaled nearly 8.9 million from

January to August 2018, a cumulative increase of 13.1%. An estimated 24.9% of these transactions involved the movement of cars between regions.

We appreciate the efforts of the Ministry of Commerce (MOFCOM) and local governments to facilitate used vehicle transactions. We have noted, however, that certain cities have yet to fully implement these changes and some cities have gone so far as to cancel plans to end these policies and continue to prevent used vehicles from being sold in different regions. This inconsistency makes it impossible for sellers of used vehicles and consumers to determine which regions have truly removed restrictions on the movement of used vehicles to other regions, which hinders used car sales. We therefore recommend that MOFCOM work with local governments to gradually end these restrictions nationwide.

To promote the development of the NEV market, we urge MOFCOM to coordinate with cities to cancel age limits on sales of second-hand NEVs. Unimpeded sales of second-hand vehicles will increase sales and provide consumers with greater choice.

Recommendations

For the Chinese government

- **Allow enterprises (both domestic and FIEs) greater opportunity to participate in policy and regulatory development and submit comments during early stages of policy development to enable these policies to better address market need and facilitate sustainable energy development.**
- Establish effective, transparent, and open mechanisms for inter-departmental coordination. The competent government authorities should strengthen cooperation and clarify their scope, requirements, and duties, especially those related to the development of ICVs. ICVs require not only government support for infrastructure development, but also innovative policies and regulations, that promote innovation while ensuring product safety.
- Encourage the development of energy conservation technology for traditional fossil fuel-based vehicles while vigorously supporting NEVs.
- Considering the long timeframe required for automobile manufacturers to upgrade production and technology cycles (often multiple years), regulatory authorities should devise a reasonable adjustment period of at least three years to allow industry to adapt to new regulations. We recommend providing passenger/commercial vehicles with four to five years of preparation time before implementing the next phase of China's emission standards.

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。
- 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，特别是智能网联汽车的发展。不仅要求政府对基础设施建设的支持，并且要求创新的政策法规来推进，在保障产品安全可控的同时，推动技术创新。
- 大力发展新能源车的同时，鼓励传统燃料车发展节能技术。
- 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。希望在下一阶段排放标准实施前，给乘 / 商用车 4-5 年准备期。

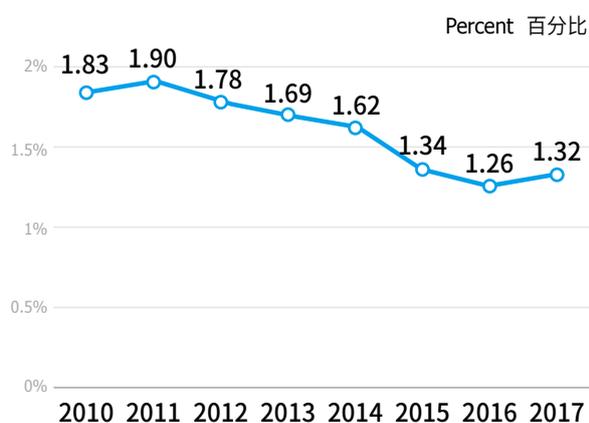
Banking and Capital Markets

Introduction

2018 marks the 40th anniversary of China’s “Reform and Opening Up,” its program of economic reform initiated in 1978. AmCham China is encouraged by China’s recent efforts to open the financial sector and acknowledges President Xi Jinping’s commitments at April 2018 Boao Forum and the November 2018 China International Import Expo (CIIE) to continue expanding market access.

Figure 1. Banking Assets in mainland China held by Foreign Banks

图 1. 外资银行在中国大陆所持的银行资产情况



In 2018 the financial sector experienced continued reform, encapsulated by the People’s Bank of China’s (PBOC) package of reforms announced by Governor Yi Gang at the Boao Forum. The State Administration of Foreign Exchange (SAFE) doubled the limit under its Qualified Foreign Institutional Investor (QFII), a program which allows foreign institutional investors to invest in China’s capital markets, to US \$300 billion in January 2019. SAFE also increased the Qualified Domestic Limited Partner/Qualified Domestic Investment Enterprise (QDLP/QDIE) quota, a program that allows Chinese investors to access investments overseas, to USD \$10 billion (US \$5 billion for each scheme) in April 2018, the first increase since 2012. The China Securities Regulatory Commission (CSRC) also released the *Administrative*

Measures for Foreign-Invested Securities Companies (2018 Measures). These measures lifted restrictions on foreign ownership of securities companies and increased the foreign ownership cap to 51% and laid out plans to remove the foreign ownership cap within three years. This reform gave foreign investors the ability to control securities companies for the first time. Moreover, the China Banking and Insurance Regulatory Commission (CBIRC) raised the cap on foreign ownership of life insurance companies from 50% to 51% in the first half of 2018 and pledged to remove all limits within three years.

AmCham China appreciates the steps taken this year to open China’s financial sector. Despite the rule changes, members continue to experience implementation challenges. Certain business license application processes, such as those for majority ownership in securities businesses, still require large upfront capital commitments and face a lengthy review process, many of which disadvantage foreign investors. AmCham China strongly urges the establishment of a truly level playing field for foreign investors operating in China.

Recent Developments and Ongoing Regulatory Challenges

Commercial Banking

In April 2018 the CBIRC was established through the merger of the China Banking Regulatory Commission (CBRC) and the China Insurance Regulatory Commission (CIRC). AmCham China welcomes the following reform policies introduced by CBIRC in April 2018 after its establishment and hopes for smooth implementation, including measures regarding ease of establishment and broadening of the scope of business.

Fixed Income Business

AmCham China members welcome the increased accessibility for foreign investors to the China Interbank Bond Market seen during the past year. Several members became onshore Bond Connect Market Makers in July 2018, allowing them to trade in domestic and international bond markets. This follows a 2017 reform by the National Association of Financial Market Institutional Investors (NAFMII), which

银行和资本市场

引言

2018年是中国改革开放40周年，中国于1978年开始实施经济改革计划。中国美国商会（商会）对中国最近开放金融业所作的努力感到鼓舞，并认可习近平主席在2018年4月博鳌论坛和2018年11月份中国国际进口博览会（CIIE）上关于继续扩大市场准入的承诺。

2018年，中国继续对金融业进行改革，该项改革包含在中国人民银行行长易纲在博鳌论坛上宣布的一揽子改革措施中。国家外汇管理局根据合格境外机构投资者（QFII）计划将限额增加了一倍，该计划允许2019年1月外国机构投资者在中国资本市场的投资限额达到3000亿美元。国家外汇管理局还增加了合格境内有限合伙人/合格的国内投资企业（QDLP/QDIE）的配额，该计划允许中国投资者进入海外投资，允许投资限额增加至100亿美元（每个计划各为50亿美元），这是2012年以来的首次增长。中国证券监督管理委员会（中国证监会）也出台了《外商投资证券公司管理办法》（2018年办法）。该办法放开了对证券公司外国所有权的限制，将外国所有权上限提高到51%，并制定了三年内取消外国所有权上限的计划。这项改革让外国投资者首次有能力控制证券公司。此外，中国银行业和保险监督管理委员会（中国银保监会）在2018年上半年将人寿保险公司的外资所有权上限从50%上调至51%，并承诺在三年内取消所有限制。

商会对今年中国金融业开放所采取的措施表示赞赏。尽管规则有所变化，但商会会员在实施上仍然面临挑战。某些营业执照申请流程，例如证券业务中多数股权的申请流程，仍然需要先垫出大笔资金，并且审核流程漫长，其中许多流程对外国投资者不利。商会强烈要求为在中国经营的外国投资者创造一个真正公平的竞争环境。

最新进展及现存监管问题

商业银行

2018年4月，中国银行业监督管理委员会（中国银监会）和中国保险监督管理委员会（中国保监会）合并成立了中国银保监会。商会欢迎中国银保监会成立后于2018年4月推出的以下改革政策，包括简化成立和扩大营业范围的措施，并希望政策能顺利实施。

固定收益型业务

商会会员对中国在过去一年扩大外国投资者准入中国银行间债券市场表示欢迎。2018年7月，数家商会会员企业成为在岸债券通市场造市商，这使其能在国内国际两个债券市场进行交易。这是继由中国银行间市场交易商协会（NAFMII）2017年改革之后的又一项改革，这使得一些商会会员企业能共同承销中国银行间债券市场的公司债券。

尽管这些改革给商会会员带来了很大希望，但它们仍然无法独立作为公司债券的主承销商。2018年10月，一些商会会员企业向投资者协会申请成为主承销商的相关许可证，但截至撰写本报告时，这些申请均未获批。商会认为，将外国金融机构更大程度上纳入在岸固定收益市场将有助于更多的全球投资者进入中国，为中国提供金融专业知识并促进市场的发展。

跨境信用管理

由于外资银行的全球地理重心和业务规模不同，通常在中国采用的经营策略也不尽相同。与国内竞争对手相比，外资银行的境内资产负债表相对较小，在金融交易方面比在贷款活动方面更活跃，并且更多地依赖于离岸融资和流动性。

跨境信贷工具使外国金融机构母公司及其境内子公司能够在中国开展银行业务。商会会员预计，中国市场的持

allowed some AmCham China members to co-underwrite corporate bonds in the China Interbank Bond Market (CIBM).

While these reforms are promising, AmCham China members are still unable to act independently as lead underwriters for corporate bonds. In October 2018 several AmCham China members applied for the relevant licenses from NAFMII to become lead underwriters, although none of these applications have been approved as of the time of writing. AmCham China believes greater inclusion of foreign financial institutions in the onshore fixed income market will help to bring more global investors to China offering financial expertise and growing the market.

Cross-Border Credit Management

Due to their global geographic focus and scale of their operations, foreign banks have traditionally employed different operating strategies in China. Compared to domestic competitors, foreign banks have relatively smaller onshore balance sheets, are more active in financial trading than in lending activities, and are more dependent on offshore funding and liquidity.

Cross-border credit facilities enable the foreign parent financial institution and its onshore subsidiaries to conduct bank operations in China. AmCham China members anticipate continued growth of the Chinese market will require increasingly larger lines of credit to facilitate operations between the parent financial institution and its subsidiaries in mainland China.

CBIRC currently imposes strict regulations to reduce bank exposure to risk which is largely designed to contain domestic banks' risk profile. Consequently, onshore cross-border credit facilities are capped at 25% of net capital. Given limitations on the amount of net capital held by onshore subsidiaries of foreign banks, the implementation of this rule hampers business operations and restricts growth opportunities. AmCham China urges regulatory authorities to recognize the unique characteristics of foreign bank operations and apply differential regulatory procedures accordingly.

RMB Internationalization

China began to gradually internationalize the RMB in the early 2000s, and internationalization accelerated following the Global Financial Crisis in 2008. A series of stepwise reforms culminated in the RMB being accepted into the International Monetary Fund's (IMF) Special Drawing Rights (SDR) basket of currencies in 2016, cementing its status as an official global reserve currency.

AmCham China understands that RMB internationalization is a long-term process and commends steps taken by Chinese authorities thus far. Early in 2018, an AmCham China member institution was designated as an RMB

clearing bank in the US, the first member to receive this designation. AmCham China members continue to see RMB internationalization as benefitting China's financial sector development.

Currently, onshore banks can transfer no more than 3% of their total annual RMB-denominated deposits overseas. The majority of foreign onshore banks still conduct relatively small-scale financial transactions. This artificial limit reduces the efficiency of RMB clearing and restricts the ability of onshore foreign banks to serve a broader segment of offshore institutional and corporate clients. AmCham China urges regulatory authorities to dispense with a "one size fits all" limit on RMB clearing and instead impose individual limitations based on the asset size of the foreign bank.

Close-out Netting

Close-out netting allows two or more parties to offset the value of multiple payments due to be exchanged between the parties and saves time and cost by reducing the number of transactions that must be conducted. This reduces pre-settlement risk between trading parties. China is a "non-netting" jurisdiction and does not allow these kinds of transactions. In the event of insolvency, China's *Bankruptcy Law* gives the administrator of the insolvent firm the right to "cherry-pick" certain favorable assets to settle accounts, raising the cost of posting collateral. This situation creates legal uncertainty with respect to derivatives trading. Derivative assets are difficult to value appropriately because they are assessed on the price of other assets. Banks trading derivatives in China currently use a non-netting-based methodology to calculate the adequacy of capital and liquidity ratios for prudential risk management. Because China is a non-netting jurisdiction, banks trading in China must set aside capital against offsetting trades on a gross basis, rather than on a trade-by-trade basis. These requirements significantly increase the capital cost of derivatives-trading.

AmCham China urges the PBOC and other relevant government authorities to recognize close-out netting and clarify the legal interpretation of classifying derivatives as assets, which would significantly reduce their cost and increase liquidity in the market.

Asset Management

Mutual Fund Management Company

Building on the State Council's announcement in 2017, the CSRC confirmed in April 2018 that the foreign ownership cap for mutual fund firms had been raised to 51% and will be raised to 100% within three years. Existing partnerships with local financial institutions coupled with the challenges of investing funds in mainland retail clients means that local partners will continue to play an important role for foreign investment firms.

续增长将需要越来越大的信贷额度，以推动母公司及其在中国大陆的子公司的运营。

为降低银行风险敞口，中国银保监会目前实施严格的法规，旨在遏制国内银行的风险状况。因此，境内跨境信贷额度上限为净资本的 25%。鉴于对外资银行境内子公司持有的净资本数量的限制，该规则的实施阻碍了业务运营，限制了增长机会。为此，商会促请监管部门根据外国银行业务的独特特征相应地采用不同的监管程序。

人民币国际化

21 世纪初中国开始逐步推动人民币国际化，并在 2008 年全球金融危机之后加速了人民币的国际化进程。2016 年，人民币被纳入国际货币基金组织特别提款权（SDR）货币篮子，这使得中国的一系列人民币国际化改革措施达到顶峰，由此巩固了其正式作为全球储备货币的地位。

商会了解人民币国际化是一个长期的过程，并对中国政府迄今为止采取的措施表示赞扬。早在 2018 年，一家商会会员机构就被指定为美国的人民币清算银行，这是第一个获此殊荣的会员机构。商会会员继续看到了人民币国际化有利于中国金融业的发展。

目前，在岸银行仅能将其人民币计价海外年存款总额的 3% 进行转账。大多数在岸外资银行仍然进行相对小规模金融交易。这种人为限制降低了人民币清算效率，并限制了境内外资银行为更广泛的离岸机构和企业客户服务的能力。商会促请监管部门在人民币清算上不要“一刀切”，而应根据外资银行的资产规模给以个别的限制。

终止净额结算

终止净额结算允许两方或多方抵消因双方之间交换而产生的多笔付款的价值，并通过减少必须进行的交易数量来节省时间和成本。这降低了交易方之间结算前的风险。中国是“非净额结算”管辖区，不允许此类交易。在破产情况下，中国的破产法赋予破产公司的管理人“选择”某些有利资产来结算账户的权利，从而提高了抵押品的交付成本。这种情况造成了衍生品交易方面法律上的不确定性。衍生资产难以适当估值，因为它们是根据其他资产的价格进行评估的。目前在中国从事衍生品交易的银行使用非净额结算方法来计算审慎风险管理的资本充足率和流动性比率。由于中国是非净额结算管辖区，因此在中国进行交易的银行必须预留资本以总额为基础抵消交易，而不是逐笔交易。这些要求显著增加了衍生品交易的资本成本。

商会促请中国人民银行和其他相关政府部门认可终止净额结算并明确将衍生品分类为资产的法律解释，这将大大降低成本并增加市场流动性。

资产管理

共同基金管理公司

2018 年 4 月，中国证监会在国务院 2017 年公告的基础上确认，共同基金公司的外资所有权上限已提高至 51%，并将在三年内上调至 100%。与当地金融机构的现有合作伙伴关系以及大陆零售客户投资资金所面临的挑战意味着当地合作伙伴将继续在外国投资公司中发挥重要作用。

除中国证监会于 2018 年 4 月发布的《外商投资证券公司管理办法》之外，与投资基金管理有关的其他实施细则仍有待发布。对于如何放开对剩余的外国所有权的投资限制以及相关时间表，行业投资者仍不得而知。商会促请中国证监会尽快发布规定予以明确。

私募基金管理

2016 年 6 月，中国首次准许外国投资者成立私募基金管理（PFM）外商独资企业。截至 2018 年 12 月，已有 16 家私募基金管理外商独资企业在中国证券投资基金业协会（AMAC）注册，共启动了 25 个在岸基金。这些基金中，17 只是股票型基金，5 只是固定收益型基金，1 只是期货基金，2 只是混合基金。

目前，私募基金管理外商独资企业只能通过客户的资金或从私募基金中所获得的利润来发行基金。私募基金管理公司不允许使用其注册本来培植自己的基金。为了鼓励更多外国投资者在中国设立私募基金管理外商独资企业，商会建议中国政府允许私募基金管理外商独资企业在岸分支机构向私募基金管理外商独资企业的基金提供种子资金，特别是向那些启动基金，因为这些启动资金在运营前六个月不可能产生任何利润。

托管服务

通过分支机构提供的本地托管服务

商会会员对 2017 年 3 月发布的《关于外资银行开展部分业务有关事项的通知》（[2017] 第 12 号）感到鼓舞。第 12 号通知允许外国银行分行在中国国内市场提供托管服务

Excluding the *Measures for the Administration of Foreign-funded Securities Companies* issued by the CSRC in April 2018, no further implementing regulations have been issued pertaining to investment fund management. It remains unclear to industry investors how or on what timeline the remaining foreign ownership investment restrictions will be lifted. AmCham China urges the CSRC to issue clarifying regulations as soon as possible.

Private Fund Management

Foreign investors were first permitted to establish Private Fund Management (PFM) Wholly Foreign-Owned Enterprises (WFOEs) in June 2016. As of December 2018, 16 PFM WFOEs have been registered with the Asset Management Association of China (AMAC), launching a total of 25 onshore funds. Of those funds, 17 are equity and five are fixed income, one is a futures fund and two are mixed funds.

Currently, funds issued by PFM WFOEs can only be seeded with client money or profits from the PFM. PFMs are not allowed to use their registered capital to seed their own funds. To encourage more foreign investors to set up PFM WFOEs in China, we recommend that the Chinese authorities allow PFM WFOEs onshore affiliates to provide seed money to the PFM WFOE's funds, especially because these start-up funds are unlikely to generate any profits during the first six months of operation.

Custody Service

Local Custody Services through Branches

AmCham China members are encouraged by the *Circular on Carrying on Certain Business by Foreign-Invested Banks* (Circular No. 12) in March 2017. Circular No. 12 allows foreign bank branches to provide custody services (i.e., guarding securities, account administration, transaction settlements, collection of dividends) in China's domestic market, subject only to CBRC (now CBIRC) reporting requirements. In February 2018, CBIRC released the *Implementation Measures on the Administrative Licensing Items concerning Foreign-Funded Banks*, which permits foreign branches to provide domestic securities investment fund custody services.

Certain businesses are still required to obtain prior administrative approval from the CSRC before they can provide securities investment fund services. Article 8.1 of CSRC's April 2013 *Administrative Measures for Securities Investment Fund Custody Business* establishes a net assets threshold for commercial banks. Applicants for securities investment fund custody license are required to have had RMB 2 billion in net assets for three consecutive years. This requirement may be interpreted to require that custody services for PRC funds be provided only by Locally-Incorporated Banks (LIBs). The remaining *Measures* did not establish clear requirements for foreign bank branches to provide securities custody services.

We urge the CSRC to issue an interpretation of Article 8.1 to clarify that a foreign branch can offer full custody services (including handling both securities and cash) to domestic securities investment funds, even if the foreign branch itself does not have RMB 2 billion in net assets, provided that the foreign bank's total net assets (across the entire institution) are at least RMB 2 billion and have remained so for at least 3 consecutive years.

Inclusion of Approved Lending Agents in Stock Connect Program

According to Rules 14A16(5) to (7) of the Securities and Futures Commission (SFC) of the Hong Kong Exchange, only Exchange Participants and Qualified Institutions may trade securities via China Connect, a program that allows offshore investors to trade Shanghai-listed stocks via the Hong Kong market. We urge the CSRC to permit 'Approved Lending Agents' to trade on China Connect. Approved Lending Agents include agents and custodians acting on behalf of offshore funds investing in China Connect securities.

Broadening participation in the program will improve liquidity. Greater liquidity will improve pricing, reduce market volatility, and ensure long-term price stability. China Connect is currently hamstrung without the participation of Approved Lending Agents, as evidenced by the lack of short sale activity registered by the SFC for China Connect Securities. AmCham China strongly believes that introducing Approved Lending Agents into the current investor ecosystem will spur liberalization of China's capital and A-share markets (denominated in RMB).

Securities

Ownership

AmCham China has long maintained that lifting foreign ownership caps for onshore securities joint ventures (JVs) is the single most important step to open the securities sector. Our members strongly believe that allowing 100% foreign ownership will help develop China's securities sector by heightening market discipline and further developing local firms' expertise. In addition, full ownership can help underpin the relationship between China and the United States, by helping US firms deepen bilateral investment ties, and in so doing, catalyze growth and job creation for both sides.

As such, our members welcome the government's commitment to raise ownership caps to 51% in 2018, and to 100% by 2021. In April 2018, the CSRC issued final rules for implementing this pledge. To date, three foreign financial institutions have applied to take 51% stakes in their onshore joint ventures, and many more are eager to follow suit after UBS' application was approved in December.

(即保护证券、账户管理、交易结算、股息收取), 仅需遵守中国银保监会(现为中国银保监会)的报告要求。2018年2月, 中国银保监会发布了《外资银行行政许可事项实施办法》, 允许境外分支机构提供境内证券投资基金托管服务。

但在提供证券投资基金服务之前某些企业仍需事先获得中国证监会的行政许可。中国证监会2013年4月发布的《证券投资基金托管业务管理办法》第8.1条规定了商业银行的净资产门槛。证券投资基金托管许可申请人连续三年的净资产应为20亿元。此要求可能被解释为要求中国基金的托管服务仅由本地注册银行(LIB)提供。其余的《办法》未对外国银行分行提供证券托管服务作明确要求。

商会促请中国证监会对第8.1条作出解释, 以明确)如下: 即使外国分行本身没有20亿人民币的净资产, 只要外国银行的净资产(整个机构)至少为20亿元人民币, 且至少连续3年都是如此, 外国分支机构也可以为国内证券投资基金提供全面的托管服务(包括证券和现金业务办理)。

在股票通项目中加入核准借出代理人

根据证券及期货事务监察委员会(SFC)第14A16(5)至(7)条规定, 只有交易所参与者及合资格机构可通过中华通交易证券, 中华通计划允许境外投资者通过香港市场交易在上海上市的股票。商会促请中国证监会允许“核准借出代理人”在中华通上交易。核准借出代理人包括代表离岸基金投资中华通证券的代理人和托管人。

扩大该计划的参与范围将提升流动性。流动性增强将改善定价、减少市场波动并确保价格的长期稳定。如果没有核准借出代理人的参与, 中华通目前会陷入困境, 香港证监会登记的中华通证券缺乏卖空活动就证明了这一点。商会坚信, 将核准借出代理人引入当前的投资者生态系统将促进中国资本和A股市场(以人民币计价)的自由化。

证券

所有权

商会长期以来一直认为, 放开对在岸证券合资企业的外资所有权上限是开放证券业的最重要举措。商会会员坚信, 允许100%的外国所有权将增强市场纪律, 进一步发展本地公司的专业知识, 从而帮助发展中国的证券业。此外, 全面所有权还可以帮助美国公司深化双边投资关系, 巩固中美关系, 进而促进中美双方的发展并创造就业机会。

鉴于此, 商会会员企业对中国政府承诺在2018年将所有权上限提高到51%并到2021年提高到100%表示欢迎。2018年4月, 中国证监会发布了实施该承诺的最终细则。到目前为止, 已有三家外国金融机构申请持有其在岸合资企业51%的股份, 并且在瑞银于12月获准申请后, 更多人会愿意效仿。

美国金融机构正积极地关注中国2018年在全面所有权方面取得的重大进展。现在至关重要, 政府应利用这一势头迅速全面地采取行动消除市场准入壁垒(市场准入壁垒实际上阻碍了外国证券公司在中国的业务)。商会会员尤其关注的是证券合资企业的发牌限制, 获得51%所有权的资格要求, 以及待定的规则对100%外国所有权作何规定的问题。

发牌

商会对中国人民银行2018年在博鳌论坛承诺确保在年内使证券合资企业和国内证券公司在业务范围上得到平等对待一事感到鼓舞。商会会员期待在发牌方面迅速兑现这一承诺。目前, 对外国公司在华营业执照的限制限制了外国投资者的参与, 以及其支持中国和国际客户的能力。目前, 在华的外国合资经纪企业在证券业仍微不足道, 按收入计2017年只占据1.3%的市场份额(图2)。实施平等待遇意味着消除无意中限制市场准入的规则。其中一个例子就是中国证监会的规则, 只允许新证券合资企业一批最多申请四个许可证, 这将现有的证券合资企业置于竞争劣势。取消这些规则将确保享有平等待遇并会鼓励那些有着长期在岸记录的现有证券合资企业, 从而鼓励美国公司在中国长期投资。

资格要求

商会还促请中国政府确保其他拟议规则不会无意间对外国证券公司申请控制其公司51%的股权产生障碍, 例如中国证监会拟议的《证券公司股权管理办法》。商会对中国证监会对该办法草案征求意见表示欢迎, 并希望中国证监会能够考虑到商会会员企业的关切。

根据拟议的办法, 在岸证券公司的大股东必须拥有不低于人民币1,000亿元(140亿美元)的净资产。这一极高标准是任何其他司法管辖区所无法比拟的, 根据商会的分析, 这会使三家中国国内证券公司、十家非金融机构和少数外资银行获得对证券公司的多数控制权。商会会员尤其担心, 这一要求会给美国金融公司试图获得其在岸证券

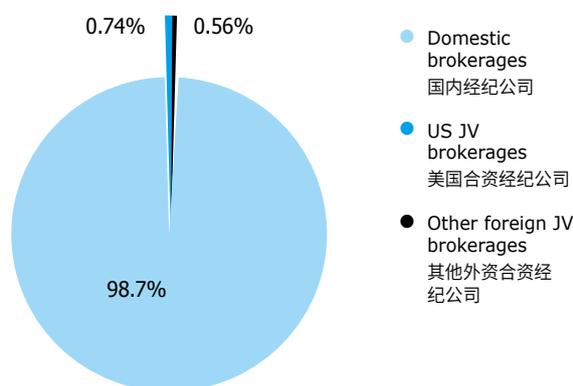
US financial institutions are watching with enthusiasm China's significant progress in 2018 towards full ownership. It is now crucial that the government capitalize on this momentum by taking swift and comprehensive action to remove market access barriers that, in practice, impede foreign securities firms' operations in China. In particular, our members are concerned about securities JVs' licensing restrictions and eligibility requirements for acquiring 51% ownership, as well as pending rules for 100% foreign ownership.

Licensing

AmCham China is encouraged by the PBOC pledge at the 2018 Boao Forum to ensure that securities JVs and domestic securities firms are treated equally in terms of business scope within the year. Our members look forward to the rapid implementation of this commitment with regard to licensing. Currently, restrictions on foreign firms' business licenses in China limit foreign investors' participation, as well as their ability to support their Chinese and international clients. Currently, foreign broker-dealer JVs in China remain a minor presence in the securities sector, holding 1.3% of market share by revenue in 2017 (Figure 2). Implementing equal treatment means eliminating rules that unintentionally limit market access. One example is CSRC's rules that allow only new securities JVs to apply for up to four licenses in one tranche, which place existing securities JVs at a competitive disadvantage. Removing such rules would ensure equal treatment as well as reward existing securities JVs with long track records onshore, encouraging US firms to invest for the long-term in China.

Figure 2. Foreign JV broker-dealers hold 1.3% of market share by revenue in China (2017)

图 2. 按收入计只占据 1.3% 的市场份额 (2017 年)



Source: China Securities Regulatory Commission, 2018
源自: 2018年中国证监会数据

Eligibility Requirements

Our members also urge the government to ensure that other proposed rules do not create unintended obstacles to foreign securities firms' applications to take 51% control of their companies, such as the CSRC's proposed *Administrative Measures on Equity Interests in Securities Companies* (Measures). AmCham China welcomes the CSRC's invitation to comment on the draft Measures and hopes the CSRC will take into consideration our members' concerns.

Under the proposed Measures, majority shareholders in onshore securities firms must have net assets of no less than RMB 100 billion (US \$14 billion). This is an extremely high standard unmatched by any other jurisdiction, and according to AmCham China's analysis, would allow no more than three domestic Chinese securities firms, ten non-financial institutions and a small number of foreign investment banks to acquire majority control of securities firms. Our members are particularly concerned as this requirement creates a new obstacle to US financial firms seeking to acquire 51% ownership of their onshore securities JV: most firms only have 1-2 entities globally that would qualify, and these entities are commonly holding companies that do not hold the necessary licenses. Lowering the requirements to net assets of no more than RMB 1 billion (US \$144,000) and total assets of no more than RMB 10 billion (US\$1.4 billion) would make China's business environment more attractive to navigate for foreign securities firms.

Our members are also looking forward to China implementing 100% foreign ownership of onshore securities companies as quickly as possible prior to 2021. This would be a game-changing milestone in China's opening-up process by providing a core component of a truly level playing field for foreign securities firms in China. In taking this step, it is critical that China retain the same rules and conditions for 51% foreign ownership when allowing 100% foreign ownership. This would allow market participants to take full control of their onshore entities as quickly and easily as possible, maximizing the benefits to China from opening up its securities sector.

Bonds

In 2018 China's bond market continued its trajectory towards full opening up. The expansion of Bond Connect Market Makers, the promotion of credit risk management instruments, and the introduction of tri-party repos are all encouraging steps. AmCham China welcomes the government's continuing improvements regarding market accessibility and product innovation. Our members noted that a wide range of overseas investors now participate in bond market activities, including primary market subscription and secondary market trading. Overseas investors are more diversified, covering central banks, commercial banks, securities companies, insurance companies, asset management institutions, and non-corporate products,

合资企业 51% 的所有权形成新的障碍：大多数公司在全球只有 1-2 个实体符合资格，且这些实体也都是普通的控股公司，未持有必要的许可证。降低净资产要求，即不高于 10 亿元人民币（144000 美元）和总资产要求，即不高于 100 亿元人民币（14 亿美元），将使中国的商业环境对外国证券公司更具吸引力。

商会会员也期待中国在 2021 年之前尽快实现在岸证券公司 100% 的外资所有权这一承诺。通过为在华的外国证券公司提供真正公平竞争环境的一个核心组成部分，这将成为中国开放进程中改变游戏规则的一个里程碑。这一措施对在允许 100% 外资所有权的同时，中国对 51% 外国所有权保留相同的规则和条件也至关重要。这将使市场参与者尽快地尽可能轻松地完全控制其在岸实体，从而最大程度上从中国开放证券业中获益。

债券

2018 年，中国债券市场继续走向全面开放。债券通市场造市商的扩张、信用风险管理工具的推广以及三方回购的引入都是鼓舞人心的措施。商会对政府在市场准入和产品创新方面不断改进表示欢迎。商会会员指出，现在有很多海外投资者参与债券市场活动，包括一级市场认购和二级市场交易。海外投资者的种类更加多元化，包括中央银行、商业银行、证券公司、保险公司、资产管理机构和非企业产品，这反映了国际上对在中国主权和公司债务工具的强烈兴趣。商会期望中国债券市场继续发展并且其实践与全球市场标准保持一致。商会认为，更有效的债券市场将促进信贷分配，并使金融体系的风险更加多元化。

三方回购

中国人民银行最近正式宣布在银行间债券市场启动三方回购。三方回购是国际发达市场中为证券融资而采取的常见回购服务模式。商会会员很高兴看到它在中国首次亮相。

商会认为，在银行间债券市场推出三方回购协议有助于市场主体进行回购交易，降低结算失败的可能性，并确保回购交易期有效覆盖风险敞口，共同提高风险防范控制能力。目前，只有银行间市场的债券登记托管和结算机构才有资格为第三方提供三方回购服务；虽然某些有资格的大型银行将来有可能加入进来。商会促请监管机构向经验丰富的外国金融机构开放这项服务。

中国债券市场全球投资者准入流程的简化

考虑到各种投资者特别是外国机构投资者的参与，国内债券市场在准入流程中的效率非常重要。2018 年 6 月，中国人民银行上海总部发布了《简化境外投资者进入中国银行间债券市场备案有关要求》。符合条件的海外投资者现在可以通过填写简化版表格申请市场准入。此外，中国人民银行取消了一项现行条款，即：如果海外机构投资者在原有投资 9 个月内汇出的投资本金低于计划投资总额的 50%，则要求重新批准原投资计划。商会认为，简化后的程序将促进更多全球投资者进入中国银行间债券市场并刺激进一步发展。

对冲工具

衍生品构成对冲和创新的重要市场工具。商会在过去几年中注意到国内利率和外汇衍生工具的巨大市场增长。然而，对缺乏信用风险对冲工具的担忧依然存在。虽然中国银行间市场交易商协会于 2010 年底推出了信用风险缓释工具（CRM）产品，但该产品的信用风险保护范围还尚未被中国银保监会明确。信用风险缓释工具帮助银行管理资本充足率，并更有效地在投资组合中分散财务风险。商会建议监管机构就投资者如何使用 CRM 产品积极管理信用风险提供行业指导。商会认为，这将改善中国公司和投资者的整体风险管理。

债券通

商会会员希望金融公司的外国实体成为债券通造市商。商会对政府今年通过为投资者引入大宗交易分配和三年免税以及实施实时交割与支付来改善债券通计划所作的努力表示欢迎。这些举措反映了中国继续开放债券市场的承诺。为了表彰中国的进步，2014 年 3 月彭博巴克莱宣布，中国有望在 2019 年 4 月纳入其全球综合债券指数，条件是进一步自由化。

然而，目前还没有一家外国机构获批成为香港 - 中国债券通造市商。这使得外国投资者在中国债券市场中微不足道的地位与截至 2018 年 9 月，外国投资者仅持有所有未偿债券的 2.2% 左右别无二致。虽然商会会员企业理解监管协调和技术基础设施准备方面目前面临着挑战，但允许外国参与债券通将有助于释放中国资本市场的新潜力。它将为中国带来高质量的外国投资者，并增强中国与全球金融市场的接轨。指定外国造市商也可以补充中国纳入全球债券指数所预期的已经非常重要的资本流入。允许外国造

reflecting strong international interest in sovereign and corporate debt instruments in China. AmCham China expects the domestic bond market to continue to evolve and align its practices with global market standards. We believe a more efficient bond market will promote credit allocation and enable better diversification of risk in the financial system.

Tri-Party Repo

The PBOC recently announced the official launch of tri-party repo in the interbank bond market. Tri-party repo is a common repo service model in international developed markets for funding securities. AmCham China members are excited to see its debut in China.

AmCham China believes the launch of tri-party repo in the interbank bond market facilitates market players to conduct repo transactions, reduces likelihood of settlement failure, and ensures the effective coverage of risk exposure in the duration of repo transactions, collectively enhancing the capacity of risk prevention and control. Currently, only bond registration custody and settlement agencies in the interbank market are eligible to provide tri-party repo services for third parties; although certain qualified large banks are expected to join in the future. AmCham China urges the regulatory authorities to open this service to experienced foreign financial institutions.

Simplification of Global Investor Onboarding Process for the China Interbond Market

Given the participation of various investors, especially foreign institutional investors, it is important that the domestic bond market be efficient in its onboarding process. In June 2018 the PBOC's Shanghai Headquarters released the *Requirements on Simplifying the Registration of Overseas Investors for Entering China Interbank Bond Market* (CIBM). Eligible overseas investors can now apply for market access by completing a simplified form. In addition, PBOC canceled an existing provision that required reapproval of the original investment plan if the investment principal remitted by the overseas institutional investor within nine months of the original investment is less than 50% of the total planned investment. AmCham China believes the simplified process will promote more global investors entering the CIBM and stimulate further development.

Hedging Instruments

Derivatives constitute an essential market instrument for hedging and innovation. AmCham China notes significant market growth on domestic interest rates and FX derivatives in the past few years, however, concerns about the lack of credit risk hedging instruments persist. Although NAFMII launched the Credit Risk Mitigation (CRM) product in late 2010, the scope of credit risk protection offered by this product has not been clarified by CBIRC.

CRM helps banks manage their capital adequacy ratios and more effectively spread financial risk across their portfolio. AmCham China recommends that regulators provide industry guidance on how investors can use CRM products to actively manage credit risks. AmCham China believes that this will improve overall risk management for Chinese companies and investors.

Bond Connect

AmCham China members would like financial firms' foreign entities to serve as Bond Connect Market Makers. AmCham China welcomes the government's efforts this year to improve the Bond Connect scheme by introducing block trade allocations and three-year tax exemption for investors and implementing real-time delivery versus payment. These moves reflect China's continued commitment to bond market opening. In recognition of China's progress, in March 2018 Bloomberg Barclays announced that China is on track to be included in its Global Aggregate Bond Index in April 2019, conditional upon further liberalization.

Currently no foreign institution, however, has received approval to serve as Market Maker for the Hong Kong-China Bond Connect. This parallels foreign investors' minor presence in China's bond market overall, with foreign investors holding only around 2.2% of all outstanding bonds as of September 2018. While we understand existing challenges regarding regulatory coordination and technological infrastructure readiness, allowing foreign participation in Bond Connect will help unleash new potential for China's capital markets. It will bring to China high-quality foreign investors and enhance China's connection to the global financial market. Appointing foreign market makers can also supplement the already-significant capital inflows expected from China's inclusion in global bond indices. Allowing foreign market makers in Bond Connect is also in line with China's goals of RMB internationalization and capital market opening.

Panda Bond Market

AmCham China noted progress in promoting Panda Bond issuance by foreign institutions in the mainland interbank bond market. In September 2018, the PBOC and the Ministry of Finance (MOF) jointly issued the *Interim Measures for Administration of the Issuance of Bonds by Overseas Institutions in the National Interbank Bond Market*. The rules further clarified standards for foreign bond issuers on application conditions and procedures, information disclosure, and matters related to bond issuance registration, entrustment, and settlement. This move will improve the internationalization of China's bond market and is a positive step forward in opening China's financial sector. While foreign financial institutions are encouraged by such progress, remittances of Panda Bond proceeds are currently subject to case-by-case approval by the PBOC and SAFE. AmCham China recommends that the Chinese government allow foreign firms who

市商进入债券通市场也符合人民币国际化和资本市场开放的目标。

熊猫债市场

商会注意到外国机构在大陆银行间债券市场推动熊猫债券发行方面取得的进展。2018年9月，中国人民银行和财政部联合发布《全国银行间债券市场境外机构债券发行管理暂行办法》。该规则进一步明确了外国债券发行人在申请条件与程序、信息披露以及债券发行登记、委托和结算相关事宜方面的标准。此举将改善中国债券市场的国际化，是中国金融业向前迈出的积极一步。虽然外国金融机构对该进展感到鼓舞，但熊猫债券收益的汇款目前需要中国人民银行和国家外汇管理局进行逐案审批。商会建议中国政府允许从中国境外获得大部分收入的外国公司自由汇寄熊猫债券所得的收益。与此同时，中国政府也应该接受更多的熊猫债券国际会计准则，特别是美国和英国的会计准则，以允许外资方更多地参与进来。

信用评级

继2017年放宽对国际信用评级机构的市场准入限制后，中国银行间市场自律组织－中国银行间市场交易商协会，就以下方面发布了新规则：

- 银行间债券市场信用评级机构的注册和评估；
- 非金融企业债务融资工具信用评级业务的调查过程；和
- 非金融企业债务融资工具信用评级机构自律公约。

然而，值得注意的是，中国人民银行于2016年10月发布的关于《信用评级业管理暂行办法（征求意见稿）》仍尚未最终确定。商会会员员期待其最终敲定，以便对中国的信用评级机构监管环境作出更明确的规定。

本年度，商会也看到了银行间债券市场和交易所债券市场监管上的整合。中国人民银行和中国证监会于2018年9月联合发布了第14号通知，旨在逐步对在这两个市场运营的信用评级机构作统一规定。此外，2018年12月，中国人民银行、中国证监会和国家发改委联合宣布建立统一的执法机制，中国证监会可根据该机制对银行间债券市场和交易所债券市场的违法行为采取统一执法行动。

国际信用评级机构可以作为国际投资者资本流向中国国内市场的桥梁。国际投资者参与中国信用评级机构市场也会对中国信用评级机构市场的健康发展产生积极影响。

开放该行业可能会带来新的机会来审视评级的监管使用情况并根据全球惯例重新关注信用风险评估。例如，当前国内信用评级机构法规中的某些规定对债券发行或购买设置信用评级下限（AA）。这种要求会扭曲激励机制，最终导致“评级选购”问题。

网络安全

中国2017年颁布的《网络安全法》及相关的网络安全要求给在中国经营的外资银行带来了诸多挑战。这其中包括数据本地化和数据传输要求，缺乏对重要术语的明确定义，后续法规草案与实施细则之间的不一致，繁琐的安全评估要求以及操作上的限制。以下为金融业的主要观察结果及建议：

数据本地化和数据流限制

跨国界自由传输数据的能力对于在全球经济中运营的金融服务公司至关重要。数据本地化和对跨境数据流的限制将会限制金融服务公司向客户提供核心产品和服务，管理风险以及遵守各司法管辖区金融监管要求的能力。

令人失望的是，商会观察到了一个令人担忧的趋势，即越来越多的数据本地化要求以及金融业和网络安全法规中对跨境数据流的限制。中国银保监会最终发布的《银行业金融机构反洗钱和反恐怖融资管理办法》严格禁止跨境转移客户身份信息和交易数据。加上中国银保监会要求“重要数据”境内存储的规定，中国人民银行的个人财务数据在岸处理要求，以及对个人信息（PI）和关键信息基础设施（CII）运营商的重要数据的不明确规定，这些都给外国金融机构带来了重大的合规负担。

商会对中国进一步开放金融业的承诺表示欢迎，并促请中国消除数据本地化要求，确保数据的自由跨境流动，这是真正成功开放金融业的前提条件。

网络运营商面临的主要挑战

- 根据中共中央网络安全和信息化委员会办公室（“网信办”）发布的《个人信息和重要数据出境安全评估办法（草案）》（“网信办草案”）和中国国家信息安全标准技术委员会发布的《信息安全技术数据出境安全评估指南（草案）》（“指南草案”），个人信息（PI）和重要数据的出境需要进行安全评估。商会认为以下意见和建议将有助于这些文件草案的厘清与执行：“重要数据”的范围不明确。根据网信办草案，网信

derive the majority of their revenues from outside China to repatriate Panda Bond proceeds freely. Meanwhile, the Chinese government should also accept a greater number of international accounting standards for Panda Bonds, especially US and UK accounting rules, to allow for greater foreign participation.

Credit Ratings

Following the relaxation of market access restrictions for international credit rating agencies (CRAs) in 2017, NAFMII, a self-regulatory organization for the interbank market in China, issued new rules in 2018 regarding:

- Registration and evaluation for CRAs in interbank bond market;
- The investigation process for the credit rating business for non-financial enterprise debt financing instruments; and
- Self-regulatory conventions for CRAs for non-financial enterprise debt financing instruments.

Nonetheless, it is worth noting that the draft regulation on the CRA industry, which the PBOC released for public comment in October 2016, has yet to be finalized. AmCham China's members look forward to its finalization to provide greater clarity on China's CRA regulatory environment.

AmCham China also saw regulatory integration across interbank bond market and exchange bond market during the year. The PBOC and CSRC jointly issued Circular 14 in September 2018 which seeks to gradually unify the regulations for CRAs operating in both markets. Moreover, in December 2018, the PBOC, CSRC, and NDRC jointly announced the establishment of a unified law enforcement mechanism, under which the CSRC can take unified enforcement action against violations in both the interbank bond market and exchange bond market.

International CRAs can serve as a bridge for capital flows from international investors to the Chinese domestic market. Their participation in the Chinese CRA market can also have a positive impact on the healthy development of the Chinese CRA market. Opening up the industry may bring new opportunity to review the regulatory use of ratings and refocus credit risk assessment in line with global practices. For example, certain provisions in current domestic CRA regulations require credit rating floors (of AA) for bond issuance or purchase. Such requirements skew incentives and eventually lead to "rating shopping."

Cybersecurity

China's 2017 *Cybersecurity Law* (CSL) and associated cybersecurity requirements present numerous challenges for foreign banks operating in China. These include data localization and data transfer requirements, a lack of clear definitions of

important terms, inconsistencies between subsequent draft regulations and implementing measures, burdensome security assessment requirements, and operational limitations. Below we discuss key observations and recommendations for the financial sector:

Data localization and Data Flow Restrictions

The ability to transfer data freely across borders is essential for financial services firms operating in the global economy. Data localization and limitations on cross-border data flows will limit financial service firms' ability to deliver core products and services to customers, manage risk, and comply with financial regulatory requirements in various jurisdictions.

To our disappointment, AmCham China has observed a worrying trend of increasing data localization requirements and restrictions on cross-border data flow in financial sector and CSL regulations. The final release of CBIRC's *Banking Financial Institutions Anti-Money Laundering and Counter Terrorist Financing Management Measures* strictly prohibit cross-border transfers of customer identification information and transaction data. Coupled with CBIRC's regulations that require "important data" to be stored onshore, PBOC's personal financial data onshore processing requirements, and unclear personal information (PI) and important data for Critical Information Infrastructure (CII) operators have created significant compliance burdens for foreign financial institutions.

AmCham China welcomes China's commitment to further open up the financial sector and urges China to eliminate data localization requirements and ensure the free cross-border movement of data, a pre-condition of truly and successfully opening up the financial sector.

Key Challenges for Network Operators

A security assessment is required for the cross-border transfer of PI and important data, as outlined in the Cyberspace Administration of China (CAC)'s *"Draft Measures on Security Assessment of Data Export of Personal Information and Important Data"* (CAC Draft Measures), and the China National Information Security Standardizations Technical Committee's *"Draft Guidelines for Data Cross-Border Transfer Security Assessment"* (Draft Guidelines). AmCham China believes these draft documents would benefit from the following:

- The scope of "important data" is unclear. Under the CAC Draft Measures, CAC has clarified that "important" is likely to be measured with reference to the State, rather than from the standpoint of particular interest groups. The Draft Guidelines specify the scope of "important data" for the banking industry. The current scope includes almost all bank data, which means almost each cross-border transfer of data by

办明确指出这里的“重要”主要是针对国家，而不是从特定利益集团的角度衡量的。指南草案中明确了银行业“重要数据”的范围。当前的范围几乎包括了所有的银行数据，这意味着银行几乎每次跨境数据转移都将受到这一要求的约束。出于获取规模经济效益的考量，国际企业通常使用“枢纽集中地”基础设施运营，因此如根据“指南草案”的“重要数据”范围执行，外资银行的合规成本将难以预估，很可能将会非常高。商会促请网信办重新考虑跨境转移安全评估的方法，并且如《网络安全法》所规定的那样将范围限制在狭义上的关键信息基础设施（CII）中。

- 根据这两份文件草案，任何网络运营者的个人信息的跨境转移都需要对发送方和接收方进行安全评估。根据“指南草案”，发送方和接收方都需要建立相应的跨境数据传输政策和评估机制。此外，发送方还需要根据接收方的业务资质，与发送方持续的业务关系，信息安全管理机制，技术支持能力以及本国或当地的政治和法律环境来评估接收方的信息保护能力。如果这些要求成为强制性规定，为遵循这些要求所需投入的合规成本将会让一些外国银行望而却步。商会促请网信办能对国际行业证书或评估结果予以承认，以降低外资银行的国内安全评估负担。

关键信息基础设施面临的主要挑战

商会会员公司主张对关键信息基础设施采用基于风险，范围狭窄，符合全球最佳实践的监管方法并避免对某些产品或服务的强制应用。商会对关键信息基础设施标准草案（《网络安全法》第35条）中规定的具体担忧如下：

- 根据2018年5月发布的《信息安全技术—关键信息基础设施安全控制措施（草案）》（征求意见稿）第6.5.2节的要求，关键信息基础设施运营商（CIIO）需要在中国大陆设立灾难恢复中心。这给商会会员带来了新的挑战 and 成本，因为国际企业的通用惯例是使用离岸灾难恢复中心。
- 根据同一文件第6.6.2节，需要对关键管理和安全职位的工作人员进行全面的背景调查（包括提供有关公民身份、政治观点、宗教信仰、工作经历、教育背景、犯罪记录、个人信用、家庭状况和海外关系等信息）。许多外资银行的IT运营由离岸IT中心提供支持；获取有关离岸员工的此类详细个人信息将具有挑战性，并可能违反其他国家的隐私政策。

最后，商会会员认识到，渗透测试对于维护强大的网络安全非常重要。商会极为关注中国公共部门参与渗透测试的可能性，因为它可能无意中增加或加剧现有的风险。商会主张监管机构承认由公司主导的渗透测试是足够充分的。商会强烈建议中国证监会和其他监管机构删除网络风险管理相关条款（其中包括CSRC第152号令）中的渗透测试和系统扫描要求，并就此话题与行业利益相关方进行公开对话。

建议

对于中国政府：

商业银行

- 取消银行业的所有配额，包括外债。
- 允许外国金融机构作为公司债券的主承销商。
- 对外国在岸机构的信贷额度适用不同的规定。现行法规规定跨境信贷额度的上限为国内外机构净资产总额的25%，这给外资银行施加了繁重的监管要求。
- 对海外人民币计价的存款转账设置全行业限制，目前设定为3%，对个人银行的限制则根据外国银行资产的规模予以规定。
- 通过对将衍生工具分类为资产的规则进行法律解释来确认终止净额结算。

资产管理

- 发布资产管理业的实施细则，阐明如何设立外资占多数股权的合资企业。
- 允许私募基金管理公司的在岸分支机构向私募基金管理公司的基金提供种子资金，特别是第一笔基金。

托管服务

- 允许在华的外资银行分行为国内证券投资基金提供全面托管服务。
- 纳入香港证监会注册的“核准借出代理人”，以借出中华通证券。

banks is subject to this requirement. As it is a common practice for international businesses to use a “hub” infrastructure system to benefit from economies of scale, under the Draft Guidelines, the compliance costs for foreign banks will be difficult to estimate and are likely to be extremely high. AmCham China urges CAC to reconsider the approach to security assessments for cross-border transfers and limit the scope to a narrowly-defined critical information infrastructure (CII), as stipulated in the CSL.

- According to the two draft documents, any cross-border data transfer of PI by Network Operators (NOs) will require a security assessment to cover both sending and receiving parties. Under the Draft Guidelines, both sending and receiving parties are required to establish a corresponding cross-border data transfer policy and assessment mechanism. Furthermore, the sending party needs to assess the receiving party’s information protection capacity on the basis of its business qualifications, ongoing relationship with the sender, its information security management mechanism, technical support capabilities, and the political and legal environment in its respective country or region. If such requirements become effective and mandatory, the cost of compliance with these requirements will become prohibitive for many foreign banks. AmCham China urges CAC to recognize international industry certificates and assessments to reduce the domestic security assessment burden on foreign banks.

Key Challenges for Critical Information Infrastructure (CII)

AmCham member companies advocate for a regulatory approach to CII that is risk-based, narrow in scope, aligned with global best practices, and avoids mandating the adoption of certain products or services. AmCham China has the following specific concerns in relation to requirements laid out in the Draft CII standards (Article 35 of CSL):

- According to Section 6.5.2 of “Information security technology - Security Controls of Critical Information Infrastructure (Draft)” issued in May 2018 for public comment, Critical Information Infrastructure Operators (CIIOs) are required to locate their Disaster Recovery center in mainland China. This presents new challenges and costs to AmCham China members, as it is common practice for international businesses to use an offshore Disaster Recovery Center.
- According to Section 6.6.2 of the same document, a comprehensive background check (including providing information on citizenship, political views, religious beliefs, professional experience, education, criminal record, personal credit, family status, and overseas relations) is required to be conducted for staff of key management and security positions. Many foreign banks’ IT operations are supported in offshore IT

centers; obtaining such detailed personal information on offshore employees will be challenging and likely violate other countries’ privacy policies.

Finally, AmCham China members recognize that penetration testing is important for maintaining robust network security. We are extremely concerned about the possibility of involvement of public sector actors in penetration testing as it may unintentionally increase or exacerbate existing risks. We advocate that company-led penetration testing be recognized by regulators as sufficient. We strongly recommend CSRC and other regulators remove penetration testing and system scanning requirements in cyber risk management related articles (among them CSRC Order No. 152) and initiate an open dialogue with industry stakeholders on this topic.

Recommendations

For the Chinese Government:

Commercial Banking

- **Remove all quotas in the banking sector, including on foreign debt.**
- Allow foreign financial institutions to act as lead underwriters for corporate bonds.
- Apply different regulations to credit facilities for foreign onshore institutions. Current regulations cap cross-border credit facilities at 25% of total net capital for both domestic and foreign institutions, which imposes burdensome regulatory requirements on foreign banks.
- Dispense with the sector-wide limit on RMB-denominated deposit transfers overseas currently set at 3% and instead allow for individual bank limits based on the size of foreign bank assets.
- Recognize close-out netting by clarifying the legal interpretation of the rules governing classifying derivatives as assets.

Asset Management

- **Release implementation rules for the asset management sector to clarify how to set up a foreign majority-owned JV.**
- Allow the onshore affiliates of PFMs to provide seed money to PFM funds, particularly for the first fund.

Custody Service

- **Allow foreign bank branches in China to offer full custody service to domestic securities investment funds.**

证券

- 取消那些实际上使美国证券公司更难从市场开放措施中获益并在整体上更难在境内运营的市场准入障碍。这些障碍包括证券合资企业的发牌限制以及证券合资企业的大多数所有者的财务资格要求。
- 2021 年之前尽快实现在岸证券公司 100% 的外国所有权。

债券

- 通过允许金融公司的外国实体作为债券通造市商，进一步改善债券通计划。
- 通过允许善意的外国发行人自由汇回收入并认可更多国际会计准则，继续推动熊猫债券的发行。

信用评级

- 取消或放宽对外资信用评级机构的外国所有权限制。
- 根据国际共识和最佳实践，引入有关信用评级行业发展的新法规或修订法规。

- Include “Approved Lending Agents” as registered by the SFC to lend China Connect securities.

Securities

- **Remove market access barriers that, in practice, make it more difficult for US securities companies to benefit from market opening measures and to operate onshore in general. These barriers include licensing restrictions for securities JVs and financial eligibility requirements for majority owners of securities JVs.**
- Implement 100% foreign ownership of onshore securities companies as quickly as possible prior to 2021

Bonds

- **Further improve the Bond Connect scheme by allowing financial firms’ foreign entities to serve as Bond Connect Market Makers.**
- Continue to promote Panda Bond issuance by allowing bona fide foreign issuers to repatriate revenues freely and accepting more international accounting standards

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 best practices.

Civil Aviation

Introduction

2018 saw many challenges but also significant progress in the field of civil aviation. China remains one of the largest US export markets for US aerospace products and is expected to remain so for many years. 2018 witnessed continued increases in cargo and passenger volume between the two countries amidst robust growth of China's civil aviation industry.

China's civil aviation industry continues to grow at double-digit rates. The country's aviation market is a national priority, and China is investing heavily in manufacturing capability, training, and infrastructure needed to support this growth. China has committed nearly \$12.4 billion in aviation infrastructure in 2018 to support industry development. The country is projected to become the largest civil aviation market by 2025 if not sooner, according to the International Air Transport Association (IATA).

While this growth has benefitted both China and the US, there are growing pains. Systemic change at the local, provincial, and national levels continues to be needed for China to realize its full aviation potential. For China to achieve greater maturity in operational capabilities it must take critical steps, including expanding access to airspace for commercial operations, improving procedural and institutional methodologies to encourage innovation, and encouraging the multi-disciplinary collaboration of the type necessary to maintain China's excellent safety record.

The country's rising middle class and gradual transition to a consumption-based economy has increased demand for aviation services. According to Boeing's 2018-2037 Market Outlook, China needs 7,690 new airplanes, valued at an estimated US \$1.19 trillion by 2037. During this same period, the Chinese economy is forecast to grow at around 4.9% annually and see 6.2% annual growth in the number of airline passengers.

China's three largest airlines are among the world's top ten carriers in terms of passenger volume. Each of them possesses a large and young fleet of more than 400 aircraft. In 2018, actual total transportation turnover reached 120.6 billion ton-kilometers (km), and total passenger volume reached 610 million, annual growth of 11.4% and 10.9%,

respectively. Passenger volume between the US and China grew by an estimated 10% in 2018 to approximately 8.8 million passengers.

Beijing Capital Airport's passenger traffic exceeded 100 million passengers in 2018, making it the second busiest airport in the world. Beijing Daxing International Airport will open later in 2019 and is designed to accommodate 75 million passengers annually.

In 2018 an additional five airports in China exceeded passenger traffic levels of 10 million, bringing the total to 37 airports with annual passenger traffic above 10 million. Boeing delivered its 2000th new aircraft to China in 2018. The first 1,000 Boeing airplanes were delivered to Chinese airlines over four decades and the following 1,000 arrived in just the past five years.

On December 10, 2018, China issued the *Action Program for Building China as a Civil Aviation Power in the New Era*. To better accommodate growth in demand and pave the way for China to become an aviation power by the middle of this century, China will continue to address bottlenecks that constrain its growth potential, especially in the areas of airspace, infrastructure development, and professional training.

US companies are important suppliers of aviation technology, services, and expertise. They have committed significant resources to help China reduce its capacity constraints and meet a wide variety of training needs. AmCham China's US-China Aviation Cooperation Program (ACP), with 42 US member companies, was established in 2004 with a mission to identify and address common issues, support the growth of China's aviation system, and undertake joint activities that further aviation safety, capacity, and efficiency.

AmCham China's ACP, the US Trade and Development Agency (USTDA), the US Transportation Security Administration (TSA), the US Federal Aviation Administration (FAA), and the Civil Aviation Administration of China (CAAC) enjoy a close partnership under the ACP umbrella. The ACP has yielded benefits to both sides for many years.

The ACP annually arranges millions of dollars of technical assistance and training for activities that are important to US industry and the sustained growth of China's aviation

民用航空

引言

2018年民用航空领域遇到了许多挑战，但也取得了重大进展。中国仍然是美国航空航天产品最大的出口市场之一，预计接下来几年仍是如此。在中国民航业强劲增长的情况下，2018年两国货运量和客运量均持续增长。

中国的民航业继续以两位数的速度增长。中国航空市场是国家优先发展的市场，中国正在大力投资制造能力、培训和基础设施来支持这一增长。2018年中国对航空基础设施投入近124亿美元，以支持行业发展。根据国际航空运输协会的数据，预计到2025年（或早于这一时间）中国将成为最大的民用航空市场。

尽管这一增长使中国和美国都受益，但也面临成长中的阵痛。中国继续需要在地方、省级和国家层面进行系统性改革，以充分发挥航空潜力。中国若想在运营能力方面变得更加成熟，必须采取关键性措施，包括扩大商业运营空域的准入，在程序和机制上改进方法鼓励创新，以及鼓励维持中国良好安全记录所必需的多学科合作。

中国正在崛起的中产阶级和逐步向消费型经济过渡增加了对航空服务的需求。根据波音发布的《2018-2037中国民用航空市场展望》，中国需要7690架新飞机，预计到2037年价值将达到1.19万亿美元。同期，中国经济预计将以每年4.9%左右的速度增长，航空公司的乘客人数将以每年6.2%的速度增长。

就客流量而言，中国有三大航空公司跻身世界十大航空公司之列。这三大航空公司都拥有一支400多架飞机组成的庞大而年轻的机队。2018年，实际总运输量达1206亿吨公里，总客运量达6.1亿人次，年增长率分别为11.4%和10.9%。2018年，美国和中国之间的客运量增长了约10%，达到约880万名乘客。

北京首都机场的客运量在2018年超过了1亿人次，成

为世界上第二大繁忙的机场。北京大兴国际机场将于2019年晚些时候开放，每年可输送7500万名乘客。

2018年，中国另外五个机场的客流量超过1000万人次，使总机场数达到37个，年客流量超过1000万人次。2018年，波音公司向中国交付了第2000架新飞机。首批1000架波音飞机在四十多年前交付给了中国的航空公司，余下的1000架飞机在五年前陆续到达中国。

2018年12月10日，中国发布了《新时代民航强国建设行动纲要》。为了更好地适应需求增长并为中国在本世纪中叶成为航空强国铺平道路，中国将继续解决限制其增长潜力的瓶颈问题，特别是在空域、基础设施发展和专业培训领域。

美国公司是航空技术、服务和专业知识的重要供应商。它们投入了大量资源以帮助中国航空市场不断扩容，并提供了各种丰富的专业培训课程。中国美国商会（商会）中美航空合作项目（ACP）（共有42家美国成员公司），成立于2004年，其使命是识别和解决共同问题，支持中国航空系统的发展，并开展进一步促进航空安全、能力和效率的联合活动。

商会的中美航空合作项目、美国贸易发展署、美国运输安全局、美国联邦航空局以及中国民用航空局在中美航空合作项目中建立了密切的合作关系。多年来中美航空合作项目为双方带来了诸多益处。

中美航空合作项目每年为那些对美国产业和中国航空系统持续增长至关重要的活动安排数百万美元的技术援助和培训。这项工作为两国带来了互利共赢，航空业在整个中美经济关系中发挥着日益重要的作用。航空产品和服务是美国向中国出口的大类之一，飞机是制成品中的大类。

在本章中，商会将针对中国航空业发展中的一些问题提出自己的见解，希望中国民航业官员能对这些问题给予进一步重视。主要内容涉及以下重要领域：完善机制建设，

system. This work produces win-win benefits for both countries with aviation playing an important and growing role in the overall US-China economic relationship. Aviation products and services constitute one of the largest categories of US exports to China, and aircraft is the largest category of manufactured goods.

In this chapter, AmCham China addresses select issues in China's aviation development that we believe require further attention from Chinese aviation officials. These include important subjects related to institutional capabilities being commensurate with current and future growth, ongoing regulatory issues, sustainability, air carrier operations, standards and certification, and general and business aviation.

Ongoing Regulatory Issues

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. China has much to gain from expanding and enhancing its current aviation system capabilities, including not only more efficient, system-wide use and management of its airspace, but also reductions in fuel burn, air pollution, flying time, and delays. Such measures will simultaneously encourage new air carrier entrants, increase airplane operations including general and business aviation, and lead to new and expanded routes.

The surge in air traffic has significantly increased pressure on China's large and complex airspace system. Although its system has a world-class safety record and continues to expand passenger and cargo aircraft operations, signs of stress are evident. These include persistent delays at airports throughout the country, en-route bottlenecks, and a continuing shortage of slots. These delays and slot shortages are due primarily to limits on the use of China's national airspace for civil aviation purposes, flight attendant inefficiencies in current airspace operations, capacity management that relies on a command and control structure, and the varied consequences of congested airspace that airlines face when arriving at or departing from airports.

Measures taken recently by CAAC have led to 'penalty boxes' being imposed on select airports with poor on-time performance. The 'penalty box' provisions do not permit charters, extra-sections, or newly scheduled operations until air traffic control, airports, and air carriers improve on-time performance. Despite the noble intentions of such measures, the 'penalty box' solution penalizes the operator and the traveling public but does little to address the true issues.

AmCham China applauds the progress CAAC has made toward implementing a national Air Traffic Flow Management (ATFM) and System Wide Information Management (SWIM) system utilizing a collaborative decision-making model (CDM). Further integrated, national airspace reform is still needed and should focus on flexible, safe and efficient system management, adapting international best practices to accommodate China's unique needs and structure. In turn, this will allow for progress in "delay prevention" rather than "delay response," effectively catering to the anticipated growth in the aviation system.

Climate Change Obligations: Advance Energy Conservation, Emissions Reduction and Sustainability

Climate change is a critical global issue. Since 2011, CAAC has issued guidance to accelerate energy conservation and emissions reduction (ECER) across the aviation industry. This guidance includes goals to reduce energy consumption and carbon dioxide emissions through technological and management innovations. Last year, CAAC also launched the *Three-Year Action Plan to Win the Blue-Sky Defense War* with new regulations promoting the use of more energy efficient vehicles, less use of auxiliary power units (APUs), and more reliance on the use of Ground Power Units (GPUs).

AmCham China is pleased to see progress in fuel savings and efficiency, development of aviation biofuels, new incentives for clean fuel ground service equipment, and the installation and application of new technologies.

Our members recognize the continued efforts to use state-of-the-art building materials and implement green airport building standards. China can and should, however, undertake greater effort to raise awareness about the impact of construction processes on energy and the environment. Given the ongoing development of new airports and the expansion of existing airports in first and second-tier cities, the environment needs to be a point of focus. Adopting national standards for clean construction equipment and processes would lead to significant improvements in local air quality.

Progress and attention on effective and efficient national airspace system management will also have direct benefits on capacity, energy savings and emissions reduction, while maximizing the benefits of ECER-related programs. Well-planned airfield taxiway and gate layout design can substantially reduce aircraft taxi times. By focusing on procedures and airline operations that utilize the capabilities of aircraft equipped with the latest navigation technologies, CAAC's Air Traffic Management Bureau (ATMB) can achieve greater benefits for aviation sustainability.

AmCham China recommends that CAAC and ATMB continue the effective utilization of NextGen (US) and Single European Sky ATM Research (SESAR) (EU) technologies in the national

目前中国航空监管者面临的主要挑战，可持续发展，航空公司运营、标准和认证，以及通用航空与公务机航空。

现存监管问题

改革中国空域管理体系，提高运营效率

改革中国的国家空域管理体系对满足中国日益增长的航空发展需求至关重要，并有助于提高体系效率，同时减少航空业对环境的负面影响。通过加强中国现有航空体系的能力，这不仅包括高效、全系统范围的空域利用和管理，也包括减少燃料消耗、空气污染、飞行时间和航班延误，从中中国还会受益更多。这些措施也同样有助于新航空公司数量增长、促进飞行业务（包括通用航空与公务机航空）增长和新航线拓展。

空中交通流量激增对中国复杂的大型空域体系带来了巨大压力。尽管中国空域体系的安全性享有全球美誉，并继续扩大其客货运流量，但其面临的压力十分明显。这些压力包括全国范围内大量航班延迟，航路瓶颈和长期的航班时刻短缺。这些航班延迟和时刻短缺主要是缘于中国国家空域对民航的使用限制、低效的空域管理、管制过于严格，以及航班起降过于集中于有限的拥堵空域等。

中国民用航空局最近采取措施，对某些航班延误严重的机场进行处罚。处罚条例要求在空管、机场和航空公司未能有效提升航班准点率的情况下，不允许包机运营，也不允许增加新的航班运营。尽管实施这些措施的出发点是好的，但“惩罚箱”解决方案会对运营商和公众出行造成不利影响，也无法真正地解决问题。

商会对中国民用航空局通过协同决策系统（CDM）实施全国航空流量管理和全系统信息管理方面取得的进展表示欢迎。商会同时也认为，中国仍需推行更全面的全国性的空域改革，着重于灵活、安全和高效的系统管理，采用国际最佳实践案例，使之适用于中国独特的组织架构以满足自身发展需求。同时，中国还应着力防患于未然而不是航班延误后的应急响应，以更好地满足其航空系统的预期增长需求。

气候变化责任：推动节能减排和可持续发展

气候变化是一个重要的全球性问题。中国民用航空局自 2011 年发布《指导意见》以来，一直致力于推动航空业节能减排工作。该指导意见包含通过技术和管理创新来减

少能源消耗和二氧化碳排放的目标。去年，民航局还启动了《打赢蓝天保卫战三年行动计划》，新法规旨在推动使用更节能的车辆，减少辅助动力装置（APU）的使用，更多地使用地面动力装置（GPU）。

商会很高兴看到中国航空业在燃料节省和效率提高、发展航空生物燃料、推动清洁燃料地面服务设施发展，以及新技术产品安装和应用方面取得的进展。

商会会员企业注意到中国在使用最先进建筑材料和实施绿色机场建设标准方面所作的不断努力。然而，中国能够也应该更加努力地提高对施工建设过程对能源问题和环境影响的意识。鉴于中国一、二线城市新建、扩建机场项目的飞速发展，对环境问题需要重视。对建设施工的设备、流程采用国家绿色标准将大大改善当地空气质量。

关注并提高中国空域系统管理效率将为扩容、节能和减排带来直接效益，同时也能有效实现节能减排相关项目效益的最大化。合理的机场滑行道和登机口布局可以大大减少飞机的滑行时间。空中交通管理局通过着力于采用最新导航技术的程序及航线运营，将有助于其进一步推动航空的可持续发展。

商会建议中国民用航空局和空中交通管理局继续在国家航空系统中有效利用新一代（美国）和欧洲天空一体化航空流量管理研究技术，包括流程、评估方式和奖励机制，以鼓励所有参与者积极参与到中国的航空系统中来，包括空管中心、航空公司和机场，以推动流程优化，提高运营效率。

航空公司的运营和问题

对美国客运和货运航空公司而言，中国是其最大的市场之一，反之亦然。与 2017 年（71.25%）相比，中国 2018 年的准点率和出发率为 80.1%，有了显著改善。然而，该行业的改革并未跟上行业日益增长的需求。与国际其他同规模的机场相比，中国一些大型机场的到港和离港准点率表现非常差。商会建议通过以下措施加强航空运输业发展。其中许多建议都对中国的航空公司以及整个航空业有益。

提高航线运营灵活性

商会促请中国提供更多的航线运营灵活性，比如允许运营商通过所有的出入口来进行规划和运营，而非将其限制在当前的城市。国际运营商目前不被准许基于航行条件（如天气或航路因素）改变航线，也无力在涉及被军事管

aviation system management model, including work on procedures, measurements, and reward systems to encourage all participants in China's aviation system, including air traffic centers, airlines, and airports, to increase their use of new procedures and improve operational efficiency.

Air Carrier Operations and Issues

China is among the largest markets for US passenger and air cargo airlines and vice versa. China's 2018 on-time arrival and departure rate of 80.1% was a remarkable improvement compared to that of 2017 (71.25%). Sector reform has not, however, kept pace with growing industry needs. Many of China's larger airports have some of the worst on-time arrival and departure performances when compared to international airports of a similar size. AmCham China recommends the following measures to strengthen the air transportation sector. Many of these recommendations will benefit Chinese airlines as well as general industry development.

Route Operational Flexibility

AmCham China urges China to allow more operational route flexibility, such as permitting operators to plan and operate via all entry/exit points, instead of limiting them to the current city pair restrictions. International operators are currently not permitted to make changes to a flight route based on changing conditions (e.g. weather or other en-route factors) without undertaking a complex process involving military approvals that are subject to denial. Tactical and timely re-routing ability reduces airport congestion and delays and delivers better customer service. Such measures would require close coordination between airline operators, ATMB, and the military in a CDM process. China now has a state-of-the-art Flight Plan Processing Center (FPPC) capable of coordinating all international route requests. This has been a long-term issue with operators and is one of the highest priority issues with respect to flight operations to and from China. In addition, it is imperative that China consider improvements in the airspace and route system for routes to and from Shanghai which is, in the opinion of operators, very inefficient and prone to significant delays.

Improved Weather Forecasting

Improved weather forecasting and the timely use of forecasts is essential for solving issues related flight delays and safety. As most departures are committed more than two hours in advance, it is impossible to delay or cancel flights before takeoff, even if severe weather at the destination makes it impossible to land. These flights then enter holding patterns or are diverted to alternative airports, resulting in unnecessary fuel usage, pollution, increased flight controller and pilot workloads which decrease safety margins. The ability to operate in very low visibility (fog) depends on whether Instrument Landing Systems (ILS) or Ground-Based Augmentation (GBAS) systems have been implemented at

major airports that support Category 2 and, more importantly, Category 3 operations (visibility as low as 75 meters of Runway Visual Range (RVR)).

ILS and GBAS systems are standard for most major European and US airports. During low visibility conditions, flights continue to operate with fewer departure delays. Diversions of arriving aircraft are reduced. Last year, we were pleased to see that Beijing Capital Airport successfully tested the "Heads Up Display RVR 90 (HUD RVR 90) take-off and Category 3 (CAT III) approach. Shanghai Pudong Airport formally launched CAT III operations on its second runway. Furthermore, ten Chinese airports with an annual passenger volume over 30 million established Airport CDM (A-CDM) to help better manage airline passenger traffic.

Optimize Flight Slot Utilization

Slot constraints at China's major airports, including Beijing, Shanghai, and Guangzhou, increasingly hinder growth. Optimizing slot allocation procedures and utilization is necessary to meet the growth and efficiency targets set by the State Council. AmCham China recommends the following steps to further improve air services:

- Continue to improve and optimize slot allocation procedures for both domestic and foreign air carriers, and ensure slot allocation is in line with IATA's Worldwide Slot Guidelines;
- Establish a fair and transparent process including measures to ensure the timely re-allocation of unused or under-utilized slots;
- Encourage CAAC to replicate the slot allocation reform from Shanghai Pudong and Guangzhou Baiyun Airports to more airports, and allow "slot swap" between air carriers, instead of the current "auction" and "lottery plus paid fee" structure;
- Extend airport operating hours at key airports to increase capacity without the need for additional facilities;
- Ease or eliminate arbitrary limitations on daily operations which do not take into account of actual usage and encourage more use of off-peak hours;
- 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, aggravating air pollution.

Increase Hub Efficiency

There needs to be a continued emphasis on improving the operation of China's international gateway airports to make them more efficient as international and domestic hubs. Development of Beijing, Shanghai, and Guangzhou as

制拒绝时处理复杂流程。及时而有策略地重新规划航线的能力可以减少机场拥堵和延误，并为客户提供更好的服务。这些措施需要航空运营商、空中交通管理局以及协同决策体系流程中的军队部门的密切合作。中国如今拥有最先进的飞行计划处理中心（FPPC），能够协调所有的国际航线请求。这对运营商来说是一个长期性的问题，也是往返中国的航班运营中最优先考虑的问题之一。此外，中国必须考虑改善往返上海的航线的空域和航线系统，因为这在中国运营商看来效率非常低下，且很容易出现重大延误。

完善天气预报系统

高质量的天气预报，和对天气预报的及时利用，对解决航班准点问题至关重要。由于大部分航班都是提前两个小时出发，即便目的地天气恶劣到无法着陆，也不大可能在起飞前延误或取消。随后，这些航班将进入等待状态或者被转移到备选机场，从而导致不必要的燃料使用、污染、调控员和飞行员的工作量增加，从而降低了安全界限。在能见度很低的情况下，操作能力依赖于可支持二类和三类运营（跑道视程能见度为 75 米）的大型机场的仪表着陆系统和陆基增强系统。

仪表着陆系统和陆基增强系统是大多数欧洲和美国的大型机场都应满足的标准。在能见度较低的情况下，航班继续运营，起飞时间延误更少。将到达的飞机改道情况减少。去年，商会很高兴看到北京首都机场成功测试了“抬头显示器跑道视程能见度 90(HUD RVR 90) 起飞和三类运营方法”。上海浦东机场在其第二条跑道上正式启动了三类运营。此外，中国客运量超过 3000 万的 10 个中国机场建立了机场协同决策体系（A-CDM），以帮助更好地管理航空公司的客运量。

提高航班时刻利用效率

中国各大机场的航班时刻申请限制，包括北京、上海和广州，越来越阻碍了经济增长。优化航班时刻分配及利用流程有助于满足国务院的增长和效率目标。商会建议通过以下几步进一步改善航空服务：

- 继续改善和优化国内外航空公司的航班时刻分配程序，确保航班时刻利用符合国际航空运输协会的《全球航班时刻指南》；
- 建立公平和透明的程序，包括采取确保及时重新分配未使用航空时刻的措施。

- 鼓励中国民用航空局将上海浦东机场和广州白云机场的航班时刻分配改革推广到更多机场，允许航空公司的“航时交换”，而非仅仅的“拍卖”和“摇号加付费”模式；
- 增加主要机场的机场运营时间，无需额外设施即可提高运营能力；
- 减少或消除日常运营中没有考虑到实际使用的垄断限制，鼓励利用更多非高峰时间；
- 消除所有货运作业不得在白天运行的时刻限制，以及对双联合终端运营的限制；
- 继续着力于减少大型机场的地面延误。这种延误对下行线路连接、影响成本和客户不变造成重要影响。长时间的延误也会导致更多废气排放，加重空气污染。

提高枢纽效率

中国应继续致力于中国国际门户机场运营表现的提高，努力将它们打造成为国际和国内的交通枢纽。北京、上海和广州的枢纽机场发展对中国和美国航空公司都十分重要。中美都因为第三方国家而失去了市场份额，这些国家绕开中国的主要国际枢纽来吸引中美旅客和货运。据估计，中国超过 40% 的二线城市由来自国外枢纽的第三国航空公司提供服务。

应制定推动货运和客运及时换乘的政策，并简化行李处理流程。这将有助于中国在来自其他区域枢纽的环太平洋空中交通流量中获取更大比例。更多高效运营还可以改善客户体验，打开中美新的二级市场。

商会建议，通过允许北京和上海浦东机场的中转旅客托运行李来提高枢纽效率。这将为机场创造更多就业机会和收入，同时也能吸引更多中转至或来自某些北亚城市的乘客。枢纽运营的效率提高和合作对中美两国的航空公司都有益。

货运行业的问题

随着中国提高全球出口价值链，依赖于适时空中交通的国际物流行业发挥了越来越重要的作用。在“航班时刻协调”机场，面向所有货运运营商制定新的白天着陆和起飞时刻的全国政策，以及由于限制空域和时刻缺乏而导致的反联合终端运营政策，影响了快递运营。快递服务是中国对外贸易的核心，以上政策也影响着中国在全球供应链中

recognized hub airports is a high priority for US and Chinese airlines alike. China and the US are both losing market share to third-party countries whose airlines attract US-China passengers and cargo, bypassing China's primary international hubs. By one estimate, more than 40% of China's second-tier cities are served by third-country carriers from hubs outside of China.

