

**2022 American Business in China
White Paper**
2022 年度美国企业在中国白皮书

Unless otherwise indicated, all charts are from the 2022 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2022年度商务环境调查。

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

Floor 3, Gate 4, Pacific Century Place,
2A Workers' Stadium North Road, Chaoyang District,
Beijing, 100027, the People's Republic of China
Tel: (8610) 8519-0800
Fax: (8610) 8519-0899
Website: www.amchamchina.org

Headquartered in Beijing with chapters
in Tianjin, Central China (Wuhan),
Northeast China (Dalian, Shenyang)

北京市朝阳区工体北路甲 2 号，
盈科中心 4 号门 3 层
邮政编码: 100027
电话: (8610) 8519-0800
传真: (8610) 8519-0899
网址: www.amchamchina.org

中国美国商会总部设于北京，在天津、
华中（武汉）、东北（大连，沈阳）设有区域办公室

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Chairman's Message

The American Chamber of Commerce in the People's Republic of China (AmCham China) dates back to 1919, as a bridge for constructive commercial engagement between both countries. The US-China relationship has a direct and profound impact on global peace and prosperity, and our member companies believe that American business in China benefits both the United States and Chinese economies.

In March, AmCham China launched the 24th annual edition of the *China Business Climate Survey (BCS) Report*. As one of the key barometers of the sentiment of the American business community in China, that report included some key themes:

- Earnings before interest and taxes (EBIT) bounced back to 2018 levels, with US companies taking a long-term view.
- Mounting pressure and risks for US companies operating in China on politically sensitive issues.
- Increasingly complex regulatory environment.
- AmCham China members desire constructive engagement, leading to concrete actions to address concerns.

China remains a top market priority for nearly two-thirds of our members, and for some member companies they believe it is important to remain competitive in the China market in order to remain competitive globally. Our member companies believe that a decoupling of the US and China economies is in neither country's economic interest. While they respect the need of both countries to define and defend their legitimate national security interests, our member companies urge that such considerations be defined as narrowly as possible, so as to permit commercially focused exchange to take place.

It is against that backdrop that we publish the 24th annual edition of the *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 countries as they work towards greater mutual understanding and successful resolution of outstanding company concerns.

The AmCham China *White Paper* is created by member companies, as a means to provide an accurate and nuanced view of the experiences that our member companies are having on the ground in China. Members volunteer countless hours to share their company

主席致辞

中国美国商会（以下简称商会）的历史可以追溯到 1919 年。多年来，商会一直致力于为中美两国搭建具有建设性商贸关系的桥梁。中美关系对全球和平与繁荣有着直接且深远的影响。商会会员企业相信，美国企业在华的业务对中美两国的经济发展都有益。

今年 3 月，商会发布了第 24 份年度《中国商务环境调查报告》。作为美国商界在华经营状况的晴雨表，该报告包括以下重点：

- 美国企业息税前利润（EBIT）恢复至 2018 年水平，美国企业普遍对华有长远考虑；
- 在华经营的美国企业在政治敏感问题上面临的压力和风险不断增加；
- 监管环境日益复杂；
- 商会会员企业期待中美两国能够进行建设性的沟通和接触，并采取具体行动来解决双方共同关注的问题。

近三分之二的受访企业表示，中国仍然是他们优先考虑的市场。部分受访企业认为，保持在中国市场的竞争力对于其保持全球竞争力来说十分重要。商会会员企业反对中美经济脱钩，因为这将损害两国的经济利益。商会尊重两国维护各自国家安全合法利益的需要，但敦促两国尽可能地缩小影响范围，避免伤及两国的正常商贸往来。

在此背景下，商会连续第 24 年发布了年度《美国企业在中国白皮书》（以下简称《白皮书》）——全面分析中国采取的会影响贸易和投资的经济政策和举措。过去二十多年，中美两国政策制定者均对《白皮书》给予高度关注，对此，我们深表感谢。今年，我们将继续通过《白皮书》为两国政府提供全面的建议，期待借此增进双方的相互理解，帮助会员企业成功解决存在的问题。

《白皮书》由商会会员企业义务撰写，准确而细致地呈现了我们的会员企业在华运营的实际体验。会员企业志愿投入大量时间，总结个体公司的经验，与同行形成共识，共撰写了 38 个章节，并不遗余力地修改完善。我在此向所有参与今年《白皮书》编写及校对工作的会员企业表示衷心的感谢。会员企业的志愿精神是商会蓬勃生命力的源泉。我还要特别感谢商会政策委员会主席罗斯先生，他每年不辞辛苦，以确保商会能够传递内容详实、文字精简的政策建议。同时，我也要感谢商会的政府事务与政策团队，他们历时数月勤奋工作，使《白皮书》的质量达到很高的水平。

experiences, build consensus within industry cohorts, draft the 38 chapters, and then painstakingly wordsmith the final product. I would like to express my deep appreciation to all of those volunteers. The volunteerism of our members is truly the lifeblood of the Chamber. Particular gratitude goes to Lester Ross, Chair of the Policy Committee, who works tirelessly year after year to ensure that we have the most substantive and well-written publication possible. Thank you also to AmCham China's Government Affairs and Policy team for their work over many months to produce a *White Paper* that meets our demanding standards.

We hope that this work will once again serve as an important tool to help facilitate mutual understanding and constructive engagement on issues of interest to our member companies.

A handwritten signature in black ink, appearing to read 'Colm Rafferty', enclosed within a large, stylized, hand-drawn oval shape.

Colm Rafferty
Chairman, AmCham China
May 2022

商会及会员企业衷心地希望《白皮书》能够成为在促进中美政府与在华外资企业间相互理解，以及推动会员企业所关切的问题可以获得实质性的解决的一个重要政策工具。

A stylized, handwritten signature in black ink, consisting of several overlapping loops and lines, positioned to the right of the main text block.

华刚林

中国美国商会主席

2022年5月



Part One:
Business Climate Overview
第一部分：商务环境综述

Business Climate Overview

Introduction

US-China economic relations remain deeply intertwined. China is among the largest and fastest growing markets in the world and constitutes an important market for US products and services. China's market also has a robust R&D and innovation ecosystem, and many leading American companies generate a substantial portion of their revenue from the China market. China is a key source and supplier of a vast number of products and components, often at lower cost and in larger scale than available elsewhere, which benefits US consumers.

In 2021, the bilateral relationship continued to deteriorate despite a resumption of regular working level dialogues and some progress on climate cooperation. The COVID-19 pandemic aggravated this deterioration, deepening mistrust between the two countries and reinforcing the focus on supply chain security, reshoring, and domestic manufacturing. Meanwhile, many longstanding economic and commercial issues that challenge the foreign business community remain unaddressed, including China's long-standing support for its SOEs, subsidies and other preferences for domestically-invested enterprises under various industrial policies, preferences for domestic technologies and products over foreign technologies and products in procurement processes, censorship and other restrictions barring entry for foreign cultural products, strict cybersecurity and data localization requirements, and cyber intrusions.

It is therefore unsurprising that a majority of our members reported "US-China bilateral tensions" has become the top challenge to doing business in China. Last year's *White Paper* highlighted the business uncertainties introduced by the COVID-19 pandemic in 2020. Events in 2021 further compounded those trends, with ongoing COVID-19 prevention measures and an increase in regulatory uncertainty across sectors introducing new market challenges. AmCham China acknowledges that the US-China relationship is undergoing a fundamental recalibration and acknowledges the need of all countries consider their national security. We remain opposed to any effort at outright decoupling of the US-China relationship. The costs of decoupling from losing trade and foreign investment benefits for both countries would be significant and are unlikely to generate clear winners. In order to be globally competitive, American

producers and service providers must be able to compete in the China market on a level playing field. Nevertheless, extensive market access barriers, protectionism, an opaque regulatory system, and discriminatory enforcement continue to hinder the operations of US business in China today.

In that spirit, this 24th edition of the *American Business in China White Paper* explores the crosscutting, industry-specific, national, and regional issues faced by AmCham China's member companies in 2021 and early 2022. Each chapter offers practical recommendations for addressing challenges facing the American business community that will, if implemented, benefit both foreign-invested enterprises (FIEs) and the Chinese economy. We hope that this year's *White Paper* will serve as a constructive tool for both the Chinese and US governments to reorient the bilateral relationship towards a more balanced and sustainable economic footing.

COVID-19 Complicates Persistent Challenges

COVID-19 has created its own set of operational challenges for foreign companies in China. With respect to hiring and staffing, half of AmCham China's members note that the COVID-19 pandemic has impacted their hiring decisions and ability to find expatriate staff willing and able to move to China. Some 81 percent of companies reported that China's management of Covid-19 had impacted their ability to attract or retain skilled foreign staff, with 35 percent describing the impact as either large or severe.

AmCham China and AmCham Shanghai conducted a flash survey in March 2022 of members on the impact of COVID-19 regulations on the American business community. Results of the survey showed that 99 percent of responding companies reported being impacted by outbreaks of the Omicron variant in March 2022, citing a range of factors. Some 57 percent of respondents reported that the recent COVID-19 outbreak had disrupted supply chains due to disruptions to transportation and shipping networks. Among manufacturing companies, reports of supply chain disruption rose to 86 percent.

Since the beginning of the COVID-19 pandemic, instability resulting from intermittent lockdowns has been cited as the main reason for companies to decrease investment plans, cited by 32 percent of respondents to the *Flash Survey* on COVID-19 impact conducted between March 27-29, 2022.

商业环境综述

引言

中 美经贸关系仍然密不可分。中国是全球最大、增长最快的市场之一，是美国产品和服务的重要出口市场。中国市场也拥有强大的研发和创新生态系统，许多美国龙头企业的大部分利润都来自中国市场。中国是大量产品和零部件的重要货源地和供应商，成本往往比其他地区更低，生产规模更大，进而使得美国消费者从中受益。

尽管中美双方在 2021 年恢复了部分工作层面的对话机制并在气候合作方面取得了一些进展，但双边关系持续紧张。新冠肺炎疫情也加剧了这一态势，加深了两国之间的不信任，并再次引起了对供应链安全、制造业回流和国内制造的关注。同时，外国在华商界长期面临的经济和商业挑战仍未得到解决，比如中国对国有企业的长期支持，产业政策给予国内企业的补贴和优惠，在采购流程中更偏好国内产品和技术，对外国文化产品的进口审查和相关限制，对网络安全和数据本地化的严格要求，以及网络攻击问题等。

因此，大多数中国美国商会（以下简称商会）会员企业表示“中美双边关系紧张”已经成为在华运营的首要挑战。2020 年《美国企业在中国白皮书》（以下简称《白皮书》）中强调了新冠肺炎疫情为商业运营带来的不确定性。2021 年这一趋势进一步加剧，现行的新冠肺炎疫情防控措施以及各行业监管的不确定性增加了新的市场挑战。商会理解中美关系正处于重塑阶段，并承认各国都有各自界定并保护其国家安全的权利。商会坚决反对中美关系彻底脱钩。脱钩会让两国在贸易和外国投资方面蒙受巨大损失，双方谁都不可能在这场博弈中成为赢家。为了增强全球竞争力，美国生产商和服务提供商必须保证能够在中国市场上进行公平竞争。然而，广泛存在的市场准入壁垒、保护主义、不透明的监管体系以及差别性执法，至今仍然阻碍着美国企业的在华运营。

本着这种精神，第 24 版《美国企业在中国白皮书》探讨了商会会员企业在 2021 年和 2022 年初面临的挑战，包括跨行业的、行业性的、全国性的和地区性的问题。并且，每一章均包含如何应对这些挑战的切实可行的建议，如果这些建议得以实施，将会为外资企业和中国经济带来巨大收益。商会希望今年的《白皮书》能够继续成为中美两国政府政策制定及落实的一个建设性工具书，并能促进双边经贸关系朝着更加平衡且可持续的方向发展。

新冠肺炎疫情让现存挑战变得愈加复杂

新冠肺炎疫情给外资企业的在华运营带来了一系列挑战。在招聘和员工留存方面，一半会员企业表示，新冠肺炎疫情影响了企业的招聘决策，以及降低外籍员工来华工作的意愿。约 81% 的会员企业表示，中国的新冠肺炎疫情防控措施影响了他们吸引或留住外国技术人员的能力，其中 35% 企业认为这种影响达到了巨大或严重的程度。

中国美国商会和上海美国商会在 2022 年 3 月就新冠肺炎疫情对在华美国商界的影响对会员企业进行了一次快速调查。调查结果显示，99% 的受访企业表示由于近期的疫情形势，在多方面受到了影响。约 57% 的受访企业表示，近期的疫情形势对交通运输与航运物流造成了影响，导致供应链受阻。在制造业领域反映“供应链受阻”的企业数量比例达到 86%。

32% 的受访企业在快速调查中提到，自新冠肺炎疫情爆发以来，疫情防控管理政策下的封控措施带来的不确定性因素成为会员企业减少在华投资计划的主要原因。在 2022 年商会《中国商业环境调查报告》中，14% 的受访企业表示，如果目前的旅行限制在接下来的六个月内没有得到改善，企业将计划减少在华投资。在上述提到的快速调查反馈中，这一数字跃升至 46%。

In the 2022 *China Business Climate Survey Report* (BCS), 14 percent of responding companies noted that they would plan to reduce their investment in China if current travel restrictions do not improve in the following six months. In the *Flash Survey* report released April 1, 2022, this figure jumps to 46 percent.

Deteriorating Bilateral Relations a Key Challenge

Across multiple spheres of the bilateral relationship, including economic, national security, law enforcement, cultural, and people-to-people exchange, events in 2021 continued to accelerate the downward trend of bilateral relations that AmCham China has highlighted in our most recent editions of the *White Paper*. This sentiment was captured in the 2022 BCS, where “rising tensions in US-China relations” was cited as the top challenge facing the business community, as reported by 56 percent of survey respondents. This impact was particularly acute in both the Technology and Resources sectors, where over two-thirds of respondents reported it as a top challenge.

Indeed, the deteriorating relationship has placed the American business community in the crosshairs as economic and trade issues have become deeply intertwined with national security and other law enforcement issues. Tensions have only grown in the aftermath of the COVID-19 outbreak, which has prompted new conversations in both the US and China about supply chain security, reshoring, and domestic production.

Throughout 2021, the US government explored development of a variety of new legislation to bolster overall US competitiveness, at times couched as a direct response to actions from China. *The United States Innovation and Competition Act (USICA)* passed the Senate in June 2021 with bipartisan support and the *America Creating Opportunities for Manufacturing, Pre-Eminence in Technology and Economic Strength (COMPETES) Act* passed in the House and is currently awaiting resolution of differences. Other legislation regarding China includes the *Creating Helpful Incentives to Produce Semiconductors (CHIPS) Act* and the proposed *Equal Access to Green cards for Legal Employment Act (EAGLE)*, the *Strategic Competition Act of 2021*, and the *National Science Foundation For the Future Act*. As the US seeks to ready itself for greater competition with China, broad legislation on investment, industry issues, and expansion of STEM education take the forefront. At the end of 2021, the *Uyghur Forced Labor Protection Act* came into effect. American businesses in China await further guidance on what processes will be employed to evaluate the compliance of their supply chains in China.

The Biden Administration has framed the relationship with China through the lens of “Three C’s”: cooperation, competition, and confrontation. Although the Biden Administration is expected to release a comprehensive, official “China strategy” in 2022, it had yet to be released at the time of the publishing of this report. American businesses in China eagerly await further clarification of such China-focused policies and legislation.

The Economic and Trade Agreement between the US and China (*Phase One*) concluded in January 2022. According to data by the Peterson Institute for International Economics, China purchased only 57 percent of the total committed US goods and services imports in 2020 and 2021. As some have expressed disappointment in the outcomes of the agreement, AmCham China members have little optimism for a Phase Two trade deal and 58 percent of this year’s BCS respondents reported being negatively impacted by the bilateral relationship.

Meanwhile, as geopolitical tensions in 2021 continued to rise, the Biden administration led a recalibration of foreign policy to include more multilateral efforts between the US and its allies. Washington and Beijing also began to take tentative steps to stabilize their relationship as rising tensions sparked a growing awareness that the risk of unintended conflict continues to grow. Furthermore, the US and China resumed discussions around climate cooperation which remains a lone bright spot in an otherwise uncertain bilateral relationship.

In the people-to-people exchange and cultural sphere, global restrictions on travel significantly restricted the opportunity for these types of interactions between the US and China in 2021. Additional actions taken by both sides further reduced the scope for bilateral exchange. For instance, with respect to news and media reporting, retaliatory actions imposed on reporters and media organizations by both sides has led to a reduction in the number of American journalists based in China and vice versa. The education sector has traditionally been an important area of bilateral cooperation and exchange but has faced difficulties due to COVID-19 and worsening bilateral relations. The combined effect of these policies has cast a chill on education, reporting, and other bilateral exchanges between the US and China.

Assessment of the China Market for Foreign Business

Against this backdrop, as reported in the 2022 BCS, more than half of members estimated their 2021 revenue would be higher than 2020, reversing a downward trend since 2019. However, the impacts of COVID-19 continue to negatively impact the revenues of two-thirds of members. This impact is felt most heavily in the Consumer sector (53 percent), whose brick-and-mortar operations are directly impacted by such lockdowns. While there has been an uptick in the proportion of companies expecting revenue to increase from last year, 2021 has also seen inflation rise. When accounting for inflation, about four-in-ten companies have yet to reach pre-pandemic performance.

Compared to the last five years, 2021 saw the highest proportion (13 percent) of companies estimating that they will be “very profitable” compared to 2020 (5 percent). While the proportion of companies anticipating profits has increased since last year (59 percent in 2021 versus 54 percent in 2020), this fails to match the 73 percent of companies that reported

日益紧张的双边关系是首要挑战

2021 年中美两国关系在经济、国家安全、执法、文化和民间交流等多个领域进一步恶化，商会在近几年的《白皮书》中均强调了这种趋势。2022 年《中国商务环境调查报告》也体现了这一趋势，56% 的受访企业表示，“中美关系日益紧张”是受访企业面临的首要挑战。这种看法在技术和资源行业体现得更为明显，超过三分之二的受访企业将其认为是首要挑战。

事实上，由于经贸问题已经与国家安全和其他执法问题深度融合，双边关系的不断恶化已经将在华外国商界置于十字路口。在新冠肺炎疫情爆发后，紧张局势进一步加剧，促使中美两国分别调整针对供应链安全、制造业回流和国内生产的战略。

2021 年，美国政府探索并制定了一系列新的法律法规，以提高美国的整体竞争力。这些法律法规的颁布有时也被认为是对中国所采取行动的直接回应。在两党的支持下，参议院于 2021 年 6 月通过了《美国创新和竞争法案》(USICA)。《2022 年美国竞争法》(COMPETES) 也获得通过，目前正在等待解决分歧。其他有关中国的立法包括《为美国创造有益的半导体生产法案》(CHIPS)、拟议的《平等获得职业移民绿卡法案》(EAGLE)、《2021 年战略竞争法案》以及《国家科学基金会未来法案》。随着美国积极准备以应对与中国的进一步竞争，关于投资、行业问题和扩大 STEM 教育的立法得到了优先关注。2021 年底，《防止强迫维吾尔族人劳动法》开始生效。在华美国企业正在等待进一步指导，以了解采用何种程序来评估其在华供应链的合规性。

拜登政府基于“三个 C”的视角来构建与中国的关系，也就是合作 (Cooperation)、竞争 (Competition) 和对抗 (Confrontation)。尽管拜登政府预计将在 2022 年发布一份全面的官方版“中国战略”，但该战略在本书截稿时尚未发布。在华美国企业迫切希望能够详细了解这些以中国为重点的政策和立法内容。

中美第一阶段经贸协议（以下简称《协议》）于 2020 年 1 月签署。根据彼得森国际经济研究所的数据，中国在 2020 年和 2021 年只兑现了美国商品和服务进口总额承诺的 57%。商会部分会员企业对《协议》的结果表示失望，因此并不对第二阶段的经贸协议抱有乐观态度。在今年的《中国商务环境调查报告》中，58%

的受访企业表示在华经营已受到双边关系的负面影响。

与此同时，随着 2021 年地缘政治紧张局势的持续升温，拜登政府主导并重新调整其外交政策，开展更多与盟友之间的多边行动。由于意外冲突的风险持续增加，不断升温的紧张局势深化了对风险的认识，华盛顿和北京也开始采取试探性措施来稳定双边关系。此外，美国和中国恢复了关于气候合作的讨论，这也成为当下不稳定的双边关系中的唯一亮点。

全球旅行限制大大减少了 2021 年中美两国在民间交流和文化领域进行互动的机会。两国采取的其他措施进一步缩小了双边交流的范围。比如，双方在新闻和媒体报道方面对记者和媒体组织实施报复性行动，导致两国驻地记者人数减少。教育历来是双边合作和交流的重要领域，但由于新冠肺炎疫情和双边关系恶化，这一行业也面临困境。这些政策的综合影响严重阻碍了中美两国在教育、媒体报道和其他领域的双边交流。

中国市场外商投资评估

在此背景下，正如 2022 年《中国商务环境调查报告》中所述，超过一半的受访企业预估其 2021 年的营收将同比上涨，逆转连续几年的跌势。三分之二的受访企业表示，新冠肺炎疫情，尤其因多地爆发疫情而采取的临时管控措施，将持续影响他们的营收。这种影响在消费领域表现得最为明显 (53%)，因为该领域会员企业线下运营直接受到新冠肺炎疫情管控影响。虽然预估营收上升企业的比例有所升高，但是 2021 年的通胀率也在上升。如果将通胀计算在内，约 40% 的企业的在华运营情况将更难达到疫情前的水平。

2021 年预计“利润将非常丰厚”的企业所占比例上升至 13%，为过去五年最高点，相比之下，2020 年只有 5% 的受访企业有如此预测。虽然 2022 年预计盈利的企业比例比去年有所上升 (2021 年为 59%，2020 年为 54%)，但该数据依然不及疫情前以及中美贸易战升级前的水平 (2017 年，73% 的企业表示盈利)。2020 年以来，利润增长幅度最大的是来自服务业的企业，其中表示盈利的企业比例上升了 13 个百分点。

由于不确定中国政府是否会进一步向外资开放中国市场上有实质进展，所有行业的不确定性和信心缺乏程度都在增加。与去年相比，感到在中国“变得不受欢迎”

profitability in 2017 before the pandemic and escalation of the US-China trade tensions. The greatest improvement from 2020 performance comes from the Services sector, which saw a 13-point improvement in the number of profitable companies.

For companies on the ground in China, uncertainty and lack of confidence have increased across all sectors, as members consider whether the government is committed to further opening China's market to foreign investment. Compared to last year, twice as many member companies feel "much less welcome" in China. Moreover, 42 percent of members report that they received increased pressure to make (or not make) statements about politically sensitive issues, which was driven by the Chinese government and Chinese media. This is especially true for the Consumer sector where 70 percent of respondents report such pressure. For global brands and businesses active in China, streamlining global business strategy and global brand values has become increasingly complex as more and more issues become "sensitive."

With respect to the two-year business outlook, there was an 11-point decline in optimism related to domestic market growth and an 18-point decline related to economic growth and recovery. The increasing lack of optimism in market growth and economic recovery may be related to China's slowing economic growth rate, which has been adversely impacted by pandemic-related restrictions across the country. While China is still viewed as a profitable and valuable market, the increasing overall market uncertainties make companies wary of predicting large gains in China over the short-to-medium term.

Furthermore, after a year of regulatory restrictions across a multitude of sectors including real estate, education, platform companies, and more, the regulatory environment became a cause of growing pessimism for doing business in China, according to 40 percent of members (up 16 points from last year). One-third of members ranked "regulatory compliance risks" as a top business challenge across all sectors. China's recent regulatory actions addressing anti-trust issues, data privacy, and social concerns are impacting member companies, as reported by 79 percent of members. One-third of member companies report that China's regulatory actions are causing uncertainty and concern back at their global headquarters and 42 percent of companies are emphasizing or reinforcing internal compliance and control measures.

Policy and regulatory conditions in China remain a roadblock to investment, according to 82 percent of respondents. They say that "increasing the transparency, predictability, and fairness of the regulatory environment" would have a somewhat significant or extremely significant impact on increasing companies' investment levels in China. Despite these hopes, most members do not expect significant changes in the coming years. Half of members expect the quality of China's investment environment to remain the same.

Opportunities in the China Market

In a market with the size and growth potential of China's market, there remain significant opportunities. China's National Bureau of Statistics reported that GDP grew by 5.1 percent in 2021, raising per capita GDP to US \$12,551. The prospect of winning in China – and winning big – continues to motivate business decision-making, despite an otherwise pessimistic outlook. In the *China Business Climate Survey Report* over two-thirds of members reported that China is a top three market opportunity.

Accordingly, and as has been the case since 2019, the top business opportunity in China is the "growth in domestic consumption and rise of an increasingly sizeable and affluent middle class," as reported by approximately 42 percent of members. This was broadly consistent across sectors, except in the Services sector where "ongoing market reforms" constituted the top business opportunity. At the sector level, the Technology & Other R&D-Intensive industries identified the "adoption of digital technologies" as a top business opportunity, while the Resources & Industrial sector identified "urbanization and continued support for infrastructure investment" as a top opportunity. In the Consumer sector, "increasing consumer demand for foreign brands and quality" was a top sector business opportunity.

Our members remain committed to the China market: 83 percent report they are not considering relocating manufacturing or sourcing outside of China, consistent with our data since 2018. Among the 15 percent that are considering or have relocated manufacturing and sourcing outside of China, the developing Asia region, including Southeast Asia, remains the top destination for 28 percent of respondents, though this is down from 42 percent last year. Other top destinations include the US (24 percent), Mexico/Canada (17 percent), developed Asia (17 percent), and Hong Kong SAR (7 percent). Notably, only 27 respondents were actively considering relocation when the survey was conducted in late 2021.

While many member companies are driven to do business in China because of the prospect of a growing marketplace, less than half of companies (47 percent) are confident in the Chinese government's commitment to further open China's market to foreign investment in the coming three years, down from 61 percent last year. The decline in confidence was most felt in the Consumer sector (down 27 percentage points). China would benefit from allowing more access to US companies. According to members, six-in-ten would plan to increase investment in China if market access was on a par with what is allowed in the US.

Top Business Challenges

In 2021, "rising tensions in US-China relations" was the leading challenge for our members for the first time. This

的会员企业数量增加了一倍。此外，42%的受访企业表示，受到中国政府和媒体影响，他们在政治敏感问题上发表（或不发表）声明的压力增大。这一点在消费行业尤其明显，70%的受访企业表示感受到了压力。对于在华全球品牌和企业来说，“敏感”问题越来越多，如何统筹兼顾全球商业战略和全球品牌价值也变得越来越复杂。

关于两年内在华经营业务的前景，对国内市场增长的乐观度下降了11个百分点，对经济增长和复苏的乐观度下降了18个百分点。企业对市场增长和经济复苏越来越不乐观，可能与中国的经济增长速度放缓有关。新冠肺炎疫情导致的防控措施和旅行限制对中国经济增长速度产生了不利影响。虽然会员企业仍然看好中国市场的发展潜力和价值，但对市场整体不确定性的增加，让企业对于在中短期内能否获得巨大收益持谨慎态度。

此外，40%的受访企业认为，在经历了房地产、教育、平台企业等众多行业的监管限制后，不稳定的监管环境是其对在中国开展业务持悲观态度的主要原因之一（比去年上升了16个百分点）。三分之一的受访企业将“监管合规风险”列为首要营商挑战。79%的受访企业反映称，中国最近针对反垄断问题、数据隐私和社会问题的监管行动对会员企业造成了影响。三分之一的受访企业表示，中国不稳定的监管环境让企业的全球总部感到担忧。42%的受访企业称将强调或加强内部合规及内部控制措施。

82%的受访企业表示，中国有待改善的政策和监管环境仍然是阻碍投资的主要因素。他们还认为，“提高透明度、可预测性和公平性”对提高其在中国市场的投资水平有显著甚至巨大的积极影响。尽管有这些期望，大部分会员企业并不认为监管环境在未来几年会出现较大的变动。一半的会员企业预计中国的投资环境将保持不变。

中国市场的机遇

中国庞大的市场规模和与之相应的增长潜力蕴含着巨大商机。根据中国国家统计局报告，2021年国内生产总值增幅为5.1%，人均国内生产总值达到12551美元。尽管由于上述原因使得外资企业对于在华运营发展整体前景不乐观，但外国商界对于中国经济发展的前景十分

看好，并且认为中国市场潜力巨大。在《中国商务环境调查报告》中，超过三分之二的受访企业表示，中国是其在全球的前三大投资市场。

自2019年来，42%的受访企业表示中国的首要商业机会是“本土消费增长/日益壮大的中产阶级规模。”各个行业的情况大致相同，但服务行业除外。在服务行业中，“持续的市场改革”被认为是首要商业机遇。从行业角度看，技术和研发行业认为“数字技术应用”是首要商业机遇，而工业和资源行业则选择了“城镇化对基础设施投资的持续支持”。消费行业认为“消费者对外国品牌/质量日益增长的需求”是首要商业机遇。

商会会员企业仍信守深耕中国市场的承诺。83%的受访企业表示，他们没有考虑将生产或采购转移到中国以外的地区，这与2018年以来的数据一致。15%的受访企业表示正在考虑或已经将制造和采购转移到中国以外的地区，28%的受访企业认为包括东南亚在内的亚洲发展中国家为转移的首选目的地，比去年的42%有所下降。其他首选目的地包括美国（24%）、墨西哥/加拿大（17%）、亚洲发达国家（17%）和香港特区（7%）。值得注意的是，只有27名受访企业正在着手考虑搬迁。

虽然许多会员企业认为中国市场蕴含的发展潜力是其履行对华投资承诺的主要因素，但对于中国政府在未来三年内进一步向外资开放中国市场的承诺，只有不到一半的企业（47%）抱有信心，低于去年的61%。消费行业的信心下降最为明显（下降27个百分点）。如果允许更多外资企业进入中国市场，中国也将会从中获益。受访企业表示，如果中国的市场准入与美国保持同等水平，六成将考虑增加在华投资。

主要运营挑战

2021年，“中美关系日益紧张”是受访企业面临的首要营商挑战。紧随其后的是“法律法规和执行不一致/不明确”（31%）以及“劳动力成本增加”（31%）。值得注意的是，排在第四位的“监管合规风险”在2021年再次进入前五大挑战之列。最后，“对数据安全的担忧”再次当选外资企业面临的前五大挑战中。这主要是由于中国实施的贸易制裁、出口管制以及网络安全限制等政策。关于网络安全政策环境的详情，请参见《白皮书》中的信息通信技术章节。

was followed by “inconsistent regulatory interpretation and unclear laws and enforcement” (31 percent) and “rising labor costs” (31 percent). Notably, “regulatory compliance risk” in fourth place was again among the top five challenges in 2021. Finally, rounding out the top five challenges for the business community was “concerns about data security,” returning to the BCS top-five challenges. This is due in part to the rise in trade sanctions, export controls, and restrictive cybersecurity policies implemented by China. For a review of the cybersecurity policy environment, please see the *White Paper* ICT chapter.

Table 1 displays an expanded list of the top 5 challenges facing member companies in China in 2021.

Table 1. Top 5 Challenges facing American Business in China, BCS Report 2022

2022 BCS Rank	2022 BCS Challenge	2021 BCS Rank
1	Rising tensions in US-China relations	1
2	Inconsistent/unclear laws and/or regulations and enforcement	3
3	Rising Labor Costs	2
4	Regulatory Compliance Risks	6
5	Concerns about data security	5

Intellectual Property and Innovation

Innovation remains important to 82 percent of members’ future growth in China. However, concerns around potential technological decoupling, increased restrictiveness of cybersecurity-related policies, and lack of sufficient IP protection are all considered barriers to innovation. Compared to last year, a smaller proportion of members believe that China’s enforcement of intellectual property rights has improved. A business environment that fosters innovation and offers sufficient IP protection and opportunities for companies to seek legal recourse to protect their IP is essential. As is well known, IP protection is a longstanding challenge for our members in China.

The key barriers to innovation in China for our member companies are ❶ concerns around potential US-China technology decoupling (23 percent), ❷ increased restrictiveness of cybersecurity-related policies (22 percent), and ❸ a lack of sufficient IP protections (21 percent). Only 14 percent of members overall report they face no notable barriers to innovation. With respect to specific tenets of China’s far-reaching *Cybersecurity Law*, which came into effect in June 2017, members report that data localization requirements most

negatively affect their competitiveness in China. Other tenets of the *Cybersecurity Law*, *Data Security Law*, and *Personal Information Protection Law* that negatively affect member operations include data privacy regulations and compliance concerns due to vague implementing regulations.

Protection of intellectual property also remains a concern for US companies doing business in China. Some 78 percent of respondents report that they would consider increasing investment in local operations if China improved policies to ensure greater protection of intellectual property. This is important for many members as they believe innovation and R&D are critical to future growth in China. Up four points from last year, 20 percent believe that there is a lack of sufficient intellectual property protection. In the last year, 44 percent of companies believe that China’s enforcement of intellectual property rights has improved, down from 47 percent in 2020 and 69 percent in 2019. For one-third of companies, the lack of adequate IP protection is creating uncertainty about how to manage company investments in China, up seven points from last year.

AmCham China 2022 Policy Priorities

The foreign business community continued to face challenges as the US-China relationship recalibrated under the new Biden Administration and COVID-19 related restrictions continued throughout 2021. The bilateral tension continues to impact foreign companies on the ground as conflicting values and a lack of clear engagement strategies spark challenges in planning a long-term China strategy. Despite the ongoing challenges, AmCham China members remain committed to the China market. American businesses in China benefit both the United States and China economically and play an important role in people-to-people exchange amidst ongoing travel restrictions.

In China, 2021 also saw an increase in the promulgation of industry regulations in China, quickly transforming the landscape of business in China in sectors such as Education, Real Estate, Investment, Cybersecurity, and more. As companies seek to find their footing in an uncertain policy environment, clarity and transparency in policymaking is key to assuage the concerns of the business community and ensure that their valuable role in society is protected.

We continue to encourage the Chinese government to make good on its promises for further economic reform and continued opening to the outside world. There are significant areas of contention in the US-China relationship, most of which offer no easy prospect for resolution. Despite the current friction in US-China relations, however, the success of multilateral efforts to address issues of the “global commons” like climate change will be dependent on US-China cooperation.

表1 在华美国企业面临的五大挑战，2022年《中国商务环境调查报告》

2022年排名	2021商业挑战	2021年排名
1	中美关系日益紧张	1
2	法律法规和执行不一致 / 不明确	3
3	劳动力成本增加	2
4	监管合规风险	6
5	对数据安全的担忧	5

知识产权与创新

82% 的受访企业表示创新对于未来在中国的发展仍然重要。然而，潜在的技术脱钩、网络安全限制政策以及知识产权保护不足引起企业的担忧，也阻碍了创新。与去年相比，认为中国知识产权执法情况有所改善的受访企业数量有所减少。因此，为企业提供充分的知识产权保护和应用法律手段保护其知识产权的保障对于促进创新的商业环境是至关重要的。众所周知，知识产权保护是商会会员企业在中国面临的长期挑战。

会员企业在中国面临的主要障碍是：① 对潜在中美技术脱钩的担忧（23%），② 网络安全限制政策的增加（22%），以及③ 知识产权保护不足（21%）。总体而言，只有14%的会员表示他们在创新方面没有面临明显的障碍。2017年6月生效的《网络安全法》对中国影响深远。对于法规中的具体条款，会员企业表示，数据本地化要求不利于提高他们在中国的市场竞争力。《网络安全法》、《数据安全法》以及《个人信息保护法》因实施细则模糊对会员业务产生了负面影响，比如数据隐私规定以及相关的合规问题。

对在华外资企业来说，知识产权保护仍然值得关注。约78%的受访企业表示，如果中国完善相关法规政策进一步加强对知识产权的保护，他们将考虑增加在华投资。知识产权保护对商会会员企业来说十分重要，他们认为创新和研发对中国的未来增长至关重要。与去年相比，20%的受访企业认为知识产权保护不足，这一比例上升了四个百分点。去年，44%的企业认为中国的知识产权执法情况有所改善，低于2020年的47%和2019年的69%。三分之一的企业表示，缺乏足够的知识产权保护对管理在华投资带来了不确定性。这一比例比去年增加了七个百分点。

中国美国商会 2022 年政策重点

受拜登政府对中美关系进行重新战略调整，以及新冠肺炎疫情相关的限制措施，外国商界在华运营仍面临诸多挑战。双边关系紧张持续影响着在华经营的外资企业。两国价值观的冲突以及缺乏明确的双方沟通方案为外商投资企业制定在中国长期投资战略计划带来了挑战。尽管如此，商会会员企业仍然致力于深耕中国市场。在华投资不仅使中美两国经济受益，也在当前持续的旅行限制政策下，间接促进了两国的民间交流。

中国在2021年颁布出台了許多行业法规，迅速改变了中国教育、房地产、投资、网络安全等行业的商业格局。企业在不确定政策环境中寻找自己立足点的同时，也希望政府能从缓解商界担忧和保护商界的角度出发，制定清晰和透明的政策。

商会继续鼓励中国政府兑现其进一步实施经济改革和对外开放的承诺。中美关系中存在重大争论领域，其中大部分都无法轻易解决。虽然双边关系困难，但只有中美合作才能推动解决气候变化等“全球公共”问题。

作为商会年度政策谏言工作的重点，以下政策纲要将指导商会每年与中国政府、美国政府、媒体、学术界和其他利益攸关方的沟通交流。商会认识到，所面临的挑战是艰巨的，且可能无法在短期内解决。然而，商会希望这些重点政策要务能够帮助形成一个长期参与和对话的框架。

重点一：鼓励中美推进务实合作，根据具体问题具体分析的原则制定有理有据、互利共赢的举措和方案，而不是形式化的价值主张。（要点：鼓励务实合作）

- 鉴于2021年中美关系缺乏进展且中美第一阶段经贸协议项下的所有承诺尚未达成，2022年的当务之急应该是在双方互利的合作领域制定明确目标。
- 中美地缘政治紧张局势仍然是2021年商会会员企业面临的头号商业挑战。根据商会2022年《中国商务环境调查报告》，58%的受访企业（较去年增加8个百分点）表示受到中美关系的直接影响。保持美国企业商业活力，确保其平等进入世界第二大经济体将有助于这些企业保持领先的全球地位，继续为美国经济做出积极贡献。

As a focus of our advocacy efforts, these priorities will guide our conversations with the Chinese government, US government, media, academics, and other stakeholders throughout the year. We acknowledge that the challenges are significant and may not be resolved within the short-term. We hope, however, that these priorities can help form a framework for longer-term engagement and dialogue.

Priority One: Encourage action-based engagement between the US and China to create substantive and mutually beneficial initiatives and solutions on an issue-by-issue basis rather than unproductive values-based positioning.

Both governments should prioritize communication at the working level and with strong business community engagement on both sides, while emphasizing real strategies for implementing their plans rather than engaging solely for the sake of engagement.

- Given the lack of progress in US-China relations in 2021 and the failure to meet all commitments under the Phase One agreement, any starting point for 2022 should focus on building clear targets around areas where cooperation can be mutually beneficial.
- Geopolitical tension between the US and China remains a top business challenge cited by members. Furthermore, 58 percent of companies report being directly impacted by the US-China relationship, up 8 points from last year (2022 BCS). Protecting American business activity and access to the second-largest economy in the world will help these companies maintain a strong global position and continue to contribute positively to the US economy.
- After the Biden Administration entered office in January 2021, many hoped to see progress on areas of concern (IPR, cybersecurity, SOEs, etc.). This optimism has waned one year into the new administration as economic competition and confrontation on values-based differences continue to define the relationship.
- Bilateral dialogue is a positive step given developments over the past few years and the elimination of most previous forums for conversation, but any restart should be results-oriented and focused on the substance of the dialogue rather than the label or process of the dialogue.
- The foreign business community has a role to play in communicating the reality of operating in the Chinese market in an accurate, objective, and timely manner to counterparts in both governments. To that end, government access for AmCham China and our member companies is essential.

In this regard we recommend:

- Both sides commit to real plans for commercial and political engagement on an issue-by-issue basis, while refraining from the public use of inflammatory and unhelpful rhetoric around values-based differences.
- Both governments prioritize bilateral communication at the working level and with strong business community engagement on both sides, as well as high-level dialogue not only on economic issues, but also dialogue on all spheres of the bilateral relationship including national security, law enforcement, and diplomacy.
- The Chinese government prioritize greater access for AmCham China, other foreign chambers of commerce, and their members to address both general industry-wide challenges and also technical issues relating to normal business operations.
- Look for ways to accelerate bilateral visa issuances, advocate for transparency with respect to travel policies, and for the Chinese government to propagate policies to facilitate return of expat workers and their families.

Priority Two: Resolve regulatory confusion and uneven policy implementation by encouraging timely and clear announcements of changes to enhance compliance capabilities.

Both governments shall ensure that new regulations are communicated effectively, allowing a grace period for implementation and providing a clear enforcement guideline for companies to follow.

- Inconsistent/unclear regulations and enforcement continue to be major challenges for AmCham China members over the past decade. In 2022, “regulatory compliance risks” was again among our members top five business challenges. (2022 BCS) Greater policy transparency is a critical need to drive new investment among our members.
- The past year has seen a wave of new regulations introduced in China across many different industries including Education, Real Estate, and internet platform companies. The regulatory environment is among the conditions driving pessimism for doing business in China, according to 40 percent of members and up 16 percentage points from last year. (2022 BCS).
- Companies specifically noted that uneven enforcement and interpretation of new regulations is a core concern when creating their compliance strategy. When policies are vague or conflicting at a national level, localities may pursue inconsistent implementation strategies and timelines.

- 2021年1月拜登政府执政后，很多人都希望中美两国在多个关注领域（比如知识产权、网络安全、国有企业等）取得重要进展。然而，这种愿望并未实现，双边关系陷入僵局，停滞不前。
- 近几年中美关系紧张，加上因疫情等原因导致两国沟通渠道有限，尽快重启双边对话具有积极意义。商会建议对话应以结果为导向，注重沟通的具体内容，而非其形式或过程。
- 在准确、客观、及时地向中美两国对口政府部门反馈在中国市场运营的实际情况下，美国商界的角色不可替代。为此，商会和会员企业与政府保持沟通至关重要。

在此，商会建议：

- 根据具体问题具体分析的原则，双方应制定经贸和政治合作的务实计划，减少使用具有煽动性的无益言辞。
- 两国政府应优先推动工作层面的双边沟通，加强与商界的沟通与交流。除关于经济问题的高层对话之外，还应展开双边关系中涉及国家安全、执法和外交等多领域的对话。
- 中国政府应优先加强同包括中国美国商会在内的外国商会及其会员企业的交流与联系，携手解决行业层面的挑战以及涉及正常业务经营中遇到的具体问题。
- 设法优化双边签证发放流程，提高旅行政策透明度，支持中方发布的帮助外资企业外籍员工及其家属返回中国的相关政策。

重点二：提高政策公开透明度和持续稳定性，保持政策在不同地域执行的一致性，鼓励政府部门及时、精准发布政策变更内容，提高企业合规能力。（要点：提高政策稳定性、透明度与在各地执行的一致性）

- 过去十年中，法规和执法不一致仍然是商会会员企业面临的主要挑战之一。2022年，“监管合规风险”再次被会员企业列为五大商业挑战之一（2022年《中国商务环境调查报告》）。提高政策透明度是推动会员企业新增投资的关键因素。
- 去年，中国政府出台了一系列针对教育、房地产和互联网行业的新法规。40%（较去年增加16个百分点）的受访企业表示，监管环境的不稳定是造成对中国营商环境持悲观态度的因素之一。（2022年

《中国商务环境调查报告》）

- 多家受访企业明确指出，新法规在内容解释和执行层面的不一致是其在制定合规战略时的主要挑战。如果国家层面的政策含糊不清或互相冲突，就会出现各地在时间安排和执行中的巨大差异。
- 美国《防止强迫维吾尔人劳动法》等法律条文内容含糊不清，导致在中国经营的美国企业非常被动。

为此，商会建议：

- 中美两国政府应提高政策宣传力度，明确具体执行细则。
- 在修订关键行业监管政策前，应征求外资企业的意见，并对可能重塑市场运行规则的政策设定宽限期，让企业有足够的时间进行内部调整。
- 中国中央政府应提供清晰明确的工作指南，避免执法或实施时间安排方面的地区差异对在中国有大量业务的外资企业造成不必要的干扰。

重点三：加强在全球和双边重要领域的合作与交流。（要点：加强合作和交流）

- 商会尊重两国有权制定符合各自国家安全利益的政策并据此行事。与此同时，国家安全行动应尽量避免通过限制贸易往来的方式执行。双方应扩大关税减免的实施范围，促进贸易往来，实现互利共赢。
- 中国一直是美国商品和服务的前三大进出口贸易伙伴。两国贸易关系的重要性和两国市场的高度关联性有利于持续深化两国的经贸合作。
- 两国在应对气候变化方面的合作值得期待，但须制定务实计划深化合作关系。商会约八成的会员企业表示，目前正在计划或实施相关行动，以推动达成造福全球的中国双碳目标。利用私营部门推动气候方面的双边合作有助于取得实际成果。
- 虽然疫情防控措施仍未取消，但应设法重启中美两国人民的正常交流往来，确保教育、商业和探亲旅行的顺利恢复。

在此，商会建议：

- 中美两国应遵守全球公认的贸易规则，维护和加强现有多边贸易机制，避免保护主义倾向。
- 双方应将国家安全问题与其他问题区分开，为两国关系设置护栏，避免引起两国在其他领域的双边竞

- Confusion over plans to implement vaguely-focused legislation such as the US “Uyghur Forced Labor Prevention Act” and USICA forces American companies with operations in China to engage in guesswork.

In this regard we recommend:

- Increased focus on policy communication and clear enforcement guidelines by both the Chinese and US governments.
- Consult MNCs when proposing key industrial regulation changes and normalize grace periods for policies likely to drastically disrupt market operations in order to limit immediate adverse effects and allow companies sufficient time to implement necessary changes.
- Focused and clear guidance from China’s central government to ensure that regional differences in enforcement or implementation timelines do not cause unnecessary disruptions for companies with a large presence in China.

Priority Three: Enrich cooperation and exchange in areas of global and bilateral importance.

The US and China governments must engage on issues of global and bilateral importance to ensure that progress on issues such as climate change is not delayed due to misaligned interests in other areas.

- We acknowledge the right of both countries to define and act in accordance with their own legitimate national security interests. At the same time, national security actions should be applied in the least trade-restrictive manner possible. The tariff exemption program should be expanded to facilitate trade, which is mutually beneficial.
- China remains a top 3 import and export partner of US goods and services. The value of this trade relationship and the interconnectedness of markets allows for continued commercially focused engagement.
- Engagement on climate has been welcome, but real plans should be put in place to continue this engagement. Some 8 of 10 AmCham China member companies report that they are currently planning or already implementing actions to support China’s climate goals with global benefits. Utilizing the private sector to help support bilateral work on climate, could help to produce real results.
- While COVID-19 prevention measures remain in place, a plan to resume regular people-to-people exchange between the US and China should be explored in order to ensure a smooth return to education, business, and family travel.

In that regard we recommend:

- The US and China adhere to globally accepted trading rules, support and strengthen the existing multilateral trade regime, and avoid protectionist tendencies.
- Both sides separate issues of national security and identify guardrails to guide bilateral competition in other spheres. National security concerns should seek to minimize any restrictions on innovation to the extent appropriate.
- Continue to encourage and facilitate study/education as part of bilateral people-to-people exchanges, while maintaining appropriate controls to prevent such exchanges from being undermined or misused to illegally or unfairly procure sensitive technologies.
- China and the US should work together to strengthen global public health infrastructure and refrain from politicizing the COVID-19 pandemic and pandemic response.
- The US and China engage in dialogue not just on trade and economic issues, but also start or intensify negotiations on national security, law enforcement, military and other spheres of the bilateral relationship to improve coordination across each of these spheres.

Sources:

1. S.1260 - 117th Congress (2021-2022): United States Innovation and Competition Act of 2021 | Congress.gov | Library of Congress
2. H.R.4521 - 117th Congress (2021-2022): America COMPETES Act of 2022 | Congress.gov | Library of Congress
3. S.3933 - 116th Congress (2019-2020): CHIPS for America Act | Congress.gov | Library of Congress
4. H.R.3648 - 117th Congress (2021-2022): EAGLE Act of 2021 | Congress.gov | Library of Congress
5. S.1169 - 117th Congress (2021-2022): Strategic Competition Act of 2021 | Congress.gov | Library of Congress
6. H.R.2225 - 117th Congress (2021-2022): National Science Foundation for the Future Act | Congress.gov | Library of Congress
7. S.65 - 117th Congress (2021-2022): Uyghur Forced Labor Prevention Act | Congress.gov | Library of Congress
8. Peterson Institute of International Economics Trade Tracker, <https://www.piie.com/research/piie-charts/us-china-phase-one-tracker-purchases-us-goods>

争。在处理国家安全问题时，应尽量减少对创新的限制。

- 作为双边人文交流的一部分，继续鼓励和促进双边教育领域交流。同时，为了防止破坏或滥用此类交流，应采取适当的控制措施，禁止通过非法或不正当方式获取敏感技术。
- 中美两国应携手合作，提高全球公共卫生基础设施水平，避免将疫情和防疫政治化。
- 中美两国不仅应就贸易和经济问题展开对话，还应同时启动 / 加强关于国家安全、执法、军事等双边关系问题的协商，以深化双方在各领域的沟通协调。

2022 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 2022 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 2021 *White Paper*. The final column indicates each chapter’s priority recommendation for 2022.

Chapter	2021 Recommendation	Progress Score	2022 Recommendation
Agriculture			
<i>Chinese Government</i>	Improve the competitiveness and sustainability of Chinese agriculture by further opening the industry up to foreign investment in wheat, maize, soybean, and rice breeding and seed production, agricultural biotechnology, and modern agricultural processing. Adjust repetitive / duplicative feed ingredient registration procedures and frozen food disinfection requirements in line with scientifically-accepted principles.	No Progress	Accelerate innovation and further improve a fair business environment in China’s agriculture sector by further opening the industry up to foreign investment in wheat, maize, soybean, and rice breeding and seed production, genetically modified crops, and modern agricultural processing.
<i>US Government</i>	Build on the momentum established by the Phase One Agreement to strengthen communication with the Chinese government, explore space for cooperation, reduce tariffs on Chinese goods, and resume the normalization of bilateral trade between the US and China.	Low Progress	Build on the momentum established by the Phase One Agreement to strengthen communication with the Chinese government, explore space for cooperation, reduce tariffs on Chinese goods, and resume the normalization of bilateral trade between the US and China.
Automotive Industry			
<i>Chinese Government</i>	Allow enterprises (both domestically-invested and FIEs) greater opportunity to participate in policy and regulatory development and submit comments during the early stages of policy development to ensure that these policies better address market need and facilitate sustainable development.	Low Progress	Comprehensively manage local platforms by the national platform, and fill out vehicle data directly connected to the national and local platforms for monitoring through just one joint model investigation and one vehicle registration.
Banking and Capital Markets			
<i>Chinese Government</i>			
<i>Commercial Banking</i>	Remove all quotas in the banking sector, including on foreign debt.	Low Progress	Allow foreign FIs to act as lead underwriters for corporate bonds.
<i>Asset Management</i>	Recommendation not provided in 2021 Chapter.	N/A	Speed up the process of QDII qualification approval and increase the quota to give joint venture financial institutions more opportunities to expand overseas investment business.
<i>Custody Service</i>	Recognize global custodians in the mainland China market by removing the requirement for foreign investors to contract directly with local sub-custodians.	Moderate Progress	Approve qualified foreign fund service providers to provide fund accounting (FA) and transfer agency (TA) services in the China market.
<i>Securities</i>	Address the uncertainty around the capital repatriation process and timeline. Providing a clear, shorter timeline for the repatriation process would increase US investors’ interest in deploying capital onshore by providing more confidence in their ability to repatriate funds when requested by investors’ end clients.	Moderate Progress	Allow more foreign onshore securities companies to participate in A-share primary deals.

2022年《白皮书》建议评价一览表

建议评价一览表是中国美国商会追踪每年重点关切问题进展的重要工具。下列表格展示了2022年中国美国商会《白皮书》中讨论的重点建议及2021年的最近进展。

进展评价体现出商会会员对主管部门在解决2021年《白皮书》中每章重点问题所取得的进展在进展程度上的评价——分为进展明显、有所进展、进展缓慢三个等级。最右一栏提供的是2022年白皮书中每章的重点建议。

章节	2021年白皮书主要建议	进展评价	2022年白皮书主要建议
农业			
中国政府	进一步向外资开放小麦、玉米、大豆和水稻育种和种子生产、农业生物技术和现代农产品加工领域，提高中国农业的竞争力和可持续性。	没有进展	通过在小麦、玉米、大豆、水稻育种和种子生产、转基因作物和现代农业加工领域进一步向外国投资开放，加快创新，进一步改善中国农业行业的公平商业环境。
美国政府	在中美第一阶段经贸协议的基础上，与中国政府加强沟通交流，进一步探索合作空间，降低中国商品关税，推动中美双边贸易恢复正常化。	进展缓慢	巩固中美第一阶段经贸协议的成果，加强与中国的沟通，探索合作空间，降低对中国商品的关税，恢复中美双边贸易正常化。
汽车制造业			
中国政府	对内外资企业一视同仁，在政策制订和起草的早期阶段，给予企业更多参与政策、法规制定和反馈意见的机会，确保相关政策更符合市场痛点，促进可持续发展。	进展缓慢	地方平台由国家平台整合管理。最终实现企业只进行一次车型联调一次车辆注册，即可以将车辆监控数据直接接入国家和地方平台。
银行和资本市场			
中国政府			
商业银行	允许外国金融机构充当公司债券的主承销商。	进展缓慢	允许外国金融机构充当公司债券的主承销商。
资产管理	2021年未提供建议。	N/A	加快QDII资质审批流程，增加额度，为合资金融机构拓展海外投资业务提供更多机会。
托管服务	批准合格的外国基金服务提供者在中国市场提供基金会计（FA）和转让代理（TA）服务。	有所进展	批准合格的外国基金服务提供者在中国市场提供基金会计（FA）和转让代理（TA）服务。
证券	解决资本抽回流程和各环节时间点的不确定的问题。明确规定资金抽回流程的时间节点、缩短流程周期将提高美国投资者在境内配置资本的动力；在投资者最终客户要求汇回资金时，美国投资者将更有信心。	有所进展	允许更多外资在岸证券公司参与A股一级交易。

Chapter	2021 Recommendation	Progress Score	2022 Recommendation
<i>Bonds and Derivatives</i>	Issue clarification on which futures products will be accessible for international investors under the new unified Qualified Foreign Investor scheme and permit foreign futures brokers to participate in the overseas intermediary structure.	Moderate Progress	Increase accessibility of futures products for international investors and permit foreign futures brokers to participate in the overseas intermediary structure.
<i>Credit Rating</i>	Abolish the requirement on credit rating floors for bond issuance or investment. Such reform will ultimately enable the market to more appropriately price risk and reduce the number of risky or non-performing loans or bonds.	High Progress	<i>No recommendation offered in 2022.</i>
<i>Cybersecurity and Cross-Border Data Flows</i>	Explicitly allow companies and their subsidiaries to conduct intra-party cross-border data transfers for purposes of conducting cross-border transactions and implementation of enterprise level compliance and risk-control policies and uphold the principles of free movement of data that China signed on to in the G20 Osaka Leaders Declaration.	Low Progress	Clarify the definition, scope, and attributes of “Important Data,” and ensure that the definition of Important Data is reasonable when developing the “important data” catalog for the financial industry.
<i>Private Equity</i>	Issue policies and regulations for private equity investment similar to the level of policy support currently afforded to venture capital, as both types of investment promote the long-term and healthy development of China’s real economy.	N/A	Establish a new service window to help companies with the approval process and create a more favorable regulatory environment for PE/VC long-term investment.
Civil Aviation			
<i>Chinese Government</i>	Further promote civil-military collaboration to increase operational efficiency and a lessening of airspace congestion.	N/A	<i>No recommendation included in 2022.</i>
Civil Society			
<i>Chinese Government</i>	Update/expand the list of Professional Supervisory Units (PSUs) and provide clear procedures and greater incentives for government entities to act as PSUs.	Low progress	Expand the list of eligible Professional Supervisory Units (PSUs) and provide clear criteria and greater incentives for government entities to act as PSUs. For domestic civil society in China, similarly, expand and improve the ability of organizations to register through the domestic process. The vibrancy of domestic civil society is important in allowing over-seas NGOs to partner with local organizations.
Competition Law			
<i>Chinese Government</i>	Applaud significant progress in addressing anti-competitive conduct by platform (Internet) companies, collusion among raw materials suppliers (particularly in the pharmaceuticals industry), and subjecting VIEs to merger review and other regulatory requirements. Decry persistent discrimination between domestic companies and their foreign competitors and allowing industrial policy interests to affect merger reviews (particularly in ICT transactions) and abuse of dominance investigations. Consider the implications of the US Supreme Court decision in <i>Leegin Creative Leather Products, Inc. v. PSKS, Inc. (Kay’s Closet)</i> with respect to resale price maintenance (RPM) enforcement and remove restrictions on the ability to undertake enforcement actions against SOEs, especially central SOEs.	Moderate Progress	Publish clear rules for determination and regulations of jurisdictional issues for merger reviews and clarify when companies must report mergers to SAMR for approval prior to closure. Such issues include providing meaningful explanations and example cases of what constitutes “control” of joint ventures and mergers of minority interests, and how revenue is allocated and attributed in calculating the filing threshold. Strictly enforce the existing eligibility criteria for the simplified procedure and publish detailed guidelines on how SAMR exercises its discretion when reviewing cases. Continue to provide expedited reviews based on the simplified procedures for merger reviews.
Compliance			
<i>Chinese Government</i>	Strive for additional clarity and consistency in regulatory enforcement and in the scope of responsibilities held by the central National Supervisory Commission and local supervision commissions. Greater transparency around anti-corruption enforcement action is paramount. Such efforts should include support for key components of the rule of law, including transparency, consistency in interpretation, and due process.	Moderate Progress	Further clarifying the responsibilities of the National Supervisory Commission and local supervisory commissions to ensure the consistency in regulatory enforcements. Transparency is critical to the Anti-corruption. Ensuring transparency and ensuring consistency in legal interpretation and due procedure in place in the legal regimes.

章节	2021年白皮书主要建议	进展评价	2022年白皮书主要建议
债券和衍生工具	澄清根据新的统一合格外国投资者计划，国际投资者可参与哪些期货产品。并允许外国期货经纪人参与海外中介机构。	有所进展	增加国际投资者获得期货产品的机会，并允许外国期货经纪人参与海外中介机构。
信用评级	废除对债券发行或投资的信用评级下限的要求。这种改革最终将使市场能够更恰当地对风险进行定价，减少风险或不良贷款或债券的数量。	进展明显	2022年白皮书对该领域不提供建议。
网络安全	明确允许公司及其子公司进行内部跨境数据传输，坚守遵守中国在二十国集团大阪领导人宣言中签署的数据自由流动原则。	进展缓慢	通过明确“重要数据”的定义、范围及特征，确保在制定金融业“重要数据”目录时的定义是合理的。
私募股权	对私募股权投资出台类似于目前对风险投资的政策支持水平的政策和法规，因为这两种投资都能促进中国实体经济的长期健康发展。	N/A	建立一个新的服务窗口，帮助公司完成审批流程，为私募股权/风险资本长期投资创造更有利的监管环境。
民用航空			
中国政府	进一步促进军民合作，以提高运行效率，缓解空域拥堵。	N/A	2022年白皮书对该领域不提供建议。
民间团体			
中国政府	更新和/或拓展业务主管单位名单，同时为担任业务主管单位的相关政府机构制定明确程序、加大激励力度。[公安部、国务院、全国人民代表大会]	进展缓慢	应扩增符合条件的业务主管单位名单，为政府机构担任业务主管单位提供明确标准和可观激励。同时，应增强和提高国内民间团体通过流程进行注册的能力。保持国内民间社会的活力对于允许海外非政府组织与当地组织合作非常重要。
竞争法规			
中国政府	赞扬在解决平台（互联网）公司的反竞争行为、原材料供应商之间的勾结（特别是在制药业）以及使可变利益实体接受合并审查和其他监管要求方面取得的重大进展。谴责国内公司与其外国竞争对手之间持续存在的歧视，并反对产业政策利益影响合并审查（尤其是信息和通信技术行业的交易）及滥用市场支配地位调查。建议借鉴美国最高法院在 Leegin Creative Leather Products, Inc. 诉 PSKS, Inc. (Kay's Closet) 一案中关于转售价格维持 (RPM) 执法的影响，取消对国有企业，特别是对中央国有企业采取执法行动的能力限制。	有所进展	对于合并审查，公布明确的管辖权问题认定规定，并明确企业何时必须向总局申报交易以在交割前审批。此类问题包括就合营企业“控制权”和少数股权收购的构成，以及在计算申报门槛时如何分配和归属收入，提供有意义的解释和实例。严格执行简化程序的现有资格标准，并公布关于总局在受理案件时如何行使自由裁量权的详细指南。继续根据合并审查简化程序提供快速审查。

Chapter	2021 Recommendation	Progress Score	2022 Recommendation
<i>US Government</i>	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.	Moderate Progress	Participating in bilateral conversations, deepening exchanges, supporting implementation of transparent and predictable regulatory institutions and reaching consensus in compliance policies and goals.
Customs and Trade			
<i>Chinese Government</i>	Given the current uncertainty in US-China bilateral relations, we urge the GACC to establish and maintain a mechanism(s) for dialogue with US and other foreign-invested enterprises in China to enhance communication and remove barriers in information sharing and to improve compliance with customs-related procedures.	Moderate Progress	Given the current uncertainty in US-China bilateral relations, we urge the GACC to establish and maintain a mechanism(s) for dialogue with US and other foreign-invested enterprises in China to enhance communication and remove barriers in information sharing and to improve compliance with customs-related procedures.
Direct Sales			
<i>Chinese Government</i>	Promptly revise the Direct Sales Regulation 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 that it is based on sales volume and not on the number of sales agents recruited.	Low Progress	Promptly revise the Direct Sales Regulation 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 that it is based on sales volume and not on the number of sales agents recruited.
Education			
<i>Chinese Government</i>	<i>Chapter not provided in 2021.</i>	N/A	Have a clear, steady, and transparent timeline to relax travel restrictions and visa policies for foreign personnel. Prioritize the timeline for students and dependents to return. Current strict visa and travel restrictions have decreased expatriates' willingness to live and work in China.
<i>US Government</i>	<i>Chapter not provided in 2021.</i>	N/A	Continue to implement China-US bilateral exchange programs in education, culture, and the humanities among others, which benefit students and higher education institutions of both countries.
Energy			
<i>Chinese Government</i>	Expand opportunities for exploration licensing for non-NOCs with more and better acreage, adequate data availability and access, and generous financial terms to attract bids.	Moderate Progress	Ensure fair competition between foreign-funded enterprises and domestic enterprises and avoid local protectionism in energy bidding.
<i>US Government</i>	As part of the continuing implementation of the Phase One Agreement, create sufficient opportunity for China to continue to reduce its tariff on US-origin LNG, which will benefit US producers.	Low Progress	<i>Recommendation not provided in 2022.</i>
<i>Both Governments</i>	Promote and maintain platforms for open dialogue and knowledge sharing through existing industry platforms like ECP and OGIF.	Low Progress	Both China and America should create policy strengthening their capacity for cooperation and technical exchange in order to address climate change and promote clean energy development.
Environment			
<i>Chinese Government</i>	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.	Low Progress	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.

章节	2021年白皮书主要建议	进展评价	2022年白皮书主要建议
合 规			
中国政府	进一步明确国家监察委员会和地方监察委员会的职责范围，保持监管与执法的一致性；提高反腐执法工作的透明度是重中之重，应确保法治的关键构成要素落实到位，包括透明度、法律解释一致性和正当程序等。	有所进展	进一步明确国家监察委员会和地方监察委员会的职责范围，保持监管执法的一致性。提高反腐执法工作的透明度是重中之重。应确保法治的关键构成要素包括透明度、法律解释一致性、正当程序等落实到位。
美国政府	参与双边对话，深入开展交流，支持贯彻落实透明且可预测的监管制度，针对合规工具和目标达成共识。	有所进展	参与双边对话，深入开展交流，支持贯彻落实透明且可预测的监管制度，针对合规政策和目标达成共识。
海 关			
中国政府	鉴于目前美中双边关系的不确定性，商会促请海关总署建立并保持与美国和其他在在华外商投资企业的对话机制，以加强沟通，消除信息共享方面的障碍，提高海关相关程序的合规性。	有所进展	鉴于目前中美双边关系存在不确定性，商会促请海关总署建立并保持与美国和其他在在华外商投资企业的对话机制，以加强沟通，消除信息共享方面的障碍，提高海关相关程序的合规性。
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。	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。
教 育			
中国政府	2021年未提供建议。	N/A	就对外国人员的旅行限制和签证政策制定明确、稳定、透明的时间表。优先安排学生和家属返回的时间。目前严格的签证和旅行限制降低了外籍人士在中国生活和工作的意愿。
美国政府	2021年未提供建议。	N/A	继续实施中美教育、文化、人文等领域的双边交流项目，使两国学生和高等教育机构受益。
能 源			
中国政府	扩大在岸勘探许可范围。中国应增加勘探区域数量并提高其质量，保证勘探数据的可用性及开放性，提供优惠金融条件吸引非国有石油公司投标。	有所进展	确保内外资企业可以在能源交易中实现公平竞争，避免地方保护主义。
美国政府	中美第一阶段经贸协议后的贸易谈判应讨论液化天然气问题，为中国创造足够机会，降低对美产液化天然气加征的关税，为美国生产商谋福利。	进展缓慢	2022年白皮书对该领域不提供建议。
双边政府	通过 ECP 和 OGIF 等现有行业平台，促进和维护开放对话和知识共享平台。	进展缓慢	中美两国都应该制定政策，加强合作和技术交流能力，以应对气候变化，促进清洁能源发展。

Chapter	2021 Recommendation	Progress Score	2022 Recommendation
<i>US Government</i>	Share environmental protection best practices and technologies where relevant with your Chinese counterparts. Encourage the adoption of international, scientifically-grounded emissions standards.	Moderate Progress	Share environmental protection best practices and technologies where relevant with your Chinese counterparts. Encourage the adoption of international, scientifically grounded emissions standards.
Express Delivery			
<i>Chinese Government</i>	Cybersecurity and express delivery authorities should jointly formulate a reasonable data assessment system for the express delivery industry that balances local security requirements with the needs of express delivery enterprises to collect and transfer data across borders frequently. Enterprises should be given sufficient preparation time and information to comply with new regulations.	Low Progress	AmCham China members propose to balance the enforcement of cybersecurity and personal information laws and the need of the express industry for efficient customs clearance, so as to reduce the additional burden on the industry caused by the restrictions on cross-border data transmission.
Food and Beverage			
<i>Chinese Government</i>	Put forth a unified framework and description of laws, regulations, and standards that govern the food and beverage industry. The relationship between food safety laws, rules, and standards and non-food safety standards that pertain to the food and beverage industry needs to be clarified, and the responsibilities of relevant government departments should also be clarified.	Low Progress	Provide a unified framework and description of the laws, regulations and standards for regulating the food and beverage industry, clarify the relationship between food safety laws, regulations and standards and those of non-food safety, and define the responsibilities of relevant government departments.
<i>US Government</i>	Strengthen communication between relevant US government authorities, industry associations, and American enterprises doing business 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.	Moderate Progress	Strengthen exchanges between relevant U.S. government authorities and industry associations, and U.S. companies in China, and increase opportunities for seminars involving all parties on international experiences and best practices that the Chinese government needs to understand.
Government Procurement			
<i>Chinese Government</i>	China should withdraw its proposed one-year transitional thresholds, its reservation to require domestic content requirements, offsets, or transfer of technology and its claim to transitional measures as a developing country given the advanced state of its economy.	Moderate Progress	In terms of its domestic procurement market, AmCham China encourages China to ensure its government procurement market remains open to foreign suppliers. FIEs can and do make positive contributions to China's national development and urge the Chinese government to issue clear guidance to ensure local governments do not unreasonably shut out or restrict FIEs from procurement opportunities, to support the commitments to equality for FIEs in procurement enshrined in the Foreign Investment Law.
<i>US Government</i>	Work with the EU and the other GPA parties to identify and present to China the improvements needed for their acceptance of China's market access coverage with the aim of facilitating China's GPA accession in 2021.	Moderate Progress	Recommend the US government to work with the EU and the other GPA parties to identify and present to China the improvements needed for their acceptance of China's market access coverage with the aim of facilitating China's GPA accession in 2022.

章节	2021年白皮书主要建议	进展评价	2022年白皮书主要建议
环境			
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。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。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。	进展缓慢	制定明确的环境合规全国性的指导方针，并在网上公示，供企业和监管机构查阅。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。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	与中国同行分享环保的最佳实践和技术，鼓励其采用以科学为基础的国际排放标准。	有所进展	与中国同行分享环保的最佳实践和技术，鼓励其采用以科学为基础的国际排放标准。
快递服务			
中国政府	网络安全和快递主管部门应共同制定合理的快递行业数据评估体系，平衡当地安全要求和快递企业频繁收集和跨境传输数据的需求。应给予企业足够的准备时间和信息用以更好遵守新的规定。	进展缓慢	建议监管部门在网络安全和个人信息法律的实施与快递业高效通关的需要之间取得平衡，以减轻跨境数据传输限制给快递业带来的额外负担。
食品、饮料与零售业			
中国政府	对相关法律、法规和标准建立统一的监管框架和确定一致的描述，以帮助管理食品和饮料行业。明确食品安全法律、法规、标准与食品饮料行业非食品安全标准的关系，明确政府有关部门的职责。	进展缓慢	提出用于管理食品和饮料行业的法律、法规和标准的统一框架和说明。与食品和饮料行业有关的食物安全法律、法规和标准与非食品安全标准之间的关系需要澄清，政府相关部门的职责也应明确。
美国政府	对相关法律、法规和标准建立统一的监管框架和确定一致的描述，以帮助管理食品和饮料行业。明确食品安全法律、法规、标准与食品饮料行业非食品安全标准的关系，明确政府有关部门的职责。	有所进展	对相关法律、法规和标准建立统一的监管框架和确定一致的描述，以帮助管理食品和饮料行业。明确食品安全法律、法规、标准与食品饮料行业非食品安全标准的关系，明确政府有关部门的职责。
政府采购			
中国政府	鉴于中国经济的发达状况，中国应撤销其提出的一年过渡门槛、要求国内含量要求、抵消或技术转让的保留，以及作为发展中国家对过渡措施的要求。	有所进展	在国内采购市场方面，鼓励中国确保其政府采购市场对外国供应商保持开放。外商投资企业能够也确实为中国的国家发展做出积极贡献，因此，敦促中国政府发布明确的指导意见，确保地方政府不无理排除或限制外商投资企业获得采购机会，以此支持《外商投资法》关于外商投资企业在采购中受到平等对待的承诺。
美国政府	与欧盟和其他《政府采购协定》缔约方合作，确定中国市场准入需要做出的改进，推动中国在2020年加入《政府采购协定》。	有所进展	建议与欧盟和其他《政府采购协定》缔约方合作，明确中国市场准入需要做出的改进，推动中国在2020年加入《政府采购协定》。

Chapter	2021 Recommendation	Progress Score	2022 Recommendation
Healthcare			
<i>Chinese Government</i>			
<i>Pharmaceuticals</i>	Continue to strengthen IPR in China and ensure adherence to the commitments for improved IPR made by China in the Phase One Agreement. For the pharmaceutical sector, develop a patent linkage notification system, adopt PTE protocols aligned with global best practices and adopt RDP protections that are consistent with those found in other developed jurisdictions such as the US.	Moderate Progress	Continue to strengthen China's intellectual property protection and effectively implement China's commitment to improve pharmaceutical intellectual property protection in Phase I of the US-China economic and trade agreement; for the pharmaceutical industry, introduce a notification system in the patent linkage system and set reasonable waiting periods for the approval of registrable patents and generics, adopt a patent term extension program consistent with global best practices, and take drug data protection measures in line with other jurisdictions with mature systems, such as the United States.
<i>Medical Devices</i>	Evidence-based practices should be used 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 service prices to be adjusted up or down as needed in line with market demands.	Moderate Progress	Adopt evidence-based practices to determine the cost of medical devices, and consider raw material costs and labor costs in pricing medical services and devices; adjust service prices according to market demand.
<i>Vaccines</i>	Enhance vaccination rates across all age groups through the introduction of more innovative vaccines and the establishment of more city-level immunization programs to fulfill China's disease prevention and public health goals.	Moderate Progress	Increase vaccination rates for all age of people to achieve China's disease prevention and public health goals.
<i>Gene Therapy Technologies</i>	Encourage line ministries, agencies, and departments to promptly issue detailed implementing regulations, clarifications, and further guidance that clearly define the scope of "human stem cell, gene diagnosis and therapeutic technology application and development," activities prohibited in the Negative List, and thus clarifying those technologies and industries in which FIEs are permitted to invest.	Low Progress	Encourage competent ministries, commissions, agencies and departments to issue timely and detailed implementing regulations, instructions and guidelines to clarify the scope of "the application and development of human stem cells, gene diagnostic and therapeutic technologies" prohibited in the <i>Negative List</i> and to clearly define the technologies and industries in which foreign-invested companies may invest.
<i>Healthcare Services</i>	Remove restrictions and limitations on foreign-invested hospitals including foreign equity limits, a ban on new hospital branches, the requirement to report each branch separately for tax purposes, and restrictions on the number of hospitals that foreign employees and doctors can be permitted to work.	Moderate Progress	Remove various restrictions and constraints on foreign invested and-owned hospitals, including restrictions on foreign equity, prohibiting hospitals from establishing new branches, requiring hospitals to file separate tax returns for each branch, and limiting the number of hospitals that allow foreign staff and doctors to practice.
<i>Occupational Health and Safety</i>	Establish a system of emergency reserve PPE and create the associated system standards to ensure that the PPE stored within the system and for use during future public health emergencies complies with China's standards and is of sufficient quality for medical/public health use.	Moderate Progress	Establish a comprehensive protective equipment stockpile system and related stockpile standards to ensure that the personal protective materials stockpiled for use in response to future public health emergencies meet the requirements of the corresponding national standards and the quality of medical/public health use.
High-Tech Trade Promotion and Export Controls			
<i>Chinese Government</i>	Expediently release implementing regulations on the export control law clarifying export control procedures, align China's control list with the multilateral lists and seek application in all multilateral export control regimes.	Moderate Progress	Work with the US Government and relevant companies to conduct outstanding end-use visits, to facilitate the removal of impacted Chinese companies from the Unverified List upon the successful completion of the end-use visits and pending licenses can be issued thereafter.

章节	2021年白皮书主要建议	进展评价	2022年白皮书主要建议
医疗卫生			
<i>中国政府</i>			
药品	继续加强中国的知识产权，确保遵守中国在中美第一阶段经贸协议中做出的改进知识产权的承诺。在医药领域，建立一个专利联系通知系统，采用与全球最佳做法相一致的专利期延长协议，并采用与美国等其他发达地区一致的药品数据保护措施。	有所进展	继续加强中国的知识产权保护力度，并遵守在中美第一阶段贸易协议中做出的改进知识产权的承诺。在医药领域，建立一个专利联系通知系统，采用与全球最佳做法相一致的专利期延长协议，并采用与美国等其他发达地区一致的药品数据保护措施。
医疗设备	应采用循证实践来确定医疗器械的成本。在调整医疗服务和设备价格时，需要考虑原材料和劳动力成本等投入。允许服务价格根据市场需求进行调整。	有所进展	采用循证实践来确定医疗器械的成本。在调整医疗服务和设备价格时，需要考虑原材料和劳动力成本等投入。允许服务价格根据市场需求进行调整。
疫苗	通过引进更多的创新疫苗和建立更多的城市级免疫计划，提高所有年龄段的疫苗接种率，以实现中国的疾病预防和公共卫生目标。	有所进展	为实现疾病预防和公共卫生需要，切实提高疫苗接种率。
基因治疗技术	鼓励主管部委、机构和部门及时发布详细的实施细则、说明和进一步的指导意见，明确界定“人类干细胞、基因诊断和治疗技术的应用和开发”的范围，以及负面清单中禁止的活动，从而明确允许外商投资企业投资的技术和行业。	进展缓慢	鼓励主管部委、机构和部门及时发布详细的实施细则、说明和进一步的指导意见，明确界定“人类干细胞、基因诊断和治疗技术的应用和开发”的范围，以及负面清单中禁止的活动，从而明确允许外商投资企业投资的技术和行业。
医疗服务	取消外商投资医院的限制和约束，包括：外资股比限制；对新建医院分支机构的禁令；要求各分支机构单独申报税务；允许外籍员工及外籍医生执业的医院数量限制。	有所进展	取消外商投资医院的限制和约束，包括：外资股比限制；对新建医院分支机构的禁令；要求各分支机构单独申报税务；允许外籍员工及外籍医生执业的医院数量限制。
职业健康安全	建立应急储备个人防护用品制度，制定相关制度标准，确保系统内储存和未来突发公共卫生事件期间使用的个人防护用品符合中国标准，具有足够好的医疗/公共卫生使用质量。	有所进展	建立应急储备个人防护用品制度，制定相关制度标准，确保系统内储存和未来突发公共卫生事件期间使用的个人防护用品符合中国标准，具有足够好的医疗/公共卫生使用质量。
高科技贸易促进和出口管制			
<i>中国政府</i>	尽快出台出口管制法实施细则，明确出口管制程序，使中国的管制清单与多边清单一致，并争取在所有多边出口管制制度中得到应用。	有所进展	加强同美方和有关企业的沟通，推进未完成的最最终用途访问，以便在最终用途访问成功完成后，将受影响的中国公司从未经验证的名单中删除，并在之后颁发待决许可证。
<i>美国政府</i>	鉴于美国的政策变化，确保许可机构有足够的资源来处理许可申请。	有所进展	鉴于美国的政策变化，确保许可机构有足够的资源来处理许可申请。
<i>对两国政府</i>	商会鼓励两国政府作出更大努力，通过教育和培训活动协助美国和中国实体加强其合规工作，以确保它们不会触犯美国国家安全和外交政策利益。	有所进展	鼓励两国政府作出更大努力，通过教育和培训活动协助美国和中国两国企业加强其合规工作，以确保它们不会触犯两国的出口管制法规。

Chapter	2021 Recommendation	Progress Score	2022 Recommendation
<i>US Government</i>	Ensure that the licensing authorities have sufficient resources to process license applications given the US policy changes	Moderate Progress	Ensure that the licensing authorities have sufficient resources to process license applications given changes in US policy.
<i>Both Governments</i>	Encourage 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.	Moderate Progress	Encourage greater efforts by both governments to assist US and Chinese entities in strengthening their compliance efforts through education and training activities to ensure that they do not run afoul of applicable export control laws and regulations.
Human Resources			
<i>Chinese Government</i>	Extend the current tax-deductible items and relief measures for foreign nationals in China beyond their scheduled expiration at the end of 2021 and extend the current special tax calculation rate for annual bonuses and equity which applies to both Chinese and foreign nationals. The new measures are likely to disincentivize multinational companies from sending senior management to work in China.	Moderate Progress	Extend the current tax-deductible items and relief measures for foreign nationals in China beyond their re-scheduled expiration at the end of 2023 and extend the current special tax calculation rate for annual bonuses and equity which applies to both Chinese and foreign nationals. The new measures are likely to disincentivize multinational companies from sending senior management to work in China.
Information and Communications Technology and Cybersecurity			
<i>Chinese Government</i>	Elements of the CSL need to be defined and clarified. We urge the government to maintain narrowly defined concepts and definitions that do not go beyond fundamental and reasonable definitions of national security.	Low Progress	Elements of the CSL need to be defined and clarified. We urge the government to maintain narrowly defined concepts and definitions that do not go beyond fundamental and reasonable definitions of national security.
<i>US Government</i>	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.	Low 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 of international standards and ethical frameworks in China.
Insurance			
<i>Chinese Government</i>			
<i>Ownership</i>	Issue detailed implementing measures describing how foreign equity caps can and will be lifted for businesses operating in the insurance industry.	Low Progress	Issue detailed implementing measures describing how foreign equity caps can and will be lifted for businesses operating in the insurance industry.
<i>Cyber Issues</i>	Clarify key definitions in China's <i>Cybersecurity Law</i> including "critical Information Infrastructure," "personal information," "important data," and "applicable supervisors," including their compatibility with applicable standards, and review the effectiveness of the measures in the Law.	Low Progress	Clarify key definitions in China's <i>Cybersecurity Law</i> including "Critical Information Infrastructure," "Personal Information," "Important Data," and "applicable supervisors," including their compatibility with applicable standards, and review the effectiveness of the measures under the Law.
<i>Licenses</i>	Increase competition in the pension and health insurance industry by approving licenses for more foreign-invested applicants and ensuring equal treatment for foreign-invested and domestically invested insurance providers.	Moderate Progress	Increase competition in the pension and health insurance industry by approving licenses for more foreign-invested applicants and ensuring equal treatment for foreign-invested and domestically invested insurance providers.
<i>C-ROSS</i>	Develop an official procedure where companies can submit written inquiries to CBIRC concerning specific C-ROSS provisions for responses in written public statements in order to reduce inconsistency of implementation.	Moderate Progress	Develop an official procedure where companies can submit written inquiries to CBIRC concerning specific C-ROSS provisions for responses in written public statements in order to reduce inconsistency of implementation.
<i>Tax Issues</i>	Restore 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.	Low Progress	Restore 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.

章节	2021年白皮书主要建议	进展评价	2022年白皮书主要建议
人力资源			
中国政府	延长目前在中国的外国公民的减税项目和减免措施，使其在2021年底到期日之后继续有效。同时延长目前适用于中国公民和外国公民的年度奖金和股权的特殊税率计算。这些新措施可能会抑制跨国公司派遣高级管理人员到中国工作的意愿。	有所进展	延长目前在中国的外国公民的减税项目和减免措施，使其在2023年底到期日之后继续有效。同时延长目前适用于中国公民和外国公民的年度奖金和股权的特殊税率计算。这些新措施可能会抑制跨国公司派遣高级管理人员到中国工作的意愿。
信息和通信技术以及网络安全			
中国政府	《网络安全法》的内容需要加以界定和明确。商会促请政府保持狭义的概念和定义，不要超越国家安全的基本合理定义。	进展缓慢	《网络安全法》的内容需要加以界定和明确。促请政府保持狭义的概念和定义，不要超越国家安全的基本合理定义。
美国政府	促进与中国机构在国际标准设定论坛上的合作，制定人工智能伦理框架，制定标准，鼓励中国采用国际标准和伦理框架。	进展缓慢	促进与中国机构在国际标准设定论坛上的合作，制定人工智能伦理框架，制定标准，鼓励中国采用国际标准和伦理框架。
保险			
中国政府			
所有权	发布详细的实施措施，说明保险企业外资股比限制如何取消。	进展缓慢	发布详细的实施措施，说明保险企业外资股比限制如何取消。
网络问题	明确《网络安全法》中的关键定义，包括“关键信息基础设施”、“个人信息”、“重要数据”和“适用监督管理机构”，并审查法律中目前所述措施的有效性。	进展缓慢	明确《网络安全法》中的关键定义，包括“关键信息基础设施”、“个人信息”、“重要数据”和“适用监督管理机构”，并审查法律中目前所述措施的有效性。
牌照	增加外商投资申请人牌照发放，确保外商投资保险公司和内资保险公司享有平等待遇，促进养老金和医疗保险行业的良性竞争。	有所进展	增加外商投资申请人牌照发放，确保外商投资保险公司和内资保险公司享有平等待遇，促进养老金和医疗保险行业的良性竞争。
中国风险导向的偿付能力体系(C-ROSS)	制定官方程序，使企业可以就中国风险导向的偿付能力体系的具体规定向中国银行保险监督管理委员会发出书面咨询，以便在书面公开声明中获取答复，减少执行上的不一致。	有所进展	制定官方程序，使企业可以就中国风险导向的偿付能力体系的具体规定向中国银行保险监督管理委员会发出书面咨询，以便在书面公开声明中获取答复，减少执行上的不一致。
税务问题	恢复企业债券和债务项目利息收入的免税状态，或者至少对改革前发行的债券免征增值税。	进展缓慢	恢复企业债券和债务项目利息收入的免税状态，或者至少对改革前发行的债券免征增值税。
知识产权			
中国政府	针对恶意抢注第三方商标的申请人，建立明确的投诉处理程序及威慑性行政处罚规定。	有所进展	针对恶意抢注第三方商标的申请人，建立明确的投诉处理程序及威慑性行政处罚规定。

Chapter	2021 Recommendation	Progress Score	2022 Recommendation
Intellectual Property Rights			
<i>Chinese Government</i>	Establish a clear process for the filing of complaints and the issuance of deterrent-scale administrative fines against trademark applicants which file third-party trademarks in bad faith.	Moderate Progress	Establish a clear process for the filing of complaints and the issuance of deterrent-scale administrative fines against trademark applicants which file third-party trademarks in bad faith.
<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>	Ensure that provisions in the FIL, the Implementing Regulations of the FIL, and the Phase One Agreement that provide for equal treatment of FIEs with their domestically-invested counterparts are implemented in full according to the timelines proscribed.	Moderate Progress	Ensure that provisions in the Circular of MIIT on Deepening Reform of “Separating Operating Permits and Business License” and Circular of the Ministry of Finance on Implementing Relevant Policies on Equal Treatment of Domestic and Foreign-Invested Enterprises in Government Procurement Activities providing for equal treatment between foreign-invested enterprises and domestic companies are fully implemented in practice.
Legal Services			
<i>Chinese Government</i>	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 the ability of foreign law firms to provide advice on China law business matters should be reasonable and practical.	Low Progress	Any Draft Regulations on the administration of China representative 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 the ability of foreign law firms to provide 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 US law firms in China to enjoy the same benefits as Chinese law firms operating overseas. This request has appeared in successive <i>White Papers</i> for many years, but foreign firms now face the prospect of even tighter restrictions than before.	Low Progress	Negotiate with China to revise current regulations in order to allow US law firms in China to enjoy the same benefits as Chinese law firms operating overseas (especially those in the US). This request has appeared in successive <i>White Papers</i> for many years, but foreign firms now face the prospect of even tighter restrictions than before.
Machinery and Manufacturing			
<i>Chinese Government</i>	Consider replacing the current subsidy system with a tax credit regime based on current global norms and ensure a level playing field for FIEs.	Low Progress	Consider replacing the current subsidy system with a tax credit regime based on current global norms and ensure a level playing field for FIEs.
<i>US Government</i>	Continue to urge China to ensure that policies stemming from MIC 2025 do not favor domestic companies at the expense of FIEs and are not dependent on subsidies in violation of China’s WTO commitments.	N/A	Continue to urge China to ensure that policies stemming from MIC 2025 do not favor domestic companies at the expense of FIEs and are not dependent on subsidies in violation of China’s WTO commitments.
Media and Entertainment			
<i>Chinese Government</i>	Remove market access barriers to allow 100 percent 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 to bring revenue share in line with international norms, increases the number of imported films, and remove market barriers.	Low Progress	Remove market access barriers to allow 100 percent 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 to bring revenue share in line with international norms, increases the number of imported films, and remove market barriers.
<i>US Government</i>	Work with China to review restrictions on investment facing US companies in China’s media and entertainment sector, with the goal of providing greater market access for US companies.	N/A	

章节	2021年白皮书主要建议	进展评价	2022年白皮书主要建议
美国政府	分享美国联邦和各州有关商业秘密法律以及美国国家商业秘密战略方面的最佳实践。	有所进展	分享美国联邦和各州有关商业秘密法律以及美国国家商业秘密战略方面的最佳实践。
投资政策			
中国政府	确保《外商投资法》、《外商投资法实施条例》、《中美第一阶段经贸协议》中关于外商投资企业与内资企业享有同等待遇的规定按照规定的时限贯彻落实。	有所进展	切实落实《工业和信息化部关于深化“证照分离”改革的通告》以及《财政部关于在政府采购活动中落实平等对待内外资企业有关政策的通知》中关于外商投资企业与内资企业享有同等待遇的规定。
法律服务			
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。	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	与中方就其现行法律法规进行谈判修改，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，但目前对外国公司的待遇不仅没有改善，反而更加艰难。	进展缓慢	与中方就其现行法律法规进行谈判修改，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，但目前对外国公司的待遇不仅没有改善，反而更加艰难。
机械制造业			
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。	进展缓慢	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。
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、违反世贸组织原则为代价扶持国内企业。	N/A	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、违反世贸组织原则为代价扶持国内企业。
媒体和娱乐业			
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。	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。尽快完成更新中美有关电影《谅解备忘录》的谈判，增加境外电影制作公司的分账份额至国际标准水平，增加进口电影的数量，并消除市场壁垒。
美国政府	与中方政府合作，协商取消美国企业在中国媒体和娱乐领域的投资限制，确保开放的市场准入机制。	N/A	

Chapter	2021 Recommendation	Progress Score	2022 Recommendation
Northeast China			
<i>Liaoning Government</i>	<i>Chapter not provided in 2021.</i>	N/A	Build a high-standard and international business environment, deepen the reform of 'decentralization, regulation and service' for foreign investment, including further simplify the procedures for foreigners to come to China, shorten approval time, realize 'online operation' and 'one-time operation', establish and improve the business environment assessment mechanism, increase the protection and promotion of intellectual property rights, severely crack down on infringement and counterfeiting, protect the legitimate rights and interests of foreign investors, improve the international dispute settlement mechanism, create a fair competition environment and continuously improve the business environment.
<i>US Government</i>	<i>Chapter not provided in 2021.</i>	N/A	
Retail & E-Commerce			
<i>Chinese Government</i>	Government regulators, in particular SAMR, should strengthen their reviews of anti-unfair competition in the online and offline retail industry, focusing on ensuring that traditional retailers and online e-commerce platforms do not engage in behavior that promotes unfair competition. The government should also standardize the subsidies it offers across the retail and e-commerce industries, and ensure those subsidies are equally available to all retailers.	Moderate Progress	Government regulators, in particular SAMR, should strengthen their reviews of anti-unfair competition in the online and offline retail industry, focusing on ensuring that traditional retailers and online e-commerce platforms do not engage in behavior that promotes unfair competition. The government should also standardize the subsidies it offers across the retail and e-commerce industries, and ensure those subsidies are equally available to all retailers.
Real Estate			
<i>Chinese Government</i>	Continue to improve China's infrastructure and standardize the management of logistics systems. Accelerate the construction of cold chain logistics infrastructure and develop industry standards for cold chain transportation.	Moderate Progress	Encourage the participation and inclusion of foreign companies in urban planning, development, property management, real estate related technologies and investment so that China can benefit from international best practice.
Shanghai			
<i>Shanghai Government</i>	Increase the transparency and predictability of COVID-19 travel rules, permit expatriate family members to return to China with spouses holding valid work permits, and encourage the central government to broaden access to vaccines to include the foreign business community.	Moderate Progress	Provide more briefings and consultations with the foreign business community on draft regulations connected to the implementation of Shanghai's 14th Five-Year Plan.
Southwest China			
<i>Sichuan and Chongqing Governments</i>	Establish a clear, efficient, and easily navigable communication and support mechanism for United States citizens and businesses in Southwest China to interface with official US diplomatic and commercial representatives in Beijing, in lieu of an American consular presence in Chengdu.	N/A	<i>No chapter provided in 2022.</i>
Standards and Conformity Assessment			
<i>Chinese Government</i>	Ensure that a wide range of opinions, experts, and institutions, including FIEs, are permitted to participate in China Standards 2035, to ensure that the any future standardization systems in China are consistent with and meet the needs of existing practices in international trade and commerce.	Low Progress	Ensure that a wide range of opinions, experts, and institutions, including FIEs, are permitted to participate in China Standards 2035, to ensure that the any future standardization systems in China are consistent with and meet the needs of existing practices in international trade and commerce.

章节	2021年白皮书主要建议	进展评价	2022年白皮书主要建议
东北地区			
辽宁省政府	2021年未提供建议。	N/A	建设高标准、国际化的营商环境，在外资领域，深化“放管服”改革，同时简化外籍人员来华程序，减少审批时间，实现“在线运营”“一次过”，制定提升营商环境评价机制，保护促进知识产权完善，严厉打击侵权假冒行为，保护外籍投资者的合法权益，改善国际争端解决机制，营造公平竞争环境，推动营商环境改善。
美国政府	2021年未提供建议。	N/A	
零售和电子商务			
中国政府	政府监管部门，尤其是国家市场监督管理总局，应加强对线上和线下零售业反不正当竞争的审查，重点是确保传统零售商和在线电子商务平台不从事促进不正当竞争的行为。政府还应该规范其在零售和电子商务行业提供的补贴，并确保这些补贴平等地提供给所有零售商。	有所进展	政府监管部门，尤其是国家市场监督管理总局，应加强对线上和线下零售业反不正当竞争的审查，重点是确保传统零售商和在线电子商务平台不从事促进不正当竞争的行为。政府还应该规范其在零售和电子商务行业提供的补贴，并确保这些补贴平等地提供给所有零售商。
房地产			
中国政府	继续完善中国的基础设施，规范物流系统的管理。加快冷链物流基础设施的建设，制定冷链运输的行业标准。	有所进展	鼓励外国公司参与和加入城市规划、开发、物业管理、房地产行业相关的技术和投资，允许中国从国际最佳实践中获益。
上海			
上海市政府	提高新冠疫情旅行规则的透明度和可预测性，允许外籍家庭成员与持有有效工作许可的配偶一起返回中国。鼓励中央政府扩大疫苗的接种范围，包括外国商界。	有所进展	就上海市在“十四五”规划期间的有关规定草案，向外商提供更多的政策宣讲和咨询机会。
中国西南			
四川、重庆政府	为中国西南地区的美国公民和企业建立一个清晰、高效、易操作的沟通和支持机制，以便与美国驻北京的官方外交和商务代表对接，以取代美国在成都的领事机构。	N/A	2022年未提供建议。
标准、合格评定			
中国政府	“中国标准 2035”研究计划应向广泛大众、专家、机构征求意见，确保中国未来的所有标准化体系符合并满足国际贸易和商业现行标准的需要。	进展缓慢	“中国标准 2035”研究计划应向广泛大众、专家、机构征求意见，确保中国未来的所有标准化体系符合并满足国际贸易和商业现行标准的需要。

Chapter	2021 Recommendation	Progress Score	2022 Recommendation
Tax Policy			
<i>Chinese Government</i>	Extend certain tax relief measures for foreign nationals in China after the scheduled expiration of the current measures at the end of 2021, as the new measures will disincentivize multinational companies from sending senior management to work in China. We also recommend that the government streamline IIT application procedures. One way to do so would be to avoid repetitive submissions of documents containing the same information (e.g., application documents containing an individual's background information submitted in a prior year will not required to be submitted again subsequent years as the government will already have those details on hand).	Low-to-Moderate Progress	Ensure industries and market players affected by COVID-19 and natural disasters receive sufficient financial support and tax reductions; more preferential policies on additional deductions for donations to encourage market entities to provide support to areas affected by the pandemic and natural disasters; more preferential fiscal and tax reduction policies targeting enterprises engaged in key areas of pandemic control and disaster relief (e.g., transportation, production and circulation of key materials, R&D of key facilities/equipment, etc.)
Tianjin			
<i>Tianjin Government</i>	Support collaboration between business, science, and academia. Tianjin is home to a number of prominent universities and educational institutions. There are also several companies with research and development (R&D) components in their Tianjin operations. We believe there is an opportunity for Tianjin to cultivate a more open and collaborative environment between such groups and leverage Tianjin's already strong manufacturing base into a hub for R&D. The biotech and healthcare sectors are one example of sectors that could easily capitalize on the businesses, experts, and institutions already in Tianjin to become pillar industries in the city.	Moderate Progress	Restoring regular visa service and regular visa processing services / provision of a channel for US and Chinese citizens. It is very important to get expatriates back and especially for their families to be able to join them in Tianjin as well. We would also like to recommend that the Tianjin government continue to monitor the situation to ensure that the quarantine requirements in Tianjin are no more stringent than they are in other cities.
Visa Policy			
<i>Chinese Government</i>	Adopt a transparent, standardized procedure for the issuance of PU letters nationwide to ensure that foreign nationals and their families working in China can obtain a visa to enter China during COVID-19.	Moderate Progress	Further normalize visa application processes to pre-pandemic norms. Allowing employees, family dependents, and all qualified individuals to enter China with ease is beneficial to ensuring normal business operations locally.
Work Safety			
<i>Chinese Government</i>	Strengthen training opportunities for the operators of MEWPs on the basis of GB/T 27549-2011 <i>Mobile elevating work platform – Operator (driver) Training</i> . Ensure that this recommended standard is consistently applied and enforced. Alternatively, promote the promulgation of group standards similar to GB/T27549-2011 to continue to improve the safety of work at height.	Moderate Progress	Continue to strengthen training opportunities for the operators of MEWPs on the basis of GB/T 27549-2011 <i>Mobile elevating work platform – Operator (driver) Training</i> . Ensure that this recommended standard is consistently applied and enforced. Alternatively, promote the promulgation of group standards similar to GB/T27549-2011 to continue to improve the safety of work at height.
Central China/Wuhan			
<i>Wuhan, Hubei, and other Central China Provincial Governments</i>	Adopt innovative and focused policies to attract, retain, and reward mid-and-high-level senior managers and team leaders in the technology sector. Partnering with global industry leaders registered in Wuhan and other Central China cities on such policies would be an effective way to attract such talent and meet market demand.	Moderate Progress	Recommend longer periods for the implementation of policy changes, giving both foreign and local businesses time to adjust their business models to the new conditions.
<i>US Government</i>	Reopen the US Consulate in Wuhan and expand the services offered to include visa services and US citizen services to provide much-needed support to American companies in Central China and strengthen the US-China relationship.	High Progress	Adopt a more cooperative posture when engaging China, including reducing tariffs on Chinese goods and restoring regular visa processing services so non-US citizen employees may return to the US.

章节	2021年白皮书主要建议	进展评价	2022年白皮书主要建议
税收政策			
中国政府	在现行措施预定于2021年底到期后，延长对在华外国公民的某些税收减免措施，因为新措施将抑制跨国公司派遣高级管理人员到中国工作的积极性。商会还建议政府精简个人所得税申请程序。其中一个方法是避免重复提交包含相同信息的文件（例如，前一年提交的包含个人背景信息的申请文件将不需要在随后几年再次提交，因为政府已经掌握了这些细节）。	进展缓慢到有所进展	建议向受疫情、自然灾害影响的行业及市场主体提供财政支持和税收减免；出台捐赠等支出的加计扣除优惠政策，以鼓励有责任心的市场主体向受疫情、自然灾害影响的地区提供多种支持；对从事抗疫救灾关键领域的企业（如：交通运输、关键物资生产与流通、关键设施/设备研发等）提供更为优惠的财税减免政策。
天津			
天津市政府	支持商业、科学和学术界之间的合作。天津有许多著名的大学和教育机构，还有几家公司在其天津业务中拥有研发部门。商会相信，天津有机会在这些集团之间培育一个更加开放和协作的环境，将天津业已强大的制造业基地打造成研发中心。生物技术和医疗保健行业就是一个例子，可以很容易地利用天津已有的企业、专家和机构，成为天津的支柱产业。	有所进展	尽快恢复正常的签证受理、签发业务/为美国和中国公民提供一个往返中国渠道。让外籍人员回到中国非常重要，尤其是让他们的家人与其在天津团聚。还建议天津市政府持续关注疫情防控措施，确保天津的隔离要求不能比其他城市的隔离要求更严格。
签证政策			
中国政府	在全国范围内采用透明的、标准化的邀请函签发程序，以确保在中国工作的外国公民及其家属能够在新冠肺炎疫情期间获得签证进入中国。	有所进展	按照新冠肺炎疫情前的规定，进一步规范签证申请流程。允许员工、家属和所有符合条件的个人可以出入中国，有利于确保当地企业的正常经营。
安全生产与应急管理			
中国政府	在GB/T 27549-2011《移动式升降工作平台操作人员（驾驶员）培训》的基础上，加强对移动式升降工作平台操作人员的培训。确保本推荐性标准得到一致应用和实施。或者，推动颁布类似于GB/T 27549-2011的团体标准，继续提高高空作业的安全性。	有所进展	在GB/T 27549-2011《移动式升降工作平台操作人员（驾驶员）培训》的基础上，加强对移动式升降工作平台操作人员的培训。确保本推荐性标准得到一致应用和实施。或者，推动颁布类似于GB/T 27549-2011的团体标准，继续提高高空作业的安全性。
武汉			
湖北省和武汉市政府	政府采取创新政策，侧重吸引、留住和奖励科技行业的中高端管理人员和团队领导者。与在武汉注册的全球行业领导企业合作，将是吸引此类人才、满足市场需求的有效途径。	有所进展	建议延长政策变更的实施期限，让外国和本地企业都有时间根据新的条件调整其商业模式。
美国政府	重新开放美国驻武汉领事馆，扩大提供的服务类别，包括签证服务和美国公民服务，为在华中地区的美国公司提供急需的支持，加强美中关系。	明显进展	在与中国接触时采取更为合作的姿态，包括降低中国商品的关税，恢复正常的签证处理服务，以便非美国公民员工可以返回美国。



Part Two:
Industrial Policy and Market Access
第二部分：产业政策和市场准入

Civil Society

Introduction

A vibrant non-profit sector can help China address broader sustainability challenges for the long-term benefit of the Chinese people. Social, non-profit, inter-governmental, and non-governmental organizations (NGOs) play an essential role in fostering sustainable business practices by 1) providing an independent source of accountability and expertise for businesses and governments; and 2) partnering with businesses and governments in local communities to support the implementation of sustainability and community engagement initiatives.

These organizations also offer a wide range of social benefits. The nonprofit sector promotes an educated and healthy workforce, environmental protection, food and nutrition security, food safety, expanded access to financial services, productive employer-labor relations, active community engagement through volunteerism, social services for marginalized populations, and corporate compliance monitoring. Civil society organizations across the world have made a significant difference in the global COVID-19 response, providing facemasks, sanitizers, water, and food supplies to marginalized communities as well as addressing deep social issues like inequality and gender-based violence that the pandemic exacerbated. In China, NGOs significantly contributed to the success of initial COVID-19 response efforts and subsequent economic rebound. Civil society will continue to make significant contributions as the world faces new obstacles like the Omicron virus strain.

The US and many other countries with historical traditions of robust civil society have active NGO sectors that work effectively with public and private sector entities to address local and national issues. In light of the economic, social, and environmental challenges produced by China's rapid growth, civil society can and does bolster sustainable development in China.

Operational Context for Overseas NGOs in China

Over the past year, operating conditions for overseas NGOs in China have remained relatively stable. *Law of the*

People's Republic of China on Administration of Activities of Overseas Nongovernmental Organizations in the Mainland of China (Overseas NGO Law), implemented in January 2017, continues to impact civil society. The issues that AmCham China highlighted in past White Papers remain significant. Only a small proportion of the nearly 10,000 overseas NGOs recognized by the National People's Congress (NPC) as operational before the Overseas NGO Law came into effect succeeded in navigating the burdensome new registration and reporting process required to engage in projects or make donations in China. Those which have received permission to operate, either by registering a representative office or obtaining a Temporary Activity Permit (TAP), continue to face significant administrative costs to fulfill reporting requirements. Some NGOs also express frustration over public security requests for detailed oral reports on their operations. Despite relative stability in the formal regulatory framework this year, multiple NGOs are concerned about an increasingly strict environment based on more frequent scrutiny and questioning from public officials in China.

At the same time, implementation measures for the Overseas NGO Law have become more uniform across localities. The initial absence of clarifying definitions and detailed implementation policies issued by the Ministry of Public Security (MPS) allowed provincial police bureaus to develop inconsistent and informal interpretations of the law. While variation still exists in treatment of NGOs, especially in areas such as banking, registered NGOs are growing more comfortable with navigating the regulatory space. Some NGOs indicate that MPS has provided improved policy explanations and hosted informative trainings over the past year for organizations to better navigate the Overseas NGO Law. However, many overseas NGOs hoping to register in China remain unable to do so given the shortage of legally designated government sponsors (Professional Supervisor Units or PSUs). Even agencies designated as PSUs are reluctant to undertake the obligations of NGO sponsorship and may refuse to meet with interested overseas parties.

Some overseas foundations have been discouraged and pushed away from the China market because of the domestic crackdown on civil society. Almost no new domestic NGOs were registered this past year in China. The lack of domestic partners makes it challenging for philanthropic overseas NGOs to operate. Additionally, a number of foundations

民间团体

引言

非 营利组织的蓬勃发展有助于解决中国面临的可持续发展挑战，这符合中国民众利益。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：为企业和政府提供独立的责任担当方和专业知识；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。

这些组织还为社会提供各方面的支持，包括帮助提高劳动力的教育和健康水平、改善和保护环境、提高食品营养标准和倡导食品安全、扩大金融服务行业准入、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积极参与、为边缘化群体提供社会服务和支持政府监督企业合规情况等。毫无疑问，民间团体在应对全球新冠肺炎疫情中发挥了重要作用，如为边缘群体提供口罩、消毒液、饮用水和食物等，并着力解决各种社会问题，如社会不公、性别暴力以及疫情时期突发的各种问题。中国的民间团体在疫情爆发初期成功组织了相关的应对工作，并为随后的经济复苏做出了重大贡献。中国的非政府组织在疫情爆发初期成功组织了相关的应对工作，并为随后的经济复苏做出了重大贡献。随着奥密克戎变异毒株在全球蔓延，民间社会组织将继续做出重大贡献。

与众多国家一样，美国有着悠久的慈善传统，民间团体活跃，积极与政府和企业开展高效合作，解决本地和全国性挑战。鉴于中国快速发展带来的经济、社会和环境挑战，民间组织有能力也期望能够支持中国的可持续发展。

境外非政府组织在中国的运营背景

过去的一年里，中国的非政府组织保持了相对稳定

的运营状态。2017年1月实施的《中华人民共和国境外非政府组织境内活动管理法》（以下简称《境外非政府组织法》）持续影响着国内的民间社会组织。中国美国商会（以下简称商会）在以往发布的《美国企业在中国白皮书》中提及的问题现在依然十分突出。近万家在华开展活动的境外非政府组织中，只有一小部分成功通过了《境外非政府组织法》规定的繁琐注册和申报流程在中国参与项目或进行捐款。通过登记设立代表机构获准在中国境内开展活动或取得“临时活动许可”的非政府组织表示，要达到报告要求，需持续花费大量行政成本。一些情况下，公安部门会频繁要求其提供有关运营情况的详细口头报告。尽管今年的监管环境相对稳定，但多个非政府组织均表示担心中国政府官员越发频繁的审查和询问将导致监管环境越来越严峻。

同时，在执行层面，各地对《境外非政府组织法》的要求更为统一。由于在最初政策发布时，公安部没有出台相关实施细则，各地公安部门对该法的解读和执行出现很大差异。尽管在对待非政府组织方面仍有不同，尤其是在银行业等领域，但已通过注册的非政府组织在配合监管时表现得越来越自如。一些非政府组织表示，为帮助他们更好地理解《境外非政府组织法》，公安部在过去一年中组织了政策解释，并举办多场培训。然而，由于制定该法的政府主管部门数量太少，许多有登记意愿且符合《境外非政府组织法》规定的非政府组织依然无法登记。而且已指定的主管单位不愿履行指导境外非政府组织的职责，一些情况下还拒绝会见相关非政府组织。

由于国内对非政府组织的打击，一些外国基金会被劝阻并被赶出中国市场。去年，中国几乎没有新的国内非政府组织注册。由于缺乏国内合作伙伴，致使主要从事慈善工作的境外非政府组织的运营面临挑战。此外，一些外国基金会已经停止向中国国内的非政府组织提供

have stopped making grants to Chinese domestic NGOs because they find the regulatory environment too onerous or simply confusing; other overseas NGOs have halted interactions with Chinese partners for the same reasons. Moreover, the passage of the *Hong Kong National Security Law (NSL)* by the NPC in June 2020 has already impacted the vibrancy of civil society in Hong Kong. The Asia Society’s China NGO Project estimates that 100 NGOs operating in China in 2021 were headquartered in Hong Kong. While this overall number remained steady in 2021, civil society based in Hong Kong expressed growing concern about funding and penalties imposed under the NSL’s broad mandate to safeguard national security. International NGOs like Amnesty International are leaving Hong Kong due to the law after decades of strong presence. Overall, collaboration between overseas civil society and their Chinese peers has decreased, the magnitude of which is unclear given that no measure of such information exists.

Analysis of the status of overseas NGOs in China by the China NGO Project (using publicly available data from the MPS) estimates that as of January 2022, overseas NGOs had registered a total of 599 representative offices in mainland China, a slight increase from last year’s numbers. These include 172 offices of US-based organizations, more than from any other country or region. The pace of new registrations picked up marginally in 2021, a reversal of the persistent downward trend since 2017, with 55 representative offices registered this year, as compared with 49 in 2020. However, this is still a substantial drop from the 286 newly registered offices in 2017. To put the numbers in context, the US Department of State estimates that 1.5 million NGOs are registered in the US.

Overseas chambers of commerce, trade promotion organizations, and industry associations continue to dominate the roster of representative offices in 2021, accounting for over

50 percent of registered organizations. Among organizations which have successfully registered a representative office in China since the *Overseas NGO Law* took effect, thirteen organizations chose to delist their representative offices in 2021. This is a notable increase from the eight organizations that delisted offices in 2020, demonstrating the impact of ongoing regulatory challenges.

During 2021, overseas NGOs obtained or renewed 742 TAPs, 145 of which were issued to NGOs originating from the US. This was a reduction from the 804 TAPs initiated in 2020, 1,022 in 2019, 897 in 2018. Trade and business-oriented groups continue to be less active on this front, of the 742 TAPs issued for activities in 2020, all but 13 were issued to non-trade, non-business-oriented organizations. Longer-term trends related to the issuance of TAPs have also persisted. In 2021 roughly half of the filings for TAPs were education-related, consistent with previous years. The China NGO Project estimated about 20 percent of TAPs addressed poverty alleviation, in line with the government’s declaration of the eradication of extreme poverty in early 2021. China also saw a slight jump in overseas NGOs filing TAPs related to the environment, with 60 filed or renewed in 2021 up from 52 in 2020, reflecting the government’s increased focus on the green transition.

Complications related to COVID-19 likely contributed to lower levels of overseas NGO activity in 2021, reflected in the continued decline in temporary activity permits and new NGO representative offices. However, it remains difficult to assess to what extent the slowdown is attributable to difficulties stemming from COVID-19 (e.g., reduced travel and human-to-human interaction, commerce, and trade) and to what extent it reflects other operational challenges. Given that the COVID-19 situation within China has improved significantly, the downward trend in NGO activity may reflect larger regulatory issues for overseas NGOs operating in China.

Table 1. Overseas NGOs in mainland China

Year	Total Number of overseas NGO Representative Offices in China (Cumulative)	Number of Representative Offices of overseas NGOs originating in the US (Cumulative)	Number of Delisted Representative Offices
2017	303	72	N/A
2018	436	106	2
2019	511	127	11
2020	554	136	8
2021	599	172	13

Source: Asia Society China NGO Project & MPS NGO Portal

资助，因为它们发现监管要求过于繁琐或令人困惑；其他境外非政府组织也出于同样的原因停止了与中国合作伙伴的互动。此外，2020年6月全国人大通过的《香港国家安全法》（以下简称“《国安法》”）已经影响了香港民间团体的活力。亚洲协会的中国非政府组织项目估计，2021年，有100个将总部设在香港的非政府组织在中国运营。虽然这一数字在2021年保持稳定，但《国安法》可能认定包括非政府组织在内的部分团体违反其广义定义，并严格限制其筹款活动，这些内容让在香港的民间组织深感忧虑。像国际特赦组织这样已在中国香港扎根数十年的国际非政府组织也因该法而选择撤离香港。总体而言，境外非政府组织与其中国同行之间的合作已越来越少。由于缺乏衡量此类信息的测算标准，尚不清楚具体数据。

中国非政府组织项目对在华的境外非政府组织进行了情况分析（使用公安部公开数据）估计截至2022年1月，境外非政府组织在中国大陆共注册有599家代表机构，较去年略有增加。其中有172家总部设在美国的境外非政府组织代表机构，位列第一。一反自2017年以来的持续下降趋势，2021年组织注册代表机构速度有所提升，共有55家代表机构注册，此数据在2020年为49家。然而，与2017年新注册的286个代表处相比，降幅仍十分明显。相比之下，美国国务院估计，美国共有150万家非政府组织登记在册。

2021年，境外商会、贸易促进组织和行业协会仍占据主导地位，约占登记机构总数的50%。2021年，十三家已成功在中国注册代表处的机构注销登记。与2020年八家注销登记相比，增幅明显，直接反映了监管环境变化带来的影响。

表1：中国大陆的境外非政府组织

2021年期间，境外非政府组织获得或更新了742个临时活动许可，其中145个发给了美国非政府组织。相比2020年的804个、2019年的1022个和2018年的897个，有所减少。贸易和商业组织相关活动的活跃度依旧不高：2021年签发的742个临时活动许可证中仅有13个属于贸易和商业组织。临时活动许可日趋收紧的趋势预计仍将持续下去。2021年，约有一半临时活动许可证备案与教育有关，与前几年保持一致。中国非政府组织项目估计，2021年，涉及扶贫的临时活动许可证的发放数量约占总数的20%，呼应了政府年初设定的全面脱贫目标。2021年，在中国获得或更新活动许可备案的与环境保护相关境外非政府组织有60个，比2020年的52个略有增加，体现了政府对绿色转型的关注程度有所增加。

毫无疑问，2021年，新冠肺炎疫情降低了境外非政府组织在华的活跃程度，不仅临时活动许可证申请量锐减，新注册的境外非政府组织代表机构的数量也在减少。然而，目前仍然难以判断临时活动许可证申请的减少有多少是与新冠肺炎疫情相关的（如出行、人与人之间的接触、贸易活动减少等），又有多少是由于境外非政府组织在华运行所面临的困难导致的。鉴于中国在抗击疫情方面已取得明显成果，非政府组织的活跃趋势下降可能反映出了在中国运营的境外非政府组织面临着更大的监管问题。

尽管如此，新冠肺炎疫情还是意外地为民间团体创造了各种机会，让其发挥自身优势，为中国应对新冠肺炎疫情贡献一份力量。2020年，在政府发布促进民间团体更多地参与抗疫工作的最终指导方针后，超过500家

年度	境外非政府组织驻华代表处总数（累计）	总部设在美国的境外非政府组织代表处数量（累计）	已注销代表处数量
2017	303	72	N/A 不适用
2018	436	106	2
2019	511	127	11
2020	554	136	8
2021	599	172	13

来源：亚洲协会中国非政府组织项目与公安部非政府组织门户

In 2020, the COVID-19 situation created opportunities for civil society to support the pandemic response in China. Over 500 overseas NGOs registered for TAPs to carry out health-related activities in 2020, following the government's eventual guidelines issued to facilitate greater civil society participation in COVID-19 response efforts. This past year, only 90 health-related overseas NGOs have registered for TAPs, reflecting the efficacy of China's contact-tracing measures and rapid pandemic response. The success of COVID-19 relief efforts would not have been as successful without an immense surge in volunteering and the participation of both overseas and domestic civil society in China.

Despite this increase in pandemic-related civil society initiatives in 2020, the decrease in overseas NGO TAPs in 2021 reflects an overall negative trend. Deputy Director of the NPC Standing Committee's Legislative Affairs Commission Zhang Yong stated at a news conference on April 28, 2016 that nearly 10,000 overseas NGOs were conducting activities in China at that point in time. Based on government data, the implementation of the Overseas NGO Law has then cost China the contributions of over 9,000 overseas NGOs.

Overseas NGOs, including corporate foundations, are integral to the operations of many AmCham China member companies. Corporate foundations registered as NGOs in the US have allowed AmCham China members to collaborate with overseas or local industry associations, universities, environmental organizations, science and technology institutions, and other Chinese institutions on information sharing, research, market development, and innovation. These foundations, as well as other overseas NGOs, play a critical role in the direction and implementation of business sustainability and community engagement activities of commercial enterprises in China, both foreign and domestic.

Ongoing Regulatory Challenges

Despite relative stability in operating conditions for overseas NGOs in China in 2021, member companies express concern over the lack of improvement and a general sense of regulatory tightening. Many overseas NGOs have been forced to suspend their support of local community activities. US corporate foundations in China are often unable to find grantees because of the increasingly complex environment for domestic civil society, especially in terms of receiving foreign money. After four years of implementation, the primary challenges resulting from the Overseas NGO Law persist.

These problems appear to stem from the design of the *Overseas NGO Law* rather than from its implementation. The MPS and specialized Overseas NGO Administration offices in provincial-level bureaus managed the initial implementation process with professionalism. After the law took force in 2017, overseas NGOs found the management to be accessible and responsive in providing

guidance on paperwork and filing procedures. Despite government responsiveness, NGOs experienced confusion surrounding inconsistent interpretations of the law across provincial bureaus until this year. Whether the lack of consistency resulted from bureaucratic inefficiency or increasing hostility towards foreign NGOs, this has added to general concern among overseas NGOs considering if and how they should try to conduct programs in mainland China.

In 2021, some overseas NGOs continued to face equal or increasing confusion about implementation procedures. However, others report improved clarity from the MPS in terms of understanding how to comply with regulations. It appears that government authorities are attempting to standardize management across provinces. AmCham China encourages the MPS to collaborate with the overseas NGO community to address remaining confusion and unify implementation procedures.

Over the past four years, public security authorities have also modestly expanded the list of approved Professional Supervisory Units (PSUs), or official sponsors required for overseas NGOs to register operations on the mainland. On the other hand, the de facto grace period extended to overseas NGOs in the process of registering operations has ended. Multiple incidents of suspension of overseas NGO activities in 2021 demonstrate a more hardline approach. Previously, overseas NGOs could also find a domestic partner organization willing to file a local project on their behalf to facilitate project operations. In 2021, filing with a domestic partner is becoming more difficult, with some NGOs unable to conduct their intended projects.

This decrease in flexibility reflects an overall trend towards greater restriction of civil society activities in China. Overseas NGOs have noticed that their annual activity reports are examined more closely and questioned more frequently. Some reports on work completed in 2020, for example, were not approved until late 2021. MPS officials at lower levels also appear to be increasingly uptight, likely reflecting attitudes at more senior levels. There is an increasing concern about the tightening atmosphere and nationalist sentiments from both state and nonstate media outlets.

Some public security NGO administration offices provided training and information sessions for PSUs, universities, and overseas and domestic NGOs. As the majority of organizations affected by these developments are located overseas and do not have offices in mainland China, however, there is an urgent need for China's overseas embassies and consulates to hold similar trainings on navigating the *Overseas NGO Law*. Additionally, the MPS online portal for submitting applications to register under the *Overseas NGO Law* lacks an English-language web page. AmCham China hopes that the MPS will estab-

境外非政府组织注册了与健康活动相关的临时活动许可证，这个数字在 2021 年仅为 90 家，这表明中国实施了卓有成效的防疫措施，这样的成功离不开志愿者的无私付出和国内外民间团体的广泛参与。

2020 年，由民间团体组织的疫情相关活动数量有所增加，但 2021 年临时活动许可证的申请总量仍呈下降趋势。2016 年 4 月 28 日，全国人大常委会法制委员会副主任张勇在新闻发布会上表示，（当时）有近万家境外非政府组织在中国开展活动。结合以上数据，《境外非政府组织法》的实施已让中国失去了 9000 多个境外非政府组织。

包括企业基金会在内的境外非政府组织，已经成为商会许多会员企业运营不可或缺的组成部分。会员企业通过美国非政府组织企业基金会的牵线搭桥，与境外或当地行业协会、高校、环境组织、科技机构和其他中国机构合作共享信息、共同开展研究、开发市场、创新等。海外基金会和其他非政府组织在指导多家国内外商业企业实现商业可持续发展，推动企业广泛参与社会活动方面发挥着举足轻重的作用。

现存监管问题

2021 年是《境外非政府组织法》实施第四年。尽管去年境外非政府组织在中国的运营状况相对稳定，但会员企业仍对监管收紧表示担忧。许多境外非政府组织被迫暂停对当地社区活动的支持。由于中国国内民间团体在筹集外资等事项上面临愈加严苛的监管环境，在华美国企业基金会很难找到受助人。

这些问题看似都归咎于《境外非政府组织法》本身的设计而非执法问题。中国公安部及省级人民政府有关部门和单位负责具体执法事宜。2017 年的大部分时间里，境外非政府组织普遍认为北京市公安局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。境外非政府组织工作人员可通过电话、社交媒体和面谈等方式与境外非政府组织管理办公室沟通，及时获取有关材料准备和备案程序的相关信息。尽管政府回复及时，但迄今为止，不同省份对同一法规的不同解读仍让非政府组织感到困扰。且不论这种差异是源于官僚机构的效率低下，还是对非政府组织愈发强烈的敌意，现在的情况让目前尚未在中国大陆设立办公室的境外非政府组织更加困惑，不知道未来是否能够在大陆地区开展项目，以及如何开展。

2021 年，境外非政府组织的反馈出现了不同声音。虽然一些境外非政府组织仍对相关流程手续感到困惑，但另一些组织表示公安部为相关法规提供了更为明确的指导。中国政府正试图统一各省的管理标准，商会期望公安部与境外非政府组织团体开展合作，解决现存困惑，统一实施程序。

过去四年中，公安机关已适度扩增获批业务主管单位（或境外非政府组织在中国大陆注册运营所需的官方主办单位）名单。但随着境外非政府组织的注册运营宽限期的结束，多个境外非政府组织的活动于 2021 年被暂停。此前，境外非政府组织可以通过愿意代其递交当地项目文件的国内伙伴开展项目。而自 2021 年起，通过国内伙伴组织提交申请的方式也变得困难，一些非政府组织因此无法如期开展项目。

上述灵活性的下降反映出民间团体正面临更为严苛的限制。境外非政府组织的年度活动报告需接受更细致的审查和询问。例如，部分在 2020 年已完成的工作报告直到 2021 年底才获得批准。基层公安部门愈发严苛的审查行为，似乎也反馈出了高层的态度。大家现在越来越关注不断收紧的监管环境和国内媒体高涨的民族主义报道。

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、高校和国内外非政府组织举办了培训和信息交流会议。然而，受该法影响的绝大多数组织都位于海外且在中国没有办事处，因此迫切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，由《境外非政府组织法》指导，公安部上线的提交申请门户网站依然没有英语版本。商会敦促公安部认识到此门户网站主要面对境外组织，尽快建立英文版门户。

去年《境外非政府组织法》实现了一定程度的标准化，但地方公安部门仍然无力解决非政府组织面临的最大难题。下文将对这些难题进行详述。

对业务主管单位的限制

2019 年，公安部发布了更业务主管单位最新名录，这是自 2016 年发布最初名单以来的首次更新。该清单包括 54 所国家级合格业务主管单位和数个新单位。尽管规模扩大，但获取业务主管单位的同意仍然是境外非政府组织登记的最大障碍。根据中国非政府组织项目提供的数据，在所有业务主管单位中，商务部负责监督的

lish a bilingual or multilingual portal in recognition of its predominantly foreign audience.

Despite some standardization of *Overseas NGO Law* implementation in the last year, the most significant challenges faced by NGOs unfortunately remain beyond the capacity of local public security bureaus to resolve. These areas are detailed below.

Limits on Professional Supervisory Units

In 2019 MPS released an updated list of PSUs, the first and only update since the original list was published in 2016. The list includes 54 national-level eligible PSUs and several new entities. Despite the expansion, obtaining PSU sponsorship remains the single largest obstacle to registration for overseas NGOs. Based on data from the China NGO Project, the Ministry of Commerce has sponsored 230 overseas NGOs to date, the most of any PSU. Even the second largest sponsoring PSU, the Ministry of Education, has only sponsored a total of 50 overseas NGOs. At the same time, at least 16 of the 54 potential PSUs do not yet appear to have sponsored any overseas NGOs.

Many eligible PSUs are unfamiliar with the work of overseas NGOs, consider them a political risk, or lack any incentive to assume the administrative burden of supervising them. PSUs are not provided with additional staff or budget to manage the extra workload. Some have stated that they lack the capacity to supervise more than a handful of overseas NGOs. Moreover, several suitable PSU candidates are not included on the most recent approved list. Organizations including the Chinese Academy of Governance, the Chinese Academy of Social Sciences, and the Development Research Center of the State Council, which have greater experience interacting with overseas NGOs across a broad range of policy and program areas, are prohibited from serving as PSUs.

Even if overseas NGOs successfully register with a PSU, they must then spend weeks or even months negotiating a yearly “work plan” with the supervising PSU before implementing programs. The work plan must be reformulated and resubmitted annually. Work plans must specify the money spent on each activity, which Chinese partners will be involved, and where activities will occur, down to the district. Activities that are conducted without prior elaboration in the work plan are considered illegal and NGOs have faced reprimands for slight changes in work plans. It is nearly impossible for NGOs, overseas or domestic, to predict and describe all activities in advance on an annual basis. Members also struggle to implement a hard stop on all activities at the end of each calendar year and provide complete accounting on activity expenditures. Changes to the work plan can be made just twice a year and require another intensive application process.

New activities cannot begin until the change is approved, which is taking lengthier periods of time due to increased government scrutiny. Given the realities of NGO operations, these requirements are highly restrictive in practice.

For many NGOs, it has become more challenging to balance relationships with their PSU while conducting programs in China. Some PSUs have demanded that overseas NGOs make significant changes in their programs. Further, although PSUs are not legally allowed to charge fees in return for sponsorship, some NGOs have found after registration that their PSU expects to share in the NGO’s funding. Increased uniformity in Overseas NGO Law implementation, while helping provide clarity in some areas, is also adding complications to NGO relationships with their PSU. In 2021, PSUs have asked their sponsored NGOs to utilize the MPS online format for all document submissions. The MPS format is more time-intensive and requires additional depth in explanation to ensure that both the PSU and general government authorities at the MPS level can understand the NGO activities. These changes create an extra layer of control and increase the likelihood that NGO project proposals will be declined.

Unclear and Time-Consuming Requirements for TAPs

The application preparation procedure for overseas NGOs seeking TAPs can be nearly as expensive and time-consuming as the representative office application process. Both applications require certification and translation of the overseas NGO’s past and current articles of incorporation and by-laws, which often takes several months. Applying for a TAP requires the agreement of a Chinese partner organization, which must then submit the formal application. Finally, the Chinese partner must also file the TAP application with the police, but overseas NGOs have found inconsistencies across provinces at this stage. Public security authorities in some provinces have accepted filings for projects that include activities in multiple provinces, as long as the Chinese partner is based within their provincial jurisdiction; the same authorities in other provinces have refused to accept multi-provincial filings, forcing overseas NGOs to either limit their projects to a single province or establish partnerships and undertake filings in multiple provinces. The maximum term of a TAP is one year, and renewals require fresh applications. Some NGOs report that certain ministries previously made exceptions for two-year approvals; however, these ministries reverted to an inflexible single-year requirement in 2021. The NGOs received no warning of the shift, meaning that some filed annual work plans before realizing that all projects approved in 2020 would no longer be considered valid. The lack of clarity and time-intensive TAP process is discouraging overseas NGOs from operating in China.

境外非政府组织最多，达 230 家。第二大业务主管单位教育部负责监督的境外非政府组织仅为 50 家。与此同时，在 54 个符合条件的业务主管单位中，至少有 16 个单位似乎尚未负责监督过任何境外非政府组织。

许多主管业务单位不熟悉境外非政府组织的工作，认为其存在政治风险，或者缺乏承担监督管理工作的动力。业务主管单位也没有额外的员工或预算来处理额外的工作内容。有些单位表示其缺乏监管更多海外非政府组织的能力。此外，一些合适的业务主管候选单位并未被列入最近的批准名单。国家行政学院、中国社会科学院、国务院发展研究中心等组织，长期致力于广泛的政策和项目领域研究，在与境外非政府组织进行互动方面拥有更为丰富的经验，但却被禁止担任业务主管单位。

即便按照《境外非政府组织法》的规定登记后，许多境外非政府组织每年仍需要花费数周时间与其业务主管单位协商“年度活动计划”，然后才能落实项目。工作计划必须每年重新报送。工作计划应涵盖资金使用、活动具体地点（详细到区），以及中国合作单位等信息。任何活动计划外的活动都视为非法活动，一些非政府组织因组织的活动与工作计划有轻微差异而受到警告。但是，任何境外或国内的非政府组织几乎都不可能每年提前如此详尽地做好活动的规划安排，因此，此条规定过于严格，难以执行。活动计划每年只能调整两次，而且备案申请手续繁琐，耗时较长。调整活动计划获批之前，无法开展新活动。由于政府审查的加强，这个流程耗时更长。鉴于非政府组织业务的实际情况，这些严苛要求在实践中很难达成。

对于许多非政府组织而言，为了在华开展项目，平衡与业务主管单位关系的过程愈发充满挑战。一些业务主管单位要求境外非政府组织对其计划进行重大变更。更有甚者，虽然法律不允许业务主管单位收取主管费用，但是一些非政府组织发现登记后，业务主管单位向其索取项目资金。提高《境外非政府组织法》实施的统一性，虽然有助于提高某些方面的清晰度，但也加深了非政府组织与业务主管单位之间关系的复杂性。业务主管单位在 2021 年要求由其主管的非政府组织使用公安部的在线格式提交所有文件。公安部的格式更加耗时，需要更为深入的解读才能确保公安部门和其他政府部门均能理解非政府组织的活动。这些变化增加了审批过程中的不确定性，降低非政府组织项目提案的通过率。

临时活动许可要求不明确且费时费力

一些境外非政府组织发现，临时活动申请几乎与登记设立代表处申请一样成本高昂且费时费力：都需要认证、翻译境外非政府组织章程细则（包括最新章程和历史章程），通常需要耗费几个月的时间。申请临时活动许可需要提交与中方合作单位的书面协议，中方合作单位随后须提交正式申请。办理审批手续的最后一步要求中方合作单位向公安部门提交临时活动备案申请，但境外非政府组织发现，这一流程的处理因省而异。只要中方合作单位在其管辖范围内，一些省份的公安部门即会批准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多省备案，要求境外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。临时活动许可期限不超过一年，延长期限还要重新申报。一些非政府组织报告说，某些部门以前对两年期的许可证做出过例外规定；然而，这些部门在 2021 年恢复了机械化的一年期限。非政府组织没有收到任何关于这一变化的通知，即意味着这些非政府组织在意识到所有在 2020 年前提交的年度工作计划将不再被视为有效。缺乏明确性和耗时甚长的临时活动许可证流程阻碍了境外非政府组织在中国的发展。

语言含糊其辞、模棱两可

《境外非政府组织法》中许多关键术语都没有定义。模糊不清的表述给境外非政府组织决定如何在华发展、开展项目带来了不确定性。在业务主管单位给与明确指导之前，境外非政府组织已经投入大量的人力、时间和资源与其进行沟通。尽管 2022 年是《境外非政府组织法》实施的第五年，但尚不清楚该法要求境外非政府组织的哪些活动需要预先获取批准。公安部及其省级公安机关对该法的解读有完全的自由裁量权。比如，境外非政府组织举办小规模或私人活动、境外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等情况，该法目前尚未就上述情形的批准要求形成共识。以上仅是《境外非政府组织法》缺乏明确指导导致诸多问题中的两个例子。境外非政府组织尚未收到 2022 年相关变化的通知，但商会会员担心，这种模糊不清的表述可能会导致未来几年的限制进一步收紧。

Ambiguous Language

Numerous key terms in the *Overseas NGO Law* remain undefined. Such vagueness creates uncertainties for overseas NGOs in deciding how to structure and implement programs in China. Overseas NGOs must invest substantial staff time and resources into communication with the MPS to receive definitive guidance. Even though the *Overseas NGO Law* is now in its fourth year of implementation, it is still unclear which overseas NGO activities should obtain pre-approval. The MPS and its provincial bureaus have open-ended discretion to interpret this language. No central consensus on approval requirements exists; overseas NGOs hosting small-scale or private events, for example, or consulting in projects funded by another entity must operate on a case-by-case basis. These are just two of many situations that lack clear direction under the Law. While overseas NGOs have not received notification of any upcoming changes in 2021, AmCham China members worry that the ambiguity could lead to increased restriction in the coming years.

Funding and Revenue Source Restrictions

Article 21.3 of the *Overseas NGO Law* allows overseas NGOs to fund their activities in China through 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.”

Funds from a lawful overseas source

The first, “funds from a lawful overseas source,” is interpreted by MPS to include money transferred into China from the NGO’s parent entity overseas. This funding source is the primary source of funding for all overseas NGOs in China. AmCham China is not aware of any exceptions.

Interest on bank deposits within the territory of China

The interpretation and implementation of “interest on bank deposits within the territory of China” is straightforward but the amounts of funding acquired in interest are generally unsubstantial.

Other funds obtained by legal means within the territory of China

Other funds obtained by legal means within the territory of China consist of three major categories: ❶ cash or in-kind donations from individuals or companies, ❷ proceeds from joint marketing or fundraising activities conducted with for-profit companies, and ❸ fees for service activities.

With respect to cash or in-kind donations, the *Overseas*

Law bars overseas NGOs from fundraising in China. This is interpreted to indicate that overseas NGOs cannot passively receive donations from any companies in China, including foreign-invested enterprises (FIEs), through their Corporate Social Responsibility (CSR) programs or other corporate funding channels. As a result, the Law eliminates a substantial source of funding for overseas NGO operations in China. It is increasingly difficult for overseas NGOs to raise funds abroad for programs in China because the appetite for funding in China has declined as the country has grown more prosperous and restrictive. Fundraising regulations are also interpreted to prohibit companies in China from providing in-kind donations to overseas NGOs. With regards to joint marketing and fundraising activities (e.g. sales promotion activities in which a portion of proceeds received by a company would go to an NGO), overseas NGOs have largely ceased activities. Authorities have deemed joint fundraising to be in violation of the *Overseas NGO Law*’s prohibition on overseas NGOs engaging in profitmaking activities. This appears to be motivated by concern that such activities, which allow NGOs to receive a percentage of for-profit company sales revenue, would incentivize NGO promotion of the brands and/or products of said for-profit company.

In terms of fees for service, overseas NGOs must navigate whether they can in practice offer services in exchange for fees. AmCham China members have found that approval of fees for service is granted on a case-by-case basis depending on the discretion of their PSU. Approvals are primarily conditioned upon whether ❶ the services to be performed lie within the scope of activities printed on the overseas NGO representative office’s registration certificate, and ❷ which type of client will receive such services. The scope of activities on the registration certificate is typically broad, allowing most overseas NGOs to engage in fee for service arrangements. Concerning client types, members report that approvals are more likely if the client is from the public sector (e.g., local government health bureau, public university or research institute, domestic NGO, or SOE). Complications arise more frequently if the client is a private sector entity for two reasons. First, the *Overseas NGO Law* prohibits overseas NGOs from engaging in “profit-making activities.” PSUs in certain provinces have interpreted this to mean that overseas NGOs cannot offer services to for-profit companies or receive payment in exchange for services. Second, if a for-profit company purchases services from an overseas NGO but the services are unrelated to the business of the company (for example, if a beverage manufacturer pays an overseas NGO to provide cataract surgeries in rural areas), the PSU will likely conclude that the “service revenue” to be paid to the overseas NGO is a disguised form of donation and therefore is prohibited under the *Overseas NGO Law*.

AmCham China acknowledges that the ability of some overseas NGOs to offer services for fees constitutes progress since passage of the *Overseas NGO Law*. To build upon this progress, the government should formalize the right

境外非政府组织在中国的筹资现状

《境外非政府组织法》第 21.3 条允许境外非政府组织从三种来源中筹集资金：① “境外合法来源的资金”；② “中国境内的银行存款利息”，以及 ③ “在中国境内合法取得的其他资金”。

境外合法来源的资金

第一个来源为“境外合法来源的资金”，公安部解释为从非政府组织海外总部转移到中国的资金。此资金来源是中国大多数境外非政府组织的主要资金来源，据商会了解目前没有任何例外。

中国境内的银行存款利息

“中国境内的银行存款利息”的解释及实施较简单，但其数额不大。

在中国境内合法取得的其他资金

在中国境内合法取得的其他资金通常分为三类：① 个人或公司的现金或以货物捐赠，② 与盈利公司共同进行的市场或筹资活动中取得的收入，以及 ③ 服务活动收费。关于现金或实物捐赠，《境外非政府组织法》禁止境外非政府组织在中国境内进行募捐。此条规定解读为禁止外国非政府组织被动接受中国企业资金支持，包括外商投资企业，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接收资金。因此，这种做法切断了境外非政府组织开展中国业务的重要资金来源。随着中国日益繁荣但其限制愈发严苛，外国对中国项目资助的兴趣已经不如以往，因此，为中国的项目筹集境外资金越来越困难。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，制造了法律方面的不确定性。此外，该法禁止境外非政府组织开展联合营销和筹款活动（例如，部分收益用于非政府组织或相关慈善事业的活动），因为主管部门认为这些活动违反了《境外非政府组织法》，法律禁止境外非政府组织参与营利性活动。这可能是考虑到允许非政府组织从营利性公司的特定销售活动收入中抽取一部分会鼓励非政府组织帮助营利性公司宣传其品牌和 / 或产品。

至于服务收费方面，主要问题是在实践中境外非政府组织能否以服务换取收费。这个问题的答案很大程度上取

决于其业务主管单位是否愿意批准，逐案审核。而批准主要取决于以下两个条件：① 所提供服务是否在境外非政府组织代表机构登记证书备案的业务范围内，以及 ② 接受此类服务的客户类型。登记证书备案的活动范围一般很广，没有禁止会员从事收费服务活动。至于第二个条件，会员们在实践中发现，如果客户是公共部门（例如，地方政府卫生局、公立研究型大学、国内非政府组织或国企），则往往容易得到批准。如果客户为私营部门，情况就会更加复杂，原因有二：其一，因为《境外非政府组织法》禁止境外非政府组织参与“营利性活动”。一些省份的业务主管单位将此解释为，即使提议的项目是非营利性的，境外非政府组织也不能与中国企业合作或者收取服务报酬。其二，假设境外非政府组织为私营企业提供免费服务，但服务本身与该企业自身的业务不相关（例如，一个饮料公司支付境外非政府组织费用，让其在农村地区开展白内障手术），业务主管单位很有可能断定该“服务营利”为变相募资，因此违反了《境外非政府组织法》。

商会承认，自《境外非政府组织法》通过以来，为境外非政府组织提供收费服务给予了更大的空间。为巩固这一进展，中国政府应将经注册的境外非政府组织提供收费服务的权利正式化。目前，个别主管业务单位在签发非正式批准方面拥有很大的自由裁量权，可能会造成误解和不一致。此外，商会建议政府考虑在收费服务范围与私营企业经营挂钩的情况下，正式允许境外非政府组织为私营企业提供免费服务。许多私营企业的切实商业需求有赖于境外非政府组织的支持，例如，许多注重企业社会责任的制造业企业渴望通过国际共享的技术知识以及境外环保非政府组织的专业科学技能，设计并实施能减少或抵消二氧化碳排放的专业服务。

尽管取得了一些进展，但《境外非政府组织法》在资金和收入来源上的限制将境外非政府组织在中国的运营工作复杂化了。对于没有大量赠款的非政府组织而言，资金缺乏所带来的困扰将是长期性的。

建议

对于中国政府：

- 在公安部网站上发布英文版指南和公告，帮助境外非政府组织注册代表机构和申请临时

of registered overseas NGOs to offer paid services. At present, individual PSUs have significant discretion over issuing informal approval, which contributes to misunderstanding and inconsistency. Moreover, we recommend that the government consider formally allowing overseas NGOs to provide paid services for private companies, as long as the services are related to the companies' scope of business. Companies often have genuine business needs that require assistance from overseas NGOs; for example, many manufacturing companies conscientious of CSR require the international familiarity and scientific expertise of overseas environmental NGOs in designing and implementing plans to reduce or offset carbon emissions.

Despite some progress, the restrictions around funding and revenue sources under the *Overseas NGO Law* have greatly complicated the ability of foreign NGOs to operate in China. Especially for NGOs without substantial endowments, lack of funding is and will continue to be a serious problem going forward.

- Clarify regulations regarding overseas NGOs “engaging in or financing profit-making activities” or providing fees for service. With respect to fees for service, formalize the right of overseas NGOs to offer services for fees into law, easing the burden on PSUs to make decisions amidst uncertainty.

Recommendations

For the Chinese Government

- Provide English-language versions of important guidance and announcements on the MPS web portal for filing representative office registration and TAP applications. Conduct more global outreach activities with overseas NGOs and their Chinese partners to disseminate updated information regarding interpretation of the *Overseas NGO Law* by public security authorities, especially at China's embassies and consulates in countries where overseas NGOs have offices.
- Expand the list of eligible Professional Supervisory Units (PSUs) and provide clear criteria and greater incentives for government entities to act as PSUs. For domestic civil society in China, similarly expand and improve the ability of organizations to register through the domestic process. The vibrancy of domestic civil society is important in allowing overseas NGOs to partner with local organizations.
- Simplify the documentation necessary to apply for a Temporary Activity Permit (TAP) and require Chinese partner Cooperation Units that withhold approval to provide a written explanation within 30 days.
- Clarify ambiguous language in the *Overseas NGO Law* and publish clear and consistent implementation guidelines. The process of drafting implementation guidelines should be open and incorporate the participation of overseas NGOs and their Chinese partner organizations.

活动许可。与境外非政府组织及其中国伙伴组织开展更多全球性外联活动。在境外非政府组织设有代表处的国家，建议中国使领馆定期组织公安机关解读《境外非政府组织法》。

- 国内民间团体的活跃对于境外非政府组织与当地组织的合作而言非常重要。应扩增符合条件的业务主管单位名单，为政府机构担任业务主管单位提供明确标准和可观激励。国内民间团体同样要增强和提高组织通过国内流程进行注册的能力。
- 简化申请临时活动许可所需的文件，为拒绝批准许可的中国合作单位在 30 天内提供相关书面说明。
- 明确《境外非政府组织法》中含糊不清的措辞，并发布明确一致的实施指南。实施指南的起草过程应予以公开，并让境外非政府组织及其中国伙伴组织参与其中。
- 明确境外非政府组织“从事或资助营利性活动”或提供收费服务的规定。服务收费方面，应以法律形式明确境外非政府组织拥有提供收费服务的权利，进而减轻业务主管单位的决策负担。

Competition Law

Introduction

China saw significant changes in the competition law arena throughout the year 2021. On January 2, 2020, the State Administration for Market Regulation (SAMR) released a *Draft Amendment to the Anti-Monopoly Law (AML)* for public comment (hereafter referred to as the “Draft”), which is the first formally circulated draft amendment to the Law since its promulgation in 2007. On October 23, 2021, after first review by the NPC, the Draft was released for public comment with highlights including:

- A safe harbor for minor misconduct

The Draft would authorize SAMR to establish a rebuttable legal presumption for certain collaborations between firms with market shares below a specified threshold. If there is evidence that conduct in the safe harbor is harmful to competition, SAMR would be able to take enforcement action against such conduct.

- Results-based resale price maintenance (RPM) defenses

RPM conduct has been a focus of enforcement and is presumed to be illegal. While maintaining the position that RPM is generally anti-competitive, the Draft appears to take a more flexible approach by allowing firms to rebut the presumption that RPM is anti-competitive. The *Anti-Monopoly Guidelines for the Automobile Industry* already enumerate the circumstances in which RPM may be justified.

- Regulation of the platform economy

The Draft would elevate several recent regulatory trends to the level of statutory authority:

- Enforcement action with respect to the unreasonable exclusions/restrictions imposed through data, algorithms, technology and platform rules.
- Enforcement action with respect to the demotion and/or reduction of rights/privileges (e.g., participation in promotions and display in search results) for non-compliance with “pick one of two”/exclusivity requirements.

- Imposition of an increasingly demanding review process for mergers.

The Draft would retain the “stop-the-clock” procedure with respect to merger reviews, suspending the review process while the parties seek to negotiate a remedy with SAMR.

- Higher penalties for violation of the AML.

The Draft would authorize SAMR to impose administrative fines of up to RMB one million on legal representatives, directors and other employees found to be directly responsible for violation of the AML.

The Draft would retain the provision for criminal liability, which appears to open the possibility of criminal liability for individuals found to be in violation of the AML.

- A public law enforcement mechanism for the People’s Procuratorate

The status of anti-monopoly regulation was separately enhanced on November 18, 2021 by elevating the Anti-Monopoly Bureau in SAMR to the National Anti-Monopoly Bureau, consisting of the First Division of Anti-Monopoly Enforcement, the Second Division of Anti-Monopoly Enforcement and the Division of Competition Policy Coordination, reflecting not only the complexity of competition work but also its utility in regulating the economy including curbing the economic (and indirectly political) power of large, especially private enterprises, and local restrictions on competition from non-local enterprises.

Merger Review

In 2021, SAMR approved 677 mergers unconditionally and an additional 4 mergers subject to conditions, (i.e., remedies) while blocking only one merger. The one blocked merger in 2021 was only the third such case since enactment of the AML and the first case prohibiting a merger of digital platform companies, although an unknown number of mergers may have been dissuaded by concern over blockage.

Statistically, approximately 86 percent of merger reviews were performed utilizing the simplified procedure. In 2020,

竞争法规

引言

2021年，中国在竞争法规领域出现了重大变化。国家市场监督管理总局（以下简称总局）于2020年1月2日发布了《〈反垄断法〉修订草案（公开征求意见稿）》（以下简称草案），这是该法条文自2007年颁布以来的首次公开发布的修订案。2021年10月23日，全国人大常委会一审后，一审草案稿对外发布，公开征求意见，其中的要点包括：

- 引入“安全港”

草案将授权总局对市场份额低于规定门槛的企业之间的特定合作建立可反驳的推定合法。如果有证据表明安全港内的行为有损竞争，总局即能够对该等行为执法。

- 基于效果的维持转售价格（RPM）辩护

RPM一直是执法重点之一，并被推定为违法。在维持RPM普遍不利于竞争这一立场的同时，草案似乎采用了更加灵活的方法，允许企业提出RPM的正当理由。汽车业反垄断指南已经列举了RPM可证明合理的情况。

- 开始整治数字平台无序行为草案反映了近期的监管趋势，其中包括：

- 针对通过数据、算法、技术和平台规则实施不合理的排除/限制的执法。
- 针对因不遵守“二选一”/排他性要求而被降级和/或减少各种权利/特权（如参加促销活动和在搜索中展示）的执法。
- 合并审查程序强度进一步上升。

草案保留了“叫停”制度，在当事方与总局协商补救方案期间，审查程序也将暂停。

- 加大对违反《反垄断法》的处罚力度

草案拟授权总局，对法定代表人、董事和其他对违反《反垄断法》负有直接责任的员工处以最高100万元的行政处罚。

草案保留了2020年草案中关于刑事责任的规定，这似乎为对参与违反《反垄断法》的个人追究刑事责任提供了可能性。

- 人民检察院公共执法机制

2021年11月18日，国家反垄断局挂牌成立。原先总局下设的反垄断局升格为国家局，其组成为反垄断执法一司、反垄断执法二司和竞争政策协调司。这一变动不仅反映了反垄断工作的复杂程度，也反映了它在调节经济方面的效用，包括限制大型企业（尤其是民营企业）的经济（和间接政治）权力，以及地方对非本地企业竞争的限制。

并购审查

2021年，总局共审结无条件批准经营者集中案件677件，附加限制性条件批准4件，禁止经营者案件1件。总局在2021年处理的1起禁止经营者集中案件，是《反垄断法》实施以来第三起禁止经营者集中案件，也是平台经济领域的首起禁止经营者集中案件，尚不清楚有多少企业因担心无法通过审查而放弃并购。

据统计，大约86%的合并审查是根据简化程序执行的。在2020年，这一程序平均需要11.75天。关于执行正常审查程序（非简化审查程序）并获得无条件批准的合并审查的资料显示，申报各方在总局确认收到材料合规后平均需要162天才能获得批准。

中国美国商会（以下简称商会）认可总局的专业水准，包括普遍增加了简化审查程序和加急审查程序下的

this procedure took 11.75 days on average after acceptance of the merger filing. Information on merger reviews where the normal review process (not the simplified review process) was performed and unconditional approval was granted indicate an average of 162 days after the announcement of the merger for the filing parties to obtain approval from SAMR.

While acknowledging the professionalism of SAMR, including the general increase in the number of notifications of the simplified and expedited review process, AmCham China remains concerned about delays in merger reviews for some industries that are due not to genuine competition issues, but rather to industrial policy concerns over more rapid technology development and/or acquisitions by entities from countries with which China has friction rather than neutral competition concerns.

Specifically, the four conditional approvals in 2021 took an average of 286.75 days from the day SAMR confirmed acceptance of filing to final decision, admittedly a reduction from 298 days in 2020. Despite this, China still significantly longer review periods for well-known mergers.

The following is a brief summary of the four conditional approvals and one rejection in 2021. All four conditional approvals involve mergers and acquisitions between foreign firms, with structural remedies in one case and behavioral remedies in three cases.

❶ *Cisco Systems/Acacia Communications* (ICT; behavioral remedies): on January 14, 2021, after a 391-day review, SAMR approved with attached restrictive conditions the proposed acquisition of Acacia Communications by Cisco Systems.

SAMR considered the merger to have a possible exclusionary and restrictive effect on the coherent optical technology market in China, given the existing market shares of the parties, market concentration in relevant markets, and the impact of the concentration on downstream companies and other operators.

The structural remedies proposed by SAMR included the parties to the merger and the concentrated entity:

The structural remedies proposed by the SAMR include:

- Continue to perform existing customer contracts, including all commercial terms and conditions and existing sales practices and procedures. The parties to the merger and the concentrated entity not unilaterally terminate existing customer contracts with Chinese customers absent the customer's approval.
- Continue to supply the relevant digital signal processors to Chinese customers on a fair, reasonable and non-discriminatory (FRAND) basis.
- Not compulsorily engage in tying goods or attaching

other unreasonable trading conditions to Chinese customers in the sale of relevant digital signal processors.

- Provide training to their relevant managements and employees and take necessary measures to ensure implementation of the commitment program.

❷ *Danfoss/Eaton* (manufacturing, structural remedies): on June 4, 2021, after a 273-day review, SAMR approved with additional restrictive conditions the proposed acquisition of Eaton's hydraulics business by Danfoss.

SAMR had the following concerns that the merger would:

- Further increase the combined market control of the parties to the merger, leading to a significant increase in concentration of the relevant market.
- Eliminate close competition between the two parties to the merger.
- Further increase market entry barriers.
- Further weaken the bargaining power of downstream customers.

The structural remedies proposed by SAMR included:

- Divestiture of the cycloidal motor business, including all tangible and intangible assets (including intellectual property), agreements, leases, commitments and customer orders, and personnel of Danfoss (Jiangsu) Power Solutions Work Function, LLC.

❸ *Illinois Tool Works/MTS Systems* (equipment manufacturing, behavioral remedies).

On November 18, 2021, after a 211-day review, SAMR approved with additional restrictive conditions the proposed acquisition of the MTS Tests and Simulations business by Illinois Tool Works.

SAMR had the following concerns:

- The market shares of MTS and Illinois Tool in the high-end electro-hydraulic servo material testing equipment market within China were 40-45 percent and 25-30 percent respectively, with a combined market share of 65-70 percent, far exceeding other competitors in the market, and the entity would enjoy a dominant market position after the concentration. As a result, the merger would bring significant changes in the market structure within China and a significant increase in market concentration.
- The two parties of the concentration are the closest competitors in the high-end electro-hydraulic servo material testing equipment market within China. The merger will remove the competitive constraint between the two major competitors in the relevant market.

通知数量，但仍担心，部分行业的交易审查的推迟，可能因中国国内产业政策或地缘政治的原因，而非因为纯粹的竞争问题。

具体而言，2021年的四宗附条件批准案从初次申报到作出决定，平均历时286.75天，相较2020年的298天进一步缩短，但中国仍在知名合并案件审查时长方面明显异于其他国家。

下文简要介绍了2021年的四宗附条件批准案和一宗禁止案。2021年的所有附条件批准案件均涉及外企之间的并购，其中一宗采取了结构性补救措施，三宗给予了行为性补救措施。

① 思科系统/阿卡夏通信公司（信息通信技术；行为性补救措施）：2021年1月14日，在经过了391天的审查之后，总局附加限制性条件批准了思科系统拟收购阿卡夏通信公司业务一案。

总局认为，鉴于两家企业现有的市场份额及其对市场的控制力、相关市场的市场集中度、集中对下游用户企业和其他有关经营者的影响等方面，该交易可能会对中国光传输系统市场可能具有排除、限制竞争效果。

总局提出的结构性补救措施包括：

- 交易双方和集中后实体将继续履行现有客户合同，包括各项商业条款以及现有销售做法和程序。除非相关中国客户自行决定终止现有客户合同，交易双方和集中后实体不得终止现有客户合同。
- 交易双方和集中后实体应按照公平、合理、无歧视的原则，继续向中国客户供应相干数字信号处理器。
- 交易双方和集中后实体不得在销售相干数字信号处理器时对中国客户强制搭售商品，或附加其他不合理的交易条件。
- 交易双方和集中后实体应对其相关管理人员和员工进行培训，采取必要措施，确保承诺方案落实。

② 丹佛斯/伊顿股份（制造业，结构性补救措施）：2021年6月4日，在经过了273天的审查之后，总局附加限制性条件批准了丹佛斯公司拟收购伊顿股份有限公司部分业务一案。

总局对该交易提出了以下担忧：

- 集中将进一步增强交易双方的市场控制力，导致相关市场集中度大幅提高。

- 集中消除了交易双方之间的紧密竞争关系。
- 集中将进一步提高相关市场的进入壁垒。
- 集中将进一步削弱下游用户的议价能力。

总局提出的结构性补救措施包括：

- 剥离丹佛斯动力系统（江苏）有限公司的摆线马达业务，包括所有有形资产和无形资产（包括知识产权）、协议、租约、承诺和客户订单，以及人员等。

③ 伊利诺斯工具制品/美特斯系统（设备制造，行为性补救措施）：2021年11月18日，在经过了211天的审查之后，总局附加限制性条件批准了伊利诺斯工具制品公司拟收购美特斯系统公司股权一案。

总局提出了以下担忧：

- 美特斯和伊利诺斯在中国境内高端电液伺服材料测试设备市场的市场份额分别为40%-45%和25%-30%，双方合计市场份额为65%-70%，远超市场上其他竞争者，集中后实体取得了市场支配地位。交易后，交易导致中国境内市场结构发生显著变化，市场集中度大幅提高。
- 集中双方是中国境内高端电液伺服材料测试设备市场上最为紧密竞争对手。本次交易将消除相关市场上两个最主要竞争者之间的竞争约束。
- 本次集中导致GUPPI达到21.7%，远高于10%的临界经验值，表明交易后，集中后实体单方面涨价的可能性很大。另外，根据调查问卷反馈，约一半的下游客户表示由于技术能力、产品质量稳定性等原因，很难从使用高端设备转向低端设备，将不得不接受竞争格局变化导致的涨价。其余客户表示受制于预算等原因，会将部分采购（约10%—50%）转向低端设备。

总局提出的行为性补救措施如下：

- 收购后继续履行与中国客户的所有涉及相关商品和服务的现有业务合同。
- 收购后继续保持对中国客户的服务水平，包括但不限于：质量、数量、交货期、售后服务与支持（包括维修）、软件更新、技术规范和用户手册等方面不低于本次交易前所提供的服务水平。
- 收购后没有正当理由，向中国客户销售的相关商品和服务的价格不得高于交易双方在生效日前24个

- The concentration leads to a Gross Upward Pricing Pressure Index (GUPPI) of 21.7 percent, which would far exceed the critical empirical value of 10 percent, indicating a high probability of unilateral price increases by the concentrated entity after the merger. In addition, according to the survey, about half of the downstream customers indicated that it is difficult to switch from using high-end to low-end equipment due to technical capability and product quality and stability issues, forcing customer acceptance of price increases due to changes in the competitive landscape. The rest of the customers said that due to budgetary constraints and other reasons, they would substitute part of their purchases (10-50 percent) by low-end equipment.

The behavioral remedies proposed by SAMR were as follows.

- Perform all existing business contracts with Chinese customers involving relevant goods and services.
- Maintain existing services to Chinese customers on terms including but not limited to quality, quantity, delivery, after-sales service and support (including maintenance), software updates, technical specifications and user manuals not less than the level of service provided prior to the concentration.
- Absent justifiable reasons, the price of the relevant goods and services sold to Chinese customers shall not exceed the average price for the same goods and/or services of the same model and configuration sold by both parties to their Chinese customers under comparable terms and conditions of the concentration during the 24 months prior to the effective date.
- Absent justifiable reasons or in accordance with past business practices, the combined entity may not: (i) refuse, limit or delay the supply of the relevant goods or services to its Chinese customers; (ii) impose any unreasonable trading conditions on its Chinese customers; (iii) reduce the quality or technical level of the relevant goods and/or services supplied to its Chinese customers; or (iv) reduce the level of after-sales service and support (including maintenance), software updates, technical specifications and user manuals.

④ *SK Hynix/Intel* (semiconductors, behavioral remedies): on December 19, 2021, after a 272-day review, SAMR approved with additional restrictive conditions the proposed acquisition of part of Intel's memory business by SK Hynix.

SAMR had the following concerns about the merger:

- The concentration would increase concentration in the SATA enterprise SSD market and enhance the market control of the concentrated entity.
- The concentration would increase concentration in the PCIe enterprise SSD market and enhance market control

of the concentrated entity.

- The concentration would enhance the incentives and ability of relevant market competitors to coordinate prices.
- Higher market entry barriers would make it difficult for new effective competitors to emerge in the near term.

The behavioral remedies proposed by SAMR were as follows.

- May not sell PCIe enterprise SSD products and SATA enterprise SSD products to the Chinese market at unreasonable prices. The price of PCIe enterprise SSD products and SATA enterprise SSD products sold to the Chinese market may not exceed their average price during the 24 months prior to the effective date, provided that the terms of the transaction are comparable.
- Continue to expand the production of PCIe enterprise SSD products and SATA enterprise SSD products for a period of five years from the effective date.
- Continue to supply all products to the Chinese market based on FRAND principles.
- May not compel or deceive Chinese customers to purchase products exclusively from SK Hynix or any company controlled by SK Hynix; and may not tie or bundle PCIe enterprise SSD products and SATA enterprise SSD products with other products.
- Help a third party competitor enter the PCIe enterprise SSD and SATA enterprise SSD market.
- May not enter into any written or oral agreement, decision or other concerted conduct (including implied concerted conduct) with major competitors in China that excludes or restricts competition with respect to sales price, production volume or sales volume.

Recent Enforcement on Platform Economy

Huya/Douyu International (Internet platform): on July 10, 2021, after a 236-day review, SAMR decided to block this merger.

SAMR had the following concerns.

- The concentration would strengthen Tencent's dominant position in the game streaming market within China, with the effect of excluding or restricting competition.
- The concentration would give Tencent a two-way blocking ability in the upstream online game operation service market and the downstream game streaming market within China, which may have the effect of excluding or restricting competition.

As this concentration of undertakings has or may have the effect of excluding or restricting competition in the game streaming market and online game operation service markets in China, the applicant party fails to prove that the beneficial effects of the concentration on competition are significantly

月内，其在交易条款和交易条件相当的情况下各自向其中国客户销售的相同型号和配置的商品和/或服务的平均价格。

- 除非有正当理由或遵循过往商业惯例，不得从事以下行为：1. 拒绝、限制或延迟向中国客户供应相关商品或服务；2. 对中国客户施加任何不合理的交易条件；3. 降低向中国客户供应相关商品和/或服务的质量或技术水平；4. 降低对中国客户在交货期、售后服务和支持（包括维修）、软件更新、技术规范 and 用户手册方面的服务水平。

4 SK 海力士 / 英特尔（半导体，行为性补救措施）：2021 年 12 月 19 日，在经过了 272 天的审查之后，总局附加限制性条件批准了 SK 海力士株式会社拟收购英特尔公司部分业务一案。

总局对该交易提出了以下担忧：

- 交易将提高 SATA 企业级固态硬盘市场集中度，增强集中后实体的市场控制力。
- 交易将提高 PCIe 企业级固态硬盘市场集中度，增强集中后实体的控制力。
- 集中可能增强相关市场竞争者协调价格的动机和能力。
- 市场进入壁垒高，短期内难以出现新的有效竞争者。

总局提出的行为性补救措施如下：

- 不得以不合理的价格向中国境内市场供应 PCIe 企业级固态硬盘产品和 SATA 企业级固态硬盘产品。向中国境内市场销售的 PCIe 企业级固态硬盘产品和 SATA 企业级固态硬盘产品的价格，在交易条款相当的情况下，不得高于其在生效日前 24 个月内的平均价格。
- 在生效日起 5 年内持续扩大 PCIe 企业级固态硬盘产品和 SATA 企业级固态硬盘产品的产量。
- 依据公平、合理、无歧视原则向中国境内市场继续供应所有产品。
- 不得强制或者变相强制中国境内市场的客户从 SK 海力士或 SK 海力士控制的任何公司排他性地采购产品；不得将 PCIe 企业级固态硬盘产品与其他产品，SATA 企业级固态硬盘产品与其他产品强制搭售或捆绑销售。
- 帮助一个第三方竞争者进入 PCIe 企业级固态硬盘和 SATA 企业级固态硬盘市场。

- 不得在销售价格、产量或销量方面与其在中国的主要竞争对手达成任何排除或限制竞争的书面或口头协议、决定或进行其他协同行为（包括默示协同）。

平台经济治理

2021 年唯一的禁止案是虎牙公司 / 斗鱼国际（互联网平台）：2021 年 7 月 10 日，在经过了 236 天的审查之后，总局决定禁止此项经营者集中。

总局提出了以下担忧：

- 集中将强化腾讯在中国境内游戏直播市场上的支配地位，具有排除、限制竞争效果。
- 集中将使腾讯在上游中国境内网络游戏运营服务市场和下游中国境内游戏直播市场拥有双向封锁能力，可能具有排除、限制竞争效果。

鉴于此项经营者集中对中国境内游戏直播市场和网络游戏运营服务市场具有或者可能具有排除、限制竞争的效果，申报方未能证明集中对竞争产生的有利影响明显大于不利影响，或者符合社会公共利益，且申报方提交的承诺方案无法有效减少集中对竞争产生的不利影响，总局决定，根据《反垄断法》第二十八条和《经营者集中审查暂行规定》第三十五条规定，禁止此项经营者集中。

另据总局 2021 年 11 月 20 日消息，总局对 43 起未依法申报违法实施经营者集中案件立案调查，其中许多并购案涉及中国大型互联网企业，这一现象同总局加强对平台经济反垄断的趋势保持一致。对涉案企业的罚款均为 50 万元人民币不等（约合 76,537 美元）。12 月 30 日，总局通报另外两起经营者集中“抢跑”案件，涉案企业均被处以 30 万元人民币（约合 45,922 美元）的罚款。

2021 年 7 月 24 日，因腾讯未事先报批而实施了经营者集中，总局对腾讯作出并公布了行政处罚决定，责令其采取必要措施恢复集中前状态。作为总局开出的首个恢复令，该命令释放出了一个信号，扭转交易对竞争的影响将成为新的执法重点。

2021 年 2 月 7 日，总局发布《关于平台经济的反垄断指南》（《平台指南》），进一步规定了可能构成垄断协议的协议类型。根据《平台指南》，使用技术方法、数据和算法都可能构成横向或纵向垄断协议。最惠国待

greater than the adverse effects, or are in line with public interests, and the commitment program submitted by the applicant party cannot effectively reduce the adverse effects of the concentration on competition, SAMR decided to prohibit this concentration of undertakings in accordance with Article 28 of the AML and Article 35 of the *Interim Provisions on Review of Concentrations of Business Operators*.

SAMR on November 20, 2021 disclosed that it had opened investigations into 43 cases of illegal implementation of concentrations of undertakings without notifications required by law involving many large Chinese Internet companies, which is in line with SAMR's tendency to tighten AML enforcement in the platform economy. On December 30, SAMR announced two other cases involving failure to notify concentrations in which the companies involved were fined RMB 300,000 (approximately US \$45,922).

On July 24, 2021, SAMR issued and published an administrative penalty decision against Tencent for implementing a concentration of undertakings without prior approval, ordering it to take necessary measures to restore the pre-concentration status. As the first restoration order issued by SAMR, it conveyed a message that reversing the impact of the merger on competition would become a new enforcement focus.

On February 7, 2021, SAMR released the *Anti-monopoly Guidelines on Platform Economy*. The *Platform Guidelines* regulate the types of agreements that may constitute monopoly agreements. According to the *Platform Guidelines*, the use of technical methods, data and algorithms may constitute a horizontal or vertical monopoly agreement. A MFN clause may also constitute a vertical monopoly agreement. So-called hub-and-spoke agreements are also prohibited because competitors can enter into hub-and-spoke agreements through vertical relationships with the platform operator or through the organization and coordination of the platform operator with other competitors.

The *Platform Guidelines* also clarify that practices such as “pick one of two” (requiring platform operators not to operate on competing platforms) and “big data discriminatory pricing” may constitute abuse of a dominant market position.

In December 2020, while the *Platform Guidelines* were still being drafted, SAMR and the Ministry of Commerce met with six Internet platform operators - Alibaba, Tencent, JD, Meituan, Pinduoduo, and DiDi Chuxing - to warn them to strengthen their monitoring of pricing activities and unfair competition. On April 10th, 2021, SAMR imposed fines totaling RMB 18.228 billion (US \$ 2.8 billion) for abuse of dominant market position and implementation of “pick one of two” conduct in Chinese Internet retail platform services. The investigation against Meituan ended on October 8, 2021 and demanded that Meituan refund its exclusive partnership deposit of RMB 1.289 billion, and pay a fine of RMB 3.442 billion equivalent to 3 percent of its

sales in China in 2020.

On the first business day of 2022, SAMR announced several administrative penalties against Chinese Internet giants for violating the AML, including Tencent, Alibaba-owned companies and Bilibili, another message of continued and increased enforcement efforts against illegal activity by platform companies.

Non-merger investigations and penalties

In 2021, SAMR vigorously regulated various types of non-merger conduct and abuse of dominant market position. In the pharmaceutical industry, after the imposition of total fines of RMB 204.5 million (US \$ 31.3 million) on three suppliers of active pharmaceutical ingredients (API) for calcium gluconate last year, SAMR imposed a fine of RMB 764 million (US \$ 120 million) on Yangtze River Pharmaceutical Group on April 15, 2021. The fine was equivalent to about 3 percent of the firm's revenue in 2018 and marked the highest antitrust fine in China's pharmaceutical industry.

From 2015 to 2019, Yangtze River reportedly fixed drug resale prices and signed limited minimum resale price agreements with downstream wholesalers and retail stores. In addition, in order to enforce these agreements, the Yangtze River established an enforcement rule to allow them and agencies to track prices and penalize distributors which did not comply with the agreements.

On September 27, 2021, Groupe Bull was fined US \$ 45.62 million by the Zhejiang Provincial Administration for Market Regulation for RPM. Equivalent to 3 percent of Groupe Bull's total China sales revenue in 2020, the fine was imposed for business practices from 2014 to 2020, including setting dealer resale prices and imposing RPM restrictions on dealers.

SAMR stated that the manufacturer:

- Signed distribution contracts with dealers that included RPM clauses.
- Issued a price adjustment policy identifying the discounts that the dealer may offer to customers.
- Required dealers to sign a commitment to comply with its price management system.
- Established an internal market inspection department and commissioned relevant agencies to monitor the implementation of the pricing policy, thereby promoting RPM practices.
- Took punitive measures against dealers who violate the price management system.

Other legislative developments

In addition to the Draft discussed earlier, SAMR issued the

遇条款也可能构成纵向垄断协议。由于竞争者可以通过与平台经营者的纵向关系或通过平台经营者与其他竞争者的组织和协调达成枢纽型协议，因此所谓的枢纽型协议也遭到禁止。

《平台指南》还明确了“二选一”（要求平台内经营者不得在竞争平台上经营）和“大数据杀熟”等做法都可能构成滥用市场支配地位。

2020年12月，在《平台指南》仍在起草阶段时，总局和商务部共同会见了六家互联网平台经营者——阿里巴巴、腾讯、京东、美团、拼多多和滴滴出行，警告他们加强对定价活动和不公平竞争的监督。2020年12月，总局启动了对阿里巴巴垄断行为的调查。2021年4月10日，总局针对其滥用国内互联网零售平台服务的市场支配地位、实施“二选一”的行为处以182.28亿元（28亿美元）的罚款。而针对美团的调查在10月8日结束，美团要求退还独家合作保证金12.89亿元，同时被处以其2020年在华销售额3%的罚款，计34.42亿元。

2022年的第一个工作日，总局公布了对违反《反垄断法》的国内互联网巨头的多项行政处罚，包括腾讯、阿里巴巴旗下公司和哔哩哔哩，又是一个继续加大执法力度打击非法活动的迹象。

非并购调查和处罚

2021年，总局大力整治各类非并购和滥用市场支配地位的行为。在制药行业，继去年对三家葡萄糖酸钙原料供应商合计处以2.045亿元（3130万美元）的罚款，总局在今年4月15日对扬子江药业处以人民币7.64亿元（约合1.2亿美元）的罚款。该罚款约相当于扬子江药业2018年收入的3%，创下了中国制药行业反垄断罚款的最高纪录。

据报道，从2015年到2019年，扬子江药业固定了药品转售价格，并与下游批发商和零售药店签订了限定最低转售价格协议。此外，为了执行这些协议，扬子江药业制定了一个实施规则，以使得扬子江药业和中介销售机构跟踪价格并惩罚不遵守最低转售价格协议的经销商。

2021年9月27日，公牛集团因维持转售价格（以下简称RPM），被浙江省市场监督管理局开出了4562万美元的罚单。这笔罚款相当于公牛集团2020年中国

总销售额的3%，针对的是2014年至2020年的经营行为，包括确定经销商转售价格并对经销商实施最低转售价格限制。

总局认为，该制造商：

- 与经销商签订了包含RPM条款的经销合同；
- 发布了价格调整政策，确定经销商可能向客户提供的折扣；
- 要求经销商签署承诺书，承诺遵守其价格管理制度；
- 设立内部市场检查部门，并委托相关机构监督价格政策的实施，从而推动RPM行为；以及
- 对违背价格管理制度的经销商采取惩罚措施。

其他立法进展

除了本章开头部分讨论的《反垄断法》修正外，总局还发布了以下指南和草案：

- 《关于知识产权领域的反垄断指南》（2020年9月18日发布）
- 《横向垄断协议案件宽大制度适用指南》（2020年9月18日发布）
- 《企业境外反垄断合规指引（征求意见稿）》（2020年9月18日）
- 《关于汽车业的反垄断指南》（2020年9月18日发布）
- 《关于原料药领域的反垄断指南》（2020年10月13日发布）
- 《经营者集中审查暂行规定》（2020年10月23日发布，当年12月1日其施行）
- 《经营者反垄断合规指南》（2020年10月30日发布）
- 《关于禁止滥用知识产权排除、限制竞争行为的规定（2020年修订版）》（2020年11月3日）

建议

对中国政府：

- 重视真正的竞争问题。公正对待本国企业及其外国竞争对手，避免产业政策利益混入关于《反垄断法》执行和滥用支配地位的调查。

following guidelines and drafts in late 2020 and in 2021:

- Regulations on Prohibiting Abuse of Intellectual Property Rights to Exclude or Restrict Competition (2015, revised November 3, 2020)
- Anti-Monopoly Guidelines for the Automobile Industry (September 18, 2020)
- Anti-Monopoly Guidelines for Intellectual Property Rights (September 18, 2020)
- Guidelines for Application of the Leniency Regime to Cases of Horizontal Monopoly Agreement (September 18, 2020)
- Anti-monopoly Compliance Guidelines (October 30, 2020)
- Anti-monopoly Guidelines for API (October 13, 2020)
- Guidelines on Overseas Anti-monopoly Compliance for Enterprises (Draft for Comment) (September 18, 2020)

participate in meetings and investigations by SAMR alongside Chinese lawyers, to fulfill China’s explicit commitment in the JMC.

- Issue additional guidelines on reconciling differences between administrative agencies and courts and between courts on the same issues, e.g., RPM enforcement issues.
- Clarify the requirement to take “necessary measures to restore the pre-concentration status” due to failure to submit a merger notification.

Recommendations

For the Chinese Government

- Focus on authentic competition issues. Treat Chinese firms and their foreign competitors fairly and refrain from injecting industrial policy concerns into investigations regarding AML enforcement and abuse of dominant position.
- Publish clear rules for determination and regulations of jurisdictional issues for merger reviews and clarify when companies must report mergers to SAMR for approval prior to closure. Such issues include providing meaningful explanations and example cases of what constitutes “control” of joint ventures and mergers of minority interests, and how revenue is allocated and attributed in calculating the filing threshold. Strictly enforce the existing eligibility criteria for the simplified procedure and publish detailed guidelines on how SAMR exercises its discretion when reviewing cases. Continue to provide expedited reviews based on the simplified procedures for merger reviews.
- Enhance the transparency of competition complaints and investigations, including publishing and implementing clear AML enforcement guidelines and a commitment to publish written enforcement decisions in a fully reasoned manner to ensure due process and rights for businesses in reviews and investigations. Allow foreign-invested enterprises to submit timely comments on all drafts involving abuse of dominant position, monopoly agreements and administrative monopolies. Issue formal guidelines that allow foreign qualified lawyers (i.e., lawyers working in foreign law firms with Chinese qualification) and foreign lawyers to

- 对于合并审查，公布明确的管辖权问题认定规定，并明确企业何时必须向总局申报交易以及在交割前审批。此类问题包括就合营企业“控制权”和少数股权收购的构成，以及在计算申报门槛时如何分配和归属收入，提供有意义的解释和实例。严格执行简化程序的现有资格标准，并公布关于总局在受理案件时如何行使自由裁量权的详细指南。继续根据合并审查简化程序提供快速审查。
- 提升竞争投诉和调查的透明度，包括印发、实施明确的《反垄断法》执法指南，并承诺以充分说明理由的方式公布书面执法决定，确保接受审查或调查的企业享有正当程序权利。允许外商投资企业及时对所有涉及滥用支配地位、垄断协议和行政垄断的立法草案提出意见。
- 发布正式指南，规定允许外国有资质的律师（即在外国律师事务所工作的具有中国资质的律师）、外籍律师与本国律师一起参加总局的会议和调查，履行中国在中美商贸联委会中的明确承诺。
- 发布更多指南，协调行政机构和法院之间以及不同法院之间在相同问题上的分歧，例如，RPM 执行问题。
- 澄清因未事先报批而引起的采取“必要措施恢复集中前状态”的要求。

Compliance

Introduction

In view of increasing supervision on cyber security and data, as well as more policy requirements from national industrial policies, the member enterprises of the American Chamber of Commerce in China (hereinafter referred to as “AmCham China”) are faced with mounting complex problems full of challenges in terms of business compliance in China. According to the *China Business Climate Survey Report* issued by AmCham China in 2021, regulatory compliance issue has once again become one of the top five challenges facing members, as it was last year.

In 2020, as US-China relations deteriorated, compliance problems for foreign-funded enterprises operating in China had intensified. In September, the government of China issued the *Provisions on the List of Unreliable Entities and Export Control Law of the People’s Republic of China*, the latter of which is the first of its kind in China and went into effect in December 2020, containing all-round contents. In January 2021, China promulgated the *Rules on Blocking Unjustified Extraterritorial Application of Foreign Legislation and Other Measures* (hereinafter referred to as the “Measures”). Although the government of China had promised that the legislation on foreign investment would take effect only after a 30-day period of solicitation for public comments, they failed to deliver on the Measures. The US government has placed a large number of Chinese companies on the *Entity List*, for the purpose of restricting US companies from transacting with or otherwise doing business with these entities. The US Department of Commerce expanded licensing restrictions on Chinese military end-use/military end-user exports/re-exports, which took effect in June 2020. In July, the US Department of Commerce suspended export license exemptions to Hong Kong. Prior to this, unlike mainland China, Hong Kong enjoyed preferential treatment. The implications of these actions, some of which are discussed in detail below, have given rise to extensive thinking about compliance, involving whether the member companies of AmCham China need to review their internal compliance frameworks.

In addition to actions taken in 2020, the increasing number of regulatory and enforcement measures in China in recent years has resulted in the uptick of investigations into US

companies in China. These investigations include beyond routine investigations conducted by government authorities pursuant to the *Anti-Unfair Competition Law*. But for US companies, these investigations appear to be conducted for achieving China’s domestic industrial policy goals or serving specific interests of Chinese competitors.

After years of rapid development, China’s economy has reached a stage of claiming to open up most of its markets, promote fair competition and equally treat all enterprises within its border. This has been clearly stipulated in the new *Foreign Investment Law* that went into force as of January 1, 2020. Today, China is also making efforts to gain global leadership, which should be achieved in a fair and transparent way.

Ongoing Regulatory Issues

Anti-Corruption Compliance

Efforts to contain COVID-19 didn’t slow down China’s legislative activities in 2020, with the National Supervision Commission (NSC) remaining active in cracking down on public officials suspected of corruption. The *Law of the People’s Republic of China on Administrative Discipline for Public Officials* (hereinafter referred to as the “*Law on Administrative Discipline*”) promulgated in June 2020 strengthens the power of NSC to impose administrative discipline on public officials. As it is in the *Supervision Law*, public servants have a broad definition, which includes not only civil servants but also the managers of state-owned enterprises and other people performing public duties. Officials in violation of regulations will be given administrative punishments such as a warning or dismissal from office. With the introduction of the national law on administrative discipline, the power of NSC to investigate and punish public officials with corrupt behavior has been further strengthened.

To enhance transparency, the NSC and Central Commission for Discipline Inspection of the Communist Party of China (CPC) have continued to issue new regulations, provide guidance to their local branches, and develop a small number of measures related to the transparency of its investigation process. In January 2020, the NSC and Central Commission for Discipline Inspection of the Communist Party of China

合 规

引 言



于中国加大在网络安全和数据领域的监管力度，提高产业政策要求，中国美国商会（以下简称商会）会员企业在合规领域面临的挑战与日俱增。商会在近期出版的 2022 年《中国商务环境调查报告》中指出，监管合规问题继去年后再次成为商会会员企业在华经营面临的五大挑战之一。

2020 年，中美双边关系紧张加剧了在华经营的外资企业面临的合规挑战。9 月，中国政府发布了《不可靠实体清单规定》和中国首部《出口管制法》，该法于 2020 年 12 月生效。2021 年 1 月，中国颁布了《阻断外国法律与措施不当域外适用办法》（以下简称《办法》），需要强调的是，《办法》未经 30 天公众意见征集期就生效了，这与中国政府对外商投资相关的立法需经 30 天公众意见征集期才能生效的承诺并不一致。

同时，美国政府将大量中国企业列入实体清单，限制美国企业与这些企业进行交易或以其它方式开展业务。美国商务部发布了扩大对中国军事最终用途 / 军事最终用户出口 / 再出口的许可限制，于 2020 年 6 月生效。7 月，美国商务部暂停对香港特别行政区的出口许可证豁免政策。在此之前，相较于中国大陆，香港特区享有优惠待遇。上述行动的影响（其中一些在下文进行了详细讨论）引发了广泛的担忧，商会会员企业因此考虑是否应重新审核其内部合规框架。

除了 2020 年出台的相关政策外，近年来中国出台的监管和执法措施日益严格，对在华外资企业开展调查的次数也日益增多。这些调查包括但不限于政府主管部门依据《反不正当竞争法》开展的常规调查。但对外资企业而言，部分调查行动的目的似乎并不明确。

多年来，中国经济高速发展，目前已开放了大部分市场，并在促进公平竞争、平等对待境内所有市场主

体等方面取得长足进步，这也于 2020 年 1 月 1 日起施行的新版《外商投资法》得到进一步确认。商会会员企业长期呼吁中国提高在反腐败和反贿赂方面的执法透明度。法治建设的关键因素在于提升透明度、在法律解释和执行上保持一致，以及确保正当法律程序。外国投资者和外资企业在制定投资战略时也会着重考虑目标市场的可预测性、公平性，以及合规和监管领域的合理性。

现存监管挑战

反腐败合规

近年来，中国国家监察委员会（国家监委）持续其高效的反腐败工作。2020 年 6 月颁布的《中华人民共和国公职人员政务处分法》（以下简称《政务处分法》）强化了国家监察委员会对公职人员实施政务处分的权力。与《监察法》一致，公职人员的定义很宽泛，包括了公务员、以及国有企业的管理人员和其他担任公共事务职责的人员。对违反规定的公职人员，将给予警告、解除公职等政务处分。

为提高透明度，国家监委和中央纪律检查委员会（中央纪委）继续发布新规定，为其地方下级机构提供指导，并提供了少量与其调查程序的透明性相关的措施。2020 年 1 月，国家监委和中央纪委发布了《纪检监察机关处理检举控告工作规则》（以下简称《规则》）。《规则》明确规定了中央纪委、国家监委及其地方下设机构的与举报人投诉有关的程序，包括举报人的权利和义务以及提供信息、向上级机关进行内部举报和受理或拒绝调查的通知的时间。商会对中国政府努力进一步完善反腐败的法定程序，提高监管工作的透明度表示认可。但是，国家监委和地方监委之间的职责分工，正如商会在过去几年的《美国企业在中国白皮书》（以下简称《白皮书》）中所指出的一样，仍然不甚清晰。商会会员企业希望能进一步明确监管执法并保持前后一致。商会鼓励政府进

(CPC) unveiled the *Rules for Discipline Inspection and Supervision Organs to Handle Accusations* (hereinafter referred to as the “Rules”), clearly defining the procedures related to whistle-blower complaints to be observed by the Central Commission for Discipline Inspection of the Communist Party of China, NSC and their local branches, including the rights and obligations of the whistleblower as well as the time for internal reporting and notification of acceptance or rejection of investigations to higher authorities. AmCham China gives affirmation to the efforts of the Chinese government to further improve legal procedures against corruption and enhance the transparency of regulatory work. However, as discussed by AmCham China in its White Paper issued in previous years, the division of responsibilities between national and local regulatory commissions remains unclear. Members of AmCham China provide sustained support in greater clarity and consistency in regulatory enforcement, and urge the Chinese government to clarify the responsibilities of central and local regulatory commissions.

Companies with corruption behavior will not only bear civil and criminal liability, but also lose their reputations, with their operations in China and international markets affected. Companies operating in China must observe local laws and regulations as well as any applicable overseas anti-bribery laws to avoid penalties and reputation damage. We recognize that US companies and citizens in China must abide by local laws and regulations and the *Foreign Corrupt Practices Act (FCPA)*. US companies operating in China need to stay vigilant and keep an eye on corruption and related risks emerging in China’s rapidly evolving business and legal environment.

With the promulgation of the long-awaited implementation rules on the *Supervision Law of the People’s Republic of China* (Supervision Law), China made progress in furthering its anti-corruption legal framework in 2021. On September 20, 2021, the National Supervision Commission of China (NSC) promulgated the *Regulations for the Implementation of the Supervision Law of the People’s Republic of China* (Implementation Regulations), which came into force on the same day. The *Supervision Law* is a cornerstone of China’s anti-corruption legal framework yet leaving many issues for further clarifications. The Implementation Regulations, filling the gaps, aims to provide more details and clarifications to these issues. For example, the Implementation Regulations defines “occupation-related violations” as “actions committed by public officials related to their duties, which do not constitute a crime, but lead to legal liabilities on public officials.” The Implementation Regulations list 101 occupation-related crimes over which the NSC and/or its local counterparts have jurisdiction, notably, including “the crime of bribing foreign public officials and officials of public international organizations, the crime of accepting bribes by non-public officials, and corresponding crime of bribing non-public officials.” Furthermore, the Implementation Regulations specify the six types of state functionaries subject to the *Supervision Law*, with a detailed description. It is worth mentioning that Article 40 further clarifies the scope of “managing staff of state-owned

enterprises (SOEs)”, an ambiguous and controversial concept in the past practice, by listing three major categories of individuals considered such managing staff.

Chapter six of the Implementation Regulations focuses on international cooperation against corruption, specifically, on preventing suspects of occupation-related violations and crimes from absconding outside of China, and repatriation of fugitive criminals. The NSC is designated to implement the *United Nations Convention Against Corruption* and other international anti-corruption treaties, coordinate anti-corruption international cooperation, lead the efforts to combat corruption, repatriate fugitive criminals, and recover proceeds of corruption. In recent years, China has made progress via international collaboration and mutual judicial assistance in combatting corruption, such as the “Sky Net” and “Fox Hunting” campaigns of repatriating fugitive criminals. According to the news release published on the NSC’s website, as of end of November 2021, the “Sky Net 2021” campaign has led to the repatriation of 1114 fugitives, and the retrieval of RMB 16.139 billion (approximately US \$2.53 billion) of criminal proceeds.

On a relevant topic, on August 20, 2021, the Standing Committee of the National People’s Congress issued the *Supervisors Law of the People’s Republic of China* (*Supervisors Law*), which came into effect as of January 1, 2022. The *Supervisors Law* is the first of its kind to standardize the appointment, removal, functions, and duties of supervisors, a special functionary created in 2018 by the *Supervision Law* to carry out the statutory functions of supervision commissions. Pursuant to the *Supervisors Law*, the duties of supervisors include educating and supervising public officials, investigating occupation-related violations and crimes of public officials, and undertaking a key role of carrying out international cooperation in anti-corruption, etc. Although the impact of this latest development on the daily operations of government and state-owned companies is unknown at present, companies doing business in China should remain vigilant and prepare for this change, especially when dealing with government officials and business partners from the public sector.

Anti-Bribery Law Enforcement

On December 26, 2020, the Standing Committee of the National People’s Congress (NPC) adopted the *Amendment (XI) to the Criminal Law of the People’s Republic of China* (hereinafter referred to as the “Amendment”), which went into force on March 1, 2021. The Amendment increases discipline for non-state public officials who accept or solicit bribes, and redefines the sentencing standards of non-state staff who take advantage of their position to accept or ask for bribes or seek benefits for others; and establishes three new sentencing grades for crimes involving “large”, “huge” or “extremely huge” sums and varying degrees of severity. Harsher discipline may be imposed on non-state staff who commit such bribery. Prior to the Amendment, pursuant

一步明晰职责划分，这有利于商界在复杂的监管环境下保持合规。

腐败不仅会使企业承担民事和刑事责任，也会损害企业的声誉，影响其在中国以及国际市场的运营。企业在华运营必须遵守中国相关法规及所有适用的海外反贿赂法律，以避免受到处罚或声誉受损。美国在华企业和公民都必须同时遵守美国《反海外腐败法》。在中国经营的美商企业需要保持警觉，密切关注在中国快速发展的商业和法律环境中出现的各种腐败和相关风险。

商会会员企业一直以来都有严格的内部合规政策，并努力确保在其运营市场的合规性。同时，各国应努力确保其政策法规在纸面上和执法层面的一致性和清晰度。在中国，内外资企业应被平等对待。在法律制定期间，听取外资企业的声音，并在调查和执法中公平对待外资企业。同时，官方不应鼓动消费者因股东国籍抵制相关企业。

反贿赂法执法

2020年12月26日，全国人大常委会通过了《中华人民共和国刑法修正案(十一)》(以下简称《修正案》)，《修正案》于2021年3月1日起施行。《修正案》增加了对非国家公职人员收受或索取贿赂的处罚。《修正案》重新界定了非国家工作人员利用职务上的便利收受或索取他人贿赂、为他人谋取利益的量刑标准。《修正案》规定了三个新的量刑等级，分别适用于涉及“数额较大”、“数额巨大”或“数额特别巨大”金额以及不同严重程度的犯罪，可能会对实施上述贿赂行为的非国家工作人员处以更严厉的处罚。在《修正案》之前，根据《中华人民共和国刑法》(以下简称《刑法》)，与国家工作人员相比，犯有腐败行为的非国家工作人员受到的处罚较轻。《修正案》对非国家工作人员适用与国家工作人员相同的量刑水平，缩小了上述处罚差距。值得注意的是，根据《刑法》，国家工作人员与非国家工作人员之间的区别取决于该人员承担的具体工作职责。如果一个人担任公职，无论其是否是政府机构的雇员，根据《刑法》，该人将被视为国家工作人员。相反，即使一个人是政府机构或国有企业的雇员，如果该个人不承担或担任任何公职，则根据《刑法》，该个人是非国家工作人员。

对于商业贿赂，中国的执法因行业而异。医药行业仍然是反腐败和反贿赂执法的首要目标。2020年，中国

国家医疗保障局(以下简称国家医保局)针对医药招标和采购过程中的商业贿赂问题采取了行动。例如，2020年8月，国家医保局发布了《关于建立医药价格和招采信用评价制度的指导意见》，旨在建立一个信用评价制度，企业在定价、招标、采购和营销过程中若实施商业贿赂，政府将进行报告、记录、监测和惩戒等。在信用评价制度下，将根据医药企业从事的不诚实行为的记录对医药企业进行评估和评分。商业贿赂，包括在药品购销过程中提供回扣或其他不当利益等，将是这一新信用评价制度考虑的关键指标之一。国家医保局随后于2020年11月发布了实施条例，规定了建立该信用评价制度的程序和规则。国家医保局打击医药行业贿赂的行为得到了其他政府部门的支持。最高人民法院与国家医保局签署一份备忘录，建立商业贿赂相关司法案件信息共享机制，以更好地协助国家医保局建立上述信用评价制度。与此同时，中央纪委和国家监委也表示支持，并表示将加强对医药业的监督，以消除腐败。

2021年，中国加强了对商业贿赂犯罪的调查，同时巧妙地平衡了保护合法商业利益的需要。2021年9月8日，国家监委与最高人民法院、最高人民检察院等部门共同印发《关于进一步推进受贿行贿一起查的意见》(以下简称《双查意见》)。《双查意见》侧重于应对行贿问题。行贿被认为是阻碍中国反腐运动的一个重大障碍。因此，国家监委、最高人民法院、最高人民检察院等多个部门将调查行贿和受贿。多次行贿、向多人行贿、行贿金额巨大、向国家公职人员或中国共产党干部行贿，或参与重大商业行贿等行为将成为加大打击力度的重点打击对象。此外，中国各相关部门正协调建立行贿人黑名单制度来打击行贿。多个部门可能对因违反反贿赂法规而被列入黑名单的实体采取限制措施，如不准进入市场、资格申请限制等。值得注意的是，《双查意见》还旨在通过要求相关权利机关谨慎制定执法措施(如拘留、资产冻结、海外出行限制等)，在打击行贿和保护合法商业利益以及个人权利方面取得平衡，将这些措施对合法企业经营的影响降到最低。

医药行业长期是中国反腐败反贿赂执法行动的重点领域。2021年2月26日，中国医药行业协会发布了一项新的引人瞩目的合规标准《医药行业合规管理规范》(PIAC/T 00001-2020)正式生效。虽然《医药行业合规管理规范》是非强制性标准，但它却为中国医药行业的企业建立健全的合规计划提供了参考和基准。《医药

to the *Criminal Law of the People's Republic of China* (hereinafter referred to as the "Criminal Law"), non-state staff who commit acts of corruption will receive lighter penalties than state staff. By applying the same level of sentencing to non-state staff as to state staff, the Amendment has narrowed the above-mentioned penalty gap. It's worth noting that, pursuant to the *Criminal Law*, the sentencing distinction between state and non-state staff depends on specific job responsibilities assumed by such individual. A person holding public office will be considered as a state official according to the *Criminal Law*, whether or not he/she is an employee of a government agency. On the contrary, according to the *Criminal Law*, even if a person is an employee of a government agency or state-owned enterprise, he/she is a non-state staff when not undertaking or holding any public office.

Regarding the "large", "huge" or "extremely huge" sums of severity set out in Article 163 of the *Criminal Law of the People's Republic of China*, neither the Amendment nor the Criminal Law has given any definition. According to judicial interpretations issued by the Supreme People's Court and the Supreme People's Procuratorate in 2016, for corruption acts of non-state staff, the "large" amount ranges between RMB 60,000 (approximately US \$9,300) and RMB 400,000 (approximately US \$62,000) and the "huge" amount ranges between RMB 1,000,000 (approximately US \$155,000) and RMB 15,000,000 (approximately US \$232,200). The sentencing grade of "extremely huge" amount was newly introduced in the Amendment, which was not covered by judicial interpretations issued in 2016, with further clarification pending from relevant departments.

In 2020, export controls became a hot topic in China, apparently driven by trade tensions between the US and China exacerbated by COVID-19. Anti-corruption has been incorporated into the export control legislation. The *Export Control Law* is an important law that took effect on December 1, 2020, providing that export licenses obtained through fraud, bribery or other improper means will be revoked, and the violators will not only have their illegal gains confiscated, but will also be fined according to the amount of their illegal gains. Those who have illegal gains of less than RMB 200,000 (approximately US \$30,300) will be fined up to RMB 2,000,000 (approximately US \$303,000); however, those who have illegal gains of more than RMB 200,000 will be given a fine up to 10 times that of the gains. Therefore, in compliance with relevant export control requirements, companies must comply with anti-corruption laws as well. It's necessary for enterprises to formulate more comprehensive internal compliance plans to adapt to the increasingly complex regulatory environment in China.

Regarding commercial bribery, China has retained sector-specific enforcement strategies, and taken the pharmaceutical industry as a prime target for anti-corruption and anti-bribery enforcement. In 2020, the National Healthcare Security Administration (hereinafter referred to

as "NHSA"), which is charged with regulating the pharmaceutical industry in China, took actions to address commercial bribery in the process of pharmaceutical tendering and procurement. For example, in August 2020, NHSA released the *Guiding Opinions on Establishing a Medical Price and Recruitment Credit Evaluation System*, which was aimed at establishing a credit rating system to report, record, monitor and punish pharmaceutical enterprises that engage in commercial bribery in pricing, bidding, procurement and marketing processes. According to the credit rating system, pharmaceutical enterprises will be evaluated and scored based on the records of dishonest practices engaged in by them. Commercial bribery, including kickbacks or other illegal benefits in the process of drug procurement and sale, will be one of the key indicators that this new credit rating system takes into account. Later in November 2020, NHSA unveiled the implementation regulations, calling for the establishment of procedures and rules of the credit rating system. NHSA has received support from other major government departments in cracking down on bribery in the pharmaceutical industry. The Supreme People's Court and the NHSA signed a memorandum concerning the establishment of an information sharing mechanism for bribery-related judicial cases, so as to better assist the NHSA in establishing the credit rating system. Meanwhile, the Central Commission for Discipline Inspection of the Communist Party of China and NSC also expressed support, adding that they would intensify efforts in supervision of the pharmaceutical industry to eliminate corruption.

Amid intensifying enforcement efforts in China, the members to AmCham China continue to advocate for greater transparency in anti-corruption and anti-bribery enforcement actions. Key elements of the rule of law such as transparency, consistency of legal interpretation and due process should be ensured in place. AmCham China shall solicit, collect and give feedbacks on the opinions of its members on drafts, regulations, drafts for comments and other documents relating to anti-corruption, and submit them to government agencies concerned. When making investment decisions, foreign investors and foreign-funded enterprises rely on the certainty and fairness of the target market, and the construction of a balanced legal regulatory environment is conducive to improving the overall effectiveness of compliance. However, it remains unknown whether the NSC and new regulations can meet the above requirements.

In 2021, China strengthened its commitment to investigate commercial bribery offenses, while balancing delicately the need to protect legitimate business interests. On September 8, 2021, the NSC, together with the Supreme People's Court (SPC), the Supreme People's Procuratorate (SPP) and other authorities, jointly issued the *Opinions on Further Promoting the Investigation of Bribe-Giving and Bribe-Acceptance (Opinions on Dual Investigations)*. The *Opinions on Dual Investigations* focus more on bribe-giving, which is believed to be a significant obstacle hindering the further

行业合规管理规范》开篇介绍了适用于制药企业合规领域的一般合规原则，然后对八个具体合规领域（特别是反商业贿赂）提供了详细而实用的指导。《医药行业合规管理规范》的附录反商业贿赂合规指南适用于医药和医疗器械领域的市场主体，包括制造企业、合同制造企业、合同研究组织、合同开发制造组织、合同销售组织。反商业贿赂合规指南的内容非常全面，为建立各种反贿赂合规方面（包括产品销售、发票的开具与核验、人事聘用、与政府官员的互动交流、与医疗保健专业人员和医疗保健组织的互动交流、礼品和招待、费用报销、举报机制、第三方案控、商业贿赂风险定期评估以及合规评估）政策和程序提供了详细指南。

第三方合规

第三方能否遵守反贿赂和反腐败法一直是商会会员企业关注的一个重点问题。第三方活动主要包括销售渠道分销商、经销商、供应商、代理商、顾问、报关行和供应链合作伙伴的活动。中国国内的商业合作伙伴必须制定合规计划，以应对未遵守反腐败法规所带来的主要风险。

尽管中国在 2021 年没有针对第三方合规出台重大立法，这一领域的总体趋势是鼓励在华经营的企业制定强有力的合规计划（特别是第三方合规计划）并实施。值得注意的是，2021 年 11 月 1 日，国有资产监督管理委员会发布了《关于进一步深化法治央企建设的意见》（以下简称《意见》）。《意见》要求，到 2025 年，中央企业基本建立全面覆盖、有效运行的合规管理体系，且该管理体系要覆盖其经营活动的方方面面。虽然这只是一般性要求，但《意见》要求合规管理机制的建立应由企业的法律总顾问牵头，并与法律、合规、内控、风险管理等管理系统协调。

具体而言，在医药行业，上述《医药行业合规管理规范》的附录反商业贿赂合规指南中有一部分是关于第三方案控的具体内容。《医药行业合规管理规范》推荐的第三方案控流程要素包括基于风险的合规尽职调查流程、高风险交易信号、签署反商业贿赂协议或在商业协议中包含反商业贿赂条款、通过支票或银行电汇的方式以市场公允价格向第三方支付正式发票上的款项、以及要求高风险第三方每年续签反贿赂承诺等。

在国内和国际市场快速发展的中国企业需要建立更

成熟的合规计划，该方案应既能应对其日常经营中出现的风险，又能应对其进一步扩张过程中出现的风险。此外，随着执法趋势的变化，企业还应及时对合规计划进行适当调整。商会敦促政府监管部门就第三方合规管理发布更详细、更实用的指南，以帮助中国企业在其国内和海外经营中进行第三方合规管理，避免在其他司法管辖区承担法律责任，并将声誉风险降至最低。

《反不正当竞争法》

继 2018 年和 2019 年修订后，国家市场监督管理总局（以下简称总局）推动落实《反不正当竞争法》。2020 年 10 月，总局发布了《规范促销行为暂行规定》，禁止经营者假借促销等名义贿赂他人，以谋取商业机会或竞争优势，违反者将根据《反不正当竞争法》受到处罚。

保护商业秘密是实施《反不正当竞争法》的一个关键议程。2020 年 9 月，总局发布了《商业秘密保护规定（征求意见稿）》，对商业秘密进行了明确界定，禁止其他实体通过盗窃、贿赂、欺诈、胁迫和电子侵入等不正当手段侵犯商业秘密。违反这些规则将受到《反不正当竞争法》第 21 条规定的处罚。该条款规定，如果发现重大违规行为，商业秘密侵权人将被处以最高 500 万元人民币（折合 75 万美元）的罚款。《修正案》加强了对商业秘密的保护，澄清了以盗窃、贿赂、欺诈、胁迫和电子侵入等不正当手段侵犯他人商业秘密是一种犯罪行为，商业秘密所有权人因该犯罪行为而遭受的“重大损失”不再是证明侵犯商业秘密罪的唯一标准。相反，只要法院认定侵犯商业秘密涉及“严重情节”（这在《修正案》中仍未界定，但与“重大损失”相比，这是一个更广泛的概念），则侵权人可以被判处侵犯商业秘密罪。

为配合 2017 年和 2019 年两次对《反不正当竞争法》的修订，解决近期案件中出现的实际问题，2021 年 8 月 18 日，最高人民法院发布了《最高人民法院关于适用〈中华人民共和国反不正当竞争法〉若干问题的解释（征求意见稿）》（以下简称《〈反不正当竞争法〉解释草案》），并就草案向社会公开征求意见。《〈反不正当竞争法〉解释草案》通过进一步界定不正当竞争行为，为快速发展的做法提供更多操作指导，企业经营者在 2020 年全国《反不正当竞争法》执法检查（如商会 2020 年《白皮书》中所讨论）中所担心和反馈的问题在很大程度上得到了解决。例如，《〈反不正当竞争法〉解释草案》对“商业道德”、“商业标识”、“有一定影响的标识”、“引人误

progress of the anti-corruption campaign in China. Thus, multiple authorities, including the NSC, SPC, SPP, etc., will endeavor to investigate bribe-giving and bribe-acceptance together. Giving bribes multiple times, to multiple persons, involving huge monetary amounts, to state functionaries or officials of the China Communist Party, or engaging in significant commercial bribery, etc. will be top targets for tougher crackdown. Moreover, Chinese authorities are coordinating to establish a blacklisting mechanism to combat bribery. Entities on the blacklist due to violation of anti-bribery rules may face restrictions from multiple authorities, such as denial of market access, restrictions on qualification application, etc. It is worth noting that the *Opinions on Dual Investigations* also try to strike a balance between the need to tackle bribery and to protect legitimate business interests and personal rights by requiring relevant authorities to carefully employ law enforcement measures, such as detention, assets freeze, overseas travel restriction, etc., and minimize the impact of such measures on lawful business operations.

As to China's efforts on protecting legitimate business interests as part of its continuous combatting of bribery, China is exploring a brand-new mechanism – third-party supervision and evaluation of compliance by companies involved in criminal cases. On June 3, 2021, the SPP and eight other ministerial-level authorities jointly issued the *Guiding Opinions on Establishing a Mechanism for Third-party Supervision and Evaluation of the Compliance of Enterprises Involved in Criminal Cases (for Trial Implementation)* (Third-Party Mechanism Guiding Opinions). The *Third-Party Mechanism Guiding Opinions* provide a framework of a non-prosecution mechanism in certain criminal cases, aiming to replace criminal prosecution with compliance commitments by market participants who are convicted of certain applicable crimes, including economic crimes and occupation-related crimes (e.g., bribery-related crimes) involved in its business operations. To be more specific, when prosecuting the applicable crimes, if (i) the enterprise or individual involved pleads guilty and accepts the imposed penalty, (ii) the enterprise involved is able to continue with its normal business operations, commits to establish a compliance program and satisfies the conditions of applying the third-party mechanism, and (iii) the enterprise involved voluntarily agrees to apply the third-party mechanism, then the SPP or its local counterparts may decide to invoke the third-party mechanism instead of further prosecuting the said enterprise. If an enterprise is involved in bribe-giving, the local counterpart of the NSC is responsible for advising the competent procuratorate on whether a third-party mechanism is applicable to that enterprise. A third-party supervisor, selected and appointed by competent authorities, will be responsible for supervising the enterprise involved to formulate a compliance program within the committed timeframe, reviewing and advising on the compliance program, and overseeing the implementation of the compliance program. The supervision program to some extent, resembles the FCPA compliance monitor-

ships. At the end of the committed timeframe, the competent procuratorate will evaluate the compliance program and decide whether to pursue the prosecution of that enterprise or not.

On December 16, 2021, the management committee of the third-party mechanism publicized the first tranche of professionals selected as third-party supervisors, consisting of professionals from law firms, accounting firms, industry associations, governments, enterprises, academic institutions, etc. On the same date, the SPP and other competent government authorities jointly held a seminar on third-party supervisors of the compliance of enterprises involved in criminal cases, during which they summarized the preliminary work results of promoting the third-party mechanism, and discussed how to further promote and implement the third-party mechanism. Enterprises with business operations in China should remain vigilant and review their compliance program and anti-bribery controls to ensure that they have a robust and effective compliance program that meets the continuous upgrading of China's compliance-related legislation.

The pharmaceutical industry has consistently been a top target for anti-corruption and anti-bribery enforcement actions in China. On February 26, 2021, a new remarkable compliance standard, the Pharmaceutical Industry Compliance Management Practices (PIAC/T 00001-2020) (PICMP), issued by the China Pharmaceutical Industry Association came into effect. Although the PICMP is non-compulsory, it serves as a useful reference and benchmark to establish or improve a comprehensive compliance program for companies operating in the pharmaceutical industry in China. The PICMP starts with general compliance principles applicable to all compliance areas by pharmaceutical companies and then provides detailed and substantive guidance on eight specific compliance areas, among which, anti-commercial bribery is a key one. The anti-commercial bribery compliance guidelines annexed to the PICMP are applicable to market players in the medicine and medical devices sectors, including manufacturing enterprises, contractual manufacturing enterprises, contractual research organizations, contractual development and manufacturing organizations, contractual sales organizations. The anti-commercial bribery compliance guidelines are comprehensive, providing detailed guidance to establish the policies and procedures in various anti-bribery compliance aspects, including, products sales, issuance and verification of invoices, recruitment, dealing with government officials, dealing with healthcare professionals and healthcare organizations, gifts and hospitality, reimbursement, third-party control, whistleblower mechanism, regular reassessment of commercial bribery risks, and compliance training.

Considering China's continuing focus on anti-bribery law enforcement, AmCham China members continue to advocate for greater transparency in anti-corruption and anti-

解的商业宣传”、“善意使用”等关键术语做了更详细的说明。《〈反不正当竞争法〉解释草案》为确定与互联网相关的现代不正当竞争行为提供了更多详细信息，包括 ① 强制性目标跳转；② 误导、欺骗和强迫行为，③ 恶意不兼容行为，以及 ④ 数据爬取。《〈反不正当竞争法〉解释草案》明确规定，这些与互联网相关的不正当竞争行为适用《反不正当竞争法》第十二条的规定。

对于中国的科技企业而言，2021 年是极其困难的一年，因为中国政府不断推出新的监管举措，并对领先的科技企业进行调查，除对其处以巨额罚款外还要求其进行整改。合规现已成为中国科技企业采取任何商业举措前都需要考虑的首要问题。为进一步解决互联网行业存在的的行为，2021 年 8 月 17 日，总局发布了《禁止网络不正当竞争行为规定（公开征求意见稿）》（以下简称《规定草案》）。《规定草案》是 2019 年针对互联网行业更新的《反不正当竞争法》的实施细则，禁止互联网业务运营商采取不恰当的竞争行为，包括但不限于扰乱市场竞争秩序、影响市场公平交易，或直接或间接破坏其他运营商或消费者的合法权益。为适应互联网行业的快速发展，《规定草案》通过加入新的行为类型，如劫持数据流量、干扰其他经营者合法提供的网络产品或者服务以及恶意不兼容，将不正当竞争行为的范围扩张到了互联网行业。此外，《规定草案》还列举了现有的《反不正当竞争法》中未涵盖的其他新型不正当竞争行为，如刷单、信息内容及页面屏蔽、数据爬取、“二选一”以及大数据杀熟行为。具体而言，“二选一”是指某些互联网平台在电子商务市场上采取的一种垄断行为，迫使经营者只选择一个平台作为其独家分销渠道，从而不公平地消除其他竞争对手的机会。2021 年，中国的一些大型互联网平台因采取“二选一”行为遭受了巨额罚款。

美国的《反海外腐败法》及其他相关法律

2021 年 6 月 3 日，拜登总统在《国家安全研究备忘录》第一号文件中将反腐败确立为美国国家安全核心利益。2021 年 12 月，白宫根据该文件发布了《美国反腐败战略》（以下简称《战略》）。该《战略》基于五个不同且相辅相成的工作领域，美国政府将围绕这五个领域组织工作，支持相关战略目标和具体的工作方向。《反海外腐败法》依旧是实现反腐败战略的重要工具。白宫在该《战略》中表示，他们将通过刑事和民事执法行动大力执行《反海外腐败法》及其他法定和监管制度。

商会会员企业继续将美国《反海外腐败法》及其他反腐败法律合规作为工作重点。企业努力设计合规培训项目以应对不合规行为。企业法律合规专业人员面临着协调不同需求，满足国际、本地要求的艰巨任务。自美国司法部于 2018 年 11 月发起“中国行动计划”以来，截至 2020 年底，美国司法部已在其“中国行动”信息页面上提供了约 68 个“中国相关案例”，包括 2020 年的 38 个案例。大多数案例涉及经济间谍、商业秘密盗窃和“充当中国非法代理人”相关指控。2020 年 11 月，在“中国行动计划”实施两周年之际，时任美国司法部长威廉巴尔表示司法部“致力于让那些通过窃取或以其他方式非法获得对美国未来发展极其重要知识与技术的人承担责任。”

2020 年，美国司法部和 / 或美国证券交易委员会公布了四项与中国有关的反海外腐败法执法行动。其中两项行动是美国司法部 / 美国证券交易委员会的平行公司执法行动，其余两项行动分别是美国司法部或美国证券交易委员会的执法行动。这些执法行动涉及美国公司或跨国公司的中国子公司向中国官员行贿，或该等美国公司或跨国公司本身向中国官员行贿，或其在中国的业务运营上内部会计控制不足。此外，2020 年 12 月下旬，美国联邦第二巡回上诉法院维持了对何志平（Chi Ping Patrick Ho）的定罪，罪名是与违反美国《反海外腐败法》和洗钱有关的七项罪名。何志平于 2019 年 3 月被判处 36 个月监禁，并处罚款 40 万美元。该判决由全体陪审员一致同意后作出，说明了某些行为者根据《反海外腐败法》看似独立的条款可能面临的平行风险。该判决还进一步强调了美国机构对美元计价转账的管辖范围（与其他监管领域的情况一样，如美国外国资产管制办公室的制裁执行）。

鉴于全球和双边政治动态，商会会员企业面临着复杂的监管环境，有时需要协调各司法管辖区不同甚至相互冲突的合规要求。然而，商会会员企业不断更新其合规和培训计划，以应对新的风险并确保合规。同时，由于中美两国自 2020 年以来颁布的新规则中的许多关键术语尚未得到定义，商会会员企业期待政府部门给予澄清和指导，以帮助它们遵守这些新规则，并创造一个更加确定的商业环境。

制裁 / 出口管制

自拜登政府执政以来，中美两国的政治局势仍然非

bribery enforcement actions. Such efforts should include support for key components of the rule of law, including transparency, consistency in interpretation, and due process. Comments from AmCham China members regarding any draft law or regulation related to anti-corruption and published for public comment should be solicited, collected, and communicated to relevant agencies..

Third-Party Compliance

Compliance with anti-bribery and anti-corruption laws by third parties has been 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 of failing to comply with anti-corruption legislation.

There were no remarkable legislative updates targeting third-party compliance in China in 2021. That said, the overall trend is to encourage companies operating in China to establish and implement a robust compliance program, of which third-party compliance is a crucial section. Of note is that, on November 1, 2021, the State-owned Assets Supervision and Administration Commission issued the *Opinions on Further Deepening the Construction of State-owned Enterprises under the Rule of Law (Opinions)*. The *Opinions* require centrally-administered SOEs to establish a comprehensive and effective compliance management system that covers all aspects of business operations by 2025. Despite general requirements, the *Opinions* require that the compliance management mechanism should be led by the general counsel of a company and coordinated with the management systems of legal, compliance, internal control, and risk management.

Specifically, in the pharmaceutical industry, the anti-commercial bribery guidelines annexed to the abovementioned PICMP include a section on third-party control. Elements of a third-party control process recommended in the PICMP include a risk-based compliance due diligence process, identification of red flags, signing anti-commercial bribery agreements or including such clauses in business agreements, payment upon formal invoices to third-party in fair market price through checks or wire transfer, and requesting annual renewal of anti-bribery commitment by high-risk third parties, etc.

Chinese companies, which are growing rapidly in domestic and international markets, need to build up more sophisticated compliance programs that can both deal with risks arising from their daily operation and further expansion, proper adjustments to compliance programs will also be needed in a timely manner as the enforcement trend keeps changing. AmCham China urges

the supervising government agencies to publish more detailed and practical guidelines regarding third-party compliance management to assist Chinese companies in managing third-party compliance in their domestic and overseas operations, in part to avoid legal liability in other jurisdictions and minimize reputational risks.

Anti-Unfair Competition Law

Following the amendments in 2018 and 2019, the State Administration for Market Regulation has sought to enforce the *Anti-Unfair Competition Law*. In October 2020, the State Administration for Market Regulation released the *Interim Provisions on Regulating Promotional Activities*, according to which the operators are prohibited from bribing others in the name of promotion to seek business opportunities or competitive advantages and violators will be punished according to the *Anti-Unfair Competition Law*.

One of the key agendas concerning the implementation of the *Anti-Unfair Competition Law* is to protect trade secrets. In September 2020, the State Administration for Market Regulation released the *Provisions on the Protection of Trade Secrets (Draft for Comment)*, clearly defining trade secrets and prohibiting other entities from infringing on trade secrets by illegal means such as theft, bribery, fraud, coercion and electronic intrusion. Violation of these rules is subject to punishments under Article 21 of the *Anti-Unfair Competition Law*. Pursuant to this article, in case major violations are found, trade secret infringers will be fined up to RMB 5,000,000 (approximately US \$750,000). The Amendment echoes the protection of trade secrets, clarifies that the violation of another's trade secrets by improper means such as theft, bribery, fraud, coercion and electronic intrusion will constitute a crime, and stipulates that the "significant losses" suffered by the owner of trade secrets as a result of the crime are no longer the only criterion to prove the crime of infringing on trade secrets. On the contrary, infringers may be convicted of infringing trade secrets provided that the court finds that such infringement involves "serious circumstances" (which are still undefined in the Amendment, but a broader concept than "significant losses").

In 2020, the Chinese government implemented the *Anti-Unfair Competition Law* as a way to further improve and safeguard fair competition in the market. For example, the enforcement inspection team of the NPC Standing Committee on the *Anti-Unfair Competition Law* paid a visit to several provinces and cities to inspect and assess local implementation of the *Anti-Unfair Competition Law*. The feedback from operators who accepted the inspection indicates that more detailed implementation regulations should be issued in support of the implementation of the *Anti-Unfair Competition Law*. Business operators said, they are not fully clear of the specific definitions and criteria for various acts considered "unfair competition", and the *Anti-Unfair Competition Law* doesn't provide guidance on regulating some rapidly devel-

常紧张，美国政府现行的制裁和贸易管制对全球供应链有潜在重大影响，并给商会会员企业带来新的合规挑战和风险。美国实施制裁和贸易管制的依据主要包括涉疆问题、涉港问题以及中国的军民融合战略。

自2020年以来，出口管制已在中国成为一个热门话题，这显然是由于新冠肺炎疫情加剧了中美之间的贸易紧张局势引起的。反腐败已被纳入出口管制立法发展。《中华人民共和国出口管制法》是一部于2020年12月1日生效的重要法律。该法规定，通过欺诈和贿赂或其他不正当手段获得的出口许可证件将被吊销，违反者不仅将被没收非法所得，还将根据非法所得金额被处以罚款。违法所得不足20万元人民币（折合3.03万美元）的，最高罚款为200万元人民币（折合30.3万美元）；但违法所得超过20万元人民币的，最高处以该金额10倍的罚款。因此，在遵守相关出口管制要求的过程中，企业还必须确保遵守反腐败法律。企业需要制定更全面的内部合规计划来应对中国日益复杂的监管环境。

2021年，美国商务部工业和安全局将80多家中国企业和个人列入了“实体清单”，限制这些实体和个人出口/再出口/国内转移受《出口管制条例》约束的物品。其中，19家被列入该清单的企业与所谓中国对新疆维吾尔自治区少数民族维吾尔族人民采取的政策和给予的对待有关。针对新疆问题，2021年7月，美国国务院与其他部门联合发布了新版的关于呼吁与涉疆侵犯人权实体有接触的企业关注其供应链中可能存在的风险的公告，美国参议院通过了《维吾尔强迫劳动预防法案》。

针对香港特区出现的国家安全问题，2021年，美国财政部外国资产控制办公室颁布《香港相关制裁条例》，共将13个中国实体和个人列入特定指定清单。此外，7月，美国国务院与其他部门联合发布了《香港商业咨询公告》，强调与中国政府和特区政府采取的可能对在香港经营的美国公司产生不利影响的行动相关的风险日益增加。

美国国防部根据13959号行政令于2020年创建的中国共产党涉军企业清单于2021年进行了重大修订。2021年6月3日，美国政府发布了14032号行政令，用中国军工复合企业清单取代中国军事企业清单。中国军工复合企业清单首次纳入了59家企业，其中大部分都是中国军事企业清单上的企业。14032号行政令规定，禁止美国个人购买或出售中国军工复合企业清单上上市企业的任何公开交易证券，以及任何为此类证券提供投

资敞口的衍生品或金融产品。同日，美国国防部公布了“中国军事企业”清单，其上有47家中国企业，其中39家企业也在中国军工复合企业清单上。但美国国防部并未说明被列入“中国军事企业”清单可能会有什么后果。商会会员企业在与中国实体和个人做生意时，必须密切关注这些与中国相关的制裁和贸易管制的变化情况，以避免因违反美国法律而受到处罚。

另一方面，全国人民代表大会2021年立法议程的一个关键议题是补充中国在反制裁、反干涉和反长臂管辖方面的法律手段。2021年，随着《阻断外国法律与措施不当域外适用办法》（以下简称《阻断办法》）和《反外国制裁法》的发布，中国在这方面取得了重大进展，为中国使用报复性工具提供了更多的法律依据。2021年1月9日，中国颁布了《阻断办法》，该办法授权由商务部牵头的政府工作机制发布禁令，以阻断阻碍中国与第三国贸易投资活动的外国法律和限制措施在域外的不合理应用。值得注意的是，除非获得豁免许可，否则不遵守有关外国法律或限制措施而违反禁令的“一方”可能会在中国法院被起诉，要求赔偿损失。2021年6月10日，中国颁布了《反外国制裁法》，这是中国建立反制外国歧视性制裁法律框架具有里程碑意义的一步。《反外国制裁法》针对直接或间接参与制定、确定和实施歧视性对外制裁措施、被视为“干涉中国内政”的组织或个人，建立了黑名单机制。《反外国制裁法》禁止“任何”组织或个人实施或协助实施外国针对中方的歧视性限制措施，这在一定程度上反映了《反外国制裁法》的治外法权效力。违反此禁令的组织或个人可能会在中国法院被起诉，要求对其发出禁制令或要求其进行损害赔偿。2021年7月，为应对美国的涉港制裁，中国根据《反外国制裁法》对美国7个人和组织实施了报复性制裁，这是自《反外国制裁法》通过以来，中国对《反外国制裁法》的首次应用。

2021年，中国通过实行《出口管制法》进一步完善其出口管制架构。2021年4月28日，商务部发布《关于两用物项出口经营者建立出口管制内部合规机制的指导意见》。虽然此《指导意见》不是强制性的，但其建议有助于出口经营者为遵守《出口管制法》提供合规计划上的参考。2021年11月2日，商务部发布了《禁止或限制进口技术的修订目录》，取代了2007年初发布的目录，此后从未更新。与此相关，2020年8月修订了《禁止或限制出口技术目录》。

oping activities and practices, such as acts of unfair competition involving Internet and e-commerce platform operators. Moreover, the State Administration for Market Regulation publishes the summary of “typical cases” identified through its various actions from time to time. However, these publications often contain limited details, and are not necessarily published in a timely manner following enforcement actions. AmCham China urges the State Administration for Market Regulation to release guidance and interpretation on the *Anti-Unfair Competition Law*, especially the solutions to new problems associated with new forms of business, and ensure that law enforcement actions are transparent and open and obey due processes.

In order to accommodate the amendments to the *Anti-Unfair Competition Law (AUCL)* in 2017 and 2019 as well as to address practical issues arising from recent cases, on August 18, 2021, the SPC issued the *Interpretations on Several Issues Concerning the Application of the Anti-Unfair Competition Law of the People’s Republic of China (Draft for Comment)* (Draft AUCL Interpretations), and solicited public comments to the draft. The Draft AUCL Interpretations, to a large extent, addressed concerns and feedback obtained from business operators in the 2020 national AUCL enforcement inspection (as discussed in the 2020 AmCham *White Paper*) by further defining unfair competition acts and providing more operational guidance to the rapidly evolving practice. For example, the Draft AUCL Interpretations refine key terms under the AUCL, such as “business ethics”, “commercial signs”, “signs with certain influential effect”, “misleading commercial marketing”, “bona fide use”, etc. Remarkably, the Draft AUCL Interpretations provide more details for the determination of modern-type unfair competition acts involving the Internet, including, (i) compulsory redirects; (ii) misleading, deceptive, and compulsory acts, (iii) malicious incompatible acts, and (iv) data crawling. The Draft AUCL Interpretations make it clear that these Internet-related unfair competition acts are subject to Article 12 of the AUCL.

Technology companies in China had a difficult year in 2021 as China continued to fill gaps in its regulations and conduct high-profile investigations against leading technology companies, resulting in large fines being imposed and rectifications required. Compliance has now become a top item in the to-do list of Chinese technology companies when they consider any business move. To further tackle unfair competition involving the Internet industry, on August 17, 2021, the State Administration for Market Regulation issued the *Provisions on Prohibition of Unfair Competition on the Internet (Draft for Comment)* (hereafter: Draft Provisions). The Draft Provisions are the implementation rules of the 2019-updated AUCL for the Internet sector, prohibiting inappropriate competitive behaviors of Internet business operators, including but not limited to, disrupting the order of market competition, affecting fair transactions in the market, or directly or indirectly damaging the lawful rights and interests of other operators or consumers. The Draft Provisions adapt the scope of unfair competition behaviors

to the fast-evolving Internet industry by including new types of acts such as hijacking data traffic, interfering with network products and services, and maliciously causing incompatibility. Furthermore, the Draft Provisions list other new types of “unfair competition” that are currently not covered by the AUCL, such as the behaviors of click farm, blocking, data crawling, “picking one from two” and discrimination by using big data. Specifically, the act of “picking one from two” is a monopolistic practice adopted by certain Internet platforms in the e-commerce market that forces business operators to choose only one platform as their exclusive distribution channel, thus unfairly eliminating opportunities of other competitors. In 2021, some major Internet platforms in China were penalized with significant monetary fines by engaging in the act of “picking one from two.”

US Foreign Corrupt Practices Act and Other Relevant Laws

On June 3, 2021, President Biden established the fight against corruption as a core national security interest of the United States in National Security Study Memorandum-1, pursuant to which, the White House issued the *United States Strategy on Countering Corruption* (Strategy) in December 2021. The Strategy rests on five distinct and mutually reinforcing pillars of work around which the US Government will organize its work and supporting them are enumerated strategic objectives and specific lines of effort. The *Foreign Corrupt Practices Act* (FCPA) remains an important tool to achieve this Strategy. The White House states in the Strategy that they will vigorously enforce the FCPA and other statutory and regulatory regimes via criminal and civil enforcement actions.

The member enterprises to AmCham China continues to prioritize compliance with the US Foreign Corrupt Practices Act and other anti-corruption laws and are trying to design compliance training programs to tackle the crisis. Corporate legal compliance professionals are faced with an arduous task of coordinating different demands and meeting international and local requirements. By the end of 2020, the United States Department of Justice (DOJ) had published about 68 “China-related cases” on its information page “China Initiative” since its launch in November 2018, including 38 cases in 2020. Most of the cases involved charges related to economic espionage, trade secret theft and “acting as an illegal agent of China”. In November 2020, on the 2nd Anniversary of “China Action”, US Attorney General William P. Barr said, “incredible progress has been made in systematic efforts to counter China”, announcing that “the DOJ was “committed to holding accountable those who steal or otherwise illegally obtain America’s intellectual capital that will power the future.”

In 2020, the DOJ and/or US Securities and Exchange Commission (SEC) unveiled four FCPA enforcement actions relating to China, of which two were enforcement actions by DOJ/SEC parallel companies and the remaining two

鉴于 2021 年全球和中美的双边政治局势以及针对与中国有关的制裁和贸易管制出台和修订的主要法律，商会会员企业在协调不同司法管辖区不同甚至有时相互冲突的合规要求面临着复杂的监管环境和挑战。但它们继续更新合规和培训计划，以应对新风险，确保遵守美国和中国法律。这样的做法是谨慎和明智的。与此同时，由于中美两国 2021 年颁布的新法规中有许多关键术语的定义尚不明确，商会期待两国政府相关部门做进一步说明和指导，以使其能更好地遵守相关规定，创造一个更明确的商业环境。

网络安全和数据政策

2021 年颁布和实施的《数据安全法》和《个人信息保护法》和 2017 年生效的《网络安全法》全面建立了中国数据和网络空间安全的管理框架。在此框架下，中国正逐步完善实施细则，制定诸多参考标准。中国 2021 年和 2022 年初发布了《关键信息基础设施安全保护条例》和新版《网络安全审查办法》，《网络安全等级保护条例（征求意见稿）》，《数据安全条例（征求意见稿）》，《网络数据出境安全评估办法（征求意见稿）》并向社会公开征求意见。然而，关键术语定义不充分，定义范围松散，过于严苛的要求都给外国商界带来了不确定性。

网络安全等级保护制度

网络安全等级保护制度作为一套综合的安全保护信息技术系统已经存在十余年。按照特定的安全要求，该制度根据信息技术系统对中国国家安全、社会秩序、公共利益、个人和组织的重要性分了五个等级进行评级。

在《网络安全法》框架下，网络安全等级保护制度得以修订，《网络安全等级保护条例（征求意见稿）》（下称《等级保护条例草案 2.0》）是重申网络安全等级保护制度的第一次尝试。尽管《等级保护条例草案 2.0》尚未发布最终版本或进一步征求意见，但全国信息安全标准化技术委员会已经发布了三项国家标准，构成了网络安全等级保护制度的基础：①GB/T 22239-2019《信息安全技术 网络安全等级保护基本要求》，②GB/T 25070-2019《信息安全技术 网络安全等级保护安全设计技术要求》，以及③GB/T 28448-2019《信息安全技术 网络安全等级保护测评要求》，所有上述要求都在 2019 年 12 月生效，并包括对特定信息技术行业的更详细要求，包括云计算、移动网络、物联网和工业互联网系统。

商会认为上述三项标准旨在支持《等级保护条例草

案 2.0》的实施，但同时注意到，这些标准是在《等级保护条例草案 2.0》发布之前以最终形式发布的，而这些标准正是依据该草案发布的。此类行动缺乏正当程序，可能会导致与最终《等级保护条例草案 2.0》不一致。商会建议上述推荐标准仅作为最佳做法来参考，而不具有法律约束力。这些推荐标准不应提出超出已发布法律法规的额外要求。

网络安全等级保护制度适用于所有网络运营商，而非仅适用于关键信息基础设施的运营商。《等级保护条例草案 2.0》似乎扩大了这些条例的范围，将“所有网络运营商”包括在内，这包括了大部分商业领域。网络安全等级保护制度 1.0 只涵盖了“重要系统”。2018 年 6 月的《网络安全等级保护条例（征求意见稿）》概括了在中国境内运营网络的结构和维护方面的几个重要要求。要求将三级及以上级别的系统与中国公安系统的局级系统相连接是不必要的宽泛要求，对公司正常运营带来了严重侵扰，可能会给公司带来重大风险。商会注意到这些在网上执行的所有技术维护都必须实行本地化的要求，这破坏了许多跨国公司采用的全球运营模式，同时没有为这些公司带来安全利益和不适当的风险和负担。

商会认为，如果要继续保留上述要求，《网络安全等级保护条例（征求意见稿）》则应限于《网络安全法》中确定的范围，并避免将网络安全等级保护制度的范围扩展到所有网络运营商。如果网络安全等级保护制度覆盖所有网络运营商，外资企业则将面临巨大的费用和行政负担才能在其全球信息技术系统内满足这些要求，这实际上是对外资企业的不公平待遇，也将抑制外商在华投资。

“安全可靠”的技术与采购

《网络安全法》、《关键信息基础设施安全保护条例》、《网络安全等级保护条例（征求意见稿）》、《数据安全条例（征求意见稿）》、《网络数据出境安全评估办法（征求意见稿）》等法律法规不同程度倡导公司采购“安全可靠”的产品和服务，但并没有明确定义安全可靠。虽然中国屡次强调“安全可靠”“安全可控”等产品和服务并不直接等于中国产品和服务，但是事实上“安全可靠”和“安全可控”将国外产品和服务排除在外，并认为本地生产能力和取自本地的产品和服务认为更安全。

商会倡导中国采取技术中立原则，不强制企业采取特定的技术或特定的服务商，技术中立原则可以让企业

were enforcement actions by DOJ/SEC. These enforcement actions involve bribery of Chinese officials by a US company or a Chinese subsidiary of a multinational corporation, or bribery of Chinese officials by such company or multinational company, or inadequate internal accounting controls in its business operations in China. In addition, in late December 2020, the United States Court of Appeals for the Second Circuit upheld the conviction of Chi Ping Patrick Ho on seven counts related to violations of FCPA and money laundering. He was sentenced to 36 months in prison and fined US \$400,000 in March 2019. The verdict, delivered unanimously, illustrates the parallel risks that some actors may face under separate provisions of FCPA. Moreover, the verdict further highlights the jurisdiction of US agencies over dollar-denominated transfers (as is the case in other regulatory areas, such as sanctions enforcement by the US Office of Foreign Assets Control).

In light of global and bilateral political changes, the member enterprises of AmCham China are faced with a complex regulatory environment as well as challenges in reconciling varying and sometimes conflicting compliance requirements in different jurisdictions. However, member enterprises continue to update their compliance and training programs to address new risks and ensure compliance. Meanwhile, as many key terms in new rules issued by China and the United States in 2020 and 2021 have yet to be defined, the members to AmCham China expect clear clarification and guidance from government sectors so that they can comply with these new rules and create a more assured business environment.

Sanctions/Export Controls

The political dynamics between China and the US remains mostly intense since the Biden Administration took office in 2021, and the US government continued to impose sanctions and trade controls that have the potential to significantly impact global supply chains and present new compliance challenges and risks to AmCham China member companies. The bases for US sanctions and trade controls, among others, mainly fall on Xinjiang-related issues, Hong Kong-related issues and China's military-civil fusion strategy.

In 2021, the Bureau of Industry and Security in the Department of Commerce added more than 80 Chinese companies and individuals to the Entity List, restricting the export/reexport/in-country transfer of items subject to the Export Administration Regulations (EAR) to these entities and individuals. Among them, 19 entities were listed in connection with China's policy and treatment of the Uyghur minority groups in the Xinjiang Uyghur Autonomous Region. Further targeting Xinjiang related issues, in July 2021, the U.S. Departments of State, together with other departments, jointly issued an updated advisory on the risks for businesses with potential exposure in their supply chain to entities engaged in human rights abuses in the Xinjiang, and the US Senate passed the Uyghur Forced Labor Prevention Act.

With respect to the national security issues in Hong Kong, in 2021, the Department of the Treasury's Office of Foreign Assets Control published the Hong Kong-Related Sanctions Regulations and designated a total of 13 Chinese entities and individuals as Specially Designated Nationals under the same. In July, the US Departments of State, together with other departments, jointly issued the Hong Kong Business Advisory to highlight growing risks associated with actions undertaken by the Chinese government and the Hong Kong Government that could adversely impact US companies that operate in the Hong Kong.

Furthermore, the Communist Chinese Military Companies (CCMC) List that was created by the US Department of Defense (DoD) under *Executive Order 13959* in 2020 was significantly revised in 2021. On June 3, 2021, the US government issued *Executive Order 14032* replacing the CCMC List with the Chinese Military-Industrial Complex Companies (CMICC) List. The CMICC List initially included 59 companies, most of which were identical to companies already on the CCMC List. Pursuant to *Executive Order 14032*, US persons are prohibited from purchasing or selling any publicly traded securities of CMICC-listed companies, as well as any derivatives or financial products that provide investment exposure to such securities. On the same date, the DoD released a list of "Chinese Military Companies", which contained 47 Chinese companies, 39 of which were also on the CMICC List. However, the DoD did not indicate possible consequences of being enlisted as "Chinese military companies". AmCham China member companies must keep apprised of the development of these China-related sanctions and trade controls when doing business with Chinese entities and individuals to avoid penalties resulting from the changing landscape of noncompliance with US laws.

On the other side, one of the key items on National People's Congress' 2021 legislative agenda is to "supplement China's legal 'toolbox' regarding anti-sanctions, anti-interference and countering the exercise of long-arm jurisdiction." In 2021, China made significant progress in achieving this goal with the issuance of the Rules on Blocking Unjustified Extraterritorial Application of Foreign Legislation and Other Measures (the Blocking Rules) and *Anti-Foreign Sanctions Law (AFS Law)*, providing for more statutory basis for China's growing arsenal of retaliatory tools. On January 9, 2021, China promulgated the Blocking Rules, which empower the governmental working mechanism led by the Chinese Ministry of Commerce (MOFCOM) to issue prohibition orders to block the unjustified extra-territorial application of foreign legislation and restrictive measures that hinder the trade and investment activities between China and a third country. Notably, unless an exemption is approved, a "party" who fails to comply with a prohibition order by complying with the foreign legislation or restrictive measures in question may be sued in Chinese courts for damages. On June 10, 2021, China issued the AFS Law, which is a milestone step to establish the legal framework for China to counteract against discriminatory foreign sanctions. The AFS Law creates a

更灵活，根据风险偏好选择最适合企业运营和业务的技术和解决方案，采取全球一致的产品和标准。面对全球不断增长的网络安全风险，灵活地采取最适合企业的技术和防范变得尤其重要。

网络安全检查

商会对公安机关“网络安全检查”的方式表示担忧。《公安机关互联网安全监督检查规定》（下称《规定》）于2018年11月1日生效，由公安部负责监督。《规定》的权威性来自《网络安全法》、《反恐怖主义法》和《人民警察法》。这些法律共同赋予公安机关对互联网业务提供商和其他网络运营商开展监督检查或远程检测的广泛权限，以评估他们对《网络安全法》、《反恐怖主义法》和其他网络安全相关法律法规的遵守情况。

通过开展远程检测，公安机关能连接到公司的专用网络，以测评潜在的、不特定的“网络安全漏洞”。商会对公安机关和其他第三方服务机构宽泛且具侵入性的监督检查授权十分关切，该权限可能导致第三方访问或披露公司个人信息、专有信息或其他敏感的公司信息。赋予如公安机关等第三方扫描或渗透安全行业系统的能力会制造许多连带或意外的安全风险，威胁公司整体网络安全。

尽管商会理解公安部希望确保公司遵守网络安全法规，但商会强烈建议公安部避免进行系统扫描或其他侵入性检查，并允许公司证明自身合规性，同时限制第三方的扫描要求，因为这些要求会给企业网络带来额外的安全风险。此外商会注意到了金融监管在其政策中强调使用渗透测试，建议金融监管关注测试对企业带来的风险，并与企业一并探索最佳能证明其网络安全能力的方式（具体见银行业和资本市场章节）。

数据本地化和数据传输

中国对跨境数据的存储、移动或访问施加了一系列限制措施，数据本地化的要求多次出现在国家层面的法律法规和行业层面的法规。各种法律法规中数据本地化的应用范围和严格程度不尽相同，包括 ❶ 最严苛的本地化，即要求仅在本地存储、传输和处理；❷ 有限制的本地化，即对数据跨境流动采取有条件的限制；❸ 以及本地存储，不限制跨境流动的要求。

2021年，中国颁发了《个人信息保护法》和《数据

安全法》，这两部法律和2017年生效的《网络安全法》构建了中国对数据和数据跨境流动政策的整体框架。《网络安全法》第三十七条限制了关键信息基础设施运营商向境外传输个人信息和重要数据的能力。《个人信息保护法》第三十八条和四十条要求企业遵循个人信息跨境流动的机制并要求处理关键信息基础设施运营者和处理个人信息达到国家网信部门规定数量的个人信息处理者在境内存储。

对于关键信息基础设施运营者和《个人信息保护法》里要求的处理达到一定数量个人信息的公司来讲，个人信息跨境流动需要通过网信部门组织的安全评估。然而，2021年10月份的数据出境安全评估办法（征求意见稿）进一步扩大了需要网信部门安全评估的情形，要求累计向境外提供超过十万人以上个人信息或者一万人以上敏感个人信息的情形通过网信部门的安全评估。在2021年11月颁布的《网络数据安全条例（征求意见稿）》中，删除了这个要求，然而跨境传输仍受制于《网络安全法》和《个人信息保护法》要求的范围。

除了此外，各行业也有诸多数据本地化要求。以金融行业为例，除《网络安全法》《个人信息保护法》和《数据安全法》规定的要求以外，2019年中国银行保险监督管理委员会（以下简称中国银保监会）的一项命令规定，对依法履行反洗钱和反恐怖融资义务获得的客户身份资料和交易信息，非依法律、行政法规规定，银行业金融机构不得向境外提供。在实践中，这些规定使得在华运营的金融机构在反洗钱和反恐怖融资中获取的客户身份资料和交易信息不得不进行本地化，影响跨国金融机构的全球运营，进而加大其运营挑战，并大大提高了新金融机构进入中国市场的门槛（参见《白皮书》的银行和资本市场章节）。

数据本地化要求对跨国公司全球业务的发展和运营有消极的影响，要求商会会员企业在多个国家的本地服务器和数据中心上进行冗余支出。这方面的投资和维护对全球支持和全球运营有巨大影响，进而会影响其当前和未来在中国市场的投资。此外，数据本地化会给不良分子带来更多或额外的入口点，因而破坏跨国公司在网络安全的努力。最后，数据本地化减少了数据在其来源国之外的可用性，因而阻碍了全球贸易、投资和创新。数据的流动对当今全球贸易至关重要，因安全评估或其他方式而导致数据流动中断都会扰乱跨国公司的正常经营，甚至导致企业暂时停业。高昂

blacklisting mechanism targeting organizations or individuals who directly or indirectly participate in the formulation, determination and implementation of discriminatory foreign sanction measures that are deemed to “interfere with China’s internal affairs.” The AFS Law prohibits “any” organization or individual from implementing or assisting in the implementation of foreign countries’ discriminatory restrictive measures against Chinese parties, which may suggest the extraterritorial effect of the AFS Law. An organization or individual who violates this prohibition may be sued in Chinese courts for injunctions or damages. In July 2021, in response to the Hong Kong-related sanctions by the US, China announced retaliatory sanctions on seven US individuals and organizations based on the ASF Law, which is the first invocation of the ASF Law since its adoption.

Moreover, in 2021, China furthered its efforts on perfecting its trade control legal regime to implement the Export Control Law of the People’s Republic of China (effective on December 1, 2020). On April 28, 2021, MOFCOM issued the Guiding Opinions of the Ministry of Commerce on Establishing Export Control Internal Compliance Programs by Exporters of Dual-Use Items. These guiding opinions are not mandatory, but they recommend principal elements of a comprehensive and effective export compliance program for dual-use items that an export operator may wish to establish to comply with the *Export Control Law*. On November 2, 2021, MOFCOM released a revised Catalogue of Technologies Prohibited or Restricted from Import, which replaced the previous catalogue issued in 2007 and never updated since then. Relatedly, the Catalogue of Technologies Prohibited or Restricted from Export was revised in August 2020.

Given the global and bilateral political dynamics in 2021 as well as the key legislative developments concerning sanctions and trade controls in relation to China, AmCham China member companies faced a complex regulatory environment and challenges in harmonizing the varying and sometimes conflicting compliance requirements of different jurisdictions. However, it is prudent and wise for them to continue to update their compliance and training programs to address new risks and ensure compliance of both US laws and Chinese laws. In the meantime, as many key terms in the new rules promulgated by China and US in 2021 have yet to be defined; AmCham China members look to greater clarification and guidance from the government authorities to facilitate their compliance and create a more certain business environment.

Cybersecurity and Data Policies

Under the *Data Security Law and Personal Information Protection Law* promulgated in 2021 and the *Cyber Security Law* promulgated in 2017, a framework for management of data and cyberspace security in China has been established. Under this framework, China is gradually improving the implementation rules, and formulating a number of refer-

ence standards. In 2021 and early 2022, China issued the *Regulations on the Protection of Critical Information Technology Facilities* and the new *Cybersecurity Review Measures*. The *Regulations on Cybersecurity Classified Protection (Draft for Comments)*, the *Regulations on the Management of Data Security (Draft for Comments)* and the *Measures on Security Assessment of the Cross-border Transfer of Online Data (Draft for Comments)* have undergone public solicitation for comments. However, inadequate definitions of key terms, a loose definition scope and overly stringent requirements all bring uncertainty to the foreign business community.

System for Classified Protection of Cybersecurity

The system for classified protection of cyber security has existed for more than a decade as a set of comprehensive security protection information technology system. The system has, in accordance with specific security requirements, assigned a five-level importance rating based on the importance of information technology systems to China’s national security, social order, public interest, and legitimate interests of individuals and organizations.

Under the framework of the *Cybersecurity Law*, the system for classified protection of cyber security is being revised. The *Regulations on Cybersecurity Classified Protection (Draft for Comments)* (hereinafter referred to as the “*Regulations on Classified Protection Draft 2.0*”) represents the first attempt to revisit the system for classified protection of cyber security. Although the *Regulations on Classified Protection Draft 2.0* has not yet been published in final form or for further comment, the National Information Security Standardization Technical Committee has issued three national standards that constitute the basis of the system for classified protection of cyber security: ❶ GB/T 22239-2019 Information Security Technology – Baseline for Classified Protection of Cybersecurity; ❷ GB/T 25070-2019 Information Security Technology – Technical Requirements of Security Design for Classified Protection of Cybersecurity; ❸ GB/T 28448-2019 Information Security Technology – Evaluation Requirements for Classified Protection of Cybersecurity all took effect in December 2019, and include more detailed requirements for specific information technology sectors, covering cloud computing, mobile networks, the Internet of Things and industrial Internet systems.

Although AmCham China understands that these three standards are designed to support the implementation of *Regulations on Classified Protection Draft 2.0*, we are concerned that these standards were published in their final form prior to the publication of *Regulations on Classified Protection Draft 2.0*, under which these standards were issued. A due process is not in place for such actions, which may result in inconsistency with the final *Regulations on Classified Protection Draft 2.0*. AmCham China seeks a commitment from China that these recommended standards were only indicative best practices and not legally binding.

