

**AMERICAN BUSINESS**

**IN CHINA** 美国企业在中国·白皮书

**WHITE PAPER**

**2023 American Business in China  
White Paper  
2023 年度美国企业在中国白皮书**

Unless otherwise indicated, all charts are from the 2023 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2023年度商务环境调查。

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

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华中(武汉)、东北(大连、沈阳)、西南地区设有区域办公室

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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 increased commerce and people-to-people exchanges directly benefit the economies and peoples of both nations.

As a Chamber of Commerce, we meet with both governments on a regular basis. We appreciate the close attention that US and Chinese policymakers pay to AmCham China's annual *China Business Climate Survey (BCS) Report*, and annual *American Business in China White Paper*. These are the key mechanisms that our business community uses to offer constructive recommendations to both governments.

In March 2023, AmCham China launched the 25<sup>th</sup> annual edition of the *BCS*, which included the following key themes:

- Members reported a slightly more pessimistic financial outlook compared to previous years.
- China is no longer the primary investment destination it once was.
- Most members are not considering relocating their supply chains.
- Tense bilateral relationship continues to stoke uncertainty in business decision making.
- Members are looking for ways to support the cooperative agenda.

It is against this backdrop of business sentiment that we publish the 25<sup>th</sup> annual edition of the *White Paper* – a comprehensive analysis of China's economic policies and practices impacting foreign trade and investment. In this edition, we continue AmCham China's legacy of offering a comprehensive set of constructive recommendations for both governments, as they work towards greater mutual understanding and successful resolution of outstanding company concerns.

As always, the *White Paper* is drafted by member companies, and aims to provide an accurate and nuanced view of the experiences that their businesses are having on the ground in China. We are grateful to every volunteer who generously dedicated countless hours to share their insights, build consensus within industry cohorts, draft the 40 chapters, and meticulously refine the final product. The volunteerism of our members is truly the lifeblood of the Chamber and of the American business community in China.

# 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。中美关系对于全球和平与繁荣有着直接且深远的影响。会员企业相信，深化双边经贸往来并增加人文交流将直接惠及两国经济和人民。

作为商会，我们与中美两国政府保持经常性会晤。我们感谢美国和中国政策制定者对商会年度《中国商务环境调查报告》和年度《美国企业在中国白皮书》的关注。这两份出版物是商界向两国政府提供建设性意见建议的主要政策工具。

2023 年 3 月，商会发布了第 25 期年度《中国商务环境调查报告》。该报告包括以下重点内容：

- 与往年相比，会员企业对在华整体营商环境略显悲观；
- 中国不再是首要投资目的地；
- 大多数会员企业并未考虑转移供应链；
- 中美关系紧张持续为在华运营带来不确定性；
- 会员企业期待参与支持中美合作议题。

在此背景下，商会连续第 25 年发布年度《美国企业在中国白皮书》（以下简称《白皮书》）——全面分析中国实施的经济政策和举措及其对在华运营的外商投资企业的影响。今年，我们将延续这项传统，继续通过《白皮书》为两国政府提供全面的建设性建议，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会员企业在华运营的实际感受。商会感谢会员企业志愿投入大量时间，分享各自见解，与同行形成共识，共撰写了 40 个章节，并不遗余力地修改完善。会员企业的志愿精神是商会和在华美国商界蓬勃生命力的源泉。

On this 25<sup>th</sup> year, we would like to particularly recognize Lester Ross, Chair of the Chamber's Policy Committee, for his strong leadership and invaluable contributions since the earliest years of the publication.

A handwritten signature in black ink, appearing to read 'Colm R', with a large, stylized flourish above the name.

Colm Rafferty  
Chairman, AmCham China  
April 2023

在第 25 期《白皮书》发布之际，我们要对商会政策委员会主席罗斯先生致以崇高的谢意，感谢他自《白皮书》诞生以来对刊物的强有力指导和宝贵贡献。

A stylized, handwritten signature in black ink, consisting of several overlapping loops and strokes.

华刚林

中国美国商会主席

2023 年 4 月





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

# Business Climate Overview

## Introduction

The US and China remain deeply intertwined economically. Two-way bilateral trade in goods rose from US \$658 billion in 2021 to US \$690 billion in 2022, despite the COVID-related slowdown and challenging bilateral relationship. China is an important market for US products and services, including high-tech sectors like civil aviation and healthcare. China is a key supplier of a vast array of products and components, delivering benefits to both US producers and consumers.

In 2022, the foreign business community faced twin challenges from a deteriorating US-China relationship and uncertainty stoked by pandemic-related regional lockdowns across China. These factors combined to create an uncertain policy environment for foreign-invested enterprises (FIEs) in China. Unsurprisingly, respondents in our 2023 China Business Climate Survey Report (BCS) cited “rising tensions in US-China relations” as their top challenge.

The US approach to the bilateral relationship is in a period of recalibration. At AmCham China, we respect the legitimate needs of both countries to define and protect their national security and law enforcement interests but urge them to do so in ways that allow space for commercially focused engagement to take place and in close consultation with the business community. We recognize that the US must take steps to ensure that it retains long-term competitiveness, and we hope to amplify the voices of the American business community in China throughout this process.

However, in order to be globally competitive, China needs to commit to further opening and allow American producers and service providers to compete on a level playing field. We continue to urge the Chinese government to make good on its promises for further economic reform and continued opening to the outside world. The Chinese government should ensure that all legislation, such as the Foreign Investment Law which went into effect on January 1, 2020, and included commitments to equal treatment for foreign enterprises, is implemented faithfully. In addition, the Data Security Law, Personal Information Protection Law, and the Cybersecurity Law continue to challenge our member companies as the many conflicting measures, lack of grace

periods, and unclear policy implementation makes compliance strategies costly and cumbersome.

On the US side, we welcome the opportunity to work closely with the Administration to provide a full account of the current situation of US companies on the ground in China and identify opportunities to advocate for a more equitable and sustainable economic relationship.

We recognize that there are significant areas of contention in the US-China relationship, many of which offer no easy prospects for resolution. Despite those frictions, however, the presence of US companies in China has served as a stabilizing force in the bilateral relationship and contributed economic value to both sides. The role of American businesses in China continues to be a positive force for sharing American values and employment practices in China, while promoting people-to-people exchanges during this challenging time.

Against this backdrop, this 25<sup>th</sup> 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 2022 and early 2023. Each chapter offers practical recommendations for addressing challenges facing the American business community that will, if implemented, benefit both 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 Colors 2022’s Performance

COVID-19 created its own set of operational challenges for foreign companies in China. In 2022, China’s COVID-19 prevention measures shook the overall performance of the US business community in China. Aside from the widely reported Shanghai lockdown, many other regional lockdowns left businesses and supply chains in a precarious place throughout 2022. Hyper-regional epidemic prevention measures made formulating a national and global business strategy impossible for our member companies.

This situation led to a slightly more pessimistic business climate for 2022 with revenue further declining down to

# 商业环境综述

## 引言

**中** 美经贸关系仍然密不可分。尽管双边关系持续紧张，新冠肺炎疫情也导致经济放缓，但中美双边货物贸易额仍从 2021 年的 6580 亿美元增加到 2022 年的 6900 亿美元。中国是美国产品和服务的重要出口市场，包括民航和医疗保健等高科技领域。中国也是大量产品和零部件的重要货源地和供应商，美国生产商和消费者可以持续从中受益。

2022 年，在华外国商界面临着双重挑战，一方面中美关系恶化，另一方面中国各地因疫情封控而引发不确定性。这些因素交织在一起，让在华外资企业处于充满不确定性的政策环境中。不出所料，在中国美国商会（以下简称商会）的 2023 年《中国商务环境调查报告》中，“中美关系日益紧张”成为受访企业在中国运营的首要挑战。

美国对华战略正处于重塑阶段。商会尊重并承认两国各自界定并保护其国家安全和执法利益的权利，但希望双方在此过程中为商业活动留出空间，并与商界保持紧密沟通。商会认知美国必须采取措施保持其长期竞争力，并希望在整个过程中有机会扩大美国商界在中国的声音。

然而，为了增强全球竞争力，中国需要致力于进一步扩大开放，允许美国生产商和服务提供商能够在中国市场上进行公平竞争。商会敦促中国政府兑现进一步推行经济改革和继续对外开放的承诺。中国政府应保证所有法律得到坚定执行，例如 2020 年 1 月 1 日生效的《外商投资法》，其中包括平等对待外资企业的承诺。此外，《数据安全法》、《个人信息保护法》和《网络安全法》仍然困扰着商会会员企业。由于许多措施相互冲突、缺乏宽限期以及政策实施不明确，导致企业要投入更多的人力物力进行繁琐冗长的合规工作。

商会期待增进与美国政府的密切合作，助其全面了解在华美国企业的经营现状，并寻找机会倡导更公平和可持续的双边经济关系。

商会认识到，中美关系在许多领域存在重大争议，许多问题在短时间内无法解决。然而，尽管存在这些摩擦，在华经营的美国企业仍然为稳定双边关系做出了巨大贡献，为双方贡献了巨大经济价值。在华美国企业是分享美国价值观和就业实践经验的积极力量，并在这一充满挑战的时期促进人文交流。

在此背景下，第 25 期《美国企业在中国白皮书》探讨了商会会员企业在 2022 年和 2023 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。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。2022 年，中国的新冠肺炎疫情防控措施对美国商界在华的整体运营带来了巨大影响。除了广泛报道的上海封控外，许多其他地区的封控措施已导致企业和供应链在整个 2022 年陷入不稳定状态。跨区域的疫情防控措施使得商会会员企业难以制定国家和全球业务战略。

以上背景导致企业对 2022 年的商业环境略显悲观，企业收入下降，回落到 2020 年的水平。三分之一的受访企业（34%）预计其收入下降，约 56% 的受访企业预计不会盈利，达到了 2020 年新冠疫情爆发以来的最高比例。与 2021 年相比，息税前利润（EBIT）下降的

the 2020 level, with one-third of respondents (34 percent) reporting a decline in revenue. Some 56 percent of members do not expect to be profitable, the highest percentage since the pandemic began in 2020. Companies experiencing declining EBIT margins were much more likely to be impacted by COVID-19 compared to 2021, with intermittent lockdowns hurting businesses, especially in the Consumer and Services sectors.

Epidemic prevention measures have been eased in 2023, but the sense of uncertainty remains. In order to regain business confidence, our member companies hope to see an increase in flights.

## 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 2022 and early 2023 continued to accelerate the downward trend in bilateral relations that AmCham China has highlighted in our most recent editions of the White Paper. This sentiment was captured in the 2023 BCS, where “rising tensions in US-China relations” was cited as the top challenge facing the business community for a third consecutive year. Furthermore, 96 percent of members believe that a positive relationship between the US and China is important for their company’s growth. This is acutely so for the Technology and Services sectors, each reporting that six-in-ten members believe that the bilateral relationship is ‘extremely important’ for business.

Nearly all members believe that the US-China bilateral relationship is key to growing their business in China. However, more than half of members were pessimistic about the future of US-China bilateral relations in 2023. Specifically, three-quarters of members report that they are impacted by US-China trade tensions, a condition that has worsened since the previous year according to survey responses.

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 risen in the aftermath of the COVID-19 outbreak, divergent responses to the 2022 Russian invasion of Ukraine, House Speaker Pelosi’s visit to Taiwan and subsequent PLA military exercises in the South China Sea, the February 2023 balloon incident, and the hearings of the US Select Committee on the Strategic Competition Between the United States and the Chinese Communist Party on “The Chinese Communist Party’s Threat to America.”

The refusal of China to speak out against Russia’s 2022 invasion of the Ukraine has further exacerbated tensions

with the US and other Western nations as well as several of its neighbors. The Chinese government has refused to condemn the Russian invasion of Ukraine, repeated Russian propaganda and disinformation about the war, opposed economic sanctions against Russia, and abstained or sided with Russia in United Nations votes on the war in Ukraine. These decisions have continually put China at odds with many the US and many Western nations, who have threatened sanctions should China offer military or financial aid to Russia. Without peaceful resolution, this issue continues to raise concern among foreign companies invested in China.

Throughout 2022, the US government explored development of a variety of new legislation to bolster overall US competitiveness including the passage of the CHIPS and Sciences Act which provides the Department of Commerce with \$50 billion for a suite of programs to strengthen and revitalize the US. position in semiconductor research, development, and manufacturing—while also investing in American workers. These measures also place limits on what R&D grant recipients can perform abroad in an attempt to bolster the US’s self-reliance in chip manufacturing.

The Biden Administration has further released an “invest, align, compete” framework in order to manage the bilateral relationship with China. In Secretary Blinken’s May 2022 Speech, the strategy is further explained:

“We will invest in the foundations of our strength here at home – our competitiveness, our innovation, our democracy. We will align our efforts with our network of allies and partners, acting with common purpose and in common cause. And harnessing these two key assets, we’ll compete with China to defend our interests and build our vision for the future.”

Meanwhile, as geopolitical tensions in 2022 continued to rise, the Biden administration conducted a recalibration of foreign policy to include more multilateral efforts between the US and its allies and partners. 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 was continuing to grow. Furthermore, the US and China discussions around climate cooperation and food security remain the only bright spot in an otherwise uncertain bilateral relationship.

Throughout Xi Jinping’s tenure as leader, China’s stated view of relations with the United States is grounded in a “big power diplomacy” model with three major principles: ❶ no confrontation, ❷ mutual respect, and ❸ win-win cooperation. Over the past year, however, greater centralization of power in the top echelons of PRC’s government has led to a more unified voice on domestic and international policy issues. With a Party-centric policy environment, fundamental resolution of areas of divergent values between the US and China remains unlikely in the near term.

公司受到新冠肺炎疫情的影响更大，间歇性封控对企业造成了严重影响，尤其是消费和服务行业的企业。

2023 年防疫措施持续调整，但不确定性依然存在。为了重拾商业信心，商会会员企业希望尽快增加航班数量。

## 日益紧张的双边关系是首要挑战

近几年，商会在《白皮书》中持续关注中美两国关系发展。近期，两国在经济、国家安全、执法、文化和民间交流等多个领域矛盾凸显，2022 年和 2023 年初的事态发展让双边关系持续恶化。2023 年《中国商务环境调查报告》也体现了这一趋势，“中美关系日益紧张”连续第三年成为商界在中国时常面临的首要挑战。此外，96% 的受访企业认为积极的双边关系对企业的发展至关重要。对于技术和服务业来说，情况尤其如此，行业中六成的受访企业认为双边关系对企业“极其重要”。

几乎所有会员企业都认为，中美双边关系是其发展在华业务的关键。然而，超过一半的受访企业对 2023 年中美双边关系的未来持悲观态度。具体而言，四分之三的会员企业表示他们受到中美贸易局势持续紧张的影响，根据调查结果，这种情况从去年开始已经恶化。

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。新冠肺炎疫情爆发、对俄乌战争的不同态度、时任美国众议院议长佩洛西访问台湾以及随后解放军在南海进行军事演习、2023 年 2 月的气球事件以及美国与中国共产党战略竞争特设委员会就“中国共产党对美国的威胁”举行听证会，一系列事件导致双边关系紧张局势进一步加剧。

中国尚未就 2022 年俄罗斯在乌克兰发起的“特别军事行动”作出公开反对，这加剧了与美国和其他西方国家及其他几个周边邻国的紧张关系。中国政府没有谴责战争发起方，在宣传中引用俄方的口径和不实信息，反对对俄罗斯的经济制裁，并在联合国就乌克兰战争的投票中选择弃权或站在俄罗斯一边。这些决定不断导致中国与美国和许多西方国家产生分歧，后者扬言如果中国向俄罗斯提供军事或财政援助，就会遭到制裁。如果该问题无法得到和平解决，将会进一步引起在华外资企业的担忧。

整个 2022 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，包括《为美国创造有益的半导体生产法案》(CHIPS)，该法案为商务部提供 500 亿美元执行一系列计划，以提高和振兴美国在半导体研究、开发和制造方面的地位，同时还将投资于美国工人。这些措施还限制了接受研发资助者在国外的行为，以加强美国在芯片制造方面的自力更生能力。

拜登政府进一步发布了“投资、结盟、竞争”框架来构建与中国的关系。国务卿布林肯在 2022 年 5 月的讲话中，进一步解释了这一战略：

“我们将投资于我们在国内的实力基础——我们的竞争力，我们的创新，我们的民主。我们将与我们的盟友和伙伴网络保持一致，以共同的目标和共同的事业行事。利用这两项关键资源，我们将与中国进行竞争，捍卫我们的利益，建立我们对未来的愿景。”

与此同时，随着 2022 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和粮食安全的讨论，这也成为当下不稳定的双边关系中少有的亮点。

在习近平担任领导人的整个任期内，中国对两国关系的态度秉承“大国外交”模式，该模式基于三项主要原则：① 不对抗，② 相互尊重，③ 合作共赢。然而，在过去一年中，中国政府高层权力的进一步集中，官方在国内和国际政策问题上的声音更加统一。在以中国共产党为中心的政策环境下，短期内根本性解决价值观领域分歧的领域仍然不太可能。

## 中国市场外商投资评估

根据中国国家统计局公布的最新数据，2022 年中国国内生产总值 (GDP) 实际增长 3%。尽管前景悲观，但企业对在中国市场立足、甚至是大获成功的憧憬继续激励着商业决策的制定。

中国许多地区将吸收和利用外资视为帮助当地经济复苏的方式，《2023 年中国政府工作报告》介绍了直接

## Assessment of the China market for foreign business

According to the latest figures published by the National Bureau of Statistics of China, the growth of real gross domestic product (GDP) in China amounted to 3 percent in 2022. The prospect of winning in China – and winning big – continues to motivate business decision-making, despite an otherwise pessimistic outlook.

Many regions in China eye foreign investment as a means to local economic recovery and plans to attract FDI were featured in China’s Central Government Work Report in 2023. Despite this desire to attract FDI and promises to further shorten its negative lists, however, foreign companies report market access issues and low confidence that China will continue its opening. While many members still see China as a priority market, this year saw a sharp decline in members who rank China as a top three priority, according to our 2023 BCS data. The willingness to increase investment and strategic priority is declining as China becomes merely one of many investment destinations.

Some 34 percent of members estimated that their 2022 revenue will be lower than 2021. While 2021 saw a trend toward normalization of financial expectations and general market perception, 2022 results are similar to reported performance in 2020 – when the pandemic began. According to two-thirds of members, much of 2022’s financial performance issues can be explained by intermittent regional lockdowns to control local outbreaks. The proportion of companies forecasting profitability decreased from 59 percent in 2021 to 44 percent in 2022. One-in-five members faced losses in 2022. The proportion of companies in the Tech and R&D, Resources & Industrial, and Services sectors expecting to be profitable dropped significantly.

This year, less than half of members ranked China as a top three investment priority, marking a significant shift. Nearly half of members (45 percent) reported that China’s investment environment is deteriorating, a 31-percentage point uptick from last year and the highest response rate on this answer choice in the last five years. Most members report that they are revising their investment plans for China, opting to make no additional investment or even to decrease investment overall. Uncertainty around China’s policy environment, the expectation of slower economic growth in China, and overall uncertainty in the US-China economic relationship were cited by members as the top reasons for decreasing investment.

Nearly half of respondents still report feeling “less welcome” in China, a trend that has risen by 11 percentage points since 2020. This may be related to more restrictive technology and cybersecurity-related regulations or rising tension in the US-China relationship. More than one-third of respondents reported that foreign companies are treated unfairly by

government policies and enforcement actions compared to their domestic competitors, which is a 5 percentage points increase since 2021. Additionally, for the second year in a row, uncertainty and lack of confidence rose across all sectors, as members consider whether the government is committed to further opening China’s market to foreign investment. Some 85 percent of respondents believe that innovation and R&D are important for business growth in China, increasing from last year. Members identified the top three barriers to innovation as technology decoupling, restrictive cybersecurity policy, and insufficient IP protection. There is declining sentiment and growing uncertainty about IPR enforcement across all sectors during the past five years, although over one-third of respondents reported that China’s enforcement of IPR improved in the past year. Nearly one-quarter of members say that inadequate IP protection limits investment in China, with difficulty prosecuting IP infringements and insufficient IP protection as the top two challenges.

### Top Business Challenges

In 2023, “rising tensions in US-China relations” was the leading challenge for our members for the third year in a row. This was followed by “COVID-19 prevention measures” (55 percent), “inconsistent regulatory interpretation and unclear laws and enforcement” (32 percent) and “rising labor costs” (25 percent), and “regulatory compliance risks” (25 percent).

Table 1 displays an expanded list of the top 5 challenges facing member companies in China in 2023.

**Table 1. Top 5 Challenges facing American Business in China, BCS Report 2023**

2023 BCS Rank	2023 BCS Challenge	2022 BCS Rank
1	Rising tensions in US-China relations	1
2	COVID-19 prevention measures	n/a
3	Inconsistent regulatory interpretation and unclear laws & enforcement	2
4	Rising labor costs	3
5	Regulatory compliance risks	4

### Intellectual Property and Innovation

85 percent of respondents believe that innovation and R&D are important for business growth in China, increasing from last year. Members identified the top three barriers to innovation as technology decoupling, restrictive cybersecurity policy, and insufficient IP protection. There is declining

吸引外商投资的计划。尽管中国政府抱有直接吸引外商投资的愿望，并承诺进一步压缩负面清单，但外资企业仍然认为市场准入存在问题，并且对中国将进一步开放的信心不足。虽然许多会员企业表示中国仍然是他们优先考虑的市场，但根据商会 2023 年《中国商务环境调查报告》的数据，今年将中国列为前三大优先考虑的市场的会员企业数量急剧下降。与其他一众投资目的地相比，随着中国具有的优势逐渐淡化，企业增加在华投资和将中国视为战略重点的意愿正在下降。

大约 34% 的会员企业预计其 2022 年的收入将低于 2021 年。虽然 2021 年的财务预期和总体市场认知呈正常化趋势，但 2022 年的结果与 2020 年疫情开始时的表现相似。三分之二的会员企业表示，大部分 2022 年出现的财务业绩问题都可以通过地区为了控制当地疫情采取的反复封控来解释。预测盈利的企业比例从 2021 年的 59% 下降到 2022 年的 44%。五分之一的会员企业在 2022 年没有盈利。科技与研发、资源与工业以及服务业中预计盈利的企业比例大幅下降。

今年，仅有不到一半的会员企业将中国列为前三大重点投资市场，传递了重大信号。近一半的会员企业（45%）表示，中国的投资环境正在恶化，比去年上升了 31 个百分点，达到了过去五年以来的最高点。大部分会员企业表示，他们正在调整对中国的投资计划，选择不进行额外投资，甚至减少整体投资。会员企业认为减少投资的主要原因包括中国政策环境存在不确定性、中国经济预期增长会放缓、以及中美经济关系整体存在不确定性。

近一半的受访企业仍然表示在中国感到“不受欢迎”，这一趋势自 2020 年以来上升了 11 个百分点。这可能与更严格的技术和网络安全相关法规或日益紧张的中美关系有关。超过三分之一的受访企业表示，与国内竞争对手相比，外资企业受到政府政策和执法行动的不公平对待，该比例自 2021 年以来增加了 5 个百分点。此外，由于不确定中国政府是否会在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。约 85% 的受访企业认为创新和研发对在华业务的增长十分重要，这一比例较去年有所增加。会员企业认为，创新的三大障碍分别为潜在的技术脱钩、网络安全限制政策和知识产权保护不足。在过去五年中，

所有行业对知识产权执法的悲观情绪都在进一步提升，不确定性也在增加，尽管超过三分之一的受访企业表示，中国的知识产权执法在过去一年有所改善。近四分之一的会员企业表示，知识产权保护不足限制了他们的在华投资，知识产权侵权起诉困难和知识产权保护不足构成最大挑战。

## 主要运营挑战

2023 年，“中美关系日益紧张”连续第三年成为会员企业面临的首要挑战。其次是“新冠疫情防控措施”（55%），“法律法规和执行不一致 / 不明确”（32%）和“劳动力成本增加”（25%）以及“监管合规风险”（25%）。

表1 显示了2023年会员企业在中国面临的五大挑战。

2023年排名	2023商业挑战	2022年排名
1	中美关系日益紧张	1
2	新冠疫情防控措施	/
3	法律法规和执行不一致 / 不明确	2
4	劳动力成本增加	3
5	监管合规风险	4

## 知识产权与创新

85% 的受访企业表示创新和研发对于未来在中国的发展很重要，比例较去年进一步增加。即使超过三分之一的受访企业表示，中国的知识产权执法在过去一年有所改善，但在过去五年中，行业对知识产权执法的悲观情绪都在进一步提升，不确定性也在增加。近四分之一的会员企业表示，知识产权保护不足限制了他们的在华投资，知识产权侵权起诉困难和知识产权保护不足构成最大挑战。

2023 年创新的三大障碍与前一年相同，即潜在的技术脱钩、网络安全限制政策和知识产权保护不足。关注技术脱钩的会员企业比例比去年增加了 4 个百分点，而关注知识产权保护不足和网络安全限制政策的会员企业比例分别下降了 1 个百分点和 3 个百分点。

对在华美国企业来说，知识产权保护仍然值得关注。约 72% 的受访企业表示，如果中国完善相关法规政策



sentiment and growing uncertainty about IPR enforcement across all sectors during the past five years, although over one-third of respondents reported that China's enforcement of IPR improved in the past year. Nearly one-quarter of members say that inadequate IP protection limits investment in China, with difficulty prosecuting IP infringements and insufficient IP protection as the top two challenges.

The top three barriers to innovation remained the same in 2023 as the year before: technology decoupling concerns, restrictive cybersecurity policy, and insufficient IP protection. The proportion of members concerned about decoupling increased 4 percentage points from last year, while those concerned about insufficient IP protection and the restrictions caused by cyber-security policies declined by only 1 percentage point and 3 percentage points, respectively.

Protection of intellectual property also remains a concern for US companies doing business in China. Some 72 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.

### AmCham China 2023 Policy Priorities

In 2022, the foreign business community faced twin challenges from a deteriorating US-China relationship and uncertainty stoked by pandemic-related regional lockdowns across China. These factors combined to create an uncertain policy environment for FIEs in China. Unsurprisingly, respondents in our 2023 China Business Climate Survey Report (BCS) cited "rising tensions in US-China relations" as their top challenge.

Against this backdrop, our 2023 Policy Priorities reflect the reality of a bilateral relationship characterized by competition and values-based conflict. The Policy Priorities also aim to promote the crucial engagement needed to maintain the global position of American businesses. These priorities reflect the opinions of the Chamber's diverse membership and are drawn from multiple discussions among AmCham China member companies and supported by survey analyses from our annual Business Climate Survey, White Paper, and additional Flash Surveys.

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 Policy Priorities can help to form a framework for AmCham China's longer-term engagement and goals while fostering mutually beneficial commercial relationships between China and the US.

### *Priority 1: Maintain channels for commercial engagement and meaningful exchange while separately addressing national security concerns and values-based differences where possible.*

- Success in China is vital to the long-term competitiveness of US business globally. Profits from business in China support R&D and innovation of American firms, giving them the edge to remain global leaders in their respective industries.
- The early months of 2023 saw further deterioration in US-China bilateral relations. The cancellation of high-level discussions removed an opportunity for both countries to make progress on a range of issues.
- Rising tensions between the US and China remain a top business challenge cited by members. Furthermore, three-quarters of companies report being directly impacted by the US-China relationship and 46 percent of members expect the relationship to deteriorate in 2023, up from 24 percent in 2022.
- Protecting American business activity and access to the second-largest economy in the world will help American companies maintain a strong global position and continue to contribute positively to the US economy. In order to support the global competitiveness of American brands, it is important to keep commercial lanes open for business between the US and China.
- Bilateral dialogue is an essential step given developments over the past few years and the elimination of most older forums for conversation, but any resumption should be results-oriented and substantive.
- 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 both governments. AmCham China member companies have long histories of successful and responsible work in China.
- AmCham China is available and willing to serve as a resource to both the Chinese and US governments in order to communicate the challenges and opportunities our member companies encounter.

To that end, government access for AmCham China and our member companies is essential. In this regard we recommend that:

- Both sides prioritize high level engagement to address longstanding concerns over national security, law enforcement, and values-based differences, while empowering working level officials to engage with their counterparts on less sensitive issues to widen the lines of communication available for cooperative discussions.
- Where national security concerns exist, they should be addressed directly between US and Chinese government counterparts while avoiding unnecessary impediments.

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

## 中国美国商会 2023 年政策重点

2022 年，外国商界面临着双重挑战，一方面是中美关系恶化，另一方面是中国各地因疫情封控而引发的不确定性。这些因素交织在一起，让在华外资企业处于充满不确定性的政策环境。不出所料，在商会 2023 年《商务环境调查报告》中，“中美关系日益紧张”成为受访企业在华运营的首要挑战。

在此背景下，商会 2023 年的政策重点反映了以竞争和价值观冲突为特征的双边关系。为了维持美国企业的全球地位，政策重点还旨在促进企业的关键参与。政策重点反映了商会不同会员企业的意见，并参考了商会会员企业之间的多次讨论，并得到了商会年度《商务环境调查报告》、《白皮书》和其他快速调查的结果分析的支持。

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，同时促进中美之间形成互利互惠的商业关系。

### 重点一：畅通商业参与和有效交流的渠道，尽可能解决国家安全问题和价值观差异。

- 中国市场对于美国企业长期保持全球竞争力至关重要。在中国市场获得的利润对美国企业的研发和创新提供支持，帮助企业在各自行业中保持全球领先地位。
- 2023 年初，中美双边关系进一步恶化。高层对话的取消导致两国失去了在一系列问题上取得进展的机会。
- 日益紧张的中美关系仍然是会员企业面临的头号商业挑战。此外，四分之三的受访企业表示受到中美关系的直接影响，46% 的受访企业预计中美关系将在 2023 年继续恶化，高于 2022 年的 24%。
- 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。为了维持美国品牌

的全球竞争力，畅通中美之间的商业渠道至关重要。

- 鉴于过去几年的事态发展以及大多数早期对话论坛的取消，双边对话迫在眉睫，但对话应以结果为导向，注重沟通的具体内容。
- 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，外国商界的角色不可替代。商会会员企业在中国多年的经营中取得了良好成果，同时极具责任感。
- 商会愿意为中美两国政府提供资源，以传达商会会员企业遇到的挑战和机遇。

因此，商会和会员企业与政府保持沟通至关重要。在此，商会建议：

- 两国政府应优先推动高层对话，讨论国家安全、执法和价值观差异等多个领域长期存在的问题，同时允许政府相关工作人员与同行就非敏感问题进行接触，以拓宽合作讨论的沟通渠道。
- 国家安全相关问题应由中美两国政府主管部门直接解决，避免导致无意义的商业阻碍和矛盾升级。
- 双方需要明确表达对经济安全问题的担忧，与商界进行协商，评估民营企业面临的真正问题，交流本地公司的经验。
- 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，破除旅行障碍，加快重启民间交流。

### 重点二：提高政策公开透明度和持续稳定性，保持政策在不同政府层级执行的一致性。

- 过去十年中，“法律法规和执行不一致 / 不明确”仍然是商会会员企业面临的主要挑战之一。商会 2023 年《中国商务环境调查报告》显示，“法律法规和执行不一致 / 不明确”以及“监管合规风险”仍然位列商会会员企业面临的前五大业务挑战。此外，2023 年对中国监管环境的看法越来越悲观的会员企业比 2022 年增长了 5%。提高政策透明度是推动会员企业新增投资的关键因素。
- 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国家和全球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

- Concerns around issues of economic security need to be communicated clearly on both sides, including consultation with the business community to assess the genuine issues faced by the private sector and the experiences of companies on the ground.
- The Chinese government should prioritize greater access for AmCham China and their members to address both general industry-wide challenges and also technical issues relating to normal business operations.
- Both sides should look for ways to accelerate a restart of people-to-people exchanges by continuing to remove hurdles for visa issuance and travel.

***Priority 2: Advocate for clear and consistent policies at all levels of government along with transparent policy implementation directives and intentions.***

- Inconsistent/unclear regulations and enforcement have continued to be major challenges for AmCham China members over the past decade. In our 2023-member survey, both “inconsistent regulatory interpretation and unclear laws & enforcement” and “regulatory compliance risks” remained among the top five business challenges of AmCham China members. Furthermore, members continue to report an increasingly pessimistic view of China’s regulatory environment, with a 5 percent increase between 2022 and 2023. Greater policy transparency is a critical need to drive new investment among our members.
- Companies specifically note that uneven enforcement and interpretation of new regulations is a core concern when formulating their national and global compliance strategies. When policies are vague or conflicting at a national level, localities may pursue inconsistent implementation strategies and timelines.
- Conflicting policies have also led to lackluster implementation of legislation such as the Foreign Investment Law, which was widely celebrated by the business community after it took effect in 2020. AmCham China members generally have yet to see an extension of national treatment to foreign firms in China and remain concerned about the unfair treatment impacting foreign firms.
- On the US side, long-rumored policies of outbound investment reviews continue to concern our members, for whom compliance in both jurisdictions is of the utmost importance. Timely and clearly communicated regulations will help members to plan ahead and optimize their global business strategy.

In this regard we recommend:

- Increased focus on policy communication and clear

enforcement guidelines by both the Chinese and US governments.

- Consultation with MNCs when proposing key industry regulatory changes and normalize grace periods for policies likely to drastically disrupt market operations in order to allow companies sufficient time to implement necessary changes and reduce the potential for violations.
- Focused and clear guidance from China’s central government to ensure that regional differences in enforcement and implementation timelines do not cause unnecessary disruptions for companies with a large presence in China.

***Priority 3: Expand market access for FIEs through continued efforts to address ongoing concerns such as non-tariff barriers, the negative list, procurement restrictions, and unfair treatment in favor of SOEs and domestic companies generally.***

- AmCham China has for many years highlighted the persistent challenges FIEs face in the China market including state intervention in the economy, restrictive market access policies, IP rights violations, pressure to transfer technology, and an often opaque and discriminatory regulatory environment.
- China recognizes that while FIEs account for less than 3 percent of the country’s total enterprises, they create two-fifths of China’s foreign trade, one-sixth of its tax revenue and nearly one-tenth of its urban employment.
- Some 60 percent of members highlight “market access” as the most concerning aspect of unfair treatment in the Chinese market. Members report that they would increase investment in China if they feel they had greater market access.
- Despite the gradual shortening of industries included on the annual negative lists, both implicit and explicit barriers exist for FIEs in China. While AmCham China encourages the Chinese government to continue to narrow the negative list, many companies note that barriers to entry take many forms.
- AmCham China has advocated for greater access to government procurement opportunities since China ascended to the WTO. Lack of access to government procurement opportunities more than 20 years later remains a large hurdle for foreign companies in China. While select regions allow FIEs with production facilities in China to bid on volume-based procurement contracts, companies report that local competitors have the upper hand in the final selection process. In many regions and sectors, companies have reported being told that government agencies can no longer allow an FIE to provide products.

突,就会出现各地在时间安排和执行中的巨大差异。

- 政策之间相互不一致也导致《外商投资法》等法律法规实施乏力,该法于2020年生效后受到商界的热烈欢迎。商会会员企业普遍尚未看到将国民待遇扩大到在华外资企业,并仍然担心外资企业受到不公平待遇。
- 美国方面,传闻已久的境外投资审查政策持续令商会会员企业感到担忧,对企业来说,在两边司法管辖区保持合规至关重要。法律法规及时和明确的传达有助于会员企业提前计划并优化其全球经营战略。

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,避免违规风险。
- 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:继续致力于解决长期存在的问题,包括非关税壁垒、负面清单、采购限制以及有利于国有企业和内资企业的不公平待遇等,扩大外资企业的市场准入。**

- 多年来,商会一直强调外资企业在中国市场长期面临的挑战,包括国家干预经济、市场准入限制政策、知识产权侵犯、技术转让压力以及普遍不透明和歧视性的监管环境。
- 中国认识到,虽然外资企业占全国企业总数的不到3%,但它们创造了中国五分之二的外贸、六分之一的税收和近十分之一的城市就业。
- 约60%的会员企业强调“市场准入”是中国市场不公平待遇最令人担忧的方面。会员企业表示,如果中国政府能够扩大市场准入,他们将增加在中国的投资。
- 尽管列入年度负面清单的行业逐渐减少,但中国外资企业仍然面临隐性或显性壁垒。虽然商会鼓励中国政府继续压缩负面清单,但许多企业表示,除了负面清单外,市场准入壁垒存在多种形式,包括限制企业参与标准制定、公平参与政府采购。
- 自加入世贸组织以来,商会一直倡导扩大政府采购

机会。20多年后,缺乏政府采购机会仍然是外资企业在中国的一大障碍。虽然部分地区允许在中国拥有生产设施的外资企业竞标基于数量的采购合同,但会员企业表示,当地竞争对手在最终选择过程中仍占上风。在许多地区和行业,会员企业被告知政府机构不再允许外资企业提供产品。

为此,商会建议:

- 中国政府应确保任何市场准入承诺都基于一个原则,即无论内资还是外资,为行业内的所有企业提供公平的竞争环境。中国政府应放弃通过隐晦、未公布或内部的指令,用国内制造提供的产品/服务取代美国或其他外国制造提供的产品/服务。
- 对于新兴行业,中国政府应向外资企业平等开放市场,而避免要求企业以安全或规范流程为幌子与当地企业或市场监管机构分享知识产权。
- 中国政府应做出承诺进行有效改革,包括明确基准和时间表以及集中监督,以确保中国法律和监管架构的不断更新以及法律法规的公正实施。同样,中国政府也应当优先考虑协调各部委,确保一致的政策制定、实施和执行。
- 应当取消中国市场歧视外资企业或其产品和服务、优待内资企业的法律法规、执法活动、审批程序、采购优惠和其他要求。
- 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。

In this regard we recommend:

- The Chinese government ensure that any market access commitments are accompanied by actions that guarantee a level playing field for all firms within those industries, regardless of the nationality of their shareholders. The Chinese government should abandon the use of implicit, unpublished, or internal guidance to replace US or other foreign-made products/services with domestically made equivalents.
- The Chinese government open its markets to FIEs on equal terms in emerging sectors without requiring companies to share their IP with local firms or market regulators under the guise of safety or standard operating procedures.
- The Chinese government make commitments to meaningful reform include clear benchmarks, timelines, and intensive monitoring to ensure lasting changes to China's legal and regulatory architectures and impartial implementation of laws and regulations. Similarly, coordinated and consistent policy development, implementation, and enforcement between Chinese government ministries must be prioritized.
- Laws and regulations, enforcement activities, approval processes, procurement preferences, and other requirements that treat FIEs or their products and services less favorably than domestic firms in the China market be eliminated.
- The US and Chinese governments adhere to globally accepted trading rules, support and strengthen the existing multilateral trade regime, and avoid protectionist tendencies.

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3. US Department of State, "The administration's approach to the people's republic of China", link: <https://www.state.gov/the-administrations-approach-to-the-peoples-republic-of-china/#:~:text=To%20succeed%20in%20this%20decision,%2C%20our%20innovation%2C%20our%20democracy>
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## 2023 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 2023 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 2022 *White Paper*. The final column indicates each chapter’s priority recommendation for 2023.

Chapter	2022 Recommendation	Progress Score	2023 Recommendation
<b>Agriculture</b>			
<i>Chinese Government</i>	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.	Low Progress	Accelerate innovation and further improve a fair business environment in Chinese 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	After the completion of 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.
<b>Automotive Industry</b>			
<i>Chinese Government</i>	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.	Low Progress	Optimize policies, laws, and regulations related to electric, intelligent, and connected industries. Streamline policies and increase transparency and predictability for industry.
<b>Banking and Capital Markets</b>			
<i>Chinese Government</i>			
<i>Commercial Banking</i>	Allow foreign FIs to act as lead underwriters for corporate bonds.	Low Progress	Allow foreign FIs to act as lead underwriters for corporate bonds.
<i>Asset Management</i>	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.	N/A	Consider re-aligning liability standard to better reflect the practical and commercial reality. The suitability framework should evolve towards a holistic suitability approach.
<i>Custody Service</i>	Approve qualified foreign fund services providers and allow them to provide fund accounting (FA) and transfer agency (TA) services in the China market.	Low Progress	Approve qualified foreign fund services providers and allow them to provide fund accounting (FA) and transfer agency (TA) services in the China market.
<i>Securities</i>	Allow more foreign onshore securities companies to participate in A-share primary deals.	Moderate Progress	Ease restrictions on multinational company’s spin-off listing, red-chip companies’ listing, IPO secondary offering, as well as IPO pricing and placement.

## 2023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2023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2022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2023年白皮书中每章的重点建议。

章节	2022年白皮书主要建议	进展评价	2023年白皮书主要建议
<b>农业</b>			
中国政府	通过进一步开放小麦、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的外商投资，加快创新，进一步改善中国农业领域的公平商业环境。	进展缓慢	通过进一步开放小麦、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的外商投资，加快创新，进一步改善中国农业领域的公平商业环境。
美国政府	在第一阶段协议形成的势头基础上，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。	进展缓慢	第一阶段协议完成后，加强与中国政府的沟通，探索合作空间，降低中国商品关税，恢复中美双边贸易正常化。
<b>汽车制造业</b>			
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，即将车辆监控数据直接接入国家和地方平台。	进展缓慢	完善电动化、智能化、互联化产业相关政策法规。简化政策并提高行业的透明度和可预测性。
<b>银行和资本市场</b>			
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	允许外资金融机构担任公司债券的主承销商。
资产管理	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。	N/A	根据实际情况调整负债标准，适当性框架应向整体适当性发展。
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。	进展缓慢	批准合格的外国基金服务供应商在中国市场提供基金会计（FA）和过户代理（TA）服务。
证券	允许更多外资在岸证券公司参与A股一级交易。	有所进展	对跨国公司分拆上市、红筹公司上市、IPO二次发行以及IPO定价和配售流程放款限制。
债券和衍生工具	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	N/A	在中国监管机构的管理下，允许上海自贸区（FTZ）的企业在自由贸易账户下通过芝加哥期货交易所（CBOT）进行对冲交易。



Chapter	2022 Recommendation	Progress Score	2023 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.	N/A	Increase accessibility of futures products for international investors and permit foreign futures brokers to participate in the overseas intermediary structure.
<i>Credit Rating</i>	<i>No recommendation offered in 2022.</i>	High Progress	Recognize the correlation between adjustment rate and the grade, i.e., the higher the grade, the stronger the stability of ratings, and the lower grade, the greater frequency of rating adjustments.
<i>Cybersecurity and Cross-Border Data Flows</i>	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.	Moderate Progress	Extend the 6-month adjustment period for <i>Measures for the Security Assessment of Outbound Data Transfer</i> .
<i>ESG Investing</i>		N/A	China's ESG investment has received a significant boost since the announcement of the 2030/2060 dual carbon target, with encouraging policies from regulators and active participations from both financial institutions and companies continuing to implement and rise.
<b>Civil Aviation</b>			
<i>Chinese Government</i>	<i>No recommendation included in 2022.</i>	N/A	Implement policies and procedures to increase efficiency of airspace and airport operations including implementation of 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 while optimizing hub airport design to better integrate air and ground systems to enhance runway and taxiway operational efficiency; we also recommend further relaxation or elimination of the "freighter window to provide welcome market relief."
<b>Civil Society</b>			
<i>Chinese Government</i>	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.	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.
<b>Competition Law</b>			
<i>Chinese Government</i>	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	Moderate Progress	Focus on authentic competition issues. Treat Chinese firms and their foreign competitors fairly and refrain from injecting concerns on industrial policies, investment policies, and/or trade policies into AML enforcement. Coordinate the respective jurisdiction and enforcement of the AML and rules regarding national security review, such as the <i>Measures for the Security Review of Foreign Investments</i> .

章节	2022年白皮书主要建议	进展评价	2023年白皮书主要建议
信用评级	2022年白皮书对该领域不提供建议。	进展明显	重视信用评级调整率与其等级之间的关联性：等级越高，评级稳定性越强；等级越低，评级调整频率越高。
网络安全	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。	有所进展	延长《数据出境安全评估办法》的6个月调整期。
ESG投资		N/A	自2030年和2060年“双碳”目标宣布以来，中国的ESG投资快速发展，监管机构的鼓励政策得到落实，金融机构和企业的积极性和参与度不断上升。
<b>民用航空</b>			
中国政府	2022年白皮书对该领域不提供建议。	N/A	出台相关政策和程序以提高空域和机场的运营效率，参照国际规范和最佳实践，对国内外承运商实施透明的机位分配程序，以确保快速恢复交通流量，推动未来增长；优化枢纽机场设计，整合空中和地面系统，提高跑道和滑行道的运营效率；进一步放宽或取消“货运窗口，缓解市场压力”。
<b>民间团体</b>			
中国政府	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。充满活力的国内民间团体将为境外非政府组织提供良好伙伴。	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。充满活力的国内民间团体将为境外非政府组织提供良好伙伴。
<b>竞争法规</b>			
中国政府	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。	有所进展	重视真正的竞争问题。公正对待本国企业与其外国竞争对手，避免产业政策利益、投资政策、贸易政策等混入《反垄断法》的执行，协调好《反垄断法》与国家安全审查规则（例如：《外商投资安全审查办法》）各自的管辖与执行。

Chapter	2022 Recommendation	Progress Score	2023 Recommendation
<b>Compliance</b>			
<i>Chinese Government</i>	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.	<b>Moderate Progress</b>	Foreign enterprises operating in China sometimes encounter situations where they believe that they have been unfairly treated due to internal government policies that guide enforcement of compliance with laws and regulations. Most US companies operating in mainland China emphasize corporate compliance and have invested significant resources in ensuring compliance with applicable laws and regulations. This emphasis on compliance often puts US companies at a disadvantage by comparison with their competitors. In order to attract US investment, the regulatory environment needs to be consistent and transparent with all companies operating on a level playing field.
<i>US Government</i>	Participating in bilateral conversations, deepening exchanges, supporting implementation of transparent and predictable regulatory institutions and reaching consensus in compliance policies and goals.	<b>N/A</b>	Continuing to cooperate with China at international forums addressing climate change, anti-corruption, global alignment of standards and other functional issues.
<i>For both Governments</i>	<i>Not provided in 2022</i>	<b>N/A</b>	Resuming bilateral conversations, deepening exchanges, supporting transparent and predictable regulatory institutions and reaching consensus on compliance policies and goals.
<b>Customs and Trade</b>			
<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 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.	<b>Moderate Progress</b>	To facilitate smoother and more stable information exchange between enterprises and Customs, it is recommended that Customs provide more tools for enterprises to use. For instance, we suggest that the Customs system support enterprise authentication of the customer's 18-digit unified social credit code.
<b>Direct Sales</b>			
<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.	<b>Low Progress</b>	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.
<b>Education</b>			
<i>Chinese Government</i>	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.	<b>High Progress</b>	We believe that private schools provide greater autonomy and that numerous pilot programs and educational reforms are initiated in private schools. It is also essential to recognize that economic growth and the improvement of people's standard of living generate diverse education demands. Therefore, we recommend that the Chinese government impose appropriately different implementing policies for non-public schools.
<i>US Government</i>	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.	<b>Low Progress</b>	To address current challenges, it is crucial for student visa policies for Chinese students to be clear and transparent. We recommend that Education USA and embassy consular officers increase their outreach efforts to potential students and their families. Domestic and international political issues have resulted in mixed messages, and it is important to reassure students and their families that they are welcome to study in the United States. Additionally, qualified graduates should be reassured that employment opportunities and visas will be available to them.

章节	2022年白皮书主要建议	进展评价	2023年白皮书主要建议
<b>合 规</b>			
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。	有所进展	在中国经营的外商投资企业有时会遇到这样的情况：他们认为，会因政府内部引导企业遵守法律法规的政策而受到不公平的对待。大多数在中国境内经营的美国公司都侧重于公司合规，并在遵守适用的法律法规方面投入了大量资源。与竞争对手相比，这种对合规性的侧重往往使美国公司处于劣势。为了吸引美国公司投资，需要营造对所有在公平竞争环境中运营的公司保持一致和透明的监管环境。
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。	N/A	恢复与中华人民共和国政府的双边对话，深化交流互鉴，支持建设透明和可预测的监管机构，并就合规政策和目标达成共识。
双边政府		N/A	继续与中国在应对气候变化、反腐败、全球标准统一和其他非政治性问题相关的国际论坛中合作。
<b>海 关</b>			
中国政府	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	目前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顺畅。建议海关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，针对客户18位统一社会信用代码，建议海关系统向企业开放调用认证权限。
<b>直 销</b>			
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。
<b>教 育</b>			
中国政府	就对外国人员来华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。	进展明显	我们认为，更多的自主性是私立学校的优势之一。许多试点项目与教育改革都是在私立学校开启。同样还需要认识到的是，随着经济发展，人民生活水平提高，教育需求也变得多样化。中国美国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。
美国政府	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。	进展缓慢	考虑到当前面临的挑战，针对中国留学生的学生签证政策应清晰明确，同时我们也建议“留学美国（Education USA）”以及使领馆官员可以加大对潜在学生及其家庭的宣传力度。国内外政治问题导致信息混杂。我们应让学生及其家庭相信，他们在美国学习是受欢迎的。此外，还要让他们了解，合格的毕业生将获得留美就业机会及留美必需的签证。

Chapter	2022 Recommendation	Progress Score	2023 Recommendation
<b>Energy</b>			
<i>Chinese Government</i>	Ensure fair competition between foreign-funded enterprises and domestic enterprises and avoid local protectionism in energy bidding.	Moderate Progress	Ensure fair competition between foreign-funded enterprises and domestic enterprises and avoid local protectionism in energy bidding.
<i>Both Governments</i>	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.	N/A	Establish and launch relevant mechanisms involving Chinese and American enterprises, and strengthen policy, technical exchanges and cooperation between two countries in addressing climate change and developing clean energy
<b>Environment</b>			
<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	This chapter was not provided in 2023.
<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	This chapter was not provided in 2023.
<b>Express Delivery</b>			
<i>Chinese Government</i>	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.	Low Progress	AmCham recommends that relevant departments should make public announcements in advance before major policies and regulations come into effect, and consult with all parties in the industry, including foreign-invested enterprises, to ensure the access to industry-related information. It is recommended that the regulatory requirements be consolidated, simplified, and unified to ensure regulatory uniformity. When major policies and standards are released, a grace period is suggested to be given to enterprises with policy interpretation and compliance guidance so that they can gear up for compliance.
<b>Food and Beverage</b>			
<i>Chinese Government</i>	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.	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 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.	Moderate Progress	Strengthen exchange 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.