Policies should be developed to facilitate timely transfers of cargo and passengers, as well as streamlined baggage handling. This would help China capture a larger share of Pacific Rim air traffic from other regional hubs. More efficient operations would also improve customer experience and open new, secondary markets between the US and China.

AmCham China recommends increasing hub efficiency by allowing baggage checks for transfer passengers in Beijing Capital and Shanghai Pudong. This will generate more jobs and revenue for airports, while also helping to attract more passengers transferring to or from other cities in Northeast Asia. An increase in efficient hub operations and code-share cooperation could result in carrier gains for both China and the US.

Cargo Industry Issues

The international logistics industry, which depends on well-timed air transportation, will be increasingly important to China as its economy moves up the global export value chain. Express delivery services have been negatively affected by a nationwide policy against giving new day-time landing and take-off slots to all-cargo operators at "slot coordinated" airports, as well as policies preventing co-terminalization operations between these airports. Express delivery services are central to China's foreign trade and these policies affect the country's competitiveness in global supply chains. There have been suggestions that CAAC may be considering a relaxation of the "freighter window," in which slots for all-cargo operations are limited to night-time hours at principal Chinese airports. Progress on this issue would provide welcome market relief.

Co-terminalization allows a carrier to service two or more locations 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., to 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 destinations by combining their services with larger, more established destinations, thereby maximizing efficiency and reducing costs, while also mitigating market risks for shippers and manufacturers.

Customs

As discussed in the 2018 *White Paper*, overly complex customs regulations continue to hamper the evolution and growth of the logistics industry in China. China currently lacks practical customs procedures to allow in-bound goods to flow through China's gateway airports within a realistic aviation timeframe. This deficiency discourages the movement of international air cargo to China's central and western regions. Affected carriers are increasingly moving hub operations to airports outside of China or not serving these internal regions at all. As the need for air cargo services grows and networks become more complex, the need for greater scheduling flexibility also 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 adapt their schedules to demand and to recover from schedule disruptions elsewhere in their networks.

Coordinating Efforts for Service Efficiency and Cost-Effectiveness

The already high costs at major Chinese airports continue to rise, further impeding aviation operations. Aviation fees in China are already among the highest in the region, while local monopolies on the provision of necessary supplies and services, such as fuel, cargo handling, and government filings, are an expensive drag on efficiency. 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 supervision on manufacturers and/or shippers of dangerous goods (e.g., lithium batteries). Our members strive to meet *China Civil Aviation Dangerous Goods Transportation Administration Regulations* (CCAR 276-R1) compliance requirements but remain concerned that other parties may not be doing so. Stronger enforcement of China's dangerous goods regulations on other parties such as manufacturers or shippers would be helpful.

General and Business Aviation Industry Development

Our members welcome China's commitments to the continued development of general aviation and business aviation (GABA). Recent progress, such as the simplification of permitting procedures for general and business aviation operations, is commendable. AmCham China also applauds the policy guidance and measures issued by the National Development and Reform Commission (NDRC) and State Council to further reform the aviation sector. These measures should be followed diligently as China implements the 13th Five-Year Plan (2016-20). Our members hope that the challenge of incorporating GA into China's national airspace

的竞争力。也有迹象表明，中国民用航空局可能正在考虑放宽“货机窗口”，这一政策规定所有货运运营的时刻受限于中国主要机场的夜间时间。这一问题的改善将进一步促进市场发展。

联合终端化允许航空公司连续旅程的相同架飞机服务外国两处或两处以上的地点。该航空公司不允许在两点之间承运国内交通（即从事沿海运输），但是可以在联合端点化地点或国外之外地点的任一地点提供航空服务。联合端点化允许航空公司，尤其是所有货运运营商，通过与更大、已设的目的地的服务相结合来发展面向更小内陆目的地的服务，从而帮助航空公司最大化飞机使用的效率，显著减少成本，同时减少货主和厂商的市场风险。

海关

商会在2018年《白皮书》中表示，过于复杂的海关持续阻碍中国物流业的发展和演变。目前中国缺乏在实际航空时间范围内允许入境货物通过中国的门户机场抵达的切实可行的海关流程。这一缺陷不利于国际航空货运流入中国中西部地区。受影响的航空公司越来越转向或受限在中国之外的机场枢纽运营，或者完全不服务这些内陆地区。随着航空货运服务的需求增长和网络的日益复杂，对调度灵活性的需求也随之增加。对货运服务的需求不是静态的，而是根据节假日、季节和消费者需求而不断变化。商会需要采取更为灵活和及时的程序，让航空货运承运人根据需求调整其计划安排，从容应对网络中所有的计划冲突。

协调服务效率和成本效益

中国主要机场本已高昂的成本持续呈现上升势头，进一步阻碍了航空业务的发展。中国的航空费用已经是这一地区最高的了，而当地对燃料、货物装卸和政府文件等必需物资和服务的垄断，更是极大地影响了效率。中国民用航空局、机场、边境机构和航空公司必须携手合作，减少中国的国际机场成本。

危险品条例的执行

商会建议中国对危险品（比如锂电池）的生产商和承运人实行更为严格的监管。商会会员努力满足《中国民用航空危险品运输管理规定》(CCAR 276-R1)的条件，但是仍然担心第三方可能不会严格执行本规定。对生产商和承运人等第三方实行更严格的中国危险品管理条例会大有裨益。

通用和商业航空业发展

商会会员欢迎中国对持续发展通用航空与公务机航空的承诺。最近取得的一些进展，比如简化了通用和公务航空运营的许可程序，这值得称赞。商会赞同中国发改委和国务院颁布的关于进一步改革航空业的指南和措施。中国实施“十三五”规划（2016–2020）的同时，这些措施也应得到实现。商会会员希望，将通用航空融入中国全国空域体系的挑战得到重视。通用航空的增长在很大程度上取决于中国政府改善设施和政策基础的行动。这些行动将提高中国的运输效率和流动性，刺激创造就业，并帮助满足人道主义需求。

商会建议进一步推动工作，实现以下几点：

- 继续支持开放所有高空域的举措。增加更为直接的航线，使通用航空与公务机航空飞行器可以在最佳飞行高度实现更佳的燃油利用效率并减少对环境的影响；
- 发展通用航空与公务机航空机场，完善和整合航空准入，支持固定基地运营商通过加油、设施维护及其他服务功能进行竞争；
- 基于通用航空与公务机航空的类型和航空运营商的不同，实施不同的安全条例，以精确采取安全风险调控措施；
- 完善航空服务站系统，提供在线天气预报等其他飞行计划信息和报文服务；
- 允许通航承运人访问国内航空信息，并将其与所需图表和地图相整合，支持全中国的飞行安全工作。适用“目视飞行规则”的航空信息出版物必须得到更广泛的应用。这些“目视飞行规则”的飞行安全取决于导航数据和图表的可获取性。

民用直升机行业

民用直升机行业也经历了实质性增长和发展，但具体的运营挑战依然存在。直升机机队在过去五年间增长了200%以上，目前已增加到约1200架。

在直升机行业的其他有益细分领域中，航空医疗服务和公共安全（包括执法，搜索和救援以及消防）需要给予重视和支持。

为了继续发展直升机行业，商会建议中国民航局：

- 建立一个由国际经验丰富的直升机专家组成的工作组，

system will remain a priority. GA growth depends heavily on Chinese government actions to improve physical and policy infrastructure. Such actions will provide China with greater efficiency and mobility in transportation, stimulate job creation, and help fulfill humanitarian needs.

AmCham China recommends more efforts be made along the following lines:

- Continue to support initiatives that would liberalize airspace at all altitudes. Increased direct routings enable GABA aircraft to operate at optimum altitudes for greater fuel efficiency and reduced environmental impacts;
- Develop GABA airports, improve and integrate access to commercial airports, and support competition amongst Fixed Base Operators with standards for fueling and maintenance facilities, and all other functions;
- Differentiate safety regulations based on types of GABA aircraft to accurately match risk mitigation to the cost of regulation;
- 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 so it can be integrated into the required charts and maps that support flight safety throughout China. The Aeronautical Information Publications for Visual Flight Rules (VFR) must also be more widely available. The safety of such VFR flights depends on the availability of navigational data and charts.

Civil Helicopter Industry

The civil helicopter industry has also experienced substantial growth and development, though specific operational challenges persist. The helicopter fleet has grown by more than 200% during the last five years to about 1,200 aircraft today.

Among other beneficial segments of the helicopter industry, Air Medical Services and Public Safety (including Law Enforcement, Search and Rescue, and Fire Fighting) require attention and support.

To continue the development of the helicopter industry, AmCham China recommends that CAAC:

- Establish a working group involving internationally experienced helicopter experts to provide best practices for policy and regulation development;
- Create helicopter routes through urban areas and a low altitude air-space infrastructure that combines helicopter and fixed-wing traffic simultaneously;
- Integrate helicopters and helipads into the development

of a tiered hospital system, with a standardized emergency response dispatch system;

- Provide government funding, subsidies, and support for air medical services and the advanced training and equipment required for operators and associated companies;
- Improve access for *foreign* flight training companies to conduct pilot training in China.

Aligning Validation Processes with International Standards

AmCham China congratulates CAAC on their first year of validation activity under the new FAA-CAAC Implementation Procedures for Airworthiness (IPA) and US-China Bilateral Aviation Safety Agreement (BASA) signed in October 2017. The FAA-CAAC IPA clearly indicates that the FAA and the CAAC are increasing collaboration, that the Chinese government is making an effort to reduce burdens on both regulators and industry, and that the industry is growing increasingly aligned with international validation principles. AmCham China recommends that CAAC increase its efforts with FAA to educate manufacturers on IPA and share best practices across the industry.

We commend CAAC for introducing some standard flow times to help with planning, while also acknowledging that these flows will not be met from time to time. Companies have found such measures to be mutually beneficial in projects with other agencies, such as the FAA and European Aviation Safety Agency (EASA), which have established flow times.

AmCham China members support CAAC and FAA's vision that the IPA increase project predictability and efficiency. We encourage FAA and CAAC's continued collaboration to clarify and simplify the special emphasis items (SEI), significant standards differences (SSD), and areas for further technical confidence building (AFTCB) lists. This collaboration is key to making the IPA a joint success for the US and China aviation industries. A process is needed to collect industry feedback from each individual project to further improve either the IPA or CAAC and FAA's implementing procedures.

In support of project predictability, AmCham China recommends that CAAC establish standard flow times for each project type (including Streamlined Validation (SV), Limited Technical Validation (LTV) and Full Technical Validation (FTV)). Procedures could be developed for each of the Safety Elements, especially SEI and AFTCB, so that applicants and CAAC have a mutual understanding of CAAC's expectations during a validation project. This should reduce the overall flow times and resources required from CAAC, FAA, and the applicant.

AmCham China members recognize that project-specific procedures and flow time details will be built into the

为政策和法规的制定提供最佳做法；

- 创建通过城市地区的直升机航线及将直升机和固定翼机相结合的低空空域基础设施；
- 将直升机和直升机停机坪整合到分层医院系统的研发中，并配备标准化的应急响应调度系统；
- 提供政府资金、补贴和对航空医疗服务的支持以及运营商和联营公司所需的高级培训和设备；
- 增加外国飞行培训公司进入中国进行飞行员培训的机会。

验证程序与国际标准接轨

商会对中国根据美国联邦航空管理局和中国民用航空局于 2017 年 10 月签署的新《适航实施程序》(IPA) 和《中美双边航空安全协议》而开展的第一年的验证活动表示祝贺。《适航实施程序》清楚地表明美国联邦航空管理局和中国民用航空局正在加强合作，中国政府正在努力减轻监管机构和行业的负担，并且该行业正日益与国际验证原则接轨。商会建议中国民用航空局加强与美国联邦航空管理局的合作，为制造商提供有关《适航实施程序》方面的教育，并分享整个行业的最佳实践。

商会建议中国民用航空局采取标准流程时间帮助规划，同时也理解到这些流程有时也难以实现。ACP 会员公司使用该套管理模式与其他机构（比如美国联邦航空管理局和欧洲航空安全局）合作时，也借鉴了该管理方法，达到了互利互惠的结果。公司发现这些措施对项目已建立了流程时间的其他机构也达到了相同的效果。

商会会员支持中国民用航空局和美国联邦航空管理局的愿景，即 IPA 将提高项目的可预测性和效率。我们鼓励美国联邦航空管理局和中国民用航空局继续合作，明确并简化特别重点项目 (SEI)、显著标准差异 (SSD) 以及进一步建立技术信心的领域 (AFTCB) 等清单。此次合作是使 IPA 成为美国和中国航空业共同取得成功的关键。同时，需要一个从每个项目中收集行业反馈的过程，以进一步改进 IPA 或中国民用航空局和美国联邦航空管理局的实施程序。

为支持项目可预测性，商会建议中国民用航空局为每个项目类型建立标准流程时间（包括简化验证 (SV)、有限技术验证 (LTV) 和完整技术验证 (FTV)）。可以为每个安全要素制定程序，特别是 SEI 和 AFTCB，以便申请人和中国民用航空局在验证项目期间相互理解中国民用

航空局的期望。这应该减少中国民用航空局、美国联邦航空管理局和申请人所需的总流程时间和资源。

商会会员认识到，具体项目的程序和流程时间等细节将纳入项目工作计划，并认为工作计划的好处是工作级别团队在整个项目中可以轻松更新。为支持此类灵活的项目协议，商会建议中国民用航空局考虑将工作计划内容和更新委派给认证中心的工作级别团队。这样可以避免与工作计划更新相关的流动时间增加，并允许美国联邦航空管理局、原始设备制造商和中国民用航空局专注于最高安全风险的领域。

即便面对繁重的启动和初始工作，审定中心的工作仍在有条不紊地进行，商会对此感到钦佩。商会鼓励中国民用航空局继续追求效率，减少标准流程，以期在未来几年获得更多的认证和验证量。商会也鼓励更多地强调 IPA 中的原则，以认可认证机构的工作。中国民用航空局应重点关注技术风险高的领域，以最大限度地提高效率。即便是航空体系快速发展给中国民航局带来了更多的监管挑战，商会仍认为《适航实施程序》是解决中国民用航空局巨大工作量的长效工具。

商会还注意到，中国民用航空局最近较为关注飞机交付授权审定检查方面的内容。这样的委任授权对中国民用航空局和各制造商都大有益处。商会成员公司支持中国民用航空局与美国联邦航空管理局、欧洲航空安全局、加拿大交通部、巴西国家民航局等其他航空机构继续开展密切合作，统一审定、验证、检查和制造验收的程序与流程。

需要中国民用航空局在零部件制造批准书方面给予指导和认可

商会会员支持中国民用航空局继续推动零部件制造人批准书 (PMA) 流程，这样一来，外国供应商可以向中国商飞的航空公司客户直接出售用于中国商飞 ARJ-21 和 C919 的飞机零部件和可替换配件。如果未建立适当的零部件制造人批准书流程与指导文件，飞机交付后，航线运行所需的零部件需要通过商飞引入，这流程并不实用，并且航空公司认为这一流程不利于其运营商飞飞机机型。商会促请中国民用航空局进一步开放市场，不附加后续限制条件或验证，更多地允许美国联邦航空管理局的零部件制造人批准书。这将有助于加速经验丰富且符合标准的大型产业基地建设，以加快流转时效和复杂解决方案的高效制定，进而保证飞机安全性。此外，美国联邦航空管理局的丰富经验可以追溯到 20 世纪 70 年代（超过 130 万个批准书），

project workplan. We see benefits in a workplan being easily updated throughout the project by working-level teams. To support such flexible project-specific agreements, AmCham China recommends that CAAC consider delegating workplan content and updates to the certification center working-level teams. This may avoid increased flowtime associated with workplan updates, and allow FAA, OEM, and CAAC to focus on the areas of highest safety risk.

Given the difficulties that certification centers face in starting operations and responding to heavy initial workloads, CAAC's recent gains are commendable. AmCham China encourages CAAC to continue to pursue efficiencies that decrease standard flows in anticipation of more certification and validation volume in the coming years. AmCham China also encourages greater emphasis on the principles in the IPA to recognize the work of the certifying authority. CAAC should focus on areas of high technical risk to maximize efficiency improvements. AmCham China recognizes the IPA as a long-term enabler supporting CAAC's substantial workload even as rapid growth in the aviation industry creates more regulatory challenges.

AmCham China also recognizes CAAC's recent interest in delegating certification inspection for aircraft delivery. The mutual benefit of such delegation to both CAAC workload and to manufacturers will be significant. AmCham China members encourage the CAAC to continue working closely with the FAA, EASA, Transport Canada, the National Civil Aviation Agency of Brazil (ANAC) and other aviation authorities to align certification, validation, inspection, and manufacturing approval procedures and processes.

Recognition and Guidance Needed for CAAC Parts Manufacturer Approval

Our members encourage CAAC to continue developing parts manufacturer approval (PMA) processes that would permit foreign suppliers to sell replacement parts, articles and components for the Commercial Aircraft Corporation of China (COMAC) ARJ-21 and C919 aircraft directly to COMAC's airline customers. Without proper PMA processes and guidance in place, parts required to support post-delivery airline operations would need to flow through COMAC, which is impractical and disincentivizes airlines from operating COMAC-type aircraft. AmCham China therefore urges CAAC to open its market to allow full acceptance of FAA PMA parts without validation or subsequent restriction. This will foster access to a large, experienced and vetted industry base capable of fast turnaround times and efficient development of complex solutions to ensure aircraft safety. Additionally, the FAA has tremendous experience (more than 1.3 million approvals) dating back to the 1970s, with very few concerns relating to airworthiness occurring in this period.

Regarding development of CAAC PMA, initial efforts should focus on parts with the lowest risk. The global PMA

industry has evolved to produce very complex parts, as well as parts with significant system interactions, including those that influence boundary conditions for life-limited parts (LLP).

AmCham China recognizes that CAAC will need substantial time to build the technical capability to support CAAC-based PMA applications of this caliber. We therefore recommend that CAAC seek training from FAA subject matter experts to ensure adequate rules and guidance materials are in place to address corollary processes, including:

- Instruction for Continued Airworthiness approvals;
- Analysis of system effects (especially with parts impacting thermally-balanced systems);
- Validation of airworthiness limitations when pma parts are introduced on parts that influence llp boundary conditions;
- Establishment of ownership for failure investigations when operating configurations have been modified differently from the type design; and
- Failure Malfunction and Defect reporting requirements for PMA holders.

It is also essential that CAAC PMA rules and guidance materials address assessment of design changes, both intentional and unintentional, that create untested operating configurations at the system level, in order to ensure compliance with all certification requirements. Notably, CAAC should review the recent guidance material issued by the FAA (2015) to address turbine engine PMA parts where the FAA has determined that part-level approval processes are inadequate for assessing system interactions that can be impacted by design changes introduced through PMA.

AmCham China encourages CAAC to work closely with the FAA, EASA, ANAC and Transport Canada to help CAAC inspectors gain experience in the delivery of aircraft. More broadly, we encourage CAAC to align its practices with other robust regulatory entities around the world. US companies are also able to provide expertise and support to CAAC inspectors regarding standardization of their aircraft delivery practice.

Recommendations

For the Chinese Government:

- **Increase efforts to adopt an integrated national ATFM framework that incorporates a SWIM system and CDM procedures for air traffic control, airline, and airport experts to enable growth and efficiency through enhanced system management that also alleviates delays.**

并且这一时期很少出现适航性问题。

关于中国民用航空局零部件制造人批准书的研发，最初应该集中在风险最低的部分。全球零部件制造人批准书行业已经发展为能生产非常复杂的零件，以及具有显著系统交互的零件，包括那些影响有限寿命零件（LLP）的边界条件的零件。

商会认识到中国民用航空局需要大量时间进行技术能力建设，以支持这种标准所要求的零部件制造人批准书申请。因此，商会建议中国民用航空局参加美国联邦航空局有关主题专家的培训，以确保制定适当的规定和章程指南，包括：

- 指导持续适航批准的指南；
- 系统影响分析（尤其是影响热平衡系统的零部件）；
- 针对影响有固定时限部件的边界条件的部件的零部件制造人批准书，采用验证适航限制；
- 当运行配置修改后与设计许可不相符，出现错误调查报告的时候，应建立问责制；以及
- 对零部件制造授权持证者的故障和错误上报应有明确的要求。

中国民用航空局的零部件制造授权规定和指导内容也必须解决设计变化的评估问题，创建未经测试的系统级操作配置，以确保符合所有审定要求。值得注意的是，中国民用航空局应审查美国联邦航空管理局（2015年）为解决涡轮发动机零部件制造授权问题而发布的最新指导文件，美国联邦航空管理局已确定部件级的审批程序不足以评估那些受到零部件制造授权设计变化影响的系统交互工作。

商会鼓励中国民用航空局与美国联邦航空管理局、欧洲航空安全局、巴西国家民航局，以及加拿大交通部继续开展密切合作，帮助其监察员获取更多的飞机交付经验。更广泛地说，商会鼓励中国民用航空局与全球各地的监管机构的流程相接轨。美国公司愿意向中国民用航空局的监察员提供关于飞机交付工作标准化的专业知识和全力支持。

建议

对中国政府：

- 进一步采用综合性的全国空中交通流量管理框架，包括关于空中交通控制、航空公司和机场专家的全系统信息管理体系和协同决策体系，通过减少延误的强化系统管理来促进增长和提高效率。
- 开发一套适合中国民用航空局业务的航空天气预报系统。优化中国主要枢纽机场的时刻分配和操作程序，提升调度灵活性。
- 将中国认证流程与国际标准接轨，进一步研发并扩展零部件制造人批准书流程。
- 继续推进实体和政策基础设施建设，推动中国全国空域体系的通用航空增长。
- 通过制定鼓励全系统应用方案，继续推动提高效率的新一代和单一欧洲天空空中交通管理研究技术在空中交通管理程序中的有效应用。

- Develop a state-of-the-art aviation weather forecasting system customized to CAAC operations. Optimize slot allocation and operational procedures at China's major hub airports and increase scheduling flexibility.
- Align certification processes with international standards and further develop and extend a part manufacturer approval (PMA) process.
- Continue to strengthen physical and policy infrastructure to enable GA growth within China's national airspace system.
- Continue the effective utilization of efficiency-boosting NextGen and SESAR technologies in air traffic management procedures by developing plans to encourage their system-wide use.

Direct Sales

Introduction

The direct sales industry was first introduced to the Chinese market in the early 1990s and has expanded rapidly since its introduction. Direct sales refer to the practice of marketing and selling products directly to the consumer outside a fixed retail location. Sales can happen at the home, workplace, or other non-store locations. According to statistics from the State Administration for Industry and Commerce (SAIC), there were 163 direct sales companies in China by 1995, reflecting the industry’s rapid early growth. The growth of direct sales operators was accompanied by a rise in “pyramid” schemes, a term for business models that prioritizes often unsustainable recruitment strategies rather than sales of tangible goods or services to generate revenue. Pyramid schemes are considered scams and are illegal in many countries. Despite the Chinese government’s commitment to eradicating such schemes, pyramid schemes often disguise themselves as legitimate direct sales businesses making it difficult for regulatory authorities to distinguish between legitimate and illegitimate operators.

To tackle pyramid schemes, the government has generally responded with strict industry-wide regulations that adversely affect legitimate industry stakeholders. An industry-wide ban instituted in 1998 was eventually lifted with the passage of the *Regulation on Direct Sales Administration* (Direct Sales Regulation) in 2005. According to the Ministry of Commerce (MOFCOM), as of December 2018, 91 direct sales enterprises had been approved for operation in China. According to the SAIC, the direct sales industry generated RMB 167.3 billion in sales revenue in 2017, up 9% from the previous year. The direct sales industry plays a positive role in promoting employment, consumption, and boosting tax revenue from small and medium enterprises (SMEs). As China transforms toward a high-value, consumption-based economy, the direct sales industry can play an important role.

It is important to acknowledge the Chinese government’s continued commitment to market-based reforms. AmCham China appreciates the steps taken over the past twenty years to regulate the direct sales industry. The provisions mandated by the 2005 *Direct Sales Regulation* (and related regulations) are no longer consistent, however, with the demands of

the current market or China’s changing consumer needs. Consequently, direct sales companies struggle to compete with other actors in the sales industry.

Ongoing Regulatory Issues

Excessive Regulation of the Direct Sales Industry Limit its Competitiveness

Online sales sectors, WeChat online stores, and platforms in the sharing economy (e.g., Didi Chuxing, Airbnb) have all benefitted from eased regulation over the past several decades. The Direct Sales Regulation however imposes strict restrictions on sales, employee compensation, recruitment and training, and daily operations. Facing a plethora of restrictions, it is difficult for the direct sales industry to compete fairly with conventional retailers and e-commerce platforms.

Summary table Comparing Regulations on Direct Sales Industry in China and the US

China	US
Direct sales companies (domestic and foreign-owned) can only sell products from one of six categories. These products must be manufactured by the company itself, or its parent or subsidiary company.	No restriction on the type or origin of products sold by direct sales firms.
Team commission compensation structures are not permitted.	No restrictions on the structure of company compensation model(s).
Direct sales companies must establish a local service center in every locality (county) where it operates	No requirements on the number or location of company service centers

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。直销是指在固定的零售场所以外直接向消费者销售产品的行为。销售可以发生在家，工作场所，或其他商店以外的地点。据国家工商行政管理总局（现已划归为国家市场监督管理总局）统计，截至1995年，中国已有163家直销公司，反映了该行业早期的快速发展。直销运营商的增长伴随着“传销”的兴起。“传销”指的是优先考虑不可持续的招聘战略的商业模式，而非通过销售有形商品或服务来创收。传销被认为是骗局，在许多国家是非法的。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。

政府采取严格监管的方式来遏制传销的蔓延，也影响了直销行业的发展。随着2005年《直销管理规例》的颁布，一项于1998年实施的全行业禁令最终得以解除。截至2018年12月，商务部网站公示全国共有91家企业通过审批获得直销经营许可。根据国家工商行政管理总局的数据，2017年直销市场经营总额达1673亿元，同比增长9%。直销行业对于促进就业、驱动消费、增加中小企业税收等方面，都表现出了十分积极的影响。随着中国向高价值、消费为基础的经济转型，直销行业将发挥重要作用。

中国美国商会（商会）要认可中国政府在市场改革方面做出的持续努力。商会赞赏中国政府在过去20年对监管直销行业所做出的努力。然而，2005年《直销管理规例》的条款（和相关条例）已经不符合当前市场或中国日益变化的消费者需求，从而导致直销公司与销售行业的其他公司竞争激烈。

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

网络销售，微商，以及共享经济平台（例如滴滴出行、爱彼迎）在过去几十年，均受益于宽松的监管环境。然而《直销管理规例》却对直销经营的各个方面，如计酬方法、人员招募及对直销员的培训日常经营行为均制定了严格的限制条款，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和电商平台展开公平竞争。

中美直销行业条例对比

中国	美国
直销公司（内资和外资公司）只能销售6种产品中的一种。这些产品必须由公司或其母公司或子公司自行生产。	不限制直销企业销售的产品种类和产地
禁止团队计酬补偿结构	公司薪酬模式结构不受限制。
直销公司必须在其经营的每个地区（县）建立当地服务中心。	对公司服务中心的数量和地点没有要求

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%。此外，《禁止传销条例》规定，禁止以整个团队（团队佣金）的销售总额作为报酬基础。这两项限制违

Restrictions on Sales Compensation

Current regulations restrict the type and amount of compensation for which direct sales employees are eligible. The *Direct Sales Regulation* limits sales commissions to a maximum of 30 percent of personal sales. In addition, the *Regulation on the Prohibition of Pyramid Selling* stipulates that compensation based on the total volume of sales by an entire team (team commission) is prohibited. These two restrictions run counter to standard industry practices and place unfair compensation restrictions on direct sales staff. More flexible compensation rates determined by market forces are common across competing sales industries. AmCham China recommends that these restrictions on direct sales be lifted.

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." This interpretation stated, for the first time, that "pyramid selling activities based on the sale of goods and for which sales performance is the basis for 'team commissions' will not be treated as criminal." The document also provided a judicial distinction between "multi-level selling and marketing" and "pyramid schemes." Multi-level marketing strategies are a common practice across the direct sales industry, thus AmCham views this interpretation as a positive development. Current regulations, however, need to be updated to reflect the Court's November 2013 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 e-commerce platforms have the freedom to choose what products to sell based on the needs of the market. They can choose to sell their own products, products manufactured by other entities on their behalf, or products manufactured by third party entities. The direct sales industry, however, is restricted to selling only products from the following six categories: cosmetics, cleaning supplies, select food items, healthcare devices, small kitchenware products, and household appliances. Direct sales enterprises are limited to selling company products (including those of its parent or holding company). In a rapidly evolving marketplace such restrictions directly disadvantage the direct sales industry. Moreover, these restrictions prevent the direct sales industry from taking advantage of globally integrated supply chains and original equipment manufacturers (OEMs) in China to support Chinese government efforts to reduce industrial overcapacity and enhance efficiency.

Existing Regulations are Inconsistent with Industry Needs

In 2005 the Direct Sales Regulation was consistent with industry needs and had a positive effect on the industry's

development. Sales volumes, business regulation, and public knowledge all improved as a result. Since the Direct Sales Regulation was issued in 2005, both the direct sales industry and the Chinese consumer market has fundamentally changed.

As China's economy has developed over the years, it has also become increasingly complex. The rise of e-commerce platforms, online stores, and sharing platforms have changed how Chinese consumers interact with retailers, producers, and the marketplace. Today's consumers are both familiar with and comfortable operating across a variety of online and brick-and-mortar retailers and platforms. Consumer protection and commercial distribution regulations have developed rapidly. Consequently, the framework established by the 2005 *Direct Sales Regulation* is no longer adequate to govern the industry and places direct sales enterprises at a distinct disadvantage vis-a-vis competitor firms in other industries.

Direct sales enterprises are still required to establish a customer service center in every city where they do business or where their products are marketed. The original intention of this regulation was to ensure the availability of after-sales consumer services at a time when online sales were not common. The rapid rise in global telecommunications, social media platforms, and electronic communication has rendered this requirement superfluous. Instead, these regulations force firms to invest unnecessary resources. AmCham China urges the relevant authorities to consider updating industry regulations on business operations like recruitment, compensation, training, and management in close consultation with industry stakeholders.

Recommendations

For MOFCOM, SAIC, and the State Council:

- **Revise the *Direct Sales Regulation* as soon as possible, by relaxing restrictions on compensation for direct sales agents and allowing compensation to be based on the aggregate volume of the sales team under a direct sales agent, provided 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 lift restrictions on the direct sales industry, including the following:
 - Ease product category restrictions and allow the sale of OEM products by direct sales firms;
 - Remove or relax local service center requirements;
 - Reduce restrictions on direct sales agent training and other daily operations by enterprises.

反了行业的标准做法，对直销人员实行了不公平的薪酬限制。然而，以市场为基础的灵活计酬方式是其他行业的普遍做法。因此，商会建议取消这些对直销的限制。

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。多层次的营销策略是直销行业的普遍做法，因此，商会认为这种解释是一种积极的进步，而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、健身器材、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）。在快速发展的市场中，这种限制直接对直销行业产生不利影响。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。

直销现有法规与行业需求脱节

2005年颁布的《直销条例》由于符合当时的行业需求，对行业发展产生了积极影响。销量、商业法规和公众对直销行业认识都得到了改善。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。

随着多年的发展，中国经济也变得越来越复杂。电商平台、网店和共享平台的兴起改变了中国消费者与零售商、生产商和市场的互动方式。今天的消费者对各种在线和实体零售商和平台上耳熟能详，且乐于使用这些平台。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发展脱节，与其他行业的竞争对手相比，直销企业处于明显的劣势。

举例而言，直销法规仍然要求直销企业在开展经营或营销产品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，全球电信、社交媒体平台和电子通信迅速崛起，这样的规定完全丧失现实意义，造成了企业资源的浪费。商会促请有关部门与行业利益相关者磋商，考虑更新有关商业运作的行业规定，包括招募、计酬、培训、管理等等，

建议

对商务部、国家市场监督管理总局、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。
- 尽快修订《直销管理条例》配套规定，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。
 - 取消或放松服务网点方面的要求。
 - 减少对直销员培训及企业日常经营行为的限制。

Education

Introduction

2018 marked the 40th anniversary of China's *Reform and Opening Up*. International education exchanges formed a pioneering element of China's early reform efforts. It was as early as the winter of 1978 that the college entrance examination (高考) was reinstated and China initiated a series of programs to encourage international education exchange. Foreign experts and scholars were invited to give lectures in China, and Chinese students began to go abroad for their education. AmCham China hopes education continues to play a leading role in China's opening and reform.

AmCham China acknowledges China's remarkable achievements in the field of education. Both primary (ages 6-11) and lower-secondary (ages 12-14) enrollment rates have reached close to 100%. Spending on education has exceeded 4% of GDP (meeting a government target) for six consecutive years. China sent over 600,000 students abroad for tertiary-level study in 2017, and the US remains a favored destination.

The October 2017 report of the 19th National Congress of the Communist Party of China (CPC) stated "As socialism with Chinese characteristics has entered a new era, the principal contradiction facing Chinese society has evolved. What we now face is the contradiction between unbalanced and inadequate development and the people's ever-growing needs for a better life." It also emphasized "giving priority to developing education" and "public respect for educators and support for education." To continue supporting these directives, foreign-invested education institutions must balance market demands with the desire to provide accessible education for all. Unfortunately, in recent years AmCham China members have encountered new challenges in domestic education, particularly in the private education sector. AmCham China urges the Chinese government to recognize, discuss, and address issues identified here.

At the National Education Conference on September 10, 2018, Premier Li Keqiang called for streamlining administration and improving regulation and services in education. He noted the Chinese government "must respect the law of education development, give full play to schools as a main body, significantly reduce various types of inspections, assessments, evaluations, and strengthen guidance on the

orientation, standards, and quality for running a school to create a good environment for schools to focus on management. We also encourage law-based social support to education." This statement summarizes the reforms desired by AmCham China members.

Higher Education and International Education Exchange

Over the past 40 years of *Reform and Opening Up*, China's education sector has undergone remarkable change. Higher education has benefitted immensely; China now has over 30 million students enrolled in higher education (2017), helping to power China's economic development.

In 1986 the Johns Hopkins University-Nanjing University Center for Chinese and American Studies became the first joint China-US school in China. In October 2012 New York University-Shanghai was founded and enrolled its first undergraduate students in August 2013. In September 2013 Duke University-Kunshan University was approved by the Ministry of Education (MOE) of China and the first class matriculated in 2014. These are successful examples of China-US cooperation in higher education and have promoted a growing number of student exchanges. Moreover, the US-China Consultation on People-to-People Exchange (CPE) held its 7th annual meeting in 2016 in Beijing, chaired by Secretary of State John Kerry and Vice Premier Liu Yandong. The CPE aims to strengthen relations between the US and China in culture, education, sports, women's issues, and health.

AmCham China is highly supportive of the efforts of both governments to promote education and cultural exchange. We hope these exchanges continue as they are mutually beneficial. Opening China's higher education sector to foreign student participation will improve its global competitiveness. At the same time, Chinese overseas students are an important source of enrollment and tuition resources for American universities. Reports in July 2018 that the US was considering restricting visas to Chinese graduate students in science and technology fields are unhelpful and will only serve to undermine the US higher education industry, which remains the global standard.

The Special Management Measures for Foreign Investment

教育

引言



今年是中国改革开放 40 周年，而改革开放是始于教育的。可以说教育是中国改革开放的先行领域，是对外交流的排头兵。1978 年冬季恢复高考，之后不久开始了双向的教育国际交流，即邀请国外的专家学者来华讲学，并开始向发达国家派遣留学生，值得特别提及。中国美国商会希望教育在改革开放中继续先行！

中国美国商会赞赏中国在教育领域，特别是教育国际交流方面取得的显著成就！基础教育方面，九年义务教育稳步扎实发展小学（6-11 岁）和初中（12-14 岁）入学率接近 100%。国家财政拨款对教育的投入连续 6 年达到规划中的占 GDP4% 的目标。现在，中国已成为最大的留学生输出国家（2017 年中国的出国高中后留学生达到 60 万）。美国则成为中国留学生最喜欢的目的地之一。

中国共产党 19 届大会报告指出：“中国特色社会主义进入新时代，我国社会主要矛盾已经转化为人民日益增长的美好生活需要和不平衡不充分的发展之间的矛盾。”又提出“优先发展教育事业”和“支持和规范社会力量兴办教育”。教育的需求反映了人民对美好生活需要的追求，外资教育在这方面的努力即适应市场需求，又满足人民的需求。当前，中国美国商会的会员在教育投资方面遇到一系列新问题与困难，近两年主要是在民办教育领域，下文会有专门论说，希望中国政府给予重视、疏导与解决。

在 2018 年 9 月 10 日召开的全国教育大会上，李克强总理要求，“要深化教育领域‘放管服’改革，充分释放教育事业发展生机活力。尊重教育发展规律，充分发挥学校办学主体作用，大幅减少各类检查、评估、评价，加强对办学方向、标准、质量的规范引导，为学校潜心治校办学创造良好环境。积极鼓励社会力量依法兴办教育”。这正是教育培训提供者所期盼的！

高等教育与国际交流

改革开放 40 年来，中国的教育发生了巨大的变化，特别是高等教育的发展令人瞩目，其规模已经跃居世界第一，拥有 3 千多万在读大学生，为经济发展提供了人才支撑。

中美之间的“中美人文交流高层磋商”进行了 7 轮，极大地丰富了双方在教育和人文领域的交流。中美共建大学模式的发展，从早期的南京大学 - 约翰斯·霍普金斯大学中美文化研究中心（成立于 1986 年）、到近年来的上海纽约大学（2012 年 10 月 15 日，学校正式挂牌成立。2013 年 8 月，第一批本科生入学学习。）以及昆山杜克大学（学校于 2013 年 9 月获得教育部批准正式设立，并于 2014 年秋季迎来首批学生。），皆为中美双方合作办学的成功案例，促进了双方的教育人文交流，培养了一大批活跃在中美各个行业，特别是经贸领域的能人。

中国美国商会高度赞扬中美两国政府对人文交流的高瞻远瞩！并希望这种交流持续扩大。这将有利于中国高等教育的健康发展，因为从世界各国高等教育及一流大学的经历看，面向世界开放办学才是大学的成功之道。同时，中国留学生群体为美国各大学提供生源、学费，也有利于美国高等教育的持续发展。再者，这将为中美双方的广泛交流提供人才保障。

我们注意到中国商务部 2018 年 6 月 28 日颁布了《外商投资准入特别管理措施（负面清单）（2018 年版）》，里面有关于高等教育的一些限制性政策。我们期待着中国有关部门能同外商共同探索如何充分利用全球优质高等教育资源和资金，助力中国高等教育国际化发展，使更多中国家庭获得高质量教育机会。

基础教育 K-12 Education

改革开放 40 年来，中国经济社会发展迅速，人均可支配收入明显提高，人民对教育的需求有增无减，对教育提出了全方位、各阶段的更高要求。外资本着有需求，就有

Access (2018 Negative List) was released by the Ministry of Commerce (MOFCOM) on June 28, 2018. AmCham China notes that the education sector is still heavily restricted to foreign investment. Foreign investors in higher education are still subject to joint ventures restricting their investment to less than 50%. We look forward to working with the Chinese government to explore how to make full use of available international, high-quality resources for higher education and funds to promote the internationalization of China's higher education and to enable more Chinese families to obtain quality education opportunities.

K-12 Education

China's rising middle class has greater disposable income to invest in education products. As long as demand remains strong, the education sector will remain an attractive destination for foreign investors.

Foreign-invested international schools educate not only the children of foreign diplomats and expats, but also provide opportunities for Chinese children to engage with their foreign peers and gain exposure to international education opportunities. They are an important element in China's education ecosystem. AmCham China hopes that the Chinese government will continue to support international schools.

Private education training has been among China's fastest growing sector in recent years. Rapid growth has been accompanied by a mixture of good and bad educational practices, as well as complications stemming from issues not yet stipulated under law. AmCham China recognizes the importance placed on this sector by the Chinese government and has maintained a cooperative stance in the face of government-led inspections of private education facilities, including foreign-invested education institutions. AmCham China urges respect for teachers and the classroom environment and that these inspections be conducted in line with relevant laws and regulations. Inspections of educational sites should not be conducted in the same manner as inspections of manufacturing sites. AmCham China therefore suggests:

- Law enforcement inspection officers receive pre-employment training to carry out inspections in accordance with relevant laws and regulations;
- Regulatory authorities avoid excessive and repeated inspections by relevant departments, including education, industry and commerce (i.e. market supervision), and fire and work safety departments;
- Recognize that adult and minors education training institutions should be treated differently.

Inconsistencies in the Legal Environment Complicates Investment

Prior to 2016, foreign investment in private training and education facilities was a relatively smooth process. There

were no specific restrictions on foreign-invested educational institutions and private education was not included in the Negative List.

In November 2016 an updated *Law of the People's Republic of China on the Promotion of Private Education* (the Law) was adopted and implemented in September 2017. The Law drew a distinction between for-profit and non-profit education institutions. For the first time, the Law legally recognized for-profit private education institutions. Article 19 of the Law stipulates "For-profit private schools can legally generate revenue and school profits must be managed in accordance with the relevant laws." AmCham China recommended in the 2017 White Paper that the Chinese government lift restrictions on for-profit educational institutions. We are pleased to see this positive change.

Since the revision of the Law in September 2017, provincial and local education authorities in certain locations have entered a holding pattern and stopped issuing "education permits" because they are waiting for formal implementing regulations to be released. To work around the delay, local authorities have begun issuing temporary, localized regulations and permits to govern education institutions. But these temporary regulations lack a solid legal and operational basis and are often inconsistent.

These challenges are compounded by the fact that the implementing regulations for the Law have yet to be introduced. In April 2018, the MOE solicited public opinions on draft implementing regulations. After significant feedback, the MOE submitted the regulations to the Ministry of Justice (MOJ), which in turn solicited further public comment on August 10, 2018. As of March 2019, the final implementing regulations have not been published. On August 22, 2018, however, the State Council issued a document titled *Opinions of the General Office of the State Council on Regulating the Development of Off-Campus Training Institutions* (Circular No. 80). This was followed by the *Notification of the General Office of the Ministry of Education on Accomplishing the Special Governance and Rectification of on Off-Campus Training Institution* (the Notification), published on September 3, 2018. The publication of these documents was then followed by a nationwide inspection campaign of private educational institutions, including foreign-invested education training organizations.

This has raised pressing questions for the industry, namely, are Circular No. 80, the Notification, and the Law consistent? Where they vary, which regulations are education institutions subject to and which take precedence? An example of such discrepancy: The Law considers some subjects (English, art, dance), as non-academic and thus exempt from the required "education permits" or regulatory inspections. Circular No. 80 by contrast requires all classes be inspected and operate with an "education permit." This has also created situations where legally registered companies are unable to operate because the relevant education permits

业务可做、有发挥用武之地的市场原则，依据相关的法律法规，前来投资。

外商投资国际学校不仅对外交官和外派工作人员子女的教育很重要，而且对有出国念高中和大学愿望的中国儿童也很重要。它们是中国教育生态系统的重要组成部分，中国美国商会希望政府给予持续的关注与支持。

近年来，发展最为迅猛的是民办教育培训领域。在快速发展的过程中难免鱼龙混杂，出现一些法律尚未规范的问题，中国美国商会认同政府对民办教育培训这一快速发展行业的规范和治理，乐于见到政府对教育领域的重视，并积极配合政府对民办教育（含外资教育机构）行业检查行动。但希望在密集的大检查中，依法依规，尊重教育环境与教师。无论如何，教育机构的检查是不能等同于对生产企业的检查！为此，我们提出以下几点建议供参考：

- 执法人员进行上岗前培训，充分和完整地理解法律法规及相关文件；
- 避免多部门分别进行的多次重复的检查（检查涉及教育、工商暨市场监管、消防、安检等多个部门）；
- 区别对待成人与青少年培训机构。

外资办教育的准入与法制环境滞后的矛盾

2016年之前，外资的准入遵循《外商投资法》等相关法律法规注册运营，主要是建立国际学校及社会所需的专项培训，比较顺利。目前，根据《外商投资法》的规定，外资教育机构投资并无特别限制，而且均不在“负面清单”之列，属于备案即可的范畴。

2016年11月，《中华人民共和国民办教育促进法》第二次修订通过，于2017年9月1日起实施。从外商投资的角度看，《民办教育促进法》（以下简称：《民促法》）的要点之一就是区别对待“营利”与“非营利”的教育机构。换言之，就是承认了营利性的民办教育机构，并给予合法地位。该法第十九条明确规定：“营利性民办学校的举办者可以取得办学收益，学校的办学结余依照公司法等有关法律、行政法规的规定处理。”中国美国商会在其2017年的《白皮书》中，曾建议中国政府取消对营利教育机构的限制，因此我们非常欣喜地看到这一积极的变化，并对此表示高度赞赏！

然而，随着《民促法》的修订，却出现了这样的现象：各级政府踌躇不前，有的地方两年来停滞了审批新的机构、

停止颁发“办学许可证”；有的地方自己出台“暂行办法”等地方政策法规，开始整治民办教育机构领域，但也缺乏坚实的法律基础及法律的严谨性。原因只有一个：等候“实施条例”的出台。2018年4月，教育部将“实施条例”挂到网上，公开征求社会意见，据说收到上千条反馈意见。2018年8月10日，司法部又对送审稿进行另一轮征求意见。可至今，未见主管的司法部发布最终的《民办教育促进法实施条例》。期间国务院于2018年8月22日发文，《国务院办公厅关于规范校外培训机构发展的意见》（国办发〔2018〕80号），2018年9月3日教育部发布了《国务院办公厅关于切实做好校外培训机构专项治理整改工作的通知》，各地政府开始大规模治理民办教育领域、民办教育机构，包括外资培训机构。问题和困惑来了：国务院的《意见》、教育部的《通知》与《民促法》是否一致？不同的条款，以法为准？这种差异的一个例子是：法律认为某些科目（英语，艺术，舞蹈）是非学术性的，因此免于所要求的“教育许可”或监管检查。相比之下，第80号通知要求对所有课程进行检查，并以“教育许可证”进行操作。上述情况给从事教育的会员造成困难，实际上面临着“准人不准营”的窘境。

基础教育阶段的培训机构近段时间面临问题可以归纳为：

- 缺乏清晰的统一法律法规，立法滞后；
- 法律与政府文件之间有矛盾，对执法机构和外资培训机构都造成混乱；
- 中央与地方、以及各地政府部门对法律的理解不一致；
- 新的法律或政策出台缺少过渡期，整改期。
- 涉及全行业的政策性文件出台前未面向社会、企业、行业协会征求意见及建议。

中国美国商会期望商务部、教育部及其他相关部门能够及时协调解决这一问题（至截稿时止，商会了解到，商务部与教育部已经开始就此问题展开协调工作。我们希望此问题能尽早得以解决）。同时，期待《民办教育促进法实施条例》的尽快出台，以使政府主管部门暨执法者、及教育培训举办者皆明确如何执法和守法。

外籍教师面临的困难

外商投资的国际学校及培训机构均大量聘用外籍教师，以外语为例，这使得中国的学生（包括成人和青少年）可

have not been granted.

In summary, the main challenges facing K-12 private education institutions are:

- Ambiguous and fragmented regulations. Implementation of regulation is failing to keep pace with the sector's needs;
- Inconsistency between various published regulations, laws, and opinions;
- Inconsistent implementation of regulations between national, provincial, and local branches of government;
- The lack of a temporary transition period (or grace period) to accommodate understanding of and compliance with new regulations;
- The government's policy is to allow the participation of industry stakeholders, society, and industry associations in the drafting of industry-wide policies. This has not always been consistent with members' experience.

AmCham China urges the central government, in particular MOFCOM and MOE, to continue their ongoing coordination to address these issues in a timely manner. (As of the time of publication, we have learned that MOFCOM and MOE are currently working to address these issues and we hope for a solution soon). Meanwhile, we urge the publication of implementation regulations for the Law as soon as possible to enable effective implementation, enforcement, and compliance.

Difficulties Facing Foreign Teachers

Foreign-invested international schools and education institutions employ many foreign teachers. Foreign teachers bring a unique skillset and enable Chinese students to benefit by learning foreign languages and subject material directly from native speakers. AmCham China appreciates the Chinese government's efforts to standardize and streamline the visa application and Work Permit process. The Foreign National Work Permit program launched in April 2017 helps schools initiate Work Permit applications and classifies foreign workers according to three categories: A, high-end talent; B, industry professionals (including foreign teachers), and C, seasonal/temporary laborers. The assessment standards for A, B, and C categories remain unclear. Demands for original and authenticated application materials combined with the requirement that applicants be 25 years or older with more than two years of work experience are too onerous and dissuade young foreign talent from coming to China.

AmCham China recommends simplifying the time-consuming document notarization and authentication process required for Work Permits in ways that guarantee the authenticity of these documents without imposing unnecessary administrative burdens. We suggest applicants be allowed to submit original documents in lieu of authenticated copies of the same documents. (For further discussion

of ongoing visa issues for foreigners in China please refer to the Visa Chapter).

Difficulties Facing Foreign Students

China is becoming an increasingly attractive destination for foreign students. China's MOE estimates roughly 489,000 foreign students were studying in China in 2017, up from 290,000 in 2011. Close to 11% of the total foreign student population is from the US. Despite its increasing popularity, foreign students still face visa challenges that inhibit their ability to work and study in China.

Foreign students must leave China to transfer their visas. International students hired in China after graduation must apply from outside China to transfer their student visa to a work visa, a costly process for students (financially) and employers (delays hiring). AmCham China urges the Chinese government to amend regulations to allow students to transfer their visas within China. AmCham China is, however, encouraged by the December 2017 announcement that the entry/exit bureaus of Chaoyang and Shunyi districts in Beijing were expanding their services to issue work and study permits and handle matters relating to permanent residency for foreigners. This is the first time that responsibility for entry/exit procedures has been devolved to the district level. AmCham China encourages additional policies that continue to make it easier for qualified students and professionals to obtain the relevant visas and documentation.

Online Education

The growth of artificial intelligence (AI) has also begun to impact the education sector. Online education has expanded education service delivery more widely across the population. The use of AI technologies will help service providers meet demands for continuing education. At the same time, the growth of online education will increasingly demand that legislation keep pace in order to improve service delivery while streamlining administration. AmCham China urges the Chinese government will continue to support the development of online education and guide the regulatory environment in a sustainable and inclusive manner in order to make lifelong education a reality.

Recommendations

For the Chinese Government:

- **Consistent with the past 40 years of *Reform and Opening Up*, continue to design, implement, and legislate policies to promote a more open, accessible, and sustainable education sector.**
- Clarify and disseminate implementation regula-

以直接与母语教师学习外语。当然，外籍教师到中国任教需要遵守中国的法律法规。中国美国商会赞赏中国政府对签证及工作许可申请流程的标准化措施。2017年4月这一新规开始实施，使得申请学校和机构有章可循。但目前对外籍人才的A, B, C类别的评定标准仍不是很清楚，同时，对申请者原户籍的若干证明材料的要求、对申请者的年龄、工作两年以上的经验等规定过于死板，都会影响优秀年轻外国人才来华任教。这些人才/专家可能会因为准备申请耗费时间而转往他国。

中国美国商会建议简化繁重的文件公证和工作许可证的认证要求，这些要求并不一定证明文件的真实性，但会造成耽搁和行政负担。工作许可证申请人应获准提交原件或公证/法律文件。有关工作许可证申请要求的更多细节，请参阅**签证政策**一章。

外籍学生面临的困难

近年来，随着中国高等教育与国际交流的发展，引起了外国大学生的关注。与此同时，这部分外籍学生也遇到一些挑战：外籍在华留学生转换签证种类时必须离境办理申请，例如留学生在华学习期满后找到本地工作，将学生签证转为工作签证时，必须到中国以外的国家申请等，这带来操作上的不便，我们希望外国学生能在中国境内直接转换签证。

中国创新创业教育与国际交流，在让世界了解中国的同时，也吸引了一批外国大学生毕业后在华参与创新创业、定居，或者假期来华实习，期待着中国的相关签证政策支持并鼓励这个群体。我们也欣喜地看到在中国境内若干地区为此做出的积极尝试，如2018年北京朝阳和顺义两个服务示范区颁布了新十条政策，支持外国青年学生来华寻找工作实习机会，此外签证政策也支持正在中国留学的外国大学生选择毕业在中国创业，我们期待这类政策和经验能在全中国推广。

关于线上教育

随着科技进步的日新月异，人工智能已经开始应用于教育领域，线上教育服务更是如虎添翼，极大地促进了教育的普及发展。可以说，教育行业是人工智能的先行应用领域之一，将能更好的满足广大群众对教育的需求。同时，线上教育会有先行领域的特点，即法律立法的滞后与如何“放管服”的问题。中国美国商会希望线上教育的发展得到政府及各方的鼓励和支持，让终身教育成为现实！

建议

对中国政府：

- 在改革开放40年的基础上，继续在高等教育领域实行积极的开放政策。
- 尽快完成并发布《中华人民共和国民办教育促进法实施条例》，依法规范治理民办教育领域，保证“促进”和“鼓励”落到实处。
- 对民办教育机构的大检查和规范管理，需要对执法者进行岗前培训，以确保国家的政令得以完整准确执行！避免伤害整个行业。
- 根据过去二年签证工作类别体系的实践，改善并适当放宽外籍教师的申请程序，以保证优秀人才来华任教。
- 支持并鼓励人工智能及最新科技融入教育，造福于人民并惠及广大受教育者。

对美国政府：

- 继续执行美中之间达成的一系列教育人文交流的协议，这对两国的高等院校及年青学生皆有益。
- 保持和尊重中美双方的签证互惠政策，特别是赴美中国学生的签证政策的稳定性。
- 支持和鼓励教育服务行业的双向交流，这是美国顺差的领域。

tions of the Law as soon as possible. Govern private education institutions according to standards defined by the Law.

- Offer employment training on school inspections and management standards to regulatory officials to ensure that government regulations are fully executed while avoiding policies that harm the entire industry.
- Simplify visa and work permit application procedures for foreign teachers under the Foreign National Work Authorization Program to ensure China can attract the highest quality teachers. Introduce policies that enable foreign students studying in China to transfer to a Work Permit if they have accepted a job.
- Actively support and regulate the integration of AI technologies across the education sector to encourage lifelong learning.

For the US Government:

- **Continue to implement China-US bilateral exchange programs in education, culture, and humanities among others, which benefit students and higher education institutions of both countries.**
- Continue to admit Chinese students on appropriate visas to study at US institutions, which benefits the US higher education system and helps it maintain its global competitiveness.
- Encourage the exchange of educational services, a field in which the US is a global leader.

Express Delivery Services

Introduction

China overtook the United States in 2014 as the world’s largest market for Express Delivery Services (EDS) (by volume). Powered by the growth in E-commerce platforms, between 2012 and 2017 the Chinese market maintained an annual 50% growth rate. In the first 8 months of 2018, the market reportedly grew nearly 27% year-on-year (y/y). To keep up with the industry’s growth, the Chinese government embarked on a program to strengthen nationwide EDS security standards.

In 2015, 13 regulatory agencies jointly issued reforms to strengthen security for EDS logistics and shipping operations. Also in 2015, the government implemented the “Three

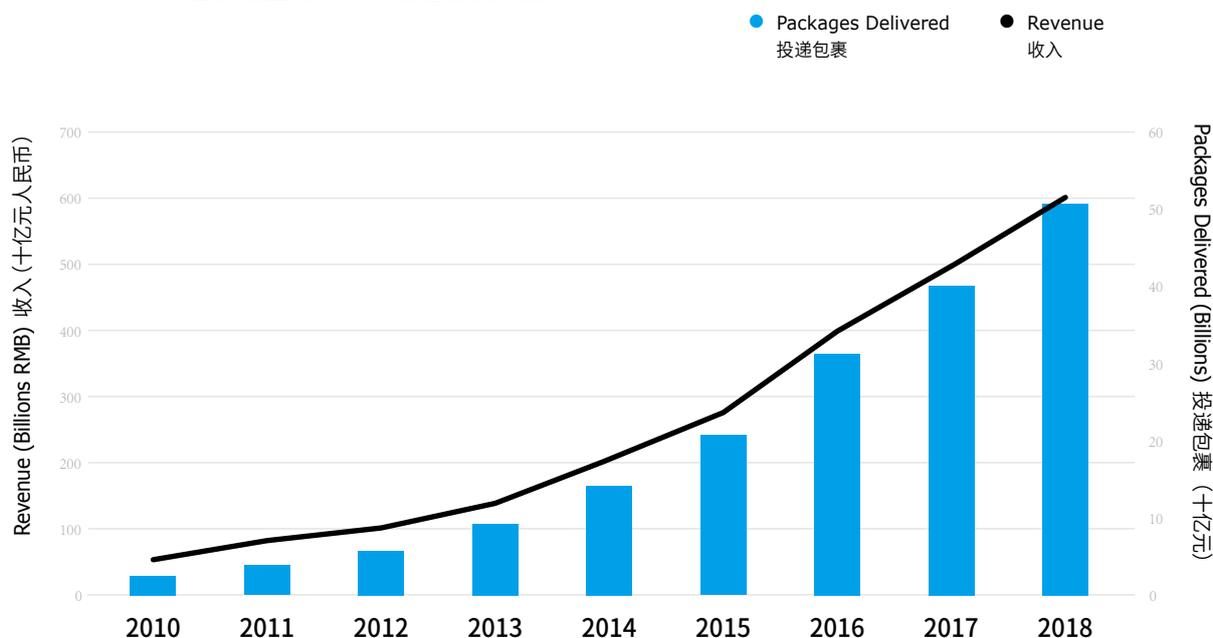
100 percent” measures nationwide, which mandated:

- 100% name registration of EDS operators;
- open-box inspection of 100% of EDS packages;
- 100% X-ray inspection of EDS packages.

AmCham China members want to participate in the development of security standards for the EDS sector and we believe these policies should reflect reasonable, industry-specific conditions. We encourage the regulatory authorities to avoid “one size fits all” measures that impede normal business operations and create unnecessarily high operating costs. Currently, there is no nationwide coordination mechanism that links the Ministry of Public Security (MPS) and the postal service administrative systems. Provincial public security departments have varying security regulations for

Revenue and Packages Delivered in the Express Delivery Sector, China, 2010-2018.

2010-2018 年中国快递业的收入和递送包裹数量



Source: State Postal Bureau
 源自：国家邮政局

快递服务

引言

2014年，中国取代美国成为全球最大的快递服务（按量计算）市场。2012年至2017年间，电子商务平台持续增长，推动中国快递服务市场年增长率保持在50%ⁱ。据报道，2018年前8个月，快递服务市场同比增长近27%ⁱⁱ。为跟上行业发展，中国政府启动了一项加强全国快递服务业安全标准的计划。

2015年，13个监管部门联合启动加强快递物流和装运安全的改革；同年还在全国范围内实施了“三个百分百”的措施，规定：

- 100% 实名收寄；
- 100% 收寄验视；
- 100% 过机安检。

中国美国商会（商会）成员希望参与制定快递服务行业安全标准，同时认为相关政策应充分合理地考虑行业特点和情况，监管部门应避免“一刀切”的做法，妨碍正常运营，造成不必要的高运营成本。目前，国家层面缺乏联动公安部和邮政管理系统的协调机制。省级公安部门对用于跟踪货物运输的快递数据采集技术和X光安检设备制定不同的安全规定，许多企业必须重复投资高昂设备才能达到不同省份的要求。这些投资降低了企业效率，与国务院此前关于简政放权、为企业减负的政策要求相违背，同时不必要地增加了企业成本，阻碍其发展。

鉴于《网络安全法》中关于数据出境安全等一系列新技术规范和标准于2017年出台，今后快递行业在数据监管和出境安全评估方面必将面临更多的挑战。国际快递业务对于全球商业至关重要。商会促请相关部门在做出任何影响数据管理和评估体系以及可能影响企业日常业务的决定时，能够充分考虑快递行业的特点，允许企业参与标准制定与规定修订。

商会期待相关监管部门在以上政策的制定过程中，能够采取更为平衡的方式审视监管与行业发展之间的关系。通过这种方式，相关部门既能实现有效监管，又能支持和促进行业健康稳定发展，同时还能推动出台更完善的安全措施。

现存监管问题

安全监管问题

商会企业反映日常业务由于各种监管要求对业务造成了影响，主要体现在以下方面：

数据收集和监管：

地方公安要求企业配备符合地方安全标准的安检设备，并要求实现设备与公安的监控中心实现数据图像对接。2015年，全国已经部署了快递安全追踪系统。包括外资企业在内的快递企业均在各自站点和分拣中心购买和配置了X光机安检设备，但是地方公安的技术标准与邮政管理部门的技术标准互不相同。例如，许多省份采用不同的X光机技术规格，需要购买不同的设备。标准不同造成企业需要重复采购和配置设备。特别是在商会企业运营的国际转运中心内，目前已经配置了机场和海关要求的安全管理设备。如果还要求配置新的设备，会增加企业运营成本，降低效率。此外，鉴于当前设备尺寸，国际转运中心也没有足够空间容纳多余设备。

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”。

虽然20号文件没有直接提到快递服务行业，但明确要

EDS data collection techniques and x-ray equipment used to track shipments, forcing many businesses to make costly, overlapping investments to meet varying provincial requirements. These investments reduce corporate efficiency and undermine previous State Council directives to streamline administration and reduce administrative burdens, while unnecessarily raising costs and impeding growth.

New technical standards and regulations for cross-border data transfers introduced in 2017 under the national *Cybersecurity Law* are already imposing additional challenges on the EDS sector. International EDS services are an important sector of global commerce. As such, AmCham China urges that any changes to regulations regarding the construction and operation of data management and evaluation systems that impact daily operations, take into consideration the specific characteristics of the EDS industry and allow companies to participate in standards formulation and regulatory development on an equal basis.

Relevant regulatory authorities are urged to consider the connection between regulation and industry development in a more balanced manner. In this way, authorities can maintain effective regulation, while supporting and promoting healthy and stable industry development and robust security measures.

Ongoing Regulatory Issues

Safety Supervision

Current regulatory requirements impact the day-to-day operations of AmCham EDS members. The strongest impacts are in the following areas:

Data Collection and Monitoring

Regional public security bureaus require EDS operators to align their security monitoring facilities with local security standards (determined by the local police) and connect their imaging databases with public security monitoring centers. In 2015, a nationwide security tracking system for EDS was deployed. EDS enterprises (including foreign-invested enterprises (FIEs)), purchased X-ray security inspection equipment for deployment in their logistics and sorting centers. Local public security bureaus and postal service administration departments continued to impose varying technical safety standards. One example of this is many provinces employ different X-ray technical specifications, which require purchasing different equipment. Different standards force many companies to prematurely replace and reconfigure their equipment. In one of the international distribution centers currently operated by several AmCham China members, extensive airport and customs security management equipment is already in place. If AmCham members are forced to purchase new equipment to meet different standards, they will do so at great cost and inef-

iciency to their operations. Additionally, given its current size, the international distribution center does not have much capacity or the space requirements to accommodate redundant equipment.

In 2014, the State Council released *Several Opinions on Promoting Fair Market Competition and Maintaining Normal Market Order* (Circular No. 20) to:

“standardize and perfect mechanisms for coordination in regulatory enforcement and cooperation and improve the mechanisms for market regulatory authorities to perform their respective duties and responsibilities and work together.” The document also called for authorities to promote inter-departmental information sharing, break up ‘information islands’ and achieve the openness, sharing, and exchange of information resources.”

While not directly referring to the EDS sector, Circular 20 explicitly calls for greater coordination between regulatory bodies, particularly through information sharing and transparency. AmCham China urges the Joint Central Committee for the Security Management of Express Delivery to develop and administer unified national security inspection standards and technical requirements. Otherwise, local authorities will continue to impose their own, often contradictory standards and regulations, creating unnecessary compliance costs for businesses.

Express Delivery Real-Name Registration System

The postal service has developed an app that electronically verifies the identities of the sender and receiver through name verification. This app is currently being trialed throughout China. This app is in part intended to strengthen monitoring of cash-based transactions between individual buyers and sellers. During initial implementation, however, various provinces have required commercial clients to also provide name-based proof of identity in order to complete a transaction. Requiring name verification for commercial sellers distributing goods in bulk is unnecessary, in part because commercial customers and express delivery companies have already signed long-term security agreements subject to Chinese law. Moreover, the operations of commercial sellers are entirely unlike those of individual sellers. For instance, commercial sellers often ship identical goods in multiple deliveries to different locations. Currently, each of these shipments of identical goods is subject to name verification. AmCham China urges the Chinese government to accommodate these differences between commercial and individual sellers when designing regulations for the EDS industry.

Cybersecurity

China’s nationwide *Cybersecurity Law* was implemented on June 1, 2017. Among a raft of new digital regulations, the

求各监管机构通过信息共享、提高透明度等方式加强协调。商会促请快递安全管理联合中央委员会制定、执行统一的国家安全检查标准和技术要求。否则，地方政府将继续各行其是，执行往往相互矛盾的标准和法规，给企业带来不必要的合规成本。

快递实名制

邮政监管部门已经开发了快递实名收寄 APP，并在全国推广。政策本意是加强个人买方和商家现金交易的监控。但在推行过程中，各省纷纷要求企业的商业客户也提供实名登记信息才能完成交易。商业客户根据中国法律规定和快递企业已经签署了长期安全保障协议，没必要要求大宗运输货物的商业卖家每次运输都进行实名验证。此外，商业卖家多批次运输同类货物到不同目的地，其运营与个人卖家完全不同。商会期待在相关政策规定制定过程中能考虑到商业卖家与个人卖家的不同。

网络安全

中国于 2017 年 6 月 1 日起执行《网络安全法》。在一系列关于电子的新规中，《个人信息和重要数据出境安全评估办法》与快递行业息息相关。快递行业已经被明确列入了数据出境安全评估范围。

快递行业涉及大量客户信息，如姓名、地址、包裹信息等，来进行跨境贸易和运输，在数据安全方面要遵守特定的要求。按照国家的法律要求，快递企业目前每天都要向海关总署、国家安全局传送数据。《网络安全法》目前对于如何实施安全评估、实施主体都没有清晰的指导意见。如果相关评估影响企业通关速度，必将对整个行业造成重大负面影响。商会促请中国政府能与行业专家共同制定、完善数据安全评估实施规定。

新能源汽车

快递行业依靠货车在城市派送快件。商会承认快递货车会造成城市交通拥堵。快递公司愿意增加新能源车辆（使用替代燃料）的使用比例，但同时告诫：仅快递服务业增加新能源汽车的使用并不能解决中国城市拥堵和污染问题。

政府监管机构与快递服务公司加强合作，是快递服务业可持续发展的必由之路。合作将推动双方达成互利的解决方案，减少交通拥堵和污染，提高快递服务的环境可持续性，并为新能源汽车的使用建设必要的基础设施（如充电站）。

建议

对中国政府：

- 期待在国家层面加快建立快递行业安全监管统一领导框架，明确监管主体，统一全国监管措施，并制定包括安检设备在内的、各部委共同认定的统一技术标准。
- 建立与公安部现行信息系统兼容监管的数据平台，促进监管部门之间的数据共享，减少重复向企业索取数据的行为。
- 网络安全主管部门和快递监管部门应共同研究制定合理的快递行业数据安全评估体系，平衡本地安全需求与快递服务业频繁跨境采集和传输数据的需求。
- 制定新的国家新能源汽车标准，与国际标准保持一致。

Assessment Measures on the Security of Personal Information and Important Data and the Guidelines for the Safety of Outbound Data is particularly relevant. EDS is listed explicitly as one of the industry's required to pass additional security assessments in order to transfer data abroad.

EDS relies on a substantial amount of customer information, including names, addresses, and package details, to power cross-border commerce and delivery. It is subject to unique data security requirements. By law, EDS enterprises are already required to submit data to the General Administration of Customs (China Customs) and the central Ministry of Public Security (MPS) daily. Under the *Cybersecurity Law*, there are no clear guidelines stipulating how these "security assessments" should be conducted and by whom. If these new security assessments delay the customs clearance process, it will have significant ramifications for the entire industry. AmCham China urges the Chinese government to work with EDS industry professionals to develop and refine future implementing regulations for data security assessments.

New Energy Vehicles

The EDS industry relies on trucks for urban express delivery operations. AmCham members acknowledge EDS delivery trucks contribute to city traffic and congestion. EDS companies are willing to increase the proportion of New Energy Vehicles (those powered by alternative sources of fuel) in their delivery fleets, but caution that China's urban congestion and pollution challenges cannot be solved by greater NEV adoption in the EDS industry alone.

Greater cooperation between government regulators and EDS companies is necessary for sustainable development of the EDS sector. Cooperation will enable both sides to reach mutually beneficial solutions to reduce traffic congestion and pollution, improve environmental sustainability of EDS, and build necessary infrastructure (e.g. charging stations) to support NEV adoption.

- Cybersecurity and EDS authorities should jointly formulate a reasonable data assessment system for EDS industry that balances local security requirements with the need of EDS businesses to collect and transfer data across borders frequently.
- Formulate new national standards governing NEVs that are consistent with international standards where applicable.

Recommendations

For the Chinese Government:

- **Establish a uniform security regulation framework at the national level for the EDS industry. Clarify the responsibilities of the various regulatory bodies and standardize regulatory measures across the country.**
- Establish a data platform that is compatible with the existing MPS information system to promote data sharing between regulatory bodies and reduce the need for duplicative data requests.

Food & Beverage

Introduction

2018 was a fruitful year for food safety in China. At all levels of government and in collaboration with various social organizations, significant food safety efforts were undertaken to strengthen the legal system, improve supervision and administration, and support social co-governance (e.g. the integration of resources from social and public sectors to improve food management and safety). In March 2018, the food safety regulatory structure was reorganized when the State Council initiated a vast restructuring of China's ministries and institutional organization structure with the goal of improving the government's institutional operational efficiency and market regulation.

2018 marks the tenth anniversary of China's first *Food Safety Law*. The past decade has witnessed steady progress in national food safety regulations and development of a standards system. In 2018, in addition to government restructuring, the central government launched "Healthy China 2030" (Healthy China), a national strategy to attain the health standards of developed countries by 2030. The strategy covers public health services, environmental management, the healthcare industry, and food and drug safety. AmCham China members want to play a full role in promoting food safety, social co-governance, and a healthy China. We believe that pursuing these strategies will create a favorable business climate for the long-term growth of the industry.

Recent Developments and Ongoing Regulatory Issues

Institutional Reform under the State Council

AmCham China welcomes the government's efforts to improve market supervision and food safety through institutional reform. We hope the government will consider the industry's perspectives on these efforts as discussed below.

Guarantee More Professional Food Safety Supervision

Food safety supervision is a highly specialized and technically demanding field. We anticipate that the State Council's insti-

tutional reforms will be implemented in accordance with local conditions and in a unified manner. We urge that all localities ensure the professional qualifications of local food safety supervisors or introduce expert consultation mechanisms to ensure that food supervision processes and standards are more scientific, authoritative, and of a high quality.

To that end, we recommend that State Administration for Market Regulation (SAMR) organize regular training for local inspectors. AmCham China members are ready to share their global experience and expertise and mobilize a variety of resources to assist market supervisors to build capacity.

When introducing new or revising existing laws, AmCham China recommends that SAMR seek feedback on draft regulations from industrial associations (like AmCham China) and individual corporations, allow for an adequate transition period for companies to comply with revised regulations, and offer detailed, timely, and authoritative interpretations of any new regulations. This will improve understanding and compliance.

Balance the Desire for High-Quality Food with Strict Industry Management

China's food safety supervision system is gradually evolving towards a more comprehensive governance model that involves all sectors of society. As part of the evolution, AmCham China urges respect for business autonomy. Food production and management companies are legally defined as the "first responsible person" (or entity). Given their legal obligations, companies should be permitted autonomy to implement safety risk management processes. This autonomy should be balanced alongside a stronger, more systematic series of food safety supervision mechanisms to hold regulators and enterprises accountable for meeting standards and ensuring regulatory errors are rectified on an industry-wide basis. Authorities should avoid any impulse for "one-size-fits-all" regulatory enforcement.

Promote "Three-In-One" Integration of Local Supervisory Departments to Improve Regulation

In the past, enforcement of relevant laws was hindered by inconsistent enforcement, procedures, and legal documentation. A lack of appropriate coordination across relevant regulatory authorities at central, provincial, and local levels also

食品饮料

引言

2018年是中国食品安全工作成果丰富的一年。在各级政府的重视和社会各界的共同努力下，食品安全领域在法规体系建设、科学监管、社会共治等各个方面均取得了卓越的成果。2018年3月启动的国务院机构改革，着力推进重点领域和关键环节的机构职能优化和调整，为全面提升市场监管机构执行力打下了坚实的基础。

2018年是我国第一部《食品安全法》颁布实施十周年，国家食品安全法规标准体系建设稳步推进，相关法律法规不断完善。2018年也是“健康中国”战略深入实施的一年。为营造有利行业长远发展的商业环境，中国美国商会（商会）会员企业愿意充分发挥自身作用，为食品安全社会共治共享和推进“健康中国”贡献力量。

最新进展和现存监管问题

国务院机构改革

为进一步加强市场监管工作，新组建了国家市场监督管理总局（以下简称“总局”）。我们赞赏中国政府通过机构改革提升食品安全监管力度和效率的决心，也希望新组建的食品安全监管机构能够在逐步完善体系和推进工作时，综合考虑来自企业的以下几方面诉求。

保障并加强食品安全监管的专业性

食品安全监管工作专业性强，技术要求高。我们期待各地在落实国务院机构改革任务过程中因地制宜，发挥统一管理优势的同时，加紧提升基层食品安全监管人员的专业能力或引入专家咨询机制，确保食品监管工作能够以更科学、更权威、更高水平地向前推进。

建议总局定期组织培训，商会会员企业愿意充分发挥

各自的资源优势 and 分享在全球其他市场运营的经验，调动多种资源，助力市场监管人员能力建设。

在相关法规制定和修订过程中，广大企业也希望总局继续充分征求行业协会（如中国美国商会）及企业的意见，并给新法规充足的执行过渡期，为业界提供详细的科学解读，以利于企业认真了解和遵照执行。

平衡“管活管优”和“严管食品行业”的关系

在中国食品安全监管体系逐步走向全社会参与的综合治理模式的过程中，应更加重视企业自治的关键作用，突出食品生产经营企业“第一责任人”的法律主体地位，允许企业自主实施食品安全风险管理。强化建立系统性食品安全监管机制，对监管者和企业科学追责、强调系统性纠错和提升改进，避免“一刀切”式的监管执法。

尽快推进地方“三局合一”，提升监管效率

过去，“多合一”综合执法在地方上遇到了执法依据不统一、执法程序不统一、法律文书不统一等问题，属地和垂直的交叉管理也造成部门协调的复杂繁琐。我们期待，本次机构改革能自上而下推进“三局”在办事流程、监管体系、以及内部工作机制上的协调，提升监管效率，更好地适应市场监管一体化的新形势。

尽快推进各部门监管职责和沟通渠道的信息公开

此次机构改革整合了多部委多部门的监管职责，但具体司局和处级部门的信息公开尚未完成，使得企业了解相关部门具体职能并进一步沟通的难度增大。我们期望相关部委网站能够尽快完善信息公开，以便食品生产和经营企业准确、及时了解信息，更顺畅地与政府有关部门沟通。

社会共治，建设“健康中国”

作为一项国家战略，“健康中国”体现了国家从战略层面推动健康议题的决心。近年来，食品饮料行业不断转型升

created operational challenges. We hope that the creation of SAMR enables improved coordination among supervisory authorities and internal accountability within the “three bureaus (local regulatory bodies of the former State Administration for Industry and Commerce, China Food and Drug Administration (CFDA), and provincial Quality and Technology Supervision Bureaus). We anticipate that improved coordination will lead to improved regulatory efficiency and supervision.

Clarify Regulatory Responsibilities

While the institutional reform under the State Council is a positive step in bringing together previously fragmented regulatory responsibility, some ministry departments have yet to publish details about their administrative responsibilities. It is very difficult for companies to address issues or communicate with relevant authorities without clear information about their roles and responsibilities. We urge relevant ministries and commissions charged with monitoring the food and beverage industry to publish regulatory information on their websites in a timely and complete manner to allow food and beverage companies to access relevant regulatory information and improve communication with relevant government departments.

Implementing “Healthy China” through Social Co-governance

“Healthy China,” a national strategy first announced in 2016, reflects the Chinese government’s determination to promote public health as a key aspect of social and economic development nationwide. As part of its ongoing development, the food and beverage industry has increasingly prioritized food safety. Businesses have incorporated concepts of “nutrition and health” into their long-term development strategies to provide consumers with appetizing and healthy products.

Implementing “Healthy China” through Practical Action

AmCham China members accept their obligation to support the National Nutrition Plan (2017-2030) (a segment of “Healthy China.”) We believe that our participation will encourage high-quality development of the food and beverage industry. Since the roll-out of “Healthy China,” the food and beverage industry has both diversified and improved the nutritional value of its product offerings. The focus has been on reducing sodium, oil, and sugar content in food, as well as promoting healthy mouths, healthy weight, and healthy bones (a program known as the “Three Reductions and Three Kinds of Health”). Some examples include:

- Product innovation by developing products with reduced salt, oil, and sugar content. These products are appealing to consumers but provide a more nutritionally-balanced set of dietary choices;
- Providing clear, factual and easy-to-understand product

nutrition information on packaging materials and via marketing strategies to help consumers make more informed choices;

- Promoting healthy lifestyles by partnering across industries to enhance literacy and education about health, encourage exercise, and balanced diets;
- Instituting responsible marketing techniques to prevent inappropriate marketing materials from reaching children under the age of 12.