的成本和不可逆的业务损失等不确定性会迫使跨国公司和其他企业撤离中国。

商会建议中国避免数据本地化政策，而应保持其对“G20 大阪宣言”的总体支持，这既在信任的基础上提倡了自由数据流的理念，同时针对狭义定义的国家安全相关信息等特定情况的信息类别作出跨境传输限制。此外，商会建议中国尽可能明确和狭窄定义“重要数据”，关注对国家安全最重要的数据，明确“重要数据”的范围不包括公司正常运营产生的数据，以避免因混淆或不确定给外国投资带来不必要障碍。

就个人信息跨境传输来讲，目前全球范围内的个人信息跨境传输在多种监管机制下进行，包括欧盟《通用数据保护条例》(GDPR) 下的标准合同条款 (SCC) 和具有约束力的公司规则 (BCR)、亚太经合组织跨境隐私规则 (CBPR) 系统认证，以及其他适当的保障措施。这些数据保护框架均未将数量阈值作为政府审查的触发因素。商会倡导中国个人信息跨境机制能与国际机制保持一致，并确保相互操作性。另外，建议相关网信部门对数据跨境的安全评估仅限于真正涉及国家安全的“重要数据”，不包含个人信息。商会鼓励中国积极参与现有的多边框架，例如《亚太经合组织跨境隐私规则体系》和《亚太经合组织隐私框架》，并为致力于发展更强大的国际或多边数据交换和保护框架的区域论坛和全球论坛做出贡献。这样的框架将惠及中国和在华外国企业。

数据隐私

2021 年 8 月 20 日，中国全国人民代表大会通过了《个人信息保护法》，并于 2021 年 11 月 1 日生效。《个人信息保护法》广泛借鉴了欧盟《通用数据保护条例》(GDPR)，是中国第一部专门针对个人数据保护的统领性法律。该法传递出的关键信息是为中国的数据保护设定高标准，将个人同意（可撤回）作为处理数据的主要依据，对数据的跨境传输施以限制并赋予本法域外效力，并将处以高额罚款和基于营业额的罚款作为主要处罚手段。

放眼国际环境，《个人信息保护法》将使中国与欧盟 GDPR 所开创的数据保护合规问责机制接轨，促使个人信息处理组织采取“自上而下”的方式，实施适用于全组织的、符合数据管理实践标准的政策和程序。在对数据主体同意的管理、个人信息影响评估和数据跨境传输等方面，合规管理成本将有所增加。

由于该法的很多条文较为笼统，并且缺少必要的实施措施和细则，因此，《个人信息保护法》的出台无疑将给跨国组织机构带来重大的合规挑战。

回顾过去一年的发展，商会希望就以下议题向中国政府提出意见建议：

进一步明确个人信息和敏感个人信息的定义和范围

根据《个人信息保护法》，个人信息是以电子或者其他方式记录的、与已识别或者可识别的自然人有关的各种信息，不包括匿名化处理后的信息；敏感个人信息是一旦泄露或者非法使用，容易导致自然人的人格尊严受到侵害或者人身、财产安全受到危害的个人信息，包括生物识别、宗教信仰、特定身份、医疗健康、金融账户、行踪轨迹等信息，以及不满十四周岁未成年人的个人信息（非穷尽式列举）。上述定义，尤其是敏感个人信息的定义，模糊且过于宽泛。《个人信息保护法》对敏感个人信息设定了更严格的保护义务，包括但不限于取得数据主体的单独同意，采取严格的技术保护措施，进行个人信息影响评估等。如果敏感个人信息没有明确的定义和范围，则相关组织难以履行上述保护义务。

进一步明确处理数据的法律依据

在数字技术飞速发展和个人信息侵权事件频发的背景下，加强对个人信息的保护，同时促进数据利用，最大限度地发挥数字经济的潜力，是十分必要和紧迫的。因此，建立健全的个人信息收集和处理法律机制势在必行。根据《个人信息保护法》，符合下列情形之一的个人信息处理者（类似于 GDPR 中数据控制者的概念）方可处理个人信息：取得同意，为履行数据主体合同所必需，在处理员工个人信息时为人力资源管理所必需，为履行法定义务所必需，为应对突发公共卫生事件所必需，合理使用公开的信息，或法律、法规规定的其他情形。但是，目前尚无关于如何在实践中适用同意豁免的进一步指引，比如以下事项尚不明确：何时可以使用合同履行豁免；用人单位是否可以基于人力资源管理的理由将员工的个人信息（包括敏感个人信息）传输到中国境外。跨国组织通常采用的方式是，配备人力资源集中管理系统来处理中国员工的个人信息。商会迫切希望中国政府能够尽快就此类实施问题进行澄清。

These recommended standards should not propose additional requirements beyond published laws and regulations.

AmCham China remains concerned that the system for classified protection of cybersecurity applies to all network operators, not just the operators of critical information infrastructure. The Regulations on Classified Protection Draft 2.0 appear to expand the scope of these regulations by including “all network operators”, covering many business domains. The System for Classified Protection of Cybersecurity 1.0 only covers “key systems”. The Regulations on Cybersecurity Classified Protection (Draft for Comment) released in June 2018 summarizes several important requirements for the structure and maintenance of operating networks in China. It is an unnecessarily broad request to link a system at Level 3 or above to the bureau level system of the Chinese Public Security System, which is seriously intrusive to the normal operation of companies and may bring significant risks. AmCham China members are also concerned about the requirement that all technical maintenance performed on these networks must be localized. This undermines the global operating model adopted by many multinational corporations, without bringing security benefits and undue risks and burdens to these companies.

AmCham China holds that, if the above requirements are to be retained, the Regulations on Cybersecurity Classified Protection of (Draft for Comments) should be limited to the scope set out in the *Cybersecurity Law* and avoid extending the system for classified protection of cyber security to all network operators. In case the system for classified protection of cyber security covers all network operators, foreign-funded enterprises will face significant costs and administrative burdens to meet these requirements within their global technology systems, which discriminates against foreign-funded enterprises and will discourage foreign investment in China.

“Safe and Reliable” Technology and Procurement

The laws and regulations, including the *Cybersecurity Law*, Regulations on the Protection of Critical Information Technology Infrastructure, Regulations on Cybersecurity Classified Protection (Draft for Comments), Regulations on the Management of Data Security (Draft for Comments) and *Measures on Security Assessment of the Cross-border Transfer of Online Data (Draft for Comments)*, all call for companies to purchase “safe and reliable” products and services to varying degrees, but without a clear definition of “safe and reliable” standards. Although China has repeatedly stressed that “safe and reliable” and “secure and controllable” products and services do not directly equate to Chinese products and services, in fact, “safe and reliable” and “secure and controllable” products and services exclude foreign products and services and consider local production capacity and locally sourced products and services to be safer.

We suggest that China adopt the principle of technology neutrality, which does not force enterprises to adopt specific technologies or designate specific service providers. The principle of technology neutrality gives enterprises more flexibility in terms of selection of the technologies and solutions that best suit their operations and business based on their risk appetites, and the adoption of products and standards that are internationally and globally consistent. In the face of mounting global network security risks, it is particularly important to be flexible in adopting technologies and precautions that best suit enterprises.

Network Security Check

AmCham China expresses concerns about the way the public security organ conduct “cyber security checks”. The *Provisions on Internet Security Supervision and Inspection by Public Security Organs* (hereinafter referred to as the “Provisions”) took effect on November 1, 2018, subject to supervision from the Ministry of Public Security. The authority of the Provisions comes from the *Cybersecurity Law*, the *Anti-terrorism Law*, and the *Law of the People’s Republic of China on People’s Police*. These laws jointly grant public security organs broad authority to conduct supervision and inspection or remote detection of Internet service providers and other network operators, so as to assess their compliance with the *Cybersecurity Law*, the *Anti-terrorism Law* as well as other cybersecurity-related laws and regulations.

By conducting remote inspections, the public security organ can connect to a company’s private network to assess potential and unspecified “cybersecurity vulnerabilities”. AmCham China is quite concerned about the broad and intrusive authorization regarding supervision and inspection granted by the public security organs and other third-party service providers, which may cause third parties to access or disclose personal information, proprietary information or other sensitive information of companies. The empowerment to third parties such as public security organs of the ability to scan or penetrate security industry systems will bring about many collateral or accidental security risks, and threats to the company’s network health.

Although AmCham China understands that the Ministry of Public Security wants to ensure that companies comply with cyber security regulations, AmCham China strongly recommends that the Ministry of Public Security avoid system scans or other intrusive inspections, allow companies to prove their compliance and restrict scanning requests from third parties as these requirements may pose additional security risks to enterprise networks. On top of that, AmCham China notices that financial regulators have highlighted the use of penetration tests in their policies. We also recommend that financial regulators pay attention to the risks posed by these tests to enterprises and explore the best way to demonstrate their cybersecurity capabilities jointly with enterprises (see the Section of Banking and Capital Market).

还需要注意的一点是，与 GDPR 不同，《个人信息保护法》中未规定可以以“合法利益”为理由在未取得相关个人同意且无法豁免同意的情况下处理个人信息。此外，在某些情形下还需要取得单独同意，比如处理敏感个人信息、向境外传输、转移给其他个人信息处理者等。目前尚无关于何为“单独同意”的进一步解释，但从字面看，其释义为非捆绑的、可撤回的同意。如果政府有意采用字面解释方法，则在实践中将很难收集到单独同意，因为数据处理组织需要允许数据主体选择加入或退出相关的数据处理活动。我们建议中国政府考虑做出适当的放宽或澄清，将“单独同意”的要求细化到更具操作性。

细化域外效力的范围

根据《个人信息保护法》，境外实体在中国境外处理中国数据主体的个人信息，有以下情形的，也适用《个人信息保护法》：以向中国境内自然人提供产品或服务为目的，或分析境内自然人的活动。此外，这些境外实体有义务在中国境内指定一名代表并就此向相关数据保护机构进行登记。但是，“在中国提供服务或者产品”的范围尚未明确。这一模糊而宽泛的条款引起了众多境外实体的极大顾虑，例如，是否所有可被中国境内用户访问且安装了可用于收集和分析中国境内用户个人信息的 cookie 的中国境外网站，均基于该法的域外效力而受其管辖。值得注意的是，《中华人民共和国网络安全法》发布的《信息安全技术——数据出境安全评估指南》草案指出，建议采用目标锁定要素，比如网站含中文、接受人民币（中国货币）付款以及向中国交付货物。我们强烈建议中国政府进一步明确域外效力的范围，并将其缩小至合理的范围，比如增加目标锁定要素。

目前，境内代表委任和登记程序尚未发布，中国政府将如何在实践中规范境外实体也尚不明确。所有这些不确定性都会引起跨国组织的合规疑虑并增加其合规成本。商会迫切希望中国政府尽快进一步明确相关程序。

产业政策

尽管中国提及于 2015 年首次发布的中国制造 2025 产业战略的次數明显减少，中国仍在大力推进相关工作，力争实现中国制造 2025 的政策目标。中国加强在重要先进的制造业和服务业领域提升国内自身能力的决心从未改变。因此，商会担心，如果外商投资企业要进入中国市场，它们将不得不继续面临被迫与中国国内企业分享技术以及合作的压力。下面将探讨一些支持中国产业政策的主要政策举措。

“十四五”规划和 2035 年远景目标

2021 年 3 月 11 日，第十三届全国人民代表大会四次会议通过了《中华人民共和国国民经济和社会发展第十四个五年规划（2021 - 2025 年）和 2035 年远景目标纲要》（以下简称《纲要》）并公开表示对《纲要》的支持。《纲要》提出了科技创新、制造业、服务业、数字经济产业、消费和国内市场、基础设施消费、城镇化、环境保护、社会福利和国家安全方面的优先发展事项。《纲要》的主要内容包括：

- 坚持创新驱动发展，完善科技创新战略；
- 加快发展现代产业体系，深入实施制造强国战略；
- 发展壮大战略性新兴产业，促进服务业蓬勃发展，建设现代化基础设施体系；
- 畅通国内大循环，促进国内国际双循环；
- 推动数字技术与实体经济深度融合，推动产业数字化转型；
- 加快制造业基础零部件“卡脖子”和短板攻关，培养战略性新兴产业，推动生产模式绿色转型；以及
- 扩大制造业中长期贷款和信贷规模，培养对制造业的股权投资和债券融资偏好，降低整体融资成本

2021 年 7 月 9 日，商务部根据最新的“十四五”规划发布了《“十四五”商务发展规划》，制定了未来五年商务发展的相关目标和工作重点，对未来五年市场主体行为提供了指导。该规划中提到，《外商投资法》的颁布提高了中国营商环境的国际排名。《“十四五”商务发展规划》强调了在未来五年畅通国内大循环，扩大出口转内销力度，以及整合国内外资源。到 2025 年，中国将吸收外商直接投资 7000 亿美元，其中，高技术产业和自由贸易港将分别占 30% 和 19%。

除此之外，《“十四五”商务发展规划》还强调，未来，自由贸易试验区将在开放中国贸易方面发挥重要的示范作用。该规划呼吁建设自由贸易试验区；高质量建设海南自由贸易港和中国（上海）自由贸易试验区临港特区；进一步开放东部的京津冀、长三角、粤港澳大湾区；推动新疆成为“一带一路”建设的核心经济区；支持广西、云南建立东南亚及周边国家合作走廊。

2021 年 10 月 22 日，商务部根据“十四五”规划和《“十四五”商务发展规划》制定了《“十四五”利用外资发展规划》。商务部将继续优化利用外资结构，保

Data localization and data transmission

China has adopted a series of restraints on the storage, movement or access of cross-border data and the requirements of data localization have repeatedly appeared in laws and regulations at the national level and regulations at the industry level. The application scope and severity of data localization in various laws and regulations are different, including 1) the most stringent localization, that is, it is required to store, transmit and process data only locally; 2) limited localization, i.e., conducting conditional restrictions on cross-border transfer of data; 3) and local storage, i.e., the cross-border transfer of data is not restricted.

In 2021, China issued the *Personal Information Protection Law of the People's Republic of China* (hereinafter, the “*Personal Information Protection Law*”) and the *Data Security Law of the People's Republic of China* (hereinafter, the “*Data Security Law*”) which constitute the overall framework of China’s policies on data and cross-border transfer of data with the *Cybersecurity Law of the People's Republic of China* (hereinafter, the “*Cybersecurity Law*”) which came into force in 2017. Article 37 of the *Cybersecurity Law* restricts the ability of operators of critical information infrastructure to transmit personal information and important data abroad. Article 38 and Article 40 of the *Personal Information Protection Law* require that enterprises follow the cross-border transfer mechanism of personal information and require operators of key information infrastructure and personal information processors whose processing personal information reaches the amount specified by the national cybersecurity administration to store data in the Chinese territory.

As for operators of key information infrastructure and enterprises whose processing personal information reaches the amount specified by the *Personal Information Protection Law*, cross-border transfer of personal information requires security assessment organized by cyberspace administrations. However, the *Measures on Security Assessment of Cross-border Transfer of Personal Information and Important Data (Draft for comments)* issued in October 2021 further expanded the scope of the security assessment conducted by the Cyberspace Administration of China (CAC). It requires that cross-border transfer of PI of 100,000 or more individuals or sensitive PI of 10,000 or more individuals is subject to security assessment. The above-mentioned requirement was deleted in the *Network Data Security Management Regulations (Draft for comments)* published in November 2021. The cross-border transfer of PI is still subject to the *Cybersecurity Law* and *Personal Information Protection Law*.

In addition, there are also various requirements for data localization in various industries. Take the financial industry for example. In addition to the provisions of the *Cybersecurity Law*, *Personal Information Protection Law*, and *Data Security Law*, in 2019 an order of China Banking and Insurance Regulatory Commission stipulated that, without the provisions of laws and administrative regulations,

banking financial institutions shall not provide cross-border customer identity data and transaction information obtained by financial institutions while performing their obligations in relation to anti-money laundering and counter-terrorism financing according to the law. In practice, these provisions ensure that customer identity data and transaction information obtained by financial institutions operating in China in performing their obligations in relation to anti-money laundering and counter-terrorism financing have to be localized, so that transnational financial institutions cannot use their global operation mode, their operation challenges is greatly increased, and the threshold for new financial institutions to enter the Chinese market is greatly raised (See the Chapter on banking and capital markets in the *White Paper*).

Data localization requirements have a negative impact on the development and operation of multinational corporations’ global business. Data localization requires multinational companies to make redundant expenditures on local servers and data centres in multiple countries. One-time and continuous investment and maintenance will have a great impact on the global support and global operation of multinational corporations, and then affect their current and future investment in the Chinese market. What is more, data localization will bring opportunities to cyber criminals, thus undermining the efforts of multinational corporations in network security. Finally, data localization reduces the availability of data outside its country of origin, thereby hindering Global trade, investment and innovation. Data free flow is of great importance to current global trade. The interruption of data flow caused by security assessment or other means will disrupt the normal operation of multinational corporations, and even lead to suspension of business. High costs and irreversible business loss can push multinational corporations and other enterprises out of China.

AmCham China suggests that China should repeal data localization policies and maintain its overall support for the G20 Osaka Leaders’ Declaration, which not only advocates the concept of free data flow based on trust, but also imposes restrictions on cross-border transmission of narrowly defined national security information and other specific information. In addition, AmCham China suggests that China should define “important data” as clearly and narrowly as possible, focus on the most important national security information data, and define that the scope of “important data” shall not include the data generated by the normal operation of the enterprise so as not to bring unnecessary obstacles to the foreign investment due to confusion or uncertainty.

Nowadays, global cross-border transmission of personal information is subject to multiple supervision mechanisms, including Standard Contractual Clauses (SCC) and Binding Corporate Rules (BCR) of the *General Data Protection Regulation* issued by the European Union, the *APEC Cross-Border Privacy Rules* (CBPR), and other reasonable protection measures. None of these data protection frameworks use quantitative thresholds as a trigger for government review. We advocate

持利用外资的规模位居世界前列，促进国内大循环以及国内国际双循环。该《规划》还将引导外资投资数字化转型、节能环保、生态环境和绿色服务等产业，支持新型基础设施建设，支持外资参与国家科技发展事业。

该《规划》提出，放宽外资准入门槛；有序推进电信、互联网、教育、文化、医疗等领域相关业务开放；推动放宽外商投资法律、运输等行业业务范围、人员资质等要求。稳妥推进制造业、服务业和农业领域开放，允许外资在更多领域控股或独立投资。该《规划》还通过缩减市场准入负面清单，减少一下行业准入许可数量，进一步降低了市场准入门槛：仓储和邮政服务、信息传输、软件和信息技术服务、租赁和商业服务、科学研究和技术服务、文化、体育和娱乐。

2021年10月26日，商务部、中央网络安全和信息化委员会办公室以及国家发展和改革委员会联合发布了《“十四五”电子商务发展规划》。《“十四五”电子商务发展规划》建议支持优质电子商务企业，支持电子商务技术服务商融资，推动电子商务技术产业化，支持云计算、大数据、人工智能、虚拟现实等数字技术应用。《“十四五”电子商务发展规划》旨在支持电子商务企业的全球化运营；完善全球电子商务仓储、物流、支付和数据等基础设施布局；鼓励以人民币结算。“十四五”期间，电子商务营业额预计将达到46万亿元人民币（约合7.2万亿美元），国内网上零售额将增至17万亿元人民币（约合2.67万亿美元），跨境电子商务营业额将增至2.5万亿元人民币（约合3922亿美元）。

中国企业社会信用体系

2014年，国务院发布了《社会信用体系建设规划纲要（2014—2020年）》（以下简称《规划纲要》）。“社会信用体系”是国务院自2000年代初以来提出的一个概念，而这一《规划纲要》为中国市场上的企业、政府机构、社会组织和个人提供了建设社会信用体系的正式蓝图。社会信用体系有可能极大地改变中国的监管框架。社会信用体系由两个主要功能组成，即①数据收集和②基于数据的奖惩系统。《规划纲要》着重在政府管理、商务/商业、社会和司法四个领域建设社会信用体系。对实体的评估以社会信用体系衡量的“信誉度”为基础。企业社会信用体系将根据14个业务领域（包括税务、金融、政府采购、电子商务、贸易和物流，以及“企业

诚信”等定义不太明确的领域）来衡量中国市场企业（国内的和国外的）的信誉。随着企业社会信用体系的推出，它可能会对中国企业的合规性、业务流程甚至战略产生深远的影响。

政府还没有为最终的企业社会信用体系确定明确的目标或完整的蓝图。《规划纲要》规定了一系列模糊的目标，例如：

- “建立社会信用的基本法律、法规和标准体系”；
- 建立了“基于信息共享的覆盖全社会信用的调查体系”；
- “基本完善了信用监管体系”；
- “充分发挥鼓励信任和惩罚不信任的机制”。

中国政府的统计数据显示，中国近三分之二的省、自治区和直辖市已经实施或发布有关社会信用的地方性法规的计划。在Trivium为美中经济安全审查委员会编写的一份报告中估计，截至2019年6月，中国共有32个地方的44个政府机构向社会信用数据集提供了记录。2020年7月，国家发展改革委发布了《关于进一步规范公共信用信息纳入范围、失信惩戒和信用修复构建诚信建设长效机制的指导意见》。《意见》旨在确定可以收集什么样的信息，如何将其公之于众，何时实施什么样的处罚和怎样实施处罚，以及如何恢复负面信用。

根据商会2021年发布的《中国商务环境调查报告》，关于企业社会信用体系的建立，44%的受访企业认为这是一个积极的进展，因为企业社会信用体系可以①有助于在外资企业和内资企业之间建立公平的竞争环境，或②限制不良行为者的市场准入，从而改善合规企业的环境。但是，应该注意的是，将近三分之一的受访企业同时报告说“没有足够的数据来形成意见”。

随着企业社会信用体系不断发展，在中国市场经营的企业将需要投入更多资源来理解并合规。商会促请中国政府尽可能通过透明公开的方式来制定和实施企业社会信用制度，并与企业界密切协商。外资企业应能对所有与企业社会信用体系相关的法律、法规和政策发表意见。虽然企业社会信用体系确实有可能提高监管透明度，在公司治理和合规方面创造公平的竞争环境，并惩罚不合规的行为者，但这在很大程度上取决于其实施情况。正如在上文所讨论的，政府并没有为企业社会信用体系提出明确的最终目标，因此很难对其进展情况进行评估。此外，社会信用体系非常依赖“黑名单”的使用，这导

that China's cross-border personal information mechanism should be consistent with international mechanisms and ensure interoperability. What is more, we recommend that China's cyberspace administration only conduct security assessments on the "important data" involving national security instead of personal information. AmCham China encourages China to participate in the existing multilateral agreement frameworks, such as the CBPR and the APEC Privacy Framework, and make contributions to regional and global forums dedicated to developing stronger international or multilateral frameworks for data exchange and protection. These frameworks will bring benefits to China and foreign enterprises in China.

Data privacy

On August 20, 2021, the National People's Congress (NPC) passed the *Personal Information Protection Law* (PIPL) which came into force on November 1, 2021. The *Personal Information Protection Law*, China's first governing law designed to protect personal information, was largely co-opted from the *General Data Protection Regulation* (GDPR) issued by the European Union. This law sets high standards for China's data protection, takes personal consent (which can be withdrawn) as the main basis for processing data, imposes restrictions on cross-border transmission of data with extraterritorial effect, and takes high fines and fines based on turnover as the main methods of punishment.

Keeping eyes on the international environment, the PIPL will integrate China with data protection accountability system launched by GDPR, enable organizations responsible for personal information processing to implement policies and procedures applicable to the organization and consistent with data management practice standards in a "top-down" manner. Compliance costs will increase in the management of data subject consent, impact assessment of personal information and cross-border data transmission.

Many provisions in this Law are general, without necessary measures and details, and thus the introduction of it will undoubtedly bring major challenges to multinational organizations.

Looking back on our development of last year, we hope to put forward supplementary opinions and considerations to the Chinese government on the following topics:

The definition and scope of personal information and sensitive personal information need to be further clarified. According to the PIPL, personal information refers to various kinds of information that is related to any identified or identifiable natural persons as recorded by electronic or other means, not including the anonymized information; sensitive personal information refers to personal information that, once leaked or illegally used, is likely to infringe the human dignity of natural persons or endanger the personal and property safety,

including biometrics, religious beliefs, specific identity, medical health, financial accounts, whereabouts and other information, as well as the personal information of minors under the age of 14 (non-exhaustive). The above-mentioned definitions, especially the sensitive personal information, are vague and over-generalized. The PIPL sets stricter protection obligations for sensitive personal information, including but not limited to obtaining the separate consent of the data subject, taking strict technical protection measures, and conducting personal information impact assessment. If there is no definition and scope for sensitive personal information, it is hard for relevant organizations to perform the above-mentioned obligations.

The legal basis of data processing needs to be clarified. In the context of rapid development of digital technology and frequent infringement of personal information, it is imperative to provide better protection to personal information, promote exploitation of data, and reach the potential of digital data. Therefore, it is imperative to build a sound legal mechanism for personal information collection and processing. According to the PIPL, PI Handlers (similar to the concept of data controller in GDPR) may only handle personal information if one or more of the following circumstances is present: where they have obtained individuals' consent; where necessary to conclude or fulfil a contract of data subject; where necessary to conduct human resources management in handling personal information of labours; where necessary to fulfil statutory duties and responsibilities or statutory obligations; where necessary to respond to sudden public health incidents; handling personal information within a reasonable scope; or other circumstances provided in laws and administrative regulations. However, there is no further guidance on how to apply the waiver of consent in practice. For example, the following matters are not clear: when the waiver of contract performance can be used, whether the employer can transfer the employee's personal information (including sensitive personal information) outside China for reasons of human resource management. Multinational corporations usually adopt centralized human resources management systems to process the personal information of Chinese employees. We urgently hope that the Chinese government can clarify such implementation issues as soon as possible.

It should be noted that, the PIPL, different from GDPR, does not stipulate that personal information can be processed on the grounds of "legitimate interest" where the individual's consent concerned has not been obtained and cannot be waived. In addition, separate consent may be required under certain circumstances, including processing sensitive personal information, transmission out of the country, transferring data to other personal information processors, etc. At present, there is no further explanation on what "separate consent" is, but it refers to non-binding and revocable consent. If the government is willing to adopt its literal meaning in practice, it is hard to collect the separate consent. Because the data processing organization allows the data subject to

致了过度和不必要的惩罚。中国很少公开有关用于分析或处理输入社会信用体系大量数据的算法信息，这使得企业不清楚如何计算社会信用体系的分数。此外，社会信用体系的运作需要中央、省和地方各级部门之间大量数据的收集和协调。简单的数据输入或其他人为错误可能会导致企业的社会信用过低，这可能会导致行政制裁或被纳入黑名单，从而阻碍企业开展业务的能力。解决上述错误的明确行政程序需要写入社会信用体系政策框架，并明确传达给企业。

《外商投资法》——两年回顾

《外商投资法》和《优化营商环境条例》于2020年1月1日同时生效，旨在解决外商投资企业在华经营面临的长期问题。《外商投资法》和《优化营商环境条例》旨在向外国投资者和外商投资企业提供与内资企业同等的权利，包括在知识产权、商业秘密和技术保护等外国企业界长期面临挑战的领域。

《外商投资法》及其实施细则规定，中国保护外国投资者和外资企业的知识产权，保护知识产权持有人的权益，严格追究知识产权侵权的法律责任。《优化营商环境条例》为平等对待内资企业和外资企业及其他市场主体的商业环境确立了基本规范，有利于创造公平竞争的市场环境。《外商投资法》和《优化营商环境条例》确认，设立外资企业不再需要审批，除非该投资受国家外商投资负面清单约束。《外商投资法》也明确规定，行政机关及其工作人员不得强制外资企业转让技术，商会对此感到备受鼓舞。

尽管如此，商会仍希望中国政府对如何实施《外商投资法》和《优化营商环境条例》做出明确的阐述。商会会员企业希望能够看到证明《外商投资法》和《优化营商环境条例》为外资企业在中国创造了一个完全平等的竞争环境的实际案例，关于国家和地方监管机构解释和实施法规不明确等问题仍然存在。《外商投资法》和《优化营商环境条例》也没有涉及中国国有企业尤其是央企相比中国民营企业获得的优惠待遇，比如补贴和其他隐性政府担保。这些优惠待遇扭曲了市场，加剧了不公平竞争。

在中国经营的外国企业仍然面临日益严格的安全法规，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。其中，许多措施实际上起到了支持中国实现产业政策目标的作用。此外，2020年12月，

中国商务部根据《外商投资法》的规定发布了《外商投资安全审查办法》。虽然商会认识到，中国像其他国家一样，有理由建立一个外国投资筛选程序，但商会担心，新规定过于宽泛，将对中国经济产生不利影响。这些法规涵盖了中国《国家安全法》中涉及的各类经济活动，与其他主要司法管辖区相比，该法涵盖了包括农业在内的更广泛的经济活动。这些法规在投资方式方面也过于宽泛，因为它们涵盖了绿地投资以及现有企业的并购交易。这些法规规定，在申请被接受后，外国投资的审查期最长为五至六个月，通常是在咨询期之后，但尚不清楚该审查是在其他投资监管审查之前、期间还是之后进行，特别是反垄断审查。冗长的审查期增加了成本和不确定性，对外国直接投资产生了不利影响。

中国的国家安全审查对外国投资和外资企业运营的影响越来越大。2021年1月18日，中国开始正式实施国家发展和改革委员会与商务部联合发布的《外商投资安全审查办法》。该《办法》规定，由国家发展和改革委员会取代商务部对外商投资企业进行安全审查。外商投资国防安全领域或涉及国家安全的重要行业，须按照新办法进行安全审查。但该《办法》既未规定确定一个企业是否属于前述行业的标准，也未提供一个行业清单供参考，这就导致外商在华投资合规风险的增加。将合规风险降至最低最安全的方法是申请直接与国家发展和改革委员会协商。启动安全审查往往会引起投诉甚至资本交易取消，从而增加投资成本，对外国直接投资产生不利影响。

2022年1月1日，中国政府宣布《外商投资准入特别管理措施(负面清单)(2021年版)》(以下简称《2021年国家负面清单》)和由国家发展和改革委员会和商务部联合发布的《自由贸易试验区外商投资准入特别管理措施(负面清单)(2021年版)》(以下简称《2021年自贸区负面清单》)生效。这两个清单上的行业数量分别从33家和30家缩减到了31家和27家。中国于2017年推出负面清单制度，这是中国第四年缩减外商投资负面清单。但是，上文讨论的安全审查措施包括绿地投资，这可能会削弱缩减负面清单带来的好处。

外商投资和中国“双循环”

中国于2020年5月首次宣布的“双循环”新发展格局强调技术自立，标志着中国长期政策的转变，减少

join or exit the relevant data processing activities. We suggest that the Chinese government implement such policies more flexibly or explain it, and clearly define the requirement of “separate consent” and make it more operational.

Clearly defining the scope of extraterritorial effects. According to the PIPL, where one of the following circumstances is present in handling activities outside the borders of the People’s Republic of China of personal information of natural persons within the borders of the People’s Republic of China, this Law applies as well: where the purpose is to provide products or services to natural persons inside the borders, where analyzing or assessing activities of natural persons inside the borders. In addition, PI handlers outside the borders of the PRC are also responsible for appointing a designated representative in China and register it with the relevant data protection authorities. However, the scope of “providing products or services to natural persons inside the borders” is not clear. This vague and general provision has raised significant concerns among PI handlers outside the borders of the PRC. For example, they wonder whether all websites outside the borders of the PRC that can be accessed by users in China and in which cookies that can be used to collect and analyze users’ personal information in China are installed are subject to its jurisdiction based on the extraterritorial effect of the PIPL. It is worth noting that a draft of the *Information Security Technology - Guidelines for Data Cross-Border Transfer Security Assessment of the Cybersecurity Law* says it is suggested to adopt targeting elements, including whether the website contains Chinese, accept payments in Chinese Yuan, and deliver goods to China. We strongly suggest that the Chinese government further clarify the scope of extraterritorial effect and narrow it to a reasonable one, such as adding targeting elements.

At present, the procedures for the appointment and registration of domestic representatives have not been released, and it is unclear how the Chinese government will regulate overseas entities in practice. All these uncertainties will cause compliance doubts of multinational organizations and increase their compliance costs. We urgently hope that the Chinese government can clarify such issues as soon as possible.

Industrial Policy

On the surface, China has significantly deemphasized mentions of its Made in China 2025 (MIC 2025) industrial strategy first released in 2015, although China has continued to vigorously implement the policy objectives of MIC 2025. China remains determined to build up its domestic capabilities in important advanced manufacturing and services sectors. Therefore, AmCham China is concerned that Foreign Investment Enterprises (FIEs) will continue to experience pressure to share their technology and partner with domestic firms on an involuntary basis if they are to enjoy access to the Chinese market. Below we explore some of the major policy initiatives in place to support China’s industrial policy.

The 14th Five-Year Plan and the Long-Range Objectives through the Year 2035

On March 11, 2021, the Fourth Session of the 13th National People’s Congress passed and officially endorsed the resolution on the *14th Five-Year Plan (2021-2025) for National Economic and Social Development and the Long-Range Objectives through the Year 2035*, which sets forth development priorities in technology innovation, the manufacturing industry, service industry, digital economy industry, the consumption and domestic market, infrastructure consumption, urbanization, environment protection, social welfare and national security. The key contents of the plan include the following:

- Adhere to innovation-driven development and refine technology innovation strategies;
- Accelerate the development of a modern industrial system and further develop the strategy of turning China into a manufacturing powerhouse;
- Develop and expand strategic emerging industries, promote the flourishing development of the service industry, and build a modern infrastructure system;
- Facilitate large-scale “domestic circulation” and promote domestic-international “dual circulation;”
- Promote in-depth integration of digital technology and the real economy, and industrial digital transformations;
- Accelerate the amelioration of bottlenecks and shortcomings in manufacturing basic parts and components, cultivate strategic emerging industries and promote green transformation of modes of production; and
- Expand the scale of mid- and long-term loans and credit loans for the manufacturing industry, promote the preference of equity investment and bond financing for manufacturing, and reduce overall financing costs.

On July 9, 2021, the Ministry of Commerce issued the *14th Five-Year Plan for Business Development (FYPBD)* in accordance with the latest 14th Five-Year Plan to formulate relevant goals and work priorities for business development and guide the behavior of market entities in the next five years. The plan mentions that the promulgation of the *Foreign Investment Law (FIL)* has improved the international ranking of China’s business environment. The FYPBD highlights large-scale “domestic circulation,” expansion of exports to domestic sales, as well as the integration of domestic and foreign resources in the next five years. It also mentions using foreign trade and investment as a bridge to promote domestic-international “dual circulation.” By 2025, China will absorb US \$700 billion of foreign direct investment, of which high-tech industries and free trade ports would account for 30 percent and 19 percent, respectively.

In addition to the above, the FYPBD emphasizes that pilot free trade zones will play significant exemplary roles for the opening up of China’s trade in the future. The plan calls for developing pilot free trade zones; high-quality development of the Hainan Free Trade Port and China (Shanghai) Pilot Free

了对海外市场的依赖。该战略是在中美关系紧张和新冠肺炎疫情之际出台的。根据“双循环”，中国政府在2020年发布了一系列政策文件，以促进国内供应链，实施需求侧改革，并鼓励对关键科技部门的投资。2020年10月，十九届五中全会将科技自立（和自强）列为国家战略。2020年12月，中央经济工作会议宣布了中国2021年的八项重点任务，包括确保技术和供应链独立，并将扩大内需作为重中之重。

2021年12月，中共中央政治局召开会议，制定2022年经济工作计划。会议围绕全面实现自给自足和自力更生展开，强调加快实施科技政策，继续聚焦关键核心技术，增强战略性科技实力，巩固企业在创新方面的优势地位，实现科技、工业、金融产业的良性循环。

尽管对国内市场和实现技术自力更生的重视度越来越高，但中国政府官员一再表示，中国将继续开放，欢迎外国投资。2021年8月23日，商务部部长王文涛在国务院新闻办公室的新闻发布会上表示，对国内大循环的重视度越来越高并不意味着不需要外资，这种解读比较片面，完全是误解。王文涛解释说，大部分外商投资企业都是双循环的践行者，通过其在华的商务活动，外资企业深深融入了国内大循环。尽管如此，“双循环”发展模式还是引起了外资企业的担忧，即该战略将导致中国更关注关键技术的获取，而不重视外商投资企业在—个公平的竞争环境中与国内企业开展技术竞争。

《中国标准 2035》

早在2018年，国家标准化管理委员会就宣布正在起草《中国标准 2035》，这引起了国际媒体的广泛关注，被称为“升级版的《中国制造 2025》”。2021年4月20日，国家标准化管理委员会发布了《2021年全国标准化工作要点》，在该文件中提出要积极参与国际标准化治理，推动国内外标准化协调发展，广泛开展标准化合作。

2021年10月10日，中共中央、国务院印发《国家标准化发展纲要》，明确提出2025年和2035年的发展目标。《国家标准化发展纲要》指出，到2025年，各行各业都建立一套高质量的标准化体系；国家标准平均制定周期缩短至18个月以内，制定标准时，给予政府和市场利益同等考虑；国际标准转化率达到85%以上；建立一套国家质量基础设施体系。《国家标准化发展纲要》还提出，到2035年，完善具有中国特色的标准化

管理体制。

除了在国内整合标准外，中国还通过“一带一路”倡议强化中国标准的影响力。2021年11月5日，总局发布了《中国标准化发展年度报告(2020年)》。该《报告》称，中方将继续推动与巴基斯坦、缅甸、哥斯达黎加和非洲标准化组织等4个国家和地区标准机构签署标准化合作文件；积极推进与“一带一路”共建国家开展标准信息交换；与水利部及联合国工业发展组织合作，推动制定水电项目标准；推进中俄民航标准互认工作；与蒙古国及巴布亚新几内亚合作建立标准示范区；不断完善“一带一路”共建国家标准信息平台。中国正在努力提高其在国际标准化治理中的话语权，影响现有体系、规则、框架和标准。

绿色发展、二氧化碳达峰以及碳中和

2021年2月22日，国务院发布了《国务院关于加快建立健全绿色低碳循环发展经济体系的指导意见》(以下简称《指导意见》)。《指导意见》提出分两步建立健全绿色低碳循环发展经济体系。第一步，到2025年，产业结构、能源结构、运输结构明显优化；绿色产业比重显著提升；基础设施绿色化水平不断提高，清洁生产水平持续提高；生产生活方式绿色转型成效显著；能源资源配置更加合理、利用效率大幅提高，主要污染物排放总量持续减少，碳排放强度明显降低。第二步，到2035年，重点行业、重点产品能源资源利用效率达到国际先进水平，广泛形成绿色生产生活方式。

2021年10月24日，国务院和中共中央联合印发了《关于完整准确全面贯彻新发展理念做好碳达峰碳中和工作的意见》。该《意见》强调，要将二氧化碳达峰和碳中和整合到整体经济和社会发展中。到2025年，中国将初步形成绿色低碳循环经济发展框架，大幅提高重点产业能源利用效率。该《意见》的主要内容包括：

- 推动经济和社会发展全面绿色转型；
- 深化产业结构调整；
- 加快清洁、低碳、安全、高效的能源体系建设；
- 加快低碳交通运输体系建设；
- 提升城乡绿色低碳发展质量；
- 加强绿色低碳技术研究和推广应用；
- 持续巩固提升碳汇能力；
- 提高对外开放绿色低碳发展水平；

Trade Zone Lin-Gang Special Area; further opening up of the Beijing-Tianjin-Hebei, Yangtze River Delta and Guangdong-Hong Kong-Macao Greater Bay Area in the eastern region; promoting Xinjiang as a core economic zone for the Belt and Road Initiative; and supporting Guangxi and Yunnan's establishment of a cooperation corridor for Southeast Asia and neighboring countries.

On October 22, 2021, the Ministry of Commerce formulated the *14th Five-Year Plan for the Use of Foreign Investment* in accordance with the 14th Five-Year Plan and the FYPBD. The Ministry of Commerce will continue to optimize the structure of foreign investment utilization, keep the scale of foreign capital utilization at the forefront globally, and promote large-scale domestic circulation, as well as domestic-international "dual circulation." It will also guide foreign capital to invest in industries such as digital transformation, energy conservation and environmental protection, ecological environment, and green services, construction of new infrastructure, and support foreign participation in national science and technology development undertakings.

The plan will relax access for foreign investment; promote open investment in telecommunications, Internet, education, culture, and medical services; and relax requirements on foreign investment laws, business scope and personnel qualification in transportation and other industries. It also promotes the opening up of the manufacturing, service and agriculture industries, and will allow for foreign holdings or sole proprietorship in more areas. The plan further lowers barriers to market access by narrowing the negative list of market access and reducing the number of access permits in the following industries: warehousing and postal services, information transmission, software and information technology services, leasing and business services, scientific research and technical services, culture, sports and entertainment.

On October 26, 2021, the Ministry of Commerce, the Central Cyberspace Affairs Commission and the National Development and Reform Commission jointly issued the *14th Five-Year Plan for E-Commerce (PEC)*. The PEC proposes support for high quality e-commerce companies, support for financing of e-commerce technology service providers, promotion of the industrialization of e-commerce technologies, and supporting the application of digital technologies, including cloud computing, big data, AI and virtual reality. The PEC aims to support globalized operations of e-commerce companies; improve the global e-commerce infrastructure layout, such as warehousing, logistics, payment and data; and foster settlement in RMB. During the 14th Five-Year Plan period, e-commerce turnover is expected to reach RMB 46 trillion (approximately US \$7.2 trillion), while domestic online retail sales will rise to RMB 17 trillion (approximately US \$2.67 trillion), and cross-border e-commerce turnover will rise to RMB 2.5 trillion (approximately US \$392.2 billion).

China's Social Credit System for Enterprises

In 2014, the State Council issued the *Planning Outline for the Construction of a Social Credit System (2014-2020)* (hereinafter, the "Planning Outline"). It is a concept the State Council proposed in 2000s, which provides a blueprint of the Social Credit System for Enterprises (hereinafter, the "SCSE"), government authorities, civil societies and individuals in the Chinese market. The social credit system changes the regulatory framework of China. It has two functions, namely ❶ data collection and ❷ the bonus-malus system based on the data. The Planning Outline prioritizes the construction of social credit system in government administration, commerce/business, society and justice. The assessment of an entity is based on "credibility" measurement of the Social Credit System. The SCSE shall measure the credibility of enterprises (both domestic and foreign) in the Chinese market concerning the 14 business sectors (including tax, finance, government procurement, trade and logistics, and sectors where "enterprise credibility" is not clearly defined). The Social Credit System, with its official launch, may produce a profound impact on the enterprise in the Chinese market in terms of compliance, business processes and even the strategies.

The government has yet to clarify the goals of an ultimate SCSE goal or provide any complete blueprint. The Planning Outline has set a series of ambiguous goals, including:

- "Establishing basic law, regulation and standard system for the Social Credit System";
- Establishing "a surveying system covering all aspects of social credit based on the information sharing";
- "Improving the credit regulatory system"; and
- "Fully utilized the mechanism that reward the credibility and punishment for incredibility".

The statistics of the Chinese Government suggests that almost two third of provinces, autonomous region or the municipality directly under the central government have implemented the social credit system or issued regulated local regulations. Trivium China estimated in its report to US China Economic and Security Review Commission that, until June 2019, there are 44 local governments in 32 regions in China has provided records for the data collection of the Social Credit System. In July 2020, the National Development and Reform Commission released the *Guiding Opinions on Further Standardizing Data Collection, Trust-Breaking Punishment and Credibility Restoration of Public Credit Information to Build Long-Term Mechanisms for Credibility Construction*. The Opinions is designed to identify what information can be collected, how to disclosure such information to the public, when and what punishment shall be given and how to restore negative credibility.

According to the 2021 *China Business Climate Survey Report by AmCham China*, 44 percent of members believed the estab-

- 完善法律、法规、标准、统计和监督体系；以及
- 完善政策制度体系。

共同富裕及其产业政策影响

“共同富裕”已成为十四五规划期间经济社会发展的主要目标。2021年8月17日，在中央财经委员会第十次会议上，习近平主席提出要讨论共同富裕问题。此次会议确定了收入初次分配、再分配和三次分配协调配套的基础性制度安排。在三次分配的基础上，政府鼓励民间团体自愿进行私人捐赠，为慈善事业做出贡献。在共同富裕目标的影响下，产业政策将重新评估公平与效率的关系，为基础设施建设和公共服务相关产业带来更多的投资和发展。

在房地产行业，共同富裕的目标将推动政府主导的社会保障住房项目投资。中国政府加强了对房地产行业的监督，特别是在2020年和2021年。2021年上半年，中国政府强调“禁止投机购房”，并针对房地产市场出台了各种规定。首先，中国政府从银行方面控制资金流入房地产，阻止消费贷款进入房地产市场。随后，中国政府从土地供应方面入手，控制房地产公司获得土地的节奏。2021年2月25日，自然资源部发布了一份关于居住用地分类管理的文件，要求22个重点城市在一年内发布居住用地公告不得超过3次。与此同时，住房和城乡建设部与国务院强调通过土地、批准、税收和财政政策保障出租房的基本制度和配套政策。

在制造业，共同富裕对该行业的发展也提出了更高的要求，制造业在实现高产的同时还要保证高质量发展。制造业发展带来的就业机会对实现共同富裕具有重要意义。以共同富裕为目标制定的产业政策将推动可再生能源行业和制造业向先进技术和信息技术方向发展，推动传统制造业转型，实现碳达峰碳中和目标。

在教育行业，2021年5月21日，中共中央办公厅、国务院办公厅联合印发了《关于进一步减轻义务教育阶段学生作业负担和校外培训负担的意见》。该《意见》明确规定：一、不再审批新的面向义务教育阶段学生的学科类校外培训机构，现有学科类培训机构统一登记为非营利性机构；二、学科类培训机构一律不得上市融资，严禁资本化运作；三、建立培训内容备案与监督制度。该《意见》还提到，严禁提供境外教育课程和超范围培训。此外，该《意见》还规定，校外培训机构不得占用国家

法定节假日、休息日及寒暑假组织学科类培训。最后，将校外培训机构收费纳入政府指导价管理，在个别地区进行试点，然后在全国范围内推广。

建议

对中国政府：

- **进一步明确国家监察委员会和地方监察委员会的职责范围，保持监管执法的一致性。提高反腐执法工作的透明度是重中之重。应确保法治的关键构成要素包括透明性、法律解释一致性、正当程序等落实到位。**
- 及时发布《反不正当竞争法》约束性指导意见及解释，确保执法行动透明、公开。
- 正视并解决在华外资企业因监管和执法条款（包括《反不正当竞争法》中的相关条款）而感到不受欢迎、遭到无理责难的情况。由中央政府发布指令，强调依法提供公平待遇的将大有裨益。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、一致和基于规则的制度，为在华投资者提供国民待遇，并在《外商投资法》及其实施条例中明确做出规定。
- 提高法律法规起草、实施和执行（包括企业社会信用体系的制定）的透明度，以增强企业对法律和监管环境的可预测性和一致性的信心。统一国家、地方以及不同领域的数据隐私法规，提高监管一致性。

对美国政府：

- **参与双边对话，深入开展交流，支持贯彻落实透明且可预测的监管制度，针对合规政策和目标达成共识。**
- 继续在国际反贿赂和腐败论坛上与中国积极开展合作。

lishment of the SCSE is a positive development, as it may ❶ help build a fair competition between foreign enterprises and domestic enterprises or ❷ improve enterprise compliance by restricting the market access for misconducting entities. But it is worth noting that almost one third of member expressed that “the data is insufficient to form opinions”.

As the SCSE develops, the enterprises operating in Chinese market need to invest more to understand and comply with relevant regulations. AmCham China shall continue to urge the Chinese Government to formulate and implement the SCSE as transparently as possible and consult more with the business community. Foreign enterprises should be able to express their views on laws, regulations and policies under the SCSE. Though the SCSE may indeed increase the transparency of regulations, create a fair competition environment in terms of corporate governance and compliance, and punish those non-compliant, it depends on how to enforce SCSE. As discussed above, the government has yet to provide a clear goal for SCSE, which makes it hard to assess the progress. In addition, the Social Credit System relies on the “blacklist”, which often results in excessive and unnecessary punishments. China rarely discloses its algorithm for analysing or inputting massive social credit data, which confuses enterprises in how to calculate social credit scores. So, the fact remains that the operation of such social credit system requires massive data collection and coordination of the Central Government, provincial and local governments. Simple data input or other artificial mistakes may lead to lower social credit score of an enterprise or other errors, and the resulting administrative restrictions or blacklist inclusion will hinder the operation of the enterprise. The administrative process to remedy the aforesaid mistakes need to be expressively embedded in the social credit policy framework and the enterprises shall be notified of the remedy (if any).

The Foreign Investment Law – Two Year Review

Both the *Foreign Investment Law of People’s Republic of China and the Regulations on Optimizing the Business Environment* became effective on January 1, 2020, aiming at resolving long-term issues faced by the foreign enterprises in their operation in China. Both the Foreign Investment Law and the Regulation are intended to provide equal rights to foreign investors and enterprises compared with domestic enterprises, covering IP, trade secrets and technology protection, which are the very issues faced by the foreign enterprises in the long term.

The *Foreign Investment Law* and its detailed implementation provisions if China shall protect the IP of foreign investors and enterprises, protect the rights of IP holders, and hold the IP infringers legally responsible. The Regulations established basic standards for a business environment of equal treatment for domestic enterprises, foreign enterprises, and other entities, which is conducive to fair competition in the market. Both the *Foreign Investment Law* and Regulations confirm that, the establishment of a foreign enterprise no longer requires reviews, unless the investment is restricted

by the Negative List for Market Access. It is also expressed in the *Foreign Investment Law* that, administrations and other authorities shall not force foreign enterprises to transfer technologies, an inspiring message for AmCham China.

Nonetheless, AmCham China still urges the Chinese Government to clarify how to implement the *Foreign Investment Law* and the Regulations, as evidence that the *Foreign Investment Law* and the Regulations are capable of creating an environment of complete fair competition in China for foreign enterprises in their implementation remains inadequate for our members. Furthermore, the issues of interpretation and implementation of these laws and regulations by national and local regulators still exist. Neither the *Foreign Investment Law* nor the Regulation has mentioned that SOEs, especially the central enterprises, enjoy more preference than private enterprises in China, subsidies and other invisible government guarantees for example. These preferences have distorted the market and exacerbated the unfair competition.

It is also worth noting that foreign enterprises operating in China still face increasingly stringent security laws, which can be seen in the *National Security Law*, the *Cyber Security Law* and relevant data compliance measures, though these measures have supported China to realize production policy goals. In addition, the Ministry of Commerce of China released the *Measures for Security Review of Foreign Investment* according to the *Foreign Investment Law*. AmCham China realized though, that China, like many other counties, may establish a foreign investment screening mechanism for reasons, it is frightening that these excessively broad regulations may cause adversary impacts on the Chinese economy. These regulations involve every economic activity involved in China’s *National Security Law*, which covers broader economic activities including agriculture compared with other major legal jurisdictions. These regulations are also over-generalized in investment, as they cover greenfield investments and the acquisition and merger of existential corporates. The regulations provided that the foreign investment shall be subject to reviews for five to six months after the application is accepted, usually after the consultancy period. It is still unclear that national security review is scheduled before, during or after other regulatory investment reviews, especially the anti-trust reviews. The lengthy reviews augment costs and uncertainties, causing negative impacts on foreign direct investments.

National security reviews in China have an increasing impact on foreign investment and operations. On January 18, 2021, China formally implemented the *Measures for Security Review of Foreign Investments* jointly issued by the National Development and Reform Commission (NDRC) and the Ministry of Commerce, in which the NDRC replaced the Ministry of Commerce in conducting security reviews of foreign-funded enterprises. Foreign investments in national defense and security sectors, or in important industries that have a bearing on national security shall be subject to security reviews pursuant to the new measures. However, the measures do not stipulate the standards that will be used to

determine if a company falls under the categories, nor does it provide a list of industries for reference, which increases compliance risks for foreign investments in China. The safest way to minimize compliance risk is to apply directly for negotiations with the NDRC. Once the security review is triggered, it often leads to complaints and even the cancellation of capital transactions, which increases investment costs and adversely affects foreign direct investments.

On January 1, 2022, Chinese government announced that the *Special Administrative Measures for Foreign Investment Access (Negative List) (2021 Edition)* (2021 National Negative List) and the *Special Administrative Measures for Foreign Investment Access in Pilot Free Trade Zones (Negative List) (2021 Edition)* (2021 FTZ Negative List) jointly issued by the NDRC and the Ministry of Commerce came into effect. The number of industries contained on the two lists was reduced from 33 items and 30 items to 31 items and 27 items, respectively. China launched the negative list system in 2017, and this is the fourth year in which China has shortened its foreign investment negative lists. However, the security review measures discussed above cover greenfield investments, which is likely to undermine the benefits of this further narrowing of the negative lists.

Foreign Investments and China's Dual Circulation

China has first announced the “Dual Circulation” pattern and emphasized the technological independence in May 2020, marking the turning point in China’s long-term policies and reflecting China will be less reliant on overseas market. This strategy was put forward at the juncture of China-American tension and the COVID-19 pandemic. According to the “Dual Circulation” strategy, the Chinese Government has published a series of policies to boost domestic supply chains, carried out the reform on the demand side, and encouraged investments into the key technological sectors. At the Fifth Plenary Session of the 19th Central Committee of the Communist Party of China in October 2020, technological independence (and self-improvement) was included as one of the national strategies. At the Central Economic Work Conference in December 2020, 8 key tasks of China were announced for 2021, including ensuring technological and supply chain independence as well as prioritizing domestic demands.

In December 2021, the Political Bureau of the CPC Central Committee held a meeting to formulate the economic work agenda in 2022. Focusing on achieving a high level of self-reliance and self-improvement, the meeting emphasized faster implementation of science- and technology- related policies, continued focus on key core technologies, enhancing strength in strategic science and technology areas, strengthening the dominant position of enterprises in innovation, and realizing a virtuous circulation between the science and technology, industry and finance industries.

Despite the increased emphasis on the domestic market and technological self-reliance, Chinese government officials have repeatedly said that China will continue to be open and welcome foreign investment. On August 23, 2021, Wang Wentao, Minister of Commerce of China, said at a State Council Information Office’s press conference that a greater focus on large-scale domestic circulation does not mean there is no need for foreign investment, and that such an interpretation is “one-sided and a misunderstanding.” Wang emphasized that most FIEs practice dual circulation and are deeply integrated in the international circulation through their business activities in China. Despite such rhetoric, the DCM has created concerns that the strategy will result in a focus on the acquisition of critical technology without allowing FIEs to compete with their technology on a level playing field in China.

China Standards 2035

As early as 2018, the National Standardization Administration (NSA) announced that it was drafting China Standards 2035, which attracted extensive attention from international media and was described as “an upgraded edition of MIC 2025.” On April 20, 2021, the NSA published *The Key Points of National Standardization Work in 2021*, which proposed active participation in international standardization governance, promoting the coordinated development of domestic and international standardization, and carrying out extensive standardization cooperation.

On October 10, 2021, the Central Committee of the Communist Party of China (CPC) and the State Council issued the *National Standardization Development Program*, which clearly stated development goals for 2025 and 2035. The *National Standardization Development Program* pointed out that by 2025, a high-quality standardized system should be established in all levels of society; the average formulation cycle should be shortened to 18 months with equal emphasis given to government and market interests when formulating standards; the conversion rate of international standards should be raised to 85 percent; and a national quality infrastructure system should be established. The *National Standardization Development Program* also proposed that the standardization management system with Chinese characteristics should be improved by 2035.

In addition to integrating standards domestically, China is also strengthening the influence of Chinese standards through the Belt and Road Initiative. On November 5, 2021, the State Administration for Market Regulation issued the *China Standardization Development Annual Report (2020)*. According to the report, China will continue to promote the signing of standardization cooperation agreements with national and regional standards bodies in Pakistan, Myanmar, Costa Rica as well as Africa; facilitate the Belt and Road Initiative; formulate standards for hydropower projects through cooperation between the Ministry of Water Resources and United Nations

Industrial Development Organization; promote civil aircraft standards that are mutually recognized in China and Russia; establish standard demonstration areas through cooperation with Mongolia and Papua New Guinea; and improve the platform on standards information for Belt and Road countries. China is working to enhance its voice in international standardization governance and influence existing systems, rules, frameworks, and standards.

Green Development, Carbon Dioxide Peaking and Carbon Neutrality

On February 22, 2021, the State Council issued the *Guiding Opinions of the State Council on Accelerating the Establishment of a Sound Economic System with Green, Low-Carbon and Circular Development* (“Guiding Opinions”). The *Guiding Opinions* mention two steps to establish and improve a green and low-carbon circular development economic system. First, by 2025, it is necessary to optimize the industrial structure, energy structure, and transportation structure; increase the proportion of green industries; raise the level of green infrastructure and clean production; and realize green transformation of production and lifestyles. It is also necessary to achieve a more reasonable allocation of energy resources, improve utilization efficiency, reduce total discharge of major pollutants and reduce the intensity of carbon emissions by 2025. Second, the *Guiding Opinions* mention that by 2035, the energy resource utilization efficiency of key industries and key products should reach advanced levels by international standards, resulting in green production and lifestyles.

On October 24, 2021, the State Council and the CPC Central Committee jointly issued the *Working Guidance for Carbon Dioxide Peaking and Carbon Neutrality in Full and Faithful Implementation of the New Development Philosophy*. The guidance emphasizes the integration of carbon dioxide peaking and carbon neutrality into the overall economic and social development. By 2025, China will have created an initial framework for a green, low-carbon and circular economy, and greatly improve the energy efficiency of key industries. The key content of the guidance includes the following:

- Promote comprehensive green transformation in economic and social development;
- Facilitate in-depth industrial restructuring;
- Accelerate development of a clean, low-carbon, safe and efficient energy system;
- Accelerate the construction of a low-carbon transportation system;
- Improve the quality of green and low-carbon development in urban and rural areas;
- Strengthen research on green and low-carbon technologies, and promoting their application;
- Continue to consolidate and improving carbon sink capacity;
- Promote a green and low-carbon mode of opening up;

- Improve laws, regulations, standards, and statistical and monitoring systems; and
- Improve policy mechanisms.

Common Prosperity and Its Industrial Policy Impact

“Common prosperity” has become the main goal of economic and social development during the 14th Five-Year Plan period. On August 17, 2021, Xi Jinping proposed a discussion on the issue of common prosperity at the 10th meeting of the Central Finance and Economics Committee. The meeting established the coordination and basic supporting institutional arrangements for initial distribution, redistribution and third distribution of income. Based on the three-layer allocations, the government encourages civil societies to voluntarily make private donations and contribute to charities. Influenced by the goal of common prosperity, industrial policies will re-evaluate the relationship between equity and efficiency and will bring more investment and development in infrastructure construction and public service-related industries.

In the real estate industry, the goal of common prosperity will promote government-led investment in social housing projects. The Chinese government has strengthened supervision of the real estate market, especially in 2020 and 2021. In the first half of 2021, the Chinese government emphasized “no housing speculation” and issued various regulations aimed at the real estate market. First, the Chinese government controlled the flow of funds into real estate from the bank side and prevented consumer loans from entering the real estate market. Subsequently, on the land supply side, the government controlled the pace of land acquisition by real estate companies. On February 25, 2021, the Ministry of Natural Resources issued a residential land classification regulation document, requiring 22 key cities to issue residential land announcements no more than 3 times within a year. At the same time, the Ministry of Housing and Urban-Rural Development and the State Council emphasized basic systems and supporting policies for guaranteeing rental housing through land, approval, tax, and finance policies.

In the manufacturing industry, common prosperity will also bring about higher requirements for industry development, which requires both high yield and high quality. The employment opportunities brought about by the development of the manufacturing industry are of great significance to realizing common prosperity. The industrial policy under the goal of common prosperity will promote development of the renewable energy industry and the manufacturing industry in the direction of advanced technology and information technology and will also promote the transformation of the traditional manufacturing industry to achieve the carbon peaking and carbon neutrality goals.

In the education industry, on May 21, 2021, the General Office of the CPC and the General Office of the State Council jointly

approved a set of guidelines to ease the burden of excessive homework and off-campus tutoring on students undergoing compulsory education. The guidelines clearly state that first, no new certifications for any off campus tutoring institutions for students in compulsory education will be approved, and all existing tutoring institutions shall be registered as non-profit entities. Second, tutoring institutions are not allowed to go public for financing and capitalized operations are prohibited. Third, the guidelines propose the establishment of a tutoring content filing and supervision system. The guidelines also mention that the use of overseas education courses and advanced tutoring are strictly prohibited. In addition, the guidelines state that tutoring should not be organized on national statutory holidays, rest days, as well as winter and summer vacations. Finally, the fees charged by tutoring institutions will be incorporated into government-guided price management, which will be piloted in individual regions before being rolled out nationwide.

confidence in the predictability and consistency of legal and regulatory environment. Ensuring the consistency in data privacy laws and regulations at national and local levels in each field as well as regulatory consistency.

For the US Government

- **Participate in bilateral conversations, deepening exchanges, supporting implementation of transparent and predictable regulatory institutions and reaching consensus in compliance policies and goals.**
- Continue to cooperate with China on the International Anti-Bribery and Anti-Corruption Forum.

Recommendations

For the Chinese Government

- **Further clarify the responsibilities of the National Supervisory Commission and local supervisory commissions to ensure the consistency in regulatory enforcements. Transparency is critical to the anti-corruption push. Ensuring transparency and ensuring consistency in legal interpretation and due procedure in place in the legal regimes.**
- Issue bonding guiding opinions and interpretations for the *Anti-Unfair Competition Law* in time to ensure transparent and open enforcements.
- Face this issue: foreign enterprises in operating in China often feel unwelcome or suffer unreasonable blames due to the regulation and enforcement provisions (including relevant articles in the *Anti-Unfair Competition Law*). It is necessary to issue Central Government decrees to emphasize the benefits from legally equal treatment. Many foreign enterprises value the compliance and have invested notable resources, however they have not been broadly recognized by the Chinese enforcement authorities.
- Introduce transparent, consistent and rule-based institutions that live up to international standards, offering national treatment for foreign investors in China, and clarifying the terms of the *Foreign Investment Law* and the supporting implementation provisions.
- Improve the transparency in law and regulation drafting, implementation and enforcement (including the introduction of the Social Credit System for Enterprises) to strengthen enterprises'

Customs and Trade

Introduction

In 2021, the General Administration of Customs of China (GACC) made progress in COVID-19 prevention through action at China's ports, while at the same time working to stabilize and enable foreign trade. With respect to efforts to stabilize trade, the GACC focused on optimizing customs clearance procedures, revising the *Customs Law*, further decentralizing customs inspection procedures, and advancing the authorized economic operator (AEO) system. Member companies of AmCham China are appreciative of these efforts. In contending with the COVID-19 pandemic and developing related prevention policies, GACC authorities across the country undertook a series of actions to accelerate the import of supplies, equipment, and medicine required for the control of COVID-19, to address transportation and shipping delays resulting from COVID-19, and to prolong the period in which enterprises can make import/export tax payments and customs declarations. The extension on tax payments and customs declarations helped to facilitate the restoration of regular business operations of many import/export businesses in China, and laid a solid foundation for economic recovery.

Given China's comparatively rapid response to and economic recovery from the impact of COVID-19, this chapter focuses on several ongoing challenges and issues with respect to customs procedures and policies for AmCham China member companies. As measured against global standards, China has room to improve its customs and trade procedures. In AmCham China's 2022 Business Climate Survey (BCS) Report, 12 percent of respondents reported they are treated unfairly with respect to customs procedures relative to domestic companies, rising three points since the previous year.

AmCham China encourages the GACC and other customs authorities to continue its reform and to adopt international best practices. Member companies would benefit from additional guidance and clarity on the ongoing overhaul of the *Customs Law*, import and export activities in the cross-border e-commerce sector, voluntary disclosure processes, and preferential treatment for Authorized Economic Operators (AEOs). Although China's customs procedures are improving, there is still room to improve the efficiency, uniformity, and convenience of these procedures. Improving the efficiency of China's customs clearance procedures will not only boost economic development, but also enhance China's global competitiveness.

Customs Law Amendments

In 2019, GACC initiated an overhaul of the *Customs Law*, which was last reformed in 2000. The amendment process and associated outcomes are of great significance and concern to both AmCham China members and broader industry. We hope this legislative reform effort will be incorporated into the Five-year Legislative Plan of the National People's Congress (2018-2023) as soon as possible.

As we did in the 2021 *White Paper*, we continue to recommend the authorities consider the following:

- Continue to evaluate and rectify inconsistencies between the *Customs Law*, its implementing regulations, and the associated regulations for customs inspections and quarantines to facilitate smoother overall implementation of customs procedures.
- Incorporate the provisions for voluntary disclosure into the revised *Customs Law*.
- Clearly define the scope of the exception clause for "false declarations."
- Ensure that the *Customs Law* remains consistent with related laws and regulations such as the *Foreign Investment Law* (effective January 1, 2020), *E-commerce Law* (effective January 1, 2019), *Encryption Law* (effective January 1, 2020), *Export Control Law* (effective December 1, 2020).
- Work to clarify legal issues with respect to the application of new technologies such as electronic documents, blockchain, and Big Data into customs procedures.
- Consult frequently with industry and associations like AmCham China during the amendment and reform process of the *Customs Law*.

The Policymaking Process for Customs-related Regulations

Considering the reform of the *Customs Law*, AmCham China wishes to reemphasize that the current policy development process for customs-related legislation is characterized in part by a lack of transparency, inconsistent consultation with industry, and abrupt implementation of unclear policies that leave enterprises with insufficient time to adapt to the required changes.

海关和贸易

引言

2021年，中国海关在口岸疫情防控和促进外贸稳增长两个方面都付出了极大的努力并取得了非常瞩目的成就。中国美国商会（以下简称商会）赞赏中国海关在持续推进跨境贸易便利化，优化通关程序，研究修订《海关法》，推进海关查验程序的“放管服”改革，以及推进授权经济经营者制度等方面做出的努力。尤其是疫情期间，全国海关一边严防疫情输入，一边实施一系列扶持政策，加快疫情防控工作所需的用品、设备和药品的进口，解决疫情所造成的运输延误问题，并延长公司缴纳进出口税和报关的期限，为广大的进出口企业恢复正常经营秩序提供了便利，也为实现经济复苏打下了坚实的基础。

鉴于中国对新冠肺炎疫情做出了相对迅速的反应，经济恢复也较为快速，本章将重点探讨商会会员企业在海关程序上面临的问题与长期挑战。按照全球标准衡量，中国仍有改进海关和跨境贸易程序的空间。在商会发布的2022年《中国商务环境调查报告》中，12%的受访者表示，相对于内资企业，他们觉得自己在海关手续方面受到了不公平的对待。

商会鼓励海关总署和其他机构继续改革，并采用国际最佳做法。对《海关法》、跨境电子商务部门的进出口活动、自愿披露程序以及对授权经济经营者的优惠待遇等方面的进一步明确将有助于商会会员企业在中国的进一步发展。尽管中国在持续完善海关通关程序，但这些手续的效率、统一性和便利程度仍有提高的空间。提高中国通关程序的效率不仅会促进经济发展，也会增强中国的全球竞争力。

海关法的修订

2019年中国海关启动了《海关法》的修订工作，这

次修订是继2000年大修之后的又一次重大调整。此次修订具有非常重要的意义，商会和业界都非常关注。希望尽快将此法纳入全国人大五年（2018-2022）立法计划，扎实推进。

尽管此次修订已于2021年结束，但商会仍期望提出以下建议：

- 继续评估和纠正《海关法》及其实施条例和有关海关检查和检疫条例之间不一致之处，以促进海关程序的全面顺利实施；
- 将主动披露纳入新《海关法》；
- 明确申报不实的免责条款；
- 其他一些新的法律都会涉及《海关法》，例如《外商投资法》、《电子商务法》、《密码法》、《出口管制法》等，充分考虑与这些相关法律的衔接；
- 明确新技术应用的法律问题，如电子文档、区块链、大数据等等；
- 充分听取企业和业界的建议。

政策制定程序及海关系统相关建议

商会注意到目前海关方面的立法及政策制定过程中，有缺乏透明度、与行业的协商不足、执行突然且政策内容不清晰明确——这导致企业没有足够的时间来适应所需的更改。

商会建议在重大政策法规正式生效实施前能提前进行公示，并充分听取各方意见建议。在重大政策发布时，建议视具体情况给予企业3至6个月的准备期以准备和应对任何变化。政府还应确保在制定新法律法规之前征求各方的反馈意见，并考虑根据收到的反馈意见修订此类立法。

商会会员企业在具体的业务实践中，时有发生遇到口岸海关依照没有公开的内部指引、规程、意见执行具体管

We recommend that public announcements be made prior to the implementation of major policy changes or new regulations that are likely to have an impact on the industry in a manner that affords enterprises sufficient time to adapt. After the release of key laws, regulations, or policies, we recommend a grace period of three to six months be implemented for enterprises to prepare and respond to any changes.

The government should also solicit public feedback from all stakeholders prior to the enactment of new laws and regulations and consider revising such legislation on the basis of the feedback received.

Port authorities sometimes follow guidance established in internal documents, procedures, and opinions. Our member companies cannot comply with these regulations as they are often not made public. We recommend the government end the use of unpublished directives or policies and instead ensure that all industry regulations are made public following an appropriate notification period.

Moreover, because access to China's customs clearance system and its associated parameters are largely unavailable to industry, enterprises encounter challenges when they attempt to link to the limited functions of the system in which they are permitted as part of the normal course of their business. In order to facilitate improved access, the GACC should open up a greater number of areas of the customs system to enterprises and enable them to link a greater portion of their internal systems to the state's customs system. For instance, we recommend that the customs system permit enterprises to authenticate their access to the system independently by entering their unique 18-digit social credit code.

Customs Supervision and Inspection

Customs inspection is a law enforcement activity performed as a necessary element of normal trading activities. Customs authorities must verify whether the goods being traded are consistent with their legally declared contents. Goods to be imported and exported and their means of transportation may all be subject to inspection.

Following the 2018 reform by GACC to integrate the formerly separate customs declaration form and quarantine declaration form, the vast majority of imported and exported goods are now inspected at Chinese ports. There are, however, several issues with the current inspection and supervision process that remain.

The first is that a large proportion of inspections conducted at these ports require that packages be opened for review; that is, goods are removed from the transport vessel, the packaging is removed, and customs officials then inspect the physical condition of the goods in question. For certain

products, such as those that are dustproof or dust resistant, anti-static, contain fresh or perishable goods, or additional exceptional circumstances, importers, exporters, their agents, or cosigners can apply to have customs personnel inspect and approve goods at a specified time and place such as a factory, warehouse, or construction site.

However, the capacity and resources of the customs authorities are limited. There is a lack of uniform implementation of the provisions for inspections of special goods. Assigning customs officials to inspection sites designated by importers, exporters or their agents takes a considerable amount of time and is challenging to execute in practice. Products awaiting inspection at these sites have been subject to differential degrees of damage. The method of "non-intrusive inspection" advocated by the GACC in recent years has not been widely adopted and that is also problematic.

We recommend that the GACC consider the complexity associated with the import and export of a wide range of valuable commodities. Specific operational guidelines should be issued to regulate customs procedures for special products. Reform efforts should also consider using data on an enterprise's credit history/credit rating and data on the technical specifications and parameters of these special products provided by enterprises themselves, in combination with other forms of Big Data, to conduct risk assessments. The purpose of these proposals is not only to protect the interests of enterprises but to improve the overall efficiency of the customs clearance process.

The second issue is that for inland exporters located far from the coast, employees from the exporting enterprise are frequently required to travel to the port of inspection and provide details on the goods being exported. This inconvenient requirement increases operating costs for enterprises and decreases export clearance efficiency. We recommend that customs inspection representatives be stationed in a greater number of non-coastal areas where many enterprises are located so that exporters can address these issues locally rather than having to travel to the coast.

The third issue is that towards the end of 2019 and early 2020, our members noticed that the timing of customs inspections shifted from a model characterized by inspections conducted at the port of entry to one in which customs inspections are conducted when the goods arrive at their final destination. We appreciate such changes may be intended to reduce the concentration of inspections conducted at the port of entry and improve customs clearance efficiency thereby improving business operations. In practice, however, due in part to insufficient availability of inspectors at certain destinations, customs inspections cannot be arranged in a timely manner. The result is that after being released from the port of entry, the goods are subject to a wait that can last from several days to several weeks before an onsite inspection at the destination can be arranged. The longer the delay, the greater the increase in

理措施，而企业由于无法事先了解相关规定而未能提前完善各项合规准备。建议海关对此类内部指引、规程、意见等提炼出针对企业的具体要求，经适当调整后以公告等形式通知大众。

此外，由于很多海关系统参数未向企业开放，企业接入海关系统时对接不畅。商会建议海关总署向企业开放更多的工具权限，以实现企业内部系统与海关系统的平稳流畅对接。例如，建议海关系统允许企业通过输入其唯一的 18 位社会信用代码来独立验证其对系统的访问权限。

海关监管与查验

海关查验是海关履行监管职能的执法监管行为，对于维护正常贸易秩序是非常必要的，海关查验的对象包括进出口货物和运输工具，核实检查对象是否与申报内容相符。

在海关通关一体化之后，绝大部分进出口货物在口岸进行查验作业，主要存在以下三个问题。

首先商会注意到口岸海关在实施查验中，有较大比例是要求开箱查验，即将货物从运输工具中取出并拆除外包装后对货物实际状况进行核验。对于一些特殊产品，如防尘防静电或者鲜活品，虽然海关规定在特殊情况下，经进出口收发货人或其代理人申请，海关审核同意，在指定时间到工厂、仓库或建筑工地等指定地点对货物进行检查和批准。

但是在实际操作过程中，各个口岸海关受人力资源等要素的限制，对于该要求实施的标准不统一，指派海关官员到企业指定场所进行查验耗时较长、不容易实现，也对这些现场待检验的产品受到不同程度的损坏。近年来，国家质检总局倡导的“非侵入性检查”方法没有得到广泛采用，也存在问题。

商会建议海关总署考虑各种贵重商品进出口的复杂性，颁布具体的操作指南，以规范特殊产品的海关程序。改革工作还应考虑利用企业信用等级和企业自行提供的技术规格和参数数据，结合大数据的其他形式进行风险评估。这些建议的目的不仅是为了保护企业的利益，也是为了提高通关过程的整体效率。

第二个问题是，对于远离海岸的内陆出口商，在口岸

海关实施查验时，经常要求出口企业的雇员前往检验港对出口货物进行说明解释。这一要求不仅增加了企业的经营成本，也降低了出口清关效率。建议仍然保持企业所在城市海关查验的机制，方便企业就近向当地海关进行说明和解释。

第三个问题是，在 2019 年底和 2020 年初，商会会员企业注意到，海关已从在入境港进行检查的模式转变为在货物到达最终目的地时进行海关检查的模式。商会理解这种改变可能是为了分散集中度，提高通关效率，达到方便企业的目的。但实际上，有些目的地海关由于人手配置等方面的原因，无法随时安排查验，货物在口岸放行运送到目的地后需要几天至几周的时间等待安排安排查验，造成进口货物积压，产品的供应链周期变长，运营成本增加。

统筹安排各地海关查验能力，对于目的地海关暂没有足够人手或资源及时处理查验的仍由入境口岸海关安排查验。商会同时建议海关在对入境查验，清关等操作做出调整时，能预先考虑到可能存在的问题并提前落实必要的配套调整措施。

“两步申报”

2021 年中国海关在推动“两步申报”通关模式上取得了很大的进展。此模式在多地海关成功试运行之后，于 2020 年 1 月 1 日开始正式推广到了全国。“两步申报”模式大大提高清关效率，商会建议在以下方面做出进一步改进：

- 原有的“一步申报”应平行维持，并应允许企业根据其进口的产品选择使用相应的清关方式。此外，商会建议不应强制要求企业使用“两步申报”来申报，而是允许公司在自愿的基础上进行适当的选择。
- 虽然商会主张企业可以自由选择其报关模式，但商会同时也注意到，一步式简易报关模式很繁杂。商会鼓励进一步精简“一步申报”方式所需的文件。一种方法是为位于保税区的授权经济经营者简化许可证或检验检疫程序的要求。这些要求可完全从第一步初步申报中删除，仅作为第二步全面申报的一部分。
- 允许企业在第二步申报时，对第一步申报不够准确的信息，例如某一特定货物的具体数量等，予以更正。
- 为授权经济经营者认证企业提供更灵活和 / 或简化

operating costs borne by the importing enterprise.

For destinations where the customs authorities lack sufficient manpower or resources to handle inspections in a timely manner, inspections should be arranged at the port of entry. We also recommend that when adjustments or alterations are made to operational procedures such as inspections of imported goods and customs clearance procedures, the customs authorities should strive to lay the groundwork well in advance to ensure that necessary adjustments do not seriously hamper business operations.

Two-step Declaration

In 2021, the GACC continued implementation of the “two-step declaration” for customs clearance, building on progress seen in 2019. After a successful trial in several port cities, the two-step was officially implemented nationwide on January 1, 2020. Although the “two-step declaration” has increased customs clearance efficiency, we recommend further improvements be made in the following areas:

- The original “one-step declaration” should be maintained in parallel and enterprises should be allowed to choose which declaration they would like to use to clear their imports. Moreover, we recommend that enterprises not be required to use the “two-step declaration” to file their customs declaration, and instead be permitted to choose appropriately on a voluntary basis.
- While we advocate for enterprises to have the freedom to choose its customs declaration model, we note that the one-step summary declaration model is burdensome. We recommend further streamlining the documentation required for the “one-step” summary declaration. One way to do so would be to permit AEOs located in Bonded Zones to enjoy simplified information provision requirements for licensing, or inspection and quarantine procedures. These requirements could be removed entirely from the first step preliminary declaration and required only as part of the full declaration in the second step.
- In instances where information is inaccurately reported in the first step of the declaration, such as an instance where the quantity of a particular good is incorrectly reported, we recommend enterprises be allowed to make corrections during the second step of the declaration.
- Authorities should provide more flexible and/or streamlined procedures for AEO-certified enterprises. AEO-certified enterprises are recognized by the GACC and qualify for simplified customs procedures, thereby making the clearance process more efficient.

Voluntary Disclosure

According to China’s *Regulations on Customs Inspections* and the *Implementing Regulations on Customs Inspections*, volun-

tary disclosure by a customs enterprise permits enterprises to conduct independent self-examinations or to undergo an examination by an entrusted intermediary agency. If these examinations uncover that there has been an underpayment of customs duties, taxes or other violation of the above Regulations, and the enterprise responsible, acting on its own initiative, reports the violation in writing to the GACC, the GACC shall address the violation as appropriate and in accordance with the law.

Other developments, including the issuance of the *General Administration of Customs Announcement No. 161* [2019], which clarified matters related to handling voluntary disclosures of tax-related violations, represents a positive development with respect to the construction of a voluntary disclosure system. Despite this progress, AmCham China members would like to see continued progress regarding voluntary disclosures of customs violations. For instance, in practice and despite the issuance of *Announcement No. 161* [2019], the process to file and correct an error under voluntary disclosure remains lengthy. It can take member companies several months to receive approval following the filing of its voluntary disclosure report and application for an exemption from associated late fees. We recommend that the GACC seek to streamline this process and shorten the time to approve a voluntary disclosure application and associated exemption. One potential solution could be to permit AEO-certified enterprises to enjoy expedited approval procedures.

More broadly, as we did in the 2021 *White Paper*, we continue to recommend the following to improve voluntary disclosure procedures:

- Procedures with respect to voluntary disclosures for violations or issues beyond tax-related violations should be clarified in writing through the promulgation of laws or regulations.
- Strengthen the legal authority of the voluntary disclosure procedure. We recommend provisions governing voluntary disclosure be enshrined in the *Customs Law* or in separately introduced voluntary disclosure regulations. Such regulation should be introduced as soon as possible.
- Clarify the scope of administrative penalties that can be levied for violations of voluntary disclosure provisions and ensure information regarding those penalties is subject to public comment and the final version made public.
- Clarify whether “intentionality” is considered with respect to legal compliance with and violations of voluntary disclosure.
- Combine reform of voluntary disclosure and reporting of customs declaration errors with reform of the “two-step declaration” to provide enterprises with reasonable flexibility when proactively addressing errors in reporting. Reasonable flexibility should aim to address the current challenges enterprises face in modifying their customs declarations forms when they

的程序。特许经济经营者认证公司得到海关总署的认可后，可简化其通关手续，从而提高通关效率。

主动披露

根据《中华人民共和国海关稽查条例》和《〈中华人民共和国海关稽查条例〉实施办法》有关规定，海关企业主动披露，是指进出口货物放行后，与进出口货物直接有关的企业、单位自行或者委托社会中介机构开展自查，发现存在少缴、漏缴税款或者违反海关监管规定的情况，主动书面报告海关，海关依法予以酌情从轻处置的管理行为。

近年来，中国海关的主动披露制度建设取得了不少令人鼓舞的成果。海关总署公告 2019 年第 161 号对关于处理主动披露涉税违规行为有关事项进行了明确，其出台给了企业一个合法修正错误的机会。但在实际操作过程中，整个处理过程往往会耗费较长时间，例如在接收主动披露报告环节，申请减免滞纳金环节，往往会需要数月时间才能得到批复。商会建议海关优化主动披露流程，缩短操作时间，特别是针对特许经营认证企业给予更加便利的操作政策。

更广泛地说，正如商会在 2021 年《美国企业在中国白皮书》中所提出的那样，为了改进自愿披露程序，继续建议如下：

- 建议对涉税违规行为之外的其他业务的主动披露也进行相关地明确，将主动披露制度有效地推广和运用。
- 建议提升主动披露的司法层级，例如，在《海关法》里加入主动披露的相关条文，或者尽快出台单独的主动披露条例。
- 建议细化并明确处罚幅度和条件，并公开信息。
- 关于“守法容错”，建议海关界定是否“故意”在先。
- 关于申报错误的主动披露和改单，建议可以结合“两步申报”的改革进行完善，在改单的操作上给予企业一定的、合理的灵活性，真正解决“改单难”的问题。
- 建议海关利用大数据等新兴技术对企业的主动披露进行事后分析和监控，尽可能地排除“恶意”主动披露的行为。
- 建议海关给予高级认证企业更便捷的主动披露优惠政策和待遇。

- 对于企业主动披露的违规行为，不纳入企业信用考核（不论处罚金额多少）。
- 建议明确主动披露的时效性，例如，新加坡规定 20 年，大多数国家 3-4 年。

授权经济经营者（AEO）制度

中国海关在推进授权经济经营者制度过程中取得了喜人的成果，很好地响应了国家大力建设信用体系的改革导向。近年来，海关陆续制定出台了针对进出境快件运营人、跨境电子商务平台企业、水运物流运输企业、航空物流运输企业和公路物流运输企业的单项标准，进一步扩充了 AEO 制度体系，商会对于海关总署在建立健全授权经济经营者制度上做出的巨大努力表示支持与赞赏。

商会期待海关未来在完善授权经济经营者制度政策的过程中，根据所涉及的不同行业的具体特点，细化不同类型认证企业的便利化管理措施。伴随着快件运营人认证单项标准的出台，期待海关能够制定针对快件运营人认证企业的具体便利化措施，例如，针对不同等级认证企业适当降低快件低值类货物的查验率；简化报关单据随附单证，快件运营人在申报进出口快件货物时可不向海关提交随附单证，海关审核时如需要再提交。

同时针对其他相关行业增加更多的便利管理措施，例如相关行业企业可以优先参与海关改革试点；可以优先受邀参与海关政策修订讨论；企业可向海关申请政策方面的培训；两步申报模式中可向海关申请免除担保的企业范围建议扩大至“一般认证企业”等。

获得授权经济经营者认证提升了企业的信誉度和知名度，商会也建议各直属海关进一步加强授权经济经营者认证企业的管理措施，充分发挥“绿色通行证”的价值。

此外，商会鼓励海关未来在完善授权经济经营者制度的过程中，能够针对不同行业的特点建立一定的容错机制。例如，进一步简化企业主动披露的申请方式和海关批准程序，鼓励企业加强自我管理和自我检查，帮助企业加快合规步伐。

截至 2021 年 10 月 15 日，中国海关已与 46 个国家和地区签署了 AEO 互认安排，希望中国能与更多的国家达成 AEO 互认，并给予授权经济经营者企业更多、

discover an error has been made.

- Adopt greater use of data-driven technologies to conduct after-the-fact analyses and monitor voluntary disclosure by enterprises to eliminate the possibility of “malicious” voluntary disclosures. One of the benefits of voluntary disclosures are that the fines associated with errors in voluntary disclosure can be reduced or waived in certain cases. Thus, there is incentive for certain enterprises to intentionally engage in non-compliant acts and then make a “malicious” voluntary disclosure of noncompliance in order to face a reduced penalty. The use data-driven technologies can help to reduce instance of malicious disclosures and continue to encourage compliant enterprises to benefit from truthful voluntary disclosures.
- Implement preferential policies for AEO and other certified operators to make the voluntary disclosure process more convenient.
- Do not include violations of voluntarily disclosure provisions by enterprises in the social corporate credit assessment (regardless of the monetary value of the penalties imposed). Extend the period after completing the import/export declaration for voluntary disclosures, which is currently 3 months. Such a length is too short; it can take enterprises up to three months from the customs declaration alone to determine an error has been made. In contrast, Singapore permits disclosures within 20 years, while most countries have timelines of three or four years. AmCham China believes a period of three or four years is reasonable.

AEO System

In recent years, the GACC oversaw positive results with respect to its efforts to promote the AEO system and increase trust in China’s reform and is part of China’s construction of a comprehensive credit management system (e.g., the social credit system). Over the past few years, GACC has expanded the scope of the AEO system and issued unique, individual standards for inbound and outbound express delivery operators, cross-border e-commerce platforms, water transport and logistics entities, air transport and logistics entities, and highway logistics entities. AmCham China is supportive of the efforts of the GACC to improve and reform the AEO system.

We look forward to the GACC continuing to improve the AEO system by taking into account the specific characteristics of different industries involved and refining the convenient measures made available to certified enterprises to facilitate more efficient customs clearance measures. For example, following the promulgation of certification standards for the express mail industry, we expect the GACC will formulate measures that permit AEO-certified entities to reduce the number of inspections they must complete for low-value goods arriving via express mail. We also expect the GACC to reduce the volume of customs declaration

documentation that must be submitted in support of the import/export of express delivery documents and goods and permit the same documents to be submitted multiple times if required during the customs review process.

Additionally, policies that attempt to streamline the customs clearance process for AEO-certified enterprises in other industries would be welcomed. These could include priority participation for certified enterprises in pilot customs reform efforts, priority invitations to participate in dialogues concerning revisions to China’s customs policies and allowing these entities to apply to the GACC to participate in customs-related training. With respect to the “two-step declaration,” we recommend that enterprises permitted to apply for certain exemptions be expanded to include AEO generally-certified enterprises.

Obtaining an AEO certification has improved both the credibility and brand awareness among the GACC for those enterprises who obtain such certification. We recommend that local customs bureaus strengthen their regulations pertaining to AEO-certified enterprises to enable them to take full advantage of the “green lane” benefits (which include expedited licensing, registration, and release of goods).

Moreover, we recommend that the GACC establish a fault-tolerance mechanism that is designed to reflect different operating characteristics and realities across industries. For instance, the GACC could simplify the application and customs approval procedures for enterprises that voluntarily disclose their violations, encourage enterprises to strengthen their internal compliance mechanisms, and in doing so to help enterprises accelerate their level of compliance.

Until, October 15, 2021, China has signed AEO mutual recognition agreements with 46 countries and regions. We encourage China to expand the number of countries with which it has an AEO mutual recognition agreement in place and in doing so ensure that AEO-certified enterprises enjoy more streamlined customs clearance procedures. Multinational companies benefit from global supply chains that enable them to produce their products and services at scale. A greater number of AEO mutual recognition agreements and associated policies will accelerate customs clearance, facilitate trade, and promote global economic development.

Express Delivery Shipments

Class C Inbound and Outbound Express Shipping

China is a significant exporter of business-to-consumer (B2C) products. Via cross-border e-commerce and retail strategies that promote a “sell global” strategy, a greater

更有获得感的通关便利。跨国企业都是跨国供应链模式，更多的授权经济经营者互认便利措施，将大大推动通关便利，促进贸易便利化，推动全球经济发展。

海关与贸易（快递寄递服务行业）

C类进出境快件退运

中国是 B2C 出口大国，近年来伴随着跨境电子商务的迅猛发展，更多的中国制造通过 B2C 出口的形式“卖全球”，走向国际市场。伴随着整体体量的增长，出境货物在国外被拒收或无法投递需要退运回国的情况越来越多的出现。

2020 年 1 月起跨境电商出口退货海关监管业务正式启动，全国各地陆续上线电商出口退货功能。商会非常赞赏海关在跨境电商领域率先试点出口退货功能，成功打通跨境电商出口退货通道。

在海关监管对快件的分类方式中，C 类快件指价值在 5000 元及以下的低值快速货物，其“低值”、“大量”的特点使 C 类快件与普通货物之间存在着显著的差异，因此 C 类快件对于通关便利性的需求远高于普通货物。未来我们期待海关可以将跨境电商出口退货的先进做法推广到 C 类快件的管理上，例如，在企业能够向海关提供相应 C 类快件货物原始出口记录的情况下，支持实现退运进口免税免证；建立高效、安全、便捷的 C 类快件出口退货通道，将解决 C 类快件出口商品退运进境渠道不畅的痛点，实现建立正向物流和逆向物流的完整闭环。该问题的妥善解决，势必有助于减少中小企业负担，促进小微企业进一步拓展海外市场，提升中国企业的国际市场竞争力。

低值货物与个人物品监管

伴随着全球跨境电子商务的迅猛发展，进出境低值货物的数量在全球范围内都呈现出不断上涨的趋势。而贸易便利化是支持正在不断成长壮大的跨境电子商务贸易的必要条件，因此，包括欧盟、美国在内的许多国家和地区都出台了简化低值货物通关手续的相关政策。国际上许多国家也都设有比较合理的低值免税政策，以美国为例，自 2016 年 3 月 10 日起，美国进口低值免税申报（De Minimis）金额上限为 800 美元，基于这项规定，除限定性货物（即特殊类别）外，其余所有申报价值低

于 800 美元的货物都免于征收进口关税和增值税。

商会建议中国海关参照国际惯例，简化低值货物通关手续，并借鉴国际上对低值货物普遍采取的简易申报程序，如提高申报限值、减少随附单证、简化商品归类与申报要素、采用单一税率等。这一措施可以有效提高通关效率，提升贸易便利化水平。对低值货物适用相对于大宗贸易更为简便的通关流程，在当前通关提速降费的大环境下，既可以减少海关的行政成本，又可以降低企业的通关成本，减轻企业负担，实现企关双赢。

海关出入境个人物品管理是目前影响贸易便利化的另一个重要因素。根据《中华人民共和国海关对进出境快件监管办法》第二十一条规定：“个人物品类进出境快件报关时，运营人应当向海关提交《中华人民共和国海关进出境快件个人物品申报单》、每一进出境快件的分运单、进境快件收件人或出境快件发件人身份证件影印件和海关需要的其他单证。”这一要求使快件运营企业需要逐单对进口个人物品进行身份证验核。身份证验核应该是执法部门履行的职责，要求快件运营企业逐单对进口个人物品进行身份证验核在具体操作中给企业带来了巨大的人力与经济负担，降低了所涉快件的时效。

单一窗口的建立实现了绝大多数监管证件的联网核查，给企业带来了巨大的便利。身份核查也应该效法这一成功实践，通过不同政府部门间全面实现信息共享减轻企业负担。商会提议海关与其他政府部门之间通过信息互联实现个人身份证信息验证，以简化流程提高效率，并减轻企业因委托第三方认证机构而产生的额外运营成本。同时希望海关可以简化申报程序，允许自然人或其代理人以无纸化方式进行申报。

在 B 类个人物品申报的限值方面，现有的申报限值为 800 元人民币（港澳台地区）或 1,000 人民币（除港澳台外的国家或地区）。由财政部、海关总署、税务总局共同发布的《关于完善跨境电子商务零售进口税收政策的通知》中规定，自 2019 年 1 月 1 日起，将跨境电子商务零售进口商品的单次交易限值由人民币 2,000 元提高至 5,000 元。商会建议海关在对 B 类个人物品申报的限值方面与跨境电商零售进口商品的单次交易限值保持政策上的一致性，将 B 类个人物品申报的限值提高至 5,000 元人民币。

number of Chinese-made products are entering the international market via B2C transactions. At the same time, with the increase in the overall volume of sales, a greater number of exported goods are being rejected by customs at the overseas port of entry, resulting in them being marked as “undeliverable” and returned from overseas back to China.

Beginning in January 2020, customs authorities established a cross-border e-commerce channel for processing export returns, and e-commerce export return services have been launched across the country. Guangzhou was the first city to launch such a mechanism. We appreciate the initiative demonstrated by the GACC to pilot the export return function and successfully implement a system for returning exported goods.

Express shipments classified as “Class C” are taxable items valued at RMB 5,000 or less excluding those goods involving export licenses. Class C shipments are typically low-value, high-volume goods, and the demands these goods place on customs clearance procedures is higher than that of other types of goods. We recommend the customs authorities to extend this approach to processing export returns to all Category C shipments. Along these lines, we anticipate the customs authorities will introduce new policies related to the return of Class C shipments. We recommend that if an enterprise can provide to the customs authorities the original export record of the goods that are to be returned, then return shipments should be permitted to be imported tax-free. The establishment of an efficient, safe, and convenient export and return channel for Class C export goods will address current “pain points” that appear in current entry channels for Class C export goods, thereby moving toward a completely “closed loop” that permits the efficient delivery and return of category C shipments. A definitive solution to this problem will reduce the burden on small-and-medium-sized (SMEs) as they manage return shipments, encourage micro enterprises to further expand into overseas markets, and enhance the overall competitiveness of Chinese businesses in the international market.

Low-Value Goods and Personal Belongings

The rapid development of global cross-border e-commerce has resulted in growth in trade of low-value goods (physical goods whose monetary value does not exceed a certain threshold; the exact threshold varies from country to country). Supporting cross-border e-commerce activities requires measures that simplify and facilitate trade. Accordingly, many countries and regions, including the European Union (EU) and the US, have introduced policies to simplify customs clearance procedures for low-value goods. Countries around the world have tax exemption policies for low-value goods. For example, as of March 10, 2016, the US has raised its low-value tax exemption threshold for imported goods (De Minimis value) from US \$200 to US \$800. Based on this change, all other goods with a declared value of US \$800 or less are exempt from import

duties and value-added tax except for certain restricted goods (those in special categories).

The GACC can improve its customs clearance efficiency and facilitate trade by aligning its customs clearance procedures for low-value goods with international best practices. For low-value goods, simplified customs clearance procedures are applied (as compared the procedures applied with respect to bulk trade in goods). We suggest drawing on the simplified declaration and reporting procedures adopted around the world to manage low-value goods. Such procedures include increasing the monetary threshold for classification of such goods, reducing the number and scope of documents required to complete the customs declaration, simplifying the classification and declaration framework for these goods, and adopting a single tax rate. Adopting such measures for low-value goods is consistent with the current emphasis on improving customs clearance times and reducing fees. Adoption of these measures should also reduce the administrative resources expended by GACC and reduce the administrative burden on enterprises who benefit from accelerated customs clearance, representing a “win-win” outcome.

Current entry and exit procedures for personal items also hinder efforts to facilitate trade. According to Article 21 of the *Customs Regulations for the Entry and Exit of Express Shipments*:

“When inbound and outbound personal items have been declared, the operator shall submit to the customs authorities the ‘Declaration Form of Inbound and Outbound Personal Items of the Customs of the People’s Republic of China,’ a separate waybill for each inbound and outbound shipment, the recipient of the inbound shipment or the sender of the outbound shipment must provide a photocopy of their ID and other documents required by customs.”

Such a requirement means, in practice, express delivery enterprises must verify the identity of recipients of imported items one by one. Law enforcement departments should be responsible for the ID card verification. We recommend the customs authorities integrate their systems more closely with other government departments so that ID verification information can be shared via these interconnected systems. Improved information sharing will simplify the verification process and reduce additional operating costs for enterprises who entrust ID verification to third-party certification agencies.

Implementation of the single window has provided enterprises the convenience of verifying their regulatory documents online. The need to verify identities of senders and recipients of personal items should also merit adoption of an online verification system and mechanisms should be developed so that the ID information can be shared seamlessly across government departments. At the same time, we encourage the customs authorities to simplify declaration procedures and permit individuals or their representatives to submit electronic declarations.

国际转运中心管理

国际转运中心（Hub）的作用在于聚集不同的制造业和服务业，以此为依托建立完整的物流供应链，整合不同资源，助力提高运输效率。其高效、健康的运营有赖于不同监管部门间的协作。

但目前在中国尚未形成针对国际快递转运中心的统一监管政策，企业在处理不同类型货物时，在仓储、运输、集中托运等方面都会遇到困难，进而导致运营效率降低。由于缺乏对国际转运中心监管的明确、统一的政策，各地区在转运中心的管理上无法做到系统化、统一化，增加了企业的行政成本，降低了国际转运中心的运输效率。

以国际转运中心处理进出境国际转运货物为例，现有的海关法律制度中对于过境、转运、通运的监管规定非常少，少数涉及该问题的海关公告仅规范了海运口岸进出境中转集拼的监管规定，未涉及到空运进出境中转集拼的监管事项。国际快递在全球物流中所占比重日益增加，且发展国际中转业务能够极大地提升运输效率、节约企业运营成本，同时也有助于提升国际性货运枢纽机场的运作能力，因此商会建议海关制定一个较为完整的包含“过转通”不同运输模式的制度体系，覆盖航空运输在内的进出境国际中转货物，提供高效、便利的监管政策，便捷货物跨境流动。

从全方位完善监管政策角度，建议海关协同中央和地方交通运输、商务、市场监管等政府部门，重视国际快递转运中心对于行业发展的重大作用，就国际快递转运中心开展业务活动时遇到的具体问题向企业征集意见，听取企业在全中国其他地区的成功经验，最终制定清晰的政策，明确转移程序和相关便利措施，为国际转运中心管理提供统一的指导方针。

商会会员企业期待海关将转运中心问题纳入改革进程。在中央政府大力推进自由贸易港（以下简称自贸港）建设的大背景下，按照自贸港的建设规划，自贸港内将鼓励开展货物自由储存、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”的先进海关管理理念。国际转运中心位于各大航空枢纽的核心区域，其特点正契合自贸港的发展理念，可以利用改革契机摆脱过去对于转运中心的束缚，彻底发挥转运中心的优势和效能，让转运中心成长为海关改革和自贸港建设的示范先锋。

海关系统稳定性

近年来，中国海关对通关系统的改革付出了大量的努力，取得了许多显著的成果。2021年，中国海关系统的能力和稳定性都大大地得到了提升，因系统不稳定带来的通关的滞后较前几年明显减少。

商会希望海关继续加强应急响应和支持措施，让企业知道有问题找谁、出现问题时快速响应解决，把海关系统故障对企业通关运作造成的影响降到最低。

近年来，中国海关在提升通关时效方面取得了喜人的进步，企业普遍感受到通关时间大大地缩短了。不少地方海关也纷纷制定了通关时效的目标（例如货抵港后48小时或72小时内必须完成清关），商会鼓励海关对没能在设定时间内完成清关的货物仍允许其继续正常清关（而不是要求其退运海外）。

建议

对中国政府：

- 在当今天中美双边关系充满不确定性的情况下，希望中国海关能够维持与在华美资企业的对话机制，增进沟通与了解，畅通信息沟通渠道。
- 充分利用高科技提升监管水平，提高通关系统的稳定性，提供更好的应急和支持措施。
- 确保在实施可能对行业产生影响的重大政策变更或新法规之前发布公告，以便留给企业足够的时间进行调整。在发布新的法律，法规或政策后，商会建议实施三到六个月的过渡期，以便企业准备并响应任何更改。
- 通过考虑受益于该系统的多个行业/企业的独特特征，持续完善授权经济经营者（AEO）系统，并相应地完善各种可用的行业认证，以促进更有效的通关措施。
- 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。

The current limit for declarations of inward/outward Category B (Personal Goods) is RMB 800 (Hong Kong, Macao and Taiwan) or RMB 1,000 (in countries or regions other than Hong Kong, Macao and Taiwan). The Ministry of Finance (MOF), the GACC and the State Administration of Taxation (STA) stipulated in the *Notice on Improving Tax Policies on Cross-border E-commerce Retail Imports* that beginning January 1, 2019, the single transaction limit for retail goods imported through cross-border e-commerce channels would increase from RMB 2,000 to RMB 5,000. We recommend that customs authorities maintain consistent policies regarding the single transaction limit for cross-border e-commerce retail imports and the limit for declaring imported Class B personal goods. We also support increasing the limit for declaring Class B goods to RMB 5,000.

International Transit Center Management

International transshipment centers (or hubs) are regional shipping locations used to integrate the manufacturing and service industries and develop a complete end-to-end supply chain, to improve transportation efficiency. The successful operation of these centers depends on the collaboration between different regulatory authorities and the integration of various resources.

At present, however, there is no unified regulatory system governing China's international express transshipment centers. Consequently, enterprises encounter difficulties in warehousing, transporting, and centralized shipping of different goods. Without systematic and coordinated policies nationwide, the supervision and management of international transshipment hubs varies across regions. As a result of the inconsistency, companies often experience an increase in administrative costs and these transshipment centers do not operate with maximum efficiency.

One example is how existing customs laws and regulations have very few regulatory requirements for handling inbound and outbound transshipped cargo. Several customs announcements concerning this issue only address regulatory requirements for the inbound and outbound transshipment of cargo by sea but fail to address other modes of transport, for instance GACC *Announcement No. 120 [2018]*, the *Announcement on Matters Concerning Customs Supervision for Inbound and Outbound Consolidated Goods Transiting Via Sea*. There are no guidelines for customs regulation and control of inbound and outbound cargo traveling by air. We recommend that the customs authorities develop a more comprehensive regulatory system that covers different transit modes (transit goods, transit cargo, and through goods) of inbound and outbound shipments (air, sea and land) for international cargo.

Furthermore, in a bid to improve the regulatory environment, we recommend the customs authorities cooperate

with central and local government departments including those responsible for transportation, commerce, market supervision, and other related agencies. International transshipment hubs play an essential role in supporting economic development and trade. We recommend that the government solicit input from industry, seek to emulate successful strategies adopted in other global markets, and formulate clear and standardized policies, transfer procedures, and related measures for the management of international transshipment centers.

AmCham China members look forward to the promulgation of reform by the customs authorities pertaining to transshipment centers. China's central government is accelerating the construction of free trade ports (FTPs), which allow goods to be freely stored, exhibited, dismantled, refitted, repackaged, reorganized, processed, and manufactured. We recommend that the government prioritize reforms that develop a system for regulating customs procedures under the maxim: the "first step is to prioritize deregulation; the next step is to ensure safe and efficient management." In addition, 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.

Stability of the Customs System

Over the past few years, the GACC has invested significantly in reforming China's customs clearance system and procedures with noticeable results. In 2021, our members were pleased to find that the capacity and stability of the customs system improved significantly, and lags in customs clearance procedures that previously were caused by challenges with the underlying clearance system infrastructure were reduced significantly as compared with prior years.

As part of the ongoing reform effort, we encourage the GACC to continue to strengthen emergency response and support measures to ensure the normal operation of the import and export of goods when system updates or maintenance tasks require longer than one hour, so that enterprises have an identified point of contact in the event of problems that may arise. This will minimize the impact of any system failures or outages on normal business and customs clearance operations.

Moreover, over the past few years, the GACC has made welcome progress in improving the timeliness of customs clearance procedures; indeed, our members report that the timelines associated with customs clearance have been noticeably reduced. Local customs authorities across the country have established targets for customs clearance. For

example, some local customs bureaus have implemented practices such that customs clearance procedures must be completed within the initial 48 or 72 hours following the arrival of the goods. Our members welcome these commitments for goods to clear customs on an expedited timeline, however, we hope that the local GACC bureaus will follow regular customs clearance procedures for goods that have not been cleared on the expedited timeline, instead of asking for the goods to be returned to their overseas point of origin.

Recommendations:

For the Chinese Government

- Given the current uncertainty in US-China bilateral relations, we urge the GACC to establish and maintain a mechanism(s) for dialogue mechanism with US and other foreign-invested enterprises in China to enhance communication and remove barriers in information sharing and to improve compliance with customs-related procedures.
- Utilize advanced and emerging technologies to improve the overall regulation of the customs system. Improve the reliability of customs clearance procedures by strengthening the emergency response measures and identified points of contact to ensure continued ability to engage in import/export activities even when system updates or maintenance tasks require longer than one hour, so that enterprises have an identified point of contact in the event of problems that may arise. improved support measures during system shutdowns or other similar emergencies.
- Ensure that public announcements are made prior to the implementation of major policy changes or new regulations that are likely to have an impact on the industry in a manner that affords enterprises sufficient time to adapt. After the release of new laws, regulations, or policies, we recommend a preparation period of three to six months be implemented for enterprises to prepare and respond to any changes.
- Continue to improve the Authorized Economic Operator (AEO) system through consideration of the unique characteristics of the multiple industries/enterprises that benefit from the system and refine the various available industry certifications accordingly to facilitate more efficient customs clearance measures.
- On the basis of implementing a “single window” to promote international trade, implement uniform standards and reduce information asymmetries across China’s customs clearance procedures.

Government Procurement

Introduction

Government procurement in China remains an area of great concern for AmCham China. While China has made progress in recent years in improving its government procurement system with the introduction of regulations and proposed revisions of its procurement laws, designed to bring greater transparency and accountability to government procurement practices, China has yet to fulfill its commitment to accede to the World Trade Organization (WTO) Agreement on Government Procurement (GPA) made when it first became a member of the WTO in 2001. China's submission of its seventh – and latest – revised market access offer in 2019 represented a significant advancement of its accession. Yet, full accession still seems some distance away.

There have been encouraging signs with respect to domestic reform of the procurement regime. These include a proposed revision of its *Government Procurement Law* in December 2020, which would clarify its provisions in several respects, and the implementation of new initiatives that were aimed at improving the transparency of its procurement process. At the same time, the proposed national security review regime in the draft *Government Procurement Law* would introduce additional uncertainties. AmCham China is also concerned by reports that government entities are continuing to source technology from domestic suppliers in response to the Chinese government's emphasis on technological self-reliance.

AmCham China remains concerned over the slow pace of China's GPA accession negotiations. Since applying for GPA accession and submitting its initial market access offer in December 2007, and including its most recent revised offer, China has submitted a total of seven offers over a span of fifteen years. AmCham China therefore urges the Chinese government to work with GPA parties to immediately resolve the issues necessary for their approval so that China can finally accede to the GPA in 2022.

In fact, opening China's government procurement market to foreign competition is in China's own interest, and would be consistent with its stated commitments to market competition. 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, while also strengthening the rule of law in China. More importantly, China's accession to the GPA could serve as a model for other countries, in particular the other 14 WTO members with WTO commitments, like China's, to seek GPA membership. In addition, as a GPA party, China could truly be a leader in the global trading community, as it can lead by example in encouraging the adoption of international procurement practices in countries that may not be ready for GPA accession but would nonetheless benefit from the adoption of procurement rules and practices that focus on transparency. This is particularly important in Africa and other areas where China is undertaking extensive projects under its Belt and Road Initiative (BRI). In those projects, as a GPA party, China can help ensure that the home countries are engaging in international best practices in their procurement activities.

Completion of its GPA accession would also provide a basis for China to encourage the other parties to the Regional Comprehensive Economic Partnership (RCEP), which entered into force on January 1, 2022, to expand the agreement's very modest procurement provisions. The RCEP government procurement chapter promotes transparency and cooperation but does not include any market access commitments. Such commitments would help kick start further infrastructure buildout in the region.

GPA accession would enable China to fulfill a major WTO commitment while allowing 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 multilateral trading system. US businesses and trade associations widely recognize the importance of the Chinese government procurement market. China's accession to the GPA would allow US firms to participate in China's government procurement on a transparent, predictable, and non-discriminatory basis, and provide China with leverage against barriers to participation for Chinese companies engaging in overseas government procurement markets.

China's Government Procurement Market

The size of China's government procurement market has almost quadrupled over the past decade. In 2010, government procurement was estimated by the Chinese government to be roughly RMB 842 billion (37 percent for procurement of

政府采购

引言

中国美国商会（以下简称商会）高度关切中国政府采购领域政策发展。近年来，中国在完善政府采购制度方面取得了进展，出台了相关法规并进一步开展工作修订《政府采购法》，以提高政府采购的透明度与问责制，但中国尚未履行其 2001 年首次成为世贸组织（WTO）成员时做出的加入 WTO 政府采购协议（GPA）的承诺。中国于 2019 年提交了第七次，也是最新一次修订的出价清单，标志着其加入协议的重大进展，但仍需做出进一步的努力以实现完全加入 GPA。

近来中国政府对推进改革政府采购制度释放出积极的信号。财政部于 2020 年 12 月发布《政府采购法（修订草案征求意见稿）》，并明确一些方面的规定。此外，新举措的实施旨在提高采购流程透明度。与此同时，《政府采购法》修订草案中提出的国家安全审查制度将带来一些不确定性。商会十分关注有关政府实体继续通过国内供应商采购技术以响应中国政府加强科技“自立自强”的报道。

中国加入 GPA 的谈判进展依然缓慢，商会对此表示关注。中国于 2007 年 12 月申请加入 GPA 后提交了市场准入出价清单，并于近期提交了最新修订后的版本。此间，中国前后共提交了 7 次出价清单。商会敦促中国政府与 GPA 各方合作，立即处理获得批准涉及的问题，使中国最终能够在 2022 年加入 GPA。

实际上，中国政府采购市场的对外开放符合中国自身利益，也符合中国做出的关于市场竞争的承诺。这么做将使中国政府实体能够获得 GPA 各方提供的商品和服务，即以最具有竞争力的价格获得高质量且最先进的商品和服务。加入 GPA 还有利于中国打击地方保护主义与腐败，同时巩固中国的法治建设。更重要的是，中

国加入 GPA 可以为其他国家提供参考，尤其是其他 14 个像中国一样承诺加入 GPA 的 WTO 成员国。此外，作为 GPA 缔约方，中国可以真正地成为全球贸易领导者，因为其可以作为榜样，鼓励那些未做好准备加入 GPA、但仍将受益于高度透明的采购规则和实践的国家采用国际采购实践。这对于中国在“一带一路”倡议下在非洲和其他地区开展广泛项目尤为重要。在这些项目中，作为 GPA 缔约方，中国可以帮助这些地区在其采购活动中采用国际最佳实践。

完成加入 GPA 还将为中国鼓励区域全面经济伙伴关系（RCEP）的其他缔约方扩充该协议有限的采购条款提供基础。RCEP 于 2022 年 1 月 1 日生效，其政府采购章节提倡促进透明度与合作，但不包括任何市场准入承诺。此类承诺将有助于当地启动进一步的基础设施建设。

加入 GPA 将使中国能够履行对 WTO 的重大承诺，同时使其能够参与国际采购标准和实践的持续发展。这也将为中国推进其对多边贸易体系的承诺与支持提供机会。美国企业和行业协会普遍认识到中国政府采购市场的重要性。中国加入 GPA 将使美国企业能够在透明、可预测和非歧视的基础上参与中国政府采购，并为中国提供应对阻碍其参与海外政府采购市场的壁垒提供筹码。

中国政府采购市场

中国政府采购市场规模在过去十年几乎翻了两番。2010 年，中国政府采购规模约为 8420 亿元人民币（37% 用于采购“货物”，53% 用于采购“建筑和工程相关服务”，8.4% 用于采购“其他服务”）。2021 年，WTO 对中国进行了第八次贸易政策审议（TPR）。在第八届贸易政策审议上，中国政府公布 2019 年政府采购规模为 3.31 万亿元人民币（约合 5190 亿美元）（26% 用于采购“货

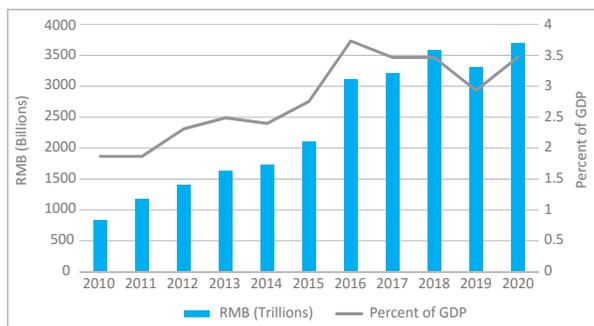
“goods,” 53 percent for procurement of “construction and engineering-related services,” and 8.4 percent for procurement of “other services”). In 2021, the WTO conducted its 8th biennial Trade Policy Review (TPR) of China. At the 8th TPR, the Chinese government reported the total value of its government procurement at RMB 3.31 trillion (approximately US \$519 billion) in 2019 (26 percent for procurement of “goods,” 45 percent for procurement of “construction and engineering-related services,” and 29 percent for procurement of “other services”). Moreover, much of China’s procurement market is handled at the sub-central level. The TPR report estimates 91.9 percent of China’s procurement is conducted by provincial and local governments.

In September, 2021, the Ministry of Finance (MOF) reported the total value of China’s government procurement to be about RMB 3.70 trillion (approximately US \$582 billion) in 2020, 92.3 percent of which was handled at the local government level. Total procurement increased by 11.8 percent from 2019, which well exceeded China’s GDP growth of 2.3 percent in the same period. However, these government procurement figures represent only a portion of China’s procurement. They are limited to the procurement covered by its Government Procurement Law. Purchases not covered by this law are not considered government procurement and are not included in the government’s procurement figures.

China’s state-owned enterprises (SOEs) conduct significant procurement in China, including a large number of infrastructure projects and public utility works. However, SOE procurement is excluded from China’s government procurement figures because the Government Procurement Law does not apply to SOE purchases. This exclusion likely explains the fact that its government procurement accounted for only 3.6 percent of China’s gross domestic product (GDP) in 2020 (compared to 3.3 percent in 2019). This stands in sharp contrast to the 10 percent to 15 percent of GDP accounted for by government procurement in most countries.

These numbers illustrate that the scale of China’s government procurement market remains globally significant. The high proportion of local spending underlines the need to ensure that government procurement is opened up to foreign competition at the local government level in a consistent and transparent manner.

Figure 1. Total Value of China’s Government Procurement Market, 2010-2020



Source: WTO, Ministry of Finance

China’s GPA Accession

When China became a WTO Member in December 2001, it declared its intention to initiate “as soon as possible” negotiations to become a party to the GPA by tabling a market access offer of the procurement it would cover under the Agreement. However, China did not initiate its accession for six years - until 2007. Twenty years after China’s declaration of its intent to seek GPA membership, its accession remains an unfulfilled promise.

In October 2019, China submitted its latest market access offer, its sixth revised offer of procurement that it will open under the GPA. That offer came nearly five years after it submitted its fifth revised offer. China’s 2019 GPA offer moved it closer to the scope of coverage offered by the current GPA parties. Below is a brief summary of China’s 2019 GPA revised market access offer relative to that of existing parties:

- China’s permanent thresholds are consistent with those used by most parties.
- China’s central government entity coverage is generally in line with that of GPA parties, with the possible exception of its coverage of defense procurement, which may not be as extensive as most parties.
- China’s coverage of all provinces and provincial-level municipalities is comprehensive and appears to include better sub-central government coverage than that provided by several existing GPA parties.
- China’s services offer follows most parties in its use of a positive list (listing only the services that it covers) but lags other parties in the scope of its covered services.
- China’s full coverage of construction services is consistent with that of other GPA parties.

The WTO Secretariat noted in its report prepared for China’s 8th TPR that “significant progress was made” on China’s accession since the last review in 2018, noting that China’s new offer, “for the first time, included non-sensitive military procurement” and added seven provinces and municipalities, 16 SOEs, and 36 local universities. On the other hand, the report observed that “[no] minority autonomous regions at the provincial level were included in the new offer, and some SOEs in the infrastructure and public utility sectors are missing. Some services sectors are not included in the offer.”

Areas in which China should improve its offer include its coverage of state-owned enterprises (SOEs), services, and defense procurement. In addition, several obstacles remain (even though China has removed other problematic elements found in earlier offers). China continues to assert a “right” to transitional measures, including higher transitional thresholds (for one year). It also insists that it “may require” the incorporation of technology transfer, domestic content, and other offsets. Offsets are prohibited by the Agreement, except where allowed as a transitional measure for a developing country. Given China’s economy and development, such transitional measures would not be appropriate. A second obstacle is China’s insistence that

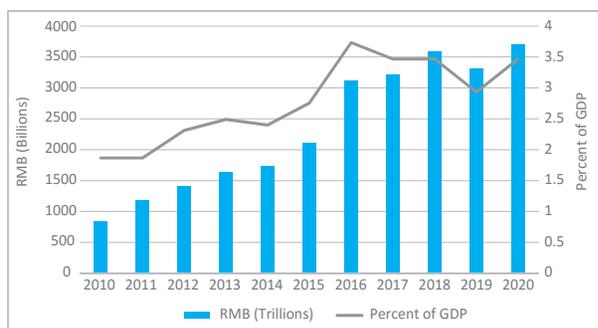
物”，45%用于采购“建筑和工程相关服务”，29%用于采购“其他服务”。此外，中国大部分采购市场在中央以下层面处理。TPR 报告估计，中国 91.9% 的采购由省级和地方政府执行。

根据财政部 2021 年 9 月发布的数据，2020 年中国政府采购规模约为 3.7 万亿元人民币（约合 5820 亿美元），其中 92.3% 是在地方政府层面处理的。采购规模较 2019 年增长 11.8%，远超中国 GDP 同期 2.3% 的增长。然而，这些政府采购数字仅代表中国采购的一部分。它们仅限于《政府采购法》所涵盖的采购。本法未涵盖的采购不属于政府采购，不计入政府采购数据。

中国国有企业在中国进行大量采购，包括大量的基础设施项目和公用事业工程。但是，由于《政府采购法》不适用于国有企业的采购，因此国有企业采购被排除在中国政府采购数据之外。这种排除可能能够解释这样一个事实，即 2020 年的中国政府采购仅占国内生产总值 (GDP) 的 3.6%（相比之下，2019 年为 3.3%）。这与大多数国家政府采购占 GDP 的 10% 至 15% 形成鲜明对比。

这些数字表明，中国政府采购市场的规模在全球范围内仍然具有重要意义。地方支出比例之高说明有必要确保政府采购在地方政府层面以一致和透明的方式面向外国竞争。

图表 1 2010 年至 2020 年中国政府采购市场总值



来源：WTO，财政部

中国加入 GPA

中国于 2001 年 12 月成为 WTO 成员国时宣布打算“尽快”启动谈判，通过根据该协议涵盖的采购提出的市场准入出价清单成为 GPA 的缔约方。然而，直到 6 年后的 2007 年，中国才开始启动加入 GPA。在中国宣布有意加入 GPA 的 20 年后，其加入 GPA 仍然是一个未兑现的承诺。

2019 年 10 月，中国提交了最新的市场准入出价清单。该出价清单是中国将根据 GPA 开放采购的第六份修订出价清单，距离其提交第五份修订出价清单 5 年。中国 2019 年 GPA 出价清单的覆盖范围更加接近于 GPA 现有缔约方。以下是中国 2019 年 GPA 修订市场准入出价清单相较于 GPA 现有缔约方的简要总结：

- 中国的永久性门槛与其他大多数 GPA 缔约方一致。
- 中国中央政府实体的覆盖范围与其他 GPA 缔约方大体一致，但中国国防采购覆盖范围不够广泛。
- 中国所有省和省级直辖市的覆盖范围全面，并且其地方政府覆盖优于其他 GPA 缔约方。
- 中国提供的服务遵循其他 GPA 缔约方的积极清单（只列出其涵盖的服务），但涵盖的服务范围相对落后
- 中国建筑服务的全面覆盖与其他 GPA 缔约方一致。

WTO 秘书处在其为中国第八次贸易政策审议准备的报告中指出，自 2018 年审议以来，中国加入 GPA “取得了重大进展”，并指出中国的新出价清单“首次包括非敏感性军事采购”，并增加了 7 个省市、16 家国有企业和 36 所地方大学。另一方面，报告指出，“没有省级少数民族自治区被列入新的出价清单，并且一些基础设施和公用事业领域的国有企业也未被列入新出价清单。一些服务行业也未被纳入新出价清单。”

中国出价清单应改进的方面包括国有企业、服务和国防采购的覆盖范围。此外，仍有一些阻碍存在（尽管中国已经解决了早期出价清单中发现的其他问题）。中国继续主张采取过渡性措施的“权利”，包括提高过渡期门槛（为期一年）。中国还坚称其“可能需要”实行技术转让、国内含量和其他补偿措施。协议禁止实行补偿措施，除非是面向发展中国家的过渡性措施。考虑到中国的经济和发展，这样的过渡性措施是不合适的。第二个阻碍是中国坚持在加入 GPA 后推迟两年执行 GPA。这意味着这两年间，中国可以在向其他 GPA 缔约方供应商开放采购之前参与他们的采购，这似乎很不公平。第三个潜在问题是提议排除“以支持中小企业为目的的采购”，因为其涉及中型企业。这一提议很容易遭到采购方滥用，其仅通过声称支持中小企业，就可以结束中国的许多采购程序。

世贸组织政府采购委员会 (GPA 委员会) 在其 2021 年年度报告中重申，其“认为中国在双方同意和适当的

it delay its implementation of the GPA for an additional two years after its accession. That would mean it would be allowed to participate in the procurement of GPA parties for two years before it even opened its procurement to their suppliers, which seems unfair. A third potential issue is China's proposed exclusion of "procurement with the aim of supporting small and medium-sized enterprises," in particular as it relates to medium-sized enterprises. This exclusion could easily be misused to close off many of China's procurement proceedings, simply by claiming support of small and medium-sized enterprises.

The WTO Government Procurement Committee (GPA Committee) reiterated, in its 2021 Annual Report, its "view that China's GPA accession, on mutually agreeable and appropriate terms, would be significant for the Agreement, for the WTO, and for the world economy." It reported that in 2021, China updated the Committee on its government procurement reform, replied to parties' comments and questions on its 2019 revised offer and updated its *Replies to the Checklist of Issues* (information on its procurement system), and engaged in meaningful deliberations with the parties on its accession. The parties in turn reiterated their remaining concerns with China's accession. As it has in prior years, the Committee expressed the hope "that productive discussions can be carried out in 2022 to keep the positive momentum and to move China's accession forward." The Committee's report gave no indication that it anticipates the completion of China's accession in 2022, however.

In any case, the Biden administration does not appear prepared to approve China's accession any time soon. In its 2021 foreign trade barriers report, the US Trade Representative stated that, as of March 2021, the US "viewed China's offers as incommensurate with the coverage offered by other GPA parties in scope and coverage." While it pointed to several areas in which China's 2019 offer "showed progress", it nonetheless concluded that the offer "fell short of US requests and remains far from acceptable." It cited "significant deficiencies" in a number of critical areas, including "thresholds, entity coverage, services coverage, and exclusions."

China's Application to Join CPTPP

China formally applied to join the 11-member Comprehensive and Progressive Trans-Pacific Partnership (CPTPP) in September 2021. In an apparent bid to demonstrate that it is prepared to open its procurement market under CPTPP, China's Ministry of Finance, reportedly in October 2021, directed local governments to ensure that that foreign-owned suppliers were given the "right to participate fairly in government procurement," provided that their products were made in China.

Given that China has not yet met the GPA standards for accession, it is questionable whether China could meet

those of the CPTPP, since the CPTPP procurement chapter is based on the GPA. However, if China were able to negotiate accession to the CPTPP before it completes its negotiations to join the GPA, the United States would lose both the ability to shape China's procurement liberalization under the GPA, and access to China procurement market. This could be avoided if the Biden administration were to reverse former President Trump's withdrawal of the United States from the CPTPP's predecessor and seek re-entry into the CPTPP.

China's Domestic Procurement Regime

Policy Developments

In recent years, China has made the development of its domestic technology industry a key national priority. China's leadership has indicated in its 14th Five Year Plan that the development of China into a self-reliant "technology power" is a national goal. As part of this emphasis on China's domestic technology industry, it appears that governmental agencies have increasingly turned to sourcing indigenous technology products and services from domestic suppliers. Some members of AmCham China in the technology and manufacturing sector have reported that in recent years it is becoming increasingly difficult to obtain contracts from central and local governments. For example, some members noted that the low-price cap set under the Central National Agencies Procurement Standards for Common Office Software have prevented government entities from adopting new products offered by foreign companies. Other members commented that some government or SOE procurement processes explicitly disqualify imported goods, or indirectly exclude imported goods by adopting selection criteria that favor domestic producers (e.g., giving disproportionate weight to the cost of the product and reducing the weight assigned to product quality and service).

AmCham China respects the decision by the Chinese government to support its domestic technology industry. We also understand there may be reasonable restrictions against foreign businesses from participating in certain highly-sensitive government projects. However, we respectfully submit that a total rejection of foreign participation in government procurement is not necessary or desirable to achieve China's goals. Indeed, many of our members are proud of their contribution to the growth of China's indigenous technology sector. AmCham China calls upon the Chinese government to ensure that foreign businesses in the technology sector be permitted to participate in government procurement processes without discriminatory barriers.

Legislative Developments

Domestic procurement in China is governed by a complex patchwork of laws, regulations, and other administrative measures. The two main pieces of legislation on govern-

条件下加入 GPA，将对该协议、WTO 和世界经济具有重要意义。”报告称，2021 年，中国向委员会通报了关于政府采购改革的最新情况，答复了其他 GPA 缔约方对 2019 年修订出价清单的评论和问题，并更新了《问题清单答复》（关于采购制度的信息），并与缔约方就其加入问题进行了有意义的讨论。缔约方反过来重申了他们对中国加入的持续关注。与往年一样，委员会表示希望“能够在 2022 年开展富有成效的讨论，以保持积极的势头，推动中国加入 GPA”。但委员会报告没有表明它预计中国将在 2022 年完成加入。

无论如何，拜登政府似乎不准备在短期内支持中国加入 GPA。美国贸易代表在其 2021 年对外贸易壁垒报告中指出，截至 2021 年 3 月，美国认为中国出价清单在范围和覆盖面上与其他 GPA 缔约方不相称。尽管报告指出中国 2019 年出价清单在几个方面“表现出进展”，但同时得出结论称，这一出价清单“没有达到美国的要求，仍然远未被接受”。报告列举了一些关键领域的“重大不足”，包括“门槛、实体覆盖范围、服务覆盖范围和被排除的事项”。

中国申请加入 CPTPP

中国于 2021 年 9 月正式申请加入由 11 个成员国组成的全面与进步跨太平洋伙伴关系协定 (CPTPP)。据报道，中国财政部于 2021 年 10 月指示地方政府确保予以外资供应商在华生产的产品“公平参与政府采购的权利”，这显然是为了表明中国准备在 CPTPP 下开放其采购市场的态度。

鉴于中国尚未达到加入 GPA 的标准，中国能否达到加入 CPTPP 的标准值得怀疑，因为 CPTPP 采购章节基于 GPA。但是，如果中国能够在完成加入 GPA 的谈判之前加入 CPTPP，美国将失去在 GPA 下影响中国采购自由化的能力，也将失去进入中国采购市场的机会。如果拜登政府能够扭转美国前总统特朗普让美国退出 CPTPP 的做法，并寻求重新加入 CPTPP，这种情况是可以避免的。

中国国内采购制度

政策发展

近年来，中国将发展国内科技产业列为国家重点。

中国领导层在“十四五”规划中指出，发展成为自立自强的“科技强国”是中国的国家目标。基于对中国国内技术产业的重视，政府机构似乎越来越倾向从国内供应商那里采购本土技术产品和服务。商会的一些技术和制造业成员称，近年来，从中央和地方政府获得合同变得越来越困难。一些成员指出，《中央国家机关通用办公软件配置标准》设定的低价上限阻碍了政府实体采用外国公司提供的新产品。其他成员评论称，一些政府或国有企业采购流程明确取消进口商品的资格，或通过采用有利于国内生产企业的选择标准间接排除进口商品（例如，过分重视产品成本却忽略产品质量与服务）。

商会尊重中国政府支持国内科技产业发展的决定。商会同时理解，这一领域的限制，特别是事关禁止外国企业参与特定高度敏感政府项目，可能是合理的。然而，商会愿再次强调，完全拒绝外国参与政府采购对于实现中国的目标来说不仅是不必要的，更是不可取的。事实上，商会许多会员企业都为他们参与中国本土科技行业的发展做出的贡献而感到荣幸。商会呼吁中国政府确保允许科技行业的外国企业在没有歧视性壁垒的情况下参与政府采购过程。

立法的发展

中国国内采购受到一系列复杂的法律、法规和其他行政措施的制约。关于政府采购的两项主要立法是《政府采购法》和《招标投标法》及其各自的实施条例。这两部法律目前都在修订中。《外商投资法》及其实施条例也对外商投资企业公平参与政府采购提出了重要要求。这些法律得到不同部委和机关颁布的各种行政措施的补充，包括针对特定行业或地方的措施。

本节概述了中国采购监管格局的最新变化，以及商会对其中一些发展变化的看法。

对《政府采购法》、《招标投标法》及相关配套文件的修订

《政府采购法》和《招标投标法》构成了中国政府采购的主要法律，这两部法律目前均在修订之中。在 2019 年，财政部将对《政府采购法》的修订列为 2019 年立法研究项目。财政部将在修订《政府采购法》期间，参考现行法律应用与《招标投标法》的冲突、近期政府采购制度的改革以及中国加入 GPA 的进展。

ment procurement are the *Government Procurement Law* and the *Tendering and Bidding Law*, and their respective implementing regulations. Both laws are currently under revision. The *Foreign Investment Law* and its implementing regulations also contain important requirements with respect to fair participation in government procurement by foreign-invested enterprises (FIEs). These laws are supplemented by various administrative measures promulgated by different ministries and agencies, including measures tailored to specific industries or localities.

As with previous submissions, this section provides a summary of recent changes in China's regulatory landscape for procurement, and the views of AmCham China on some of those developments.

Revising the Government Procurement Law (GPL), the Tendering and Bidding Law (TBL) and Relevant Supporting Documents

The GPL and the TBL, which constitute the main laws governing government procurement in China, are currently under revision. MOF included amendment of the GPL among its 2019 legislative research projects. To revise the GPL, MOF will consider how the current application of the law conflicts with the TBL, recent reforms in its government procurement regime, and progress towards GPA accession.

On December 4, 2020, MOF published the draft revised GPL (Draft GPL), followed by a one-month public consultation period. The Draft GPL specified that the scope of government procurement covers only "government activities and public services," which appear to exclude activities carried out by government entities in their private capacity. The Draft GPL also improves the procurement process by including additional pricing methods, an explicit emphasis on the equal status of government and suppliers as contractual parties, and a new reference to litigation as an avenue to resolve disputes in the contractual formation process. The Draft GPL also relaxes the conditions that must be fulfilled by suppliers in order to participate in government procurement by removing vague requirements such as a "positive commercial reputation."

The Draft GPL also proposes a new national security review regime on government procurement. All government procurement activities which are determined to have national security implications would need to pass a national security review organized by relevant governmental authorities. The Draft GPL does not contain further details on the industries or products that would be covered by this review regime. Our members do not understand why a separate national security review mechanism has been included, which would only result in heavier and possibly discriminatory burdens for FIEs that extend beyond preexisting security review processes. AmCham China urges that the government provide further details on the proposed national security

review and ensure that foreign businesses can participate in procurement opportunities that do not contain a genuine security dimension.

Notably, both the original GPL and the latest draft request the government to give priority to domestic products in procurement. This requirement is associated with a 2007 regulation, the *Administration of Government Procurement of Imported Products*, issued by MOF, which requires administrative approval to procure foreign products, and the approval shall be granted only if such products cannot be obtained domestically or cannot be obtained under reasonable commercial terms. In practice, some sectors (e.g., the medical equipment sector) continue to face strict administrative scrutiny for imported foreign products due to such regulatory restrictions.

On December 3, 2019, National Development and Reform Commission (NDRC) published draft revisions to the TBL for public comment (Draft Revised TBL). While these revisions to the 1999 TBL do not include any provisions directly applicable to FIEs, they aim to address exclusionary practices that discriminate against potential bidders, which should improve access for FIEs in China's government procurement market. The Draft Revised TBL also seeks to increase transparency by standardizing the bidding process and preventing collusion among bidders, or between bidders and procurers, and to strengthen supervision of contractual performance following a tender or bid award. AmCham China submitted comments on the draft revisions of the TBL, acknowledging that the draft resolves certain issues present in the existing TBL but noting that several areas of concern remain.

In April 2020, during the second meeting of the 13th National People's Congress (NPC) and the second meeting of the 13th National Committee of the Chinese People's Political Consultative Conference (CPPCC), NDRC invited NPC and CPPCC members to comment on the draft revised TBL. In August and September 2020, the Ministry of Justice (MOJ) sought comments from 46 stakeholders, including the China Tendering and Bidding Association and the All-China Lawyers Association, on the Draft Revised TBL. The timeframe for the NPC's review of the GPL and TBL is unclear. For instance, the NPC's 2021 Legislative Work Plan published on April 23, 2021 did not include the GPL or TBL on the list of bills for the NPC's first review.

In March 2022, the MOF announced its 2022 Legislative Work Plan, which states that it will strive to complete drafting the revised GPL in 2022 and submit it for the State Council's approval timely. MOF also disclosed that it steadily advances the draft revision of *Administrative Measures for Non-Bidding Government Procurement (revision)* and the revised *Administrative Measures for Invitations to Bid and Tenders in Government Procurement of Goods and Services in 2022*. On April 30, 2021, MOF issued the draft revised *Administrative*

2020年12月4日，财政部公布了《政府采购法》修订草案，随后开展了为期一个月的公开意见征询。草案明确规定，政府采购的范围仅涵盖“政府活动和公共服务”，不包括政府实体以私人身份开展的活动。草案还改进了采购流程，纳入了额外的定价方法、明确强调政府和供应商作为合同方的平等地位，以及将诉讼作为解决合同形成过程中争议的新途径。草案还放宽了供应商参与政府采购所必须满足的条件，取消了“良好的商业信誉”等模糊要求。

草案同时建议为政府采购建立新的国家安全审查制度。所有被确定为对国家安全有影响的政府采购活动都需要通过相关政府当局组织的国家安全审查。草案并没有明确关于这一审查制度将涵盖的行业或产品的更多细节。商会会员企业对额外增加一个单独的国家安全审查机制的必要性不甚明了，这会给外商投资企业带来更重且可能具有歧视性的负担，超出现有的安全审查程序范围。商会敦促中国政府就拟议中的国家安全审查制度提供更多细节，并确保外国企业能够获得不涉及真正安全层面的采购机会。

值得注意的是，现行法律和最新草案都要求政府在采购中优先考虑国内产品。这一要求与2007年财政部颁布的《政府采购进口产品管理办法》一致。该条例规定，采购外国产品需要进行行政审批，并且批准的条件是无法在国内或无法在合理的商业条款下获得此类产品。在实践中，由于此类监管限制，某些行业（例如医疗器械行业）继续面临对进口外国产品的严格行政审查。

2019年12月3日，国家发展和改革委员会公布了《招标投标法》修订草案，征求公众意见。虽然针对1999年《招标投标法》进行的这些修订不包括任何直接适用于外商投资企业的条款，但修订条款旨在解决歧视潜在投标人的排他性做法，这将完善外商投资企业在中国政府采购市场的准入。草案还旨在通过标准化招标程序和防止投标人之间或投标人与采购人之间的串通来提高透明度，并加强对招标或中标后合同履行情况的监督。商会提交了对修订草案的意见，认可该草案解决了现行法律中存在的一些问题，同时指出仍有几个令人关注的方面。

2020年4月，在十三届全国人大（NPC）二次会议和全国政协（CPPCC）十三届二次会议期间，国家发改委邀请全国人大代表及全国政协委员就草案提出意

见。2020年8月至9月，司法部就草案征求了包括中国招标投标协会和中华全国律师协会在内的46个利益相关方的意见。但全国人大审查《政府采购法》和《招标投标法》的时间安排尚不清楚。例如，2021年4月23日发布的全国人大2021年立法工作方案未将其列入全国人大一审议案清单。

2022年3月，财政部公布了2022年立法工作方案，提出力争在2022年完成《政府采购法》修订的起草工作，并及时提交国务院批准。财政部还表示，将在2022年稳步推进修订《政府采购非招标采购方式管理办法》和《政府采购货物和服务的招标投标管理办法》修订版的起草工作。财政部在2021年4月30日最新发布的《政府采购货物和服务的招标投标管理办法》修订草案较上一版做出的主要修订如下：①完善评审机制，降低评审过程中的操纵风险，促进“物美价廉”的采购；②优化营商环境，促进公平竞争；③优化交易规则，降低交易成本；④引入电子采购，提高采购效率。2022年1月14日，财政部发布《政府采购框架协议采购方式暂行管理办法》。

2021年4月30日，财政部发布了《政府采购需求管理办法》，主要是为了确保采购实体公平合理地设计和实施采购流程。该条例要求采购实体详细、清晰地描述采购需求；鼓励采购实体在确定采购需求前通过咨询、论证、问卷调查等方式进行需求调研；要求采购实体对条例所列特定类型的采购进行需求调研，包括价值高、涉及公共利益且社会高度关注的项目，或技术复杂、专业性强的项目，或在预算部门或采购商认为需求调研有必要的情况下。

网络安全采购

2020年4月27日，国家互联网信息办公室（CAC）等12个部门联合发布了《网络安全审查办法》（原《审查办法》），并自2020年6月1日起施行。2022年1月4日，十二部门对原《审查办法》进行修订，并发布修订后的《审查办法》，并自2022年2月15日起施行。根据2017年《网络安全法》第三十五条的规定，发布《审查办法》，建立国家安全审查制度，维护关键信息基础设施供应链的安全。

根据《审查办法》，“关键信息基础设施运营者”（CIIO）采购“网络产品和服务”影响或可能影响国家

Measures for Invitations to Bid and Tenders in Government Procurement of Goods and Services to seek public comments. The draft makes the following main revisions to the previous version: ❶ improving the evaluation mechanism, lowering the manipulation risks during the evaluation and promoting procurement with “good quality and good price”; ❷ optimizing the business environment and promoting fair competition; ❸ optimizing trade rules and decreasing trading cost; and ❹ introducing electronic procurement and increasing procurement efficiency. On January 14, 2022, the Ministry of Finance released the interim *Administrative Measures for the Government Procurement Framework Agreement*.

On April 30, 2021, MOF issued the *Government Procurement Demand Management Measures*, which are primarily intended to ensure procuring entities design and conduct procurement processes in a fair and appropriate manner. This regulation requires procuring entities to describe the procurement requirements in a detailed and clear way; encourages procuring entities to conduct demand research by consultation, demonstration, questionnaire survey, and other approaches before determining the procurement requirement; and requests procuring entities to conduct demand research on certain types of procurement listed in the regulations, including projects with high values, involving public interest or of high social concern, those that are technically complex or highly professional, or where budget departments or purchasers consider demand research to be necessary.

Cybersecurity Procurement

The initial *Measures for Cybersecurity Review* (Original Review Measures) were issued by twelve departments, including the Cyberspace Administration of China (CAC), jointly on April 27, 2020 and took effect on June 1, 2020. The Original Review Measures were revised and issued on January 4, 2022 by the twelve departments (Revised Review Measures) and have taken effect on February 15, 2022. The Review Measures are issued pursuant to Article 35 of the 2017 *Cybersecurity Law* to establish a national security review regime safeguarding the security of the supply chain for critical information infrastructure.

Under the Review Measures, when the purchase of “network products and services” by an “operator of critical information infrastructure” (CIIO) influences or may influence state security, the CIIO shall report the procurement to the cybersecurity review office to conduct a cybersecurity review.

- Based on the Original Review Measures, “network products and services” mainly refer to core network equipment, high-performance computers and servers, mass storage equipment, large databases and applications, network security equipment, cloud computing services, and other network products and services that have an important impact on the security of critical

information infrastructure. The Revised Review Measures newly added important communication products, and the network products or services that have an important impact on cybersecurity and data security, into the scope of “network products and services”.

- According to the *Regulations on the Security Protection of Critical Information Infrastructure* discussed below, “critical information infrastructure” refers to the key network facilities and information systems in important industries and areas such as public telecommunication and information service, energy, transport, water conservancy, finance, public service, e-government and science and technology industry for national defense, which may seriously endanger the national security, national economy, people’s livelihood, and public welfare if they are subject to any destruction, loss of function, or data leakage. The relevant governmental department overseeing the protection of critical information infrastructure has the overriding right to identify the appropriate CIIO.

Additionally, after obtaining approval from the Central Cyberspace Affairs Commission, the cybersecurity review office may initiate a review on network products or services if it has concerns that those products or services can influence or may influence state security.

The revision of the Review Measures introduces an explanation of circumstances that affect or may affect national security by network platform operators’ data processing activities into the scope of cybersecurity review, and clearly requires the network platform operators that have more than 1 million users’ personal information to apply for cybersecurity review before they are listed overseas.

The State Council issued the *Regulations on the Security Protection of Critical Information Infrastructure* (CII Protection Regulations) on July 30, 2021. The Regulations, which took effect on September 1, 2021, require the CIIOs to give priority to procuring safe and credible network products and services. Where the procurement of any network products and services may affect national security, a security review shall be completed pursuant to the relevant regulations. Additionally, when procuring any network products and services, the operators shall sign security and confidentiality agreement(s) with the providers identifying the providers’ obligations and duties in respect of technical support, security, and confidentiality.

In addition, CAC also issued the draft *Regulations on Network Data Security Management* to seek public comments on November 14, 2021. This draft version stipulates that the processor of important data shall give priority to safe and credible network products and services in procurement activities, and that any cloud computing service procured by a state agency or a CIIO shall have completed the security assessment organized by the national cyberspace authority in

安全的, CIIO 应当向网络安全审查办公室汇报采购情况, 并接受网络安全审查。

- 根据原《审查办法》, “网络产品和服务”主要是指对关键信息基础设施的安全产生重要影响的核心网络设备、高性能计算机和服务器、海量存储设备、大型数据库和应用程序、网络安全设备、云计算服务等网络产品和服务。修订后的《审查办法》新增重要通信产品, 以及对网络安全和数据安全产生重要影响的网络产品或服务, 并将它们纳入“网络产品和服务”范畴。
- 根据下文讨论的《关键信息基础设施安全保护条例》, 关键信息基础设施是指公共电信和信息服务、能源、交通、水利、金融、公共服务、电子政务和国防科技产业等重要行业和领域的关键网络设施和信息系 统, 如果发生遭到破坏、丧失功能或数据泄露的情况, 就可能严重危害国家安全、国计民生和公共福利。监督关键信息基础设施保护的相关政府部门有权确定适当的 CIIO。

此外, 经国家网信办批准, 网络安全审查办公室认为网络产品或服务影响或可能影响国家安全的, 可以对其进行审查。

对《审查办法》的修订将网络平台运营者的数据处理活动对或可能对国家安全产生影响的情形纳入网络安全审查范围, 明确要求拥有 100 万以上用户个人信息的网络平台运营者在境外上市前须申请网络安全审查。

国务院于 2021 年 7 月 30 日发布了《关键信息基础设施安全保护条例》(关键信息基础设施保护条例)。该条例自 2021 年 9 月 1 日生效, 要求关键信息基础设施运营者优先采购安全可靠的网络产品和服务。采购网络产品和服务可能影响国家安全的, 应当按照有关规定完成安全审查。此外, 在采购任何网络产品和服务时, 运营商应与供应商签订安全和保密协议, 明确供应商在技术支持、安全和保密方面的义务。

此外, 国家网信办还于 2021 年 11 月 14 日发布了《网络安全数据安全条例》草案, 征求公众意见。草案规定, 重要数据的处理者在采购活动中应当优先选择安全可靠的网络产品和服务, 并且国家机关或关键信息基础设施运营者采购的云计算服务应当完成国家网络空间管理局会同国务院有关部门组织的安全评估。

为促进区块链和 5G 的发展与应用, 工信部、国家网信办于 2021 年 5 月 27 日发布的《关于加快推动区块链技术应用和产业发展的指导意见》和包括工信部、网信办、发改委等 10 个部门于 2021 年 7 月 5 日联合发布的《5G 应用“扬帆”行动计划(2021-2023 年)》都提到政府采购应当支持区块链和 5G 的发展与应用, 比如增加 5G 应用的政府采购支出, 促进 5G 在城管、教育、医疗、文化等公共服务领域的应用。

商会认为, 《审查办法》可能会给外国公司在中国市场销售网络产品和服务带来不确定性、限制其机会、增加监管合规负担, 超出商业上合理和必要的范围, 并导致外国技术受到有利于国内供应商和技术的歧视。关键信息基础设施运营商的构成范围并不完全清楚, 这一事实为寻求提供网络产品和服务的外国公司带来了额外的不确定性。商会继续鼓励中国保留所有要求产品“安全可控”的规定, 直到这些规定与 WTO 协议和规则(包括 TBT 协议中的规定)保持一致, 并确保任何“安全可控”的规定都是严格定制的、符合国际规范的, 并且不会对业务施加不必要的基于国籍的条件或限制(有关这些主题的更多讨论, 请参阅《白皮书》信息通信技术章节)。

新冠肺炎疫情期间的采购便利措施

2020 年 1 月 26 日, 财政部发布了《关于疫情防控采购便利化的通知》。通知规定, 各级政府机关、事业单位和组织使用财政资金购买或者交付某些与疫情防控相关的货物、工程项目和服务的, 可免于执行《政府采购法》规定的程序。这些政府实体也可以免于采购进口材料必须获得的批准。

关于促进公平竞争和平等待遇的管理办法

2021 年 10 月 13 日, 财政部发布《关于在政府采购活动中落实平等对待内外资企业有关政策的通知》。通知强调, 政府采购采购商必须严格执行《外商投资法》等现行法规。在政府采购活动中, 除涉及国家安全和国家机密的采购项目外, 不得区别对待境内外企业在华生产的产品。在中国生产的产品, 无论其供应商是内资企业还是外资企业, 均应依法保障其平等参与政府采购活动的权利。为切实保障内外资企业在政府采购活动中的公平竞争, 各级采购主体不得在信息发布、供应商资质认定、资质审查、评价标准等方面对内资企业和外商投

conjunction with relevant authorities under the State Council.

To promote the development and application of blockchain and 5G, the *Guiding Opinions on Accelerating the Application of Blockchain Technology and the Development of the Industry* issued by Ministry of Industry and Information Technology (MIIT) and CAC on May 27, 2021 and the 5G Application “Sailing” Action Plan (2021-2023) jointly issued by 10 departments, including MIIT, CAC, and NDRC, on July 05, 2021, both mention that government procurement shall support the development and application of blockchain and 5G, such as increasing government procurement expenditures on 5G applications to promote 5G applications in public service areas such as urban management, education, medical care, and culture.

AmCham China believes the Review Measures are likely to create uncertainty and/or restrict opportunities for foreign companies to sell network products and services to the China market, increase the burden of regulatory compliance beyond that which is commercially reasonable and necessary, and result in foreign technology being discriminated against in favor of domestic vendors and technology. The fact that the scope of what constitutes a CIIO is not entirely clear creates additional uncertainty for foreign companies seeking to supply network products and services. We continue to encourage China to stay all regulations requiring “secure and controllable” products until these regulations are consistent with WTO agreements and rules (including those in the TBT Agreement) and ensure that any “secure and controllable” regulations are narrowly-tailored, are consistent with international norms, and do not unnecessarily impose nationality-based conditions or restrictions on business (see White Paper ICT chapter for more discussion of these topics).

Procurement Facilitation Measures during the COVID-19 Epidemic

On January 26, 2020, MOF issued the Announcement on Facilitation of Procurement for Epidemic Prevention and Control. The Announcement provided that governmental authorities, institutions, and organizations at all levels that use fiscal funds to purchase or deliver certain goods, engineering projects, and services related to epidemic prevention and control may be exempted from the procedures stipulated in the GPL. These government entities may also be exempted from having to obtain approvals for procuring imported materials.

Administrative Measures on Promoting the Fair Competition and Equal Treatment

On October 13, 2021, MOF issued the *Notice on the Implementation of Relevant Policies on Equal Treatment of Domestic and Foreign-Funded Enterprises in Government Procurement Activities*. This

notice emphasizes that government procurement purchasers must strictly implement existing regulations, such as the *Foreign Investment Law*. In government procurement activities, with the exception of procurement projects involving national security and state secrets, products produced by domestic and foreign enterprises in China shall not be treated differently. Products produced in China, regardless of whether their suppliers are domestically-funded or foreign-funded enterprises, shall be guaranteed the right to participate in government procurement activities on an equal footing in accordance with the law. To effectively ensure fair competition between domestic and foreign companies during government procurement activities, procuring entities at all levels must not apply differential or discriminatory treatment to domestically-funded enterprises or foreign-invested enterprises in terms of the release of information, supplier qualification determinations, qualification reviews, and evaluation standards, and shall not use ownership, organizational form, shareholding structure, investor’s nationality, product brand, and other unreasonable conditions to restrict suppliers. In addition, if any enterprise believes that any procurement activity has harmed its rights and interests, it can raise complaints in accordance with the relevant regulations.

On October 31, 2021, the State Council issued the *Opinions on the Launch of a Pilot Business Environment Innovation Program*, which states that in order to further eliminate unreasonable restrictions, such as regional division and local protection, the government should break down the “hidden thresholds and barriers” affecting foreign companies in the fields of bidding, government procurement, and other areas. For instance, registration requirements without any legal or regulatory basis should be abolished. In addition, the notice states that, in order to maintain fair competition, the government should cancel the differentiated treatment of enterprises in qualifications, bidding, government procurement, rights protection, and other areas to prevent the abuse of administrative power by classifying enterprises, adding certification items, setting up project libraries, registration, certification, and identification that excludes and restricts competition. The notice further states that, in order to protect the property rights and other legitimate rights and interests of various market entities in accordance with laws, the government should improve the government’s promise-keeping mechanism, establish a system for reviewing the legality of government commitments and a system for reimbursement, compensation and accountability of government untrustworthiness, and manage dishonest behavior of the government in debt financing, government procurement, bidding, investment attraction and other fields.

In addition, on January 19, 2021, MOF issued a *Notice on Carrying out the Special Cleanup of Government Procurement Alternative Database, Directory Database, and Qualification Database* that mandated a “clean up” operation to eradicate lists of pre-qualified supplier kept by some government

资企业实行差别待遇或歧视待遇，并且不得以股权、组织形式、股权结构、投资人国籍、产品品牌等不合理条件限制供应商。此外，企业认为采购活动损害其权益的，可以按照有关规定提出投诉。

2021年10月31日，国务院发布《关于开展营商环境创新试点工作的意见》。文件提出，为进一步消除区域划分、地方保护等不合理限制，政府要破除招标、政府采购等领域影响外资企业的“隐性门槛和壁垒”。例如，应废除没有任何法律或监管依据的注册要求。此外，文件指出，为维护公平竞争，政府应取消企业在资质、招投标、政府采购、维权等方面受到的差别化待遇，防止以企业分类、增加认证项目、设立项目库、登记、认证、认定等排除、限制竞争的方式滥用行政权力。文件进一步指出，为依法保护各类市场实体的产权和其他合法权益，政府应当健全政府守信机制，建立政府承诺合法性审查制度，建立政府失信补偿和责任追究制度，对政府在举债融资、政府采购、招投标、招商引资等领域的失信行为进行管理。

此外，2021年1月19日，财政部发布《关于开展政府采购备选库、名录库、资格库专项清理的通知》，要求开展“清理”工作，彻底清除部分政府采购采购商保留的资格预审供应商名单，鼓励供应商公平竞争。为管理政府失信行为，中共中央和国务院于8月11日联合发布《法治政府建设实施纲要（2021-2025年）》。纲要提出，政府应重点治理政府在债务融资、政府采购、招投标、招商引资等方面的失信行为，加快政府诚信建设。

2021年7月8日，国家市场监督管理总局、国家发改委、财政部、商务部、司法部联合发布了《公平竞争审查制度实施细则》。该条例还规定，法律、法规授权管理公共事务的行政机关和组织应当在制定政府采购条例和其他政策性文件时，进行公平竞争审查，评估其对市场竞争产生的影响，防止排斥或者限制市场竞争。

跨部门执法管理办法

2021年7月30日，国家市场监督管理总局发布《市场监督管理严重违法失信名单管理办法》。文件规定，列入严重违法失信行为名单的，可以作为政府机关对实体参与政府采购项目和工程招投标进行评估时的重要考虑因素。此外，财政部于2021年8月26日发布《财政机关行政处罚听证实施办法》草案，征求公众意见。该草

案规定，有关部门拟实施处罚，禁止供应商、采购机构参与政府采购活动，或禁止政府采购评审专家参与政府采购评审活动的，可以根据有关各方的要求召开听证会。

提高政府采购透明度的管理办法

2020年3月为提高政府采购透明度，财政部发布了以下两项法规。一是修订后的《政府采购信息发布管理办法》（《办法》），旨在规范政府采购信息发布，提高政府采购透明度。原《办法》于2004年发布。修订后的《办法》旨在解决未通过指定媒体发布公共信息、隐瞒信息、信息提供差别化等透明度问题，消除阻碍供应商以公平和透明的方式获取采购信息的壁垒。

二是《关于开展政府采购意向公开工作的通知》。该通知要求公共部门公开宣布其进行政府采购的意向，并允许供应商提前获取政府采购计划。这一披露要求最初是作为一项试点规则实施的，仅适用于北京、上海和深圳的中央政府部门和省级部门。自2020年7月1日起通过这些政府部门实施的采购项目，需要通过网站（www.ccgp.gov.cn）上的中央政府部门等指定媒体进行公示。其他下级政府部门将自2021年1月1日和2022年1月1日起分批执行此项披露要求。

商会支持提高公共采购活动透明度的努力，希望这些修订后的措施能在国家和地方层面得到忠实和公平的实施，并建议在全国范围内进一步推行这些试点措施。

通过政府采购扶持中小企业

财政部和工信部于2020年12月30日发布《政府采购促进中小企业发展管理办法》，并自2021年1月1日起施行。《管理办法》主要细化对中小企业（SMEs）采购预留的规定，完善政府采购项目价格评估优惠办法，支持中小企业。低于200万元（约合25.9万美元）的货物和服务采购项目和低于400万元（约合51.7万美元）的工程采购项目等所有小型采购项目均须保留给中小企业。此外，对于非中小企业采购项目，在政府部门评估报价时，中小企业的货物和服务采购报价享有6%至10%的减免，且工程项目的采购报价享有3%至5%的减免。在新冠疫情对经济的冲击下，该法规的颁布是为了支持中小企业的复苏。

2021年出台了多项法规政策，进一步推动落实《政府采购促进中小企业发展管理办法》，例如国家税务总局

procurement purchasers, in order to encourage fair competition between suppliers. For managing the dishonest behavior of the government, the Implementation Outline for Building a Rule of Law Government (2021-2025), issued by the Central Committee of the Communist Party of China and State Council on August 11, also mentions that the government should focus on managing dishonest behaviors by the government in debt financing, government procurement, bidding, investment attraction, and other areas to speed up the construction of government integrity.

On July 8, 2021, the Implementation Rules of the Fair Competition Review System were issued jointly by the State Administration for Market Regulation (SAMR), NDRC, MOF, MOFCOM and DOJ. This regulation also stipulates that the administrative agencies and organizations authorized by laws and regulations to manage public affairs shall conduct fair competition reviews to assess the impact on market competition and prevent exclusion or restriction of market competition, when formulating the regulations and other policy documents of government procurement.

Administrative Measures on Cross-Department Enforcement

On July 30, 2021, the State Administration for Market Regulation (SAMR) issued the *Measures for Lists of Parties with Seriously Unlawful and Dishonest Acts for Market Regulation Authorities*, which stipulate that a party's designation on lists of parties with serious unlawful and dishonest conduct can be an important consideration when government agencies evaluate the entity's participation in government procurement projects and engineering bidding. Additionally, on August 26, 2021, MOF issued the draft *Implementing Measures for the Administrative Penalties Hearing of Finance Authorities* to seek public comments. This draft stipulates that if the relevant authorities intend to impose punishments to prohibit the suppliers and procurement agencies from participating in government procurement activities or prohibit the government procurement review experts from participating in government procurement review activities, a hearing can be held at the request of the relevant parties.

Administrative Measures on Improving Transparency in Government Procurement

Two MOF regulations, which became effective in March 2020, were targeted at improving transparency in government procurement. The first measure, the revised *Administrative Measures for the Release of Government Procurement Information* (Measures), standardizes the release of government procurement information and improves the transparency of government procurement. The original Measures were issued in 2004. The revised Measures aim to address transparency issues such as the failure to release public information through designated media, concealment of information, and

differential provision of information, in order to eliminate barriers that preclude suppliers from obtaining procurement information in a fair and transparent manner.

The second measure is the Announcement on Carrying Out the Publication of the Government Procurement Intention. The announcement requires public authorities to publicly announce their intention to carry out government procurement and allows suppliers to access the government's procurement plans in advance. This disclosure requirement was initially implemented as a pilot rule that applied only to central governmental authorities and provincial authorities in Beijing, Shanghai, and Shenzhen. Procurement projects implemented on and after July 1, 2020 through these governmental authorities need to be publicly announced through designated media, such as the central governmental authorities at a specified website (www.ccgp.gov.cn). Other lower-level governmental authorities were required to implement this disclosure requirement in batches from January 1, 2021 and January 1, 2022.

AmCham China supports efforts to improve transparency with respect to public procurement activities. We hope that these revised measures will be implemented in a faithful and equitable manner at the national and sub-national level and recommend that those pilot measures be expanded nationwide.

Supporting Small and Medium-Sized Enterprises via Government Procurement

MOF and MIIT issued the *Administrative Measures for Promoting the Development of Small and Medium-Sized Enterprises via Government Procurement* on December 30, 2020, effective January 1, 2021. The Administrative Measures mainly refine the regulation on procurement reserved for small and medium-sized enterprises (SMEs) and improve the preferential methods to evaluate the price of government procurement projects to support SMEs. All small procurement projects, that is procurement projects where the goods and services are under RMB 2 million (US \$259,000) and engineering procurement projects under RMB 4 million (US \$517,000) must be reserved for SMEs. Additionally, for procurement projects not reserved for SMEs, the price offered by SMEs will enjoy a deduction of six to ten percent for goods and services procurement and three to five percent for engineering projects when the governmental authorities evaluate the quotations. This regulation was likely promulgated in part to support recovery of the SME sector in the aftermath of the economic impact of the COVID-19 pandemic.

In 2021, several regulations and policies were issued to further promote the implementation of *Administrative Measures for Promoting the Development of Small and Medium-Sized Enterprises via Government Procurement*, such as the *Notice on the Implementation of the Administrative Measures for Government Procurement to Promote the Development of Small and Medium-sized Enterprises* issued by the State Taxation

2021年4月16日发布的《关于实施政府采购促进中小企业发展管理暂行办法的通知》、国务院2021年11月22日发布的《关于进一步加大对中小企业纾困帮扶力度的通知》以及国务院有关工作办公室2021年11月23日发布的《关于印发提升中小企业竞争力若干措施的通知》。

政府采购服务管理办法

根据《政府采购法》，政府采购分为三类：服务、货物和工程项目。《政府购买服务管理办法》对政府购买服务进行了详细的指导。《管理办法》于2014年首次发布，涵盖相关方、采购内容、采购程序、预算管理、合同履行与监督等方面。2020年1月3日，财政部发布修订版《管理办法》，将符合条件的服务提供者范围扩大到农村集体经济组织、基层群众性自治组织和符合条件的个人。修订版《管理办法》还列出了不得通过政府采购获得的被禁止的服务。新的合同履行规定提高了政府与供应商在合同中的平等地位，并规定服务期限一般不得超过一年。

药品和疫苗集中采购计划

2019年9月25日，中国将药品集中采购试点扩大至全国，试图与药品生产企业谈判降低价格。所有中国大陆集中采购市场范围内的药品生产企业（药品上市许可证持有企业、进口药品全国总代理为生产企业），经国家药品监督管理局批准，均可参加试点。该试点项目于2018年底在中国11个城市推出：北京、天津、上海、重庆、沈阳、大连、厦门、广州、深圳、成都和西安。这些城市共同构成了中国最大份额药品市场。与2017年试点城市最低价格相比平均降价52%，最高降价96%。这一集中采购项目平等对待外商投资企业，多家跨国药企已在试点项目中中标。此外，2019年12月1日起实施的《疫苗管理法》规定，政府通过地方综合公共资源交易平台集中采购非免疫规划疫苗。类似采购计划还将覆盖一些医疗耗材和设备。

2020年，国家医疗保障局医药价格和招标采购指导中心发布《医药价格和招采信用评价的操作规范(2020版)》和《医药价格和招采信用评价的裁量基准(2020版)》，对参与药品采购计划的医疗生产企业实施信用评价制度。获得“不诚实”类别信用评估结果的生产企业可能会被禁止参与采购。

国家发改委和财政部还分别于2021年4月30日和2021年8月25日联合印发了《关于开展国家组织高值医用耗材集中带量采购和使用的指导意见》和《深化医疗服务价格改革试点方案》。这些通知旨在落实和完善医用耗材集中采购。《深化医疗服务价格改革试点方案》提出，政府要推进所有医用耗材的网上采购，并扩大高值医用耗材集中采购的范围。

优先考虑绿色产品与设备

《节约能源法(2018年修订)》、《公共机构节能条例(2017年修订)》以及《循环经济促进法(2018年修订)》要求政府采购中优先考虑节能环保的产品与设备。政府官员不得采购因环境原因而被淘汰的产品与设备。不遵守这些规定的机构可能会受到行政处罚或纪律处分。国务院也在2018年12月发布的《“无废城市”建设试点工作方案》中提出了“无废城市”的概念。该工作方案鼓励地方政府加大对可回收产品的采购力度。

财政部、住房城乡建设部于2020年10月13日发布《政府采购支持绿色建材促进建筑品质提升试点工作通知》，旨在推动对绿色建材的使用。该试点工作将在南京、杭州、绍兴、湖州、青岛、佛山等城市展开，为期两年，涵盖医院、学校、写字楼、综合体、展览馆和中心、体育馆、保障性住房和其他新的政府工程项目。

2021年，中国出台了一系列通过政府采购促进绿色产品消费的法规政策，建立健全绿色低碳循环发展经济体系，将碳达峰和碳中和纳入经济体系。文件包括国务院分别于2021年2月22日和2021年10月26日发布的《关于加快建立健全绿色低碳循环发展经济体系的通知》和《2030年前碳达峰行动方案》、发改委于2021年7月1日发布的《“十四五”循环经济发展规划》以及国家机关事务管理局、国家发改委、财政部和生态环境部联合发布的《深入开展公共机构绿色低碳引领行动促进碳达峰实施方案》。这些法规和政策都要求政府采购活动优先考虑绿色产品。

商会很高兴看到政府采购决策更加重视环境因素，但促请政府制定符合国际最佳实践的各行业环境标准（详见《白皮书》环境章节）。

Administration on April 16, 2021, the *Notice on Further Strengthening the Relief and Assistance for Small and Medium-sized Enterprises* issued by the State Council on November 22, 2021, and the *Notice on Issuing Several Measures to Improve the Competitiveness of Small and Medium-sized Enterprises* issued by the relevant working office of the State Council on November 23, 2021.

Administrative Measures for Government Procurement of Services

Under the GPL, government procurement is divided into three categories: service, goods, and engineering projects. Detailed administrative guidance on the government procurement of services is provided under the *Administrative Measures for Government Procurement of Services*. First issued in 2014, the Administrative Measures cover subject areas such as relevant parties, purchase content, procurement procedures, budget management, contract performance, and supervision. On January 3, 2020, MOF issued revised Measures that expand the scope of eligible suppliers of services to include rural collective economic organizations, grassroots mass autonomous organizations, and qualified individuals. The revised Measures also list proscribed services that may not be obtained through government procurement. The new provisions on contract performance enhance the equal status of government and suppliers in contract, and mandate that the service period generally cannot exceed one year.

Centralized Drug and Vaccine Procurement Program

On September 25, 2019, China expanded its pilot centralized drug procurement program to the entire country in an attempt to negotiate lower prices with drug manufacturers. All manufacturers (drug marketing authorization holders and general national agents of imported drugs are regarded as manufacturers) of drugs within the scope of the centralized procurement market in mainland China may participate in the pilot program with the approval of the National Medical Products Administration. This pilot program was rolled out at the end of 2018 in 11 Chinese cities: Beijing, Tianjin, Shanghai, Chongqing, Shenyang, Dalian, Xiamen, Guangzhou, Shenzhen, Chengdu, and Xi'an, which together constitute the lion's share of the Chinese drug market. Compared with the lowest prices in the pilot cities in 2017, the average price reduction was 52 percent, while the highest price cut was 96 percent. This centralized procurement program provides equal treatment for FIEs, and several multinational pharmaceutical companies have won contracts under the pilot program. Furthermore, the *Vaccine Administration Law*, which took effect on December 1, 2019, provides that vaccines shall be centrally procured by governments through the locally integrated public resource trading platform. Some medical consumables and devices will also be subject to a similar procurement program.

In 2020, the Pharmaceutical Price and Tendering and Procurement Guidance Center of the National Healthcare Security Administration issued the Practice Code for Pharmaceutical Price and Tendering and Procurement Credit Evaluation (2020 Edition) and the Discretion Benchmark for Pharmaceutical Price and Tendering and Procurement Credit Evaluation (2020 Edition) on November 18, 2020, to implement a credit evaluation system for medical manufacturers who participate in drug procurement programs. Manufacturers who receive credit evaluation results in the "dishonest" category may be rejected from participation in the procurement.

NDRC and MOF also jointly issued the Guiding Opinions on Procurement and Use of High-Value Medical Consumables in a Centralized Quantity of National Organizations and the Pilot Program for Deepening the Reform of Healthcare Service Pricing on April 30, 2021 and August 25, 2021, respectively. These notices also aim to implement and improve the centralized procurement of medical consumables. The Pilot Program for Deepening the Reform of Healthcare Service Pricing states that the government should promote online procurement of all medical consumables, and expand the scope of centralized procurement of high-value medical consumables.

Priority to Green Products and Equipment

The *Energy Conservation Law* (2018), the *Provisions for Energy Conservation of Public Institutions* (2017), and the *Circular Economy Promotion Law* (2018) require priority to be given in government procurement to products and equipment that are energy-saving and environmentally-friendly. Government officials may not purchase products and equipment that are being phased out for environmental reasons. Agencies that fail to comply with such requirements may be subject to administrative penalties or disciplinary action. The State Council also proposed the concept of a "Waste-Free City" in its Work Proposal of the Pilot Construction of "Waste-Free City" in December 2018. This work proposal encourages local governments to increase their procurement of recyclable products.

The MOF and the Ministry of Housing and Urban-Rural Development issued the Announcement on the Pilot Program on Government Procurement on Green Building Materials to Promote the Construction Quality Improvement on October 13, 2020 to promote the use of green building materials. This pilot program is to be carried out in Nanjing, Hangzhou, Shaoxing, Huzhou, Qingdao, and Foshan cities for two years, and covers the construction of hospitals, schools, office buildings, complexes, exhibition halls and centers, gymnasiums, affordable housing, and other new governmental engineering projects.

In 2021, China issued a series of regulations and policies to promote the consumption of green products via government procurement to establish and improve the green and

建 议

中国宣布有意加入 GPA 已有 20 多年。中国应完成加入 GPA，履行其对 WTO 的承诺。商会敦促中国政府采取必要的最后措施，与美国以及 GPA 涵盖的其他 47 个 WTO 成员国在互惠的基础上开放政府采购市场，并于 2022 年完成加入 GPA。中国也应该借此机会，为其他在加入 WTO 议定书中做出类似承诺的 WTO 成员树立一个积极的榜样。中国加入 GPA 也将激励其他 WTO 成员国寻求加入这一重要的诸边协议。此外，中国应继续对国内采购制度进行改革，确保与 GPA 原则保持一致。

对中国政府：

商会敦促中国政府解决尚未解决的问题，并响应其他 GPA 缔约方提出的要求，以便在 2022 年完成加入 GPA。商会敦促中国政府与其他 GPA 缔约方合作，解决这些不足并做出其他改进：

- 考虑到中国经济的发达程度，作为发展中国家，中国应该取消其拟议的一年过渡期门槛，取消对国内含量、技术转让和其他补偿措施的要求，并不保留采取过渡性措施的权利。
- 新修订的 GPA 出价清单应包括出于政府目的（非商业销售或转售目的，或非出于商业销售或转售目的的产品与服务的生产与提供）定期采购的主要国有企业，包括电力公用事业公司。此外，商会鼓励政府明确其对国有企业的立场，首先发布一项明确的指示，确认国有企业的采购是完全基于商业考虑的非政府采购。这将符合中国在加入 WTO 议定书工作组报告中关于国有企业商业独立性的承诺。然后，中国可以扩大 GPA 的覆盖范围，将参与政府采购的主要国有企业包括在内。
- 敦促中国通过商会与美国业界进行对话，以确保合理的服务覆盖范围。中国应考虑涵盖的、对美国业界具有重要意义的服务包括：

- 所有金融服务，包括保险、银行和电子支付服务
- 快递服务
- 医疗卫生服务
- 所有信息和通信技术服务
- 媒体和娱乐服务
- 电子商务服务，以及
- 会计、审计和簿记服务以及与管理咨询相关的服务。

- 还敦促中国撤回其在加入后推迟实施 GPA 的提议，因为 GPA 不授权加入国在加入后推迟全面实施 GPA。

- 在国内采购市场方面，商会鼓励中国确保其政府采购市场对外国供应商保持开放。外商投资企业能够也确实为中国的国家发展做出积极贡献，因此，外商投资企业敦促中国政府发布明确的指导意见，确保地方政府不无理排除或限制外商投资企业获得采购机会，以此支持《外商投资法》关于外商投资企业在采购中受到平等对待的承诺。

对美国政府：

- 建议美国政府与欧盟和其他 GPA 缔约方合作，确定并向中国提出接受中国市场准入覆盖范围所需的改进措施，推动中国在 2022 年加入 GPA。

low-carbon circular development economic systems and include the carbon dioxide peak and carbon neutrality into economic systems, such as the *Notice on Accelerating the Establishment and Improvement of the Green and Low-carbon Circular Development Economic Systems* and the Action Plan for Carbon Dioxide Peak before 2030, issued by the State Council on February 22, 2021 and October 26, 2021, the Plan for the Development of Circular Economy in the “14th Five-Year Plan” period, issued by NDRC on July 1, 2021, and the Implementation Plan for In-Depth Green and Low-Carbon Leading Actions of Public Institutions for Carbon Dioxide Peak, issued by the National Government Offices Administration, NDRC, MOF and Ministry of Ecology and Environment on November 19, 2021. These regulations and policies all require priorities be given in government procurement activities to the green products.

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 the White Paper Environmental Chapter for further discussion).

Recommendations

It has been over 20 years since China declared its intent to accede to the GPA. China should demonstrate its commitment to the WTO by completing its accession. AmCham China urges the Chinese government to take the necessary final steps to open its government procurement market on a reciprocal basis with the United States, as well as with the other 47 WTO members that are covered by the GPA, and to complete its accession in 2022. China should also take the opportunity to serve as a positive model to 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 important plurilateral agreement. In addition, China should continue the domestic reform of its procurement regime to ensure alignment with the principles enshrined in the GPA.

For the Chinese Government

- We urge the Chinese government to address the outstanding issues and requests of the GPA parties in order to complete its accession to the GPA in 2022. AmCham China urges the Government to work with the GPA parties to address these deficiencies and other improvements:

- China should withdraw its proposed one-year transitional thresholds, its reservation to require domestic content requirements, transfer of technology, and other offsets and its claim to transitional measures as a developing country given the advanced state of its economy.
- A new revised GPA offer 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), including electrical utilities. Furthermore, AmCham China encourages the 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.
- AmCham China urges China to 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 US industries include the following:
 - All financial services, including insurance, banking and e-payment services,
 - Express delivery services,
 - Healthcare services,
 - All information and communications technology services,
 - Media and entertainment services,
 - E-commerce services, and
 - Accounting, auditing, and bookkeeping services and services related to management consulting.
- AmCham China also urges China to withdraw its proposal to delay its implementation of the GPA after accession, as the GPA provides no authority for an acceding country to delay its entire implementation of the GPA after accession.
- In terms of its domestic procurement market, AmCham China encourages China to ensure its government procurement market remains open to foreign suppliers. FIEs can and do make positive contributions to China’s national development and urge the Chinese government to issue clear guidance

ance to ensure local governments do not unreasonably shut out or restrict FIEs from procurement opportunities, to support the commitments to equality for FIEs in procurement enshrined in the Foreign Investment Law.

For the US Government

- AmCham China recommends the US government to work with the EU and the other GPA parties to identify and present to China the improvements needed for their acceptance of China's market access coverage with the aim of facilitating China's GPA accession in 2022.

High-Tech Trade Promotion and Export Controls

Introduction

In 2021, the US trade deficit with China was reported at being more than US \$355 billion, which represents an increase of approximately 12 percent from 2020. The US trade deficit with China for the first two months of 2022 was reported as being more than US \$67 billion. The US and China relationship in 2021 and the first quarter of 2022 continued to be contentious, especially in export controls and sanctions. While no new export control regulations were directly imposed by the US on China or by China on the US during this time frame, there were numerous expansions of export controls and sanctions globally that have a direct and broad impact on the US-China relationship and have escalated tensions on export controls that are proving to be very challenging for both US and Chinese companies to navigate.

Despite the trade frictions and concerns over expanding export controls, the US remains the largest market for Chinese exports and China is the third largest importer of US goods behind Canada and Mexico. However, the US has continued to strengthen its oversight on US high-tech exports to China in the semiconductor and aerospace sectors, as well as many other emerging technology fields covered by dual-use export controls. The US also added more Chinese entities to the US Entity List, expanded the list of entities on the Military End-user list and the Unverified List, and continued to heavily scrutinize license applications for the export of controlled items to China. On the Chinese side, companies have reported that China has slowed down arranging and conducting end-use visits, which contributed to the additions to the Unverified List and delays the issuance of pending export licenses until the end-use visits are successfully completed. While some of this delay can be attributed to COVID, it appears that these delays are also attributable to the strained export control relationship between the US and China.

AmCham China encourages both China and the US to collaborate at the industry and government levels to address issues of concern on both sides about export controls and sanctions, and we urge China and the US to minimize restrictions on technology-sharing for those technologies that have a clear rationale for civil end-use and are mutually beneficial to the US, China, and global supply chains. We also urge the US and

China to work together cooperatively to address the various geopolitical and logistical adversities facing the global economy, as such cooperation benefits the economies of both countries and fosters global growth and development.

Recent Developments and Ongoing Regulatory Issues

Global Export Controls

2022 has seen the implementation of the most expansive global sanctions and export controls ever imposed. While these export controls and sanctions, including those issued by the US, are not directed at China, they impact Chinese companies' operations and business, and the business of US companies operating in China. These sanctions and export controls are very complex and comprehensive and create a substantial risk for any company, whether US or Chinese, that is noncompliant. While AmCham China recognizes that the US and China are not in accord on these export controls and sanctions, we would appeal to each side to minimize the impact of these sanctions and export controls on legitimate civil-use high-tech trade between the two countries. We also ask that neither government take actions that would escalate the tension in this area that could lead to an expansion of sanctions and export controls that directly impact US-China trade.

US Export Controls

Further Expansions of the FDPR Rule

There was no further expansion of the Foreign Direct Product Rule (FDPR) regarding Chinese entities on the Entity List since it was last expanded on August 17, 2020. However, there was an extensive expansion of the FDPR imposed on Russia and Belarus that also impacts Chinese companies and US companies operating in China.

The FDPR for Russia and Belarus applies if a foreign-produced item is a "direct product" of "technology" or "software." A foreign-produced item meets the product scope of being "direct product" if the foreign-produced item is not

高科技贸易促进和出口管控

引言

据 报道，美国对中国的贸易逆差在 2021 年超过了 3550 亿美元，比 2020 年增加了约 12%，这一数字在 2022 年的前两个月超过了 670 亿美元。在 2021 年全年以及 2022 年第一季度，中美关系持续紧张，特别是在出口管制和制裁方面。虽然双方在这个时间段内都没有向对方强加任何新的出口管制要求，但全球范围内许多出口管制和制裁范围的扩大对双方关系都有直接和广泛的影响，并导致紧张的出口管制局势升温，已经存在证明表示出口管制对于中美企业来说都是十分棘手的。

中国美国商会（以下简称商会）鼓励中美两国在产业和政府层面加强合作，以解决双方关注的出口管制和制裁问题，商会敦促中美两国尽量减少对于那些有明确、合理解释的民事最终用途及对中美两国和全球供应链都有利的技术分享的限制。商会促请双方共同合作，解决全球经济面临的各种地缘政治和物流问题。双方的合作将有利于两国和全球的经济的发展。

近期的事态发展和存在的监管问题

全球出口管制

2022 年，美国实施了有史以来最广泛的全球性制裁和出口管制。虽然这些管制和制裁并非针对中国，但它们正在影响中国企业的运营和业务及在华美国企业的日常运营。这些制裁和出口管制措施十分复杂且全面，给任何不合规企业，无论是美国企业还是中国企业，都带来了巨大的风险。虽然商会意识到两国还没有在这些出口控制和制裁方面达成一致，但商会呼吁双方尽量减少其对两国之间合法民用高科技贸易的影响。商会促请双方政府避免采取任何会导致紧张局势升级的行动，任何此类行动都可能会导致制裁和出口管制范围的扩大，并直接影响到中美经贸往来。

美国出口管制

外国直接产品规则 (FDPR) 的进一步扩展

自 2020 年 8 月 17 日外国直接产品规则 (FDPR) 的范围被扩大以来，还没有进一步扩大实体清单上中国实体数量的决定。然而，对俄罗斯和白俄罗斯实施的 FDPR 规则有了进一步的发展，这也影响到中国企业和在华经营的美国企业。

外国生产的物项如果是“技术”或“软件”的“直接产品”，则适用俄罗斯和白俄罗斯的 FDPR 规则。如果外国生产的物项没有被指定为 EAR99，属于原产于美国的“技术”或“软件”的“直接产品”，且受到商业管制清单 (CCL) 中任何 ECCN 规定的 EAR 管辖，则该物项属于“直接产品”的产品范围。

外国生产的物项如果是完整工厂或工厂“主要组成部分”的“直接产品”，则也适用于俄罗斯和白俄罗斯的 FDPR 规则。如果外国生产的物项没有被指定为 EAR99，并且由位于美国以外的任何工厂或工厂的“主要组成部分”生产，无论是在美国还是外国制造，本身就是美国原产的“技术”或“软件”的“直接产品”，且受到商业管制清单 (CCL) 上任何 ECCN 规定的 EAR 管辖，则该外国生产的物项属于俄罗斯和白俄罗斯 FDPR 规则这一部分的产品范围。

俄罗斯和白俄罗斯的 FDPR 挑战

对俄罗斯和白俄罗斯 FDPR 规则范围的扩大，加上美国财政部和全球其他国家对俄罗斯和白俄罗斯实施的相应制裁，导致企业面临的出口合规环境变得非常复杂并具有挑战性。虽然商会还没有看到任何旨在规避这些制裁活动的迹象，但由于这些管制和制裁措施十分广泛且复杂，企业担心可能会无意中触犯到制裁措施。为了帮助缓解未来可能产生的困惑和问题，商会敦促美国政

designated Export Administration Regulation (EAR) 99 and is a “direct product” of US-origin “technology” or “software” subject to the EAR that is specified in any ECCN on the Commerce Control List (CCL).

The FDPR for Russia and Belarus also applies if a foreign-produced item is a “direct product” of a complete plant or ‘major component’ of a plant. A foreign-produced item meets the product scope of this part of the FDPR for Russia and Belarus if the foreign-produced item is not designated EAR99 and is produced by any plant or ‘major component’ of a plant that is located outside the United States, when the plant or ‘major component’ of a plant, whether made in the United States or a foreign country, itself is a “direct product” of US-origin “technology” or “software” subject to the EAR that is specified in any ECCN on the CCL.

Challenges of the Russia and Belarus FDPR

The expanded FDPR on Russia and Belarus, combined with the corresponding sanctions imposed on Russia and Belarus by the US Treasury Department and other countries around the globe, have created a very complex and challenging export compliance environment for companies. While AmCham China has not seen any sign of activities intended to circumvent these sanctions, there is concern that companies could inadvertently run afoul of the sanctions due to how broad and complex these controls and sanctions are. To help alleviate any confusion or problems in the future, AmCham China requests the US Government continue to provide FAQs on the controls and work with AmCham China and Chinese industry associations on an extensive outreach program to all companies operating in China on the Russia and Belarus export controls and sanctions.

Military End-User/End-User

The US Department of Commerce Bureau of Industry and Security (“BIS”) has continued to carry out and enforce export control regulations on China regarding military end-use and military end-users (MEU Rule) that applies to goods, software, and technology subject to US export controls jurisdiction. BIS has also placed additional Chinese companies on the MEU List, adding to the 57 Chinese companies placed on the initial MEU list published on December 23, 2020.

This MEU Rule has increased licensing requirements and due diligence responsibilities for both US and non-US companies, which need to ensure they are not exporting or reexporting items subject to the US Export Administration Regulations when “military end users” or “military end uses” are involved.

While BIS has provided a list of FAQs and conducted extensive outreach to industry, which have been very beneficial to the AmCham China membership, AmCham China members still suffer quite extensive delays in the processing of license

applications due to the requirements of MEU Rules and other rules. Thus, we again request that the US government devote additional resources to processing license applications in a timely and consistent fashion to avoid hindering legitimate civil trade.

Education and Training

Amidst the numerous changes to Chinese and US export control laws and regulations over the last several years, which now include the implementation of new and unprecedented global sanctions and export controls, education and training are imperative for both US and Chinese companies as they endeavor to engage in high-tech trade safely and legally. 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 the past months, AmCham China has seen an enormous increase in demand for education and training on export controls from both US exporters and their Chinese customers, and AmCham China would like to engage actively with the US and Chinese governments to develop and conduct training on US and Chinese export control laws.

AmCham China has previously facilitated educational seminars for US exporters, Chinese importers, and government officials on export controls and compliance to help enhance high-tech trade between the two countries and to minimize regulatory risks. AmCham China hopes the Chinese and US governments will work with AmCham China to reengage in such cooperative training so companies can work together for the mutual benefit of both countries.

Entity List

BIS continues to add Chinese entities to the Entity List for national security and foreign policy reasons. The Entity List identifies foreign parties that are prohibited from receiving some or all items subject to the EAR, unless the exporter, reexporter, or transferor first receives a license from BIS. BIS chairs and implements the decisions of the End-User Review Committee (ERC), which is the interagency group consisting of representatives from the Departments of Commerce, Defense, Energy, State, and the Treasury as appropriate. The ERC oversees administering the Entity List and determining all additions to, removals from, or other modifications to the Entity List. According to AmCham China’s observations, the most recent removal of a Chinese entity from the Entity List by the ERC was in August 2019.

Given the above facts, AmCham China would like to see greater effort by the US government to promote education on best practices to avoid US export control violations, and to provide more detailed guidance and direction to listed entities which are making efforts to be removed from the Entity List, especially if the entity has expressed willingness

府继续提供对管制措施常见问题的解释，并与中国美国商会和中国行业协会开展合作，就俄罗斯和白俄罗斯的出口管制和制裁措施向所有在华经营的企业开展普遍的宣传计划。

军事最终用户 / 最终用户

美国商务部工业与安全局（BIS）继续执行和实施对中国有关军事最终用途和军事最终用户的《出口管理条例》（MEU 规则），该条例适用于受美国出口管制约束的商品、软件和技术。BIS 还将更多的中国企业列入 MEU 名单，在 2020 年 12 月 23 日公布的初始 MEU 名单上增加了 57 家中国企业。

这项 MEU 规则增加了美国和非美国企业的许可要求和尽职调查责任，旨在确保在涉及“军事最终用户”或“军事最终用途”时，企业没有出口或再出口受美国《出口管理条例》（EAR）管制的物项。

虽然美国商务部工业和安全局（BIS）已经发布了一份常见问题解答清单，并开展了很多行业性宣传活动，商会会员企业也从中收益。但商会注意到，由于该规则和其他规则的要求，许可证申请的进度出现了相当大的延迟。因此，商会促请美国政府投入更多的资源，及时和一致地处理许可证申请，以避免波及合法贸易经贸往来。

教育和培训

在过去几年中，中国和美国的出口管制法律法规发生了许多变化，其中包括实施新的和前所未有的全球制裁和出口管制。在中美两国企业努力安全合规地从事高科技贸易的过程中，相关的政策培训是必不可少的。组织从事贸易的合格进口商和出口商，为他们提供出口管制和合规性培训，是推动中美高科技贸易发展的有效途径。在过去的几个月里，商会发现美国出口商及其中国客户对出口管制教育和培训的需求有了显著增长，商会希望与中美两国政府积极接触，组织和开展涉及两国出口管制法律的培训。

众所周知，商会曾为美国出口商、中国进口商和相关政府部门举办过有关出口管制和合规的教育研讨会，推动两国的高科技贸易发展，并最大限度地降低监管风险。商会希望两国政府能够与商会合作，重新组织开展

此类合作培训，以便企业能够共同为两国的共同利益而努力。

实体清单

出于国家安全和外交政策的考虑，BIS 持接连将多家中国实体列入实体清单。除非出口商、再出口商或转商事先从 BIS 获得许可，实体清单中确定的外国当事方禁止接收部分或所有受《出口管理条例》管制的物项。BIS 组织开展最终用户审查委员会（ERC）并执行其决定，该委员会是由商务部、国防部、能源部、国务院和财政部代表组成的跨部门小组。委员会对实体名单的管理进行监督，并对所有实体名单的增加、删除或其他修改行为作出决定。据商会观察，委员会最近一次将中国实体从实体名单中删除是在 2019 年 8 月。

鉴于上述事实，商会希望看到美国政府作出更大努力，就如何避免美国出口管制违法行为的最佳实践开展教育培训，并为正在努力将自己从名单上删除的被列实体提供更详细的指导和指示，尤其当该实体表示愿意实施有效的出口合规计划（ECP）并暂停导致其被列名的活动时。

此外，商会希望中美两国政府都能鼓励中国公司申请将自己从实体清单中删除，并此为提供必要的支持。这对于提高透明度和鼓励企业积极展示如何加强出口合规工作，以持续参与美中高科技贸易并获得战略优势，都会有所帮助。

外国供应和非美国供应商

美国的一些出口管制规则是单边的，许多美国限制的两用物项可以轻易地从其他国家出口而无需出口许可。此外，这些物项许多已经存在于中国本土市场。在这种情况下，这些单边限制对美国的国家安全没有任何好处。因此，商会建议，特别是在制定新的单边管制措施及对新兴技术和基础技术施加任何管制时，美国政府能够审查美国的出口管制政策和管制措施，并将中国本土已经存在的供应和非美国来源的供应纳入考虑。

商会强调，在其他国家可以自由或方便地出口同样物项的情况下，限制美国物品对中国的出口不利于美国的国家安全。相反，这将导致美国企业失去出口机会，并反过来损害美国的就业机会、经济增长和美国军事工

to implement effective Export Compliance Program (ECP) and halt the activities that caused their listing.

Further, AmCham China would like both the US and Chinese governments to encourage Chinese companies to apply for removal from the Entity List and provide necessary support. This could be extremely helpful in terms of transparency and a positive demonstration of how to strengthen export compliance efforts to continually engage and gain strategic economic advantage for US companies through US-China high-tech trade.

Foreign Availability and Non-US Suppliers

A number of US export control rules are unilateral, and many items that require a US dual-use export may be exported readily from non-US countries without an export license. Additionally, many of these items are already available indigenously in China. In such instances, AmCham China has found that these unilateral restrictions provide little benefit to US national security. AmCham China therefore requests that the US government review US export control policies and controls considering indigenous availability in China and availability from non-US sources, especially in formulating new unilateral controls, as well as any controls to be placed on emerging and foundational technologies.

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. Instead, it results in a lost US export opportunity for US companies, 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 revising the emerging and foundational technologies control lists and before promulgating any unilateral US controls.

Chinese Export Controls

End-Use Visits

As stated in the introduction to this Chapter, AmCham China members are experiencing delays in the arrangement and conduct of end-use visits, which delays the issuance of licenses that are important to US exporters and their Chinese customers. Compounded by global supply chain difficulties due to COVID, AmCham China believes it is important to work together to limit any further negative impacts on the supply chain. AmCham China hopes that outstanding end-use visits can be carried out as soon as possible, as this is a routine procedure that US and Chinese export control authorities have been conducting for decades.

Chinese Regulatory Reform

The Standing Committee of the 13th National People's Congress passed *China's Export Control Law (ECL)* on October 17, 2020, effective December 1, 2020. China's National People's Congress described the law as 'China's first omnibus national legislation on export controls,' which previously had been governed by rules scattered in various statutes and administrative regulations. The ECL consists of 49 articles over five chapters covering general provisions, control policies, control lists and control measures, regulations, and legal liability, plus supplementary provisions.

On April 22, 2022, the Ministry of Commerce published the "*Regulations on Export Control of Dual-Use Items (Draft for Comment)*" and the document "*Regarding the Regulations on Export Control of Dual-Use Items (Draft for Comment)*". AmCham China had stressed the importance of releasing these regulations and appreciates that the Ministry of Commerce has published the draft for comment. AmCham China looks forward to engaging with the Ministry of Commerce on the draft regulations and providing industry feedback on the draft.

Recommendations

For the Chinese Government

- Work with the US Government and relevant companies to conduct outstanding end-use visits, to facilitate the removal of impacted Chinese companies from the Unverified List upon the successful completion of the end-use visits and pending licenses can be issued thereafter.
- Engage with industry on the draft export control regulations and offer seminars and workshops to discuss the draft.
- Engage with US and Chinese companies in developing criteria for compliance programs as provided in the ECL.

For the US Government

- Ensure that the licensing authorities have sufficient resources to process license applications given changes in US policy.
- Engage with Chinese companies being considered for addition to the Entity List and give them the opportunity to address concerns that may prevent their addition to the list.
- Work with other governments to impose multi-lateral controls instead of imposing unilateral US

业基地的稳定。因此，商会敦促美国政府在修订新兴技术和基础技术管控清单时，以及在颁布任何单边管制措施之前，能够尽可能与其他多边出口管制体系成员的做法保持一致。

中国出口管制

最终用途审查

正如引言中所述，商会会员企业在组织和开展最终用途审查方面遇到了延误的情况，阻碍了对美国出口商及其中国供应商十分重要的许可审批。鉴于新冠疫情为全球供应链带来种种挑战，商会认为必须共同努力，避免任何对供应链的进一步负面影响。商会希望中国政府能够尽快组织和开展尚未完成的最终用途审查，这也是两国出口管制部门几十年来一直在开展的例行程序。

中国监管改革

第十三届全国人大常委会于2020年10月17日通过了《中华人民共和国出口管制法》，于2020年12月1日开始生效。全国人大常委会将该法描述为“中国第一部关于出口管制的综合国家立法”。此前，该法的管辖范围由分散在各种法规和行政条例中的规则负责。《出口管制法》包括五章，涵盖总则、管制政策、管制清单和管制措施、法律责任以及附则，共49条。

2022年4月22日，商务部发布了《两用物项出口管制条例（征求意见稿）》公开征求意见的通知。商会赞同这些法规的重要性，并赞赏商务部公开征求意见的做法。商会期待与商务部就《条例》草案内容进行交流，并提供行业的反馈意见。

与中美两国企业进行合作，制定中国出口管制法律规定的合规流程标准。

对美国政府：

- 鉴于美国的政策变化，确保主管部门拥有足够资源来处理许可申请。
- 与可能被纳入实体清单的中国企业进行接触，在将其纳入清单前，为其提供机会解决问题的机会。
- 与其他国家政府开展合作，实施多边管制，取代美国的单边管制，单边管制无助于实现国家安全和外交政策目标。

对双方政府：

- 商会鼓励两国政府作出更大努力，通过教育和培训活动协助美国和中国企业加强自身合规工作，确保他们不会违反适用的出口管制法律和条例。
- 建立两国政府和行业代表可以公开合作的渠道，以解决出口管制问题，并确定基准以提高中国企业获得美国管制商品的能力，允许中美企业为了两国的共同利益一起开展技术研发工作。

建议

对中国政府：

- 与美国政府和相关企业开展合作，完成待办的最终用途审查，在全部完成最终用途审查后，将受影响的中国企业从未审查名单中剔除，并在审查完成后发放批准许可。
- 就《出口管理条例》草案与业界进行沟通交流，并组织培训会 and 研讨会对该草案开展讨论。

controls that are ineffective in reaching national security and foreign policy goals.

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 that they do not run afoul of applicable export control laws and regulations.
- 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.

Human Resources

Introduction

The sudden outbreak of COVID-19 in China had a substantial impact on the business community, affecting operations, revenue generation and capital management, and the external operating environment of our member companies in 2020 and continues to dominate the concerns regarding human capital in China in 2021 and 2022.

In 2021 China's GDP grew 5.1 percent year on year, according to China's National Bureau of Statistics. Member companies remained committed to strategically prioritizing their China operations with 60 percent of members reporting China as a top three priority market for their business. Despite this, many companies grow concerned about human capital challenges amidst ongoing pandemic restrictions and growing US-China bilateral tensions.

In AmCham China's 2022 *China Business Climate Survey*, member companies reported that their top three human capital challenges for 2022 are labor costs (44 percent), rising salary and wage costs (42 percent), and US-China tensions (28 percent). Eight-of-ten members anticipate their company will have to endure higher labor costs on average in 2022 compared to 2021. For the Resources sector, that figure jumps to nine-of-ten companies.

Attracting and retaining staff is the top human capital priority for 2022, up 30 percentage points from 2021. A third of companies acknowledge that employee turnover was higher this year than last year – potentially related to the global pandemic-related trend of people leaving their jobs for new opportunities. Meanwhile, half of members also expect to increase headcount in 2022 beyond their 2021 levels. The need to find qualified talent to fill both existing vacant roles and new roles is further complicated by the rise in labor and salary costs. Beyond travel restrictions impacting qualified candidates last year, attracting and retaining expatriate staff was also challenged by the proposed changes to the Individual Income Tax Law (IIT Law). The changes were expected to go into effect on January 1, 2022 but were delayed at the last minute to take effect in 2023.

Flexible Employment

Consistent with the development of China's economy, more

enterprises are looking to establish flexible employment or flexible working arrangements. Flexible employment differs from traditional, full-time, "nine-to-six" employment. Instead, flexible employment captures a spectrum of non-traditional working arrangements through which enterprises hire workers on a flexible basis, based on their company's production demands and employment needs, including part-time employment. Many younger workers are pursuing jobs in the "gig economy," characterized by multiple professional identities and active engagement in temporary, flexible work arrangements across different organizations at the same time.

From a business perspective, flexible employment enables enterprises to respond quickly to changing market conditions while reducing long-term operating and staffing costs. For those engaged in flexible work, such opportunities allow them to set flexible schedules and earn income while managing other personal or family responsibilities. The scope of occupations with flexible employment opportunities is large. Being active in a diverse landscape of jobs, projects, and opportunities is an important way for flexible workers to market their personal and professional value.

China's *Labor Contract Law* established the current regulatory framework for part-time employment and constitutes the legal basis for flexible employment in China. In practice, flexible employment can include dispatched labor (through a third-party agency), outsourcing, part-time labor, retirement, and re-employment, or paid and unpaid interns. In principle, Chinese regulations allow for the development of flexible employment. Our members' experience with flexible employment, however, is frustrating in the following respects discussed below.

Social Insurance and Flexible Work

China's current social security system is predicated on providing benefits for traditional full-time employment. After an employee signs a work contract, both employee and employer jointly contribute mandated social insurance payments (pension insurance, unemployment insurance, medical insurance, work-related injury insurance, maternity insurance, and a housing fund). The employer is obligated to withhold and/or collect social insurance payments to ensure

人力资源

引言

2020年中国突如其来的新冠肺炎疫情，对企业影响巨大，中国美国商会（以下简称商会）会员企业在内部运营、收入、资本管理及外部经营环境等方面均受到冲击。2021年和2022年，中国人力资源行业仍然笼罩在疫情的阴影之下。

根据国家统计局的数据，2021年中国GDP同比增长5.1%。商会会员企业在战略上一如既往地高度重视其在中国的业务，60%的会员企业表示中国位列其业务主要市场的前三名。尽管如此，随着疫情相关限制政策持续实施，中美双边紧张关系不断加剧，许多企业对人力资本的挑战愈发担忧。

商会2022年《中国商务环境调查报告》显示，会员企业在2022年面临的三大人力资本挑战分别是劳动力成本（44%）、工资和薪金成本上升（42%）和中美紧张关系（28%）。80%的会员企业预计，与2021年相比，2022年平均劳动力成本将会更高。对于资源型行业来说，劳动力成本升高的企业跃升至90%。

吸引员工、留住员工是2022年企业人力部门的首要任务，比2021年增加了30个百分点。三分之一的企业承认，今年的员工流失率高于去年——这可能与全球疫情背景下，大家纷纷离开原工作岗位另谋高就的趋势息息相关。同时，半数会员企业也预计2022年会在2021年的基础上增加员工人数。随着劳动力成本和工资成本不断上升，寻找符合条件的人才来填补现有空缺岗位和新岗位的需求也变得更加复杂。去年，除了受旅行限制影响，寻找符合条件的候选人、吸引和留住外籍员工也受到了《个人所得税法》修订草案的挑战。

《个人所得税法》修订版原本计划于2022年1月1日生效，但最终确定推迟到2024年生效。

灵活用工机制

随着中国经济的发展，越来越多的用人单位及劳动者希望通过灵活用工的方式来形成彼此的雇佣关系。灵活用工区别于传统朝九晚六的全职工工，是企业基于生产需求和用人需求的波峰波谷，灵活按需雇佣劳动者，与劳动者之间建立非全职劳动关系的一种用工模式。同时随着新生代批量进入职场，产生了大量“斜杠青年”，即选择拥有多重职业和身份的多元生活的人才，他们经常拥有多个职业身份，同时在不同的新经济组织中工作。

从企业角度讲，灵活用工制度使企业能快速应对不断变化的市场，同时也为企业节省了长期的运营及人力成本。从劳动者角度讲，这种用工模式可以帮助他们更灵活地安排自己的工作时间，在获得收入的同时兼顾个人兴趣或家庭责任。具有灵活就业机会的职业范围很大。在各种各样的工作、项目和机会中活跃起来是员工体现其个人和专业价值的重要方式。

中国《劳动合同法》对于非全日制劳动关系已经进行了规定，这是目前实行灵活用工的法律依据。在实际操作过程中，灵活用工通常是以劳务派遣（通过第三方机构）、外包用工、非全日制用工、退休返聘或实习劳务等形式存在的。虽然原则上中国的法规为灵活用工提供了发展的空间，但是结合具体的经验，商会发现灵活用工在以下方面仍具局限性。

社保机制不能为企业与劳动者的灵活用工模式提供有效保障

中国现行的社保机制为传统的固定全职工工方式提供了有效保障。员工与用人企业签定劳动合同之后，由企业与员工共同缴纳社会保险（包括养老保险、医疗保险、失业保险、工伤保险和生育保险，及住房公积金）。由于企业承担代扣代缴义务，可以使各项社会保险的缴

that contributions are made. In the event that problems arise during the course of employment, such as a work injury or temporary unemployment, the enterprise and employee can be compensated via the existing social security system.

Under a flexible employment arrangement, social insurance payments are the responsibility of the employee. On the one hand, this reduces the staffing costs for enterprises. On the other hand, it creates certain risks for enterprises that want to adopt flexible employment and presents a long-term challenge to financing social security. For example, if a work-related injury occurs, the enterprise has to cover the costs on its own instead of compensating the employee from social insurance funds. Many responsible enterprises reduce these risks through the purchase of commercial accident insurance or through outsourcing and hiring of dispatched labor. These options may, however, entail the need to procure additional insurance policies or make other arrangements to control risk, raising labor costs. Challenges also arise with respect to making payments to such employees, including complicated procedures and a reliance on labor dispatch agencies.

Because China's social security system at present does not function efficiently to benefit part-time employees, employees who make individual social security contributions may be unable to enjoy the full benefit of their labor. Cases arise in which individual social insurance payments are not fulfilled, or employers incur high fees from intermediaries for assistance in navigating the system. Therefore, employees who make individual social security contributions are unable to fully benefit as intended. These challenges aggravate opposition to flexible employment and render it incapable of providing sufficient protection to those workers who need it.

Flexible Employee Qualifications

As China's industrial and economic structure has developed, flexible employment is increasingly common in the IT and service industries. Its application has expanded from simple, repetitive jobs to more technical, professional, and managerial positions. Consequently, the number and type of professional qualifications needed for flexible employment have expanded. Flexible employment arrangements need to be based on appropriate business and professional ethics. China has yet to establish a system for appropriately rating and assessing the professional qualifications of flexible workers, particularly those who assume management or other technical positions. The ability to assess the qualifications and professional reputation of flexible workers remains a challenge.

We recommend that the government begin by establishing a system to standardize the certification of professional qualifications, link those qualifications to social security, and learn from the experience of other developed countries in creating policies to govern flexible employment so as to promote the development of flexible employment arrangements in China.

AmCham China's specific recommendations include:

- Leverage the Ministry of Human Resources and Social Security (MHRSS), its local departments, and industry associations to develop a professional qualification certification system to regulate the hiring of flexible workers. Work with the MHRSS and industry associations to strengthen the certification of professional qualifications of flexible workers. Ensure that the certification process is considered the minimum "threshold" for flexible employment. Such approach will reduce the business risks stemming from hiring flexible labor, while ensuring qualified flexible workers have access to the right opportunities. It also creates a stronger connection between flexible workers and the projects in which they are involved. This approach will help to raise the professional standards of flexible workers and establish a healthy and dynamic flexible employment marketplace.
- Encourage enterprises to assume responsibility for withholding and collecting payments by reducing the social security contribution rate for flexible employment. Additionally, allow multiple enterprises to share contributions to social security for flexible workers. For flexible workers with certified qualifications and a professional reputation in good standing, we recommend that employers be responsible for withholding and collecting social insurance payments, and a lower social security contribution rate be applied. For individual enterprises, this will reduce operating and staffing costs. Because each enterprise now bears responsibility for social security payments, flexible workers should be motivated to obtain the needed professional qualification certifications or invest in their capabilities in order to do so. In addition, if flexible workers are employed by multiple employers at the same time, they may also have the opportunity to increase their individual social security benefits by collecting social insurance contributions from multiple employers.
- Engage in consultation with countries that are global leaders in developing policies to support and manage flexible employment. Create a stronger enabling environment for employees and enterprises employing flexible workers by improving laws and regulations. Europe, the US, and Japan have established relatively comprehensive systems with respect to flexible employment and have some specific practices from which China could benefit. We recommend that the Chinese government learn from the experiences of these countries by interacting with industry associations and relevant labor and employment regulatory agencies. Incorporating global best practices should improve the regulatory framework for flexible labor with respect to employment conditions, labor protection, vocational training, and unemployment protection in the context of China's particular needs.

纳落到实处，一旦在员工受雇期间出现任何问题（如工伤，或暂时失业），企业与劳动者都可以从社保体系中得到有效的保障。

但是对于灵活用工模式而言，社会保险的缴纳义务由劳动者个人承担。这种操作一方面为企业节省了用工成本，但同时也为企业采取灵活用工带来了潜在的困难和风险，为社会保障的长期筹资带来挑战。如有工伤情况发生时，企业不能从社会保险中列支相应的赔偿费用，而需要自行承担费用。许多负责任的用人企业为员工购买商业意外伤害保险，或是通过劳务派遣及外包用工的形式来降低这个风险。但是，这可能需要购买额外的保险或通过其它方式来控制风险，从而增加劳动力成本。向此类雇员付款还有其它困难，包括复杂的程序和对劳务派遣机构的依赖。

由于目前中国的社会保障体系无法有效地保障非全职员工的权益，因此，个人缴纳社会保险金的员工可能无法充分享受其劳动所带来的收益。这导致个人社会保险未得到缴纳，或者雇主需要向中介机构支付高额费用协助加入社保体系。因此，个人缴纳社会保险金的员工无法如期充分受益。这些挑战只会加剧对灵活就业的反对，使其无法为需要的工人提供足够的保护。

从业人员资质在现行灵活用工模式下不能得到有效监管

随着中国产业结构和经济结构的发展变化，IT及服务产业灵活用工现象越来越普遍，其所适用的岗位也从初期的简单、重复性高的工作岗位扩大到技术、专业、管理型岗位。因此，企业对于灵活用工从业人员的素质要求在不断提高，需求规模也在不断扩大。在灵活用工模式下，劳动者与企业间的雇佣更需要建立在良好商业和职业道德的基础上。目前中国在职业管理过程中仍未建立完善的职业资质评级评估体系，特别是管理或其他技术岗位人员。评估劳动者资质与职业信誉的能力至今仍是一大挑战。

商会建议中国政府可以从建立并完善职业资质认证体系入手，与社保体系进行有效连动，借鉴发达国家在灵活用工方面的经验，从而促进灵活用工在中国的发展。具体建议包括：

- 借力人力资源和社会保障部、地方人社部门或行业

协会力量推行职业资质认证体系，规范灵活就业人员的聘用。借助劳动用工管理部门或行业协会的优势，强化从业人员的职业资质认证。将认证流程作为灵活用工的基本“门槛”。这种做法在降低了用人企业的用工风险的同时，可以保证符合资质的灵活就业人员能够获得合适的机会。另一方面可以在灵活就业者和其参与的项目之间建立起更强的联系，这一举措可以推动劳动者职业素质的整体提高，建立健康和有活力的灵活用工市场。

- 通过降低灵活用工的社保费率，鼓励企业承担代扣代缴社保的责任。此外，可以允许多家企业共同为灵活就业人员缴纳社保。对于具有认证资质和良好职业信誉的灵活就业人员，商会建议由用人单位负责代扣代缴社保，并适用较低的社保费率。就单一用人企业而言，这种方式可以节省运营与人员聘用成本。由于现在每个企业都要承担缴纳社会保险的责任，应激励灵活就业人员获得所需的专业资格认证，或者为获得专业资格而进行能力投资。此外，如果灵活就业人员同时为多家企业工作，其本人也有机会通过多家企业的代扣代缴社保来提升个人的社保待遇。
- 加强与在制定支持和管理灵活就业政策方面处于全球领先地位的国家交流沟通。通过完善法律法规，为员工和企业聘用灵活就业人员创造更加有利的环境。欧美及日本在灵活用工方面已经建立比较完善的制度，且拥有一些具体的实践经验，中国可以从中受益。建议中国政府通过行业协会或是劳动就业管理部门的资源来与这些国家取得联系，具体地借鉴一些在灵活用工方面的实践经验。通过这些实践经验的学习，结合中国的具体用工需求在聘用条件，劳动保护，职业培训，失业保障等方面完善灵活用工的监管框架。

社会保险缴纳

分级式社保体系

由于中小微企业对社会保险不堪重负，商会建议政府建立阶梯式或分级式的社会保险缴纳结构。国务院办公厅于2019年5月开始施行《降低社会保险费率综合方案》。该方案降低了企业对养老保险的缴费比例，削减了失业和工伤保险的保费，并调整就业人员平均工资

Social Insurance Payments

Graduated Social Insurance Regime

Because social insurance payments impose a disproportionate burden on micro, small- and-medium enterprises (MSMEs), we recommend that the government establish a stepped or graduated social insurance payment structure. The General Office of the State Council implemented the *Comprehensive Plan for Reducing Social Insurance Rates* in May 2019. The Plan reduces enterprise contributions to pension insurance, cuts unemployment and work-related injury insurance premiums, adjusts calculations for average salaries, and reasonably shrinks the pool of insured individuals and enterprises required to pay into the social insurance system. This policy has significantly reduced the burden of social insurance on industry. In 2019, contributions to social insurance fell by an estimated RMB 425.2 billion.

In response to COVID-19, Premier Li Keqiang on February 18, 2020 presided over an executive meeting of the State Council which decided to reduce or exempt corporate social insurance premiums and implement a policy that deferred housing provident fund payments by enterprises. As of the end of December a total of RMB 1.54 trillion has been reduced or exempted from the social insurance fund for basic pensions, work-related injuries, and unemployment. As of November 2020, a month earlier, social insurance payments had been reduced by a total of RMB 1.3914 trillion, and this reduction was composed of two parts, one from permitted exemptions to social insurance payments totaling RMB 1.1369 trillion and the second from a reduction in the rate of social insurance payments to be made, totaling RMB 254.5 billion. Additionally, certain insurance payments totaling RMB 69.9 billion have been deferred.

Even while reductions to overall social insurance fund contributions have been made, improved methods of collecting and monitoring these payments mean the burden on MSMEs is still significant. Flexibility around when social insurance contributions are made and at what level which characterized the MSME sector in the past is gradually being reduced. Enterprises that have traditionally made social insurance contributions on time and in full stand to benefit the most from tighter collection and monitoring of such payments.

Now that the ability to monitor compliance with social security contributions has gradually improved and data on these payments can be shared, we recommend that a graduated ladder for social insurance premiums be established along the lines of the graduated corporate income tax system. Such reform would continue to reduce the burden of social insurance contributions on industry and promote employment and sustainable development.

An additional issue concerns the outsourcing of the delivery of social insurance payments. The listed location where

a social insurance payment is made (e.g., to which local authority) should generally correspond to the location of the employer (e.g., social insurance payments made on behalf of local employees must be paid from the account of the local subsidiary or branch). If an enterprise does not have a branch in the same location where the social insurance contribution is to be made, the enterprise generally must outsource this operation to an HR specialist in order to continue making the social insurance payments. Nevertheless, outsourcing creates potential compliance challenges.

According to a survey released by 51 Social Security, a company that provides internet-based social security solutions, in 2020, the proportion of enterprises with offices in more than one province among those surveyed was 48.4 percent. Approximately 15 percent of survey respondents indicated that their employees are located in more than 10 cities across China. Enterprises with operations and offices in multiple provinces is now the norm. Such a system demands that talent and labor be able to move flexibly across sub-national borders.

Article 7 of the *Interim Regulations on the Collection and Payment of Social Insurance Premiums*, provides that:

“Payers must register with the local social insurance agency in order to participate in the social insurance scheme. Items needed to register include: the unit’s name, domicile, place of business, unit type, name of the legal representative or person in charge, bank account number, and other items as stipulated by the labor and social security administrative department of the State Council.”

Enterprises operating nationally often have a diverse, geographically disparate set of employees, some of whom work outside the locality where the enterprise is registered. In such cases, the employee’s location of business is different from the location where the enterprise is registered, and social insurance contributions must be paid according to the enterprise’s place of registration. At present, the most widely adopted method is for enterprises, including AmCham China member companies, to make social insurance contributions through a third-party HR company acting as an agent. Some localities require that the labor contract be provided when the HR agency handles a new hire or change in staffing, and therefore the company needs to outsource its social insurance payments. Such an action is risky and prone to legal disputes. In order to be fully compliant with the existing regulations, an enterprise needs to register its branch in a location where it has employees, which indirectly increases management and operating costs. If all social insurance payments are made in the location where the enterprise is registered, employees who use or try to collect their social insurance confront challenges, particularly with respect to medical insurance payments.

Therefore, adapting current policies around the collection of social insurance payments in ways that account for an

计算口径，合理降低部分参保人员和企业的社保缴费基数。该政策明显降低了企业社保的缴费负担，对企业减负的作用明显。2019年共计减免4252亿元。

为应对疫情，2020年2月18日，国务院总理李克强主持召开国务院常务会议，决定减免企业社保费、实施企业缓缴住房公积金政策。截止2020年年底，共减免养老、工伤、失业等社保费15,400亿元人民币。2020年一月至十一月，共减免企业基本养老保险、工伤、失业三项社会保险费11,369亿元，降低社保费率政策减少基金收入2545亿元，合计为企业减负13914亿元，缓缴社会保险费699亿元。

即使社会保险的总体缴纳额有所降低，但征收监督社保缴纳的方法不断改进，这意味着中小微企业的负担仍然很大。过去中小微企业在社会保险缴费时间和基数上的灵活空间在逐步压缩。随着社保征管愈发严格，一直按时、足额缴纳社会保险费的企业则会受益最多。

既然社保税务征收监管能力已逐步完善，数据能够共享，建议根据企业收入税的阶梯，制定社保基数或者费率的阶梯，进一步合理降低相应企业的社保负担，促进就业与可持续发展。

另一个问题涉及到社会保险缴纳的外包问题。社保缴纳地需要和实际用人单位完全一致（当地员工的社保缴纳需要是当地分子公司的账户），公司如果在员工社保缴纳地没有分公司，则需要和人力资源外包公司签订外包合同，以便继续缴纳社保。然而，此方法会给企业带来一些潜在的合规挑战。

根据51社保（一家提供互联网社保解决方案的企业）发布的2020年度调查显示，受访企业中的跨省企业占比上升，达48.4%，其中约15%的企业员工分布在全国10个以上的城市。企业在多个省份设有业务和办事处现在已成为常态。人才的跨省流动以及灵活的就业方式也成为了用工的大势所趋。

然而《社会保险费征缴暂行条例》第七条规定：缴费单位必须向当地社会保险经办机构办理社会保险登记，参加社会保险。登记事项包括：单位名称、住所、经营地点、单位类型、法定代表人或者负责人、开户银行账号以及国务院劳动保障行政部门规定的其他事项。

对于有全国性业务，员工分布在不同地域，一些员

工工作所在地与公司注册地不同的企业，社保需要在公司注册地缴纳。对包括商会会员企业在内的私营部门来说，目前通用的操作方法是第三方人事服务公司代理缴纳社会保险。在实操阶段，局部地区在人事代理机构办理增员时会需要提供劳动合同，这就意味着公司需以外包形式达到缴纳社保的目的，这种操作存在法律风险，容易发生法律纠纷。如果要完全合规，公司就需要在所在地注册分公司，间接导致公司管理运营成本的增加，如果社保全部在公司注册地缴纳，那么在员工在使用或尝试领取社保时，特别是医保环节就有诸多挑战。

因此，对于社会保险的征缴政策如何适配企业的快速发展、人员分布的地理范围快速扩展以及员工在中国大陆各地分布，仍是一个很关键的问题。商会希望有机会与政府定期沟通，确定上述挑战的解决方案。

个人所得税

2018年8月第十三届全国人大常委会第五次会议通过了个税改革方案并决定于2019年1月1日正式实施。这次个税改革在7个方面对于个人所得税的管理进行调整，最为重要的包括参考了发达国家以年度为单位，以家庭为单位的税务管理理念，在完善税法体系，规范税务管理的同时维护个人在税收方面的权益。个税改革中最为人们津津乐道的是国家在提高了个税免起征点的同时，首次设立了专项附加扣除项目，将子女教育、继续教育（成人），大病医疗，住房贷款利息，住房租金，赡养老人等支出也列入税前扣除项目，这些举措意在降低了广大工薪族的税负压力，提高低收入群体的生活水平。在2019年1月个税改革实施的同时，国家还对原有的针对特别情况及特定人群的税收制度给予了一定的过渡期，其中就包括针对全年一次性奖金的特殊计税方法及针对外籍人员的特别情况所给予的包括语言培训，住房补贴，子女教育津贴等专项附加扣除项目。

2021年12月29日，国务院宣布，年终奖个税优惠政策延至2023年底。2021年12月31日财政部和国家税务总局发布公告，有关津补贴等优惠政策延续实施，执行期限延长两年。商会对此表示欢迎。

过去三年，商会一直坚持不懈地倡导在中央和地方两级延续实施外籍员工津补贴免税优惠政策。此前，根据相关规定，2022年1月1日起，外籍个人不再享受住房补贴、子女教育费、语言培训费等津补贴免税优

enterprise's growth, an expansion to its geographical scope, and the dispersion of its employees within mainland China remains a critical issue. AmCham China welcomes the opportunity to consult regularly with the government to identify potential solutions to these challenges.

Individual Income Tax

In August 2018, the Fifth Meeting of the Standing Committee of the 13th National People's Congress (NPC) passed revisions to China's individual income tax (IIT) regime. These changes were formally implemented on January 1, 2019. The IIT reform affected the IIT system across seven main aspects, the most significant of which include bringing China's income tax code into closer alignment with established tax management principles applied in other developed countries such as filing on an annual basis and permitting families to jointly file. The effort also included reforms designed to improve China's tax code and standardize its management practices while safeguarding individual rights with respect to taxation. One of the most frequently highlighted IIT reforms is that while the government has raised the tax exemption threshold, it has also set up special additional deductions for the first time that cover children's education, continuing education (for adults), medical treatment for critical illnesses, housing/mortgage loan interest, and rent, and expenses for elderly care. These measures are principally intended to reduce the tax burden on the majority of wage earners in the economy and bolster the living standards of low-income populations. Alongside implementation of the revised IIT, the state has also established a transition period to comply with the revised IIT policies pertaining to "special circumstances" and "specific groups of people." This transition period covers revisions to the special calculation methods used to calculate the tax on annual, one-time bonuses for salaried employees and special circumstances for foreign nationals including language training, housing subsidies, children's education allowances, and other special additional deductions.

AmCham China welcomes both the State Council's announcement on December 29, 2021, that bonuses will continue to be taxed separately at a preferential rate until the end of 2023, and the two-year extension of non-taxable allowances jointly announced by the Ministry of Finance and the State Administration of Taxation on December 31, 2021.

AmCham China has advocated tirelessly for the past three years for the extension of non-taxable allowances for expatriate employees at the central and local levels. These non-taxable allowances, which include housing, education, and language training, had been set to become fully taxable in 2022. This was a top AmCham China member concern, expected to result in a further decrease of international assignments to China.

IIT Reform

The IIT reform has reduced the tax burden but its effect on high-level managers/executive staff has been fairly limited. IIT reform benefits are unevenly skewed against executive management.

Executive management comprises a unique group. Most have obtained post-secondary degrees from domestic or foreign universities and have accumulated significant business management experience. Many have professional knowledge and technical expertise in their fields. Attracting and retaining these employees is a key strategy of any company's development plan. These individuals are often compensated at levels consistent with their market value. The original intent of the IIT reform was to reduce the burden on wage earners/taxpayers. However, a review of the impact of the reform on executive managers reveals several notable developments that suggest the reform has yet to achieve its original intentions.

(1) Special Additional Deductions

The accumulation of experience is a key element of an executive manager's career development. Even today, as we see companies working to bring through the next generation of corporate managers, many executive managers are in the latter stages of their careers. Access to education for young children, obtaining a loan to purchase their first home, and receiving an advanced diploma are not their core areas of concern. They are more concerned with ❶ continuing to accrue specialized technical knowledge, developing their management skills both at home and abroad, and engaging in self-improvement by enhancing the breadth and vision of their industry knowledge; and ❷ preparing their post-work plans, in particular how they will continue to contribute to society while maintaining a stable pension and/or income. These are projects of importance into which executive managers have often invested significant time and resources, and yet they are not included within the scope of this IIT reform. Therefore, a considerable portion of the special additional deductions newly-added as part of this reform (such as housing, children's education and continuing education) cannot be effectively utilized by executive management staff.

(2) Regional Disparities in Implementation of the Special Additional Deductions

The headquarters of large domestic and foreign companies remain primarily located in first-tier and coastal cities in order to be close to China's leading commercial and industrial ecosystems. Because of this, these cities tend to bring together executive managers from across multiple industries. Given their comparatively developed status, the cost of housing, children's education, elder care, and medical expenses in these cities is higher than in other areas of China. The IIT reform, however, adopts a one-size-fits-all approach

惠政策。这是商会会员企业最为关心的问题，该措施预计会导致派遣到中国的外籍人才数量将进一步减少。

个人所得税改革

个税改革降低了纳税人的税负压力，但对于高端管理人员/主管人员的作用相当有限，税改红利对于管理人才显现分配不均的现象。

管理人员是相对特别的一个群体。他们多接受过国内或国外知名学府的高等教育，积累多年的企业一线管理经验，其中更不乏掌握一些特定领域的专业知识的专家级人员。对于这类员工的吸引与保留是企业发展规划的关键战略，因此提供与其市场价值相匹配的薪酬是国内外企业通用的作法。个税改革的初衷是减少工薪阶层/纳税人的税负压力。但是结合个税改革对管理人员的影响时，商会发现以下现象表明改革并未实现其初衷。

(1) 专项附加扣除

经验积累是管理人员职业发展的一个关键因素。即使在大力倡导企业管理人员年轻化的今天，企业仍然保有许多步入职业生涯后半程的高端管理人员。对于他们而言，年幼的子女的教育，首套住房的贷款，基础教育的文凭早已不是困扰他们的话题。在经过了职场的历练之后，他们更关心两个方面的问题：① 更多的涉猎先进的技术知识，贯通国内外的管理技能，通过提升知识技能的广度与视野提高自身的素质；② 为人生的下半程 - 退休后生活做好充分的准备，如果在贡献社会的同时，保有稳定的退休金/收入。这些他们关心的，并且为之投入大量精力与财力的项目并没有包括在本次个税改革的项目之中。同时税改中新增加的专项附加扣除项目中有相当部分项目（如住房，子女教育，继续教育等）对于高端管理人员又是无法有效利用的。

(2) 专项附加扣除项目金额没有充分体现区域差异

为靠近中国领先的商业产业生态体系，一线及沿海城市仍是各中、外大型企业总部所在地，同时也是各行业高端管理人员的聚集地。相较其它城市，这类城市所需要的包括住房、子女教育、赡养老人、医疗支付的生活成本是远远高于其它城市的。然而税改方案中在子女教育，赡养老人，继续教育及医疗支付方面规定的扣除金额没有考虑地域消费成本的差异，而是采用了一刀切

的方法。因此对于包括高端管理人员在内的一线及沿海城市的员工，税改所带来的效果出现明显的差异。

由此可见，税改方案中主要税负扣除项目设计与高端管理人员的人群特点及地域分布之间的差异，最终使得税改的红利没有得到合理适度的分配。而这种不平衡现象在过去2年可以通过保留全年一次性奖金的特殊计税方法进行适度的缓解。但是随着三年过渡方案即将到期，高端管理人员收入中的重要组成部分 - 年度奖金也将合并入全年收入进行缴纳，通过实例计算，在多数情况下，奖金税率更高，从大概率上会出现高端管理人员税后收入降低的情况。这种情况，必定加剧企业在高端管理人才吸引与保留方面的困难，增加企业实施其经营战略的挑战。

(3) 外籍个人附加扣除项目到期

人才的跨境流动是推动经济发展、国际合作以及科技进步的重要力量之一。自改革开放以来，通过大力引进外籍人才，中国有效地提升了其技术进步及经营管理能力，从而在短短的40多年间一跃成为世界第二大经济体。出于吸引高端外籍人才的目的，中国采取了多项政策，多年来针对外籍人才所享有的语言培训、子女教育、住房等方面的特别津贴税收制度就是其中之一，在很大程度上缓解了因为不能参与中国国民享有的义务教育，不能入住普通的居民社区，语言不通等而带来的额外生活成本的压力。但是随着针对外籍人才的特别津贴所适用的附加扣除项目到2021年12月底的失效，外籍人员在中国的生活成本将会出现急剧增加的情况，仅以子女教育一项为例：

对于一名中国员工其上高中的子女所需要支付的年学费不超过人民币2000元（约300美元），这笔费用可以通过专项附加扣除项目在税收上得以减免对待。而一名外籍员工的子女所需要的年学费不少于人民币10万元，在针对外籍的特别政策失效之后，10万元中仅有12,000元可以通过专项附加扣除项目在税收上得以减免。因为税收政策的变化必将带来外籍人员税后可支配收入的明显减少，增加他们的税收负担，最终导致中国市场上外籍专业人才的流失。

平衡完善的税收政策对创造资源，提供公共服务、刺激公共投资 and 经济发展来说至关重要。个税改革较之

with respect to deductions for children's education, elder care, continuing education, and medical payments, and fails to account for differences in the cost of these services across the country. Therefore, for those in first-tier and coastal cities, including executive managers, the impact of this IIT reform has been uneven.

Based on the above, it follows that the tax-deductible benefits contained in the IIT reform are not aligned with the geographical density and distribution of executive managers based in China, which ultimately means that the dividends and benefits from the reform do not appropriately benefit this segment of the population. This imbalance has been partially addressed over the past two years through the continued use of a special tax calculation that applies a special tax rate specifically for annual bonuses. As the three-year transition period was due to expire at the end of 2021, the annual bonus, an important benefit commonly included in an executive management compensation package, would be calculated as part of a manager's salary. Under this new calculation, in most cases the bonus will be subject to a higher tax rate and the manager's annual after-tax income will fall. This change will frustrate attempts by enterprises in China to attract and retain talented employees/managers and increase the challenges they face in implementing their business strategies.

(3) Expiration of Current Tax-Deductible Items for Foreign Nationals

The movement of people between countries is an important contributor to economic development, international collaboration, and technological progress. Since the advent of *Reform and Opening Up*, foreign nationals have played an important role in China's technological advancement and adoption of advanced managerial techniques during China's journey to becoming the world's second largest economy in just over 40 years. The tax-exempt allowances for language training, children's education, and housing are an important part of China's policy to attract leading foreign talent to China. To some extent, the additional living costs imposed on foreign nationals because of their children's inability to enroll in public schools and participate in China's compulsory education that is otherwise available to Chinese nationals, or their inability to take up residence in many ordinary residential communities, as well as challenges stemming from a language barrier, have been mitigated in part because of this tax relief. However, as these allowances expire at the end of December 2023, the cost of living for many foreign nationals is likely to increase sharply. Below we provide an example based on the cost of children's education:

Annual tuition fees that Chinese nationals pay for their children to attend high school typically do not exceed RMB 2,000 (US \$300). These fees can be deducted through application of the special additional deductions. In comparison, education for foreign children can incur tuition fees in excess of RMB 100,000. When the current policy expires, foreign nationals

will only be able to claim RMB 12,000 (of the RMB 100,000) as tax deductible under the special additional deductions contained within the IIT reform. These changes to the tax code will reduce take-home income and increase the tax burden among foreign nationals, potentially encouraging these professionals to permanently exit the market.

A robust, balanced tax policy is essential to generating resources for the provision of public services and to spur public investment and economic development. Compared with China's earlier IIT code, the IIT reform has reduced the tax burden for a majority of salaried employees. Continued reform, however, to the IIT will help the business community to attract and retain high-end management talent and other needed foreign professionals. In this regard, AmCham China would like to offer the following recommendations:

Implement a more flexible and diversified special additional deduction policy

We recommend that the scope of the special additional deduction for continuing education be expanded, instead of being limited to enrollment in certain academic programs or vocational education prescribed by the MRHSS. We recommend that emerging technologies (e.g., digital applications and artificial intelligence), new management practices and operating structures (e.g., blockchain and global logistics management), and applied courses from accredited overseas universities be included in the scope of "continuing education." An expansion of the scope will broaden the pool of training and skills development programs to which working professionals have access, encourage Chinese employees to participate in international training, certification, and skills development, and upgrade China's human capital and skillsets, bringing them more in line with global practice. In addition, we recommend that commercial pension and commercial medical insurance payments be included in the scope of the special additional deductions. This will help to extend commercial insurance benefits beyond those available through the national social insurance scheme. It will also generate opportunities for executive managers and foreign professionals to enjoy equal treatment and access to benefits under China's IIT reform.

Retain the Existing Tax-Exempt Allowances under China's IIT Code

AmCham China believes that although special itemized deductions for payments like children's education, housing, and continuing education will be available to foreign nationals following the IIT reform and past the conclusion of the three-year transition period, these itemized deductions are unlikely to have a significant impact on the cost of living for foreign nationals in China. They already face the prospect of high costs to educate their children in China. Instead, we recommend that the government extend the current relief measures for housing, children's education, and language

前的政策已经大幅度地降低了纳税人的税负压力。基于上述观察，商会认为可以通过持续税改帮助企业吸引并保留高端管理人才及外籍专业人才。具体的建议如下：

实施更加灵活多样的专项附加扣除政策

商会建议进一步扩大继续教育专项扣除的适用范围，使其不仅限于人社部所规定的学历及职业技能教育，可以考虑将一些新的科学技术（如数字化应用，人工智能）、新的管理观念及运营模式（如区块链，全球化物流管理等）以及海外一些知名大学的应用性课程加入继续教育的项目范围。这样的调整有利于更广泛的技能人才培养，推动中国员工参与国际技能培训与认证活动，最终使中国整体员工素质提高并与国际接轨。另外，商会建议将商业养老，商业医疗保险支付列入专项扣除的适用范围。这样做一方面可以提升商业保障体系对于国家基本社保体系的支持力度与互惠作用，另一方面可以为企业高端管理人员及外籍专业人才享有同等税改红利创造机会。

将外籍人员的特别津贴所适用的专项附加扣除项目保留在中国《个人所得税法》规定中

商会发现，虽然税改后，在三年过渡期结束之后，保留了子女教育、住房、继续教育等专项附加项目对于外籍人员的适用资格，但是，这些分享扣除不会对在华外籍人士的生活成本产生重大影响。目前，他们面临子女在中国受教育的高昂成本。商会建议，政府在现行的住房、子女教育和语言培训补贴措施于2021年底到期后，延续实行该政策。否则，在华外籍雇员所面临的税负将会显著增加，并导致派遣外籍员工到中国的企业运营成本上升。

打通各地专项人才退税政策的壁垒，支持管理人才及外籍人才

商会欣喜地看到，为了吸引和保留高端管理人才，部分地区出台了一些专项退税或税收减免政策。但是由于政策出台存在偶发性及地域性的差异，多数政策的适用性与可操作性普遍存在一定程度上的限制，从而导致政策红利落实不均衡。这种情况让人怀疑相关政策能否长期持续地实现其围绕人才保留的既定目标。商会建议可以从全国层面制定一些长期的框架性的指导方案，以期可以减少政策执行中的区域差异，改善跨省合作，使

企业可以真正地获得这类政策的红利来达到吸引和保留高端管理人才及外籍专业人才的目标。

建 议

对中国政府：

- 在2023年底，现行的在华外国人免税项目和减免措施到期后，保留现行的外籍人士专项附加扣除项目和适用于中外人员的年终奖和股权特别计税标准。新措施可能会限制跨国公司派遣高级管理人员到中国工作。
- 与劳动行政部门和行业协会合作，制定职业资格认证制度，规范灵活就业人员的聘用。
- 因许多企业（国内和国外）跨越不同省份展开业务，其雇员分布在全国范围内，建议修改雇员实际工作的企业必须由当地子公司/分支机构缴纳社会保险的规定。
- 实施更加灵活多样的专项附加扣除政策，包括扩大继续教育专项扣除范围，将新兴技术、新的管理实践和经认证的海外大学的操作、应用课程纳入其中。

training available to foreign nationals in China after the re-scheduled expiration of the current measures at the end of 2023. Failure to do so will significantly increase the tax burden on foreign workers and translate into higher operating costs for companies dispatching foreign workers to China.

Remove Barriers that Prevent Implementation of Tax Rebates to Support Executive and Foreign Talent.

AmCham China is pleased that certain local governments have introduced special tax rebates or tax reduction policies in order to attract and retain executive management and other talent. Due to regional differences in implementation and the sporadic nature of their introduction, there are varying levels of restriction on access to and implementation of most of these policies, meaning that the benefits accrue unevenly, and this situation puts into question the long-term sustainability of such policies to meet their stated objectives around talent retention. We recommend that a long-term framework and associated guidance be formulated at the national level to help reduce regional disparities in implementation and improve cross-provincial collaboration so that enterprises can obtain the benefits of these policies to attract and retain talented executive managers and foreign professionals.

management practices, and applied courses from accredited overseas universities.

Recommendations

For the Chinese Government

- **Extend the current tax-deductible items and relief measures for foreign nationals in China beyond their re-scheduled expiration at the end of 2023 and extend the current special tax calculation rate for annual bonuses and equity which applies to both Chinese and foreign nationals. The new measures are likely to disincentivize multinational companies from sending senior management to work in China.**
- Partner with labor administrations and industry associations to develop a professional qualification certification system to regulate and standardize the hiring of flexible workers.
- Amend the requirement that social insurance payments must be made by the local subsidiary/branch of an enterprise where an employee physically works, to account for the fact that many enterprises (both domestic and foreign) have operations in multiple provinces and geographies and a wide-spread distribution of employees within mainland China.
- Implement a more flexible and diversified special additional deduction policy, including expanding the scope of the special deduction for continuing education to include emerging technologies, new

Intellectual Property Rights

Introduction

2021 saw an impressive array of legal developments in the IP space, and as in previous years, AmCham China members have observed numerous improvements over the last year. This chapter will outline some of those improvements, as well as some persistent and more recent concerns relating to IP that affect both foreign-invested and domestically-invested entities operating in China.

Restructuring of the Government and Courts

Consistent with the observations of prior *White Papers*, AmCham China members have yet to see measurable improvements in patent administrative enforcement since the recent unification and concentration of patent and trademark resources within China National Intellectual Property Administration (CNIPA) under State Administration for Market Regulation (SAMR) in 2018 as well as the consolidation of patent and trademark enforcement under local Market Supervision Administrations (MSAs). AmCham China remains hopeful that the passage of the fourth amendment to the *Patent Law* in October 2020 (effective on June 1, 2021), and the investment of greater resources and more ambitious enforcement efforts will result in an increase in enforcement action and in fines for egregious and repeat infringers.

AmCham China was encouraged by the recent establishment of a new IP division in Supreme People's Court (SPC) for hearing appeals related to invention patents, trade secrets, antitrust claims, computer software, information communication designs, and new plant varieties. 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, establish a new specialized IP Court in Hainan, and new IP tribunals in Wuxi and Xuzhou.

2021 and early 2022 Legislative Updates

There were many noteworthy legislative, administrative, and judicial developments in 2021 and early 2022. We include a detailed list to signify the many developments in IP protection in 2021 and early 2022, which

include the following:

- Issuance of the *Measures for the Supervision and Administration of Online Transactions* by SAMR, (March 15, 2021), effective May 1, 2021,
- Issuance of the *Jiangsu Higher People's Court Trial Guidelines for Trademark Infringement Civil Disputes (Revised Edition)* by Jiangsu Higher People's Court (April 15, 2021),
- Issuance of the *Jiangsu Higher People's Court Trial Guidelines for Trade Secret Infringement Civil Disputes (Revised Edition)* by Jiangsu Higher People's Court (April 15, 2021),
- Issuance of *Guidelines on Rules of Evidence in Intellectual Property Civil Litigation of Beijing Higher People's Court* by Beijing Higher People's Court (April 22, 2021),
- Issuance of the *Guidelines for Lawyers on Proof of Signature Right in Beijing Foreign-related Intellectual Property Cases* by the Trademark Law Professional Committee of Beijing Lawyers Association (April 23, 2021),
- Issuance of *Administrative Measures for Livestream Marketing (for Trial Implementation)* by Cyberspace Administration of China, etc. (April 2021), effective May 25, 2021,
- Issuance of *Revised Draft of Several Provisions on Regulating Patent Applications (Draft for comments)* by CNIPA (May 6, 2021),
- Issuance of *Provisions on the Participation of Technical Investigators in the Handling of Administrative Rulings on Patent and Integrated Circuit Layout Design Infringement Disputes (Provisional)* by CNIPA (May 7, 2021),
- Issuance of *Understanding and Application of the Notice on Strengthening the Work Related to the Protection of Well-known Trademarks in Trademark Violation Cases* by CNIPA (May 11, 2021),
- Issuance of *Interim Measures for the Handling of the Relevant Examinations after the Implementation of the Revised Patent Law* by CNIPA (May 24, 2021), effective June 1, 2021,
- Issuance of *Measures for Administrative Decisions on Major Patent Infringement Disputes* by CNIPA (May 26, 2021), effective June 1, 2021,

知识产权

引言

2021年，中国在知识产权领域的一系列立法进展备受瞩目。如往年一样，中国美国商会（以下简称商会）注意到，在过去一年中，中国在知识产权方面取得了很大改进。本章将概述其中一些改进，以及部分知识产权相关的、持续存在和最近出现的、影响在华外商投资企业和本土投资实体的问题。

政府和法院重组

一如往年《美国企业在中国白皮书》（以下简称《白皮书》）所述，自2018年国家市场监督管理总局（以下简称总局）下属的国家知识产权局对专利和商标资源进行了统一和集中管理，地方市场监督管理局对专利和商标的执法进行整合以来，商会仍未看到专利行政执法方面出现明显改进。商会期望2020年10月通过的《专利法》第四次修订（自2021年6月1日起施行）及更有力的执法行动，能加大执法力度，提高对恶意、重复侵权人的罚款。

商会赞赏最高人民法院（以下简称最高法）新成立知识产权部门，以审理发明专利、商业秘密、反垄断索赔、电脑软件、信息传播设计、植物新品种相关案件。同时，商会赞赏对中方更好分配知识产权案件中的举证责任、增加合格知识产权法官数量，以解决目前的资源限制问题的承诺，中国还在海南设立了自由贸易港知识产权法院，在无锡和徐州建立了知识产权法庭。

2021年和2022年初立法进展

2021年以及2022年初，中国有多项立法、行政和司法进展值得关注，商会在下详细列出以展示2021年知识产权保护领域取得的诸多进展，其中包括：

- 2021年3月15日，国家市场监督管理总局发布《网

络交易监督管理办法》，自2021年5月1日起施行。

- 2021年4月15日，江苏省高级人民法院发布《江苏省高级人民法院商标侵权民事纠纷案件审判指南（修订版）》。
- 2021年4月15日，江苏省高级人民法院关于印发《江苏省高级人民法院侵犯商业秘密民事纠纷案件审判指南（修订版）》的通知。
- 2021年4月22日，北京市高级人民法院发布《北京市高级人民法院知识产权民事诉讼证据规则指引》。
- 2021年4月23日，北京市律师协会商标法专业委员会发布《北京涉外知识产权案件立案签字权证明文件律师指引》。
- 2021年4月，中国国家互联网信息办公室发布《网络直播营销管理办法（试行）》，自2021年5月25日起施行。
- 2021年5月6日，国家知识产权局发布《关于规范专利申请的若干规定（征求意见稿）》修订稿。
- 2021年5月7日，国家知识产权局发布《关于技术调查官参与专利、集成电路布图设计侵权纠纷行政裁决办案的若干规定（暂行）》。
- 2021年5月11日，国家知识产权局发布《关于加强查处商标违法案件中驰名商标保护相关工作的通知》。
- 2021年5月24日，国家知识产权局发布《关于施行修改后专利法的相关审查业务处理暂行办法》，自2021年6月1日起施行。
- 2021年5月26日，国家知识产权局发布《重大专利侵权纠纷行政裁决办法》，于2021年6月1日起施行。
- 2021年6月8日，上海市知识产权局等发布《上海市电子商务领域知识产权保护工作意见（试行）》，自2021年7月15日起施行。
- 2021年6月16日，最高人民法院发布《人民法院网上诉讼规则》，自2021年8月1日起施行。

- Issuance of *Opinions of Shanghai Municipality on the Protection of Intellectual Property Rights in E-Commerce (for Trial Implementation)* by Shanghai IPA, etc. (June 8, 2021), effective July 15, 2021,
- Issuance of *Online Litigation Rules of People's Courts* by SPC (June 16, 2021), effective on August 1, 2021,
- Issuance of *Implementing Rules for the Fair Competition Review System* by SAMR, etc. (June 29, 2021),
- Issuance of *Provisions of the Supreme People's Court on Several Issues concerning the Application of Law to the Trial of Civil Dispute Cases Related to the Patent Rights Pertaining to Drugs under Application for Registration* by SPC (July 4, 2021), effective on July 5, 2021,
- Issuance of *Implementing Measures for the Early Resolution Mechanism for Drug Patent Disputes (for Trial Implementation)* by NMPA and CNIPA (July 4, 2021),
- Issuance of *Measures for Administrative Decisions under Early Resolution Mechanism for Drug Patent Disputes* by CNIPA (July 5, 2021),
- Issuance of *Several Provisions of the Supreme People's Court on the Application of Law in the Trial of Cases Involving Disputes over Infringement of the Rights to New Plant Varieties (II)* by SPC (July 5, 2021), effective July 7, 2021,
- Issuance of *Administrative Regulations of the People's Republic of China on the Registration of Market Entities* by the State Council (July 27, 2021), effective March 1, 2022,
- Issuance of *Measures for Collaborative Governance of Violations and Offenses in Patent and Trademark Agency Industry* by CNIPA (July 30, 2021),
- Issuance of *Administrative Measures for Credit Repair by Market Regulation Authorities* by SAMR (July 30, 2021), effective September 1, 2021,
- Issuance of *Measures for the Administration of Lists of Parties with Serious Unlawful and Dishonest Conduct by Market Regulation Authorities* by SAMR (July 30, 2021), effective September 1, 2021,
- Issuance of *Provisions on the Publicity of Information on Administrative Punishment Imposed by Market Regulation Authorities* by SAMR (July 30, 2021), effective September 1, 2021,
- Issuance of *<Patent Examination Guidelines Amendment Draft (Draft for Comment)> Amendment Comparison Table* by CNIPA (August 3, 2021),
- Issuance of *Explanation on the <Draft Amendment to the Guidelines for Patent Examination (Draft for Comment)>* by CNIPA (August 3, 2021),
- Issuance of *Provisions on the Prohibition of Unfair Competition on the Internet (Draft for Public Comment)* by SAMR (August 17, 2021),
- Issuance of the proposed revisions of the *PRC E-Commerce Law* by SAMR (August 31, 2021),
- Issuance of the *Measures for the Administration of Lists of Entities with Serious Unlawful and Dishonest Acts by Market Regulation Authorities* by the State Council on September 1, 2021;
- Issuance of the *Implementing Rules of the Administrative Regulations on Registration of Market Entities (Draft for Comment)* by SAMR (September 3, 2021),
- Issuance of *Measures for Credit Management of Patent Agencies (Draft for Comment)* by CNIPA (September 8, 2021),
- Issuance of *Service Guide for Patent Agency Approval* by CNIPA (October 1, 2021),
- Issuance of *Announcement on Adjusting the Issuance Method of Trademark Registration Certificate* by CNIPA (October 9, 2021),
- Issuance of *Beijing Intellectual Property Court Reference for Proof in Civil Cases of Infringements of Trade Secrets* by Beijing IP Court (October 29, 2021),
- Issuance of *Measures for the Registration of Pledging of Patent Rights* by CNIPA (November 15, 2021),
- Issuance of *Guidelines for Trademark Examination and Adjudication* by CNIPA (November 16, 2021), effective January 1, 2022,
- Issuance of *Code of Practice for Asset Appraisal - Intellectual Property (Draft for Comments)* by the China Appraisal Society (November 25, 2021),
- Issuance of *Regulations on Intellectual Property Protection of Hainan Free Trade Port* by Hainan SCNPC (December 1, 2021), effective January 1, 2022,
- Issuance of *Judgment Standards for General Trademark Violations* by CNIPA (December 13, 2021), effective January 1, 2022,
- Issuance of *Law of the People's Republic of China on Science and Technology Advancement* (December 24, 2021), effective January 1, 2022,
- Issuance of *Measures for Fast-track Examination of Trademark Registration Applications (for Trial Implementation)* by CNIPA (January 14, 2022),
- Issuance of *Regulations on Intellectual Property Credit Management* by CNIPA (January 24, 2022),
- Issuance of *Interpretation of Several Issues Concerning the Application of the Anti-Unfair Competition Law of the People's Republic of China* by SPC (March 16, 2022), effective March 20, 2022.