章节	2022年白皮书主要建议	进展评价	2023年白皮书主要建议
<b>能源</b>			
中国政府	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。	有所进展	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。
双边政府	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。	N/A	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。
<b>环境</b>			
中国政府	为企业环保合规制定国家指导方针，并在网上公示，供企业和监管机构查阅。商会建议监管方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	2023年未提供建议。
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	2023年未提供建议。
<b>快递服务</b>			
中国政府	商会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。	进展缓慢	建议相关部门在重大政策法规正式生效实施前应提前进行公示，充分听取包括外资企业在内的行业各方意见及建议，确保外资企业在内的所有企业都能拥有行业相关信息的获取渠道。建议归并简化并统一各项监管要求，保证监管统一性。在重大政策标准发布时，建议视具体情况给予企业一定的准备期以便于企业做好充分准备，并给予企业具体的政策解读与合规指导。
<b>食品、饮料与零售业</b>			
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	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。	有所进展	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。

Chapter	2022 Recommendation	Progress Score	2023 Recommendation
<b>Government Procurement</b>			
<i>Chinese Government</i>	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.	<b>Low Progress</b>	<p>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 2023. AmCham China urges the Government to work with the GPA parties to address these deficiencies and other improvements:</p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> <li>• 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.</li> </ul>
<i>US Government</i>	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.	<b>Low Progress</b>	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 2023.
<b>Healthcare</b>			
<i>Please see the chapter for specific recommendations.</i>			
<b>High-Tech Trade Promotion and Export Controls</b>			
<i>Chinese Government</i>	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.	<b>Low Progress</b>	Engage with the U.S. Government and U.S. and Chinese companies to address military-civil fusion issues and help companies develop criteria for compliance programs to ensure civil end-use to reinvigorate U.S.-China high-tech trade.
<i>US Government</i>	Ensure that the licensing authorities have sufficient resources to process license applications given changes in US policy.	<b>Low Progress</b>	Work with other governments to impose multi-lateral controls instead of imposing unilateral US controls that are ineffective in achieving national security and foreign policy goals. Where controls remain unilateral, reconsider the effectiveness of such controls, and remove those controls that are not meeting US policy goals.

章节	2022年白皮书主要建议	进展评价	2023年白皮书主要建议
<b>政府采购</b>			
中国政府	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。	进展缓慢	<p>商会敦请中国政府处理未决问题和《政府采购协定》参加方提出的要求，争取2023年完成加入《政府采购协定》。商会促请政府与《政府采购协定》参加方一道，解决这些不足和其他改进措施：</p> <ul style="list-style-type: none"> <li>• 中国应撤回其提出的为期一年的过度门槛，取消对国内比例要求、技术转让、和其他补偿交易的保留，并鉴于其经济发展程度，应撤销其主张自身作为发展中国家而获得的过渡措施。</li> <li>• 新改进的《政府采购协定》出价应包含出于行政目的而定期进行采购的大型国有企业（包括电力公司），即不以商业销售或转售为目的，或不用于生产或供应以商业销售或转售为目的的产品或服务的国企。并且，商会建议政府通过以下方式阐明自身对国有企业的立场。首先，发布明确的行政条例，确认国有企业采购仅基于商业考量，而不属于政府采购。这样的条例符合中国在《加入世界贸易组织工作组报告书》中，有关国有企业商业独立性的承诺。其次，中国可扩大其《政府采购协定》范围，将参与行政目的采购的大型国有企业也纳入其中。</li> <li>• 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。</li> </ul>
美国政府	商会建议与欧盟和其他《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2022年加入《政府采购协定》。	进展缓慢	商会建议与欧盟和其他《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2023年加入《政府采购协定》。
<b>医疗卫生</b>			
有关具体建议，请参阅章节内容。			
<b>高科技贸易促进和出口管制</b>			
中国政府	加强同美方和有关企业的沟通，推进未完成的最终用途访问，以便在最终用途访问成功后，将受影响的中国公司从未经验证的名单中删除，并在之后颁发许可证。	进展缓慢	与美国政府和美国及中国公司合作，解决军民融合问题，并帮助公司制定合规计划的标准，确认民用最终用途，以重振美中高科技贸易。
美国政府	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。	进展缓慢	与其他国家政府合作，实施多边管制，而不是实施美国的单边管制，因为这些管制对实现国家安全和外交政策目标是无效的。如果管制仍然是单边的，应重新考虑这种管制的有效性，并取消那些不能实现美国政策目标的管制。
对两国政府	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实体加强其合规工作，以确保它们不会触犯两国的出口管制法规。	进展缓慢	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两国的出口管制法规。



Chapter	2022 Recommendation	Progress Score	2023 Recommendation
<i>Both Governments</i>	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.	Low Progress	AmCham China encourages greater efforts by both governments to assist U.S. and Chinese entities to strengthen their compliance efforts through education and training activity to ensure they do not run afoul of applicable export control laws and regulations.
<b>Human Resources</b>			
<i>Chinese Government</i>	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.	Moderate Progress	Extend the current tax-deductible items and relief measures for foreign nationals in China beyond their scheduled expiration at the end of 2023. We also suggest extending the current special tax calculation rate for annual bonuses and equity, which applies to both Chinese and foreign nationals. These new measures will likely prevent multinational companies from being discouraged from sending senior management to work in China.
<b>Information and Communications Technology and Cybersecurity</b>			
<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	<p>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:</p> <ul style="list-style-type: none"> <li>• The implementing regulations for the CSL should not go beyond the scope of the CSL as stated within its original text.</li> <li>• (Already addressed in CII decree) The cyber-security review should not be based on a company's country of origin or nationality of the company's shareholders. Clear standards and transparent criteria are needed for companies to measure their ability to comply with regulatory requirements.</li> <li>• Remove intrusive system scanning and pen-testing in cybersecurity inspection and recognize company-led testing results.</li> </ul>
<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 of international standards and ethical frameworks in China.	Low Progress	Design policies from a strategic perspective out of America's long-term interest, instead of being driven by politics; fully engage the business community in policymaking process.
<b>Insurance</b>			
<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 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.	Low Progress	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.
<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.

章节	2022年白皮书主要建议	进展评价	2023年白皮书主要建议
<b>人力资源</b>			
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，使其超过2021年底的预定期限。并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	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。
<b>信息和通讯技术以及网络安全</b>			
中国政府	《网络安全法》的内容需要加以界定和明确。商会敦促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	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： <ul style="list-style-type: none"> <li>• 《网络安全法》的任何实施条例都不应超出法律原文范围。</li> <li>• (已在关键信息基础设施相关法令中得以解决)网络安全审查不应基于公司的来源国或公司股东的国籍。企业需要清晰透明的标准来衡量其遵守监管要求自身守法的能力。</li> <li>• 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要求，并认可公司主导的检测结果。</li> </ul>
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	以美国的长期利益而非政治驱动为出发点，战略性地设计政策；让企业界充分参与政策制定过程。
<b>保 险</b>			
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。
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。

Chapter	2022 Recommendation	Progress Score	2023 Recommendation
<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.
<b>Intellectual Property Rights</b>			
<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.
<b>Investment Policy</b>			
<i>Chinese Government</i>	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.	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.
<b>Legal Services</b>			
<i>Chinese Government</i>	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.	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 (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.	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 White Papers for many years, but foreign firms now face the prospect of even tighter restrictions than before.
<b>Machinery and Manufacturing</b>			
<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	In the past few years, US manufactures in China witnessed severe power shortages especially in Summer, which led to disruption of power supply. We would like to see the Chinese government taking concrete measures to ensure stable power supply. As we are committed to the dual carbon target, we would also hope the Chinese government can enhance our access to green power such as wind and solar.
<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	

章节	2022年白皮书主要建议	进展评价	2023年白皮书主要建议
<b>知识产权</b>			
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	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处罚金额。
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	分享美国联邦和州《商业秘密法》的实践经验和国家商业秘密战略。
<b>投资政策</b>			
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。	有所进展	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。
<b>法律服务</b>			
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。
<b>机械制造业</b>			
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	在过去的几年里，美国的在华制造商目睹了严重的电力短缺，特别是在夏季，这导致了电力供应的中断。商会希望看到中国政府采取具体措施，确保电力的稳定供应。由于商会致力于实现双碳目标，商会也希望中国政府能够加强商会会员企业对风能和太阳能等绿色能源的利用。
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	

Chapter	2022 Recommendation	Progress Score	2023 Recommendation
<b>Media and Entertainment</b>			
<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, increase 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>		N/A	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.
<b>Northeast China</b>			
<i>Liaoning Government</i>	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.	N/A	Foreign entities in second tier cities of Northeast China have difficulty sustaining relations, leading to reduced innovation and economic progress. One solution could be increasing official cooperation with organizations such as AmCham China or creating government-sponsored organizations focused on international business, similar to Beijing's IBLAC. Furthermore, local governments could allow for vetted foreign nationals of good standing, such as green card holders, to join as international advisors in local government level organizations such as CPPCC.
<b>Real Estate</b>			
<i>Chinese Government</i>	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.	Moderate Progress	Great progress has been achieved in the green building development, supported by foundational policies such as the national carbon reduction targets. Yet, a lot more can still be done in reshaping the underlying value systems and sales mechanisms. The government should continue to support the new renewed focus on the vitality of the projects.
<b>Retail &amp; E-Commerce</b>			
<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.	Low 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.
<b>Shanghai</b>			
<i>Shanghai Government</i>	Provide more briefings and consultations with the foreign business community on draft regulations connected to the implementation of Shanghai's 14th Five-Year Plan.	Moderate Progress	Provide more talent incentives such as rental and home purchase subsidies.
<b>Southwest China</b>			
<i>Sichuan and Chongqing Governments</i>	<i>No chapter provided in 2022.</i>	N/A	<i>No recommendations provided in the 2023 Chapter.</i>

章节	2022年白皮书主要建议	进展评价	2023年白皮书主要建议
<b>媒体和娱乐业</b>			
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。	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		N/A	与中国展开合作，审查美国公司在中国媒体和娱乐行业面临的投资限制，为美国公司提供更大的市场准入。
<b>东北地区</b>			
辽宁省政府	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。	N/A	中国东北地区的二线城市往往难以维持其与外资企业的关系，导致创新不足、经济停滞。一个解决方案是，当地政府加强与诸如中国美国商会等组织的合作，或者创建由政府赞助的国际商业组织，类似于北京的IBLAC。此外，地方政府可允许通过审查的外国公民，如绿卡持有者，作为国际顾问加入地方政府层面的组织，比如政协。
<b>房地产</b>			
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，允许中国从国际最佳实践中获益。	有所进展	在国家碳减排目标等基础政策的支持下，绿色建筑的发展成效显著。然而，在重塑基本的价值体系和销售机制方面还有很长的路要走。政府应该继续支持那些重新重视项目活力和高质量发展的新举措。
<b>零售和电子商务</b>			
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。	进展缓慢	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。
<b>上海</b>			
上海市政府	就上海市在“十四五”规划期间的有关规定草案，向外商提供更多的情况宣讲和咨询。	有所进展	提供更多的人才激励措施，如租金和购房补贴。
<b>中国西南</b>			
四川、重庆政府	2022年未提供建议。	N/A	2023年章节中未提供任何建议。

Chapter	2022 Recommendation	Progress Score	2023 Recommendation
<b>Standards and Conformity Assessment</b>			
<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.	<b>Low Progress</b>	<i>No chapter in the 2023 White Paper.</i>
<b>Tax Policy</b>			
<i>Chinese Government</i>	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.)	<b>Low-to-Moderate Progress</b>	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.)
<b>Tianjin</b>			
<i>Tianjin Government</i>	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.	<b>Moderate Progress</b>	Quickly restore 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 quickly as possible. We would like to recommend that the Tianjin government set up special return processes and procedures to facilitate this return movement and make the experience easy and pleasurable.
<b>Visa Policy</b>			
<i>Chinese Government</i>	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	<b>High Progress</b>	Grant multiple entries Chinese business (M) or reunion (Q) visa with 6- or 12-months validation term.
<b>Work Safety</b>			
<i>Chinese Government</i>	Continue to 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.	<b>Low Progress</b>	Continue to 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.
<b>Central China/Wuhan</b>			
<i>Wuhan, Hubei, and other Central China Provincial Governments</i>	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.	<b>N/A</b>	AmCham recommends incentivizing foreign health care providers to set up an international hospital in Wuhan and/or recruit more foreign medical professionals to Wuhan hospitals as well as establish a network of English translators available 24/7.
<i>US Government</i>	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.	<b>Low</b>	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	2022年白皮书主要建议	进展评价	2023年白皮书主要建议
<b>标准、合格评定</b>			
中国政府	中国标准 2035 研究计划应向广大公众、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	2023 年白皮书中没有章节。
<b>税收政策</b>			
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。	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。
<b>天津</b>			
天津市政府	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。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。	有所进展	迅速恢复正常签证服务和签证处理服务 / 为美国和中国公民提供办事渠道。首要的是允许外国人入境，特别是其家人能尽快返津团聚。商会建议天津市政府通过开通特殊回国程序，协助外商顺利返津。
<b>签证政策</b>			
中国政府	按照新冠肺炎前的规范，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人可以出入中国，有利于确保当地企业的正常经营。	进展明显	签发半年多次或一年多次的商务（M）签证和探亲（Q）签证。
<b>安全生产与应急管理</b>			
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。	进展缓慢	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。
<b>武汉</b>			
湖北省和武汉市政府	美国商会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。	N/A	商会建议鼓励外国医疗机构在武汉设立国际医院和 / 或为武汉医院引进更多的外籍医疗专业人员，并建立全天候的英语翻译网络。
美国政府	在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。	进展缓慢	可能的话，与中国就具有全球意义的领域进行接触时采取更加合作的姿态。恢复正常的签证处理服务，避免交流中的针锋相对，降低对中国商品的关税和 / 或提供更多的关税豁免，缩小出口管制的范围，重新开启民间交流，并启动第二阶段贸易正式谈判。





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

## Civil Society

Non-profit organizations, including non-governmental organizations (NGOs), play important roles in civil society in many countries around the world. In the United States even local affiliates of foreign NGOs make important contributions to supporting research, building civil society, and aiding disadvantaged segments of society. AmCham member NGOs seek to do the same in China alongside their domestic counterparts but report that they are increasingly handicapped in doing so by tightened enforcement of the *Overseas NGO Law*.

### 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 ❶ providing an independent source of accountability and expertise for businesses and governments; and ❷ 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 response to COVID-19, providing facemasks, sanitizers, water, and food supplies to marginalized communities as well as addressing deep social issues like inequality and gender-based violence exacerbated by the pandemic. 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 accompanying 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. The *Law on the Management of Overseas NGO Activities Within Mainland China (Overseas NGO Law)*, effective January 2017, continues to impact civil society. The issues that AmCham China has highlighted in past White Papers remain substantial. 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* took force have succeeded in navigating the burdensome new registration and reporting processes 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 and delays in fulfilling 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 in 2022, multiple NGOs are concerned about an increasingly strict regulatory 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 public security bureaus to develop inconsistent and informal interpretations of the law. While variation still exists in treatment of NGOs, especially in such areas 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

# 民间团体

非营利组织，包括非政府组织（NGO），在世界许多国家的公民社会中发挥着重要作用。在美国，外国非政府组织在当地分支机构为支持研究、建设公民社会和帮助社会弱势群体做出了重要贡献。中国美国商会（以下简称商会）会员中的非政府组织寻求与其国内同行一起在中国做同样的事情，但报告称，由于《境外非政府组织境内活动管理法》的执法力度越来越大，他们在这样做时遇到的障碍越来越大。

## 引言

一个充满活力的非营利部门有助于中国应对更广泛的可持续发展挑战，长期造福于中国人民。社会组织、非营利组织、政府间组织和非政府组织在促进可持续商业实践方面起到了至关重要的作用：① 为企业和政府提供独立的责任担当方和专业知识；② 与当地社区的企业和政府合作，为实施可持续发展和社区参与行动提供支持。

这些组织还提供了各方面的支持，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。世界各地的民间社会组织在全球新冠抗疫工作中发挥了重要作用，为社会边缘群体提供了口罩、消毒剂、水和食品供应，并解决了因疫情而加剧的不平等和性别暴力等深层次社会问题。中国的民间团体在疫情初期的应对工作组织和随后经济复苏的成功做出了重大贡献。民间组织将继续在全球面临像奥密克戎病毒变异株这样的新障碍时发挥重大作用。

美国和许多其他拥有稳固公民社会悠久历史的国家都拥有十分活跃的非政府组织部门，这些部门为了解决地方和国家问题，与公私部门实体展开了有效合作。鉴

于中国快速发展而产生的各种经济、社会和环境挑战，公民社会能够且切实推动中国的可持续发展。

## 境外非政府组织在中国的运营背景

过去的一年里，中国的境外非政府组织保持了相对稳定的运营状况。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》（《境外非政府组织境内活动管理法》）继续对公民社会带来影响。中国美国商会在以往的《白皮书》中强调的问题依然十分重要。在近万家获中国全国人大认可运营的境外非政府组织中，只有一小部分在《境外非政府组织境内活动管理法》生效之前成功地完成了在中国开展项目或捐赠所需的繁琐的新注册和报告程序。那些通过注册代表处或经由取得临时活动许可证而获得经营许可的组织还要继续花费大量履行报告所需的行政支出。某些非政府组织还因公安部门要求其就自身行动情况提交详细的口头报告而受挫。尽管今年正式监管框架相对稳定，但多个非政府组织均表示担心中国政府工作人员越发频繁的审查和询问将导致环境越来越严峻。

同时，《境外非政府组织境内活动管理法》在各地的落实情况变得更为统一。由于中国公安部在最初颁布政策时并未阐明相关定义，也并未出台实施细则，各省公安厅对该法的解读并不一致也未成文。虽然非政府组织在银行等领域方面的待遇仍然存在差异，但经注册的非政府组织在监管方面受到的桎梏渐消。一些非政府组织表示，中国公安部在去年里为各组织提供了更为详尽的政策解释，并举办了相关信息培训班，以便各组织能更好地遵守《境外非政府组织境内活动管理法》。但是，由于合法指定的政府主办单位（业务主管单位，即PSU）不多，许多希望在中国注册的境外非政府组织仍然无法如愿。那些被指定为业务主管单位的机构甚至不愿意承担非政府组织的主管义务，并拒绝与感兴趣的境外各组织进行会面。

designated government sponsors (Professional Supervisory Units or PSUs). Even entities 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 in China in 2021 and MPS has yet to release data for 2022. The lack of domestic partners makes it challenging for philanthropic overseas NGOs to operate in China. Additionally, a number of foundations 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 impacted the vibrancy of civil society in Hong Kong. Our analysis based on publicly available data from the MPS estimates that 101 NGOs operating in China in 2022 were headquartered in Hong Kong. While the 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, reducing China's influence among NGOs, 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 (based on publicly available data from the MPS) estimates that as of January 2022, overseas NGOs had registered a total of 682 representative offices in mainland China, a slight increase from the previous year. These include 153 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 49 representative offices newly registered in 2022 compared to 55 in 2021. Seven of the newly registered NGOs are from the US, most of which are education or health-related. To put the numbers in context, the US State Department 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, 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, 16 organizations chose to delist their representative offices in 2022. This is a notable increase from the 13 organizations that delisted offices in 2021, demonstrating the impact of ongoing regulatory challenges.

During 2022, overseas NGOs obtained or renewed 661 TAPs, 33 of which were issued to NGOs originating from the US. This was a further reduction from 1,022 TAPs obtained or renewed in 2019, 804 in 2020 and 742 in 2021.

Restrictions related to COVID-19 likely contributed to lower levels of overseas NGO activity in 2022, reflected in the continued decline in TAPs and increase in newly delisted 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.

In 2020, the COVID-19 situation created opportunities for civil society to support the pandemic response in China. Over 500 overseas NGOs registered TAPs to conduct

**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
2022	682	153	16

Source: Asia Society China NGO Project & MPS NGO Portal

由于国内对非政府组织的限制，一些外国基金会被劝阻并被赶出中国市场。中国去年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，境外非政府慈善组织的运营相当有难度。此外，有基金会认为监管环境障碍重重且令人费解，已停止向中国国内非政府组织提供资助；而其他境外非政府组织也出于同样的原因停止与中国伙伴组织的来往。此外，全国人大于2020年6月通过的《中华人民共和国香港特别行政区维护国家安全法》对香港公民社会的活跃产生了不少影响。据亚洲协会的“中国非政府组织项目”估计，2021年有100个在中国开展业务的非政府组织将总部设在香港。虽然这一总数在2021年保持稳定，但总部设在香港的公民社会对“在《香港国安法》的广泛授权之下，为维护国家安全而进行资助活动或处以罚款”的做法感到担忧。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撤离。总体而言，境外公民社会与中国同行之间的合作已日渐减少，由于缺乏衡量此类信息的衡量标准，尚不清楚具体数据。

“中国非政府组织项目”对中国境外非政府组织状况的分析（使用公安部的公开数据）估计，截至2022年1月，境外非政府组织在中国内地一共注册了682个代表处，较去年略有增加。其中有153个代表处由总部设在美国的组织注册，高于任何其他国家或地区。2021年，一反自2017年以来的持续下降趋势，各组织注册新代表处的步伐略有加快，注册数量达55个，而2020年该数字为49个。然而，与2017年新注册的286个代表处相比，降幅仍然十分明显。根据美国国务院提供的数字，美国估计有150万个注册的非政府组织。

**表1：中国内地的境外非政府组织**

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
2022	682	153	16

资料来源：亚洲协会“中国非政府组织项目”和MPS非政府组织门户网站

到2022年，代表处名册中大部分仍为境外商会、贸易促进组织和行业协会，所占比例超过50%。自《境外非政府组织境内活动管理法》实施以来，有16个已成功在中国注册代表处的组织选择在2022年注销其代表处。与2021年有13个组织注销其代表处相比，直接反映了监管环境变化带来的影响。

2022年，境外非政府组织获得或续期的临时活动许可证为661个，其中有33个签发给来自美国的非政府组织。相比2019年的1022个、2020年新签发的804个和2021年的742个，该数字有所减少。

2022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。但是，新冠疫情带来的难题（例如，出游、人与人之间的互动、商业和贸易的减少）到底对经济造成了多大的影响以及对其他运营挑战造成了何种程度的影响，这两点仍然难以评估。鉴于中国国内的抗疫已取得明显成果，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。

2020年新冠疫情爆发，民间团体积极为中国抗疫提供支持。2020年，在政府发布促进公民社会更多地参与抗疫工作的最终指导方针后，有超过500家境外非政府组织注册了有关开展健康相关活动的临时活动许可证。而过去的一年里只有90家与健康有关的境外非政府组织注册了临时活动许可证，这体现出中国在密接者追踪措施和快速抗疫方面的有效性。新冠抗疫工作的成功离不开志愿者的辛勤付出以及中国国内外民间团体的参与。

health-related activities in 2020, following the government's Guidelines issued to facilitate greater civil society participation in COVID-19 response efforts. In 2021, only 90 health-related overseas NGOs registered TAPs, reflecting the efficacy of China's contact-tracing measures and rapid pandemic response. Public data is not yet available for 2022. 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 continued decrease in overseas NGO TAPs in 2021 and 2022 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 since 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 and domestic 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

As with many other sectors in 2022, NGOs report being severely impacted by the COVID-19 prevention measures, domestic and international travel restrictions, and city-wide lockdowns. 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 with respect to receiving foreign funds. 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 public security bureaus managed the initial implementation process with professionalism. After the *Overseas NGO Law* took effect in 2017, overseas NGOs found the public security authorities to be accessible and responsive in providing guidance on paperwork and filing procedures. Despite such responsiveness, NGOs experienced confusion regarding inconsistent interpretations of

the *Overseas NGO Law* across provincial bureaus until 2021. Whether the lack of consistency resulted from bureaucratic inefficiency or increasing hostility towards overseas 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), i.e., 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, but that is now more difficult.

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 challenged 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 rigid, likely reflecting attitudes at more senior levels. There is an increasing concern about the more restrictive 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 establish 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.

尽管 2020 年与疫情有关的非政府组织活动有所增加，但 2021 年境外非政府组织临时活动许可证的减少体现出总体趋势呈负面。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。根据中国政府提供的数据，《境外非政府组织境内活动管理法》的实施导致中国损失了 9000 多家境外非政府组织的捐款。

在商会许多会员公司的运营中，包括企业基金会在内的境外非政府组织是不可或缺的一部分。通过在美国注册为非政府组织的企业基金会，商会会员企业能与境外或当地的行业协会、大学、环保组织、科技机构和其他中国机构在信息共享、研究、市场开发和创新方面开展合作。就中国国内外的商业企业在指导和实现商业可持续性、社区参与活动这方面，这些基金会以及其他境外非政府组织起到了关键作用。

## 现存的监管问题

尽管 2022 年境外非政府组织在中国的运营状况相对稳定，但商会会员企业表示情况并未得到改善，普遍对监管的收紧表示担忧。许多境外非政府组织被迫暂停对当地社区活动的支持。由于中国民间团体的监管环境日益复杂，尤其是在接受外国资金方面，中国境内的美国企业基金会往往无法找到受助人。在实施四年后，《境外非政府组织境内活动管理法》期望解决的问题仍然存在。

这些问题似乎源于《境外非政府组织境内活动管理法》本身的设计而非执法问题。公安部和各省公安厅的境外非政府组织管理办公室负责具体执法事宜。境外非政府组织认为管理办公室在该法于 2017 年施行后的大部分时间里，在文书工作和备案程序方面提供了易于获取、回复及时的指导。尽管政府回复及时，但迄今为止，非政府组织仍然因为各省级机构对该法的解读不一致而倍感困惑。无论缺乏一致性是出于官僚主义的低效率还是源自对境外非政府组织的敌意增加，这都增加了境外非政府组织有关是否以及如何在中国内地开展项目的普遍担忧。

2021 年，一些境外非政府组织在实施程序方面继续面临相同或日益严重的困惑。但据其他组织表示，公安部在了解如何遵守法规方面提供了更为明确的指导。中国政府当局似乎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合作，解决现存困惑，统一实施程序。

过去四年，公安机关也已适度扩增获批准的业务主管单位名单，或称之为境外非政府组织在中国内地注册运营所需的官方主办单位名单。另一方面，实际上给予境外非政府组织的注册运营宽限期已经结束。2021 年，有多个境外非政府组织的活动被暂停，这也表明中国政府采取了更为强硬的态度。此前，境外非政府组织也可以通过愿意代其提交当地项目的国内伙伴组织开展项目。而在 2021 年，通过国内伙伴组织提交申请变得越发困难，一些非政府组织无法如期开展项目。

灵活性有所下降反映出在华民间团体活动面临更为严苛的限制。境外非政府组织注意到，其年度活动报告需要接受更为密切的审查和更为频繁的询问。例如，部分关于在 2020 年已完成的工作报告直到 2021 年底才获得批准。较低级别的公安部官员似乎也越来越谨慎，这可能反映出了上层领导的态度。大众越发担心国家和非国家媒体渲染的紧张气氛和民族主义情绪。

一些公安非政府组织管理办公室为业务主管单位、大学以及国内外非政府组织提供了培训和信息交流会议。但是，由于受《境外非政府组织境内活动管理法》影响的大多数组织均位于境外且并未在中国内地设立代表处，因此迫切需要中国驻外使领馆举办类似的指导培训。此外，公安部为根据《境外非政府组织境内活动管理法》提交注册申请而设立的在线门户网站缺少英文页面，而该网站的主要用户是外国组织，商会希望公安部建立一个双语或多语门户网站。

尽管去年《境外非政府组织境内活动管理法》的实施有一定程度的标准化，但遗憾的是，地方公安局仍然无力解决非政府组织面临的重大难题，下文将对这些问题进行详述。

## 对业务主管单位的限制

2019 年，公安部发布了更新的主管业务单位名单，这是自 2016 年发布最初名单以来的首次也是唯一一次更新。该名单含有 54 个符合条件的国家级主管业务单位和多个新单位。尽管该名单有所扩增，但如何找到一家主管业务单位仍然是境外非政府组织注册的最大障碍。根据中国非政府组织项目提供的数据，在所有业务



## 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 eligible national-level 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 247 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 53 overseas NGOs.

Many eligible PSUs are unfamiliar with the work of overseas NGOs, consider them a political risk, or lack an 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 an annual “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 sub-municipal district level. Activities that are conducted without prior elaboration in the work plan are considered illegal and overseas 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 a 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 longer periods of time due to increased government scrutiny. Given the realities of NGO operations, these requirements are highly restrictive in practice.

For many overseas 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 overseas NGOs have found after registration that their PSU expects to share in the 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 2022, 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 central 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 rejected.

## 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 public security, 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 in 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 discourages overseas NGOs from operating in China.

## Ambiguous Language

Numerous 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 require 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 on 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 *Overseas NGO Law*. While overseas NGOs have not received notice of any upcoming changes in 2023,

主管单位中，商务部负责监督的境外非政府组织最多，达 230 家。而第二大业务主管单位教育部，其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任何境外非政府组织。

许多符合条件的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。

许多境外非政府组织即便按照《境外非政府组织境内活动管理法》成功通过业务主管单位注册，每年也需要花费数周甚至数月时间向其业务主管单位汇报“工作计划”，然后才能开展项目。工作计划必须按年重新拟订并提交，具体说明每项活动的经费，将与哪些中国伙伴单位合作，以及活动将在哪里举办，甚至需明确到具体地区。未在工作计划中事先说明而开展的活动被视为非法，非政府组织会因工作计划略有改动而受到斥责，但国内外非政府组织几乎不可能每年都提前预测和说明所有活动。成员还努力在每个日历年年底艰难停掉所有活动，并对活动支出进行完整的会计核算。而工作计划的变更每年仅可进行两次，并且需要一个更为繁琐的申请流程，在变更获得批准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，这些要求在实践中限制太高。

对于许多非政府组织来说，在中国开展项目，同时平衡与业务主管单位的关系，变得越来越具有挑战性。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，但仍有部分非政府组织的业务主管单位在其注册后希望向该非政府组织收取费用。《境外非政府组织境内活动管理法》实施统一性的提高，在有助于提高某些方面的清晰度的同时，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和公安部同级的普通政府部门均能理解非政府组织的活动。这些变化增添了更多的控制性，而非政府组织项目提案被拒绝的可能性也因此变高。

### 对临时活动许可证的要求不明确且耗时长

与代表处的申请流程几乎一样，寻求临时活动许可证的境外非政府组织的申请准备程序成本高昂且耗时甚长。这两项申请都需要对境外非政府组织过去和现在的团体章程和细则进行认证和翻译，通常需要数月时间。申请临时活动许可证需要先获得中国伙伴组织的同意，然后必须提交正式申请。最后，中国伙伴组织也必须向公安部门提交临时活动许可证申请，但境外非政府组织发现各省现阶段的程序不一致。有些省份的公安机关受理在多个省份开展活动的项目的申请，只要中国伙伴组织位于其省内管辖范围即可；而有些省份的公安机关拒绝受理跨省申请，导致境外非政府组织只能要么将其项目限制在某个省份内，要么则在多个省份建立伙伴关系后一一进行申请。临时活动许可证的最长期限为一年，续期需要重新申请。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警告，即意味着这些非政府组织在意识到所有项目均为在 2020 年获批之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对境外非政府组织在中国开展业务形成了阻碍。

### 含糊不清的措辞

《境外非政府组织境内活动管理法》中的许多关键术语仍未明确界定。这些模糊不清给境外非政府组织在中国设置组织架构和实施项目带来了不确定性。境外非政府组织必须投入大量人力、时间和资源与公安部进行沟通才能获得明确的指导。尽管《境外非政府组织境内活动管理法》已进入实施的第四个年头，但目前仍不清楚有哪些境外非政府组织的活动应获得预先批准。公安部及各省公安厅在解读该法方面拥有完全的自由裁量权。例如，境外非政府组织想要举办小型或私人活动或为另一实体资助的项目提供咨询，获批情况均须根据具体情况而定。该法目前尚未就上述情形的批准要求形成共识，以上只是在该法项下缺乏明确指导的

AmCham China members worry that the ambiguity could lead to increased restrictions in 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. Funding source ❶ 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 earned from 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 NGO Law* bars overseas NGOs from fundraising in China. This is interpreted to mean that overseas NGOs cannot passively receive donations from companies in China, including foreign-invested enterprises (FIEs), through their Corporate Social Responsibility (CSR) programs or other corporate funding channels. As a result, the *Overseas NGO Law* bars 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 respect 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 activity. Authorities have deemed joint fundraising to be in violation of the *Overseas NGO Law*’s prohibition on overseas NGOs engaging in profitmaking activity. This appears to be motivated in part 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 the relevant 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 of registered overseas NGOs to offer services for fees. 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 services for fees 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.

众多情形中的两个例子。虽然境外非政府组织尚未收到有关 2021 年即将发生任何变化的通知，但商会会员担心这种模糊不清可能会导致未来几年相关限制将进一步收紧。

### 资金和收入来源限制

《境外非政府组织境内活动管理法》第 21.3 条允许境外非政府组织在中国境内活动的资金可通过以下三种途径：①“境外合法来源的资金”；②“中国境内的银行存款利息”；③“在中国境内合法取得的其他资金”。

#### 来自境外合法来源的资金

第一种是“来自境外合法来源的资金”，根据公安部的解释，即为包括从非政府组织的境外总部转移到中国的资金。资金来源①是中国所有境外非政府组织的主要资金来源。商会暂未了解到有任何例外情况。

#### 中国境内的银行存款利息

“中国境内的银行存款利息”的解释和实施比较简单直接，但所获利息数额一般不大。

#### 在中国境内合法取得的其他资金

在中国境内通过合法方式取得的其他资金包括三大类：①个人或公司的现金或实物捐赠，②与营利性公司进行联合营销或筹款活动的收益，以及③服务活动的费用。关于现金或实物捐赠，《境外非政府组织境内活动管理法》禁止境外非政府组织在中国境内募捐。该条也被扩大解释为境外非政府组织不得被动地接受包括外商投资企业在内的任何中国公司通过其企业社会责任计划或者其他企业资助渠道提供的捐款。因此，该法切断了境外非政府组织在中国开展活动的大量资金来源。境外非政府组织越来越难以在国外为中国的项目筹集资金。随着中国日益繁荣，但其限制确愈发苛刻，中国的资金需求已经有所减少。筹款规定也可以解释为禁止中国公司向境外非政府组织提供实物捐赠。境外非政府组织基本上已停止联合营销和筹款活动（例如，公司收到的部分收益将向非政府组织捐赠用于推广活动）。中国政府认为联合募捐违反了《境外非政府组织境内活动管理法》中禁止境外非政府组织从事营利活动的规定。这种做法似乎是出于这样一种顾虑，即这些允许非政府组

织从营利性公司获得一定比例销售收入的活动，可以激励非政府组织推广该营利性公司的品牌和（或）产品。

在服务费用方面，境外非政府组织必须了解其在实践中是否可以提供服务以换取收费。商会成员发现，服务费的批准是其业务主管单位根据自由裁量权，视具体情况而定的。批准主要取决于：①所要执行的服务是否属于境外非政府组织代表处在注册证书上列明的活动范围，②接受此类服务的客户属于哪些类型。注册证书上所列的活动范围通常非常广泛，所以大多数境外非政府组织都可以参与服务收费安排。据成员报告，就客户类型而言，如果客户来自公共部门（例如，地方政府卫生局、公立大学或研究机构、国内非政府组织或国有企业），则获批可能性更高。如果客户是私营部门实体，则情况将会十分复杂，原因有二：一是《境外非政府组织境内活动管理法》禁止境外非政府组织从事“营利活动”。某些省份的业务主管单位据此解释为境外非政府组织不能向营利性公司提供服务或用服务换取收费。二是如果营利性公司从境外非政府组织购买服务，但这些服务与该公司的业务无关（例如，如果饮料制造商向境外非政府组织付款，要求在农村地区提供白内障手术），则业务主管单位可能会得出这种向境外非政府组织支付的“服务收入”是一种变相捐赠的结论，这是被《境外非政府组织境内活动管理法》所禁止的行为。

商会承认，自《境外非政府组织境内活动管理法》通过以来，一些境外非政府组织提供收费服务的能力有所进步。为了巩固这一进展，中国政府应正式确定经注册的境外非政府组织提供收费服务的权利。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，从而造成误解和不一致。此外，我们建议政府考虑正式允许境外非政府组织为私营公司提供与该公司的业务范围有关的收费服务。公司往往有许多真正的业务需求，需要境外非政府组织的帮助，例如，许多认真履行企业社会责任的制造公司在设计和执行碳排放量的减销计划时需要境外环境非政府组织所拥有的国际熟悉度和科学专业知识。

尽管取得了一些进展，但《境外非政府组织境内活动管理法》对资金和收入来源的限制令境外非政府组织在中国的运营能力大大复杂化。特别是对于没有大量赠款的非政府组织而言，不管是现在还是将来，资金缺乏都是一个较为严重的问题。

## 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
- 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.
- 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.

## 建 议

### 对中国政府：

- 在公安部门门户网站上提供有关提交代表处注册和临时活动许可证申请的重要指南和公告的英文版本。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，特别是在境外非政府组织设有代表处的国家，中国驻该国的使领馆应传播公安机关有关《境外非政府组织境内活动管理法》的最新解读信息。
- 扩增符合条件的业务主管单位名单，并为政府机构担任业务主管单位提供明确的标准和更多的激励。对于中国国内的民间团体来说，同样要增强和提高组织通过国内流程进行注册的能力。国内民间团体的活跃程度对于境外非政府组织与当地组织的合作而言非常重要。
- 简化申请临时活动许可证所需的文件，要求拒绝批准的中国伙伴合作单位在 30 天内提供书面说明。
- 明确《境外非政府组织境内活动管理法》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”或提供服务费用的规定。在服务收费方面，以法律形式确立境外非政府组织收费服务的权利，减轻业务主管单位的决策负担。

# Competition Law

## Introduction

In 2022, China made significant changes to its competition law regime. On June 24, 2022, the Standing Committee of the Thirteenth People's Congress at its 35th meeting passed the *Decision on Amending the Anti-Monopoly Law of the People's Republic of China (AML)*. The amended AML came into effect on August 1, 2022. The key amendments are summarized as follows:

- Penalize organizing or providing substantive assistance to other parties in reaching monopoly agreements, including, without limitation, hub-and-spoke arrangements in the context of the platform economy.

The amendments fill a gap by imposing stricter compliance requirements on undertakings, but the precise conduct that constitutes “organization” and “substantive assistance” remain to be clarified through regulatory enforcement and the judiciary.

- Provide clear guidance for future administrative practice against vertical monopoly agreements.

In the past, there has been a disagreement between the State Administration for Market Regulation (SAMR) as competition regulator and the Chinese courts in evaluating hardcore vertical price restraints such as resale price maintenance (RPM). SAMR treats RPM as illegal per se, while Chinese courts have ruled that RPM should be subject to a rule-of-reason analysis (by looking at whether defendants' conduct gives rise to anti-competitive effects).

The amended AML clarifies that RPM is illegal, but such presumption may be rebutted with evidence on the absence of exclusivity or effects of anti-competitive practice by the undertakings. SAMR is now aligned with the courts' stance. While SAMR is authorized to presume illegality without having to prove RPM results in anti-competitive effects in practice, undertakings may rebut such presumption on a case-by-case basis. As a result, SAMR can be expected to be more cautious in enforcement under the amended AML.

- Introduce a “safe harbor” regime for vertical monopoly agreements.

This is the first codification of a market-share-based safe harbor rule specifically applicable to potential vertical restraints. Although the amended AML does not provide a precise market share threshold for the exemption, the *Provisions on Prohibition of Monopoly Agreements (Draft for Comment)* (June 27, 2022) propose an exemption for market shares below 15 percent, which is stricter than the 30 percent threshold previously provided in the *Provisions on the Prohibition of the Abuse of Intellectual Property Rights to Exclude or Restrict Competition and the Guidelines on Anti-Monopoly in the Automobile Industry* (collectively, the Auto and IP Guidelines).

For the safe harbor rule to apply, in addition to the market share threshold, vertical agreements must meet other conditions expected to be issued by SAMR. It is unclear whether RPM as a hardcore vertical restraint may actually benefit from the safe harbor rule. Previously, the Auto and IP Guidelines explicitly excluded RPM-type vertical price restraints from their safe harbor rules.

- Direct focus on the abuse of market dominance in the platform economy sector.

The amended AML adds two articles to the chapters on general provisions and abuse of market dominance, respectively, explicitly prohibiting undertakings from exploiting any data and algorithms, technology, capital advantages or platform rules or otherwise engaging in any monopoly conduct prohibited by the AML (among which abuse of market dominance is specifically referenced). SAMR further designates “self-preferential treatment” by platform operators as a circumstance that falls within abuse of market dominance in the *Provisions on Prohibition of Abuse of Dominant Market Positions (Draft for Comment)*.

- Introduce a “stop the clock” provision in merger review proceedings.

The amended AML grants SAMR the power to suspend the merger control review period under any of the following circumstances: ❶ undertakings' failure to submit information as required, ❷ the occurrence of new circumstances/facts which have a material impact on the review that requires further verification, or ❸ imposition of restrictive conditions in the undertakings' application that require further evaluation. Once these issues are resolved, the clock will resume.

# 竞争法规

## 引言

2022年，中国在竞争法规领域发生了重大变化。2022年6月24日，第十三届全国人民代表大会常务委员会第三十五次会议审议通过《关于修改中华人民共和国反垄断法的决定》，新修订的《反垄断法》已于2022年8月1日起施行，其中主要修订要点概述如下：

- 新增组织或实质性帮助他人达成垄断协议属于违法行为，包括平台经济语境下的轴辐协议等。

该修订填补了原来法律规定的空白，对经营者提出了更高的合规要求，但何为“组织”及“提供实质性帮助”，有待执法实践进一步澄清。

- 明确纵向垄断协议的行政执法认定路径。

过去，国家市场监督管理总局（以下简称总局）和中国法院在对纵向核心价格限制如转售价格维持的认定路径上存在分歧。总局按照“原则禁止”的认定路径执法，而中国法院则认为应以“合理原则”进行分析认定（需判断被告的行为是否有任何反竞争效果）。

新修订的《反垄断法》澄清了认定路径，对于转售价格维持推定违法，但可由经营者就不具有排除、限制竞争效果进行抗辩；协调了总局执法和法院司法裁判上的分歧。尽管总局可以推定而非必须证明转售价格维持有反竞争效果，但给企业在个案中提出抗辩留出了空间。在新修订的《反垄断法》下，总局的执法会更加审慎。

- 新增纵向垄断协议“安全港”制度。

这是在法律层面首次确立以市场份额为标准的“安全港”豁免制度，明确适用于纵向垄断协议。尽管新修订的《反垄断法》未明确可豁免的市场份额，《禁止垄断协议规定（征求意见稿）》（2022年6月27日）拟定15%以下的市场份额可豁免，较此前《关于汽车业的反

垄断指南》和《关于禁止滥用知识产权排除、限制竞争行为的规定》（合称汽车和知产指南）规定的30%更严格。

除了市场份额标准，纵向垄断协议还需满足总局规定的其他要求以适用“安全港”制度，目前尚不清楚“安全港”制度是否可适用核心纵向限制如转售价格维持。此前，汽车和知产指南明确规定转售价格维持不适用其“安全港”制度。

- 新增对平台经济领域滥用行为的关注。

新修订的《反垄断法》分别在总则和滥用市场支配地位章节增加了两条，明确禁止经营者利用数据和算法、技术、资本优势以及平台规则等从事禁止的垄断行为（其中特别单独规定了不得从事滥用市场支配地位的行为）。总局进一步在《禁止滥用市场支配地位行为规定（征求意见稿）》中将平台经营者“自我优待”单独列为一种滥用市场支配地位的行为。

- 新增经营者集中“停钟”制度。

新修订的《反垄断法》明确总局有权在以下任一情形出现时决定中止计算经营者集中的审查期限：① 经营者未按照规定提交文件、资料，导致审查工作无法进行；② 出现对经营者集中审查具有重大影响的新情况、新事实，不经核实将导致审查工作无法进行；③ 需要对经营者集中附加的限制性条件进一步评估，且经营者提出中止请求。自情形消除之日起，审查期限继续计算。该制度可避免以往在复杂案件审限不够时撤回案件重新申报的操作，但也给审限带来了一定的不确定性。

- 大幅提高行政处罚力度、引入刑事责任条款。

新修订的《反垄断法》明确对对达成垄断协议负有个人责任的法定代表人、主要负责人和直接责任人员，可以处以最高100万元的罚款。



This will replace the previous “pull and refile” practice in complex cases when the statutory review period runs out, but it may also bring uncertainty to the review timeline.

- Significantly increase administrative penalties and introduces criminal liability.

The amended AML explicitly imposes fines of up to RMB 1 million on legal representatives, persons in charge, and other persons found to be solely responsible for the undertaking’s conclusion of a monopoly agreement.

The amended AML increases the maximum fines for breach of the AML. For example, an undertaking that fails to notify SAMR of a notifiable transaction may be subject to a fine of up to 10 percent of its sales revenue from the preceding year if the concentration of undertakings has or may have the effect of excluding or limiting competition, or a fine of up to RMB 5 million if the concentration has no anti-competitive effect (previously, the fine was capped generally at RMB 500,000, without distinguishing whether there were any anti-competitive effects). Notably, any fines under the AML can now be increased by two to five times in a case where the circumstances, impacts, and consequences of the illegal conduct are particularly severe.

The amended AML specifically provides that a violation of the AML may also lead to criminal liability. Given that the undertaking’s employees and senior management can be criminally liable for its breach of the AML, this will further enhance the deterrent effect of the AML.

## Merger Review

In 2022, SAMR approved 770 mergers unconditionally and an additional five mergers subject to conditions (i.e., remedies). On August 1, 2022, SAMR initiated a pilot program to authorize the market regulatory authorities of five provinces and municipalities directly under the central government, i.e., Beijing, Shanghai, Guangdong, Chongqing, and Shaanxi, to conduct some merger reviews. Throughout 2022, SAMR’s local offices in Beijing, Shanghai, Guangdong, Chongqing, and Shaanxi approved 94 mergers unconditionally.

Statistically, approximately 87.5 percent of merger reviews were performed utilizing the simplified procedure. In 2022, this procedure took 18 days on average after acceptance of the merger filing. Specifically, the five conditional approvals in 2022 took an average of 364.2 days from the day SAMR confirmed the acceptance of merger filing to final decision, a substantial increase from the 286.75 days in 2021, although Covid-19 restrictions may have been a factor.

The following is a summary of the five conditional approvals in 2022, as well as a short comparison of the merger review process between SAMR and authorities in other relevant jurisdictions (if any). Among the five cases, two conditional

approvals involved mergers and acquisitions between US firms, both of which were subject to behavioral remedies proposed by SAMR. The third conditional approval involves a merger and acquisition between a Chinese firm and a German firm, in which structural remedies and behavioral remedies were proposed by SAMR. The fourth case was the first time that SAMR proposed restrictive conditions on a merger and acquisition between two Chinese state-owned enterprises. The fifth conditional approval involved an M&A transaction between Korean firms in which behavioral remedies were proposed by SAMR.

① *Siltronic AG/Global Wafers* (wafers, structural remedies, and behavioral remedies): On January 20, 2022, after a 297-day review, SAMR approved, with additional restrictive conditions, the proposed acquisition of Siltronic AG by Global Wafers.

SAMR considered the merger to have a possible exclusionary and restrictive effect on both the global and domestic markets for eight-inch float zone wafers.

SAMR had the following concerns:

- The merger would further increase the post-merger entity’s market control in both the global and domestic markets for eight-inch float zone wafers.
- The merger would lead to an increase in concentration of the relevant market.
- The merger may enhance the incentives and ability of relevant competitors to coordinate prices.
- Higher market entry barriers would make it difficult for new efficient competitors to emerge in the short term.

Based on notifying parties’ proposed commitments, the structural remedies and behavioral remedies approved by SAMR included:

- Divest the float zone wafer business of Global Wafers, that is, the float zone wafer business of Topsil Global Wafers A/S in Denmark, including all tangible and intangible assets; all agreements, leases, commitments, and customer orders; and all assets and personnel necessary for maintaining business operations and ensuring the continuity and competitiveness of the business, including all customers, credits, and other records.
- Complete the divestiture within six months from the effective date of the review decision. If the divestiture cannot be completed within six months, the time limit may be extended for an additional three months upon approval by SAMR. If the divestiture is not completed within the above time period, a trustee shall be engaged to find a suitable buyer and complete the divestiture in accordance with the Interim Provisions on the Examination of Concentration of Undertakings.