Implementing a Co-governance Model Across Government and Enterprises in Order to Build a “Healthy China”

“Healthy China’s” success requires collaboration across various actors. A series of documents introduced by the Chinese government emphasize the government’s leading role in coordinating social organizations, industry stakeholders, and individuals to work together to promote healthy outcomes.

To this end, we expect decision-makers in government to fully engage with the scientific community and food and beverage industry when developing nutrition and health policies. They should do so in a manner which is open, practical, fair, derived from scientific principles and evidence-based results, and utilizes the industry’s practical expertise. For example, the “Three Reductions and Three Kinds of Health” strategy requires cooperation from various elements of society. The strategy must consider differing needs of consumers, foster innovative and diversified product offerings, and strengthen service delivery to allow consumers access to low-salt, low-oil, and low-sugar foods. The key to building a healthier China lies in an environment of strong social co-governance.

AmCham China members also appeal to government regulators and research institutions to increase public awareness and understanding by educating consumers about how to decipher pre-packaged food labels and popularizing knowledge about key nutrients and additives. A broader and deeper public understanding of these issues can eliminate misunderstandings and assist consumers in making rational choices in favor of healthier diets. At the same time, preventing false food safety rumors and factual inaccuracies from spreading will enhance public confidence in China’s food safety. AmCham China stands ready to support these nutritional and health science education activities.

Recommendations for the Operation of the Food and Beverage Industry

In order to create a sustainable business environment for the industry, AmCham China members suggest the following improvements to laws and standards, market supervision, and enforcement:

级，在保证食品安全的基础上，将“营养健康”的元素纳入到企业长期发展战略中，为消费者提供既美味又健康的产品。

以实际行动积极落实“健康中国”战略

商会会员企业一致认为，配合“健康中国”国家战略，积极参与推进《国民营养计划（2017—2030年）》的实施，是食品饮料行业义不容辞的义务，也是追求高质量发展的必由之路。自“健康中国”战略推出以来，食品饮料行业已经在产品多元化和提升产品营养健康价值方面进行了许多有益的探索和实践，并在推动“三减三健”方面采取了切实行动。

- 产品创新和多元化：持续创新，积极研发适合消费者口味和健康需求的减盐、减油、减糖产品，提供更多营养均衡的产品选择。
- 清晰易懂的产品信息：在包装和销售渠道提供完善、清晰易懂并基于事实的产品营养信息，帮助消费者科学选择。
- 推动健康生活方式：积极与社会各界合作，通过开展健康教育、倡导均衡膳食和积极运动，提升公众的营养和健康素养。
- 负责任营销：不对12岁以下儿童开展市场营销活动。

构建政府、企业、社会共治格局，建设“健康中国”

共建共享是建设“健康中国”的基本路径。政府出台的一系列纲领性文件都强调了政府主导，统筹社会、行业和个人三个层面，形成健康促进的强大合力。

为此，我们期待决策部门在制定营养健康政策的过程中，能充分听取科研界和产业界的意见和建议，依据科学事实和数据，参考产业实操经验，制定实事求是、公正合理的政策法规。正在推进的“三减三健”行动就需要社会多方共同协作。例如，“三减”的推广及实施需要考虑消费者的不同需求，要引导企业通过创新开发兼顾消费者口味和健康需求的多元化产品；并加强服务创新，为消费者获取低盐、低油、低糖食品提供更加便利的服务。因此，在政府引导下，食品饮料行业、科技界、社团组织及个人等共同参与，共创良好的社会共治氛围是建设“健康中国”的关键所在。

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，积极向消费者传播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解，帮助消费者理性选择，实现科学膳食。同时，加强对食品安全谣言的打击，才能有效避免食品谣言引起的恐慌，增强中国公众对食品安全的信心。商会愿意积极参与并支持相关的营养健康科普宣传活动。

食品饮料行业生产和经营管理有关的法治建设、监管问题和建议

为营造有利行业长远发展的商业环境，商会企业对完善法规标准、市场监管和执法提出以下建议：

继续改革食品安全法规体系顶层设计，释放行业创新活力

- 《食品安全法》对提升行业食品安全水平发挥了巨大的作用，给广大的生产经营企业和消费者带来了前所未有的信心，但我们也应看到，将标签、营养、检测方法作为食品安全范畴进行管理的做法越来越不利于行业发展，也不利于国家推进《国民营养计划》，企业往往会为规避食品安全的严厉处罚措施而放弃营养强化产品的开发。因此建议将这部分内容移出食品安全标准体系，纳入国家强制性指南文件，这样既可以强制规范行业发展，又不会动辄上升到食品安全层面，减少企业压力，避免不必要的监管资源浪费及行业损失。
- 进一步完善食品安全卫生规范和食品安全产品标准，逐步推进良好卫生规范管理制度（GMP）与关键危害控制计划（HACCP）相结合的过程管理标准，简化终产品指标要求。例如：微生物的监测和检测应逐步从终产品检测过渡到过程监测，减少终产品中不必要的菌落总数检测。
- 建议完善保健品法规，加快保健品审批，加强上市产品监管。对因旧评价标准废止导致的保健品功能标准体系缺失问题进行补充，坚决打击不规范的健康概念商业炒作，引导行业健康发展，提升健康产业形象。
- 建议国家在发布强制过敏原标识的同时，出台具体的企业管理及政府监管的技术指导文件，避免标准发布后的各种挑战。
- 建议开展可回收包装材料再生利用的科学法规研究，适时启动回收再生包装材料合法利用的法规建设进程。

Continue to Reform Industry Regulation to Promote Innovation

- The *Food Safety Law* has played a significant role in improving food safety standards industry-wide and raising consumer and business confidence. We must also recognize, however, that by introducing more stringent labeling, nutrition, and testing to regulate food safety, the regulators have created operational challenges. Nor are such steps necessarily conducive to the promotion of the National Nutrition Plan. As general practice, companies tend to abstain from developing nutritionally-enhanced products in order to avoid running afoul of food safety standards. AmCham China recommends that requirements for nutritious foods be removed from food safety standards and regulations and be incorporated into national mandatory guidance documents instead. Such reform will not only improve industry regulation but will also ease industry's compliance burden while reducing unnecessary regulatory oversight.
- We recommend improving food safety, hygiene, and product standards through the gradual promotion of Good Manufacturing Practice (GMP) and Hazard Analysis and Critical Control Point (HACCP) techniques to streamline final product standards and requirements. These techniques control for product quality and adherence to food safety standards. In particular, we recommend that monitoring and detection of microorganisms gradually shift from the final product testing stage (as at present) to monitoring throughout the entire cycle so as to reduce the number of unwanted microorganism and bacteria colonies currently discovered in the final product testing stages.
- With respect to healthcare products, we recommend improving regulations, accelerating the examination and approval procedures, and strengthening market oversight. Because the previous standards were abolished, China lacks a functional standards system for healthcare products. Consequently, in the absence of these standards, it is necessary to crackdown on the spread of fraudulent, unscientific, and non-standard healthcare products and concepts to both improve the quality of products and improve the industry's reputation.
- We recommend that regulators simultaneously release mandatory allergen labels and documents that offer specific technical guidelines for corporate management and regulatory oversight. These documents have not always been issued at the same time, creating compliance challenges after the standards are released.
- We recommend research be undertaken on proper methods for recycling packaging materials and subsequent laws and regulations be developed to guide the legal use of recycled packaging materials.

Enhance Understanding of Laws and Regulations Among Regulators to Allow for More Consistent Implementation

- We recommend that the Chinese government prioritize harmonization between the *Food Safety Law* regulatory standards as soon as possible. The government should clarify the relationship between food safety standards and non-food safety standards and the roles of relevant regulatory departments. It has been AmCham China's experience that different regulatory departments often have different understandings of national standards, industry standards, enterprise/company standards, and group standards of non-food safety, which severely hampers execution of non-food safety standards.
- Following the release of the *Administrative Measures on Food Operation Licenses* in 2015, further reform must be undertaken to improve product licensing, adopt a license reporting system to improve management, and allow food production licenses to be gradually cancelled.
- We strongly urge the government to improve management and supervision of food safety and associated risks. A national food safety random inspection team should be established to ensure that sufficient resources are allocated to inspections and they can be carried out during the entire food management process from source to end product. This type of process management should fundamentally improve food safety and quality across the industry.

Professional Faultfinders and Professional Claimants

Professional Faultfinders (PFFs) and professional claimants have abused the law for personal gain in the name of food safety, at significant cost to business operations and administrative and commercial resources.

In 2018, AmCham China members welcomed evidence that supervisory bodies and judicial organs are becoming increasingly cautious in dealing with cases involving professional claimants. Shenzhen, Chengdu, and Shanghai introduced policies to curb and punish professional claimants whose actions are driven solely by personal gain.

AmCham China recommends that further action be taken through these next steps:

- Set the level of risk posed by professional claimants at the national level;
- Encourage the regulatory system to focus on safety issues with significant associated risk and set a balance between the need to crack down on counterfeit products and permit organic industry development. Establish clear procedures for identifying and addressing unreasonable claims.
- Promote public interest litigation and devise ways to

进一步提升法规执行部门对国家法规标准的深刻理解，建立科学合理的统一执行尺度

- 建议国家对整个食品法律法规标准体系进行统一说明，食品安全标准体系和非食品安全标准之间的关系以及相关管理部门的职责划分尤其需要尽快明确。各监管部门和行业对非食品安全国家标准、行业标准、企业标准、团体标准的地位就存在不同理解，造成执行困扰。建议在确保食品安全的基础上，建立一个统一的非食品安全标准法规体系，解决行业在执行标准过程中遇到的问题。
- 进一步简政放权，在前两年出台的新《食品生产许可证管理办法》的基础上，进一步改革生产许可制度，逐步取消发放生产许可证，建议可采取报备制度进行管理；
- 进一步推进实施过程管理检查监管制度以及完善按照风险等级划分管理措施的制度，打造国家级食品安全飞行检查队伍，将资源集中分配到过程检查中，引导企业采取从源头到终产品的全过程管理理念，从根本上提升食品行业的食品安全质量水平。

进一步完善惩罚性赔偿制度，缓解职业索赔人对企业带来的负面影响

近年来，职业索赔人打着食品安全的旗号，滥用法律，谋求一己私利，为企业正常经营带来负面影响，浪费了大量行政及商业资源。

2018年我们高兴地看到，各地监管机关和司法机关在处理职业索赔人案件时日趋谨慎，深圳、成都、上海等地方陆续出台了遏制职业索赔人负面影响的政策，规范、惩治“以打假为名、行牟利之实”的职业索赔、职业举报行为。

商会建议：

- 下一步在国家层面通过区分问题的风险程度；
- 引导该制度将重点放在重大风险食品安全问题上。寻求打击假劣产品和维护企业健康发展的平衡点，审慎处理不合理赔偿要求，以索赔为目的的购买不予保护；
- 进一步推广公益、集体诉讼，通过更透明、不以营利为目的的渠道保护消费者权益，使职业索赔回到社会共治的应有轨道。

进口食品随附官方证书

在过去两年中，国家质量监督管理部门就“进出口食品随附官方证书”与出口国政府及行业积极沟通，并探讨可执行的方案。商会赞赏中国政府在此过程中表现出的开放态度和专业精神。

2019年9月30日，两年的“进口食品随附官方证书”过渡期即将结束。目前商会及行业非常关注此事，并期待与中国政府继续沟通，从兼顾进口食品安全监管和贸易便利化的角度出发，探索进口食品监管更高效的解决方案。

《农产品质量安全法》的修订及食用农产品合格证制度完善及相关建议

农业部已于2015年开始推动《农产品质量安全法》的修订工作。为促进食品行业发展以及保证食品安全立法和执法的完善，商会建议在修订中重点加强对食用农产品种养殖源头的监管，对原有的监管盲点——农业散户也提出主体责任要求；做好与《食品安全法》的衔接，以合格证为抓手，提升食用农产品的产地准出和市场准入的监管衔接；结合地方执法实践，为合格证、食用农产品追溯、信用体系、综合执法、舆情监测和应急响应等新型监管制度提供顶层立法支持。

关于食用农产品合格证管理制度，我们建议：

- 推广地方最佳实践经验，完善全国合格证管理制度；
- 探索国家层面的跨部门合作方式，做好各相关部门监管和制度等方面的无缝衔接；
- 做好制度结合，如结合产地、追溯、信用等制度强化流通透明性和农业生产环节的主体责任，结合进货查验和尽职免责制度，以有效的政府监管来提升合格证的市场准入作用。

明厨亮灶

近一年，全国多个地区市场监管、食品安全监管部门或在地方政府的要求下，将“明厨亮灶”视为争取食品安全示范城市的“形象工程”，逐步形成一刀切地强制要求或变相强制餐饮企业引入网络宽带、加装实时监控摄像头，并在企业证照的申请、审批和核查等环节设置障碍，把国家层面的政策倡导变成了证照办理的前置条件，大大增加了企业的运营负担。商会建议由国务院减轻企业负担的牵头部门搜集信息专题研究，予以督察，切实减轻企业负担；

protect consumers' rights through more transparent channels, rather than those that allow PFFs and professional claimants to do so through profit-oriented means.

Food Import Certificates

In October 2017, the General Administration of Quality Supervision, Inspection and Quarantine (now merged under SAMR) enacted new regulations requiring that official certificates be attached to imported foods. The certificate should come from the competent regulatory authority in the exporting country and is an effort to help Chinese authorities control the quality of food coming into China. China proposed to implement a transition two-year transition period to allow importers to comply. AmCham China appreciates the openness, communication, and professionalism demonstrated by the Chinese government during this process.

On September 30th, 2019, the two-year transition period for the official certificate will expire. AmCham China members are very concerned about the end of the transition period and expect further engagement with the Chinese government to ensure operational continuity following the end of the transition period. Any solutions should focus on both imported food safety regulations and trade facilitation opportunities.

The Quality and Safety Law for Agricultural Products and the Agricultural Products Qualification Certification System

Since 2015, the Ministry of Agriculture (now the Ministry of Agriculture and Rural Affairs) has been in the process of revising the *Agricultural Products Quality and Safety Law*. In order ensure the improvement of food safety regulation and enforcement, AmCham China recommends that the amendment should not only strengthen supervision of sourcing for edible agro-products, and also address the original regulatory blind spot: clearly defining the responsibilities of agricultural retail investors. The amendment should be complementary to the existing *Food Safety Law* and improve oversight of edible agro-products from sourcing to market. It should provide national legislative support for new supervision systems (e.g., certificates, traceability of edible agro-products, credit systems, comprehensive law enforcement, public opinion monitoring, and emergency response) in combination with local law enforcement efforts.

Our suggestions concerning a management system for edible agro-product qualification certificates are as follows:

- Promote local best practices and improve the national Certificate Management System;
- Encourage national cross-sector cooperation and integration of relevant regulatory departments;
- Effectively integrate existing systems that track product origin, credit histories, purchase inspections and due

diligence with any new system for tracking edible agro-products to ensure effective government regulation.

The "Transparent Kitchen" Initiative

In 2018 many cities strove to become a "Food Safety Model City." As part of this process, the concept of the "Transparent Kitchen" has become a popular vanity project promoted by market regulators, food safety supervision authorities, and/or local governments. Under this initiative, catering enterprises are forced to install network broadband and video cameras throughout their kitchens to meet requirements. If they refuse, they face delays during the corporate license application, approval, and verification process.

This is an example of a well-intentioned government advocacy initiative hindering business operations. AmCham China recommends that the relevant department under the State Council take a leading role in researching, gathering information, undertaking special studies and supervising the implementation of this initiative. We recommend that SAMR strengthen coordination with local market regulators to avoid unnecessarily burdensome regulation stemming from well-intentioned policy advocacy.

Improving Credit Supervision Techniques

During the *National Symposium on Market Regulation* in July 2018, SAMR Director Zhang Mao called for the establishment of a new regulatory mechanism based on credit supervision and supplemented with random inspections, random assignment of inspectors, and transparent disclosure of results (the "double random, one open" initiative). This would replace the previous method focused on scheduled annual inspections.

AmCham China supports the use of credit supervision techniques but also foresees risks. Nationwide credit reporting legislation is currently insufficient and the relevant provisions are dispersed throughout different laws, with vague provisions and unclearly defined responsibilities. Furthermore, there is no existing uniform standard for credit data collection, no coordination mechanisms, and no rules governing data security or sharing between regulatory departments. In this context, regulatory agencies supervising credit scores may use them as an easy method to evaluate and dispense punishment without sufficient consideration of other aspects of a company's operations. Regulatory punishments based on credit supervision are subject to abuse and inconsistent application. The process of blacklisting companies for serious violations is plagued by disorganized and inconsistent standards, procedures and sanctions. In some instances, separate businesses have had the same degree of penalty imposed on them regardless of the level of their history of previous infractions. In other instances, a single business may be punished for the same violation in different regions. Both of these examples come at great cost to the business itself.

建议国家市场监督管理总局加强与地区市场监管部门的协调，避免倡导政策在地区层面强制执行和过度执行的情况。

信用监管的探索和建议

2018年7月全国市场监管工作座谈会上，张茅局长要求建立以“双随机、一公开”为基本手段，以重点监管为补充、以信用监管为基础的新型监管机制。

商会支持信用监管，但也看到了如下风险：信用立法滞后，相关规定散见于不同法律，部分法条不明确，未能清晰区分各主体责任；监管避难就易，对大型、实体、经营企业带来更多的处罚成本和声誉损失；信用惩戒有滥用、区分度低等风险，如“黑名单制度”标准、程序、惩戒措施相对混乱，失信程度不同的市场主体承担同样惩罚，信用修复制度不完善，同一经营者在不同地区因同样问题遭受多次信用惩罚，甚至因而影响企业正常经营；信用数据采集缺乏统一标准，部门间缺乏对接机制和数据安全操作细则等。

为此，我们建议：加强立法，明确主体职责，保证尽职免责，提升精准公示；规范监管行为，明确监管手段、适用、标准、程序等内容，不断提升执法人员的专业能力；“过罚相当”，明确黑名单列入移出标准和程序、惩戒措施、公示渠道、信用修复、异议救济等；实现信用监管协同、信息实时共享。

落实责任溯源，保障食品安全—《食品安全法》第136条适用情况的建议

《食品安全法》第136条是针对食品经营者的“尽职免责”规定，符合食品行业主体多元化、责任差异化的特点，也体现了法律责任设定的公平性和合理性。但在实操中，因相关规定的笼统性和不确定性，以及可操作性适用标准的缺失，使执法裁量权过宽，导致适用争议而无法真正得到很好的实施。

商会提出建议如下：

- 统一规定并发布该条适用指导，细化经营者可以举证的方式，明确易于判断的情形；
- 该法涉及的“没收不符合食品安全标准食品”主要是为了风险防范而不属于行政处罚，建议不计入累计违法次数。

加快婴配奶粉配方注册审批进度，保障企业正常经营，满足中国消费者需求

自中国实施婴幼儿配方乳粉产品配方注册管理制度以来，中国婴配奶粉行业得到进一步的规范，对重建消费者信心与促进市场健康发展也起到了很大作用。我们赞成中国对婴幼儿配方乳粉行业实行以配方注册为代表的严格管理，也感谢国家市场监督管理总局为推动此项工作开展付出的努力与取得的成就。然而从2018年2月份以来，婴幼儿配方乳粉的注册工作已陷入停滞，导致一批符合要求的申请企业无法按正常程序要求获得注册许可并开展生产经营。这不仅给企业造成了市场和经济损失，也使中国消费者的需求无法得到保障。

商会建议：国家市场监督管理总局应加快婴幼儿配方乳粉产品配方注册的审批工作，在相关规定的时限要求下开展包括现场核查等各项审批工作，以保障企业正常经营，满足中国消费者需求。

建议

对中国政府：

- 在政策及标准制定及执行过程中充分利用商协会等平台，开展公私合作（PPP）项目或定期交流机制，鼓励分享国际先进经验及技术。
- 在落实国务院机构改革任务的同时，尽快推进各部门监管职责和沟通渠道的信息公开，以便食品生产和经营企业准确、及时了解信息，更好地进行与政府之间的沟通。
- 期待决策部门在制定营养健康政策的过程中，能充分听取科研界和产业界的意见和建议，制定实事求是、公正合理的政策法规。
- 继续完善食品安全国家标准体系，考虑出台国家食品标准体系管理规定，规范各种不同标准的出台和使用，积极发挥不同种类标准的积极作用，并探索独立灵活的营养标准体系。
- 不断加强市场监管和执法队伍建设，提高执法人员专业水平，持续推进标准化执法，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

Therefore, we expect the government to strengthen legislation to clarify responsibilities among various operators in the production process, ensure exemption from liability when appropriate due diligence is conducted, and improve transparency and publicity of relevant regulations.

The competency of relevant law enforcement personnel needs to be enhanced to clarify regulatory applications, standards, and procedures. Clarifying the Blacklist inclusion criteria, removal procedures and disciplinary mechanisms, and establishing procedures for companies to repair their credit scores will create an appropriate disciplinary system. Establishing a “Whitelist” of approved companies and regulatory processes will incentivize companies to meet those standards. Finally, there is a need to bolster inter-departmental coordination of credit supervision and real-time information sharing to avoid companies being punished multiple times for the same infraction.

Application of Article 136 of the Food Safety Law

Article 136 of the *Food Safety Law* exempts food safety operators from punishment if their food does not meet safety standards but they can prove that they completed satisfactory due diligence. Article 136 reflects the food and beverage industry’s diverse supply chains and responsibility, and appropriate exemption from legal liability. In practice, however, disputes have arisen from general regulations lacking in specificity, as well as a lack of applicable standards, which leads to overly broad enforcement discretion and substandard implementations.

In this regard, AmCham China recommends that the authorities:

- Publish uniform guidance regarding the application of Article 136 and standardize the methods by which food supply operators can provide evidence of due diligence;
- Where the law describes “confiscation of substandard food,” such action should be taken only for risk prevention rather than punishment. We recommend that such action be excluded from the cumulative number of violations.

Infant Formula Recipe Registration

Following implementation of the infant formula Recipe Registration system in China, standards for infant formula have improved and the industry has seen renewed consumer confidence. AmCham China supports strict management of the infant formula industry by the Chinese government and appreciates the efforts of SAMR to promote this work. Since February 2018, however, the examination and approval of infant formula recipes in China has stagnated. The result is that multiple, qualified applicants have been unable to obtain necessary permits for production and distribution of infant formulas.

AmCham China recommends SAMR accelerate the examination and approval of infant recipe approval and, perform on-site audits within the time limits stipulated by law, in order to allow businesses to operate normally and meet consumer demand.

Recommendations:

For the Chinese government:

- **Utilize existing platforms offered by organizations like AmCham China to develop Public-Private Partnerships or regular platforms for dialogue to encourage the sharing of international best practices and technology.**
- During the ongoing institutional reform of government agencies under the State Council, promote transparency and information sharing about the supervisory responsibilities and available official communication channels of China’s government departments as soon as possible, to improve understanding and communication between industry and government.
- Require the departments responsible for developing standards and policies to consult with researchers and industry when developing nutrition and health policies. Use the consultation process to ensure the policies put forth are fair, reasonable, and realistic.
- Continue to improve the National Food Safety Standards System. Consider introducing standardized management regulations for this system. Increase the consistency with which new standards are introduced and linked two existing standards, and explore the development of an independent and more flexible nutrition standards system.
- Continue to strengthen the professional capacity of market regulators and law enforcement. Encourage standardized enforcement through consistent regulations, uniform interpretation and implementation of laws across provinces and regions, open new channels for communication between the private sector and regulators and respond in a timely manner to the legitimate problems encountered by companies during the regulatory compliance process.

For the US government:

- **Strengthen communication between relevant US government authorities, industrial associations, and American enterprises in China. Increase opportunities to involve all parties in seminars, dialogues, and workshops related to international expertise and best practice urgently in demand across the Chinese government.**

在合规中遇到的法规解读和执行层面的问题给予及时回应。

对美国政府：

- 加强美国政府相关主管部门、行业协会等与在华美企的交流，针对中国政府亟需了解的国际经验、最佳实践等，增加由各方参与的研讨机会。

Healthcare

PHARMACEUTICALS

Introduction

AmCham China commends the efforts by the Chinese government to improve public health access and care in 2018, particularly the progress made in accelerating drug approvals, improving drug quality and encouraging innovation in the pharmaceutical industry. AmCham China is pleased to see that authorities have clarified the requirements to introduce new drugs into the marketplace, which will help pharmaceutical companies better meet patient needs.

Recent Developments and Ongoing Regulatory Issues

Drug Registration and Approval

In 2018 China emphasized innovation as a priority across the pharmaceutical industry and passed new policies for pharmaceutical registration and approval:

- A total of 55 drugs were granted priority registration and approval;
- The July 2018 *Announcement on Adjusting Registration and Approval for Clinical Trials of Drugs* (No. 50) by the National Medical Products Administration (NMPA, previously the State Drug Administration) implemented a 60-day review period for clinical trial applications. On November 5, the Center for Drug Evaluation (CDE) then accepted the first batch of eight licenses for clinical trials, confirming implementation of this new policy. This reform will shorten clinical trial applications by up to two years;
- The *Working Procedure for Registration and Approval for Overseas New Drugs for Urgent Clinical Needs* (No.79) jointly released by NMPA and the National Health Commission (NHC) stipulates that overseas drugs for urgent care needs which show promising early or mid-stage clinical results are exempt from clinical trials and can be directly imported in China.

This change should cut the time to market by up to two years.

AmCham China appreciates the efforts made this year to accelerate drug registration and approval. Further reform is necessary, however, to guarantee patient access to innovative drugs. AmCham China looks forward to working with relevant ministries to navigate these reforms:

- The current drug classification continues to treat imported drugs and domestic drugs differently;
- The licensing and approval system for new drugs does not include new applications for imported drugs;
- Due to differences between Chinese and international pharmaceutical drug standards, drugs previously listed overseas for years may be considered substandard products in China. Consequently, patients in China often lack access to the latest imported drugs;
- Clinical trials must go through a lengthy approval process that often involves approval from relevant ethics committees, human genetic resource offices, and registration departments, all from different government institutions. The lengthy approval process delays patient access to drugs.

Optimize the Intellectual Property System to Boost Innovation in the Pharmaceutical Industry

Regulatory Data Protection and Patent Linkage

On May 12, 2017 the NMPA released its draft policies on *Encouraging Drug and Medical Device Innovations and Protecting Innovator's Rights* (Circular No. 55) for public comment. The policies introduced six-year regulatory data protection (RDP) periods for chemical drugs and ten-year RDPs for therapeutic biologics products. Circular No. 55 also outlined plans for a preliminary patent linkage system. This initiative received strong support from the central government, which in October 2017 issued the *Opinions of the State Council on Promulgating the Reform of Review and Approval System for Drugs and Medical Devices to Encourage Innovation*. This document included provisions to improve

医疗

药品

引言

中 国美国商会（商会）赞赏 2018 年中国政府在改善公众健康方面所做的努力，以及在加快药品审评审批、提升药品质量保障患者安全和鼓励医药创新方面所取得的重大进展。我们欣喜地看到国家明确提出要把加快引进创新药来满足患者的强烈需求放在首位。

最新进展及现存监管问题

药品审评审批

2018 年是中国鼓励药品创新，加快审评审批各项政策落地实施并初见成效之年。具体包括：

- 共有 55 个药品纳入优先审评审批程序。
- 国家药品监督管理局《关于调整药物临床试验审评审批程序的公告》（2018 年第 50 号），明确临床试验申请由审批制改为 60 天默示许可制；2018 年 11 月 5 日，药品审评中心（CDE）发布首批 8 个临床试验默示许可受理号，标志 60 天默示许可制正式落地，该项改革措施可使临床试验申请获得批准的时限大大提前。
- 国家药品监督管理局和卫生健康委员会联合发布的《临床急需境外新药审评审批工作程序》（2018 年第 79 号文）规定临床急需的境外新药可以在符合相关条件的情况下，可直接申请进口，不需要在批准前完成临床试验，企业承诺上市后完成相关临床研究即可该措施可使药品在中国上市时间提前 1-2 年。

商会感谢有关部门为加快药品审评审批做出的努力。

但与此同时，进一步优化监管环境以提高患者对创新药品的可及性是促进行业发展的基石。因此，商会提供以下建议并愿意与有关部门一起努力：

- 药品分类应主要依据在中国是否拥有知识产权，不应以产地划分为进口药和国产药；
- 上市许可持有人制度试点应同时适用于进口药品和国产药品；
- 由于中国和国际药典标准的差异，存在境外上市多年的药品在中国被视为不合格产品的现象，导致中国患者无法及时用到新药；
- 临床试验审批涉及到设在不同机构的伦理委员会，人类基因资源管理办公室和注册管理部门，审批流程冗长，严重影响到患者对创新药的可及性。

建立鼓励药品创新的知识产权保护体系

监管数据保护和专利链接

2017 年 5 月 12 日，国家药品监督管理局发布了《鼓励药品医疗器械创新保护创新者权益的相关政策（征求意见稿）》（2017 年第 55 号）。这些政策对化学药品给予 6 年数据保护期，对治疗用生物制品给予 10 年数据保护期。第 55 号文还概述了初步建立药品专利链接制度的计划。该提议得到了中央政府的大力支持，后者于 2017 年 10 月发布了《关于深化审评审批制度改革鼓励药品医疗器械创新的意见》。该意见包括改进数据保护期实施规则，建立一个与美国橙皮书的美国专利链接系统有类似框架的专利链接系统。

在 2018 年 4 月 25 日，国家药品监督管理局在《药品试验数据保护实施办法（暂行）》中进一步公布了细节，对既属于创新药又属于儿童专用药的产品给予 6 年数据保护期，对创新治疗用生物制品给予 12 年数据保护期。

RDP rule implementation and establish a patent linkage system (under a framework similar to that of the U.S. patent linkage system-U.S. Orange Book).

On April 25, 2018, NMPA released further details in the draft *“Implementing Measures for Pharmaceutical Trial Data Protection,”* providing a six-year RDP (for new drugs and new pediatric pharmaceutical products for children and orphans) and a 12-year RDP for therapeutic biologics products.

Although many details are yet to be provided, those initiatives are promising. AmCham China supports these proposals and offers several suggestions to address our concerns:

- Absent reform of regulations on preliminary injunctions and damages, we support the efforts of NMPA to work with the judiciary and National Intellectual Property Administration (NIPA) to develop a comprehensive patent linkage system that provides equal protection to both generic and brand name drugs;
- The duration of an RDP should not be subject to requirements that ❶ companies file for RDP in China at the same time they file for RDP in other countries, or ❷ clinical data be obtained locally;
- Transitional provisions should be added to provide RDP for companies with products that have received preliminary approval during the final stages of production.

Intellectual Property Right Requirements for R&D Collaboration (e.g., Clinical Trials) Involving Human Genetic Resources

In July 2015, the Ministry of Science and Technology (MOST) published the *Guidelines on Administrative Approvals of Collection, Trade and Exportation of Human Genetic Resources*. These *Guidelines* applied a series of interim measures to all joint pharmaceutical R&D, including clinical trials (since they typically involve human beings, cells, tissues or blood samples) conducted in China by Chinese companies (including foreign-invested enterprises (“FIEs”)) and foreign entities.

The 2015 *Guidelines* state that before MOST approves joint clinical trials, agreements must contain provisions that products emanating from this joint R&D will be co-owned by both the Chinese and foreign entity.

This requirement is particularly onerous because Chinese regulations require clinical trials to be conducted in China and stipulate that foreign entities must partner with a Chinese entity. It is also inconsistent with recent commitments by the Chinese government to protect the intellectual property rights of foreign investors and FIEs. Moreover, MOST’s implementation of these new intellectual proper-

ty-sharing requirements is hampered by inconsistent and opaque implementation. AmCham China urges Chinese authorities to clarify the rules regarding joint sharing of pharmaceutical R&D and intellectual property in a transparent and consistent manner to better promote joint R&D opportunities.

Drug Tender Procedure

Beginning in March 2018 the Chinese government underwent a significant organizational restructuring of its national government ministries. The newly established National Healthcare Security Administration (NHSA) now oversees the implementation of pharmaceutical procurement and monitors its implementation.

In November 2018 a *National Volume-based Drug Procurement Pilot Plan* focusing on reform of the central drug procurement process was tentatively approved and a pilot program launched in 11 cities (including Beijing and Shanghai) in 2019.

AmCham China supports the Chinese government’s efforts to improve drug quality and safety for patients while reducing the costs of treatment. Efforts to centralize drug procurement to create a more transparent process, enhance national treatment of foreign and domestic companies and better link drug volume and price considerations are important.

AmCham China also encourages government authorities to deepen the role of the market in all drug procurement-related decisions and policies. AmCham China urges the NHSA to establish and maintain an open, fair, and transparent market competition mechanism that allows for procurement agreements between drug manufacturers and consumers on the basis of national treatment and fair market competition. We recommend that past practices where drug procurement decisions were made purely on the basis of lowest cost be avoided for both brand and generic drugs.

Additionally, requirements that companies include specific price reductions in their bids as a pre-condition for procurement awards should be abolished. AmCham China also recommends that authorities gradually establish a comprehensive evaluation system for drug procurement based on accepted international practices where key elements like drug quality assurance and the ability to provide a stable supply of drugs are included.

If, during the procurement process, authorities promote the use of generics over brand name drugs, they need to consider clinical and patient needs. AmCham China encourages authorities to fully consider the unique character of drug development and fully respect the rights of healthcare professionals and patients to prescribe medication based on individual treatment needs, avoid excessive administrative

尽管有许多细节尚未公布，但这些举措也很有前景。商会支持这些举措，并提出一些建议来解决我们的问题：

- 在未有关于暂行禁令和损害赔偿法律规定改革的情况下，我们支持国家药品监督管理局（前身为国家食品药品监督管理局）联合司法部门和国家知识产权局共同开发一个全面的专利链接系统，对仿制药和原厂药给予平等保护。
- 数据保护期的持续时间不应受以下条件影响：
 - ① 规定在中国申请了数据保护期的企业同时也在其他国家申请数据保护期的要求；
 - ② 规定在当地获得临床数据的要求。
- 应增加过渡性条款，对在生产的最后阶段获得初步批准的产品的公司给予数据保护期。

对涉及人类遗传资源的研发合作（例如临床试验）的知识产权要求

在2015年7月，科学技术部公布了《人类遗传资源采集、收集、买卖、出口、出境审批行政许可事项服务指南》。这些指南对所有由中国企业及外国企业（含外资中国企业）联合的医药研发活动，包括通常涉及人类、细胞、组织和血液样品的临床试验，提供了一系列临时措施。

2015年该指南指出，在科学技术部批准进行联合临床试验前，双方的协议必须包含以下条款，即中外双方实体企业共同拥有联合研发活动所产生的产品。

这一要求尤为繁重，因为中国法规要求在中国进行临床试验，并规定外国实体企业必须与一家中国实体企业合作。此外，科学技术部对这些新的知识产权共享要求的施行，受到执行不一致、不透明的损害。商会敦促中国当局以透明、一致的方式明确关于共同分享药品研发和知识产权的规定，以更好地开拓联合研发机遇。

药品招标采购

在2018年3月中国政府启动的国家机构调整中，新设立的国家医疗保障局被赋予了“统筹指导开展药品集中采购，制定药品、医用耗材的招标采购政策并监督实施”的职责。

11月，《国家组织药品集中采购试点方案》获得批准，并计划在11个城市组织开展了部分药品的相关采购试点。

商会关注、理解并支持中国政府在保障患者用药质量

安全、降低患者用药费用负担方面所做出的各种努力，也支持在切实的量价挂钩前提下，通过公开透明和充分有效的市场竞争进行合理的医药采购。

对于未来医药招标采购政策的设计和调整后，商会希望有关部门能切实遵照和落实中国政府在相关政策中所一直坚持奉行的充分尊重和发挥市场机制作用的指导原则。在有关政策的具体落实和执行中，商会希望国家医保局等政府有关部门首先应努力建立并维护公开、公正和透明的市场竞争机制与秩序，促进企业通过合理的商业竞争与实际采购方达成的采购协议。同时要避免既往单纯以寻求最低价格为目标的做法，尤其应避免将特定的降价要求作为中标的必须前提。应考虑逐步符合国际公认标准的综合评估体系，其中特别要包括可靠的质量、稳定的市场供应等重要因素。

在通过药品集中采购推进仿制药品和原研药品之间的相互替代时，建议考虑药品的特性，兼顾临床和患者需求逐步推进。

希望有关部门在相关政策执行中，还应充分考虑医药产品的特殊性，充分尊重医疗卫生专业人士和患者基于个体实际治疗需求的用药选择权，避免过度度的行政干预或在采购中形成事实上的垄断，更要避免将医生和患者的用药选择完全局限于价格最低的药物。

医保目录动态调整

中国现行基本医疗保险覆盖人数超过13.5亿人，且其保障水平不断提高，纳入报销的药物数量也在日益增加。

2019年3月新国家基本医疗保险用药目录调整方案公布并征求意见。商会希望相关政府部门在对于医保目录制度进行改革和建立动态调整方面，能够充分总结之前的相关经验，并且更多地就相关制度的改革与完善，特别是具体流程和遴选标准的规范化、标准化，以及落实执行的监督管理等方面，与包括制药行业、医疗卫生专业人士等在内的各利益相关方进行广泛的交流和沟通，从而真正建立一个调整过程公开透明、制度完善合理的医保目录调整机制，使得更多的创新药品能够更加及时地纳入医保报销的范围，造福广大患者。

oversight and prevent the rise of monopolies in the drug and pharmaceutical markets.

Adjustment to the National Drug Reimbursement System

China's basic medical insurance schemes now successfully covers over 1.35 billion people. Among other improvements, these schemes have increasingly expanded reimbursement benefits for a growing number of pharmaceutical products.

In 2019 a plan to update the *National Reimbursement Drug List* (NRDL) was published for comment. AmCham China encourages the regulatory authorities to apply lessons learned from previous adjustments using standardized procedural and selection criteria. Authorities should also strengthen communication with a broad range of industry stakeholders regarding proposed NRDL reforms in order to formulate a more transparent NRDL adjustment mechanism that allows for greater insurance coverage and a more efficient reimbursement process in line with patient needs.

Healthcare Services

Restrictions on Foreign-Invested Medical Institutions

Until recently, investment in medical services has been included on the restricted list in the investment catalog, limiting foreign equity holdings to 70%. The recently published draft Negative list removes this category. If in fact healthcare services are eliminated from the final list it would make for a much more welcoming environment for foreign investment, according "National Treatment" to foreign-invested healthcare institutions.

Although foreign-invested hospitals that meet international standards are needed and encouraged in China, they are handicapped by restrictive and discriminatory policies. A variety of operating restrictions, some de jure and some de facto, on the private hospital industry including property ownership, bed numbers, medicine prices, vaccine services, limits on service licenses in specific units (e.g., assisted reproduction), lack of medical insurance (even considering available commercial insurance), and a high income tax rate all dissuade foreign investors.

An old "temporary regulation" (*Management Measures for Sino-Foreign JV Medical Institutions* <中外合资合作医疗机构管理办法>) dating back to 2000 before China joined the WTO imposes many restrictions on foreign-invested hospitals, which would be inconsistent with the new proposed "national treatment" status. The Measures limit foreign ownership to 70% and the term of 20 years, and prohibits branches. Prohibiting branches limits the ability of hospitals to grow into healthcare systems with scale. It also restricts benefits stemming from economies of shared management

and eliminates the ability for "hospital chains" to be taxed as a single entity. Currently taxed at the standard high rate of 25%, a hospital (or clinic chain), must report every facility separately, so that losses from newly established facilities cannot be offset against more mature profitable facilities, resulting in extremely high income tax rates for a growing healthcare brand.

High end medical talent is a scarce commodity. To absorb talent and ideas from around the world and to service the international community, some foreign-invested healthcare companies recruit senior talent from abroad. According to the *Interim Measures for the Administration of Short-term Medical Practice of Foreign Physicians in China* (外国医师来华短期行医管理暂行办法), it is possible to acquire licenses for these senior employees and the NHC recognizes the benefits of allowing them to work at one or more healthcare facility. In practice, however, Work Permits for foreigners are issued for work at only one company / facility, restricting foreign doctors to working in only one facility, even if the same investor owns more than one facility. AmCham China recommends that foreign doctors be allowed multi-site practice licenses, the same as Chinese doctors.

Hospitals in China continue to be granted status according to an accreditation system of "Primary," "Secondary" or "Tertiary" designation. These designations have a hard requirement for the number of beds necessary to be granted the designation. For example, Tertiary General Hospitals must have at least 500 in-patient beds. Because modern medicine requires shorter hospital stays and many procedures can now be done on an outpatient basis at lower cost, AmCham China strongly recommends that the bed number requirement be dropped from these designations. This is important because licenses for certain technologies, such as IVF, Stem Cell Therapy, and Robotic Surgery, can be withheld from hospitals without those Tertiary Designations.

Health Insurance

Despite the fact some private hospitals have aligned the pricing schemes of drugs and related medical services with government-directed prices, most private hospitals still operate outside existing medical insurance programs, which limits patient choice and inhibits the development of specialized cancer treatment units in private hospitals.

AmCham China recommends that basic medical insurance be extended to cover private hospitals and allow patients to be reimbursed up to the maximum allowable amount in public hospitals and then allowed to pay the remaining balance out-of-pocket or with supplemental commercial health insurance. Moreover, we recommend raising the ceiling on individual income tax deductions for health insurance premiums. Together, these policies should improve patient access to needed medicines and improve patient and consumer choice.

医疗服务

对外资医疗机构的限制

直到最近，医疗服务投资已被列入投资目录的限制清单，将外国股权比例限制在 70%。最近发布的负面清单草稿删除了该类别。根据外国投资医疗机构的“国民待遇”，如果从最终名单中删除医疗保健服务，将为外国投资创造一个更加良好的环境。

通过其他优惠政策，中国需要和鼓励符合国际标准的外资医院。私营医院行业的各种经营限制，一些法律上和事实上的限制，包括财产所有权、床位数、医药价格、疫苗服务、特定单位的服务许可限制（例如辅助生育），缺乏医疗保险（甚至考虑到可用的商业保险），高所得税率都会劝阻外国投资者。

从 2000 年起，旧的“临时监管”（中外合资医疗机构管理办法）对外资医院有很多限制，这与新提出的“国民待遇”不一致。该法规将外国所有权限制在 70%，期限为 20 年，不允许分支机构。限制医院分支机构的开放限制了医院成长为具有规模的医疗保健系统的能力。它还限制了共享管理经济带来的好处，并消除了“医院连锁”作为单一实体征税的能力。目前，医院（或诊所连锁店）以 25% 的行业高税率征税，必须单独报告每个设施，因此新建设施的损失不能用于更成熟的盈利设施，导致不断发展的医疗品牌极高的所得税率。

高端医疗人才是一种稀缺商品。为了吸收来自世界各地的人才和思想，为国际社会服务，一些外资医疗公司从国外招聘高级人才。根据“《外国医师来华短期行医管理暂行办法》，这些人才可以获得高级职员的执照，国家卫生委员会也认可并允许他们在一个或多个医疗机构工作。然而，在实践中，外国人的工作许可证仅在一家公司/机构中发放，因此即使同一投资者拥有一个以上的设施，外国医生也只能在一个机构中工作。我们建议允许外国医生获得多地执业许可证，与中国医生享受同等待遇。

根据“一级”，“二级”或“三级”认证制度，中国国内的医院继续获得相应级别。这些名称对指定的床位数量有硬性指标。例如，三级综合医院须至少有 500 张病床。由于现代医学要求更短的住院时间，且可以在门诊进行许多手术，商会强烈建议删除床位数要求。这一点非常重要，因为某些技术的许可证，如体外受精、干细胞治疗和机器人手术，仍能在没有三级认证的医院保留。

健康保险

尽管一些私立医院已将药物和相关医疗服务的定价方案与政府指导的价格保持一致，但大多数私立医院仍在现有的医疗保险计划之外运作，这限制了患者的选择并抑制了私立医院癌症专项治疗的发展。

商会建议将基本医疗保险扩展到私立医院，并允许患者获得在公立医院最高可允许金额的报销，然后自费支付余款或由单独的商业健康保险支付。此外，我们建议提高健康保险费的个人所得税抵扣上限。这些政策使得患者更易获得对所需药品，并改善患者和消费者的选择。

博鳌超级医院和医疗旅游先行区

2013 年，国务院正式批复海南设立博鳌乐城国际医疗旅游先行区，给予其医疗技术、药品器械特许准入等“国九条”黄金政策。2018 年 3 月 31 日，先行区第一个标志性项目——博鳌超级医院如期开业，“一个共享医院平台 + 若干个临床医学中心”运行模式进入探索阶段。该平台可为患者申请使用已在欧美发达国家上市，尚未在国内获批上市的新药。

博鳌超级医院内的特别规定下，和睦家国际疫苗和癌症中心获得批准，比中国其他医院提前 4 个月开始使用 HPV 九价加卫苗 (HPV 9 Gardasil)。我们鼓励海南省政府继续支持进一步使用中国尚未开发的其他重要疫苗。

实际运行中我们发现，该政策落地实施面临审批程序繁琐，流程过长的尴尬局面，给不少希望及时使用药物的癌症患者造成不便。商会建议，医疗先行区所在地有关部门可大力促进利好政策的落地，简化审批流程，搭建快速通道，真正把政策变成患者的福音。取消部分癌症特效药的进口关税使其价格与香港比更有竞争力。

健康扶贫

健康扶贫是消除贫困的重要组成部分。非公经济通过扶贫行动可履行其企业社会责任，非公的专业性可助力社会创新并帮助困境人群获得医疗服务供给。很多非公机构包括医院，医药及医疗器械企业等，具有为基层医务人员组织并提供赋能培训的实质，并带来可持续的影响力。

商会愿意协调会员单位，特别是医疗领域的企业等提供创新型的医疗救助，包括：

- 提供专业志愿者服务，针对性地解决贫困地区的

Boao Super Hospital and the Boao Medical Tourism Pilot Zone

In 2013, the State Council approved the Boao Lecheng International Medical Tourism Pilot Zone in Hainan. This reform created a series of preferential policies, including the 9 *National Articles* which streamlined approvals for needed imported medical technology, medicine and medical equipment access. The first landmark project, the Boao Super Hospital, opened on March 31, 2018. Open to private and/or foreign investment, the Hospital offers a new operating model of “one shared hospital platform + several clinical medical centers.” The Hospital platform is permitted to apply to stock and prescribe medicines available internationally but otherwise under review for use in mainland China.

Within the Super Hospital, under the special regulations, the United Family International Vaccination and Cancer Center got approval to begin the use of the HPV 9 Gardasil a full four months earlier than it was available in other hospitals in China. We encourage the Hainan government to continue to support further use of other important vaccines, not yet available in China.

The medicine application process has been hampered by cumbersome and lengthy application procedures, delaying patient access to critically-needed medication. AmCham China recommends the relevant authorities streamline approval procedures and establish a “fast track” lane to ensure these policies meet their intended goal to provide a wider array of medications to patients. Abolishing existing import tariffs for specific medicines would also increase the price competitiveness of the Boao Super Hospital compared to medications and medical services available in Hong Kong.

Corporate Social Responsibility and the Health Sector

Health-focused aid programs contribute to poverty alleviation through their impact on growth, direct benefits to the poor, and increased spending on social services. Private sector expertise and a commitment to Corporate Social Responsibility (CSR) offer opportunities to improve healthcare for impoverished communities. Healthcare service providers, and pharmaceutical and medical device manufacturers have the capacity to provide professional training for local providers in rural, impoverished areas. Organizations like AmCham China have a role to play in coordinating across their membership bases.

Given these opportunities and expertise, we urge the Chinese government to engage with AmCham China to leverage private health sector expertise and maximize the impact of CSR. AmCham China is willing to:

- Coordinate among its members in the medical sector to provide professional volunteer services to address healthcare challenges in rural and impover-

ished areas. Sharing information on health and poverty challenges will help private and donor agencies to allocate resources and effectively reduce poverty;

- Provide training for medical staff in poor areas. Training and education will help grassroots healthcare workers professionalize their skills and contribute to more sustainable development;
- Assist with the coordination of funds and volunteer organizations to build sustainable, collaborative poverty alleviation strategies and programs.

MEDICAL DEVICES

Recent Developments and Ongoing Regulatory Issues

Pre-Marketing Management

In 2018, the former State Drug Administration advanced the State Council’s directive to “deepen reform.” The results have been impressive. In light of huge demand for information on the registration process, the Center for Medical Device Evaluation (CMDE) established five different channels (allowing communication before, during review, and for special cases) to receive inquiries from applicants and hired large numbers of reviewers/consultants to reduce delays. CMDE began to use official WeChat and Internet platforms to publish rules, answer frequently asked questions, and disseminate comics and cartoons to build knowledge about medical device registration and product knowledge.

At the same time, AmCham China members have experienced situations where information obtained during the consultation process does not align with the actual medical device registration procedure, causing members to have separate applications rejected for the same reason.

When clinical trials are required to be conducted, AmCham China recommends strengthening communication between the applicant and the evaluation agency. This should be done before beginning the clinical trial. Otherwise, if any modification to the protocol is made during the review, the clinical trial must be redone, wasting medical and evaluation resources.

Pre-Market Management - Clinical Requirements

We were delighted to see that China, one of the member countries of the International Medical Device Regulators Forum (IMDRF), successfully held two IMDRF meetings in 2018. China also joined the new work item (NWI) and Medical Devices Clinical Research (MDCI) project, to advance global coordination around the use of clinical data.

医疗卫生问题。政府公开健康贫困的具体事项有助于捐赠机构对接相关资源并做到精准有效扶贫。

- 为贫困地区医务人员提供赋能培训。培训与继续教育有助基层医护人员强化个人综合实力，谋求可持续职业发展。帮助协调潜在的公益基金与志愿者组织，共同建立可持续性扶贫模式。
- 商会鼓励相关政府部门开放性地与非公领域合作，最大化地实现企业社会责任的影响力。

医疗器械

最新进展及现存监管问题

上市前管理

2018 年是国家药品监督管理局根据国务院的要求进一步深入改革、固化改革成果的一年。我们欣喜的看到，部分改革成效已经彰显。如，医疗器械技术审评中心进一步提高公众服务意识，开通申报前、申报中和特殊事项咨询等五种咨询渠道，对处在注册申报不同阶段的申请人均有相应的咨询渠道。参加咨询的审评人员和咨询场次都有大幅度的增加。同时，面对庞大的申报咨询需求，医疗器械技术审评中心积极通过官方微信，网络平台等先进手段，对共性问题在汇总的基础上，不断推出共性问题答疑，医疗器械注册和产品知识普及漫画等一系列有利于引导申请人有效、有序、高质量申报的举措。

但是与此同时，我们也看到，很多现场咨询获取的信息或者达成的一致意见没有办法固化并落实到注册审评过程中，最大限度的避免同样问题再次出现在补单中等现象。

尤其是对于需要进行临床试验的资讯项而言，商会建议，临床试验开始前，应在申请人和评审机构之间在现有的仅对需要临床试验预审批产品提供临床试验预咨询的基础上，进一步拓展咨询范围，建立一个更强大的临床方案沟通机制，避免一旦在审评过程中对方案提出修改，申请人必然会面临着必须重新做临床试验，造成包括医疗和审评资源的浪费。

上市前管理 - 临床

我们欣喜的看到，中国作为 IMDRF 成员国之一，在 2018 年成功主办了 IMDRF 的两次会议，并顺利成为新的工作项目 (NWI) “医疗器械临床研究 (MDCI)” 项目的召集人，并在推动该研究项目积极推进和未在使用临床数据方面的全球协调。基于此，我们也希望再次重申我们的立场：临床试验的目的是为了验证临床评价之后的剩余风险，鉴于进口产品在原产国上市审批时已经对产品进行了完整的风险评估，我们建议政府取消已经选择在中国进行临床试验的进口医疗器械首次注册申请中需要提交原产国上市证明的要求。同时，这一要求也应在临床试验和首次注册产品的注册申请审批流程中被取消。此外，如果进口医疗器械申请人能够在申请注册时提供其原产国上市证明，那么应该免除在中国开展临床试验的要求。在这种情况下，在中国的上市审批将由其境外临床数据和临床评价结果来支持。此举有利于减少具有国际先进水平的医疗器械在我国上市时间与欧美国家存在的差距。

上市前管理 - 电子化申报

行业了解到国家药监局正在考虑积极推进电子化申报以便规范申报资料格式，提升审评审批效率。我们欢迎上述举措，但也希望电子化进程可以充分考虑信息化系统的实际情况，留给监管当局和行业双方足够多的时间来测试信息系统，避免仓促上马。且需要审慎考虑信息安全问题，尽最大可能避免产品信息泄露的风险。

全生命周期管理 - MAH

在 2018 年，国家药监局响应国发【42】号文件精神，积极推进医疗器械领域上市许可持有人的落地。但是我们发现，与药品领域不同的是，已经在华上市的进口医疗器械，生产线原样搬迁至境内生产的，没有一条适用的注册申报途径 - 既不属于进口注册，也不属于国产注册。商会建议进口医疗器械上市许可持有人在将其生产环节转移到中国国内的情况，应与国内生产的产品受到国内场地搬迁受到法规的平等对待，以简化注册流程，助力体系升级，加速进口医疗器械国产化进程。

全生命周期管理 - 标准

长期以来，医疗器械行业一直面临着该领域大量的强制性的行业标准滞后于产品技术发展以至于制约产品发展这一困境。在国家药监局医疗器械标准管理中心的不断努

In light of these developments, we reiterate our view that clinical trials are intended to identify any residual risks after clinical evaluations have been conducted. Given that imported devices must undergo a full risk assessment in their country of origin, we recommend that the government remove the requirement to submit a country of origin certificate with the initial registration application for a medical device whose clinical trial is to be conducted in China. The requirement to submit a country of origin certificate should also be removed from the clinical trial and new product registration process. Additionally, if an imported medical device has a country of origin certificate, a clinical trial should not be required in China. In these cases, overseas clinical data and clinical evaluation results should be sufficient. This will help to reduce the delay between market approvals in China and in other developed countries with respect to medical devices.

Pre-Market Electronic Management Application

AmCham China understands that NMPA is considering accelerating electronic applications in order to standardize application documents and improve the efficiency of examination and approvals. We welcome these initiatives but recommend that the electronic application process reflect the complexities of introducing new information management systems by building a system testing period for both regulatory authorities and industry members. We also need to ensure that any new system is secure and prevents data leakage to the greatest extent possible.

Product Lifecycle Management-Market Authorization Holder

In response to the 2017 State Council *Opinion on Strengthening Reform of the Drug and Medical Device Review and Approval Process* (Opinion No. 42), the State Drug Administration made active efforts to accelerate the medical device licensing process. AmCham China has found, however, that no registration pathway is available for imported medical devices that want to relocate their manufacturing activities to China. Unlike regulations for pharmaceuticals, these devices do not clearly fall under existing imported or domestic registration procedures. AmCham China recommends that if holders of licensed imported medical devices transfer their production processes to China, they should be treated equally alongside domestically-produced devices and subject to local regulations regarding domestic production relocation to simplify the registration process and accelerate the localization of imported medical devices.

Product Lifecycle Management-Standards

For many years the medical device industry has been hindered by the fact that many mandatory industry standards are not aligned with international best practices thus restricting product development. Following efforts of the Center for Medical Device Standards Management under

NMPA, AmCham China is delighted to see that the absolute number of mandatory national and industry standards for medical devices is gradually declining.

We suggest the consistent application of standards will improve the market regulatory environment. Most industry standards in China are adapted from standards defined under the International Organization for Standardization (ISO). Imported medical devices often conform to the latest international standards, but do not necessarily meet standards in China's domestic market (which are often older). Therefore, AmCham China recommends that after China's standards are updated, a reasonable transition period be defined for companies to update their products. According to the Standing Committee of the National People's Congress (NPCSC), a transition period should be allowed between the release of new standards and their implementation. In addition, any medical devices listed on the market that comply with the previous standards should not be expected to comply with the revised standards during device inspections.

Post-Market Supervision-Adverse Events and Re-evaluation

AmCham China was delighted that the State Administration for Market Regulation (SAMR) issued the *Regulation on the Monitoring and Re-evaluation of Adverse Events of Medical Devices* in August 2018 (Order No. 1). Subsequently, eight guiding principles (i.e., the *Regulations for Periodic Risk Assessment Reports of Medical Devices for Market License Holders*), were released for public comment in November and December. The National Center for Adverse Drug Reaction Monitoring (the Center) organized two training sessions. These actions are important for developing risk management procedures and protocols.

Companies holding imported medical device licenses, who are responsible for monitoring adverse events, have expressed concern over the requirement to implement these new regulations within three months without implementing guidelines. We urge the relevant authorities to ensure implementation of laws and regulations affords companies sufficient transition periods to comply and ensure that these regulations do not apply to medical devices with previously-approved licenses.

Centralized Procurement

Since 2002 all provinces with support from the NHC have initiated a centralized procurement process for high-value consumables, in particular, vascular intervention products, pacemakers, electrophysiology and non-vascular interventional products. Since 2012, the price of these products has fallen annually. With the hindsight of 15 years of nationwide centralized procurement, these challenges deserve further attention:

力和推动下，行业乐见本领域强制性国家标准和强制性行业标准的绝对数量一直在逐步下降。

我们在此谨提出标准的规范性使用问题供进一步改进和落实：由于我国医疗器械领域大部分行业标准是由境外的国际标准化组织（ISO）标准转化过来的，对于进口产品而言，符合了境外的升级版标准，往往就无法符合旧版标准。因此商会建议在标准更新后，需要给予企业一段合理明确的过渡期以完成产品的更新换代。从全国人大立法委员会的解释看，新标准发布到实施有一段过渡期，在过渡期新老标准都是有效标准。符合哪一版的产品都是合规产品。且在旧版标准有效期内上市的产品，在遇到上市后检查时，也应该依从旧版标准及其相关参数要求；不能用新版标准来衡量旧版标准下上市的产品，并作为处罚依据。

上市后监管 - 不良事件和再评价

商会欣喜地看到《医疗器械不良事件监测和再评价管理办法》作为国家市场监督管理总局成立以来的第1号令（以下简称“1号令”）于2018年8月发布；在相当短的时间内，《上市许可持有人医疗器械定期风险评价报告撰写规范》等八个指导原则陆续予以公开征求意见；并在11月、12月由国家药品不良反应监测中心（以下简称“中心”）组织召开了两次培训。为企业开展风险管理、落实主体责任起到积极作用。

进口医疗器械上市许可持有人承担医疗器械不良事件监测的主体责任，在接受了监管机构的培训之后，作为主体责任人对上述法规在出台3个月，相关支持性指南和信息化系统均未出台之际即需要贯彻实施表示关切。我们希望相关法律法规的出台和实施可以充分考虑到实施层面的实际情况，给予企业足够的合规过渡期，并对法规实施之前就已经上市的产品不再进行回溯性要求。

集中采购

自2002年起各省市、原卫生部对部分高值耗材陆续开展了集中采购工作，以血管介入、起搏器、电生理以及非血管介入产品集中采购开展的省市和轮次最多，特别是2012年以来上述产品的价格经过逐年降价，甚至一年多次降价。从全国范围的集中采购项目的体会来看，有以下问题值得进一步思考：

“双信封”招标模式

与药品相比，医疗器械产品因适应症、产品工艺设计、材质、规格、型号等不同区分出各种产品系列，产品组件、配套也因患者个体差异、治疗方式、手术路径的不同种类复杂多样。“双信封”模式下将同目录下所有产品进行简单的比对，不考虑创新产品、换代技术、特殊适应症等原因，强行制定先限价入围，再竞价、议价的规则，导致投标企业被迫降价使用最便宜、最老的基础产品投标或无奈弃标。过高的降价幅度不仅限制了创新产品和性价比适宜的产品在临床的使用，更限制了患者获得适宜产品服务的权利，同时大大削弱了生产企业创新的意愿。建议改革医疗器械集中采购模式，以透明的挂网采购方式取代“双信封”模式。

采购限价

各省在医疗器械产品挂网时，采用“全国最低价”作为限价挂网的依据，不考虑有些产品的“全国最低价”与采购模式、采购数量、回款时间、配送成本等关键因素相关联，而中国幅员辽阔，各地因经济发展、疾病谱、医疗服务水平和规模存在较大差异，生产企业的产品终端价格也随之存在差异。建议主管部门在制定限价依据和原则条款时，应充分考虑采购模式、采购数量、回款时间、采购周期等关键因素，制定科学、合理的符合实际的市场价格，避免大批产品因无法接受限价而退出市场，难以满足临床需求。

二次议价

近年出现在省标中标后，还要以市、医院为单位开展二次的价格谈判，使得投标企业的价格进一步降低，形成“没有最低只有更低价格”的恶性循环，造成许多投标企业被迫弃标，难以满足临床需求的局面，同时二次议价不仅加大了市级和医院相关部门的工作量，投标企业也在不同市、医院间疲于奔命，运营成本不断增加。建议取消二次议价，以省为单位开展挂网采购模式。

关于质量层次

改善产品资质信息的科学评估。医疗器械的临床效果评估应采取高等级评估后对多中心临床试验进行分析的方法。临床试验报告已经成为各国政府市场准入的参考依据。植入性耗材的安全性和有效性评价应该以上市后多年的临床试验结果作为循证医学证据进行比较，主观评论、意见或实验室报告证据等级较低，结果难以令人信服。另外，

Replace the "Double Envelope" Procurement Model

Medical devices are catalogued into different product categories based on their product design specifications, material, and product types. Product components and accessories are necessarily diverse because of the unique differences between individual patients, treatment methods and surgical options. Under the "double envelope" model, all products in the same catalogue are similarly assessed, regardless of their level of innovation, needed replacement technology, or unique specifications. These assessments dictate the rules with respect to pricing, bids and negotiations. The result is that many companies must lower their prices by using out-of-date or cheaper products in order to participate in the procurement process. These forced price reductions not only restrict the clinical use of more innovative, cost-effective products, but also restrict patient access to needed devices. AmCham China recommends reforming the centralized medical device procurement process, in particular that the "double envelope" model be replaced by a more transparent online purchasing process.

Purchasing Price Limits

China's provinces have adopted the principle of the "lowest national price" for online medical device procurement, regardless of the fact that pricing must consider a variety of inputs. China's vast territory has disparities in the level of economic development, a varied disease burden, and differential access to medical services, all of which affect a product's end price. AmCham China recommends that the central government more clearly consider key procurement considerations like the quantity of items to be procured, the estimated time to repayment, and distribution costs to ensure that procurement prices reflect market realities. This will help prevent products from exiting the market due to unrealistic limits on price, leading to reduced patient access.

Second Round Negotiations

In recent years, after a bid is awarded at the provincial level, a second round of negotiations takes place at the city and even hospital level, further lowering the price of the original bid. This creates a "race to the bottom" with respect to price, which forces many suppliers out of competition, despite clinical demand for devices. A second round of price negotiations increases the administrative workload of municipal departments and hospitals. Bidding enterprises also have to navigate different procurement strategies between cities and hospitals, increasing operational costs. AmCham China recommends that city and hospital-level price negotiations be abolished and online procurement take place only at the provincial level.

Medical Device Quality

Clinical evaluations of medical devices should be based on

a high-level assessment of multi-center clinical trials. In a number of countries, clinical trial reports have become the standard reference point for regulators when reviewing applications for market access. Safety evaluations of implantable and consumable devices should be measured against multiple years of clinical trial data. Relying on comments, opinions or laboratory reports of medical devices that are often subjective and based on minimal evidence is not recommended. The Chinese patent system classifies patents as invention, utility model or design. Invention patents undergo substantive review and are the highest quality. AmCham China recommends that when evaluating the validity of a product declaration, regulators distinguish between different types of clinical evidence, with greater consideration given to invention patents.

Two-Invoice System

The perioperative period refers to the first stage of a surgical procedure (preoperative, intraoperative and postoperative) and constitutes an important sales opportunity for the medical device industry. Managing the lifecycle of implantable or consumable devices is critical to ensure patient safety. Medical device manufacturers have different sales models (some utilize branches, or national general agents, or a network of offices). Distribution companies assume a large number of pre-sales and after-sales service functions including product training, equipment installation and maintenance, tool distribution and disinfection, and miscellaneous operational support. The complete product service cycle begins after distribution/implantation and requires both human and material resources especially during post-operation follow-up, which are often outside the capacity of device manufacturers. After-sales patient outreach services are essential for medical device distribution companies. China's medical device industry is a competitive product marketplace, but manufacturer requirements for after-sales outreach and technical support vary greatly. There are too few agents qualified to provide professional after-sales device service.

As compared with the pharmaceutical industry, medical devices are often manufactured individually or in small quantities because they need to be heavily customized to meet individual patient needs. Medical institutions do not purchase devices in large batches. Currently, medical device purchase takes place only through a small-scale orders and purchases. According to regulations of the "two-invoice system," when retailing pharmaceuticals, production and distribution firms must issue VAT invoices. The invoices must include the name, device specifications, number of units, quantity, unit price, and the quantity of drugs to be sold. If these details are not listed in their entirety, any taxable services should also be listed. The drugs for sale should also be accompanied by a sales receipt. The receipt should include 11 items, including the name of the drug, the dosage schedule, and any other items purchased.

中国专利分为发明专利、实用新型专利和外观设计专利，其中发明专利的技术含量最高。商会建议，在对产品申报资格进行评估时，应区分不同级别的临床证据，给予发明专利更大的权重。

两票制

与药品不同，术前备货、术中跟台、术后技术服务是医疗器械行业销售环节中不可或缺的一部分，植入性耗材全程管理更是保障患者安全的重要举措。医疗器械生产企业的不同销售模式（分支机构、全国总代、办事处等），流通企业同样承担着产品培训、设备安装维修、工具配送消毒、术式跟台等大量的售前、售后服务等职能。特别是植（介）入产品在配送、植入后，全产品周期的服务刚刚开始，还需要大量的人力和物力投入到术后的随访，生产厂家有限的人力和渠道是无法覆盖的，需要通过医疗器械流通企业实现产品售后的延伸服务。同时，医疗器械行业因产品种类繁多复杂，生产企业对代理商的资质、售后服务的技术水平和人员能力要求差异较大，无法用少量的几家代理商实现专业化、个性化的售后服务。

与药品不同，医疗器械因使用数量少，规格、型号的个性化较大，医疗机构无法实现批量采购，少量、多次的订单式采购是医疗器械采购的市场现状，若按照“两票制”规定的“生产、流通企业销售药品时，必须开具增值税专用发票或者增值税普通发票，税票上应列明销售药品的通用名称、规格、单位、数量、单价、金额等，不能全部列明的，应附上应税劳务清单。所销售药品还应附销售出库单，出库单上要列明药品名称、剂型等 11 项内容”进行采购，将会给生产企业、经销企业和医疗机构带来几何级倍增的工作量和管理成本。

各地因经济发展、疾病谱、医疗技术服务水平和规模存在较大差异，地市、县市场（特别是偏远地区），如果严格推行“两票制”，生产企业的运营成本将要急剧上升，如代理商管理、物流配送全产品型号备货、补货、退货、换货、催款等。

支付费改革

中国正在积极推动支付费改革，以从按项目为主的收付费机制逐步过渡至按病种、按床日收付费，并最终转型为以住院病人按 DRG 的多元复合型的医疗支付方式。改革本身旨在通过科学运用工具，使得医疗机构不断优化的“临床诊疗过程”，更合理、高效的利用医保基金、减轻患者负担，

保证医疗质量。

就测算体系，目前各省按病种费用的成本测算通常是按照该病种疾病以往 3 年的历史价格的平均值来确定标准，或因没有考虑到医疗机构差异化、使用医疗器械的质量、主诊断下操作差异等关键因素，或会导致医疗服务的不足和以次充好，损害患者的利益。建议测算根据临床实际数据测算，兼顾技术与临床进步，国家可考虑出台更明确的指导原则。

鉴于 DRG 与按病种费率测算的性质，现有数据将永远偏向分类中已经存在的产品和治疗操作，而非潜在更加优异的创新技术和治疗手段。国际上，为解决此问题，在尊重临床实践现状的基础上，均允许符合一定条件的技术单独结算或大幅提升病种支付比例。在美国，通过新技术的额外支付解决；在英国，新产品可以列除外项目表内，以便进行 DRGs 之外（例外的产品）的产品支付；在德国，每家医院可以使用“创新支付”来支付新技术费用。中国也可以考虑制定即符合中国国情，又符合临床技术发展的“单独结算”或“超额支付”条件。

实施 DRG 的国家 / 地区的医疗体系、配套政策不尽相同，但完整、准确的信息系统，是执行的核心。医疗机构之间信息化系统建设也参差不齐，临床术语、疾病编码、病案首页、手术操作均未统一；而中央和地方各级政府监管机构对相关数据管理也有多套不相关联的系统。同时，全国 DRG 版本众多，分组器有较大差异，全国暂无统一标准。在标准、数据、评价体系多配套体系不完善的基础上，多以利益相关方从自身运营角度或会感到无所适从，例如：地方政府如何选择适合版本、医院信息化系统建立与维系成本、企业如何预估调整市场战略等。

全球经验表明，大打包支付机制可能成为有力的医疗服务激励或抑制因素。完善信息和数据系统的同时，还需要合理的医疗质量监测体系与合理评估指标，从而确保服务购买方从各个医院内，支付同一 DRG 获取相同的价值。通过评估监测措施确保不同服务医疗机构的公平竞争环境，有效防止上调编码、服务不佳、再入院、拒绝入院、仅治疗 DRGs 内最健康或最简单的患者（挑拣最有利的患者）等行为。

按病种、DRG 支付费实施的另一关键因素是通过多利益相关方参与决策、以持续监测结果为基础，建立的动态调整机制。以透明的方式进行定期调整，相关利益方参与，将以美国为例，美国每年都会进行支付调整，Medicare

Disparities between regions regarding China's economic development, disease burden, and differential access to medical services, means that strict implementation of the "two-invoice system" for medical device manufactures will increase manufacturers operating costs, affecting agents, logistics and distribution, product inventory, product returns and replacements, and payment methods.

Payment Classification System Reform

China is moving from a system of project, disease and hospital stay-based payment to a diagnosis-related group (DRG)-based payment, which standardizes prospective payments to hospitals and encourages cost-saving. Reforms emphasize easing patient burdens and ensuring medical quality by optimizing the clinical diagnosis process and making effective use of the medical insurance fund.

At the provincial level, the cost of treatment for individual diseases is crudely calculated according to estimates of the average price of treatment for that disease over the past three years. This does not take into account certain factors affecting treatment and results in substandard medical care and services. These factors include the varying quality of the medical institutions in the province, capacity for effective diagnosis, and the varying provision of appropriate medical devices and technology. Therefore, AmCham China recommends that the price of treatment be calculated using actual clinical data and account for improved technology and clinical service delivery. In this regard, we urge the Chinese government to introduce clearer guidelines.

Given the nature of DRG-based calculations, current data always favors the application of existing products and treatment options, instead of considering more technologically-advanced devices. To address this problem, in other developed countries new technologies that meet certain conditions can have their payments settled separately or increased proportionally in line with the costs of treatment at the clinic. In the US, this issue is addressed by allowing additional payments to be made for new technologies. In the UK, new products are excluded from payments made outside the DRG program (i.e., "exceptional products"). In Germany, each hospital can use special "innovation payments" to cover new technologies. China should also consider "individual settlements" or "excess payment" allowances in line with national healthcare conditions and clinical technology development.

While the medical systems and policies in different countries which use the DRG payment scheme vary, a complete and accurate information system is essential. Current information systems that link medical institutions are constructed unevenly and the clinical terminology, disease codes, medical records, and operations used often differ. Central and local government regulators use different data management systems. There exist multiple versions of DRG schemes and groups across China, all lacking a uniform standard.

Faced with these different standards and data systems, stakeholders struggle with operational challenges. These include identifying and implementing appropriate DRG and information systems at the local level, or establishing and maintaining hospital information systems, or how to forecast and adjust market strategies appropriately.

Member companies global experience has shown large, packaged payment systems can both inhibit or incentivize medical services. A reasonable medical quality monitoring system and reasonable evaluation indicators are needed to ensure service purchasers obtain the same value from the same DRG in each hospital. To ensure a level playing field for different medical institutions across different service providers, these systems are needed to prevent poor service delivery, refusal to admit or multiple costly re-admissions, and other behaviors that restrict treatment to the healthiest patients in DRGs.

Dynamic adjustment mechanisms which are based on continuous monitoring of patient health results are also important to DRG-based payment schemes. In the US, DRG-based payment structures are adjusted every year, and Medicare shares cost records and other details with relevant stakeholders for their feedback and analysis. The annual adjustment process provides the authorities with accurate and timely feedback on Medicare's operations in a transparent manner.

Medical Service Pricing Reform

Following the *Opinions on Promoting the Reform of Medical Services Prices and Opinions on Comprehensively Deepening the Reform of the Price Mechanism*, published in June 2016 and November 2017 respectively, all provincial authorities have improved local management of medical service prices on the basis of local conditions, accelerated the examination of pricing for medical services, and begun to adjust the price of medical services. These reforms have, to a certain extent, reduced the cost of pharmaceuticals, consumables and lab tests, and improved the quality of medical services.

Following the government reorganization initiated in March 2018, the responsibility for pricing medical services was transferred from the National Development and Reform Commission (NDRC) to the National Healthcare Security Administration (NHSA). We expect these changes to strengthen dynamic pricing for healthcare offerings, medical insurance, and medicine across multiple stakeholders. It should help to adjust pricing of different healthcare services offered by the public and non-public government hospitals. In addition, the government is developing the *National Medical Services Price Items Specification* (2020 edition), which is expected to further standardize current operating procedures and incorporate more new medical service items and advanced technologies into clinical practices.

与利益相关者分享所有相关成本历史和详情，以便进行分析、向 Medicare 提供反馈。这个年度调整的流程有助于相关部门以透明的方式接收到有关系统运作方式的准确和及时的反馈。

医疗服务价格改革

近年来，为贯彻落实《推进医疗服务价格改革意见》、《关于全面深化价格机制改革的意见》等政策，分别于 2016 年 6 月与 2017 年 11 月公布。各省结合实际改进医疗服务价格管理方式，加快新增医疗服务价格项目受理审核，调整医疗服务价格，一定程度上降低了药品、耗材和大型检查检验费用，提升了医务人员的劳务价值。

在 2018 年的机构改革后，医疗服务定价职能从发改委转移到了医保局，这一变化将强化价格与医疗、医保、医药等相关政策衔接联动，有利于建立分类管理、动态调整、多方参与的价格形成机制。此外，国家正在研究制定 2020 年版本的《全国医疗服务价格项目规范》，有望进一步规范先现行的操作流程，并将更多新的医疗服务项目和先进技术纳入临床应用。

结合过往经验，我们希望在改革的进程中进一步考虑技术进步，形成动态准入机制；提倡用科学的方法核算医疗服务项目的价格，在检验项目上区分方法学，同时体现医疗技术人员服务的价值；充分考虑《全国医疗服务价格项目规范》在地方的应用，为患者提供优质、多元的医疗服务。

新技术准入

自发改委发布《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》以来，各地逐步开放了新增医疗服务价格项目申请的窗口，但各地对接《全国医疗服务价格项目规范（2012 年版）》的进程仍稍显缓慢，甚至有些地方仍在使用 2001 年的版本作为基础，制定本地医疗服务价格项目。由于 2001 版目录发布时间过早，很多已经成熟的技术方法、服务项目都还没有被纳入。此外，各地开放新增医疗服务价格项目申请的时间不一致，未设置固定的周期，服务开放和受理的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，医院没有充足时间准备相关证明材料。还有值得注意的一点是，部分省份开放的窗口期仅受理新增的医疗服务价格项目申请，对于原有项目的修订申请不作受理，原有项目中所包含的基本技术、基础产品经过了改进和创新后无法在项目中得到运用，无

法体现创新价值，也不利于技术的进步和医疗质量的提升。

医疗服务项目定价

医疗服务项目的定价应该基于其技术价值。从医疗实践的角度而言，临床应当为患者选择最适宜的技术和最佳的治疗方案。若一些针对特定病患或特定疾病所必需使用的器械没有被纳入单独的收费类别，过低的价格将导致高效型和科技创新型医疗器械不被采用，从而可能延误疾病的治疗。甘肃、深圳等省市在制定新项目价格和进行医疗服务价格调整时，不仅严格限制耗材的除外，也将医疗服务价格进行了下调。在医疗服务评估机制不健全的情况下，一些医疗机构可能会因为经济原因或出于成本的控制，仅使用廉价或者技术较为基础的耗材，不愿意使用适宜高效的技术，甚至选择低价低质的产品，无法保障服务质量和医疗质量安全。

在检验项目中，《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的成本承受能力等因素，从而鼓励适宜技术的使用”。然而，从医学角度分析，不同检验方法或试剂的灵敏度和特异度可能存在一定程度的不同，成本也存在差异。在疾病的不同阶段，临床医生需要使用不同的检验方法来判断病人的状况，如筛查、早期诊断、疾病治疗和康复进展的监测。先进的方法学能够提供更高的特异性和敏感性，从而帮助医生更准确地诊断疾病，为调整或停止治疗提供依据。因此，诊断服务的定价也应该根据方法学的不同有所区分。

建议

药品

对中国政府：

- 尽快建立数据保护、专利链接和专利期补偿制度，切实保护知识产权，鼓励创新：明确保护时限和流程；明确包含创新治疗用生物制品。
- 建立更加优化的临床试验审批程序，将伦理委员会、人类基因资源管理办公室和注册管理部门的串联审批改为平行审批。
- 建立公开透明的招标采购规则，以符合国际公认

Based on AmCham China member experience, we urge the authorities to consider the impact of technology and allow for the formation of a dynamic access mechanism, encourage the use of evidence-based standards to calculate the price of medical service items, distinguish between various methodologies used during project inspections, appropriately reflect the value of technical medical services, and consider allowing local application of *National Medical Services Price Items Specification* to guarantee high-quality and diversified medical services for patients.