Trademarks

Online Counterfeiting and Piracy

In the 2020 and 2021 *White Papers*, AmCham members were cautiously optimistic about a revised *E-Commerce Law* that went into effect on January 1, 2019. As discussed last year Article 1.13 of the Phase One Agreement extends the time period for rightsholders to file an administrative response to a counter notification to 20 days and introduces penal-

- 2021年6月29日,国家市场监督管理总局发布《公平竞争审查制度实施细则》。
- 2021年7月4日,最高人民法院发布《最高人民法院关于审理申请注册的药品相关的专利权纠纷民事案件适用法律若干问题的规定》,自2021年7月5日起施行。
- 2021年7月4日,国家药品监督管理局和国家知识产权局发布《药品专利纠纷快速解决机制实施办法(试行)》。
- 2021年7月5日,国家知识产权局发布《药品专利纠纷提前解决机制行政裁决办法》。
- 2021年7月5日,最高人民法院发布《最高人民法院关于审理侵犯植物新品种权纠纷案件具体应用法律问题的若干规定(二)》,自2021年7月7日起施行。
- 2021年7月27日,国务院发布《中华人民共和国市场主体登记管理条例》,自2022年3月1日起施行。
- 2021年7月30日,国家知识产权局发布《专利商标代理行业违法违规协同治理办法》。
- 2021年7月30日,国家市场监督管理总局发布《信用修复管理办法》,自2021年9月1日起施行。
- 2021年7月30日,国家市场监督管理总局发布《严重违法失信行为当事人名单管理办法》,自2021年9月1日起施行。
- 2021年7月30日,国家市场监督管理总局发布《市场监督管理行政处罚信息公开规定》,自2021年9月1日起施行。
- 2021年8月3日,国家知识产权局发布《专利审查指南(征求意见稿)》修订稿。
- 2021年8月3日,国家知识产权局发布《关于〈专利审查指南修改草案(征求意见稿)〉的解释》。
- 2021年8月17日,国家市场监督管理总局发布《关于禁止互联网不正当竞争行为的规定(征求意见稿)》。
- 2021年8月31日,国家市场监督管理总局发布《关于〈中华人民共和国电子商务法〉的修订建议》。
- 2021年9月1日,国务院市场监管部门发布《市场监督管理严重违法失信名单管理办法》。
- 2021年9月3日,国家市场监督管理总局发布《市场主体登记管理条例实施细则(征求意见稿)》。
- 2022年9月8日,国家知识产权局发布《专利代理机构信用管理办法(征求意见稿)》。
- 2021年10月1日,国家知识产权局发布《专利代理审批服务指南》。
- 2021年10月9日,国家知识产权局发布《关于调整商标注册证发放方式的公告》。
- 2021年10月29日,北京知识产权法院发布《北京知识产权法院审理侵犯商业秘密民事案件诉讼举证参考》。
- 2021年11月15日,国家知识产权局发布《专利权质押登记办法》。
- 2021年11月16日,国家知识产权局发布《商标审查审理指南》,自2022年1月1日起施行。
- 2021年11月25日,中国资产评估协会发布《资产评估执业准则——知识产权(征求意见稿)》。
- 2021年12月1日,海南省人大常委会发布《海南自由贸易港知识产权保护条例》,自2022年1月1日起施行。
- 2021年12月13日,国家知识产权局发布《一般商标违法行为判定标准》,自2022年1月1日起施行。
- 2021年12月24日,《中华人民共和国科学技术进步法》修订后发布,自2022年1月1日起施行。
- 2022年1月14日,国家知识产权局发布《商标注册申请快速审查办法(试行)》。
- 2022年1月24日,国家知识产权局发布《知识产权信用管理条例》。
- 2022年3月16日,最高人民法院发布《关于适用〈中华人民共和国反不正当竞争法〉若干问题的解释》,自2022年3月20日起施行。

商 标

网络假冒和盗版

在2020年和2021年《白皮书》中,商会对2019年1月1日起实施的《电子商务法》持谨慎乐观态度。如去年所述,第一阶段协议的第1.13条规定,权利人收到反向通知后提交行政投诉的时限被延长至20天,并对恶意提交反向通知的行为进行处罚。由此可见,《电子商务法》中的一些新规定已经过时,需要进一步修订。目前,商会希望此类修正需要确保侵权人不能仅仅通过拒收权利人的侵权通知而逃避法律责任。

商会认为,新法律的颁布标志着中国政府在电子商务市场适用《商标法》方面取得了积极进展,不过之前白皮书中提出的一些问题仍未得到解决。商会会员企业

ties for counter-notifications lodged in bad faith. It is thus apparent that some of the provisions in the *E-commerce Law* are already outdated and will require further amendment. For now, AmCham China members are hopeful that any such amendments will not result in sellers of infringing materials avoiding responsibility by merely objecting to rights holders' notices of infringement.

AmCham China members noted that the new law appeared to signify progress in the Chinese government's approach to the application of trademark law in China's e-commerce markets, but that the law still leaves unaddressed some of the concerns raised in earlier *White Papers*. AmCham China members continue to be concerned about ambiguity over the type and amount of evidence sufficient to be deemed "prima facie" evidence and thus trigger the take-down measures for IPR holders under Article 42 (and trigger the 20-day limit for online business platforms under Article 43). In addition, the provisions may still allow e-commerce platform operators to avoid performing take-down procedures if online business operators provide weak or partial evidence to prove their lack of infringement, but the clarifications provided in the *Phase One Agreement* suggest that the provision of false evidence would likely be cause for sanctions. AmCham China members continue to look forward to further clarification of these issues in light of the commitments set out in the *Phase One Agreement*.

As we noted in earlier *White Papers*, online counterfeiting is still a serious issue and numerous methods are available to infringers to circumvent the law. For example, a trademark infringer which 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, 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, and echoing previous AmCham *White Papers*, AmCham China members urge the Chinese government to continue to address this important and pressing issue by adopting the following measures:

- 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 through adoption of simple two or three-strike rules),
- Encourage e-commerce platforms to adopt best practices to make it easier to identify counterfeiters (such as requiring platforms to display the business licenses or

other identifying information for sellers on their platforms) 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, and

- 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., by instituting a system of random IP authorization audits of high-volume vendors).

Bad Faith Filings

The issue of bad faith filings is one that has vexed AmCham China members for many years and has been highlighted in the last seven *White Papers*. In the 2020 and 2021 *White Papers*, AmCham China members noted positive developments with respect to the issuance of the 2019 *Trademark Law* amendments, as well as SAMR's *Several Provisions on Regulating the Application and Registration of Trademarks* (SAMR TM Provisions).

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 CNIPA deals with trademarks filed in bad faith. Over the past two years, an increasing number of CNIPA cases have invoked Article 7 of the *Trademark Law*, which provides that "applications for registration and use of trademarks shall comply with the 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 CNIPA to reject any trademark that "does not conform to the relevant provisions of this Law."

AmCham China is also encouraged by a few ongoing developments, including:

- The issuance of a *Special Action Plan for Addressing Bad Faith Trademark Filings* in March 2021 by CNIPA;
- The addition of a new chapter in the *Guidelines for Trademark Review and Adjudication* focusing on the examination of trademark filed in bad faith, which sets out a list of criteria for determining when trademarks were filed in bad faith, and affirms the legitimacy of defensive filings of trademarks by rightful brand owners;
- 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,
- Efforts to align CNIPA review standards with those of the TRAD and the People's Courts,
- The possibility of levying fines against applicants who file trademarks in bad faith, as well as the extension of sanctions to trademark agencies that knowingly

仍然担心“初步证据”的类型和数量界定存在歧义，根据第四十二条规定，该歧义可能导致知识产权权利人的主张被撤销（依第四十三条，对于电子商务平台来说，则会触发 20 天时限）。此外，如果电子商务平台经营者提供不充分或部分证据来证明其没有侵权行为，该条款仍可能允许电子商务平台经营者避免启动撤销程序，但中美第一阶段经贸协议中表明，提供虚假证据很可能导致制裁。商会期待，中国政府根据中美第一阶段经贸协议中的承诺对这些问题进行进一步说明。

正如往年《白皮书》中提到的，网络造假问题依然严重，侵权人仍然有很多手段可以规避法律。例如，寻求注册大量商标的商标侵权人可以假借熟人或其公司名义提交申请而不被发现，而且这种手法很简单，完成之后也不会留下任何可以在法庭程序中指向侵权人的确凿证据。此外，这些最新改进主要对知名品牌的所有者有利，因为其可以投入大量资源对电商平台进行定期监控，并主动请求这些网站删除侵权产品的链接。

网络造假的问题长期存在，如果没有政府持续的關注及业内相关方的介入，这种情况难以得到改善。因此，如前几年商会在《白皮书》的建议一样，商会促请中国政府通过以下措施，推进这一重要而紧迫问题的解决：

- 继续对电商平台施压，针对通知删除机制以及反复违规者实施严格、透明的用户友好型政策（最好是简单的事不过二或事不过三规则）；
- 鼓励电商平台采用最佳做法，以便更高效地识别造假者（如要求平台展示其平台上商家的营业执照或其他身份信息）、在没有初步授权证据的情况下删除卖家发布的链接，提高造假者在多重虚假身份的掩护下运作的难度；
- 鼓励电商平台打造知识产权文化，积极采取措施，加大造假者在网站上上架其产品的难度（例如，建立高销量卖家随机知识产权授权审查制度）。

恶意申请

商会会员企业已被恶意申请问题困扰多年，并在以往七年的《白皮书》中都重点指出了这一问题。在 2021 年和 2020 年的《白皮书》中，商会会员企业指出，随着 2019 年《商标法》的修订以及总局发布的《规范商标申请注册行为若干规定》（国家市场监督管理总局商标管理规定），此类问题已取得了积极进展。

各法院与审理机构愈加支持在商标案件中审查恶意因素，商会会员企业因此备受鼓舞。国家知识产权局在商标案件中加大支持审查恶意因素的趋势尤其明显。在相关案件中，国家知识产权局（这一趋势在 2019 年和 2020 年加速发展）开始更加频繁地援引《商标法》第 7 条，该条规定，“申请商标注册和使用时应遵循诚实守信原则”，并将其作为处理恶意案件的根据。第三十条还对第七条引起的案件进行了补充，该条规定，国家知识产权局将驳回“不符合本法有关规定”的商标。

还有其他一些进展也让商会备受鼓舞，其中包括：

- 2021 年 3 月，国家知识产权局发布了《打击商标恶意抢注行为专项行动方案》；
- 在《商标评审指南》中新增一章，重点对恶意申请的商标进行审查，其中列出了判断商标恶意申请的标准，并肯定了合法品牌所有者防御性申请商标的正当性；
- 对涉及被指控为恶意申请的同一违法者的案件进行集体审查；
- 加快或优先审查涉及恶意申请的案件；
- 努力使国家知识产权局的审查标准与商标局和人民法院的审查标准保持一致；
- 保留对恶意申请商标者征收罚款的可能性，以及根据新发布的《市场监督管理严重违法失信名单管理办法》，将制裁范围扩大到故意为恶意申请商标者申请商标的商标代理机构。

虽然商会会员企业支持引入恶意注册者“黑名单”制度，但现有制度不够透明，且品牌所有者并不清楚其能否及如何影响国家知识产权局未来有关恶意行为实施者的审查决定。目前尚不清楚品牌所有者能否以及如何利用上述规定，让已知恶意注册者受到行政处罚。

商会强烈建议总局与相关部门进一步强化品牌所有者（其中包括在中国市场知名度相对较低的中小企业）的可用工具，以有效解决第三方恶意申请其商标行为，并促进国家知识产权局、国家知识产权局商标局、法院系统统一审定标准。商会同样建议总局，在处理恶意申请行为时采用国际最优方法，如采用国际商标协会 2020 年 11 月 11 日会议决议通过的《恶意商标申请注册》中的方法。

facilitate the filing of trademarks in bad faith under the newly issued *Measures for the Administration of Lists of Entities with Serious Unlawful and Dishonest Acts by Market Regulation Authorities*.

While the introduction of a “blacklisting” process for bad faith filers is welcomed by AmCham China members, the current process continues to lack transparency, and it is unclear to brand owners whether and how they can impact future examination decisions by CNIPA involving bad faith actors. It is also unclear whether and how brand owners can pursue administrative penalties for known bad faith filers.

AmCham China strongly recommends that SAMR and relevant agencies within the government further strengthen the tools available to brand owners -- including 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 to work to better align review standards between NIPA, the NIPA Trademark Office (TRAD), and the court system. AmCham China also recommends that SAMR adopt international best practices for the handling of bad faith filings, such as those outlined in a board resolution of November 11, 2020 by the International Trademark Association entitled *Bad Faith Trademark Applications and Registrations*.

Absolute Grounds Rejections

AmCham China members report an increase in the frequency of absolute ground rejections of trademarks by CNIPA over the last three years.

For trademarks that are rejected as generic, descriptive or “otherwise lacking distinctiveness” under Article 11.1 of the PRC *Trademark Law*, AmCham members report that CNIPA trademark examiners demonstrate little or no appreciation of the difference between marks that are merely suggestive and those that are descriptive. In addition, AmCham China members have observed that there is little guidance for applicants regarding the kinds of evidence that is required to show acquired distinctiveness through use in the PRC market in order to overcome Article 11 rejections. While Beijing IP Court and Beijing Higher People’s Court have issued a number of judgments in cases that address these issues, there seems to be little alignment between the developing standards for acquired distinctiveness before the courts and those applied by CNIPA. Moreover, there is currently no guidance for trademark owners regarding how to defend a third-party genericide challenge before the TRAD, and these kinds of cases are becoming much more common in the PRC market.

Perhaps even more vexing than an apparent increase in the number of absolute grounds rejections on the basis of Article 11 is the observation by AmCham China members of a similar increase in the frequency of absolute grounds rejections on

the basis of Article 10. The most common rejections reported by AmCham China members are based on Article 10.1(7), which prohibits the use and registration of trademarks that “are of a deceptive nature and are liable to create mistaken recognition among the public as to the quality or other characteristics or the places of origin of relevant goods.” CNIPA rejection notices that invoke Article 10 rarely contain an explanation as to why a mark was viewed as apparently deceptive or mis-descriptive. As there is currently no clear guidance for applicants as to how to respond to an Article 10.1(7) rejection, trademark applicant’s regularly find themselves in the unfortunate situation of facing a bar to the “use” of their mark in the PRC market with no clear path to obtaining registered rights, even if the mark in question has already obtained market recognition through prior use in international markets. As an Article 10 rejection is essentially a bar to registration and use in the PRC market, the lack of clear standards to respond to such rejections can effectively function as a bar to market entry for certain branded products and services. As the CNIPA implements Guidelines for Trademark Examination and Adjudication starting January 1, 2022, AmCham China hopes issues concerning bad faith filings and absolute grounds rejections can be more effectively addressed.

Document Formalities before Beijing IP Court

The document formalities required for the US to support the filing of administrative review of TRAD decisions before Beijing IP Court have been a source of significant concern for AmCham China members, and that concern has only been exacerbated by delays with the notarization and legalization of documents on account of COVID-19.

Currently, FIEs must submit an executed power of attorney (POA), a certificate attesting to the identity of the legal representative (CILR), and a copy of the petitioner’s certificate of incorporation or similar such corporate formation document (COI), and all of these documents must be notarized by a public notary and legalized by the Chinese Embassy or relevant consulate.

The purpose of the CILR document is to confirm that the person who signed the POA on behalf of the enterprise was appropriately authorized to do so, and Beijing IP Court thus requires additional documentation (also notarized and legalized) that confirms the signing authority of the CILR signatory (who must be different than the signatory of the POA). The additional document requirements to confirm the authority of the CILR signatory has become the source of particular confusion, and the case acceptance division of Beijing IP Court routinely rejects petitions for administrative review of TRAD decisions because of the inability of a petitioner to obtain a notarized and legalized document attesting to the CILR signing authority in a timely fashion, with that document being accepted -- in the discretion of the court’s case acceptance division -- as sufficiently authoritative. AmCham China member companies in some US juris-

绝对理由驳回

商会会员企业反馈称，过去三年内，国家知识产权局以绝对理由驳回商标的频率有所上升。

商会注意到《中华人民共和国商标法》第十一条规定，“仅有本商品的通用名称、图形、型号的”“仅仅直接表示商品特点的”以及“无显著性”的标志不得注册商标。然而，根据商会会员企业的反馈，国家知识产权局审查官审查商标时，极少甚至不对暗示性与描述性标志与进行区分。此外，商会还注意到，关于反驳第十一条驳回理由所要求的、用以证明经使用在中国市场上获得显著性的证据类型，缺乏具体指引。尽管北京知识产权法院与北京市高级人民法院就解决以上问题作出诸多判决，人民法院关于“获得显著性”不断发展的审理标准与国家知识产权局适用标准并不一致。此外，目前尚无关于商标权人如何应对第三人向商标局或评审部门提起通用名称撤销的具体指引，而此类案件在中国市场正愈发普遍。

商会观察到，在援引第十一条，以绝对理由驳回的商标的数量有显著上升的同时，援引第十条驳回商标的数量也出现了上升的现象。而后者比前者更为恼人。据商会会员企业反馈，最常见的商标驳回理由基于第十条第七款，该条规定“带有欺骗性，容易使公众对商品的质量等特点或者产地产生误认的”标志不得注册商标。在国家知识产权局驳回通知书中会援引第十条，却极少解释为何此标志为欺骗性或误导性。当商标以此理由遭驳回时，商标申请人缺乏明确指导，不知如何回应此类驳回。如此一来，商标申请人常发现自身在中国市场无法“使用”自身商标，且没有明确途径取得注册权利，即使其商标在国际市场使用已获得市场认可。第十条从根本上阻碍了商标在中国市场中的注册以及使用，且针对此条法律驳回进行回应尚无明确标准，更将部分有商标的产品服务阻拦在中国市场之外。

国家知识产权局于2022年1月1日起开始执行《商标审查审理指南》，原《商标审查审理标准》同时废止。商会期待新的政策能进一步解决恶意申请和绝对理由驳回等问题。

提交北京知识产权法院前的文件手续

为向北京知识产权法院申请受理行政纠纷案、审查

国家知识产权局商标局决定，所需的各种美国文件手续一直是商会会员企业极为关心的问题，而由于新冠肺炎疫情导致公证认证延误更加剧了这一担忧。

目前，外国投资企业须提交已签署的授权委托书、法定代表人身份证明书，以及一份申请人的公司注册证明文件副本或类似的公司成立文件，且以上文件均需经过公证处公证，以及中国驻外使领馆认证。

法定代表人身份证明书旨在证明代表企业签署授权委托书人员已获得充分授权，北京知识产权法院因此要求补充文件（同样需经公证认证），确认法定代表人身份证明书签署人的签署权（该签署人必须区别于授权委托书签署人）。要求补充文件以确认法定代表人身份证明书签署人的签署权，这一行为让人非常困惑，且由于请求人无法及时获取经公证合法化文件以证明法定代表人身份证明书的签署权，北京知识产权法院立案庭通常会驳回对国家知识产权局商标局决定的行政审查请求，而且此类受理文件是否足够权威仅由法院立案庭自行认定。商会会员企业在美国部分辖区须提交经公证认证的董事会议决议副本以及类似公司文件，才能满足补充文件要求，但在3个月内完成这项工作极其困难。

商会会员企业对北京知识产权法院在新冠肺炎疫情期间延长申请时限表示感激，但商会仍强烈建议北京知识产权法院（或最高人民法院）就案件受理手续发布明确且合理的指导，且至少考虑到以下几点：

- 明确提交经公证认证文件期限可灵活调整，并设立自动延期的正式流程，以防相关文件获取或认证遭遇延期；
- 采信法定代表人身份证明书文件仅需一份签字人出具的证明，证明其签字权限的、简单的、经签署、公证、认证的书面陈述；
- 就简化文件的受理发布明确指南，并考虑在特定法院存放经公证、认证法定代表人身份证明书和授权委托书文件，以在未来一年或几年内处理相似案件时提供帮助。

著作权

商会很高兴看到《中华人民共和国著作权法》第三次修订版的颁布，该法于2020年6月1日生效。商会在近年《白皮书》中提出的意见和建议仍然适用，简

dictions have had to submit notarized and legalized copies of board resolutions and other such corporate documents to meet these additional document requirements and doing so within three months has been very difficult.

While AmCham China members are grateful for Beijing IP Court's willingness to extend filing deadlines during the COVID-19 pandemic, AmCham China strongly recommends that Beijing IP Court (or SPC) publish clear and reasonable guidelines around case acceptance formalities that, at the very least, consider the following:

- Flexible deadlines for the submission of notarized and legalized documents, and a formal process for obtaining automatic extensions of time in cases where document retrieval and/or legalizations are delayed,
- Acceptance of CILR documents with a simple signed, notarized, and legalized affidavit by the signatory attesting to their signing authority for the petitioner, and
- Clear guidelines for streamlined document acceptance, with consideration given to the deposit of copies of notarized and legalized CILR and POA documents with the court that can be used to support future similar cases brought within a one or multiple-year period.

Copyright

AmCham China was pleased to see the promulgation of the third revision of the *Copyright Law of the People's Republic of China* (PRC Copyright Law), which came into effect on June 1, 2020. AmCham China's observations and wish-list from its 2020 White Paper remain relevant, and in short, AmCham China looks forward to further developments that address the following:

- A reversal of the "server principle" by ensuring that services that facilitate piracy are held liable regardless of whether infringing content is stored on their servers,
- Address widespread enterprise end-user software piracy,
- Ensure an effective and transparent remedy against the makers/distributors of piracy apps and devices (as well as middleware) that facilitate infringement (including where infringing content is hosted remotely),
- Revise Article 217 of the PRC *Criminal Law* to better account for online piracy, to explicitly include the digitalization of written works and the circumvention of digital technological protection measures within the ambit of criminal behavior, and at the same time, lower the criminal thresholds to provide a meaningful criminal enforcement option for the vast majority of online counterfeiting.

Trade Secrets

On April 15, 2021, Jiangsu Higher People's Court released

the revised *Trial Guidelines for Trade Secrets Infringement Civil Disputes*. The old edition was issued in 2011, and the court released the revised version based on the issuance of the 2017 and 2019 *Anti-Unfair Competition Law*, the relevant judicial interpretations and the new issues encountered during the judicial practice. Some noteworthy points including the following:

- Relevant content has been revised and improved according to the latest laws, regulations and judicial interpretations concerning the protection of trade secrets. For example, the qualification of the plaintiff, the identification of the trade secrets, the identification of infringement, the transfer of the burden of proof, the identification of improper means, and the handling of cross-criminal issues, etc.,
- Provide some judicial guidelines on lowering the burden of trade secrets owners,
- Provide some creative explorations of the court, such as the relevant measures to prevent secondary leakage of trade secrets in litigation, and the sample text of the confidentiality order, etc.

On October 29, 2021, Beijing IP Court released the *Reference for Proof in Civil Cases of Infringements of Trade Secrets*. The reference includes four parts, and a summary of the content is set in the section below:

- The first part includes the evidential reference on the right basis. This part makes detailed provisions on the subjects that can raise trade secrets infringement civil cases, the statutory requirements for trade secrets, and the reasons for defending the statutory conditions. Focusing on the legal requirements of trade secrets, it provides a detailed and comprehensive reference, including legal requirements such as confidentiality, confidentiality measures, and value,
- The second part includes the evidence reference of infringement. This part provides detailed provisions on the manifestations of acts in civil cases of infringement of trade secrets, and the defense reasons. In view of the fact that employees and ex-employees are frequently involved in violations of trade secrets, the scope of employees and ex-employees is clarified, and the plaintiff is guided to provide effective evidence for the infringement by employees and ex-employees. At the same time, it provides evidence reference for the defendant to raise the relevant defense,
- The third part includes the evidence reference for civil liability. This part makes detailed provisions on civil legal liability methods such as cessation of infringement, compensation for losses, and punitive damages in civil cases of infringement of trade secrets. According to the relevant provisions of the law and judicial interpretation, the rights holder is instructed to present evidence based on the plaintiff's loss, the

而言之，商会期待进一步解决以下问题：

- 废除“服务器原则”，确保为盗版提供便利的服务行为要承担责任，无论侵权内容是否存储在其服务器上；
- 解决普遍存在的企业终端用户使用盗版软件问题；
- 确保为侵权行为提供便利的盗版应用程序和设备（以及中间软件）的制造商/分销商采取有效和透明的补救措施（包括侵权内容被远程托管的情况）；
- 修订《中华人民共和国刑法》第二百一十七条，以更好地解决网络盗版，明确将文字作品的数字化和规避数字技术保护措施的行为纳入犯罪范围，同时降低犯罪门槛，为绝大多数的网络造假提供有意义的刑事执法选择。

商业秘密

2021年4月15日，江苏省高级人民法院发布了修订后的《侵犯商业秘密民事纠纷案件审理指南》。旧版于2011年发布，法院根据2017年和2019年发布的《反不正当竞争法》、相关司法解释以及司法实践中遇到的新问题，发布了修订版。包括以下关键内容：

- 根据有关商业秘密保护的最新法律、法规和司法解释，对相关内容进行了修订和完善，包括对原告资格的认定、商业秘密的认定、侵权行为的认定、举证责任的转移、不正当手段的认定、交叉犯罪问题的处理等；
- 提供关于降低商业秘密所有者负担的司法指引；
- 提供法院的创造性探索实践，如防止商业秘密在诉讼中二次泄露的相关措施，以及保密令的样本文本等；

2021年10月29日，北京知识产权法院发布了《侵犯商业秘密民事案件诉讼举证参考》，包括四个部分，内容摘要如下：

第一部分包括正确依据的举证参考。这一部分对能够引发商业秘密侵权民事案件的主体、商业秘密的法定要求、法定条件下的抗辩理由等做了详细规定。以商业秘密的法律要求为重点，提供了详细而全面的参考，包括保密性、保密措施、价值等法律要求。

第二部分包括侵权行为的举证参考。该部分对

侵犯商业秘密民事案件中的行为表现形式、抗辩理由等进行了详细规定。鉴于员工和前员工经常参与侵犯商业秘密的行为，明确了员工和前员工的范围，指导原告为员工和前员工的侵权行为提供有效证据。同时，为被告提出相关抗辩提供举证参考。

第三部分包括民事责任的举证参考。该部分对侵犯商业秘密的民事案件中停止侵权、赔偿损失、惩罚性赔偿等民事法律责任方式做了详细规定。根据法律和司法解释的相关规定，指导权利人根据原告的损失、被告的利润、许可费的合理倍数、法定赔偿金等进行举证。根据惩罚性赔偿制度的有关规定，还详细列出了恶意侵权、严重侵权等的举证参考。

第四部分包括程序性事项的举证参考。该部分对诉讼保全、调查令、诉讼中的保密措施、侵犯商业秘密民事案件中的刑民交叉等程序性事项作了详细规定。

商会建议制定独立的《商业秘密法》，并与其他知识产权法律保持统一。此外，现有工业专有技术保护法规仍需进一步完善。

专利

立法进展

2021年7月4日，最高人民法院发布《最高人民法院关于审理申请注册的药品相关的专利权纠纷民事案件适用法律若干问题的规定》。最高人民法院于2020年10月发布征求意见稿，该正式版本于2021年7月5日生效，包括以下关键内容：

- 北京知识产权法院对涉及药品上市审批的一审民事纠纷案件具有专属管辖权；
- 当事人应补充提交：① 在相关平台上记载的相关专利信息；② 在相关平台上公布的相关药品信息；③ 药品的技术方案是否属于相关专利的保护范围的初步证据；
- 接受行政申诉或无效宣告请求，不影响民事案件的审理；
- 当事人对诉讼中获得的商业秘密或者其他需要保密的商业信息负有保密义务，擅自披露或者在诉讼活动之外使用或者允许他人使用的，应当依法承担民事责任；

defendant's profit, a reasonable multiple of the license fee, and statutory compensation. According to the relevant provisions of the punitive damages system, the evidence reference for malicious infringements, serious infringements, etc. is also listed in detail,

- The fourth part includes the evidence reference of procedural matters. This part makes detailed provisions on procedural matters such as preservation, investigation orders, confidentiality measures in litigation, and criminal-civilian crossover in civil cases of infringement of trade secrets.

AmCham China continues to recommend the creation of a stand-alone trade secrets law in correspondence with laws governing other IP rights. Additionally, the protection of industrial knowledge remains an area where there is a need for refinement of the existing regulations to add further safeguards.

Patents

Judicial Developments

On July 4, 2021, SPC released the *Provisions of the Supreme People's Court on Several Issues concerning the Application of Law to the Trial of Civil Dispute Cases Related to the Patent Right Pertaining to Drug under Application for Registration*. SPC issued a draft for public comment in October 2020 and this official version took effect on July 5, 2021. Some noteworthy points include the following:

- Beijing IP Court will have the exclusively jurisdiction over the first instance of the civil disputes concerning the examination and approval of marketing of drugs,
- Parties of such civil disputes shall additionally submit ❶ information of the relevant patents recorded on the relevant platform, ❷ information of the relevant drugs published on the relevant platform; and ❸ *prima facie* evidence regarding whether the technical solution of the drug fall into the protection scope of the relevant patent,
- Acceptance of an administrative complaint or an invalidation petition would not influence the trial of the civil case,
- The party concerned shall be obliged to keep the confidentiality of the trade secrets or other business information needs to keep confidential obtained during the litigation, and shall bear civil liability in accordance with the law if it discloses such information without authorization or uses, or allow others to use, the same outside the litigation activities,
- In a lawsuit for infringing patent rights or confirming non-infringement of patent rights against the same patent right and the drug applied for registration, the people's court generally will affirm the effective judgment,

- If the patentee or the interested party knows or should have known that the alleged patent should be declared invalid or the relevant technical solution of the applied-for drug applied does not fall within the scope of protection of the patent, but still files a lawsuit or administrative complaint under Article 76 of the *Patent Law*, the drug applicant may file a lawsuit for damages with Beijing Intellectual Property Court.

Administrative Developments

Combined with the *Measures on Regulating the Behavior of Patent Application* issued and implemented on March 11, 2021, CNIPA revised the *Several Provisions on Regulating Patent Application* and released the revised version on May 6, 2021 for public comment.

The *Provisions* supplemented and improved the definition of abnormal patent application behavior, and further clarified the manifestations of abnormal patent application behavior. The *Provisions* clarified the special handling procedures of CNIPA for abnormal patent applications, and at the same time, in order to protect the legitimate rights and interests of the counterparty, provided the relevant legal remedies. The *Provisions* further updated and improved the handling measures for entities or individuals who engage in various abnormal patent application behaviors, as well as responsible departments and agencies.

On May 7, 2021, CNIPA issued the *Provisions Concerning the Participation of Technical Investigators in the Handling of Cases of Administrative Adjudications Involving Infringement Disputes over Patent and Layout Design of Integrated Circuit (Interim)*. Issuance of these provisions follows Supreme People's Court's regulation on technical investigators for IP-related litigations and reflects CNIPA's determination to encourage the use of administrative recourse even in complex patent disputes. Some noteworthy articles include the following:

- CNIPA and the local administrative patent departments may assign technical investigators to participate in administrative review of patents and integrated circuit layout design infringement disputes.
- CNIPA is responsible for building a database of national technical investigators and selecting and managing the technical investigators. The local administrative patent departments may select and manage the technical investigators in their own jurisdictions.
- Duties performed by the technical investigators in administrative adjudications include, but are not limited to, the following: ❶ putting forward suggestions on key issues of the technical facts and the scope, order, and methods of investigation; ❷ participating in investigation and evidence collection; ❸ participating in questioning and oral hearings; ❹ providing technical survey opinions; ❺ assisting the handling examiners

- 对于侵犯专利权或者确认不侵犯专利权的诉讼，对同一专利权和申请注册的药品，人民法院一般会维持有效判决；
- 如果专利权人或者利害关系人知道或者应当知道被控专利权应当被宣告无效或者所申请的药品的相关技术方案不属于专利权的保护范围，仍然根据专利法第七十六条规定提起诉讼或者行政申诉的，药品申请人可以向北京知识产权法院提起损害赔偿诉讼。

行政进展

结合 2021 年 3 月 11 日发布实施的《关于规范专利申请行为的办法》，国家知识产权局对《关于规范专利申请的若干规定》进行了修订，并于 2021 年 5 月 6 日发布修订版，征求公众意见。

《规定》补充和完善了专利申请异常行为的定义，并进一步明确了专利申请异常行为的表现形式。《规定》明确了国家知识产权局对异常专利申请的特殊处理程序，同时为保护相对人的合法权益提供了相关的法律救济途径。《规定》进一步更新和完善了对有各种专利申请异常行为的单位或个人以及责任部门和机构的处理措施。

2021 年 5 月 7 日，国家知识产权局发布了《关于技术调查官参与专利、集成电路布图设计侵权纠纷行政裁决办案的若干规定（暂行）》。继最高人民法院关于知识产权相关诉讼技术调查管的规定之后，规定的发布反映了国家知识产权局鼓励在复杂的专利纠纷中使用行政诉讼手段，包括以下重点条款：

- 国家知识产权局和地方专利行政部门可以指派技术调查官参与专利和集成电路布图设计侵权纠纷的行政审查。
- 国家知识产权局负责建立国家技术调查官数据库，选拔和管理技术调查官。各地专利行政部门可在本辖区内选拔和管理技术调查官。
- 技术调查官在行政裁决中履行的职责包括但不限于以下内容：① 对技术事实的关键问题和调查的范围、顺序、方法提出建议；② 参与调查取证；③ 参与质证和口头审理；④ 提供技术调查意见；⑤ 协助办案审查员安排鉴定人和相关技术领域的专业人员提供意见；⑥ 作为无表决权的代表参加合议庭的有关会议。
- 技术调查官的意见应作为合议庭确定技术事实的参考。合议庭应全权负责技术事实的认定。

为保证修改后的《专利法》的实施，国家知识产权局制定并颁布了《关于施行修改后专利法的相关审查业务处理暂行办法》，于 2021 年 6 月 1 日起开始施行。该《办法》共 11 条，规定了申请部分外观设计专利、外观设计专利国内优先权请求、专利期限补偿和药品专利期限补偿请求等相关手续和时间要求。

国家知识产权局于 2021 年 5 月 26 日正式发布《重大专利侵权纠纷行政裁决办法》。《办法》对属于修改后的《专利法》第七十条第一款规定的案件类别进行了解释。《办法》还规定了国家知识产权局对此类案件的行政处理指南。包括以下重点条款内容：

- 重大专利侵权纠纷包括但不限于：① 涉及重大公共利益的纠纷；② 严重影响行业发展的纠纷；③ 跨省的专利侵权纠纷。
- 重大专利侵权纠纷的其他要求包括：① 请求人是专利权人或利害关系人；② 有明确的被请求人；③ 有明确的请求和具体的事实和理由；④ 人民法院尚未立案的案件涉及相关纠纷。
- 国家知识产权局应当自收到起诉书之日起五个工作日内受理案件并通知申诉人，并指定 3 名以上单数的案件管理人组成合议庭。如果投诉不符合《办法》规定，国家知识产权局应在收到投诉之日起五个工作日内通知投诉人，并解释拒绝受理的原因。
- 国家知识产权局案件管理人员在进行审查时可以行使以下权力：① 询问有关当事人及其他有关单位和个人，调查与涉嫌专利侵权行为有关的情况；② 对有关场所进行现场检查；③ 检查与涉嫌专利侵权行为有关的产品。
- 国家知识产权局应当根据案件的具体情况，决定是否进行口头审理。国家知识产权局应当自受理之日起三个月内结案。

2011 年 7 月 5 日，国家知识产权局发布了《药品专利纠纷早期解决机制实施办法（试行）》。国家知识产权局于 2020 年 9 月发布了征求意见稿，该正式版本于 2021 年 7 月 4 日生效。

国家知识产权局根据修改后的《专利法》第七十六条规定，制定并发布了《办法》。《办法》旨在为当事人提供在相关药品审评审批过程中解决相关专利纠纷的机制，保护药品专利权人的合法权益，降低仿制药上市后

with arranging appraisers and professionals in the relevant technical fields to provide opinions; and ⑥ attending relevant meetings of the collegiate panel as nonvoting delegates.

- The opinions of technical investigators shall be used as a reference for the collegiate panel to determine technical facts. The collegiate panel shall be solely responsible for the determination of technical facts.

In order to ensure the implementation of the revised *Patent Law*, CNIPA has formulated and promulgated the *Interim Measures for the Handing of the Relevant Examinations after the Implementation of the Revised Patent Law*, which will come into force on June 1, 2021. The *Measures* have 11 articles in total and provide the relevant formality and time requirements for filing partial design patents, domestic priority requests for design patents, patent term compensation and drug patent term compensation requests, etc.

CNIPA officially issued the *Measures on Administrative Adjudication of Major Patent Infringement Disputes* on May 26, 2021. The *Measures* provide an explanation of the categories of cases that would fall under the purview of Article 70.1 of the amended *Patent Law*. The *Measures* also set out guidelines for the administrative handling of such cases by CNIPA. Some noteworthy articles include the following:

- Major patent infringement disputes include but are not limited to 1) disputes involving major public interests; 2) disputes seriously affecting the development of the industry; and 3) cross-provincial patent infringement disputes.
- Other requirements for major patent infringement disputes include: 1) the claimant is the patentee or the interested party; 2) there is a definite respondent; 3) there are clear requests and specific facts and reasons; and 4) the people's court has yet to docket a case involving the relevant dispute.
- CNIPA shall accept the case and notify the claimant within five working days of the date of receipt of the complaint, and designate three or more odd-numbered case administrators to form a collegiate panel. CNIPA shall notify the claimant within five working days of the date of receipt of the complaint if the complaint does not comply with the *Measures*, and explain the reasons for rejection.
- CNIPA case administrators may exercise the following powers when conducting an examination: 1) inquire the relevant parties and other relevant entities and individuals, and investigate the circumstances related to the suspected patent infringement; 2) conduct on-site inspections of the relevant premises; and 3) inspect products related to suspected patent infringement.
- CNIPA shall decide whether to conduct an oral hearing based on the specific circumstance of the case. The NIPA shall close the case within three months from the date of acceptance.

On July 5, 2011, CNIPA released the *Implementing Measures for the Early Resolution Mechanism for Drug Patent Disputes (for Trial Implementation)*. CNIPA issued a draft for public comment in September 2020 and this official version took effect on July 4, 2021.

CNIPA prepared and issued the *Measures* based on Article 76 of the amended *Patent Law*. The *Measures* aim to provide parties with a mechanism for resolving relevant patent disputes during the review and approval of the relevant drug, protect the legitimate rights and interests of drug patentees, and reduce the risk of patent infringement after generic drugs are marketed. The main contents of the *Measures* include platform construction and information disclosure system, patent right registration system, generic drug patent declaration system, judicial link and administrative link system, drug review and approval classification processing system, and market exclusivity system for the first generic drug.

On July 5, 2021, CNIPA released the *Measures for Administrative Decisions under Early Resolution Mechanism for Drug Patent Disputes*. CNIPA issued a draft for public comment in February 2021 and this official version took effect on July 5, 2021.

CNIPA prepared and issued the *Measures* based on Article 76 of the amended *Patent Law*. There are 24 articles in the *Measures*, which provide information on the subject of the request for an administrative ruling, the scope of drug patents that can be adjudicated, the coordination with judicial channels, the relationship between administrative rulings and invalidation procedures, the enforcement and disclosure of administrative rulings, judicial relief for administrative rulings, and other case handling. procedures, etc.

On August 3, 2021, CNIPA released the *Draft Amendment to the Patent Examination Guidelines* for public comment. The purpose of this revision is to ensure that the examination practices will be in line with the requirements of the amended *Patent Law*. Some noteworthy revisions include the following:

- Relevant regulations on the improvement of the design system, involving application document requirements and examination standards for partial designs and GUI products, examination of clearly distinguishable designs, national priority of designs, filing and examination procedures for international designs, etc.,
- Procedural provisions related to the Patent Cooperation Treaty, involving incorporation by reference, restoration of priority, additions, corrections, etc.,
- Relevant provisions on patent term compensation, involving patent grant term compensation and drug patent term compensation,
- The relevant provisions of the patent open license, involving the filing and withdrawal of the open license

的专利侵权风险。《办法》的主要内容包括平台建设和信息公开制度、专利权登记制度、仿制药专利申报制度、司法衔接和行政衔接制度、药品审评审批分类处理制度、首仿药的市场独占制度等。

2021年7月5日，国家知识产权局发布了《药品专利纠纷早期解决机制行政裁决办法》。国家知识产权局于2021年2月发布征求意见稿，正式版本于2021年7月5日生效。

国家知识产权局根据修改后的《专利法》第七十六条制定并发布了该办法。《办法》共24条，对请求行政裁决的主体、可以裁决的药品专利范围、与司法途径的协调、行政裁决与无效程序的关系、行政裁决的执行与公开、行政裁决的司法救济及其他案件处理程序等进行了规定。

2021年8月3日，国家知识产权局发布了《专利审查指南修改草案》，征求公众意见。此次修订的目的是为了统一审查实践与修订后《专利法》的要求，包括以下重点内容：

- 完善外观设计制度的相关规定，涉及部分外观设计和图形用户界面产品的申请文件要求和审查标准、可明显区分的外观设计的审查、外观设计的国家优先权、国际设计的申请和审查程序等。
- 与《专利合作条约》有关的程序规定，涉及以提及方式纳入、恢复优先权、补充、更正等。
- 专利期限补偿的相关规定，涉及专利授权期限补偿和药品专利期限补偿。
- 专利开放许可的相关规定，涉及开放许可声明的备案和撤回、开放许可的登记和公告、开放许可实施合同的生效和备案、费用减免程序的办理等。
- 关于药品专利纠纷早期解决机制中无效案件审查的相关规定，涉及请求和证明文件的提交、审查顺序、审查依据、审查情况、结案通知等。
- 关于提高审查质量和效率的相关规定，涉及实用新型的明显创造性审查、涉及计算机程序的发明专利申请审查、复审和无效程序中的依职权审查等。

2021年9月8日，国家知识产权局发布《专利代理机构信用管理办法》草案，征求公众意见，包括以下重点内容：

- 国家知识产权局负责全国专利代理机构的信用监管工作。各省、自治区、直辖市专利行政部门负责本

行政区域内专利代理机构信用监管工作的组织实施。

- 专利代理机构和专利代理人的信用满分为100分，根据不良信用记录，如违规经营或执业行为、经营异常、行政处罚、行业处罚等进行扣分。
- 对信用积分低于60分的专利机构，由国家知识产权局和地方知识产权管理部门进行分类管理。将其列为重点监管对象，并限制其便利措施。

2022年1月24日，国家知识产权局发布《知识产权信用管理条例》。《条例》第六条明确规定，六种具体行为被列为法律法规规定的不诚信行为，即（一）不以保护创新为目的的非正常专利申请行为；（二）恶意商标注册申请行为；（三）违反法律、行政法规从事专利、商标代理并受到国家知识产权局行政处罚的行为；（四）提交虚假材料或隐瞒重要事实申请行政确认的行为；（五）适用信用承诺被认定承诺不实或未履行承诺的行为；（六）对作出的行政处罚、行政裁决等，有履行能力但拒不履行、逃避执行的行为。《条例》第九条明确了六项对失信主体的具体管理措施。

不公平竞争与电子商务

2022年3月16日，最高人民法院发布《关于适用〈中华人民共和国反不正当竞争法〉若干问题的解释》。最高人民法院于2021年8月18日发布征求意见稿，正式版本于2022年3月20日生效，包括以下重点内容：

- 第一条明确规定，人民法院在司法实践中可以适用《反不正当竞争法》第二条。第一条在授权法官适用《反不正当竞争法》第二条审理案件的同时，也明确了只有在《反不正当竞争法》第二章、《专利法》、《商标法》、《著作权法》等无法对相关行为进行规制时，才适用《反不正当竞争法》第二条。
- 第二条在确定竞争关系时采用了一个相对宽泛的标准。对于存在争夺交易机会或削弱竞争优势的潜在关系的市场主体，人民法院可以将其认定为《反不正当竞争法》第二条中的“其他企业”。
- 第三条明确了适用《反不正当竞争法》第二条中“商业道德”的认定标准。
- 第四条至第十五条是对《反不正当竞争法》第六条所提及的商业标识保护的详细规定。具体来说，第四条明确了“具有一定影响力的标识”的定义和认定的因素，第五条和第六条说明了标识不能作为商

statement, the registration and announcement of the open license, the entry into force and recordal of the open license implementation contract, and the handling of fee reduction procedures, etc.,

- Relevant regulations on invalidation case review of the early resolution mechanism for drug patent disputes, involving submission of requests and supporting documents, review sequence, review basis, review status and case closing notice,
- Relevant regulations on improving the quality and efficiency of examination, involving the examination of obvious inventive step for utility models, the examination of invention patent applications involving computer programs, the ex officio examination in re-examination and invalidation procedures, etc.

On September 8, 2021, CNIPA released the *Draft Measures for Credit Management of Patent Agency* for public comment. Some noteworthy developments include the following:

- CNIPA is in charge of the national patent agency credit supervision. The departments of patent administration of provinces, autonomous regions and municipalities directly under the Central Government shall be responsible for the organization and implementation of the credit supervision of patent agencies within their administrative regions,
- The full credit score of patent agencies and patent agents is 100 points, which will be deducted according to bad credit records, such as irregular business or practice behaviors, abnormal business operations, administrative punishments, industry punishments, etc.,
- Patent agencies with credit points below 60 points are subject to classified management by CNIPA and local intellectual property management departments. They will be listed as key supervision objects, and their convenience measures will be restricted.

On January 24, 2022, CNIPA released the *Regulations on Intellectual Property Credit Management*. Article 6 of the *Regulations* clearly states that six specific acts are classified as dishonest acts in accordance with laws and regulations, namely: abnormal patent application acts not aimed at protecting innovation, malicious trademark registration applications, acts of engaging in patent and trademark agency in violation of laws and administrative regulations and subject to administrative penalties by CNIPA, submitting false materials or concealing important facts to apply for administrative confirmation, applying credit commitments that are found to be untrue or failing to perform commitments, and acts that have the ability to perform administrative punishments, administrative rulings, etc., but refuse to perform or evade enforcement. Article 9 of the *Regulations* clarifies six specific management measures for untrustworthy entities.

Unfair Competition and E-commerce

On March 16, 2022, SPC released the *Interpretation of Several Issues Concerning the Application of the Anti-Unfair Competition Law of the People's Republic of China*. SPC issued a draft for public comment on August 18, 2021 and this official version took effect on March 20, 2022. Some noteworthy points include the following:

- Article 1 clearly stipulates that courts may apply Article 2 of the *Anti-Unfair Competition Law* in judicial practice. Article 1, while authorizing judges to apply Article 2 of the *Anti-Unfair Competition Law* to adjudicate cases, also clarifies that Article 2 of the *Anti-Unfair Competition Law* shall only be applied if/when the relevant acts cannot be regulated by Chapter II of the *Anti-Unfair Competition Law*, the *Patent Law*, the *Trademark Law*, the *Copyright Law*, etc.,
- Article 2 adopts a relatively broad standard when determining competitive relationship. For market participants in a potential relationship of competing for trading opportunities or diminishing competitive advantages, the people's court may determine the market participants as "other businesses" in Article 2 of the *Anti-Unfair Competition Law*,
- Article 3 clarifies the criteria for determining "business ethics" when applying Article 2 of the *Anti-Unfair Competition Law*,
- Articles 4 to 15 are detailed provisions for the protection of commercial signs as referenced by Article 6 of the *Anti-Unfair Competition Law*. Specifically, Article 4 clarifies the definition of "signs with certain influence" and the factors to be considered in determination, Articles 5 and 6 illustrate situations where signs cannot function as goods/services identifier and circumstances that could be viewed as fair use (taking reference from *trademark law* theories), Article 7 clarifies that signs violate Article 10.1 of the *Trademark Law* are not protectable in the context of *Anti-Unfair Competition Law*, Article 12 provides ways of how to determine similarity/identity of signs and market confusion, Article 14 involves the rules of lawful source defense and Article 15 lists circumstance of indirect infringements,
- Article 17 lists some circumstances of false and misleading promotion, and Article 18 clarifies that claimant of false and misleading promotion shall prove the relevant damages,
- Article 19 stipulates that in commercial defamation cases, the plaintiff shall be a specific victim of the alleged commercial defamation,
- Articles 21 and 22 detail the specific application situations of acts referenced by Article 12.1-12.2 of the *Anti-Unfair Competition Law*,
- Article 23 clarifies that statutory damages are applicable for false and misleading promotion, business defamation and internet unfair competitions acts (previously

品/服务标识的情况和可以被视为合理使用的情况(参考了《商标法》的理论),第七条明确了违反商标法第十条的标识。第七条明确了违反《商标法》第十条第一款的标识在《反不正当竞争法》中不受保护,第十二条提供了如何确定标识的相似性、同一性和市场混淆的方法,第十四条涉及合法来源的抗辩规则,第十五条列出了间接侵权的情况。

- 第十七条列举了虚假和误导性宣传的一些情况,第十八条明确了虚假和误导性宣传的索赔者应证明相关损失。
- 第十九条规定,在商业诋毁案件中,原告应当是被控商业诋毁行为的具体受害人。
- 第二十一条和第二十二条详细规定了《反不正当竞争法》第十二条第一款和第二款所提及的行为的具体适用情形。
- 第二十三条明确了虚假宣传、误导性宣传、商业诋毁和网络不正当竞争行为适用法定赔偿(此前仅适用于商业标志侵权和商业秘密盗用)。

2021年8月31日,总局发布了《中华人民共和国电子商务法》的修订建议,并征求公众意见,内容包括:

- 电子商务平台经营者在声明到达权利人后二十个工作日内未收到权利人投诉或起诉通知的,应当及时终止所采取的措施。
- 如果平台上的经营者提出保证金,以补偿可能的知识产权侵权行为造成的损失,电子商务平台经营者可以暂时停止采取的措施。
- 提交不侵权虚假声明的经营者将面临更重的责任。
- 相关部门可以限制情节恶劣的侵权者的经营活动,包括吊销相关许可证。

2021年8月17日,总局发布《关于禁止网络不正当竞争行为规定(草案)》,并公开征求意见。草案全面总结和列举了《反不正当竞争法》第十二条规定的各种网络环境中可能涉及的不正当竞争行为,不仅包括传统的不正当竞争行为,还包括利用技术手段在互联网上从事不正当竞争行为,其中包括以下几点:

- 细化网上虚假宣传行为。禁止虚假排名、虚假评论等行为。
- 明确网上商业诋毁的情形,禁止雇佣网络水军恶意攻击当事人的行为。未经证实的风险提示可能构成诽谤。

- 在现行法律的基础上,从反不正当竞争的角度,规范恶意拦截、非法抓取数据、二选一等新热点问题。
- 草案一方面明确了平台经营者维护平台竞争秩序的合规性要求,另一方面也为平台经营者采取必要措施、要求平台上的经营者合规经营提供了参考。
- 经营者的不正当竞争行为严重或者有重大影响的,在接受行政处罚后,应当通过网络向社会公众发出整改函。

2021年7月30日,总局发布《市场监督管理严重违法失信名单管理办法》。根据该《办法》第二条,当事人违反法律、行政法规,性质恶劣,情节严重,社会危害性大,被市场监管部门给予严重行政处罚的,市场监管部门应当将其列入严重违法失信行为当事人名单,并向社会公布违法和不诚信行为,通过国家企业信用信息公示系统予以公示,并实施相应的行政措施。根据《办法》第九条规定,该黑名单制度适用于某些严重的知识产权侵权行为,包括:(一)侵犯商业秘密、商业诋毁、组织虚假交易以及其他严重扰乱公平竞争的不正当竞争行为;(二)故意侵犯知识产权,通过提交不规范的专利申请或恶意的商标申请损害公共利益,以及从事严重违法的专利、商标代理行为。

2021年3月15日是世界消费者权益日,总局发布了《网络交易监督管理办法》。该文件是实施《电子商务法》的重要一环,对相关法律法规进行了细化和完善。《办法》重点关注网络社交、网络直播等网络交易新业态、新模式(国家网信办等主管部门也发布了《网络直播营销管理办法(试行)》,对直播进行了更详细的规定),并重点关注平台选择、违法评价等涉及网络市场交易秩序的关键问题。《办法》第十四条规定,网络交易经营者不得有扰乱市场竞争秩序、损害其他经营者或者消费者合法权益的不正当竞争行为(还列举了一些虚假宣传和误导性宣传的情况)。

举证和程序

为了更好地贯彻最高人民法院2020年发布的《关于知识产权民事诉讼证据的若干规定》,统一北京法院在知识产权诉讼中的裁判标准,为当事人举证提供指引,北京市高级人民法院于2021年4月22日发布了《知识产权民事诉讼证据规则指引》。

该《指引》分为五个部分:一般规定、专利侵权纠纷、

only applicable for commercial signs infringement and trade secret misappropriation).

On August 31, 2021, SAMR released some proposed revisions of the *PRC E-Commerce Law* for public comment. The proposed revisions include:

- If the operator of the e-commerce platform fails to receive a notice that the rightsholder has complained or sued within 20 working days after the statement reaches the rightsholder, it shall terminate the measures taken in a timely manner,
- If the operator on the platform puts forward a bond to compensate for the losses caused by potential intellectual property infringement, the operator of the e-commerce platform may temporarily suspend the measures taken,
- Operators submitting false statements on non-infringement will face heavier liability,
- The relevant authorities may restrict the business activities of egregious infringers, including revoking the relevant licenses.

On August 17, 2021, SAMR released the *Draft Provisions on the Prohibition of Unfair Competition on the Internet* for public comment. The draft comprehensively summarizes and enumerates the unfair competition behaviors that may be involved in various network environments as stipulated in Article 12 of the *Anti-Unfair Competition Law*, not only including traditional unfair competition behaviors, but also include the use of technical means to engage in unfair competition on the Internet. Some of the noteworthy points include the following:

- Refinement of the online behavior of false promotion. Acts such as false rankings and fake reviews, etc. may be banned,
- Clarify the situation of online commercial defamation, and prohibit the act of hiring cyber navy to attack a party maliciously. Unsubstantiated risk alerts may amount to defamation,
- On the basis of current laws, from the perspective of anti-unfair competition, regulate new hot issues such as malicious interception, illegal data capture, two-to-one selection, etc.,
- While, the draft clarifies the compliance requirements for platform operators to maintain the competition order on the platform, it also provides reference for platform operators to take necessary measures and to require operators on the platform to operate in compliance,
- If the unfair competition behavior of the operator is severe or has a major impact, after accepting the administrative penalty, it shall make a rectification letter to the public through the Internet.

On July 30, 2021, SAMR released the *Measures for the Administration of Lists of Parties with Serious Unlawful and*

Dishonest Conduct by Market Regulation Authorities. According to Article 2 of the *Measures*, where a party commits a violation of laws or administrative regulations with a bad nature, serious circumstances, and great social harm and is subjected to severe administrative penalties by a market regulation authority, the market regulation authority shall include it in the lists of parties with serious unlawful and dishonest conduct and publicize the same through the National Enterprise Credit Information Publicity System and implement corresponding administrative measures. According to Article 9 of the *Measures*, this black list system is applicable to certain severe IP infringements, including 1) infringement of trade secrets, commercial defamation, organization of false transactions, and other unfair competition practices that seriously disrupt fair competition; and 2) intentionally infringing intellectual property rights, harming public interests by submitting irregular patent applications or malicious trademark applications, and engaging in serious illegal patent and trademark agency activities.

On March 15, 2021, the World Consumer Rights Day, SAMR released the *Measures for the Supervision and Administration of Online Transactions*. This document is an important departmental rule for implementing the *E-commerce Law*, refining and improving the relevant laws and regulations. The *Measures* focus on new business forms and new models of online transactions such as online social networking and online live streaming (authorities such as Cyberspace Administration of China, etc. also issued the *Administrative Measures for Livestreaming Marketing (for Trial Implementation)* to provide more detailed rules for live streaming), and focus on key issues related to the order of online market transactions, such as platform selection, illegal evaluation, etc. Article 14 of the *Measures* prescribes that no online transaction operator may commit any act of unfair competition that disrupts the market competition order and damages the legitimate rights and interests of other operators or consumers (and also lists some instances of false and misleading promotion).

Evidence and Procedures

In order to better implement the *Several Provisions on Evidence in Intellectual Property Civil Litigation* issued by SPC in 2020, unify the judgment standards of Beijing courts in intellectual property litigation, and provide necessary evidence production guidelines for the parties, Beijing Higher People's Court issued *Guidelines on Rules of Evidence in Intellectual Property Civil Litigation* on 22 April, 2021.

The *Guidelines* are divided into five parts: general provisions, disputes over patent infringement, disputes over copyright infringement, disputes over trademark infringement, and disputes over unfair competition. The *Guidelines* provide the relevant parties with a comprehensive roadmap of what kind of evidence should be submitted during IP litigations, and the requirements on strength and content of the relevant evidence.

版权侵权纠纷、商标侵权纠纷和不正当竞争纠纷。《指引》为相关当事人提供了知识产权诉讼中应提交何种证据的全面指导，以及对相关证据的强度和内容的要求。

一方面，《指引》进一步完善了当事人的取证方式，另一方面，解决了按照举证责任转移规则举证的困难。此外，《指引》还积极应对技术发展趋势，完善了新型证据的审查规则。

2021年4月23日，北京市律师协会商标法专业委员会发布了《北京涉外知识产权案件立案签字权证明文件律师指引》。该《指引》包括20多个国家和地区（包括美国的特拉华州、加利福尼亚州、密歇根州、新泽西州和明尼苏达州）的案件登记材料样本，在一定程度上可以缓解外国权利人在北京提交知识产权案件时的压力。

建 议

对中国政府：

- **建议针对恶意申请第三方商标的商标申请人，建立清晰的申诉程序，并为其规定具有足够威慑性的行政罚款金额。**
- 进一步解决有关商标盗版者仅以一个或少量第三方商标为目标进行恶意注册的问题，并为品牌拥有者提供指南，就有关商标在其他辖区使用并无误导这一事实，指导其回应中国国家知识产权局基于《商标法》第10条的绝对理由驳回。
- 为北京知识产权法院庭审，有关国家知识产权局商标局行政审查的案件受理手续提供明确且合理的指南。
- 继续履行《中美第一阶段经贸协议》中保护知识产权的承诺，不再以技术转让为获取市场准入的条件。
- 制定专门的《商业秘密法》，以与现行的其他知识产权相关保持法律一致，并允许法院在民事和刑事诉讼中制定保护商业秘密的书面指导。

对美国政府：

- 分享美国联邦和州《商业秘密法》的实践经验和国家商业秘密战略。
- 在第二阶段的谈判中继续优先处理知识产权保护方面的遗留挑战，包括加强司法执行、强化知识产权侵权的民事赔偿。

On the one hand, the *Guidelines* further improve the way parties obtain evidence, and on the other hand, solve the difficulty in producing evidence according to the rules of shifting the burden of proof. In addition, the *Guidelines* actively respond to technological development trends and improve the review rules for new types of evidence.

On April 23, 2021, Trademark Law Professional Committee of Beijing Lawyers Association released *Guidelines for Lawyers on Proof of Signature Right in Beijing Foreign-related Intellectual Property Cases*. The *Guidelines* include samples of case registration materials from more than 20 countries and regions (including Delaware, California, Michigan, New Jersey and Minnesota of the US). The *Guidelines* can, to a certain extent, relieve the pressure of foreign rights holders when submitting IP cases in Beijing.

- Continue to prioritize remaining challenges with respect to IP protection including strengthening judicial enforcement and enhancing civil compensation for IP infringement as part of any phase two negotiations.

Recommendations

For the Chinese Government

- **Establish a clear process for the filing of complaints and the issuance of deterrent-scale administrative fines against trademark applicants which file third-party trademarks in bad faith.**
- Revise the Trademark Examination and Review Standards to address open issues involving bad faith filings by trademark pirates that target only one or a small number of third-party trademarks and provide clear guidance to brand owners on how to respond to absolute grounds rejections issued by CNIPA on the basis of Article 10 of the PRC *Trademark Law* that take into account non-deceptive use in other jurisdictions.
- Publish clear and reasonable guidelines for case acceptance formalities for cases involving the administrative review of Trademark Office decisions before Beijing IP Court.
- Continue to implement the commitments made as part of the Phase One Agreement to protect intellectual property and remove any prerequisites for technology transfers as a basis for market entry.
- Create a stand-alone trade secrets law in correspondence with existing laws governing other IP rights, and permit the courts to establish written guidelines on the protection of trade secrets in civil and criminal litigation.

For the US Government

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

Investment Policy

Introduction

With the continuing impact of COVID-19, the global economy recovered slowly in 2021. Meanwhile China's macroeconomic growth rate has maintained steady growth. The latest World Economic Outlook issued by the International Monetary Fund (IMF) predicted growth of the global economy by 5.9 percent in 2021, with advanced economies predicted to grow by 5 percent, emerging economies and developing countries predicted to grow by 6.5 percent, and China's economic growth expected to be 8.1 percent. According to the latest data from the Ministry of Commerce of China, throughout the entire year of 2021, China's actual use of foreign capital was RMB 1,149.4 billion, a year-on-year increase of 14.9 percent. This level has surpassed that of last year, and the scale has reached a record high. Among the leading industries, the high-tech service industry grew by 19.2 percent, and the high-tech manufacturing industry grew by 10.7 percent. At the same time, the regional distribution has become more balanced, and the actual use of foreign capital in the eastern, central, and western regions increased by 14.6 percent, 20.5 percent, and 14.2 percent year-on-year, respectively.

The year 2021 witnessed the 100th anniversary of the founding of the Communist Party of China and marked the beginning year of the 14th Five-Year Plan. The Communist Party of China and the State Council jointly listed "doing a good job in stabilizing foreign investment" as one of the important decision-making deployments set forth in "Six Stability." (The task of "Six Stability" was first put forward at the politburo meeting of the Communist Party of China Central Committee held on July 31, 2018, and includes stabilizing employment, stabilizing finance, stabilizing foreign trade, stabilizing foreign investment, stabilizing investment, and stabilizing expectations.) The *14th Five-Year Plan for Utilization of Foreign Investment* issued by the Ministry of Commerce has outlined corresponding arrangements, such as further condensing the negative list of foreign investment access, relaxing the entry threshold of key areas, continuing to reduce market access restrictions, improving the catalog of industries that encourage foreign investment, and improving foreign investment in the public service system.

Pursuant to the Ministry of Commerce's implementation

of the *Foreign Investment Law* and its supporting regulations, the spirit of the Ministry of Commerce's 2021 Foreign Investment Stabilization Work Conference, and the Ministry of Commerce's *Notice on Doing a Good Job in Stabilizing Foreign Investment Focusing on Building a New Development Pattern*, local governments are formulating policies and measures for stabilizing foreign investment to fully demonstrate to foreign investors the high-level openness and positive business environment of various regions.

Because the Chinese government has actively and properly balanced the relationship between normalization of the epidemic and economic development, a stable and safe operating environment has been created for foreign-invested enterprises. At the same time, since 2021, China's various economic indicators have been improving, booming, and showing strong resilience, which has enabled most foreign-invested enterprises in China to obtain higher investment returns. In addition, in the first year of the 14th Five-Year Plan, China vigorously promoted high-quality economic development, accelerated the construction of a new development pattern, and provided a large number of new investment opportunities for foreign-invested enterprises.

According to a recent survey conducted by the Ministry of Commerce, 93.3 percent of more than 3,000 key foreign-invested enterprises have optimistic expectations for their future development prospects. Recent reports issued by foreign chambers of commerce in the United States, Europe, and Japan show that nearly two-thirds of U.S.-funded companies, 59 percent of European-funded companies, and percent of Japanese-funded companies plan to expand their investment in China.

In the context of the epidemic, China's absorption of foreign capital has maintained rapid growth, and its scale has reached a record high, reflecting the strong attraction of the Chinese market to multinational companies.

The 14th Five-Year Plan for Utilization of Foreign Investment and the Central Economic Work Conference

On October 12, 2021, the Ministry of Commerce issued

投资政策

引言

受

新冠疫情的持续影响，2021年全球经济复苏缓慢，但中国宏观经济增速保持稳定增长。IMF2022年4月发布的《世界经济展望》报告预测2022年全球经济增长3.6%，其中发达经济体增长3.3%，新兴经济体和发展中经济体增长3.8%，而中国经济预期增速为5.5%。中国商务部2022年1月13日发布的最新数据显示，2021年全年，中国实际利用外资金额11493.6亿元人民币，同比增长14.9%。规模创历史新高。其中，高技术服务业增长19.2%，高技术制造业增长10.7%。同时，区域分布更趋均衡，东部、中部、西部地区实际使用外资同比分别增长14.6%、20.5%和14.2%。

2021年中国共产党成立一百周年，“十四五”实现良好开局。中国共产党和国务院将做好稳外资工作列为“六稳”（“六稳”首次于2018年7月31日召开的中共中央政治局会议提出，指的是稳就业、稳金融、稳外贸、稳外资、稳投资、稳预期）重要决策部署之一。商务部发布的《“十四五”利用外资发展规划》已从进一步压减外商投资准入负面清单、放宽重点领域准入门槛、持续减少市场准入限制、完善鼓励外商投资产业目录、健全外商投资公共服务体系等多个方面做出安排。

根据商务部对贯彻落实《外商投资法》及其配套法规的部署、2021年商务部稳外资工作会精神以及商务部印发的《关于围绕构建新发展格局做好稳外资工作的通知》要求，各地政府正在纷纷制定稳外资工作的政策措施，向外国投资者充分展示各地高水平开放的姿态和良好的营商环境。

中国政府积极妥善平衡疫情常态化和经济发展的关系，为外资企业创造了平稳、安全的经营环境。同时，2021年以来中国各项经济指标向好，蓬勃发展，呈现强

大韧性，使得多数在华外资企业获取了较高投资收益。另外，在“十四五”开局之年，中国大力推进经济高质量发展，加快构建新发展格局，为外资企业提供了大量投资新机遇。

商务部近期间卷调查显示，3000多家重点外资企业中，93.3%的企业对未来发展前景持乐观预期。美、欧、日等外国商会近期发布的报告显示，近三分之二的美资企业、59%的欧资企业和36.6%的日资企业计划扩大在华投资。

疫情背景下，中国吸收外资仍保持快速增长，规模创历史新高，反映出中国市场对跨国公司保持强烈的吸引力。

《“十四五”利用外资发展规划》和中央经济工作会议

2021年10月12日，商务部将《“十四五”利用外资发展规划》（以下简称《规划》）印发给各省、自治区、直辖市、计划单列市、新疆生产建设兵团商务主管部门、四川省经济合作局及商务部各直属单位。敦促其结合实际情况，认真组织实施。

《规划》从推进更高水平对外开放、优化利用外资结构、强化开放平台功能、提升外商投资促进服务水平、完善外商投资管理体制、优化外商投资环境、促进国际投资自由化便利化7个方面，明确23项重点任务，提出具体举措。

在优化外商投资环境方面，《规划》要求全面保障外商投资公平待遇。具体包括：保障外商投资企业依法平等适用国家各项支持政策，以及获取人才、资金、土地等生产要素。保障外商投资企业平等参与国家标准、行业标准、地方标准和团体标准的制定工作，提高标准化工作的公开性和透明度。破除行业壁垒和地方保护，

the *14th Five-Year Plan for Utilization of Foreign Investment* (hereafter the “Plan”) to the commerce departments of all provinces, autonomous regions, municipalities directly under the central government, cities specifically designated in the state plan, and the Xinjiang Production and Construction Corps as well as the Sichuan Province Bureau of Economic Cooperation, all directly affiliated units of the ministry, for the purpose of requiring these commerce departments to conscientiously organize implementation in light of actual conditions.

The Plan covers seven aspects: promoting a higher level of opening to the outside world, optimizing the use of foreign investment structure, strengthening the function of open platforms, improving the level of foreign investment promotion services, improving the foreign investment management system, optimizing the foreign investment environment, and promoting international investment liberalization and facilitation. The Plan further clarifies 23 key tasks and proposes specific measures.

In terms of optimizing the foreign investment environment, the Plan requires comprehensive protection of fair treatment of foreign investment. Specifically, it includes ensuring that foreign-invested enterprises apply the state’s supporting policies equally in accordance with the law, and obtaining production factors such as talent, capital, and land; ensuring that foreign-invested enterprises participate in the formulation of national standards, industry standards, local standards, and group standards on an equal footing, and increase the openness and transparency of standardization work; breaking down industry barriers and local protections, and ensuring that foreign-invested enterprises participate in government procurement and bidding activities through fair competition in accordance with the law; improving the fairness of administrative law enforcement, and treating domestic and foreign enterprises equally; and implementing the fair competition review system and maintaining the order of the fair competition market.

The Plan also states the protection of the legitimate rights and interests of foreign invested companies will be protected. Specifically, it includes implementing the *Measures for Complaints by Foreign-Invested Enterprises*, improving the mechanism for complaints by foreign-invested enterprises, and handling complaints from foreign-invested enterprises in a timely manner; encouraging qualified regions to carry out local legislative work to protect foreign investment, and protecting the legitimate rights and interests of foreign investment in accordance with the law; providing equal protection to property rights of foreign-invested enterprises in accordance with the law; implementing a punitive compensation system for intellectual property infringement, increasing the protection of trade secrets, and cracking down on all types of intellectual property infringements; strengthening the administrative enforcement of intellectual property rights, and improving the timeliness and convenience of judi-

cial remedies for intellectual property rights; promoting intellectual property arbitration and mediation, exploring diversified intellectual property dispute resolution mechanisms, and effectively protecting the intellectual property rights of foreign-invested enterprises.

The Plan further requires the improvement of the service guarantee mechanism. Specifically, it includes establishing and improving the national key foreign-invested enterprises and foreign-invested projects tracking service mechanism and linkage guarantee mechanism, coordinating and solving the outstanding difficult problems reported by foreign-invested enterprises, implementing full-process tracking services in the pre-project, construction, and commissioning phases, and increasing the use of sea, land, energy consumption, and other aspects to ensure the accelerated implementation and construction of projects; improving the mechanism for responding to major public emergencies; and actively coordinating to facilitate cross-border exchanges of personnel, materials, and other foreign-invested enterprises to ensure normal production and operation of enterprises.

It is worth noting that in terms of improving the foreign investment management system, the Plan proposes a sound national security review system for foreign investment. Specific requirements include fully implementing the *Measures for the Security Review of Foreign Investment*, conducting publicity and interpretation of relevant laws and policies, and guiding foreign investors to actively declare; strengthening the monitoring of foreign investment in important areas and key regions, promptly detecting and identifying national security risks, and guiding local commercial authorities to pay close attention to relevant foreign investment developments; conducting security reviews of foreign investments that affect or may affect national security in accordance with the law; cooperating with relevant parties to supervise the implementation of the review decision, and guiding the local competent commercial departments to cooperate in the implementation of the review decision; strengthening the coordination and linkage with anti-monopoly review, anti-unfair competition review, and other work to jointly build a national security line of defense.

From December 8 to 10, 2021, the Central Economic Work Conference (“Conference”) was held in Beijing. The Conference arranged for economic work in 2022 to take the lead and seek progress while maintaining stability. The Conference also proposed to expand high-level opening up, take multiple measures to stabilize foreign trade, ensure the stability of the industrial chain and supply chain, and increase the intensity of attracting foreign investment.

In terms of foreign investment policies, the Conference called for mobilizing local reforms and encouraging local governments to take the initiative to reform in accordance with local conditions. At the same time, it called to expand high-level

保障外商投资企业依法通过公平竞争参与政府采购、招标投标活动。提高行政执法公平性，对内资企业一视同仁、平等对待。深入落实公平竞争审查制度，维护公平竞争市场秩序。

《规划》还要求保护外商投资合法权益，具体包括：落实《外商投资企业投诉工作办法》，完善外商投资企业投诉工作机制，及时处理外商投资企业投诉事项。鼓励有条件的地区开展外商投资保护地方立法工作，依法保护外商投资合法权益。依法平等保护外商投资企业产权。落实知识产权侵权惩罚性赔偿制度，加大商业秘密保护力度，打击各类知识产权侵权行为。加大知识产权行政执法力度，提高知识产权司法救济的及时性和便利性。推进知识产权仲裁和调解，探索多元化知识产权纠纷解决机制，切实保护外商投资企业知识产权。

《规划》进一步要求完善服务保障机制。具体包括：建立健全全国重点外资企业和外资项目跟踪服务机制和联动保障机制，协调解决外商投资企业反映突出的困难问题，在项目前期、建设和投产环节，实行全流程跟踪服务，加大用海、用地、能耗等方面保障力度，推动项目加快落地和开工建设。完善应对重大突发公共事件机制，积极协调推动外商投资企业人员、物资等跨境往来便利，保障企业正常生产经营。

值得注意的是，在完善外商投资管理体制方面，《规划》提出了健全外商投资国家安全审查制度。具体要求：全面落实《外商投资安全审查办法》，做好相关法规政策的宣传解读，引导外国投资者主动申报。强化对重要领域、重点地域外商投资的监测，及时发现识别国家安全风险，指导地方商务主管部门密切关注相关外商投资动态。对影响或可能影响国家安全的外商投资依法开展安全审查。会同有关方面对审查决定的执行实施监督，指导地方商务主管部门配合做好审查决定的执行工作。加强与反垄断审查、反不正当竞争审查等工作协调联动，共同筑牢国家安全防线。

2021年12月8日至10日，中央经济工作会议（以下简称“会议”）在北京举行。会议部署2022年经济工作要稳字当头、稳中求进。会议还提出扩大高水平开放，多措并举稳定外贸，保障产业链供应链稳定，加大吸引外资力度。

在外资政策方面，会议要求调动地方改革积极性，

鼓励各地因地制宜、主动改革。同时，要求扩大高水平对外开放，推动制度型开放，落实好外资企业国民待遇，吸引更多跨国公司投资，推动重大外资项目加快落地，推动共建“一带一路”高质量发展。

外商投资负面清单及自贸区负面清单

国家发展改革委同商务部于2021年12月27日发布了《外商投资准入特别管理措施（负面清单）（2021年版）》（以下简称外商投资负面清单）和《自由贸易试验区外商投资准入特别管理措施（负面清单）（2021年版）》（以下简称自贸区负面清单）。两份负面清单已于2022年1月1日起实施，是涉及外商投资的最新负面清单。相较于2020年的版本，2021年版的外商投资负面清单和自贸区负面清单对外商投资的禁止和限制类条目分别缩减至31条和27条，压缩比例分别为6.1%和10%。

根据发改委负责人介绍，2021年版的外商投资负面清单和自贸区负面清单的主要变化包括如下内容：

1. 进一步深化制造业开放

在汽车制造领域，两个清单均取消了2020年版本中对乘用车制造外资股比限制以及同一家外商仅可在中国建立不超过两家生产同类整车产品的合资企业的限制。在广播电视设备制造领域，两个清单也都取消了2020年版中对外商投资卫星电视广播地面接收设施及关键件生产的限制，实现了内外资一致管理的原则。此外，令人欣喜的是2021年版本自贸区负面清单在制造业条目下实现了清零。

2. 自贸区放宽服务业准入

2021年版自贸区负面清单在市场调查领域，除规定了广播电视收听、收视调查须由中方控股外，取消了外资准入限制；在社会调查领域，则取消了外商投资社会调查的禁止性规定，但要求中方股比不低于67%且法定代表人应当具有中国国籍。

3. 提高外资准入负面清单精准度

在两个2021负面清单的说明部分增加了“从事禁止投资领域业务的境内企业到境外发行股份并上市交易的，应当经国家有关主管部门审核同意，境外投资者不

opening to the outside world, promote institutional opening, implement the national treatment of foreign-invested enterprises, attract more investment from multinational companies, promote the accelerated implementation of major foreign-invested projects, and promote the high-quality development of the “Belt and Road” joint construction.

Negative List for Foreign Investments and Negative List for Pilot Free Trade Zones

The National Development and Reform Commission, jointly with the Ministry of Commerce, promulgated the *Special Administrative Measures (Negative List) for Access of Foreign Investments* (2021 Edition) (the “Negative List for Foreign Investments”) and the *Special Administrative Measures (Negative List) for Access of Foreign Investments to Pilot Free Trade Zones* (2021 Edition) (the “Negative List for Pilot Free Trade Zones”) on December 27, 2021. These recent negative lists for foreign investment went into effect on January 1, 2022. Comparing with the year 2020 edition, the prohibited and restricted items for foreign investment in the 2021 versions of the Negative List for Foreign Investments and Negative List for Pilot Free Trade Zones are respectively reduced by 6.1 percent and 10 percent to 31 and 27 items.

According to the official interpretation of the National Development and Reform Commission, the main changes in the 2021 versions of the Negative List for Foreign Investments and Negative List for Pilot Free Trade Zones include the following:

1. Further Deepening the Opening of the Manufacturing Industry

For the automobile manufacturing sector, both the Negative List for Foreign Investments and the Negative List for Pilot Free Trade Zones cancel the original restrictions set forth in the 2020 versions on the proportion of foreign shares in passenger car manufacturing and the limitation that a single foreign investor can establish no more than two joint ventures producing similar vehicle products in China. For the radio and television equipment manufacturing sector, the two Negative Lists have also canceled the restrictions in the 2020 version on the production of foreign-invested ground receiving facilities and key parts of the satellite and television and broadcasting sector, which has achieved the consistent management of domestic and foreign investment. In addition, the 2021 version of the Negative List for Pilot Free Trade Zones deleted all restricted items under the manufacturing category.

2. Relaxing Access of Service Industry in Pilot Free Trade Zones

Regarding the Negative List for Pilot Free Trade Zones,

in the market survey sector, with the exception that the Chinese investor should hold controlling stakes in the radio and television rating survey, the restrictions on access of foreign investment have been deleted; in the social survey sector, the prohibition on foreign investment has been abolished, but the Chinese stake shall not be lower than 67 percent and the legal representative shall be a Chinese national.

3. Making the Negative List for Foreign Investments More Targeted

In the note portion of the two 2021 Negative Lists, new content was added which includes the following: “a domestic enterprise engaged in activities in any field prohibited from foreign investment shall be subject to review and approval by the relevant authorities of the State for listing and trading overseas, and any overseas investor in the enterprise shall not participate in the operation and management of the enterprise, and the equity ratio of overseas investors in the enterprise shall be governed by the relevant regulations on the management of domestic securities investments made by overseas investors.” This statement is especially aimed at those enterprises engaged in businesses prohibited from foreign investment in the two Negative Lists. When listing abroad, they must receive approval from the China Securities Regulatory Commission and other competent authorities that their foreign investment is not governed by the prohibitions and restrictive provisions set forth in the Negative Lists, which truly achieves the accurate and inclusive management of the Negative Lists. In addition, the two Negative Lists also request that enterprises listing abroad meet the two conditions that foreign investors do not participate in the operation and management of the enterprises and the share ratio satisfies the requirements, which reflects the requests of overall development and staying safe.

4. Optimizing the Management of Negative List for Foreign Investments

To better coordinate the Negative List for Foreign Investments and the Negative List for Market Access, a provision is added to the note portion of the two 2021 Negative Lists which states: “the relevant provisions of the Negative List for Market Access shall uniformly apply to domestic and foreign investors.” This statement clarifies that the investment management excluded in the Negative List for Foreign Investments should be subject to the Negative List for Market Access as Chinese domestic enterprises. In addition, the two Negative Lists also add the content that foreign-invested enterprises investing in China should comply with the relevant provisions of the Negative List for Foreign Investments in their note portion, which defines that the enterprises re-invested in and re-established by foreign investors in China are

得参与企业经营管理，其持股比例参照境外投资者境内证券投资管理有关规定执行”的新内容。这一说明特别针对那些从事两个负面清单中禁止外商投资领域业务的企业赴境外上市时须经证监会和相关主管部门就外商投资不适用负面清单中禁止和限制性规定进行审批，真正做到了负面清单的精准化和包容性管理。同时，两个负面清单还要求企业赴境外上市需要满足外资不参与企业经营管理 and 股比符合规定两个条件，体现了统筹发展和安全的要求。

4. 优化外资准入负面清单管理

为做好外资准入负面清单与市场准入负面清单衔接，两份2021年版负面清单的说明部分增加了“境内外投资者统一适用《市场准入负面清单》的有关规定”，明确了不列入外商投资负面清单中的投资管理应同样与中国国内企业一样受《市场准入负面清单》的约束。此外，两份负面清单还增加了外商投资企业在中国境内投资，应符合外商投资负面清单的有关规定的內容，明确了外商在中国再投资设立的企业是外商投资企业，同样应受外商投资负面清单制约。

商会会员对2021年负面清单中新开放的领域表示欢迎，但仍存以下关切：

- 新的外商投资负面清单保留的31个条目覆盖了出版印刷、运输、航空、快递、电信、教育、网络出版等广泛行业，限制和阻碍了外商投资企业提供全方位产品和服务的能力。
- 在对同一事项的多部门管理中，部门间欠缺透明高效的协调机制和清晰的管理和审批标准，审批结果的不确定性对外商投资企业的运营效率产生负面影响。
- 中国政府在实际可能出现的投资类问题上缺乏明确态度，使缺乏官方法律文件参考的外国投资者进退两难。此类问题包括但不限于可变利益实体（VIE）的投资事宜。

《工业和信息化部关于深化“证照分离”改革的通告》

2021年5月19日中国国务院印发了《关于深化“证照分离”改革进一步激发市场主体发展活力的通知》（以下简称通知），部署自2021年7月1日起，在全国范围

内实施涉企经营许可事项全覆盖清单管理，对所有涉企经营许可事项按照直接取消审批、审批改为备案、实行告知承诺、优化审批服务等四种方式分类推进审批制度改革，同时在自贸试验区进一步加大改革试点力度。通知中后附了包含了523项中央层面设定的被取消或改变证照管理方式的涉企经营许可事项，其中有68项许可项目被直接取消，所涉及的审批部门包括工业和信息化部（以下简称工信部）、公安部、自然资源部等多个部局单位。

2021年6月29日，按照通知的要求，工信部签发了《工业和信息化部关于深化“证照分离”改革的通告》，明确自2021年7月1日起，对工业和信息化领域18项涉企经营许可事项在全国范围内，按照直接取消审批、优化审批服务等方式分类推进改革；其中，取消了外商投资经营电信业务（含基础电信业务、第一类增值电信业务和第二类增值电信业务）的审批，不再核发《外商投资经营电信业务审定意见书》，相应外资审查工作纳入电信业务经营许可审批环节；同时，对“电信业务（第二类增值电信业务）经营许可”事项，明确在自由贸易试验区同时实行告知承诺审批试点。对电信业务经营许可、电子认证服务许可等14项审批项目，提出压减审批时限、简化审批材料、调整审批层级、优化审批流程、完善监管方式等改革要求和监管措施，提出加强对外商投资电信企业日常经营活动的监测，督促企业按要求报送有关信息，开展“双随机一公开”等监管，发现违法违规行为依法查处并公开记过，加强信用监管，向社会公布电信业务经营不良名单和失信名单，依法依规对失信主体开展失信惩戒等事后监管措施。

商会会员对工信部取消外商投资经营电信业务的审批、缩减审批时限及简化审批资料等举措表示欢迎，但仍密切关注中国政府能否切实按照其入世承诺向外资开放电信业务的问题。按照中国信息通信研究院在2020年3月发布的《外商投资电信企业发展态势》报告，截至2020年3月底，获得批准的外商投资电信企业共计232家。从业务领域看，主要集中在增值电信业务领域；从许可数量上看，B21在线数据处理与交易处理业务、B25信息服务业务、B24-1国内呼叫中心业务位居前三，该三项业务许可数量占全部业务许可颁发数量的86%。从投资资本来源看，232家外商投资电信企业中，约三分之二企业的外方资本来源于香港，其次是美国和新加坡，三者共计占总量的79%。尽管如此，商会发现，由

foreign-invested enterprises and should also be bound by the Negative List for Foreign Investments.

While our members welcome the further opening of some areas in the 2021 Negative Lists, we remain concerned about the following issues:

- The new Negative List for Foreign Investments still retains 31 items covering the industries of publication printing, transportation, aviation, express delivery, telecommunications, education, and online publishing, thereby continuing to hamper the ability of foreign investors to offer a full range of products and services in the Chinese market.
- The multi-sectoral management of the same matter and the lack of an effective, transparent coordination mechanism and clear management and approval standards among different authorities result in the uncertainty of approval results, which affects the operational efficiency of foreign-invested enterprises.
- Regarding the investment problems existing in practice, such as the investment by variable interest entity (VIE), there is no clear and definite attitude from the Chinese government. Thus, foreign investors face a dilemma from having no official legal documents on which to rely.

Circular of MIIT on Deepening Reform of “Separating Operating Permits and Business Licenses”

The State Council issued the *Circular on Deepening the Reform of “Separating Operating Permits and Business Licenses” to Further Boost the Vitality of Market Entities for Development* (the “Circular”) on May 19, 2021. Effective as of July 1, 2021, the Circular provides that the full coverage list management of enterprise-related business license matters will be implemented nationwide, and the approval reform for all enterprise-related business license matters will be promoted in four ways: by directly canceling the approval requirement, changing the approval process, implementing notification and commitment, and optimizing the approval service and, in the meantime, further strengthening the pilot reform in the pilot free trade zones. The Circular includes a list of 523 enterprise-related business license items to be canceled or changed via license management at the central governmental level, among which 68 license items have been simply canceled. The approval authorities involved include the Ministry of Industry and Information Technology (hereafter “MIIT”), the Ministry of Public Security, the Ministry of Natural Resources, and other ministries.

On June 29, 2021, according to the requirements of the Circular, MIIT issued the *Circular of MIIT on Deepening Reform of “Separating Operating Permits and Business Licenses,”* which clarifies that since July 1, 2021, the reform

of 18 enterprise-related business licenses in the field of industry and information technology will be promoted nationwide by means of direct cancellation of approval and optimization of approval services, among which the approval of foreign investment in telecommunications business (including basic telecommunications business, first category value-added telecommunications business, and second category value-added telecommunications business) has been canceled. The *Examination Decision on Foreign Investment in Telecommunications* is no longer issued, and the foreign investment review will be included in the examination and approval process for telecommunications business licenses. At the same time, for the “business license of telecommunications business (second category value-added telecommunications business),” MIIT clarifies that the pilot program of the notification and commitment approval process shall be introduced in the pilot free trade zones. For the 14 approval items such as telecommunications business licenses and electronic certification business licenses, MIIT proposes reform requirements and regulatory measures such as reducing the approval time limit, simplifying the approval materials, adjusting the approval level, optimizing the approval process, and improving the supervision methods. MIIT also proposes to strengthen the monitoring of the daily business activities of foreign-invested telecommunication enterprises, urge enterprises to submit relevant information as required, carry out “double random and one publication” supervision to investigate and deal with violations according to law and publish penalties to the public, strengthen credit supervision to publish the bad operation list and list of dishonest telecommunications enterprises to the public, and carry out post-regulatory measures such as punishment of dishonest entities in accordance with laws and regulations.

Although our members welcome the measures taken by MIIT to cancel the separate approval of foreign investment in telecommunications business, reduce the approval time limit, and simplify the application documents, the question of whether the Chinese government can effectively open its telecommunications business to foreign investors in accordance with its World Trade Organization accession commitments remains a concern for foreign-invested enterprises. According to the report on the *Development Status of Foreign-Invested Telecommunications Enterprises* issued by the China Academy of Information and Communications Technology in March 2020, by the end of March 2020, a total of 232 foreign-invested telecommunications enterprises were in the process of being approved. In terms of the invested fields, the investment is mainly in the field of value-added telecommunications business. In terms of the number of licenses, B21 online data processing and transaction processing businesses, B25 information services, and B24-1 domestic call center services are the top three services, accounting for 86 percent of the total number of business licenses issued. In terms of the source of investment, about two-thirds of the 232 foreign-invested enterprises come from Hong Kong, followed by the United

于外资企业在投资电信业务存在审批难的问题，大部分从事增值电信业务的外资企业并未采用直接持股架构，仍沿用 VIE 架构。

《财政部关于在政府采购活动中落实平等对待内外资企业有关政策的通知》

2021 年 10 月 13 日，财政部签发通知，要求在政府采购活动中，除涉及国家安全和国家秘密的采购项目外，不得区别对待内外资企业在中国境内生产的产品。在中国境内生产的产品，不论其供应商是内资还是外资企业，均应依法保障其平等参与政府采购活动的权利。在政府采购活动中，各级单位不得在政府采购信息发布、供应商资格条件确定和资格审查、评审标准采用等方面，对内资企业或外商投资企业实行差别待遇或者歧视待遇。各级单位不得以所有制形式、组织形式、股权结构、投资者国别、产品品牌以及其他不合理的条件对供应商予以限定，切实保障内外资企业公平竞争。内外资企业在政府采购活动中，凡认为采购文件、采购过程、中标或者成交结果使自身权益受到损害的，均可依照相关规定提起质疑和投诉。

商会会员对中国政府在政府采购领域努力打破本国国内保护壁垒的做法表示欢迎，但鉴于长久以来中国政府倾向于支持国内企业，以及最近几年中国政府对国家方面监管力度的加强，商会会员对该通知在政府采购操作过程中是否能真正贯彻和执行尚存疑虑。

中美第一阶段经贸协议执行情况

中美第一阶段经贸协议自 2020 年 2 月 14 日正式生效，并已于 2021 年 12 月 31 日到期。在近两年的执行过程中，中美第一阶段经贸协议在知识产权保护、技术转让、进一步开放金融服务业、货币政策公平透明、扩大贸易等方面做出相关承诺及规定。在过去的两年内，中国积极地履行上述相关承诺，并与美国保持坦诚沟通。在 2021 年，商会注意到，中国进一步在以下几个方面继续履行其承诺。

继 2020 年对《专利法》进行修改并建立惩罚性损害赔偿制度后，中国于 2021 年进一步加强对知识产权的保护，先后印发了《知识产权强国建设纲要（2021—2035 年）》和《国务院关于印发“十四五”国家知识产权保护和运用规划的通知》等纲领性文件，在完善知识

产权法律体系、加强知识产权司法和行政保护等方面提出总体性要求，并于 2022 年 1 月 4 日发布《知识产权强国建设纲要和“十四五”规划实施年度推进计划》，进而提出近期未来的重点任务和具体工作措施。

此外，中国最高人民法院审判委员会于 2021 年 2 月 7 日通过了《关于审理侵害知识产权民事案件适用惩罚性赔偿的解释》，为正确实施知识产权惩罚性赔偿制度提供指引，明确了惩罚性赔偿的适用范围、请求内容和时间、计算基数和倍数等内容。

针对中美第一阶段经贸协议中的地理标志保护相关问题，在 2021 年 5 月 21 日生效的《国家知识产权局、国家市场监督管理总局关于进一步加强地理标志保护的指导意见》（以下简称《指导意见》）中得到了回应。《指导意见》强调要强化地理标志保护的申请质量监管，对申请材料弄虚作假等行为从严处置，驳回有关地理标志保护申请。此外，《指导意见》要求严厉打击地理标志侵权假冒行为，加强地理标志领域的行政执法与刑事司法衔接，并明确提出严格履行中美第一阶段经贸协议等国家协议的义务，完善国外地理标志产品在华保护年度报告制度。

在金融服务领域，中国在 2021 年进一步开放金融服务市场，并于 2021 年 3 月 19 日发布《中国银行保险监督管理委员会关于修改〈中华人民共和国外资保险公司管理条例实施细则〉的决定》（以下简称《决定》），持续优化保险业投资和经营环境，努力创造有利于中外资公平竞争的市场营商环境。《决定》对《中华人民共和国外资保险公司管理条例实施细则》进行修改，取消合资寿险公司的外资比例限制，允许外国保险集团公司和境外金融机构入股外资保险公司，明确入股条件，并与《外商投资安全审查办法》相衔接，要求对影响或可能影响国家安全的投资外资保险公司行为进行外商投资安全审查。

此外，在保险中介服务领域，中国于 2021 年 12 月 3 日发布《中国银行保险监督管理委员会办公厅关于明确保险中介市场对外开放有关措施的通知》（以下简称《通知》），取消外资保险经纪公司的准入限制，允许外国保险集团公司、境内外资保险集团公司投资设立的保险中介机构经营相关保险中介业务。《通知》的发布表明了中国政府推进保险业对外开放、提高中国保险中介市场服务水平的决心。

States and Singapore, accounting for 79 percent of the total. Nevertheless, we found that most foreign-invested enterprises engaged in value-added telecommunications business still adopted a VIE structure instead of a direct shareholding structure. We believe the reason is that it is difficult for foreign-invested enterprises to get approval for their investment in telecommunications business.

Circular of the Ministry of Finance on Implementing Relevant Policies on Equal Treatment of Domestic and Foreign-Invested Enterprises in Government Procurement Activities

On October 13, 2021, the Ministry of Finance issued a notice requiring that in government procurements, with the exception of projects involving national security and state secrets, products manufactured by domestic and foreign enterprises in China shall not be treated differently. For products manufactured in China, no matter whether their suppliers are domestic or foreign-invested enterprises, their right to equally participate in government procurements shall be ensured. Domestic and foreign-invested enterprises shall not be treated differently or discriminatorily in terms of procurement information release, supplier qualification determination and examination, and evaluation standards adopted in government procurements. The government departments shall not limit the supplier range by providing unreasonable conditions about the form of ownership, organizational form, ownership structure, investor nationality and product brand, etc., so as to effectively ensure fair competition between domestic and foreign-invested enterprises. Both domestic and foreign-invested enterprises may raise questions and submit complaints in accordance with relevant regulations if they believe that their rights and interests are damaged by the procurement documents, procurement process, bid winning, or transaction results in any government procurements.

Our members welcome the Chinese government's effort to break through domestic protection barriers in the field of government procurement; however, in view of the long-standing tendency of the Chinese government to support domestic enterprises and the strengthening of the Chinese government's supervision of national security in recent years, our members are still waiting to see how the Circular are executed and followed in the process of government procurements.

Implementation of the Phase One Economic and Trade Agreement

The *China-US Phase One Economic and Trade Agreement* ("Phase One Agreement") became effective on February 14, 2020, and was set to expire on December 31, 2021.

The *Phase One Agreement* included clauses in the areas of protection of intellectual property rights, technology transfer, further opening up of the financial sector, implementation of fair and transparent currency policies, expansion of trade, etc. Over the nearly two years of the *Phase One Agreement's* implementation, China has been proactively working to fulfill its commitments in the above-mentioned areas and maintaining candid communication with the US government on a regular basis. We note that in 2021 China continued fulfilling its commitments in the following aspects.

After the amendment to the *Patent Law of the People's Republic of China* and establishment of a punitive damage system in 2020, China further strengthened its protection of intellectual property rights in 2021. New framework policies were issued, including the *Outline for Building an Intellectual Property Rights Powerhouse (2021-2035)* and the *Circular of the State Council on Printing and Distributing the National Plan for the Protection and Application of Intellectual Property Rights during the 14th Five-Year Plan Period*, to put forward overall requirements on improving the legal system of intellectual property rights, enhancing judicial protection and administrative protection of intellectual property rights, etc. On January 4, 2022, the Chinese government further released the *Annual Promotion Plan for the Implementation of the Outline for Building an Intellectual Property Rights Powerhouse and the 14th Five-Year Plan*, which includes important tasks and specific measures for the near future.

In addition, the Adjudication Committee of the Supreme People's Court of the People's Republic of China passed the *Interpretation on the Application of Punitive Damages in the Trial of Civil Cases Involving Infringement of Intellectual Property Rights* on February 7, 2021. The Punitive Damages Application Interpretation provides guidance on the application of punitive damages for intellectual property rights infringement and clarifies the application scope of punitive damages, the content and timing of the application, the base figure for calculation of punitive damages, and determination of multiples of punitive damages.

The *Guiding Opinions of the State Intellectual Property Office and the State Administration of Market Regulation on Further Strengthening the Protection of Geographical Indications* (hereafter "Guiding Opinions"), effective May 21, 2021, echoed the relevant issues of geographical indications protection in the *Phase One Agreement*. The *Guiding Opinions* emphasized the importance of enhancing regulatory supervision over the quality of the application process for geographical indications protection, requiring the authorities to take harsh and strict actions, including potential dismissal of applications upon discovering dishonesty in the application materials. Also, the *Guiding Opinions* required the authorities to ① crack down on infringement and counterfeiting activities relating to geographical indications, ② enhance both administrative and criminal protections

商会注意到，扩大中美贸易相关承诺的执行情况也备受关注。中国承诺自2020年1月至2021年12月进口美国产品和服务总额比2017年增加至少两千亿美元。根据彼得森国际经济研究所的最新数据，自2020年1月至2021年11月，在全球疫情、供应链受阻等大环境影响下，中美第一阶段经贸协议下产品的中国进口额比例仅达到第一阶段目标额的62%（以中国进口数据计算）或60%（以美国进口数据计算），尚未完成中美第一阶段经贸协议下的购买承诺。但是中国始终秉持积极的态度，努力推动落实义务，与美国团队保持正常沟通。

商会对中国为履行其在中美第一阶段经贸协议下的承诺而做出的努力表示赞赏，但针对国有企业补贴、非市场政策等会员核心关切，期待未来能够通过双边谈判落实解决，商会将密切关注相关进展。

《反外国制裁法》

第十三届全国人民代表大会常务委员会第二十九次会议于2021年6月10日通过《反外国制裁法》，该法于当日立即生效。《反外国制裁法》的主要目的是反制外国国家对中国或中国公民、组织所采取的歧视性限制措施，维护中国国家主权与安全，保护中国公民、组织的合法权益。

根据《反外国制裁法》，中国国务院有关部门可以将直接或间接参与制定、决定、实施该法规定的歧视性限制措施的个人、组织列入反制清单，并根据实际情况采取反制措施。同时，对于反制清单以外的个人、组织，国务院有关部门也可以决定对其采取反制措施。这些个人、组织包括：**①** 列入反制清单个人的配偶和直系亲属；**②** 列入反制清单组织的高级管理人员或者实际控制人；**③** 由列入反制清单个人担任高级管理人员的组织；**④** 由列入反制清单个人和组织实际控制或者参与设立、运营的组织。

具体反制措施包括以下一项或几项：**①** 不予签发签证、不准入境、注销签证或者驱逐出境；**②** 查封、扣押、冻结在我国境内的动产、不动产和其他各类财产；**③** 禁止或者限制我国境内的组织、个人与其进行有关交易、合作等活动；**④** 其他必要措施。

由于《反外国制裁法》适用范围较广，不仅包括列

入反制清单的个人或组织，还包括与其存在特定关系的个人或组织，比如列入反制清单的外国个人担任高级管理人员的外商投资企业或列入反制清单的外国组织在华投资的外商投资企业，商会会员担心这会给在美国企业增加额外的合规成本和负担。即使企业自身没有被列入反制清单或被采取反制措施，外商投资企业的在华生意也可能因企业无法与被采取反制措施的组织、个人进行交易、合作而受到影响，尤其是鉴于国务院有权对不执行反制措施的境内组织和个人依法予以处理、限制或禁止其从事相关活动。

另外，由于《反外国制裁法》规定国务院有关部门做出的决定为最终决定，相对人无法提出行政复议或行政诉讼，商会会员担心企业的参与程度较低，程序权利有限，无法充分维护其在华的合法权益。

《反外国制裁法》还要求任何组织和个人均不得执行或协助执行外国国家对我国公民、组织采取的歧视性限制措施，并赋予中国公民、组织向法院提起诉讼的权利。这一规定可能会使跨国公司陷入两难境地，迫使其在遵守美国歧视性限制措施还是中国法律规定之间做出选择。

此外，《反外国制裁法》的很多表述较为模糊，不少条款过于宽泛和简要，商会促请中国政府出台配套法规，对相关名词和表述做出明确解释，进一步明确和细化具体工作机制。

自《反外国制裁法》于2021年中旬发布以来，商会注意到，外交部先后于2021年7月和12月依据《反外国制裁法》对美国针对中国的歧视性限制措施采取了三次反制措施。反制措施主要回应的是7月和12月美国因香港问题制裁多名中国中央政府驻港机构官员，以及12月美国因新疆侵犯人权问题制裁4名中国官员。中国认为美国的上述制裁严重干涉了中国内政，违反国际关系基本准则，因此中国外交部决定采取对等反制措施，包括禁止实施反制措施的人员入境中国（含内地、香港和澳门）、冻结其在华财产及禁止中国公民和机构与其交易。

尽管目前为止被列入反制清单并采取反制措施的组织和个人均与人权、涉港、涉疆等政治问题有关并是政府组织或政客，但由于《反外国制裁法》的适用范围广泛，日后也可能会有商业实体被列入清单或采取反制措施，

in the geographical indications area, ❸ strictly fulfill obligations in the international agreements such as the *Phase One Agreement*, and ❹ improve the annual report system regarding the protection of foreign geographical indication products in China.

In the financial services sector, China continued to open up its market in 2021 and released the *Decision of the China Banking and Insurance Regulatory Commission on Revising the “Rules for the Implementation of the Administrative Regulations of the People’s Republic of China on Foreign-Invested Insurance Companies”* (hereafter “Decisions”) to continue to optimize the investment and business environment of the insurance industry and strive to foster a fair business environment for both domestic and foreign capital. The Decisions made the following revisions to the *Rules for the Implementation of the Administrative Regulations of the People’s Republic of China on Foreign-Invested Insurance Companies*: ❶ canceling the proportion restriction on foreign capital in joint venture life insurance companies; ❷ allowing foreign insurance group companies and overseas financial institutions to invest in insurance companies in China and providing investment conditions; and ❸ aligning with the *Measures for the Security Review of Foreign Investment* by requiring foreign investment security review for foreign investment activities in the insurance industry if such activities affect or might affect national security.

In addition, in the insurance intermediary service sector, China released the *Notice of the General Office of the China Banking and Insurance Regulatory Commission on Specifying Relevant Measures for Liberalizing the Insurance Intermediary Market* (hereafter “Notice”) on December 3, 2021. Through the Notice, China canceled market access restrictions on foreign-invested insurance brokerage companies and allowed professional insurance intermediaries invested in by foreign insurance group companies and foreign-invested insurance group companies to engage in relevant insurance intermediary business. The issuance of the Notice indicates China’s determination to further open up the insurance industry and improve services in the domestic insurance intermediary market.

AmCham China notes that China’s implementation of its commitments with respect to the expansion of China-US trade has been under the spotlight recently. China agreed to increase purchases of certain U.S. goods and services by US \$200 billion in total for the period from January 1, 2020, to December 31, 2021, on top of the 2017 level. According to recent statistics gathered by the Peterson Institute for International Economics, from January 2020 to November 2021, China’s purchases of all covered products under the Phase I Agreement reached only 62 percent (based on statistics of Chinese imports) or 60 percent (based on statistics of US exports) of the target, which means China has not yet completed its purchase obligations under the *Phase One Agreement*. This is mainly due to the impact of the global pandemic and supply chain disruption. However,

China has always maintained a positive attitude, strived to fulfill its obligations, and maintained normal communication with the US team.

While AmCham China applauds the efforts made by China to fulfill its commitments under the *Phase One Agreement*, we hope that issues of key concern to our members, such as subsidies for state-owned enterprises, non-market policies, etc., can be addressed in future negotiations between the two countries, and we will closely monitor the development in this regard.

Anti-Foreign Sanctions Law

The *Anti-Foreign Sanctions Law* was passed on June 10, 2021 by the Standing Committee of the 13th National People’s Congress. The law became effective immediately. The primary goal of the *Anti-Foreign Sanctions Law* is to safeguard China’s national sovereignty and security and protect the legal rights and interests of Chinese citizens and organizations by allowing the authorities to implement countermeasures regarding certain measures taken by foreign countries targeting China or Chinese citizens or organizations that are considered as discriminatory restrictive measures.

According to the *Anti-Foreign Sanctions Law*, relevant departments of the State Council may decide to include in the countermeasure list individuals and organizations that directly or indirectly participate in the formulation, decision, or implementation of the discriminatory restrictive measures stipulated by the law and take countermeasures based on the actual circumstance. Meanwhile, such relevant departments may also decide to take countermeasures with respect to individuals or organizations not included on the countermeasure list. Such individuals and organizations include ❶ spouses and immediate family members of individuals on the countermeasure list; ❷ senior officers or actual controllers of organizations on the countermeasure list; ❸ organizations within which individuals on the countermeasure list serve as senior officers; and ❹ organizations actually controlled or established or operated by the individuals and organizations on the countermeasure list.

Specific countermeasures include one or several of the following: ❶ refusal of visa issuance, denial of entry, cancellation of visa, or deportation; ❷ sealing, seizing, or freezing the movable assets, immovable property, and other types of assets located within the territory of China; ❸ prohibiting or restricting organizations and individuals within the territory of China from engaging in transactions, cooperation, or other activities with such individuals or organizations; and/or ❹ other necessary measures.

The *Anti-Foreign Sanctions Law* may apply broadly to both the individuals or organizations on the countermeasure

尤其是相关歧视性限制措施涉及商业领域。另外，商会注意到，外交部在宣布以上三次制裁时都强调中国将采取对等反制措施，不论是反制对象的数量还是反制措施的类型，均体现了对等的特点，这也表明中国政府在适用《反外国制裁法》时秉持审慎、克制的原则。

商会将持续关注并监督《反外国制裁法》后续配套法规和解释的出台以及中国政府对该法的适用，商会也鼓励中国政府加强与商会的互动，以便会员企业更好地理解《反外国制裁法》及相应合规义务。

海南自由贸易港

《海南自由贸易港法》

在《海南自由贸易港建设总体方案》（以下简称《总方案》）于2020年6月1日正式引发一年之后，2021年6月10日，《中华人民共和国海南自由贸易港法》（以下简称《海南自由贸易港法》）经全国人大常委会三次审议后全票表决通过，并于该日予以公布并实施。随后，《海南自由贸易港跨境服务贸易特别管理措施（负面清单）（2021年版）》（以下简称《自由贸易港负面清单》）也于2021年7月23日正式公布，自2021年8月26日起施行。

根据《总方案》设置的发展目标，预期到2025年将初步建立以贸易和投资自由便利为重点的自由贸易港政策制度体系；到2035年，自由贸易港制度体系和运作模式会更加成熟，海南自由贸易港将成为中国开放型经济新高地区；到21世纪中叶，将全面建成具有较大国际影响力的高水平自由贸易港。《海南自由贸易港法》的颁布实施为尽快建设海南自由贸易港并达成以上发展目标提供了必要的法律基础，该法以贸易自由化、投资便利化为重点，其主要内容和亮点如下：

1. 在立法和管理权限方面赋予海南更多的自主权

按照《海南自由贸易港法》的规定，海南自由贸易港可以在遵循宪法和法律行政法规基本原则的前提下，结合实际需要，在对现行法律和行政法规的规定进行一定程度的变通后，制定针对海南自由贸易港的法规。同时，该法还规定由国务院及相关部门根据建设需要，依法授权委托海南省和有关部门行使相应的行政管理权。

2. 着重贸易和投资的自由化与便利化

在贸易方面，《海南自由贸易港法》确立了“一线开放、二线管住”的货物贸易监管模式，其中“一线”是指海南跟境外的分割线；“二线”是指海南自由贸易港跟内地的分割线。除了被列入《自由贸易港负面清单》中禁止和限制进出口的货物以外，所有其他货物均可在境外和海南自由贸易港之间自由进出。对《自由贸易港负面清单》之外的跨境服务贸易，按照内外一致的原则管理。

在投资方面，该法明确了一系列投资自由便利的措施，包括全面推行极简审批投资制度，对外商投资实行准入前国民待遇加负面清单管理制度，同时明确放宽海南自由贸易港的市场准入。

3. 实行“零关税、低税率、简税制”的特殊税收政策

《海南自由贸易港法》明确了海南自由贸易港于2025年封关前后简化税制的要求。在全岛封关运作后，对进口征税商品目录之外的所有货物免征进口关税。另外，《总方案》也已对税收政策安排进行了优化。例如，目前对注册在海南自由贸易港并实质性运营的鼓励类产业，给予优惠减按15%征收企业所得税；对在海南自由贸易港工作的高端人才和紧缺人才，其个人所得税实际税负超过15%的部分，予以免征。

4. 强调在海南自由贸易港实行严格的生态环境保护制度

《海南自由贸易港法》在生态环境保护方面实行包括环境保护目标责任制和考核评价制度，环境保护目标完成情况一票否决制，以及生态环境损害责任终身追究制等制度，对严重破坏生态环境的有关政府部门、负责人和其他直接责任人员追究严格责任。

5. 深化产业发展、人才发展、金融等方面的体制改革

该法进一步提出推进建设国际旅游消费中心，推动旅游与文化体育、健康医疗等领域的深度融合；创新人才培养支持机制，建立科学合理的人才引进和待遇保障机制；同时强调推进金融改革创新，建立适应海南自由贸易港投资自由化和便利化要求的跨境资金流动管理制度。

list and other individuals or organizations in certain relationships with such listed individuals or organizations, e.g., a foreign-invested enterprise whose senior officer is a listed foreign individual or a foreign-invested enterprise in China invested in by a listed foreign organization. Thus, AmCham China members are concerned that the implementation of the *Anti-Foreign Sanctions Law* will create additional compliance complications with respect to the operations of US companies in China. Even if a company itself is not on the list or is not subject to countermeasures, the business of a foreign-invested enterprise in China might still be affected since it is not allowed to have transactions or cooperation with organizations or individuals that are subject to countermeasures, especially considering the restrictions or prohibitions that might be imposed by the State Council against domestic organizations and individuals not implementing the countermeasures.

In addition, since the *Anti-Foreign Sanctions Law* considers the decisions made by relevant departments of the State Council to be final, which means the companies cannot initiate administrative review or litigation, our members are concerned that they will not be able to fully protect their legal rights and interests in China with such restrictions on full participation and procedural rights.

The *Anti-Foreign Sanctions Law* also forbids organizations and individuals from implementing or assisting with the implementation of discriminatory restrictive measures taken by foreign countries against Chinese citizens and organizations and grants a right of action to Chinese citizens and organizations. Such requirements may put US multinational companies in the difficult position of having to choose between compliance with US discriminatory restrictive measures or Chinese requirements.

Furthermore, considering that some language in the *Anti-Foreign Sanctions Law* is extremely vague and many provisions are quite broad and simple, AmCham China urges the government to clarify relevant terms and language and the details of the specific working mechanism in subsequent supplementing regulations.

We note that, since the promulgation of the *Anti-Foreign Sanctions Law* in mid-2021, the Ministry of Foreign Affairs has, in July and December of 2021, announced three countermeasures with respect to the discriminatory restrictive measures taken by the United States. The countermeasures were mainly in response to the US sanctions in July against several Chinese central government officials due to the issue of Hong Kong, and sanctions in December against four Chinese officials due to human rights issues in Xinjiang. China believes that the United States, by imposing the above-mentioned sanctions, has severely interfered with China's internal affairs and violated basic principles of international relations. Thus, the Ministry of Foreign Affairs decided to take reciprocal countermeasures, including prohibiting individuals subject to such counter-

measures from entering China (including mainland China, Hong Kong, and Macau), freezing such individuals' and organizations' property in China, and prohibiting Chinese citizens and institutions from doing business with them.

Although until now the organizations and individuals included on the list and subject to countermeasures have all been involved with political issues such as human rights, Hong Kong, and Xinjiang, and all of them are either politicians or government organizations, the broad scope of application of the *Anti-Foreign Sanctions Law* means that there may be commercial entities included on the list and/or subject to countermeasures in the future, especially when the US discriminatory restrictive measures target the business sector. Also, we note that the Ministry of Foreign Affairs emphasized the reciprocity of the countermeasures taken by China when it made the announcements, and such reciprocity was reflected in the number of subjects and types of countermeasures, which indicates that the Chinese government has shown some restraint when implementing the *Anti-Foreign Sanctions Law*.

AmCham China will continue monitoring and supervising the subsequent release of supplementing regulations and interpretations of the *Anti-Foreign Sanctions Law* as well as the implementation of the law by the Chinese government. We encourage the government to engage with us to help our members better understand the *Anti-Foreign Sanctions Law* and their compliance obligations.

Hainan Free Trade Port

Hainan Free Trade Port Law

One year after the official release of the *Master Plan for the Construction of the Hainan Free Trade Port* (hereafter "Master Plan") on June 1, 2020, the *Hainan Free Trade Port Law of the People's Republic of China* (hereafter "Free Trade Port Law") was approved by unanimous vote on June 10, 2021, after three deliberations by the Standing Committee of the National People's Congress and was promulgated and implemented on the same day. Subsequently, the *Special Administrative Measures (Negative List) for Cross-border Trade in Services in Hainan Free Trade Port (2021)* (hereafter "Hainan Negative List") was also officially announced on July 23, 2021 and went into effect August 26, 2021.

According to the development goals set in the Overall Plan, it is expected that by 2025, a free trade port policy and institutional system focusing on the liberalization and facilitation of trade and investment will be initially established; by 2035, the free trade port institutional system and operation model will be more mature. The Hainan Free Trade Port will become a new highland area of China's open economy; by the middle of the 21st century, a high-level free trade port with strong international influence will be fully built. The promulgation and implementation

《海南自由贸易港跨境服务贸易特别管理措施（负面清单）（2021年版）》

《海南自由贸易港跨境服务贸易特别管理措施（负面清单）》（以下简称《自由贸易港负面清单》）是中国在跨境服务贸易领域公布的第一张负面清单，明确列出针对境外服务提供者的 11 个大类共 70 项的特别管理措施。对于该清单未包括的所有领域，在海南自由贸易港按照境内外服务和提供者待遇一致的原则进行管理。

作为在服务贸易管理模式方面的一项重大突破，《自由贸易港负面清单》有利于提高中国总体服务业的对外开放水平。该清单的开放度超过了中国加入 WTO 的承诺，也超过了绝大部分中国签署的自贸协定在服务贸易方面的开放水平。该清单中的一些亮点如下：

- **在航运、金融等现代服务业领域作出多项开放安排。**例如，取消了境外服务提供者不得从事航空气象服务的限制，也取消了未在中国设立验船公司的境外船舶检验机构不得派员或者雇员在中国境内开展船舶检验活动的限制；允许境外个人申请开立证券账户或者期货账户，并允许境外个人申请证券投资和期货投资咨询的从业资格等。
- **在法律服务、市场调查等商业服务领域扩大对外开放程度。**例如，明确境外律师事务所驻海南的代表机构可以从事部分涉及海南的商事非诉讼法律事务；规定境外服务提供者在经过资格认定取得涉外调查许可证后即可进行市场调查。
- **在教育文化配套领域实行更加开放的政策。**例如，取消境外个人教育服务提供者到中国境内提供教育服务需要有两年专业工作经验的限制。
- **在人才政策方面提升开放水平。**例如，取消境外个人参加注册计量师、注册消防工程师等十多项职业资格考试的限制。

商会预期《海南自由贸易港法》等一系列法规的出台会为外商投资企业带来新的机遇，由此进一步增强企业长期深耕海南的信心。被称为中国最短外商投资负面清单的《自由贸易港负面清单》也必将为外商投资企业带来大量的投资机会。此外，企业还可享受极具竞争性的税收优惠政策，从而获得巨大收益。

商会赞赏中国发布的以上利好措施，同时也提出如下几点建议：

- 商会希望有关部门能充分运用在立法和管理权限上的优势，深化对《海南自由贸易港法》的研究，尽快启动对现行法律、法规及规章的梳理工作，早日形成与海南自由贸易港相适应的司法体制，加大海南自由贸易港的改革创新力度。
- 商会特别关注营商环境的问题，期待有关部门能够注重完善法规体系的公平性，增强法规的透明度和可预期性，消除外商投资企业在市场准入审批等方面所感受到的不平等情况。

《区域全面经济伙伴关系协定》

自 2021 年 4 月 15 日向东盟秘书长正式交存《区域全面经济伙伴关系协定》（以下简称 RCEP）核准书后，中国即开始着手各项准备工作。2022 年 1 月 1 日，经过各方长达 9 年的谈判和努力，RCEP 作为世界上规模最大的自由贸易区协定在 6 个东盟成员国（文莱、柬埔寨、老挝、新加坡、泰国、越南）和 4 个非东盟成员国（中国、日本、澳大利亚和新西兰）正式生效。

联合国贸易和发展会议（UNCTAD）的一份研究报告显示，RCEP 所有缔约国的 GDP 总量约占全球的 30.5%，超过北美自贸协定（28%）、欧盟（17.9%）等协定，将缔造全球贸易的新重心。

在 RCEP 生效后，区域内已核准成员之间 90% 以上的货物贸易将最终实现零关税，中国近 30% 的货物出口可以实现零关税待遇，可涵盖中国 1.4 万亿美元的贸易额。根据中国商务部国际贸易经济合作研究院近日发布的《RCEP 对区域经济影响评估报告》模拟结果显示，到 2035 年，RCEP 将使中国实际 GDP、出口和进口增量分别较基准情形累计增长 0.35%、7.59% 和 10.55%，出口和进口累计增量将分别达到 3,154 亿美元和 3,068 亿美元，经济福利将累计增加 996 亿美元。

对于中国的企业来说，RCEP 必然会带来重要的发展机遇。更多企业的产品可以零关税出口至相关国家，同时进口产品的成本也会有所降低，从而获得更大的市场空间。预期 RCEP 的生效可以进一步提升贸易便利化水平，降低企业在中国的经营和交易成本，企业可结合产业特点实现更大发展。

毫无疑问，RCEP 的落地将为中国经济的高质量发展注入新的动力，也让其他国家应对贸易保护主义更

of the *Free Trade Port Law* provides the necessary legal basis for building the Hainan Free Trade Port as soon as possible and achieving the above development goals. The *Free Trade Port Law* focuses on trade liberalization and investment facilitation, and its main contents and highlights are as follows:

1. Give Hainan more autonomy in terms of legislative and management authority

According to the provisions of the *Free Trade Port Law*, the Hainan Free Trade Port can, in adherence to the *Constitution* and the basic principles of laws and administrative regulations, formulate special laws and regulations for the Hainan Free Trade Port after making certain changes to the existing laws and administrative regulations in light of the actual needs. Meanwhile, the *Free Trade Port Law* also stipulates that the State Council and relevant departments shall, according to the needs of construction, authorize Hainan Province and relevant departments to exercise corresponding administrative authority.

2. Focus on liberalization and facilitation of trade and investment

In terms of trade, the *Free Trade Port Law* establishes the goods trade supervision model of “Free Flow through the First Line and Efficient Control at the Second Line,” in which the “First Line” refers to the separation line between Hainan and overseas, and the “Second Line” refers to the separation line between the Hainan Free Trade Port and the Chinese mainland. Except for the goods listed in the Hainan Negative List that are prohibited or restricted from import and export, all other goods can be freely imported and exported between overseas markets and the Hainan Free Trade Port. The cross-border service trade outside the Hainan Negative List will be managed in accordance with the principle of internal and external consistency.

In terms of investment, the *Free Trade Port Law* clarifies a series of liberalized and facilitated measures for investment, including the comprehensive implementation of a simplified investment approval system, the implementation of pre-establishment national treatment plus a negative list management system for foreign investment, and a clear relaxation of market access for the Hainan Free Trade Port.

3. Implement special tax policies of “Zero Tariff, Low Tax Rate, and Simplified Tax System”

The *Free Trade Port Law* specifies the requirements for simplifying the tax system before and after the independent customs operations of the Hainan Free Trade Port are put into place in 2025. After the independent customs operations on the whole island, all goods not included in the catalog of import taxable goods will be exempt from

import duties. In addition, the Master Plan has already made some optimized tax policy arrangements. For example, qualified enterprises currently in the encouraged industries and having practical operations in the Hainan Free Trade Port are entitled to a preferential corporate income tax rate of 15 percent, and high-end talents and urgently needed talents working at the Hainan Free Trade Port enjoy a personal income tax rate of 15 percent.

4. Emphasize the implementation of a strict ecological and environmental protection system in the Hainan Free Trade Port

The *Hainan Free Trade Port Law* implements systems such as the environmental protection target responsibility system and assessment and evaluation system, the one-vote veto system for the completion of environmental protection goals, and the lifelong accountability system for ecological environment damage in terms of ecological environmental protection. The relevant government departments, persons in charge, and other persons directly responsible for serious damage to the ecological environment will be held strictly accountable.

5. Deepen institutional reforms in industrial development, talent development, the financial sector, etc.

The *Hainan Free Trade Port Law* further proposes to promote the construction of an international tourism consumption center, as well as the deep integration of tourism, culture, sports, health care, and other fields; to innovate a support mechanism for talent training and establish a scientific and reasonable talent introduction and treatment guarantee mechanism; and at the same time, emphasizes promoting financial reform and innovation and establishing a cross-border capital flow management system adapted to the requirements of Hainan Free Trade Port investment liberalization and facilitation.

Special Administrative Measures (Negative List) for Cross-border Trade in Services in Hainan Free Trade Port (2021)

The Hainan Negative List is the first negative list published by China in the field of cross-border service trade. It clearly lists 70 special management measures in 11 categories for overseas service providers. All areas within the Hainan Free Trade Port that are not included in this list are managed in accordance with the principle of consistent treatment of domestic and foreign services and service providers.

As a major breakthrough in the management mode of service trade, the Hainan Negative List is beneficial to improve the level of opening up of China’s overall

有信心。商会将继续关注 RCEP 生效后具体政策的变化进展，期待相关外商投资企业在中国的发展环境得到进一步优化。

总结

尽管 2021 年全球经济因新冠疫情持续而复苏缓慢，但在中国政府的努力之下，中国宏观经济增速保持稳定增长，并成功吸引金额高达 11493.6 亿元人民币的外资（2021 年全年），同比增长 14.9%，规模创历史新高，商会及会员这一成绩表示赞赏。此外，为进一步履行中美第一阶段经贸协议的承诺，中国政府在 2021 年继续缩减负面清单，并颁布了多项法律法规，继续为中外企业提供更加公平的竞争环境做出努力，商会会员看好中国市场。

商务部近期刊调查显示，3000 多家重点外资企业中，93.3% 的企业对未来发展前景持乐观预期。美、欧、日等外国商会近期发布的报告显示，近三分之二的美资企业、59% 的欧资企业和 36.6% 的日资企业计划扩大在华投资。

但是，如本章所述，在华外资企业仍面临诸多挑战，也对一些悬而未决的问题表示担忧。尽管解决这些问题并不容易，商会促请中国政府将这些问题提上日程，为内外资企业创造一个更加公平的营商环境。

企业的审批和监督工作，明确诸多安全审查之间的关系，降低企业合规成本，提高企业运营效率。

- 中国政府应明确处于灰色地带的投资类问题，如对可变利益实体的地位做出表态，帮助外国投资者判断通过可变利益实体进行投资的风险。
- 颁布《海南自由贸易港法》以及《反外国制裁法》的配套条例、解释和意见，具体指导法律实施，帮助外商投资企业确定合规义务、判断相应风险。

建议

对中国政府：

- 确保《工业和信息化部关于深化“证照分离”改革的通告》以及《财政部关于在政府采购活动中落实平等对待内外资企业有关政策的通知》中关于外商投资企业与内资企业享有同等待遇的规定能够切实落实。
- 继续履行改革开放承诺，进一步缩减负面清单中的市场准入限制，尤其是针对运输、航空、快递、电信等行业的市场准入限制，使外商投资企业在中国能够提供全方位的服务。
- 在以网络安全为代表的领域中，更好地统筹协调对同一或类似事项拥有管辖权的多个部门对

service industry. The openness of this list exceeds China's commitment to joining the World Trade Organization, and also exceeds the openness of most free trade agreements executed by China in terms of trade in services. Some of the highlights in the Hainan Negative List are as follows:

1. Make a number of opening arrangements in modern service industries such as shipping and finance. For example, the restriction that overseas service providers are not allowed to engage in aviation meteorological services has been canceled, and the restriction that overseas ship inspection agencies having no ship inspection company in China are not allowed to send personnel or employees to carry out ship inspection activities in China has also been canceled; overseas individuals are permitted to apply for opening securities accounts or futures accounts, and to apply for professional qualifications for securities investment and futures investment consultation.

2. Expand the openness in business services such as legal services and market research. For example, it is clarified that the representative offices of foreign law firms in Hainan can engage in some commercial and non-litigation legal affairs involving Hainan; and it is stipulated that foreign service providers can conduct market research after being qualified and obtaining foreign-related investigation licenses.

3. Implement more open policies in the field of education and culture. For example, the requirement of two years of professional work experience for overseas individual educational service providers to provide educational services in China is removed.

4. Improve the level of openness in terms of talent policy. For example, the restrictions on overseas individuals participating in more than 10 professional qualification examinations such as registered metrology and registered fire engineers have been lifted.

We expect that the promulgation of a series of regulations such as the *Free Trade Port Law* will bring new opportunities for foreign-invested enterprises, thereby further enhancing the confidence of enterprises to cultivate in Hainan for a long time. The Hainan Negative List, known as the shortest negative list for foreign investment in China, will surely open up many investment opportunities to foreign-invested enterprises. In addition, businesses can enjoy highly competitive tax incentives, which can lead to huge benefits.

We appreciate the above favorable measures released by China but would like to make several suggestions as follows:

- We hope that relevant departments can make full use of their advantages in legislation and management authority to deepen the study of the *Free Trade Port Law*, start to sort out the existing laws, regulations, and

rules, form a judicial system suitable for the Hainan Free Trade Port, and intensify the system's reform and innovation as soon as possible.

- We pay special attention to the business environment and expect relevant departments to focus on improving the fairness of the regulatory system, enhancing the transparency and predictability of laws and regulations, and eliminating the inequalities that foreign-invested enterprises experience in market access approvals.

Regional Comprehensive Economic Partnership Agreement

Since the formal deposit of the instrument of ratification of the Regional Comprehensive Economic Partnership (hereafter "RCEP") Agreement to the Secretary-General of the Association of Southeast Asian Nations (hereafter "ASEAN") on April 15, 2021, China has begun taking various preparatory steps. On January 1, 2022, after nine years of negotiation, efforts by all related parties, and as the world's largest free trade area agreement, RCEP came into force in six ASEAN member states (Brunei, Cambodia, Laos, Singapore, Thailand, Vietnam) and four non-ASEAN member states (China, Japan, Australia, and New Zealand).

According to a research report by the United Nations Conference on Trade and Development (UNCTAD), the combined gross domestic product ("GDP") of all RCEP member states accounts for about 30.5 percent of the world's total GDP, surpassing other agreements such as the North American Free Trade Agreement (28 percent) and the European Union (17.9 percent). RCEP will create a new focus of global trade.

After RCEP takes effect, over 90 percent of the trade in goods among the approved members in the region will eventually achieve zero-tariff treatment, and nearly 30 percent of China's exported goods will also be tariff-free, which may cover China's trade volume of US \$1.4 trillion. According to the simulation results of the *Report on the Impact of RCEP on Regional Economy* recently released by the Chinese Academy of International Trade and Economic Cooperation under the Ministry of Commerce of China, by 2035, RCEP may increase China's actual GDP by 0.35 percent, its exports by 7.59 percent, and its imports by 10.55 percent compared with the baseline scenario. The cumulative increase in exports and imports may reach US \$315.4 billion and US \$306.8 billion, respectively, and China's economic welfare may increase by US \$99.6 billion.

For enterprises in China, RCEP will inevitably bring important development opportunities. More products of Chinese enterprises can be exported to relevant countries with zero tariffs, and the cost of imported products will also be reduced, thus gaining them a larger market space. It is expected that the effectiveness of RCEP will further enhance the level of trade facilitation, reduce the operation

and transaction costs of enterprises in China, and enable enterprises to achieve greater development based on their industrial characteristics.

There is no doubt that the implementation of RCEP will inject new impetus into the high-quality development of China's economy, and will also make other countries more confident in the face of trade protectionism. We will continue to pay attention to the changes and progress of specific policies after RCEP goes into effect, and we look forward to further optimization of the development environment for relevant foreign-invested enterprises in China.

Conclusion

Although the recovery of the global economy in 2021 slowed due to the continuing COVID pandemic, the Chinese government maintained stable growth of the macro economy through its efforts, and successfully attracted foreign capital at the amount of RMB 1149.4 billion, with a growth rate of 14.9 percent, which exceeded that of 2020 and reached a record high. AmCham China and our members applaud such an achievement. In addition, in order to further fulfill its commitments under the *Phase One Agreement*, the Chinese government continued narrowing down the items on the Negative List in 2021 and promulgated various laws and regulations to create a more fair competitive environment for both domestic and foreign-invested companies. Our members have shown great interest in the Chinese market.

The recent questionnaire of the Ministry of Commerce indicates that 93.3 percent of over 3,000 key foreign-invested enterprises have optimistic expectations for their future prospects. Recent reports issued by foreign chambers of commerce in the United States, Europe, and Japan show that nearly two-thirds of US-invested companies, 59 percent of European-invested companies, and 36.6 percent of Japanese-invested companies plan to expand their investment in China.

However, as mentioned previously in this chapter, US companies in China still face various challenges and are concerned about some outstanding issues. Although such issues are not easy to fix, AmCham China urges the Chinese government to make such issues a priority and create a fairer business environment for foreign-invested and domestic companies.

Recommendations

For the Chinese Government

- Ensure that provisions in the *Circular of MIIT on Deepening Reform of "Separating Operating*

Permits and Business License" and Circular of the Ministry of Finance on Implementing Relevant Policies on Equal Treatment of Domestic and Foreign-Invested Enterprises in Government Procurement Activities providing for equal treatment between foreign-invested enterprises and domestic companies are fully implemented in practice.

- Continue fulfilling its commitments regarding an opening-up policy by further shortening the Negative Lists, especially with respect to market access restrictions on transportation, aviation, express delivery, telecommunication, etc., and by allowing foreign-invested enterprises to provide a wider range of services in China.
- Coordinate among various competent departments with respect to their approval and supervision of same or similar matters, especially in the cybersecurity area where the relationship of multiple security reviews should be clarified to save compliance costs for companies and improve their operation efficiency.
- Take a clear position on the investment issue considered as a gray area in China, that is, the status of the variable interest entities, so that foreign investors may assess the associated risk of their investment in China.
- Promulgate supplementing regulations, interpretations, and opinions with respect to the *Hainan Free Trade Port Law* and the *Anti-Foreign Sanctions Law* to provide guidance on the implementation of the laws so that foreign-invested enterprises may understand their compliance obligations and the associated risk.

Standards, Certification, and Conformity Assessment

Introduction

In 2021, many industries saw continued focus on defining standards and regulation of the market targeting overall long-term growth. In October 2021, China's State Council released its national strategy for technical standards. Despite its call for industry leaders to participate in the standards setting process, many foreign companies remain skeptical that their input will be taken into consideration. Development of China's Standards has been a long-time priority, but a slow-moving and often opaque process.

The revised *Standardization Law* came into effect on January 1, 2018. The revised version is the first since the law was originally enacted in 1988. Such reform included the entry into force of several regulations, namely the *Administrative Measures for Local Standards* effective March 1, 2020, and the *Administrative Measures for Mandatory National Standards* effective June 1, 2020. Both were issued by the State Administration for Market Regulation (SAMR) and are intended to provide further guidance on standards setting at the national and local levels.

AmCham China continues to follow developments with respect to SAMR, which as a market super-regulator bears administrative responsibility for standardization, certification and accreditation, as well as for market supervision, anti-monopoly behavior, price supervision, food and drug safety, intellectual property rights, and business licenses since its creation in March 2018.

The revised *Standardization Law* has created a stable legal foundation for China to continue to reform its system for standardization. It introduced market-driven reforms and provisions for group standards, unified mandatory standards, and reduced the number of recommended standards. AmCham China welcomes the foundation laid by the revisions and hopes the creation of SAMR will continue to improve China's regulatory oversight.

These reforms notwithstanding, AmCham China remains concerned about China's commitment to accept and align with international standards, which enable global trade and investment.

AmCham China therefore believes that the *Standardization Law* requires further revision in several areas, including:

- The continuing preference for domestic standards in many industries,
- The failure to follow international standard setting principles of the *World Trade Organization Agreement on Technical Barriers to Trade (WTO/TBT)*,
- The fact that social organization standards can and are superseded by State-sponsored standards,
- A lack of due process in the formulation of standards led by social organizations,
- Distortions caused by domestic subsidies, and
- A lack of conventional copyright protection language in the *Standardization Law*.

In addition, our members remain concerned about the unreasonable disclosure of enterprise standards, including requirements that enterprise standards must be disclosed in order to be considered as a standards "pioneer." AmCham China continues to urge that these issues be resolved, and that China prioritize the adoption of existing international standards absent solid justification for the use of local alternatives.

In March 2020, the Standardization Administration of China (SAC) released the *Main Points of National Standardization Work*, the culmination of the two-year planning phase for China Standards 2035, a broad-based initiative designed to leverage the Belt and Road Initiative (BRI) to promote China's international influence through standards development and leadership. AmCham China urges that foreign-invested enterprises (FIEs) be allowed to participate equally and share their expertise in this initiative, and we strongly advocate the adoption of international standards throughout the BRI rather than the adoption of regional standards, as such practices will fragment the international standardization system.

On January 1, 2020, the *Foreign Investment Law* (FIL) came into effect which provides for equal participation for foreign-invested and domestically-invested enterprises in standards-setting processes. For the second year in a row in the Banking and Capital Markets chapter of this White Paper we noted that the People's Bank of

标准

引言

2021年，许多行业为了实现整体长期增长目标，持续关注市场标准制定及监管。2021年10月，中国国务院发布了国家技术标准战略。尽管文件中呼吁行业领先企业参与标准制定过程，但许多外国公司对他们的意见是否会被纳入考虑范围依然持怀疑态度。长期以来，中国标准的制定一直是优先事项，但这个过程却进展缓慢且往往缺乏透明度。

修订后的《标准化法》于2018年1月1日开始生效。这是自1988年制定该法律以来的第一次修订。这一系列改革也包括2020年3月1日起施行的《地方标准管理办法》、2020年6月1日起施行的《国家强制性标准管理办法》。这两项标准均由国家市场监督管理总局（以下简称总局）发布，旨在为国家和地方各级的标准制定提供进一步指导。

中国美国商会（以下简称商会）将继续关注总局后续的政策发布。自2018年3月成立以来，总局作为一个超级市场监管机构，肩负着标准化、认证认可、市场监管、反垄断行为、价格监管、食品药品安全、知识产权、营业执照等多方面的行政责任。

修订后的《标准化法》为中国继续推进标准化制度改革奠定了坚实稳固的法律基础。其以市场为导向，对团体标准、统一强制性标准进行了改革，同时减少了推荐标准的数量。商会愿意接受修订案的相关内容，同时也希望总局能够继续改善中国的相关监管工作。

尽管进行了这些改革，商会仍十分关注中国对接受并接轨国际标准的承诺，这些标准将成为全球贸易和投资发展的基础。

因此，商会认为，《标准化法》需要在以下几个方面进一步修订，包括：

- 许多行业仍倾向于采用国内标准；
- 未能遵循世界贸易组织《技术性贸易壁垒协议》（WTO/TBT）的国际标准制定原则；
- 社会组织标准可以而且已经被国家支持标准所取代；
- 在社会组织主导的标准制定过程中缺乏正当程序；
- 国内补贴造成的扭曲；
- 《标准化法》中缺乏常规版权保护的相关表述。

此外，商会仍关注企业标准的不合理披露，其中要求必须披露企业标准才能被视为标准“领跑者”。商会继续敦促解决这些问题，并希冀中国在没有充分理由使用本地替代标准的情况下，优先采用现有国际标准。

2020年3月，中国标准化管理委员会发布了《国家标准化工作要点》，标志着“中国标准2035”两年规划阶段达到高潮。这一有广泛基础的倡议旨在利用“一带一路”倡议，通过制定标准和发挥领导作用，提升中国的国际影响力。商会敦促，允许外商投资企业平等参与这一倡议并分享他们在这一倡议中的专业知识。商会强烈建议在整个倡议中采用国际标准而非地方标准，因为采用地方标准会使国际标准化体系变得支离破碎。

2020年1月1日，《外商投资法》正式生效，规定外商投资企业和国内投资企业平等参与标准制定过程。在本书的“银行与资本市场”章节中，商会连续第二年指出，中国人民银行的中国金融标准技术委员会于2020年2月发布了《个人金融信息安全规范》。这是一个推荐标准，虽然人民银行表示欢迎外国金融机构，但在此标准制定过程中仍未征求外国金融机构的意见。商会发布的2021年度《中国营商环境调查报告》显示，在《外商投资法》改善营商环境部分，只有20%会员表示《外商投资法》可使其更平等地参与标准制定工作；14%会员表示，应该在双方持续进行的双边谈判中，优先考虑技术标准和标准制定程序。

China's China Financial Standards Technical Committee (CFSTC) published a *Personal Financial Information Security Specification*, a recommended standard in February 2020, without consulting foreign financial institutions even though the People's Bank maintains that foreign financial institutions are welcome in China. In the *AmCham China 2021 Business Climate Survey (BCS) Report*, even among those respondents who reported that the FIL has improved the business environment, only 20 percent noted that the FIL had primarily led to more equal participation for them in standards-setting efforts, and 14 percent stated that technical standards and standards-setting procedures should be prioritized in any continuing bilateral negotiations.

China Standards 2035

China Standards 2035 is a state-sponsored program to promote Chinese technical standards across a range of industries. Initiated in 2017 by the General Administration of Quality Supervision, Inspection and Quarantine (consolidated into SAMR in March 2018), implementation officially commenced in March 2018.

The initial phase of China Standards 2035, a research program overseen by the Chinese Academy of Engineering, released its preliminary report, the *Main Points of National Standardization Work in 2020* (Main Points Report), in March 2020. This initial Main Points Report represents the culmination of two years of research programs, workshops, and deliberation.

The Main Points Report lays out a series of actions that constitute the next step in the evolution of China Standards 2035. These actions are broadly organized around five main areas:

1. To "strengthen the top-level design and enhance the strategic position of standardization." This will be done by formulating an outline for a national standardization strategy, integrating standards development efforts into China's 14th Five-Year Plan (2021-2025), and reconciling standardization efforts with China's other national strategies in areas like innovative development, rural revitalization, regional coordination, and sustainable development.
2. To "deepen standardization reform and enhance the vitality of standardization development." This is to be achieved by improving the administration of national mandatory standards, optimizing the management of recommended standards, improving industry standards, strengthening local standards-setting efforts, enhancing urban standardization, and boosting the competitiveness of enterprise standards.
3. To "enhance the standard system and improve the ability of high-quality development." This objective is premised on standards development in nine identified industry/sector areas: prevention and control of COVID-19, agricultural and rural systems, food safety

and quality, high-end manufacturing, next generation information technology and biotechnology, the services industry, social governance, ecological development, and national standards sampling.

4. To "engage in the governance on international standards and enhance the internationalization of standards." This is to be met by engaging with international standards organizations, collaborating in new industries to promote the growth of international standards, encouraging cooperation on standards between different countries and regional bodies, and through adoption of international standards.
5. To "strengthen the scientific management of standards and increase the efficiency of standards governance." This is to be met by establishing standards institutes, reinforcing mutual links between standards work and innovation, establishing more efficient mechanisms to develop and revise standards, optimizing the management of China's Technical Committees, reinforcing the application of standards, and improving the quality of standards information services.

AmCham China strongly welcomes those aspects of the Main Points Report and China Standards 2035 that promote adoption of and alignment with international standards, particularly as these standards will continue to be the basis of the international trade and economic system that fosters the unimpeded flow of commerce.

AmCham China will continue to monitor the next phase of China Standards 2035 and seek opportunities to contribute. AmCham China welcomes the multiple references in the Main Points Report to encourage the development of group standards and to reduce the use of industry standards in favor of group standards. Industry standards are typically national in scope and issued by an industry regulator and registered with the SAC. They tend to be developed where no corresponding national mandatory standard exists. Group standards (also known as "social organization" standards), are voluntary and can be developed by any registered group or social organization in the absence of other mandatory, industry, or local standards. They are typically drafted to address market demands and developed more rapidly than the government-led process for other standards.

A system of group-led standards development is more conducive to the development of a market-driven economy, and AmCham China is pleased to see group-led standards given a key role in standards development. We applaud the plan to engage more experts from FIEs and to study the international experience of other nations in developing group standards. We believe a balanced policy environment, characterized by minimal government interference is needed to allow groups to lead standards development. In this regard, we will be closely monitoring to ensure that social organization standards, with equal

“中国标准 2035”

“中国标准 2035”是一项由国家资助，旨在各行业推广中国技术标准的项目。该项目由国家质量监督检验检疫总局于 2017 年发起（2018 年 3 月并入总局），于 2018 年 3 月正式开始实施。

“中国标准 2035”是一个由中国工程院牵头监督实施的研究项目，与 2020 年 3 月发布了初期研究报告《2020 年全国标准化工作要点》（以下简称《工作要点》）。这份报告是两年来项目研究、研讨及各方综合商议的成果。

《工作要点》列出了一系列行动，这些行动组成了“中国标准 2035”下一步发展阶段发展方向，行动大致围绕五个主要领域展开：

① “强化顶层设计，提升标准化工作的战略地位”。编制国家标准化战略纲要，将标准化工作纳入国家“十四五”规划（2021-2025 年），与创新驱动发展、乡村振兴、区域协调发展和可持续发展等国家战略相对接。

② “深化标准化改革，提升标准化发展活力”。通过完善强制性国家标准管理，优化推荐性国家标准的管理，完善行业标准的管理，加强地方标准化工作，推动城市标准化创新发展，增强企业标准竞争力。

③ “加强标准体系建设，提升高质量发展的能力”。这一目标的前提是在九个确定的行业和部门领域制定标准：即新冠肺炎疫情防控、农业农村体系、食品安全与质量、高端制造业、新一代信息技术与生物技术、服务业、社会治理、生态建设、国家标准样品等。

④ “参与国际标准治理，提升标准国际化水平”。要实现这一目标，需要与国际标准组织合作，在新兴行业中合作以促进国际标准的发展，并通过采用国际标准，鼓励不同国家和地区机构之间的标准合作。

⑤ “加强科学管理，提高标准化治理效能。”通过建立标准机构，加强标准工作与创新的互动支撑，建立更有效的标准制定和修订机制，优化国家技术委员会管理，强化标准的实施应用，并完善标准信息咨询服务质量。

商会全力支持《工作要点》和“中国标准 2035”中促进采用国际标准并与国际标准接轨的内容，这些标准

将继续作为国际贸易和经济体系的基础，促进经贸往来畅通无阻。

商会将继续关注“中国标准 2035”的下一阶段工作，并期待能有机会作出贡献。《工作要点》中多次提出鼓励团体标准制定，并减少行业标准的使用以支持团体标准制定，商会对此表示支持。行业标准通常是全国性的，由行业监管机构发布并在国家标准委员会注册的。此类标准往往在国家没有相应强制性标准的情况下发展起来。团体标准（也被称为“社会组织”标准）是自愿的，可以由注册团体或社会组织在没有其他强制性、行业或地方标准的情况下制定。这些标准的起草更针对于市场需求，其标准制定过程比政府主导的制定过程更迅速。

团体主导的标准制定体系更有利于市场经济发展，商会很高兴看到团体主导标准在标准制定中发挥关键作用。商会对从外商投资企业聘请更多专家参与进来，并研究其他国家在制定团体标准方面国际经验的做法表示赞赏。商会认为，目前需要一个政府干预最少的、平衡的政策环境，以支持团体在标准化制定过程中发挥领导作用。在这方面，商会将保持密切关注，以确保外商投资企业和国内企业都能够平等参与社会团体标准的制定，并保证社会团体标准以同样适用于政府规定标准和国有企业采用标准的方式在市场上发展作用。

作为该平衡政策环境的一部分，商会建议建立一个第三方认证机制，对在标准制定过程中体现出公开、公平和透明原则的最佳团体/组织进行认证。这将为确保制订出适合市场的高质量标准起到积极作用。

商会期望与相关政府机构开展进一步沟通，以更好地了解“中国标准 2035”项目的最新进展。一方面，“中国标准 2035”反映了中国致力于继续向更加开放的经济发展目标迈进，完善国内标准制定流程。商会敦促政府及相关机构允许商会会员全面、公开地参与国内标准制定过程。另一方面，商会担心，外商投资企业因无法充分、平等参与“中国标准 2035”项目而导致的或可能出现的推广国内技术而歧视国外技术的情况。商会将密切关注“中国标准 2035”项目的进展情况，其计划本身就将为中国标准工作的发展方向提供明确指引。在这方面，中美经贸协定的农业章节中，中国承诺消除多种美国农产品的市场准入壁垒，包括在农业生物技术、饲料进口和牛肉产品等领域以国际标准为基础进行决策等等。所有

participation from FIEs and domestically-invested enterprises, are able to develop and be applied in the market in a manner equally applicable to government-mandated standards and those adopted by state-owned enterprises.

As part of such a balanced policy environment, AmCham China recommends a third-party accreditation scheme be established to certify groups/organizations which exemplify best practices during the standards development process as characterized by the principles of openness, fairness, and transparency. Such processes will ensure the development of high-quality standards appropriate for the market.

AmCham China has a strong interest in consulting with relevant government agencies to better understand the progress to date around China Standards 2035. On the one hand, China Standards 2035 reflects China's commitment to continue moving toward a more open economy and improve its domestic standards development process. AmCham China urges the government and relevant standards-setting bodies to allow full and open participation of AmCham China members. On the other hand, AmCham China is concerned that continued development of China Standards 2035 absent full and equal participation of FIEs will result in the promotion of domestic technology while encouraging discrimination against foreign alternatives. AmCham China is closely monitoring the progress of China Standards 2035, which will itself provide a clear indication of the direction China's standards efforts are moving. In this regard, the agriculture chapter of the Economic and Trade Agreement between the US and China includes commitments by China to remove market access barriers for multiple US agricultural products including by basing its decisions on international standards in areas like agricultural biotechnology, feed imports, and beef products, among others. All such commitments should be honored in practice at the port of entry and other regulatory nexuses, not just on paper.

FIEs and Standards Setting

The FIL enacted on January 1, 2020 and *Circular No. 23* [2019] provides a clear legal basis for FIEs to participate equally in standard setting. *Circular No. 23* provides that "The State will ensure equal participation in China's standards-setting efforts by domestically-invested and foreign-invested enterprises," and ensure "transparency and a sound scientific basis in the development and revision of industry standards and technical specifications."

In 2017, the SAC, the National Development and Reform Commission (NDRC), and the Ministry of Commerce (MOFCOM) jointly issued the *Guiding Opinions on Foreign-Funded Enterprises Participating in the Standardization Work of China* (*Guiding Opinions*). Article 6 of the *Guiding Opinions* provides that representatives of FIEs may join

the China National Standardization Technical Committee (including technical sub-committees and working groups) as members or observers, and enjoy full rights to exercise their obligations in accordance with the *Measures for the Administration of the China National Standardization Technical Committee*.

We welcome the promulgation of written legislation that actively encourages FIEs to participate in China's standards-setting work. In practice, however, our members find that FIEs continue to encounter considerable resistance when applying to join a standardization technical committee and that many decisions are made by the leadership of technical committees on which representatives of FIEs are restricted from participation before decisions are made by full technical committees. Certain domestic enterprises on these technical committees are sensitive to participation by FIEs and work to hinder their participation. We strongly encourage the government disseminate clear, binding implementing regulations and enforcement mechanisms that ensure equal participation by FIEs on standards-setting technical committees particularly those that act in support of the provisions included in the FIL. FIEs should also be permitted to participate in industry working groups that support standards development activities, particularly those related to standards development of "secure and controllable" technologies, given the potential for such standards to affect a wide range of industries and market entities. With the development of Intelligent connected vehicles, vehicle manufacturers are also stakeholders for communication, data security and cybersecurity related policies, etc. The consultations for those policies should be available for auto industry too.

Adoption of International Standards and Due Process

The revised *Standardization Law* and China Standards 2035 demonstrate China's willingness to participate in international standardization activities and continue to align with international standards. Neither the revised 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.

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

这些承诺应在入境口岸和其他监管中得到实际体现，而非仅仅落在纸面上。

外资企业与标准制定

2020年1月1日颁布的《外商投资法》和2019年第23号公告，为外商投资企业平等参与标准制定提供了明确的法律依据。第23号公告中规定，“国家保障内资企业和外商投资企业平等参与我国标准制定工作”，确保“行业标准和规范的制定和修订公开透明并具有科学依据”。

2017年，中国标准化委员会（SAC）、国家发展改革委（NDRC）、商务部（MOFCOM）联合发布了《外商投资企业参与我国标准化工作的指导意见》（简称《指导意见》）。《指导意见》第6条规定，外商投资企业的代表可以作为委员或观察员加入中国国家标准技术委员会（包括技术分委会和工作组），并按照《全国专业标准化技术委员会管理办法》的规定享有权利，履行义务。

商会支持中国颁布法律文件，支持外资企业积极参与中国标准制定工作。但在实践中，商会的部分会员表示，外商投资企业在申请加入标准化技术委员会时仍遇到相当大的阻力。许多决定是由技术委员会的领导层做出的，外商投资企业代表在技术委员会做出全体决议之前，其参会就已经受到了限制。部分加入技术委员会的国内企业，对外商投资企业的参与非常敏感，并设法阻碍其参与。商会强烈支持政府发布明确、有约束力的实施细则和执行机制，确保外商投资企业平等参与标准制定技术委员会。除此之外，还应允许外商投资企业参与支持标准制定活动的行业工作组，特别是与“安全和可控”技术标准制定有关的工作组，因为此类标准可能对广泛的行业和市场实体产生影响。随着智能网联汽车的发展，汽车制造商也是通信、数据安全和网络安全相关政策等的利益相关者，这些政策协商也应该适用于智能汽车行业。

采用国际标准和正当程序

修订后的《标准化法》和“中国标准2035”表明，中国愿意参与国际标准化活动并继续与国际标准接轨。然而，无论是修订后的《中华人民共和国专利法》，还是《中华人民共和国专利法实施细则》，都没有明确地

与国际标准制定的既定原则相一致，也没有充分利用现有国际标准来履行中国对WTO/TBT的承诺。这些内容均没有表现出对正当程序的明确承诺。

商会敦促中国在实施《标准化法》的过程中，坚持国际标准制定的既定原则并采用正当程序。商会敦促中国像所有加入世贸组织的主要工业化国家一样，履行其作为法律和政策标准化框架基础的WTO/TBT承诺。WTO/TBT要求一国制定的标准在国际标准存在或国际标准即将完成的情况下必须遵守规定。除国际标准无效或不适合之外，必须全部或部分使用国际标准作为国家或行业标准的基础。此外，在采用一项标准之前，标准化机构必须给世贸组织成员有关各方至少60天的时间，使各方能够提交对标准草案的建议。

商会反对在无任何合理理由的情况下，部分采用国际标准的做法。先前类似的尝试造成了不必要的混乱，导致了标准重复和不一致，并使标准实施变得更加繁琐。独特的国内标准不仅限制了市场准入，而且人为地对进口产品和技术设置了贸易壁垒，也阻碍了中国产品和技术进入国际市场。这抑制了中国企业融入全球市场的能力。要求产品按照中国独特的标准进行设计和生产，只会增加国外、国内、上游和下游利益相关者在制造、研发和设计方面的时间和成本。

中国政府和行业越来越多地采用了一系列国际标准。中国约75%的国内标准（国标或强制性国家标准）源于采用国际标准化组织（ISO）、国际电工委员会（IEC）或国际电信联盟（ITU）标准或通过这标准来制定。国际标准也被广泛应用于一些行业特定标准的开发中。中国的监管机构越来越多地参与ISO、IEC、ITU、ASTM、美国机械工程师协会（ASME）、美国保险商实验室（UL）、电气和电子工程师协会（IEEE）以及其他标准开发相关机构的活动。商会认识到中国在这些组织中发挥了日益重要的作用，并对中国积极参与这些组织表示赞赏。中国已明确承诺，将根据“中国标准2035”，鼓励中国企业参加ISO、IEC和ITU主办的会议。商会建议，邀请在中国经营的外商投资企业代表与中国代表团一同参加此类国际会议。

商会建议中国政府在没有充分理由使用本地标准的情况下，尽可能采用国际标准，而不是制定国内标准。如果某些标准需要根据中国的国情进行修改，那么标准制定过程中的透明度就至关重要。修改者应对调整后的

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 all efforts to adopt international standards only in part without reasonable justification. Previous attempts to do so have created unnecessary confusion, led to duplicative and inconsistent standards, and made implementation more cumbersome. Unique domestic standards restrict market access and erect artificial trade barriers to 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 (R&D), and design.

China's government and its industries have increasingly embraced a number of international standards. Approximately 75 percent of China's domestic standards (GuoBiao or mandatory national standards) are derived from or developed by adopting standards from the International Organization for Standardization (ISO), International Electrotechnical Commission (IEC) or the International Telecommunications Union (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 International, the American Society of Mechanical Engineers (ASME), Underwriters Laboratories (UL), Institute of Electrical and Electronics Engineers (IEEE), and other standards development-related institutions. AmCham China recognizes China's growing role in these organizations and applauds its continued participation. In line with China's stated commitment to encourage participation in ISO/IEC/ITU-sponsored conferences under China Standards 2035, AmCham China recommends that representatives from FIEs in China be invited to join and participate alongside any Chinese delegations to such international conferences.

AmCham China recommends that the 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-setting process is crucial. Explanations should be provided for any standards that are adjusted. When adapting these standards, the 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.

In this regard, AmCham China is concerned about the impact of the BRI on the application of standards in other markets. We understand China's plan to leverage the BRI in support of its global standardization efforts. We recommend, however, that any standards developed and promoted in BRI countries and regions be aligned with international standards to the maximum extent possible. These efforts otherwise risk fragmenting the current system of global standards and also conflict with China's stated commitment to further embrace international standards.

Aligning China's domestic standards with common international standards will support China's domestic economic development and international initiatives, including the BRI. Domestically invested enterprises operating in China should acknowledge that conformance with international standards will require the government to adapt China's domestic market conditions.

Recognition of Disciplined Standards Setting Bodies

The revised *Standardization Law* and current regulations and practices continue to largely treat many international standards as superficial, traditionally adhering only to standards issued by multilateral bodies, especially ISO, IEC, and ITU. In actuality, however, the recognition and acceptance of international standards extends well 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 multitude of applications in the global market alone.

While the *Standardization Law* and China Standards 2035 encourage social organizations/groups to lead the standards development process, it is unclear whether regulators will consider all globally recognized SDOs, which are mostly comprised of social organizations, on a par with international standards-setting bodies (especially ISO, IEC, and ITU). AmCham China recommends that the regulators follow the international principles of open participation, due process, transparency, impartial voting rights, and consensus-oriented when determinate a particular standard. Particular importance should be ascribed to the technical quality and market relevance of a given standard, defined by its acceptance in the marketplace. In accepting these SDOs as valid standards-setting bodies and following these principles in the standards adoption process, AmCham China believes that the government will not only improve the domestic standardization system but also promote the competitiveness of Chinese technologies and products in the global marketplace.

AmCham China therefore strongly urges the government to broaden its official recognition of international

标准做出解释。在调整这些标准时，政府应咨询国际专家和利益相关方。中国监管机构应与国际专家合作，确保这些标准在解释和应用方面保持一致。

在这方面，商会对“一带一路”倡议对其他市场标准应用的影响表示关注。商会对中国计划利用“一带一路”倡议支持其全球标准化工作表示理解，但建议，在“一带一路”沿线国家和地区制定、推广的标准应尽可能与国际标准接轨。否则，这些做法可能会使当前全球标准体系产生断层，并违背中国进一步接受国际标准的承诺。

中国国内标准与国际通用标准的对接，将为中国国内经济发展和包括“一带一路”在内的国际倡议提供支持。在中国经营的内资企业应认识到，遵守国际标准需要中国政府适应国内市场概况和需求。

认可符合要求的标准制定机构

修订后的《标准化法》和现行的法规与惯例仍然在很大程度上把许多国际标准视为表面现象，只遵守多边机构，特别是 ISO、IEC 和 ITU 发布的标准。但实际上，对国际标准的认可和接受不仅仅只限于 ISO、IEC 和 ITU，没有哪个政府、个人或标准制定组织可以独自领导所有技术标准的制定和其在全球市场中的适用。

虽然《标准化法》和“中国标准 2035”鼓励社会组织和团体主导标准制定过程，但目前尚不清楚监管机构是否会将所有全球公认的标准制定组织（主要由社会组织组成）与国际标准制定机构（特别是 ISO、IEC 和 ITU）同等看待。商会建议，监管机构在决定是否采用某一特定标准时，应采用国际公认的标准制定原则，包括公开参与、程序正当、开放透明、公正的投票权和以共识为导向的做法。商会相信，通过接受标准制定组织作为有效标准制定机构，并在标准采用过程中遵循这些原则，政府不仅能够完善国内的标准化体系，更能提高中国技术和产品在全球市场的竞争力。

因此，商会强烈敦促政府将其对国际标准组织的正式认可范围，从 ISO、IEC 和 ITU 扩大到所有遵循 WTO/TBT 透明、公开、公平、共识、相关性和有效性原则的组织，同时也将 WTO G/TBT/1/Rev. 8 Section IX 所详述的发展中国家的利益纳入考虑之中。这种做法与中国推进社会组织和团体标准的战略是一致的。商会认为，私营标准制定组织也符合以上条件，同时商会鼓

励政府在与 ISO、IEC 和 ITU 相同的基础上参与并接受这些标准制定组织。

企业标准“领跑者”制度

2018 年 7 月，国土资源部、国家发改委、科技部、工信部、财政部、生态环境部、交通运输部、中国人民银行联合发布《关于实施企业标准“领跑者”制度的意见》（国家城市监管标准 [2018] 第 84 号）（以下简称“《意见》”）。企业标准“领跑者”制度旨在通过标准引领和企业标准的使用，促进中国产品和服务的供应及质量提升。该制度以企业产品和服务标准的自我声明公开为基础，由技术机构、行业协会、行业联盟、平台企业等第三方评估机构进行企业标准评估，选定产品和服务核心标准指标具有先进水平的企业，确定企业标准“领跑者”。

该制度拟通过以下方式实施企业产品和服务标准的自我声明公开：① 确定“领跑者”企业的主要特征；② 建立“领跑者”评价机制；③ 发布企业标准排行榜；④ 制定由“领跑者”或领先企业标准组成的标准排行榜；⑤ 建立以成为企业标准领导者必须完成的六项任务为基础的动态调整机制。

2018 年 11 月，总局办公厅发布了《2018 年度实施企业标准“领跑者”重点领域》。中国标准化研究院（CNIS）负责监督企业标准“领跑者”制度的实施，并负责以下工作：① 建立企业“领跑者”专家委员会；② 统一公开评估机构评选的企业标准排名和企业“领跑者”名单；③ 建设和运行统一的企业标准“领跑者”信息平台；④ 监督标准评估机构；⑤ 协助政府部门研究激励政策和监督机制；⑥ 推动大型零售店和电子商务平台“领跑者”的标准评价。

研究院发布《关于发布企业标准“领跑者”实施方案(试行)的通知》，并发布 2018 年至 2019 年企业标准“领跑者”名单以支持《意见》，规范企业标准建设。

在此之后，研究院于 2019 年 2 月发布了《企业标准“领跑者”实施方案(试行)》。该计划确定了企业标准“领跑者”制度的基本框架及相关方责任，并规定了企业标准的流程和排名标准。2018 年、2019 年和 2020 年陆续发布了企业标准“领跑者”名单。“领跑者”名单已从最初关注的消费品行业，扩大到涵盖装备和高端制造业、“生活服务”以及被列为新兴产业的行业。截

SDOs beyond ISO, IEC, and ITU to any organization that follows the WTO/TBT principles of transparency, openness, fairness, consensus, relevance, and effectiveness, while taking into account the interests of developing-countries as detailed in *WTO G/TBT/1/Rev. 8 Section IX*. Such approach is consistent with China's strategy to promote social organization/group standards. Our members are confident that even private SDOs meet these qualifications and encourage the government to engage with and accept these SDOs on the same basis it does with ISO, IEC, and ITU.

The Enterprise Standard "Pioneer" System

In July 2018, the Ministry of Natural Resources, NDRC, the Ministry of Science and Technology (MOST), MIIT, the Ministry of Finance (MOF), the Ministry of Ecology and Environment (MEE), the Ministry of Transport (MOT), and the 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 Opinions). The enterprise standard "Pioneer" system aims to promote the supply and quality of Chinese products and services through standards leadership and the use of enterprise standards. The system is based on self-declaration of enterprise product and service standards. Evaluations of enterprise standards are to be conducted by technical institutions, industry associations, industry alliances, platform-based enterprises, and other third-party evaluation agencies to determine enterprise "Pioneers," i.e., those enterprises whose products and services contain advanced levels of core standards indicators.

The system proposes to implement the self-disclosure of enterprise product and service standards by ① determining the key features of "Pioneer" enterprises, ② establishing a "Pioneer" evaluation mechanism, ③ issuing enterprise standards rankings, ④ formulating a standards ranking list that comprises pioneering or leading enterprise standards, and ⑤ establishing a dynamic adjustment mechanism based on six tasks that must be fulfilled in order to be considered enterprise standards leaders.

In November 2018, SAMR's General Office issued the 2018 *Annual Implementation of Enterprise Standards "Pioneers" in Key Areas*. The China National Institute of Standardization (CNIS) is charged with overseeing the enterprise standard "Pioneers" system. CNIS is responsible for ① establishing an enterprise "leaders" expert committee, ② disclosing in a unified manner the enterprise standard rankings and list of enterprise "Pioneers" as created by an evaluation agency, ③ construction and operation of the unified information platform known as the enterprise standard "Pioneer," ④ overseeing standards evaluation agencies, ⑤ assisting government departments in studying incentive policies and supervision mechanisms; and ⑥ promoting the evaluation

of standards used by large retail store and e-commerce platform "Pioneers."

CNIS released the *Notice on Issuing the Implementation Plan for the Enterprise Standard Pioneers (Trial Implementation)* and issued a list of enterprise Pioneers from 2018 and 2019 in support of the *Opinions* and to standardize the development of enterprise standards.

Following this, CNIS released the *Plan for the Implementation of the Enterprise Standard "Pioneers" (Trial Implementation)* in February 2019. The Plan establishes the basic framework for the enterprise standard "Pioneers" system, the responsibilities of interested parties, and lays out the procedures and ranking criteria for enterprise standards. Successive enterprise standard "Pioneer" lists were released in 2018, 2019, and 2020. The list of "Pioneers" has expanded from its original focus on the consumer products sector to cover equipment and high-end manufacturing, "Life service," and industries classified as emerging industries. As of the end of 2020, the list of Pioneers covers 40 industries and 184 industry sectors.

AmCham China believes that the current rules for identifying enterprise standards "Pioneers," including the enthusiasm for publicizing enterprise standards, does not achieve the goal of "promoting the supply and quality of Chinese products and services." We are also concerned the system does not use evaluation methods grounded in science to assess which standards are to become pioneers. The ranking and evaluation methods used in the Pioneer System are not standardized across products, because different products/industries have unique methods to implement their own standards. It is therefore difficult to measure, compare, and implement the Pioneer standards in practice. We recommend that the government take further action to ensure that the Enterprise Pioneer system is fair, open, transparent and adheres to the use of evaluation methods grounded in science to determine enterprise "Pioneer" standards.

Moreover, publication of enterprise standards can lead to the release of sensitive or proprietary corporate information and should be avoided. AmCham China strongly recommends that the government reassess the rationale of the enterprise standard "Pioneer" program with respect to the value of its standardization efforts and revise policies that have created confusion or undermined standards-setting efforts.

Enterprise Standard Review System

Article 27 of the *Standardization Law* stipulates that companies shall disclose product functions, performance indicators, and corporate standards as part of the process of self-declaration for enterprise standards. Such metrics commonly include proprietary product or service speci-

至 2020 年底，“领跑者”名单已经覆盖了 40 个行业和 184 个行业部门。

商会认为，现行企业标准认定“领跑者”的规则，以及企业标准的宣传热度，还没有达到“促进中国产品和服务的供应和质量”的目标。商会同样担心，这个制度没有使用科学的评估方法来评价哪些标准应该成为榜样。“领跑者”制度中使用的排名和评估方法在不同产品之间没有实现标准化，不同的产品和行业在实施标准时有其个性化的方法。因此在实践中很难衡量、比较和实施领先的标准。商会建议政府进一步采取行动，确保企业“领跑者”制度公平、公开、透明，并坚持使用科学评估方法来确定企业“领跑者”标准。

此外，企业标准的公布可能导致敏感或专有的企业信息的泄露，应予以避免这种情况。商会强烈建议政府就其标准化工作的价值，重新评估企业标准“领跑者”计划的基本原理，并对造成混乱、以及对标准制定工作产生不利影响的政策进行修订。

企业标准审查制度

《标准化法》第 27 条规定，在企业标准自我声明公开的过程中，企业应公开产品功能、性能指标、企业标准等。这些指标通常包含各个实体开发的专有产品或服务规范，甚至可能包括产品功能和 / 或公司产品及服务的详细描述。这种级别的细节会包含机密或敏感信息，甚至构成知识产权。

在审查企业标准期间，不应要求实体披露可能暴露或损害其知识产权的机密信息。企业 / 权利持有人应有权决定是否披露这些信息，以及根据自身条件选择披露多少。

此外，“领跑者”制度在制定完整的最终产品实施标准清单方面，缺乏一种有效和经济的方法，这大大降低了外商投资企业参与企业标准体系的积极性。

团体（社会组织）标准

修订后的《标准化法》旨在为创新标准创造空间。如第 18 条所述：

“国家鼓励学会、协会、商会、联合会、产业技术联盟等社会团体协调相关市场主体共同制定满足市场和创

新需要的团体标准，由本团体成员约定采用或者按照本团体的规定供社会自愿采用。”

第 18 条为团体标准奠定了法律基础，并由此建立了一个新的标准制定过程，可以在政府授权的标准和市场采用的标准之间建立一种平衡。第 18 条鼓励社会组织制定标准，以增加响应市场需求的有效标准供给。这反映了中国现有标准发展过程的显著变化，其特点是政府主导的标准传播过程。

《标准化法》第 27 条授权国家对社会组织和企业标准实行自我声明公开和监督制度。《标准化法》取消了对企业标准进行分类归档的制度，改为社会组织和企业标准自我声明公开和监督制度。

一般而言，各级标准和标准制定过程应力求达到以下结果：

- ① 强制性标准建立经营底线的基线标准；
- ② 推荐标准应满足特定行业的基本需要，并寻求最大程度的一致性以改进产品开发；
- ③ 特定行业的标准应弥补 ① 或 ② 中未涵盖的其他监管要素或标准；
- ④ 团体标准应注重创新和传播促进新产品和服务创造的标准；
- ⑤ 企业标准应加强正在开发的产品和服务的质量。

团体标准是根据自我要求的标准制定和发布的，目的是提供给其成员采用或由其他团体或组织自愿采用。团体标准的制定、建立和发布不需要行政主管部门的批准或备案，且其标准开发完全出于自愿。它是政府监督的标准制定程序不断改革的结果，旨在简化标准管理，并将标准制定的权力下放给其他能够与国际标准接轨的组织。团体标准的目标与国家标准和行业标准的目标不同。团体标准不颁发行政许可，这意味着市场采纳率必须反映市场需求。团体标准的指定时间通常为三到六个月，这比政府主导的标准制定时间要快，这也使得团体标准成为满足创新和快速变化的市场需求的理想选择。

近年来，团体标准在立法基础和实践中都有了重大突破。但在实际执行过程中，被政府强制执行或采纳为市场标准的行业标准，仍然对产业有巨大影响。所以团

fications developed by individual entities and may even include detailed descriptions of product functions and/or corporate products and services. This level of detail frequently contains confidential or sensitive information that otherwise constitutes intellectual property.

During the review of an enterprise standard, entities should not be required to disclose confidential information that may expose or undermine its intellectual property. The enterprise/rights holder should have the right to decide whether to disclose this information and how much to disclose on its own terms. In addition, an effective and economical method for formulating a complete list of final product implementation standards is lacking with respect to the Pioneer system. This has greatly reduced the enthusiasm of FIEs to participate in the Enterprise standard system.

Group (social organization) Standards

The revised *Standardization Law* aims to create space for the creation of innovative standards. As stated in Article 18:

“The state encourages societies, associations, chambers of commerce, federations, industrial technology alliances, and other social organizations to jointly formulate social organization standards which meet market and innovation needs by collaborating with relevant market entities for the purpose of adoption by their own members upon agreement or the voluntary adoption by society in accordance with the provisions of the social organizations that have established the standards.”

Article 18 establishes a legal basis for group standards and a new standards formulation process which can establish a balance between government-mandated standards and standards adopted by the market. Article 18 encourages social organizations to formulate standards to increase the supply of effective standards responsive to market demands. This reflects a marked change in China’s existing standards development process, which has been characterized by a government-led standards dissemination process.

Article 27 of the *Standardization Law* authorizes the state to implement a system to supervise the self-declaration of social organization and enterprise standards. The *Standardization Law* has eliminated the filing system which catalogued enterprise standards and replaced it with a system of supervision based on self-declaration for social organization and enterprise standards.

In general, standards and the standards development process at each level should seek to achieve the following outcomes:

1. Mandatory standards establish a baseline standard of minimum viability,

2. Recommended standards should address the basic needs of a given industry and seek to establish the greatest degree of uniformity to improve product development,

3. Industry-specific standards should compensate for other regulatory elements or standards that are not covered by ❶ or ❷,

4. Group standards should focus on innovation and disseminating standards that promote the creation of new products and services,

5. Enterprise standards should strengthen the quality of the products and services being developed.

Group standards are developed and released based on self-imposed standards for the purpose of adoption by their own members or voluntary adoption by other groups or communities. The creation, establishment, and release of group standards is not required to be approved by or filed with administrative authorities. Group standards development is purely voluntary. It is an outcome of the ongoing reform of the standards development process overseen by the government that aims to streamline standards administration and delegate authority for standards development to other organizations who can align with international standards. The goals of group standards differ from those of national and industry-specific standards. No administrative permit is issued for group standards, meaning that market adoption must reflect market demand. Group standards can often be mapped out in three to six months, which is more rapid than the timeline for the development of government-led standards, which makes them ideal for satisfying the demands of an innovative and rapidly changing marketplace.

In recent years there have been important breakthroughs in both the legislative foundation and the practice of using group standards. Industry standards de-facto enforced or accepted as the market standard by the government, however, still have an enormous impact on industry. Therefore, it is still unclear how group standards are to contend equally with other types of standards in the market.

Moreover, our members have found that issues remain with respect to the formulation of group standards:

1. The group standards-setting process and the procedures to alter group standards are opaque and not uniform. The timing associated with various procedures is unclear, and there is no transparent, normative regulation to measure enforcement. With respect to fees for licensing standards, there is no public or uniform fee, entities are generally notified about what fees are owed and by when in an ad-hoc fashion, and which actions or items will be subject to a fee is unclear.

体标准如何在市场上与其他类型的标准平等竞争，目前仍未有定论。

商会成员也发现，在制定团体标准方面仍然存在问题：

① 团体标准的制定过程和团体标准修订的程序既不透明，也不统一。与各种程序相关的时间不明确，也没有透明、规范的规定来衡量执行情况。关于许可标准的收费，没有公开或统一的收费标准，实体一般都是临时被通知需要缴纳哪些费用以及何时缴纳，也不清楚哪些行为或项目涉及到收费。

② 团体标准往往不能反映行业的最新技术发展。由于可能公司只有一部分参与了团体标准制定，或由于集团或组织的内部利益控制某些标准的颁布，团体标准最终的技术指标不一定与行业领先的做法相一致。

③ 团体标准的制定过程可能存在不透明，有时未能将专业人士或专家纳入其中。最终可能是少数实体在有限的透明度下推动标准制定过程。相反，团体标准制定应要求负责起草小组标准的小组满足一系列参与标准，其中包括一定数量的独立专家的参与。此外，商会建议至少由两个不同的团队负责开发小组标准，并由两个独立的组织进行后续测试，以确保开发的公平性。

④ 评选企业标准“领跑者”的评价标准不明确，影响了中国企业标准的发展（见上文讨论）。相反，团体标准制定应该根据“领跑者”标准，在市场份额、品牌历史、品牌声誉和产品质量等多个方面对参与者进行衡量，以确定其能达到参与评选的最低门槛。

⑤ 团体标准制定的目的，在于满足市场需求，促进技术创新和行业发展。目前团体制定的程序，与标准制定组织制定标准的程序并不一致，特别是要加强对标准制定组织知识产权的保护。商会敦促政府通过提高知识产权意识和规范团体标准制定程序来支持团体标准制定工作。

总的来说，团体标准的制定程序亟待完善。国家标准委员会应制定有关团体标准的程序和规范以指导其发展。同时，需要允许能够消除不完善的团体标准的市场主导机制不受干预地发挥作用。商会希望通过完善团体标准监管，促进研发工作，提升行业竞争力，推进供给侧改革，培养促进创新的标准“领跑者”。

推荐标准

中国《标准化法》第2条规定：“本法所称标准（含标准样品），是指农业、工业、服务业以及社会事业等领域需要统一的技术要求。标准包括国家标准、行业标准、地方标准和团体标准、企业标准。国家标准分为强制性标准、推荐性标准，行业标准、地方标准是推荐性标准。强制性标准必须执行。国家鼓励采用推荐性标准。”

《标准化法》规定，为保障人身健康和财产安全，保障国家安全、生态安全，满足“经济和社会管理的基本需要”，必须制定强制性国家标准。该法为团体标准规定了明确的法律地位，团体标准由市场独立制定，必须与国家标准、行业标准和其他地方标准相一致。由此可看出，强制性国家标准具有明确的法律地位。不符合强制性标准的产品和服务不能生产、销售、进口或供给。

相比之下，推荐标准的制定可以作为强制性国家标准的补充，并用于促进行业发展。制定推荐标准的目的之一是指导行业技术的发展，而不是作为标准或门槛来衡量行业的合规性或限制市场准入。在这种情况下，推荐标准缺乏国家基础和执行合法性。此外，目前还没有颁布有关推荐标准的国家实施条例，这意味着没有标准来评估推荐标准的执行情况。

商会会员企业在实践中发现，监管部门经常采用推荐标准作为市场准入的强制性要求。这不仅避开了现有强制性标准的项目和产品审批程序，还限制了外资企业的企业合规和市场准入限制，原因在于外资企业的产品不是为中国市场设计的，可能不符合推荐标准。这种歧视性做法意味着中国消费者可以获得的产品质量会有所降低，选择也会有所减少。

如果推荐标准没有经过国家强制性标准的相关项目批准、公众评议和技术审查就成为实际使用中的强制性标准的话，这些标准的技术质量就会受到质疑。一些技术上优于市场现有水平的产品，可能会因为不符合标准而受到限制，同时这也可能导致外资企业无法进入中国市场，也可能会对“一带一路”倡议的相关国家产生影响。

与此同时，在产品开发的后期阶段，遵循推荐标准会给行业带来过高的合规成本。由于采用推荐标准可能会引发技术性贸易壁垒，使其不符合世贸组织的原则，所以推荐标准没有按照WTO/TBT的要求执行通知程

2. Group standards often do not reflect the latest technological developments in the industry. Because participation in group standards-setting may be restricted to only a subset of companies, or as a result of internal group/organization interests which control the promulgation of certain standards, the final technical indicators do not necessarily align with industry-leading practices.

3. The group standards formulation process can be opaque and sometimes fail to include professionals or experts. A select few entities can end up driving the standards development process with limited transparency. Instead, the team charged with drafting group standards should be required to meet a set of participation criteria that includes participation by a set number of independent experts. Additionally, we recommend that group standards be developed by at least two different teams and that the subsequent testing be conducted by two separate organizations to ensure fairness in development.

4. The evaluation criteria to assess enterprise standards “pioneers” is unclear and undermines the development of enterprise standards in China (see discussion above). Instead, standards pioneers should be evaluated and allowed to participate based on whether they can meet a minimum threshold with respect to their market share, brand history, brand reputation, and product quality.

5. Group standards are designed to meet market demands and facilitate technological innovation and industry development. The procedures with respect to the adoption of standards developed by SDOs is not consistent or implemented effectively. In particular, greater protection of IPR for SDOs is needed. AmCham China urges the government to support group standards development by increasing awareness of IPR and standardizing the procedures for group standards development.

In sum, procedures to formulate group standards urgently needs to be better regulated. The SAC should formulate procedures and specifications with respect to group standards in order to guide their development. At the same time, market-led mechanisms that can eliminate inadequate group standards need to be allowed to function free of intervention. AmCham China hopes that improved regulation of group standards will boost R&D, enhance industry competitiveness, promote supply-side reform, and cultivate standards “pioneers” that can promote innovation.

Recommended Standards

Article 2 of China’s *Standardization Law* states:

“The standards (including standard samples) mentioned in this Law refer to the technical requirements that need to be unified in the fields of agriculture, industry, services, and

social undertakings. Standards include national standards, industry standards, local standards, group standards, and corporate standards. National standards are divided into mandatory standards and recommended standards, while industry standards and local standards are recommended standards. Mandatory standards must be implemented. The state encourages the use of recommended standards.”

The *Standardization Law* requires mandatory national standards to be formulated to guarantee personal health and safety, protect property, ensure national security, ecological security, and meet the basic “needs of economic and social management.” The Law provides for a clear legal status for group standards, which are to be independently formulated by the market and must align with national standards, industry standards, and other local standards. The legal status of mandatory national standards is therefore clear. Products and services that fail to meet mandatory standards cannot be produced, sold, imported, or provided.

By contrast, recommended standards can be formulated to supplement mandatory national standards and be used to facilitate industry development. One purpose of establishing recommended standards is to guide the development of industry technology, rather than to serve as standards or thresholds to measure industry compliance or restrict market access. Recommended standards therefore lack the national basis and legitimacy to be enforced. Furthermore, no national implementing regulations concerning recommended standards have been promulgated, which means there is no standard for assessing their enforcement.

In practice, however, our members find that regulatory authorities often adopt recommended standards as *de facto* mandatory requirements for market access. This not only circumvents existing project and product approval procedures for mandatory standards, but it also creates corporate compliance and market access restrictions for FIEs whose products may not meet the recommended standards as they are not designed for the Chinese market. Such discriminatory practices mean the quality and selection of products available to the Chinese consumer is reduced.

When recommended standards function as *de facto* mandatory standards without undergoing relevant project approvals, public comment periods, and technical reviews that are normally required for mandatory national standards, the technical quality of such standards is subject to question. Certain products which are technically superior compared to what is available on the market may be restricted because they do not meet these standards, which may not be grounded in the appropriate technical specifications. The government should also limit the use of recommended standards that are based on domestic essential patents from being adopted as national/mandatory standards. Otherwise, such recommended standards will only serve to restrict market access for FIEs in the China market and, potentially, throughout the BRI.

序。基于此情况，商会建议，对于寻求进入中国市场的产品，不引入或要求采用推荐标准。如果推荐标准要成为强制性标准，就必须作为新的强制性标准，经过严格的项目审批、起草、公众意见和技术审查程序，确保这些标准制定的过程科学透明。

商会注意到，自 2018 年以来，中国已发布了《关于智能网联汽车国家标准体系建设的指导意见》，其中指出，到 2025 年，中国将制定 400 多项智能网联汽车标准。而对于互联汽车行业来说，虽然强制性标准和推荐标准之间存在明显的区别，但在实际执行中，仍然存在推荐标准被强制执行的情况，而这正是行业面临的挑战和考虑的重点。

商会建议中国标准化部门将行业必须遵守的基准标准作为强制性标准予以监管，其他推荐标准可由企业根据实际需要自愿采用。

认证、鉴定、检查和检测机构的许可

2019 年 10 月，国家标准委发布了《关于调整完善强制性认证产品目录及其实施要求的公告》（公告〔2019〕第 44 号），对中国强制性认证（CCC）产品目录进行了如下调整：取消 18 个产品类别的强制性产品认证，在另外 17 个类别中设立“自我声明”标准，并简化了自我声明标准的要求。

2018 年以来，CCC 产品目录已减少近 40%。约 27 个产品的 CCC 认证方式由第三方认证向企业自我声明制度转变，CCC 证书发放量减少了 30 万份。2020 年，在新冠肺炎疫情的刺激下，中国承诺深化 CCC 认证制度改革，简化产品认证程序，并向外商投资企业提供认证服务和技术支持。

商会对这些改革表示赞赏。除了减轻企业的行政负担外，2019 年第 44 号公告承诺，将促进市场在资源配置中的作用，降低制度性交易成本，提高市场主体的合规性，并强调产品认证在确保消费者安全方面的重要性。

商会认为，精简强制性产品认证制度，公布产品目录和列入目录所需的认证，不仅能推动中国认证制度的统一实施，也能提高中国制造产品的质量，并进一步鼓励中美贸易。

自 2020 年 1 月 1 日起生效的《外商投资法》及其

实施细则，从多个方面重申了平等对待外商投资企业和内资企业的原则，其中也涵盖了标准制定方面。根据这一原则，有关部门也正在继续努力寻找新的能够通过相关资格检查进行强制性产品认证的机构。

商会对中国推进检验检测机构市场化改革持积极态度，承诺向外资企业开放强制性产品认证行业，允许外国检测机构为所有产品类别提供强制性产品检测认证服务，并允许国外机构成为产品强制性认证机构。

本着《外商投资法》颁布的精神，任何感兴趣的实体，无论其国籍如何，都能平等地参与到中国的认证、鉴定、检查和检测行业的建设中。作为这一承诺的一部分，商会敦促政府在认证、鉴定、检验和检测行业尽可能采用国际最佳做法。特别是要明确划分监管部门和行业参与者的角色和责任，使市场发挥主导作用，同时为制造商和服务行业提供更多选择，以满足中国市场的相关检测、检验和认证要求。

建议

对中国政府：

- 确保专家、机构、外商投资企业，能够广泛参与“中国标准 2035”的过程，确保中国未来的标准化体系符合并满足国际贸易与商业实践的需要。
- 根据 2018 年修订的《标准化法》和随后的《指导意见》，以及 2020 年 1 月 1 日生效的《外商投资法》，政府应密切关注技术委员会及其附属委员会和标准工作组的活动，确保外资企业与内资企业平等参与标准制定的各个阶段。
- 完善团体标准的监管和制定，确保其遵循公开、透明和基于共识的做法，与国际惯例保持一致，以防止特殊利益集团滥用。确保寻求进入中国市场的产品不采用或要求采用推荐标准。如果要使推荐标准成为强制性标准，就必须将其视为新的强制性标准，并需经过严格的项目批准程序、起草程序、公众意见和技术审查程序。

At the same time, compliance with recommended standards imposes excessive compliance costs on industry at the latter stages of product development. Recommended standards do not undergo the notification process as required by the WTO/TBT. Because the introduction of recommended standards may trigger technical barriers to trade, their use is not in line with WTO principles. AmCham China therefore recommends that recommended standards not be introduced or required for products seeking market access in the Chinese market. If they are to be mandatory, it is imperative that they be treated as new, mandatory standards and made to undergo rigorous project approval procedures, a drafting, public comment, and technical review process so as to ensure they are developed in a scientific and transparent manner.

AmCham China noticed that since 2018, China has released guidelines on the construction of national standards system for the Intelligent Connected Vehicle, which indicated that China will formulate more than 400 standards for Intelligent Connected Vehicles by 2025. The challenge and concern for the industry is that although there is a clear difference between mandatory standards and recommended standards, there are still recommended standards being mandated in practice.

AmCham China recommend that the standardization authorities in China make the baseline standards that the industry must comply with as mandatory standards and bring them into supervision, and other recommended standards can be adopted voluntarily by enterprises according to their actual needs.

Recognition of Certification, Accreditation, Inspection and Testing Institutions

In October 2019 SAMR released the *Announcement on Adjusting and Improving the Compulsory Certification Product Catalogue and its Implementation Requirements (Circular No. 44, [2019])* which made the following adjustments to the China Compulsory Certification (CCC) product catalogue: canceling compulsory product certification for 18 product categories, establishing “self-declared” standards for a further 17 categories, and streamlining the requirements for self-declared standards.

Since 2018, the CCC product catalogue has been shortened by nearly 40 percent. The CCC method of certifying some 27 products has moved from third-party certification to a system of corporate self-declaration, and the number of CCC certificates issued has fallen by 300,000. In 2020, spurred by the COVID-19 pandemic, China promised to deepen reform of the CCC certification system, simplify product certification procedures, and provide certification services and technical support to FIEs.

AmCham China appreciates these reforms. In addition

to lessening the administrative burden on enterprises, *Circular No. 44 [2019]* promises to promote the market’s role in the allocation of resources, reduce institutional transaction costs, improve compliance of market entities, and underscore the importance of product certification in ensuring consumer safety.

AmCham China believes that streamlining the compulsory product certification system and publicizing the product catalogues and certifications required in order to be listed in those catalogues should promote a more unified implementation of China’s certification system, will improve the quality of Chinese-made products, and further spur trade between China and the US.

The FIL and its Implementing Regulations, both of which came into effect on January 1, 2020, reaffirm the principle of equal treatment for both FIEs and domestically invested enterprises in multiple respects, including in standards-setting efforts. Under this principle, efforts are continuing to identify new institutions capable of conducting compulsory product certifications through the relevant qualification examinations.

AmCham China welcomes China’s promotion of market-oriented reform of inspection and testing entities, its commitment to open the compulsory product certification industry to FIEs, to allow foreign testing institutions to provide compulsory product testing and certification services for all product categories, and to allow foreign institutions to become compulsory product certification institutions.

In the spirit established by the FIL, any interested entity regardless of national origin will be able to participate equally in the construction of China’s certification, accreditation, inspection, and testing industry. As part of this commitment, AmCham China urges the government to adopt international best practices in the certification, accreditation, inspection, and testing industry to the maximum extent possible. In particular, it is essential to clearly delineate and separate the roles and responsibilities of regulatory authorities and industry participants, to enable the market to play a leading role, all the while providing manufacturers and those in the service industry more options to meet the relevant testing, inspection, and certification requirements of the Chinese market.

Recommendations

For the Chinese Government

- Ensure that a wide range of opinions, experts, and institutions, including FIEs, are permitted to participate in China Standards 2035, to ensure that the any future standardization systems in China are consistent

- 正式提高对国际标准制定组织，以及符合WTO/TBT国际标准制定原则组织的认可。尽可能采用现有全球技术标准的完整形式，以确保充分协调，避免制定国内国家标准或偏离现行全球标准的标准。
- 重新评估企业标准“领跑者”计划的基本原理和必要性，既要考虑其对标准化活动整体价值的贡献，也要考虑其发布企业标准（含专有信息）所带来的潜在影响。

with and meet the needs of existing practices in international trade and commerce.

- As per the 2018 revised *Standardization Law*, subsequent Guiding Opinions, the FIL effective January 1, 2020, the government should closely monitor the activities of the Technical (TC) Committees, its subcommittees, and standards working groups to ensure that FIEs are allowed to participate in all phases of standard-development activities on an equal basis with domestically invested enterprises.
- Improve the regulation and development of group standards and ensure they follow an open, transparent, and consensus-based practice in line with international practice to prevent abuse by special interests. Ensure that recommended standards are not introduced or required for products seeking access to the Chinese market. If they are to be made mandatory, it is imperative that they be treated as new, mandatory standards and made to undergo rigorous project approval procedures, a drafting, public comment, and technical review process.
- Officially broaden the recognition of international standards development organizations (SDOs) to include any organization that follows the WTO/TBT principles on international standards development. 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.
- Reassess the rationale for and the necessity of the enterprise standard “Pioneer” program, with respect to its contribution to the overall value of standardization activities and the potential it creates for the publication of enterprise standards, which contain proprietary information.

Tax Policy

Introduction

In China, tax policy is formulated in response to the changing macroeconomic environment. When formulating tax policies, the State Taxation Administration aims to attract foreign investment and boost the domestic economy, rather than only focusing on increasing tax revenue.

Among the series of preferential tax policies issued by fiscal and tax authorities in 2020, most were extended further to the end of 2021 to support businesses amid the COVID-19 pandemic. The *Stamp Tax Law* reduced the burden on taxpayers by appropriately simplifying tax items and tax rates. Digital electronic invoice pilots that kicked off in three areas in China ushered in new opportunities for corporate finance and tax management. These pilots also promoted digital upgrading and the intelligent transformation of tax collection and administration, while reducing the cost of tax collection and payment. The *Administrative Penalties Law* was revised; a new tariff adjustment plan was adopted; the duty-free policy for imports during the 14th FYP was introduced; and export-related policies were further improved. Tax policies were further improved to favor R&D, scientific and technological innovation, and entrepreneurship. Advanced pricing arrangements and mutual negotiation procedure mechanisms were once again improved to avoid double taxation. China continues to promote regional preferential tax policies to fuel the targeted development of regional economies.

AmCham China supports these favorable policies but notes unaddressed long-term challenges still facing foreign-invested companies and taxpayers operating in China. For example, challenges remain with inappropriate restrictions on favorable incentives for R&D activities under the current economic development policy, eligibility for tax relief for internal restructuring of cross-border groups, repeated collection of consumption taxes, and a lack of effective local supervision and inspection.

AmCham China welcomes these measures and urges the Chinese government to ensure that preferential tax policies are implemented clearly and consistently, providing equal footing for foreign-invested enterprises in China. We hope that the government can pay close attention to the challenges and issues raised in this chapter and work with the foreign

business community to reform the tax system and create a better overall business environment.

Fiscal and Tax Policies in Response to the Pandemic

To address severe impacts of COVID-19 on economic and social development, the fiscal and tax authorities unveiled a wealth of preferential tax policies to support epidemic prevention and control as well as the resumption of work and production in 2020. The implementation of most of these preferential policies has been extended until late 2021, in a bid to help market players overcome difficulties introduced by the epidemic.

The pandemic continues to send shockwaves throughout the economy in 2022. Over the past two years, frequent international and domestic natural disasters introduced more uncertainty. AmCham China hopes industries and market players affected by COVID-19 and natural disasters can receive financial support and tax reductions to ease their burden and recommends:

- Regional fiscal and tax preferential policies are appropriately introduced to help those affected overcome difficulties brought by COVID-19 and natural disasters;
- Preferential policies allowing additional deductions for donations and other expenditures are introduced to encourage market entities to provide support to areas affected by the pandemic and natural disasters;
- More preferential fiscal and tax reduction policies are introduced to enterprises engaged in key areas of pandemic control and disaster relief (e.g., transportation, production and circulation of key materials, R&D of key facilities/equipment, etc.).

Regional Preferential Tax Policies

In the face of a complex and volatile economic situation, the establishment of special economic zones has played a key role in driving economic growth and high-quality development amidst the COVID-19 pandemic. In 2021, special economic regions worthy of attention and preferential fiscal and tax policies include:

税务政策

引言



中国因应宏观环境变化调整税收政策。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，而是致力于使这些税收政策起到鼓励外国投资、刺激国内经济的作用。

2021年，中国的税收政策有以下进展：财税部门2020年出台的一系列支持疫情防控、助力复工复产的税收优惠政策延期至2021年底；合并了税目税率、减轻了纳税人税负的《印花税法》通过；三地全电发票试点方案落实，税收征管数字化升级和智能化改造推进，征纳成本降低，以上调整均为企业财税管理带来了新机遇；海关《行政处罚法》修订；新关税调整方案通过；“十四五”进口免税政策出台；出口政策进一步完善；税收政策更加侧重研发、科技创新和创业。此外，预约定价安排计划得到完善；预约定价安排和相互协商程序机制得到推动，有利于避免双重征税；区域性税收优惠政策得到推动，促进了区域经济的蓬勃发展。

中国美国商会（以下简称商会）对近期出台的税收政策表示欢迎，但在华经营的外商投资企业和纳税人仍面临长期挑战，如，研发费用加计扣除政策仍存限制；跨境集团内部重组税务减免资格申请困难重重，存在重复征收消费税等问题。由于地方缺乏有效监管和稽查，多处出现偷逃消费税的不合规现象。

商会欢迎这些支持措施，并敦促中国政府确保以明确和一致的方式实施税收优惠政策，并在平等的基础上向外商投资企业提供税收优惠。商会希望政府能够重视本章提出的挑战和问题，共同携手推进税制改革，营造更好的营商环境。

应对疫情的财税政策

为应对新冠肺炎疫情对经济社会发展带来的巨大影响，2020年，财税部门出台了一系列支持疫情防控和助力复工复产的税费优惠政策。这些优惠政策大部分延期执行至2021年底，有的放矢地帮助市场主体渡过疫情难关。

2022年，新冠肺炎疫情对经济的影响仍在持续。近两年，国内外频发的自然灾害给诸多企业带来更为艰巨的挑战。商会支持受疫情、自然灾害影响的行业及市场主体获得财政支持和税收减免，商会建议：

- 出台区域性财税优惠政策，帮助受疫情和自然灾害影响的市场主体渡过难关；
- 鼓励富有责任心的市场主体向受疫情、自然灾害影响的地区提供多种支持，适度出台捐赠等支出的加计扣除优惠政策；
- 对从事抗疫救灾关键领域的企业（如：交通运输、关键物资生产与流通、关键设施/设备研发等），提供更为优惠的财税减免政策。

区域性税收优惠政策

在复杂多变的经济形势下，经济特区的建立对受新冠肺炎疫情影响下的经济增长及高质量发展起到了重要作用。2021年，值得关注的经济特区及其财税优惠政策主要包括：

横琴粤澳深度合作区

横琴粤澳深度合作区（以下简称横琴合作区）于2021年9月正式揭牌，区域涵盖横琴与澳门特别行政区之间和横琴与中华人民共和国境内其他地区之间的海关监管区域。横琴合作区的财税优惠政策主要包括：

- 企业所得税优惠政策：对横琴合作区符合条件的产

Guangdong-Macao In-Depth Cooperation Zone in Hengqin

Officially announced in September 2021, the Guangdong-Macao Cooperation Zone in Hengqin (hereinafter referred to as “Cooperation Zone in Hengqin”) covers the customs control areas between Hengqin and Macao SAR, as well as between Hengqin and other areas within the territory of the People’s Republic of China. Preferential fiscal and tax policies for the Cooperation Zone in Hengqin mainly include:

- Preferential policies of enterprise income tax: For eligible industrial enterprises, the enterprise income tax will be levied at a reduced rate of 15 percent. For eligible capital expenditures of enterprises, a one-time pre-tax deduction or accelerated depreciation and amortization is allowed for period when the expense is incurred. Income derived from new overseas direct investment by tourism, modern service industries, and high-tech industry enterprises shall be exempted from enterprise income tax.
- Individual income tax policy for domestic and foreign talents: For highly skilled talent with in-demand abilities, the individual will be exempted from individual income taxes exceeding 15 percent. For Macao residents working in the Cooperation Zone in Hengqin, the portion of their individual income tax burden exceeding the Macao tax burden will be exempted.
- Other preferential tax policies: Tax policy system featuring “first-line” relaxation and “second-line” control of goods.

Pudong New Area

The *Opinions on Supporting High-level Reform and Opening Up and Building a Leading Area for Socialist Modernization in Pudong New Area* released in April 2021 introduced the main preferential fiscal and tax policies as follows:

- Preferential policy of enterprise income tax: In specific areas of Pudong, the enterprise income tax will be levied at a reduced rate of 15 percent for five years from the date of establishment of eligible enterprises engaged in the production and development of core components in key fields such as integrated circuits, artificial intelligence, biomedicine, civil aviation, etc. In specific areas of Pudong, a pilot policy of preferential income tax for corporate venture capital firms, has been implemented. Under this policy, eligible corporate venture capital enterprises will be exempted from enterprise income tax according to the shareholding ratio of individual shareholders at the end of the year.
- Preferential policies related to import and export: Drugs used in clinical research will be exempted from import linkage tax. Accredited R&D institutions shall be allowed to receive exemption from import linkage tax for imported self-use equipment, while the purchase

of domestic equipment for self-use shall be given a tax rebate. We recommend support for the implementation of policies in the Yangshan Special Comprehensive Free Trade Zone in specific areas of special customs supervision.

- Other preferential tax policies: Study tax policies adapted to the development of overseas investment and offshore business and support the value-added tax policy for service exports of enterprises in Pudong.

Qianhai Shenzhen-Hong Kong Modern Service Industry Cooperation Zone

In January 2014, the Ministry of Finance and the State Taxation Administration jointly released guidance stipulating that enterprises in industries of interest that are based in the Qianhai Shenzhen-Hong Kong Modern Service Industry Cooperation Zone (hereinafter referred to as “Qianhai Cooperation Zone”) can have a preferential income tax rate of 15 percent. These policies expired on December 31, 2020.

In July 2021, fiscal and tax authorities released more guidance further expanding the scope of industries eligible for preferential enterprise income tax policies on the basis of the previous Qianhai Cooperation Zone tax rate. This new guidance also relaxed the requirements for the proportion of prime operating income to total income. The policy went into effect on January 1, 2021 and will expire in December 31, 2025.

AmCham China supports fiscal and tax authorities in introducing preferential policies and region-sensitive systems so that our member companies can enjoy a more friendly tax environment and drive the development of regional economies.

Tax Legislation and Reform Draft

Stamp Tax

On June 10, 2021, the Standing Committee of the 13th National People’s Congress (NPC) adopted the *Stamp Tax Law of the People’s Republic of China* (hereinafter referred to as the “Stamp Tax Law”), which will come into effect on July 1, 2022. The Interim Regulations of the People’s Republic of China on Stamp Tax promulgated by the State Council on August 6, 1988 (hereinafter referred to as the “Interim Regulations”) will be implemented simultaneously.

The *Stamp Tax Law* generally maintains the framework of the current stamp tax system, simplifies the tax rates to reduce the burden of taxpayers, and makes adjustments to the tax system based on current economic conditions. With the introduction of the *Stamp Tax Law*, China has enacted laws for 12 out of 18 tax categories, marking another step forward in tax legislation.

业企业，减按 15% 的税率征收企业所得税；对企业符合条件的资本性支出，允许在支出发生当期一次性税前扣除或加速折旧和摊销；对在横琴合作区设立的旅游业、现代服务业、高新技术产业企业新增境外直接投资取得的所得，免征企业所得税。

- **针对国内外人才的个人所得税政策：**对在横琴合作区工作的境内外高端人才和紧缺人才，其个人所得税负超过 15% 的部分予以免征；对在合作区工作的澳门居民，其个人所得税负超过澳门税负的部分予以免征。
- **其他税收优惠政策：**货物“一线”放开、“二线”管住等。

浦东新区

《中共中央国务院关于支持浦东新区高水平改革开放打造社会主义现代化建设引领区的意见》于 2021 年 4 月发布，其财税优惠政策主要包括：

- **企业所得税优惠政策：**在浦东特定区域对符合条件的从事集成电路、人工智能、生物医药、民用航空等关键领域核心环节生产研发的企业，自设立之日起 5 年内减按 15% 的税率征收企业所得税；在浦东特定区域开展公司型创业投资企业所得税优惠政策试点，在试点期内，对符合条件的公司型创业投资企业按照企业年末个人股东持股比例免征企业所得税。
- **进出口相关优惠政策：**研究对用于临床研究的药品免征进口环节税；允许认定的研发机构享受进口自用设备免征进口环节税、采购国产设备自用的给予退税政策。支持洋山特殊综合保税区政策在浦东具备条件的海关特殊监管区域的特定区域适用。
- **其他税收优惠政策：**研究探索适应境外投资和离岸业务发展的税收政策、支持浦东企业服务出口的增值税政策等。

深圳前海深港现代服务业合作区

2014 年 1 月，财税部门联合发文，提出设立在前海深港现代服务业合作区（以下简称前海合作区）的鼓励类产业企业可享受 15% 企业所得税优惠税率的优惠政策。相关政策于 2020 年 12 月 31 日到期。

值得注意的是，2021 年 7 月，财税部门再次出台重

磅文件，在延续前海合作区企业所得税优惠税率的基础上，进一步拓展了可享受企业所得税优惠政策的行业范围，并对符合要求的主营业务收入占总收入的比例标准进行放宽。相关政策自 2021 年 1 月 1 日起执行至 2025 年 12 月 31 日。

商会支持财税部门出台区域性税收优惠政策，期望在促进区域经济蓬勃发展的同时，为广大会员企业及市场主体创设更为友好、便利的税收环境。

税收立法和改革草案

印花税

2021 年 6 月 10 日，十三届全国人大常委会第二十九次会议表决通过了《中华人民共和国印花税法》（以下简称《印花税法》），并于 2022 年 7 月 1 日起施行。1988 年 8 月 6 日国务院发布的《中华人民共和国印花税法暂行条例》（以下简称《暂行条例》）同时废止。

本次通过的《印花税法》总体上维持了现行印花税制的框架，适当兼并了税目税率以减轻纳税人税负，并根据当下经济现实对现行税制作出了部分调整。随着《印花税法》的出台，中国现行 18 个税种中已有 12 个税种制定了法律，税收立法再进一步。

与《暂行条例》等现行规定相比，《印花税法》保持了现行税制框架和税负水平基本不变。其主要变化如下：

- **税目：**将“融资租赁合同”新增为单列税目；将“证券交易”作为单列税目，交易对象除股票以外，增加以股票为基础发行的存托凭证；删除“权利、许可证照”、“其他账簿”税目。
- **税率：**将承揽合同、建设工程合同、运输合同税目的适用税率由 0.05% 降为 0.03%；将“产权转移书据”中的“商标专用权、著作权、专利权、专有技术使用权转让书据”税目的适用税率由 0.05% 降为 0.03%；“对资金账簿减半征收印花税法（即适用税率为 0.025%）”的政策上升至法律层面。
- **计税依据：**《印花税法》从法律层面对计税依据是否包含增值税税款进行了明确，即不包括列明的增值税税款；《印花税法》另对应税合同、产权转移书据中未列明金额，以及转让证券时无转让价格等特殊情形下的计税依据确定方法作出了规定。

Compared to the Interim Regulations and other existing provisions, the current tax framework and burden of the *Stamp Tax Law* generally remain unchanged. The main changes are as follows:

- **Tax items:** For example, “financial leasing contracts” and “securities transactions” are now separate taxable items. Additional changes include the issuance of share-based depositary receipts for trading objects in addition to stocks, and the removal of rights, licenses, and other account books as taxable items.
- **Tax rate:** Lowers the tax rate for work contracts, construction projects, and transportation from 0.05 percent to 0.03 percent. Lowers the tax rate for “trademark exclusivity transfers, copyrights, patent rights, and proprietary technology use rights” from 0.05 percent to 0.03 percent, and halves stamp duty on capital books (i.e., applicable tax rate of 0.025 percent).
- **Taxation basis:** The *Stamp Tax Law* makes clear whether the tax basis includes VAT tax or if it is excluded. This law also defines the method for determining the tax basis under special circumstances where the amount is not specified in the taxable contract or property transfer documents and there is no transfer price when transferring securities.
- **Preferential treatment for tax reduction and exemption:** The *Stamp Tax Law* summarizes and integrates the tax exemption provisions and provides for more statutory deductions and exemptions. For example, to adapt to the emergence of e-commerce, this law stipulates that electronic orders made by individuals and e-commerce operators are exempted from stamp duty. It also authorizes the State Council to reduce or exempt the stamp duty for residents’ housing demand guarantee, the reorganization of enterprises, bankruptcy, support for the development of small and medium enterprises, and other cases which are reported to the Standing Committee of the National People’s Congress for filing.
- **Tax payment method and period:** The *Stamp Tax Law* does not abolish the current self-service tax payment method. However, the *Interim Regulations* has repealed the rule that “the payable tax amount will be exempt from stamp duty if it is less than 10 cents.” If the final amount of taxes are less than 5 cents, the amount will not be counted; if the final amount of taxes is greater than 5 cents it will be calculated as 10 cents.” The *Stamp Tax Law* makes clear that stamp duty payments will be levied quarterly, annually, or on when triggered by an external event. Stamp duty on securities transactions is paid weekly, and the withholding agent (i.e., securities registration and settlement institutions) declares the payment of tax and interest on the bank settlement within five days from the end of each week.
- **Location of tax payment:** The *Stamp Tax Law* defines where taxes should be paid. For example, if the taxpayer is an organization, they must declare and pay stamp duty to the local tax authorities. If the taxpayer

has moved residences/business locations, the taxpayer should pay stamp duty to the local tax authorities for their permanent address.

- **Taxation administration:** According to the *Stamp Tax Law*, where a taxpayer is an entity or individual outside China and has a subsidiary within China, the domestic subsidiary will be the withholding agent. Taxpayers who have no subsidiaries in China must declare and pay the stamp duty on their own, following a specific procedure formulated by State Council tax authorities. Moreover, the *Stamp Tax Law* stipulates that the securities registration and clearing institution is the withholding agent of stamp duty on securities transactions. Unlike the *Interim Regulations*, the *Stamp Tax Law* doesn’t have special, specific penalty provisions that independently apply to stamp duty; instead, it makes it clear that taxpayers, withholding agents, tax authorities, and their staff who violate the provisions of the *Stamp Tax Law* shall be held accountable legally in accordance with the *Law on the Administration of Tax Collection*.

Pilot of Digital Electronic Invoices in Three Places

On November 30, 2021, the Guangdong Provincial Tax Services, State Taxation Administration; the Shanghai Municipal Tax Services, State Taxation Administration; and the Inner Mongolia Autonomous Region Tax Services, State Taxation Administration released the *Notice on Carrying out the Pilot of Comprehensive Digital Electronic Invoices* (hereinafter referred to as the Notice), which stipulates that starting December 1, 2021, the pilot of comprehensive digital electronic invoices (hereinafter referred to as the “digital electronic invoices”) will be implemented by relying on the national unified electronic invoice service platform to provide taxpayers with digital electric invoice issuance, delivery, inspection, and other services within 24 hours free of charge online.

This pilot represents a key move for tax authorities to implement the *Opinions on Further Deepening the Reform of Tax Collection and Administration*, promote the digital upgrading and intelligent transformation of tax collection and administration across the board, and reduce the cost of collection and payment. Compared to previous methods for the management of paper or electronic invoices, the contents of this announcement have undergone major changes, with profound implications for future tax collection and administration. The main changes are as follows:

- **New invoice type:** New types of invoices introduced include special VAT electronic invoices and ordinary electronic invoices.
- **Cancellation of specific format requirements:** Digital electric invoices may be delivered as emails/other forms of digital messaging instead of specific formats such as PDF and OFD. This allows enterprises to customize

- **减免税优惠**：《印花税法》将散落在不同文件中的免税规定进行了归纳与整合，并规定了更多的法定减免税情形，例如，为顺应近年来电子商务的发展趋势，《印花税法》对于个人与电子商务经营者订立的电子订单，免征印花税；《印花税法》还授权国务院对居民住房需求保障、企业改制重组、破产、支持小型微型企业发展等情形规定印花税减征或者免征，同时报全国人民代表大会常务委员会备案。
- **纳税方式和期限**：《印花税法》并没有取消现行的贴花纳税方式，但取消了《暂行条例》中的“应纳税额不足一角的，免纳印花税。应纳税额在一角以上的，其税额尾数不满五分的不计，满五分的按一角计算缴纳”的规定；在纳税期限方面，《印花税法》明确了印花税按季、按年或者按次计征。证券交易印花税则按周解缴，由扣缴义务人（即证券登记结算机构）自每周终了之日起五日内申报解缴税款及银行结算的利息。
- **纳税地点**：《印花税法》对纳税地点进行了明确。例如，纳税人为单位的，应当向其机构所在地的主管税务机关申报缴纳印花税。不动产产权发生转移的，纳税人应当向不动产所在地的主管税务机关申报缴纳印花税。
- **征收管理**：根据《印花税法》，纳税人为境外单位或者个人，在境内有代理人的，以其境内代理人为扣缴义务人；在境内没有代理人的，由纳税人自行申报缴纳印花税，具体办法由国务院税务主管部门规定。另外，《印花税法》规定，证券登记结算机构为证券交易印花税的扣缴义务人。与《暂行条例》不同，《印花税法》不再保留独立适用于印花税法的具体罚则条款，明确对纳税人、扣缴义务人和税务机关及其工作人员违反《印花税法》规定的，依照税收征收管理法和有关法律、法规的规定追究法律责任。

三地全电发票试点方案

2021年11月30日，广东省税务局、上海市税务局、内蒙古自治区税务局先后发布《关于开展全面数字化的电子发票试点工作的公告》（以下简称《公告》），明确自2021年12月1日起，依托全国统一的电子发票服务平台，试点开展全面数字化的电子发票（以下简称全电发票），24小时在线免费为纳税人提供全电发票开具、交付、查验等服务，实现发票全领域、全环节、全要素电子化。

此次试点是税务机关落实《关于进一步深化税收征管改革的意见》，全面推进税收征管数字化升级和智能化改造，降低征纳成本的重要举措。本次公告内容，对比之前纸质或电子发票管理办法发生重大变化，对未来税收征管的影响深远。主要变化如下：

- **新发票种类**：本次全电发票下新增票种包含电子发票（增值税专用发票）和电子发票（普通发票）。
- **去特定版式**：全电发票可选择以数据电文形式交付，不再要求PDF、OFD等特定版式，允许企业自定义发票要素，并取消发票联次概念。
- **去专用设备**：通过通用数字证书，纳税人不仅可以在电脑网页端开具全电发票，还可在电子发票服务平台全部功能上线后，通过客户端、移动端随时随地开具全电发票。
- **授信制额度**：依托动态“信用+风险”体系，税务机关依据纳税人的风险程度、纳税信用等级、实际经营情况等因素，对试点企业在一个自然月内的开票总金额实行额度管理。
- **赋码式领票**：此次试点通过“赋码制”取消特定发票号段申领环节，在发票信息生成后，系统自动分配唯一的发票号码。
- **新交付手段**：全电发票模式采用“税务数字账户”作为交付入口。全电发票开具后，发票信息会自动同时发送至开票方与受票方的“税务数字账户”，受票方企业即可查询、下载。
- **多状态跟踪**：本次全电发票试点额外增加了对发票“入账状态”的管理。该做法有助于推动入账归档一体化，支持未来与大型企业ERP等财务软件直接对接，实现发票报销、入账、归档一体化操作。
- **新红票流程**：全电发票的“入账状态”也对红字发票开具流程产生影响。

随着全电发票的推出，税务机关可完整掌握从开具、传递、入账、抵扣到归档的发票全生命周期信息链条。全电发票不仅对税收征管的数字化升级和智能化改造影响深远，对企业财税管理也带来了新机遇和新挑战。本次改革对企业产生如下影响，比如提高开票便捷性；缩小开票时点与收入确认时点差异；对于开票管理、入账方式、凭证归档及税务风险管控的影响。

- invoice elements and stop having to combine invoices.
- **Cancellation of special-purpose equipment requirements:** With a universal digital certificate taxpayers can not only issue digital electric invoices online, but also issue digital electric invoices anytime and anywhere through the client and mobile terminal after all functions of the e-invoice service platform are launched.
 - **Credit line:** Tax authorities should be able to exercise quota management over the total amount of invoices issued by pilot enterprises within a month by relying on a dynamic “credit + risk” system in light of factors such as the taxpayer’s risk degree, tax payment credit rating, and business situation.
 - **Application based on assigned invoice code:** In this pilot, the application process for invoice number segments is eliminated; after invoice information is generated, the system will automatically assign a unique invoice number.
 - **New means of delivery:** After digital electric invoices are issued, the invoice information will be automatically delivered and sent to the “digital tax account” of both the invoicing party and the drawee. Thus, it will be immediately available for inquiry and downloading by enterprises receiving the invoice.
 - **Multistate tracking:** The pilot of digital electric invoices has enabled multistate tracking for the invoice’s entry status. This practice helps promote entry-archiving integration; direct connection with ERP and other financial software of large-size enterprises in the future; and integrated invoice reimbursement, entry, and archiving.

After the introduction of digital electronic invoices, tax authorities can completely master the information chain of invoices throughout the life cycle from issuing, transmitting, recording, and deducting, to filing. Digital electric invoices have far-reaching influence on digital upgrading and intelligent transformation of tax collection and administration, but also present new opportunities and challenges to enterprises fiscal and tax management. This reform makes invoice issuance more convenient; reduces the difference between issuance time and revenue recognition time; and influences issuance management, entry method, document filing, and tax risk control.

Issues Related to Export Policies and Permanent Establishment

Analysis on the Influence of Amendments to Administrative Penalties Law from the Perspective of Customs

On January 22, 2021, the Standing Committee of the 13th National People’s Congress (NPC) adopted the revised *Administrative Penalties Law of the People’s Republic of China* (hereinafter referred to as the “*Administrative Penalties Law*”),

which came into effect on July 15, 2021. This amendment defines the concept of administrative penalties; adds new types of administrative penalties; expands the authority to set administrative penalties; adjusts the scope of hearings and the time limit for handling cases; and introduces regulations on comprehensive administrative enforcement, information publicity, and legal review of major punishment decisions. Amid the current system of customs laws and regulations, a series of documents relating to administrative penalties such as *Regulations on the Implementation of Customs Administrative Penalties*, *Procedures of the Customs for Handling Administrative Penalty Cases* and *Measures of the Customs for Hearing of Administrative Penalties* are expected to be revised, so as to affect the production and operation activities of import and export enterprises. The following contents have, based on the newly revised *Administrative Penalties Law*, given a brief discussion of the expected changes in customs administrative penalty rules. New circumstances in which no penalty is imposed: In the amendment to the *Administrative Penalties Law*, a new “no penalty for the first violation” clause is introduced. It is expected that the customs administrative penalty rules will also introduce this provision. Moreover, the revised *Administrative Penalties Law* introduces new provisions concerning subjective fault. Procedural rules about how to determine the fault of involved parties may be developed for customs in the future to ensure implementation of the above provisions.

New circumstances in which no penalty is imposed: In the amendment to the *Administrative Penalties Law*, a principle of “no penalty for the first violation” is introduced. It is expected that the administrative penalty rules of the customs will also introduce this provision, and the “list of no penalty for the first violation” will be released in the future to further clarify the change. Moreover, the revised *Administrative Penalties Law* introduces new provisions concerning subjective fault.

To this end, procedural rules about determination of fault of the parties may be developed for customs in the future, to ensure implementation of the above provisions.

- **Standardization of administrative penalties:** In addition to warnings, fines, confiscating illegal income/ property, orders to suspend production or business, temporary seizures or revocations of licenses, administrative detention, and other existing types of administrative penalties, the revised *Administrative Penalties Law* introduces new penalties such as complaints, qualification demotions, restrictions on production and business operation, orders to restrict or halt operations. As entry and exit inspections and quarantines become integrated into the customs enterprise credit management and AEO (Authorized Economic Operator) systems, the types of customs administrative penalties in the future will likely further expand.
- **Adjust relevant time limits:** To improve administrative efficiency and promote fair law enforcement, the *Administrative Penalties Law* adjusts time limits for

出口相关政策和常设机构问题

海关视角下的行政处罚法修订影响浅析

2021年1月22日，十三届全国人大常委会第二十五次会议通过了修订后的《中华人民共和国行政处罚法》(以下简称《行政处罚法》)。修订后的《行政处罚法》已于2021年7月15日起施行。此次修订明确了行政处罚的概念，补充了行政处罚的种类，增加完善了综合行政执法、信息公示、行政处罚全过程记录、重大处罚决定法制审核等制度规定，适当扩大了行政处罚设定的权限，并调整了听证范围与办案期限。

在现行的海关法律法规体系中，《海关行政处罚实施条例》、《海关办理行政处罚案件程序规定》、《海关行政处罚听证办法》等与海关行政处罚有关的一系列文件预期将作出相应调整，从而对进出口企业的生产经营活动产生影响。以下内容将以新修订的《行政处罚法》为基础，简要讨论海关行政处罚规则的预期变化。

- **新增不予处罚的情形**：此次的《行政处罚法》修订确立了“首违不罚”的原则，预期海关行政处罚规则也将引入该项规定，未来可能推出“首违不罚清单”对相关事项予以明确。此外，修订后的《行政处罚法》新增了有关主观过错的规定，在海关领域或将研究出台当事人主观过错认定的程序规则，以保障上述条款的实施。
- **规范行政处罚的种类**：在警告、罚款、没收违法所得/非法财物、责令停产停业、暂扣或吊销许可证、行政拘留等现有行政处罚种类的基础上，修订后的《行政处罚法》新增了通报批评、降低资质等级、限制开展生产经营活动、责令关闭、限制从业等类别。结合出入境检验检疫划入海关系统和海关企业信用管理及AEO制度(Authorized Economic Operator)的实施，未来海关行政处罚的种类将遵循《行政处罚法》的规定有所扩充。检验检疫领域的行政处罚，海关企业信用等级管理中的升降级制度等，预期将被整合到海关行政处罚体系中。
- **调整相关时限规定**：为提高行政效率，促进公正执法，《行政处罚法》对办案、听证、追责等重要时限做出调整，可以预见海关行政处罚中的相关时限也会进行相应修改，例如：除非法律、法规、规章另有规定，行政机关应自立案起九十日内做出处罚

决定。现行的海关行政处罚条例尚未对此时限做出规定，新条例是否会对此做出修订仍有待观察。

- **明确从旧兼从轻原则**：修订后的《行政处罚法》明确采取“从旧兼从轻”原则，海关行政处罚条例的修订也将体现这一原则。
- **提升处罚过程透明度**：将行政执法公示制度、执法全过程记录制度和重大执法决定法制审核制度的“三项制度”纳入《行政处罚法》是此次修订的一大亮点。这些内容将在未来的海关行政处罚法规体系中得以充实。

基于上述讨论，商会建议企业应做好事前风险防范工作，提高依法治企能力，强化合规管理，及时跟踪新规变化。企业在面临行政处罚风险时，应建立合理的应对机制，主动评估影响，积极配合调查，依法维护权益。

2022年关税调整方案

国务院关税税则委员会于近期发布《2022年关税调整方案》(税委会[2021]18号)。根据方案，自2022年1月1日起，对部分商品税则税目和进、出口关税进行调整。值得注意的是，2022年我国进出口税则税目随《商品名称及编码协调制度》(以下简称《协调制度》)2022年版同步调整，调整后8位商品编码总数为8,930个。

此次调整旨在重点通过扩大优质消费品、先进技术、重要设备、能源资源等进口，促进进口来源多元化，贯彻“十四五”关于构建促进国内国际双循环的新发展格局以及绿色低碳的重要规划内容。总体而言，此次调整主要涉及以下方面：

完成协调制度转换 服务产业发展需求——中国海关深度参与协调制度修订工作

《协调制度》于2021年间完成最新一轮修订无人机、玻璃车窗、通信天线等一批在国际贸易中颇具影响力的“中国方案”获得通过。相应的修订也体现在我国的2022年进出口税则税目中。主要修订内容举例如下：

- 为满足技术与贸易需求，解决国际贸易争端，《协调制度》新增了部分品目和子目，并修订了部分注释和条文。如为无人机新增品目88.06、为玻璃车窗新增子目8708.22等。
- 为回应国际社会的普遍关切，更好履行国际公约，《协调制度》新增了部分品目和子目。出于对健康

handling and hearing cases. It is likely that relevant time limits of customs administrative penalties will be revised accordingly. For example, unless otherwise provided for by laws, regulations, or rules, the administrative body will make a decision on a penalty within 90 days from the date of case filing. Under current customs administrative penalty rules, no time limit is set. It remains to be seen whether the amendment to the *Customs Administrative Penalty Ordinance* will be adjusted again on the basis of the above 90-day provision.

- Define the principle of applications of the old law with exception of less punishment in the new law: The revised *Administrative Penalties Law* defines applications of the old law with exception of less punishment in the new law, which will be also reflected in the amendment to the administrative penalty rules.
- Enhance the transparency of punishment process: One of the highlights of this amendment is the integration of the systems of law enforcement publicity, documentation, and legal review of major decisions into the *Administrative Penalties Law*. In the future, this content will also be refined through customs administrative penalties.

Based on the above discussion, AmCham China encourages member enterprises to engage in preemptive risk prevention, enhance the capacity of corporate management according to new laws, strengthen compliance management, and track upcoming changes as a result of new regulations. When exposed to the risk of administrative penalty, enterprises should establish a response mechanism, take initiative to assess the impact, cooperate with the investigation, and safeguard their interests in accordance with the law.

Tariff Adjustment Plan for 2022

The Customs Tariff Commission of the State Council released the tariff adjustment plan for 2022 (No. 18 [2021] of the Customs Tariff Commission of the State Council), which specified that tariff items and import and export tariffs on some commodities will be adjusted beginning on January 1, 2022. The items of import and export tariffs in China in 2022 will be adjusted synchronously with the updated version of the Harmonized Commodity Description and Coding System (hereinafter referred to as “Harmonized System”) in 2022, with the total number of 8-digit commodity codes reaching 8,930 after this adjustment.

This adjustment aims to diversify import sources by expanding import of high-quality consumer goods, advanced technology, key equipment, energy and resources, and implement the important content of the 14th Five-Year Plan, fostering a new development landscape that promotes both domestic and international growth and drives green and low-carbon development. In general, this adjustment mainly involves:

Transforming the Harmonized System and Meet Industry Development Needs--Deep Involvement of China Customs in the Revision of the Harmonized System.

The latest round of revision of the Harmonized System was completed in 2021, of which influential “Chinese solutions” in international trade of drones, glass windows, communication antennas, etc. are recognized. Corresponding revisions are also reflected in China’s import and export tariff rules and items for 2022. These revisions include:

- Adding new items and sub-items to meet the needs of new technology development, trade in new products, and solve international trade disputes. For example: introducing a new category 88.06 for drones, and new sub-category 8708.22 for glass windows, etc.
- Adding new items and sub-items in response to widespread attention from the international community and for better implementation of international conventions. For example, to address health concerns, a new sub-item 3002.51 for cell therapy drugs and new sub-item 3006.93 for placebo and blind kits for clinical trials were introduced.

Focus on Meeting Domestic Economic Demand, Leverage on the International Market in a Coordinated Way--954 Items Subject to Temporary Import Tax Rates

To mitigate the financial burden of patients and continue improving people’s health and well-being, a zero tariff rate will be applied to radium chloride injections – a new anti-cancer drug – and a temporary lower import tax rate will be applicable to some medical products such as intracranial thrombectomy stents and artificial joints.

To fuel the green and low-carbon development of China’s industries, temporarily low import tax rates will be applied to environment-friendly and low-carbon commodities, such as particle traps for gasoline engines that can enhance fuel efficiency and reduce emissions, as well as peat used for soil remediation.

There are other circumstances where temporary import tariff rates lower than “most-favored nation” (MFN) tariff rates are applied. For example, in order to meet the demand of domestic industries for key parts, raw materials, resources, and other aspects, high-purity graphite parts, high-voltage cables for high-speed trains, membrane electrodes for fuel cells, bipolar plates, and other key parts will be subject to a temporarily lower import tax rate.

Official Entry-into-Force of RCEP, Sharing of the Fruits of Opening-up--The Free Trade Network Continues to be Upgraded

As of January 1, 2022, the *Regional Comprehensive Economic*

问题的关注,《协调制度》为细胞疗法药物新增子目 3002.51,为临床试验用的安慰剂和盲法试剂盒新增子目 3006.93。

立足国内经济需求 统筹利用国际市场——954项商品享受进口暂定税率

为减轻患者经济负担,不断提升人民健康福祉,《协调制度》对新型抗癌药氯化镭注射液实施零关税,对颅内取栓支架、人造关节等部分医疗产品实施较低的进口暂定税率。

为促进国内产业绿色低碳发展,《协调制度》对环保低碳商品实施较低的进口暂定税率。此类商品包括但不限于可提高车辆燃油效率、减少尾气排放的汽油机颗粒捕集器与可用于土壤修复的泥煤等。

此外,为满足国内产业对关键零部件、原材料、资源等方面的需求,《协调制度》对关键零部件实施低于最惠国税率的进口暂定税率。此类零部件包括但不限于高纯石墨配件、高速动车使用的高压电缆、燃料电池用膜电极组件和双极板等。

RCEP 正式生效实施 共享对外开放成果——自贸网络持续升级

《区域全面经济伙伴关系协定》(RCEP)已于 2022 年 1 月 1 日起对文莱、柬埔寨、老挝、新加坡、泰国、越南等 6 个东盟成员国和中国、日本、新西兰、澳大利亚等 4 个非东盟成员国开始生效。2022 年起,符合条件的进口货物可适用 RCEP 项下的协定税率。

除 RCEP 以外,根据其他已经签订的自贸协定和优惠贸易安排,2022 年中国还将对原产于 28 个国家或地区的部分商品实施协定税率。其中,中国与新西兰、秘鲁、哥斯达黎加、瑞士、冰岛、韩国、澳大利亚、巴基斯坦、格鲁吉亚、毛里求斯等双边自贸协定以及亚太贸易协定将进一步降税。

围绕产业发展需求 促进产业转型升级——调整多项商品进出口关税

根据国内产业发展和供需情况变化,对部分氨基酸、铅酸蓄电池零件、明胶、猪肉、间甲酚等取消进口暂定税率,恢复执行最惠国税率;为继续严格限制“两高一资”产业规模,促进相关行业转型升级和高质量发展,提高了磷、粗铜的出口关税。

此外,为维护信息技术产品全球产业链稳定,降低国内相关下游产业的生产成本,将自 2022 年 7 月 1 日起对 62 项信息技术产品的最惠国税率实施第七步降税,降税后的信息技术产品整体平均税率将降至 0.2%。

“十四五”期间进口免税政策

为了落实科教兴国战略和创新驱动发展战略,助力科技强国建设,财政部、海关总署、国家税务总局于 2021 年 4 月发布《关于“十四五”期间支持科技创新进口税收政策的通知》(财关税[2021]23 号,以下简称《支持科创进口税收政策》),规定自 2021 年 1 月 1 日至 2025 年 12 月 31 日,科学研究机构、技术开发机构、学校等境内单位进口国内不能生产或性能不能满足需求的科学研究、科技开发和教学用品,以及出版物进口单位为前述有关单位进口用于科研、教学的图书、资料等,可享受有关的进口环节减免税待遇。

财政部、海关总署、国家税务总局连同其他有关部门随即还发布了与《支持科创进口税收政策》配套的《关于“十四五”期间支持科技创新进口税收政策管理办法的通知》(财关税[2021]24 号,以下简称《管理办法》),对上述进口优惠政策的相关具体事项予以明确,例如享受优惠的进口单位需具备的条件以及核定部门,已经征收的应免税款的退还条件,进口单位对进口增值税的免税自主选择权,以及进口免税货物的管理使用要求和违规惩戒规定等。

此次发布的《支持科创进口税收政策》涉及的免税商品包括以下两类:

- 国内不能生产或性能不能满足需求的科学研究、科技开发和教学用品
- 用于科研、教学的图书、资料等

上述第 1 类商品免征进口关税和进口环节增值税、消费税,第 2 类商品只免征进口环节增值税。

经核定的外资研发中心可以享受上述免税政策,除此之外,还有很多单位可以享受该政策,比如经核定的有进口许可的出版物进口单位等。

需要注意的是,可享受免税政策的单位名单一般由相关部门进行事前核定。参与核定的部门包括国家中央宣传部、发展改革委、科技部、工业和信息化部、教育

Partnership (RCEP) came into effect for Brunei, Cambodia, Laos, Singapore, Thailand and Vietnam of ASEAN as well as four non-ASEAN members, including China, Japan, New Zealand and Australia. Therefore, from 2022, the agreed tariff rates under RCEP will apply to eligible imported goods.

In addition to the RCEP, pursuant to other free trade agreements and preferential trade arrangements already signed, in 2022, China will also apply tariff rates to some goods originating from 28 countries or regions. Among them, China will further lower the tax rates in bilateral free trade agreements with New Zealand, Peru, Costa Rica, Switzerland, Iceland, the Republic of Korea, Australia, Pakistan, Georgia and Mauritius, as well as the *First Agreement on Trade Negotiations* among developing member countries of the Economic and Social Commission for Asia and the Pacific.

Focus on Industry Development Demand, Facilitate Industrial Transformation and Upgrade--Import and Export Tariffs on many Goods will be Adjusted

In light of the development of domestic industries and changes in supply and demand, temporary import tax rates on some amino acids, lead-acid battery parts, gelatin, pork, and m-cresol will be abolished and the MFN rate will be resumed; and in order to continue to limit the number of industries with high energy consumption, high pollution, and high resource consumption the export duties on phosphorus and crude copper have been increased.

In addition, in order to maintain the stability of the global industrial chain of IT products and reduce the production cost of related downstream industries in China, the seventh-step tax reduction will be implemented for MFN rates for 62 IT products beginning on July 1, 2022, after which the overall average tax rate on IT products will fall to 0.2 percent.

Import Duty-free Policy during the 14th FYP

To execute China's strategy of spurring economic development through innovation, science, and technology, the Ministry of Finance, General Administration of Customs, and State Taxation Administration released the *Notice on Import Tax Policies Supporting Science and Technology Innovation during the 14th Five-Year Plan Period* (No. 23 [2021] of the Ministry of Finance, hereinafter referred to as "Import Tax Policies Supporting Science and Technology Innovation"). According to this Notice, from January 1, 2021 to December 31, 2025, supplies needed for scientific research, technological development, and teaching that can't be produced by scientific research institutions, technology development institutions, schools, and other domestic institutions, or domestic institutions whose performance can't meet demands are subject to import tax reduction or exemption. This also includes books and materials imported by foreign publishing houses that will be used in teaching or scientific research.

Moreover, the Ministry of Finance, General Administration of Customs and State Taxation Administration released the *Notice on Administrative Measures for Import Tax Policies Supporting Science and Technology Innovation* during the 14th Five-Year Plan Period (No. 24 [2021] of the Ministry of Finance, hereinafter referred to as "Administrative Measures") as a supporting document for the *Import Tax Policies Supporting Science and Technology Innovation* jointly with other departments concerned, in which specific items related to the above preferential import policies are clarified, including the requirements for import institutions subject to a preference rate and the approved departments, refundable conditions for tax exemption already levied, free option of duty exemption by import institutions for value-added tax on imports, requirements for the administration and use of import duty-free goods, disciplinary provisions for violations, etc.

Tax-free products included in *Import Tax Policies Supporting Science and Technology Innovation* released this time are divided into the following two categories:

- Scientific research, scientific development and teaching supplies that can't be produced domestically or whose performance can't meet demands.
- Books, materials, etc. used for scientific research and teaching.

The above-mentioned goods under Category 1 are exempted from import duties, import value-added tax, and consumption tax, while those under Category 2 are exempted from import value-added tax.

The approved foreign-funded R&D centers can enjoy tax exemption above. In addition to that, many other entities can also benefit from this policy, such as approved publication importers with import permits.

It should be noted that the list of organizations that can enjoy duty-free policies is generally approved in advance by relevant departments including the Ministry of Science and Technology, the National Development and Reform Commission, the Ministry of Industry and Information Technology, the Ministry of Education, the Ministry of Culture and Tourism, the Publicity Department of the CPC Central Committee, the provincial departments in charge of science and technology, finance, taxation and commerce, as well as customs taking direct charge of local entities enjoying duty-free policies. For example, the approved departments of foreign-funded R&D centers include provincial commercial authorities, as well as provincial finance and taxation departments and the customs in direct charge of R&D centers.

Foreign-funded R&D centers subject to the tax exemption policy shall simultaneously satisfy the following conditions:

- Where it is an independent legal entity, the total investment must not be less than US \$8 million; where it is a

部、文化和旅游部，以及省级科技、财政、税务、商务主管部门和享受免税政策单位所在地直属海关等。比如，外资研发中心的核定部门是省级商务主管部门会同省级财政、税务部门和研发中心所在地直属海关。

可享受免税政策的外资研发中心应同时满足以下条件：

- 作为独立法人的，投资总额不低于 800 万美元；作为非独立法人的（如内设部门），研发总投入不低于 800 万美元；
- 专职研究与试验发展人员不低于 80 人；
- 设立以来累计购置的为科研、教学和科技开发提供必要条件的实验设备、装置和器械的原值不低于 2,000 万元。

加强研发、创新税收优惠

根据国家统计局数据（2021 年 9 月），2020 年中国研发支出总额为人民币 2.44 万亿元（3738 亿美元），比 2019 年增长 10.2%。研发投入的增加在很大程度上归功于中国创新税收政策的不断完善，包括研发加扣、高新技术企业、先进技术服务企业以及集成电路和软件产业的激励。这些激励措施不断完善，但仍有一系列额外的改进建议，以使激励措施更可行、更实用和更有效。

2021 年，财政部和国家税务总局陆续出台了三个关于研发费用加计扣除的文件，分别是财政部税务总局公告【2021】6 号、财政部税务总局公告【2021】13 号和国家税务总局公告【2021】28 号，进一步加强了对研发和创新活动的政策支持。根据目前的发展方针，研发活动的扶持政策仍有不适当的限制，商会建议如下：

- 允许所有行业适用加计扣除政策。目前，列入《外商投资准入特别管理措施》（负面清单）的行业，一律不享受加计扣除政策。其中包括批发和零售业、住宿和餐饮业、租赁和商业服务业、娱乐业等。鉴于中国政府公开表示要将经济向服务业转移，并且各行业均加大信息化、数字化投入，转变传统运营方式，商会提请重新审议限制行业。
- 初创企业需要现金返还类的研发税收优惠。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，部分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不足的问题。商会建议中方考虑建立类似机

制。此外，BEPS 2.0 最低税额对可退还的税收抵免给予了更优惠的税收待遇，可作为评估可退税性时的一个考量因素。

- 分阶段加计扣除比率支持创新型初创企业。通过抬高初期开支的加计扣除额可最大化为创新小型企业提供支持。例如，香港特别行政区规定首 200 万港币（即 180 万人民币，25.8 万美元）研发开支，可获得 300% 的加计扣除，其余可获得 200% 的加计扣除。鉴于国务院计划将年利润低于 300 万元人民币公司的企业所得税有效税率下调至 10%，这类优惠措施变得越来越重要。
- 允许制造业企业以外的其他鼓励类行业企业适用 200% 加计扣除政策。除制造业以外，还有其他重点行业的研发活动需要政策扶持，例如数字经济环境下的信息传输、软件和信息技术服务业。扩大此优惠政策的适用范围有助于加快中国经济转型升级的步伐。

对于高新技术企业激励，商会建议进一步改进：

- 高新技术企业合规收入和研发费用比例规则优化。在现有高新技术企业法规体系下，无论是高新技术产品 / 服务收入比例的计算，还是研发费用比例的计算，均有可能受到企业当年权益性投资业务（如重组、处置等）所产生的收入影响。考虑到企业除投资性公司外，大部分企业的权益性投资业务属于非经常性、偶发性的特殊事项，但同时影响金额一般偏大，建议考虑将此类收入排除在总收入 / 收入总额的统计口径之外，进而在不影响企业必要的结构调整前提下，减少此类特殊事项为高新技术企业评定带来的不确定性。这在当下宏观经济环境面临挑战、企业普遍寻求转型的大背景下，提高企业高端化发展的积极性。
- 制造业企业新产品、新工艺商业化量产前的试生产费用定性。由于制造业行业特性，在企业新产品或新工艺达到商业化量产指标（良品率、效率等）之前，均需经过试生产和改进流程。在会计处理过程中，该阶段投入通常被用于冲减研发支出，或在归集高新企业研发费用时被剔除。上述投入虽然不会从根本上改变新产品或新工艺的设计、配方或基础结构，但却是验证新研发成果是否能够投入使用的不可或缺的环节。如果能够通过解释或立法，明确允许将企业试生产新产品或新工艺成本 / 费用作为

non-independent legal entity (such as internal departments), the total R&D investment must not be less than US \$8 million;

- Employing more than 80 full-time employees to conduct research and test development;
- The original value of experimental equipment, devices and instruments purchased since its establishment to provide necessary conditions for scientific research, teaching and technological development shall not be less than RMB 20 million.

Strengthen Tax Incentives for R&D and Innovation

According to the National Bureau of Statistics (as of September 2021), China's R&D expenditure totaled RMB 2.44 trillion (US \$373.8 billion) in 2020, an increase of 10.2 percent from 2019. The increase in R&D investment is largely due to continuous improvement of China's innovative tax policies, including the incentives for R&D, high-tech enterprises, advanced technology service enterprises, as well as the integrated circuit and software industries. These incentives are constantly improving, but a range of additional improvements are suggested to make them more accessible, useful, and effective.

In 2021, to provide more policy support for R&D and innovation activities, the Ministry of Finance and State Taxation Administration have successively released three documents on additional deduction of R&D expenses, i.e., Announcement No.6 [2021] of the Ministry of Finance and State Taxation Administration, Announcement No.13 [2021] of the Ministry of Finance and State Taxation Administration and Announcement No.28 [2021] of State Taxation Administration. Under current economic development policy, there are still inappropriate restrictions on policies in favor of R&D activities. In view of this, AmCham China recommends as follows:

- Implement additional deductions for all industries. Presently, industries listed in the "Special Administrative Measures for Foreign Investment Access" (Negative List) will not enjoy additional deductions, which includes the wholesale and retail, accommodation and catering, leasing and business services, entertainment, etc. industries. In light of the professed desire of the Chinese Government to shift the economy towards services as well as increasing the digitization of traditional business models in various industries, AmCham China recommends that the restricted industries list be reconsidered.
- Start-ups are in need of R&D tax credits such as cash rebates. Innovative start-ups at the early stage often suffer large losses, without conditions to profit from additional deductions of R&D expenses. In contrast, some developed countries use cashback schemes to address insufficient cash flows faced by start-ups. AmCham China recommends establishing a similar mechanism. It should also be noted that the minimum tax outlined in BEPS 2.0 gives more favorable tax treatment to refundable tax credits. This should be considered when reassessing refundable taxes.
- Introduce an additional deduction rate to support innovative start-ups. By increasing the amount of additional deductions for initial expenses, support for innovative small enterprises can be maximized. For example, Hong Kong SAR provides a 300 percent additional deduction for the first HK \$2 million (RMB 1.8 million, US \$258,000) spent on R&D, and 200 percent additional deduction for the rest. In view of the State Council's plan to lower the effective corporate income tax rate to 10 percent for companies whose annual profits are less than RMB 3 million, such incentives are increasingly more important.
- Enterprises in encouraged industries other than manufacturing enterprises are allowed to enjoy the policy of 200 percent additional deduction. In addition to manufacturing, there are other key industries that need policy support for R&D activities, such as information transmission, software, IT services, and other digital economy supporting industries. Extending the scope of this preferential policy will help speed up the pace of China's economic transformation.

Regarding incentives for high-tech enterprises, AmCham China recommends that:

- The proportions and rules of compliance income and R&D expenses for high-tech enterprises be optimized. Amid existing laws and regulations of high-tech enterprises, both the calculation of the proportion of income from high-tech products/services and the proportion of R&D expenses is likely to be affected by the income generated by equity investment business (such as restructuring and disposal) in the current year. Excluding investment companies, the equity investment of most enterprises is irregular and the amount is large. Due to this, we recommend that the exclusion of such income from the statistical caliber of total income be considered in order to reduce the uncertainty brought by such special, one-off events for the evaluation of high-tech enterprises, without affecting necessary structural adjustment. This is difficult to achieve in the current macro environment. As enterprises seek transformation and repositioning, it can improve and guarantee enterprises' enthusiasm for advanced and sophisticated development.
- Determine the nature of trial production costs of manufacturing enterprises prior to commercialization of new products and new processes. Every time a manufacturing enterprise develops and produces a new product or applies a new process, it must go through a period of trial production and improvement before reaching

高新技术企业的研发费用进行核算，将显著鼓励制造业企业加大创新投入。

- **大型样机研发投入费用定性。**对于生产制造大型机械设备或的企业而言，除自主启发式研发外，基于市场或者下游客户的需求而开展的有针对性的研发研制活动亦至关重要。由于研发出的样机一般具有较高等经济与实用价值，便于出售。出于与销售配比的原则，在会计处理过程中一般将此类研发投入计入主营业务成本进行核算，并在归集高新企业研发费用时剔除。但实际上，此类样机的研发投入往往具有相当高的创新性和先进性，伴有发明专利、实用新型等知识产权的产生。从鼓励向高精尖制造工艺转型、提升中国制造业产业升级的角度来看，商会建议摒弃会计核算上的刻板规定，将此类大型样机的研发投入费用认可为高新技术企业口径下的研发费用。

申请跨境集团内部重组税务减免的资格困难重重

目前，国际税收方面最重大的发展是由 G20/OECD 层面主导的 BEPS2.0 税收改革。BEPS 包容性框架（中国为其主要成员），旨在以从 2023 年和 2024 年税收年度开始生效的新的国内法律、协定和规定敲定新的全球税收制度体系细则。为促进未来合规和缓解过度的税收风险，许多跨国企业正在研究自身集团结构和供应链应做出的调整。对于中国跨境经营的企业也是如此，企业需要通过重组为其亚洲和在华业务打下良好的基础。

为促进此类重组并将相关税收成本降至最低，商会敦促及时大幅放宽跨境集团内部重组减免的条件。第 59 号通知是这一领域的主要税收条例，它规定全资企业集团内的以下三种类型跨境重组才能获得税收递延：

- 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（非居民对非居民）；如果此类转让不允许非居民子公司在（假设）进一步转让居民企业股份时获得更优惠的中国协定预扣税资本利得税率，则将给予减免。此外，非居民子公司在重组交易后三年内不得进行实际转让；
- 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（非居民对居民）；
- 居民企业以其拥有的资产或股权向 100% 直接控股

的非居民企业进行投资（居民对非居民）。在这种情况下，即使居民企业符合 59 号文特殊税务处理的标准，也需要就其资产或股权转让收益申报企业所得税。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。

为使第 59 号文更加灵活，方便跨境重组，应放宽以下条件：

- 降低当前集团控股 100% 的比例要求（即，股权转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；
- 消除对境外控股公司（无论是向上还是横向）之间进行跨境企业并购持股比例的限制（目前为 100%）。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。

完善预约定价安排和相互协商程序机制

国家税务总局积极推动预约定价安排和相互协商程序机制，使纳税人在转让定价安排上实现税收确定性，避免双重征税。在这方面，国家税务总局在促进与相应主管部门的预约定价安排和相互协商程序谈判方面取得了明显进展。正如国家税务总局 2021 年 10 月发布的《中国预约定价安排年度报告（2020）》所指出的，国家税务总局取得了另一个重要的里程碑，即 2020 年达成的单边和双边预约定价安排数量继 2019 年达到历史最高点后，再次创下历史新高。2021 年，受疫情影响国家税务总局及其主管部门组织了在线会议，在没有实质性障碍的情况下推进待决预约定价安排和相互协商程序案件的双边谈判。这些都是由于国家税务总局为该计划提供更多的资源而投资，同时努力遵守经合组织的相互协商程序并由国家税务总局的统一团队处理，才得以实现。这补充了国家税务总局公告 [2016] 第 64 号和公告 [2017] 第 6 号所提供的相关税收指导政策的更新，并支持中国努力实现其在 BEPS 行动计划第 14 条中的最低标准承诺，改善争端解决机制的使用、有效性和及时性。

虽然中国政府在这方面进展喜人，但仍可以采取一些有效措施，确保预约定价安排和相互协商程序机制能

commercial mass production targets (e.g., yield and efficiency). Investment at this stage usually directly writes off R&D expenditure at the time of filing taxes and is also excluded when collecting R&D expenses of high-tech enterprises. Although these investments are unlikely to fundamentally change the design, formulation, or basic structure of a new product or process, they are an indispensable step to verify whether a new research result can be applied in a real sense. If it is made clear that the costs/expenses incurred by enterprises in trial production of new products or new technologies can be accounted as R&D expenses of high-tech enterprises, the investment in innovation among manufacturing enterprises will likely increase.