新修订的《反垄断法》提高了对相关违法行为的最高罚款数额，比如对于违法实施集中，且具有或者可能具有排除、限制竞争效果的，可对经营者处上一年度销售额百分之十以下的罚款，不具有排除、限制竞争效果的，处五百万元以下的罚款（修订前为五十万元以下罚款并且未区分是否有反竞争效果）。尤其值得注意的是，如违法行为情节、影响和造成的后果特别严重的，《反垄断法》中规定的任何罚款数额均可以增加到二至五倍。

修订后的《反垄断法》明确规定，违反《反垄断法》构成犯罪的将依法追究刑事责任，如对于违法企业的员工及高管可追究刑事责任，将进一步增强《反垄断法》的威慑力。

## 并购审查

2022年，总局共审结无条件批准经营者集中案件770件，附加限制性条件批准5件。自2022年8月1日起，总局开始试点委托北京、上海、广东、重庆、陕西等5个省（直辖市）市场监督管理部门实施部分经营者集中案件反垄断审查。2022年，北京、上海、广东、重庆和陕西的市场监督管理部门共审结无条件批准经营者集中案件94件。

据统计，大约87.5%的经营者集中案件是根据简易程序来审理的。2022年，简易程序自立案之后平均需要18天。具体而言，2022年的5宗附加限制性条件批准案件从立案到作出决定，平均历时364.2天，相较于2021年的286.75天有所延长。

下文简要介绍了2022年的5宗附加限制性条件批准案件，并将其涉及的境外经营者集中审查程序（如有）与中国的审查程序进行简要对比。其中2宗案件涉及美国企业之间的交易，均被总局施加了行为性救济。1宗案件涉及中国企业与德国企业之间的交易，被总局施加了结构性救济与行为性救济。第4宗案件系总局首次对两家中国国有企业之间的交易施加限制性条件。第5宗案件涉及两家韩国企业之间的交易，被总局施加了行为性救济。

①**世创股份/环球晶圆**（晶圆；结构性救济 & 行为性救济）：2022年1月20日，历经297天的审查之后，

总局附加限制性条件批准了环球晶圆拟收购世创股份股权案。

总局认为，该项集中对于全球和中国境内8英寸区熔晶圆市场具有或可能具有排除、限制竞争效果。

总局提出了以下担忧：

- 交易进一步提高了集中后实体在全球和中国境内8英寸区熔晶圆市场控制力。
- 交易进一步提高了相关市场的集中度。
- 交易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。

基于申报方提出的承诺方案，总局同意以下的结构性与行为性补救措施：

- 剥离环球晶圆的区熔晶圆业务，即丹麦Topsil Global Wafers A/S（拓谱公司）的区熔法晶圆业务，包括该公司所有有形资产和无形资产；所有协议、租约、承诺和客户订单；所有客户、信贷及其他记录等维持该业务运营、确保该业务存续性和竞争性所必需的全部资产及人员。
- 自审查决定生效日起6个月内完成剥离，如到期无法完成，经总局批准，上述时限可延长3个月；如未能在上述期限内完成剥离，应根据《经营者集中审查暂行规定》委托剥离受托人寻找合适的剥离买方并完成剥离。
- 按照公平、合理、无歧视的原则，继续向中国境内客户供应各类晶圆产品。在同等条件下，不得就价格、质量、数量和交货期、售后服务等交易条件对中国境内客户实施差别待遇。
- 合同期满后，如果中国境内客户希望续签合同，集中后实体无正当理由不得拒绝，且续签条件不得低于原合同。
- 对相关管理人员和员工进行持续培训，并采取必要措施，确保承诺方案的落实。

根据公开信息显示，由于德国经济事务与能源部没有在本交易要约收购的最后期限内批准该交易，环球晶圆未能成功收购实创股份，环球晶圆将依据此前约定向世创股份支付5,000万欧元的“分手费”。本项交易所涉的境内、境外经营者集中审查情况对比如表格-1所示：

- Continue to supply wafer products of all kinds to customers in China on a fair, reasonable, and nondiscriminatory (FRAND) basis. May not implement discriminatory treatment against customers in China under the same circumstances with respect to price, quality, quantity, delivery date, after-sale service, or other trading conditions.
- Upon the expiration of contract terms, if a customer in China wishes to renew the contract, the post-merger entity shall not refuse without justifiable reasons, and it shall ensure that renewal conditions are not inferior to those of the original contracts.
- Provide continuous training to relevant management and employees and impose essential measures to ensure implementation of the proposed commitments.

According to public information, Global Wafers did not succeed in acquiring Siltronic as the German Federal Ministry for Economic Affairs and Energy did not approve the transaction before tender offer’s deadline. As a result, Global Wafers had to pay Siltronic a termination fee of 50 million Euros as previously agreed. The comparison across jurisdictions for the merger reviews involved in this transaction are provided in Table-1:

**Table 1-Comparison across jurisdictions for the merger reviews involved.**

Jurisdiction	Date Filed/ Date Completed	Length (Day)	Outcome
SAMR	2021.03.29—2022.01.20	297	Approved conditionally
Committee on Foreign Investment in the United States	Date Completed: 2021.03.07	/	Approved unconditionally
United States Federal Trade Commission	2021.09.06—2021.10.05	29	Approved unconditionally
German Federal Cartel Office	2021.01.08—2021.02.08	31	Approved unconditionally
German Federal Ministry for Economic Affairs and Energy	Date Filed: 2020.12.10	/	No approval issued before the tender offer’ s deadline
UK Competition and Markets Authority	Date Completed: 2021.09.09	/	Approved unconditionally
Austrian Federal Competition Authority	2021.02.08—2021.03.09	29	Approved unconditionally
Korea Fair Trade Commission	2021.01.15—2021.04.21	96	Approved unconditionally
Japan Fair Trade Commission	2021.06.15—2021.11.26	164	Approved unconditionally
Competition and Consumer Commission of Singapore	2021.02.26—2021.05.11	74	Approved unconditionally
Taiwan Fair Trade Commission	2021.04.13—2021.05.05	22	Approved unconditionally

②Xilinx/AMD (computer processing units (CPUs), graphics processing unit (GPU) accelerators and field-programmable gate arrays (FPGAs), behavioral remedies): On January 21, 2022, after a 289-day review, SAMR approved, with additional restrictive conditions, the proposed acquisition of Xilinx by AMD.

SAMR considered the merger to have a possible exclusionary and restrictive effect on both the global and domestic markets for CPUs, GPU accelerators, and FPGAs.

SAMR had the following concerns:

- The post-merger entity would have the ability to elim-

表格 1- 所涉及的境内境外经营者集中审查程序对比

司法辖区	审查期限	审查时长	审查结果
中国国家市场监督管理总局	2021.03.29—2022.01.20	297	附加限制性条件批准
美国外国投资委员会	审结日期：2021.03.07	/	无条件批准
美国联邦贸易委员会	2021.09.06—2021.10.05	29	无条件批准
德国联邦反垄断局	2021.01.08—2021.02.08	31	无条件批准
德国经济和能源部	提交日期：2020.12.10	/	没有在要约收购的最后期限内批准该交易
英国竞争和市场管理局	审结日期：2021.09.09	/	无条件批准
奥地利联邦竞争局	2021.02.08—2021.03.09	29	无条件批准
韩国公平交易委员会	2021.01.15—2021.04.21	96	无条件批准
日本公平交易委员会	2021.06.15—2021.11.26	164	无条件批准
新加坡竞争与消费者委员会	2021.02.26—2021.05.11	74	无条件批准
台湾地区“公平交易委员会”	2021.04.13—2021.05.05	22	无条件批准

② **赛灵思/超威半导体** (CPU, GPU 加速器和 FPGA ; 行为性救济) : 2022 年 1 月 21 日, 历经 289 天的审查之后, 总局附加限制性条件批准了超威半导体拟收购赛灵思股权案。

总局认为, 该项集中对于对全球和中国境内 CPU、GPU 加速器、FPGA 市场具有或可能具有排除、限制竞争效果。

总局提出了以下担忧 :

- 集中后实体在 CPU、GPU 加速器、FPGA 市场具有排除、限制竞争的能力。
- 集中后实体在 CPU、GPU 加速器、FPGA 市场具有排除、限制竞争的动机。
- 集中可能在 CPU、GPU 加速器和 FPGA 市场产生排除、限制竞争的效果。
- 市场进入壁垒高, 短期内难以出现新的有效竞争者。
- 基于申报方提出的承诺方案, 总局同意以下的行为性补救措施 :
- 向中国境内市场销售超威 CPU、超威 GPU 与赛灵思 FPGA 时, 不得以任何方式强制进行搭售, 或者附加任何其他不合理的交易条件; 不得阻碍或限制客户单独购买或使用上述产品; 不得在服务水平、价格、软件功能等方面歧视单独购买上述产品的客户。

- 在与中国境内企业既有合作基础上, 进一步推进相关合作, 并依据公平、合理、无歧视原则, 向中国境内市场继续供应超威 CPU、超威 GPU、赛灵思 FPGA 和相关软件、配件。
- 确保赛灵思 FPGA 的灵活性和可编程性, 继续开发并确保赛灵思 FPGA 产品系列的可获得性, 确保其开发方式与基于 ARM 的处理器相兼容且符合赛灵思在交易前的计划。
- 继续保证向中国境内市场销售的超威 CPU、超威 GPU、赛灵思 FPGA 与第三方 CPU、GPU 和 FPGA 的互操作性; 上述互操作性水平不低于超威 CPU、超威 GPU 与赛灵思 FPGA 的互操作性水平; 互操作性升级的相关信息、功能和样品应当于升级后 90 天内提供给第三方 CPU、GPU、FPGA 制造商。
- 对第三方 CPU、GPU 和 FPGA 制造商的信息采取保护措施, 与第三方 CPU、GPU 和 FPGA 制造商签订保密协议; 将第三方 CPU、GPU 和 FPGA 制造商的保密信息储存在独立且互不相通的硬件系统中。

该项交易最早开始于 2020 年 10 月 27 日。2022 年 2 月 14 日, 超威半导体宣布其以全股票交易的方式完成了对赛灵思的收购。本项交易所涉及的境内、境外经营者集中审查情况对比如表格 -2 所示 :

inate and restrict competition in the markets for CPUs, GPU accelerators, and FPGAs.

- The post-merger entity would have the motivation to eliminate and restrict competition in the markets for CPUs, GPU accelerators, and FPGAs.
- The concentration may produce the effect of eliminating and restricting competition in the markets for CPUs, GPU accelerators, and FPGAs.
- Higher market entry barriers would make it difficult for new effective competitors to emerge in the short term.

Based on the notifying parties’ proposed commitments, the behavioral remedies approved by SAMR included:

- May not compulsorily engage in tying goods or attaching any other unreasonable trading conditions when selling AMD’s CPUs, AMD’s GPUs, and Xilinx’s FPGAs in China. Shall not hinder or restrict customers from purchasing or using the above products independently. Shall not discriminate against customers who purchase only the above products in terms of service level, price, software functionality, etc.
- Further promote relevant cooperation with Chinese enterprises on top of existing cooperation programs; continue to supply AMD’s CPUs, AMD’s GPUs, Xilinx’s FPGAs, and related software and accessories in China based on FRAND principles.

- Ensure the flexibility and programmability of Xilinx’s FPGAs, continue to develop and ensure the availability of Xilinx’s FPGA product series, and ensure that its development method is compatible with ARM processors and conforms to Xilinx’s premerger plan.
- Continue to ensure interoperability between AMD’s CPUs, AMD’s GPUs, Xilinx’s FPGAs sold in China, and third party CPUs, GPUs, and FPGAs. The interoperability level shall not be lower than the interoperability level between AMD’s CPUs, AMD’s GPUs, and Xilinx’s FPGAs. Information, functions, and samples related to the interoperability upgrade shall be provided to third-party CPU, GPU, and FPGA manufacturers within 90 days after the upgrade.
- Take protective measures on the information of third parties’ CPU, GPU, and FPGA manufacturers; sign confidentiality agreements with third-party manufacturers; and preserve their confidential information in an independent and mutually exclusive hardware system.

This acquisition was originally announced on October 27, 2020. On February 14, 2022, AMD announced the completion of its acquisition of Xilinx in an all-stock transaction. The comparison across jurisdictions for the merger reviews involved in this transaction are provided in Table-2:

**Table 2-Comparison across jurisdictions for the merger reviews involved.**

Jurisdiction	Date Filed/ Date Completed	Length (Day)	Outcome
SAMR	2021.04.07—2022.01.21	289	Approved Conditionally
Federal Trade Commission of United States	2020.11.09—2021.01.11	63	Approved unconditionally
European Commission	2021.05.26—2021.06.30	35	Approved unconditionally
Korea Fair Trade Commission	2021.02.15—2021.04.21	65	Approved unconditionally
Competition and Consumer Commission of Singapore	2021.05.04—2021.08.30	118	Approved unconditionally
UK Competition and Markets Authority	2021.05.10—2021.06.29	50	Approved unconditionally
Turkish Competition Authority	2021.02.22—2021.05.20	87	Approved unconditionally
Austrian Federal Competition Authority	/	/	Approved unconditionally
Taiwan Fair Trade Commission	/	/	Approved unconditionally

表格 2- 所涉及的境内境外经营者集中审查程序对比

司法辖区	审查期限	审查时长	审查结果
中国国家市场监督管理总局	2021.04.07—2022.01.21	289	附加限制性条件批准
美国联邦贸易委员会	2020.11.09—2021.01.11	63	无条件批准
欧盟委员会	2021.05.26—2021.06.30	35	无条件批准
韩国公平交易委员会	2021.02.15—2021.04.21	65	无条件批准
新加坡竞争与消费者委员会	2021.05.04—2021.08.30	118	无条件批准
英国竞争和市场管理局	2021.05.10—2021.06.29	50	无条件批准
土耳其竞争管理局	2021.02.22—2021.05.20	87	无条件批准
奥地利联邦竞争局	/	/	无条件批准
台湾地区“公平交易委员会”	/	/	无条件批准

### ③高意公司/相干公司（激光；行为性救济）：

2022年6月28日，历经283天的审查之后，总局附加限制性条件批准了相干公司拟收购高意公司股权案。

总局认为，该项集中对全球和中国境内高功率二氧化碳激光器市场、低功率二氧化碳激光器市场、准分子激光器用玻璃基激光光学器件市场具有或可能具有排除、限制竞争效果。

总局提出了以下担忧：

- 集中后实体具有排除、限制高功率二氧化碳激光器市场竞争的能力和动机，且集中可能对该市场产生排除限制竞争的效果。
- 集中后实体具有排除、限制低功率二氧化碳激光器市场竞争的能力和动机，且集中可能对该市场产生排除限制竞争的效果。
- 集中后实体具有排除、限制准分子激光器用玻璃基激光光学器件市场竞争的能力和动机，且集中可能对该市场产生排除限制竞争的效果。

基于申报方提出的承诺方案，总局同意以下的行为性补救措施：

- 继续履行现有涉及二氧化碳激光光学器件的供应合同和涉及准分子激光器用玻璃基激光光学器件的采

购合同及其商业条款。

- 依据公平、合理、无歧视原则，继续向客户供应二氧化碳激光光学器件。包括承诺价格、质量、数量等条款不低于方案生效日之前12个月内的平均水平，并在同等条件下，不得对自身二氧化碳激光器业务与第三方客户之间实施差别待遇。
- 对准分子激光器用玻璃基激光光学器件的采购继续遵循多源供应原则，并基于非歧视原则继续采购上述器件，不得在相关采购中设定有利于自身玻璃基激光光学器件业务的条件。包括继续对相关第三方供应商进行资格认证，无正当理由不得减少供应商数量，及时有效向第三方供应商提供相关产品技术规格，不得增加高意目前对相干的供应份额等。
- 承诺对第三方制造商的竞争性敏感信息采取保护措施。包括与第三方制造商签署保密协议，对第三方制造商竞争性敏感信息设置信息屏障等。

根据公开信息显示，该项交易至少需要取得4个司法辖区的反垄断许可，包括中国、美国、德国和韩国。随着中国国家市场监督管理总局的批准，相干公司于2022年7月1日宣布完成对于高意公司的收购。本项交易所涉及的境内、境外经营者集中审查情况对比如表格-3所示：

③ *Coherent/II-VI* (lasers, behavioral remedies): On June 28, 2022, after a 283-day review, SAMR approved, subject to additional restrictive conditions, the proposed acquisition of Coherent by II-VI.

SAMR considered the merger to have potential exclusionary and restrictive effect on both the global and domestic markets for high-power CO<sub>2</sub> lasers, low-power CO<sub>2</sub> lasers, and glass-based laser optics for excimer lasers.

SAMR had the following concerns:

- The post-merger entity would have the ability and motivation to eliminate or restrict competition in the high-power CO<sub>2</sub> lasers market, and the concentration may produce the effect of eliminating or restricting competition in such market.
- The post-merger entity would have the ability and motivation to eliminate or restrict competition in the low power CO<sub>2</sub> lasers market, and the concentration may produce the effect of eliminating or restricting competition in such market.
- The post-merger entity would have the ability and motivation to eliminate or restrict competition in the glass-based laser optics for excimer lasers market, and the concentration may produce the effect of eliminating or restricting competition in such market.

Based on the notifying parties’ proposed commitments, the behavioral remedies approved by SAMR included:

- Continue to perform existing supply contracts involving CO<sub>2</sub> laser optics and procurement contracts involving glass-based laser optics for excimer lasers and their business terms.

- Continue to supply CO<sub>2</sub> laser optics to customers in accordance with FRAND principles. Terms of committed price, quality, and quantity shall not be inferior to the average level during the 12 months before the effective date of the proposed commitments. May not implement discriminatory treatments between its own CO<sub>2</sub> laser business and third-party customers under the same conditions.
- Continue the purchase of glass-based laser optics for excimer lasers in accordance with the principles of multi-source supply and nondiscrimination. May not impose conditions favorable to its own glass-based laser optics for excimer lasers business in relevant procurement, including continuing to carry out qualification certification for relevant third-party suppliers, not reducing the number of suppliers without justifiable reasons, providing relevant product technical specifications to the third-party suppliers in a timely and effective manner, and not increasing the current supply share of II-VI to Coherent.
- Commit to take protective measures on competitively sensitive information of third-party manufacturers, including signing confidentiality agreements with third-party manufacturers, establishing information barriers for competitively sensitive information of third-party manufacturers, etc.

According to public information, this transaction requires antitrust clearance from at least four jurisdictions, including China, United States, Germany and Korea. With approval of SAMR, on July 1, 2022, II-VI announced that it had completed the acquisition of Coherent. The comparison across jurisdictions for the merger reviews involved in this transaction are provided in Table-3:

**Table 3-Comparison across jurisdictions for the merger reviews involved.**

Jurisdiction	Date Filed/ Date Completed	Length (Day)	Outcome
SAMR	2021.09.18—2022.06.28	283	Approved conditionally
United States Federal Trade Commission	2021.04.08—2021.05.10	32	Approved unconditionally
Germany Federal Cartel Office	2021.07.26—2021.08.25	30	Approved unconditionally
Korea Fair Trade Commission	2021.07.17—2022.02.28	226	Approved unconditionally

④ *Shanghai Airport Group/China Eastern Air Logistics* (logistics, behavioral remedies): On September 13, 2022, after a 309-day review, SAMR approved, with additional restrictive conditions, the proposed joint venture between Shanghai Airport Group and China Eastern Air Logistics.

SAMR considered the merger to have potential exclusionary and restrictive effects on the cargo terminal service market of Shanghai Pudong Airport and the international/ domestic air cargo service market with Shanghai Pudong Airport as the departure or destination.

表格 3- 所涉及的境内境外经营者集中审查程序对比

司法辖区	审查期限	审查时长	审查结果
中国国家市场监督管理总局	2021.09.18—2022.06.28	283	附加限制性条件批准
美国联邦贸易委员会	2021.04.08—2021.05.10	32	无条件批准
德国联邦反垄断局	2021.07.26—2021.08.25	30	无条件批准
韩国公平交易委员会	2021.07.17—2022.02.28	226	无条件批准

④**上海机场集团 / 东方航空物流**（物流；行为性救济）：2022 年 9 月 13 日，历经 309 天的审查之后，总局附加限制性条件批准了上海机场集团与东方航空物流新设合营企业案。

总局认为，该项集中对上海浦东机场货站服务市场、以浦东机场为出发地或目的地的国际 / 国内航空货运服务市场具有或可能具有排除、限制竞争效果。

总局提出了以下担忧：

- 集中后实体在上海浦东机场货站服务市场具有市场支配地位。
- 集中对上海浦东机场货站服务市场具有或者可能具有排除、限制竞争的效果。
- 集中对以浦东机场为出发地或目的地的国际 / 国内航空货运服务市场具有或可能具有排除、限制竞争效果。

基于申报方提出的承诺方案，总局同意以下的行为性补救措施：

- 保持机场集团与东航物流浦东机场货站业务的相互独立，机场集团、东航物流在浦东机场货站服务市场上继续独立开展公平竞争，不得交换竞争性敏感信息，不得达成或实施《反垄断法》禁止的垄断行为。
- 保证机场集团、东航物流与合营企业相互独立与竞争，具体措施包括人员不得兼职、股东权利限制、规定竞业禁止期限、办公场所及信息系统保持隔离、办公系统用户权限限制等。
- 确保机场集团、东航物流与合营企业之间不直接或间接交换竞争性敏感信息。合营企业独立运营，包括但不限于财务独立、人事独立、生产服务独立、采购独立、研发独立、定价独立、销售独立。
- 机场集团、东航物流继续履行与相关客户已经签署的浦东机场货站服务合同。合同期满后，如相关客

户希望续签合同，机场集团、东航物流不得拒绝，且续签条件不得低于本次交易前的服务水平。本项承诺有效期为 5 年。

- 机场集团、东航物流与合营企业应按照公平、合理、无歧视的原则，提供在浦东机场的机场货站服务。在同等条件下，不得就价格、数量等交易条件对下游客户实施差别待遇，不得实施不合理高价，不得合理地限制浦东机场货站服务提供总量。
- 除监督受托人外，合营企业承诺每年邀请中国航空运输协会对合营企业履行承诺情况进行监督指导。

⑤**韩亚航空株式会社 / 大韩航空公司**（航空客运；行为性救济）：2022 年 12 月 26 日，历经 643 天的审查之后，总局附加限制性条件批准了大韩航空公司拟收购韩亚航空株式会社股权案。

总局认为，该项集中对与中国相关的 15 条航线定期航空客运服务市场具有或可能具有排除、限制竞争效果。

总局提出了以下担忧：

- 交易进一步提高了相关市场的集中度。
- 交易进一步增强了集中后实体的市场控制力。
- 交易消除了相关市场最紧密竞争者之间的竞争。
- 交易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。

基于申报方提出的承诺方案，总局同意以下的行为性补救措施：

- 集中双方和集中后实体需履行归还航班时刻、归还航权、稳定供应、续签航空客运协议和保障航空客运辅助服务等义务。
- 集中双方和集中后实体需履行以下合规承诺：① 交易双方和集中后实体无正当理由，不得超过正常成本以及合理利润范围提高相关航线上的机票价格以



SAMR had the following concerns:

- The post-merger entity would have a dominant market position in the cargo terminal service market of Shanghai Pudong Airport.
- The concentration would produce a potentially exclusionary and restrictive effect on the cargo terminal service market of Shanghai Pudong Airport.
- The concentration would produce a potentially exclusionary and restrictive effect on the international/ domestic air cargo service market with Shanghai Pudong Airport as the departure or destination.

Based on the notifying parties' proposed commitments, the behavioral remedies approved by SAMR included:

- Maintain the mutual independence of the cargo terminal businesses of Shanghai Airport Group and China Eastern Air Logistics so that Shanghai Airport Group and China Eastern Air Logistics continue to independently engage in fair competition in the cargo terminal service market of Shanghai Pudong Airport. Shanghai Airport Group and China Eastern Air Logistics may not exchange competitively sensitive information and may not enter or implement monopolistic conduct prohibited by the AML.
- Ensure mutual independence and competition among Shanghai Airport Group, China Eastern Air Logistics, and the joint venture. Specific measures shall include no concurrent employment, restriction of shareholders' rights, stipulation on noncompetition period, isolation of office space and information systems, restriction of office system user permission, etc.
- Ensure that Shanghai Airport Group, China Eastern Air Logistics, and the joint venture do not directly or indirectly exchange competitively sensitive information. The joint venture shall maintain independent operations, including but not limited to independence in terms of finance, human resources, production service, procurement, research and development, pricing, and sales.
- Shanghai Airport Group and China Eastern Air Logistics shall continue to perform their existing cargo terminal service contracts at Shanghai Pudong Airport that has been signed with relevant customers. Upon the expiration of contract terms, if a customer wishes to renew the contract, Shanghai Airport Group and China Eastern Air Logistics may not refuse and shall ensure that the renewal conditions are not inferior to the service level before the concentration. This commitment is valid for five years.
- Shanghai Airport Group, China Eastern Air Logistics, and the joint venture shall provide cargo terminal service at Shanghai Pudong Airport based on FRAND principles. Under the same conditions, they shall not implement discriminatory treatments on downstream customers in terms of price, quantity, and other trading

conditions. They shall not impose unreasonably high prices or unreasonably limit the total amount of cargo terminal services provided at Shanghai Pudong Airport.

- In addition to supervisory trustees, the joint venture agrees to engage China Air Transport Association to supervise and guide the joint venture in fulfilling its commitments on a yearly basis.

⑤ *Asiana Airlines/Korean Air* (passenger air transport, behavioral remedies): On December 26, 2022, after a 643-day review, SAMR approved, subject to additional restrictive conditions, the proposed acquisition of Asiana Airlines by Korean Air.

SAMR considered the merger to have a potential exclusionary and restrictive effect on scheduled passenger air transport services market along 15 routes related to China.

SAMR had the following concerns:

- The merger would lead to an increase in concentration of the relevant market.
- The merger would further increase the post-merger entity's market control.
- The merger would eliminate competition among the closest competitors in the relevant market.
- The merger may enhance the incentives and ability of relevant competitors to coordinate prices.
- Higher market entry barriers would make it difficult for new effective competitors to emerge in the short term.

Based on notifying parties' proposed commitments, the behavioral remedies approved by SAMR included:

- Korean Air, Asiana Airlines, and the post-merger entity shall each perform the obligations of slot return, traffic right returns, stable supply, passenger air transport agreement renewal, and assurance on passenger air transport auxiliary services.
- Korean Air, Asiana Airlines, and the post-merger entity shall honor the following compliance commitments: ① without justifiable reasons, Korean Air, Asiana Airlines, and the post-merger entity shall not increase ticket price and passenger air transport ground service price of relevant routes beyond normal costs and reasonable profit range; ② Korean Air, Asiana Airlines, and the post-merger entity shall not implement price behavior that excludes or restricts competition for the purpose of increasing market share; and ③ when Asiana Airlines withdraws from relevant airline alliances and works on corresponding changes, in accordance with the provisions of relevant laws and regulations, Korean Air, Asiana Airlines, and the post-merger entity will take reasonable and necessary data protection measures and establish relevant data protection systems to prevent customer data breaches.

及航空客运地面服务价格；② 交易双方和集中后实体不得实施以提高市场份额为目的，排除、限制竞争的价格行为；③ 在韩亚航空进行相关航空联盟的退出、变更过程中，交易双方和集中后实体将依照相关法律、法规的规定，采取合理且必要的数据保护措施，构建相关的数据保护制度，以避免客户数据泄露。

自大韩航空于 2021 年向 14 个国家或地区的竞争执法机构提交申报材料以来，其已获得了包括韩国在内

的 11 个国家的（附条件）批准，目前仍需等待取得欧盟、美国和日本的批准。根据公开信息显示，该项交易于 2023 年 1 月 13 日向欧盟委员会进行申报。欧盟委员会于 2023 年 2 月 17 日决定对大韩航空收购韩亚航空的交易进行进一步调查。由于双方决定不向欧盟委员会提交承诺，因此欧盟委员会预计将拥有 90 个工作日的时间内做出决定，即截止日期为 2023 年 7 月 5 日。目前，该项交易成功与否仍具有不确定性。本项交易所涉的境内、境外经营者集中审查情况对比如表格 -4 所示：

表格 4- 所涉及的境内境外经营者集中审查程序对比

司法辖区	审查期限	审查时长	审查结果
中国国家市场监督管理总局	2021.03.23—2022.12.26	643	附加限制性条件批准
欧盟委员会	进一步调查	2023 年 1 月 13 日至今	尚未审结
美国联邦贸易委员会	/	/	尚未审结
日本公平交易委员会	/	/	尚未审结
韩国公平交易委员会	2021.01.14—2022.02.22	404	附加限制性条件批准
马来西亚航空委员会	2021.03.19—2021.09.09	174	无条件批准
土耳其竞争管理局	2021.01.14—2021.02.04	21	无条件批准
菲律宾竞争委员会	审结日期：2021.05.31	/	无条件批准
台湾地区“公平交易委员会”	提交日期：2021.01.14	/	无条件批准
泰国贸易竞争委员会	审结日期：2021.05.31	/	无条件批准
新加坡竞争与消费者委员会	2021.07.06—2022.02.08	217	无条件批准
澳大利亚竞争和消费者委员会	2022.01.13—2022.09.01	231	无条件批准
越南工业与贸易部	审结日期：2021.11.16	/	无条件批准
英国竞争与市场管理局	2022.09.16—2023.03.01	166	无条件批准

## 垄断协议与滥用市场支配地位行政处罚案件

2022 年，总局继续大力整治各类垄断协议与滥用市场支配地位案件。截止目前，2022 年总局累计处罚横向垄断协议案件 10 起，纵向垄断协议案件 4 起，滥用市场支配地位案件 9 起。2022 年，总局持续关注民生、医药等领域，并首次就涉及特许经营模式的纵向垄断协议案件予以处罚。

2022 年 6 月 24 日，海南伊顺药业有限公司（“伊顺药业”）因达成并尚未实施纵向垄断协议而被海南省

市场监督管理局处以 20 万元人民币的处罚。伊顺药业在与部分经销商签署的相关协议中包含限定经销商的商品最低转售价格条款，还规定了停止发货、支付违约金等惩罚措施。

2022 年 7 月 12 日，北京凯瑞联盟教育科技有限公司（“凯瑞公司”）因限定最低转售价格被北京市市场监督管理局处以 2020 年度销售额 3% 的罚款，约 94 万元人民币。北京市市场监督管理局认定凯瑞公司实施以下违法行为：

Since its submission of notification materials to competition enforcement agencies in 14 countries or regions in 2021, Korean Air has received (conditional) green light from 11 countries including South Korea and this acquisition still awaits approval from the European Union, United States, and Japan. According to public information, this transaction was notified to European Commission on January 13, 2023. On February 17, 2023, the European Commission

opened in-depth investigation into proposed acquisition of Asiana Airlines by Korean Air. Korean Air and Asiana Airlines decided not to submit commitments. The European Commission has 90 working days, until July 5, 2023, to take a decision. The success of this transaction is still uncertain. The comparison across jurisdictions for the merger reviews involved in this transaction are provided in Table-4:

**Table 4-Comparison across jurisdictions for the merger reviews involved.**

Jurisdiction	Date Filed/ Date Completed	Length (Day)	Outcome
SAMR	2021.03.23—2022.12.26	643	Approved Conditionally
European Commission	Further investigation	Since January 13, 2023 and still pending	Under Review
United States Federal Trade Commission	/	/	Under Review
Japan Fair Trade Commission	/	/	Under Review
Korea Fair Trade Commission	2021.01.14—2022.02.22	404	Approved Conditionally
Malaysian Aviation Commission	2021.03.19—2021.09.09	174	Approved unconditionally
Turkish Competition Authority	2021.01.14—2021.02.04	21	Approved unconditionally
Philippine Competition Commission	Date Completed:2021.05.31	/	Approved unconditionally
Taiwan Fair Trade Commission	Date Filed: 2021.01.14	/	Approved unconditionally
Trade Competition Commission of Thailand	Date Completed:2021.05.31	/	Approved unconditionally
Competition and Consumer Commission of Singapore	2021.07.06—2022.02.08	217	Approved unconditionally
Australian Competition & Consumer Commission	2022.01.13—2022.09.01	231	Approved unconditionally
Ministry of Industry and Trade	Date Completed:2021.11.16	/	Approved unconditionally
UK Competition and Markets Authority	2022.09.16—2023.03.01	166	Approved unconditionally

- 合作协议明文规定禁止加盟商价格调整
- 制定并发布多项规章制度保障价格管控
- 通过邮件向加盟商传达各地区定价变化及优惠活动信息
- 答复消费者价格由总部制定
- 加盟商定价或调价，须经凯瑞公司审批通过方可执行
- 对违反价格条款的加盟商实施处罚

## 平台经济反垄断

《反垄断法》在 2022 年的修订中重点关注平台经济反垄断及相关问题。具体而言，新修订的《反垄断法》第 9 条规定：“经营者不得利用数据和算法、技术、资本优势以及平台规则等从事本法禁止的垄断行为。”

总局在《禁止滥用市场支配地位行为规定（征求意见稿）》第 20 条针对平台经营者的“自我优待”提出相关规定，“禁止具有市场支配地位的平台经营者利用数据和算法、技术以及平台规则等，没有正当理由，在与该平台内经营者竞争时，对自身给予下列优惠待遇：① 对自身商品给予优先展示或者排序；② 利用平台内经营者的非公开数据，开发自身商品或者辅助自身决策。本条所称‘正当理由’包括：① 基于公平、合理、无歧视的平台规则实施的展示或者排序；② 符合正当的行业惯例和交易习惯；③ 能够证明行为具有正当性的其他理由。”

总局在《经营者集中审查规定（征求意见稿）》中根据数字经济特点对于市场进入影响评估、结构性救济和行为性救济方面提出新的规定。重点包括：① 考虑数据对于市场进入的影响情况；② 考虑剥离数据等无形资产或相关权益的结构性救济；③ 考虑开放网络或者平台等基础设施、修改平台规则等行为性救济。

《国务院关于经营者集中申报标准的规定（修订草案征求意见稿）》中要求在中国境内营业额超过 1000 亿元人民币的大型企业实施的并购（包括所谓的猎杀式收购）如符合特定条件则需要进行并购审查。具体而言，同时满足下列条件的，经营者应当事先申报：① 其中一个参与集中的经营者上一会计年度在中国境内的营业额超过 1,000 亿元人民币；且 ② 合并其他方或被收购方市值（或估值）不低于 8 亿元人民币，并且上一会计年度在中国境内的营业额占其在全球范围内的营业额比例

超过三分之一。大型企业尤其是大型互联网企业一般市场力量较强，相比中小经营者，其集中行为具有排除、限制竞争效果的可能性较高，此次修改对包括大型互联网企业在内的大型企业实施的猎杀式收购等的收购的关注，增强了反垄断执法的针对性。

此外，为解决猎杀式收购问题，修订后的《反垄断法》还允许总局要求低于法定申报标准的交易进行申报，如果该交易具有或者可能具有排除、限制竞争效果。此前，《关于平台经济领域的反垄断指南》和《关于原料药领域的反垄断指南》中已允许总局对未达申报标准案件主动调查，但总局一直未公开过对该类案件的调查情况，对于如何判断未达申报标准但具有或可能具有反竞争效果，还有待未来在法规和实践层面进一步明确。

国家发展和改革委员会、国家市场监督管理总局等九部门于 2021 年底发出的《关于推动平台经济规范健康持续发展的若干意见》，提出通过完善规则制度、明确监管重点等手段完善平台经济治理体系（特别是所谓“守门人”的大型互联网平台），例如完善反垄断、不正当竞争、平台价格行为等制度，以反垄断和反不正当竞争、个人信息保护和数据安全等作为监管重点。

该意见发布后，全国和地方层面进一步的政策也纷纷落地。比如：

- 最高检于 2022 年 3 月的新闻发布会上介绍，将探索推进互联网平台反垄断和反不正当竞争公益诉讼，对平台二选一、虚假宣传、竞价排名、违规促销、违法采集数据、违法推送等破坏市场竞争秩序的行为加强监督。
- 根据 2022 年 4 月和 6 月的公告，总局竞争政策与大数据中心将构建“二选一”等相关模型，汇聚主要电商平台内经营者信息，采用大数据技术，分析不同维度下各电商平台内经营者重合度，综合研判电商平台企业是否存在滥用市场支配地位。此外，总局还计划建成反垄断执法业务智能研判中心，利用自然语言处理、大数据、机器学习、深度学习、模型构建等技术，实现对重点行业头部企业垄断竞争行为风险的研判和预警。
- 作为平台经济大省，浙江省于 2022 年 7 月 5 日发布了全国首个互联网平台企业竞争合规省级地方标

## Enforcement Cases Against Monopoly Agreement and Abuse of Market Dominant Position

In 2022, SAMR continued to vigorously regulate several types of cases of monopoly agreements and abuse of market dominance. In 2022, SAMR imposed administrative penalties on a total of ten horizontal monopoly agreement cases, four vertical monopoly agreement cases, and nine abuse of market dominance cases. SAMR continued to pay attention to people's livelihood, the pharmaceutical industry, and other areas, and issued a penalty decision against a vertical monopoly agreement involving franchise for the first time.

On June 24, 2022, Hainan Eshun Pharmaceutical Co., Ltd ("Eshun Pharmaceutical") was fined RMB 200,000 by Hainan Provincial Administration for Market Regulation on the grounds that a vertical monopoly agreement was reached but not yet implemented. The relevant agreements that Eshun Pharmaceutical signed with some distributors contained provisions that stipulate minimum resale price for medicines and punishment measures, such as discontinuing of delivery and fines for breach of minimum resale price provisions.

On July 12, 2022, Beijing Kairui Alliance Education Technology Co., Ltd ("Kairui") was fined three percent of its revenues in 2020 by the Beijing Municipal Administration for Market Regulation for RPM, equaling approximately RMB 940,000. The Beijing regulator determined that Kairui had committed the following illegal conduct:

- Expressly prohibiting franchisees from adjusting prices in the cooperation agreements.
- Formulating and issuing several rules and regulations to ensure price control.
- Notifying franchisees of information of price change and promotion activities in various regions via email.
- Replying to customers that prices were determined by their head offices.
- Subjecting franchisees' pricing and price adjustment decisions to Kairui's approval.
- Imposing punishment on franchisees which violated the price terms.

## Anti-Monopoly in Platform Economy

The 2022 amendment to the AML focuses on platform economy antitrust and related issues. Specifically, Article 9 of the amended AML stipulates that undertakings may not use data, algorithms, technologies, capital advantages, platform rules, etc., to engage in any monopolistic practice prohibited by the present law.

SAMR set forth provisions on "self-preferencing conduct" of platform operators in Article 20 of the *Provisions on Prohibition of Abuse of Dominant Market Position (Draft for Comment)*. Article 20 stipulates that a platform operator with

market dominance is prohibited from using data and algorithms, technologies, platform rules, etc., to give itself the following preferential treatment without justifiable reason in competition with undertakings using the platform: ❶ giving priority to display or ranking for its own commodities, and ❷ using nonpublic data of the undertakings using the platform to develop its own commodities or assist in its own decision-making. "Justifiable reason" referred to in this Article includes: ❶ implementing display or ranking based on the platform rules that are FRAND, ❷ complying with proper industry practice and trading customs, and ❸ any other reason justifying an act.

Based on the characteristics of the digital economy, SAMR put forward new rules on market entry impact assessment, structural remedies, and behavioral remedies in the *Provisions on the Examination of Concentrations of Undertakings (Draft for Comment)*. The key points include: ❶ the impact of data on market entry; ❷ structural remedies, such as divestiture of data and other intangible assets or interests; and ❸ behavioral remedies, such as granting access to infrastructures of network or platform and modifying platform rules.

*The Provisions of the State Council on Thresholds for Prior Notification of Concentration of Undertakings (Revised Draft for Comment)* require concentrations (including a so-called "killer acquisition") conducted by large undertakings with over RMB 100 billion in revenue within China to be subject to merger review if certain conditions are met. Specifically, concentrations conducted by undertakings with over RMB 100 billion in revenue within China may be subject to merger review if ❶ one undertaking's revenue in the previous financial year in China exceeds RMB 100 billion, and ❷ any of the other merging undertaking(s) or targets (i) has a market value or valuation of RMB 800 million or more, and (ii) more than one-third of its worldwide revenue was generated from China in the previous financial year. Large-scale companies, especially Internet tycoons, compared to small and medium-sized companies, generally have stronger market power, and the acquisitions initiated by them usually are more likely to have the effect of eliminating or restricting competition. The focus on acquisitions conducted by large-scale companies, including Internet tycoons, such as killer acquisitions, in the amended AML strengthened the targeting of anti-monopoly enforcement.

The amended AML also addresses the killer acquisition issue by allowing SAMR to require the parties to file, even if the transaction falls below the statutory filing thresholds, if below-threshold transactions have or may have the effect of eliminating or restricting competition. Previously, SAMR was already granted the power to investigate below-threshold transactions pursuant to the *Anti-monopoly Guide for the Platform Economy Sector* and the *Anti-monopoly Guide for the Active Pharmaceutical Ingredients Sector*. However, SAMR has never publicly disclosed any investigation on below-threshold transactions. The determination that a below-threshold transaction may have anti-competitive

准《互联网平台企业竞争合规管理规范》(DB33/T 2511-2022) (《浙江规范》), 并于 2022 年 8 月 5 日起生效实施。《浙江规范》界定了互联网平台分类, 规定了互联网平台企业竞争合规的组织管理、风险管理、保障措施、评价与改进等方面的定性技术要求。《浙江规范》重点关注互联网平台企业“自我优待”、“大数据杀熟”、算法滥用、强制“二选一”、资本无序扩张等破坏公平竞争的行为, 从反垄断、反不正当竞争两个角度, 全面梳理竞争合规管理过程中需关注的重点内容、常见的平台企业合规风险及风控措施等。

## 其他立法进展

作为新修订的《反垄断法》的配套实施规章, 截止 2022 年底, 总局还发布了以下征求意见稿。根据总局目前的公告, 其完成了对相关意见的征集及研究。下一步, 总局将根据征求意见情况, 对以下规定进行修改完善, 按程序推进相关工作:

- 《禁止垄断协议规定 (征求意见稿)》(2022 年 6 月 27 日)
- 《禁止滥用市场支配地位行为规定 (征求意见稿)》(2022 年 6 月 27 日)
- 《制止滥用行政权力排除、限制竞争行为规定 (征求意见稿)》(2022 年 6 月 27 日)
- 《禁止滥用知识产权排除、限制竞争行为规定 (征求意见稿)》(2022 年 6 月 27 日)
- 《经营者集中审查规定 (征求意见稿)》(2022 年 6 月 27 日)
- 《国务院关于经营者集中申报标准的规定 (修订草案征求意见稿)》(2022 年 6 月 27 日)
- 2022 年 12 月公布了《反不正当竞争法》

## 关于《反不正当竞争法》修订

《反不正当竞争法》已经进入国家当前立法工作计划。国家市场监督管理总局于 2022 年 12 月公布了《反不正当竞争法》修订草案征求意见稿。该草案有两处修订对于营造良好的公平竞争环境和企业营商环境存在重大不利影响, 需要引起立法部门的重视:

- 草案“第八条”将交易相对方纳入商业贿赂的受贿

主体。无论从商业贿赂的本质, 或是从全球立法例来看, 交易相对方都不应该是受贿行为的主体。2016 年《反不正当竞争法》修订时, 吸收了上述意见, 将交易相对方从商业贿赂的受贿主体中剔除, 从而解决了困扰企业多年的难题。随后, 企业根据新的法律框架构建其商业行为。此次修法, 却再次将交易相对方纳入到受贿主体范畴, 这一举措令很多企业深感迷惑, 许多已经按照当前反不正当竞争法创建的商业模式遭到颠覆。

- “第十三条”建立了相对优势地位经营者制度。在《反垄断法》已经规定了具有市场支配地位经营者的相关法律制度的前提下, 又在《反不正当竞争法》中规定内容几乎一致的相对优势地位经营者制度, 会导致法律适用混乱, 甚至导致《反垄断法》的空转。其次, 相对优势地位经营者制度缺乏充分调研和考虑, 会颠覆已经在中国普遍存在且良好运行几十年的经销体制。不得限定经销商的经销区域、渠道等内容, 将会使采用经销体制的企业在内外组织管理上无所适从。再次, 相对优势地位经营者制度在全球竞争法立法实例中也是罕见的。即便是在采用这一制度的德国, 也从未见到过执行该规定的执法案例。

## 建议

### 对中国政府:

- 重视真正的竞争问题。公正对待本国企业与其外国竞争对手, 避免产业政策利益、投资政策、贸易政策等混入《反垄断法》的执行, 协调好《反垄断法》与国家安全审查规则 (例如:《外商投资安全审查办法》) 各自的管辖与执行。
- 澄清《反垄断法》修订后尚不明确的一些关键问题, 包括: 安全港制度是否也适用核心纵向价格限制; 如何判断虽未达法定申报标准, 但一项交易具有或可能具有排除或限制竞争的效果; 此外, 对于经营者未依法申报或申报后未经批准即实施 (抢跑) 的判断标准, 建议总局结合以往执法经验总结并发布相关

effects remains to be further clarified at the statutory and practice levels.

Nine authorities, including the National Development and Reform Commission and SAMR, issued *the Several Opinions on Promoting the Standardized, Healthy, and Sustainable Development of the Platform Economy* at the end of 2021. The Opinions proposed improvement of the platform economic governance system (especially a large online platform as a so-called “gatekeeper”) by developing sound rules and systems, such as administrative measures on anti-monopoly, unfair competition, and platform-related price behavior, and clarifying the key areas of oversight, including anti-monopoly and anti-unfair competition, personal information protection, and data security.

Since the issuance of such opinions, additional policies at both the national and local levels have also been implemented. For example:

- The Supreme People’s Procuratorate announced at a press conference in March 2022 that it will explore and promote anti-monopoly and anti-unfair competition public interest litigation on Internet platforms and strengthen supervision over behavior that undermines the order of market competition, such as platform “pick one of two,” false advertisements, paid listings, illegal sales promotions, illegal data collections, and illegal push notifications.
- According to the announcements in April and June 2022, SAMR’s Competition Policy and Big Data Center will build a “pick one of two” and other related models, collect information on businesses in major e-commerce platforms, leverage big data technology, analyze the overlap of businesses in different respects across different e-commerce platforms, and comprehensively analyze whether e-commerce platform operators abuse their market dominant positions. In addition, SAMR also plans to set up an intelligent research center for AML enforcement, using natural language processing, big data, machine learning, deep learning, model construction, and other technologies to realize the analysis and early warnings of the risks of monopolistic competition behavior of leading companies in key industries.
- As home to many major platform operators, Zhejiang Province on July 5, 2022, issued the first provincial-level standard for competition compliance of Internet platform operators, the “Competition Compliance Management Specification for Internet Platform Enterprises” (DB33/T 2511-2022) (the “Zhejiang Specification”), which came into effect on August 5, 2022. *The Zhejiang Specification* defines the classification of Internet platforms and stipulates the qualitative technical requirements for organizational management, risk management, safeguard measures, evaluation, and improvement with respect to competition compliance of Internet platform enterprises. The “Zhejiang Specification

focuses on behavior that undermines fair competition, such as “self-preferential treatment,” “big data bias,” algorithm abuse, forced “pick one of two,” and disorderly expansion of capital. It also comprehensively lays out the key content that needs to be monitored in the process of competition compliance management, common compliance risks, and risk control measures of platform enterprises from the perspectives of anti-monopoly and anti-unfair competition.

## Other Legislative Developments

SAMR issued the following drafts for comments as implementing rules with respect to the amended AML as of 2022. According to SAMR’s announcement, it has completed the collection and study of relevant public comments, which will be reflected in the next step, when SAMR further revises the following drafts and proceeds according to its procedure:

- *Provisions on Prohibition of Monopoly Agreements (draft for comment)* (June 27, 2022)
- *Provisions on Prohibition of Abuse of Dominant Market Positions (draft for comment)* (June 27, 2022)
- *Provisions on Prohibition of Abuse of Administrative Power to Exclude or Restrict Competition (draft for comment)* (June 27, 2022)
- *Provisions on Prohibition of Abuse of Intellectual Property Rights to Exclude or Restrict Competition (draft for comment)* (June 27, 2022)
- *Provisions on the Examination of Concentration of Undertakings (draft for comment)* (June 27, 2022)
- *Provisions of the State Council on Thresholds for Prior Notification of Concentrations of Undertakings (revised draft for comment)* (June 27, 2022)
- *Amendment of the Anti-Unfair Competition Law* (December 2022)

## About the Amendment of the Anti-Unfair Competition Law

The *Anti-Unfair Competition Law* has been included in the current legislative work plan of the country. In December 2022, the State Administration for Market Regulation released a draft revision of the law for public comments. There are two proposed revisions in the draft that could have a significant negative impact on creating a fair competitive environment and a conducive business environment for enterprises. These revisions require attention from the legislative department:

Firstly, the proposed revision to Article 8 includes the counterparty of a transaction as the subject of commercial bribery. This approach contradicts the nature of commercial bribery and global legislation, which do not recognize the counterparty as a subject of bribery. In 2016, when the *Anti-Unfair*

指导意见（尤其是在申报后交易交割前的过渡期注意事项），促进交易当事人竞争合规。

- 提高经营者集中反垄断审查透明度，以便外界监督，并且给经营者合理预期以理性安排交易。比如，对所有申报交易都在受理当日于总局官网进行公示，具体可参考简易案件公示表；对于未达申报标准但总局依法要求申报 / 审查的案件，也于总局做出决定之日在官网公示；对于所有审结案件，在决定公布时一并披露案件的具体审查时限。



*Competition Law*” was last revised, the above opinion was incorporated, and the counterparty was removed as a subject of commercial bribery, thus resolving a long-standing issue for enterprises. Enterprises then structured their business conduct according to the new legal framework. However, the proposed revision in the current draft once again includes the counterparty as the subject of bribery. This move has deeply confused many companies, and many established business models in accordance with the current law have been subverted.