Market Access for New Technologies

Since the NDRC issued the *Notice on Relevant Issues of Accelerating the Examination of New Medical Services Price Items* in 2012, all regions have gradually opened application windows for new medical service price items. The *National Medical Services Price Items Specification* is out of date and impedes coordination between regions. Some regions are even still using the 2001 edition, which does not incorporate the latest technologies, methods and services. The window of time for new medical service price project applications varies by location and the schedule of when services are available and adding new services is irregular. Existing hours of operation of newly-added medical services in some provinces are short and do not allow hospitals sufficient time to prepare their materials. It is also worth noting that some provinces only accept new applications for medical service price items during certain windows and refuse to accept revised applications for original items. This is inconsistent with industry needs as the older technology used in the original projects may have been upgraded, which means the service pricing no longer reflects the improved technology and undermines the quality of new medical devices.

Medical Services Pricing

The price of medical services should be based on the quality of the technical services being provided. Medical practitioners should be permitted to select the most appropriate technologies and devices and define the optimal treatment plan for the patient. If devices necessary for specific treatment courses are not specified in a separate fee category, they may not be used because of cost considerations, delaying treatment. When pricing new items and adjusting medical service prices, some provinces and cities like Gansu and Shenzhen have not only restricted consumption of consumables but also lowered the price of medical devices below market rates. In instances of insufficient or inadequate medical evaluations or diagnosis, some medical institutions use inexpensive or technologically-inferior consumables and products. This makes it impossible to guarantee the quality and safety of medical services.

According to the 2012 edition specification, “the prices of test items shall not distinguish between reagents or methods and shall give full consideration to mainstream local testing methods, society’s capacity to bear costs and other factors,

thereby encouraging the use of appropriate technology.” From a medical perspective, however, the sensitivity and specificity of different test methods or reagents varies and costs also differ. Depending on the stage of a given disease, clinicians use different tests to determine the patients’ condition, through screening, early diagnosis or monitoring, and monitoring rehabilitation. Advanced methodologies provide a high degree of specificity and confidence to allow physicians to diagnose diseases more accurately and adjust treatment. Therefore, the costs associated with diagnosis must vary based on the methodology applied.

Recommendations

PHARMACEUTICALS

For the Chinese Government:

- **Establish data protection, patent link, and patent period compensation systems as quickly as possible. Encourage innovation through effective protection of IP rights. Clarify both time limits and the process of protection for pharmaceutical products, in particular for innovative and therapeutic biological products.**
- Streamline the clinical trial approval process. Currently, parallel approvals are needed from the Ethics Committee, the Human Genetic Resources Management Office and the Registration Management Department.
- Create a more transparent and open national drug tender and procurement process based on internationally-accepted standards that incorporates market-based price-volume mechanisms while avoiding administrative interference in procurement outcomes. This includes prohibiting the current practice within the *National Drug Procurement Pilot*, where pilot cities force companies who have won previous provincial procurements but may not have won a bid from a pilot city to reduce drug prices as a pre-condition for continuing procurement.
- Prioritize patient safety, while encouraging the use of generic drugs. Respect the rights of patients to choose their own drugs based on treatment needs. Prevent imitation drugs from replacing generic drugs and monopolizing the market.
- Dynamic adjustments to the basic medical insurance drug list should be more predictable, transparent, publicly-available, and subject to clearly defined time periods when adjustments can be made. Pharmaceutical product manufacturers should be allowed to submit applications for new products to be covered by the basic medical insurance drug list at any time and participate in the

标准的条件，在真实的量价挂钩基础上，改进现行集中采购，并且避免对中标价格直接进行行政干预。包括，停止目前在国家组织药品集中采购试点中，部分试点城市强制要求已列入本省集中采购采购范围内，但试点未中标的品种，也需下调价格方可保证继续采购使用。

- 基于患者安全的考虑，在鼓励仿制药使用的同时，尊重和保障基于实际治疗需求的用药选择权，在执行中切实避免仿制药替代成为仿制药垄断。
- 基本医疗保险用药目录的动态调整机制应更加可预料，如有明确的时间或周期安排；流程更加透明；同时向社会公开以接受监督。药品生产企业应被允许随时提出产品纳入医保报销范围的申请，并全面参与相关负责机构的评审流程。且被许可可就具体要求寻求澄清以确保准确和公正。同时，应建立对关于临床价值评估和沟通流程的申诉机制。

医疗服务

对中国政府：

- 取消《暂行条例》对外商投资医院的限制，包括：禁止新建医院分支机构，要求各分支机构单独申报税务，限制外籍员工可以工作的医院数量，以及认证医院所需的床位数量。
- 扩大基本医疗保险，以支付对私立医院的访问，并允许患者在公立医院获得最高可允许金额的报销。进一步允许患者自费支付剩余的余额或使用单独的商业健康保险来增加获得药物的机会。
- 在博鳌乐城国际医疗旅游试验区，简化审批流程，建立药品审批“快车道”。
- 利用私营医疗保健行业的专业知识和资源，通过企业社会责任计划和财政激励措施，解决中国农村和贫困社区的医疗保健挑战。

医疗器械

对中国政府：

- 通过允许推荐医疗设备标准，而不是强制标准来促进行业创新。商会希望医疗器械行业能够了解如何解决这一重叠问题，与全国人大立法委员会保持一致。
- 先行开展药品流程领域改革，“两票制”应按照国家药品分类管理，充分考虑市场供求关系、价值规律、法律约束、市场秩序多因素，逐步探索符合市场规律的经验，分步骤、有序地实施。医疗器械市场因特有的专科性、个性化等差异，其改革应该考虑药物试点的结果。国家出台配套措施以加速新版本《全国医疗服务价格项目规范》在地方的应用。
- 各地区定期对新增医疗服务项目开放接受和审查窗口，实现动态准入。
- 在制定医疗服务价格时，以服务患者为第一要务，强调疗效优先、价格合理的原则，基于技术价值，将具有显著安全性。
- 在检测项目上，建议考虑将更多先进、灵敏和特定的检测方法纳入新一版规范，特殊情况下允许差别计费。最后建议在某些范围内对单独收费或提价等收费方法进行限制，开展综合监管加强成本的控制和管理。

review process. Pharmaceutical companies should also be permitted to seek clarification on specific requirements to ensure accuracy and fairness. At the same time, a complaint mechanism for clinical assessments should be established

HEALTHCARE SERVICES

For the Chinese Government:

- **Remove restrictions and limitations on foreign-invested hospitals under the “temporary regulation” including: a ban on new hospital branches, the requirement to report each branch separately for tax purposes, restrictions on the number of hospitals that foreign employees can work for, and the minimum bed number requirement for hospital accreditation.**
- Extend basic medical insurance to cover visits to private hospitals and allow patients to be reimbursed up to the maximum allowable amount in public hospitals. Further allow patients to pay the remaining balance out-of-pocket or with separate commercial health insurance to increase access to medication.
- Streamline approval procedures and establish a “fast track” lane for approval of medicines under review in China in the Boao Lecheng International Medical Tourism Pilot Zone.
- Utilize the expertise and resources of the private healthcare sector through CSR programs and financial incentives to address healthcare challenges in rural and impoverished communities in China.

MEDICAL DEVICES

For the Chinese Government:

- **Promote industry innovation by allowing medical device standards to act as recommended guidelines rather than mandatory standards. The medical device industry is prepared to work with the NPC Legislative Council to resolve regulatory overlaps.**
- The “two-invoice system” should be based on dynamics of market supply and demand, and the proper legal framework. Implementation of these steps should happen gradually. The market for medical devices is unique, and its reform should take into account results from pilot pharmaceutical reforms. Promulgate supporting measures to accelerate the implementation of the latest version of the *National Medical Service Price Items Specification* in local areas.
- All locations should periodically review and accept

windows for newly added medical services to allow patients to access the latest devices in a cost-effective manner. Enact supporting measures to accelerate the implementation of the latest version of the *National Medical Service Price Items Specification* in local areas.

- Establish evidence-based practices to establish the cost of medical devices. When adjusting medical service and device prices, inputs like the cost of raw materials and labor need to be considered. Permit services prices to be adjusted up or down as needed in line with market demands. Incorporate health technology assessments as a reference tool for decision-making.
- Inspection of new medical devices should encourage the introduction of more advanced, sensitive and specific test methods into inspection standards while permitting differential billing schemes under special circumstances. Institute limits on separate charges or price increases that permit changes within a certain range and improve supervision of these changes to strengthen cost control.

Information and Communications Technology

Introduction

AmCham China continues to urge a return to openness, stability and clarity in China's policy environment for the Information and Communications Technology (ICT) sector. For decades, China's growing prosperity has been built on policies of opening up to the outside world. Recent trends toward restricting access in the ICT sector appear to indicate a reluctance by China to maintain its commitment to such openness, harming its global investment reputation. Renewed commitments and concrete actions to open the sector would advance continuing prosperity for both the US and China.

From the perspective of US businesses, the ICT sector in China presents a dilemma. On the one hand, it is now one of the most dynamic sectors of China's economy. On the other hand, it has arguably become the most difficult sector for foreign enterprises to navigate, especially as the policy environment has become more restricted and uncertain over the past few years. It not only foretells a future drop in foreign investment but also less interaction with the outside world for China.

As a reflection of their rapidly growing importance to both the US and China, this chapter discusses the state of key emerging technologies like artificial intelligence (AI) and Blockchain for the first time. Given their relatively nascent stage of development and vast uncertainty around how these technologies will unfold, AmCham China's policy positions are of a more general nature at this time.

Cybersecurity Law and ICT Market Access Issues

China's *Cybersecurity Law* came into force on June 1, 2017 and imposed strict cybersecurity restrictions on the country's ICT sector. The law's passage was driven by a mix of national security and industrial policy concerns. The regulations place excessive burdens on the private sector and discriminate against international vendors. No other major economy has a similarly intrusive cybersecurity review mechanism in place. Uneven implementation and a loosely-defined scope

has created uncertainty in the foreign business community. The law imposes limitations on cross-border data flows for both network operators and operators of "critical information infrastructure" (CII). The broad definition of CII and an evolving "cybersecurity classification protection scheme" result in companies being simultaneously subjected to multiple regulatory frameworks governing the same subject matter, as well as mandatory on-site inspections, data localization requirements, code audits, and other intrusive requirements that heighten the risk of IP theft and data security breaches.

AmCham China appreciates the willingness shown by Chinese authorities to engage with the business community to enhance transparency around implementation of the *Cybersecurity Law*. While AmCham China continues to have concerns about the *Cybersecurity Law* and hopes that its unnecessarily burdensome provisions are revised, AmCham China is also concerned that regulations promulgated to implement the *Cybersecurity Law* may exceed the bounds of such Law and create additional and unnecessary market distortions. Importantly, AmCham China urges that the current and future regulations avoid discriminating against foreign business, observe China's World Trade Organization Agreement on Technical Barriers to Trade (WTO/ TBT) obligations, conform to international best practices, and establish regular mechanisms to enhance dialogue and accountability around implementation of the *Cybersecurity Law*.

We recommend that China use a narrowly-designed, flexible regulatory approach regarding the operation of CII. The approach should adopt recognized global, voluntary standards, and internationally-accepted risk-management methods. The distinction between CII and network operators should be clarified and consistent given that the *Cybersecurity Law* provides different regulations for each set of operators. CII operators should only be subject to cybersecurity requirements and cross-border transfer rules for CII, instead of rules for both CII and network operators. Similarly, CII operator-specific rules should not be extended to network operators.

Cross-Border Data Flows and "Security Assessments"

Although the draft *Cybersecurity Law Implementation Measures for Security Assessments of Cross-Border Data Transfers* (of

信息和通信技术

引言

中国美国商会（商会）促请中国在信息和通信技术行业建设开放、稳定和清晰的政策环境。几十年来，中国的繁荣都是以开放的政策为基础。然而，近期中国有限制信息和通信技术行业准入的趋势，这种似乎不愿履行其对外开放承诺的信号对中国自身全球性的投资也造成了负面的影响。中国在开放信息和通信技术行业方面持续承诺并采取具体行动将推进中美两国持续繁荣。

从美国业界的角度来看，中国的信息和通信技术行业面临两难困境。一方面，它现在是中国经济中最具活力的领域之一。另一方面，它可以是外国企业最难驾驭的领域，尤其近几年政策环境变得越发受限，充满不确定性。这不仅意味着外资在中国将会缩减，也预示着中国与外界的互动将减少。

为反映人工智能(AI)和区块链等关键新兴技术对中美两国重要性的与日俱增，本章第一次就其现状进行了探讨。鉴于这些技术尚处于相对初期的发展阶段，发展走向存在不确定性，商会目前的政策立场更具普适性。

《网络安全法》及信息和通信技术市场准入问题

中国《网络安全法》于2017年6月1日生效，对信息和通信技术行业实施了严格的网络安全限制。该法案的通过得益于对国家安全和产业政策的关切。但是该规定给私营企业带来过重的负担，并涉嫌歧视国际供应商，其他主要经济体都不存在类似的干预性网络安全审查机制。政策执行不统一、定义范围宽泛等都为外资企业带来了许多不确定性。《网络安全法》限制网络运营商和“关键信息基础设施”(CII)运营商的跨境数据流动。关键信息基础设施定义宽泛，网络安全分级保护计划升级，导致企业同时要

遵守多个管理框架，应对强制现场检查，执行数据本地化要求、代码审计和其他干预性要求。这会增加知识产权盗窃和数据安全漏洞的风险。

商会赞赏中国政府愿意让业界共同参与，提高实施《网络安全法》透明度的做法。尽管商会对《网络安全法》仍有疑虑，希望修订其中繁复的条款，但商会也担心因实施《网络安全法》而颁布的相关法规可能会超出该法律的范畴，扭曲市场。同时，商会促请现行及后续法规能对外国企业一视同仁，履行中国对世界贸易组织(WTO)《技术性贸易壁垒协定》的义务，与国际最佳做法接轨，并建立加强《网络安全法》实施的对话和问责机制。

商会建议中国对关键信息基础设施运营采取专门、灵活的监管方式，采用国际认可的自愿性标准和风险管理方法。鉴于《网络安全法》对每类运营商制定了不同的规则，应明确关键信息基础设施运营商和“网络运营商”的区别。关键信息基础设施运营商应只遵守网络安全要求和适用的跨境转移相关规定，而不应同时遵守适用于关键信息基础设施运营商和网络运营商的规定。同样，适用于关键信息基础设施运营商的规定不应该扩大到网络运营商。

跨境数据流动以及“安全评估”

尽管《网络安全法》关于跨境数据传输安全评估实施办法草案(修订草案已于2017年8月底发布)允许网络运营商在某些情况下采用自我评估框架，给予跨境转移个人信息一定程度的灵活性，但跨境转移一些个人信息和“重要数据”(尚未充分定义)仍须向当局报告，关键信息基础设施运营商转移信息须经主管机关批准。尽管“重要数据”仍需正式定义，但是中国在国家网络安全标准《信息安全技术—关于跨境转移数据安全评估指导意见》征求意见稿中的附件列出了重要数据详细分类示例，明确“重要数据”的概念。该附件涵盖所有商业领域和所有数据，包括源代码、销售收入和与国家安全完全无关的其他数据。如果仍然对

which a revised draft was circulated in late August 2017) have given network operators some degree of flexibility regarding the cross-border transfer of personal information by permitting them in some cases to use self-assessment frameworks, some international transfers of personal information and of “important data” (a term which has yet to be adequately defined) still have to be reported to authorities. Transfers conducted by CII operators require approval from the competent authorities. Despite lacking a formal definition of “important data,” China has attempted to clarify the concept by providing a detailed sectoral list of examples of important data in an annex to the national recommended cybersecurity standard *Information Security Technology—Guidelines for Data Cross-Border Transfer Security Assessment for Public Comments (Draft Guidelines)*. This list encompasses all commercial sectors and covers nearly all data, including source code, sales revenue, and other forms of data wholly unrelated to national security. This excessively expansive and vague characterization of important data, if left unchanged, would have a far-reaching and adverse impact on foreign-invested enterprises (FIEs) in particular across all sectors, particularly given the need for unimpeded cross-border data flows in a globalized digital world.

Security assessments for personal information and important data should be considered separately with respect to cross-border data transfers. Security assessments should not be required concurrently for both types of data. Only cross-border transfers of national security-related important data should be subject to a security assessment. The assessments themselves should not be overly intrusive and should not require enterprises to disclose trade secrets such as source code or proprietary customer lists.

Cybersecurity Classified Protection Scheme (CCPS)

On June 27, 2018, China officially established a cybersecurity protection baseline for network operators and a universal compliance framework for the Cybersecurity Law by releasing the draft *Cybersecurity Classified Protection Regulation (Draft CCPS Regulation)*, an ambitious version of the Multi-level Protection Scheme (MLPS) that expands government supervision to a large swath of the commercial sector. CCPS grades the importance of IT systems on a five-point scale according to their importance for China’s national security, social order, public interests, and the legitimate interests of individuals and organizations. Concerningly, networks classified at level three or above must use network products and services deemed commensurate with their own security protection level. The *Draft CCPS Regulation* does not specify which metrics will be used to evaluate such products and services, which has led to concern over domestic favoritism. Another requirement of great concern to AmCham China is the stipulation that all products or services that could impact national security must pass a “national security review” conducted by the Cyberspace Administration of China (CAC) in collaboration with other departments. The

contents and procedural process of this national security review have yet to be specified, leading to worries over IP and data privacy protection and discrimination in favor of domestic products.

Much like China’s draft implementation regulations for CII, the *Draft CCPS Regulation* also imposes several significant requirements regarding the structure and maintenance of networks operating within China. For instance, the CCPS legislation requires that systems at level three and above must be connected with China’s public security bureau system and stipulates that all technical maintenance performed on networks must be localized. These unnecessarily intrusive requirements, among others, threaten to shut foreign technology out of systems ranked at CCPS level three and above, constituting a significant point of concern for the industry at large.

The *Draft CCPS Regulation* imposes new intrusive and burdensome requirements on products and services provided by network operators, further impacting international vendors. For instance, the earlier MLPS only targeted “important” network systems,” but the *Draft CCPS Regulation* could now target “all” network systems. The scope of the legislation has been enlarged to include cloud computing, Big Data, mobile internet, the Internet-of-Things (IoT) and advanced industrial systems, among other emerging technologies. Moreover, cyber products graded at level three must undergo annual cybersecurity product testing and evaluation by the public security bureau, cryptographic compliance assessments, as well as obtain new administrative approvals and licenses. AmCham China urges that if it must remain, the *Draft CCPS Regulation* be confined to follow regulations established in the *Cybersecurity Law*, avoid expanding the scope of MLPS and refrain from adding unnecessary regulatory items. In addition, AmCham China urges the government to consider relaxing the current CCPS regulations which are among the most restrictive cybersecurity frameworks for civilian systems in the world.

Cybersecurity Review Regime

In May 2017, the CAC officially released the *Security Review Measures for Cyber Products and Services (Interim Measures)*. The review examines important cyber products and services procured for use in networks and information systems related to national security and focuses on the “security and controllability” of these products and services. Under this regime, industry regulators in finance, telecommunications, energy, and transportation will conduct cybersecurity reviews across their respective sectors. A cyber product or service which fails to pass cybersecurity review will be barred from CII procurement.

The *Interim Measures* are broad in scope and include many vaguely defined terms and in some cases inconsistent language, introduces several new organizational players, and includes language alarming to AmCham China.

重要数据采用过于宽泛和模糊的定义，将对所有领域的外资企业产生深远的负面影响，而当今全球化的数字世界需要畅通无阻的跨境数据流动。

跨境数据转移时，对于个人信息和重要数据的安全评估应当加以区分，不应同时对两种类型数据进行安全性评估。只有转移与国家安全密切相关的重要数据才需要接受安全评估。安全评估不应该成为不必要的干扰，也不应该要求企业披露商业机密，比如源代码或专有客户列表。

网络安全等级保护计划

2018年6月27日，中国为网络运营商正式建立了网络安全保护基线，为《网络安全法》设立了通用合规框架，发布了《网络安全等级保护条例》（征求意见稿），这是升级版的信息安全等级保护计划，将政府监管范围扩展到了商业领域。《网络安全等级保护条例》草案根据IT系统对中国国家安全、社会秩序、公共利益以及个人和组织合法权益的重要性等方面进行五分制评级。需要注意的是，三级及以上网络必须使用自身安全保护水平对应的网络产品和服务。《网络安全等级保护条例》草案没有明确规定评估此类产品和服务的指标，此举有对国内偏袒的嫌疑。另一个令商会非常关注的要求是，所有可能影响国家安全的网络产品和服务都必须通过中国国家互联网信息办公室与其他部门联合的“国家安全审查”。国家安全审查的内容和流程尚未明确，因此企业对知识产权和数据隐私的保护忧心忡忡，担心为保护国产产品而被区别对待。

同中国关键信息基础设施实施条例草案一样，《网络安全等级保护条例》草案也对中国境内运营网络的结构和维护提出了若干重要要求。例如，《网络安全等级保护条例》立法要求三级及以上系统必须与中国公安系统连接，并规定所有在网上进行的技术维护必须本地化。这些不必要的干预性要求，预示将外国技术排除在《网络安全等级保护条例》三级及以上系统之外，是整个行业关注的重点。

《网络安全等级保护条例》草案对网络运营商提供的产品和服务提出了更多强制性要求，进一步冲击了国际供应商。例如，早期的信息安全等级保护计划仅针对“重要”网络系统，但《网络安全等级保护条例》草案现在针对“所有”网络系统。立法范围已经扩大到云计算、大数据、移动互联网、物联网和先进工业体系等新兴技术。此外，三级网络产品每年必须接受公安局的网络安全产品检测评估、加密合规性评估，并重新获取行政许可。商会建议，如果必须保留该规定，则《网络安全等级保护条例》草案应遵守《网

络安全法》的规定，不再扩大信息安全等级保护计划的范围，避免增加不必要的监管内容。此外，商会促请政府考虑放宽目前的《网络安全等级保护条例》，该条例是世界上民用系统最严格的网络安全框架之一。

网络审查制度

2017年5月，国家互联网信息办公室正式发布《网络产品和服务安全审查办法（暂行）》，审查用于国家安全相关网络和信息系统的重点网络产品和服务，重点关注这些产品和服务的“安全性和可控性”。金融、电信、能源和交通领域的行业监管机构基于此办法开展各自领域的网络安全审查。未通过网络安全审查的网络产品或服务将被禁止参与关键信息基础设施采购。

《暂行办法》涉及面广，使用了许多定义模糊的术语，存在语言不一致的情况，还设置了新的组织机构，同时一些措辞令商会担忧。《暂行办法》中的标准将对信息和通信技术行业产生深远影响，并可能提高某些关键领域的网络产品和服务供应商的市场准入壁垒。商会促请网络安全审查制度遵守中国对WTO开放市场的承诺，不歧视外国技术，不设置不必要的市场准入壁垒。

知识产权转移

2018年3月29日，国务院发布《知识产权对外转让有关工作办法（试行）》，完善国家安全体系，规范知识产权对外转让。该立法将转让类型分为三类：权利人变更、知识产权实际控制人变更和知识产权独占许可。该办法提出的审查措施对商务活动进行干预，引发了外国投资者对知识产权保护的高度关注。例如，根据办法条例，当需要在海外如国际学术交流提供科学数据时，作者需要先向其雇主（如研究所、学院或大学）提交数据征求同意。

云市场准入：

中国《电信业务分类目录》将云计算归为增值电信业务（具体为互联网数据服务），这意味着供应商必须获得特定的许可证之后才能运营。外商投资企业不能获取互联网数据中心许可证或其他增值电信业务许可证。此外，尽管云计算是中国的战略重点，但由于股权上限、投资限制、连接性要求、跨境数据转移能力的限制以及计算基础设施本地化的要求，外国信息和通信技术公司在很大程度上仍未涉足云计算。

2016年底，工信部发布了《关于规范云服务市场经营

The criteria included in the *Interim Measures* will have a far-reaching impact on the ICT industry and potentially raise barriers to market entry for suppliers of network products and services in certain critical sectors. AmCham China urges that the Cybersecurity Review Regime comply with China's WTO commitment to an open market, ban discrimination against foreign technology, and prevent unnecessary market access barriers.

Intellectual Property Transfers

On March 29, 2018 the State Council released the *Measures for Transfer of Intellectual Property Rights to Foreign Investors (Trial)* to improve China's national security system and regulate the transfer of intellectual property rights to foreign investors. The legislation classifies transfer types into three distinct categories: change of rights holder, change of actual controller of IP, and exclusive licensing of IPR. The review measures proposed by this legislation raise significant concerns for foreign investors surrounding IP protection, and introduce considerable regulatory interference in commercial affairs. For instance, under the *Measures*, when scientific data must be provided overseas, as in the case of international academic exchanges, the author needs to first submit the data to his or her employer (i.e., research institute, college or university) for approval.

Cloud Market Access:

The *Telecom Service Catalog* classifies cloud computing as a type of Value-Added Telecommunication Service (specifically an internet data service), which means vendors must obtain a specific license to operate. FIEs are not able to procure internet data center licenses or any other value-added telecommunications service permit. Additionally, cloud computing, despite being a strategic priority for China, remains largely off limits to foreign ICT companies due to equity caps, investment restrictions, connectivity requirements, and restrictions on the ability to engage in cross-border data transfer and requirements to localize computing infrastructure.

The Ministry of Industry and Information Technology's (MIIT) draft *Notice on Regulating Business Behaviors in the Cloud Service Market* released at the end of 2016 introduced an unprecedented level of government interference into the operations of cloud service operator partnerships without articulating a rationale for their imposition. The draft *Notice* includes provisions that, among other things, require Cloud Service Providers (CSPs) to physically construct and maintain infrastructure in China, subject cross-border data transfers to a range of restrictions, limit the ability of foreign companies to market their services in China under their own brand, and create duplicate copies of all key equipment, business systems, and data. The regulatory amendment process has not only systematically created an unlevel playing field for foreign operators within the China market, but also restricted their ability to partner on reasonable terms with

Chinese companies. AmCham China urges deletion of these requirements in the final *Notice*, which has yet to be released as of the end of 2018.

Personal Information Protection

The *Cybersecurity Law* contains personal information protections which apply to all business entities regardless of size or industry. Despite this, individual data protection requirements are often ill-defined in scope and provide little guidance for compliance. To address these issues, the Standing Committee of the National People's Congress (NPCSC) announced in September 2018 that the *Personal Information Protection Law and Data Security Law* were part of its legislative agenda. AmCham China believes that the subject matter of these two laws is so closely related that the laws should be consolidated into a single law. The promulgation of a unified personal information protection and data security law could be a significant development for data protection in China.

The European Union (EU) finalized its long-awaited General Data Protection Regulation (GDPR) in May 2018. EU leaders have acknowledged they see the GDPR as setting the "global standard" for data privacy. GDPR offers an opportunity for China to observe and learn from its implementation. For example, the current paradigm for online consent, "notice and consent," presents the terms of an agreement (notice) and requires users to make a choice to proceed (consent). The efficacy of this model has been called into question in recent years as lengthy, complicated privacy notices have become the norm and their value to end users has declined. Consequently, the definition and application of "user consent" has also blurred. The ubiquity and frequency of online data collection in today's digital world has led to a phenomenon called "consent fatigue," where users automatically give their consent without understanding what their consent entails.

Yet the GDPR has reiterated its commitment to "notice and consent." It has also strengthened the requirements by requiring consent to be "freely given, specific, informed and unambiguous." It is unclear whether these additional requirements address the modern challenges presented by "consent fatigue."

We recommend that China enact a unified national personal information protection and data security law. At the same time, we urge Chinese authorities to avoid hastily adopting a flawed law. We recommend that the NPCSC fully deliberate on the proposed legislative changes in an open and transparent manner with full consultation from relevant stakeholders, and consider the following:

- "Personal information" be defined 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 to which the data user has reasonable access, revealing individual identities"

行为的通知》草案（以下简称《通知草案》），对云服务运营商的合作关系进行了前所未有的政府干预，但并未明确缘由。《通知草案》要求云服务供应商须在中国建设、维护基础设施，并限制跨境数据转移，限制外国企业使用自身品牌在中国市场提供服务的能力。草案同时要求对所有重要设备、商业体系和数据进行副本留存。法规修订程序不仅没有系统性地为外国运营商在中国市场创造一个公平的竞争环境，反而限制了其以合理条件与中国企业合作的能力。商会建议在最终通知（截止到2018年底还未发布）中删除这些要求。

个人信息保护

《网络安全法》保护个人信息的规定，适用于各种规模、行业的所有商业实体。尽管如此，个人数据保护需求范围仍定义模糊，缺乏合规指导意见。为解决这些问题，全国人大常委会于2018年9月宣布，将《个人信息保护法》和《数据安全法》提上立法议程。商会认为，两项法律的主题密切相关，应该合并成一部法律。颁布统一的个人信息保护和数据安全法会推动中国数据保护的极大发展。

欧盟于2018年5月出台了期待已久的《通用数据保护条例》(GDPR)。欧盟领导人承认，他们认为GDPR为数据隐私设定了“全球标准”。GDPR为中国提供了观摩和学习的机会。例如，当前网上的同意模式即“知情同意”，先出现同意（知情），然后要求用户选择继续（同意）。近年来，这种模式的有效性受到质疑，因为冗长、复杂的隐私保护声明已成为常态，对用户的意义已经下降。因此，“用户同意”的定义和应用也变得模糊。在当今的数字世界，网上收集数据随处可见，导致“同意疲劳”现象：即用户在不了解同意内容的情况下自动同意。

然而，GDPR再次强调了“知情同意”要以“自愿、具体、知情和明确”为原则。目前尚不清楚这些附加要求是否解决了“同意疲劳”带来的现代挑战。

商会建议中国制定统一的国家个人信息保护和数据安全法。与此同时，促请中国当局不要仓促实施仍有漏洞的法规。我们建议全国人大常委会公开、透明，充分参考利益相关方的意见，全面审议拟议的法例修订，并考虑以下事项：

- “个人信息”定义为“以电子或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”（如个人位置信息）。

- 新个人信息安全法不仅限于“知情同意”，要设计更符合消费者利益、保护消费者数据的机制。数据保护的法律责任人应为收集数据的公司和实体，而不是提供数据的个人。
- 数据保护法应基于建议使用数据的潜在损害，而非基于用户同意对个人数据隐私进行评估。只有在收集和敏感个人信息时，公司才需要征得消费者的明确同意。如果资料泄漏不会因公布敏感资料而令个人用户处于危险中，或导致公开数据外泄，公司可自行决定是否告知数据外泄。

新的数据法规必须在保护消费者数据的需求和过度繁琐法规会阻碍跨境数据转移的风险之间取得平衡。例如，日本个人信息保护法于2015年修订，并于2017年生效。其关键创新是清晰地定义了“匿名处理信息”，或已处理的个人信息，从而无法确认特定个人。目前法律对匿名处理信息的限制明显少于对个人身份信息的限制，如没有义务获得数据主体的使用同意。该修正案的目标是在不侵犯或威胁个人隐私权的情况下，推进数字经济产生的个人信息和数据的商业适用。

商会支持以上相关修正案，这些修正案有效地平衡了隐私和商业数据管理需求。商会鼓励中国采纳类似日本《个人信息保护法》的做法，明确规定匿名信息创建和处理程序。

中国网络安全标准和全国信息安全标准化技术委员会（信安标委）

信安标委是行业技术、管理实施《网络安全法》的唯一关键标准制定平台。商会欢迎中国标准化过程的市场化转型，鼓励信安标委继续实施符合国际规范、透明、市场化、以共识为导向、技术中立的标准制定过程。

在信安标委审议的众多标准中，有几项值得注意。目前适用于“网络关键设备和网络安全专用产品认证与评估”和“安全可控产品与服务”的网络产品包括（但不限于）服务器、可编程逻辑控制器和数据库。商会会员企业担心，对比外国企业，目前制定的产品标准将更加符合中国企业的利益。会员企业认为，产品和服务的安全要求应该符合国际标准、保持技术中立。国际认可的“共同评价准则”可作为确保安全的参考框架，建立全球一体化的市场。

政府采购云计算安全产品的标准目前正在修订中。商会认为，此次修订的语言和技术规范应符合国际标准化组

(e.g., personal location information).

- New personal information security laws move beyond “notice and consent” and design mechanisms that protect consumer data in ways that are more aligned with their interests. Place the legal burden of data protection on the companies and entities that collect this data rather than on individual providers of the data.
- Data protection laws be designed that mandate personal data privacy be assessed on the basis of potential harm arising from the proposed use of data, rather than on the basis of user consent. Companies should be required to obtain express consumer consent only for the collection and processing of sensitive personal information. If case-by-case data breaches do not put individual users at risk of harm by releasing sensitive data, or results in the release of data already in the public domain, companies should be able to exercise discretion on whether to provide notice of the data breach.

New data regulations must balance the need for protection of consumer data with the risk of overly burdensome regulations that unnecessarily impede cross-border data exchanges. As a recent example, Japan’s *Personal Information Protection Law* was amended in 2015 and came into effect in 2017. A key innovation was the adoption of a specific definition of “anonymously processed information,” or personal information which has been processed so as to make it impossible to identify specific individuals. The current law subjects anonymously processed information to significantly lighter restrictions than personally-identifiable information, including no obligation to obtain consent from the data provider to use. The goal of this amendment is to promote commercial use of personal information and data generated by the digital economy without violating or threatening individual privacy rights.

AmCham China supports these amendments, and others like them, as a practical way to balance privacy concerns with commercial data curation needs. AmCham China encourages China to adopt an approach similar to Japan’s *Personal Information Protection Law* and adopt provisions that clearly define procedures for creating and processing anonymously processed information.

China Cybersecurity Standards and Technical Committee 260

SAC/TC260 (TC260) functions as the only critical-standards setting platform for industries to engage around the technical and administrative implementation of the Cybersecurity Law. AmCham China welcomes the market-driven transformation of standardization processes in China and encourages TC260 to continue implementing a standards development process that conforms to international norms and is transparent, market-driven, consensus-oriented, and technology-neutral.

Of the many standards under deliberation in TC260, we wish to highlight several here. Cyber products currently subject to the *Certification and Evaluation for Network Key Devices and Cybersecurity-Specific Products* and *Secure and Controllable Products and Services* include (but are not limited to) servers, programmable logic controllers (PLCs) and databases. AmCham China members are concerned that the product standards as currently written will advantage domestic business interests over foreign. AmCham China members believe product and service security requirements should be in line with international standards and technology neutrality. The globally-accepted *Common Criteria Standards and Assessment Scheme* is an appropriate reference framework to both protect security and build a globally integrated market.

The standards for government procurement of cloud computing security products are currently under revision. AmCham China believes the revision process should bring these procedures in line with International Organization for Standardization (ISO)/International Electrotechnical Commission (IEC) (ISO/IEC/JTC1) standards with respect to both language and technical specification. Currently, some of these procedures conform only to China’s national standards, notably GB/T 32400 – 2015 Cloud Computing Overview and Terminology, and GB/T 32399 – 2015 Cloud Computing Reference Architecture.

TC260 commercial encryption algorithm experts are currently working with the ISO/IEC/JTC1 SC27 subcommittee on IT Security to bring China’s national encryption standards in line with ISO/IEC/JTC1 standards, including SM2/3/4/9 and ZUC security algorithms. AmCham China strongly supports efforts to conform Chinese encryption products to international standards and believes global collaboration enhances the value-add of China’s algorithms.

AmCham China notes with concern that responsibility for some cybersecurity standards have moved from TC260 to other TCs across the Chinese government. For instance, the *Critical Network Devices Cybersecurity Requirement*, a mandatory standard initiated by MIIT, is now under the jurisdiction of TC485 (China Communication Standardization TC). AmCham China believes this is inconsistent with the State Council guidelines directing TC260 to take responsibility for all cybersecurity-related issues and will lead to a fragmentation of cybersecurity standards-making. AmCham thus urges TC260 to maintain sole responsibility for cybersecurity standards.

Emerging Technologies

Artificial Intelligence and Big Data

Artificial intelligence (AI) refers to the science and development of technologies capable of completing tasks that normally require human intelligence, such as visual perception, language processing, or robotics. Many emerging AI technologies require vast amounts of data to “teach”

织/国际电工委员会(ISO/IEC/JTC1)标准。目前,部分修订内容仅符合中国国家标准,主要有GB/T 32400-2015云计算概述和术语,以及GB/T 32399-2015云计算参考架构。

信安标委商用加密算法专家目前正与ISO/IEC/JTC1 SC27 IT安全小组委员会合作,保证中国的国家加密标准符合ISO/IEC/JTC1标准,包括SM2/3/4/9和ZUC安全算法。商会强烈支持中国加密产品与国际标准接轨,并认为全球合作将提高中国算法的附加值。

商会注意到,信安标委的一些网络安全标准责任已经交接给中国政府的其它技术委员会。例如,工信部制定的强制性标准《关键网络设备网络安全要求》,现归属全国通信标准化技术委员会管理。商会认为,这违背了国务院要求信安标委对所有网络安全相关问题负责的指导方针,会导致网络安全标准制定的分裂。因此,商会敦促信安标委对网络安全标准承担全部责任。

新技术

人工智能和大数据

人工智能(AI)是指能够完成通常需要人类智力才能胜任的工作所需的科学和技术,如视觉感知、语言处理或机器人技术。许多新兴的人工智能技术需要大量的数据来“教”机器如何执行特定的任务。因此,大数据的增长推动了人工智能技术的进步。中国已将人工智能列为战略产业,并投入大量资金。在国际上,中国和美国一起被视为全球人工智能发展的领头羊。

中国的人工智能发展不能自我孤立,应鼓励私营单位及公立部门与海外同行合作。人工智能技术的协同发展将有利于当前和未来全球人类发展安全。尽管人工智能对国家安全的影响不容忽视,尤其是在网络和军事技术方面的应用,但如果全球领先国家在人工智能发展方面互相竞争而非合作,世界将变得更加危险。

商会建议中国积极参与当前及未来的全球论坛、会议和工作组,指导人工智能的发展。目前,许多国际利益相关者都在关注人工智能道德标准的制定和实施。商会建议中国在建立人工智能的道德体系、规范和价值观方面发挥主导作用。除了简单地建立规范并实践外,还需要保证设计和执行的透明度,向全球公众有效传达这些标准。中国应作为“宪章成员”参与并引领使用人工智能。中国主导

应对人工智能领域的新挑战,有机会塑造未来。

如果没有全球合作,中国不太可能采用人工智能领域全新的、不断演变的全球规范和标准。外资企业将不愿在中国分享或处理数据。对信息处理的不信任可能会使国际组织减少流入中国的信息,对中国的经济关系和国内技术发展产生负面影响。如果外国企业缩减流入中国的信息,中国将只能依赖国内数据。考虑到中国的人口规模,中国能够自己生成庞大的数据集。中国的数据生态系统收集了大量个人用户的数据,但数据的质量(结构和标签)和多样性无法和美国等地相媲美。中国人工智能独立发展,缺乏不同数据源的大量输入会使其在中国以外的地方用处有限。

此外,对中国人工智能发展的不信任可能会导致其他国家减少中国公民在科技等领域教育、培训签证的发放量(美国现任政府正在考虑)。可能还会限制向中国出售人工智能发展所需的技术设备。

金融科技

在日益数字化的经济中,中国政府日益重视对新兴金融科技如区块链和加密货币的监管。2017年9月,中国政府发布了禁止首次代币发行和加密货币交易的规定。然而,九个月后,工信部下属中国信息产业发展中心(CCID)研究所发布全球公共标准链评价指标(全球公有链技术评估指数),并确认计划在2019年建立国家区块链标准委员会。

随着此类金融技术的不断发展,加强监管的必要性日益凸显。到目前为止,中国政府还未解除对加密货币的禁令。中国人民银行(PBOC)正在着手制定法规,监管此类新金融科技,实现中国金融体系现代化。所有迹象表明,中国政府愿意接受并探索机会以在中国使用此类技术。

为了让区块链技术和数字货币更好地服务于实体经济,中国人民银行于2017年成立了数字货币研究所,并开始发行自己的数字货币,提高国内零售支付系统的效率。央行已表示,鼓励公众使用区块链技术,为零零售业带来更多效益。

建议

对中国政府:

- 应明确定义关键信息基础设施,只适用于特定和相对狭义的信息基础设施类别,强调但不过

machines how to perform a specific task. Consequently, the growth of Big Data has fed into recent improvements in AI technologies. China has designated AI as a strategic industry and is making significant investments in these technologies. Internationally, China is already seen, alongside the US, as a leader in global AI development.

China should not isolate itself in its AI development and should encourage both private and public sector entities to collaborate with their overseas counterparts. The current and future safety and security of global human development will benefit if AI technologies are shaped collaboratively. While we cannot ignore the national security implications of AI, particularly its applications for cyber and military technologies, the world will be a more dangerous place if global leaders adopt competitive rather than collaborative postures with respect to AI development.

AmCham China recommends that China participate in global forums, conferences, and working groups established now and in the future to guide AI development. Currently, many international stakeholders are focused on the development of AI ethical standards and practices. AmCham China recommends that China accept a leading role in the development of ethical systems, norms and values governing AI. Beyond simply establishing these norms and practices, there is a need for transparency in their design and enforcement, as well effective communication of these standards to the global public. China should participate as a “charter member” and leading exponent of the responsible use of AI. By leading the debate on emerging challenges in AI, China will have an opportunity to influence the outcomes.

Absent global collaboration, China will be less likely to adopt nascent, evolving global norms and standards around the development of such technologies. FIEs will hesitate to share or process data in China. Such mistrust over the handling of information could lead international organizations to curtail information flows to China with negative ramifications for China’s economic relations and its internal technological development. In the event foreign businesses reduce information flows into China, China will be forced to rely on domestic data. Given the size of its population, China can and does generate enormous datasets on its own. The Chinese data ecosystem collects a great depth of data on individual users, but often lacks the data quality (structure and labeling) as well as diversity of data collected in the US and elsewhere. Chinese AI developed in isolation and without significant input from diversified data sources will have limited usefulness outside China.

In addition, mistrust around the development of AI in China could lead other countries to curtail education and training visas for Chinese nationals in science and technology professions (as is under consideration by the current US Administration). It could also lead to restrictions on the sale to China of technological equipment necessary for AI development.

Financial Technology

In an increasingly digital economy, China’s government is beginning to pay greater attention to regulation of emerging financial technologies (fintech), such as Blockchain and Cryptocurrency. In September 2017, the Chinese government published regulations to ban Initial Coin Offerings (ICOs) and Cryptocurrency Exchanges. Nine months later, however, the China Center for Information Industry Development (CCID) Research Institute under MIIT published standards for the Global Public Chain Assessment Index (全球公有链技术评估指) and confirmed plans to establish a National Blockchain Standards Committee in 2019.

As these fintech technologies continue to develop, the need for greater regulation becomes increasingly important. To date, China’s government has not lifted the ban on cryptocurrencies. The People’s Bank of China (PBOC) is beginning to establish regulations to govern these new financial technologies and modernize China’s financial system. These signs indicate that Chinese authorities are willing to tolerate and explore opportunities for these technologies to operate in China.

To allow blockchain technology and digital currency to better serve the real economy, the PBOC established the Digital Currency Research Institute in 2017 and began to issue its own digital currency to improve efficiency of the domestic retail payments system. The PBOC has indicated encouragement for the public to use Blockchain technology as a way to bring more benefits to the retail industry.

Recommendations

For the Chinese Government

- **The definition of CII should be clarified and made applicable only to a specific and relatively narrow category of information infrastructure, emphasizing but not going beyond its fundamental connection to national security.**
- China should open its cloud computing service business to FIEs to both enhance competitiveness and ensure the sector develops in tandem with emerging globally-accepted standards and practices.
- The data localization requirement should be applied only to operators of CII, as originally provided in the text of the *Cybersecurity Law*, and not to “network operators.” The framework requiring “network operators” to conduct and pass security assessments for cross-border transfers of “Personal Information” and “important data” should be removed. “Network operators” should

分强调其与国家安全的基本联系。

- 中国应向外资开放云计算服务业务，增强竞争力，确保该行业与国际认可的新兴标准和实践接轨。
- 数据本地化的要求应仅适用于《网络安全法》最初规定的关键信息基础设施运营商，而不应适用于“网络运营商”。应取消框架中对“网络运营商”跨境转移个人信息以及“重要数据”需要接受安全评估的要求。相反，“网络运营商”应在亚太经合组织跨境隐私规则体系基础上的跨境数据传输框架的管理，这一框架也很宽松。同时，采购网络安全产品和服务的安全审查不应过于复杂或繁琐。《中华人民共和国网络安全法》实施细则和规定均不应超出原文本规定的法律范围。现行规定是世界上民用网络安全框架最严格、最有干预性的规定之一，因此商会促请监管机构考虑放宽现行规定。
- 中国应根据商业和政府实体使用或处理个人数据的需要，采用并促进使用数据匿名和去身份化技术。中国应该阻止甚至惩罚任何不必要的重新识别个人数据的行为。虽然 GDPR 可能过于繁琐，但日本的个人信息保护法为中国制定自己的个人信息安全法提供了一个可借鉴的模式。
- 中国的人工智能技术发展不能自我孤立。鉴于中国的经济地位，商会促请中国通过多边参与制定全球人工智能伦理、标准和最佳实践，成为人工智能发展的领导者。

对美国政府：

- 促进与中国机构在国际标准设定论坛上的合作，鼓励在中国采用国际标准。
- 继续推进亚太经合组织跨境隐私规则体系、亚太经合组织隐私框架，并促进将其作为亚太经合组织区域的共识标准。
- 继续和中国政府内的相应部门合作应对《网络安全法》中关于跨境数据转移框架中一些规定以及中国数字经济整体发展对“网络运营商”产生的不利影响。

instead be made subject to a cross-border data transfer framework that is modeled, even if loosely, on the APEC Cross-Border Privacy Rules system. Meanwhile, the security review of cybersecurity products and services for procurement should not be overly complicated or burdensome. None of the implementing rules and regulations for the *Cybersecurity Law* should go beyond the scope of the Law as stated within its original text and AmCham China urges regulators to consider relaxing current requirements as they are among the most intrusive in the world for civilian cybersecurity frameworks.

- China should adopt and promote the use of data anonymization and de-identification techniques as required practice for commercial and government entities using or processing personal data. China should discourage and even penalize any unnecessary re-identification of personal data. While the GDPR may be too burdensome, Japan's *Personal Information Protection Law* offers a model for China to follow as it develops its own personal information security laws.
- China should avoid isolating its AI technological development. Commensurate with its economic status, we urge China to be a leader in the development of AI through multilateral participation in the development of global AI ethics, standards, and best practices.

For the US Government:

- **Promote cooperation with Chinese agencies in international forums for the development of frameworks for ethical uses of AI, as well as for standard setting, and encourage the adoption in China of international standards and ethical frameworks.**
- Continue to promote the APEC Cross-Border Privacy Rules system, the APEC Privacy Framework, and the adoption of these as a consensus standard across the APEC region.
- Continue to engage with counterparts in the Chinese government about the negative effects on “network operators” that results from the cross-border data transfer framework currently proposed under the *Cybersecurity Law*, as well as the negative implications for the development of China's digital economy.

Insurance

Introduction

AmCham China welcomed several reforms announced by the Chinese government in 2018 with respect to the insurance industry. Most importantly, AmCham China welcomed several announcements by relevant government authorities including the China Banking and Insurance Regulatory Commission to ease market access for foreign-invested insurance companies. Some reform measures have already been formally drafted, including in the *Draft Revised Administrative Regulations of the People's Republic of China on Foreign-Invested Insurance Companies* which removed the two-year seasoning requirement for the operation of representative offices before becoming eligible to conduct business in China, an important reform to facilitate the entry of foreign insurance companies without a current presence in China.

Other reforms like the lifting of the 50% foreign equity cap in life insurance companies are welcome but implementation is subject to an unnecessarily long two-stage process, initially to 51% followed by a three-year delay before removal of the cap in its entirety. Such delay will only inhibit the creation of a level playing field between foreign-invested and domestically-invested life insurance companies, depriving Chinese consumers of greater choice by mature life insurance companies.

In addition, the *Draft Implementation Rules for the Administrative Regulations of the People's Republic of China on Foreign-Invested Insurance Companies* published in July would impose a 5-year lockup requirement on principal shareholders and require that they replenish the insurance company's capital if they wish to reduce their shareholding or leave the China market. These requirements do not reflect common regulatory standards in other major insurance markets, would impose a discriminatory burden on foreign shareholders and foreign-invested insurance companies, and unduly burden capital transactions in the insurance industry by impeding transfers to better capitalized investors who are better equipped to enhance the insurance company's capital base.

AmCham China also urges the Chinese government to reinforce its commitment to lifting the equity cap on foreign ownership in insurance companies by clarifying that the

1/3 per shareholder equity cap under the *Measures on the Administration of Equity in Insurance Companies* does not apply to foreign shareholders in foreign-invested insurance companies. Unless regulations are clarified and the equity cap is lifted promptly, AmCham China believes that American life insurance companies will be reluctant to enter the market and foreign insurance companies will not understand how the concept of "competitive neutrality" applies to foreign-invested insurance companies.

Foreign investment in the insurance industry also continues to be unnecessarily handicapped by the 25% foreign equity cap and the requirement that insurance asset management companies have at least two investors unless the companies are subsidiaries of domestic holding companies. Such restrictions unnecessarily impede the ability of foreign insurers to conduct business in China and are inconsistent with global best practices which allow insurance companies, regardless of the nationality of their shareholders, to control their investment of insurance funds through insurance asset management companies.

The reforms also included the restructuring of the supervisory authority, initiated in the spring of 2018, which merged the China Insurance Regulatory Commission (CIRC) and the China Banking Regulatory Commission (CBRC) into the new, consolidated China Banking and Insurance Regulatory Commission (CBIRC). AmCham China hopes that CBIRC will adopt a more globally-oriented perspective to supervision. AmCham China is concerned, however, that the regulatory restructuring may not only maintain but actually widen the supervisory divide between foreign-invested and domestically-invested enterprises. Specifically, foreign-invested insurance companies pre-restructuring were generally required to submit applications to revise their core documents, establish branches, and other operational matters through the former International Department in CIRC, rather than directly to the relevant supervisory department (Life, Property, Reinsurance), resulting in significant delay, often to their disadvantage relative to domestically-invested competitors. The restructuring may have exacerbated such discrimination against foreign-invested insurance companies by expanding the responsibility of the International Department to actually supervise foreign-invested insurance companies in the expanded International Cooperation and Foreign-Invested Organizations Supervision Department

保险

引言

中 国美国商会（商会）对 2018 年中国政府在保险业宣布的几项改革表示欢迎。最重要的是，商会对包括中国银行保险监督管理委员会（银保监会）在内的相关政府部门为放宽外资保险公司市场准入而发布了多个公告表示欢迎。一些改革措施已经正式起草，包括《中华人民共和国外资保险公司管理条例修订草案》中的改革措施，这取消了对代表处有资格在中国开展业务前需要有两年运营调整期的规定。这是一项重要的改革措施，旨在促进目前尚未在中国开展业务的外国保险公司进入中国市场。

其他改革措施，例如取消人寿保险公司 50% 的外国股权上限，也值得欢迎，但实施却要经过不必要的漫长的两阶段程序，最初为 51%，三年之后才完全取消整个股权上限。这一拖延只会阻碍在外资人寿保险公司和内资人寿保险公司之间建立公平的竞争环境，使中国消费者丧失了更多选择成熟的人寿保险公司的机会。

此外，7 月份公布的《中华人民共和国外资保险公司管理条例实施细则》（草案）将对主要股东设定 5 年锁定期要求，并规定如果他们想减持股份或离开中国市场，则需补充保险公司的资本。这些要求并未反映其他主要保险市场的共同监管标准，会对外国股东和外资保险公司带来歧视性负担，并阻碍其向资本化较高的投资者（能力较强能够增大保险公司的资本基础）转变而对保险业的资本交易造成过多的负担。

商会还提请中国政府加强关于取消保险公司外资股权上限的承诺——明确表示《保险公司股权管理办法》规定的各股权上限 1/3 不适用于外资保险公司的外国股东。商会认为，除非对规定予以明确并迅速取消股权上限，否则美国人寿保险公司将不愿意进入市场，并且外国保险公司也不会理解“竞争中立”的概念如何适用于外资保险公司。

保险业的外国投资也继续受限于 25% 的外国股权以及其他规定（如保险资产管理公司至少应拥有两名投资者，除非公司是国内控股公司的子公司）。这些不必要的限制阻碍了外国保险公司在中国开展业务，并与全球最佳做法不相一致，在全球最佳做法下，允许保险公司无论其股东为何国国籍，都可以通过保险资产管理公司控制保险公司对保险资金的投资。

改革还包括监管机构的重组，重组于 2018 年春季启动，将中国保险监督管理委员会（保监会）和中国银行业监督管理委员会（银监会）合并为新的统一的银保监会。商会希望银监会采用更全球化的监督视角。然而，商会担忧的是，监管重组不仅维持实际上还在扩大外资企业与内资企业之间的监管鸿沟。具体而言，外资保险公司预重组通常需要向前保监会国际部提交修改核心文件、设立分支机构和其他运营事项等的申请，而不是直接向人寿、财产、再保险等相关监管部门提交申请，由此导致了大量的拖延，使外资保险公司与国内投资竞争者相比往往处于劣势。此次重组将国际部的职责范围实际扩大到还监管扩大后的国际合作和外资组织监管部（香港、澳门、台湾办事处）中的外资保险公司，从而可能加剧对外资保险公司的歧视，加大了外资和内资竞争对手之间的区别，尽管外资保险公司已在中国成立并被获得了牌照。

现存监管问题

市场准入和扩展障碍

美国保险公司其中许多拥有数十年服务全球消费者的经验，希望向中国消费者提供产品。但为了做到这一点，外资保险公司需要获得在华经营许可并被给予国民待遇，以便与其国内投资同行在公平环境中竞争。不幸的是，外资保险公司继续面临人为的所有权上限，延迟发放许可证和新产品批准以及其他障碍。例如，外资保险公司在所有

(Hong Kong, Macau, Taiwan Office), aggravating the distinction between foreign-invested and domestically-invested competitors even though foreign-invested insurance companies are also established and licensed in China.

Ongoing Regulatory Issues

Barriers to 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 to both acquire a license to operate in China and be accorded national treatment in order to compete on a level playing field with their domestically-invested counterparts. Unfortunately, foreign-invested insurers continue to face 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 urge removing these barriers nationwide, with the pilot free trade zones (PFTZs) a natural starting point for liberalization.

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 2018, the market share of foreign-invested insurers stood at a mere 6.19%, up only slightly from 4.46% in 2014. The decline in life insurance has been particularly sharp, falling from 8.9% in 2005 to 5.8% in 2014 before increasing back to 8.1% in 2018, though it has not reached nor exceeded levels seen in 2005 (see Figure next page). Even the largest foreign-invested life insurer’s market share is less than 2%. 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 1.9% in 2018. Foreign-invested health and pension insurers continue to be excluded from the market altogether.

Regulatory and Compliance Costs

In addition, 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 CBIRC to simplify costly burdens wherever possible and take these burdens fully into account when considering compliance requirements.

Cybersecurity Challenges

AmCham China members understand the challenges that Chinese regulators face in managing new technologies and addressing cybersecurity concerns. China’s 2017 Cybersecurity Law and subsequent Draft Measures set overly broad restrictions on cross-border data flows, which will create barriers for both Chinese and foreign companies operating in industries where data needs to be shared internationally. The Draft Measures extend the requirements for “personal information” and “important data” to be subject to “security assessments,” moving from “Critical Information Infrastructure” Operators to virtually all Network Operators. In addition, “Critical Information Infrastructure,” “personal information,” “important data,” and “applicable supervisors” as identified or defined in the Draft Measures and standards encompass a vast range of data, industries, and sectors which extends far beyond international norms. This will impose a tremendous impact on insurers, disproportionately affecting the operations of foreign insurers that involve personal data and cross-border data transfers. The consequence will be higher costs all around, outweighing any benefit to consumers. We recommend the government reconsider the balance between privacy and data security protection against the development needs of the insurance industry when finalizing these regulations and standards to ensure data security and promote technological innovation without unduly restricting cross-border data transfers.

Premiums in 2018

Unit: RMB 10,000 yuan

	Domestically-Invested		Foreign-Invested	
	Total	Market Share (%)	Total	Market Share (%)
Life	241,343,277.34	91.90	21,265,444.72	8.10
Property	115,278,975.79	98.06	2,277,946.70	1.94
Total	356,622,253.13	93.81	23,543,391.42	6.19

权变更方面受制于人为时间框架和其他障碍，并且与其国内同行相比自主权更少。商会继续促请在全国范围内取消这些障碍，将试点自由贸易区作为自由化的自然起点。

虽然商会认可监管工作取得的进展，但仍对外资保险公司所面临的市场准入和扩张障碍感到失望。内资保险公司和保险经纪公司，尤其是规模较大的，仍然在损害外资保险公司和消费者的利益的基础上，在所有权结构和资本运作方面享有更多监管优惠。

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。截至 2018 年底，外资保险公司的市场份额仅为 6.19%，仅略高于 2014 年的 4.46%。人寿保险份额下降尤其严重，从 2005 年的 8.9% 下降到 2014 年的 5.8%，2018 年虽然没有达到或超过 2005 年的水平，但回升到 8.1%（见图 1）。即使是最大的外资人寿保险公司的市场份额也不到 2%。最近才被批准参与开展机动车第三方责任险业务的外资财产和意外险公司，在 2018 年的市场份额也仅为 1.9%。目前，外资健康保险和养老保险公司仍无法进入中国市场。

监管和合规成本

拥有丰富国际市场从业经验的商会会员企业发现，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，例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。商会呼吁银保监会尽可能地简化程序从而降低保险公司的成本负担，并在制定合规要求时充分考虑这些成本负担。

网络安全挑战

商会会员了解中国监管机构在管理新技术和解决网络安全问题方面所面临的挑战。中国 2017 年颁布的《网络安全法》及随后的《办法草案》对跨境数据流设置了过多的限制，这将给在需要进行数据国际共享的行业中经营的中

外公司形成障碍。《办法》将“个人信息”和“重要数据”要求扩大到需要“安全评估”，从而将审查范围从“关键信息基础设施”运营商扩大到几乎所有的网络运营商。此外，《办法》及标准中确定或定义的“关键信息基础设施”、“个人信息”、“重要数据”和“适用监管”涵盖了广泛的数据、行业和部门信息，远远超出国际规范。这将对保险公司，尤其是涉及个人数据和跨境数据传输的外国保险公司的运营产生巨大的影响。结果将是成本普遍增加，超过带给消费者的任何利益。我们建议政府在最终敲定这些法规和标准的同时根据保险业的发展需求重新考虑隐私和数据安全保护的平衡，以确保数据安全和促进技术创新，同时不过度限制跨境数据传输。

银保监会关于《保险机构信息化监管规定》(草案)

银保监会在 2015 年 10 月出台《保险机构信息化监管规定(草案)》(草案)并于 2016 年 4 月通知 WTO 修订版之后，目前正在筹划保险机构信息系统新规则。草案要求保险公司在采购 IT 硬件和软件时优先考虑“安全可控”的产品。

草案和《网络产品和服务安全审查办法(试行)》会缩减外资保险公司中国业务的采购选择范围，从而可能对其产生不利影响。这将增加成本并在非中国业务中产生互操作性问题，最终降低安全性并增加中国消费者的成本。草案中规定的数据本地化要求也会对外资保险公司产生实质性的不利于竞争的影响。商会促请相关机构明确“安全可控”的定义，以确保保险公司保留自由裁量权，根据 IT 系统的安全性和可靠性，而非国家来源，确定不同的供应商和技术供应商。

偿二代

2016 年，中国保监会（现已整合并入中国银保监会）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”），

2018 年保费

单位：万元人民币

	内资		外资	
	小计	市场份额 (%)	小计	市场份额 (%)
寿险	241,343,277.34	91.90	21,265,444.72	8.10
财产险	115,278,975.79	98.06	2,277,946.70	1.94
总计	356,622,253.13	93.81	23,543,391.42	6.19

CBIRC's "Draft Administrative Regulations on the Informatization of Insurance Institutions"

CBIRC is contemplating a new rule governing the information systems of insurance institutions after issuing the *Draft Administrative Regulations on the Informatization of Insurance Institutions* (Draft Informatization Regulations) in October 2015 and notifying the WTO of a revised version in April 2016. The *Draft Informatization Regulations* require insurers to give priority to "secure and controllable" products during procurement of IT hardware and software.

The *Draft Informatization Regulations* and the *Security Review Measures for Cyber Products and Services* (Interim) threaten to 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. AmCham China urges clarifying the definition of "secure and controllable" to ensure that insurers retain individual discretion to decide among different vendors and technology providers on the basis of security and reliability of IT systems, not on national origin.

C-ROSS

In 2016, CIRC (now CBIRC) began formal implementation of the China Risk-Oriented Solvency System (C-ROSS), China's second-generation solvency regime, and its regional bureaus have been inspecting insurance companies for compliance with C-ROSS. On September 18, 2017, CIRC issued the "*Planning for C-ROSS Phase II*," officially launching Phase II of the project. CIRC plans to complete implementation within three years. Detailed regulations and guidelines have yet to be released. Because C-ROSS is a far-reaching and complex set of new rules, CBIRC needs to ensure that all bureaus and officials interpret its provisions consistently, which has not always been consistent with member experiences. Consistency and transparency are important to companies' ability to promptly and properly comply with C-ROSS.

Nevertheless, enforcement needs to be principles-based and aligned with the Insurance Core Principles of the International Association of Insurance Supervisors and not be "one size fits all." As insurance companies differ widely in size, complexity, nature of businesses, and products offered, C-ROSS should take 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 to CIRC concerning specific C-ROSS provisions for responses in written public statements. Publicly available written CIRC interpretations would mitigate the risk of inconsistency in policy implementation.

Life Insurance

Digital (Internet) Insurance and Regulatory Reform

The development of internet insurance presents a tremendous opportunity for China to effectively promote innovation and financial reform, and a unique opportunity for foreign-invested insurers to acquire new customers cost-effectively. AmCham China welcomed the 2015 *Interim Measures on the Administration of Internet Insurance Business*, 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. AmCham China also appreciates the streamlining of certain regulatory procedures under Item 53 of the 2018 *Notice Concerning Promotion of the Reform of Separation of Licenses and Certificates* across China.

The range of insurance policies permitted to be sold over the internet is, however, still unreasonably narrow. For example, while there is a huge need now for health insurance products (including medical products and critical illness products), which will only increase as China's population 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 a wider range of life insurance products as well as 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.

Administration of Capital Guarantee Funds of Insurance Companies

AmCham urges CBIRC to clarify the qualifications for banks holding capital guarantee funds, including the definition of major penalties. *Measures for the Administration of Capital Guarantee Funds of Insurance Funds* require that the depositary bank not have incurred a major penalty in the past three years but lack a clear definition of "major penalty." Supervision of banks has become tighter in recent years with a number of banks penalized for regulatory violations which makes it difficult to determine whether a bank meets the requirements to serve as a depositary bank. At the same time, we recommend expanding the number of banks qualified to accept deposits of capital guarantee funds to include foreign-invested banks that meet the same requirements. Currently, capital guarantee funds can only be deposited in domestically-invested banks.

Property Insurance

China's insurance industry has diverse market players. Domestic and foreign-invested insurers vary widely in shareholding structure, scale, products, and distribution channels.

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。2017年9月18日，中国保监会发布“偿二代二期计划”，正式启动该项目二期工程。保监会计划在三年内完成实施。然而，详细法规和准则尚未公布。鉴于偿二代的广泛性和复杂性，保监会需要确保其各地委员会及保监会全体官员对规则能够做出一致的解读，因为规则总不符合委员们的体验。规则解读的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十分重要。

但是，规则的执行需坚持原则导向，符合国际保险监督官协会（IAIS）制定的保险监管核心原则，且不应“一刀切”。鉴于各家保险公司在规模、复杂程度、业务性质和所提供产品等方面存在很大差别，偿二代的实施应当考虑具体公司的业务性质。为促进偿二代能够顺利、统一地实施，关于偿二代具体规定的解释，商会期待有一项能让保险公司向银保监会提交书面咨询，且能得到委员会书面公开声明作为回应的正式程序。商会相信银行保险监督管理委员会发布的公开解释将降低政策实施不一致的风险。

人寿保险

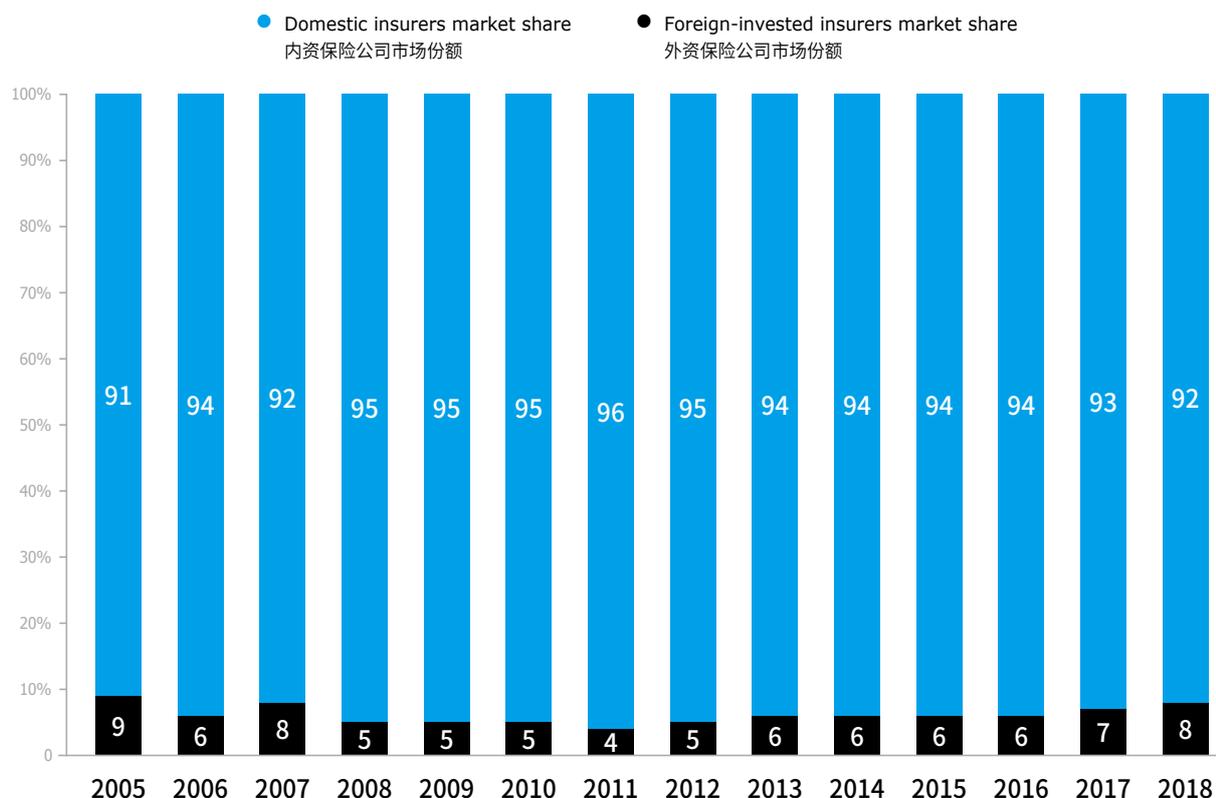
数字（互联网）保险和监管改革

互联网保险的发展为中国有效推动创新和金融改革提供了巨大的机遇，也为外资保险公司高性价比地获得新客户提供了独特的机会。商会对2015年《互联网保险业务监管暂行办法》表示欢迎，这将允许保险公司通过互联网在特定条件下出售某些类型的保险产品，即使是在没有设立分支机构的省份。商会也对中国按照2018年《关于促进“证照分离”改革的通知》第53项在全国推开的精简某些监管程序的改革表示赞赏。

然而，允许通过互联网销售的保单范围仍然十分有限。例如，虽然现在对医疗保险产品（包括医疗产品和重大疾病产品）的需求量很大，而这些产品只会随着中国人口的老齡化而增加，但这些产品仍然不允许在全国范围内在线销售。商会建议扩大允许在线销售的产品范围（包括更广泛的人寿保险产品以及重大疾病产品），进一步扩宽这一渠道，这将更好地满足客户需求，进一步促成中国改革金

Foreign Life Insurance Market Share in China

外资寿险公司在中国市场所占有的份额



The current insurance regulatory structure does not differentiate among insurers but applies the same regulatory requirements to all of them. This not only raises unnecessary compliance burdens on foreign-invested general insurers which in aggregate account for less than a 2% market share, but also handicaps their development against domestic insurers. AmCham China therefore recommends that CBIRC issue regulatory rules and guidelines that distinguish more precisely among property and casualty insurers based on their global size and experience to foster competition and market growth.

Ambiguity in insurance regulations, particularly in how the regulations are applied to foreign-invested insurers, creates challenges in implementation. For example, both the *Regulations on Independent Directors of Insurance Institutions* and the *Administrative Measures on Equity in Insurance Companies* state that these rules apply to foreign-invested insurers by reference, but do not provide implementing details. Foreign-invested insurers must consult with the CBIRC from time to time to obtain guidance on implementation and the guidance offered by the CBIRC can vary among officials. AmCham China recommends that CBIRC provide written explanations and clarifications to reduce ambiguity and uncertainty.

Foreign-invested insurers are able to use their international footprint, networks, and extensive experience to help Chinese enterprises to expand internationally, for instance, along the routes of the “Belt and Road Initiative.” Tax regulations however discriminate against the insurance industry. Under VAT regulations, Chinese enterprises which engage in construction projects, fairs and exhibitions and other businesses abroad may enjoy VAT exemptions on their revenue earned overseas. Selected businesses operating travel services also enjoy the benefit of exempting income from accommodation, catering and transportation services from their VAT taxable income. Overseas Personal Accident and Travel insurance premiums (especially insurance covering overseas contract workers and expatriates) are not exempt from VAT. Moreover, in those countries and regions like the Cayman Islands, Singapore and Hong Kong, where non-admitted insurance is permitted, insurers from China usually provide direct insurance coverage for risks domiciled in such jurisdictions. Unfortunately, unlike reinsurance premiums, premiums stemming from such direct insurance coverage are neither VAT exempt nor deductible from VAT taxable income. AmCham China recommends that CBIRC coordinate with the Ministry of Finance (MOF) and the State Taxation Administration (STA) to provide equal treatment to the insurance industry by applying VAT exemptions to premiums derived from direct insurance cover for such overseas domiciled risks.

Health Insurance

The revised *Measures for the Administration of Health Insurance* released in November 2017 devoted an entire chapter to

collaboration between the health management service and social health insurance. It emphasized that health insurers can combine health insurance products with health management services, thereby providing both health risk assessments and prevention products. Health insurers were encouraged to strengthen their collaboration with healthcare institutions, health management institutions and rehabilitation institutions to provide convenient and high-quality service to insureds. Health insurers were also encouraged to realize data sharing and information connectivity with medical institutions and social insurance organizations subject to full privacy and data security protection.

AmCham China welcomes the policies announced in the *Measures for the Administration of Health Insurance*. US-specialist health insurers have decades of experience and great expertise in health management and data sharing and welcome the opportunity to bring their expertise and experience to the China market to make the “Healthy China 2030” initiative a reality. AmCham China therefore urges CBIRC and other government authorities to remove all non-prudential barriers to participation by foreign health insurers in China’s health insurance industry. Participation by US health insurers will introduce advanced concepts, know-how, technology and products to China, advancing the wellbeing and security of Chinese citizens.

Reinsurance

In 2016, CIRC began formal implementation of the China Risk-Oriented Solvency System (C-ROSS), China’s second-generation solvency regime, and its regional bureaus have been inspecting insurance companies for compliance with C-ROSS. While more systematic regulation of solvency in the insurance industry is appropriate, AmCham China believes 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 unreasonable because CBIRC has other, less costly means to ascertain the soundness of such offshore reinsurers, including by established means of consultation with the offshore reinsurers’ home country supervisors. Moreover, the adverse weighting of cross-border reinsurance transactions discourages cross-border reinsurance transactions with the perverse consequence of concentrating risk in China rather than dispersing risk more widely. AmCham China therefore urges CBIRC to reconsider C-ROSS *Chapter 8 Credit Risk Minimum Capital* to prevent such unfortunate concentration of risk while CBIRC determines the basis for insurance industry compliance with new International Financial Reporting Standards (IFRS) rules.

AmCham China is also concerned that by concentrating risk onshore, the C-ROSS framework will adversely affect international reinsurers by overweighting credit risk and imposing collateral requirements even for those international

融行业的宏伟目标，提高金融包容性和补充公共医疗保险。

保险公司资本担保基金管理

商会促请中国银保监会明确持有资本担保基金的银行的资质，包括对重大罚款的定义。《保险基金公司资本担保管理办法》要求存托银行在过去三年内未发生重大处罚，但对“重大处罚”未给出明确的定义。近年来，由于许多银行因违反监管规定而受到处罚，监管越来越严格，如此一来，很难确定银行是否符合作为存托银行的要求。同时，我们建议增加有资格办理资本担保基金存款的银行的数量，将满足相同要求的外资银行包含进来。目前，资本担保基金只能存入内资银行。

财产保险

中国保险业市场主体呈多元化。外资保险公司与内资保险公司在股权结构、规模、产品和分销渠道差异很大。目前，无法从保险监管结构对保险公司进行区分，但所有保险公司都适用相同的监管要求。这不仅给那些市场份额总体上不到2%的保险公司带来了不必要的合规负担，而且还阻碍了它们的发展。因此，商会建议银行保险监督管理委员会颁布监管规则和指南，根据财产险公司和意外险公司的全球规模和经验进行更准确区分，以促进竞争和市场增长。

定义不明确的保险规定，尤其那些适用于外资保险公司的为实施带来了挑战。例如，《保险机构独立董事管理办法》和《保险公司股权管理办法》均规定，这些规则适用于外资保险公司，但未提供实施细则。外资保险公司必须不时咨询银保监会获得实施指南，而银保监会提供的指导也因官员而异。商会建议银保监会提供书面解释和说明，以减少歧义和不确定性。

外资保险公司能够利用其国际足迹、网络和丰富的经验帮助中国企业向国际（如，“一带一路”沿线）扩大业务。但税收规定对保险业有歧视。根据增值税规定，从事建筑项目、交易会 and 展览会以及其他海外业务的中国企业可以享受海外收入增值税豁免。某些经营旅游服务的企业还享有对增值税应纳税所得免征住宿、餐饮和运输服务收入的优惠。对海外个人意外与旅游险（特别是涉及海外合约工人及外籍人士的保险）保费不免征增值税。此外，在开曼群岛、新加坡和香港等允许非许可保险国家和地区，中国的保险公司通常会为这些司法管辖区内的风险提供直接保险。不幸的是，与再保险保费不同，对这种直接保险

的保费既不免征也不减征增值税应纳税所得。银保监会应与财政部和国家税务总局协调，通过对此类存在于海外的风险相关的直接保险保费免征增值税，为保险业提供平等的待遇。

健康保险

在2017年11月发布的修订后的《健康保险管理办法》中，专列出了一章讲述健康管理服务与社会健康保险之间的合作。该办法强调健康保险公司可以将健康保险产品与健康管理服务相结合提供健康风险评估与预防产品。鼓励健康保险公司加强与医疗机构、健康管理机构和康复机构的合作，为被保险人提供方便、优质的服务。还鼓励健康保险公司实现与医疗机构和社会保险机构的数据共享和信息互通，并且充分保护隐私和数据安全。

商会对《健康保险管理办法》中公布的政策表示欢迎。美国专业健康保险公司在健康管理和数据共享方面拥有数十年的经验和丰富的专业知识，对有机会将其专业知识和经验带入中国市场从而使“健康中国2030”计划成为现实表示欢迎。为此，商会促请银保监会和其他政府部门取消所有外国健康保险公司参与中国健康保险业时面临的所有的非审慎性障碍。美国健康保险公司的参与将向中国引入先进的理念、专门技能、技术和产品，促进中国公民的福祉和安全。

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。虽然对保险业偿付能力实施更系统的监管是合理的，但商会认为，偿二代对中国分保公司与声誉良好且在本国司法管辖区内有良好财务评级的离岸再保险公司之间的跨境交易规定了不合理的资本要求和抵押要求。商会认为，此类资本要求和抵押要求是不合理的，因为银保监会有其他方式（无需较高成本）来确定此类离岸再保险公司的稳健性，包括既有的向离岸再保险公司的本国监管机构进行咨询的方式。此外，对跨境再保险交易权衡不利会阻碍跨境再保险交易，使中国发生风险集中而不是更广泛地分散风险的不良后果。因此，商会促请银保监会重新考虑C-ROSS《第8章信用风险最低资本》，以防这种不幸的风险集中发生，同时确定保险业遵守新《国际财务报告准则》（IFRS）规则的依据。

reinsurers subject to compliance supervision in their home jurisdictions which satisfies the requirements for mutual recognition in accordance with the recommendations of the International Association of Insurance Supervisors (IAIS).

Brokerages

The *Guiding Catalogue on Foreign Investment in Industry*, revised in 2015, removed foreign investment in insurance brokerages from the “restricted” category, while the January 2017 *Notice of the State Council on Several Measures for Expansion of China’s Opening to the Outside World and Active Use of Foreign Capital* focused on relaxing barriers to foreign investment in insurance intermediaries, further strengthening China’s opening to the outside world. More recently, Premier Li Keqiang in the 2018 *Report on the Work of the Government* clearly stated the government’s policy on “lifting restrictions on the business of foreign-invested insurance broker institutions.” AmCham China was greatly encouraged when CBIRC issued the *Notice Concerning Expansion of the Authorized Scope of Business for Foreign-Invested Insurance Brokers* in April 2018. The Notice set forth five areas in which foreign-invested brokers may expand their authorized scope of business in China, thereby leveling the playing field with domestic insurance brokers.