- **Determine the nature of R&D investment of large prototypes.** For enterprises that produce and manufacture large mechanical equipment, except for independent heuristic R&D activities, a significant category of R&D activities are generally targeted R&D activities based on the needs of the market or downstream customers. Because the value of prototypes developed is high and of practical significance, they can be used for sale. This kind of R&D investment is generally included in main business costs for accounting purposes in line with the current principle of matching with sales and should be excluded. However, the R&D investment in such prototypes tends to be quite innovative and advanced, accompanied by the emergence of invention patents, utility models, and other intellectual property rights. To facilitate a shift to advanced and sophisticated manufacturing processes and the upgrading of China's manufacturing industry, we suggest that rigid accounting rules be removed, and R&D investment of such large prototypes be recognized as R&D expenses of high-tech enterprises.

Great Difficulties in Obtaining Eligibility for Tax Relief for Internal Restructuring of Cross-border Groups

Currently, the most significant development of international taxation is the BEPS 2.0 tax reform led by the G20 and Organization for Economic Cooperation and Development (OECD). The BEPS Inclusive Framework, with China as a key member, seeks to finalize the details of a new global tax regime with new domestic laws and agreements that will go into effect during the 2023 and 2024 tax years. In response to this, many transnational enterprises are examining possible changes to their group structures and supply chains so as to facilitate future compliance and mitigate excessive tax risks. This is also true for companies operating across borders with China, with many needing to lay a good foundation for further growth of their businesses in China and Asia through restructuring.

To facilitate restructuring and minimize associated tax costs, AmCham China calls for the prompt and significant relaxation of the conditions for providing tax exemptions

for the restructuring of cross-border groups. *Circular No. 59* is the main tax regulation in this area, stipulating that the following three types of cross-border restructuring within a wholly owned enterprise group are eligible for tax deferral:

- Where, in the transfer of equity in another resident enterprise (non-resident to non-resident) by a non-resident enterprise to a resident enterprise that has a 100 percent direct holding relationship with it, non-resident subsidiaries are not allowed to obtain more favorable PRC agreement withholding tax capital gains and tax rates on (assumed) further transfer of shares of resident enterprises, tax reduction and exemption will apply. In addition, non-resident subsidiaries may not be actually transferred within three years of the restructuring transaction;
- Transfer of equity in another resident enterprise (non-resident to resident) by a non-resident enterprise to a resident enterprise that has a 100 percent direct holding relationship with it;
- Where investment of the resident enterprise in the 100 percent directly controlled non-resident enterprise with its assets or equity (resident to non-resident), even if a resident enterprise meets the criteria for special tax treatment under the No. 59 Document, it also needs to report enterprise income tax on their assets or equity transfer proceeds. However, the above items can be reported within a decade (partially deferred) rather than being immediately recognized without special tax treatment.

To increase the flexibility of the No. 59 Document and facilitate cross-border restructuring, the following conditions should be relaxed:

- Relax the current 100 percent shareholding requirement for groups (i.e., the shareholding requirement between the transferer and the transferee). AmCham China recommends a relaxation to 80 percent.
- Allow "upstream" subsidiaries to enjoy deductions on transfers of assets and shares to parent companies, instead of only special tax treatment for transfers from parent companies to subsidiaries.
- Remove the current 100 percent shareholding limit on cross-border M&As between foreign holding companies, whether upwards or horizontally. Normal business operations cannot meet this requirement. Therefore, other more practical alternatives must be considered.

Improve Advance Pricing Arrangements and Mutual Consultation Procedures

The State Taxation Administration actively promotes the implementation of advance pricing arrangements and mutual consultation procedures, so that taxpayers can achieve tax certainty in transfer pricing arrangements and double taxation can be avoided. In this regard, the

够优化税收机制和报告流程：

- 更好地控制相互协商程序和预约定价安排的流程和时间：税基侵蚀与利润转移行动计划 14 项最低标准要求双边预约定价安排和相互协商程序的审查和谈判流程，并且需在 24 个月内完成。在最新公布的 2020 年报中，正式申请后两年内签署的双边预约定价安排协议数量占 2020 年签署协议总数的 78%。此外，经济合作与发展组织最近发布的 2020 年相互协商程序统计数据显示，就 2016 年 1 月 1 日之后启动的相互协商程序，国家税务总局平均签订时间为 30.7 个月，高于商定的 24 个月时间框架，但低于 35 个月的全球平均水平。商会祝贺国家税务总局取得了以上鼓舞人心的成就。然而，还有进一步的改进空间，商会建议国家税务总局采取有效的步骤，通过以下方式实现这一目标：
- 进一步壮大国家税务总局预约定价安排和相互协商程序团队，当跨国企业在母国和中国之间寻求双边预约定价安排时，应协调公司不同在华实体下级税务机关。近年来，国家税务总局获得了更丰富的人力资源，这将帮助其节省与下级税务机关及外国税务机关的沟通时间。
- 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。根据国家税务总局 [2016] 第 64 号公告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，纳税人有时会在流程的某个阶段“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。在这方面，商会理解国家税务总局在 2021 年 7 月发布的单边预约定价安排的简化程序旨在方便税务机关在规定时间内对程序各个阶段作出回应。此外，简化程序被减少到三个阶段，而不是一般预约安排定价程序下的六个阶段。然而，商会注意到，简化后的预约安排定价程序规定只适用于部分符合其适用标准的纳税人，并且只适用于单边预约安排定价。商会理解上述程序可能无法适用双边预约安排定价，且双边预约安排定价的评估和谈判往往不在国家税务总局和 / 或地方税务机关的控制范围内，然而，有关部门需要就双边预约安排定价进展与纳税人及时进行沟通。
- 预约定价安排的盈利要求：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，税务机关必须将其调整到四分位区间中位值。商会认为，若能允许利润调至下四分位数的最高水平，以便在双边预约定价安排的 3 至 5 年有效期内达到要求，这样的盈利目标是更加合理的。商会注意到，在预约定价安排实施期间，一些地方税务机关允许对下四分位数进行调整。然而，这并非全国实行的标准做法。商会建议国家税务总局可以提供指导，允许在预约定价安排实施期间调整下四分位数。

- 相互协商程序退税：相互协商程序退税在许多辖区很常见。商会注意到，中国的税收优惠条例规定了相互协商程序中的纳税人可享受退税，在过去两年中，一些相互协商程序案例中出现了退税的情况。然而，实际上，从中国税务部门获得相互协商程序退税十分困难，成功案例不多。在为相互协商程序启用预约定价安排的讨论和谈判中，无法获得相互协商程序退税，谈判讨很难达成结果。最理想的情况是在可以同时讨论预约定价安排和互相协商程序案件退税的情况下争取退税。
- 海关：通过预约定价安排或 TP 审计达成的 TP 安排可能会让纳税人在与中国海关打交道时遇到困难，反之亦然。这是一个在任何辖区经营的纳税人都会面临的问题，因为税务和海关当局的立场相互冲突。商会注意到深圳正在进行的一个试点，其中，国家税务总局和海关部门已基本讨论了在预约定价安排 / 联合裁决框架下解决公司收入和进口定价双重征税的主要问题。如果试点成功，商会希望国家税务总局与海关总署合作并采取行动，将其推广到其他省市。不仅有助于促进跨境贸易，还将使中国成为首个解决由于税收和海关双重认定导致双重征税问题的国家。

关于与其他政府机构合作方面，商会鼓励国家税务总局与国家外汇管理局（SAFE）通力合作，以便处理因实施转让定价调整而产生的跨境收付款。在管理转让定价政策和风险方面，跨国企业会在财政年度末进行转让定价调整，以调节当地实体的盈利能力，使其财务结果与集团的转让定价政策保持一致。尽管通过发行借方或贷方票据进行年终转让定价调整的方式在许多发达地区是可行且普遍的做法，但由于国家外汇管理局（SAFE）在处理跨境收付款时有严格的外汇管制规定，该方式并不适用于在华纳税人。

State Taxation Administration has made headways in facilitating the negotiation on advance pricing arrangements and mutual consultation procedures with relevant authorities. As noted in the *Annual Report on Advance Pricing Arrangements in China (2020)* released by the State Taxation Administration in October 2021, the State Taxation Administration achieved another important milestone as the number of unilateral and bilateral advance pricing arrangements concluded in 2020 hit a record high after peaking in 2019. In 2021, to address the impacts of COVID-19, the State Taxation Administration and its competent authorities convened online meetings to advance bilateral negotiations on pending advance pricing arrangements and mutual consultation procedure cases without substantive obstacles. These were achieved based on the input of more resources into the program by the State Taxation Administration, as well as the efforts made to comply with OECD's mutual consultation procedures and treatment by a unified team at the State Taxation Administration. It supplements relevant tax guidance policy updates in Announcements No. 64 [2016] and No. 6 [2017] of the State Taxation Administration, providing support for China to meet its minimum standard commitments under Article 14 of the BEPS Action Plan and improve the use, effectiveness and timeliness of the dispute settlement mechanism.

Despite the encouraging progress of the Chinese government on this front, some measures can still be taken to optimize tax mechanisms and reporting processes by means of advance pricing arrangements and mutual consultation procedures:

- Pursue better control over the flow and timing of mutual consultation procedures and advance pricing arrangements: The 14 minimum standards of the Action Plan for Base Erosion and Profit Shifting (BEPS) require a review and negotiation process for bilateral advance pricing arrangements and mutual consultation procedures, which should be completed within 24 months. In the 2020 annual report newly released, the number of bilateral advance arrangements concluded within two years upon formal application accounted for 78 percent of the total signed in 2020. Moreover, according to the mutual consultation procedure statistics for 2020 recently issued by OECD, for mutual consultation procedures initiated after January 1, 2016, the average signing time of the State Taxation Administration was 30.7 months, higher than the agreed time frame of 24 months, but lower than the global average of 35 months. AmCham China extends congratulations to the State Taxation Administration for the inspiring achievements above. However, there is room for further improvement. We recommend that the State Taxation Administration take effective steps to achieve this goal by:
 - Further strengthening the advance pricing arrangements/mutual consultation procedures team at the State Taxation Administration, and deepening coordination among tax authorities at the lower levels of different Chinese entities within its corporate group when transnational enterprises seek bilateral advance pricing arrangements between their home country and China. In recent years, the State Taxation Administration added more resources. Abundant manpower can help the State Taxation Administration optimize its communication time with tax authorities at lower levels as well as foreign tax authorities.
 - We should provide taxpayers with clearer information on the expected time of each stage of the advance pricing arrangement process. According to Announcement No. 64 [2016] of the State Taxation Administration, advance pricing arrangements are divided into six stages: pre-submission meeting, intention, analysis and evaluation, formal application, negotiation and signing, and supervision over implementation. Due to limited resources and internal coordination issues among tax authorities, taxpayers may find themselves “helpless” at one stage of the process with no knowledge of when they will be formally informed by the authorities to move to the next stage. In this regard, we understand that the simplified procedures for unilateral advance pricing arrangements introduced by the State Taxation Administration in July 2021 are designed to help tax authorities to respond to various stages of the process within the prescribed time frame. The simplified procedures are also reduced to three stages rather than six under the general advance arrangement pricing process. However, the provision of simplified appointment arrangement pricing procedures only applies to taxpayers who meet the criteria and to unilateral advance arrangement pricing. Although it is understandable that such procedures may not be applicable to bilateral advance arrangement pricing and that the negotiation of bilateral advance arrangement pricing often falls outside the control of the State Taxation Administration and/or local tax authorities, there is a need for more structured communication between taxpayers and relevant authorities on the progress of bilateral advanced arrangement pricing.
 - Profitability requirements for advance pricing arrangements: According to current advance pricing arrangements, if a company's profit for the year is outside of the defined quartiles, the tax authority will adjust it to the middle quartile range. In our view, it makes more sense to adjust the profit to the highest level of the lowest quartile in order to realize required profitability targets over the 3-5 year period of bilateral advance pricing arrangements. Although some local tax authorities do allow adjustments to the lower quartile when implementing advance pricing arrangements, it is not standard practice nationwide. AmCham China suggests that the State Taxation Administration provide guidance to allow for adjustment to the lower quartile when implementing advance pricing arrangements.
 - Tax rebates through mutual agreement procedures: Tax rebates through mutual agreement procedures is

消费税的现实问题

与委托加工相关的重复征收消费税的问题

对于连续生产应税成品油行为，消费税法采用连续抵扣机制，从而避免同体积的应税品消费税重复征收的问题。然而，对于委托加工行为，不可采用连续抵扣机制，受托方在计算代扣代缴消费税时，应税原材料中包含的已纳消费税不允许抵扣。该重复征收消费税问题变相使得企业向高成本生产模式倾斜，由此制约中国经济的长期发展及纳税总收入的增长。

商会建议，应允许受托方在计算代收代缴消费税时抵扣所耗应税原材料中委托方已负担的消费税，以此消除重复征收消费税的问题。

价值链上各个阶段重复征收消费税的问题

按照现行消费税法的抵扣政策，纳税人购置已税原材料，用于连续生产应税消费品时，只有在规定范围内的原材料才允许抵扣外购应税消费品的消费税。如果其不在规定的清单上，则该应税消费品已缴纳的消费税不予抵扣（如煤油馏分油与溶剂油），这意味着该原材料会被征收双重消费税。这可能会限制某些石油制品与产品的发展，并削弱中国经济发展。

商会建议政府通过扩大抵扣系统的范围，使其平等适用于所有石油产品，消除此类双重征税问题，进一步平衡中国的竞争环境，拉动经济增长，提高经济效率。

建议中央及地方政府分享消费税收入

根据中国现行的税收征收机制，地方税务机构将征收的税收收入上缴中央政府，再由中央政府按不同比例在中央、省、市及地方政府之间进行分享。地方留成的税收收入可用于维持和激励地方税务机构的征税行为。然而，在现行的消费税征收机制中，地方收缴的消费税收入全部上缴中央，省、市及地方政府不分享消费税税收收入。

该消费税收入分配机制不利于激励地方征缴消费税，因为征收消费税将降低地方企业的盈利水平，从而间接降低了企业所得税税收收入。由于缺乏地方的有效监管和稽查，多处涌现偷逃消费税的不合规现象，由此影响了全国的税收总收入。此外，由于市场上充斥着不合规企业销售的不含消费税成本的产品，合规企业的含税产品面临着不公平的竞争环境。

商会建议中央政府将至少 10% 的消费税收入分配给省、市和区级政府，这将有助于确保激励地方政府改进消费税征收方法。

建议

对中国政府：

- 建议向受疫情、自然灾害影响的行业及市场主体提供财政支持和税收减免；出台捐赠等支出的加计扣除优惠政策，以鼓励富有责任心的市场主体向受疫情、自然灾害影响的地区提供多种支持；对从事抗疫救灾关键领域的企业（如：交通运输、关键物资生产与流通、关键设施 / 设备研发等）提供更为优惠的财税减免政策。
- 消除跨境集团内部重组税务减免资格的申请障碍，包括降低当前集团控股比例要求；允许“上游”子公司将资产和股份转让母公司时获得减免，以及在纵向和横向两个维度下取消对境外控股公司之间进行跨境企业并购持股比例达到 100% 的限制。
- 允许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，包括进一步优化解决程序和时间、与申请人的沟通、续签要求、退税和关税等问题。
- 加大对研发和创新的税收优惠力度，允许所有行业适用加计扣除政策；为初创企业提供税收返还优惠、增加初期研发开支的加计扣除额。
- 解决重复征收消费税等问题；改革消费税税收分配机制，解决偷逃消费税的不合规现状，为合规含税产品营造公平的竞争环境。

common in many jurisdictions. China's tax incentives state that taxpayers going through mutual agreement procedures can enjoy tax rebates. In the past two years, tax rebates have emerged in a number of mutual consultation procedure cases. However, it is very difficult to obtain tax rebates through mutual consultation procedures from Chinese tax authorities. In advance pricing mutual agreement procedure negotiations, it is unlikely to obtain a tax rebate. This makes negotiations difficult to finalize. We suggest that tax rebates be sought when both the advance pricing arrangements and mutual negotiation procedures can be discussed simultaneously.

- **Customs:** Transfer Pricing ("TP") arrangements made through advance pricing arrangements or TP audits may bring taxpayers difficulty when dealing with Chinese customs, and vice versa. Due to the conflicting positions of the tax and customs authorities, this is an issue faced by taxpayers operating in any jurisdiction. AmCham China is interested in the ongoing pilot in Shenzhen, in which the State Taxation Administration and customs authorities worked together to solve corporate income double taxation and import pricing under the advance pricing arrangements/ joint adjudication framework. If the pilot works, we recommend that the State Taxation Administration work with the General Administration of Customs to roll it out in other provinces and cities. We believe this measure is conducive to facilitating cross-border trade and making China the first country to solve the problem of double taxation caused by dual identification of taxation and customs.

AmCham China also encourages the State Taxation Administration to work with the State Administration of Foreign Exchange ("SAFE") on processing cross-border receipts and payments arising from the implementation of transfer pricing adjustments, transnational enterprises make transfer pricing adjustments at the end of the fiscal year, in a bid to regulate the profitability of local entities and align its financial results with the group's transfer pricing policy. Although year-end transfer pricing adjustments through the issuance of debit or credit notes are feasible and common in many developed regions, it's difficult for Chinese taxpayers to make adjustments in this way, mainly because of SAFE's strict exchange control rules for handling cross-border receipts and payments.

Practical Issues on Consumption Tax

Repeated imposition of consumption tax related to consigned processing

In order to avoid double taxation on taxable refined oil, the *Consumption Tax Law* stipulates a continuous deduction mechanism. However, the continuous deduction mechanism doesn't apply to commissioned processing, and when the

trustee calculates the withholding consumption tax, the paid consumption tax contained in taxable raw materials is not allowed to be deducted. Repeated collection of consumption tax has made enterprises shift towards high-cost production, restricting the long-term development of China's economy and the growth of total tax revenues.

We recommend allowing the deduction of the consumption tax paid on taxable raw materials when calculating consumption tax in order to solve double taxation.

Repeated imposition of consumption tax at all stages of the value chain

According to the current consumption tax deduction mechanism, for those used for continuous production of taxable. According to the current consumption tax deduction mechanism, those continuously producing taxable consumer goods are eligible for a deduction on consumption tax payable as long as the product being made falls under the scope of the provisions. However, taxable oil products (e.g., kerosene distillates, solvent oils) that aren't under the scope of the provisions are not eligible for the deduction mechanism, inconsistent with the continuous deduction mechanism of most taxable products including other refined oil products. This restricts the industrial development of these kind of products and the growth of gross tax income.

To solve issues with the repeated collection of consumption tax, we recommend extending the consumption tax deduction mechanism to cover all refined oil products to provide a more level-playing field for all industries, thus enhancing the competitiveness, efficiency, and growth of gross tax income in the Chinese economy

We suggest that the central and local governments share consumption tax revenue.

Under China's current tax collection system, tax revenue collected by local authorities is transferred to the central government and then shared among central, provincial, municipal, and local governments in varying proportions. Tax revenue retained by local authorities is used to incentivize good tax collection practices. However, current consumption tax collection practices make it so that all consumption tax revenue collected by local governments is transferred to the central government, instead of being shared with provincial, municipal and local governments.

The consumption tax revenue distribution mechanism is not conducive to encouraging local governments to collect a consumption tax, because collecting consumption taxes would reduce the profitability of local enterprises and indirectly reduce the amount of enterprise income tax they can collect. Without sufficient local supervision and inspection, irregularities in consumption tax evasion have emerged in several

places, damaging the country's total tax revenue. Moreover, as the market is flooded with products sold by non-compliant enterprises without consumption tax costs, businesses that do pay taxes face an unfairly competitive environment.

We recommend that the central government share at least 10 percent of consumption tax revenue with provincial, municipal, and local governments, because sharing consumption tax revenue will encourage local governments at all levels to strengthen their consumption tax collection and management practices.

Recommendations

For the Chinese Government

- Ensure that industries and market players affected by COVID-19 and natural disasters receive sufficient financial support and tax reductions; introduce more tax incentives for donations to encourage market entities to support areas affected by the pandemic and natural disasters; and introduce more tax incentives for enterprises engaged in key areas of pandemic control and disaster relief (e.g., transportation, production & circulation of key materials, R&D of key facilities/equipment, etc.);
- Reduce the required level of investment holding for cross-border intra-group restructuring. This would allow for relief on "upstream" subsidiary-to-parent asset and share transfers, and ending the practice of subjecting cross-border corporate mergers amongst offshore holding companies (either upstream or laterally) to the group holding test percentage (currently 100 percent);
- Make the Advance Pricing Arrangement (APA) and Mutual Agreement Procedure (MAP) programs more accessible to multinational taxpayers operating in China from both local and central tax authorities, including further refining the process and timing, communication with applicants, renewal requirements, refunds, and customs issues;
- Extend R&D tax deduction incentives to all industries. Offer refundable tax credits and enhanced deductions for initial R&D expenditure to support start-up companies;
- Crack down on consumption tax evasion to create a fair environment for companies who comply with the laws.

Visa Policy

Introduction

Considerable progress was made in 2021 to create a more streamlined and predictable visa application process, but many hurdles remain as COVID-19 visa restrictions remain in place.

COVID-19-related Visa Challenges in China

AmCham China has observed that starting from March 2021, foreign nationals and their family members who have received China produced COVID vaccines, visiting the mainland of China for resuming work and production in various fields need only to provide the documents required before the COVID-19 pandemic when applying for a visa. The PU letter issued by the foreign affairs is no longer required. AmCham China recommends that the facilitation expands to all visa applicants vaccinated with other types of vaccines and applies to all China embassies/consulates.

AmCham China observed that starting in September 2021, Shanghai, Zhejiang, and Guangdong provinces have gradually resumed the dependent PU letter applications which was suspended in Q4 2020. AmCham China welcomes the relaxation of restrictions on the PU letter application of foreign dependents but still observed the challenges with dependent entry currently as well as the inconsistency in consular practices on processing entry visa applications.

Recent Developments around Chinese visas

Expanded Eligibility for Recent Graduates

In the 2021 *White Paper*, AmCham mentioned China's National Immigration Administration's (NIA) convenient immigration policy issued in July 2019 containing 12 measures to attract skilled foreign nationals, ease the requirements for foreign nationals to obtain Work Permits in China, and create a friendlier immigration environment. In October 2020, Shanghai extended this initiative through the introduction of a new policy that provides recent graduates with a greater number of options to work for companies registered in Shanghai. Previously, recent foreign gradu-

ates could only apply for work authorization if they were sponsored by companies registered in one of China's Free Trade Zones (FTZs) or High-Tech Parks recognized by the Shanghai municipal government.

The implementation of this policy has meant that, in practice, outstanding foreign graduates in China who are employed by a company registered outside the recognized FTZs or high-tech parks can apply for work authorization if they hold a master's degree. Additionally, foreign students graduating from "world-renowned" universities outside China can, in theory, also benefit from this policy, although the strict measures imposed by China to control COVID-19 will have precluded many from utilizing the policy.

AmCham China welcomes the creation of a more flexible environment that would provide more talent options for companies in China as well as attract more talented foreign students to live and work in mainland China. In 2021, AmCham observed little development on similar policies nationwide. AmCham China continues to recommend that similar policies be implemented nationwide, and will continue to pay attention to the development of obtaining work permits for employing foreign employees in China. Additionally, we hope that the use of the phrase "world-renowned universities" in the Shanghai announcement will not mean in practice that qualified graduates from universities not deemed "world-renowned" by the government will be precluded from obtaining permission to work in China. Instead, qualified graduates from any accredited university should be able to receive a Work Permit for employment in China if offered a position.

Tax Payments for Category A Foreigner Work Permit Applications

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 nationals under the age of 60, who hold at least a bachelor's degree and have at least two years of relevant experience,

签证

引言

2021年，中国努力优化来华签证审批流程并取得进展，但新冠肺炎疫情导致旅行和签证限制仍然严格。

新冠肺炎疫情下的中国签证办理挑战

中国美国商会（以下简称商会）注意到，自2021年3月起，已接种中国国产新冠疫苗的，赴华从事各领域复工复产活动的外籍人员及其家属，可按照疫情前规定准备材料并递交申请，无需提供外事办公室出具的邀请函。商会建议将该办法扩大到接种非中国国产疫苗的申请人，并适用于所有中国使领馆。

自2021年9月起，上海市、浙江省和广东省逐步恢复了于2020年第四季度起暂停的家属来华邀请函的办理工作。商会乐见上述省市对外籍人员家属邀请函申请限制的放宽，但注意到目前仍存在家属入境困难、使领馆对入境签证申请的处理方法不一致等实际问题。

中国签证的最新进展

扩大应届毕业生对象范围

2021年度《美国企业在中国白皮书》以下简称（《白皮书》）中提及了中国国家移民管理局于2019年7月颁布的吸引外籍专门技术人才的12项移民与出入境便利政策，放宽了外籍人员在中国获得工作许可证的要求，并创造更友好的移民环境。2020年10月，上海市出台的一项新政策为外籍应届毕业生在上海注册的公司工作提供了更多选择。在此之前，外籍应届毕业生只有在中国各自贸区或上海市政府认可的高科技园区注册的公司担保下才能申请工作许可证。

这一政策的实施意味着在实际操作过程中，受雇于认可的自贸区或高科技园区以外注册公司的优秀外籍毕

业生，如果有硕士学位，就可以申请工作许可。此外，从中国以外的“世界知名大学”毕业的外国学生理论上也可以享受该政策，但是，中国为控制疫情而采取的严格措施导致许多人无法从中受益。

商会乐见中国正致力于创造更灵活的环境，为在华企业提供更多的人才选择，吸引更多优秀外籍学生来中国大陆生活和工作。然而在2021年间，商会并没有在上海以外的其他省市看到类似的政策。商会依然建议在全国范围内推广这些政策，并将持续关注外国雇员工作许可申请事宜的进展。此外，上海政府在公告中使用了“世界知名大学”一词，商会不希望在实际申请中会对毕业于非政府认定的世界知名大学的合格毕业生拒发中国工作许可。相反，任何公认知名大学的优秀毕业生若能在华获得工作职位，均应有资格获得工作许可。

A类外国高端人才工作许可证申请纳税要求

《外国人来华工作许可服务指南》（暂行）于2017年4月起正式实施，其中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，年龄未满60周岁，具有学士及以上学位和两年及以上相关工作经验；
- C类：从事临时性、季节性、非技术性或服务性工作的外国人员。

外籍人员须满足六个标准中的任意一个才有能获得A类工作许可证，其中包括每年至少缴纳一定数额的所得税总额，并提供包括税务证明在内的文件，证明外籍人员的所得税缴纳记录符合A类要求。如果企业未能缴纳A类签证所需税款，可能会受到严厉处罚，如公司被列入雇用外国人的黑名单，并且在有关员工的现有许可证到期后，禁止为其申请新的工作许可证。

- Category C: Foreign nationals who engage in temporary, seasonal, non-technical or service-related work.

Foreign nationals can qualify for a Category A Work Permit by meeting any of six criteria, one of which is that they must pay a specified minimum amount of total income tax annually, and documentation, including a tax certificate, must be provided to prove that a foreign national's income tax payments meet Category A requirements. The failure of companies to pay the tax required for a Category A visa can lead to severe penalties, including firms being blacklisted from hiring foreign nationals and bans on applications for new Work Permits for the employees in question after the expiration of the current permits.

In the 2021 *White Paper* we recommended that the government standardize the tax requirement process nationwide and provide more flexibility without penalizing companies or individuals unnecessarily when their income tax payments did not meet the required threshold (except in cases of outright fraud). In 2021 AmCham China has observed that the guidance about the documentation required to determine the eligibility and tax threshold has generally become more transparent and clearer across China, a development that we welcome, and hope will continue.

AmCham China also observed local governments exhibiting a degree of flexibility in instances where the failure to meet certain tax requirements was mainly due to reasons relating to the COVID-19 pandemic. For example, the Beijing, Shanghai, and Guangzhou Foreign Expert Bureaus (FEBs) announced they will assess, on a case-by-case basis, the failure to meet established thresholds due to COVID-19 and companies will need to provide a detailed explanation letter in support of their positions. AmCham China welcomes the improvement of the flexibility, although the requirements of local governments are different. AmCham China recommends that the same standard and flexibility to be implemented nationwide.

Online Registration of Temporary Residence in Shanghai

Foreign nationals staying in mainland China are required to register their accommodation at the local police station within 24 hours of arrival if they are not staying in a hotel or serviced apartment. The Shanghai Public Security Bureau officially launched the "Self-Help Declaration System for Overseas Personnel Accommodation Registration" across the entire city in October 2019. Foreign nationals residing in Shanghai are no longer required to visit their local police station in person to register. They can instead now complete the declaration form online. The usability and stability of paperless online self declaration have been affirmed widely. In the 2021 *White Paper* we recommended that the government implement a similar system nationwide. AmCham China has not seen any progress on this issue in 2021. The

conditions created by COVID-19 have reinforced the value of an online process that is more efficient and convenient, particularly when people are urged to maintain social distancing protocols as they have been in the past year. AmCham China continues to recommend that this self-declaration system be implemented nationwide.

Expanded Eligibility of Part-Time Job

In March 2021, Shanghai Foreign Expert Bureau promulgated a notice of "Online Approval" for Foreigner's Work Permit Version 4.0 to facilitate the introduction of foreign talents. The Notice includes expanding the eligibility of foreign scientific and technological talents to work part-time in Shanghai.

The implementation of this policy has meant that, in practice, foreign scientific and technological talents employed by enterprises in Shanghai can work part-time in Shanghai without reapplying for or amend work Permit after signing a written tripartite agreement registered with Shanghai Foreign Expert Bureau with the original employer and part-time employer.

AmCham China welcomes the creation of a more flexible working environment that would provide more working arrangements options for foreign nationals to live and work in China. AmCham China recommends specifying "foreign scientific and technological talents" and standardizing the application procedure. AmCham China also recommends that a similar policy be implemented nationwide.

Recommendations

For the Chinese Government

- Further normalize visa application processes to pre-pandemic norms. Allowing employees, family dependents, and all qualified individuals to enter China with ease is beneficial to ensuring normal business operations locally.
- Promote policies that attract outstanding foreign students to work and live in China throughout the entire country, rather than having only preferential policies to specific regions.
- Create a more flexible environment for expats living and working in China and provide more job options.
- Clearly define foreign scientific and technological talents, promote pre-approval for work permit applications, and promote corresponding policies nationwide.

在 2021 年《白皮书》中，商会建议中国政府将全国纳税要求标准化，在公司或个人的所得税支付未达到要求的起征点时（明显欺诈的情况除外），不对其进行不必要的处罚，为企业提供更灵活的灵活性。商会乐见 2021 年中国关于确定资格和起征点所需文件的指导变得更为透明和明确，并期待进一步的积极进展。

商会还注意到，地方政府灵活处理了因新冠疫情导致的某些纳税要求不达标问题。例如，北京、上海和广州的外国专家局宣布将会逐例评估因为疫情未能达到规定起征点的情况，同时企业需要提供详细的解释信说明状况。商会乐见此灵活性的提升，但同时也注意到各地方政府的要求不同，建议在全国范围内推广相同的标准和灵活性。

上海市临时住宿在线登记

境外人员在中国大陆停留期间如未入住酒店或服务式公寓，须于抵达后 24 小时内到当地公安派出所登记住宿信息。上海市公安局于 2019 年 10 月在全市范围内正式启动“境外人员住宿登记自助申报系统”。居住在上海的境外人员不用再前往居住地派出所申报临时住宿登记，足不出户即可在线完成自助申报。无纸化在线自助申报的实用性和稳定性得到广泛的肯定。商会在 2021 年《白皮书》中建议在全国推广此类自主申报系统，然而这一倡议并无后续进展。疫情下，人们需持续遵守社交距离规定，在线流程高效便捷，实用性强，极具价值。商会再次建议在全国范围内推广此类自主申报系统。

扩大兼职工作资格认证范围

2021 年 3 月上海外国专家局颁布了旨在便利外国人才引进的外国人工作许可证“不见面”审批 4.0 版通知，其中包含扩大外国科技人才在上海兼职工作资格认证范围的相关内容。

该政策的实施意味着，受雇于上海企业的外国科技人才可以在与原单位和兼职单位签订书面三方协议并提交至市外专局报备后，无需重新办理或变更工作许可证就能在沪从事兼职工作。

中国美国商会欢迎中国创造更灵活的工作环境，为外籍人士在华就业提供更多的工作安排和工作选择。中国美国商会建议明确“外国科技人才”并规范申请程序。中国美国商会还建议在全国范围内实施类似政策。

建议

对中国政府：

- 在全国采用透明和标准化的普通邀请函发放流程，确保在华工作的外籍人员及家属可以在疫情期间获取入境签证。
- 在全国推广吸引优秀外国留学生来华工作生活的相关政策，而不是仅限于特定地区。
- 为在华生活和工作的外籍人员创造更灵活的环境，提供更多的工作选择。
- 对外国科技人才进行明确定义，推动工作许可申请流程标准化，并在全国范围内推广相应政策。



Part Three:
Industry-Specific Issues
第三部分：具体行业问题

Agriculture

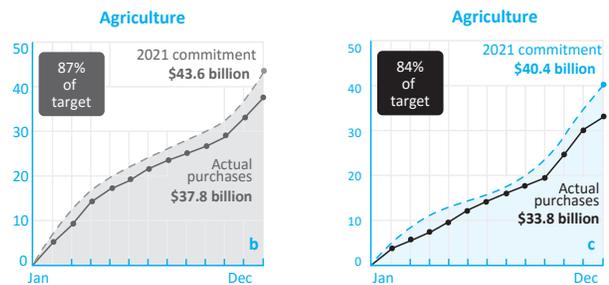
Introduction

AmCham China applauds the government of China, farmers, and food processors for the progress achieved in agricultural and food production in 2021. China’s long-term agricultural policy continues to emphasize the importance of green and sustainable agricultural modernization and rural development, while also increasing food security. In February 2022, the CPC Central Committee and State Council released the 2022 No. 1 Document, which emphasizes the need to continue “comprehensive promotion of rural revitalization, to ensure stable and increasing agricultural production, growing incomes for farmers and tranquility in rural areas.” In addition to the 2022 No. 1 Document, AmCham China commends the central government’s proposed objectives under the 14th Five-Year Plan (2021-2025) to improve the quality of agricultural goods, enhance the efficiency of agricultural production, and ensure food security.

In 2021, AmCham China members witnessed implementation of the *Economic and Trade Agreement Between the US and China* (Phase One Agreement). Progress with respect to food and agricultural commitments made by China include:

- Updates to implementing lists of US facilities permitted to export US agricultural goods, such as meat, dairy, infant formula, pet food, seafood, fish meal and dried grains,
- Announcements regarding tariff exclusions for imports of US agricultural products that had been subject to China’s retaliatory tariffs and a reduction in the tariff rate imposed on certain US agricultural goods.

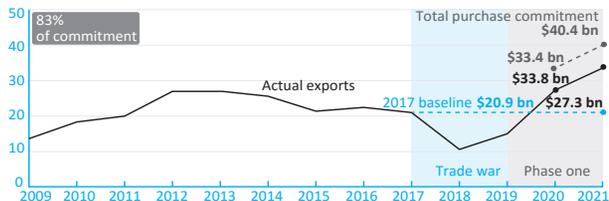
From January 2021 through December 2021, for covered agricultural products in the Phase One Agreement, China committed to an additional US \$19.5 billion of purchases in 2021 above 2017 levels, implying an annual commitment of US \$43.6 billion (Chinese imports, panel b) and US \$40.4 billion (US exports, panel c). In 2021, China’s imports of covered agricultural products from the United States were US \$37.8 billion and US exports to China were US \$33.8 billion. In 2021, China’s purchases of covered agricultural products reached 87 percent (Chinese imports) or 84 percent (US exports) of the annual commitment.



Source: Peterson Institute

While overall bilateral agricultural trade reached record levels, it is still below Phase One commitments. AmCham China recognizes the impact of the COVID-19 pandemic on Chinese import commitments and remains hopeful that China will faithfully implement and strive to meet its agricultural commitments under the Phase One Agreement in 2022.

US agricultural exports to China covered by the phase one deal, billions USD
a. All agricultural goods, 2009-21



Source: Peterson Institute

Some longstanding structural and regulatory issues continue to hinder reaching the full potential of bilateral agricultural cooperation. Frequent lockdowns and repetitive testing and disinfection requirements lead to disruptions of the whole frozen food supply chain and add extra cost to Chinese consumers amidst global food price inflation. AmCham looks forward to working together with both Chinese and US governments to address these challenges.

AmCham China member companies remain confident in their longstanding partnerships with Chinese agriculture businesses, though we remain deeply concerned about continued tensions between China and the US. AmCham China hopes to see a de-escalation in bilateral tensions and a long-term commitment and implementation from the Chinese government to address longstanding trade and

农业

引言

中 国美国商会（以下简称商会）祝贺中国政府 2021 年在农业领域取得的进展。中国的长期农业政策继续强调农业现代化和农村发展的重要性，同时注重提高产品安全。2022 年 2 月，中共中央和国务院发布 2022 年中央一号文件，强调继续全面推进乡村振兴，确保农业稳产增效、农民增收、农村稳定。除了一号文件，商会也赞赏中央政府在“十四五”规划（2021-2025 年）中提出的提高农产品质量、提高农业生产效率、保障粮食安全的目标。

2021 年，商会会员企业见证了中美第一阶段经贸协议的实施情况。中国在粮食和农业方面取得了以下进展：

- 更新允许出口美国农产品的美国设施实施清单，例如乳制品、婴儿配方奶粉、宠物食品、海鲜、鱼粉和干谷物。
- 宣布对受到中国报复性关税的美国农产品的进口免除关税，并降低对某些美国农产品征收的关税。

对于农产品的采购，按照中美第一阶段经贸协议中的约定，中国承诺在 2017 年采购额的基础上，2021 年再额外购买 195 亿美元，全年采购总额达到 436 亿美元（详见英文版本图表所示）。2021 年 1 月至 12 月，中国从美国进口了价值 378 亿美元的农产品，完成了其采购承诺的 87%。

尽管双边农业贸易总额达到创纪录水平，但仍低于中美第一阶段经贸协议中承诺的水平。商会了解新冠肺炎疫情对中国进口承诺的影响，并希望中国在 2022 年切实履行并达成中美第一阶段经贸协议的采购承诺。

一些长期存在的结构性矛盾和监管问题仍在继续阻碍双边农业合作潜力的充分发挥。频繁的封锁、重复检测和消毒要求导致整个冷冻食品供应链的中断，并在全

球面临食品通胀的同时增加了中国消费者的支出成本。商会期待着与中美两国政府能携手共同应对这些挑战。

尽管商会会员企业对日益紧张的中美关系深感忧虑，但对与中国农业企业的长期合作关系依然充满信心。商会希望双边紧张局势能有所缓和，中国政府能做出长期承诺并付诸实施，以应对影响会员企业在华经营的长期贸易挑战。商会会员企业计划与中美两国的农业企业开展合作，建立牢固的商业伙伴关系。商会也希望继续支持中国实现农业现代化和粮食安全的目标。

种子行业

市场准入挑战

与 2020 年版相同，2021 年版《外商投资准入特别管理措施》（国家负面清单）和《自由贸易试验区外商投资准入特别管理措施》（自贸区负面清单）没有取消农作物品种培育和种子生产方面的限制，商会对此感到遗憾。在中国全面实施种业振兴行动的背景下，2021 年版国家负面清单仍然要求玉米品种培育和生产的须由中方控股。商会依旧建议政府放宽外资对小麦和玉米新品种育种和生产的投资限制，允许外国投资者拥有 100% 股权，并且允许外资对大豆和水稻新品种的育种和生产进行投资。

2021 年国家负面清单和自贸区负面清单仍然禁止外商投资于“转基因品种培育和转基因种子生产”。根据中国政府的农业现代化发展方针所倡导的“尊重科学，严格监管，有序推进生物育种的产业化和利用”，禁止外资进入这些领域只会限制良性竞争，降低行业效率，让中国农民无法获得国际先进农业技术和作物品种。同时，将放慢中国农业在实现创新和现代化目标方面的脚步。如果外国投资者不能参与中国生物技术领域的产业化和发展，他们所投资的传统育种公司将缺乏竞争力，

market access challenges affecting our member companies. AmCham China members intend to work together with Chinese and US agricultural industries to ensure that business partnerships remain strong. AmCham China also hopes to continue to support efforts to achieve China's goals in agricultural modernization and food security.

Seed Industry

Market Access Challenges

AmCham China is disappointed that the 2021 *Special Administrative Measures on Access to Foreign Investment* (National Negative List) and the *Free Trade Zone Special Administrative Measures* did not remove the equity cap on ownership of joint ventures of certain crop seeds, reflecting no change to the 2020 edition. Under the circumstance of China National Seed Vitalization, the 2021 National Negative List still requires that the controlling entity in corn variety breeding and production be Chinese. AmCham China continues to urge, as we have done consistently in the past, that the government relax restrictions on foreign investment ownership in the breeding and production of new crop varieties for wheat and corn to allow foreign investors to own 100 percent equity; and allow foreign investors to invest in the breeding and production of new crop varieties of soybean and rice.

The 2021 National Negative List and the FTZ Negative List still prohibit foreign investment in "genetically-modified (GM) varieties breeding and GM seed production." Although the Chinese government's agricultural modernization development guidelines include "[a] respect for science, strict supervision, and an orderly promotion of the industrialization and utilization of biological breeding," prohibiting foreign investment in these fields will only restrict healthy competition and reduce the sector's efficiency and undercut the ability of Chinese farmers to obtain internationally advanced agricultural technology and crop varieties. At the same time, it will delay progress in China's agricultural sector toward meeting its goals of innovation and modernization. If foreign investors cannot participate in the industrialization and development of China's biotechnology sector, their investments in conventional breeding companies will be less competitive and unlikely to survive. Such outcomes will substantially affect existing investments and are likely to discourage continued R&D and reduce the willingness of foreign investors to participate in China's seed industry.

We urge the Chinese government to allow foreign investors to engage more widely and fairly in seed technology innovation and crop production.

Import and Export of Seed and Breeding Material

AmCham China member companies are delighted that the government is revising the regulations governing the import and export of plants, such as the implementing regulations

with respect to phytosanitary ordinance (e.g., the *Implementing Rules for the Plant Quarantine Regulations (Agricultural Part)*). Our member companies believe that significant changes to regulations governing the 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 approvals, slowly processed phytosanitary certifications and permits, and unclear policy guidance and directives.

Exporting seeds for research purposes is overly complicated for multinational corporations and foreign-invested enterprises (FIEs). For instance, germplasm exports from China are prohibited if domestic germplasm is used in breeding. 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.

We hope that the Ministry of Agriculture and Rural Affairs (MARA) will take into consideration comments provided by industry as it revises relevant legislation on the import and export of seed breeding material, such as industry input provided on the *Implementing Regulations for the Plant Quarantine Regulations (Agricultural Part)*, published by MARA for comment in October 2019. More broadly, we urge MARA to reduce the obstacles created by unclear approval procedures with respect to research cooperation between domestic and foreign entities, technical exchanges, information sharing, and research and development of new varieties. Requiring approvals from multiple seed administration agencies and MARA in China and in the country-of-origin delays research cooperation and inhibits technological exchange and information sharing between multinational corporations and the local seed industry, hampering new variety development.

Moreover, with respect to export controls, the Chinese government issued a notice on *Adjusting and Promulgating the Catalogue of Technologies Prohibited or Restricted from Export by China* (the Catalogue) on August 28, 2020. This is the first revision to the Catalogue since 2008. The revised Catalogue listed "crop (including pasture) germplasm resources and corresponding breeding technology" as well as "genetic engineering (genes and vectors)" as restricted for export.

As of the date of publication, AmCham China notes that a separate catalogue of crop/germplasm resources that are permitted for export has yet to be published. In order to encourage continued innovation and investment in breeding technologies, we urge the government to remove these newly added items from the Catalogue. If this cannot be done, we urge that at a minimum the government apply differential treatment to germplasm products or genes that are proprietary/property of the private sector and publish a catalogue of crop/germplasm resources that are permitted for export as soon as possible.

不可能存活。这样的结果将大大影响现有的投资，并有可能阻碍后续研发，降低外国投资者参与中国种子行业的意愿。

商会敦促中国政府允许外国投资者更广泛和公平地参与种子技术创新和农作物生产。

种子和育种材料的进口和出口

商会会员很高兴看到政府正在修订有关植物进出口的法规，如有关植物检疫条例的实施细则（如《植物检疫条例实施细则》（农业部分））。商会会员认为，有必要对种子和育种材料进出口的管理法规进行大幅修改，以简化冗长而复杂的审批程序。这将减少商会会员因多余的审批、植物检疫证书和许可证的缓慢处理以及政策指导和指令不明确而导致的延误。

对于跨国公司和外资企业来说，以研究为目的种子出口过于繁琐。例如，如果使用国内种质，则禁止从中国出口种质。即使不使用国内种质，申请和批准程序也十分模糊和冗长，而且批准率很低。

商会希望农业农村部在修订育种材料进出口的相关法律时，考虑业界提供的意见，比如业界对农业农村部2019年10月公布的《植物检疫条例实施细则》（农业部分）所提出的意见。更广泛地说，商会敦促农业农村部在国内外实体的研究合作、技术交流、信息共享以及新品种的研究和开发方面，减少因审批程序不明确而造成的障碍。要求中国和原产国的多个种子管理机构和农业农村部进行审批，会拖延研究合作，抑制跨国公司和当地种子行业之间的技术交流和信息共享，阻碍新品种的开发。

此外，在出口管制方面，中国政府于2020年8月28日发布了《关于调整发布〈中国禁止出口限制出口技术目录〉的通知》，这是自2008年以来首次对《目录》进行修订。修订后的《目录》将“农作物（包括牧草）种质资源和相应的育种技术”以及“基因工程（基因和载体）”列为限制出口项。

截至本报告发表之日，商会注意到，还没有发布单独的允许出口的作物和种质资源目录。为了鼓励育种技术的不断创新和投入，商会敦促政府从目录中删除这些新增项目。如果无法实现，商会敦促政府至少要对属于私营企业专有/产权的种质产品或基因实行差别待遇，

并尽快公布允许出口的作物和种质资源目录。

假冒种子和知识产权保护

种子行业属于技术和研究密集型产业，因此对知识产权的有效保护对种子行业至关重要。知识产权保护不足一直是中国种子行业发展的主要障碍。品种侵犯和种子假冒是进口和国产种子的共同问题。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，正在努力为种子行业的创新创造良好的环境，加强知识产权的法律保护，包括在新修定的《中国种子法》中对实质性派生品种的新规定。商会敦促中国农业科学院尽快制定实质性派生品种实施办法，特别是玉米的技术规范。

商会会员希望继续与中国政府相关部门保持密切合作。商会敦促中国当局对侵权行为进行更加严厉的处罚，来有效保护育种者权利。商会还建议提供更多的知识产权工具以对创新进行全面保护。我们尤其建议政府：

- 对不属于个别植物品种的创新生物技术产品授予适当的专利权。
- 为种子企业建立知识产权信用体系，以更好地管理种子开发的知识产权，加强执行育种者权利保护。

农业化学品行业

农药注册数据互认工作

中国在2017年修订了国内的农药法规。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，外商投资企业必须委托农业农村部批准的实体在中国进行所有的注册检测。从2017年11月1日起，农业农村部在注册程序中已经停止接受海外实验室出具的经合组织良好实验室规范报告。这些报告支持经合组织的数据互认计划，该计划规定，一种农药如果经过一个数据互认计划签署国的检测和批准后，则被视为被所有签署国接受。因此，对于其他国家产生的相关高质量数据，农药登记部门可以考虑免除国内的登记要求。中国正在考虑加入数据互认计划，但尚未加入。

因此，外商投资企业现在必须与中国实体合作进行登记检测，每次检测的费用为2000到3000万人民币，并面临额外的登记程序，可能会延长至三到四年。根据商会会员的经验，中国现在是少数几个不接受农药注册数据互认计划的国家之一，并要求所有的登记检测在其境内进行。

Counterfeit Seeds and Intellectual Property Protections

The seed industry is technology and research intensive, making effective intellectual property rights (IPR) protection critical to its success. Weak IPR protection has been a major barrier to the development of China's seed industry. Variety violations 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 the State Administration for Market Regulation (SAMR), are working to create a favorable environment for innovation in the seed sector by strengthening IPR legal protections, including new regulation on Essentially Derived Varieties (EDV) in the revised China Seed Law. We urge MARA to establish technical specifications for the determination of Essentially Derived Varieties as soon as possible, especially for maize.

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 infringements as an effective way to protect breeders' PVP rights. AmCham China also recommends the provision of additional IP tools to provide comprehensive innovation protection. In particular, we recommend that the government:

- Grant proper patent rights to innovative biotech products which are not individual plant varieties,
- Establish an IP credit system for seed companies to better manage IPR over seed development and enhance PVP enforcement.

Agrochemical Industry

Mutual Acceptance of Data (MAD) 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 FIE 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, FIEs 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. In our members' experience, China is now one of only a limited number of countries 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 internationally-produced pesticides. MARA should, at the same time, jointly seek an interim solution to accept the test reports from overseas GLP laboratories.

Addition of Illegal Pesticide Analogues

An ongoing crackdown on the production and use of fake pesticides by the authorities (including officials from MARA, SAMR, MPS and their subnational departments), has helped to reduce the presence of fake pesticides on the market and improve the overall quality of China's pesticide market. Agriculture industry stakeholders and farmers continue to suffer, however, from a growing problem whereby illegal ingredients, such as pesticide analogues, are "hidden" in pesticides available on the market. 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 should enable authorities to classify these pesticides as "fake."

The proliferation of these analogues is increasing and constitutes a major challenge facing enterprises in the pesticide industry. As the analogues being used have not been registered with the regulators, however, the agriculture and public security departments cannot consistently identify the "fake" pesticides which contain these analogues, an essential step to remove them from circulation and punish the offending producers.

Such pesticide analogues have not undergone the requisite testing and registration to guarantee their safety in accordance with China's pesticide management regulations. The illegal production and sale of pesticide analogues is a risk to China's environmental and food safety. Therefore, AmCham China encourages MARA to issue further regulations and guidance on what is being done to identify and dispose of products containing illegal pesticide analogues. Tests for the presence of pesticide analogues should be included as part of both annual and random inspections conducted by the authorities.

First Global Registration

Article 11 of the *Measures for the Administration of Pesticide Registration*, published in June 2017, provides that "companies exporting pesticides to China shall submit a pesticide registration application to the State Council

经过几年的共同努力，商会很高兴看到商务部主动与相关部委沟通，准备申请加入经合组织良好实验室规范体系，稳步实现数据互认。但是，这一过程需要时间。商会敦促农业农村部在接受海外良好实验室检测报告的同时，寻求一个临时的解决方案。

农药中添加的非法成分

政府（包括来自农业农村部、市场监督管理总局、公安部及其相关部门）对生产和使用假农药的行为进行持续打击，有助于减少市场上假农药的存在，提高中国农药市场的整体质量。然而，农业行业的利益相关者和农民仍然遭受着一个日益严重的问题，即农药类似物等非法成分，这些成分被“隐藏”在市面上的农药中。虽然这些类似物与农药标签上标明的有效成分具有相似的特性，但根据《农药管理条例》，如果农药含有化学类似物，则认定为“假农药”。

这些类似物正在传播扩散，是农药行业龙头企业面临的主要挑战。然而，由于使用中的类似物没有在监管机构进行注册，农业和公安部门无法持续有效识别含有这些类似物的“假农药”，而这也是将它们从流通中清除并惩罚违规生产者的必经之路。

这类农药类似物没有经过必要的检测和登记，无法按照中国的《农药管理条例》保证其安全性。非法生产和销售农药类似物对中国的环境和食品安全构成威胁。因此，商会鼓励农业农村部发布进一步的规定和细则，说明如何识别和处理含有非法农药类似物的产品。主管部门进行的年度检查和随机检查应包含对农药类似物的检测。

首次全球注册

2017年6月公布的《农药登记管理办法》第十一条规定：“向中国出口农药的企业应当向国务院农业主管部门提交农药登记申请，同时提交本条第一款规定的资料、标准农药样品，以及其他有关国家（或地区）的登记和使用证明”。

在实践中，当农业农村部审查注册申请时，要求申请人提供在其他国家使用的注册许可证作为“在其他相关国家（或地区）注册和使用的证明”。这种规定阻碍了商会会员企业将最先进的农药技术和产品引入中国市场，也与中国政府推动进一步开放和创新商业环境的总体方向相违背。

商会鼓励农业农村部考虑缩小这一规定的范围，只要求提供来自其他国家的注册申请证据，以提高将新产品引入中国市场的速度。在这方面，商会注意到中国政府正在提速创新药物的注册流程，让中国成为首个批准使用这些药物的国家（不用等它在别国获批之后），以使患者和国家卫生系统受益。因此，商会也敦促农业农村部学习国家药品监督管理局的经验，并在农用化学品行业实行类似的审批制度，以便中国农业市场能够及时获得更多更安全的新产品。

生物技术

具有生物技术特性的进口商品面临监管和许可证问题

2021年，具有生物技术特性的农作物商品审批取得了进展，农业农村部批准了2个产品。2021年，农业农村部在转基因生物安全委员会会议后及时发布了安全评价决定，商会认可这一进展，并鼓励农业农村部将转基因生物安全委员会会议后20个工作日作为发布决定的标准时间。商会很高兴地注意到，根据中美两国在2020年1月签署的中美第一阶段经贸协议，中国已承诺在评估和许可农业生物技术产品方面实施透明和基于科学的程序，并在不晚于24个月的时间内发布关于批准进口农业生物技术产品用于饲料和进一步加工的最终决定。鉴于这一承诺，商会提出以下担忧和建议。

商会十分关注监管部门在进口生物技术产品的安全审批方面提出的大量重复性数据本地化要求。商会鼓励农业农村部考虑产品在中国的预期用途，采取更灵活的数据本地化规定，而不是对数据施加限制性的、“一刀切”的要求。商会鼓励农业农村部与行业相关方进行深入探讨，制定更合理的数据要求，包括明确如何生成和分享数据以满足安全法规。商会建议农业农村部制定行政程序和数据要求，将转基因生物产品与含有用途的产品区分开来（如将饲料酶与转基因微生物区分开来），并考虑应用基因编辑等先进技术。

商会会员建议农业农村部在履行中国对进口农业转基因生物产品进一步加工最长24个月审批时限的承诺时，适用更明确的行政程序规则。例如，对于不打算在当地种植、用于进一步加工的进口转基因生物，如果农业农村部继续施加广泛的本地研究要求，特别是田间试验要求，那么24个月的审批时限就很难实现。商会注

agricultural authority together with the information stipulated in paragraph one of this Article, a standard pesticide sample, along with proof of registration and use in other relevant countries (or regions).”

In practice, when MARA reviews a registration application, it requires applicants to provide the registration licenses used in other countries as proof of “the registration and use in other relevant countries (or regions).” Such practice prevents AmCham China member companies from introducing the most advanced pesticide technologies and products into the Chinese market and runs counter to the overall orientation of the Chinese government to promote a more open and innovative business environment.

AmCham China encourages MARA to consider scaling back this requirement to provide registrations from other countries to accelerate introduction of new products into the Chinese market. We note in this regard that the Chinese government authorities are accelerating the registration of innovative drugs as the first country to approve their usage for the benefit of patients and national health system. AmCham China therefore also urges MARA to study the experience of the National Medical Products Administration (NMPA) and institute similar approvals in the agrochemical industry in order for the Chinese agriculture market to have timely access to newer and safer products.

Biotechnology

Regulatory and permit issues facing import commodities with biotech traits

The regulatory approval procedure for crop commodities with biotech traits made progress in 2020, with four products approved by MARA. In 2020, MARA released its decision on safety evaluations via its website within 20 working days following the NBC meeting and extended the valid authorization period of biosafety certificates from three years to five years, which AmCham China commends as a positive development. We are pleased that under the terms of the Phase One Agreement, China has committed to implementing a transparent and science-based procedure for evaluating and licensing agricultural biotechnology products and a maximum 24-month timeframe for issuance of a final decision on the approval of imported agricultural biotechnology products for feed and further processing (FFP). In light of this commitment, we offer our continuing concerns and suggestions below.

AmCham China is concerned by the number of repetitive data localization requirements imposed by 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. We encourage MARA to conduct a deep dive

with industry stakeholders to develop more reasonable data requirements, including clarifying how data can be generated and shared to meet safety regulations. We recommend MARA adopt administrative procedures and data requirements that differentiate genetically modified organism (GMO) products from Contained Use products (such as differentiating feed enzymes from genetically modified microorganisms) and consider the application of cutting-edge technologies such as gene-editing.

AmCham China members recommend that MARA adopts clearer administrative procedural rules with respect to the implementation of China’s commitment on a maximum 24-months approval timeframe for imported agricultural GMO products for FFP. For example, it will be difficult to achieve the 24-month approval timeframe if MARA continues to impose extensive local study requirements, in particular the field trial requirement, on imported GMOs for FFP which are not intended to be locally cultivated. In the past, treating imported GMOs for processing in the same way as local cultivation for which the full-blown technical assessment and local studies standards were applied has become a major delaying factor in the regulatory approval timeframe and product launch in China. Moreover, the current regulatory process for approval of imported GMOs for FFP involves multiple steps, including an application for import permit (to import testing materials to China for local studies), local studies, a biosafety assessment conducted by the NBC and an application for approval of a biosafety certificate.

AmCham China members believe that all of these interim steps, such as the import permit application and the biosafety certificate application, should be treated as parts of a single application, rather than as separate applications, so that China’s commitment to a 24-month maximum approval timeframe for imported GMO products for FFP will not be undermined.

AmCham China also notes that export approvals from the country of origin (COO) are still a required precondition to apply for import safety certificates for biotech products. Under the current rules, MARA still requires COO approval at the very beginning of the entire process, that is when an applicant applies for an import permit to import testing materials to China for local studies. Requesting COO approval prior to the commencement of local studies and technical safety assessments has created significant delay in the regulatory process. 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.

GMO Low-Level Presence

Under the State Council GMO Biosafety Regulations, no agricultural GMOs can be imported to China without completing relevant biosafety assessment and obtaining a

意到农业农村部在 2022 年初取消了对新批准产品的国内田间试验要求，这一举措让商会感到鼓舞。商会会员建议农业农村部将无需国内田间试验作为所有用于进一步加工的转基因生物的标准要求，并继续考虑取消其他类型国内研究的要求。过去，对进口转基因生物的处理方式与对本地种植的处理方式一样，都是采用全面的技术评估和本地研究标准，这已经成为中国监管部门审批时间和产品上市缓慢的主要原因。此外，目前对进口转基因生物用于进一步加工的批准程序涉及多个步骤，包括申请进口许可（将检测材料进口到中国进行本地研究）、本地研究、由农业转基因生物安全委员会进行生物安全评估以及申请生物安全批准证书。

商会会员认为，所有这些步骤，如进口许可申请和生物安全证书申请，都应作为一份申请的组成部分，而不是分为单独的申请，这样就不会影响中国对进口转基因生物产品进一步加工最长 24 个月审批时限的承诺。

商会还指出，农业农村部要求原产国的出口批准仍然是申请生物技术产品进口安全证书的必要前提。根据目前的规则，农业农村部仍然要求在研发过程的一开始，也就是在申请人申请进口许可，将检测材料进口到中国进行本地研究时，就获得原产国的批准。在开始本地研究和技术安全评估之前要求原产国批准，在监管过程会造成很大延误。商会鼓励农业农村部允许企业在考虑出口批准的同时申请中国进口安全批准，以加快这些产品进入中国市场的速度。

转基因生物低水平混杂

根据国务院《农业转基因生物安全管理条例》，如果没有完成相关的生物安全评估并获得农业农村部进口许可或生物安全证书，任何农业转基因生物都不得进口到中国。这实质上意味着中国对转基因生物低水平混杂采取零容忍的态度。中国对任何具有生物技术特征的商品采取零容忍政策是不现实的，因为在避免具有和不具有生物技术特征的谷物无意混杂方面，粮食企业面临挑战，即使是采用最佳做法并遵守最高农业和生产实践标准的经营者，这些政策也是不现实的，因为对于操作数千吨谷物的经营者来说，发生微量混杂现象的概率很大。根据这些零容忍政策，如果在多达 66000 公吨的货物中发现一个由未经批准的转基因种子种植的内核、豆子或谷物，那么整批货物就会被拒绝进口。

转基因生物低水平混杂是一个普遍适用于商品交易的国际标准。2008 年，国际食品法典委员会批准了《国际食品法典——附件 3：重组 DNA 植物材料在食品中低水平混杂食品安全评估》。行业的最佳做法是，允许粮食运输中最多含有 5% 的新的转基因产品，这些产品已经在原产国得到批准，并获得了相关的食品安全认证。如果中国采用这种做法，将提高贸易水平，而不会对公众健康构成风险。此外，2020 年中央经济工作会议提出要推动生物技术育种的产业化，中国已经批准了转基因生物安全证书的本地种植。中国继续采取零容忍政策和立场，可能会给全球市场上的中国国内生物技术产品带来挑战。商会还注意到，中美第一阶段经贸协议的附件 16 也就这一特殊问题规定了一些一般原则，包括中国承诺及时通知进口商低水平混杂事件的发生并要求提供补充信息，向美国提供与低水平混杂事件发生有关的风险和安全评估摘要，及时处理该事件，在发布决定时考虑美国或其他外国给予的授权，并进行个案评估以尽量减少贸易干扰。

当具有生物技术特征的产品在一个市场已经得到批准，且在运往另一个尚未批准市场的粮食中检测出微量的生物技术特征时，就会造成粮食供应的中断，所以商会建议中国政府采用低水平混杂标准，可以避免粮食供应中断的影响。新品种和组合品种的授权数量正在不断增加，更多的新型基因工程品种正在开发中。在出口国和进口国批准基因工程产品的过程之间会不可避免地存在一定程度的延迟。采用低水平混杂标准符合国际最佳实践和基于科学的标准，可以帮助减轻任何延误带来的影响，有效控制风险并降低成本。

肥料

21 世纪中国化肥产量大幅增长，产能过剩使中国成为世界上最大的化肥出口国，进而碳排放过量，消耗了大量磷矿石等不可再生资源，造成了沉重的环境负担。

例如，中国氮磷钾肥加工业规模巨大，产能超过 1 亿吨。氮磷钾工业主要采取造粒和加热工艺对氮、磷、钾成品进行再加工，属于能源密集型生产，增加了不必要的运输处理程序，提高了种植成本。

精简化肥业结构、进一步控制产能、提高加工运输效率有利于降低种植者的肥料成本，减少能源使用及碳排放量。

MARA import permit or biosafety certificate. This essentially means zero tolerance for GMO Low-Level Presence (LLP) in China. China's zero-tolerance policies for any commodities with biotech traits are not practical given the challenges facing commercial grain traders in avoiding the unintentional co-mingling of grains with and without biotech traits, even among operators who apply best practices and adhere to the highest standards of agricultural and manufacturing practice. These policies are also impractical given the statistical odds of some co-mingling occurring for operators who manipulate thousands of metric tons of grain. Under these zero tolerance policies, if just one kernel, bean, or grain grown from the seed of an unapproved genetically-engineered (GE) event is found in a shipment that can be as large as 66,000 metric tons, then the entire shipment can be rejected by the authorities.

GMO LLP is an international standard commonly applied in commodity trading. In 2008, the Codex Alimentarius Commission approved the *Annex on Food Safety Assessment in Situations of Low-Level Presence of Recombinant-DNA Plant Material in Food*. Industry best practice is that grain shipments be allowed to contain up to five percent of new genetically-engineered products that have been approved in the originating country and have obtained the relevant food safety certifications. If China were to adopt this practice, it would increase levels of trade without posing risks to public health. In addition, China's 2020 Central Economic Work Conference proposed to promote the industrialization of biotechnology breeding, and China has already approved GMO safety certificates for local cultivation. Continuation of China's zero-tolerance policy and stance is likely to create challenges for China's domestic biotech products in the global market. We also note that Annex 16 of the Phase One Agreement also sets out some general principles on this particular issue, including China's commitment to promptly inform the importer of the LLP occurrence and request for additional information, provide to the US a summary of the relevant risk and safety assessment relating to the LLP occurrence, promptly handle the occurrence, take into consideration the authorization granted by the US or other foreign countries when issuing decisions, and make a case-by-case assessment to minimize trade disruptions.

AmCham China recommends that the Chinese government apply the LLP standard. Doing so would mitigate the consequences of disruptions to grain supplies that can result when trace amounts of a biotech trait that has been approved in one market are then detected in a grain shipment to another market where the trait has not yet been approved. The number of authorizations for new and combined events is increasing and more novel genetically engineered (GE) events are being developed. Some amount of delay between the approval of a GE product in the exporting country and importing country is inevitable. Adoption and application of the LLP standard is consistent with international best practice and science-based standards, can help mitigate the impacts of any delays, and is a useful technique to control risk and reduce costs.

Fertilizer

Fertilizer production increased significantly in China in the 2000s and has resulted in excess capacities. The excess capacities have made China the largest fertilizer exporter in the world, generating excessive carbon emissions, depleting non-renewable resources such as phosphate rock, and creating many environmental burdens.

For example, China has an overwhelming NPK fertilizer processing industry with capacity of over 100 million metric tons. The NPK industry mainly uses granulation and heating processes to reprocess finished nitrogen, phosphate, and potassium products. Its production process is energy intensive and adds an unnecessary layer of transportation and handling, increasing cost for growers.

A lean fertilizer industry structure with controlled capacity and more efficient processing and transportation will help lower fertilizer costs for growers and reduce energy consumption and carbon emissions.

New technology such as digital farming and biotechnology will play an important role in the development of sustainable modern agriculture in China. The effective adoption of digital farming requires enterprise leadership and government support to help design correct solutions for growers. Biotechnology has great potential to enhance nutrients use efficiency, to remove overuse of chemical fertilizers, and to improve soil health. Carbon emissions from applications of fertilizers, especially nitrogen fertilizers, can be reduced through advancement and adoption of biotechnology. Government support and better regulations to allow fair market competition are essential to cultivate a healthy market environment.

Feed Industry

Feed Import Approvals

In order for feed additives and some feed ingredients to be imported into China, they are required to undergo a government approval process that involves first registering these products with MARA followed by additional product risk assessments and facility registration procedures with the General Administration of Customs of China (GACC). These approvals need to be in place before the products can be imported. The registration process with MARA needs to be renewed every five years.

Although the registration procedures for non-new feed and feed additives with MARA are predictable, the GACC registration procedures have traditionally been lengthy and less transparent. A lack of coordination between ministries is hampering the industry. AmCham China urges reform of the approval procedure requirements, and that the timeframe be shortened by allowing companies to submit the same docu-

数字农业和生物技术等新技术将在中国可持续现代农业的发展进程中发挥重要作用。有效采用数字农业需要企业的领导力和政府的支持，帮助种植者设计合适的解决方案。生物技术 in 提高养分利用效率、解决过度使用化肥和改善土壤健康等方面潜力巨大。通过进一步推进生物技术的发展，并采用生物技术，可以减少施用化肥，特别是氮肥造成的碳排放。政府提供支持、进一步完善法规，推动市场公平竞争，对培养健康的市场环境至关重要。

饲料行业

饲料进口审批

向中国境内出口饲料添加剂和一些饲料原料的，需要经过政府审批程序，首先在农业农村部进行注册登记，然后在中国海关总署进行产品风险评估和生产设施登记。上述必须在产品进口之前完成上述审批程序。农业农村部要求每五年登记一次。

尽管饲料和饲料添加剂在农业农村部的登记程序明晰，但海关总署的登记程序仍然冗长、透明度较低。政府各部门之间缺乏协调，阻碍了该行业发展。商会促请改革审批程序要求，允许企业同时向农业农村部和海关总署提交相同文件，缩短办事期限。商会建议农业农村部和海关总署一同设计解决方案，以便饲料样品进口到中国市场进行验证和测试。

根据中美第一阶段经贸协议，中国承诺加快进口饲料登记，商会对该协议部分的落实表示期待。总体而言，商会预期中美第一阶段经贸协议的全面实施将有助于中方获取美国产品和技术，促使中国食品生产更为健康、更可持续。协议的实施还提供了替代抗生素解决方案。

牛肉和猪肉贸易

中美两国之间的牛肉和猪肉贸易对中国人民至关重要，确保中国消费者持续获得安全、营养丰富、价格合理的蛋白质。中美第一阶段经贸协议中有关美国红肉进口的条款，标志着中国商业贸易条件的显著提升。2021年，美国对华的牛肉出口总额创下新高，达到15.5亿美元（98.5亿元人民币），与2020年相比，增长了500%以上。由于非洲猪瘟爆发导致国内猪肉短缺，2020年美国对中国的猪肉出口达到了20.95亿美元，为历史最高水

平，但随着中国猪群重建，2021年美国对中国的猪肉出口下降到16亿美元以下。2021年美国对中国的家禽出口达到8.4亿美元，比2020年增长17%，主要得益于美国鸡爪的出口价格上涨。

中美第一阶段经贸协议取消了对肉类贸易的一些长期限制，为美国牛肉、家禽和猪肉生产者提供了机会，令人欣喜不已。在中美第一阶段经贸协议中，中国承诺取消对美国牛肉及其产品的牛龄要求，并扩大了进口美国牛肉和加工牛肉产品的许可范围。

中国还将认可美国行业的可追溯体系，并对牛体内莱克多巴胺的最大残留限量进行风险评估。莱克多巴胺是美国食品药品监督管理局（FDA）批准的添加剂，用于提高肉类产量。中国还承诺对牛生产中使用的合成激素采用国际公认的最大残留限量。尽管中国检疫部门遵守牛肉激素最大残留量的标准，但莱克多巴胺的风险评估和最大残留限量最终标准尚未公布，目前仍禁止进口含莱克多巴胺残留的猪肉。

中国于2019年11月解除了对美国禽肉出口的禁令。中国从2015年高致病性禽流感爆发以来一直禁止进口美国家禽产品。中美两国签署的家禽产品安全贸易区域化协议将保证未来不会仅因几例高致病性禽流感病例而禁止整个国家的产品出口。

美国向中国出口的牛肉、家禽和猪肉在常规性进口关税的基础上，还需缴纳25%、30%和37%的针对美国301条款的反制性关税。幸运的是，过去两年，中国政府一直豁免美国牛肉、家禽和猪肉出口的反制性关税。虽然中美第一阶段经贸协议已于2021年12月31日到期。当前无法预料中国政府是否会延长对美国动物蛋白的报复性关税豁免，因此美国肉类行业仍然面临不确定性，这将对美国肉类产品在中国市场的竞争力产生巨大影响。商会促请两国政府针对这些悬而未决的问题谈判协商解决，为肉类贸易创造稳定的环境。

为应对新冠肺炎疫情，中国政府制定了多项措施，以应对疫情通过进口冷冻食品进行传播的风险，尽管新冠肺炎并不是食源性疾病。世界卫生组织和粮食及农业组织于2020年4月联合发布的临时指南中指出“人们通过食品或食品包装感染新冠疫情的可能性非常小。”此外，中国国家食品安全风险评估中心和中国疾病预防控制中心（CDC）的官员表示，新冠肺炎通过食品和包装传播的风险非常低。

ments simultaneously to both MARA and GACC. We also recommend that MARA and GACC devise a solution so that feed samples can be imported to undergo verification and testing in the China market.

Under the Phase One Agreement, China has committed to accelerating registration of imported feed. In general, AmCham China continues to anticipate that full implementation of the Phase One Agreement will help to secure US-based products and technologies in support of healthier and more sustainable food production in China. This also includes allowing for the provision of alternative antibiotic solutions.

Meat and Poultry Trade

The US-China beef, poultry and pork trade continues to demonstrate the importance of this partnership for the Chinese people in enabling them continued access to safe, nutritious, and reasonably-priced protein. Implementation of the Phase One Agreement market access provisions concerning US meat imports has resulted in a marked improvement in the terms of commercial trade. Total US beef exports to China in 2021 reaches a record of US \$1.55 billion (RMB 9.85 billion), a 500+ percent increase compared with 2020. Due to a domestic pork shortage driven by ASF outbreak in the past several years, US exports of pork to China reached a record high of \$2.28 billion in 2020 but dropped 26 percent to U. \$1.74 billion in 2021 due to a rebuild in China's hog herd. US poultry exports to China in 2021 reached US \$879 million, a 16 percent increase from 2020, thanks largely to increased export prices of US Chicken paws.

The Phase One Agreement removed a number of long-standing restrictions on the meat trade that provide welcome opportunities for US beef, poultry and pork. In the Phase One Agreement, China committed to remove all cattle age restrictions for US beef and beef products and expand the product scope for US beef and processed beef products that are permitted for import.

China also agreed to recognize US industry traceability systems and undertake a risk assessment for Maximum Residue Levels (MRLs) for ractopamine, an FDA-approved additive used by the US beef and pork industries to enhance meat yields. China also committed to adopting internationally recognized MRLs for synthetic hormones used in cattle production. However, neither the ractopamine risk assessment nor the final MRL standard have been released, although Chinese quarantine authorities are adhering to the draft standard for beef hormone MRLs. The ban on pork imports with traces of ractopamine remains.

China removed the ban on US poultry imports in November 2019, which had been put in place for 5 years due to high pathogenic avian influenza (HPAI). An agreement on regionalization of poultry diseases signed by the US and China also

removed the risk of a ban on imports from the whole country just because of a few isolated HPAI cases in the future.

US beef, poultry and pork exports to China are subject to China's Section 301 retaliation tariff at 25 percent, 30 percent and 37 percent, respectively, on top of regular import duty. Fortunately, the Chinese government has offered an exemption from the retaliation tariff for US beef, poultry and pork exports in past two years. While the Phase One Agreement expired on Dec 31, 2021, the US meat industry faces uncertainty as to whether the Chinese government will continue to offer an exemption from the retaliation tariff to US animal protein in 2022 and beyond, which will have a huge impact on competitiveness of US meat products in China market. AmCham China urges the two governments to negotiate a solution on these pending issues to create a predictable environment for meat trade.

In response to the COVID-19 pandemic, the Chinese government has enacted multiple measures designed to address the risk of COVID-19 transmission via imported frozen food, despite the fact that COVID-19 is not a food-borne disease. Moreover, according to joint World Health Organization (WHO) and Food and Agriculture Organization (FAO) interim guidance issued in April 2020, "it is highly unlikely that people can contract COVID-19 from food or food packaging." Moreover, the Deputy Director of China's National Center for Food Safety Risk Assessment and Chinese Center for Disease Control (CDC) said the risk of transmission of COVID-19 through food and packaging is very low.

The GACC began to suspend the import of products from foreign meat plants beginning June 18, 2020 and published the *Announcement on the implementation of emergency preventive measures for overseas producers of imported cold chain foods that have been detected positive nucleic acid of the new coronavirus* on September 11, 2020. Beginning in the fall of 2020, China implemented regulations that mandate COVID-19 testing and disinfection of all imported cold chain products, including US meats, at the first point of entry into the market following their release from customs and quarantine. In 2020 GACC suspended imports from a total of 124 foreign meat plants in 21 countries, some with only one confirmed employee with a COVID-19 infection. The majority of these suspensions remain in place until today and have yet to be lifted even after more than one year. The GACC has also undertaken emergency preventive measures resulting in a temporary suspension of one or four weeks on 39 overseas meat plants in 2020.

Such large-scale suspensions have imposed significant losses on international meat suppliers and limited their capacity to meet Chinese demand. The Comprehensive Team of the Joint Prevention and Control Mechanism under the State Council issued the *Work Plan for Preventive and Comprehensive Disinfection of Imported Cold Chain Food* on November 9, 2020, and the *Notice on further improving the traceability management of cold chain food* on November

从2020年6月18日起，海关总署开始暂停进口外国肉类工厂的产品，并于2020年9月11日发布《对检出新冠病毒核酸阳性的进口冷链食品境外生产企业实施紧急预防性措施的公告》。从2020年秋季，中国政府要求所有进口的冷链产品（包括美国红肉）在从海关和检疫部门放行后进入市场的第一时间，都必须进行新冠肺炎检测和消毒。2020年，海关总署暂停了21个国家共计124家外国肉类工厂的进口，有些工厂只有一名职员确诊感染新冠病毒。海关总署还采取了紧急预防措施，使39家海外肉类工厂在2020年暂停运营一至四周。

如此大规模的供应暂停给国际肉类供应商造成了巨大损失，并限制了其满足中国消费需求。国务院联防联控机制综合工作组于2020年11月9日发布了《进口冷链食品预防性全面消毒工作方案》，并于2020年11月27日发布了《关于进一步做好冷链食品追溯管理工作通知》。根据以上公告，所有用于肉类进口的集装箱必须在市级的中央仓库进行消毒，进口相关数据需要由中国进口商上传至监控系统，然后才能将产品投放市场。以上严格措施的出台，增加了肉类供应商的物流成本和滞留费，并阻碍了整个肉类供应链的运转。商会敦促中国政府公布相关科学证据，证明采取严格的预防措施的合理性。如以上做法不可行，商会则敦促政府根据最新的科学数据调整这些措施，使中国采取的措施与国际指南保持一致。

美国牛肉和猪肉生产商仍致力于与中国政府合作，进一步了解彼此的立场，让中国消费者能够买起安全的、可持续生产的猪肉和牛肉。

农业机械

自2004年以来，补贴和其他优惠政策推动了中国农业机械化设备的销售，降低了中国粮食生产的总体成本。商会非常感谢中国中央和地方农业主管部门为符合补贴要求的进口农机产品获批推广鉴定证书并顺利归档给予的大力支持。由于省级农业部门在实施补贴方面拥有充分的自主权，各省的补贴政策也不尽相同，农业机械制造商在一些地区仍然难以完成归档。商会恳请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，提高产业效率。商会建议有关部门能够考虑调整补贴方向，逐步转向对新技术如智能农业的补贴。

建议

对中国政府：

- 进一步向外资企业开放小麦、玉米、大豆、水稻育种和种子生产、转基因作物和现代农业加工领域，加快创新，持续改善中国农业领域的营商环境。
- 简化整个农业供应链的审批程序，包括：① 种子和育种材料的进出口，以促进中国种子品种的发展；② 在农用化学品行业，在中国加入经合组织的数据互认体系之前，允许农药注册继续基于海外生成的数据作为临时措施。
- 与中美第一阶段经贸协议内容保持一致，简化农业生物安全监管流程及相关的审核时间表。相关的认证程序应按照规定计划期限定期进行。
- 发布科学依据，证明对包括牛肉和猪肉在内的进口冷链食品采取严格的新冠肺炎预疫情控措施的合理性。根据最新的科学数据调整相关措施，并使中国采取的措施与国际指南保持一致。
- 鼓励各省执行统一的农业机械补贴，提高效率，并逐步将为“智能农业”提供动力的新型创新技术纳入补贴。

对美国政府：

- 巩固中美第一阶段经贸协议的成果，加强与中国政府的沟通，探索合作空间，降低对中国商品的关税，恢复美中双边贸易正常化。
- 通过官方和非官方双边对话机制加强与中方合作，监督中美第一阶段经贸协定的执行情况，并继续致力于解决美国农业生产商面临的贸易和投资限制。

27, 2020. Under these documents, all containers used for meat imports must be disinfected in a central warehouse located at the city level, and the associated data on imports needs to be uploaded into a monitoring system by the Chinese importer before these products can be released to the market. Enactment of these strict measures has increased the cost of logistics and demurrage for meat suppliers and has slowed entire meat supply chains. AmCham China urges the Chinese government to publish scientific evidence to justify the imposition of these strict preventive measures. If that is not possible, then we urge that the government adjust these measures based on the most recently available scientific data and bring China's practices in this respect into alignment with international guidance.

US beef and pork producers remain committed to working with the Chinese government to understand each other's positions and to enable Chinese consumers to have access to affordable pork and beef that is produced safely and sustainably.

Agricultural Machinery

Since 2004, subsidies and other favorable policies have powered sales of agricultural mechanization equipment in China, reducing overall costs of food production in China. We highly appreciate the great support of central and provincial governments for qualified imported agricultural machinery to obtain appraisal certificates and complete filing for the subsidies. As provincial agricultural authorities have substantial autonomy regarding subsidy implementation, and policies differ from province to province, agricultural machinery manufacturers still have difficulty completing filing in some regions. AmCham recommends that authorities encourage consistent subsidy policies and filing requirements at the provincial level in order to foster a healthy business environment and improve farming efficiency. We also suggest MARA further encourage and support advanced technologies and smart agricultural machinery.

agrochemical industry, allow pesticide registration to continue based on data generated overseas as interim measures until China joins OECD's MAD Program.

- Consistent with the Phase One Agreement, streamline the agricultural biotech regulatory process and associated review time frames. Relevant certification proceedings should be conducted periodically and in accordance with a defined, scheduled timeline.
- Publish scientific evidence to justify the imposition of strict COVID-19 preventive measures on imported cold chain foods including beef, poultry and pork. Adjust these measures based on the most recently available scientific data and bring China's practices in this respect into alignment with international guidance.
- Encourage the consistent implementation of agricultural machinery subsidies across provinces to raise efficiency and gradually shift these subsidies to include new and innovative technologies being used to power "smart agriculture."

For the US Government

- Build on the momentum established by the Phase One Agreement to strengthen communication with the Chinese government, explore space for cooperation, reduce tariffs on Chinese goods, and resume the normalization of bilateral trade between the US and China.
- Work with Chinese officials through official and unofficial bilateral dialogues to monitor trade and build off implementation of the Phase One Agreement and to continue to address trade and investment restrictions faced by US agricultural producers.

Recommendations

For the Chinese Government

- Accelerate innovation and further improve a fair business environment in China's agriculture sector by further opening the industry up to foreign investment in wheat, maize, soybean, and rice breeding and seed production, genetically modified crops, and modern agricultural processing.
- Simplify the approval procedures across the agricultural supply chain, including: ❶ for the import and export of seed and breeding materials to advance the development of seed varieties in China, and ❷ in the

Automotive

Introduction

In 2021, the COVID-19 pandemic continued and regional outbreaks in China caused difficulties. In addition, a chip shortage brought about unprecedented challenges to China's automotive market. Volume of sales saw a slight increase in 2021, compared to the low benchmark of 2020, which ended the previous trend of declining sales ever since 2018.

According to statistics of China Association of Automobile Manufactures, 26.27 million vehicles were sold in 2021, up 3.8 percent year-on-year. It is worth noting that among such vehicles, 3.52 million were new energy vehicles (NEVs), accounting for 13.4 percent of the total.

In 2021, the central and local governments of China rolled out multiple policies to stimulate car consumption. Such policies include introducing NEVs to the countryside and car trade-in, encouraging cities to increase the quota of plate license, supporting the construction of charging infrastructure, and lifting unreasonable limitations imposed on used car transactions. A number of local governments proposed development goals and implementation plans on NEVs and charging infrastructure. In addition, the Chinese Government paid great attention to cybersecurity and data security in 2021, with relevant ministries and commissions rolling out a series of laws and regulations around cybersecurity and data security. Among them, those applicable to automotive industry not only standardize data security, but also provide guidelines related to free cross-border transfer of automotive data, bringing about new challenges for the global development of automobile technology.

The automotive industry, conventionally thought of as a manufacturing industry, is accelerating its transformation into an electrified, connected, and intelligent high-tech industry. Technology is increasingly becoming essential to national strategies of competitiveness as the risk of technological decoupling increases. The automotive industry is a highly globalized industry, and a stable supply chain is critical for its continued development. Competition intensified among major countries and regions on issues of supply chain, military application, geopolitical impact, and other market factors, all of which pose great challenges to the global development of the automotive industry and devel-

oping technology. For instance, with countries such as China, America, Europe, Japan, and South Korea rolling out brand new chip development strategies and supportive policies, competition on chip technology will become more intensive. Meanwhile, the geopolitics of each country and region will also influence the stability of the automotive supply chain.

The uncertainties of the ongoing pandemic continue to challenge industry stability in 2022. Unstable production, disrupted supply, and sluggish consumption will add more uncertainties to the macro economy and hinder the recovery of automotive industry.

AmCham China suggests the government create a looser policy environment safeguard a steady industry development, and stimulate technology innovation.

Transparent, foreseeable, and sound policy environment

AmCham China members face long-term challenges in policy coordination and stability. China's automotive industry is supervised by multiple authorities. The duties of these authorities sometimes overlap, with little coordination between them, which increases the uncertainties over the industry policies. Many local governments also rolled out policies, which increases enterprises' operation cost at regional level.

AmCham China members expect coordination mechanisms as different competent authorities continue to optimize industry regulation, increase policy transparency, continuity, foreseeability, and create a coordinated and coherent policy environment for the continued development of automotive industry.

Transparency

At present, foreign invested enterprises have limited opportunities to participate in the early stage of the policy-making process. Once the draft policy has been publicized for comments, it is often too late to make any significant changes.

Foreign Investment Law of the People's Republic of China (FIL) and its Implementation Rules came into effect on January 1, 2020. AmCham China is pleased to see that these

汽车制造业

引言



回顾 2021 年，全球疫情继续蔓延，国内疫情散点爆发。同时，芯片短缺给中国汽车市场带来了前所未有的挑战。全年汽车销量在 2020 年低基数的基础上，实现了小幅的正增长，结束了自 2018 年以来连续三年下滑的态势。

据中国汽车工业协会统计，2021 年售出 2627 万辆汽车，同比增长 3.8%。值得一提的是新能源汽车销量达到 352 万辆，渗透率达到 13.4%。

2021 年，中央和地方政府出台多项政策，鼓励汽车消费。措施包括新能源汽车下乡和汽车以旧换新，鼓励城市增加号牌指标投放，支持充电基础设施建设，取消对二手车交易不合理限制等。多地政府也相继拟定了新能源汽车和充电基础设施的发展目标和实施计划。2021 年，网络安全和数据安全也是中国政府的工作重点，各部委密集出台了一系列网络安全和数据安全的法律和法规。其中汽车行业相关的政策在规范数据安全的同时，对汽车数据的跨境自由流动进行了规定，给汽车技术全球性发展带来了新的挑战。

汽车产业正在从传统制造业向电动化、网联化、智能化的高科技产业加速变革，科技竞争日益成为国家战略竞争的核心，技术脱钩的风险不断加大。汽车是高度全球化的产业，供应链的稳定对产业的发展至关重要。主要国家和地区在市场、供应链、行业竞争、军事及地缘政治等领域的博弈加剧，为汽车产业和技术的全球化发展带来重大挑战。如中、美、欧、日、韩等国家与地区都出台了全新的芯片发展战略和支持政策，芯片竞争将更加激烈。同时，各个国家和地区的政治因素也影响汽车供应链的稳定。

2022 年，疫情带来的不确定性依然是最大的风险，

企业生产不稳定，供应受阻和消费低迷将给宏观经济和汽车行业复苏增加更多的不确定性。

在这种背景下，政府为行业发展提供一个更加宽松的政策环境，保障行业稳定发展，激励技术创新，对包括商会会员在内的汽车行业至关重要。

透明、可预见、稳健的政策环境

中国美国商会（以下简称商会）会员在政策协调和稳定方面面临长期挑战。在中国，汽车行业的监管涉及多个政府部门，但这些部门的管理职责有时会出现重叠，不同部门之间缺乏协调，增加了行业政策的不确定性。同时很多地方出台了各地的政策要求，呈现出区域化的特点，增加了企业的运营成本。

商会会员企业期待中国各主管部门统筹配合，继续优化行业管理，增强政策的透明度、连续性和可预见性，为行业发展建立一个协调统一的政策环境。

透明度

目前，外资企业在政策研究早期阶段的参与机会有限。一旦政策草案制定完成，进入公开征求公众意见阶段，要想做出重大改变往往为时已晚。

《外商投资法》及其《实施条例》已于 2020 年 1 月 1 日生效。虽然商会很高兴地看到外商投资企业参与标准制定内容已被写入外商投资法中，但是汽车技术标准化委员会目前还没有来自外资企业的委员。

商会一直呼吁，政策、标准草案起草前期阶段，应当广泛征求包括外资企业在内的企业意见；在草案征求公众意见阶段，也应该对企业和公众提出的意见进行公开反馈，政策最终版本如有重要新增内容，也应提前告知公众并再次征求公众意见。

regulations allow foreign invested enterprises to participate in standard formulation. However, until now, no representatives from foreign enterprises have been included in the National Technical Committee of Auto Standardization.

AmCham China has always advocated that the Chinese Government solicit enterprises' opinions, including those of foreign invested enterprises, at the early stages of drafting a policy or standard, publicly give feedback based on the submissions, and inform the public and resolicit their opinions in advance if major content will be added to the final edition of the policy.

In addition, policy interpretation and enforcement activities are still characterized by a lack of transparency. Our members find that when they seek clarification on certain policies, they do not always receive clear and timely answers in a manner that addresses their concerns. Their applications are often rejected without explanation. AmCham China continues to urge greater transparency among regulatory authorities with respect to regulatory enforcement to ensure that FIEs receive appropriate and prompt guidance and clarification to comply with relevant standards to the same extent as domestically-invested enterprises.

Continuity and foreseeability

Considering the long cycle of automobile manufacturing, product development and production usually take several years. AmCham China hopes that the government will formulate and release related policies and plans at least three years in advance, especially those related to NEVs. In the process of formulating policies, AmCham China urges the government to fully consider the current status of the industry and the overall market environment, and give enterprises sufficient transition period in combination with the actual production capacity of enterprises, so that enterprises have sufficient time to make adjustments.

AmCham China recommends that the government maintain the stability and foreseeability of the dual-credit management system, introduce the 2024-2025 dual-credit management system as soon as possible, keep the sales target of NEVs in 2025 unchanged, and continue to consider the fuel consumption of electric vehicles as zero, which means the upstream emissions of electric vehicles are also considered as zero, providing a stable expectation for the industry.

The subsidies for NEVs will expire at the end of 2022, MIIT proposes to promptly study and formulate a clear set of supportive policies for extending the NEV purchase tax incentives. AmCham China suggests relevant authorities of Chinese government to speed up policy studies and finalize the policies as early as possible. The New Energy Vehicle Industry Development Plan (2021-2035) proposes to improve the dual-credit management system and explore pathways that align with the carbon trading market mechanism.

However, the planned goals and details regarding to how to connect the dual-credit management system with the carbon emission regulation policies have not yet been confirmed, China targets achieving carbon peak around 2030 and the Chinese government is drafting and designing the roadmap for the automotive industry to achieve carbon peaking and supporting policies. AmCham China recommends that such policies be finalized as early as possible, to grant the industry a smooth transition period between introducing new policies and abolishing old ones, so as to eliminate the concerns among auto sales and consumers.

Establishing coordinated and coherent policy requirements

With the development of NEVs and intelligent and connected automobiles, the industry's policies have involved with more national authorities. Some local governments have also promulgated their own policies. The lack of coordination among different policies and inconsistency between policies readouts by the national and local governments increased the uncertainties over the industry's development. Automotive production benefits from economies of scale. It is important to build a nation-wide, unified market and formulate coordinated and coherent policy requirements, which is critically important for NEV and intelligent and connected automotive. AmCham China calls on the government to strengthen coordination and establish a consistent policy environment.

AmCham China recommends the government key stakeholders to strengthen communication and coordination in automobile-related policy making and implementation, establish clear and coherent policy and regulation requirements, provide a stable and foreseeable supervision environment for the industry, and reduce enterprises' compliance costs and risks.

In addition, we recommend that the government unify policies and regulations at the central and local levels while eliminating unnecessary local requirements. For automobiles to be listed in local new energy vehicle catalogue and to apply for free license plate, it is suggested not to impose local requirements and standards other than national certification standards. Furthermore, the local requirements for NEV remote monitoring and testing of intelligent and connected automobiles on road should align with national standards.

Speeding up the modernizing trends of electrification

The rapid development of new and alternative energy sources and intelligent networks are having a significant effect on the automotive industry. Regulators must balance the need to formulate new regulations to govern these technologies while attempting to resolve inconsistencies between

此外，政策的透明度还体现在政策解读和实施过程中。比如，企业对政策的疑惑有时不能得到及时明确的解答；政策执行过程中，企业的申请有时被驳回，但没有被告知具体原因等。商会希望，政府在政策执行环节有更高的透明度，让企业得到有效的指导和帮助。

连续性和可预见性

考虑到汽车制造的长周期性，产品开发、生产通常需要数年时间。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，特别是与新能源汽车产品相关的政策。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，给企业足够的过渡期，让企业有充分的时间做出调整。

商会建议保持双积分管理办法的稳定性和可预期性，尽早出台 2024-2025 年双积分管理办法。同时，建议保持 2025 年新能源汽车销售目标不变，电动车的燃料消耗量继续按照零计算，即电动车的上游排放按零计算，为行业提供稳定预期。

随着新能源补贴将于 2022 年底退出，工信部提出将抓紧研究明确新能源汽车购置税优惠延续等支持政策，行业呼吁政府相关部门加快政策研究并尽早确定政策；《新能源汽车产业发展计划（2021-2035）》提出完善双积分管理办法，研究建立与碳交易市场衔接机制的任务，但目前双积分与碳排放管理政策接轨的计划目标与细节尚未明确；中国计划在 2030 年前后实现碳达峰，主管部门正在起草和考虑汽车行业实现碳达峰的路线图和相关配套政策。商会希望，以上相关政策能早些明确，给汽车企业必要的准备期，避免给企业增加不必要的负担。其次，希望新的政策和旧政策衔接适度，平缓退坡，避免对汽车销售和消费者信心产生剧烈影响。

建立协调一致的政策要求

随着新能源和智能网联汽车的发展，行业政策也涉及更多的政府部门。同时，一些地方政府也出台了各自的政策要求。政策间缺乏协调、中央与地方政策不一致的情况依然存在，为行业发展增加了不确定性。汽车是规模效应非常强的产业，建设全国统一市场，制定协调统一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说，这一点尤为关键。

商会呼吁主管部门加强跨部门、跨地区的协调，形成一致的政策环境。

一方面，商会建议政府部门在汽车政策制定和执行中加强沟通协调，形成清晰、统一的政策和管理要求，为行业提供稳定可预见的监管环境，降低企业的合规成本和风险。

另一方面，建议统一中央和地方的政策、法规要求。在国家标准认证之外，建议地方新能源目录和免费牌照不增加地方要求和标准。同时，地方新能源汽车远程监控要求、各地智能网联汽车路试要求和国家标准统一。

加快制定与电动化、智能化、网联化相关的政策法规

电动化、网联化、智能化已成为汽车产业发展的方向和趋势，政府也为之设定了相应的目标和愿景。2021 年，工信部发布了《关于加强智能网联汽车生产企业及产品准入管理的意见》，明确了智能网联汽车准入管理的原则要求。

汽车行业正在面临技术变革，新能源、智能网联等新技术快速发展。监管机构也面临着如何加快制定与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面向 2025 年的双积分管理政策，配合新能源汽车的规划目标，细化充电基础设施发展相关的政策，包括增加公共充电桩的维护运营，解决老旧小区充电难的问题。

同时，商会建议适时修改《道路交通安全法》、《公路法》、《测绘法》等，开放更多实际场景供自动驾驶车辆测试，简化测试申请流程，推动测试牌照全国互认；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，商会建议尽快落实智能网联、自动驾驶等新技术、新工艺、新材料的许可豁免机制，鼓励其应用，推动中国智能网联汽车的发展。

未来，随着数字技术的不断发展，汽车产业和信息技术等产业将高度融合，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，以及信息产业、地图测绘、交通管理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。

existing policies and the pace of technological development.

AmCham China recommends that the government introduce the dual-credit policies in preparation for 2025, which should be aligned with the planned goals for NEVs, refine the policies related to the development of charging infrastructure enhancing the maintenance and operation of public charging piles, and address the difficulty of charging in old residential blocks.

Moreover, AmCham China suggests to promptly revise laws such as the *Road Traffic Safety Law*, *Highway Law*, and *Surveying and Mapping Law*, to open more real scenarios for testing self-driving vehicles, simplify the application for testing, promote the mutual recognition of license plate obtained after passing the test across China. Following the principle of technology neutrality, provide some flexibility for enterprise compliance, and create a loose regulatory environment. To further solve the problem of changes to laws and regulations lagging behind technological innovation, AmCham China suggests applying the licensing exemption mechanism for new technologies, new processes and new materials such as intelligent connected vehicles and autonomous driving, encourage their application and promote the development of intelligent connected vehicles in China.

In the future, with the development of digital technology, the automotive industry and IT industry will be highly integrated, and cross-industry cooperation needs new means of management. Various competent authorities of traditional automotive industry, as well as other industry authorities such as information industry, surveying and mapping, and transportation management authorities, need to strengthen communication and coordination in policy making and implementation, to jointly promote technological innovation in the industry.

Data security and ICVs

Data and information security in automotive industry

China's has implemented *Cybersecurity Law*, *Data Security Law*, and *Personal Information Protection Law*, as the inferior law of China's data security and the Several Provisions on the Management of Automobile Data Security (for Trial Implementation) for the security management of automobile industry have also been issued and now in implementation. In the context of the globalization of the automobile market and supply chain, and to support R&D and ICV development, domestically-invested enterprises, joint ventures, and other FIEs in the automotive industry must conduct regular cross-border data exchanges, including regular exchanges about upgrades to self-driving algorithms based on the latest traffic pattern data. AmCham China encourages consideration of the following measures:

- Organize industry experts to study and define the connotation and extension of automobile data, formulate a list of automobile data to be managed, clarify the kinds of personal data and other automobile data that are required for the R&D of ICV and that will not threaten national security and have been desensitized, and allow such data to be transferred freely.
- Speed up the effort of drafting and issuing the standards related to automobile data security, including data classification and identification of important data, etc.; fully consider opinions of industry practitioners when formulating relevant regulations and standards, and balance national supervision and industrial development.
- Strengthen government cross-sector cooperation and form clear and coherent management rules, such as formulating the submission and content templates of the annual report on automobile data security management and provide a stable and foreseeable regulatory environment for the industry and reduce enterprises' compliance costs and risks.

Intelligent Connected Vehicles

The automotive industry is impacted by the modernizing trends discussed earlier in this chapter (i.e., electrification, networks and connectivity, and intelligent technologies). In particular, the development of intelligent, connected and self-driving (autonomous) vehicles is of critical focus. The development of ICVs requires multi-sectoral coordination to remove policy and regulatory barriers that impede technology development and application and requires policies and regulations to match and promote the technology advancement. In order to accelerate the development of China's ICV market, AmCham China encourages consideration of the following measures.

Testing on Public Roads:

During development, it is vital that autonomous vehicles be tested across a multitude of road conditions and real-life driving scenarios, many of which can only be replicated using existing public roads. As China is a vast country with the world's longest roadway network, we recommend that the testing of autonomous vehicles be permitted on public roadways to ensure that these vehicles are commercially safe and capable of handling a variety of road and traffic conditions. Current regulations, however, impede the development of autonomous driving technology. AmCham China is pleased to see that Beijing and a few other cities have opened partial highways for public road testing. We fully understand the safety concerns that the government has regarding self-driving cars testing on public roads, and we recommend that the government permit developers of autonomous vehicles and their suppliers to test autonomous vehicles on public roads when they meet the following requirements:

数据安全与智能网联汽车

汽车行业的数据与信息安全

《网络安全法》、《数据安全法》《个人信息保护法》作为我国数据安全的三个上位法均已生效，针对汽车数据安全管理的《汽车数据安全若干规定（试行）》也已经发布并实施。在汽车市场和供应链全球化背景下，自主、合资以及外资企业的智能网联汽车在研发过程中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。为此，商会建议：

i. 组织行业专家研究确认汽车数据的内涵和外延，制定汽车数据管理清单，明确对于智能网联汽车研发所需的不涉及国家安全和已经进行过脱敏处理的个人信息数据和其它汽车数据，允许自由流动。

ii. 加速推动汽车数据安全相关标准的起草和发布，包括数据分级分类和重要数据识别等；在制定相关法规和标准时，能够充分听取行业意见，平衡好国家监管与产业发展。

iii. 希望加强政府跨部门合作，形成清晰、统一的管理细则，例如制定年度汽车数据安全情况报告的提交流程，内容模板等，为行业提供稳定的、可预期的监管环境，降低企业的合规成本和风险。

智能网联汽车

当前，汽车行业面临智能化、网联化、电动化和共享化的深刻变革。其中，智能网联及自动驾驶已成为汽车行业的重要战略方向之一。智能网联汽车涉及到了多个行业的协同发展，同时更需要相匹配的政策与法规推动技术进步，消除技术发展和应用的障碍。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：

公共道路测试

在自动驾驶的开发过程中，充分测试多样化的实际路况和道路、驾驶场景至关重要，而这些测试所需要的数据只能在真实的公开道路上得到采集和分析。中国幅员辽阔，道路和交通场景极为繁杂，更需要充分的实际道路测试来确保自动驾驶的安全性和功能性。现行法规对实际道路测试的限制，为自动驾驶的研发带来了障碍。目前，个别城市如北京已经开放了部分高速公路用于测

试，商会对此表示欢迎。商会充分理解相关主管部门对自动驾驶实际道路测试而导致的安全性担忧，尽管如此，商会建议主管机构、相关决策者考虑在满足下列条件下，尽可能多的开放实际场景供自动驾驶研发测试：

- 厂商提交确保相关安全的材料，并经过有关部门审核和批准。
- 车辆的安全方案经由第三方机构验证等。
- 厂商声明承担自动驾驶实际道路测试的安全责任。
- 测试过程中，配备安全员随时干预自动驾驶功能。

高精度地图使用与地理信息收集

目前国内没有专门对于自动驾驶用地图的具体法规要求。导航电子地图安全处理技术基本要求中规定“导航电子地图在公开出版、销售、传播、展示和使用前，必须进行空间位置技术处理”（即“偏转加密”），而且到目前为止高程（例如汽车行驶在高架桥路段，汽车所处位置的高度信息）是禁止在导航地图中使用的。位置的偏转和缺少高程信息对自动驾驶定位准确性和可靠性都造成负面影响，从而严重影响其安全性。因此，商会建议，在保证国家安全前提下，允许自动驾驶车辆使用未经偏转的自动驾驶地图。

同时开放高程数据，支持自动驾驶技术的研发与商用化。在制定自动驾驶用地图的具体法规的过程中，希望能够与汽车企业和研究机构深入沟通，整体考虑自动驾驶和车联网的需求，明确需要规制的数据项目，研究合适的管理办法。

建立与国际标准一致的标准体系，允许外资参与技术委员会、国家标准与推荐标准的制定

中国于 2018 年起陆续发布了国家车联网产业标准体系建设指南，指出到 2025 年中国要制定超过 400 项智能网联汽车的相关标准。行业面临的挑战及担忧是，虽然相关强制性标准和推荐性标准本身在命名上有明显的区别，但在实操层面仍然存在推荐性标准被强制执行的情况。

商会建议中国标准化相关主管部门在标准制定过程中，积极地与国际标准化活动沟通协调，将产业所必须遵守的底线标准规划为强制性标准并纳入监管，确保智能网联汽车产品的合规性；而其他推荐性标准，企业可以根据自身实际需求自愿采用。同时建议标准委员会，

- Documents demonstrating vehicle safety have been submitted by the manufacturer and approved by the competent authorities,
- The vehicle's safety has been verified by a third party,
- The manufacturer's insurance and relevant liability clauses hold the manufacturer accountable for road test safety,
- Human drivers accompanying the autonomous vehicle can intervene and override the autonomous features at any time during the test.

High-Precision Maps and Geographic Information Collection

China lacks specific legal standards for the maps used in autonomous vehicles. The current references, which come from basic technical requirements for digital navigation maps, in particular the national mandatory standard Basic Requirements for the Safe Handling of Electronic Navigation Maps (GB 20263-2006), stipulates that "before the publication, sale, dissemination, display and use of a digital navigation map, the map must have been subjected to spatial security processing." Current restrictions on some information displays necessary for map navigation, including on plugins for measuring vertical deflections and restrictions on displaying elevated terrain, also create challenges for autonomous vehicles to accurately and reliably pinpoint their location, which is a safety risk. AmCham China recommends allowing ICV developers to use high-precision maps in autonomous driving vehicles. In the meantime, grant the access to elevation data to support the R&D and commercialization of autonomous driving technology. We also suggest making comprehensive consideration of autonomous driving and ICVs industry needs during the autonomous driving map regulation formulation process, identify data items that need to be regulated and develop appropriate rules.

Alignment with International Standards

Since 2018, China has released a number of guidelines for developing a national standard system for the ICV industry, and target to formulate more than 400 standards by 2025. The automotive sector is concerned about the lack of clarity regarding mandatory and recommended standards, specifically regarding any standards that limit the development of new technologies.

AmCham China strongly encourages the authorities to liaise with their international counterparts and more openly and transparently engage with FIEs in the standards development process. Such practice is also provided for mandatory standards in the FIL. Such practices would also enable China to develop domestic ICV standards that are aligned with emerging international standards and facilitate exports. With regard to new ICV technologies (i.e., technologies without existing standards or those whose development is in conflict

with existing technical regulations), we encourage the authorities to establish technical evaluation committees and an evaluation process to exempt certain technologies from compliance with out-of-date standards where needed. Such exemptions are needed for continued technological innovation.

Carbon peaking and carbon neutrality

NEVs

China's NEVs saw a rapid development since 2021, and the annual production and sales volume has reached millions. Under such rapid development context, continuing the incentive policies related to NEVs could further stimulating consumption, eliminating local protection measures that are not conducive, The "unrestricted operation and purchase" of EVs will contribute to the sustainable development of China's NEV industry.

Continuing incentive policies for NEVs and promote high-quality development of NEVs

With the marketization of new energy, it is recommended to shift subsidies from the purchase stage to the use stage, such as removing local purchase restrictions on NEVs, granting parking concessions for NEVs, and enhancing subsidies related to charging infrastructure. The existing NEV purchase tax policy will expire at the end of 2022. MIIT proposes to promptly develop and formulate a clear set of supportive policies for extending the NEV purchase tax incentives. AmCham China would like to see the finalized policies as early as possible.

AmCham China understands the importance of 'Dual Carbon Goals' and recommends relevant authorities to promote the quality development of EVs through policy development (such as dual-credit system/incentive measures) and market mechanisms, avoiding setting mandatory energy consumption limits on the individual vehicle level while ensuring the rapid growth of EVs and promoting the diversification of EV products.

Rolling out inclusive policies for new technologies in charging infrastructure

Charging infrastructure and services are crucial to the sustainable development of NEVs. We are pleased to see that the Chinese government and local governments have introduced subsidy policies to promote the construction of charging infrastructure. However, the utilization rate of charging infrastructure is not high at current stage. AmCham China recommends relevant authorities at the national level to issue some incentive and subsidy policies for charging infrastructure as an effective measure to stimulate the development of the industry, which will help improve charging infrastructure services. Moreover, we suggest establishing a more inclusive "exemption" system for new technologies

特别是通信、网络安全标准委员会，用更加开放的态度吸纳外商投资企业实质参与标准化工作，积极公开标准草案和最终发布文本，最终实现全球统一的智能网联汽车标准法规体系并促进出口。针对智能网联汽车领域的新技术（例如尚未制定标准或与现行技术法规冲突的技术），可以建立技术评估委员会和相应评估流程，给予相应的认证豁免等，以鼓励并促进技术创新。

双 碳

新能源汽车

中国新能源汽车 2021 年进入快速发展阶段，已经达到年产销数百万辆的体量，面对这样高速发展的形势，延续新能源汽车相关的激励政策并尽快出台更多有利于消费者购买和使用的新能源车政策，继续破除不利于新能源汽车发展的地方保护措施，做到新能源汽车的“不限行，不限购”，将有助于中国新能源汽车产业的持续发展。

延续新能源汽车激励政策，推动新能源汽车高质量发展

随着新能源市场化的发展，建议补贴从购置环节转向使用环节，例如取消新能源汽车地方限购、给予新能源汽车停车优惠，同时加强充电基础设施相关补贴。现行的新能源汽车购置税政策到 2022 年底就要到期，工信部提出将抓紧研究明确新能源汽车购置税优惠延续等支持政策，行业希望相关政府部门加快政策研究并尽早明确。

鉴于“双碳目标”的重要性，建议有关部门在确保电动车高速增长、促进电动车产品多样化的同时，通过政策（例如双积分体系 / 激励性措施）和市场的双重导向推动电动车的高质量发展，避免在单车层面设定强制性的能耗限值要求。

对充电基础设施新技术兼容并包

充电基础设施及服务对于新能源汽车的可持续发展至关重要，我们很高兴看到国家和地方出台了推动充电基础设施建设的补贴政策，但是现阶段充电基础设施利用率不高，建议国家相关部门尽快出台充电基础设施奖补政策作为阶段性拉动产业发展的有效措施，将有利于提升充电基础设施服务质量。同时建立对充电相关新

技术（车电分离，无线充电，车网互动等）更加包容的“豁免”制度和鼓励新技术的专项补贴基金，允许企业在安全有保障的前提下进行一些技术试点和创新应用，在产业安全能够得到保障的前提下，注重技术进步和满足用户利益，要及时修订阻碍新技术发展的法律法规。

排放标准

2021 年 7 月 1 日起，《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）已经在全国范围内实施，目前行业主管部门正在分别考虑下一阶段重型商用车油耗和排放标准制定和管理。

现行的商用车排放和油耗标准都没有温室气体的限值和求。据统计，2020 年商用车以汽车总量 12% 占比，排放了超过 60% 的汽车总碳排放量，因此，商用车下一阶段污染物排放、温室气体和二氧化碳排放、燃油消耗量的协同管理对于商用车行业下一步的发展和汽车行业助力实现“碳达峰、碳中和”的双碳目标至关重要。因此，商会建议在制定商用车下一代污染物排放、燃油消耗和温室气体等标准时，明确逐步到以减少二氧化碳排放为重点，短期内可以考虑两步走的安排：

在实施下一阶段（第四阶段）油耗标准的同时，搭建起商用车二氧化碳排放管理的体系（测试、记录、上传等），但不针对氮氧化物等传统污染物再做大幅降低的要求，这样企业可以集中资源聚焦于油耗的降低和能效的提升，并在四阶段油耗标准的产品上获得一定的投资回报期。

i. 在实施下一阶段排放标准或者油耗标准的时候，由于油耗和二氧化碳是正相关的关系，但它们和污染物之间是“此消彼长”的关系，因此建议主管部门充分考虑对传统污染物和二氧化碳在限值要求和管理方面的协同，以降低企业在合规方面的工作量和经济成本。

ii. 此外，商会建议下一步商用车二氧化碳排放的管理可以考虑借鉴污染物排放管理体系，并且重点关注实际道路全生命周期内的在用符合性排放水平，以有效地降低汽车实际碳排放量。

燃油消耗量政策：双积分和上游碳排放

支持企业平均燃料消耗量和新能源汽车积分政策，

related to charging and swapping (vehicle-electric separation, wireless charging, vehicle-network interaction, etc.) and a special subsidy fund to encourage new technologies, allow enterprises to implement some technical and innovative application pilot projects on the premise that safety can be guaranteed, focus on technological progress and meet the interests of users, and promptly revise laws and regulations that hinder the development of new technologies on the premise of ensuring industrial safety.

Emission standards

From July 1, 2021, China's Stage VI Emission Standard for Heavy-Duty Vehicles (China VI Emission Standard) was implemented nationwide, and the industry's competent authorities are currently considering the formulation and management of fuel consumption and emission standards of heavy-duty commercial vehicles for the next stage.

Current commercial vehicle emission and fuel consumption standards do not have greenhouse gas limits and requirements. According to statistics, in 2020, commercial vehicles, which accounts for 12 percent of all kinds of vehicles, emitted more than 60 percent of the total carbon emissions from vehicles. The coordinated regulation of pollutant emissions, greenhouse gas and carbon dioxide emissions, and fuel consumption of commercial vehicles in the next stage are crucial for the development of the commercial vehicle industry and for the automotive industry to help achieve the dual carbon goal, i.e., carbon peaking and carbon neutrality. Therefore, AmCham China recommends that when formulating the next generation of pollutant emission, fuel consumption and greenhouse gas standards for commercial vehicles, it is essential to express the focus on gradually reducing carbon dioxide emissions. In the short term, a two-phase arrangement can be considered:

- While implementing the fuel consumption standard of the next stage (Stage IV), AmCham China suggests establishing a system for the management of carbon dioxide emissions of commercial vehicles (testing, recording, uploading, etc.), but not setting requirements to significantly reduce conventional pollutants such as nitrogen oxides. By doing so, enterprises can concentrate resources on fuel consumption reduction and energy efficiency improvement and obtain a certain payback period for products that meet the Stage IV fuel consumption standards.
- Fuel consumption and carbon dioxide emissions are positively correlated. But if they increase, the pollutants will reduce, and vice versa. AmCham China recommends when implementing the emission and fuel consumption standards of the next stage, the competent ministries and commissions give full consideration to the synergy in the limits of pollutants and carbon dioxide emissions and reduce enterprises' compliance work and economic cost.

In addition, AmCham China suggests the management of carbon dioxide emissions from commercial vehicles can refer to the pollutant emission management system, and that focus should be kept on the in-use vehicles' compliance to emission levels during the entire life cycle of real roads, and effectively reduce the actual carbon emissions of vehicles.

Fuel consumption policies: dual credit and upper-stream carbon emissions

AmCham China recommends supporting the credit policies for enterprise average fuel consumption and NEV to maintain policy stability and foreseeability. For example, the sales target of NEVs in 2025 shall maintain and establish certainties for the industry and keep zero emissions from the upstream of electric vehicles, promote the development of NEVs by 2030.

Market entry

Removing the limitation on ownership percentages

In September 2020, China announced that the country will strive to achieve carbon peaking by 2030 and carbon neutrality by 2060. In the context of China's innovation and opening up, AmCham China appreciates China's confidence in comprehensively promoting the dual-carbon strategy and China's leading role in institutional innovation in global EV development. AmCham China member companies are committed to deepening their roots and increasing investment in China and speeding up the effort to have electrification strategies launched in China through innovative business models, contributing to industrial upgrading and the achievement of dual carbon goals.

Compared with conventional fuel vehicles consumers, Chinese EV consumers have high requirements for new retail models and customer experience. They also have high expectations of leading the global digital ecological chain, which puts forward fundamental reform requirements for the institutional innovation in "establishing a value chain system and providing entire life cycle services" and developing rapid iteration capabilities. With such changes needed, the industrial enterprise model represented by the conventional joint venture can no longer meet the experience requirements of Chinese electric vehicle customers. Meanwhile, we see that the new car-making forces represented by "Weixiaoli", the independent brands represented by "Changan, Dongfeng, and BYD", and the wholly-owned enterprises represented by Tesla, have developed a capability that meets the needs of China's electric vehicle market competition, and achieved rapid development by exploiting their flexible innovation mechanisms. Therefore, in terms of operating electric vehicle business in China, we hope to learn from the business practices and structures of excellent domestic electric vehicle enterprises and adopt a more independent and dominant business operation model.

建议保持政策稳定性和可预测性，如：保持 2025 年新能源汽车销售目标不变，为行业提供稳定预期、在 2030 年前保持电动汽车零上游排放以促进新能源汽车的发展。

市场准入

中央：股比放开

2020 年 9 月，中国向世界做出了庄严承诺，力争实现 2030 年前碳达峰、2060 年前碳中和。在中国创新、开放的大背景下，外资汽车企业高度赞赏中国全面推进双碳战略的坚定信心和引领全球电动车发展的制度创新，愿意深化扎根、增加投资，通过创新的业务模式，加速电气化战略在中国落地，为产业升级和双碳目标贡献力量。

与传统燃油车消费者不同，中国电动车消费者对于新零售模式和客户体验的高要求以及引领全球数字化生态链的高期待，对于电动车企业“组建价值链系统、提供全生命周期服务”的体制创新和快速迭代能力的建设提出了根本性的变革要求。在这样的需求变革中，传统的合资公司所代表的工业企业模式已经不能契合满足中国电动车客户的体验要求。同时我们看到，以“蔚小理”为代表的造车新势力、以“长安、东风、比亚迪”为代表的自主品牌、以及以特斯拉为代表的全资企业，都依托其灵活创新的机制，打造了符合中国电动车市场竞争所需要的能力，并且得到了快速的发展。因此，我们希望借鉴国内优秀的电动车企业的商业实践和架构，以更自主的、更具主导性的商业运营模式开展在华电动车业务。

同时，2018 年出台的《汽车产业投资管理规定》等一系列高壁垒行业准入政策以及一事一议的行政审批为汽车企业投资项目带来了诸多不确定的因素，不利于外资汽车企业进行在华新能源汽车项目的投资规划。

在不断深化对外开放和放管服的大背景下，我们期待政府能抱着开放、市场化的态度，对经营合作模式的变革予以更宽松的态度，让传统的汽车制造企业在向电气化、智能化、网联化变革的时代中得到更好的生存与发展。我们相信外资带来的良性竞争能够更好激发产业与市场活力，推动中国新能源汽车产业在技术、研发等方面的发展并拉动上下游产业链。

在具体政策诉求方面，商会建议：

i. 确保《外商投资法》、《外商投资法实施条例》、中美第一阶段经贸协议中关于外商投资企业与内资企业享有同等待遇的规定按照规定的切实落实。

ii. 颁布条例进一步指导外商投资国家安全审查制度和《不可靠实体清单》的实施，确保这些制度将根据预期目标进行调整，而不会被广泛应用，以免为在华外商投资制造不必要的障碍。进一步缩减负面清单中的市场准入限制，允许外国投资者在投资中国和在华经营方面有更大的自由度。

iii. 2022 年 1 月 1 日开始，中国全面放开汽车制造业中对外商投资的限制。我们建议尽快开启《汽车产业投资管理规定》以及相关生产准入政策法规的修订工作，充分利用市场要素调配、优化汽车行业的投资，完善以维护市场公平竞争为主要目标的政策、法规体系，逐步去除目前规定中非市场要素相关的要求。特别是，按照国家发改委公布的《汽车产业投资管理规定》中的第四十五条：投资项目内容发生变更的，“需报原审批单位办理”。但具体办理流程尚未公开，因此，希望发改委能提供指导，尽快公布具体办理流程。

地方：各地政策和标准要求不一致给进入地方市场造成挑战

建立协调一致的政策要求，破除地方保护措施

中国已经是全球最大的新能源汽车市场，为推动新能源汽车市场发展，中央政府出台了一系列鼓励政策，并提出要消除地方保护、确保平等的市场准入。我们认为这都是非常积极有效的政策，期望在地方政府层面能够尽快得到切实贯彻落实。

目前大多数限购城市根据工信部的《新能源汽车推广应用推荐车型目录》发行新能源汽车免费牌照，一些不在推荐目录中的进口新能源车型将无法在这些城市享受新能源汽车免费牌照。同时，一些城市设置要求备案作为获取相关鼓励措施的前提。这些都限制了新能源汽车的长期发展。

建议统一中央和地方的政策、法规要求。比如，地方免费牌照政策等。建议以 CCC 证书或产品公告为获

In addition, there are still many uncertainties of automotive investment, such as a series of high-threshold-industry access policies, (i.e. *Automotive Industry Investment Management Regulations* issued in 2018), as well as the administrative examination and approval on a case-by-case basis. Such issues are not conducive to foreign auto enterprises and impact their investment planning of NEV projects in China.

AmCham China expects the Chinese Government to adopt an open and market-oriented attitude in the context of continuously deepening opening up and streamlining administration, delegating power and upgrading services, and create a looser environment for the reform of the business cooperation model, so that conventional auto manufacturing enterprises can survive and obtain better development in the era of transitioning towards electrified, intelligent, and connected future. We believe that the healthy competition brought about by foreign investment can better stimulate the vitality of the industry and market and promote the development of China's NEV industry in terms of technology, research and development, and pull the development of the upstream and downstream industrial chains.

AmCham China hopes to see favorable policy change addressing:

To ensure that the FIL and its Implementation Regulations, and the equal treatment of foreign enterprises and domestic enterprises stipulated in the *Phase One Economic and Trade Agreement* between China and the United States are effectively implemented within the specified timeframe.

To promulgate regulations to further guide the implementation of the national security review system and the *Unreliable Entity List* for foreign investment, ensuring that these systems are adjusted according to the intended goals and not be widely used, so as not to create unnecessary obstacles to foreign investment in China. To further reduce market access restrictions on the negative list, giving foreign investors greater freedom in investing in and operating in China.

Starting from January 1, 2022, China completely lifted the restrictions on foreign investment in the automobile manufacturing industry. We recommend the revision of the *Automotive Industry Investment Management Regulations* and related production access policies and regulations as soon as possible to make full use of market factors, optimize investment in the automotive industry, and improve the policy and regulatory system with the main goal of maintaining fair competition in the market, and gradually remove the requirements regarding non-market elements in the existing regulations. In particular, according to Article 45 of the *Provisions on the Administration of Investments in the Automotive Industry* promulgated by the National Development and Reform Commission: if the content of an investment project is changed, it "must be reported to the

original examination and approval unit for processing." However, the specific processing procedures have not yet been made public. Therefore, we hope that the National Development and Reform Commission can provide guidance by announcing the specific processing procedures as soon as possible.

Inconsistent local standards and requirements create barriers for market access

China is already the largest NEV market in the world. To promote the development of the NEV market, the central government has issued a series of incentive policies and proposed to eliminate local protection and ensure equal market access. We believe that these are positive and effective policies, and we hope they can be implemented as soon as possible at the local government level.

At present, most cities implementing car-purchase restrictions by issuing free license plates for NEVs according to the *Catalogue of Recommended Models for Promotion and Application of New Energy Vehicles* issued by MIIT, while some imported NEVs are not in the recommended catalogue and are not eligible to obtain such free license plates in these cities. Moreover, some cities require imported NEVs to be filled with relevant authorities to enjoy relevant incentives. All of these measures will limit the long-term development of NEVs.

Make the Central government's and local governments' policies and regulatory requirements consistent, including the local free license plate policy, etc. It is recommended to use the CCC certificate or product announcement as the qualification for NEVs to obtain free license plates and abolish any forms of local protection measures for NEVs, including introducing local catalogs or filing requirements.

On November 11, 2016, MIIT issued the *Circular of the Ministry of Industry and Information Technology on Further Improving Safety Supervision of the Promotion and Application of New Energy Vehicles* (No. 377 [2016] of EIDC, MIIT, hereinafter, "Document No. 377"). It has been more than 5 years since the issuance of Document No. 377 and the production capacity and sales volume of NEVs exceeding three million, the NEV industry has undergone great changes. To better adapt to and guide the development of the industry, we suggest making corresponding revisions and updates to Document No. 377.

Currently, there are too many platforms at each level. An enterprise needs to upload information both to the national monitoring platform, and the local monitoring platform. In addition, the platforms have many requirements in various aspects of platform joint investigation, which is difficult for enterprises to cope with. This not only makes it difficult to manage, but also causes a great resources waste.

得新能源汽车免费牌照的资格，同时各地废除对新能源汽车采取的任何形式的地方保护措施，包括设置地方目录或备案等。

加强国家地方整合管理，应对动力电池溯源和RTM（需求追溯矩阵）要求不统一的挑战

工信部2016年11月11日发布了《工业和信息化部关于进一步做好新能源汽车推广应用安全监管工作的通知》（工信部装【2016】377号，下称377号文）。从377号文发布到今天已经超过5年，伴随着新能源汽车产销量突破300万辆大关，新能源汽车产业已经发生了很大的变化。为了更好的适应和指导产业的发展，我们建议对该文件做出相应的修改和更新。

目前的实际情况是各级平台太多，据统计超过20家平台。企业平台既要上传信息至国家监测平台，又要同时上传信息至地方监测平台。并且，各个平台在平台联调各方面要求繁多，企业难于应付。这既增加了管理的难度，也造成了资源的极大浪费。

建 议

对中国政府：

- 地方平台由国家平台整合管理。最终实现企业只进行一次车型联调一次车辆注册，就可以将车辆监控数据直接接入国家和地方平台。
- 取消地方监测平台，集中力量做好国家监测平台的建设和管理，为新能源车辆的安全监管和行业发展提供更有力的支撑。
- 另外，对于动力电池溯源数据的管理，地方平台由国家平台整合管理，国家平台可以与地方平台共享信息。目前上海建立了地方动力电池溯源管理平台，希望后续可以以适当的方式避免更多的地方平台建设。

Recommendations

For the Chinese Government

- Comprehensively manage local platforms by the national platform, and fill out vehicle data directly connected to the national and local platforms for monitoring through just one joint model investigation and one vehicle registration.
- Cancel local monitoring platforms, concentrate on the construction and management of the national monitoring platform, and provide stronger support for the safety supervision of NEV and the industry development.
- In addition, the management of power battery traceability data should also align, in which the local platform is recommended to be comprehensively managed by the national platform, and the national platform can share information with local platforms. Shanghai has established a local power battery traceability management platform, and we hope that appropriate measures will be taken to avoid developing more local platforms in the future.

Banking and Capital Markets

Introduction

The creation of multi-level capital markets is a key priority of China's 14th Five-Year Plan. After years spent focusing on the growth and rapid development of China's financial system, regulators now seek to stabilize the market for healthy long-term growth, become a prominent international market, internationalize the RMB, and promote the development of green finance. Foreign invested enterprises (FIEs) can help to achieve these goals and bring international best practices to the China market.

Commercial Banking

Fixed Income Business

AmCham China believes that greater inclusion of foreign financial institutions (FIs) in the onshore fixed income market will help to attract more global investors to China, offering financial expertise, increased stability and market growth.

AmCham China members are still unable, however, to act independently as lead underwriters for corporate bonds on the interbank market. Although several AmCham China members have applied since October 2018 for the required licenses from the National Association of Financial Market Institutional Investors (NAFMII), no applications from US-based financial institutions have been approved as of the time of writing. Two European FIs secured lead underwriting licenses in 2019. Although the ability of US FIs to become lead underwriters for corporate bonds on the interbank market was included in the *Phase One* agreement, no lead underwriting licenses were issued to any foreign FIs in 2020 and 2021. Members will continue to monitor the situation closely to see whether US FIs are granted licenses to become lead underwriters of such corporate bonds in 2022.

Requirements for Financial Reporting

The growth of the financial industry has been coupled with the proliferation of regulatory technology, i.e., the

use of emerging technologies to help companies meet their compliance responsibilities, which has been widely adopted across the financial industry. In light of these trends, regulators in China have imposed increasingly strict regulatory reporting requirements in recent years. Notably, the types of reports required to be filed are increasing, data requests are becoming more granular, and the number of reports that need to be automatically generated is growing. Foreign-invested FIs operating in China have been generally supportive and have worked to comply with these requirements. At the same time, AmCham China feels that many of these reporting requirements are increasingly duplicative, the implementation of certain reporting guidelines has been rushed, and the reporting standards, inspections, verification, and procedures for submission of these reports varies across different regulatory agencies. Such inconsistencies hinder the ability of foreign-invested FIs to meet existing reporting requirements by the specified deadlines. AmCham China members report that more than 1,000 categories of reports are required to be filed, the requirements for which are in continuing flux. AmCham China recommends that the government review the need for this magnitude of reporting and strive to streamline reporting requirements by consolidating some requirements and by ending duplicative or repetitive requirements. Such reforms would save time, cost, and resources associated with processing these reports for both regulators and FIs, including AmCham China members. Critically, it would also enable regulators to focus on the identification of technical solutions, optimize their reporting systems, and strengthen risk identification, prevention, and control.

China Government Bond Futures

In February 2020, the Ministry of Finance (MOF) and the China Securities Regulatory Commission (CSRC) issued the *Announcement on the Exchange of Treasury Bond Futures Trading* (Announcement 2020 No. 12) allowing eligible commercial banks and insurance companies to trade China Government Bond (CGB) Futures on the China Financial Futures Exchange on a pilot basis. To date, five major Chinese banks have participated in this pilot, but foreign banks have yet to be included. Foreign banks in China facilitate foreign investment into China's onshore bond market. As a result, foreign banks have accumulated

银行和资本市场

引言

建立多层次资本市场是中国“十四五”规划的重点内容之一。经过多年中国金融体系的增长和快速发展，监管机构现在寻求稳定市场以实现健康的长期增长，成长为重要的国际市场，实现人民币国际化，推动绿色金融的发展。外商投资企业愿意协助中国政府实现这些目标，并在中国市场引入国际最佳实践。

商业银行

固定收益型业务

目前，中国美国商会（以下简称商会）会员企业仍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中国银行间市场交易商协会申请相关许可证，截至本章节截稿时，美国金融机构的申请均未获批，但2019年两家欧洲金融机构获得了主承销商许可证。中美第一阶段经贸协议中包括美国金融机构获得主承销商许可证的资格，然而，在2020及2021年，没有任何主承销商许可证被颁发给外国金融机构。商会将密切关注今年中国是否会授予美国金融机构公司债券主承销商许可证。商会认为，将外国金融机构进一步纳入中国境内固定收益市场将有助于吸引更多外国投资者进入中国，为中国提供金融专业知识并促进市场的发展。

财务报告要求

近年来，随着金融业的高速发展，以及监管科技的兴起与应用，相关监管机构对于监管报表的要求愈发严格，报表种类不断增多，数据粒度不断细化，对报表自动化程度的要求持续提高。在华展业的外资金融机构对此表示理解并积极支持。

同时，各外资机构也注意到，不同监管报表间的重复、同质化现象日益明显，部分通知及要求的发布与实

施略显仓促，且各地监管机构在有关报送口径、检核校验、报表提交方式等方面的要求存在差异，这不利于银行集中资源按既定计划稳步提高报表质量。目前已生效的各类监管报表共计千余种且在持续变化中，商会建议有关监管部门考虑优化监管报表设计、简化繁冗重复、合并/取消同类报表。此举将可节约监管机构和与被监管机构的大量人力、时间和成本，将精力集中在优化技术解决方案，提高监管报送系统效率，加强风险识别与防控等方面上。

中国国债期货

2020年2月，财政部和证监会发布了《国债期货交易公告（公告2020，12号）》，允许符合条件的商业银行和保险公司在金融期货交易所试点交易中国国债期货。到目前为止，中国有五大银行参与了该试点交易，但尚未有外资银行加入。在华外资银行为外资进入中国境内债券市场提供了便利。因此，外资银行积累了大量中国国债风险敞口。商会敦促尽快允许外资银行参加试点项目，使其利率风险的管理得到改善。将外资银行纳入中国国债的期货交易会使其投资者基数更加多样化，加深市场深度、提高市场流动性、形成“价格发现”和稳定定价机制。

黄金及其制品进出口准许证

中国对实物黄金和黄金产品的进口施加了严格的许可要求。到目前为止，只有少数几家外资银行获得了向中国进口黄金的许可，但没有一家是美国银行。商会促请中国政府为美国银行办理黄金进口许可，从而平衡黄金供需并提高中国境内黄金市场的流动性。与此同时，该举措还将使美国银行将全球最佳实践引入中国，推动中国黄金市场国际化，加强上海黄金交易所与国际黄金交易平台的对接，包括美国交易所运营商芝加哥商品交易所和伦敦金银市场协会，并提高上海黄金交易所全球黄金定价体系中的影响力。

significant CGB exposure. AmCham China urges that the pilot project be made available to foreign banks as quickly as possible to enable them to improve management of their interest rate exposure. The inclusion of mature foreign banks with their vast experience in CGB futures trading will diversify the investor base and improve the depth, liquidity, 'price discovery' and pricing mechanisms within the market.

Gold Import Licenses

The Chinese government imposes strict licensing and requirements on physical gold and gold-product imports. To date, only a handful of foreign banks have been licensed to import gold into China, and none are US-headquartered banks. AmCham China urges the government to issue gold import licenses to US banks which will help to balance the forces of supply and demand and improve the liquidity of China's onshore gold market. This would also allow US banks to introduce global best-practices into China, support the internationalization of China's gold market, improve the connections between the Shanghai Gold Exchange and international gold trading platforms such as US exchange operator CME Group and the London Bullion Market Association (LBMA), and increase the influence of the Shanghai Gold exchange in the global gold pricing system.

Open Market Operation Primary Dealer Status

The PBOC maintains and publishes an annual list of institutions permitted to conduct Open Market Operations (OMO). To date, only four foreign banks have been included in this list. AmCham China urges that more US-based banks be granted primary dealer status to conduct OMO. Compared with domestic banks, foreign banks have irregular access to RMB-denominated capital. OMO primary dealer status will permit foreign banks to more efficiently leverage RMB-denominated capital to serve the real economy. In the context of China's capital market (and particular its bond market) reform, obtaining OMO primary dealer status will improve the efficiency and liquidity of China's onshore bond market, and boost the confidence of foreign banks in the onshore market.

Rotation requirements for key personnel

The regulatory requirement for rotation of key personnel, a longstanding feature of Chinese governmental administration implemented in part to prevent corruption and localism, is inappropriate for a complex, technically demanding industry subject to stringent regulation. Foreign banks encountered some practical difficulties in the implementation process. The *Guiding Opinions of the China Banking and Insurance Regulatory Commission (CBIRC) on the Avoidance of Employees in Banking and Insurance Institutions*

[2019] stipulates that "key personnel" refer to personnel who have management operations and risk control decision-making power in the institution. The scope of such personnel with such power or significant influence at all levels of institution and within internal departments is to be determined by each institution in light of its own actual and regional characteristics, and in accordance with the needs of internal control management and risk control.

The division of responsibilities of each department in a foreign-invested bank is strictly defined, yet the professional knowledge, skills and experience required by the heads of each department are different. For example, the person in charge of compliance needs to be familiar with regulatory requirements, and the general counsel needs to be familiar with national laws, administrative regulations and regulatory rules, the person in charge of the product department needs to understand the relevant products or technologies they manage, and the heads of business departments such as corporate, retail and financial markets require different professional skills in their respective fields. Some positions also require professional qualifications, such as accountants, lawyer, anti-money laundering and other professional qualifications; some positions such as compliance officer, chief financial officer, and chief information officer also require approval by the regulatory authority. Therefore, if the bank is required to implement the rotation of the heads of these internal departments who have decision-making power or significant influence on operations management and risk control, the heads of the departments may not have the professional qualifications and experience to serve as the heads of other departments. The heads of these departments are rotated to other departments within the bank. First, it is very difficult in reality. Second, due to the rotation, the heads of relevant departments are not familiar enough with the professional knowledge, which weakens the bank's internal control level and increases the degree of risk in the professional field.

Foreign-invested banks generally achieve the goal of internal control management through a relatively complete three-line comprehensive risk management framework. During the daily performance of duties, the management of the business by the heads of various departments is constrained by matrix management, strict separation of front and back office and post separation mechanism, and the moral hazard of personnel has been well controlled, especially in the key aspects of credit approval, and other similar areas. In terms of process, a clear division of responsibilities, credit authority and mutual checks and balances have been established. In addition to regularly arranging risk self-inspections for the first line of defense, there are also compliance inspections for the second line of defense and internal audits for the third line of defense, so as to achieve the goal of effectively controlling various risks.

公开市场操作一级交易商地位

中国人民银行每年保留并公布一份允许进行公开市场操作的机构名单。到目前为止，只有少数几家外资银行被列入这个名单。商会促请授予更多美国银行一级交易商地位，以进行公开市场操作。与国内银行相比，外资银行获得人民币计价资本的常规渠道较少。公开市场操作一级交易商身份将使外资银行更有效地利用人民币资本来服务于实体经济。在中国资本市场（特别是债券市场）改革的背景下，获得一级交易商地位将提高中国在岸债券市场的效率和流动性，提振外资银行对在岸市场的信心。

关键人员轮岗要求

关于“关键人员”轮岗，外资银行在执行过程中遇到了一些实际困难。《中国银保监会关于银行保险机构员工履职回避工作的指导意见》（银保监发〔2019〕50号）中规定，“关键人员”指银行保险机构中对该机构经营管理、风险控制有决策权或重要影响力的各级管理层成员和内设部门负责人，具体人员范围由各机构结合自身实际和区域特点，根据内控管理和风险控制需要予以确定。

外资银行各个部门的职责分工有严格界定，各部门负责人需要的专业知识、技能及经验各不相同，例如合规负责人需要熟知监管要求，总法律顾问需要熟悉国家法律、行政法规及监管规则，产品部门负责人需要了解其管理的相关产品或技术，对公、零售及金融市场等业务部门负责人各自主管的领域都要求不同的专业技能等等；有些岗位还需要具备专业资质，如会计师、律师、反洗钱等专业资格；有些岗位还需要监管部门的审批核准，如合规负责人、首席财务官、首席信息官等。因此若要求银行落实这些对经营管理及风险控制有决策权或重要影响力的内设部门负责人轮岗，该部门负责人有可能不具备担任其他部门负责人的专业资格和经验，若硬性要求这些部门负责人在银行内部轮岗到其他部门，一是现实存在的难度很大，二是有可能造成因为轮岗，相关部门负责人专业知识不够熟悉，反而弱化了银行的内控水平，加大了专业领域的风险程度。

外资银行普遍通过较为完善的三道防线全面风险管理框架实现内控管理的目标。各部门负责人在日常履职过程中，对业务的管理受到矩阵式管理、严格的前后台分离和岗位分离机制的约束，人员的道德风险已经得到较好的管控；尤其是在信贷审批等关键流程方面，均建立了明确的职责分工、授信权限及互相制衡机制。除了定期安排一道

防线的风险自查，还有第二道防线的合规检查和第三道防线的内部审计，从而达到有效控制各类风险的目标。

根据《中国银保监会办公厅关于落实案件防控工作有关要求的通知》（银监办发〔2012〕127号）、《中国银保监会办公厅关于银行自助设备管理风险提示的通知》（银监办发〔2014〕124号）、《银行业金融机构衍生产品交易业务管理暂行办法》（中国银行业监督管理委员会令2011第1号）等相关监管要求，外资银行已经普遍界定了需要轮岗的重要岗位包括衍生产品交易主管及交易员、分行行长、支行行长、委派会计、分支行柜员岗等，对风险防范采取了必要妥善的措施。

商会建议监管机构考虑外资银行的实际情况，在关键人员的轮岗要求方面，能够允许银行根据其风险状况评估决定关键人员的轮岗豁免期，例如允许部分专业性较强的关键人员的轮岗豁免期适当延长及重复豁免。

资产管理

继2019年7月国务院发布《关于进一步扩大金融业对外开放有关举措》后，中国进一步开放金融市场和资产管理行业。行业对于未来机会十分期待，并希望将世界先进的投资管理能力和风险管理措施和专业知识纳入到这一过程中来。商会会员企业十分期待与银行财富管理公司开展合作并建立外资控股的合资财富管理公司，也期待建立全资基金管理公司，使得全球资产管理公司能够提供广泛的国内和跨境投资产品，以满足中国大陆个人投资者以及合格投资者日益增长的需求。

基金管理公司 (ODII)

适当加快 QDII 资格审批进度并适当增加 QDII 资格名额

关注到从2015年起，QDII资格申请较往年放慢，名额也非常有限，平均每年1-2家公募基金的速度获批QDII资格。在资管新规的大背景下，投资者资产多元化配置的需求在增强。同时，合资/外资资产管理公司在投研能力、制度、风控、销售服务方面越来越成熟和完善。并且凭借基金公司外方股东的特殊商业禀赋，能为境内投资者的跨境投资需求提供重要支撑。希望通过QDII的业务资格，将海外的成功策略及产品引入国内资本市场，力求为基金份额持有人带来多元化的投资产

According to the *Notice of the General Office of the [former] China Banking Regulatory Commission (CBRC) on Implementing the Relevant Requirements for Case Prevention and Control [2012]*, and the *Notice of the General Office of the CBRC on Risk Reminders of Bank Self-Service Equipment Management [2014]*, the *Interim Measures for the Administration of Derivative Transactions of Banking Financial Institutions [2011]* and other relevant regulatory requirements, foreign banks have generally defined important positions that need to be rotated to prevent risks among derivative product transaction supervisors and traders, branch presidents, sub-branch presidents, appointed accountants, branch teller posts, and more.

We urge regulators to consider the actual situation of foreign banks and allow banks to determine the rotation exemption period for key personnel based on their risk profile assessment.

Asset Management

China continued to open its financial markets and the asset management industry following the State Council's *Measures for Further Opening Up the Financial Sector* announced in July 2019. AmCham China members are excited about the opportunities ahead and hope to participate by introducing world-leading investment management capabilities, risk management measures and global expertise. AmCham China members particularly look forward to partnering with bank wealth management subsidiaries to establish foreign-controlled joint venture wealth management companies and also to establish wholly foreign-owned fund management companies. Doing so would allow global asset managers to provide a wider range of domestic and cross-border investment products to facilitate the growing demands of both retail and sophisticated investors in mainland China.

Fund management companies

QDII applications have slowed since 2015 and QDII quotas remain very limited, with an average of one or two public funds being approved for QDII each year. In the context of China's new regulations on asset management, investors' demand for diversified asset allocation is increasing. At the same time, foreign-invested asset management companies are becoming more and more sophisticated with respect to investment and research capabilities, systems, risk control, and sales services. Coupled with the special business endowment of foreign shareholders of fund companies, they can provide sufficient support for the cross-border investment needs of Chinese investors. We hope to introduce successful overseas strategies and products into the Chinese capital market through the QDII channel and strive to bring diversified investment products to fund shareholders and meet the growing needs of investors for global allocation. By allowing onshore investors the opportunity for offshore exposure in a controlled manner, the QDII channel also has the poten-

tial to reduce the incentive for such investors to engage in irregular transfer of funds overseas for money laundering or other illicit purposes. We urge that consideration be given to appropriately expediting the progress of QDII approval and increasing QDII quotas, so as to give foreign-invested financial institutions more opportunities to expand their overseas investment businesses.

Cross-border QDII Investment

As of December 2021, the State Administration of Foreign Exchange (SAFE) has released a total of US \$157.5 billion of QDII quotas to institutional investors across banks, trusts, insurers, fund management companies and securities companies. We understand there has been continuous momentum from the regulatory perspective to promote cross-border investments, however, global asset managers continue to encounter hurdles when dealing with different asset allocators on the interpretation of the relevant rules and regulations on cross-border investments. Domestic asset allocators (QDII owners) have taken a conservative approach in their interpretation because current overseas investment policies from the China Banking and Insurance Regulatory Commission (CBIRC) and CSRC date back to 2006 and 2007, respectively, and do not correspond to the *Guidance Opinions Concerning Standardization of Asset Management Operations by Financial Institutions* issued by the National People's Congress in 2018. The misalignment in regulatory interpretation causes domestic asset allocators to take a more conservative approach in their interpretation and to forfeit a number of alpha opportunities for their offshore portfolios. As demand for overseas asset allocation continues to grow, AmCham China members hope to see a more coordinated approach from the regulators in aligning and updating cross-border investment policies for both onshore investors and offshore managers.

Interagency Coordination

In the global context, asset management is regarded as one of the functional pillars in the financial ecosystem. However, in China, given the nature of the institutional supervisory model, the market has been divided into more than seven sub-categories and licenses that qualify an institution to conduct asset management or quasi-asset management business under the CSRC or CBIRC regime. While we appreciate the nature of the existing system, AmCham China members recommend that coordination across regulatory bodies be optimized, especially during the policy rollout on investment, risk and operational guidance. Firms with either bank wealth management or private fund management licenses can distribute higher risk products (Private Equity, Hedge Fund, etc.) to sophisticated investors, but are supervised by separate regulatory regimes (CBIRC and CSRC) with different frameworks. We urge that policies be aligned across regulatory departments to enable global managers to develop a full suite of capabilities catering to the varying demands of onshore investors and channels.

品，满足越来越多投资者全球配置的需求。恳请考虑适当加快 QDII 资格审批进度并适当增加 QDII 资格名额，给与合资金融机构更多拓展海外投资业务的机会。

跨境 QDII 投资

截至 2021 年 12 月，国家外汇管理局已经向银行、信托、保险公司、基金管理公司和证券公司等机构投资者发放了总计 1575 亿美元的 QDII 配额。商会发现，从监管的角度来看，促进跨境投资的势头一直未减，然而全球资产管理公司在与不同资产配置者打交道的过程中，在面对相关跨境投资规则和条例的解释时仍然遇到了障碍。银保监会和中国证监会的最新海外投资政策分别发布于 2006 年和 2007 年，而这些政策与 2018 年发布的资产管理新规并不匹配，国内资产配置者（QDII 所有者）在解释上一一直采取保守的态度。监管解释上的错位导致国内资产配置者在解释上采取更保守的方式，并放弃合理在海外投资集团开展阿尔法策略的机会。随着海外资产配置的需求不断增长，商会期待监管机构在统一和更新在岸投资者和离岸管理者跨境投资政策方面采取更加协调的方法。

跨部门协调

在全球范围内，资产管理都被共识为金融生态系统中的功能支柱之一。然而在中国，鉴于机构监管模式的性质，市场已被分隔为 7 个以上的子类别和牌照类型，允许机构在中国证监会或银保监会的制度框架下开展资产管理或准资产管理业务。虽然商会对现有制度的性质表示认可，但建议加强各监管机构之间的协调，特别是在投资、风险和运营指导方面政策的推出期间。拥有银行财富管理或私募基金管理牌照的公司可以向合格投资者分销高风险产品（私募基金、对冲基金等），但受到不同的监管制度（银保监会和证监会）和框架的监管。商会希望各监管机构的政策能够保持一致，以便全球管理机构能够开发全套产品，满足不同在岸投资者和渠道的需求。

客户适配性评估

商会认为，为满足不同客户对风险和回报的偏好，需要存在多种资产管理产品可以投资的工具。在实际情况下，投资范围因监管部门对投资者保护的重视而受到了限制。与其限制所有客户的投资范围，商会建议监管

机构考虑根据目标客户类型以及他们对产品的适配性进一步区分其允许投资范围。应当允许某些类型的产品在更广泛的工具范围内进行投资，但前提是这些产品只能提供给具有较高风险承受能力的客户，资产管理公司可以根据不同类型客户的需求提供合适的产品，并促进资产管理市场更加活跃。

托管服务

估值核算和份额登记服务

2017 年 3 月，中国资产管理协会发布了《私募投资基金服务业务管理办法（试行）》，明确了私募基金服务机构与私募基金管理人之间的法律关系，确立了对基金权益单位登记、估值与核查服务、提供信息技术系统服务三类私募基金服务业务的要求。《办法》要求希望在中国提供基金会计和转移会计服务的基金管理人申请加入中国资产管理协会并成为会员。

商会了解到，中国资产管理协会自 2019 年以来一直在更新《办法》。与此同时，基金会计和转移会计服务的注册程序也已经暂停。到目前为止，由于这个原因，商会会员企业或外国投资的基金服务提供商，虽然在过去两年内提交了申请，但没有获得批准。在 2019 年之前，大约有 45 家国内投资的基金服务提供商在中国资产管理协会进行了注册，因此可以在获得许可的情况下提供基金会计和转移会计服务。

美国的托管银行，特别是已经提交申请的银行，对于国际市场上提供基金会计和转移会计服务方面，他们已经具有丰富的专业知识和深厚的经验积累。为了进入中国市场，他们建立起了高度合格的服务程序，包括风险管理、操作、隔离、人力资源等。商会敦促中国证监会和中国资产管理协会建立合理的注册资格，允许外商投资基金服务提供者进入市场，更为重要的是，促请相关机构在合理的时间内颁布更新的管理办法。商会也鼓励中国证监会和中国资产管理协会在《办法》的框架下批准符合要求的外商投资机构，这样高质量服务提供商能够早日进入中国市场，对中国投资市场、国内投资基金及投资者均能有正向作用。

境内证券投资基金结算业务

根据《中国证券登记结算有限责任公司结算参与人

Client Suitability Assessment

We continue to see the need for a variety of instruments into which asset management products may invest, to serve clients varied appetite for risks and returns. In practice, there are limitations to the scope of investment due to the regulatory focus on investor protection. Instead of limiting the scope of investment for all clients, AmCham China members recommend that regulators consider further differentiating the permitted investment scope based on the suitability for different products among different clients. By permitting certain types of products for investment in a broader scope of instruments, subject to the condition that such products can be offered only to clients with higher risk tolerance, asset managers may offer suitable products to serve different types of clients' needs and contribute to a more vibrant asset management market.

Fund Management Services

Fund Accounting and Transfer Agency Services

In March 2017, the Asset Management of Association of China (AMAC) released the *Administrative Measures on the Private Investment Fund Service Business (Trial)*, which clarified the legal relationship between a private fund service institution (PFSI) and a Private Fund Manager (PFM), established requirements for three types of private fund services businesses: fund interests unit registration, valuation and verification services, and provision of information technology system services. The *Administrative Measures (Trial)* require fund administrators which expect to provide Fund Accounting (FA) and Transfer Accounting (TA) services in China to apply to join AMAC as members.

We understand that AMAC has been updating the *Administrative Measures (Trial)* since 2019. At the same time, the registration procedure for FA and TA services has been suspended. Consequently, no AmCham China members or foreign-invested fund service providers which submitted applications in the past two years have been approved. By contrast, about 45 domestically-invested fund service providers registered with AMAC before 2019 continue to be permitted to provide FA and TA services.

US custodian banks, and particularly those which have submitted applications, have substantial expertise and deep experience in international markets providing FA and TA services. To enter the China market, they have established highly qualified service procedures including risk management, operations, segregation, and human resources. AmCham China urges CSRC and AMAC to establish reasonable registration qualifications that permit access for foreign-invested fund service providers and, more importantly, promptly promulgate the updated *Administrative Measures*. In addition, in order to expedite this process,

we also encourage CSRC and AMAC to approve qualified foreign-invested providers on a "trial case approach", as the early entry of high-quality service providers should benefit the Chinese investment market and domestic investment funds and investors.

Settlement Services for Domestic Securities Investment Funds

According to the China Securities Depository and Clearing (CSDC) *Administrative Guideline on Settlement Participants (2017 Rev.)*, applicant's seeking to pursue a custodian settlement model to conduct settlement business as a commercial bank, are required to meet regulatory qualifications including but not limited to ① RMB 40 billion year-end net assets; and ② subsidiaries in three locations (e.g., Beijing, Shanghai and Shenzhen). While we understand the overall regulatory considerations, the above requirements set up extremely high thresholds for foreign participants, which in turn block them from offering settlement service to domestic securities investment funds. The lack of a settlement function prevents foreign participants from providing onshore custodial services due to product integration and cost efficiency considerations.

We welcomed CSRC's reforms in the *Administrative Measures on Securities Investment Funds Custody Businesses (Order No. 172)* in July 2020 which allow foreign bank branches to conduct custody business to look through to the parent company's capital capability in order to fulfill applicable net asset requirements. We encourage CSDC to consider the same practice to allow foreign branches to conduct settlement business by leveraging parent company's capital capability. We would also encourage CSDC to remove the requirement to have subsidiaries in three locations (e.g., Beijing, Shanghai and Shenzhen). Compared to domestic competitors, foreign banks have a relatively smaller presence in-country and are more dependent on offshore capability. It raises costs and may not be cost-effective for foreign banks to set up in different locations to serve clients in the same market. We urge CSRC and CSDC to recognize the distinctive characteristics of foreign bank operations and provide a streamlined and unified market access process for both custody and settlement services, as cornerstones of custodial servicing activities, to allow foreign bank branches to provide settlement service to domestic funds.

QFI Settlement

In October 2020, CSDC amended its implementation rules on QFI settlement and clarified for the first time that brokers may conduct settlement business for QFIs. We welcome this development as it enriched the types of settlement participants to include brokers in addition to custodian banks. The custodian bank settlement model is well preferred by global investors because of its advantages in efficiency and lower funds transfer costs. For local fund custody, foreign

管理工作指引（2017年修订版）》，要在中国证券登记结算有限责任公司加入会员或推行托管结算模式，以商业银行的身份开展结算业务，申请人需要满足的监管资质包括但不限于：1、年末净资产400亿元人民币；2、在内地（如北京、上海、深圳）拥有子公司。虽然商会理解监管部门的整体考虑，但上述要求为境外参与者设置了极高的门槛，进而阻碍了他们为境内证券投资基金提供结算服务。出于产品整合和成本效益的考虑，不提供结算功能将阻碍外国参与者提供在岸托管服务。

商会很高兴看到中国证监会在2020年7月颁布的《证券投资基金托管业务管理办法》（第172号令）中所开展的改革措施，允许外国银行分行在开展托管业务时，通过母公司的资本能力，以达到适用的净资产要求。商会鼓励中国证券登记结算有限责任公司考虑采取同样的做法，允许外国分行通过利用母公司的资本能力开展结算业务。商会也鼓励中国证券登记结算有限责任公司取消在三个地方（如北京、上海和深圳）设立子公司的要求。与国内竞争者相比，外资银行的在岸业务相对较少，更依赖于离岸能力。对外资银行来说，在不同的地方设立机构以服务同一市场的客户是不符合成本效益的，同时也会增加运营成本。商会敦促中国证监会和中国证券登记结算有限责任公司认识到外资银行业务的显著特点，为托管和结算服务提供简化和统一的市场准入程序，作为托管服务活动的基石，允许外资银行分支机构为国内资金提供结算服务。

QFI 结算

2020年10月，中国证监会修订了关于合格金融机构结算的实施细则，首次明确经纪商可以为合格金融机构开展结算业务。商会对这一进展持积极态度，因为它丰富了结算参与者的类型，除托管银行外，还包括了经纪商。同时，托管银行的结算模式因其效率高、资金转移成本低的优势，深受全球投资者的青睐。而对于本地基金托管业务，外资银行需要采用券商人结算模式，而不是托管行结算模式。因此，券商是中国证券登记结算有限责任公司的结算参与者，商会会员企业只能收到来自券商拆分后的结算数据而非中国证券登记结算有限责任公司的结算文件，这导致外资银行的基金净值计算通常晚于其他中资银行，影响托管行与基金公司数据的准确性、工作效率以及信息披露的时效。在这方面，商会希望中国证券登记结算有限责任公司在为合格投资者提

供服务方面，同时允许托管人结算模式和经纪人结算模式存在，以提高市场的多样性。

代理证券接待

根据香港交易所证券及期货事务监察委员会的《规则》第14A16(5)至(7)条和《规则》第14B16(5)至(7)条，只有交易所参与者和合格机构可以通过深港通和沪港通进行证券交易，该模式允许境外投资者通过香港市场交易上海和深圳的上市股票。商会了解到，中国证监会在过去几年中一直在与中国证券金融公司和行业参与者共同研究这个问题，但没有获得具体的进展。商会鼓励中国证监会考虑采取“试行办法”，允许已经获得证监会批准和选定的“合格借贷代理人”，包括投资沪深证券的离岸基金代理人和托管人在内，可以通过两通进行网上交易。

扩大对该计划的参与将改善流动性。更大的流动性能够减少市场波动，并对价格长期稳定起到支持作用。目前如果没有合格借贷代理人的参与，两通的参与十分有限，证监会对两通证券注册活动的缺乏可以证明这一点。商会相信，在目前的投资者生态系统中引入合格借贷代理制度将刺激中国资本市场和A股市场（以人民币计价的资产）的发展，使内地参与者受益。

全球托管行的角色

全球托管行通过一体化全球网络运作，能够为客户提供进入全球金融系统的机会。领先的托管行在全球100多个证券市场开展业务。在包括美国市场在内的某些市场，全球托管行提供直接托管服务。在许多其他市场，全球托管行通常通过指定的当地“次级托管行”进入市场。投资者与全球托管行签订合同，或者与不同市场的当地次级托管行签订合同，以确保投资者资产的有效管理，这是全球金融市场上一种普遍的做法。

然而，在中国大陆市场，外国投资者被要求与当地的次级托管行直接签约。在许多情况下，因为直接签订合同的要求与全球惯例相悖，所以外国投资者并不适应，或者为了确保双方都能够满意，合同审查过程可能会很漫长。商会建议政府承认大陆市场上的全球托管行，取消外国投资者直接与本地分托管行签订合同的要求。这不仅可以更好地管理投资者的资产，还可以简化中国证监会允许合格外国投资者指定无限数量的本地托管行监

banks need to adopt the settlement model of securities dealers instead of the settlement model of custodian banks. Therefore, while securities companies are settlement participants in the Central Depository and Clearing Corporation, FIs can only receive settlement data from the securities companies instead of settlement documents from the China Central Depository & Clearing Co., Ltd. (CCDC), which generally results in delayed calculation of the net fund value of foreign banks compared to other Chinese banks, affecting the accuracy of data, the work efficiency of custodian banks and fund companies, and the timeliness of information disclosure. In this regard, we hope that CSDC will allow both the custodian settlement model and broker settlement model to serve QFIs to increase market efficiency.

Securities Lending Agency

Under *Rules 14A16(5) to (7) and Rules 14B16(5) to (7)* of the Securities and Futures Commission (SFC), only Exchange Participants and Qualified Institutions may trade securities via China Connect, a program that allows offshore investors to trade Shanghai- and Shenzhen-listed stocks via the Hong Kong market. We understand that CSRC has been working on this issue with the China Securities Finance Corporation (CSFC) and industry participants, but concrete steps have yet to be achieved. We encourage CSRC to consider a “trial case” permitting selected “Approved Lending Agents” who have already been approved by the SFC 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 reduce market volatility and support long-term price stability. China Connect participation is currently limited without the participation of Approved Lending Agents, as evidenced by the lack of activity registered by the SFC for China Connect Securities. We believe that introducing Approved Lending Agents into the current investor ecosystem will spur development of China’s capital and A-share markets (those denominated in RMB) to the benefit of Mainland participants.

Role of a Global Custodian

Global custodians operate through integrated global networks that enable them to offer their clients access to the global financial system. Leading custodians operate in more than 100 securities markets worldwide. In certain markets including the US market, global custodians provide direct custody service. In numerous other markets, global custodians typically access a market through an appointed local “sub-custodian.” It is common practice across global financial markets for investors to contract with global custodians and for such global custodians to contract with local sub-custodians in different markets to ensure efficient management of investor assets.

In the Chinese mainland market, however, foreign investors are required to contract directly with local sub-custodians. In many circumstances, foreign investors are not comfortable with the direct contract requirement either because it runs contrary to global practices, or because the contract review process can be lengthy in order to ensure that both sides are satisfied. We encourage the government to recognize global custodians in the mainland market by removing the requirement for foreign investors to contract directly with local sub-custodians. This would not only facilitate better management of investor assets, but also would streamline implementation of the CSRC regulatory change to allow Qualified Foreign Investors (QFIs) to appoint an unlimited number of local custodians. To control risk, participants can maintain an investor ID requirement at the trading level for market surveillance purposes.

Bond Settlement Agents

AmCham China is encouraged by progress in building up the infrastructure of China’s bond market, which has been guided by the People’s Bank of China (PBOC). The PBOC released a 30-item Opinion document in February 2020 to gradually transfer the onshore Settlement Agents Model to a Custody Bank Model in order to serve foreign investors via the China interbank bond market (CIBM). This progress paves the way for our members’ participation in the CIBM. To continue attracting and even accelerating high quality foreign investment in the CIBM, we recommend that the PBOC introduces international best practices in implementation. For instance, bond settlement agents (BSAs) in mainland China are currently responsible for both trading and settlement in the CIBM. By contrast, in global financial markets trading and settlement functions are typically separated across different FIs. This means that within the mainland market, global custodians must instruct their local sub-custodians that their trading departments must not settle CIBM transactions. Failure to properly separate trading and settlement actions means that global custodians do not consider CIBM assets to be under their custody, with the consequence that foreign investor assets are not properly protected. Therefore, we recommend that China adopt international best practices with respect to BSAs and require separation of trading and settlement functions.

QFI Third-party FX

AmCham China is encouraged to see that PBOC and SAFE jointly promulgated the *Regulations on Funds of Securities and Futures Investment by Foreign Institutional Investors* (2020) No. 2. The new regulations lifted quota requirements and simplified the administrative requirements for remittance and repatriation of funds as well as currency exchanges by QFI investors. Currently QFIs who remit foreign currency to fund their investment are required to execute FX with the QFI custodian only. With more flexibility, foreign investors would be able to execute with any onshore counterparties

管变化的实施。为了控制风险，参与者可以在交易层面保持投资者身份的要求，以达到市场监管的目的。

债券结算代理

商会十分欣喜的看到，在中国人民银行的指导下，中国债券市场的基础设施建设取得了进展。中国人民银行在 2020 年 2 月发布了 30 条意见文件，将在岸结算代理模式逐步转为托管银行模式，以便通过中国银行间债券市场为外国投资者服务。这一进展为商会会员企业参与银行间债券市场铺平了道路。为了继续吸引甚至加速高质量的外国投资进入银行间债券市场，商会建议中国人民银行在实施中引入国际最佳实践。例如，中国大陆的债券结算代理人目前负责银行间债券市场中的交易和结算。相比之下，在全球金融市场中，交易和结算功能通常是由不同的金融机构分开负责的。这意味着在大陆市场上，全球托管行必须指示其当地的次级托管行，其交易部门不得对银行间债券市场交易进行结算。如果不能适当分离交易和结算行为，意味着全球托管行不认为银行间债券市场资产是由他们托管的，其结果是外国投资者的资产得不到适当的保护。因此，商会建议中国在债券结算代理人方面采用国际最佳实践，并要求将交易和结算职能分开。

QFI 第三方外汇

商会欣喜地注意到，中国人民银行和国家外汇管理局联合颁布了《境外机构投资者境内证券期货投资资金管理规定》（2020 年第 2 号）。《规定》取消了配额要求，简化了合格机构投资者汇出和汇回资金以及货币兑换的管理要求。目前，汇出外币为其投资提供资金的合格投资机构只需与合格投资机构的托管人执行外汇。具备了更多的灵活性，外国投资者希望与任何有能力进行外汇交易的在岸对手方进行交易。增加外汇交易方的数量可以实现最佳执行效果，这也是所有外国投资者所追求的。因此 QFI 托管人可以继续进行监控，汇款和汇回继续通过 QFI 托管人的在岸账户进行。自去年以来，对中国银行间债券市场投资者的类似限制已经放宽，反过来，中国银行间债券市场投资者可以与任何在岸交易方执行外汇（用于结算）。

外资银行获得第三方存管银行资格

根据券商结算模式的相关要求，证券经纪商必须指

定第三方存管银行（存管银行）为客户开设专门的结算账户用作证券市场投资。目前，中国大约有 25 家存管银行，都是中资银行。存管银行由银保监会和中国证监会指定，没有相关法规也无申请资质条件。由于 QFI 的两融交易和商会会员企业的基金托管业务都需要采用券商结算模式，鉴于一些外资银行没有存管银行的资质，客户必须要在其他有资质的存管行开立第三方存管账户，并在交易前将相关资金从托管户划转至三方存管账户才能进行交易，增加了许多运营的风险与成本。

证 券

首次公开募股 (IPO)

保荐人先行赔付

商会理解保荐人先行赔付制度在保护投资者和维护市场稳定方面的重要作用。然而，这一机制也引发了一些关于其对保荐机构限制的争论。一方面，这种做法在海外资本市场还没有先例。另一方面，赋予保荐人为其尽职调查辩护的权利是对保荐人履行尽职调查责任的必要激励。但是，强制要求预付赔偿意味着保荐人需要承担严格的责任（无过错责任），也就是说，即使尽职调查做得很好，保荐人也没有机会进行辩护和免责。

商会已经在这方面看到了一些进展。随着注册制的 IPO 制度在整个 STAR 市场和创业板的实施，这两个市场都取消了类似要求。此外，根据新修订的《证券法》第 93 条，保荐人可以决定他们是否采用这一机制。

基于上述情况，以及 STAR 市场和创业板的成功案例基础上，商会认为取消主板 IPO 的先行赔付要求是合理和有益的。这一取消也符合注册制 IPO 改革的核心——市场改革和自由化的精神。

共同投资机制

在现有的强制性共同投资机制下，保荐人在提高 IPO 配售的经纪佣金，或降低 IPO 价格以保证市场表现方面具有强烈动机。共同投资的成本也很容易作为保荐费的参考因素间接转移到发行人身上，从而降低发行人的实际融资效率。更广泛地说，美国和香港股票市场所没有的机制，在吸引高质量的国际资本方面是不适用的。新设定价较低导致的超额认购和低中签率会进一步打击外国投资者的投资欲望。

with the capability to trade FX. Increasing the number of FX counterparties enables best execution which is what all foreign investors would look for. Remittance and repatriation continue to go through the onshore accounts maintained by the QFI custodian so the QFI custodian can continue the monitoring. This similar restriction was relaxed for CIBM investors since last year and in turn CIBM investors can execute FX (for settlement) with any onshore counterparts.

Foreign banks are qualified as third-party custodians

In accordance with brokerage settlement model requirements, securities brokers are required to designate a third-party custodian to open a special settlement account for their clients to invest in securities markets. Currently, there are about 25 custodians in China, all of which are Chinese banks. The custodians are designated by the CBRC and the CSRC, and there are no regulations or qualifications to apply for such role. Since QFI's securities margin trading and our fund custodian business require the brokerage settlement model, given that some foreign banks are not qualified as custodians, clients have to open third-party accounts with other qualified custodians and transfer the relevant funds from the custodian account to the third-party account before trading, which increases operational risks and costs.

Securities

IPO

Sponsor's Advance Compensation

AmCham China members understand the important role of advance compensation by underwriters in protecting investors and maintaining market stability. However, the mechanism has also triggered some debate over restrictions on underwriting agencies. While there is no precedent for such a practice in overseas capital markets, granting sponsors the right to defend their due diligence is an imperative incentive for sponsors to fulfill due diligence responsibilities. But the mandatory requirement of advance compensation means sponsors will need to assume strict liability (no-fault liability), i.e., even if due diligence is well-performed, there will be no prospects for sponsors to defend themselves and be exempt from liability.

We have already seen some progress in this regard. With the implementation of the registration-based IPO system across the STAR Market and ChiNext, both markets removed such requirements. In addition, according to Article 93 of the newly revised *Securities Law*, sponsors can decide on their adoption of this mechanism.

Based on the aforementioned issues and building on the successful examples in the STAR Market and ChiNext,

we believe that it would be beneficial to remove advance compensation requirements for Main Board IPOs. Such removal would also adhere to the spirit of market reform and liberalization that lies at the core of registration-based IPO reform.

Co-investment Mechanism

Under the existing mandatory co-investment mechanism, sponsors have strong incentives to raise brokerage commissions for IPO placements, or to lower IPO prices in order to ensure market performance. The cost of co-investment is also easily transferred to the issuer indirectly as a reference factor for sponsorship fees, thereby reducing the issuer's actual financing efficiency. More broadly, the mechanism, which is absent from US / Hong Kong stock markets, is counter-intuitive to attract high quality international capital. The over-subscription and low success rate from lower pricing of new stocks could further discourage foreign investors' appetite.

Therefore, AmCham China members would recommend the gradual abolition of co-investment requirements for sponsors. Specifically, it can be achieved through the following steps:

- First, relax the co-investment requirements on the STAR Market, aligning with the ChiNext practice of implementing such mechanism only on four types of stocks – unprofitable, red-chip structure, special voting rights and shares issued at high prices.
- Second, in the four situations where co-investment is required, further limit the scope of red-chip companies to those that have not been listed overseas.
- Finally, with the continuous deepening of the registration-based IPO reform, gradually cancel the co-investment requirement in the long-term.

IPO Joint-Sponsor Threshold

Our members note that per window guidance of the CSRC, joint-sponsorship is currently allowed only for IPOs with a deal size above RMB 10 billion and PIPEs with a deal size above RMB 20 billion. We note that this rule was originally put in place in order to ensure full usage of the joint sponsorship role, promote active coordination among advisors and improve overall due diligence quality. However, we also note that the existing deal size threshold limits participation by foreign onshore securities companies in A-share primary deals. We believe that active participation by onshore foreign securities companies would allow them to bring in global investment expertise, operational efficiencies, best practices and standards in compliance and internal processes that will help improve due diligence quality and internationalize the onshore markets. To this end, we recommend lowering deal size thresholds in order to accommodate more active involvement by foreign onshore securities companies as joint sponsors for IPOs.

因此，商会建议逐步取消对保荐人的共同投资要求。具体来说，可以通过以下措施实现：

- 首先，放宽对 STAR 市场的共同投资要求，向创业板做法看齐，即只对四类股票——无收益、红筹架构、特殊投票权和高价发行的股票实施这一机制；
- 其次，在需要共同投资的四种情况下，进一步将红筹公司的范围限定为未在海外上市的公司；
- 最后，随着注册制 IPO 改革的不断深入，从长远来看应逐步取消共同投资的要求。

IPO 联合保荐人门槛

商会注意到，根据中国证监会的窗口指导，目前只允许交易规模超过 100 亿元人民币的 IPO 和交易规模超过 200 亿元人民币的 PIPE 进行联合保荐。商会理解制定这一规则的初衷是为了确保充分发挥联合保荐人的作用，促进顾问之间的积极协调，提高整体尽职调查的质量。然而，现有的交易规模门槛目前限制了外国在岸证券公司参与 A 股一级交易的参与。商会认为，在岸外国证券公司的积极参与将能够带来全球投资专业知识、运营效率、合规和内部流程方面的最佳实践和标准，这将有助于提高尽职调查的质量并使在岸市场国际化。为此，商会建议降低交易规模门槛，以便外国在岸证券公司更积极参与成为 IPO 联合保荐人。

IPO 机构投资者

目前，在上海证券交易所和深圳证券交易所的现有指导下，STAR 市场和创业板都实施了 IPO 制度，要求机构投资者手中的 10% 份额在 IPO 后 6 个月内不得交易。对于 STAR 市场的发行，投资者从六类机构投资者（共同基金、社会保障基金、养老金、年金、保险和 QFII）中抽签决定。对于创业板的发行，投资者是通过抽签或按比例决定的。商会理解指导意见的出台是为了确保市场表现和稳定，但该规则正在影响被选中机构投资者的售后交易策略。商会认为，为了促进市场效率，取消该规则将会带来好处。

此外，商会很高兴看到 STAR 市场和创业板能够持续吸引国内外战略投资，但目前只有主权财富基金和养老金有资格作为基础部分投资者参与 A 股 IPO，全球投资者仍然渴望更多地参与中国在岸 A 股资本市场，商会建议扩大这一规则，将更多的离岸长期投资者和外国

公司投资者纳入基础部分投资者。这不仅将有助于实现机构投资的多元化，优化上市公司的股权结构，也有益于 A 股与国际资本市场的进一步融合和接轨，并增强其在全球投资者中的影响力。

定价和配售改革

商会支持在所有市场全面实施注册制 IPO 改革的决定。为了进一步挖掘市场潜力，鼓励高质量的市场发展，在定价和配售方面商会提出以下改革措施：

- 允许发行人和承销商决定定价和配售事宜

询价过程可以反映出投资者对新股发行的估价和需求，为交易双方创造动力。发行人和承销商可以收集和筛选出投资者的真实需求，从中制定出更加准确合理的发行价格。更重要的是，承销商可以掌握充分的信息，为发行公司选择一批长期、稳定、专业的有效投资者，确保公司的发展。对于投资者而言，具有较强研究能力的投资者可以在投资者教育、路演、路演等过程中获得充分的信息，对发行公司的价值和前景进行独立、专业的评估。基于市场的询价过程将起到过滤掉“热钱”和投机者的作用，同时保护真正的投资者。

因此，商会建议逐步提高发行人和承销商在定价和配股方面的决策权，取消包括公募基金、社保和养老金在内的机构投资者的最低配股比例上限，并适当考虑更多承担风险的投资者。这样一来，证券公司可以根据发行人的发展阶段、机构投资者的资质和背景、报价、锁定期的自愿承诺、自愿存款和市场情况来做出定价和配售决定。

同时，监管部门可以列举出希望发行人和承销商在定价时考虑的因素，从而对定价行为进行一定的引导。这样，就可以充分发挥市场的定价功能，使市场化的定价约束机制得以构建，促进更合理的价格发现机制的形成。

- 取消“高价剔除”和“定价不高于四个指标”的要求

根据商会会员公司的观察，STAR 市场产品的报价非常接近，导致价格集中在一个远低于价值报告所显示范围的水平。这主要是由于两个限制，“高价剔除”和“定价不高于四个指标”。

在注册制新股发行制度改革之前，存在着投资

IPO Institutional Investment

Currently, under the existing guidance of the Shanghai Stock Exchange and the Shenzhen Stock Exchange, both the STAR Market and ChiNext implement an IPO system which requires 10 percent of the investors of the institutional tranche to a six-month investment lock-up period post-IPO. For STAR Market offerings, investors are selected by lottery from a group of six types of institutional investors (Mutual Fund, Social Security Fund, Pension, Annuity, Insurance and QFII). For ChiNext offerings, the investors are determined by lottery or on a pro-rata basis. While we understand that guidance is in place in order to ensure market performance and stability, we also note that the rule is affecting the after-market trading strategy of the selected institutional investors. We believe that it would be beneficial to look to remove the rule in order to promote market efficiency.

Additionally, we are pleased by the continued success of the STAR Market and ChiNext through its ability to attract domestic and foreign strategic investment. However, we note that currently only Sovereign Wealth Funds and Pension Funds are eligible to participate in A-Share IPOs as investors of the cornerstone tranche. As global investors remain eager for greater participation in China's onshore A-share capital markets, we recommend the broadening of this rule to include additional offshore long-only and foreign corporate investors as part of the cornerstone tranche. This will help diversify institutional investments and optimize the shareholding structure of listed companies. It will also contribute to further integration and alignment between A-share and international capital markets and enhance its influence among global investors.

Pricing and Placement Reform

Our members welcome the decision to fully implement the registration-based IPO reform across all markets. To further tap into market potential and encourage high quality market development, we would like to propose the following reforms with regard to pricing and placements:

- *Allow issuers and underwriters to decide on pricing and placement*

The process of inquiry can reflect investors' valuation and demand for the new offering, creating incentives for both trading parties. Issuers and underwriters can collect and screen out the real needs of investors, from which they can formulate a more accurate and reasonable issuance price. More importantly, underwriters can be equipped with ample information to select an effective group of long-term, stable and professional investors for the issuing company, ensuring the firm's growth. For investors, those with strong research capabilities can obtain sufficient information in the process of investor education (PDIE), pre-roadshows, roadshows, etc., to perform independent and professional assessment of

the value and prospect of the offering company. The process of market-based inquiry will serve to filter out "hot money" and speculators, while protecting the real investors.

Therefore, we propose to gradually increase the decision power of issuers and underwriters in pricing and share allocation and lift the cap on the minimum allocation ratio for institutional investors including public funds, social security and pension funds. We also recommend that due consideration be given to more risk-taking investors. In so doing, securities companies can make pricing and allocation decisions based on the development stage of the issuer, the qualifications and background of institutional investors, quotations, the voluntary commitment of the lock-up period, voluntary deposits and market conditions.

In the meantime, regulators can enumerate the factors that they want issuers and brokers to consider when setting prices in order to provide certain guidance on pricing behavior. In this way, it is possible to give full play to the pricing function of the market, enable the construction of a market-based pricing constraint mechanism, and facilitate the formation of a more reasonable price discovery mechanism.

- *Remove "high price exclusion" and "pricing no higher than the four indicators" rules*

According to our observations, the quotation for the STAR Market offerings are very similar, resulting in the concentration of price at a level that is far lower than the range indicated in the value report. This is mainly due to two restrictions: "high price exclusion" and "pricing no higher than the four indicators."

Before the registration-based IPO system reform, there were speculative behaviors that investors over quote in order to obtain the allotment which led to the exclusion of the highest price to regulate the quotation process. However, the implementation of the registration-based IPO system has narrowed the gap between the issue price of new shares and the secondary market price. Investors also gradually become aware of risks and made decisions based on rational judgement. There is thus less need for underwriters to artificially adjust quotations and prices by eliminating the highest quotations.

Therefore, AmCham China members suggest removing the restrictions of "high price exclusion" and "pricing no higher than the four indicators" across all markets and sectors. This will enable investors who quote a reasonable and relatively high price to obtain the placement rather than being excluded.

- *Optimize the strategic placement process*

In addition, we recommend optimizing the strategic placement process. According to the relevant practices of the STAR Market and the ChiNext, strategic investors oftentimes need

者为了获得配股而过度报价的投机行为，这导致了剔除高价来规范报价过程。然而，基于注册制的新股发行制度的实施，缩小了新股发行价格与二级市场价格之间的差距。投资者也逐渐意识到了风险，并在理性判断的基础上做出决定。因此，承销商不太需要通过剔除最高报价来人为地调整报价和价格。

因此，商会建议取消所有市场和行业的“高价剔除”和“定价不高于四个指标”的限制。这将使报出合理和相对较高价格的投资者能够获得配售，而不是被排除在外。

• 优化战略配售过程

商会建议优化战略配售过程。根据 STAR 市场和创业板的相关惯例，战略投资者往往需要在了解潜在发行价格之前签署战略投资协议。然而，法规规定的战略投资锁定期较长，导致投资的风险相对较高。关键信息的缺失也往往使成熟的机构投资者难以通过内部审批程序，从而打击了投资者参与战略配售的积极性。

因此，商会建议在确定发行价格区间时或之后签订战略投资协议，以提高投资者的投资成本和潜在收益的透明度，增加投资者的投资热情和确定性。

股票通产品范围

商会支持继续努力发展“股票通”，将符合条件的 ETF 纳入“股票通”产品生态系统。商会希望进一步扩大“股票通”的可投资范围，包括更多的产品，如 IPO，以及南向股票拆借和北向卖空等附加功能。这些产品和功能将改善在岸资本市场的定价和流动性，使离岸投资者能够更好地对冲交易，管理交易成本，并执行更复杂的交易策略。特别是随着中国经历了重大和高调的股票指数纳入，这些工具将是吸引美国机构投资者的关键因素，他们希望增加和对冲在岸资本市场的风险，并期待这些变化能够尽快实施。

大宗交易

商会鼓励实施进一步改革措施，以便将大宗交易扩大到“股票通”参与者——这一工具目前仅适用于合格投资者。大宗交易是机构投资者用来尽量减少价格下滑和降低影响成本以实现大宗交易的最佳执行的关键工具。这是一个使投资者能够更有效地调整投资组合的关

键功能，这可以增加允许此类交易市场的吸引力。监管机构可以考虑采取分阶段的方法，首先为“股票通”参与者建立一个单独的大宗交易机制，为外国参与者提供一个更好的框架来管理对外资股权的限制。最终，商会会员企业期待将在岸大宗交易窗口扩大到“股票通”参与者，允许其能够像 QFI 投资者一样使用。在合格境外机构方面，商会期望将大宗交易窗口在整个交易日内扩大，以便进行即时匹配。

假期交易

商会支持香港交易所最近咨询中提出的修改建议，即在“股票通”中增加 4 到 6 个北向交易日，这将使 A 股市场开放的非交易日的数量减少约 50%。目前，“股票通”只有在香港和相关的大陆市场都开放交易时才能使用。这导致内地的“股票通”投资者在某些日期无法在香港市场进行交易，即使这些市场开放，香港投资者在内地市场也是如此。商会希望迅速实施所提出建议，并希望监管机构考虑允许在香港假期的前一天通过“股票通”进行买卖。商会期待与监管机构合作的机会，制定解决方案，允许通过“股票通”在假期进行交易。

交割与支付 (DVP)

世界上许多市场都在向交易日 (T) 后两天 (T+2) 的 DVP 结算周期靠拢。然而，中国的股票市场存在独特机制，采用了不同的 DVP 周期，即股票在交易日 (T+0) 以毛额 (交易 - 交易) 结算，而现金在第二天的 T+1 以净额结算。这种非标准的 DVP 结算系统将要求所有的股票交易和现金在投资者在市场上的上下达买单或卖单之前，必须完全预先交付或预付资金，这就产生了一些其他 DVP 模式可以避免的问题。例如，非标准 DVP 不仅提高了外国投资者的交易对手和市场风险，而且使中国证券登记结算有限责任公司面临本金和重置成本风险。它还还为外国投资者及其经纪人 (即 QFI 计划下的结算参与者) 带来了额外的成本和风险，特别是对于大型的长期外国投资者来说，他们通常为其管理的许多基金和客户委托使用多个托管人。

连接香港和大陆市场的“股票通”计划从 2014 年开始就采用了这种滞后的结算流程，这引起了外国投资者的极大关注。为了回应这些担忧，股票通监管机构在 2017 年引入了实时 DVP。商会鼓励中国政府对 A 股证券结算采用 DVP。

to sign a strategic investment agreement before knowing the potential issuance price. However, the strategic investment lock-up period stipulated by regulations is long, resulting in relatively high-risk exposure for the investment. The lack of key information also often makes it difficult for sophisticated institutional investors to pass the internal approval process, thereby dampening the enthusiasm of investors to participate in strategic placements.

Therefore, AmCham China recommends that the strategic investment agreement be signed when or after the issuing price range is determined, so as to enhance the transparency of investment costs and potential returns for investors and increase their enthusiasm and certainty for investments.

Stock Connect Product Scope

AmCham China members welcome continued efforts to enhance Stock Connect by including eligible ETFs in the Connect product ecosystem. We hope to see further expansion of the investible universe within the Stock Connect schemes to include more products such as IPOs as well as additional features such as southbound stock borrowing and lending (SBL) and northbound short-selling. These products and features will improve pricing and liquidity in onshore capital markets by allowing offshore investors to better hedge trades, manage trading costs, and execute more complex trading strategies. In particular, as China experiences significant and high-profile equities index inclusions, these tools will be key to attracting inflows from US institutional investors looking to increase and hedge their exposures to onshore capital markets. Our members look forward to these changes being implemented as quickly as possible.

Block Trades

AmCham China encourages improvements to allow for the expansion of block trading to Stock Connect participants – a facility which is currently available only to QFI investors. Block trades are critical tools used by institutional investors to minimize price slippage and reduce impact costs to achieve the best execution of large transactions. It is a key feature that enables investors to adjust their portfolios more efficiently, increasing the attractiveness of markets where such trades are allowed. Regulators may consider taking a phased approach by first building a separate block trading mechanism for Connect participants, offering foreign participants a better framework to manage limitations on foreign ownership. Eventually, members would like to see the onshore block trading window expanded to allow access by Connect participants just as QFI investors can. On the QFI side, members would like to see the block trading window be extended for matching throughout the entire trading day with instant matching.

Holiday Trading

Finally, we welcome the proposed changes by the Hong Kong Exchange in its recent consultation to add 4-6 Northbound trading days to Stock Connect, which would reduce the number of non-trading days when A-share markets are open by about 50 percent. Currently, Stock Connect is only available when both Hong Kong and the relevant mainland markets are open for trading. This leads to mainland Stock Connect investors being unable to trade in Hong Kong markets on certain days even when these markets are open, and vice versa for Hong Kong investors in mainland markets. Members would like to see the proposed changes implemented promptly and for regulators to consider allowing buy and sell orders via Stock Connect to be done on a day prior to a Hong Kong holiday. We would welcome the opportunity to work with regulators to develop solutions to allow for holiday trading through Stock Connect.

Delivery Versus Payment (“DVP”)

Many markets around the world have been converging to a Delivery Versus Payment (“DVP”) settlement cycle of two days (T+2) after the trade date (T). However, China’s equity market is unique as it has adopted a different DVP cycle, i.e., stocks are settled on a gross (trade-for-trade) basis on the day they are traded (T+0), and cash settles on a net basis the next day (T+1). This non-standard DVP settlement system would require all stock trades and cash to be fully pre-delivered or pre-funded before an investor can place a buy or sell order on the market, which gives rise to several issues that the DVP model otherwise avoids. For example, Non-standard DVP not only raises counterparty and market risks for foreign investors but also exposes China Securities Depository and Clearing Co., Ltd (“CSDC”) to both principal and replacement cost risks. It also creates additional costs and risks for foreign investors and their brokers (i.e., clearing participants under the QFI scheme), especially for large, long-only foreign investors who typically use multiple custodians for the many funds and client mandates that they manage.

The Stock Connect scheme, which links the Hong Kong and mainland markets, used this lagged settlement process from its inception in 2014 and it raised significant concern among foreign investors. In response to these concerns, Stock Connect regulators introduced real-time DVP in 2017. AmCham China encourages the Chinese government to adopt DVP for A-Share securities settlement.

We welcome the regulator’s recent efforts to improve the settlement cycle, including CSDC’s draft amendments to the rules and public consultation. We also maintain that the following improvements could help to further overcome the operational challenges of China’s non-standard DVP model:

商会支持监管机构最近为改善结算周期所做的工作，包括中登公司对规则的修订草案和公开广纳意见。商会相信以下改进措施有助于进一步克服中国非标准 DVP 模式所带来的运营挑战：

- 保持中国的股票和现金的结算周期与国际 DVP 惯例一致（当且仅当收到付款时才会交付证券，当且仅当交付证券时才会付款），以更好地确保投资者的资产安全，并取消预注要求。
- 过渡到 T+1 或 T+2 结算周期，以更好地与国际惯例接轨。关于结算过程的长度（即交易日和资金转移或结算之间的天数），国际金融一直在向 T+2 结算周期发展。欧洲在 2014 年采用了这种模式，日本和美国在 2015 年和 2017 年相继采用。在采用后，一家美国交易后金融服务公司美国存托信托和清算公司（DTCC）表示 T+2 减少了市场和对手方风险，增加了金融稳定性，并提高了安全性和效率。
- 同时，鉴于目前紧张的 T+0 结算时间框架，实施可行的股票借贷制度可以帮助促进股票借贷以达到“失效转移”的结算目的。

多经纪商模式

商会期待放松目前监管机构对投资者单一经纪商的限制，并根据全球最佳实践执行监管义务，提供在多个经纪商之间转换的选择。

虽然中国证监会于 2020 年 9 月 25 日出台的最新的 QFI 规则取消了对 QFI 可聘用的经纪商数量的限制，但商会担心，由于上海证券交易所和深圳证券交易所的规定，QFI 通过一个经纪商购买的股票通过另一个经纪商出售仍然存在实际障碍。例如，上交所规定，一个证券账户只能指定一个经纪商，并通过该经纪商指定的专用交易者参与业务单元参与证券交易。同一证券账户只有在重新指定该经纪商并履行手续后，才能向另一经纪商下单，并受到上交所的限制。这些规定限制了合格投资者通过最初购买股票的经纪商以外的经纪商出售股票，因为这需要重新指定经纪商或上交所和深交所规定的托管转移。因此，这增加了外国投资者的操作复杂性和合规成本，并有可能不符合最佳执行要求。

直接市场准入 (DMA)

商会希望监管机构能够允许经纪商向客户提供直接

市场准入 (DMA)，并取消拟定的前提条件，即经纪商必须在过去三年中的两年被评为 A 级或以上，这对外国经纪商是不公平的。

2015 年，中国证监会发布了包括《关于加强证券公司外部接入信息系统的通知》在内的一系列规定，以规范经纪商向其客户提供的应用程序接口 (API)。一般认为，这些规定适用于国内情况，而不是适用于合格境外机构，但是，商会会员企业希望监管机构能够确认这一理解是否正确。业界还关注 2019 年中国证监会《证券公司交易信息系统外部接入管理暂行规定》（征求意见稿）中概述的经纪商 A 级评级的要求。这意味着几乎所有将来要注册成立的合资或外商独资证券经纪商（统称“外商投资证券经纪商”）都将无法满足这一要求。因此，商会担心，对于任何寻求为其投资者提供直接市场准入的外商投资证券经纪商来说，等级评定要求将是一个巨大的挑战。

程序化交易

商会会员企业期望在制定明确程序化交易规则方面做出更大贡献。2015 年 10 月，中国证监会发布征求意见稿，对“程序化交易”进行监管。“程序化交易”被广泛定义为包括通过预先设定的程序或特定软件自动生成或执行交易指令的交易活动。此后，除了中国《证券法》第四十五条规定要向交易所报告，不得影响交易所的系统安全和正常交易秩序外，证券市场对程序化交易的监管没有重大进展。

商会注意到，制定程序化交易规则已经连续几年被列入中国证监会的年度立法计划，期待着规则草案的早日发布和后续的市场咨询。即将出台的措施草案将为行业提供指导，同时提高市场的流动性，提高价格发现的效率。商会会员企业期待在任何规则最终确定之前有机会反馈对草案的意见。

证券借贷

合格境外投资者 (QFI)

商会希望看到多头销售情况的改变，即借入股票的数量受制于价格上涨的规则，这也是中国资本市场所特有的。这一规则的应用将意味着，如果同一实体内的另一个交易台在同一证券上做空，那么作为该证券多头持有人的交易台将受到涨停板规则的约束。业界期望努力

- Aligning the Chinese settlement cycle with international DVP practice (delivery of securities happens when and only when payment is received, and payment happens when and only when the securities are delivered) for both stock and cash to better ensure asset safety for investors and remove the pre-funding requirement
- Migrate to a T+1 or T+2 settlement cycle to better align with international practices. With respect to the length of the process for settlement (i.e., the number of days between the transaction date and the transfer of funds or settlement), international financial markets have been moving toward to a T+2 settlement model. Europe adopted this model in 2014, Japan in 2015, and the US in 2017. At the time of adoption, the US Depository Trust and Clearing Corporation (DTCC), a post-trade financial services company, said that T+2 offers reduced market and counterparty risk, increased financial stability, and improved safety and efficiency.
- In the meantime, given the current tight T+0 settlement timeframe, it would be helpful to implement a workable stock borrowing and lending (“SBL”) regime, which can help to facilitate stock borrow for ‘fail cover’ settlement purposes.

Multi-broker Model

AmCham China members would like to see the relaxation in the current single broker restriction for investors and provide optionality to switch across multiple brokers in line with global best execution regulatory obligations.

While CSRC’s latest QFI rules introduced on September 25, 2020 have removed the limit on the number of brokers a QFI may engage, we are concerned that there is still a practical obstacle for a QFI to sell the shares purchased via one broker through another broker, due to provisions of both the Shanghai Stock Exchange (SSE) and the Shenzhen Stock Exchange (SZSE). For example, SSE stipulates that a securities account may designate only one broker and participate in securities trading via the dedicated Participant Business Unit (PBU) assigned by such broker. The same securities account may place orders with another broker only after its re-designation of such broker and after fulfilling formalities and subject to restrictions provided by the SSE. Such provisions restrict a QFI from selling shares through a broker different from the one through which the shares were originally purchased, as this requires re-designation of a broker or transfer of custody prescribed by the SSE/SZSE. It thus adds to operational complexity and compliance costs for foreign investors and the potential of not meeting best execution requirements.

Direct Market Access

AmCham China members encourage regulators to allow brokers to provide Direct Market Access (DMA) to clients and remove the drafted prerequisite that a broker must be

rated grade A or higher for the past two of three years which would be unfair for foreign brokers.

In 2015, the CSRC issued circulars including the *Notice on Strengthening the External Interface with Information System by Securities Companies* to regulate the application program interfaces (APIs) provided by brokers to their clients. It is generally understood that the circulars apply in the domestic context rather than to QFIs, however, AmCham China members would appreciate if regulators could confirm that the understanding is correct. The industry is also concerned about the requirement of Grade A rating for the broker outlined in the 2019 CSRC consultation draft of the *Interim Administrative Provisions on External Interface with Trading Information Systems of Securities Companies*. It would mean that almost all the joint venture or Wholly Foreign-Owned Enterprise (WFOE) securities brokers to be incorporated in the future (collectively “Foreign-invested Securities Brokers”) would fail to meet such requirement. Therefore, we are concerned that the grade rating requirement will be a substantial challenge for any Foreign-invested Securities Broker seeking to provide DMA for their investors.

Program Trading

Our members are also keen to contribute more actively in the formulation of clear rules for program trading. In October 2015, CSRC issued a consultation draft to regulate so-called “program trading” which is broadly defined to cover any trading activities in which the trading orders are automatically generated or executed through pre-set programs or specific software. Since then, there has been no significant development in the regulation of program trading in the securities market, except for the requirement to report with exchanges and refrain from affecting the system security and normal trading order of the exchanges as provided in Article 45 of China’s *Securities Law*.

AmCham China members note that the formulation of rules on program trading has been listed in CSRC’s annual legislative plan for several years and we look forward to the early release of the draft rules and the subsequent market consultation. The forthcoming draft measures will provide guidance to the industry, as well as improve market liquidity and provide efficiency of price discovery. We also look forward to presenting our comments on the consultation draft before any rule is finalized.

Securities Borrowing and Lending (SBL)

- Under QFI

AmCham China members wish to see a change in long sales, which are subject to the uptick rule up to the quantity of the borrowed shares and is unique to China’s capital markets. The application of this rule will mean that a trading desk that is a long holder in a security will be subject to the uptick

将自有股票与借入股票分开，以防止该规则阻碍多头交易员的能力。韩国和香港存在最佳实践案例，允许投资者设立不同的汇总单位，这样同一投资者的不同交易台或投资策略可以隔离交易流量，只对做空股票的单位适用涨停板规则。

此外，外国投资者对最近在《合格境外投资者规则》中将证券交易所的保证金交易和证券融资以及证券借贷纳入中国证券金融股份有限公司范围的规定表示认可。商会鼓励监管机构确保允许所有合格境外投资者进入在岸证券借贷框架，包括共同基金和对冲基金，使国际主动型基金能够参与有担保的卖空交易，这具有对其他国际参与者的被动交易流量提供抵消的优势，也将改善价格发现，减少价格波动，并提高中国证券的流动性。

股票通

虽然通过“股票通”渠道进行的证券借贷已经存在多年，但由于监管和实际障碍，其参与度相当有限。目前，“股票通”规则允许交易所的交易所参与者之间进行证券借贷。然而，实际的市场参与者是参与者的关联公司或贷款代理人，而非参与者本身。因此，商会期望扩大交易参与者的定义（包括参与者的关联公司和贷款代理人），以允许“股票通”参与者之间的再融资证券借贷，以迎合中国证券公司最初推出该机制时的意图。

终止净额结算

《期货和衍生品法》（草案）已经由全国人大常委会两次审议，并且两次向社会公开征求意见。业界热切期盼《期货和衍生品法》可以尽早通过，从而消除中国终止净额结算的不确定性。

但是，应当注意的是，根据《期货和衍生品法》（草案）的规定，该法律仅适用于衍生品交易。因此，债券回购交易和证券借贷交易是否也可进行终止净额结算存在法律的不确定性，希望通过相应的立法和解释，明确终止净额结算也适用于该等交易类型。同时，希望中国监管机构可以进一步推动本地衍生品交易基于盯市的担保品要求，从而进一步降低相关违约风险。

此外，希望可以进一步开放本地债券市场回购交易的参与主体，允许更多的境外参与者可在中国债券市场开展回购交易。

金融衍生品市场配套立法

除了《期货和衍生品法》外，中国还需相应配套的金融衍生品部门规章，扩大产品种类。商会注意到中国人民银行，银保监会，证监会和国家外汇管理局日前出台了《关于促进衍生品业务规范发展的指导意见（征求意见稿）》。根据草案的规定，银行开展的跨境衍生品交易需以套期保值为目的。但实践中，银行还为做市和平盘之目的开展跨境衍生品交易。前述草案的规定可能对银行的跨境交易能力产生较大的影响。

此外，由于相关市场的国际化以及外资金融机构的经营特点，实践中也需要进行相关信息及数据的跨境传输。建议加强各区域监管机构的沟通协作，在安全可控及保密的前提下，可以进行信息和数据的跨境传输。

债券和衍生工具

2020年，中国债券市场继续全面开放。商会欢迎中国证监会修订债券市场监管规定，允许投资者灵活选择结算周期。该举措反映出中国继续致力于债券市场开放。作为对中国债券市场进步的认可，富时罗素（FTSERussell）在2020年9月确认，中国将于2021年10月被纳入世界政府债券指数，这是中国第三次被纳入主要的全球债券指数。

同时，商会会员企业注意到，目前有大量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，反映出国际社会对中国主权债务和公司债务工具的浓厚兴趣。商会预计，中国国内债券市场将继续发展，并与全球市场实践保持一致。商会认为，一个更有效的债券市场将促进信贷配置，加强在岸金融体系风险分散。

商品期货

商会会员企业很高兴看到，中国进一步兑现承诺，在2020年增加了更多大宗商品期货产品，并期待中国继续保持这一势头，加快推出更多期货和期权产品，推动大宗商品期货市场国际化。这些变化补充了已经存在数年的境外中介机构结构，机构现已在中国各大宗商品交易所推出7种不同的产品。境外中介机构取得了巨大的成功，为国际投资者投资中国大宗商品期货提供了便

rule, if another trading desk within the same entity is short in the same security. The industry would welcome efforts to segregate owned versus borrowed shares so as to prevent the rule from impeding the ability of the long trader. Examples of best practice are in South Korea and Hong Kong which allow investors to set up different aggregation units so that the same investor with different trading desks or investment strategies can segregate flow and apply the uptick rule only to the unit that is shorting the shares.

Additionally, foreign investors appreciate the recent inclusion of margin trading and securities financing on stock exchanges, and securities lending to China Securities Finance Corporation Limited (CSFC) under the New QFI Rules. However, we encourage regulators to ensure that access to the onshore SBL framework is allowed for all QFIs, including mutual funds and hedge funds, enabling international active funds to participate in covered short selling trading which has the advantage of providing an offset against passive trading flow from other international participants. This will improve price discovery, reduce price volatility, and enhance liquidity of PRC securities.

- Under Stock Connect

Although SBL via the Stock Connect channel has been available for years, the participation is quite limited due to regulatory and practical obstacles. Currently, the Stock Connect rules allow for securities lending between Exchange Participants (EPs) of the Exchange. However, actual market participants are affiliates of EPs or Agent Lenders and not the EPs themselves. As such, we could welcome expansion of the definition of EP (to include EP affiliates and Agent Lenders) to permit refinanced securities lending and borrowing between Stock Connect participants, under the arranged mechanism of CSFC, as originally intended during the initial launch.

Closed-out netting

On April 20, 2022, the Standing Committee of the National People's Congress passed the *Futures and Derivatives Law of the PRC*, which will come into effect on August 1, 2022. The law fills gaps in China's previous regulations surrounding futures and derivatives and is expected to eliminate uncertainty surrounding termination of closed-out netting in China's markets.

However, it should be noted that according to the Law, it applies only to derivatives transactions. Therefore, there is legal uncertainty as to whether closed-out netting is also available for bond repo transactions and securities lending, and we hope that the corresponding legislation and interpretation will clarify that closed-out netting is also applicable to these types of transactions. We also hope that Chinese regulators can further promote the requirements of marking-

to-market-based collateral for local derivatives transactions, thereby further reducing the related default risk.

In addition, it is expected that the local bond market can be further opened for repo transactions, allowing more foreign participants to conduct repo transactions in the Chinese bond market.

Supporting regulations for financial derivatives market

In addition to the *Futures and Derivatives Law*, China needs corresponding supporting sectoral regulations on financial derivatives to expand the product scope. We note that the PBOC, CBIRC, CSFC and the SAFE issued the *Guiding Opinions on Promoting the Standardized Development of Derivatives Business (Draft for Comments)* in January 2022. According to the *Guiding Opinions*, cross-border derivatives transactions conducted by banks need to be for the purpose of hedging. However, in practice, banks also conduct them for the purpose of market-making and flat-trading. The provisions of the aforementioned regulations may have a significant impact on banks' ability to trade across borders.

In addition, due to the internationalization of the relevant markets and the operating nature of foreign financial institutions, cross-border transmission of relevant information and data is also required in practice. We recommend that communication and collaboration among regional regulators be strengthened so that the cross-border transmission of information and data can be conducted under the premise of security control and confidentiality.

Bonds and Derivatives

In 2022, China's bond market continued its trajectory towards a full opening. We welcome CSRC's move to revise its bond market regulations to allow investors to flexibly choose settlement cycles. The move reflects China's continued commitment to bond market opening. In recognition of China's progress, in September 2020, FTSE Russell confirmed that China would be, and was in fact, included in the World Government Bond Index starting in October 2021.

Meanwhile, 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, including central banks, commercial banks, securities companies, insurance companies, asset management institutions, and non-corporate products, reflecting strong international interest in sovereign and corporate debt instruments in China. We expect 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 improved diversification of risks in the onshore financial system.

利，提高了在岸市场的稳定性。监管机构还可以采取进一步措施，继续推动中国期货市场的国际化。例如，中国政府机构可以考虑发布更多细节，说明在新的统一合格境外投资者机制下，哪些期货产品将向国际投资者开放。近期实施的合格境外投资者改革有望推动市场的重大变革。中国商品期货是全球流动性最高的 10 种商品之一，如果可以在全球范围内交易，可投资产品的规模将会大大增加。此外，中国监管机构还应考虑允许美国期货经纪商参与境外中介机构结构。监管机构还可以利用新成立的广州期货交易所，加速推出碳期货，这将是大湾区金融市场发展国家政策蓝图提出的建立碳排放交易中心的规划的重要一步。

监管机构还可参照国际化在岸商品期货，鼓励开发结构性离岸产品，并加强外资企业在国内交易所中的所有权。这将帮助监管机构引入全球最优做法和与国际市场联系紧密的离岸公司，从而建立运转良好、国际化的大宗商品市场。

终止净额结算

2022 年 4 月 20 日，全国人大常委会表决通过了《中华人民共和国期货和衍生品法》（以下简称《期货和衍生品法》），并自 2022 年 8 月 1 日起施行。该法补齐了中国期货和衍生品领域法律的“短板”，期望本法的施行可以帮助消除中国终止净额结算的不确定性。

但是，应当注意的是，根据《期货和衍生品法》的规定，该法律仅适用于衍生品交易。因此，债券回购交易和证券借贷交易是否也可进行终止净额结算存在法律的不确定性，希望通过相应的立法和解释，明确终止净额结算也适用于该等交易类型。同时，希望中国监管机构可以进一步推动本地衍生品交易基于盯市的担保品要求，从而进一步降低相关违约风险。

此外，希望可以进一步开放本地债券市场回购交易的参与主体，允许更多的境外参与者可在中国债券市场开展回购交易。

终止净额结算使交易两方或多方抵消各方之间多笔交易支付的价值，通过减少必须进行的交易数量节省时间和成本。终止净额结算允许交易对手以净额而非毛额为基础管理信贷风险，降低了交易各方之间的结算前风险。中国是“非净额”管辖区，目前还没有立法或先例

支持终止净额结算。在破产的情况下，中国《企业破产法》赋予破产公司管理人“挑选”一些有利资产进行结算的权利，从而提高了提供担保的成本。

这种情况对衍生品交易造成了法律上的不确定性。衍生品资产价值难以准确评估，因为此评估以其他资产价格为基础。目前，中国交易衍生品以非净额为基础来计算资本充足率和流动性比率。因为中国是非净额辖区，在中国交易的银行必须拨出资本，以毛额抵消交易，而不是分笔抵消交易。这些要求大大增加了衍生品交易的资本成本。上海商会建议中国政府在法律上明确将衍生品归类为资产，显著降低成本，增加市场的流动性。

美国投资者期待中国正式颁布综合立法或最高司法解释，规定净额结算适用于中国各类金融机构和企业。净额结算广受监管全球金融公司的其他国家监管机构认可。要确保净额结算在中国和其他主要司法管辖区内得以执行，监管机构需要使企业能够更有效地应对信贷风险，努力降低金融风险。商会建议中国人民银行和证监会以及其他监管机构协调一致，让所有相关监管机构参与立法程序。其他国家的国家监管机构在净额结算相关法律法规制定方面经验丰富，中国与其合作一定能受益匪浅。

对冲工具

衍生品是对冲和创新的重要市场工具。商会注意到，过去几年里，中国国内利率和外汇衍生品市场显著增长，然而，对缺乏信贷风险对冲工具的担忧持续存在。尽管中国银行间市场交易商协会在 2010 年末推出了信用风险缓释工具，该产品提供的信用风险保护范围尚未被监管部门明确。信用风险缓释工具帮助银行管理其资本充足率，更有效地将金融风险分散到投资组合中。商会建议监管机构就投资者如何使用信用风险缓释工具管理信贷风险提供行业指导。商会认为，这将提高中国企业和投资者的整体风险管理水平。

债券通

商会会员企业希望金融公司的外国实体充当债券通做市商。然而，目前还没有一家外国机构获批成为香港—内地债券通做市商。境外外国公司对债券通使用的限制，反映出其在中国债券市场的整体规模较小：截至 2020 年 12 月，外国投资者只持有中国国内债券总额的 3.3%。

Commodity Futures

AmCham China members are pleased to see China expand on its pledge to add more commodities futures products in 2020 and look forward to seeing China maintain this momentum by accelerating the rollout of more futures and options to internationalize its commodities futures markets. These changes supplement the Overseas Intermediary (OI) structure which has been in place for a few years and now includes seven different products across various commodities exchanges in China. The OI structure in particular has been a great success, allowing international investors easier access to China commodity futures and contributing to greater onshore market stability. However, there are additional measures which regulators can take to continue internationalizing China's futures markets. For example, Chinese authorities may consider issuing further details on which futures products will be accessible for international investors under the new unified QFI scheme. The recent QFI reforms have the potential to be a significant game changer for the markets. Chinese commodity futures are in the top 10 most liquid products globally and if they are globally accessible, the size of the investible universe would increase. In addition, the authorities should also consider allowing US futures brokers to participate in the OI structure, which is currently not permitted.

Regulators can also leverage the newly established Guangzhou Futures Exchange (GFE) to accelerate the introduction of carbon futures, which will be a step toward establishing itself as an emissions trading hub which is outlined in the national policy blueprint for the development of financial markets in the Greater Bay Area. Regulators may also look to encourage the development of structured offshore products with reference to internationalized onshore commodity futures as well as a greater ownership role for foreign firms in onshore exchanges. This would support regulators' efforts to build well-functioning, internationalized commodities markets by bringing in global best practices and offshore players with deep ties to international markets.

Termination of Netting

Closed-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. Close-out netting allows counterparties to manage credit risks on a net rather than gross basis. This reduces pre-settlement risk between trading parties. China is generally believed to be a "non-netting" jurisdiction and does not yet have any legislation or live case studies to support close out netting. In the event of insolvency, China's Bankruptcy Law may give 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. Foreign banks that are trading derivatives in China generally use a non-netting-based methodology to calculate capital adequacy and liquidity ratios for prudential risk management. Because China is not deemed to be 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. We recommend that the Chinese government clarify the legal interpretation of classifying derivatives as assets, which would significantly reduce their cost and increase liquidity in the market.

US investors look forward to seeing China enact formal, comprehensive netting legislation or Supreme People's Court interpretations applicable to all types of FIs and companies in China including in the case of a counterparty filing for bankruptcy and is also recognized by other national regulators which supervise global financial firms. Ensuring that this practice is enforceable within China and in other major jurisdictions would complement the efforts of regulators to reduce financial risks by enabling firms to more effectively address credit risk. We recommend that the PBOC and CSRC, among other regulatory agencies, take a concerted approach to the legislative process involving all relevant regulators. China could also benefit from working with national regulators in other countries experienced in netting-related laws and regulations.

Hedging instruments

Derivatives constitute an essential market instrument for hedging and innovation. AmCham China has noted significant market growth in 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 regulators. CRM helps banks to manage their capital adequacy ratios and more effectively spread financial risks 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. Currently no foreign institution has received approval to serve as market maker for the Hong Kong-mainland China Bond Connect. Offshore foreign firms' limited access to Bond

商会理解现有的监管协调和技术基础设施面临着挑战，然而允许外资参与“债券通”将为中国资本市场释放新的潜力。这将给中国带来优质的外国投资者，加强中国与全球金融市场的联系。采用外国做市商还可以在已相当可观的资本流入基础上，进一步补充中国被纳入全球债券指数预计将带来的资本流入。允许外国做市商参与“债券通”也与中国推进人民币国际化和资本市场开放的目标相一致。

熊猫债券市场

商会注意到外国机构在内地银行间债券市场发行熊猫债方面的进展。2018年9月，中国人民银行和财政部联合发布了《全国银行间债券市场境外机构债券发行管理暂行办法》，进一步明确了外国债券发行人在申请条件、程序、信息披露、债券发行登记、委托和结算相关事项的标准。此举将促进中国债券市场的国际化，也代表了中国金融业的进一步开放。尽管这些进展鼓舞了外国金融机构，但目前熊猫债券收益的汇款仍需由中国人民银行和外汇局逐案批准。商会建议中国政府允许大部分收入来自中国境外的外国公司自由汇回熊猫债券收益。中国政府也应针对熊猫债券采用更多的国际会计准则，尤其是美国和英国的会计准则，从而提高外资机构对中国市场的参与度。

金融衍生品市场配套立法

除了《期货和衍生品法》外，中国还需相应配套的金融衍生品部门规章，扩大产品种类。商会注意到中国人民银行，银保监会，证监会和国家外汇管理局日前出台了《关于促进衍生品业务规范发展的指导意见（征求意见稿）》。根据草案的规定，银行开展的跨境衍生品交易需以套期保值为目的。但实践中，银行还为做市和平盘之目的开展跨境衍生品交易。前述草案的规定可能对银行的跨境交易能力产生较大的影响。

此外，由于相关市场的国际化以及外资金融机构的经营特点，实践中也需要进行相关信息及数据的跨境传输。建议加强各区域监管机构的沟通协作，在安全可控及保密的前提下，可以进行信息和数据的跨境传输。

私募股权

混合所有制改革是提高国有企业活力的重要途径。2022年是国企改革三年行动的收官之年，国务院国资委

落实国务院国企改革领导小组的要求，积极研究和推动相关领域的改革。多个地方政府也将混改、重组放在重要位置。希望有关部门进一步明确鼓励和支持包括私募股权投资机构在内的外资参与混改的政策。

建立连接以促进跨市场债券发行和交易

2022年1月20日，经中国人民银行和中国证监会批准，5家机构联合发布了《银行间债券市场与交易所债券市场互联互通业务暂行办法》。该《办法》有利于跨市场债券的发行和交易，促进资金等要素的自由流动，形成统一的市场和价格，有助于提高中国债券市场基础设施的服务水平和效率，有助于发展以客户为中心的债券市场基础设施服务体系。商会认为，这是国内债券市场连接机制建设和促进国内债券市场一体化发展的重大进展。

另一个例子是，中国证监会发布了《证券与基金业务信息技术管理办法（2019年）》，以指导行业信息技术系统的配置。根据第63条规定，所有“重要”的IT系统都需要在岸，包括支持交易和结算的系统等。因此，QFI托管IT系统最好在岸上部署。然而，从业务角度来看，由于QFI的跨境特点，在QFI渠道下有必要进行跨境数据传输、存储和处理，因为本地托管人需要将客户的日常交易数据传输给离岸QFI客户和全球托管人进行处理。

美国先进的托管机构已经在境外建立了完全符合ISO27001/2标准的IT支持系统，在物理和环境安全、访问控制、系统维护、事件管理等方面高度满足中国证监会的安全管理要求。此外，由于QFI的特殊业务性质，QFI的客户数据已经存储在全球托管人的境外数据中心。因此，商会敦促中国证监会继续允许我们的会员企业依靠其现有的离岸IT基础设施来开展QFI业务，同时只建立必要的在岸协议来支持业务。

此外，对于最新颁布的《数据安全法》和《个人信息保护法》，商会希望相关金融监管机构就具体实施提供指引。颁布金融机构的关键信息基础设施认定标准或颁布关键信息基础设施运营者的名单。

与境外关联企业共享离岸系统

商会希望解决外资银行与其境外关联企业共享离岸系统（包括文件存储系统）的问题。

Connect mirrors their smaller presence in China's bond market overall: foreign investors hold only 3.3 percent of China's domestic bonds overall as of December 2020. While we understand existing challenges regarding regulatory coordination and technological infrastructure readiness, allowing foreign participation in Bond Connect will 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 indexes. Allowing foreign market makers in Bond Connect is also in line with China's goals of RMB internationalization and capital markets opening.

Panda bond market

AmCham China has noted progress in promoting Panda Bond issuance by foreign institutions in the mainland interbank bond market. In September 2018, the PBOC and MOF jointly issued the Interim Measures for Administration of the Issuance of Bonds by Overseas Institutions in the National Interbank Bond Market. The rules 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 FIs 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 which derive the majority of their revenue from outside China to repatriate Panda Bond proceeds freely. Meanwhile, the 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.

Private Equity

Mixed ownership reform is an important way to improve the vitality of state-owned enterprises. 2022 is the closing year of the three-year campaign to reform state-owned enterprises, and the State-owned Assets Supervision and Administration Commission (SASAC) has been actively studying and promoting reforms in related areas to implement the requirements of the State Council Leading Group on State-owned Enterprise Reform. A number of local governments have also attached great importance to the reform and restructuring. AmCham China hopes that the relevant authorities will further clarify the policy of encouraging and supporting foreign investors, including private equity investment institutions, to participate in the mixed ownership reform.

Facilitate bond issuance and trading across markets

On January 20, 2022, with the approval of PBOC and CSRC, five authorities jointly released the "Interim Measures for the Connectivity Business between the Interbank Bond Market and the Exchange Bond Market". It facilitates cross-market bond issuance and trading, promotes free flow of elements like capital, and forms a unified market and unified price. It helps improve the service level and efficiency of the infrastructure of Chinese bond markets, contributes to the development of a customer-centric bond market infrastructure service system. AmCham China believes that this constitutes major progress in the building of the domestic bond market connect mechanism and promoting the integrated development of domestic bond markets.

Another example is CSRC's issuance of the *Measures for the Information Technology Management of Securities and Funds Operations* (2019) to guide the setup of industry IT systems. According to Article 63, all "important" IT systems are required to be onshore, including the systems to support trade and settlement, etc. Therefore, QFI custody IT systems are preferred to be deployed onshore. However, from a business perspective and due to QFI's cross-border nature, there is a necessity of cross-border data transfer, storage and processing under the QFI channel, as local custodians need to transfer clients' daily transaction data to offshore QFI clients and global custodians for processing purposes.

Leading US custodians have already set up supporting IT systems offshore fully in line with ISO 27001/2 which are highly qualified to meet with CSRC's security management requirements in aspects of physical and environmental safety, access control, system maintenance, incident management, etc. In addition, due to QFI's specific business nature, QFI clients' data has already been stored in global custodians offshore data centers. Therefore, we urge CSRC to continue to allow our members to rely on their existing offshore IT infrastructure set up to conduct QFI business, while only building out necessary onshore protocols to support business.

In addition, for the newly enacted *Data Security Law* and the *Personal Information Protection Law*, AmCham China urges financial regulators to provide guidelines on the concrete implementation and promulgate criteria for critical information infrastructure of financial institutions and/or promulgate a list of critical information infrastructure operators.

Sharing offshore systems with offshore affiliates

AmCham China urges attention to the issue of foreign banks sharing offshore systems (including file storage systems) with their offshore affiliates.

此外，对于最新颁布的《数据安全法》和《个人信息保护法》，商会希望颁布金融机构向境外执法部门，特别是境外监管机构，披露个人信息以及金融信息（包括重要数据 / 核心数据）的合规细则。

信用评级

总的来说，商会很高兴看到，通过中国人民银行、中国证监会、国家发展和改革委员会、财政部和其他监管机构领导的改革措施（包括已实施的和拟实施的），国内信用评级行业的质量有所提高。商会认为这些变化是中国金融市场更广泛的改革计划的一部分，为投资者、企业和中国经济带来了更多可能性。

针对 2021 年中国信用评级行业面临的变化，中国监管机构采取了深入而广泛的措施，商会对此表示赞赏。

为促进信用评级行业健康发展，2021 年初，中国人民银行和四个部门公开征求意见稿，旨在促进中国农村信用社的高质量、健康发展。关键消息涵盖了信用分类、基准分类、SACP、双重评级和基于投资者反馈的评价等评级表。在 2021 年 8 月，中国人民银行正式发布了《关于促进债券市场信用评级行业健康发展的通知》，敦促地方 CRA 在 8 月 2022 日完成信用评级差异化的改进。该通知旨在加强对国内 CRA 的监管，提高其独立性和质量控制。

为调整保险投资的评级地板，2021 年 11 月，CBIRC 发布了调整保险资金投资债券信用评级要求的通知。取消了所有合格金融机构发行的债券的投资下限，这些债券在中国注册并获得许可，且状态良好。公司发行人发行的债券的投资下限放宽。

CBIRC 根据风险管理能力将保险投资者分为三类。

- 第一类：取消一类保险投资者的投资下限
- 第二类：将第二类保险投资者的投资下限从 AA 降低到 BBB
- 第三类：将第三类保险投资者的投资下限保持在 AA

针对强制评级规定，监管的改革也取得了进展。

- 2021 年 1 月中国银行间市场交易商协会在注册阶段取消了对公司债券的强制性信用评级要求，这是

中国监管机构在高评级发行人一系列高调违约后降低外部评级的第一步。

- 2021 年 2 月中国证监会取消了新公司债券发行和交易的信用评级要求。
- 2021 年 3 月中国银行间市场交易商协会在银行间市场公司债券发行阶段放宽了信用评级。
- 2021 年 8 月人民银行在银行间市场非金融企业债务融资工具发行阶段取消了信用评级的强制性要求。

除了取消强制性要求外，信贷市场正在进行的监管改革，包括鼓励区分评级和双重评级，放松了对债券发行最低评级要求的限制等，这些措施都在将评级需求的主导力量返还给市场。此外，银保监会还调整了投资债券的保险公司的最低信用评级要求，从而消除了在市场上使用差异化评级的障碍。

这些削弱对外部评级依赖的新规定反映了中国证监会为提振市场信心所做的努力。商会预计，这些变化将使不同市场的各种信用评级法规更加统一和细化，从而推动国内信用评级行业的发展和透明化。国内信贷市场的监管环境正在演变。监管政策正在朝着提高评级质量和减少机构对外部评级依赖的方向发展。商会认为，拟议的变化标志着中国金融市场和整个信用评级行业的日益自由化。

商会一直与中国政府和其他市场参与者保持着沟通，分享对信用评级方法的观点，提高市场透明度，加快中国信用文化的发展。商会认为，信用评级机构应该在信用市场改革中发挥根本性作用。国际信用评级机构的经验和最佳做法，及其对中国市场理解的加深，有助于政府更有效地管理和化解信贷风险，提高市场透明度，加速中国资本市场的国际化。

评级质量评估

根据国际经验，通过历史违约率的统计可以反映评级结果的质量，即信用等级越高对应的违约率越低。同时，利用信用等级变动分析、信用利差分析等对评级质量进行检验。信用等级变动分析内容主要包括信用等级迁移率、上调率 / 下调率等。

商会认为，信用等级的调整率要与级别相关联，即级别越高的评级的稳定性越强，低级别的评级调整频率较为频繁。信用利差分析主要通过债券的发行利率、到

In addition, with respect to the recently enacted *Data Security Law* and *Personal Information Protection Law*, we urge the relevant financial regulators to provide guidelines on the concrete implementation and promulgate criteria for the critical information infrastructure of financial institutions and/or promulgate a list of critical information infrastructure operators.

Credit Ratings

Generally speaking, AmCham China is pleased to see progress to improve the quality of the domestic credit rating industry epitomized by reforms (both in final and proposed form) led by the PBOC, CSRC, the National Development and Reform Commission (NDRC), MOF, CBIRC and other regulators. We recognize that these changes are part of a broader program of reform within Chinese financial markets, which has ushered in an encouraging period of possibility for investors, companies, and the Chinese economy.

We also acknowledge the thorough and diligent approach taken by Chinese regulators in considering changes to China's credit rating industry in China in 2021.

To promote healthy development of the Credit Reporting Agency (CRA) Industry, in the beginning of 2021 PBOC and four other authorities publicly solicited comments on the draft policy aimed at promoting high quality and healthy development of CRAs in China. The key messages covered rating scale with credit differentiation, benchmark rating in all categories, SACP, dual rating and evaluation based on investors' feedback, etc. In August 2021 PBOC formally released the *Notice to Promote the Healthy Development of the Credit Ratings Industry of the Bond Market* urging local CRAs to complete improvements on credit rating differentiation by August 2022. The *Notice* aims to strengthen supervision of domestic CRAs and improve their independence and quality control.

To adjust the ratings floor for insurance investments, CBIRC in November 2021 issued the *Notice on Adjustment of the Credit Rating Requirements for Insurance Funds Invested in Bonds*. The investment floor was removed for bonds issued by all eligible FI issuers registered and licensed in China and in good shape. The investment floor for bonds issued by corporate issuers was relaxed.

CBIRC classifies insurance investors into 3 categories according to their risk management capacity:

- Category I: Removed the investment floor for category I insurance investors
- Category II: Lowered the investment floor for category II insurance investors from AA to BBB
- Category III: Kept the investment floor for category III insurance investors at AA

With respect to the mandatory rating requirement, regulatory reform has also made progress:

- January 2021 – NAFMII removed mandatory credit rating requirements on corporate bonds during the registration phase as the first step for Chinese regulators to reduce reliance on external ratings following a series of high-profile defaults by highly rated issuers.
- February 2021 – CSRC removed credit rating requirements on new corporate bond issuance and trading.
- March 2021 – NAFMII relaxed credit ratings at the issuance stage of interbank market corporate bonds.
- August 2021 – PBOC removed mandatory requirements on disclosing credit ratings during the issuance stage of non-financial enterprise debt financing instruments in the interbank market.

In addition to the removal of mandatory requirements, ongoing regulatory reforms in the credit market include encouragement for differentiated ratings and dual ratings and eased restrictions on the minimum rating requirements for bond issuance, which restore the dominant power of rating demand to the market. CBIRC also adjusted minimum credit rating requirements for insurance company investing in bonds which removed barriers for differentiated ratings to be used in the market.

These new rules to reduce reliance on external ratings reflect CSRC and CBIRC's efforts to shore up market confidence. Regulatory policies are moving in the direction of improving rating quality and reducing institutional dependence on external ratings. We believe that the proposed changes signify the increasing liberalization of Chinese financial markets and the credit rating industry in general.

AmCham China has been in regular communication with the Chinese government and other market participants to share views on the importance of credit ratings in financial infrastructure, provide greater market transparency, and accelerate the evolution of China's culture of credit. AmCham China believes that CRAs should play a fundamental role in the process of credit market reform. The experience and best practices of international credit rating agencies, coupled with their growing understanding of the Chinese market, can enhance the government's efforts to manage and mitigate credit risks, improve market transparency, and accelerate the internationalization of China's capital market more effectively.

Assessment of rating quality

With respect to the testing of default rates, the quality of rating results is reflected through the statistics of historical default rate, that is, the higher the credit rating, the lower the default rate. At the same time, credit rating change analysis and credit spread analysis are used to test rating quality. The content of credit rating change analysis mainly includes credit rating migration rate, up / down rate, etc.

期收益率或者估值收益率等与无风险债券收益率的差异来反映不同信用等级对应的信用利差之间的区分性。总体来说，商会认为任何一项评估指标都有其局限性，因此建议监管综合参考多项评估指标来得到更加全面的评估结果。

规范评级流程

商会完全赞同关于建立科学规范评级流程的监管意图。商会认为，为了实现这一目标，可以把更多的重点放在高质量的信用分析上面，评级作业中的具体步骤可放在次要位置。

目前，评级机构都很重视评级作业具体步骤方面的形式合规，可能并没有做到真正高质量的信用分析。如果监管在监管规定中强调高质量的信用分析，可能能够更好地引导评级机构把精力放在高质量的信用分析上，从而实现合理可信的评级结果。

目前关于评级流程的监管规定总体上是合理的。如果能将其中一部分非常具体的要求改为重点评估评级机构的信用分析结果，可以更好地引导评级机构把资源和精力放在最合理的地方。

以定期跟踪的要求为例，评级机构可能做到了在年报公布后三个月进行定期跟踪的形式合规，但并不必然保证评级结果的合理性和评级报告的高质量。因为要在有限的时间内完成所有的年度跟踪，评级机构可能遵守了流程上的要求，但不一定深入研究了评级报告的内容和评级结果。

如果监管重点强调评估评级结果的合理性（可以用评级结果分布或者债券信用利差等指标来衡量评级结果合理性），可以引导评级机构的分析部门管理层真正重视信用分析的质量，而不仅仅是满足于评级作业流程方面的形式合规。

建立连接以促进跨市场债券发行和交易

对于信用评级行业来说，在规则方面，商会建议监管机构继续推动银行间市场和交易所市场信用评级自律规则的统一，包括评级机构备案规则、评级业务流程、信息披露规则的统一等。

在管理方面，商会希望监管机构继续推进信用评级业跨市场自律管理的协调机制，包括评级机构备案信息

共享，同时涉及两个债券市场的同一类问题可以与同一监管部门进行咨询并集中协调解决，日常监管检查也可以通过协调机制统一安排。

在自律体系和评价方面，商会建议增添跨市场自律体系和打分结果互认，如在发改委，保险资管协会自律体系下被列入失信名单的评级公司，在银行间市场也会受到停业处罚。

网络安全和跨境数据传输

网络安全和跨境数据流动

数据本地化和网络安全相关政策给在华外国金融机构带来诸多挑战，也是金融业市场进入主要障碍之一。现行金融领域要求，2017年颁布的《网络安全法》2021年颁布的《数据安全法》和《个人信息保护法》及相关的网络安全和数据相关政策要求包括数据本地化和数据传输限制、侵入性检查和测试相关要求，以及其他规范网络安全的要求。此类规定重要术语缺乏明确定义、后续法规草案与实施细则不一致、安全评估要求繁杂以及操作上的限制等雪上加霜，导致挑战更加严峻。在本节中将讨论对金融领域的主要意见和建议。

数据本地化和数据流限制

跨境自由传输数据对于国际金融服务公司来说至关重要。数据本地化和对跨境数据流限制将会严重影响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。

2022年，中国颁发了《个人信息保护法》和《数据安全法》，这两部法律和2017年生效的《网络安全法》构建了中国对数据和数据跨境流动政策的整体框架。《网络安全法》第三十七条限制了关键信息基础设施运营商向境外传输个人信息和重要数据的能力。《个人信息保护法》第三十八条和四十条要求企业遵循个人信息跨境流动的机制并要求处理关键信息基础设施运营者和处理个人信息达到国家网信部门规定数量的个人信息处理者在境内存储。

对于关键信息基础设施运营者和个人信息保护法里要求的处理达到一定数量个人信息的公司来讲，个人信息跨境流动需要通过网信部门组织的安全评估。然而，2021年10月份的《数据出境安全评估办法》（征求意见

AmCham China believes that the adjustment rate of credit rating should be related to the grade, i.e., the higher the grade, the stronger the stability of ratings, and the lower grade, the greater frequency of rating adjustments. Credit spread analysis mainly reflects the distinction between credit spreads corresponding to different credit grades through the difference between the issuance interest rate, yield to maturity or valuation yield of bonds and the yield of risk-free bonds. AmCham China generally believes that any evaluation index has its limitations, and therefore recommends that regulators comprehensively refer to multiple evaluation indexes to obtain more comprehensive evaluation results.

Standardizing the rating process

AmCham China fully agrees with the regulatory intention to establish a scientific and standardized rating process. We believe that in order to achieve this goal, we can focus more on high-quality credit analysis, and the specific steps in the rating operation can be put in a secondary position.

At present, rating agencies attach great importance to formal compliance in specific steps of rating operation and may not have achieved real high-quality credit analysis. If the regulation emphasizes high-quality credit analysis in the regulatory provisions, it may better guide rating agencies to focus on high-quality credit analysis, to achieve reasonable and credible rating results.

The current regulatory provisions on the rating process are generally reasonable. If some very specific requirements to focus on the evaluation of the credit analysis results of rating agencies can be amended, rating agencies would be better guided to focus their resources and energy on the most reasonable place.

Taking the requirement of regular tracking as an example, rating agencies may be compliant in the form of regular tracking three months after the publication of the annual report, but it does not necessarily ensure the accuracy of the rating results and high quality of the rating report. It is impossible for the rating agency to follow up all the contents and results of the annual research process, but it is not necessary to follow up on the requirements of the rating agency.

If the supervision focuses on the rationality of the evaluation rating results (the rationality of the rating results can be measured by the distribution of rating results or bond credit spread and other indicators), the management of the analysis department of the rating agency can be guided to direct attention to the quality of credit analysis, rather than just meet the formal compliance of the rating operation process.

Building connections to facilitate cross-market bond issuance and trading

On January 20, 2022, with the approval of PBOC and CSRC,

five regulatory departments jointly issued the *Interim Measures for the Connectivity Business between the Interbank Bond Market and the Exchange Bond Market*. The *Measures* facilitate cross-market bond issuance and trading, promote the free flow of elements like capital, and form a unified market with unified pricing. This helps to improve the service level and efficiency of the infrastructure of Chinese bond markets and contributes to the development of a customer-centric bond market infrastructure service system. AmCham China believes that this constitutes major progress in the building of the domestic bond market connect mechanism and promoting the integrated development of domestic bond markets.

For the credit rating industry, AmCham China suggests that regulators continue to promote the unification of credit rating self-discipline rules in the inter-bank market and exchange market, including the unification of filing rules of rating agencies, rating business processes and information disclosure rules.

With respect to management, AmCham China hopes that regulators continue to promote the coordination mechanism of cross-market self-discipline management of the credit rating industry, including the sharing of filing information of rating agencies. At the same time, the same kind of problems involving two bond markets can be addressed with the same regulatory department and solved in centralized coordination. Daily supervision and inspection can also be arranged uniformly through this coordination mechanism.

In terms of self-discipline system and evaluation, AmCham China suggests adding a cross-market self-discipline system and mutual recognition of scoring results. For example, rating companies listed on the dishonest list under the self-discipline system of the NDRC and the Insurance Asset Management Association would also be disciplined by suspension of business in the inter-bank market.

Cybersecurity and Cross-Border Data Transfers

Cybersecurity and Cross-border Data Flows

Data localization and cybersecurity policies present numerous challenges for foreign FIs in China and are among the main barriers for market entry in the financial sector. Existing financial sector requirements, the 2017 *Cybersecurity Law* (CSL), 2021 *Data Security Law* (DSL) and 2021 *Personal Information Protection Law* (PIPL) and associated cybersecurity requirements include data localization and data transfer restrictions, intrusive inspection and testing requirements, and other prescriptive cybersecurity requirements. Challenges on this front are also exacerbated by a lack of clear definitions of important terms, inconsistencies between subsequent draft regulations and implementing measures, burdensome security assessment requirements, and operational limitations established by the CSL. In this section we

稿)》进一步扩大了需要网信部门安全评估的情形,要求累计向境外提供超过十万人以上个人信息或者一万人以上敏感个人信息的情形通过网信部门的安全评估。在2021年11月颁布的网络数据安全条例(征求意见稿)中,需要通过网信部门安全评估的范围删除了这个要求,回归到《网络安全法》和《个人信息保护法》要求的范围。

此外,《网络安全法》和《数据安全法》也建立了重要数据跨境的监管框架。《数据出境安全评估办法(征求意见稿)》明确要求“重要数据”跨境需要网信部门组织的安全评估。网信办在2021年11月发布的《网络数据安全条例(征求意见稿)》第73.3条将“重要数据”定义为当“被篡改、破坏、披露、非法获取或非法使用时可能危害国家安全和公共利益”的数据,并规定了几大类重要数据。企业仍不清楚哪些项目将被纳入部门监管机构发布的重要数据目录。商会希望网信办能让各行业组织和公众更清楚地了解部门监管机构即将发布的重要数据目录的发布时间、适用范围和属性,并公开征求企业意见,这些文件所包含的数据类型将会对企业及其合作方产生重要影响。

此外,商会认为“重要数据”的定义应该与2019年《数据安全管理办法(草案)》中的定义一致,应明确将企业生产管理和业务运营的内部数据排除在外。此外,全国信息安全标准化委员会(TC260)在2022年1月7日发布的《重要数据识别指南(征求意见稿)》明确指出重要数据应“聚焦安全影响:从国家安全、经济运行、社会稳定、公共健康和安全等角度识别重要数据,只对组织自身而言重要或敏感的数据不属于重要数据,如企业的内部管理相关数据(4.a)”,进一步确立了重要数据并不针对对企业自身重要的数据。

商会注意到银保监会在其于2021年12月31日发布的《银行保险机构信息科技外包风险监管办法》将重要数据定义为“包括但不限于客户资料、交易数据、商业秘密等,参见国家法律法规和国家标准对重要数据的相关定义”。商会希望确认银保监会此定义划定的“重要数据”范围仅适用于银行保险机构信息科技外包活动,“客户资料、交易数据、商业秘密等”不试用《网络安全法》和《数据安全法》以及其实施细则中对“重要数据”的规定。《网络安全法》和《数据安全法》提出的“重要数据”是从“危害国家安全和公共利益”角度出发,不应该包

括“客户资料、交易数据、商业秘密”和国家安全不相关的数据。

一个例子是,外国资管公司需将其在华子公司特定类别的数据发送到海外以满足监管报告、风险控制等重要需求。商会会员希望监管机构能够深刻理解外商独资或控股资管公司的离岸母公司需要某些数据和信息的理由及重要性,并且在制定跨境数据共享的相关政策和法规时,能够充分考虑到各类别数据之间和数据跨境共享目的之间的差异。譬如,为了满足离岸监管报告和集团风控的需要,在岸持有上市证券的相关数据需要跨境共享。商会期待各相关监管机构能制定更一致、有效合理的跨境数据共享政策。

此外,商会敦促金融监管部门,人民银行,银保监会和证监会在制定“重要数据”目录时能和行业进行沟通,听取行业建议和意见,保证此重要概念在金融行业定义的范围合理,这对高度全球化的金融行业至关重要。

在《网络安全法》颁布之前,金融领域就已有严格的数据本地化要求。2009年,中国银保监会发布的《商业银行信息科技风险管理指引》要求确保核心系统在中国境内独立运行;2011年中国人民银行发布的《关于银行业做好个人金融信息保护工作的通知》规定中国公民个人金融信息的储存、处理和分析不得在中国境外服务器进行。2019年初,中国银保监会发布《银行业金融机构反洗钱和反恐怖融资管理办法》(2019年第1号),规定对依法履行反洗钱和反恐怖融资义务获得的客户身份资料和交易信息,非依法律、行政法规规定,银行业金融机构不得向境外提供。这在实践中导致在华金融机构“必须本地化”反洗钱和反恐怖融资相关的客户身份资料和交易信息;国际金融机构的全球运营模式在中国毫无用武之地,无法实施,增加了现有金融机构的运营挑战,大幅提高了金融机构进入中国市场的门槛。

根据中国人民银行党委书记郭树清在2020年12月新加坡金融科技节上的讲话,金融监管机构将制定《金融数据安全保护条例》。商会注意到中国人民银行在2019年和2020年的规章制定工作计划中均表示要制定《个人金融信息保护试行办法》。

《中华人民共和国个人信息保护法》会在许多方面影响金融机构的业务运作。草案涉及面过广,对重点关注的领域缺乏具体指导,为金融机构带来了合规方面的挑

discuss our 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 the free flow of data seriously limit the ability of financial service firms to deliver core products and services to customers, manage risk, and comply with financial regulatory requirements in various jurisdictions.

In 2021, China enacted the *Personal Information Protection Law* (PIPL) and *Data Security Law* (DSL). Together with the *Cybersecurity Law* (CSL) which took effect in 2017, these three laws establish an overarching regulatory framework on data and cross-border data flow. Article 37 of the CSL restricts the ability of critical information infrastructure operators (CIIOs) to transmit personal information (PI) and important data overseas. The PIPL reiterated the restrictions on PI cross-border transfer on CIIOs and newly added data localization requirements for companies handling PI reaching a volume-based threshold. In the meantime, the PIPL also specified mechanisms companies could leverage for cross-border transfer of PI.

For CIIOs and companies subject to data localization under the PIPL, cross-border PI transfer can be conducted after passing a Cyberspace Administration of China (CAC)-led security assessment. However, the October 2021 draft *Outbound Data Transfer Security Assessment Measures*, attempts to expand the scope of application for CAC-led security assessment. In the November 2021 draft *Network Data Security Management Regulations*, CAC adjusted the scope for their security assessment of cross-border data flow to align with the scoped of the CSL and the PIPL.

In addition, the CSL and the DSL also established a regulatory framework for important data cross-border. The *Outbound Data Transfer Security Assessment Measures (Draft for Comment)* clearly requires that cross-border of “important data” requires a security assessment organized by the CAC. The CAC *Online Data Security Management Regulations (Draft for Comments)* [2021] defines “Important Data” as “data that can endanger national security or the public interest once tampered with, destroyed, leaked, or illegally obtained or used”. It is still unclear which items will be included in the important data catalogue issued by the departmental regulator. AmCham China urges CAC to coordinate with sectoral regulators and be transparent about the timing of the important data catalogue and consult with industry when preparing the catalogue as the types of data contained in these documents will have an important impact on enterprises and their partners.

In addition, AmCham China strongly recommends the definition of “Important Data” be consistent with the definition

in the “*Data Security Management Measures (Draft)*” in 2019, and that internal data on enterprise production management and business operations be clearly excluded. In addition, on January 7, 2022, the National Information Security Standardization Technical Committee (TC260) issued the *Important Data Identification Guidelines (Draft for Comment)* clearly stating that Important Data should “Focus on impact on security: Critical data shall be identified from the perspectives of national security, economic operation, social stability, public health and safety. Data that is key or sensitive solely to the organization itself is not considered as critical data, such as data relating to the internal management of an enterprise”. This further establishes that “Important Data” does not cover data that is important to the enterprise itself.

We note that the CBIRC defined important data as “including but not limited to customer information, transaction data, trade secrets, etc., and also see the definition in national law and national standards”. AmCham China would like to confirm with CBIRC that the definition and scope of “Important Data” in the IT outsourcing rules is limited to banking and insurance institutions’ IT outsourcing activities and is not deemed to be “Important Data” as covered in the CSL and the DSL and its implementing rules. We understand that “Important Data” under the CSL and the DSL refers to data that could “endanger national security and public interests” and should not cover “Customer information, transaction data, trade secrets, etc.”

There are important needs, such as regulatory reporting and risk monitoring for foreign asset managers’ China affiliates to send certain types of data offshore. AmCham China members urge regulators to recognize the rationale for and need to share certain data/information with the offshore parent of wholly or majority foreign-owned asset managers. We urge that policies and regulations on cross-border data sharing by asset managers’ onshore entities can consider exceptions regarding the different types of data and the rationale for cross-border sharing. One example is that onshore shareholding data of listed securities is needed for purposes both of offshore regulatory reporting and group risk monitoring. We urge greater consistency and recognition of these rationales by the various regulators in developing rules and regulations for cross-border data sharing.

Another example is that CSRC released the *Measures for the Information Technology Management of Securities and Funds Operations* (2019) to guide industry IT system setups. According to Article 63, all “important” IT systems are required to be onshore, including the systems to support trade and settlement, etc. Therefore, QFI custody IT systems are preferred to be deployed onshore. However, from a business perspective and in light of QFIs’ cross-border feature, cross-border data transfer, storage and processing under the QFI channel is essential as local custodians need to transfer clients’ daily transaction data to offshore QFI clients and global custodians for processing purposes.

战。包括 1) 适用范围过广，包括治外法权 2) 对金融机构在内的组织施加繁重义务，将极大地增加这些组织的合规负担，尤其在跨境你转移个人信息和合法收集及处理个人信息方面 3) 金融机构对个人信息的处理已经有了严格的规范，因此部分内容与现有法律法规重叠。在执行前，尽量减少重复和不一致的内容至关重要 4) 法律中 d “原则性”的义务，需要提供更明确的指南，以确保在实践中履行这些义务。且该指南需要在任何法规生效之前提供。

商会敦促中国人民银行审查现有和即将出台的金融数据保护和网络安全相关规定，并去除关于数据本地化的要求。金融业数据本地化的要求与中国政府开放金融业的举措背道而驰。商会欢迎中国进一步开放金融业的承诺，并敦促中国取消数据本地化的要求，确保数据的自由跨境流动，这也是真正成功开放金融业的前提条件。

据报道，中国人民银行在 2019 年就上述《个人信息金融信息保护试行办法》征询了国内行业的意见，但尚未征询国外金融机构的意见。商会支持中国人民银行在政策制定过程中与行业开展合作，同时鼓励中国人民银行将外国同业纳入协商过程中。商会了解到，中国人民银行全国金融标准化技术委员会在 2020 年 2 月发布了行业推荐标准《个人信息金融信息保护技术规范》，但并未咨询国外金融机构。商会会员致力于与金融监管部门分享最佳实践，支持政策和标准制定。同时，商会希望金融监管机构在考虑实施推荐行标准里的要求前将会与包括外资在内的金融机构进行进一步讨论和征求意见。

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《个人信息出境安全评估办法（征求意见稿）》（2019）、《个人信息和重要数据出境安全评估办法（征求意见稿）》（2017）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 2021 年《网络数据管理条例（征求意见稿）》规定，网信办明确指出“重要”主要是从国家的角度，而非特定利益集团的角度衡量。商会促请网信办、中国人民银

行，银保监会按照《网络安全法中》规定，将范围限制为狭义上的整整国家安全相关的数据；

- 根据 2021 年网信办发布的《数据跨境安全评估办法（征求意见稿）》，重要数据和达到一定条件的个人信息的跨境转移都需要网信办组织的安全评估。目前全球范围内的个人信息跨境传输在多种监管机制下进行，包括欧盟《通用数据保护条例》（GDPR）下的标准合同条款（SCC）和具有约束力的公司规则（BCR）、亚太经合组织跨境隐私规则（CBPR）系统认证，以及其他适当的保障措施。这些数据保护框架均未将数量阈值作为政府审查的触发因素商会促请网信办、中国人民银行及其他金融监管机构能和国际上的做法一致，对个人信息跨境传输不增加政府组织的安全评估。另外，商会建议网信办、中国人民银行及其他金融监管机构能对国际行业证书和评估结果予以承认，降低外资银行的国内安全评估负担。

关键信息基础设施

商会会员企业主张关键信息基础设施的监管方式应该基于风险、缩小适用范围、与国际最佳实践一致，避免强制特定产品和服务。此外，《网络安全法》第 35 条规定关键信息基础设施的运营者采购网络产品和服务，可能影响国家安全的，应当通过国家安全审查。此外，商会会员企业正在关注由全国信息安全标准化技术委员会（TC260）起草的一系列关键信息基础设施的相关标准，商会会员希望确保所建议的标准仅供参考，而不代表强制性要求。商会对关键信息基础设施标准草案中规定的要求有以下具体关切：

- 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》征求意见稿第 6.5.2 条，关键信息基础设施运营者应确保灾难备份中心位于中国境内。这给商会会员企业带来了新挑战，增加了成本，因为国际企业灾难备份中心普遍都设在境外。
- 根据同一文件第 6.6.2 节规定，关键信息基础设施运营者应对安全管理负责人和关键岗位人员实施安全背景审查（包括提供有关公民身份、政治审查、宗教信仰、从业经历、教育背景、犯罪记录、个人信用、家庭情况以及海外关系等信息）。许多外资银行的 IT 运营由离岸 IT 中心提供支持；获取有关

Leading US custodians have already set up supporting IT systems offshore fully in line with ISO 27001/2 which are highly qualified to meet with CSRC's security management requirements with respect to physical and environmental safety, access control, system maintenance, incident management, etc. In addition, due to QFI's specific business nature, QFI client's data has already been stored in global custodian's data centers offshore. Therefore, we urge CSRC to continue allowing our members to rely on their existing offshore IT infrastructure set up to conduct QFI business, subject only to building necessary onshore protocols to support business.