Secondly, the proposed “Thirteenth Article” establishes the system of relatively dominant position operators. While the “*Anti-Monopoly Law*” has already stipulated relevant legal systems for operators with dominant market positions, the “*Anti-Unfair Competition Law*” proposes a relatively dominant operator system with almost the same content. This could lead to confusion in the application of the law and even render the *Anti-Monopoly Law* redundant. Moreover, insufficient research and consideration of the relatively dominant position operator system could undermine the distribution system that has been prevalent and operating effectively in China for decades. The proposed revision does not allow the limitation of distribution areas and channels of dealers, causing a loss to enterprises that adopt the distribution system in terms of internal and external organization and management. Furthermore, the relatively dominant position operator system is rare in global competition law legislation, and even in Germany, where this system is adopted, there has never been a law enforcement case to enforce this provision.

before the closing of a transaction), based on past enforcement experience, to promote competition compliance.

- Improve the transparency of merger control review to ensure external supervision and give undertakings reasonable expectations to rationally arrange transactions. For example, disclose all notified transactions on the official website of SAMR on the day of acceptance, the form of which may refer to the Simple Case Public Notice Form. Disclose cases which do not meet the notification standards but are required by SAMR to be notified/reviewed under the amended AML on the official website of SAMR on the day of such decision. For all closed cases, disclose the relevant review timeline of each case when the decision is made public.

## Recommendations

### *For the Chinese Government*

- Focus on authentic competition issues. Treat Chinese firms and their foreign competitors fairly and refrain from injecting concerns on industrial policies, investment policies, and/or trade policies into AML enforcement. Coordinate the respective jurisdiction and enforcement of the AML and rules regarding national security review, such as *the Measures for the Security Review of Foreign Investments*.
- Clarify a number of key issues that are unclear in the amended AML, including whether the safe harbor rule also applies to hardcore vertical price restraints and how to determine whether a transaction that is not reportable under the amended AML has or is likely to have the effect of eliminating or restricting competition. In addition, AmCham China recommends that SAMR summarize and issue relevant guidance on the criteria of gun-jumping (especially the “do’s and don’ts” during the transitional period



# Compliance

## Introduction

2022 was a particularly challenging year for US businesses in China, in part due to the impact of the COVID-19 pandemic, which disrupted most commercial activities and impacted employers and employees alike. US companies in China faced further challenges arising from the impact of US legislative developments that focused on national security and other China-related concerns, including the *Uyghur Forced Labor Prevention Act* (“UFLPA”). These developments placed additional stress on supply chains, adding significant compliance costs as businesses in certain industries were required to diligence China suppliers in order to meet new US regulatory requirements. Member companies of the American Chamber of Commerce in China (“AmCham China”) also faced local regulatory compliance challenges as Chinese authorities fine-tuned the implementation of various regulatory regimes, including new regimes with respect to data security and personal information privacy. According to the *China Business Climate Survey Report* published by AmCham China in 2023, risk management and US-China trade tensions were two of the top three reasons cited by members considering locating manufacturing and sourcing outside of mainland China. Regulatory enforcement was the third largest concern of AmCham China members regarding unfair treatment in China and in response to heightened regulatory enforcement by Chinese authorities 38 percent of respondents said that they were focusing on compliance and internal controls.

## PRC regulatory environment

### *Economic Sanctions & Export Control*

In 2020 and 2021 China promulgated new laws and regulations to create new sanctions, foreign sanctions blocking and listing regimes triggered in part by the long-arm jurisdiction of the US economic sanctions regime. Three documents were promulgated to achieve this aim: the *Provisions on the List of Unreliable Entities* (“Unreliable Entities List”), the *Rules on Blocking Unjustified Extraterritorial Application of Foreign Legislation and Other Measures* (“Blocking Rules”) and the *Anti-Foreign Sanctions Law* (“AFSL”).

On September 19, 2020, the Ministry of Commerce issued the Unreliable Entities List, which applies to any foreign

enterprise, other organization or individual that endangers China’s national sovereignty, security or development interests, or suspends normal transactions with, or takes discriminatory measures against Chinese enterprises, other organizations or individuals that violate normal market transaction principles, thereby causing serious harm to Chinese counterparties. Listing has the effect of restricting import/export activities for companies on the list, as well as restricting entry of personnel and relevant transportation to China, restricting or removing existing foreign personnel from China and the imposition of fines commensurate with the violation. Two US companies engaged in the defense industry were placed on the Unreliable Entities List in February 2023.

On January 9, 2021, the Ministry of Commerce issued 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” which 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. This potentially puts US companies in a difficult position as they must comply with the laws and regulations of the US. So far, in 2022 Chinese authorities have not taken actions against US.

On June 10, 2021, the Standing Committee of the National People’s Congress promulgated the AFSL, which established the legal framework for China to counter foreign economic sanctions. The AFSL creates a blacklisting mechanism targeting organizations or individuals which 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 AFSL prohibits “any” organization or individual from implementing or assisting in the implementation of a foreign country’s discriminatory restrictive measures against Chinese parties and in theory the law has extraterritorial effect. An organization or individual which violates this prohibition may be sued in Chinese court for an injunction or damages. Since July 2021 through to the end of 2022, 15 individuals and three entities, including two major US defense companies have been listed under the AFSL.

# 合 规

## 引 言

**对** 于在华经营的美国企业来说，2022年充满挑战，一部分原因是受到新冠肺炎疫情的影响，导致大部分商业活动、企业和员工受到影响。美国新颁布了诸多有关国家安全的法规，导致在华美企面临的挑战进一步加剧，其中包括《防止强迫维吾尔族人劳动法》（UFLPA）。由于这些新颁布的法规要求某些行业的企业对中国供应商进行调查，以满足美国新提出的监管要求，导致供应链承受的压力进一步加剧，极大地提高了企业的合规成本。由于中国政府正在对各种监管制度的实施进行逐步调整，中国美国商会（以下简称商会）的会员企业在本地监管合规方面也面临挑战，其中包括有关数据安全和个人信息隐私方面的新制度。商会2023年发布的《中国商务环境调查报告》显示，会员企业不选择中国境内而是其他地方进行生产和采购的前三大原因中，包括风险管理和中美贸易关系紧张。商会会员企业认为，在不公平待遇方面，监管执法位列第三位。38%的受访企业表示正在加强合规和内部管制，以应对中国政府的监管执法。

## 中国的监管环境

### 经济制裁与出口管制

为了应对美国经济制裁体系引发的长臂管辖权，中国于2020年和2021年颁布法律法规明确制定了新的制裁措施、外国制裁反制措施以及清单制度。为此，中国已经颁布了三部法律法规，包括：《不可靠实体清单规定》（以下简称《不可靠实体清单》）、《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》）以及《中华人民共和国反外国制裁法》（以下简称《反外国制裁法》）。

2020年9月19日，商务部发布《不可靠实体清单》，适用于任何危害中国国家主权、安全、发展利益，或者

违反正常的市场交易原则，中断与中国企业、其他组织或者个人的正常交易，或对中国企业、其他组织或者个人采取歧视性措施，严重损害中国企业、其他组织或者个人合法权益的外国企业、其他组织或者个人。《不可靠实体清单》规定，对列入该清单的外国实体可以采取一系列措施，包括限制或者禁止其从事与中国有关的进出口活动；限制或者禁止其相关人员、交通运输工具等入境；限制或者取消其相关人员在中国境内工作许可、停留或者居留资格；以及根据情节轻重给予相应数额的罚款。到本章截稿前，已有两家美国国防公司于2023年2月被列入《不可靠实体清单》。

2021年1月9日，商务部发布了《阻断办法》，建立由其牵头的政府工作机制，负责颁布禁令，阻断限制中国与第三国之间进行经贸活动时外国法律和措施的不当域外适用。值得注意的是，除非豁免得到批准，否则，如果“当事人”未能遵守禁令，未能遵守相关外法律与措施，中国公民、法人或者其他组织可以依法向人民法院提起诉讼，要求该当事人赔偿损失。鉴于美国企业必须遵守美国的法律法规，因此该规定可能会让美国企业陷入两难。到目前为止，中国政府在2022年还未针对在华美国企业采取与《阻断办法》有关的行动。

2021年6月10日，全国人民代表大会常务委员会颁布了《反外国制裁法》，为中国反制外国经济制裁建立了法律框架。《反外国制裁法》建立了反制清单机制，适用于直接或者间接参与制定、决定、实施“干涉中国内政”的歧视性外国制裁措施的组织或个人。《反外国制裁法》禁止“任何”组织或个人实施或参与实施外国国家对中国当事人的歧视性限制措施，理论上该法具有治外法权效力。可在中国的法院对违反这一禁令的组织或个人提起诉讼，要求其停止侵害、赔偿损失。自2021年7月至2022年底，有15名个人和3家实体，包括两家重要的美国国防公司，已经被列入反制清单。

2021年，中国致力于进一步完善其出口管制制度。

In 2021, China furthered its efforts to perfect its export control regime. After the promulgation of the *Export Control Law* of the People's Republic of China (took effect 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. While these Guiding Opinions are not mandatory, they comprise principal elements of a comprehensive and effective export compliance program for dual-use items that an export operator may wish to establish in order to comply with the *Export Control Law*. On November 2, 2021, MOFCOM released a revised Catalogue of Technologies Prohibited or Restricted from Import. Separately, the Catalogue of Technologies Prohibited or Restricted from Export was revised in August 2020.

It is noteworthy that anti-corruption provisions have been incorporated into China's export control legislation. The *Export Control Law* provides that export licenses obtained through fraud, bribery or other improper means will be revoked, and violators not only will have their illegal gains confiscated but will also be fined according to the amount of their illegal gains.

### ***Anti-Bribery and Corruption ("ABAC") Compliance and Enforcement***

In recent years, China has reformed its systems for monitoring corruption issues, following on several years of enforcement of compliance requirements against government officials. The PRC National Supervisory Commission ("NSC") has responsibility for overseeing the disciplinary system. The *Law of the People's Republic of China on Administrative Discipline for Public Officials* ("*Law on Administrative Discipline*") effective July 1, 2020 strengthened the power of the NSC to impose administrative discipline on public officials. The term public official is defined broadly to include not only government officials but also managers of state-owned enterprises and other persons performing duties on behalf of the state. Under the law, public officials found to be in violation of laws and regulations may receive administrative punishments from warnings up to dismissal from office. The *Law of the People's Republic of China on Supervisory Officers*, effective January 1, 2022, further strengthens measures targeted at responsible persons in the state sector. Among other things, the law specifically targets officers with supervisory responsibility who have been involved in bribery and corruption.

To enhance transparency, the NSC and Central Commission for Discipline Inspection of the Communist Party of China (CCDI) have continued to issue new regulations, provide guidance to their local branches, and develop some measures related to the transparency of its investigation process. In January 2020, the NSC and CCDI issue the *Rules for Discipline Inspection and Supervision Organs to Handle Accusations* ("*Rules*"), clearly defining the procedures relating to whistleblower complaints to be observed by the CCDI, 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 by higher authorities. AmCham China applauds the efforts of the Chinese government to further improve legal procedures to address corruption and enhance the transparency of regulatory work.

On December 26, 2020, the Standing Committee of the National People's Congress ("NPC") adopted *Amendment (XI) to the Criminal Law of the People's Republic of China* ("*Amendment XI*"), effective March 1, 2021. Amendment XI increases sanctions on non-state public officials who accept or solicit bribes, and redefines the sentencing standards for 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 this Amendment, pursuant to the *Criminal Law of the People's Republic of China* ("*Criminal Law*"), non-state staff who committed acts of corruption were subject to 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 penalty gap. The sentencing distinction between state and non-state staff depends on specific job responsibilities assumed by each individual. In 2021, China strengthened its commitment to investigate commercial bribery offenses, while balancing 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 impediment to the anti-corruption campaign in China. Thus, multiple authorities, including the NSC, SPC and SPP, will endeavor to investigate bribe giving and bribe taking. Giving bribes for 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.

With regard to protecting legitimate business interests as part of its continuous combatting of bribery, China is exploring the new mechanism of third-party supervision and eval-

在《中华人民共和国出口管制法》（以下简称《出口管制法》）（自2020年12月1日起生效）颁布后，2021年4月28日，商务部发布了《商务部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》（以下简称《指导意见》）。虽然《指导意见》并非强制性的，但它包含了一系列主要原则，而两用物项出口经营者需要基于这些原则，建立全面、有效的内部合规机制，来满足《出口管制法》的要求。2021年11月2日，商务部发布了修订后的《中国禁止进口限制进口技术目录》（以下简称《目录》）。另外，《目录》曾于2020年8月修订。

值得注意的是，反腐败条例已被纳入中国出口管制的法律法规。《出口管制法》规定，以欺骗、贿赂等不正当手段获取管制物项出口许可证件，或者非法转让管制物项出口许可证件的，撤销许可，收缴出口许可证，没收违法所得，并根据违法经营额处以罚款。

### 反贿赂与反腐败（“ABAC”）合规与执法

近年来，在对公职人员执行合规要求数年之后，中国对其监测腐败问题的制度进行了改革。中华人民共和国国家监察委员会（以下简称国家监委）负责监督纪检监察系统。2020年7月1日生效的《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》）强化了国家监委对公职人员实施政务处分的权力。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。根据法律规定，对违反规定的公职人员，将给予警告、解除公职等行政处分。2022年1月1日生效的《中华人民共和国监察官法》进一步加强了对国家公职人员的监督。其中，该法对涉嫌参与贿赂和腐败的监察人员进行了特别规定。

为提高透明度，国家监委和中共中央纪律检查委员会（以下简称中央纪委）继续发布新规定，为其地方下级机构提供指导，并出台了一些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进行内部举报的时间和上级机关受理或拒绝调查的通知时间。商会对中国政府努力进一步完善反腐败的法定程序、提高监管工作透明度的做法表示认可。

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《修正案十一》），于2021年3月1日起施行。《修正案十一》增加了对非国家公职人员收受或索取贿赂的处罚，重新界定了非国家公职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。《修正案十一》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”的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公职人员处以更严厉的处罚。在《修正案十一》之前，根据《中华人民共和国刑法》（以下简称《刑法》），与国家公职人员相比，犯有腐败行为的非国家公职人员受到的处罚较轻。《修正案十一》规定非国家公职人员与国家公职人员适用相同的量刑水平，缩小了上述处罚差距。国家公职人员与非国家公职人员之间的区别取决于该人员承担的具体工作职责。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求。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，这是阻碍中国反腐运动的一个重大障碍。因此，国家监委、最高人民法院和最高人民检察院等多个部门将不遗余力地调查行贿和受贿。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员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》还将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）的方法，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，将这些措施对合法经营企业的影响降到最低。

在保护合法商业利益方面，为了持续打击贿赂行为，中国正在探索建立新机制，以第三方监督和刑事案件所涉公司的合规性评估为抓手。2021年6月3日，最高人民检察院和其他八个部委联合发布《关于建立涉案企业合规第三方监督评估机制的指导意见（试行）》（以下简称《第三方机制指导意见》）。《第三方机制指导意见》为特定犯罪案件建立了不起诉机制，该机制通过要求实施犯罪行为的市场主体作出合规承诺，来取代刑事诉讼，其中包括在生产经营活动中涉及的经济犯罪、职务犯罪等案件（例如涉嫌贿赂的案件）。如果犯罪案件符合下

uation 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. When prosecuting the applicable crimes, if ❶ the enterprise or individual involved pleads guilty and accepts the imposed penalty, ❷ 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 ❸ 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 engages 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 monitorships. 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.

Other than the proposed changes to the *Anti Unfair Competition Law* discussed below, there were no major ABAC legal or regulatory developments in 2022, although several technical notices and regulations regarding the operation of criminal cases involving bribery came into effect, along with industry revisions to ABAC regulations, including commercial bribery activities overseen by the State Administration of Market Regulation (“SAMR”).

Statistics published in state media regarding the enforcement of anti-bribery laws in the period January to November 2022 show that 1,208 cases were opened, and 1,704 persons were arrested. It is notable that this level of enforcement was achieved notwithstanding the impact of the COVID-19 pandemic, although overall enforcement was down on previous years. Companies and company officials found to be corrupt face civil/administrative or criminal liabilities and potential reputational damage. Foreign companies operating in mainland China must observe local anti-bribery and corruption laws and regulations as well as applicable overseas laws to avoid penalties and reputational damage. For multinational companies this can make for a complex

compliance picture. Specifically, US companies and citizens in China and potentially non-US companies with exposure to US jurisdiction must abide by PRC laws, regulations, and the *US Foreign Corrupt Practices Act* (“FCPA”). The two legal regimes diverge in certain key respects. For example, the definition of a “foreign government official” under the FCPA is not equivalent to the definition of a “government functionary” under PRC anti-bribery legal provisions.

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.

*Third-Party ABAC Compliance.* Compliance with both PRC and US anti-bribery and corruption laws by third parties has been a major concern for US companies operating in mainland China. Those concerns include but are not limited to the activities of sales channel distributors and resellers, vendors, agents, investment advisors, consultants, customs brokers, and supply chain partners. It is essential that companies with exposure to US diligence the effectiveness of third party compliance programs and urge business partners in mainland China to adopt compliance measures that address the key risks of failing to comply with applicable ABAC legislation.

There were no substantive legislative updates targeting third-party compliance in China in 2022. For example, in November 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. The Opinions require that the implementation and operation of compliance management mechanisms should be led by the general counsel and coordinated with those managing the legal, compliance, internal control, and risk management functions of a company. This approach reflects compliance structures that have been adopted by many leading Chinese companies, both SOEs and private companies, for several years.

### ***Anti-Unfair Competition Law***

The *Anti-Unfair Competition Law* (“AUCL”) regulates commercial bribery, protection of trade secrets and other anti-competitive conduct that is addressed in anti-trust laws in the US. Following the amendments in 2018 and 2019, the SAMR was charged with enforcement of the. The anti-trust aspects of the AUCL are addressed elsewhere in this White Paper in the Competition Law Chapter. For purposes of this Compliance chapter, the focus is on the commercial bribery aspects of the AUCL.

In 2020, the Chinese government implemented the amended AUCL as a way to further improve and safeguard fair

列条件，包括 ❶ 涉案企业、个人认罪认罚；❷ 涉案企业能够正常生产经营，承诺建立或者完善企业合规制度，具备启动第三方机制的基本条件；以及 ❸ 涉案企业自愿适用第三方机制，则最高人民检察院及其地方人民检察院可以适用第三方机制，而不再对企业进行起诉。纪检监察机关应就涉嫌行贿的企业是否符合第三方机制适用条件，向人民检察院提出建议。由相关主管部门召集和建立的第三方机制管委会，负责监督涉案企业制定合规计划，明确合规计划的承诺完成时限，审查合规计划并提出建议，监督合规计划的履行情况。该监督机制在某种程度上类似于美国《反海外腐败法》(FCPA) 中的合规监督机制。承诺完成时限期满后，人民检察院应对合规计划进行评估，并决定是否对该企业进行起诉。

在反贿赂和反腐败方面，尽管数个针对涉嫌贿赂的刑事案件的指导意见和规定已经生效，对相关法规也已进行了行业修订，包括由国家市场监管总局负责监督商业贿赂行为的规定，但除了下文讨论的对《中华人民共和国反不正当竞争法》(以下简称《反不正当竞争法》) 的拟议修订外，2022 年没有取得重大立法或监管进展。

根据国家媒体公布的有关反贿赂法规执行情况的统计数据，2022 年 1 月至 11 月期间，共立案 1208 件，逮捕 1704 人。值得注意的是，尽管受到新冠肺炎疫情的影响，总体执法情况比前几年有所下降，但仍达到了一定的执法水平。腐败不仅会使企业和企业人员承担民事 / 行政和刑事责任，也会损害企业的声誉。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，以避免受到处罚或使声誉受损。对于跨国企业来说，可能会面临复杂的合规情况。具体而言，美国在华企业和在华公民以及可能受美国管辖的非美国企业在遵守中国法律的同时，还必须遵守美国的《反海外腐败法》。这两套法律体系在部分关键方面存在分歧。例如，《反海外腐败法》中“国外政府官员”的定义并不等同于中国反贿赂法律条款中“公职人员”的定义。

在中国经营的美国企业需要保持警觉，审查其合规计划和反贿赂控制措施，以保证合规计划的健全、有效，同时密切关注中国迅速发展的合规法治环境。

**第三方反贿赂与反腐败合规。** 第三方能否同时遵守中国和美国的反贿赂和反腐败法一直是美国在华企业关注的一个重点问题。这些问题关切包括但不限于销售渠道分销商、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。面临美国合规风险的企业需要

确保第三方制定有效的合规计划，并督促中国国内的商业合作伙伴制定合规措施，以应对未遵守反腐败法规所带来的主要风险。

2022 年，中国在第三方合规立法方面没有取得实质性的进展。2021 年 11 月，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。《意见》要求合规管理机制的实施和运行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。许多中国龙头企业(包括国有企业和民营企业)几年来一直采用的就是这种合规结构。

### 《反不正当竞争法》

《反不正当竞争法》对商业贿赂、商业秘密保护以及美国反垄断法律中涉及的其他反竞争行为进行了规定。该法于 2018 年和 2019 年修订后，由国家市场监督管理总局(以下简称“市场监督管理总局”)负责执行。本《白皮书》其他部分对《反不正当竞争法》涉及的反垄断问题进行了讨论，详见。就本章节而言，重点在于《反不正当竞争法》中有关商业贿赂的方面。

2020 年，《反不正当竞争法》经修订后实施，旨在进一步改善和保障市场的公平竞争。例如，全国人大常委会执法检查组对部分省市进行视察，对当地的法律实施情况进行了评估。受访经营者认为，应发布更详细的实施细则，以支持对该法的实施。企业经营者表示，他们对各种“不正当竞争”行为的具体定义和标准并不完全清楚，而且《反不正当竞争法》也没有对一些新兴商业行为和实提供监管指导，包括互联网和电子商务平台经营者的不正当竞争行为。此外，虽然市场监督管理总局不时公布其各种执法行动中发现的“典型案例”，但公布信息仅包含案例的概要信息，所涉及的细节往往有限，而且有可能无法在执法行动开展后及时公布。

2020 年 10 月，市场监督管理总局发布了《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，以谋取商业机会或获得竞争优势。

中国继续对《反不正当竞争法》中的商业贿赂条款进行修订。2022 年 11 月 22 日，国家市场监督管理总局发布了《反不正当竞争法(修订草案征求意见稿)》(以下



competition in the market. For example, the enforcement inspection team of the NPC Standing Committee on the AUCL paid a visit to several provinces and cities to inspect and assess local implementation of the 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 AUCL. Business operators said, they are not fully clear of the specific definitions and criteria for various acts considered “unfair competition,” and that the AUCL does not provide guidance on regulating some rapidly developing activities and practices, such as acts of unfair competition involving Internet and e-commerce platform operators. Moreover, while the SAMR publishes summaries of “typical cases” identified through its various actions from time to time, these publications often contain limited details, and are not necessarily published in a timely manner following enforcement actions.

In October 2020, the SAMR released the *Interim Provisions on Regulating Promotional Activities*, according to which operators are prohibited from bribing others in the course of promotions for purposes of seeking business opportunities or competitive advantages.

China continues to amend the commercial bribery provisions of the AUCL and on November 22, 2022, SAMR issued the Draft AUCL Amendments. The draft proposes prohibiting businesses from bribing transaction parties and both individuals and entities from accepting bribes in commercial transactions. This expands the scope of liability from that of employees who bribe under the current law. The draft amendment also extends to bribery by third parties on behalf of their principals, which is a gap in current law. The amendment also proposes increased penalties so that the maximum fine for giving bribes will be RMB 5 million, up from RMB 3 million. In terms of the impact of the proposed amendments on compliance, AmCham China members should review and if necessary strengthen third party bribery rules and check the legality of discounts, rebates and other benefits provided to counterparties by the company, since these activities are explicitly covered under the Amendment.

### ***Cybersecurity, Data Privacy and Data Security***

China has now fully implemented its cybersecurity regime, comprising the *Cyber Security Law* promulgated in 2017, and the *Data Security Law* and the *Personal Information Protection Law* promulgated in 2021. Under this framework, China has been gradually introducing implementation rules and formulating reference standards. As of 2023 foreign companies in mainland China must fully comply with all of the new laws and relevant subsidiary legislation. This is proving somewhat challenging as it is not yet clear how authorities will implement the new regime and foreign companies in particular have concerns surrounding cross border data transfers, which could seriously affect their ability to do business at an international level.

*Personal Information Protection.* 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 PIPL is China’s first law governing the protection of personal information has many similarities with the General Data Protection Regulation (“GDPR”) implemented by the European Union in 2017. The new law sets ambitious standards for protection of the personal information of individuals in mainland China, takes personal consent as the main basis for processing data, imposes restrictions on cross-border transfers of personal information with extraterritorial effect, and uses relatively high fines as the principal form of punishment for non-compliance.

*The definition and scope of personal information and sensitive personal information.* According to the PIPL, personal information refers to information related to any identified or identifiable natural persons, recorded by electronic or other means, not including 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. 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 assessments.

*The legal basis of personal data processing.* In the context of the rapid development of digital technology and related infringement of personal information, it is imperative to protect personal information, to promote the legal exploitation of data, and reach the potential of digital data. Under the PIPL, PI handlers (similar to the concept of data controllers under the GDPR) may only handle personal information if one or more of the following circumstances applies: ❶ an individuals’ consent has been obtained; ❷ where necessary to conclude or fulfil a contract of data subject; ❸ where necessary to conduct human resources management in handling personal information of labors; ❹ where necessary to fulfil statutory duties and responsibilities or statutory obligations; ❺ where necessary to respond to sudden public health incidents; ❻ handling personal information within a reasonable scope; or ❼ other circumstances provided in laws and administrative regulations. Additional separate consents may be required regarding processing sensitive personal information, transfer of personal information outside of mainland China, and transferring data to other personal information processors, etc. While the Chinese personal information protection regime has similarities to the GDPR it differs in one material aspect in that it does not stipulate that personal information can be processed on the grounds of “legitimate interest.” Legitimate interest addresses situations where an individual’s consent to processing his/her personal information has not been obtained and cannot be otherwise waived as a matter of law.

简称《修订草案》)。《修订草案》规定禁止企业向交易方行贿，禁止个人和实体在商业交易行为中收受贿赂。这扩大了现行法律对员工收受贿赂责任范围的规定。《修订草案》对委托第三方代表其收受贿赂的行为进行了规定，弥补了现行法律的空白。《修订草案》还提议加大处罚力度，将行贿的最高罚款从 300 万元人民币提高到 500 万元人民币。就《修订草案》对合规的影响而言，商会会员企业应审查并在必要时完善有关第三方受贿行贿的规定，并检查《修订草案》明确规定的由企业向交易相对方提供的折扣、回扣和其他优惠是否合法。

## 网络安全、数据隐私和数据安全

2017 年生效的《网络安全法》和 2021 年颁布和实施的《数据安全法》和《个人信息保护法》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，制定参考标准。从 2023 年起，在中国境内经营的外国企业必须完全遵守所有新颁布的法律法规。鉴于尚不明确中国政府将如何实施这些新制度，企业在遵守相关规定时面临一定的挑战，特别是企业对于跨境数据传输会存在担忧，这可能会严重影响它们的跨国经营。

**个人信息保护。**2021 年 8 月 20 日，全国代表大会通过了《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 2017 年颁布的《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。该法为中国境内的个体个人信息保护设定高标准，将个人同意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，并将处以高额罚款作为不合规的主要处罚手段。

**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。《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。

**个人数据处理的法律依据。**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数据的潜力，是十分必要和紧迫的。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《通用数据保护条例》中数据控制者的概念）方可处理个人信息。

- ① 取得个人的同意；
- ② 为订立、履行数据类合同所必需；
- ③ 在处理劳动者个人信息问题时进行人力资源管理所必需；
- ④ 为履行法定职责或者法定义务所必需；
- ⑤ 为应对突发公共卫生事件所必需；
- ⑥ 在合理的范围内处理个人信息；
- ⑦ 法律、行政法规规定的其他情形。

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。虽然中国的个人信息保护制度与《通用数据保护条例》存在相似之处，但有一点不同需要注意，即《个人信息保护法》中未规定可以以“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。合法利益针对特定情形，即无法获得个人对处理其个人信息的同意，并且依法不能另外豁免时。

**个人数据的跨境传输。**2022 年 9 月 1 日，国家互联网信息办公室发布的《数据出境安全评估办法》（以下简称《办法》）生效。《办法》对数据（包括个人数据）的跨境传输以及需要向政府申报数据出境安全评估的情形进行了规定，程序包括开展数据出境风险自评估，以及与境外接收方拟订立数据出境相关合同。

**《个人信息保护法》的域外效力。**根据《个人信息保护法》，境外实体在中国境外处理中国境内自然人的个人信息，有以下情形的，也适用于《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；
- 或分析中国境内自然人的活动。

此外，这些境外个人信息处理者有义务在中国境内指定一名代表并就此向中华人民共和国相关的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。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。对数据主体同意、个人信息的影响评估以及跨境数据传输的管理都会导致合规成本增加。

**《数据安全法》。**2021 年 9 月 1 日，全国人大常委会颁布了《中华人民共和国数据安全法》，旨在保护个人和组织的数据权利，鼓励“数据依法合理有效利用，

*Cross-border transfers of personal data.* On September 1, 2022, the *Measures for the Security Assessment for Cross-border Transfer of Data* issued by the CAC came into effect. The measures provide for measures in relation to transfers of data, including personal data, outside mainland China, and the circumstances when government approval must be sought for such transfers. Procedures include self-assessments and standard clauses to be entered into with overseas counterparties.

*Extraterritorial effect of PIPL.* Under the PIPL, if one of the following circumstances is present in connection with handling activities outside of mainland China regarding the personal information of natural persons within mainland China:

- Where the purpose is to provide products or services to natural persons inside mainland China; or,
- Where the purposes are to analyze or assess the activities of natural persons inside mainland China, then PI handlers outside of mainland China must appoint a designated representative in China and register that representative with relevant PRC data protection authorities. The scope of coverage is broad. For example, they wonder whether all websites outside mainland China that can be accessed by users inside mainland 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. Compliance costs will increase in the management of data subject consent, impact assessment of personal information and cross-border data transmission.

*Data Security Law.* On September 1, 2021 the NPC Standing Committee promulgated the Data Security Law ("DSL") which is intended to protect the data rights of individuals and organizations, encourage the "lawful, reasonable and effective use of data, ensure the lawful orderly free flow of data and promote the development of the digital economy. National level regulators coordinate local level implementation and implementation by various sectoral regulators. Government departments are tasked with advancing the establishment of e-governance and increasing the use of data for purpose of economic and social development. The DSL defines data as "any record of information in electronic or other forms" and covers a broad range of data handling activities. It assumes a hierarchical data protection system based on particular categories. One particular category that is yet to be clearly defined is that of "important data." The DSL includes penalties for non-compliance with corporate fines of up to RMB 1 million per violation along with other sanctions and extends to activities conducted outside of mainland China. Since its promulgation various subsidiary legislation has been issued in draft or final form to implement the intention of the law.

*Enforcement.* Shock waves went through the local business community in China when in July 2022 the CAC announced

a fine of RMB 8,026 billion against Didi Global Co., Ltd., part of the ride-hailing group, for historical data violations. Those violations included the unlawful collection of excessive amounts of personal data, processing of personal information without due notification to data subjects, frequent disproportionate data requests, failure to describe the purpose of data collection and most seriously carrying out data processing activities that harmed national security and the national critical information infrastructure. The Didi case confirmed that Chinese authorities are taking data privacy very seriously.

*Compliance.* Many US companies operating in China already have robust personal information protection measures in place and are astute to comply with data security measures both internally and in accordance with the rules in the jurisdictions where they operate. Generally, the principal compliance challenges for US companies in China are to localize China-generated data and related activities and to try to navigate the bureaucracy involved with cross border data transfers. Localizing data adds costs and security concerns, more especially because the experience of some AmCham China members suggests that some data centers located in mainland China may not have sufficient experience of protecting their servers against cyber-attacks. The procedures involved with cross-border data transfers are not yet mature and because they are relatively slow and unclear these measures are tending to act as a drag on commercial activities. From the perspective of some AmCham China members, this level of bureaucracy could eventually impact decisions regarding trade and investment with China. In particular, the lack of a legitimate interest basis for processing personal information sets China apart from the EU and other jurisdictions. AmCham China urges relevant Chinese authorities to consider the international ramifications of the new regime on cross border data flows and to take measures to ensure their efficiency.

### *Social Credit System for Enterprises*

In 2014, the State Council issued the *Planning Outline for the Construction of a Social Credit System (2014-2020)* ("Planning Outline"), which provided a blueprint for the Social Credit System for Enterprises ("SCSE"), government authorities, civil societies and individuals in China. The Planning Outline prioritized the construction of a social credit system in government administration, commerce/business, society and justice. The assessment of an entity is based on "creditability" measurement of the Social Credit System. The SCSE measures the creditability of enterprises (both domestic and foreign) in 14 business sectors (including tax, finance, government procurement, trade and logistics, and sectors where "enterprise creditability" is not clearly defined). The SCSE has had a significant impact on all companies in China in terms of overall compliance.

As the SCSE develops, it is expected to support increased regulatory transparency, and a fair competition environ-

保障数据依法有序自由流动，促进以数据为关键要素的“数字经济发展”。国家监管机构应统筹协调各地区和各行业监管机构的实施。政府部门应大力推进电子政务建设，提升运用数据服务经济社会发展的能力。《数据安全法》所称数据是指，“指任何以电子或者其他方式对信息的记录”，并涵盖广泛的数据处理活动。该法以数据类别为基础构建了一套分级保护框架。其中一个重要类别，即“重要数据”的范围尚不明确。《数据安全法》对违反规定的行为处以罚款，最高达 100 万元人民币，还包括其他处罚措施，并将效力扩大至中国境外。自该法颁布以来，各种相关法规和实施细则陆续发布草案或正式颁布，旨在坚定执行该法。

**法律执行。**2022 年 7 月，国家互联网信息办公室宣布对滴滴出行集团旗下的滴滴出行全球股份有限公司的历史数据违法行为处以 80.26 亿元人民币的罚款，震惊了中国商界。违法行为包括非法收集过量的个人数据、在没有适当通知数据主体的情况下处理个人信息、经常提出不相称的数据要求、没有说明收集数据的目的，最严重的是进行损害国家安全和国家关键信息基础设施的数据处理活动。滴滴案件证实，中国政府对数据隐私十分重视。

**合规。**许多美国在华企业已经制定了有力的个人信息保护措施，既遵守内部有关数据安全的数据措施，也遵守所在辖区的司法规定。总体而言，如何本地化中国产生的数据和相关处理活动，以及在涉及跨境数据传输时如何与政府打交道，是美国在华企业面临的头号合规挑战。数据本地化提高了成本和安全风险，特别部分商会会员企业的经验表明，一些位于中国境内的数据中心可能缺乏足够的经验来保护其服务器免受网络攻击。跨境数据传输的流程还不成熟，相对缓慢且不够明确，往往对商业活动产生了阻碍。一些商会会员企业表示，与政府打交道面临的困难最终会影响它们在中国的贸易和投资决策。特别是，由于缺乏处理个人信息的合法利益基础，中国与欧盟和其他司法管辖区有所不同。商会敦促中国相关部门考虑新规定对数据跨境传输产生的国际影响，并制定措施提高数据跨境传输的效率。

## 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》”），为中国市场上的企业社会信用体系建设、政府机构、社会组织和个人提供了的蓝图。《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、贸易和物流，以及“企业诚信”等定义不太明确的领域）来衡量企业（国内外）的信誉度。企业社会信用体系对中国所有企业的整体合规产生了重大影响。

企业社会信用体系的不断发展，将提高监管透明度，为企业治理和合规创造公平的竞争环境。然而，鉴于中国很少采用公开采集和分析大量社会信用数据的方法，外资企业对评级体系的运行表示担忧。此外，社会信用体系会将不满足社会信用要求的企业和个人列入“黑名单”，这往往会导致对企业和个人过度和不必要的惩罚。简单的数据输入或其他人为错误可能会导致企业或个人的社会信用过低，这可能会导致行政制裁或被纳入黑名单，从而阻碍企业或个人开展业务的能力。

## 外商投资

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》）和《优化营商环境条例》（以下简称《条例》）都旨在解决外商投资企业在中国经营时面临的长期问题。它们旨在保障外国投资者和外商投资企业平等适用国内企业享有的权利，包括知识产权、商业秘密和技术保护方面的权利。

《外商投资法》和《条例》规定，外国投资者和外商投资企业的知识产权应当受到保护，侵权者应当承担法律责任。《条例》确立了国内企业、外商投资企业和其他实体享有平等待遇的基本标准，以创造有利于公平竞争的营商环境。《外商投资法》和《条例》都确认，设立外商投资企业不再需要监管审批，除非在市场准入负面清单中限制投资。《外商投资法》还明确规定，有关部门不得强迫外商投资企业转让技术。商会会员企业对此等优化表示支持，他们期待进一步确定这些法律的适用性，特别是进一步确定国有企业的立场。

**安全法。**虽然新的外商投资法在一定程度上简化了对外国投资者的监管合规要求，但投资者必须遵守中国的投资安全法。在中国经营的外商投资企业必须遵守中华人民共和国的各种安全法，包括《中华人民共和国国家安全法》、《中华人民共和国网络安全法》、《中华人民共和国保守国家秘密法》和其他规定。中国的国家安全审查对外商投资和经营的影响越来越大。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

ment in terms of corporate governance and compliance. Foreign companies have had concerns, however, regarding the operation of the rating system, since the method for inputting and analyzing vast amounts of social credit data is unclear. In addition, the Social Credit System utilizes a “blacklist for companies or persons who fall short of social credit requirements, which sometimes results in excessive and unnecessary punishments. Simple data input or other artificial mistakes may lead to a lower social credit score for an enterprise or individual, and the resulting administrative restrictions or blacklist inclusion could create difficulties.

## Foreign Investment

Both the *PRC Foreign Investment Law* (“Foreign Investment Law”) and the *Regulations on Optimizing the Business Environment* (“Regulations”), which became effective on January 1, 2020, are aimed at resolving long-term issues faced by the foreign enterprises in their operation in China. They are intended to provide equal rights to foreign investors and companies as compared with domestic enterprises, including rights with regard to IP, trade secrets and technology protection.

The Foreign Investment Law and the Regulations provide that the IP rights of foreign investors and enterprises shall be protected and infringers shall be held legally responsible. The Regulations establish basic standards for equal treatment for domestic enterprises, foreign companies, and other entities, in order to create a business environment that is conducive to fair competition. Both the Foreign Investment Law and the Regulations confirm that the establishment of a foreign enterprise no longer requires regulatory review and approval, unless investment is restricted in the Negative List for Market Access. The Foreign Investment Law also specifically stipulates that foreign companies shall not be forced to transfer technology by relevant authorities. This development has been welcomed by AmCham China members, who look forward to further clarification of the application of these laws and in particular further clarification of the position of SOEs.

*Security laws.* While the new foreign investment laws have simplified the regulatory compliance requirements for foreign investors to some extent, investors must comply with China’s investment security laws. Foreign companies operating in China must comply with various PRC security laws, including the *National Security Law*, the *Cyber Security Law*, the *State Secrets Law* and other measures. 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 as the authority conducting security reviews of foreign invested enterprises. The Measures cover a broad range of investments, including Greenfield invest-

ments and mergers and acquisitions, and there is some uncertainty surrounding whether or not security reviews are required for certain types of investments. Further, security reviews may take up to 6 months (in some cases longer) after an application has been accepted, which can have a negative impact on an investment.

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.

*Dual Circulation Policy.* PRC authorities first announced the “Dual Circulation” system and emphasized technological independence in May 2020 as part of a policy to emphasize China’s self-reliance. In support of the “Dual Circulation” policy, the Chinese Government has published a series of policies to boost domestic supply chains, carried out demand side reform, and encouraged investments in 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.

Despite the increased emphasis on the domestic market and technological self-reliance and the unfavorable geo-political headwinds, Chinese government officials have repeatedly said that China will continue to be open and welcome foreign investment.

## China Standards 2035

As early as 2018, the National Standardization Administration (“NSA”) announced that it was drafting China Standards 2035. 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

部联合发布的《外商投资安全审查办法》(以下简称《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。《办法》涵盖的投资范围很广,包括绿地投资和并购,但是某些类型的投资是否需要安全审查存在一定的不确定性。此外,在申请被接受后,安全审查可能长达6个月(在某些情况下会更长),这可能会对投资产生负面影响。

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。两份清单上的行业数目分别由33项和30项缩减至31项和27项。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。

**双循环政策。**中华人民共和国政府于2020年5月首次宣布“双循环”政策,并强调技术独立,强调将其作为中国独立自主政策的一部分。为支持“双循环”政策,中国政府出台了一系列促进国内供应链发展的政策,进行了需求侧改革,鼓励对关键技术领域进行投资。在2020年10月召开的中国共产党第十九届中央委员会第五次全体会议上,技术自主(和自强)被列入国家战略之一。在2020年12月的中央经济工作会议上,中国宣布了2021年的8项重点任务,包括确保技术和供应链独立自主以及优先考虑国内需求。

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,欢迎外商投资。

### 《中国标准 2035》

早在2018年,国家标准化管理委员会(NSA)就宣布其正在起草《中国标准 2035》。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》,明确提出到2025年和2035年时的发展目标。《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,国家市场监督管理总局发布了《中国标准化发展年度报告(2020年)》。报告指出,中国将继续推动与国家和地区标准机构签署标准化合作协议,通过水利部与联合国工业发展组织合作制定水电项目标准;除其他措施外,推广中俄相互认可的民用航空器标准。

2023年2月16日,国家标准化管理委员会发布了《2023年国家标准化发展指南》(以下简称《指南》)。《指南》侧重于加强中国的标准体系建设,并明确规定了标准和体系要开放发展,以促进与国际标准的对接。中国政府的任务是审查标准的国际影响力,同时发展地方标准体系。相关官员正在研究这一转变的具体影响,因此在与国际标准接轨方面,标准设定可能是逐渐改变的。

### 共同富裕

“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、再分配和第三次分配协调配套的基础性制度安排。受共同富裕目标的影响,产业政策开始重新评估公平与效率的关系。

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提高发展质量。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。共同富裕理念是中国当前产业政策的一部分,影响着中国整体合规制度的方向和基调。

### 产业政策

从表面上看,尽管中国继续加大相关工作力度,力争实现中国制造2025的政策目标,但中国提及2015年首次发布的中国制造2025(MIC 2025)产业战略的字数明显减少。中国在重要的先进制造业和服务业领域加

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 a 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 its 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, formulate standards for hydropower projects through cooperation between the Ministry of Water Resources and United Nations Industrial Development Organization; and, promote civil aircraft standards that are mutually recognized in China and Russia, among other measures.

On February 16, 2023, the NSA issued “Guidelines for Establishing National Standard Projects in 2023” (“Guidelines”). The Guidelines include a detailed focus on strengthening the standards system in China and specifically stipulate the opening up of standards and systems in order to promote compatibility with international standards. Chinese authorities are tasked with reviewing the international impact of standards at the same time as developing the local standards system. Changes in standard setting with regard to alignment with international standards are likely to be gradual as relevant officials work through the detailed impact of this shift.

### ***Common Prosperity***

“Common prosperity” was positioned as the main goal of economic and social development during the 14th Five-Year Plan period. On August 17, 2021, President Xi Jinping proposed a discussion on the issue of common prosperity at the 10<sup>th</sup> 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. Influenced by the goal of common prosperity, industrial policies have begun to re-evaluate the relationship between equity and efficiency.

In the manufacturing industry, common prosperity is intended to bring about higher requirements for industry development, including higher yields and improved quality. 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 promote the transformation of traditional manufacturing industries to achieve the carbon peaking and carbon neutrality goals. Common prosperity concepts are part of China’s current industrial policy and they impact the direction and tone of China’s overall compliance regime.

### ***Industrial Policy***

China no longer actively promotes 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. These policies have been given greater emphasis as a result of the pressures on the US-China bilateral relationship. Below we summarize some of the major policy initiatives that support China’s industrial policy.

*The 14<sup>th</sup> Five-Year Plan and the Long-Range Objectives through the Year 2035.* On March 11, 2021, the Fourth Session of the 13<sup>th</sup> National People’s Congress passed and officially endorsed the resolution on the *14<sup>th</sup> 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 14<sup>th</sup> Five-Year Plan to formulate relevant

强国内能力建设的决心从未改变。受到中美双边关系的压力，政府更加重视这些政策。下面我们将探讨一些支持中国产业政策发展的主要政策举措。

“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第四次会议通过了《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)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，深入实施将中国建设为制造强国的战略；
- 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》(FYPBD)，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。还提到以外贸和外商投资为桥梁，促进国内国际“双循环”。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“一带一路倡议”建设的核心经济区；支持广西、云南与东南亚及周边国家建立合作走廊。

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、生态环境保护和绿色服务等产业，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；推动放宽运输等行业的外商投资法、业务范围、人员资质等要求。《规划》还将稳妥推进制造业、服务业和农业领域开放，允许外资在更多领域控股或独资经营。该《规划》还通过缩减市场准入负面清单，减少行业准入许可数量，进一步降低了以下行业的市场准入门槛：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、中共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》(PEC)。《“十四五”商务发展规划》建议支持优质电子商务企业发展，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”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；以及鼓励以人民币结算。“十四五”规划期间，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)。

中国当前产业政策的一些目标已经实现或接近最终确定，并且在新冠疫情期间对此开展了大量工作。对于商会会员企业来说，了解中国产业政策的影响力以及影响其合规责任的影响非常重要。商会敦促中国政府采取开放的态度向外商投资企业解释其产业政策的实施情况，并充分考虑政策实施对外商投资企业的影响。

## 绿色发展、碳达峰以及碳中和

环境、社会和公司治理(ESG)合规在中国公司的合规方案中越来越重要。在相关的发展中，中国政府还通过执行现有法律法规来解决“漂绿”事件。



goals, 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 intends to 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 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 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 14<sup>th</sup> 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 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 14<sup>th</sup>*

*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 14<sup>th</sup> 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).

Some of the goals of China’s current industrial policy have already been achieved or are close to finalization and much work has taken place during the COVID-19 period. It is important for AmCham China members to understand the impact of China’s industrial policy and the points where it impacts their compliance responsibilities. AmCham China urges Chinese authorities to adopt an open approach to explaining the implementation of its industrial policy to foreign businesses and to fully consider the impact that policy implementation will have on foreign business.

### ***Green Development, Carbon Dioxide Peaking and Carbon Neutrality***

ESG compliance features increasingly in the compliance programs of companies in China. In a related development, Chinese authorities are also focusing on instances of greenwashing through enforcement of existing laws and regulations.

Environmental compliance follows government policy as expressed in various rules and opinions that are focused on the development of a green economy. 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* reference 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 according to international standards, resulting in green production and lifestyles.

环境合规遵循政府政策，在各种侧重于绿色经济发展的规则和意见中有所体现。2021年2月22日，国务院发布了《国务院关于加强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，要优化产业结构、能源结构、交通结构；提高绿色产业比重；提高绿色基础设施和清洁生产水平；实现生产生活方式绿色转型。到2025年，要实现更合理的能源资源配置，提高利用效率，减少主要污染物排放总量，降低碳排放强度。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，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》（以下简称《意见》）。该《意见》强调，要将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；
- 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。

## 美国监管环境

### 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支柱，美国政府将围绕这五个支柱组织工作，并列出的战略目标和具体的工作方向。《反海外腐败法》（FCPA）依旧是实现这个战略的重要工具。

白宫在该《战略》中表示，他们将通过刑事和民事执行行动大力执行《反海外腐败法》及其他法定和监管制度。

截至2020年底，作为其“中国行动计划”的一部分，美国司法部（DOJ）在其信息页面上发布了约68起“涉华案件”，其中包括2020年的38起案件。这些案件大多涉及与经济间谍、盗窃商业机密和“充当中国非法代理人”相关的指控。

在新冠疫情期间，美国司法部（DOJ）和/或美国证券交易委员会（SEC）公布了四项与中国有关的FCPA执法行动，其中两项是DOJ/SEC平行公司的执法行动，其余两项是DOJ/SEC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对中国官员的贿赂，或该公司或跨国公司对中国官员的贿赂，或其在中国的业务运营中对内部会计的监管力度不足。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）七项与违反FCPA和洗钱有关的罪名的定罪。2019年3月，他被判处36个月监禁，并罚款40万美元。一致作出的判决说明了一些行为人在FCPA单独条款下可能面临的平行风险。此外，该判决进一步彰显了美国机构对美元计价转账的管辖权（与其他监管领域一样，例如美国外国资产控制办公室的制裁执行）。

商会会员企业历来强调遵守FCPA。随着美国经济从新冠疫情中复苏，监管机构表示将再次关注FCPA执法，虽然受益于政府的全面反腐行动，中国境内的贿赂和腐败环境有所改善，但美国公司应继续关注遵守FCPA以及中国反贿赂反腐败的各种法律法规。

### 制裁 / 出口管制

2022年，美国当局继续将大量中国公司列入“实体清单”，该清单可以限制美国公司与这些实体进行交易或以其他方式开展业务。美国商务部扩大了对中国军事终端 / 军事终端用户出口 / 再出口的许可限制，该限制于2020年6月生效。这些行动的影响（其中一些将在下面详细讨论）引起了对合规的广泛思考，包括商会会员企业是否需要审查其内部合规框架。

2022年，美国政府继续实施制裁并利用各种出口管制措施，这些管制措施有可能对全球供应链产生重大影响，并给商会会员企业带来新的合规挑战和风险。美国

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.

## United States regulatory environment

### *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.

By the end of 2020, the United States Department of Justice (DOJ) had published approximately 68 “China-related cases” on its information page as part of its “China Initiative”, including 38 cases in 2020. Most of these cases involved charges related to economic espionage, trade secret theft and “acting as an illegal agent of China”.

During the COVID period, 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 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).

Member AmCham China historically emphasized compliance with the FCPA. As the US recovers from the COVID pandemic, regulators have indicated that there will once again be a focus on FCPA enforcement and while the bribery and corruption environment in mainland China has improved due to the comprehensive actions of government authorities, US companies should continue to maintain a focus on compliance with the FCPA as well as various Chinese ABAC laws and regulations.