Nevertheless, despite these positive signals from official sources, CBIRC has yet to even accept for processing any applications for license expansions from US-based foreign-invested insurance brokers. AmCham China urges CBIRC to take prompt action to implement China’s reforms on insurance brokerages and establish a level playing field for all qualified applicants. Any non-prudential delay constitutes discrimination among market players and further deprives Chinese consumers of a wider choice of brokerages for smaller scale commercial risks, automobile insurance, and individual life and accident insurance.

Pension Insurance and Retirement Savings

AmCham China applauds China’s substantial progress in pension reform in 2018. The long-awaited tax-deferred individual pension pilot program was launched in May 2018 in Shanghai, Fujian Province, and Suzhou Industrial Park, offering pension insurance products with tax incentives.

After the one-year Pillar 3 pension pilot program is complete, it is expected to be expanded to other regions in China and to cover other types of financial products such as mutual funds. AmCham China believes that it is critical for individuals to be given a wide choice of insurance and investment products for voluntary, tax-incentivized retirement saving accounts. and recommends more incentives be given to encourage individuals to save more for their own retirement.

We note, however, that it was not until March 2019 that the first foreign-invested pension provider was licensed to operate in China despite their many years of experience and expertise in global markets. We recommend that the govern-

ment allow foreign-invested firms to participate in the retirement field to the same extent as domestically-invested financial services companies.

Despite the launch of the Pillar 3 pension pilot in China, Pillar 2 pensions (i.e., employer-based retirement plans such as enterprise annuities and occupational annuities) did not see much growth in 2018. Many suggestions have been made to improve enterprise annuities. AmCham recommends that regulators incorporate the successful lessons from other markets to boost the growth of Pillar 2 pension savings, such as auto-enrollment and using lifecycle funds as default investment options.

AmCham China notes that asset management licenses for enterprise annuities and occupational annuities are still tightly controlled and continues to advocate for a clear and transparent licensing process that treats foreign-invested firms equally alongside domestic firms.

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.

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. CBIRC however 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*.

Sales and Service Channels

Branching

AmCham China recognizes that branch application proce-

商会同时担心，由于目前风险集中在中国境内，二代代框架会对国际再保险公司，甚至是那些已在其母国接受合规监管，并已根据国际保险监管协会的建议，满足相互认可要求的国际再保险公司，施加过多的信用风险和担保要求。

保险经纪

2015年修订的《外商投资产业指导目录》将外商投资保险经纪从“限制”类别中删除，而2017年1月《国务院关于扩大对外开放积极利用外资若干措施的通知》重在放宽对外商投保中介机构方面的障碍，进一步扩大中国的对外开放。最近，李克强总理在2018年的《政府工作报告中》明确规定了政府“放开对外资保险经纪机构业务的限制”的政策。当2018年4月银保监会发布《有关扩大外资保险经纪公司授权经营范围的通知》时，商会受到了极大的鼓舞。该通知列出了外资经纪公司被允许扩大其在中国的授权经营范围的五个领域，从而使其拥有了一个公平的环境与国内保险经纪公司进行竞争。

然而，尽管官方消息释放了这些积极信号，银保监会尚未接受过处理美国外资保险经纪公司营业执照扩张申请的案件。商会促请银保监会迅速采取行动，实施中国保险经纪业务改革，为所有符合条件的申请人建立一个公平的竞争环境。任何非审慎型延迟对市场参与者构成了歧视，进一步剥夺了中国消费者在小规模商业风险、汽车保险以及个人生命与意外险上选择保险经纪公司的更多选择权。

养老保险和退休金储蓄

商会对2018年中国养老金改革取得实质性进展表示赞赏。2018年5月，期待已久的个税递延型养老金试点项目在上海、福建省和苏州工业园区启动，为养老保险产品提供了税收激励。

为期一年的第三支柱养老金试点项目完成后，试点项目有望扩展到中国其他地区，并涵盖共同基金等其他类型的金融产品。商会认为，为个人自愿型、税收激励型退休储蓄账户提供多种保险和投资产品选择至关重要，并建议采取更多激励措施，鼓励个人多存储退休养老钱。

然而，商会注意到，尽管在全球市场拥有多年的经验和专业知识，但还没有一家外国养老金供应商被获准在中国经营。商会建议政府允许外资企业与内资金融服务公司在同等程度上参与到退休领域中来。

尽管中国启动了第三支柱养老金试点，但2018年第二支柱养老金（如企业年金和职业年金等雇主退休金计划）却没有太多增长。许多有关提高企业年金的建议也被提出。商会建议监管机构吸纳其他市场的成功经验，以促进第二支柱养老金储蓄（如作为默认投资选择的自动注册使用生命周期基金）的增长。

商会注意到，对企业年金和职业年金的资产管理许可的控制仍然非常严格，并继续呼吁建立一种明确透明的许可程序，将外资企业与国内企业平等对待。

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。商会对此表示欢迎并且希望能够在不久的将来得以实施。但是，商会注意到，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。商会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。

保险资产管理公司

商会对自2011年以来保险资产管理公司牌照的发放数量的和2014年中国保险资产管理协会的设立表示欢迎。但是，中国银保监会却继续依照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要有两名发起人股东，即使修订后的《公司法》只要求一名发起人股东。换句话说，所有保险公司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。

销售和服务渠道

设立分支机构

根据《保险资产管理规定》（2015）的规定，外资保险公司在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会束缚外资保险公司为中国消费者提供服务的能力。商会将继续促请中国银保监会加快对外资保险公司设立分

dures were formally leveled between foreign-invested and domestically-invested insurers with respect to branch as well as sub-branch approvals by the *Administrative Provisions on Insurance Companies* (2015). In comparison to domestically-invested insurers, however, foreign-invested insurers still suffer from more rigorous and lengthier branch approval procedures, including the effective refusal to consider concurrent applications. Such slow approval hampers the ability of foreign-invested insurers to serve consumers. AmCham China continues to urge CBIRC to promptly review foreign-invested insurers' branch applications, including concurrent branch applications of qualified foreign-invested insurers.

Investment of Insurance Funds

AmCham China applauds the continued loosening of restrictions on investment vehicles that has opened new investment channels and markets. AmCham China urges that the size and investment experience of the corporate parents of insurance companies be considered 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 in the near term 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 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 5% to 6%. Although input VAT is deductible, the deductible ratio is insufficient so the tax rate on premium income is largely unchanged in practice. 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. AmCham China recommends the STA, in coordination with related agencies, maintain the tax-exempt status for interest income from corporate bonds and debt programs, or at minimum adopt a "cut-off" approach to exempt bonds issued prior to the reform from VAT. We also recommend that STA 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.

Recommendations

For the Chinese Government:

Ownership

- **Issue detailed implementing measures describing how foreign equity caps can be raised to 51% for business operating in the insurance industry.**
- Allow insurance asset management companies to be established by a single founding shareholder in accordance with the Company Law.

Cyber issues

- **Clarify key definitions in China's Cybersecurity Law and review the effectiveness of the measures in the law as they are currently written.**
- 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.

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.

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.

Tax Issues

- **Correct the heavier tax burden on insurance companies as a result of VAT reform.**
- Expand tax incentives for tax-deferred annuities.

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。

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。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，中国能够在近期出台相关监管政策，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务负担

国务院实施增值税改革的初衷是为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，商会促请国家税务总局同相关部门协作保留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。商会也建议国家税务总局提高保险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，商会对外资保险公司的代表处能够获得免征增值税的待遇表示赞赏。

建议

对中国政府：

所有权

- 出台详细的实施措施，说明如何将经营保险业的企业的外国股权上限提高至51%。
- 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。

网络问题

- 明确《中国网络安全法》中的关键定义，并审查目前写入法律的措施的有效性。
- 明确CIRC关于《信息化规定（草案）》中“安全和可控”的定义，并根据IT系统的安全性和可靠性而非国籍给予保险公司自由决定不同供应商的选择权。
- 对保险公司省级分支机构合规职能要求予以明确并详细规定。
- 取消对跨境再保险交易的不必要资本要求和抵押要求。

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。

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。

税务问题

- 解决增值税改革给保险公司造成的税负加重的问题。
- 扩大个税递延型养老保险的税收优惠的范围。

Legal

Introduction

Foreign law firms face a wide range of market access constraints in mainland China, especially:

- Restriction of their organizational form to that of a representative office, albeit an income-earning and corporate tax-paying representative office;
- Inability for PRC-qualified lawyers to maintain their licenses, preventing firms from representing clients in PRC court proceedings;
- Prohibitions against participation in certain kinds of meetings at government departments involving their clients;
- Discriminatory taxation; and
- Unnecessarily slow, complicated, and unpredictable registration procedures for the establishment and renewal of representative offices.

The Chinese government's continued restrictions in this sector significantly limit the options available to mainland Chinese and foreign companies seeking legal advice and counsel, and deprive PRC-qualified lawyers of the opportunity to work for, receive training in, and become principals of foreign law firms. Moreover, the current restrictions are inconsistent with international best practices which allow lawyers in different jurisdictions to serve together in the same firm. This also results in many foreign investors and parties to commercial and financial transactions being unwilling to accept PRC 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 and hire locally licensed attorneys in those jurisdictions.

Recent Developments

Draft Regulations for Further Strengthening Regulation over Foreign Law Firms

The Ministry of Justice (MOJ), through its local counterparts,

has engaged in strict review and monitoring of PRC representative offices of foreign law firms since the spring of 2018. At the end of November, MOJ hosted a meeting with representatives of certain foreign law firms' representative offices in China. During such meeting, MOJ indicated that it would promulgate new regulations further tightening the supervision of foreign law firms' in China ("Draft Regulations").

As of this report's publication, the Draft Regulations have not been released for public comment, nor have AmCham members seen the exact content of such regulations. Based on previous MOJ comments, it is likely that the Draft Regulations, if finalized and implemented, will further limit the ability of foreign law firms to operate in China.

We encourage the Chinese government to publish such Draft Regulations for comment before promulgation. We hope that the Draft Regulations will provide transparent and practical guidance on foreign law firms operations in China and include measures to level the playing field. We note in this regard that foreign law firms are generally allowed to establish fully-fledged law offices and to have locally licensed attorneys in much of the US.

Ongoing Regulatory Issues

Burdensome Representative Office Registration and Renewal Procedures

Foreign law firms face burdensome regulatory approval procedures that do not apply to domestic 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." PRC authorities evaluate such need based in part on the "social and economic development conditions" of the proposed location and the "development needs" for legal services in the location, tests that do not apply to domestic law firms. These and other similarly vague, burdensome, and discretionary considerations appear 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. The requirement to demonstrate this development need unnecessarily and unreasonably lengthens the approval process for a represen-

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：

- 尽管代表处有企业收益、缴纳企业所得税，但其组织形式限于代表处；
- 中国执业律师无法保留其执照，导致律所无法提供中国法律相关的咨询，无法在中国法院及特定监管程序中代表客户；
- 不允许出席客户与政府部门之间的重要会议；
- 差别性的税收政策；
- 办理代表机构设立、延期等注册手续过于繁杂，过程漫长且结果难以预料。

中国政府一直在法律服务领域对外国律师事务所进行限制，不仅严重阻碍了中国内地企业和外国企业获取高度专业化的法律意见和咨询服务，更剥夺了中国职业律师在外国律师事务所工作、培训及升迁的机会。此外，现行政策不允许不同司法管辖区的执业律师在同一家律师事务所共同工作，不符合国际惯例。因此，许多外国投资者和金融交易相关方既不愿使用中国法律作为合同的适用法律，也不愿选择中国法庭或仲裁解决争端。现行规定有违互惠原则，因为中国的大部分主要贸易伙伴都允许中国律师事务所在其境内设立代表处提供全面服务，并允许在管辖范围内聘用当地执业律师。

最新进展

进一步加强对外国律师事务所监管的条例草案

自2018年春季以来，司法部通过地方司法部门对外国律师事务所驻华代表处开展严格审查监督。11月底，司法部会见了部分外国律师事务所驻华代表处代表。会议上，

司法部表示将颁布新法规（法规草案），进一步加强对在华外国律师事务所的监管。

截至本报告发表之时，法规草案尚未发布征求意见稿，中国美国商会（商会）会员企业也未看到该条例的具体内容。司法部此前表示，该法规草案可能会进一步限制外国律师事务所在中国开展业务的能力。

商会鼓励中国政府就有关法规草案公布征求意见稿。我们希望该条例草案能够为外国律师事务所在华经营提供透明、务实的指导，包括采取措施为中外律师事务所建立公平竞争的环境。美国大部分地区允许外国律师事务所设立综合律师事务所代表处，并聘请当地执业律师。

现存监管问题

代表处注册及续期程序繁琐

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”和对法律服务的“发展需求”。此类定义模糊、繁琐的要求可能违反中国在世贸组织有关取消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。按此要求，审批流程可能延长至9个月之久，既不必要也不合理。此外，审批时间难以预料，通常久拖不决，设立代表处的申请程序可以而且应该大大精简。

此外，外国律师事务所设立一个代表处后，必须等待至少三年才能再增设新的代表处。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大力发展的重点经济区域，此类限制政策削弱了外国律师事务所为内陆省份客户服务的能力。国内律师事务所在海外（或中国）设立办事处时从未面临类似限制困境。

tative 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 its initial representative office in the PRC before being allowed to seek approval for a second office. Foreign law firms have reported substantial difficulty and delay 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 in its efforts to boost economic development. No domestic law firm faces similar restrictions in opening offices overseas (or in the PRC).

Foreign law firms, unlike domestic law firms, are limited to two offices in China, which impedes their ability to service client needs and violates China's commitment in the Protocol on the Accession of the People's Republic of China to the World Trade Organization. The bureaucratic registration and renewal practice often prevents talented and licensed foreign lawyers from registering as representatives of the China office of a foreign firm. Moreover, licensed foreign lawyers cannot provide legal services to clients if they have not physically worked outside mainland China for at least two years (Chief Representatives are required to have three years of work experience).

Since late 2018, the PRC authorities have indicated that all foreign lawyers serving as a representative or Chief Representative must spend at least 183 days a year in China. Such requirement is not imposed on PRC law firms operating overseas, and it will greatly impair the ability of foreign law firms to staff their offices in China.

Limited Scope of Practice for PRC-Qualified Lawyers in Foreign Firms

PRC law currently requires that PRC-licensed attorneys must give up their PRC license if they join representative offices of international law firms in the PRC. 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, in order to offer comprehensive legal services to their clients. Removing this restriction would create more career opportunities for mainland China legal professionals and support Chinese companies to expand more efficiently and successfully. These issues were also raised in detail in the 2018 *White Paper*.

Restrictions on Appearance Before Government Agencies

AmCham China urges the Chinese government to implement its commitment made in 2014 at the 25th Joint Commission on Commerce and Trade (JCCT) to allow representatives of

foreign law firms' representative offices established in China to attend and participate in meetings with the anti-monopoly enforcement agency 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 deprive Chinese and international clients of adequate representation and sufficient information in dealing with the government, create a negative image for the Chinese government, and other negative impacts on the Chinese legal environment. These issues were raised in detail in the 2018 *White Paper*.

To the best of our knowledge, no other leading economy limits, restricts, or so inconsistently and non-transparently prohibits access for foreign lawyers to domestic 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 status of 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 decreases domestic firms' effective income tax rate.

Essentially, all international law firms in China are taxed at the representative office level while individual attorneys are simultaneously taxed at the individual level. Domestic law firms are only taxed at the individual level.

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.

Other Market Access Problems

Foreign law firms also face other restrictions that impair their ability to operate in China. These include:

- An unnecessarily cumbersome process to replace the Chief Representative of a firm and for foreign lawyers to transfer firms;
- Difficulty and even an inability to hire foreign non-legal professionals;
- One-year limit on the duration of work visas for foreign

与中国律师事务所不同，外国律师事务所在中国只能设立两个办事处，影响了服务客户的能力。注册和续签流程繁冗、官僚，导致才华横溢的执照外国律师无法注册成为外国律师事务所中国办事处的代表。执业外国律师未在中国大陆以外实际工作满二年的，不得为客户提供法律服务。

过去几个月，中国政府规定，所有担任代表或首席代表的外国律师每年在中国境内居留的时间不得少于183天。但是，在海外运营的中国律师事务所并不适用此规定。外国律师事务所在中国设立办事处将愈发困难。

中国律师在外国律师事务所的执业范围受限

当前中国法律要求，如果中国执业律师要加入国际律师事务所在中国的代表处，必须放弃中国执照。商会继续促请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。这些要求在2018年《白皮书》中也有详述。

外国律师参与政府会议受限

商会促请中国政府履行其在2014年第25届中美商贸联委会上做出的承诺，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此承诺。

目前，中国通常会禁止、限制，或是在不透明的条件下允许一些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。

据了解，全球其他主要经济体中都不存在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的情况。

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。

本质上讲，美国和其他在华外国律师事务所按代表处征税，个人律师同时按个人征税。而国内律师事务所只按个人纳税。

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。

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：

- 律所首席代表变更、外国律师更换其任职律所时所需履行的程序过于繁杂；
- 不能或难以聘用外籍非法律专业人士；
- 外国律师（包括首席代表）工作签证的有效期只有一年；
- 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在华中外客户提供高效服务的能力。

《外国投资目录》的限制

2018年7月发布的《外商投资产业指导目录》（《外商投资负面清单》）继续将“中国法律事务咨询”列入“禁止”清单，而在2011版的《指导目录》中，这一项是列入在“限制”清单中。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。

限制外国执业律师提供法律服务

外国律师事务所的有关行政法规规定，外国律师事务所的代表机构必须至少要有两名代表。行政法规还规定，首席代表在中国境外执业不少于3年，其他代表已在中国境外执业不少于2年。

2002年司法部关于执行《外国律师事务所驻华代表机构管理条例》的规定明确提出“境外执业时间”，是指在执业资格取得国获得律师执业许可后，在该国法定律师注册登记机构进行律师执业注册登记的时间。换句话说，律师执业注册的时间长短与在境外执业的时间长短有关。然而，在实际执行过程中，司法部和当地相关部门要求，外国律所的代表处注册和续期期间，每名首席代表必须证明其已在中国大陆以外实际工作了3年，代表必须证明其已在中国大陆以外实际工作了2年。由于缺乏明确的法律依据，许多具有外国或中国国籍的优秀律师，如果在法学院

- lawyers (including Chief Representatives); and
- Protracted work permit application procedures (sometimes lasting up to a year and a half).

We encourage the Chinese government to address these issues in order to improve foreign law firms' ability to serve their clients efficiently in China.

Foreign Investment Catalog Restrictions

In the latest *Catalog of Industries for Guiding Foreign Investment* (Negative List for Foreign Investment) effective in July 2018, "investment in Chinese legal matters" continues to be classified as "prohibited." It was originally classified as "restricted" in the 2011 Catalog. Contrary to the current Negative List for Foreign Investment, 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. Permission to "advise on the impact of Chinese laws" does not, however, address the need for further liberalization of access for foreign law firms and their Chinese national lawyers, as discussed in this chapter.

Limitation on Foreign Licensed Lawyers from Providing Legal Services

The relevant administrative regulations on foreign law firms require that each representative office of a foreign law firm must have at least two representatives.

The *Provisions of the Ministry of Justice regarding the Implementation of the Administration of Foreign Law Firms' Representative Organizations in China* explicitly explain that the term "time of engaging in practice of law outside China" shall mean the duration of registration for engaging in law practice as a lawyer with the statutory registration authority for lawyers of such country in which a law practitioner obtains his/her law practice qualification. In other words, the duration of registration as a lawyer counts for the duration of engaging in practice of law outside China. In practice however, MOJ and its local counterparts require, during the registration and renewal of a representative office of a foreign firm, that each Chief Representative or representative demonstrate that he or she has physically worked outside mainland China for three or two years respectively. This practice, lacking any explicitly published legal basis, has prevented many talented and experienced lawyers of foreign or Chinese nationality from being registered as a representative of the foreign firm's China office if such lawyers come to China for work within two years after law school graduation and bar admission. Without registration as representatives, these lawyers are prohibited from providing legal services to clients. These requirements significantly restrict the ability of foreign law firms to provide legal services in China.

Recommendations

Most of the issues addressed in this chapter have been raised by AmCham China for many years but the barriers largely persist and are increasing. We continue to request that increased attention to these issues by both governments will lead to a reduction or elimination of these barriers. We believe that continued opening of the legal market will promote the development of an advanced services industry in China and thus remains in China's economic interest.

For the Chinese Government:

- **Any Draft Regulations on the administration of China offices of foreign law firms and any restrictions imposed therein should be transparent and be published for public comment before promulgation and implementation. Any restrictions on foreign law firms' advice on China law business matters should be reasonable and practical.**
- Revise current regulations to allow foreign law firms to hire and admit to their employment and partnerships PRC-qualified lawyers without requiring them to suspend their PRC lawyer's license when they join a foreign law firm.
- Provide clearly in regulations that foreign lawyers are permitted to participate in all meetings between their clients and Chinese government departments and licensed PRC attorneys can handle litigation matters in PRC courts, just as PRC law firms are allowed to do in the US if they employ US-licensed attorneys in their US offices.
- Simplify the requirements, eliminate the unpredictability, and shorten the review period for the establishment of foreign law firms' representative offices, as well as the opening of more than two offices.
- Provide foreign law firms with treatment equivalent to that of domestic 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.

For the US Government:

- **Negotiate with China to revise current regulations in order to allow international law firms in China to enjoy the same benefits as Chinese law firms operating overseas, including in the US. This request has appeared in successive White Papers for many years, but foreign firms are now facing the prospect of tighter restriction instead of progress.**

毕业、获得律师资格两年内来中国工作，就不能注册成为外国律师事务所中国办事处的代表。未经注册，不得为客户提供法律服务。这些要求大大限制了外国律师事务所在中国提供法律服务的能力。

支机构所享有的同等待遇。几年来白皮书多次提出此要求，但目前对外国公司的待遇不仅没有进步，还变本加厉地限制。

建议

本章所讨论的大部分问题商会已经提出了好几年，但这些问题在很大程度上仍然存在。商会仍然希望中美两国政府重视这些问题，减少或消除障碍。商会认为进一步打开中国的法律服务市场符合中国建立国际服务市场的诉求，有利于中国经济的发展。

对中国政府：

- 任何关于外国律师事务所中国办事处的管理规定草案及任何限制要求必须公开透明，并在颁布实施前公开征求意见。对外国律师事务所就中国法律事务提供咨询的限制政策应该合理切实。
- 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。
- 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。
- 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，授权中国律师在中国法院处理诉讼事务，与聘用美国当地执业律师的中国律所享有其在美国的同等待遇。
- 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。

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

Machinery Manufacturing

Introduction

China's manufacturing/machinery industry is one of the major sectors of the national economy comprising roughly 30% of total GDP (Figure 1) and has been an important employer for China's vast labor force. Under the *Made in China 2025* (MIC 2025) program, the government determined to upgrade industry to enable domestic high-end manufacturers to compete at the global level. There were stated goals to increase the domestic content of core components and materials to 40% by 2020 and 70% by 2025. These presented a number of commercial opportunities for foreign companies to support national policy. Even though the government appears to no longer be promoting MIC 2025, it appears that the core policies have not changed and therefore certain aspects of the current policy framework continue to be challenging for foreign companies.

On the one hand, China deserves credit for the transparency shown in stating its domestic content goals. On the other hand, those same domestic content goals can be interpreted as protectionist and run counter to the concept of national treatment under the country's WTO commitments. Moreover, as currently written, it is unclear to what extent foreign manufacturing firms will be considered "domestic", even though foreign firms operating in China are Chinese legal entities or be pressured to transfer operations and intellectual property to China.

In the industrial sector, there has been relatively slow progress in resolving issues, as noted in previous editions of the AmCham China White Paper. These include the timing of implementation of specific regulations, and differing tax structures for firms in the financial leasing industry. As is often the case, part of the problem is inconsistent policy implementation, which is likely due to interagency coordination issues between ministries and between central and local governments. We hope that the relevant authorities will consider the issues discussed in this document, and devise reasonable solutions predicated on a level playing field for all companies.

Ongoing Regulatory Issues

Off-Road Emissions Regulation

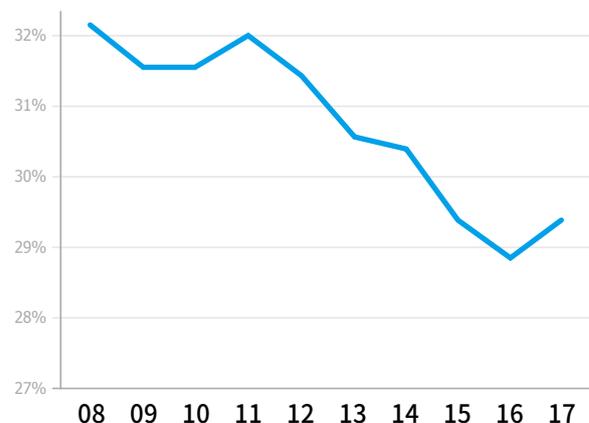
AmCham China welcomes the release of the long-awaited *Non-road Mobile Machinery and Diesel Engine Stage IV emission regulation (NR4)*. With these regulations, manufacturers can now adjust product development strategies, apply for appropriate emission certifications, and comply with relevant corporate disclosure requirements.

The NR4 emission certification test is much stricter than the previous NR3 certification test, requiring significantly longer preparation time from manufacturers to meet each requirement. Given the short testing period and stringent requirements, we ask the government to simplify the procedure for NR4 machine homologation, such as emissions testing, to enable manufacturers to deliver clean and efficient products to customers on time.

AmCham China supports stringent and consistent enforcement of emissions regulations for non-road machinery to ensure a level playing field for the whole industry. For any items not clearly stated in the regulations, AmCham China

Manufacturing as a Percent of GDP, China.

中国制造业占 GDP 的比重



Source: Work Bank, 2018

源自: 《工作银行》, 2018

机械制造业

引言

中 国制造业 / 机械制造业是国民经济的主要行业之一，约占 GDP 的 30% (图 1)，雇佣了中国庞大的劳动力。“中国制造 2025”计划表明，政府决心升级产业，使国内高端制造商达到国际水平。该计划目标是到 2020 年将核心部件和材料的自主保障率提高到 40%，到 2025 年提高到 70%。外企从中可以获得许多商业机会来支持国家政策。尽管政府似乎不再继续推动“中国制造 2025”政策，但核心政策没有改变，因此当前政策框架的某些方面仍为外国企业带来挑战。

一方面，中国在阐述自主保障目标时展示了透明度，值得肯定。另一方面，自主保障目标可以解读为保护主义，与中国在世贸组织承诺的国民待遇概念背道而驰。此外，即使在华经营的外企是中国法人实体，或者迫于压力将业务和知识产权转移到中国，但目前尚不明确外国制造企业是否能与“国内”企业享受同等待遇。

商会发布的《白皮书》多次指出，机械制造行解决问题进展相对缓慢：包括规定的实施时间，融资租赁行业公司不同的税收结构。问题的部分原因是中央和地方政府部门间的协调问题导致政策执行不一致。商会希望有关部门考虑本文的建议，并为所有企业制定合理的解决方案，提供公平竞争环境。

现存监管问题

非道路排放法规

商会欢迎《非道路移动机械及其装用的柴油机第四阶段排放法规》(国四)尽快发布。法规发布后，制造企业可以根据法规内容调整产品开发战略、申请排放证书及进行相关的企业披露。

与非道路国三标准相比，非道路国四排放测试比国三

要求更加苛刻。鉴于准备时间短、测试要求严等各项因素，商会恳请中国政府能够简化国四产品的鉴定流程，如排放测试等，以确保制造企业能够按时交付清洁高效的产品。

商会希望中国政府能够严格贯彻执行非道路机械排放法规，以保证公平的行业环境。如遇到法规中表述不明确的内容，期望相关部门能够提供清晰的指导方针，以避免因各级执法部门的理解不同而导致的含糊不清或主观解读。此外，商会希望国四法规中应规范不得篡改排放设计要求，以防止私自篡改排放控制的情况发生。

国四标准的制定参考了欧洲(3b 到 5 阶段)和美国(第四阶段)的标准。总体来说，商会支持国际标准一致化，以确保发动机产品标准处理与国际供应链发动机制造行业保持协调一致。坚持全球认可的国际标准可以促进全球市场中的公平竞争，避免造成不必要的成本，并最大限度地减少产品供应方面因当地法规差异导致的人为局限性。商会提醒中国政府，编制中国独特的标准，可能会导致合规程序复杂化，并为企业带来不必要的出口壁垒。

从 2019 年 1 月 1 日起，政府宣布要求非道路机械使用符合国四排放标准的石油 / 柴油产品(含硫量较低)。然而，许多地区特别是中国西部和内陆的偏远地区所供应的柴油含硫量高，并不符合国四规定的标准。含硫量高的柴油会增加发动机故障率并增加排放控制的困难。商会敦促中国政府支持全国供应含硫量低的柴油并采取相应措施确保柴油油品质量。

船舶发动机排放

环境保护部(2018 年 3 月改制为生态环境部)发布的 GB 15097-2016《船舶发动机排气污染物排放限值及测量方法(中国第一、二阶段)》已于 2018 年 7 月 1 日起实施。根据规定，所有船用发动机均须进行 2,500 小时耐久性试验(DF 测试)，确定船机在使用寿命期内符合修订版废气排放标准。

urges relevant authorities to provide guidelines to minimize the potential for subjective and inconsistent interpretation by different regulatory enforcement bodies. We also urge that the NR4 include a manufacturing anti-tamper design requirement to prevent alteration of emission controls.

NR4 is derived from standards implemented in Europe (Stage 3b to 5), and the US (Tier 4f). In general, AmCham China supports international regulatory harmonization to ensure consistent standards treatment of machine engines and engine products that reflect the global supply chains characterizing the engine manufacturing industry. Adherence to globally-accepted international standards promotes a level playing field in the global marketplace, avoids unnecessary costs, and minimizes the potential for artificial limitations on product offerings based on local regulations. AmCham China cautions the Chinese government, however, that designing China-specific standards could complicate the compliance process and create unnecessary export barriers for companies.

The government announced that beginning January 1, 2019 non-road machinery will be required to use petroleum/diesel products (with lower sulfur content) that meet China NR4 emission standards nationwide. Diesel supplies in many regions, however, particularly in the more remote regions of China's West and interior, are high in sulfur and do not meet standards established under NR4. High sulfur-content diesel increases engine failure rates and complicates emission control. We urge the Chinese government to support the supply of low sulfur-content diesel nationwide and implement appropriate measures to ensure its quality.

Marine Engine Emissions

The GB 15097-2016 *Limits and measurement methods for exhaust pollutants from marine engines (China Stage I and II)* issued by the Ministry of Environmental Protection (reconstituted in March 2018 as the Ministry of Ecology and Environment (MEE)) went into effect on July 1, 2018. Per the regulation, all marine engines are required to undergo a 2,500-hour durability test (DF Test) to guarantee that engines will meet the revised emission standards for their lifetime.

The DF Test is a common industry practice to certify both small engines and industrial machinery engines and generators. Most marine engines are, however, above 1,000kw and the cost of the test fuel is prohibitive for many manufacturers. Moreover, the DF Test has not been adopted by the International Maritime Organization (IMO) as practice for certifying marine engines. Since *China Stage I and II* went into effect on July 1, 2018, only a handful of manufacturers have obtained the relevant certifications, typically by carrying over their existing off-highway engine test results. For manufacturers focused on the production of marine engines, the DF Test has imposed costly administrative burdens.

AmCham China recommends that MEE and Ministry of Transportation (MOT) reconsider the certification process

for marine engines and replace the required DF Test with another approach, such as in-use marine engine checks, which use portable exhaust measurement systems to measure emissions and are much less costly than DF testing.

Remanufacturing

China's remanufacturing industry has enjoyed substantial government support in recent years. To promote healthy development, AmCham China urges the government to strictly regulate standards for remanufactured finished goods (RFG), particularly RFGs which are not produced by the original manufacturer. At the same time, we also encourage publication of RFG standards for product end-users and consumers to help them understand and clearly distinguish between original remanufactured parts, non-original remanufactured parts, refurbished parts, and overhauled parts.

Since 2017, China's remanufacturing industry has mandated that RFGs for construction machinery and automotive parts can only be used for maintenance when the serviced product is no longer under warranty. It remains difficult to induce customers to accept RFGs when their original product is still under warranty.

Remanufacturing itself has many benefits for consumers and businesses, including lowering product costs, reducing downtime when replacing broken or defective products, encouraging purchasing flexibility, as well as environmental benefits. A better understanding of the remanufacturing industry among consumers is the most important way to grow market demand for RFGs. Incentivizing the use of remanufactured products during the warranty period will grow the market for manufactured goods. AmCham China recommends that relevant departments issue pilot projects or incentives to encourage use of remanufactured products for maintenance during the warranty period if the quality meets or exceeds the new product standards.

In 2018 AmCham China was pleased to see that the Ministry of Commerce (MOFCOM) revised the *Administrative Measures for the Import of Mechanical and Electrical Products* to allow used mechanical and electrical products (including remanufactured cores) to be imported for repair and exported afterwards under MOFCOM supervision. We look forward to further progress towards the unimpeded cross-border flow of RFGs and cores. We encourage the Chinese government to implement a value-added tax (VAT) exemption for recycled remanufacturing cores, which would benefit the development of the Chinese remanufacturing industry.

Equipment Leasing

Financial leasing services are an effective tool for businesses to invest in advanced machinery and equipment and raise productivity. Equipment leases as a share of total manufacturing equipment purchases generally range from 15% to

耐久性试验是检验小型发动机和工业机械发动机和发电机常见的行业做法。然而，大多数船用发动机功率都在1000千瓦以上，耐久试验带来的燃油负担超出了许多制造商的承受能力。此外，国际海事组织（海事组织）也未采用耐久性试验来检验船用发动机。自2018年7月1日“中国一、二阶段”实施以来，只有少数制造商通过引用现行非公路发动机试验结果获得了相关认证。因为耐久性试验给生产船机的制造商们带来的经济负担是巨大的。

商会建议，生态环境部及交通部应重新考虑船机的认证程序，用其他方法取代耐久性试验要求，如对在用的船用发动机使用便携式排气测量系统来测量排放量，成本比耐久性试验低得多。

再制造

近年来，中国的再制造产业得到了政府的大力支持。为促进健康发展，商会促请政府对再制造产品认定的标准进行严格把控，充分考量原厂的标准。同时在后市场加大对终端用户的宣导，以助其能明确区分原厂再制造件、非原厂再制造件、翻新件，以及大修件。

自2017年起，中国再制造业规定工程机械和汽车零部件再制造产品只能用于质保期外的维修服务。当原厂产品在保修期内时，客户很难接受再制造产品。

再制造本身对消费者和企业都有很多好处，包括降低产品成本、减少更换破损或有缺陷产品时的停机时间、鼓励采购灵活性以及环境效益。让消费者更好地了解再制造行业是扩大再制造产品市场需求的最重要途径。鼓励在保修期内使用再制造产品，将扩大制成品市场。商会建议，如果产品质量达到或超过新产品标准，相关部门应发布试点项目或奖励措施，鼓励在质保期内对再制造产品进行维修。

我们很高兴地看到2018年商务部颁布修订版《机电产品进口管理办法》，允许列入《禁止进口货物目录》的旧机电产品（其中包括再制造生产核心产品），在符合环境保护、安全生产的条件下，经商务部同意，可以进境维修（含再制造）并复出境。我们期待中国能够进一步推动再制造成品自由跨境流通。我们促请中国政府对可回收、再制造核心产品免征增值税，推动中国再制造产业的发展。

设备融资租赁

融资租赁服务是企业投资先进机械设备、提高生产效率的有效工具。在其他发达国家，设备租赁占制造业设备

采购总额的15%到30%之间，而中国的租赁比例低于5%。进一步统一政府各部门和各省租赁法规，应有助于扩大融资渠道。

自2018年4月20日起，商务部将租赁企业监管责任移交给银保监会。具体监管政策和实施条例尚未颁布，给租赁公司带来了很大的不确定性，影响日常运营。

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。近年来，融资租赁企业接入人民银行企业征信系统的工作取得了一些进展，然而，虽然机械设备的承租人以个人为主，个人租赁企业目前很难接入人民银行个人征信系统。增加获取个人征信的机会极大地促进机械设备的融资。

商务部监管的租赁公司不能享受亏损准备金税收抵免，而这在发达国家却是普遍做法。此外，中国自2016年5月1日全面实施增值税改革以来，机械设备租赁的增值税税率为16%，相比之下，销售及售后回租贷款只需按6%缴纳增值税。在某些情况下，16%的增值税税率没有任何减免，高到以至于根本无法向客户提供直接租赁。这不符合中国政府推动农业机械化和金融支持实体经济的做法。

商会建议中国政府在详尽调研、参考租赁公司意见的基础上尽快制定新的监管规则，同时给予行业足够的准备期及过渡期，确保租赁公司的正常业务运营不受影响。保障融资租赁企业能够接入人民银行个人征信系统，实施统一的税收政策，为各类融资租赁产品如直接租赁，创造公平竞争的环境。

中国制造 2025

2015年首次推出“中国制造2025”计划，旨在通过降低劳动密集型生产，扶持高科技机械和产品，重塑中国制造业。到2025年实现基本工业化，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。

2018年，中美贸易争端及谈判涉及“中国制造2025”，情况不太明朗。不确定性笼罩着业界：“中国制造2025”在多大程度上仍然是官方政策，即使正式停止执行，该计划的关键政策在多大程度上仍然有效。目前还不清楚外商投资企业，特别是在中国为中国市场开发、生产商品和产品的企业，如何能够参与其中。

30% in other developed countries, while China's leasing rate is below 5%. Improving the consistency of leasing regulations across government departments and provinces should help expand access to financing.

Effective April 20, 2018, MOFCOM transferred the regulatory responsibility for leasing firms to the China Banking and Insurance Regulatory Commission (CBIRC). Detailed regulatory policies and implementing instructions have not been announced, creating significant uncertainty among leasing companies and inhibiting daily operations.

An up-to-date credit history is vital to screen potential customers for new leases. 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, which enables relevant financial firms and institutions to access the PBOC's Credit Reporting System. It remains extremely difficult for individual leasing firms to obtain access to individual credit records held by the PBOC, even though the majority of customers interested in leases are individual customers. Increasing or improving access to individual credit records would significantly improve access to finance for machinery and equipment.

Currently, leasing companies under MOFCOM supervision cannot claim tax credits for their loss provisions, even though this is a common practice in developed countries. Additionally, following the implementation of wide-ranging VAT reform across China on May 1, 2016, leases for machinery and equipment became subject to a 16% VAT rate as compared with the 6% VAT rate applied to sales and leaseback loans. In some cases, the VAT rate of 16% with no available deduction is so high that it is impossible for many companies to offer their customers direct leases. These policies undercut the Chinese government's stated goals of promoting agricultural mechanization and extending financial support to the real economy.

AmCham China recommends that the Chinese government issue new regulatory rules as soon as possible based on detailed research and input from leasing companies that incorporates sufficient time for preparation and transition, ensure financial leasing companies are able to access Individual Credit Reporting Systems and create a fair competitive environment among all types of financial leasing companies by adopting consistent tax policies for different financial products such as direct equipment leasing.

The Former Made in China 2025

The MIC 2025 program, first announced in 2015, was designed to reshape Chinese manufacturing by reducing labor-intensive production in favor of high-tech machinery and goods. It aimed to increase innovation and manufacturing efficiency in order for China to achieve basic industrialization by 2025, become an intermediate manufacturing powerhouse with full industrialization by 2035, and then a

global leader in manufacturing by 2049.

In 2018 as part of a trade dispute and ongoing negotiations between the US and China, the status of the MIC 2025 program has become less clear. There is uncertainty in the business community around the extent to which MIC 2025 still represents official policy, and, even if it is officially discontinued, to what extent key policies of the program will remain defacto policy. It remains unclear how foreign-invested enterprises (FIEs), particularly those that are developing and producing goods and products in China for the Chinese market, are and were able to participate.

Under the former MIC 2025, the Chinese government mandated numerous indigenous innovation policies and announced high domestic content goals which appear to be tantamount to import substitution. Even if the former MIC 2025 program has ended in name, core elements of the program do not appear to have been terminated. AmCham China members remain concerned that previous MIC 2025 policies will continue to be used to support domestic companies at the expense of FIEs by effectively excluding FIEs from commercial opportunities given the implicit and explicit favoritism toward local firms created by the stated industrial policy. End users should have the freedom to purchase capital equipment and services from any vendor they choose, including local FIE manufacturers. Reducing the choices available in the marketplace through government mandate will limit opportunities for innovation and negatively impact the overall development of industry.

Subsidies represent another area of concern for manufacturing FIEs under MIC 2025. Multiple stated incentive programs that included subsidies were largely unclear, due to different implementation methods in different regions. AmCham China urged the Chinese government to treat all industrial entities equally and provide a level playing field. Even though MIC 2025 may have ended, baseline support for the policy appears to be ongoing with less transparency, which is problematic. More importantly, AmCham China is increasingly concerned that the continued use of subsidies is playing a role in the ongoing trade tensions between the US and Chinese governments.

We therefore recommend the use of tax credits as an alternative in line with global and American practice, rather than subsidies which are viewed negatively by the foreign business community. Some key points and recommendations in this area are as follows:

- MIC 2025 subsidies were, and current apparent practices are, distorting competitive opportunities for both domestic and foreign companies;
- The business plans of many domestic firms are based on subsidies and are generally not viable for the long term. Subsidies waste government resources while placing foreign firms at a financial disadvantage;

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。即使“中国制造 2025”计划在名义上已经停止，但计划的核心内容似乎并没有终止。商会的会员企业仍担心，“中国制造 2025”会牺牲外资企业来扶持内资企业。因为政策对本土企业的隐性和显性偏袒，外资企业将被有效地排除在商业机会之外。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。

补贴是“中国制造 2025”外资制造商的另一个问题。由于不同地区的执行方法不一致，许多包括补贴在内的优惠方案都尚不明确。商会敦促中国政府一视同仁，提供一个公平的竞争环境。更重要的是，商会越来越担心，持续补贴可能会增加美中两国政府之间的贸易冲突。

因此，商会建议将税收抵免作为替代方案，与美国和国际接轨，不再采用外资商界均不看好的补贴方式。要点和建议如下：

- “中国制造 2025”的补贴扭曲了国内外企业的竞争；
- 许多国内公司的商业计划都是以补贴为基础，从长远来看是不可行的；补贴浪费了政府资源，同时使外国公司处于财务劣势；
- 采用税收抵免制度将激励优秀企业投资资金，并在未来获得抵免；
- 税收抵免制度也有利于反腐败，提高税收合规，并可以更好地管理企业。

建议

对中国政府：

- 考虑以基于当前全球规范的税收抵免制度取代目前的补贴体系，确保外资企业享有公平的竞争环境。
- 简化国四产品的鉴定流程，在有限的时间内达到排放标准，确保制造企业能够按时交付清洁高效的产品并确保排放法规执行的严格和一致性。
- 修改船用发动机的认证要求，采用现行的船用发

动机检测，不再使用目前的耐久性试验。

- 继续推动再制造成品自由跨境流通。对可回收、再制造核心产品免征增值税，考虑允许再制造成品用于保修更换。
- 确保融资租赁公司进入中国人民银行个人征信系统，并允许公司享受亏损准备金税收抵免，与发达国家接轨。

对美国政府：

- 继续敦促中国相关部门确保“中国制造 2025”政策不以牺牲外商投资企业为代价扶持国内企业。

- Moving to a tax credit regime will incentivize good companies to invest their own funds and receive credits later;
- A tax credit regime is also conducive to anti-corruption measures, enhances tax compliance, and allows greater control of business operations.

Recommendations

For the Chinese Government:

- **Consider replacing the current subsidy system with a tax credit regime based on current global norms and ensure a level playing field for FIEs.**
- Simplify the machinery homologation procedure to meet NR4 emission standards within a limited preparation period and ensure stringent and consistent enforcement of emission regulations.
- Modify the certification requirements for marine engines and adopt a test approach such as in-use marine check rather than the current DF test.
- Continue to promote the unimpeded flow of RFG across borders and make recycled, remanufactured cores exempt from VAT. Consider allowing RFG to be used for warranty replacements.
- Ensure access for financial leasing companies to the PBOC's Individual Credit Reporting System and allow companies to enjoy tax credits commensurate with their loss provisions, a common practice among developed countries.

For the US Government:

- **Continue to urge Chinese counterparts to ensure that policies stemming from MIC 2025 do not favor domestic companies at the expense of FIEs.**

Media & Entertainment

Introduction

The media and entertainment industry in China plays an important role in creating creative and enriching content for the domestic market and driving economic growth. China is the second largest movie market globally after the United States. In 2018, its total box office revenue grew 9% to RMB 60.98 billion (US \$8.87 billion). China already has the greatest number of movie theatre screens of any country globally, with more than 60,000 nationwide. The quality of China's domestic films has also been on the rise.

In recent years, supported by the largest Internet user base in the world, China's online audiovisual business has also been expanding dramatically. It provides consumers with access to an array of movies, television programming, music, and multimedia content.

The Chinese government has actively promoted the development of the media and entertainment industry to bring China's rich entertainment and cultural traditions to the global market and taken significant actions to combat piracy. And yet, the media and entertainment industry is still largely prohibited to foreign investment. There is much to be done to tackle long-standing market access challenges and regulatory barriers in order to provide a level playing field for all entertainment companies, foreign or domestic. AmCham China urges China to promote reciprocity in market access, remove discriminatory regulations, and continue to prioritize and protect intellectual property (IP) rights.

Ongoing Challenges

Film

Foreign investment restrictions

For the last decade foreign companies have been prohibited from establishing or operating film production companies, distribution companies, and film import businesses, as mandated by the *Foreign Investment Catalog and the Special Management Measures for Foreign Investment* (Negative List). Foreign entertainment companies are only permitted to

work with domestic partners to co-produce films on a project-by-project basis under strict regulation.

As President Xi Jinping said at the October 2017 19th National Congress of the Communist Party of China (CPC) "China will not close its door to the world and will only become more and more open," AmCham China members hope that the film production market will open up, which will not only benefit US film producers, but also promote China's domestic film industry and give China's rich cultural traditions greater exposure to the world.

Theatrical Film – Revenue Share and Quota

The US-China Film Memorandum of Understanding (MOU) was signed in 2012 to settle a WTO dispute in lieu of China coming into compliance with its obligations. Under the terms of the MOU, China allowed a total of 34 foreign films into the country annually, of which 14 films must be in "enhanced format" (e.g., 3D or IMAX). These 34 films are subject to revenue-sharing agreements, whereby US film production companies receive only 25% of the gross box office revenue for each film. The MOU was required to be updated in 2017, including a commitment by China to enhance the benefits to the United States under the MOU, however, a new agreement has yet to be reached. AmCham China urges that any new MOU allow foreign film producers to receive a share of the gross box office revenue their films generate in line with international norms.

Release Date and Restrictions During Peak Seasons

While some imported films are permitted day-and-date releases in China, many are delayed for weeks long. Moreover, release dates are often given only four to six weeks in advance, hindering planning and effectively limiting marketing opportunities. In addition, the Chinese government implements "blackout periods," during which no new foreign films may be released. These blackout periods are designed to discriminate in favor of domestic Chinese films and limit competition. They typically occur during the summer and Lunar New Year holidays or coincide with political events.

Delayed day-and-date releases, short notice release dates, and restrictions on the release of new foreign film titles

媒体与娱乐业

引言

媒体与娱乐业在中国发挥着重要作用，它为国内市场提供新颖丰富的内容，并推动经济增长。中国是仅次于美国的全球第二大电影市场。2018年，中国电影总票房收入达609.8亿元人民币（约合88.7亿美元），比上年增长9%。同时中国拥有全球最多的电影银幕数量，全国范围内共计6万多块。同时中国国产电影的质量也在不断提高。

中国的互联网用户数位居世界第一。近年来，中国的网络视听业务迅猛发展。它为消费者提供了丰富的电影、电视节目、音乐和多媒体内容。

中国政府一直以来积极推动媒体和娱乐业的发展，致力于将中国丰富的传统娱乐文化推向全球市场，并同时采

取有力措施打击盗版。在此大环境下，媒体和娱乐业却在很大程度上仍然禁止外商投资。解决长期存在的市场准入问题和监管障碍，为国内外所有娱乐公司提供一个公平的竞争环境，这一任务仍然任重道远。鉴于上述情况，中国美国商会（商会）敦促中国在市场准入方面采用对等原则，消除歧视性规定，并继续加强知识产权保护。

现存挑战

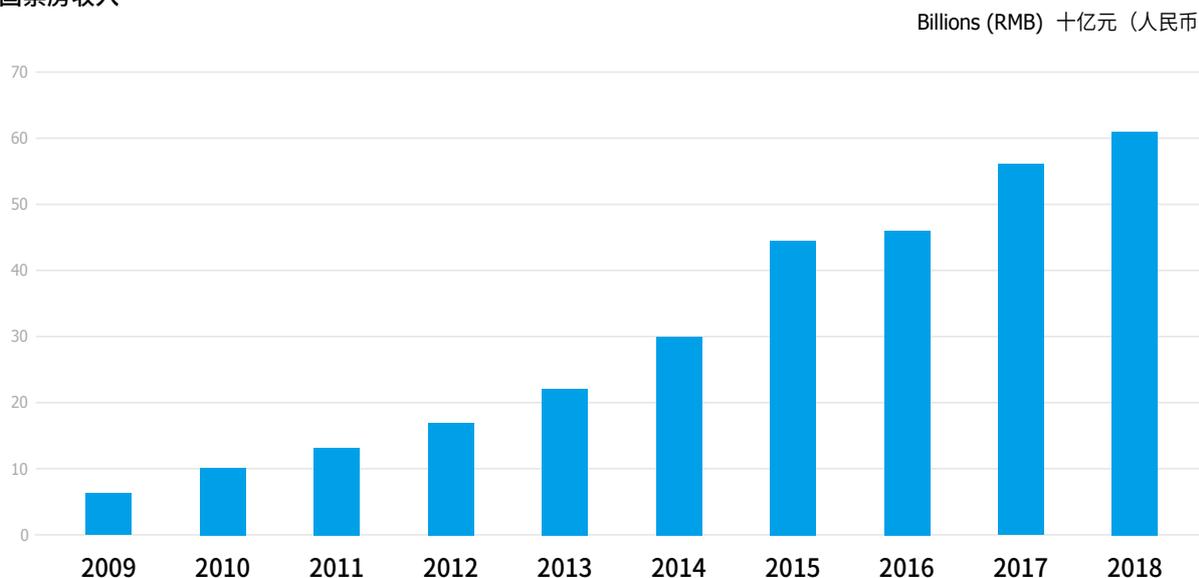
电影

外商投资限制

近十年来，根据《外商投资产业指导目录》和《外商投资准入特别管理措施（负面清单）》的规定，禁止外国

China Box Office Revenue

中国票房收入



Source: Compiled from Multiple Sources: Reuters, ChinaFile, Market estimates.
 源自：包含多个来源，路透社，ChinaFile，市场估计。

during peak season not only discriminates against foreign films but reduces total Chinese box office revenues while contributing to a turn to illegal sources for unauthorized film and TV content by Chinese citizens.

Online Audiovisual Services

China has seen rapid growth in its online audiovisual industry. According to a report published by China Netcasting Services Association, China's online video users totaled 609 million by mid-2018 and the online video market was worth an estimated RMB 202 billion. Ongoing market access restrictions prevent foreign companies from competing – at all in some ways, equally in others—in this fast-growing market.

Foreign Investment Restrictions

For over a decade China has prohibited foreign investment in online audiovisual services. Instead, foreign companies have to license their content to domestic companies which distribute it to the Chinese market.

Quota Restrictions and Censorship Review

SAPPRFT's September 2014 *Notice on Further Implementation of Provisions Concerning the Administration of Online Foreign Films and TV Dramas* caps the online distribution of foreign content at 30% and requires online distributors to submit content for censorship review. The content review process includes only two windows each year for online distributors to submit content for registration and review. Moreover, the authorities require foreign TV series to be submitted as complete seasons, when previously they could be submitted on a per-episode basis; this rule effectively delays access to foreign TV series at the time when they are most valuable.

These rules have substantially reduced the number of US television programs distributed in China. These restrictions have also contributed to an increase in use by Chinese citizens of unauthorized piracy sources for these programs online.

In September 2018 the new National Radio and TV Administration (NRTA) (which replaced SAPPRFT in March 2018) issued new draft *Administrative Rules on the Introduction and Dissemination of Foreign Audio-Visual Programs*. These rules further tighten controls on foreign content and propose not only a generic 30% cap on foreign content, but mandate that the 30% quota be applied on a genre-by-genre basis to film, TV, animation, documentaries, and “other” programs, including education, science and technology, culture, variety, and sports programs.

AmCham China urges the Chinese government to remove both the market access barriers, and regulatory and investment restrictions for online audiovisual services.

Television

Despite the growth in online audiovisual services, television still reaches the largest domestic audience nationwide. China prohibits foreign investment in television, including in television production companies. Chinese local cable networks are prohibited from carrying foreign satellite channels without government approval or landing permits. Foreign satellite-based channels beaming into China are required to downlink from a government-owned encrypted satellite platform, and these channels may only be shown in high-end hotels (three star and above) and foreign expatriate compounds. The annual fee for each channel remains prohibitively high, at US \$100,000. In addition, strict, longstanding regulations limiting the total airtime of foreign content broadcast on domestic television, including complete bans on foreign programming during prime time should be relaxed.

Intellectual Property Protection

Internet Piracy

The National Copyright Administration of China (NCAC) has initiated Special Enforcement Campaigns on copyright infringement every year since 2005. These campaigns have resulted in positive and lasting changes to the video-hosting landscape and created an environment that is enabling the growth of a legal digital media economy.

Nevertheless, illegal downloading and streaming of foreign films remains very problematic in China. Many illegal websites utilize Peer-to-Peer (P2P) networks and applications to provide instant streaming access to unauthorized and illegal copies of movies and television shows. These links are rapidly disseminated via social media platforms. There are also many mobile apps and devices that aggregate pirated content, a threat to the legitimate US and China motion picture industries. China must continue working to regulate these P2P networks, websites, and mobile content aggregators, which together become a significant threat to the continued growth of legitimate online media and entertainment industry.

To address the challenge of internet piracy, AmCham China urges the adoption of adequate protection for digital media through the following actions:

- Promulgate new rules that effectively address the huge volume of internet piracy caused by video aggregation websites and mobile apps;
- Enumerate the exclusive rights under the copyright;
- Criminalize violations of the Anti-Circumvention Provisions for Technological Protection Measures (TPMs) and information rights management (IRM);
- Criminalize internet offenses that may lack a demonstrable profit motive but that impact rights holders on

公司设立或者经营电影制作公司、发行公司、电影进出口业务。在此严格监管下，外国娱乐公司只能与国内公司合作，以项目制的形式联合制作电影。

习近平主席在 2017 年 10 月中国共产党第十九次全国代表大会上表示：“中国开放的大门不会关闭，只会越开越大。”商会会员希望能够开放电影制作市场，这不仅有利于美国电影制片方，也将促进中国国内电影产业的发展，有利于向世界展示中国丰富的传统文化。

院线电影—票房分账和配额

《中美双方就解决 WTO 电影相关问题的谅解备忘录》（谅解备忘录）于 2012 年签署，作为双方在中国在履行 WTO 义务问题上存在分歧的解决方案。根据谅解备忘录的规定，中国每年允许 34 部外国分账电影进入中国，其中 14 部电影必须是“高新技术格式”电影（如 3D 或 IMAX 格式）。这 34 部电影按照有关票房分账协议条款执行，美国电影制作公司只能获得每部电影总票房收入的 25%。此份谅解备忘录必须在 2017 年协议到期时更新，其中包括一项中方承诺强化美方利益的条款。然而，时至今日新的协议尚未达成。商会敦促，任何新的谅解备忘录都应保证外国电影制片方获得符合国际惯例的影片总票房分账比例。

影片上映日期和旺季期间限制

少数进口影片获准在中国与国外同步上映，但多数影片会推迟数周才上映。另一方面，在中国的上映日期通常只在上映前四到六周才能最终确定，极大地限制了策划和市场营销的机会。此外，中国政府还实行了“保护期”，在此期间，不允许新的外国电影上映。这些歧视措施用于保护中国本土电影的发展，违背了公平竞争原则。保护期通常发生在暑期和农历新年假期，或特殊政府活动时期。

推迟同步上映日期、短暂的定档发布期及旺季期间对新上映外国影片的限制，这不仅是对国外影片的歧视，还会减少中国电影票房的总收入，使得消费者转移到非法渠道去获取未经审查播出的影视内容。

网络视听服务

中国网络视听产业迅猛发展。据中国网络视听节目服务协会发布的报告显示，截至 2018 年 6 月，中国网络视频用户已达 6.09 亿，预计网络视频内容行业市场规模约为 2020 亿元人民币。然而，长久以来的市场准入限制在不同程度上阻碍了外国公司在这一快速增长的领域进行平等竞争。

外商投资限制

十多年来，中国一直禁止外商投资网络视听节目服务业务。外国公司只能将其影视节目内容授权给国内公司，由后者向观众提供服务。

配额限制和审查制度

2014 年 9 月，国家新闻出版广电总局发布《关于进一步落实网上境外影视剧管理有关规定的通知》，规定单个网站年度引进播出境外影视剧的总量，不得超过该网站上一年度购买播出国产影视剧总量的 30%，并要求各网站对所引进的境外影视剧内容需要递交审查。每年只有两个时间窗口可以让网络平台递交登记和审查申请。此外，境外电视剧必须以整季的形式提交，而此前则允许以单集形式提交。这一规定实际上拖延了外国电视节目内容在最具价值的时间进入市场。

这些规定大大减少了美国电视剧节目的引进数量，也使得更多的中国消费者通过网络上未经授权的盗版渠道获取内容。

2018 年 9 月，国家广播电视总局（原国家新闻出版广电总局）发布《境外视听节目引进、传播管理规定（征求意见稿）》。这一规定进一步加强了境外节目总量不得超过 30% 的限制。同时规定 30% 的限制还适用于单一的风格类型如：电影、电视剧、动画片、纪录片和“其他”各类境外电视节目，包括教育、科技、文化、综艺和体育节目等等。

商会敦促中国政府消除网络视听服务市场准入壁垒，放宽对网络视听服务的监管和投资限制。

电视

尽管网络视听服务规模增长很快，电视依然在中国拥有最广泛的受众群体。中国禁止外商投资各级广播电台（站）、电视台（站）等及广播电视节目制作公司。未经政府批准或登陆许可，禁止中国省市有线电视运营商引入境外卫星频道。外国卫星频道落地中国，需要从政府加密卫星平台下行传输，这些频道仅能在涉外高端酒店（三星级及以上）和外籍人士居住区播放。同时，每个频道的高达 10 万美金的年费令人望而却步。此外，长久以来，中国一直严格限制播放境外节目内容在电视频道的总播出时间，包括完全禁止外国节目在黄金时段的播出。这些禁令都应解除。

a commercial scale. Revise the “500 copies” criminal threshold;

- Eliminate legal distinctions between crimes of “entities” and “individuals;”
- Provide deterrent-level civil and criminal penalties for infringement;
- Establish an adequate liability regime for e-commerce platform operators as well as satisfactory measures for notice and takedown of websites central to the piracy ecosystem.

Camcord Piracy

China remains a significant number of instances of camcord piracy across the film industry. Industry analysis has identified as many as 72 illegal camcord-based recordings were identified as coming from cinemas in China between 2014 and September 2018. While China has been increasingly cooperative in efforts to prevent camcorder recordings, AmCham China urges the government to strengthen civil, administrative, and criminal penalties to deter illegal use of camcorders in cinemas.

Piracy Devices and Apps

China is a leading manufacturer of blank media boxes which permit installation of third-party, pre-loaded, or post-purchase applications that allow consumers access to pirated content. AmCham China members would like to work with the Chinese government to develop solutions to deal with the challenges posed by these blank media boxes.

Legislative Inaction on the Copyright Law

China’s Copyright Amendment Bill has been under review since the Legislative Affairs Office (now under the Ministry of Justice (MoJ)) solicited public comments in June 2014. China should prioritize the amendment process and promulgate a revised *Copyright Law* to help address issues discussed above. As part of the review, China should increase the level of compensation given to copyright owners who have their rights infringed, ease the copyright owner’s burden of proof, and establish stronger deterrent-level penalties.

with international norms, increases the number of imported films, and removes market barriers.

- Remove restrictions during peak periods for imported films and allow US film producers flexibility to decide release dates.
- Remove quota restrictions on foreign content for online video services.
- Allow foreign television series to be reviewed by censors on a per-episode basis.

For the US Government:

- **Work with China to review the investment restrictions on US companies in the media and entertainment sector, with the goal of providing greater market access for US companies.**
- Complete negotiations as required for the update the film MOU, as above.
- Continue to encourage the Chinese government to work together with US businesses to find solutions to the challenges raised in this chapter.
- Identify and encourage opportunities to share US best practices on copyright protection with relevant Chinese government entities.

Recommendations

For the Chinese Government:

- **Remove market access barriers to allow 100% foreign ownership of film and television production and distribution companies and online video services companies.**
- Complete negotiations as required for the update to the film MOU that brings revenue share in line

知识产权保护

网络盗版

国家版权局自 2005 年起，每年开展打击网络侵权盗版专项治理的“剑网行动”。这为网络视频行业带来积极良好的变化，为合法数字媒体经济的增长创造了良好的政策法规环境。

然而，非法下载和通过流媒体盗版外国电影在中国仍然是个突出问题。许多非法网站利用点对点（P2P）网络和应用程序，提供未经授权的和非法盗版的电影和电视节目。这些链接通过社交媒体平台迅速传播。此外，许多移动应用程序和设备聚合盗版内容，对美国和中国电影行业构成了严重威胁。中国必须继续加强对 P2P 网络、网站和移动视频聚合设备的监管，这些内容对合法网络媒体和娱乐行业的持续增长构成了重大威胁。

为应对网络盗版的挑战，商会敦促采取强有力措施，对数字媒体进行如下保护：

- 发布新规，有效解决视频聚合网站和移动应用带来的海量互联网盗版问题；
- 明确版权的专属权；
- 对违反规避技术措施条款和信息版权管理的行为定罪；
- 对可能缺乏明显的盈利动机，但在商业规模上对版权所有人造成影响的网络犯罪进行定罪。对“传播他人作品的数量合计在五百件（部）以上”的犯罪门槛进行修订；
- 取消“实体”和“个人”罪行之间的法律区别；
- 对侵权行为进行威慑级别的民事和刑事处罚；
- 对电子商务平台经营者建立责任制度，并采取有效措施，对网络盗版的核心删除通知问题进行监管。

影院盗录

中国电影行业仍然存在大量的盗录问题。有关行业分析报告提出，从 2014 年到 2018 年 9 月，中国影院非法盗录的视频多达 72 个。虽然中国在防止摄像盗录方面的配合度日益加强，商会敦促政府加强民事、行政和刑事处罚，杜绝在影院的非法盗录行为。

盗版硬件产品和应用程序

中国是全球领先的机顶盒生产制造商，机顶盒允许预装或后装第三方应用程序，使得消费者可以轻易获取盗版内容。商会会员愿与中国政府共同努力，通过制定解决方案来应对空白机顶盒设备带来的挑战。

《著作权法》立法进程缓慢

自 2014 年 6 月国务院法制办公室（现隶属于司法部）报请国务院审议《中华人民共和国著作权法（修订草案送审稿）》，征求公众意见以来，《著作权法》一直处于审核状态。中国应加速修法进程，尽快颁布《著作权法》，以帮助解决上述问题。作为修订的一部分，中国应加大对著作权被侵犯的权利人赔偿力度，减轻著作权人的举证责任，加强威慑性处罚。

建议

对中国政府：

- 取消市场准入壁垒，允许外商全资控股设立影视制作、发行公司和从事网络视听节目服务。
- 依据协议谈判达成新的中美电影谅解备忘录，增加外国公司进口电影的分账份额至国际标准水平，增加进口电影的数量，消除市场壁垒。
- 取消进口电影的旺季发行期限限制，允许美国电影制片方自主决定上映日期。
- 取消网络视听节目服务对境外剧的配额限制。
- 允许境外电视剧按集审查。

对美国政府：

- 与中方政府合作，消除美国企业在中国媒体和娱乐领域的投资限制，以确保开放的市场准入机制。
- 完成协议谈判，按照中美电影谅解备忘录所规定的要求修改协定。
- 继续鼓励中国政府与美国企业共同努力合作，针对文本中涉及的挑战寻找解决方案。
- 寻找机会，鼓励与中国相关政府机构分享美国在版权保护方面的最佳实践。

Oil and Gas, Energy, and Power

Introduction

China's energy sector continued its steady reform in 2018 through continued commitment to the policies of the 13th Five-year Plan which emphasize the transition to low carbon-based energy infrastructure, increasing clean energy (natural gas, renewables) as a share of China's consumption, and market-based reform of the oil and gas markets. Despite prioritizing cleaner energy sources, China consumed an estimated 4.7 billion MT of coal in 2018, an increase of 4.8% (y/y) and the highest level of consumption in the last seven years.

Domestic energy developments have occurred against the backdrop of a significant trade dispute between China and the US, which has injected uncertainty into industry operations. Following the release of the US Trade Representative's investigation into China's trade practices in March 2018, both sides engaged in an escalating trade conflict throughout 2018. By the end of the year, the US had imposed tariffs on over US\$ 200 billion worth of Chinese imports, while Chinese tariffs covered US\$ 60 billion of US imports. Energy sector products, material inputs, and equipment are heavily subject to these tariffs. In late 2018, however, China resumed importing liquid natural gas (LNG) and crude oil from the US.

The US, the world's number one oil and gas producer, and China, the world's top oil and gas importer, remain natural energy partners and have enjoyed a longstanding energy partnership. AmCham China recommends finding a solution-oriented approach based on fairness and reciprocal treatment to resolve the trade and economic disagreements and believes that trade and cooperation in the energy sector is an important building block to sustain a balanced and prosperous trade relationship.

Upstream Oil and Gas

China is the largest oil and gas producer in the Asia-Pacific region. China's oil and gas industry continues to be dominated by three national oil companies (NOCs): China National Petroleum Corporation (CNPC), Sinopec and China National Offshore Oil Corporation (CNOOC). Foreign

companies have gained only a small foothold in the market, often only after partnering with the NOCs.

China has significant potential for further oil and gas exploration and development. Onshore areas in the western provinces and deep water locations off the coast remain under-explored. These resources are challenging to recover due to complications from deep water, high temperature, and high pressure. China's current oil-producing fields are increasingly mature, that is to say, they have passed peak production and rely on continued investment to generate returns. The steady decline in domestic oil production coupled with the increase in energy demand means over 70% of China's crude oil supplies were imported in 2018, a trend that is expected to increase over the coming years with implications for energy security.

The central government increasingly views natural gas as key to easing the country's pollution challenges and is promoting natural gas across industrial and residential sectors for power generation, household heating, and feedstock. Growth in onshore gas production is being generated by increased output from the Sichuan, Ordos, and Tarim basins and is expected to continue through 2020. Offshore gas production is also expected to increase over the next few years as new gas fields are brought online in the South China Sea.

The State Council announced its long-awaited *Oil and Gas Reform Plan* ("the Plan") in May 2017. This was followed by additional notices to promote foreign investment, including Circular No. 39 and the 2017 revision of the *Guiding Catalogue on Foreign Investment*. Restrictions limiting foreign companies to exploration of certain unconventional oil and gas sites (30 in total) were also lifted. A detailed implementation plan and timetable for the Plan has yet to be provided by the relevant authorities. Furthermore, the procedure to obtain environmental permits for upstream oil and gas developments, ranging from new projects that require significant upfront capital to well drilling for daily operations, has become increasingly unpredictable and is negatively impacting existing production targets and project financials, as well as limiting future expansion and investment.

AmCham China recognizes the strong efforts made by the State Council and urges the National Development and Reform Commission (NDRC), the newly-formed

石油、天然气、能源和电力

引言

2018年，通过继续实施“十三五”规划，中国能源领域持续推进稳步改革。“十三五”规划重点推进低碳能源基础设施转型，提高清洁能源（天然气、可再生能源）在中国能源消耗中的比重，推进油气市场市场化改革。尽管中国优先发展清洁能源，但据估计，2018年煤炭消费量仍达47亿吨，同比增长4.8%，为近7年来消耗最高水平。

国内能源发展在中美之间爆发的一场重大贸易争端的背景下发生，该争端给行业运营带来了不确定性。2018年3月，美国贸易代表办公室发布对中国贸易行为的调查报告后，双方贸易冲突全年不断升级。截至2018年底，美国已对价值2000多亿美元的中国进口商品加征关税，而中国只对价值600亿美元的美国进口商品加征关税。能源领域的产品、材料投入和设备受到这些关税的严重影响。然而，2018年底，中国恢复了从美国进口液化天然气和原油。

美国是世界最大的油气生产国，而中国是世界最大的油气进口国。两国仍是天然能源合作伙伴，且享有长期的能源合作关系。中国美国商会（商会）建议在公平和互惠待遇的基础上，寻找一个以解决方案为导向的方法来解决贸易和经济分歧，且认为能源领域的贸易与合作是维持平衡和繁荣贸易关系的重要基石。

上游油气

中国是亚太地区最大的油气生产国。中国油气产业持续由三家国有石油公司主导：中国石油天然气集团公司、中国石油化工集团公司和中国海洋石油总公司。外国公司往往只有在与中国国家石油公司合作之后，才在油气市场获得了一小部分立足之地。

中国油气勘探开发潜力巨大。西部省份的陆上地区和沿海深水区仍未得到充分开发。由于深水、高温、高压等

因素的复杂化，这些资源的恢复正面临着巨大的挑战。目前，中国的油田正变得越来越成熟，也就是说，它们的产量已经超过了峰值，并依靠持续的投资来获得回报。国内石油产量的稳步下降，加上能源需求的增长，这意味着2018年中国70%以上的原油供应来自进口。这一趋势预计将在未来几年有所增长，并且将对国家能源安全产生影响。

中央政府不断将天然气视为缓解国家污染挑战的关键，并在工业领域和住宅区推广天然气，用于发电、家庭供暖和生产原料。陆上天然气产量的增长是由四川、鄂尔多斯和塔里木盆地产量的增加而产生，且预计这种情况将持续到2020年。随着中国南海新气田的投入使用，预计未来几年海上天然气产量也将增加。

2017年5月，国务院公布了期待已久的《油气改革方案》（以下简称《方案》）。随后又发布了促进外商投资的附加通知，包括国发39号文和2017年修订的《外商投资指导目录》。限制外国公司勘探某些非常规油气田（总共30个）的规定也被取消。有关部门尚未提供《方案》的详细实施计划和时间表。此外，上游油气开发项目（从需要大量前期资金的新项目到日常运营所需的钻井）获取环境许可的程序已经变得越来越不可预测，并对现有的生产目标和项目财务产生负面影响，也限制了未来的扩张和投资。

商会认识到中国国务院做出的巨大努力，并敦促国家发展和改革委员会、新成立的国家自然资源部，和其他相关政府部门加快必要的立法改革来授予上游区块获取权限、简化许可证审批的过程，并为国际石油公司的投资提供财政和税收激励。商会促请中国政府及国有石油公司提供更具吸引力的上游机会，以激励国际石油公司增加在中国的资本和技术投资，这些发展将有利于中国的经济增长。

传统石油天然气

由于油价较低、勘探成功的可能性有限、现有生产许可证到期的因素，越来越多的国际石油公司选择离开或减

Ministry of National Resources (MNR), and other relevant government authorities to expedite the legislative reforms necessary to grant access to upstream acreage, streamline the procedure for permit approvals, and provide fiscal and tax incentives for International Oil Companies (IOCs) to invest. AmCham China urges the Chinese government and the NOCs to offer more attractive upstream opportunities to motivate IOCs to increase capital and technology investment in China, developments which would be beneficial for China's economic growth.

Conventional Oil and Gas

Due to low oil prices, limited exploration success, and the expiration of existing production licenses, an increasing number of IOCs have chosen to leave or reduce their upstream businesses in China and shift investments elsewhere. If this trend continues, it will limit China's access to foreign capital and advanced technical expertise for upstream exploration and reduce the strength of the domestic upstream sector.

In the 2018 China offshore oil and gas licensing process, CNOOC offered 38 offshore exploration blocks to foreign companies, covering an area of 37,250 km². To attract more offshore exploration, CNOOC issued regulations promoting favorable financial terms for investors to pursue the technically and financially demanding HP/HT, deep-water, deep-reservoir and hard-to-access reservoir blocks. They also extended exploration periods, enacted a "zero relinquishment" policy during the first and second exploration phases (thereby reducing the size of the relinquishment area), and enabled a more favorable bonus payment and investment sharing-structure between CNOOC and foreign contractors/companies. Foreign financial institutions, either individually or as part of a consortium with IOCs, were also allowed to bid on contracts (as non-operators).

For the first time in the history of open bidding rounds for exploration blocks, CNOOC proposed two Strategic Cooperation Areas, (existing mining-approved license areas and contract areas are not included) in the Pearl River Mouth Basin of the South China Sea. On December 18, 2018, CNOOC announced that it had signed Strategic Cooperation Agreements with nine IOCs. The agreements will facilitate long-term cooperation between CNOOC and IOCs and provide more potential exploration and development opportunities in the Strategic Cooperation Areas for IOCs.

Encouraged by the favorable fiscal terms on offer alongside the rising price of oil, exploration activities in the South China Sea are gradually increasing. In 2018, four new upstream production sharing contracts (PSCs) were signed between CNOOC and foreign independent oil companies.

There has been more limited progress, however, with respect to onshore licensing for exploration blocks. In February 2017, the Ministry of Land Resources (MLAR) (now MNR) announced plans for a second round of licensing that would

offer up to 30 blocks in Xinjiang to domestic companies. Only five blocks were eventually offered in late 2017 and only three Chinese domestic companies won bids to three blocks. AmCham China believes that to develop its domestic resources quickly to meet its rising energy demand, China needs to offer better acreage and more attractive financial terms to attract bids from non-NOC companies.

Shale Gas

China shale gas sector is in its nascent stage. Sinopec's Fuling and PetroChina's Changning-Weiyuan and Zhaotong projects are in operation, both located in the mountainous Sichuan Basin. China shale gas production reached 10 BCM in 2018. Despite progress, China will likely miss its 2020 production target of 30 BCM as stated in its 13th energy sector five-year plan, by a considerable margin.

Shale gas formations in China tend to be deeper and less-pressured than formations in the US. 80% of China's shale gas formations are deeper than 3,500 meters. These formations require deeper wells that cost more and are more difficult to maintain. Above ground, China's shale gas deposits are often located in areas of higher population density than in North America, creating land access challenges.

The Chinese government has declared shale gas a strategic resource and is eager to extract its gas deposits to meet its significant energy demand. A series of policies have been issued to boost shale gas development, including the shale gas subsidy program which started at 0.4 RMB/m³ then dropped to 0.2 RMB/m³ in 2019. This subsidy program will expire in 2020.

To expand the shale gas sector, we recommend the Chinese government continue the shale gas subsidy program to at least 2025. Given the deep shale gas formations in China, higher, long-term subsidies are needed to incentivize investments of resources and technology.

North America's success with shale gas was built on competitive and open markets, active small-and-medium-sized companies, well-developed infrastructure, and available technical expertise. China has comparative gaps in each of these areas. We believe a liberalized gas pricing scheme that reflects the true costs of gas supply, competitive supply chains, provision of TPA to shale gas infrastructure will be essential to unlocking China's shale gas potential.

Oil Pricing

In 2018 the deregulation of China's oil market accelerated. Shell obtained the first license awarded to an IOC to independently trade oil products in China's wholesale market. Less progress was made with respect to retail fuel (gas and diesel stations) pricing; prices are currently regulated through a system of price caps by the central government and only tenuously linked to international oil prices.