In addition, we urge PBOC, CBIRC and CSRC to communicate with industry when drafting the "Important Data" catalogue, listen to industry suggestions and opinions, and ensure that the definition of this important concept in the financial industry is reasonable, which is of great importance to the globalized financial sector.

In the financial sector, there are already stringent data localization requirements which predate the CSL. A 2009 CBIRC regulation, *Commercial Bank IT Risk Management Guideline*, requires banks to onshore their important systems, while a 2011 PBOC regulation, *Notice Requiring Financial Institutions to Properly Conduct Personal Financial Information*, prohibits FIs from analyzing, processing, or storing personal financial information (PFI) of Chinese citizens in offshore servers. Back in 2019, a CBIRC decree, *Banking Financial Institutions Anti-Money Laundering and Counter Terrorism Financing Management Measures (Decree No. 1)*, prohibited the cross-border transfer of all customer identification information and transaction information obtained in the course of performing anti-money laundering (AML) and counter-terrorism financing (CTF) obligations unless permitted by laws and regulations. In practice, this creates hard localization of AML and CTF related to customer identification information and transaction information for FIs operating in China and makes it impossible for international FIs to employ their global operational model, resulting in increased operational challenges for existing FIs and dramatically raising the threshold for new FIs entering the Chinese market.

Financial regulators are developing the Financial Data Security Regulation based on PBOC Deputy Governor and Party Secretary Guo Shuqing's remarks at the Singapore Fintech Festival in December 2020. The PBOC's legislative plan listed a Personal Financial Information Protection Trial Measure in both 2019 and 2020.

The PIPL impacts the business operations of FIs in many ways if broadly implemented. The PIPL is overbroad and lacks specific guidance in key areas of concern, creating compliance challenges for FIs. These include ❶ broad scope of application and extraterritorial application; ❷ onerous obligations imposed on organizations including FIs that will significantly raise their compliance burdens, particularly with respect to the cross-border transfer of PI and the legal collection and processing of PI; ❸ overlap and

potential duplication and inconstancy with existing laws and regulations because the processing of PI conducted by FIs is already highly regulated; and ❹ a number of "principles-based" obligations which require clearer guidance to ensure compliance in practice which to be issued with sufficient lead time prior to any compliance regulations coming into effect.

AmCham China urges PBOC to review and remove data localization requirements in the existing and upcoming financial data protection and security related rules. Sweeping data localization requirements in the financial sector are counter-productive to China's efforts to open its financial sector. AmCham China welcomes China's commitment to further open the financial sector and urges China to minimize data localization requirements and ensure the free cross-border movement of data, a pre-condition of truly and successfully opening financial sector.

The PBOC reportedly consulted with domestic industry on the aforementioned *Personal Financial Information Protection Trial Measure* in 2019 but has yet to consult foreign FIs. While AmCham China endorses PBOC's collaboration with industry during policy formulation, we encourage the PBOC to include foreign industry in the consultation process. We are also aware that the PBOC China Financial Standards Technical Committee (CFSTC) published a Personal Financial Information Security Specification, an industry-recommended standard in February 2020, without consulting foreign FIs. AmCham China members are committed to sharing industry best practices and supporting financial regulators' efforts in drafting policies and standards. We would appreciate clear assurances that financial regulators will have further discussions with industry, including foreign FIs, with respect to making any data protection requirements mandatory rather than recommended.

Key Challenges for Network Operators

A security assessment is required for the cross-border transfer of Personal Information and Important Data, as outlined in the CAC's *Draft Measures for the Security Assessment of Cross-Border Personal Information Transfers (2019)* and the *Draft Measures on the Security Assessment of the Export of Personal Information and Important Data (2017)*, (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. In the 2021 draft *Online Data Security Management Regulations*, the CAC clarified that "important" is likely to be measured with reference to the State, rather than from the standpoint of individual interest groups. AmCham China urges CAC, the PBOC, and other related finan-

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。

此外，对于最新颁布的《数据安全法》和《个人信息保护法》，商会期待相关金融监管机构就具体实施提供指引。颁布金融机构的关键信息基础设施认定标准或颁布关键信息基础设施运营者的名单。

金融行业使用公有云和私有云

采用公共云是一个全球趋势，也是跨国公司和机构（包括金融机构）所采用的常见方法。金融机构正在向云端迁移，以增加计算能力，降低成本，缓解风险，加强操作的灵活性。目前，中国金融监管部门对金融机构使用公有云缺乏明确的指导，这为金融机构带来了困惑和不确定性。商会建议，中国人民银行、银保监会和中国证监会积极拥抱公有云，与金融行业进行紧密沟通与合作，共同寻找管理使用公有云的风险。商会注意到中国人民银行和国家市场监督管理总局于2019年10月发布了金融机构使用云计算平台的认证要求 - 《金融科技产品认证目录（第一批）》和《金融科技产品认证规则》，其中把云计算纳入目录，针对金融机构使用云计算服务增加了另一层要求和限制，但并没有明确说明针对的风险。

金融行业另一个同样亟待解决的问题的是关于私有云的使用。金融行业里关联机构服务模式非常普遍。通常同一个集团在中国有不同的业务以及相对应的法人实体，分别覆盖银行、证券或资产和财富管理等多种金融服务，同时也会设立为这些法人实体提供公共基础设施和其他运营服务的内部服务机构。金融监管部门，金融行业，金融稳定委员会，国际证监会组织和其他金融行业国际标准制定组织都广泛认可这种“内部关联机构服务模式”。在科技基础设施包括内部云共享方面，关联机构共享模式广泛使用，可以最大化的支持各业务条线，并从外包风险管理角度上可以有效地减轻和控制风险。

内部云仅向金融机构的关联公司 / 法人实体提供服务，而不向外部金融机构或客户提供服务。这种模式与公共云模式有所不同，不应受到任何增值电信业务相关许可的约束。商会还注意到，《中欧全面投资协定》中也作出了类似规定，指出增值电信业务许可不适用于其他行业。商会建议中华人民共和国工业和信息化部可以理解金融行业的需求，将集团内部云和各关联公司间的

服务模式视为内部云，将“无溢出”原则应用于金融业集团级内部云使用，并明确此类云不需要增值电信业务许可的要求。

其他网络安全挑战

网络安全对金融行业至关重要，金融监管机构正在积极探索不同方式衡量金融机构保持网络安全能力。一些金融监管部门认为渗透测试和扫描等方式是首选方式。证监会《证券投资基金管理信息技术管理办法》（令第152号）中也就此做出规定，该办法于2019年6月1日起施行，允许证监会及其派出机构对公司进行渗透测试。虽然银监会对渗透测试没有明确的规定，但其开展全行业的渗透测试已经很多年。商会对公共行业（及其委托的第三方）进行渗透测试的可能性十分担忧，因为这可能在无意中增加或加剧各种风险，扰乱公司国际运营，并可能增加敏感信息对外披露的风险。测试是评估网络风险控制和弹性的众多工具之一，只能提供特定时间点的风险评估，而不应作为金融机构整体网络风险计划的衡量标准。而缺乏操作背景的测试系统和应用程序可能会中断金融机构的运营。

为了实现这一目标，商会建议金融监管机构应该允许有能力进行公司主导测试的公司能够通过自己的团队在自己的环境中进行测试。公司主导的测试结果可以提供更多高质量的信息，满足监管要求。同时，商会希望监管部门理解信息的敏感度，并在监管过程中收集满足监管目的的最少数据，确保金融机构高度敏感数据免于分享。如果高度敏感信息被公开，或无意中被披露或被窃取，则会给公司和公司客户带来极大风险。商会强烈建议中国证监会和其他监管机构重新考虑网络风险管理相关条款规定（其中包括中国证监会第152号令）中的渗透测试和系统扫描漏洞等要求，并就此与行业利益相关方协商讨论。

中国人民银行领导范一飞支持外商投资企业平等参与常规活动，以创造一个公平、高效、开放、透明的标准生态体系，商会对此表示赞赏。商会欢迎全国金融标准技术委员会（TC180）积极主动将外商投资企业纳入标准制定过程中，并期待与全国金融标准技术委员会（TC180）共同探讨外商投资企业如何在实践中参与标准制定过程。

cial regulators to reconsider the approach to security assessments for cross-border transfers of both Personal Information and Important Data and limit the scope to a narrowly defined set of critical information infrastructure (CII), as stipulated in the CSL.

- According to the 2021 *Outbound Data Transfer Security Assessment Measures (Draft for Comments)*, cross-border data transfer of “important data” and personal information will require a CAC-led security assessment. Globally, the cross-border transfer of PI takes place under a number of regulatory mechanisms, including Standard Contractual Clauses (SCCs) and Binding Corporate Rules (BCRs) under the EU’s General Data Protection Regulation (GDPR), certification under APEC’s Cross-Border Privacy Rules (CBPR) System, and other appropriate safeguards. None of these data protection frameworks apply volume thresholds as a trigger for government review. AmCham China urges the CAC, the PBOC, and other financial regulators to align China with the international approach to PI transfer and not require government-led security assessments. We encourage the CAC, the PBOC and other financial regulators to recognize international industry certifications and assessments to reduce the domestic security assessment burden on foreign banks.

Critical Information Infrastructure (CII)

AmCham China member companies advocate a regulatory approach for CII that is risk-based, narrow in scope, aligned with global best practices, and avoids mandating the adoption of certain products or services. In addition, the Draft CII regulation requires cybersecurity reviews for network products and services which may affect national security (Article 35 of the CSL). Additionally, AmCham China member companies are tracking CII-related standards drafted by the National Information Security Technical Committee (TC260), and our members seek assurances that recommended standards are for reference only and do not constitute mandatory requirements. AmCham China has the following specific concerns in relation to requirements laid out in the Draft CII standards:

- According to Section 6.5.2 of “Information security technology – Security Controls of Critical Information Infrastructure (Draft)” issued in May 2018 for public comment, CII operators 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. As many foreign FI 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.

In addition, with respect to the DSL and PIPL, we urge financial regulators to formulate guidelines on concrete implementation and to promulgate criteria for Critical Information Infrastructure (CII) of financial institutions and/or promulgate a list of CII operators.

Public and Private Cloud in the Financial Sector

Adoption of the public cloud is a global trend and a common approach employed by multinational companies and institutions, including FIs. FIs are migrating to the cloud to leverage increased computing capabilities, lower costs, mitigate risk and increase operational resiliency. Currently, the lack of clear guidance on use of the public cloud in China creates confusion and uncertainty among FIs. AmCham China recommends that the PBOC, CBIRC and CSRC adopt a positive cloud-welcoming approach and work with industry to effectively manage cloud-specific risks, as necessary. The PBOC and the State Administration for Market Regulation (SAMR) published a certification requirement for FIs using a cloud computing Platform in October 2019, the Fintech Product Certification Catalog (First Batch) and the Fintech Product Certification Rules, which together have added another layer of restriction on the use of cloud computing services for FIs without specifying the risks it tries to address.

An equally, if not more, pressing issue in financial sector is use of the private cloud. Normally, there are different lines of business and legal entities that cover distinct services like banking, securities, or asset and wealth management under a financial group, and those companies are viewed as affiliated companies. It is common for those entities under a financial group leveraging a common technology infrastructure, cloud included, provided by an affiliated entity. Such practice is known as an “inter-affiliate service model”, and is widely recognized by industry, regulators, the Financial Stability Board (FSB), International Organization of Securities Commissions (IOSCO) and other international Standards-Setting Bodies (ISSBs).

The cloud only provides services to the affiliated companies/legal entities, and not to external FIs or clients. This model is distinct from the public cloud model and therefore should not be subject to any value-added telecom service (VATs)-related licenses. We also note that a similar principle is included in the draft China-EU Comprehensive Agreement on Investment that Value Added Telecommunications Services (VATS)-related licenses are not required outside the telecommunications sector. AmCham China recommends that the Ministry of Industry and Information Technology

商会会员企业注意到中国人民银行发布了大量金融业推荐标准。商会希望中国人民银行确认推荐标准无论是在国家层面还是行业层面，仅作为参考最佳实践而颁布，而非强制性要求。如果金融监管机构想要强制执行现有推荐标准中的某些要求，该等要求应列入官方法律和法规，并在起草过程中公开征询公众意见。商会促请中国人民银行和全国金融标准技术委员会应基于风险采取网络安全保护措施，取消不必要的规范性要求，包括行业标准中对国内加密算法和数据本地化的要求。

此外，对于最新颁布的《数据安全法》和《个人信息保护法》，商会期待颁布金融机构向境外执法部门，特别是境外监管机构，披露个人信息以及金融信息（包括重要数据 / 核心数据）的合规细则。

境内企业境外发行证券和上市问题

私募股权和风险资本的退出

商会会员企业十分关注国内公司在监管方面的发展，包括 VIE 结构公司的上市和在海外发行证券，这是美元私募股权和风险资本退出的主要途径。

商会注意到，2021 年 12 月 24 日，中国证监会发布了《国务院关于境内公司境外发行证券和上市管理的规定（草案）》和《境内公司境外发行证券和上市备案管理办法（草案）》，提出了以备案为基础的制度，要求公司在直接和间接的海外证券发行和上市方面向监管机构登记。2021 年 12 月 27 日，国家发展和改革委员会和商务部发布了《外商投资准入特别管理措施（2021）》和《自由贸易试验区外商投资准入特别管理措施（2021）》（“负面清单”于 2022 年 1 月 1 日生效）。

根据这些文件，以前被禁止纳入外资的国内公司如果获得相关政府机构的批准，现在可以向海外出售股票。这些公司将禁止外国投资者参与管理，其持股必须遵循与中国国内股票市场外国投资者相同的要求。

然后在 2022 年 1 月 4 日，中国国家互联网信息办公室发布了《网络安全审查办法》（2022 年 2 月 15 日生效），要求接触 100 万以上用户个人数据的网络平台运营商在国外开展 IPO 之前完成网络安全审查。

虽然这些监管举措旨在为私营部门提供关于政府执法程序的指导，并促进国内公司获得资本市场资源的能

力。但这些文件缺乏执行细节，对在香港和美国或其他外国上市的政策没有具体说明，也没有明确涉及国内许多采用 VIE 结构的公司。

从私募股权和风险资本的角度来看，商会期待一个更有确定性和可预测性的监管环境，这也有利于长期投资。同时，商会期望美元私募股权和风险资本基金的投资和退出方式更加明确，特别是要解决 VIE 问题，因为这将对中国的产业和经济发展产生深远的积极影响和连锁效应。鉴于该问题的复杂性，商会建议设立一个专门的服务窗口，有效地帮助企业完成审批程序。商会与私募股权、风险资本和投资银行的会员企业一起，希望能随时了解监管动态，并有机会与业界和政府一起参与讨论制定相关政策的实施细则。

环境、社会、治理投资

可持续性投资和管理

尽管中国是世界上最大的股票市场之一，但中国的现代股票市场只有 30 年的历史。到目前为止，它们的优先事项大多在于生存和发展。但是，随着中国经济从不惜一切代价的增长模式转向强调质量和可持续性的模式，这种企业心态正在开始转变。越来越多的中产阶级消费者关心他们购买东西的环境和社会足迹。可持续投资的兴起为公司加强环境、社会和治理工作起到了激励作用。鉴于这些因素，公司普遍愿意并且经常渴望参与环境、社会和治理问题。

当地的资产管理公司正开始建立专注于可持续投资的专门团队，并参与全球环境、社会和治理工作付出努力，如气候行动 100+，一个让温室气体排放者参与使用清洁能源的国际倡议。

管理是指投资者作为负责任的资本提供者，通过投票和参与，监督和影响企业行为。管理权从长计议，并将环境、社会和治理问题与公司业绩的传统运营和财务指标同等看待。在越来越多的研究支持下，其前提是负责任的投票和积极参与，推动更好的企业行为和更可持续的财务回报，也有助于全球资本市场的长期发展。

通过参与为客户和受益人创造价值

投资者积极的投票和参与可以保护和提高投资回报。投资者与被投资公司分享如何优化其商业战略和实

(MIIT) recognize the group-level internal cloud and inter-affiliate service models as a form of private cloud, apply the same “no spill-over” principle to group-level internal cloud use in the financial sector, and remove the requirement for cloud-related VATs licenses.

Other Cybersecurity Challenges

Cybersecurity is critical to the financial sector and financial regulators are exploring ways to assess cybersecurity capabilities. Some financial regulators identified pen testing (penetration tests) and scanning as preferred methods. This is reflected in CSRC’s *Administrative Measures on Information Technology of Securities Fund Management Institutions* (Order No. 152), effective June 1, 2019, which allows CSRC and its agents to conduct pen testing on firms. Although CBIRC does not have explicit requirements in regulations on pen-testing, it has been conducting industry-wide pen-testing for a number of years. We are extremely concerned about the potential for public sector actors (and their entrusted third parties) to be involved in pen testing as doing so may unintentionally increase or exacerbate various risks, disrupt global operations and increase the risk of disclosure of sensitive information to multiple parties. Testing is one of many tools to evaluate cyber risk control and resilience and can only provide an assessment of risk at a specific point-in-time and should not be used as a measure of an FI’s overall cyber risk program. Testing systems and applications that lack operational context are likely to disrupt FI operations.

To achieve the same objective, we recommend that financial regulators allow firms with the capability to conduct a firm-led test have the option to conduct a test on its own environment using its own team. Firm-led testing results are far more informative for regulatory purposes. In the interim, we would like to highlight the sensitivity of some data in pen testing reports and urge regulators to limit the collection of sensitive data to that which is directly relevant and necessary to accomplish a specific purpose.

Sharing detailed sensitive information presents a risk to the firms and the firms’ clients if the results become public or are inadvertently disclosed or stolen. We strongly recommend that CSRC, CBIRC and other regulators reconsider pen testing and system scanning requirements as a supervisory practice (among them CSRC Order No. 152) and initiate an open dialogue with industry stakeholders on this topic.

AmCham China would like to applaud PBOC Deputy Governor Fan Yifei’s commitment to supporting the equal participation by FIEs in standards activities to create a fair, efficient, open, and transparent standards ecosystem. AmCham China welcomes TC180’s outreach initiative and willingness to include foreign FIs in the standards-setting process, and we look forward to engaging with TC180 to clarify how foreign FIs’ can participate in the standards setting process in practice.

In addition, AmCham China members have followed the release of an enormous number of financial industry recommended standards by the PBOC. We seek confirmation that recommended standards, both at the national or industry level, are promulgated as reference best practices, and are not mandatory. If financial regulators would like to mandate certain requirements established in existing recommended standards, those requirements should be included in official financial laws and regulations and be subject to public consultation during the drafting process. AmCham China urges the PBOC and TC180 to adopt a risk-based approach to cybersecurity and technology in general, and remove unnecessary prescriptive requirements, including requirements for domestic encryption algorithms and data localization requirements from its industry standards.

In addition, with respect to the DSL and PIPL, we hope that financial institutions will be permitted to disclose personal information and financial information (including important data/core data) to overseas law enforcement agencies, especially overseas regulatory agencies.

Environmental, social and governance investments

Sustainability Investing and Stewardship

Despite being among the world’s biggest stock markets, China’s modern equity markets are only 30 years old. Their priorities so far have been survival and growth. Corporate mentality is starting to shift as the country rebalances its economy from a model of growth at all costs to one that emphasizes quality and sustainability. An expanding body of middle-class consumers care about the environmental and social footprints of what they buy. The rise of sustainable investing offers incentives for companies to step up their environmental, social, and governance (ESG) efforts. Given these factors, companies are generally willing and often eager to engage on ESG issues.

Local asset managers are starting to build dedicated teams focused on sustainable investing and to take part in global ESG efforts such as the Climate Action 100+, an international initiative to engage greenhouse emitters on clean energy.

Stewardship refers to investors acting as responsible capital providers by monitoring and influencing corporate behaviors, through voting and engagement. Stewardship takes a longterm view and treats ESG issues as equal in importance to the traditional operational and financial metrics of a company’s performance. The premise, supported by a growing body of research, is that responsible voting and active engagement drive better corporate behaviors and more sustainable financial returns. This helps the long-term development of capital markets globally.

施环保政策的最佳实践，可以鼓励公司做出改变，从而形成更现代、更具前瞻性的商业模式。

大约三年前，一名投资分析师开始与该公司管理层进行对话，以了解其公司的企业社会责任实践。该分析师对该公司在管理其环境足迹方面的做法印象深刻，他建议该公司可以提高其工作的透明度，并改善其治理，以确保取得进展。商会很高兴看到这家公司成为中国第一家以中英文定期发布可持续发展报告的快递公司。

此外，该公司率先将高管薪酬与可持续绩效挂钩。为了扩大影响，该行业的其他人注意到了其可持续发展的积极作用，并纷纷开始效仿。中国平均每天有超过 2 亿个包裹在运输，这一领域的可持续做法可能会对环境产生巨大影响。

与该公司的讨论从披露和可持续性转移到具体的环境和社会实践。这家快递巨头随后在过去三年里在减少纸质运单方面取得了进展。通过使用电子运单和更小的纸张，该公司将每个包裹的纸张消耗量减少了 70%，每年节省约 5 万吨纸张。该公司加入了基于科学的目标倡议 (SBTi)，以寻求实现进一步碳减排。电动车队已被部署用于收集和交付过程，可回收转运袋也被广泛使用。在社会责任方面，该公司设立了一项特别基金，用于保护一线员工的健康和安全。通过改进安全标准的管理，这家快递公司将其因受伤而损失的时间比率（每 200000 个工作小时）从 2018 年的 1.28 减少到 2020 年的 0.68。

这家快递公司一直重视投资者的反馈，包括在参与过程中提出的扩大碳报告范围的新建议。

通过投票改善性别多样性

除了参与之外，中国在提高性别多样性方面所采取的措施也落后于其近几十年的显著经济增长。今天，女性在中国公司董事会和高层管理中仍然处于边缘地位。投资者可以而且应该利用投票作为工具来推动性别多样性的改善。

最近的迹象显出性别比例方面的进步。新一代女性企业高管正在慢慢崛起，而教育中的性别平等也在改善，公众对女性领导的接受度也在提高。

在 2021 年 5 月的一个案例中，一家全球领先的资产管理公司投票反对一家大型食品和饮料公司的董事会

董事任命。尽管其客户中有相当一部分是女性，该公司多年来一直采用全男性的董事会。2021 年初，该资产管理公司在与该公司就董事会结构问题进行接触时，强调需要提高其女性代表性。尽管做出了让女性加入董事会的口头承诺，但到 5 月底，该公司在举行年度股东大会旨在进行董事任命时没有采取任何行动。因此，该资产管理公司投票反对董事改选，理由是缺乏在女性代表方面的行动，以及一名董事在董事会的出席率很低，而且没有对其缺席作出令人满意的解释。

然而，该公司最近采取的行动更让人看到希望。自年度股东大会以来，该公司在其 20 多年的历史，首次于 2021 年 12 月任命一名女性董事进入其董事会。虽然这只是一个案例，但它传递了一个信息，表明投资管理可以为中国的性别多样性带来变化。

过去十年，中国的上市公司在性别多样性方面取得了稳步进展，但在这个世界第二大经济体中仍有巨大的改进空间。全球资产管理公司可以与他们的中国投资对象紧密合作，利用政府保护妇女权利的新政策，缩小性别差距。

中国需要采取积极应对措施

投资者参与的价值应该得到重视，特别是在中国这样一个年轻的市场，这里正在发生巨大的经济转型，企业正在经历快速增长、创新和颠覆。如果进行得当，参与可以带来不小的变化，对当地规则和挑战的深入了解也至关重要。与商会会员企业投资的大多数市场一样，注重共同点而不是分歧的方法很具有建设性，在中国也应该很有效。此外，作为一个基本的自下而上的投资者，资产管理公司不管如何强调直接和持续参与，对于准确评估一个公司的环境、社会和治理实践，以及其财务业绩都不为过。

在中国这样的市场，大多数公司刚刚开始踏上这条道路，管理的作用甚至更加突出。这是因为大多数公司都清楚地了解其可持续发展实践的重要性，但在开始时需要指导。通过参与，公司可以更好地明确投资者的期望，了解同行的实践和进展，并了解可以助力他们的相关资源。反过来，投资者也能更好地了解公司的想法和计划。鉴于环境、社会和治理方面普遍缺乏高质量的信息披露，这对于有效衡量新兴市场公司的可持续发展实践是必不可少的。

Create value for clients/beneficiaries through engagement

Active voting and engagement have the potential to protect and enhance investments and returns. Through working with investees to advocate on behalf of green initiatives, investors can maximize the company's growth and long-term vision, providing better return on investment in the longterm. Advocacy in the express delivery services market, for example, has maximized returns and lessened the industry's impact on the environment through sustainable packaging models.

Improve gender diversity through voting

In addition to engagement, the country's steps towards greater gender diversity have lagged its remarkable economic growth of recent decades. Women today remain on the periphery of Chinese company boards and top managements. Investors can and should use voting as a tool to drive improvement in gender diversity.

Recent gender ratio reports show signs of progress. A new generation of female executives is rising slowly through corporate ranks, while gender equality in education is improving and public acceptance of female leadership is growing.

In one case, in May 2021, one of the global leading asset managers voted against the appointment of board directors at a large food and beverage company. An all-male board had been in place at the firm for years, though a significant portion of its customers are women. In early 2021, the asset manager highlighted the need to improve its female representation when engaging the company on board structure issues. Despite making a verbal commitment to bring women on board, the firm had taken no action by the end of May, when it held an annual general meeting with proposals of director appointments. The asset manager therefore voted against director re-election, citing the lack of progress on female representation, as well as the low board attendance by one director who had offered no satisfactory explanation for his absence.

However, recent actions the company has taken have been more encouraging. Since the annual shareholders' meeting, the firm for the first time in its 20-plus year history appointed a female director to its board in December 2021. While this is only one example, we believe it provides an indication of the changes that investment stewardship can bring to gender diversity in China.

China's publicly traded firms have made steady progress towards gender diversity over the last decade, but there remains huge room for improvement in the world's second-biggest economy. Global asset managers can work closely with their Chinese investees to narrow gender gaps, taking advantage of new government policies to protect women's rights.

China needs an active approach

The value of engagement should be appreciated, especially in a young market like China, where a great economic transformation is taking place and companies are experiencing rapid growth, innovation, and disruption. Engagement can effect powerful change if conducted appropriately and a deep understanding of local rules and challenges is crucial. A constructive approach focusing more on common ground than on disagreement should work well in China, as in most of the markets where FIs invest. Moreover, as fundamental bottom-up investors, asset managers cannot emphasize enough the value of direct and sustained engagement in making an accurate assessment of a company's ESG practices - as well as its financial performance.

In markets such as China where most companies are just starting out on this journey, stewardship plays an even more prominent role. This is because most companies understand well the importance of their sustainability practices but need guidance as they get started. Through engagement, companies can obtain better clarity on investor expectations, learn about the practice and progress of their peers, and become informed of the relevant resources that can assist their efforts. Investors, in turn, gain better insights into companies' thinking and plans. Given the general lack of quality disclosure on ESG, this is indispensable for an effective gauge on the sustainability practices of companies in emerging markets.

Overseas issuance and listing of securities by domestic enterprises

Exit of PE/VC

AmCham China members are very focused on regulatory development on domestic companies including VIE-structured companies going public and issuing securities overseas, which is the main approach for the exit of US dollar private equity and venture capital (PE/VC).

AmCham China is aware that CSRC on December 24, 2021 issued the draft *Provisions of the State Council on the Administration of Overseas Securities Offerings and Listings by Domestic Companies* and the draft *Administrative Measures for the Filing of Overseas Securities Offerings and Listings by Domestic Companies* ("Draft Rules"). The Draft Rules propose a filing-based regime, requiring companies to register with regulators for the direct and indirect issuance and listing of overseas securities. On December 27, 2021, NDRC and the Ministry of Commerce (MOC) issued the *Special Administrative Measures on the Access of Foreign Investment* (2021) and *Special Administrative Measures on the Access of Foreign Investment in Pilot Free Trade Zones* (2021) ("Negative Lists"), effective on January 1, 2022.

建议

对中国政府：

商业银行

- 允许外国金融机构担任公司债券主承销商。
- 允许外资银行参与中国国债期货交易的试点项目，使投资者基础多样化，增加市场深度，提高市场流动性和定价机制。

资产管理

- 适当加快 QDII 资格审批进度并增加名额，给予合资金融机构更多拓展海外投资业务的机会。

托管服务

- 批准符合条件的境外基金服务机构在中国市场提供估值核算和份额登记服务。
- 允许在华外资银行分支机构为境内证券投资基金提供结算服务。

证券

- 允许更多外资在岸证券公司参与 A 股一级交易。
- 允许投资者们自由地参与中国市场，特别是允许离岸多头和外国公司作为基石投资者。
- 纳入更多符合条件的 ETF 到互联产品生态系统，以此来加强沪港通和提高市场定价机制和流动性。
- 在 A 股证券结算中采用 DVP，调整中国的结算周期，以并更好地与国际接轨。

债券和衍生工具

- 推动更多期货产品向国际投资者开放，并允许境外期货经纪商加入境外中介机构。
- 建议受其他监督全球金融公司的国家监管机构认可的净额结算适用于中国各类金融机构和企业。

网络安全和跨境数据传输

- 明确“重要数据”的定义、适用范围和属性，并在制定“重要数据”目录时确保重要概念在金融行业定义的合理性。
- 明确允许公司及其子公司为开展跨境交易和执行企业级合规和风险控制进行内部跨境数据传输，坚持中国在二十国集团大阪领导人宣言中签署的数据自由流动原则。
- 关键信息基础设施的监管方式应该基于风险，并适当缩小其适用范围以便和国际最佳实践达成一致，避免强制特定产品和服务。
- 将集团内部云网络视为不受增值电信服务许可约束的私有云。
- 继续允许外商投资企业加入中国金融标准技术委员会（TC180），本着技术中立和基于风险的原则，采取网络安全保护措施，并采用全球金融市场协会《金融服务业使用渗透测试的规管架构》中的行业最佳实践，包括认可由认证公司主导的渗透测试。

境内企业发行证券和上市问题

- 设立新的服务窗口加快审批流程的进度，并创建一个更加有利于 PE/VC 长期投资的监管环境。

Based on the documents, domestic companies in sectors that were formerly blocked from accessing foreign investment may now sell shares overseas if they obtain approval from relevant government agencies. Foreign investors in these companies will be prohibited from taking part in management, and their shareholdings must follow the same requirements as for foreign investors in China's domestic stock market.

Then on January 4, 2022, the CAC issued the *Cybersecurity Review Measures* (effective Feb 15, 2022) which require network platform operators with access to the personal data of 1 million or more users to complete a cybersecurity review before launching an IPO in a foreign country.

While the regulatory moves are intended to provide guidance to the private sector on the government's enforcement process and to promote domestic companies' ability to access capital market resources, they lack detail on implementation, including with respect to specifics on policies for companies listed in Hong Kong and in US or other foreign countries. Moreover, the documents do not expressly address companies with a VIE structure which many domestic companies have adopted.

From a PE/VC perspective, AmCham China hopes for a regulatory environment with more certainty and predictability favorable for long term investment. We look forward to more clarity on ways for US dollar PE/VC funds' investments and exit and, specifically, resolution of the VIE issue, which we believe will have a profound and positive impact and chain effect on China's industry and economic development. Given the complexity of the issue, we hope that a special service window is set up to assist the approval process for companies efficiently. AmCham China VC/PE and investment bank managers in particular intend to follow regulatory developments and are prepared to offer their expertise to government regulators in the formulation and implementation of relevant policies.

Recommendations

For the Chinese Government

Commercial Banking

- Allow foreign FIs to act as lead underwriters for corporate bonds.
- Allow foreign banks to participate in pilot programs to trade China Government Bond Futures to diversify the investors base and improve the depth, liquidity, and pricing mechanisms within the market.

Asset Management

- Speed up the process of QDII qualification approval and increase the quota to give joint venture financial institutions more opportunities to expand overseas investment business.

Custody Service

- Approve qualified foreign fund services providers and allow them to provide fund accounting (FA) and transfer agency (TA) services in the China market.
- Allow foreign bank branches in China to offer settlement services to domestic securities investment funds.

Securities

- Allow more foreign onshore securities companies to participate in A-share primary deals.
- Allow investors to freely participate in the CN market and include offshore long-only and foreign corporate as cornerstone investors.
- Incorporate more eligible ETFs in the Connect product ecosystem to enhance the Stock Connect, liquidity, and pricing mechanisms within the market.
- Adopt DVP in A-Share securities settlement to align with international practice and adjust China's settlement cycle.

Bonds and Derivatives

- Increase accessibility of futures products for international investors and permit foreign futures brokers to participate in the overseas intermediary structure.
- Enact netting legislation to all types of FIs and companies in China. Netting is recognized by other national regulators which supervise global financial firms.

Cybersecurity and Cross-Border Data Flows

- Clarify the definition, scope, and attributes of "Important Data," and ensure that the definition of Important Data is reasonable when developing the "important data" catalog for the financial industry.
- Explicitly allow companies and their subsidiaries to conduct intra-affiliate cross-border data transfers for the purposes of conducting cross border transactions and implementing enterprise-level compliance and risk-control policies, and uphold

the principles of data free flow that China endorsed in the G20 Osaka Leaders' Declaration.

- The regulatory approach to Critical Information Infrastructure should be risk-based and appropriately narrowed in scope to align with international best practices and avoid mandating specific products or services.
- Recognize group-level internal cloud as a private cloud not subject to VAT licenses.
- Continue to open up the China Financial Standards Technical Committee (TC180) to participation by foreign companies, adopt a technology-neutral and risk-based approach to cybersecurity, and adopt industry best practices for pen testing as outlined in the *GFMA Framework for the Regulatory Use of Penetration Testing in the Financial Services Industry*, including recognition of firm-led pen testing.

Exit of PE/VC Investments

- Establish a new service window to help companies with the approval process and create a more favorable regulatory environment for PE/VC long-term investment.

Civil Aviation

Introduction

This Aviation Chapter summarizes China's recent aviation developments, plans, challenges, and future benefits of the U.S.-China aviation relationship. It addresses areas that would benefit from further attention based on global aviation best practices while recognizing that significant progress has been made over the last decade. This paper contains seven sections: 1) Key Recommendations, 2) Recent Aviation Developments, 3) Enhancing China's Airspace System and Improving Airport Operational Efficiency, 4) Air Carrier Operation Issues, 5) General and Business Aviation Development, 6) Aligning Validation Processes with International Standards, and 7) Climate Change and Sustainability Action.

US companies are important suppliers of aviation technology, equipment, and services and have committed significant resources to working with China in reducing capacity constraints through continued improvements to capabilities and meeting a wide variety of training needs. AmCham China's US-China Aviation Cooperation Program (ACP), with its 35 US members, was established in 2004 with a mission to undertake joint safety, security, capacity, and efficiency-building activities that would be beneficial to China's aviation development. The Civil Aviation Administration of China (CAAC), Federal Aviation Administration (FAA) and Transportation Security Administration (TSA)'s support of this program has been an important factor in the success of ACP's programs. ACP remains committed to working on aviation issues that offer win-win opportunities for the United States and China.

Key Recommendations

Full Resumption of Airline Travel Between United States and China.

- Facilitate a gradual and orderly resumption of international traffic and development by developing a roadmap for border openings.
- Adhere to rights already given to US carriers under the US-China Air Transport Agreement when considering pandemic control measures.

Increase Efficiency of Airspace and Airport Operations

- Implement a transparent slot assignment process for both domestic and foreign carriers in line with international norms and best practices to ensure fast recovery of traffic flows and future growth.
- Optimize hub airport design and further China's 14th Five-Year Plan to better integrate air and ground systems to enhance runway and taxiway operational efficiency.
- Continue efforts to adopt key recommendations contained in ACP's Shanghai Area Airspace and Ground Optimization technical assistance project and ACP's 2019 Quantifying Weather Impacts Aviation Pilot Project to optimize the efficiency and grow capacity of the airspace system.
- Further relax or eliminate the "freighter window," in which slots for all-cargo operations are limited to nighttime hours at principal Chinese airports, to provide welcome market relief.

Adopt Policies and Procedures to Advance the Development of China's General Aviation and Business Aviation (GABA) Sector to Realize Economic Benefit.

- Continue supporting initiatives that would increase the usage of airspace at all altitudes, such as increasing direct routings enabling GABA aircraft to operate at optimum altitudes for greater fuel efficiency and reduced environmental impact.
- Provide an integrated approach to airspace design that factors in GABA operations including unmanned aerial systems (UAS) to optimize the utilization of airspace.

Align Validation Processes with International Best Practices

- Improve Implementation Procedures for Airworthiness (IPA) impacts on larger validations with particular interest in valuations that involve aspects of Special Emphasized Items (SEI), CCAR 34, and CCAR 36.
- Apply simplified validation process to independent repair station similar to the OEM simplified validation process on MROs initiated by CAAC.

民用航空

引言

本篇

概述了中国近期航空业的发展情况、未来规划和面临的挑战，以及推进美中航空关系的潜在利好。本章指出，在过去十年里，通过借鉴全球范围内航空业的最佳实践经验，中国航空业取得了重大进展，但部分领域仍需加大关注。本章共分七个部分：1) 主要建议，2) 行业最新进展，3) 强化中国空域系统和提升机场运营效率，4) 航空公司运营问题，5) 通用航空与商务航空发展，6) 认证程序与国际标准接轨，7) 气候变化和可持续发展行动。

美国企业是航空技术、设备和服务的重要供应商。美国企业投入大量资源帮助中国航空市场不断扩容，并提供了各种丰富的专业课程。中国美国商会的美中航空合作项目（以下简称“ACP”）成立于2004年，包含35家美国会员企业，其使命是支持中国航空领域的发展，组织合作交流，提高航空安全性和容量水平。中国民用航空局（以下简称“民航局”）、美国联邦航空管理局（FAA）和美国运输安全管理局（TSA）对本项目的大力支持是美中航空合作项目成功的重要因素。美中航空合作项目始终致力于处理航空领域问题，使两国共同受益。

主要建议

全面恢复美中之间的航空旅行。

- 制定边境开放计划，促进国际互联互通逐步有序恢复。
- 在考虑采取疫情管控措施时，遵守《美中航空运输协定》项下已赋予美国航空公司的权利。

提高空域与机场运营效率

- 根据国际规范和最佳实践，为国内外航空公司实施透明的航班时刻分配流程，帮助其快速恢复交通流量，确保今后行业的稳定发展。

- 优化枢纽机场设计，进一步推动“十四五”规划，更好地整合空中与地面系统，以提高跑道和滑行道的运行效率。
- 继续大力推广美中航空合作项目上海地区空域和地面优化技术援助项目以及美中航空合作项目2019年量化气候影响航空试点项目中所含的主要建议，优化空域系统效率，增加空域系统容量。
- 进一步减少或取消“货机窗口”限制，即允许全货机在中国主要机场间的起降不仅局限于夜晚，这将促进航空货运市场发展，缓解市场压力。

制定政策与程序，推动中国通用航空与商务航空（GABA）行业的发展，实现经济效益。

- 继续支持能提高各高度空域使用率的方案，例如增加直达航线，保证通用航空与商务航空飞机能够在最佳高度飞行，从而提高燃油效率，减少对环境的影响。
- 针对通用航空与商务航空运营（包括无人机系统（UAS））中所含的空域设计制定综合行动方案，从而优化空域の利用。

认证程序与国际标准接轨

- 增加《适航实施程序》（IPA）对大规模验证的影响，关注涉及特别强调条款（SEI）、中国民用航空规章《涡轮发动机飞机燃油排泄和排气排出物规定》、中国民用航空规章《航空器型号和适航合格审定噪声规定》方面的估值。
- 参照民用航空局对维护、维修和操作的原始设备制造商实施的简化验证流程，简化独立维修站的验证流程。

推进中国航空业绿色可持续发展措施的实施

- 采用搭载最新导航技术的飞机，通过额外的程序和

Advance Green and Sustainable Development Measures “in” China’s Aviation Sector

- Adopt additional procedures and airline operations that utilize the capabilities of aircraft equipped with the latest navigation technologies and ensure green development practices already in use achieve expected results.
- Continue adapting the capabilities of NextGen (US) and Single European Sky ATM Research-based (SESAR / EU) technologies and utilize them in China’s national airspace system, including best practices in procedures, measurements, communication, and decision-making support.

Recent Aviation Developments

Building on over a decade of steady economic growth, and despite the challenges that the global transportation industry faces due to the pandemic, China remains on track to become world’s largest aviation market. China’s GDP grew by an impressive 8.1 percent in 2021, and according to the World Bank, it is expected to grow by 5.1 percent in 2022.

Last year, total turnover, passenger traffic, and cargo and mail transportation volume were 85.7 billion tons, 440 million person-times and 7.32 million tons, showing an increase of 7.3 percent, 5.5 percent, and 8.2 percent year-on-year respectively; total aviation investment was RMB 115 billion, an increase of 6.4 percent compared to 2020. Approximately 25 percent of all aviation growth worldwide over the last decade came from China. In 2021, the total number of general aviation flight hours reached 1.182 million, an increase of 20.1 percent year-on-year. The total number of airports reached 243 in 2021, with the newest additions of Qingdao Jiaodong International Airport and Chengdu Tianfu International Airport.

Boeing’s most recent Commercial Market Outlook (CMO) estimates that China will need 8,700 new airplanes valued at US \$1.47 trillion. This figure increases to almost US \$1.8 trillion with the estimated value of commercial aviation services market over the next 20 years. China’s passenger traffic growth between 2021 and 2039 is forecast to be 5.3 percent per year and eventually reach 3,300 billion passenger-km; cargo traffic is forecast to grow by 7 percent annually to reach 102 billion ton-km. The CMO also forecasts that China’s civil aviation industry will require more than 400,000 new aviation personnel by 2040, including pilots, technicians, and cabin crew. In the same year, China’s domestic traffic is expected to also exceed air travel in North America.

According to the Commercial Aircraft Corporation of China (COMAC), the number of aircraft in the Chinese fleet will increase to 9,957 aircrafts, and its share of global aircraft fleets will increase to 22 percent by 2024, becoming the largest single aviation market in the world. The factors that

contribute to this include the rapid rise of China’s middle class, increasing economic and trade growth, growing urbanization and continued government investment toward improving and expanding its transportation infrastructure, including investments in the country’s air traffic system.

China’s recently released 14th Five-Year Plan (2021-2025) indicates that continued investment will be made to build capacity and efficiency to meet the rising demand. Key features of China’s 14th Five-Year Plan (Plan) are the country’s emphasis on smart aviation, sustainability, new infrastructure investments, and green development. By 2025, the number of civil transport airports in China is expected to reach more than 270, an increase of more than 30 compared to the 13th Five-Year Plan. Total transportation turnover will reach 175 billion ton-km and passenger transportation volume will reach 930 million times, more than double reported figures in 2021.

The Plan also addresses development bottlenecks with plans to undertake specific projects over the next five years to focus on building capacity, improving quality service capability, advancing green and low-carbon operations, and leading scientific and technological innovation. Projects to advance industry skills and increase industry and government collaboration will also be undertaken.

With China’s growth, the country has made some notable achievements that are important to the international aviation community. The country’s safety record is on par with other markets and the rate of annual flight punctuality reached 88 percent, remaining above 80 percent for four consecutive years.

Over the last several years, China made operational efficiency and capacity building a top priority. ACP is particularly pleased that CAAC has adopted many of the recommendations from ACP’s Shanghai Area Airspace and Ground Optimization, Beijing, and Xi’an Massive Delay Response (MDRS) studies and related technical assistance and training activities. With an eye toward more systematic management coordination, CAAC’s new Civil Aviation Operation Management Center, Civil Aviation Meteorological Center and its Civil Aviation Information Management Center were a priority for development and began operations last year. This work should translate into a more efficient air traffic flow system and help delete reduce congestion at many of China’s congested airports. CAAC’s plans to establish more entry and exit points for North American carriers is also welcome news.

US companies are important suppliers of aviation technology, equipment, and services and have committed significant resources to working with China in reducing capacity constraints through continued improvements to capabilities and in meeting a wide variety of training needs. The CAAC, FAA and TSA’s support of ACP’s program has been an important factor in the success of the organization’s various

航空公司的运营方式使其效能达到最大化，并确保已经采取的绿色措施达到预期效果。

- 进一步采纳美国下一代空管系统项目 (NextGen) 以及欧洲单一天空空管研究计划 (SESAR) 在实施流程、通讯和决策支持等方面的最佳实践，优化中国国家空域系统。

航空行业最新进展

十多年来，中国经济稳步发展。在此基础上，尽管全球运输业因疫情面临重重挑战，但中国仍有望成为世界最大的航空市场。2021年，中国国内生产总值 (GDP) 增长了 8.1%，取得骄人的成绩。根据世界银行数据，预计 2022 年，中国 GDP 将适度小幅增长 5.1%。

去年，中国航空市场运输总周转量 857 亿吨公里，同比增长 7.3%；旅客运输量 4.4 亿人次，同比增长 5.5%；货邮运输量 732 万吨，同比增长 8.2%；航空投资总额 1,150 亿元，同比增长 6.4%；通用航空飞行总时数达到 118.2 万小时，同比增长 20.1%；新增青岛胶东国际机场和成都天府国际机场，机场总数达到 243 个。过去十年间，中国市场贡献了约 25% 的全球航空业增长。

波音公司最新发布的《民用航空市场展望》(CMO) 预计，中国将需要 8,700 架新飞机，价值 1.47 万亿美元。未来 20 年运输航空服务市场价值预计将增长至近 1.8 万亿美元。《民用航空市场展望》还预测，到 2040 年，中国民航业将需新增 400,000 多名航空工作人员，包括飞行员、技术人员和空服人员。预计同年中国国内航空运输量也将超过北美航空的运输量。根据 2020 年 12 月中国航空工业集团有限公司发布的《2020—2039 年民用飞机中国市场预测年报》，预计 2021 年至 2039 年间，中国的客运量将以每年 5.3% 的速度增长，最终达到 3.3 万亿人公里；货运量将以每年 7% 的速度增长，达到 1,020 亿吨公里。

根据中国商飞公司 (COMAC) 数据，到 2040 年，中国机队的飞机数量将增加到 9,957 架，其在全球机队中的占有将增加到 22%，成为世界上最大的单一航空市场。中国能实现这一成就，主要原因是中国中产阶级的迅速崛起、经济贸易的不断增长、城市化进程的不断推进以及政府在交通基础设施改善和扩大方面的持续投资 (包括对国家空中交通系统的投资)。

根据中国近期发布的“十四五”民用航空发展规划 (2021 年—2025 年) (以下简称“规划”) 数据，中国将继续投资以提升航空业的运营能力与效率，从而满足日益增长的需求。规划指出，中国将重点关注智能航空、可持续发展、基础设施新投资和绿色发展这几个议题。预计到 2025 年，中国民用运输机场数量将达到 270 个以上，比“十三五”规划末期增加 30 个以上。运输总周转量将达到 1750 亿吨公里，旅客运输量达 9.3 亿人次。

规划还就行业发展瓶颈问题提出解决方案，计划在未来五年开展具体项目，重点提高运输运力、提升优质服务水平、推进绿色和低碳运营，以及引领科技创新。此外，还将开展提高行业技能和加强行业与政府合作的项目。

随着中国经济的发展，中国航空业已经取得令人瞩目的成就，对国际航空界也起着至关重要的作用。中国的安全记录一直表现出色，年航班正常率达 88%，已经连续四年保持在 80% 以上。

近几年来，中国一直把提高运营效率和加强容量建设作为首要任务。ACP 很高兴注意到，民航局采纳了我们提出的很多意见建议，如在上海推行空域和地面优化项目，在北京和西安启动大面积航班延误应急响应机制 (MDRS)，并组织多项有针对性的援助和培训活动。为提高系统和管理协调能力，民航局新设立的民航运营管理中心、民航气象中心和民航信息管理中心都被列为优先发展项目，并于去年开始投入运营。这些都将有效提升中国民航的空中交通流量系统，并有助于减少中国许多机场的拥堵问题。另一个好消息是，中国民用航空局计划为北美航空公司提供更多的出入口。

美国企业是航空技术、设备和服务的重要供应商，他们投入大量资源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。民航局、美国联邦航空局和美国运输安全管理局对美中航空合作项目的大力支持，使得各类运输运力项目都得以顺利举行。

美国航空业也受益于中国市场的发展。采用美国实践当中最佳的程序和标准，不仅促进两国航空系统的接轨，而且减少航空权益分配上的分歧。航空产品和服务历来是美国对华出口商品种类中最庞大的类别，飞机更是制成品出口种类中占比最多的一类。

capacity building programs.

The US aviation sector benefits from China's growth. The adoption of procedures and standards that align with US best practices further align our two aviation systems and reduces burdens on aviation interests. Aviation products and services traditionally constitute one of the largest categories of US exports to China, and "aircraft" is the largest category of manufactured good exports.

There is also recognition that China is committed to developing its own indigenous capabilities and, as such, US companies are naturally taking steps to ensure the protection of their intellectual property. As the Plan shows, the country will continue to invest in its BeiDou Navigation Satellite System. China's single aisle C919 is on track to receive certification and is expected to enter service this year. The country is also moving forward with plans to produce the C912, its first wide body commercial aircraft. In time, China will become a major global aviation supplier.

China's investments also represent select opportunities for further collaboration with the large supply of US equipment (engines, avionics, and parts) and services. The pandemic created additional challenges and opportunities for increased bilateral cooperation to address common issues related to safety and security, supply chain disruptions, aeromedical health (including pilot fatigue), aircraft maintenance, and virtual validation, among other issues. Collaboration is needed to ensure that the civil aviation sector and travel industry are taking all possible steps to assist with the growth of the industry. Working together to address climate change issues has been highlighted by the Presidents of both China and the United States as an important priority.

Need for Full Resumption of Airline Travel Between United States and China

While we applaud the efforts that China has played in minimizing spread of the coronavirus, the rigorous travel restrictions imposed as a result are adversely impacting commercial operations and investment decisions of AmCham China's member companies in China. Global travel between the US and China has been emphasized as the top business challenge for these companies.

We encourage China to implement a transparent slot assignment process for airlines, in line with international norms and best practices to ensure fast recovery of traffic flows. We also recommend that China facilitate a gradual and orderly resumption of international traffic and development by developing a roadmap for border opening. Furthermore, it is recommended to adhere to rights already given to US carriers under the *US-China Air Transport Agreement* when considering pandemic control measures.

Enhancing China's Airspace System and Improving Airport Operational Efficiency

The growth in air traffic has significantly increased pressure to change on China's large and complex airspace system. China continues to address its shortcomings including delays at airports, en route bottlenecks, and a continuing shortage of slots.

China's 14th Five-Year Plan builds upon its work in this area and specifically addresses needs to optimize the structure of national high, medium, and low air route networks, as well as to develop a more transparent process for the allocation of slots. AmCham China is pleased that the Air Traffic Management Bureau (ATMB) is building upon the key recommendations contained in ACP's Quantifying Weather Impacts Pilot Project (QWIPP) and is investing in meteorological monitoring and forecasting capabilities. ATMB's plans to expand its use of Wake Turbulence Recategorization (RECAT-CN), and to advance normalized operations using PMS and CDO/CCO operations is also a positive development for the industry. In addition, CAAC has made progress toward implementing a System Wide Information Management (SWIM) system and recently introduced the country's own unique collaborative decision-making model (CDM).

Continued efforts to adopt key recommendations contained in ACP's Shanghai Area Airspace and Ground Optimization technical assistance project and ACP's 2019 Quantifying Weather Impacts Aviation Pilot Project to optimize the efficiency and grow capacity of the airspace system are underway. This work is extremely important for the development of a comprehensive roadmap for a nationwide air traffic flow system.

Air Carrier Operation Issues

Optimize Flight Slot Utilization

Slot constraints at China's major airports, including Beijing, Shanghai, Guangzhou, and Shenzhen, 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.
- Keep slots and traffic database open to reduce airline operational uncertainty during the season change.
- Establish a fair and transparent process including measures to ensure the timely re-allocation of unused or under-utilized slots.

ACP 注意到中国在不断提升自身航空实力的同时，美国企业也在采取措施保护自身知识产权。正如规划中提到的，中国将继续投资北斗卫星导航系统。中国 C919 单通道客机即将获得认证，预计今年投入使用。此外，中国正在推进 CRJ929 飞机的生产计划，CRJ929 是中国首架宽体客机。中国将逐步成为全球重要的航空供应国。

中国对航空业的持续大量投资也为美国的设备（发动机、航空电子设备和零部件）及服务商提供了大量进一步开展合作的机会。疫情之下，中美两国面临的挑战和机遇，需要双方通力合作解决安全安保、供应链稳定、航空医疗卫生保障（包括飞行员休整）、飞机日常维护以及虚拟验证等方面的常见问题。中美两国加强合作是进一步发展民航业和旅游业的必要条件。中美两国元首强调，共同应对气候变化问题是两国工作的重中之重。

全面恢复中美之间的航空旅行

商会赞赏中国在控制新冠疫情传播方面所做的努力，但由此施加的旅行严格限令对商会会员企业在中国的日常运营和投资决策都产生了不利的影响，是商会会员企业目前面临的最大的商业挑战。

商会鼓励中国根据国际规范和最佳实践实施透明的航班时刻分配流程，尽快恢复运输流量。同时，建议中国制定边境开放计划，促进国际交通运输和国际旅行逐步有序恢复。此外，商会建议中国在考虑采取疫情管控措施时，遵守《美中航空运输协定》项下已赋予美国航空公司的权利。

提升中国空域管理体系，提高机场运营效率

航空运输量的激增，这一全球性的航空问题，对中国复杂的大型空域体系也带来了巨大压力。中国力求突破自身发展局限，如航班延误、终端航路拥堵和航班时刻短缺的问题。

民航局发布的“十四五”规划旨在解决以上问题，并致力于优化国家高、中、低航线网络结构与透明航班时刻分配流程。商会乐见空中交通管理局（ATMB）采纳 ACP 在“量化天气影响试点”项目（QWIPP）中提出的建议，在提高其气象监测和预报能力上不断投入资金支持。空中交通管理局（以下简称“空管局”）还计划扩展尾流间隔重新分类（RECAT-CN）的使用，利用

点融合系统和连续下降 / 爬升运行机制来推动常态化运行。此外，民航局在推行广域信息管理（SWIM）系统方面取得了较大进展，并于最近引进了中国特有的协同决策系统（CDM）。

商会鼓励民航局继续大力采纳 ACP 在上海空域和地面优化技术支持项目和“2019 年量化气候影响航空试点项目”中的主要建议，从而优化空域系统效率、增加空域系统容量，这对制定全国空中交通流量系统计划具有重大意义。

航空公司运营问题

优化航班时刻利用效率

- 北京、上海、广州和深圳等地机场的航班时刻紧张日益严重地影响航空业务发展。优化航班起降时刻分配流程有助于实现国务院设定的经济增长和能效目标。商会建议通过以下措施进一步改善航空服务：
- 继续优化国内外航空公司的航班时刻分配程序，与国际航空运输协会制定的《世界航班时刻准则》接轨。
- 保持航班时刻和交通数据库的开放性，减少因季节变化造成的航空公司日常运营的不确定性。
- 建立公平透明的程序，及时重新分配未使用或未充分使用的航班时刻。
- 鼓励民航局将上海浦东国际机场和广州白云国际机场实施的航班时刻分配改革推广到其他机场，允许航空公司“交换航班时刻”，而非采用“拍卖”和“摇号加付费”模式。
- 延长主要机场的运营时间，无需增加设施即可提升产能。
- 减少或去除日常运营中不符合实际需求的人为限制，鼓励充分利用非高峰时段运营。
- 取消货运航班的日间时段限制，并允许国外货运公司在一次航行中可前往中国多个机场进行运营。

继续改善大型机场地面运行效率。此类延误对中转连接和运营成本造成重大影响，影响旅客的出行体验。长时间延误也会增加碳排放，加重空气污染。

提高航线运营灵活性

商会促请中国给予航线运营更大的灵活性，建议近

- Encourage CAAC to replicate the slot allocation reform from Shanghai Pudong and Guangzhou Baiyun Airports to additional airports, and allow “slot swaps” between air carriers, instead of permitting “auction” and “lottery plus paid fee” practices.
- 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 account for actual usage and encourage greater use of off-peak hours.
- Eliminate limitations on day-time slots for all-cargo operations, as well as restrictions on co-terminal operations which would allow foreign cargo carriers to operate at multiple airports in China on a single trip.
- Continue efforts to reduce ground delays at major airports. Such delays have a significant impact on down-line connections, costs, and inconvenience to customers. Lengthy delays also generate more emissions, aggravating air pollution.

Allow More Route Flexibility

It is in China’s best interest to allow more operational route flexibility, such as permitting operators to plan and operate via more entry/exit points, instead of limiting them to the current city-pair restrictions. It is recommended that the current entry/exit restrictions, based on city pairs, eventually be eliminated, allowing operators to operate via all entry/exit points. This is especially relevant as the global airline industry recovers from significant disruptions caused by the COVID-19 pandemic.

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 while delivering better customer service. Such measures would require close coordination between airline operators, ATMB, and the military in a Collaborative Decision Making (CDM) process.

We are pleased that China now has a state-of-the-art Flight Plan Processing Center (FPPC) capable of coordinating all international route requests. We look forward to seeing improvements in the airspace and route system for routes to and from Shanghai, which result in significant delays.

Gateway and Hub Airport Issues

We applaud China’s plans to make the country’s international gateway airports more efficient as international and domestic hubs. Development of Beijing, Shanghai, and Guangzhou as recognized hub airports is a high priority for US and Chinese airlines alike.

China and the United States 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 percent of China’s second-tier cities are served by third-country carriers from hubs outside of China. We look forward to seeing the results from new policies designed to facilitate timely transfers of cargo and passengers, as well as streamlined baggage handling. This should help China capture a larger share of Pacific Rim air traffic from other regional hubs.

AmCham China also recommends increasing hub efficiency by allowing baggage checks for transfer passengers in Beijing Capital and Shanghai Pudong airports. This will attract more passengers transferring to or from other cities in Northeast Asia, while also helping to generate more passengers, jobs, and revenue for the airports. An increase in efficient hub operations and code-share cooperation could result in carrier gains for both China and the United States.

Cargo Industry Issues

The international freight and logistics industry, which depends on well-timed air transportation, is becoming increasingly important to China. Express delivery and general air freight services have been negatively impacted by a nationwide policy against giving new daytime landing and take-off slots to all-cargo operators at “slot coordinated” airports. Express and general air freight delivery services are central to China’s foreign trade and these policies affect the country’s competitiveness in global supply chains.

We are pleased to learn that CAAC may be considering a further 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.

AmCham China also encourages China to allow for co-terminalization which permits a carrier to service two or more locations in a foreign country with the same aircraft as part of a continuous journey. 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 cost, while also mitigating market risks for shippers and manufacturers.

In addition, overly complex and regionally inconsistent customs regulations continue to hamper the evolution and growth of the logistics industry in China. China’s current customs procedures do not allow in-bound and out-bound goods to flow through China’s gateway airports within a realistic aviation timeframe. This deficiency discourages the movement of international air cargo to and from China’s central and western regions. As noted earlier, affected carriers are increasingly moving hub operations to airports

期对航空公司开放更多航线出入境点，并取消现有的基于航线城市对航路的限制，最终允许航空公司在所有航线出入境点进行运营。随着全球航空业从新型冠状病毒肺炎疫情中复苏，上述提议将尤为重要。

中国目前不允许运行国际航线的航空公司在特定情况下灵活改变航路（如遇天气变化或其他航路因素）。一旦出现类似情况，航空公司需要经过复杂的军方批准流程，方可改变航线，然而该批准往往无法获得。允许航空公司有策略地及时调整航路可以减少机场拥堵和延误，并为乘客提供更好的服务。这些措施需要航空运营商、空管局以及军方在协同决策流程中密切合作。

商会很高兴看到，中方成立了中央空中交通管理委员会，其主要职责是提供高水平的国家空域管制和飞行控制。商会也盼望其改善往返上海航线的空域和航线系统延误问题。

门户机场和枢纽机场问题

商会赞赏中国努力提升国际门户机场效率，打造国内及国际枢纽机场的各项举措。北京、上海和广州三地枢纽机场的发展对中美航空公司都至关重要。

目前第三国航空公司通过避开中国的主要国际枢纽机场来吸引中美旅客和货运订单，导致中美两国部分航空客货运市场份额的不断流失。据估计，中国二线城市超过 40% 航空客货运输由第三国航空公司经国外枢纽完成。商会期待新政策的制定能提高货运和客运中转速度，简化行李服务，有助于中国提升在环太平洋空运市场份额。

商会建议允许北京首都国际机场和上海浦东国际机场的中转旅客办理通程行李直挂，以提高枢纽效率。这将为机场创造更多就业机会和收入，同时也能吸引更多东北亚城市的中转乘客。高效的枢纽运营和代码共享对中美两国航空公司来说都大有益处。

航空货运问题

国际物流依赖于准时的航空运输。随着中国向全球价值链高端攀升，国际物流的影响力与日俱增。然而，快递服务受到了国家政策约束的不利影响，即限制时刻协调机场向全货机开放新的日间起降时刻。快递和邮政空运业务是中国对外贸易的核心，与之相关的政策会直接影响中国在全球供应链中的竞争力。

商会很高兴地了解到，民航局在考虑放宽“货机窗口”政策，即允许全货机在中国主要机场间的起降不仅限于夜晚，这将促进航空货运市场发展，缓解市场压力。

商会鼓励中国允许航空公司提供串飞服务，即航空公司利用同一架飞机在境外国家两个或以上地点提供联程服务。串飞使航空公司尤其是全货机能够将地域广阔、更为成熟的目的地服务输送给地域较小、较为封闭的目的地，从而最大化航空公司的飞机使用效率并降低成本，同时减少货主和制造商的市场风险。

此外，过于复杂且区域不一致的海关管理规定持续阻碍中国物流业的发展和增长。中国现行的海关流程无法保证入境货物在中国的门户机场快速通关，不利于国际空运物流向中国中西部地区。如前所述，受到影响的航空公司，逐渐将枢纽货站转移到中国境外的机场，或者不再为这些国内地区提供货运服务。

航空货运服务需求的激增和日益复杂的航运网络都对调度排期的灵活性提出了更高的要求。货运服务的需求会随着节假日、季节和消费者需求的变化而不断变化。根据波音公司 2021 年的《民用航空市场预测》报告，预计 2021 年至 2039 年之间，货运量将以每年 7% 的速度增长，最后达到 1,020 亿吨公里。更灵活快速的通关流程可使得货运公司根据需求及时调整其航班计划，从容应对航运网络中的突发情况。

中国主要门户机场高昂的航空性业务收费继续呈上升趋势，进一步阻碍了航空业务的发展。中国的航空费用处于区域内高位，对于航油、货物装卸和政府手续等必需物资和服务的地区垄断进一步拉低了航空业务的效率和效益。商会希望民航局、机场、海关和航空公司能共同努力，降低中国国际机场的航空性业务收费。

航空安保

航空安保仍然是民航客货运输的核心业务。民航局规范了全国机场航空安保的法规和操作流程。中国有必要继续强化完善航空安保，微小的违规也会带来直接及巨大的不良后果。为有效维持和提高航空安保水平，中国应继续通过信息交流、评估和培训等形式，开展国际交流与合作。

危险品供应安全规定的执行

商会建议中国政府加强对危险品运输三大利益相关

outside of China, or alternatively 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. Cargo traffic is forecasted to grow by 7 percent annually to reach 102 billion ton-km between 2021 and 2039, according to Boeing's 2021 Commercial Outlook Report. More flexible and timely procedures are needed to allow air cargo carriers to adapt their schedules to changes in demand and to recover from schedule disruptions elsewhere in their networks.

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, serve as an expensive drag on efficiency. We remain hopeful that CAAC, airports, border agencies, and airlines work together to lower costs at China's international airports.

Aviation Security

Aviation security remains an integral part of the transportation sector for both passenger and cargo operations. CAAC is responsible for regulation and implementation of security procedures at airports throughout mainland China. Efforts to strengthen aviation security should continue, as any security breaches can cause immediate and lasting damage or harm. Information exchanges, assessments, and trainings conducted in partnership with other countries around the world is an important element of aviation security and such activities should be continued.

Enforcement of Dangerous Goods Supply Chain Safety

AmCham China recommends that the Chinese government impose stricter supervision on all three major supply chain stakeholders of dangerous goods air transportation: shippers, forwarders, and airlines. Our members strive to comply with the requirements of the China Civil Aviation Dangerous Goods Transportation Administration Regulations (CCAR 276-R1), but remain concerned that other parties may not be doing so.

AmCham China supports the development of a more comprehensive and stronger inspection program of the entities engaged in the transport of dangerous goods by air, especially shippers and shipper's agents. The utilization of enforcement capabilities in Chapter 12 – Legal Liabilities of China's dangerous goods air regulations on the applicable entities (e.g., shippers, shipper's agents, ground handlers,

cargo sales agent, operators) would help to ensure a level playing field for all operators.

General and Business Aviation Development

AmCham China members applaud China's commitments to the continued development of general aviation and business aviation (GABA). General aviation hours totaled 1.182 million last year, which is an increase of 20.1 percent compared that of the year before. China's registered unmanned aerial vehicles (UAV) reached 830,000 by the end of 2021, with operating time totaling more than 10 million hours. There were 374 certified general aviation airports by the end of 2021, significantly less than goal of over 500 airports set in China's 13th Five-Year Plan. The GABA sector will require adoption of more favorable government policies and incentives to continue expanding, while recognizing the fast-growing commercial aviation sector that faces crowded and limited airspace.

We are pleased to observe the attention given to continued improvement of safety policies and regulations in the realm of GABA. The ongoing discussions and focus on promoting the simplification of the validation process of general aviation manufactured equipment and establishment of UAV standards will benefit the industry overall. We also applaud progress made by CAAC in establishing a low-altitude Flight Service Station system and developing several projects in Hunan, Jiangxi, and Anhui provinces to pilot closer civil-military cooperation for use of low altitude airspace.

The civil helicopter industry also offers substantial growth potential, although specific operational challenges remain. The segments of the helicopter industry that will benefit from more work include Air Medical Services and Public Safety fleets (including for law enforcement search and rescue, and firefighting).

AmCham China is pleased to see that the 14th Five-Year Plan includes actions to improve the physical and policy infrastructure. Such actions will provide China with greater transportation efficiency, mobility, and development through the creation of more jobs, and the ability to address humanitarian needs. AmCham China members remain committed to support China's workforce development.

In summary, AmCham China offers the following recommendations for China's GABA sector:

- Continue support for initiatives that would increase the usage of airspace at all altitudes. Increased direct routings enable GABA aircraft to operate at optimum altitudes for greater fuel efficiency and reduced environmental impact.
- Provide for an integrated approach to airspace design that factors in GABA operations including unmanned aerial systems (UAS) to optimize the utilization of

方的监管，即托运人、货运代理人 and 航空公司。商会会督促会员企业严格遵守并执行《中国民用航空危险品运输管理规定》(CCAR 276-R1) 的相关规定，但对于非会员企业，商会则无法保证其遵规守规。

商会支持为危险品航空运输实体，尤其是托运人和托运代理人，开展更全面深入的危险品检查相关项目。中国《民用航空危险品运输管理规定》第十二章中对于适用实体（例如托运人、托运代理人、地面服务商、货运销售代理人、经营人）的法律责任的具体规定，加强了对这些相关运输方在危险品运输管理上的执法力度，创造了公平有序的竞争环境。

通用航空与商务航空发展

商会会员赞赏中国在通用航空与商务航空 (GABA) 方面的不断投入与发展。去年，通用航空飞行总时数达 118.2 万小时，同比增长 20.1%。截至 2021 年底，中国无人机 (UAV) 实名登记数量达 830,200 架，运行总时长超过 1,000 万小时；中国在册通用航空机场数量达到 374 个，明显低于“十三五”规划所设定的超过 500 个的目标。在运输航空快速扩张而导致空域拥堵的情况下，依然实现通用航空与商务航空的稳健增长，政府的优惠政策和激励措施必不可少。

商会乐见中国在不断完善通用航空和商务航空领域的安全政策和法规，欣闻中国在持续关注 and 讨论简化通用航空制造设备的验证流程和制定无人机标准。商会赞赏民航局在建立低空飞行服务站系统方面取得的进展，以及为加强低空空域使用效率上的军民合作，在湖南、江西和安徽省开展的相关试点项目。

虽然在运营上面临挑战，但民用直升机行业仍展现出巨大的增长潜力，尤其是在航空医疗服务和公共安全机队（包括执法、搜救及消防）方面。

商会很高兴地看到，“十四五”规划就改善设施和夯实政策基础制定了具体实施方案。此举将提高中国的运输效率和流动性，创造更多的就业机会，并帮助满足人道主义需求。商会会员企业会继续支持中国的劳动力发展。

综上所述，商会对中国通用航空与商务航空行业提出以下建议：

- 继续支持所有高度空域使用率的提升方案。增设直达航线，保证通用航空与商务航空飞行器能够在最佳高度飞行，提高燃油利用率并减少对环境的影响。
- 为包括无人机在内的通用航空与商务航空业务提供的综合的空域设计方法论。
- 在改善中国城市空中交通水平 (UAM) 和发展中国高级空中交通市场 (AAM) 两方面上实现不断创新。
- 进一步建设通用商务航空机场，完善整合商务机场准入，支持地面固定基地运营商 (FBO) 之间以燃料补给、设施维护及其他功能为标准进行竞争。
- 根据通用商务航空机型实施不同的安全条例，精准采取安全风险调控措施。
- 允许航空运营人访问国内航空航图，便于获取所需图表和地图，支持中国的飞行安全工作。
- 创建城市地区的直升机航线，建设将直升机和固定翼机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，支持航空医疗服务，提供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在进入中国开展飞行员培训的机会。
- 向企业或企业家提供相关资料及培训，帮助他们更好地了解公司、个人、政府等对于通用航空与商务航空飞行器的核心需求。

认证过程与国际标准接轨

民航局和美国联邦航空局于 2017 年 10 月签署了《适航实施程序》(IPA)。在日趋成熟的美中航空关系中，此举是促成美中航空关系日趋成熟化的一个重要里程碑。美国公司致力于分享他们的经验和建议，以确保《适航实施程序》的预期价值得以实现，并使两国受益。

《适航实施程序》旨在为航空制造业和服务业创造一个更可预测的监管环境。项目周期和项目技术范围均会在可预测的范围内。2021 年，美国各行业已经看到适用《适航实施程序》的初步成效，并期待其未来在大规模的认证程序上产生积极影响，尤其是涉及安全要素、特别关注清单 (SEI)、显著标准差异 (SSD)、《涡轮发动机飞机燃油排泄和排气排出物规定》(CCAR 34) 和《航空器型号和适航合格审定噪声规定》(CCAR 36) 等方面的认证。商会赞赏民航局启动针对航空维修企业 OEM 的简

airspace.

- Promote the innovation on further improving the Urban Air Mobility (UAM) and Advanced Air Mobility (AAM) in China.
- Further develop GABA airports, improve and integrate access to commercial airports, and support for competition amongst Fixed Base Operators (FBO) 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.
- Provide air carriers with access to domestic aeronautical information so that it can be utilized to create the charts and maps required to support safe flight throughout China.
- Establish helicopter routes through urban areas and 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.
- Publish documentation/ provide training to companies and entrepreneurs to help business understand the value proposition of GABA aircraft for corporate use, personal use, government use, etc.

Aligning Validation Processes with International Standards

The CAAC and FAA signed the *Implementation Procedures for Airworthiness* (IPA) in October 2017. This has been a welcome and important milestone in the maturing US-China aviation relationship. US companies are committed to sharing their experience and advice to ensure that the intended value of the IPA is realized and beneficial to both countries.

The IPA is intended to bring a more predictable regulatory environment for aviation products and services. Key metrics of interest are predictable project length and predictable project technical scope. US industries have seen initial benefits from IPA implementation in 2021 and look forward to positive IPA impacts on larger validations in the future. Validations that involve lowercase, Special Emphasized Items (SEI), Significant Standards Differences (SSD), CCAR 34, and CCAR 36 aspects are of particular interest. While we applaud the OEM simplified validation process on MRO initiated by CAAC, we look forward to similar progress to be applied to independent repair stations.

AmCham China recommends that CAAC expand its efforts with the FAA to educate manufacturers on IPA and share best practices across the industry. Our members applaud CAAC's plan to systematize the airworthiness certification procedure, and to establish an airworthiness approval and management system.

AmCham China also commends CAAC for introducing some standard flow times, 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 FAA and European Aviation Safety Agency (EASA), which have established flow times.

AmCham China members support the CAAC and FAA's joint vision that the IPA will increase project predictability and efficiency. We encourage the FAA and CAAC's continued collaboration to clarify and simplify the SEI, SSD, and areas for further technical confidence building (AFTCB) lists. We also encourage the FAA and CAAC to establish a process by which SEI, SSD, and AFTCB items may be eliminated over time. 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 from application received to project assigned for each project type including Streamlined Validation (SV), Limited Technical Validation (LTV), and Full Technical Validation (FTV), and standard flow times from project assigned to validation approval for Streamlined Validations (SV). Procedures can be developed for each of the safety elements, especially SEI and AFTCB, so that both applicants and the CAAC have a mutual understanding of the CAAC's expectations during a validation project. This should reduce the overall flow time and resources required from the CAAC, FAA, and the applicant.

AmCham China members recognize that project-specific procedures and flow time details will be built into the 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 the FAA, OEM, and CAAC to focus on the areas of highest safety risk.

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 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.

化认证流程，同时期待类似的认证简化程序可应用于独立的航空维修站。

商会建议民航局加强与美国联邦航空局的合作，为制造商开展《适航实施程序》的教育培训，并在整个行业内分享最佳实践。商会赞赏民航局拟将适航认证程序系统化并建立适航审批和管理体系。

此外，商会对民航局制定标准流程时间表示肯定，同时也理解实施过程中存在困难。企业发现，由于美国联邦航空局和欧洲航空安全局（EASA）等这些航空机构已拥有成熟的流程时间标准化实践经验，民航局相关措施的制定使得企业与这些机构的合作更易达到互惠互利的效果。

商会会员企业支持民航局和美国联邦航空局的共同愿景，即《适航实施程序》将提高项目的可预测性和效率。我们鼓励美国联邦航空局与民航局继续合作，明确并简化特别关注清单、显著标准差异以及进一步建立技术信心的领域清单。商会还鼓励两国民航管理当局建立相应流程，使特别关注清单、显著标准差异和进一步建立技术信心的领域清单可以随时间推移逐步被淘汰。此次合作是美中两国航空业共同确保《适航实施程序》成功实施的关键。同时，需要从所有相关项目中收集行业反馈意见，改进《适航实施程序》或两国民航管理当局的实施程序。

为支持实现项目可预测性，商会建议民航局为每个项目类型建立从收到申请到分配项目的标准流程时间，包括简化验证、有限技术验证、完整技术验证，以及简化验证（SV）从项目分配到认证批准的标准流程时间。可以为每个安全要素制定相应程序，特别是特别关注清单（SEI）和进一步建立技术信心的领域清单，便于申请人和民航局在认证项目期间的相互了解。通过进一步了解民航局对项目的期望，可以缩短美中两国航空管理当局和申请人所需的总流程时间，并减少资源的耗费。

商会会员赞同将具体程序和流程时间等细节纳入项目工作计划，认为这有利于工作团队在项目实施过程中更新工作计划。为支持此类弹性项目协议，商会建议民航局考虑将工作计划内容制定和更新委派给认证中心的工作团队，这样可以避免更新工作计划所带来的流程时间的增加，并使美国联邦航空管理局、原始设备制造商和民航局将精力集中在安全风险最高的领域。

商会鼓励民航局继续提高效率，减少标准流程，以利于在未来几年提高认证验证量。尽管航空业的快速增长增加了监管挑战，但商会认为《适航实施程序》是缓解中国民航巨大工作量的有效工具。

鉴于受到新冠疫情出行限制的影响，现场认证难以实施。商会建议民航局引入虚拟审核方法，建立常态化虚拟审核流程。

气候变化和可持续发展行动

气候变化是至关重要的全球性议题。习近平主席承诺，中国将采取更强有力的政策和措施，在2030年之前实现碳达峰，在2060年之前实现碳中和。这已成为中国“十四五”规划的重点内容之一。为实现双碳目标，民航局计划对相关领域提供指导意见，包括制定民用航空绿色发展蓝皮书、优化航线结构，以及采取措施提高燃油效率。

除此之外，民航局还计划继续开放临时航线，推进数字化和智能化维护维修系统的建设，以确保飞机安全、可靠、高效运行。当前，中国对多地机场进行升级改造，使其能够以更环保、更智能和更可持续的方式不断发展。中国寻求的战略解决方案是，通过使用节能设备、改善机场供热制冷系统、利用新建筑材料、整合机场系统、实施远程操作控制、使用大数据和其他机场数字化解决方案，实现航空业的可持续增长，同时降低运营成本和对环境的影响。

按照计划，北京、上海、广州三地机场将成为降噪试点。此外，值得一提的是，北京新建的大兴国际机场采用了最先进的建筑材料和绿色机场建筑标准。

重视提高中国空域系统管理效率将为扩大容量和节能减排带来直接效益，同时也能实现东海岸经济区（ECER）相关项目的效益最大化。

合理布局机场滑道和登机口可以大幅缩短飞机滑行时间。空管局利用最新的机载导航设备，实施先进的导航及航线运营程序，进一步推动航空可持续发展，并使现行措施达到预期目标。

商会建议民用航空局和空管局继续借鉴美国下一代空管系统 NextGen 和欧洲单一天空空管研究计划 SESAR 在实施流程、通讯和决策支持等方面的最佳实践

Given the difficulties of implementing in-person validations due to the Covid-19 travel restrictions, AmCham China encourages CAAC to introduce virtual validation practices, and possibly to establish a 'normal' virtual validation process.

airlines, and airports, to reduce stress on the airspace system by safely incorporating efficiency.

Climate Change and Sustainability Action

Climate change is a critical global issue. President Xi Jinping stated commitment to bring carbon emissions to a peak by 2030 and achieve carbon neutrality by 2060 with more forceful policies and measures. This has become a cornerstone of China's 14th Five-Year Plan. CAAC's plan includes guidance on several subjects including among others, to develop a blue book on the green development of civil aviation, to optimize the structure of routes, and to take measures to promote fuel efficiency.

There also are plans to continue opening temporary routes and to promote the construction of a digital and intelligent maintenance and repair system to ensure the safe, reliable, and efficient operation of aircraft. China is upgrading its airports to be greener, smarter, and more sustainable. China seeks strategies and solutions that allow for sustained aviation growth while also reducing costs and environmental impacts through the utilization of energy conservation equipment, airport heating and cooling systems, efficient building materials and systems, airport systems integration, remote operations control, and big data and airport digital solutions.

Airports in Beijing, Shanghai, Guangzhou will be trial places for noise reduction. Attention also is being given to the use state-of-the-art building materials and adoption of green airport building standards as evidenced by Beijing's new Daxing International Airport.

Progress and continued efforts to create effective and efficient national airspace system management also will 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 continuing to adopt procedures and airline operations that utilize the capabilities of aircraft equipped with the latest navigation technologies, CAAC's Air Traffic Management Bureau (ATMB) will fulfill expectations to achieve greater benefits for aviation sustainability and ensure that practices already in use achieve expected results.

AmCham China also recommends that CAAC/ATMB continue to adapt the capabilities of NextGen (US), and Single European Sky ATM Research-based (SESAR / EU) technologies and utilize them in China's national airspace system, including best practices in procedures, measurements, communication, and decision-making support. This will offer new capabilities to all participants in China's air traffic management system, including air traffic centers,

经验，优化中国空域管理系统。此举将在保障安全的前提下，进一步提升中国空管、航空公司和机场三方的运营效率，减轻空域系统压力。

Direct Sales

Introduction

Direct sales is the selling of products and services directly to consumers with no intermediaries involved. This business model provides significant opportunities for entrepreneurship and contributes to overall economic prosperity. The direct sales business model is used widely across the globe; laws have been enacted to protect the interests of consumers and promote fair competition. The direct sales business model has gained substantial popularity in China since it was introduced in the early 1990s. However, the pyramid scheme business model gained popularity alongside the direct selling boom. Pyramid schemes are widely considered a fraudulent or illegal business model, as it recruits members via a promise of receiving payments or services as compensation for enrolling others into the scheme rather than selling physical products or providing actual services.

The Chinese government is committed to cracking down on illegal pyramid schemes and has adopted strict regulatory policies to curb the spread of this business model. In 2005, the *Regulations on Direct Selling Administration and Prohibition of Pyramid Schemes Ordinance* were introduced. The former imposes stringent requirements on market entry for direct sellers, including:

- 1) The investor must have a strong business credit score and no major illegal business records for five consecutive years before filing an application;
- 2) Registered capital must be at least RMB 80 million, with a full deposit in a designated bank of at least RMB 20 million.

These stringent entry requirements communicated that direct sellers need to invest heavily in establishing systematic operations involving research and development, production, logistics, and sales; it also prompted sellers to increase their appetite for risk.

Direct selling has gone through five phases since 1990: the initial period (1990-1998); the rectification period (1998-2001); the legislation period (2001-2005); the rapid development period (2006-2018); and the stagnation period (2019-present). By the end of 2018, 91 enterprises were licensed by

the Ministry of Commerce to engage in direct sales, of which 58 are domestic enterprises and 33 are foreign. However, a registration review found that only 88 enterprises currently operating, including 32 foreign enterprises (Avon has withdrawn from the Chinese market).

The size of the direct sales market in China hit an all-time high in 2018 of RMB 236.45 billion from RMB 26.1 billion in 2006, accounting for about 18 percent of the global direct selling market and becoming the second-largest direct selling market in the world, second to the United States. However, this development momentum was disrupted by the Quanjian incident at the end of 2018 and the COVID-19 outbreak in 2020. Because of this, direct selling in China entered a downward spiral and encountered grave challenges. The *2020 Annual Report of Global Direct Selling* released by the World Federation of Direct Selling Associations recorded a year-over-year growth rate of only 2.28 percent globally, with a three-year compounded annual growth rate (CAGR) of -0.1 percent from 2017 to 2020. The Chinese market has experienced a continuous decline in sales in over the last two years due to major market impacts. With China excluded from the aforementioned figure, worldwide sales reached a year-over-year growth rate of 5.8 percent in 2020, with a three-year CAGR of three percent.

The Quanjian incident at the end of 2018 went viral and spurred wide public discussion. This severely impaired the social perception of direct selling and triggered a crisis of public trust in the health care market, taking a heavy toll on the direct selling industry. Since January 8, 2019, the State Administration for Market Regulation and 12 other government ministries and agencies jointly launched a nationwide 100-day campaign to crack down on illegal practices involving health products. The Ministry of Commerce reviewed the registration of direct selling products, direct selling trainers, and direct sellers in April of the same year, suspending the approval of new direct selling businesses in February 2018. The COVID-19 outbreak in 2020 dealt an even heavier blow to direct sellers. Along with the emergence of new retail models such as the Micro Business Program and e-commerce, most direct sellers are confronted with declining performance, with many domestic direct sellers verging on closure or stagnation.

In response to the “100-day campaign” and special rectification work requirements, direct sellers have launched a comprehensive “Self-Appraisal and Self-Rectification”

直 销

引 言

直销是通过面对面直接将产品及服务销售给消费者的商业模式，它为消费者提供创业机会，也有助于繁荣经济发展。作为市场发展的一部分，直销已被许多国家接受，并通过相关法律的修订来保护消费者利益、促进公平竞争。直销模式于上个世纪 90 年代初期引进中国并迅速发展，直销的发展也伴随着“传销”模式的扩张，这是一种靠以“拉人入伙”方式而不是销售有形商品或提供实际服务来进行牟利的商业模式，这种模式在许多国家都认为是诈骗或违法行为。

中国政府一直致力于打击非法传销，采取严格监管的方式来遏制传销的蔓延。2005 年中国政府颁布了《直销管理条例》、《禁止传销条例》。前者对直销企业实施严格的准入条件，要求投资者具有良好的商业信誉，连续 5 年无重大违法经营记录，实缴注册资本不低于人民币 8000 万元，并在指定银行足额缴纳不少于人民币 2000 万元保证金。这些准入条件表明直销企业必须投入巨大成本，建立完备的研发、生产、物流、销售体系及具备较强的抗风险能力。

直销行业自 1990 年至今经历了五个阶段的历史发展时期：初期进入时期（1990 年 -1998 年）、清理整顿转型时期（1998 年 -2001 年）、立法规范时期（2001 年 -2005 年）、依法蓬勃发展时期（2006 年 -2018 年）、发展停滞时期（2019 年 - 至今）。截至 2018 年底，商务部公布的获牌企业共有 91 家，其中内资企业 58 家，外资企业 33 家。通过复核登记，目前实际经营的直销企业为 88 家，其中外资企业 32 家（雅芳退出中国市场）。

中国直销市场规模从 2006 年的 261 亿元发展到 2018 年的峰值 2364.5 亿元，占全球直销市场 18% 左右，成为仅次于美国的全球第二大直销市场。但这一发展势

头受 2018 年底的权健事件和 2020 年以来爆发的新冠肺炎疫情影响，中国直销行业遭遇严峻挑战，整体呈下行态势。根据世界直销协会联盟 2020 年全球直销年度报告，2020 年全球销售增长率为 2.28%，2017-2020 年三年复合增长率为 -0.1%，中国市场近两年因受重大影响，销售额连续下滑，全球销售数据如不包括中国，2020 年全球年销售增长率为 5.8%，3 年复合年增长率为 3.0%。

2018 年底的“权健事件”导致舆论持续发酵，不仅让直销行业的社会认可度急剧下降，同时还引发了公众对保健市场的信任危机，行业遭受重创。2019 年 1 月 8 日起国家市场监督管理总局等 13 个部门在全国范围内集中开展联合整治“保健”市场乱象百日行动，商务部于同年 4 月对直销备案产品、直销培训师和直销员进行复核登记，2 月起暂停直销日常业务审批至今。2020 年爆发的新冠肺炎疫情更使直销企业雪上加霜，伴随微商、电商等新零售模式对直销模式的冲击，大部分直销企业处于业绩下滑、特别是内资直销企业面临生存压力甚至停顿状态。

为响应“百日行动”和相关专项整治工作要求，直销企业全面开展“自省自查自纠”，查漏补缺，制定相关管理制度加大对经销商、营销人员的监管，加强对经销商和直销员的管理与素质提升，努力提高守法合规经营的意识和责任感，接受政府部门相关检查。新冠肺炎疫情爆发以来，直销企业积极开展复工复产，保障市场供应，稳定经销队伍，调整经营模式，加快布局数字化，应对市场变化；同时强化合规管理，保障消费者权益；困难之下不忘履行社会责任，捐款捐物支持抗疫第一线，服务乡村振兴，继续推动公益事业。

直销、保健食品行业的特点及对社会的贡献

如引言部分介绍，《直销管理条例》对直销企业实施严格的准入条件，要求直销企业在中国投资设厂，产品

campaign, formulating management policies to increase the supervision of sellers and marketing personnel; improve the quality of sellers and marketing personnel; and enhance seller's awareness of the law, sense of responsibility, and willingness to undergo inspections by government authorities. Since the initial COVID-19 outbreak, direct sellers have resumed production and operations to ensure normal market performance. They stabilized their distribution teams, transformed their business models, and accelerated their digitalization processes in response to a changing market climate. They also tightened their compliance management to protect consumers' rights and interests. Despite these difficulties, they continued to fulfill their social responsibilities by donating money and materials to help frontline workers combat COVID-19, support rural revitalization efforts, and promote public welfare.

Characteristics of the Direct Selling and Health Product Industries and Their Social Contributions

As mentioned in the Introduction section, the *Regulations on Direct Selling Administration* imposes stringent requirements on market entry for direct sellers, requiring them to invest and set up factories in China and adopt direct selling as their business model. The market established by this measure is a combination of the real economy and modern service industry, reflecting attributes of both the manufacturing and service industries.

The market positioning of the direct selling industry is very compatible with the "Healthy China" initiative. At least 70 percent of business operations within the direct selling industry are related to the concept of "Big Health." As such, supporting businesses that direct sell health products has the added benefit of supporting the aims of Healthy China 2030 and reducing the pressure on social and public health resources. As China's disposable income per capita continues to increase, direct selling enterprises may have a major role to play in meeting the increasingly diverse and personalized needs of consumers, boosting consumption, and improving overall standards of living.

As the Chinese government intensifies its focus on the Six Stabilities (stable employment, finance, trade, foreign investment, investment, and expectations), the Six Guarantees (ensuring employment, basic livelihood, market entities, food and energy safety, stable supply chains, and grassroots operations), and Dual Circulation, the direct selling industry has a positional advantage and a unique role to play in expanding employment, increasing the consumption of health products, promoting the development of small and micro enterprises and self-employed businesses, and creating new jobs. According to the 2021 *Report on the Social Contribution of the Direct Selling Industry* released by the Direct Selling Committee of the China Health Care Association, the direct sales industry is responsible for the creation of more

than 20 million jobs and serves as a platform for flexible employment for at least 5 million people nationwide.

In recent years, foreign direct sellers including Amway, Herbalife, Nature's Sunshine, Infinitus, and Perfect have established digital transformation plans to enable distributors to better serve their customers. Despite their declining performance in China, foreign direct sellers still report great confidence in investing in the Chinese market. They are also gaining deeper knowledge of the Chinese market and are exploring new ways to improve their operational models. They continue to increase their investment in R&D, innovation, and the Chinese market while improving operational efficiency and controlling costs. These activities are in service of foreign direct sellers' goals to meet consumer demand for product diversity and easy access, play an active role in promoting consumption and stabilizing employment, and help build a Healthy China.

The American Chamber of Commerce in China (hereafter, "AmCham China") appreciates the efforts the Chinese government to facilitate the rule-of-law based and orderly development of the direct selling industry in China. However, the *Regulations on Direct Selling Administration* introduced in 2005 and other related regulations no longer meet the changing needs of the market and consumers. The rapid development of the Internet and information technology has brought about new business models that challenge the competitive advantages of existing enterprises, causing significant distress to direct sellers and many health product industries that must comply with a strict regulatory environment.

Direct Sales and Health Product Industries were Confronted with a Strict Business and Regulatory Environment

The *Regulations on Direct Selling Administration* sets high thresholds for direct selling and also impose strict controls on direct sellers in terms of sales, salaries, personnel recruitment and training, and daily operations, forcing many enterprises to abandon the process of applying for a direct selling business license. Despite this, new business models that are similar to direct sales such as ecommerce are not subject to the *Regulations on Direct Selling Administration* and create unfair competition for businesses that are. Direct selling marketers who violate business ethics and harm consumers by exaggerating the efficacy of their products continue to have a negative impact on the direct selling industry as a whole.

Throughout the history of China's health product industry, there has been room to improve the direct selling industry's positioning, function claims evaluation methods, registration and filing system, management methods, scientific research, and advertising practices. According to Chinese laws, functional claims can only be applied to health products whose

销售方式上采取直销方式，是实体经济与现代服务业的结合，既有制造业的属性，又有服务业的特点。

直销产业的定位与健康中国的战略非常契合。直销行业的业绩中至少 70% 以上与大健康理念有关。促进保健食品直销行业的发展，不仅符合“健康中国 2030”的整体产业发展目标，更能够依托其产业经营特点，广泛传播健康生活理念，提升国民整体健康意识水平，进而分担社会与公共卫生的资源压力。从产业形态来看，随着居民可支配收入的提高，直销企业在满足消费者多样性、个性化的消费需求、拉动消费、改善人民生活水平方面大有发挥作用的空间。

在国家实施“六保、六稳”、“双循环”战略的大背景下，直销行业在带动就业，促进健康消费及消费升级，促进小微企业、个体经营者事业发展及增加就业机会方面具有独特优势与作用。根据中国保健协会直销工作委员会发布《2021 中国直销行业社会贡献专题报告》，直销行业提供了 2000 万个以上的就业岗位，并为全社会至少 500 万人左右提供了灵活就业的路径和平台。

近年来为适应电子商务和数字化商业模式的发展趋势，包括安利、康宝莱、自然阳光、无限极、完美等在内的外资直销企业纷纷布局数字化转型，赋能经销商更好地为顾客服务。尽管外资直销企业在中国的直销市场业绩出现下滑，但其长期扎根、对中国市场的投资信心并未改变，对市场的认识在不断深化，企业也在探索完善运营模式。在积极提升运营效率、控制成本的同时，继续加大在华投资和研发创新投入，以满足消费者对产品多样性和便捷性的需求，努力为促消费、稳就业发挥积极作用，助力健康中国建设。

中国美国商会（以下简称商会）十分赞赏中国政府在推动直销行业合法有序发展所做出的努力。但是应该看到，2005 年出台的《直销管理条例》以及其他相关规定已经无法满足当前市场和消费者不断变化的需求。互联网、信息技术的快速发展带来日趋频繁的商业创新活动，涌现出各种新兴商业模式挑战现有企业的竞争优势，使得处在双严管的直销、保健食品行业面临不公平竞争的经营困境和监管环境。

直销、保健食品行业被污名化及面对不公平竞争的经营和监管环境

《直销管理条例》不仅在直销准入设置高门槛，还对

直销企业在销售、薪酬、人才招聘和培训以及日常经营方面有严格管控，许多企业放弃申请直销经营许可，实践中存在大量以某种类类似于直销的形式开展经营以及新兴电商经营模式带来的不公平竞争，管理上却不受《直销管理条例》的约束和监管。这类企业出现的问题以及少数直销营销人员因无法坚守商德底线，夸大功效，损害消费者权益，经媒体曝光而拖累整个直销行业及被污名化。

保健食品在中国发展的历程中，关于保健食品的定位、功能声称评价方法、注册备案制度改革、行业管理模式、科研、广告宣传和科普等方面都有待完善。根据中国相关法律，只有保健食品能够进行功能性声称，这背后凝聚着大量科技实力支撑，包括产品研发投入、评估审批上市等诸多环节。但现实中，为追逐商业利润，普通食品违规标识、夸大功能功效、虚假宣传和非法添加问题十分突出，不少保健食品在功能宣传上也存在夸大宣传，不但使行业深陷低谷，也让消费者对保健食品产生误解，严重影响保健食品行业的形象。

在政府监管方面，长期以来直销、保健品市场监管任务重、人员少、监管力量有限、监管技术手段缺乏的矛盾异常突出，给政府监管部门监管带来挑战。集中整治、专项治理的运动式监管成为监管执法的常态，这种问题驱动、被动式的事后监管，虽然在较短时间内整合资源，集中力量处理保健食品违规违法经营问题，对典型大案要案的处理起到震慑作用，却无法将个案的执法成效上升到更高层次的预防性制度安排，以应对保健食品市场的快速发展及变化。

服务网点要求

目前的直销法规仍然要求直销企业在开展经营的城市中的每一个城区设立固定的服务网点，承担消费者咨询和服务的职能。当时的立法初衷是保障消费者的售后服务。在互联网、物流高度发达的今天，通过在线客服进行远程退货已经是普遍操作。该规定的要求已失去意义，不仅大大加重了企业负担，也增加政府行政管理成本，造成社会资源的严重浪费。

因此，更新直销许可制度以及取消对直销区域的限制和服务网点也是顺应经济高质量发展的要求，建议取消或者降低服务网点设立的要求。

benefits are supported by tremendous scientific and technological strength. These products also have to go through additional R&D, production, evaluation, and marketing approval procedures. Despite this, illegal labeling, exaggerated efficacy, false propaganda, and illegal food additives are pervasive throughout the food industry to help unethical business owners make greater profit. The functions of many health products are also exaggerated, dragging down the whole industry, causing distrust among consumers and tarnishing the reputation of the health products industry.

Regulatory authorities faced outstanding difficulties regulating the direct selling and health product industries, including a heavy workload, lack of staff, limited regulatory power, and limited of regulatory ability. Responsive regulation practices focused on rectification instead of prevention has become the norm, despite the fact that more proactive solutions could act as a deterrent to fraud and other illegal practices.

Service Outlets

Current direct selling regulations still state that direct sellers need to establish fixed service outlets in every district in the cities where they operate in order to provide consultation services for customers. The original intent was to ensure that consumers have access to after-sales service. However, with wide access to the Internet and sophisticated logistics systems, returning goods through online customer service is common. Because of the changing landscape of direct sales, this requirement has become meaningless. Its presence not only imposes a great burden on enterprises, but also increases government administrative costs, resulting in a waste of resources.

Therefore, updating the direct selling licensing system and removing restrictions on direct selling and required fixed service outlets are in line with the government's economic development aspirations. We recommended that requirements for fixed service outlets be eliminated or reduced.

Product Range of Direct Selling and Limitations on Products for Entrusted Processing

Both traditional stores and online distribution channels have the ability to decide what product categories they are going to sell according to market demand, with the exception of a few special categories explicitly prohibited by law. They can choose to sell their own products or products produced by other entities. However, the direct selling industry is subject to special requirements and is limited to selling six categories of products: cosmetics, cleaning products, food, healthcare equipment, small kitchenware, and household appliances, resulting in fierce competition and product homogenization among direct sellers.

In the context of a constantly changing market climate and

fierce competition, such requirements greatly limit direct sellers and puts them at a distinct disadvantage in market-based competition. Against the backdrop of highly integrated supply chain, it is unwise to prohibit direct sellers from making full use of their capacity. This approach also runs counter to the Chinese government's efforts to streamline excessive capacity and improve efficiency.

AmCham China recommends that the Chinese government lift the restrictions on the six categories of direct selling and explore ways to establish a blacklist system for direct sellers, i.e., listing only products that are prohibited for direct selling. AmCham China also suggests that direct sellers be allowed to use OEMs when they can fully control the safety and quality of their products.

Direct Sales Associations

The promotion of industrial autonomy is a significant mechanism for creating industry self-regulation and facilitating healthy industry development. Industrial autonomy in the direct selling industry requires the establishment of a direct selling industry association. Currently, there is no national industry association for direct sellers. Existing direct selling industry self-regulatory committees are mostly secondary organizations or alliances of different organizations. We hope to establish a national-level direct selling industry association in China as soon as possible as a complementary force for the government to regulate the direct selling industry, so that it can serve as a bridge between direct sellers and various stakeholders such as the government, media, and consumers, and assume responsibilities and roles as follows: ❶ meeting the needs and protecting the lawful rights and interests of consumers; ❷ resolving public misunderstandings about the direct selling industry and establishing a positive image of the direct selling industry as a whole; ❸ abiding by the World Code of Conduct and regulating direct selling enterprises to operate in compliance with the law; ❹ enhancing industry cohesion, improving direct selling-related regulations, and promoting the healthy development of the direct selling industry in China.

Recommendations

For the Ministry of Commerce, State Administration for Market Regulation, and the State Council:

- We recommend that the Ministry of Commerce resume the approval and filing procedures for direct selling as soon as possible to ensure normal daily operations continue for direct sellers and guarantee their full compliance with the related regulations.

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，相关主体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。而直销行业销售的产品局限于化妆品、保洁用品、保健、食品、保健器材、小型厨具、家用电器六个品类的产品，造成直销企业之间激烈竞争及产品同质化。

在当前市场热点快速切换，竞争激烈的时代背景下，这样的规定大大束缚了直销企业的手脚，使直销行业在以市场为基础的竞争中处于非常不利的局面。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。

商会建议政府放宽对六大类直销商品的限制，探索建立直销企业负面清单制度，即只列出直销行业禁止销售的产品。商会也建议当直销公司能够完全控制产品安全和质量时，可允许直销产品使用代工。

直销行业协会

行业自治是规范企业、推动行业自律、促进行业健康发展的重要主体，推进行业自治需要成立直销行业协会。目前直销行业尚没有全国性的行业协会，实践中直销行业或自律委员会多为不同机构的二级组织或联盟形式。商会希望能够尽快成立中国直销行业协会，成为政府监管直销行业的补充力量，使之作为直销企业与政府、媒体、消费者等各种利益相关方的沟通桥梁，承担和发挥诸多职责与作用：**①** 满足消费者需求及保护消费者权益；**②** 化解社会公众对行业的误解、树立直销行业整体正面形象；**③** 践行直销商德约法，规范直销企业守法经营、诚信自律；**④** 增强行业凝聚力，推动完善直销相关法规，促进我国直销行业健康发展。

建 议

对商务部、国家市场监督管理总局、国务院：

- 建议商务部尽快恢复直销相关的审批、备案

等工作，以保障企业日常经营与合规；

- 建议加快修订《直销管理条例》配套规定，以适应当前市场环境及改善营商环境等要求，如：
 - 取消或放松服务网点方面的要求；
 - 允许委托加工产品作为直销产品；
 - 放宽产品范围，探索建立直销产品负面清单制度；
 - 认可线上报名申请、培训及各类纸质证件的电子化的合法性，如电子化的培训证书等；
- 建议国家市场监督管理总局推动建立企业信用评价及分类监管机制

在总结部分地方市场监管部门实施直销行业信用评价及分类监管制度的经验基础上，加快推广各地建立企业信用评价分类监管机制，实施差异化、精准化监管，提升监管效能。对于信用评级良好/较高的公司可以较为宽松和包容审慎监管，降低政府例行检查的频率，适当减少对直销人员培训及会议等企业日常经营行为的限制等。

- 加强行业自治，允许成立全国性的直销行业协会，授权制定和执行经营性的最佳实践和标准，协助政府部门规范直销市场、加强企业诚信自律，努力构建企业自治、行业自律、社会监督、政府监管的社会共治体系，共同推动行业稳定、健康、持续发展。
- 加大对保健食品科普宣传和引导力度。多渠道开展营养健康科普宣传，提高公众营养健康认知、科学素养和防范健康风险的能力。
- 统筹考虑社交电商与直销经营的监管问题，以有效管控风险为出发点，共同探索、推进直销两个条例的修改。使其与其他行业处于同样的公平竞争环境，释放直销产业对社会经济发展应有的促进作用。

- We recommend that state authorities speed up the revision of supporting rules for the Regulations on Direct Selling Administration to improve the business climate and adapt to the rapidly changing market. Recommended revisions include:
 - Eliminate or reducing the requirements regarding fixed service outlets;
 - Broaden the range of products that can be sold by direct sellers and exploring ways to establish a product blacklist system;
 - Recognize the legality of online registration systems and electronic copies of training and other paper documents, such as electronic training certificates.
- We recommend that the State Administration for Market Regulation promote the establishment of a mechanism for credit evaluation and classified regulation of enterprises.
- We recommend drawing on the experience of some local market regulatory authorities in implementing a mechanism for credit evaluation and classified regulation of the direct selling industry. We should popularize this mechanism nationwide. We should also enhance regulatory effectiveness. For companies with good /high credit ratings, regulation can be more lenient, with a lower frequency of routine inspections from the government and appropriately reduced restrictions on daily operations such as personnel training and meetings with direct selling enterprises.
- We recommend that state authorities encourage industrial autonomy, allow the establishment of national-level direct selling industry associations, authorize the formulation and implementation of operational best practices and standards, assist government authorities in regulating the direct selling market, and strive to build a shared social governance system that integrates corporate autonomy, industry self-discipline, social supervision, and government regulation, so as to jointly promote the stable, healthy, and sustainable development of the direct selling industry.
- We recommend that state authorities increase efforts to promote and guide the health product industry. Specifically, efforts should be made to spread nutritional and health knowledge through multiple channels, improve public awareness of nutrition and health, and improve scientific literacy to prevent health risks.
- We recommend that state authorities take into account the regulatory challenges brought by

e-commerce and explore ways to promote the revision of the relevant direct selling regulations, thus enabling the direct selling industry to compete with other industries and promote social and economic development.

Education

Introduction

Once reform and opening set off a wave of economic changes, three expatriate schools began their operations in China. This marked the beginning of international education in China. At the same time, Chinese students began going abroad to study. Forty years later, international education in China has become one of the country's largest sources of people-to-people exchange. International students from mainland China that are study abroad in the US increased from around 2,770 in 1980 to 372,532 in 2020. International schools and investment in private education have experienced rapid growth in the past decades. The quality of education and internalization level has increased in China through education exchanges. US universities benefit from increased diversity of students and increased revenue from international tuition. Most importantly, international education and people-to-people exchange is an effective and powerful way to maintain communication between the citizens of the two countries, allowing both sides to maintain good will and better understand each other.

AmCham China acknowledges China's remarkable achievements in the field of education. Primary (age 6-11) and lower secondary (age 12-14) enrollment rates have reached nearly 100 percent. Spending on education has exceeded 4 percent of GDP for nine consecutive years. International students studying in China in 2018 exceeded 492,000. There are 662,100 Chinese students studying abroad; 372,532 of which chose the US as their destination country. Unfortunately, 2020 and 2021 were very challenging years for the education sector. The COVID-19 pandemic, policy reforms, and economic slowdown have all impacted the industry.

The COVID-19 pandemic impacted the international education exchange by travel restrictions, decreased flights, and visa processing difficulties. The number of international students from mainland China to United States dropped 14.8 percent to 317,299 in 2020-2021. Geopolitical issues and safety concerns have worsened the situation. The US government banned Chinese students with military connections in 2020 due to national security concerns, affecting nearly 1,000 students. Despite the fact that the number of students affected was small, it sent a

message that the US is no longer a welcoming place for Chinese students. Chinese parents have invested more effort into considering other destination countries. While in China, strict visa policies for students and dependents have kept over half a million foreign students abroad from entering China. Most international students are still waiting for permission to enter China.

China's education policy reform in 2020 and 2021 will change the development of private education investment. In July 2021, the "Double Reduction" policy, aiming to reduce the burden on primary and middle school students, has reduced the private sector's role in the landscape of Chinese education. In response, education companies are shifting their emphasis to outside of China and to areas with more political freedom and support, such as vocational education. In September 2021, *the Regulations on the Implementation of the Law of Promotion of Privately-run Schools* was enacted. It spurred a highly restricting new era for bilingual schools in China. In the first half of 2021, financing and investment deals in the education industry decreased to RMB 16 billion.

AmCham members face a variety of challenges in the education sector. As we discuss throughout this chapter, issues have arisen in form of a more challenging regulatory environment, strict visa and travel restrictions, difficulties in hiring, and retention of foreign teachers and students. AmCham China encourages the Chinese government to address the above issues to create a more expat friendly environment.

K-12 Education

The international schools in China are generally divided into three categories: expatriate schools that only accept foreign passport holders, bilingual schools that offer international curriculums and accept Chinese nationals, and international departments of public schools that offer international curriculums. Since foreign investment in the K-12 education sector is traditionally channeled through expatriate schools and bilingual schools, we will discuss these two categories in this section.

After decades of development, international schools have become an important element in China's education

教育

引言

改 革开放之初，就有三家外籍学校入驻中国，这标志着中国国际教育发展的开端。几乎同时，中国学生也开始赴国外学习。四十年后，中国的国际教育成为两国最大的面对面交流项目之一。1980年，自中国大陆赴美国际学生有2770人，2020年，这一数字跃升至372532人。随着生活水平的提高，中国家长对教育的需求越来越多元化。过去十年，国际学校的建立和对私立教育的投资呈快速增长态势。中美双边开放给两国都带来了好处。通过促进教育交流，中国的教育质量和国际化水平得以提升，美国大学的学生多样性和财务状况得到改善。**重中之重，国际教育和人文交流可以有力促进两国国民持续沟通，保持良好关系，避免误解的产生。**

中国美国商会（以下简称商会）认识到，中国在教育领域成绩突出。小学（6~11岁）和初中（12~14岁）的入学率都达到100%。教育支出连续九年超过国民生产总值（GDP）的4%。2018年，在中国学习的国际学生超过492000人。中国在外求学的学生人数有662100，其中在美国学习的有372532人。然而，2020年和2021年使教育行业陷入艰难时期。新冠肺炎疫情、监管政策变化以及经济放缓都对其造成了冲击。

新冠肺炎疫情下的旅行限制、航班减少、签证难办的问题对国际教育交流造成冲击。2020~2021年，中国大陆去美国读书的国际学生人数下降了14.8%（下降至317299人）。地缘政治以及安全问题使得该情况雪上加霜。在2020年，出于国家安全考虑，美国政府以其同军队有联系为由限制部分中国学生赴美留学，这一政策影响了近1000名中国学生。这个数字看似不大，但却传递出美国不再像以前一样欢迎中国学生的信号。中国家长开始关注其它国家的学校。同时，针对国际学生及其家属实行的严格的签证政策使超过五十万的外国学生无法

进入中国，大部分国际学生仍在等待进入中国的许可。

中国2020年和2021年的教育政策改革将改变民办教育的发展。2021年7月出台的“双减”政策，旨在减少小学和中学学生负担，使得民办教育在中国教育中发挥的作用减小。为了应对这一政策，教育公司开始将其业务重点转向国外以及政策支持（或没有政策限制）的领域，如职业教育。2021年9月，《中华人民共和国民办教育促进法实施条例》生效，开启了中国双语学校严格受限的新时代。2021年上半年，教育行业的融资和投资协议下降至160亿元人民币。

正如在本章所讨论的，商会会员企业在中国教育领域面临着各种各样的挑战，包括更具挑战性的中国监管环境、严格的签证政策和旅行限制、对外教和学生的招聘和挽留困难等方面。商会愿意积极推动中国政府解决上述问题，从而创建一个对外商更加友好的环境。

K12 教育

中国的国际学校大致可分为三类：外籍学校，此类学校只接收持有外国护照的学生；双语学校，可提供国际课程，且接收中国籍学生；公立学校国际部，可提供国际课程。由于K12教育领域的外国投资一般指向外籍学校和双语学校，所以本节我们将重点讨论这两类国际学校。

经过几十年的发展，国际学校已成为中国教育生态系统的重要元素。2021年，外籍学校数量已增长至130所。与此同时，中国中产阶级对国际教育的需求驱动双语学校数量快速增长。2021年，双语学校数量超过559所，是外籍学校数量的四倍。为确定2020年和2021年影响这些学校的因素，商会对一组选定的学校做了调查和访谈。学校基于重要性对影响因素进行了排序，具体如下。下面我们将从新冠肺炎疫情的影响、政策改变以及经济和人口结构变化几个方面进行详述。

ecosystem. In 2021, the number of expatriate schools grew to 130. Meanwhile, the demand for international education among China's middle class has driven the rapid growth of bilingual schools. In 2021, the number of bilingual schools reached over 559, 4 times the number of expatriate schools. To determine the factors influencing these schools in 2020 and 2021, we conducted surveys and interviews with a group of select schools. Schools have ranked the influencing factors as displayed below. We will elaborate on the impact of COVID-19, policy changes, and economic and demographic changes in the following section.

Graph 1. Rank of Influencing Factors in School Operations

COVID-19 Pandemic 新冠全球疫情	1
Significant Change in Policy 政策环境变化	2
Economy Slowdown 经济增速变缓	3
Declining expat population in China 外籍人才在中国流失	4
Decrease in Demand for international education 对国际教育需求减少	5

COVID-19 Impact

The COVID-19 pandemic resulted in significant challenges for international schools' recruitment and admissions. As both expatriate schools and bilingual schools rely on a high percentage of foreign faculty, they were heavily impacted by the restrictive policies associated with the pandemic.

- Visa Policy:** After March 28, 2020, China closed its border to foreign nationals except for essential working staff and humanitarian reasons. After almost two years, there has been no timeline publicized to lift the restrictions. Visa approvals for foreign job applicants are becoming more challenging to acquire. Additionally, it is more difficult to get dependent visas for the dependents of expatriate staff members. Expatriate schools used to prefer hiring teaching families as it increased the staff stability, according to an anonymous AmCham member school. Now, qualified foreign candidates face a high risk of not being able to get visas for their dependents, so the schools are less likely to hire from overseas. The expatriate schools and bilingual schools chose to recruit staff from candidate pools of people that have already been based in China for the past two years.
- Disrupted Flights and Travel Restrictions:** In addition to visa policies, unstable flights, ever-changing COVID testing policies, and strict quarantine protocols have further decreased expatriates' willingness to work in China. Since March 2020, the Civil Aviation Administration of China (CAAC) announced an intention to decrease international flights to control the spread of COVID-19. The international capacity of flights to and from China was already running at just two percent of pre-COVID levels. Travel to China is additionally challenged by the testing protocols required by the various Chinese embassies and consulates

prior to international air travel to China which change frequently and often with very short notice. The quarantine time extended from 14 days in 2020 to 21 days in most cities, and many cities require at least 7 more days for an additional health control monitoring period. These restrictions have made international travel costly, difficult, and/or impossible in the past two years.

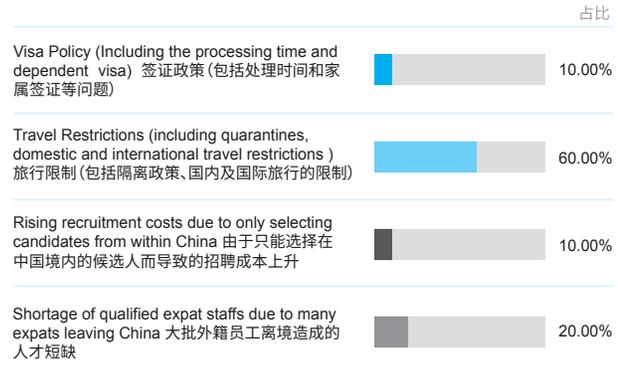
The survey showed that the retention of expatriate staff has become very difficult during the past two years as a result. Most schools have experienced at least a five percent increase in their expatriate faculty turnover rate.

Graph 2: The Foreign Faculty Turnover Change in 2020 and 2021



Travel restrictions are now the biggest barrier for hiring and retaining expatriate talent. With many expats leaving China and few newcomers filling the talent pool from other countries, the candidate pool for quality international educators has shrunk.

Graph 3: The Most Challenging Factor for Faculty Recruitment and Retention



AmCham members praised the Chinese government for the effective pandemic control measures that allowed the economy and society to recover in a very short time. As the global community gains knowledge about COVID-19, AmCham hopes the Chinese government will develop a clear, steady, and transparent timeline to relax travel restrictions. Without a plan to relax international travel restrictions, international schools will see a greater outflow of expatriate employees. In the absence of quality expatriate faculties offering educational services, the development of educational services for overseas talent will be problematic. This is contradictory to the recent policies for attracting more overseas talent to work in China.

Policy and Regulation Trends

To improve the business environment and attract more overseas talent, the Chinese government in every level is improving related supporting services for expatriates by

图表1 影响学校运营的因素排序

COVID-19 Pandemic 新冠全球疫情	1
Significant Change in Policy 政策环境变化	2
Economy Slowdown 经济增速变缓	3
Declining expat population in China 外籍人才在中国流失	4
Decrease in Demand for international education 对国际教育需求减少	5

新冠肺炎疫情的影响

新冠肺炎疫情给国际学校的招聘和招生工作带来了巨大挑战。由于外籍学校和双语学校对外教的需求比例很高，所以国际学校受疫情相关限制政策的冲击非常严重。

签证政策:2020年3月28日后,中国暂停外国人入境,除非出于重要工作原因和人道主义原因必须进入中国。该项限制措施已实施两年,何时才能解除限制,至今尚未可知。外国求职者的签证申请越来越难获得批准,而外籍职工家属申请家属签证获批的几率更低。商会的一家学校匿名表示,过去外籍学校倾向于聘用教师家庭,因为这样能提高教职工的稳定性。现在,国际求职者可能无法为其家属获得签证,这样的高风险下学校海外招聘的可能性不大。这两年,外籍学校和双语学校招聘的教职工均为已在中国待过一阵的外国教职候选人。

航班中断和旅行限制:除签证政策外,航班不规律、新冠病毒检测政策不断变更以及隔离政策严格执行进一步削弱了外籍人员到中国工作的意愿。自2020年3月,中国民用航空局宣布减少国际航班,以控制新冠肺炎疫情蔓延,往返中国的国际航班的载运量仅为新冠肺炎疫情前水平的2%。各中国驻外大使馆和领事馆要求在乘坐国际航班到中国前进行核酸检测的政策变化得非常快,而且提前通知的时间非常短,这也使赴中国工作变得非常困难。大多数城市要求的隔离时间从2020年的14天延长到21天,许多城市还另外要求至少7天的健康观察期。这些限制措施使得在过去两年中,国际旅行费用高企,出行困难。

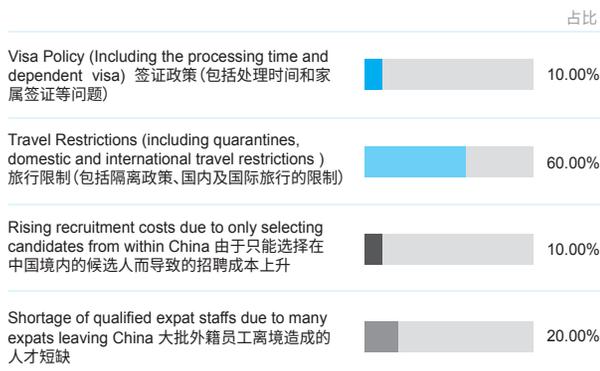
调查结果显示,由于上述原因,这两年留住外籍教师变得非常难。大多数学校的外教流动率都上升了至少5%。

图表2 2020年和2021年外籍教师流动率变化情况

占比	占比
No Change 没有	20.00%
Yes, under 5% 是,上升幅度在5%以下	20.00%
Yes, 5%-10% 是,5%-10%的上升	20.00%
Yes, above 10% 是,上升幅度超过10%	40.00%

现在,旅行限制已成为使聘用和留住外教面临风险的首要原因。随着许多外籍教职工离开中国,同时,很少来自其他国家的新鲜血液补充外教人才队伍,优秀国际教育人员候选人才库变小了。

图表3 教师招聘和留用方面面临的挑战



商会会员企业对中国政府采取有效的疫情控制措施,在非常短的时间内实现经济和社会复苏表示赞赏。随着国际社会对新冠病毒的了解不断加深,商会希望中国政府就放宽旅行限制制定一个清晰、可靠和透明的时间表。如果没有关于放宽国际旅行限制的计划,国际学校外籍员工的流失率将持续上升。如果没有优秀的外教提供教育服务,海外人才教育服务发展就会变得困难重重。

政策和法规趋势

为改善营商环境,提升开放水平,吸引更多海外人才,中国各级政府正在完善外籍人员相关配套服务,为外籍学校提供更多机会。在2019年初,海南省就宣布了建立外籍学校来吸引海外人才到海南工作的相关政策。粤港澳大湾区也宣布了增加外籍学校和双语学校数量的政策。2021年11月发布的《首批营商环境创新试点改革事项清单》放松了对外籍学校组织者/赞助人的门槛要求,允许中国实体开办这类学校。商会很高兴看到这一积极政策的出台,并希望了解关于这项政策的更多细节。

另一方面,这项关于双语学校的新法规使监管环境变得复杂且日益严格。中国政府将教育视为促进社会流动和公平的“公共产品”,这意味着民办义务教育的发展和运营将受到严格监管。湖南、四川和江苏三省计划在接下来几年将民办招生占比控制在5%。不再新批义务教育阶段的民办学校。此外,现在,地方主管部门在遵守中央规定的法规方面受到的审查越来越多,灵活性越来越低。新生效的《中华人民共和国民办教育促进法实施条例》将从以下几个方面对K12双语学校进行:

providing more opportunities for expatriate schools. Early in 2019, Hainan Province announced related policies to create expatriate schools to attract overseas talent working in Hainan. The Greater Bay Area also announced policies to increase the number of expatriate schools and bilingual schools. In November 2021, the *Reform List of Improving Business Environment Innovative Pilots* relaxed the thresholds for organizers/sponsors of expatriate schools and allowed Chinese institutions to open this type of school. AmCham welcomes this positive development and looks forward to learning more about the details of policy.

In contrast to these positive developments, new regulations for bilingual schools have created a complex and increasingly strict regulatory environment. The Chinese government values education as a “public good” for social mobility and equity, meaning the private compulsory education system will be under strict regulation in expansion and operation. Hunan, Sichuan, and Jiangsu provinces have plans to cap the enrollment at private schools up to five percent in the next few years. No new private schools will be approved. In addition, local authorities are now under increasing scrutiny and less flexibility for compliance with centrally mandated regulations. The newly enacted *Regulations on the Implementation of the Non-state Education Promotion Law of the People’s Republic of China (2021 Revision)* will impact the K-12 bilingual schools in several aspects:

- **Admissions:** Bilingual schools used to set their tests and interviews earlier than the public schools to attract top-performing students. Since 2020, the admission process of bilingual schools must follow the same timeline as public schools. That means, if a school has more applicants than its available places, placements will be allocated by computer lottery. Under these new admission rules, both schools and student families face uncertainties about enrollment. For bilingual schools, enrolled students now have a greater range of competency. The enrollment numbers did not change much, but the students admitted are less competitive than previously.
- **Foreign Investment:** 2021 regulations have formally prohibited foreign enterprises/individuals from being sponsors of compulsory education institutions. The sponsors must be established in China. Furthermore, the regulations prohibited Variable Interest Entity (a legal business structure in which an investor has a controlling interest despite not having a majority of voting rights) structure that many schools use from the grade 1-9 period. According to the survey results, some schools are required to change investors and organizational structure to meet the compliance requirements. There is also risk that stricter scrutiny will apply to the opening of any future schools, such as disclosing the final beneficiary of the structure.
- **Governance:** The decision-making group (board of directors, board of trustees or members of council) of a private school for compulsory education must be Chinese nationals and comprise representatives

appointed by the relevant approval authority. The person in charge of the board of directors, or other decision-making body of a private school, must also be a Chinese national and be settled in China. This does not mean that schools cannot have foreign principals or management staff.

- **Curriculum:** In recent years, bilingual schools failed to provide sufficient coverage of local curriculum and prioritized international learning. The 2021 regulations required schools to use government-directed textbooks in the compulsory education stage, forbidding the use of foreign textbooks. That means foreign curricula are prohibited for Chinese students from grade 1-9. Bilingual schools offering high school education and compulsory education may offer their own courses, provided they meet the national curriculum standards. In practice, schools need to prioritize the Chinese curriculum and textbooks by meeting class content requirements, but after the compulsory education period, they can maintain an international curriculum and use international textbooks. Some schools reflected that they needed to alter their curriculum and textbooks in response to the change. All textbooks need to be sanctioned and approved by the education authorities. There have been more random inspections from the education authorities to ensure the schools comply with the relevant laws and regulations.

AmCham respects the Chinese government’s effort to promote quality public education as part of wider socio-economic and cultural development goals. From an anonymous survey respondent, the education authority regulates bilingual schools and public schools in the same way in every aspect, leading to an “one-size-fits-all” situation. AmCham China recommends the Chinese government impose appropriately different implementation policies for non-public schools. For example, bilingual schools, schools for children of migrant workers, and private schools affiliated to public schools are all in the private school category. They have completely different admissions targets, faculties, and management systems. It is important to realize that economic development and the improvement of people’s living standards create diversified education demands.

Economic and Demographic Change

The global economy is on the road of recovery to pre-pandemic levels. China’s strong epidemic control effort allowed its economy to lead the recovery curve in 2020. However, its growth rate in 2021 is slowing due to aggressive fiscal contractions, natural disasters, and the “stop and go” COVID-19 recurrence pattern. The economic slowdown has weakened private demand and consumer spending power. Parents are more sensitive to the increases of school tuition. If this trend persists, it will fundamentally impact the development of private education.

The demographics of international schools have changed. Expatriates have been leaving China throughout the past

- **招生**：过去双语学校的考试和面试时间通常都比公立学校早，以此来吸引表现优异的学生。自2020年起，双语学校的正式招生工作必须与公立学校同时进行，并且采用公立学校的招生方式，由地方主管部门摇号进行。这意味着，如果学校的报名人数超过计划招生数，采用电脑对学生随机录取。在这些新的招生规则下，学校和学生家庭都面临着不确定性。对于双语学校来说，现在招收的学生的能力参差不齐。虽然入学总人数没有太大变化，但招收的学生的竞争力不如以前强了。
- **外国投资**：2021年的这项法规明确规定禁止外国企业/个人作为赞助者参与义务教育。赞助者必须设立在中国。此外，法规规定禁止采用许多学校在1~9年级期间采用的“可变利益实体”结构（是一种合法的商业结构，虽然投资者没有多数投票权，但允许投资者持有该实体的控制性权益）。调查结果显示，有些学校需要变更投资者和结构才能符合法规要求。另外还存在一种风险，即对未来任何新开设的学校进行更严格的审查时，这种结构的最终受益者有可能会被披露出来。
- **管理**：义务教育阶段民办学校的决策团队（董事会、受托人委员会或理事会成员）必须是中国人且可以是相关批准机关任命的代表。董事会或民办学校其他决策机构的负责人也必须是在中国定居的中国公民。尽管如此，但这并不意味着学校的校长或管理层人员不能是外国人。
- **课程**：近年来，双语学校在义务教育阶段提供的中国国内课程不足，而是将教学重点放在了国际课程上。2021年的这项法规要求在义务教育阶段学校必须使用政府指定的教科书，禁止使用境外教科书。这意味着，1~9年级的学生不能接受境外课程项目的教学。提供高中和义务教育的双语学校可自选课程，但这些课程必须符合国家课程标准。在实践中，学校需优先按照境内课程大纲和教科书进行教学，满足其规定的上课时间和内容要求，但现在他们可以保留国际课程和教科书。有学校反映为应对这一政策变化，需要开发自己的课程和教科书。所有教科书都必须获得教育部门的批准。为确保相关法律法规在各学校落实，教育部门加大了随机检查的力度。

实现更广泛的社会经济和文化发展目标

中国政府开展关于推动优质公共教育工作，商会对此做

法表示尊重。一名受调查者匿名表示，教育部门对双语学校的监管在各方面与公立学校完全相同，导致产生“一刀切”的局面。商会建议中国政府对非公立学校适当采取与对公立学校不同的政策。双语学校、农民工子女学校、公立学校附属的私立学校都属于私立学校范畴。他们的招生目标、院系和管理制度与公立学校完全不同。必须认识到，在经济发展和人民生活水平的提高的背景下，存在着不同的教育需求。

经济和人口结构变化

全球经济正逐渐恢复到疫情前的水平。2020年，中国强有力的疫情控制工作使中国的经济复苏领跑全球主要经济体。但由于过度的财政紧缩、自然灾害以及新冠肺炎疫情持续反复造成的“走走停停”模式，2021年的经济增长速率正在放缓。经济放缓削弱了私人需求和消费者的承受能力。由于学费是一大笔支出，家长对学费上涨变得尤其敏感。如果这个趋势持续下去，民办教育的发展将受到巨大冲击。

国际学校的人口结构发生了变化。过去十年中，外籍人士陆续离开中国，上海的外籍人员数量下降了20%以上，北京的外籍人员数量下降了40%以上。外籍人员流失导致许多外籍学校的在校生人数减少。减少的人数在许多中国移民的孩子因这次疫情返回祖国后才得到弥补。这些学生中的大多数要么持有外国护照，不符合进入公立学校的资格要求，要么是在国外接受了多年教育，不想转到中国的公立教育系统。对于双语学校来说，出生率的下降将很快对他们的招生产生重大影响。一名受调查者匿名表示，他们学校的幼儿园入学人数下降了。未来两到三年，这一趋势将对小学招生工作带来严峻挑战。

外籍教师面临的困难

外教具有独特的技能组合，使学生能够通过直接跟学习外语和学科材料而受益。目前很难找到能取代外教技能的中国本地员工。商会感激中国政府在疫情期间为办理签证申请开启“复工复产”绿色通道。但是，旅行限制和严格的签证政策仍是大多数国际学校在聘用和挽留外教方面面临的巨大挑战。

个人所得税改革

经过很长时间的讨论和谈判，最终确定外籍人员个人所得税免税补贴改革政策有效期延长至2023年12月31日。商会对中国政府为外籍人员和雇主提供有利的税

decade. The number of expatriates fell by more than 20 percent in the past decade in Shanghai. In Beijing, the number of expatriates dropped more than 40 percent. The outflow of expatriates has caused a decrease in the enrollment of many expatriate schools. After the pandemic, this loss was made up for by children of Chinese immigrants who have chosen to return to their origin country. Most of these students either hold foreign passports, which made them ineligible to attend public schools, or they have been educated abroad for many years and switching to the Chinese public education system is not an option. For bilingual schools, the declining birth rate will significantly affect admissions soon. According to an anonymous member, the school has experienced a decrease in kindergarten enrollment. This trend will further create challenges for elementary school admission in two to three years.

Difficulties Facing Foreign Teachers:

Foreign teachers bring a unique skill set and enable students to benefit by learning foreign languages and subject material directly from native speakers. It is currently very difficult to find local employees to replace their skills. AmCham China appreciates the Chinese government's efforts to provide a "Resumption of Production and Work" Fast-Track for the visa application process during the pandemic. However, travel restrictions and strict visa policies are still the top challenge for most international schools' recruitment and retention of foreign teachers.

Individual Income Tax Reform

After long discussion and negotiation, the date that individual income tax reform on tax-exempt allowances will go into effect for foreign nationals has been extended to December 31, 2023. AmCham China appreciates the Chinese government's efforts to maintain a supportive tax environment for expatriates and employers. Although implementation is delayed, concerns about this tax change remain. If enacted, the tax reform will significantly impact the ability of foreign nationals to live and work in China. The costs of a quality international school education for the children of foreign nationals living in China are currently among the highest in the world. These international schools are predominately led and staffed by foreign educators, who will also be impacted by the elimination of these tax-exempt allowances for foreign nationals. To continue providing foreign employees with a competitive salary and benefits, international schools will be challenged to continue providing similar employee packages without significantly increasing school fees despite tax increases. It is anticipated that school expenses will increase by at least 10 to 15 percent to keep foreign employees at a similar level of compensation after these tax-exempt benefits are removed. The anticipated increase in school fees will only further compound the impact of the increased taxes paid by foreign nationals in China.

Difficulties Facing Foreign Students:

International school students under the age of 18 are largely the dependents of expatriates. Visa restrictions since the pandemic have restricted this group of students from coming to China. As a result, some students have remained outside of the country for many months and have studied online. The endless waiting of students that were not able to come back due to COVID-19 has increased the number of students that have transferred to other schools.

The strict visa policies and border closures due to the pandemic have locked most international students in higher education out of the country for nearly two years. Only students from South Korea have been able to return to China because of a bilateral agreement signed by the two countries in July 2021. In November 2021, New York University Shanghai and Duke Kunshan University announced that students could expect to return to campus by February 2022. However, the Winter Olympics and Omicron variant have postponed the timeline once again.

AmCham China acknowledges the tremendous progress China has made in globalizing its higher education system. AmCham recommends that the Chinese government further prioritize its timeline for students and dependents return. If foreign academics and students continue to suffer with no end in sight, they may switch their education to more welcoming countries.

Recent Policy Developments

Based on the guiding ideology put forward in *China's Education Modernization 2035* and the "14th Five-Year Plan" for the development of education, the Chinese government has aggressively carried out reforms to ensure equal access to high-quality education. In 2021, a number of education policies were introduced with an overall goal of changing its approach from being focused on rapid development to regulation. Because of this, the landscape of the sector has changed. Over the past year, strict regulations have been rapidly implemented in preschool education, curriculum-based off-campus tutoring, and private education. In the preschool education field, "premium" education services are prohibited, with preschool training classes shut down. The commercial operation of curriculum-based off-campus tutoring is banned, and stringent approval and regulation have been enforced, which means that there is little room for development. Because private education has also entered an era of strict regulation, private schools are faced with either complying with regulations or closing within a specified time limit.

Because of the regulations, the sectors listed above are rapidly cooling. New types of education, encouraged by the policies, are increasingly gaining attention, such as vocational education. The specific policy changes are as follows:

收环境的努力表示感谢。虽然这项税收改革政策的实施被推迟，人们对它的担忧依然存在，这项政策一旦生效，将对雇主和外籍公民是否来中国居住和工作的决定产生重大影响。目前，要为居住在中国的外籍人员子女提供优质国际学校教育，所需成本是世界上最高的。这些国际学校主要在外籍教育从业者的领导下开展工作，师资队伍也主要由外籍教育从业者组成，取消外籍个人的免税补贴也将对这些外籍教育从业者产生影响。为继续给这些外籍员工提供有竞争力的薪水和福利，国际学校将在非大幅增加学费的前提下，为员工提供同等的待遇，此番做法可谓是一项挑战。预计这些免税补贴取消后，要使外籍员工拿到同等水平的报酬，学校的支出将至少增加 10%~15%。预计学费的上涨只会进一步使得外籍人员在中国缴纳的个税增加产生的影响复杂化。

外籍学生面临的困难

很多 18 岁以下的国际学校学生是外籍人士的家属。自疫情爆发以来的签证限制使得这些学生不能到中国来，导致一些学生好几个月只能待在国外，在网上学习。漫长的等待使许多在新冠肺炎疫情期间无法返校的学生不得不转学到其他学校。

因中国自疫情以来实施严格的签证政策和暂停入境政策，大多数在中国接受高等教育的国际学生已被拒在中国以外将近两年。时至今日，只有来自韩国的学生可以因两国在去年 7 月所签署的协议进入中国。2021 年 11 月，上海纽约大学和昆山杜克大学宣布，学生有望于 2022 年 2 月返校。但现在冬奥会和奥密克戎毒株使得这一时间不得不再次推迟。

商会观察到，中国在高等教育全球化方面所取得的巨大进步。在此，商会进一步建议中国政府尽快就学生及其家属返回中国给出一个明确的时间。如果仍继续这种遥遥无期的等待，外国学者和学生可能就要转向更欢迎他们的国家去开展教育工作和求学了。

给中国和美国政府的建议

中国政府

- 就为外籍人员放松旅行限制和签证政策制定一个清

晰、可靠和透明的时间框架。尽快就学生及其家属返回中国给出一个明确的时间表。现行严格的签证政策和旅行限制降低了外籍人员到中国居住和工作的意愿。

- 恢复中美之间的正常航班。在当前政策下，一家外国航空公司一周只有一趟航班飞往中国。巨大的需求使得机票一夜天价，使得学校为外籍人员报销的旅行费大大增加。
- 考虑将目前实施的儿童教育免税补贴延长到 2023 年以后。取消这些补贴，外籍人员的子女教育成本将大幅增加，因为其给外教家庭带来的税收负担将增加，国际学校的费用也将增加。
- 就教育监管改革制定可靠、分阶段的改革方法，特别是就影响外资企业在教育领域投资的改革。

美国政府

- 继续实施中美在教育、文化和人文等领域开展的双边交流项目，相关项目使两国学生和高等教育机构普遍获益。
- 继续招收持有有效签证的中国学生到美国教育机构学习。开放对美国的高等教育体系有利，可以帮助美国的高等教育体系保持在全球的竞争力。

2021 年中国教育行业格局重塑，多领域政策变化巨大

基于《中国教育现代化 2035》提出的指导思想以及教育事业发展的“十四五”规划，近几年政府为实现教育高质量发展以及教育公平化进行了大力改革。2021 年，教育政策频出，政策整体基调从“大力发展”转向“有序监管”，重塑了行业格局。在过去的一年，强监管模式已在学前教育、学科培训及民办教育三大领域迅速展开。在学前教育领域，全面禁止超前教育，关停学前培训班；在学科类校外培训领域，禁止商业化运作，严格审批监管，该领域已失去发展空间；民办义务教育同样进入严监管时代，民办学校面临限期整改或关停。

随着政策进一步落地，在以上领域市场迅速降温的同时，新的教育赛道在政策的鼓励下逐步升温，比如素质教育和职业教育等。具体政策变化如下表：

Sectors	Policies	Highlights
Pre-school education	<i>Instructions on Vigorously Promoting the Scientific Coordination between Kindergartens and Primary Schools</i> in March 2021	Using performance on examinations or other competitions as the basis for enrollment is strictly prohibited Illegal off campus tutoring institutions are not allowed to serve preschool children Online tutoring for preschool children is not allowed, and new off-campus tutoring institutions (including curriculum or non-curriculum based) for preschool children will no longer be approved Children shall be admitted to neighborhood primary schools without any forms of examination
K12 curriculum-based tutoring	“Double Reduction” in July 2021 <i>Notice on Unified Registration of Curriculum-Based Off-Campus Tutoring Institutions for Students in Compulsory Education as Non-Profit Organizations</i> in September 2021	No approval of new curriculum-based education and tutoring institutions Curriculum-based education enterprises are prohibited from financing or going public Existing curriculum-based tutoring institutions shall be uniformly registered as non-profit institutions Daily regulation on operation of the sector shall be strengthened in view of industry chaos Recruitment of foreign teachers is prohibited
Non-state compulsory education	<i>Regulations on the Implementation of the Non-state Education Promotion Law of the People’s Republic of China</i> in May 2021 <i>Notice of the Ministry of Education and Other Seven Ministries on Regulating the Establishment of Public Schools or Participation in the Establishment of Private Compulsory Education Schools</i> in July 2021	Compulsory education schools run independently by public schools or jointly by public schools and the government shall be transformed into public schools Private schools for compulsory education shall not trade with stakeholders No social organization or individual can control school implementation through mergers and acquisitions or other agreements
Quality-oriented education	<i>Guidelines for the Quality Evaluation of Compulsory Education</i> in March 2021 <i>National Fitness Program (2021-2025) in August 2021</i> <i>Outline of the Nationwide Scientific Literacy Action Plan (2021-2035)</i> in June 2021	Investment in quality-oriented education will be promoted for the compulsory education stage Structural reform of secondary schools and higher education has been further refined; and additional policies improving education quality have been made in various sub-areas Reforms have been made to strengthen teenagers’ science literacy A focus has been placed on guaranteeing that students have on-campus and off-campus exercise time
Occupational education	<i>National Vocational Education Reform Implementation Plan</i> in March 2019 “14 th Five-Year Plan” in March 2021 <i>Opinions on Promoting the High-quality Development of Modern Vocational Education</i> in October 2021	Public and private vocational education schools are allowed to offer instruction in technology and management Measures to improve the quality of vocational education include refinements to the “classified enrollment” system of vocational colleges and improvements in the integration of general education and vocational education. The proportion of undergraduates enrolled in vocational education is not to be less than 10 percent of the number of graduate students in vocational education The large-scale evaluation and training of vocational skills is encouraged Businesses are encouraged to implement vocational education programs according to law

领域	政策	主要内容
学前教育	2021.3《关于大力推进幼儿园与小学科学衔接的指导意见》	<ul style="list-style-type: none"> • 严禁以各类考试、竞赛、培训成绩或证书等作为招生依据 • 校外培训机构不得对学前儿童违规进行培训 • 不得开展面向学龄前儿童的线上培训，不再审批新的面向学龄前儿童的校外培训机构（包含学科或非学科） • 小学严格执行免试就近入学
K12学科类培训	2021.7“双减”新规 2021.9《关于将面向义务教育阶段学生的学科类校外培训机构统一登记为非营利性机构的通知》	<ul style="list-style-type: none"> • 不再审批新的学科类教育培训机构 • 禁止学科类教育企业融资与上市 • 现有学科类培训机构统一登记为非营利性机构 • 针对以往行业乱象强化常态运营监管 • 禁止聘请境外外籍教师
民办义务教育	2021.5《中华人民共和国民办教育促进法实施条例》 2021.7《教育部等八部门关于规范公办学校举办或者参与举办民办义务教育学校的通知》	<ul style="list-style-type: none"> • 公办学校单独举办或与政府等合办的义务教育学校整改为公办学校 • 实施义务教育的民办学校不得与利益关联方进行交易 • 任何社会组织和个人不得通过兼并收购、协议控制等方式控制实施 • 义务教育的民办学校、实施学前教育的非营利性民办学校
素质教育	2021.3《义务教育质量评价指南》 2021.8《全民健身计划（2021-2025年）》 2021.6《全民科学素质行动规划纲要(2021-2035)》	<ul style="list-style-type: none"> • 素质教育在义务教育阶段逐渐得到强化和重视 • 升学制度改革进一步细化落地，各细分领域出利好政策 • 加强青少年科学素质培养 • 完善青少年科学素质监测评估 • 保障学生校内外体育运动时间
职业教育	2019.1《国家职业教育改革实施方案》 2021.3“十四五”规划 2021.10《关于推动现代职业教育高质量发展的意见》	<ul style="list-style-type: none"> • 实施职业教育的公办学校可以吸引企业的资本、技术、管理等要素，举办或者参与举办实施职业教育的营利性民办学校 • 推动职业教育提质培优，完善高职院校“分类招考”制度，健全普职融通制度。开展多样化的在职培训和继续教育 • 职业本科教育招生规模不低于高等职业教育招生规模的10% • 鼓励职业技能培训和鉴定 • 鼓励各类企业依法参与举办职业教育 • 大规模开展职业技能培训

3-C 职业教育发展机遇空前

自2019年政府发布《国家职业教育改革实施方案》以来，利好政策不断，旨在大力促进职业教育发展，鼓励职业学校建设、职业技能提升及产教融合。2021年4月在全国职业教育大会上，国家主席习近平强调，在全面建设社会主义现代化国家新征程中，职业教育前途广阔、大有可为。2021年5月，财政部、教育部发布《关于下达2021年现代职业教育质量提升计划资金预算的通知》，同月，人社部、财政部、教育部发布《关于扩大院校毕业年度毕业生参加职业技能培训有关政策范围的通知》。可见职业教育政策的不断具体深化，利好行业发展。由于对K12学科类政策的不断限制，更多的资

本和企业将投入到职业教育行业，职业教育将迎来发展新阶段。

从资本投入的角度看，职业教育政策整体趋势主要体现在资本进入风险解除，助力职业教育发展；同时，政府应加强对职业教育的监督管理，促进规范化，谨防资本过度逐利。2021年5月14日，国务院发布修订后的《中华人民共和国民办教育促进法实施条例》，利好职业教育，资本进入风险解除。但新增以“坚持教育公益性，对受教育者加强社会主义核心价值观教育，落实立德树人”为民办教育的根本任务，防止资本过度逐利。

2021年6月发布《中华人民共和国职业教育法修订

3-C Vocational education is facing unprecedented development opportunities

Since the government issued the *National Vocational Education Reform Implementation Plan* in 2019, a number of favorable policies have been implemented to promote the development of vocational education and encourage the construction and improvement of vocational schools. In April 2020 at the National Vocational Education Conference, President Xi Jinping emphasized that on China's new journey of building a modern socialist country, there will be a promising future for vocational education with significant development opportunities. In May 2021, the Ministry of Finance and the Ministry of Education jointly issued the *Notice on Issuing the Capital Budget for the Quality Improvement Plan of Modern Vocational Education in 2021*. In the same month, the Ministry of Human Resources and Social Security, the Ministry of Finance, and the Ministry of Education released the *Notice on Expanding the Policy Coverage of Vocational Skills Training for College Graduates in the Graduation Year*. The continuous implementation of vocational education policy is beneficial to the development of the sector. Due to increasingly stringent policy restrictions on K12 curriculum-based tutoring, more money and enterprises will seek the new opportunity presented by the vocational education sector.

Current policy trends in vocational education reflect a national desire to eliminate the risks facing capital entry and boost the development of vocational education. The government is also strengthening the regulation and management of vocational education, promoting standardization, and guarding against excessive profit-seeking. On May 14, 2021, the State Council issued the revised *Regulations on the Implementation of the Non-state Education Promotion Law of the People's Republic of China*, which could help support vocational education and eliminate risks of capital entry. However, the fundamental task of private education is to "adhere to the public benefits of education, strengthen the education of socialist core values, and foster virtue through education," so as to prevent excessive profit-seeking.

In June 2021, the *Revised Draft of the Vocational Education Law of the People's Republic of China (Draft for Comment)* was released for soliciting public opinions. The *Vocational Education Law* is expected to speed up implementation. In addition, it states that "the expenditure structure will be improved, and the newly-added education funds will be weighted towards vocational education", so that the vocational education sector's capacity can be improved or substantially supported (more funds will be invested in public colleges). The government will support the development of vocational talent and attract more students who are willing to take the path of vocational education by enhancing the social status of trade jobs. Because of this, the market positioning and awareness of vocational education could be enhanced.

On October 12, 2021, the General Office of the CPC Central Committee and the General Office of the State Council issued

Opinions on Promoting the High-Quality Development of Modern Vocational Education, which proposes improvements to simultaneously strengthen management and regulation while maintaining a positive environment for capital entry. This plan defined the main development goals of vocational education: by 2025, the quality of vocational education will improve, the creation of a modern vocational education system will almost be completed, and the construction of a vocational skill-based society will be comprehensively promoted. The management of schools will be improved, the conditions for running schools will be enhanced, and increasing the quality of vocational education will be prioritized. By 2035, China's vocational education system will be world class, and the important role played by vocational skills in society will be solidified. The social status of talent educated at vocational skills will be improved, and the supply of vocational talent will match economic demand. For the first time, the *Opinions* included sections on "2025 enrollment targets for vocational undergraduates" and "encouraging listed companies to conduct vocational education."

The *Opinions* also stated that the level of Sino-foreign cooperation in running schools will be strengthened. A number of exemplary Sino-foreign cooperative education institutions and projects will be operated. The platform for Sino-foreign cooperation and exchange will be expanded. A number of high-level international vocational schools will be built and internationally influential professional standards, curriculum standards, and teaching resources will be developed.

According to *The Outline of the People's Republic of China 14th Five-Year Plan for National Economic and Social Development and Long-Range Objectives for 2035*, during the 14th Five-Year Plan period, China will focus on enhancing the adaptability of vocational and technical education, which specifically includes five goals: highlighting the characteristics of vocational education, improving the top-level design, creating a new school management practices, improving the quality of education, and streamlining the integration of vocational education and general education.

- Highlighting vocational jobs: highlight the characteristics of vocational and technical (skilled worker) education, promote sector reform and innovation, and rapidly cultivate technical and skilled talent. Developing vocational education will strengthen structural employment issues and allow for the rapid development of downstream sectors.
- School management practices: promote innovation in school management practices, improve the integration in workforce and education pipelines, encourage enterprises to develop high-quality vocational and technical education, and explore the apprenticeship system with Chinese characteristics. The government encourages employers to participate in vocational education and education practitioners to optimize school management practices based on industrial upgrading and technological change. "Incorporating the integration of

草案（征求意见稿），面向社会征求意见。《职业教育法》有望加快落地，此外提出“优化支出结构，新增教育经费向职业教育倾斜”，职教办学能力提升或得到实质性支持（经费或更多投向公办院校）。政府将从职业教育人才发展角度予以支持，通过提升技能型人才社会地位吸引更多学生有意愿选择职业教育的升学路径，职业教育在学历教育的市场定位与市场认知或有所提升。

2021年10月12日，中共中央办公厅、国务院办公厅印发了《关于推动现代职业教育高质量发展的意见》（以下简称《意见》），提出健全多元办学格局，在鼓励资本进入的同时加强了监督管理。提出职业教育主要发展目标：到2025年，职业教育类型特色更加鲜明，现代职业教育体系基本建成，技能型社会建设全面推进。办学格局更加优化，办学条件大幅改善，职业本科教育招生规模不低于高等职业教育招生规模的10%，职业教育吸引力和培养质量显著提高。到2035年，职业教育整体水平进入世界前列，技能型社会基本建成。技术技能人才社会地位大幅提升，职业教育供给与经济社会发展需求高度匹配，在全面建设社会主义现代化国家中的作用显著增强。同时，《意见》首次提及“2025年职业本科招生目标”和“鼓励上市公司举办职业教育”。

在国际合作方面，《意见》指出提升中外合作办学水平。办好一批示范性中外合作办学机构和项目。拓展中外合作交流平台。推动职业教育走出去。积极打造一批高水平国际化的职业学校，推出一批具有国际影响力的专业标准、课程标准、教学资源。

根据《“十四五”规划纲要和2035年远景目标纲要》，“十四五”期间，中国将着重增强职业技术教育适应性，具体包括五大方面：突出职业教育的特色、完善顶层设计、创新办学模式、提升教育质量和深化职普融通。

- **突出特色**：突出职业技术（技工）教育类型特色，深入推进改革创新，优化结构与布局，大力培养技术技能人才。明确重点在于培养技术技能型人才，表明了职业教育的大力发展目的在于解决人才的结构性就业问题，以适应下游产业的高速发展。
- **办学模式**：创新办学模式，深化产教融合、校企合作，鼓励企业举办高质量职业技术教育，探索中国特色学徒制。政府肯定多元化办学主体、鼓励用人企业参与职业教育。围绕产业升级与技术变革优化办学，

支持企业开展职业培训。“将产教融合列入经济社会发展规划”对各级政府的产教融合工作提出更高要求。

- **职普融通**：深化职普融通，实现职业技术教育与普通教育双向互认、纵向流动。这一方面说明政策鼓励贯通升学路径，拉长培养周期。同时，在普通中小学实施职业启蒙教育，将职业教育的选择尽量前置，推动普通教育与职业教育的相互渗透，或可降低选择职业教育的时间与机会成本。
- **顶层设计**：完善职业技术教育国家标准，推行“学历证书+职业技能等级证书”制度。该职业技能等级证书制度的建立将逐渐加强企业深度参与职教学。
- **教育质量提升**：实施现代职业技术教育质量提升计划，建设一批高水平职业技术学院和专业，稳步发展职业本科。为职业教育匹配合适师资，师资与企业衔接实现产教更紧密结合。

与此同时需要注意的是，地方实施意见尚未落地，还存在不确定性。但是预计政府执行职业教育的政策力度会超预期。

现存挑战

2020年1月，教育部发布《中小学教材管理办法》，要求义务教育学校不得使用境外教材。同时规定，高等学校、中等职业学校、普通高中中外合作办学机构或项目、经省级教育行政部门批准开设的普通高中境外课程项目，境内教材确实无法满足教学需要，可选用境外教材，鼓励选用我国出版社翻译出版、影印出版的国外优秀教材。在当下强监管的教育政策环境之下，境外内容出版商需要进一步的政策引导，包括外文读物、电子读物等引入细则，以及对境外教材本地化的使用规范和要求。

建议

希望政府能对境外出版内容的使用的趋势及政策方向给予提前通知，以便企业调整战略。

“双减”政策下的教育培训行业

2021年对于中国教育培训行业和机构来说无疑是一个巨大转折。在前几年，中国K12教育培训市场迎来了资本流入和投资的高峰期。据媒体公开报道，到

production and education into the economic and social development plan” proposes increasing the focus places on the integration of business needs and education at all levels of government.

- Integration between vocational education and general education: strengthen the integration between vocational education and general education. This policy aims to support the creation of a seamless path toward vocational education and other forms of specialized training. Additionally, it aims to encourage the creation of vocational enlightenment education in regular primary and secondary schools in order to promote both vocational and traditional general education paths to students, which may reduce the time and opportunity cost of choosing vocational education.
- Top-level design: improve the national standards of vocational and technical education and implement a system of “academic certificate plus vocational skill level certificate”. The establishment of a vocational skill level certificate system will gradually strengthen the ability of businesses to participate in vocational education.
- Education quality improvement: implement vocational and technical education quality improvement plans, create high-level vocational and technical colleges and disciplines, and steadily develop vocational undergraduate courses. In order to create facilities suitable for vocational education, educational institutions and businesses will be paired to promote greater integration between enterprises and education.

It should also be noted that the policies outlined above have not yet been implemented and uncertainty remains. But it is believed that the government’s execution of its vocational education policies will be successful beyond current expectations.

Challenges

In January 2020, the Ministry of Education issued the *Measures for the Management of Instructional Materials for Effective Teaching and Learning in Primary and Secondary Schools*, barring compulsory education schools from using overseas teaching materials. However, it also stipulates that in cases where Chinese teaching materials are unable to meet the needs of institutions of higher learning, secondary vocational schools, Chinese-foreign cooperative education institutions, or high schools approved by provincial education regulators, foreign teaching materials can be adopted. Additionally, outstanding foreign teaching materials are encouraged to be translated, published, and photocopied by Chinese publishing houses. Under the current strong regulatory environment of education policy, foreign content publishers need additional policy guidance, including clarity on the rules regulating foreign and electronic reading materials, as well as on the requirements for the localization of foreign teaching materials.

Education and training sector under the policy of “Double Reduction”

2021 is undoubtedly a critical turning point for China’s education and off-campus tutoring sector. A few years ago, China’s K12 education and off-campus tutoring market experienced a peak of capital inflow and investment. According to media reports, by 2020, its market size had reached RMB 2 trillion, with nearly 700,000 institutions and 10 million employees involved. On July 24, 2021, the Chinese government’s “Double Reduction” strategy was implemented. In the next four months, the trillion-yuan online and offline education and off-campus tutoring market experienced a rapid withdrawal of capital and great volatility as institutions began to transform or withdraw under regulation. According to the information from the Ministry of Education of China’s press conference on December 21, 2021, the total number of off-campus curriculum-based tutoring institutions has fallen dramatically, with the number of offline institutions down by 83.8 percent and online institutions by 84.1 percent. Some of the remaining tutoring institutions will transform into non-profit organizations, and government-guided prices will be implemented. Those not suitable for transformation will be dissolved.

There is no room for further growth in the K12 curriculum-based tutoring market. In light of the unprecedented regulation, the overall size of the K12 curriculum-based tutoring education and market may drop sharply by 70 percent to 90 percent. Online education for children under six-years-old is also prohibited, which means that online products and services for children aged 0-6 will cease to exist in China, including both curriculum-based and non-curriculum tutoring.

The policy orientation of the Chinese government prioritizes quality education, family education, vocational education, off-campus trusteeship, educational technologies (AI and SaaS), driving private capital into the education sector, and encouraging the market entry and expansion of leading teaching and training enterprises. Moreover, after the “Double Reduction”, educational technology has become another important field in the transformation of K12 teaching and tutoring institutions. New smart educational technology such as learning tablets, dictionary pens, error checkers, early education robots, smart eye protection lamps, etc. are emerging, with broad use cases and large market potential. Physical education has also experienced rapid development due to favorable policies, with its market expanding quickly. According to the analysis in the report, by 2023, the children’s physical education market in China is expected to exceed RMB 130 billion.

It is worth noting that although the “Double Reduction” policy is aimed at mainland China, it also has the potential to have significant impact on global cross-border educational institutions, products and services, recruitment, and cultural exchanges. This potential is reflected in the policies

2020年该领域市场规模达到2万亿元，有近70万机构及1000万从业人员。2021年7月24日“双减”文件落地，在之后4个多月，随着资本的快速撤离，万亿规模的市场剧烈震荡，线上和线下教育培训机构在整治中纷纷开始转型或退出。根据中国教育部2021年12月21日新闻发布会披露的信息，学科类培训被大幅压减，线下校外培训机构已压少83.8%，线上校外培训机构已压少84.1%。留下的培训机构一部分转为非营利性机构，实行政府指导价，提供公益服务；不适合转非的将被进一步注销。

从市场分类看，K12学科类培训市场和行业的发展空间将不复存在。鉴于史无前例的监管力度，K12学科类教培行业整体业务或将锐减70%至90%。而6岁以前的线上教育也被禁止，这就意味着无论是学科类还是素质类，面向0-6岁儿童的线上化产品和服务将在中国境内市场消失。

与之并行的是，中国政府及其政策导向正在更加鼓励素质教育、家庭教育、职业教育、校外托管以及教育科技（AI及SaaS），引导着部分社会资本开始转向这些领域，也促使部分教培头部企业向这方面转型，使得上述细分市场的规模有一定扩大。同时，“双减”之后教育硬件成为K12教培机构转型的另一重要领域，学习平板、词典笔、错题打印机、早教机器人、智能护眼灯等教育智能教育硬件的细分品类越来越多，应用场景越来越广，市场规模越来越大。在素质教育中，体育教育培训因受政策利好而发展迅速，其市场仍在不断升温；有报告分析认为，到2023年中国少儿体育培训市场规模预计将超1300亿元。

值得关注的是，“双减”政策虽然针对中国境内，但对全球化的跨境教育机构、产品服务、人员就业及人文交流也产生了很大影响，主要体现在要求K9阶段的教育培训禁止使用境外教材以及聘请身在境外外教的条例中。部分国际教育出版集团的中国业务减少，多家提供跨境在线教育的机构关闭了中国境内业务，其背后是数十万来自全球各地的在线教育从业者失去了工作机会和收入。

建议

对中国政府的

- 希望中国政府相关政策的制定过程能够更加透明，可以更多地去公开征求市场主体和社会意见，给予行业及市场主体一定空间和时间来进行准备和过渡。
- 希望能够继续保持和加强教育开放和全球化导向，为教育和人文交流提供更多交流渠道和市场化机会。

that prohibit the use of foreign teaching materials and the employment of foreign teachers during the K-9 stage. Some international education publishing houses have downsized their business in China, and a large number of institutions providing cross-border online education have ceased operation. As a result, hundreds of thousands of employees involved in online education from all over the world have lost their jobs and income.

Recommendations

For the Chinese Government

- Have a clear, steady, and transparent timeline to relax travel restrictions and visa policies for foreign personnel. Prioritize the timeline for students and dependents to return. Current strict visa and travel restrictions have decreased expatriates' willingness to live and work in China.
- Resume regular air flights between China and the US. Under current policies, foreign carriers can operate only one flight a week to China. The massive demand has driven the price of flight tickets to an extremely high level, resulting in increased school costs due to expat travel reimbursement.
- Consider extending current tax-exemptions for children's education after 2023. The removal of these allowances will significantly increase the cost of educating children of foreign nationals due to the combined impact of an increased tax burden for families and higher costs at international schools.
- Pursue a steady, phased approach to reforming in education regulations, particularly with respect to reforms that will impact investment in the education sector by foreign-invested enterprises.

For the US Government

- Continue to implement China-US bilateral exchange programs in education, culture, and the humanities among others, which benefit students and higher education institutions of both countries.
- Continue to allow Chinese students to study at US institutions on appropriate visas. This openness benefits the US higher education system and helps it maintain its global competitiveness.

Energy

Introduction

In 2021, influenced by a series of factors at home and abroad, China's energy industry, especially the supply side, witnessed a turning point of development. During the Two Sessions (annual plenary sessions of the National People's Congress (NPC) and Chinese People's Political Consultative Conference (CPPCC)) in March, the Chinese government officially announced the 14th Five-Year Plan and the Long-Range Objectives Through the Year 2035, which defined the general requirements for building a clean, low-carbon safe, and efficient modern energy system, and required that the low-carbon energy transformation be "faster, more accurate, and more comprehensive." 2021 is not only the first year of the 14th Five-Year Plan, but also the first year of the implementation of China's "peaking carbon dioxide emissions and carbon neutrality" goals. In actively promoting the "dual carbon" goals, China has increased policy support and created strategic opportunities for the development of clean energy. In 2021, China vigorously implemented renewable energy substitution actions and accelerated the adjustment of its energy structure. The installed capacity of renewable energy power generation in China has historically exceeded 1 billion kilowatts, which doubled at the end of 2015, accounting for 43.5 percent of the total installed capacity of power generation in China. Among these energy sources, the installed capacity of hydropower, wind power, solar power and biomass power generation ranked first in the world.

However, with the overall sustained recovery of the global economy, the rapid upturn of energy and power consumption, the tension between energy supply and demand, and rising prices, China faced its most severe power shortage in years in the second half of 2021. Some areas and industries also adopted the "campaign-style" carbon reduction measures and one-size-fits-all solutions to reduce energy consumption, strictly controlled coal production capacity, and impractically cut down coal production and consumption. Such extreme behaviors have caused "power rationing" in several regions, which has also triggered societal reflection on energy security, "dual carbon goals", and economic development.

In response, the Chinese government took effective measures at the national level, formulated and improved the top-level design scheme, and motivated all sectors to correct the

"campaign-style" carbon reduction. In October 2021, the government successively issued two critical documents of "1+N" policy framework: *Working Guidance for Carbon Dioxide Peaking and Carbon Neutrality in Full and Faithful Implementation of The New Development Philosophy* (hereinafter, the "Working Guidance") and *Action Plan for Carbon Dioxide Peaking Before 2030* (hereinafter, the "Action Plan"). These documents clearly defined the principles of national planning, prioritizing conservation, leveraging the strengths of the government and the market, coordinating efforts on the domestic and international fronts, and guarding against risks. Following this, carbon-peaking action plans for relevant industries will be issued one after another in the future.

The American Chamber of Commerce in the People's Republic of China (hereinafter, the "AmCham") noted that the publication of these two key documents coincided with the eve of the COP 26 UN Climate Change Conference to the UNFCCC in Glasgow, UK, demonstrating China's firm determination to move towards the goal of peaking carbon dioxide emissions and carbon neutrality to the international community. In addition, AmCham was delighted to find that China and the United States issued the *US-China Joint Glasgow Declaration on Enhancing Climate Action in the 2020s* (hereinafter, the "Joint Declaration") during the COP 26, which defined the scope of bilateral cooperation. The Joint Declaration not only focused on energy transformation, but also maintained a high degree of consistency with China's domestic "dual carbon" policy, which has brought great opportunities for in-depth cooperation between the energy industries of the two countries.

Oil and Gas

Since the worldwide energy crisis in 2021, countries have reflected and adjusted their current energy policies. One broad consensus is that the transition away from fossil fuels cannot be rushed and the stability of our energy supply needs to be paid high attention. Although the development of renewable energy in China is fast, before peaking carbon dioxide emissions in 2030, the proportion of non-fossil fuel energy sources in primary energy consumption will only be about 25 percent by 2030, and fossil fuels will still "comprise the majority" of carbon emissions of carbon emission at that time. Therefore, when renewable energy cannot replace fossil fuels instantly, natural gas, as the cleanest fossil fuel, is the key energy to replace coal. Although China's total natural gas

能源

引言

2021年，受国内外多重因素影响，中国的能源行业，尤其是能源供给侧迎来了发展“拐点”。两会期间，中国政府正式对外公布“十四五”规划和2035年远景目标纲要，明确了构建清洁低碳、安全高效的现代能源体系的总体要求，并要求能源低碳转型朝着“更快、更准、更全”的方向持续发力。这标志着2021年不仅是“十四五”规划的开局之年，更是中国“碳达峰、碳中和”战略实施的元年。中国在积极推进“双碳”进程中，加大了政策支持力度，为清洁能源发展创造了战略机遇期。2021年，中国大力实施可再生能源替代行动，加快推进能源结构调整。全国可再生能源发电装机容量历史性突破10亿千瓦，比2015年底实现翻番，占全国发电总装机容量的43.5%。其中，水电、风电、太阳能发电和生物质发电装机容量均稳居世界第一。

然而，“双碳”大幕刚刚开启，随着全球经济总体持续恢复，能源电力消费快速回升，能源供需矛盾突出、价格持续攀升，进入到2021年下半年，中国不仅面临着历年最高的电力短缺挑战，一些地方和行业还采取“运动式减碳”方案，一刀切控制能源消费，严控新增煤炭产能，不切实际压减煤炭生产和消费，这一系列极端行为导致了多地不能不采取“拉闸限电”的措施，这也引发了全社会对于能源安全、“双碳”和经济发展的深入思考。

基于此，中国政府及时在国家层面纠偏、纠错，采取自上而下的方式制定并改善顶层设计方案，坚持全国一盘棋，纠正“运动式减碳”。2021年10月，中国政府先后发布《关于完整准确全面贯彻新发展理念做好碳达峰碳中和工作的意见》（《意见》）和《2030年前碳达峰行动方案》（《方案》），两份“1+N”政策体系的重磅文件，明确了坚持全国统筹、节约优先、双轮驱动、内外畅通、防范风险的原则，后续将陆续出台相关行业的

碳达峰行动方案。

中国美国商会（以下简称商会）注意到，这两项关键性文件出台的时间恰逢在英国格拉斯哥《联合国气候变化框架公约》第二十六次缔约方大会（COP26）召开的前夕，向国际社会彰显了中国实现碳达峰碳中和目标的坚定决心。此外，商会更加欣喜地注意到，中国和美国在大会期间发布了《中美关于在21世纪20年代强化气候行动的格拉斯哥联合宣言》（以下简称《联合宣言》），明确了双方合作范围和行动，内容不仅聚焦能源转型，还和中国此前的国内“双碳”政策保持了高度的一致性，这为两国能源行业的深入合作带来了巨大机遇。

石油和天然气

经过2021年全球范围的能源危机，各国对现行能源政策进行了反思和调整，其中的一个广泛共识就是去化石能源不能操之过急，能源供应的稳定性需受到高度重视。2030年“碳达峰”以前，中国可再生能源的发展虽然快，但是，到2030年，非化石能源占一次能源消费比重仅为25%左右，决定碳排放峰值的还是化石能源。因此，在可再生能源还不能“一步到位”替代化石能源的情况下，天然气作为最清洁的化石能源，是替代煤炭的关键能源。然而，虽然截至2020年底，中国天然气总探明储量达到8.4万亿立方米，位居全球第六，但中国天然气进口量也同时位居世界第一，覆盖了世界主要天然气资源国。基于能源安全的考虑，中国也应加大对国内页岩气的开采，充分平衡进口需求。

中美能源合作

气候变化已然成为中美两国为数不多的合作领域，作为在气候变化领域最具有系统性影响力的国家，中美在促进全球经济结构转向更清洁、低碳和有效的模式上

reserves reached 8.4 trillion cubic meters by the end of 2020, ranking sixth in the world, its import volume of natural gas ranked first in the world, covering the world's major natural gas resource countries. Based on its usage of energy security, China should also increase its usage of domestic shale gas and fully balance the import demand.

Sino-US Energy Cooperation

Climate change has become one of the few areas of cooperation between China and the US. As the countries with the most systematic impact in the field of climate change, China and the US have common interests and broad space for cooperation in promoting the shift of the global economic structure to a cleaner, low-carbon and effective model. After several rounds of consultations, AmCham is encouraged by the final signing of the Joint Declaration between two countries. It is expected that the discussions and consensus based on energy cooperation between both sides can finally be put into practice.

According to the Joint Declaration, in order to solve the climate crisis, both nations plan to accelerate action in the key decade from 2021 to 2030 and cooperate in controlling methane emissions, eliminating global illegal deforestation, and promoting clean energy. In addition, the US and China will cooperate on emission reduction standards, clean energy, industrial decarbonization, circular economy, carbon capture, utilization, and storage (CCUS) and other related technical fields. They will also establish the "Working Group on Enhancing Climate Action in the 2020s" to focus on actions that can be taken this decade. In terms of carbon dioxide emission reduction, the two countries intend to cooperate on policies that support the effective integration of high shares of low-cost intermittent renewable energy; transmission policies that encourage efficient balancing of electricity supply and demand across broad geographies; distributed generation policies that encourage bringing solar, storage, and other clean power solutions closer to electricity users; and energy efficiency policies and standards to reduce electricity waste. China once again stressed that it would phase out coal consumption during the 15th Five-Year Plan, while the US set a goal set a goal of achieving 100 percent carbon-free electricity by 2035. Their respective commitments regarding the elimination unabated international thermal coal power generation is also mentioned in the Joint Declaration.

The *US-China Joint Glasgow Declaration on Enhancing Climate Action in the 2020s*, which is more consistent with the energy measures in the Working Guidance and Action Plan, proposed more concrete actions for cooperation than the policies, measures, and technologies in the *China-US Joint Statement Addressing the Climate Crisis* issued in April 2021 to decarbonize industries, including through circular economy, energy storage and grid reliability, CCUS, and green hydrogen as well as increased usage of renewables. In order to promote Sino-US energy cooperation, AmCham recommends:

1. Help Chinese and American enterprises and governments address climate change and promote clean energy development by creating policies that streamline technical exchange;
2. Create programs to pilot the use of clean and low-carbon technologies within Chinese and American enterprises;
3. Establishing a plan to encourage China and the US to maintain global energy security; strengthen cooperation in natural gas, new energy, and hydrogen energy; cooperate on CCUS; and work with the international community to maintain the stability of the global industrial and supply chain;
4. Strengthen the ability of Chinese and American governments, think tanks, and businesses to collaborate and develop policies to promote energy transformation and clean energy development.

AmCham noted that the Joint Declaration's proposal for reducing carbon emissions mainly focused on the introduction of clean power. In the process of shifting from high-carbon energy sources to low-carbon energy sources, electricity has become the most widely used energy source. However, China's power systems responsible for generating electricity use a lot of fossil fuels and water resources and emit a lot of dust, sulfur dioxide, nitrogen oxide, and other air pollutants. Therefore, the reform of the power system is particularly important for China's "dual carbon" strategy.

Although the specific methods of achieving carbon neutrality that have been chosen by different countries vary greatly, all paths converge of a common goal of developing and promoting the use of clean energy. Despite this, however, the potential role of fossil fuels in a global clean energy transformation should not be ignored.

Natural gas will have an important role in realizing China's "dual carbon" goals and creating a safe and reliable power grid.

In 2020, fossil fuels were China's dominant energy source, followed by hydropower, wind power, solar power, nuclear power, and biomass power. Renewable energy has not yet reached its full potential in China. Compared with wind and solar power, natural gas has advantages when it comes to scalability, construction time, regulation performance, and more. Its also has advantages when it comes to responsiveness, power generation cost, and sustainability. In his "Coordinate Energy Security and Green Transformation" speech, Zhang Jianhua, the Director of the National Energy Administration, argued that "improving the capacity of the energy grid is necessary for the country to be able to adopt new energy sources." The 1.2 billion kilowatts of new energy sources requires that the system's peak load regulation capacity scale to meet the demand. In order to transition

有着共同利益和广泛的合作空间。因此，在经历多轮磋商后，商会对于中美《联合宣言》的最终签署备受鼓舞，期待双方此前基于能源合作的多项讨论和共识，能最终得以实践。

根据《联合宣言》，为解决气候危机，双方计划在2021年至2030年的关键十年加速行动，在控制甲烷排放、消除全球非法毁林、推进清洁能源等方面开展合作。此外，双方计划在减排标准、清洁能源、行业脱碳、循环经济以及CCUS等相关技术领域开展合作，并建立“21世纪20年代强化气候行动工作组”，聚焦在此十年强化具体行动。在二氧化碳减排方面，中美双方提出了支持有效整合高占比、低成本、间歇性可再生能源的政策；鼓励有效平衡跨越广阔地域电力供需的输电政策；鼓励整合太阳能、储能和其他更接近电力使用端的清洁能源解决方案的分布式发电政策；减少电力浪费的能效政策和标准。中国再次强调将在“十五五”时期逐步减少煤炭消费，并尽最大努力加快此项工作，而美国则制定了到2035年100%实现零碳污染电力的目标。终止对未加装减排设施的国际煤电支持的承诺也在《联合宣言》中被提及。

相较于2021年4月发布的《中美应对气候危机联合声明》，中美在工业和电力领域脱碳的政策、措施与技术，包括通过循环经济、储能和电网可靠性、碳捕集利用和封存、绿色氢能、增加部署可再生能源，此次格拉斯哥《联合声明》提出的合作内容更加具体完整，与中国的两项双碳“1+N”政策体系关键文件中的能源措施更为相符。为了促使中美能源合作更好地落地，商会建议：

- 1、建立和启动中美企业参与的相关机制，支持中美在应对气候变化、清洁能源发展等方面加强政策、技术交流合作；
- 2、在电力系统、新能源等领域，在双方相关政府部门的支持下，建立沟通和合作机制，大力促进中美企业在清洁低碳技术的示范试点和推广应用；
- 3、建立务实的行动方案，促进中美维护全球能源安全，加强天然气和新能源领域合作，加强氢能包括天然气发电、氢能在发电交通等领域的应用，以及碳捕获和谈利用等领域的合作，同国际社会一道，维护全球产业链供应链安全稳定；
- 4、中美政府、智库和企业加强交流合作，在能源转型、

电力系统和新能源等相关政策领域加强沟通交流，支持和发展促进能源转型和清洁能源发展的政策。

能源转型

商会注意到，《联合宣言》中“减少二氧化碳排放”的条款下，重点提及了清洁电力，这不仅是因为中美在清洁电力方面达成了广泛共识，更是因为能源革命的关键就在于电力的转型与绿色发展。在实现从高碳能源向低碳能源转型过程中，电力作为一种由一次能源转化而来的二次能源，具有便捷、清洁等特征，成为应用最为广泛的能源。但是，电力生产消耗了大量的化石能源和水资源，排放了大量的粉尘、二氧化硫、氮氧化物等大气污染物。因此，电力系统的改革在当前中国“双碳”战略的大背景下，显得尤为重要。

天然气发电

纵览全球，虽然能源转型的碳中和具体路径不尽相同，但不会脱离化石能源清洁利用与发展新能源的范畴。即便在中国“双碳”战略下，清洁能源的战略不断提高，但也并不意味着化石能源的地位应该一落千丈。

天然气发电是实现“双碳”目标的重要组成和电网安全可靠的重要支撑

从2020年中国发电装机容量看，火电（煤电、气电等）仍占绝对主导地位，其次是水电、风电、太阳能发电、核电、生物质发电，可再生能源发电尚未有效发挥其天然优势。同时，电力系统的低碳和清洁发展是中国实现双碳目标的重要组成。为构建“以可再生能源为主体”的新型电力系统，气电将发挥不可或缺的作用。一方面，燃气发电具有清洁低碳的特点，在煤电有序退出的过程中，将成为重要的清洁、低碳替代电源；另一方面，相较于风电、太阳能发电，天然气电具有启停速度快、升降负荷能力强、发电成本调节性能出色的优势，相比较储能、抽水蓄能等灵活性电源，是发电成本、供电持续性综合最优的调峰电源，同时具有长周期持续调节能力，以及跨季节调峰能力。气电还可以为局部区域天然气储备和调峰做出贡献。

因地制宜发展高能效燃机电厂，精准布局分布式是天然气发电重要发展途径

目前天然气发电发展较快的地区主要是在环境质量

to green energy sources, it will be necessary to develop more natural gas plants, build more power stations, and research new technology to improve the system's regulation, consumption, and storage capacity.

The main strategy for increasing the availability of natural gas is the construction of more high-efficiency power plants in line with local conditions.

Currently, the regions where natural gas is being rolled out the fastest are areas with access to affordable electricity, policies that allow for multiple energy sources, and clear environmental guidelines such as the Yangtze River Delta, the Pearl River Delta, Beijing, Tianjin, and their surrounding areas. Introducing natural gas and other sustainable energy sources are most important in central urban areas. Scientific prototyping will be conducted developed areas such as the Yangtze River Delta, the Pearl River Delta, and Shandong Peninsula to promote clean energy in North China. After prototype specifics and location are finalized, the parameters of the experiment will be determined according to consumer demand and electricity price in order to reduce the risk of the investment. Best practices also include developing heavy-duty gas turbine projects alongside light-duty gas turbine projects in order to reap the complementary benefits of both. Special attention should be paid to the development of energy modulating power stations, high-efficiency generators, and infrastructure for wind, solar, and gas projects.

Increase the supply of natural gas by improving the efficiency of new developments in the gas and electricity industry.

To improve the adoption rate of natural gas, increasing its availability and affordability are important. Oil and gas reforms have paved the way for the construction of natural gas infrastructure in regions throughout China, thus boosting the supply. In order to support the development of natural gas, we recommend that policy be introduced to coordinate the construction of pipes and other factors affecting the supply of natural gas in order to ensure steady supply and stable prices. We believe that it is critical to create a balanced natural gas production system; establish a fair, open, and transparent market environment; and encourage the construction of necessary infrastructure.

Create policies that incentivize the development of gas and electricity.

In order to promote clean energy, it is necessary to introduce market reforms that incentivize the creation of an energy distribution market; integrate the market across auxiliary and primary services; and encourage market activity. It is also necessary reform the power grid system, promote the consumption of renewable energy, and accelerate the creation of development mechanisms sensitive to peaking capacity

and energy storage. Measures should be taken to improve the price of power and improve the attractiveness of low-carbon energy. Additionally, measures should be taken to encourage the development of an auxiliary service market.

Integrate natural gas with alternative energy sources such as wind, solar, and hydrogen to comprehensively develop the power industry.

Gas peaking plants should be built in areas with a high amount of natural gas, wind, and solar resources. In these areas, the creation of complementary, integrated power generation systems such as a gas-wind system or a gas-solar system should also be explored. Other attractive options, such as a coupling of wind, solar, and hydrogen gas should also be explored. Benefits of using complementary systems include increasing the overall output of renewable energy and the improving reliability of the energy grid. This system has the potential to help realize China's dual carbon goals, promote renewable energy, and increase China's energy security by increasing reliability. The National Energy Administration issued a declaration stating that "it is necessary to encourage coal, oil, and gas companies to use their resources to build out solar and other clean energy projects to advance the development of renewable energy". This has provided coal, oil, and gas companies with the opportunity to participate in the above-mentioned integration projects. Central and local governments need to coordinate closely to explore new policy interventions that can support the integrated development of new energy sources, which is of great importance for the regulation of gas and electric, promotion of renewable energy, ensuring the stability of the new power system, and managing the carbon dioxide emissions.

Actively work to transition natural gas from "low carbon" emissions to "zero carbon"

For both new and existing gas power plants, a transition from low-carbon to zero-carbon can be achieved by using hydrogen as fuel and/or adopting carbon capture, utilization, and storage (CCUS). CCUS technology continues to develop worldwide and is increasingly being adopted by gas power plants. CCUS is expected to become an important method for gas power plants to achieve lower carbon emissions. Presently, the most advanced HA-class gas turbines have a mixed burning ratio of 50 percent hydrogen. They are expected to achieve 100 percent by 2030. Europe, the US, Japan, and China are working hard to develop their hydrogen energy industries. Hydrogen-mixed combustion is an important method gas turbines can use to achieve low, and eventually zero, carbon emissions.

AmCham believes that the government should encourage the use of hydrogen mixing and carbon capture devices to achieve a zero-carbon future for gas turbines. It is critical to aggressively promote the adoption of hydrogen energy and

要求高、电价承受力强、多气源保障的区域，比如长三角、珠三角、京津冀以及周边地区。随着经济发达的重点区域环境保护要求提高，碳达峰和碳中和实施方案的制定，上述具有多气源保障、以及一定价格承受能力的中心城市区域，仍然是气电发展的最主要地区，如长三角、珠三角、山东半岛城市群等经济发达地区及沿海城市或冷热电负荷中心，以及天然气产地及管输侧、LNG接收站周边、北方推进清洁供暖的省会城市。随着燃气发电技术的进步，这些区域的燃气发电也顺应国际趋势，向更高效的 HA 级燃机过渡，为未来实现更高的效率、更大的碳减排、以及更低的发电成本提供保障。同时，在工业园区、新型产业园区和大中城市大型商业区，积极发展气、电、冷、热一体化的天然气分布式能源站，将为城市低碳能源供应和节能减排做出贡献。

加强气电与风电、光伏、氢能等多种能源的融合，实现气电产业协同发展。

到 2030 年中国将新增 8 亿千瓦以上可再生能源装机，大规模的可再生能源发电装机并入电网，对于电网的灵活性电源提出了巨大需求。目前，各区域正在研究在天然气和风光资源富集区配套建设一批燃气调峰电站，建立协同配合的气、风互补或气、光互补发电形态，建立以氢能为核心的风—光—氢—气耦合发电的新形式，既有效解决弃风弃光问题，也提升可再生能源发电总出力水平、电网运行可靠性以及电源外送能力，最终实现气电与可再生能源融合发展，加快促进双碳目标的实现，掺烧氢气也可部分解决天然气供给问题，进一步保障能源安全。这其中，国家能源局发布文件明确提出“支持煤炭、油气等企业利用现有资源建设光伏等清洁能源发电项目，推动天然气发电与可再生能源融合发展项目落地，促进化石能源与可再生能源协同发展”，这为煤炭、油气企业积极参与上述融合项目提供了政策机遇。为此，国家和地方需要紧密协调，探索融合发展的支持政策体系和新模式，这对于保障新型电力系统安全稳定和电力系统碳达峰具有重要意义。

保障天然气供应，建立健全气电上下游产业协调发展机制

近年来，国家和地方能源部门和企业做了大量工作，增加天然气产量以及多渠道多元化供应，为天然气持续稳定供给提供了保障。未来，仍将继续增加国内天然气

产量，并持续通过多种渠道保障天然气供给，增加天然气储备和调节能力。从全球市场看，虽然天然气价格短期受到冲击，中长期看，总体供应宽松。随着国家油气改革的推进，各个区域天然气基础设施的建设，天然气多渠道的稳定供给可以得到保障，价格回归合理区间。在政策机制方面，建议建立健全上游资源供应、中游管网运输、下游用户消费之间协调可持续发展的市场运行机制，降低因上游天然气资源供应不确定性和下游市场天然气价格波动性带来的风险。继续协调与平衡天然气产供储销体系，建立公平、开放、透明、有序的市场环境，搭建天然气监管、交易和运行模拟平台，推动基础设施、资源供应全面开放。

持续完善天然气发电上网电价形成机制，支持气电发展

全国范围内多个区域有天然气发电的市场需求，亟需深化天然气发电上网电价形成机制改革，加快推动天然气发电参与电力市场竞争，保障天然气发电回收成本、获得合理收益；支持天然气发电发挥优越的调节能力，提升电力系统灵活性，促进新能源发展和消纳。建议完善不同类型的天然气发电市场化形成机制，实现上下游价格有效联动，在电力现货市场中为低碳能源和调峰资源建立促进和支持的价格体系，体现调峰等价值；加强辅助服务市场体系的建设，包括容量市场的构建，体现备用容量价值。同时，电力市场全国碳交易已启动，未来政策设计应使低碳能源的价值得到市场认可和体系，激励清洁能源投资。

积极探索天然气发电由“低碳”向“零碳”能源的过渡

燃机电厂通过使用氢气作为燃料或者采用碳捕获、利用与封存 (CCUS)，将可实现燃气电厂从低碳到零碳电源过渡。全球 CCUS 技术不断发展，部分燃气电厂已经开始 CCUS 示范，随着未来技术进步和成本下降，CCUS 有望成为燃机电厂实现更低碳排放的重要方式。目前，最先进的 HA 级燃机已具有掺烧 50% 氢气的的能力，并且有望在 2030 年前实现 100% 掺氢燃烧。欧洲、美国、日本等国大力发展氢能产业，并积极开展燃气轮机掺氢燃烧示范。中国积极发展氢能产业，燃气轮机掺氢将成为未来氢气利用的重要渠道。商会建议，在有条件的地区，政府支持率先开展燃气轮机掺氢示范或 CCUS 示范，

the integration of multiple energy sources. Simultaneous attention should be paid to carbon trading, voluntary emission reduction trading, and other means to decarbonize natural gas. It is also important to make the extraction of oil and gas carbon neutral.

Wind Power

China has abundant wind resources. Because of this, China has worked hard to develop onshore and offshore wind power. However, with the construction of large-scale wind power infrastructure underway, consumption and energy grid connection issues have become increasingly prominent. As a result, there are still many limitations. Wind power also faces great pressure from state subsidies. Notice on Improving the Wind Power Feed-in Tariff Policy issued by the National Development and Reform Commission in May 2019 clarified that a tariff on newly approved offshore wind power projects will be determined through a competition; in order to ensure that all offshore wind power units are connected to the grid by the end of 2022, pricing/fees imposed by the government will be determined based on the time that the grid connections of individual units are finalized.

AmCham encourages the Chinese government to incentivize the development of offshore wind power by improving policy support for equipment manufacturers and investment and construction parties. We also recommend that the government exercise caution when considering whether or not subsidies should be cancelled. If cancellation is necessary, a subsidy phase-out mechanism should be implemented, such as one where the subsidy is decreased year by year. Doing so will prevent manufacturers and other partners from prioritizing scale over quality.

Recommendations

For the Chinese Government

- Ensure fair competition between foreign-funded enterprises and domestic enterprises and avoid local protectionism in energy bidding;
- Ensure that there is a steady supply of natural gas by establishing the coordinated upstream and downstream development of the gas and electricity industries;
- Centralized heavy-duty gas turbines should be developed alongside light-duty gas turbines in order to benefit from the complementary advantages of having both;
- Improve the policy of the energy industry to promote the development of alternative energy sources;

- Improve the integration of gas, wind, solar, hydrogen, and other energy sources in order to achieve comprehensive development of the energy industry;
- Promote the development of clean energy by encouraging firms to use hydrogen mixing and carbon capture technology;
- Improve policy support for those involved in offshore wind power, including equipment manufacturers, investors, and developers, and avoid arbitrarily canceling subsidies;
- Establish a subsidy phase-out mechanism and create financial subsidies for wind power on the local level;

For the Chinese and American Governments:

- Both China and America should create policy strengthening their capacity for cooperation and technical exchange in order to address climate change and promote clean energy development;
- Both governments should actively promote the prototyping, promotion, and adoption of clean and low-carbon technology among Chinese and American companies;
- Centralized heavy-duty gas turbines should be developed alongside light-duty gas turbines in order to benefit from the complementary advantages of having both;
- Strengthen cooperation between Chinese and American governments, think tanks, and businesses on energy transformation and alternative energy sources, and develop policies to promote energy transformation and clean energy development.

并通过完善电力市场和碳市场等多种机制政策，支持和促进相关技术应用，推动和支持天然气发电由“低碳”向“零碳”的过渡。

风 电

中国风力资源丰富，近年来也在大力倡导和开展陆上风电于海上风电的建设，但随着大规模的风电建设，风电的并网和消纳问题也日益凸显，还面临着诸多限制因素。例如，风电面临着国家补贴即将退出的巨大压力，根据 2019 年 5 月国家发改委发布的《关于完善风电上网电价政策的通知》，明确新核准海上风电项目全部通过竞争方式确定上网电价，若 2022 年以后海上风电全部机组完成并网的，执行并网年份的指导价。

商会鼓励中国政府健全政策扶持机制，给予海上风电包括设备制造商、投资建设方在内全链条的政策支持，取消补贴不要操之过急。建立阶段性补退破补贴机制，比如补贴逐年下降，同时调动地方财政补贴积极性，通过补贴实现海上风电产业链延伸和推动地方经济转型升级的良性循环，避免海上风电片面追求规模、忽视质量的“抢装潮”。

建 议

对中国政府：

- 在能源相关招投标中，保证外资企业和国内企业公平竞争，避免地方保护主义；
- 保障天然气供应，建立健全气电上下游产业协调发展机制；
- 持续完善天然气发电上网电价形成机制，支持气电发展；
- 加强气电与风电、光伏、氢能等多种能源的横向融合，实现气电产业协同发展；
- 在有条件的地区，建议支持率先开展燃气轮机掺氢示范或 CCUS 示范；
- 健全政策扶持机制，给予海上风电包括设备制造商、投资建设方在内全链条的政策支持，避免“一刀切”取消补贴；

- 建立阶段性补退破补贴机制，调动地方财政补贴积极性，通过补贴实现海上风电产业链延伸和推动地方经济转型升级的良性循环。

对中美两国政府：

- 建立和启动中美企业参与的相关机制，支持中美在应对气候变化、清洁能源发展等方面加强政策、技术交流和合作；
- 在电力系统、新能源等领域，在双方相关政府部门的支持下，建立沟通和合作机制，大力促进中美企业在清洁低碳技术的示范试点和推广应用；
- 建立务实的行动方案，促进中美维护全球能源安全，加强天然气和新能源领域合作，加强包括天然气发电、氢能在发电交通等领域的应用，以及碳捕获，同国际社会一道，维护全球产业链供应链安全稳定；
- 中美政府、智库和企业加强交流合作，在能源转型、电力系统和新能源等相关政策领域加强沟通交流，支持和发展促进能源转型和清洁能源发展的政策。

Environmental Protection

Introduction

Environmental issues are increasingly important for AmCham China member companies both in terms of business opportunities and compliance challenges. As we have detailed in previous *White Papers*, the regulatory landscape has shifted dramatically in recent years, with promulgation of the National Action Plans to combat air (2013), water (2015), and soil pollution (2016) and amendments to the *Environmental Protection Law*. This has fostered a trend towards increasingly stringent environmental standards and greater emphasis on 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. 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 2022 *Business Climate Survey* (BCS), where inconsistent regulatory interpretation and unclear laws and enforcement have been a leading business challenge for many years. At the same time, AmCham China believes that with respect to environmental protection there is strong interest in improving conditions and is committed to working together with the Chinese government.

The reduction of greenhouse gas emissions (GHG) and commitments to address climate change represent major issues of global commons and an area ripe for US-China cooperation within the context of the broader multilateral agenda to tackle climate change. Both China and the US have prioritized these issues within their domestic policy agendas. In September 2020 during a speech to the UN General Assembly, General Secretary Xi Jinping committed China to achieving peak carbon emissions before 2030 and becoming carbon neutral by 2060. On February 19, 2021, the US officially rejoined the Paris Agreement following an Executive Order signed by President Biden on his first day in office. As a Presidential candidate, President Biden also outlined plans for the US to become a clean energy economy and a net-zero emitter no later than 2050. As the two largest

economies and GHG emitters in the world, multilateral progress towards tackling climate change will depend to an extent on US-China cooperation. China has already committed to substantial purchases of US energy products under the Phase One Agreement. There are also large export opportunities for companies in China and the US with respect to clean energy technologies. Moreover, positive engagement on climate change issues could help build some bilateral goodwill and constitute a starting point for re-establishment of a healthy working relationship between the two countries. AmCham China supports US-China cooperation on this issue and urges both sides to involve the business community to leverage its technology, investment, and industry best practices in any future collaborative efforts.

Environmental Compliance and Enforcement

Stringent standards and regulations

China's renewed focus on environmental enforcement is evident in the increase of enforcement actions and administrative fines levied for environmental offenses, the implementation of laws, and the creation of new designed to enhance environmental protection. These include the revised *Water Pollution Prevention and Control Law* which was effective in January 2018 and strengthened government supervision and responsibility for water pollution prevention and resource protection, the creation of the Ministry of Ecology and Environment (MEE) as part of a broader government reorganization in 2018 which consolidated previously diffuse pollution enforcement and environmental protection power, and the September 2020 amendment to the *Solid Waste Environmental Pollution Prevention and Control Law* (Solid Waste Law) discussed below.

In 2018 total administrative fines for environmental offenses amounted to RMB 15.3 billion (US \$2.28 billion), five times the amount accrued in 2014 before enactment of the *Environmental Protection Law*.

AmCham China welcomes these developments and believes establishing clear standards for emissions and environmental protection is of central importance. There remain challenges, however, with respect to the existing regulatory framework. Several of the issues we raised last year remain

环境保护

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（以下简称商会）会员企业来说都是一个日益重要的领域。正如商会在过去几年的《美国企业在中国白皮书》（以下简称《白皮书》）环境章节中所述，随着《国家大气污染防治行动计划》（2013年）、《国家水污染防治行动计划》（2015年）和《国家土壤污染防治行动计划》（2016年）的颁布以及《环境保护法》的修订，近年来监管形势发生了巨大变化，环保标准日益严格、执法力度进一步加强。

商会热烈欢迎中国政府对环境保护和可持续发展议题的持续关注，许多商会会员企业有许多相同的目标和价值观。然而，与任何扩张性的政策实施一样，挑战也随之而来。对治理污染的重点关注给会员企业带来了各种挑战，如合规、执法不一致、供应链中断等问题。废物管理和处置等其他问题对许多会员来说仍然是长期要面临的挑战。在2022年商会《中国商务环境调查报告》（BCS）中，许多商会会员企业都对环保领域的相关问题表示关切。多年来，监管解释不一致、法律法规及执法不明确一直是会员企业面临的最大经营挑战。另一方面，商会认为，会员企业和中国政府都对改善环境状况有着浓厚的兴趣，愿意共同努力、携手合作。

减少温室气体排放和应对气候变化是全球共同关注的重大问题，也是中美在应对气候变化的更广泛的多边议程中开展合作的成熟领域。中国和美国都将这些问题列为其国内政策议程的优先事项。2020年9月，习近平总书记在联合国大会上发表演讲时承诺，中国将在2030年前实现碳达峰，并在2060年前实现碳中和。2021年2月19日，美国总统拜登上任第一天就签署行政命令，正式重新加入《巴黎协定》。早在作为总统候选人时期，拜登就勾勒出美国在2050年之前成为清洁能源经济体和净零排放国的计划。作为世界上最大

的两个经济体和温室气体排放国，应对气候变化的多边进展将在一定程度上取决于中美合作。中国已经承诺根据第一阶段协议大量购买美国能源产品。在清洁能源技术方面，中国和美国的公司也有大量的出口机会。此外，在气候变化问题上的积极接触有助于建立一些双边善意，也是两国重新建立健康工作关系的起点。商会支持中美在这一问题上的合作，并敦促双方让企业界参与进来，在未来的任何合作中利用其技术、投资和行业最佳实践。

环境合规与执法

严格的标准和法规

中国对环境执法的重新重视体现在对环境违法行为的执法行动和行政处罚的增加、法律的实施以及旨在加强环境保护的新制度的建立。这包括2018年1月生效的修订后的《水污染防治法》，加强了政府对水污染防治和资源保护的监管和责任。生态环境部的成立是2018年政府机构改革的一部分，其整合了以前分散的污染防治法和环境保护权力，即2020年9月对《固体废物污染环境防治法》（《固废法》）的修订案。

2018年环境违法行为行政处罚总额达153亿元人民币（22.8亿美元），是《环境保护法》颁布前2014年应计金额的5倍。

对于中国政府在立法层面取得的进展，商会备受鼓舞，并认为制定明确的排放和环境保护标准至关重要。然而，现行标准框架仍然面临挑战。商会去年提出的若干问题仍然突出，商会希望在此再次重点强调这些问题：

- **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

relevant and we wish to highlight them again here:

- *Crude enforcement of regulations.* Crude enforcement imposes 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 are ordered to 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 and unfair cost to the compliant businesses themselves.
- *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 major 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.* Many monitoring, testing, and sampling requirements to ensure compliance are in practice overly onerous and inefficient. For specific examples, see the section below on volatile organic compounds (VOC).
- *Inappropriate data collection methods for environmental compliance.* WeChat, the popular Chinese messaging, and social media app is sometimes used by environmental authorities to collect data and monitor environmental compliance. Our members have been asked on multiple occasions to submit enterprise specific information and data to meet environmental compliance regulations via WeChat groups, which conflicts with the government's obligation to maintain confidentiality and exposes their data to other companies, including competitors, in the WeChat group.

In response to these challenges, AmCham China recommends that the Chinese authorities:

- *Provide a schedule of planned regulations and their effective dates.* Promulgate a clear schedule and timetable that details at the national and provincial level when planned, forthcoming environmental protection regulations will go into effect, to enable companies, including foreign-invested enterprises (FIEs), an opportunity to comment on the regulations before they are adopted, and to allocate their assets efficiently and on a timely basis to comply with regulatory requirements.
- *Promulgate national standards.* Publish clear environmental standards and regulations online

in one location 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 enterprises, often to the detriment of AmCham China members' supply chain management and business operations.

- *Implement Industry Standard Best Practices and Reduce Onerous Administrative Activities.* We recommend that enterprise data be collected through official channels and end the use of WeChat to collect official data. WeChat is a useful channel for local environmental protection bureaus to disseminate regulatory information to enterprises. The collection official enterprise data, by contrast, should not be conducted through private channels like WeChat; enterprise data should instead be submitted via email or hard copy to protect confidential and sensitive information.
- *Institute Grace Periods.* Implementation of new environment policies should provide appropriate transition periods to maintain a stable regulatory environment. AmCham China urges the Chinese government to adopt longer, more consistent grace periods between implementation and enforcement of new environmental regulations. Similarly, we recommend that companies with a track record of meeting regulations be given at least a temporary credit (e.g., 3-6 months) during which time they will not be subject to operating shutdowns or other intrusive regulatory inspections. We further recommend that authorities prioritize on-site inspections of facilities that have failed to meet certain targets or standards while exempting those operations found to be in compliance with existing environmental protection standards.

More broadly, we recommend that the government clarify how the Corporate Social Credit System (SCS) will be used to enforce environmental compliance. Public reporting on the SCS has indicated that compliance with environmental regulations will form a key element of the SCS regulatory framework. Companies that violate environmental protection laws can be blacklisted by the Ministry of Ecology and Environment (MEE) and have their business operations severely curtailed. A clear implementation plan describing how the SCS will be integrated into existing compliance frameworks and where it will extend current enforcement mechanisms has yet to be promulgated. AmCham China encourages the government to provide opportunities for

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。

- **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。商会会员企业发现，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，地方环境保护官员在监督合规时，经常不熟悉最新的环境法规。
- **特定行业标准冗余或不合理。**许多确保合规的监控、测试和采样要求实际上过于繁重和低效。有关具体示例，请参阅下文关于挥发性有机化合物（VOC）的部分。
- **环境合规的数据收集方法不当。**微信是在中国广受欢迎的社交媒体应用程序。环保部门广泛使用微信来收集数据、监测环境合规性。商会会员企业多次被要求通过微信群提交企业特定信息和数据，来满足环境合规要求，这与政府的保密义务相冲突，且将会员企业的数据暴露给微信群中的其他企业（包括竞争对手）。

为应对这些挑战，商会建议：

- **发布拟议法规计划表及其生效日期的时间表。**国家和省级层面规划拟议法规时，要发布明确的计划表和时间表预计环保法规何时生效，便于外商投资企业、制造商和工业运营商可以分配资源来符合监管预期。
- **颁布国家标准。**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。商会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可能会造成国内和外资企业环境合规执行不平等，不利于会员企业的供应链管理和企业经营。
- **执行行业标准最佳实践，减少繁琐的行政工作。**通过官方渠道收集官方企业数据，停止使用微信收集官方数据。微信是地方环保局向企业传播监管信息的有效渠道。不应通过微信收集企业官方数据；企业数据应通过电子邮件或复印文本提交，保护机密和敏感信息。
- **设置宽限期。**实施新的环境政策应提供适当的过渡期，维持稳定的监管环境。商会促请中国政府在实

施和执行新的环境法规时设置更长、更一致的宽限期。同样，商会建议对合规表现良好的企业至少要给予临时宽限期（例如 3-6 个月），在此期间，企业不会被要求停止运营或受到其他侵入性监管检查。商会还建议政府优先对未达到某些目标或标准的设施进行现场检查，同时豁免符合现有环境保护标准的设施。

更广泛地说，商会建议政府澄清如何利用企业社会信用体系（SCS）来强制执行环境合规。有关“企业社会信用体系”的公众报告已提及，遵守环保法例将是“企业社会信用体系”规管架构的重要一环。违反环境保护法的企业将被生态环境部列入黑名单，其经营活动将受到严格限制。至于社会信用体系将如何纳入现行规管架构，以及将如何扩展现行的执行机制，则尚未公布清晰的推行计划。商会鼓励政府提供对话机会，以便更好地了解如何将环境合规纳入企业的“企业社会信用体系”，确保必要的合规，并能够利用这些监管要求带来的新商机。虽然社会信用体系在 2020 年没有太多进展，但政府也在 11 月讨论了社会信用体系实施的现状。商会希望这些问题将在随后的文件中得到解决，这些文件将详细说明社会信用体系的执行情况。

挥发性有机化合物标准

2018 年 7 月 3 日，国务院发布了 **打赢蓝天保卫战三年行动计划**（三年行动计划），以提高空气质量。该计划对石化、化工、工业涂料、包装、印刷等重点挥发性有机化合物排放行业实施了一系列挥发性有机化合物专项整治要求。

为实现挥发性有机化合物减排目标，国家市场监督管理总局和中国标准化管理委员会于 2020 年 3 月 3 日发布了四项强制性国家标准：

- 《工业防护涂料中有害物质限量》（GB 30981-2020）
- 《胶粘剂挥发性有机化合物限量》（GB 33372-2020）
- 《胶粘剂挥发性有机化合物限量》（GB 38507-2020），与
- 《清洗剂挥发性有机化合物含量限值》（GB 38508-2020）。

商会支持中国政府为实施三年行动计划所做的努力，并很高兴看到，政府监管机构就上述四项挥发性有

industry dialogue to better understand how environmental compliance will be factored into the corporate SCS to ensure compliance where necessary, and to be able to take advantage of new commercial opportunities created by these regulatory requirements. Although there was only limited movement on the SCS in 2020, the government met in November to discuss the current state of SCS implementation. We hope that these issues will be addressed in subsequent documents detailing the implementation of the SCS.

VOC Standards

On July 3, 2018, the State Council released the *Three-Year Action Plan to Win the Battle for a Blue Sky* (Three-Year Action Plan) to improve air quality. This Plan implemented a series of special VOC remediation requirements for the petrochemical, chemical, industrial coating, packaging, printing, and other key VOC-emitting industries.

To achieve its goal of reducing VOC emissions, the State Administration for Market Regulation (SAMR) and the Standardization Administration of China (SAC) issued four mandatory national standards on March 3, 2020:

- *Limiting the Use of Harmful Substances in Industrial Protective Coatings* (GB 30981-2020)
- *Limiting the Amount of Volatile Organic Compounds Content in Adhesives* (GB 33372-2020)
- *Limiting the Use of Volatile Organic Compounds in Printing Ink* (GB 38507-2020), and
- *Standard Limit for the use of Volatile Organic Compounds Content in Cleaning Agents* (GB 38508-2020).

AmCham China is supportive of the effort undertaken by the government to implement Three-Year Action Plan. We are pleased that government regulators have consulted with our member companies regarding implementation of the four VOC national standards listed above and have included standards experts in the consultations with our members.

Three of the four VOC standards took effect on December 1, 2020, while GB 38507-2020 entered effect on April 1, 2021. Based on evaluations undertaken internally by our members and preparations made for the implementation of these standards, there is a consensus that the implementation of these standards in the ICT and electronics industries requires more time to conduct testing and certification of new materials capable of compliance with these standards. More time is also needed to conduct testing of any final products designed using these materials. Therefore, we recommend that the implementation date regarding the four VOC standards in the ICT and electronics industries be postponed for at least six months. Furthermore, we recommend that the government offer exemptions for non-compliant inventory or stock made using previous materials that may need repair or refurbishment for the reasons discussed below.

It is incredibly complex to confirm the quality of low-VOC materials across all tiers of the ICT/electronics industry supply chain and to do so requires a significant transition period to ensure the quality and application of such materials. China is a major producer, consumer, and exporter of electronics and its electronics industry employs millions of workers. Disruptions to the electronics industry supply chains or materials could have negative ripple effects on the industry and its employees. Industry experience has revealed that the process to qualify and validate new materials used in the design or manufacture of electronics, such as a low-VOC alternative, can take one to two years. After a manufacturer introduces a new, low-VOC material in the supply chain, downstream participants must ensure that the low-VOC materials can meet strict performance, quality, and durability requirements.

These qualification challenges are particularly complex in legacy product designs that were originally designed with materials containing certain VOCs. Due to the highly complex nature of electronics and associated products, changes in one material or one component can have a ripple effect on the hundreds or thousands of other components within the product. When one considers that each component can have multiple suppliers, such changes can affect hundreds of suppliers. Even small changes, such as the introduction of a low-VOC material, need to be thoroughly tested and validated, a process that sometimes requires the product to be re-designed or re-engineered.

In the ICT and electronics industry ready-made, low-VOC replacements cannot be easily inserted into the manufacturing process. Performance requirements with respect to coatings or materials used in consumer electronics are very demanding and not easily replaceable. Additional resources are needed to develop, test, and certify low-VOC coatings to ensure they provide the necessary performance, quality, and durability. A range of factors must be considered, including functional and mechanical performance, durability, the time to manufacture, the equipment needed to process these coatings, and the ease of quality control.

“One-Size-Fits-All” Requirements for VOC Emissions

In addition to requesting a longer transition period with respect to compliance with VOC emissions standards, we encourage the government to avoid one-size fits all requirements and other onerous regulations with respect to VOC emissions. In the petrochemical and lubricant industries, relatively low temperatures are required to vaporize crude oil and the level of associated VOC emissions is also low, so low in fact that some AmCham China members have reported that their on-site monitoring systems report zero VOC emissions during the refining process. Despite this, regulators often require that members conduct an on-site Leakage Detection and Repair (LDAR) procedure on a

机化合物国家标准的实施与商会的会员企业进行了协商，且在与商会的会员企业协商时邀请了标准专家。

三项挥发性有机化合物标准于2020年12月1日生效，而GB 38507-2020则于2021年4月1日生效。根据行业进行的评估和为实施这些标准所做的准备工作，人们普遍认为，要在电子工业中有效地实施这些标准，还需要更多时间对符合这些标准的新材料进行测试和认证，并对使用这些材料设计的最终产品进行测试。因此，商会建议将电子电气行业四项挥发性有机化合物标准的实施日期推迟六个月。此外，商会建议政府对使用以前材料制造的不合规库存或库存提供豁免，这些材料可能需要修理或翻新，原因如下所述。

在信息技术/电子产业供应链的各个层次上确认低挥发性有机化合物材料的质量是极其复杂的，做到这一点需要一个关键的过渡期，以确保这些材料的质量和实际应用。中国是电子产品的主要生产国、消费国和出口国。电子产业雇佣了数百万的工人。电子行业供应链或材料供应的中断可能会对该行业及其雇员产生负面的连锁反应。行业经验表明，检测和验证电子产品设计或制造中使用的新材料（如低挥发性有机化合物替代品）是否合格大约需要一到两年时间。制造商在供应链中引入新的低挥发性有机化合物材料后，下游企业必须确保低挥发性有机化合物材料能够达到标准性能、质量和耐久性要求。

检测传统产品设计中最初使用某些含挥发性有机化合物材料是否合格尤其复杂。由于电子产品的高度复杂性，一种材料或一种组件的变化会影响产品中的数百或数千个其他组件。考虑到每个组件可能有多个供应商，这种变化可能会影响数百个供应商。即使是很小的改变，例如引入低挥发性有机化合物材料，也需要经过彻底的测试和验证，这一过程中有时需要对产品进行重新设计或重造。

在通信技术行业中，低挥发性有机化合物的替代品不能轻易地投入到制造过程中。消费类电子产品所用涂层或材料的性能要求非常高，不能轻易被替换。需要更多资源来开发、测试和认证低挥发性有机物涂料，确定其能提供必要的性能、质量和耐久性。需要考虑的因素有很多，包括功能性能、机械性能、耐久性、制造所需的时间、加工所需的设备以及质量控制措施。

挥发性有机物排放的“一刀切”要求

除了要求延长挥发性有机化合物排放标准的过渡期外，商会鼓励政府避免采用一刀切的要求或其他有关挥发性有机化合物排放的苛刻法规。在石油化工和润滑油行业，原油蒸发所需的温度较低，相关挥发性有机化合物排放水平也较低；商会的一些会员表示他们的现场监测系统报告挥发性有机化合物排放为零。尽管如此，监管机构通常要求会员每季度在现场进行一次泄漏检测和修复，并安装额外的处理设施。泄漏检测与修复通常用于控制设备泄漏污染物的排放。泄漏检测与修复的成本很高，而且不会为环境保护工作带来显著的额外效益。因此，商会建议监管机构与行业协商制定各个行业的挥发性有机化合物排放标准，并反映行业最佳实践。

废物管理

固体废物

几十年快速发展的城市化和工业化给中国的固体废物管理带来了压力。国家统计局数据显示，中国城市产生的生活垃圾从2001年的1.35亿吨增加到2018年的2.28亿吨。中国政府出台一系列计划应对城市固体废物带来的挑战。2019年初，中国政府公布了建设10个“无废”试点城市工作方案。该计划将持续到2021年，旨在最大限度地减少源头固体废物量的产生，同时最大限度地提高废物处理率和安全处置。

最近，《固体废物污染防治法》（简称《固废法》）第五次修订案于2020年9月1日起施行。《固废法》规定了防止和控制工业废物、生活垃圾、建筑垃圾、农业废物和危险废物造成的污染。第五次修订案新增了废物制造者的义务，将固体废物纳入污染物排放许可证计划，要求逐步禁止进口固体废物，禁止生产、销售和使用塑料袋，并加大对不当或非法处理废物的处罚力度。

商会发现，现有的监管框架与最近发布的修订案不同步。例如，修订案倡议“对固体废物再利用”，但尚未就如何实现这一目标建立明确的监管框架。这些不同步给企业遵守固体废物管理和处置条例带来了困难。此外，《国家危险废物名录（2021年版）》于2021年1月1日生效。该名录与政府的绿色发展重点一致，危险废物可以在名录规定的某些条件下回收利用。相关的实施

quarterly basis and install additional treatment facilities. The LDAR is a practice that is typically used to control emissions from leaks of pollutants in equipment. The LDAR practice is costly and does not yield significant additional benefits for environmental protection. Therefore, we instead recommend that regulators develop VOC emission standards that are customized by industry, developed in consultation with industry, and reflective of the best practices employed by industry.

Waste Management

Solid waste

Several decades of rapid urbanization and industrialization have put pressure on solid waste management in China. According to the NBS, the amount of municipal solid waste (MSW) produced by cities in China increased from 135 million tonnes in 2001 to 228 million tonnes in 2018. The Chinese government has issued a number of plans to address the challenges posed by MSW. In early 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 the generation of new solid waste, while maximizing waste treatment rates and safe disposal activities.

More recently, the fifth amendment to the Solid Waste Law entered into effect on September 1, 2020. The Solid Waste Law governs the prevention and control of pollution from industrial waste, household waste, construction waste, agricultural waste, and hazardous waste. The fifth amendment imposes new obligations on waste generators, incorporates solid waste into the pollutant emissions permit scheme, requires solid waste imports to be gradually banned, bans the production, sale, and use of plastic bags, and increases the penalties for improperly or illegally handling solid waste.

Our members have found that the existing regulatory framework is not aligned with the most recent amendment. For instance, the amendment calls for “the utilization of solid waste,” but no clear regulatory framework has been established on how that will be implemented. These inconsistencies among others create difficulties for enterprises to comply with solid waste management and disposal regulations. Moreover, the 2021 edition of the *National Hazardous Waste Catalogue* went into effect on January 1, 2021. Consistent with the government’s emphasis on green development, the Catalogue defines certain conditions under which hazardous waste can be recycled. The associated implementing regulations have yet to be promulgated, however, and our members are unsure of how to meet the conditions for recycling as defined in the Catalogue. We urge the government to issue clear and practical implementing regulations as soon as possible.

At present, only a handful of state-owned waste processing enterprises 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, foreign-invested manufacturing businesses in China now face an increasing number of 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 operating costs for businesses. The business operations of member companies have been disrupted and some have even been forced to suspend operations until they are able to dispose of hazardous waste within the regulated time period and quantitative storage limits.

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. AmCham China urges the government to extend, support, and increase municipal industrial waste collection capability and offers the following recommendations:

- Open hazardous waste disposal to a broader range of companies may help to increase waste disposal capacity. We support MEE’s plans to establish procedures to provide qualified facilities with the technology and capital to develop professional industrial waste management capacity and reduce the burden on existing industrial waste facilities.
- Release detailed implementing plans and allow current pilot programs to develop solid waste disposal best practices that can be implemented nationwide.
- Solid waste disposal is a public service with broad environmental and health benefits for society including a reduced intensity of greenhouse gas emissions from the buildup of waste. We recommend that the government encourage the development of the solid waste disposal industry by promoting solid waste disposal as an element of corporate social responsibility (CSR) and encouraging companies to use it to broaden their CSR portfolios.

2020 Waste Sorting Initiative

A March 2017 State Council directive now requires 46 directly administered municipalities and provincial capital cities to separate all solid waste into four categories: ordinary, recyclable, organic, and hazardous (as of 2020). This policy has started to be rolled out nationwide, though the extent of implementation varies by province. This policy may 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

条例尚未颁布，商会不确定如何达到名录中规定的回收条件。希望政府能够尽快出台具体的实施措施。

目前，仅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，而大多数企业的许可范围十分受限。由此造成的废物处理业人为垄断导致废物处理能力的不足。因此，由于缺乏合格的废物服务供应商、固体废物法规执行不一致以及缺乏明确的政策指导，在华外国制造企业现在面临着越来越多的挑战。这使企业面临合规方面的挑战和更高的企业运营成本。如果不能在规定的期限内处理有害废物，使有害废物保持在规定的数量限制内，会员企业的经营就会中断，甚至被迫停业。

除了现行环境检查过多外，许多企业还要接受定期和随机的废物处理检查，这大大增加了受影响严重地区废物处理的相关业务成本。商会促请政府加大支持以提高城市工业废物收集能力，并提出以下建议：

- 向更多企业开放危险废物处理资格，可能有助于提高废物处理能力。商会支持生态环境部制定为合格的机构提供技术和资本，开发专业工业废物管理能力，减轻现有工业废物机构负担步骤的计划。
- 发布详细的实施计划，并允许当前的试点项目制定可在全国范围内实施的固体废物处理最佳实践。
- 固体废物处理是一项对社会具有广泛的环境和健康效益的公共服务，包括减少废物堆积造成的温室气体排放强度。商会建议政府通过将固体废物处理纳入企业社会责任的一部分以及鼓励企业利用固体废物扩展其企业社会责任范畴来鼓励固体废物处理行业的发展。

2020 年垃圾分类计划

一项 2017 年 3 月发布的国务院令要求 46 个直辖市和省会城市将所有垃圾分为四类：普通、可回收、有机和有害（截至 2020 年）垃圾。此项政策已开始在全国推广，但执行程度因省而异。这项政策可能对许多产生废物较多的行业的运营造成重大影响，包括酒店和旅游业、零售、工业和商业办公园区以及住宅区。这些行业几乎没有符合这些规定的正式垃圾分类系统，这可能会使它们面临新的责任。

2020 年，受新冠肺炎疫情影响，垃圾分类计划并

未取得重要进展。在 2020 年下半年，商会见证了一些市政指导方针及有关违规处罚的具体细节的发布。但企业如何才能帮助促进这项计划的实施并从中受益尚不明确。在一些一线城市（如上海和北京）已经实施了多项推进垃圾分类的政策，如视频宣传讲解垃圾分类计划、安装新的分类垃圾投放桶和设置公共标牌说明如何分类垃圾。会员企业注意到 2020 年在提供运输垃圾用的集装箱和车辆方面取得了一些进展。然而，当前仍然缺乏建立有效的分类系统所需的必要基础设施和专业知识。所收集垃圾的分类、储存和运输所需的基础设施是一项庞大的工程。废物处理能力，特别是处理在市政和轻工业废物中占很大比例的有机废物的能力，目前尚不存在。没有处理能力，大部分已经分好类的垃圾最终还是将返回垃圾填埋场和焚化炉。

2021 年 5 月，国家发展改革委和住房城乡建设部发布《“十四五”城镇生活垃圾分类和处理设施发展规划》，指出了城镇生活垃圾分类和处理设施还存在处理能力不足、区域发展不平衡等问题，要求继续大力推进生活垃圾分类制度实施，提出到 2025 年底，全国城市生活垃圾资源化利用率和分类收运动力得到显著提高，焚烧处置能力和占比大幅提升。

原则上，垃圾分类计划应能改善环境保护水平和提高垃圾处理能力，同时为私营业创造广泛的商业机会。商会建议制定一个明确的路线图，向企业说明（包括外资和本土企业）如何参与该计划，让企业清楚地了解成本结构，便于会员企业制定业务计划。商会期待有机会与政府合作创建一个经济上可行，又能达到中央政府目标的垃圾分类和处理产业。

污染物排放

《排污许可证管理办法》自 2021 年 3 月 1 日起施行。第二十九条规定：排污自行监测数据与执法机关或者其下属监测机构收集的监测数据不一致的，后者应当作为行政执法的依据。在会员企业经历的一些案例中，当地生态环境部门授权的检测机构没有进行客观的检测。企业委托机构提供的数据与政府授权机构提供的数据始终存在差异。

商会建议建立一个选择池，在企业见证下从数据库中随机选择检测机构。地方生态环境部门所委托的检测机构很多时候不能做到完全客观，商会会员企业曾经遇

formal established systems for sorting waste consistent with these regulations, potentially exposing them to new liability.

There has not been significant progress in the past two years, in large part because of the circumstances created by COVID-19. In the final months of 2020, members witnessed the release of some municipal guidelines and specific details on penalties for non-compliance. There remains a lack of clarity as to how enterprises can both contribute to and benefit from this initiative. There have been several policies implemented in major municipalities (e.g., Shanghai and Beijing), including video campaigns explaining the initiative, the installation of new public waste disposal bins for separating waste, and public signage explaining how the waste is to be sorted. In 2021, members noted some progress in terms of the provision of containers and vehicles to transport materials once they have been sorted. And yet, the necessary infrastructure and expertise to build an effective sorting system at large appears to be lacking. The infrastructure needed for the sorting, storage, and transportation of collected materials is a massive undertaking. The waste processing capacity that will be required, particularly for organic waste, which is a significant proportion of the municipal and light industry waste stream, does not yet exist. Without the processing capacity, much of the waste that is initially sorted will ultimately return to landfills and incinerators.

In May 2021, the National Development and Reform Commission (NDRC) and the Ministry of Housing and Urban-Rural Development (MOHURD) issued the 14th Five-Year Plan for the Development of Urban Domestic Waste Classification and Treatment Facilities which pointed out the challenges of insufficient processing capacity and inadequate regional development, required to continue to vigorously promote the implementation of the waste sorting system. It is proposed that by the end of 2025, the national urban domestic waste recycling and utilization rate and classification collection capacity will be significantly improved, and the incineration disposal capacity and proportion will be greatly increased.

In principle, the *Waste Sorting Initiative* should improve environmental protection and waste disposal and create extensive business opportunities for private industry to implement these goals. AmCham China recommends establishment of a clear roadmap that explains how enterprises (both foreign- and domestically-invested) can take part in this initiative, and a clear understanding of the cost structure so that member companies can develop business plans. We look forward to opportunities to work with the government to build a waste sorting and processing industry that is both financially viable and meets the goals of the government's initiative.

Pollutant Discharge

The "Management Regulations of Pollutant Discharge

Permits" took effect from March 1, 2021.

As the article 29 points out, if the self-monitoring data of pollutant discharging is inconsistent with the monitoring data collected by authority or its subordinate monitoring institutions, the latter shall be used as the basis for administrative law enforcement.

In some cases that we had dealt with, testing institutions authorized by the local ecology and environment department did not conduct test objectively. Discrepancy is always existing between the data from institution entrusted by enterprise and that from government-authorized institutions. We recommend establishing a selection pool, randomly select testing institutions from the database under the enterprises' witness.

Plastic waste management

NDRC issued "Opinions on Further Strengthening Plastic Pollution Control", which includes the plan to ban and/or restrict the production and use of certain types of plastic products on January 18, 2020. The Plan identifies targets for the period 2020 through 2025 to strengthen plastic pollution controls, recycling and the reutilization of plastic waste, bans on certain single-use plastics, and potential alternative (circular) business models. In the second half of 2020, measures on single-use plastic products and local action plans were published and implemented by multiple localities including Shanghai, Chengdu, and Guangzhou. This followed a ban announced by Hainan in 2019 to eliminate plastic bags and tableware by the end of 2020. The State Council then launched the *Guiding Opinions on Green and Low-Carbon Circular Development* in February 2021, which established high-level targets for 2025 and 2035, and provides comprehensive guidance covering production, logistics, consumption, infrastructure, technology, and innovation, an enabling policy framework, and implementing requirements. On September 15, 2021, the NDRC and MEE released the "14th Five Year Plan Action Plan for Plastic Pollution Control" (short as "Action Plan"), which clarified the general principles: the establishment of comprehensive management system for plastic pollution control, the scientific and prudent promotion of alternative products, the improvement of plastic waste recycling and utilization level, and the reduction of landfill and environmental leakage. The Action Plan put forward the main tasks of implementing source reduction, promoting the standardized recycling and disposal of plastic waste, and carrying out plastic waste cleaning. In December 2021, the "14th FYP for Industrial Green Development" issued by the Ministry of Industry and Information Technology (MIIT) clearly encourages the development of "chemical recycling technology for plastic waste."

Plastics are an important element of our society and should never end up as litter in our environment. AmCham China applauds recent efforts to make policies unambiguous, science-based, material- and technology neutral, and

到过公司委托的多家检测机构均检测得到数据不超标，但生态环境部门委托的检测机构检测则超标。商会建议应该在企业在场情况下，在咨询公司数据库中盲抽选取检测机构。

塑料废物管理

国家发改委于2020年1月18日发布了《关于进一步加强塑料污染治理的意见》，其中包含了禁止和/或限制生产和使用某些类型的塑料制品的计划，该计划确定了2020年至2025年期间的目标，以加强塑料污染控制、塑料废弃物的回收和再利用、禁止某些一次性塑料制品以及潜在的替代（循环）商业模式。2020年下半年，包括上海、成都、广州等多地发布并实施了关于一次性塑料制品的措施和地方行动计划。此前，海南在2019年宣布了一项禁令，要求在2020年底前消除塑料袋和餐具。随后，国务院于2021年2月出台了《关于绿色低碳循环发展的指导意见》，确定了2025年和2035年的高水平目标，并提出了涵盖生产、物流、消费、基础设施、技术和创新的全面指导意见、扶持政策框架和实施要求。2021年9月15日，国家发改委和生态环境部发布了《“十四五”塑料污染治理行动方案》（以下简称《行动方案》），明确了完善塑料污染全链条治理体系、科学稳妥推广塑料替代产品、提升塑料废弃物回收利用水平、减少填埋和环境泄露的总原则，提出了推动源头减量、推进塑料废弃物规范回收利用和处置、开展塑料垃圾清理为核心的主要任务和部门分工。在2021年12月，工信部发布的《“十四五”工业绿色发展规划》中，明确鼓励“化学回收技术处置塑料废弃物”的发展。

塑料是人类社会重要的基础材料，不应被当作垃圾随意丢弃在环境中造成污染。商会认为，塑料垃圾政策应该是明确的、以科学为基础的、材料和技术中立的、资源和成本效率高的。在没有进行生命周期和社会经济影响分析的情况下，不应任意发布任意区别塑料与其他材料的禁令或限制。商会充分肯定和支持《行动方案》要求对包括塑料垃圾在内的所有废弃物建立健全的管理体系，以确保塑料垃圾能够得到妥善收集和处置。商会认可从经济、资源效率和生命周期的角度，制定最有利的政策和技术。商会支持提高塑料回收率的努力，以及将塑料废弃物转化为可再利用资源的创新和解决方案。商会认识到，先进的回收利用可以有效地将塑料废弃物转化为用于生产原生优质塑料和其他有价值产品的原材料，而质量平衡的采购方法可以帮助证明这些产品的循

环性。商会赞赏将先进的化学回收技术作为机械回收在塑料废物解决方案中的必要补充，同时建议在原料供应和产品应用等方面出台具体政策和法规，鼓励该技术发展。

废物进口禁令

中国于2017年首次发布，2018年1月生效的对24种固体废物的进口禁令，导致了全球回收链的永久性重组。几大航运公司（赫伯罗特，地中海航运公司）将不再接将废纸和塑料运往中国港口的项目。2020年6月，中国对多个处理进口次级商品的机构进行了检查。

值得肯定的是，许多牌号的回收黄铜、铜和铝已被重新分类为“可回收原材料”，而不是“固体废物”。根据2020年11月颁布的新分类，这些产品现在是允许进口的。此外，中国国家标准化管理委员会于2020年11月批准了13个黑色金属牌号和2个不锈钢牌号的进口标准。同时，塑料、纸张和其他非金属材料也将在美国和中国本土进行收集和加工。美国环境保护署首次制定了一项全国性的回收策略。

商会希望，垃圾分类计划带来的商业机会可以抵消禁令的部分影响。商会仍将促请中国政府与行业进行对话，让企业了解他们该如何支持这个计划。这一点尤为重要，因为许多中国企业（主要是塑料加工商）已经能够在美国开展可行的加工业务。加大支持外国企业参与国内回收市场的力度必将大受欢迎、互利互惠。建立一个鼓励中国生活垃圾处理行业和美国行业分享最佳实践的平台对双方都有利，因为这将推动国家回收和垃圾分类标准的制定，淘汰过去以贸易为基础的体系。

生产者责任延伸制度

2016年12月，国务院公布了生产者责任延伸制度计划（EPR计划）。该制度要求生产者必须将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、流通消费、回收利用和废物处置。《固废法》第五修订案增加了三个关于产品管理的部分：生产者责任延伸制度、产品和包装回收以及塑料禁令。修订案第66条规定了建立电子产品、铅电池和车辆动力电池的生产者责任延伸制度计划。根据这些规定，这些货物的生产者必须自行或通过聘请第三方建立一个回收废旧产品的制度。生产者还必须向公众提供有关回收系统的信息。

resource- and cost-efficient. AmCham China further recommends that no arbitrary bans or limitations discriminating plastic versus other materials should be issued without conducting lifecycle and socioeconomic impact analyses. We fully recognize and support the requirements in the Action Plan on the construction of a sound management system for all waste, including plastic waste, to ensure that plastic waste can be properly collected and treated. We advocate for the development of policies and technologies that are most favorable from economic, resource-efficiency, and lifecycle perspectives. We support efforts to increase plastic recycling rates, as well as innovations and solutions that convert plastic waste into reusable resources. We recognize that advanced recycling can effectively transform plastic waste into the raw materials used for virgin-quality plastic and other valuable products, and that mass balance sourcing methods can help certify the circularity of these products. We appreciate that advanced recycling techniques and technologies have been considered as a necessary complement to mechanical recycling in plastic waste solutions, and recommend the introduction of specific policies and regulations on feedstock and product application.

Ban on Recycled Imports

China's ban on 24 types of imported solid waste, announced in 2017 and first implemented on January 1, 2018, has led to a permanent restructuring of global recycling supply chains. Several major shipping lines (Hapag-Lloyd, MSC) will no longer accept scrap paper and plastics for shipment to Chinese ports. In June 2020, the Chinese government carried out inspections of several facilities dealing with imported secondary commodities.

On a positive note, many grades of recyclable brass, copper, and aluminum, have been reclassified as 'recycled raw materials' instead of 'solid waste,' and are now permitted to be imported under this new classification enacted in November 2020. In addition, the standards for 13 grades of ferrous metals and two stainless steel grades were approved by the SAC in November 2020 for import. At the same time, plastics, paper, and other non-metallic grades will now be collected and processed locally, both in the US and China. The US Environmental Protection Agency (EPA) is for the first time developing a national recycling strategy.

AmCham China hopes that business opportunities stemming from the *Waste Sorting Initiative* may offset some of the adverse impacts of the ban. We continue to urge the Chinese government to engage in dialogue with industry to understand how they can support this initiative. This is particularly salient as many Chinese companies, primarily plastics processors, have been able to establish viable processing operations in the US. Greater support for foreign business participation in the domestic recycling market would be welcomed and reciprocated. The establishment of a platform to encourage the sharing of best practices between China's

domestic waste management industry and US industry counterparts would be valuable to both sides, as they move forward with development of national recycling and waste sorting standards and move away from the trade-based system of the past.

Extended Producer Responsibility

The *Extended Producer Responsibility Plan* (EPR Plan) was announced by the State Council in December 2016. 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. The fifth amendment to the Solid Waste Law added three sections on product stewardship: EPR, product and packaging recycling, and a plastics ban. Article 66 of the amendment provides for the establishment of EPR programs for electronic products, lead batteries, and vehicle batteries. Under these provisions, producers of these goods are required to establish a system for recycling used/end-of-life products either on their own or by engaging a third-party. Producers are also required to provide information to the public about this recycling system.

Based on the 2016 EPR Plan, the policy framework for EPR was expected to be formulated by 2020, and laws and regulations promulgated by 2025. To date, few implementing details have been released publicly beyond initial reduction and recycling targets. AmCham China urges the government to provide details on the proposed EPR framework as soon as possible. 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. EPR is a viable, transparent system to provide funding for waste management infrastructure. We support an EPR system that meets the following criteria:

- Clearly specifies which parties are responsible for the costs involved in solid waste treatment,
- Allocates appropriate funding for the construction of solid waste collection networks, processing units, management, and maintenance of waste management infrastructure. The fees associated with waste processing need to be sufficient to cover the full costs of the program. Recycling targets should be set using the best available science while taking local circumstances into consideration,
- Enables industry to innovate flexibly and find the most efficient way to comply with legal obligations while adhering to harmonized reporting requirements and industry standards.
- Ensures accountability and equal enforcement across all products to discourage free riders.

根据 2016 年的规划，预计到 2020 年形成生产者责任延伸制度政策框架，2025 年颁布相关法律法规。迄今为止，除了最初的减排和回收目标外，几乎没有公开发布任何实施细节。商会促请政府尽快提供拟议生产者责任延伸制框架的细节。一套统一、全面、监管所有制成品的生产者责任延伸制监管体系，可以创造新的投资机会，并为生产者合规创造一个公平的竞争环境。在为废物管理基础设施提供资金方面，生产者责任延伸制是可行的、透明的。商会认为生产者责任延伸制度应符合以下标准：

- 明确规定处理固体废物的费用应该由哪一方承担。
- 为固体废物收集网络和处理装置的建造、废物管理基础设施的管理和维护分配适当的资金。废物处理相关的费用应足以覆盖该计划的全部费用。制定回收目标时应充分利用现有的科学知识，同时考虑当地情况。
- 让行业能够灵活创新，找到能在遵守统一的报告要求和行业标准的同时又能遵守法律义务的最有效的方式。
- 确保所有产品都有责任人且平等执法，打击无责任人的产品。

碳排放交易计划与脱碳

2013 年，中国首次在北京、广东、上海、深圳以及天津启动了碳排放交易计划（ETS）试点项目。2014 年在湖北和重庆开展试点，2016 年在福建开展试点。2017 年 12 月，中国发布了《全国碳排放权交易市场建设方案（发电行业）》。这标志着碳排放交易体系的启动，该体系最初仅覆盖燃煤发电，最终将扩大到七个其它行业：石油化工、化工、建材、钢铁、有色金属、造纸和航空。

2018 年年中，碳排放交易计划的责任从发改委移交给了生态环境部。在 2020 年和 2021 年初，生态环境部发布了几项新的碳排放交易计划法规：

- 《全国碳排放权登记交易结算管理办法（试行）》草案于 2020 年 11 月公开征求意见。这些草案首次详细阐明了国家碳排放登记、交易和结算的主管部门和监管框架。
- 《2019-2020 年全国碳排放权交易配额总量设定与分配实施方案（发电行业）》于 2020 年 11 月发布，公开征求意见。拟议的碳排放交易计划确定了每年 2.6 万吨二氧化碳当量（CO₂e）排放的临界值，超过该临界值的

企业将被纳入新的全国碳排放交易计划。在初始阶段，中国全国的碳市场可能总共有 2267 个发电厂。

- 2021 年 2 月 1 日，生态环境部发布的《碳排放权交易管理办法》生效。这些规定于 11 月以草案形式发布，于 2020 年 12 月获得批准。这些措施是对发改委 2014 年发布的部门规章的更新。
- 在 1 月和 2 月，包括上海、江苏、广东和海南在内的多个地方政府承诺，将在国家确定的时间表之前达到碳排放峰值，并将实现碳中和的行动计划纳入其 2021 年政府工作报告。

商会促请政府广泛参与行业协会和其他渠道，确保在碳排放交易计划法律法规起草过程中与行业进行包容性协商，并确保外资企业有机会平等参与和分享国际最佳实践。确保为企业提供适当的过渡期来实施碳排放交易计划，且碳排放信用评级应基于行业基准，而不是当前的排放水平，否则排放量最高的企业将会获得更高的信用分。这种做法阻碍了企业在短期内进行技术升级以减少排放，对已经采用先进环境技术的外商投资企业不利。

减碳与资源效率

商会赞赏中国政府对于脱碳的承诺。商会愿通过分享会员企业的最佳实践，参与节能减排工作。在衡量行业或企业层面的排放量时，政府可以考虑“资源效率”。与传统的注重能源效率相比，资源效率强调生产过程中的节能，同时减少材料投入。商会会员企业最近就一家钢铁厂的资源效率问题进行了研究分析，主要参考的是其 2014 年至 2018 年的数据。研究发现，资源效率的提高大约有 60% 来自节能，而 40% 来自生产过程中所用材料的减少。转向注重资源效率将需要明确、可衡量的减排指标。这种方法可以在减少碳排放、资源利用和可持续的低碳发展方面带来巨大的潜在效益，特别是在加工行业等高耗能行业。

建议

对中国政府：

- 商会敦促中国政府制定明确的环保合规国家指导方针，并在网上公示，供企业和监管机构查阅。商会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

Emissions Trading Scheme and Decarbonization

In 2013, China launched its first Emissions Trading Scheme (ETS) pilot programs in Beijing, Guangdong, Shanghai, Shenzhen, and Tianjin. In 2014 pilots were launched in Hubei and Chongqing, and in 2016 in Fujian. In December 2017, China published the *Work Plan for Construction of the National Emissions Trading System (Power Sector)*. This marked the launch of a national ETS system, which will initially cover coal-fired power and will eventually be expanded to cover seven other sectors: petrochemicals, chemicals, building materials, iron and steel, non-ferrous metals, paper, and aviation.

In mid-2018, responsibility for the ETS was transferred from the National Development and Reform Commission (NDRC) to the MEE. In 2020 and early 2021 several new ETS regulations were issued by the MEE:

- The Draft *Measures for the Administration of National Carbon Emissions Registration, Trading and Settlement (Trial)* was made available for comment in November 2020. The draft Measures clarify in detail the responsible authorities for national carbon emissions registration, trading, and settlement.
- The 2019-2020 *National Carbon Emission Trading Cap Determination and Allowance Allocation Scheme (Power Generation Industry)* was released for comment in November 2020. The proposed ETS plan establishes a cut-off threshold of 26,000 tonnes per year of carbon dioxide equivalent (CO₂e) emissions, above which entities would be included in the new nationwide ETS. In its initial phase, China's nationwide carbon market could cover a total of 2,267 power plants.
- On February 1, 2021, the *Administrative Measures for Carbon Emissions Trading* issued by MEE entered into effect. These rules were released in draft form in November and approved in December 2020. These Measures represent an update on departmental regulations issued by NDRC in 2014.
- In January and February 2021 several local governments including Shanghai, Jiangsu, Guangdong, and Hainan pledged to reach peak carbon emissions ahead of the national timeline and included targets to achieve carbon neutrality in their 2021 government work reports.

AmCham China urges the government to broadly engage trade associations and other channels to ensure inclusive consultation with industry during the drafting of ETS laws and regulations, and to ensure that FIEs have the opportunity to participate equally and share international best practices. AmCham China urges that an appropriate transition period be provided 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-invested companies that already employ advanced environmental technology.

Decarbonization and Resource Efficiency

We praise the Chinese government's commitment to decarbonization. The AmCham China community is willing to share our experience and support energy conservation and emission reduction efforts. As part of this effort, the government could consider "resource efficiency" when measuring emissions at the industry or enterprise level. Resource efficiency places an emphasis on both energy saving and material reducing inputs in the production process, as compared with a traditional focus on energy efficiency. A recent case study on resource efficiency at a steel plant conducted by AmCham China member looked at data from 2014 to 2018. It found that an estimated 60 percent of the improvement in resource efficiency was derived from energy conservation while 40 percent was derived from a reduction in the materials used during the production process. A shift to a focus on resource efficiency would require development of clear, measurable indicators for emissions reduction. Such an approach could bring significant benefits with respect to reducing carbon emissions, resource utilization, and sustainable, low-carbon development, particularly in energy-intensive industries like process manufacturing industries.

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 shut-downs. We also encourage all provincial and local environmental authorities to publish regulatory requirements and make regulatory material easily available to relevant companies.
- Release detailed implementing plans and allow current pilot programs to develop recycling and solid waste disposal best practices that can be implemented nationwide. Open recycling and solid waste processing and disposal to a broader range of qualified companies (both foreign and domestic) to increase capacity.
- Delay implementation of the recently issued national standards on VOCs to give industry sufficient time to test, certify, and integrate low-VOC materials

至少提前 60 天发出通知。商会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。

- 发布详细的实施计划，并允许当前的试点项目制定可在全国范围内实施的固体废物回收和处置最佳实践。向更广泛的合格公司（包括国外和国内）开放回收和固体废物处理和处置，提高废物处理能力。
- 延迟执行最近发布的挥发性有机化合物国家标准，给行业足够的时间来测试、认证低挥发性有机化合物材料，并将其整合到供应链和生产过程中。此外，避免对挥发性有机化合物采用“一刀切”的要求，应与各个行业共同制定适用于该行业的法规。
- 确保为企业提供适当的过渡期来实施碳排放交易计划，且碳排放信用评分应基于行业基准，而不是当前的排放水平，否则排放量最高的企业将会获得更高的信用分。
- 与商会会员合作，在行业或企业层面衡量排放量时，考虑采用“资源效率”的概念。在减少碳排放、资源利用和可持续低碳发展方面，特别是在加工行业等能源密集型行业，资源效率可带来巨大的潜在效益。

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。

对两国政府而言：

- 建立全球领域的合作模式，特别是在气候变化方面。应对气候变化的全球议程在一定程度上需要中美合作。在这一议程上的合作可以采取协调行动的形式，以根据每个国家规定的时间框架实现碳中和，和 / 或在其他国际多边论坛上就此问题进行合作。通过利用商界的最佳实践、推动绿色私营部门的发展，扩大商界的参与度。

into their supply chains and production processes. Additionally, avoid the implementation of “one-size fits all” requirements on VOCs and instead work with industry to develop customized regulations.

- Ensure an appropriate transition period for companies to comply with implementation of the ETS and ensure that ETS credits are issued based on industry benchmarks rather than current emissions rates, to prevent the highest emitters from receiving more credits.
- Consider adopting the concept of “resource efficiency” when measuring emissions at the industry or enterprise level and work with AmCham China members to develop measurable targets. Resource efficiency could yield significant potential benefits with respect to reducing carbon emissions, resource utilization, and sustainable, low-carbon development, particularly in energy-intensive industries.

For the US Government

- Share environmental protection best practices and technologies where relevant with your Chinese counterparts. Encourage the adoption of international, scientifically grounded emissions standards.

For Both Governments

- Establish patterns of cooperation in matters of the global commons, particularly with respect to climate change. The global agenda to tackle climate change is dependent upon US-China cooperation. Cooperation on this agenda could take the form of coordinated action to achieve carbon neutrality, and cooperation on this issue in other international multilateral forums. AmCham China members have technology and best practices which they can make available to address problems of the global commons.

Express Delivery

Introduction

China's express delivery industry maintained steady growth in 2021. According to preliminary statistical data released by the State Post Bureau of the People's Republic of China, the express delivery sector is expected to record business revenue and business volume of RMB 1.04 trillion and 108.5 billion parcels respectively for 2021, representing a year-on-year growth of 18 percent and 30 percent respectively. The sector is expected to create more than 200,000 new jobs and support creating online retail sales of nearly 11 trillion yuan. The business revenue for 2022 is expected to reach 1.16 trillion yuan, an increase of about 12 percent year-on-year (YoY); and business volume is expected to reach 122.5 billion parcels, an increase of about 13 percent YoY.

In 2021, a number of laws and regulations on cybersecurity, data security and personal information protection were promulgated and implemented, which further improved the legal and regulatory system in this field and set more stringent compliance requirements for participants in economic activities in various industries. The express delivery industry now faces more challenges in terms of cross-border data transmission, localized data storage, and cybersecurity review. International express delivery businesses are critical to global trade. AmCham China urges relevant authorities to take full account of the characteristics of the industry when making any decisions affecting data management and assessment systems and potentially impacting day-to-day operations.

The express delivery sector fully supports efforts made by governmental departments, including the competent authorities of the industry, regarding the greening of express packaging, but hopes that relevant authorities could consider the characteristics of cross-border transportation in the policy development process and avoid adopting "one-size-fits-all" requirements for international and domestic express deliveries. Relevant governmental departments are also expected to help industry players in promoting and communicating packaging requirements among users.

AmCham members understand the original intention of the competent authorities of the industry to regulate industry access management. However, in the license application, there are some differences in specific compliance require-

ments in different regions. AmCham requests that national administrations for the industry clarify the specific requirements and standards for the approval and management of international express business licenses. In terms of permitted geographical scope and the management of agency model, AmCham members hope competent authorities can consider the operation models of international express businesses.

AmCham China expects relevant regulators to fully consider the opinions of different industry players (including foreign-funded enterprises), consider the characteristics of the industry, and improve the predictability and transparency of policies during the process of policy development and supervision. Express delivery enterprises look forward to better coordinating with the competent authorities of the industry and promoting the sustainable and healthy development of the industry through communications with regulators.

Existing regulatory issues

Cybersecurity, data security and personal information protection

Cross-border data transmission

The *Cybersecurity Law of the People's Republic of China*, which came into effect June 1, 2017, requires the Chinese government to conduct security assessments on cases where operators of critical information infrastructures must provide personal information data to related parties overseas. Various supporting policies for this requirement have been implemented one after another, including the *Measures on Security Assessment of Cross-Border Transfer of Personal Information and Important Data*, which was consulted twice in 2017 and 2019. The Cyberspace Administration of China issued the *Measures on Security Assessment of Cross-Board Transfer of Data (Draft for Comments)* in October 2021. According to the *Draft*, the express delivery industry is likely to be included in the scope of data security assessment.