### *Sanctions/Export Controls*

In 2022, US authorities have continued to place large number of Chinese companies on the *Entity List*, which generally has the effect of restricting US companies from transacting with or otherwise doing business with those 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. The implications of these actions, some of which are discussed in detail below, have given rise to extensive thinking about compliance, including whether AmCham member companies need to review their internal compliance frameworks.

During 2022, the US government continued to impose sanctions and utilize various export control 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 and China’s military-civil fusion strategy.

In 2022, the Bureau of Industry and Security (“BIS”) of the Department of Commerce added more PRC companies and individuals to the Entity List, restricting the export/reexport/in-country transfer of items subject to the Export

实施制裁和贸易管制的依据主要是涉疆问题以及中国的军民融合战略。

2022年，美国商务部工业和安全局（BIS）将更多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》（EAR）约束的物品。其中，被列入该清单的实体与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待遇有关。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《防止强迫维吾尔人劳动法》。

此外，美国国防部（DoD）根据2020年第13959号行政命令创建的共产党中国军队公司（CCMC）名单已进行了重大修订。2021年6月3日，美国政府发布第14032号行政命令，将CCMC名单替换为中国军工复合体企业（CMICC）名单。中国军工复合体企业名单首次纳入了59家企业，其中大部分都是CCMC名单上的企业。14032号行政令规定，禁止美国个人购买或出售中国军工复合体企业名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CMICC名单上。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。商会的会员企业在与中国实体和个人做生意时，必须积极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。

鉴于全球和双边政治变化，商会会员企业将继续面临复杂的监管环境，以及在不同司法管辖区协调不同且有时相互冲突的合规要求方面的挑战。

鉴于2022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，商会的会员企业在不同司法管辖区协调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。相关机构应该全面更新合规要求和培训计划，以应对新风险，确保会员企业的行为既遵守美国法律又符合中国法律规定。与此同时，由于中美两国2022年颁布的新法规中有许多关键术语的定义尚不明确，商会会员企业期待着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，创造一个更明确的营商环境。

## 建 议

### 对中国政府：

- 在中国经营的外商投资企业有时会遇到这样的情况：他们认为，会因政府内部引导企业遵守法律法规的政策而受到不公平的对待。大多数在中国境内经营的美商公司都侧重于公司合规，并在遵守适用的法律法规方面投入了大量资源。与竞争对手相比，这种对合规性的侧重往往使美商公司处于劣势。为了吸引美商公司投资，需要营造对所有在公平竞争环境中运营的公司保持一致和透明的监管环境。
- 明确国家监察委员会和地方监察委员会的职责，确保监管执法的一致性。确保法律解释和正当程序的透明度和一致性。
- 对《反不正当竞争法》商业贿赂条款的系统化发布指导意见和解释，确保执法透明公开。
- 提高“企业社会信用体系”的透明度，增强对法律和监管环境的可预测性和一致性的信心。
- 考虑有效实施数据传输规则，使其不会成为国际交易和争议解决中跨境数据传输的阻碍或激励因素。
- 评估中国境内数据中心运营的系统，以提高客户数据的安全性。

### 对美国政府：

- 恢复与中国政府的双边对话，深化交流互鉴，支持建设透明和可预测的监管机构，并就合规政策和目标达成共识。
- 考虑参与促进美国企业在亚洲开展业务的多边贸易和投资协定。
- 继续与中国在应对气候变化、反腐败、全球标准统一和其他非政治性问题相关的国际论坛中合作。

Administration Regulations (EAR) to these entities and individuals. Among them, entities have been 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 US 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.

Further, the Communist Chinese Military Companies ("CCMC") List that was created by the US Department of Defense ("DoD") under Executive Order 13959 in 2020 has been significantly revised in. 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 fifty-nine 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.

In light of global and bilateral political changes, the member enterprises of AmCham China continue to face a complex regulatory environment as well as challenges in reconciling varying and sometimes conflicting compliance requirements in different jurisdictions.

Given the global and bilateral political dynamics in 2022 as well as the key US legislative developments concerning sanctions and trade controls in relation to China, AmCham China member companies faced a complex regulatory environment and additional challenges to comply with the varying and sometimes conflicting regulatory requirements of different jurisdictions. This has required the comprehensive updating of compliance and training programs to address new risks and ensure compliance with both US laws and Chinese laws. In the meantime, as many terms in and the application of new rules promulgated by both China and the US in 2022 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.

## Recommendations

### *For the Chinese Government*

- Foreign enterprises operating in China sometimes encounter situations where they believe that they have been unfairly treated due to internal government policies that guide enforcement of compliance with laws and regulations. Most US companies operating in mainland China emphasize corporate compliance and have invested significant resources in ensuring compliance with applicable laws and regulations. This emphasis on compliance often puts US companies at a disadvantage by comparison with their competitors. In order to attract US investment, the regulatory environment needs to be consistent and transparent with all companies operating on a level playing field.
- Clarifying the responsibilities of the National Supervisory Commission and local supervisory commissions to ensure consistency in regulatory enforcement. Ensuring transparency and consistency in legal interpretation and due process.
- Issuing guiding opinions and interpretations of the commercial bribery provisions of the *Anti-Unfair Competition Law* on a systematized basis to ensure transparent and open enforcement.
- Improving transparency around the Social Credit System for Enterprises to strengthen confidence in the predictability and consistency of legal and regulatory environment.
- Consider the efficient implementation of data transfer rules so that they do not become a drag or incentive to cross border data transfers in international transactions and dispute resolution.
- Assess the systems operated by data centers in mainland China in order to improve the security of customers' data.

### *For the US Government*

- Resuming bilateral conversations with the PRC government, deepening exchanges, supporting transparent and predictable regulatory institutions and reaching consensus on compliance policies and goals.
- Consider participation in multi-lateral trade and investment agreements that support US businesses in Asia.
- Continuing to cooperate with China at international forums addressing climate change, anti-corruption, global alignment of standards and other non-political issues.



# Customs

## Introduction

China's customs and trade procedures have room for improvement when measured against global standards. According to the AmCham China's 2023 Business Climate Survey (BCS) Report, seven percent of respondents reported unfair treatment in customs procedures compared to domestic companies.

AmCham China urges the GACC and other customs authorities to continue their reforms and adopt international best practices. Member companies would benefit from more guidance and clarity on the ongoing Customs Law overhaul, 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 enhance the efficiency, uniformity, and convenience of these procedures. Improving the efficiency of China's customs clearance procedures would not only boost economic development but also enhance China's global competitiveness.

## Regulation of Low-Value Goods and Personal Effects

With the rise of global cross-border e-commerce, the volume of low-value inbound and outbound goods has increased significantly worldwide. This boom in cross-border e-commerce trade would not be possible without trade facilitation, and as a result, many countries and regions, including the EU and the US, have introduced policies to simplify customs clearance procedures for low-value goods.

Many countries have also put in place reasonable low-value, duty-free policies. Taking the US as an example, since March 2016, the De Minimis threshold has been raised to US \$800, meaning that goods valued at US \$800 or less can enter duty-free into the US, except for restricted goods in special categories.

We recommend that China's Customs adhere to international practices and streamline customs clearance procedures for low-value goods. We propose drawing on the simplified declaration procedures commonly adopted internationally

for low-value goods, such as raising the declaration value limit, reducing requested accompanying documents, simplifying the classification of goods and declaration elements, and adopting a single tax rate. These measures would be a significant step towards facilitating trade and more efficient customs clearance.

By applying a more convenient customs clearance process for low-value goods compared to bulk trade, we can bring down the costs for both customs operations and enterprises, echoing the macro environment of faster clearance and lower costs. Both Customs and enterprises can benefit from these measures.

Effective customs management of personal effects for inbound and outbound shipments is a critical factor in trade facilitation. According to Article 21 of the Measures of the People's Republic of China Customs for the Supervision of Inward and Outward Express Consignments, operators must submit "The Import and Export Express Personal Effects Declaration Form of the People's Republic of China," a HAWB (House Air Waybill) for each express shipment, a photocopy of the recipient's personal identification document for inbound shipments, or the sender's personal identification document for outbound shipments, and any other documents required by Customs.

The current stipulation regarding the verification of ID for imported personal effects places a heavy burden on express operators, who are required to verify IDs on a shipment-by-shipment basis. This is particularly challenging as ID verification is typically the responsibility of law enforcement authorities. Consequently, this process slows down the delivery of imported express parcels and adds significant labor and economic burdens to enterprises.

To alleviate this issue, we suggest that Customs and other government departments streamline the personal ID card verification process by leveraging their existing information centers. By doing so, it would reduce additional operating costs incurred by enterprises and help to speed up the delivery of imported express parcels. Member companies hope that Customs can simplify the declaration process and allow enterprises and their agents to make streamlined, online declarations.

# 海关和贸易

## 引言

**本**章将重点探讨中国美国商会（以下简称商会）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 2023 年《中国商务环境调查报告》中，7% 的受访企业表示，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经认证的经营者（AEO）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。

## 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。这些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，实现政企双赢。

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复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，降低了快件运输的时效性。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。

商会建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。

此外，商会建议跨境电子商务零售进口的单笔交易限额与 B 类个人物品申报的价值限额保持一致，将金额从 2000 元提高到 5000 元；与财政部、海关总署和税务总局发布的《关于完善跨境电子商务零售进口税收政策的通知》设定的新限额保持一致。



Additionally, we recommend that the single-transaction limit for cross-border e-commerce retail imports be consistent with the value limit for declaration of Category B personal effects. This can be achieved by raising it from RMB 2,000 to RMB 5,000, which is the new limit set by the *Notice on Improving the Tax Policy for Cross-border E-commerce Retail Importation* released by the Ministry of Finance, the General Administration of Customs, and the General Administration of Taxation.

## AEO System

China Customs has made remarkable progress in implementing the Authorized Economic Operator (AEO) system, in line with the country's objective of establishing a credit system. In recent years, Customs has set standards for various entities, including inbound and outbound express operators, cross-border e-commerce platforms, water, air, and road logistics transport companies, thereby expanding the AEO system. We fully support and appreciate the General Administration of Customs' tireless efforts in establishing a robust AEO system.

As of November 1, 2021, the revised *Measures of the People's Republic of China on Credit Management of Enterprises Registered and Filed with Customs* have become effective. The new measures have abolished "general certified enterprises," introduced facilitation measures for advanced certified enterprises, updated specific requirements of the customs credit management system, and made significant adjustments to the original AEO system.

As Customs continues to refine the AEO system, it is anticipated that they will develop more targeted facilitation measures for certified enterprises in various industries. The updated Standards for Advanced Certified Enterprises, released by the General Administration of Customs in October 2022, have already introduced changes to general and single standards, including those for "express mail services." However, specific guidelines for express operators are still forthcoming.

To further improve the AEO system, it is recommended that Customs engage with industry stakeholders to obtain their feedback and input on developing measures tailored to certified enterprises. For example, AEO-certified express operators could benefit from lower inspection rates for low-value goods and simplified customs declaration document requirements. Additionally, more facilitation measures could be introduced for related industries, such as the customs reform pilot. Enterprises should also be invited to participate in discussions on customs policy revisions that enable them to apply for Customs training programs.

Furthermore, we suggest implementing fault-tolerant mechanisms for different industries as part of the overall efforts to improve the AEO system. Simplifying the applica-

tion process for voluntary disclosure and customs approval procedures can encourage enterprises to take more responsibility for self-management and self-inspection, helping them to comply with changes more quickly.

## Advance Paperless Declaration

Over the past few years, the General Administration of Customs of China has taken significant steps towards streamlining customs clearance procedures. The implementation of paperless declaration for imported goods has been successful, and the same practice is gradually being introduced for exported goods. The changes have brought about tangible benefits for stakeholders, including international courier companies.

Currently, the single window platform allows importers, exporters, and customs brokers to upload electronic copies of customs clearance documents for inspection, eliminating the need for physical paperwork. However, in reality, the customs inspection department still occasionally requests paper copies of the declarations, meaning that the process is not entirely paperless. This requirement to keep physical copies of documents after uploading scanned versions creates additional costs and administrative burdens for businesses, as they need to allocate funds and manpower for storing these paper records.

Instead of physical documents, electronic documents can be used as a viable alternative, and mandating the retention of paper documents for extended periods of time can further increase the financial burden on enterprises.

Furthermore, in line with the *General Administration of Customs of China Announcement No. 92 of 2014*, enterprises are required to obtain Customs approval in order to keep paperless import and export declaration documents on file. However, as paperless customs clearance has been gradually introduced as a viable alternative to physical paper documents, it may be beneficial to revise or streamline the approval process for paperless recordkeeping. This would improve customs clearance efficiency, reduce the burden on enterprises, and contribute to China's goal of low-carbon development and carbon neutrality.

We suggest amending relevant provisions to remove the requirement for obtaining specific customs approval for paperless recordkeeping. Instead, we recommend adopting a paperless declaration policy across the board, where paper declaration documents or scanned copies are only required for goods with higher customs risk. To clarify policies and regulations, Customs should confirm that electronic documents have the same legal effect as paper documents, eliminating the need to keep paper documents once the corresponding electronic data has been preserved. This will help relieve the burden for enterprises and support the recovery of cross-border trade following the pandemic.

## AEO 制度

中国海关在推进 AEO 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 AEO 制度上做出的巨大努力表示支持与赞赏。

2021 年 11 月 1 日，新版《中华人民共和国海关注册登记和备案企业信用管理办法》生效实施，取消了“一般认证企业”，增加了针对高级认证企业的便利措施，更新了海关信用管理体系的一些具体要求，对原有 AEO 制度做出了重大的调整。

商会期待海关未来在完善 AEO 制度政策的过程中，根据所涉及不同行业的具体特点，进一步细化认证企业的便利化管理措施。2022 年 10 月，海关总署发布 106 号公告，公布了新修订的《海关高级认证企业标准》，对通用标准及包括“快件运营业务”在内的单项标准进行了更新，但仍未公布针对快件运营人的具体指南。

商会期待未来海关在针对快件运营人的具体指南制定过程中可以与行业加强沟通，倾听行业意见，并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 AEO 认证企业适当降低快件低值类货物的查验率；建议简化报关单据随附单证，获得 AEO 认证的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。同时也建议针对其他相关行业增加更多的便利管理措施，例如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。

此外，我们建议海关未来在完善 AEO 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。

## 推动“全面无纸化”申报

近年来，海关总署在简化报关程序方面做出了巨大努力，在无纸化申报方面，进口货物的无纸化申报已经

全面推行，出口货物的无纸化申报也正在逐步推开。包括国际快递企业在内的相关各方从中获得了切实的政策利好。

目前单一窗口平台已经支持进出口商、代理报关机构将清关文件以电子扫描件形式上传系统以供海关审验，不再需要提供纸质文件。但在清关的实际操作过程中，由于偶有海关稽查部门要求查看纸质报关单证的情况出现，进出口商或代理报关机构在对纸质单证进行扫描上传后，仍然需要保有纸质文件，仅简化了纸质文件的实物传递过程，因此仍然不是真正意义上的“全面无纸化”。大量纸质单证的留存，需要投入一定的资金与人力对这些纸质单证进行管理。在已留有电子单证的前提下，纸质单证的相关功能已可以由对应的电子单证实现，而其长期留存的要求却给企业带来了一定的成本负担。

此外，现行有效的《海关总署公告 2014 年第 92 号(关于发布〈通关作业无纸化进出口报关单证档案企业存储管理标准〉的公告)》依据 2014 年生效时的通关环境，要求对有无纸化存储要求的企业，需经海关核准后方可开展企业存单。经过多年的发展与改革，在目前海关已基本实现了申报环节无纸化通关的新形势下，对于存单企业需要取得海关核准的要求有待做出调整。

为了进一步提高通关效率，切实减轻企业负担，同时更好地推进低碳环保发展，响应国家确定的碳达峰碳中和目标，我们建议对相关规定进行修订，取消存单企业需要提前取得海关核准的相关要求。建议海关采用“全面无纸化”申报形式，即全面免除要求提供纸质报关文件或纸质报关文件的扫描件，仅在相关货物被列为较高海关风险等级时才要求提供纸质报关文件或其扫描件。建议海关从政策法规高度以书面形式明确电子单证与纸质单证具有相同的法律效力，由此确认在已留存电子单证的情况下无需再留存相同内容的纸质单证，以实现给企业减负，助力疫情后跨境贸易复苏。

## 国际快递进口货物的运费计算

国际快递企业承运的进口快件货物运费计算问题多年来一直是困扰快递行业的难题。对于最终运费价格的确定，因为快件企业与客户的运费通常采用定期结算，根据国际快递服务的惯例，运费的结算通常是月结，并且是后置的，与物流运输的进行相比存在一定滞后性。

## Calculation of Freight Costs of Imported Goods by International Express

For years, the issue of calculating freight costs for imported express cargo by international express companies has been a challenge in the industry. The settlement of freight fees usually occurs on a regular basis (typically monthly) after the transportation process, creating a delay. Regular customers also receive discounts based on their shipment volume, which can affect the final freight rate. Due to these practices, express companies may not know the final freight fee total when declaring the entry of goods. Consequently, the customs inspection authority may find the freight fees paid by the customer to the express enterprise inconsistent with the declared amount in the import cargo declaration during the inspection of the import recipient (customer of express enterprise).

To address this objective discrepancy in the declaration of international express freight fees, we propose that Customs implement a fault tolerance mechanism for international express enterprises. For instance, if the difference falls within a certain limit, the express enterprise can be exempt from subsequent administrative penalties.

### Recommendations

#### *For the Chinese Government*

- In actual practice, there are instances where port customs rely on internal documents, such as operational guidelines, regulations, and opinions, as their management measures. Unfortunately, these materials are not available to enterprises beforehand, which makes it difficult to prepare for compliance. To address this issue, it is suggested that Customs extract requirements that are specific to enterprises from these internal guidelines, regulations, and opinions, and notify the public through official announcements after making appropriate adjustments.
- To facilitate smoother and more stable information exchange between enterprises and Customs, it is recommended that Customs provide more tools for enterprises to use. For instance, we suggest that the Customs system support enterprise authentication of the customer's 18-digit unified social credit code.

此外，针对协议客户，最终的运费还会根据客户的发件量达到不同的数量阶梯等级而给予不同的折扣，因此影响其发送快件的实际最终运费价格。基于以上原因，快件企业在货物入境申报时可能无法获得最终结算运费价格。并由此导致海关稽查部门在对进口收件人（快件企业客户）稽查中可能会出现客户向快件企业支付的运费金额与进口货物报关单申报运费金额不一致的情况。

考虑到国际快递运费申报客观误差的存在，我们建议海关对国际快递企业在运费申报上可以建立一定的容错机制，例如运费差异在一定比例内的，不对快递企业进行行政处罚。

## 建 议

### 对中国政府：

- 行业在具体的业务实践中，时有遇到口岸海关执行的具体管理措施遵循海关内部操作指引、规程、意见等内部文件的情况，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、意见等提炼出具体针对企业的要求，经适当调整后更多地以公告等形式通知大众。
- 目前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顺畅。建议海关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，针对客户 18 位统一社会信用代码，建议海关系统向企业开放调用认证权限。

# Government Procurement

## Introduction

**G**overnment 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 became a member of the WTO in 2001. China's submission of its sixth – 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 China's procurement regime. These include a proposed amended revision of the Government Procurement Law in July 2022, which followed a December 2020 proposed amendment. The proposed amended revision would clarify provisions in the law in several respects and improve the transparency of China's 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, as well as reports that indicate the imposition of restrictions by provincial governments on imported medical equipment and supplies.

AmCham China remains concerned over the slow pace of China's GPA accession negotiations. After applying for GPA accession and submitting its initial market access offer in 2007, China has submitted a total of seven offers over a span of fifteen years, including its most recent revised offer in 2019. AmCham China therefore urges the Chinese government to work with GPA parties to immediately resolve the issues necessary for their approval of its accession terms so that China can finally accede to the GPA in 2023.

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 competi-

tion. 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 14 WTO members with WTO commitments to seek GPA membership, including members whose GPA accession negotiations, like China's, are pending. 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, China could, as a GPA party, 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.

# 政府采购

## 引言

**中**国美国商会（以下简称商会）高度关注中国在政府采购领域的政策发展。虽然中国近年来通过引入规章制度完善了政府采购实践的透明度与职责划分，取得了进展，并计划修订其《政府采购法》，但中国尚未履行其 2001 年加入世界贸易组织（WTO，下称世贸组织）时就《政府采购协定》（GPA）做出的承诺。中国于 2019 年提交了第七次出价，也是最新一次改进的市场准入出价，这标志着中国加入世贸组织的重大进步。但中国加入《政府采购协定》仍需进一步努力。

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。2022 年 7 月，财政部就《政府采购法（修订草案征求意见稿）》（以下简称《修订草案》）再次向社会公开征求意见，这是继 2020 年 12 月修订后对该法进行的又一次修订。本次修订明确了几个方面的规定。此外，新举措的实施旨在提高采购流程透明度。与此同时，《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。商会仍对政府实体继续从国内供应商处采购技术以响应中国政府实现科技自立自强号召的有关报道表示担忧。此外，还有消息称省政府对进口医疗设备和用品实施限制。

中国加入《政府采购协定》的谈判进展缓慢，商会对此表示关注。中国于 2007 年 12 月申请加入《政府采购协定》后首次提交了市场准入出价，并于 2019 年提交了最新改进的出价，在 15 年内总共提交了 7 次出价。因此，商会敦请中国政府与《政府采购协定》各参加方合作，尽快解决必要问题，争取在 2023 年加入《政府采购协定》。

实际上，中国对外开放政府采购市场符合中国自身利益，也符合中国参与市场竞争的承诺。这有助于中国

相关政府实体进入《政府采购协定》参加方的商品和服务市场，获取质高价优、最先进的商品和服务。加入《政府采购协定》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《政府采购协定》可以为其他国家提供参考，尤其是其他 4 个承诺加入《政府采购协定》的世贸组织成员国，以及 10 个像中国一样正在等待加入《政府采购协定》的世贸组织成员国。此外，作为《政府采购协定》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《政府采购协定》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。这对中国在“一带一路”倡议下在非洲和其他地区广泛开展项目尤为重要。作为《政府采购协定》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。

加入《政府采购协定》还将为中国鼓励《区域全面经济伙伴关系协定》（RCEP）的其他缔约方扩充该协议有限的采购条款提供依据。《区域全面经济伙伴关系协定》于 2022 年 1 月 1 日生效，其政府采购章节提高了透明度并促进合作，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。

中国加入《政府采购协定》将有助于履行入世承诺，同时能够参与国际采购标准和实践持续发展的进程中。这也将是促进中国履行其多边贸易体制承诺和支持多边贸易体制的机会。美国企业和贸易协会普遍认同中国政府采购市场的重要性。中国加入《政府采购协定》将让美国企业在透明、可预测和非歧视的基础上参与中国政府采购，并为中国企业参与海外政府采购抵制市场壁垒起到杠杆作用。

## 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。

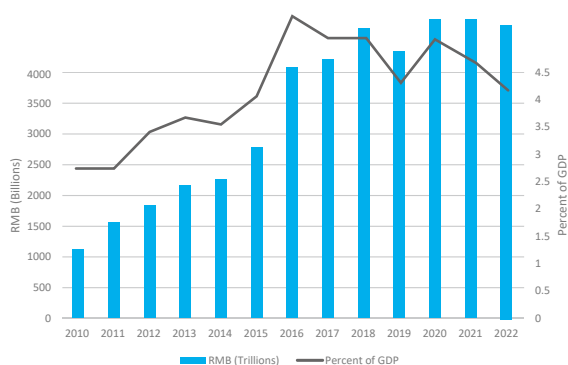
## China's Government Procurement Market

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 "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 2022, the Ministry of Finance (MOF) reported the total value of China's government procurement to be about RMB 3.64 trillion (approximately US \$540 billion) in 2021, representing a decrease of 1.6 percent from 2020. 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* currently does not apply to SOE purchases. This exclusion likely explains the fact that its government procurement accounted for only 3.2 percent of China's gross domestic product (GDP) in 2021 (and 3.6 percent in 2020). This stands in sharp contrast to the 10 percent to 15 percent of GDP accounted for by government procurement in most countries.

**Figure 1. Total Value of China's Government Procurement Market, 2010-2022** Source: WTO, MOF



Source: WTO, Ministry of Finance

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.

### 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-two 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, except its coverage of defense procurement 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 "[n]o 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 SOEs, services, and defense procurement. In addition, several obstacles remain (even though China has removed other problematic elements found in earlier offers).

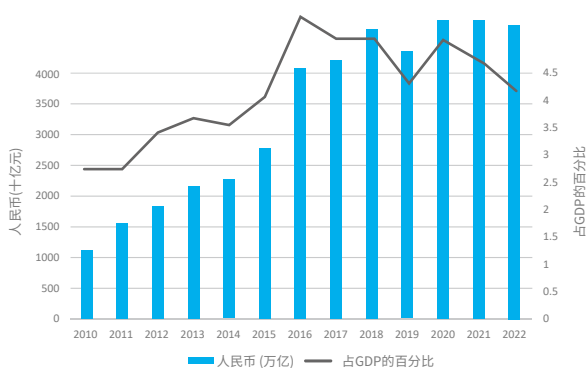
2010年，中国政府采购总额约为8420亿元人民币，其中37%用于采购“货物”，53%用于采购“建筑和工程相关服务”，8.4%用于采购“其他服务”。2021年，世贸组织对中国进行了第八次两年一度的贸易政策审查(TPR)。在第八次贸易政策审查上，中国政府公布2019年政府采购总额为3.31万亿元人民币(约合5190亿美元)。其中26%用于采购“货物”，45%用于采购“建筑和工程相关服务”，29%用于采购“其他服务”。此外，中国大部分的采购市场都是在中央以下层级进行的。贸易政策审查报告估计，中国91.9%的采购由省级和地方政府处理。

根据中国财政部发布的2018年报告，2022年中国政府采购总额约为3.64万亿元人民币(约合5400亿美元)，比2020年减少1.6%。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。该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。这种排除似乎解释了这样一个事实，即2021年的中国政府采购仅占国内生产总值(GDP)的3.2%(2020年为3.6%)。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2022年中国政府采购市场总额



来源：世贸组织，财政部

## 中国加入《政府采购协定》

中国于2001年12月成为世贸组织成员国时，宣布有意“尽快”启动谈判，加入《政府采购协定》并提交一份市场准入出价，提供其在协定内拟涵盖的采购范围。然而，直到6年后的2007年，中国才开始启动加入《政府采购协定》谈判。在中国宣布有意加入《政府采购协定》的22年后，其加入《政府采购协定》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。该出价是中国将根据《政府采购协定》开放采购的第六份改进出价，距离其提交第五份改进出价过去了5年。中国2019年《政府采购协定》出价的覆盖范围更加接近于《政府采购协定》现有缔约方。以下是与现有参加方相比较的中国2019年《政府采购协定》改进的市场准入出价的简要总结：

- 中国清单的永久性门槛与大多数参加方一致。
- 中国中央政府实体的覆盖范围与其他《政府采购协定》缔约方大体一致，但中国国防采购覆盖范围不够广泛。
- 中国全面覆盖所有省份和直辖市，并且次中央政府覆盖范围比其他《政府采购协定》缔约方提供的覆盖范围更大。
- 中国的服务采购项目出价与其他《政府采购协定》缔约方一样采用正面清单(只列出其涵盖的服务)，但涵盖的服务范围相对落后。
- 中国的工程服务覆盖范围全面，与《政府采购协定》参加方一致。

世贸组织秘书处在其为中国第八次贸易政策审查编制的报告中指出，自2018年审议以来，中国加入《政府采购协定》“取得了重大进展”，并指出中国的新出价“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，“新出价没有包含省级少数民族自治区，并且一些基础设施和公用事业领域的国有企业和一些服务行业也未被列入新出价。”

中国应从国有企业、服务和国防采购的覆盖范围等方面改进出价。此外，尽管中国已经解决了早期出价中发现的其他问题，但仍有一些阻碍。中国继续主张设立过渡措施的“权利”，包括在一年过渡期内适用标准



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 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 quite 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. That was the most recent activity on China’s accession. The Committee indicated in its 2022 annual report that no work was undertaken on China’s accession in 2022 due to the inability of the Committee to reach a consensus on a new chair.

While the parties have recognized that China’s 2019 offer was “comprehensive” and “on the whole commensurate with those of GPA Parties,” they still have had concerns. Moreover, the Biden administration does not appear prepared to approve China’s accession any time soon. In a 2023 report to Congress on China’s compliance with its WTO commitments, it set out its views on China’s 2019 offer. While acknowledging that the offer showed progress, the report concluded China’s 2019 offer “fell short of US expectations and remains far from acceptable” due to significant deficiencies in several critical areas. Those areas include 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. To date, the CPTPP parties have not established a working group on China’s accession.

## ***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 14<sup>th</sup> Five Year Plan that the development of China into a self-reliant “technology power” is a national goal. It appears that governmental agencies have increasingly turned to sourcing indigenous technology products and services from domestic suppliers as part of this emphasis on China’s domestic technology industry. 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 government entities. For example, some members noted that the low-price cap set under the *Central National Agencies Procurement Standards for Common Office Software* has prevented government entities from adopting new products offered by foreign companies. Other members, including those in the medical supplies industry, 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 government 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.

较高的门槛。中国还坚称其“可能要求”融入技术转让、国内比例和其他补偿交易。协议禁止补偿交易，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，这样的过渡措施是不合适的。第二个阻碍是中国坚持在加入《政府采购协定》后推迟两年执行《政府采购协定》。这意味着这两年间，中国可以在向其他《政府采购协定》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。第三个潜在问题是中提提议排除“以支持中小企业为目标的采购”，特别是与中型企业有关的采购。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（《政府采购协定》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条件下加入《政府采购协定》，将对该协议、世贸组织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《政府采购协定》缔约方对 2019 年改进出价的评论和问题，并更新了《问题清单的答复》（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。以上便是中国加入《政府采购协定》的最新进展。委员会在其 2022 年年度报告中表示，由于委员会无法就新主席达成共识，因此在 2022 年没有就中国加入《政府采购协定》开展工作。

虽然各方都承认中国 2019 年的出价“覆盖全面”，而且“总体上与其他《政府采购协定》缔约方一致”，但他们仍存在顾虑。此外，拜登政府似乎不准备在短期内支持中国加入《政府采购协定》。拜登政府于 2023 年向美国国会提交了关于中国遵守其入世承诺的报告，其中包含对中国 2019 年出价的看法。尽管报告指出中国 2019 年出价在几个方面“表现出进展”，但同时得出结论，这一出价“没有达到美国的要求，仍然远远不能接受”。报告列举了一些关键领域的“重大不足”，包括“门槛、实体范围、服务覆盖范围和被排除的事项”。

### 中国申请加入全面与进步跨太平洋伙伴关系协定

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）。到目前为止，全面与进步跨太平洋伙伴关系协定缔约方尚未成立工作小组来处理中国申请加入的事项。

## 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。中国的领导层在“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处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，从中央和地方政府实体获得合同变得越来越困难。例如，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，特别是事关禁止外资企业参与特定高度敏感的政府项目，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。商会呼吁中国政府允许科技行业的外资企业在没有歧视性壁垒的情况下参与政府采购过程。

### 颁布的法律

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。

与以前的报告一样，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。

### 修订《政府采购法》、《招标投标法》及相关配套文件

《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

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.

In December 2020, MOF published a draft revised GPL (Draft GPL). China had not implemented the 2020 proposed revision before MOF, on July 15, 2022, called for comments on a revised draft revision of the GPL (Revised Draft). In response, the AmCham submitted comments. In general, the AmCham recommended that the Revised Draft be aligned with Circular No. 35 issued by the Treasury Department of the MOF on October 13, 2021, which ensures equal participation in government procurement activities for domestic and foreign enterprises, strictly implementing relevant regulations and treating products (and services) manufactured within China by FIEs as equal to those produced by Chinese companies. While we commended the Revised Draft's identification of situations in which the Chinese government may purchase "goods, projects, and services" from FIEs, we expressed concerns that the term "domestic goods, projects, and services" continues to be marred by a lack of consistency and clarity, which has caused longstanding challenges for FIEs seeking to participate in government procurement activities on equal terms. We recommend that the Revised Draft provide a clear definition for "domestic goods, projects, and services" and that this definition be consistent with the provisions of the *Foreign Investment Law*, such that goods, projects, and services produced or manufactured by FIEs in mainland China are considered "domestic" and subject to equal treatment.

AmCham is also concerned that the national security review regime on government procurement, first proposed in December 2020, was carried into the Revised Draft. We set out our concerns with the proposed review regime in our 2021 White Paper and in our comments to MOF on the Revised Draft.

A third general concern is the broad scope of the Revised Draft, which covers procurement activities of "state agencies, institutions, organizations and other procurement entities at all levels." AmCham is concerned that it could include (or at least influence) procurement decisions by entities with connections to the state, such as SOEs, schools, universi-

ties, and hospitals. Our organizations are concerned that, without a clearer scope, such entities will feel compelled to abide by the Revised Draft and thus be required to purchase "domestic" goods, projects, or services and to go through the national security review process when such actions may not be required. Together, with the lack of a clear definition of what constitutes "domestic" goods, projects, or services, our organizations fear that products from domestically invested enterprises may be unduly favored or prioritized over those from FIEs. AmCham does recognize that the apparent extension of the GPL to SOEs "that engage in public utilities or operate public infrastructure or public service networks for public purposes" would be a positive step, as it would subject a significant segment of China's procurement to GPL disciplines. It would also likely facilitate their coverage under the GPA. AmCham also submitted comments on specific articles of the Revised Draft.

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 limits that approval to when 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.

For instance, the *Guiding Standards for Approval of Government Procurement of Imported Products* jointly published by the Ministry of Finance and Ministry of Industry and Information Technology on May 14, 2021, states that the procurement of 137 types of medical devices must be limited to domestic products. AmCham members have reported that provincial governments have since severely restricted approvals for imported medical devices, such as by requiring additional reviews by finance departments or "international exchange centers" before imported devices can be procured. Notably, authorities in one province appear to have stated that procurement is banned in principle from foreign suppliers who have ceased shipments to China pursuant to US Entity List restrictions, unless there are no alternative products. In practice, US medical device suppliers have faced increasing rejections from government procurement processes, often with no or inadequate explanation from government authorities.

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

2019年，财政部将修订《政府采购法》列为2019年立法研究项目。财政部在修订《政府采购法》期间，充分考虑了现行法律的适用与《招标投标法》、政府采购制度的最新改革以及中国加入《政府采购协定》进程的冲突之处。

2020年12月，财政部公布了《政府采购法（修订草案征求意见稿）》（以下简称《修订草案》），并于2022年7月15日发布新版《修订草案》再次向社会公开征求意见。商会就此提交了意见。总体来说，商会建议《修订草案》与财政部国库司于2021年10月13日发布的35号通知保持一致，确保内外资企业平等参与政府采购活动，严格执行相关规定，同等对待外资企业在中国境内生产的产品（和服务）和内资企业生产的产品。《修订草案》规定中国政府可以从外资企业采购“货物、工程和服务”，商会对此表示认可。然而，“本国货物、工程和服务”的定义仍然缺乏一致性和阐释，导致希望平等参与政府采购的外资企业面临长期挑战，商会对此表示担忧。商会建议《修订草案》对“本国货物、工程和服务”作出明确定义，并确保该定义与《外商投资法》的规定相一致，进而中国大陆的外资企业生产或提供的货物、工程和服务就被视为“本国货物、工程和服务”，受到同等对待。

此外，《修订草案》纳入2020年12月首次提出的、为政府采购建立新的国家安全审查制度规定，商会对此表示关注。商会在2021年《白皮书》和向财政部提交的关于《修订草案》的意见中，表达了商会对安全审查制度的关注。

除了之前提到的两大问题，第三个商会普遍关注的问题在于《修订草案》广泛的覆盖范围，它涵盖了“国家机关、事业单位、团体组织和其他采购实体”的采购活动。商会担心，这可能包括（或至少影响）与国家相关的实体的采购决定，包括国有企业、学校、大学和医院等。商会会员企业担心，如果不能进一步明确覆盖范围，这些实体将被迫遵守《修订草案》，被要求采购“本国”货物、工程或服务，并且在不需采购上述产品的情况下接受国家安全审查。再加上缺乏对什么是“本国”货物、工程或服务的明确定义，商会会员企业担心，政府采购可能会优先考虑、侧重于选用内资企业、而不是外资企业的产品，这一点并不合理。《修订草案》将《政府采购法》的适用范围进一步扩大到“从事公用事业，运营公共基

础设施或者公共服务网络的公益性国有企业”，这会让中国相当一部分的采购活动受到约束，商会对此表示赞赏。这也可能使《政府采购协定》更好地覆盖中国政府采购活动。商会还就《修订草案》的具体条款提交了意见。

值得注意的是，现行法律和《修订草案》都要求政府在采购中优先考虑本国产品。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。

财政部和工业和信息化部于2021年5月14日联合印发《政府采购进口产品审核指导标准》，其中规定137种医疗器械必须全部采购本国产品。商会会员企业表示，此后各省严格限制进口医疗器械的审批，例如要求在采购进口器械前由财政部门或“国际交易中心”进行额外审查。值得注意的是，各省级主管部门似乎已经声明，除非没有替代产品，原则上禁止从由于美国实体清单限制而停止向中国发货的外国供应商处采购产品。事实上，越来越多的美国医疗器械供应商在政府采购程序中持续碰壁，而政府往往未能提供充分解释，甚至是不给予任何解释。

2019年2月3日，国家发展和改革委员会公布了《中华人民共和国招标投标法（修订草案公开征求意见稿）》（以下简称《修订草案》），征求公众意见。尽管对1999年施行的《招标投标法》进行的本次修订并未包括任何直接适用于外商投资企业的规定，但修订旨在解决歧视潜在投标人的排他性做法，这将有助于外商投资企业进入中国政府采购市场。《修订草案》还力求通过规范招标程序、防止投标人之间或投标人与采购人之间勾结串通，来提高透明度，并在招标或中标后加强监督合同履行情况。商会提交了对《修订草案》的意见，认可该《修订草案》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，在十三届全国人大二次会议和全国政协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《修订草案》提出意见。2020年8月至9月，司法部就《修订草案》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。

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 13<sup>th</sup> National People's Congress (NPC) and the second meeting of the 13<sup>th</sup> 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 *Interim Administrative Measures for Procurement under the Government Procurement Framework Agreement* was issued by MOF on January 14, 2022, and took effect on March 1, 2022. The measures aim to regulate frequent and small-scale procurement activities. Under the measures, a framework agreement can be signed with shortlisted suppliers in the first stage when the relevant entities would procure goods and services repeatedly with clear and unified standards. In the second stage, the procuring entity would select a supplier from shortlisted suppliers and conclude a procurement contract. In general, the term of a framework agreement for goods shall not exceed one year and those for services shall not exceed two years. The procuring entity can select shortlisted suppliers which have signed the framework agreements during these periods without a repeated bidding and tendering process.

### 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 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 with respect to 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

财政部于2022年1月14日发布《政府采购框架协议采购方式管理暂行办法》(以下简称《办法》),自2022年3月1日起生效,旨在规范多频次、小额度的采购活动。《办法》规定,可以与在第一阶段入围的供应商订立框架协议,届时相关实体将以明确、统一的标准重复采购货物和服务。在第二阶段,采购实体将从入围供应商中确定成交供应商并订立采购合同。货物项目框架协议有效期一般不超过1年,服务项目框架协议有效期一般不超过2年。采购实体可以选择期间签署了框架协议的入围供应商,而无需重复招标和投标过程。

## 网络安全采购

2020年4月27日,国家互联网信息办公室等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,12个部门对原《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。《审查办法》根据2017年《网络安全法》第三十五条的规定发布,旨在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”采购“网络产品和服务”影响或可能影响国家安全的,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合适的关键信息基础设施运营者。

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。

修订《审查办法》包括,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日起生效,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。这一草案尚未落实为正式法律。

商会认为,外国公司在中国市场销售网络产品和服务时,《审查办法》可能会给其带来不确定性、限制其机会、给监管合规带来商业上不合理及不必要的负担,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者的涵盖范围并不完全明确,这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,直到这些规定与世贸组织协议和规则(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)。

## 关于促进公平竞争和平等待遇的管理办法

2022年,中国在几项重要政策中强调了政府采购中公平竞争的重要性。3月,中共中央和国务院发布了《关于加快建设全国统一大市场的意见》(以下简称《意见》),要求政府主管部门进一步明确违反建设统一市场的招标采购适用规定和行为。根据《意见》,有关部门在制定

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 conjunction with relevant authorities under the State Council. This draft has yet to be implemented into formal law.

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).

### ***Administrative Measures on Promoting the Fair Competition and Equal Treatment***

In 2022, China emphasized the need for fair competition in government procurement in several significant policies. In March, the Central Committee of the Communist Party of China and State Council issued the *Opinions on Accelerating the Establishment of a Unified Domestic Market*, which require governmental authorities to further clarify provisions and practices applicable to tendering and procurement that violate unified market construction. According to the opinions, fair competition review and legal examinations shall be conducted in strict accordance with the relevant provisions when relevant authorities formulate rules for tendering and bidding and government procurement. It is strictly prohibited for procuring entities to impose illegal limits or designations on specific patents, trademarks, brands, components and parts, origin, and suppliers, or to set qualifications or conditions that are incompatible with the actual needs of tendering and bidding and procurement projects. No illegal restrictions can be imposed on bidder’s locations, ownership systems, or organization forms, and no unreasonable conditions can be set to exclude or restrict suppliers from participating in bidding and procurement activities.

The *Circular of the National Development and Reform Commission and Other Authorities on Effectively Performing the Key Tasks for Reducing Costs in 2022*, released in April 2022, restated the fore-

going requirements as one of its main focuses. Later, in July 2022, *Several Opinions of the National Development and Reform Commission and Other Departments on Strictly Implementing Tendering and Bidding Laws and Systems and Further Regulating the Behavior of Bidding and Tendering Subjects* were published, proposing measures to prohibit unreasonable restrictions and hidden barriers in bidding and tendering activities. Lastly, the *Outline of the Strategic Plan for Expanding Domestic Demand (2022-2035)* was circulated by the Central Committee of the Communist Party of China and State Council on December 14, 2022. The outline mentions that China shall accelerate the establishment of a fair and unified market by improving the policies and rules on bidding and tendering and government procurement. It states that enterprises of all types of ownership structures shall be treated equally and that relevant fair, open, and transparent competition rules and the fair competition review mechanisms need to be stipulated and improved, as well.

### ***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](http://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

招标投标和政府采购规定时，应严格按照有关规定进行公平竞争审查和法律审查。严禁采购单位违法限制或者指定特定的专利、商标、品牌、零部件、原产地、供应商，或设定与招标投标和采购项目实际需要矛盾的资格或条件。不得违法限定投标人所在地、所有制形式、组织形式，或者设定其他不合理的条件以排斥、限制经营者参与招标采购活动。

2022年4月发布的《国家发展改革委等部门关于做好2022年降成本重点工作的通知》，重申上述要求为重点工作之一。随后，2022年7月，《国家发展改革委等部门关于严格执行招标投标法规制度进一步规范招标投标主体行为的若干意见》发布，提出了禁止招标投标活动中不合理限制和隐性壁垒的措施。2022年12月14日，中共中央和国务院印发《扩大内需战略规划纲要（2022-2035年）》（以下简称《纲要》）。《纲要》提到，中国将完善招标投标和政府采购的政策和规定，加快建立公平、统一的市场。《纲要》指出，应对各类所有制企业平等对待，建立公平开放透明的竞争规则，健全公平竞争审查机制。

### 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》（以下简称《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、信息提供差异化等透明度问题，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。这一披露要求最初作为一项试点规则实施，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进行的采购项目，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准确和公平的实施，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

2022年，中国继续支持中小企业的发展，在政府采购活动中提供优惠政策。由于新冠肺炎疫情暴发，《关于中央企业助力中小企业纾困解难促进协同发展有关事项的通知》于2022年5月19日发布，要求中央企业积极采购中小企业优质产品和服务，不得设置不合理条件，限制排斥中小企业参与采购活动。财政部于2022年5月30日发布的《关于进一步加大政府采购支持中小企业力度的通知》，以及国务院于5月31日发布的《国务院关于印发扎实稳住经济一揽子政策措施的通知》指出，政府采购需要为中小企业提供更多支持，并将小微企业货物和服务采购的价格扣除比例从6%至10%提高到10%至20%。按照统一质量标准，将预留面向中小企业采购的份额由30%以上提高至40%以上。非预留项目要给予小微企业评审优惠，增加中小企业合同规模。

### 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》（以下简称《管理办法》）对政府购买服务进行了详细指导。《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。新的合同履行规定使得供应商与政府在合同中地位平等，并规定服务期限一般不得超过一年。

2022年3月，财政部发布《关于做好2022年政府购买服务改革重点工作的通知》，以解决服务采购活动中存在的问题，包括政府购买服务合同管理不够规范、绩效管理需要进一步加强、购买边界把握不够准确等。此外，重点工作还包括要求政府主管部门加大城乡社区公共服务、公共卫生服务、基本养老服务、就业公共服务和教育公共服务的采购力度。

### 优先考虑绿色产品与设备

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，例如国务院分别于2021年2月22日和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



and recommend that those pilot measures be expanded nationwide.

### ***Supporting Small and Medium-Sized Enterprises via Government Procurement***

In 2022, China continued to support the development of small and medium-sized enterprises (SMEs) by providing preferential policies in government procurement activities. Due to the outbreak of COVID, the *Circular on Matters concerning Central State-owned Enterprises' Efforts in Helping Small and Medium-sized Enterprises Tide over Difficulties and Promoting Coordinated Development* was issued on May 19, 2022, which asked the central SOEs to actively purchase high-quality products and services from SMEs, and not to set unreasonable conditions to restrict and exclude SMEs from procurement activities. The *Notice on Further Strengthening Government Procurement to Support Small and Medium-sized Enterprises*, issued by MOF on May 30, and the *Package of Policy Measures to Firmly Stabilize the Economy*, circulated by State Council on May 31, 2022, state that government procurement needs to provide more support to SMEs, and increased the price deduction ratio for SMEs from 6 percent-10 percent to 10 percent-20 percent for goods and services procurements. In accordance with the unified quality standards, the share of reserved procurement for SMEs will be increased from more than 30 percent to more than 40 percent. For non-reserved projects, regulations require procuring entities to offer preferential reviews for SMEs and increase the number of contracts given to SMEs.

### ***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.

In March 2022, MOF issued the *Circular on Effectively Carrying Out Key Tasks for the Reform of Government Procurement of Services in 2022* to solve problems in service procurement activities, including that the management of government

procurement service contracts is not sufficiently standardized, performance management needs to be further strengthened, and inaccuracies in the scope of procurement boundaries. In addition, the key tasks include requesting government authorities to expand the procurement of services for urban and rural community public services, public health services, basic pension services, employment public services, and education public services.

### ***Priority to Green Products and Equipment***

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 low-carbon circular development economic systems and include the carbon dioxide peak and carbon neutrality into economic systems. These measures included 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 priority be given to green products in government procurement activities.

To implement the *Working Guidance for Carbon Dioxide Peaking and Carbon Neutrality in Full and Faithful Implementation of the New Development Philosophy and the Action Plan for Carbon Dioxide Peaking before 2030*, issued in September and October 2021, NDRC and other departments circulated the *Implementation Plan for Promoting Green Consumption* on January 28, 2022. This implementation plan states that China will promote the revision of the TBL and the GPL to improve green procurement policies, further stipulate government green procurement standards, increase the procurement of green and low-carbon products, expand the scope of green and low-carbon product procurement, and increase the proportion of green and low-carbon products in government procurement. On May 25, MOF also issued the *Opinions on Providing Financial Support for Carbon Dioxide Peaking and Carbon Neutrality*, which emphasize similar requirements. The relevant supporting policies were also issued for building materials, IT equipment, and other industries, including, for example, the *Notice on Printing and Distributing the Action Plan for Green and Low-Carbon Development of the Information and Communication Industry (2022-2025)* (August 22, 2022), the *Opinions on Deepening the Reform of the Management System of the Electronic and Electrical Industry* (September 23, 2022), the *Notice on Expanding the Implementation Scope of Government Procurement Supporting Green Building Materials to Improve Building Quality* (October 12, 2022), and the *Implementation*

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》以建立健全绿色低碳循环发展经济体系，并将碳达峰和碳中和纳入经济体系。这些法规和政策都要求政府采购活动优先考虑绿色产品。

为贯彻落实2021年9月发布的《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》和10月发布的《2030年前碳达峰行动方案》，国家发改委等部门于2022年1月28日印发《促进绿色消费实施方案》（以下简称《实施方案》）。该《实施方案》指出，中国将推进修订《招标投标法》和《政府采购法》，完善绿色采购政策，进一步强化政府绿色采购标准，加大绿色低碳产品的采购力度，扩大绿色低碳产品采购范围，提高绿色低碳产品在政府采购中的比例。5月25日，财政部还发布了《财政支持做好碳达峰碳中和工作的意见》，重申了上述要求。针对建材、IT设备等行业也出台了相关的配套政策，包括2022年8月22日发布的《关于印发信息通信行业绿色低碳发展行动计划（2022-2025年）的通知》、2022年9月23日发布的《关于深化电子电器行业管理体制改革的意见》、2022年10月12日发布的《关于扩大政府采购支持绿色建材促进建筑品质提升政策实施范围的通知》、以及2022年12月13日发布的《关于进一步完善市场导向的绿色技术创新体系实施方案（2023-2025年）》。此外，2022年底发布的《扩大内需战略规划纲要（2022-2035年）》，重申政府要完善绿色采购制度，加大低碳产品采购力度，建立健全绿色产品标准、标识、认证体系和生态产品价值实现机制。

商会很高兴看到政府采购决策更加重视环境因素，但敦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）。

## 建议

中国宣布加入《政府采购协定》已超过22年。中国应通过加入《政府采购协定》来履行对世贸组织的承诺。商会敦请中国政府采取必要的最后步骤，与美国及其他47个《政府采购协定》范

围内的世贸组织成员一道，在互惠的基础上开放其政府采购市场，并于2023年加入《政府采购协定》。中国也应借此机会为其他在加入世贸组织议定书中作出类似承诺的世贸组织成员树立正面典范。此外，中国加入《政府采购协议》将激励世贸组织其他成员加入这个重要的多边协议。此外，中国应继续对国内采购制度进行改革，确保与《政府采购协定》原则保持一致。

## 对中国政府：

商会敦请中国政府处理未决问题和《政府采购协定》参加方提出的要求，争取2023年完成加入《政府采购协定》。商会促请政府与《政府采购协定》参加方一道，解决这些不足和其他改进措施：

- 中国应撤回其提出的为期一年的过度门槛，取消对国内比例要求、技术转让、和其他补偿交易的保留，并鉴于其经济发展程度，应撤销其主张自身作为发展中国家而获得的过渡措施。
- 新改进的《政府采购协定》出价应包含出于行政目的而定期进行采购的大型国有企业（包括电力公司），即不以商业销售或转售为目的，或不用于生产或供应以商业销售或转售为目的的产品或服务的国企。并且，商会建议政府通过以下方式阐明自身对国有企业的立场。首先，发布明确的行政条例，确认国有企业采购仅基于商业考量，而不属于政府采购。这样的条例符合中国在《加入世界贸易组织工作组报告书》中，有关国有企业商业独立性的承诺。其次，中国可扩展其《政府采购协定》范围，将参与行政目的采购的大型国有企业也纳入其中。
- 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；

*Plan for Further Improving Market-oriented Green Technologies Innovation System (2023-2025)* (December 13, 2022). In addition, the *Outline of the Strategic Plan for Expanding Domestic Demand (2022-2035)* issued at the end of 2022 reiterates that the government needs to improve the green procurement system and increase procurement of low-carbon products, and establish and improve green product standards, labels, certification systems and ecological product value realization mechanisms.