少在中国的上游业务，并且将投资转向其他地方。如果这一趋势继续保持，中国获得上游勘探所需外资和先进专业技术的渠道将受到，国内上游行业的实力也将被削弱。

在 2018 年中国海上油气授权过程中，中国海洋石油总公司向外国企业提供了 38 个海上勘探区块，面积 37,250 平方公里。为吸引更多的海上勘探，中国海洋石油总公司颁布条例，提高为投资者提供的优惠金融条款，以实现在技术和财务方面要求较高的高温高压、深水、深油藏和难以进入的油藏区。投资者还延长了勘探周期，在第一、二勘探阶段实行“零让渡”政策（从而缩小了让渡面积），使中国海洋石油总公司与外国承包商/公司之间的奖金支付和投资共享结构更加优惠。外国金融机构，无论是单独的还是作为国际石油公司联营的一部分，也被允许（作为非运营商）参与合同竞标。

在勘探区块公开招标历史上，中国海洋石油总公司首次提出了南海珠江口盆地两个战略合作区域（不包括现有的采矿许可区域和合同区域）。2018 年 12 月 18 日，中国海洋石油总公司宣布与 9 家国际石油公司签署战略合作协议。这些协议将促进中国海洋石油总公司与国际石油公司的长期合作，为国际石油公司在战略合作领域提供更多潜在的勘探和开发机会。

在有利的财政条款和油价上涨的推动下，南海的勘探活动正在逐步增加。2018 年，中国海洋石油总公司与外国独立石油公司签署了四份新的生产分成合同。

然而，在勘探区块的陆上许可方面，其进展较为有限。2017 年 2 月，中华人民共和国国土资源部（现自然资源部）宣布了第二轮许可计划，将向国内企业提供多达 30 个新疆区块。在 2017 年底，只有 5 个区块最终被投标，并且只有 3 家中国国内企业赢得了三个区块的竞标。商会认为，为了快速开发国内资源，满足不断增长的能源需求，中国需要提供更好的陆上区块和更具吸引力的财务条款，以吸引非国家石油公司的投标。

页岩气

中国页岩气行业处于初期阶段。中石化涪陵和中石油的长宁——威远和昭通项目正在运营，均位于四川盆地山区。中国页岩气产量在 2018 年达到 10 亿立方米。尽管取得了进展，但中国可能会错过其第 13 个能源部门五年计划中所述的 30 亿立方米的 2020 年生产目标。

中国的页岩气地层往往比美国的地层更深，压力更小。

中国 80% 的页岩气层深度超过 3500 米。这些地层需要更深的井，其成本更高且更难维护。在地面上，中国的页岩气储层通常位于人口密度高于北美的地区，从而引起土地使用权等问题。

中国政府已宣布页岩气为战略资源，并急于开采天然气储量以满足其巨大的能源需求。为促进页岩气开发，中国政府已经出台了一系列政策，包括页岩气补贴计划，该计划的开工率为 0.4 元/立方米，后在 2019 年降至 0.2 元/立方米。该补贴计划将于 2020 年到期。

为拓展页岩气产业，商会建议中国政府至少继续实施页岩气补贴计划至 2025 年。鉴于中国页岩气层较深，需要更高的长期补贴来激励对资源和技术的投资。

页岩气在北美的成功建立在竞争激烈且开放的市场、活跃的中小型企业、完善的基础设施和可得的专业技术之上。中国在这些领域均与北美存在差距。商会认为，自由化天然气定价计划反映了天然气供应的真实成本，有竞争力的供应链，为页岩气基础设施提供第三方准入，对于释放中国的页岩气潜力至关重要。

石油定价

2018 年，中国石油市场放宽管制的速度加快。壳牌公司获得了国际石油公司颁发的第一张许可证，可以在中国批发市场独立交易石油产品。在零售燃油（汽油和柴油站）定价方面进展较少；目前，价格是通过中央政府制定的价格上限制度来进行调控的，而且与国际油价只有微弱的联系。

近年来，有几个积极的信号表明，政府打算解除对燃油零售行业的管制。2017 年 5 月，国务院发布的《关于深化油气行业改革的意见》（以下简称《意见》）鼓励对油价进行市场引导，但《意见》的出台时间和实施细节尚未公布。

商会强烈鼓励中国政府全面放开石油价格，并主张取消价格上限，以在中国打造一个具有竞争力的零售市场。这样做将有利于：

- **继续推进改革开放。** 2018 年是中国改革开放（中国经济改革方案）40 周年。2018 年，习总书记多次强调要继续推进经济改革。外国投资在燃油零售市场有着巨大的潜力，但这一潜力正受到管制定价的限制。
- **确保产品的多样性。** 一个全面运转的燃油零售市场，将为消费者在高质量和低质量燃油之间提供更多选择，

There have been several positive signals suggesting the government intends to deregulate the retail fuel sector in recent years. The *Opinions on Deepening Oil and Gas Industry* market guidance of oil prices, however the timing and implementing details Reform (*Opinions*) issued by the State Council in May 2017 encouraged stemming from the *Opinions* have not been forthcoming.

AmCham China strongly encourages the Chinese government to fully deregulate oil prices and advocates the removal of price ceilings to deliver a competitive retail market in China. Doing so will support:

- **Continued Reform and Opening Up.** 2018 is the 40th anniversary of China's *Reform and Opening Up*, China's economic reform program. In 2018 President Xi repeatedly emphasized a commitment to continued economic reform. There is significant potential for foreign investment in the retail fuel market, but this potential is being curtailed by regulated pricing.
- **Product Diversity.** A fully functioning retail fuel market will offer consumers greater choice between high- and low-quality fuel and encourage foreign investors to introduce the latest fuel technologies into the Chinese market while supporting domestic technology development.
- **Higher Quality Products and Reduced Price Volatility.** Price volatility is the government's major concern regarding full deregulation of the retail fuel market, although the evidence from other countries' experience suggests this concern may be unwarranted. Opening the retail fuel market has been shown to lead to lower prices because it attracts IOCs and investment and improves product quality through market competition.

Natural Gas and Liquefied Natural Gas (LNG)

Promoting Natural Gas Use

Natural gas is an environmentally-friendly and sustainable fuel source. To combat severe air pollution in China's cities caused in part by coal-fired residential heating boilers and industrial furnaces, the Chinese government has begun prioritizing the use of natural gas as a primary fuel source. According to the NDRC's *Clean Winter Heating Scheme* (2018 - 2021) issued in 2017, significant portions of China's existing coal - fired boiler capacity were marked for elimination or planned for upgrade to gas - fired boilers, increasing gas demand in both the residential and industrial sectors.

These natural gas policies suffered a setback in early 2018. Although the actual measurable impact was minimal, the gas shortage in the winter of 2017-18 was widely perceived to have been caused by the campaign to remove coal boilers and replace them with gas burners. To avoid a repeat scenario, in the winter of 2018-19 the government reduced the emphasis on upgrading to gas.

As a result, estimates suggest that across the "2+26 cities" (those in the Beijing-Tianjin-Hebei region currently subject to strict emission standards by the Ministry of Ecology and Environment (MEE)) only two million households in 2018 had switched from coal to gas, half the number of households in 2017.

Apart from the environmental benefits, natural gas is also a consistent, reliable, safe, and convenient fuel source. It is the industry's responsibility to communicate the benefits of natural gas to government decision-makers, and consumers, especially in the face of the recent gas shortage and subsequent policy setbacks. AmCham China believes there is a need for greater advocacy around the benefits of natural gas. To support the development of a fully-functioning natural gas market in China we recommend the following:

- Promoting the development of LNG terminal infrastructure to facilitate LNG "bunkering" (the practice of providing liquefied natural gas fuel to a ship for its own consumption) and increased gas consumption;
- A cocktail of policy incentives that induce consumers to switch from coal to gas at the provincial and local levels, facilitate the use of natural gas in distributed energy and Combined Heating Power (CHP) units, and centralized winter heating for southern China.

Natural Gas Pricing

Progressive reforms in China's natural gas sector implemented by the NDRC over the past five years have transformed the pricing structure from a "well-head cost-plus" model that existed until 2013 to a "wholesale city-gate" pricing model that we see today. City-gate price reforms included the merging of prices for the previously segmented baseload and incremental gas demand, linking the price of gas to imported oil products, and changing the price control mechanism from absolute price ceilings to price benchmarks that allow prices to fluctuate within a band of 20% based on market demand.

China's city-gate price reforms since 2013 have only applied to non-residential price adjustments. In June 2018, NDRC announced city-gate price schemes for residential and non-residential sectors were to be merged within one year to ensure a smooth transition and avoid volatility. Beginning June 2019, residential city-gate prices will transition from a price ceiling to a price benchmark, with an uncapped lower band and up to 20% cap on price increases. Since the implementation of these reforms, residential sector prices have risen, moderating gas demand while reducing market inefficiency caused by the two-tiered pricing mechanism.

In the summer of 2018, a new winter gas price structure was introduced by PetroChina, which included "peak pricing" features to better reflect demand differential for heat during the summer and winter. Under the new scheme, a fixed

并鼓励外国投资者在支持国内技术发展的同时，将最新的燃油技术引入中国市场。

- **提高产品质量，降低价格波动。** 价格波动是政府对完全放开燃油零售市场的主要担忧，尽管其他国家的经验表明，这种担忧可能是没有根据的。开放燃油零售市场已被证明会带来更低的价格，因为它吸引了国际石油公司和投资，并通过市场竞争提高了产品质量。

天然气和液化天然气

推广天然气使用

天然气是一种环保、可持续的能源。为应对部分住宅燃煤供暖锅炉和工业锅炉造成的城市严重空气污染，中国政府已开始优先使用天然气作为主要燃料来源。根据国家发改委2017年发布的《冬季清洁供暖方案(2018-2021年)》，中国现有燃煤锅炉的很大一部分产能已被取消或计划升级为燃气锅炉，这增加了住宅和工业领域的天然气需求。

这些天然气政策在2018年初遭遇挫折。尽管实际可测量的影响很小，但人们普遍认为，2017-18年冬季的天然气短缺是因为使用煤气炉代替燃煤锅炉所造成的。为了避免重蹈覆辙，2018-19年冬季，政府减少了对升级到使用天然气的强调。

因此，据估计，在“2+26个城市”（京津冀地区目前受到生态环境部制定的严格排放标准的限制）中，2018年只有200万户家庭从煤炭转向天然气，占2017年的一半。

天然气除了具有环境效益外，还是一种稳定、可靠、安全、方便的燃料来源。天然气行业有责任向政府决策者和消费者宣传天然气的好处，尤其是在最近天然气短缺和随后的政策挫折面前。商会认为，有必要就天然气的好处进行更多的宣传。为支持中国天然气市场全面运转，商会建议：

- 推动液化天然气码头基础设施的发展，以促进液化天然气“加油”（一种为船舶提供液化天然气燃料供其自身消耗的做法）和天然气消费量的增加；
- 制定一系列政策激励措施，引导消费者在省级和地方层面从使用煤炭转向使用天然气，促进天然气在分布式能源和热电联供单位以及中国南方的集中冬季供暖使用。

天然气定价

过去5年，国家发改委实施了天然气行业渐进式改革，定价结构已经从2013年之前存在的“井口价加成本”模式转变为今天的“城市供气站批发价”定价模式。城市供气站价格改革包括合并之前分段的基本负荷和增加的天然气需求价格，将天然气的价格与进口石油产品挂钩，改变价格控制机制，将绝对价格上限调整为允许价格根据市场需求在20%的区间内波动的价格基准。

自2013年以来，中国的城市供气站价格改革只适用于非住宅价格调整。2018年6月，国家发改委宣布，为确保平稳过渡和避免波动，将在一年内合并住宅和非住宅价格体系。从2019年6月开始，住宅城市供气站价格将从价格上限过渡到价格基准，较低区间不设上限，价格增长上限为20%。自这些改革实施以来，住宅领域的价格一直在上涨，一方面抑制了天然气需求，另一方面降低了两级定价机制导致的市场效率低下。

2018年夏，中国石油天然气股份有限公司推出了新的冬季天然气价格结构，其中包括“峰值定价”，以更好地反映夏季和冬季的对暖气的需求差异。在新方案下，一个固定的公式将需求分为“基本需求”和“峰值需求”。“从2018年11月到2019年3月，峰值需求的定价将有所不同。中石油还与终端用户签署了新的补充协议，允许在2018-19年实施新的冬季天然气价格机制。其它国有石油公司紧随中石油之后，今年也推出了类似的冬季定价机制。

商会支持这些改革。为剩余住宅和工业部门制定统一的“城市供气站”定价结构，能更好地反映天然气进口成本，也符合向市场化定价框架迈进的步伐。以前在确定取暖成本时没有考虑季节性因素，造成了冬季天然气短缺，因为对天然气供应商来说，他们没有经济上的动力来建立天然气库或对需求波动做出反应。新的冬季定价方案将季节性作为一个默认特性。

上海和重庆的石油天然气交易所

上海石油天然气交易所于两年前启动商业操作，2018年的活动被视为其对中国市场化改革的贡献的有力证明。作为成功的衡量标准，中国第二大油气交易所——重庆油气交易所于2018年5月成立。

上海石油天然气交易所报告了300亿立方米的天然气交易，包括280万吨液化天然气，约占国内天然气消费总量的11%。上海石油天然气交易所目前拥有2000多家注

formula classifies demand as either “base demand” or “peak demand.” Peak demand is to be priced differently from November 2018 through March 2019. PetroChina also signed new supplementary agreements with end users allowing the new winter gas price scheme to take effect in 2018-19. Other NOCs followed PetroChina’s lead and similarly introduced a winter pricing scheme this year.

AmCham China supports these reforms. A uniform city-gate pricing structure for the residential and industrial sectors better reflects the cost of gas imports and is in line with the move to a market-based pricing framework. The previous failure to consider seasonality when determining the cost of heating contributed to the winter gas shortages because there was little economic incentive for gas providers to build up gas storages or be responsive to demand fluctuations. The new winter pricing scheme has made seasonality a default feature.

Shanghai and Chongqing Oil & Gas Exchange

The Shanghai Petroleum and Natural Gas Exchange (SHPGX) commenced commercial operations two years ago and its activities in 2018 are seen as evidence of its contribution to China’s market-based reform. As a measure of its success, China’s second oil and gas exchange, the Chongqing Oil & Gas Exchange, launched in May 2018.

The SHPGX reported 30 billion cubic meters (BCM) of gas transactions, including 2.8 MT (million ton) of LNG, about 11% of total domestic natural gas consumption. SHPGX now has more than 2,000 companies registered, a 40% increase from 2017. Registered companies include a mix of Chinese NOCs, city-level distributors, and foreign companies.

Although most of the 30 BCM of gas was contracted offline and then posted to the platform, a growing proportion of SHPGX’s gas sales are now actively being tendered and transacted online. In order to address winter gas supply shortages and extend market-based price mechanisms, SHPGX launched new natural gas forward sale transactions, accepted bids from companies for LNG receiving terminals, and encouraged South to North gas swap trading.

This year also saw new wintertime LNG supply agreements establish peak demand pricing structures based on prices from the SHPGX, the first time a natural gas exchange was used to underpin LNG supply agreements. Given the strong market interest in such SHPGX-enabled LNG sales, AmCham China expects the continued introduction of new products on the SHPGX in the near future.

Operational challenges remain, however, before the SHPGX can develop into a fully functioning exchange guaranteeing full liquidity, diversity of supply, third party access (TPA) and fully-structured product offerings. To address these issues, AmCham China recommends the SHPGX:

- Standardize trading contracts and confirmation notices, enable contracts to be denominated in US dollars to support international LNG trades, allow TPA to existing LNG infrastructure, increase the number of suppliers and the volume of LNG traded via SHPGX platform, and allow fully independent decision making by the SHPGX to support market-based operations.
- Expand the scope of auctions from “seller only” to a mix of “seller” and “buyer” auctions, which would enable the development of a “continuous market” and align SHPGX with international best practices so that natural gas and LNG contracts can be exchanged freely.
- Develop futures contracts based on existing infrastructure contracts to improve market liquidity, enhance pricing and encourage capital investments.
- Increase the focus on data transparency and publish weekly or monthly reports about trading data (e.g., gas storage levels, market volume figures) necessary for market-based natural gas pricing. The US Energy Information Administration (EIA) regularly provides data updates for US-based natural gas traders.

Downstream: Pipelines, Underground Storage, LNG Receiving Terminals and Market

Consistent with the public tone of the central government in early 2018, several major reform measures were released by the State Council and NDRC to promote natural gas market development, improve the layout of oil and gas pipelines to enhance connectivity, and continue support fair and equal TPA to oil and gas pipeline network facilities.

The draft *Measures for Regulating Fair Opening of Oil and Gas Pipeline Network Facilities* (August 2018) (Draft Measures) would for the first time require all natural gas transactions be settled based on heating values calculated over a 24-month period. Despite current uncertainty around the pace of implementation, the Draft Measures constitute an important step towards full TPA by requiring more frequent information disclosures from facility operators and more closely aligning with international best practices regarding gas transaction settlements. AmCham China is also encouraged that the Draft Measures were published after broad-based consultation with industry stakeholders which helps to reduce unintended side effects from policy implementation.

The creation of an independent national pipeline company (NPC) was deferred to 2019, reflecting the Chinese Government’s cautious approach and the complications created by the presence of multiple vested interests. The delay has created challenges, manifested in NOCs reluctance to invest in new gas pipelines. China total gas pipeline length only increased marginally (to around 92,000 km) at the end of 2018 as compared with more significant growth in 2017.

册公司，较 2017 年增长 40%。注册公司包括中国国有石油公司、市级分销商和外国公司。

尽管这 300 亿立方米天然气的大部分合同是线下签订的，然后才发布到平台上，但越来越多的上海石油天然气交易所天然气销售正积极地在网上招标和交易。为解决冬季天然气供应短缺问题，扩大市场价格机制，上海石油天然气交易所推出了新的天然气预售交易，接受企业对液化天然气接收站的投标，并鼓励南北天然气互换交易。

今年还出现了新的冬季液化天然气供应协议，根据上海石油天然气交易所的价格建立了需求峰值定价结构，这是天然气交易所首次被用液化天然气供应协议的定价基础。鉴于市场对上海石油天然气交易所达成的液化天然气销售的强烈关注，商会预计上海石油天然气交易所不久的将来将继续推出新产品。

然而，在上海石油天然气交易所能够发展成为一个功能齐全的交易所，确保充分的流动性、供应的多样性、第三方准入自由和全结构产品供应之前，运营方面的挑战仍然存在。为解决这些问题，商会建议上海石油天然气交易所：

- 将交易合同及确认通知标准化，合同以美元来计价来支持国际液化天然气交易，允许第三方准入现有液化天然气基础设施，增加通过上海石油天然气交易所平台交易的供应商的数量和液化天然气交易量，并允许上海石油天然气交易所完全独立决策来支持以市场为基础的操作。
- 将竞价交易范围从“仅限卖方”扩大到“卖方”和“买方”的混合拍卖，发展“持续市场”，使上海石油天然气交易所与国际最佳实践接轨，实现天然气和液化天然气合同的自由交换。
- 在现有基实物合同基础上开发期货合同，提高市场流动性，加强价格信号以，鼓励资本投资。
- 加大对数据透明度的关注，每周或每月发布市场天然气定价所需的交易数据（如天然气存量、市场交易量等）报告。美国能源情报署定期为美国天然气交易商提供数据更新。

下游行业：管道、地下储气库、液化天然气接收站及市场

2018 年年初，国务院和国家发改委公布了几项主要的改革措施以促进天然气市场发展，改善石油和天然气管道的布局来提高互连互通，并继续支持公平、平等的第三方准入石油和天然气管道网络设施，这些措施与中央政府的 2018 年年初设定的基调是一致的。

《油气管网设施公平开放的办法（公开征求意见稿）》（2018 年 8 月）（以下简称《办法草案》）首次要求在 24 个月过渡期后，天然气贸易均以热值为基础结算。尽管目前实施时间表尚不明确，但该措施草案要求基础设施运营方更频繁地披露信息，并进一步向国际天然气交易结算的最佳做法保持一致，这是朝着全面实施第三方准入迈出的重要一步。令商会感到鼓舞的是，该措施草案是在与行业利益相关者进行广泛磋商后公布的，这有助于减少政策实施过程中产生的意外副作用。

成立独立的国有石油天然气管道公司被推迟到 2019 年，这反映了中国政府的谨慎态度，以及多重既得利益的存在带来的复杂性。这一拖延带来了挑战，表现在国有石油公司不愿投资新建天然气管道。与 2017 年大幅增长相比，2018 年底中国天然气管道总长度仅小幅增长（约 9.2 万公里）。

商会认可 2018 年在地下储气库开发方面取得的进展。截至 2018 年底，地下储气库总库容为 104 亿立方米，仅占全年天然气需求的 3.9%。地下储气库在中国的项目仍然被国有石油公司垄断，新项目的实现速度低于预期，部分原因是地质条件复杂性、前期需大量资本投资以及缺乏明确的政府信号来鼓励行业投资。

为增加液化天然气供应，2018 年，液化天然气接收站项目批准建设步伐也有所加快。截至 2018 年底，液化天然气接收站再气化运行总能力由每年 6000 万吨提高到 7000 万吨。年利用率由 2017 年的 67% 提高到 2018 年的 80%；东部地区的利用率接近 100%。

2018 年，中国国有石油公司对长期液化天然气长期合同的需求有所恢复。签订了超过每年 900 万吨的长期销售和采购协议。包括发电企业和浙江能源、广汇等天然气分销企业在内的二级液化天然气买家，继续在中国液化天然气市场发挥积极作用。通过长期协议和现货采购的组合更多的参与方可以实现更灵活的液化天然气供应和成本优化。

与 2017 年相比，2018 年冬季液化天然气的价格更加合

AmCham China acknowledges progress made in Underground Gas Storage (UGS) development in 2018. Total UGS capacity at the end of 2018 was 10.4 BCM, accounting for only 3.9% of annual gas demand. UGS projects in China are still monopolized by NOCs and new projects were slower to materialize than expected partially because of the geographical complexity, substantial upfront capital investments required, and the lack of clear government signals encouraging industry investment.

2018 also witnessed an acceleration in the pace of approvals for proposed LNG terminals to increase LNG supply. Total operational LNG terminal regasification capacity increased from 60 Million Tons per Annum (MTA) to 70 MTA by the end of 2018. The annual utilization rate increased from 67% in 2017 to 80% in 2018; the utilization rate in Eastern China was close to 100%.

Chinese NOCs rediscovered their appetite for long-term LNG contracting in 2018. More than 9 MTA of long-term Sales and Purchase Agreements (SPA) were signed. Second tier LNG buyers, including power generation companies and gas distribution companies such as Zhejiang Energy and Guanghui continue to play an active role in the China LNG market. Greater participation enables more flexible LNG supply and cost optimization via a combination of long-term and spot cargo purchases.

LNG prices in the winter of 2018 were more reasonable and stable compared to 2017. Stability is the result of an increase in diversity of gas suppliers combined with infrastructure development and improved demand-side management. On the other hand, the price of LNG was higher than usual in the summer, the result of companies taking steps to procure LNG to meet wintertime demand, increased UGS, and unusually high spot prices.

At the end of 2018 China's LNG terminals were still predominantly controlled by the NOCs, who together controlled over 50 MTA of nominal capacity or approximately 80% of overall capacity in China. The move towards fair and equitable TPA to LNG terminals and pipelines was slow, as full TPA is still undermined by the presence of multiple vested interests.

AmCham China fully supports the general direction of reform around natural gas infrastructure and recognizes there is no universal model to guarantee fair and transparent TPA to pipelines and storage.

Progress will come from clearly defined policies that support open TPA and explicitly prohibit discrimination, and promote investment in LNG infrastructure at an attractive rate of return for investors and operators regardless of the companies involved. Appropriate and clearly defined regulations need to be in place to ensure compliance by industry stakeholders, guarantee information transparency and fair regulatory oversight. AmCham China looks forward to

continued reform by the Chinese government that promotes fair and equal LNG infrastructure TPA and reduces existing regulatory red tape to promote direct investment in LNG terminals by private and foreign companies.

AmCham China also recommends that the government invite AmCham China representatives to fully participate in the regulatory process as was the case with the May 2018 Draft Measures discussed above.

Extending Joint Venture Partnerships

The standard Joint Venture (JV) contract is typically 15-20 years. Many JVs formed in the early 1990s are currently under negotiation to extend their partnerships. Under the *Measures for the Supervision and Administration of the Transactions of State-Owned Assets of Enterprises* (State-owned Assets Supervision and Administration Commission Decree #32) issued in 2016, a public bidding process is now required to extend a JV. Decree #32 places state-owned enterprises in a favorable position to establish JVs given the vast amounts of capital to which they have access, and it has created problems for foreign companies who want extend their JVs.

Foreign companies are committed to long-term investments in China. To ensure long-term investments and support JV extensions, we urge the Chinese government to issue feasible incentives to foreign investors and provide other reasonable support to the extension of JV partnerships that will provide for sustainable industry growth.

US-China Energy Cooperation

Energy cooperation is a holistic topic covering issues like oil and gas policy, civil nuclear energy, power grid construction and energy equipment, renewables and advanced biofuels, and clean energy science and technology. It requires cooperation from governments, private enterprise, and research institutions. China and the US are longstanding partners on energy, encapsulated in the 2008 *Ten-year Framework for Cooperation in Energy and Environment*, a multifaceted agreement which AmCham China believes has underpinned a generally successful framework for energy cooperation between the two countries.

Founded in September 2009 by 24 US companies, the US-China Energy Cooperation Program (ECP) is a public-private-partnership that receives official support from the US and Chinese governments. ECP acts as a bridge connecting government officials with the private sector to advance sustainable development and commercial energy cooperation. ECP organizes roundtables and workshops, and trade missions to the US. Alongside the US-China Oil & Gas Industry Forum (OGIF), a public-private partnership that brings together oil and gas executives and government officials on an annual basis, these collaborative activities have played important role in working level China-US

理稳定。这是天然气供应渠道的多样性增加，加上基础设施发展和需求方管理的改善。另一方面，由于企业采取措施采购液化天然气以满足冬季需求、地下储气库注气增加以及异常高的现货价格，导致液化天然气价格在夏季高于正常水平。

截至 2018 年底，中国液化天然气接收站仍主要由国有石油公司控制，这些国有石油公司总共控制了每年 5000 多万吨的设计产能，约占中国总产能的 80%。液化天然气接收站和管道的公平、平等第三方准入方面进展缓慢，因为完全的第三方准入仍然受到多个既得利益集团的削弱。

商会完全支持天然气基础设施改革的大方向，认识到没有普遍适用的模式来保证管道和储存的第三方准入的公平透明。

明确界定的政策才会推动进展。这些政策支持开放的第三方准入，明确限制歧视，以对投资者和运营商都有吸引力的回报率促进对液化天然气基础设施的投资，而不论参与主体是何种类型的公司。需要制定适当和明确的法规，以确保行业利益相关者遵守规定，确保信息透明和公平的监管。商会期待中国政府继续推进改革，促进公平、平等的液化天然气基础设施的第三方准入，并减少现有监管的繁文缛节，以促进私人 and 外国公司对液化天然气接收站的直接投资。

商会也建议政府邀请商会代表充分参与监管过程，正如上文讨论的 2018 年 8 月推出的措施草案一样。

扩大合资伙伴关系

标准的合资企业合同通常是 15–20 年。上世纪 90 年代初成立的许多合资公司目前正在谈判扩大合作关系。根据 2016 年颁布的《企业国有资产交易监督管理办法》（国资委令第 32 号），扩大合资企业需要进行公开招标程序。第 32 号令将国有企业置于建立合资企业的有利地位，因为国有企业拥有大量的资本，这给那些想要扩大合资企业的外国公司带来了问题。

外国公司致力于在中国进行长期投资。为确保长期投资和支持扩大合资企业，商会提请中国政府向外国投资者提供切实可行的激励措施，并为扩大合资伙伴关系提供其他合理支持，以促进行业可持续增长。

中美能源合作

能源合作是一个综合性的议题，涉及石油和天然气政策、民用核能、电网建设和能源设备、可再生能源和先进生物燃料以及清洁能源科技等。它需要政府、私营企业和研究机构的合作。在 2008 年中美签署的多层面的协议《中美能源与环境十年合作框架》中谈到，中美两国在能源领域是长期合作伙伴。商会认为该协议为两国能源合作规定了基本成功的框架。

由 24 家美国公司于 2009 年 9 月成立的中美能源合作项目是一个公私合作伙伴关系，得到了美国和中国政府的官方支持。该项目是连接政府官员和私营部门，促进可持续发展和商业能源合作的桥梁。该项目还组织了圆桌会议和研讨会，并向美国派出贸易代表团。这些合作活动与中美油气产业论坛一道，在中美能源合作的工作层面发挥了重要作用。中美油气产业论坛也是一种公私合作伙伴关系，每年将油气企业高管和政府官员召集到一起。

能源贸易是中美能源合作的重要组成部分。中国依赖外国石油，而美国为中国提供了一个实现原油和天然气供应多元化的机会。作为油气出口国，中国对能源的需求是美国出口商的一个市场机遇，也是美国减少对华贸易逆差的一个机会。

沿着这些思路，美国液化天然气公司与中国液化天然气公司于 2018 年启动了第一个、也是唯一一个直接、长期的液化天然气销售和采购协议。第一批液化天然气于去年 11 月交付中国。商会认为，两国之间的这种能源贸易伙伴关系将促进能源合作，并应在 2019 年得到进一步推动。

2018 年全年不断升级的中美贸易经济的紧张局势，对中美能源合作提出了挑战。商会敦促美国和中国：

- 继续利用上述现有政策框架和公私平台加强能源合作；
- 继续扩大化石燃料和可再生能源合作；
- 寻求中美企业共同参与“一带一路”下的能源项目，特别是绿色、低碳能源技术和项目的机遇。

可再生能源

中国的可再生能源行业，尤其是太阳能和风能，正在不断加强。中国政府制定了可再生能源消费和生产的目标，包括提议到 2030 年将非化石能源占总消费的比重提高到 20%。到 2050 年，政府计划将非化石燃料能源消费占总消

energy cooperation.

Energy trade is an important element of China-US energy cooperation. China is dependent on foreign oil and the US offers an opportunity to diversify China's supply of crude oil and gas. As an exporter of oil and gas, China's demand for energy is a market opportunity for US exporters and a chance to reduce its trade deficit with China.

Along these lines, the first and only direct, long-term LNG SPAs between a US-based LNG firm and a Chinese counterpart were initiated in 2018. The first delivery of LNG arrived in China in November. AmCham China believes this type of energy trading partnership between the two countries will stimulate energy cooperation and should be further promoted in 2019.

Rising US-China trade and economic tensions throughout 2018 have been challenging to China-US energy cooperation. AmCham China urges both the US and China:

- Continue to strengthen energy cooperation using the existing policy framework and public-private platforms described above;
- Continue to expand cooperation in fossil fuels and renewable energy;
- Identify opportunities for joint participation of Chinese and American enterprises in energy projects under the Belt and Road Initiative, particularly those focused on green, low-carbon energy technology and projects.

Renewable Energy

China's renewable energy sector, especially solar and wind, is gaining strength. The Chinese government has set targets for renewable energy consumption and production, including proposing to increase the proportion of non-fossil fuel-based energy to account for 20% of total consumption by 2030. By 2050, the government plans for non-fossil fuel-based energy consumption to account for 50% of total consumption. China accounts for a quarter of the world's solar power and one-third of the world's wind power generation. The China Renewable Energy Engineering Institute (CREEI) has stated that the cost of renewable energy equipment is expected to continue falling to 2020, and the annual solar power generating capacity is estimated to reach 80-160 GW, up from 70 to 140 GW in 2018.

In addition, the Chinese government has indicated it wants to support renewable energy production and technology by both domestic and foreign-invested enterprises (FIEs). On May 31, 2018, the central government issued the 2018 *Photovoltaic Power Generation-Related Matters Notice*, which significantly reduced photovoltaic power generation subsidies, further promoting competition in the renewable energy sector.

Despite the stated reductions in subsidies for domestic companies, AmCham China members have still experienced unequal implementation of relevant regulations. Provincial authorities are responsible for interpreting and implementing the regulations governing renewable energy products. They have project management oversight and remain in charge of land distribution, selecting project contractors, project construction, and power transmission. Provincial power grid operators also have authority over electricity purchase decisions.

This situation means Chinese companies implicitly enjoy advantages not available to FIEs with respect to renewable energy projects. AmCham China urges the Chinese government, at both national and provincial levels, to engage in open dialogue with FIEs about renewable energy opportunities and to ensure that opportunities available to domestic firms are equally available to FIEs.

National Emissions Trading System and Offshore Environmental Law

In December 2017 China announced long-awaited plans to launch its national emissions trading system (ETS), creating the world's largest carbon market. Implementation is still in the early stages. China's ETS is likely to face challenges in critical areas such as ensuring compliance and enforcement, fundamental data transparency, and applying uniform rules on monitoring, reporting, and verification. AmCham China encourages policymakers in China to refer to and learn from ample experience gained by countries already operating, and companies already participating in, a carbon market. China's policy approaches to emissions trading will also provide new insights and lessons for mature and developing ETSS.

With respect to offshore environmental protection laws, in March 2018, the Chinese government amended a number of offshore regulations including the *Administrative Regulation on the Prevention and Treatment of Pollution and Damage to the Marine Environment by Marine Engineering*, the *Administrative Regulation on the Prevention and Control of Pollution Damages to the Marine Environment by Coastal Engineering Construction Projects of the People's Republic*, and the *Regulation on the Prevention and Control of Vessel-induced Pollution of the Marine Environment*.

AmCham China supports the Chinese government's aim of augmenting the protection of the marine ecology. Once again however our members urge the Chinese government to ensure that the implementation of the aforementioned Draft Revisions and the new pollution charge policy does not unnecessarily impede the normal ETS approval process or counterproductively affect legitimate business activities, and that the evaluation of oil spill accidents be conducted fairly and conclusively.

费的50%。中国的太阳能发电量占世界的四分之一，风能发电量占世界的三分之一。中国可再生能源工程研究院表示，可再生能源设备的成本预计将持续下降到2020年，预计太阳能年发电能力将从2018年的700-1400亿瓦特提高到800-1600亿瓦特。

此外，中国政府已经表示，它希望支持国内和外资企业的可再生能源生产和技术。2018年5月31日，中央政府发布了《2018年光伏发电有关事项通知》，大幅降低光伏发电补贴，进一步促进可再生能源领域竞争。

尽管商会已宣布削减对国内企业的补贴，但其会员在执行相关规定方面仍存在不平等现象。省级主管部门负责解释和执行可再生能源产品管理条例。他们有项目管理监督，并继续负责土地分配，选择项目承包商，项目建设和电力传输。省级电网运营商也有权决定是否购买电力。

这意味着，中国企业在可再生能源项目上暗中享有外商投资企业所不具备的优势。商会敦促中国政府，在国家及省级层面，就可再生能源的机会与外商投资企业开展公开对话，并确保国内企业与外商投资企业享有同等的机会。

国家排放交易制度和海上环境法

2017年12月，中国宣布了人们期待已久的启动全国碳排放交易体系的计划，打造全球最大的碳市场。该计划的实施仍处于初期阶段。中国的碳排放交易体系可能会在一些关键领域面临挑战，比如如何确保合规和执行、基本数据透明度，以及实施统一的监管、报告和核查制度。商会鼓励中国的政策制定者借鉴和学习已经在碳市场运作的国家和已经参与其中的企业所积累的丰富经验。中国涉及碳交易的政策方法也将为成熟和发展中的碳排放交易体系提供新的见解和经验。

2018年3月，中国政府就海上环境保护法修订了一系列海上法规，如《海洋工程对海洋环境污染和破坏的防治管理规定》、《中华人民共和国沿海工程项目对海洋环境污染损害防治管理条例》和《船舶污染海洋环境防治条例》。

商会支持中国政府加强海洋生态保护的目標，但也再次敦促中国政府确保上述修订草案的实施，确保新排污收费政策不妨碍正常的环评审批流程或对合法的商业活动产生消极影响，确保公平全面地对石油泄漏事故进行评价。

执行地方环保法律

由于政府越来越重视环境保护，为了减少空气污染，防止臭氧破坏，或当重大公共事件在附近发生时，一些会员的合资石化工厂经常受到检查，有时甚至是入侵检查，要求达到生产要求，甚至有时被要求关闭。粗放的环境执法不仅造成高昂的企业运营成本，而且会带来潜在风险。例如，一些会员的合资企业使用一氧化碳作为上游原料，而意外的工厂关闭已经导致大量一氧化碳在工厂关闭过程中排放。

商会充分赞赏地方和省级政府在环境保护方面所做的努力，但促请有关部门对已遵守现有规定的工厂采取不同的做法。商会还建议在企业和监管机构之间建立强有力的沟通渠道，以减轻工厂意外关闭带来的负面影响。

建议

对中国政府：

- 继续推动中美在油气领域的长期合作。将所有能源商品（原油、液化天然气和石油产品）排除在未来任何关税和非关税贸易壁垒之外。
- 推行政策改革，推进油气行业必要的立法改革，以扩大上游地区的准入并取消对上游地区的限制，提高许可证申请和审批流程的效率，并提供财政和税收激励措施，吸引上游国家石油公司投资者。邀请商会会员企业就拟议中的政策改革发表评论，并借鉴美国的经验。
- 鼓励发展液化天然气接收站、储气设施、管道等天然气基础设施，为浮式储存气化装置在中国的推广搭建平台。建立健全的商业框架，并定期提供相关天然气数据，以促进天然气储存投资。成立新的独立的国有管道公司，提高管道的连通性。
- 继续支持上海和重庆石油天然气交易所的发展，允许更多的油气产品在该交易所交易。与商会一起访问新成立的重庆石油天然气交易所，以更好地了解新交易所的产品供应和运营情况。
- 制定一个固定的时间表来放松对零售石油产品价格的管制（包括取消政府在价格异常波动时保留

Enforcement of Local Environmental Protection Laws

Given the government's increasing focus on environmental protection, some members' petrochemical JV plants have been subject to frequent and sometimes intrusive inspections, production requirements, or even asked to shut down from time to time to reduce air pollution, prevent ozone damage, or when major public events are taking place nearby. Crude environmental enforcement is not only costly for business operations but creates potential risks. For instance, some members' JV plants use carbon monoxide for upstream feedstock, and unexpected plant shutdowns have caused significant quantities of carbon monoxide to be emitted during the plant shutdown process.

We fully appreciate the efforts of local and provincial governments with regard to environmental protection but urge authorities to take a different approach to plants complying with existing regulations. We also recommend that strong communications channels be established between companies and regulators to mitigate the negative effects to from unexpected plant shutdowns.

Recommendations

For Chinese Government:

- **Continue to promote long-term cooperation between China and the US in the oil and gas sector. Exclude all energy commodities (crude oil, LNG and petroleum products) from any future tariff and non-tariff trade barriers.**
- Pursue policy changes and advance the legislative reforms necessary in the oil and gas sector to expand access to and remove restrictions on upstream acreage, improve the efficiency of the permit application and approval process, and provide fiscal and tax incentives to attract upstream IOC investors. Invite AmCham China member companies to comment on the proposed policy reform and draw experience from the US.
- Encourage the development of gas infrastructure such as LNG terminals, gas storage facilities, and pipelines and create a platform to promote FSRU in China. Put in place a robust commercial framework and make relevant natural gas data regularly available to promote gas storage investments. Set up a new independent national pipeline company to improve pipeline connectivity.
- Continue to support the development of SHPGX and Chongqing Oil & Gas Exchange by allowing a greater volume of oil and gas products to be traded on the exchange. Engage with AmCham China

about a possible visit to the new Chongqing Oil & Gas Exchange to better understand the product offerings and operation of the new Exchange.

- Establish a fixed time schedule for the deregulation of retail oil product prices (including removing the stipulation that the government retains the rights to control prices during abnormal price fluctuations).

For the US Government:

- **Identify and encourage opportunities to share US best practices with relevant Chinese government and business entities. For example, expand access for Chinese firms to upstream acreage, resources, and midstream infrastructure in the US, as well share best practices about how data transparency and information sharing are important for attracting investment and technological innovation and the development of unconventional energy resources.**

Both Governments:

- **Promote and maintain platforms for open dialogue and knowledge sharing through existing industry platforms like ECP and OGIF, regardless of external tensions in the broader bilateral relationship.**

价格控制权的规定)。

对美国政府：

- 寻找并鼓励创造机会与中国相关政府和企业分享商会的最佳实践。例如，扩大中国企业进入美国上游地区、资源和中游基础设施的机会，分享数据透明度和信息共享对吸引投资、技术创新和非常规能源开发的重要性的最佳实践。

对双方政府：

- 不管更广泛的双边关系外部多么紧张，双方政府要通过中美能源合作项目和中美油气产业论坛等现有行业平台，促进和维护开放对话和知识共享平台。

Real Estate

Introduction

After decades of rapid growth, China’s real estate market has entered a cooling period following the implementation of stricter policies to restrain price growth and steer the market towards greater stability.

The tight monetary environment and commercial loan restrictions are pushing developers to become more competitive. At the same time, new real estate sectors are emerging, bringing with them additional risks and opportunities. Co-working is revolutionizing the traditional office environment. Rental housing, a proposed solution to exorbitant housing prices in China, offers promising options. New retail platforms are reinventing how consumers connect with products, while PropTech, an industry term for new technologies being applied to real estate, represents the future of the industry. As the real estate market evolves, stakeholders will be increasingly forced to adapt and innovate.

Recent Developments and Ongoing Regulatory Issues

New Housing Regulations

The Development of the Rental Housing Market

In 2018 tight property regulations from the central govern-

ment continued to stabilize housing prices in Tier I cities, while property prices in Tier II cities cooled in the second half of the year, offsetting previous gains. Home prices in Tier III and IV cities, however, have risen dramatically this year following the introduction of government subsidies to encourage home purchases.

To bolster the housing markets in Tier III and IV cities, China Development Bank injected RMB 990 billion through its Pledged Supplementary Lending policy during the first seven months of 2018. Part of a massive urban redevelopment project, the flood of credit was designed to assist low-income residents (often living in informal housing) in purchasing new homes, while existing properties were marked for demolition. This policy generated home sales in Tier III and IV cities but spurred rising home prices and attracted speculative investors. Across 70 of China’s major cities, 65 reported rising prices through September 2018.

In response to rising property prices, the central authorities began in 2018 to restrict lending in cities with inadequate housing inventory and hot property markets. In October 2018 the State Council decided to halt funding in these markets altogether. China Development Bank began scaling back its loans in mid-2018. Following the government’s decision to end funding in October 2018, many Tier III and Tier IV city governments stopped handing out cash subsidies for urban redevelopment projects. With no additional funding streams, home prices in Tier III and IV cities are expected to decline in 2019.

Tier Type	Description	Examples
Tier I	GDP over US \$300 billion Directly controlled by central government	Beijing, Guangzhou, Shanghai, Shenzhen
Tier II	GDP between US \$68-299 billion Provincial capital cities and sub-provincial capital cities	Hefei, Jiaxing, Urumqi, Xiamen
Tier III	GDP between US \$18-67 billion Cities with 150,000-3 million people	Daqing, Guilin, Wuhu, Yichun
Tier IV	GDP below US \$17 billion Cities populated by less than 150,000 people	Anqing, Chenzhou, Longyan, Luzhou

房地产

引言

在 经历了几十年的高速发展后，中国房地产行业逐步进入了降温期。为了限制楼市价格增长，并引导市场转向更稳定的发展模式，全国房地产相关政策显著收紧。

随着 2018 年金融环境收紧，开发商融资渠道受到限制，房地产市场中适者生存。与此同时，新的行业和领域不断兴起，也带来了全新的机遇与挑战。联合办公将新的工作方式和理念引入办公楼市场；长租公寓方兴未艾，为房价高昂的楼市提供了解决方案；新零售重塑了我们购物的习惯；而房地产科技（PropTech）这个流行词汇，预计将引领行业未来。房地产行业正面临变革，各利益相关方必须与时俱进、不断创新。

最新进展及现存监管问题

房地产新规

房地产租赁市场进展

2018 年，中央政府继续稳定一线城市房价，二线城市房价在下半年有所降温，和大涨之前持平。然而，政府出台购房补贴政策，三线和四线城市的房价今年大幅上涨。

为提振三、四线城市房地产市场，国家开发银行在 2018 年前 7 个月内通过抵押补充贷款政策，向房地产注入

9900 亿元人民币。放开信贷是为了推动大规模市区重建项目，旨在帮助现有住房即将拆迁的低收入居民（通常居住在非正规住房人群）购买新房。结果三四线城市不仅房地产销售如火如荼，房价也随之水涨船高，引来了炒房客。截至 2018 年 9 月，中国 70 个主要城市中有 65 个城市的房价出现上涨（图 1）。

为应对房价上涨，针对住房存量不足、房地产市场过热的城市，中央政府从 2018 年开始严控住房贷款；2018 年 10 月，国务院决定不再对这些市场提供资金。中国国家开发银行从 2018 年年中开始缩减贷款规模。政府于 2018 年 10 月决定不再提供专项贷款后，许多三、四线城市重建项目取消了现金补贴。由于没有其他资金来源，预计 2019 年三、四线城市的房价将会下降。

长期住房发展中的金融创新

为刺激房地产销售，去年政府推出“类房地产投资信托基金”（类 REITs），允许房地产开发商将房地产资产证券化并筹集资金。2017 年 11 月，位于北京的新派公寓管理公司成功发行了 2.7 亿元人民币的租赁住房托资产支持证券。随后市场迅速发展。截至目前，共发行了 9 个总价值 91.9 亿元的产品。26 套基础房产（16 套在一线城市）是发行这些证券的基础，包括青年公寓、白领公寓和高端商务公寓。近期，分期类 REITs 进入市场。2018 年 10 月 31 日，保利地产集团首次推出 10 个分期租赁类 REITs，价值达 790 亿元；其中 7 个完成了一期发行，融资 82 亿元人民币。鉴于目前房

城市分类	描述	示例
一线	GDP 超过 3000 亿美元，直接由中央政府管理	北京、广州、上海、深圳
二线	GDP 在 680-2990 亿美元之间，省会城市、地级中心城市	合肥、嘉兴、乌鲁木齐、厦门
三线	GDP 在 180-670 亿美元之间，人口约 15 万 -300 万	大庆、桂林、芜湖、宜春
四线	GDP 低于 170 亿美元，人口不足 15 万	安庆，郴州，龙岩，泸州

Financial Innovations in Long-Term Housing Development

As part of the government's continuing efforts to encourage citizens to purchase homes, "quasi" Real Estate Investment Trusts (quasi-REITs) entered the market during the past year to allow property developers to securitize real estate assets and raise money. In November 2017, China Young Professional Apartments, a Beijing-based condominium manager, issued RMB 270 million in rental housing asset-backed securities. The market has grown quickly since then. To date, nine products, with a total value of RMB 9.19 billion, have been issued. These securities are based on a mix of 26 underlying properties (16 within Tier-1 cities), including youth, white-collar, and high-end business apartments. More recently, multi-tranche rental housing quasi-REITs have appeared on the market. First offered by Poly Real Estate Group, multi-tranche quasi-REITs reached a value of RMB 79 billion across 10 products as of October 31, 2018; seven of which completed their first phase issuance at RMB 8.2 billion. Considering ongoing real estate lending restrictions, AmCham China supports these financial instruments for offering a new funding channel for developers to finance new projects.

Foreign Investment Environment

Despite an overall decline in mainland commercial property investment over the past year, foreign demand has picked up significantly; in Tier I cities foreign investors made up around 35% of total investment. Due to low yields in China's core/core plus asset categories, buyers continue to look for value-added investments in Tier I cities by upgrading or converting underperforming assets. In addition, infrastructure development is attracting capital to emerging Central Business Districts (CBDs) in Tier I and Tier II cities.

Among Tier I cities, Shanghai represented the main investment destination for foreign investment in the first three quarters in 2018. Shanghai real estate investment totaled RMB 23.5 billion, an increase of 83% year-on-year (y/y). An estimated 36% of this investment came from foreign investors, up from 18% in 2017. In Beijing, disparities between property prices and investor expectations discouraged deals. Consequently, foreign investment accounted for only a handful of foreign transactions in 2018.

Foreign investment is expected to continue growing over the next 12 months, helped by a friendly foreign investment environment. High levels of activity are expected to continue in Shanghai. With several emerging decentralized CBDs and urban renewal projects, Beijing has ample opportunities for increased foreign investment.

Space and Technology in the Workplace

Development of Flexible Space

As of June 2018, China became one of the largest markets for

flexible space in the Asia-Pacific, with a total of 16.5 million square feet of flexible office space across Beijing, Shanghai, Guangzhou, and Shenzhen. Chinese operators raised about US \$2.7 billion from private equity investment between 2015 and August 2018.

Concerns have been raised regarding the fiscal sustainability of flexible space offices among stakeholders. CBRE, a real estate firm, surveyed the prices of hot desks in flexible space centers and found China to be the most profitable market. Hot desks are offered at a 200% premium over rent prices in nearby office buildings. At the same time, rent accounts for less than 30% of total costs for companies offering flexible space offices; however, operational expenses like staff, marketing and administration are all significant.

AmCham China believes that better management, cost control techniques, and space allocation can improve profitability and raise occupancy of flexible space markets, which are increasingly in demand across China.

Landlord and Investor Responses to Flexible Space

Landlord and investor involvement in flexible space real estate is traditionally grouped into three operating models: Traditional Lease, Platform, and Revenue Sharing. The Traditional Lease model remains the most popular approach among core investors and landlords managing high-end buildings. A growing number of landlords have adopted the Platform model, to take better advantage of smart technologies in real estate, although the practice is not yet widespread. The Revenue Sharing model appeals to value-added investors and landlords with assets in non-core locations, especially those in oversupplied markets.

AmCham China cautions that the challenges of managing flexible space real estate can be significant. Investors need to be forward-thinking to incorporate flexible spaces as part of their overall real estate portfolios. At the same time, flexible spaces are important investment opportunities that offer variable amenities that combine food & beverage, convenient living, business events, and wellness into core assets, as well as providing new angles to convert underperforming assets.

Proptech

Proptech is an umbrella term tying the application of new technologies to real estate. China is at the forefront of the Proptech movement, encapsulated by the success of domestic real estate tech 'unicorns' Lianjia.com and Fangdd.com, among others. Some 60% of proptech funding in the Asia-Pacific region has gone to China since 2012. The adoption of new technologies is already changing the real estate sector in several areas:

Artificial Intelligence: The race to harness artificial intelligence in China and the Asia-Pacific region is catalyzing

地产贷款重重受限，商会欢迎利用金融工具为开发商提供新的融资渠道，为新项目融资。

外商投资环境

尽管过去一年内地商业地产投资整体下滑，但海外需求明显回升；一线城市的外国投资者约占总投资的 35%。由于中国核心 / 核心 + 资产类别的收益率较低，买家继续通过升级或置换不良资产，在一线城市寻找增值投资。此外，基础设施建设吸引资金流向一线、二线城市的新兴中央商务区 (CBDs)。

一线城市中，上海在 2018 年前三季度外商投资中拔得头筹。上海房地产投资总额达到 235 亿元人民币，同比增长 83%。据估计，其中 36% 来自外商投资，高于 2017 年的 18% (图 2)。因此，2018 年外商投资仅占国际交易的一小部分。

外商投资环境友好，预计未来 12 个月外商投资将继续增长；上海预计将吸引大量外资。北京分散的中央商务区及城市更新项目有大量增加的外商投资机会。

工作场所的空间和技术

柔性空间开发

截至 2018 年 6 月，中国已成为亚太地区最大的柔性办公空间市场之一，北京、上海、广州和深圳共有 1650 万平方英尺的柔性办公空间。2015 年至 2018 年 8 月，中国运营商通过私募股权投资筹集了约 27 亿美元。

利益攸关方对柔性空间办公室的财政可持续性表示关切。房地产公司世邦魏理仕 (CBRE) 对柔性空间中心公用办公桌价格的调查发现：中国市场最有利可图，租金比附近其他公用办公桌高出 200%。对柔性空间办公室的运营商来说，租金占总成本的比例不到 30%；但是，员工、市场营销、行政管理等运营费用都很高昂。

商会认为，中国各地对柔性空间的市场需求日益高涨，改善管理、成本控制方式和空间配置可以提高利润率和市场占有率。

业主和投资者对柔性空间的反应

传统上，业主和投资者参与柔性空间地产的经营模式分为三种：传统租赁模式、平台模式和收益共享模式。主要投资者和高端建筑业务仍最倾向传统租赁模式。采用平台模式的业主不断增加，充分利用房地产领域的智能技术，

但是这种做法还未普及。对于在非核心地区，尤其是在供应过剩市场拥有资产的增值投资者和业主来说，收入共享模式很具吸引力。

商会提醒，管理柔性空间房地产可能面临巨大挑战。投资者要高瞻远瞩，将柔性空间纳入整体房地产投资组合。同时，柔性空间的投资机会不容小觑，提供多种多样的便利设施，将餐饮、便捷生活、商务活动和健康融入核心资产，也为置换不良资产提供了一个新角度。

房地产科技

房地产科技 (PropTech) 是所有重塑房地产行业的数字技术的统称。中国处于房地产科技运动的最前沿，几家科技“独角兽”企业取得广泛成功，而链家和房多多也已跻身其中。自 2012 年以来，亚太地区约 60% 的房地产科技资金流向了美国。以下几项新技术引领了房地产行业的变革：

人工智能：中国和亚太地区竞相驾驭人工智能，促进了机器学习技术的应用，搜索引擎、图像识别技术和聊天机器人也随之发展。房地产的自动化程度将会从数据管理到设施运营全面提升。

区块链：区块链是金融技术发展的重要组成部分，而目前正以比特币等虚拟货币的形式进入房地产市场。P2P 交易是虚拟货币的优势；由于没有中介介入，因此交易成本更低、效率更高。

数据分析与物联网：大数据及其应用不断增长，房地产行业也涉入其中。商业地产的利益相关者将从数据增长中大大受益，利用数据更好地了解投资地点、租赁申请人、租户、估值方法等，进而做出明智决定。

3D 打印：3D 打印将在项目开发中发挥更大的作用，因为 3D 打印有望降低施工成本，提高施工速度和质量。2015 年，中国建造了世界上第一座 3D 打印公寓楼。

房地产科技发展迅速，能够重塑市场。我们鼓励企业探索新技术，主动与创新型新兴公司合作，保证从新技术中受益。商会还鼓励中国政府与产业界密切合作，为房地产科技领域制定合理、灵活的监管规定，建立监管框架，平衡增长。

greater use of machine-learning techniques to power search engines, image recognition technologies, and chatbots. From data management to facilities operations, this will increase automation in real estate.

Blockchain: Blockchain, an essential component of financial technologies (fintech) development, is now entering the real estate market in the form of cryptocurrencies such as Bitcoin. The benefits of using cryptocurrencies include cheaper and more efficient peer-to-peer transactions that remove middlemen.

Data Analytics & the Internet of Things: The real estate sector is not immune to the growth of Big Data and its applications. Commercial real estate stakeholders will increasingly benefit from more data to make better informed decisions about investment locations, rental applicants and tenants, and valuation methodologies.

3D Printing: 3D printing will increasingly play a bigger role in project development as the technology promises rapid, higher-quality construction at a lower cost. China constructed the world's first 3D-printed apartment building in 2015.

Proptech is developing rapidly with the power to transform the market. To ensure companies do not miss the benefits offered by these new technologies, they are encouraged to explore new technologies and collaborate with innovative new companies. AmCham China also encourages the Chinese government to work closely with industry to develop reasonable, flexible regulations for the Proptech sector that balances its growth with an appropriate regulatory framework.

Logistics and Warehouse Space

E-commerce Drives Demand for Warehouse Properties

According to the National Bureau of Statistics, total online sales in China in 2018 increased by 23.9% (y/y), 2.3 times greater than growth in total retail sales. The rapid growth of online sales in China has stimulated demand for e-commerce and third-party logistics (3PL) services, which in turn has led to soaring demand for physical warehouse properties in China's major cities. According to the latest version of the China Logistics Rental Map produced by Colliers International, the vacancy rate of logistics properties in major Chinese markets in H1 2018 was at a historically low level: vacancy rates in 26 of 34 cities were below 10%. Cities like Beijing, Tianjin, Kunshan, Taicang, and Foshan all recorded "full" or "nearly full" occupancy. The cost of renting logistics units has also grown. In many Tier I and Tier II cities, rental rates increased more than 10%, and in Dongguan (Guangdong), average rent rates increased by 18% (y/y); as compared with the roughly 3% growth seen in the past three to five years.

Growing demand for warehouses alongside the closure of illegal, low-end warehouses and restrictions on new land for warehouse construction has created new opportunities for institutional investors, both foreign and domestic.

In September 2018, Singapore's sovereign wealth fund GIC partnered with Global Logistic Properties (GLP), the largest logistics operator in China, to establish a US \$2.0 billion fund to invest in logistics properties in China. Moreover, when GLP privatized in 2017, a private Chinese consortium acquired the enterprise for US \$11.6 billion. In August 2018, Canada Pension Plan Investment Board (CPPIB) and Australia-based logistics developer Goodman Group injected an additional US \$1.75 billion into their Goodman China Logistics Partnership, increasing the total equity commitment to US \$5.0 billion.

Significant investment in logistics properties in China over the past year underscores investor confidence in the logistics market. Given the rapid but sustained development of both China's e-commerce and related 3PL industries, AmCham China forecasts the logistics market to continue its high-speed growth in the next three to five years. At the same time, we acknowledge that local governments in several areas of China have moved to block further development of the logistics industry through employment, tax, and land restrictions. AmCham China recommends that local governments in China adopt reasonable locally designed policies to regulate the local logistics industry, rather than across-the-board restrictions as we have seen this year.

Recommendations

For the Chinese Government:

- Create a platform to closely monitor the status of decentralized retail markets to avoid oversupply in certain areas and cities.
- Promote a friendly retail investment environment for foreign investors and encourage new investment products including the quasi-REITs.
- Offer a mixture of financial and policy incentives to improve management, control costs, and optimize space allocation of flexible spaces which are increasingly in demand across China.
- Work closely with industry leaders to develop reasonable, flexible regulations for the Proptech sector that balances sector growth with an appropriate regulatory framework.
- Avoid cross-the-board restrictions on new logistics and warehousing spaces, and instead develop and implement reasonable and adaptable locally-designed regulations.

物流与仓储空间

电子商务驱动仓储物业需求

国家统计局数据显示，2018年全国线上零售总额同比增长23.9%，增速为零售总额增速的三倍。中国线上零售的快速增长刺激了电子商务和第三方物流业(3PL)服务的需求，进而导致中国主要城市仓储物业需求及租金的迅猛增长。房地产公司高力国际(Colliers International)最新版《中国物流租金地图》显示，2018年中国绝大多数主要物流市场空置率创历史新低：34座城市中21座城市空置率低于10%，例如北京、郑州、昆山、太仓及佛山等数座城市均取得满租或接近满租。租赁物流单元的成本也有所上升。诸多一线及二线城市物流租金同比涨幅超过10%，广东东莞涨幅甚至达到18%，而过去三到五年租金同比涨幅通常约为3%。

随着非法低端仓库的关闭以及对新建仓储用地的限制，对仓库的需求不断增长，为国内外机构投资者创造了新的机遇。

2018年9月，新加坡主权财富基金GIC与普洛斯(GLP)——中国最大的物流运营商合作成立一支20亿美元基金用于投资中国物流物业。此外，普洛斯于2017年完成私有化，一个中国私人财团以116亿美元收购了这家企业。2018年8月，加拿大退休基金投资公司(CPPIB)及澳大利亚物流开发商嘉民集团(Goodman)向嘉民中国物流基金额外注资17.5亿美元，将股本总额提高至50亿美元。

过去一年，针对中国物流物业的密集投资活动显示了投资者对于物流市场的信心。鉴于中国电子商务及相关第三方物流业迅速且稳健的发展，商会预测中国物流市场将在未来三到五年继续高速增长。此外，我们也注意到中国一些当地政府由于就业、税收、土地限制等原因，限制当地物流行业的进一步发展。商会建议中国当地政府出台合理政策以规范当地物流行业，而不是我们今年所见的严格限制。

建议

对中国政府：

- 创建平台，密切监控分散零售市场状况，避免某些地区和城市的供应过剩。
- 为外国投资者营造友好的零售投资环境，鼓励包括类REIT在内的新投资产品。
- 制定一系列财政和政策激励措施，改善管理、控制成本，并优化柔性空间的配置。中国各地对柔性空间的需求日益增长。
- 与行业领导者紧密合作，为房地产科技领域制定合理、灵活的规章制度，在适当的监管框架下平衡部门增长。
- 不再全面限制新物流和仓储空间，制定实施因地制宜的规定。

Retail & E-commerce

Introduction

2018 marked the 40th anniversary of *Reform and Opening Up* and the first year to enact the directives of the 19th Communist Party of China (CPC) National Congress. The past year has been marked by change, from restructuring China's government ministries to continued economic reform. These domestic developments occurred against the backdrop of intensifying trade tensions between China and the US. Because of these changes, China's retail & e-commerce industry faces both opportunities and challenges.

Over the past year industry stakeholders have met many of these challenges by committing to a path of innovation, transformation, and technology upgrading. AmCham China also acknowledges steps taken by the Chinese government to maintain a stable business environment by further improving market access and commercial reform, reducing the tax burden and promoting trade.

In order to maximize the commercial benefits from these developments for business, consistent implementation of relevant laws and policies at all levels is critical. AmCham China members believe that in light of China's statements and actions in support of continued economic *Reform and Opening Up*, foreign-invested enterprises (FIEs) in China are well placed to leverage their international experience, resources, and expertise to meet the changing demands of Chinese consumers.

Recent Developments and Ongoing Regulatory Issues

Omnichannel Retail Development and Promotion

The move towards omnichannel retail (which allows retailers to connect with consumers through multiple touchpoints) is an important industry trend. The rapid growth of e-commerce in China has both intensified competition and promoted positive retail industry development.

Successful retail companies are increasingly able to inte-

grate both digital and traditional platforms to connect with customers. The advent of the Internet and e-commerce platforms has improved efficiency, allowed retailers to more effectively serve customers, and adapt to challenges.

Online enterprises face different operating requirements compared to their "bricks-and-mortar" counterparts, from decisions about store locations and sales transaction technology, to marketing, and customer responsiveness, among many others. It is challenging for any one enterprise to operate both. An effective strategy combines the strengths of traditional retail with the convenience and accessibility offered by the Internet, allowing retailers to pursue omnichannel retail strategies.

Currently, China's retail regulatory framework is mostly designed to serve either online retailers or "bricks-and-mortar" stores. In order to create a more favorable operating environment for the retail industry, AmCham China urges the Chinese government to consider policies that facilitate the integration of online and "bricks-and-mortar" retail by creating a stable investment environment, providing efficient public services, incentivizing retailers to adopt omnichannel strategies, and encouraging investments in innovation.

Optimizing the Social Credit System for Retail Businesses

As detailed in the *Planning Outline for the Construction of a Social Credit System (2014—2020)* ("The Plan"), the construction of a nationwide social credit system by 2020 is already underway. The social credit system is intended to assess and measure social credit along many social and financial indicators. Business that fail to comply with regulations may also be subject to punishments through joint disciplinary mechanisms or being blacklisted. Taking into consideration the punitive enforcement measures as currently provided in the legal and regulatory framework, AmCham China members fear that the social credit system's punitive enforcement measures are inherently unequal and will be applied unevenly across different businesses and sectors, potentially causing some firms' reputations to suffer.

Current laws and regulations generally do not clearly articulate the responsibilities of manufacturers and retailers in the production and retail process, which makes it difficult

零售和电子商务

引言

2018年是中华人民共和国改革开放40周年，也是贯彻党的十九大精神开局之年。过去一年发生了很多变化，从政府机构改革到经济的持续改革，这些国内发展在中美贸易摩擦加剧的背景下出现。由于这些变化，中国经济和零售业在过去的一年中既面临着机遇也遭受到了巨大的挑战。

在过去一年里，为积极应对挑战，行业利益相关者坚持走创新转型升级之路。中国政府也通过进一步放宽市场准入、减少税收负担、改革商事制度、促进贸易便利化等一系列手段以期维护稳定的营商环境，中国美国商会（商会）对这些措施表示认可。

为使企业尽可能地从这些措施中受益，在各个层面上严格贯彻实施相关政策和法律至关重要。商会会员相信，随着未来中国改革开放的步伐进一步加大，外资在华企业将能够更好地利用国际经验，资源和专业知识服务于中国消费者日益增长的需要。

最新进展及现存监管问题

全渠道零售的发展与推广

全渠道零售（允许零售商通过多个接触点与消费者联系）是一个重要的行业趋势。中国电子商务的快速发展，既加剧了竞争，也促进了零售业的积极发展。

成功的零售企业越来越能够将数字平台和传统平台结合起来，与客户建立联系。互联网和电子商务平台的出现提高了效率，使零售商能够更有效地服务客户，并适应挑战。

与“实体”企业相比，在线企业面临着不同的运营需求，从决定店铺位置、销售技巧，到营销和客户响应能力，不一而足。对任何一家企业来说，同时经营这两种业务都很有挑战性。一种有效的策略是将传统零售业的优势与互

联网提供的便利性和可访问性相结合，使零售商能够寻求全渠道的零售策略。

目前，中国的零售监管框架主要为在线零售商或“实体”商店服务。为了给零售业创造更有利的经营环境，商会商会促请中国政府考虑通过创造稳定的投资环境，促进在线和“实体”零售的融合，提供有效的公共服务，鼓励零售商采用全渠道战略，鼓励创新投资。

零售企业社会信用体系的完善

根据《社会信用体系建设规划纲要（2014—2020年）》，中国将在2020年前建设完整的社会信用体系。社会信用体系旨在通过许多社会和金融指标来评估和衡量社会信用。联合惩戒制度是社会信用体系中管理社会商业活动的核心内容，各领域的联合惩戒措施最多可达近百项。考虑到目前法律和监管框架中规定的惩罚性执行措施，商会成员担心，社会信用体系的惩罚性执行措施本质上是不平等的，在不同企业和行业中无法实现均衡执法。

现行的法律法规一般没有明确规定制造商和零售商在生产零售过程中的责任，阻碍了许多零售企业进行适当的产品尽职免责。全国社会信用体系的实施只会加剧这些挑战，并使零售商面临不合理的惩罚和不公平的较低社会信用评分。

此外，商会成员持续在国家和地方层面的遭受法律法规执法不均，这给商业零售业带来了不必要的风险和行政负担。如果社会信用体系的全面实施增加了合规负担，同时增加了处罚成本，或不公平地侵害外商投资企业的合法权益或声誉，将不利于为私营零售商营造公平的竞争环境。

目前，外商投资企业对行政处罚有多种申诉选择，包括通过法院系统进行行政裁决和法律补救。然而，商会会员发现，补救方法，特别是解决与商业社会信用评分相关问题的办法，仍然不够完善。即使外商投资企业上诉成功，相关处罚被撤销，处罚信息的公开以及随后的法律程序可

to determine who is responsible for each step of the process. Implementation of the nationwide social credit system only compounds these challenges and exposes retailers to the possibility of unreasonable penalties and reputation damage.

Moreover, AmCham China members continue to experience uneven enforcement of laws and regulations between national and sub-national levels, which imposes unnecessary risks and administrative burdens on the commercial retail sector. If the full implementation of the social credit system increases the burden of compliance while raising the costs for failing to meet relevant regulations, or unfairly infringes on an FIE's legal rights, interests, or reputation, the development of a level playing field for private retailers will continue to be hindered.

FIEs currently have several options to appeal against administrative penalties, including administrative adjudication and legal redress through the court system. AmCham China members have found, however, that the options to achieve redress, particularly those to address issues relating to commercial social credit scores, remain underdeveloped. Even if an FIE is successful on appeal and the associated penalties are revoked, the publicity generated by the imposition of the penalty and subsequent legal process can permanently damage an FIE's businesses reputation.

AmCham China urges the Chinese government to clarify relevant laws and regulations to clearly define the responsibilities of manufacturers, retailers, and managers in the production process and clearly delineate responsibilities of upstream and downstream stakeholders. We urge the authorities to ensure the social credit system correctly rewards compliant businesses and punishes repeat violators. As an important step to reduce regulatory inconsistency, AmCham China urges the Chinese government publish all relevant laws and regulations online and make them readily accessible to regulators and businesses. We also recommend clarifying the process for companies to appeal against social credit violations and restore their commercial credit scores.

Punitive Compensation System

Driven by the financial rewards on offer through the Punitive Compensation System (PCS), professional faultfinders (PFFs) have become a menace to the retail industry. PFFs actively seek to identify trivial mistakes in pricing, labeling, or product quality and use loopholes in the PCS framework that fail to distinguish between minor product defects and defects harmful to consumers. PFFs and "professional claimants" typically target formal enterprises of sufficient size and the ability to pay compensation, as opposed to informal or illegal small-and medium-sized enterprises (SMEs) under comparatively weak regulatory oversight. According to data from an AmCham China member, in the period 2013-2017, the number of cases resulting from PFFs as a share of the company's total litigation soared, going from 23% in 2013 to 92% just four years later in 2017.

In 2018 AmCham China members were very pleased to see that local regulatory supervision departments and courts have become increasingly cautious when handling PCS cases. Policies to curb the negative impact of PFFs have been introduced in Shenzhen, Chengdu, Shanghai, and other cities.

AmCham China recommends reforming the PCS to focus on major product risks rather than allowing compensation to be sought for minor defects. Moreover, we urge the Chinese government to refuse to accept complaints or enforce compensation for unreasonable claims by raising the threshold for damages by claimants. Consumer rights would be better protected if formal class action lawsuits became standard practice for addressing retail product defects, and more transparent litigation policies were developed and implemented in partnership with civil society organizations.

Consolidated Tax Filings Across Legal Persons or Entities

As described in the 2018 AmCham China *White Paper*, local, municipal, and district governments have repeatedly required foreign retailers to set up wholly foreign-owned enterprises (WFOEs) in their respective jurisdictions. These requirements stem from each government's desire to increase tax collection, boost local investment, and improve its performance on key national economic indicators. As a result, some large chain retailers have been forced to set up dozens or even hundreds of legal entities and value-added tax (VAT) reporting units in China. These large chains suffer significant administrative burdens and excessive taxation from the inability to offset profits with losses between entities, the inability to conveniently move assets and staff between locations, a diminished customer shopping experience, and increased management costs.

AmCham China appreciates the efforts of the Chinese government to lower economic and the operating costs of doing business and urges the State Administration of Taxation (STA) to adjust its policies to allow different 100% owned legal entities in the same group to pay consolidated VAT and income taxes. We urge the National Development and Reform Commission (NDRC) and Ministry of Commerce (MOFCOM) to promulgate additional mandatory regulations to prevent local governments from using their administrative power to force retailers to establish new legal entities in their respective jurisdictions. Finally, we hope that NDRC and National Bureau of Statistics (NBS) continue to promote use of modern statistical and accounting techniques, so as to avoid incentivizing local governments to establish unnecessary or duplicative WFOE's in their districts.

False Advertising and False Publicity

China's *Consumer Protection Law and Advertising Law* contain provisions to prevent "false publicity" and "false adver-

能会对外商投资企业的商业声誉造成永久性的损害。

商会促请中国政府明确相关法律法规，明确制造商、零售商和管理者在生产过程中的责任，明确上下游利益相关者的责任。有关部门应确保社会信用体系正确奖励合规企业，并惩罚屡次违规的企业。作为减少监管不一致的重要一步，商会促请中国政府在网上公布所有相关法律法规，使监管机构和企业能够随时查阅。商会还建议澄清企业对违反社会信用的行为提起上诉及恢复企业商业信用评分的流程。

惩罚性赔偿制度的完善

受“惩罚性赔偿制度”相关丰厚回报驱动，“职业索赔人”逐渐成为困扰零售行业的顽疾。利用现有制度未能将对消费者有害的风险和瑕疵区分的漏洞，“职业索赔人”集中针对定价，标签或产品质量瑕疵等非重大风险的瑕疵提出“惩罚性赔偿”要求。有赔偿能力的，具有一定规模的规范企业往往是“职业索赔人”针对的重点，而非不正规，不合法，监管较薄弱、的部分中小企业。据某会员企业数据，2013至2017年，来自职业索赔人的案件占该公司所有诉讼案件的比值飙升，从2013到2017年的短短四年里，从23%上升到92%。

2018年，商会会员也高兴地看到，各地监管机关和法院在处理“惩罚性赔偿制度”案件时日趋谨慎，深圳、成都、上海等地方陆续出台了遏制职业打假人负面影响的政策。

商会建议对“惩罚性赔偿制度”进行改革，将重点放在重大产品风险上，而不是针对轻微瑕疵寻求赔偿。此外，商会促请中国政府提高索赔人的赔偿门槛，拒绝受理不合理的索赔投诉或强制执行赔偿。如果正式的集体诉讼成为解决零售产品瑕疵的标准做法，通过与民间社会组织合作，制定和实施更加透明的诉讼政策，消费者的权益将得到更好的保护。

跨法人或实体合并纳税申报

正如2018年《白皮书》所述，基于在税收、投资和重要国家经济指标政绩方面的考虑，地方市政府甚至区政府不断要求连锁零售商在其辖区内设立独资企业，一些大型连锁零售商因此被迫在华设立数十家、甚至上百家法律实体和增值税申报单位，相应承担了大量行政负担，如盈亏不能相抵导致的过度纳税、资产流转和员工转岗不便、顾客购物体验降低、主体过多造成的管理成本等。

商会赞赏中国政府在降低经济和运营成本方面所做的努力，并促请税务总局进行政策协调，实现同一集团公司100%控股的不同法人实体实现增值税和个人所得税合并纳税；商会促请发改委和商务部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；最后，商会希望发改委和统计局继续推广目前的统计和会计方法，避免地方政府在各自辖区内为设立不必要的外资企业。

虚假宣传和虚假广告

《消费者权益保护法》和《广告法》中分别对虚假宣传和虚假广告进行了定义和规范，但是没有对产品宣传中的人为失误或技术性失误与主观故意的欺诈性广告加以区分，以致在产品宣传中极小的错误都有可能被认定为构成虚假宣传。因此，这不但滋生了职业举报打假人以获取高额赔偿为目的的恶意举报行为，也造成了执法过严，诉讼过多等问题。

对此，商会建议，对“虚假宣传和虚假广告”的认定中，要考虑到出现问题的广告是否实质性地损害了消费者的权益，或者广告中的产品或者服务是否对消费者的人身安全或财产安全带来潜在风险或损害。此外，商会促请有关部门要考虑到，现问题后企业是否采取了积极的补救措施，是否主动公告并修改错误信息等，而不能将无心之过与恶意欺诈一概而论，同等视之、同等处罚。

商会促请有关部门在《互联网广告管理暂行办法》中能够对主观故意的欺诈和细小的失误作出明确区分。根据现行规定，在线购物网站必须允许消费者在下单后7天内，无理由退货。这些规定旨在保护消费者，因此商会建议有关部门在管理办法中给予适量的容错机制，并为法律补救开辟渠道，防止职业打假人滥用这一制度。

进一步完善跨境电商监管制度

在中国各政府部门的支持下，中国的跨境电商进口在过去数年里得到快速的发展，一大批境外的优质食品通过跨境电商渠道被介绍给中国消费者，扩大了内需也满足了消费升级的需求。

2018年11月，商会非常高兴地看到国务院决定延续和完善跨境电商零售进口政策并扩大适用范围。这一政策既肯定了跨境电商零售进口对中国经济的积极作用，更好的满足了消费者更便利的购买全球产品的需求，同时也有利于提高中国对外开放的水平。商会看到这一政策为跨

tising,” but fail to clearly distinguish between *human or technical error and intentionally fraudulent* activity. The result is that even minor errors in public advertisements can be considered “false advertising.” This regulatory shortcoming has not only given rise to PFFs seeking compensation by declaring minor publishing errors “false advertisements,” but has also created an operating environment characterized by burdensome enforcement and excessive litigation.

AmCham China recommends that the treatment of accusations of “false publicity” or “false advertising” take into account whether the advertisement in question has substantially damaged consumers’ rights or whether the product or service being advertised would bring risks or damages to consumers’ personal or property safety. Moreover, we urge the authorities to consider whether the offending enterprise took active steps to resolve the situation in a reasonable amount of time, including correcting the information. The government should not treat unintentional false advertising and intentional misrepresentations as the same, or similar, violations subject to punishment.

AmCham China urges the authorities to draw a clear distinction between unintentional false advertising and international misrepresentations in the *Interim Measures for the Administration of Internet Advertising* (Interim Measures). Online shopping sites under current regulations are required to permit consumers to return products largely without justification within seven days of ordering. These regulations are designed to protect consumers’ rights. AmCham China urges the authorities to show flexibility and create channels for legal redress in the Interim Measures to prevent PFFs from abusing the system.

Improving the Cross-Border E-commerce Management and Supervision System

Thanks to the support of various government bureaus, China’s cross-border e-commerce businesses have enjoyed rapid growth in recent years. High quality foreign foods, for example, have been imported into China through cross-border e-commerce channels, which has helped to further Chinese consumers’ needs.

In November 2018, AmCham China was pleased to learn that the State Council decided to extend the cross-border e-commerce retail import policy and expand its scope. These developments underscore the positive effects of cross-border e-commerce on China’s economy, allow Chinese consumers to access a wider range of products, and demonstrates China’s commitment to further economic opening.

At the operational level, AmCham China:

- Expects cross-border e-commerce retail imports to rapidly become the standard for business operations, and the relevant authorities (e.g. General Administration of Customs (China Customs), State

Administration for Market Regulation) (SAMR)) to adhere to the principles of innovation and flexibility during the regulatory process.

- Looks forward to the regulatory authorities engaging openly and transparently with industry stakeholders during the development of new rules and regulations to manage the e-commerce sector and ensuring a reasonable transition period for retailers to adapt to new regulations.
- Has noticed local customs officials inspecting food imported through cross-border e-commerce according to domestic national standards, affecting both product sales and consumer experience. Furthermore, since the nationwide implementation of the Golden Customs system (an e-government initiative to link China’s customs bureaus through data sharing), cross-border e-commerce goods cannot be shipped freely into Golden Customs pilot cities, which is hindering many company’s operations.

Recommendations

For the Chinese Government:

Recommendations for the Retail Sector

- **Regulate the retail industry, including both “bricks-and-mortar” and online retailers, under a unified regulatory system that is marked by consistent enforcement of regulations nationally.**
- Improve the PCS by clearly differentiating between harmful product defects eligible for compensation and minor product errors that do not constitute a threat to consumer health and safety, thus discouraging unreasonable compensation claims. Promote collective/public interest litigation. [NPC, State Council, SAMR, Supreme Court]
- Introduce mandatory regulations to prevent local governments from forcing retailers to set up new legal entities in their jurisdictions. Revise current statistical methodologies used to calculate local government performance indicators to avoid incentivizing local governments to require establishment of more wholly-owned enterprises. [NDRRC, NBS, State Council, MOFCOM]
- Revise the *Interim Measures for the Administration of Internet Advertising* to clearly distinguish between accidental or unintentional inaccuracies in product advertising that do not affect the integrity of the product against deliberate claims used to falsely promote retail products and to disincentivize PFFs from seeking extravagant or unwarranted damages from retailers.