The *Personal Information Protection Law*, which came into force on November 1, 2021, continued adopting the security assessment requirements for data leaving the country prescribed in the *Measures on Security Assessment*

快递服务

引言

2021年中国快递行业保持稳步增长，根据国家邮政局公布的初步统计数据，预计2021年全年快递业务收入和业务量分别达到1.04万亿元和1085亿件，同比分别增长18%和30%。新增社会就业20万人以上，支撑网络零售额接近11万亿元。2022年，预计快递业务收入将达到1.16万亿元，同比增长12%；快递业务量达到1225亿件，同比增长13%。

2021年，多项涉及网络安全、数据安全、个人信息保护的法律法规颁布实施，这一领域的法律法规体系得以进一步完善，向全社会不同行业的经济活动参与者提出了更为严格的合规要求。快递行业在数据跨境传输、数据本地化存储、网络安全审查等方面将面临更多的挑战。国际快递业务对于全球贸易至关重要，中国美国商会（以下简称商会）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。

快递行业完全支持包括行业主管部门在内的政府部门在绿色快递包装上的努力，但希望相关部门在政策制定过程中能够充分考虑到国际快递跨境运输的特点，避免对国际快递与国内快递采取一刀切式要求，同时期待相关政府部门能够就快递包装要求帮助企业向用户做好宣传及沟通工作。

商会理解行业主管部门希望规范行业准入管理的初衷，但在许可申请过程中，不同地区在具体达标要求上存在一定的差异。商会期待在国家层面明确国际快递经营许可审批与管理的具体要求与标准。在许可的地域范围及代理模式管理方面，希望主管部门能够考虑国际快递运营模式的特点。

商会期待相关监管部门在政策的制定和具体的监管中，能够充分听取包括外资企业在内的不同市场主体的

行业意见，兼顾快递行业特点，提高政策的可预见性和透明度。快递企业期待借助同监管部门的沟通，更好地配合行业主管部门的工作，推动行业持续健康发展。

现存监管问题

网络安全、数据安全及个人信息保护

数据跨境传输

《网络安全法》自2017年6月1日起施行，要求向海外相关方提供个人信息数据的关键信息基础设施运营者通过安全评估。与此要求相关的各项配套政策陆续落地，其中《个人信息和重要数据出境安全评估办法》于2017年、2019年两次征求意见。根据国家网信办于2021年10月发布的《数据出境安全评估办法（征求意见稿）》内容，快递行业被列入数据出境安全评估范围的可能性较大。

2021年11月1日起施行的《个人信息保护法》延续了此前《个人信息和重要数据出境安全评估办法（征求意见稿）》的数据出境安全评估要求，非关键信息基础设施运营者在向境外提供个人信息时需通过国家网信部门组织的安全评估。将数据出境安全评估的适用范围扩大到整个商业领域将严重干扰国际快递业的正常经营活动。

2021年11月14日，国家网信办发布《网络数据安全条例（征求意见稿）》，该条例基于《网络安全法》、《数据安全法》及《个人信息保护法》的相关条款制定了更为繁杂的监管要求。其中，数据跨境安全管理以独立章节形式出现，并细化了具体规定。此版《征求意见稿》的执行将使国际快递行业面临更多数据合规挑战。

从国际快递服务的客观属性来看，不可避免地需要

of *Cross-Border Transfer of Personal Information and Important Data (Draft for Public Comments)*, requiring non-critical information infrastructure operators to pass a security assessment organized by the cyberspace administrations of China when providing personal information to foreign countries. Expanding the application scope of the security assessment to the whole commerce field may cause serious interference to normal business activities in the international express industry.

On November 14, 2021, the Cyberspace Administration of China issued the *Regulations on the Administration of Network Data Security (Draft for Comments)*, which set out more onerous regulatory requirements based on relevant provisions in the *Cybersecurity Law of the People's Republic of China*, the *Data Security Law of the People's Republic of China*, and the *Personal Information Protection Law of the People's Republic of China*, with specific provisions on the security management of cross-border data transfer detailed as a separate chapter. The *Draft*, if implemented finally, will create more data compliance challenges for the industry.

Due to the objective attributes of international courier services, personal information directly related to these services, such as the sender's/recipient's name, phone number, address, and items in the parcel inevitably needs to be provided to parties outside China for cross-border trade and transport, otherwise it is impossible to complete international express transport and distribution services. In accordance with the current requirements by Chinese regulators, courier companies are currently required to transmit data to the General Administration of Customs of the People's Republic of China and the Ministry of State Security on a daily basis. Clear guidance is needed to clarify how to implement security assessments and how to identify implementation entities, and to define the responsibilities for the management of cross-border data transfer proposed in the *Cybersecurity Law of the People's Republic of China*. If relevant assessments affect the speed of customs clearance of express enterprises, they will certainly have a significant negative impact on the whole industry.

According to existing policies and drafts, it would take a long preparation period and waiting period for express delivery companies to obtain data assessment results. Therefore, such industries with constantly updated data as international express may even need to apply frequently for assessments. The international express delivery community suggests that regulators should fully consider the actual situation of the industry and balance the regulatory requirements for cyberspace security and the objective needs of the industry for clearance efficiency when developing and improving security assessment and implementation regulations for cross-border data transmission. We propose simplifying the requirements or the process of security assessment on cross-border transfer of such personal information, shorten the approval time, and allow companies without poor security assessment record to continue their data transfer activities

across borders during the security assessment period.

Data localization

The two topics, data localization and cross-border transmission of data, are closely related to each other but have their own focus. Data localization requires that the storage and processing of data must take place at data centers and servers within the source country. Article 37 of the *Cybersecurity Law of the People's Republic of China* states that "personal information and important data collected and generated by operators of critical information infrastructures in their business operations in the People's Republic of China shall be stored within the territory." Together with related provisions on cross-border transmission mentioned in the previous section, the statement can be interpreted as a rule by regulators based on the *Cybersecurity Law of the People's Republic of China* that requires data to be stored locally and evaluated when transferred to other countries.

The *Data Security Law of the People's Republic of China*, which came into effect on September 1, 2021, establishes the basic system for data classification and grading management, security risk assessment, monitoring and early warning, emergency response and data security review, and clarifies the data security protection obligations of concerning subjects. In terms of data localization, the *Data Security Law of the People's Republic of China* continues adopting the basic framework established by the *Cybersecurity Law of the People's Republic of China*.

Based on Article 37 of the *Cybersecurity Law of the People's Republic of China*, the *Personal Information Protection Law* adds the subject of "personal information processor whose volume of personal information processed has reached the level stipulated by national cyberspace administrators", which expands the coverage of subjects to which the personal information storage principle applies. For the volume mentioned here, the only available reference is the "*Measures on Security Assessment of Cross-Board Transfer of Data (Draft for Comments)*" issued in October 2021. However, whether the standard under the *Personal Information Protection Law* is consistent with such a volume level is subject to further detailed provisions introduced by cyberspace administrators.

The *Regulations on Critical Information Infrastructure Security Protection* stipulates that the competent authorities and supervisory and administrative departments of key industries and fields shall be responsible for identifying critical information infrastructures in such industries and fields. The scope of critical information infrastructure operators in the international express industry has not been defined. An international courier company, even if it is not considered a critical information infrastructure operator, must still fulfill its data localization obligations if the amount of personal information it handles reaches the level specified by cybersecurity administrators. Therefore, international express companies involved in intensive personal data transfers,

向境外提供递送涉及的例如寄件人和收件人的姓名、电话号码、地址、包裹内物品等个人信息。在国家监管机构的现行要求下，国际快递企业需每天向海关总署、国家安全部传送数据。商会认为，对于《网络安全法》提出的数据跨境传输管理规定，相关部门需向行业提供清晰的指导意见，明确评估细节，确定评估实施主体，明确评估责任，避免因安全评估降低了企业通关速度，对行业发展造成负面影响。

根据现行政策和征求意见稿内容，面对当前的数据安全评估体系，国际快递企业需要花费较长时间准备评估和等待结果。此外，数据更新快的特性也使国际快递企业需要频繁接受评估。商会建议监管机构在制定和完善数据跨境传输的安全评估规定时充分考虑行业实际，平衡网络安全监管要求和快递行业对于通关效率的客观需要。简化个人信息跨境传输安全评估的要求和流程，缩短审批时间，并允许没有不良评估记录的企业在安全评估期内向境外传输数据。

数据本地化

数据本地化与数据跨境传输紧密关联、各有侧重。狭义的数据本地化要求数据的储存和处理必须在数据来源国境内的数据中心和服务器上进行。《网络安全法》第37条规定：“关键信息基础设施的运营者在中华人民共和国境内收集的个人信息和重要数据应当在境内存储。”结合前一章节提及的跨境传输相关规定，可以理解为监管机构依托《网络安全法》对数据制定了“本地存储，出境评估”的制度。

《数据安全法》自2021年9月1日起施行，确立了数据分类分级管理、安全风险评估、监测预警、应急处置、数据安全审查等基本制度，明确了相关主体的数据安全保护义务等。在数据本地化上，《数据安全法》延续了《网络安全法》确定的基本框架。

《个人信息保护法》在《网络安全法》第37条规定的基础上，增加了“处理个人信息达到国家网信部门规定数量的个人信息处理者”这一主体，使得个人信息境内储存原则适用的主体范围扩大。对于此处提及的相应数量标准，唯一可供参考的是2021年10月发布的《数据出境安全评估办法（征求意见稿）》，但就《个人信息保护法》下的数量标准是否与此一致，有待网信部门出台细化规定。

《关键信息基础设施安全保护条例》中规定，重要行业、领域的主管部门和监督管理部门负责认定该行业、领域的关键信息基础设施。目前国际快递行业中关键信息基础设施运营者的范围仍未确定。而即使不构成关键信息基础设施运营者，国际快递企业处理的个人信息若达到网信部门所规定的数量，仍然需要履行数据本地化的义务。因此，对于涉及密集个人数据的国际快递而言，无论是否会被归类为关键信息基础设施运营者，都有可能被要求履行数据本地存储义务。

如前所述，为了实现国际间快递的运输配送，需要向境外提供国际快递相关的个人信息。对于国际快递服务来说，国内数据的境外使用是普遍现象，而非个例。商会建议有关部门认识到数据本地化制度将对合理的数据使用造成阻碍。应进一步区分数据的不同使用场景，对常态化境外数据使用加以区分，保证国际快递服务涉及数据的合理境外使用。

网络安全审查

《网络安全法》规定对关键信息基础设施运营者实施严格的监管，被列为关键信息基础设施运营者意味着对某些网络产品和服务的采购和使用将面临繁重的限制，例如前文提及的对跨境数据传输进行安全审查、严格的数据本地化要求等。但关键信息基础设施运营者的衡量标准仍未明确，因此，国际快递企业是否会被划为关键信息基础设施运营者仍不确定。

自《网络安全法》颁布以来，网络安全相关的法律法规陆续出台。重点关注关键信息基础设施的《网络安全审查办法》于2020年6月1日生效，取代了此前的《网络产品和服务安全审查办法（试行）》。2021年7月，国家网信办修订发布的《网络安全审查办法（修订草案征求意见稿）》中规定，除了关键信息基础设施运营者采购网络产品和服务外，网络运营者开展影响或者可能影响国家安全的数据处理活动，也将在网络安全审查范围内，其中包括掌握超过100万用户个人信息的运营者赴国外上市的情形。该《征求意见稿》体现出中国政府对供应链安全和境外访问国内信息等数据安全问题的重点关注。

基于《网络安全审查办法》（以下简称《办法》）确定的框架，网络安全审查制度开始逐步推行。根据《办法》，外国企业需要评估其客户是否是关键信息基础设施

whether they are classified as key information infrastructure operators or not, may be required to fulfill their data local storage obligations.

As mentioned above, due to the objective attributes of international courier services, personal information directly related to international courier services inevitably need to be provided to parties outside China for cross-border trade and transport, otherwise it is impossible to complete international express transport and distribution services. Therefore, for international courier services, using the data collected within China abroad is a regular scenario rather than an occasional case. In terms of data management, we suggest that relevant authorities face up to the obstacles that the data localization system may objectively cause to the reasonable use of data outside of China. When requiring data localization, the authorities should further distinguish different usage scenarios and identify the regular scenarios necessary to realize international express services, so as to ensure the reasonable use of data outside China in international express delivery operations.

Cybersecurity review

The regulatory requirements for critical information infrastructure operators in the *Cybersecurity Law of the People's Republic of China* are stringent, but the important question of which business entities would be recognized as critical information infrastructure operators remains open. There is uncertainty as to whether relevant companies in the international express industry would be included in the roster of critical information infrastructure operators. If a company is classified as a critical information infrastructure operator, it signifies that the company would be subject to onerous restrictions on the procurement and use of certain cyberspace products and services, such as the aforementioned security reviews over cross-border data transfer and strict requirements for data localization.

Since the enactment of the *Cybersecurity Law of the People's Republic of China*, more cybersecurity laws and regulations have been issued one after another. The *Measures for Cybersecurity Reviews*, which focuses on critical information infrastructures, took effect on June 1, 2020, replacing the previous *Measures for Security Reviews on Network Products and Services (for Trial Implementation)*. A year later, the Cyberspace Administration of China revised the Measures by issuing a Draft Revision for Public Comments in July 2021, which calls for reviews on the procurement of network products and services as well as on data processing activities that affect or may affect national security, including the cases of operators with personal information of more than 1 million users going public abroad. The Draft reflects a focus on supply chain security and data security (including foreign governments' access to Chinese data).

Based on the framework set out in the *Measures for Cybersecurity Reviews*, the cybersecurity review system has begun to be implemented gradually. According to the

Measures, foreign companies will need to assess whether their customers are critical information infrastructure operators and whether the products and services they provide fall within the scope defined in the *Measures* or are being provided to industries or sectors defined in the *Measures*. The 2021 version Draft Revision for Public Comments expands the application scope of the reviews from the procurement of network products and services by critical information infrastructure operators to data processing activities by all data processors. The expanded scope is very broad, but the Draft does not set clear criteria to specify what threshold conditions should be met when cybersecurity reviews are triggered, except for two existing cases: procurement of network products and services by critical information infrastructure operators and the listing of such operators abroad. For data processors that do not fall into the two scenarios mentioned above, the lack of clear trigger conditions causes a great deal of uncertainties to accurately determine whether a cybersecurity review or a reporting review is required. Overall, the cybersecurity review system may increase the uncertainties and costs associated with international express operators' business activities in China.

On June 27, 2018, the Ministry of Public Security of China publicly solicited comments on the "*Regulations on Cybersecurity Level Protection (Draft for Public Comments)*", which became the core policy of the Cybersecurity Level Protection 2.0 policy system. Based on Article 21 of the *Cybersecurity Law of the People's Republic of China*, the Draft requires the establishment of a cybersecurity level protection system, classifying cyberspace into five levels in terms of security protection and specifying the security protection obligations applicable to each level. International express delivery enterprises have generally met the compliance requirements in the cybersecurity level protection system applicable to international express delivery services, and are fulfilling their cybersecurity protection obligations.

International express delivery companies suggest clarifying the specific conditions and thresholds for triggering cybersecurity reviews, so that all data processors can fully understand and comply with them. We suggest that cyberspace administrators, when performing network security reviews, simplify relevant review processes by taking into account the same or similar requirements already met by express delivery enterprises in their implementation of the protection system. For international express delivery services, if cybersecurity reviews are performed, we recommend allowing information to continue to be transmitted across borders during the review process to ensure that the delivery service is not disrupted or its timeliness is not affected.

Green packaging requirements for express parcels

In recent years, the State Post Bureau and other administrative departments have introduced a number of policies for green packaging of express parcels. The express delivery

运营者，以及其提供的产品和服务是否属于其定义的范围，或者是否正被提供给其中定义的行业或领域。2021版《修订草案征求意见稿》（以下简称《草案》）将审查的适用范围从关键信息基础设施运营者采购网络产品和服务扩大到全部数据处理者开展数据处理活动。扩大后的适用范围非常宽泛，但除现有关键信息基础设施运营者采购网络产品和服务以及国外上市这两种情形外，《草案》中没有设定明确的标准来规定网络安全审查应在符合什么门槛条件时被触发。对未落入上述两种情形的数据处理者而言，这一触发条件的不清晰带来了很大的不确定性，无法准确认定是否需要进行网络安全审查、是否需要申报审查。总体来看，网络安全审查制度可能增加国际快递行业在华经营活动的不确定性和相关成本。

2018年6月27日，公安部发布《网络安全等级保护条例（征求意见稿）》，这是网络等级保护2.0标准体系中的核心政策。《草案》基于《网络安全法》第21条要求建立网络安全等级保护制度的有关规定，将网络分为五个安全保护等级，并明确了各级网络分别适用的安全保护义务。国际快递企业已普遍达到网络安全等级保护制度中适用于国际快递寄递服务的合规要求，坚实履行着相关的网络安全保护义务。

商会建议对触发网络安全审查的条件加以明确，这将有助于行业内所有数据处理者更好地了解并遵守相关规定。商会建议网信部门在执行网络安全审查过程中考虑到企业在执行等级保护制度要求时已达成的相同或相近的要求，简化相关的审查流程。此外，针对国际快递寄递服务，如果执行网络安全审查，建议在审查过程中允许信息继续进行跨境传输以保证寄递服务不因此中断或影响其时效性。

快递绿色包装要求

近年来，国家邮政局等部门陆续出台多项关于快递业绿色包装相关的政策，快递寄递服务行业完全理解并充分支持行业主管部门在保护生态环境方面的努力，在生产经营中做到环境友好与可持续发展也是快递行业应尽的企业社会责任。

目前陆续出台的快递绿色包装相关政策中，一些具体的规定主要还是从国内快递的角度进行制定，比如可循环包装箱/盒的推广使用。2021年12月发改委、商务部、国家邮政局联合发布的《关于组织开展可循环快

递包装规模化应用试点的通知》。然而对于国际快递而言，包装将随包裹本身送达全球各地，对国际快递包装采用等同于国内快递的循环要求可能在客观上无法实现。商会建议包括行业主管部门在内的政府部门在绿色快递包装政策体系制定的过程中充分考虑到国际快递的特点，商会也期待包括行业主管部门在内的政府部门能够更多的倾听包括外资企业在内的国际快递企业的意见。

此外，新出台的政策或发布的征求意见稿中加入了对于快递用户自带包装应当满足邮件快件包装绿色治理要求的规定，如2020年6月发布的《邮件快件绿色包装规范》中，要求在用户自带包装不满足环保要求且不同意更换的情况下，快递寄递企业应不予收寄，这可能会导致用户纠纷的增多。希望行业主管部门能在针对用户的绿色包装宣传方面给予行业更多支持，协助企业获得用户理解，减少用户自带包装不符合环保要求而产生的纠纷。

国际快递业务经营许可管理

在国际快递业务经营许可的申请、延续、信息变更业务办理过程中，企业需要依照许可涉及的子分公司所在地向地方行业主管部门进行申请。我们发现在许可审批的具体要求细节上、审核判定的尺度上、对相关规定的阐释解读上，不同地区的行业主管部门提出的具体要求存在着一定差异。国际快递企业普遍具有严格的内部合规规范与企业自律准则，不同地区国际快递业务经营许可要求上的差异，给企业带来了一定的困扰。

商会建议行业主管部门从国家层面细化对于国际快递经营许可审批的具体要求，并协调各地区地方邮政管理部门形成一致的合理审批要求。

国际快递经营许可地域范围核定问题

《邮政法》、《快递暂行条例》及《快递业务经营许可管理办法》中均未对国际快递业务经营许可的地域范围做出明确规定。2009年前，监管机构要求国际快递企业在商务部备案并取得“国际货运代理企业备案证书”，该备案证书无地域范围限制，取得该备案证书的企业可以在全国范围内开展相关业务。2010年，随着修订版《邮政法》生效，国际快递业务许可管理进行了调整，从事国际快递业务的企业须取得行业主管部门颁发的“国际

sector fully understands and supports the efforts by industry administrators in protecting the ecological environment. To be environmentally friendly and sustainable in production and operation is also a corporate social responsibility of the sector.

In the recently issued green express packaging policies, some specific provisions were formulated mainly for domestic express services. For example, in order to promote the adoption of recyclable boxes/cases, the National Development and Reform Commission, the Ministry of Commerce and the State Post Bureau jointly issued the “Notice on the organization and implementation of pilot projects for the application of recyclable express packages at scale” in December 2021. For international courier services, packages will be delivered around the world with the parcels themselves, so it may be impossible to meet the requirement to use the same recyclable packages for parcels in international courier services as in domestic courier services. We suggest that governmental departments, including the competent authorities of the industry, when developing green express packaging policies, fully take into account the characteristics of international express services. We also expect them to listen to more opinions of international express companies, including foreign-funded enterprises.

In addition, newly issued policies or newly released drafts for comments added the provision that “packages provided by express users themselves should meet the governance requirements for green packaging.” For example, the “Green Packaging Specifications for Mails and Express Parcels” issued in June 2020 requires that in the case that the package provided by the user himself does not meet environmental requirements and the user does not agree to change it, express delivery companies should not accept and send the user’s parcel, which may lead to an increase in user disputes. We hope competent departments of the industry offer more support promoting green packages among users.

Management of international express business licenses

For the application, renewal and information change of international express business licenses, an express delivery company needs to file applications with local industry authorities in the region where its subsidiary or branch using the license is located. We found that there are differences in specific requirements by industry authorities in different regions regarding details of the specific requirements for license approval, review standards and the interpretation of relevant regulations. International express companies generally have strict internal compliance standards and corporate self-discipline standards, so these differences in the licensing requirements in different regions have sparked difficulties for these companies.

AmCham China suggests that the competent depart-

ments of the industry detail the specific requirements for the approval of international express business license at national level, and coordinate with local postal administrators in various regions to develop consistent and reasonable approval requirements.

Approval of the geographical scope of international express business licenses

The *Postal Law of the People’s Republic of China*, the *Interim Regulations on Express Delivery* and the *Measures for the Management of Express Business Licenses* do not specify the geographical scope of international express business licenses. Before 2009, regulators required international express delivery enterprises to register with the Ministry of Commerce of China and obtain the “Registration Certificate for International Freight Forwarding Company”, which has no geographical restrictions. The revised *Postal Law*, which came into effect in 2010, adjusted the management of international express business licenses, stipulating that enterprises engaged in international express businesses must obtain the “International Express Business License” issued by the competent department of the industry. Since 2010, the geographical scope of the International Express Business Licenses that express companies have obtained is limited to the provincial level.

The *Several Opinions of the State Council on Further Improving Utilization of Foreign Investment* stipulates that “in order to protect the legitimate rights and interests of foreign-funded enterprises... all regions and departments shall provide administrative license for foreign investment in strict accordance with the *Foreign Investment Law of the People’s Republic of China*, the *Administrative License Law of the People’s Republic of China* and other laws and regulations, and shall not change the scope, procedures and standards for the administrative license without authorization.”

Narrowing the approved geographical scope of international express business license from the provincial level previously to the city (district, state, or league) level will objectively raise the market access threshold for foreign-funded enterprises in the international express industry. This move not only fails to meet the requirements repeatedly stressed by the State Council to expand China’s opening-up, actively utilize foreign capital and improve the business environment, but also violates commitments made by China upon its accession to the World Trade Organization.

We suggest that competent authorities of the industry take into full account the unified deployment by the State Council on actively utilizing foreign investment and improving the business environment as well as the commitment made by China upon its accession to the World Trade Organization, for better management of international express business licenses.

快递业务经营许可”。自 2010 年以来，企业已取得的国际快递业务经营许可证的地域范围限定在省（自治区、直辖市）一级。

《国务院关于进一步做好利用外资工作的意见》中规定，“（十四）保护外商投资企业合法权益……各地区、各部门应严格遵照外商投资法、行政许可法等法律法规对外商投资实施行政许可，不得擅自改变行政许可范围、程序及标准等。”

将国际快递业务经营许可地域范围的核定，由此前的省（自治区、直辖市）一级缩小至设区的市（地、州、盟）一级，将在客观上提高外资企业在国际快递行业的市场准入条件，现行规定与国务院反复强调的扩大对外开放、积极利用外资、改善营商环境的要求存在差距，也违背了与中国加入世界贸易组织时做出的承诺。

商会建议行业主管部门在国际快递业务经营许可的管理上充分考虑国务院在积极利用外资、改善营商环境上的统一部署以及中国加入世界贸易组织时作出的承诺。

国际快递的代理模式问题

在对国际快递行业的监管中，偶见行业主管部门将国际快递在部分地区采用的代理模式等同于国内快递较多采用的加盟模式对待，将代理模式和加盟模式一同纳入快递业务经营许可地域范围核定的管理框架下。

从快递行业的客观实际来看，代理模式和加盟模式存在着明确的区别。加盟模式是某企业获得另一快递企业的授权，在某一区域内使用授权快递企业的品牌、管理模式、运输网络等来运营快递业务，加盟企业是授权企业在该授权区域内的全权代表。

而在代理模式中，代理商和被代理的快递企业之间是基于合作协议而达成的合作关系，代理商负责揽收客户的快件，并基于合作协议将揽收到的快件转交给被代理快递企业，使用被代理企业的国际快递服务实现快件的运输及投递，代理商和被代理快递企业双方在运营上各自独立，代理商在当地的揽收业务完全是其自主经营行为，揽收后快件被转交至被代理的快递企业后，而后被代理企业的服务流程才正式开始。

因此，商会建议行业主管部门充分理解国际快递行

业代理模式的特点，对代理模式与加盟模式进行差异化管理，不要将代理模式等同于加盟模式一并纳入现行快递业务经营许可地域范围核定的管理框架下。

建议

对中国政府：

- 应当平衡网络安全及个人信息执法与快递行业高效通关的需求，减轻数据跨境传输限制给行业带来的额外负担。
- 建议进一步区分数据的不同使用场景，对于国际快递寄递服务这样的常态化数据境外使用场景避免采用一刀切式的本地化要求。
- 建议明确国际快递行业触发网络安全审查的具体条件和门槛，并为满足条件的企业简化审查流程，并保证寄递服务不受审查影响。
- 希望包括行业主管部门在内的政府部门在建立健全绿色快递包装政策体系的过程中也充分考虑到国内快递和国际快递的特点，并更多地倾听各方的声音。
- 期待在国家层面明确国际快递经营许可审批与管理的具体要求，统一全国审批标准。

International Express Agency Model

In the regulation of the international courier industry, the competent departments of the industry sometimes treat the agency model adopted by international express enterprises in some regions as the franchise model commonly used by China's domestic express companies, including both the agency model and the franchise model into the management framework within the permitted geographical scope of express businesses.

The objective reality of the express industry shows a clear distinction between the agency model and the franchise model. In the franchise model, an enterprise is authorized by another courier company to use the franchisor's brand, management model and transportation network, to conduct courier businesses in a certain region, and the franchisee is the franchisor's plenipotentiary representative in the authorized region. In the agency model, the agent and the principal (an express delivery company) reach a partnership based on a cooperation agreement; the agent is responsible for receiving the express parcels and mails from customers and transferring them to the principal based on the cooperation agreement, and realize the transportation and delivery of the express parcels and mails through the principal's international express services; the agent and the principal are independent in operation; the parcel receiving business conducted by the agent is entirely its own operational behavior; and the service process of the principal officially begins after the parcel received is transferred to the principal.

We suggest that the competent authorities of the industry fully understand the characteristics of the agency model, manage the agency model and the franchise model in differentiated ways, and do not include the agency model into the current management framework for the approval of the geographical scope of express businesses as the franchise model.

the specific conditions and thresholds for triggering cybersecurity reviews in the international express industry, simplifying relevant review processes for enterprises that meet certain conditions, and ensuring that the delivery service is not interrupted during the review process.

- AmCham China members hope that government departments, including the competent authorities of the industry, when developing green express packaging policies, can fully take into account the characteristics of domestic and international express services, and listen to more opinions of all parties concerned.
- AmCham China members expect the specific requirements for the approval and management of international express business licenses to be clarified at the national level and the national approval standards to be unified.

Recommendations

For the Chinese Government

- AmCham China members propose balancing the enforcement of cybersecurity and personal information laws and the need of the express industry for efficient customs clearance, so as to reduce the additional burden on the industry caused by the restrictions on cross-border data transmission.
- AmCham China members recommend further distinguishing different data usage scenarios, to avoid one-size-fits-all localization requirements for regular overseas usage scenarios in international express delivery services.
- AmCham China members recommend clarifying

Food and Beverage

Introduction

Since the COVID-19 outbreak in 2020, the global pandemic and its pressure on the global economy has led to a sharp drop in revenue and a surge in costs for some member companies. Fully respecting the guidance documents and control measures set by Chinese government departments at all levels, the American Chamber of Commerce in China (hereinafter referred to as the “AmCham”) strives to help member companies understand epidemic prevention measures, potential risks, and fully understand the situation and needs of affected enterprises that have had to undergo suspension and resumption of work and production due to the epidemic’s impact on various regions and society at large. We have responded to the specific needs of member companies through inter-agency coordination to help companies recover from the impact of the epidemic at various stages.

AmCham understands the policies of governments around the world, including the Chinese government in terms of epidemic prevention and control, as well as related food supervision requirements during such epidemics. Based on this, we continue to express our special concerns about the epidemic’s impact on international and domestic supply chains.

AmCham hopes that the Chinese government will continue to pay close attention to the business environment that impact industry: to help industry cope with challenges, continue to introduce policies to benefit industry, and create a scientific, rigorous and future-oriented food safety management system and an open, global market economy. In terms of policy, the environment and conditions for implementing prevention and control measures in the food, beverage and catering industry, as well as their impact on the interaction of all parties, should be fully considered when implementing epidemic prevention and control management measures. AmCham believes that under the premise of respecting science, following and abiding by rules, industry should be given a certain degree of autonomy to implement internal risk management procedures. AmCham encourages large companies to share relevant experience with small and medium-sized enterprises, and continues to do a good job in the dynamic management of epidemic prevention and control and resumption of work and production according

to the judgments of the World Health Organization (WHO) and scientists from various countries, and strives to drive the industry to do a good job in food safety risk management.

Improve the business environment in food and beverage industry

In order to create a business environment conducive to the long-term development of the industry, member companies have made the following suggestions for improving market regulations, standards and enforcement.

Unify regulation and enforcement in food and beverage industry

China attaches great importance to food safety, and the State Council issued the *Opinions on Deepening Reforms to Strengthen Food Safety* in May 2020, which calls for the effective implementation of the “strictest” measures to keep ensuring a stable and positive trend in food safety. The “strictest” measures require Party Committees and governments at all levels to adhere to strictest prevention at source, strictest control in process, and strictest risk control, improve the food and drug safety regulatory system, and strengthen unity and authority. The newly revised Food Safety Law calls companies to take major responsibilities, and the *Implementing Regulations of Food Safety Law* further require that persons in charge of food companies take specific responsibilities of food safety. While this clarification is helpful, assigning responsibility to persons in charge is complex, which will be discussed below.

While appreciating what China has done in improving food safety, AmCham China urges unified enforcement and regulation. Because of regional differences and the discretion of local authorities, it is difficult to have a national criteria to determine if an event is an exception and who should be responsible for such incidents or illegal conduct when defining the scope and consequences of “food safety incidents” and distinguishing companies’ risk management systems.

Due to decentralized food safety systems, local governments’ distinct interpretations of the central government’s policies lead to divergent enforcement across China. AmCham China hopes that local governments manage to be service-oriented,

食品与饮料

引言



2020年新冠肺炎疫情以来，全球范围内的感染传播情况及其对全球经济的压力导致部分会员企业营收锐减，成本激增。中国美国商会（以下简称商会）在充分尊重中国各级政府部门对疫情的指导性文件和管控措施的基础上，努力帮助会员企业了解疫情防控手段和潜在风险，并在疫情期间的区域性社会面管控和复工复产过程中充分了解受影响企业的情况和需求，通过机构间协调等回应企业的具体诉求，帮助企业从疫情影响中阶段性恢复。

商会理解包括中国政府在内的世界各国政府对于疫情防控的政策，以及在此期间的食品监管要求，并在此基础上特别表达对国际、国内供应链的关切。

商会希望中国政府能够继续切实关注企业的经营状况，帮助企业应对挑战，继续出台惠企政策，打造科学、严谨、面向未来的食品安全管理局面和全球畅通的大市场环境。政策上，在落实疫情防控管理措施的同时，充分考虑到食品饮料和餐饮行业落实防控措施的环境与条件，及其对各方交互作用的影响。商会认为，在尊重科学、遵循规律、遵守规则的前提下，企业应被赋予一定的自主权，落实内部风险管理流程。商会鼓励大型企业与中小企业分享相关经验，按世卫组织及各国科学家的论断和研判，继续做好疫情防控和复工复产的动态化管理，并努力带动行业做好食品安全风险管控。

进一步改善食品饮料行业营商环境

为营造有利行业长远发展的商业环境，商会会员对完善法规标准、市场监管和执法提出以下建议：

加强执法的监管和一致性

中国高度重视食品安全这一民生工程，2020年5

月国务院发布了《关于深化改革加强食品安全工作的意见》，要求切实抓好落实食品安全“四个最严”，继续保证食品安全形势稳定向好的趋势。食品安全“四个最严”工作要求的提出，要求各级党委和政府坚持源头严防、过程严管、风险严控，完善食品药品安全监管体制，加强统一性、权威性。新修订的《食品安全法》强调了落实企业主体责任，《食品安全法实施条例》进一步体现了食品安全责任要落实到企业负责人。虽然这一澄清是有帮助的，但将责任交给企业负责人也有其自身的复杂性，我们将在下面讨论。

尽管商会赞赏中国在改善食品安全方面取得的稳步进展，但商会促请加强执法和监管的统一。由于地区差异和地方当局的自由裁量权，在明确界定“食品安全事故”的范围及其后果、区分企业风险管理体系、企业风险管理体系等问题上，很难就食品安全标准达成全国共识，确定是否发生了个别错误，并决定谁应对此类事件或违规行为负责。

在食品安全体系分散的大背景下，各地对中央政策解读不一，导致中国各地执法出现分化。商会希望各地能够朝着服务型、开放型、讲科学的方向发展，保障中央和地方监管体系系统一致。地方政府应全面深化“放管服”改革，推动食品安全统一监管和执行。

商会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，造成执法困扰，阻碍了这些非食品安全标准的执行。

商会建议全国各级监管部门落实标准化执法，避免出现相同问题，但因发生地点和企业不同导致执法力度不同的现象对于模糊性问题的处理，及时适当地听取行

open and scientific to ensure unified and consistent regulation across the central and local governments who should deepen the reform of government functions and improve enforcement of food safety.

AmCham China recommends that the Chinese government provide a unified description of the entire system of food laws, regulations and standards, and that the relationship between the food safety standards system and non-food safety standards, as well as the responsibilities of relevant regulatory authorities, needs to be clarified as soon as possible. Regulatory authorities and the industry have different understandings of national standards, industry standards, corporate standards, and group standards for non-food safety, which results in enforcement problems and affects the implementation of these standards.

AmCham China suggests that regulatory authorities at all levels have consistent law enforcement to avoid problems that occur many times and listen to advice and suggestions of industry associations when it comes to inconsistent law enforcement due to different locations and companies. AmCham China also recommends that while the “strictest” measures and other policies and regulations are well implemented, more detailed, scientific and reasonable supporting measures or guidance documents are supposed to be given to help grassroots agencies understand how laws and regulations should be enforced. In order to ensure a good business environment, AmCham China is willing to organize member companies to share best practices in overseas and Chinese markets for top-level design, regulatory reform and capacity building of market regulators, making contributions to food safety in China.

AmCham China strongly recommends that the Chinese government improve its food safety inspection and monitoring procedures and build a food safety regulatory system based on identified risks, and encourages to establish a national team for food safety sampling to ensure that adequate resources are allocated for inspections throughout the food management process from source materials to final products. This process management should fundamentally improve food safety and quality in the industry. At the same time, provincial and local governments should strengthen the management and regulation of food safety and control over related risks through multi-sectoral and multi-level coordination.

Further optimize food safety regulation

Food safety regulation is highly professional and technically demanding. AmCham China expects local governments to continue to improve the professional capacity of grassroots food safety regulators, optimize staffing, implement systematic training programs, and strengthen expert consultation mechanisms. AmCham China recommends that a scientific food safety management assessment mechanism be estab-

lished by evaluating the effectiveness of local regulation, social benefits and other safety indicators, for which food safety regulators are responsible. The local governments should listen to companies’ opinions and demands in regulatory efforts. AmCham China expects to enhance communication with the regulators through interviews, seminars and other various forms of official discussions to improve the professional capacity of food safety regulators, and ensure that food regulation becomes more authoritative, effective and improved.

Further enhance communication on food safety

AmCham China hopes to further improve the communication to the industry and to consumers regarding food safety, to guide media from prioritizing eye-catching news to scientific information, and to take advantage of the remarks and resources of professional media and business associations based on experience of other markets, so as to present a holistic objective picture of food safety while effectively addressing food safety rumors to inform public awareness. .

Strengthen regulatory innovation in new ingredients and new food additives

In recent years, as people’s health awareness continues to rise, foods and beverages with nutritional and health benefits have been prevailing among consumers. Chinese and foreign food manufacturers have put efforts on research and development of such products, especially health products related to intestinal health, sleep improvement, eye care, sports nutrition, and weight management.

In product R&D, new functional ingredients, food additives, sweeteners, and flavor ingredients play a crucial role. However, in China, due to the long review of new ingredients, many Chinese manufacturers cannot be approved to use them in product development, which slows food R&D. Overseas manufacturers widely use new food ingredients to develop products with nutritional and health functions, and export products to China through cross-border e-commerce, taking up the market share from Chinese manufacturers.

AmCham China recommends that the government implement a whitelist for ingredients and food additives in the production of new foods to approve them for use in a few other jurisdictions. The whitelist would reduce repetitive, unnecessary animal and human experimentation and testing, significantly shorten the approval and review for new ingredients, and support innovation in food and beverage industry by Chinese and overseas manufacturers.

Accuracy and efficiency of food testing methods

Currently, most Chinese food companies rely on end-product testing methods and compliance with national mandatory

业协会的意见和建议。在确保食品领域“四个最严”方针、落实政策法规的同时，能够进一步出台更加细化、科学合理的配套措施或指引文件，加强基层执法机构对于法律法规的理解和把握，在落实“四个最严”的同时，保障和优化营商环境，商会愿意组织会员企业分享国外及国内市场最佳实践，助力顶层设计、监管改革推进和市场监管人员能力建设，为中国食品安全社会共治贡献力量。

商会强烈建议政府完善食品安全的检查和监督程序，构建以识别的风险为基础的食品安全监管体系。鼓励成立国家食品安全抽查小组，确保为从源头到最终产品的整个食品管理过程中的检查分配足够的资源。这种过程管理应该从根本上提高整个行业的食品安全和质量。同时，各省级和地方政府要通过多部门、多层次协调，加强对食品安全及相关风险的管理和监管。

进一步提升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。商会期待各地继续加快提升基层食品安全监管人员的专业能力，合理配备人员，实施系统培训计划、强化专家咨询机制。商会建议通过评估各地监管有效性、社会效益和其他安全指标，建立科学的食品安全管理评估机制，食品安全监管机构负责实施此机制。在监管工作中注重听取企业意见和诉求。商会期望通过采访、座谈及其他各类官方讨论形式加强与监管机构的交流，提高食品安全监管的专业能力。这将加速监管机构专业能力的培养，确保食品监管工作能够以更权威、更有效、更高水平地向前推进。

持续改善食品安全信息的沟通

希望进一步提升对行业、对消费者关于食品安全信息的沟通。可参考比照其他市场的经验，引导媒体从抓眼球到重科学的全面转变，发挥专业媒体、商协会的言论和资源优势，全面客观真实反应食品安全的全貌，有力打击食品安全谣言，让公众逐步形成正确认知。

加强新原料新食品添加剂等方面的监管创新

近年来，随着人们健康意识的不断提升，具有营养保健功效的食品和饮料备受消费者青睐。国内外食品生产商都加大了对此类产品的研究和开发力度，特别是和肠道健康、改善睡眠、护眼、运动营养、体重管理相关的健康产品。

在产品研发中，功能性的新食品原料和新的食品添加剂、甜味剂、香原料等发挥了至关重要的作用。但是在中国，由于新原料的审批周期长，很多国内生产商无法在产品研发中获批使用新原料，导致研发受阻。而境外生产商广泛应用新食品原料开发具有营养保健功能的产品，并通过跨境电商的形式将产品进口至中国，抢占了国内生产商的份额。

商会建议政府对生产新食品所使用的原材料和食品添加剂实行正面清单制度，让这些原材料和食品添加剂获得批准，并在其他一些司法管辖区广泛使用。使用正面清单将减少重复、不必要的动物和人体实验和测试的需要，大大缩短新原料的批准期限，并支持国内外制造商在食品和饮料行业的创新。

提高食品检测方法准确度及检测效率

目前，中国食品企业在食品安全控制手段上多数依赖于终端产品检测，并遵循国家强制性标准。而预防措施即环境过程监测目前仅处于起步阶段，政府应促进企业加强过程中的环境监控，尤其环境致病菌过程监控的实施，从源头过程上把控并增加食品安全的可控性。

对于食品检测方法，食品企业及政府监管目前检测方法多依赖国家强制性标准。合理化检测方法部分可采纳快检方法，而微生物作为食品安全重要检测指标则完全依赖国家强制性标准方法，主要为传统检测方法。微生物检测方法时间长，过程繁琐且对操作人员要求较高，由于微生物指标具有不可复检的特点，建议应与国际接轨采用或建立先进检验方法体系提高准确度及检测效率，如与 AOAC, FDA, USDA 及欧洲 AFNOR 等方法体系的互认与接轨，以满足广大食品企业对引进先进食品安全检测方法的需求。另外建议目前的食品安全指标检测方法改为非强制性的推荐标准，企业可根据自身状况灵活选择检测方法，满足其食品安全限量标准即可。

对于特殊医学用途配方食品的食品安全和检测方法，我国检测方法的系列标准（GB 5009）在制定及验证过程中并未采用特殊医学用途配方食品（固体和液体基质）产品进行方法学验证及研究，一些前处理步骤、检出限和定量限不适用于特医产品的检测，造成部分营养素加测结果与实际含量存在偏差，甚至导致结果误判。建议尽快研究使用于特医，尤其是液态特医的检测方法国标。我国的一些检测方法和国际公认检测方法（AOAC）有差异，希望能够接受等效性评估后的结果。

standards for food safety. Preventive measures, such as environmental and process monitoring, are not mature and developed. The government should promote environmental monitoring in production process, especially for pathogenic bacteria, to regulate and control food safety at source.

For food testing methods, food companies and government regulation rely on national mandatory standards. Rapid testing methods can be adopted to rationalize current food testing, while microorganisms as an important indicator of food safety is completely dependent on the national mandatory standard methods, mainly for traditional testing methods. Microbiological testing methods usually take a long time, and the process is cumbersome and has higher requirements on operators. Due to the nature of microbiological indicators that they cannot be re-tested, it is recommended to adopt international standards or establish advanced testing system to ensure the accuracy and efficiency, such as mutual recognition with AOAC, FDA, USDA and European AFNOR, in order to meet the need of major food companies for advanced food safety testing methods. In addition, it is recommended that the current food safety testing methods be changed to non-mandatory, recommended standards, so that companies can flexibly choose testing methods according to their own conditions and meet their food safety standard limits.

For food for special medical purposes (FSMP), no method validation or research of FSMP (with solid and liquid substrates) is conducted in developing the testing method standards (GB 5009 series) in China, leading to the incompatibility of pre-processing steps, detection limits and quantitative limits to FSMP. As a result, in some cases there are discrepancies between test results and actual amount of nutrition content, giving rise to misjudgments sometimes. We would like to suggest that efforts be taken to research on FSMP fitting national standard for testing methods, especially for liquid FSMP. As some testing methods in China are different from internationally recognized methods (AOAC), we hope results of equivalence evaluation could be accepted.

On clinical trial requirements of FSMP, pediatric clinical trials are special in many aspects, such as ethical considerations, selections, and evaluations, and with multiple difficulties. And SAMR clearly states in the *“Technical Guidelines for Clinical Trials of Drugs in Pediatric Populations”* (No. 48 [2016]) that *“To design clinical trials of drugs on kids, when evaluation requirements are met, one should follow the principle of ‘with smallest sample number, the fewest specimen, and causing least pain’”, and that “the clinical trial data of drugs in foreign pediatric populations can be used, if existing data are available abroad, on conditions of the following: first of all, there is no big difference in disease epidemiology, etiology, pathogenesis and disease progression prognosis among regions; second, there are no big clinical pharmacology and therapeutics differences among ethnic groups, in evaluation of adult patient trial data at home and abroad.”*

We suggest that the same principle be applied to rare diseases in children, that *“a reasonable sample size should be determined in accordance with epidemiology, trial evaluation methods and statistical assumptions”*. We would like to recommend to refer to the principle of drugs, and adopt flexible clinical trial requirements for disease-specific full nutrition formulas for kids aged at 1-10 years, especially for a disease with low incidence, i.e., allowing to follow clinical trial data of similar formula abroad after confirming no significant etiological differences among races, and appropriately adjusting the number of cases in clinical trials in China; to accept ordinary diet as a control group, and compare growth status of the same kid between before and after taking the formula, or between the individual status of a kid and normal growth indicators, instead of parallel control groups.

In addition, some inspection regulations allow the use of rapid testing methods, but lack guidelines for integrating and comparing the results with mandatory national standards. As a result, they are often not implemented in practice. AmCham China recommends that the Chinese government establish a mechanism for the coordination and comparison of rapid testing methods with conventional results based on national standards, as well as an evaluation system for selecting rapid testing methods as appropriate, in order to align China’s food contamination testing procedures with international standards.

Sufficient Grace Period for Food Labeling Changes

Food labeling is an essential part of doing food business in China. It is included in *Food Safety Law* and varies mandatory GB standards and Regulations. Food players in China put lots of efforts and attention to ensure its label is in fully regulatory compliance. Pre-packaged food is not able to easily change (operational challenge too high cost or would cause damage to the food per se).

Usually, food manufacturer keeps an inventory of labels. It is not every change will cause label waste, and/or product waste.

In 2021, there were 3 regulations under revision: GB 7718, GB 28050 and *Food Label Supervision Management Regulation* 《食品标识监督管理办法》. These regulations are in charge by different authorities or by different expert team. There is possibility that these 3 regulations are going to be published or come into force in 2022 at different time slot. This revision will mandate label change and therefore should follow a grace period for the manufacturers to fully comply.

China strengthens credit regulation

AmCham China notices that China is constructing a new credit-based regulatory mechanism, a unified searchable and sharing system for credit record of market entities, and a

对于特殊医学用途配方食品的临床试验要求，儿科人群临床试验在伦理学考虑、入选操作和评价方法等诸多方面具有特殊性，并存在一定的困难，因此总局在《儿科人群药物临床试验技术指导原则》（2016年第48号）中明确提出“设计儿科人群药物临床试验时，在满足评价要求的前提下，尽可能遵循‘样本量最小、标本最少、痛苦最小’的原则”，明确“在国外已有儿科人群药物临床试验数据的情况下，首先应评价不同国家或地区的疾病流行病学、病因、发病机理和疾病进展预后等是否存在差异；评价国内外成年患者试验数据中，重点针对种族差异进行评价，包括是否存在临床药理学和治疗学等方面的差异，如在上述各方面差异性比较中有充分证据表明不存在显著差异，可以沿用国外儿科人群药物临床试验数据”。针对儿童罕见病，也明确“应结合疾病的流行病学、试验评价方法和统计学假设确定合理的试验样本量”。因此，建议参照药物原则，对于适用于1-10岁人群、尤其是发病率较低人群的疾病特异性全营养配方的临床试验灵活要求，在确认不存在显著病因种族差异后，允许沿用国外类似配方临床试验数据，在国内进行的临床试验的例数可适当调整；接受将普通膳食作为对照组，进行自身前后对照或与标准正常生长发育指标对照，代替平行对照组。

此外，一些检验法规允许使用更新的快速检测方法，但缺乏将这些快速检测方法的结果与强制性国家标准进行整合和比较的指南。因此，在实践中它们往往无法实施。我们建议中国政府建立快速检测方法与基于国家标准的传统评价结果的协调和比较机制，以及选择合适的快速检测方法的评估体系，以便使中国的食品污染检测程序与国际标准接轨。

预留充足的食物标签更换过渡期

食品标识是在中国开展食品业务的一个必不可少的部分。食品标识在《食品安全法》和各种强制性的GB标准和法规中都有体现。中国的食品企业耗费大量精力，确保产品标签合规。

预包装食品标签的变更非常复杂（操作上的挑战在于成本太高或会对食品本身造成损害）。

通常情况下，食品生产企业会保持一定数量的印刷标签库存。不能频繁地更换标签，每次更换都会造成标签的浪费，以及/或产品的浪费。

2021年，GB 7718、GB 28050和《食品标识监督管理办法》等3项法规正在修订中。这些法规由不同的部门或不同的专家团队负责修订，修订版可能会在2022年的不同时间段发布生效。修订内容会导致食品企业大规模更换标签，希望政府相关部门给足企业标签更换的过渡期。

加强信用监管

商会看到中国正在加快构建以信用为基础的新型监管机制的创新，建立统一可查询的市场主体信用记录，互通共享，同时设立市场主体信用“黑名单”，结合“双随机、一公开”，以及“互联网+监管”和逐步推进信用分级分类监管。政府通过信息共享及公开、联合惩戒等“组合拳”让企业失信成本大幅增加，以期起到监督和督促诚信经营的目的。这样的创新监管举措让信用良好的企业权益可以得到更好的保护。

但同时商会也注意到，监管信用评级体系需要收集大量的企业数据，其中大部分是政府部门要求企业必须提供的。在这种情况下，各级政府及相关部门如何才能有效地保护企业的信息需要格外关注，尤其是涉及企业技术及员工信息等的敏感数据。因此商会建议尽快加强立法，规范监管行为，明确监管手段，不断提升监管人员的专业能力，并确保公职人员尽职。

进一步完善惩罚性赔偿制度，缓解职业索赔人对行业带来的负面影响

2018年，商会注意到各地监管和司法机构在处理职业索赔人案件的问题日益审慎，北京、深圳、上海等地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”和“维权”之名，通过恶意投诉而牟利的职业索赔、职业举报的不法行为。

2019年12月，总局发布《市场监督管理投诉举报处理暂行办法》，明确指出“不是为生活消费需要购买、使用商品或者接受服务，或者不能证明与被投诉人之间存在消费者权益争议的”而发起的投诉，市场监督管理部门不予受理。但同时，对于如何正确解读和界定“为生活消费为目的”等相关法律法规，司法机构和市场监管部门也存在争议，如最高人民法院2019年出台了《关于审理食品安全民事纠纷案件适用法律若干问题的解释》（征求意见稿），其中关于审理食品安全民事纠纷案件适用法律的解释仍存在被职业索赔人滥用的风险。

“blacklist” for market entities who have credit issues, along with the oversight model of random inspection and public release across the board and the Internet Plus government services model so as to gradually build a credit rating system for regulation. Defaulters will get higher penalty by governments’ information sharing and joint punishment in order to promote honesty in business. Such innovative regulatory measures allow the rights and interests of companies with good credits to get better protection.

However, AmCham China also notes that the rating system needs to collect a large number of corporate data, most of which is what government departments ask companies to provide. Under such circumstances, how governments and relevant departments at all levels can effectively protect companies’ information needs to be paid great attention, especially important data involving technology and employee information. Therefore, AmCham China recommends that laws be issued as soon as possible to supervise regulation, clarify regulatory measures, keep improving the professional capacity of regulators, and ensure that public officials do their jobs.

Further improve the punitive damages system to mitigate the negative impact of professional claimants on the industry

In 2018, AmCham China has noticed increasing prudence in the handling of professional claimant cases by local regulatory and judicial authorities, with Beijing, Shenzhen and Shanghai making policies to curb the negative impact of professional claimants, and to regulate and penalize the illegal conduct of professional claimants who profit from malicious complaints in the name of “fraud fighting” and “rights defending”.

In December 2019, SAMR issued the *Interim Measures for Handling Market Complaints and Reports* which clearly states that complaints will not be accepted by market regulators if the applicant purchases and uses commodities, or accepts services not for the purpose of living consumption, or if the applicant cannot prove that they have disputes on consumer rights and interests with the respondent. However, we can also see that there is controversy between the judiciary and the market regulators as to how to correctly interpret and define “for the purpose of living consumption”. Despite the Supreme People’s Court issued the *Interpretation of Applicable Laws on Trials of Civil Disputes on Food Safety* (draft for public comments), there is still a risk that the interpretation will be abused by professional claimants.

The current “punitive damages system” fails to distinguish between real risks and defects. Professional claimants have focused on filing claims for label defects, tying up administrative and judicial resources, and deliberately exploiting the nature of chain businesses by filing lawsuits in multiple locations (without even shopping locally), which greatly

impacts companies.

This not only highly affects companies’ normal production and operation, but also causes a great occupation and waste of market regulation and judicial resources at the grassroots level. According to the People’s Court News, the China Consumers’ Association and other organizations, the resources consumed by professional claims are four to five times more than normal complaints, and public resources are wantonly squandered by a few people. The problems that really affect consumers and market operation can not be addressed. Professional claims are even more damaging to the business environment.

Another noteworthy point is that in December 2020, the Supreme People’s Court issued the *Interpretation of Applicable Laws on Trials of Civil Disputes on Food Safety (1st)*, which lists several common situations. According to Article 148 of the *Food Safety Law*, an “operator” who produces or sells food, and is aware that the food does not meet the corresponding food safety standards shall be liable for punitive damages. However, it may be a challenge for consumers or affected individuals to prove that the operator “is aware”. The *Interpretation* and common situations attached clarify that:

- Selling food out of expiry date constitutes that the operator “is aware.”
- Operators that fail to inspect goods on delivery constitutes that the operator “is aware.”
- Punitive damages are subject to the premise of no personal injury.
- An operator is not allowed to claim exemption from liability, stating that imported food has already been through the entry-exit inspection and quarantine.

AmCham China recommends that the government refine the “due diligence exemption” in Article 136 of the Food Safety Law on the basis of the *Interpretation* to exempt operators from penalties if their food does not meet safety standards, but they can demonstrate that they have exercised satisfactory due diligence. As part of these amendments, the obligation of manufacturers to allow their goods to be inspected by law should be specifically clarified, and the Article should make clear that importers can also apply for exemptions according to the “duty relief” Article.

On the Article “target punishment to the liable individuals” of the Implementing Regulations of Food Safety Law

The Article 68 and Article 73 in the newly amended *Implementing Regulations of Food Safety Law* clarify that punishments are targeted to the liable individuals in accordance with the Article 75.

In reality, executives and high managements of large retail

现行“惩罚性赔偿制度”未能够将真正的风险和瑕疵进行区分。职业索赔人群体集中针对标签瑕疵提出赔偿，大量占用行政和司法资源，并且故意利用连锁企业性质，在多地提出诉讼（甚至没有在当地购物），让企业不堪其扰。

这不仅严重影响了企业的正常生产经营秩序，更是造成基层市场监管和司法资源的极大占用与浪费，据《人民法院报》及中国消费者协会等机构透露，职业索赔所耗费资源是一般正常投诉的4倍至5倍，公共资源被少数团伙恣意挥霍，反而让真正影响到消费者和市场经营秩序的问题无法得到处理。职业索赔对营商环境更是造成损害。

另外一个值得关注的发展是，2020年12月，最高人民法院发布了《最高人民法院关于审理食品安全民事纠纷案件适用法律若干问题的解释（一）》（解释），列举了几种常见情况。根据《食品安全法》第148条，“经营者”生产、销售明知不符合相应食品安全标准的食品，应当承担惩罚性赔偿责任。然而，对于消费者或受影响的个人来说，证明经营者“知道”其食品不符合相关标准可能是一个挑战。“解释”和附带的常见情况阐明：

- “解释”及典型案例明确销售已过保质期的食品构成经营者“明知”；
- 经营者未依法履行进货查验义务构成经营者“明知”；
- 惩罚性赔偿不以造成人身损害为前提；
- 经营者不能仅以进口食品已经过出入境检验检疫为由主张免责等。

在解释的基础上，商会建议政府细化《食品安全法》第136条“尽职免责”条款，如果食品安全经营者的食品不符合安全标准，但他们可以证明自己已经进行了令人满意的尽职调查，则免于处罚。作为这些修订的一部分，应当对制造商允许其货物依法接受检验的义务做出具体澄清，该条款应当明确规定，进口商也可以根据“关税减免”条款申请豁免。

科学细化食品安全法实施条例“处罚到人”的条款

新修订的《中华人民共和国食品安全法实施条例》在条例第六十八条、第七十三条等新设法律责任中也明确要求依照第七十五条的规定对有责任的个人进行处罚。

判断企业法人、负责人是否存在违法行为，应充分考虑其“主观故意/恶意”、“批准、授意、指使”等情况，

现实中大型连锁零售企业的高管可能担任多家门店的法定代表人或负责人，不参与具体门店日常管理；商会尊重司法机构对于食品安全直接责任人的相关处罚，但对于法定代表人的处罚责任的认定、罚款幅度的界定应更加科学合理。

此外，对于违法行为什么是“性质恶劣”、什么是“造成严重后果”，条例未作出明确的规定，考虑到主观归责给行政执法带来的挑战，需要进一步明确如何认定明知这样的主观状态来避免认定的难度消解了处罚的严厉。建议根据具体情形，商会期待食品安全主管部门能够出台进一步的细化条款，便于企业加强合规管理。

推进“健康中国”战略实施

社会共治 建设“健康中国”

新冠肺炎疫情以来，建设“健康中国”的重要性日益彰显。《中共中央关于制定国民经济和社会发展第十四个五年规划和二〇三五年远景目标的建议》也提出了要“全面推进健康中国建设”的重大任务。近年来，为了配合“健康中国”国家战略，食品饮料行业不断转型升级，在保证食品安全的基础上，将“营养健康”理念纳入企业长期发展战略，努力为消费者提供既美味又健康的产品。

以实际行动共建“健康中国”

商会食品饮料工作组全体会员企业一致认为，助力“健康中国”，积极参与推进《健康中国行动（2019-2030）》和《国民营养计划（2017-2030）》，是食品饮料行业义不容辞的责任，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，并通过产品创新与多元化、向消费者科普营养健康信息、倡导健康生活方式等行动，切实推动“三减三健”工作落地。并为推动“三减三健”工作采取了以下实际行动：

- 产品创新和多元化：持续创新，积极研发兼顾消费者口味和健康需求的少盐、少油、少糖产品，提供更多营养均衡的产品选择。
- 发布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

chains may act as legal representatives or heads of multiple stores without participating in the daily management of specific stores, so it should be fully considered that if they are deliberate/malicious or grant, authorize and instruct others to do such conduct when judging if they have illegal conduct. AmCham China respects the penalties imposed by the judiciary on those directly responsible for food safety, but the determination of the liability of legal representatives and the definition of fines should be more scientific and reasonable.

In addition, the *Regulations* do not make clear what is “serious offence” and what is “have serious consequences”. Taking into account the challenges posed by subjective attribution of responsibility to law enforcement, it needs to further clarify how to identify such a subjective state of being aware to avoid declining the severity of penalties. AmCham China expects the food safety regulators to introduce further refinement of the provisions to facilitate companies to strengthen compliance management

Healthy China 2030

Social governance for Healthy China 2030

Since the outbreak of COVID-19, it has been increasingly important to build a “healthy China”. The Central Committee of the Communist Party of China’s *Outline of the 14th Five-Year Plan for National Economic and Social Development and Long-range Objectives for 2035* also proposes to “comprehensively promote the construction of a healthy China” as a major task. In recent years, in line with the national strategy of Healthy China, the food and beverage industry has been transforming and upgrading, incorporating the concept of nutrition and health into its long-term development strategy on the basis of ensuring food safety, and striving to provide consumers with both delicious and healthy products.

Take substantive actions to actively implement the Healthy China strategy

AmCham China food and beverage member companies all agreed that the industry have duty to actively implement the Healthy China strategy, along with the *Healthy China Action Plan (2019-2030)* and the *National Nutrition Plan (2017-2030)*, which is also the way for high-quality development. Since the launch of the Healthy China strategy, the food and beverage industry has made many useful explorations and practices in product diversification and enhancing the nutrition and health value of products and has taken the following substantive actions to respond to the call of “three less and three healthy” (less oil, less sugar and less salt, and healthy mouth, healthy bones and healthy weight) by product innovation and diversification, education on nutrition and health knowledge, and advocating healthy lifestyles.

- *Product innovation and diversification*: continuously innovate and actively develop products with less salt, oil and sugar that take into account consumers’ tastes and health needs to provide more nutritionally balanced products.
- *Clear and easy-to-understand product information*: provide entire, clear and fact-based product nutrition information in packaging and sales channels to help consumers make scientific choices.
- *Healthy lifestyles*: actively work with the community to enhance public nutrition and health knowledge through education and promotion of balanced diets and active exercise.
- *Responsible marketing*: vigorously promote the concept of reasonable diet and healthy lifestyle in marketing activities, and do not conduct marketing activities for children under 13 years old.

Joint governance of the government, enterprise and society to build a healthy China

To share and build together is the basic path to building a healthy China. The government has issued a series of guidance documents that emphasize the government’s leadership and the coordination of the society, industry and individuals to form a strong joint force for health promotion.

Member companies of AmCham China are ready to actively discuss with government authorities on cooperation projects in the area of the “three less and three healthy” policy, and AmCham China is willing to actively promote related dialogues in the future. At the same time, AmCham China notes that the food and beverage industry is profoundly affected by this policy, and that member companies have good self-discipline and do not market to children under 12 years old. AmCham China hopes that the formulation and implementation of the policy will be carried out in a scientific and orderly manner, taking into account the survival and development of the industry. AmCham China is willing to actively organize political and corporate seminars and expert discussions on this topic, and promote the implementation of the “Healthy China” strategy along with member companies.

To this end, AmCham China expects policy makers to base their nutrition and health policies on scientific facts and research data, and to refer to the industry’s practical experience. At the same time, sufficient time is needed to listen to the views of industry associations and companies. The “three less and three healthy” call to action being promoted requires the collaboration of multiple parties in society. For example, the promotion and implementation of the call needs to take into account the different needs of consumers, to guide companies to innovate and develop diversified products that take into account consumers’ different tastes and health needs. The industry needs to further strengthen

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：在市场营销活动中大力宣传合理膳食理念、积极倡导健康生活方式；不对 13 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的力量，形成健康促进的强大合力。

商会会员企业愿积极与政府主管部门开展“三减三健”方面的合作项目探讨，未来商会也愿积极促进相关对话。与此同时，商会注意到食品饮料行业受“三减”政策影响深远，会员企业自律性好，不会对 13 岁以下儿童开展市场营销活动。希望“三减”政策的制定与实施能够秉持科学态度，兼顾行业生存与发展，有序推进。商会愿就此议题，积极组织政企研讨和专家论证，与会员企业一起推进“健康中国”战略实施。

除此之外，商会期待决策部门在制定营养健康政策的过程中，依据科学事实和调研数据，参考产业实操经验。同时，预留充分的时间听取行业协会和企业的意见。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，要引导企业创新开发兼顾消费者口味和健康需求的多元化产品；行业需要进一步加强与专业界的沟通互动，分享在“三减”政策实施中的行业共性问题，增进互信，共同推动相关法规标准和营养健康政策向正面、积极的方向发展。因此，在监管机构的引导下，共创良好的社会共治氛围是建设“健康中国”的关键所在。

会员企业期待有机会参与相关行动计划的制定工作，与决策部门分享企业的相关数据、科研成果和管理经验。同时，商会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食品饮料以及重要营养素和添加剂的科学知识、预包装食品标签解读，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，科学膳食。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教活动。

继续优化食品安全体系建设，激发行业在营养

健康领域的创新活力

新《食品安全法》及其实施条例的出台对提升食品行业安全起到了一定的保障作用，增强了消费者对食品安全的信心。但同时商会也看到，在保障食品安全的基础上，国家的工作重点已经上升到了营养健康领域。商会认为将营养标签等不会影响食品安全的内容纳入食品安全范畴进行管理的做法越来越不利于行业发展，尤其是不利于推进《“健康中国 2030”规划纲要》及《健康中国行动（2019-2030）》的开展落实，因此建议将不涉及食品安全问题的内容从食品安全标准体系移除，减少对企业的束缚和压力，同时避免不必要的监管资源浪费，更大力度地引导、促进食品企业在营养健康方面的研发，使得企业能够更积极地参与国家营养健康相关工作，顺应国家对食品行业发展的新规划。

中国在推进食品行业供给侧改革的过程中，也在加快推进“健康中国”战略的落实。随着中国消费者越来越多地选择更健康的食品，商会建议有关部门进一步减少对企业基于健康利益销售食品能力的限制。例如，众所周知，DHA（二十二碳六烯酸，一种欧米茄-3 脂肪酸）能促进大脑和眼睛的健康发育。然而在中国，宣传 DHA 有益健康的广告目前仅限于婴儿配方奶粉。取消这些限制将为消费者提供更多关于食物含量和相关营养益处的信息。最终，这些政策将使消费者在选择食品时做出更健康的饮食选择。

正如在 2019 年和 2020 年《白皮书》中所提出的那样，进一步完善食品安全与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。这些技术控制产品质量和遵守食品安全标准。特别是，商会建议对微生物和其他有机体的检测从最终产品测试阶段（目前）逐步转向整个生产周期的监测，以减少目前在最终产品测试阶段发现的不需要的微生物和细菌菌落的数量。采取这样的预防措施，也可以减少企业和监管部门处理相关问题时造成的资源浪费。

商会建议国家在制定标签管理办法时，如在过敏原标识和进口食品贴标等问题上，出台具体的企业管理及政府监管的技术指导文件，并给与企业一定的包装切换过渡期（如 2-3 年），减少企业因适应调整而带来的压力，同时也可避免办法发布后的各种挑战。

商会同时建议开展可回收包装材料再生利用的科学法

communication and interaction with the professional community, to share common problems in the promotion of the policy, enhance mutual trust, and jointly promote the development of regulations, standards and policies of nutrition and health in a positive and active direction. Therefore, under the guidance of regulators, creating a good atmosphere of social governance is the key to building a healthy China.

Member companies look forward to the opportunity to participate in the development of relevant action plans and share relevant data, scientific research results and management experience of their companies with the decision makers. At the same time, AmCham China also calls on government regulators and scientific research institutions to step up their efforts in popularizing science and actively disseminate to consumers scientific knowledge about food and beverages as well as important nutrients and additives, and label interpretation of prepackaged foods, so as to eliminate misunderstandings arising from incorrect or incomplete information and help consumers make rational choices and have a reasonable diet. Strengthening the fight against food safety rumors is the only way to effectively avoid the panic caused by food rumors and to enhance public confidence in food safety. AmCham China is willing to actively participate in and support related dissemination and education activities nutrition and health.

Continue to optimize food safety system and stimulate the industry's innovation in areas of nutrition and health

The new *Food Safety Law* and its implementing regulations have played a role in enhancing the safety of the food industry and have increased consumer confidence in China's food safety. But at the same time, AmCham China also sees that the national focus has risen to areas of nutrition and health, on top of safeguarding food safety. AmCham China believes that the inclusion of nutrition labels and other content that does not affect food safety into the food safety category for management is increasingly detrimental to the development of the industry, especially in implementing of the *Health China 2030: Blueprint and the Health China Action Plan (2019-2030)*, and therefore recommends that content that does not involve food safety issues be removed from the food safety standard system to reduce the constraints and pressure on companies, while avoiding unnecessary waste of regulatory resources, and to guide companies to put more efforts on research and development in areas of nutrition and health, so that companies can participate more actively in the national planning in nutrition and health, and get in line with the new national plan for the development of the food industry.

As China pushes forward with supply-side reforms in the food industry, it is also accelerating the implementation of the Healthy China strategy. As more Chinese consumers

choose healthier foods, AmCham China recommends that the authorities further reduce restrictions on companies to sell foods based on health benefits. For example, it is well known that DHA (docosahexaenoic acid, an omega-3 fatty acid) promotes healthy brain and eye development. However, in China, advertisements promoting the health benefits of DHA are currently limited to infant formulas. Removing these restrictions would provide consumers with more information about the food composition and nutritional benefits. Ultimately, these policies will allow consumers to make healthier dietary choices when selecting foods.

As proposed in the *White Paper 2019 and 2020*, it is recommended to further improve food safety and hygiene practices and product standards, progressively promote Good Manufacturing Practice (GMP) combined with Hazard Analysis and Critical Control Point (HACCP), and simplify indicator requirements of end-product. These techniques control product quality and compliance with food safety standards. In particular, AmCham China recommends a gradual shift in the detection of microorganisms and other organisms from the current testing in end-product to monitoring throughout the production cycle in order to reduce unwanted microbial and bacterial colonies currently found in the end-product testing phase. Taking such precautionary measures would also reduce resource waste when companies and regulatory authorities are dealing with related problems.

AmCham China recommends that the Chinese government introduce specific technical guidance documents for corporate management and government regulation in making labeling management measures, such as allergen labeling and imported food labeling, to give companies a certain transition period (e.g. 2-3 years) for changing packaging to reduce companies' pressure on adapting to the adjustment, and to avoid various challenges after the measures get releases.

AmCham China also recommends that scientific and regulatory research on the recycling of packaging materials be carried out, and that laws and regulations be made for the use of recycled packaging materials in due course, so that companies can participate in and jointly explore practicable applications.

AmCham China encourages the opening of a green channel for the import of raw materials and samples for R&D and innovation purposes. When companies try to develop and innovate, they sometimes need to import raw materials and samples from abroad for relevant researches. However, the current import filing requires complicated and time-consuming documents, which to a certain extent hinders product innovation. In view of the fact that materials used for R&D are not used for production and will not enter the market, and will not have food safety issues to the final consumer products, AmCham China suggests that national regulatory agencies consider giving a certain degree of flexibility to the import of such food materials and samples for non-production and sales purposes, such as through import

规研究，适时启动回收再生包装材料合法利用的法规建设，使企业能够参与并共同探索可实践的应用。

商会鼓励对于研发创新用途的原材料和样品进口能够开通绿色通道。公司在尝试研发和创新时，有时需要从国外进口原料和样品进行相关的研究。但是目前的进口备案所需材料繁杂、耗时较长，一定程度上阻碍了产品创新。鉴于用于研发的材料并非用于生产，也不会进入市场流通，不会对最终消费品带来食品安全隐患，我们建议国家监管机构考虑对这类非生产销售用途的食料和样品进口给予一定的灵活度，如通过进口备案（名称、数量、用途等）/核销备案（销毁记录）的模式简化进口监管流程，这样不仅可以实现有效监管目的，也能够帮助促进企业不断创新。

优化食品饮料产品的进出口监管

商会看到中国政府在加强进口食品安全监管的同时，积极探索可以提高通关效率、缩短检验检疫时间的有效实践。商会希望能够看到政府深入推进进出口监管模式的改革，进一步促进食品国际贸易的便利化。

第 248 号令、249 号令章节

随着《境外食品生产企业注册管理规定》（海关总署第 248 号令）和《进出口食品安全管理办法》（海关总署第 249 号令）自 2022 年 1 月 1 日起施行，海关总署和美国政府当局需要在充分讨论和相互认可的基础上，进一步对未来实施美国企业注册和进出口食品监管加以说明。建议包括：

- 应对执行海关总署第 248 号令和 249 号令的新要求预留至少 18 个月的过渡期，确保及时完成注册。
- 加强海关总署和美国政府当局之间的顺畅沟通渠道，为属于海关总署第 248 号法令第 7 条规定的美国企业提供有关申请档案和现场核查等方面的明确指导。
- 海关总署在国家层面正式发布的规定、指南和解释，由各级海关部门统一转达和遵循。（例如，第 248 号令不适用于跨境电子商务、样品、免税业务等。）

持续优化单一窗口金融服务功能以便利企业对接

商会食品饮料企业充分体验到了海关单一窗口的便利性和可操作性。商会赞赏海关总署及相关政府部门为实施单一窗口、提升贸易便利化进程所付出的努力。目前单一

窗口功能已延展到金融服务。由于部分商会企业进口量较大，需要手工填报的内容较多，部分填报信息与海关系统已有数据重合，商会建议优化单一窗口金融服务功能以便利企业对接数据，或批量导入数据，即可减少企业人工成本，同时又可提升效率和数据的准确性。

进一步简化咖啡因出口手续

中国是咖啡因的主要生产国和出口国，年产量和出口量约占全球市场的 70% 左右。全球消费者喜爱的主打饮料里所含的咖啡因成分多数来自中国。2021 年初，为加强咖啡因出口的规范管理，中国主管部门要求所有（中国）出口商在申请咖啡因出口许可证时增加三份材料：一是与境外客户签订的合同，首次申请需中国驻外大使馆公证；二是境外客户的营业执照，临近有效期或新换发的执照都需要重新到中国驻外大使馆公证；三是境外客户担保函，每次申请都需到中国驻外大使馆公证。新规增加了咖啡因出口许可证申请的程序和材料，而全球疫情也增加了相关文件准备的难度和周期，导致咖啡因供应周期也相应延长，对跨国食品饮料企业全球供应链的稳定性造成了较大影响。

建议中国主管部门对中国咖啡因出口商分类评级管理，对记录优良、信誉好的出口商简化其咖啡因出口许可证的手续。这样不但有助于提高审核效率，减少中国咖啡因出口商的申请时间和压力，也有助于跨国食品饮料企业增加供应链的稳定性，更有助于扩大中国原料和元素的全球化应用。

优化宠物食品的监管

得益于海关部门系统性的监管，宠物食品的进口越来越规范化，但是在进口中还是面临较多的检验检疫流程以及较为繁复的手续，这使得宠物食品需要耗费较长周期才能真正投入国内市场。宠物食品作为新兴行业，需要多元化的产品以满足中国宠物食品日益增长的市场规模和中国消费者的需求。为了满足国内宠物食品行业的可持续发展，商会建议相关主管部门对于小批量、主要用于了解国内消费者对新产品反馈的宠物食品给予一定的便利化，如采取备案制度（记录名称、数量、用途等），在保证产品检验检疫要求的基础上，尽量简化进口监管流程，使得宠物新产品能够更快地进入中国市场，以便生产企业能尽快了解国内消费喜好及需求，以更好地促进行业发展。

美中肉类贸易存在巨大的提升空间，包括直接消费和

filing (name, quantity, use, etc.) or write-off filing (write off records) to simplify the import regulation process, which can not only achieve effective regulatory purposes, but also to help promote companies' continuous innovation.

Customs regulations of food and beverage products

AmCham China has seen the Chinese government strengthen the regulation on imported food safety while actively exploring effective practices that can improve customs clearance efficiency and shorten inspection and quarantine time. AmCham China hopes to see the government deepen the reform of the import and export regulation model to further facilitate international food trade.

Decree 248 & 249

As *The Regulations on the Administration of Registration of Overseas Food Manufacturing Enterprises* (GACC Decree 248) and *The Measures for the Administration of Import and Export Food Safety* (GACC Decree 249) coming into effect since 1st of January 2022, more clarities need to be provided based on thorough discussion and mutual recognition between GACC and US government authorities concerning the future implementation of US facilities registration, and import/export food supervision. Recommendations include:

- Apply a transition period of at least 18 months for the implementation of new requirements under GACC Decree 248 and 249 to ensure timely processing of registrations.
- Enhance a smooth communication channel between GACC and US government authorities to provide clear guidance of application dossiers and onsite verification for US facilities falls into Article 7 of GACC Decree 248.

The regulations, guidance, and interpretations officially issued by GACC at national level are transmitted and followed by Customs authorities at all levels uniformly. (e.g. Decree 248 is not applicable to cross-border e-commerce, samples, duty-free business, etc.)

Further optimize the single-window financial services to facilitate business data docking

AmCham China's food and beverage companies have fully enjoyed the convenience and accessibility of the customs' single-window services. AmCham China appreciates the efforts made by the General Administration of Customs and relevant government departments to implement the single-window services and facilitate trade process. At present, the single-window function has been extended to financial services. As a few AmCham China's companies have a large import volume and need to fill in more contents manually, some of the information filled in overlaps with the existing

data in the customs system, AmCham China suggests optimizing the single-window financial services to facilitate companies to dock data, or import data in bulk, which can reduce companies' labor cost and at the same time improve the efficiency and accuracy of data.

Further simplify the procedures for caffeine exports

China is a major producer and exporter of caffeine, accounting for approximately 70% of the global market in terms of annual production and exports. Since early 2021, in order to strengthen the regulation of caffeine exports, the Chinese authorities have required all (Chinese) exporters to add three documents when applying for a caffeine export license: first, a contract signed with overseas customer that needs to be notarized by the Chinese embassy for the first application; second, the business license of overseas customer that needs to be notarized by the Chinese embassy for each application when the license is new or nearing the expiration date; third, a guarantee letter from overseas customer that needs to be notarized by the Chinese Embassy for each application. The new regulations have increased the procedures and materials for caffeine export license applications, and the global pandemic has also raised the difficulty and time for preparing related documents, as a result of which the caffeine supply cycle is prolonged and the stability of global supply chain of multinational food and beverage companies is greatly impacted.

It is suggested that the Chinese authorities should perform a classification and rating system for Chinese caffeine exporters and simplify the procedures for those with good records and reputation, which will not only help improve the audit efficiency and reduce the time and pressure for Chinese caffeine exporters to apply a license, but also help multinational food and beverage companies to ensure the stability of their supply chains, and more importantly, expand the global application of Chinese raw materials and elements.

Pet food regulations

Thanks to the systematic supervision of the customs departments, the import of pet food is becoming increasingly standardized, while still facing complex inspection and quarantine processes and complicated procedures, which makes pet food take a long time to really enter the Chinese market. As an emerging industry, pet food needs diversified products to match the growing market size and meet the needs of Chinese consumers. In order for sustainable development of the Chinese pet food industry, AmCham China recommends that the relevant authorities give green lights to small batches of pet food products that are mainly used to understand the feedback of Chinese consumers on new products, such as adopting a filing system (with records on name, quantity, use, etc.), and simplifying the import regulation process as much as possible on the basis of ensuring product inspection

用于饲料行业。在中国的生产成本(如饲料、人力、环境保护)不断攀升,对高质量肉制品或宠物食品的供应缺口不断扩大的背景下,我们高兴地看到中国刚刚解除了美国禽肉对华出口禁令。但是对于含鸡肉成分的宠物食品,即禽类产品/制品,仍然无法开展贸易。商会希望中美两国政府部门能够继续深化在此问题上的谈判和交流,尽快开放禽类相关产品的进口准入,推进双边贸易的拓展。商会相信更加开放的贸易合作能够更好地为中国消费者或行业提供安全可靠且可持续生产的食品/宠物食品及原材料供应源。

加快对境外企业生产的婴幼儿配方食品配方注册海外现场核查相关问题

自中国实施婴幼儿配方乳粉产品配方注册管理制度以来,行业相关监管工作得到了进一步规范,也对重建消费者信心与促进市场健康发展起到了很大作用。商会赞成中国政府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。

但应当引起高度关注的是,鉴于国家市场监督管理总局每年派出的海外核查团组十分有限;疫情爆发后,海外现场核查更是全面暂停,导致境外新产品在提交注册申请后3-4年依然无法获得审批,对相关申请企业的运作造成了极大限制,也无法满足国内消费者对创新的营养健康产品的需求。考虑到新国标实施在即,如果境外工厂现场核查问题无法得到有效解决,2023年2月之后大量的婴幼儿配方食品将无法继续进口。

目前总局已开展大量尝试,委托境外官方机构开展配方注册现场核查试点工作,我们赞赏这一努力和创新,相信将有利于推动解决产品配方注册现场核查问题。然而,考虑到目前与总局开展境外现场核查沟通的国家数量并不多,再加上境外官方机构的工作效率问题,担心在新国标实施前仍可能发生境外工厂配方产品无法完成现场核查的情况。

为此,我们建议对声誉较好、先前有过配方注册的境外企业实行“先批准后核查”,即注册资料在通过相关技术机构的审核之后,先批准上市,并在两年内完成现场核查。企业对提交材料的真实性负责。如发现问题,可以要求企业立刻停止销售,产品质量安全存在严重风险时组织产品召回,并给予相应行政处罚等。另外,在疫情防控常态化条件下,建议总局考虑采用远程视频链接,并与婴

儿配方奶粉授权外资制造商所在国的食品监管部门协调,以加快其婴幼儿配方奶粉的现场验证和注册。商会促请总局履行美中第一阶段协议的有关规定,加快外商投资企业婴幼儿配方奶粉的现场核查和注册工作。为了突出中国政府一贯倡导的对内资企业和外商投资企业一视同仁的原则,促进其正常经营,总局应优先考虑已完全按照要求提交注册文件但尚未获得批准的外商投资企业。

商会还建议总局优化外商投资企业目前的检查流程。除了提前通知需要接受检查的海外监管机构和外商投资企业的海外工厂,总局还应公布与外商投资奶粉生产企业注册或海外工厂检查有关的年度检查计划或时间表,以便企业在必要时提前获得原材料并进行其他准备。

另外,对于有效解决新旧国标过度期婴幼儿配方食品集中注册问题的建议。2021年3月,国家卫生健康委员会发布修订后婴幼儿配方食品系列国家标准,包括《食品安全国家标准婴幼儿配方食品》(GB 10765 2021)、《食品安全国家标准较大婴儿配方食品》GB10766 2021)、《食品安全国家标准幼儿配方食品》GB 10767 2021)等,过渡期为两年。新国标对于蛋白质、脂肪、维生素、还有部分可选择性营养成分如DHA的限量值均有较大调整。

企业必须根据新国标开展研发、试制、稳定性研究、检验、配方注册资料准备、配合现场核查等工作,并需要在明年2月前获得符合新国标的配方注册审批。与此同时,行业内大量的已经通过注册的婴幼儿配方乳粉配方将会在2022年到期,许多企业因为新国标产品注册准备时间限制,需要及时提交相关旧配方的延续注册申请,以保证稳定的市场供应。目前快到期的旧国标产品,因国家要求必须在注册到期6个月前提交申请,因此即使得到新的审批,最多再延续生产7个月。而且相关产品注册五年了,一直在市场上销售没有不良反应和消费者重大投诉。

在2022年婴配食品企业面临旧国标产品的延续注册以及新国标产品申请的双重压力的同时,因为将有大量的婴配产品配方注册申请,也将会给国家市场监督管理总局的审批工作带来的极大压力。

为有效降低企业负担并节约行政资源,保护企业正常的销售,稳定市场的供应,我们建议针对2022年6月后注册到期的旧国标婴幼儿配方乳粉配方,自动延续其注册有效期至新国标实施之日。

and quarantine requirements, so that new pet food products can enter the Chinese market faster, and manufacturers can quickly understand Chinese consumers' preferences and needs, so as to better develop the industry.

The US.-China meat trade has a great potential for growth, including both for direct consumption and for feed use. Against the backdrop of rising production costs (feed, labor, and environmental protection) in China and a widening supply gap for high-quality meat products or pet food, AmCham China is pleased to see that China has just lifted the ban on US. poultry meat exports to China. However, trade is still not possible for pet food containing chicken ingredients, that are poultry products and end-products. AmCham China hopes that the Chinese and US. government will continue to deepen negotiations and exchanges on this issue, open import access for poultry-related products as soon as possible, and promote the expansion of bilateral trade. AmCham China believes that more open trade cooperation can better provide Chinese consumers or industry with safe, reliable and sustainable supplies for food and pet food as well as raw materials.

Infant Formula

AmCham China encourages the acceleration of on-site verification for the registration of infant formula milk (IMF) produced overseas. Since the implementation of China's IMF registration management, the industry has been further standardized, which helps to rebuild consumer confidence and promote the healthy development of the market

AmCham China is in favor of the Chinese government's strict management on IMF registration and FSMP oversea registration, and applauds SAMR for its efforts and achievements in this regard.

However, what draws our concern is that a very limited number of delegations have been sent overseas to perform onsite verifications, and that they are fully suspended after the outbreak of COVID-19 in 2020, which leads to the no approval of new oversea IMFs after submission for 3-4 years, bringing great limitation to businesses operation, as well as consumer quest for new nutrition and healthcare products. As the new national standard is to be implemented soon, if on-site verifications cannot be fully resumed overseas, there may be a halt to general trade of oversea IMF products.

SAMR has made great efforts to entrust overseas official institutions to carry out the pilot work of on-site IMF plant verifications. We appreciate this innovative effort and believe that it will be conducive to address the problems. However, considering that only a few countries are currently in communication with SAMR, coupled with the possible inefficiency of overseas agencies, it is worrisome that the on-site verification of IMF overseas factory may fail to catch up with the implementation date of the new standards.

Therefore, we recommend that overseas enterprises with sound record of reputations and previous IMF registrations with SAMR be "approved first and then inspected", i.e., approving market access upon the completion of institution review of the registration documents, and arrange on-site verification within two years. The enterprise shall be responsible for the authenticity of the submitted materials. If a problem is found, the enterprise can be required to stop sales immediately, organize product recall when there is a serious risk of product quality or safety, and receive corresponding administrative penalties.

In the regular pandemic prevention and control policy, it is recommended that SAMR consider remote video verification and coordinating with food regulatory authorities in countries where authorized overseas manufacturers of infant and young children formula milk powder are located in order to expedite on-site verification and registration. AmCham China urges SAMR to fulfill the relevant provisions of the US.-China Phase I agreement to expedite the on-site verification and registration of infant and young children formula milk powder of foreign-invested manufacturers. In order to reflect the principle of treating Chinese and foreign-invested companies equally, SAMR should give priority to foreign-invested companies that have already submitted registration documents in full compliance with the requirements but have not yet received approval to facilitate their normal operation.

AmCham China also recommends that SAMR optimize the current inspection process for foreign-invested companies. In addition to notifying in advance overseas regulatory agencies and overseas factories of foreign-invested companies that need to be inspected, SAMR should publish annual inspection plans or schedules so that companies can have raw materials and make other preparations in advance if necessary.

In addition, we would like to offer an effective solution towards the problem of the packed registration IMF in the transitional period for national standards. In March 2021, the National Health Commission issued a series of revised national standards for IMF, including GB 10765 2021, GB10766 2021, and GB 10767 2021, for newborn, infant and toddlers, with a transition period of two years. The new national standard has greatly adjusted the limit values of protein, fat, vitamins, and some selective nutrients such as DHA.

Enterprises must carry out research and development, trial production, stability research, inspection, preparation for registration, and cooperation with on-site verification and others in accordance to the new national standard, in a bid to obtain the approval of formula registration before February next year. At the same time, many IMF products are to expire in 2022, and most companies need to submit renewal applications to ensure stable market supply, as their new formula preparations are not ready. For the products meeting old national standards, whose registration are to expire, due to requirements of 6 months submission in advance before expiration, the production can only be extended for up to

归类预裁定结果调整为 10 位海关商品编码

随着跨境电商的发展，越来越多的境外商品被国内消费者青睐。然而，境外商品种类繁多，成分复杂，诸如婴幼儿的辅食类食品，有时各海关对同一商品申报的归类认定会有所不同。2018 年，海关总署发布了《中华人民共和国海关预裁定管理暂行办法》，在符合先行裁定条件的申请范围内，优先考虑进出口货物的分类，其结果适用于整个关税区。企业在进口货物之前，可以向当地海关 / 港务局申请对其分类的预先裁定，这将解决中国各港口分类不一致带来的挑战。

然而，在实践中，地方海关当局通常只提供 8 位数的海关商品代码，而不是提供完整的 10 位数代码时，它提供了分类的预先裁决。代码的最后两位数字可以而且有时仍然包含与货物分类有关的信息，并且可以为地方当局发布的不同分类创造空间。在这种情况下，货物无法通过黄金海关系统的第二阶段在国内保税区之间流通。通过跨境“1210 模式”进口的货物流动，通常是为需要加速交货给中国消费者的加急产品预留的，是许多企业物流网络的关键环节。与此同时，一旦不同地方海关对商品申报海关编码最后 2 位的附加码认定不同，将导致企业无法完成正常申报；或者不得不在不同关区按照不同的海关编码申报进口。后者会导致企业因为同一产品在不同关区的编码存在差异会承担诸多风险，甚至被处罚。

综上所述，不完整的编码预裁定结果，限制了新产品的引进，甚至带来企业合规风险。

商会建议海关总署修改《暂行办法》的规定，要求海关商品编码为 10 位的完整海关商品编码或者商品分类编码最后两位的参考裁定，应当事先作出裁定。另外，商会鼓励企业在申请预先决定时，可以选择适合其需要的分类（8 位或 10 位代码）。

可持续发展

为了碳中和目标的顺利推进，亟需推动相关市场政策的制定，此类政策包括但不限于反映商业活动社会成本的政策、有助于减少企业碳足迹的规则，以及推动消费者可持续消费的方案。对此，中国美国商会建议中国政府从下述各项规则 and 标准入手，制定相关政策：

推进行之有效的政策路径

- 碳移除规则（内部碳抵消、外部碳抵消以及自然气

解决方案)：明确且公平的碳移除规则将使企业更有信心制定碳移除计划并加大投入，推动中国实现双碳计划等气候目标。具体而言，内部碳抵消、外部碳抵消，以及自然气候解决方案（NCS）将在商业界净零排放进程中起到重要作用。首先，将高质量内外碳抵消认可为有效的碳补偿工具，并用清晰的标准予以支持；其次，自然气候解决方案（NCS）能够提高农业生产经济效率和韧性，提升作物产量、生物多样性和水质，政府应将其作为主流实践加以推广。

- 碳标签和环境声明：基于企业为其产品提供的环境声明，确保消费者能够进行气候智慧型选择，这一过程需要良好的监管，以确保规则明确和公平。例如：随着碳标签计划 / 标准化声明的引入，公司和品牌以透明、可比（公平竞争环境）和真实的方式，就环境方面的努力进行沟通。这一做法也将赋能消费者对环保产品的选择。

除了明确的政策路径之外，要想实现净零碳排放，还需要可持续包装等关键新技术以及低碳基础设施的驱动，推动整体市场转型，这离不开立法和监管层面的支持

塑料包装有利于食品饮料产品的安全存贮和运输，可以延长产品新鲜度和货架期，有效减少了食物浪费。为实现可持续发展，跨国食品饮料企业采取了多种举措推动包装可持续：一是减少 PET 塑料使用，进行包装减重；二是包装材料循环再生，将饮料瓶回收再生后作为服装、鞋帽、家具等的原料，或制成食品级 rPET 瓶，实现“瓶到瓶”的多次循环应用；三是重塑包装，投资突破性的食品包装技术，开发非食品来源的植物基塑料，并探索其他材料应用的创新解决方案。

当前恰逢碳中和机遇期，广大食品饮料企业都在加紧努力，希望助力中国早日实现碳达峰和碳中和。根据商会会员企业研究，与使用原生 PET 相比，使用 rPET 可降低 63% 温室气体排放、减少 79% 能量消耗，与中国的碳减排、碳中和目标以及《十四五循环经济发展规划》要求相吻合。目前，欧美已经广泛使用食品级 rPET，中国还在对食品级 rPET 材料进行食品安全风险评估，希望相关政策法规和标准尽早出台，让食品级 rPET 应用成为食品饮料行业权新的碳中和发力点。

7 months even the renewal is granted. Considering that the relevant products have been registered and sold on the market for five years without any negative response and major consumer complaints.

In summary, in 2022, while IMF enterprises are facing the double pressure of the renewal registration of old national standard products and the application of new national standard products, there will be many applications for IMF registration, adding great workload to SAMR.

To effectively reduce the burden on enterprises and save administrative resources, ensure the normal sales of enterprises, and stabilize the supply of the market, we recommend that the old national standard IMF that expires after June 2022 automatically have its registration validity period extended to the date of implementation of the new national standard.

Adjust advance ruling results on classification to a 10-digit customs commodity code

With the development of cross-border e-commerce, more and more overseas commodities are prevailing to Chinese consumers. However, there is a wide variety of overseas goods with complex composition, such as complementary food for infants and young children, and sometimes the advance ruling on classification of the same goods may vary from one customs office to another. In 2018, GAC issued the *Interim Administrative Measures on Advance Ruling*, which gives priority to the classification of imported and exported goods within the scope of applications eligible for advance ruling, and is applicable to the entire customs territory. Companies can apply to their local customs or port authority for an advance ruling on their classification prior to importing goods, which will address the challenges posed by inconsistent classification across Chinese ports.

In practice, however, local customs authorities usually provide only the 8-digit customs commodity code instead of the full 10-digit code when it provides an advance ruling on the classification. The last two digits of the code can and sometimes still do contain information related to the classification of the goods and have possibilities for different classifications issued by the local authorities. In this case, the goods cannot be circulated between domestic bonded areas through phase II of the Golden Customs System. The flow of goods imported through the cross-border 1210 Model is often reserved to Chinese consumers for products that require expedited delivery, and is a key step in the logistics network of many companies. At the same time, once different customs have different decisions of the additional code of the last 2 digits, the enterprise will be unable to complete declaration; or it will have to declare differently according to customs requests. The latter will lead to enterprises compliance risks and even to be fined because of different reporting of coding on one same product.

In summary, incomplete coding pre-ruling results may limit the introduction of new products and even bring corporate compliance risks.

AmCham China recommends that GAC amend the provisions in the Interim Measures to require the customs to provide a complete customs commodity code of 10 digits or a reference ruling for the last two digits. In addition, AmCham China encourages companies to choose the classification (8 or 10-digit code) that suits their needs when applying for advance rulings.

Sustainable Development

In order to move successfully toward carbon neutrality goals in the coming years, there is an urgent need to advance policy makings in all markets, with priorities including mechanisms to reflect the social costs of business conduct, rules to allow businesses to minimize carbon footprint, and solutions to enable consumers to shift to sustainable consumption. Therefore, AmCham China recommends that the Chinese government make policies from the following rules and standards.

Developing effective policy pathways

- Carbon removal rules (internal carbon offsets, external carbon offsets, and Natural Climate Solutions):** ensuring that carbon removal rules are clear and fair will also give companies more confidence to develop carbon removal plans and increase relevant investment, ultimately helping China to achieve its ambitious goals in addressing climate change. Specifically, efforts in internal carbon offsetting and external carbon offsetting, as well as Natural Climate Solutions (NCS), will play an important role in the business community's progress toward net zero carbon emissions. First, high-quality internal carbon offsetting and external carbon offsetting are officially recognized as effective carbon offsetting tools and supported by clear standards. Second, NCS can improve agricultural production efficiency and resilience, enhance crop yields, biodiversity and water quality, and should be promoted as a mainstream practice by the government.
- Carbon labeling and environmental claims:** ensuring that consumers can make climate-smart choices based on the environmental claims that companies provide for their products requires good regulation to ensure clear and fair rules. For example, with the introduction of carbon labeling schemes and standardized claims, companies and brands communicate about their environmental efforts in a transparent, comparable (in fair competition) and truthful manner. This practice will also allow consumers to make environmental-friendly product choices.

建 议

对中国政府：

- 提出用于管理食品和饮料行业的法律、法规和标准的统一框架和说明。与食品和饮料行业有关的食物安全法律、法规和标准与非食物安全标准之间的关系需要澄清，政府相关部门的职责也应明确。
- 在政策、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。需要采纳微生物快检方法，中国目前的传统方法与国际通用方法尚有差距。
- 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。

In food and beverage industry, sustainable packaging contributes to carbon reduction and carbon neutrality.

Plastic packaging ensures safety, quality and freshness of food and beverage products, prolongs their shelf life and effectively reduces food waste. MNCs in food and beverage sector have rolled out a range of sustainable packaging initiatives to contribute to circular economy: reducing the weight of PET bottles, developing plant based PET and PET bottle recycle and reuse, where PET bottles can be recycled into materials for clothes, furniture and even food grade rPET(recycled PET), which is widely used in markets like the EU and US.

According to the research of the member companies of the Chamber of Commerce, use of rPET in food and beverage packaging can reduce greenhouse gas emissions by 63% and energy consumption by 79%, compared with that of virgin PET, making considerable contributions to China's carbon reduction and carbon neutrality goals and the "14th Five-Year Circular Economy Development Plan". At present, food-grade rPET is widely used in Europe and the United States, and China is still conducting food safety risk assessments on food-grade rPET. It is hoped that relevant policies, and standards will be introduced as soon as possible to allow food-grade rPET use.

istic, fair and reasonable policies and regulations. Adopt rapid microbiological testing methods due to the gap between China's current conventional methods and the international common methods.

- Continue to strengthen the capacity building of market regulators and law enforcers, to ensure standardized law enforcement, and to advance unified and accurate interpretation and implementation of regulations among local authorities, continue to call for establishing open channels and mechanisms for communication between companies and legislative departments, and give timely responses to companies' problems in interpretation and implementation of regulations.

For the US Government

- Strengthen exchanges between relevant US government authorities and industry associations, and US companies in China, and increase opportunities for seminars involving all parties on international experiences and best practices that the Chinese government needs to understand.

Recommendations

To the Chinese government

- Provide a unified framework and description of the laws, regulations and standards for regulating the food and beverage industry, clarify the relationship between food safety laws, regulations and standards and those of non-food safety, and define the responsibilities of relevant government departments.
- Make full use of business associations and platforms in the process of making and executing policies and standards, and develop public-private partnership programs or regular exchange mechanisms for sharing advanced international experience and technology.
- While implementing the State Council's institutional reform, disclose the regulatory responsibilities and communication channels of various departments as soon as possible so that food manufacturers and operators can get accurate and timely information and better communicate with the government.
- Listen to the opinions and suggestions of the scientific research community and the industry in making nutrition and health policies, and formulate real

Healthcare

Introduction

Implementing Healthy China 2030 is one of the most important goals of Chinese government in the next ten years. AmCham China members in the healthcare sector remain committed to supporting the development of a vibrant health care system in China while serving as a trusted, partner to the Chinese government, medical institutions, collaborators, and the public at large.

This chapter outlines AmCham China's policy recommendations from member companies in the areas of China's healthcare services, medical devices, pharmaceuticals, vaccines, gene therapy, and occupational health and safety.

Healthcare Services

Foreign Investment Restrictions

On September 18, 2021, NDRC and MOFCOM jointly released the Special Administrative Measures (Negative List) for the Access of Foreign Investment (2021 Version). AmCham China is glad to see that the negative list further reduces the number of items restricted. This is an encouraging signal for foreign businesses to invest in China.

However, the 2021 negative list continues to include healthcare services into special management measures. The limitations on foreign ownership up to 70 percent significantly impacts the development of many foreign-invested healthcare facilities. Other additional restrictions also impede their daily operations, including the prohibition for foreign investments on opening hospital and clinic branches, which excludes other foreign investments and prevents them from providing a full range of services to patients, including outpatient services and more intensive hospital care. Moreover, qualified medical personnel are not permitted to work freely in different medical institutions and sites of the same investor and can only be registered in one hospital or clinic. These restrictions also impose a heavy tax burden on foreign investment in healthcare facilities, as foreign investors cannot consolidate the tax returns of multiple holdings or investments.

AmCham China recommends that the Chinese government

further open foreign investment in healthcare services by removing healthcare from the Negative List and allowing foreign investors to invest in healthcare branches and clinics with consolidated tax returns, which would help qualified foreign-invested healthcare providers better contribute to the development of China's healthcare system.

Tax Policies for Foreign-invested Hospitals

As detailed in the 2021 White Paper, joint ventures are still not yet allowed to open hospital branches, and each medical branch or clinic must be registered separately, whether or not they are operated under the same brand name. Restrictions on joint venture hospital branches weakens the potential for them to grow into health care systems of scale, diminish the benefits of shared management, suppress the ability of "chain hospitals" to function as a single taxable entity, and impose additional burden to the government taxation work.

Currently, hospitals (or chain clinics) are taxed at rates as high as 25 percent (vs 15 percent for many other industries), and hospitals must report each facility separately, so revenues from facilities with established profitability do not offset the cost of new facilities, resulting in extremely high-income tax rates for developing healthcare brands.

Hospitals require significant upfront investment and often take many years to become truly profitable. Offering preferential tax rates to hospitals in China will help attract more investment into the private healthcare sector, creating a more favorable environment for investment and growth, and allowing investors to balance financial returns with quality and safety.

The private healthcare sector was hit greatly by the pandemic, primarily due to mandatory hospital closures, costs of special protective equipment, and additional costs associated with more stringent screening mechanisms. The medical industry is not included in the industries that receive preferential treatment from the government, except in the rare cases where its operations can be classified as "other industries", which are often enjoyed by small businesses. As a result, many private hospitals are not able to enjoy these supports to recover from the pandemic.

Lowering the corporate income tax rate for foreign-invested

医疗

引言

建

设落实“健康中国 2030”战略是中国政府当前乃至未来十年里最重要的长期工作目标之一。中国美国商会（以下简称商会）医疗卫生领域的会员企业致力于成为中国政府、医疗机构、合作方乃至社会大众心目中值得信赖的合作伙伴。

医疗服务

针对外资医院的税收政策

合资医疗机构尚未被允许开立医院分支机构，且每个医疗分支机构或诊所必须单独注册，无论这些机构是否由同一品牌经营。限制合资医院开设分支机构阻碍了医院成长为具有规模的医疗保健系统的潜能，削弱了共享管理经济带来的好处，限制了“连锁医疗院线”作为单一纳税实体的能力，并且给政府税收工作增加负担。

目前，医院（或连锁诊所）所得税高达 25%，医院必须单独报告每个设施，因此已具备成熟的盈利能力的设施收入不能抵消新建设施的损失，导致发展中的医疗品牌所得税负担极高。中国许多行业能享受 15% 的优惠税率。医院需要大量的前期投资，而且往往需要很多年才能真正盈利。向中国的医院提供优惠的税率，有助吸引更多投资，尤其是吸引外资进入私立医疗机构和医疗保健业，为投资和发展创造更有利的环境，使投资者能兼顾财务回报及质量安全。

私立医疗行业受新冠肺炎疫情打击，主要由于医院强制性关闭、特殊防护装备开销大，及更严格的筛查机制产生了不少额外费用。医疗行业未被纳入接受政府优惠待遇的行业，除非在极少情况下，其经营可被归为“其他行业”，而这些行业往往只针对小型企业。因此，尽管遭受损失，许多私立医院并不能使用这些优惠政策，这不利于其从疫情中恢复。

降低外商投资医疗机构的企业所得税率，允许合并税务申报，将有助于缓解当前情况，使行业得以实现可持续发展，使相关医疗机构为中国医疗能力做出更大贡献。

医保报销应涵盖高端私立医院和线上服务

尽管一些高端私立医院的药品和相关服务定价机制与政府指导一致，但大多数高端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和慢性病专科治疗的发展，不利于开展分级诊疗。每月按时缴纳社保的个人如果去高端私立医院寻求高质量的医疗服务，将无法享受医保报销。

商会建议中国的基本医疗保险扩展到高端私立医院和互联网服务领域，并允许患者在公立医院得到最大限度的报销额度，剩余费用自行支付或通过补充医疗保险支付。高端私立医院的任务是提供不同水平的护理，以满足社会的不同需求。为了提供最高水平的服务，高端私立医院的医疗服务价格往往不同，且高于非私立医院的价格。如果消费者愿意为更高水平的护理支付更高的价格，他们不应放弃享受公共保险的权利，而是应该被允许纳入补充保险范围，以便在其选择的医疗机构寻求治疗。此外，商会建议提高医疗保险费用的个人所得税减免上限。这些政策可增加患者获得所需药品的机会，让患者和消费者拥有更多、更优质的选择。

外籍医疗医生

医疗人才是一种稀缺资源。为了吸引国际人才，一些外商投资医疗企业从国外招聘了高级人才，引入了先进的知识和技能。根据《外国医师来华短期行医管理暂行办法》，这些高级人才可以获得行医许可，国家卫生健康委员会认可这些医生在一个或多个医疗机构行医所带来的好处。然而在实践中，外国人的工作许可只能发给一家企业 / 机构，即使同一个投资者拥有多个医疗机构，外国医生也只能在一家机构工作。

medical institutions and allowing consolidated tax returns will help alleviate the current situation and allow the industry to achieve sustainable development, enabling the relevant medical institutions to make a greater contribution to China's healthcare capacity.

Health Insurance Should Be Extended to High-End Private Hospitals and Online Services

Although some high-end private hospitals have pricing mechanisms for drugs and related services that are consistent with government guidelines, most high-end private hospitals continue to operate outside of the existing basic medical insurance (BMI) program, which limits patient choice and inhibits the development of specialized cancer treatments. Individuals who pay into their social insurance funds on time each month are effectively shut out from medical reimbursement through social insurance if they turn to high-end private hospitals for high-quality medical services.

AmCham China recommends that China's basic BMI be extended to high-end private hospitals and online services, and that patients be allowed to receive the maximum amount of reimbursement in public hospitals, with the remaining costs paid for out-of-pocket or through supplemental health insurance. The mission of high-end private hospitals is to provide different levels of care to meet the diverse social needs. In order to provide the highest level of service, private hospitals often have different and higher prices for medical services than non-private hospitals. If consumers are willing to pay higher prices for a better medical care, they should not forfeit their right to public insurance, but should be allowed to draw upon that coverage in order to be able to seek care at the provider of their choice. A small pilot allowing for BMI plus supplemental out of pocket payment for a small number of private hospitals in Shanghai was instituted several years ago, allowing this at only some of the qualified private hospitals and not others make for unfair competition and an uneven playing field. AmCham China recommends increasing the cap on the personal income tax deduction for health insurance costs. These policies would increase patient access to needed medications and improve patient and consumer choice.

Foreign Medical Talent

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 to bring in advanced knowledge and technology. According to the Interim Measures for the Administration of Short-term Medical Practice of Foreign Physicians in China, 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 facilities. In practice, however, Work Permits for foreign nationals are issued for work at only one company/facility, restricting

foreign doctors to working in a single facility, even if the same investor owns more than one facility.

The draft Administrative Measures for the Practice of Foreign Doctors in China released in January 2020 by the NHC may further restrict access to international talent, as foreign doctors would be required to pass the NHC exam in Chinese. Given that English is the prevailing language of the international medical and scientific community, we urge the government to exhibit flexibility. In order to take full advantage of available international talent, we recommend that foreign doctors be issued licenses that permit them to work at multiple site and that the NHC exam be optionally administered in English, because their patient base is likely to be English-speaking. We also recommend that foreign doctors who are licensed in China be permitted to practice on Chinese internet platforms.

Public Health Emergency Management Systems

AmCham China recommends that the Chinese government make full use of the private sector when upgrading China's public health emergency response and management system. Private hospital workers have a significant role to play in emergency response, as demonstrated during the fight against COVID-19 in Hubei province. Of more than 40 thousand health professionals supporting Wuhan in 2020, more than 4 thousand were from private hospitals. However, the national health commission didn't include these personnel into the national public health emergency management system, so they went to Wuhan as volunteers. The inclusion of private hospitals in the national system helps the government fully utilize the expertise, professional skills and resources provided by medical specialists from private hospitals. This facilitates the flow of technical support and supplies and ensures that health professionals safely reach the front lines of emergencies, including the ongoing pandemic efforts.

At the beginning of the outbreak of the COVID-19 pandemic, AmCham China noticed that the government leveraged its resources to support public hospitals over private hospitals. Some private hospitals and clinics were forced to close due to lack of protective equipment and epidemic prevention resources, because the supply of protective equipment was only distributed to public hospitals. Other private hospitals were forced to partially or completely shut down due to local government policies, causing huge economic losses to these private hospitals and clinics. And, with limited medical capacity to treat COVID-19 patients in public hospitals during the containment period, other patients' access to treatment and care has also been limited.

Furthermore, to build an efficient public health emergency system, AmCham China recommends that the Chinese government treat private and public healthcare suppliers in a more equitable manner so that private hospitals can

2020年1月，国家卫生健康委员会颁布了《外国医师来华行医管理办法》（征求意见稿），其中内容将会进一步限制国际医疗人才的引入，如该征求意见稿表示将要求外国医生需要以中文作答完成国家卫生健康委员会考试。由于英语是国际医学领域的主要语言，并且国际医生面临的患者人群可能倾向说英语，建议国家卫生健康委员会的考试可以用英语进行。商会还建议充分利用国际医疗人才，向外国医生签发的许可，允许他们在多个医疗机构行医，并可提供线上服务。

公共卫生应急管理

商会建议中国政府在完善中国的公共卫生应急管理系统时充分利用私营领域的力量。在新冠肺炎疫情爆发之际，中国各地方政府派出4万多名医护人员支援湖北对抗新冠肺炎，其中4000多名医护人员均来自私立医院，他们与公立医院的医护人员共克时艰。但这些私立医院的医护人员并未纳入由国家卫生健康委员会监管的全国卫生应急总体规划中，所以他们以志愿者身份前往湖北支援。将私立医院纳入全国卫生应急总体规划有利于政府充分利用私立医院的医疗专家提供的专业知识、专业技能和资源，促进技术支持和物资流动，使其安全抵达抗疫前线。

在新冠肺炎爆发之初，商会注意到，国家在采取救援措施时，会优先动用公立医院资源，一些私立医院和诊所由于缺少防护设备和防疫资源而被迫关闭，因为防护设备都供给分配给了公立医院。其他私立医院出于当地政府政策被迫部分或完全停业，给这些私立医院和诊所造成了巨大的经济损失。而且，由于疫情控制期间公立医院治疗新冠肺炎患者的医疗能力有限，其他患者获得治疗和护理的机会也受到了限制。

为了打造一个高效的公共卫生应急系统，商会建议中国政府以更公平的方式对待私立和公立医疗服务提供者，使私立医院在现行分级诊疗制度下，最大限度地发挥其作用。

对外商投资的限制

2021年12月27日，国家发改委、商务部发布了《外商投资准入特别管理措施（负面清单）（2021年版）》。商会欣喜地看到负面清单再次缩减，这是市场进一步开放的信号，也是鼓励外商投资的信号。

然而，遗憾的是，2021年负面清单继续将医疗服务列入特别管理措施。目前，外国投资权益比例限制在最高70%，这极大地阻碍了许多外商投资医疗机构的发展。除了投资限制，其他限制也阻碍了外商投资医疗机构的日常经营，包括禁止外商投资医院开立医院和诊所分支机构，这限制了其他外商投资，阻碍了外商投资医疗机构为病人提供全面的服务，包括门诊服务和更集中的医院护理。此外，合格的医护人员不可在同一个投资人控股的不同医疗机构和场所自由工作，只能在一所医院或诊所注册。这些限制也对外商投资医疗机构造成了沉重的税务负担，因为外国投资者不能将多个控股机构或投资的税务申报整合到一起。

商会建议中国政府进一步开放外商投资医疗服务领域，将医疗服务从负面清单中去除，允许外国投资者投资医疗分支机构和诊所，合并税务申报。这一举措有助于合格的外商投资医疗机构更好地助力中国医疗体系的发展。

医疗器械、耗材和支付改革

进入市场前的原产地认证批准要求

商会欢迎创新医疗器械注册取消原产地认证要求。这不仅证明了国家药品监督管理局的审批能力，也反映了中国政府决心让先进医疗器械对于中国患者更可达、更容易使用。商会也希望国家食品药品监督管理局进一步推进此措施，使其适用于所有的进口医疗器械产品，以满足市场和广大中国患者的用械需求。更多内容请参阅2021年《白皮书》。

医疗器械临床试验

商会欢迎国家药监局制定《医疗器械临床评价技术指导原则（征求意见稿）》、《新增和修订的免于进行临床试验医疗器械目录》以及《新增和修订的免于进行临床试验体外诊断试剂目录》。商会认为，这些规定将帮助中国平衡监管部门、行业和患者对临床要求的需要。商会非常高兴地看到，中国监管部门已经认识到，医疗器械的临床试验只有在已有临床文献资料、临床数据不足以证明产品安全性和有效性的情况下才应当开展。《医疗器械监督管理条例》（国务院令第680号）也试图实现这种平衡，规定第二类和第三类医疗器械产品在以下三种情形下免于进行临床试验：

continue serving patients and play an active role in alleviating strains on medical resources due to pandemic-related restrictions.

Medical Devices, Consumables, and Payment Reform

The Requirement for Country-of-Origin (COO) Certification to Obtain Pre-Market Approval

AmCham China appreciates the effort that certificate of country of origin is no longer required for registering innovative medical devices, which not only demonstrates the approval capabilities of NMPA, but also reflects the Chinese government's determination to make advanced medical devices more accessible for Chinese patients. AmCham China also hopes that NMPA will further apply this measure to all imported medical devices so as to meet the needs of the market and Chinese patients. Please refer to the 2021 White Paper for more details.

Clinical Trial

AmCham China is pleased to see that NMPA promulgates the Technical Guidelines for Clinical Evaluation of Medical Devices (Draft for Comments), the New and Amended Clinical Trial Exemption List for Medical Devices, and the New and Amended List Clinical Trial Exemption List of In Vitro Diagnostic Reagents, which AmCham China believes will help China balance the needs of regulators, industry and patients for clinical requirements. AmCham China is also glad to see that the Chinese regulatory authorities have recognized that clinical trials of medical devices should only be conducted when the existing available clinical literature and data are insufficient to prove the safety and efficacy of the product. The Regulations on Supervision and Administration of Medical Devices (the State Council, directive No. 680) also attempts to achieve this balance by exempting Class II and Class III medical devices from clinical trials in the following three circumstances:

- Medical devices in the same variety have clear working mechanism, design stereotypes, and mature production process, and are marketed and clinically applied for many years without serious adverse events recorded, and no changes in routine use;
- Non-clinical evaluations can prove that the medical device is safe and effective;
- Analysis and evaluation of data obtained from clinical trials or clinical application of medical devices in the same variety can prove that the medical device is safe and effective.

Existing clinical trial regulations give rise to concerns that excessive and unnecessary human trials will tie up the limited resources of qualified clinical trial facilities and

crowd out limited regulatory resources that should otherwise be devoted to other more important areas. Moreover, unnecessary clinical trials can delay patient access to life-saving medical technologies and place a significant burden on the industry in terms of predictability, cost and time to market. Time to market is particularly important to the medical device industry. Considering that clinical trials usually take two to three years or longer, unnecessary trials will push back the time to market for products in China by more than two generations.

AmCham China recommends that China's regulatory and technical authorities adopt a risk-based approach to medical device clinical trials and further explore and implement best regulatory practice for clinical requirements that ask for clinical trials only when safety and clinical effectiveness cannot be demonstrated by other means or devices are not determined to be beneficial to patient health. A risk-based approach integrates the interests of regulators, industry, and patients, and balances the following two needs, on one hand, to ensure that appropriate trials are conducted when safety and efficacy cannot be confirmed through other clinical and non-clinical data, and on the other hand, to ensure that impediments to patients in need of life-saving medical technologies are minimized.

Suggestions on management requirements and technical specifications for improving Laboratory Developed Tests (LDT)

On March 18, 2021, the State Council issued a new revision of the Regulations for the Supervision and Administration of Medical Devices (the State Council, directive No. 739), which has sparked widespread concerns in the industry. Article 53 puts forward that for in vitro diagnostic reagents that have no equivalent products on the market, eligible medical institutions can develop their own equivalent products in accordance with their clinical needs, which can be used under the guidance of a licensed physician inside the institution. Specific management measures will be made by the State Council's drug supervision and management departments along with departments in charge of health development.

LDT responds to the national strategies of tiered diagnosis and treatment, high-level medical personnel development, and precision medicine. The gradual opening and encouragement of proper development of LDT in medical diagnosis departments of large hospitals with conditions to meet the needs of precision medicine is in line with the national trends of promoting tiered diagnosis and treatment and the general direction of enhancing innovative development of healthcare. The development of medical diagnosis is inseparable from LDT which relies on high-tech equipment and highly qualified professionals, and also gives back to capacity building of the medical personnel. The development of individualized medicine and precision medicine is inseparable from accurate and reliable test results, especially those of the

- 工作机理明确、设计定型，生产工艺成熟，已上市的同品种医疗器械临床应用多年且无严重不良事件记录，不改变常规用途的；
- 通过非临床评价能够证明该医疗器械安全、有效的；
- 通过对同品种医疗器械临床试验或者临床使用获得的数据进行分析评价，能够证明该医疗器械安全、有效的。

现有的临床试验规定让人不免担心过多和不必要的人体试验，会占用临床试验机构的有限资源，挤占原本应当用于其他更重要领域的有限的监管资源。而且，不必要的临床试验会推迟患者获得救生医疗技术的时间，在可预测性、成本和上市时间方面给行业造成重大负担。上市时间对医疗器械行业尤为重要。考虑到临床试验需要两到三年或者更长的时间，不必要的试验使得产品进入中国市场的时间将会推后两代以上。

商会建议中国监管和技术部门从风险评估的角度判断医疗器械临床试验，进一步探索和实施临床要求的最佳监管实践做法，只有在无法通过其他方式证明安全性和临床效果或者确定对患者健康有利的情况下才要求进行临床试验。基于风险的方法综合考虑了监管机构、行业和患者的利益，平衡两个方面的需要，既要在无法通过其他临床和非临床数据证实安全性和效果的时候确保进行适当的试验，也要确保将对需要救命医疗技术的患者的妨碍减到最小。

关于加快建立完善实验室自建检测方法 (LDT) 管理要求和技术规范的建议

2021年3月18日，国务院发布了新修订的《医疗器械监督管理条例》(中华人民共和国国务院令 第739号)，引发了业界广泛关注。文中的第53条提出：“对国内尚无同品种产品上市的体外诊断试剂，符合条件的医疗机构根据本单位的临床需要，可以自行研制，在执业医师指导下在本单位内使用。具体管理办法由国务院药品监督管理部门会同国务院卫生主管部门制定。”

实验室自建检测方法 LDT 顺应了分级诊疗、高水平医学人才发展、精准医疗等国家战略要求。在有条件的大型医院医学诊断部门逐步放开甚至鼓励恰当发展 LDT，满足临床精准医学的需求，符合国家推进分级诊疗的趋势与促进医疗水平创新发展的大方向。医学诊断的发展离不开 LDT，而 LDT 在依赖高科技设备及高素

质高水平人才的同时，也回馈促进人才队伍的建设。个体化医学和精准医疗的发展与准确可靠的检测结果密不可分，尤其是日新月异的分子检测技术和高新检测技术的检测结果。LDT 也有助于医院内部规范医疗行为，促进合理检查，规范生物标本的流通，提高医疗资源利用效率，降低医疗费用，保障人民群众健康权益，改善就诊体验。

中国临床医学诊断实验室开展的 LDT，无论是数量还是种类都与美国等发达国家相距甚远。国内仅有少数临床医学诊断实验室开展，并且大多仅作为临床研究，无法满足临床诊疗日趋增长的个体化与精准化的需求。另一方面，患者检测需求的差异化，对相应的检测服务、医生的医学知识等提出了更高的要求。LDT 由于其转化医学和个体化医学的特性为应对临床供需双方的痛点、促进现代医学发展提供了新动力。

商会欣喜地看到，为了响应 LDT 日益迫切的发展需求，国家和地方已经从政策层面对 LDT 规范发展的关切做出了积极回应。随着 2021 版《医疗器械监督管理条例》的发布实施，2021 年 7 月 15 日，国务院发布《关于支持浦东新区高水平改革开放打造社会主义现代化建设引领区的意见》，赋予浦东新区改革开放新的重大任务。《意见》第四条明确提出：“在浦东新区范围内允许有条件的医疗机构按照相关要求开展自行研制体外诊断试剂试点。”商会认为更多新的检测技术和检测项目的研发和应用将在很大程度上促进医学诊断未来的发展，这有助于临床诊疗水平的快速发展，有助于病人生命和健康质量的不断提高。商会期待相关部门加快建立 LDT 的管理要求和技术规范，造福广大人民，促进行业发展。

医疗器械上市后变更管理 - 变更注册后标签、说明书执行时间的管理

目前医疗器械和体外诊断试剂的变更注册种类繁多，除了小部分属于变更备案（如，注册人、备案人的名称和地址变化，代理人名称和地址变化）外，其他变化均属于变更注册范畴，例如，增加包装规格、增加适用机型、延长有效期、增加样本类型、外包装标签以及其他一些涉及到说明书的描述性文字变化或不降低性能指标的微小变化。上述这些变化很多情况与产品本身安全无关，仅是说明书或标签发生变化。

依据目前规定，变更注册批准后，在中国销售的产

rapidly upgrading molecular testing technologies and high-tech testing technologies. LDT also helps to regulate medical behavior within hospitals, promote rational examination, standardize the circulation of biological specimens, improve the efficiency of medical resources, reduce healthcare costs, protect people's health rights and interests, and improve the diagnosis experience.

The LDTs performed by clinical medical diagnostic laboratories in China are far from those performed in developed countries such as the United States, both in terms of quantity and variety. Only a few laboratories in China perform LDTs, and most of them are only used as clinical studies, which cannot meet the increasing demands for individualization and precision in clinical treatment. On the other hand, patients' different testing needs have put forward higher requirements on corresponding testing services and doctors' medical knowledge. Due to the natures of translational and individualized medicine, LTDs provide a new impetus to address the pain points of both clinical supply and demand, and to promote the development of modern medicine.

AmCham China is pleased to see that in response to the increasingly urgent development needs of LDT, the central and local governments have responded positively to the concerns of LDT regulations. After the release and implementation of the 2021 version of the Regulations on Supervision and Administration of Medical Devices on July 15th, 2021, the State Council issued the Opinions on Supporting the High-Level Reform and Opening-up of Pudong New Area to Build a Leading Area for Socialist Modernization, which designates new major tasks to the reform and opening-up of Pudong New Area. Article 4 of the Opinions clearly states that eligible medical institutions in Pudong New Area are allowed to carry out LDTs in vitro diagnostic reagents in accordance with relevant requirements. AmCham China believes that the development and application of more new testing technologies and testing items will largely contribute to the future development of medical diagnosis, which will facilitate the rapid development of clinical diagnosis and treatment levels and the continuous improvement of patients' lives and health quality. AmCham China expects the relevant departments to speed up the establishment of LDT management requirements and technical specifications for the benefit of the general public and the development of the industry.

Reform on pricing of healthcare services

After the reform on governmental functions in 2018, the pricing of healthcare services was transferred from NDRC to NHSA, and the linkage between pricing and policies of healthcare, health insurance, and pharmaceuticals was further strengthened, and a pricing mechanism with category management, dynamic adjustment and multiparty participation is gradually taking shape.

AmCham China has noticed that NHC is recently considering making a new version of the National Specifications on Prices of Healthcare Services, which is expected to further standardize the current operating procedures and incorporate more new medical services and advanced technologies into clinical applications. NHSA is also organizing the promulgation of the Specifications. The efforts mentioned above will be bound to greatly standardize the management of healthcare service pricing.

AmCham China hopes to further consider the role of technological advances in improving the quality and efficiency of healthcare services in the reform to form a dynamic admission mechanism, to advocate a scientific approach to determining admission and pricing of healthcare services, and to adjust and raise the proportion of healthcare services in the pricing as appropriate to fully reflect the service value of healthcare technicians.

The pricing of healthcare services should be based on the technical value they can provide. From the perspective of practice, clinical practitioners should select the most appropriate technology and devices and make an optimal treatment plan for patients that should be balanced with medical ethics, technological advances, affordability of health insurance funds and cost effectiveness, instead of merely focusing on lower price. If the price is unilaterally lowered, or some devices necessary for specific patients or diseases are not included in the separate catalog, it may result in a fact that technically innovative medical devices are not being able to give full play to their value, or that healthcare institutions give up using advanced and efficient technologies and products for economic reasons, and only use inexpensive but obsolete consumables and technologies, making it difficult to guarantee the quality and safety, and to improve healthcare levels.

For example, regarding physical examinations, the Specifications states that "examinations shall not be priced based on different reagents or methods and shall fully consider factors such as the mainstream methods in local medical institutions and the cost affordability of society to encourage the use of appropriate technologies". From a medical perspective, clinicians need to use different methods to determine the condition of the patient at different stages of disease, including screening, early diagnosis, disease treatment and monitoring of the progress of recovery. And advanced examination methods have higher specificity and sensitivity, or can shorten the time required, which will help clinicians diagnose diseases earlier and more accurately and help determine whether to adjust or stop treatment. Moreover, different methods for the same indicator have different scope of application, environment of use or target population, and they are not simple substitutions to each other, but are mutually supplementary, and can be used together to better improve diagnosis accuracy. Since different diagnoses have different prices, diagnostic pricing should also be differentiated, otherwise it may result in a fact that

品的标签上的生产日期需要在变更注册证的批准日期之后，并且变更批准之后生产的产品需要立即使用新批准的说明书及标签。

但是，从实际生产计划以及供应链等环节来看，由于注册人、备案人往往无法提前获得确切的变更注册批准时间，企业很难提前做出预测调整生产计划以满足生产日期在变更注册证批准之后的要求。同时，在变更批准后调整生产计划、安排新标签和说明书的印制以及运输均需要一段时间。需要等到下一个生产批次的产品按照变更获批之后的信息生成新的说明书和标签才能供应市场，这将导致产品在过渡期间供应不足，以致未能完全满足病人的需要。

商会建议国家药品监督管理局考虑能够尽早修订《医疗器械说明书和标签管理规定》（国家食品药品监督管理总局令第6号）并考虑发布一个关于变更批准后可以实施标签和说明书过渡期的通知，并在该规定/通知中明确一个变更注册实施的过渡期，允许获得变更注册批准的产品的新旧标签在过渡期并行使用。并建议，国家药品监督管理局能够考虑参考《药品上市后变更管理办法（试行）》中相关要求，在医疗器械变更注册申请批准也给予六个月的变更实施过渡期，以便企业制作新标签、说明书及合理安排生产计划。

医疗服务价格改革

2018年机构改革后，医疗服务定价职能从发改委转移到医保局，价格与医疗、医保、医药等相关政策衔接联动得以进一步强化，分类管理、动态调整、多方参与的价格形成机制正在逐步形成。

商会了解到，近期国家卫健委正在研究制定新版本《全国医疗服务价格项目规范》，有望进一步规范现行的操作流程，并将更多新的医疗服务项目和先进技术纳入临床应用。国家医保局也组织了“国家医疗服务价格项目规范”的编定工作。上述工作必将极大地促进医疗服务价格管理走向规范。

商会希望有关部门进一步考虑技术进步对医疗服务质量与效率的提升作用，形成动态准入机制；提倡用科学的方法确定医疗服务项目的准入和价格；适当调整提升医疗服务价格中医疗服务的比重，减少中间环节，取消医疗耗材加成。

医疗服务项目的定价应基于其能够提供的技术价值。从医疗实践的角度而言，临床医疗工作者应当为患者选择最适宜的技术、设备和形成一套最优治疗方案。这个最优，应充分平衡考虑医学伦理、技术进步、医保基金承受能力和成本效益等方面，而不仅仅指价格最低。若片面压低医疗服务项目价格，定价过低或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收费目录，可能导致技术创新型医疗器械无法充分发挥其价值，或造成医疗机构因为经济原因放弃使用先进高效的技术和产品，而仅使用价廉但濒临淘汰的耗材/技术，难以保障服务质量和医疗质量安全，也不利于医疗水平不断提高。

例如，有关检验项目，《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，以鼓励适宜技术的使用”。从医学角度，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。并且，先进的检测手段具有更高的特异性和敏感性，或能缩短检验所需时间，帮助医生更早更准确地诊断疾病，为调整或停止治疗提供依据。而且，针对同一指标的不同方法的检验项目有不同的适用范围、使用环境或适应人群，它们之间不一定能构成简单替代关系，而是取长补短、互相印证的，配合使用可以更好的提高诊断的准确程度。由于不同诊断存在成本差异，因此诊断定价也应有所区分，否则可能造成更新更好诊断的方式被“逆淘汰”的现象。

商会建议，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”原则，基于技术价值，优先将具有安全性、效用和效果显著的产品列为单独收费，且保障病患的自主选择权；在调整医疗服务定价时，应考虑到原材料、人力成本的增加，建立科学的成本测算方法，合理地调整医疗服务价格，使得调整做到“有升有降”；在检测项目上，建议考虑将更多先进、灵敏度/特异度更高的检测方法纳入新一版规范，适当允许差别计费。

医疗服务项目的动态调整

自国家发改委发布《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》（发改价格〔2015〕3095号）以来，各地逐步开放了申请新增医疗服务价格

newer and better diagnostic methods would get eliminated.

AmCham China recommends that in pricing healthcare services, the first priority be to serve patients, with the principle of “efficacy first and reasonable price”, and based on the value of technology, products with safety, efficacy and significant effect be added to the list of separate charges to protect patients’ rights of independent choices. In adjusting the pricing of healthcare services, consideration should be given to the increase in raw materials and labor costs, and scientific costing methods should be applied to reasonably adjust prices that can be up and down according to the market. As for examination services, it is recommended that more advanced and more sensitive/specific methods be added in the new version of the Specifications, and distinct pricing be allowed as appropriate.

Dynamic adjustment of healthcare services prices

Since NDRC issued the Notice on Issues Related to Acceptance and Review to Prices of New Healthcare Services (NDRC pricing, 2015, No. 3095), the window for applying for pricing of new healthcare services has gradually been opened, but the process of aligning with the Specifications has been relatively slow everywhere. Since 2020 when NHSA started to code for healthcare services, NHSA has still referred to the coding format and item names of the 2001 and 2007 versions of the Specification. From this point of view, it seems that the two versions are still the most popular version at present. Due to the early release of these two versions, plenty of already mature technical methods and services have not yet been added to the existing catalogs, which cannot fully allow new medical technologies to be applied in clinical use.

In addition, a standardized mechanism has not been formed in the management of adding and amending prices of healthcare service. For example, there is no fixed duration for applying prices of new healthcare services, and a few provinces leave insufficient time for hospitals to prepare for relevant materials. The evaluation that basically relies on experts’ experience is short of objective indicators and basis. Some regions do not open the window for application for a long time or do not review the items submitted, resulting in a constant backlog of new applications. Another point worth noting is that the application periods for amendments to existing items (such as price adjustments and connotation changes of existing items) are not enough, as a result of which technologies and products in existing items that have undergone improvements and innovations cannot be updated in a timely manner, restricting the progress of healthcare technology and the improvement of quality, and failing to reflect the value of innovation.

In recent years, the medical insurance departments have been regulating healthcare institutions and individuals for fraudulent reimbursement and indiscriminate charges

by spot inspections. In the future, regular monitoring will be executed, and institutions are required to more strictly implement the current pricing, and service prices are also asked to be adjusted in a timely manner according to relevant regulations.

In summary, AmCham China recommends that local governments regularly (1-2 times per year) accept applications for new healthcare service items as well as amendments to existing items, and speed up the review of new items, in order to properly promote the market access of new technologies and services and updated and timely clinical application. Time for application should be informed in advance, or it is recommended to adopt a model of “long-term acceptance and regular review” to give sufficient time for hospitals to prepare materials. At the same time, the results of health technology assessment should be considered for the determination to the admission.

Payment System Reform

In 2017, the General Office of the State Council issued the Guiding Opinions on Further Deepening the Reform of Basic Medical Insurance Payment Methods, which proposes to further strengthen the budget management of medical insurance funds and fully implement a multifaceted and composite diagnosis-based medical insurance payment system since 2017. All local governments should select a certain number of disease types to implement diagnosis-based payment, and the central government selects certain regions to carry out diagnosis-related groups (DRGs) pilot programs, and encourages local government to optimize multiple payment methods, such as capita and hospital bed-based payment. After the reform on governmental functions in 2018, NHSA started to focus on payment system reform and respectively launched DRG and DIP pilot programs. The first batch of DRG pilot cities were released in October 2019. By the end of 2021, 30 DRG and 71 DIP pilot cities have started actual payments one after another. In 2021, the reform of health insurance payment methods has covered all medical institutions and healthcare services, and multiple multifaceted and composite health insurance payment methods adapted to different diseases and service natures have been prevailing nationwide, with a significant decline in the proportion of item-based payment. In order to better and fully use health insurance funds, the reform of health insurance payment system will be further deepened in the future, with a target that 70 percent of inpatient expenses needs to be settled by DRG or DIP by 2025.

According to international DRG experience, as for healthcare service providers, if the payment system reform is implemented properly, it can to a certain extent improve the management of institutions, regulate treatment behaviors, enhance patient satisfaction, raise the importance and requirements of hospitals for care, and improve the quality and efficiency of healthcare to control costs. Otherwise, it may

项目的窗口，但各地对接《全国医疗服务价格项目规范（2012年版）》的进程稍显缓慢。2020年国家医保局开展医疗服务项目编码制定时，仍然会参考《全国医疗服务价格项目规范（2001年/2007版）》的编码格式和项目名称。从这一点看来，2001年/2007版仍是目前最主流、最基础的版本，但由于该版本目录发布时间过早，很多已经成熟的技术方法、服务项目都尚未纳入现有目录，无法充分满足医疗新技术进入临床使用的需求。

此外，各地在新增/修订医疗服务价格项目的管理流程上，尚未形成规范机制，例如：各地开放新增医疗服务价格项目申请窗口的周期不固定，部分省份新增窗口期开放时间较短，医院缺乏充足时间准备相关资料，评选过程主要依靠专家经验，缺少客观的指标和依据。有些地区长期不开放窗口或对收集到的项目不做审核，造成新增申请不断积压。还有一点值得注意的是，旧项目修订（如已有项目的价格调整、内涵变更等）窗口期开放过少，造成旧项目中所包含的技术、产品经过了改进和创新后，无法在项目中得到及时更新，制约了医学技术的进步和医疗质量的提升，无法体现创新价值。

近年来，医保部门通过开展医疗机构“飞检”等手段，对医疗机构、个人欺诈骗保、乱收费等行为进行监管，未来将实现常态化的监管，要求医疗机构更严格的执行现行收费项目，同时也要求医疗服务价格项目根据规定及时做出调整。

综上所述，商会建议，各地区定期（每年1-2次）对新增医疗服务项目开放接受和审查窗口，加快审核新增医疗服务价格项目，同时开放受理原有项目的修订申请，以适当促进新技术和新服务的市场准入、更新与及时的临床应用；通知提前时间，或采用“长期开放、定期处理”的模式，给予充分时间准备材料；同时，将卫生技术评估的结果纳入作为准入的决策参考。

支付制度改革

2017年，国务院办公厅发布《关于进一步深化基本医疗保险支付方式改革的指导意见》，提出2017年起，进一步加强医保基金预算管理，全面推行以按病种付费为主的多元复合式医保支付方式。各地要选择一定数量的病种实施按病种付费，国家选择部分地区开展按疾病诊断相关分组（下文称“DRGs”）付费试点，鼓励各地完善按人头、按住院日等多种付费方式。2018年

机构改革后，国家医保局着力支付制度改革，先后启动了DRGs支付和DIP（区域总额下按病种分值付费，下文称“DIP”）支付的试点工作。2019年10月发布首批DRG试点城市。到2021年底，30个DRG国家试点城市和71个DIP国家试点城市陆续启动实际付费。2021年，医保支付方式改革覆盖所有医疗机构及医疗服务，全国范围内普遍实施适应不同疾病、不同服务特点的多元复合式医保支付方式，按项目付费占比明显下降。为进一步提升医保基金使用效率，未来医保支付方式改革将进一步深化，并设定了目标在2025年70%的住院费用需要开展DRGs或者DIP的结算。

依据国际DRG经验，对医疗服务提供方来说，支付制度改革若实施得当，能一定程度提高医疗机构的管理水平、规范医疗机构的诊疗行为、提升患者的满意度、提高了医院对护理的重视程度和要求、提升医疗质量和效率以控制成本；相反，也可能会影响医疗机构对医疗服务新技术的引进和采用、医疗机构选择病人、因节省费用而影响医疗质量。我国支付制度改革（DRG/DIP）处于试点阶段，因此建议政策制定部门完善相应的配套政策：

新技术差异化支付政策

考虑到DRG/DIP的支付标准通常是采用历史数据来进行测算，但新药品和新技术在临床上还未得到充分使用，因此该支付标准可能未完整考虑新药品和新技术的使用成本，支付标准可能存在不够准确的情况，从而抑制了新药品和新技术的使用以及临床技术的发展。基于价值证据，考虑将符合条件的创新技术/创新产品暂不纳入DRG/DIP支付，待临床充分使用产品后（国际经验为2-3年），再纳入DRG/DIP的支付体系中。

基于临床治疗的制度化监督管理机制

将医院、医生行为制度化。例如，明确规定一些因医疗服务提供不当或院内照护不当造成的院内感染、非预期二次手术、非预期二次入院，是医院应该自行承担的成本，不可纳入资源消耗范畴。

由医保支付方进行质量监管。如医保支付方成立专家委员会，定期抽检评估医生的诊疗行为。审核DRG/DIP分组相关的诊疗信息的准确、真实记录得以实现，保证既不能因为少填、错填造成DRG/DIP组的降级或错误入组，得到不足支付，又不可升级DRG/DIP组。

impede the introduction and adoption of new technologies for healthcare services by institutions, cause institutions' discrimination on patients, and affect the quality of healthcare due to cost savings. China's payment system reform (DRG/DIP) is still in the pilot phase, so it is recommended that relevant authorities make the following supporting policies:

New technologies differentiate payment policies

Considering that DRG/DIP payment standards are usually measured by historical data, but new drugs and technologies have not yet been fully used in the clinic, the standards may not take into full account the cost of using new drugs and technologies, and may not be accurate enough, which inhibits the use of new drugs and technologies and the development of clinical technologies. Based on the value evidence, it is recommended to exclude eligible innovative technologies/products from the DRG/DIP payment system for the time being, and then include them in the system after the products are fully used in the clinic (2-3 years in international experience).

Institutionalized supervision and management mechanism based on clinical treatment

Institutionalize hospital and doctor behaviors. For example, specify that some nosocomial infections, unintended secondary surgeries, and unintended secondary admissions caused by improper delivery of medical services or improper in-hospital care are costs those hospitals should bear on their own and may not be included in the category for reimbursement.

Quality control by the health insurance payer. For example, the health insurance payer establishes an expert committee to evaluate doctors' treatment behaviors on a regular sampling basis. The accurate and true record of the treatment information related to DRG/DIP audits is achieved to ensure that insufficient reimbursement due to downgrading and wrong grouping of DRG/DIP caused by less filling or misfiling, while being unable to upgrade the grouping, will not happen.

Resource allocation from an overall cost perspective. The clinic should further optimize the clinical pathway from the perspective of improvement of care quality through day surgery and outpatient clinics, thus optimizing the overall cost. For example, since the cost of maintenance consumables takes up a small part of the overall cost of DRG or DIP group, controlling the use of such products will not have a significant impact on the overall cost, but will easily lead to infection and other risks, and increase the overall treatment cost. Therefore, including day surgery into healthcare is very crucial.

Evaluations on pilots, especially for clinical treatment behavior/quality after the payment reform

The implementation of payment reform may bring about a

situation where hospitals and providers care too much about the cost, and replace previous empirical treatments with cheaper treatment options, which if the reform is not implemented properly may lead to a decline in treatment quality and patient satisfaction and is not the original intent of the reform. Therefore, it is recommended that policy makers consider inviting third-party clinical and academic evaluation organizations to conduct annual payment reform evaluations of providers with respect to clinical outcomes and treatment quality, and consider linking evaluation results to payment outcomes, which would allow payment policies to better guide hospitals to provide high-quality treatment to patients and achieve high-quality development.

Management and adjustment mechanism of core elements in improving policies.

- Maintain and adjust disease groupings. Based on the national version, clinical needs and local realities, establish a permanent mechanism for adjusting and maintaining patient groupings. Promote daily payment for hospital beds and capita-based payment.
- Strengthen the management of weights and intervention to reflect the value of healthcare personnel.
- Strengthen the management of medical institution coefficients. Reflect the technical value and promote services at lower levels, while strengthening the vertical and horizontal comparison of healthcare behaviors and establishing an evaluation mechanism for the use of health insurance funds. Promote joint payment for medical associations.
- Establish an evaluation and dispute handling mechanism with multiparty participation. Establish a mechanism for the discovery of controversial issues, research and resolution, and feedback on the results to incorporate all parties to participate in the evaluation based on actual clinical practices, and uphold the adjustment of diagnosis, weights and intervention.

Volume-based procurement (VBP)

Many efforts have been made in recent years to reform and streamline the procedures for volume-based procurement (VBP). While we recognize that much progress has been made, this centralized procurement reform continues to face several challenges, most notably in the areas of the transparency of regulations for participation in VBP, lack of standardization and insufficient volume for procurement at sub-national levels. Low-cost pricing causes a race to the bottom and disincentivizes innovation. Group standards allow low and high-quality consumables to participate in the same procurement opportunities. Please see the 2021 White Paper for specific details on these ongoing challenges.

In light of these issues, AmCham China continues to recommend the government consider a value-based approach to

从总体成本角度进行资源配置。临床更应该从医疗质量提升的角度出发，通过日间手术、门诊等方式进一步优化临床路径，进而优化整体成本。如维护类耗材对于整体 DRG 组或者 DIP 组的费用占比很小，控制该类产品的使用对于整体费用的影响不大，反而容易因为该类产品的使用导致感染等风险，增加整体治疗费用。因此增加或开放日间手术纳入医保将非常关键。

启动试点评估，尤其是针对支付制度改革后临床治疗行为 / 医疗服务质量

实施支付方式改革可能会带来医院和供方在过于关注费用控制的情况下，用更廉价的治疗方案取代以往的经验治疗，如实施不当有可能导致医疗质量和患者满意度下降，且这也并非支付制度改革的初衷。因此建议政策制定者考虑邀请第三方临床和学术评估机构，每年对医疗机构进行针对临床治疗结果和医疗质量的支付改革评估，并且可考虑将评估结果和支付结果连接起来。从而使得支付政策可以更好的引导医院为患者提供高质量的治疗，实现高质量发展。

政策完善核心要素管理与调整机制

- 维护调整病种分组。以国家版为基础，贴近临床需求和地方实际情况，建立调整、维护病种分组的常设机制。推进按床日付费、按人头付费机制。
- 加强权重、分值管理，体现医务人员劳动价值。
- 加强医疗机构系数管理。体现技术含量，促进服务下沉，同时加强医疗服务行为的纵向和横向比较，建立医保基金使用绩效考核机制。推进紧密型医联体打包付费。
- 形成多方参与的评价与争议处理机制。建立完善争议问题发现、研究解决和结果反馈机制，吸纳各方参与进行评价，从实际临床出发科学评价，支撑病种、权重、分值的动态调整。

医用耗材集中带量采购 (VBP)

近年来，政府为调整医用耗材集中带量采购 (VBP) 政策做出了许多努力。虽然目前已取得了很大进展，但集采仍面临着一些挑战，尤其在缺乏法规透明度、缺乏标准化和地方采购量不足等方面。低成本定价导致了竞价竞争，抑制了创新，团体标准允许低质量和高质量耗材获得同等的采购机会。相关内容请参阅 2021 年《白皮书》。

鉴于此，商会建议政府考虑价格、经济效益与医疗水平等因素，尤其是以下几点：

- 在制定集采政策时应平衡控制短期成本的需求和医药行业可持续高质量发展的需要，注意集采对产品质量和创新生态系统的影响。
- 国家医保局应就医用耗材集采的触发机制和规则制定发布标准化指南，确保集采的标准化和可操作性。更清晰、更统一的规则将有助于企业更好地理解参与集采。
- 与药品不同，医用耗材品类多样，创新周期快，服务成本高。商会建议在全国范围内发布指导意见之前先开展集采试点项目。商会还建议分调研、执行、评估三个阶段开展工作，在上一批评估完成前不急于开展下一批集采，坚持一品一规的原则。
- 国家医保局等相关部门应将产品价值作为集采的评价标准，在综合评价中增加技术指标，而不仅关注成本。为了患者和医保系统，以及为提升创新能力、促进市场竞争，应适当考虑各种方案并保持政策灵活，以鼓励引入新的医疗技术。这将有助于确保中国对医疗保健公司的吸引力并促进医疗领域不断创新。
- 在采购价格方面，政府应坚持公平竞争原则，赋能战略采购，引导良性市场竞争，形成合理采购价格。商会建议中央出台相关政策和指导文件，规范国家重点，引导地方定价政策，确保地方采购政策连贯有序。目前实施集采的每个省份的采购量都不同，价格也应当允许有所不同。同时也要避免不同省市进行价格联动或在合同期内对中选价格进行调整。
- 在集采签约和履约过程中，坚持遵守公平、诚信的原则，确保采购发起方、中标方、终端医疗机构按约定严格履行合同，使各方合法利益得到有效维护。由于履行期通常长达一到两年，各方还需充分考虑市场实时的实际供应状况和不断变化的医疗需求，及时调整集采可能带来的影响。在评估和回顾带量采购工作时，广泛听取市场参与方和行业专家的意见，客观考量，创造透明、稳定、可预期的政策环境。
- 国家医保局应对医用耗材集采进行全周期、多维度的跟踪评价。这应该从医疗机构、医保部门以及企业三个角度全面跟踪集采的结果和实施情况，重点关注医保基金的节约、医疗服务的提供以及患者准入。这将有助于从各个方面为未来的招标项目提供

VBP which considers price, clinical, and economic benefits, with particular focus on the following points:

- VBP rules should take into account short-term cost control objectives and the need for sustainable and high-quality development of the pharmaceutical industry when making VBP policies, noting impact of VBP on product quality and the innovation ecosystem.
- NHSA should issue standardized guidance on the triggering mechanisms and rulemaking for VBP of medical consumables, to ensure the standardization and operability of VBP activities. Clearer and more consistent rules will help companies better understand and participate in VBP.
- Unlike pharmaceuticals, medical consumables are diverse in category and classification, and subject to rapid innovation cycles and higher service costs. We recommend that VBP pilots first be carried out before the issuance of nationwide guidance. We also recommend that the work be carried out in three respective phases: research, execution, and evaluation, postponing the next batch of VBP before the evaluation on the prior batch is completed and adhering to the principle of one rule for one product.
- NHSA and other relevant departments should consider the value of the product as an evaluation criterion for VBP, and add technical indicators to the comprehensive evaluation, rather than solely focusing on cost. For the benefit of patients and the healthcare system, and to improve innovation and market-based competition, due consideration and policy flexibility must be provided to encourage the introduction of new medical technologies. This will help to ensure that China remains an attractive market for healthcare companies and a leading source of medical innovation.
- With respect to procurement prices, the government should adhere to the principle of fair competition, enable strategic purchasing, guide healthy market competition, and allow reasonable, market-driven purchase prices to form. We recommend that policies and guiding documents be issued by the central government to standardize national-level key priorities and then guide local policies with respect to pricing, and ensure that local governments implement their procurement policies in a consistent and orderly fashion. For example, currently, each province that implements VBP does so with a different purchase volume, and thus the prices associated with that procurement should be permitted to fluctuate. VBP across different provinces and cities should not allow coordination on pricing that allow for the changing of the contracted price during the contract period.
- During the execution of a procurement bid and/or signing of a contract, the government should adhere to the principles of fairness and integrity to ensure that the entity managing the bid, the party who wins the bid, and the end-use medical institutions adhere to the

contract as agreed to protect the interests of all parties. Since contracts for VBP are commonly executed over a period of one to two years, parties to the agreement must have the flexibility to respond to developments on the ground with respect to supply and demand. Reviews and/or evaluations of VBP should consider input from market participants and industry experts and create a transparent, stable, and predictable policy environment.

- The NHSA should conduct a full-cycle, multi-dimensional tracking and evaluation of medical consumables VBP, including a complete review of VBP results and implementation from the perspectives of medical institutions, BMI governmental agencies, and healthcare companies, with an emphasis on savings in health insurance funds, provision of medical services, and patient access. A new round of VBP should be considered only after all existing VBP programs have been completed, which will better inform future bidding programs. Although innovative medical devices are more expensive than previous products, the overall hospital stay and expenses will be reduced due to the application of new technologies. Therefore, overall consideration and encouragement of innovation are particularly critical.

Thoughts on import substitution

Since reform and opening began, with the implementation of China's "import, digest, absorb and re-innovate" strategy, the pharmaceutical and health industry has been developing rapidly thanks to policy support and increased investment. Along with the transformation and upgrading, the competitiveness of the local industry chain has been enhanced, and in recent years, there are more substitutions on import products by domestic products in the pharmaceutical industry.

AmCham China has noticed that under the top-level design of national planning that calls for the principle of "independent and controllable, safe and efficient", various departments and regions have been making corresponding policies in recent years, especially in government procurement, and have taken measures to have domestic alternatives replace imports. One of the policies with the most widespread impact is the notice to issue and print the Guidance Standards on the Review to Government Procurement of Imported Products (2021 version) co-issued by the Ministry of Finance and the Ministry of Industry and Information Technology in May 2021, whose multiple articles involve medical products. In those articles, "recommended procurement rate" changes to "100 percent of domestic products", covering products such as gene sequencers, imaging, nuclear medicine and other high-end medical devices. When implementing the notice, some local governments have tougher requirements, which directly leads to the suspension of procurement, and directly impacts the normal businesses of foreign-invested pharmaceutical companies in China. Such practices is bound to

信息。在现有集采全部完成后，再考虑开展新一轮集采。增加创新的医疗器械，虽然比之前的产品价格高，但是由于应用新技术，减少了整体住院时间，康复时间反而整体医疗费用降低，所以整体考虑以及鼓励创新尤其关键。

进口替代

改革开放以来，随着中国“引进、消化、吸收、再创新”模式的实施，得益于政策支持和投入增加，医疗产业得到了迅速发展。伴随着转型升级、本土产业链竞争力的不断增强，近年来进口替代，包括医药行业的国产替代进入了一个快速发展阶段。

商会注意到，在国家规划关于“自主可控、安全高效”的顶层设计之下，各部门、各地区近年来不断有相应的政策跟进，特别是在政府采购环节，出台国产替代进口的相关措施。其中影响最为广泛是财政部和工信部 2021 年 5 月出台的“关于印发《政府采购进口产品审核指导标准（2021 年版）》的通知”（以下简称“通知”）。“通知”多个条目涉及医疗产品，其中大部分条目的“审核建议比例”为“全部采购本国产品”，产品覆盖了基因测序仪、影像、核医学等高端医疗设备。“通知”在落实过程中，有些地方出现了层层加码的现象，直接导致了采购中止，对在海外医药企业正常经营活动造成直接冲击。此类做法，长此以往，势必进一步挫伤外资在华的长期投资发展热情。

商会认为，通过立法在政府采购过程中保护本国产品和服务，借此歧视他国的产品和服务本身是和 WTO《政府采购协定》中的非歧视原则相冲突的。商会呼吁，中国加快加入《政府采购协定》进程，按照国际通行规则对待本国和跨国企业。遵照“健康中国 2030”以人为本的发展理念，平等对待进口和外资企业国产化产品，让创新医疗技术、产品得以顺利引进，满足日益增长的科研、临床需求。另外，对于特殊的产品，比如药品和医疗器械，药监局已经通过审批的方式认定了进口产品和国产产品，对于这类产品，应该按照药监局的批件来判断，避免在认定时出现潜在冲突。

制药

近年来，国务院和相关政府部门致力于推进中国制药行业的创新发展和患者对创新药物的可及性。不断增

加医疗保健支出，提高企业研发能力，建设良好的营商环境。国家药监局推动多项制药业改革，重点提升监管体系的有效性，效率及产能。实践证明，改革产生了广泛的影响，且普遍是成功的。《疫苗管理法》（2019 年 12 月 1 日起实施）和《药品管理法》（2019 年 12 月 1 日起实施）双管齐下，共同推动药品审评审批制度改革、促进创新，使中国能够与美国 / 欧盟等一众主力市场齐头并进，显著提升中国患者获取创新药物的时效性。此外，国家药品监督管理局还采取了一系列措施，加速新药审评审批流程，其中包括：

- 国家药监局在中国分步转化实施国际人用药品注册技术要求国际协调会的指导原则，推动中国药品研发标准与国际标准保持一致；
- 最新临床试验申请默示许可制的落地，将临床试验审评的周期精简至 60 天，而过去这一周期可长达 1-2 年的，有了显著的进步；
- 上市许可持有人制度已经在新修订的《药品管理法》中初步确立；
- 建立药品审评审批加速制度，包括：突破性治疗，附条件批准，优先审评审批和特别审批有条件审批，并梳理出一份境外已上市临床急需新药名单（2 批）。

建立鼓励创新药、研发合作的知识产权保护体系

创新是引领发展的第一动力，保护知识产权就是保护创新，医药创新发展与知识产权保护力度密切相关。2020 年 10 月通过的《专利法第四次修正案》于 2021 年 6 月 1 日起正式生效，其中引入了专利权期限补偿和专利纠纷早期解决机制等条款，商会对这些积极的变化表示认可和欢迎。中国的知识产权环境正在不断改善，商会欢迎多项双边和多边协议的签署。

商会针对《专利法》中提到的部分制度以及其它相关药品知识产权保护制度提出以下建议，希望能够支持于国家知识产权环境优化的相关工作。

专利纠纷早期解决的有效机制（“专利链接”）

2021 年 7 月 4 日国家药监局及国家知识产权局发布了《药品专利纠纷早期解决机制实施办法（试行）》，商会支持专利链接制度的设立并希望其能不断优化。药品专利链接制度的核心是药品审批与司法的衔接，其中涉及了药品专利有效性和侵权认定。批准等待期的时间

further dampen the enthusiasm of foreign investors in China's long-term investment and development in the long run.

AmCham China believes that the legislation to protect domestic products and companies in government procurement and thereby discriminate against products and companies of other countries is itself in conflict with the principle of non-discrimination in the WTO Agreement on Government Procurement (GPA). AmCham China calls on China to accelerate the progress to join the GPA and to treat domestic and multinational companies in accordance with internationally accepted rules. In line with the people-oriented development concept in the "Healthy China 2030" strategy, China should treat imported products and foreign companies domestic-made products equally, so that innovative medical technologies and products can be introduced smoothly to meet the growing scientific research and clinical needs. In addition, for special products, such as drugs and medical devices, NMPA has identified imported products and domestic products through the approval process, and these products should be judged in accordance with the NMPA's approval documents to avoid potential conflicts in the identification.

Pharmaceutical companies

In recent years, the State Council and relevant government departments have committed to advancing the development of innovation in China's pharmaceutical industry and patient access to innovative medicines, and have continued to increase healthcare expenditure, improve the R&D capabilities of companies, and build a favorable business environment. NMPA has promoted a number of reforms in the pharmaceutical industry, focusing on improving the effectiveness, efficiency and capacity of the regulatory system. The reforms have proven to have a broad impact and have generally been successful. The Vaccine Administration Law (implemented as of December 1, 2019) and the Drug Administration Law (implemented as of December 1, 2019) have worked together to drive reform of the drug review and approval system and promote innovation, enabling China to move forward on par with a host of major markets such as the United States and European Union, and significantly improving the timeliness of access to innovative medicines for Chinese patients. In addition, NMPA has taken a series of measures to accelerate the review and approval process for new drugs, including:

- NMPA has gradually implemented guidelines of the International Conference on Harmonization of Technical Requirements for Registration of Pharmaceuticals for Human Use in China to promote the alignment of China's drug development standards with international standards.
- The latest clinical trial application implied license system has been put in place and reduces the duration of clinical trial review to 60 days, which is a significant

improvement from the past when it could be as long as 1 to 2 years.

- The marketing licensee system has been initially established in the newly amended Drug Administration Law.
- An faster drug review and approval system has been established, including breakthrough therapy, conditional approval, priority review and approval, and special approval, along with a list of new drugs that have been marketed outside of China for urgent clinical needs (2 batches).

Establish an intellectual property protection system that encourages drug innovation and R&D cooperation

Innovation is the first driving force for development, and protecting IP is protecting innovation. The development of pharmaceutical innovation is closely related to the strength of IP protection. The fourth amendments to the Patent Law passed in October 2020 came into force on June 1st, 2021, which introduced provisions for patent right term compensation and an early resolution mechanism for patent disputes, and AmCham China recognizes and acknowledges these positive changes. China's IP environment is improving, which is embodied by the signing of several bilateral and multilateral agreements.

AmCham China makes the following recommendations for some of the systems mentioned in the Patent Law and other related pharmaceutical IP protection systems, and hopes to support the efforts put into the optimization of China's IP environment:

An effective mechanism for early resolution of patent disputes (Patent Linkage)

On July 4, 2021, NMPA and the National Intellectual Property Administration (NIPA) issued the Implementing Measures for the Early Resolution Mechanism of Drug Patent Disputes (Trial), in which AmCham China supports the establishment of a patent linkage system that can get continuously optimized. The heart of the drug patent linkage system is the interface between drug approval and justice, which involves the validity of drug patents and infringement determination. The waiting period for approval should take into account the actual situation of the review by drug regulatory authorities and the objective time of judicial decision. The current implementing measures only sets a 9-month waiting period for chemical generic drug registration applications, and the waiting period does not apply to biological products. China adopts a dual administrative and judicial system for patent infringement/invalidity disputes. According to the TRIPS Agreement and domestic laws, the final decision rests with the judicial authorities. Studies have shown that it takes an average of 23 months from the time a request for invalidation is filed to the time a first instance judgment is rendered, and

设定应当考虑药品监管部门审评的实际情况以及司法裁判的客观时间。目前的实施办法对化学仿制药注册申请仅设置了9个月的等待期，且等待期不适用于生物制品。中国在专利侵权/无效纠纷中采用行政、司法“双轨制”。根据TRIPS协议和国内法相关规定，其终审权在法院。有研究表明，从无效宣告请求受理至作出一审判决平均用时23个月；从无效宣告请求受理至作出二审判决平均用时37个月。根据已公开的数据，北京知识产权法院近六年来审理涉及到药品专利的侵权案件时长是28个月。如当事人不服一审裁判提起上诉，至少还需再耗费4个月。对于药监部门而言，目前仿制药审评周期也在一年至一年半左右。因此商会认为设置24个月的批准等待期更为合理而且具有实际意义，并且该机制应一致地应用于化学药品和生物制品。

依据《药品专利纠纷早期解决机制实施办法（试行）》，只要仿制药申请人主张专利三类声明，就可能获得批准。专利权人对此类声明不能采取有效的维护自己专利权的措施，再加上目前实施办法中药品上市的概念没有明确定义，专利权人无法确保防止专利侵权。因此商会建议修改“试行”“办法”时明确：只有在中国上市药品专利信息登记平台上列出的所有有效专利到期后，国家药监局才批准专利三类声明的仿制药申请。

优化目前专利链接的通知制度

《药品专利纠纷早期解决机制实施办法（试行）》第6条规定，“仿制药申请被受理后10个工作日内，仿制药申请人应当将相应声明及声明依据通知上市许可持有人”。其中声明未落入相关专利权保护范围的，声明依据应当包括仿制药技术方案与相关专利的相关权利要求对比表及相关技术资料。在实践中，仿制药企业可能会不通知、或延误通知上市许可持有人，也不提供声明依据，导致上市许可持有人在后续环节遇到较大障碍。建议明确仿制药申请人不通知、延误通知以及不提供声明依据的法律后果。

建议通过如下方式优化专利链接机制：

- 澄清“上市”的概念，目前的《办法》所述的“上市”，应既包括直接的市场销售行为，也包括参与招标，医保谈判等许诺销售的行为。
- 建议明确仿制药企业直接递交三类声明后违反承诺上市的法律后果，否则四段声明的意义有限，也很

难起到早期解决纠纷的作用。

- 建议生物制品适用和化学药同样的早期纠纷解决机制。

专利信息登记平台可登记的专利类型

《药品专利纠纷早期解决机制实施办法（试行）》中规定，化学药上市许可持有人可在中国上市药品专利信息登记平台登记药物活性成分化合物专利、含活性成分的药物组合物专利、医药用途专利，而生物制品仅可登记活性成分的序列结构专利和医药用途专利。商会认为，要实现早期解决专利纠纷的目的，不对专利信息登记平台可登记的专利类型做出过多限制，并且没有必要对化学药品和生物制品区别对待。商会建议，应将除工艺专利以外的专利，包括保护上市药品的活性成分、制剂以及相关用途的专利均纳入平台可登记的专利类型。

专利期延长

专利期延长的计算

目前国际主流方式有两种：1) 美国方式（1/2 临床时间 + 上市审批时间）；2) 欧洲方式（上市许可授予日 - 专利申请日 - 5年）。商会支持2020年11月公开的《专利法实施细则修改建议（征求意见稿）》中采纳的欧洲方式，因为其简单直接，可避免因为各种日期的复杂计算而增加大量的行政负担，也可避免因此引发的过多的争议纠纷。

明确新药的定义

在专利法体系下并没有“新药”的相关定义。依据现行《专利法》第四十二条，对在中国获得上市许可的新药相关发明专利，可获得不超过5年的补偿期，新药批准上市后总有效专利权期限不超过十四年。从政策目的角度来说，需要专利期限补偿的药品是需要耗费大量时间进行临床试验证明其安全性和有效性，并以此为基础被中国药品监管机构批准上市的所有原研药品，而不应仅将专利期限补偿适用于向中国药品监管机构首先递交或向中国与其他国家的药品监管机构同步递交上市申请的药品。商会鼓励在《专利法实施细则》中明确，“本法所指新药为在中国首次获得上市许可、且具有完整和充分的安全性、有效性数据作为上市依据的化学药和生物制品”。该定义符合专利期延长制度设计的初衷，即

37 months from the time a request for invalidation is filed to the time a second instance judgment is rendered. According to published data, in the past six years, the average length of time for the Beijing Intellectual Property Court to hear infringement cases involving pharmaceutical patents was 28 months. If the parties appeal against the first instance decision, it will take at least another 4 months. For the drug regulatory authorities, the current review cycle for generic drugs is also about one to one and a half years. AmCham China therefore believes that a 24-month waiting period for approval is more reasonable and meaningful, and that the mechanism should be applied consistently to both chemical and biological products.

According to the Implementing Measures, as long as a generic drug applicant asserts three types of statements of the patent, it may be approved. Patent owners cannot take effective measures to defend their patent rights against such statements, and along with the fact that the concept of drug marketing is not clearly defined in the current Implementing Measures, patent owners cannot ensure the prevention of patent infringement. Therefore, AmCham China proposes to amend the Implementing Measures to clarify that NMPA will approve generic applications for patent class III claims only after the expiration of all valid patents listed on China's patent information registration platform for marketed drugs.

Optimize the current notification system for patent links

Article 6 in the Implementing Measures stipulates that "within 10 working days after a generic drug application is accepted, the applicant shall notify the marketing licenses of the corresponding declaration and the basis for the declaration". If the declaration is not within the scope of protection of relevant patents, the basis of the declaration shall include a comparison table of the technical scheme of the generic drug and the relevant claims of the relevant patents and relevant technical information. In practice, generic drug companies may not notify, or delay in notifying, the marketing licensee, and do not provide the basis of the declaration, which results in greater obstacles for the marketing licensee in the follow-up process. It is suggested to clarify the legal consequences of non-notification, delayed notification and failure to provide the basis of declaration by generic drug applicants.

It is recommended that the patent linkage mechanism be optimized by the following measures:

- Clarify the concept of "being marketed". The current "being marketed" mentioned in the Implementing Measures should include both direct sales and other promised sales, including participation in bidding and medical insurance negotiations.
- Clarify the legal consequences of violating the marketing promise after the generic drug companies

directly submit Class III declarations, otherwise the significance of the Paragraph IV Certification (PIV) is limited, and it is difficult to make a difference in the early resolution of disputes.

- Apply the early dispute resolution mechanism to biological products and chemical drugs.

Types of patents that can be registered on the patent information registration platform

The Implementing Measures stipulates that marketing licensees for chemical drugs are allowed to register patents for compounds of active ingredient of the drug, for drug compositions containing active ingredients, and for pharmaceutical uses on the patent information registration platform for drugs marketed in China, where biological product can only be registered to patents for sequence structures of active ingredients, and for pharmaceutical uses. AmCham China believes that in order to achieve the purpose of early resolution of patent disputes, there should not be too many restrictions on the types of patents that can be registered on the platform, and there is no need to treat chemical drugs and biological products differently. AmCham China suggests that patents other than process patents, including patents protecting active ingredients, formulations and related uses of marketed drugs, should be included in the types of patents that are registrable on the platform.

Patent term extension

Calculation of patent term extension

There are currently two mainstream international approaches: a) the US approach (1/2 clinical period + marketing approval period); and b) the European approach (date of grant of marketing authorization - date of patent application - 5 years). AmCham China supports the European approach adopted in the Proposed Amendments to the Implementing Regulations of the Patent Law (Draft for Comments), which was made public in November 2020, because it is simple and straightforward and can avoid a large administrative burden due to the complicated calculation of various dates, as well as the excessive disputes arising from it.

Clarify the definition of new drugs

There is no definition of "new drugs" in the current patent law system. According to Article 42 of the current Patent Law, patents for inventions related to new drugs licensed for marketing in China may be granted a compensation period of not more than five years, and the total valid patent right period after the approval of the new drug for marketing shall not exceed fourteen years. From the perspective of policy purposes, the drugs requiring patent term compensation periods are all originator drugs that require significant time

对经历漫长而完整的研发过程后获得上市的创新药品进行相应的专利期补偿。该定义也与全球其他国家的认定和操作保持一致。

专利延长期内专利的保护范围

同样重要且需要明确的是，在未超出其权利要求限定范围的前提下，一项专利在其被延长的专利期内的保护范围应被允许覆盖经国家药监局批准上市的含有同样活性成份的药品及其获批的所有适应症。

药品试验数据保护

有效落实现行法律法规规定的药品数据保护制度

为加强知识产权保护、激励医药行业创新，建议相关主管部门在药品审评审批过程中实际执行《药品管理法实施条例》（2002版）第35条（即2019版第34条）规定的新型化学成份药品的6年数据保护期，在含有新型化学成份的药品在中国首次获批之日起6年内不批准任何仿制药上市。

尽快在立法层面进一步完善药品数据保护方面的法律修订和细则制定

国家药品监督管理局于2018年4月26日发布《药品试验数据保护实施办法（暂行）（征求意见稿）》，作为一个良好的开端，引起各方热烈讨论。但是由于《药品管理法实施条例》尚未修订，缺乏上位法法律支撑，数据保护实施办法的制订与正式颁布目前处于停滞状态。建议尽快启动《药品管理法实施条例》的修订工作，并将药品试验保护的定义与原则等相关条款纳入其中，为后续的法规颁布提供法律依据。

同时，建议国家药监局继续开展《药品试验数据保护实施办法》及配套文件的制订工作，待药管法实施条例颁布后，可以尽快的落地实施药品试验数据保护的相关法规。

目前，由国家数据保护制度带来的有效市场独占期均长于6年，建议考虑对在中国境内获批上市的新药给予更长期限的数据保护期，例如，可考虑借鉴欧洲经验，为所有新药（化学药和生物制品）均提供8年数据独占期加上2年市场独占期，如果在数据独占期8年中有新的具有显著临床效益的适应症获批，市场独占期可再延

长1年；或考虑借鉴美国经验，为新适应症等新的临床探索提供独立的数据保护期，并将生物创新药的数据保护期进一步延长至12年。

建议中国应采用符合美国或欧洲体系的试验数据保护制度，以确保中国国内的数据保护制度与国际标准接轨。同样应当明确的是，能够享受药品数据保护的新药是指“在中国首次获得上市许可、且具有完整和充分的安全性、有效性数据作为上市依据的化学药和生物制品”。

医保目录动态调整

2020年7月，国家医保局发布《基本医疗保险用药管理暂行办法》，以规范医保目录调整、报销和管理。这也标志着中国建立总体更为透明和可预期的国家基本医疗保险用药目录调整机制进入更加实际性的阶段。在2021年根据相关管理原则完成的新一轮医保目录调整工作中，共有117个药品参与谈判，94个谈判成功，总体成功率高达61.7%；在新增谈判成功67个药品中，66个为过去5年内上市，27个实现“当年上市当年入保”，医保目录动态调整总体取得重大突破，并切实造福广大相关中国患者。

商会高度赞赏中国政府，特别是国家医疗保障局作为基本医保监管职责部门，在推进医保目录动态调整机制相关改革过程中取得重大成就，同时也对于进一步探索、优化中国医保目录动态调整机制，提出以下建议：

- 优化价值评估机制：医保谈判应进一步强化多维度价值导向、尊重创新的原则。除传统临床价值维度外，还应基于创新药品对患者、家庭以及经济和社会的整体价值对其进行综合评估，并根据综合评估结果对药品进行价值分级，对高价值等级药物给予溢价，以价值为导向指导形成差异化支付标准；
- 完善支付标准形成机制：应采用更为综合的方法对创新药谈判价格进行评估。由于药品价格制定涉及众多影响因素，建议综合考虑价值评估得分、国际参考价格、参照药品价格、预算影响分析等影响因素进行创新药谈判定价，避免仅选取最低价的单一定价方法；
- 医保谈判流程管理：在专家评审阶段，建议选取专业领域权威专家参与评审，并逐渐缩小专家团队专业水平差距，以保证评审结果客观性与公平性；在

to conduct clinical trials to prove their safety and efficacy and are approved for marketing by the Chinese drug regulatory authorities on this basis, and patent term compensation periods should not be applied only to drugs that are first submitted to the Chinese drug regulatory authorities or to the drug regulatory authorities of China and other countries simultaneously. AmCham China encourages the clarification in the Implementing Rules of the Patent Law that “new drugs referred to in this Law are chemical drugs and biological products that have been granted marketing authorization for the first time in China and have complete and sufficient safety and efficacy data as the basis for marketing”. This definition is in line with the original design of the patent term extension system, i.e., to compensate the corresponding patent term for innovative drugs that have been marketed after a long and complete R&D process. The definition is also consistent with the determination and operation of other countries around the world.

The scope of protection of patents during the patent extension period

It is also important and needs to be clarified that the scope of protection of a patent during its extended patent term should be allowed to cover all indications for which the drug containing the same active ingredients has been approved for marketing by NMPA, provided that the scope of the claim is not exceeded.

Pharmaceutical trial data protection

Effective implementation of the current laws and regulations for pharmaceutical data protection

In order to strengthen intellectual property protection and stimulate innovation in the pharmaceutical industry, it is recommended that the relevant competent authorities actually implement the six-year data protection period for drugs with new chemical ingredients as stipulated in Article 35 of the Implementing Regulations of the Drug Administration Law (2002 Edition) (i.e., Article 34 of the 2019 Edition) in the drug review and approval process. No generic drugs will be approved for marketing within six years from the date of the first approval of a drug containing a novel chemical ingredient in China.

Further improve the amendments to and implementing regulations of laws on pharmaceutical data protection at the legislative level as soon as possible

NMPA released the Implementing Measures for Pharmaceutical Trial Data Protection (Interim) (Draft for Comments) on April 26, 2018, which served as a good start and caused lively discussions among all parties. However, because the

Implementing Regulations of the Drug Administration Law has not been amended and lack of legal support from the higher laws, the development and formal promulgation of the implementing measures for data protection are currently at a standstill. It is suggested to start the amendments to the Implementing Regulations of the Drug Administration Law as soon as possible and incorporate the definition and principles of pharmaceutical trial data protection and other relevant provisions into it, so as to provide a legal basis for the subsequent promulgation of the regulations.

At the same time, it is recommended that NMPA continue to develop the Implementing Measures for Pharmaceutical Trial Data Protection and supporting documents, so that the regulations related can be implemented as soon as possible after the promulgation of the Implementing Regulations of the Drug Administration Law.

Currently, the effective market exclusivity period of the national data protection system is longer than 6 years. It is recommended that a longer data protection period be considered for new drugs approved for marketing in China. For example, an 8-year data exclusivity period plus a 2-year market exclusivity period could be considered for all new drugs (chemical and biologic), and if a new clinically significant indication is approved during the 8-year data exclusivity period, the market exclusivity period could be extended by another year; or consider drawing on the US experience to provide a separate data protection period for new clinical explorations such as new indications, and further extend the data protection period for biologically innovative drugs to 12 years.

It is recommended that China adopt a trial data protection system in line with the US or European system to ensure that the Chinese domestic data protection system is in line with international standards. It should also be made clear that new drugs that are eligible for drug data protection are “chemical drugs and biological products that have received marketing approval for the first time in China and have complete and sufficient safety and efficacy data as the basis for marketing”.

Medical insurance catalog dynamic adjustment

In July 2020, NHSA issued the Interim Measures for the Administration of Medicines under the Basic Medical Insurance Scheme to regulate the adjustment, reimbursement and management of the BMI catalog, which also marks a more practical stage in the establishment of an overall more transparent and predictable national mechanism for adjusting the national BMI catalogue in China. In the new round of BMI catalog adjustment completed in 2021 according to the relevant management principles, a total of 117 drugs were negotiated, and 94 were successfully negotiated, with an overall success rate of 61.7 percent. Among the 67 newly negotiated drugs, 66 were marketed within the

谈判和竞价阶段，建议增加政府、企业、专家互动交流机制与渠道，在完成基金、药物经济学测算后，将完整测算结果与企业进行充分沟通；在公布结果阶段，建议将药品谈判结果与决策原因一并向企业披露，已生成更加清晰、公开的决策形成体制，并保证基本药品的医保价格，给与企业动力进行生产。

商业健康保险可持续发展

为持续增进民生福祉，推进医疗保障和医药服务高质量协同发展，国务院于2020年3月发布《关于深化医疗保障制度改革的意见》，提出到2030年全面建成以基本医疗保险为主体，医疗救助为托底，补充医疗保险、商业健康保险、慈善捐赠、医疗互助共同发展的医疗保障制度体系。其中明确指出要加快发展商业健康保险，丰富健康保险产品供给，研究扩大保险产品范围的未来发展方向。

近年来，作为商业健康保险中具有中国特色的险种之一，普惠型商业健康保险取得了蓬勃发展，弥补了基本医疗保障与传统商业健康保险之间的保障空白。与此同时，我国商业健康保险总体仍存在参保率低、健康数据不足、未充分满足患者日益增长的健康需求等发展瓶颈，建议通过以下方面持续推进商业健康保险可持续发展：

- 明确政府职能定位，强化政府主导及参与商业健康保险顶层设计与规划，与基本医保形成差异化的补充。从政策机制层面，为国家医保目录范围外的高值创新药品提供保障方案，通过合理优化保障范围及保障方案、开放个人账户支付通道扩大基金池等规划举措，促进健康人群持续投保，减轻患者因病致贫及返贫的经济负担；
- 在安全风险可控前提下，加强开放、共享全面且标准化的基本医保数据体系与病历系统，促进保险公司更具依据及针对性地开发因地制宜的健康保险产品，持续提升行业专业能力；
- 围绕“以治病为中心向以人民健康为中心转变”的健康中国理念，探索商业健康保险纳入覆盖疾病预防、诊断、治疗、康复一体化解决方案的全人群、全生命周期健康管理服务，推动商业保险由支付方向健康管理方转变；
- 适当鼓励生物制药企业参与到商业健康保险生态圈

建设合作中，为产业提供特定疾病领域、患者支付能力等方面洞见，助力商业健康保险长足发展。

国家基本药物目录调整

自2009年《关于建立国家基本药物制度实施意见》正式颁布以来，国家基本药物制度一直积极有序的推进。

迄今为止，中国一共发布了2009版、2012版、2018版三版国家基本药物目录。随着社会经济水平的发展和科学技术的进步，人民群众的自我保健意识和支付能力不断提高，用药需求层次和结构呈现多元化形态；随着新冠肺炎疫情爆发、生态环境的恶化和高强度的工作生活节奏导致我国疾病谱也在发生巨大改变，临床用药需求范围进一步扩增，用药结构和水平需要不断进行完善和提升，这对基本药物目录的调整提出了更高的要求。

首先，随着“健康中国2030”行动规划纲要的深入推进，基本药物目录作为保障国民基本的防病治病的医疗需求、体现和实现国民健康权的重要途径。为了推动并实现“健康中国2030”的主要健康指标，在基本药物目录调整过程中提出如下建议：① 优先考虑重大慢性病心血管疾病、糖尿病、严重精神障碍、自身免疫系统等）和肿瘤（肺癌、肝癌、胃癌、食管癌、大肠癌、乳腺癌等）治疗领域的疾病防治基本用药需求，特别是近年来乳腺癌新发人数快速增长，已取代肺癌成为全球第一大癌。在中国由于乳腺癌筛查普及率低，民众知识缺乏以及独特的生育政策，乳腺癌发病年龄比国外早大约10年。② 将更多的创新药物纳入国家基本药物目录，进一步明确评审标准。近年来，随着中国药品审评审批制度改革的不深入，创新药物上市速度大大加快，因其突出的临床疗效、良好的安全性，被更多的应用于临床治疗当中。与此同时，国家基本药物目录对提升临床合理用药水平起着至关重要的作用，如果将重点疾病治疗领域的创新药物及时纳入国家基本药物目录，必将提升临床合理用药水平，将为实现“健康中国2030”健康指标发挥重要的作用。

其次，在基本药物目录遴选过程中，建议逐步建立和完善更加科学、透明的评审机制和准入标准。

综上所述，国家基本药物目录是国家基本药物制度实施的重要手段，建议在国家基本药物目录调整过程中，

past 5 years, and 27 were included in the BMI catalog in the same year they were marketed. The overall dynamic adjustment of BMI catalog has made a major breakthrough, and effectively benefited the majority of Chinese patients.

AmCham China highly appreciates the significant achievements made by the Chinese government, especially the NHSA as the department responsible for the supervision of BMI in promoting the reform related to the dynamic adjustment mechanism of BMI catalogs, and also makes the following suggestions for further exploring and optimizing the dynamic adjustment mechanism of China's BMI catalogs.

Optimize the value evaluation mechanism: medical insurance negotiations should further strengthen the principles of multi-dimensional value orientation and respect for innovation. In addition to the of traditional clinical value, innovative drugs should be comprehensively evaluated based on their overall value to patients, families, and the economy and society, and the value of drugs should be graded according to the results of the comprehensive evaluation, with premiums given to high-value grade drugs and value-oriented guidance to form differentiated payment standards.

Improve the payment standard formation mechanism: a more integrated approach should be adopted to evaluate the negotiated price of innovative drugs. Since drug pricing involves numerous influencing factors, it is recommended to consider value evaluation scores, international reference prices, reference drug prices, budget analysis and other factors, and avoid the single pricing method of selecting only the lowest price.

Medical insurance negotiation process management: in the expert review phase, it is recommended that authoritative experts in professional fields be selected to participate in the review, and gradually narrow the gap between the professional levels of expert teams to ensure the objectivity and fairness of the review results. In the negotiation and bidding phase, it is recommended that interaction and communication mechanisms and channels among the government, companies and experts be added, and that the complete measurement results be fully shared with companies after the completion of fund and pharmacoeconomic calculations. In the phase of the announcement of results, it is recommended that the drug negotiation results be disclosed to companies together with the reasons for decision-making, so as to generate a clearer and more open decision-making system. Ensuring the price of essential medicines will encourage and support the development of healthcare industry.

Sustainable development of commercial health insurance (CHI)

In order to continue to promote people's livelihood and advance the high-quality and synergistic development of

medical security and healthcare services, the State Council issued the Opinions on Deepening the Reform of Medical Security System in March 2020, proposing to fully establish a medical security system by 2030 with BMI as the main body, and medical assistance as the backbone, along with the co-development of supplementary medical insurance, commercial health insurance, charitable donations and medical mutual aid. It is clearly pointed out that China should accelerate the development of commercial health insurance, enrich the supply of health insurance products, and study the future development direction of expanding the scope of insurance products.

In recent years, as one of the types of commercial health insurance with Chinese characteristics, inclusive commercial health insurance has achieved vigorous development, and bridged the gap between BMI and traditional CHI. At the same time, there are still bottlenecks in the overall development of CHI in China, such as low participation rate, insufficient health data, and not fully meeting the growing health needs of patients. It is recommended to continuously promote the sustainable development of CHI through the following aspects:

- Clarify the positioning of government functions, strengthen government leadership and participation in the top-level design and planning of CHI, and be a differentiated complement to BMI. At the policy mechanism level, provide coverage options for high-value innovative drugs outside the scope of the national BMI catalogs, and promote sustainable insurance coverage for healthy people and reduce the financial burden of patients who suffer from poverty and return to poverty due to illness by reasonably optimizing the coverage and options, and opening up the payment channels for personal accounts to expand the fund pool;
- Strengthen the opening and sharing of a comprehensive and standardized BMI data system and medical record system under the premise of controlled security risks, so as to facilitate insurance companies to develop health insurance products tailored to local conditions on a more basic and targeted basis and to continuously improve the professional capacity of the industry;
- Focus on the healthy China concept of "converting the focus on disease treatment to people's health", explore the integration of CHI into full coverage of the whole population and whole life cycle health management services that cover disease prevention, diagnosis, treatment and rehabilitation integrated solutions, and promote the transformation of commercial insurance from a payer to a health manager;
- Encourage biopharmaceutical companies as appropriate to participate in the cooperation to construct a CHI ecosystem, provide insights into specific disease areas in the industry and patients' abilities to pay, and help the long-term development of CHI.

参考更多的国际先进经验，采纳更科学的遴选和评估方法，细化相应的配备使用激励政策，为广大的中国患者获得更好的药物治疗水平提供制度基础。

药品集中带量采购常态化

2021年1月，国务院发布《关于推动药品集中带量采购工作常态化制度化开展的意见》，明确将全面推动药品集中带量采购工作常态化制度化开展。自2018年11月开展第一批“4+7”药品带量采购试点以来，到目前为止国家已组织完成6批7轮药品集中采购工作，共涉及218个品种加胰岛素，平均降低药价超过50%减轻了群众用药费用负担。

鉴于药品集中带量采购制度的改革会对患者、医疗机构、医疗保障主管部门和制药行业等都产生直接和深远的影响，并结合此前相关试点过程中所发现的情况，建议有关职能部门在后续相关常态化和制度化建设过程中，需关注和重点考虑下述问题：

坚持强调采购药品的质量安全，合理应用一致性评价结果。

仿制药一致性评价结果是之前国家开展药品带量采购的基础。但在带量采购工作中也需结合药品的不同品规属性和当前一致性评价工作实际情况，以及一致性评价的特定局限，对部分品种有所区别，以确保患者用药安全。如：用于急重症救治的注射剂型仿制药品种的一致性评价开展时间不长，且通常仿制产品的长期安全性证据相对缺乏，在采购选择中需谨慎；生物制品，例如胰岛素产品，具有分子量大、结构复杂、生物活性对其结构完整性依赖性强、生产工艺复杂的特点，其生物工程及无菌工艺要求成本极高，不同厂家差异很大，很难实现临床的可替代，不宜简单套用化学药品一致性评价标准或概念。对于生物制品，希望有更加严格的标准，例如根据临床特点设计最适宜的采购规则，审慎开展对于生物制品的集采。

在促进采购中选品种使用时，充分尊重和保障基于患者治疗实际需求的用药选择权。

药品集中带量采购的目标是让患者可以选择用上质量和疗效有保障的药品，应该通过制度设计为患者治疗提供更优、更全面的药物选择，而不宜对患者用药选择

造成事实上的限制，特别是对质量稳定和疗效可靠的未采购品种，不宜人为设限，控制或限制其使用，更不应造成患者在治疗过程中事实上只有带量采购中选药品为唯一的选择。

坚持通过公平合理的市场竞争，形成采购价格。

要避免在采购执行中片面追求最低价格。应通过促进公平合理的竞争，支持推动加速形成科学合理的药品价格形成市场机制。更要通过科学合理的制度体系设计，确定合理的采购标准，而不以最低价为中选的唯一标准，从而让药品生产企业真正有积极性主动参与，而不是在面对存亡压力下被动降价，或是以不计成本的低价达到暂时抢占市场的短期目的。同时，遵循相关国家价格政策中，药品价格原则上实行市场调节价的要求，要避免对未中标品种进行强制降价，或对药品价格过度或不合理的行政干预。

充分评估、探索适合生物制品的采购方式，确保市场多样性，保障产业健康发展

目前国际上对生物制品的“仿制”均只能做到“类似”，生物制品没有一致性评价做支撑，且生物类似药在国内刚刚起步，产业发展仍在萌芽，同品种生物药之间也有差异（如：适应症）因此，更需要考虑临床用药需求，充分征求临床和药学专家以及相关企业意见，摸清企业产能，形成适合生物制剂特点的规则。

省级或跨省联盟带量采购政策应与国家保持有效衔接，构建“质、价、供”平衡关系的采购新机制。

国家集中带量采购范围以外的药品由省级独立或与其他省份联盟开展集采工作，会涉及多个治疗领域，多针对未通过一致性评价、采购金额高、临床用量大的药品，尚无统一标准。因此，更应综合评估药品临床特性，坚持临床、药学专家论证、遴选原则，科学拟定带量采购范围，充分考虑原研、参比制剂和仿制药间存在质量差异，不以最低价或以所有产品的最高/平均降幅作为中选唯一标准，科学制定分组以及中选规则，满足不同层次患者需求。

综上，商会建议：

- 在政策落实中借鉴国际经验，政府与企业共同探索

Adjustment on the National List of Essential Medicines

Since the official promulgation of the Opinions on the Establishment of National System for Essential Medicines in 2009, the national system for essential medicines has been actively and orderly constructed. The list for essential medicines is the foundation and key to the implementation of the system, and involves multiple aspects such as selection, production and delivery, use and compensation, among which the scientific and effective selection of medicines that meet unmet clinical treatment needs appears to be crucial, and also has guiding significance for achieving the policy objectives of the system and rational clinical use of medicines.

To date, China has released three editions of the National List of Essential Medicines, namely the 2009, 2012 and 2018 editions. With the development of social and economic level and the progress of science and technology, people's awareness of healthcare and abilities to pay are increasing, and the level and structure of drug demand are diversified. With the outbreak of COVID-19, the deterioration of ecological environment and the high intensity of work and fast lifestyles, the disease spectrum in China is also changing greatly, and the scope of clinical drug demand is further expanding. The structure and level of medicine use needs to be improved and upgraded continuously, which has put forward higher requirements for the adjustment of the List.

First of all, with the in-depth promotion of the "Healthy China 2030" action plan, the List of Essential Medicines is an important way to ensure the basic medical needs of the Chinese people for disease prevention and treatment, and to reflect and realize the right to China's public health. In order to promote and achieve the main health indicators of the action plan, the following recommendations are made in adjusting the List: ❶ priority should be given to major chronic diseases (cardiovascular diseases, diabetes, severe mental disorders, autoimmune system, etc.) and tumors (lung cancer, liver cancer, stomach cancer, esophageal cancer, colorectal cancer, breast cancer, etc.). In particular, the number of new cases of breast cancer has increased rapidly in recent years, replacing lung cancer as the first rank in the world. In China, due to the low prevalence of breast cancer screening, the lack of public knowledge and the unique fertility policy, the age of onset of breast cancer is about 10 years earlier than that of other countries; ❷ incorporate more innovative medicines into the List and further clarify the evaluation criteria. In recent years, with the continuous reform of China's drug review and approval system, the speed of marketing innovative drugs has been greatly advanced, and they are more often used in clinical treatment because of their outstanding clinical efficacy and good safety. At the same time, the List plays a crucial role in improving the level of rational clinical use. If innovative drugs in key disease treatment areas are included in the List in a timely manner, it will certainly improve the rational

clinical use and play an important role in realizing the health indicators of the "Healthy China 2030" action plan.

Moreover, in the selection of the List, it is recommended to gradually establish and improve a more scientific and transparent evaluation mechanism and admission criterion.

In summary, the National List of Essential Medicines is an important tool for the implementation of the national system for essential medicines. It is suggested that in the adjustment of the List, more international advanced experiences should be referred to, more scientific selection and evaluation methods should be adopted, and corresponding supporting and incentive policies should be refined, so as to provide an institutional basis for the majority of Chinese patients to obtain a better level of drug treatment.

Regular medicine VBP

In January 2021, the State Council issued the Opinions on Promoting the Normalization and Institutionalization of Centralized Volume-Based Procurement of Drugs, which clearly states that China will comprehensively promote the normalization and institutionalization of centralized VBP of drugs. Since the first batch of "4+7" VBP pilots in November 2018, China has so far organized and completed six batches and seven rounds of centralized VBP, involving a total of 218 varieties of insulin, which reduces the average price of drugs by more than 50 percent and mitigate the burden of drug costs on the patients.

In view of the direct and far-reaching impact of the reform of the centralized VBP system on patients, medical institutions, medical security authorities and the pharmaceutical industry, and in light of the problems identified during the previous relevant pilot programs, it is recommended that the relevant functional departments should pay attention to and focus on the following points in the subsequent process of normalization and institutionalization.

Keep emphasizing the quality and safety of the procured drugs and the reasonable application of results of the consistency evaluation.

Results of generics consistency evaluation are the basis for the previous national VBP. However, VBP also needs to be combined with the different product natures and the actual situation of the current consistency evaluation, as well as the specific limitations of the consistency evaluation, and to distinguish certain varieties to ensure patients' medication safety. For example, the consistency evaluation of generic injectable drugs used for acute treatment has not been carried out for a long time, and there is usually a relative lack of long-term safety evidence for generics, which requires caution in procurement selection. Biological products, such as insulin products, are characterized by large molecular weight, complex structure, strong dependence of biological

更加积极有效的公平竞争策略。

- 在推进药品集中采购过程中，在制定配套政策过程中，加强相关部委之间的沟通协调，拓宽听取管理相对人的意见渠道，稳步推进药品集中带量采购工作。

药品拓展性同情使用

2019年颁布的《药品管理法》中第二十三条为药品的拓展性同情使用提供了法律依据。但2020年颁布的《药品注册管理办法》，适用范围不包含“非上市为目的药品临床研究及其监督管理活动”。虽然国家药品监督管理局在2017年已经发布了《拓展性同情使用临床试验用药物管理办法（征求意见稿）》，但至目前仍未正式发布实施。目前仍缺少一部可遵循的指导性法规文件用于药品同情性研究项目开展。

商会建议尽快颁布《药品同情使用管理办法》，明确药品同情性使用的定义与范围、以及其批准路径，使得药品研发企业与监管机构在实际操作中都有足够的法规依据，清晰的流程。另外，商会鼓励不仅允许在开展临床试验的机构内给急需的患者进行同情使用，而是扩大至满足一定资质的临床试验机构，例如，在临床研究管理体系完备的三级甲等医院开展，解决患者对此类药物的急迫需求。

全面持续提高药品监管能力，提供政策与资金支持

2021年5月，国务院办公厅发布《关于全面加强药品监管能力建设的实施意见》，提出具体要求：对标国际通行规则，深化审评审批制度改革，持续推进监管创新，加强监管队伍建设，按照高质量发展要求，进一步提升药品监管工作科学化、法治化、国际化、现代化水平，推动我国从制药大国向制药强国跨越，更好满足人民群众对药品安全的需求。

中国药品监督管理机构现有人力资源和经费保障不足，在药品审评队伍能力建设和体系建设方面，在紧跟药物创新前沿技术、开发新工具、新方法、新程序等方面遇到巨大的困难，中国药品审评资源不足是制约审评能力进一步提升的瓶颈。

建议国家药监局借鉴美国的《处方药付费者法案》，

进一步改革经费管理制度，探索经费来源新渠道。同时设定绩效承诺体系，设立中长期战略目标。

建议国务院与财务部对药品监督管理局提供足够的政策层面与资金层面的支持，使得国家药监局成为世界领先的监管机构之一，更好的促进制药行业的发展。

药品零售

2021年10月28日，商务部发布《关于“十四五”时期促进药品流通行业高质量发展的指导意见》，进一步对药品流通行业的发展做出指导。《意见》提出，到2025年，培育形成5—10家超五百亿元的专业化、多元化药品零售连锁企业；药品零售百强企业年销售额占药品零售市场总额65%以上；药品零售连锁率接近70%。可以预见的是，在政府指引下，中国药品零售行业将会进一步集中并茁壮成长。

在包括美国在内的严格实行医药分离的发达国家，零售终端已经成为主要的药品销售终端渠道，按销售规模统计，美国药品市场院内外渠道规模占比小于3:7，而中国的零售药店受制于处方来源、医保支持、药品供应保障和药事服务能力等原因，尚未达致这一局面，绝大多数药品销售仍来自于院内药房。2018年机构改革后，中国的医药分开、处方外流明显加快，但是全国性的、大面积的医院处方院外流转还未成型。目前，绝大多数的中国的零售药店仍承担药品销售终端的职能、药事服务水平有较大提升空间，执业药师数量也存在缺口，药品零售企业执业药师配备使用不到位的现象具有一定普遍性。不同于公立医疗机构具有公益性质，零售药店多为盈利性机构，需要通过持续盈利进行发展。药品的自主定价是保障零售药店发展的重要因素之一。由于全国各省经济水平、患者承受能力等存在差异，不同地区的零售药店根据市场接受程度对药品进行差异化定价。遗憾的是，部分省市的医保部门仍对零售药店药品的价格进行隐性限定，例如要求不超过医院销售价的一定比例。同时，国家定点医保药品零售药店申请门槛仍然较高。在国谈药品“双通道”开始执行的大背景下，给予零售药店充分的定价权将更有利于其发展积极性。

因此，商会建议：

- 继续通过政策指导加快医药分开并引导处方外流，

activity on its structural integrity, and complicated production process, and their bioengineering and aseptic process requirements are extremely costly. The cost varies greatly from different manufacturers, so it is difficult to achieve clinical substitution. For biological products, AmCham China hopes that there will be more stringent standards, such as designing the most suitable procurement rules according to clinical characteristics and prudently carrying out VBP of biological products.

In selecting varieties in VBP, patients' rights to choose the medication based on their actual needs shall be fully respected and guaranteed.

The objectives of centralized VBP of drugs is to give patients the option to use drugs with guaranteed quality and efficacy, and the system should be designed to provide patients with better and more comprehensive choices for their treatment, and it is not appropriate to impose actual restrictions on patients' drug choices, especially for unprocured varieties with stable quality and reliable efficacy, and to set artificial limits to control or restrict their use. The case that patients have the only choice of drugs selected from VBP in the treatment process should not happen.

Pricing VBP through fair and reasonable market competition.

The unilateral pursuit of the lowest price in procurement execution should be avoided. A scientific and reasonable market mechanism for drug pricing by fair and reasonable competition needs to be established. What's more, through a scientific and reasonable system, reasonable procurement criteria should be determined without the lowest price as the only criterion for winning, so that drug manufacturers are truly motivated to participate actively, rather than passively lowering prices in the face of survival pressures or achieving short-term goals of temporarily capturing the market with low prices regardless of cost. At the same time, in following the relevant national pricing policies, drug prices in principle are required to be based on market-regulated prices, to avoid mandatory price reductions for varieties that have not won bidding yet, or excessive or unreasonable administrative intervention in drug prices.

Fully evaluate and explore suitable procurement methods for biological products to ensure market diversity and safeguard the healthy development of the industry

At present, the international generics for biological products can only be similar, without consistent evaluation to support, and biological generics just start development in China, and the industry is still in the bud with differences between the same drugs (e.g.: indications). Therefore, it is necessary to consider the clinical needs of drugs, fully consult clinical

and pharmacy experts and related companies, to identify the capacity of manufacturers, and to form rules that are suitable for natures of biological agents.

Provincial or cross-provincial alliance procurement policies should be effectively connected with the national system to build a new procurement mechanism with balance on quality, price and supply.

Procurement of drugs outside the scope of national centralized VBP are carried out by the provincial level independently or in alliance with other provinces, which involves multiple therapeutic areas, mostly for drugs that have not passed the consistency evaluation, and have higher procurement volume and higher clinical demands, without uniform standards yet. Therefore, it is important to comprehensively evaluate the clinical natures of drugs, adhere to the principles of clinical and pharmacy expert consultation and selection, scientifically determine the scope of VBP, and fully consider the quality differences between the original drugs, reference listed drugs and generic drugs, without treating the lowest price or the highest/average rate of reduction of price as the only selection criterion for all products. Scientific grouping and selection rules also need to be made to meet the needs of patients at different levels.

In summary, AmCham China recommends to:

- Draw on international experience in policy implementation, and the government and companies jointly explore more active and effective strategies for fair competition.
- In the process of promoting centralized VBP and formulating supporting policies, strengthen the communication and coordination between relevant ministries, broaden the channels for listening to the views of relevant managers, and steadily promote centralized VBP of drugs.

Drug compassionate use

Article 23 of the *Drug Administration Law* promulgated in 2019 provides a legal basis for the compassionate use of drugs. However, the scope of application in the Measures for the Administration of Drug Registration promulgated in 2020 does not include "clinical research of drugs for non-marketing purposes and relevant supervision and management activities". Although NMPA has issued the *Measures for the Administration of Compassionate Use of Drugs for Clinical Trials (Draft for Comments)* in 2017, it has not been officially released and implemented so far. There is still a lack of a guiding regulatory document that can be followed for drug compassionate use research projects to be carried out.

AmCham China recommends that the Regulations on Compassionate Use of Drugs be promulgated as soon as possible to clarify the definition and scope of compassionate use of drugs and its approval pathway, so that both drug

积极试点并向全国推广处方共享平台与电子处方应用以更好连接医院与药店，推动药品供应保障朝着多元化方向发展。

- 鼓励零售药店从药品销售终端升级到群众基层医疗服务分支形式之一，利用 56 万家零售药店的基数基础探索提供各类疾病初级咨询服务；为连锁零售药店培养各类高水平药师以提高药事服务水平提供政策支持。
- 在零售药店销售的药品，医保支付范围外不予限定价格标准，充分尊重零售药店定价权。
- 不在市场化程度较高的药品零售领域推行带量采购等政府组织的集中采购举措，以良性市场竞争为途径推动行业健康发展。

罕见病

国家卫生健康委的数据显示，中国有各类罕见病患者约 2000 万人。在 2021 年 1 月 15 日国务院常务会议中，中央领导明确要求研究对治疗罕见病的“孤儿药”采购做出特殊安排，以满足这一人群的用药需求。

江苏作为第一个发布罕见病药品目录的省份，后续也出台了一系列保障政策，制定了《江苏省罕见病药品目录》和《江苏省罕见病药品重点保障目录》，规范了医院配备使用，并实行动态管理、定期调整更新；促进了供需对接：在供应企业与罕见病协作网成员单位之间搭建沟通平台，例如鼓励大型药品经营企业开发罕见病药品供应信息系统，实时动态了解罕见病药品供应情况和临床诊疗需求情况。在罕见病综合保障上做出探索。

在这种情况下，为了促进罕见病用药特别是孤儿药的可及与发展，商会提出以下建议：

加强罕见病诊疗协作网药品采购及使用、建立区域服务中心

国家卫生健康委组建的罕见病协诊疗作网成员医院承担全国罕见病集中诊疗、学术带头任务，需要优先配备罕见病药品，尤其是进入第三批临床急需境外上市新药名单和纳入优先审评目录的具有突破性的创新药物。参考天津血友病诊疗医院的经验，各地区选取医疗机构设置罕见病用药服务中心或输注中心，以满足地方患者注射药品或生物制品的使用需求。

招采、流通环节给与罕见病药品政策倾斜

在各省各级药品招标采购平台中，对罕见病用药实施单独管理、优先挂网等优惠政策。同时在医院，对疗效明确、可显著提升患者获益的罕见病用药的采购开辟绿色通道，简化院内的药品采购流程。进一步考察增值税税改对罕见病药品流通的影响，降低罕见病药品的流通成本；例如出台政策豁免罕见病药品的流通次数要求，以保障罕见病的库存调拨和远程多级配送。

探索高值罕见病药品的供应保障模式

对罕见病协作网医院内使用的高值罕见病治疗用药，应以提升医疗质量为目标，避免用药占比、次均费用等指标考核罕见病药品。促进罕见病药品合理用药、加强药事管理、提升药学服务、积累创新药品使用经验。同时完善“双通道”供药模式，将罕见病药品纳入各地的医保特殊药品使用管理范围，完善医院和药店“双通道”的供药模式，通过定医院、定责任医师、定零售药店实现定点特药专业药店的医保报销。

进一步厘清中国罕见病认定标准

国家卫生健康委员会联合五部委于 2018 年 5 月发布《第一批罕见病》目录，共涵盖 121 个疾病病种，对推动我国罕见病认定、诊疗及药品研发、注册审评与准入奠定了重要基础。2021 年 9 月由全国罕见病学术团体主委联席会议发布的《中国罕见病定义研究报告》中建议将我国罕见病定义修订为：新生儿发病率低于 1/10,000，患病率低于 1/10,000，患病人数低于 14 万；符合其中一项的疾病，即可为罕见病。因罕见病认定关系到后续药品研发、注册、多层次保障等众多准入环节进程，将直接影响患者医疗需求满足程度，建议国家进一步厘清罕见病认定标准，建立更加清晰、更具依据性的罕见病动态认定机制。

从国家层面探索与建立多方共担的高值罕见病药品多层次保障机制

高值罕见病药品保障作为关系民生的重大社会问题，应进一步加强国家层面顶层设计，建立独立的罕见病药品多层次保障政策体系与评估机制。基于罕见病创新药品研发成本较高、价格相对高昂、患者人数有限等特性，仅依靠单方力量解决其支付问题存在难度，因此建议在参考国际、国内相关地区实践经验基础上，由国

developers and regulatory agencies have sufficient regulatory basis and a clear process in practice. In addition, upon passing the ethic argument, AmCham China encourages not only allowing compassionate use for patients in urgent need in institutions conducting clinical trials, but also expanding it to clinical trial institutions that meet certain qualifications, for example, in tertiary hospitals with complete clinical research and management systems to address the urgent needs of patients for such drugs.

Comprehensively keep improving drug regulatory capacity, and provide policy and financial supports

In May 2021, the General Office of the State Council issued the *Implementing Opinions on Comprehensively Strengthening and Building Drug Regulatory Capacity*, which puts forward specific requirements: benchmark internationally accepted rules, deepen the reform of the review and approval system, continue to promote regulatory innovation, strengthen regulator's team building, and further enhance the drug regulation system to be more scientific, legal, internationalized and modernized in accordance with the requirements of high-quality development, to foster China to be a manufacturer with quality from a manufacturer with quantity, and to better meet people's needs for drug safety.

The existing human resources and financial security of Chinese drug supervision and management agencies are insufficient, and great difficulties exist in building the capacity and system of drug review teams, keeping up with the frontier technology of drug innovation, and developing new tools, methods and procedures for review. The lack of resources for drug review in China is a bottleneck that restricts the further improvement of review capacity.

It is recommended that NMPA learn from the US PAID Act to further reform the funding management system and explore new channels of funding, while making a performance commitment system and medium and long-term strategic goals.

It is recommended that the State Council and the Ministry of Finance provide sufficient policy and financial support to NMPA to make it one of the world's leading regulators and to better promote the development of the pharmaceutical industry.

Drug retail

On October 28, 2021, the Ministry of Commerce issued the *Guiding Opinions on Promoting the High-Quality Development of Drug Distribution Industry in the 14th Five-Year Plan Period* to further guide the development of the drug distribution industry. The Opinions proposes to foster 5 to 10 specialized and diversified drug retail chains with over RMB 50 billion

revenue by 2025; to have the annual sales of the top 100 drug retailers account for more than 65 percent of the total drug retail market; and have the drug retail chain rate achieve 70 percent. It is foreseeable that under the government's guidance, China's drug retail industry will further concentrate and thrive.

In developed countries, including the United States, where healthcare and drugs services are strictly separated, terminal retailers have become the main terminal channels for drug sales, and the ratio of in-hospital and out-of-hospital channels in the US drug market is less than 3:7 according to sales scale statistics. After the reform of governmental functions in 2018, the separation of healthcare and drugs services and the outflow of prescriptions in China have advanced significantly, but a nationwide, large-scale outflow of hospital prescriptions has yet to take shape. At present, the majority of Chinese retail drug stores still serve as sales terminals with more potential to improve their level of services, and there is a lack in the number of licensed pharmacists. Unlike public medical institutions with public welfare, drug retailers mostly are for profit, who need to survive through sustainable profitability. The independent pricing of drugs is one of the important factors to ensure the development of retailers. Due to the differences in economic levels and patient affordability in different provinces, drug retailers in different regions should have distinct pricing for drugs according to market acceptance. Unfortunately, medical insurance departments in some provinces and cities still impose implicit price limits on drug retailers by requiring them not to exceed a certain percentage of the sales price in hospital. At the same time, the application threshold for drug retailers to be designated as national BMI drug suppliers is still high. In the context of the implementation of the dual channel for drugs with national negotiation, giving drug retailers full rights on pricing is conducive to their development.

Therefore, AmCham China recommends to:

- Continue to advance the separation of healthcare and drug services and guide the outflow of prescriptions through policy guidance, actively pilot and promote prescription sharing platforms and e-prescription applications nationwide to better connect hospitals and drug stores, and safeguard diversified drug supply;
- Encourage drug retailers to upgrade from drug sales terminals to branches of primary medical services for the public, and explore for primary consultation services by using the resources of 560,000 retail drug stores; provide policy support for drug retailers and help train pharmacists to improve pharmacy services;
- Not impose restrictions on pricing for drugs sold at retail drug stores that are out of the scope of BMI catalog, and fully respect drug retailers' rights on pricing drugs;
- Not implement government-organized centralized VBP

家主导，结合医疗保险（基本医疗保险、大病保险、特殊病种医疗保险）、商业健康保险发展，进一步推动设立罕见病专项救助基金，完善各方功能定位与衔接机制，并依托财务或疗效风险共担等有效工具，建立更加清晰明确的罕见病高值药品多层次保障路径，确保患者自付金额在可承受范围内。与此同时，应进一步鼓励社会救助、慈善公益力量参与罕见病高值药品多层次保障体系发展，形成合力共同提升罕见病患者获益。

关于推进非处方药审评审批制度，保障公众自我药疗的健康需求

中国的非处方药法规体系和监管制度尚未建立，主要存在的问题包括：

- 中国目前对于 OTC 产品的注册准入并没有独立的审评审批程序和技术要求，我国也被认为是全球非处方药注册最严格，上市审批时间最长的国家之一，甚至无注册上市路径的困境。过于严苛的技术标准和过于漫长的审批时间不符合非处方药已经通过广泛使用得到充分验证的安全性和有效性特点。
- 非处方药作为药品的重要组成部分和类别，无单独的监管机构和监管资源配置，严重制约了针对非处方药品类属性的法规制修订和监管制度创新。

上述监管体系的缺失，致使中国非处方药创新和发展严重停滞，非处方药用药不可及。我国的非处方药品仍存在品种落后，数量少，可及性低等现状。特别是儿童、老年人等用药人群的药品不可及、顺应性低。OTC 产品的新配方、新剂型、新包装、新口味等因法规缺失而导致创新不足。境外已上市且疗效和安全用药基础良好的非处方药在我国仍不可及，不能满足公众自我保健、自我诊断、自我药疗的健康需求，消费者普遍境外购买非处方药。

建议

为解决以上问题，商会建议围绕药品审评审批制度改革创新，密切跟踪国际监管发展前沿，拟通过监管工具、标准、方法等系列创新，建立非处方药全生命周期的单独法规体系与科学监管制度，有效解决影响和制约非处方药研发创新、高质量发展的突出性问题，加快推动非处方药行业健康发展，满足人民用药需求。

建议国务院发布《加快非处方药行业发展实施意见》，多部委联动建立 OTC 单独的科学监管和法规体系

建议中国进一步明确药品基于风险的科学监管制度，建立和完善非处方药全生命周期的法规体系。鼓励高质量、满足多层次用药需求的非处方药行业的健康发展。与此同时，加强科学技术支撑和监管能力建设，建立单独的非处方药监管机构和监管队伍，完善现代化科学监管新标准、新工具、新方法，包括在国家药品监督管理局设立非处方药注册和监管部门，单独建立非处方药审评审批分中心或部门。

建议尽快落实《药品管理法》和《药品注册管理办法》中非处方药上市注册的配套文件制定工作

商会期待中国尽早发布《化学药品非处方药上市注册技术指导原则（征求意见稿）》等相关法规和指南。建立和完善 OTC 注册 / 转换审评制度，以及非处方药标签说明书管理办法，针对不同适应症或适用人群的双跨产品的法规依据和监管原则。促进非处方药品高质量发展，推进药品监管体系和监管能力现代化，保护和促进公众健康。

疫苗

“预防为主”一直以来都是落实《健康中国 2030》战略的重点。新冠肺炎疫情爆发以来，疫苗接种再次被广泛公认为是全球最成功和最具成本效益的卫生干预措施之一。同时，加强疫苗研发和疾病控制领域的国际合作，加强基层公共卫生和防疫措施成为政府重点议题。

提高疫苗可及性

新冠肺炎疫情大大增加了百姓传染病预防的意识普遍提升，且对于预防接种需求不断攀升，因此，引入更多的创新疫苗进入中国将为预防接种供应保障提供帮助。中国监管部门在加快疫苗的注册和审批方面做了很大的努力，但是外资疫苗企业在疫苗注册审批流程上仍面临一些挑战，例如对于全球国际多中心临床试验（IMCT）血液样本的要求，技术指导和药典与国际标准的差异。商会期盼中国疫苗审评标准与国际标准可更加融合，这将不仅会加快创新疫苗的引入，还将有效帮助

in drug retail sectors that are highly market-oriented and promote the healthy development of the industry through healthy market competition.

Rare Diseases

According to NHC, there are approximately 20 million patients with various rare diseases in China. In an executive meeting of the State Council on January 15th, 2021, leaders of the central government explicitly requested that special arrangements be made for the procurement of “orphan drugs” for rare diseases to meet the patients’ needs.

As the first province to publish a rare disease drug catalog, Jiangsu has also introduced a series of policies to safeguard implementing the catalog with the promulgation of the Jiangsu Catalog of Drugs for Rare Disease, and the Jiangsu Catalog of Focus Drugs for Rare Diseases, which regulate hospital use, and implement dynamic management and regular adjustment and update. The policies help match the supply with demand by building a communication platform between supply companies and members of the Rare Disease Collaborative Network (RDCN), through ways such as encouraging large pharmaceutical companies to develop a rare disease drug supply information system to help understand the supply of rare disease drugs and the demand for clinical treatment in real time and dynamically.

In this context, and in order to promote the accessibility and development of drugs for rare diseases, especially orphan drugs, AmCham China makes the following recommendations:

Strengthen RDCN’s procurement and use of drugs, and establish regional service centers

Hospitals that are RDCN members formed by NHC undertake the task of centralized treatment and academic leadership for rare diseases nationwide and need to be supplied with rare disease drugs on a priority basis, especially innovative drugs with breakthroughs that are listed in the three batches of new drugs marketed outside of China in urgent clinical need and are included in the priority review catalog. Referring to the experience of Tianjin Hemophilia Treatment Hospital, medical institutions in each region are selected to establish rare disease drug service centers or infusion centers to meet the demand of local patients for injectable drugs or biological products.

Policy support on procurement on distribution of rare disease drugs

In the provincial drug bidding and procurement platforms, preferential policies for separate management and priority listing of rare disease drugs need to be made. At the same time, hospitals should open green channels for the procurement of rare disease drugs that have clear efficacy and can significantly enhance patient benefits and simplify

the procurement process. The government should further examine the impact of VAT reform on the distribution of rare disease drugs to reduce their distribution costs, by ways such as introducing policies to exempt rare disease drugs from the distribution frequency requirements in order to ensure inventory transfer and multi-level distribution of rare diseases drugs.

Explore a supply and security model for high-value rare disease drugs

For high-value rare disease drugs used within RDCN hospitals, the goal should be to improve medical quality and avoid evaluating rare disease drugs with indicators such as the ratio in prescription and average cost. It is supposed to promote the rational use of rare disease drugs, strengthen pharmacy management, improve pharmacy services, and accumulate experience in the use of innovative drugs. At the same time, it needs to improve the dual-channel drug supply model of hospital pharmacies and drug stores, include rare disease drugs into the management scope of BMI special drugs in each region, and realize reimbursement for rare disease drugs in specially designated pharmacies and drug stores by designating hospitals, physicians responsible, and drug retailers.

China’s rare disease identification standards need to be further clarified

NHC released the First Catalog of Rare Diseases in May 2018 together with five other ministries and commissions, which covers a total of 121 rare diseases, and lays an important foundation for rare disease identification, diagnosis and treatment, drug development, and registration review and access in China. The Study Report on the Definition of Rare Diseases in China released by the Joint Meeting of the National Rare Disease Academic Groups’ Main Committee in September 2021 recommends amending China’s rare disease definition as follows: the incidence rate of newborns is less than 1/10,000, the prevalence rate is less than 1/10,000, and the number of patients is less than 140,000. Any diseases that meet one of these standards can be defined as rare diseases. Since the identification of rare diseases is related to subsequent drug R&D, registration, multi-level security and many other access processes, and directly affects how patient medical needs are met, it is recommended that China further clarifies the criteria for the identification of rare diseases and establish a clearer and more reasonable dynamic identification mechanism for rare diseases.

Explore and establish a multi-level security mechanism for high-value rare disease drugs from the national level with participation of multiple parties

As a major social issue related to people’s livelihood, the

中国开发的疫苗进入国际市场。同时，建议在粤港澳大湾区、海南博鳌等已经开展医疗产品先行先试的区域考虑涵盖已在港澳或境外已上市的疫苗。

国家免疫规划疫苗采购

根据《疫苗管理法》，国家将建立免疫规划疫苗动态调整机制，将适合的新疫苗纳入国家免疫规划，尤其注重创新疫苗或广泛需要的疫苗的纳入。建立一个更有活力、更透明、更可预测的国家免疫规划调整机制至关重要。政府还应确保为纳入国家免疫规划的潜在候选疫苗提供明确的循证评估标准。

考虑到疫苗必须经过长期研发和严格的审批过程，采购还需考量公共卫生效益及供应保障问题，同时，中国《外商投资法》对公共采购流程中的平等待遇作出了规定。因此，中国美国商会及会员希望国家免疫规划的疫苗采购面向国家药监局已批准上市的所有疫苗，不以进口或本地生产的疫苗来区分，以保证可持续且高质量的保障特别是面对儿童的疫苗。

基因治疗技术

基因治疗及相关技术的发展是当今全球生物制药产业的重要组成部分。这些技术在改善治疗效果和患者健康方面有很大潜力。其中，很多技术已经在基因和细胞治疗领域得到应用。2017年发布的《“十三五”生物产业发展规划》（2016-2020）提出，要敦促政府利用新基因治疗技术带来的机会，加速药物研发，提高药物质量，以满足临床和行业用药需求。规划还呼吁政府改善投资环境，制定激励措施，吸引外资企业在中国设立研发、制造和采购中心。

然而，2021年12月发布的《外商投资准入特别管理措施（负面清单）（2021年版）》第19条指出，“禁止投资人体干细胞、基因诊断与治疗技术开发和应用。”《生物安全法》，已于2021年4月15日生效。《生物安全法》对生物技术的发展和应用提出了明确的法律要求和相应的限制，以“保护国家安全和公共利益。”鉴于《生物安全法》的限制及其所建立的法律框架，商会希望政府能考虑相应调整对基因治疗技术的外国投资管控，并依靠《生物安全法》和相关法规对此类投资进行有效管理。

如有必要对外国投资和基因治疗产业经营活动同时进行管理，商会敦促政府颁布实施条例，例如特定行业的负面清单，以利于更加清晰地理解政策边界，在确保合规的同时，促进跨国公司在华研发、创新活动的有效开展。建议修改负面清单第19条为“禁止投资人体干细胞、基因诊断与治疗技术开发和应用。（用于临床治疗的、未涉及人类遗传物质改变的免疫细胞、基因诊断与治疗技术开发和应用除外）”

除了《生物安全法》和2021年负面清单，商会会员企业还关注国务院于2019年7月1日颁布的《人类遗传资源管理条例》。商会建议，国务院科学技术行政部门应尽快出台实施细则，对一些模糊问题加以澄清，比如，基因测序行业为了提供售后服务而接触客户使用仪器产生的特定数据应该如何处理。中国美国商会随时准备为会员企业提供沟通平台，以便与政府就以上问题进行交流，并期待能就这些议题进行持续对话。

职业健康与安全

防护用品应急储备

2020年突发的全球性新冠肺炎疫情给应急物资储备敲响了警钟。尽管2003年SARS疫情后国内开始逐步建立应对突发公共卫生事件的物资储备制度，但实际应急物资储备与突发公共卫生事件应对所需存在较大差距。尤其是早期新冠肺炎疫情防控中出现了防疫物资紧缺的问题，进一步凸显了建立和完善防护物资储备的必要性（据国务院联防联控机制2020年2月19日新闻发布会）。

在此，商会提出以下观察和建议：

建立完善的防护装备储备体系和制定相关储备标准

在中国抗击新冠肺炎疫情中，个体防护装备充当了重要角色。部分省区的卫生应急基本物资储备名录中尽管规定了防护服、医用口罩、GB2626KN95口罩、防毒面罩、防护眼罩、防护手套和鞋套的储备要求，但仍存在防护物资品种欠缺，储备数量有限的情况。建议制定防护用品的储备标准，完善储备体系和储备规模，把必需的防护物质类别列入储备清单，并建立必要的储备规模。除政府应急防护物资储备外，建议积极引导企业、

top-level design should be further strengthened to establish an independent multi-level security policy system and evaluation mechanism for rare disease drugs. Based on the high R&D cost, relatively high price and limited number of patients, it is difficult to solve the payment problem of innovative drugs for rare diseases only by unilateral force. Therefore, it is recommended that, based on the practical experience of international and domestic regions, China should take the lead and combine the development of medical insurance (basic medical insurance, major medical insurance and medical insurance for special diseases) and commercial health insurance to further promote the establishment of special relief funds for rare disease, improve the functional positioning and coordination mechanisms of all parties, and rely on effective tools of financial or therapeutic risk sharing to establish a clearer and more explicit multi-level protection pathway for high-value drugs of rare diseases to ensure that patients' out-of-pocket payments are within affordable limits. At the same time, social assistance and charity should be further encouraged to participate in the development of a multi-level coverage system for high-value drugs of rare diseases, forming a joint effort to enhance the benefits of rare disease patients.

On promoting the review and approval system for OTC drugs to protect the public's health needs for self-medication

China's OTC drug regulatory system has not yet been established, and the main problems include:

- China currently does not have an independent review and approval process and technical requirements for OTC product registration access, and China is also considered one of the countries in the world that have most stringent OTC drug registration with the longest time to market approval, and even has no registration access for marketing. The overly stringent technical standards and excessively long approval time are not in line with the safety and efficacy natures of OTC drugs that have been fully validated through board use.
- As an important drug type, OTC drugs do not have a separate regulatory agency and regulatory resources, which severely restricts the amendments to regulations and innovation of regulatory system for OTC drugs.

The absence of the above regulatory system has led to a serious stagnation in the innovation and development of OTC drugs in China.

OTC drugs are inaccessible. China's OTC drugs still have problems of fewer variety, fewer quantity and lower accessibility. In particular, the drugs for children and the elderly are inaccessible and low in efficacy, and the new formulations, new dosage forms, new packaging and new flavors of OTC drugs are not developed sufficiently due to the lack of regu-

lations. OTC drugs that have been marketed overseas and have good efficacy and safety are still inaccessible in China, which cannot meet the public's health needs for self-care, self-diagnosis and self-medication, and consumers generally buy OTC drugs from overseas.

Recommendations

To solve the challenges highlighted above, AmCham China proposes to reform and innovate around the drug review and approval system, closely follow the advanced practices of international regulatory development, and establish a separate scientific regulatory system that covers the whole life cycle of OTC drugs through a series of innovations in regulatory tools, standards and methods, so as to effectively address the outstanding problems that affect and restrict the R&D, innovation and high-quality development of OTC drugs, and accelerate the healthy development of the OTC drug industry to meet people's needs for relevant drugs.

The State Council issues the Implementing Opinions on Accelerating the development of OTC Drug Industry, along with multiple ministries and commissions to establish a separate scientific regulatory and legal system for OTC

It is recommended that China further refine the risk-based scientific regulatory system for drugs, establish and improve the regulatory system for the entire life cycle of OTC drugs, encourage the healthy development of the OTC drug industry. At the same time, China needs to strengthen scientific and technological support and regulatory capacity building, establish a separate regulatory agency and team for OTC drugs, and introduce new standards, tools and methods for modern and scientific regulation, including the establishment of an OTC drug registration and regulatory department at NMPA and a separate sub-center or department for OTC drug review and approval.

Make supporting policies for OTC drugs as soon as possible based on the Drug Administration Law and the Measures for the Administration of Drug Registration

The industry expects China to release the Technical Guidelines for the Marketing Registration of Chemical OTC Drugs (Draft for Comments) and other related regulations and guidelines as soon as possible, establish and improve the OTC registration/conversion review system, as well as promulgating measures to the administration of OTC drug labeling and instructions, so as to provide legal basis and regulatory principles for products with different indications or applicable populations, promote the high-quality development of OTC drugs, modernize the drug regulatory system and capacity, and safeguard public health.

社会团体和家庭实施储备。加大电动送风呼吸器等高防护等级物质的储备，以增强对高风险人群的防护。

储备符合标准要求的防护装备

据工信部统计，中国是世界最大的口罩生产和出口国，口罩的年产量占全球约 50%，但巨大的产能与防护用品质量之间的反差不容忽视。储备单位所储备的防护物资须符合相应的国家标准要求，如医用防护口罩须符合 GB19083-2010，颗粒物防护口罩须符合 GB2626-2019，防毒面罩须符合 GB2890-2009，防护眼罩须符合 GB14866-2006 标准等。采取必要的措施以确保为储备系统生产的个人防护装备符合所有相关标准。

引导正确选择、使用防护用品，避免防护不足或不必要的浪费

公共卫生应急事件中医护及公众面临的风险不同，防护要求也不同。不同风险人群防护用品的选用可参照国家卫健委相关指导，避免防护不足或不必要的浪费。以呼吸防护为例，医护人员需要选用医用防护口罩或电动送风呼吸器，在某些情况下也可以使用 KN95 口罩。普通公众选用 KN95 口罩，医用外科口罩或一次性使用医用口罩即可满足不同风险层级的防护需求。KN95 口罩也可以作为日常呼吸防护常备物品。口罩属于有限次使用的物品，采取消毒剂或高温消毒、洗涤或其他措施来净化口罩会造成防护效能不可预知的下降，进而带来不必要的风险。

医务人员的健康与安全

中国劳动人口中，医疗卫生人员总数超过 1000 万，医疗行业的培训具有周期长、强度大的特点，而且从业风险高、技术资质办法严格特点，医疗卫生人员在从事职业活动过程中面临多方面的职业危害隐患，尤其是血源性病原体对广大医疗卫生人员构成的职业健康威胁十分严峻，医疗卫生人员的职业健康损害和职业病已成为全社会共同关注的热点问题。

在中国政府各部进行的结构性改革中，卫健委组建了职业健康司，改善中国百姓的职业健康与安全。这为职业健康防护工作带来了新的发展契机。2019 年国务院推出的健康中国行动（2019—2030 年）中，也明确提出了相关行动目标，计划到 2030 年：

- 实现工伤保险法定人群参保全覆盖；
- 工作场所职业病危害因素检测率达到 85% 及以上，接触职业病危害的劳动者在岗期间职业健康检查率达到 90% 及以上；
- 鼓励用人单位优先采用有利于防治职业病和保护员工健康的新技术、新工艺、新设备、新材料政府完善职业病防治技术支撑体系；建立完善工作场所职业病危害因素监测和职业病报告网络。

针对工作人群，尤其是医疗卫生人员的职业安全与职业风险缓释，商会提出如下几点建议：

- 健康中国行动提出应研究修订《中华人民共和国职业病防治法》等法律法规，亟待能进一步明确并细化医疗卫生人员相关的职业卫生防护及职业健康权益；
- 在局部试点调研的基础上，总结经验，并上升到法律制度，积极推动医护人员职业卫生防护地方法规出台；
- 政府建立对各类医疗职业暴露的监测体系：完善职业暴露上报制度，建立职业暴露的监测及反馈体系；
- 开展医护人员职业健康联合执法，检查医院是否将国家相关职业卫生安全标准是否落实到位，并将医护人员职业危害预防控制纳入到院长职业化培训项目之中；
- 完善医护人员职业伤害预防和救助赔偿机制。将预防职业危害相关的技术及暴露后的救治成本计入医疗投入，或纳入医疗保险，以形成长期稳定的投入机制。

促进应急救援人员职业健康

众所周知，消防员是一种高危职业，他们所面对的是复杂多样、不可预测的职业危害。据美国职业健康安全研究所（NIOSH）网站，由其牵头进行的大规模调查研究（针对 1950-2009 年的约 3 万名消防员）结果表明，美国消防员罹患癌症的概率明显高于普通人，从 1.14 到 2.02 倍不等。基于此，美国政府于 2018 年发布实施了《消防员癌症登记法案》，创建了消防员国家登记处，对消防人员的癌症发病率和趋势进行研究。

商会注意到，在中国目前已有若干有关消防员职业健康的法规，包括：《消防法》、《消防员职业健康标准》、《消防职业安全与健康》和《中华人民共和国职业病防

Vaccine

Prevention has always been the focus of the Healthy China 2030 strategy. With the outbreak of COVID-19, governments, the scientific community and the medical profession worldwide are actively exploring and addressing this unprecedented global public health challenge. Vaccination is widely recognized as one of the most successful and cost-effective health interventions worldwide. Therefore, the development of global, effective, and widely available vaccines is essential for effective responses to public health problems. Strengthening international cooperation in disease control and vaccine development is essential. In addition, strengthening emergency health and infectious disease management and response mechanisms remains an important issue for the Chinese government.

In recent years, the urgent need to reform China's public health management and disease prevention and control system in order to improve the response to future pandemics and other public health emergencies has been realized in for example the 14th Five-Year Plan and Vision 2035 adopted at the National People's Congress in Beijing in March 2021. The reform agenda includes improving the legislative framework around public health emergencies and strengthening domestic scientific research, development and innovation, including vaccine development and other therapies. In addition, the government has emphasized the need to strengthen grassroots public health and pandemic preparedness measures and to improve the capacity of China's public health professionals.

Vaccines can make a significant contribution to improving population health, thereby indirectly enhancing economic growth. Increasing access to vaccines for all ages will help improve public health in China. Members of the AmCham China healthcare working group will continue to support the government's initiatives for disease prevention and control reform and contribute to their development.

Vaccine accessibility

The Chinese regulatory authorities have made significant improvements to speed up the registration and approval process of vaccines. The COVID-19 outbreak has greatly increased the general awareness of infectious disease prevention among the population and the rising demand for vaccinations, so the introduction of more innovative vaccines into China will help with vaccination supply security. Foreign vaccine companies are still facing some challenges in the vaccine registration and approval process, such as the requirements for blood samples of international multicenter clinical trials (IMCT), and differences on technical guidance and pharmacopoeias between domestic and international standards. AmCham China expects Chinese vaccine standards and development practices to be aligned with internationally accepted practices, which will not

only accelerate the introduction of innovative vaccines but will also effectively help Chinese vaccine manufacturers to enter the international market. At the same time, it is recommended that innovative vaccines are also applicable to regions such as the Greater Bay Area where access reform measures such as early and pilot testing of pharmaceutical products are carried out, and that for innovative vaccines already approved overseas, appropriate mechanisms be considered to allow eligible expatriates to apply for use in the above-mentioned regions

National immunization program (NIP) vaccine procurement

According to the Vaccine Administration Law, China will establish a dynamic adjustment mechanism for vaccines to include suitable new vaccines in the NIP, with a particular focus on the inclusion of innovative vaccines or vaccines that are widely needed. A more dynamic, transparent, and predictable mechanism for adjusting the NIP is essential. The government should also ensure that clear evidence-based evaluation criteria are provided for potential vaccine candidates for inclusion in the NIP.

Considering that vaccines must undergo a long research and development and strict approval process, procurement also requires consideration of public health benefits and security of supply, and that China's Foreign Investment Law provides for equal treatment in public procurement, AmCham China and its members hope that the procurement of vaccines for NIP will not be determined by whether the vaccines are imported or domestically produced, and that all vaccines approved for marketing by NMPA will have equal access so as to provide a sustainable supply of quality vaccine for the Chinese people, especially children.

Cell and Gene therapy technology

The development of gene therapy and related technologies is an important part of today's global bio-pharmaceutical industry. These technologies have great potential to improve treatment outcomes and patient health. The 13th Five-Year Plan for the Development of the Biological Industry (2016-2020) released in 2017, urges governments to take advantage of the opportunities presented by new gene therapy technologies to accelerate drug development and improve drug quality to meet clinical and industry drug use. The Plan calls on the government to improve the investment environment and create incentives to attract foreign investors to build R&D, manufacturing, and sourcing centers in China.

However, Article 19 of the Special Administrative Measures (Negative List) for Foreign Investment Access (2021 Edition) published in December 2021 states that "it is prohibited to invest in the development and application of human stem cells and gene diagnosis and treatment

治法》等。此外，10年前建立的职业病防治工作部际联席会议制度在2020年7月进行了调整和完善，成员单位增加了应急管理部。

2018年中国的消防员职业化改革使得其职业健康问题凸显。同时，中国即将开启的十四五规划中，消防员的长期职业健康应当是“平安中国”和“健康中国”的重要组成部分，建议卫生健康部门充分利用消防员的职业健康档案，牵头开展相关职业病的研究，并定期公布相关数据和结果。多措并举，确保个人防护装备的产品质量，避免“劣币驱逐良币”，包括修订相关产品标准、加强市场监管和惩处力度、改进招投标管理、提高消防员对个人防护装备的评价发言权等。充分利用社会资源，加强消防员各类职业健康专业培训。

关注中小企业职业安全健康

国家卫健委“卫生健康事业发展统计公报”数据显示，2016-2020年间尽管报告职业病总数呈现下降趋势，但职业性尘肺病及其他呼吸系统疾病占总报告病例的比例基本保持在85%左右，职业性尘肺病及呼吸系统疾病依然是用人单位面临的主要职业病类型，此外职业性化学中毒和噪声的伤害案例仍有较大的占比。职业病危害防治形势依然严峻，尤其数量超过3000万家的中小企业贡献了80%以上的劳动力就业机会，也是职业伤害事故的主要发生场所。从中小企业的职业伤害案例来看，其主要原因包括如下因素：

- 中小企业的管理者对职业安全健康的认识不到位，管理者重视程度不够，导致企业职业安全健康投入不足。
- 职业安全健康管理配备不足或者相关人员知识欠缺，同时劳动者缺乏必要的职业防护意识，职业安全健康教育培训欠缺。
- 生产工艺和技术条件比较落后，基本的工程防护能力薄弱。企业没有针对相应危害，正确配备和使用合规有效的个人防护用品。

支持中小企业职业安全健康建设

支持中小企业进一步做好职业安全健康工作，非常具有现实紧迫性。这将不仅有利于提升企业的安全管理水平，也有利于降低全社会总体职业伤害水平，促进我国健康中国战略的实现。建议：

- 以《安全生产法》和《职业病防治法》为指引，加强对中小企业的监督管理，提升工商企业的主体责任意识；加大职业安全与健康技术支持，帮助建立和完善职业安全健康管理制度和规范。多途径的增强对中小企业人才的教育和培训，提升其职业安全健康水平；
- 完善个体防护装备的配备，帮助中小企业实施合理的职业危害控制措施。充分利用GB39800《个体防护装备配备规范》系列标准，为作业者配置符合国家标准或行业标准且适合作业者的个体防护装备。GB39800.1-2021《个体防护装备配备规范-总则》及石油石化天然气、非煤矿山和冶金三个行业的个体防护装备配备规范已于2022年1月1日起执行，建议加强标准的宣贯，让工商企业尤其是中小企业的个体防护装备的配备落到实处，同时加强个体防护装备质量的监督管理。
- 为应对安全事故和可能发生的紧急情况，确保一线人员、急救应急响应人员和基础设施工作人员在履行职责时得到应有的保护，储备符合标准要求、足够的和适用的个体防护装备储备和救援装备十分必要。建议引导工商企业合理储备个体防护装备，以备紧急情况发生时有效保护作业者及实施救援，以降低各类损失并尽快恢复企业的正常生产和生活秩序。

加强科研院所和高校实验室职业安全健康管理

实验室作为重要的科研场所，是研发和创新的重要基地。科研院所和高校实验室安全事故仍然时有发生，暴露出实验室安全管理仍存在薄弱环节，突出体现在实验室安全责任落实不到位、管理制度不完善、教育培训不充分和个体防护装备配备不规范等方面。建议进一步落实《病原微生物实验室生物安全管理条例》和《关于加强高校实验室安全工作的意见》等规范，加强科研院所和高校实验室安全监督管理，加强实验人员的职业安全健康教育，完善必需的个体防护装备和应急措施的配备，以保障实验人员职业安全健康。

女性健康领域

女性健康，特别是中老年女性健康健康中国的重要基石。《中国妇女发展纲要（2011-2020年）》中提出妇女在整个生命周期享有良好的基本医疗卫生服务，妇女

technologies". The Biosafety Law which took effect on April 15th, 2021, puts forward clear legal requirements and corresponding restrictions on the development and application of biotechnology in order to "protect national security and public interest". Given the limitations of the Law and the legal framework it establishes, AmCham China hopes that the government will consider adjusting its controls on foreign investment in gene therapy technology accordingly, and be based on the Law and related regulations to effectively manage such investment.

If it is necessary to regulate both foreign investment and business activities in the gene therapy industry, AmCham China urges the government to promulgate implementing regulations, such as industry-specific negative lists, to facilitate a clearer understanding of policy boundaries and to ensure compliance while promoting effective R&D and innovation activities by multinational companies in China.

In addition to the Biosafety Law and the 2021 Negative List, AmCham China member companies are also concerned about the National Regulations on the Management of Human Genetic Resources promulgated by the State Council on July 1st, 2019. AmCham China has observed that the Ministry of Science and Technology has released the Implementation Rules for the Regulations, and further clarified some of the concerns member companies have. AmCham China suggests that how specific data generated by the gene sequencing industry's access to customers' use of instruments in order to provide after-sales service should be handled can be clarified. AmCham China stands ready to provide a communication platform for member companies to engage with the government on the above issues and looks forward to an ongoing dialogue on these topics.

Occupational Health and Safety

Stockpile of emergency protective supplies

The sudden global outbreak of COVID-19 in 2020 has sounded an alarm to the emergency supplies stockpile. Although the domestic material reserve system for responding to public health emergencies began to be established gradually after the SARS in 2003, there is a large gap between the actual stockpile and the demands in responding to public health emergencies. In particular, the shortage of materials emerged in the early prevention and control stage of COVID-19 further highlights the need to establish and improve the reserve system of protective supplies (according to the press conference of the State Council Joint Prevention and Control Mechanism on February 19th, 2020).

In this regard, AmCham China makes the following observations and recommendations:

Establish a comprehensive protective equipment reserve system and develop relevant reserve standards

In China's fight against the COVID-19, individual protective equipment has played an important role. Despite the reserve requirements for protective clothing, medical masks, GB2626 KN95 masks, gas masks, protective eye masks, protective gloves and shoe covers specified in the reserve lists of basic materials for health emergencies in some provinces and regions, there is still a lack of varieties of protective materials and raw materials to produce them, a limited number of reserves. It is recommended to develop reserve standards for protective supplies, improve the reserve system and reserve scale, include the necessary categories of protective substances in the reserve list, and ensure the necessary reserve scale. In addition to the government emergency protective material reserves, it is recommended to actively guide enterprises, social groups and families to implement reserves. It also needs to increase the reserve of high protection level substances such as electric air supply respirators to enhance the protection of high-risk people.

Stockpile of protective equipment that meets standards and requirements

According to the statistics of the Ministry of Industry and Information Technology, China is the world's largest manufacturer and exporter of masks, and the annual production of masks accounts for about 50 percent of the world, but the contrast between the huge production capacity and the quality of protective supplies cannot be ignored. The protective materials stockpiled by the reserve organizations, including medical protective masks, particulate protective masks, anti-toxic masks, and protective eye masks, shall meet the requirements of the corresponding national standards. Necessary measures need to be taken to ensure that the individual protective equipment produced for the reserve system meets all relevant standards.

Guide the correct choice and use of protective equipment to avoid inadequate protection or unnecessary waste

The risks faced by healthcare workers and the public in public health emergencies are different, and the protection requirements are also different. The selection of protective equipment for people with different risks can refer to the relevant guidance of NHC to avoid insufficient protection or unnecessary waste. Taking respiratory protection as an example, medical and nursing staff need to use medical protective masks or electric air supply respirators, and in some cases, KN95 masks can also be used. The general public can choose KN95 masks, medical surgical masks or single-use medical masks to meet the protection needs of different risk levels. KN95 masks can also be used for daily protection. Masks have limited times of use, and taking

的人均预期寿命延长等 10 项妇女健康主要目标。在妇女常见病的防治方面，国家不断加大对妇女宫颈癌、乳腺癌筛查工作投入力度，“两癌”检查项也已被纳入基本公共卫生服务内容，越来越多妇女从中受益。

根据国家统计局最新数据及趋势显示，中国预计将快速迎来人口负增长。人口的老齡化与负增长通常与劳动力短缺、经济增长乏力、社会缺乏活力等问题挂钩，因此是值得关注的重点问题。

育龄女性减少与生育力下降是造成中国人口增速大幅降低的原因之一。促进生育力保护、优化辅助生殖技术、普及生殖医疗覆盖、合理避孕避免非意愿妊娠以减少不孕不育等可作为保护生育力的有效政策手段。

2021 年 6 月，中国印发《关于优化生育政策促进人口长期均衡发展的决定》，实施“三孩”生育政策及配套支持措施，被视为优化人口政策的顶层设计。目前，多个省份已完成了人口与计划生育条例的修订，并采取了延长产假、发放生育津贴、完善生育服务体系、保障育龄女性权益等一系列措施。中国已将促进人口长期均衡发展作为中长期发展规划，商会相信相关的政策部署将越来越多，也将更细化、深化。与此同时，受限于此前计划生育国策的政策理念，中国生育力保护政策仍存在部分限制、生育力保护相关教育的普及仍有提高空间。

但自 2001 年原卫生部发布中国辅助生殖领域首个较为系统的法律规范性文件（《人类辅助生殖技术管理办法》）以来，至今政策端对该领域的控制监管整体趋严。根据 2015 年 5 月卫计委印发的《人类辅助生殖技术配置规划指导原则（2015 版）》，新筹建开展的辅助生殖技术应当配置在三级综合医院、三级妇幼保健院或三级妇产医院。最新发布的《人类辅助生殖技术应用规划指导原则（2021 版）》也规定，若按常住人口测算，每 230 万 -300 万人口可设置 1 个机构。目前的政策导向致使中国经批准开展人类生殖辅助技术的医疗机构仅为 600 家左右。目前，不少省份已发布人类辅助生殖技术应用规划（2021-2025 年），但除个别省份（如四川、陕西）以外，其他省份均要求截至 2025 年新增辅助生殖中心不超过 10 家。在开放三胎并鼓励生育的大背景下，或将无法满足不孕患者的相关需求。

高龄、生育间隔不合理、非计划妊娠是影响女性生育力的重要因素，与逐年显著下降的新生儿数形成鲜明

对比的是，中国公开数据显示 2014-2018 年间中国每年人工流产数始终处在 950 万以上的高位。与此同时具有 3 个特点：数量庞大、重复流产者占比高、年轻未育的女性比例大。其中 25 岁以内妇女所占比例为 47.5%。而以上大多数情况的原因是女性过往的合理避孕需求没有被满足。例如，虽然经过多年发展，长效可逆避孕技术已十分成熟，并已成为美国等部分发达国家基层医疗机构即可提供的医疗服务。与之相比，中国能够提供长效可逆避孕手术的医疗机构由于需要资质申请仍然较为有限，在基层医疗机构中的可及性尚不充足，尤其对于未育女性人群则更为突出。与此同时，是否应该避孕，如何科学避孕等教育因素也是造成以上情况的部分原因。这些保护生育力的保障措施不足，已成为中国实现长期人口战略的潜在障碍。

因此，商会建议：

- 构建覆盖全生命周期的生殖健康体系，构建生育友好型社会，以提高女性生殖健康水平。
- 进一步放开医疗机构开展辅助生殖以及基层医疗机构开展长效避孕手术，并组织规范培训，在全国范围内提高生殖与避孕技术的可及性，使女性生殖健康服务对象扩展至所有育龄妇女，尤其是未育女性，以此进一步促进中国女性的生育力保护。
- 加强生殖健康教育，传递科学避孕知识，消除女性的健康隐患。将“更好生育，避孕先行”等生殖及避孕健康教育的传播从医疗机构延伸至校园，作为国家教育体系建设的重点之一。

在中国，约三分之一 50 岁以上的女性和超过半数 65 岁以上女性患有骨质疏松症。《中国妇幼健康事业发展报告（2019）》中也提到要“针对更年期妇女健康需求，开展大众化的健康教育，提供健康咨询和指导……开展骨质疏松症诊治。”具体建议如下：

- 将健康骨骼管理作为更年期妇女健康重点领域工作，纳入各地区“十四五”妇女发展规划和行动方案。为推进《妇女发展纲要（2021—2030）》中建立完善妇女全生命周期健康管理模式的策略实施，积极推动有条件的地区将健康骨骼纳入妇女发展规划，优先针对绝经后妇女骨质疏松等女性重大慢病建立宣传教育、咨询指导、筛查评估、综合干预和急救救治为一体的全方位卫生健康服务体系。将女性骨骼健康作为女性全生命周期健康管理中不可或缺的

disinfectant or high-temperature disinfection, washing or other measures to decontaminate the mask can cause an unpredictable decrease in protection effectiveness and thus bring unnecessary risks.

Health and Safety of Medical Staff

In China's working population, the total number of medical staff accounts for over 10 million. The long medical training brings higher occupational risks and stricter requirements on technical certificates and licenses. Medical staff face a variety of occupational hazards potential during working, especially blood-borne pathogens that have serious threats to their health. Occupational health damage and diseases of medical staff have become a common concern of society.

Among the structural reforms carried out by the Chinese Ministries, the Department of Occupational Health established by NHC aims to improve the occupational health and also safety of the Chinese people, which has brought new development opportunities for occupational health protection. The 2019 Healthy China (2019-2030) Action Plan, launched by the State Council, also clearly sets out relevant action goals, and plans to achieve by 2030:

- Full coverage of the population with work injury insurance;
- Workplace occupational disease hazards detection rate of 85 percent and above, and occupational health inspection rate for labors exposed to occupational disease hazards on duty of 90 percent and above;
- Encourage employers to prioritize new technologies, new techniques, new equipment and new materials that are conducive to the prevention and control of occupational diseases and the protection of employees' health; the government's improvement on the technical supporting system for the prevention and control of occupational diseases; and establishment of a factor monitoring and reporting network for occupational disease hazards in the workplace.

For occupational safety and occupational risk mitigation of the working population, especially healthcare workers, AmCham China makes the following recommendations:

- The Healthy China Action Plan proposes to amend the Prevention and Control of Occupational Diseases Law and other regulations, and it is urgent to be able to further clarify and refine the occupational health protection and occupational health rights and interests related to medical and healthcare staff and workers.
- On the basis of local pilot researches, summarize experience and legalize, and actively promote the introduction of local regulations on occupational health protection for medical and healthcare staff and workers.
- The government establishes a monitoring system for

various types of medical occupational exposures: improve the system for reporting occupational exposures, and establish a monitoring and feedback system for occupational exposures.

- Carrying out joint law enforcement on occupational health of medical and healthcare staff and workers, and check whether hospitals have put in place the relevant national occupational health safety standards, and incorporate occupational hazard prevention and control into the occupational training program for directors.
- Improve occupational injury prevention and relief and compensation mechanisms for medical and healthcare staff and workers. Include technologies related to occupational hazard prevention and post-exposure rescue costs in medical budget or in medical insurance to form a long-term stable budget mechanism to extend protection for health workers and protect them from harm and injury.