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 22 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 2023. 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 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 2023. 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, and stop discriminatory policies against foreign suppliers, especially in the medical industry. Such discriminatory policies are not only harmful to an open and fair market but may significantly hurt Chinese patients' interest. FIEs can and do make positive contributions to China's national development. AmCham China also urges the Chinese government to issue clear guidance to ensure local governments do not unreasonably shut out or restrict FIEs from procurement opportunities and to support the commitments to equality for FIEs in procurement enshrined in the *Foreign Investment Law*.

- 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、审计和簿记服务和与管理咨询相关的服务。
- 商会还敦请中国撤回其加入后推迟执行《政府采购协定》的请求，因为协定本身无法授权加入国推迟执行协定。
  - 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，并停止对外国供应商的歧视性政策，特别是医疗行业。医疗行业的歧视性政策不仅不利于形成公开公平的市场秩序，可能还会给中国患者的利益带来严重损害。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，商会敦请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：

- 商会建议美国政府与欧盟和其他《政府采购协定》参加方一起，以促成中国 2023 年加入《政府采购协定》为目标，共同确定中国市场准入出价中的改进措施是否达到各方的接纳要求，并提供相关措施。

**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 2023.

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# High-Tech Trade and Export Controls

AmCham China members engaged in high-tech trade acknowledge and commit to comply with all applicable export controls. We also believe, however, that continuity with partners and exports to customers around the world, including China, strengthen the competitiveness of our companies by enabling us to increase scale of production, earn revenue to finance R&D, and familiarize ourselves with technological developments elsewhere in the world. We therefore urge regulators to keep these considerations in mind when considering whether to impose, tighten or relax export controls.

## Introduction

Since its inception in 2006, AmCham China's Export Compliance Working Group (ECWG) has worked to adapt to the constantly changing trade environment by embracing a more compliance-oriented focus on important export licensing decision-making and deepening industry understanding of Chinese trade and trade-related controls. The ECWG has done so to facilitate a mutually beneficial export control environment that enhances global trade cooperation while promoting a security and compliance culture within the trade community in China.

Throughout 2022 the US and China relationship in high-tech trade and export controls continued to deteriorate. In the second half of the year, China suspended all dialogue and cooperation on export controls in response to US actions that China deemed contrary to Chinese interests and security. The US continued to add Chinese entities to the Entity List and imposed the broadest export control restrictions ever on the Chinese semiconductor industry. This and other actions left both US and Chinese companies in the position of having to reevaluate how they can work together and how each can successfully do business in these important markets.

Despite this expansion of export controls and the deterioration of communications, there was a slight uptick in the export control relationship between the US and China after the meeting between President Biden and President Xi on November 14, 2022, in Bali, Indonesia. Some groundwork was laid for the two governments to take actions to stabi-

lize and improve US-China relations. Since then, China has begun to arrange end-use visits, which is a positive sign. Additionally, instead of taking any unilateral actions in response to the new US export controls on the Chinese semiconductor industry, China filed a trade dispute with the World Trade Organization.

It is vital that the US and China re-engage in meaningful dialogue and cooperation on export controls, creating benefit for both countries. AmCham China encourages both governments to work with industry and have open and transparent discussions before imposing any new sanctions that would negatively impact both US and Chinese companies and the global supply chain.

Specifically, we urge China to support Chinese companies in their interactions with the US Government in the export licensing process and in export compliance, and we urge the US to reevaluate the export control levels it has set for China. AmCham China members also believe that many restrictions imposed by the US are on technologies that are already mature and are essential to the global supply chain in consumer sectors that do not pose a national security threat.

## Recent Developments and Ongoing Regulatory Issues

### *New Export Controls and Sanctions*

#### *Russia and Belarus Export Controls and Sanctions*

Last year witnessed the implementation of the most expansive and global sanctions and export controls ever imposed. The first set of export controls and sanctions, imposed by the US and many of its allies and partners, were directed at Russia and Belarus, but they also impacted Chinese companies' operations and business as well as the business of US companies operating in China. These Russian and Belarussian sanctions and export controls were very complex and comprehensive and created a substantial risk for any company, whether US or Chinese, found to be noncompliant. While AmCham China realizes that the US and China are not in agreement on these export controls and sanctions, we appeal to each side to minimize the impact of these sanctions

# 高科技贸易与出口管制

从事高科技贸易的中国美国商会（以下简称商会）会员接受并承诺遵守所有适用的出口管制。商会会员企业相信，持续性的合作伙伴关系及对包括中国在内的世界各地客户的产品出口，能够扩大生产规模并提高企业收入，以此来资助研发，并了解世界各地的技术发展，提升公司竞争力。因此，商会促请监管机构在考虑实施、收紧或放松出口管制时，能将这些因素考虑在内。

## 引言

**自** 2006 年成立以来，商会中国出口合规工作组（ECWG）一直致力于适应不断变化的贸易环境，将更注重合规的重点放在重要的出口许可决策上，并加深行业对中国贸易和贸易相关控制的理解。ECWG 这样做是为了促进互利的出口管制环境，加强全球贸易合作，同时促进中国贸易界的安全和合规文化。

在准备白皮书的这一章节时，由 15 个以上的 ECWG 成员做出了这一分析，旨在加强美中在出口管制方面的合作，并建立有利于商业贸易的出口管法规则。这么做的目的是为了创建一个互惠互利的出口管制环境，以加强全球贸易合作，同时促进中国贸易界的安全与合规文化发展。

在 2022 年的大部分时间里，美国和中国在高科技贸易和出口管制方面的关系继续恶化。在去年下半年，中国暂停了所有关于出口管制的对话和合作，以回应美国在中国看来违背其利益和安全的措施。美国不断将中国实体列入实体清单，并对中国半导体行业实施了有史以来最广泛的出口管制限制。这一措施和其他措施使美国和中国公司不得不重新评估他们如何合作，以及各自如何在这些重要的市场上成功地开展生意往来。

尽管这种出口管制的扩大和两国之间沟通的恶化趋势仍然存在，在 2022 年 11 月 14 日拜登总统和习主席在印度尼西亚巴厘岛的会晤之后，美国和中国之间的出

口管制关系还是有了一些改善。这为两国政府采取稳定和改善美中关系的措施奠定了一些基础。此后，中国开始安排最终用途考察（end-use visits），这是一个积极的信号。此外，中国没有采取任何单边行动来回应美国对中国半导体行业的新出口管制，而是向世界贸易组织提交了贸易争端的申诉。

美国和中国就出口管制重新进行有意义的对话和合作十分重要，这能够使两国都受益。商会鼓励美中两国政府在实施任何会对两国公司以及全球供应链产生负面影响的新制裁之前，与业界合作，进行公开和透明的讨论。

具体而言，商会敦促中国支持中国公司在出口许可程序和出口合规方面加强与美国政府的互动，同时商会敦促美国重新评估其对中国设定的出口管制水平。商会认为，许多被实施制裁的技术已经很成熟，对消费领域的全球供应链至关重要，但不构成任何国家安全威胁。

## 最新动态与正在发生的监管问题

### 新的出口管制与制裁

#### 对俄罗斯和白俄罗斯的出口管制与制裁

去年我们见证了有史以来最广泛的全球制裁和出口管制的实施。第一轮出口管制和制裁，包括美国所实施的那一批，是针对俄罗斯和白俄罗斯的，但它们也确实影响了中国公司的经营和业务，以及在中国经营的美国公司的业务。对俄罗斯和白俄罗斯的这些制裁和出口管制非常复杂也十分全面，它们给无论是美国还是中国的任何公司都带来了巨大的风险，它们常常出现合规性问题。虽然商会意识到美国和中国在这些出口管制和制裁上没有达成一致，但我们呼吁双方尽量避免使用这些制裁和出口管制措施以减轻对两国之间合法民用高科技贸易的影响。我们还呼吁任何政府都不要采取会使这一领域紧张局势升级的措施，这可能会导致制裁和出口管制的扩大，直接影响美中贸易。



and export controls on legitimate civilian high-tech trade between the two countries. We also urge both governments to refrain from actions that would escalate tension in this area and may lead to a broader expansion of sanctions and export controls that directly impact US-China trade.

### Export Controls on Semiconductors and Changes to the UVL

The second major set of export control rules issued by the US were directed at the Chinese semiconductor industry. These rules were published on October 7, 2022, and expanded the Commerce Control List (CCL) to include the following:

#### 1. Advanced Computing and Semiconductors

- Added certain advanced chips, computer commodities containing such chips, and semiconductor manufacturing equipment;
- Expanded the scope of the Export Administration Regulations (EAR) to reach additional items produced outside the United States (Foreign Direct Product Rule (FDPR) Footnote 4);
- Restricted the ability of US persons to support the development or production of integrated circuits at certain semiconductor fabrication facilities in China (US Persons); and
- Added new license requirements for certain items destined to China, including certain items for use in supercomputers, the development or production of semiconductors or semiconductor manufacturing equipment, and destined to fabs in China that produce chips at a certain level.

2. The US Government at that time also added numerous companies to the Unverified List (UVL) and revised the policy regarding the UVL. Pursuant to the policy change, companies on the UVL are to be placed on the Entity List if the outstanding end-use visit is not conducted successfully within 60 days from the date of placement on the UVL.

These changes have had a dramatic impact on both US companies and individuals and their Chinese customers, with many publicly traded companies projecting losses in the billions of dollars. Although AmCham China understands the US Government's national security, intellectual property, and national security concerns with the Chinese semiconductor sector, we are concerned that the unilateral nature of these controls will serve only to inhibit US companies' trade without accomplishing US national security goals. AmCham China members also are concerned that the level of the controls has broadly captured mature technology levels that China can already reach and serve only to negatively impact global supply chains. AmCham China, therefore, urges the US Government to review the actual impact of these rules considering their unilateral implementation and the level of controls.

For the Chinese Government, AmCham China urges an increase in dialogue and cooperation with the US Government on export controls. This could be done by clarifying and actually unwinding the concept of military-civil fusion. For many years US and Chinese companies worked together in commercial sectors with a full understanding that this commercial cooperation could not cross over into the military side. In implementing this policy, both sides promoted and implemented export compliance policies and procedures and allowed transparency that led to great strides in high-tech cooperation between the US and China. AmCham China submits that reestablishment of such transparency and compliance could be especially helpful at a time when the world is emerging from a pandemic and faces global supply chain issues.

### *End-use Visits*

AmCham China also asks the Chinese Government to increase its cooperation in conducting end-use visits at the request of the US Government. AmCham China members are experiencing delays in the arrangement and conduct of end-use visits, which holds up the approval of licenses important to US exporters and their Chinese suppliers. While global supply chain difficulties are due in great part to COVID, AmCham China believes it is important to work together to limit any further negative impacts. AmCham China hopes that the Chinese Government can work to arrange and carry out the outstanding end-use visits as soon as possible, as this is a routine procedure that US and Chinese export control authorities have been carrying out for decades.

### *Entity List*

The Bureau of Industry and Security (BIS) continues to add Chinese entities to the Entity List for national security and foreign policy reasons. These companies are often added to the list without any dialogue with the added company and only a general statement on why they were placed on the list. Chinese companies consequently find it almost impossible to address the US Government's concerns and ultimately be removed from the Entity List.

Given the above, AmCham China encourages greater effort by the US Government to promote education on best practices to avoid US export control violations. The US Government should also 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 its willingness to implement an effective Export Compliance Program (ECP) and halt the activities that caused their listing.

AmCham China further believes that it is important for the US and Chinese governments to encourage Chinese companies to apply for removal from the Entity List and provide

## 对半导体的出口管制和对“未经核实清单” (UVL) 的修改

第二轮重大出口管制规则是由美国发布的，主要针对的是中国半导体行业。这些规则于 2022 年 10 月 7 日公布，涉及以下内容：

### 1. 先进计算机和半导体

- 在《商务部管制清单》(Commerce Control List, CCL) 中增加了某些先进的芯片、含有此类芯片的计算机商品以及半导体制造设备。
- 扩大了《美国出口管理条例》(EAR) 的范围，以涵盖更多在美国以外生产的物品（外国直接产品规则 (FDPR) 脚注 4)。
- 限制了美国人支持（美国人）在中国的某些半导体制造设施开发或生产集成电路的能力；
- 对某些运往中国的物品增加了新的许可证要求，包括某些用于超级计算机、开发或生产半导体或半导体制造设备的物品，以及运往中国生产芯片达到一定水平的工厂的物品。

2. 美国政府当时还将许多公司列入未经核实清单 (UVL)，并改变了关于 UVL 的政策。在政策变化中，如果从被列入 UVL 之日起 60 天内没有成功进行未完成的最终用途考察，UVL 上的公司将被列入实体清单。

以上这些变化对美国公司和个人及其中国客户都产生了巨大的影响，许多上市公司宣布由于这些变化造成的损失估计达数十亿美元。商会理解美国政府因国家安全、知识产权原因关注中国半导体行业的发展，但我们担心这些管制措施的单边性质不仅会影响美国公司的市场表现，也无法达成美国的国家安全目标。商会成员还担心，这些控制措施的水平已经广泛涵盖了美国已经可以达到的成熟技术水平，并对全球供应链产生负面影响。因此，商会敦促美国政府在考虑其单边措施和管制水平的基础上评估这些规则的实际影响。

对于中国政府，商会促请加强与美国政府在出口管制方面的对话与合作。要做到这一点，可以澄清并在事实上消除美方对军民融合的顾虑。多年来，美国和中国公司在商业领域合作，并充分理解这种商业合作不能跨越到军事方面。在执行这一政策的过程中，双方都促进和实施了出口合规政策和程序，并允许有透明度，从而使美中两国的高科技合作取得了巨大的进步。在世界正

摆脱疫情并面临全球供应链问题之际，重新建立这种透明度和合规的制度将会大有裨益。

## 最终用途考察

商会并呼吁中国政府在执行美国政府要求的最终用途考察方面加强合作。商会会员企业在安排和进行最终用途访问方面遇到了延误，这阻碍了对美国出口商和他们的中国供应商非常重要的许可证的批准。由于所有全球供应链的困难在很大程度上是由新冠疫情造成的，商会认为，共同努力以限制对供应链的任何进一步的负面影响十分重要。商会希望中国政府能够努力尽快安排和进行尚未完成的最终用途考察，因为这是美国和中国出口管制当局几十年来一直在进行的例行程序。

## 实体清单

美国工业和安全局 (BIS) 继续以国家安全和外交政策为由将中国实体加入实体清单。在大多数情况下，被添加的公司是在没有进行任何同美国政府对话的情况下被添加的，只是笼统地说明了它们被列入名单的原因。中国公司发现解决美国政府的关切几乎是不可能的，并最终因这些原因被从实体名单上删除。

鉴于上述事实，商会鼓励美国政府做出更大的努力，宣传最佳实践教育避免违反美国出口管制。美国政府还应向已被列入实体清单，但正在努力从名单中被移除的上市实体提供更详细的指导和方向，特别是如果该实体已表示有愿意实施有效的出口合规计划 (ECP) 并停止导致其被列入实体清单的活动。

商会认为，美中两国政府应鼓励中国公司申请从实体名单中被删除，并提供必要的支持。这对于提高透明度和积极展示如何加强出口合规工作可能是非常有帮助的。

## 国外供应和非美国供应商

如上文所强调的，美国的一些出口管制规则是单方面的，并不有效，因为许多需要美国两用出口的项目可以在没有出口许可证的情况下从非美国国家轻易地出口。此外，许多这些项目在中国本土已经可以获得。在这种情况下，商会发现，这些单边限制对美国国家安全没有益处。因此，商会要求美国政府审查美国的出口管制政策和管制措施，考虑到中国本土的可用性和非美国

necessary support. This could be extremely helpful in terms of transparency and a positive demonstration of how to strengthen export compliance efforts.

### *Foreign Availability and Non-US Suppliers*

Several US export control rules are unilateral and not effective because 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 encourages the US government to 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 it looks to place 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, and economic growth. AmCham China, therefore, urges the US Government to 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 controls.

### *Chinese Export Controls*

#### *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. The National People's Congress and its Standing Committee described the law as China's first omnibus national legislation on export controls, which previously had been governed by rules scattered across various statutes and administrative regulations. The ECL's five chapters and 49 articles cover general provisions, control policies, control lists and control measures, regulations, and legal liabilities, 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 very much appreciates that the Ministry of Commerce has published the drafts for comment. AmCham China has engaged with the Ministry of Commerce on the draft regulations and provided industry feedback on the draft.

### Conclusion

The expansion of export controls and sanctions 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 may inadvertently run afoul of the sanctions due to their breadth and complexity. To help alleviate any confusion or problems in the future, AmCham China requests that the US Government continue to provide FAQs on the controls and work with both AmCham China and Chinese industry associations on an extensive outreach program to all companies operating in China.

Additionally, amidst the numerous changes to Chinese and US export control laws and regulations over the last several years, 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.

AmCham China's ECWG 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 that the Chinese and US Governments will work with the ECWG to reengage in such cooperative training, so companies can work together for the mutual benefit of both countries.

### Recommendations

#### *For the Chinese Government*

- Engage with the US Government and US and Chinese companies to address military-civil fusion issues and help companies develop criteria for compliance programs to ensure civil end-use to reinvigorate US-China high-tech trade.
- Work with the US Government and relevant companies to conduct outstanding end-use visits, to enable removal of impacted Chinese companies from the Unverified List upon successful completion of the end-use visits and issuance of pending licenses.

#### *For the US Government*

- Work with other governments to impose multilateral controls instead of imposing unilateral US controls that are ineffective in achieving national security and foreign policy goals. Where controls

来源的可用性，特别是在制定新的单边管制措施，以及对新兴和基础技术的任何管制。

商会继续强调，在其他国家可以自由或容易地出口同等物品的情况下，限制美国物品对中国的出口并不利于美国国家安全。相反，它导致美国公司失去出口机会，并反过来影响美国的就业和经济增长。因此，商会要求美国政府在修订新兴技术和基础技术控制清单时，以及在颁布任何美国单边控制措施之前，尽可能地与其他多边出口管制制度成员保持一致。

## 中国的出口管制

### 中国的监管改革

第十三届全国人民代表大会常务委员会于2020年10月17日通过了《中华人民共和国出口管制法》(ECL)，其生效日期为2020年12月1日。全国人民代表大会及其常务委员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，以前这些规则散见于各种法规和行政条例中。《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、条例和法律责任，加上补充条款，共49条。

2022年4月22日，商务部公布了《两用物项出口管制条例(征求意见稿)》，与《关于〈两用物项出口管制条例(征求意见稿)〉公开征求意见的通知》文件。商会肯定发布这些规定的重要性，并赞赏商务部公布草案征求意见。商会期待着与商务部就条例草案进行沟通，并提供行业对草案的反馈。

## 总结

毫无疑问，出口管制和制裁范围的扩大让公司处在一个非常复杂和具有挑战性的出口合规环境。虽然商会没有看到任何旨在规避这些制裁措施的迹象，但由于制裁的广度和复杂性，会员企业担心他们可能会无意中触犯这些制裁。为避免今后有任何困惑或问题，商会敦促美国政府继续提供关于这些控制措施的常见问题解答，并与商会和中国行业协会合作，向所有在中国有经营活动的公司开展广泛的宣传。

此外，在过去几年中，中国和美国的出口管制法律和法规发生了许多变化。为了安全和合法地从事高科技贸易，对美国和中国公司的教育和培训是必不可少的。将从事贸易交易的合格进口商和出口商聚集在一起，对他们进行出口管制和合规性教育，可以推动中美高科技贸易进一步发展。

商会出口合规工作小组(ECWG)以前曾为美国出口商、中国进口商和政府官员举办过关于出口管制和合规的教育研讨会，以帮助加强两国之间的高科技贸易，并将监管风险降至最低。商会建议中国和美国政府与ECWG合作，重新参与此类合作培训，深化企业间合作，共同造福两国。

## 建议

### 对中国政府：

- 与美国政府和中國公司合作，解决军民融合问题，并帮助公司制定合规计划的标准，确认民用最终用途，以重振美中高科技贸易发展。
- 与美国政府和相关公司合作，推进未完成的最终用途考察，以便在成功完成最终用途考察后，将受影响的中国公司从未经证实的名单中删除，并在成功完成未完成的最终用途考察后，颁发待批的许可证。

### 对美国政府：

- 与其他国家政府合作，实施多边管制，而不是实施美国的单边管制，因为这些管制对实现国家安全和外交政策目标是无效的。如果管制仍然是单边的，应重新考虑这种管制的有效性，并取消那些不能实现美国政策目标的管制。
- 与正在被考虑加入实体清单的中国公司接触，给他们机会解决可能导致他们被列入清单的问题。

### 对两国政府：

- 商会鼓励两国政府做出更大努力，通过教育和培训活动帮助美国和中国实体加强其合规工作，以确保他们不违反适用的出口管制法律和法规。
- 建立一种机制，使两国的政府和行业代表能够合作解决出口管制问题，以提高中国公司获得美国管制商品的能力，并允许美国和中国公司共同参与技术研发，使两国受益。

remain unilateral, reconsider the effectiveness of such controls, and remove those controls that do not meet US policy goals.

- Engage with Chinese companies being considered for addition to the Entity List and give them the opportunity to address concerns that may avoid the need for their addition to the List.

### *For Both Governments*

- AmCham China encourages greater efforts by both governments to assist US and Chinese entities to strengthen their compliance efforts through education and training activity to ensure 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 procure US-controlled commodities and allow US and Chinese companies to develop technology together for the benefit of both countries.



# Human Resources

## Introduction

The COVID-19 outbreak in China had a significant impact on the business community, affecting operations, revenue generation, and capital management. The external operating environment of our member companies was also greatly impacted in 2020 and continues to be a concern regarding human capital in China in 2021 and 2022.

In AmCham China's 2023 China Business Climate Survey, members report that their top three human resources challenges are US-China tensions and geopolitical concerns (43 percent), labor costs (37 percent), and rising salary and wage costs (31 percent) (Figure 49). In this year's survey, 51 percent of members reported that their top expatriate candidates were unwilling to move to China, up 21pp from last year (Figure 53). With the official end of quarantine for international arrivals on January 8, 2023, it is anticipated that the travel situation will gradually improve as international flights resume to pre-pandemic levels. However, it is uncertain whether this increased ease of travel will be sufficient to reverse the current trend of expatriate staff being reluctant to relocate to China.

## Flexible Employment Mechanism

As the Chinese economy continues to develop, more employers and workers are exploring the benefits of flexible employment relationships. Unlike the traditional 40-hour workweek and full-time employment, flexible employment allows companies to hire workers on a more flexible basis, based on the demand of production and employment, and establish part-time labor relations with workers. In addition, a growing number of younger workers are entering the workforce in the "gig economy," which is characterized by having multiple professional identities and actively engaging in temporary, flexible work arrangements across different organizations.

From a business perspective, flexible employment offers companies the ability to quickly adapt to changing market conditions while keeping long-term operational and labor costs low. For workers engaged in flexible work, this type of employment allows for flexible schedules and earning potential, enabling them to balance their personal interests

and family responsibilities. The scope of occupations offering flexible employment opportunities is broad, providing flexible workers with numerous ways to market their personal and professional value.

The current regulatory framework for part-time employment in China is established by the *Labor Contract Law*, which serves as the legal foundation for flexible employment. In practice, flexible employment typically takes the form of labor dispatch through third-party agencies, outsourced employment, part-time employment, retired re-employment, or internship labor. While Chinese regulations permit the development of flexible employment, our members have experienced several frustrating aspects of this type of employment, including the following:

### *Social Insurance and Flexible Work*

China's social security system is currently designed to cater to the needs of full-time employees, as employers and employees jointly contribute to mandated social insurance payments after a work contract is signed. This system covers pension insurance, unemployment insurance, medical insurance, work-related injury insurance, maternity insurance, and a housing fund, and ensures compensation for both employers and employees in case of any problems arising during employment.

However, in the case of flexible employment arrangements, the responsibility of social insurance payments falls on the worker, reducing the staffing costs for enterprises but creating risks for them in the long run. For instance, if a work-related injury occurs, the enterprise has to cover the costs instead of compensating the employee from social insurance funds. Some enterprises choose to purchase commercial accident insurance or hire dispatched labor to mitigate these risks, but this can result in additional insurance policies or arrangements to control risks, raising labor costs. Additionally, there are challenges associated with making payments to flexible employees, such as complicated procedures and a reliance on labor dispatch agencies.

The current social security system in China does not adequately protect the rights and benefits of part-time employees, which can result in individual contributors not

# 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。

商会 2023 年《中国商务环境调查报告》显示，会员企业表示在人力资源方面的前三大挑战包括“中美关系紧张和地缘局势恶化”（43%）、“整体人力成本增加”（37%）和“薪资成本上涨”（31%）（图 49）。在今年的调查中，51% 的会员表示，公司外籍候选人不愿意前往中国工作，该比例较去年增加了 21 个百分点（图 53）。随着 2023 年 1 月 8 日起中国进一步放宽新冠疫情防控措施，国际航班预计将逐步恢复到新冠疫情前的水平。但国际旅行的开放对外籍人才是否愿意重返中国这一问题的影响仍不确定。

## 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用工，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用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。



receiving full compensation for their labor. This leads to challenges such as non-payment of social insurance contributions by employees or high fees charged by agencies to help companies join the social security system. Consequently, workers who make individual social security contributions do not receive the full benefits they are entitled to, which exacerbates opposition to flexible employment and hinders its ability to provide adequate protection to those in need.

### *Flexible employee Qualification*

As China's economy and industrial structure continue to evolve, the prevalence of flexible employment is growing in industries such as IT and services, expanding from simple and repetitive jobs to technical, professional, and managerial positions. This growth means that the required professional qualifications for flexible employment are also expanding, and it is crucial that appropriate business and professional ethics are applied. However, there is currently no system in China to appropriately rate and assess the professional qualifications of flexible workers, particularly those in management or technical positions. This lack of assessment makes it difficult to determine the qualifications and professional reputation of flexible workers.

To address this issue, we recommend that the government establish and improve a system to standardize the certification of professional qualifications and link them to social security. This system should draw on the experiences of developed countries in the area of flexible employment. Such measures will help promote the development of flexible employment in China, benefiting both workers and employers.

AmCham China recommends:

- To ensure the fair and sustainable employment of flexible workers, several measures can be taken. Firstly, the Ministry of Human Resources and Social Security (MOHRSS), its local departments, and industry associations can collaborate to develop a professional qualification certification system. This will help regulate the hiring of flexible workers, while strengthening the certification of their professional qualifications. Employers can then consider certification as the minimum requirement for hiring flexible workers, reducing business risks and ensuring that qualified workers have access to opportunities. It also fosters a closer relationship between flexible workers and their projects, raising professional standards and creating a dynamic employment marketplace.
- Secondly, enterprises can be encouraged to take responsibility for withholding and paying social security for their flexible workers. To incentivize this, social security rates for flexible workers can be lowered. Moreover, multiple enterprises can jointly pay social security contributions for flexible workers, reducing operational and staffing costs for single employers. For certified and reputable flexible workers, employers can take responsibility for

withholding and paying social security on their behalf, with a lower rate applied. Flexible workers should be encouraged to obtain professional qualifications or invest in their competencies, as social security contributions can enhance their personal benefits. If flexible workers work for multiple companies simultaneously, they should have the opportunity to receive social security benefits from each employer.

- To support and manage flexible employment in a more effective manner, it is essential to engage with countries that are leaders in developing policies for this type of work. Countries such as Europe, the US, and Japan have already established comprehensive systems and specific practices that China can learn from. By interacting with industry associations and relevant labor and employment regulatory agencies, the Chinese government can improve its laws and regulations to create a more enabling environment for both employers and employees who hire or work as flexible workers.
- We recommend that China consults with these countries to understand their experiences and incorporate global best practices into its regulatory framework for flexible labor. This approach will help to address specific needs in China, such as employment conditions, labor protection, vocational training, and unemployment protection. By doing so, China can create a regulatory framework that is better suited to the needs of its economy and workforce, while benefiting from the lessons learned by global leaders in this field.

### **Social Insurance Payment**

#### *Optimize implementation of the “Three Unifications” policy*

This policy aims to ensure compliance and protection of employees' interests by requiring multinational companies to recruit local employees and sign labor contracts through their headquarters. This ensures local employees enjoy uniform and fair benefits. However, since August 2020, the policy has brought significant concerns to the operation of foreign enterprises in China and the protection of employees' rights and interests. Provinces and municipalities have launched a special campaign to carry out the policy, requiring HR service providers to stop making social security payments on behalf of foreign companies.

To start, the policy of “insured at the place of registration” has had negative effects on workers. If an enterprise cannot establish a branch in a timely manner, it must transfer its employees to the city where it does have a branch in order to pay social insurance based on the principle of proximity. This can result in employees losing certain benefits such as medical insurance and social security at their place of work, and it may also affect other aspects of their lives linked to social security payment, such as home ownership and their

鉴于目前中国的社会保障体系无法有效地保障非全职工工的权益，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，使其无法为需要的雇员提供足够的保护。

### 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，劳动保障，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

#### 优化“三统一”政策执行方式，为跨国企业经营提供便利

大型跨国企业需要招聘本地员工以支持本地业务，并通过运营总部与其签订劳动合同，使其享受统一公平的福利待遇。自2020年8月起，中国各省市应人社部要求，陆续启动了“三统一”政策的专项整治行动，要求人力资源服务商全面停止与外资企业的社保代缴业务并限期整改。尽管“三统一”政策的根本核心是“主体”合规和保护职工利益，但在实际执行中对在华外资企业的运营和职工权益保障造成了极大的困扰。

首先，注册地参保政策调整导致劳动利益者受损。如企业无法或未能及时设立分支机构，只能将有关员工按临近原则集中转到已设立分支机构的城市缴纳，对员工而言，其在工作地享受的医保、社保等会受一定影响，其他与社保缴纳挂钩的方面，如购房、子女入学资格等也可能受到受影响。此外，在其退休后也会涉及转移等问题。其次，“三统一”政策无法适用于跨国企业新型用工形式。大多数情况下，大型跨国企业业务遍及多个城市，按照“三统一”政策的标准，外企企业在国内所有设有业务的城市设立分公司缺乏可行性，而如果企业将

children's eligibility for schooling. Furthermore, the insurance of transferred employees will need to be transferred again after retirement.

Secondly, the "Three Unifications" policy is not well-suited to new forms of employment in multinational enterprises. In most cases, large multinational enterprises have business in many cities, making it impractical for them to establish branches in each location in order to comply with the policy. If enterprises move their employees' social security to cities where they do have branches, they may technically be violating labor laws and taxation regulations.

Lastly, there are inconsistencies in the implementation of the "Three Unifications" policy and related labor standards across different local governments. In some cities, there is insufficient time for enterprises to remedy the situation, and enforcement can be excessively strict. Additionally, labor standards vary from place to place, such as the approval of special working hour systems. This leads to inefficiencies in overall enterprise management, forcing the enterprise to close business departments and dismiss employees in certain cities.

Based on the issues raised, we suggest the following recommendations:

- The Ministry of Human Resources and Social Security of China should provide standardized guidance to local HR and social security management departments. This includes providing a remedy for HR service providers to make social security payments on behalf of foreign enterprises, allowing for compliance and providing ample time for implementation.
- Implement the "secondary social security account" model in Shijiazhuang as it can enhance social security management efficiency and improve operations for multinational enterprises in different cities.
- Establish a white list of HR service providers by the Ministry of Human Resources and Social Security, along with a framework and standards for social security payments by human resources agencies. This will guarantee the legality of the payment process, protect employee rights and interests across cities and positions, and aid enterprises in cutting unnecessary costs.
- At the provincial level, make the "Three Unifications" policy applicable, ensuring that social security payments can be made within the province.
- Encourage local human resources and social security departments to maintain close communication with relevant departments, including taxation departments. This will tighten supervision, improve social security collection systems, and digitize methods to standardize the implementation of the "Three Unifications" policy.
- Consult with stakeholders to gather information about their concerns and experiences on the ground, in order to better inform the implementation of the policy.

### *Optimize maternity leave policy and introduce more supportive measures*

Since the end of 2021, many provinces and cities in China have revised their policies on population and family planning regulations. The most significant changes have been made to the regulations surrounding maternity leave, paternity leave, and parental leave. While the flexibility of the policies has provided some convenience for couples, it has also brought increased costs and management complexity for businesses.

For enterprises, it is very difficult to manage challenges related to ensuring a consistent leave policy and leave system due to the variation of policy requirements and standards across different places in China. Enterprises above a certain scale hope to have a set of unified rules to comply with in order to streamline the process and minimize management costs. Additionally, since policy releases are not coordinated, and there is no designated platform for releases and updates, both employees and enterprises need to collect and check the latest information for leave application and review on different official and social media websites. Therefore, the government is recommended to establish a platform for policy announcement and management to enhance the efficiency of enterprises and employees.

Furthermore, the interpretation of local policies is not yet comprehensive, and further clarification on the implementation is needed. Different places release different statements on whether to implement local regulations, with some promoting them while others are more ambiguous and unable to give clear instructions.

It is worth noting that different segments of society have different reactions to the extension of leave policy discussed above. While businesses are concerned about the additional costs, female employees are worried about potential employment discrimination. In this context, companies hope that the government, in line with the overall policy of encouraging childbirth, will establish a mechanism to share the cost of childbirth and improve public services and related protections.

Experts suggest that the central government, while supporting parental leave in pilot areas, should provide relevant policy support, such as giving certain tax breaks and incentive subsidies to companies where women of childbearing age work, depending on their childbearing status. Only with various measures adopted to form a social mechanism for sharing the cost of parenting can companies better recruit and train female employees and eliminate employment discrimination.

### **Individual Income Tax**

In August 2018, revisions to China's individual income tax

部分员工社保迁至设有分公司的城市，严格意义上来讲，可能违背了劳动法、工商以及税务的相关法律法规。第三，各地地方政府推行“三统一”政策的执行标准或者相关的劳动规范标准存在差异。部分城市对企业整改限期过短，执行力度过严，导致企业无法顺利过渡员工社保迁移；同时各省市的相关劳动规范标准不同，例如特殊工时制度审批。不同分公司采取不同的劳动规范标准，导致企业整体管理效率低下，使企业不得不在部分城市撤销业务部门以及遣散员工。

基于以上问题，建议：

- 国家人社部对地方人力资源与社会保障相关管理部门进行统一指导，尤其是对于人力资源服务商帮当地外企注册分公司的员工社保代缴的整治行动，不仅能够使地方人社部门整治行动更加规范，也能够为企业提供一定的政策执行缓冲期。
- 建议参考石家庄“二级社保账户”模式，既提高当地社保管理效率，又利于企业各地运营。
- 建议人社部建立人力资源服务商白名单，制定对人力资源机构代缴的执行框架和标准。在华外资企业通过合规合法的大型人力服务中介代缴员工的公积金、养老金、工伤保险，不仅能够从源头上保证了代缴流程的合规合法，保障不同城市不同职能岗位员工的权益，还能够帮助企业合理控制不必要的成本支出。
- 建议“三统一”政策以省为单位，实现人员社保缴纳资质省内互认。
- 建议各地人社部门与税务部门等相关部门能够保持密切沟通，通过改进社保征收系统等数字化方式来加强监管，使“三统一”政策的执行更加规范。
- 建议了解各利益相关方情况和顾虑，为政策落地实施提供更多参考信息。

### 优化生育假期政策，加强生育配套措施

从2021年年底开始，多省市修改了人口与计划生育条例政策，其中变化最大的是产假、陪产假、以及育儿假的相关规定。政策的灵活性为夫妻解决生育问题提供了一定便利，但在企业管理方面，也带来了成本和管理复杂度的增加。

在企业实际管理中，由于各地政策要求和标准存在差异性，这对于覆盖全国、且具有一定规模人数的企业来讲，非常不便于企业的统一管理，这包括休假政策一

致性的挑战及休假系统配置上的挑战。从企业来讲，希望能够有一套统一规则来遵守，化繁为简，尽量减少企业管理成本。此外，由于各地政策发布较为分散，且没有统一的发布和更新平台，员工和企业都需要到不同的政府和社会网站收集、查阅最新信息，从而进行假期申请/审核。因此，希望政府可以建立一个统一平台进行政策公示和管理，提升企业和员工的工作效率。第三，各地政策解释尚不全面，从实操角度还希望能够进一步明确。不同地方对于是否执行当地规定的口径也是不一样的，有些地方是倡议，有些地方态度比较模糊，始终无法给出明确指示。

我们也注意到，在以上各种假期延长后，社会方面反映各异。企业方担心额外成本，女员工则担心可能的就业歧视。企业切实希望，政府在鼓励生育的大方针下，能够建立健全生育成本分摊机制，强化公共服务和相关保障。正如某些专家所建议的：“中央在支持有条件的地方开展父母育儿假试点的同时，落实相关政策支撑，如对育龄妇女所在单位，根据女性生育情况给予一定的税收减免和奖励补贴等。只有多管齐下，形成养育成本共担的社会机制，才能更好地促进企业招聘女性、大胆培养女性，消除就业歧视”。

### 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

(IIT) system were passed by the Fifth Meeting of the Standing Committee of the 13th National People's Congress (NPC), with implementation starting on January 1, 2019. The IIT reform consisted of seven main aspects, with the most significant being the alignment of China's income tax code with established tax management principles used in other developed countries, such as annual filing and joint filing for families. The goal of the reform was to improve China's tax code and standardize its management practices while ensuring individual rights were protected with respect to taxation.

One of the most notable IIT reforms was the increase in the tax exemption threshold, coupled with the introduction of special additional deductions for children's education, continuing education for adults, medical treatment for critical illnesses, housing/mortgage loan interest, and rent, as well as expenses for elderly care. These measures were primarily intended to reduce the tax burden on most wage earners and improve the living standards of low-income populations.

As the revised IIT was being implemented, the state established a transition period to comply with the new policies for "special circumstances" and "specific groups of people." This transition period covered 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, such as 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.

To further reduce the tax burden on expatriates and attract more foreign talent, the government will continue to offer tax-free benefits until the end of 2023. These benefits include housing rental, children's education costs, and language training costs. Expatriates can choose to avail themselves of special additional deductions or tax-exempted fringe benefits, but once they have made their decision, they cannot change their method during the calendar year.

### *Personal Income Tax Reform*

In order to further ease the tax burden for the working class, the following new policies were issued in 2022, in addition to the existing special deductions.

- **Under-three-year-old Infants and Toddlers' Childcare.** Starting from January 1, 2022, taxpayers' childcare expenses for infants and toddlers under three years old shall be deducted according to the standard quota of RMB 1,000 per month for each child. Guardians

of infants and toddlers, including biological parents, step-parents, adoptive parents, persons other than parents acting as guardians of minors, can apply for the above special additional deduction accordingly. (Notice of the State Council on the Establishment of Individual Income Tax (IIT) Special Additional Deduction for Under-three-year-old Infants and Toddlers' Childcare (Guo Fa [2022] No. 8))

- **Tax deferral policies for individual pensions.** Since January 1, 2022, the preferential tax deferral policy for individual pensions has been implemented in some cities. The individual's contribution to the personal pension fund account shall be deducted from the comprehensive income or business income according to the limit standard of 12,000 yuan per year. The individual income tax of investment income included in the personal pension fund account is not levied temporarily. The individual pension received by the individual is not included in the comprehensive income, and the individual income tax is calculated and paid at the tax rate of 3 percent alone, and the tax paid is included in the "wage and salary income" item. (Announcement of the Ministry of Finance and the State Administration of Taxation on Individual Pension-Related Individual Income Tax Policies (Announcement of the Ministry of Finance and the State Administration of Taxation, No. 34 of 2022))
- **Individual income tax refund for qualified home buyers.** From October 1, 2022, to December 31, 2023, taxpayers who sell their current home and purchase a new housing within one year after the sale are eligible for the tax refund.
  - "Announcement of Ministry of Finance and the State Administration of Taxation on Housing-related Individual Income Tax Policies" (Announcement of Ministry of Finance and the State Administration of Taxation, No. 30 of 2022)
  - "Announcement of the State Administration of Taxation on Matters Relating to the Administration of Housing-related Individual Income Tax Policies" (Announcement of the State Administration of Taxation, No. 21 of 2022)
- **Tax benefits for legal aid subsidy.** From January 1, 2022, legal aid subsidies received by legal aid personnel in accordance with the provisions of the Legal Aid Law of the People's Republic of China are exempt from value-added tax and individual income tax. Announcement of the Ministry of Finance and the State Administration of Taxation on Taxation Policies Relating to Legal Aid Subsidies (Ministry of Finance and the State Administration of Taxation Announcement No. 25 of 2022)

The new provisions introduced have been aimed at supporting residents in raising children, improving their housing conditions, promoting personal pensions, and facilitating the development of personal pensions.

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。

与此同时，为了更好地缓解外籍人员个人所得税的压力，吸引越来越多的外籍人员。外籍个人享受住房补贴、子女教育费、语言培训费等津补贴免税优惠政策也将延续至 2023 年底。

外籍个人符合居民个人条件的，可以选择享受个人所得税专项附加扣除，也可以选择享受住房补贴、语言训练费、子女教育费等津补贴免税优惠政策，但不得同时享受。外籍个人一经选择，在一个纳税年度内不得变更。

## 个人所得税改革

为了进一步降低工薪阶层的税负压力，在原有的专项扣除基础上，2022 年新发布了以下政策：

- **3 岁以下婴幼儿照护**：自 2022 年 1 月 1 日起纳税人照护 3 岁以下婴幼儿子女的相关支出，按照每个婴幼儿每月 1000 元的标准定额扣除。婴幼儿监护人：包括生父母、继父母、养父母；父母之外的其他人担任未成年人的监护人，可以比照执行。（《国务院关于印发 3 岁以下婴幼儿照护个人所得税专项附加扣除的通知》（国发〔2022〕8 号））
- **个人养老金递延纳税优惠**：自 2022 年 1 月 1 日起，在个人养老金先行城市对个人养老金实施递延纳税优惠政策。个人向个人养老金资金账户的缴费，按照 12000 元/年的限额标准，在综合所得或经营所得中据实扣除。计入个人养老金资金账户的投资收益暂不征收个人所得税。个人领取的个人养老金，不并入综合所得，单独按照 3% 的税率计算缴纳个人所得税，其缴纳的税款计入“工资、薪金所得”项目。（《财政部税务总局关于个人养老金有关个人所得税政策的公告》（财政部税务总局公告 2022 年第 34 号））
- **居民换购住房个人所得税优惠** 2022 年 10 月 1 日至 2023 年 12 月 31 日，对出售自有住房并在现住房出售后 1 年内在市场重新购买住房的纳税人，对其出售现住房已缴纳的个人所得税予以退税优惠。

◦ 《财政部税务总局关于支持居民换购住房有

关个人所得税政策的公告》（财政部税务总局公告 2022 年第 30 号）

◦ 《国家税务总局关于支持居民换购住房个人所得税政策有关征管事项的公告》（国家税务总局公告 2022 年第 21 号）

- **法律援助补贴税收优惠** 自 2022 年 1 月 1 日起对法律援助人员按照《中华人民共和国法律援助法》规定获得的法律援助补贴，免征增值税和个人所得税。《财政部 税务总局关于法律援助补贴有关税收政策的公告》（财政部 税务总局公告 2022 年第 25 号）

这些新条款在支持居民养育子女，改善住房条件，推动个人养老金的发展及起到了一定的作用。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，我们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。即使在我们大力倡导企业管理人员年轻化的今天，我们仍然保有許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 如果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，如何在贡献社会的同时，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。

### (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

While these measures have had a modest impact on the general population, they have failed to benefit senior managers and executives equally. The group of executive managers is unique, consisting mostly of highly educated individuals with vast business management experience and technical expertise in their fields. Attracting and retaining such talent is crucial to the success of any company's development plan, and these individuals are often compensated at levels that reflect their market value. While the original intent of the IIT reform was to reduce the tax burden on wage earners, an examination of its impact on executive managers reveals several noteworthy developments that suggest that the reform has yet to achieve its intended goals.

### (1) Special Additional Deductions

The accumulation of experience is a crucial factor for the career development of managers. Despite efforts to build a younger team of corporate management staff, many top executives are still in the second half of their careers. For these seasoned professionals, concerns such as their children's education, mortgage payments, and basic education diplomas are no longer at the forefront. Instead, their main priorities are accessing more advanced technical knowledge and international management skills to improve themselves by broadening their knowledge and expanding their vision, as well as preparing for retirement and contributing to society while maintaining a stable pension or income. Unfortunately, these issues, which require significant investment of energy and money, are not addressed by the current individual tax reform.

### (2) Special Additional Deductions do not embody regional differences

In China, the first-tier and coastal cities are the preferred locations for large Chinese and foreign enterprises, as well as for top executives in various industries who seek proximity to the optimal business industry ecosystem. However, the high cost of living in these cities, including housing, children's education, support for the elderly, and medical care, remains a major concern. Unfortunately, the tax reform proposal does not take into account the living costs of different cities in determining the deductions related to children's education, support for the elderly, further education, and medical care. This one-size-fits-all approach leads to significant differences in the effect of the tax reform for employees in different cities, particularly for senior executives in first tier and coastal cities. As a result, the tax reform benefits are not distributed in a reasonable and appropriate manner, which makes it more difficult for companies to attract and retain top management talent and implement their business strategies. Ultimately, these differences between the tax reform proposal and the population characteristics and geographical distribution of senior managers create more challenges for enterprises.

### (3) Implementation of more flexible and diversified special additional deduction policies

We suggest expanding the scope of the special deduction for further education beyond the current definition by the Ministry of Human Resources and Social Security. This could include new science and technology, management concepts, and operational models, as well as applied courses from renowned overseas universities. This would encourage Chinese employees to participate in international skills training and certification activities, improve the overall quality of China's workforce, and align with international standards.

We are glad to see the inclusion of personal pension options in the special additional deductions this year. However, due to the salary income gap, we propose raising the pension cap and incorporating specific commercial pensions and commercial medical insurance payments into the special deductions. This would enhance support and reciprocity of the commercial protection system for the national basic social security system, and create opportunities for senior corporate executives and foreign professionals to enjoy the same tax reform benefits.

## Recommendations

### *For the Chinese government*

- Extend the current tax-deductible items and relief measures for foreign nationals in China beyond their scheduled expiration at the end of 2023. We also suggest extending the current special tax calculation rate for annual bonuses and equity, which applies to both Chinese and foreign nationals. These new measures will likely prevent multinational companies from being discouraged from sending senior management to work in China.
- Collaborate with labor administrations and industry associations to develop a professional qualification system that regulates the hiring of flexible workers.
- Revise the regulation that social insurance must be paid by local subsidiaries/branches of the enterprises where the employees actually work, as many domestic and foreign enterprises operate across different provinces, and their employees work in different cities across the country.
- Implement a more flexible and diversified special additional deduction policy, which includes expanding the scope of the special deduction for continuing education. This expansion should include emerging technologies, new management practices, and applied courses from accredited overseas universities.

业高级管理人员的聚集地。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。因此对于包括高级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。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) 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认证活动，最终使我国整体员工素质提高并与国际接轨。

我们很欣喜的看到今年增加的专项扣除中已经设立了个人养老金的选项，但是由于目前薪资收入的差异化较大，我们建议提高养老金的限额，并将特定的商业养老，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级管理人员及外籍专业人才享有同等税改红利创造机会。

- 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。

## 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。



# Intellectual Property Rights

## Introduction

2022 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. Please note that the administrative institutions referenced here were in place prior to the restructuring approved by the National People's Congress in March 2023.

## Restructuring of the Government and Courts

AmCham China was encouraged by a commitment by the courts 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 a new IP tribunal in Quanzhou, Fujian.