跨境电商零售进口有序发展提供了原则性的指引和规范。

在中央政策保持稳定的同时，企业在实际操作中面临一些具体的挑战，商会期待：

- 跨境电商零售进口作为快速发展的新业态，相关监管部门（海关，市场监管总局等）在实际监管的过程中，在坚持原则的基础上予以一定的创新和灵活性；
- 如有相关细化的监管措施或细则出台，建议充分与行业探讨，并予以合理的过渡期；
- 地方海关会按照中国国家标准来检测跨境电商进口食品，影响了产品的销售和消费者体验；从去年9月海关实施金关二期之后，自贸区之间的跨境电商进口商品无法做到正常地流转，给企业的经营带来了极大的挑战。

跨境电子商务行业

- 在制定新法规的过程中，公开透明地与行业利益相关者接触，以管理电子商务行业，确保零售商有合理的过渡期来适应新法规。
- 鉴于跨境电商进口食品已被定位为个人自用物品，不使用中国标准来进行检测和监管，避免对企业 and 消费者造成不必要的影响；
- 尽快完善跨境电商试点自贸区城市之间货物的自由流转监管措施，使得跨境电商进口货物能够在相关试点区域内实现自由流转，为企业运作带来便利，为消费者提供更加便利的购物选择。

建议

对中国政府：

零售业

- 在全国范围内持续执行监管规定的统一监管体系下，对零售业进行监管，包括“实体店”和在线零售商。
- 改善“惩罚性赔偿制度”，明确区分可获得赔偿的有害产品缺陷和对消费者健康和安全的威胁的轻微瑕疵，打击不合理的赔偿要求。推动集体 / 公益诉讼。[全国人大、国务院、国家市场监督管理总局、最高法院]
- 出台强制性法规，防止地方政府强迫零售商在其管辖范围内设立新的法律实体。修订现有的地方政府绩效指标的统计方法，避免地方政府要求建立更多的独资企业。[国家发改委、国家统计局、国务院、商务部]
- 修订《互联网广告管理暂行办法》，对产品广告中不影响产品完整性的无意错误，和故意传播的虚假广告进行区分，防止职业打假人向零售商过分索赔和提出无根据的赔偿指控。

Recommendations for the Cross-Border E-Commerce Sector

- **Engage openly and transparently with industry stakeholders during the development of new rules and regulations to manage the e-commerce sector and ensure a reasonable transition period for retailers to adapt to new regulations.**
- Food products imported through cross-border e-commerce channels have been mislabeled as “personal items.” AmCham China recommends that domestic standards for testing and supervision not be used to avoid unnecessary impacts on enterprises and consumers.
- Improve measures to administer goods shipped between cities participating in the cross-border e-commerce pilot free trade zone (PFTZ) as soon as possible, so that cross-border e-commerce import goods can be freely transferred between PFTZs, which would enhance the overall movement of goods.

Sports

Introduction

Sports have widespread economic, social, educational and individual health benefits. China recognizes these benefits, and the country's engagement with sports to date makes it clear that the government is willing to invest resources to promote the industry.

In 2018, the AmCham China White Paper Sports Chapter focused on chronicling the development of the sports industry in China and highlighting several member issues and challenges. To focus the narrative, this year's chapter instead focuses on live sports broadcast rights, an issue of particular concern to AmCham China members at present.

The linear and digital live sports broadcast market is growing rapidly in China, driven by video streaming technology improvements coupled with the Chinese market's growing interest in sports. In recent years, there have been several important developments in China's sports broadcasting industry:

- In 2018, US Major League Baseball (MLB) and Tencent announced a collaboration to telecast live 125 baseball games, as well as provide highlights. The package also includes the support and broadcast of developmental and complementary programming throughout China, including a Chinese version of MLB's weekly highlight show, a baseball reality show, college competitions, and baseball educational shows.
- In 2017, Suning's PPTV broke records with a \$2 billion USD deal for the exclusive rights to live broadcast the English Premier League, La Liga, and the Bundesliga. The same year, CCTV extended a deal with soccer association FIFA to broadcast the entirety of the World Cup and other major FIFA-organized international competitions through 2022. PPTV likewise broadcasts livestreams of the Chinese Super League for football, while the China Basketball Association livestreams are broadcast by Tencent/China Mobile and Youku.
- In 2016, ESPN struck a deal with Tencent to provide Chinese-language programming, events, content, and live coverage of local sports through its international feed. In addition to an ESPN-branded section on Tencent's QQ Sports portal, the content will be inte-

grated across the QQ platform.

- In 2015, the US National Basketball Association (NBA) signed a five-year deal with Tencent to broadcast a then-record number of live matches on Tencent's QQ Sports portal, as well as programming and highlights. The package was comprehensive and included the draft, pre-season games, regular season games, all play-offs, and finals.

Ongoing Regulatory Issues

Copyright protections for live broadcasting

In China, as in many other countries, regulations are often forced to catch up with fast-growing industries. China's sports industry is no different. On the surface, both the owners of sports franchises and the platforms that broadcast live sports competitions appear to be appropriately protected by contract rights, but the protection is not iron-clad. Livestreaming technology provides viewers with a broad media menu from which to choose. Where the livestreaming rights are not specifically authorized under contract, however, current copyright protections are not sufficient to guarantee protection for either sports owners or broadcasters.

The absence of appropriate copyright protection entered the spotlight in China when Beijing won the rights to host the 2008 Summer Olympics. The International Olympic Committee (IOC) maintains control over the rights to broadcast the Olympic games. The 2008 Games were the first time that, in addition to licensing the rights to television broadcasting, the IOC would also license digital rights for broadcasting online and over mobile platforms. The Chinese government responded by promulgating regulations to combat unauthorized use of online and mobile broadcasts, which was generally received favorably by the IOC. As the exclusive licensee for the games, CCTV was authorized to take action against any illegal streaming sites or applications. These regulations were limited to coverage of the 2008 Olympic Games only; all other forms of live sports broadcasting were excluded and the regulations were not then incorporated within China's *Copyright Law*.

体育

引言

体育具有广泛的经济、社会、教育和个人健康效益。中国承认体育的价值，中国对体育的参与度表明政府也愿意投入资源推动体育产业的发展。

2018年，中国美国商会（商会）《白皮书》体育章节重点记录了中国体育产业的发展，聚焦部分会员企业的问题和挑战。今年重点关注商会会员特别关切的体育直播权问题。

随着视频流媒体技术不断进步，中国市场对体育的兴趣日益浓厚，中国线性和数字体育直播市场迅速扩张。近年来，中国体育直播业有以下几项重要进展：

- 2018年，美国职业棒球大联盟（MLB）和腾讯宣布开展广泛合作，合作内容包括125场赛事直播、精彩赛事看点；同时腾讯在中国各地支持和播出棒球衍生补充节目，如中文版MLB棒球周报、棒球真人秀、高校棒球锦标赛和棒球推广节目。
- 2017年，苏宁PPTV打破纪录，以20亿美元的价格拿下英超、西甲和德甲的全媒体独家版权。同年，中央电视台与国际足联达成协议，中央电视台获得2018-2022年世界杯和国际足联各项大型国际赛事在中国大陆地区的独家全媒体版权。PPTV直播中超联赛，而中国篮球协会的直播权则由腾讯/中国移动和优酷共享。
- 2016年，娱乐体育节目电视网（ESPN）与腾讯达成协议：腾讯在中国地区以中文呈现ESPN的节目、赛事、内容和对当地体育的现场报道。腾讯不仅在腾讯QQ体育门户上建立ESPN专有板块，还将内容整合到QQ平台上。
- 2015年，美国职业篮球协会（NBA）与腾讯签署了一项为期五年的协议，NBA赛事及节目将通过腾讯QQ体

育门户直播史无前例、创纪录的赛事、节目和精彩内容。合作协议内容涵盖NBA全程赛事，包括选秀、季前赛、常规赛、季后赛和总决赛等。

现存监管问题

直播版权保护

与许多其他国家一样，中国的法规往往滞后于相关行业的快速发展。中国的体育产业也不例外。表面上看，体育特许经营权的权利人和直播体育赛事的平台似乎都受合同权利保护，但这种保护并不是坚不可摧。直播技术为观众提供了广泛的媒体选择。然而，如果合同没有明确授权直播权，当前版权保护法并不能充分保护体育特许经营权的权利人和直播平台。

北京赢得2008年夏季奥运会主办权时，版权保护的缺失在中国成为了焦点。国际奥林匹克委员会掌握奥运会的播放权。2008年奥运会，国际奥委会在授予中央电视台电视转播权的同时，第一次同时授予了互联网和移动平台视音频转播权。中国政府颁布了对应的相关法规，打击未经授权使用互联网和移动平台上进行传播的行为，这一举措受到国际奥委会的广泛好评。作为奥运会的独家授权方，中央电视台有权对任何非法流媒体网站或应用程序采取行动。但是此规定只适用于2008年奥运会；不适用其他形式的体育直播，也未纳入到中国的《著作权法》。

近期两个关于直播版权的案件有益于我们更好地了解中国广播著作权法的现状。第一起案件是新浪起诉凤凰新媒体集团。新浪旗下网站直播中超联赛赛事，凤凰新媒体集团旗下的凤凰网也同时直播同一赛事。新浪公司称，直播属于影视作品，或者是类似以电影拍摄方式拍摄的作品，北京朝阳区法院也认可这一说法，认为凤凰新媒体集团转播非法。中国的著作权法保护影视作品及以类似以电影拍摄方式拍摄的作品。然而，在上诉中，北京高级知识产权

Two recent cases regarding copyright over livestream broadcasts provide useful context for understanding the state of broadcasting copyright laws in China. In the first, Sina Corp, owner of a website that live-streamed China Super League soccer matches, sued Phoenix New Media group, owner of ifeng.com, another online platform that was simultaneously streaming the same matches. Sina Corp claimed that the streaming was a work of cinematography, or created by a method similar to cinematography, and the Beijing Chaoyang District Court agreed, finding Phoenix New Media Group's rebroadcasting of this work illegal. China's Copyright Law protects "cinematographic works and works created by virtue of an analogous method of film production."

On appeal, however, the Beijing Higher Intellectual Property (IP) Court reversed the decision, arguing that a cinematographic work must be fixed, stable, and creative, and neither the video production nor streaming of a soccer match met those standards. The Shanghai Intermediate People's Court has similarly found that the effort required to produce a live stream (i.e., camerawork, commentary) does not give rise to authorship claims which can be used in court to deter unauthorized uses. Thus, it appears Chinese courts so far have not recognized broadcasts of live sports competitions as sufficiently "creative" or protected under copyright law.

In contrast, US law asserts that if a sports event is recorded while being live streamed, such that the recording is in a fixed location (e.g., the broadcaster's hard drive), the stream is considered fixed and stable, and thus illegal rebroadcasting is in violation of US copyright law and subject to penalty. US copyright law also recognizes the creativity and originality displayed by the broadcaster when deciding how to film an event, further protecting live broadcasts from infringement.

The second case involved CCTV and unauthorized use of its recorded broadcastings of the 2014 FIFA World Cup over the internet. CCTV asserted the recordings were either a cinematographic work (wherein CCTV was the owner of the work) or an audiovisual recording (wherein CCTV is entitled to "neighboring rights protection," that is IP protections afforded to those who help the creator of the IP distribute their work to the public). The Beijing District Court found that the work constituted an audiovisual recording and ordered the defendant to pay damages of RMB 670,000 to the national broadcaster. On appeal, the Beijing IP Court increased the damages owed to RMB 4 million. The Beijing IP Court agreed the broadcasting was a video recording in a stable, fixed location, unlike the first case discussed above, but deemed the work not creative enough to be classified as a cinematographic work.

The issue of live sports broadcast rights is of longstanding concern to foreign broadcasters in China. It has been raised in official and unofficial US-China forums including the US-China IP Cooperation Dialogue in 2013 and the 26th US-China Joint Commission on Commerce and Trade (JCCT) in 2015. At both forums China and the US agreed to protect

sports broadcasting under their respective laws.,

Despite the lack of full IP rights covering live broadcasting, AmCham China is encouraged by the recent demand for broadcasting of live sporting events in China. AmCham China cautions, however, that the recent surge in interest should not be taken to reflect the market norm; rather, our members' experience suggests these are short-term market trends driven by favorable circumstances. Viewers' tastes change quickly, and technological advancement will create new and improved viewer experiences, rapidly changing the media through which live broadcasts are delivered to consumers.

What will remain constant, however, is the need for strong IP protections to encourage live sports broadcasting. Broadcasters need to be incentivized to produce and stream original work. They will only be incentivized if they are guaranteed exclusive rights and protections to the programs they choose to broadcast. Currently, China's live sports broadcasting market is at an early stage of development. The time is ripe to help China's laws catch up with that development.

Recommendations:

For the Chinese Government:

- **Consistent with previous negotiations under the JCCT, direct the National Copyright Administration of China (NCAC) to amend and enforce the Copyright Law to ensure broadcasting organizations hold a copyright and full intellectual protection over the sports live streams that they produce.**

For the US Government:

- **Continue to advocate with your Chinese counterparts for the incorporation of the recognition of copyright in sports live streaming to encourage domestic and foreign investment in China's sports media industry.**

法院推翻了这一判决，认为影视作品必须具备固定性、稳定性和独创性，而足球比赛的视频制作和播出都不符合这些标准。

上海市中级人民法院同样判定直播（如摄影，纪录片）不构成版权请求，这可以在法庭上用来阻止非授权使用。这样以来，中国的法院目前并不认定体育竞赛的直播足够有“独创性”或受版权法的保护。

相比之下，美国法律主张：如果现场直播体育赛事，内容录制固定在介质上（例如，广播电视公司的硬盘），那么就达到了固定、稳定的要求，因此非法转播违反了美国著作权法，要受到惩罚。美国著作权法还认可播出方在决定如何拍摄赛事时所表现出的独创性和原创性，进一步保护节目播出不受侵犯。

第二起案件涉及未经中央电视台授权在互联网上转播2014年国际足联世界杯。中央电视台声称，世界杯的录制属于影视作品（中央电视台是作品的权利人），或音像制品（中央电视台受著作邻接权保护，即作品传播者对帮助知识产权创作者传播作品过程中所享有的权利）。北京市地方法院认定该作品为音像作品，责令被告向国家广播电台支付违约金67万元。在上诉中，北京知识产权法院将赔偿金增加到400万元。北京知识产权法院认为，视频是在稳定的、固定的地点录制，与上面讨论的第一个案例不同，但认为这段视频的独创性不充分，不能归类为电影作品。

体育直播权问题是在华外国广播机构长期关注的问题。2013年中美知识产权合作对话和2015年第26届中美商贸联委会等中美官方和非官方论坛都就此问题进行了讨论。以上两个论坛上，中美两国达成一致：依据各自法律保护体育直播。

尽管知识产权有关直播的内容缺失，但商会因中国近期大量的体育赛事直播需求而备受鼓舞。然而，商会提醒，近期投资者对体育赛事直播兴趣飙升，不应视之为市场常态；相反，商会会员的经验表明，市场需求增长是因友好环境催生而成的短期市场趋势。观众的口味变化很快，技术进步将提升观众体验，迅速调整直播的媒介。

然而不变的是，我们需要强有力的知识产权保护来推动体育直播的进一步发展，激励直播平台制作、播出原创作品。只有直播平台对选择播出的节目享有排他性权利、受到保护，才是真正的激励。目前，我国体育直播市场还处于早期发展阶段，但是现在已时机成熟，中国法律要与行业发展齐头并进。

建议

对中国政府：

- 按照此前中美商贸联委会谈判结果的要求，指导中国国家版权局修订并执行著作权法，确保广播机构对其制作的体育直播节目拥有版权、享受充分的知识产权保护。

对美国政府：

- 继续与中国同行共同倡导认可体育直播的著作权，鼓励国内外对中国体育媒体产业进行投资。

Work Safety and Emergency Management

Introduction

In China work safety has become an increasingly important area of focus for government authorities, industry associations, research institutes, the business community, and the public. Following a period of advocacy, the *Work Safety Law (WSL)* was amended in 2014 for the first time since its enactment in 2002, a step toward improving the regulatory environment.

On October 31, 2016, President Xi Jinping ordered workplace safety supervisory authorities at all levels to maintain a “red line” against 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. Authorities are also required to identify and eliminate potential risks, ensure accountability and improve institutional supervision, and strengthen safety equipment technology, emergency administration and other basic tasks. They are also required to accelerate the establishment of systems to prevent and control safety risks.

In April 2018, as part of the massive government reorganization announced by the National People's Congress (NPC), the central government established the Ministry of Emergency Management (MEM). This is the latest in a series of long-awaited reforms to raise the political influence of disaster response agencies within the government.

MEM integrates 13 departments and units including the formerly independent State Administration of Work Safety and the Ministry of Public Security's Fire Department. MEM is tasked with defusing major security risks, improving public safety management, and establishing a unified command structure with so-called Chinese characteristics to be responsible for flexible and responsive emergency management.

Civil Engineering

The Ministry of Housing and Urban-Rural Development (MOHURD) publishes an annual report on safety-related accidents in the housing and municipal sector. Between 2010 and 2015, the total number of accidents declined from 772

to 554, but the number of accidents has grown as investment in infrastructure picked up, such that there were 807 fatalities in 2017. In the construction industry, there was a reported 1,752 deaths in the first half of 2018, an increase of 1.4% year-on-year (y/y).

“Fall from height” accidents, the most common type of accident in the construction industry, consistently account for about 50% of total reported safety-related accidents. At a conference of the Party Politburo in July 2018, it was made clear that infrastructure investments will remain a priority, which should continue to generate business in the construction sector. We urge the Chinese government to pay attention to safety in the construction sector, especially work at height.

Improvements in Work at Height Regulations and Standards

China's new *Standardization Law* went into effect on January 1, 2018, replacing the version last revised in 1989. The 1989 *Standard Law* defined four types of standards: national, industry, local, and enterprise standards. The 2018 revision maintained this classification. Under the 2018 *Standardization Law*, however, only national standards are mandatory, while industry and local standards are merely recommended and may not be treated as mandatory. Companies may nevertheless be advised, however, to consider adherence to such recommended standards in the interest of minimizing legal liability as well as protecting corporate reputation.

In addition, to encourage the adoption of higher corporate standards in more industries, the 2018 *Standardization Law* provides a legal basis for group standards. Group standards may be promulgated by authorized organizations, including schools, industry associations, and alliance organizations. In the aerial work platform industry, a number of associations are formulating group standards and safety inspection groups for work at height to update outdated or impractical national standards. While we commend this effort, we caution against the promulgation of conflicting standards by different organizations.

Protective Equipment for Falls from Height

Fall from height is among the leading causes of industrial

安全生产与应急管理

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》于2014年得以修订，进一步强化依法治安。

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。健全制度和完善监管，强化安全科技、应急管理等基础工作，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。

2018年4月，作为3月全国人大宣布的大规模政府改组的一部分，中国政府组建了应急管理部。这是一系列期待已久的改革努力中的最新一次，这些努力旨在改善中国如何管理和应对灾害。应急管理部将13个部门和单位的职责进行了整合和统一。

这次整合的目的在于：防范化解重特大安全风险，健全公共安全体系，整合优化应急力量和资源，推动形成统一指挥、专常兼备、反应灵敏、上下联动、平战结合的中国特色应急管理体制。

土木工程

住建部每年都会发布的房屋市政工程生产安全事故。2015年前，事故和死亡总数有逐渐下降的趋势；随着2016年下半年基建市场复苏开始，事故和死亡总数开始逐渐上升。2010年至2015年间，事故总数从772起降至554起，但随着基础建设投资的增加，事故数有所增长，以至于2017年间因事故死亡人数达到807人。2018年上半年间，建筑行业上报死亡人数达1752人，较去年同比增长1.4%。

尽管事故总数会有波动，在超过十种的事故类型中，高处坠落一直占了事故总数的50%左右。高处坠落是在工地上最高发的事故类型。在2018年7月召开的中央政治局会议中提出，基建仍然会是投资重点。这也会带来大量的建筑项目开工。我们希望中国政府能够继续重视建筑安全，尤其是高处作业。

完善高处（高空）作业法规和标准

2018年1月1日，新标准法投入使用，取代了在1989年修订的标准法。旧标准法规定了四种标准的类型：国标，行标，地标和企业标准。新标准法沿用了这样的分类方法。然而，标准的强制性被新标准法所优化。旧标准法里，国标，行标和地标可以是强制或者推荐自愿遵守。而新标准法里，只有国标才能是强制性，行标和地标只能是推荐。

此外，为了鼓励更高的企业标准被更多行业采纳，新标准法给予团标合法地位。团标可以由合法的社会团体所发布，包括学校，协会，商会和联合会。在高空作业平台行业，多家协会正在筹化高空作业的安全操作和质量检验团标，以此来提高现有老旧或者不实用的国行标。但这可能带来另外一个问题，就是市场从缺乏可用标准到到处都是各类组织颁发的各类标准。

坠落防护设备

高处坠落是工业企业人身伤害事故的重要原因之一，高处坠落事故在致命性方面也位居前列，因此我们需要给予足够的重视。经过多年的研究与实践，坠落防护领域普遍的共识是，在防坠落过程中使用全身式安全带，并使用缓冲装置来限制坠落制动过程中产生的冲击力。欧美等发达国家相关法规对此都有明确的规定，例如：美国 OSHA 1926.502《坠落防护系统的标准和做法》中，第(d)条规定：自1998年1月1日起，腰带不可以用于坠落制动系统，国标 GB6095 中定义为：坠落悬挂安全带。

injury. After years of research and practice, the industry consensus is to use full-body safety belts and buffer devices to limit the injury resulting from any potential fall from height. Europe and America have clear regulations on this issue. Article d of the US Occupational Health and Safety (OSHA) Personal Fall Arrest System (29 CFR 1926.502(d)) (to prevent falls from height) stipulates that a body belt may not be used as a fall arrest system.

China's national standard GB 6095-2009 by contrast defines a "safety belt" harness as an object that supports and controls the human body, disperses the force of impact, and prevents the body from sustaining injury in the event of a fall. Harnesses are generally classified into full body, body belt, and chest/sit harnesses. The use of body belt and chest/sit harnesses is nevertheless still common in China which, in the event of a fall, are not equipped to provide sufficient protection.

Establishing sufficient precautions to prevent tools from falling from height is also important. Small objects falling from a height of as little as six meters can generate great force and damage on impact.

Therefore, as stipulated in China national standard GB 6095-2009, only a full body harness should be used in the fall arrest system. Moreover, when working at height workers must take precautions to prevent their tools from falling, for instance by wearing appropriate tool belts, which can reduce the damage to personnel and equipment from falling tools and prevent tools from being left behind in the workplace.

AmCham China therefore recommends more stringent enforcement of national standard GB 6095-2009.

Emergency Management of Hazardous Chemicals

Although safety standards with respect to chemical production in China continue to improve, major chemical accidents still happen with distressing regularity and tragic outcomes. While there are existing regulatory provisions for emergency management, the framework is not strong enough to govern the rapidly growing chemical industry. Comprehensive legislation to regulate the management of dangerous chemicals lags behind industry needs. Thus far, piecemeal legislation has only been promulgated in response to a particular accident or series of accidents.

In the US, the legal system and hazardous chemicals emergency management systems are complementary. For instance, the Emergency Planning and Community Right-to-know ACT (ECPRA) and Risk Management Plans (PMP) issued under the 1990 Clean Air Act by the Environmental Protection Agency (EPA) allow for satisfactory development of emergency management and risk mitigation strategies. Local Emergency Planning Committees (LEPC) have been

set up across the United States to provide local governments, residents, firefighters and other first responders with a full range of emergency plans and relative information.

China's emergency management capacity is principally housed in the fire brigade, which has a singular function. Emergency management capacity at the regional and commercial level is relatively weak.

In accordance with an October 2018 plan regarding the establishment of a national fire rescue team, the China Fire Rescue College was formally established at the end of last year. This marks an important step in building a system to train high-quality fire and rescue professionals.

Overall, when compared against developed countries in North America and Europe, hazardous chemical emergency management in China still has a long way to go. We encourage the government to encourage industry associations, research institutes and the business community to play an active role in providing policy research and consultation, drafting regulations and standards, and developing advanced emergency equipment and technologies. More specifically, AmCham China offers the following recommendations:

- Build capacity of organizations to identify hazardous chemicals. Establish national databases of enterprises licensed to operate with hazardous chemicals, emergency rescue equipment inventories, and emergency management experts. Improve the predictability and efficiency of emergency management by applying emerging artificial intelligence, big data and cloud computing technologies;
- Welcome foreign-invested enterprises (FIEs) to participate equally in industrial policies to encourage the highest standards of emergency management. Allow foreign participation in emergency technology research, product development and certification for emergency equipment to eliminate the use of outdated technology or programs;
- Maximize the capacity of China's existing fire rescue schools and other education institutes through professional education and training. Nurture the development of high-quality emergency management and technical experts. To improve institutional management, we recommend that the government support for the development of local social relief organizations and the dissemination of knowledge on best practices for grassroots emergency management;
- Collaborate with counterparts in the US government to learn about, understand and ultimately implement appropriate emergency regulations and standards.

中国国家标准 GB 6095-2009 《安全带》中，系带的定义为，坠落时支撑和控制人体、分散冲击力，避免人体受到伤害的部件。注：系带由织带、带扣及其他金属部件组成，一般有全身系带、单腰系带、半身系带。因此，目前中国市场上还普遍能看到使用单腰系带、半身系带来进行坠落防护的情况。单腰系带、半身系带进行坠落防护时，一旦发生坠落，坠落悬挂冲击作用力会集中在工人的腰部或胸部，导致内脏受到严重的伤害。

在工作场所，尤其是有高空作业的工作场所，工具的坠落防护也是非常重要的方面。有测试数据表明，0.5kg的重物从6m的高空坠落，足以产生51kg的冲击力，并且由于工具形体较小（只有0.5kg），对人体局部造成的压强和伤害会非常之大。那么对于再大一些的工具，冲击力也会随之加大，其引发的后果就更加严重了。

在中国国家标准中规定在坠落悬挂类安全带中只可以使用全身式系带。当人员在高空作业时，要配戴工具坠落防护的产品，可以防止工具的意外跌落，减少对人员和重要设备的冲击损害。同时也可以避免工具遗忘在工作现场而导致的安全隐患。

因此，中国美国商会建议更严格地执行国家标准 GB 6095-2009。

危险化学品应急管理

全国安全生产状况总体虽持续好转，但重特大化学品事故仍然层出不穷。相关法规对应急管理做了相应的规定，但相对于整个行业的快速发展，现有基础和投入还相对薄弱，难以适应危险化学品应急管理的实际需求。危化品应急管理的立法工作，已经落后于行业的实际发展，甚至出现事故倒逼、推动立法的现象。

美国的法律体系建设与危化品应急管理体系建设相辅相成，法律建设具有一定的预见性，指导并督促实际工作的开展，例如《应急规划和社区知情权法》、环保署的《风险管理计划》。美国各地设立“地方应急规划委员会”（LEPC），为当地政府、居民、消防员与救援方提供一整套应急方案与相关信息。我国的应急管理能力以消防力量为主，组成和功能单一，分散到地区或者企业应急管理能力较弱，应急管理效率与救灾能力等与欧美发达国家相比还有较大差距。

根据《组建国家综合性消防救援队伍框架方案》，中

国消防救援学院于2018年底正式挂牌成立，在构建消防救援高等教育体系、培养造就高素质消防救援专业人才领域迈出了重要一步。

我国在危化品应急管理方面的工作任重道远。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、先进应急装备及技术的开发、推广和应用方面发挥积极作用，在立法，应急管理体系优化，应急救援力量建设等方面开展深入合作，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。

- 重视危险化学品危害辨识能力，建立危险化学品企业信息数据库，应急救援装备数据库以及应急专家库等，以人工智能、大数据、云计算等现代科技新成果应用为抓手，提高应急管理的预见性、高效性。
- 允许外资企业平等参与“中国制造2025”，以实现应急管理的最高标准，包括应急技术研究，建立应急装备的产品开发及认证机制，淘汰传统落后的技术方案及应急装备。
- 利用中国消防救援学校等教育资源优势，通过开展专业教育及技能培训，为企业和职能部门培养一批高素质的应急管理与技术专家。在持续发挥国家的体制优势方面，要更加贴近一线，鼓励及引导社会救援力量迅速发展，及时挖掘基层应急管理的生动实践和成功经验。

向中国应急管理部门官员，标准起草专家分享美国政府在应急领域相关法规标准制定，实施，监管方面的经验和成果。搭建平台，组织双方专家交流。

消防安全

空气呼吸器（SCBA）是消防员的主战个人防护装备之一，安全性、舒适性和易用性是产品的三个最主要关键词。目前，中国的各类消防员人数约为37万人，通过3C认证的空气呼吸器生产厂家近70家。美国有超过110万消防员（含职业和义务），主要的消防空气呼吸器制造商为7家。相比之下，中国的制造商偏多，存在不少品牌各异而产品雷同的情况；根据包括消防员在内的各类使用者的反馈，空气呼吸器的产品质量也有待提高。此外，有关空气呼吸器的相关标准的规定不够协调和统一（如正常氧气浓度下限在GB/T31795-2015中已和美国标准一致，规定

Fire Safety

A safe, comfortable, and easy to use self-contained breathing apparatus (SCBA) is an essential element of a firefighter's personal protective equipment. There are an estimated 370,000 firefighters in China, and nearly 70 SCBA manufacturers which have passed China Compulsory Certification (3C) as required for manufactured products. In comparison, there are more than 1.1 million firefighters (both professional and volunteer) in the US, and only seven major SCBA manufacturers. In China, despite various SCBA brands, quality is lacking even among SCBA labeled products. In order to ensure that gas and toxins are unable to penetrate SCBAs, standard GA/T 620-2006 mandates that regular safety tests be carried out every year, but in practice such requirement is often ignored.

As part of the government reorganization, the Fire Department in the Ministry of Public Security (MPS) and fire brigades were incorporated into MEM, which assumed responsibility for fire safety and the development of a professional firefighting force.

Due to differing standards and certification procedures, SCBA and other firefighting products developed to US standards often face delayed entry into the Chinese market. AmCham China members believe that the standards of the National Fire Protection Association (NFPA) and the National Institute for Occupational Health and Safety (NIOSH) concerning SCBA are more advanced, the product configurations are more complete, and the manufacturing quality is higher.

China's fire emergency management training and education also faces challenges, including improving fire safety training. AmCham China members would be pleased to work with the authorities to address these issues. We suggest that the US and China strengthen cooperation to promote mutual recognition of standards and certifications and the rapid adoption of new technologies across China's fire and rescue industry.

We recommend integrating, upgrading and systematizing SCBA safety standards, enhancing the right of firefighters to procure their own equipment (including SCBA), and encourage the introduction of new SCBA technology. Regular testing of SCBA and their gas cylinders should be instituted. We urge the authorities to implement a "two rooms and one station" (BAC charging room, SCBA service room, and BAC hydrotesting station) inspection format for use by all fire brigades. Units that pass examination should be permitted to provide air inflation and testing services that meets industry needs.

We recommend that China monitor the occupational health of firefighters and promote the use of respiratory protective equipment (Fit Test). The authorities should guide firefighting equipment manufacturing enterprises and fire-

fighting training schools to launch public activities to raise fire safety awareness.

Confined Space Safety Management

According to Article 59 of the *Interim Provisions on the Administration and Supervision of Work Safety in Confined Space of Industrial and Commercial Enterprises* issued by MEM (then the State Administration of Work Safety), "confined space" refers to any space that is closed or partially closed, relatively isolated from the outside world, relatively narrow at the entrance and exit with poor ventilation, and liable to accumulate toxic and harmful substances, inflammable and explosive substances.

According to the Notice of the General Office of MEM on the *Confirmation of Confined Space Operating Conditions in Industrial and Commercial Operations*, 61 limited space accidents were responsible for the death of 112 people in 2018. Among nine major accidents in 2018, seven involved blind rescues which themselves resulted in 18 deaths.

In 2018, MEM urged all regions to issue plans for enhancing safety in confined space work environments, especially supervision of the metallurgy, building material, and light manufacturing industries. These plans are expected to guide confined space work safety over the next two to five years.

The Safe Production Committee Office of the State Council in March of 2019 reported eight recent fatal confined space accidents in which the number of fatalities was aggravated by improper rescue efforts. The report on these incidents exposed five problems:

- The approval system for confined space operations was not implemented and safety risk identifications were not in place;
- Improper disposal of on-site emergency rescue materials had taken place;
- Insufficient attention was given to emergency management and safety;
- Appropriate safety education and training measures were not in place; and
- There was insufficient management and regulatory oversight.

To improve work safety in a confined space environment, operations should follow the principles of "ventilation first," "testing later," and "operation last." Indicators of suitable confined space environments include concentration levels of oxygen, inflammable and explosive substances, and toxic and harmful gases. Testing and inspection of these areas should comply with relevant standards and no workers should be permitted to enter confined spaces without first passing inspection. If a confined space accident occurs, it must immediately be reported to public security and the

为 19.5%，但在 GB/T18664-2007 中仍是老规定 18%。为保证面罩的气密性，GA620-2006 中规定每年应进行定性或定量的密合性测试，但在实际操作中被省略了（不一而足）。

2018 年 3 月，应急管理部成立，原公安部消防局和消防部队现役编制成建制划归应急管理部，全部转为行政编制，承担灭火救援和其它应急救援工作。消防部队改革转隶以后，作为应急救援的主力军和国家队，将向更加专业化、职业化发展。

由于中美两国标准和认证规定不同，政策各异，符合美国标准的空气呼吸器等消防产品不能快速进入中国市场为中国消防救援提供防护。客观地说，有关空气呼吸器的美国消防协会（NFPA）和美国职业安全健康研究院（NIOSH）标准更为先进、产品配置更全、制造质量更高。

应急管理部的成立，在很大程度上实现了对全灾种的全流程和全方位的管理，有利于提升公共安全的保障能力。中国的消防应急管理培训和知识体系建设也面临新的课题，深化人才培养是一项重要工作。在华美资公司愿在这个领域做出自己的贡献。对美国和中国政府分别提出 1-2 条政策建议。

建议两国政府间加强沟通与合作，促进标准和认证的互认，促进新技术新标准新产品在中国消防救援行业的快速应用。建议对空气呼吸器的相关安全标准进行整合、升级和系统化成套化；提高消防战斗员对包含空气呼吸器在内的各类消防器材和装备取舍的发言权；避免此前对空气呼吸器进行统型（类似制服）的做法，以促进技术的进步。统一明确并公布空气呼吸器及其气瓶的定期检测单位，将基本属于各消防支队标准配置的“两室一站”纳入管理，对经考核合格的单位，可颁发证书，使其有资质对外进行充气、检测等服务，以满足广大工业用户的普遍迫切需求。

建议国家关注消防员的职业健康，推进呼吸防护用品的适合性检验。积极鼓励和引导消防器材和装备制造企业、消防培训学校等开展消防体验和公益培训活动，包括：办公园区、社区、校园等。

有限空间作业的安全管理

应急管理部（安监总局）第 59 号令《工贸企业有限空间作业安全管理与监督暂行规定》本规定所称有限空间，是指封闭或者部分封闭，与外界相对隔离，出入口较为狭窄，

作业人员不能长时间在内工作，自然通风不良，易造成有毒有害、易燃易爆物质积聚或者氧含量不足的空间。工贸企业有限空间的目录由国家安全生产监督管理总局确定、调整并公布。

《应急管理部办公厅关于 2018 年度工贸行业有限空间作业条件确认工作情况的通报》，2018 年全国工贸行业共发生有限空间事故 61 起，死亡 112 人。2018 年发生的 9 起较大事故中，7 起事故涉及盲目施救，导致多死亡 18 人。

2018 年，应急管理部持续开展工贸企业有限空间作业条件确认工作，督促各地区谋划好 2 至 5 年有限空间作业条件确认工作部署，重点督促各地区在自行规定期限内健全完善冶金、建材、轻工等行业企业有限空间监管台账，对造纸和酱腌菜生产企业、附属污水处理系统有限空间作业条件确认工作进行全面查漏补缺，推动企业真正落实有限空间辨识、作业审批和安全警示标志设置要求，开展有限空间作业关键技术研究，修订工贸行业企业有限空间目录，进一步指导企业开展有限空间辨识和风险管控工作。

近日，国务院安委会办公室通报了 8 起有限空间因施救不当导致伤亡扩大事故情况。今年 3 月份以来，有关行业领域连续发生多起有限空间较大生产安全事故，这些事故在初期均只有 1 人遇险，但在救援处置中，因盲目施救、措施不当导致伤亡扩大，造成了重大人员伤亡，教训极其深刻沉痛。通报指出，事故主要暴露五大问题：

❶ 未落实有限空间作业审批制度，安全风险辨识不到位。❷ 现场应急救援处置不当。❸ 对应急管理和安全生产工作不重视。❹ 安全教育培训工作不到位。❺ 监督管理存在薄弱环节。

有限空间作业应当严格遵守“先通风、再检测、后作业”的原则。检测指标包括氧浓度、易燃易爆物质（可燃性气体、爆炸性粉尘）浓度、有毒有害气体浓度。检测应当符合相关国家标准或者行业标准的规定。未经通风和检测合格，任何人员不得进入有限空间作业。有限空间作业中发生事故后，现场有关人员应当立即报警，禁止盲目施救。应急救援人员实施救援时，应当做好自身防护，佩戴必要的呼吸器具救援器材。

高校实验室的安全管理

中国近年政府加大了对高等教育事业的投入，高等学校的经费节节攀高。在快速发展的同时，高校实验室安全

response must be conducted by authorized personnel with proper respirators. Blind rescues must be prohibited.

University Laboratory Safety Management

In recent years the Chinese government has increased investment in higher education. Together with this investment, university laboratory safety needs to be strengthened. Higher education institutions generally lack safety management institutions and full-time staff. University laboratories contain hazardous chemicals used in classroom experiments. The supervision experience of many classroom laboratory safety management personnel is insufficient. According to the National Statistics Bureau, there have been 14,543 laboratory safety accidents and 29 deaths in universities and colleges in China in the past decade, including two accidents at the end of 2018. Given the high frequency of accidents, laboratory safety management in higher education is increasingly in the public eye.

In the US, the Laboratory Safety Guidance published by OSHA in 2011 (OSHA 3404-11R 2011) includes guidelines developed by experts for laboratory chemical management, exposure assessments, personal protective equipment management, and medical training.

After the Tianjin Port explosion in 2015, the Ministry of Education (MOE) established a procedure for "Safety Inspections of Scientific Research Laboratories" and subsequently conducted inspections, but ultimately only offered a set of suggested requirements on laboratory construction in higher education, rather than implementing formal regulations. No university has since established a laboratory safety environment, health and safety (EHS) risk management system.

There is much to be done to improve laboratory safety management. AmCham China recommends that the government continue to allow universities, industry associations, research institutes and the business community to play an active role in providing policy research and concept development, drafting regulations and standards, and developing an appropriate culture of laboratory safety.

In particular, we recommend that the MOE, provincial education authorities and higher education institutions establish independent departments to oversee laboratory safety and EHS. American universities often have distinct laboratory security management departments responsible for laboratory safety oversight, which helps to ensure that funding and staffing needs are met.

We recommend that the government establish a general safety system overseeing university scientific research experiments and work to build a culture of safety in university laboratories. Safety education and training should be required for all employees and available in a number of mediums (online

courses, videos, manuals) to encourage uptake.

We also recommend that the government standardize the use of personal protective equipment. Higher education institutions should allocate dedicated funds for the provision and use of personal protective equipment. We encourage the US government to conduct regular exchanges between Chinese and American universities and government security management authorities to share best practices on laboratory risk management strategies and university safety administration guidelines and policies.

Road Traffic Safety

In 2009 China overtook the US as the world's largest automotive market, and traffic considerations remain a concern. A 2018 WHO report on global traffic safety estimated the rate of road traffic deaths in China was 18.2 (per 100,000) was above that of Europe (9.3) and the Americas (15.6).

In 2019 we enter the fourth year of China's 13th Five-year Plan. Due to changing macroeconomic priorities and conditions, transportation infrastructure investments have fallen. The Party at its 19th National Congress proposed building a "traffic power," under the slogan of "traffic powers the country, roads come first." In February 2018 the central government released the *Opinions of the Party Central Committee on the Implementation of the Rural Revitalization Strategy*, which offered a vision for rural road revitalization to ensure that rural residents have access to convenient, safe and efficient transportation services.

Rural road construction is currently limited by a lack of funding, environmental considerations, and widespread safety concerns. AmCham China therefore, recommends that the government increase its focus on rural road safety facilities. In areas prone to road accidents, the government should carry out safety assessments, provide recommendations, and ensure funding to ensure the quality of road construction.

There is also a need for urban road safety. In particularly dangerous sections of highways and expressways (e.g., long downhill sections), we encourage the authorities to ensure the reasonable and appropriate layout of traffic signs and roadway markers to improve traffic safety.

Recommendations

For the Chinese Government:

- Encourage industry associations, research institutes, and the business community to provide policy research and consultation, support develop-

管理问题亟待加强，高校内普遍缺乏相应管理机构、专职管理人员。部分院校通过第一轮安全检查逐步设置了实验室安全管理机构，但管理层级多为科级，职能简单，人数少，且人员多数缺乏 EHS 管理背景和专业能力。高校实验室危险化学品种类庞杂，实验工艺变更复杂，实验人员安全意识不足，安全管理人员投入及监管经验不足等问题，高校的实验室事故层出不穷。据统计，十年来全国高校共发生各类实验室安全事故 14543 起，死亡 29 人。2018 年底先后发生了南京中医药大学翰林学院爆燃事故、北京交通大学 12.26 事故。中国高等教育的实验室安全管理问题引起了社会及的广泛关注。

但横向比较美国：美国职业安全与健康管理局 OSHA 在 2011 年出版的《实验室安全指南》对实验室内化学品管理，暴露评估，危害沟通，个人防护用具管理，医疗监护及培训等做出了具体要求和指导建议，同时还有很多专业机构例如美国消防协会 NFPA，美国采暖制冷与空调工程师学会 ASHRAE 等都对实验室设备设施安全提供技术指引。

高校实验室安全安全管理不足的情况，仅仅在 2015 年天津港大爆炸后，教育部科技司建立了“科研实验室安全检查”制度，进行了二轮检查，但该检查并未触及政府机构层面的安全建设，仅针对高校内部的机构建设提出了建议性要求。尚未有高校建立起以“风险管理”为核心的实验室安全环保健康（EHS）管理体系。

我国在实验室安全管理方面的工作任重道远。我们期望政府继续允许高校，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、先进管理理念及技术的开发、推广和应用方面发挥积极作用。我们促请政府同这些实体从立法，实验室安全管理体系优化，安全文化建立及培训等方面开展深入合作，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实验室工作人员的安全。

我们尤其建议教育部、省级教育主管部门、高校均应成立独立的“实验室安全环保健康”管理部门，参照美国高校实验室安全管理部门配置，将实验室安全从现有的“大安全”管理体系中独立出来，提升管理层级，加大安全资金投入。

我们建议建立科研试验的安全准入制度，加大高校实验室安全整体意识的培训，将安全教育纳入各级考评体系，安全教育和培训应做到全员覆盖，培训形式可以灵活多样

（实验室安全线上课程、线下课程、实验室安全手册、讲座、视频、VR、AR 等教育模式）。

我们还建议规范实验室个人防护装备使用，学校应当安排专项经费用于配备个人防护装备，并健全实验室个人防护装备的管理制度，加强个人防护装备配备、发放、培训使用等管理工作。

我们同时建议搭建平台，开展中美高校安全主管政府部门的高峰交流，促进中美高校之间 EHS 管理层面的交流活动，针对高校化学品管理、应急管理、风险评估等内容进行交流，从学校层面推进安全管理水平的提升，与中国高校实验室监管部门官员、标准起草专家分享美国高校在实验室安全相关法规标准制定，实施，监管方面的经验和成果。

道路交通安全

2009 年，中国超过美国成为了世界上最大的机动车市场，这也让交通问题成为了一个担忧。世界卫生组织 2018 年发布的一份关于全球交通安全的报告预估中国的（每十万人）交通道路死亡率（18.2）超过欧洲（9.3）以及美洲（15.6）。

2018 年是十三五计划的第三年，受宏观经济、政治形势影响，交通基础设施建设有所减少。在这一年，党在十九大中提出了建设“交通强国”的宏伟目标，并且明确了“交通强国、公路先行”的思路。在 2018 年 2 月，中央发布了《中共中央关于实施乡村振兴战略的意见》，进一步明确了农村公路的责任主体、管理制度和监管机制，为推进农村公路的高质量发展，让农村群众享受便捷、安全、高效的交通服务条件提供制度保障。

目前，农村公路的建设受到经费、环境等影响，普遍存在安全隐患，表现为安全设施的缺失与不合理设置。因此，商会建议：政府应提升对农村公路安全设施的重视，并对各类安全设施的合理性进行检查。对于一些事故频发的路段，组织业内专家进行安全评估与建议，并确保建设费用，以保障施工单位能应用性能优异的安全设施。此外，建议政府在加强农村公路建设的同时，进一步提升城市道路与高速公路的安全建设，让所有交通参与者享受到交通强国的利益。在城市道路，针对机非混行的情况，出台管理措施并鼓励技术方案。在高速公路，对于典型的危险路段（如长大下坡），关注标志标线的合理布设，以提升路段的交通安全。

ment of draft regulations and standards in a more organized and disciplined manner and develop advanced emergency equipment and technologies.

- Prevent the proliferation of conflicting standards under the *Work Safety Law* at the national, provincial, industry, and group level. Group standards implementation has so far been hampered by fragmented and overlapping standards.

Hazardous Chemicals Emergency Management

- Build capacity of organizations to identify hazardous chemicals, establish national databases of enterprises licensed to operate hazardous chemicals, emergency rescue equipment inventories, and a database of emergency management experts.

Fire Safety

- Integrate, upgrade, and systematize SCBA safety standards, enhance the right of firefighters to procure their own equipment (including SCBA), and encourage the introduction of new SCBA technology.

Confined Space Emergency Management

- Any testing and inspection of these areas should comply with relevant standards and no workers should be permitted to enter limited spaces without first passing inspection.

Laboratory Safety

- The MOE, provincial education authorities, and higher education institutions should establish independent departments to oversee laboratory EHS.

建议

对中国政府：

- 鼓励行业协会，研究机构和企业界在提供政策研究和咨询，起草法规和标准以及开发先进的应急设备和技术方面发挥积极作用。
- 防止国家、省、行业和集团层面的“安全生产法”中相互冲突的标准增多。到目前为止，集团标准的实施一直受到分散和重叠标准的阻碍。

危险化学品应急管理

- 建立组织识别危险化学品的能力，建立许可经营危险化学品的企业的国家数据库，应急救援设备清单和应急管理专家数据库。

消防安全

- 整合、升级和系统化空气呼吸器安全标准，增强消防员采购自己的设备（包括空气呼吸器）的权利，并鼓励引入新的空气呼吸器技术。

有限空间作业的安全管理

- 对这些区域进行的任何测试和检查应符合相关标准，未经工作人员检查，不得允许工人进入有限的空间。

高校实验室的安全管理

- 教育部，省教育主管部门和高等教育机构应设立独立的部门，监督实验室的环境，健康和安全的。

Part Four:
Regional Issues
区域性问题

Southwest China

This chapter was contributed by the American Chamber of Commerce in Southwest China (AmCham Southwest).

Introduction

Chengdu and Chongqing remain Southwest China's leading urban centers and continue to benefit from their strategic positioning along the Belt and Road Initiative (BRI), an infrastructure and investment initiative designed to enhance inter-regional connectivity and cooperation. Although confident in their long-term prosperity, AmCham Southwest member companies have a number of immediate concerns.

Sichuan is a major economic province. As of 2018, more than 347 Fortune 500 companies have established operations in the province, of which 285 have operations in its capital city, Chengdu. The presence of so many large foreign companies is indicative of the city's appeal to foreign investors and complements Chengdu's goal of becoming a global city. Chengdu Tianfu Software Park, a developing high-tech industrial zone, has attracted foreign and domestic entities, capital, and talent in high-tech industry. Chengdu's rapidly expanding transportation network has reduced travel times throughout the city and its surrounding areas. As of January 2019, Chengdu signed up to the Transit Visa Exemption Program, which allows foreign citizens from 53 eligible countries to travel visa-free for up to 144 hours. Moreover, the opening of the new Tianfu International Airport (currently scheduled for 2020) will make Chengdu one of only three cities (along with Beijing and Shanghai) to have two international airports.

Southwest China's other major economic engine, Chongqing, is one of only four municipalities directly subordinate to the central government. In 2018, Chongqing's GDP growth was 6.3% in the first 11 months of 2018, missing its target rate of 8.5% by over 2%. A significant contributing factor has been lower than expected automobile sales, which shrank by 17.3% year-on-year (y/y). The automobile sector is Chongqing's largest, accounting for one-fifth of output (followed by electronics and chemicals). Ford Motor had planned to manufacture the Ford Focus Active in Chongqing for export to the US but cancelled its planned investment in September 2018, citing the impact of automobile tariffs. Nevertheless, Chongqing continues to attract foreign investment and 287 of the Fortune 500 have operations in the city.

Despite Southwest China's optimistic outlook, both Chengdu and Chongqing face new economic challenges stemming from a changing regulatory and investment landscape. As high-tech and electronic manufacturing industry expands, companies are unable to find appropriate qualified talent, forcing them to outsource work to other cities or turn to foreign talent, which can be challenging given current immigration policies and regional cultural realities.

Foreign companies and foreign-invested enterprises (FIEs) have growing concerns over the region's underlying economic environment and have been forced to explore alternatives to shore up revenue. Chief concerns include fairness and transparency of the region's legal and regulatory environment, equal enforcement of existing policies and regulations between domestic and foreign companies which is a concern shared by AmCham China members in other regions, evolving consumer habits, and the primary and secondary effects of the ongoing trade dispute between the US and China. Concerns stemming from the trade dispute have caused businesses to delay or adjust their investment decisions, as seen in Ford's decision to cancel its planned manufacturing investment in Chongqing. In order to achieve the region's aspirations of becoming a global hub, a trusted legal system and pragmatic policies that are equally enforced will be increasingly important for Chengdu and Chongqing to continue to thrive.

This chapter covers the Southwest Region but focuses on Chengdu and Chongqing as the largest cities in the Southwest where relevant. Chapter content is organized by sectoral issues or industry-wide challenges.

Education Sector

International Schools Affected by Declining Enrollment of Foreign Students

The region's international education sector has been negatively impacted by the decline in foreign expatriates living and working in Southwest China and government policies to encourage enrollment in domestic schools by children of Chinese families returning from overseas. A significant decline in enrollment levels at international schools has led to questions about the quality and operation of these schools.

中国西南

本章由中国西南美国商会撰写。

引言

成都和重庆仍然是中国西南地区的主要城市中心，并继续从“一带一路”倡议的战略定位中受益，该基础设施和投资倡议旨在加强区域间连通性与合作。尽管商会会员公司对其长期繁荣充满信心，但仍有许多亟待关注的问题。

四川是一个经济大省。截至 2018 年，有超过 347 家财富 500 强企业在该省开展业务，其中 285 家在其省会成都开展业务。如此众多外国公司的打入该地区表明该城市对外国投资者非常具有吸引力，并对成都成为全球城市的目标具有补益作用。成都天府软件园是一个正在成长的高新技术产业园区，吸引了国内外实体、资金和高科技产业人才。成都快速发展的交通网络缩短了整个城市及周边地区的出行时间。截至 2019 年 1 月，成都实施了过境免签计划，允许来自 53 个符合条件的国家的外国公民免签证旅行长达 144 小时。此外，新的天府国际机场的开通（目前计划于 2020 年开通）将使成都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。

中国西南地区的另一个主要经济引擎 - 重庆，是中央政府直属的四个直辖市之一。2018 年，重庆前 11 个月的 GDP 增长率为 6.3%，低于目标增长率（8.5%）超过两个百分点。促进增长的一个重要因素是汽车销售量低于预期，同比下滑 17.3%。汽车行业是重庆最大的行业，占产量的五分之一（其次是电子和化学品）。福特汽车曾计划在重庆生产福特福克斯出口到美国，但 2018 年 9 月取消了该投资计划，据称理由是汽车关税的影响。尽管如此，重庆仍继续吸引外资，其中财富 500 强企业中有 287 家在该市开展业务。

尽管西南地区前景乐观，但成都和重庆都面临着监管和投资环境不断变化带来的新经济挑战。随着高科技和电子制造业的扩张，企业无法找到合适的合格人才，从而不

得不将工作外包给其他城市或转向寻找外国人才，但鉴于目前的移民政策和地区文化现实情况，这可能具有挑战性。

外国公司和外资企业对该地区潜在的经济环境越来越担忧，并被迫探索其他方案以增加收入。其主要担忧的问题包括该地区法律和监管环境的公平性和透明度，其他地区的中国美国商会会员所共同关心的现行政策和法规是否能对国内外公司平等执行，不断变化的消费习惯，以及当前美中贸易争端的主要和次级影响。正像我们所见到的福特决定取消其在重庆的制造投资计划，贸易争端引发的担忧已经导致企业推迟或调整投资决策。为了实现该地区成为全球中心的愿望，平等地执行可信的法律制度和务实政策对于成都和重庆继续蓬勃发展将变得越来越重要。

本章涵盖了西南地区尤其是成都和重庆这两个西南地区最大的城市。章节内容按照行业问题或跨行业挑战进行组织。

教育行业

国际学校受到外国学生入学率不断下降的影响

该地区的国际教育行业受到在中国西南地区生活和工作的外籍人士数量减少以及政府鼓励从海外归国的中国家庭子女入读国内学校政策的消极影响。国际学校入学率的大幅下降使人们对这些学校的质量和运作产生了疑问，因为自从 2016 年该地区的外籍学生数量有所下降以来，招收到的美国和欧洲学生少之又少。许多从海外回国的中国公民想让孩子入读国际学校，但发现即使他们的孩子以前在国外接受过教育，这样做也很难，因为他们没有持有外国护照。商会促请中国政府支持减少国际学校入学限制的政策。

外籍教师签证政策

目前的签证政策对识别和留住外国人才又增加了难度。例如，英语语言学校仅限于从经批准的国家名单中进行人

Because the number of foreign expats in the region has declined since 2016, there are fewer American and European students enrolled. Many Chinese nationals returning to China from overseas want to enroll their children in international schools but find it difficult to do so even if their children have previously been educated abroad because they do not hold foreign passports. AmCham Southwest urges the Chinese government to support policies that reduce restrictions on admission to international schools.

Visa Policies for Foreign Teachers

Current visa policies add a layer of difficulty to identifying and retaining foreign talent. For example, English language schools are limited to hiring nationals from an approved list of countries. Even where candidates are qualified native English speakers, they may be barred simply for not being from an approved country. For example, teachers from countries such as Sweden and Norway often speak English fluently, but cannot be hired to teach English because of nationality-based language restrictions on teacher hiring across the industry. This has resulted in some schools losing qualified teachers.

While AmCham Southwest understands the desire to ensure that foreign teachers are native English speakers, we encourage regulators to grant schools in the Southwest greater autonomy to hire teachers from countries with a high degree of English fluency to alleviate current shortages of teachers.

Manufacturing Sector

Foreign manufacturers are at an operational disadvantage relative to domestic firms operating in Southwest China. They suffer from an uneven playing field, due in part to government policies that favor domestic firms. Under the umbrella of Made in China 2025 (MIC 2025), China favors the design and manufacture of locally-made technologies. In the medical device industry, government policies in many provinces encourage hospitals to purchase locally-made devices and technology. The government has set targets for 90% of treatments and cures to occur at county-level hospitals, creating a substantial market for companies that manufacture medical devices, in particular medical imaging devices. AmCham Southwest members' experience is that domestic manufacturers have secured the vast majority of procurement opportunities for medical imaging devices at the region's local hospitals, even in cases where foreign-manufactured devices are of a higher quality. Moreover, member company sales have also been harmed by government policy which raised the cap on the price and quantity of medical devices below which non-competitive bids or no bidding is required.

Separately in 2018, the Chongqing municipal government offered a program of subsidies to cell phone manufacturers. AmCham Southwest members have found the subsidies

favor domestic companies. Although not universal, some member companies have not been able to obtain the same subsidies as domestic firms, essentially locking some member companies out of particular regions or provinces.

AmCham Southwest urges the regional governments, particularly in Chengdu and Chongqing, to allow foreign and domestic firms (including FIEs) to participate equally in procurement opportunities and, if subsidies must be continued, to be allowed equal, fair, and reciprocal access to any sector-specific subsidies. Doing so will improve the quality of products in the marketplace, enhance China's regional economy, and improve the welfare of consumers.

Real Estate Sector

AmCham Southwest's members in the real estate sector are beginning to adapt their products and services to meet many of the challenges discussed in the introduction. For instance, in the commercial real estate industry, government directives to deleverage have forced companies to abandon an operating model based on significant debt levels with a high asset turnover rate. Real estate firms in the Southwest region have begun to securitize assets through financial products and services such as Commercial Mortgage Backed Securities (CMBS) and Real Estate Investment Trusts (REITs). These are complicated financial offerings; complicated in both their provision and regulation. While securitization of assets deleverages a company's balance sheet, it shifts the risk to individual investors purchasing those products. Without proper regulation, risk is not reduced, it is simply transferred to the investors.

AmCham Southwest recommends that the government work with experienced industry members to develop an effective regulatory regime to oversee these complicated real estate financial products which together with appropriate regulation can improve access to funding for commercial real estate.

Insurance Sector

Foreign insurance providers have cited falling premiums and have responded by increasing the variety and sophistication of their insurance products. In the last three quarters of 2018, one AmCham Southwest member has witnessed a 7.7% decrease in its premiums (y/y). By comparison, its premiums in other industrialized economies rose by 1.9% in 2018 and premiums in other developing markets increased 6.1%. To address falling premium rates, AmCham Southwest members are experimenting with new insurance offerings to meet local demand and rising disposable incomes, such as individualized insurance plans and property insurance.

To help facilitate the growth of these new insurance prod-

员聘用。即使应聘者条件合格且英语为母语，也可能仅仅因为不是来自经批准的国家而被拒之门外。例如，瑞典和挪威等国的教师经常会说流利的英语，但由于整个行业在教师聘用上都有基于国别的语言限制，因此也不能受聘为英语教师。这导致一些学校错失了合格的教师。

虽然商会理解确保外籍教师来自英语为母语的国家的这一要求，但我们还是鼓励监管机构给予西南地区学校更大的自主权，从英语流利程度高的国家聘请教师，以缓解目前教师短缺问题。

制造业

与在中国西南地区经营的国内公司相比，外国制造商处于运营劣势。他们所处的竞争环境不公平，部分原因在于政府支持国内企业的政策。在“中国制造 2025”的保护下，中国支持本地技术的设计和制造。在医疗器械行业，一些省份的政府政策鼓励医院购买本地制造的设备和技术。政府已经为县级医院制定了 90% 的治疗目标，从而为制造医疗器械，特别是医疗成像设备的公司创造了巨大的市场。商会会员的经验是，即使在外国制造的器械质量较高的情况下，这也确保了国内制造商享有采购该地区医院医疗成像设备的绝大部分机会。此外，会员公司的销售也因政府政策受到损害，因为政府政策提高了医疗器械的价格和数量上限，而低于该价格和数量时，无需竞争性投标或不需要投标。

另外，2018 年，重庆市政府向手机制造商提供了一项补贴计划。商会会员发现补贴对国内公司有利。虽然这不具有普遍性，但一些会员公司却不能获得与国内公司相同的补贴，基本上将某些会员公司排除在特定地区或省份之外。

商会促请地区政府，特别是成都和重庆市政府，允许国外和国内公司（包括外资企业）机会均等地参与采购，如果必须继续实施补贴，允许平等、公平和互惠地获得特定行业补贴。这样一来，将提高市场的产品质量，增强中国的区域经济，改善消费者福利。

房地产业

商会的房地产会员企业开始调整其产品和服务，以应对引言中所述的多重挑战。例如，在商业房地产行业，政府的去杠杆化指令迫使企业放弃基于重大债务水平和高资产周转率的运营模式。西南地区的房地产公司已经开始通

过商业贷款抵押证券（CMBS）和房地产投资信托等金融产品和服务进行资产证券化。这些是复杂的金融产品；规定和监管都很复杂。虽然资产证券化降低公司的资产负债表风险，但却将风险转移给购买这些产品的个人投资者。如果没有适当的监管，风险不会降低，只会转移给投资者。

商会建议政府与经验丰富的行业会员合作，制定有效的监管制度，来监督这些复杂的房地产金融产品，同时与适当的监管相结合，如此一来，可以改善商业房地产的融资渠道。

保险业

外国保险公司已经提到保费下降，并为此增加保险产品的种类和复杂程度。在 2018 年最后三个季度，一家会员企业的保费同比下降了 7.7%。相比之下，2018 年其他工业化经济体的保费增长了 1.9%，其他发展中市场的保费增长了 6.1%。为了应对不断下降的保费率，会员企业正在尝试新的保险产品，以满足当地需求和不断增加的可支配收入，如个人保险计划和财产保险。

为了促进这些新保险产品的发展，商会促进政府监管机构与商会协商，改善监管框架，以使新产品安全进入市场。

基础设施投资

重庆的经济一直依赖基础设施支出；2017 年固定资产投资占 GDP 的 90% 左右。固定资产投资开始放缓，导致了更大范围上对投资放缓的担忧。2018 年，固定资产投资同比增长 7%，而 2016 年为 12.1%，低于 2011 年的高值 31%。这让商会感到担忧，因为高水平的基础设施投资已经使重庆成为对外国有吸引力的目的地。也许是为了表明对持续基础设施投资的承诺，2018 年 12 月北京批准了一批价值 456 亿元的城市轨道交通项目。

成都的酒店业也受到基础设施挑战的不利影响。城市周围频繁的交通拥堵可能使游客很难轻松游览城市。四川九寨沟国家公园在地震造成重大破坏后关闭了七个多月进行翻修。关闭热门旅游景点导致游览成都的游客数量下降。

虽然商会赞赏政府为抑制基础设施支出和控制债务水平而作的努力，但我们促请其平衡该地区的基础设施需求，包括对著名旅游景点进行改造和维护，这对中国西南地区其他发展中的产业具有重要的次级影响。

ucts, AmCham Southwest encourages government regulators to improve the regulatory framework in consultation with AmCham Southwest to allow new products to safely enter the market.

Infrastructure Investments

Chongqing's economy has been reliant on infrastructure spending; fixed asset investment (FAI) contributed around 90% of GDP in 2017. FAI has begun to slow, leading to concerns about a broader investment slowdown. In 2018, FAI grew 7% y/y, compared with 12.1% in 2016 and down from a high of 31% in 2011. This is concerning for AmCham Southwest, given that high levels of infrastructure investment have made Chongqing an attractive destination for foreign investment. Perhaps to signal its commitment to continued infrastructure investment, a series of urban rail projects valued at RMB 45.6 billion were approved by Beijing in December 2018.

Chengdu's hospitality industry has also been adversely impacted by infrastructure challenges. Frequent traffic congestion around the city can make it difficult for visitors to travel around the city easily. Jiuzhaigou National Park in Sichuan was closed for over seven months for renovation after an earthquake caused significant damage. This closure of a popular tourist site led to a decline in the number of tourists visiting Chengdu.

Although AmCham Southwest appreciates the government's efforts to rein in infrastructure spending and control debt levels, we urge it to balance the infrastructure needs of the region, including the renovation and upkeep of prominent tourist sites which have important secondary effects on other growing industries in Southwest China.

Skilled Labor Shortages

Despite the influx of foreign companies to Chongqing and Chengdu, the Southwest region still struggles with shortages of skilled labor and senior management to fill in-demand, high-level jobs, particularly in the real estate, financial, and hospitality industries. Companies have had to bring in talent from outside the region, though this can be difficult because east coast cities like Beijing and Shanghai are often seen as more attractive. For example, the Chongqing Pilot Free Trade Zone (PFTZ), established in April 2017, has already welcomed over 12,000 companies. Able to attract foreign investment with few restrictions, the Chongqing PFTZ is expected to stimulate growth. To handle investments, Chongqing PFTZ will need lawyers with experience in international litigation and cross-border transactions. In another example, the hospitality industry is suffering from high turnover rates. There is particular demand for employees with international hospitality experience, though many of

these individuals migrate to cities like Shanghai and Beijing in search of what are perceived to be better opportunities.

AmCham Southwest members have found college graduates in the region lack the necessary skills so they often need to provide additional on-the-job training to meet their needs. AmCham Southwest recommends governments in the region focus on improving education curricula to enable students to build in-demand skillsets and also recommends that regional governments consider providing training and reskilling opportunities for broader segments of the population. Doing so in consultation with local industry to determine their needs would maximize the potential of any training programs.

Recommendations

For the Sichuan and Chongqing Governments:

- **Allow foreign and domestic firms (including FIEs) to participate equally in procurement opportunities by encouraging purchasing guidelines that give weight to quality considerations. If subsidies must be continued, ensure that foreign companies are allowed equal, fair and reciprocal access to any sector-specific subsidies.**
- Expand the list of nationalities eligible for professional positions as foreign educators, subject to the applicants meeting other recruitment requirements.
- Improve education curricula to enable students to build in-demand skillsets. Consider providing training and reskilling opportunities in consultation with local industry to determine how to maximize the potential of any training programs.
- Support improved admission policies for children of former Chinese expats in international schools.
- Balance the need to control debt and fixed asset investment with realistic infrastructure needs of the region consistent with its status as a growing area of investment.

熟练劳动力短缺

尽管外国公司涌入重庆和成都，但西南地区仍然面临着熟练劳动力和高级管理人员短缺无法填补有所需求和高水平的就业岗位（特别是房地产、金融和酒店业）的问题。公司不得不从外部引进人才，但这样做很难，因为北京和上海等东部沿海城市往往被认为更具吸引力。另一个例子是，2017年4月成立的重庆自由贸易试验区（重庆自贸区）已迎来了12000多家公司落户。能够少加限制地吸引外国投资，重庆自贸区有望刺激经济增长。为了处理投资，重庆自贸区将需要具有丰富国际诉讼和跨境交易经验的律师。酒店业的人员流动率很高。该行业尤其需要具有国际酒店经验的员工，尽管其中许多人迁移到上海和北京等城市寻找所认为的更好的机会。

商会会员发现该地区的大学毕业生缺乏必要的技能，因此需要对其经常提供额外在职培训以满足其需求。商会建议该地政府注重改善教育课程，使学生能够建立所需求的技能，并建议地方政府考虑为更广泛的人群提供培训和再培训机会。在该过程中与当地行业协商以确定其需求将最大限度地发挥任何培训计划的潜力。

建议

对四川和重庆政府：

- 通过鼓励重视质量因素的采购指导方针，允许国外和国内公司（包括外资企业）机会均等地参与采购。如果必须继续实施补贴，确保允许外国公司平等、公平和互惠地获得特定行业补贴。
- 根据符合其他招聘要求的申请人的情况，扩大有资格担任外国教育工作者职位的国籍名单。
- 改进教育课程，使学生能够建立所需要的技能。与当地行业协商考虑提供培训和再培训机会，以确定如何最大限度地发挥任何培训计划的潜力。
- 支持改善国际学校前中国外籍儿童入学政策。
- 平衡控制债务和固定资产投资的需求与该地区的实际基础设施需求的关系，与其作为不断增长的投资领域的地位相一致。

Northeast China

Introduction

Gross domestic product (GDP) in Liaoning Province, home of AmCham China's Northeast Chapter, grew 5.5% in 2018, reaching US\$ 374 billion. This growth rate was up from 4.2% in 2017. This was evidence of continued recovery from the lows of 2016, when Liaoning's GDP contracted 2.5%. Although Liaoning's growth rate was still below the national rate of 6.6% in 2018, it is again beginning to see growth similar to that enjoyed by the rest of China. State media attributed approximately 56% of this growth to "scientific and technological innovation." Increased coal and steel prices, freight volumes, and private investment were also reportedly important contributors to economic growth.

The main economic activity in Liaoning remains manufacturing in such industries as animal husbandry, communications, railway, transportation, shipping, and aviation. More recently, however, these older industries have seen declining market demand and falling prices, which contributed to the recession in 2016. To continue stimulating growth, China requires greater investment in new technology development and innovation, which will require attracting technology-intensive industries as well as new products and services. To this end, the Liaoning government held an event in London in October 2018 designed to recruit companies and employees from priority industries like aerospace, technology equipment, energy, IT, artificial intelligence, and advanced materials. Foreign investment in Liaoning increased 15% year-on-year (y/y) in the first eight months of 2018 to US\$ 3.7 billion.

In the context of Liaoning's economic recovery, this chapter summarizes AmCham China Northeast Chapter members' responses to a series of questions posed by the Chapter Executive Committee during site visits conducted following the release of the 2019 AmCham China *Business Climate Survey* (BCS) in February. This data was collected in addition to the BCS results to provide more specific data on the business climate in the Northeast region. Although chapter members expressed broad agreement with the findings of the BCS, there are regional differences. Responses discussed in this chapter represent the industrial, high-technology manufacturing, financial services, healthcare and pharmaceuticals, consulting, hospitality, and software industries.

Challenges of Doing Business in Liaoning

Attracting and Retaining Talent

The most commonly cited challenge was difficulty in attracting and retaining talent relative to Tier I cities (e.g., Beijing, Shanghai, Guangzhou, Shenzhen). This challenge stems from issues with education, healthcare, visas, and rising labor costs.

Many AmCham China Northeast members reported that the local education system hinders retention of top local talent and can even hinder the ability of companies to hire foreign management. Many employees perceive the local public education system as inferior to that of Tier I cities. Consequently, when their children approach school age, they seek to relocate. Most member companies believe retaining local talent will continue to be difficult. Although the university system in Liaoning is regarded favorably, many students opt to leave Liaoning after graduation. Foreign enterprises expressed difficulty in convincing top foreign talent to relocate to Liaoning Province because the selection of international schools is limited. While there is some optimism that new private primary education schools in Jinshitan on the outskirts of Dalian will address this challenge, concerns remain: the capacity of these new options is limited, the location may make it challenging for employees based in downtown Dalian, and the costs may be prohibitive for many employees.

A relatively undeveloped healthcare industry in Liaoning also prevents top foreign talent from coming to the Province. AmCham China Northeast member companies raised the point that healthcare services lag behind international standards and other areas in China with respect to both quality and availability. This hinders the ability of companies to attract top foreign management talent. In the absence of appropriate medical care options, employees travel to Tier I cities for advanced medical care, costing time and resources.

Many AmCham China Northeast member companies also mentioned difficulty in obtaining visas as a barrier to attracting and retaining talent. Obtaining foreign visa approval from Chinese authorities was most commonly cited, although one company also mentioned that they encountered difficulty obtaining visas for Chinese nationals

中国东北

引言

辽宁省是中国美国商会东北分支办公室所在地，2018年该省国内生产总值（GDP）增长率从2017年的4.2%上升至2018年的5.5%。这是在2016年2.5%的基础上的持续恢复。虽然辽宁的GDP增长率仍然低于全国6.6%水平，但经济复苏使其接近中国其他地区增长率水平。2018年，辽宁的国内生产总值为3740亿美元。其中，56%的增长归功于科技创新。其他增长点还包括煤炭和钢铁价格上涨、货运量和私人投资的增加。

辽宁的主要经济活动是畜牧、通讯、铁路、运输、航运和航空等传统产业增值产品的制造，这些产品在过去几年中带动了大部分GDP增长。然而，近年来，这些传统行业的市场需求和销售价格都出现下滑，导致了GDP下降。中国市场需要更多新技术开发和新产品创新来刺激GDP增长。辽宁实现这种增长的行业包括高新技术产业以及新产品和服务。为此，辽宁举办了数场国际性活动，旨在吸引航空航天、技术设备、能源、IT、人工智能和先进材料行业的公司和人才，更好地参与竞争。2018年前8个月，辽宁的外国投资同比增长15%至37亿美元。

本章总结了商会东北办公室会员对2018年《中国商务环境调查报告》（《报告》）后续访问期间执行委员会提出问题的回应。这些信息是对《报告》的补充，且因为《报告》在2018年没有按地区公布调查结果。虽然东北会员与《报告》的总体调查结果一致，但我们希望说明具体的区域差异。提供这些信息的公司来自工业、高科技制造、金融服务、医疗、制药、咨询、酒店和软件行业。

在辽宁省经商面临的挑战

吸引和留住人才

与一线城市相比，最常见的挑战是难以吸引和留住人才。大多数公司都提到了该项。这一挑战又可以细分为教育、医疗保健、签证和工资增长等问题。

许多商会成员提到，当地教育体系是留住当地顶尖人才和吸引外国管理人员的障碍。许多员工认为当地公共教育系统不如一线城市，所以当他们的孩子达到入学年龄时，他们会寻找离开的机会。大多数外国公司认为留住本地人才仍然很困难。虽然辽宁的大学制度很好，但很多学生毕业时都想离开辽宁。此外，由于国际学校有限，外国企业难以说服外国顶尖人才迁往辽宁省。这种情况也许能得到些许改善，因为金石滩会设立的私立小学，但容量有限，大连市中心企业员工可能不会选择该校，并且很多人可能也支付不起。

留住人才的第二个常见困难是辽宁省相对不发达的医疗行业。商会会员公司提到，这里医疗服务的质量落后于中国或国际其他地区。这也是吸引高层管理人才的一个障碍。此外，由于员工需要前往一线城市接受高级医疗护理，导致时间和资源的浪费。

许多商会会员企业也提到难以获得签证也是吸引和留住人才的一大障碍。虽然经常提到的是申请中国政府批准的外国签证，但一家公司还提到，他们很难获得中国公民在美国工作的签证。几家公司提到签证延误是关键职位无法填补的原因。

从历史上看，沈阳是一个具有挑战性的投资地，因为辽宁与中国其他地区有着截然不同的官僚文化。自上世纪90年代以来，大连相较辽宁其他城市而言发展更快，但近几年，大连作为领先投资目的地的声誉大幅下降，很少有公司会再把大连视为一线投资目的地。

for work assignments in the US. Delays in visa processing was mentioned by several companies as a reason why key positions could not be filled.

Shenyang has always been a challenging place to invest for historical reasons, given that Liaoning has a very different bureaucratic culture than other parts of China. Dalian has been considered more progressive since the 1990's, but its former reputation as a leading investment destination has diminished considerably in the past few years. Dalian's historical reputation as a Tier I city is rapidly diminishing.

One reason for that is that it is a commonly understood that if you "invest in Dalian", you are not going to be close to Dalian city, but rather at least 1 hour from the CBD, and lack educational, medical, and personal services. It appears that a high percentage of expatriates have left the city due to visa issues and the general perception that foreigners are less welcome than in the past.

Infrastructure

Multiple AmCham China Northeast members discussed key infrastructure challenges. The main complaint concerned the availability and speed of the Internet. For instance, several companies that provide internet-based services have suffered service quality issues because Internet speeds are very slow, and there are no obvious channels to address these issues. Many enterprises are frustrated with the lack of access to consistent business virtual private networks (VPNs) because the government frequently blocks these VPN services. This concern also undermines talent retention because top international talent and employees require VPNs to access internet tools and software commonly used outside China. They are very frustrated by frequent interruptions that restrict access to the outside world, as well as the inability of their children to complete schoolwork requiring these tools.

AmCham China Northeast members also cite a lack of prime office space for large companies. For instance, the needs of one member company based in the Dalian Software Park outgrew its existing office space and could not find office space closer than Kaifaqu, which was regarded as too far away for employees. The perception among members is that Dalian is effectively several separate cities (e.g., the Software Park, Downtown, Kaifaqu), each with its own infrastructure and development plan. Several companies were reportedly given incentives to move to new locations which still lacked basic services.

Regulatory Clarity

In common with the results of the BCS, Liaoning-based members expressed frustration at a lack of clarity and consistency in the interpretation and application of laws and regulations. Member enterprises indicated a desire for government officials to remove vague language and end opaque decision-making practices with respect to regulatory

development and enforcement. The enterprises expressed frustration that a lack of clarity in regulatory implementation has forced them to slow or delay business operations and further investment. They recognized, however, that this issue is not unique to the local regulatory environment. Customs, cybersecurity, and environmental regulations were among those cited in particular.

Incentives

Several companies mentioned that local governments in Liaoning offer fewer investment incentives for foreign enterprises compared to other provinces in China, causing them to prioritize their operations in other locations. While some incentives are related to the talent retention issues discussed above, other incentives include capital rebates, tax incentives, or IT infrastructure incentives.

Business Ecosystem

Several member companies reported the ecosystem linking businesses, universities, governments, and other events in Dalian remains underutilized, as cooperation among these different types of organizations is limited. Several of the hospitality member companies reported that the number of government, university, and business events has steadily decreased in recent years, resulting in lower capacity utilization in their hotels, fewer university students being hired, lower tax revenue, and less government funding to hold development events. Other members urged the government to improve university recruitment in conjunction with AmCham China Northeast members to attract more students to stay and work in the province.

Opportunities for Business in Liaoning

AmCham China Northeast Chapter members cited several business opportunities in Liaoning's Tier II cities. First, members expressed optimism that the business environment would continue to improve, both in terms of growing domestic consumption and in terms of a reduction in the number of state-owned enterprises (SOE) with non-performing loans helped by the central government's focus on deleveraging. Although some concern was raised about the ongoing US-China trade dispute, Northeast Chapter members did not report it as a top issue impeding business and shared optimism that it would be resolved in 2019.

The also expressed hope that local governments would be responsive to the feedback provided in this chapter and work collaboratively to continue to improve the business environment. Member companies hope that AmCham China will collaborate with Liaoning's Tier II city governments to improve the issues discussed throughout the chapter.