Promote occupational health of emergency responders

Firefighters are known to be a high-risk occupation, and are exposed to complex, diverse and unpredictable occupational hazards. According to the website of the National Institute for Occupational Safety and Health (NIOSH), the results of a large-scale research led by it (for about 30,000 firefighters from 1950-2009) show that firefighters in the United States are significantly more likely to develop cancer than the general population, ranging from 1.14 to 2.02 times, based on which the US government released and implemented the Firefighter Cancer Registry Act in 2018, and created the Firefighter National Registry to study cancer incidence and trends among firefighters.

AmCham China notes that there are currently several regulations in place in China regarding the occupational health of firefighters, including the Fire Services Law, the Occupational Health Standards for Firefighters, the Occupational Safety and Health for Firefighters, and the Prevention and Control of Occupational Diseases Law. In addition, the inter-ministerial joint meeting system on occupational disease prevention and control established 10 years ago was adjusted and improved in July 2020, with the addition of the Ministry of Emergency Management as a member.

The professionalization reform of firefighters in China in 2018 has brought their occupational health issues to the fore. Meanwhile, in China's upcoming 14th Five-Year Plan, the long-term occupational health of firefighters should be an important part of Safe China and Healthy China strategies, and it is recommended that health departments make full use of the occupational health records of firefighters, take the lead in conducting research on relevant occupational diseases, and regularly publish relevant data and results. Multiple measures should be taken to ensure the quality of personal protective equipment products, including

环节，降低因脆性骨折导致的致残致死率，延长妇女人均预期寿命，提高人均健康预期寿命。

- 推动落实社区重点人群骨质疏松风险筛查，提升更年期女性和老年女性用药可及性。会同卫健委、疾控局、工会等相关部门，优先针对企事业单位在职或退休更年期妇女等免费提供简易骨质疏松风险筛查项目。倡导将临床疗效突出和安全性良好的医保目录内药品纳入国家基本药物目录，并适当提升报销比例，进一步提升患者用药可及性。
- 提升女性对健康骨骼的认识和教育。积极动员更多的社会力量参与健康知识普及工作。鼓励卫生健康行业学会、协会组织专家开展多种形式的、面向公众的健康科普活动。
- 依托多层次医疗保障制度体系，加大公共财政补助，进一步提高骨密度检查和骨质疏松治疗用药的可负担性。积极推动基本医保个人账户用于支付政府部门组织开展的骨骼健康管理项目。探索补充商业健康保险、医疗慈善、医疗互助等为辅助的多元医疗保障筹资机制。推动有条件的地区优先将重点人群的骨骼健康管理服务纳入妇幼保健财政和公共卫生服务预算。

关于推动无创产前筛查（NIPT）一线使用的建议

预防出生缺陷，提高人口质量长期以来是政府工作的重点之一。为积极应对老龄化，改善人口结构，保持人口禀赋优势，2021年7月，《中共中央、国务院关于优化生育政策促进人口长期均衡发展的决定》，明确实施三孩政策。同年9月份，国务院发布《中国妇女发展纲要（2021-2030）》以及《中国儿童发展纲要（2021-2030）》，强调推动生育政策与经济社会政策的配套衔接。

为应对高龄孕妇增多的现状，加大出生缺陷发生风险防控力度，国家卫计委2016年发布了《孕妇外周血胎儿游离DNA产前筛查与诊断技术规范》。对开展NIPT工作的机构、人员、设备和技术等进行了规范。目前全国已有440多家医疗机构可以开展NIPT的产前筛查和检测工作。全国各地高度重视，积极将无创产前筛查（NIPT）纳入民生项目，从省级层面看，河北、天津和山西三个省均出台了相关政策，另有23个地级市出台了无创产前筛查的补助政策。商会建议国家卫健委借鉴全球有关国家，如比利时、荷兰、澳大利亚、美国等的先例，为所有孕妇提供无创产前筛查，让这项安

全、可靠、具有经济性的技术得以造福所有孕妇人群，为预防出生缺陷，保障人口质量发挥更大的作用。

数字技术与医药健康

新冠肺炎疫情对整个行业的影响已成为行业数字化变革的催化剂。《“健康中国2030”规划纲要》提到数字技术与医药健康深度融合，医疗健康产业数字化转型势在必行：充分发挥医药健康产业海量数据和丰富应用场景优势，从研发、生产、流通、应用各环节促进数字技术与医药健康产业深度融合。将加快布局下一代计算：包括量子计算、量子通信、神经芯片、DNA存储等前沿技术，加强信息科学与生命科学、材料等基础学科的交叉创新。鼓励在生物医药领域，建设国际水准的工业互联网平台和数字化转型促进中心，深化医药研发、药品生产、药品营销、市场服务等环节的数字化应用，加快医药产业园区数字化改造。推动医疗数字化服务普惠应用，推进医院、养老院等公共服务机构资源数字化，积极发展互联网医院，鼓励社会力量参与“互联网+医疗”建设，创新提供服务模式和产品。中国十四五规划中提出数字化技术的应用场景在智慧医疗，包括：完善电子健康档案和病历、电子处方等数据库，加快医疗卫生机构数据共享；推广远程医疗，推进医学影像辅助判读、临床辅助诊断等应用；运用大数据提升对医疗机构和医疗行为的监管能力。

数字化研发

大数据、人工智能、云计算等技术加速与生物医药全面融合，在候选药物设计与筛选过程中，通过计算机的模拟、计算和预算药物与受体生物大分子之间的关系，设计和优化先导化合物。在化合物合成制备环节，可通过大数据知识库的查询比对，整合先进的目标化合物合成路线并用人工智能做出优选推荐。上述手段能大大缩短新药开发周期，降低开发成本。

数字化临床试验

尽管研发投入大幅增加，而且通过基因组学、自动化和计算技术取得了历史性的进步，但每年生产的新药数量仍停留在20多年前的水平，很多临床试验曾遭遇延迟情况，尤其是罕见病和肿瘤疾病领域。同时临床试验成本居高不下，接近1/3的成本都花在患者招募。面对突如其来的疫情，商会很多医疗行业会员企业表示临

amending relevant product standards, strengthening market supervision and punishment, improving bidding management, and increasing firefighters' rights to speak on personal protective equipment evaluation. Social resources are supposed to be fully used to strengthen the professional training of firefighters in various occupational health.

Focus on occupational safety and health in SMEs

Data from the NHC's Statistical Bulletin on Health and Hygiene Development shows that although the total number of reported occupational diseases shows a decreasing trend between 2016 and 2020, the proportion of occupational pneumoconiosis and other respiratory diseases in the total reported cases basically remains at about 85 percent, and occupational pneumoconiosis and respiratory diseases are still the main occupational diseases faced by employers, in addition to occupational chemical poisoning and noise injury cases which still have a large proportion. The situation of occupational disease hazard prevention and control is still tough, especially for the 30 million SMEs which contribute more than 80 percent of employment, and are also the main sites of occupational injury accidents. The main reasons of occupational hazard cases in SMEs are as follows:

- Managements of SMEs do not have a good understanding of occupational safety and health, and do not pay enough attention to it, which results in insufficient investment in occupational safety and health.
- Enterprises do not have insufficient occupational safety and health managers, or managers are lack of knowledge, while employers are short of the necessary awareness of occupational protection, and occupational safety and health education and training is scarce.
- Production process and technical conditions are relatively undeveloped, and basic engineering protection capability is weak. Enterprises do not properly equip and use compliant and effective personal protective equipment for corresponding hazards.

Support the construction of occupational safety and health in SMEs

Supporting SMEs to further improve their occupational safety and health is an urgent need. This will not only help to improve the safety management of enterprises, but also help to reduce the overall occupational injuries in society as a whole and promote the realization of the Healthy China strategy, with the following recommendations:

- Based on the Work Safety Law and the Occupational Diseases Prevention and Control Law, strengthen the supervision and administration on SMEs and enhance their awareness of the main responsibility; enhance technical support for occupational safety and health and help establish and improve occupational safety and

health management systems and regulations; advance personnel education and training in SMEs via multiple ways to improve occupational safety and health management.

- Ensure the supply and reserve of protective equipment to help SMEs implement reasonable measures to control occupational hazards; based on GB39800.1-2021 Individual Protective Equipment Specifications, provide workers with personal protective equipment that complies with national and industry standards; as Individual Protective Equipment Specifications and specifications of personal protective equipment for petroleum, petrochemical and natural gas, non-coal mining and metallurgical industries have been implemented since January 1st, 2022, strengthen the implementation of the standards, and ensure supervision and administration on the quality of personal protective equipment.
- In order to respond to safety accidents and possible emergencies, ensure that front-line workers, first-aid emergency response personnel and infrastructure staff can get due protection in their duties; ensure the stockpile of personal protective and rescue equipment in line with the standards and requirements; guide enterprises to reasonably stockpile personal protective equipment to effectively protect workers and implement rescue in case of emergency, in order to reduce all kinds of losses and restore normal production and operation of enterprises as soon as possible.

Strengthen occupational safety and health management in research institutes and university laboratories

Laboratories, as important research places, are important for research and innovation. Laboratory safety accidents in research institutes and universities still occur from time to time, revealing that there are still weaknesses in laboratory safety management, and highlighting the lack of implementation of laboratory safety responsibilities, imperfect management systems, inadequate education and training, and the lack of standardized personal protective equipment. It is recommended to further implement the Regulations on the Administration of Biosafety in Pathogenic Microbiology Laboratories and the Opinions on Strengthening Laboratory Safety in Colleges and Universities, strengthen the supervision and management of laboratory safety in research institutes, colleges and universities, provide occupational safety and health education to laboratory personnel, and ensure the necessary personal protective equipment and emergency measures to safeguard occupational safety and health of laboratory personnel.

Women's Health

The health of middle-aged and elderly women is another

床研究项目减缓或暂停，因“患者无法 / 延迟访视”、“无法入组新患者”因素导致项目减缓的比例高达三分之二，如何加速临床 Protocol 匹配，更自动化的数据采集，以及更智能的分析是数字化临床试验的重点。

数字化工厂和供应链

在自动化、物联网和其他新一代信息通信技术的共同推动下，数字化生产使医药生产环节可视、可控、智能，不仅降低了人工操作中难以避免的偏差和错误，确保信息的透明度和流程的合规性，还能够通过分析采集的数据持续改进药品质量，从而实现提质降本的效果。

数字化医疗服务

随着互联网、移动互联网的发展，患者开始以更主动的身份参与医疗服务和药物治疗当中，通过网站、移动应用等渠道获得疾病和药物知识，并提出自己对诊疗的建议。尤其是一些慢病患者，由于长期应对某一类疾病，已经成为了该领域的“专家”。先进药企已经注意到这一趋势，并开始通过数字化方式与患者进行互动，例如：医学问答机器人可以主动回答患者的相关问；线上随访管理系统可以随时搜集患者的信息反馈；智能小药盒可以提醒患者及时准确用药等，为患者提供更好的医疗体验；通过人工智能技术和大数据分析的辅助的循证医学参考资料为医师和药师的合理用药以及超说明书用药的探索提供了便捷和保障，以及辅助诊断治疗以及借助数字和互联网平台和传统医学结合，进行远程医疗操作以及服务，或者为患者提供更多帮助以及意见。

医疗和生命科学行业具有高技术、高投入、长周期、高风险、高收益等特点，对于医疗和医药企业来讲，只有不断创新，合规运营、降本增效，才能保持长期可持续发展。这种情况下，数字化转型将成为医疗和医药企业的必然选择。

建议

医疗服务

- 取消针对外资医院的各种限制和掣肘，包括对外资资本的限制，禁止医院新设分支机构，要求医院每家分支机构分别单独报税，限制

允许外籍员工和医生从业的医院数量。

- 将社会医疗保险覆盖范围扩展到私立医院领域，赋予患者与公立医院等同的最高报销限额。进一步放宽限制，允许患者执行支付生育费用或参与独立的商业健康保险增加获得药物的渠道。
- 确保私营和公共医疗服务提供者享受更加平等的待遇，并将私立医院纳入国家公共卫生应急计划和响应机制。鉴于本次新冠病毒肺炎疫情爆发期间，私立医院及其员工的发挥了不可忽视的作用，采纳这一建议尤为必要。

医疗器械、耗材和支付改革

- 采用循证实践来确定医疗器械的成本。在调整医疗服务和器械价格时，需要考虑原材料成本和人工成本等投入。服务价格可根据市场需求进行调整。
- 各地区定期开放窗口，对《全国医疗服务价格项目规范》新增医疗服务项目开放接受和审查窗口，使患者以低成本的方式使用最新的设备。
- 考虑采用基于价值的方法对医疗耗材进行招标和投标，同时考虑其价格及其临床和经济效益。监管机构应推动政策精简，以促进医疗耗材的批量采购。
- 继续改革医疗保险支付，确保建立适当机制，将新技术 / 医疗纳入现有支付结构中，扩大全国 DRG/DIP 支付结构，在实施过程中建立支付改革评价制度试点。

医药

- 继续加强中国知识产权保护，切实履行中国在中美第一阶段经贸协议中对改善药品知识产权保护承诺的承诺。针对制药行业，在专利链接制度中引入通知制度并设定合理的可登记专利类型和仿制药批准等待期，采用与全球最佳实践一致的专利期延长方案，采取与美

important part of a healthy China. In the China's National Program for Women's Development (2011-2020), 10 major goals for women's health are proposed, such as good basic health services for women throughout their life cycle and increased average life expectancy of women. In terms of prevention and treatment of common diseases among women, China has been increasing its investment in cervical and breast cancer screening for women, and screening and testing for the two cancers have been included in the basic public health services, which benefits more and more women.

Data from China's National Bureau of Statistics shows that the trend is that China will have negative population growth soon. The aging population and negative population growth are usually linked to labor shortage, sluggish economic growth, and lack of social vitality, and are therefore key concerns.

Fewer women of childbearing age and declining fertility are among the reasons for China's dramatically lower population growth rate. Promoting fertility protection, optimizing assisted reproductive technologies, universal reproductive medical coverage, and rational contraception to avoid unwanted pregnancies to reduce infertility can be effective policy tools to protect fertility.

In June 2021, China issued the Decision on Optimizing Fertility Policy to Promote the Long-term Balanced Development of the Population, which implements a "three-child" fertility policy and supporting measures, and is considered the top-level design for optimizing population. Currently, several provinces have completed revisions to their population and family planning regulations, and have adopted a series of measures to extend maternity leave, provide maternity allowances, improve the maternity service system, and protect the rights and interests of women of childbearing age. China has made the promotion of long-term balanced population development a medium- and long-term plan, and AmCham China believes that related policies will become more and more refined and deepened. At the same time, due to the previous policy philosophy of family planning, there are still some limitations in China's fertility protection policy, and there is still room to improve the popularity of fertility protection-related education.

In recent years, assisted reproduction is under increasing regulatory restrictions in China. The current policy orientation has resulted in only about 600 medical institutions approved to conduct assisted human reproductive technologies in China. Currently, many provinces have issued plans for the application of assisted human reproductive technology (2021-2025), but with the exception of certain provinces (e.g., Sichuan and Shaanxi), all other provinces require no more than 10 new assisted reproductive centers by 2025. In the context of the three-child policy and encouraging fertility, it may not be possible to meet the related needs of infertile patients. In addition, contrast to the significant year-on-year decline in the number of newborns, Chinese public data shows that the annual number of abortions in China

was consistently at a high level of over 9.5 million from 2014 to 2018. Medical institutions in China that can provide long-acting reversible contraception are still limited in their availability, especially for women who have not yet had children, due to the need to apply for qualifications. At the same time, educational factors such as whether contraception should be used and how to use it scientifically are also part of the reason for this situation. These inadequate safeguards to protect fertility have become a potential barrier to China's long-term population strategy.

Preventing birth defects and improving population quality has long been one of the government's priorities. In response to the increase in the number of elderly pregnant women and to increase the prevention and control of the risk of birth defects, the former National Health and Family Planning Commission issued the Technical Specifications for Peripheral Blood Fetal Free DNA Prenatal Screening and Diagnosis for Pregnant Women in 2016, which regulates the institutions, personnel, equipment and technology for NIPT. At present, more than 440 medical institutions nationwide can carry out prenatal screening and testing of NIPT. China attaches great importance to the integration of NIPT into livelihood projects. At the provincial level, Hebei, Tianjin and Shanxi have issued relevant policies, and another 23 prefecture-level cities have issued subsidized policies for NIPT. AmCham China suggests that NHC should learn from the good precedents in the globe to provide NIPT screening for all pregnant women, so that this safe, reliable, and economical technology can benefit all pregnant women and play a greater role in preventing birth defects and ensuring population quality.

Therefore, AmCham China recommends to:

- Construct a reproductive health system that covers the entire life cycle and build a fertility-friendly society in order to improve female reproductive health.
- Further open medical institutions to carry out assisted reproduction and primary medical institutions to carry out long-lasting contraceptive procedures, and organize standardized training to improve the accessibility of reproductive and contraceptive technologies nationwide, so that female reproductive health services can be extended to all women of childbearing age, especially infertile women, as a way to further promote fertility protection for Chinese women.
- Strengthen reproductive health education, deliver scientific contraceptive knowledge, and eliminate hidden health risks for women. The dissemination of reproductive and contraceptive health education, such as "better fertility, contraception first", should be extended from medical institutions to campuses as one of the priorities of the national education system.

In China, about one-third of women over the age of 50 and more than half of women over the age of 65 suffer from oste-

国等其他制度成熟的司法辖区一致的药品数据保护措施。

- 明确建立基本医保用药目录（NRDL）动态调整机制的相关内容。确保 NRDL 动态调整机制修订的公开、透明，并征询公众意见。NRDL 调整机制还应建立申诉机制，以便药品上市许可持有人在认为其产品纳入 NRDL 过程中受到不公平或不恰当限制时，可以寻求修订。
- 借鉴其他已实施药品集中采购计划的发达市场的经验和最佳做法。加强政府和行业之间的合作，共同探讨制定加强市场化竞争的政策，建立基于药物经济学原理的动态价格调整机制，逐步降低药品价格。
- 通过现有的诊断和治疗网络，加强采购和使用用于诊断罕见病的孤儿药，并考虑建立区域服务中心。

疫苗

- 提高各年龄段的疫苗接种率，实现中国疾病预防和公共卫生目标。
- 国内监管环境向国际最优实践看齐，从而提高中国公民获得创新疫苗 / 免疫的机会。
- 建立公开透明的国家免疫规划动态调整机制，确保对该机制的任何修订均须征询公众意见。

基因治疗技术

- 鼓励主管部委、机构和部门及时发布详细的实施条例、说明和指导方针，以明确负面清单中所禁止的“人体干细胞，基因诊断和治疗技术的应用和开发”范围，清晰界定外商投资企业可以投资的技术和行业；
- 尽快发布《人类遗传资源管理条例实施细则》，对一些模糊问题加以澄清，比如，基因测序行业为了提供售后服务而接触客户使用仪器产生的特定数据应该如何处理。

职业健康和安全

- 建立完善的防护装备储备体系和相关储备标准，确保所储备的用于应对未来突发公共卫生事件的个人防护物资符合相应的国家标准要求和医疗 / 公共卫生使用质量。
- 明确职业健康防护技术和医务人员的健康权，在《健康中国 2030》法律法规（如《职业病防治法》）修订建议中对此加以澄清。
- 将消防员职业健康和安全目标纳入十四五规划中，包括对中国消防部队职业健康与安全进行研究并定期公布数据和结果，完善中国市场的消防员个人防护装备标准，防止不合格或不符合标准的设备流入市场。

oporosis. Women also have a 40 percent lifetime risk of osteoporotic fractures, which is higher than the combined incidence of breast, endometrial and ovarian cancers. The Report on the Development of Maternal and Child Health in China (2019) also mentions the need to “target the health needs of menopausal women, conduct mass health education, and provide health counseling and guidance...and carry out osteoporosis diagnosis and treatment”. It is recommended that the prevention and treatment of osteoporosis and other key common diseases in women be included in the objectives of women’s health, and AmCham China will work with all parties to promote the implementation of osteoporosis risk screening for key populations in the community and further enhance the accessibility of related screening services and medications. The specific recommendations are as follows.

- Include healthy bone management as a key area of work for menopausal women’s health, prioritize the establishment of a comprehensive health service system that includes all aspects of health, and integrates publicity and education, consultation and guidance, screening and evaluation, comprehensive intervention and emergency treatment for postmenopausal women with osteoporosis and other major chronic diseases. It is necessary to make women’s bone health an integral part of women’s life-cycle health management, reduce the rate of disability and death caused by fragility fractures, and increase the average life expectancy of women.
- Promote the implementation of osteoporosis risk screening for key populations in the community and enhance the accessibility of medication for menopausal and elderly women. In conjunction with NHC, CDC, labor unions and other relevant departments, prioritize the provision of free simple osteoporosis risk screening programs for working or retired menopausal women in enterprises and institutions. Advocate for the inclusion of drugs with outstanding clinical efficacy and safety in the BMI catalog into the national essential drug list, and appropriately increase the reimbursement ratio to further enhance the accessibility of medication for patients.
- Raise women’s awareness and educate women about bone health. Actively mobilize more social forces to participate in health education. Encourage health industry societies and associations to organize experts to carry out various forms of health science education activities for the public.
- Increase public financial subsidies to further improve the affordability of bone density screening and osteoporosis treatment medication. Actively promote the use of BMI personal accounts to pay for bone health management programs organized by government departments. Explore a diversified medical insurance funding mechanism supplemented by commercial health insurance, medical charity, and medical mutual aid. Promote priority inclusion of skeletal health management services for key populations in the financial and public

health service budgets for maternal and child health care in regions with conditions.

Recommendations to promote the first-line use of noninvasive prenatal screening (NIPT)

Preventing birth defects and improving the quality of the population has long been one of the priorities of the government. In order to actively cope with aging, improve the population structure, and maintain the advantages of population endowment, in July 2021, the Decision of the CPC Central Committee and the State Council on Optimizing The Birth Policy to Promote the Long-term Balanced Development of the Population clearly implemented the three-child policy. In September of the same year, the State Council issued the Outline for the Development of Chinese Women (2021-2030) and the Program for the Development of Chinese Children (2021-2030), emphasizing the promotion of the integration of fertility policy and economic and social policies.

In order to cope with the increasing number of elderly pregnant women and increase the prevention and control of the risk of birth defects, the National Health and Family Planning Commission issued the “Technical Specifications for Prenatal Screening and Diagnosis of Pregnant Women with Peripheral Blood fetus free DNA” in 2016. The institutions, personnel, equipment and technologies that carry out NIPT work are regulated. At present, more than 440 medical institutions across the country can carry out prenatal screening and testing of NIPT. From the provincial level, Hebei, Tianjin and Shanxi provinces have issued relevant policies, and 23 prefecture-level cities have introduced subsidy policies for non-invasive prenatal screening. The Chamber of Commerce recommends that the National Health Commission learn from the precedents of relevant countries around the world, such as Belgium, the Netherlands, Australia, the United States, etc., to provide non-invasive prenatal screening for all pregnant women, so that this safe, reliable and economical technology can benefit all pregnant women, and play a greater role in preventing birth defects and ensuring the quality of the population.

Digital Health

The impact of COVID-19 on the entire industry has become a catalyst for the digital transformation of the industry. The “Healthy China 2030” plan outline mentions that digital technology and medicine and health must become deeply integrated and that digital transformation of the medical and health industry is imperative to success of the plan. The outline plans to achieve this transformation through giving full play to the advantages of massive data applications of the medical and health industry and promote the deep integration of digital technology and the medical and health industry from the aspects of research and development, production, circulation and application. This

would accelerate the layout of next-generation computing including cutting-edge technologies such as quantum computing, quantum communication, neural chips, and DNA storage, and strengthen the interdisciplinary innovation of information sciences and basic disciplines such as life sciences and materials. The plan also highlights construction of an international-level industrial Internet platform and digital transformation promotion center in the field of biomedicine while also investing in and accelerating the digital transformation of pharmaceutical industry parks. China's 14th Five-Year Plan also proposes accelerating the application scenarios of digital technology are in smart medical care, including improving databases such as electronic health records and medical records and electronic prescriptions, and accelerating data sharing in medical and health institutions, promoting telemedicine, promoting the application of medical image-assisted interpretation and clinical auxiliary diagnosis, and using big data to improve the supervision capacity of medical institutions and medical behaviors.

Digital R&D

Big data, artificial intelligence, cloud computing and other technologies are all central to plans to accelerate the full integration with biomedicine. Their application can change the process of drug candidate design and screening through computer simulation of the relationship between drugs and recipient biomacromolecules, design and overall optimization of pilot compounds. In the synthesis and preparation of compounds, the advanced target compound synthesis routes can be integrated and optimally recommended with artificial intelligence backing through query and comparison of big data knowledge. The above measures can both shorten the development cycle of new drugs and significantly reduce development costs.

Digital Clinical Trials

Despite significant increases in R&D investment and historic advances in R&D processes through modern applications of genomics, automation and computing technology, the number of new drugs produced each year matches figures of the 1990's. Many clinical trials experience delays, especially when for new drugs treating rare and oncological diseases. At the same time, the cost of clinical trials remains high, and nearly one-third of total cost is often spent on patient recruitment. In the face of the sudden COVID-19 epidemic, many member companies of AmCham China that are experts in the medical industry report that clinical research projects were slowed down or suspended, and that the proportion of project slowed down due to "patients cannot travel or must delay visiting" and "unable to enroll new patients" is as high as two-thirds. Acceleration of digital clinical trials could counter these challenges directly through clinical Protocol matching, more automated data collection, and smarter analysis speeding up analysis.

Digitize Factories and Supply Chains

Driven by automation, the Internet of Things and other new generations of information and communication technologies, digital production can make the pharmaceutical production process visible, controllable and intelligent. This transformation not only reduces any inevitable deviations and errors in manual operation, but also ensures the transparency of information and process compliance. Furthermore, data collected during digital automation can continuously improve the quality of drugs through proper analysis leading to a more effective and cost efficient way of ensuring long-term efficacy and quality.

Digital Healthcare

With the development of the Internet and mobile Internet, patients began more actively participating in medical services and drug treatment through obtaining disease and drug knowledge through websites, mobile applications and other channels, and putting forward their own suggestions for diagnosis and treatment. In particular, some patients with chronic diseases have become "experts" in their field due to long-term research and personal experiences with a certain type of disease. Advanced pharmaceutical companies have noticed this trend and began to interact with patients through digital means, such as medical question and answer robots that can actively answer patients' relevant questions, online follow-up management systems that collect patients' information feedback at any time, smart small pill boxes that remind patients to use drugs in a timely and accurate manner and provide patients with a better medical experience, evidence-based medical reference materials assisted by artificial intelligence technology and statistical analysis of big data providing convenience and guarantee for the rational use of drugs by physicians and pharmacists and the exploration of over-the-instruction drugs, as well as auxiliary diagnosis and treatment. Furthermore, the combination of digital and Internet platforms and traditional medicine, or telemedicine operations and services can also help provide greater access overall for patient care without the burden of travel.

The medical and life science industry already embraces the characteristics of high technology and high investment enterprises. For medical and pharmaceutical enterprises, only continuous innovation, compliance operation, cost reduction and efficiency improvement can maintain long-term sustainable development. Digital transformation is inevitable for the success of medical and pharmaceutical companies in the digital world.

Recommendations

Healthcare services

- Remove various restrictions and constraints on foreign invested and-owned hospitals, including restrictions on foreign equity, prohibiting hospitals from establishing new branches, requiring hospitals to file separate tax returns for each branch, and limiting the number of hospitals that allow foreign staff and doctors to practice;
- Extend social health insurance coverage to the private hospital sector and grant patients the same maximum reimbursement limits as in public hospitals; further relax restrictions to allow patients to enforce payment of maternity expenses or participate in independent commercial health insurance to
- increase access to medications;
- Ensure equal treatment of private and public healthcare providers and include private hospitals in national public health emergency plans and response mechanisms since private hospitals and staff play an important role in the outbreak of COVID-19.

Medical device, consumables and payment reform

- Adopt evidence-based practices to determine the cost of medical devices, and consider raw material costs and labor costs in pricing medical services and devices; adjust service prices according to market demand;
- Regularly open local windows for acceptance and review of new medical services added to the National Specifications on Prices of Healthcare Services to allow patients to use the latest devices in a cost effective manner;
- Consider a value-based approach to bidding and tendering for medical consumables, taking into account their price and clinical and economic benefits; regulators should promote policy streamlining to facilitate VBP of medical consumables;
- Keep reforming BMI payments to ensure that appropriate mechanisms are in place to incorporate new technologies/medical treatments into existing payment structures, expand the national DRG/DIP payment structure, and establish a pilot payment reform evaluation system.

Medicine

- Continue to strengthen China's intellectual property protection and effectively implement China's

commitment to improve pharmaceutical intellectual property protection in Phase I of the US-China economic and trade agreement; for the pharmaceutical industry, introduce a notification system in the patent linkage system and set reasonable waiting periods for the approval of registrable patents and generics, adopt a patent term extension program consistent with global best practices, and take drug data protection measures in line with other jurisdictions with mature systems, such as the United States;

- Clarify the establishment of a dynamic adjustment mechanism for the NRDL; ensure that the amendments to NRDL are public and transparent, and consult for public comments; an appeal mechanism should be introduced in NRDL so that drug marketing licensees can seek amendments if they claim their products are unfairly or inappropriately restricted in the process of being included in NRDL;
- Draw on the experience and best practices of other developed markets that have implemented centralized drug procurement programs; strengthen cooperation between government and industry to jointly explore the development of policies to enhance market-based competition and establish a dynamic price adjustment mechanism based on pharmacoeconomic principles to gradually reduce drug prices;
- Enhance the procurement and use of orphan drugs for the diagnosis of rare diseases through existing diagnostic and treatment networks, and consider establishing regional service centers.

Vaccines

- Increase vaccination rates for all age of people to achieve China's disease prevention and public health goals;
- Align the domestic regulatory environment with international best practices, thereby improving access to innovative vaccines/immunizations for Chinese people;
- Establish an open and transparent dynamic adjustment mechanism for the national immunization program and ensure that any revisions to the mechanism are subject to public consultation.

Gene therapy technology

- Encourage competent ministries, commissions, agencies and departments to issue timely and detailed implementing regulations, instructions and guidelines to clarify the scope of "the application and development of human stem cells, gene diagnostic and therapeutic technologies" prohibited in the Negative List and to clearly define the technologies and industries in which foreign-invested

companies may invest;

- Promptly issue the Implementing Regulations for the Administration of Human Genetic Resources to clarify ambiguous issues, such as how to handle specific data generated by the gene sequencing industry's access to customers' instruments in providing after-sales services.

Occupational health and safety

- Establish a comprehensive protective equipment stockpile system and related stockpile standards to ensure that the personal protective materials stockpiled for use in response to future public health emergencies meet the requirements of the corresponding national standards and the quality of medical/public health use;
- Clarify occupational health protection technology and the health rights of medical workers, and clarify this in the proposed amendments to the laws and regulations of the Healthy China 2030 strategy (e.g., the Occupational Diseases Prevention and Treatment Law);
- Incorporate firefighters' occupational health and safety goals into the 14th Five-Year Plan, including conducting research and regularly publishing data and results on occupational health and safety in the Chinese fire service, and improving the standards for firefighter personal protective equipment for the Chinese market to prevent substandard or non-compliant equipment from entering the market.

ICT

Introduction

AmCham China continues to urge for 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 indicate apparent 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 China and the US.

From the perspective of US business, the ICT sector in China presents a dilemma. While it is now one of the most dynamic sectors of China's economy, it has arguably become the most difficult sector for foreign enterprises to navigate, especially as the domestic policy environment has become more restricted and uncertain in recent years and in the wake of growing US-China bilateral tension. The dilemma not only foretells a future drop in foreign investment but also less interaction with the outside world for China.

Data Governance

Data localization

China imposes restrictions on the storage, movement, and access to data across borders. China's national laws and regulations and sectorial regulatory requirements are fraught with data localization requirements. Data localization requirements vary in scope of application and strictness and largely include three categories: ❶ local-only storing, transmission, and processing; ❷ local copy of data and allowing hosting, transmission and processing abroad; and ❸ narrower, conditional restrictions on cross-border data flow.

In 2021, China released *Personal Information Protection Law* (PIPL) and *Data Security Law* (DSL). Together with the *Cybersecurity Law* (CSL) which took effect in 2017, the three laws established an overarching regulatory framework on data and cross-border data flow. Article 37 of the CSL restricts the ability of critical information infrastructure

operators (CIIOs) to transmit personal information (PI) and important data overseas. The PIPL reiterated the restrictions on PI cross-border transfer on CIIOs and newly added data localization requirements for companies handling PI reaching a volume threshold. In the meantime, the PIPL also specifies mechanisms companies could leverage for cross-border transfer of PI.

For CIIOs and companies required for localization under the PIPL, cross-border PI transfer could be conducted after passing the Cyberspace Administration of China (CAC)-led security assessment. However, the draft Outbound Data Transfer Security Assessment Measures, an important implementing measure released in October 2021, attempted to expand the scope of application for CAC-led security assessment to cover cumulative provision of PI of 100,000 people or sensitive PI of 10,000 abroad. In a draft Network Data Security Management Regulations released in November, CAC adjusted the scope for CAC-led security assessment for cross-border data flow and aligned with the scoped prescribed in the CSL and the PIPL.

In addition to requirements imposed by the CSL, DSL and PIPL, a 2019 China Banking and Insurance Regulatory Commission (CBIRC) order prohibits the cross-border transfer of all customer identification information and transaction information obtained in the course of performing anti-money laundering (AML) and counter-terrorism financing (CTF) obligations unless permitted by law or regulation. In practice, these regulations create a hard localization of AML-and-CTF-related customer identification information and transaction information for financial institutions (FIs) operating in China, make it impossible for multinational FIs to use their global operational model, result in increased operational challenges for existing FIs and dramatically raise the threshold for new FIs entering the Chinese market (see the *White Paper* Banking and Capital Markets Chapter).

Data localization requirements would negatively impact global operations of multinational companies (MNCs). Data localization impairs economic growth by requiring redundant expenditures on local servers and data centers in multiple countries. One time and ongoing investment and maintenance impacts on global support model. The cost to place people and process onshore will negatively affect their existing and future investment in the China market. In addi-

信息通信技术

引言



美国商会（以下简称商会）继续促请中国在信息通信技术行业重构开放、稳定、清晰的政策环境。数十年来，中国经济的日益繁荣是建立在其对外开放基本国策之上的。然而，近年来中国在信息通信技术行业准入限制愈发严格的趋势，似乎表明中国对维持其开放承诺有所保留，这将损害其全球投资信誉。重新承诺并采取具体行动开放该行业将推动中美两国持续繁荣。

从美国业界的观点来看，中国的信息通信技术行业面临两难困境。一方面，信息通信技术行业现在是中国经济最具活力的行业之一。另一方面，信息通信技术行业或已成为外国企业最难驾驭的行业，尤其是近年来，随着中美双边关系日益紧张，国内政策环境变得更加受限和不确定。这不仅意味着外资企业将缩减在华投资，还意味着中国与外界的互动将会减少。

数据治理

数据本地化

“数据本地化”通常是指“为了解决国家安全问题、保护公民的个人信息或促进经济增长而寻求限制数据流动的措施。”这些政策没有考虑到当今跨国业务的性质和全球化的力量，及其可能会对经济和公民产生意想不到的反面效果。

在中国，国家和行业法规错综复杂，无论是相关法律法规的最终版本还是草案，都对本地存储和数据传输施加限制。数据本地化要求在多个国家的本地服务器和数据中心进行冗余支出，这损害了经济增长；引入多个或额外的入口点，实际上不利于网络安全；同时减少数据在其来源国之外的可用性，因而阻碍了全球贸易、投资和

创新。若许多国家或地区都采用各自的数据本地化法规，其累积效应将把世界分裂成不同的数据处理域，每个国家和地区都专门产生和专门处理自己的数据，继而对经济增长和生产力发展产生影响。

中国对跨境数据的存储、流动或访问施加了一系列限制措施，有关数据本地化的要求多次出现在国家及行业的法律法规中。国际范围内的数据本地化规定可大致根据其应用范围和严格程度分为以下三类^①最严苛的本地化，即要求仅在本地存储、传输和处理；^②既可本地存储，也不限制跨境流动；^③有限制的本地化，即对数据跨境流动采取限制条件。

2021年，中国颁布了《中华人民共和国个人信息保护法》（以下简称《个人信息保护法》）和《中华人民共和国数据安全法》（以下简称《数据安全法》），以上两部法律和2017年生效的《中华人民共和国网络安全法》（以下简称《网络安全法》）共同构建了中国对数据及其跨境流动政策的整体框架。《网络安全法》第三十七条限制了关键信息基础设施运营商向境外传输个人信息和重要数据的权限。《个人信息保护法》第三十八条和四十条重申了对关键信息基础设施运营者在数据跨境流通方面施加的限制，并强调了法案新增的数据本地化要求，即处理个人信息数量达到国家网信部门规定的企业需按要求进行境内信息存储。《个人信息保护法》中详细列出了企业可利用的个人信息跨境转移方式。2019年7月发布的《个人信息出境安全评估办法（征求意见稿）》建议将这一限制扩大到所有网络运营商，要求其在将个人信息传输到境外目的地之前进行并通过安全评估。此外，金融等其他部门也在一定程度上受到数据本地化的限制。

对于关键信息基础设施运营者和《个人信息保护法》中要求的“处理达到一定数量个人信息的公司”来讲，个人信息跨境流动需要通过国家网信办组织的安全

tion, data localization undermines cybersecurity efforts by introducing multiple or extra points of entry, and impedes global trade, investment, and innovation by making data less available outside its country of origin. Seamless data flow is essential for global trade today, and any interruptions of data flows by security assessments or other means would disrupt MNCs' normal operations and could even lead to the temporary closure of their business. The uncertainty and potential for significant costs and irreversible damage to businesses could drive businesses, MNCs included, away from the China market.

We recommend that China eschew data localization policies, and instead maintain its general support for the Osaka Track, which promotes the concept of free data flows on the basis of trust, while at the same time in particular cases involving categories of information which may deserve restrictions on cross-border transfer (such as national security related information), we recommend that China narrowly define "important data" and have clear carve-outs for the commercial sector to avoid confusion or uncertainty that could impose unnecessary barriers to foreign investment. Furthermore, we recommend that China proactively participate in existing multilateral frameworks, such as the APEC Cross-Border Privacy Rules System and the APEC Privacy Framework, as well as contribute to regional and global forums for the development of more robust international or multilateral data exchange and protection frameworks that will benefit China as well as foreign businesses in China.

In sum, it may be tempting at present for China to adopt data localization policies that restrict flows of PI and important information from China through the CSL and its implementation framework. But given its prominence and importance to the world economy, if China were to do so, data localization may come to be accepted as a normal feature of international data protection. Other countries may adopt data localization laws of their own. By encouraging data localization at home, China would be contributing to and solidifying a trend abroad that could ultimately result in the loss of China's own access to data from other countries. The loss of access to foreign data will close off opportunities not only for the financial sector, but for China's technology sector, likely leading to negative technological and economic outcomes, including limiting Chinese technology which will function well only in China but be handicapped in other international markets.

Market Access Barriers

Cloud Computing

The Telecom Service Catalogue classifies cloud computing as a type of "Value-Added Telecommunications Service" (VATS) (specifically listed under "Internet Resource Collaboration Service (IRCS)"), which means vendors must obtain a license to operate. Foreign-invested enterprises (FIEs) are

not allowed, however, to obtain an IRCS license for cloud computing. Additionally, VATS remain 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 (MIIT)'s draft *Notice on Regulating Business Behaviors in the Cloud Service Market* released at the end of 2016 introduced heavy-handed government regulation into the operations of cloud service operator partnerships. The draft Notice includes provisions that, among other things, require Cloud Service Providers (CSPs) to construct and maintain physical infrastructure in China, subject cross-border data transfers to a range of restrictions, limit the ability of FIEs to market their services in China under their own brand, and create duplicate copies of all key equipment, business systems, and data. These provisions, while still in draft form, have created a technical barrier for foreign operators within the China market and 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 2020. In favorable developments, however, the signing of the *US-China Economic and Trade Agreement* (Phase One Agreement) on January 15, 2020 includes provisions for China to import cloud computing parts and related services, and in December 2020 the National Development and Reform Commission (NDRC) and the Ministry of Commerce (MOFCOM) issued the *Special Administrative Measures (Negative List) for Foreign Investment Access in the Hainan Free Trade Port (2020 Edition)* which promotes the opening of VATS, allowing enterprises with registered entities and service facilities in the Hainan FTP to develop internet data centers and content distribution network services throughout the FTP and internationally, commitments which AmCham China will be monitoring closely.

AmCham China continues to urge the Chinese government to reduce restrictions on the cloud computing industry that in practice inhibit the ability of foreign-invested CSPs to operate in the domestic market. China's cloud service providers are able to operate largely without the same level of restriction in the American market. Allowing foreign-invested CSPs to operate in China on a level basis with domestically-invested companies will improve China's domestic market by enhancing competition and expanding the options available to Chinese consumers and businesses.

An equally important issue is the use of private cloud. In the financial sector for example, a financial institution may have different lines of businesses and separate legal entities that cover banking and securities to asset and wealth management. It is common for such financial institutions to leverage a shared technology infrastructure, including an internal cloud service. This practice is commonly known as the "inter-affiliate service model." The internal cloud is used only to service the financial institution's affiliated compa-

评估。然而，2021年10月份发布的《数据出境安全评估办法（征求意见稿）》中进一步扩大了需要网信部门安全评估的情形，要求累计向境外提供超过十万人以上个人信息或者一万人以上敏感个人信息的企业通过网信部门的安全评估。2021年11月颁布的《网络数据安全管理条例（征求意见稿）》中删除了此项要求，回归到《网络安全法》和《个人信息保护法》要求的范围。

各行业也需遵守其他数据本地化要求。以金融行业为例，除《网络安全法》《个人信息保护法》和《数据安全法》规定的要求以外，2019年中国银行保险监督管理委员会（以下简称中国银保监会）发布的一份办法中规定“对依法履行反洗钱和反恐怖融资义务获得的客户身份资料和交易信息，非依法律、行政法规规定，银行业金融机构不得向境外提供。”以上规定使在华运营的金融机构不得不将其在反洗钱和反恐怖融资活动中获取的客户资料和交易信息进行本地化，致使跨国金融机构无法运用其全球运营模式，不仅加大了其运营难度，还大幅提升了新金融机构进入中国市场的门槛（参见《白皮书》银行和资本市场章节）。

数据本地化要求对跨国公司全球业务的发展和运营产生消极影响。因数据本地化要求，企业不得不增加额外开支，以运营其在多个国家的本地服务器和数据中心，这不利于经济增长。一次性和持续的投资和维护，对全球技术支持和全球运营，以及其当前和未来在中国市场的投资产生巨大负面影响。此外，数据本地化要求增加了接入口，这可能会破坏跨国公司在网络安全方面做出的努力。最后，数据本地化减少数据在其来源国之外的可用性，因而阻碍了全球贸易、投资和创新。数据的无缝流动对当今全球贸易至关重要，因安全审查或其他情况而导致数据流动中断都会扰乱跨国公司的正常经营，甚至导致企业暂时停业。高昂的成本和不可逆的业务损失等不确定性或会迫使跨国公司和其他企业撤离中国。

商会建议中国避免实行数据本地化政策，继续保持对“G20大阪数字经济宣言”的总体支持。该宣言既在信任的基础上提倡了跨境数据自由流动的理念，又针对国家安全相关信息等特定情况的信息类别作出了跨境传输限制。为此，商会建议中国对“重要数据”做出精准定义，关注对国家安全产生最重大影响的数据，明确“重要数据”的范围不包括公司正常运营数据，以避免因混淆或不确定给外国投资带来的不必要障碍。此外，商会

建议中国积极参与现有的多边框架，例如《亚太经合组织跨境隐私规则体系》和《亚太经合组织隐私框架》，并为致力于发展更强大的国际或多边数据交换和保护框架的区域论坛和全球论坛做出贡献。这样的框架将惠及中国和在华外资企业。

综上，目前中国可能会采取数据本地化政策，通过《网络安全法》和《个人信息保护法》及其实施框架限制个人信息和重要信息流出中国。但是，鉴于中国对世界经济的突出重要性，中国的举措或将导致数据本地化逐渐被接纳为国际数据保护的一个正常特征，推动其他国家出台自己的数据本地化法律。中国在国内鼓励数据本地化的做法将推动境外形成同样趋势，最终可能导致中国自身无法访问其他国家的数据。无法访问境外数据不仅会让金融行业失去机遇，也会让中国相关行业失去机遇，并可能导致包括将中国技术限制在本土而在其他国际市场上受阻的负面经济和技术后果。

市场准入壁垒

云计算

《电信业务分类目录》将云计算归为增值电信业务，具体列在“互联网资源协作服务业务”项下，这意味着供应商必须获得运营许可。但是，外资企业却被禁止获得云计算的互联网资源协作服务业务许可。另外，由于股权上限、投资限制、连接性要求、跨境数据传输能力的限制以及本地化计算机基础设施的要求，增值电信业务在很大程度上仍然禁止外国信息通信技术企业进入。

工业和信息化部（以下简称工信部）2016年底发布的《关于规范云服务市场经营行为的通知（征求意见稿）》，给云服务运营商合作伙伴的经营活动引入了严格的政府监管规定。该通知草案包括以下条款：要求云服务提供商在中国建设和维护物理基础设施、跨境数据传输方面遵守一系列限制，限制外资企业在华营销其旗下品牌的服务，并要求外资企业为所有关键设备、业务系统和数据创建副本。尽管这些条款仍处于草案阶段，但它们给外国运营商在中国市场设置了技术壁垒，限制了它们以合理的条件与中国企业进行合作的能力。这些规定截至2020年底还未正式发布，商会敦促中国政府在最终《通知》中删除以上要求。利好消息是，中美于2020年1月15日签署的中美第一阶段经贸协议（以下

nies and legal entities and does not service external entities, a distinct model from the public cloud. This model should not be subject to any VATs-related licenses. We also note that a similar principle is included in *China-EU Comprehensive Agreement on Investment*, specifically that VATs-related licenses do not apply across sectors. AmCham China recommends that MIIT recognize group-level internal cloud services and the inter-affiliate service model as an internal cloud, apply the “no spill-over” principle to group-level internal clouds operating in the financial sector, and end the requirement that they obtain cloud-related VATs licenses.

Other VATs

FIEs remain subject to the *Provisions on Administration of Foreign-Invested Telecommunications Enterprises*, last amended in 2008. Article 6 of the Provisions imposes a 49 percent foreign equity cap if the FIE provides “basic telecoms services” and a 50 percent foreign equity cap if the FIE provides “value-added telecoms services.” The *Classified Catalogue of Telecommunications Businesses* constitutes the basis for licensing telecommunications businesses in China. The current edition of the Catalogue, released in 2016, represented an effort to modernize China’s telecommunications regulatory regime and includes a number of new businesses that had emerged since the Catalogue was first issued in 2003 (including 4G wireless, cloud-based solutions, and internet domain name registration services). Although the Catalogue was designed to spur private investment, the extent to which foreign investors may participate is at best unclear. AmCham China continues to urge the Chinese government to remove restrictions on foreign investment in the telecoms sector to encourage investment and improve the quality of telecoms products and services available to Chinese consumers and in the Chinese market.

Public Procurement and ICT

Revised Government Procurement Law

On December 4, 2021, the Ministry of Finance (MOF) released a draft revision of the *Government Procurement Law* for public comment. It consisted of 10 chapters including general and supplementary provisions specifying government procurement policies, demand management, dispute settlement, supervision and inspection, and legal liability.

The Draft Revisions simplifies the qualifying conditions for suppliers. In the spirit of reform efforts to “streamline administration, delegate power, strengthen regulation and improve service,” the Draft Revisions adopts an “essential conditions + negative list” to define the qualifying conditions for suppliers, a step which should facilitate supplier participation in government procurement activities and reduce government-imposed transaction costs. The Draft Revisions clarify areas of legal liability by laying out the

liability for violations by related entities and incorporates appropriate penalties.

Our members have concerns, however, with respect to a number of areas. For example, there are multiple references in the Draft Revisions to “support domestic industries,” or “safeguard national security.” There are also terms that lack clarity such as “conditions for suppliers to participate in government procurement activities,” a loosely defined reference to “supplier liability,” and the inclusion of a “security review system.” FIEs in China must already comply with the full range of Chinese security laws, regulations, and standards that govern corporate activities within the country. Our members would like to better understand why a separate security review mechanism has been included in the Draft Revisions, which would only result in heavier and possibly discriminatory burdens for FIEs that extend beyond preexisting security review processes. Moreover, in the areas referenced above where the contract terminology is not clearly defined, we urge that they be clarified and that the Draft Revisions provide that a non-fixed-term purchase contract may be concluded inclusive of a withdrawal mechanism for each party and subject to any price adjustment mechanisms specified in the contract.

In China, all wireless products need to comply with SRRC requirement and obtain mandatory SRRC certificate before selling in market. As per the experience in past years, the lead time of SRRC certification is 8-10 weeks as normal. Starting from Oct 2021, that lead time has increased. On average, each new SRRC application needs an extra 2-3 weeks.

“Secure and Controllable” Technologies and Procurement

The *Foreign Investment Law* (FIL) and its Implementing Regulations, which came into effect on January 1, 2020, include in particular multiple commitments to equal treatment for foreign and domestic enterprises in the areas of licensing, government procurement, standards development, and intellectual property rights. Article 42 of the Implementing Regulations would also provide that “no organization’s procurement personnel or procurement agency may set unreasonable conditions to impose differential treatment or discrimination against foreign-invested enterprises.”

There have been some improvements with respect to equal treatment for FIEs in government procurement (see the *White Paper* Government Procurement chapter), and yet the ICT industry faces an increasingly challenging situation and still encounters barriers to equal treatment, particularly in areas of government procurement. The major concerns are:

- Clear, transparent, and measurable definitions of what constitutes “secure and controllable” products and services are missing. “Secure and controllable” appears frequently throughout China’s national development

简称第一阶段协议) 包含了中国进口云计算部件和相关服务的条款; 2020 年 12 月, 国家发展改革委和商务部发布了《海南自由贸易港外商投资准入特别管理措施(负面清单)(2020 版)》, 促进了增值电信服务开放, 允许在海南自贸港中拥有注册实体和服务设施的企业在整个自贸港和国际范围内开发互联网数据中心和内容分发网络服务, 商会将密切关注这些承诺。

商会继续促请中国政府减少对云计算行业的限制; 这些限制实际上抑制了外资云服务提供商在中国市场的运营能力。中国的云服务提供商在美国市场运营则并未受到同等水平的限制。允许外资云服务提供商在中国与内资企业开展同等水平的运营将扩大中国消费者和企业的选择范围, 改善中国国内市场。

同样重要的问题是私有云的使用。例如, 金融部门中的金融机构可能有不同的业务部门和独立的法律实体, 涵盖银行、证券、资产和财富管理。这些金融机构通常利用包括内部云服务在内的共享技术基础设施, 这种做法通常被称为“关联企业间服务模式”。在这种不同于公共云的共享模式中, 内部云仅用于服务金融机构的关联公司和法律实体, 而不服务外部实体。该模式不应受到任何增值电信服务相关许可的限制。商会还注意到, 《中欧全面投资协定》中包含了类似的原则, 其中包括与增值电信服务相关的许可不适用于所有行业的规定。商会建议工信部将集团级内部云服务和关联企业间服务模式视为内部云, 将“无溢出”原则应用于在金融领域运营的集团级内部云, 并终止其获得云相关增值电信服务许可的要求。

无线技术设备

在中国, 所有的无线产品都需要符合 SRRC 的要求, 并在市场销售前获得强制性的 SRRC 证书。

根据过去几年的经验, SRRC 获证周期通常为 8-10 周。自从 2021 年 10 月开始, 获证周期有所变长。平均而言, 每个新的 SRRC 申请将需要比以前多 2-3 个星期。这对业内公司造成了巨大影响。而且, 2022 年的延迟时间越来越长。

商会希望相关部门能够帮助解决这个问题。

其他增值电信服务

外资企业仍需遵循最近于 2008 年修订的《外商投

资电信企业管理规定》。该规定第六条要求, 经营基础电信业务的外商投资电信企业的外方投资者在企业中的出资比例不得超过 49%, 经营增值电信业务的外商投资电信企业的外方投资者在企业中的出资比例不得超过 50%。《电信业务分类目录》构成中国电信业务经营许可的基础。2016 年发布的新版目录体现了中国在电信监管制度现代化方面所做的工作, 其中包括自 2003 年首次发布目录以来出现的新业务, 如 4G 无线、基于云的解决方案、互联网域名注册服务等等。尽管该目录旨在刺激民间投资, 但外国投资者的可参与度仍不明确。商会继续敦促中国政府取消对外商在电信行业的投资限制, 鼓励投资, 提高面向中国消费者和中国市场的电信产品和服务的质量。

公共采购和信息通信技术

修订后的《政府采购法》

2020 年 12 月 4 日, 财政部发布了《政府采购法(修订草案征求意见稿)》(以下简称《修订草案》)。《修订草案》由十个章节组成, 包括具体规定政府采购政策、需求管理、争议处理、监督和检查以及法律责任的一般条款和补充条款。

《修订草案》放宽了对供应商资格条件的限制。本着“精简管理、下放权力、加强监管和改善服务”的改革原则, 采用了“基本条件+负面清单”的标准对供应商的资格条件进行界定。这一措施预计将促进供应商参与政府采购活动, 降低政府施加的交易成本。此外, 《修订草案》阐明了法律责任领域, 列出了相关实体的违法责任, 并纳入了适当的处罚。

然而, 商会会员企业仍对《修订草案》中的部分内容表示关切, 如对“支持国内产业”或“维护国家安全”的多次提及; 对“供应商参与政府采购活动的条件”等术语的模糊定义; 对“供应商责任”的宽泛定义; 以及“安全审查制度”等。在华外资企业必须遵守中国所有的安全法律、法规和规范国内企业活动的标准。商会会员企业对《修订草案》中仅包含一个单独的安全审查机制提出疑问, 会员企业表示, 这样的机制只会给外资企业带来比现有安全审查程序更为沉重, 甚至近于歧视性的负担。此外, 商会敦促中国政府澄清上文提到的未明确定义的领域, 并敦促《修订草案》允许签订包括每一方的退出机制的无固定期限采购合同, 遵守合同中规定的所有价格调整机制。

plans, including the *National Science and Technology Innovation Plan during the 13th Five-year Plan* issued by the State Council in July 2016 (and to be supplanted by a new agenda under China's 14th Five-Year Plan, which prioritizes domestic innovation) well as other sector-specific plans. Our members remain concerned that such vague terminology is used to prefer domestic technology over foreign-made equivalents.

- The apparent expansion of “secure and controllable” products and services requirements beyond public procurement and into areas like procurement by state-owned enterprises (SOEs) and into Critical Information Infrastructure (CII) sectors and industries concerns AmCham China members.
- Vendors and Chinese-based clients are only willing or able to procure “secure and controllable” technologies, which in practice is interpreted to mean domestic technologies. They are deemed more secure simply because they are produced and sourced locally. While we recognize that the deterioration of the US-China relationship has reinforced this sentiment which has a negative impact on the ability of foreign technology companies to do business in China, the origin of “secure and controllable” technologies predates such friction, and its roots lie to a substantial extent in industrial policy.
- The possibility for ICT products and services to be subject to government reviews on the basis of potential supply chain disruption risks for factors lie beyond the technical quality of the products and services themselves is concerning/relatively high. In the *Cybersecurity Review Measures* effective June 1, 2020, cyber products and services may be subject to a government review if their supply chains could be disrupted due to “non-technical factors like politics, diplomacy, or trade.”

In light of this reality, and to ensure that the stated goals of recent legislation on public procurement match the reality of member companies operating in the market, we recommend that the Chinese government:

- Clarify in writing that “secure and controllable” criteria and other product safety and reliability standards do not promote domestically invested products at the expense of foreign-invested products on the basis of the nationality of the shareholder. The “secure and controllable” criteria should apply only to a set of transparent and narrowly defined criteria for state secrets and national security. Procurement purchasing standards should instead focus on criteria like product performance and reliability, life cycle costs, environmental sustainability, and energy conservation.
- Ensure consistency in the application and interpretation of public procurement laws. There is a fundamental contradiction in having parallel economic policies that on the one hand emphasize equal treatment and competitive neutrality for all enterprises, while other policies at the same time stress domestic innovation and

provide subsidies to state-owned and other domestically invested competitors.

- Develop procurement standards and criteria in an open and transparent manner. FIEs and foreign rating and standards agencies should be permitted to participate in the development of procurement standards.
- Encourage relevant government regulatory agencies at national and local levels to promptly issue their own regulations, implementation measures, and judicial interpretations with respect to government procurement to facilitate implementation for FIEs following the enactment of the FIL and the Implementing Regulations. We urge the government to allow for a transition period to allow FIEs to adapt their structures to comply with new regulations.
- Promptly clarify the provisions in the FIL Implementing Regulations related to the “complaint settlement mechanism.” In particular, details on how FIEs can report and address instances of perceived or real unfair treatment with respect to public procurement are needed. How can those instances be reported? To whom and in what time period(s)? Which agency or institution will coordinate the complaints and also coordinate any responses to improve the relevant policies? MOFCOM issued the *Revised Measures on Handling Complaints of FIEs* effective October 1, 2020, but many of these questions remain to be answered in detail.

Cybersecurity Law

China's *Cybersecurity Law* (CSL) was released on June 1, 2017 and imposes strict cybersecurity restrictions on both ICT industries and ICT users. It leaves considerable latitude for discrimination against international vendors and imposes stringent conditions on the foreign business community. Alongside the regulations themselves, enforcement of the CSL is continuously evolving. Uneven implementation, a loosely defined scope, and inadequate definitions of key terminology, including the definition of a CII Operator (CIIO), have created uncertainty in the foreign business community. To our knowledge, no other major global economy has a similarly intrusive and non-transparent cybersecurity review mechanism in place.

We continue to urge revision of the unnecessarily burdensome provisions of the CSL, as discussed below in greater detail, and any associated implementing regulations. Importantly, AmCham China urges that current and future regulations refrain from discriminating against foreign business, comply with 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 CSL.

“安全可控”的技术与采购

2020年1月1日生效的《中华人民共和国外商投资法》（以下简称《外商投资法》）及其实施条例特别涵盖了在许可、政府采购、标准制定和知识产权领域对国内外企业实行平等待遇的多项承诺。《外商投资法实施条例》第四十二条规定，“政府采购的采购人、采购代理机构”不得“以不合理的条件对外商投资企业实行差别待遇或者歧视待遇”。

外资企业在政府采购中的平等待遇有所改善（见《白皮书》政府采购章节），但信息技术行业仍面临日益严峻的形势，在以政府采购为代表的领域中，不平等待遇持续存在。商会主要关注以下问题：

- 缺少对构成“安全可控”的产品和服务的清晰、透明、可衡量的定义。“安全可控”经常出现在中国的国家发展计划中，包括2016年7月国务院发布的《“十三五”国家社会发展科技创新规划》（将被《“十四五”规划》项下的新议程所取代，该议程优先考虑国内创新）以及其他特定行业的规划。商会会员担心对此类模糊术语的使用将导致采购方在挑选同类产品时偏向本国技术企业。
- “安全可控”的产品和服务需求明显扩展到公共采购之外，并扩展到国有企业采购等领域以及关键信息基础设施部门和行业。
- 供应商和中国客户只愿意购买，或只能买到所谓“安全可控”的国内技术产品，原因仅是其在本地进行取材与生产，这对外国技术公司在中国开展业务的能力产生了负面影响。商会认识到，中美贸易摩擦加重了上述倾向，事实上，此类偏向很大程度上来源于摩擦前便开始实行的产业政策。
- 政府出于供应链中断等安全因素对信息技术产品和服务进行的审查甚至超过了对产品和服务本身技术质量的考量。在2020年6月1日生效的《网络安全审查办法》中，如果网络产品和服务的供应链因“政治、外交或贸易等非技术因素”而中断，它们可能会接受政府审查。

鉴于这一现实，为确保最新公共采购立法的既定目标有效服务于会员公司的现实情况，商会建议中国政府：

- 书面说明“安全可控”的标准以及其他产品安全性和可靠性标准不会以股东的国籍为基础，以损害

外商投资产品的利益来推广国内产品。相反，“安全可控”的标准仅应适用于一套透明且狭义的国家机密和国家安全标准。采购标准应侧重于产品性能和可靠性、生命周期成本、环境可持续性和节能等标准。

- 确保公共采购相关法规的解释同实际情况保持一致。双重经济政策的根本矛盾在于，在声明所有企业待遇平等和竞争中立的同时，其他政策却强调国内创新并向内资和国有企业提供补贴。
- 以公开透明的方式制定采购标准和准则。应允许外资企业和外国评级及标准机构参与采购标准的制定。
- 鼓励国家和地方政府相关监管机构及时发布各自的政府采购法规、实施办法和司法解释，以便外资企业在《外商投资法》及《外商投资法实施条例》颁布后能够顺利执行。商会敦促中国政府设置一个过渡期，让外资企业调整其结构，以符合新的规定。
- 及时阐明《外商投资法实施条例》中有关“投诉工作机制”的规定。特别是需要详细说明外商投资企业如何上报和解决在公共采购方面所认为或实际存在的不公平待遇。明确如何上报、何时上报、向谁上报、谁会回复、如何跟进等问题。商务部发布了2020年10月1日起生效的修订版《外商投资企业投诉工作办法》，但其中许多问题仍待详细解答。

《网络安全法》

于2017年6月1日施行的《中华人民共和国网络安全法》对信息技术行业和信息通信技术用户均实行严格的网络安全限制。这对不公平对待国际供应商留下了很大余地，并对外国商界施加了严格的条件。除了法律本身，《网络安全法》的执法也在不断演进。执行上的不平衡、定义范围松散、关键术语定义不充分，如关键信息基础设施运营商的定义，都给外国商界带来了不确定。据商会所知，全球其他经济体都没有类似的侵入性和不透明的网络安全审查机制。

商会继续敦促中国政府对《网络安全法》中不必要的规定及相关实施条例进行修订（下文将详细讨论）。重要的是，商会敦促中国在当前和未来的立法中避免歧视外国企业，遵守中国在《世界贸易组织贸易技术壁垒协定》中的义务，参照国际优秀先例，建立常规机制，围绕《网络安全法》的施行加强对话和问责。

Critical Information Infrastructure

After four years of the issue of the draft *Regulations on Protection of Critical Information Infrastructure Security*, the *Security Protection Regulations for Critical Information Infrastructure*, it was officially promulgated on July 30, 2021 and came into force on September 1, 2021. However, in accordance with the stipulation of the Regulation, the rules for the identification of critical information infrastructure for important industries and fields shall be developed by the protection authority separately in light of the actual conditions of respective industries and fields.

Clear and consistent formal rules are needed in order for FIEs to assess whether they are deemed a CIIO with respect to their compliance obligations under the CSL and take the necessary steps as detailed by regulators.

TC260 announced a pilot program for national standards related to “information security technology – Critical information infrastructure cybersecurity protection” in December 2019. This program outlined basic procedures for TC260 to “verify the rationality and operability of relevant standards, solicit input and collect insight with respect to promoting the adoption of certain standards, and provide technical support to CII protection.” Nevertheless, our members have not witnessed comprehensive regulatory progress with respect to the protection of CII.

On August 10, 2020, TC260 released two CII-related standards for public comment with a deadline of October 9, 2020. The first, the *Information Security Technology - Method for Evaluating the Security Protection Capability of Critical Information Infrastructure*, provides that the evaluation will focus on the areas of “capability domain level,” “graded protection,” and “cryptography.” This standard specifies the method of evaluation for the “capability domain level.” The second, the *Information Security Technology - Method of Boundary Identification for Critical Information Infrastructure*, outlines four basic principles that will guide identification of the boundaries of CII, and specifies the model, the method, and the process for the identification of CII boundaries. The draft standard also defines CII, “critical business,” “CII elements” and provides for a CII boundary identification method based on the flow of information and whether the business constitutes a “critical business” as determined by the sector or industry-specific administrative department.

We continue to recommend that China endeavor to apply a narrowly-defined, flexible regulatory approach regarding the operation of CII. The approach should adopt recognized voluntary global standards and internationally accepted risk-management methods. The distinction between CII and network operators should be clarified and remain consistent across the regulatory environment, particularly because the CSL provides different regulations for both sets of operators. CIIOs should only be subject to cybersecurity requirements and protection schemes designed for CII, instead of being

subject to different regulations for both CII and network operators. Similarly, regulations developed for CIIOs should not be extended to network operators.

The Multi-Level Protection Scheme

The MLPS represents a decade-long effort to develop a comprehensive IT system security protection scheme. The scheme grades the importance of IT systems on a five-level scale according to their importance with respect to China’s national security, social order, public interest, and the legitimate interests of individuals and organizations, with specific corresponding security requirements.

Under the CSL framework, the MLPS is being revamped, and the draft *Regulations on the Cybersecurity Multiple-Level Protection Scheme* (Draft MLPS 2.0 Regulations) released in June 2018 constitutes the first attempt to revisit the MLPS. While the MLPS 2.0 Regulations have yet to be issued in final form or for further comment, TC260 has already published three national standards that constitute the basis of the MLPS: ❶ *GB/T 22239-2019 Information Security Technology – Baseline for the Multi-level Protection Scheme*, ❷ *GB/T 25070 – 2019 Information Security Technology – Technical Requirements of Security Design for the Multi-level Protection Scheme*, and ❸ *GB/T 28448 – 2019 Information Security Technology – Evaluation Requirements for the Multi-level Protection Scheme*, all of which came into effect in December 2019 and include more detailed requirements for specific IT industries including cloud computing, mobile networks, the Internet of Things (IoT) and industrial internet systems.

While AmCham China understands that the three standards are designed to support the implementation of MLPS 2.0 Regulations, we are concerned that the standards have been issued in final form prior to the issuance of the Draft MLPS 2.0 Regulations, to which they are pursuant. Such action lacks due process and may lead to inconsistencies with the final Draft 2.0 Regulations. We recommend that these recommended standards are referenced as best practices only and are not legally binding. They should not create additional requirements that go beyond published laws and regulations.

On September 22, 2020, the Ministry of Public Security (MPS) released the *Guiding Opinions on Implementing MLPS and the CII Protection Scheme*. The Guiding Opinions supports implementation of the MLPS and CII protection scheme designed to protect CII and important data from cybersecurity threats, incidents, and network intrusion.

The Guiding Opinions follow three key principles:

- Multi-level protection shall be based on the level of importance of network’s infrastructure, information systems, and data; and special protection will be applied to CII networks and networks coded as MLPS level 3 and above.

关键信息基础设施

在《关键信息基础设施安全保护条例（征求意见稿）》发布四年后，《关键信息基础设施安全保护条例》于2021年7月30日正式公布，2021年9月1日起实施。但条例规定，对于关键信息基础设施的认定规则，应由重要行业和领域的保护工作部门结合本行业、本领域实际具体制定。

对此，外资企业仍需要一个清晰、一致的规则，以便根据其《网络安全法》义务的履行情况，评估自身企业是否被视为关键信息基础设施运营商，并据此采取监管机构详细规定的必要步骤。

全国信息安全标准化技术委员会于2019年12月启动了一项有关《信息安全技术—关键信息基础设施网络安全保护基本要求》的国家标准试点工作。该工作概述了委员会的基本程序，即“验证相关标准的合理性和可操作性，就加快采纳某些标准而征求意见，并为关键信息基础设施保护提供技术支持”。但是，商会在保护关键信息基础设施方面尚未看到全面的监管进展。

2020年8月10日，全国信息安全标准化技术委员会发布了以下两个关键信息基础设施相关标准，以征求公众意见，截止日期为2020年10月9日。第一，《信息安全技术关键信息基础设施安全防护能力评价方法》，规定评估将集中在“能力域级别”、“分级保护”和“密码”等领域。该标准规定了“能力域级别”的评估方法。第二，《信息安全技术关键信息基础设施边界确定方法》概述了指导关键信息基础设施边界确定的四项基本原则，并详细说明了关键信息基础设施边界确定的模型、方法和过程。标准草案还对“关键信息基础设施”、“关键业务”、“关键信息基础设施要素”进行了定义，并规定了一种确定关键信息基础设施边界的方法。该方法基于信息流及业务是否构成由行业或特定行业管理部门确定的“关键业务”。

商会继续建议中国努力对关键信息基础设施的运营采取一种严格而不失其灵活性的监管方法。该方法应采用全球公认的自愿性标准和国际认可的风险管理方法。此外，由于《网络安全法》对两类运营商采取不同的适用规定，该方法还应应对信息基础设施运营商和网络运营商做出明确区分，并在整个监管环境中进行统一。关键信息基础设施运营商仅遵守为关键信息基础设施设计的

网络安全要求和保护方案，而不受针对关键信息基础设施和网络运营商二者共同而设的不同法规约束。同样，为关键信息基础设施运营商制定的法规也不应当适用于网络运营商。

网络安全等级保护制度

网络安全等级保护制度作为一套综合的安全保护信息技术系统已经存在十余年。按照特定的安全要求，该制度依据信息技术系统对中国国家安全、社会秩序、公共利益、个人和组织的合法利益等领域的重要性程度分为五个等级进行评估。

在《网络安全法》框架下，网络安全等级保护制度正在进行修订，2018年公布的《网络安全等级保护条例（征求意见稿）》（以下简称《等级保护条例草案2.0》）是首次重新审视现行网络安全等级保护制度。尽管《等级保护条例草案2.0》尚未发布最终版本或征求进一步意见，但全国信息安全标准化技术委员会已经发布了三项国家标准，构成了网络安全等级保护制度的基础：

①GB/T 22239-2019《信息安全技术网络安全等级保护基本要求》②GB/T 25070-2019《信息安全技术网络安全等级保护安全设计技术要求》③GB/T 28448-2019《信息安全技术网络安全等级保护测评要求》，所有上述要求都在2019年12月实施，并包括对特定信息技术行业的更详细要求，包括云计算、移动网络、物联网和工业互联网系统。

商会理解以上标准旨在推动《等级保护条例草案2.0》的实施，但商会注意到，这三项标准是在《等级保护条例草案2.0》发布前以最终形式发布的，而这些标准正是依据该草案发布的。此类缺乏应循程序的行动或将导致标准与最终《等级保护条例草案2.0》的不一致。商会寻求中国的承诺，即这些推荐标准仅是参考性的最佳做法，而不具有法律约束力。这些推荐标准不应产生超出已发布法律法规的额外要求。

2020年9月22日，公安部发布了《贯彻落实网络安全等级保护制度和关键信息基础设施安全保护制度的指导意见》（以下简称《指导意见》）。《指导意见》支持实施网络安全等级保护制度和关键信息基础设施保护计划，旨在保护关键信息基础设施和重要数据免受网络安全威胁、突发状况和网络入侵。

- Implementation shall endeavor to offer comprehensive protections for emerging technologies and applications like cloud computing, the Internet of Things (IoT), New Internet, Big Data, and smart manufacturing.
- Under the CSL, the Ministry of Public Security (MPS) is responsible for protecting China's cybersecurity domains. The Cybersecurity Administration of China (CAC) is tasked with supervising cybersecurity developments.

The overarching themes in the Guiding Opinions include:

- **Identifying CII:** Industry-specific regulators from the public communication and information services, energy, transportation, water resources, finance, public services, e-government, national defense, and other critical industries are tasked with identifying industry-specific CII-identification criteria and filing them with MPS. Any basic networks, large private networks, core business systems, cloud platforms, big data platforms, IoT networks, industrial control systems, intelligent manufacturing systems, new Internet, and new communication facilities that meet defined CII criteria shall be deemed "CII."
- **Responsibility for CII protection:** MPS (with relevant ministries as needed) is in charge of designing and deploying a comprehensive plan for the protection of CII. Industry-specific regulators are responsible for designing and executing an industry-specific CII protection strategy.
- **Enhance important data and personal information (PI) protection:** CIIOs shall establish a protection scheme for important data and PI. PI and important data collected and generated by CIIOs in the course of their China operations shall be stored in China. Where a cross-border transfer of such data is required for commercial reasons, such transfers shall undergo a security assessment as specified in existing regulations.
- **Procurement:** If the products and services to be procured may affect national security, the provisions for a cybersecurity review set forth in the Measures for Cybersecurity Review (effective June 1, 2020) shall apply.
- **Alert and Notification:** Both CIIO and network operators with an MLPS Level 3 designation and above need to conduct cybersecurity monitoring and alert protocols and comply with information notification requirements. They need to report the results of their cybersecurity monitoring to both their industry regulators and the MPS.

AmCham China remains concerned about the fact that the MLPS applies to all network operators, not only CIIOs. The Draft MLPS 2.0 Regulations appear to expand these regulations to cover "all network operators," which would include a large swath of the commercial sector. MLPS 1.0 originally covered only "important systems." The June 2018 Draft

MLPS Regulations outlines several significant requirements with respect to the structure and maintenance of networks operating within China. Requirements to have systems graded at level three and above connected to China's public security system at the bureau level are unnecessarily broad and intrusive and may introduce significant risks for member companies. Our members are also concerned about the requirement that all technical maintenance performed on those networks be localized, which disrupts the global operating model adopted by many multinational companies without creating security benefits and introducing undue risk and burden on these companies.

AmCham China believes that if they are to remain, the Draft MLPS Regulations should be confined to the scope established in the CSL and avoid expanding the scope of the MLPS to all network operators. If MLPS is expanded to cover all network operators, FIEs will face great expense and administrative burden to meet these requirements in the context of their global IT systems which will discriminate in fact against FIEs and disincentivize foreign investment in China.

Cybersecurity Review Regime

In May 2017, the CAC officially released the *Security Review Measures for Cyber Products and Services (Interim Measures)*. In May 2019, the CAC released an updated draft *Cybersecurity Review Measures* and on April 27, 2020, twelve government agencies released the *Cybersecurity Review Measures*, effective June 1, 2020. The final Measures replaced the earlier Interim Measures. The cybersecurity review process is defined by the CSL (Article 35), as well as the practice of a "national security review," as defined by the *National Security Law* (Article 59), in cyberspace.

According to the this version, a cybersecurity review is to be triggered by two scenarios: ❶ an assessment by a CIIO that procurement of certain network products and services may potentially impact national security (Article 2); or ❷ an assessment by any member of the Cybersecurity Review Working Mechanism, subsequently approved by the Central Cybersecurity and Informatization Commission (Article 15), that the presence of certain network products and services in the market may impact national security. The Measures stress the importance of ex-ante, concurrent, and ex-post supervision, which means that even if a supplier or procurement activity has cleared the initial review procedures, it can still be subject to a subsequent review and the outcome of the initial review may be affected.

Under Article 9, "the cybersecurity review focuses on assessing the risks to national security possibly posed by the purchase of network products and services" considering the following factors:

- The risks that critical information may be illegally

《指导意见》遵循三个关键原则：

- 网络安全等级保护应基于网络基础设施、信息系统和数据资源的重要程度；关键信息基础设施网络和编码为网络安全等级保护制度第三级及以上的网络将得到特别保护。
- 制度在实施环节应努力提供包括对云计算、物联网、新互联网、大数据和智能制造等新兴技术和应用程序等的全方位保护。
- 根据《网络安全法》，公安部负责保护中国的网络安全网域。中国国家互联网信息办公室负责监督网络安全的发展。

《指导意见》的总体主题包括：

- **明确关键信息基础设施：**来自公共通信和信息服务、能源、交通、水资源、金融、公共服务、电子政务、国防和其他关键行业的特定行业监管机构，负责确定特定行业的关键信息基础设施确定标准，并将其提交给公安部。任何符合关键信息基础设施标准的基础网络、大型专用网络、核心业务系统、云平台、大数据平台、物联网网络、工业控制系统、智能制造系统、新互联网和新通信设施，都应被视为“关键信息基础设施”。
- **关键信息基础设施保护的责任：**公安部（视需要联合相关部委共同）负责设计和部署保护关键信息基础设施的综合计划。特定行业的监管机构，负责设计和执行特定行业的关键信息基础设施保护战略。
- **加强对重要数据和个人的保护：**关键信息基础设施运营商应制定重要数据和个人的保护方案。关键信息基础设施运营商在其中国业务过程中收集和生成的个人数据和重要数据应存储在中国。如果出于商业原因需要跨境传输此类数据，则传输应按照中国现行法规的规定进行安全评估。
- **采购：**如果拟采购的产品和服务可能影响国家安全，则适用《网络安全审查办法》（2020年6月1日起生效）中关于网络安全审查的规定。
- **警报和通知：**网络安全等级保护制度三级及以上级别的关键信息基础设施运营商和网络运营商，均需执行网络安全监控和警报协议，并遵守信息通知要求。他们需要向行业监管机构和公安部报告网络安全监控的结果。

此外，商会对制度的适用范围表示关切。网络安全等级保护制度并非针对关键信息基础设施运营商，而适用于所有网络运营商。网络安全等级保护制度 1.0 只针对“重要系统”，而《等级保护条例草案 2.0》进一步扩大了条例的范围，将包括大量商业领域的“所有网络运营商”囊括在内。2018年6月的《网络安全等级保护条例（征求意见稿）》概括了在中国境内运营网络的结构和维护方面的几个重要要求，条例要求的将三级及以上级别系统与中国公安系统的局级系统相连接是不必要的宽泛要求，或将给会员公司带来重大风险。商会还注意到了在这些网络上执行的所有技术维护都必须本地化的要求，这将为许多跨国公司采用的全球运营模式带来负面影响，在带来不适当的风险和负担的同时却没有为这些公司带来相应的安全利益。

商会认为，如果要继续保留上述要求，则《网络安全等级保护条例（征求意见稿）》应限于《网络安全法》中确定的范围，并避免将网络安全等级保护制度的范围扩展到所有网络运营商，否则，外资企业只有承担巨大的费用和行政负担才能在其全球信息技术系统内满足这些要求，这实际上是对外资企业的歧视，也将抑制外商在华投资。

网络安全审查制度

2017年5月，国家网信办正式发布了《网络产品和服务安全审查办法（试行）》。2019年5月，国家网信办发布了最新的《网络安全审查办法（征求意见稿）》，2020年4月27日，12个政府机构公布了联合制定的《网络安全审查办法》，于2020年6月1日生效。最终办法取代了先前的临时办法。《网络安全法》（第35条）定义了网络安全审查流程，《国家安全法》（第59条）定义了网络空间中的“国家安全审查”做法。

根据2020版《网络安全审查办法》，网络安全审查将由两种情况触发：① 关键信息基础设施运营商对某些网络产品和服务的采购可能潜在影响国家安全的评估（第2条）；或② 网络安全审查工作机制的任何成员对市场某些网络产品和服务的存在可能影响国家安全的评估，随后由中央网络安全和信息化委员会批准（第15条）。《网络安全审查办法》强调事前、事中和事后监督的重要性，这意味着即使供应商或采购活动通过了初步审查程序，仍可能要接受后续审查，初步审查的结果可能会受到影响。

controlled, interfered with, or damaged, and that important data may be stolen, breached, or destroyed, as a result of the use of the products or services;

- The potential for a disruption to the continuity of CII operations caused by an interruption to the supply of a product or service;
- Risks with respect to the security, openness, transparency, diversity of product inputs and sources, the reliability of supply channels, and the risk of a cut off of supplies due to political, diplomatic, trade or other factors;
- The ability of product and service providers to comply with Chinese laws, administrative regulations and departmental rules;
- Other factors that may harm CII and place national security at risk.

Many of the criteria used to establish supply chain security as provided in the final Measures are subjective and abstract. The “openness, transparency and diversity of product inputs and sources” cannot be judged objectively as there is no agreed upon, quantitative standard against which they may be assessed. The “risk of a cut off of supplies due to political, diplomatic, trade or other factors” are factors outside the control of most suppliers. Given the current tension in US-China relations as well as China’s history of suspending imports from different countries for political reasons, its inclusion means that the cybersecurity review process can be used to retaliate against countries, entities or individuals perceived to have displeased China.

AmCham China remains concerned that China’s cybersecurity review regime, particularly as it lacks clear standards and transparent criteria, will be used to discriminate against foreign technology providers. The final Measures appear to unreasonably obfuscate the distinction between legitimate security concerns and unreasonable discrimination against certain technologies on the basis of point of origin. Instead, we recommend that any cybersecurity review regime be based on agreed technical standards for security rather than considerations of product or service origin. AmCham China urges that the cybersecurity review regime comply with China’s WTO commitment to an open market, ban discrimination against foreign technology, and remove unnecessary market access barriers.

Cybersecurity Inspections

AmCham China has concerns with respect to the ability of public security organs (PSOs) to conduct “internet security inspections.” The final *Internet Security Supervision and Inspection Provisions by Public Security Organs* (the Provisions) went into effect on November 1, 2018 and are overseen by the MPS. The Provisions derive authority from the CSL, the *Counter-Terrorism Law* (CTL), and the *People’s Police Law*. Together, these laws give PSOs broad authority

to conduct on-site inspections or remote testing of Internet service providers and other network operators to evaluate compliance with the CSL, CTL, and other cybersecurity-related laws and regulations.

The authority to conduct remote testing effectively enables a PSO to connect into a company’s private network to evaluate the potential for unspecified “cybersecurity vulnerabilities.” AmCham China is extremely concerned about the broad and intrusive inspection mandate held by PSOs and other third-party services that may enable them to access or disclose PI, proprietary information, or other sensitive corporate information. Simply giving third parties like PSOs the ability to scan/penetrate secure industry systems creates a number of ancillary or unintended security risks with respect to overall network health.

While we understand MPS’s desire to ensure compliance with cybersecurity regulations, we strongly recommend that MPS refrain from conducting system scanning or other intrusive exercises and allow firms to demonstrate compliance while limiting scanning requirements by third parties which impose additional security risk on company networks.

Cybersecurity Vulnerabilities

The *Cybersecurity Threat Information Publication Management Measures* (Draft Management Measures) were released in November 2019 by CAC to support the CSL by aiming to prevent the irresponsible disclosure of cybersecurity threat information which may be harmful to national security or the public interest, or compromise cybersecurity. The Draft Management Measures seek to regulate what information may not be included that is published. It requires that any disclosure of associated threat information shall seek prior consent from the relevant network operator unless the vulnerabilities of concern have been eliminated/repaired, or when the information has been reported a minimum of 30 days earlier to the relevant cybersecurity or other government agency. Any efforts to publish a comprehensive analytic report on cybersecurity attacks, incidents, risks, and vulnerabilities in key industries (public telecommunications and information services, energy, transportation, water supply, finance, public services, e-government, national defense science, technology) or at the “national, cross-regional, or cross-sectoral” level needs to be approved in advance by the government.

The Draft *Cybersecurity Vulnerability Administrative Measures* released in June 2019 by MIIT for comment require that vulnerabilities be addressed immediately and patching or preventive measures for relevant products be released within 90 days after the vulnerability is identified. With respect to relevant network services or systems, patches or preventive measures need to be issued within 10 days. The Draft for Comment provides that users or technical partners of a product or service with an identified vulnerability

根据第9条，“网络安全审查重点评估采购网络产品和服务可能带来的国家安全风险”，主要考虑以下因素：

- 产品使用和服务过程中导致的关键信息基础设施被非法控制、干扰或破坏，以及重要数据被窃取、泄露、毁损的风险；
- 产品和服务供应中断对关键信息基础设施业务连续性的危害；
- 产品和服务的安全性、开放性、透明性、来源的多样性，供应渠道的可靠性以及因为政治、外交、贸易等因素导致供应中断的风险；
- 产品和服务提供商遵守中国法律、行政法规、部门规章的情况；
- 其他可能危害关键信息基础设施安全和国家安全的因素。

最终《网络安全审查办法》中规定的用于维护供应链安全的诸多标准较为主观和抽象。在没有可用于评估的公认量化标准的情况下，“产品信息和来源的公开性、透明性和多样性”无法客观判断。“由于政治、外交、贸易或其他因素导致供应中断的风险”是大多数供应商无法控制的因素。鉴于当前中美关系的紧张，以及中国曾因政治原因暂停从不同的国家进口，将此条纳入规定意味着网络安全审查程序可能被用来反制令中国不快的国家、实体或个人。

商会仍然担心，由于中国的网络安全审查制度缺乏明确和透明的标准，或将被用来歧视外国技术供应商。最终版《网络安全审查办法》似乎混淆了合法的安全问题和东道国对外国技术的不公平对待之间的区别。商会建议任何网络安全审查制度都应基于商定的安全技术标准，而非产品和服务的来源。商会敦促网络安全审查制度遵守中国加入世贸组织时就开放市场提出的承诺，禁止歧视外国技术，并消除不必要的市场准入壁垒。

网络安全检查

商会对公安机关执行“网络安全检查”的方式表示担忧。《公安机关互联网安全监督检查规定》（以下简称《规定》）自2018年11月1日起施行，由公安部负责监督。《规定》的权威性来自《网络安全法》、《中华人民共和国反恐怖主义法》（以下简称《反恐怖主义法》）和《中华人民共和国人民警察法》。这些法律共同赋予公安机

关对互联网业务提供商和其他网络运营商开展监督检查或远程检测的广泛权限，以评估他们对《网络安全法》、《反恐怖主义法》和其他网络安全相关法律法规的遵守情况。

通过开展远程检测，公安机关能连接到公司的专用网络，以测评潜在和不明的“网络安全漏洞”。商会对公安机关和其他第三方服务机构宽泛且具侵入性的监督检查授权非常关注。该权限或将赋予第三方如公安机关扫描或渗透安全行业系统的能力，这将导致第三方有权查看或披露公司个人信息、专有信息或其他敏感的公司信息，形成连带或意外安全风险，威胁公司整体网络健康。

商会理解公安部希望确保公司遵守网络安全法规的良好意图，但商会强烈建议公安部避免系统扫描等侵入性检查，允许公司证明自身合规性，同时限制第三方的扫描要求，以上要求会给企业网络带来额外的安全风险。

网络安全漏洞

为预防可能导致国家安全、公共利益及网络安全的信息泄露，支持《网络安全法》的实施，国家网信办于2019年11月发布了《网络安全威胁信息发布管理办法（征求意见稿）》（以下简称《管理办法草案》）。《管理办法草案》试图规范网络安全威胁信息发布行为，对网络安全威胁信息中不应包含的内容做出了要求。《管理办法草案》要求任何威胁信息的披露都应事先征求相关网络运营商的同意，除非关注的风险、脆弱性已被消除或修复，或者至少提前30日向网络安全机构或其他政府机构举报了该信息。发布涉及公共通信和信息服务、能源、交通、水利、金融、公共服务、电子政务、国防科技工业等重要行业和领域的网络安全攻击、事件、风险、脆弱性综合分析报告时，或发布全国性或跨地区、跨行业领域的综合分析报告时，应事先向有关政府部门报告。

工信部于2019年6月发布的《公共互联网网络安全威胁监测和处置办法（征求意见稿）》（以下简称《征求意见稿》）要求在发现漏洞起的90日内立即解决漏洞，并发布相关产品的补丁或预防办法。有关网络服务或系统的补丁或预防办法须于10日内发布。《征求意见稿》指出，如果已发现漏洞的产品和服务的用户或技术合作伙伴也需要采用补丁或预防办法，则需要五日内通知他们，并将信息上报至工信部建立的网络安全威胁信息

which also need to adopt patches or preventive measures must be notified within five days and that information shall be reported to the Cybersecurity Threat Information Sharing Platform under MIIT. The Draft for Comment also encourages third party organizations or individuals reporting vulnerabilities via collection platforms like the China National Vulnerability Database (CNVD) and China National Vulnerability Database of Information Security (CNNVD) to do so in a timely manner.

Three vulnerability-related national standards were released on November 25, 2020 by TC260 and will go into effect on June 1, 2021.

- *GB/T 30276-2020 Information security technology-Specification for cybersecurity vulnerability* specifies standards for the process of managing cybersecurity vulnerabilities, including discovery and reporting, receipt, verification, disposal, release, and tracking.
- *GB/T 30279-2020 Information security technology-Guidelines for categorization and classification of cybersecurity vulnerability* specifies the categorization method and classification indicators of cybersecurity vulnerabilities and provides recommended classification methods.
- *GB/T 28458-2020 Information security technology-Cybersecurity vulnerability identification and description specification* specifies the methods to identify and describe a cybersecurity vulnerability.

Together, these three standards provide a detailed framework for cybersecurity vulnerability identification and process. These standards are roughly aligned with coordinated vulnerability disclosure (CVD) principles. AmCham China strongly urges the government to pursue a unified regulatory environment with frequent coordination among the different government authorities with respect to vulnerability identification and remediation. We encourage China to align the proposed regulations with well-established and broadly adopted best practices and industry standards. These practices and standards have been carefully developed by experts in the field of CVD and vulnerability handling. We support alignment with these practices, as articulated in International Organization for Standardization's (ISO) international standards such as ISO/IEC 29147 (2018), given the globally intertwined nature of technology and associated vulnerability management processes.

Repairing identified product/service vulnerabilities is a technical issue that is made more complex by the presence of global supply chains for many of these products and services. AmCham China believes a fixed time requirement to install a patch or repair a vulnerability is neither technically feasible nor reasonable. Mandatory requirements to disclosing vulnerabilities to other parties before installing a patch will not mitigate the damage but only create additional risk.

Cryptography Law

China's *Cryptography Law* was enacted in October 26, 2019 and came into effect on January 1, 2020. The Law defines encryption as "technologies, products, or services applying specific transformations to encrypt and protect this information or perform other security authentications." Encryption is classified into three categories: "core," "common," and "commercial" encryption. "Core" and "common" encryption categories are used to protect information considered to be "state secrets," while commercial encryption is used to protect information that is not a state secret.

The Law outlines the regulations and procedures governing cryptography product and service vendors, cryptography certification bodies, and users of cryptography products. In particular:

- Enterprises are encouraged to apply to qualified certification agencies to certify their cryptography products and services;
- CIIOs that adopt commercial cryptography for security purposes (as required by relevant laws and regulations) are required to undergo security assessments conducted by certified testing agencies regarding their use of commercial cryptography. Moreover, CIIOs that purchase cryptography products and services that may impair "national security" are required to undergo a "national security review";
- Commercial cryptography products and services that involve "national security", "social or public interests", and have "cryptography protection function" will be subject to import licenses and export controls.

Furthermore, AmCham China notes that any network operators that choose to certify their commercial encryption products via a security assessment will also have to consider their own MLPS level and associated regulations for encryption security if they are a CIIO. Notably, under the *Cryptography Law*, CIIOs are now permitted to conduct a security self-assessment or authorize a commercial cryptography testing body to conduct the assessment.

AmCham China welcomes these certain provisions in the *Cryptography Law*, including the commitment to ❶ "equal treatment for FIEs" handling commercial cryptographic technology, ❷ an exemption from the import licensing and export control framework for commercial cryptographic technology used in "mass market consumer products," ❸ the commitment that "government bodies and their employees" will not employ "administrative measures to force a transfer of commercial cryptography technology," ❹ not disclose IP during the certification process, and ❺ avoid burdensome and duplicative testing and certification requirements.

Nevertheless, concerns remain. The Law is unclear with

共享平台。《征求意见稿》还鼓励第三方组织或个人通过中国国家漏洞库和国家信息安全漏洞库等收集平台报告漏洞。

全国信息安全标准化技术委员会于2020年11月25日发布了三个与漏洞相关的国家标准，并将于2021年6月1日实施。

- GB/T 30276-2020《信息安全技术网络安全漏洞管理规范》规定了网络安全漏洞管理流程的标准，包括发现和报告、接收、验证、处置、发布和跟踪。
- GB/T 30279-2020《信息安全技术网络安全漏洞分类分级指南》规定了网络安全漏洞的分类方法和分类指标，并提供了推荐的分类方法。
- GB/T 28458-2020《信息安全技术网络安全漏洞标识与描述规范》规定了识别和描述网络安全漏洞的方法。

这三个标准共同为网络安全漏洞识别和处理提供了一个详细的框架，大致符合协调漏洞披露原则。根据协调漏洞披露，新发现的硬件、软件和服务中的漏洞直接向受影响产品的供应商报告，或向国家互联网应急中心报告（国家互联网应急中心将私下向供应商报告），或向私人实体报告（私人实体将私下向供应商报告）。这使供应商有机会在任何一方公开披露漏洞之前进行诊断并提供经过全面测试的更新或其他纠正措施。商会强烈敦促政府就漏洞识别和修复建立一个多部门协调机制，确保监管环境的一致性。商会鼓励中国将拟议法规与业已建立并广泛采用的最佳实践和行业标准相结合，这些实践和标准是由协调漏洞披露和漏洞处理领域的专家精心制定的。鉴于技术和相关漏洞管理流程的全球关联性，商会支持遵循ISO国际标准（如ISO/IEC 29147(2018)）中阐明的做法。

修复已识别的产品和服务漏洞是一个技术问题，由于许多此类产品和服务存在全球供应链，这个问题变得更加复杂。商会认为，要求在固定期限内安装补丁或修复漏洞在技术上既不可行也不合理。在安装补丁之前向其他利害关系方披露漏洞存在的强制性要求非但无法减轻损害，反而只会带来额外的风险。

《密码法》

《中华人民共和国密码法》（以下简称《密码法》）

于2019年10月26日通过，并于2020年1月1日施行。《密码法》所称密码，是指“采用特定转换的方法对信息等进行加密保护、安全认证的技术、产品和服务”。密码分为三类：“核心密码”、“普通密码”和“商用秘密”。核心密码、普通密码用于保护被认为是国家机密的信息，而商用密码用于保护不属于国家机密的信息。

《密码法》概括了管理密码产品和服务供应商、密码认证机构以及密码产品用户的法规和程序。尤其是：

- 鼓励企业向有资质的认证机构对其密码产品和服务进行检测认证；
- 出于安全目的（根据相关法律法规的要求）采用商业加密技术的关键信息基础设施运营商，必须接受认证测试机构对其商业加密技术使用情况进行的安全评估。此外，关键信息基础设施运营商采购可能损害“国家安全”的产品和服务的，必须接受“国家安全审查”；
- 涉及“国家安全、社会公共利益且具有加密保护功能的”商用密码实施进口许可和出口管制。

此外，商会注意到，选择安全评估来认证商用密码产品的网络运营商，若同时作为关键信息基础设施运营商，则必须同时考虑其网络安全等级保护级别和相关密码安全法规。值得注意的是，《密码法》允许关键信息基础设施运营商自行或者委托商用密码检测机构开展商用密码应用安全性评估。

商会乐见《密码法》中某些规定对包括以下方面的承诺：① 处理密码技术应依法“平等对待外资企业”；② 豁免“大众消费品”中使用的商业密码技术的进口许可和出口控制框架；③ “行政机关及其工作人员”不得利用行政手段强制转让商用密码技术；④ 在认证过程中不得披露知识产权；以及⑤ 避免重复检测认证。

然而，《密码法》并未明确对于现行密码管理框架中将密码作为“核心功能”方面的任何变化。1999年发布的《商用密码管理条例》范围广泛，但重要的是，国家商用密码管理办公室在2000年澄清了“核心职能”的范围，其指出，“商用密码条例中包含的‘加密产品和包含加密技术的设备’的管理范围仅限制加密和解码操作是其核心功能的专用硬件和软件；其他项目，包括无线电话、视窗软件、浏览器软件等，不包括在范围内。”自发布以来，行业一直依赖于该“核心功能”指南，该

respect to any changes in the current encryption regulatory framework regarding encryption as a “core function.” The *Commercial Cryptography Administrative Regulations* published in 1999 were broad in scope, but importantly the Office of State Commercial Cryptography Administration (OSCCA) clarified the scope of the “core function” in 2000. The clarification stated that “the scope of the management of encryption products and equipment containing encryption technology” incorporated in the [commercial encryption] regulations, only limits specialized hardware and software for which encryption and decoding operations are core functions; other items, including wireless telephones, Windows software, browser software, etc., are not included in the scope. Industry has relied upon this “core function” guideline in China since it was issued, and the clarification has enabled Chinese industry and ICT sector to develop. Thus, the Law should similarly establish such a core function clarification.

The Law is still plagued by terms that lack clarity, such as “mass consumer products” and the potential for certain products to be excluded from the definition. The term “commercial cryptography,” which is distinct from cryptography used for national security (termed “core” and “common” cryptography), is not defined or uniformly treated throughout the Law. While mass market consumer products are exempt from a system of import licensing and export controls, commercial cryptographic products and technologies related to “national security” and “social and public interests” are not exempt. Those two categories remain undefined and could be used as a pretext to ignore the exemption. Moreover, it remains possible that subsequent implementing regulations will impose additional requirements on mass consumer products aside from the licensing and export control requirements.

In August 2020, the OSCCA released the Draft *Commercial Cryptography Administrative Regulations* (Amended Draft) for public comment. This Amended Draft has undergone significant changes as compared to the previous State Council Directive released in 1999. The Amended Draft has been updated to align with the framework established by the *Cryptography Law*; in that respect commercial cryptography is no longer considered a “state secret.” The “core-function” principle is not mentioned; the result is that the scope of “commercial cryptography” has been expanded under the new Law. AmCham China nevertheless has several concerns with regard to the Amended Draft: ❶ the Amended Draft does not implement, and is inconsistent in some provisions, with the spirit of the *Cryptography Law* and its provisions; ❷ the Amended Draft is overbroad in scope and vague. The Amended Draft should continue to rely on the “core function” principle or a similar concept. It needs to provide clear definitions for “commercial cryptography” and “mass market consumer products,” terms used in the Amended Draft and *Cryptography Law*. We recommend that “mass market consumer products” be defined as “cryptography features for data confidentiality as found in components and

products openly available to the public without restriction for a fee or free of charge, for personal or business use, where the encryption functionality cannot be modified by the end user;” ❸ a failure to protect the interoperability of international standards and use of internationally standardized encryption algorithms; ❹ the Amended Draft proposes an extensive and unprecedented import license/export control scheme; and ❺ the failure to provide for the protection of sensitive intellectual property while granting of intrusive enforcement powers to regulators.

On December 31, 2020, MOFCOM and the General Administration of Customs of China (GACC) issued an updated *Dual Use Items and Technologies Export/Import License Management Catalogue* (#75) that went into effect on January 1, 2021. Updated annually by MOFCOM, the new catalogue includes some positive changes and Section IX, titled “Some Dual-Use Items and Technologies,” which is most relevant to AmCham China member companies, remains unchanged. We hope, however, that further clarification can be provided in writing with respect to the following areas:

Scope & “Primary Function:” AmCham China noticed that the latest Catalogues include a narrower set of products than in prior years, particularly with respect to the Import Catalogue, and are focused on including more products whose “primary function” is cryptography. These developments are welcomed, and we encourage those regulators responsible for revising the Amended Draft to similarly reflect the “core function” principle explicitly in the revisions. It is our view that cryptographic features in ICT products for which the “core (or primary) function” is not encryption should remain unregulated, as they are today, and not be subjected to certification restrictions or import/export requirements. We recommend that the latest Catalogue be less expansive in light of the World Semiconductor Council Encryption Principles which call for deregulation of commercial encryption in mass market consumer ICT products.

“Security Chips:” We recommend that the government provide a clear definition of “Security Chips” as listed in the Export Catalogue. General-purpose products with cryptographic functions should not be regulated. Again, it is our view that importation or exportation of ICT products with cryptographic features for which the “core or primary function” is not encryption should remain unregulated as they are today and not be subject to import/export requirements, and the mass market exemption in the *Cryptography Law* should be explicitly referenced.

AmCham China strongly urges that cryptography products and services that meet international standards, have been proven secure and are commonly used in other global markets should be permitted to enter and be used in the China market. Ongoing efforts to encourage the adoption of domestic national encryption standards that differ from established international standards and norms will impose huge costs on industry to develop these technologies.

澄清使中国行业和信息通信技术行业得以发展。因此，《密码法》应当针对其核心职能做出同样的澄清。

《密码法》中仍存在“大众消费产品”等众多定义不清晰的术语，且存在某些产品可能被排除在定义之外的可能性。“商用密码”这一叫法不同于用作国家安全的密码（称为“核心”及“普通”密码），在整个法律中并未定义或统一对待。尽管大众消费品不受进口许可和出口管制制度的约束，但与“国家安全”和“社会和公共利益”有关的商业密码产品和技术不受豁免。这两个类别仍未清晰定义且可以用作忽略豁免的托词。此外，除了许可和出口控制要求外，后续的实施法规仍有可能对大众消费品施加其他要求。

2020年8月，国家商用密码管理办公室发布了《商用密码管理条例（修订草案征求意见稿）》（以下简称《修订草案》）。与1999年发布的国务院指令相比，《修订草案》发生了重大变化。为符合《密码法》建立的框架，《修订草案》作出一些列更新，如商用密码不再被视为“国家机密”。《修订草案》中未提及“核心功能”原则，这使“商用密码”的范围扩大了。商会对于《修订草案》的关切具体如下：**①**《修订草案》没有贯彻《密码法》及其条款的精神，在某些条款中与《密码法》及其条款不一致；**②**《修订草案》的范围过于宽泛和模糊。《修订草案》应继续依靠“核心功能”原则或类似的概念。需要为《修订草案》和《密码法》中使用的术语“商用密码”和“大众消费品”提供明确的定义。商会建议将“大众消费品”定义为“用于个人或商业用途的组件和产品中的数据保密性加密功能，这些组件和产品免费向公众公开，最终用户不能修改加密功能”；**③**未能保护国际标准的互操作性和国际标准化加密算法的使用；**④**《修订草案》提出了一项广泛和前所未有的进口许可/出口管制计划；**⑤**在授予监管机构侵犯性执法权力的同时，未能为敏感知识产权提供保护。

2020年12月31日，中国商务部和海关总署发布了更新后的《两用物项和技术进出口许可证管理目录》（#75），自2021年1月1日起实施。商务部每年更新一次该目录，新的目录包括一些积极的变化，与商会会员公司最相关第九节（“部分两用物项和技术”）保持不变。然而，商会希望中国政府能够就以下方面提供进一步的书面澄清：

- **范围和“主要功能”**：商会注意到，最新的目录包括的产品比往年更少，特别是在进口目录方面，并侧重于包括更多“主要功能”是密码的产品。商会对以上发展表示欢迎，并鼓励负责修订《修订草案》的监管机构在修订中明确反映“核心职能”原则。商会认为，“核心（或主要）功能”不是密码的信息通信技术产品中的加密功能应像今天一样不受监管，不受认证限制或进出口管制的约束。商会建议，根据《世界半导体理事会密码原则》，最新的目录应不要太宽泛。《世界半导体理事会密码原则》要求对大众消费类信息通信技术产品的商业秘密解除管制。
- **“安全芯片”**：商会建议中国政府对《出口目录》中所列的“安全芯片”作出明确定义。商会认为，具有加密功能的通用产品不应受到监管，同样，具有加密功能的信息和信息通信技术产品的进出口，若其“核心或主要功能”不是密码，就应该像今天这样不受管制，不受进出口要求的约束，而且应该明确提及《密码法》中的大众市场豁免。

商会强烈呼吁，应允许符合国际标准、经验证安全、在其他全球市场普遍使用的密码产品和服务进入中国市场。而持续鼓励商用密码从业单位采用不同于现有国际标准和规范的国家加密标准，将给行业带来开发相应技术的巨大成本。此外，由于这些新标准不一定如其他国际标准般符合严格的安全标准，在此新标准下生产的产品和服务在市场上不会得到广泛使用，因此也会引发安全问题。

《出口管制法》

《中华人民共和国出口管制法》（以下简称《出口管制法》）于2020年12月1日施行，该法包括关于出口管制政策、管制清单和管制措施、出口管制监督和管理以及法律责任的规定。《出口管制法》共五章四十九条。“出口管制”是指国家为从中国出口某些物品而采取的禁止性或限制性措施，以对这些物品的使用者和用途实施管制。2021年12月29日，国务院新闻办公室发布了《中国的出口管制》白皮书，指出中国主张加强出口管制国际协调，坚决反对滥用出口管制措施和实施歧视性限制措施。商会注意到，为便于《出口管制法》的实施，商务部开通了“中国出口管制信息网”。商会鼓励实行统一且符合履行不扩散等国际义务和承诺的出口管制制度。

Moreover, it creates security concerns as these new standards will not have necessarily met the same rigorous criteria for security as other international standards and the products and services deployed under these standards will not be as widely used in the market.

Export Control Law

The *Export Control Law* (ECL) was passed at the 22nd session of the Standing Committee of the 13th National People's Congress (NPC) on October 17, 2020. The ECL, effective December 1, 2020 includes provisions with respect to export control policies, control list(s) and control measures, export control supervision and administration, and legal liabilities. It consists of 49 articles across 5 chapters. "Export Control" refers to prohibitive or restrictive measures taken by the State for the export of certain items from China, to exert control over the users and uses of such items. On December 29, 2021, The State Council Information Office published a whitepaper on China's Export Control, stating that China stands for strengthening international coordination of export control and firmly opposes the abuse of export control measures and the implementation of discriminatory restrictive measures. AmCham agrees with this. AmCham also noted that the Ministry of Commerce has launched the China Export Control Information website to facilitate the implementation of the *Export Control Law*. AmCham welcomes a unified export control regime and consistent with prevailing international practices with respect to the performance of non-proliferation and other international obligations.

The ECL, Article 48, where any country or region abuses export control measures to endanger the national security and interests of the People's Republic of China (PRC), the PRC may take reciprocal measures against that country or region commensurate with the "actual situation." While we note that the US Export Administration Regulations (EAR) also apply on an extraterritorial basis, the scope of those regulations is limited to the sale and purchase of specific types of clearly identified items (e.g., US-origin items, direct products of US-origin technology or software). In contrast, the ECL's extraterritorial provision does not specify how China will enforce the ECL overseas, and it is unclear what kinds of behavior will be formally considered to be "endangering" China's "national security and public interests." The provision could have substantial implications depending on how the ECL is enforced and threatens to create tremendous uncertainty for global companies (for further discussion of export control issues, see the *White Paper* Export Control Chapter).

Data Localization

"Data localization" generally means measures "that seek to restrict data flows in order to address national security concerns, to protect the PI of citizens, or to promote

economic growth." These misguided policies fail to recognize the nature of today's global operations and the forces of globalization, and can have serious, harmful, and unintended consequences on economies and citizens alike.

In China, a patchwork of national and sectoral laws and regulations, both in final and in draft form, imposes restrictions on local storage and data transfers. Data localization impairs economic growth by requiring redundant expenditures on local servers and data centers in multiple countries, which undermines cybersecurity efforts by introducing multiple or extra points of entry, and impedes global trade, investment, and innovation by making data less available outside its country of origin. The cumulative effect of many nations each adopting data localization regulations will be to fracture the world into separate data processing spheres, each exclusively generating and exclusively manipulating its own data, with resulting impacts on economic growth and productivity.

Article 37 of the CSL strongly restricts the ability of CIOs to transmit PI and important data overseas. The July 2019 *Draft Measures for the Security Assessment of Cross-Border Personal Information Transfers* proposed to extend this restriction to all network operators, by requiring them to conduct and pass a "security assessment" before transferring PI to offshore destinations. Additionally, several other sectors are fraught with data localization requirements. For example, addition to requirements imposed by the CSL, a 2019 China Banking and Insurance Regulatory Commission (CBIRC) order prohibits the cross-border transfer of all customer identification information and transaction information obtained in the course of performing anti-money laundering (AML) and counter-terrorism financing (CTF) obligations unless permitted by law or regulation. In practice, these regulations create a hard localization of AML-and-CTF-related customer identification information and transaction information for financial institutions (FIs) operating in China, make it impossible for multinational FIs to use their global operational model, and result in increased operational challenges for existing FIs and dramatically raise the threshold for new FIs entering the Chinese market (see the *White Paper* Banking and Capital Markets Chapter).

We recommend that China eschew data localization policies, and instead maintain its general support for the Osaka Track, which promotes the concept of free data flows on the basis of trust, while at the same time in particular cases involving categories of information which may deserve restrictions on cross-border transfer (such as national security-related information). We recommend that China narrowly define such data and have clear carve-outs for the commercial sector to avoid confusion or uncertainty that could impose unnecessary barriers to foreign investment. Furthermore, we recommend that China proactively participate in existing multilateral frameworks, such as the APEC Cross-Border Privacy Rules System and the APEC Privacy Framework, as well as contribute to regional and global forums for the

《出口管制法》第四十八条规定，“任何国家或者地区滥用出口管制措施危害中华人民共和国国家安全和利益的，中华人民共和国可以根据实际情况对该国家或者地区对等采取措施。”尽管商会注意到，美国《出口管理条例》也适用于域外，但《出口管理条例》的范围仅限于销售和购买特定类型的明确标识的项目（例如美国原产项目、美国原产技术或软件的直接产品）。相比之下，《出口管制法》的治外法权条款没有具体说明中国将如何在海外实施《出口管制法》，也未明确何种行为将被正式视为“危及”中国的“国家安全和公共利益”。该条款可能会产生重大影响，具体取决于《出口管制法》的实施方式，并可能给全球企业带来巨大的不确定性（有关出口管制问题的进一步讨论，请参见《白皮书》出口管制章节）。

个人信息保护

2021年8月20日，中国全国人民代表大会常务委员会通过了《个人信息保护法》，并于2021年11月1日施行。《个人信息保护法》是中国第一部专门针对个人数据保护的统领性法律，广泛借鉴了欧盟《通用数据保护条例》（GDPR）。该法传递出的关键信息是为中国的数据保护设定高标准，将个人同意（可撤回）作为处理数据的主要依据，对数据的跨境传输施以限制并赋予本法域外效力，并将处以高额罚款和基于营业额的罚款作为主要处罚手段。

放眼国际环境，《个人信息保护法》将使中国与GDPR所开创的数据保护合规问责机制接轨，促使个人信息处理组织采取“自上而下”的方式，实施适用于全组织的、符合数据管理实践标准的政策和程序。在对数据主体同意的管理、个人信息影响评估和数据跨境传输等方面，合规管理成本将有所增加。

由于该法的很多条文较为笼统，并且缺少必要的实施措施和细则，因此，《个人信息保护法》的出台无疑将给跨国组织机构带来重大的合规挑战。

回顾过去一年的发展，商会希望就以下议题向中国政府提出补充意见和考虑事项：

- 需要进一步明确个人信息和敏感个人信息的定义和范围。《个人信息保护法》规定，个人信息是以电子或者其他方式记录的与已识别或者可识别的自然

人有关的各种信息，不包括匿名化处理后的信息；敏感个人信息是一旦泄露或者非法使用，容易导致自然人的人格尊严受到侵害或者人身、财产安全受到危害的个人信息，包括生物识别、宗教信仰、特定身份、医疗健康、金融账户、行踪轨迹等信息，以及不满十四周岁未成年人的个人信息（非穷尽式列举）。上述定义，尤其是敏感个人信息的定义，模糊且过于宽泛。《个人信息保护法》对敏感个人信息设定了更严格的保护义务，包括但不限于取得数据主体的单独同意，采取严格的技术保护措施，进行个人信息影响评估等。如果敏感个人信息没有明确的定义和范围，则相关组织难以履行上述保护义务。

- 需要进一步明确处理数据的法律依据。在数字技术飞速发展和个人信息侵权事件频发的背景下，加强对个人信息的保护，同时促进数据利用，最大限度地发挥数字经济的潜力，是十分必要和紧迫的。因此，建立健全的个人信息收集和处理法律机制势在必行。根据《个人信息保护法》，符合下列情形之一的，个人信息处理者（类似于GDPR中数据控制者的概念）方可处理个人信息：取得同意，为履行数据主体合同所必需；在处理员工个人信息时为人力资源管理所必需；为履行法定义务所必需；为应对突发公共卫生事件所必需；合理使用公开的信息，或法律、法规规定的其他情形。然而，目前尚无关于如何在实践中适用同意豁免的进一步指引，比如以下事项尚不明确：何时可以使用合同履行豁免；用人单位是否可以出于人力资源管理的原因将员工的个人信息（包括敏感个人信息）传输到中国境外。跨国组织通常采用的方式是，配备人力资源集中管理系统来处理中国员工的个人信息。商会迫切希望中国政府能够尽快就此类实施问题进行澄清。

还需要注意的一点是，与GDPR不同，《个人信息保护法》中未规定可以“合法利益”为由在未取得相关个人同意且无法豁免同意的情况下处理个人信息。此外，在某些情形下还需要取得单独同意，比如处理敏感个人信息、向境外传输、转移给其他个人信息处理者等。目前尚无关于何为“单独同意”的进一步解释，但从字面看，其释义为非捆绑的、可撤回的同意。如果政府有意采用字面解释，则在实践中将很难收集到单独同意，因为数据处理组织需要允许数据主体选择加入或退出相关的数

development of more robust international or multilateral data exchange and protection frameworks that will benefit China as well as foreign businesses in China.

In sum, it may be tempting at present for China to adopt data localization policies that restrict flows of PI and important information from China through the CSL and its implementation framework. But given its prominence and importance to the world economy, if China were to do so, data localization may come to be accepted as a normal feature of international data protection. Other countries may adopt data localization laws of their own. By encouraging data localization at home, China would be contributing to and solidifying a trend abroad that could ultimately result in the loss of China's own access to data from other countries. The loss of access to foreign data will close off opportunities not only for the financial sector, but for China's technology sector, likely leading to negative technological and economic outcomes, including limiting Chinese technology which will function well only in China but be handicapped in other international markets.

PI Protection

On August 20, 2021, China's National People's Congress Standing Committee passed the PIPL, which took effect on November 1, 2021. Drawing extensively from the European Union's *General Data Protection Regulation* (GDPR), the PIPL is China's first comprehensive personal data protection law. The key message is that the law set a high bar for Chinese data protection, taking revocable consent as its principal basis for processing, introducing extraterritorial effect and restrictions on international data transfers and imposing significant and revenue-based fines as the principal penalty for non-compliance.

Putting the PIPL in context, the law will put China in line with the accountability-driven approach to data protection compliance pioneered under the GDPR. Organizations will be expected to take a "top down" approach and implement firm-wide policies and procedures that fix standards for data management practices. There will be a stepping up of compliance overhead in areas such as consent management, privacy impact assessments and international data transfers.

Due to the absence of implementing measures and prescribed forms of documentation that are necessary to give specificity to a number of generally worded provisions of the law, it goes without saying that the PIPL will present a significant compliance challenge for multinational organizations.

Given developments over the past year, we wish to document some additional observations and considerations on these topics for the Chinese government:

- *Further clarification on definition and scope of personal information and sensitive personal information.* Under the

PIPL, personal information refers to various types of electronic or otherwise recorded information related to identified or identifiable natural persons, excluding anonymized information; sensitive personal information refers to any information once leaked or illegally used, may easily cause harm to the dignity of natural persons or grave harm to personal or property security, including information on biometric characteristics, religious beliefs, specially-designated status, medical health, financial accounts, individual location tracking, etc., as well as the personal information of minors under the age of 14 (which is a non-exhaustive list). The definitions are vague and overbroad, particularly for sensitive personal information. The PIPL set up stricter obligations to protect sensitive personal information, including but not limited to obtaining a separate consent from data subjects, taking strict technical protection measures, and conducting a personal information impact assessment. Without a clear definition and scope of sensitive personal information, it is difficult for multinational urbanizations to comply with the said protection obligations.

- *Further clarification on legal basis for processing.* Against the background of rapid development in digital technologies and frequent infringement of PI rights, it is both necessary and urgent to strengthen the protection afforded to PI while promoting data utilization to maximize the potential of digital economy. Thus, it is imperative to develop a sound legal mechanism for collecting and processing PI. Under the PIPL, personal information handlers (a concept similar to data controllers) may process personal information based on consent, necessary for performance of contract with data subjects, necessary for human resources management when processing employees' personal information, statutory obligations, public health emergency, reasonable use of publicly available information or other conditions as specified by the law and regulations. However, there is no further guidance on how to apply the exemptions to consent in practice, for example, it is not clear when the performance of contract exemption can be used; and whether the employers can transfer employees' personal information (including sensitive personal information) outside of China based on the human resource management ground. It is common that multinational organizations have a centralized human resource management system that will process personal information of Chinese-based employees. We need the Chinese government to clarify these implementing issues as soon as possible.

It is also noted, unlike GDPR, the PIPL does not have a "legitimate interest" basis for processing personal information where consent has not been obtained and an exemption is not available. Also, separate consent is required in certain scenarios, such as processing sensitive personal data, cross-border transfer, transfer to another personal information handler. There is no further explanation on what a "separate

据处理活动。商会建议中国政府考虑作出适当的放宽或澄清，将“单独同意”的要求细化到更具操作性。

- **细化域外效力的范围。**根据《个人信息保护法》，境外实体在中国境外处理中国数据主体的个人信息，有以下情形的，也适用《个人信息保护法》：以向中国境内自然人提供产品或服务为目的，或分析境内自然人的活动。此外，这些境外实体有义务在中国境内指定一名代表并就此向相关数据保护机构作出登记。但是，“在中国提供服务或者产品”的范围尚未明确。这一模糊而宽泛的条款引起了众多境外实体的极大顾虑，例如，是否所有可被中国境内用户访问且安装了可用于收集和分析中国境内用户个人信息的 cookie 的中国境外网站，均基于该法的域外效力而受其管辖的问题。值得注意的是，《中华人民共和国网络安全法》发布的《信息安全技术——数据出境安全评估指南》草案指出，建议采用目标锁定要素，比如网站含中文、接受人民币（中国货币）付款以及向中国交付货物。商会强烈建议中国政府进一步明晰域外效力的范围，并将其缩小至合理范围，比如增加目标锁定要素。
- **目前，境内代表委任和登记程序尚未发布，中国政府将如何在实践中规范境外实体也尚不明确。**所有这些不确定性都会引起跨国组织的合规疑虑并增加其合规成本。商会迫切希望中国政府尽快就此作出澄清。
- **需要区分国家安全考虑和具体政策目标。**尽管保护国家安全对任何国家政府都至关重要，但关于国家安全的考虑可能并不总是与个人信息保护和隐私政策目标相关。中国现有多部法律处理数据和国家安全的交叉问题，包括《国家安全法》、《网络安全法》和《数据安全法》。将首要的国家安全考虑强加于个人信息管理之上，可能会使确保个人信息有序和自由流动的努力复杂化，并过度限制个人信息的使用。

人工智能与大数据

人工智能管理和多边协作

人工智能将是当前时代的变革性技术之一。计算机学习、识别复杂模式和赋予人类做出更好决策的能力日益增强，这将创造巨大的社会和经济机会。许多组织已经在使用人工智能来提高效率，解决以前难以解决的问题，

如气候变化、疾病防控和公共卫生。

在 2019 年和 2020 年《美国企业在中国白皮书》的信息通信技术章节中，商会认同新兴人工智能技术需要大量数据来“教”机器如何执行特定任务，因此大数据的增长推动了这些技术进步的看法。去年，商会建议中国的人工智能开发工作不应单独进行。商会鼓励民企、公共部门与海外同行进行合作，也鼓励中国参与目前和未来为指导人工智能开发而设立的全球论坛、会议、工作组，以及参与目前多个论坛正在酝酿中的标准制定工作。商会为人工智能系统和技术的伦理管理提出了建议。商会支持这些建议，并邀请读者重温这些章节。

多个国家和国际论坛以及多边组织都在制定管理人工智能技术伦理发展和应用的原则。2019 年 6 月举行的 G20 贸易和数字经济部长会议在会议结束时发布了一份非约束性承诺，即在人工智能发展方面采取以人为本的方式。该承诺宣讲了关于人工智能发展的以下原则：包容性增长、可持续发展与福祉、以人为本的价值观、公平、透明和可解释性、稳健性、安全与保障、问责制。有关内容还承诺促进跨境数据流，但坦承做到这点需要制定适当的法律框架，让消费者信任他们的数据被恰当使用。

在国际上达成一项在一定程度上可执行、应执行的协议，需要全球努力来整合各方都在考虑的多个原则、指导方针和框架，而这些原则、方针、框架都是围绕着为支撑未来人工智能发展应用的共识而进行的。中国作为世界第二大经济体，其企业处于人工智能全球创新的最前沿，商会敦促中国保证参与到这一全球整合工作中，以塑造全球人工智能治理原则、标准和价值观的发展，并确保其国内理解与国际发展一致。其中一个机会是国际标准化组织的 ISO/IEC JTC1 SC42（人工智能分委会），该分委会致力于人工智能领域的标准化。商会建议中国优先采用国际标准作为其人工智能治理工具包的一部分，并在人工智能技术开发方面进行合规性评估，而不是创建自己的新的和不必要的标准及法规。

数据共享

数据在帮助理解模式、识别趋势和应对主要挑战方面非常有价值。事实上，人工智能的最新进展是由深度学习的发展驱动的。而这些深度学习模型系使用大量数据进行训练。因此，大量可用数据是人工智能的关键信息。

consent” is, although the obvious interpretation is an unbundled, revocable consent. If the plain wording approach is intended by the authorities, then it will be very difficult to collect separate consent in practice, as organizations would need to allow data subjects to opt in or opt out of the relevant processing activities. We suggest that the Chinese government should consider some official relaxation or clarification that reduces the “separate consent” requirement to something more practical.

- *Refining the scope of Extraterritorial Effect.* According to the PIPL, if an offshore entity processes the personal information of China-based data subjects outside of China in order to provide products or services to individuals in China, or analyze the activities of individuals in China, the PIPL shall apply to the offshore entity. Furthermore, these offshore entities are obligated to appoint a representative located within China and register same with the relevant data protection authority. However, the scope of “providing services or products in China” has not been specified yet. This vague and broad clause caused a significant concern to many overseas entities, e.g., whether all websites outside of China accessible to Chinese-based users and have a cookie to collect and analyze personal information of Chinese -based users will be covered by this extraterritorial effect. It is noted that the draft *Information Security Technology- Guidelines for Data Cross-Border Transfer Security Assessment* issued under the CSL suggests an element of targeting will apply, such as Chinese language on websites, accepting RMB as payment and delivering goods to China. We strongly suggest Chinese government should further clarify the scope of the extra-territory effect and narrow it down to a reasonable extent e.g., adding targeting elements.

At present, the procedures for setting up appointments with local representatives and initiating a registration have not yet been published, and it is not clear how Chinese authorities will regulate foreign entities in practice. All these uncertainties caused the compliance concerns and increase potential costs for multinational organizations. We should urge Chinese government to make clarification as soon as possible.

- *Need for a Distinction between National Security Considerations and Specific Policy Objectives.* While protecting national security is of utmost importance to any national government, considerations regarding national security may not always be relevant to PI protection and privacy policy objectives. There are several existing laws in China that address the intersection of data and national security, including the *National Security Law*, the CSL and the DSL. Imposing overarching national security considerations on top of PI governance may complicate efforts to ensure the orderly and free flow of PI and overly limit the use of PI.

Artificial Intelligence and Big Data

AI Governance and Multilateral Collaboration

Artificial Intelligence (AI) will be one of the transformational technologies of our time. The increasing ability of computers to learn, identify complex patterns and empower humans to make better decisions will create huge social and economic opportunities. Already, organizations are using AI to become more efficient and to tackle previously intractable problems like climate change, disease, and public health.

In the 2019 and 2020 *White Paper* ICT chapters we acknowledged that emerging AI technologies require vast amounts of data to “teach” machines how to perform specific tasks, and that the growth of Big Data has therefore fed into recent improvements in such technologies. Last year, we recommended that China not isolate its AI development efforts. We encouraged both private and public sector entities to collaborate with their overseas counterparts, and that China participate in global forums, conferences, and working groups established now and in the future to guide AI development and. We also encouraged China to participate in the development of standards currently under consideration in multiple forums. We proposed recommendations for the ethical governance of AI systems and technologies. We stand by those recommendations and invite readers to revisit those chapters.

Multiple countries, international forums, and multilateral organizations are in the process of developing principles to govern the ethical development and application of AI technologies. For instance, the G20 meeting of Trade Ministers and Digital Economy Ministers in June 2019 released a non-binding commitment to a human-centered approach to AI development at the conclusion of the meeting. The public readout enshrined a commitment to the following principles with respect to AI development: inclusive growth, sustainable development and well-being, human-centered values, fairness, transparency and explainability, robustness, safety and security, and accountability. The readout also included a commitment to promoting the cross-border flow of data but acknowledged that doing so requires the development of appropriate legal frameworks which ensure that consumers can trust that their data is being used appropriately.

Achieving a degree of agreement internationally on which principles can and should be implemented requires a global effort to consolidate the many principles, guidelines, and frameworks under consideration around a common understanding that will underpin future AI development and application. We urge China, as the second largest economy in the world and whose companies are at the forefront of AI global innovation, to ensure that it participates in this global consolidation effort to shape the development of global AI governance principles, standards, and values, and ensure that its own domestic understanding aligns with that being

已在整个新冠肺炎疫情过程中得到证明的是，各国政府正在开放和共享关于感染率和传播模式的数据，以促进公私合作制定有效的应对措施。各方（包括私营部门）利用公开数据构建复杂的工具来跟踪和分析新冠肺炎病毒的全球趋势，并扩大人类对其行为的了解。

商会支持在政府主导下公布公共部门的研究数据，并以现代和可用的格式公布的行动。在这方面，商会就应该强调这些行动的原则和操作概念提出了几项建议：

- **知识产权**：商会支持平衡的知识产权；这些法律包含用于机器学习和人工智能的数据使用和分析的严格例外，并认为没有必要为数据创建新形式的知识产权保护来代替有效的合同条款和访问控制。
- **治理和合同**：商会支持鼓励广泛采用开放数据使用协议和其他许可机制的政策，以明确用户访问和分析数据的能力，并支持制定由行业或政府创建的数据共享治理框架。例如，政府可以在公开或非常宽泛的条件下提供公共资助研究的数据。
- **特定数据倡议**：商会支持建立共同的区域和安全“数据空间”行动；这种数据空间鼓励在具体部门内部进行更广泛的数据共享和协作，并鼓励更广泛的反映具体部门需求的数据共享和协作，以及支持促进跨部门共享的类似框架及公私数据协作倡议。
- **标准**：商会支持标准化工作；标准化工作通过正式的标准组织或非正式的行业工作，如开源项目，使发布、共享、组合和协作数据变得更加容易。商会建议跨国公司与其国内同行有平等的机会参与标准制定过程。
- **技术中立性**：为了充分利用先进技术，商会建议所有产品和服务向用户（公共部门、私人、学术或其他）开放，无论其所有权、平台、操作系统或使用的移动设备。
- **隐私 / 数据保护**：开放数据和更好的数据协作应该重申而不是破坏现有的隐私法律和法规。

建 议

对中国政府：

- 需要对《网络安全法》的内容加以说明。商会敦促政府使用狭义的概念和定义，内容不超出国家安全的基本和合理定义。尤其是：
 - 《网络安全法》的任何实施条例都不应超出法律原文范围。商会敦促监管机构在网络安全等级保护制度框架下考虑放宽当前的强制性要求，因为这是世界上对私营领域网络安全干扰程度最高的框架之一。
 - 应当阐明关键信息基础设施的定义，这一概念应仅适用于特定且类别相对狭窄的信息基础设施。应当区分信息基础设施运营商和网络运营商，并在整个监管环境中保持一致，尤其是因为《网络安全法》对两类运营商有不同的适用条例。
 - 网络产品和服务的网络安全审查不应模糊合法的安全顾虑和因来源国或股东国籍而对某些技术做出不合理歧视之间的区别。企业需要清晰透明的标准来衡量自身的守法能力。
 - 大多数国家都不会对大众消费品的加密功能的进口和国内使用作出规定。政府不应监管商业应用、产品或服务中加密功能的进口或国内使用，包括大众消费品。国际标准密码算法应被允许以与中国国家密码算法相同的方式使用，不得以任何方式强制或鼓励外资企业使用国内加密算法。
 - 在网络安全监督检查中删除侵入性系统扫描和渗透性检测，并认可公司主导的检测结果。
- 中国应向外资企业开放云计算服务业务，增强中国云计算服务的行业竞争力，使其与全球公认的新兴标准和实践协同发展。中国应遵守《中欧全面投资协定》中规定的原则，即增值税相关许可不适用于如金融、物流或

developed internationally. One such opportunity lies with the International Standardization Organization's ISO/IEC JTC1 SC42, which addresses standardization in the area of Artificial Intelligence. We recommend that China prioritize adoption of international standards as part of its AI governance toolkit and in conformity assessments with respect to development of AI technologies, rather than creating its own new standards and regulations.

Data Sharing

Data is hugely valuable in helping to understand patterns, identify trends, and address major challenges. Indeed, recent advancements in AI have been driven by developments in deep learning. These deep learning models are trained using large amounts of data. Large volumes of usable data are therefore critical input for AI.

This has been demonstrated throughout the COVID-19 pandemic. Governments around the world are opening and sharing data on infection rates and transmission patterns to foster development of effective responses and public-private collaboration. Publicly available data has been used by a variety of actors including the private sector to construct sophisticated tools to track and analyze global trends with respect to the COVID-19 pandemic virus and expand our understanding of its behavior.

We support government-led efforts to publish public sector data for research and to do so in modern and usable formats. In that regard, we have several recommendations regarding principles and operating concepts that should underscore such efforts:

- **Intellectual property:** We support balanced IP laws that contain robust exceptions for the use and analysis of data for machine learning and artificial intelligence and believe efforts to create new forms of IP protection for data are unnecessary in place of effective contract terms and access controls.
- **Governance and contracting:** We support policy that encourages the widespread adoption of open-data use agreements and other licensing mechanisms to clarify the ability of users to access and analyze data, and the development of governance frameworks for data sharing created by industry or governments. For instance, governments can make the data from publicly funded research available under open or very broad terms.
- **Data-specific initiatives:** We are supportive of efforts to create common and secure "data spaces" that encourage greater data sharing and collaboration within and reflecting the needs of specific sectors, as well as similar frameworks and public-private data collaboration initiatives to enable such sharing across sectors.
- **Standards:** We support standardization efforts that make it easier to publish, share, combine and collab-

orate around data, either through formal standards organizations or informal industry efforts like open-source projects. We recommend multinational companies have equal opportunity alongside their domestic counterparts to participate in the standards formulation process.

- **Technology neutrality:** To make the best use of advanced technologies, we recommend that all products and services be available to users (public sector, private, academic or others), regardless of the ownership, platform, operating system, or mobile device used.
- **Privacy/Data protection:** Open data and better data collaboration should reaffirm and not undermine existing privacy laws and regulations.

Recommendations

For the Chinese Government

- Elements of the CSL need to be defined and clarified. We urge the government to maintain narrowly defined concepts and definitions that do not go beyond fundamental and reasonable definitions of national security. In particular:
 - None of the implementing regulations for the CSL should go beyond the scope of the CSL as stated within its original text. We urge regulators to consider relaxing current mandatory requirements under the MLPS framework as they are among the most intrusive in the world for private sector cybersecurity frameworks.
 - The definition of CII should be clarified and made applicable only to a specific and relatively narrow category of information infrastructure. The distinction between CIIOs and network operators should be clarified and remain consistent across the regulatory environment, particularly because the CSL provides different regulations for both sets of operators.
 - The cybersecurity review for network products and services should not blur the distinction between legitimate security concerns and unreasonable discrimination against certain technologies on the basis of their country of origin or nationality of their shareholders. Clear standards and transparent criteria are needed for companies to measure their ability to comply with regulatory requirements.
 - Most countries do not regulate the importation and domestic use of cryptographic features for mass-market consumer in products. The government should not regulate the importation or domestic use of cryptographic features in

医疗（如果在网上提供）在内的有关服务。

- 确保公共采购法的解释与适用效力相一致。特别是在信息通信技术领域，商会建议中国政府以书面形式明确“安全可控”的标准，或解释其他产品的安全性和可靠性标准并不是要以牺牲外国产品和服务为代价来推广本国产品和服务。相反，“安全可控”的标准仅适用于透明、狭义的国家机密和国家安全。采购标准应侧重于产品性能和可靠性、生命周期成本、环境可持续性和节能等标准。
- 中国应当尽力避免“数据本地化”政策，或尽可能将其限制在较小的适用范围内，并遵循透明客观的程序予以实施。同时，中国应积极参与现有的多边框架，如“大阪数字经济宣言”和《亚太经合组织跨境隐私规则体系》和《亚太经合组织隐私框架》等。
- 中国应避免孤立自身的人工智能技术发展。鉴于中国的经济地位，商会敦促中国通过多边参与制定全球人工智能伦理体系、标准和最佳实践，成为与其经济状况相称的世界人工智能领域的带头人，为支持市场良性竞争而发展应用人工智能树立责任底线。此外，各国政府（包括中国政府）应以现代、可用的格式，发布可用于广泛的研究目的和寻求经济机会的公共部门数据。

对美国政府：

- 在国际论坛上促进与中国机构的合作，制定人工智能伦理应用框架和标准，鼓励中国采用国际标准和国际伦理框架。
- 继续推广《亚太经合组织跨境隐私规则体系》和《亚太经合组织隐私框架》，在应用中将二者设为整个亚太经合组织地区的共识标准。
- 继续对接中国政府相关部门，探讨由于《网络安全法》当前提出的跨境数据传输框架对网络运营商带来的负面影响，及其对中国数字经济发展的负面影响。

commercial applications, products, or services, including in mass-market consumer products. International standard cryptographic algorithms should be permitted to be used in the same fashion as China's national cryptographic algorithms. Use of domestic cryptographic algorithms should not be forced or encouraged on FIEs in any way.

- Remove intrusive system scanning and pen-testing in cybersecurity inspection and recognize company-led testing results.
- 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. China should adhere to the principles outlined in the *EU-China Comprehensive Agreement on Investment* such that VATs-related licenses will not be applied to other services such as financial, logistics, or medical if offered online.
- Ensure consistency in the application and interpretation of public procurement laws. In particular with respect to the ICT sector, we recommend that the government clarify in writing that “secure and controllable” criteria or other product safety and reliability standards are not an attempt to promote domestic products and services at the expense of foreign ones. Instead, “secure and controllable” criteria only apply to a set of transparent and narrowly defined state secrets and national security. Procurement purchasing standards should instead focus on criteria like product performance and reliability, life cycle costs, environmental sustainability and energy conservation.
- To the maximum extent feasible, China should eschew “data localization” policies, or implement them only within a narrow scope of application and subject to transparent and objective procedures. At the same time, China should proactively participate in existing multilateral frameworks, such as the Osaka Track, the APEC Cross-Border Privacy Rules System and the APEC Privacy Framework.
- 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 governance, ethics, standards, and best practices to establish a floor of responsibility for the development and use of AI that supports market competition in a healthy manner. Additionally, governments, including China, should publish public sector data in modern, useable formats that can be used for broad research purposes and in pursuit of economic opportunity.

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 of international standards and ethical frameworks in China.
- 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 result from the cross-border data transfer framework currently proposed under the CSL as well as the negative implications for the development of China's digital economy.

Insurance

Introduction

China Daily reported that the Insurance Industry is expected to grow by 7.6 percent in 2022. Although such forecast growth would be faster than in many other markets, it fails to reach pre-pandemic performance after the 2020 Motor Vehicle Insurance Reform and the ongoing regulatory uncertainty sparked by a wave of cybersecurity and personal information regulations throughout 2021.

In 2019, AmCham China members welcomed several long-awaited reforms to the insurance industry in China including in particular the China Banking and Insurance Regulatory Commission (CBIRC) *Rules on Implementation of the Administrative Regulations of the People's Republic of China on Foreign-Invested Insurance Companies (CBIRC Order 2019 No. 4, November 29, 2019)* and subsequent clarifications of commitments made in the Phase One Agreement between the United States and China to ease market access for foreign-invested insurance companies in the interest of creating a level playing field and instituting competitive neutrality between domestically-invested and foreign-invested insurance companies. As a result, in March 2021, the CBIRC has further revised the *Rules* in to fulfill China's commitment made in the Phase One Trade Agreement.

However, some reforms apparently promulgated for prudential purposes unfortunately appear likely to have an adverse impact on foreign investment. The revised *Rules on Implementation of the Administrative Regulations of the People's Republic of China on Foreign-Invested Insurance Companies* would impose a five-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 commonly recognized 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.

As most foreign-invested insurance companies are rela-

tively small, AmCham China urges CBIRC to limit the imposition of overly burdensome supervisory requirements on smaller insurance companies lest such requirements, which may be appropriate for large insurance companies, inadvertently stifle competition. AmCham China also urges CBIRC to clearly declare that foreign-invested insurance companies may submit any application directly to its substantive department (Personal Insurance, Property Insurance, or Reinsurance) rather than first through the International Cooperation and Foreign-Invested Organizations Supervision Department to avoid unnecessary and discriminatory processing delay.

As China honors its commitments to lift the foreign equity cap in personal insurance and provide equal treatment to foreign-invested and domestically invested insurers, reinsurers, insurance intermediaries and insurance asset management companies, AmCham China members are confident that they will be able to bring even more high-quality products and services to Chinese customers and deploy their expertise to grow the insurance industry in China.

Ongoing Regulatory Issues

Barriers to Market Entry and Expansion

Regulatory and Compliance Costs

Our members welcome the territorial regulatory reform of CBIRC that aims to further promote devolution of regulatory responsibility and streamline administration. However, since the reform, AmCham China members have noticed that local regulations issued by provincial-level CBIRC bureaus may impose different requirements for the same matter, which increases the cost of compliance and the operating burden of companies which is in conflict with the purpose of the reform. We suggest that CBIRC coordinate the implementation of laws, administrative regulations and rules by its subordinate bureaus in order to maintain consistency in administrative management with respect to business operations and regulatory principles. This will reduce the unnecessary difficulties that face insurance companies when expanding into and operating in different regions due to inconsistent local regulatory requirements.

保 险

引 言

到 2022 年底，中国保险业整体增长率预计将达到 7.6%。虽然保险业表现优于许多其他市场预期，但由于汽车保险投保率降低，加之 2021 年网络安全和个人信息相关法规浪潮所引发的监管不确定性，导致 2022 年保险业仍未恢复到新冠肺炎疫情爆发前的水平。

2019 年，中国在保险领域启动了几项令人期待已久的改革，中国美国商会（以下简称商会）对此深表欢迎。改革举措包括：中国银保监会发布修订后的《中华人民共和国外资保险公司管理条例实施细则》（中国银行保险监督管理委员会令 2019 年 第 4 号），随后澄清了中美第一阶段经贸协议中做出的有关承诺，放宽外资保险企业准入限制，创造公平的竞争环境，并在中资保险公司和外资保险公司之间建立竞争中立。

然而遗憾的是，一些显然出于审慎目的而颁布的改革措施似乎可能适得其反。《中华人民共和国外资保险公司管理条例实施细则（2021 修正）》规定：外资保险公司主要股东应当承诺自取得股权之日起 5 年内不转让所持有的股权，外资保险公司主要股东拟减持股权或者退出中国市场的，应补充保险公司的资金。此类要求与其他主要保险市场的常规监管标准出入较大，会对外资股东和外资保险公司造成歧视性负担，并阻碍股权转移给资本状况更佳、更有能力加强保险公司资本基础的投资人，从而给保险业的资本交易带来沉重负担。

鉴于大部分外资保险公司规模相对较小，商会建议银保监会尽量避免对小保险公司施加过于繁重的监管要求——此类要求可能适用于大型保险公司，但对规模较小的企业来说，此类要求既增加了其负担，也不利于其竞争。商会还建议银保监会明确，外资保险公司可直接向其主要业务部门（人身保险、财产保险或再保险）而

非先通过国际合作和外资机构监管部门提交申请，避免不必要的风险以及因歧视导致的处理延迟。

随着中国履行其承诺，提高个人保险外资股本上限，并为外资和内资保险公司、再保险公司、保险中介机构和保险资产管理公司提供平等待遇，商会会员企业对未来充满信心，能够为中国客户带来更多高质量的产品和服务，并利用其专业知识推动中国保险业的进一步发展。

现行监管问题

市场准入和拓展挑战

监管和合规成本

商会会员企业称赞中国银保监会进一步推动简政放权，并开展属地监管改革。但是，自改革推行以来，商会会员企业注意到，省级银保监局发布的地方法规往往针对同一事项提出不同要求，各行其是，进而增加了合规成本、加重企业运营负担，与改革的初衷背道而驰。商会建议银保监会统筹实施各地方局发布的法律法规及相关规则，保持企业运营和地方监管原则行政管理的一致性。这有利于减少保险公司在不同地区业务拓展时因地方监管法规要求不同而面临的不必要的困难。

网络安全相关挑战

商会会员企业理解，中国监管机构在管理新技术及应对网络安全问题所面临挑战，但商会发现相关法规导致成本高昂，构成了事实上的贸易壁垒。《网络安全法》及之后的网络和信息相关立法对跨境数据传输限制过于宽泛，对需要将数据全球共享的中外企业均造成了障碍。

关于《个人信息保护法》和《数据出境安全评估办法（草案）》中的部分要求，商会会员企业认为如果跨境数据传输的安全评估以一定时期内实际向中国境

Cybersecurity Challenges

Although AmCham China members understand the challenges Chinese regulators face in managing new technologies and addressing cybersecurity concerns, AmCham China believes that regulations which impose excessive costs constitute de facto trade barriers. The *Cybersecurity Law (President Order No. 53, effective June 1, 2017)* and subsequent cyber and data legislations set overly broad restrictions on cross-border data flows, which create barriers for both Chinese and foreign companies operating in industries where data needs to be shared internationally.

Concerning the *Personal Information Protection Law (President Order No. 91, effective November 1, 2021)* (PIPL) and the Draft Measures of Security Assessment Measures for Cross-Border Data Transfer (issued on October 29, 2021), members believe that it makes more sense if security assessments for cross-border data transfers are based on the amount of personal information actually being transferred outside China in a specific period rather than based on the size of the data user's business. We recommend that the methods for calculation of the amount of data be specified. We also believe that there should be some generally accepted transfers that can either be fast tracked or excepted, e.g., transfers of employee data to foreign JV partners or parent companies. Otherwise, it will be incredibly burdensome for both companies and the Cyberspace Administration of China (CAC) to manage. We also recommend that in such cases, it may be more appropriate to waive the assessment requirement instead of requiring an annual filing.

And common practices where remote access by overseas shareholder home offices is needed to provide critical support (e.g., remote access to Official Work System for Anti-Money Laundering (AML) purposes) or to reduce key risks (such as AML, fraud, etc.) should be clarified and also be excluded from the Draft Measures. Also, we would suggest that the Risk Self-Assessment requirement be simplified or exempted for data transfers that do not contain important data or personal information. We also request further clarification and guidance on required materials needed for cross-border data transfer be released by the authority.

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 (issued on October 9, 2015)* (the *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 in the procurement of IT

hardware and software.

The *Draft Informatization Regulations* and the *Cybersecurity Review Measures* threaten to adversely impact foreign-invested insurers in particular by narrowing their procurement options for China operations. Unless they are revised, these regulations threaten to increase costs and create interoperability problems with non-China operations, ultimately reducing security and raising the cost of insurance products and services for Chinese customers. Data localization requirements specified in the *Draft Informatization Regulations* would also impose substantial anti-competitive effects on foreign-invested insurers. AmCham China urges that the definition of "secure and controllable" be clarified to ensure that insurers retain discretion to decide among different vendors and technology providers on the basis of the security and reliability of IT systems, not on national origin. For more information, please refer to the *White Paper ICT* Chapter.

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 (CIRC Fa [2017] No. 67, effective September 18, 2017)*, officially launching Phase II of the project, and planning to complete implementation within three years. However detailed regulations and guidelines have yet to be released as of this writing. 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 the case according to 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 (IAIS) rather than "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 CBIRC concerning specific C-ROSS provisions for responses in written public statements. Publicly available written CBIRC interpretations would mitigate the risk of inconsistency in policy implementation.

Voice call and SMS service

The *Draft Administrative Regulations for Short Message Services and Voice Call Services (issued on August 31, 2020)* were

外传输的个人信息量为依据，而不是以数据使用者的业务规模为依据，则更为合理。商会建议明确计算数据量的计算方法。商会建议，一些为公众广泛接受的数据传输，如将员工相关信息传输到外国合资公司合作伙伴或母公司应可以开放快捷通道，或者成为例外的特殊情况。否则，无论是对企业还是监管者来说，管理信息的工作量都会超出想象的繁重。商会还建议在这种情况下，不再实施安全评估，采用年度报备的方法取而代之反而会更加合适。应对境外股东总部需要远程访问来提供关键支持（如为反洗钱而远程访问官方工作系统）、或降低关键风险（如《反垄断法》、欺诈等）的常见做法予以澄清，并排除在草案之外。同时，商会还建议简化风险自我评估的要求，或对不含重要数据或个人信息的数据传输予以豁免。我们要求相关部门进一步明确跨境数据传输所需材料并给予指导。

银保监会《保险机构信息化监管规定（草案）》

自2015年10月颁布《保险机构信息化监管规定（草案）》，并在2016年4月向世贸组织通报了修订版以来，银保监会正就规范保险机构信息系统的制定新规。条例草案要求保险公司在采购信息技术硬件、软件时，优先考虑“安全可控”的产品。

条例草案和《网络产品和服务安全审查办法（暂行）》可能会对外资保险公司产生不利影响，特别是缩减了其在华业务的采购选择。除非对相关规定重新进行修订，否则可能会增加成本，并造成与中国境外经营业务之间有效协作的问题，最终降低安全性，并提高中国客户的保险产品和服务成本。条例草案中有关数据本地化要求的规定也将对外资保险公司产生重大反竞争影响。商会要求澄清“安全可控”的定义，便于确保保险公司保留裁量权，在不同供应商和技术供应商之间基于系统的安全性和可靠性而非基于原产国做出采购决策。有关更多信息，请参阅白皮书信息技术章节。

偿二代

2016年，中国保监会（现同银监会合并为银保监会）开始正式实施中国风险导向偿付的能力体系——中国第二代偿付能力监管制度（下称“偿二代”），并通过各地保监部门对保险公司偿二代合规情况进行检查。2017年9月18日，中国保监会发布《偿二代二期工程建设方案》，正式启动二期工程。保监会原计划在三年内完成实施。

然而，详细法规和指导尚未公布。鉴于偿二代的长远性和复杂性，保监会需要确保各地保监部门及行政人员对规则做出一致解读。然而，会员公司反馈，对规则解读不一的情况也曾出现。透明、一致的规则解读对于保险公司迅速、恰当遵守偿二代至关重要。

尽管如此，规则的执行需要坚持原则导向，符合国际保险监督官协会制定的保险监管核心原则，不应一刀切。因各家保险公司的规模、复杂程度、业务性质和所提供产品各不相同，偿二代的实施应当考虑公司业务特性。为推进偿二代顺利统一实施，商会希望能有一个正式程序，保险公司可以就具体的偿二代规定向银保监会提交书面咨询，后者以书面公开说明作为答复。银保监会公开发表的书面解释能降低政策实施不一致的风险。

语音通话和短信服务

工业和信息化部（工信部）于2020年8月公布《通信短信息和语音呼叫服务管理规定（征求意见稿）》并向社会征求意见。征求意见稿规定，未经用户明确同意，不得向其发送商业性短信或拨打商业性电话。征求意见稿同时保护用户免受非法获取联系信息后的电话营销，商会对此表示欢迎。工信部表示，征求意见稿同时旨在推动短信和语音呼叫服务的高质量发展。因此，商会建议工信部将获得许可的保险公司和其他金融机构运营的呼叫中心与电话营销公司的呼叫中心区分开来，因为保险公司运营的呼叫中心已获许可，并要接受工信部或其他地方保监部门的年检。征求意见稿应明确定义“明确同意”，并说明如何获取，以便企业满足合规要求。商会还建议工信部举行与行业代表的系列会议，收集关于征求意见稿的反馈，以更好了解其中规定对行业运营的影响。

人寿保险

恶意投诉

“恶意投诉”指某些人或者组织引导客户通过登记投诉获取人寿保单“全额退保”，以换取客户佣金或者使客户通过指定代理购买保单的做法。新冠肺炎疫情爆发导致此类做法激增。自2019年以来，银保监会及其地方部门已发布防范“恶意投诉全额退保代理”骗局风险提示，该骗局可能导致人寿保单持有人失去该保单所保护的原始利益、保费率上升、等待期需要重新计算，或者在持有人试图回购时被拒绝申请。商会对银保监会

published for comment by the Ministry of Industry and Information Technology (MIIT) in August 2020. The Draft Regulations prohibit the provision of commercial services via SMS or telephone in the absence of explicit agreement with the customer. AmCham China welcomes provisions that protect customers from telemarketing tactics employed when a customer's contact information has been illegally obtained. According to MIIT, the Draft Regulations also aim to promote the high-quality development of SMS and voice call services. Therefore, AmCham China recommends that MIIT differentiate call centers run by licensed insurance companies and other financial institutions from centers employed by telemarketers, given that call centers operated by insurance providers are licensed and subject to annual inspection by MIIT or its local bureau. We also recommend that any restrictions on SMS and voice call services exclude those services provided by insurance companies to their own customers to ensure product quality and continuity of service. The Draft Regulation should specify what constitutes explicit consent and how it can be obtained in order for industry to meet compliance expectations. AmCham China also recommends that MIIT arrange a series of meetings with industry representatives to collect feedback on the Draft Regulations and to better understand their impact on industry operations.

Life Insurance

Malicious complaints

A "malicious complaint" refers to the practice whereby certain people or organizations guide customers to obtain "full surrender" of their life insurance policies by registering complaints in exchange for a commission or purchase of insurance policies through designated agents. The COVID-19 outbreak led to a spike in such practices. Since 2019, CBIRC and its local bureaus have issued public warnings about the risk of "full surrender through complaints by a proxy", which can result in the life insurance policyholder losing the original benefits protected under that policy, an increase in premium rates, a recalculation of the waiting period, or rejection of the application rejected when the holder seeks to repurchase. AmCham China appreciates CBIRC's effort to investigate these extortive practices. We recommend cooperation with law enforcement departments to implement punitive measures to guard against such practices to ensure a fair environment for the high-quality development of China's insurance industry.

Foreign currency denominated policies (FCDPs)

Foreign currency denominated policies (FCDPs) offer customers the protection and wealth management benefits of traditional life insurance coupled with additional foreign exchange risk management. These features serve to offer alternative foreign exchange investment products to residents. FCDPs are an important category of insurance

policies on the international market. However, FCDPs with a term of more than one year are not permitted to be sold on the Chinese market due to foreign exchange control policy restrictions. Such restrictions on the provision of FCDPs have a disproportionately adverse impact on foreign-invested insurers which have accumulated significant experience with FCDPs on the international market. These restrictions may also induce some people to evade foreign exchange controls to purchase some products in Hong Kong or elsewhere, a practice which can be better controlled if FCDPs are offered on China's domestic market. AmCham China urges the Chinese government to conduct a pilot sale of long-term FCDPs in Free Trade Zones as a product innovation in China's insurance market to provide more options to satisfy the financial needs of Chinese households rather than only ease foreign exchange controls to allow purchase of such products in Hong Kong.

Administration of Capital Guarantee Funds of Insurance Companies

AmCham China urges CBIRC to clarify the qualifications for banks holding capital guarantee funds, including the scope of violations subject to major penalties. The *Measures for the Administration of Capital Guarantee Funds of Insurance Funds* (CIRC Fa [2015] No. 37, effective April 3, 2015) require that the depositary bank not have incurred a major penalty in the past two 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. Capital guarantee funds at present can only be deposited in domestically-invested banks which is inconsistent with China's commitment to treat foreign-invested and domestically-invested financial institutions on a level playing-field.

Pension Insurance and Retirement Savings

The latest census in China shows that among China's total population of 1.4118 billion in 2020 there are 191 million people aged 65 and over, which is 13.5 percent of the total population. China's population aged 65 and over is forecast to increase to nearly 370 million by the middle of the century, which will be roughly 30 percent of the total population. In the coming three decades China will be experiencing one of the fastest aging rates in the world, turning China from an aging society into an aged society (with over 14 percent aged 65 and above) and then a super-aged society (with over 20 percent aged 65 and above) based on OECD standards.

The sheer size of the elderly population and rapidity of aging justify the urgency of actively dealing with the challenge of aging in China that became a national strategy after

调查这些勒索行为的努力表示感谢。商会建议与执法部门合作，实施惩罚措施，防范此类骗局，为中国保险业的高质量发展营造公平的环境。

外币保单 (FCDPs)

外币保单为客户提供传统人寿保险的财产保护和财富管理优势，以及外汇风险管理的附加优势。这些功能为消费者提供了替代性的外汇投资产品。外币保单是国际市场上的一类重要保单。但是，期限超过一年的外币保单不允许在中国市场上出售。这些限制对在国际市场上积累了丰富的外币保单经验的外资保险公司产生了严重的不利影响，而且还可能诱导部分消费者逃避外汇管制，在香港或其他地方购买某些产品，而假如中国内地市场提供外币保单，则可以更好地管制这种做法。商会敦促中国政府允许出售长期外币保单，作为中国保险市场上的一种补充产品，以更好地满足中国家庭的金融需求，而非仅仅放宽外汇管制，允许在香港购买此类产品。

保险公司资本保证金的管理

商会敦促银保监会明确银行持有资本保证金的资格，包括重大违法违规范围。《保险公司资本保证金管理办法》规定存放银行要在过去三年内无重大违法违规记录，但并未明确定义何为“重大违法违规”。近年来，许多银行因违反监管规定而受到处罚，对银行的监管随之越发严格，这使得保险公司很难确定一家银行是否符合成为存放银行的要求。同时，商会建议将符合相同条件的外资银行纳入资本保证金存放银行的范围，增加满足资格的银行数量。目前，资本保证金只能存入内资银行，这与中国保证公平对待外资和内资金融机构的承诺相悖。

养老保险和退休储蓄

中国最新人口普查显示，2020年中国总人口14.118亿，其中65岁及以上人口1.91亿，占总人口的13.5%。到本世纪中叶，中国65岁及以上人口预计将增至近3.7亿，约占总人口的30%。在未来30年，中国将成为经历世界上老龄化最快的国家之一。根据经合组织的标准，中国将从老龄化社会转变为深度老龄化社会（65岁及以上人口占14%以上），然后转变为超级老龄化社会（65岁及以上人口占20%以上）。

中国老年人口呈现数量庞大、比例快速增长的态势，积极应对老龄化挑战已成为当务之急。2020年10月中共十九届五中全会召开后，积极应对老龄化成为国家战略。2021年发布的十四五规划对此提出一些重要目标：**①**健全多层次社会保障体系，**②**基本养老保险参保率提高到95%，**③**提高企业年金覆盖率，**④**发展第三支柱养老保险。商会对上述政策举措和进展表示赞赏。

商会注意到2021年自愿个人退休账户改革未取得重大进展。除了2018年5月起在上海市、福建省和苏州工业园区实施个人税收递延型养老保险试点之外，银保监会还于2021年6月还在浙江省（含宁波市）、重庆市启动了试点专属商业养老保险，提供养老保险产品。商会建议总结上述试点的经验，并将范围扩大到中国其他地区和其他金融产品，同时尽快颁布实施中国个人退休账户的国家政策。商会认为，对于个人而言，能够为自愿、且有税收激励的退休储蓄账户提供多种保险和投资产品至关重要。产品种类繁多可鼓励个人为自己的退休生活增加储蓄。

商会建议监管机构继续吸收其他全球市场的经验教训，借鉴其最佳做法，进一步促进养老金储蓄的增长。这些措施包括：自动加入职工养老保险、使用生命周期基金作为默认的投资选择，以及除了在香港外，允许其他海外投资来实现风险投资组合多元化。

商会指出，企业年金(EAs)和职业年金(OAs)的管理许可仍然受到严格限制。商会持续倡导许可流程应清晰透明，平等对待外商投资企业与内资企业；同时建议政府按照此前承诺，允许外资公司投资养老管理公司，使具有多年经验和丰富专业知识的全球养老服务供应商能够惠及中国市场。

财产保险

中国保险业市场主体呈多元化。内资保险公司与外资保险公司的股权结构、规模、产品和分销渠道截然不同。当前的监管结构并未区分保险公司，所有保险公司都适用相同的监管要求。对于市场份额合计不到2%的一般外资保险公司来说，这不仅增加了不必要的合规负担，还不利于其发展。因此，商会建议银保监会发布监管规则和指南，根据财产险公司和意外险公司的全球规模和经验对保险公司进行更精确区分，以促进竞争和市场增长。

the fifth plenary session of the 19th Central Committee of the Communist Party of China in October 2020. The 14th Five-Year Plan (2021-2025) promulgated in 2021 included important targets which include ❶ enhancing the multi-pillar social security system, ❷ increasing basic pension coverage to 95 percent, ❸ expanding the coverage of enterprise annuities, and ❹ developing Pillar 3 pension products. AmCham commends these positive policy initiatives and progress.

AmCham China observed no major progress on voluntary individual retirement account reform in 2021. In addition to the tax-deferred individual pension pilot program launched in May 2018 in Shanghai, Fujian Province, and Suzhou Industrial Park, CBIRC launched the pilot exclusive commercial pension insurance program in Zhejiang Province (including Ningbo) and Chongqing in June 2021 to offer pension insurance products. AmCham China welcomes the decision that these pilots have been further extended to other parts of the country. We recommend that national policies for Chinese individual retirement accounts (IRAs) be promulgated and implemented as soon as possible. AmCham China believes that it is critical for individuals to have access to a wide choice of insurance and investment products for voluntary, tax-incentivized retirement saving accounts. A greater variety of products will encourage individuals to save more for their own retirement and ease the financial burden on government to support the elderly.

AmCham China recommends that regulators continue to incorporate lessons learned and best practices from other global markets to increase the growth of pension savings. These include such policies as auto-enrollment in employer-based pension funds, the use of lifecycle funds as default investment options, and permitting overseas investment in addition to investing in Hong Kong in order to diversify risk portfolios.

AmCham China notes that management licenses for Enterprise Annuities (EAs) and Occupational Annuities (OAs) are still tightly restricted. We continue to advocate for a clear and transparent licensing process that treats foreign-invested enterprises equally alongside domestically-invested enterprises. We recommend that the government, consistent with its previous commitments to allow foreign companies to invest in pension management companies, approve applications to enable global pension service providers with many years of experience and expertise to benefit China's market.

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. The current 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 two percent 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* (CBIRC Fa [2018] No. 35, revised on February 4, 2020) and the *Administrative Measures on Equity in Insurance Companies* (CIRC Order [2018] No. 5, effective April 10, 2018) provide that they apply by reference to foreign-invested insurers, but do not provide implementing details. Foreign-invested insurers must consult with CBIRC from time to time to obtain guidance on implementation, but such guidance offered by CBIRC officials is not always consistent. 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, including along the routes of the Belt and Road Initiative. Tax regulations discriminate against the insurance industry, however. 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 a VAT exemption on their income from accommodation, catering, and transportation services. However, Overseas Personal Accident and Travel insurance premiums (especially insurance covering overseas contract workers and expatriates) are not VAT-exempt. 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 cover are neither VAT-exempt nor deductible from VAT taxable income. AmCham China continues to recommend 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.

Moreover, insurance companies typically have branches located in several different provinces and if each branch is required to complete its VAT filing independently, the operational costs for such compliance work will be unreasonably high. Considering that corporate income tax filings can be consolidated and the draft consultation paper for the

保险法规的含糊不清，尤其是法规如何适用于外资保险公司，给实施带来了困难。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，这些规则参考适用于外资保险公司，但未规定实施细则。外资保险公司必须咨询银保监会以获取实施指导，但银保监会官员们提供的指导并非始终一致。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全球部署和资源以及丰富经验帮助中国企业向国际市场扩张，包括“一带一路”倡议的沿线国家。但是，税收法却歧视保险业。根据增值税规定，在海外从事建筑工程项目、交易会 and 展览会以及其他业务的中国企业可免缴境外收入增值税。某些经营旅游服务的企业还享有住宿、餐饮和运输服务收入增值税的免除优惠。但是境外旅游人身意外险，特别是涉及境外合同工人和外籍人员的保险，不免征增值税。此外，在开曼群岛、新加坡和香港等允许非认可保险的地区，中国的保险公司通常会为此类司法管辖区所定风险提供直接保险。遗憾的是，与再保险保费不同，此类直接保险产生的保费既不免征增值税，也不能从增值税应纳税所得中扣除。商会建议银保监会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承保范围内的保费免征增值税，为保险业参与者提供平等待遇。

此外，保险公司通常在不同的省份设有分支机构，如果要求每个分支机构独立完成增值税申报，合规工作的运营成本将会高得离谱。鉴于企业所得税申报可以合并，增值税法律咨询文件草案也提到了“合并申报”原则，商会建议财政部和国家税务总局加快颁布有关增值税合并申报的实施细则。

根据现行税收规定，在满足具体要求、企业将从现金流管理改善中受益的情况下，增值税进项税额增量超额（即2019年3月31日以后新取得的超额进项税额）可以申请退税。截至目前，尚没有进一步解释历史超额增值税进项税（即2019年3月31日之前产生的超额进项税额）的规定出台。商会建议国家税务总局考虑扩大超额增值税进项退税范围，以覆盖特定期限内的历史份额。

此外，在2020年试点企业和新增企业中，增值税专用电子发票改革取得了突破性进展。商会认为，加快在金融机构（包括主要提供无形服务的保险公司）中采用电子发票将有助于提高企业的运营效率。

健康保险

2021年，在国家医保局的指导下，各地积极推进医用耗材带量采购工作，在采购范围、采购规则、支付标准和货款结算方式等方面，进行了诸多尝试，形成了国家组织、地方响应、全国联动的态势。国家组织的第二批人工关节带量采购规则中，明确提出了伴随服务费，在产品分组和企业淘汰率方面也做了相应的调整，在进一步明确市场预期的同时，更加尊重临床使用习惯，保障主流产品可以持续提供临床服务。这些规则的调整和优化，让企业感受到政策制定者的良苦用心，积极配合政府部门做好带量采购工作。然而，在各地落地相关工作的过程中，还存在一些问题，现根据高值医用耗材集中带量采购的执行情况，提出以下建议：

一、关于企业过度承担退换货的问题

目前签署的三方协议中，要求生产企业负责质量问题退换货的条款不一，医疗机构在执行时又加码让生产企业承担非质量问题的产品退换货。产品退换货的原因比较复杂，涉及产品破损、过效期、手术操作不当、手术正常损耗和产品质量等多种因素，若全部由生产企业承担将进一步加重企业负担，不利于中标产品在医疗机构的正常使用。

建议：完善细化协议退换货条款，明晰企业和医疗机构各自应承担的责任。

二、关于配套政策落地执行的问题

国家医疗保障局高值医用耗材集中带量采购规则中，明确规定采购的产品质量、供应、回款、使用，以及结余留用、支付标准和中选价联动等配套政策。但部分省市相关的配套政策始终难以落地执行，尤其是回款问题，生产企业普遍关注但难以执行到位。部分省市甚至过度限制配送商数量，一定程度上导致终端配送不畅。

建议：各地医保部门应对医疗机构开展回款专项督导，确保中标产品及时结算；允许企业在合理范围内自行选取一定数量的配送商。

三、对带量采购的品种开展综合评价

和药品相比，医用耗材产品的使用更加复杂，往往需要技术培训、跟台服务、售后服务等特殊伴随服务；临床质量的影响因素众多，包括医用耗材的产品质量、

VAT law references the principle of “consolidated filing,” AmCham China recommends that MOF and STA accelerate the promulgation of detailed implementing regulations on “VAT consolidated filings”.

Under current tax regulations, the incremental excess VAT input tax can be applied for refund on the condition that the specific requirements are satisfied, and the enterprises will benefit through improved cash flow management. To date, no further regulations have clarified details with respect to the historical excess VAT input tax. AmCham China recommends that STA consider enlarging the excess VAT input refund scope to cover the historical shares in a defined period.

In addition, the VAT Special e-invoice enjoyed a breakthrough in 2020 among select pilot enterprises and new enterprises. This further deployment of e-invoices within financial institutions including insurers which primarily provide intangible services was a welcome change that improved operational efficiency among enterprises.

Health Insurance

In 2021, under the guidance of the National Medical Insurance Bureau, all localities actively promoted the procurement of medical consumables, and made many attempts to alter the terms of procurement scope, procurement rules, payment standards and payment settlement methods, forming a national organization, local response, and nationally united system. In the second release of procurement rules for artificial joints organized by the state, it is clearly proposed that the service fee and corresponding adjustments be made in terms of the group procurement product rate, while further clarifying market expectations, clinical use habits, and ensuring that mainstream products continue to be available for clinical services. The adjustment and optimization of these rules allow enterprises to obtain the benefits of policy changes and actively cooperate with government departments to do a good job in quantity procurement. However, in the process of landing related work in various places, some problems persist, and we now present the following suggestions with respect to the implementation of the centralized procurement of high-value medical consumables:

1. The issue of excessive responsibility for return and replacement of goods by enterprises.

In the tripartite agreement signed at present, the provisions requiring production enterprises to be responsible for the return and replacement of goods with quality problems are inconsistent, enabling medical institutions to increase the number of products that require production enterprises to bear responsibility for non-quality related problems. The reasons for product return and replacement are more complex, involving product damage, expiration period, improper surgical operation, normal surgical loss, product quality and other factors. If all responsibility is placed on the

production enterprise, it will further increase the burden of the enterprise, and is not conducive to the normal use of the winning product in medical institutions.

2. The issue of the implementation of supporting policies.

The National Medical Security Administration’s rules for the centralized procurement of high-value medical consumables clearly stipulate the supporting policies such as the quality, supply, payment collection and use of the purchased products, as well as the retention of balances, payment standards and linkage of the selected price. However, the relevant supporting policies of some provinces and cities present compliance difficulties, especially with respect to payment collection, which is of general concern to production enterprises but difficult to implement in practice. Some provinces and cities even excessively limit the number of distributors, which to a certain extent leads to poor terminal distribution.

3. Carrying out comprehensive evaluation of varieties with quantity procurement.

Compared with drugs, the use of medical consumables products is more complex, often requiring technical training, follow-up services, after-sales service and other special accompanying services. There are many factors affecting clinical quality, including the quality of medical consumables, accompanying services, and the habits and proficiency of medical staff. Therefore, the evaluation of medical consumables purchased with quantity should adopt a comprehensive evaluation method, including product quality, surgical operation, accompanying services, production capacity, enterprise credit, etc., to ensure comprehensive performance in all aspects with valuation based solely on price.

Individual provinces are not transparent enough in policy decision-making, publicity, rule interpretation, publicity, etc. AmCham China recommends that in policy decision-making, full communication and research should be conducted with hospital managers, medical staff, production enterprises, distribution enterprises and other relevant parties; and solicit the opinions of production enterprises and industries, so that enterprises can understand the goals of government reform, in order to obtain the support and cooperation of enterprises and achieve mutually beneficial outcomes.

Reinsurance

In 2016, CIRC began formal implementation of 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

临床伴随服务、医务人员的使用习惯及熟练程度等。因此，带量采购医用耗材的评价应该采取综合评价方法，包括产品质量、手术操作、伴随服务、生产能力、企业信用等，以确保中选品种的综合性能，而不仅仅是价格单维度的比价。

四、提高政策决策过程的透明度

个别省份在政策决策、公示、规则解读、宣传等方面透明度不够。建议在政策决策中，与医院管理者、医护人员、生产企业、配送企业等各相关方进行充分的沟通和调研；并征求生产企业和行业的意见，让企业理解政府改革的目标，以期得到企业的支持和配合，实现多赢的局面。

再保险

2016年，保监会开始正式实施中国风险导向的偿付能力体系——中国第二代偿付能力监管制度，并通过各地保监局对保险公司偿二代合规情况进行检查。尽管对保险业的偿付能力实施更系统的监管是合理的，但商会认为，偿二代对中国再保险公司与信誉好且在其本国具有良好财务评级的离岸再保险公司之间的跨境交易施加了不合理的资本支出和担保要求。商会认为，这种资本支出和担保要求是不合理的，因为银保监会可以采取其他成本更低的手段来确定此类离岸再保险公司的稳健性，包括采用与离岸再保险公司的本国监管机构现有的沟通途径。此外，跨境再保险交易的不利权重会阻碍跨境再保险交易，导致风险集中在中国而不是更广泛地分散开来。因此，商会敦促银保监会重新考虑《偿付能力监管规则》第8号“信用风险最低资本”，以防止此类风险集中的不良结果，同时银保监会确定保险业遵守新《国际财务报告准则》规定的基础。

与此同时，商会担心偿二代框架将风险集中在中国境内，会对国际再保险公司产生不利影响，因为偿二代甚至对那些已经在本国辖区范围内接受合规监管、根据国际保险监督官协会的建议满足了相互认可要求的国际再保险公司施加了过多的信用风险和担保要求。

保险经纪

许 可

2015年修订的《外商投资产业指导目录》将外国保

险经纪从“限制”投资类别中删除。2017年1月发布的《国务院关于扩大中国对外开放积极利用外资若干措施的通知》进一步深化对外开放，并在其中提及放宽保险中介机构外资准入限制。此外，国务院总理李克强在2018年《政府工作报告》中明确指出，政府拟“放开保险经纪公司经营范围限制。”

商会注意到，中国在2020年发布了一系列积极的法规、规章和通知，商会的一名会员获得了期待已久的扩展许可证，可以开展更广泛的业务活动，这些都是可喜的进展。但是，按照银保监会于2018年4月27日发布的《关于放开外资保险经纪公司经营范围的通知》，仍有不少符合条件的外商投资保险经纪公司尚未获得保监会批准在华拓展业务，而他们在两年前就已递交了申请。

近两年来，互联网保险市场发展迅速，但是，由于经营范围的许可限制，外商投资保险经纪公司尚无法在互联网上开展业务。商会促请银保监会向符合条件的外商投资保险经纪机构发放扩展范围许可证。这样的行动符合政府对外资和内资保险经纪公司一视同仁的承诺，并且可以让拥有丰富行业经验和专业知识的外资保险经纪公司助力中国互联网保险市场的发展，造福中国消费者。银保监会的任何非审慎拖延都将违背平等对待国内外市场参与者的原则，使得中国消费者无法接触更多能够提供小规模商业风险、汽车保险以及个人寿险和意外险提供经纪服务的经纪公司，从而破坏市场竞争。

互联网保险业务管理办法

银保监会发布的《互联网保险业务监管办法》（《办法》）自2021年2月1日起施行。《办法》要求，互联网保险业务的申请按照办法中的规定办理。商会注意到与《办法》相关的两大实际挑战：

- 《办法》未能明确列出实际操作层面上的指导措施。因此，企业需要联系身处北京的中国银保监会有关负责备案程序的人员，以获取相应的实施指导。会员企业发现，由于在中国市场开展业务的保险中介机构数量庞大，而银保监会的工作人员数量相对有限，因此难以及时收到口头解释。
- 按照互联网保险牌照的申请流程，中国境内任何保险中介机构在申请开展互联网保险业务时，应将申请提交至银保监会指定的邮箱，之后将提交至中央层面统一处理。这导致会员的申请处理严重延误。

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 9 Credit Risk Minimum Capital (CBIRC Fa [2021] No. 51, effective January 1, 2022)* 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 reinsurers subject to compliance supervision in their home jurisdictions which satisfies the requirements for mutual recognition in accordance with IAIS recommendations.

Brokerages

Licensing

In 2015 the *Catalogue of Industries for Guiding Foreign Investment* (2015 rev.) removed foreign insurance brokerages from the "restricted" investment category. The January 2017 *Notice of the State Council on Several Measures for Expansion of China's Opening up to the Outside World and Active Use of Foreign Capital (Guo Fa [2017] No. 5, effective January 12, 2017)* discusses relaxing restrictions on the access of foreign capital to insurance intermediaries and further strengthening China's economic opening to the outside world. Furthermore, Premier Li Keqiang in his 2018 *Government Work Report* clearly stated that the government planned to "lift restrictions on the scope of business of foreign-invested insurance brokerages."

In 2020 AmCham China witnessed the issuance of a series of positive regulations, rules, and notices, and one of our members was granted a long-awaited expanded license to conduct a wider range of business activities. These are welcome developments; however, based on the *Notice Concerning the Expansion of the Authorized Scope of Business for Foreign-Invested Insurance Brokers (CBIRC Fa [2018] No. 19)* issued by CBIRC on April 27, 2018, there are still many eligible foreign-invested insurance brokers which yet to receive approval from CBIRC to expand their business in China, despite having submitted their applications over two years ago.

The Internet insurance market has been developing rapidly over the past two years, yet the ability of foreign-invested insurance brokers to conduct business over the Internet has been hindered due to licensing restrictions on their scope of business. AmCham China urges CBIRC to issue expanded scope licenses to eligible foreign-invested insurance brokers. Such action would be consistent with the government's commitment to equal treatment for foreign-invested and domestically-invested insurance brokers, and will allow foreign-invested insurance brokers, who have deep industry experience and expertise, to help shape China's Internet insurance market to the benefit of Chinese consumers. Any non-prudential delay by CBIRC undermines the principles of equal treatment between all market players, foreign and domestic, and impairs competition by denying Chinese consumers access to a greater number of brokerages capable of brokering insurance for small-scale commercial risks, automobile insurance, and individual life and accident insurance.

Measures on the Administration of Internet Insurance Business

CBIRC's *Measures on the Administration of Internet Insurance Business (CBIRC Order [2020] No. 13)* (Measures) entered into effect on February 1, 2021. The Measures require any application to conduct Internet insurance business follow the provisions detailed in the Measures. AmCham China observes two significant practical challenges regarding the Measures:

- The Measures lack definitive guidance with respect to their practical implementation, consequently companies need to contact CBIRC's Beijing-based personnel in charge of filing procedures to obtain ad-hoc implementation guidance. Our members have found that delays arise in receiving oral explanations because of the large number of insurance intermediaries operating in the China market relative to the considerably smaller number of CBIRC personnel.
- In accordance with the filing process for Internet insurance licenses, applications to conduct Internet insurance by any insurance intermediary in China needs to be submitted to one email inbox as specified by CBIRC and processed at the central level. This has caused our members significant delays in the processing of their applications.

As China continues to promote the development of Internet insurance, AmCham China urges CBIRC to issue detailed implementing regulations with respect to the filing process, and to provide written explanations and guidance in order to alleviate uncertainty. We recommend that certain administrative procedures, such as reviews for licensing applications, be devolved to local authorities, which would allow the authorities to better manage demand, increase efficiency, and expedite the processing of applications.

在中国持续推动互联网保险的发展的同时，商会促请银保监会发布关于申请流程的实施细则，并提供书面解释和指导以减少不确定性。商会建议将许可申请审核等行政程序移交给地方机构，以便地方机构更好地管理需求，提高效率，并加快申请处理。

保险基金投资

商会对中国持续放宽对投资工具的限制表示赞赏，这一举措有助于开拓新的投资渠道和市场。商会呼吁，在资本市场中确定投资保险基金的资格时，应考虑保险公司母公司的规模和投资经验。考虑这些因素对于将知识从成熟市场转移到中国大有裨益，也能缓解本地缺乏具备足够经验和技能来投资新兴资产类别的人才短缺问题。商会还希望，中国近期能出台相关监管政策，为上述新兴资产类别以及保险基金提供必要的风险对冲工具。

海外投资资格

随着中国保险市场资产规模持续增长，全球化配置对国内保险资金的需求也愈发凸显。然而，根据市场公开信息，自2018年以来，没有任何保险机构或保险资产管理公司成功取得境外投资资格。同时，国家外汇管理局却为前几年已获取境外投资资格的保险机构增加了QDII（合格境内机构投资者）投资额度。商会建议银保监会在支持保险机构在谨慎有序的前提下，根据自身能力开展境外投资。近年来，人民币对主要外币汇率保持双向波动，总体稳定。通过批准支持更多保险机构到境外投资，可以提高保险机构的境外投资能力，并使中国的保险资金受益于国际市场的投资机会。提高境外投资能力也可以增强中国保险公司的能力，加强对人民的金融保护。

税务问题

增值税改革导致保险公司税负加重

国务院实施增值税改革的初衷是减轻企业特别是服务行业企业的税负，但是2016年“营业税改增值税（营改增）”改革全面实施后，中国保险公司的税负却显著增加。税负增加的主要原因是，改革将增值税的适用范围扩大到了公司债券等固定收益类投资产品的利息收入，而在营业税制度下这类收入是免税的。此外，改革将应税保费相关产品的税率从5%提高到6%。进项增

值税税额虽然可以抵扣，但可抵扣的比例不足，所以实际上保费收入的税率基本保持不变。对保险公司增加征费会在短期内降低其盈利能力，极大地影响其定价和精算，最终损害中国投保人的利益。商会建议国家税务总局与相关部门协调，恢复公司债券和债务项目利息收入的免税资格，或者至少采用“新老划断”方式对增值税改革之前发行的债券实行免税。商会还建议国家税务总局为保险业提供更为明确一致的规则，在全国统一增值税的适用范围并扩大进项增值税的抵扣范围。同时，商会很高兴地注意到外国保险公司的代表处能再次免征增值税。

建 议

对中国政府：

所有权

- 出台详细的实施措施，说明如何取消保险业企业的外资股比上限。
- 及时修订2004年《保险资产管理公司管理暂行规定》，进一步明确取消对外资拥有保险资产管理公司的任何限制。
- 消除外国健康保险公司参与中国健康保险行业的非审慎性壁垒，与中国取消人身保险的外资股比上限的承诺保持一致。

网络问题

- 明确中国《网络安全法》中的关键定义，包括“关键信息基础设施”、“个人信息”、“重要数据”和“适用的监督机构”，其中要包括与适用标准的兼容性，并审核法律中现行措施的有效性。
- 以跨境传输涉及的数据集数量为基础重新定义《个人信息保护法》中的数据传输风险，而非惩罚需要处理较大数据集的公司。
- 在中国银保监会《保险机构信息化监管规定（征求意见稿）》中明确“安全可控”的定义，赋予保险公司自由裁量权，以便其根据信息

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 to alleviate the shortage of local talent with adequate experience and sophistication for investing in new asset classes. AmCham China also hopes 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.

Overseas investment qualification

The continuous growth of the asset size of China's insurance market makes domestic insurance funds increasingly needed for global allocation. However, according to public information on the market, no insurance institutions or insurance asset management companies have obtained overseas investment qualifications since 2018. Meanwhile, insurance institutions that received qualifications in previous years were granted additional QDII quotas from SAFE. AmCham China recommends that CBIRC support insurance institutions to conduct overseas investments in accordance with their own capabilities on a prudent and orderly basis. In recent years, the CNY exchange rates against major foreign currencies have maintained two-way fluctuations and overall stability. Allowing and supporting more insurance institutions to invest overseas will enhance the ability of insurance institutions to make overseas investments and enable insurance funds in China to benefit investment opportunities in the international market. Such ability to invest overseas will allow insurance companies in China to offer stronger financial protection to Chinese citizens.

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 increased mainly because the reform extended application of the VAT to interest income from fixed-income investment products like corporate bonds, which had been tax-exempt under the business tax system. In addition, the reform raised the tax rate for taxable premium-related products from five percent to six percent. Although input VAT is deductible, 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 impairing the interests of Chinese policyholders. AmCham China recommends that the STA, in coordination with related agencies, restore 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 again been determined to be VAT-exempt.

Recommendations

For the Chinese Government

Ownership

- Issue detailed implementing measures describing how foreign equity caps can and will be lifted for businesses operating in the insurance industry.
- Remove all non-prudential barriers to participation by foreign health insurers in China's health insurance industry, consistent with China's commitment to remove foreign equity caps on personal insurance.

Cyber issues

- Clarify key definitions in China's *Cybersecurity Law* including "Critical Information Infrastructure," "Personal Information," "Important Data," and "applicable supervisors," including their compatibility with applicable standards, and review the effectiveness of the measures under the Law.
- Redefine risk of data transfer under the Personal Information Protection Law to be based on the quantity of data sets involved in a cross-border transfer rather than penalizing companies that deal with larger data sets.
- Clarify the definition of "secure and controllable" in CIRC's Draft Informatization Regulations and provide insurers the discretion to decide among different vendors on the basis of security and reliability of IT systems, not national origin.

Licenses

- Increase competition in the pension and health insurance industry by approving licenses for more

技术系统的安全性和可靠性而非来源国家来选择供应商。

许可证

- 向更多外资保险公司发放经营许可证，确保外资保险提供公司和内资保险公司享有平等待遇，以增强养老保险行业和健康保险行业的竞争。
- 允许出售长期外币保单，作为中国保险市场上的一种补充产品，以更好地满足中国家庭的金融需求，而非仅仅放宽外汇管制，允许在香港购买此类产品。

C-ROSS 偿二代

- 制定一个正式程序，让保险公司可以就具体的偿二代规定向银保监会提交书面咨询，后者以书面公开说明作为答复，减少政策实施不一致的情况。
- 免除跨境再保险交易的不必要资本支出和担保要求。跨境再保险交易的不利权重会阻碍跨境再保险交易，导致风险集中在中国而不是更广泛地分散开来。

保险经纪海外投资资格

- 通过批准支持更多保险机构到境外投资，可以提高保险机构的境外投资能力，并使中国的保险资金受益于国际市场的投资机会。

税务问题

- 恢复公司债券和债务项目利息收入的免税资格，或者至少采用“新老划断”方式对增值税改革之前发行的债券实行免税；
- 扩大税收递延型年金的税收优惠。
- 加强银保监会、财政部和国家税务总局之间的协调，通过对此类存在于海外的风险相关的直接保险承保范围内的保费免征增值税，为保险业参与者提供平等待遇。

foreign-invested applicants and ensuring equal treatment among foreign-invested and domestically invested insurance providers.

C-ROSS

- Develop an official procedure where companies can submit written inquiries to CBIRC concerning specific C-ROSS provisions for responses in written public statements in order to reduce inconsistency of implementation.
- Remove unnecessary capital charges and collateral requirements on cross-border reinsurance transactions. 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.

Tax Issues

- Restore the tax-exempt status for interest income from corporate bonds and debt programs, or at a minimum adopt a “cut-off” approach to exempt bonds issued prior to the reform from VAT.
- Expand tax incentives for tax-deferred annuities.
- Increase coordination among CBIRC, MOF and STA to provide equal treatment to the insurance industry by applying VAT exemptions to premiums derived from direct insurance cover for overseas domiciled risks.

Legal Services

Introduction

Foreign law firms face a wide range of longstanding 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 People’s Republic of China (PRC)-qualified lawyers to maintain their licenses, preventing foreign law firms from providing legal advice on Chinese law and from representing clients in PRC courts and certain regulatory proceedings,
- Prohibitions against participation in certain kinds of meetings or filings with government departments involving their clients,
- Discriminatory taxation liability as compared to that of domestic law firms, and
- Increasing nationwide centralization of the regulation of foreign law firms.

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. Despite continuing efforts by the Chinese government to encourage “joint-venture firms” between foreign and domestic firms, the current restrictions are inconsistent with international best practices, which allow lawyers qualified in different jurisdictions to serve together in the same firm. 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.

Ongoing Challenges

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 are 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 representative office of a foreign law firm by up to nine months. Moreover, the length of the approval process is unpredictable and often subject to protracted delays.

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).

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 (including the Chief Representative and the Representative of a foreign firm’s representative office in China) cannot provide legal services to clients if they have not physically worked outside mainland China for at least two years (as in the case of a Representative) or three years (as in the case of a Chief Representative).

Beginning in 2018, PRC authorities indicated that all foreign lawyers serving as a representative or Chief Representative must spend at least 183 days a year in China. Such requirements are not imposed on PRC law firms operating overseas, and greatly impair the ability of foreign law firms to staff their offices in China. This requirement imposed increased

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并缴纳企业所得税，但其组织形式仅限于代表处；
- 中国执业律师无法保留其执照，导致外国律所无法提供中国法律相关的咨询，也不能在中国法院及特定监管程序中代表客户；
- 不被允许出席客户与政府部门之间的某些会议或者手续申报；
- 与中国国内律师事务所相比，承担具有歧视性的税务责任；
- 政府对全国范围内的外国律师事务所的监管日益集中化。

长期以来，中国政府在该领域的限制剥夺了中国内地企业和外资企业获取高度专业化的法律意见和咨询服务与中国职业律师在外国律师事务所工作、培训及升迁的机会。尽管中国政府在鼓励中国和外国公司建立“合资公司”方面已经做出了持续的努力，但现行政策不符合国际惯例，按照国际惯例，不同司法管辖区的执业律师可以在同一家律师事务所共同工作。这些限制措施有违对等原则，因为中国的多数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，并允许其在管辖范围内聘用当地执业律师。

现存监管挑战

代表处注册及续期程序

相对于内地律师事务所，外国律师事务所的监管审批程序繁琐复杂，外国律师事务所在申请设立代表处时，必须证明其“设立代表机构从事法律服务业务的实际需要”。中国政府部门评估该需要的一个标准是拟设代表

处住所地的“社会经济发展状况”和对法律服务的“发展需要”，而中国律师事务所则不需要此类评估。上述规定不但模糊、繁琐和主观，而且有违中国对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的承诺。证明这“发展需要”这一要求，使外国律师事务所代表处的审批程序不必要、不合理地延长了9个月。此外，审批时长难以预料，通常久拖不决。

此外，外国律师事务所在中国设立首个代表处后，必须等待三年才能再增设新的代表处。外国律师事务所均表示该类申请过程困难重重且进展缓慢。此类限制措施削弱了外国律师事务所为内陆省份客户服务的能力，而内陆省份正是中国政府大力发展的重点经济区域。然而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。

注册和续期流程的繁冗、官僚化，导致优秀的外国执业律师无法注册成为外国律师事务所中国办事处的代表。此外，现有政策规定外国执业律师（包括外国事务所中国代表处的首席代表和一般代表）未在中国大陆以外实际工作满2年，或3年（如首席代表）的，无法为客户提供法律服务。

自2018年起，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受此类限制。外国律师事务所为中国处派驻代表将愈发困难，再加上常态化疫情防控、航班取消以及针对新冠肺炎疫情的全球旅行限制，会让外国律师事务所在中国的运营愈发困难。由于各国抗击疫情力度不均，商会预计这些挑战在2022年将会持续存在。因此，商会建议，至少在中国和世界完全控制住新冠肺炎疫情之前取消该限制要求。

外国律师事务所续期注册

2020年初，司法部建立了外国律师事务所中国办事

hardship in 2021 because of the continued quarantine policies, flight cancellations, and worldwide travel restrictions imposed in response to COVID-19. We anticipate these challenges to continue in 2022 given the uneven global effort to combat COVID-19. Therefore, we urge that, at a minimum, these requirements be waived before the COVID-19 pandemic is fully contained and regular travel to China can resume.

Registration Renewal for Foreign Law Firms

Starting in early 2019, the Ministry of Justice (MOJ) established an online system to renew the registration of the China offices of foreign law firms. Through this online system, all China representative offices of foreign law firms must submit their annual renewal applications online directly to the MOJ. After the online application is reviewed and approved by the MOJ, each China office of a foreign law firm must then submit hard copy originals of the application documents to the local Bureau of Justice (BOJ) in the jurisdiction where the China office is located.

Previously, annual renewal applications for the China representative offices of foreign law firms were first reviewed by the local justice bureau. After completing the review, the local justice department or bureau in each province or municipality would then file the annual renewal applications with the central-level MOJ. This prior practice provided local justice authorities with a degree of administrative discretion which they often displayed in implementation.

Following the establishment of the online system in 2020, all foreign law firms are now required to submit their application documents online through the MOJ system, including a letter of commitment by the firm to add a new representative by June 2020. Due to the impacts of COVID-19, many American and foreign law firms have faced difficulty in obtaining (without prolonged delays at the relevant foreign government agencies and Chinese embassies or consulates overseas) the needed apostille and consular certifications needed for renewal of their registration and to satisfy the procedures for a new representative appointment by foreign law firms. As a part of the renewal process, American law firms must have their relevant materials certified by their local state governments, or authenticated by the federal government, and then authenticated by the local Chinese consulates or the Chinese Embassy in the US. COVID-19 has caused severe delays in both the American state and federal government offices and the Chinese consulates and Embassy, greatly extending document certification procedures in many cases. This has subsequently delayed law firms in submitting their certified documents to the MOJ in China for license, work permit, and visa renewal in 2022.

Some AmCham China members have noted that the local justice bureaus have exhibited a degree of flexibility in overcoming these challenges but urge that such flexibility be expanded to all international law firms with offices in China given the global situation with respect to COVID-19.

In particular, we urge the MOJ and local justice bureaus to extend for sixty days (or more) the current licenses for the coming year, without full documentation, but with the understanding that the law firms will submit the full sets of required documentation as soon as they can be obtained. If this cannot be done, we urge the MOJ to clarify what will happen and what recourse foreign law firms should seek if the documents are not received by the relevant deadline. We also recommend that the Chinese Embassy and Consulates in the US provide an expedited channel through which law firm documents can be authenticated.

More broadly, this new online system for annual renewals is reflective of the MOJ's determination to centralize the administration of the China representative offices of foreign law firms and standardize the implementation of renewal procedures. While the annual renewal of registration is not itself a new requirement for foreign law firms, applying for renewal online is a new practice that was not circulated for public comment prior to its implementation. Nor did the MOJ provide an opportunity for input from the legal community before tightening enforcement of the requirement that all foreign law offices have at least one Chief Representative and one representative.

As we have done for many years, we continue to urge the Chinese government to publish any new regulations or policies with respect to the administration of foreign law firms for public comment before promulgation. We hope that any new policies or regulations will provide transparent and practical guidance on foreign law firm operations in China and include measures to level the playing field between domestic and foreign law firms in China. We note again in this regard that foreign law firms (including law firms of China origin) are generally allowed to establish fully-fledged law offices and to have locally licensed attorneys in much of the US.

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 a representative office of an international law firm 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 additional training and employment opportunities for mainland Chinese law students and lawyers, which would in turn expand the pool of trained and experienced PRC-qualified lawyers available to PRC law firms and companies to hire as counsel or in other positions requiring specialized legal backgrounds.
- Enable Chinese companies to expand more efficiently

处续期注册的网上系统，所有外国律师事务所的中国办事处必须要在该平台上将年度申请直接提交至司法部。司法部审核和批准后，每个外国律师事务所的中国办事处必须将申请文件原件报送其所在地的司法部门。

在此之前，外国律师事务所中国办事处的年度续期申请首先是由地方司法局审核的，审核完成后，各省、直辖市司法厅/局将续期申请上报给司法部。这种做法给了地方部门一定的行政自由裁量权，往往体现在执行过程中。

2020年网上系统建立之后，所有外国律师事务所都必须通过司法部网上平台提交申请文件，文件中还要附带承诺书，保证在2020年6月前再派驻一名代表。由于新冠肺炎疫情的影响，很多美国以及外国律所在年度续期过程中需要获得的海牙认证、领事认证，以及落实外国律所任命新代表程序而面临困难。外国律所必须获得由其当地州政府或联邦政府认证的相关文件，之后再通过当地驻美中国使领馆的认证。新冠肺炎疫情严重拖延美国州和联邦政府办公室以及中国驻美领事和大使馆的办事效率，因而大大延长了文件认证过程。故而，这种情形拖延了律所向中国司法部提交认证文件以获得在2022年的执照、工作许可以及签证的续期的过程。

一些商会会员企业已经注意到中国当地司法局在应对这些挑战方面显现出一定程度上的灵活性。商会建议将这种灵活性推广到在中国拥有办公室的所有国际律所，以更好应对新冠肺炎疫情在世界造成的影响。特别是，商会建议司法部和地方司法部门对此类情况采取包容性谅解措施，在外国律师事务所无法提交所需全套文件，但签署谅解协议，承诺保证在获得全套文件后尽快提交的情况下，将外国律师事务所许可证延长六十天（或更长）至下一年，这会给予美国律事务所有必要的时间来获得所需的认证文件。如果不能做到这一点，商会促请司法部澄清将会发生什么，以及如果在相关截止日期之前没有收到文件，外国律师事务所应该寻求什么样的追索。商会亦建议中国驻美使领馆提供一个可以认证律师事务所文件的快速渠道。

从长远影响考虑，新的年度续期线上系统显示出司法部集中管理外国律师事务所中国处和标准化续期程序执行的决心。外国律师事务所年度续期注册并非新规定，在线申请却是新做法，但这一做法在开始执行前并未征

求公众意见，司法部强化执行外国律所办事处至少有一名首席代表和一名一般代表的要求前也未征求法律界的意见。

商会一如既往地促请中国政府在发布任何外国律师事务所管理方面的新规或政策前征求公众意见。商会希望新规或政策会给予在中国执业经营的外国律师事务所提供透明和切实的指导，并为中国和外国的律所打造公平的竞争环境。就此而言，商会再次强调，在美国大部分地区，外国律师事务所（包括中国律师事务所）一般都可以设立全面服务的法律办事处，并雇佣当地的执业律师。

中国律师在外国律师事务所的执业范围受限

根据现行中国法律规定，中国执业律师要加入国际律师事务所在中国的代表处，就必须放弃中国执照。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，也可成为合伙人，以便为客户提供全面的法律服务。取消限制规定将会大有裨益：

- 为中国大陆的法律专业学生和律师提供更多培训和就业机会，壮大中国合格律师队伍，他们训练有素、经验丰富，可以进入中国律所和企业担任法律顾问或其他需要专业法律背景的职务。
- 中国公司的法律顾问可以跟国际法律专家团队合作，推动中国公司更高效、更成功的扩张。
- 提高外国律师事务所能力，以便更好代理在中国大陆做生意的客户以及想要在全球扩展商业和投资活动的中国公司。

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。目前的惯例是，很多外国律所的代表仅能作为观察员而非积极参与者或法律顾问参加此类会议。商会促请中国政府履行承诺，并确保所有执法部门在其他法律领域也履行此承诺。

目前，外国律师出席或参与其客户与中国大陆政府部门的很多会议往往都被限制，即便获准也是基于具体情况而定。明确和执行一致的法规缺位将会导致：

and successfully by enabling integration of their counsel in China into a worldwide team of legal specialists.

- Increase the capacity of foreign law firms to represent clients doing business in mainland China, as well as Chinese companies looking to expand their global commercial and investment activities.

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. To date, and as a matter of practice, in many cases foreign law firm representatives are allowed to attend such conferences only as observers and not as active participants or legal counsel. AmCham China urges the Chinese government to implement this commitment and expand the practice across government enforcement agencies in all other areas of law.

Presently, appearance and participation by lawyers from foreign law firms' representative offices established in China in many types of meetings involving their clients and mainland Chinese government agencies is often restricted or permitted only conditionally on a case-by-case basis. This lack of clear and consistently enforced regulations:

- Deprives foreign and Chinese companies and individuals of adequate representation in meetings relating to areas of non-Chinese law,
- Prevents foreign and Chinese companies and individuals from determining the composition of their own legal teams in meetings with Chinese government officials,
- Reduces foreign and Chinese companies and individuals' ability to understand government proceedings in their international context,
- Hampers the ability of foreign and Chinese companies and individuals to provide information to mainland Chinese government officials relating to the clients' activities and obligations in China and abroad,
- Creates the impression that the Chinese government may engage in arbitrary and discriminatory treatment in dealings with foreign companies and individuals, creating an uneven playing field, and
- Frustrates the right of international law firms to advise foreign and Chinese companies and individuals on the Chinese legal environment contrary to clearly established provisions in China's *Protocol on the Accession of the PRC to the WTO* as well as in State Council regulations.

To the best of our knowledge, no other leading economies

so inconsistently and non-transparently limits, restricts, or prohibits access for locally-qualified and foreign lawyers from foreign law firms' representative offices 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, US and other foreign 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 principle of non-discrimination in the US-China *bilateral tax treaty*, AmCham China urges the Chinese government to 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 representative office and for foreign lawyers to transfer between firms,
- Difficulty and even inability to hire foreign non-legal professionals,
- One-year limit on the duration of work visas for foreign 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.

Negative List Restrictions

In the latest *Special Administrative Measures on Access to Foreign Investment (2021 edition)* (2021 National Negative List) effective as of January 1, 2022, "investment in Chinese legal matters" continues to be classified as "prohibited." It was originally classified as "restricted" in the 2011 Catalogue. 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*

- 外国和中国客户在涉及非中国法律的会议中没有充分代表权；
- 客户无法在会见中国政府官员时决定自己法律团队的人员构成；
- 客户受个人经历和背景限制无法很好地理解与中国政府的会议程序；
- 客户很难向中国大陆政府官员提供其在中国境内外的活动和职责信息；
- 会让外国公司造成其与中国政府打交道时可能会遭受任意和歧视性的待遇的印象，造成不公平的竞争环境；
- 妨碍国际律师事务所就中国法律环境向外国和中国客户提供咨询的权利，这违反了中国加入《世界贸易组织议定书》和国务院的相关规定。

据商会所知，其他的主要经济体都未以如此不一致和不透明的方式限制、阻碍或禁止外国律师接触本国政府官员。

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《美国企业在中国白皮书》）。另外，外国律师事务所也不能使用中国律师事务所享受的优惠税收计算方法，这一方法能够大幅降低中国律师事务所的实际所得税率。

从根本上来讲，美国的和其他在华外国律师事务所要以代表处身份纳税，律师本人同时还要按个人纳税。而国内律师事务所仅需在个人层面纳税。

为解决这种不公平现象并与《中美税收协定》中的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其他影响他们在中国执业能力的限制，包括：

- 律所代表处首席代表变更、外国律师更换任职律所的程序过于繁杂；

- 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）工作签证的有效期限只有一年；
- 工作许可申请程序冗长（有时甚至持续一年半的时间）。

商会支持中国政府解决上述问题，以便外国律师事务所更高效地在中国服务其客户。

负面清单限制

最新的《外商投资准入特别管理措施（国家负面清单）（2021 年版）》（外商投资负面清单）于 2022 年 1 月 1 日生效，其中“中国法律事务投资”仍然被列为“禁止”，而在 2011 版本中则是“限制”。但是根据中国在 2001 年《中华人民共和国加入世贸组织议定书》中的承诺，关于中国法律影响的信息是可以提供的。然而，这并不能满足本章谈到的相关需求，即进一步放开外国律所及其中国国籍律师的准入。

限制外国执业律师提供法律服务

中国关于外国律师事务所的有关行政法规（例如《外国律师事务所驻华代表机构管理条例》）规定，外国律师事务所的代表机构必须至少要有两名代表，上面也提到过，这一规定仅从 2018 年开始统一执行。行政法规还规定，首席代表已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》的规定中明确指出，“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。也就是说，律师执业注册的时间也算在中国境外的执业时间。然而，在实际执行过程中，一些地方司法部门要求外国律所的代表处在注册和续期之时提交文件，分别证明首席代表已在中国大陆以外实际工作了 3 年，其他代表已在中国大陆以外实际工作了 2 年。由于这一做法缺乏明确的法律依据，所以许多外国或中国国籍的优秀律师在法学院毕业或获得律师资格后两年内来中国工作，不能注册成为外国律师事务所中国办事处的代表。未能注册为代表的话，这些律师就不能为客户提供法律服务。这些要求严重限制了外国律师事务所在中国提供法律服务的能力。

the PRC to the WTO. It does not, however, address the need for further liberalization of access for foreign law firms and their Chinese national lawyers, as discussed in this chapter.

Limitation on Foreign Licensed Lawyers from Providing Legal Services

The relevant administrative regulations on foreign law firms in China (e.g., the *Regulations on the Administration of Foreign Law Firms' Representative Offices*) require that each representative office of a foreign law firm must have at least two representatives, although as we discussed above this provision has only been uniformly enforced since 2018. The administrative regulations also require that the Chief Representative should have practiced of law outside China for at least three years and that each of the other representatives shall have been in the practice of law outside China for at least two years.

The 2002 *Provisions of the Ministry of Justice regarding the Implementation of the Administration of Foreign Law Firms' Representative Organizations in China* expressly provides 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 their law practice qualification. In other words, the duration of registration as a lawyer counts for the duration of engaging in the practice of law outside China. In practice, however, certain local justice bureaus require, during the registration and renewal of a representative office of a foreign firm, that each Chief Representative or representative demonstrate that they have physically worked outside mainland China for three or two years, respectively. This practice, lacking any express 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 of 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.

Legal Services in the Pilot Free Trade Zones

Some positive developments have occurred within Shanghai's Pilot Free Trade Zone (PFTZ) and Hainan Free Trade Port. This includes the November 2014 *Implementing Measures of the Shanghai PFTZ for the Mutual Assignment of Lawyers as Legal Consultants by Chinese and Foreign Law Firms* and the *Implementing Measures of the Shanghai PFTZ for Joint Venture Operations Between Chinese and Foreign Law Firms* (See the 2015 *White Paper* for more detail on these Implementing Measures). In November 2019 the Hainan Department of Justice issued the *Implementation Measures for the Mutual Appointment of Lawyers as Legal Counsel by Chinese and Foreign*

Law Firms in Hainan Province, and additionally, in 2020 we witnessed the issuance of the following regulations:

- *Lawyers Regulations of the Hainan Special Economic Zone* issued on September 27 by the Standing Committee of the Hainan Provincial People's Congress,
- *Implementation Measures for Joint Operation of Chinese and Foreign Law Firms in Hainan Province* issued by the Hainan Department of Justice on December 5.

We note that under current policy in Hainan province, the representative offices of Hong Kong SAR, Macau SAR, and certain foreign law firms in Hainan are permitted to engage in certain commercial non-litigation legal affairs involving Hainan in accordance with relevant regulations. In addition to cooperation between foreign law firms and Chinese law firms by agreement, authorities in Hainan province also permit cooperation between Hong Kong SAR and Macau SAR law firms and mainland law firms in the form of partnerships in Hainan. We continue to highlight these developments as having displayed the potential for incremental improvement and urge that such positive developments be extended nationwide rather than confined to certain geographies.

We also note that the joint-venture model has been found by several AmCham China member law firms to be unsuccessful in other countries where it has been employed. Like any business, law firms operate best when they can operate independently and share profits and losses as a single operational unit.

Recommendations

Most of the issues addressed in this chapter have been raised by AmCham China for multiple years, but the barriers largely persist. We continue to hope 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 representative 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 the ability of foreign law firms to provide advice on China law business matters should be reasonable and practical.**
- Given the challenges created by COVID-19, extend for sixty days (or more) the current registration

自由贸易试验区的法律服务

上海自由贸易试验区（PFTZ）以及海南自贸港内出现了一些积极的改变，比如 2014 年 11 月发布的《（上海）自由贸易试验区中外律师事务所互派律师担任法律顾问的实施办法》和《（上海）自由贸易试验区中外律师事务所联营的实施办法》（详见 2015《美国企业在中国白皮书》）。海南省司法厅于 2019 年 11 月发布《海南省中外律师事务所互派律师担任法律顾问的实施办法》。此外，海南在 2020 年还颁布了以下法规：

- 海南省人大常委会于 9 月 27 日颁布《海南经济特区律师职业条例》。
- 海南省司法厅于 12 月 5 日颁布《海南省中外律师事务所联营实施办法》。

商会注意到，根据目前海南省的政策，在海南的港澳代表处和来自国外的律所根据相关条例允许参与一些当地的商务非诉讼法律事务。在海南省，除中外律所通过协议可以合作以外，还允许港澳律所同大陆律所实行合伙制进行合作。商会将继续强调这些显示出具有逐步改善潜力的发展，并建议这种进步在普及到全国范围内，而非局限于某些地区。

另外，商会的多家成员律师事务所在其他国家成立的合资模式并不成功。律师事务所和其他企业一样，只有当其能够独立经营并作为单一的经营单位分担盈亏，才能实现最好的经营结果。

建议

商会于几年前已经提出本章所讨论的大部分问题，但多数障碍仍然存在。商会仍然希望两国政府能够持续关注这些问题，最终能减少或消除障碍。商会相信进一步开放法律服务市场将会推动中国服务业更高水平的发展，也符合中国的经济利益。

对中国政府：

- 任何关于外国律师事务所中国办事处的管理条例草案及相应限制要求必须公开透明，并在颁布实施前征求公众意见。任何对外国律所在中国开展法律咨询业务的限制都应保证

其合理性和实用性。

- 鉴于新冠肺炎疫情带来的挑战，在外国律师事务所无法提交所需全套文件，但签署谅解协议，承诺保证在获得全套文件后尽快提交的情况下，将外国律师事务所许可证延长六十天（或更长）至下一年。长远来讲，商会敦促政府简化要求，消除不可预测性，缩短外国律师事务所代表处的设立和增设的审查期限，并在所得税方面给予外国律师事务所与国内律师事务所同等的待遇。
- 修订现行法规，允许外国律师事务所雇用中国执业律师并允许其担任合伙人，不再要求中国执业律师在加入外国律师事务所时放弃其中国律师执业证。
- 允许外国律师事务所聘请外籍非法律专业人士，完善代表的注册和调动程序，延长代表的签证有效期，缩短工作许可的审批时间。
- 在注册步骤中明确表示，在海外注册了两年的外国律师在其注册两年后将允许其担任在中国代表处的代表，而无需在海外办公室执业两年。
- 在相关法规中明确允许外国律师参与其客户与中国政府部门的所有会议，中国执业律师可以在中国法院处理诉讼事务，而在美国的中国律所在当地办公室雇佣美国执业律师的话，也可以享受同等待遇。

对美国政府：

- 与中方进行谈判修订其现行规定，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（尤其是美国律师事务所）所享有的同等待遇。商会已经连续几年在《美国企业在中国白皮书》中提出此要求，但现在外国律所可能会面临更加严格的限制措施。

licenses of foreign law firms for the coming year, without full documentation, but with the understanding that the law firms will submit the full sets of required documentation as soon as they can be obtained. More broadly, we urge the government to 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 additional offices, and to provide foreign law firms with treatment equivalent to that of domestic law firms for PRC income tax purposes.

- 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.
- 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.
- Clearly provide in registration procedures that foreign lawyers admitted and registered to practice law in foreign jurisdictions for two years are allowed to be registered as representatives of their China representative offices two years after they have been registered, without requiring them to physically work in an overseas office for two years.
- Clearly provide 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.

For the US Government

- **Negotiate with China to revise current regulations in order to allow US law firms in China to enjoy the same benefits as Chinese law firms operating overseas (especially those in the US). This request has appeared in successive White Papers for many years, but foreign firms now face the prospect of even tighter restrictions than before.**

Machinery/Manufacturing

Introduction

In 2021 the added value of the Chinese manufacturing sector was 31.4 trillion yuan, accounting for 27.4 percent of Chinese GDP. The sector employs a significant portion of China's labor force. It has been negatively impacted by the imposition of tariffs by the US and China in 2018 and 2019. COVID-19 prevention measures have also posed unique challenges to the manufacturing sector. Early responses led to a complete or partial shutdown of many manufacturing facilities across China in 2020, aggravating the challenges facing this sector. As China brought COVID-19 under control domestically and manufacturers returned to work in Q2 and beyond, China's exports helped to revive its economic growth, and by one estimate China's share of world exports increased from around 15 percent to 19 percent by the end of 2020. Manufacturers in China went to great lengths to comply with COVID-19 restrictions and restart their operations as soon as possible in 2020, and their success in 2020 affirmed China's importance as a global manufacturing hub. In AmCham China's 2022 *Business Climate Survey*, conducted at the end of 2021, 57 percent of respondents in the Resources & Industrial sector reported an increase in revenue in 2021 relative to 2020, compared with 38 percent who reported an increase in revenue in 2020 (versus 2019).

Under the *Made in China 2025* (MIC 2025) program initiated in May 2015, the government has promoted the upgrade of key manufacturing industries to enable domestic high-end manufacturers to compete at the global level. Stated goals included an increase in the domestic content of core components and materials to 40 percent by 2020 and 70 percent by 2025. Even though the government, in the face of foreign criticism, is no longer overtly promoting MIC 2025, nor has it achieved its domestic content goals for 2020, it appears that the core policies have not changed. In 2020, in response to growing international pressure and the economic shock of COVID-19, China announced a new "Dual Circulation Model" for its economic development, which includes a twin emphasis on domestic demand and promotion of domestic technology. Moreover, the 14th Five-Year-Plan approved by the National People's Congress in March 2021, emphasizes the development of internet-based, Big Data, and AI technologies to support China's advanced manufacturing. Therefore, certain aspects of the current policy

framework continue to be challenging for foreign-invested enterprises (FIEs). In the 2022 *China Business Climate Survey*, 24 percent of AmCham China respondents in the Resources and Industrial sector reported they are treated unfairly as compared to their domestic competitors, though 72 percent reported they believe they are treated equally.

The domestic content goals outlined in MIC 2025 can be interpreted as protectionist and run counter to the principle of national treatment for FIEs as established under China's *Foreign Investment Law* (FIL), enacted January 1, 2020. Furthermore, it is unclear to what extent foreign-invested manufacturing firms are or will be considered "domestic", even though FIEs operating in China are Chinese legal entities, or the degree to which they could be pressured to transfer operations and intellectual property to China. Perhaps somewhat promisingly, the number of BCS respondents reporting that they share technology in China due to "informal pressure from local authorities" declined from 11 percent in 2019 to three percent in both 2020 and 2021. Nevertheless, these concerns persist across our member base and AmCham China will continue to monitor these provisions closely.

There has been relatively slow progress in resolving issues affecting the manufacturing sector, as noted in previous editions of the AmCham China White Paper. These include the timing of implementation of specific regulations, variant tax structures and restrictions on the scope of FIEs operating in the financial leasing industry. As is often the case, part of the problem is inconsistent policy implementation, which is due in part to coordination shortcomings between ministries and between central and local governments. We urge the relevant authorities to consider the issues discussed in this chapter, consult with industry stakeholders, and devise reasonable solutions predicated on a level playing field for all companies, whether foreign-invested, domestically-invested, or state-owned.

Agricultural Machinery Subsidies

Since 2004 subsidies and other favorable policies have powered sales of agricultural mechanization and machinery equipment in China, reducing the overall costs associated with food production in China. AmCham China remains

机械制造业

引言

中国制造业是国民经济的重要组成部分。2021年中国制造业增加值占GDP比重达到27.4%，是中国劳动力就业行业分布的关键领域之一。2018年至2019年，中美两国互相加征关税，使制造业笼罩在阴霾之下。为应对新冠肺炎疫情扩散，政府采取了一系列防控措施，致使中国诸多制造厂商纷纷在2020年第一季度陷入完全或部分停摆状态，导致2020年上半年中国制造业面临更加严峻的挑战。随着对国内新冠疫情的全面控制，以及各制造商第二季度后的陆续复工，中国的出口在恢复经济增长这一任务中发挥了重大作用。据估计，截止2020年底，中国占比在世界总出口的份额中从15%左右增加到19%。中国制造商严格遵守新冠疫情下的防疫规定，尽全力在2020年重启运营，他们在2020年获得的成功奠定了中国作为全球制造业中心的地位。2021年，制造业企业的发展成绩也同样亮眼。在中国美国商会（以下简称商会）发布的2022年《中国商务环境调查报告》中，57%的资源与工业行业受访者表示，相较于2020年，2021年的收入有所增加。这一比例与2021年的《中国商务环境调查报告》内容相比，上涨了19%。

2015年5月，政府首次提出要实施“中国制造2025”计划支持对制造领域的重要产业进行升级，推动国内高端制造商提升国际竞争力。“中国制造2025”计划目标包括，将国产核心部件和材料的自主保障率在2020年提高到40%，到2025年提高到70%。尽管中国政府因面临他国指责而不再继续公开强调“中国制造2025”计划，也没有实现其设定的2020年自主保障目标，但核心政策似乎并未改变。2020年，为了应对日益增长的国际压力和新冠肺炎疫情带来的经济冲击，中国提出“双循环”新发展格局以此推动经济发展，其中强调既要充分发挥国内超大规模市场优势，还要大力推

动国内技术发展。此外，2020年10月，中共十九届五中全会召开审议通过了《中共中央关于制定国民经济和社会发展第十四个五年规划和二〇三五年远景目标的建议》，强调需发展基于互联网、大数据、人工智能的技术，为中国先进制造业注入支撑力。因此，当前政策框架的某些方面对外商投资企业来说仍然构成挑战。根据商会2022年《中国商务环境调查报告》，在资源和工业行业，24%的会员企业表示，与国内竞争对手相比，他们受到了不公平的对待，尽管72%的会员企业表示自己受到了平等对待。

“中国制造2025”中的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对外资企业予以国民待遇的原则背道而驰。此外，即使在华经营的外企是中国法人实体，但外商投资制造企业会以多大程度被视为或将被视为“内资”，或在多大程度上可能会被迫将业务和知识产权转移到中国，上述具体定义目前还不清楚。令人鼓舞的是，由于受到“地方当局的非正式压力”而在中国分享技术的会员企业比例从2019年的11%下降到2020年的3%。尽管如此，这些担忧在商会会员群体中仍然存在。商会将对这些条款保持密切关注。

商会往年发布的《美国企业在中国白皮书》中多次指出，机械制造业相关问题解决进程相对缓慢，包括具体法规的按时执行，融资租赁行业外资企业税收结构的差异、对融资租赁行业外商投资企业经营范围的限制等。问题的部分原因是中央和地方政府部门间的协调不足，导致政策执行不一致。商会呼吁有关部门考虑本章的建议，征求行业利益相关方的意见，制定合理的解决方案，为所有企业包括外商投资企业、内资企业、国有企业提供公平竞争环境。

农机补贴

自2004年以来，补贴和其他优惠政策推动了中国

appreciative of the latest subsidy policy released in 2018, which included imported agricultural machinery on the subsidy list. Nevertheless, provincial agricultural authorities have substantial autonomy regarding subsidy implementation, and policies differ from province to province. As a result, manufacturers of agricultural machinery must work with all provincial authorities responsible for subsidy implementation and enforcement. AmCham China continues to recommend that the government ensure that subsidy policies are implemented consistently at the provincial level. Such action will only serve to foster a healthy business environment and improve the efficiency of China's agricultural sector. Additionally, we encourage the government to gradually shift its subsidies to include new and innovative technologies being used to power "smart agriculture."

Non-Road Emissions Standards

On December 28, 2020, the Ministry of Ecology and Environment (MEE) issued *Technical Requirements for the Control of Pollutant Emissions from Non-road Diesel Mobile Machinery (HJ1014-2020)* and *Limits and Measurement Methods for Emissions of Diesel Engine Exhaust Pollutants for Non-road Mobile Machinery* (China's third and fourth >(GB20891-2014) Amendment. Together these policies provide that China will implement its Stage IV Emission Standard for non-road mobile machinery beginning on December 1, 2022. The Beijing Municipal Bureau of MEE plans to implement GB20891-2014 Amendment in Beijing ahead of schedule.

Under Beijing's plan, Stage IV Emission Standard requires that since December 1, 2021 non-road mobile machinery at or below 560kW and diesel engines installed in Beijing or produced and sold in Beijing must meet the non-road mobile machinery Stage IV Emission Standard. In view of the stricter emission controls and shorter preparation time provided for the non-road mobile machinery Stage IV Emission Standard than was provided for the previous non-road Mobile Machinery Stage III Emission Standard, AmCham China urges the government to simplify certification procedures with respect to National Stage IV products, including emissions testing procedures, to ensure that manufacturers have sufficient time to deliver clean, efficient, and compliant products.

The requirements established under the Stage IV Emission Standard for Non-road Mobile Machinery provide that non-road mobile machinery equipped with diesel engines with a net power rating of 37kW and above be equipped with satellite navigation precision positioning systems or vehicle-mounted terminal systems. AmCham China recommends that the government implement and enforce the Stage IV Non-Road emissions regulations equally across all industry participants in order to ensure a marketplace characterized by national treatment. We expect the relevant departments including MEE to provide clear guidelines that reduce the prospect of ambiguity or subjective interpretation

at the sub-national level stemming from inconsistent interpretation of these regulations. Inconsistent interpretation of such regulations continues to be a leading challenge for our members and detracts from China's stated commitment to improving its business environment.

In a separate development that is also impacting member companies in the machinery sector, beginning January 1, 2019, the government announced that it now requires non-road mobile machinery to be fueled by petroleum and diesel products with low sulfur content that that comply with GB17691-2018, (the National Stage IV Emission Standard) that requires low-sulfur content less than or equal to 10 ppm). Our members continue to report, however, that the diesel fuel supplied in many regions across China, especially in the remote areas of western and inland China, is high in sulfur content, and does not meet the standards established by the National Stage IV standards. The use of high-sulfur diesel only increases engine failure rates and increases the challenges associated with emissions control. AmCham China urges the government to enact policies that ensure sufficient supplies of low-sulfur diesel nationwide and otherwise ensure the quality of China's diesel oil.

Marine Engine Emissions

GB 15097-2016 *Limits and measurement methods for exhaust pollutants from marine engines (China Stage I and II)* issued by the 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 1,000 kw 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 non-road 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 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. Alternatively, we recommend that MEE strengthen post-testing supervision and accept durability data generated during the manufacturer's R&D process to ensure compliance with ship emission regulations.

Since the enactment of GB 15097-2016, many domesti-

农业机械化设备的销售，降低了中国粮食生产的总体成本。商会尤其赞赏 2018 年发布的新补贴政策，该政策将进口农业机械列入补贴清单。省级农业部门在实施补贴方面拥有充分的自主权，各省的补贴政策也不尽相同。因此，农业机械制造商必须与负责补贴执法的所有省级机构合作。商会敦促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，提高农业部门效率。商会建议有关部门能够考虑调整补贴方向，逐步转向对新技术如智能农业的补贴。

非道路排放法规

生态环境部于 2020 年 12 月 28 日发布了《非道路柴油移动机械污染物排放控制技术要求》(HJ1014-2020) 和《〈非道路移动机械用柴油机排气污染物排放限值及测量方法(中国第三、四阶段)〉(GB20891-2014) 修改单》，其中规定全国将于 2022 年 12 月 1 日起实施非道路移动机械第四阶段排放标准。北京市生态环境局也已经发布，要求自 2021 年 12 月 1 日起，在北京市生产、销售的 560kW 以下(含 560kW) 非道路移动机械及其装用的柴油机须满足《非道路移动机械第四阶段标准》。鉴于非道路国四相比非道路国三排放控制更加严格，准备时间短，商会恳请中国政府能够简化国四产品的认证流程，如排放测试等，以确保制造企业能够有充足的时间交付合规的产品。

按照《非道路移动机械第四阶段标准》要求，装用额定净功率 37kW 及以上柴油机的非道路移动机械应加装卫星导航精准定位系统或车载终端系统。商会希望中国政府能够严格贯彻执行非道路国四的要求，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。

另一项政策的出台也影响到商会机械行业的会员企业。从 2019 年 1 月 1 日起，政府宣布要求非道路机械使用符合 GB17691-2018(国六排放标准) 柴油产品(含硫量 ≤ 10ppm)。然而，一些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，并不符合国六规定的标准。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 GB15097-2016《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，任何船用发动机均须进行 2,500 小时耐久性试验(DF 测试)，确定船机在有效寿命期内符合修订版废气排放标准。

耐久性试验是检验小型发动机、工业机械发动机和发电机的常见行业做法。然而，大多数船用发动机功率都在 1000 千瓦以上，许多制造商难以负担认证试验所需的燃油成本。此外，国际海事组织(海事组织)并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沿用现行非道路发动机试验结果获得了相关认证。耐久性试验给生产船机的制造商们带来了巨大的经济负担。

商会建议，生态环境部应重新考虑船机的认证程序，用其他方法取代规定的耐久性试验。例如现行的船用发动机检测，其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，或者直接采用厂家研发过程中的耐久数据，通过加强事后监管的方式确保船机排放合规。

自 GB15097-2016 生效以来，很多内、外资厂商已经按标准要求完成了相应的认证试验。然而，商会会员对于究竟需要通过哪些认证测试才能达到 GB15097-2016 的标准仍然感到困惑。部分原因在于生态环境部和中国船级社的监督和执行职责有所重叠。商会会员还发现，未通过此标准认证的船舶发动机部件和产品仍在市场上非法销售。因此，商会建议生态环境部和中国船级社在上述标准的基础上，简化 GB15097-2016 认证流程，确保只有经过认证的船用发动机零部件和产品才能进入市场，严厉打击违法销售和使用未按要求取得认证产品的行为。

再制造

近年来，中国的再制造产业得到了政府的大力支持。为促进其健康发展，商会呼吁政府严格把控再制造终成品的认定标准，加强对再制造终成品特别是非原厂商生产的再制造终成品的质量控制。同时建议向产品终端用户和消费者加强宣传再制造终成品的认定标准，以助其

cally-invested and foreign-invested manufacturers have completed the certification tests to comply with GB 15097-2016. And yet, our members continue to find that marine engine parts and products that have not been certified under this standard continue to be sold illegally on the market. We urge the MEE and the China Classification Society (CCS) to clarify and where possible simplify the certification process for GB 15097-2016, and work to ensure that only certified marine engine parts and products have access to the market, and improve enforcement to end the illegal sale and use of products that have not been certified under GB 15097-2016.

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.

Remanufacturing itself has many benefits for consumers and businesses, including lowering product costs, reducing downtime when replacing broken or defective products, and 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 remanufactured goods. AmCham China recommends that relevant departments issue pilot projects or incentives to encourage the use of remanufactured products for maintenance during the warranty period provided that the quality meets or exceeds the new product standards.

In order to ensure the quality of RFGs, in particular those RFGs used in the automotive industry, the National Development and Reform Commission, along several other ministries, published the *Interim Measures for the Administration of Remanufactured Automotive Parts* for public comment on August 11, 2020. We look forward to the government's release of supporting documents to guide policy implementation, however at the same time we also offer several recommendations to improve the roll-out of this policy:

- Clarify the requirements with respect to the qualifications of entities permitted to engage in remanufacturing. One way this could be done is through the addition of "remanufacturing" to the business license of qualified entities). We also recommend that the NDRC clarify the definition of "other relevant market entities,"

as provided for in the Draft Interim Measures.

- With respect to efforts to encourage remanufacturing entities to apply for third-party certification of the quality of their remanufacturing systems, we recommend that entities whose systems are already certified be permitted to undergo a simplified certification procedure or be exempt from any requirement to obtain fresh certification while enjoying the same rights, obligations, and flexibility to operate as they currently enjoy.
- With respect to the requirement that remanufacturing entities ensure that any RFGs they produce and sell are of equivalent quality and characteristic to newly-manufactured products or product prototypes, we urge the government to clarify the scope of products, features, and criteria that will be subject to testing and inspection. Without greater clarity, this is an arbitrary standard to impose on RFGs and manufacturers.

Financial Leasing for Machinery and Equipment

Financial leasing services are an effective method 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 30 percent in other developed countries, while China's leasing rate is below five percent. Improving the consistency of leasing regulations across government departments and provinces should help expand access to financing.

As of April 20, 2018, MOFCOM transferred its regulatory responsibility for financial leasing companies to the China Banking and Insurance Regulatory Commission (CBIRC). On January 8, 2020, a draft of the *Interim Measures on Supervision and Management of Financial Leasing Companies* (Draft Interim Measures) was published by CBIRC for comment. In the Draft Interim Measures, the scope of business for commercial leasing companies does not list "factoring" as a permitted activity (i.e., a type of debt financing in which a business sells its accounts receivable (its invoices) to a third party at a discount in order to raise capital. Factoring is common practice in many industries, including capital-intensive industries like machinery and manufacturing). Factoring activities are also not listed in the *Special Administrative Measures on Access to Foreign Investment (2020 edition)* (Negative List) as a restricted or prohibited activity. Its exclusion in the Draft Interim Measures is also not in line with the spirit of the *Guidelines for Accelerating the Development of Financial Leasing Industry* published by the State Council in 2015 (Circular No.68) which permitted financial leasing companies to engage in factoring transactions.

Factoring transactions of equipment leasing firms primarily involve accounts receivable from manufacturing companies that are generated through the sale of machinery to retailers and dealers. Most of the machinery equipment sold

了解并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。

再制造本身对消费者和企业有很多好处，可以降低产品成本、减少更换破损或有缺陷产品时的停机时间、加强采购灵活性并提升环境效益。让消费者更好地了解再制造行业是增加再制造行业市场需求的最重要途径，在保修期内鼓励再制造产品的使用也将帮助扩大再制造产品的市场。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出台奖励措施，鼓励厂商在质保期内用再制造产品进行维修。

为保障再制造产品质量、规范机动车零部件再制造产业的发展，国家发展改革委会同有关部门组织起草了《汽车零部件再制造规范管理暂行办法（征求意见稿）》，并于2020年8月11日起向社会公开征求意见，商会支持政府出台必要的政策文件引导行业的发展，同时机械行业也出台相关指导意见，并建议：

- 明确对再制造企业营业资质方面的要求（例如在企业经营范围中加入“再制造”选项），以及明确“其他相关市场主体”的定义。
- 关于鼓励再制造企业申请第三方再制造质量体系认证，建议针对原厂再制造企业简化认证流程或免除认证，但享有认证后的同等权利和义务。
- 关于要求再制造企业应当保证所生产销售的再制造产品具备与原型新品同样的质量特性，建议进一步明确检验检测的范围。

机械设备的融资租赁

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手段。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，有助于扩大融资渠道。

截止到2018年4月20日，商务部已将制定融资租赁公司业务经营和监管规则职责划给中国银行保险监督管理委员会（以下简称银保监会）。2020年1月8日，银保监会发布《融资租赁公司监督管理暂行办法（征求意见稿）》。在征求意见稿中，融资租赁公司的业务范围未提及商业保理业务（如企业将应收账款（发票）折价出售给第三方以筹集资金的一种债务融资方式）。保理

业务在许多行业都很常见，包括资本密集型行业，如机械制造业。《外商投资准入特别管理措施（2019年版）》（负面清单）中的限制性或禁止类经营活动亦未包括此类业务。保理业务也不在《外商投资准入特别管理办法（2020年版）》（负面清单）中列为限制或禁止经营活动。这有违《国务院办公厅关于加快融资租赁业发展的指导意见》（国办发〔2015〕68号）允许融资租赁公司兼营与主营业务有关的保理业务的精神。

设备租赁公司的保理业务主要是购买制造企业销售设备产生的应收账款，且这些设备大部分将会通过设备租赁公司以融资租赁的形式提供给最终用户。因此，在制造企业和设备租赁公司总体风险有限的基础上，保理业务在加速制造企业资金周转、扩大生产销售方面发挥了重要作用。外商投资企业开展保理业务所产生的额外收入，往往再投资于中国市场，这是国际制造企业及其设备租赁公司通行多年的成功经验。

商会建议监管部门优先保证监管政策的一致性，在充分调研的基础上谨慎制定新政策、新规则，减少包括外商投资企业在内的所有在华经营企业面临的政策不确定性风险。

考虑到融资租赁公司正常业务的延续性，商会建议允许已获批兼营商业保理业务的融资租赁公司继续兼营商业保理业务，作为融资租赁业务的有益补充。但前提是需符合《融资租赁企业监督管理暂行办法》中“融资租赁和其他租赁资产比重不得低于总资产的60%”的规定。

此外，征求意见稿规定融资租赁公司的风险资产总额不得超过净资产的8倍。考虑到融资租赁公司长期以来适用杠杆率不会超过10倍，一直风险可控。经营同类业务的金融租赁公司的杠杆率为12.5倍，因此，商会建议将融资租赁公司的杠杆率保持最高值10倍不变，与商业保理公司等其他地方金融机构保持一致。商会建议中国政府发布有关管理办法时应充分听取租赁公司的意见，并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。

原“中国制造2025”和补贴问题

“中国制造2025”计划于2015年首次提出，旨在通过减少劳动密集型生产，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

will then be financed to end users via the financial leasing company. The financial risk to the manufacturer and financial leasing company is limited and factoring transactions play a vital role in accelerating cashflows, enhancing access to capital and improving the production and sales capacity of machinery firms and manufacturers. The additional revenue produced by factoring transactions conducted by FIEs is often reinvested into the China market. It is an effective business model that has been used by foreign-invested manufacturers and leasing companies for many years.

AmCham China recommends that regulators prioritize consistency of regulations and only promulgate new policies or regulations after thorough research and with a view to maintaining policy continuity to reduce the uncertainty facing all companies, including FIEs, operating in China.

With respect to factoring, AmCham China recommends that FIEs approved to conduct factoring transactions be permitted to continue, as they form a useful supplement to the activities of financial leasing companies, provided that they comply with the *Administrative Measures for Financial Leasing Companies* such that “the proportion of leased assets (via factoring) shall be not less than 60 percent of the total assets” of a given entity.

Furthermore, the Draft Interim Measures stipulate that the total risk assets of a financial leasing company may not exceed eight times its net assets. Financial leasing companies have long been subject to ratios such that risk assets are no more than ten times their total net assets, and such leverage has been manageable. Some financial leasing companies operating similar businesses have ratios closer to 12.5 times total net assets. We recommend that the government maintain the provision that risk assets be not more than ten times total net assets, consistent with domestic financial institutions like commercial factoring companies. AmCham China recommends that the government consult with industry with respect to these proposed changes, adopt recommendations proposed by the industry, and provide enterprises sufficient preparation time and a transition period to meet these new regulations so as not to hinder the regular operations of the financial leasing industry.

The Former Made in China 2025 and subsidies

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 the trade dispute between the US and

China, the status of the MIC 2025 program became less clear. That lack of clarity continued into 2019 and 2020. There is uncertainty in the business community around the extent to which MIC 2025 still constitutes official policy and, even if it is officially discontinued, to what extent key policies of the program remain de facto policy. It remains unclear how 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, and as we discussed in the introduction section, policy announcements in 2020 including the “Dual Circulation Model” and elements of China’s 14th FYP that emphasize support for upgrading its manufacturing capacity. Moreover, the Ministry of Industry and Information Technology, at its annual Work Conference in December 2021, highlighted the need to maintain “stability” of the manufacturing sector (as a proportion of GDP), enhance the “independent security” of supply chains, and accelerate development of high-end manufacturing.

AmCham China members remain concerned that MIC 2025 and related policies will continue to be used to support domestically-invested 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 FIEs. Reducing the choices available in the marketplace through government mandate will limit opportunities for innovation, disincentivize foreign investment and negatively impact the overall development of industry.

Subsidies are another area of concern for manufacturing FIEs under MIC 2025. Many incentive programs that include subsidies are unclear due to inconsistencies in implementation methods among regions. AmCham China urges the government to treat all industrial entities equally and provide a level playing field. Even though MIC 2025 may have formally ended, baseline support for the policy appears to be ongoing with less transparency which is no less problematic. More importantly, AmCham China is increasingly concerned that the continued use of subsidies is inconsistent with China’s WTO commitments and plays a role in the ongoing trade frictions between the US and Chinese governments.

We therefore recommend the use of tax credits as an alternative in line with global and US practice, rather than subsidies which are viewed negatively by the international business community. Some key points and recommendations in this area are as follows:

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，“中国制造 2025”计划作为中美贸易争端及谈判内容的一部分，情况变得不够明朗。但不确定性仍笼罩着业界，“中国制造 2025”在很大程度上被视为是官方政策，即使正式停止执行，该计划的关键政策在很高程度上仍然有效。目前尚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，如何参与其中。

在原“中国制造 2025”计划的指导下，中国中央政府颁布了多项自主创新政策，公开表明计划提高自主保障比例，似乎有意实现进口替代。虽然原“中国制造 2025”计划名义上已经停止，但在 2020 年的政策公告中仍包含“双循环”新发展新格局和中国“十四五”规划中强调支持制造业能力提升的内容。此外，中国工业和信息化部在 2020 年 12 月的年度工作会议上，强调要保持制造业的“稳”（GDP 的占比），提升供应链的“自主安全”，加快发展高端制造业。

商会会员企业担心，原“中国制造 2025”计划会牺牲外资企业来扶持内资企业。鉴于政策对本土企业有明里暗里地优待，外资企业将无法避免与商业机会隔绝的命运。最终用户应当有权自行选择供货商，购买资本设备和服务，包括外商投资的本地生产企业。借政府之手压缩市场选择范围将打击市场创新潜力，不利于行业的总体发展。

补贴是“中国制造 2025”计划中外资制造商担心的另一个问题。由于在不同地区补贴执行不一致，许多包括补贴在内的优惠方案尚不明确。商会呼吁中国政府一视同仁，营造公平的竞争环境。更重要的是，商会越来越担心，继续使用补贴既不符合中国在世贸组织的承诺，也可能加剧中美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，不再采用国际商界均不看好的补贴方式。要点和建议如下：

- “中国制造 2025”计划的补贴曾经、并且现在依然在破坏国内外企业的公平竞争；
- 许多国内公司的商业计划都以补贴作为依托，从长远来看是不可取的；这样做既补贴浪费了政府资源，

又使外国公司陷入财务劣势；

- 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；
- 税收抵免制度还有利于反腐败，提高税收合规，并可以更好地管理企业。

建议

对中国政府：

- **建议考虑将现行的补贴制度替换为基于当前全球规范的税收抵免制度，确保外资企业享有公平的竞争环境。**
- 农业机械补贴方面，确保各省级机构采取统一的省级农机补贴政策，以营造健康的商业环境，提高农业部门效率。同时，将农机补贴方向逐步转向新技术如智能农业，推动“智慧农业”的进一步发展。
- 为了保证公平的行业环境，在所有行业参与者中严格贯彻执行《非道路移动机械第四阶段标准》的要求。相关部门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。
- 明确对再制造企业营业资质方面的要求，特别是汽车零部件再制造业的资质要求，对于有营业资质的企业从事汽车零部件再制造时免去重新获取认证的环节，明确再制造产品的范围、特点和需检测检验的标准。
- 因为外国投资企业会面临政策不确定性风险，建议监管部门优先保证监管政策的一致性，在充分调研并适当考虑到不一致和因缺乏连续性所造成的风险之后，再颁布新规或修订后的规则。在重型机械的融资租赁行业，继续允许外国投资企业经营保理业务，作为其业务活动的一项常规内容。

对美国政府：

- 继续敦促中国相关部门确保“中国制造 2025”

- MIC 2025 subsidies were, and current apparent practices are, distorting competitive opportunities for both domestically-invested enterprises and FIEs,
- The business plans of many domestic firms are based on subsidies and are generally not viable in the long term. Subsidies waste government resources while placing foreign firms at a financial disadvantage,
- Moving to a tax credit regime will incentive good companies to risk their own capital to become eligible for credits later,
- A tax credit regime is also conducive to anti-corruption measures, enhances tax compliance, and allows greater control of businesses.

to permit FIEs to engage in factoring as a regular element of their business operations.

For the US Government

- Continue to urge China to ensure that policies stemming from MIC 2025 do not favor domestic companies at the expense of FIEs and are not dependent on subsidies in violation of China's WTO commitments.

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.**
- Ensure that subsidy policies for agricultural machinery are implemented consistently at the provincial level, which will only serve to foster a healthy business environment and improve the efficiency of China's agricultural sector. Gradually shift its subsidy policies to include new and innovative technologies being used to power "smart agriculture."
- Implement and enforce the Stage IV Non-Road Mobile Machinery Emissions Standard equally across all industry participants in order to ensure a marketplace characterized by national treatment. Provide clear guidelines that reduce the prospect of ambiguity or subjective interpretation at the sub-national level stemming from inconsistent interpretation of these regulations.
- Clarify the requirements with respect to the qualifications of entities permitted to engage in remanufacturing, particularly remanufacturing of automotive parts, exempt certified entities from needing to obtain fresh certification in order to engage in remanufacturing of automotive parts, and clarify the scope of remanufactured products, features, and criteria that will be subject to testing and inspection.
- Prioritize regulatory consistency and only promulgate new or amended regulations after thorough research and with appropriate consideration of the risks created by inconsistency and a lack of continuity which particularly hamper FIEs. In the financial leasing sector for heavy machinery, continue

计划不以牺牲外商投资企业为代价扶持国内企业，不对内资企业予以补贴优待，遵守中国的“入世”承诺。

Media and Entertainment

Introduction

The media and entertainment industry in China plays an important role in creating and enriching content for the domestic market and driving economic growth. China is now the largest theatrical market globally for the second consecutive year in 2021. In 2021, China continued to top the movie market globally both in terms of total box office and movie theatre screen. The total box office in 2021 was US \$7.44 billion (RMB 47.26 billion), up 558.4 percent from the US \$1.13 billion (RMB 20.4 billion) box office in 2020, but still down 26.5 percent from the US \$9.2 billion (RMB 60.3 billion) box office in 2019 due to the sustained effects of the COVID-19 pandemic. China has reported the largest number of movie theatre screens of any country globally for the past 3 years, with 82,248 screens at the end of 2021. The professional and production 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. According to the China Netcasting Services Association, China's online audiovisual users have grown from 461 million in 2015 to 944 million in June 2021, doubling after only six years. The online audiovisual business provides consumers with access to an array of movies, television programming, music, and multimedia content.

The Chinese government has also promoted the development of the media and entertainment industry and taken action to combat piracy, including renewed commitments in the January 2020 *Economic and Trade Agreement between the US and China* (Phase One Agreement).

And yet, the media and entertainment industry in China remains largely off-limits to foreign investment with little signs of improvement. The *Special Administrative Measures (Negative List) for Foreign Investment Access (2021 Edition)* (2021 Negative List) that went into effect on January 1, 2022, maintained the prohibition on foreign investment in the cultural and media entertainment sectors.

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 media and entertainment companies, foreign or domestic, and for companies to realize the

full potential of their investments. In November 2021, at the opening ceremony of the 4th China International Import Expo (CIIE), Chinese President Xi Jinping reiterated that "As for China, we will not change our resolve to open wider at a high standard; we will not change our determination to share development opportunities with the rest of the world; and we will not change our commitment to an economic globalization that is more open, inclusive, balanced and beneficial for all." AmCham China therefore urges China to fully implement its commitments and promote reciprocity in market access, remove discriminatory regulations, and continue to prioritize and protect intellectual property (IP) rights.

Ongoing Challenges

Film

Foreign investment restrictions

Under *Guiding Catalogue on Foreign Investment in Industry* (2005 ver.), foreign companies were briefly permitted to form joint ventures to produce and distribute films and TV series, but after a few months it became difficult for companies to do so in practice. Beginning with the *Guiding Catalogue on Foreign Investment* (2007), foreign companies have been prohibited from establishing or operating film production companies, distribution companies, and film import businesses. This prohibition has continued under the Negative List system, the first version of which was issued in 2016. Foreign entertainment companies are only permitted to work with domestic partners to co-produce films on a project-by-project basis under strict regulation. Despite a statement on March 15, 2019, by Premier Li Keqiang that "China will adopt a policy of pre-established national treatment, along with a negative list management system, which will be shortened in time," and the new *Foreign Investment Law*, effective January 1, 2020, which promises equal treatment for foreign investors in a number of respects, film and TV production, distribution, and online video platforms have yet to be removed from the Negative List.

In 2020 and early 2021, General Secretary Xi has repeatedly stated that "China will further open up under the 'dual circulation model,'" Furthermore, at the Global CEO Council virtual meeting in December 2021, Premier Li Keqiang reit-

媒体与娱乐业

引言



中国的媒体和娱乐业在为国内市场创造和丰富内容、推动经济增长方面发挥着重要作用。到 2021 年，中国已连续第二年成为全球最大的影院市场。2021 年，中国在电影总票房和银幕规模方面蝉联全球电影市场榜首。2021 年总票房为 74.4 亿美元（约合 472.6 亿元人民币），在 2020 年的 11.3 亿美元（约合 204 亿元人民币）基础上增长了 558.4%，但由于持续受到新冠肺炎疫情的影响，仍然比 2019 年的 92 亿美元（约合 603 亿元人民币）减少了 26.5%。据报道，在过去三年里，中国是全球影院银幕数量最多的国家。截至 2021 年底，中国共计拥有 82248 块银幕。此外，中国国产电影的专业程度和制作质量也在不断提高。

近年来，得益于世界上最大规模互联网用户群的支持，中国的网络视听产业成长迅速。中国网络视听节目服务协会的数据显示，中国的在线视听用户从 2015 年的 4.61 亿增长至 2021 年 6 月的 9.44 亿，在短短的六年时间内翻了一番。该产业的发展为消费者提供了丰富的电影电视节目、音乐及多媒体内容。

在中国政府推动媒体和娱乐业发展的同时，采取有力措施打击盗版。中方在 2020 年 1 月的中美第一阶段经贸协议中重申该项承诺。

然而，中国在媒体和娱乐产业上，对外资有颇多限制，这一情况在近年来几乎没有改善的迹象。自 2022 年 1 月 1 日起生效的《外商投资准入特别管理措施（负面清单）（2021 年版）》（以下简称“2021 年负面清单”）并未取消对外资进入中国的文化传媒和娱乐领域的限制。

为解决长期存在的市场准入问题和监管障碍，并为国内外所有媒体和娱乐公司提供公平竞争的环境，推动该领域的外资企业释放其巨大的投资潜力，仍任重道远。2021 年 11 月，中国国家主席习近平在第四届中国

国际进口博览会（CIIE）开幕式上重申，“中国扩大高水平开放的决心不会变，同世界分享发展机遇的决心不会变，推动经济全球化朝着更加开放、包容、普惠、平衡、共赢方向发展的决心不会变”。因此，中国美国商会（以下简称商会）促请中国全面履行相关承诺，在市场准入方面促进对等，取消歧视性法规，并继续加强知识产权（IP）保护。

现存监管挑战

电影

外商投资限制

根据《外商投资产业指导目录（2005 年版）》，外资企业可以通过同内资企业成立合资企业生产和发行影视作品。《外商投资产业指导目录（2007 年版）》再次限制外资企业设立或经营电影制作公司、发行公司和电影进口业务。该政策延续至 2016 年后中国政府首次采用“负面清单”制度。外资娱乐公司只能在严格监管下以单个项目为基础与本土公司合作制作合拍片。尽管李克强总理在 2019 年 3 月 15 日表示，“中国将采取准入前国民待遇政策，同时实行负面清单管理制度，并及时缩短负面清单。”但自《外商投资法》于 2020 年 1 月 1 日生效以来，最新版负面清单中在外商参与影视剧的制作、发行，以及网络视听节目服务平台的限制并未得到放宽。

2020 年和 2021 年初，习总书记多次表示，“要加快构建更加开放的国内国际双循环”。李克强总理在 2021 年 12 月“全球首席执行官委员会”线上会议上，再度重申了这一观点，并承诺“完善外商投资促进和服务体系，使中国长期成为极具吸引力的投资目的地。”令人遗憾的是，外国投资者在影视市场上仍然受到了较大限制。商会成员企业仍希望，电影制作市场能够逐渐向美国电影和电视制片人开放。

erated these points making a commitment to “improve the foreign investment promotion and service system and make China a highly attractive investment destination over the long run.” Unfortunately, foreign investors in the film and television market are still subject to greater restrictions. AmCham China members continue to hope that the film production market will eventually open to US film and TV producers.

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 complying 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 would be in “enhanced format” (e.g., 3D or IMAX). These 34 films are subject to revenue-sharing agreements, pursuant to which US film production companies receive only 25 percent of the gross box office revenue for each film – a figure far below international norms. Under its terms, the MOU was required to be updated in 2017, including a commitment by China to enhance the benefits to the US under the MOU. To date, however, a new MOU has yet to be concluded. AmCham China encourages both sides to pursue a new MOU to allow foreign film producers to receive a share of the gross box office revenue which 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 if not longer. 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 films and limit competition. They typically occur during the summer and Lunar New Year holidays or to coincide with political events.