### 2022 and early 2023 Legislative Updates

The following is a list of the many noteworthy legislative, administrative, and judicial developments in 2022 and early 2023:

- *Regulations of Guangdong Province on Intellectual Property Protection* by the Standing Committee of the Guangdong People's Congress (March 29, 2022), effective May 1, 2022
- *Regulations on the Protection and Promotion of Intellectual Property of Shandong Province* by the Standing Committee of the Shandong People's Congress (March 30, 2022), effective May 1, 2022
- *Regulations of Beijing Municipality on Intellectual Property Protection* by the Standing Committee of the Beijing People's Congress (March 31, 2022), effective July 1, 2022
- *Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China (Revised in 2022)* by the Supreme People's Court (April 1, 2022), effective April 10, 2022
- *Several Provisions of the Supreme People's Court on Jurisdiction of First-Instance Civil and Administrative Intellectual Property Cases* by the Supreme People's Court (April 20, 2022), effective May 1, 2022
- *Criteria for the Jurisdiction of the Primary People's Courts over Intellectual Property-related Civil and Administrative Cases of First Instance* by the Supreme People's Court (April 20, 2022), effective May 1, 2022
- *Judgment Guidance of Shandong Higher People's Court on the Application of Punitive Damages in the Intellectual Property Infringement Civil Cases* by the Shandong Higher People's Court (April 20, 2022)
- *Trial Guidelines of Beijing Higher People's Court on the Application of Punitive Damages in the Intellectual Property Infringement Civil Cases* by the Beijing Higher People's Court (April 25, 2022)
- *Measures for Administration and Protection of Collective Trademarks and Certification Trademarks (Draft for Comment)* by NIPA (June 7, 2022)
- *Civil Enforcement Law of the People's Republic of China (Draft)* by the Standing Committee of the National People's Congress (June 24, 2022)
- *Guidelines for Intellectual Property Protection at Exhibitions* by NIPA (July 20, 2022)
- *Regulations of Zhejiang Province against Unfair Competition (revised 2022)* by the Standing Committee of the Zhejiang People's Congress (July 29, 2022), effective October 1, 2022
- *Understanding and Application of Criteria for the Determination of Trademark Infringement* by NIPA (August 12, 2022)
- *Beijing Intellectual Property Court Handbook for Evidence Presentation of Parties in Civil Cases Involving Computer Software Copyright* by the Beijing Intellectual Property Court (August 25, 2022)
- *Copyright Regulations of Guangdong Province* by the Standing Committee of the Guangdong People's Congress (September 29, 2022), effective January 1, 2023
- *Regulations on the Protection and Promotion of Intellectual Property of Zhejiang Province* by the Standing Committee of the Zhejiang People's Congress (September 29, 2022), effective January 1, 2023
- *Administrative Measures for the Patent Agency Credit Evaluation* by NIPA (October 8, 2022)

# 知识产权

## 引言

2022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进展。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。请注意，此处提及的行政机构是2023年3月第十四届全国人大一次会议通过的国家机构改革措施之前的相关部门。

## 政府和法院重组

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知识产权法院，在福建泉州建立了知识产权法庭。

## 2022年和2023年初立法进展

2022年以及2023年初，中国有多项立法、行政和司法进展值得关注，其中包括：

- 2022年3月29日，广东省人民代表大会常务委员会发布《广东省知识产权保护条例》，自2022年5月1日起施行。
- 2022年3月30日，山东省人民代表大会常务委员会发布《山东省知识产权保护和促进条例》，自2022年5月1日起施行。
- 2022年3月31日，北京市人民代表大会常务委员会发布《北京市知识产权保护条例》，自2022年7月1日起施行。
- 2022年4月1日，最高人民法院发布《最高人民法院关于适用〈中华人民共和国民事诉讼法〉的解释（2022年修正）》，自2022年4月10日起施行。
- 2022年4月20日，最高人民法院发布《最高人民

法院关于第一审知识产权民事、行政案件管辖的若干规定》，自2022年5月1日起施行。

- 2022年4月20日，最高人民法院发布《最高人民法院关于基层人民法院管辖第一审知识产权民事、行政案件标准》，自2022年5月1日起施行。
- 2022年4月20日，山东省高级人民法院发布《山东省高级人民法院关于审理侵害知识产权民事案件适用惩罚性赔偿的裁判指引》。
- 2022年4月25日，北京市高级人民法院发布《北京市高级人民法院关于侵害知识产权民事案件适用惩罚性赔偿审理指南》。
- 2022年6月7日，国家知识产权局发布《集体商标、证明商标管理和保护办法（征求意见稿）》。
- 2022年6月24日，全国人民代表大会常务委员会发布《中华人民共和国民事诉讼法（草案）》。
- 2022年7月20日，国家知识产权局发布《展会知识产权保护指引》。
- 2022年7月29日，浙江省人民代表大会常务委员会发布《浙江省反不正当竞争条例（2022年修订）》，自2022年10月1日起施行。
- 2022年8月12日，国家知识产权局发布《〈商标侵权判断标准〉理解与适用》。
- 2022年8月25日，北京知识产权法院发布《北京知识产权法院计算机软件著作权民事案件当事人举证手册》。
- 2022年9月29日，广东省人民代表大会常务委员会发布《广东省版权条例》，自2023年1月1日起施行。
- 2022年9月29日，浙江省人民代表大会常务委员会发布《浙江省知识产权保护和促进条例》，自2023年1月1日起施行。
- 2022年10月8日，国家知识产权局发布《专利代理信用评价管理办法》。

- *Guidelines on the Estimation of Royalty Rates for Open Patent Licensing (for Trial Implementation)* by NIPA (October 14, 2022)
- *Provisions on the Supervision and Administration of Trademark Agency* by the SAMR (October 27, 2022), effective December 1, 2022
- *Revised Draft of Patent Examination Guidelines (draft for re-comment)* by NIPA (October 31, 2022)
- *Anti-Unfair Competition Law of the People's Republic of China (Revision Draft for Comment)* by SAMR (November 22, 2022)
- *Understanding and Application of Judgment Standards for General Trademark Violations* by NIPA (November 2022)
- *Guidelines on How to Avoid Conflicts with Prior Rights in Trademark Application for Registration and Use* by NIPA (December 7, 2022)
- *Guidance on Application for Registration and Use of Service Trademarks in Class 35* by NIPA (December 7, 2022)
- *Civil Procedure Law of the People's Republic of China (Draft Revision)* by the Standing Committee of the National People's Congress (December 30, 2022)
- *Trademark Law of the People's Republic of China (Draft for Comment)* by NIPA (January 13, 2023)
- *Interpretation on Several Issues Relating to the Application of Law in the Handling of Criminal Cases of the Intellectual Property Rights Infringement (Draft for Comment)* by the Supreme People's Court and Supreme People's Procuratorate (January 18, 2023)
- *Guidelines on Prohibiting the Use of Marks as Trademarks* by NIPA (January 19, 2023)
- *Guidelines on Application for Registration and Use of Trademarks Containing Geographical Names* by NIPA (January 19, 2023).
- The draft would incorporate counterfeiting service trademarks within the scope of the Criminal Law and clarifies the relevant standards for determining the crime of counterfeiting service trademarks (Articles 1 and 2);
- Article 24 of the draft would provide: "two or more registered trademarks' refer to two or more registered trademarks that identify different sources of goods and services. Where the registered trademarks are different, but are used on the same goods or service and all refer to the same goods or service source, they shall not be recognized as 'two or more registered trademarks'";
- Regarding the determination of "knowingly", the draft would add "purchasing or selling goods at prices significantly lower than the market price without justifiable reasons" and "transferring, destroying infringing goods or evidence such as accounting vouchers after being discovered by administrative law enforcement authorities and judicial authorities of selling counterfeits, or providing false certificates";
- Article 10 of the draft would provide that the act of copying and distributing works or audio and video products or duplicating works or audio and video products that have yet to be published without the permission of the copyright owner shall be deemed as "copy and distribute" as provided in Article 217 of the Criminal Law;
- Regarding trade secret crimes, Article 14 of the draft would list the circumstances that constitute "serious circumstances" and "especially serious circumstances";
- Articles 28 and 29 of the draft would provide the method for determination of the "amount of loss" and "amount of illegal gains" in trade secrets crimes; and
- Articles 25 and 26 of the draft would improve the provisions on "size of illegal business operations" and clarify the determination of "amount of illegal income"

## General IP Protection

For general IP protection, the relevant state-level authorities issued a draft judicial interpretation (JI) on handling IP infringement criminal cases. AmCham China applauds this new JI and the issuance of two guidelines for the application of punitive damages in IP civil disputes. NIPA separately issued an IP protection guidelines focused on exhibitions, and numerous IP protection regulations were issued by local governments in 2022.

### **Draft Judicial Interpretation on Handling IP Infringement Criminal Cases**

On January 18, 2023, the SPC and the SPP issued a draft *Interpretation on Several Issues Relating to the Application of Law in the Handling of Criminal Cases of Intellectual Property Rights Infringement* for public comment. Some noteworthy provisions include the following:

### **Guidelines on Applying Punitive Damages in IP Infringement Civil Cases**

On April 25, 2022, the Beijing Higher People's Court issued the *Trial Guidelines of the Beijing Higher People's Court on the Application of Punitive Damages in Intellectual Property Infringement Civil Cases* (effective upon release). The guidelines consist of 51 articles and are into six parts. The first part consists of general provisions; the second to fourth parts mainly address substantive issues in the application of punitive damages, including statutory elements, the calculation of punitive damages and the provisions of punitive damages applicable to network service providers; the fifth part addresses regulations on procedural issues; and the sixth part addresses the scope of application. Noteworthy points include the following:

- Articles 1.2 and 1.3 of the Guidelines stipulate the

- 2022年10月14日,国家知识产权局发布《专利开放许可使用费估算指引(试行)》。
- 2022年10月27日,国家市场监督管理总局发布《商标代理监督管理规定》,自2022年12月1日起施行。
- 2022年10月31日,国家知识产权局发布《专利审查指南修改草案(再次征求意见稿)》。
- 2022年11月22日,国家市场监督管理总局发布《中华人民共和国反不正当竞争法(修订草案征求意见稿)》。
- 2022年11月,国家知识产权局发布《〈商标一般违法判断标准〉理解与适用》。
- 2022年12月7日,国家知识产权局发布《关于商标申请注册与使用如何避免与在先权利冲突的指引》。
- 2022年12月7日,国家知识产权局发布《关于第35类服务商标申请注册与使用的指引》。
- 2022年12月30日,全国人民代表大会常务委员会发布《中华人民共和国民事诉讼法(修订草案)》。
- 2023年1月13日,国家知识产权局发布《中华人民共和国商标法修订草案(征求意见稿)》。
- 2023年1月18日,最高人民法院、最高人民检察院发布《关于办理侵犯知识产权刑事案件适用法律若干问题的解释(征求意见稿)》。
- 2023年1月19日,国家知识产权局发布《关于禁止作为商标使用标志的指引》。
- 2023年1月19日,国家知识产权局发布《关于含地名商标申请注册与使用的指引》。
- 将假冒服务商标纳入刑法范围,明确假冒服务商标罪认定的相关标准(第一条、第二条);
- 第二十四条规定:“两种以上注册商标”,是指识别商品、服务不同来源的两种以上注册商标。虽然注册商标不同,但在同一种商品、服务上使用,均指向同一商品、服务来源的,不应当认定为“两种以上注册商标”;
- 关于“明知”的认定,增加“无正当理由以明显低于市场价格进货或者销售的”和“被行政执法机关、司法机关发现销售假冒注册商标的商品后,转移、销毁侵权商品、会计凭证等证据或者提供虚假证明的”;
- 第十条规定,未经著作权人许可,复制、发行作品或者音像制品或者复制尚未出版的作品、音像制品的行为,应当认定为刑法第二百一十七条规定的“复制、发行”;
- 关于商业秘密犯罪,第十四条列出构成“情节严重”和“情节特别严重”的情形;
- 第二十八条、第二十九条明确商业秘密犯罪“损失数额”和“违法所得数额”的认定办法;
- 第二十五条、第二十六条完善“非法经营数额”的规定,明确“违法所得数额”的认定。

### 《北京市高级人民法院关于侵害知识产权民事案件适用惩罚性赔偿审理指南》

2022年4月25日,北京市高级人民法院发布《北京市高级人民法院关于侵害知识产权民事案件适用惩罚性赔偿审理指南》(发布后施行)。该指南共51条,分为六个部分。其中第一部分为一般规定;第二部分至第四部分主要涉及惩罚性赔偿适用中的实体问题,包括法定要件、惩罚性赔偿的计算以及惩罚性赔偿对网络服务提供者适用的相关规定;第五部分为程序问题的相关规定;第六部分为适用范围。有以下几点值得注意:

- 第1.2条和第1.3条规定了惩罚性赔偿的具体适用条件。请求人不仅需要提出要求,还需要明确计算方法;
- 第2.2条列出了可以认定构成故意侵害知识产权的六种情形。第2.4条列举了可以认定为侵害知识产权情节严重的七种情形,不仅包括侵权行为是否具有本质上的严重性,如针对同一权利人或者同一知识产权多次实施侵权行为;而且侵权行为的后果也很严重,如权利人商业信誉遭受重大损失;还包括侵权人使用不当手段阻碍取证的情形。第2.5条规

## 一般知识产权保护

在一般知识产权保护方面,国家有关部门发布了关于办理侵犯知识产权刑事案件的司法解释草案。商会对这一新的司法解释和两份知识产权民事纠纷惩罚性赔偿适用指南的发布表示支持。国家知识产权局发布了以展会为重点的知识产权保护指南,地方政府于2022年发布了诸多知识产权保护法规。

### 《关于办理侵犯知识产权刑事案件适用法律若干问题的解释(征求意见稿)》

2023年1月18日,最高人民法院、最高人民检察院发布《关于办理侵犯知识产权刑事案件适用法律若干问题的解释(征求意见稿)》向社会公开征求意见。一些规定值得注意,包括:

specific requirements to apply for punitive damages. The applicant not only needs to make a request, but also needs to clarify the calculation method;

- Article 2.2 lists six circumstances that can be determined to constitute intentional infringement. Article 2.4 lists seven situations that may be identified as serious infringements, including not only whether the infringement is intrinsically serious, such as multiple infringements against the same right owner or the same intellectual property rights; but also serious consequences of infringement, such as major loss to the right owner's business reputation; it also includes situations where the infringer uses improper means to obstruct the collection of evidence. Article 2.5 stipulates the circumstances of intentional infringement and serious circumstances;
- Article 3.2 clarifies that the statutory compensation amount shall not be used as the base of punitive damages. Article 3.5 lists nine types of factors that can be considered in calculating actual losses, including sales volume, price, profit, clicks, downloads, and page views of relevant content on the right owner's website, etc. Article 3.6 enumerates eleven types of factors that can be considered in the calculation of infringement profits; and
- Article 3.12 lists the factors that may be considered in determining the contribution of the relevant intellectual property. Article 3.15-3.19 provide guidelines for determining the multiple of punitive damages for infringement of patent rights, trademark rights, copyrights, trade secrets, and plant variety rights.

On April 20, 2022, the Shandong Higher People's Court issued the Judgment Guidance of the Shandong Higher People's Court on the Application of Punitive Damages in Intellectual Property Infringement Civil Cases (effective upon release). The Guidelines are divided into five parts and contain 22 articles, clarifying the general requirements and specific measures for the application of punitive damages in the trial of civil cases of infringement of intellectual property rights by Shandong courts.

### ***Guidelines on IP Protection at Exhibitions***

On July 20, 2022, NIPA issued the Guidelines on Intellectual Property Protection at Exhibitions (effective upon release). Some noteworthy points include the following:

- Article 8 stipulates that the local IP administration may, in concert with relevant departments, guide the exhibition organizer in setting up a workstation, and coordinate relevant staff members, law enforcement personnel, professional technicians and legal professionals to enter the workstation;
- Article 8 further specifies the workstation's primary tasks, including but not limited to accepting IP-related

complaints; conducting mediations during the exhibition; providing advice on IP-related laws, regulations and policies; providing opinions on the complaints of suspected IP infringement; transferring the relevant complaints and materials to the IP administration at exhibition location, etc.;

- Article 14 stipulates that if the respondent fails to submit its written statements and evidentiary materials without justifiable reasons within 24 hours after receiving the notification, or the fact of infringement has been confirmed by a valid legal document, or the respondent has admitted the infringement, the workstation shall coordinate with the exhibition organizer to take measures in a timely manner; and
- Article 21 stipulates that the exhibition organizer shall compile statistics on the intellectual property concerning information of the exhibition, the handling of intellectual property complaints and disputes of the exhibition, etc., and submit the same to the relevant intellectual property management department within 10 working days after the closure of the exhibition.

### ***General IP Protection Regulations Issued by Local Governments***

On March 29, 2022, the Standing Committee of the Guangdong People's Congress issued the *Regulations of Guangdong Province on Intellectual Property Protection*. These regulations took effect on May 1, 2022 and some noteworthy points include the following:

- Article 12 stipulates that the provincial government shall establish and improve the intellectual property law enforcement cooperation mechanism, and establish a unified and coordinated law enforcement standard, evidence rules, and case guidance system;
- Article 15 stipulates that the relevant departments shall conduct special administrative protection actions in areas where IP infringements are concentrated and in risk-prone areas, and increase the investigation and crackdown on repeated infringements, malicious infringements, and group infringements;
- Articles 16, 26 and 27 provide express paths for patent application, IP enforcement and patent infringement disputes;
- Articles 37 to 45 clarify that relevant departments should establish and improve public services, optimize government services, and provide risk warning services; promote the development of the intellectual property service industry, promote the construction of a credit system in the intellectual property field, and strengthen overseas rights protection service, etc.;
- Article 46 stipulates that dishonest conduct in the field of intellectual property shall be included in public credit information. Competent departments shall determine punitive measures for dishonesty, and improve the

定了侵权故意且情节严重的认定；

- 第 3.2 条规定，法定赔偿数额不得作为惩罚性赔偿的基数。第 3.5 条列出了计算实际损失时可以考虑的 9 种因素，包括销售量、价格、利润、点击量、下载量、权利人网站上相关内容的页面浏览量等。第 3.6 条列举了计算侵权利润时可以考虑的 11 种因素；
- 第 3.12 条列出了在确定相关知识产权的贡献度时可以考虑的因素。第 3.15 至 3.19 条规定了侵犯专利权、商标权、著作权、商业秘密、植物新品种权惩罚性赔偿倍数的认定。

2022 年 4 月 20 日，山东省高级人民法院发布《山东省高级人民法院关于审理侵害知识产权民事案件适用惩罚性赔偿的裁判指引》（发布后施行）。该指引共分五部分，共 22 条，明确了山东法院审理侵犯知识产权民事案件适用惩罚性赔偿的一般要求和具体措施。

### 《展会知识产权保护指引》

2022 年 7 月 20 日，国家知识产权局发布了《展会知识产权保护指引》（发布后施行）。以下要点值得注意，包括：

- 第八条规定，展会举办地知识产权管理部门可以会同有关部门指导展会主办方根据国家有关规定和实际需要设置工作站，并应展会主办方请求协调相关工作人员、执法人员、专业技术人员和法律专业人员进驻工作站；
- 第八条进一步明确了工作站的主要任务，包括但不限于受理涉及知识产权的相关投诉；调解展会期间知识产权侵权纠纷；提供知识产权有关法律法规及政策咨询；对涉嫌侵犯知识产权的投诉提供判断意见；将有关投诉情况及材料移送展会举办地知识产权管理部门等；
- 第十四条规定，被投诉人接到通知后 24 小时内无正当理由未提交书面陈述意见及证据材料的，或被投诉参展项目侵权事实已经由生效的法律文书确认的，或被投诉人承认侵权的，工作站应当协调展会主办方及时采取措施；
- 第二十一条规定，展会举办地知识产权管理部门应当指导展会主办方对展会知识产权信息进行统计，对展会知识产权投诉、纠纷处理情况进行统计，并于展会结束后 10 个工作日内报送展会举办地知

识产权管理部门。

### 地方政府颁布的一般知识产权保护条例

2022 年 3 月 29 日，广东省人大常委会发布《广东省知识产权保护条例》，自 2022 年 5 月 1 日生效，包括以下要点：

- 第十二条规定，省人民政府应当建立和完善知识产权执法协作机制，建立统一协调的执法标准、证据规则和案例指导制度；
- 第十五条规定，负责知识产权保护的主管部门和相关部门应当对知识产权侵权集中领域和易发风险区域开展行政保护专项行动，加大对重复侵权、恶意侵权、群体侵权等行为的查处和打击力度；
- 第十六条、第二十六条和第二十七条规定了专利申请、知识产权执法和专利侵权纠纷的快捷途径；
- 第三十七条至第四十五条明确，有关部门应当建立健全公共服务，优化政务服务，提供风险预警服务；推动知识产权服务业发展，推进知识产权领域信用体系建设，加强境外维权服务等；
- 第四十六条规定，知识产权领域的失信行为应当纳入公共信用信息；主管部门应当确定失信惩戒措施，完善知识产权失信惩戒机制；
- 第四十八条明确，行政处罚决定、行政裁决、司法判决生效后，再次侵犯同一知识产权的，应当从重处罚。

2022 年 3 月 30 日，山东省人大常委会发布《山东省知识产权保护和促进条例》。自 2022 年 5 月 1 日生效，包括以下要点：

- 鼓励有关单位加强知识产权创存，支持自主知识产权产业化应用；完善以知识价值为导向的知识产权分配机制；鼓励知识产权金融服务创新；
- 建立了行政保护与司法保护、政府监管与行业自律、企业自治与社会监督相结合的知识产权保护体系；规定知识产权重点保护清单和侵权预警机制；加强重点部门的知识产权保护；
- 明确了市场监督管理部门和各部门的具体工作职责；要求县级以上人民政府综合运用财税、投资、产业、科技、人才等政策提供引导和服务；建立海外预警、信息公共服务、快速审查等制度。

2022 年 3 月 31 日，北京市人大常委会发布《北京

mechanism for punishing intellectual property dishonesty; and

- Article 48 clarifies that anyone who infringes the same intellectual property rights again after an administrative punishment decision, administrative adjudication or judicial judgment takes effect shall be severely punished.

On March 30, 2022, the Standing Committee of the Shandong People’s Congress issued the *Regulations on the Protection and Promotion of Intellectual Property of Shandong Province*. These regulations took effect on May 1, 2022 and some noteworthy points include the following:

- The regulations encourage relevant units to strengthen the creation and storage of IPR, support the industrial application of independent IPR; improve the knowledge value-oriented IPR distribution mechanism; and encourage intellectual property financial service innovation;
- The regulations establish an IP protection system that combines administrative protection and judicial protection, government supervision and industry self-discipline, enterprise self-government and social supervision; stipulates a list of key IP protections and an early warning mechanism for infringement; strengthens the protection of IPR in key sectors; and
- The regulations clarify the specific job responsibilities of the market supervision and management department and various departments; require people’s governments at or above the county level to comprehensively use policies such as finance, taxation, investment, industry, technology, and talents to provide guidance and services; and establish overseas early warning, information public services, rapid review and other systems.

On March 31, 2022, the Standing Committee of the Beijing People’s Congress issued the Regulations of Beijing Municipality on IP Protection, effective July 1, 2022. Noteworthy provisions include the following:

- Establishment of a rapid investigation mechanism for infringements and violations, and implementation of key supervision and inspection of key areas and places; strengthen the review of transfers overseas of IPR; and improve the linkage mechanism between administrative protection and judicial protection;
- Specification of IP protection obligations and corresponding legal responsibilities of Internet service providers and exhibition organizers; establishment of an intellectual property credit evaluation and dishonesty punishment mechanism; support enterprises, colleges and universities, and scientific research institutions to explore new IP protection models; support the construction of IP alliances and patent pools; and
- Establishment of patent navigation, IP finance, IP analysis and evaluation systems for major economic and

technological activities; implementation of trademark and brand strategy projects; establishment of an IP public service system; establishment of a public information service platform; and establishment of platforms for IP transactions.

On September 29, 2022, the Standing Committee of the Zhejiang People’s Congress issued the *Regulations of Zhejiang Province on the Protection and Promotion of IP*. These regulations took effect on January 1, 2023. Noteworthy provisions include the following:

- “Collecting, retrieving, and duplicating electronic data related to suspected illegal acts” are treated as administrative law enforcement measures;
- Specification that major government investment, major independent innovation, major technology introduction or IPR export, major talent management and introduction, and other projects established with fiscal funds or state-owned capital shall be evaluated and security reviewed to prevent IPR risk;
- Encouragement for the public to complain and report on IP violations, and stipulate that if a report involving a major IP violation is verified to be true, the whistleblower will be rewarded; and
- Clear protection for data through certificate deposit and registration that has been processed by a certain algorithm, has practical value, and has the attributes of intellectual achievements.

## Trademarks

### Online Counterfeiting and Piracy

In the last three White Papers, AmCham members expressed cautious optimism about a revised E-Commerce Law that entered into effect on January 1, 2019. As discussed last year Article 1.13 of the Phase One Agreement extended the time period for rightsholders to file an administrative response to a counter notification to 20 days and introduced penalties 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 left 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

市知识产权保护条例》，自 2022 年 7 月 1 日起施行。以下规定值得注意：

- 建立违法行为快速查处机制，对重点区域、重点场所实施重点监督检查；加强对知识产权向境外转移的审查；完善行政保护与司法保护衔接机制；
- 明确互联网服务提供商和展会主办方的知识产权保护义务和相应的法律责任；建立知识产权信用评价和失信惩戒机制；支持企业、高校、科研机构探索知识产权保护新模式；支持知识产权联盟和专利池建设；
- 为重大经济和技术活动建立专利导航、知识产权融资、知识产权分析和评价体系；实施商标和品牌战略项目；建立知识产权公共服务体系；建立公共信息服务平台；以及建立知识产权交易平台。

2022 年 9 月 29 日，浙江省人大常委会发布《浙江省知识产权保护和促进条例》，自 2023 年 1 月 1 日起生效。以下规定值得注意：

- “收集、调取、复制与涉嫌知识产权违法行为有关的电子数据”作为行政执法措施；
- 规范对政府重大投资、重大自主创新、重大技术引进或者知识产权输出、重大人才管理与引进等以财政资金、国有资金设立的项目进行评价和安全审查，防范知识产权风险；
- 鼓励公众对知识产权侵权行为进行投诉和举报，并规定涉及重大知识产权侵权行为的举报经核实属实的，对举报人给予奖励；
- 对经过一定算法加工、具有实用价值和智力成果属性的数据进行保护。

## 商 标

### 网络假冒和盗版

在最近三年的《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 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会导致制裁。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，并在以往八年的《白皮书》中都重点指出了这一问题。在最近三年的《白皮书》中，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。



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 forth in the Phase One Agreement.

As we noted in earlier White Papers, online counterfeiting remains a serious issue and numerous methods are available to infringers to circumvent legal obligations. 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 of 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 eight White Papers. In the recent three White Papers, AmCham China members were 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 NIPA deals with trademarks filed in bad faith. An increasing number of NIPA 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 which requires that NIPA reject any trademark which “does not conform to the relevant provisions of this Law.”

While AmCham China is impressed by some provisions of the new NIPA draft Trademark law (discussed below) with respect to bad faith filings and registrations, AmCham China continues to strongly recommend 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 Review and Adjudication Division (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***

Consistent with comments made in the 2022 White Paper, AmCham China members report an increase in the frequency of absolute ground rejections of trademarks by NIPA 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 NIPA 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 the Beijing IP Court and the 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 People’s Courts and those applied by NIPA. Moreover, there is currently no guidance for trademark owners regarding how to defend a third-party genericide challenge before the TRAD, although such cases are becoming much more common in the PRC market.

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，国家知识产权局开始更加频繁地援引《商标法》第七条，该条规定“申请商标注册和使用时应遵循诚实信用原则”。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。

在国家知识产权局发布的新《商标法》草案（下文讨论）中，商会对有关恶意申请和注册的部分规定印象深刻，但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。

### 绝对理由驳回

与2022年《白皮书》中的意见一致，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》第十一条第一款规定，“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。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。

国家知识产权局正在修订《商标审查审理指南》（最近一次修订于2016年12月），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。

### 《商标法》修正草案

1月13日，国家知识产权局发布《中华人民共和国商标法修正案草案》（以下简称“《修正草案》”）向社会公开征求意见。《修正草案》自2018年正式开始审议，在此背景下2019年《商标法》得到修订，主要为了解决商标囤积问题。目前的《修正草案》覆盖全面且目标明确，旨在更新《商标法》，以解决新出现的和长期存在的问题，包括恶意申请和商标使用问题。

《修正草案》共十章101条（现行《商标法》共八章73条），包括新增23条条款，以及对现行《商标法》的51条条款进行结构或实质性修改，只有27条保持不变。

在诸多拟议的修订中，以下要点值得注意：

- 驰名商标保护：新版第十八条将扩大现行法律对未注册驰名商标的保护，明确禁止“使用和注册”此类商标的复制、摹仿或翻译，不得误导消费者认为商标与驰名商标具有相当程度的联系，而减弱驰名商标的显著特征、贬损驰名商标的市场声誉。该条还将把为“广大公众所熟知”的未注册商标的保护范围扩大到不相类似的商品和服务。

商会指出，“广大公众所熟知”标准疑似对“相关公众熟知”标准进行了细化，需要进一步明确。目前尚不清楚引入这种“广大公众”措辞是否意味着缩小了仅为“相关公众”所熟知的商标的保护范围，而无关该商品或服务的注册状态和相关性水平如何。商会认为，鉴于第十条确立的一般原则，将

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.” NIPA 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 applicants frequently 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.

NIPA is currently in the process of revising the *Trademark Examination and Review Standards* (last revised in December 2016), and AmCham China members are hopeful that open issues regarding the handling of bad faith filings and absolute grounds rejections will be appropriately addressed in the new standards.

### *New Draft Trademark Law*

On January 13, NIPA circulated a draft amendment to the *PRC Trademark Law* for public comment (“TML Draft Amendment”). The TML Draft Amendment is the product of deliberations that officially commenced in 2018 and resulted in the 2019 revisions to the *Trademark Law* that were primarily focused on addressing the issue of trademark hoarding. The current TML Draft Amendment is a comprehensive and ambitious effort to update the Trademark Law to address both new and longstanding issues, including – among many others – the issue of bad faith filings and issues around trademark use.

The CNIPA Draft Amendment contains 101 articles in 10 chapters (as opposed to 73 articles in 8 chapters in the current Trademark Law). It includes the addition of 23 new articles, as well as organizational or substantive revisions to 51 articles of the current *Trademark Law*. Only 27 articles remain unchanged.

Of the many proposed revisions, the more significant and noteworthy revisions include the following:

- *Protection of Well-known Trademarks* -- New Article 18 would expand the protection afforded to unregistered

well-known marks under current law by explicitly prohibiting the “use and registration” of reproductions, imitations or translations of such marks that would mislead consumers into assuming a certain degree of connection between the mark and the well-known mark sufficient to cause dilution of the distinctives or damage to the reputation of the unregistered well-known mark. It would also expand the scope of protection for unregistered trademarks that are famous to the “general public” to unrelated goods/services.

AmCham China members note that the “widely well-known to the general public” standard introduces what appears to be an elaboration on the “well-known to the relevant public” standard that will definitely require further clarification. It is unclear whether the introduction of this “general public” language portends a narrowing of the scope of protection for marks that are well-known only among the “relevant public” regardless of the registration status and the level of relevance of the designated goods/services. AmCham China members believe that the introduction of this new “general public” language is arguably unnecessary in light of the general principle established under Article 10 that clearly ties the scope and strength of protection to the level of distinctiveness and fame.

- *Prohibition of Duplicate Registrations*: New Article 21 would prohibit the filing and registration of trademarks that are the same as prior trademarks by the same proprietor covering the same goods and that were subject to a non-consensual cancellation, revocation or invalidation decision within a year of the date of filing. Despite some enumerated exceptions to the prohibition, the introduction of a refiling prohibition could significantly affect rightful brand owners as well as serial pirates. It is unclear whether and how the prohibition could impact refilings that are part of a wider strategy to clear bad faith filings from the registry via pending parallel opposition/invalidation and/or subsequent court appeal proceedings (without a reliable “suspension of procedure” mechanism at the filing stage under current practice). Such refilings are common in situations where the rightful brand owner is unable to secure registered trademark rights because of blocking pirate marks, and are informed by a bona fide desire to prevent additional third-party citations (e.g., non-bad faith filings) jumping the queue pending resolution of parallel proceedings against the pirate marks, or where a multinational company adopts a uniform global branding strategy but delays actual commercial use for certain goods/services in the China market. In sum, AmCham China members hope to see some additional clarification as to the circumstances contemplated under the “other proper reasons” exception and whether these kinds of good faith strategic refilings would be exempted.
- Applications for Registration of Trademarks in Bad

保护的范围和强度与显著性和名声水平明确联系起来，没有必要引入“广大公众”这种新措辞。

- **禁止重复注册**：新版第二十一条规定申请注册的商标不得与申请人在同一种商品上在先申请、已经注册或者在申请日前一年内被公告注销、撤销、宣告无效的在先商标相同。尽管该条列举了部分例外情形，但禁止重复注册可能会严重影响品牌合法所有者和多次盗版者。重复注册通常属于高层战略的一部分，目前尚未清楚该禁令是否以及如何对此产生影响，该战略旨在通过对未决的平行诉讼宣告商标异议或无效，和/或配后随后的法院上诉程序（根据目前的做法，在申请阶段不存在有效的“程序中止”机制），从商标注册中剔除恶意注册。这种重复注册常见于以下情况：品牌的合法所有者由于盗版商标的阻碍而无法获得注册商标权，且出于善意考量，在针对盗版商标的平行诉讼裁定之前，避免更多的第三方引证（例如非恶意申请）插队，或者跨国公司采取统一的全球品牌战略，但推迟在中国市场对某些商品/服务的实际商业使用。总之，商会希望进一步明确“其他正当理由”的例外情况，以及这类善意的战略性重复注册是否能得到豁免。
- **商标恶意注册申请**：新版第二十二条将为肃清商标恶意注册申请提供独立依据，包括：① 不以使用为目的，大量申请商标注册，扰乱商标注册秩序的；② 以欺诈或其他不正当手段申请商标注册的；③ 申请注册有损国家利益、社会公共利益或者有其他重大不良影响的商标的；④ 违反第十八条（驰名商标）、第十九条（代理人、代表人、其他利害关系人抢注）和第二十三条（保护在先权利）规定，故意损害他人合法权利或者权益，或者谋取不正当利益的；⑤ 有其他恶意申请商标注册行为的。

商会指出，第二十二条涉及到首个独立条款，包含一系列恶意情况，这些情况将作为驳回商标申请以及宣告商标异议和无效的依据。值得注意的是，第二十二条第二款将现行《商标法》第四十四条第一款（即禁止以欺骗或其他不正当手段获得商标注册）的范围明确扩大到商标驳回和异议，而不仅仅是商标注册无效。

商会会员企业担心第二十二条第一款中的“不以使用为目的”的限制也适用于品牌合法所有者的防御性注册。2021版《商标审查审理指南》规定，善意的防御性商标注册（旨在积极/审慎地维护盗版或保留业务扩张

权利）不属于现行《商标法》第四条（“不以使用为目的的恶意申请”）的情形。自2022年年中以来，国家知识产权局向商标注册覆盖的广泛商品/服务类别（即防御性申请）的品牌所有人发出审查意见，要求他们提交实际商业用途或使用主题商标的意图证明。国家知识产权局目前的行为引起了商会会员企业的极大关注，防御性商标注册旨在减轻商标盗版的广泛影响，而僵化地规定“不以使用为目的”，可能会在未来导致这种防御性注册策略难以立足。考虑到这一点，需要进一步明确审查审理标准，以确保减少商标囤积的策略不会影响品牌的合法所有者为保护关键品牌免受不良行为者攻击而做出的善意努力（并且不会导致国家知识产权局审查处为了调查防御性注册而付出高昂成本）。

- **商标异议**：新版第三十六条将异议期限从三个月缩短到两个月，但目前尚不清楚补充异议申请的期限是否会从三个月缩短到两个月。会同第三十九条（明确规定被异议人（也是商标申请人）只能向北京知识产权法院提出异议上诉），该条款将缩短商标申请人从申请到注册的时间，简化目前的审查和起诉程序（即异议和异议上诉），并将程序合并并在同一审查/复审机构内（即国家知识产权局）。同样值得注意的是，目前草案的商标移转程序与下文第四十五条所规定宣告无效程序不同。
- **异议审查**：商会会员企业指出，新版第三十九条将大幅改变现行程序，取消被异议商标所有人的行政上诉选项，而是要求所有人在收到国家知识产权局的决定30天内向北京知识产权法院提出上诉。
- **相对理由无效宣告和商标移转**：新版第四十五条对现行第四十五条进行扩展，明确在先权利人或利害关系人可以根据**第十八条**（驰名商标）、**第十九条**（代理人、代表人、其他利害关系人的恶意申请）、**第二十条第一款**（地理标志）、**第二十三条**（在先权利）、**第二十四条**（在先注册）、以及**第二十五条**（在先申请）在被诉商标注册之日起五年内可以请求国务院知识产权行政部门宣告该注册商标无效。该条进一步明确，对违反本法**第十八条**、**第十九条**规定，或者违反本法**第二十三条**规定以不正当手段抢注他人已经使用并有一定影响的商标的，在先权利人“可以请求将该注册商标移转至自己名下”。该条还呼应了现行第四十五条的内容，即当被异议注册属于恶意注册时，驰名商标所有人不受五年的时间限制。

Faith: The new proposed Article 22 would provide a stand-alone basis for clearing the applications and registrations of trademarks that were filed in bad faith, and would include ❶ “applying for a large number of trademark registrations, not for the purpose of use, disrupting the trademark registration order; ❷ applying for trademark registrations by fraud or other improper means; ❸ applying for trademarks in circumstances where the trademark is “detrimental to the interests of the State or the public interest” or has other significant unhealthy influences; ❹ applying for trademarks that violate the provisions of **Article 18** (well-known trademark), **Article 19** (unauthorized filing by an agent or representative, or other related party) and **Article 23** (third party prior rights and interests), intentionally damaging the legitimate rights or interests of others, or seeking improper interests; or ❺ engaging in other acts of bad faith involving the filing of applications for trademark registration.

AmCham China members note that Article 22 would entail the first stand-alone provision that addresses a range of bad-faith scenarios that would serve as the basis for rejections of trademark filings as well as for oppositions and invalidations. It is noteworthy that the second paragraph of Article 22 would explicitly expand the purview of Article 44.1 of the current *Trademark Law* (i.e., prohibition of registrations obtained by deceptive or other improper means) to the rejection and opposition of trademarks, rather than just the invalidation of registered trademarks.

One concern that AmCham China members have with this provision is that the “not for the purpose of use” limitation in the first paragraph of Article 22 would also apply to defensive filings by rightful brand owners. The 2021 Trademark Examination and Review Guidelines provides that a defensive filing in good faith (for the purposes of actively/prudently defending piracy or preserving rights for business expansion) does not fall under the circumstances of Article 4 of the current *Trademark Law* (“bad faith filings, not for the purposes of use”). Since mid-2022, NIPA has issued examination opinions to brand owners with trademark registrations covering a wide range of goods/services classes (i.e., defensive filings) requiring that they submit proof of actual commercial use or an intent to use the subject marks. The current NIPA campaign has led to significant concern by AmCham China members with defensive filing programs aimed at mitigating the effects of widespread trademark piracy, and an inflexible adoption of the “not for the purpose of use” limitation could essentially render such defensive filing strategies untenable going forward. With this in mind, further clarifications of the examination/review standards are required to ensure that strategies to curtail trademark hoarding do not affect good faith efforts by rightful brand owners to protect key brands from being targeted by bad actors

(and do not lead to significant costs for responding to NIPA office actions involving defensive filings).

- *Trademark Oppositions:* New Article 36 would shorten the opposition period from three to two months, but it is unclear whether the period to supplement opposition filings will be shortened from three to two months as well. Along with Article 39 (confirming that an opposed party, also a trademark applicant, can only appeal an opposition decision to the Beijing IP Court), this provision would reduce the time for a trademark applicant to prosecute an application through to registration, simplify the current examination and prosecution procedures (i.e., opposition and opposition appeal) and consolidate the procedures within the same examination/review authority (i.e., NIPA). It is also noteworthy that the current draft does not adopt a trademark transfer process mirroring the process contemplated for invalidations in Article 45 below.
  - *Examination of Opposition:* AmCham China members note that the new Article 39 would significantly alter current procedure by removing the option of an administrative appeal by the proprietor of an opposed mark that is disapproved and would instead require that the proprietor bring an appeal to the Beijing IP Court within 30 days of receipt of a decision by NIPA.
  - *Invalidation on Relative Grounds and Trademark Transfer:* New Article 45 would expand on existing Article 45 by confirming that the registration of trademarks may be challenged by prior trademark owners or interested parties on the basis of **Article 18** (well-known trademark), **Article 19** (bad faith applications by agents, representatives, or another related party), **Article 20.1** (geographical indication), **Article 23** (prior rights), **Article 24** (prior registration), and **Article 25** (prior application) within five years of the registration date of the challenged trademark. It further confirms that the prior right holder “may request that the registration be transferred to them” in the context of invalidations based on **Article 18** or **Article 19**, or for invalidations filed against trademarks obtained by improper means in violation of **Article 23** when the trademark has a certain degree of influence. It also echoes the current Article 45 language that exempts the owners of well-known trademarks from the five-year rule when the challenged registration was filed in bad faith.
- AmCham China members observe that the most noteworthy and welcome addition to Article 45 is the ability of a right holder to request that a challenged registration be transferred to them in the context of invalidation petitions filed on the basis of Articles 18 and 19, and for improper registrations of influential trademarks under Article 23.
- *Explanation of Trademark Use:* New Article 61 would introduce a use requirement for all registered trade-

商会会员企业希望对第四十五条进行关键补充，允许权利人在根据第十八条和第十九条提出无效宣告请求的情况下，以及根据第二十三条他人对驰名商标进行不当注册时，能够请求将被异议注册转移转至自己名下。

- 商标使用说明：新版第六十一条对所有注册商标提出使用要求。根据目前草案规定，注册人应当自商标核准注册之日起每满五年之后的十二个月内，向国家知识产权局说明该商标在核定商品上的使用情况或者不使用的正当理由。商标注册人可以对上述期限内的多件商标的使用情况集中作出说明。期满未说明的，由国家知识产权局通知商标注册人，商标注册人自收到通知之日起六个月内仍未说明的，视为放弃该注册商标，由国家知识产权局注销该注册商标。国家知识产权局还应对说明的真实性进行随机抽查，必要时可以要求商标注册人补充相关证据。经抽查说明不真实的，由国家知识产权局撤销该注册商标。

商会会员企业认为，这种对中国商标实践的补充相当新颖，并可能对普遍采取防御性注册策略（即为无意实际使用这些商标的商品/服务申请关键商标以防止商标盗版者抢先为同一商品/服务申请/注册相同商标）的品牌所有人产生重大影响。此外，实行“使用说明”制度需要明确使用说明的提交标准、迟交“理由”的接受范围，以及进行抽查的程序和标准。

## 著作权

2022年8月25日，北京知识产权法院发布《北京知识产权法院计算机软件著作权民事案件当事人举证手册》（发布后施行）。

- 第一章是计算机软件著作权权属纠纷案件的举证手册。本章包括第1条至第4条，包括著作权属证明要求、委托开发、国家机关下达任务所开发软件的权属、职务作品等四个方面；
- 第二章是计算机软件著作权侵权纠纷案件的举证手册，包括5大条和8小条。第5条是关于诉讼事由的；第6条是关于当事人可以如何主张权利内容与侵权行为类型并进行举证；第7条涉及当事人对最终用户侵权类型的案件可以如何主张与举证；第8条是

关于当事人对破坏技术措施的案件可以如何主张与举证；第9条是关于当事人可以如何举证证明软件移植抗辩；

- 第三章涉及计算机软件合同纠纷案件，共4条，涵盖合同内容、效力、履行和终止四个方面；
- 第四章为民事案件程序事项，共2条，涵盖电子证据制作和质证保全两个方面。

2022年9月29日，广东省人大常委会发布《广东省版权条例》，自2023年1月1日起施行，包括总则、版权创造与运用、版权保护、版权管理与服务、法律责任及附则，共6章40条。以下内容值得注意：

- 第七条规定，对重大版权成果给予奖励；第八条规定，主管部门应当采取措施激励作品创作，推动科技创新、数字经济、文化遗产与发展等领域作品的创作和转化；
- 第二十条规定，主管部门应当建立健全重点作品版权保护预警制度，建立重点关注市场名录，加强对电商平台、展会、专业市场、进出口等重点领域的监测管理，及时组织查处版权侵权行为；
- 第二十二条规定了网络服务提供者应当依法履行版权保护主体责任；第三十八条规定了对屡次违法行为给予从重处罚；
- 第二十六条要求主管部门利用大数据、人工智能、区块链等新技术，健全版权监管工作平台，在作品登记、监测预警、宣传培训等方面创新版权监管方式；
- 第三十一条明确规定了版权鉴定和价值评估，要求主管部门加强机构建设，推动建立版权鉴定技术标准和版权价值评估标准。

## 专利

### 行政进展

2022年10月8日，国家知识产权局发布《专利代理信用评价管理办法（公开征求意见稿）》公开征求意见。其中，专利代理机构和专利代理师的信用等级从高到低分为“A”、“B”、“C”、“D”四个等级，并按计分情况评价。计分满分为100分，根据负面信息予以扣减。具体为每件异常专利申请扣0.5分，最高扣20分；对提交异常专利申请情节严重的机构扣10分；每件境外异常专利申请扣1分，最高扣20分；造成重大国际不利影响且相关机构拒不退出的，最高扣分40分。

marks. Under the provision as currently drafted, registrants would be required to file a statement of use or justification for non-use with NIPA every five (5) years, and within the twelve (12) month period following the expiration of each five-year period. The statements of use can cover multiple trademarks within the covered period. Failure to timely file a statement of use will result in the issuance of a notification by NIPA, and if an “explanation” is not provided within six (6) months of receipt of the notice, NIPA shall cancel the registered trademark. NIPA will also conduct random inspections of the “authenticity” of statements provided and may require supplementary information as appropriate. If a random inspection confirms that a statement of use was fraudulent, then NIPA shall cancel the registered trademark.

AmCham China members believe that this would be a fairly novel addition to PRC trademark practice, and could have a significant impact on brand owners who have adopted a wide defensive filing strategy (i.e., the filing of key marks for goods/services for which there is no intent to actually use the marks in order to prevent trademark pirates from pre-emptively filing/registering the same marks for the same goods/services). In addition, the adoption of a “proof of use” regime like the one contemplated here would require clarification of the standards for the submission of specimens of use, the scope of acceptable “explanations” of late responses, and the process and standards for random inspections of use claims.

## Copyright

On August 25, 2022, the Beijing Intellectual Property Court released the *Beijing Intellectual Property Court Handbook for Evidence Presentation of Parties in Civil Cases Involving Computer Software Copyright* (effective upon release).

- The first chapter of the handbook is a handbook of proof for disputes over computer software copyright ownership. This part includes Articles 1-4, including four aspects including proof requirements for copyright ownership, entrusted development, ownership of software developed by tasks assigned by state agencies, and service works;
- The second chapter of the handbook is a handbook for producing evidence in cases involving computer software copyright infringement disputes, including 5 major articles and 8 smaller articles. Article 5 is about the cause of action; Article 6 is about how the party should claim the content of rights and the type of infringement and provide evidence; Article 7 addresses how the party should claim and provide evidence for end-user infringement cases; Article 8 is about how to claim and provide evidence for cases of circumvent of technical measures; and Article 9 is about the provision of evidence for defense of software transplantation;
- The third chapter of the handbook is “Computer Software Contract Dispute Cases”, with 4 articles in total, covering four aspects of contract content, validity, performance and termination; and
- The fourth chapter of the handbook is “Manual of Evidence on Procedural Matters”, which consists of two articles, covering two aspects of electronic evidence production and cross-examination and evidence preservation.

On September 29, 2022, the Standing Committee of the Guangdong People’s Congress issued the *Copyright Regulations of Guangdong Province*, effective January 1, 2023. The regulations are divided into general provisions, copyright creation and use, copyright protection, copyright management and services, legal responsibilities and supplementary provisions, in 40 articles across six chapters. Noteworthy provisions include the following:

- Article 7 stipulates that major copyright achievements shall be rewarded; Article 8 stipulates that the competent department shall take measures to encourage the creation of works, and promote the creation and transformation of works in the fields of scientific and technological innovation, digital economy, cultural inheritance and development, etc.;
- Article 20 specifies that the competent authorities shall establish and improve the early warning system for copyright protection of key works, establish a list of key markets, strengthen monitoring and management of key areas such as e-commerce platforms, exhibitions, professional markets, import and export, and organize investigations and punishments of copyright infringement in a timely manner;
- Article 22 specifies the responsibilities of network service providers; Article 38 provides heavier punishments for repeated infringements;
- Article 26 requires that the competent authorities use new technologies such as big data, artificial intelligence, and blockchain to improve copyright supervision work platforms, and innovate copyright supervision methods in terms of work registration, monitoring and early warning, publicity and training, etc.; and
- Article 31 clearly stipulates copyright identification and value evaluation, requiring competent departments to strengthen institutional construction and promote the establishment of copyright identification technical standards and copyright value evaluation standards.