In previous years AmCham China Northeast members cited rising labor costs as a major impediment to growth, but this was not cited in 2018 as a major issue. Instead, there was opti-

原因之一是，人们普遍认为，如果你“在大连投资”，你就不会离大连市很近，且至少离大连市中心商务区一小时，因而无法获得市中心的教育、医疗和个人服务。似乎很大比例的外籍人士因签证问题，及认为外国人不像过去那么受欢迎的普遍看法离开这座城市。

基础设施

一些商会会员提到关键基础设施是一大问题。抱怨的主要是互联网访问的可用性和速度。例如，几家提供基于互联网的服务公司都有过质量问题，因为互联网速度缓慢，且无法改善。另一个相关问题是许多企业因无法持续使用虚拟专用网络（VPN）而受挫，原因是政府经常屏蔽这些 VPN 服务。这种担忧也与人才保留有关，因为顶尖的国际人才需 VPN 来使用中国以外通用的标准的互联网工具和软件，频繁的中断让他们与外界隔离开来，他们对此感到非常失望，而他们的孩子也无法完成必须使用这些工具的功课。

商会会员提到的另一个基础设施相关的问题是大公司缺乏优质办公空间。例如，一家位于软件园的公司因为业务扩大需要扩容，却找不到比开发区更近的地方，开发区对于员工来说太遥远了。人们认为大连是几个独立的个城市构成的（软件园、市中心、开发区），每个城市都有自己的基础设施和规划。有人提到有公司被鼓励搬到连基本服务都没有的地方。

规则的明确性

与《报告》中提及的中国其他地区一样，商会的辽宁成员对法律法规不清晰、执法不一致而感到受挫。成员企业表示希望政府官员在法规中删除模糊的语言和不透明的决策。这些企业表示，不知道究竟哪些法律的实施导致他们放慢执行速度，并对进一步投资有所担忧。他们认识到这个问题并不仅限于当地法规，涉及范围包括海关、网络安全和环境法规。

激励措施

一些公司提到，地方政府提供的外国投资激励措施少于中国其他省份，这使得企业到其他地方进行一些运营活动。虽然其中一些激励措施与上述人才保留问题有关，但其他激励措施与资本回扣、税收激励或 IT 基础设施激励相关。

商业生态系统

一些企业表示，大连的商业 / 大学 / 政府 / 活动环境仍然未得到充分利用，因为这些组织的合作有限。例如，几家酒店公司表示近年来政府、大学和商业活动稳步下降，导致酒店利用率下降，低层公司雇用的大学生减少，公司税收减少，政府举办发展活动的资金减少。其他成员表示，他们希望政府能通过与商会会员合作改善大学招聘的情况，留住更多的学生。

机会

商会东北分会成员列举了在辽宁二线城市开展业务的一些机会。首先，会员们乐观地认为，无论是在国内消费方面还是在中央政府改善债务结构以减少不良国有企业方面，商业环境都会继续好转。虽然对于正在进行的美中贸易存在一些担忧，但分支办公室会员还没有将其列为阻碍业务发展的首要问题，并且乐观地认为这一问题将在 2019 年得到解决。

他们同时希望地方政府能够对本报告的反馈做出回应，并继续改善营商环境。会员公司也希望商会能够与辽宁二线城市政府合作，改善上述问题。

虽然前几年成员们提到劳动力成本上升是增长的主要障碍，但 2018 年它不在是主要问题。相反，人们乐观地认为，劳动力将能够改善、调整经济发展中的高附加值行业，并帮助其成功。

东北地区中产阶级的稳步增加继续推动国内消费增长。国内消费的增长和对外国品牌和外国质量的需求增加，将继续为在中国开展业务的外国公司创造更多机会。

除了国内消费机会，会员们还在应对环境挑战和环境保护中看到了机会。中国东北地区面临着空气和水环境质量持续恶化的挑战，但中央政府愿集中精力解决这些问题，这便为在环境保护和治理方面的专业外国企业创造了机会。

中国创新能力不断增强在会员们看来是最大商机。对于寻求在中国运营的外国企业来说，创新的不断发展和相对较低成本的劳动力是一个有吸引力的组合。

mism that the labor force would be able to innovate, adapt, and be successful in high-value sectors of the economy.

The steady rise of the middle class in Northeast China continues to fuel domestic consumption. Coupled with increasing customer demand for foreign brands and foreign quality, these factors continue to create opportunities for foreign companies doing business in Northeast China.

Beyond domestic consumption, members see opportunities to address environmental challenges and improve environmental protection. The continuing challenge posed by poor air and water quality in Northeast China coupled with the central government's focus on addressing those conditions is creating opportunities for foreign enterprises with expertise in environmental protection and remediation.

China's growing capacity for innovation rounded out the top business opportunities identified by member companies. An increasingly innovative and relatively low-cost workforce is an attractive combination for foreign enterprises operating in China.

For the US Government:

- **The US Consulate in Shenyang should continue to reach out to local governments in more collaborative and creative ways to help US businesses find solutions to the challenges raised in this chapter.**
- Improve the ability of member companies to obtain visas for Chinese nationals on work assignments in the US.
- Continue to work toward a trade agreement that prioritizes intellectual property protection, a level-playing field, and transparent regulatory enforcement.

Recommendations

For the Liaoning Government and Municipal Governments of Shenyang and Dalian:

- **Continue round-table events with foreign businesses regarding the regulatory and operational challenges they face and continue to identify practical solutions to address them.**
- Continue to provide infrastructure and incentives to increase foreign investment in Liaoning.
- Meet with the AmCham China Northeast Chapter regularly to resolve issues facing foreign businesses. Provide a provincial government channel for resolving inconsistent policies and enforcement.
- As new policies and laws are promulgated, provide foreign businesses with appropriate and timely guidance on implementation in Liaoning.
- Ease the process for foreign employees to apply for work visas and permanent residence status. The simplified procedures utilized in Shanghai are a good model.
- Support events that bring together AmCham China Northeast, education institutions, and government officials. These events include AmCham China Northeast events, job fairs, and training.
- Offer provincial and local government websites and documentation in bilingual formats (Chinese and English) to improve understanding among foreign enterprises.

建议

对辽宁省政府和沈阳 / 大连市政府：

- 继续与外国企业开展圆桌会议，讨论企业面临的监管和运营挑战，并找到实用解决方案。
- 继续提供基础设施和激励措施，增加外国公司在辽宁省投资。
- 定期与美国商会会面，以解决外国企业面临的具体和一般性问题。通过省政府为企业提供渠道解决不一致的政策和执法。
- 在颁布新政策和法律之时，为外国企业提供如何在辽宁省实施的指导。
- 根据上海现有的简化程序，简化外国员工申请工作签证和永久居留身份的流程。
- 支持美国商会 / 教育 / 政府合作伙伴活动，如美国商会活动、招聘会和培训。
- 如果政府表格和网站以双语形式提供，会员将不胜感激，这样外国企业可以更为清楚。

对美国政府：

- 美国驻沈阳领事馆应继续以更具协作性和创造性的方式与地方政府联系，以帮助美国企业找到解决本章所提出挑战的解决方案。
- 提高会员公司获得签证的能力，让员工在美国完成工作任务。
- 继续努力达成贸易协议，重视知识产权保护、公平竞争和透明的法规执行。

Shanghai

This chapter was contributed by The American Chamber of Commerce in Shanghai (AmCham Shanghai).

Introduction

Situated at the mouth of the Yangtze River, Shanghai is mainland China’s financial center, home to the country’s first Free Trade Zone (SHFTZ) and the greatest number of regional headquarters of multinational corporations and foreign-invested research and development (R&D) centers of any city in China. According to the Shanghai Municipal Commission of Commerce, services account for almost 70% of the city’s GDP, higher than any other city in mainland China. The city remains attractive for foreign investment. Between January and November 2018, the city introduced over 4,000 foreign-invested projects with paid-in capital of approximately US \$16.09 billion, according to the Shanghai Statistics Bureau.

Shanghai’s development strategy is centered around an initiative to transform the city into what the municipal government has termed the “Five Global Centers.” The first four Centers—finance, economy, trade, and shipping—were established under the city’s 5th Shanghai Master Plan (1999-2020). “Innovation” was added to the 6th Master Plan, “Shanghai: 2035.” Given Shanghai’s advanced development, this places the city at the forefront of the central government’s “China Dream” to turn the country into a “moderately prosperous society” by 2020, a “modern socialist country” by 2035, and a “prosperous, strong, democratic, culturally-advanced, and harmonious socialist country” by 2050. Specific development targets are laid out in Shanghai’s 13th Five-Year Plan (FYP) 2016-2020, designed in coordination with China’s 13th national FYP (2016-2020).

Shanghai has seen substantial progress in each of these five sectors, but further reform is needed. Each of Shanghai’s Five Centers remains hampered by over-regulation and administrative inefficiency. More troublingly, certain sectors of the economy, in particular internet-based news information services, surveying and mapping services, and retail pharmacies, among others, have remained entirely closed to foreign investment.

The China International Import Expo (CIIE), held from November 5-10, 2018 in Shanghai, was billed as a symbol of China’s (and Shanghai’s) commitment to continued economic opening. AmCham Shanghai encourages the government to implement this commitment by undertaking

reforms that address structural barriers to entry facing foreign firms in the China market. Removing these barriers will be instrumental to Shanghai realizing its goal of establishing the “Five World Centers.”

Shanghai’s Five Centers	
Economy	Promote high-value services and manufacturing
	Attract multinational corporations
	Improve ease of doing business
Trade	Increase trade and boost competition
	Strengthen Shanghai Free Trade Zone
	Prioritize E-commerce
Finance	Deepen financial markets
	Attract global financial institutions
	Allow greater market access for foreign investors
Shipping	Improve infrastructure of Shanghai’s sea and airports
	Favorable position at Delta of Yangtze River
	Invest in green shipping
Innovation	Creation of Shanghai stock Exchange Science and Technology Board
	Promote knowledge economy and high-quality development
	Encourage foreign-invested R&D Centers

Source: Shanghai 2035

上海

本章由上海美国商会撰写。

引言

上海位于长江口，是中国大陆的金融中心，设有中国的第一个自由贸易区（上海自贸区），是中国跨国公司地区总部和外资研发中心数目最多的城市。根据上海市商务委员会的统计，服务业占该市GDP的近70%，高于中国大陆其他任何城市。该市对外商投资仍具有吸引力。根据上海市统计局的统计，2018年1月至11月，该市引入了4000多个外资项目，实收资本约为160.9亿美元。

上海的发展战略围绕着将该市打造为市政府所称的“五个全球中心”进行。前四个中心—金融、经济、贸易和航运是根据该市第五轮《上海市城市总体规划（1999–2020）》确立的。“创新”被加入到第六轮总体规划，即“上海：2035”中来。鉴于上海的飞速发展，这将该市置于中央政府实现“中国梦”的最前沿，其中包括将中国至2020年全面建成“小康社会”，至2035年建成“现代化社会主义国家”，至2050年成为“繁荣、富强、民主、文明、和谐的社会主义国家”。具体发展目标是在上海十三五规划（2016–2020）中制定的，是配合了国家十三五规划（2016–2020）而设计的。

上海在这五个中心领域都取得了实质性进展，但还需要进一步改革。上海五个中心的发展仍受到过多监管和行政效率低下的阻碍。更令人担忧的是，某些经济行业，尤其是基于互联网的新闻信息服务、测绘服务和零售药店等，完全不对外商投资开放。

2018年11月5日至10日在上海举行的首届中国国际进口博览会（CIIE），被视为中国（和上海）兑现进一步开放经济承诺的象征。上海美国商会鼓励政府通过推行改革来解决外国公司在中国市场准入上的结构性障碍，从而实现这一承诺。消除这些障碍将有助于上海实现其“五个世界中心”的目标。

将上海打造为国际金融中心

2008–2009全球金融危机之后，中国国务院瞅准了这个时机力争将上海打造为可与美国主导的全球金融体系相比肩的全球金融体系，并承诺至2020年将上海打造成为国际金融中心。

为此，中国采取了重要措施开放其金融业。2018年，全国负面清单中取消了对银行业外资所有权的限制，并允

上海的五个中心	
经济	推动高价值的服务业与制造业
	吸引跨国公司
	提高经商便利化
贸易	增加贸易，促进竞争
	加强上海自贸区
	优先考虑电子商务
金融	深化金融市场
	吸引全球金融机构
	对外国投资商的更大市场准入
航运	改善上海海洋和空港基础设施
	位于长江三角洲的有利位置
	投资绿色航运
创新	上海证券交易所科创板
	推动知识经济和高质量发展
	外资研发中心

源自：上海2035

Shanghai as an International Financial Center

After the 2008-2009 Global Financial Crisis, China's State Council saw an opportunity to present Shanghai as an alternative to the US-led global financial system and pledged to transform Shanghai into an international financial center by 2020.

Accordingly, China has taken important steps to open its financial sector. The 2018 Negative List removed limits on foreign ownership in the banking sector and allowed foreign firms to take up to 51% ownership in firms in financial securities, fund management, futures, and life insurance. The government pledged to remove the remaining ownership restrictions by 2021. Although these restrictions were removed on a nationwide basis, the effects in Shanghai are expected to be particularly pronounced as it is the country's financial hub. In July the Shanghai municipal government issued the *100 Measures*, a cocktail of policies that included new commitments to open the financial sector in a bid to upgrade Shanghai's status as an international financial center.

The government also continues to experiment with new reforms. At the CIIE President Xi Jinping announced the creation of a new science and technology innovation board on the Shanghai Stock Exchange to better connect innovation with capital. In August Shanghai opened the country's first court specializing in finance-related court proceedings and designed to curb financial risk.

And yet many challenges stand in the way of Shanghai becoming an international financial hub, some of which stem from national policies outside the remit of the municipal government. In the banking sector, protectionist policies have allowed Chinese banks to establish market dominance. Foreign banks have been forced to open branches in under-served or rural communities only and faced administrative licensing delays. In the E-payment sector, despite repeated pledges by the government, Mastercard and Visa continue to be denied access to the market.

The government also continues to intervene in financial markets and tightly manage the RMB exchange rate. In August 2018, China imposed reserve requirements for financial institutions and issued statements suggesting it was prepared to do more to stem a declining RMB exchange rate. Frequent government intervention in the market creates operational challenges for financial institutions who find themselves forced to adapt to sudden policy changes. Foreign banks are at a disadvantage because they often receive informal, last-minute notification of policy changes from Chinese regulators and have less time to prepare than their domestic counterparts. Beyond operational challenges, an economic concept known as the "impossible trinity" suggests that frequent government intervention will create structural obstacles in Shanghai's transition towards an international financial center. Under the "impossible trinity" a country can have any two of the following: free capital

mobility, a managed exchange rate, and independent monetary policy. If China continues to prioritize exchange rate stability, it will have to sacrifice a liberal capital account, one of the hallmarks of an open financial system.

Shanghai as an International Trade Center

In August 2016 the Shanghai municipal government released plans to transform the city into an international trade center during its 13th FYP (2016-2020). The plan prioritizes e-commerce, increasing trade, strengthening the SHFTZ and regulatory reforms to bolster competition.

The country's first FTZ was established in Shanghai in September 2013. It is home to more than 55,000 registered enterprises, half of which are foreign. Although the SHFTZ comprises only 2% of Shanghai's total land area, it constitutes about 25% of the entire city's GDP and 40% of its total trade. It has served as a testing ground for trade and economic reforms, many of which have been gradually extended to other cities and regions in China. SHFTZ may be a victim of its own success, however. According to AmCham Shanghai's June 2018 *Trade Environment Satisfaction Survey* which received responses from more than 70 companies, the SHFTZ continues to become less important to American business operations as these policies and reforms are implemented across a greater number of cities in China.

Reforms introduced in the FTZ in the last several years by the General Administration of Customs and Shanghai Customs Bureau include the single-window system, free trade accounts, reduced customs duties, and streamlined clearance processes. The single-window system, which is designed to improve customs clearance efficiency and reduce costs by allowing companies to declare cargo and taxes together via an online platform, has been the most helpful reform according to AmCham Shanghai's 2018 *Trade Environment Satisfaction Survey*.

In November 2018, the State Council announced 53 new measures to deepen reform in the country's 11 provincial-level FTZs. Among the new measures, the SHFTZ received clearance to work with the Ministry of Human Resources and Social Security to conduct pilot projects to support non-standard employment, temporary workers, part-time and on-call work. Existing mandatory workforce ratios for foreign technicians in foreign-invested construction, engineering and architectural firms will also be loosened. This reform should allow more foreign workers to be hired in these industries.

Shanghai as an International Economic Center

Shanghai has long served as a bridge between China's

许外国公司在金融证券、基金管理、期货和人寿保险领域公司中持有高达 51% 的所有权。政府承诺在 2021 年前取消剩余的所有权限制。虽然这些限制在全国范围内被取消，但对上海的影响预计会尤其显著，因为上海是中国的金融中心。2018 年 7 月，上海市政府出台了 - “扩大开放 100 条” 行动方案，包括开放金融业的新承诺，旨在提升上海国际金融中心的地位。

政府还将继续尝试新改革。习近平主席在 CIE 上宣布在上海证券交易所设立新的科创板，以更好地将创新与资金联系起来。2018 年 8 月，上海设立了中国首家金融法院，旨在遏制金融风险。

然而，在上海成为国际金融中心的进程中仍存在着许多挑战，其中一些源于受制于市政府职权范围之外的国家政策。在银行业，保护主义政策使中国的银行确立了市场支配地位。外资银行被迫只能在服务水平低下或农村社区开设分支机构，不能及时被给予行政许可。在电子支付领域，尽管政府一再承诺开放，但是万事达卡和维萨卡仍不被允许进入市场。

政府还继续干预金融市场，严格管理人民币汇率。2018 年 8 月，中国对金融机构实施准备金率规定并发表声明，表示准备采取更多措施阻止人民币汇率下跌。政府频繁干预市场给金融机构带来运营挑战，并迫使他们适应突然的政策变化。为此，外资银行处于不利地位，因为它们往往在最后一分钟收到中国监管机构关于政策变化的非正式通知，而且与其国内同行相比，准备时间更短。除了运营挑战之外，被称为“不可能的三位一体”的经济概念表明，频繁的政府干预将会在上海向国际金融中心的发展进程中形成结构性障碍。在“不可能的三位一体”论之下，一个国家必须在自由资本流动、汇率管理和独立货币政策之间做出选择。如果中国继续优先考虑汇率稳定，将不得不牺牲自由资本账户，这是开放金融体系的标志之一。

将上海打造为国际贸易中心

2016 年 8 月，上海市政府发布了在“十三五”期间（2016-2020）将该市打造成国际贸易中心的规划。该规划优先考虑电子商务、增加贸易、加强上海自贸区和监管改革，以加强竞争。

中国第一个自由贸易区于 2013 年 9 月在上海成立。它拥有 55000 多家注册企业，其中一半是外国企业。虽然

上海自贸区只占上海土地总面积的 2%，但却占整个城市 GDP 的 25% 左右，总贸易量的 40%。其已成为贸易与经济改革的试验田，其中一些政策已逐步扩展复制到中国的其他城市和地区。然而，上海自贸区也可能是其自身成功的牺牲品。根据 2018 年 6 月发布的《上海美国商会 2018 年贸易环境满意度调查》显示（受访企业逾 70 家），上海自贸区对美国商业运营的重要性每况愈下，因为这些政策和改革已在中国多个城市实施。

过去几年，海关总署和上海海关在自贸区实施的改革包括单一窗口系统、自由贸易账户、降低关税和简化清关流程。根据《上海美国商会 2018 年贸易环境满意度调查》显示，旨在通过允许公司借助在线平台申报货物和税收来提高通关效率和降低成本的单一窗口系统，是卓有成效的改革。

2018 年 11 月，国务院宣布了 53 项新举措，在中国 11 个省级自贸区深化改革。在这些新举措中，上海自贸区获准与人力资源和社会保障部合作开展试点项目，以支持非标准就业、临时工、兼职和随时招工作。针对外资工程和建筑公司的外国技术人员的现有强制性劳动力比率也将放宽。该项改革应该允许在这些行业雇佣更多的外国工人。

将上海打造为国际经济中心

长期以来，上海一直为中国国内市场与国际市场搭建了的桥梁。截至 2018 年 7 月，逾 642 家跨国公司（MNC）在上海设立了地区总部，是中国大陆城市中总部最多的城市。虽然这些公司仅占上海所有外资企业的 1.3%，但却占上海总税收的 11.6% 和净利润的 17.3%。上海市政府越来越多地鼓励地区总部成为集管理、决策、采购、销售、研发和资本服务于一体的“多功能总部”。

为更好地提升营商便利化程度以及上海对外国投资商的吸引力，该市简化了各类行政审批程序。根据世界银行《2019 营商环境报告》显示，该报告对上海和北京的改革进行了追踪，并总结出中国通过以下方式改善其商业环境：

- 简化企业的社会保障登记；
- 完善在房地产登记处获得建筑许可证和登记新建筑物的程序；
- 通过免费连接流程和为消费者引入移动应用程序来改善供电情况，将获得电力连接的平均时间从 143 天减少至 43 天；

domestic market and international markets. By July 2018, Shanghai served as the regional headquarters for more than 642 multinational corporations (MNCs), the most of any mainland Chinese city. Although these corporations represent only 1.3% of all foreign-invested companies, they account for 11.6% of aggregate taxes and 17.3% of net profits. The Shanghai municipal government is increasingly encouraging regional headquarters to become “multifunctional headquarters” integrating management, decision-making, purchasing, sales, R&D and capital services under one roof.

To improve the ease of doing business locally and make Shanghai more attractive to foreign investors, the city streamlined a variety of administrative procedures. According to the 2019 World Bank *Ease of Doing Business Report*, which tracks reform in both Shanghai and Beijing, China improved its business climate by:

- Simplifying social security registrations for businesses;
- Improving the process to obtain building permits and register new buildings with the real estate registry;
- Improving access to electricity by making the connection process free of charge and introducing a mobile application for consumers, reducing the average time to obtain an electricity connection from 143 days to 43 days;
- Simplifying tax payments through the abolition of the business tax and several reforms to streamline compliance. China’s reforms resulted in it breaking into the top 50 countries on the World Bank’s *Ease of Doing Business Report* for the first time.

Officials want to transition Shanghai’s manufacturing sector to high-value added products and services. Shanghai’s 13th FYP set a target for Strategic Emerging Industries—led by the advanced information industry, which includes integrated circuits and automobiles—to account for more than 20% of the city’s GDP by 2020. Officials are also prioritizing intelligent, service-oriented, and green improvements in manufacturing. Shanghai’s *100 Measures* include pledges to upgrade sectors like telecommunications, advanced manufacturing, automobile, aircrafts, and shipbuilding.

Compared with other global cities, however, Shanghai still faces challenges attracting and retaining international top-level talent. Domestically, the *hukou* system presents barriers to entry for talented workers from elsewhere in mainland China; internationally, processes to obtain and renew Work Permits, Permanent Residency Visas, criminal records and internship visas should be streamlined if the city wishes to attract talent from abroad (see Visa Chapter).

Shanghai as an International Shipping & Logistics Center

Shanghai is well-positioned geographically to become a

major air and sea shipping center. Located at the mouth of the Yangtze River, Shanghai’s container port—the world’s busiest—handled a throughput of 42.01 million twenty-foot equivalent units (TEUs) in 2018, a 4.4% year-on-year increase from the same period in 2017. The volume of air cargo managed by Shanghai’s Pudong International Airport (PVG) in the same period decreased by 1.1% from 2017 to 3.81 million metric tons of mail and freight, but this still constitutes an 8.83% increase from 2016. Shanghai hopes to exceed 42 million TEUs in its container port operations and move at least 4.4 million metric tons of air cargo through its airports by 2020.

In June 2018 the Shanghai government released a Three-Year Action Plan (2018-2020) to consolidate the city’s status as an international shipping center. This plan proposed six initiatives:

- Increase the efficiency and infrastructure of the city’s sea and air ports;
- Optimize and improve the hub port collection and distribution system;
- Promote green, safe, and efficient shipping standards;
- Comprehensively upgrade the level of modern shipping services;
- Strengthen the coordination of regional ports and shipping, especially in the Yangtze Delta Region; and
- Improve coordination mechanisms between the relevant national ministries to complete Shanghai’s transition towards a fully-functioning international shipping center by 2020.

The city will also consolidate maritime legal services and arbitration, shipping finance and insurance, maritime education and R&D, shipping consultancy, and data services.

But while Shanghai has clearly established itself as a world leader in volume of shipping, it lags behind other global ports in terms of shipping-related services. For example, US FTZs categorize cargo by one of four “statuses” of merchandise (Privileged Foreign Status, Zone-Restricted Status, Nonprivileged Foreign Status, and Domestic Status), whereas Shanghai’s FTZ only sorts cargo into “bonded” and “non-bonded,” reducing the ability of customs authorities to accurately classify, supervise, and impose excise duties on cargo.

Shanghai as an International Innovation Center

Shanghai was home to 400 foreign-invested R&D centers by the end of October 2018, the most of any city in China. According to the Shanghai Municipal Commission of Commerce, these centers invest mostly in high-tech industries, including pharmaceuticals and biotechnology, information technology, automobile and auto parts, chemicals,

- 通过取消营业税和若干改革简化纳税，以简化合规。中国的改革使其首次跻身世界银行经商便利指数前50强。

政府官员们希望将上海的制造业转变为高附加值的产品和服务。上海的十三五规划确定了以先进的信息产业为主导的战略性新兴产业的目标，其中包括至2020年集成电路和汽车产业GDP产出占全市20%以上。政府官员们也优先考虑制造业的智能化、服务化和绿色化。上海市政府的“扩大开放100条”行动方案包括承诺升级电信、先进制造、汽车、飞机和造船等行业。

然而，与其他全球城市相比，上海仍然面临着吸引和留住国际顶尖人才的挑战。放眼国内，户口制度对来自中国大陆其他地方的优秀人员入沪形成了障碍；放眼国际，如果上海想要吸引国外人才，获得和续签工作许可证、永久居留签证、犯罪记录和实习签证等相关程序应该加以简化（见签证章节）。

将上海打造为国际航运物流中心

上海优越的地理位置使其成为主要的空运和海运中心。上海的集装箱港口位于长江口，是最繁忙的集装箱港口，其2018年的吞吐量为4201万个20英尺标准箱（TEU），较2017年同比增长增长了4.4%。同期上海浦东国际机场的航空货运量为381万吨邮件和货物，较2017年同比下降了1.1%，但较2016年仍同比增长了8.83%。上海希望其集装箱港口运营量超过4200万个标准箱，并希望至2020年通过其机场至少运送440万公吨航空货物。

2018年6月，上海市政府发布了一项三年行动计划（2018-2020），以巩固该市国际航运中心的地位。该计划包含了六项举措：

- 提升城市海空港的效率和基础设施；
- 优化改进枢纽港口集散系统；
- 提高绿色、安全、高效的运输标准；
- 全面提升现代航运服务水平；
- 加强区域港口和航运的协调，特别是在长江三角洲地区；
- 改善国家相关部委之间的协调机制，完成上海向功能完备的国际航运中心的转变。

该市还将加强海事法律服务与仲裁、航运金融与保险、

海事教育与研发、航运咨询和数据等服务。

虽然上海在航运量方面已明显处于世界领先地位，但在航运相关服务方面却远远落后于其他全球港口。例如，美国自由贸易区根据商品的四种“状态”（特权外国地位、区域限制地位、非特权外国地位和国内地位）之一对货物进行分类，而上海自贸区仅将货物分为“保税”和“非保税”，降低了海关机构对货物准确分类、监督和征收消费税的能力。

将上海打造为国际创新中心

截至2018年10月底，上海拥有400家外资研发中心，位居全国城市之首。据上海市商务委员会称，这些中心主要投资于高科技产业，包括制药和生物技术、信息技术、汽车及汽车零部件、化工、新能源和新材料。世界十大制药公司中有七家在上海设立了研发中心，包括辉瑞、诺华、罗氏、强生、葛兰素史克、艾伯维和安进。

上海下辖各区正在根据本地区特有的优势发展其特定产业：宝山（智能设备、新材料和邮轮经济）；长兴岛（船舶和海洋工程设施）；浦东（集成电路、生物医药和智能网联车辆）；闵行（军民融合）；奉贤（生物医学）；临港（智能制造设备）；金山（精细化工和汽车配件）；松江（智能设备制造与智能安防）；青浦（电子信息）和嘉定（汽车配件）。

为帮助上海确立其创新中心地位，仍有以下几个突出问题有待解决：

- 互联网限制和相对慢的互联网速度继续延缓关键业务功能。信息的自由流动是成功研发的关键组成要素；
- 外国公司仍然关注2017年出台的网络安全法。公司试图确保国际公司不会因网络安全和对法律实施的澄清而受到歧视；
- 在知识产权（IP）执法方面，上海仍然落后于全球标准。法院只接受明确的知识产权侵权案件，即使侵权被起诉，罚款通常也太低，无法带来威慑力；
- 外资企业几乎没有机会与当地大学和利益相关者开展有意义和卓有成效的研发合作。

上海的创新生态系统并不像全球领先的创新中心那样对外资企业开放。遗憾的是，虽然上海市政府可以采取措解决知识产权问题并直接在企业和大学之间建立研发合作，但目前互联网和网络安全改革必须由中央政府推进。

and new energy and new materials. Seven of the world's ten largest pharmaceutical companies—Pfizer, Novartis, Roche, Johnson & Johnson, GSK, AbbVie and Amgen—have set up R&D centers in Shanghai.

Districts across Shanghai are developing specific industries according to district-specific advantages: Baoshan (smart devices, new materials and cruise economy); Changxing Island (ships and marine engineering facilities); Pudong (integrated circuits, biomedicine and intelligent connected vehicles); Minhang (civil-military integration); Fengxian (biomedicine); Lingang (intelligent manufacturing equipment); Jinshan (fine chemicals and auto parts); Songjiang (intelligent equipment manufacturing and intelligent security); Qingpu (electronic information); and Jiading (auto parts).

Several outstanding challenges still need to be addressed to help Shanghai establish itself as a center of innovation:

- Internet restrictions and relatively slow internet speeds continue to delay critical business functions. The free flow of information is a critical component of successful R&D;
- Foreign firms remain concerned about the 2017 *Cybersecurity Law*. Firms are seeking assurances that international companies will not be discriminated against on the basis of cybersecurity and clarification on how the law is to be implemented.
- Shanghai still lags behind global standards with respect to intellectual property (IP) law enforcement. Courts only accept clear-cut cases of IP infringement and, even if prosecuted, the fines levied are often too low to be a successful deterrent.
- Foreign-invested enterprises have few opportunities to launch meaningful and effective R&D collaboration with local universities and stakeholders.

The innovation ecosystem in Shanghai is not as open to foreign-invested companies as leading global innovation hubs. Unfortunately, while the municipal government can take steps to address IP concerns and establish R&D collaboration between businesses and universities directly, internet and cybersecurity reform must presently come from the central government.

more attractive as an international economic, financial, trade, shipping, and R&D center.

- Issue detailed regulations to carry out the *Foreign Investment Law* after its passage by the National People's Congress. The law aims to provide the necessary mechanisms on the facilitation, protection and management of foreign investment. It will replace three current laws governing joint ventures (JV's) and wholly- foreign owned enterprises. Notably, forced technology transfer by administrative measures will be forbidden.
- Implement incentives for local governments to establish R&D centers in their districts. R&D centers foster innovation but directly generate little tax revenue, do little to count toward key government performance indicators, and are consequently often rejected by local development authorities. One solution could be for Shanghai to issue GDP and tax revenue requirements just for R&D centers.

Recommendations

For the Shanghai Municipal Government:

- **Fully implement the reform and opening policies outlined in Shanghai's "100 Measures," which will help improve the business environment for both local and foreign companies and make Shanghai**

建议

对上海市政府：

- 全面实施上海市政府的“扩大开放 100 条”行动方案中提出的改革开放政策，这将有利于改善本地和外国公司的经商环境，使上海成为更具吸引力的国际经济、金融、贸易、航运和研发中心。
- 在全国人民代表大会通过《外商投资法》后，出台其实施细则。该法旨在为对外投资的便利化、保护和管理提供必要的机制。它将取代现行的三项合资企业和外商独资企业法律。值得注意的是，该法下禁止通过行政措施进行强制技术转让。
- 对地方政府采取激励措施，鼓励其在所辖区域内建立研发中心。研发中心能够促进创新，但直接创造的税收很少，鲜被计入关键的政府绩效指标，因而经常被地方发展机关拒之门外。对上海而言，一个可能的解决方案是仅对研发中心推出 GDP 和税收收入规定。

Tianjin

Introduction

Tianjin is China's fourth largest city by population, northern China's most important seaport and home to a significant industrial and service sector base. It also leverages its status as a Free Trade Zone (FTZ) to attract business to northern China. Despite this, the city is often overshadowed by its larger and politically more powerful neighbor, Beijing. Recent plans, such as the Jing-Jin-Ji integration project, which aims to integrate the northern Chinese region that comprises Tianjin, Beijing and Hebei, has yielded mixed results for Tianjin. For example, while train services between Tianjin and Beijing have increased in frequency and capacity, Beijing is nearing completion of its second international airport while Tianjin's relatively new airport still operates at less than full capacity. There are concerns that overcapacity in the region could increase with the development of the Xiong'An New Area, while leaving existing areas of Tianjin unfinished or underdeveloped.

For nearly a decade Tianjin had been known as one of China's fastest growing economies. In 2018 economic growth slowed substantially (to an estimated 3.6%), and evidence emerged that reported economic growth in previous years had been overstated. By the end of 2018, Tianjin had fallen from one of China's fastest growing economies to near the bottom in terms of year-on-year (y/y) economic growth rates.

Despite the slowdown, Tianjin boasts a broad industrial base, a growing service sector and a nascent domestic tourism sector. Some manufacturing firms pushed out of Beijing by government policy and higher costs have turned to Tianjin as an alternative location. The shortage of qualified labor in Tianjin, however, as well as rising labor costs remains a challenge for both manufacturing and service sector firms.

The role of Tianjin's municipal and district governments in leading development policy is more prominent than in other cities. For example, a large number of new property developments are nearing completion in Hexi District government's "New Badali" area, while new office towers and a museum were completed in the Binhai New Area's Yujiapu district. These projects were not undertaken by private firms but built by government-backed enterprises. The visible role of the government means these areas receive investments

that the private sector is generally unwilling to seed, but it has also led to a glut of high-end housing, office, and retail space, at least in the near term.

Surveys of AmCham China members in Tianjin have produced mixed results. Some members reported continuing or growing profitability, while a majority were concerned about a deteriorating investment environment. Members reported concerns about rising salary and social welfare costs coupled with a difficulty in finding appropriate skillsets. Concerns were also raised about the negative impact of environmental degradation on local living standards. Recent trade tensions have magnified claims that Chinese-owned businesses continue to be given preferential market access. Some members viewed the government's participation in the economy as a stabilizing force while others felt government-backed companies created an additional marketplace competitor.

The data in this chapter, unless otherwise specified, is based on responses to the 2019 AmCham China *Business Climate Survey* conducted in late 2018, and more targeted surveys of AmCham China members in Tianjin in early 2019.

Tianjin's Business Climate

Of particular concern, 44% of members reported the business environment was "deteriorating" with only 26% saying it was "improving." These results represented an almost complete reversal of sentiment from last year when 40% reported an improving climate.

Investment Environment

When asked how they felt about Tianjin's business environment as compared to the investment environment in other cities, just under half (48%) felt Tianjin's investment environment was "about the same" as other cities, nearly 15% felt Tianjin had a "better investment environment" than other cities, while 11% felt Tianjin's was "worse." Just over one-quarter of our members reported they did not have a view on this topic.

When asked about plans for additional investment in 2019, the results were similar to 2018. Approximately two-thirds

天津

引言

中 国人口第四大城市—天津，是中国北方最重要的海港以及重要的工业和服务业基地，该城市还以其自由贸易区（自贸区）的优势地位吸引大批企业进入到中国北方。尽管如此，对比规模更大、政治影响力更强的邻市北京，天津的优势略显逊色。在近期发展计划中，京津冀一体化项目旨在整合天津、北京以及河北所在的中国北方区域，此举对天津市的影响好坏参半。例如，尽管京津城际的列车班次和载客量都有所增加，但北京的第二个国际机场已接近完工，而天津相对较新的机场仍运行不足。有人担心，随着雄安新区的开发，该地区的产能过剩将会加剧，而天津现有地区则可能处于未建成或发展滞后的状态。

近十年来，天津一直被称为中国发展最快的城市之一。2018年，经济增长大幅放缓（估计为3.6%），有证据显示前几年报道公布的经济增长被夸大了。截至2018年底，天津已经从中国增长最快的经济体之一下降到同比经济增长率排名末端的城市。

尽管增速放缓，但天津拥有广泛的工业基础、不断发展的服务业和新兴的国内旅游业。一些被政府政策和更高成本“推出”北京的制造企业已将天津作为另一个选择。然而，天津的合格劳动力短缺以及劳动力成本上升对制造业和服务业公司来说仍然是一个挑战。

天津市及其区政府在主导发展政策方面的作用比其他城市更为突出。例如，河西区政府的“新八大里”地区的大量新房地产开发项目即将完工，滨海新区的于家堡区建成新的办公大楼和博物馆。这些项目不是由私人公司承担，而是由政府支持的企业建造的。政府的明显作用意味着，这些地区得到的投资，通常是私营部门不愿投资的，但却导致了高端住宅、写字楼和零售场所的过剩，至少短期内如此。

中国美国商会天津成员的调查结果好坏参半，一些成员报告持续盈利或盈利增长，而大多数成员则担心投资环境恶化。成员们担心薪酬和社会福利成本上升的同时很难找到合适技能的雇员。同样，还对环境退化给当地生活水平造成的消极影响表示关切。最近紧张的中美贸易局势加剧了有关给予中国企业继续享受更佳市场地位的说法。一些成员认为政府参与经济是一种稳定力量，而另一些成员则认为政府支持的企业创造了一个额外的市场竞争对手。

除非另有说明，本章节的数据源自2018年底完成的《2019中国美国商会商务环境调查报告》，以及2019年初针对中国美国商会天津地区会员的问卷调查。

天津的商务环境

特别值得关注的是，44%的成员报告说商业环境有所“恶化”，仅有26%的成员说商业环境有所“改善”。去年有40%的受访者表示商业环境有所改善，今年的调查结果与去年几乎完全相反。

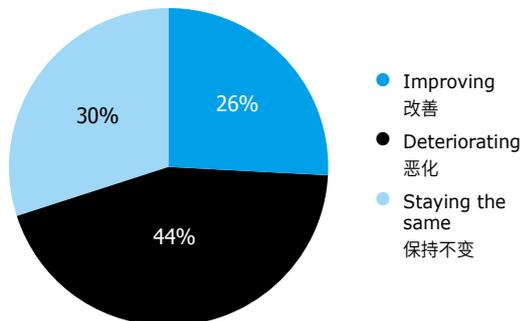
投资环境

当被问及与其他城市的投资环境相比，他们对天津的商业环境感觉如何时，只有不到一半的人（48%）认为天津的投资环境与其他城市“差不多”，近15%的人认为天津相比其他城市有“更好的投资”环境，而11%的人认为天津的情况更“糟糕”。超过四分之一的成员对此话题没有观点。

当被问及2019年是否增加投资计划时，其结果与2018年相似。约三分之二的受访者表示，他们“计划增加投资”，三分之一的受访者表示“没有增加投资的计划”。成员们对自己的投资计划略显乐观，41%的受访者表示，计划投资将比2018年增长11%或更多，只有32%的受访者表示，计划投资将与2018年持平。

Figure 1. What is the Overall Investment Climate Like in Tianjin?

图 1. 如何评价天津的整体投资环境?



Source: AmCham China, Tianjin Chapter
来源: 中国美国商会, 天津办公室

responded they were “planning to make additional investments” while one-third reported “no plans for additional investments.” Members were marginally more optimistic about how much they planned to invest, with 41% of respondents noting those planned investments would increase by 11% or more relative to 2018, and only 32% reported planned investment would be at the same level as in 2018.

Revenue

Some 52% reported higher revenue in 2018 as compared with 2017, while 19% said their revenues were down year-on-year and 30% said their revenues in 2018 were unchanged from 2017.

Growth Prospects

AmCham China asked its members to identify potential drivers of their business in Tianjin. The top three choices were ① Tianjin as an FTZ for global or regional operations, ② the growth of domestic consumption, and ③ Tianjin as a sourcing or manufacturing center. In support of Tianjin’s widening economic base, survey respondents displayed a generally positive outlook on prospects of Tianjin becoming a hub for R&D or high value-added services.

Recent Developments and Ongoing Regulatory Issues

While many firms are optimistic about Tianjin’s prospects, 80% of our members indicated that “inconsistent regulations and enforcement” have at least “some negative impact” on their operations. This is a trend that has been consistent in

the AmCham China *Business Climate Survey* for multiple years.

These surveys took place against the backdrop of an ongoing trade dispute between China and the US. When members in Tianjin were asked to rank their key priorities as part of any negotiated outcome to the trade dispute, members companies were clear that measures to level the playing field between foreign and domestic companies are the priority. The top three most common choices were:

- ① “the elimination of measures and practices that give Chinese-owned suppliers of goods and services advantages over foreign-owned ones;”
- ② “elimination of investment restrictions on foreign investors;” and
- ③ “improved enforcement mechanisms to ensure commitments made during negotiations are kept.”

Human Capital and Environmental Challenges

Our members continue to see rising labor costs as a business development challenge in Tianjin. Concerns about “rising labor costs” and “social costs” were the most commonly identified human resources (HR) concerns among member companies. The “lack of adequate management staff” rounded out the top three HR issues in Tianjin.

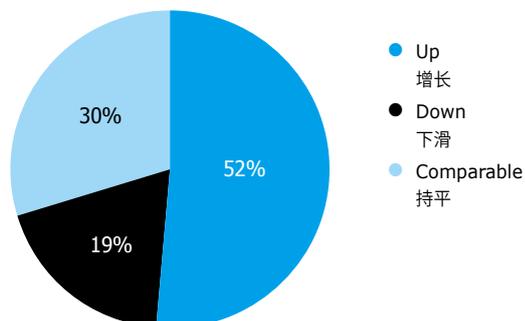
Environmental issues are an increasingly important area for Tianjin member companies both in terms of business opportunities and compliance challenges. The regulatory landscape has shifted dramatically in recent years, with increasingly stringent environmental standards and a greater emphasis on environmental enforcement, particularly after the 2015 explosions in the Tianjin Port. As a manufacturing center, many Tianjin members have been subject to shutdowns during periods of heavy pollution, regardless of their own level of compliance with existing standards.

With respect to solid waste disposal, Tianjin member companies have been affected significantly by the ban on recycled imports imposed by China at the beginning of 2018. A substantial portion of the trade in this business used to go through Tianjin Port.

Moreover, as a municipality directly administered under the central government, Tianjin is one of the first cities required to begin separating and sorting solid waste by the end of 2020. This process was already underway as of 2018. Videos reminding commuters to sort their waste are now playing on the Tianjin subway and materials are being distributed by the City Appearance Management Committee. This waste sorting initiative applies to the enterprise sector and will create more compliance issues for members.

Figure 2. How does the estimated 2018 revenue of your Tianjin operations compare with 2017 results?

图 2. 与 2017 年相比，如何评价贵司 2018 在天津的盈利情况？



Source: AmCham China, Tianjin Chapter
来源：中国美国商会，天津办公室

收入

与 2017 年相比，约有 52% 的受访者表示 2018 年收入有所增加，而 19% 的人表示收入同比下降，30% 的人表示 2018 年的收入与 2017 年相比没有变化。

增长前景

中国美国商会调查其成员在天津开展业务的潜在驱动因素。名列前茅的是 ① 天津作为全球或区域运营的自由贸易区，② 国内消费的增长，③ 天津作为采购或制造中心。为支持天津不断扩大的经济基础，受访者对天津成为研发或高附加值服务中心的前景普遍持乐观态度。

最新进展及现存监管问题

虽然许多企业对天津的前景持乐观态度，但 80% 的成员表示“不一致的法规和执法行为”对其运营或多或少“有些负面影响”，这是多年来中国美国商会营商环境调查中一贯的趋势。

这些调查是在中美之间持续贸易争端的背景下进行的，当天津的会员企业被问及在贸易争端的谈判结果中进行关键事项排序时，会员企业明确表示为国内外企业创造公平的竞争环境是首选。最常见的三个重要选项是：

① “取消使中国商品和服务供应商优于外资企业的措施和做法；”

② “取消对外国投资者的投资限制；” 以及

③ “改进执法机制，以确保在谈判期间作出的承诺得以执行。”

人力成本和环境挑战

我们的会员继续将不断上涨的劳动力成本视为天津商业发展面临的挑战，对“劳动力成本上升”和“社会成本”的担忧是成员公司中最常见的人力资源方面的担忧，“缺乏合格的管理人才”是天津人力资源最突出的三大问题之首。

无论是在商业机会还是合规挑战方面，环境问题对天津成员企业愈发重要。近年来，监管格局发生了巨大变化，环境标准日趋严格，环境执法也越来越受重视，尤其是 2015 年天津港爆炸事件之后。作为一个制造中心，许多天津企业在严重污染期间，不管其是否符合现有的标准，都面临着停产。

在固体废物处理方面，天津的成员企业深受中国在 2018 年初实施的回收进口禁令的影响，这个行业的大部分贸易都是通过天津港进行的。

此外，作为一个直辖市，天津是首批被要求在 2020 年底前开始固体废物分类处理的城市之一，这一进程从 2018 年就开始了。天津地铁上目前播放提醒通勤者整理垃圾的视频，市容管理委员会也在分发相关材料。这种垃圾分类活动适用于企业，并将为成员带来更多的合规问题。

建议

对天津政府：

- 面临增长放缓和企业信心下降情况，政府应该重拾其吸引和留住外商对天津投资的努力，天津需要适当的政策组合吸引人才和投资，以保持与中国其他地区的竞争力。
- 确保政策、法规和法律不分股东国籍对所有公司一视同仁，为新的执法举措加大公共教育力度，例如，最近改善空气质量和环境合规的努力。强调并实施所有政策，法规和执法的透明度。此举将改善业务规划，鼓励持续创新和投资，造福整个城市。

Recommendations

For the Tianjin Government:

- **Facing slower growth and declining business sentiment, the government should revitalize its efforts to attract and retain foreign investment in Tianjin. An appropriate mix of policies that attracts human capital and investment is needed for Tianjin to remain competitive with other locations in China.**
- Ensure that policies, regulations, and laws are applied and enforced equally on all companies regardless of shareholder nationality. Direct greater efforts toward public education for new enforcement initiatives, such as the recent efforts to improve air quality and environmental compliance. Emphasize and implement transparency in all policies, regulations, laws, and enforcement. This will improve business planning and encourage sustained innovation and investment for the benefit the entire city.
- Innovation and technology are pivotal to members' business strategies and will help to address other business challenges discussed earlier. Policies like the Tianjin FTZ and the Jing-Jin-Ji initiative are welcomed by AmCham China. Barriers like uneven treatment of foreign and domestic firms, technology transfer, and insufficient IP protection that dissuade the best local and foreign talent from coming to Tianjin must be removed in order to maximize the potential of these initiatives.
- Market Tianjin more assertively to foreign investors through the use of a professional public relations agency and through coordinated efforts with foreign business chambers to address slowing economic growth and deteriorating business sentiment.
- Continue eliminating investment restrictions by reducing the Negative List, removing equity caps on foreign ownership, and eliminating requirements for foreign companies to form joint ventures. Greater market access for foreign companies will improve competition, spur innovation, attract a larger share of investment to Tianjin, and ease trade tensions between China and the US.

- 创新和技术对成员的商务战略至关重要，并且有助于解决前面讨论的其他业务挑战。天津自贸区和京津冀倡议等政策受到中国美国商会的欢迎，为了最大限度地发挥这些倡议的潜力，必须消除诸如对待国内外公司不平等、技术转让和知识产权保护不足等阻碍优秀的本地和外国人才来天津的障碍。
- 通过专业公关机构更加积极地向外国投资者推荐天津，与外国商会协调行动，以此应对经济增长放缓和商业信心恶化等问题。
- 通过减少负面清单、取消外资持股上限、取消外国公司组建合资企业的条件来继续消除投资限制。外国企业更大程度的市场准入，将改善竞争。刺激创新，吸引更多的投资到天津，并缓解中美之间的贸易紧张局面。

Wuhan / Central China

Introduction

Wuhan, one of China's megacities defined as having population greater than 10 million, is the commercial, financial and transportation center of Central China. With approximately one hundred colleges and universities and 1.3 million university students, Wuhan is a key source of talent for AmCham China businesses. Foreign investment in Wuhan in 2018 reached US \$10.9 billion, an increase of 13.7% over 2017, while foreign investment in Hubei province increased 5.5% over the previous year. McKinsey Global has identified Wuhan as a *City 600*, that is one of 600 cities expected to have the greatest contribution to global economic growth out to 2025.

Member companies applaud the Wuhan government's efforts at improving air quality and traffic, upgrading support for businesses, and attracting top talent. Nevertheless, challenges remain. As identified in the *2019 AmCham China Business Climate Survey* (BCS), which measures business sentiment across the entire AmCham China membership base, "Inconsistent regulatory interpretation and unclear laws & enforcement" remained the top business challenge in 2018 for the fourth year in a row (55% of respondents). Member companies in Wuhan and Hubei continue to struggle with high-level talent retention, traffic safety, and healthcare. AmCham China urges provincial and municipal authorities to review these issues and engage with member companies on how best to address them.

Recent Developments and Ongoing Regulatory Issues

Attracting & Retaining Mid- to High-Level Talent (Wuhan Municipal Government)

AmCham China applauds the efforts of local and provincial governments to attract talented personnel to Hubei. The recent policies on residency permits (*hukou*) have encouraged a greater number of talented young professionals to stay in Wuhan. Current policies focused on attracting global top-level technical experts and leaders, such as providing capital for new, qualified private startup ventures, have also helped to improve the quality of Wuhan's workforce.

Nevertheless, recruiting high-and-mid-level talent remains a significant challenge for companies in Wuhan. As reported by the 2019 BCS, a "shortage of qualified employees" (28%) remains one of the top business challenges across our membership base. If Wuhan wishes to enhance, or even maintain, its position as one of the top tier "high-tech" cities in China, it must attract talented foreign and Chinese senior managers and team leaders. Currently, many potential recruits fitting this profile are already settled with their families in cities such as Beijing, Shanghai, or Shenzhen. These professionals are unlikely to relocate their *hukou* to Wuhan and without the appropriate *hukou*, they would face housing, healthcare, and lifestyle challenges.

AmCham China recommends that the Hubei and Wuhan governments adopt innovative policies to attract, retain, and reward mid-and-high-level senior managers and team leaders in the technology sector. We advise the creation of collaborative platforms for universities, high-tech companies, and professional third-party training companies to develop talented professionals as current cooperation efforts are sporadic and fragmented. Partnering with global industry leaders registered in Wuhan would be an effective way to educate top-level talents and meet market demand. The Wuhan government should also extend the central government's policy of allowing university instructors to simultaneously be employed by local companies with appropriate local initiatives. An ever-growing pool of talented senior managers and team leaders in key growth areas will reinforce Central China's current and future economic growth.

Greater Legal and Regulatory Transparency (Hubei & Wuhan Governments)

AmCham China recognizes the continuing efforts made by the central government, Hubei, and Wuhan governments to improve support for local enterprises, such as designating government officials to serve as contact points for key enterprises and establishing a mechanism for annual dialogue with the business community.

Nevertheless, AmCham China members in Central China have insufficient official access to information about new policies and regulations in a timely manner. Foreign compa-

武汉 / 华中

引言

武 汉是中国人口超过 1000 万的特大城市之一，是华中地区的商业、金融和交通中心。武汉拥有近百所高等院校和 130 万名大学生，是中国美国商会（商会）业务的重要人才来源。2018 年，外商在武汉投资 109 亿美元，比 2017 年增长 13.7%，湖北省外商投资比上年增长 5.5%。麦肯锡将武汉定义为全球 600 座城市之一，600 城市指的是预计到 2025 年对全球经济增长贡献最大的 600 个城市。

会员企业对武汉市政府在改善空气质量和交通、提升对企业的支持和吸引顶尖人才方面所做的努力表示赞赏。然而，挑战仍然存在。2019 年商会《营商环境调查报告》对整个商会会员群体的商业情绪进行了评估，调查显示，“监管解释不一致、法律执行不明确”在 2018 年连续第四年成为企业面临的最大的商业挑战（55% 的受访者）。武汉和湖北的会员公司仍在保留高端人才、交通安全和医疗保健方面继续努力。商会促请各省市相关部门审查以上问题，并与会员公司共同探讨解决这些问题的最佳方案。

最新进展及现存监管问题

吸引并留住中高端人才（武汉市政府）

商会赞赏地方和省级政府为吸引人才到湖北工作所做的努力。最近的居住许可（户口）政策鼓励了更多有才华的、年轻的专业人士留在武汉。目前的政策侧重于吸引全球顶级技术专家和领导者，比如为新的、合格的私营初创企业提供资金，这也有助于提高武汉劳动力的质量。

然而，对于武汉的企业来说，招聘中高端人才仍然是一个重大挑战。2019 年营商环境调查显示，“合格员工不足”（28%）仍然是会员群体面临的最大的商业挑战之一。如果武汉希望加强并继续作为中国顶级“高科技”城市之一，

则必须吸引中外高管和团队领导人才。目前，许多符合这一条件的潜在人才已经与家人在北京、上海或深圳等城市安居。这些专业人士不太可能把户口迁到武汉，如果没有适合的户口，他们将面临住房、医疗和生活方式的挑战。

商会建议湖北省和武汉市政府采取创新政策，吸引、留住和奖励科技行业的中高端管理人员和团队领导者。考虑到目前各方面的合作过于分散，我们建议为大学、高科技公司和专业第三方培训公司创建合作平台，培养人才。与在武汉注册的全球行业领导者合作，将是培养顶级人才、满足市场需求的有效途径。武汉政府还应扩大中央政府的政策，采取适当的地方举措，允许大学教师任职的同时受雇于当地企业。在经济增长的关键领域，越来越多的优秀高级管理人员和团队领导者将加强华中地区当前和未来的经济增长。

提高法律和监管透明度（湖北和武汉政府）

商会赞赏中央政府、湖北省政府和武汉市政府为加强当地企业的支持所作的持续努力，例如指定政府官员作为重点企业的联络人，以及建立与商界的年度对话机制。

然而，华中地区的商会会员缺乏充分的官方渠道，无法及时获得有关新政策法规的信息。外国公司能够追踪公开声明和新闻报道，了解最新的监管动态，但几乎没有渠道获得正式的英文政策文件，从而造成法律执行法规和准则往往不明确。在华中地区，商会发现河南和江西的官方网站没有英文内容。在湖北和湖南的政府网站上，我们可以看到大概的英文监管指南，但往往找不到重要细节，比如如何完成各种审批和许可流程，外国投资者和外商投资企业如何达到税务和人力资源要求。上海和四川省政府提供的英文监管信息比华中地区许多政府提供的都要完整。

商会建议，湖北省和武汉市政府应优先将新的政策、法规和实施流程（包括实施部门的名称）尽快用英文公布，并通过其官方网站明确发布。上海和四川省政府网站可作

nies are able to track public statements and news reports to stay current on the latest regulatory developments but have few channels to obtain formal policy documents in English. Consequently, legal implementing regulations and guidelines often remain unclear. Within Central China, AmCham China has found Henan and Jiangxi official government websites do not have English-language content. On the Hubei and Hunan government websites we can read broad regulatory guidelines in English but often cannot find important details on how to complete various approval and licensing procedures or meet tax and human resources requirements applicable to foreign investors and Foreign-Invested Enterprises (FIEs). The Shanghai and Sichuan provincial governments offer more complete regulatory information in English than many governments in Central China.

AmCham China recommends that the Hubei and Wuhan governments prioritize prompt publication of new policies, regulations, and implementation processes (including the names of the implementing departments) in English and make them clearly available through their official websites. The Shanghai and Sichuan provincial government websites are a useful reference point. We also recommend that they invite foreign companies and local enterprises to provide feedback on draft laws and regulations in a transparent manner. AmCham China recommends that the Hubei and Wuhan governments expand online services in English to allow foreign companies to complete a greater number of regulatory procedures online.

Traffic Challenges (Wuhan Traffic Management Bureau)

AmCham China applauds the significant investments that the Hubei and Wuhan governments have made in recent years to improve traffic conditions, including a 144-hour transit visa exemption for eligible foreigners and the opening of three new subway lines. AmCham China continues to regard traffic congestion as a chief concern for living and working in Wuhan. The number of vehicles on the roadways is increasing faster than the available traffic management infrastructure can handle. Vehicles entering and exiting residential compounds block pedestrian walkways and electric scooters frequently violate traffic laws and drive on sidewalks, constituting a hazard to pedestrians.

AmCham China recommends that the Hubei and Wuhan governments develop a comprehensive traffic management strategy that includes building more parking structures and strictly enforcing traffic management laws to prevent cars obstructing pedestrian walkways. We also recommend that real estate developers be required to account for traffic flow and congestion when developing new residential complexes.

Healthcare Sector (Wuhan Municipal Health Commission)

The healthcare system in Wuhan continues to improve with more facilities, advanced technology, and better training coming online. Many hospitals have opened VIP departments where staff speak English and help foreigners navigate the Chinese medical system. Several international, private healthcare organizations operate in conjunction with the public hospital system in Wuhan.

Despite these improvements, access to high-quality healthcare remains limited by the lack of trained general practitioners qualified to treat common medical issues and coordinate care across medical disciplines. As a result, patients must navigate a complex system of specialists on their own, and many rarely see the same physician twice, increasing the likelihood that medical issues are overlooked. The healthcare system in Wuhan would benefit from studying the practices of international healthcare providers already operating in the city.

AmCham China recommends that the Hubei and Wuhan governments adopt clear policies to support international healthcare providers and allow them to function more autonomously. We suggest that providers be permitted to issue long-term prescriptions, administer immunizations to foreigners directly, perform medical tests and present the results in their offices (e.g., PPD tests for tuberculosis). We also recommend that international providers be allowed to accept payment from international medical insurance providers. Not only would both the foreign and Chinese communities benefit from such policies to improve the overall quality of the healthcare system, Wuhan would become more attractive to foreign companies operating in Central China.

Promoting Wuhan

AmCham China believes that promoting Wuhan investment opportunities in the US will not only bring new capital and high-end technology to the city but will also attract “high-end” foreign professionals. This will grow the overseas business communities and increase the city’s diversity. Over time, these trends will accelerate Wuhan’s attractiveness as an international destination and benefit foreign companies, including AmCham China members in Wuhan.

In the US, only Pittsburgh has established an official friendship with Wuhan. AmCham China suggests that the Wuhan municipal government be more proactive in promoting Wuhan’s competitive advantages in the US, and in particular highlight Wuhan’s large available talent pool and communicate successful investments made by businesses operating in Optics Valley, a high-tech investment area in Wuhan. These activities should focus on building cooperative relations with cities on the West Coast of the US with a strong track record of developing high-tech industries.

为有益参考。商会建议邀请外国公司和当地企业，采用透明机制，对法律法规草案提出反馈。商会建议湖北省和武汉市政府扩大英语在线服务，以允许外国公司在线完成更多的监管流程。

交通问题 (武汉交通管理局)

商会赞赏湖北省和武汉市政府近年来为改善交通状况做出的重大投资，包括为符合条件的外国人提供 144 小时过境免签，以及开通三条新的地铁线路。商会继续将交通拥堵视为武汉生活和工作的首要问题。路面车辆数量的增长速度超过了现有交通管理基础设施的处理能力。进出居民区的车辆堵塞人行道，电动摩托车经常违反交通法规和在人行道上行驶，这都对行人构成了危害。

商会建议湖北省和武汉市政府制定全面的交通管理战略，包括兴建更多停车设施和严格执行交通管理法，防止车辆阻塞行人通道。商会建议房地产发展商在开发新住宅区时，应对交通流量及拥堵负责。

医疗行业 (武汉市卫生健康委员会)

随着更多的医疗设施、先进的技术和更好的培训上线，武汉的医疗体系不断完善。许多医院开设了 VIP 科室，科室的员工可以讲英语，引导外国人了解中国的医疗体系。在武汉，有几家国际私营医疗机构与公立医院系统合作。

尽管取得了一些进展，但由于缺乏训练有素的通科医生来处理常见的医疗问题和协调跨医学学科的护理，人们获得高质量医疗服务的机会仍然有限。因此，患者必须自己浏览复杂的专家系统，而且很多人很少由同一个医生问诊两次，这增加了医疗问题被忽视的可能性。通过研究已经在武汉开展业务的国际医疗机构的做法，可以使武汉的医疗体系受益。

商会建议湖北省和武汉市政府采取明确的政策，支持国际医疗机构，并允许其增加经营的自主性。我们建议允许医疗机构开具长期处方，直接对外国人进行免疫接种，进行医学检查，并将检查结果在办公室中公示（例如结核病的 PPD 检查）。我们还建议允许国际医疗机构接受国际医疗保险机构的付款。不仅外国和中国社区将受益于此类政策，提高医疗体系整体质量，武汉也将对在华中地区运营的外国公司更具吸引力。

宣传武汉

商会认为，促进武汉在美国的投资机会，不仅将为武汉带来新的资本和高端技术，还将吸引“高端”外国专业人士。这将促进海外商界的发展，增加城市的多样性。随着时间的推移，这些趋势将加速武汉作为国际目的地的吸引力，并使外国企业受益，包括武汉的商会会员企业。

在美国，只有匹兹堡与武汉正式建立了友好关系。商会建议武汉市政府更加积极地宣传武汉在美国的竞争优势，尤其强调武汉庞大的人才库，宣传光谷地区（武汉的一个高科技投资区）的企业投资成功的案例。这些活动的重点应该放在与美国西海岸在发展高科技产业方面有着良好记录的城市建立合作关系。

建议

对湖北省政府和武汉市：

- 扩大现有吸引和留住高级管理人才的战略。包括扩大大学和公司合作开发人才的平台，允许大学教授在公司工作。
- 通过及时更新政府网站和提供英语服务，提高法律法规的透明度。允许外国公司公开、自由地参与新法规的草案审议流程。
- 增加停车场建设，执行现有的交通法规，提高行人安全，应对交通挑战。
- 允许外国诊所扩大服务范围，包括处方、免疫接种和检测，改善针对外国人的医疗服务。
- 更加积极地宣传武汉，使之成为美国公司的投资目的地，强调武汉光谷地区的人才库和投资机会。

对美国政府：

- 与中国政府，包括武汉市政府合作，通过访问和当地互动，探索华中地区的外国投资机会，并为美国公司组织活动寻找投资机会。

Recommendations

For the Hubei and Wuhan Governments:

- **Expand current strategies to attract and retain senior management talent. This includes expanding platforms for universities and companies to work together on developing talent and allowing university professors to work in companies.**
- **Provide greater transparency around new laws and regulations by promptly updating the government website and providing English-language services. Allow foreign companies to openly and freely participate in the draft review process for new laws and regulations.**
- **Address traffic challenges by building more parking structures and enforcing existing traffic laws to increase pedestrian safety.**
- **Improve healthcare for foreigners by allowing foreign clinics to expand services including prescriptions, immunizations, and testing.**
- **Be more proactive in promoting Wuhan as an attractive investment destination for US companies emphasizing Wuhan's talent pool and investment opportunities in Optics Valley.**

For the US Government:

- **Engage with the Chinese government, including the Wuhan municipal government, to explore opportunities for foreign investment in Central China and organize opportunities for US companies to explore investments through visits and local interaction.**

Acronyms 缩写表

3C	China's Compulsory Certification
3PL	Third-Party Logistics
AAL	Approved Agent Lender
ABAC	Anti-Bribery and Anti-Corruption
ABN	Asset-backed notes
ACP	US-China Aviation Cooperation Program
AEO	Authorized Economic Operator
AI	Artificial Intelligence
AIC	Administration for Industry and Commerce
AMAC	Asset Management Association of China
AMC	Anti-Monopoly Commission
AMD	Advanced Micro Devices
AMEA	Anti-Monopoly Enforcement Agency
AML	Anti-Monopoly Law
ANAC	"National Civil Aviation Agency of Brazil"
ANPRM	Advance Notice of Proposed Rulemaking
APA	Advance Pricing Arrangements
APEC	Asia-Pacific Economic Cooperation
APU	Auxillary Power Unit
AQSIQ	General Administration of Quality Supervision, Inspection, and Quarantine
ASE	Advanced Semiconductor Engineering
ASME	American Society of Mechanical Engineers
ASTM	American Society for Testing and Materials
ATFM	Air Traffic Flow Management
ATSE	Advance Technology Services Enterprise
AUCL	Anti-Unfair Competition Law
AUCL	Anti-Unfair Competition Law
BACTs	Best Available Control Technologies
BAPA	Bilateral Advance Pricing Arrangement
BASA	US-China Bilateral Aviation Safety Agreement
BATs	Best Available Techniques
BCAN	Broker Client Assigned Number

BCM	Billion Cubic Metres
BCS	AmCham China Business Climate Survey
BEPS	Base Erosion and Profit Sharing
BFA	Boao Forum for Asia
BIS	Bank of International Settlement
BIS	US Bureau of Industry And Security
BMI	Basic Medical Insurance
BO	Beneficial Owner
BRF	Belt and Road Forum
BRI	Belt and Road Initiative
CAAC	Civil Aviation Administration of China
CAAM	China Association of Automobile Manufacturers
CAC	Cyberspace Administration of China
CAC	Codex Alimentarius Commission
CAC	Certification and Accreditation Administration
CBD	Central Business District
CBIRC	China Banking and Insurance Regulatory Commission
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
CCDI	Central Committee for Discipline Inspection
CCID	China Center For Information Industry Development
CCL	US Commerce Control List
CCPS	Cybersecurity Classified Protection Scheme
CCS	China Classification Society
CDE	Center For Drug Evaluation
CDM	Collaborative Decision-Making Model
CDM	Clean Development Mechanism
CDPF	China Disabled Person's Federation

CDS	Credit Default Swap
CEN	European Committee for Standardization
CENELEC	European Committee for Electrotechnical Standardization
CEPA	Closer Economic Partnership Arrangement
CFA	Chinese Football Association
CFDA	China Food and Drug Administration
CFIUS	The Committee on Foreign Investment in the US
CFTC	US Commodity Futures Trading Commission
CHP	Combined Heat and Power
CIBM	China Interbank Bond Market
CII	Critical Information Infrastructure
CIIE	China International Import Expo
CIPS	Cross-border Inter-bank Payment System
CIQ	China Inspections and Quarantine Services
CIRC	China Insurance Regulatory Commission
CISMD	Certification, Inspection, and Supervision Management Department
CIT	Corporate Income Tax
CMBS	Commercial Mortgage Backed Securities
CMDE	Center for Medical Device Evaluation
CNCA	National Certification and Accreditation Administration
CNCC	Certificate of No Criminal Conviction
CNG	China National Games
CNIS	China National Institute of Standardization
CNOOC	China National Offshore Oil Corporation
CNPC	China National Petroleum Corporation
COMAC	Commerical Aircraft Corporation of China
CPC	Communist Party of China
CPE	US-China Consultation On People-To-People Exchange
CPPIB	Canada Pension Plan Investment Board
CRA	Credit Rating Agency
CREEI	China Renewable Energy Engineering Institute
CRM	Credit Risk Mitigation
C-ROSS	China Risk-Oriented Solvency System
CRS	Common Reporting Standards

CRS	Computer-Related Service
CSD	Certification and Supervision Department
CSL	Cybersecurity Law
CSPs	Cloud Service Providers
CSR	Corporate Social Responsibility
CSRC	China Securities Regulatory Commission
CT	Consumption Tax
CTA	Covered Tax Agreement
CTO	Chief Technology Officer
DDGS	Distiller's Dried Grains with Solubles
DE	Distributed Energy
DEMPE	Development, Enhancement, Maintenance, Protection and Exploitation
DF Test	Durability Test
DOC	US Department of Commerce
DOE	US Department of Energy
DOTAS	UK Disclosure of Tax Avoidance Schemes
DRG	Diagnosis-Related Group
EAR	US Export Administration Regulations
EASA	European Aviation Safety Agency
ECCNs	Export Control Classification Numbers
ECER	Energy Conservation and Emmissions Reduction
ECP	US-China Energy Cooperation Program
ECpra	US Emergency Planning And Community Right-To-Know ACT
ECRA	US Export Control Reform Act
ECWG	Export Compliance Working Group
EDS	Express Delivery Service
EDV	Essentially Derived Varieties
EHS	Environment, Health And Safety
EIA	US Energy Information Administration
EIA	Environmental Impact Assessments
EP	Exchange Participant
EPA	US Environmental Protection Agency
EPR	Extended Producer Responsibility
ERP	Enterprise Resource Planning
ETS	Emissions Trading System
EU	European Union

EVUS	Electronic Visa Update System
FAA	Federal Aviation Administration
FAI	Fixed Asset Investment
FAQ	Frequently Asked Question
FCPA	Foreign Corrupt Practices Act
FDA	US Food and Drug Administration
FDI	Foreign Direct Investment
FEB	Foreign Experts Bureau
FI	Financial Institution
FIE	Foreign-Invested Enterprise
FIEs	Foreign-Invested Enterprises
FOCAC	Forum on China-Africa Cooperation
FSIS	USDA Food Safety Inspection Service
FTP	Free Trade Port
FTZ	Free Trade Zone
FYP	Five-Year Plan
GA	General Aviation
GAAP	Generally Accepted Accounting Principles
GAAR	General Anti-Avoidance Rule
GACC	General Administration of Customs
GAPP	General Administration of Press and Publication
GAS	General Administration of Sport of China
GB	Guobiao (National Standard)
GBAS	Ground-Based Augmentation System
GCP	Good Clinical Practice
GDP	Gross Domestic Product
GDPR	EU General Data Protection Regulation
GDS	Global Distribution System
GHG	Greenhouse Gas
GLP	Good Laboratory Practice
GLP	Global Logistic Properties
GMO	Genetically Modified Organism
GMP	Good Manufacturing Practice
GPA	Agreement on Government Procurement
GUI	Graphic User Interface
HACCP	Hazard Analysis and Critical Control Points
HCP	US-China Healthcare Cooperation Program

HKEX	Hong Kong Exchange
HMT	Hong Kong, Macau And Taiwan
HNTE	High And New Technology Enterprise
HR	Human Resources
IAIS	International Association of Insurance Supervisors
IAMCs	Insurance Asset Management Companies
IATA	International Air Transportation Association
ICE	Intercontinental Exchange
ICT	Information and Communications Technology
ICV	Intelligent and Connected Vehicle
IEC	International Electrotechnical Commission
IEEE	Institute of Electrical and Electronics Engineers
IGCC	Integrated Gasification Combined Cycle
IIT	Individual Income Tax
ILS	Instrument Landing System
IMDRF	International Medical Device Regulators Forum
IMO	International Maritime Organization
IOC	International Oil Company
IOC	International Olympic Committee
IOM	International Organization of Migration
IoT	Internet of Things
IoV	Internet of Vehicles
IP	Intellectual Property
IPA	"Implementation Procedures for Airworthiness"
IPR	Intellectual Property Rights
IRFS	International Financial Reporting Standards
IRM	Information Rights Management
ISO	International Organization for Standardization
ISRI	US Institute For Scrap Recycling Industries
ITU	International Telecommunication Union
IVD	In Vitro Diagnostics
JCCT	US-China Joint Commission on Commerce and Trade
JV	Joint Venture

KIIO	Key Information Infrastructure Operators
LCR	Large Commercial Risks
LEPC	US Local Emergency Planning Committees
LIB	Foreign Locally-Incorporated Bank
LLP	Life-Limited Parts
LLP	Low-Level Presence
LNG	Liquefied Natural Gas
LSA	Location Specific Advantages
LTI	Long-Term Incentive
M&A	Mergers and Acquisitions
MAD	Mutual Acceptance of Data
MAP	OECD Mutual Agreement Procedure
MARA	Ministry of Agriculture and Rural Affairs
MCA	Ministry of Civil Affairs
MDCI	Medical Devices Clinical Research
MEE	Ministry of Ecology and Environment
MEM	Ministry of Emergency Management
MHRSS	Ministry of Human Resources And Social Security
MIC 2025	Made in China 2025
MIIT	Ministry of Industry and Information Technology
MLR	Ministry of Land and Resources
MLB	US Major League Baseball
MLI	Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting
MLPS	Multi-Level Protection Scheme
MNC	Multinational Corporation
MNR	Ministry of Natural Resources
MOC	Ministry of Culture
MOE	Ministry of Education
MOF	Ministry of Finance
MOFA	Ministry of Foreign Affairs
MOFCOM	Ministry of Commerce
MOHRSS	Ministry of Human Resources and Social Security
MOHURD	Ministry of Housing and Urban-Rural Development
MOJ	Ministry of Justice

MOST	Ministry of Science and Technology
MOT	Ministry of Transportation
MoU	Memorandum of Understanding
MPS	Ministry of Public Security
MRC	Mainland Residence Card
MSA	Market Supervision Administration
MSCI Inc.	Morgan Stanley Capital International Inc.
MTA	Million Tons Per Annum
MTN	Medium Term Note
NAFMII	National Association of Financial Market Institutional Investors
NBA	US National Basketball Association
NBS	National Bureau of Statistics
NCAC	National Copyright Administration of China
NDRC	National Development and Reform Commission
NEV	New Energy Vehicle
NFL	US National Football League
NFPA	US National Fire Protection Association
NGO	Non-Governmental Organization
NHC	National Health Commission
NHSA	National Healthcare Security Administration
NIOSH	US National Institute For Occupational Health And Safety
NIPA	China National Intellectual Property Administration
NIPA	National Intellectual Property Administration
NMPA	National Medical Products Administration
NO	Network Operator
NOC	National Oil Company
NPC	National People's Congress
NPC	National Pipeline Company
NPCSC	Standing Committee of The National People's Congress
NPLCC	Net Present Lifecycle Costing
NPO	Non-Profit Organization
NR4	Non-road Mobile Machinery and Diesel Engine Stage IV emission regulation
NRDL	National Reimbursement Drug List

NRTA	National Radio And TV Administration
NSC	National Supervision Commission
NWI	New Work Item
NWP	Notification of Work Permit
ODP	Overall Development Plan
OECD	Organisation for Economic Cooperation and Development
OEM	Original Equipment Manufacturer
OGIF	US-China Oil and Gas Industry Forum
P2P	Peer-To-Peer
PBOC	People's Bank of China
PCS	Punitive Compensation System
PE	Permanent Establishment
PFF	Professional faultfinder
PFMWFOE	Private Fund Management Wholly Foreign-Owned Enterprise
PFTZ	Pilot Free Trade Zone
PHEV	Plug-in Hybrid Energy Vehicle
PII	Personally Identifiable Information/ Personal Information
PLCs	Programmable Logic Controllers
PMA	Parts Manufacturering Authorization
PMP	Risk Management Plans
PPD	Purified Protein Derivative
PPT	Principal Purpose Test
PRB	Patent Review Board
PRC	People's Republic of China
PSB	Public Security Bureau
PSC	Production Sharing Contract
PSU	Professional Supervisory Unit
PVG	Shanghai's Pudong International Airport
PVP	Plant Variety Protection
QDII	Qualified Domestic Individual Investor
QDLP	Qualified Domestic Limited Partners
QFII	Qualified Foreign Institutional Investor
R&D	Research and Development
RBPS	Rudder Brake Pedal Units
RDP	Regulatory Data Protection
REIT	Real Estate Investment Trusts

RFG	Remanufactured Finished Goods
RFID	Radio Frequency Identification
RHQ	Regional Headquarters
RMB	Renminbi
ROA	Return on Assets
RPM	Resale Price Maintenance
RQDII	RMB Qualified Domestic Institutional Investors
RQFII	RMB Qualified Foreign Institutional Investor
RWE	Real-World Evidence
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
SAMR	State Administration for Market Regulation
SAPPRFT	State Administration of Press, Publication, Radio, Film, and Television
SAR	Special Administrative Region
SASAC	State-Owned Assets Supervision and Administration Commission
SCA	State Cryptography Administration
SCBA	Self-Contained Breathing Apparatus
SCIO	State Council Information Office
SCLAO	State Council Legislative Affairs Office
SDGs	Sustainable Development Goals
SDO	Standards Development Organization
SDR	Special Drawing Right
SEP	Standard-Essential Patent
SESAR	Single European Sky ATM Research
SFC	Securities and Futures Commission (of Hong Kong)
SFCA	Secondary Flight Control Actuation
SHPGX	Shanghai Petroleum and Natural Gas Exchange
SIMD	Standards Innovation Management Division
SIPO	State Intellectual Property Office
SMEs	Small and Medium-Sized Enterprises
SOEs	State-Owned Enterprises

SPA	Sales And Purchase Agreements
SPB	State Post Bureau
SPC	Supreme People's Court
SPIL	Siliconware Precision Industries
STA	State Taxation Administration
STMD	Standards Technical Management Division
SWIM	System Wide Information Management
TC260	China National Information Security Standards Technical Committee
TEU	Twenty-Foot Equivalent Units
THSA	Trimmable Horizontal Stabilizer Actuators
TIC	Testing, Inspection, and Certification
TIER	Technology Import/Export Regulations
TMO	Trademark Office
TOX/RTO	Thermal Oxidizer Or Regenerative Thermal Oxidizer
TPA	Third-Party Access
TPM	Technological Protection Measures
TPR	Trade Policy Review (Conducted By WTO)
TQA	Throttle Quadrant Assemblies
TRAB	Trademark Review and Adjudication Board
TRQ	Tariff Rate Quota
TSA	"US Transportation Security Administration"
UGS	Underground Gas Storage
UK	United Kingdom
UL	Underwriters Laboratories
UMP	Utility Model Patent
UPMC	University of Pittsburgh Medical Center
US	United States
USCIS	US Citizenship and Immigration Services
USTDA	US Trade and Development Agency
UTC	United Technologies Corporation
VAT	Value-Added Tax
VATS	Value-Added Telecommunications Services
VC	Venture Capital
VFR	Visual Flight Rules
VOCs	Volatile Organic Compounds
VPN	Virtual Private Network

WFOE	Wholly Foreign-Owned Enterprise
WHT	Withholding Tax
WSC	World Semiconductor Council
WSL	Work Safety Law
WTO	World Trade Organization
WTO/TBT	World Trade Organization Agreement on Technological Barriers to Trade



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