Delayed day-and-date releases, short notice release dates, and restrictions on the release of new foreign film titles during peak seasons not only discriminate against foreign films but also reduce total Chinese box office revenues while inducing Chinese citizens and entertainment consumers to turn to illicit sources for unauthorized film and TV content.

Online Audiovisual Services

China has seen rapid growth in its online audiovisual industry. At the end of 2020, China’s online video market was worth an estimated RMB 600.9 billion (approximately US \$94.3 billion). Ongoing market access restrictions prevent foreign companies from competing on a level playing field, and in some instances on any basis whatsoever, 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, then distribute it domestically.

Quota Restrictions and Content Review

The *Notice on Further Implementation of Provisions Concerning the Administration of Online Foreign Films and TV Dramas*, issued by the former State Administration of Press, Publication, Radio, Film and Television (whose duties with respect to this industry are now divided between the National Radio and Television Administration (NRTA) and the China Film Administration, both under the Party’s Central Publicity Department) in 2014, caps the online distribution of foreign content at 30 percent 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, whereas 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. Since the 30 percent foreign content cap is limited by country, in actuality, US content is restricted to less than 10 percent in real market terms.

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 NRTA issued a new draft *Administrative Regulations on the Introduction and Dissemination of Foreign Audio-Visual Programs*. These draft regulations would further tighten controls on foreign content and propose not only a generic 30 percent cap on foreign content, but mandate that the 30 percent 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.

While these regulations on broadcast of overseas programming have yet to be officially promulgated in final form, AmCham China members are deeply concerned that these market access restrictions have been implemented in practice by online video platforms since early 2021. US film and TV companies continue to face an extremely uncertain and uneven playing field. Without an official announcement or formal promulgation of the regulations, an industry-wide application of the 30 percent foreign content cap on cartoons began on April 1, 2021. Additional unannounced restrictions have also been issued which expand the quota restrictions by genre to other categories as well, including documentaries and other overseas TV programs. We urge China to

院线电影——票房分账和配额

2012年，中美双方就解决WTO电影相关问题签署了《中美双方就解决WTO电影相关问题的谅解备忘录》(MOU)，为双方在解决中国履行WTO义务问题上存在分歧时提供依据。根据该《谅解备忘录》的条款，中国每年允许34部外国电影进入中国，其中14部电影必须为“高技术格式”电影(如3D或IMAX)。这34部电影依照有关票房分账协议条款进行分账。该协议明确，美国电影制作公司仅可获得每部电影总票房收入的25%——这一数字远远低于国际标准。根据其文本，《谅解备忘录》须于2017年进行更新，并履行进一步保障美方的利益的承诺。但截至目前，新的协议尚未达成。商会敦促双方促成一项新的《谅解备忘录》，并允许外国电影制片人按照国际标准从其电影产生的总票房收入中分账。

影片上映日期和旺季期间限制

虽然部分进口电影获准于国内外同步上映，但许多电影至少要推迟数周时间才能在华上映。此外，上映日期通常只提前四到六周确定，这一举动极大阻碍了电影的上映规划并限制了其营销机会。而且，中国政府还实行了“国产电影保护期”，在此期间，不允许外国电影上映。这一旨在保护中国本土电影业发展的举措，与公平竞争的原则背道而驰。“国产电影保护期”通常为暑假和农历新年假期，或其他政府认定的特殊时期。

推迟同步上映日期、短暂的定档发布期以及在旺季期间对外国电影上映的限制，不仅是对进口电影的歧视，还减少了中国的总票房收入，使得中国消费者转向非法渠道获取未经授权的影视内容。

网络视听服务

中国的在线视听产业发展迅速。截至2020年底，中国的网络视频市场价值约为6009亿元人民币(约合943亿美元)。然而，长期以来的市场准入限制严重阻碍了外国公司在这个快速增长的市场上进行公平竞争，在某些情况下，甚至导致了外国公司根本无法参与竞争的情况。

外商投资限制

十多年来，中国一直禁止外国投资网络视听节目服

务业务。外国公司只能将其节目授权于本土企业，由其在华发行。

配额限制和内容审查

2014年，原国家新闻出版广电总局(其就本行业的相关职责现由中央宣传部下属的国家广播电视总局(NRTA)和国家电影局负责)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》，规定单个网站每年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数量的30%，并要求各网站将所引进的境外影视剧内容递交审查。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，监管方还要求外国电视剧以整季的形式提交，而此前可以以单集形式提交；这一规定导致外国电视节目内容难以在最具价值的时段进入市场。由于30%的配额限制，使得来自美国的影视剧内容实际上仅占国产影视剧内容的10%以下。

上述规定大大减少了美国电视节目在中国的发行量，同时也导致更多的中国观众不得不选择在网上观看未经授权的盗版资源。

2018年9月，国家广播电视总局发布了《境外视听节目引进、传播管理规定(征求意见稿)》。草案进一步加强了对境外视听节目的管理，不仅强调了境外视听节目总量不得超过30%的上限，还要求境外电影、电视、动画、纪录片和“其他”节目，包括教育、科学和技术、文化、综艺和体育节目，在不同类型的基础上适用该30%的配额。

这部关于境外视听节目管理的规定目前只是征求意见稿，官方尚未发布正式文件。然而，事实上，自2021年初以来，网络试听平台已经实施了这些市场准入限制。美国影视公司面临着极其不确定和不平等的竞争环境。2021年4月1日，对动画片类别30%的配额限制，已经开始实施。包括纪录片在内的其它类别也已经出台了类似的配额制度。对于此政策在制定、实施中所存在的程序性问题，商会会员深表忧虑。商会敦促相关监管机构本着《外商投资法》以及李克强总理的声明精神和内容行事，支持准入前国民待遇政策，培育以市场为基础的国际一流营商环境，并取消对美国电影和电视节目在中国获得网络发行许可的不利影响。这些规定极大地限制了境外影视剧在中国的引进数量，导致上映时间推迟，并在实操层面上对外国节

act in the spirit as well as the letter of the *Foreign Investment Law* and Premier Li's statement in support of pre-established national treatment, fostering a market-based, world-class business environment and removing these restrictions that have adversely impacted US film, and TV programs licensed in China for online distribution. This has resulted in delays, effectively curtailing day-and-date releases and in practice placed additional caps on the availability of foreign content.

Additionally, in the second quarter of 2019, without an official announcement, Chinese government agencies significantly slowed the processing of reviews of US content intended for Chinese online streaming platforms, in what has been referred to in industry meetings as a "soft ban".

The above policy changes, including the quota and content review process, are not consistent with General Secretary Xi's stated commitment to "rule by law," nor do they comply with Article 7 of the *Foreign Investment Law Implementing Regulations*, effective January 1, 2020, which provide that "unpublished rules shall not be taken as the basis for exercising regulation over foreign investment."

AmCham China encourages the Chinese government to:

- Remove restrictions on foreign investment in the online audiovisual market and allow foreign companies to operate online streaming services,
- Allow films with an approved theatrical release permit to be released on online video platforms without having to undergo additional rounds of content review,
- Revoke all restrictive measures and remove all quotas on foreign content (including the *2014 Notice on Further Implementation of Provisions Concerning the Administration of Online Foreign Films and TV Dramas and the Notice and Measures on Administration of Online Foreign Films, and the Statement and Rules on Importing TV Formats*),
- Revoke and cease implementation of all regulations, decrees, and notices that have not been officially and publicly announced or published.

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 are available only 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 limit the total airtime of foreign content broadcast on domestic television, including complete bans on foreign

programming during prime time. AmCham China encourages a reevaluation and relaxation of these restrictions.

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 enables the growth of a legal digital media economy.

Nevertheless, illegal downloading and streaming of foreign films remains a significant problem 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, constituting 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 constitute a significant threat to the continued growth of legitimate online media and entertainment industry.

On November 24, 2019, the Central Committee of the Communist Party of China (CCP) and the State Council jointly issued the *Guidelines on Strengthening the Protection of Intellectual Property Rights*. AmCham China hopes that additional concrete steps will be taken to strengthen IPR protection (including copyright, patent, and trademark).

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 available under 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 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,

目的引进设置了额外的上限。

此外，在 2019 年第二季度，在没有官方宣布的情况下，中国政府机构大幅放缓了针对中国在线流媒体平台的美国内容审查处理速度，此举在行业会议中称之为“软禁令”。

上述政策，包括配额和内容审查程序，与国家领导人所承诺的“依法治国”背道而驰，也不符合 2020 年 1 月 1 日生效的《外商投资法实施条例》第七条所规定的“未经公布的相关条例不得作为外商投资监管的依据”。

商会促请中国政府：

- 取消对外商投资网络视听节目服务的限制，允许外企运营在线流媒体服务；
- 允许持有公映许可证的电影于网络视频平台上映，豁免对其进行额外的内容审查；
- 撤销所有限制性措施及外国内容配额（包括 2014 年《关于进一步落实网上境外影视剧管理有关规定的通知》、《广电总局关于进一步加强和改进境外影视剧改进和播出管理的通知》、《广播电影电视关于引进、播出境外电视节目的管理规定》）
- 撤销并停止执行所有尚未正式公开宣布或发布的法规、法令和通知。

电视

尽管网络视听服务持续增长，在中国，电视仍拥有最大的受众群体。中国禁止外商投资包括电视制作公司在内的电视领域。未经政府批准或持有落地许可，中国本地有线电视网络不得传送境外卫星频道。境外卫星频道传输到中国，需要通过政府卫星平台加密定向传送，且只能在高端酒店（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 万美元的年费高得令人望而却步。此外，长期以来，中国一直严格限制境外节目内容在国内电视频道的总播出时间，包括完全禁止境外节目在黄金时段播出。商会再次促请中国政府重新评估和放宽这些限制。

知识产权保护

网络盗版

自 2005 年以来，中国国家版权局（NCAC）每年

都会开展打击侵权盗版的专项整治的“剑网行动”。这为视频托管领域带来了积极而持久的变化，并合法数字经济的增长营造了良好的环境。

然而，在中国，非法下载和传播境外电影仍然是一个较为突出的问题。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、非法的且能即时播放的电影和电视节目，并在社交媒体平台传播这些链接。市场上还存在许多大量聚合盗版内容的移动应用程序和设备，对两国正版电影行业构成了威胁。中国应加强对 P2P 网络、网站和移动视频聚合设备 / 应用程序的监管，这些平台网络已经对合法的线上媒体和娱乐产业的持续发展构成了重大威胁。

2019 年 11 月 24 日，中共中央、国务院联合发布了《关于强化知识产权保护的意见》。商会期待中国政府能够采取更多举措，加强知识产权保护（包括版权、专利和商标）。

应对网络盗版的挑战，商会促请中方通过以下行动，对数字媒体予以充分保护：

- 发布新规，以有效解决视频聚合网站和移动应用程序带来的大量互联网侵权盗版问题；
- 明确版权下的专有权；
- 对违反技术保护措施（TPM）和信息权利管理（IRM）反规避条款的行为定为刑事犯罪；
- 将可能缺乏明显利润动机但对权利持有人产生商业影响的网络犯罪定为刑事犯罪，修改“转发 500 份”的刑事门槛；
- 消除“实体”和“个人”犯罪之间的法律区别；
- 对侵权行为施加具有威慑力的民事和刑事处罚；
- 为电子商务平台运营商建立全面责任制度，并采取有效措施，对涉及网络盗版的主要网站实施通知和下架行动。

录制盗版

中国电影行业内仍有着大量的录制盗版案例。有关行业分析发现，仅在 2018 年和 2019 年，来自中国电影院的非法摄像机录制影片多达 53 部。虽然中国有意愿整治摄像盗录情况，但还可以采取更有效的威慑措施。商会促请监管者加强民事、行政和刑事处罚，以杜绝在电影院非法使用摄像机盗录的情况。

- 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.

Camcorder Piracy

China continues to have a significant number of instances of camcorder piracy across the film industry. Industry analysis identified as many as a total of 53 illegal camcorder-based recordings coming from cinemas in China in 2018 and 2019. While China has been cooperative in efforts to prevent camcorder recordings, more effective deterrent measures should be put in place. 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 be pleased to work with the Chinese government to develop solutions to deal with the challenges posed by these blank media boxes.

Amended Copyright Law

China issued an amended Copyright Law in November 2020 which came into effect on June 1, 2021. This is the first revision to China's Copyright Law since 2010. The amended Law contains a number of positive reforms, including:

- An increase in the maximum amount of "punitive" damages that can be sought, from RMB 500,000 (US \$76,300) to RMB 5 million (US \$763,000),
- A shift in the burden of proof to infringing defendants upon a review of prima facie evidence, and
- Protections for TPMs, which enable digital trade in copyrighted works.

It is vital that China properly implement the revised *Copyright Law* to ensure compliance with its international commitments, including to provide TPM protections that are adequate and effective. China should further revise its legal framework to bring its domestic standard of copyright protection and enforcement into alignment with global norms and best practices and to meet the challenges of copyright protection in the digital age. While our members witnessed some notable improvements to its enforcement framework in 2020, in particular the increase in maximum punitive damages in the revised *Copyright Law*, China should continue to faithfully implement the *Guidelines on Strengthening the Protection of Intellectual Property Rights*, and its commitments under the Phase One Agreement, including commitments to ensure that all websites will "remove

infringing content, block or disconnect pirated website links, and stop the dissemination of infringing information."

Theme Park Industry

Theme parks are an increasingly popular destination for Chinese tourists. According to the US company AECOM, there are approximately 160 theme parks of varying size within China, which is three times more than there were ten years ago. The ten most popular theme parks in China welcomed 60.38 million visitors in 2019, up one percent from the previous year. Industry analysis from Mintel, a market intelligence and research firm, suggests that retail sales of the theme park market will grow at an average of 17.7 percent per year from 2017 to 2022, reaching RMB 89.2 billion (US \$13.8 billion) by 2022. China's theme park market has substantial growth potential. The vice chairman of AECOM, Chris Yoshii, estimates that the annual rate of theme-park visits per capita in China is around 0.16, only a quarter of the US level. This huge growth potential has led several well-known foreign brands and Chinese operators to invest in the market. In 2016, Shanghai Disney Resort, a Sino-US joint venture, began operating in Shanghai, and the Universal Beijing Resort opened in 2021. Top international brands will inject new energy into China's theme park market, bringing to bear their strong content production capabilities and international experience in IP protection.

The ongoing COVID-19 pandemic has had a significant impact on the cultural and tourism industries around the world. At the time of the outbreak of COVID-19, many theme parks in China were forced to close and the number of visitors entering the parks fell significantly. But as the epidemic was rapidly brought under control, coupled significant restrictions on global and international travel, many Chinese tourists who previously had preferred to travel internationally for their holidays pivoted to taking holidays within China. The domestic theme park industry has thus gradually recovered, and some parks are even experiencing a boom in attendance. By August 2020, China's domestic tourism industry had nearly recovered to its pre-pandemic levels.

Nevertheless, as the pandemic is still raging around the world, it has created a degree of uncertainty and its own set of challenges with respect to China's domestic pandemic control efforts, which collectively have put pressure on the theme park industry. In addition, China's theme park industry is facing its own challenges. There is growing competition in this fast-expanding market. Challenges with respect to the issuance of counterfeit tickets and pirated goods still plague the market, while the costs associated with the protection of core IP are relatively high. Many small and medium-sized theme parks lack brand-building experience and struggle to differentiate their products and customer experiences from others on the market. Their operating models are still primarily reliant on ticket sales for profit; they lack secondary consumption opportunities and suffi-

盗版设备和应用程序

中国是全球领先的空白影音盒的生产制造商，此设备可以预装或后装第三方应用程序，这使得消费者能够轻易获取盗版内容。商会会员企业愿与监管机构加强合作，探讨解决方案，应对这些空白影音盒子带来的侵权挑战。

修订后的《著作权法》

中国于2020年10月发布了修订后的《著作权法》，此法律并于2021年6月1日生效。这是2010年以来中国《著作权法》的首次修订。修订后的《著作权法》包含了一些积极的举措，其中包括：

- 将可追讨的“惩罚性”赔偿的最高金额从50万元人民币（76,300美元）增加到500万元人民币（763,000美元）；
- 在审查初步证据后，将举证责任转移给侵权被告，以及
- 对技术保护措施的保护，使受版权保护的作品能够进行数字化交易。

中国应严格落实修订后的《著作权法》，以确保遵守其国际承诺，包括对技术保护措施提供充分有效的保护，这至关重要。中国应进一步修订其法律框架，使其国内版权保护和执法标准与全球规范和最佳实践接轨，以应对数字时代版权保护的挑战。商会会员企业在2020年见证了中国执法框架的一些显著改进，尤其是经修订的《著作权法》提高了惩罚性赔偿的最高限额，并希望中国继续严格执行《关于加强知识产权保护的指导意见》及其在中美第一阶段经贸协议中的承诺，包括确保所有网站“删除侵权内容，屏蔽或断开盗版网站链接，停止传播侵权信息”的承诺。

主题公园产业

主题公园越来越受到中国游客的喜爱。根据美国AECOM公司的数据，中国大约有160个不同规模的主题公园，是十年前的三倍多。2019年，中国十大最受欢迎的主题公园接待了6038万游客，比前一年增长了1%。市场情报和研究公司英敏特（Mintel）的行业分析表明，从2017年到2022年，主题公园市场的零售额将以年均17.7%的速度增长，到2022年将达到892亿元人民币（约合138亿美元）。中国的主题公园市场具有巨大的增长潜力。AECOM副主席克里斯·吉井（Chris Yoshii）

估计，中国主题公园的人均年参观率约为0.16，仅为美国水平的四分之一。这一巨大的增长潜力带动了几家知名外国品牌和中国运营商在该市场进行投资。2016年，中美合资企业上海迪士尼度假区开始在上海运营，北京环球度假区也于2021年开始运营。顶级国际品牌将为中国主题公园市场注入新的活力，带来强大的内容制作能力以及知识产权保护方面的国际经验。

持续的新冠肺炎疫情对世界各地的文化和旅游业均造成了重大冲击。新冠肺炎疫情爆发时，中国的多家主题公园停业，入园游客数量也大幅下降。但随着疫情迅速得到控制，再加上对全球和国际旅行的重大限制，许多此前更喜欢国际旅行的中国游客转而在中国境内度假。国内主题公园产业因此逐渐复苏，部分公园甚至出现了游客人数激增的情况。截至2020年8月，中国国内旅游业几乎恢复到了疫情前的水平。

尽管如此，由于疫情仍在全球肆虐，也给中国国内的疫情防控工作带来了一定程度的不确定性和一系列挑战，而这些都给主题公园产业带来了压力。此外，中国主题公园产业也面临着自身的挑战。在这个快速扩张的市场之中，竞争也日益激烈。假票和盗版商品方面的挑战仍然困扰着市场，另外，核心知识产权的保护成本也相对较高。许多中小型主题公园缺乏品牌建设经验，难以将其产品和客户体验与市场中的其他主题公园区分开来。他们的运营模式仍然主要依靠门票销售来盈利，缺乏二次消费机会和足够的产品多样性来吸引游客。

此外，主题公园产业的国内外投资者在中国的经营仍面临着诸多挑战，主要内容详见下文。商会相信，若能解决以下问题，中国的文化和旅游业将大受裨益，同时使此产业的投资者受益：

- **疫情期间外籍员工返回中国的问题。**自新冠肺炎疫情发生以来，中国对外国公民的入境实施了严格的限制。企业高管已经能够获得中国签证返回中国，但非高管级别的员工、技术人员和专业人员依然很难获得类似签证。由于缺乏通常由外籍员工提供的专业知识，许多中外合资项目因此而停滞不前。此外，商会会员企业还发现，业内人士与中国驻外使领馆之间关于申请中国签证的沟通渠道也变得支离破碎。
- **行政审批程序。**外国投资者在中国达成的合资建设主题公园协议，也催生出了各种新的运营和管理模

cient product diversity in order to attract visitors.

Both foreign and domestic investors in the theme park industry continue to encounter challenges operating in China, of which the main points are summarized below. We believe that China's cultural and tourism industries will benefit if the following issues are addressed, and that doing so will benefit both domestic and foreign investors in the industry:

- **Return of foreign employees to China during the pandemic.** Since the outbreak of COVID-19, China has imposed strict limits on the entry of foreign nationals. Senior corporate executives have been able to obtain Chinese visas to return, but it has been difficult for non-executive-level employees, technicians, and professionals to similarly obtain visas. Many Sino-foreign joint venture projects have consequently stalled due to a lack of available expertise that would regularly be provided by foreign employees. Additionally, our members have found that the communication channels between industry and Chinese embassies and consulates overseas regarding applications for Chinese visas have been fragmented.
- **Administrative approval procedures.** With foreign investors forging joint venture arrangements to construct theme parks in China, this has catalyzed creation of new operational and management models. The existing administrative approval procedures have not kept pace with these innovative operating models, resulting in a slow and multi-layered approval process. The market environment will improve, and domestic and foreign enterprises will be encouraged to cooperate, if regulatory approval procedures can be expedited. This could be done by introducing an industry-specific negative list, or a list of jurisdictions and responsibilities approved to invest, thereby preventing regulatory pre-requisites from hindering subsequent approvals.
- **Intellectual property protection.** A series of robust IP protection mechanisms are necessary for the industry to continue to innovate. China's theme park industry is still plagued by the availability of counterfeit entry tickets and products. These counterfeit goods and associated production activities take place across the country, making it challenging for enterprises to defend their IPR, which often must be done at the provincial and local levels.
- **Uncertainty in the US-China relationship.** Although the new US administration is expected to seek cooperation on areas of global commons between the US and China, competition in key sectors between the two countries will continue. Reciprocal punitive tariffs remain in place. China maintains 25 percent (and sometimes higher) tariffs on US-made entertainment and theme park facilities, products, and goods. These tariffs create uncertainty for foreign investors and increase operational costs in the theme park industry.

In light of these challenges, we urge the Chinese government to develop transparent policies that seek to balance COVID-19 control efforts alongside the need for international professionals, employees, and talent to move across borders. We recommend that the government establish a formal, COVID-19-related mechanism for communication between domestic Chinese authorities and overseas consulates and embassies to help industry to navigate procedures with respect to the return of mid-level and senior technical personnel to China. Such action would alleviate the burden on enterprises to communicate with all relevant authorities both in China and overseas.

To stimulate China's economic recovery, we recommend that the government allocate financial support and optimize the tax structure to incentivize investments, reduce operating costs, and mitigate the impact of financial losses incurred during the pandemic. To improve IPR, we recommend that the government institutionalize the experience of local law enforcement in combating cross-provincial and cross-regional counterfeiting, establish cross-regional anti-counterfeiting and IP protection mechanisms, and reduce the costs facing enterprises who must defend their IP rights in multiple provinces or localities. At the same time, efforts should be made to strengthen market regulation and combat illegal activities that harm the industry including the widespread sale of fake tickets and counterfeit souvenirs.

Recommendations

For the Chinese Government

- Remove market access barriers to allow 100 percent 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 to bring revenue share in line with international norms, increase the number of imported films, and remove market barriers.
- Remove restrictions during peak periods for imported films and allow US film producers flexibility to decide release dates.
- Remove restrictions that in practice impede activities of foreign investors in the audiovisual services industry by removing quota restrictions on foreign content for online video services, allowing content review of foreign television series on a per-episode basis, and facilitating a more transparent, streamlined, and expedited process for content review.
- Ensure compliance with the Foreign Investment Law and its Implementing Regulations to deny legal basis to any regulations that have not been published.

式。但是，现有的行政审批程序未能跟上这些创新运营模式的步伐，导致审批过程缓慢且手续复杂。若能加快监管审批程序，将可改善市场环境，并推动国内外企业的合作。为此，可采用针对具体行业的负面清单，或通过核准投资的管辖区和责任清单来实现，从而防止监管前置妨碍后续批准的情况。

- **知识产权保护。**要使该产业保持持续创新力，需要一系列强有力的知识产权保护机制。中国的主题公园产业仍然深受假冒门票和产品的困扰。这些假冒商品和相关的生产活动在全国各地都有发生，企业要捍卫其知识产权往往必须在省和地方一级进行，给企业的知识产权保护工作带来了挑战。
- **双边关系的不确定性。**尽管美国新政府预计将寻求美中两国在全球共同领域的合作，但两国在关键领域的竞争也将继续。对等惩罚性关税仍然存在。中国对美国制造的娱乐和主题公园设施、产品和商品征收 25% 的关税（有时甚至更高）。这些关税给外国投资者带来了不确定性，并增加了主题公园产业的运营成本。

鉴于上述挑战，商会敦促中国政府制定透明的政策，在新冠肺炎疫情防控与国际专业人员、员工和人才跨境流动需求之间寻求平衡点。商会建议政府就新冠肺炎疫情期间的沟通交流建立一个正式机制，以便于中国国内当局与海外领事馆和大使馆之间的沟通，并帮助行业办理中、高级技术人员返回中国的手续。此举将减轻企业与中国和海外所有有关当局沟通的负担。

为刺激中国经济发展，商会建议政府加大财政支持力度，优化税收结构，激励投资，降低运营成本，减轻疫情期间发生的财务损失影响。为了改善知识产权保护现状，商会建议政府将地方执法打击跨省和跨地区假冒的经验制度化，建立跨地区的反假冒和知识产权保护机制，降低企业面临的必须在多个省份或地方捍卫自己知识产权的成本。同时，加强市场监管，打击假票、假纪念品销售等危害行业的非法活动。

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。尽快完成更新中美有关电影《谅解备忘录》的谈判，增加境外电影制作公司的分账份额至国际标准水平，增加进口电影的数量，并消除市场壁垒。

- 取消在旺季对进口电影的限制，并允许美国电影制片人灵活决定上映日期。
- 通过取消对在线视频服务外国内容的配额限制，允许对每集外国电视剧进行内容审查，并实施更透明、更精简和更快捷的内容审查程序。
- 确保遵守《外商投资法》及其实施条例，否认任何尚未公布的条例有法律依据。
- 制定透明和平衡的政策，在严格控制中国的新冠肺炎病毒传播疫情的问题，同时允许在中国工作的外国公民及其家人在此期间获得中国签证。

对美国政府：

- 与中国政府探讨美国公司在中国媒体和娱乐行业所面临的投资限制，为美国公司提供更大的市场准入空间。
- 完成更新电影《谅解备忘录》所需的谈判，并在此谈判过程中解决本篇所讨论的若干问题。
- 鼓励中国政府切实贯彻《全面推进北京市服务业扩大开放综合试点工作方案》等改革试点精神，推动中国传媒娱乐业创新。
- 鼓励与相关中国政府实体分享美国版权保护最佳实践的机会。

- Develop transparent and balanced policies that address concerns with respect to the spread of COVID-19 in China but also permit foreign nationals and their families working in China to obtain a Chinese visa during this period.

For the US Government

- Work with China to review restrictions on investment facing US companies in China's media and entertainment sector, with the goal of providing greater market access for US companies.
- Complete negotiations required for the update of the film MOU, which should address several of the issues discussed throughout the chapter.
- Encourage the Chinese government to faithfully implement the spirit of its pilot reform efforts, such as the *Plan for Comprehensively Promoting the Multifaceted Pilot Program of Expanding Opening-up in the Service Sector in Beijing Municipality*, in order to promote innovation in China's media and entertainment sector.
- Identify and encourage opportunities to share US best practices on copyright protection with relevant Chinese government entities.

Real Estate

Introduction

For the past several decades real estate development and infrastructure investment have been significant drivers of economic growth, urbanization and wealth creation for companies and individuals in China. In 2021, the sector experienced oversupply in some markets and debt defaults by some major domestic developers causing concern about the stability of the sector and raising questions about overdependence on the sector for GDP growth.

The success of specific property sectors within the real estate market have varied widely. A lack of international travel and an increasing move to online sales have meant hotels and traditional retail malls have suffered from a lack of demand. Conversely strong online shopping, manufacturing and exports have driven the need for modern logistics space. The fate of residential property and office space have been very dependent upon the demand and supply picture in the specific markets where they are being built. The largest cities have generally seen strong demand and construction with rising prices whereas many smaller Tier 2 cities have seen their markets suffer from overbuilding. This second trend is one of the factors that has led to stress on developers and some debt defaults. Additionally, many local governments receive revenue from land sales which have cooled over the past few years, creating uncertainty around their fiscal plans. China's 14th Five-Year plan (2021-2025), which was released in 2021, has introduced the concept of resilient cities and called for higher quality urbanization. This is both an opportunity and a challenge for the real estate sector.

Best Practice and Environmental Considerations

For China to meet its goal of higher quality urbanization, new developments will need to use more technology, the most innovative management practices, adopt best practice in urban planning including transit-oriented development and look at the energy implications of the property being developed. Transit-oriented development, where dense mixed-use properties are built near transit hubs, allows for dense development, more efficient land use, greater access to public transportation and reduction of carbon use associated with transportation systems.

Energy use in buildings is often cited as one of the most significant concentrations of power use in our economies. Better design and management of these structures could help reduce overall energy use for heating and cooling. This reduction of energy use could help China achieve its decarbonization goals. We applaud the adoption of external energy rating and health and wellness rankings such as LEED, WELL, RESET, and GRESB which encourages developers to produce higher quality assets with lower energy use and benchmark their green credentials.

Many of China's largest cities are located on or near the seacoasts or along major rivers. Rising global temperatures and subsequent increases in sea level could mean major impacts for key urban areas. China needs to thoroughly review its urban areas and prepare for either rising sea levels and an increase in storm surges that could negatively impact urban areas.

Many international real estate services firms and urban planning and architectural firms are located in China and have abundant international best practices they are keen to share with their Chinese clients. Their skills include designing new buildings as well as retrofitting older buildings to extend the useful life. Many also have extensive experience in designing properties that are energy efficient.

Technology and Innovation in Property

A significant portion of the personal wealth of China's citizens is tied up in property ownership. The lack of liquidity of these assets creates a challenge and ties consumer sentiment closely to property prices. Over the past several years, financial innovations in REITs (Real Estate Investment Trusts) in China have begun and we welcome further developments in this area. The development of REITs in other markets including Hong Kong and Singapore have created investment opportunities for individuals, created transparency in the real estate markets and have driven professionalization in the industry. We welcome further developments along these lines in mainland China.

Beyond finance, there are many innovations in technology that have applications for property. The built environment has adapted to new technologies at a slower pace than

房地产

引言

过去几十年来，房地产开发和基础设施建设一直是中国经济增长、城市化进程以及企业和个人财富创造的重要推动力。2021年，地产行业在部分市场出现了供应过剩的情况，国内一些主要开发商出现了债务违约的现象，引起了人们对该行业稳定性的担忧，并担心中国为保持GDP增长，过度地依赖地产行业的发展。

房地产市场中不同类型的物业管理部的表现存在很大差异。因国际旅行受限，线下经济越来越多地转向网上销售，导致酒店和传统零售商场需求减弱，经营受到较大影响。相反，网上购物、制造和出口的发展则产生了对现代仓储空间的需求。住宅地产和办公空间市场一直非常依赖于所处特定市场的供需情况。一线城市一般都存在强劲需求，推动地产建设以及房价不断上涨，而许多二线城市则存在过度建设的情况，这也是导致开发商面临压力和债务违约的原因之一。此外，许多地方政府通过土地拍卖获得财政收入，而在过去的几年里，土地拍卖行情已经持续降温，给地方政府的财政计划带来了不确定性。中国在2021年发布的“十四五”规划（2021-2025）中提出了弹性城市的概念，并要求提高城市化质量。这对房地产行业来说既是机遇也是挑战。

最佳实践和环境考虑因素

为实现更高质量的城市化发展，中国需要加快采用更多技术、最创新的管理方法以及城市规划的最佳实践，比如以公共交通为导向的发展，并研究开发中房地产的能源使用情况。以公共交通为导向的发展，就是在交通枢纽附近建造密集的混合用途建筑，允许地产的密集发展，让土地得到更有效的利用，公共交通更完善，并减少交通系统相关的碳使用量。

通常认为，建筑中的能源消耗是经济中最重要电力集中使用场景之一。更好地设计和管理建筑结构可以帮助减少供暖和制冷的总体能源消耗。降低能耗有助于中国实现去碳化的目标。中国美国商会（以下简称商会）支持采用外部能耗评级、健康和福利评级的做法，如LEED、WELL、RESET和GRESB，鼓励开发商以更低的能耗建设更高质量的地产，并为绿色建筑资质制定标准。

许多中国大城市都位于靠近沿海或沿江地区。全球气温上升和随之而来的海平面上升可能会对这些城市地区产生重大影响。中国需要考虑这些城市地区，并积极准备来应对可能发生的海平面上升和风暴潮灾害，以减少带来的负面影响。

中国拥有很多国际房地产服务公司、城市规划和建筑公司的分部，他们掌握国际最佳实践，并愿意与中国客户进行分享。他们拥有设计新建筑以及改造旧建筑以延长使用寿命的能力和技术，在地产节能设计方面也拥有丰富的经验。

地产行业的技术和创新

中国居民很大一部分个人财富都捆绑在房产所有权上。这些资产缺乏流动性，将消费情绪与房地产价格紧密绑定。在过去几年，中国开始了房地产投资信托基金的金融创新，商会期望看到这一领域的进一步发展。在包括香港和新加坡在内的其他市场中，房地产投资信托基金的发展为个人创造了投资机会，提高了房地产市场的透明度，并推动了行业的专业化发展。商会希望中国大陆地区能够沿着这个方向进一步发展。

在金融领域之外，还有许多技术方面的创新也适用于房地产行业。与许多其他行业相比，建筑行业应用新技术的速度较慢，但物联网和其他地产技术创新正在改变这一局面。

many other industries, but newer innovations such as the Internet of Things (IOT) and other Prop Tech innovations are changing that.

With IOT, heating and cooling systems, smart power meters, security systems and appliances can be linked together to deduct trends, energy use and money saving opportunities to improve the efficiency of how we use our homes and offices. Many residential developments now have IOT as part of their standard development offer, it is still less common in typical commercial developments and present a significant opportunity for future improvements in better energy use and operational efficiency.

Corporate Real Estate

Despite the challenges for some real estate classes such as hotels and retail malls, the commercial real estate market continues to evolve. Office space in China's biggest cities such as Shanghai, Guangzhou and Shenzhen have rents that are on par with other global cities such as London, New York and Berlin. As a result tenants, landlords and investors have pushed for higher levels of investment and professionalism in the sector. There is a growing recognition of corporate real estate (CRE) professionals and the adoption of corporate real estate teams by domestic firms to manage their increasingly large portfolios of real estate assets.

Corporate real estate management in China is no longer simply collecting details of offices leases across the country, but rather it is now a centrally controlled administrative department. Specialized CRE teams now formulate nationwide and long-term corporate real estate strategy to help companies optimize leasing arrangements and cost controls. This can provide guarantees for business expansion and increase employee well-being. Some tech firms in China have campuses with amenities similar to those found in Silicon Valley.

Additionally, international training and licensing organizations have continued to improve professionalization in the market. The British RICS designation for example is increasingly popular for industry participants.

Summary

In summary, the Chinese real estate market has evolved as the economy has matured. Real estate development is no longer a simple and reliable driver of economic growth. It does however have a role to play in China's continuing urbanization and can potentially play a role in China's plan to reduce carbon intensity and encouraging more sustainable living. As China plans to continue its drive to urbanize and to do so in a sustainable way, real estate can play a significant role in helping China house its people and businesses while achieving a reduction in carbon use. A more

professional workforce using more technologies bode well for the future of the real estate sector in China.

Recommendations

For the Chinese Government

- Encourage the participation and inclusion of foreign companies in urban planning, development, property management, real estate related technologies and investment so that China can benefit from international best practice.
- Continue to use Transit Oriented Development concepts in major urban areas to reduce land and energy use.
- Innovations in Prop-Tech should be encouraged to ensure management of property can be optimized to reduce energy use.
- China needs to review its urban development to prepare for the potential impact of rising sea levels on China's major metropolitan areas, many of which are located in coastal areas.

物联网将暖气和制冷系统、智能电表、安全系统和电器设备联系在一起，减少了能源消耗并节约了成本，提高家庭和办公室能源使用效率。许多住宅开发项目现在都将物联网作为项目开发的标准内容，但在商业开发项目中很少见到对物联网的考虑，这也为未来提高能源使用和运营效率提供了重要机遇。

企业房地产

尽管包括酒店和零售商场在内的部分类型房地产经营均面临挑战，但商业房地产市场仍在持续发展。中国一线城市，比如上海、广州和深圳的办公空间租金与其他国外城市如伦敦、纽约和柏林的租金保持同一水平。因此，租户、业主和投资者已经着力推动行业提高投资水平和专业性。人们对企业房地产专业人员的认可度越来越高，国内公司也采用企业房地产团队来管理其日益庞大的房地产投资组合。

中国的企业房地产管理不再是简单地收集全国各地办公室的租赁细节，而是成为一个战略统筹的管理团队。专业的企业房地产团队现在会制定全国性的和长期的企业房地产战略，帮助企业优化租赁安排和成本控制。这些措施可以为企业业务拓展提供保障，并进而提高员工的福利。中国一些园区的科技公司也拥有类似于硅谷企业的配置。

此外，国际培训和许可组织也在不断提高市场的专业化程度。比如，英国皇家特许测量师学会（RICS）的认证越来越受到行业参与者的欢迎。

总结

总而言之，中国房地产市场已经随着国内经济的优化而发展。房地产开发不再是经济增长一个简单而可靠的驱动力。然而，它确实在中国不断的城市化进程中发挥着重要作用，并有可能在中国降低碳强度和鼓励更可持续生活的规划中发挥进一步作用。随着中国继续推动城市化发展，并考虑以可持续的方式实现城市化，房地产行业可以在帮助中国安置人民和企业的同时，在减少碳排放方面发挥重要作用。使用更多技术、配备更专业的人员对中国房地产行业来说是未来发展的良好趋势。

建议

对中国政府：

- 鼓励外国公司参与和加入城市规划、开发、物业管理、房地产行业相关的技术和投资，进而使中国该领域从国际最佳实践中获益。
- 主要城市地区继续遵循以公共交通为导向的发展理念，减少土地和能源消耗。
- 鼓励房地产技术创新，优化房地产管理，从而减少能源使用。
- 鉴于许多城市地区都位于沿海附近，中国需要考量城市发展，积极做好准备以应对海平面上升可能对主要城市地区造成的影响。

Retail & E-Commerce

Introduction

According to figures from the National Bureau of Statistics, the retail market in China grew 12.5 percent in 2021. In 2020, the data was minus 3.9 percent. China's retail sales of consumer goods, a major indicator of consumption growth, reached RMB 44.08 trillion in 2021. Despite these gains, state media shined a light on the spending slowdowns of the final month of 2021 as a small wave of infections tied to the Omicron variant of COVID-19 re-introduced uncertainty into the market.

Notwithstanding the impact of COVID-19, the integration of online and offline retail business models has accelerated, while new business models such as home-to-home retail, contactless delivery, livestream selling, and community group buying have developed rapidly. Online retail sales accounted for 24.5 percent of China's total retail sales in 2021, a slight drop from 24.9 percent the year prior representing over RMB 14 trillion in consumption.

The *Regulations on Optimizing the Business Environment* went into effect on January 1, 2020, and the government has prioritized its implementation at both the national and provincial levels. Procedures with respect to the establishment, taxation, and the provision of online services have improved and government services have become more standardized. Regulators overseeing the retail industry have implemented reforms that enable retailers to obtain one license that is valid for multiple locations, earn exemptions from penalties for minor administrative infractions, provide one-stop administrative servicing options, and have established an "applicant commitment approach," which is designed to streamline licensing for large chains that operate multiple food and beverage outlets.

The extent of policy support for the cross-border e-commerce sector is clear, and our members are especially grateful to the government for policies implemented during the COVID-19 period to support the business community such as tax and rent reductions, reduced social security payments or exemptions from payment, and coordinated efforts to keep transportation systems running safely during the COVID-19 outbreak, all of which helped business return to work.

Moreover, the Fifth Plenum of the 19th CCP Central Committee held in October 2020 released a proposal for

China's 14th Five-Year Plan (FYP) 2021-2025. The proposal includes reference to "comprehensively promoting consumption and strengthening the role of consumption in China's economic development." Looking forward, we expect that policies to promote consumption will be an important element of China's economic development that presents significant opportunity for the retail sector and foreign-invested retailers, assuming they are able to compete on a level playing field in the China market.

US retailers go to great lengths to ensure they operate responsibly and legally in the China market. They are responsive to government initiatives and requests (for example, our member companies actively participate in the "three guarantees" campaign launched in January 2020, to stabilize price, maintain quality, and ensure supply). Foreign-invested enterprises (FIEs), including those from the retail sector, donated substantial financing, materials, and equipment to the areas most affected by the COVID-19 epidemic in China such as Wuhan. To cope with the shock of the past two years, industry has prioritized the development of omnichannel retail through online and offline touchpoints, private brands, e-commerce services, retail innovation, and cross-border e-commerce.

Regulating unfair competition/unfairly competitive activity in the e-commerce sector

COVID-19 has fostered the creation of new and niche markets. Home-to-home businesses, especially community group buying, a form of shopping in which a community leader can use social media apps like WeChat to place bulk orders for daily necessities and food, often on behalf of the members of a residential community, has attracted substantial capital and financing in 2020. Business models adopted in the e-commerce sector often prioritize customer acquisition over profitability. Such models are cash-intensive and rely on subsidies and heavy investment to power their operations. They are not conducive to the steady, long-term development of a level, competitive retail industry.

AmCham China is pleased that the State Administration for Market Regulation (SAMR) has listed "strengthening anti-monopoly and anti-unfair competition" as a focal point of its work in 2021. Firstly, we recommend that SAMR strengthen reviews of anti-unfair competition across these new patterns of business, especially with respect to

零售和电子商务

引言

根 据国家统计局数据,相比于2020年的负增长,2021年社会消费品零售总额增长12.5%,总额达到44.08万亿元。尽管取得了这些进展,但官方媒体在2021年最后一个月还是报道了消费放缓的情况。此次放缓与新冠肺炎病毒的奥密克戎变种有关,一小波奥密克戎感染再次给市场带来了不确定性。

尽管存在疫情的影响,但疫情促进线上线下加快融合,到家业务、无接触配送、直播带货、社区团购等新业态新模式快速发展。2021年,中国网上零售额占总零售额的比重为24.5%,比前一年的24.9%略有下降,全年网上零售额超过14万亿元人民币。

《优化营商环境条例》(以下简称《条例》)自2020年1月1日起正式实施,国家和省级市场监管部门都把《条例》的贯彻实施作为一项重点工作。《条例》为企业申请变更、缴税、网上办事提高了便利性,政府服务更加标准化。零售行业监管机构对零售企业试行“一照多址”、“轻微免罚”、“最多跑一次”、“申请人承诺制”等制度,旨在简化大型连锁餐饮企业的业务办理。

在跨境电商行业的政策支持方面,中国美国商会(以下简称商会)会员对减税降费、税收征管、海关便利、金融服务、劳动保障、跨境电商政策改革和支持感受明显,也诚挚感谢中国政府在疫情期间出台的包括降税、减租、社保减免、运输协调等各项扶持政策,为企业纾困减负。

此外,2020年10月召开的中共十九届五中全会还发布了《中共中央关于制定国民经济和社会发展第十四个五年规划和二〇三五年远景目标的建议》,提出“全面促进消费并增强消费在中国经济发展中的作用”。如果外资企业能够在中国市场上与其他市场主体享有相同的公平竞争机会,这将为零售业和外资零售企业带来巨大机遇。

美资零售企业在华坚持负责任经营,积极响应各级政府部署和号召(例如,商会会员企业积极参与2020年1月启动的“三保”活动,即保价格、保质量、保供应)。包括零售业在内的外商投资企业向武汉等中国受新冠肺炎疫情影响最大的地区捐赠了大量资金、物资、设备。为应对过去两年的冲击,业界优先发展线上线下触点、自有品牌、电商服务、零售创新、跨境电商等全渠道零售。

规范电子商务领域不公平 / 不正当竞争活动

新冠肺炎疫情催生了特殊的市场环境。2020年,到家业务,特别是社区团购突飞猛进,吸引了大量资金和融资。社区团长可以使用微信等社交媒体,代表社区成员批量订购日常用品和食品。电子商务领域采用的商业模式不是以短期盈利为第一目标,而是以获取客源为第一目标。这种模式属于现金密集型,依靠补贴和大量投资来推动其运作。在零售这个充分竞争的行业采用这种运作模式不利于行业的稳定发展。

商会很高兴地看到,国家市场监督管理总局将“加强反垄断和反不正当竞争”列入2021年度工作重点。商会对此表示支持并提出以下意见建议:首先,加强对新业态,特别是社区团购的反不正当竞争监管,规范市场秩序和价格低价补贴行为。在新冠肺炎疫情得到控制后,许多企业降低价格,有时甚至以低于产品或服务生产成本的价格吸引新客户群体,排挤竞争对手,并在市场上建立垄断地位。在他们站稳脚跟之后,再大幅提高价格以获取暴利。这很有可能构成垄断行为和不正当竞争行为,不仅违反了《反垄断法》和《反不正当竞争法》,同时也违反了《价格法》。此外,这些低价还扰乱了快速消费品渠道的定价体系,构成了恶性竞争。中国于2021年11月宣布成立国家反垄断局,以加强中国的反垄断能力。商会希望与反垄断局进行透明、直接沟通,从行业发展的角度了解关键内容和工作重点。此外,《反垄断法》修订草案的公布也将提供执法依据,商会期待后续发展进程及政策解读。

community group buying, and that SAMR seek to improve market order and standardize the provision of subsidies that encourage low prices. After COVID-19 was brought under control, many companies lowered their prices, sometimes below even the cost of producing certain goods or services, in order to attract new customer groups, crowd out competitors, and establish a monopoly in their market. After they established a foothold, they were able to significantly increase prices for a substantial profit. Such activity may constitute monopolistic behavior and unfair competition, which in addition to violating the *Anti-Monopoly Law* and the *Anti-Unfair Competition Law*, is also a violation of the *Price Law*. In addition, these low prices have also disrupted the system of pricing used for fast-moving consumer goods (FMCG) channels and constitute malicious competition. China announced the establishment of National Anti-Monopoly Bureau last November 2021, to strengthen China's antitrust capabilities. We expect transparent and direct communication with this entity, to learn key agenda and work priority from industry development perspective. Besides, the publication of the drafted revision of *Anti-Monopoly Law* will provide the enforcement basis, which we look forward to the timeline and readout.

Secondly, we recommend that the government continue to improve regulation of the e-commerce sector. Because of the emergence of innovative business patterns, a lack of regulatory experience, and a shortage of manpower, e-commerce platforms have a greater ability to engage in action that amounts to unfair or unequal competition. In order to protect consumer rights and privacy, particularly with respect to issues of food safety, product quality, price supervision, and taxation, e-commerce entities need to be regulated in the same manner as traditional brick-and-mortar retailers.

In addition, traditional retailers and e-commerce platforms are nominally subject to the same treatment with respect to government subsidies, tax incentives, human resource policies, and access to government services. In practice, local governments have provided a substantial amount of subsidy to the e-commerce sector, including for e-commerce platforms who make their services available in rural areas, or expand into international logistics or overseas warehousing, allow sellers to register directly on their platform, or to engage in talent recruitment and training. At the same time, qualified e-commerce platforms can also enjoy tax reductions and exemptions for small and medium-sized high-tech enterprises and "technologically advanced" entities. These benefits have enabled e-commerce platforms to reduce their operating costs compared to traditional retailers operating in the real economy, thereby distorting retail pricing, and intensifying the level of unfair competition between online platforms and offline entities.

Regulation of the Domestic Retail Market

Traditional retail enterprises with outlets in multiple loca-

tions face a lack of consistency and uniformity in policy enforcement nationwide, in particular in the areas of transportation and logistics, restrictions on the use of plastics, and policies enacted to control the spread of COVID-19. At the same time, no unified channel exists for our member companies to access all relevant policy information nationwide.

Our members also suffer from insufficient lead time to adapt to new policies. In an effort to meet government directives to control vehicle emissions or respond to emergency policies issued to control COVID-19, local governments have issued temporary traffic policies like restrictions on truck emissions and tonnage requirements without advance notice that fail to give enterprises sufficient time to adjust. Additionally, various localities have introduced restrictions on the use of certain plastic products. These policies implemented at the local level can be stricter and more extensive than those issued by the central government, and in some cases the two sets of policies overlap.

In 2021, the State Council issued a guideline introducing a pilot program to improve the business environment in six cities including Beijing, Shanghai, Chongqing, Hangzhou, Guangzhou and Shenzhen, we look forward further implementation methods could be taken first in retail industry in the near future which could aid in recovery from the adverse effects of prevention measures taken to curb the spread of COVID-19 throughout the past two years.

Flexible Work Policies for the Retail Sector

The *Measures for Examination and Approval of the Implementation of Irregular Working Hours and Comprehensive Working Hours in Enterprises* ([1994] No. 503) issued by the former Ministry of Labor, and the *Opinions of the Ministry of Labor on Several Issues Concerning the Implementation of the "Labor Law of the People's Republic of China"* issued in 1995, contain the implementing regulations that pertain to China's flexible work policies.

Over the past two decades, China's flexible work policies and employment regulations have failed to keep pace with the rise of the flexible work/gig economy, and regulators do not typically exhibit much flexibility when enforcing these policies. There are three main work-hour systems in China: the standard system, the comprehensive system, and the flexible system. Retail and catering industries must adhere to the standard system for work hours which is defined by work of no more than eight hours per day and five days per week. The retail and catering industries are not among the industries approved to employ the comprehensive or flexible work hours system. The comprehensive system calculates work hours on a weekly, monthly, quarterly, or annual basis. Under the flexible system, work hours are not fixed, although employers should still guarantee employees have sufficient rest time built into their schedule. Implementation of the comprehensive system and flexible system (collectively "special work hours,") however, is limited to certain

其次，商会建议政府继续加强对电子商务领域的监管。由于业态新，监管经验少，人力资源不足，电商平台更容易遇到不公平、不平等竞争。为了保护消费者的权利和隐私，特别是在食品安全、产品质量、价格监管和税收等方面，电子商务实体需要像传统的实体零售商一样受到监管。

此外，传统零售商和电子商务平台名义上在政府补贴、税收优惠、人力资源政策和政府服务等方面受到同样对待。但在实际执行中，地方政府为电子商务部门提供了大量补贴，包括对在农村地区提供服务，或将服务扩展到国际物流或海外仓储的电子商务平台，允许卖家直接在平台上注册，从事人才招聘和培训。同时，符合条件的电商平台还可以享受中小高新技术企业和技术先进型企业税费减免等优惠。与传统的实体零售商相比，这些补贴和税费减免使电商降低了运营成本，从而扭曲了零售价格，加剧了线上平台和线下的不公平竞争。

国内零售市场监管

作为在多个城市进行运营发展的零售行业企业，在物流运输、限塑以及新冠肺炎疫情防控政策等方面，在全国范围内的政策执行缺乏一致性和统一性。与此同时，商会会员企业难以通过一个渠道全面了解各地监管政策信息。

商会的会员企业也面临着适应新政策筹备时间不足的问题。为了满足政府控制车辆排放的指令，或为了应对控制新冠肺炎疫情而发布的紧急政策，地方政府在没有事先通知的情况下，发布了限制卡车排放和吨位要求等临时交通政策，未能给企业足够时间进行调整。在限塑方面，各地纷纷出台本地政策，有些较中央更为严格和激进，存在层层加码现象。

2021年，国务院发布《关于在北京、上海、重庆、杭州、广州、深圳等6个城市开展营商环境改善试点的意见》，商会期待在不久的将来能在零售业率先采取进一步的实施办法。在过去两年中，为遏制新冠肺炎疫情传播，许多预防措施对零售业的发展产生了不利影响，商会希望营商环境的改善措施能够有助于零售业的恢复。

零售业特殊工时政策

1994年，原劳动部发布的[1994]第503号《关于企业实行不定时工作制度和综合计算工时工作制的审批办

法》及1995年发布的《劳动部关于贯彻执行〈中华人民共和国劳动法〉若干问题的意见》两部门规章规定了我国特殊工时制度的主要形式和实施条件。

二十多年来，社会发展日新月异，特殊工时制度行业、岗位规定都落后于社会变化与发展，审批标准欠缺灵活性。中国工时制度主要有三种：标准工时制、综合工时制和弹性工时制。零售和餐饮业必须遵守标准工时制度，即每天工作不超过8小时，每周工作不超过5天。零售、餐饮业未被列入综合工时的核心审批行列。综合工时制按周、月、季度或年度计算工作时间。在弹性工时制下，工作时间不固定，但雇主仍应保证员工有充足的休息时间。但是，综合工时制和弹性工时制（统称“特殊工时”）的实施仅限于特定岗位，并须事先获得劳动部门批准。零售业或餐饮企业不能实行特殊工时制以及相关的劳动力限制，对企业开展正常商业活动的的能力产生了影响。

而各地可以自主制定适用范围和审批办法，造成了不同地方执行和监管的标准笼统混乱。在广东、广西和湖南等省份，综合和弹性工时的批准比较困难。一些地方甚至暂停了所有来自零售业的灵活工时申请。有的省市规定了企业必须提交特殊工时的详细执行方案，有的省市却对此不做具体要求。

近年来，零售业的商业模式发生了很大变化，劳动力需求模式也发生了转变。“节日效应”越来越明显，各种线上线下促销活动层出不穷，不论以日、以周、以月、以季度、以年时间段来看，都呈现明显高低峰期经营状态，标时用工模式完全无法适应现代零售业经营需求。在零售行业采用综合工时制，有利于零售商根据消费者需求安排员工排班，提高工作效率。特别是在管理人员中采用弹性制度，将使中高层管理人员具有更大灵活性，可以根据全国范围内的临时或周期性业务需求做出招聘决策。

与非全日制工时相比，特殊工时在社会保障和福利权利、劳动安全和健康保护、职业培训等方面为劳动者提供了更大保护，并提供了提交正式劳动争议解决程序的权利。目前，零售从业者只能选择非全日制用工，不改革特殊工时审批，既不利于零售业的劳动者权益保护，也会加剧线上和线下零售商之间的监管行为失衡。电商平台可以通过加盟网点、合作伙伴或第三方租赁公司实

positions and subject to prior approval from the labor authority. The inability for retailers or catering companies to operate special work hours and the associated labor constraints affects the ability of these enterprises to conduct their regular business activities.

Localities can, however, independently formulate their own procedures for approval of special work hours, which has resulted in a degree of confusion around the standards for implementation in different jurisdictions. In some provinces like Guangdong, Guangxi, and Hunan, obtaining approval for comprehensive and flexible work hours is challenging. Some localities have even suspended all applications from the retail sector to employ these special work hours. Some localities stipulate that enterprises must submit detailed implementation plans for flexible/special work hours, but often the localities do not have corresponding requirements.

In recent years, the retail industry underwent substantial changes to its business model and patterns in labor demand have shifted. The “holiday effect” is becoming more pronounced, and new online and offline promotions and advertising activities are implemented regularly to stimulate consumer activity. Regardless of the time of year, retail activity is characterized by peak and off-peak periods, which impacts labor demand. Therefore, the standard system of work hours is inadequate and unable to address the needs of the modern retail industry. Adoption of the comprehensive system in the retail industry will help retailers to arrange their employees’ shifts in line with consumer demand and improve their work efficiency. Adoption of the flexible system, particularly among managerial staff, will give middle and high-level managers greater flexibility to make hiring decisions in response to their temporary or cyclical business needs across the country.

Compared with part-time work, special work hours provide workers with greater protection around social security and welfare rights, labor safety and health protections, vocational training, and provide the right to submit to a formal labor dispute resolution process. Retail workers are limited to part-time employment options at present, and if approval procedures for special working hours are not reformed, labor protections in the retail industry will suffer and only add to the imbalance in regulatory behavior between online and offline retailers that we have discussed above. Currently, e-commerce platforms can implement flexible work hours by franchising retail outlets, relying on their partners, or through third-party leasing companies, although these arrangements often lack a clear employment relationship, and a considerable proportion of employees under these schemes do not pay into China’s social insurance.

AmCham China urges the government to modify the application of special work-hour systems and to expand the scope of qualified industries in response to the demands of the modern economy. Different permissions should be

granted by industry according to the needs of their work. Regulations should be implemented with a degree of flexibility to leave space for China’s ongoing economic development and corporate innovation. At the same time, regulators should focus on ensuring that policies issued by the national government are implemented consistently at the local level and that clear directives are disseminated to local MHRSS bureaus to clarify the rules for application and to simplify and accelerate the approvals process.

Cross-Border E-commerce Retail Imports

Cross-border e-commerce retail import policies have remained stable since first being implemented in 2019, which has allowed the industry to develop. The General Administration of Customs of China (GACC), an important regulator in this space, is continuing to supervise the sector in a way that prioritizes risk management so as to ensure the healthy and orderly development of cross-border e-commerce retail imports, promote high-quality consumption, and support China’s economic development.

Due to the impact of COVID-19, the cross-border e-commerce import industry has experienced a difficult year. The pandemic led to the imposition of restrictions on cross-border transactions, consequently cross-border e-commerce importers have had to navigate challenges in warehousing, logistics, and customer service across a number of countries, while still bringing high-quality products into China for domestic consumers. Looking forward, AmCham China is confident that the cross-border e-commerce retail import sector will continue to grow and play an active role in China’s economic development.

One way to continue supporting the sector’s development is for the GACC gradually develop evaluation criteria and disciplinary measures grounded in risk management principles to prevent and deter false transactions and reduce the risks associated with secondary sales. The development of such criteria would allow entities to develop compliance strategies in accordance with measurable, unified standards, while at the same time improving the consistency of law enforcement on these issues at China’s ports. At the same time, we hope that the government, including the GACC, will consider the evolving nature of the cross-border e-commerce retail import sector and permit a degree of flexibility in how entities choose to comply and exhibit a reasonable and restrained pattern of enforcement.

We are pleased to see that cross-border e-commerce retail has been included in the *Catalogue of Industries Encouraging Foreign Investment (2020 Edition)*. According to the data released by the Ministry of Commerce (MOFCOM) in February 2022, 132 Integrated Pilot Zones for Cross-border E-commerce have been approved in 30 provinces and areas.

AmCham China expects that the government will continue to expand the *List of Cross-border E-commerce Retail Imports*

现灵活用工，但这些安排缺乏明确的雇佣关系，而且有相当一部分员工没有缴纳社会保险。

商会呼吁国家修改特殊工时制度，扩大合格行业范围以适应现代经济需求。根据不同行业、工种性质不同给予不同权限，并留有空间给不断发展经济及企业创新；同时规范各地操作，从上而下给与各地人社部门清晰的指引，明确申请细则，减化申请批复流程，并加快审批速度。

跨境电商零售进口

跨境电商零售进口政策自 2019 年首次实施以来一直十分稳定，这使得该行业可以持续发展。作为这一领域的重要监管机构，中国海关总署应继续以风险管理为重点对行业进行监管，以确保跨境电商零售进口健康有序发展，促进高品质消费，为中国经济发展不断做出新的积极贡献。

受新冠肺炎疫情影响，跨境电商进口行业经历了艰难的一年。疫情导致跨境交易受限，在为国内消费者带来高质量产品的同时，跨境电商进口商在多国仓储、物流和客户服务方面遇到了重重困难与挑战。展望未来，商会相信未来跨境电商进口行业能够焕发更多活力，为中国经济发展不断做出新的积极贡献。

在此基础上，商会建议中国海关总署基于风险管控的大原则，逐步制定更细化的评估标准和惩戒措施，这不仅能够防止虚假交易、减少二次销售风险，也能支持该行业持续稳定健康发展。由此企业可根据统一的标准去进行合规操作，也能够提升各口岸执法的一致性。同时商会也建议包括中国海关总署在内的监管部门，执法中能够考量业态的动态变化，执法过程中在合理合法的前提下，在合规时间和方式上允许企业有一定的灵活性。

商会很高兴看到，跨境电商零售业已被纳入《鼓励外商投资产业目录（2020 年版）》，根据商务部 2022 年 2 月发布的数据，中国共有 132 个跨境电商综合试验区，覆盖 30 个省区市。

商会期待政府继续扩大《跨境电子商务零售进口商品清单》（2019 年 12 月发布），允许更多优质国际产品通过跨境电商零售渠道进入中国市场。

虚假宣传和虚假广告

《消费者权益保护法》和《广告法》均对“虚假宣传”和“虚假广告”进行了规定，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。导致在产品宣传中极小的错误都有可能构成“虚假宣传”。因此，这不但滋生了职业举报打假人以获取赔偿为目的的恶意举报，这些无关紧要的错误行为也造成了执法繁重，诉讼过多等问题。

令人鼓舞的是，国家市场监督管理总局在 2019 年 5 月对外公布的《明码标价和禁止价格欺诈的规定》的征求意见稿中，对价格欺诈的判定明确地将主观故意和无心之过区分开来，并对及时改正的无心之过排除在价格欺诈行为之外。（该规定第二条提到）。

商会建议广告监管部门应采取相关措施，包括下文讨论的措施，识别欺诈定价及欺诈广告，为企业建立适量的容错机制，让犯了无心之过的企业能及时纠正错误。

对“虚假宣传和虚假广告”的认定中，要考虑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、财产安全或权益带来潜在风险或损害，要考虑到发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，还应设法确定是否是无意中散布了虚假信息。

执法部门不应将无心之过与恶意欺诈一概而论，同等视之、同等处罚。这样处理不仅合理，还会有助于减少或避免职业索赔人滥用体系、浪费有限的行政资源和企业资源，从而使政府和企业可以更专注的为消费者提供更优质的产品和服务。

可以采取进一步的监管行动来改善食品饮料行业的条件，减少职业索赔人要求赔偿对行业造成的负面影响。商会敦促有关部门在《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做出明确区分。虽然网络上充斥着各种不准确的信息，但是根据现行规定，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，但适用范围过于宽泛，可能会被消费者滥用。因此商会建议有关部门在管理办法中给予适量灵活性，并为法律补救开辟渠道，防止职业打假人滥用这一制度。

(last issued in December 2019), which acts as a “positive list” specifying the products approved for import into China, to permit more high-quality international products to be imported through cross-border e-commerce retail channels.

Unfair Competition and E-commerce

On March 16, 2022, the SPC released the *Interpretation of Several Issues Concerning the Application of the Anti-Unfair Competition Law of the People's Republic of China*. The SPC issued a draft for public comment on August 18, 2021 and this official version took effect on March 20, 2022. Some noteworthy points include the following:

- Article 1 clearly stipulates that the People's Courts may apply Article 2 of the *Anti-Unfair Competition Law* in judicial practice. Article 1, while authorizing judges to apply Article 2 of the *Anti-Unfair Competition Law* to adjudicate cases, also clarifies that Article 2 of the *Anti-Unfair Competition Law* shall only be applied if/when the relevant acts cannot be regulated by Chapter II of the *Anti-Unfair Competition Law*, the *Patent Law*, the *Trademark Law*, the *Copyright Law*, etc.,
- Article 2 adopts a relatively broad standard when determining competitive relationship. For market participants in a potential relationship of competing for trading opportunities or diminishing competitive advantages, the people's court may determine the market participants as “other businesses” in Article 2 of the *Anti-Unfair Competition Law*,
- Article 3 clarifies the criteria for determining “business ethics” when applying Article 2 of the *Anti-Unfair Competition Law*,
- Articles 4 to 15 are detailed provisions for the protection of commercial signs as referenced by Article 6 of the *Anti-Unfair Competition Law*. Specifically, Article 4 clarifies the definition of “signs with certain influence” and the factors to be considered in determination, Articles 5 and 6 illustrate situations where signs cannot function as goods/services identifier and circumstances that could be viewed as fair use (taking reference from *trademark law* theories), Article 7 clarifies that signs violate Article 10.1 of the *Trademark Law* are not protectable in the context of *Anti-Unfair Competition Law*, Article 12 provides ways of how to determine similarity/identity of signs and market confusion, Article 14 involves the rules of lawful source defense and Article 15 lists circumstance of indirect infringements,
- Article 17 lists some circumstances of false and misleading promotion, and Article 18 clarifies that claimant of false and misleading promotion shall prove the relevant damages,
- Article 19 stipulates that in commercial defamation cases, the plaintiff shall be a specific victim of the alleged commercial defamation,
- Articles 21 and 22 detail the specific application situa-

tions of acts referenced by Article 12.1-12.2 of the *Anti-Unfair Competition Law*,

- Article 23 clarifies that statutory damages are applicable for false and misleading promotion, business defamation and internet unfair competitions acts (previously only applicable for commercial signs infringement and trade secret misappropriation).

On August 31, 2021, the SAMR released some proposed revisions of the *PRC E-Commerce Law* for public comment. The proposed revisions include:

- If the operator of the e-commerce platform fails to receive a notice that the rightsholder has complained or sued within 20 working days after the statement reaches the rightsholder, it shall terminate the measures taken in a timely manner,
- If the operator on the platform puts forward a bond to compensate for the losses caused by potential intellectual property infringement, the operator of the e-commerce platform may temporarily suspend the measures taken,
- Operators submitting false statements on non-infringement will face heavier liability,
- The relevant authorities may restrict the business activities of egregious infringers, including revoking the relevant licenses.

On August 17, 2021, the SAMR released the *Draft Provisions on the Prohibition of Unfair Competition on the Internet* for public comment. The draft comprehensively summarizes and enumerates the unfair competition behaviors that may be involved in various network environments as stipulated in Article 12 of the *Anti-Unfair Competition Law*, not only including traditional unfair competition behaviors, but also include the use of technical means to engage in unfair competition on the Internet. Some of the noteworthy points include the following:

- Refinement of the online behavior of false promotion. Acts such as false rankings and fake reviews, etc. may be banned,
- Clarify the situation of online commercial defamation, and prohibit the act of hiring cyber navy to attack a party maliciously. Unsubstantiated risk alerts may amount to defamation,
- On the basis of current laws, from the perspective of anti-unfair competition, regulate new hot issues such as malicious interception, illegal data capture, two-to-one selection, etc,
- On the one hand, the draft clarifies the compliance requirements for platform operators to maintain the competition order on the platform, and on the other hand, it also provides reference for platform operators to take necessary measures and to require operators on the platform to operate in compliance,

建 议

对中国政府：

- 政府监管部门，特别是国家市场监督管理总局，应加强对线上和线下零售业反不正当竞争的审查，重点是确保传统零售商和电商平台不从事促进不正当竞争的行为。政府还应该将其在零售业和电商行业提供的补贴标准化，并确保这些补贴对所有零售商一视同仁。
- 确保全国各地和各级政府对零售和电商行业政策的一致性和统一性，特别是在运输、物流、限制使用某些类型的包装和新冠肺炎疫情控制政策方面。建立统一的政策信息公开渠道并定期更新。
- 修改特殊工时制度的适用范围，扩大可以适用特殊工时制度的行业范围，以更好地满足行业业务需求和中国现代经济需求。
- 制定评价标准和惩戒措施，优先考虑既定的风险管理原则，以预防和遏制虚假交易，降低跨境电商零售进口领域的二次销售风险。
- 修订《互联网广告管理暂行办法》，明确区分不影响产品完整性的偶然或无意的产品广告失实与用于虚假宣传零售产品的故意宣称，防止职业打假人向零售商寻求过度或无理的赔偿。

- If the unfair competition behavior of the operator is severe or has a major impact, after accepting the administrative penalty, it shall make a rectification letter to the public through the Internet.

On July 30, 2021, the SAMR released the *Measures for the Administration of Lists of Parties with Serious Unlawful and Dishonest Conduct by Market Regulation Authorities*. According to Article 2 of the *Measures*, where a party commits a violation of laws or administrative regulations with a bad nature, serious circumstances, and great social harm and is subjected to severe administrative penalties by a market regulation authority, the market regulation authority shall include it in the lists of parties with serious unlawful and dishonest conduct and publicize the same through the National Enterprise Credit Information Publicity System and implement corresponding administrative measures. According to Article 9 of the *Measures*, this black list system is applicable to certain severe IP infringements, including 1) infringement of trade secrets, commercial defamation, organization of false transactions, and other unfair competition practices that seriously disrupt fair competition; and 2) intentionally infringing intellectual property rights, harming public interests by submitting irregular patent applications or malicious trademark applications, and engaging in serious illegal patent and trademark agency activities.

On March 15, 2021, the World Consumer Rights Day, the SAMR released the *Measures for the Supervision and Administration of Online Transactions*. This document is an important departmental rule for implementing the E-commerce Law, refining and improving the relevant laws and regulations. The *Measures* focus on new business forms and new models of online transactions such as online social networking and online live streaming (authorities such as Cyberspace Administration of China, etc. also issued the *Administrative Measures for Livestreaming Marketing (for Trial Implementation)* to provide more detailed rules for live streaming), and focus on key issues related to the order of online market transactions, such as platform selection, illegal evaluation, etc. Article 14 of the *Measures* prescribes that no online transaction operator may commit any act of unfair competition that disrupts the market competition order and damages the legitimate rights and interests of other operators or consumers (and also lists some instances of false and misleading promotion).

Recommendations

For the Chinese Government:

- Government regulators, in particular SAMR, should strengthen their reviews of anti-unfair competition in the online and offline retail industry, focusing on ensuring that traditional retailers and online e-commerce platforms do not engage in behavior that promotes unfair competition. The government should also standardize the subsidies it offers across the retail and e-commerce industries, and ensure those subsidies are equally available to all retailers.
- Ensure consistency and uniformity in policies across the country and at all levels of government that affect the retail and e-commerce sector, particularly with respect to transportation, logistics, restrictions on the use of certain types of packaging, and COVID-19 control policies. Establish a unified channel where such policy information is made public and updated regularly.
- Modify the application of special work-hour systems and to expand the scope of qualified industries who can apply special work hour systems to better meet their business needs and the demands of China's modern economy.
- Develop evaluation criteria and disciplinary measures that prioritize established risk management principles to prevent and deter false transactions and reduce the risks associated with secondary sales in the cross-border e-commerce retail import sector.
- 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 professional faultfinders (PFFs) from seeking extravagant or unwarranted damages from retailers.

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. Alongside the development of the sports market, 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.

For many years, the organization of sport in China was dominated by a strategy which essentially defined sport as a platform to contribute to national glory through the achievement of gold medals at global sporting events. Since the 2008 Beijing Olympic Games, however, there has been a cultural shift and a recognition that allowing the state to define all sporting priorities is suboptimal. The door is now open for greater public participation in sports and the market should have a greater role to play in allocating resources for sport.

That new dynamic came to the fore ahead of the 2022 Winter Olympic Games, prior to which Chinese President Xi Jinping proclaimed he "didn't care how many gold medals China won" at the Games, as a way to set public expectations for Team China's performance. In the event, China exceeded most predictions by winning nine gold medals, four silver medals, and two bronze medals to finish third overall in the medal table, behind Norway and Germany. Xi instead said he cared more about boosting sports participation in China, something that has undoubtedly seen a huge boost in winter sports in the seven-year build-up to the Winter Olympic Games and Winter Paralympic Games since China was awarded the hosting rights in 2015. State media has declared that China now has 346 million winter sports participants, surpassing the previously stated goal of 300 million; however, in the continued absence of what actually defines a winter sports "participant", this number remains largely symbolic.

China's Sports Market

Since 2013, China's sports industry has grown at a compound

annual growth rate of 18 percent and by 2019 the size of the sports industry reached RMB 2.9 trillion (US \$450 billion), consistent with the targets established in China's 13th Five-Year Plan. By 2025, the government has targeted the market to reach an estimated RMB 5 trillion (US \$770 billion). The growth in market size has been driven by rising government expenditure on sports, culture, and media activities and the power of Chinese consumers. According to analysis by AmCham China, in 2019, government expenditure on sports and media reached RMB 409 billion (US \$63.3 billion), up from RMB 354 billion, (US \$54 billion) in 2018. Per capita consumer spending on cultural, educational, and entertainment services reached RMB 3,238 in 2019, an 11.9 percent increase year-on-year. Further to previous policy releases, the government issued a "National Fitness Plan (2021-2025)" in August 2021, the goal of which was to bolster the growth of the sports industry to reach its previously stated target of RMB 5 trillion in annual revenue.

Within the market, sports education and physical fitness are two market segments with significant growth potential. In September 2020, the General Administration of Sport (GAS) and the Ministry of Education (MOE) released a series of Measures "to boost the development of physical education and improve the health of students." The measures aim to **1** strengthen physical education in schools and encourage student participation in competitive sports training, **2** improve the inter-school sports competition, **3** build competitive teams in schools, colleges, and universities, and **4** encourage participation by private sports organizations.

There was also a significant development in sports education in 2021, with the government's "Double Reduction Policy". This aimed to ease the academic pressure on students and their parents by reducing the amount of homework and after-school tutoring. By extension, other activities – such as sports – had a chance to flourish instead.

Given the government support and projected growth potential, this is a promising industry segment for investment. Nevertheless, AmCham China has identified certain challenges that could affect progress towards these goals:

- **Fragmented sports education market segment:** As sports training facilities can be rented (rather than every industry participant needing to construct their own

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。随着体育市场的发展，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。

多年来，中国的体育组织一直以一种战略为主导，这一战略的本质是将体育定义为一个可以通过在全球体育赛事上获得金牌，为国家赢得荣耀的平台。然而，自2008年北京奥运会以来，中国的体育文化发生了转变，人们认识到，让国家界定所有体育优先事项并非最佳选择。现在，体育的大门向更多的公众打开，市场应在体育资源分配方面发挥更大的作用。

2022年冬奥会为体育发展带来新的动力。此前，中国国家主席习近平表示“不在乎中国可以赢得多少枚冬奥会金牌”，以此表达公众对中国队表现的期望。中国在本届冬奥会获得了9枚金牌、4枚银牌和2枚铜牌，仅次于挪威和德国，在奖牌榜上位列第三，这也超出了大多数人的预料。习近平总书记表示他更注重提高中国的体育参与度，自2015年中国获得冬奥会和冬残奥会的主办权以来，冬季运动在七年的筹备过程中得到了长足的发展。

中国体育市场

自2013年以来，中国体育产业年均复合增长率为18%，2019年，体育产业规模达到2.9万亿元人民币（4500亿美元），与中国“十三五”规划建立的目标一致。政府的目标是到2025年，体育产业规模达到约5万亿元人民币（7700亿美元）。政府在体育、文化和媒体活动上不断增加支出以及中国消费者的消费水平推动

着市场规模不断增长。在2019年，政府在体育和媒体上的支出费用达到4090亿元人民币（633亿美元），高于2018年的3540亿元人民币（540亿美元）。在2019年，居民人均教育文化和娱乐支出为3238元人民币，同比增长11.9%。

继此前的政策发布后，政府于2021年8月发布了《全民健身计划（2021-2025年）》，其目标是促进体育产业的增长，以实现其此前提出的年收入5万亿元的目标。

在市场内部，体育教育和体育健身是两个具有巨大增长潜力的细分市场。2020年9月，国家体育总局和教育部出台了一系列“促进体育教育发展，提高学生体质”的措施，旨在：**①**加强学校的体育教育，鼓励学生参加竞技体育训练；**②**完善校际体育竞赛；**③**在学校、学院、大学建设竞赛队伍；**④**鼓励民办体育组织的参与。

2021年体育教育也有了长足的发展。2021年7月政府“双减”政策出台。这项政策旨在通过减少学生家庭作业和课后辅导数量来缓解学生与家长的学业压力。推而广之，其他活动——如体育——反而有机会蓬勃发展。

从政府的支持力度和预计的增长潜力上看，这是一个极具投资前景的细分行业。尽管如此，中国美国商会（以下简称“商会”）还是确定了一些可能影响这些目标进展的挑战：

- **碎片化的体育教育细分市场：**由于体育训练设施可以租用（不需要每个行业参与者建造属于他们自己的设施），许多以营利为目的的小型行业参与者可能会进入市场，导致市场碎片化。
- **劳动力成本高且设施有限：**体育教练员、体育教育指导员、专业教练员的工资水平高于学校的其他工作人员。这些教练员和教练也是学校的销售人员，

facilities), many small-scale industry players seeking to profit are likely to enter the market, leading to fragmentation.

- **High labor costs and limited facilities:** Sports trainers, physical education instructors, and specialized coaches command higher salaries than other school staff. These trainers and coaches also act as salespeople for the school, recruiting promising students for their programs. Given its population size and density, parts of China suffer from limited availability of sports and physical activity facilities. The Chinese government is seeking to address this issue in high profile sports like soccer through construction of new facilities (discussed below).

To deal with issues stemming from limited facilities and resources, some market participants have begun combining traditional sports education with online courses to diversify their products and enhance engagement. AmCham China recommends that the government engage closely with private industry (both foreign and domestic) to develop best practices as it accelerates the growth of its domestic sports education industry.

Market Access

China's sports industry is modernizing. This shift has been underway for several years and is epitomized by several legislative developments, most notably the October 2014 State Council *Opinions on Accelerating the Development of the Sports Industry and Promoting Sports Consumption* (State Council [2014] Circular No. 46) (Opinions). Amongst other things, the Opinions called for 500 million sports participants by the same time and that all neighborhoods have sport facilities. The Opinions also stated that the government will encourage the professionalization of sports leagues, the corporatization of sport teams, offer special tax treatment to preferred sports companies, incorporate revitalized new sport facilities in land use planning law, as well as improve intellectual property rights protections in sports to encourage appropriate market development for teams and associations. The distribution of sports through media was also to be a target.

Along these lines, the *General Plan for China Football Reform and Development* (State Council [2015] Circular No. 11) announced in 2015 by General Secretary Xi Jinping includes a 50-point road map to transform China into a global soccer power. The Plan calls for reform of the governance of the national teams, professional leagues, professional clubs and local clubs and, in particular, led to the separation of the China Football Association from the GAS. In addition to targeting organized sport for reform, recreational sport was also reviewed. In April 2015, the National Development and Reform Commission (NDRC) launched the *Medium and Long-Term Development Plan of Chinese Football (2016-2050)*, which targets, among other things, 50 million kids and adults

playing soccer, and the construction of 20,000 soccer training centers and 70,000 soccer fields by 2020. The announcement noted that every county must have two full size soccer fields and every urban compound at least one five-a-side field.

In support of the Medium and Long-Term, in May 2016, the GAS issued the *13th Five-Year Plan for Sports Development*, proposing to guide powerful domestic sports companies to merge, reorganize, and go public, while actively supporting overseas mergers and acquisitions.

More recently, the State Council *Opinions on Promoting National Health and Sports Consumption and Promoting the High-Quality Development of the Sports* (State Council (2019 Circular No. 43) pushes for China's professional sport leagues to be governed by market-based principles. It calls for the creation of public-private funding for the sports industry, the promulgation of tax breaks for investments into sports, greater protection of sports intellectual property, encourages ownership of sport stadiums by private entities rather than the government and encourages the development of e-commerce in the sports industry.

The 2019 *Outline for Building a Powerful Sports Country* from the State Council (Circular [2019] No. 40) amplified the push to commercialize the sports industry. In particular, it encourages private capital to invest in the sports industry. The Outline highlights that basketball, football and volleyball must be prioritized. The Outline also seeks to promote the development of devices for watching sports by declaring the importance of using intellectual property rights properly.

The series of legislative developments recounted above highlight that China is increasingly seeking to promote its domestic sports industry in a holistic manner, focusing on improving the quality of its domestic teams and leagues, commercial opportunities, and promoting sport as a healthy recreational activity. They also indicate China wants to promote greater privatization of and foreign investment into its sports industry going forward. The 2020 edition of the *Industrial Catalogue Encouraging Foreign Investment* lists "sports stadium operations, physical fitness, competition performance and sports training and intermediary services" as sectors where foreign investments are welcomed. AmCham China notes, however, that foreign investment into professional sports leagues in China remains severely limited. There is only one notable foreign investment in League 2 of the China Football Association. Foreign involvement in China's professional sports is limited to players and coaches at the moment. Without proper incentives and clear control assignments substantiated by capital equity, involving sound foreign professional management of domestic clubs and teams will remain a challenge. AmCham China would welcome the opportunity to engage with government regularly on how to better involve foreign investors in China's sports industry.

2021 was a tough time for professional soccer in China, with

为他们的项目招募有潜力的学生。鉴于人口规模和密度，中国部分地区的体育活动设施有限。中国政府正寻求通过建造新设施（在下文中进行讨论），解决足球等备受欢迎的体育项目中的这一问题。

为解决因设施和资源有限而产生的问题，一些市场参与者已开始将传统体育教育与在线课程相结合，使其产品多样化，并提高参与度。商会建议政府与私营企业（包括内外资企业）密切合作，在加速国内体育教育行业发展的同时，制定最佳实践。

市场准入

中国的体育产业开始现代化已经有几年了，几项立法的发展都体现出了现代化这一概念，最显著的是国务院于2014年10月印发的《关于加快发展体育产业促进体育消费的若干意见》（国发〔2014〕46号）（以下简称《意见》）。其中，《意见》同时号召5亿体育参与者为所有社区建造体育设施。《意见》还指出，政府将鼓励体育联赛专业化、运动团队公司化，对优先的体育公司给予特殊税收待遇，将新建造的新体育设施纳入土地利用规划法，同时加强对体育知识产权的保护，以此鼓励体育团队和体育协会进行适当的市场开发。通过媒体进行体育传播也将成为一个目标。

按照这一路线，习近平总书记于2015年宣布的《中国足球改革发展总体方案》（国办发〔2015〕11号文）中涵盖了向中国向世界足球强国转变的50点路线图。计划要求改革国家队、职业联赛、职业俱乐部和地方俱乐部，特别是引导足协与国家体育总局进一步脱钩。除了针对有组织的体育项目进行改革外，还审查了娱乐体育项目。在2015年4月，国家发改委出台了《中国足球中长期发展规划（2016-2050年）》（以下简称《规划》），目标是到2020年，实现5000万儿童和成人参与足球运动，并且建造2万个足球训练中心和7万个足球场。《规划》指出，每个县必须有两个标准足球场，每个城市大院至少有一个五人制足球场。

为支持中长期发展，国家体育总局于2016年5月发布了《体育发展“十三五”规划》，提出了引导国内实力雄厚的体育企业兼并重组、上市，同时积极支持海外并购。

最近，国务院办公厅印发《关于促进全民健身和

体育消费推动体育产业高质量发展的意见》（国办发〔2019〕43号）（以下简称《意见》），以推动对中国职业体育联盟的市场化治理。《意见》呼吁为体育产业设立公私合营基金，颁布对体育投资的减税政策，加强对体育知识产权的保护，鼓励私营实体而非政府持有体育场馆的所有权，并鼓励体育产业在电子商务领域的发展。

国务院办公厅关于印发《体育强国建设纲要》（以下简称《纲要》）的通知（国办发〔2019〕40号），加大了推动体育产业商业化的力度。特别是鼓励民间资本投资体育产业。《纲要》强调，必须优先考虑篮球、足球和排球。《纲要》还通过强调正确使用知识产权的重要性，促进体育比赛观看设备的开发。

上述一系列立法取得的进展表明，中国正在寻求从全局上促进国内体育产业发展，其工作主要集中在提高国内球队和联赛的质量、增加商业机会和促进体育健康娱乐活动。《纲要》还指出，中国希望进一步推动体育产业的私有化和吸引更多外国投资。然而，商会注意到能够参与中国职业体育联赛的外国投资仍然非常有限。中国足协二级联赛只有一项外国投资比较可观。目前，外国对中国职业体育的投资仅限于运动员和教练员。如果没有适当的激励措施和明确的控制权分配（以资本权益为依据），那么实现对国内俱乐部和球队进行健全的国外化专业管理仍是一个挑战。商会希望能够与相关政府部门建立定期沟通机制，探讨如何让外国投资者更好地参与到中国体育产业中来。

中国职业足球在2021年经历了艰难时期。在获得国内联赛冠军后仅四个月，中超俱乐部江苏苏宁在2月底宣布破产，其他几个俱乐部也经历了严重的财务危机。中超联赛照常举行，但新冠疫情的影响让球迷无法观看现场比赛，再加上联赛在8月至12月被强制停赛，以便中国国家队专注备战国际足联世界杯预选赛（最终被淘汰），这也让商业运作面临挑战。赛季开始前出台的一项新规定，要求球队从官方名称中删除任何赞助或商业性质的文字，这也极大影响了球队的收入来源。

体育直播

几十年来，中国法院一直否认直播体育节目的可版权性。根据中国《著作权法》的规定，“类电作品”需满足两个条件——“独创性”和“固定于有形载体”，这

Chinese Super League (CSL) club Jiangsu Suning going bankrupt at the end of February just four months after winning the domestic league, and several other clubs experiencing severe financial difficulties. The CSL continued to operate, but the shadow of COVID-19, which prevented fans from attending the games, plus the enforced shutdown of the league from August to December to allow the Chinese national team to focus on their (ultimately unsuccessful) FIFA World Cup qualifying campaign, made commercial operations challenging. A new rule introduced prior to the start of the season to remove from a team's official name any words of a sponsorship or commercial nature also hit potential sources of income.

Sports Broadcasting

For decades, Chinese courts have been denying the copyrightability of live sports programs. It has been a consensus in judicial practice that there exist two conditions to qualify as a "cinematographic work" under China's *Copyright Law* – "originality" and being "fixed in a tangible medium." However, disagreements remain with respect to the level of originality and whether the fixation shall be stabilized. Judgments denying the copyrightability of live sports programs held the opinion that a "cinematographic work" required a relatively high level of originality and that the whole video frame(s) had to be stabilized in a tangible medium. This view has been staunchly supported by some influential judges, popular scholars, and senior officials in central government agencies.

In 2020, reflecting efforts undertaken by a diversity of stakeholders and sectors over the past decade, the courts demonstrated a steep change in their understanding of the sports industry and issued several highly influential judgments protecting live sports programs as copyrightable works.

These influential cases include the two retrial judgments issued by the Beijing Higher People's Court regarding the CCTV case and the Sina case (introduced in the 2019 AmCham China *White Paper* Sports Chapter). In both cases, the Court overturned the rulings of the Beijing IP Court and held that the sports programs (e.g., the FIFA World Cup and China Super League games) involved constitute "cinematographic works" and should be protected under China's *Copyright Law*.

Another landmark case concluded in mid-November 2020 involving the NBA, a major US sports association. In 2014, the NBA (in the name of NBA Properties, Inc., the rights holder of NBA intellectual property) filed a civil lawsuit against Shanghai Zhong Yuan, the owner of a streaming platform named PPStream, for unauthorized live streaming of multiple NBA game telecasts. The first-instance judgment in this case issued by the Beijing First Intermediary People's Court adopted the aforesaid negative view, ruling that the NBA's live programming is not copyrightable. In the second

instance, ostensibly persuaded by provided evidence and articulated legal reasoning, the Beijing Higher People's Court overturned the first instance ruling, recognizing the NBA's live programs as "cinematographic works," and awarded damages totaling RMB 3.8 million (US \$580,000).

The judgment is consistent with the amendment of China's *Copyright Law* (approved in November 2020 and effective June 1, 2021), stating that the types of work under the *Copyright Law* shall not be limited to the examples listed in the law.

This remarkable judgment has demonstrated an open mind and logical thinking on the part of the Courts, and their willingness to consider patterns of industry development in their decisions. The judgment is a strong message of the Chinese courts' determination to protect IP owners, both domestically invested and foreign invested.

Despite these positive developments, our members still face a number of ongoing challenges with respect to IP rights around sports broadcasting.

1. Damages awarded for infringements by the courts are still low.

Live programs of top sporting events such as those in the NBA, NFL, World Cup, and Olympic Games receive significant investment which creates unique events with substantial market value. Instances of piracy of these events usually involve mass infringement or infringement on a widespread scale, at great economic cost to the event organizers and authorized licensees. Some courts in China have not demonstrated an awareness of the substantial economic value or the well-established licensing practices common in the sports industry. Other courts tend to issue statutory damages for infringements based on "safety" concerns, the result being that the damages awarded are low.

2. The standards for judicial rulings are still inconsistent across the lower courts and courts operating in less-developed areas of China.

Despite the landmark cases recognizing live sports programs as copyrightable works, our members' experience has been that some lower courts and courts in less-developed areas still adopt a negative perspective in their judgments and refuse to recognize the copyrightability of live sports programming. The inconsistent ruling standards and judicial interpretations create confusion and uncertainty among rights holders with respect to infringements.

3. Online piracy remains extensive

Online piracy remains a major challenge for rights holders and their authorized licensees in China. New forms of

已成为司法实践中的共识。然而，关于独创性的水平以及固定方式是否应稳定，仍存在分歧。认为体育直播节目不具有可版权性的判决认为，“类电作品”需要相对较高的独创性高度，每帧视频都必须稳定地被固定在一个有形的载体中。这一观点得到了一些有影响力的法官、大众学者和中央政府机构高级官员的坚定支持。

2020年，经过过去十年不同利益相关者和部门所做的努力，法院对体育产业的理解发生了巨大变化，并做出了几项极具影响力的判决，将体育直播节目认定为受版权保护的作品。

这些有影响力的案件包括北京市高级人民法院就央视案和新浪案（如2019年《美国企业在中国白皮书》体育章节中介绍）做出的两项再审判决。在这两起案件中，法院均推翻了北京知识产权法院的判决，认为涉案体育节目（如国际足联世界杯和中超联赛）构成“类电作品”，应受到中国《著作权法》的保护。

另一起里程碑式案件于2020年11月中旬结案，涉及美国主要体育协会，美国职业篮球联赛（NBA）。在2014年，NBA（以NBA知识产权权利人美商NBA产物股份有限公司的名义）对一个名为PPS网络电视的流媒体平台的所有者上海众源网络有限公司提起民事诉讼，指控其未经授权直播多场NBA比赛。北京市第一中级人民法院对本案做出的一审判决采纳了上述否定意见，认定NBA直播节目不受版权保护。在二审中，北京市高级人民法院在提供的证据和明确的法律推理下，推翻了一审判决，认定NBA赛事直播节目构成“类电作品”，并判令上海众源网络有限公司赔偿380万元人民币（58万美元）。

该判决与《中华人民共和国著作权法修正案》（2020年11月通过，2021年6月1日起施行）中阐释的《著作权法》规定的作品类型不限于该法列举的实例这一规定一致。

这一备受关注的判决展示了法院的开放思想和逻辑思维，以及其在判决中考虑行业发展模式的意愿。这一判决有力地表明了中国法院保护国内外知识产权权利人的决心。

尽管取得了这些积极进展，商会会员企业在体育电视节目的知识产权方面仍面临着一些挑战：

法院判定的侵权损害赔偿金仍然很低

NBA、职业橄榄球大联盟（NFL）、世界杯和奥运会等顶级体育赛事的直播节目的投资都很巨大，这些投资创造了具有巨大市场价值的独特赛事。这些赛事的盗版事件通常涉及大量侵权或大规模侵权，给赛事组织方和授权许可方造成了巨大的经济损失。中国的一些法院没有意识到体育产业中普遍存在的巨大经济价值或成熟的许可实践。其他法院倾向于基于“安全”考虑对侵权行为判定法定损害赔偿，结果是判给的损害赔偿很低。

中国的地方法院和欠发达地区的法院的司法裁决标准仍不一致

尽管有一些里程碑式的案例认定体育直播节目是受版权保护的作品，但根据会员企业的经验，一些地方法院和欠发达地区的法院在判决时仍然拒绝承认体育直播节目的版权。裁决标准和司法实践的不一致让版权持有者对侵权的概念感到困惑和不确定。

网络盗版依然猖獗

在中国，网络盗版仍然是版权权利人及其授权许可方面临的一大挑战。新的侵权方式，如使用短视频、社交媒体直播间和音频节目，在中国不断涌现，给中国体育直播节目的保护带来了持续挑战。

解决上述知识产权保护方面的挑战非常重要，因为有效的知识产权保护将为国内联赛和体育团体带来巨大的好处，包括由中国篮球协会和中国足球协会组织的赛事收入都将因成功应对这些挑战而增加。因此，继续改善体育广播的知识产权保护环境，符合行业自身利益。

中国的电子竞技

中国的电子竞技产业由国家体育总局与国家发改委、教育部、文化和旅游部以及国务院共同管理。电子竞技产业在国家层面得到了极大的政策支持。2016年是中国政府支持电子竞技的一个转折点：

- 2016年3月19日，国家体育总局宣布成立中国移动电竞产业联盟；
- 2016年4月18日，国家体育总局信息中心和大唐电信开始承办全国移动电子竞技大赛赛事；
- 2016年5月14日，国家体育总局推出电竞运动员注册制；

infringement - such as the use of short videos, live rooms on social media, and audio programs - are emerging in China, which creates continuous challenges for the protection of live sports programming in China.

Addressing the challenges identified above with respect to IP protection is particularly important as effective protection will yield significant benefits for domestic leagues and sports groups. The revenues of domestically invested leagues, including the China Basketball Association (CBA) and Chinese Super League (CSL), will be enhanced through actions that address these challenges. Thus, it is in the industry's self-interest to address these challenges and continue to improve the environment for IP protection of sports broadcasts.

eSports in China

China's eSports industry is under the jurisdiction of the General Administration for Sports, in cooperation with NDRC, the MOE, the Ministry of Culture and Tourism, and the State Council. The e-sports industry has received substantial policy support at the national level. 2016 appeared to mark a turning point in support for eSports among the Chinese government:

- On March 19, 2016, the General Administration for Sports announced the establishment of the China Mobile esports Industry Alliance,
- Also, in March 2016 the Information Center of the General Administration of Sports and Datang Telecom began to host eSport Game Events (CMEG events),
- On May 14, 2016, the General Administration for Sports introduced an athlete registration system for eSports,
- On September 2, 2016, the MOE officially added "e-sports sports and management" as a university major,
- On October 14, 2016, Premier Li Keqiang identified eSports as one of six leisure activities supported by the Chinese government.

More recently in 2020, eSports was listed as an event at the upcoming 2022 Hangzhou Asian Games. As of 2020, China's eSports market has exceeded RMB 100 billion (US \$15.5 billion), and China has surpassed North America to become the world's largest e-sports market.

eSports, in contrast to conventional sports, has permitted foreign investment, although the level to date has been modest. In contrast, Chinese media platforms have gone on an acquisition spree of foreign eSports providers. Tencent owns Riot Games and Penguin Esports and has investments in Epic Games, Activision Blizzard, Supercell, and Ubisoft. In January 2019, Tencent and Riot Games established a JV (TJ Sports), which will cover "League of Legends" in China, including event operations, brokerage, venues, derivatives,

and IP development to build a more mature and stable alliance ecosystem and to accelerate the development of the eSports ecosystem. Alibaba is a major investor into the International Esports Federation. There is only modest investment by foreign investors in the China market. eSports officials should welcome foreign investment and management as a means to improve and diversify this significant and growing market.

Recommendations

For the Chinese Government

- Reduce barriers to investment for foreign investment into China's professional sports industries. Without proper incentives and clear control assignments substantiated by capital equity, involving sound foreign professional management of domestic clubs and teams will remain a challenge.
- Recognize sports broadcasting as a copyrightable work and provide the rights holders with enforceable rights to take swift and deterrent actions in response to infringements, including administrative and criminal complaints for enforcement actions. Penalties imposed by the courts should have a deterrent-level effect. The government should increase its support to administrative and police departments to enforce/crack down on the copyright infringements of live sports broadcasts.
- Engage closely with private industry (both foreign and domestic) including US professional sports leagues to develop best practices to accelerate the growth of domestic professional leagues and the sports education industry.
- Encourage foreign investment in China's eSports market, the world's largest, through promulgation of official regulations and directives and ensure that foreign investors encounter a level playing field with respect to their domestic counterparts.

- 2016年9月2日，教育部正式将“电子竞技运动与管理”列入大学专业；
- 2016年10月14日，李克强总理将电子竞技列为中国政府支持的六大休闲活动之一。

2020年，电子竞技被列为2022年杭州亚运会的一项赛事。截至2020年，中国电子竞技市场规模已超过1000亿元人民币（155亿美元），超过北美，成为全球最大的电子竞技市场。

与传统体育相比，电子竞技接受外国投资，尽管迄今为止投资水平还不高。相比之下，中国媒体平台却在疯狂收购外国电子竞技提供商。腾讯拥有拳头游戏和企鹅电竞，并在艺铂游戏、动视暴雪、超级细胞和育碧等项目上进行了投资。2019年1月，腾讯与拳头游戏成立合资公司（腾竞体育），这将涉及到“英雄联盟”在中国的赛事运营、经纪业务、场馆、衍生品、知识产权开发等，以构建更加成熟稳定的联盟生态系统，加快电子竞技生态系统的发展。阿里巴巴是国际电子竞技联盟的主要投资者。外国投资者在中国市场的投资并不多。电子竞技的相关官员应欢迎外国投资和管理，以此来改善这个巨大且不断增长的市场，并使之多样化。

- 通过颁布官方法规和命令，鼓励外商投资中国这个世界最大的电子竞技市场，并确保外国投资者与国内投资者得到同等对待。

建 议

对中国政府：

- 降低外商投资中国职业体育产业的投资壁垒。如果没有适当的激励措施和明确的控制权分配（以资本权益为依据），那么对国内俱乐部和球队进行科学的国外专业化管理仍是一个挑战。
- 承认直播体育节目是受版权保护的作品，并向版权持有者提供对侵权行为迅速采取威慑行动的可执行权利，包括对执法行为的行政和刑事投诉。法院的处罚应具有威慑力。政府应加大对行政部门和警察局的支持力度，对侵犯体育直播版权的行为进行执法/打击。
- 与美国职业体育联盟等在内的私营产业（包括国外和国内）密切合作，开发最佳实践，以加速国内职业体育联盟和体育教育行业的发展。

Work Safety

Introduction

In China work safety has become an increased area of attention 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, General Secretary 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, 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. Our members note they have seen an increased emphasis on adherence to work safety regulations by Chinese officials over the past few years.

In recognition of the need to improve work safety, the Ministry of Emergency Management (MEM) was created during the reorganization of the Chinese government in March 2018. 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.

Throughout 2020 and 2021, as part of government’s effort to control COVID-19, the central and local governments issued a series of guidelines and policies to help industry resume business operations and employ workplace health and safety regulations to control COVID-19. These include requirements for employers to report to local disease control authorities any confirmed or suspected COVID-19 cases without delay, to institute disease control and prevention control measures in the workplace consistent with the style and manner of their operations and provide training on the use of personal

protective equipment and COVID-19, disinfect workspaces, and encourage employees to engage in good hygiene practices such as frequent handwashing. These guidelines may become longstanding requirements as COVID-19 control efforts remain in place.

Civil Engineering and Work at Height

In the construction industry, our members note increased attention to work safety regulations by Chinese officials and a willingness to impose punishments for safety violations. Such enforcement is welcomed. However, our members have experienced inconsistencies with respect to the application of safety regulations by county-level officials or officials in industrial zones. They can display limited knowledge of current safety regulations and the enforcement of local regulations is often replete with loopholes that means the application of regulations is haphazard.

This then trickles down to the building contractors, who themselves do not strictly enforce safety regulations or guidelines on construction sites. Moreover, they can and do hire day laborers to work at the site, and the laborers themselves are not professionally trained in construction safety.

Therefore, we recommend that greater emphasis be placed on prioritizing safety training, particularly for local officials, including those at the county level or in charge of special industrial zones. At the same time, national and local safety regulations should be transparent, published, and easily accessible for both regulators, industry, and contractors. Moreover, the government should mandate and even participate in regular training on worker safety for industry contractors working in construction.

According to the definition of the Chinese national standard GB/T 3608-2008 *Classification of Working at Height*, working at height refers to working at a height that is 2 meters or more from the reference plane where the operators may fall. According to statistics, falling from height is a major proportion of reported personal injury accidents in industrial enterprises. According to the report on the safety production situation of the national construction industry in the first half of 2018, which was made by the Office of the State Council Safety Committee, the total number of accidents in the construction industry has ranked first among industrial,

安全生产

引言

在 中国，安全生产已经成为政府主管部门、行业协会、研究机构、企业界和公众日益关注的领域。通过各界的不断努力，《安全生产法》自 2002 年颁布以来，于 2014 年首次进行了修订，这是改善监管环境的重要一步。

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。相关部门还要从排查消除隐患、确保责任落实、完善制度监管等方面入手，加强安全装备技术、应急管理 etc 基础性工作。同时，政府亦需加快建立安全风险防控体系。

为进一步提高安全水平，在 2018 年 3 月公布的中国政府机构改革方案中宣布组建应急管理部。应急管理部整合了 13 个部门和单位，包括原独立的国家安全生产监督管理总局和公安部消防局，旨在化解重大安全风险，提高公共安全管理水平，建立具有所谓中国特色的统一指挥机构，创建负责、灵活的应急管理体系。

贯穿 2020 年和 2021 两年，为了控制新冠肺炎疫情，中央和地方政府发布了一系列政策和指导方针来帮助各行各业恢复运营，并采用工作场所健康和法规来控制新冠疫情。这其中包括要求雇主立即向当地疾控部门报告任何确诊或疑似新冠疫情病例，在工作场所制定符合生产经营方式的疾病控制和预防控制措施，并提供关于使用个人防护设备和新冠疫情的培训，对工作场所进行消毒，鼓励员工养成良好的卫生习惯，如经常洗手。由于新冠疫情的控制工作仍在进行，这些准则已成为长期要求。

土木工程和高空作业

在建筑业，中国美国商会（以下简称商会）的会员企业注意到，中国官员越来越重视工作安全条例，并展开对违反安全规定的情况进行积极整治。商会欢迎这种执法行为。然而，商会观察到，不同县级或园区官员在执法层面不一致的情况。许多执法者对现行安全法规的了解有限，这导致地方法规的执行出现漏洞，相关法规在应用层面存在很大程度的不确定性。

这种情形对本身就没有严格执行建筑工地安全法规或准则的建筑承包商产生很大影响。同时，他们可以且确实雇用日工在工地上工作，而这些工人本身也并未经过专业的建筑安全培训。

因此，商会建议优先考虑安全培训，特别是对地方官员，包括县级官员或特殊工业区负责人的培训。同时，国家和地方的安全法规应该透明化、公开化，便于监管者、行业和承包商查阅。此外，政府应规定甚至参与对从事建筑业的行业承包商进行定期的工人安全培训。

根据中国国家标准 GB/T 3608-2008《高处作业分级》的定义，高处作业是指在距坠落高度基准面 2 米或 2 米以上有可能坠落的高处进行的作业。根据统计，高处坠落是工业企业最主要的人身伤害事故之一，应当引起重视。根据国务院安委会办公室关于 2018 年上半年全国建筑业安全生产形势的通报中，建筑业事故总量已连续 9 年排在工矿商贸事故第一位，而其中高处坠落和坍塌是事故主要类型，高处坠落事故占全部事故总数的 48.2%。导致高处坠落事故的原因很多，建议从以下方面加强高处作业坠落防护：

- 加强高处作业相关安全培训，对于安全生产管理人员要增强法律法规、企业规章、标准规范的教育培训，提高他们的安全专业技术能力，做好督促、监

mining, and commercial accidents for nine consecutive years, and falls from heights and collapses are the main types of accidents. Falls from height accounted for 48.2 percent of the total number of accidents. There are many reasons for a fall from height accident. It is recommended to strengthen the work on the protection of falls from height in the following aspects:

- Safety training on working at height should be further promoted. Education and training regarding laws, regulations, corporate rules, and standards shall be conducted for safety production management personnel to improve their professional and technical skills in safety and to ensure proper supervision and inspection. For workers directly involved in working at height, it is necessary to understand the hazards of falling from height, enhance self-awareness of safety, and avoid illegal operations or risky behaviors. To do so, workers must understand the rules, regulations and safety operation procedures related to working at height and be trained on mutual supervision and warning. Further training is necessary to understand basic measures, methods and supplies of prevention and protection of falling from height, and the need for and importance of correctly wearing and use protective equipment during the operation and proper maintenance of equipment after use.
- Enterprises should provide appropriate protective equipment for employees working at heights in accordance with the corresponding national standards, to ensure that equipment can really play a role in protecting workers from falling from heights. For example, Standard JGJ 80-2016 *Technical Code for Safety of Working at Height of Building Construction* issued by the Ministry of Housing and Urban-Rural Development stipulates in the suspended operation section of Article 5.2 that in case steel beams are used as horizontal passages, a long safety rope should be set on one side of the steel beams. The safety rope should be made of steel wire rope, although there are no clear technical requirements for the steel wire rope, which causes uneven performance and standard of the steel wire rope used by the construction unit in the actual application process. National Standard GB 38454-2019 *Personal Fall Protection Equipment—Horizontal Lifeline Device* promulgated in 2019 makes clear requirements for the performance of related products, which can be applied to this occasion. In addition, the newly-promulgated Standard GB 6095-2021 *Personal Fall Protection Equipment—Safety Belts* stipulates that the tether for fall suspension should be a full-body tether, and that the tether should include one or more connection points for fall suspension, which should be attached in front of the user's chest or behind their back. In case the fall suspension part of the safety belt includes only one fall suspension safety rope, the safety rope should have an energy absorption function or be used together with a buffer.
- The risk assessment and accident prevention functions

of work safety liability insurance shall be given full play. *Specifications for Accidents Prevention Technical Service on Work Safety Liability Insurance* (AQ9010-2019) should be promoted and implemented. The establishment of a socialized service system for safety production, in which insurance institutions and professional technical service institutions widely participate, will be accelerated through the implementation of work safety liability insurance. Before the end of 2021, the emergency management departments of various regions established an information management platform for work safety liability insurance. It is planned that by the end of 2022, online monitoring of preventive technical services given by all insurance institutions undertaking work safety liability insurance will be carried out and formulated, and a third-party evaluation and publicity system will be implemented. The responsible units and persons in charge who do not meet the standard requirements for preventive services, or who charge for no services or fewer services shall be warned and urged to make rectifications. In serious circumstances, they are to be included in the blacklist for joint punishment in the field of safety production in accordance with *The Implementation Measures for Work Safety Liability Insurance*, which will be announced to the public.

Hazardous Chemical Emergency Management

Over the past few years, we have witnessed greater prioritization of hazardous chemical emergency management by the central and provincial governments. This has been done through the enactment of legislation and an effort to improve capacity through training focused on the management and exploration of hazardous chemicals. The *Hazardous Chemicals Safety Law* was released for comment in 2020 (and is discussed in greater detail below). The number of accidents related to hazardous chemicals has fallen, and since 2020 no major chemical accidents, similar to the 2019 explosion in Xiangshui, Jiangsu, occurred in 2020.

The hazardous chemicals industry developed rapidly in China, and yet hazardous chemical emergency response is comparatively underdeveloped, and work remains to be done to improve current emergency management capabilities and protect public health and safety. It is important that the policy framework for emergency management be developed to enable insurance companies, third-party service agencies and hazardous chemical enterprises to participate. China should also draw on the experience of other developed countries in this sector, many of whom developed internationally recognized best practices.

AmCham China offers the following recommendations:

- Utilize the professional capabilities of the insurance industry. Enterprises in Europe, the US, and other markets tend to purchase insurance packages from

护和检查工作。对于直接参与高处作业的工人，需要了解高处坠落危害性，增强自我安全意识，杜绝违章作业和冒险行为；了解高处作业相关的规章制度和安全操作规程，在作业过程中做好相互监督和提醒；了解坠落防护基本的措施、方法和用品，在作业过程中能正确穿戴和使用坠落防护用品；了解坠落防护用品的使用方法，在作业过程中能正确的使用并维护保养好这些防护用品。

- 企业应当依据相应的国家标准为高处作业人员配备合适的坠落防护用品，确保这些用品能真正起到防坠落的作用。例如在中华人民共和国住房和城乡建设部标准 JGJ80-2016《建筑施工高处作业安全技术规范》第 5.2 悬空作业部分中规定，当利用钢梁作为水平通道时，应在钢梁一侧设置连续的安全绳，安全绳宜采用钢丝绳，但是并没有明确钢丝绳的技术要求，这就造成在实际应用过程中施工单位使用的钢丝绳性能和标准参差不齐。在 2019 年颁布的国家标准 GB38454-2019《坠落防护水平生命线装置》中，对相关性能提出了明确要求，可适用于此场合。另外，新颁布的 GB 6095-2021《坠落防护安全带》标准中明确规定，坠落悬挂用系带应为全身式系带，系带应包含一个或多个坠落悬挂用连接点，系带连接点应位于使用者前胸或后背，当安全带中的坠落悬挂用零部件仅含坠落悬挂安全绳时，安全绳应具备能量吸收功能或与缓冲器一起使用。
- 充分发挥安责险参与风险评估和事故预防功能。深入推动落实《安全生产责任保险事故预防技术服务规范》(AQ9010-2019)。通过实施安责险，加快建立保险机构和专业技术服务机构等广泛参与的安全生产社会化服务体系。2021 年底前各地区应急管理部门建立了安责险信息化管理平台，计划 2022 年底前对所有承保安责险的保险机构开展预防技术服务情况实现在线监测，并制定实施第三方评估公示制度。对预防服务没有达到规范要求、只收费不服务或少服务的责任单位和负责人予以警示，督促整改，情节严重的按照《安全生产责任保险实施办法》有关规定，纳入安全生产领域联合惩戒“黑名单”管理，并向社会公布。

加强危险化学品应急管理

近年来，各级政府从立法、管理、技术探索、培训等

各个方面全面提升了危险化学品的应急管理能力，《危险化学品安全法》也已经进入到公开征求意见阶段，危化品相关事故明显减少，2020 年以来没有出现类似“响水事件”级别的特别重大危化品事故。

近年中国危化品相关行业高速发展，但危化品应急基础相对薄弱，目前应急管理能力距有效保障劳动人民的生命健康还存在一定的差距。发挥政策的指导作用，激发保险公司、第三方服务机构和危化品企业的安全经济驱动力，学习国外的先进经验显得尤为重要。商会提出以下建议：

- **充分发挥保险业的作用。**欧美等国家的企业往往会购买相关保险，保险公司聘请专业的第三方服务机构帮助被保企业进行风险评估、提供定期指导和服务，帮助被保险企业提高职业安全健康水平。评估的等级会影响保险费率及理赔额。专业指导和服务可以帮助危化品企业提升应变能力，减少事故和赔付的发生，实现危化品企业、保险公司、第三方机构的“三赢”，持续推进应急管理的进步。
- **发挥政府在政策制定和能力建设上的指导和促进作用。**危化品企业往往对如何有效的提升自己的应急能力缺乏经验。建议职能部门能制定相关的标准、组织同类型企业相互学习，加强企业管理和操作人员理论和实战能力。
- **加强国际合作和交流。**经验和对于危化品应急管理非常重要，通过各个国家协会、企业和政府之间合作交流，学习好的经验，引进先进的技术，非常有利于中国危化品应急救援的发展。

危化品仓库短缺

由于危险化学品数量巨大，在很多省市都存在危险化学品仓库资源短缺的问题。特别是“8-12”事故后，几乎没有新批的危险化学品仓库资源。这不仅对化工行业带来不断上升的成本，也造成合规上的挑战。

对于广义危险化学品（不在危险化学品名录中），不需要存储在危险化学品仓库内。例如：具有潜在环境危害的化学品，危害之一是它对水生环境造成危害，但在被完好包装在密闭容器中时，它只有极其有限的水生暴露机会。那么在这种情况下，没有必要将其存储于危险化学品仓库。这不仅无助于此类化学品风险管控，并且挤兑资源，把真正易燃、易爆、腐蚀性及毒性的危险化学品游离于监管之外，将对社会造成极大的安全隐患。

professional insurance providers that include third-party service providers to help insured enterprises to conduct risk assessments, which affect insurance premiums and claim amounts. Insurance providers also provide guidance on how to improve occupational health and safety for those they ensure. Professional guidance and support can help hazardous chemical enterprises improve their emergency management capabilities, reduce the likelihood of accidents and claims, and deliver beneficial outcomes for hazardous chemical enterprises, insurance companies, and third-party agencies.

- Guide policy formulation and capacity building with respect to emergency management. Hazardous chemical enterprises sometimes lack the know-how or experience to improve their emergency response capabilities. We recommend that government departments formulate standards for emergency management and coordinate a series of trainings for the hazardous chemical industry in order to strengthen the theoretical and practical capacity of personnel responsible for emergency management and enable industry to learn from each other.
- Strengthen international cooperation and collaboration. Professional experience and access to the right technologies are of great importance to hazardous chemical emergency management. The development of China's domestic industry will benefit if its national associations, enterprises, and government have the opportunity to access international best practices and technology through collaboration with internationally leading organizations active in emergency management.

Hazardous Chemical Storage

Many provinces and cities are facing a shortage of hazardous chemical warehouse space resulting in unmet storage demands. In the aftermath of the 2015 Tianjin Port Explosion, ("8.12" accident), there has been very little new hazardous chemical warehouse space approved. Consequently, the chemical industry is facing increasing operational costs and greater compliance challenges. First, hazardous chemicals not listed in the *Catalog of Hazardous Chemicals* (2015 edition) should not be required to be stored at a hazardous chemical warehouse. For example, chemicals that are potentially hazardous in water, if well packaged in closed containers with limited exposure to water or other aquatic environments should not be required to be stored in hazardous chemical warehouses. Storage of these chemicals in specialized warehouses is unlikely to mitigate the risks and instead divert resources away from the protection of dangerous, flammable, corrosive, toxic, or explosive chemicals which pose a real risk of harm.

A draft *Hazardous Chemical Safety Law* released for comment by the Ministry of Emergency Management in October 2020. We

recommend that the draft law clarify that hazardous chemicals not included in the *Catalog of Hazardous Chemicals* (2015 edition) can be stored in a regular warehouse equipped with the appropriate firefighting equipment due to the low risks of harm that they pose to society. This will permit the chemical industry to store chemicals in ways that are commensurate with the risk level they pose and avoid occupying space in warehouses that are specially designed for storage of hazardous chemicals.

At present there is no consistent regulation between the transportation and storage of hazardous chemicals from a regulatory perspective. The same chemical substance is managed by different national authorities and subject to one set of regulations for transportation and one set for storage. With respect to storage, chemicals are classified as "general" or "hazardous;" for transportation the same chemicals are classified as either "dangerous" or "ordinary." Because these two systems are inconsistent, the chemical industry faces unnecessary compliance challenges in the transportation and storage of chemicals. For example, hazardous chemicals are required to be stored in specialized hazardous chemical warehouses, but not all hazardous chemicals are considered dangerous goods. Ordinary transportation vehicles are not permitted to pick up and transport goods stored at hazardous chemicals warehouses, specialized vehicles must be used. Therefore, we recommend that the government address this regulatory inconsistency and streamline risk management protocols of chemical substances throughout their entire lifecycle, including transportation and storage.

Operational Safety in Confined Spaces

Confined space refers to closed or partially closed space with narrow entries and exits that are isolated from the outside. Poor ventilation in such space may lead to the accumulation of toxic, harmful, flammable, and explosive substances as well as insufficient oxygen content, which may prohibit operators from working for an extended period in such space. This topic is covered by Order No. 59 of the Ministry of Emergency Management (Former State Administration of Work Safety) *Interim Provisions on Administration and Supervision of Operational Safety in Confined Spaces at Industrial and Trading Enterprises*.

Major risks of operating in confined spaces include poisoning, hypoxia, asphyxia, explosion, drowning, falling, electric shock, mechanical injury, etc. Statistics from ISA shows that a total of 20 major accidents related to operation in confined spaces occurred across the country in 2021, leading to the death of 54 people. Among these accidents, poisoning and asphyxia are the main causes of deaths and injuries, and improper or blind rescue is the main reason for the increase in deaths and injuries.

China administrates and standardizes operation in confined spaces by issuing standards and regulations including

同时，对于《危险化学品安全法（征求意见稿）》，建议澄清和指定危险化学品（不在2015版名录中）意味着风险较低，可以存储在配备必要消防设施的普通仓库。这将允许化学行业以与其风险水平相称的方式储存化学品，并避免不必要地使用专门为储存危险化学品而设计的仓库。

危化品在运输和存储环节的管理存在不一致问题。同一种化学物质在运输和存储环节由不同的国家主管部门及受不同的法规体系管理。例如：化学品在存储环节被分为一般化学品和危险化学品；而在运输环节，则被分为普通货物和危险货物。由于两种管理体系的不一致，化工行业存储和运输两个环节的衔接过程中出现了问题。譬如：危险化学品要求存储在危险化学品仓库，但危险化学品并不都是危险货物，然而普通车辆可能不被允许到危险化学品仓库去提货。因此，商会希望相关主管部门能从化学品全生命周期风险管控的角度，协调解决现有法规体系存在的不一致问题。

提升有限空间作业安全

有限空间指封闭或部分封闭，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，容易造成有毒有害、易燃易爆物质积聚，或者氧含量不足的空间。（据应急管理部〈原安监总局〉总局令第59号《工贸企业有限空间作业安全管理与监督暂行规定》）

有限空间作业的主要危险包括中毒、缺氧窒息、燃爆、淹溺、高处坠落、触电、机械伤害等。据安夏系统科技公司（ISA）统计的数据显示，2021年，全国共发生有限空间作业较大事故20起、死亡54人。在这些较大事故中，中毒窒息是导致伤亡的主要因素；从伤亡情况看，施救不当或盲目施救是导致伤亡扩大的主因。

中国通过《工贸企业有限空间作业安全管理与监督暂行规定》、AQ3028-2008《化学品生产单位受限空间作业安全规范》和GBZ/T205-2007《密闭空间作业职业危害防护规范》等标准法规对有限空间作业进行了规范。2021年以来，全国各地组织了多场关于有限空间作业的安全培训、研讨会、救援实操演练等活动。国家应急管理部发布的《有限空间作业安全指导手册》，对有限空间的定义、分类、风险种类识别、防护设备的选用、应急救援等都进行了详细阐述，对于各企业的有限空间作业都具有良好的参考和指导作用。2022年，国家强制标准《个体防护装备配备规

范第1部分：总则》、《个体防护装备配备规范第2部分：石油、化工、天然气》、《个体防护装备配备规范第3部分：冶金、有色》和《个体防护装备配备规范第4部分：非煤矿山》的正式实施，将对有限空间的作业，起到进一步的规范作用。2022年1月6日，应急管理部办公厅发布《关于开展第一批轻工重点企业有限空间作业专家指导服务工作的通知》，明确精准施策，有力推动了重点企业提高有限空间安全管理水平，做到“五个强化”，确保“五个到位”。

为了进一步提升我国有限空间作业的安全水平，建议：

- 各企业应加强有限空间作业的防护、救援设备的配备，确保操作人员正确使用，得到有效的保护。
- 开展有限空间作业培训，包括安全基础知识、危害识别分析、防护救援装备使用等。
- 重点关注盲目施救导致的伤亡扩大，普及救援优先级的概念：自救、非进入式救援、进入式救援。在条件许可的情况下，尽可能选择自救或非进入式救援方案。
- 日常工作中定期进行救援操作的演练，以提升在紧急情况时的反应速度和救援能力。

道路交通安全

2021年是交通运输发展历史上很不平凡的一年，第一个百年奋斗目标已经实现，第二个百年奋斗目标的新征程已经开启。党中央、国务院印发《国家综合立体交通网规划纲要》，完善了加快建设交通强国的顶层设计，习近平总书记赋予了交通成为中国现代化开路先锋的新使命新定位。

这一年，第二届联合国全球可持续交通大会成功举办，全运会和冬奥会保障有力，国内国际物流供应链稳定畅通，综合立体交通网络加快完善，交通脱贫攻坚成果同乡村振兴有效衔接，智慧交通和绿色交通进一步发展。根据交通运输部的数据，预计2021年新改（扩）建高速公路超过9000公里，新改建农村公路超过16万公里。

放眼“十四五”期间，综合交通运输建设，城市群都市圈、农村交通发展以及运输服务提升等方面都将取得进一步发展，逐步补齐区域之间、城乡之间发展中存在的不协调、不平衡的结构性短板，促进各种运输方式之间的一体化融合发展，推进交通运输治理能力的现代化水平。

Interim Provisions on Administration and Supervision of Operational Safety in Confined Spaces at Industrial and Trading Enterprises, AQ3028-2008 Safety Code for Operation at Confined Spaces in Chemical Manufactory and GBZ/T205-2007 Prevention and Protection Code Against Occupational Hazards of Operation in Confined Spaces. Since 2021, a variety of trainings, seminars, and rescue practices on operational safety in confined spaces have been organized across the country. *Instruction Manual for Operational Safety in Confined Spaces* issued by the Ministry of Emergency Management elaborates on the definition and classifications of confined spaces, risk type identification, selection of protective equipment and emergency rescue, serving as a good reference and guidance for different enterprises operating in confined spaces. In 2022, the official implementation of national mandatory standards *Specification of the Provision of Personal Protective Equipment-Part 1: General Requirement, Specification of the Provision of Personal Protective Equipment-Part 2: Oil, Chemical and Gas Industry, Specification of the Provision of Personal Protective Equipment-Part 3: Metallurgy, Nonferrous Metals and Specification of the Provision of Personal Protective Equipment-Part 4: Non-coal Mines* will play a regulative role in operation in confined spaces. On January 6, 2022, the General Office of the Ministry of Emergency Management issued *Notice on Carrying out the First Batch of Expert Guidance Services for Confined Space Operation at Key Light Industrial Enterprises*, which puts forward science-based and targeted measures that shall be taken to promote advancement in the management level of operational safety in confined spaces at key enterprises. Besides, the Notice also puts forward five aspects to be strengthened moving forward and five new measures.

To further improve operational safety in confined spaces in China, it is recommended that:

- All enterprises shall strengthen the protection of operation in confined spaces and increase the provision of protective and rescue equipment and ensure operators' proper use of such equipment for effective protection.
- Training on operation in confined spaces be carried out, including basic safety knowledge, hazard identification and analysis, use of protective rescue equipment, etc.
- The increase of casualties caused by blind rescue should be highlighted, and the concept of rescue priority should be popularized: self-rescue, non-entry rescue, and entry rescue. When conditions permit, self-rescue and non-entry rescue are preferred rescue plans.
- Rescue practice shall be carried out regularly in daily work to improve the response speed and rescue ability in emergency situations.

Road traffic safety

2021 was a remarkable year for the development of transportation in China. In 2021, the first centenary goal was achieved, and the policy landscape is now working to

achieve the second centenary goal. The Central Committee of the Communist Party of China and the State Council have issued the *National Comprehensive Three-dimensional Transportation Network Planning Outline*, which aims to improve the top-level design for accelerating the construction of a strong transportation country. Transportation, with its new mission and new role established by General Secretary Xi Jinping, becomes a key aspect of China's modernization.

This year, the second United Nations Global Sustainable Transportation Conference was held in Beijing. Despite ongoing epidemic prevention measures, the domestic and international logistics supply chains remained relatively stable. Furthermore, the improvement of comprehensive three-dimensional transportation network was accelerated with a focus on developing transportation to help poverty alleviation efforts linked with rural revitalization. Smart transportation and green transportation were further developed in 2021 and will remain a focus in the year ahead. According to data from the Ministry of Transport, it was estimated that in 2021, more than 9,000 kilometers of expressways were newly built, and more than 160,000 kilometers of rural roads were refurbished.

Looking at the 14th Five-Year Plan period, further achievements will be made in comprehensive transportation construction, urban and rural transportation development, and improvement in transportation services. The aim of these plans is to gradually make up for the structural shortcomings of inconsistency and imbalance in development between regions and between urban and rural areas and will also promote the integrated development of various modes of transportation, with the goal of enhancing the modernization of transportation governance capabilities.

Given the above situation, the American Chamber of Commerce in China recommends that the Chinese government consider further improving road traffic safety in the following areas:

- Improve the level of urban traffic safety. The visibility of reflective safety facilities shall be ensured in all weather and under all road conditions by further improving the safety facilities in special road sections such as road intersections, transportation hubs, schools, hospitals, and freight lanes, with the goal of enhancing the livelihood of people in the cities.
- Optimize the safety of the slow-moving traffic system. The slow-moving traffic system shall be built and optimized through detailed planning and measures such as the allocation of road rights, road reconstruction, slow-moving crossing facilities, bicycle lane layout, and barrier-free traffic facilities, so that the city will move in a green and healthy, harmonious, and livable, low-carbon and comfortable direction of development.
- Strengthen the safety management of rural highway traffic. The level of safety protection for rural highway shall be comprehensively enhanced by conducting

鉴于上述情况，商会建议中国政府考虑在以下领域进一步改善道路交通安全：

- 提升城市交通安全保障水平，通过进一步完善道路交叉口、交通枢纽、学校医院、货运专用通道等特殊路段的反光安全设施，确保安全设施的全天候全路况视认性，提升人居城市质量。
- 完善慢行交通系统安全，通过路权分配、道路改造、慢行过街设施、自行车道布置以及保障无障碍交通设施等详细规划和措施打造和完善慢行交通系统，使城市朝着绿色健康、和谐宜居、低碳舒适的方向发展。
- 加强农村公路交通安全管理，全面提升农村公路安全防护水平，对农村公路危险路段进行安全隐患排查和集中治理，增加路侧安全防护栏、警告标志标线、警示柱等安全设施，提升道路安全畅通水平。
- 提升道路安全设施的维修养护水平，逐步探索和建立道路安全设施的安全评价标准，推动维修和养护工作的专业化、标准化，完善交通安全设施巡查更新的要求和实施规范，确保道路安全设施的完整性和有效性。
- 改善现有道路安全设施的设计、建设和维养能力，并提升农村公路建设和维养中使用的标准，进一步保障道路使用者的通行安全，守护美丽中国的安全底线。

的不一致问题（包括运输和仓储层面）。

- 提高对密闭空间的运营水平和加强安全管理措施的监督管理，要求企业遵守书面操作规程，并规范在密闭空间运营的公司的安全管理。
- 改善现有道路安全和养护设施的能力，并改善农村公路建设中使用的标准，包括要求对农村公路进行环境影响评估。

建 议

对中国政府：

- 在 GB / T 27549-2011 移动式升降工作平台 - 操作员（驾驶员）培训的基础上，增加高空作业平台操作员的培训机会。确保此推荐标准得到一致地应用和执行。或促进颁布类似于 GB / T27549-2011 的团体标准，以继续提高高空作业的安全性。
- 发挥政策的指导作用，激发保险公司、第三方服务机构和危化品企业的安全经济驱动力。
- 希望相关主管部门能从化学品全生命周期风险管控的角度，协调解决现有法规体系存在

safety hazard investigation and centralized management of dangerous sections of rural highways with the addition of roadside safety fences, warning signs and markings, warning columns and other safety facilities, to enhance the level of road safety and smoothness.

- Improve the repair and maintenance level of road safety facilities. Safety evaluation standards shall be gradually explored and established for road safety facilities to promote the specialization and standardization of repair and maintenance work. The requirements and implementation specifications shall be optimized for the inspection and update of traffic safety facilities to ensure the completeness and the effectiveness of road safety facilities.
- Design, construction and maintenance capabilities of existing road safety facilities shall be enhanced, and the standards used in the construction and maintenance of rural roads shall be updated, with the goal of further ensuring the safety of road users and safeguarding the bottom line of safety for a beautiful China.

Recommendations

For the Chinese Government

- Strengthen training opportunities for the operators of MEWPs on the basis of *GB/T 27549-2011 Mobile elevating work platform – Operator (driver) Training*. Ensure that this recommended standard is consistently applied and enforced. Alternatively, promote the promulgation of group standards similar to GB/T27549-2011 to continue to improve the safety of work at height.
- Prioritize development of a more complete policy framework for emergency management of hazardous chemicals that enables insurance companies, third-party service agencies, and hazardous chemical enterprises to participate in their effective management.
- Address regulatory inconsistencies and discrepancies in the classification of hazardous chemicals to standardize risk management protocols of chemical substances throughout their entire lifecycle, including transportation and storage.
- Strengthen the supervision of confined space operations and safety management measures, require enterprises to comply with written operating procedures, and standardize safety management protocols for companies that operate in confined spaces.
- Strengthen oversight of rural traffic and improve the safety of rural road conditions by ensuring that appropriate road signage and protective guardrails, barriers, warning signs and other safety facilities are available throughout China's rural road network.



Part Four: Regional Issues

第四部分：区域性问题

Northeast

This chapter was contributed by The American Chamber of Commerce in Southwest China

Introduction

Looking at the economy of Northeast China, the GDP scale of Liaoning, Heilongjiang, and Jilin was RMB 2.76 trillion, RMB 1.49 trillion, and RMB 1.32 trillion respectively in 2021, each with growth rates of 5.8 percent, 6.1 percent and 6.6 percent. These growth rates place the regions 17th, 25th, and 26th respectively for overall growth in China.

According to Bulletin of the seventh National Census issued on May 11, 2021, the permanent population in the three Northeast provinces decreased by 11.01 million when compared with 2010. In 2020, the population in Liaoning, Heilongjiang and Jilin was 42.59 million, 31.85 million and 24.07 million respectively, decreasing by figures of 1.16 million, 6.47 million and 3.38 million over the last decade. The main reasons cited for this decline of population are the sluggish economy and extremely difficult environment with cold temperatures.

Looking at key industries, the three northeast provinces are highly similar, while they have separate areas of strength. There are many advantages for Liaoning's equipment manufacturing and raw material industries, Jilin's automobile and agricultural product processing industries, and Heilongjiang's modern agriculture and machinery manufacturing industries. In addition, there are some advantages and ongoing development in pharmaceutical, energy, petrochemical, metallurgical and aerospace fields of the three Northeast provinces.

When looking at key metropolitan areas, there are four sub-provincial cities in the three Northeast provinces, including the three provincial capital cities- Shenyang, Changchun and Harbin, and one city specifically designated in the state plan- Dalian. Looking at the 2021 economic data, Dalian ranked first for economic performance in Northeast China and 29th in China at RMB 782.59 billion. Shenyang ranked 31st in China with a GDP of RMB 724.9 billion, while Changchun and Harbin ranked much lower with a GDP of RMB 700 billion and RMB 535.1 billion, respectively.

COVID-19 Pandemic

COVID-19 continues to impact the three provinces in the

Northeast of China throughout 2021. There were different degrees of regional epidemic spread in Dalian, Shenyang, Harbin, and other regions, resulting in long-term or short-term lockdowns causing further economic impacts. As the city with the highest degree of interconnection to the global business environment, Dalian has been the most seriously affected by the epidemic. Since the outbreak of COVID-19 in 2020, Dalian was hit by the COVID-19 outbreaks five times, and majority of these instances were directly related to the cold chain import industry. These outbreaks prompted mass testing throughout the urban areas and suspension of business during strict lockdowns. Many companies in China and reliant on export to China have reported impact of these shutdowns on their bottom line.

In 2021, Jilin province was the least impacted by the ongoing epidemic. In 2021, the growth rate of disbursement of foreign capital was the highest in the three northeast provinces, but the scale was relatively small, with only US \$656 million reported.

For existing foreign-invested enterprises in the three Northeast provinces, businesses recognize the effort by local and provincial level governments to halt the spread of COVID-19 and avoid further lockdowns. During the epidemic, local bureau of Commerce and other relevant government departments provided active support and help for many foreign-invested enterprises, including member units of the American Chamber of Commerce in China in terms of investment promotion, supplier coordination, online platform construction, etc.

Travel Restrictions

Due to the persistent pressure from COVID-19, the requirements for entry in the three Northeast provinces has tended to be more strict than other regions. For example, in Liaoning, apart from the nationwide 21-day centralized quarantine (14+7), an additional 7-day home isolation and health monitoring period (14+7+7) is required. This has prominently reduced the risk of imported cases from abroad, but also reduced the desire of foreign workers who left China during the epidemic to return to China.

Among the three Northeast provinces, Dalian and Harbin, as the two most important export-oriented cities in the region, have been impacted by the waves of the epidemic.

大连 / 东北地区

引言

在 经济总量方面，2021年辽宁、黑龙江和吉林的GDP规模分别为2.76万亿、1.49万亿和1.32万亿，增长率分别为5.8%、6.1%和6.6%，分列全国第17、第25和第26位。

在区域人口方面，2021年5月11日公布的第十七次人口普查结果显示，与2010年相比，东三省的常住人口减少了1101万人。2020年，辽宁、黑龙江和吉林的人口总量分别为4259万、3185万与2407万，相比2010年分别减少了116万、647万和338万，究其原因主要是经济不景气以及高纬度地区的严寒天气。

在关键产业方面，三个省份的产业结构高度相似，分别拥有各自的优势领域，如辽宁的装备制造及原材料业、吉林的汽车以及农产品深加工，黑龙江的现代农业和机械制造业，产业积淀深厚，且都在国内占主导地位。另外，在其他领域如医药、能源、石化、冶金、航天等，东三省都有一定的优势及储备。

在主要城市方面，东三省有四个副省级城市，其中沈阳、长春和哈尔滨是省会城市，大连是计划单列市。纵观2021年经济数据，大连位于中国东北的首位，全中国排名第29位，GDP为7825.9亿元；沈阳排名第31位，GDP为7249亿元；长春位于第30至第40名中间，GDP为7000亿元；哈尔滨排名第50位，GDP为5351亿元。

新冠肺炎疫情

2021年，中国东北三个省份均受此次疫情影响。一整年，多个地区均有不同范围的流行感染，例如沈阳、长春和哈尔滨等，导致或长或短的地区封锁和经济停滞，作为东北地区对外开放程度最高的城市，大连受此次疫情影响最为严重。自疫情暴发以来，大连总共遭受5次

冲击，其中多次与进口冷链产业相关，导致大连市政府不得已实行多轮核酸检测、暂停生产以及地区封锁。可见，大连城市经济此次疫情下损失惨重，尤其是冷链相关产业。

2021年，受疫情影响最小的当属吉林省。该省份位于辽宁和黑龙江中间，离边境口岸相对较远。2021年，该省的外资同比增长水平最高，但规模相对较小，仅为6.56亿美元。

以东三省现有的外资企业来看，自2020年疫情以来，中国东三省及其各地市政府就加大力度，确保外资企业复工复产，外资企业的恢复率也保持在了较高水平。疫情期间，当地商务部门和相关政府部门积极帮助包括中国美国商会（以下简称商会）会员企业在内的当地外资企业解决实际运营困难，给予招商引资、协调供应商以及在线网络平台建设等方面的支持。

旅行限制

持续的疫情压力下，入境东三省需要满足严格疫情防控条件。例如，在辽宁实施的全国性21天（14+7）集中隔离、7天居家隔离和日常健康监测（14+7+7）。此项举措显著减少了境外输入病例风险，但同时也明显降低了外籍员工在疫情期间离开后再返回中国工作的意愿。

大连和哈尔滨是东三省最重要的出口型城市，疫情期间多次遭受影响。由于疫情防控措施，外资企业的外籍员工（尤其是高级管理人员和核心技术人员）难以进入中国，该问题已经对外资企业进行运营投资方面的决策产生了严重影响。需要强调的是，中国正在推进的新一轮改革与开放政策实施，例如“一带一路”和构建“双循环”新发展格局，但受新冠肺炎疫情阻碍，且东三省没有非常坚实的外资基础，地理位置上又处劣势的情况下，更应该积极努力采取措施、引进外资，在新一轮改革开放中占据有利地位。

Entry of overseas employees of foreign-invested enterprises (especially senior executives and core technicians) may be one of the most important factors influencing operation and investment decision-making of foreign-invested enterprises. However, it should be noted that under the background of China's advocating a new round of reform and opening-up policies such as the 'Belt and Road Initiative' and 'Dual Circulation', the three Northeast provinces are encouraged to actively increase their efforts and take measures to guarantee the introduction of foreign capital to the region, so as to ensure their own position in the new round of reform and opening up.

International Healthcare

With the acceleration of the city's internationalization process, there has been a significant increase in demand for medical treatment from investors, foreign friends, and members of the public who hold international commercial medical insurance. To enhance the competitiveness and internationalization of cities, many domestic first- and second-tier cities have vigorously developed supporting systems such as medical care.

In 2021, one of the few international medical institutions in Dalian that provides medical diagnosis services to English-speaking foreigners suspended services and withdrew from Dalian, because the qualifications of general practice clinics were not resolved in the past years. At the same time, due to the frequent recurrence of the COVID-19 pandemic, the repeated suspension of medical institutions was also one of the key reasons why the clinic could not survive.

Dalian currently has a considerable number of foreigners, and there is a great demand for international medical institutions. International medical resources are an important determinant of attracting foreign investment, so that the foreign experts and their families hired by them can stay in Dalian to work safely.

Conclusions

The Northeast Chapter data in AmCham China 2022 *Business Climate Survey (BCS) Report* shows that the US investment trends in the three northeast provinces are relatively weak and unlikely to have a significant impact on national trends. This also shows that the economic environment in the three northeast provinces is still not desirable. The continued-COVID-19 impact on regular business operations is cited as one of the main reasons. However, despite the circumstances, regional state-owned enterprises are declining and there is no significant breakthrough in the cultivation of private enterprises for a long time. The Northeast used to be the preferred regions for foreign investment, and managed to attract world famous enterprises, such as IBM, Coca Cola, Pfizer, Johnson Controls, Volkswagen, BMW to invest capital to build factories. It is in the provincial government's best

interest to attract more foreign capital through favorable policy implementation.

The GDP of Dalian, which ranked first among the three northeast provinces, grew by a factor of 8.2% in 2021. This is only slightly above the national average, but was a rare occurrence compared to the last decade. This high growth rate and the push for Northeastern provinces to attract capital may indicate the beginning of Northeast revitalization.

Recommendations

- Build a high-standard and international business environment, deepen the reform of 'decentralization, regulation and service' for foreign investment, including further simplify the procedures for foreigners to come to China, shorten approval time, realize 'online operation' and 'one-time operation', establish and improve the business environment assessment mechanism, increase the protection and promotion of intellectual property rights, severely crack down on infringement and counterfeiting, protect the legitimate rights and interests of foreign investors, improve the international dispute settlement mechanism, create a fair competition environment and continuously improve the business environment.
- Promote state-level opening-up pilot zones to optimize comprehensive services for foreign-invested enterprises, support state-level opening-up pilot zones to effectively use their authorities and enhance their comprehensive service capacity. Increase land security for state-level opening-up pilot zones, and give priority to ensure the required construction land index for key foreign investment projects. Strengthen financial support for the construction and development of state-level opening-up pilot zones, support qualified regions to plan and construct international cooperation parks with demonstration and leading role in high standard, support parks to carry out the first trial in entry in the fields of international capital, talents, institutions, services, etc., and give full play to the role of pilot free trade zones as test plots for reform and opening up.
- Build extensive and diversified network and modes of investment attraction, further improve the coordination mechanism of investment attraction, adopt pragmatic, flexible and diverse forms to strengthen the liaison service for overseas investment promotion. Improve the information platform for investment promotion, establish the information database of investment promotion, encourage foreign investment in mergers and acquisitions, guide enterprises in the province to actively participate in

国际医疗

随着城市国际化进程加快，投资者、外国友人以及持有国际商业医疗保险的市民对医疗的需求大幅增加。为了提高城市的竞争力和国际化程度，国内许多一、二线城市大力发展医疗等配套制度。

2021年，由于过去几年一直没有解决全科门诊的资质问题，大连为数不多的为外籍英语人士提供医疗诊断服务的国际医疗机构已经暂停服务，并退出大连。同时，由于新冠肺炎疫情的反复，医疗机构屡次停诊，这也是该机构无法生存的重要原因之一。

大连目前有很多外国人，对国际医疗机构有很大的需求。国际医疗资源是吸引外资的重要决定因素，如果拥有国际医疗资源，受聘的外国专家及其家属就可以留在大连稳定工作。

结 语

在商会发布的2022年《中国商务环境调查报告》中，东北地区的会员表示，美国在东北三省的美资存量与增量相对较少，不足以对国家经济走势造成太大影响，同时反映东三省的经济环境仍然不容乐观，而新冠肺炎疫情无疑是主要的影响因素之一。然而，在此情况下，地方国有企业正在衰落，民营企业培育又长时间没有突破。东三省政府可选择另一种相对可行的做法，将更多资源分配给外资企业以促进其发展。曾几何时，东三省曾是外商投资的重点区域，吸引了多家世界知名企业在此投资建厂，包括IBM、可口可乐、辉瑞、江森自控、大众、宝马等。

另外，2021年大连GDP增长8.2%，在三个东北省份的诸多城市高居榜首。这项数字高于全国平均增长率。这一突出的现象，也许可以看作东北振兴的起点。

建 议

对东北地区的政府部门：

- 建设高标准、国际化的营商环境，在外资领域，深化“放管服”改革，同时简化外籍人员来华程序，减少审批时间，实现“在线运营”“一

次通过”，制定提升营商环境评价机制，保护促进知识产权完善，严厉打击侵权假冒行为，保护外籍投资者的合法权益，改善国际争端解决机制，营造公平竞争环境，推动营商环境改善。

- 进一步发展区域内国家级开发区，优化外商投资企业综合服务能力，支持在这类试点地区简政放权。提升该试点地区土地安全性，重点关注关键外商投资项目所需建设用地指标。加强该试点地区建设发展的融资支持，支持合格地区规划建设国际合作示范园区，发挥高标准带头作用，支持园区在国际资本、人才、机构、服务等领域开展准入先行先试，充分发挥自由贸易试验区作为改革开放试验田的优势。
- 建立开放多样型的投资促进网络模式，进一步改善投资吸引协调机制，以务实、灵活、多样的形式加强海外招商引资联络服务。改善招商引资信息平台，建立招商引资信息数据库，鼓励外资并购，指导省内企业积极参与国际合作。使得“引进来”“走出去”成为现实，促进双向投资，同时结合“十四五”规划编制利用发展规划的相关要求，加强产业链投资，深入分析现有当地产业优劣势，创新招商引资策略及途径，本着固链、强链、互补链、延伸链的原则，为产业链和供应链布局中有竞争力的企业提供支持。为辽宁外商投资新项目、资本扩张、产能增加以及研究机构的建立提供更多支持，建立健全招商引资鼓励机制和容错免责机制，营造创业鼓励的良好氛围。
- 完善国内外高端人才引进支持政策。稳定并激发当地人才活力，促进当地大学和外资企业合作交流。增益增量，促进高端人才引进，吸引中国其他省份城市及境外的杰出人才在东北地区工作投资，同时鼓励人才返乡。
- 积极邀请和吸引国际医疗机构在辽宁省、黑龙江省和吉林省的主要城市开设分支机构，支持其生存和发展，改善中国东北地区的整体商业环境，提高其国际化程度。

international cooperation. Enable 'bringing in' and serve 'going out', promote two-way investment, combine the relevant requirements of '14th Five-Year Plan Formulation' Utilization Development Plan to strengthen investment in industrial chain investment and deeply analyze the advantages and disadvantages of existing local industries, innovate strategies and paths for investment attraction and provide support for competitive enterprises in layout of industrial chain and supply chain based on the principle of solid chain, strong chain, complementary chain and extended chain. Increase support for foreign-invested new projects, capital increase and production expansion and research institution establishment in Liaoning, establish and improve incentives for attracting investment, and fault tolerance and exemption mechanism, create a good atmosphere for entrepreneurship and encouragement.

- Strengthen domestic and international high-end talent introduction and support policies. Stabilize the stock and revitalize local talents, promote cooperation and exchanges between local universities and foreign-invested enterprises. Gain increment, promote the introduction of high-end talents, attract outstanding talents from other provinces and cities in China and from abroad to work and invest in Liaoning while encouraging talents to return home.
- Actively invite and attract international medical institutions to open branches in major cities of Liaoning, Heilongjiang and Jilin Provinces and support the survival and development, to improve the overall business environment and the internationalization of Northeast China.

AmCham Shanghai

This chapter was contributed by The American Chamber of Commerce in Shanghai (AmCham Shanghai)

Introduction

Shanghai is the premier financial hub of mainland China. It boasts the largest shipping port in the world by container traffic, as well as the title of being the only city in East Asia with a greater GDP than its national capital. It is the most international city in mainland China, with government census data showing Shanghai's expat population in 2020 at over 160,000. With its position at the mouth of the Yangtze River, Shanghai is a focal point for economic development within the Yangtze River Delta (YRD) Economic Belt, the richest economic region in China by per capita GDP.

The international business community has contributed a great deal to this economic growth. In a press conference on January 13, 2022, the Shanghai Municipal Commission of Commerce reported that the city's actual amount of foreign capital reached RMB 143 billion (US \$22.5 billion), representing an 11.5 percent year-on-year increase from 2020. In addition, contracted foreign capital reached RMB 384 billion (US \$60.39 billion), representing an annual increase of 16.9 percent, and the city added 60 new regional headquarters of multinational firms and 25 foreign-funded research and development centers, bringing the total number to 831 regional headquarters and 506 foreign-funded research centers in the city.

Shanghai 14th Five-Year Plan

On March 10, 2021, the Shanghai Municipal Government released *Guidelines and Objectives for Economic and Societal Development* during the 14th Five-Year Plan Period, which outlines objectives for the city's development from 2021-2025. In terms of economic development, the guidelines describe plans to: ❶ promote internationalization of Shanghai's financial markets, increasing both its total transaction value to RMB 2800 trillion (US \$439.4 trillion) and the number of regional multinational headquarters to 1000, ❷ encourage development of the science and technology sectors, increasing R&D expenditure to 4.5 percent of Shanghai's total GDP, ❸ grow the size and scope of advanced industrial manufacturing in Shanghai and promote its modernization, and ❹ quadruple the 2018 GDP of the Shanghai Free Trade Zone port.

The plan also gives a general overview of Shanghai's goals to

strengthen the 'four functions' to promote the 'five centers.' The four functions are ❶ strengthening global resource allocation, ❷ building science and technology innovation, ❸ directing the development of high-end industries, and ❹ creating an international hub for opening up and digital transformation. These are designed to promote Shanghai's position as home to the five centers, or in other words, to establish itself as a global hub for ❶ international economics, ❷ international finance, ❸ international trade, ❹ international shipping, and ❺ science and technology innovation.

The Shanghai municipal government has since issued announcements regarding the 14th Five-Year Plan's implementation in a number of specific industries, including Advanced Manufacturing, Finance, and Healthcare.

Shanghai as a Hub for Advanced Manufacturing

Since the 1990s, Shanghai has been a hub for China's secondary industry manufacturing. In recent years, Shanghai has focused its manufacturing on six key high-tech industries, those being petrochemicals, electronic information products, fine steel, automobiles, equipment, and biomedicine, accounting for 68.5 percent of Shanghai's gross industrial output in 2018. Much of this manufacturing occurs in the city's various different high-tech industrial parks, including Zhangjiang High-Tech Industry Zone, Minhang Economic and Technological Zone, and Lin-gang Special Area.

On September 9, 2021, the Shanghai Municipal government held a press conference describing specific targets for Advanced Manufacturing by 2025 in accordance with the 14th Five-Year Plan. These targets include plans to: ❶ establish over 100 advanced manufacturing projects, with total cumulative investment of over RMB 850 billion (US \$132 billion) by 2025, ❷ make advanced manufacturing industry average annual growth greater than two percent, ❸ promote sectoral growth in the "3+6 industries", wherein Shanghai will double the scale of the 3 leading industries – integrated circuits, biomedicine, and artificial intelligence – and increase the size of 6 key clusters – electronic information, life & health, automobiles, high-end equipment, advanced materials, and consumer fashion goods, and ❹ Lingang Special Area will contribute one-third of Shanghai's total GDP by 2025. These

上海

本章由上海美国商会提供

引言

上海市是中国大陆最重要的金融中心，有着全球集装箱吞吐量最大的航运港，同时也是东亚地区唯一一个国内生产总值（GDP）超过本国首都的城市。上海市是中国大陆最具国际化的城市，据政府人口普查数据显示，2020年上海市外籍人口超过了16万。上海市坐落在长江之口，是长三角经济带的经济发展中心，而长三角又是中国人均GDP最高的区域。

国际商界对上海市取得的经济增长做出了巨大贡献。上海市商务委员会在2022年1月13日的新闻发布会上表示，全市实到外资金额达到1430亿元（合约225亿美元），同比2020年增长11.5%。此外，合同外资金额达到3840亿元（合约603.9亿美元），同比增长16.9%，全市新增跨国公司地区总部60家，外资研发中心25家，全市累计设立跨国公司地区总部831家，外资研发中心506家。

上海市“十四五”规划

2021年3月10日，上海市人民政府印发了《“十四五”时期经济社会发展指导方针和主要目标》，概括了上海市在2021年至2025年期间的发展目标。在经济发展方面，该指导方针提出了下列计划：①推进上海市金融市场的国际化，金融市场交易总额增至2800万亿元（合约439.4万亿美元），跨国公司地区总部增至1000家，②鼓励发展科技产业，研发经费支出占全市总GDP的比例达到4.5%，③扩大上海市先进工业制造的规模和范围，推进先进工业制造的现代化，以及④实现上海市自贸试验区港区GDP在2018年基础上翻两番。

规划还从总体上概述了上海市强化“四大功能”、深化“五个中心”的目标。这“四大功能”指①加强全球资源分配，②建设科技创新，③引导高端产业发展，

以及④打造开放和数字化转型的国际中心。这些举措旨在推进上海市“五个中心”建设，换言之，将上海市建设成为以下五个方面的全球中心：①国际经济，②国际金融，③国际贸易，④国际航运，以及⑤科技创新。

此后，上海市人民政府发布了关于在先进制造业、金融和医疗等多个具体行业实施“十四五”规划的公告。

将上海市建设成为先进制造业中心

自20世纪90年代以来，上海市一直是中国第二产业制造业的中心。近年来，上海市的制造业主要集中在石化、电子信息产品、合金钢、汽车、装备和生物医药六大重点高科技产业，2018年在全市工业总产值中的占比达到68.5%。这些制造业大多分布在上海市各个高科技产业园区，包括张江高新技术产业开发区、闵行经济技术开发区和临港新片区。

2021年9月9日，上海市人民政府召开新闻发布会，介绍了根据“十四五”规划制定的2025年先进制造业具体目标，包括下列计划：①到2025年，建设超百个先进制造业项目，累计投资规模超过8500亿元（合约1320亿美元），②先进制造业年均增长超过2%，③推动“3+6产业”增长体系，即将全市集成电路、生物医药和人工智能三大主导产业的规模翻一番，并扩大电子信息、生命健康、汽车、高端装备、先进材料、时尚消费品六大重点产业集群，以及④到2025年，临港新片区对上海市GDP的贡献值达到1/3。这些目标强调了上海市政府对扩大先进制造业在本市经济中的作用的愿望。

为了扩大先进制造业的规模，上海市采取了各种激励措施，这些措施并不局限于本国企业，也适用于特定的高科技外企。外企可以享受补贴、税收优惠和特殊土地租赁协议，具体取决于企业所属的行业。

aspirations highlight the Shanghai municipal government's desire to expand the role of advanced manufacturing in Shanghai's economy.

Incentives designed to expand Shanghai's advanced manufacturing industry are not just limited to domestic firms, but also provided to certain high-tech foreign companies as well. Foreign companies can enjoy subsidies, tax incentives, and special land-leasing agreements, depending on their industry.

Shanghai as a Hub for International Finance

Shanghai has long been the central hub for finance in mainland China. It is the home of the Shanghai Stock Exchange, the world's third largest stock market, and the largest in Asia. It is the central financial hub for the Yangtze River Delta (YRD) region. As such, it is the location for many financial reforms and policies, serving as a testing ground before many such policies are implemented nationwide.

The Shanghai municipal government has released two key documents outlining financial industry policy goals in 2021. The first document was the "14th Five-Year Plan for Developing an International Finance Center" published on August 24, 2021. Among the policies listed in this document include: ❶ opening the insurance market for foreign investors, allowing entirely foreign-owned insurance companies in Shanghai, ❷ increasing the use of RMB for cross-border trade and investment, ❸ providing more convenient risk hedging support for foreign investors holding RMB assets, ❹ increasing the number of panda bonds and yulan bonds, and ❺ attracting or cultivating 50 leading fintech companies to house regional headquarters in Shanghai. These policies highlight the Shanghai government's strategic goal to continue liberalizing the RMB and further open the financial industry to foreign investment.

Established in 2019, the Shanghai STAR market is a NASDAQ-like equities market focused on Chinese science and technology firms. While the trading values of the market have fluctuated greatly in 2021, its membership has grown from 200 in December 2020 to 377 by the end of 2021. In April 2021, the government issued revisions further clarifying six key industries for STAR market listing, namely next-gen IT, high-end equipment, new materials, new energy, environmental protection, and biomedicines. In February 2021, the Central Committee of the CPC issued the "Action Plan for Building a High Standard Market System", highlighting certain strategic goals for the Shanghai STAR market going forward, including strengthening intellectual property rights, improving anti-monopoly and anti-unfair competition rule enforcement, the creation of a normalized delisting mechanism, and bolstering investor protections.

Shanghai's fintech industry has also seen new challenges with recent regulation on the use of cryptocurrencies in financial transactions. Cryptocurrencies have been largely banned across large sectors of the Chinese economy, with regulators

citing their power usage, decentralization, and price speculation as reasons for prohibition. These regulations coincide with the release of the eCNY, a centralized cryptocurrency released by the People's Bank of China pegged to the RMB. Shanghai was selected as one of the '10+1' trial areas, that meaning 10 cities and 1 Winter Olympic Center. On June 4, 2021, Shanghai launched a trial run of the eCNY, raffling out 350,000 red envelopes containing RMB 55 (US \$8.6) of eCNY to lucky participants. Shanghai is also conducting trials for other select cryptocurrencies; the Lin-Gang Special Area has started to test a decentralized digital currency. The coin, developed and managed by the Shanghai ShuTu Blockchain Research Institute, is entirely decentralized, pegged to the RMB, and oriented exclusively toward offshore trading. While this coin is not yet listed on international markets, it highlights goals to promote the internationalization of Chinese digital currencies.

Shanghai as a Healthcare Hub

Shanghai has been long considered a central location for healthcare investment in China. The city is home to both the YRD Sub-Center for Drug Evaluation and Inspection of the State Administration, as well as the YRD Sub-Center for Medical Device Technology Evaluation and Inspection. These centers were established at the end of 2020 and have helped streamline the approval process for drugs and medical devices produced by firms based in the YRD region. However, recent regulations to the industry in Shanghai have led to both complications and opportunities in the industry for foreign firms, as the expansion of the volume-based procurement system for drug purchases will lower profit margins, but the improvement of medical security benefits, the promotion of the commercial healthcare insurance industry, and subsidies for biomedical firms will increase the overall healthcare market size.

On July 9, 2021, the Shanghai Municipal Government released its "14th Five-Year Plan for the Development of Shanghai's Health and Sanitation". The document outlines plans for Shanghai's healthcare and biopharma industry through the 2021-2025 period, describing a few notable areas for foreign firms, including: ❶ plans on optimizing and expanding its volume-based procurement system for purchasing drugs, which increases competition for drug pricing by encouraging the use of generic substitutes, ❷ improving medical security benefits for residents, with an increase to the maximum payment limit for employee medical insurance to RMB 550,000 (US \$86,260) ❸ the continued development of high-quality family doctor services, and ❹ speeding up the development of the commercial healthcare insurance industry, encouraging companies and individuals to purchase private and supplementary healthcare plans. While volume-based procurement remains an obstacle for many international pharmaceutical companies selling into the Shanghai market, increases to the quality and quantity of insurance plans will help increase the Shanghai healthcare market size.

Outside of the 14th Five-Year Plan notice, the Shanghai Municipal Science and Technology Committee held a press conference on

将上海市建成国际金融中心

长久以来，上海市一直是中国大陆的金融中心，这里有着全球第三大股票市场上海证券交易所，同时也是亚洲最大的股票市场。作为长三角的核心金融枢纽，上海市实施了多项金融改革和政策，可以说是众多政策在全国实施之前的试验场。

上海市政府印发了两份重要文件，确定了2021年的金融业政策目标。第一份文件是2021年8月24日发布的《国际金融中心建设“十四五”规划》，其中列出的政策包括：① 向境外投资者开放保险市场，允许在上海市设立外商独资保险公司，② 增加人民币在跨境贸易和投资中的使用，③ 为持有人民币资产的境外投资者提供更便捷的风险对冲支持，④ 增加熊猫债和玉兰债的数量，以及⑤ 吸引或培育50家领先的金融科技企业将地区总部落户上海。这些政策突显了上海市政府继续实施人民币自由化、进一步向境外投资者开放金融业的战略目标。

2019年，上海市建立了科创板，这是类似于纳斯达克的股票市场，专门面向中国科技企业。虽然科创板交易额在2021年波动较大，但成员数量仍从2020年12月的200家增至2021年底的377家。2021年4月，上海市政府出台了修订案，进一步明确了在科创板上市的六大重点产业，即下一代信息技术、高端装备、新材料、新能源、环保和生物医药。2021年2月，中共中央印发了《建设高标准市场体系行动方案》，强调了上海科创板未来发展的几项战略目标，包括强化知识产权保护、改进反垄断与反不正当竞争执法、建立常态化注销机制以及加强对投资者的保护。

随着近期对金融交易中使用加密货币的监管，上海的金融科技产业也出现了新的挑战。中国经济中的大部分产业普遍禁止使用加密货币，监管机构给出的禁止理由包括电力使用、去中心化和价格投机。这些规定与数字人民币的发行不谋而合，数字人民币是中国人民银行发行的一种与人民币挂钩的集中式加密货币。上海被选为“10+1”试点区域之一，这指的是10个城市和1个冬奥中心。2021年6月4日，上海启动了数字人民币的试运行，向幸运的参与者发放了35万个55元（合约8.6美元）数字人民币红包。上海还在试运行所选定的其他加密货币；临港新片区已经开始测试一种去中心化

的数字货币。该货币由上海树图区块链研究院开发和管理，完全去中心化并与人民币挂钩，专门供境外交易使用。虽然该货币尚未在国际市场上市，但仍突显了推动实现中国数字货币国际化的目标。

将上海市建成医疗中心

长久以来，上海市一直被认为是中国医疗投资的中心，国家药品监督管理局药品审评检查长三角分中心和医疗器械技术审评检查长三角分中心均已落户上海。这两个中心均成立于2020年底，它们的成立简化了长三角企业生产的药品和医疗器械的审批程序。然而，上海市近期针对该产业出台的法规既让业内的外企面临复杂情况，又为它们带来了机遇，一方面扩大药品采购的带量采购制度将降低利润率，而另一方面医疗保障待遇的提高、商业健康保险产业的发展和生物医药公司的补贴又将扩大整个医疗市场的规模。

2021年7月9日，上海市政府印发了《上海市卫生健康发展“十四五”规划》，概述了2021年至2025年期间上海市医疗和生物制药产业的规划，并提出了几个面向外企的重点领域，包括：① 优化、扩大药品采购带量采购制度的计划，通过鼓励使用非专利替代药加大药品价格竞争，② 提高居民的医疗保障待遇，将职工医保的最高支付限额提高到55万元（合约86260美元），③ 继续发展优质家庭医生服务，以及④ 加快发展商业健康保险产业，鼓励企业和个人购买私人 and 补充医疗计划。虽然带量采购仍然构成众多国际药企在上海市场销售的阻碍，但保险计划质量和数量的提高仍将有助于扩大上海医疗市场的规模。

除了“十四五”规划的通知外，上海市科学技术委员会于2021年5月24日召开了主题为“关于促进本市生物医药产业高质量发展的若干意见”的新闻发布会。发布会上，市科委负责人介绍了推进上海市生物医药研发的工作，主要包括：① 支持核心技术研发和重大医药产品产业化，给予不超过初始投资30%、最高1500万元（合约230万美元）资金支持，重大项目列入本市战略性新兴产业发展专项，给予最高1亿元（合约1560万美元）资金支持，② 增加上海市“1+5”生物医药产业基地对生物科技公司的土地使用分配，到2025年将2.6万亩（合约4280英亩）土地开放使用，③ 简化政府手续，加快新药进入上海市场的审批，以及④ 提供

May 24, 2021, titled “Several Opinions on Promoting the High-Quality Development of the Biomedical Industry in this City.” In the press conference, committee members described efforts to promote biomedical research and development in Shanghai, most notably: ❶ supporting core technology research and the industrialization of key medical products by providing up to 30 percent of the initial investment or up to RMB 15 million (US \$2.3 million), with major projects counted as part of strategic emerging industries receiving subsidies up to RMB 100 million (US \$15.6 million), ❷ increasing land-use allotment for biotech companies in Shanghai’s “1+5” biomedical parks, opening up 26,000 mu (~4280 acres) for use by 2025, ❸ promoting the speedy approval of new pharmaceutical drugs into the Shanghai market through bureaucratic streamlining, and ❹ incentivizing innovative research and development of drugs and medical devices through subsidies up to 40 percent of initial investment.

Shanghai Data Security Rules

On November 12, 2021, the Shanghai Municipal Bureau of Market Supervision released a notice calling on local officials to further regulate and monitor the use of algorithms in online marketing, to maintain fair competition, and improve compliance management within their districts. In a similar vein, on November 25, 2021, the Shanghai municipal government released the “Shanghai Data Regulations”, a document largely mirroring other national cybersecurity laws. However, there are some notable differences important to highlight: ❶ the Shanghai rules call for the government to draft a catalog of low-risk data for cross-border transfer, specifically focused in the Lin-Gang Special Area, ❷ data collected by persons or entities in a legal way is protected under the law, as if it were the physical property of that person or entity, ❸ Shanghai will establish an authorized data exchange center in Pudong through which firms can conduct data transactions and independently price transaction data, and ❹ automated decisions made using personal data are allowed only when processors have verified its lawfulness, legitimacy, necessity, and integrity.

Pudong New Area

Among the most important legal changes in 2021 was the recent change in Pudong New Area’s regulatory framework. On June 10, 2021, the NPC Standing Committee authorized the Shanghai government to enact Pudong New Area Regulations, granting a much greater degree of freedom in forming local rules and regulations. The Pudong district government can make legal decisions and regulations in coordination with the Shanghai government. Where there are no clear central or local government laws and regulations, the Pudong government can design measures that will support its economic, social, and urban governance development, as well as implement those measures in coordination with the central government.

On August 20, 2021, the Lin-Gang Special Area of the Shanghai

Free Trade Zone also implemented a number of measures aimed at promoting offshore trading and financial investment. The “Measures to Support the Innovative Development of the Financial Industry in the Lin-Gang New Area of the China (Shanghai) Pilot Free Trade Zone” provides monetary rewards up to RMB 60 million for foreign financial institutions that move their office to the area. Similarly, rewards are also provided for specific economic contributions, like special purpose vehicle (SPV) companies who lend to specific industries, one-time talent introduction awards of RMB 200,000 (US \$31,350) per person, and subsidies of 50 percent of annual rent over a three-year period. Such efforts are designed to promote Lin-Gang as a center of Shanghai’s financial industry and incentivize increased foreign capital flows.

Another important local policy is the promotion of the Zhangjiang High-Tech Park, a central hub for Shanghai’s biomedical industry since the Shanghai municipal government and municipal party committee made a joint decision to ‘focus on Zhangjiang’ for biomedicine and integrated circuitry in 1999. Since its designation as a biomedical zone, the Zhangjiang High-Tech Park has become home to more than 300 national-level research and development institutions and accounted for upwards of RMB 110 billion (US \$17.2 billion) in 2020 – 78 percent of the Shanghai biomedical industry total. On December 6, 2021, the Shanghai Municipal People’s Congress released draft regulations for public comment regarding the promotion of biomedical innovation in the Zhangjiang park. These proposed regulations include: ❶ establishing a new mechanism for coordinating biomedical research and development, ❷ the industrialization of human cell and gene technology, ❸ in vitro testing and listing of diagnostic reagents to speed up clinical trial speed, and ❹ initiating a pilot program for the cross-border e-commerce import of drugs and medical devices. While the regulations had many positive aspects, further clarification is needed on the scope of the regulations and the definition of key terms and concepts. Companies also have asked for more opportunities to provide input into the implementation of the regulations and urged that the YRD Sub-Center for Drug Evaluation and the YRD Sub-Center for Medical Device Evaluation establish a priority review system for innovative drugs and medical devices in the Pudong New Area.

China International Import Expo

From November 5 through 10, Shanghai hosted the 4th annual China International Import Expo (CIIE). Each November, the Shanghai Municipal Government and the Ministry of Commerce co-host the CIIE. The first CIIE was held in 2018, and its purpose was two-fold: ❶ to highlight China’s commitment to opening up and economic reform, and ❷ to encourage domestic consumption of imported goods.

The 2021 CIIE had nearly 480,000 total visitors, a 20 percent increase from 2020. While the number of visitors increased, the number of exhibitors and signed deals decreased. This year’s CIIE had 3,000 exhibitors versus last year’s 3,600 and

不超过初始投资 40% 的资金支持，激励药品和医疗器械的创新研发。

上海市数据安全法规

2021 年 11 月 12 日，上海市市场监督管理局印发了一份通知，要求地方官员进一步规范、监控网络营销中的算法使用，以维护公平竞争，改善本地区的合规管理环境。同样地，2021 年 11 月 25 日，上海市政府印发了《上海市数据条例》，进一步推进上位法和中央政策在当地的贯彻落实。但其中仍有需要强调的明显差异：

- ① 上海市的法规要求上海市政府拟定一份跨境转移低风险数据目录，其中特别关注临港新片区，
- ② 个人或实体合法收集的数据受法律保护，如同数据是该个人或实体的实物财产一样，
- ③ 上海市将在浦东建立一个授权数据交换中心，企业可以通过该中心进行数据交易并独立对交易数据定价，以及
- ④ 使用个人数据自动做出的决策，只有在经处理者验证了合法性、正当性、必要性和完整性之后，方可获准。

浦东新区

2021 年最重要的法律变动是浦东新区监管框架的变动。2021 年 6 月 10 日，全国人大常委会授权上海市政府制定《浦东新区法规》，在制定地方法规和条例方面给予了更大的自由度。浦东新区政府可以与上海市政府协调制定法律决策和法规。在缺少中央或地方政府法律法规的领域，浦东政府可以制定措施支持本区的经济、社会和城市治理发展，并与中央政府协调落实这些措施。

2021 年 8 月 20 日，上海自贸区临港新片区实施了一系列推进境外交易和金融投资的措施。《中国（上海）自由贸易试验区临港新片区支持金融业创新发展的若干措施》规定，外国金融机构将办公室迁至临港新片区，可获得不超过 6000 万元奖励。同样，作出具体经济贡献也将获得奖励，如向特定行业提供贷款的特定交易机构（SPV），每人可获得 20 万元（合约 31350 美元）的一次性人才引进奖励，并且可在三年内获得 50% 的年租金补贴。这些措施都是为了将临港打造成上海金融中心，并吸引更多外资。

另一项重要的本地政策是发展张江高新技术产业开发区，自 1999 年上海市政府和市委联合决定“聚焦张江”

生物医药和集成电路产业以来，张江高科技园区已成为上海生物医药产业的核心枢纽。自从被指定为生物医药园区以来，张江高科技园区已经入驻了 300 多个国家级研发机构，2020 年产值达到 1100 亿元（合约 172 亿美元），占全市生物医药总产值的 78%。2021 年 12 月 6 日，上海市人大常委会印发了《上海市浦东新区促进张江生物医药产业创新高地建设规定（草案）》，以公开征求意见。拟定的规定包括：

- ① 建立新的生物医药研发协调机制，
- ② 人体细胞、基因技术产业化，
- ③ 诊断试剂体外测试、上市，加速临床试验，以及
- ④ 启动药品和医疗器械跨境电子商务进口试点计划。

虽然该规定有诸多积极的方面，但仍需进一步澄清其范围以及关键术语和概念的定义。企业还呼吁能有更多机会对规定的实施提供意见，并敦促药品审评检查长三角分中心和医疗器械技术审评检查长三角分中心在浦东新区建立创新药品和医疗器械优先审评制度。

中国国际进口博览会

上海市于 11 月 5 日至 10 日主办了第四届中国国际进口博览会（“进博会”）。每年的 11 月，上海市政府和商务部都会共同主办进博会。首届进博会于 2018 年举办，主要有两个目的：

- ① 强调中国履行对开放和经济改革的承诺，以及
- ② 鼓励国内消费者购买进口商品。

2021 年进博会吸引了约 48 万观众，比 2020 年增加了 20%。虽然观众人数增加，但参展商和签约数量却有所减少。2021 年的进博会共有 3000 家参展商（2020 年是 3600 家），签约总额为 4500 亿元（合约 707 亿美元），比去年减少 2.6%。

习近平主席在 11 月 4 日的开幕致辞中强调，中央政府持续致力于削减国际贸易壁垒，具体包括：

- ① 缩减医疗、电信和其他服务领域的外商投资负面清单，
- ② 减少对海南自由贸易港的监管限制，并发布官方负面清单，
- ③ 增加从周边国家的进口量，
- ④ 在有关数字经济、贸易、环境、工业补贴和国有企业的谈判中采取“积极、开放的态度”，以及
- ⑤ 积极努力加入全面与进步跨太平洋伙伴关系协定（CPTPP）和数字经济伙伴关系协定（DEPA）。

there was a total of RMB 450 billion (US \$70.7 billion) in signed deals, a 2.6 percent decrease from last year.

The opening address delivered by President Xi on November 4, 2021 emphasized the central government's continued commitment to removing certain obstacles to international commerce, including: ❶ shortening the negatives list of foreign investment in healthcare, telecommunications, and other services, ❷ reducing regulatory restrictions on the Hainan Free Trade Port and releasing the official negative list, ❸ increasing China's imports from neighboring countries, ❹ taking an 'active and open attitude' when negotiating on the digital economy, trade, the environment, industrial subsidies, and state owned enterprises, and ❺ working actively to join the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and Digital Economy Partnership Agreement (DEPA).

Recommendations

For the Shanghai Municipal Government

- Provide more briefings and consultations with the foreign business community on draft regulations connected to the implementation of Shanghai's 14th Five-Year Plan.
- To increase meaningful participation from companies at CIIE, provide more virtual platforms that allow foreign companies to participate at CIIE and strengthen government-company dialogues.
- Accelerate reforms in the Pudong New Area, particularly in the Lin Gang New Area, that would improve market access.

建 议

对上海市政府：

- 就上海市“十四五”规划实施相关规定的草案，向外资企业介绍相关情况，并广泛征询外资企业的意见。
- 鼓励更多企业积极参加进博会，提供更多虚拟平台，方便外资企业参加进博会，并加强政企对话。
- 推动浦东新区特别是临港新片区的改革，改进市场准入机制。

Tianjin

Introduction

Tianjin is one of China’s largest and most important cities. With a population of approximately 15 million residents, it is one of the four largest cities in China, and it is the largest port city in Northern China. As described on Wikipedia, “Tianjin is one of the top 25 cities in the world by scientific research outputs...”.

Tianjin is an industrial and transportation hub for Beijing and Northern China with its economy built on a long tradition of manufacturing strength combined with a growing service sector economy. Primary industries include aerospace, automotive, petroleum, shipping and logistics, microelectronics, and pharmaceuticals.

Tianjin is called home for many U.S Companies, expats and their families, however, there were several cases of senior executives leaving Tianjin in 2021 and citing COVID-19 related travel restrictions as the reason.

Nevertheless, our member companies remain optimistic about Tianjin’s future and anticipate for continued growth in domestic consumption and the continued rise of an increasingly sizeable and affluent “middle class.”

The data shown within, unless otherwise specified, is based on responses by AmCham China Tianjin Chapter members to the 2022 AmCham China BCS Report conducted in late 2021. The results reflect the business climate in 2021.

We solicited input from 74 member companies and received 62 completed responses across five main business categories, including ① 24 companies in Consumer Industry; ② 13 companies in Resources & Industrial Industry; ③ 11 companies in Services Industry; ④ 9 companies in Technology and Other R&D Intensive Industries (Tech and R&D); ⑤ 5 companies from others.

COVID-19 Pandemic

The business impact from the continued presence of COVID-19 is still inflicting on our member companies. However, even with these impacts, as shown in Figure 1, none of our members view COVID-19 as a top 4 driver of ‘down’ earnings.

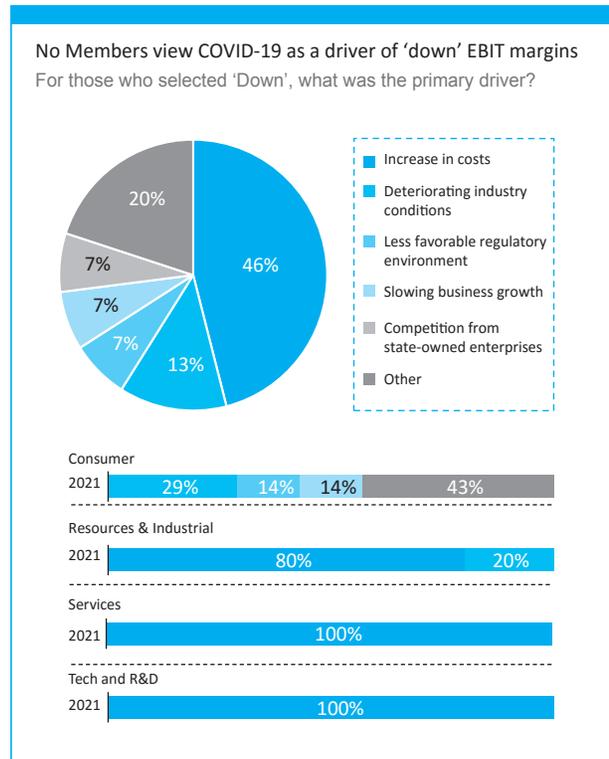


Figure 1

This being said, the potential for a major outbreak in the city remains a possibility and its effects on businesses could be significant. The outbreak in Xi’an and the experience in Tianjin in early 2022 are very compelling examples of how serious these events can be to the local communities both in terms of business and livelihood.

AmCham China strongly complement the Tianjin municipal government for their very proactive and disciplined response to the COVID-19 variant outbreak occurred in early 2022. Their measured response resulted in minimal impacts to our employees and our businesses while protecting its citizen’s lives.

We would also like to again salute the Tianjin municipal government for continuing dialogue during the events of the COVID-19 crisis which allowed us to stay updated and brief our members as well as to help restart business once the major crisis had subsided. This frequent communication is

天津

引言

天津是中国最大、最重要的城市之一。天津的常住人口约 1500 万，是中国四个最大城市之一，同时也是中国北方最大的港口城市。如维基百科上所述，“从科研成果的角度而言，天津是世界上前 25 大城市之一”。

天津是北京和中国北方的工业和交通枢纽。多年来，制造业和服务业的快速发展为天津经济发展奠定了良好的基础，主要行业包括：航空航天、汽车、石油、运输和物流、微电子及制药。

天津是许多美国企业、外籍人员及其家属的聚集地。但 2021 年，因为受新冠肺炎疫情管控措施的影响，一些高管陆续离开天津。

尽管如此，中国美国商会（以下简称商会）的会员企业仍对天津未来的发展持乐观态度。他们预计国内消费将继续增长，富裕的“中产阶级”群体规模会进一步扩大。

除另有说明外，本报告中的数据均是基于商会天津办公室会员企业就 2021 年底开展的 2022 年《中国美国商会商务环境调查报告》所作的答复。这些结果反映了 2021 年的商务环境概况。

商会天津办公室对其 74 家会员企业进行了调查，共收到 62 份完整反馈，其中大多数企业服务中国国内外的客户。这 62 家会员企业包括：① 24 家消费行业企业；② 13 家工业和资源行业企业；③ 11 家服务行业企业；④ 9 家技术和研发行业企业；⑤ 5 家其他行业企业。

新冠肺炎疫情

天津办公室的会员企业仍在承受着新冠肺炎疫情持续反复对其业务造成的影响。但即便如此，如图 1 所示，没有企业认为新冠肺炎疫情是其利润下降的前四大因素之一。

没有会员认为新冠肺炎疫情是导致息税前利润下降的原因。那些选择息税前利润下降的会员，导致他们的息税前利润下降的原因是什么？

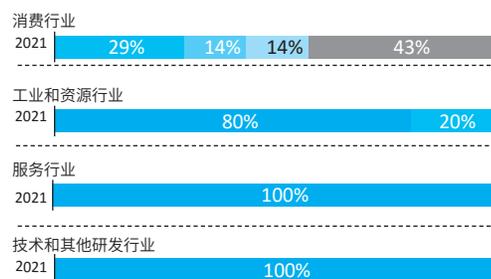
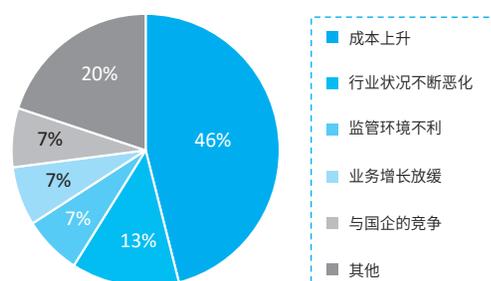


图 1

尽管如此，新冠肺炎疫情始终有可能在这个城市大规模爆发，一旦爆发，将对企业造成巨大影响。2022 年初在西安和天津爆发的疫情真实地反映了新冠肺炎疫情爆发对当地企业和人们的生活造成的巨大影响。

商会对天津市政府就 2022 年初新冠病毒变异株爆发时做出的积极、训练有素的反应表示赞赏。他们快速有序的应对措施将这次疫情对会员企业以及天津市民生活的影响降到了最低。

商会要再次向天津市政府致敬，感谢他们在新冠肺炎疫情爆发期间加强与商会的对话沟通，让商会能够及时了解疫情相关信息，向我们的会员通报相关情况，并在疫情减弱时，帮助会员企业复工复产。这种持续的沟通对于打造健康的商务环境至关重要。商会期望这种高水平的沟通与合作能够继续下去。近期商会与天津市政府的会面也让商会增加了双方继续推进合作的信心。

essential to a healthy business environment. We look forward to continuing this high level of communication and cooperation recent discussions with the government have given us confidence that this will continue.

Travel Restrictions

The continued difficulty in traveling to China at present is constantly cutting the number of resident foreign nationals. The aftereffects of China’s initial entry ban on all foreign nationals holding valid Work and Residence Permits located outside of China, enacted in 2020 which left stranded many executives, employees, and families who routinely reside in China were still present in 2021. The later loosening of these stringent travel restrictions alleviated much of the direct effect as did the re-opening of the entry process to dependents.

The Tianjin municipal government was very helpful in clarifying the process for Tianjin-based professionals and their dependents to re-apply for visas and as a result, some senior management executives have returned.

That said, the severe reduction in international flights to China, the mandatory time-limited testing that must be conducted prior to boarding, the requirement to undergo a minimum 21-day quarantine upon arrival in China, and a general discouragement of travel to China for non-Chinese citizens by the government has continued to thin the ranks of foreign nationals and businesspeople in the city. The reduction of even a few foreign employees and families has an outsized negative impact on the local economy, as the reduction of a single expatriate family reduces demand for apartments, local drivers, restaurant and food sales, foreign schools, which in turn precipitates a further reduction in demand from each of the impacted businesses.

New investment projects are also unlikely to be approved if senior management and experts are not able to easily travel to China to assess sites or meet business partners. Foreign Direct Investment levels are closely linked to the ability to freely access jurisdictions that receive investment and China’s current restrictions on travel will lead to a slowdown of new projects and additional investments.

As shown in Figure 2, the risk of companies changing their current investment strategies in China due to continued travel restrictions are present.

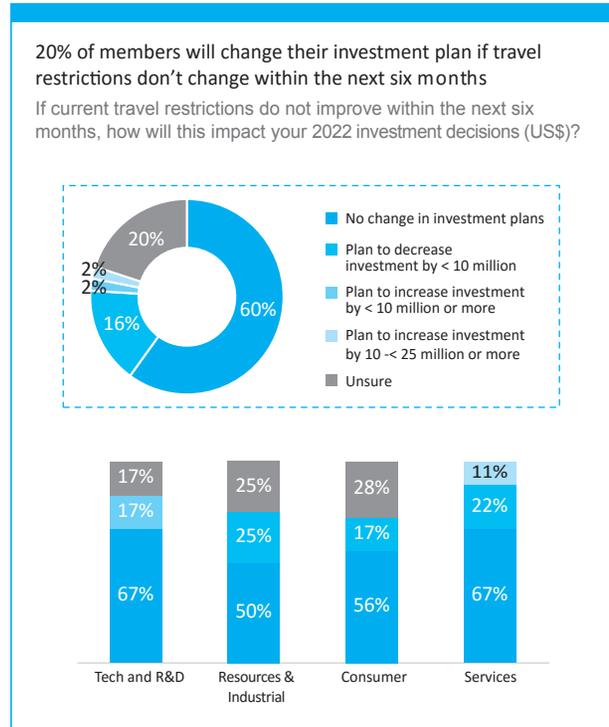


Figure 2

In addition, supply chain disruptions brought by COVID-19 has, in some cases, accelerated plans to diversify supply bases, move manufacturing home or closer to home and reinforced “in China for China” strategies. These considerations could amplify geopolitical risk of decoupling by US or China.

US-China Trade Relations

Continuing trade tensions between the US and China make bilateral relations challenging. Furthermore, a continued strong surge of nationalistic sentiment helped empower a “buy China” campaign creating additional headwinds for foreign brands and businesses. Members list US-China tensions as the top business challenge in 2021.

AmCham China Tianjin Chapter Business Climate Survey (BCS) Report

Financial Performance

In Figure 3, our members reported generally improved financial performance over the past year with 56% of our members saying that they expect to be “very profitable” and “profitable” in 2021, up from 40% in last year. 27% of our members reported an expectation reporting “break even” results in 2021 and 17% reported a “loss or a large loss” as compared to 23% reporting a “loss or a large loss” in the prior year.

旅行限制

目前，赴华旅行难使得在华外国人数量的不断减少。中国于2020年开始对所有现居国外、持有有效工作居留许可的外国人实施的入境禁令，导致许多常年居住在中国的外籍高管、员工和家庭滞留在国外，直到2021年，这种影响仍未消除。后来随着这些严格的旅行限制得到放松，例如重新向外籍人员家属开放签证申请，这在很大程度上减轻了直接影响。

天津市政府帮助在天津工作的外籍人员及其家属厘清重新申请签证的流程。因为有了他们的帮助，一些外籍高层管理人员已经回到中国。

尽管如此，由于飞往中国的国际航班数量大幅减少，登机前必须在规定的时限内进行核酸检测，抵达中国后必须隔离至少21天，再加上政府普遍不鼓励非中国公民到中国旅行，使得常驻天津的外籍人员数量持续缩减并对当地经济产生巨大的负面影响。外籍家庭数量的减少意味着对公寓、当地司机、餐饮、国际学校需求的减少，进而使得每个受影响企业的需求减少。

如果外籍高管和专家不能顺利到中国进行现场评估或与合作伙伴会面，新的投资项目将很难获得批准。外国直接投资水平与进入被投资辖区的自由度紧密相关，中国现行的旅行限制措施将使得新项目获批和新投资引入的速度放缓。

由于持续实施的旅行限制措施，如图2所示，有些企业计划改变当前的在华投资策略。

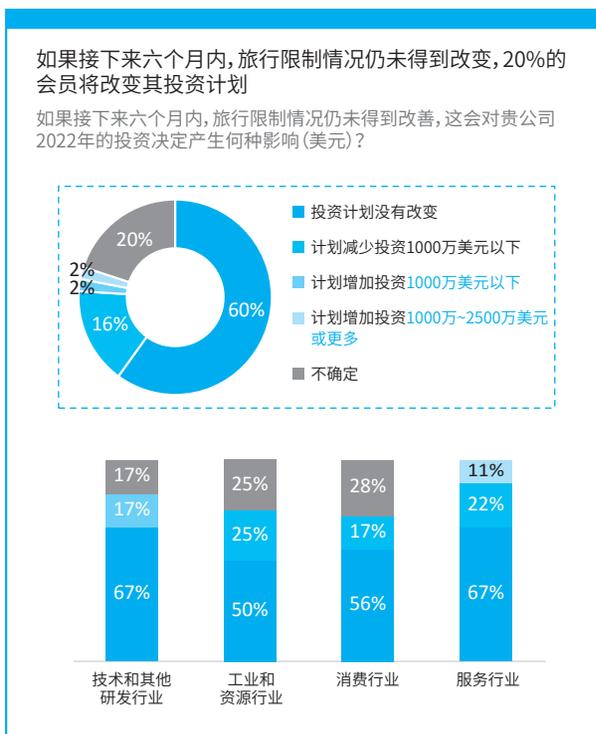


图2

此外，新冠肺炎疫情导致供应链中断使得一些企业开始提前考虑其供应基地多样化，如在母国或更靠近母国国家(地区)新建制造工厂，但同样重视“在中国、为中国”战略。然而，这些考虑可能会放大与美国或中国脱钩的地缘政治风险。

中美贸易关系

中美持续紧张的贸易局势使得中美双边关系充满挑战。此外，民族主义情绪持续高涨，助长了“买中国货”运动，给外国品牌和企业带来了更多阻力。商会天津办公室会员企业将中美紧张的关系列为2021年最大的商业挑战。

中国美国商会天津办公室商务环境调查报告总结

财务表现

商会会员企业普遍反映去年其财务表现得到了改善。图3中，56%表示预计在2021年是“大幅盈利的”或“盈利的”。而在去年的调查中，预计2020年是“大幅盈利的”或“盈利的”的企业只占40%。27%的会员表示预计其在2021年“盈亏平衡”，17%表示“亏损或大幅亏损”。而去年表示2020年“亏损或大幅亏损”的企业有23%。

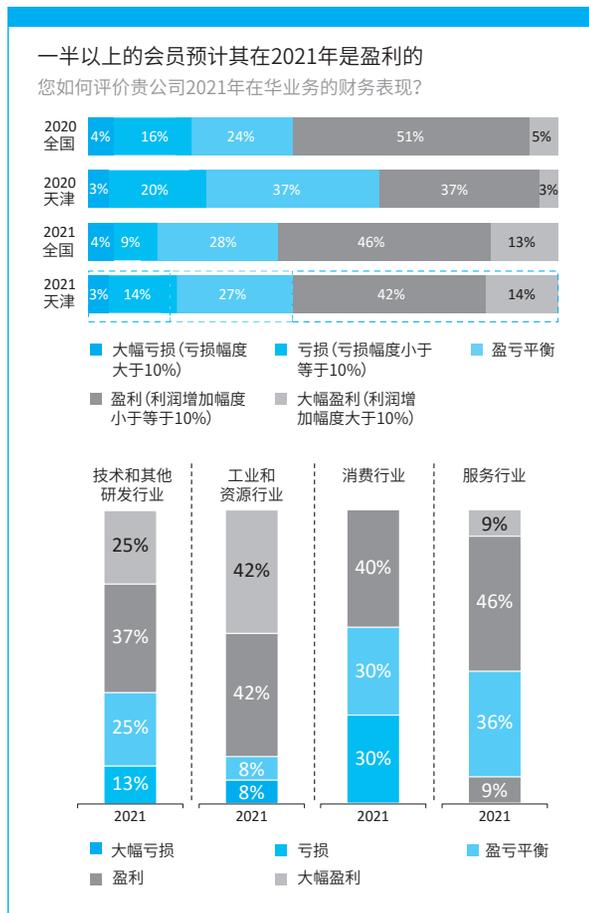


图3

区域性
问题

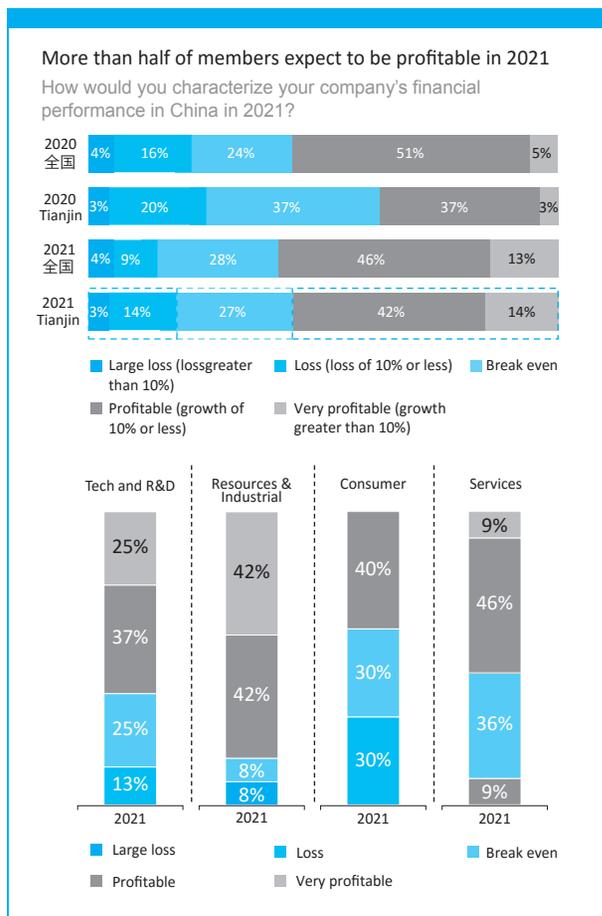


Figure 3

When asked about their two-year outlook on a range of issues, there was a mixture of sentiments among Tianjin Chapter members. The broad categories are summarized as:

Factor	Optimistic or slightly optimistic	Neutral	Pessimistic or slightly pessimistic
Domestic market growth	65%	17%	18%
Competitive pressure	40%	35%	25%
Cost competitiveness	35%	23%	42%
Profitability potential	60%	15%	25%
Regulatory environment	31%	38%	31%
US-China relations	22%	35%	43%
Economic recovery/ growth	62%	22%	16%

As mentioned earlier, our member companies remain optimistic about Tianjin’s future and are generally confident about the potential of the domestic market, their ability to achieve profitability and that the domestic economy will recover, in part due to China’s successful effort to bring COVID-19 under control. However, as seen in Figure 4, respondents displayed a higher level of pessimism with respect to cost competitiveness and the impact of tension in US-China relations on their business.

Business Opportunities in the China Market

The majority of our members said they were primarily in China to serve both foreign and Chinese markets (66%), with an additional group (31%) exclusively serving the Chinese market.

Only half of our members indicated they are confident that the Chinese government will continue to open the market to foreign investment over the next three years.

Furthermore, it is important to note what is indicated in Figure 5, that an even larger proportion (approximately 60%) saying that if China’s market were open on a par with the US market, they would increase their level of investment, a testament to the argument for greater market liberalization.

AmCham China Tianjin Chapter members feel that commercial and market opportunities in China will come from the continued growth in domestic consumption, ongoing economic and market reforms, and their expansion into other parts of the country.

当问及对未来两年的看法时，天津办公室会员企业所持态度有所不同。具体情况如下表所示：

因素	非常乐观或乐观	中立	非常悲观或悲观
国内市场增长	65%	17%	18%
竞争压力	40%	35%	25%
成本竞争力	35%	23%	42%
盈利潜力	60%	15%	25%
监管环境	31%	38%	31%
中美关系	22%	35%	43%
经济复苏 / 增长	62%	22%	16%

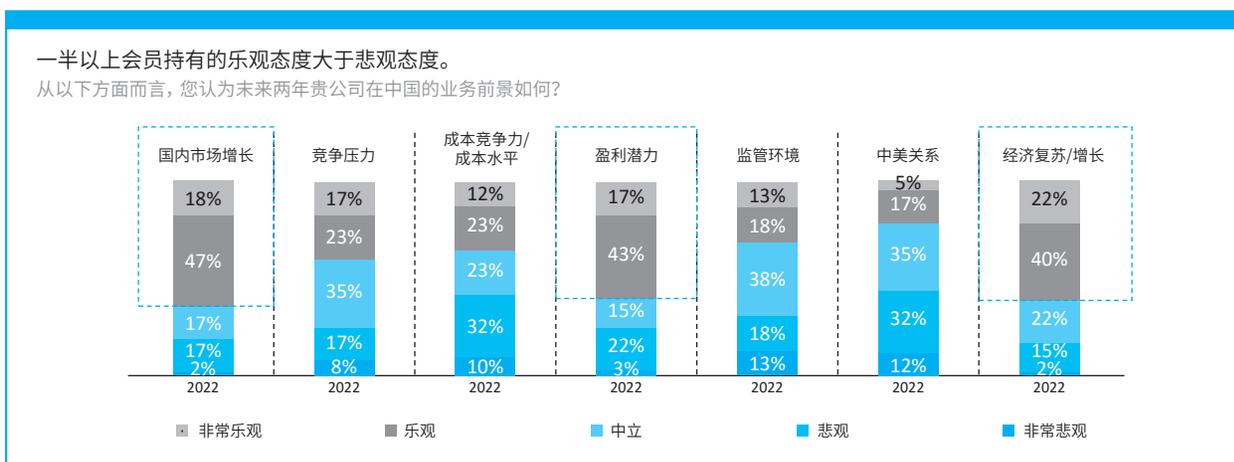


图 4

如前文所述，会员企业对天津的未来仍持乐观态度，普遍对国内市场潜力、其盈利能力以及国内市场复苏持有信心，部分原因是中国成功控制住了新冠肺炎疫情。然而，从图 4 中可以看出，受访者对成本压力和中美关系紧张对其业务的影响表现出更高层次的悲观情绪。

中国市场的商业机会

大多数会员企业（66%）表示，他们同时服务外国和中国市场；还有 31% 表示，他们仅服务中国市场。

只有一半会员表示他们有信心，在未来三年，中国政府将进一步对外国投资开放市场。

此外图 5 中的内容非常值得注意，如果中国市场能达到与美国市场同等的开放程度，超过一半的会员企业（约 60%）表示会提高投资水平，这从侧面说明中国市场的开放程度还有待提升。

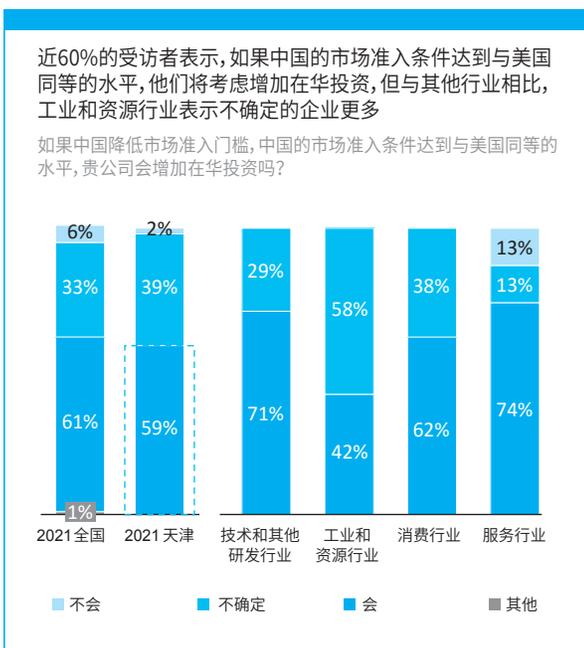


图 5

区域性问题

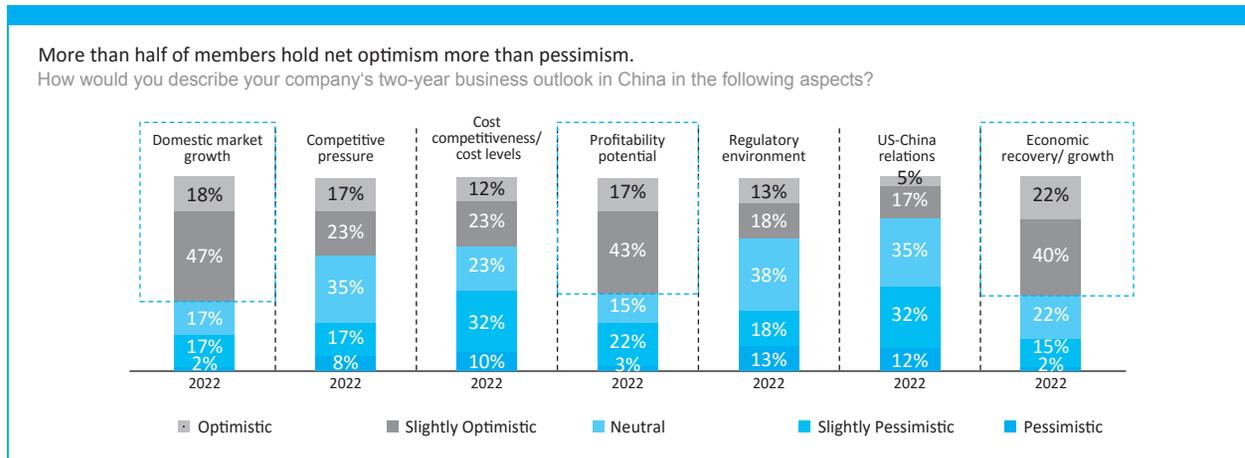


Figure 4

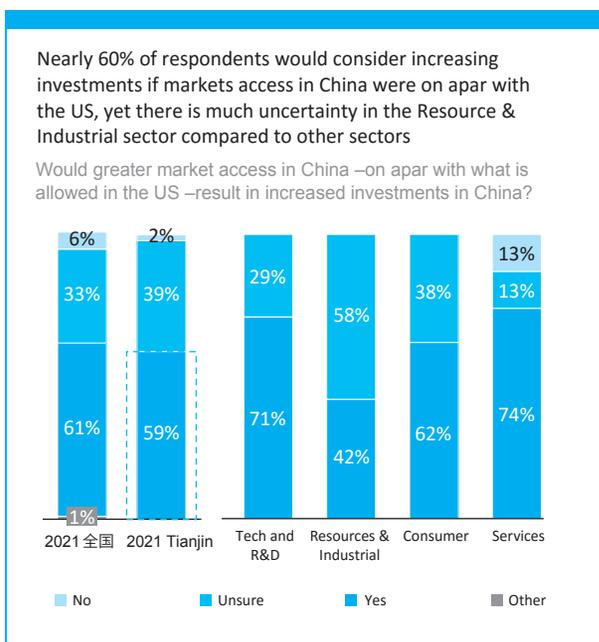


Figure 5

More than half (53%) of Tianjin Chapter members indicated they planned to grow their headcount in 2022. Among them, the technology industry plans to increase staff size the most. Only a minority (9%) planned to reduce staffing levels.

Business Challenges in the China Market

It is clear that our members continue to see economic opportunity in China, but they are also aware of the challenges. As shown in Figure 6, market access tops the list of unfair treatment areas, while Licensing and Regulatory enforcement both rank the second place.

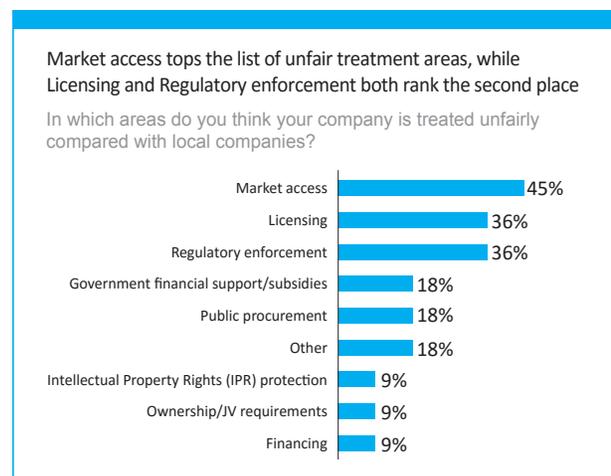


Figure 6

Compared with the overall situation of the country, as shown in the Figure 7, the top three business challenges across the AmCham China Tianjin Chapter membership are: ① Rising tension in US-China relations, ② Rising labor costs and ③ Shortages of qualified employees.

From a human resources perspective, as shown in Figure 8, the top three challenges faced by Tianjin Chapter member enterprises are also slightly different from the overall situation of the country. The challenges are ① Total labor costs, ② Rising salary and wage costs and ③ Workforce optimization.

When asked about the challenges of recruiting foreign staff to come to Tianjin, 53% of the members noted that the ① qualified candidates unable or unwilling to move to China (in some cases because of COVID-19 related restrictions) and 34% of the members noted ② the high cost of living and payroll costs.

商会天津办公室的会员企业认为，中国市场的商业和市场机会将来自国内消费的持续增长、正在进行的经济和市场改革及其在中国其他地区业务的增长。

一半以上（53%）的会员表示计划在 2022 年扩大员工规模，其中技术行业计划增加的人数最多；仅有很小一部分（9%）表示计划缩减员工规模。

中国市场的商业挑战

商会天津办公室会员企业重视中国市场的发展机遇，但他们也清楚地注意到了存在的挑战。如图 6 所示，

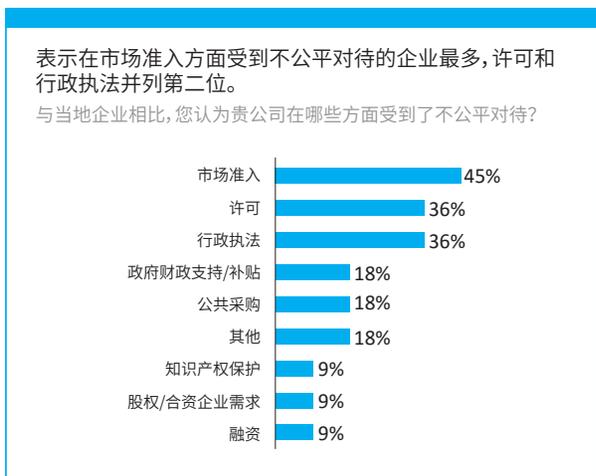


图 6

表示在市场准入方面受到不公平对待的企业最多，许可和行政执法并列第二位。

和全国总体情况相比，图 7 展示了天津办公室会员企业面临的前三大商业挑战，它们分别是：① 中美关系日益紧张，② 劳动力成本上升，及 ③ 缺乏合格的员工。

在人力资源方面，如图 8 所示，天津办公室会员企业面临的前三大挑战和全国的总体情况也略有不同，分别是：① 总体劳动力成本，② 薪资费用不断上涨，及 ③ 劳动力优化。

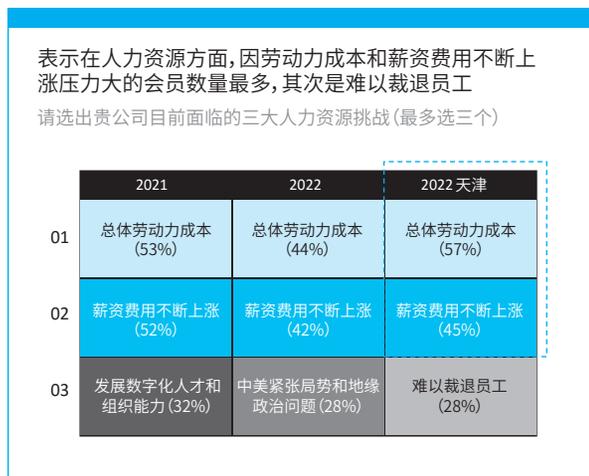


图 8

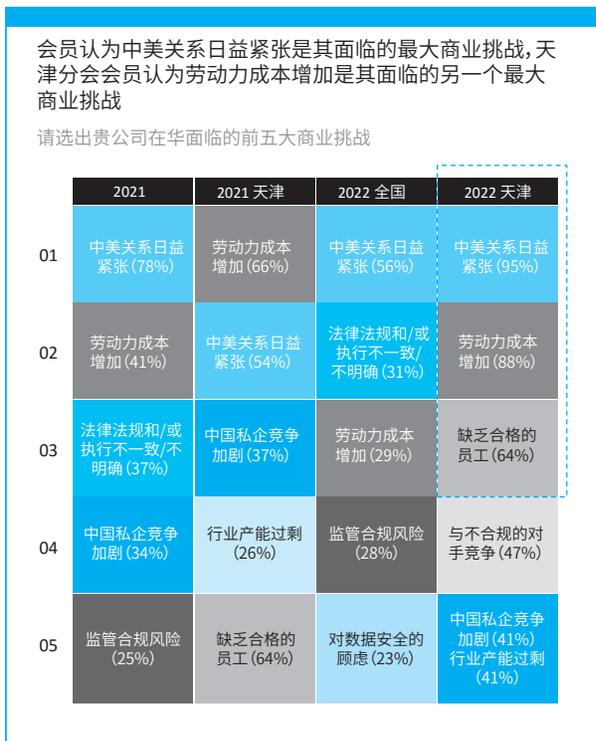


图 7

当问及在招聘外籍员工到天津工作方面面临的挑战时，53% 的会员表示合格的候选人无法或不愿意到中国来（有些是因为新冠肺炎疫情相关的限制措施），34% 的会员表示生活和工资成本高。

结 语

商会会员企业在 2022 年《商务环境调查报告》中表示，中国仍是其最看重的市场，他们愿意继续在中国进行投资。

然而，在未来一段时间内，赴华旅行的便利程度将与未来投资相关的决定密切相关。会员指出，外籍人员和企业外籍高管人数的减少将持续对天津市的经济产生负面影响。

商业的发展依赖于可预测性。在这个充满挑战的时代，消除阻碍商界顺利运营的不利因素非常重要。

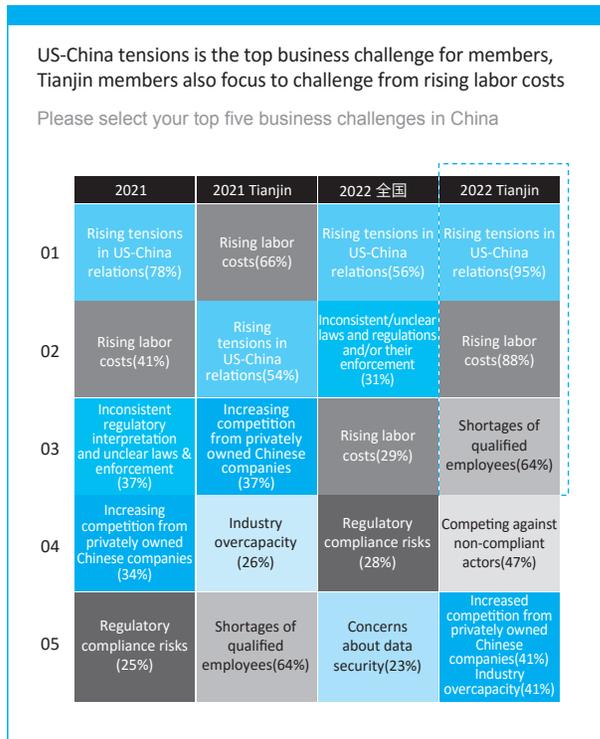


Figure 7

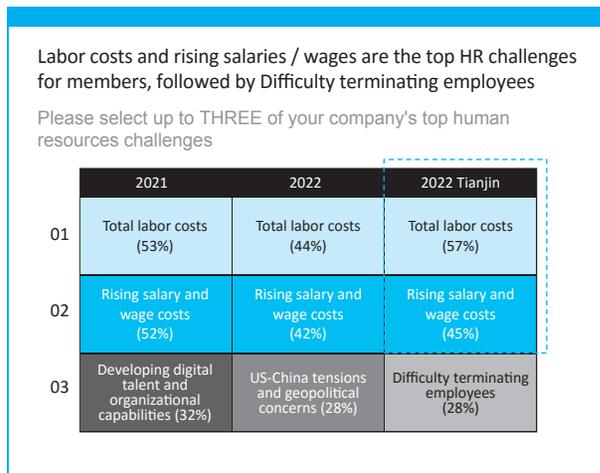


Figure 8

Conclusion

Our members have indicated in our most recent BCS Report that China continues to be a most critical market and they have demonstrated this with willingness to continue on investment their capital. Tianjin continues to be of the utmost importance to our member companies and to customers all over the world.

The continued degree of restriction on travel to China over the coming period, however, will be closely linked with decisions on future investments. As our members have clearly stated, a reduction in the number of visitors, foreign

nationals, and business executives will have a sustained negative impact on the city's economy.

Business thrives on predictability. In these challenging times, it is important that the areas that inhibit the ability of the business community to operate smoothly be eliminated.

We look forward to working with the Tianjin Municipal Government to overcome the areas that are creating friction in our trade and investment relationship. These challenges bring opportunities for us to work together towards our mutual benefit.

Our member companies look forward to facing these challenges together with the Chinese Government and with our Tianjin Municipal Government.

Recommendations

For the Tianjin Municipal Government

- **Restoring regular visa service and regular visa processing services / provision of a channel for US and Chinese citizens.** It is very important to get expatriates back and especially for their families to be able to join them in Tianjin as well. We would also like to recommend that the Tianjin government continue to monitor the situation to ensure that the quarantine requirements in Tianjin are no more stringent than they are in other cities.
- **Develop a range of new investment incentives.** Tianjin used to be characterized by strong investment incentives that benefited the city and local economy. In the 2021 BCS Report, AmCham China members highlighted Tianjin, Shanghai, and Guangdong as being cities that are well known for being receptive to foreign investment. Our members believe that the Tianjin Municipal Government should revitalize its efforts to attract foreign investment in Tianjin and should work within the context of its well-established development zones and city districts to revive and expand investment incentives to out-compete these other areas in China and ensure Tianjin remains a favorable destination for foreign investment.
- **Support collaboration between business, science, and academia.** Tianjin is home to a number of prominent universities and educational institutions. There are also several companies with research and development (R&D) components in their Tianjin operations. We believe there is an opportunity for Tianjin to cultivate a more open and collaborative environment between such groups and leverage Tianjin's already strong manufacturing base into a

商会期望与天津市政府继续加强合作，一起应对影响中美贸易与投资关系领域的挑战。这些挑战是我们共同努力、实现共赢的机会。

商会会员企业期望与中国政府以及天津市政府共同面对这些挑战。

建 议

对天津市政府：

- **恢复正常的签证受理、签发业务 / 为美国和中国公民提供一个往返中国渠道。**让外籍人员回到中国非常重要，尤其是让他们的家人与其在天津团聚。商会还建议天津市政府持续关注疫情防控措施，确保天津的隔离要求不能比其他城市的隔离要求更严格。
- **制定一系列新的投资激励措施。**以往，天津市政府会推出强有力的投资激励措施，带动当地经济发展。在 2021 年《中国商务环境调查报告》中，商会会员企业强调，天津、上海以及广东等城市比较欢迎外国投资。会员认为，天津市政府应再次加大吸引外国投资的政策力度，并在其成熟的开发区和城区范围内重新制定并推出更多投资激励措施，以超越中国其他地区，确保天津继续是外商投资偏爱的目的地。
- **支持商业、科学和学术合作。**天津有很多知名大学和教育机构，还有几家会员企业在天津设有研发部门。商会相信，天津有机会在这些团体之间搭建一个更加开放和协作的环境，使天津这个已经非常强大的制造基地发展成一个研发中心。例如，生物技术和医疗保健行业可以利用天津现有的企业、专家和机构发展为该市的支柱产业。
- **行业与地方政府更紧密的合作。**商会希望看到建立更多的机制，促使政府和行业在政策制定方面可以开展更为紧密的合作。期望外商投资企业能有更多机会持续参与到制定影响外商投资企业商务环境政策的过程中。

hub for R&D. The biotech and healthcare sectors are one example of sectors that could easily capitalize on the businesses, experts, and institutions already in Tianjin to become pillar industries in the city.

- **Closer Industry and Local Government Collaboration.** We would like to see the creation of additional mechanisms for closer Government collaboration with Industry on policy development. More opportunities should be created for foreign-invested enterprises to provide continued and sustained input on policies that will affect foreign-invested enterprises of the commercial environment.

Wuhan/ Central China

Introduction

Wuhan remains the commercial, financial and transportation center of Central China despite it being the city where the COVID-19 virus was first discovered and the city in China most impacted most by the virus. Hubei continue to recover from the pandemic, reporting the fastest growth rate of any province in China at 12.9 percent compared with 2020, and Wuhan's was 12.2 percent. In Hubei Province foreign direct investment was up 20.3 percent over 2020, foreign trade up 24.8 percent. In AmCham China's 2022 *Business Climate Survey* conducted toward the end of 2021, Central China members continue to be positive about business in China. 56 percent expected their 2021 revenues to be higher than 2020, 72 percent are optimistic about Wuhan's economic growth over the next two years, 60 percent plan to increase investment, and 72 percent report China as one of their company's top three investment priorities. AmCham China recognizes the significant measures the Hubei and Wuhan governments have taken to improve the business environment including hosting the Hubei 2021 Business Cooperation and Fortune 500 Company Dialogue, arranging for all foreigners to obtain two free Covid vaccinations, and record investment in infrastructure.

Thus, Wuhan remains a key city for the Central China region. With more than one hundred colleges and universities and 1.2 million university students, it is a key source of talent for AmCham China businesses. As part of the 14th Five-Year Plan (FYP) the Wuhan municipal government has set a goal of making Wuhan into "Five Centers": ❶ a national economic center, ❷ a national science and technology innovation center, ❸ a national commercial and trade logistics center, ❹ an international communications center and ❺ a regional financial center; and to this end has prioritized development in nine pillar industries, six new emerging industries, and five industries of the future. Hubei Province has issued a similar "4+6+8" plan. Foreign-invested enterprises (FIEs) who invest in these industries are likely to receive additional support from both the Wuhan municipal and Hubei provincial governments.

Member companies applaud ongoing efforts to help the economy recover from COVID-19, improve air quality and traffic flows, upgrade support for business, transform

Wuhan into a more global city, and attract top talent. Nevertheless, challenges remain. Topping the list among member companies in the Central China chapter is inconsistent regulatory interpretation and unclear laws and enforcement. Member companies in Wuhan and Hubei also continue to struggle with bringing talent into China, rising tensions in US-China relations, and attracting and retaining high-level talent.

This chapter reflects the activities of AmCham China members in the Central China region, which includes Anhui, Shanxi, Hunan, Henan, Hubei, and Jiangxi provinces, although the majority of our members are in Wuhan city and Hubei Province, and our recommendations are primarily directed to those governments.

Ongoing Regulatory Issues

Rapid Policy Changes

AmCham China Central China chapter recognizes the continued improvement of the investment environment. Nevertheless, members report inconsistent regulatory interpretation and unclear laws and enforcement as their top business challenge. Policies governing educational training centers, both foreign and domestic-invested, changed overnight. While the stated reasons for such policy changes are commendable, such rapid changes are a serious risk for businesses. Many foreign companies will hesitate to invest in China knowing such policy changes can happen so quickly. Member companies who are reducing their investment in China list an uncertain policy environment as their biggest reason. AmCham China recommends longer periods of implementation, giving businesses time to adjust their business models to the new conditions, which would help local companies adjust as well.

Allowing More Foreign Talent into China

AmCham China recognizes the tremendous efforts Wuhan and Hubei have made to recover after the COVID-19 pandemic. However, one result of this is an extreme bottleneck in bringing expatriate talent into China. Some investors risk losing their businesses because they cannot return or bring needed talent into China. Central China members' top recommendations to the Chinese

武汉 / 华中

引言



尽管武汉是最早发现新冠肺炎病毒的城市，也是受新冠肺炎疫情影响最为严重的城市，但武汉仍然是华中地区的商业、金融和交通中心。湖北省正进一步从疫情中恢复过来。与 2020 年相比，湖北省 GDP 增速快于中国其他省份，达 12.9%，而武汉市达 12.2%。与 2020 年相较，湖北省的外商直接投资增长 20.3%，对外贸易增长 24.8%。根据中国美国商会（以下简称商会）2021 年底进行的 2022 年中国商务环境调查，商会华中办公室会员企业继续对在华商业持乐观态度：56% 的会员企业预计其 2021 年营收超过 2020 年，72% 的会员企业对未来两年武汉的经济增长持乐观态度，60% 的会员企业计划增加投资，而 72% 的会员企业将中国列入企业的三大重点投资对象。商会认可湖北省和武汉市政府为改善营商环境所出台的各项举措，包括举办 2021 经贸洽谈会暨世界 500 强对话湖北活动，安排所有外籍人士免费接种两剂新冠病毒疫苗，以及创纪录的基础设施投资。

作为华中地区的重点城市，武汉拥有一百多所高校和 120 万大学生，为商会会员企业储备了大量人才。武汉市在其“十四五”规划中指出，力争将武汉建设成为“五个中心”的目标：① 全国经济中心 ② 国家科技创新中心 ③ 全国商贸物流中心 ④ 国际通讯中心 ⑤ 区域金融中心。为此，武汉重点发展九大支柱产业、六大新兴产业、五个未来产业。湖北省也出台了类似的“4+6+8”计划。投资这些行业的外商投资企业（FIE）可能会得到武汉市和湖北省政府的额外支持。

商会会员企业支持武汉做出的一系列努力，包括助力新冠肺炎疫情下的经济复苏、改善空气质量和交通流量、升级对商业的支持、将武汉转变为更加全球化的城市以及吸引顶尖人才。尽管如此，挑战依然存在。对商会华中办公室的会员企业来说，其首要关注的是法律和

政策在监管和执法上不明确、不一致的情况。武汉市乃至湖北省的会员企业仍面临一些困难，例如如何将人才引进中国、如何面对中美紧张关系以及如何吸引和留住高层次人才。

本章节内容同时涵盖了包括安徽、山西、湖南、河南、湖北和江西省等地的华中办公室会员企业的活动。但其中大多数会员企业位于武汉市和湖北省，因此下文的意见建议主要针对该地区的政府部门。

现存的监管问题

突如其来的政策改变

首先，商会华中办公室观察到，该地区的投资环境得以持续改善。然而，会员企业表示，不一致的监管解释和不明确的法律与执法是他们经营企业时面临的最大挑战，比如教育培训机构的监管政策在一夜之间发生了变化。虽然商会理解促使政策改变的初衷，但如此迅速的变化对于企业而言是一个重大的风险。许多外资企业知道有时政策会突然发生变化，因此在中国进行投资时会有犹豫。会员企业减少对华投资的最主要原因是因为政策环境的不确定性。商会建议延长政策实施的时间，让企业有时间根据新情况调整其商业模式，同时也有助于本土企业进行相应调整。

允许更多外籍人才引进中国

商会对武汉市和湖北省为全球新冠肺炎疫情下的经济复苏所付出的巨大努力表示认可。然而，疫情下严格的入境政策某种程度上成为了引进外籍人才的一个主要障碍。一些投资者由于无法回到中国，或者无法引进急需的外籍人才，他们在中国的业务运营受到了严重的影响。商会华中办公室的会员企业对中国政府改善营商环境的首要建议是加快恢复国际航班服务 / 审批，简化外籍人士签证和工作许可流程，恢复常规签证处理服务 / 为美

government for improving the business environment are accelerate resumption of international flight services/ approvals, simplify expat visa and work permit processes, and restore regular visa processing services / provide a channel for US citizen employees and their dependents to return to China. Doing so will send a clear message that while China will continue efforts to contain COVID-19, it will support foreign and local businesses obtain the talent they need.

Attracting & Retaining High-and-Mid-Level Talent (Hubei & Wuhan Governments)

Talent attraction is one of the key indicators used to evaluate a business environment, and Central China Chapter members applaud the measures taken by the Wuhan and Hubei governments to improve this: releasing effective policies on attracting global and top-level technical experts and entrepreneurial talents and bringing in top-level technology and vibrant start-ups, which have significantly contributed to economic development. Nevertheless, recruiting high-and-mid-level (executive or senior level, comparatively lower than top level) talent remains a major challenge for enterprises in Wuhan. Central China Chapter member companies cite difficulty attracting executive/ managerial staff as one of their top HR challenges and finding/hiring/on-boarding the right talent as their top HR priority for 2022. High and mid-level talents compose the core strength of an enterprise's development. Shanghai, Shenzhen and Guangzhou have created very bold policies to attract high-and-mid-level talents. If Wuhan aims to enhance, or even maintain its position as one of the top tier "high-tech" cities in China, it must retain and attract talented senior managers and team leaders. AmCham China recommends that the Hubei and Wuhan governments adopt innovative and focused policies to attract, retain, and reward high-and-mid-level senior managers and team leaders in the technology sector. By introducing, cultivating, and rewarding localized high-and-mid-level talents in international enterprises, it will contribute to the local talent pool. An ever-growing pool of talented senior managers and team leaders will reinforce Central China's current and future economic growth.

Wuhan Investment Opportunities

Wuhan has a solid foundation in the industries of communication, photo-electricity, fossil oil vehicle manufacturing, and compatible talent resources. It provides foreign companies, including US companies, diverse opportunities to grow in multiple industries. Central China Chapter members list adoption of digital technologies, increasing consumer demand for foreign brands/quality, growth in domestic consumption/rise of an increasingly sizable and affluent middle class, and China's policies and initiatives around carbon neutrality as investment opportunities especially in Wuhan.

AmCham China recommends the Wuhan government

highlight its long term strategy and short term focus, differentiate itself from other regional center cities in China, launch practical policies to boost the development of the entire value chains of these industries. AmCham China also recommends creatively strengthening the promotion of the government plan and policies.

Enhance Partnerships with Global Leaders to Promote Development of Priority Industries (Hubei & Wuhan Governments)

The Hubei provincial government has officially adopted its 14th FYP for Economic and Social Development in 2020, which contains a "4+6+8" system of priority industries (the Wuhan municipal government has released a similar "9+6+5" plan), including a focus on next generation IT industries, the automobile industry, the food and beverage industry, intelligent manufacturing, and biotechnology, among others. These plans, which remain high-level and broad at present, contained reference to utilizing leading enterprises and enhancing international cooperation.

Several AmCham China Central China Chapter members are global leaders in these priority industries, and AmCham China recognizes that FIEs and domestically-invested enterprises have been subject to equal treatment in the early stages of implementation, which is welcomed. AmCham China recommends that the Hubei provincial government and the Wuhan municipal government capitalize on this progress by deepening their partnerships with these globally-leading FIEs and enabling them to tap into the full range of products, services, and worldwide resources they can muster. Such partnership could include talent cultivation, technology promotion, and cooperative investment. AmCham China further recommends that Hubei provincial government and the Wuhan municipal government initiate a regular dialogue with globally-leading FIEs from priority industries to strengthen their partnerships, address obstacles in the business environment, and accelerate regional industry development. We stress, however, that such dialogues should be results focused and stress the substance of the dialogue rather than just the process of engaging in dialogue.

Adopt a More Cooperative Approach (US Government)

AmCham China Central China member companies reported increasing tension in the US-China relationship as their second biggest business challenge in 2021 and expect it to remain a key challenge in 2022. AmCham China recognizes that while differences between countries is normal, mutual respect is needed. In recent years the US government has adopted a more defensive tone when addressing these differences. AmCham China recommends the US Government adopt a more cooperative posture when engaging China. Two of Central Chapter members' top recommendations for the US government

国公民雇员及其家属提供回到中国的渠道。这样做将传达一个明确的信息，即中国在应对新冠病毒的同时，支持外国和本土企业引进所需的外籍人才。

吸引和留住中高层次人才（湖北和武汉政府）

人才吸引力是衡量营商环境的关键指标之一，商会华中办公室会员企业对武汉市和湖北省政府采取的改善措施表示赞赏，这些措施包括出台有效的政策，吸引全球和顶级技术专家和创业人才，引进顶级技术和充满活力的初创企业，为经济发展做出了重大贡献。然而，中高层次人才的短缺（高管或高级人才）仍然是武汉企业面临的主要挑战。会员企业认为，其面临的人力资源方面的最大挑战之一即为难以吸引高管/管理人员，因此，企业将寻找/雇用/吸收合适的人才作为2022年企业首要的人力资源优先事项。中高级人才构成是企业发展的核心优势。上海、深圳和广州都出台了非常有竞争力的人才引进政策，如果武汉有志于保持、抑或提升其作为中国顶级“高科技”城市之一的地位，就必须留住和吸引优秀的高级管理人员和团队负责人。商会建议湖北省和武汉市政府采取创新和有针对性的政策，吸引、留住和奖励科技行业的中高层管理人员和团队负责人。通过在外资企业中引进、培养和奖励中高层次人才，丰富本土人才储备，推动和促进当地经济发展。

武汉的投资机会

武汉的通信、光电和石油汽车制造等产业基础雄厚，人才资源优势明显，这为包括美资企业在内的外资企业在当地发展奠定了良好的基础。商会华中办公室的会员企业已经注意到了在武汉发展的机遇，包括数字技术的采用、外国品牌/品质消费者需求的增加、国内消费的增长/日益庞大富裕的中产阶级的崛起以及中国为实现碳中和目标的政策和举措。

商会建议武汉市政府突出长期战略和短期重点，区别于中国其他区域中心城市，出台切实可行的政策，促进这些产业全价值链的发展，同时采用更有创造性的方式加强对相关政策的宣传和引导。

加强与全球领导者的合作，促进重点产业发展（湖北省和武汉市政府）

湖北省政府于2020年正式通过了《湖北省国民经济和社会发展第十四个五年规划和2035年远景目标纲要》，

其中包含“4+6+8”重点产业体系规划（武汉市政府也发布了类似的“9+6+5”产业体系规划），下一代信息技术产业、汽车产业、食品饮料产业、智能制造和生物科技等。这些规划具有高水平、领域广的特点，对利用行业龙头企业、加强国际合作具有借鉴意义。

多家商会华中办公室的会员企业是这些重点行业的全球领导者。商会欢迎外资企业在规划实施初期得到了与内资企业一样的平等对待。商会建议湖北省和武汉市利用这一进展，深化与这些全球领先的外资企业的合作伙伴关系，赋能企业聚合全球资源为推动当地发展提供更好的产品和服务。这种合作关系可以多种形式开展，比如人才培养、技术推广和投资合作。商会还建议湖北省和武汉市与重点行业的全球领先外商投资企业开展定期交流活动，加强合作伙伴关系，改善营商环境，加快区域产业发展。商会强调，对话应以结果为导向，强调对话实质，而不仅仅是参与到对话当中。

采取更加合作的方式（美国政府）

商会华中办公室的会员企业表示，日益紧张的中美关系是其在2021年面临的第二大运营挑战，并预计2022年这一挑战仍将持续存在。商会认为国家之间存在差异是正常的，但应以相互尊重为前提。近年来，美国政府在解决这些分歧时采取了更具防御性的态度。商会建议美国政府在与中国交往时采取更加合作的姿态。商会华中办公室会员企业对美国政府的两项首要建议是降低对中国商品的关税和恢复正常的签证处理服务，并为非美国公民雇员返回美国工作提供渠道。

建议

对于武汉市政府、湖北省及华中其他省政府：

- 商会建议延长政策改变实施的时间，让外资企业和本土企业都有时间根据新情况调整商业模式。
- 加快恢复国际航班服务/审批，简化外籍人士签证和工作许可流程，恢复常规签证处理服务/为美籍雇员及其家属提供回到中国的渠道。

are reduce tariffs on Chinese goods and restore regular visa processing services/provide a channel for non-US citizen employees to return to the US.

Recommendations

For the Wuhan municipal government, the Hubei, and other Provincial governments of Central China

- **AmCham recommends longer periods for the implementation of policy changes, giving both foreign and local businesses time to adjust their business models to the new conditions.**
- Accelerate resumption of international flight services/approvals, simplify expat visa and work permit processes, and restore regular visa processing services / provide a channel for US citizen employees and their dependents to return to China.
- Adopt innovative and focused policies to attract, retain, and reward mid-and-high-level senior managers and team leaders in the technology sector. Partnering with global industry leaders registered in Wuhan on such policies would be an effective way to attract such talent and meet market demand.
- Highlight its long term strategy and short term focus, differentiate itself from other regional center cities in China, launch practical policies to boost the development of the entire value chains of these industries. AmCham also recommends creatively strengthening the promotion of the government plan and policies.
- Deepen partnerships with globally-leading FIEs to tap into the full range of products, services, and worldwide resources they can muster. Such partnerships could include talent cultivation, technology promotion, and cooperative investment. AmCham China also recommends that Hubei provincial government and the Wuhan municipal government initiate a regular dialogue with globally-leading FIEs from priority industries to strengthen their partnerships, address obstacles in the business environment, and accelerate regional industry development.

For the US Government

- Adopt a more cooperative posture when engaging China, including reducing tariffs on Chinese goods and restoring regular visa processing services so non-US citizen employees may return to the US.

- 采取创新和有针对性的政策，吸引、留住和奖励科技行业的中高层管理人员和团队负责人。与在武汉注册的全球行业领导者合作开展实施此类政策，将是吸引此类人才和满足市场需求的有效途径。
- 突出长期战略和短期重点，区别于中国其他区域中心城市，出台切实可行的政策，促进这些产业全价值链的发展。商会还建议创造性地加强政府计划和政策的宣传。
- 深化与全球领先的外商投资企业的合作伙伴关系，赋能企业聚合全球资源为推动当地发展提供更好的产品和服务。这种合作关系可以多种形式开展，比如人才培养、技术推广和投资合作。商会同时建议湖北省政府和武汉市政府与重点行业的全球领先外商投资企业开展定期交流活动，加强合作伙伴关系，改善营商环境，加快区域产业发展。

对于美国政府：

- 与中国交往时采取更加合作的姿态，降低对中国商品的关税和恢复正常的签证处理服务，并为非美籍雇员返回美国提供渠道。

Acronyms 缩写表

3PL	Third-Party Logistics	BAPA	Bilateral Advance Pricing Arrangement
AAL	Approved Agent Lender	BASA	US-China Bilateral Aviation Safety Agreement
ABAC	Anti-Bribery and Anti-Corruption	BCM	Billion Cubic Metres
ACP	US-China Aviation Cooperation Program	BCS	(AmCham China) Business Climate Survey
AEO	Authorized Economic Operator	BEPS	Base Erosion and Profit Sharing
AFNOR	Association Francaise de Normalisation	BIS	Bank of International Settlements
AFTCB	Areas for Further Technical Confidence Building	BIS	US Bureau of Industry And Security (Department of Commerce)
AI	Artificial Intelligence	BJCDZ	Beijing Comprehensive Development Zone
AIC	Administration for Industry and Commerce	BRF	Belt and Road Forum
AMAC	Asset Management Association of China	BRI	Belt and Road Initiative
AMB	Anti-Monopoly Bureau	BSA	Bond Settlement Agent
AMC	Anti-Monopoly Commission	CAAC	Civil Aviation Administration of China
AMEA	Anti-Monopoly Enforcement Agency	CAAM	China Association of Automobile Manufacturers
AML	Anti-Money Laundering	CAC	Cyberspace Administration of China
AML	Anti-Monopoly Law	CBA	China Basketball Association
AMR	Administration for Market Regulation	CBIRC	China Banking and Insurance Regulatory Commission
ANAC	"National Civil Aviation Agency of Brazil"	CBP	(US) Customs and Border Protection
ANPRM	Advance Notice of Proposed Rulemaking	CBPR	Cross-Border Privacy Rules
ANSI	American National Standards Institute	CBRC	China Banking Regulatory Commission
APA	Advance Pricing Arrangements	CCAR	China Civil Aviation Regulations
APEC	Asia-Pacific Economic Cooperation	CCC	China Compulsory Certification
API	Active Pharmaceutical Ingredient	CCDI	Central Committee for Discipline Inspection
APU	Auxillary Power Unit	CCID	China Center For Information Industry Development
AQSIQ	General Administration of Quality Supervision, Inspection, and Quarantine	CCL	US Commerce Control List
ASF	African Swine Flu	CCMC	Communist Chinese Military Companies
ASME	American Society of Mechanical Engineers	CCPS	Cybersecurity Classified Protection Scheme
ASTM	American Society for Testing and Materials	CCS	China Classification Society
ATC	Air Traffic Control	CCU	Chinese Cooperation Unit
ATFM	Air Traffic Flow Management	CCUS	Carbon Capture, Utilization, and Storage
ATMB	Air Traffic Management Bureau	CDM	Collaborative Decision-Making Model
ATSE	Advance Technology Services Enterprise	CDS	Credit Default Swap
AUCL	Anti-Unfair Competition Law	CEN	European Committee for Standardization
B2C	Business to Consumer		

CENELEC	European Committee for Electrotechnical Standardization
CFIUS	The Committee on Foreign Investment in the US
CFSTC	China Financial Standards Technical Committee
CFTC	(US) Commodity Futures Trading Commission
CGB	China Government Bond Futures
CIBM	China Interbank Bond Market
CII	Critical Information Infrastructure
CIIE	China International Import Expo
CIIO	Critical Information Infrastructure Operator
CIRC	China Insurance Regulatory Commission
CIT	Corporate Income Tax
CMBS	Commercial Mortgage Backed Securities
CMCT	City Maintenance and Construction Tax
CMDE	Center for Medical Device Evaluation
CNIS	China National Institute of Standardization
CNOOC	China National Offshore Oil Corporation
CNPC	China National Petroleum Corporation
CNVD	China National Vulnerability Database
COI	Certificate of Incorporation
COO	Country of Origin
CPPCC	Chinese People's Political Consultative Conference
CPPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
CRA	Credit Rating Agency
CRE	Commercial Real Estate
CRM	Credit Risk Mitigation
CRM	Cybersecurity Review Measures
C-ROSS	China Risk-Oriented Solvency System
CSDC	China Securities Depository and Clearing Corporation Limited
CSL	Cybersecurity Law
CSPs	Cloud Service Providers
CSR	Corporate Social Responsibility
CSRC	China Securities Regulatory Commission
CT	Consumption Tax

CTF	Counter-Terrorism Financing
CTL	Counter-Terrorism Law
CVD	Coordinated Vulnerability Disclosure
DCEP	Digital Currency/Electronic Payment
DCM	Dual Circulation Model
DF Test	Durability Test
DIP	Diagnosis Intervention Packet
DOC	(US) Department of Commerce
DOE	(US) Department of Energy
DOJ	(US) Department of Justice
DRG	Diagnosis-related Grouping
DSL	Data Security Law
DTA	Double Taxation Agreement
DTCC	(US) Depository and Trust Clearing Corporation
DVP	Delivery Versus Payment
E&P	Exploration and Production
EA	Enterprise Annuity
EAR	(US) Export Administration Regulations
EASA	European Aviation Safety Agency
ECCN	Export Control Classification Numbers
ECER	Energy Conservation and Emissions Reduction
ECL	Export Control Law
ECO	Export Compliance Program
ECP	US-China Energy Cooperation Program
ECRA	US Export Control Reform Act
ECWG	Export Compliance Working Group
EDV	Essentially Derived Varieties
EIA	Environmental Impact Assessments
EIA	Energy Information Administration (of the US)
EPA	US Environmental Protection Agency
EPR	Extended Producer Responsibility
EQ	Exempted Quantity
ERC	(US) End-User Review Committee
ESG	Environmental, Social, and Corporate Governance
ETF	Exchange Traded Funds

ETOPS	Extended Range Twin Engine Operations Performance Standard	GE	Genetically Engineered
ETS	Emissions Trading System	GFE	Guangzhou Futures Exchange
EU	European Union	GFMA	Global Financial Market Association
EUR	Estimated Ultimate Recovery	GHG	Greenhouse Gas
FA	Fund Accounting	GLP	Global Logistic Properties
FAA	Federal Aviation Administration	GLP	Good Laboratory Practice
FAO	Foreign Affairs Office	GMO	Genetically Modified Organism
FAQ	Frequently Asked Question	GMP	Good Manufacturing Practice
FCDP	Foreign Currency Denominated Policies	GMRA	Global Master Repurchase Agreement
FCPA	Foreign Corrupt Practices Act	GPA	(WTO) Agreement on Government Procurement
FDA	(US) Food and Drug Administration	GPL	Government Procurement Law
FDI	Foreign Direct Investment	GPU	Ground Power Units
FDPR	Foreign Direct Product Rule	HACCP	Hazard Analysis and Critical Control Points
FEB	Foreign Experts Bureau	HAKA	Hong Kong Autonomy Act
FI	Financial Institution	HKEX	Hong Kong Exchanges and Clearing
FIE	Foreign-Invested Enterprise	HNFTP	Hainan Free Trade Port
FIL	Foreign Investment Law	HNTE	High And New-Technology Enterprise
FMCG	Fast Moving Consumer Goods	HR	Human Resources
FPPC	Flight Plan Processing Center	IAIS	International Association of Insurance Supervisors
FRAND	Fair, Reasonable, and Non-Discriminatory	IAMC	Insurance Asset Management Company
FSIS	USDA Food Safety Inspection Service	IATA	International Air Transportation Association
FTA	Free Trade Agreement	ICT	Information and Communications Technology
FTP	Free Trade Port	ICV	Intelligent and Connected Vehicle
FTV	Full Technical Validation	IEC	International Electrotechnical Commission
FTZ	Free Trade Zone	IEEE	Institute of Electrical and Electronics Engineers
GA	General Aviation	IFSD	in-flight Shutdown
GAAP	Generally Accepted Accounting Principles	IGBT	Insulated-gate bipolar transistor
GABA	General and Business Aviation	IIT	Individual Income Tax
GACC	General Administration of Customs of China	ILO	International Labour Organization
GAPP	General Administration of Press and Publication	IMCT	International Multi-Center Trial
GAS	General Administration of Sport	IMO	International Maritime Organization
GATS	General Agreement on Trade in Services	IOC	International Oil Company
GB	Guobiao (National Standard)	IOM	International Organization of Migration
GBA	Greater Bay Area	IoT	Internet of Things
GDP	Gross Domestic Product		
GDPR	(EU) General Data Protection Regulation		

IoV	Internet of Vehicles
IP	Intellectual Property
IPA	"Implementation Procedures for Airworthiness"
IPO	Initial Public Offering
IPR	Intellectual Property Rights
IRCS	Internet Resource Collaboration Service
IRM	Information Rights Management
ISO	International Organization for Standardization
ITU	International Telecommunication Union
JCCT	US-China Joint Commission on Commerce and Trade
LBMA	London Bullion Market Association
LDAR	Leakage Detection and Repair
LLP	GMO Low Level Presence
LNG	Liquefied Natural Gas
LTV	Limited Technical Validation
M&A	Mergers and Acquisitions
MAD	Mutual Acceptance of Data (OECD)
MAP	Mutual Agreement Procedure (OECD)
MARA	Ministry of Agriculture and Rural Affairs
MCA	Ministry of Civil Affairs
MCU	Microcontroller Unit
MEE	Ministry of Ecology and Environment
MEM	Ministry of Emergency Management
MEU	Military End-User/End-Use
MEWP	Mechanized Elevation Work Platforms
MIC 2025	Made in China 2025
MIIT	Ministry of Industry and Information Technology
MLPS	Multi-Level Protection Scheme
MNC	Multinational Corporation
MNR	Ministry of Natural Resources
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
MRL	Maximum Residue Level
MSA	Market Supervision Administration
MSW	Municipal Solid Waste
NAFMII	National Association of Financial Market Institutional Investors
NAV	Net Asset Value
NBA	US National Basketball Association
NBC	National Biosafety Committee
NBS	National Bureau of Statistics
NCAC	National Copyright Administration of China
NDRC	National Development and Reform Commission
NEA	National Energy Administration
NEV	New Energy Vehicle
NGO	Non-Governmental Organization
NHC	National Health Commission
NHSA	National Healthcare Security Administration
NIA	National Immigration Administration
NIOSH	National Institute For Occupational Health And Safety (of the US)
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
NPO	Non-Profit Organization
NRA	Non-Resident Account
NRDL	National Reimbursement Drug List

NRTA	National Radio And TV Administration	PSU	Professional Supervisory Unit
NSC	National Supervision Commission	PTE	Patent Term Extension
NTCAS	National Technical Committee of Auto Standardization	PVP	Plant Variety Protection
O2O	Online-To-Offline	QCE	Generic Consistency Evaluation
OA	Occupational Annuity	QFII	Qualified Foreign Institutional Investor
OECD	Organisation for Economic Cooperation and Development	R&D	Research and Development
OEM	Original Equipment Manufacturer	RCEP	Regional Comprehensive Economic Partnership
OFAC	Office of Foreign Asset Controls	RDP	Regulatory Data Protection
OGIF	US-China Oil and Gas Industry Forum	RECAT	Wake Turbulence Recategorization
OII	Overseas Institutional Investor	REIT	Real Estate Investment Trusts
OMO	Open Market Operation	RFG	Remanufactured Finished Goods
OSCCA	Office of State Commercial Cryptography Administration	RMB	Renminbi (Chinese Yuan)
OSHA	US Occupational Safety and Health Administration	ROBE	Regulations on Optimizing the Business Environment
P2P	Peer-To-Peer	RPM	Resale Price Maintenance
PAPR	powered air-purifying respirators	RQFII	Renminbi Qualified Foreign Institutional Investor
PBOC	People's Bank of China	SAC	Standardization Administration of China
PCS	Punitive Compensation System	SAFE	State Administration of Foreign Exchange
PE	Permanent Establishment	SAFEA	State Administration for Foreign Experts Affairs
PFF	Professional faultfinder	SAIC	State Administration for Industry and Commerce
PFM	Private Fund Management	SAMR	State Administration for Market Regulation
PFSI	Private Fund Service Institution	SAPPRFT	State Administration of Press, Publication, Radio, Film, and Television
PFTZ	Pilot Free Trade Zone	SAR	Special Administrative Region
PHEV	Plug-in Hybrid Energy Vehicle	SASAC	State-Owned Assets Supervision and Administration Commission
PHIS	(USDA) Public Health Information System	SBL	Stock Borrowing and Lending
PI	Personally Identifiable Information/ Personal Information	SCS	Social Credit System
PI	Personal Information	SDO	Standards Development Organization
PIPL	Personal Information Protection Law	SDR	Special Drawing Right
PIRP	Patent Information Registration Platform	SEC	(US) Securities and Exchange Commission
PMA	Parts Manufacturing Authorization	SECAD	State Export Control Administrative Department
POA	Power of Attorney	SEI	Special Emphasis Items
PPE	Personal Protective Equipment	SESAR	Single European Sky ATM Research
PRC	People's Republic of China	SFC	Securities and Futures Commission (of Hong Kong)
PSB	Public Security Bureau	SGX	Singapore Exchange
PSC	Production Sharing Contracts		
PSO	Public Security Organ		

SHFTZ	Shanghai Free Trade Zone
SME	Small and Medium-Sized Enterprise
SOE	State-Owned Enterprise
SPB	State Post Bureau
SPC	Supreme People's Court
SPS	Sanitary and Phytosanitary Measures
SSD	Significant Standards Difference
STA	State Taxation Administration
SV	Streamlined Validation
SWIM	System Wide Information Management
SZSE	Shenzhen Stock Exchange
TA	Transfer Accounting
TAP	Temporary Activity Permit
TBL	Tendering and Bidding Law
TC	Technical Committee
TC180	China Financial Standardization Technical Committee
TC260	China National Information Security Standards Technical Committee
TGL	Temporary General Licenses
TMO	Trademark Office
TP	Transfer Pricing
TPA	Third-Party Access
TPM	Technological Protection Measures
TPR	Trade Policy Review (Conducted By WTO)
TRAD	Trademark Review and Adjudication Division
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
TRQ	Tariff Rate Quota
TSA	"US Transportation Security Administration"
UAV	Unmanned Aerial Vehicles
UEL	Unreliable Entity List
UK	United Kingdom
VAT	Value-Added Tax
VATS	Value-Added Telecommunications Services
VBP	Volume-based Procurement
VFR	Visual Flight Rules
VIE	Variable Interest Entity

VOA	Visa on Arrival
VOC	Volatile Organic Compound
VPN	Virtual Private Network
WFOE	Wholly Foreign-Owned Enterprise
WHT	Withholding Tax
WMC	Wealth Management Company
WMD	Weapon of Mass Destruction
WSL	Work Safety Law
WTO	World Trade Organization
WTO/TBT	World Trade Organization Agreement on Technological Barriers to Trade
YOY	Year-on-Year
YRD	Yangze River Delta
YREB	Yangze River Economic Belt