## Patents

### Administrative Developments

On October 8, 2022, NIPA released the *Draft Administrative Measures for the Patent Agency Credit Evaluation* for public

2022年10月14日，国家知识产权局发布《专利开放许可使用费估算指引（试行）》，包括三个部分，总则、估算方法和操作步骤。估算方法包含五类：参考该专利已自行实施产生的收益；参考该专利已许可实施的使用费；参考同行业专利实施许可统计数据；参考国际一般许可费率；资产评估方法。操作步骤提出了专利开放许可使用费的估算步骤，例如判断专利开放许可适当性、根据场景选择估算方法、确定计算基数、设置调整系数、估算使用费、确定支付方式等，还包括开放许可使用费估算示例以及“十三五”国民经济行业专利实施普通许可统计表。

2021年10月31日，国家知识产权局发布了《专利审查指南修改草案（再次征求意见稿）》再次征求公众意见。本轮征求意见稿的内容主要是根据前两轮公众意见进行完善，进一步对《专利法》及其实施细则的相关规定作出配套修改。以下内容值得注意：

- 第6.7.5节增加关于诚信原则的规定，以纠正相关程序中违反诚信原则的行为；
- 第一部分第三章第9.1节明确规定，确同一产品的整体设计与其任何局部设计，不能作为一件申请提出；
- 第二部分第一章第3.2节明确遗传资源包括遗传资源材料和利用此类材料产生的信息，并给出相关审查示例；
- 第二部分第一章第4.3.1.2节规定，确全部步骤由计算机等装置实施的信息处理方法，其直接目的不是获得诊断结果或健康状况，不属于诊断方法；
- 第四部分第一章第6.3节规定，复审和无效请求审查决定在发出后及时在国家知识产权局网站上公开；
- 第四部分第三章第3.7和3.8节新增规定，加权属纠纷当事人在无效宣告程序中可以提出意见和向其发送审查状态通知书；
- 第四部分第三章增加第9节“涉及药品专利纠纷早期解决机制的无效案件审查的特殊规定”，包括引言、请求书和证明文件、审查顺序、审查基础、审查状态和结案的通知；
- 第五部分第九章第2节增加“根据专利法第四十二条第二款的专利授权期限补偿”；
- 第五部分第九章第3节增加“根据专利法第四十二条第三款的专利权期限补偿”；

- 新增第六部分（外观设计国际申请），下设两章。第一章是外观设计国际注册申请的事务处理，第二章是外观设计国际申请的审查。

## 不正当竞争

2022年11月22日，国家市场监督管理总局发布《中华人民共和国反不正当竞争法（修订草案征求意见稿）》以征求公众意见。以下内容值得注意：

- 降低部分以前主要受《反垄断法》规制的行为门槛，将其列为不正当竞争行为：
  - 第十三条对“具有相对优势地位的经营者”的相关行为进行限制，基本涵盖限制交易、强制搭配、附件不合理交易条件的行为。
  - 第十七条主要规范拒绝交易的行为；第十九条主要规范不当使用算法提供差别待遇的行为。
- 草案针对司法实践认定的数字经济领域的不正当竞争行为，增加对恶意交易（逆向刷单、恶意批量购买等）和不当获取、使用他人经营数据等的规定，并且详细说明现行《反不正当竞争法》第十二条的相关原则和具体行动；
- 第二十一条列出构成不正当竞争成立的五个考虑因素。除了社会公共利益、商业行为、主观状态、客观行为等传统因素外，还加了对技术创新、产业发展、网络生态等额外影响的考虑；
- 草案扩大了商业混淆的对象类型，包括页面设计、自媒体名称、应用软件名称或图标等，并新增擅自将具有一定影响的商业标志作为搜索关键词的混淆行为。将销售侵权产品、协助侵权行为的侵权行为纳入规制范围；
- 新增了对虚构评价的虚假宣传行为和协助侵权行为的规定。新增对指示他人进行商业诽谤的规定，并将商业诽谤的对象从竞争对手扩大到其他经营者；
- 将法定赔偿和惩罚性赔偿的适用范围扩大到所有不正当竞争行为；
- 关于商业混淆，新增没收非法所得和生产工具的行政责任。对于数字经济中除恶意交易外的不正当竞争，除一般处罚条款外，新增针对特别严重行为专项处罚条款。



comment. According to the draft, the credit rating of patent agencies and patent attorneys is divided into four grades from high to low, namely “A”, “B”, “C”, and “D”, and is evaluated according to the scoring situation. A full score is 100 points, with deductions based on negative information. Specifically, 0.5 points will be deducted for each abnormal patent application, with a maximum deduction of 20 points; 10 points will be deducted for agencies that file abnormal patent applications with serious circumstances; for overseas abnormal patent applications, 1 point will be deducted for each application, with a maximum deduction of 20 points; and if major adverse international effects are caused and relevant agencies refuse to withdraw, the maximum deduction is 40 points.

On October 14, 2022, NIPA issued the *Guidelines on the Estimation of Royalty Rates for Open Patent Licensing (for Trial Implementation)*. The guidelines are divided into three parts: general principles, estimation methods, and operation steps. In the estimation method part of the guideline, five categories are proposed referring to: the income generated by the self-exploitation of the patent, the royalty of the licensed implementation of the patent, the statistical data of patent implementation licensing in the same industry, the general international licensing fee rate, and asset evaluation methods. In the part on operations, steps are proposed to estimate the patent open license royalty, such as judging the appropriateness of the patent open license, selecting an estimation method according to the scenario, determining the calculation base, setting the adjustment coefficient, estimating the royalty, and determining the payment method. The guidelines also include an example of the estimation of open license royalties and a statistics table for general licensing of patents in national economic industries during the 13th Five-Year Plan (2016-2020) period.

On October 31, 2021, NIPA released a new *Draft Amendment to the Patent Examination Guidelines* for public comment. The content of this round of draft is mainly to improve the opinions of the previous two rounds of public comments, and to further make supporting amendments to the relevant provisions of the Patent Law and its implementing rules. Noteworthy provisions include the following:

- Provisions on the principle of good faith would be added in Section 6.7.5 to correct violations of the principle of good faith in relevant proceedings;
- Chapter 3, Section 9.1 of Part One would clearly state that the overall design and any partial design of the same product may not be filed as one application;
- Section 3.2 of Chapter 1 of Part Two would clarify that genetic resources include genetic resource materials and information generated using such materials, and gives relevant review examples; Section 4.3.1.2 of Chapter 1 of Part Two would specify that all steps that are implemented by computers and other devices, for which the direct purpose is not to obtain diagnostic results or

health status, do not fall within diagnostic methods;

- Section 6.3 of Chapter 1 of Part Four would specify that the examination decisions on reexamination and invalidation petitions shall be published on the NIPA website in a timely manner after issuance;
- Sections 3.7 and 3.8 of Chapter 3 of Part Four would add provisions that parties to ownership disputes may raise opinions and be served with a notice of examination status during the invalidation procedure;
- Chapter 3 of Part Four would add Section 9 “Special Provisions on the Examination of Invalidation Cases Involving the Early Resolution Mechanism of Pharmaceutical Patent Disputes”, including the introduction, letter of request and supporting documents, examination sequence, examination basis, examination status and notification of case closure;
- Section 2 of Chapter 9 of Part Five would add “compensation for the term of patent rights according to Article 42, Paragraph 2 of the Patent Law”; Section 3 of Chapter 9 of Part Five would add “compensation for the term of patent rights in accordance with Article 42, Paragraph 3 of the Patent Law”; and
- A new Part Six would be (International Design Applications), consisting of two chapters. The first chapter deals with the procedural issues of handling international design applications, and the second chapter deals with the examination of international design applications.

## Unfair Competition

On November 22, 2022, SAMR released a draft amendment to the *PRC Anti-Unfair Competition Law* for public comment. Noteworthy provisions include the following:

- The draft would lower the threshold for some acts that were previously mainly regulated by the Anti-Monopoly Law and list them as unfair competition behavior -
  - Article 13 would introduce restrictions on the relevant acts of “operators with a comparatively advantageous position”, and basically cover the behavior of restricting trading, tying sales and imposing unreasonable trading conditions
  - Article 17 would mainly regulate the behavior of refusal to trade; Article 19 would mainly regulate the conduct of improper use of algorithms to provide differential treatment
- The draft would address unfair competition acts in the field of digital economy identified in judicial practice, and add new provisions for malicious transactions (reverse order swiping, malicious bulk purchases, etc.) and improper acquisition and use of other people’s

2022年7月29日，浙江省人大常委会发布《浙江省反不正当竞争条例（2022年修订）》（以下简称“《条例》”），共五章32条，包括总则、不正当竞争行为、监督检查、法律责任和附则。以下修订内容值得关注：

- 结合数字经济的新特点，第二章对混淆行为、商业贿赂、虚假宣传、侵犯商业秘密、商业诽谤等不正当竞争行为进行了补充和细化；
- 《条例》规定，电子商务平台经营者应当明确平台内部公平竞争规则，建立不正当竞争举报、投诉、纠纷协调等机制；允许行业协会、商会等社会组织协调处理会员之间的市场竞争纠纷；
- 《条例》规定，省有关部门应当推动构建跨省域反不正当竞争信息共享、案件移送、执法协助、联合执法机制。

## 程序和管辖

2022年4月1日，最高人民法院发布《最高人民法院关于适用〈中华人民共和国民事诉讼法〉的解释（2022年修正）》（以下简称“《修正案》”），自2022年4月10日起施行。以下修订内容值得关注：

- 《修正案》将延长简易程序案件审理期限的条件由“双方当事人同意继续适用简易程序”改为“特殊情况需要延长的”，同时将简易程序案件最长审理期限由6个月减少到4个月；
- 本次修改将简易程序转为普通程序的条件由“复杂案件”改为“不宜适用简易程序的案件”。同时，当事人对适用简易程序、小额诉讼案件审理有异议但异议不成立的，人民法院应当裁定驳回，裁定可以以口头方式作出；
- 《修正案》明确规定，人民法院可以依照《民事诉讼法》第九十条、第一百六十二条的规定，采取捎口信、电话、短信、传真、电子邮件等简便方式传唤双方当事人、通知证人和送达诉讼文书。

2022年4月20日，最高人民法院发布了《最高人民法院关于第一审知识产权民事、行政案件管辖的若干规定》和《最高人民法院关于基层人民法院管辖第一审知识产权民事、行政案件标准》。二者从案由、类型、标的三个方面入手，明确了知识产权第一审案件的管辖范围和标准，并于2022年5月1日生效，为中国涉及知

识产权民事纠纷的管辖问题提供了更全面的总结和更清晰的指导。

2022年6月24日，全国人大常委会发布《中华人民共和国民事诉讼法（草案）》（以下简称“《草案》”）向社会公开征求意见。《草案》分为4个编，17章，共207条。各编包括总则、金钱债权的终局执行、非金钱债权的终局执行、保全执行以及附则。以下修订内容值得关注：

- 《草案》明确列入失信名单的适用条件，强调法院可以根据情节的轻重，对被执行的失信人处以罚款、拘留或者追究刑事责任；
- 《草案》将建立特别拘留制度。被执行人继续拒绝履行不可替代行为的，可以再次拘留，但总拘留期限不得超过六个月；
- 《草案》明确规定，有协助执行义务的有关国家机关或者其他承担社会管理职能、提供社会公共服务的组织与人民法院之间应当建立信息化网络协助执行机制；
- 《草案》规定为当事人和利害关系人建立机制，对于人民法院未实施应当实施的执行行为的，适用人民法院的自行纠正机制；
- 在“金钱债权的终局执行”编中，《草案》对现场调查、参考价确定、拍卖、出售、清偿房地产债务等变卖程序进行了规定。《草案》规定，这种变卖主要以网络司法拍卖为主，必要时可以进行第二次拍卖。

2022年12月30日，全国人大常委会发布《中华人民共和国民事诉讼法（修订草案）》（以下简称“《修订草案》”）向社会公开征求意见。《修订草案》对涉外民事诉讼的相关内容作了一系列实质性修改，包括管辖规则和送达方式以及外国判决的承认和执行规则。以下有关涉外民事诉讼的修订内容值得注意：

- 第二百七十六条将中华人民共和国人民法院可以审理的涉外案件类型扩大到非财产权益纠纷，明确侵权纠纷的国内属地管辖权的关系，并进一步规定，如果争议与中华人民共和国存在其他适当联系的，可以由中华人民共和国人民法院管辖；
- 根据第二百七十七条的规定，与争议有实际联系的地点不在中华人民共和国境内，但当事人书面协议选择中华人民共和国人民法院管辖的，可以由中华

business data; the draft would also detail the relevant principles and specific actions of Article 12 of the current Anti-Unfair Competition Law;

- Article 21 of the draft would list five factors for consideration determining the establishment of unfair competition. In addition to such traditional factors as social and public interests, business practices, subjective state, and objective behavior, additional impacts on technological innovation, industry development, and network ecology would also be considered;
- As for commercial confusion, the draft would expand the types of objects of commercial confusion, including page design, self-media name, application software name or icon, etc., and add the confusing act of setting a commercial sign that has a certain influence as a search keyword. Infringing acts of selling infringing products and assisting infringing acts would be brought within the scope of regulation;
- The draft would add false promotion conduct of fictitious evaluations and acts of aiding infringement. The draft would include instructing others to conduct commercial slander under the regulations, and expand the object of commercial slander from competitors to other operators;
- The draft would expand the scope of application of statutory compensation and punitive damages to all acts of unfair competition; and
- As to commercial confusion, the draft would add administrative responsibility for the confiscation of illegal gains and production tools. For unfair competition in the digital economy other than malicious transactions, in addition to setting general penalty clauses, the draft would also add special penalty clauses for particularly serious behavior.

On July 29, 2022, the Standing Committee of the Zhejiang People's Congress issued the *Regulations of Zhejiang Province against Unfair Competition (revised 2022)*. They consist of 32 articles in five chapters, including general provisions, acts of unfair competition, supervision and inspection, legal responsibilities and supplementary provisions. Noteworthy revisions include the following:

- Combining the new characteristics of the digital economy, Chapter Two of the regulations supplements and details such unfair competition conduct as confusion, commercial bribery, false promotion, infringement of trade secrets, and commercial slander;
- The regulations stipulate that e-commerce platform operators shall clarify the rules of fair competition within the platform, and establish such mechanisms as reporting, complaints, and dispute coordination of unfair competition; allow industry associations, chambers of commerce and other social organizations to coordinate and handle market competition disputes among members; and
- The regulations stipulate that relevant provincial

departments shall promote the establishment of cross-provincial anti-unfair competition information sharing, case transfer, law enforcement assistance and joint law enforcement.

## Procedures and Jurisdictions

On April 1, 2022, the Supreme People's Court released the *Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China (revised 2022)*, effective April 10, 2022. Noteworthy revisions include the following:

- The amendment changed the condition for extending the trial period of simplified procedure cases from "both parties agree to continue to apply the simplified procedure" to "where required under special circumstances", and at the same time reduced the maximum trial period of simplified procedure cases from six months to four months;
- The amendment changed the condition for converting the simplified procedure to the ordinary procedure from "complicated case" to "inappropriate to apply the simplified procedure". At the same time, if it is clear that the objection of the parties to the application of the simplified procedure and the small claims procedure has not been established, the people's court shall reject it and the ruling may be oral; and
- The amendment clarified that the people's court may, in accordance with Articles 90 and 162 of the Civil Procedure Law, summon both parties, notify witnesses, and serve litigation documents through oral messages, telephone calls, text messages, faxes, and e-mails.

On April 20, 2022, the Supreme People's Court issued the *Several Provisions of the Supreme People's Court on Jurisdiction of First-Instance Civil and Administrative Intellectual Property Cases* and the *Criteria for the Jurisdiction of the Primary People's Courts over Intellectual Property-related Civil and Administrative Cases of First Instance*. The regulations start from the three aspects of cause of action, type and subject matter, and clarify the scope of jurisdiction and standards of first-instance intellectual property cases. The regulations took effect on May 1, 2022 and provide a more comprehensive summary and clearer guidance on jurisdictional issues involving IP civil disputes in China.

On June 24, 2022, the Standing Committee of the National People's Congress issued the *Draft Civil Enforcement Law of the People's Republic of China* for public comment. The draft is divided into 4 parts and 17 chapters, with a total of 207 articles. Each part consists of general provisions, final enforcement of monetary claims, final enforcement of non-monetary claims, preservation and enforcement, and supplementary provisions. Noteworthy revisions include the following:

- The draft would clarify the applicable conditions for

人民共和国人民法院管辖；

- 第二百七十九条引入两种受中国法院专属管辖的案件类型，即：① 因在中华人民共和国领域内设立的法人或者非法人组织的设立、解散、清算，以及该机关所作的决议的效力等提起的诉讼；② 因在中华人民共和国领域内审查授予的知识产权的有效性等提起的诉讼；
- 第二百八十二条规定，当事人订立排他性管辖协议选择外国法院管辖且不违反本法对专属管辖的规定，不涉及中华人民共和国主权、安全或者公共利益的，可以裁定驳回起诉；
- 第二百八十三条规定了当事人因现有境外平行诉讼可以申请中止诉讼的三种例外情形，即在下列情况下，人民法院将不中止中国案件的审理：① 当事人协议选择中华人民共和国人民法院管辖；② 纠纷属于中华人民共和国法院专属管辖；③ 由中华人民共和国人民法院审判明显更为方便。外国法院未采取必要措施审理案件，或者无法在合理期限内审结的，中国法院也有权恢复诉讼；
- 第二百八十五条增加了送达事项和相应的适用情形，例如：① 文书可以送达受送达人在中华人民共和国领域内设立的独资企业；② 受送达人为外国自然人的，可以向其在中华人民共和国领域内的企业或家属送达；③ 受送达人为在中华人民共和国领域外设立的独资企业，当相关人员在中华人民共和国领域内时，可以向其管理层送达；④ 文书可以通过即时通讯工具特定电子系统等方式送达。在过渡期间，公告送达期限将缩短至 60 天，法院可以使用其他方式与公告送达方式同时进行；
- 第三百零二条规定，中华人民共和国人民法院不予承认或执行外国法院裁定的情形，包括：① 外国法院对案件无管辖权；② 判决、裁定系通过欺诈方式取得；③ 中国法院已对同一纠纷作出判决、裁定，或已经承认或执行对同一纠纷作出的判决裁定；④ 违反中华人民共和国法律的基本原则或者国家主权、安全、社会公共利益；
- 第三百零三条列举了认定外国法院对案件无管辖权的几种情形，包括：① 外国法院依据其法律对案件没有管辖权；② 违反本法对专属管辖的规定；③ 违反当事人排他性选择法院管辖的协议；④ 当事人存在有效的仲裁协议。

## 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。
- 修订《商标审查审理标准》，以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，并为品牌所有者提供指南，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。

being included in the dishonesty list, emphasizing that the court may, depending on the severity of the circumstances, fine, detain, or pursue criminal responsibility against the dishonest person subject to enforcement;

- The draft would establish a special detention system. In the event that the person subject to enforcement continues to refuse to perform an irreplaceable act, he may be detained again, but the total duration may not exceed six months;
- The draft would clarify that an information-based network assistance enforcement mechanism shall be established between the relevant state organs that have the obligation to assist in enforcement or other organizations undertaking social management functions and providing social public services and the people's courts;
- The draft would stipulate the system for the parties and interested parties to apply to the people's court's self-correction system for the court's failure to implement the enforcement actions that should be implemented; and
- In the "Final Enforcement of Monetary Claims", the draft would stipulate such monetization procedures as on-site investigation, determination of reference price, auction, sale, and repayment of real estate debt. The draft would stipulate such the monetization is primarily based on online judicial auction, and the monetization procedure may be conducted a second time if necessary.

On December 30, 2022, the Standing Committee of the National People's Congress released the *Civil Procedure Law of the People's Republic of China (Draft Revision)* for public comment. The draft made a bundle of substantive amendments to the relevant contents of foreign-related civil proceedings, including jurisdictional rules and manner of service as well as rules for recognition and enforcement of foreign judgments. Noteworthy revisions regarding the foreign-related civil proceedings include the following:

- Article 276 of the draft would expand the types of foreign-related cases that PRC courts may hear to non-property rights and interests, specify the connections of the domestic territorial jurisdiction for tort disputes, and further stipulate that the PRC courts may have jurisdiction where the dispute has appropriate connections with the People's Republic of China;
- According to Article 277, the people's court of the People's Republic of China may have jurisdiction under circumstances where the place actually associated with the dispute is not within the territory of the People's Republic of China but the parties select by written agreement the people's court of the People's Republic of China to exercise jurisdiction;
- Article 279 would introduce two types of cases subject to the exclusive jurisdiction of PRC courts, i.e., ❶ an

action instituted due to the formation, dissolution, or liquidation of a legal person or an unincorporated organization formed within the territory of the People's Republic of China, and the validity of resolutions made by such an organ, among others; and ❷ an action instituted for the purpose of examining the validity of intellectual property rights granted within the territory of the People's Republic of China, among others;

- Article 282 of the draft would provide that if the parties enter into an exclusive jurisdiction agreement and choose a foreign court to exercise jurisdiction, which does not violate the provisions of this Law on exclusive jurisdiction and does not involve the sovereignty, security, or public interests of the People's Republic of China, a ruling may be rendered to dismiss the action;
- Article 283 would provide three exceptional circumstances where a party may move for a stay due to an existing foreign parallel litigation, i.e., the People's Court will not stay the PRC case if ❶ The parties choose by agreement to have jurisdiction over the People's Court of the People's Republic of China; ❷ the dispute is under the exclusive jurisdiction of the People's Court of the People's Republic of China; or ❸ It is obviously more convenient to be tried by the People's Courts of the People's Republic of China. The court also has the right of resume the PRC litigation if the foreign court fails to take necessary measures to try the case, or is unable to conclude the case within a reasonable time limit;
- Article 285 of the draft would add a handful of service matters and the corresponding applicable scenarios, e.g., ❶ documents may be served to the wholly-owned PRC enterprise of the recipient; ❷ where the recipient is a foreign natural person, documents may be served to his/her PRC company and his/her family members in China; ❸ where the recipient is a foreign company, documents may be served to its management when the relevant personnel is in China; ❹ documents may be served through instant messenger, specific electronic system, etc. In the interim, the period for public service would be shortened to 60 days and the court may use other means to provide service together with the public service approach;
- Article 302 would set the circumstances under which the PRC courts may not recognize or enforce judgements made by foreign courts, i.e., ❶ where the foreign court has no jurisdiction over the case; ❷ where the judgement or order is obtained through fraudulent means; ❸ where the identical matter has been tried by a PRC court or a PRC court has recognized a judgement on the identical matter; and ❹ where the judgement violating the basic principles of the laws of the People's Republic of China or state sovereignty, security or public interest; and
- Article 303 lists several circumstances where a foreign court shall be deemed to have no jurisdiction over the case, i.e., ❶ the foreign court has no jurisdiction over



the case in accordance with its law; ❷ the provisions of this law on exclusive jurisdiction are violated; ❸ the agreement by which the parties exclusively choose the court to exercise jurisdiction is violated; and ❹ the existence of a valid arbitration agreement. Unfair Competition and E-commerce

## 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 Review and Adjudication Division decisions before the 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.**
- 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.





# Investment Policy

## Introduction

The complete reversal of COVID-19 prevention measures at the end of 2022 by the Chinese government marks 2023 as the start of the post-COVID-19 era for China. Despite the continuing impact of COVID-19 and a slowly recovering global economy, China's economy continued to grow, albeit at a much slower rate. The latest World Economic Outlook issued by the International Monetary Fund (IMF) predicted growth of the global economy by 3.2 percent in 2022, with developed countries predicted to grow by 4.8 percent, emerging economies and developing countries predicted to grow by 3.7 percent, and China's economic growth expected to be 3.2 percent.

China recognizes that while foreign-invested enterprises account for less than 3 percent of the country's total enterprises, they are responsible for creating two-fifths of China's foreign trade, one-sixth of its tax revenue and nearly one-tenth of its urban employment. As the epidemic comes to an end, provinces and cities across China look to attract greater foreign investment to aid in their own economic growth and recovery plans. These stated goals to attract foreign investment, however, are not matched by greater efforts to optimize the business environment through faithfully implementing the *Foreign Investment Law*. This lack of synchronicity contributes to further confusion and uncertainty in the foreign business environment.

The year 2022 marked the second 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 the "Six Stabilizations." (The task of the "Six Stabilizations" was first put forward at a meeting of the Communist Party Politburo 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 (2021-2025) for Utilization of Foreign Investment* issued by the Ministry of Commerce has outlined corresponding arrangements, such as further narrowing the negative list of foreign investment access, relaxing the entry threshold in key sections, continuing to reduce market access restrictions, expanding the catalogue of industries that encourage foreign investment, and improving foreign investment in the public service system.

In the first year of the 14th Five-Year Plan, China notes that they have vigorously promoted high-quality economic development. Despite these efforts, pessimism and lack of confidence amongst foreign businesses has reached an all-time high. The COVID-19 prevention measures and rolling lockdowns across the country in 2022 led to a great amount of uncertainty for foreign businesses who now report feeling "less welcome" in China, with greater than one-third of AmCham China survey participants expressing unfair treatment towards foreign companies by government policies and subsequent enforcement actions.

## State of the Investment Environment

AmCham China members' overall impression of the investment environment in China in 2022 reflected a more pessimistic outlook compared to previous years as seen in the 2023 Business Climate Survey Report. The prevalence of COVID-19 in 2022 contributed largely to this result, but rising labor costs, an uncertain regulatory environment, and the uncertainty of bilateral relations are other top business challenges for members.

Furthermore, 34 percent of members estimated a decrease in revenue in 2022 than that of 2021, and companies estimated that profitability would decrease from 59 percent in 2021 to 44 percent in 2022. One in five member companies faced losses in 2022, and less than half of the members ranked China as a top three investment priority. Additionally, 2022 saw the lowest percentage of company growth compared to previous years at only 32 percent of companies reporting company growth; in 2020, when the pandemic first started, the percentage of companies who experienced growth was still 35 percent.

In the midst of uncertain bilateral relations, almost half of our members felt "less welcome" in China, with greater than one-third of survey participants expressing unfair treatment towards foreign companies by government policies and subsequent enforcement actions. Unfortunately, this has also led to the second year of an increase in uncertainty among our members regarding the Chinese government's intentions to open up China's market to foreign investment.

Although China may not be the primary investment destination it once was in pre-pandemic times, we find that many members are not considering relocating their supply chain. Despite this commitment to the China market, there is a 10-percent

# 投资政策

## 引言

2022 年末，中国政府取消了所有新冠疫情防控措施。这意味着，自 2023 年起，中国开始步入后疫情时代。疫情影响仍未消散，全球经济缓慢复苏，然而中国经济却实现了缓慢持续增长。国际货币基金组织（IMF）发布的最新《世界经济展望》报告预计，2022 年全球经济增长 3.2%，发达国家增长 4.8%，新兴经济体与发展中国家增长 3.7%，中国增长 3.2%。

中国政府意识到，外商投资企业虽然在全国企业中占比不超过 3%，但是参与了中国五分之二的外贸，缴纳了六分之一的税收，解决了将近十分之一的城镇就业问题。随着疫情进入尾声，中国各省市都希望吸引更大的外商投资，助力本地经济增长与复苏规划。然而，虽然上述吸引外商投资的目标已经人尽皆知，但是有关部门并没有严格执行《外商投资法》，作出更多努力来优化营商环境。正是因为存在这种不同步的情况，人们才会产生困惑，同时增加了外资企业在华营商环境的不确定性。

2022 年是“十四五”规划的第二年。中国共产党与国务院共同将“做好稳外资工作”列为“六稳”任务中的重要决策部署之一。（“六稳”任务于 2018 年 7 月 31 日在中共中央政治局会议上首次提出，其中包括，稳就业、稳金融、稳外贸、稳外资、稳投资、稳预期。）商务部发布的《“十四五”利用外资发展规划》中列举出了相应安排，例如，进一步压减外商投资准入负面清单，放宽重要领域准入门槛，持续减少市场准入限制，拓展鼓励外商投资产业目录，加大公共服务体系的外商投资力度。

“十四五”规划的第一年内，中国政府表示已经大力推动了高质量经济发展。然而，外国企业的消极情绪

与信心缺乏的程度已达到了前所未有之高。2022 年全国推行的新冠疫情防控措施与持续不断的封城举措让外国企业面临着极高的不确定性。上述外国企业感到在中国“不那么受欢迎”。超过三分之一的商会受访对象表示，他们受到了政策与后续强制措施针对外国企业的不公平对待。

## 投资环境现状

2023 年度《中国商务环境调查报告》表明，2022 年，中国美国商会（以下简称商会）会员企业对中国投资环境的总体印象较以往呈现更消极态势。2022 年新冠疫情大流行是问题的主要原因，但劳工成本上涨、监管环境不确定、双边关系不稳定是商会会员企业面临的商业上其他最大挑战。

此外，有 34% 的会员企业预计 2022 年收入较 2021 年将有所下降，上述会员企业预计本公司的利润率将从 2021 年的 59% 降至 2022 年的 44%。2022 年，企业亏损的会员企业占五分之一，把中国列为前三投资目标的会员企业不到一半。2022 年，较去年实现企业利润增长的会员企业仅占 32%，达到了近几年的最低点。而 2020 年疫情开始之时，实现企业利润增长的会员企业占比尚为 35%。

双边关系不稳定的背景下，将近半数会员企业在中国感到“不那么受欢迎”，超过三分之一的商会受访对象表示，他们受到了政策与后续强制措施针对外国企业的不公平对待。上述问题还导致了另一个后果。那就是会员企业在分析中国政府对外商投资开放市场的意图时，面临的不确定性连续第二年增加。

虽然中国已不再像疫情前一样是首选投资目标，但是许多会员企业暂不考虑转移其在华供应链。即便如此，

point (pp) increase in the number of companies considering or already starting to diversify part of their supply chain.

## The 14th Five-Year Plan for Utilization of Foreign Investment

On October 12, 2021, the Ministry of Commerce issued the 14th Five-Year Plan for Utilization of Foreign Investment (“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 7 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.

It is worth noting that in terms of improving the foreign investment management system, the Plan proposed a national security review system for foreign investment. Specific requirements include fully implementing the Measures for the Security Review of Foreign Investment, including:

- Conducting publicity and interpretation of relevant laws and policies,
- 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.

## The Central Economic Work Conference

From December 15 to 16, 2022, the Central Economic Work Conference (“Conference”) was held in Beijing. The

Conference stipulated making economic stability a top priority in 2023 while maintaining steady progress. The Conference also maintained that implementation of proactive fiscal policy and prudent monetary policy will be continued, macro-control will be intensified, and various policies will be formed in order to promote high-quality development.

In terms of foreign investment policies, the Conference called for more efforts to attract and utilize foreign capital, widen market access, open up modern service industries, and grant national treatment to foreign-funded enterprises such as participation in government procurement, setting industry standards, and bidding. Furthermore, the Conference stated its commitment to providing foreign businesspeople with “the greatest degree of convenience” regarding travels to China and trade and investment negotiations.

## 20th National Party Congress

The 20th National Congress of the CPC further emphasized its continual commitment to market opening, calling for a “more active opening strategy.” In particular, foreign companies that are able to contribute to China’s core development goal of improving scientific and technological self-reliance, will be most welcome, and especially for investments made in the west and northeast inland areas.

Following the 20th National Congress of the CPC, Foreign Ministry Spokesperson Wang Wenbin reaffirmed China’s fundamental national policy to open-up, highlighting China becoming the world’s largest trading country over the past decade, with the capital stock of China’s foreign direct investment (FDI) soaring to third highest in the world. Nine more free trade agreements were signed, and with the China International Import Expo (CIIE), more multinational companies are regarding China as a crucial investment target.

## 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. The updated negative list for 2023 is expected to be released before the end of Q2 2023. It is expected that the gradual shortening of the list will continue.

正在考虑或已经开始转移其在华部分供应链的企业数量增长了 10 个百分点 (pp)。

## 《“十四五”利用外资发展规划》

2021 年 10 月 12 日，商务部发布《“十四五”利用外资发展规划》(以下称“《规划》”)，并下达至各省、自治区、直辖市、计划单列市和新疆生产建设兵团商务主管部门以及部直属单位四川省经济合作局，要求上述部门结合实际情况，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。

值得注意的是，在完善外商投资管理体制方面，《规划》提出了外商投资国家安全审查制度。包括完整实施《外商投资安全审查办法》在内的详细要求如下：

- 对相关法律与政策进行宣传解读；
- 加强重点领域、重点地区外商投资的监管；
- 及时发现和识别国家安全风险，引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要依法进行安全审查；
- 与有关各方合作，监督审查决定的实施，引导地方商务主管部门在审查决定实施的过程中展开合作；
- 加强同反垄断审查、反不正当竞争审查以及其他工作的协同联系，共同构建国家安全防线。

## 中央经济工作会议

2022 年 12 月 15 日至 16 日，中央经济工作会议(以下简称会议)在北京举行。会议将经济稳定列为 2023 年重中之重，坚持稳中求进工作总基调。会议强调，继续实施积极的财政政策和稳健的货币政策，加大宏观政策调控力度，加强各类政策协调配合，形成共促高质量发展合力。

会议还要求加大力度吸引和利用外资，扩大市场准入，加大现代服务业领域开放力度，落实好外资企业国民待遇，保障外资企业依法平等参与政府采购、招投标、

标准制定。此外，会议还表示要为外商来华从事贸易投资洽谈提供最大程度的便利。

## 中国共产党第二十次全国代表大会

中国共产党第二十次全国代表大会进一步强调了将继续坚持市场开放，将采取“更积极的开放策略”，欢迎一切能够为中国实现高水平科技自立自强的发展目标作贡献的外国公司，尤其是进入到西部地区以及东北内陆地区的外商投资。

在中国共产党第二十次全国代表大会召开以后，外交部发言人汪文斌重申了中国对外开放的基本国策，强调中国是过去十年间世界贸易第一大国，中国外商直接投资(FDI)的资本储量跃居世界第三。之后又签署了九项自由贸易协定。中国国际进口博览会(CIIE)成功举办后，更多的跨国公司开始将中国看作重要的投资目的地。

## 外商投资负面清单及自贸区负面清单

国家发展与改革委员会联合商务部于 2021 年 12 月 27 日颁布了《外商投资准入特别管理措施(负面清单)(2021 年版)》(“外商投资负面清单”)以及《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)》(“自贸区负面清单”)。上述针对外商投资的负面清单于 2022 年 1 月 1 日起正式生效。同外商投资负面清单及自贸区负面清单的 2020 年版相比，2021 年版中的禁止与限制条目数分别降至 31 项与 27 项，下降百分比分别为 6.1% 与 10%。最新的 2023 年版负面清单预计将于 2023 年第二季度结束前发布。预计清单将进一步压减。

商会会员企业对进一步压减负面清单表示欢迎，但我们仍然关注负面清单未能涉及到的投资和市场准入问题。许多公司表示，他们虽然在负面清单没有列出的行业中很活跃，但针对外国投资的隐性障碍其实是一种普遍现象，而且情况还会根据地区的不同而发生变化。仍需要对省级、地方各级官员进行进一步的政策阐述并提供明确的实施纲领，以确保外商投资企业的公平准入。

## 《外商投资电信企业管理规定》的更新

截至 2022 年 5 月 1 日，因取消业绩以及运营经验等方面的相关要求，外商投资电信企业的投资审批流程

Although our members welcome the further opening of some areas on the Negative Lists, we remain concerned about investment and market access issues that go beyond the simple structure of the negative list format. Many companies report that despite being active in industries not noted in the negative list, implicit barriers to foreign investment are a common occurrence and can vary from region to region. Further policy clarification and clear implementation guidelines for provincial and local level officials is needed to ensure equal access for foreign invested enterprises.

## Updates on the Provisions on the Administration of Foreign-invested Telecommunications Enterprises

In effect as of May 1, 2022, approval for investment in foreign-invested telecommunications enterprises has been made easier by the removal of requirement of good performance and operation experience. The case-by-case approval system for foreign investment has also been removed, and the MOFCOM does not issue the Approval Certificate of Establishing Foreign-invested Enterprise, bypassing MOFCOM's approval in the process to establish a foreign-invested telecommunications enterprise. Foreign investors can also set up solely owned subsidiaries without a joint investment Chinese partner, and the investors no longer need to obtain the Examination Decision of Foreign Investment in the Telecommunications from the Ministry of Information and Industry Technology (MIIT), further shortening time to obtain the business license. Starting from May 1, 2022, a foreign-invested telecom enterprise can estimate to obtain the license within 180 days.

## Implementation of the Phase I Economic and Trade Agreement

The *China-US Phase I Economic and Trade Agreement* ("Phase I Agreement") became effective on February 14, 2020, and expired on December 31, 2021. The Phase I 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 I Agreement's implementation, China proactively fulfilled its commitments in the above-mentioned areas through both implementing new policies and removing restrictive requirements; China also maintained candid communication with the US government on a regular basis.

However, AmCham China notes that China's implementation of its commitments with respect to the expansion of China-US was not fully completed. China agreed to increase purchases of certain US 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 did not complete its purchase obligations under the Phase I 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. On January 13, 2022, the Ministry of Commerce stated that it still hopes for good conditions by the United States for trade cooperation, and the Phase II Economic and Trade agreement are still under negotiations.

While AmCham China applauds the efforts made by China to fulfill its commitments under the Phase I 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, at the 29th session of 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 maintain 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 ① spouses and immediate family members of individuals on the countermeasure list; ② senior officers or actual controllers of organizations on the countermeasure list; ③ organizations within which individuals on the countermeasure list serve as senior officers; and ④ organizations actually controlled or established or operated by the individuals and organizations on the countermeasure list.

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 cannot fully protect their legal rights

已变得更加容易。同时，取消了外商投资的个案审批制度，商务部（MOFCOM）也不再颁发《外商投资企业设立登记申请书》，设立外商投资电信企业的过程中不再需要商务部的审批。外国投资者也可以在没有共同投资的中国伙伴的情况下设立独资子公司，外国投资者也不再需要从工业和信息化部（MIIT）获得《外商投资经营电信业务审定意见书》，进一步缩短了营业执照的获得时间。2022年5月1日起，外商投资电信企业预计可以在180天内获得许可证。

## 《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。《第一阶段经贸协议》涵盖了知识产权保护、技术转让、金融行业进一步开放、公平透明的货币政策的实施、贸易扩张等方面的条款。《第一阶段经贸协议》实施的近二十年来，中国一直都在上述领域中积极履行承诺，实行新的政策，解除限制性要求。中国也一直在定期同美国政府保持坦诚沟通。

但是商会注意到，中方尚未完全实现扩大中美贸易的相关承诺。中国承诺自2020年1月1日至2021年12月31日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，《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《第一阶段经贸协议》下的购买承诺。主要原因在于全球疫情大流行以及供应链受阻。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。2022年1月13日，商务部表示仍希望美方能为双方扩大贸易合作创造良好氛围和条件，与此同时，《第二阶段经贸协议》仍在谈判的过程中。

商会对中国为履行其在《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、非市场政策等会员企业核心关切，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。

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，企业无法提出行政复议或行政诉讼，商会会员企业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。

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）、冻结其及相关组织在华财产及禁止中国公民和机构与其交易。

商会将持续跟进中国政府对《反外国制裁法》补充规定的发布与解读以及该法律的执行情况。我们恳请政府部门向我们提供一些帮助，以便我们的会员企业更好地理解《反外国制裁法》以及他们的合规义务。

and interests in China with such restrictions on full participation and procedural rights.

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 countermeasures 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.

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*

On June 10, 2021, the *Hainan Free Trade Port Law* of the People's Republic of China ("Free Trade Port Law") was approved by unanimous vote after three deliberations by the Standing Committee of the National People's Congress 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) ("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 Master 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.

### *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. 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 include removing restrictions against the modern service industries, opening up business dealings and operations to foreign offices and service providers, relaxing policies on services relating to education and culture, and allowing strong talent work eligibility.

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.

Since the implementation of the *Free Trade Port Law*, Hainan's regional GDP increased by 11.2 percent as compared to the previous year, with the largest contributor being the service sector. The cross-border and foreign investment growth has also benefited from Hainan's slow opening up to the global market, with 763 million US dollars cross-border capital inflow by the beginning of 2022.

On September 15, 2022, the Hainan Provincial People's Government issued the Notice of the People's Government of Hainan Province on Printing and Distributing the Interim Measures for the Management of the List of High-end Short-cut Talents Enjoying Preferential Individual Income Tax Policies effective January 1, 2023. This update clarified further the conditions necessary to qualify for the individual income tax incentives in Hainan.

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.

## 海南自由贸易港

### 《海南自由贸易港法》

2021年6月10日，经三次提案，全国人民代表大会常务委员会一致通过《中华人民共和国海南自由贸易港法》（以下简称《自贸港法》）。同日，《自贸港法》正式开始施行。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《海南负面清单》）也于2021年7月23日正式公布，自2021年8月26日起施行。

根据《总体方案》所设定的发展目标，预计截至2025年前，将初步建成自由贸易港政策和制度体系，着重于推进贸易与投资自由化便利化。2035年前，自由贸易港制度体系及运作模式得以发展成熟。海南自由贸易港将成为中国开放经济的新高地。到21世纪中期，完全建成具备强大的国际影响力的高级自贸港。

### 《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）》

《负面清单（海南版）》是中国在跨境服务贸易领域公布的第一张负面清单。该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。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在服务贸易领域签署的自贸协定的开放水平。《海南负面清单》的亮点包括：撤销针对现代服务业的限制、向外国办事处和服务商开放商业交易与活动、减轻教育文化相关服务的政策限制、开放更广泛的人才工作资格。

被称为中国最短外商投资负面清单的《负面清单（海南版）》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。

自《自贸港法》实施以来，海南地区GDP同比去年增长了11.2%，其中贡献最多的为服务业。海南向全球市场慢开放同时也促进了跨境与外商投资的增长。截止2022年初，跨境资本流入为7.63亿美元。

2022年9月15日，海南省人民政府发布《海南省人民政府关于印发海南自由贸易港享受个人所得税优

惠政策高端紧缺人才清单管理暂行办法的通知》，自2023年1月1日起施行。这一更新进一步阐明了申请海南个人所得税优惠应符合的条件。

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《自贸港法》的学习，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。

### 2022版《鼓励外商投资产业目录》

国家发改委（NDRC）和中华人民共和国商务部（MOFCOM）于2022年10月29日发布《鼓励外商投资产业目录》（以下简称《目录》），自2023年1月1日起施行。《目录》共包括两部分，一是全国鼓励外商投资产业目录，二是中西部地区及东北地区外商投资优势产业目录。2022版《目录》施行后，2020版《目录》将废止。新版目录共计1474项内容，较2020版增长19%。这表明了中国进一步开放经济、加大投资力度的决心。也表明中国投资市场未来将会为外商投资者提供更多优惠。中西部地区及东北地区外商投资优势产业目录新增占总新增内容的84%，同中共二十大推进共同富裕的重要主题步调一致。

### 商务部、科技部《关于进一步鼓励外商投资设立研发中心的若干措施》

2023年1月11日，国务院办公厅转发商务部和科学技术部《关于进一步鼓励外商投资设立研发中心的若干措施》。该措施彰显了外商投资研发中心在中国科技创新系统发展中的重要性。以下措施具体描述了扩大国际科技交流合作、加大力度支持外商投资在中国境内设立研发中心的目标。

- 支持科技创新：该措施要求优化技术创新服务，例



## New List in 2022 Catalogue of Encouraged Industries for Foreign Investment

The National Development and Reform Commission (NDRC) and the Ministry of Commerce (MOFCOM) released the *Catalogue of Encouraged Industries for Foreign Investment* (“the Catalogue”) on October 29, 2022, effective January 1, 2023. There are two sub-catalogues, the “national catalogue” which covers the entire country and the “regional catalogue” which covers the northeastern, western, and central regions. The Catalogue replaces its 2020 version, with a total of 1,474 items, which is an increase by 19 percent from the 2020 version. This indicates China’s intention to further open-up its economy and the increase in investment fields which will favor foreign investors. The regional catalogue additions make up 84 percent of all new entries, lining up with China’s efforts to promote common prosperity, one of the major themes of the 20th Party Congress.

## Ministry of Commerce and Ministry of Science and Technology Notice of Several Measures to Further Encourage Foreign Investment to Establish R&D Centers

On January 11, 2023, the General Office of the State Council forwarded the Ministry of Commerce and the Ministry of Science and Technology on the *Notice of Several Measures to Further Encourage Foreign Investment to Establish R&D Centers*. The measure emphasizes the importance of foreign-invested R&D centers in the development of China’s scientific and technology innovation system, and the following measures describe its goals to expand international scientific and technological exchanges and cooperation and increase support for foreign investment in China’s R&D centers:

- **Support scientific and technological innovation:** The measure calls for the optimization of technological innovation services such as implementation of tax policies which support scientific and technological innovation and simplification of application materials as well as encouragement for basic research such as supporting foreign-funded R&D centers the use of large-scale scientific research instruments and locality support for infrastructure construction, equipment purchase, talent supporting services, and operating funds. Furthermore, a more collaborative environment between industry, university, and research entities, the establishment of open innovation platforms, and smoother processes for participation in government projects are all encouraged.
- **Improve the convenience of research and development:** To improve the convenience of research and development, the State Council urges for more support towards the cross-border flow of research and development data as allowed by the law such as implementing relevant laws and regulations (e.g. Cyber Security Law, Data Security Law, Personal Information Protection Law). Furthermore, optimizing the management process of intellectual property transfer and technology import

and export and the customs clearance and supervision process of scientific research materials are also major goals to increase convenience.

- **Encourage the introduction of overseas talents:** To encourage the introduction of overseas talents, several recommendations have been made including an effort to improve the convenience of overseas talents working in China, to encourage overseas talents to apply for professional titles, to strengthen incentives and funding for overseas talents, and to facilitate the receipt and payment of cross-border funds for overseas talents. This involves support for housing, children’s education, spouse employment, medical security, etc. to these overseas talents, and the handling of real and compliant cross-border fund receipt and payment services for overseas talents by financial institutions.
- **Improve the level of intellectual property protection:** To improve the level of intellectual property protection, recommendations by the measure include acceleration of the improvement of the commercial secret protection rule system, strengthening of the construction of intellectual property protection centers, and improving the level of law enforcement of intellectual property rights.

## General Office of the State Council on Promoting Foreign Trade regarding Opinions on Maintaining Stability and Improving Quality

On May 17, 2022, the General Office of the State Council issued *Opinions on Maintaining Stability and Improving Quality on Promoting Foreign Trade*. In order to thoroughly help foreign trade companies cope with the difficulties and challenges, improve the quality of imports and exports, and help stabilize the economy, industrial, and supply chains, the following opinions were stated:

- **Strengthen the production and operation guarantee of foreign trade enterprises:** An emphasis has been placed on strengthening the production and operation guarantee of foreign trade enterprises by an established service guarantee system by all localities to quicker problem-solving services for foreign trade enterprises.
- **Promote the smooth transportation of foreign trade goods:** The *Notice of the State Council on the Joint Prevention and Control Mechanism of the Novel Coronavirus Infection and Pneumonia Epidemic on Effectively Doing a Good Job in Freight and Logistics* requires foreign trade goods to be included in the scope of important materials and ensure the smooth flow of freight logistics. This means that foreign trade enterprises can apply for vehicle passes for the transportation of key material. Wait times are to be reduced, air cargo capacity are to be more efficiently operated, and the customs clearance and operations process at railway ports is to be improved in efficiency.
- **Enhance the function of maritime logistics services to stabilize foreign trade:** Market supervision in the

如实施支持科技创新的税收政策和简化申请材料，同时鼓励基础研究，例如支持外资研发中心使用大型科研仪器以及地方支持基础设施建设、设备采购、人才配套服务和运营资金。同时鼓励构建产业、大学以及研究实体之间更加融洽的合作环境、建立开放创新平台、简化政府项目参与流程。

- 提高研发便利性：为了提高研发便利性，国务院敦促在法律允许的范围内对研发数据的跨境流动给予更多的支持，例如推行相关法律法规（如《网络安全法》、《数据安全法》、《个人信息保护法》）。此外，完善知识产权转让、技术进出口、清关以及科学研究材料监管的管理流程也是提高便利性的重要目标。
- 鼓励海外人才引入：为鼓励海外人才引入，建议加大力度提高海外人才在中国境内工作的便利性、鼓励海外人才申请职称、为海外人才提供更多激励政策和资金以及加速海外人才跨境资金收付。以上支持政策覆盖住房、子女教育、伴侣就业、医疗安全等方面，也覆盖由各金融机构向海外人才提供的真实合规的跨境资金收付服务。
- 加大知识产权保护力度：为加大知识产权保护力度，该措施所建议的内容包括：加速完善商业秘密保护规则体系、推进构建知识产权保护中心以及加大知识产权保护执法力度。

## 国务院办公厅发布《关于推动外贸保稳提质的意见》

2022年5月17日，国务院办公厅发布《关于推动外贸保稳提质的意见》。为了全面帮助外贸企业充分应对困难挑战、提高进出口商品质量以及维稳经济、产业链和供应链，给出以下意见：

- 加大力度保障外贸企业生产经营。各地建立服务保障体系，加大力度重点保障外贸企业生产经营、为外贸企业解决问题。
- 加大力度保障外贸产品运输顺畅。《国务院应对新型冠状病毒感染肺炎疫情联防联控机制关于切实做好货运物流保通保畅工作的通知》，将外贸产品列入关键材料，要求确保货运物流顺畅。鉴于此，外贸企业可以申请车辆通行证以运输关键材料。等待时间得以缩短，航空货运得以高效开展，铁路港口清关及运营流程也变得更为高效。

- 提高海运物流服务能力以维稳外贸。符合相关法律法规的国际航运市场监管亟待完善。同时，各地应提高协调协同能力，完善货物运输物流系统。
- 加速跨境电商发展，提质增效。《意见》借鉴跨境电商出口海外仓监管模式，出台便利跨境电商出口商品及时退换货的政策，及时开展试点，处理好税率问题，推出必要制度以引导企业充分利用现行出口退税政策。
- 加大力度支持出口信用保险。为提高出口信用保险额，建议中国出口信用保险公司支持外贸企业在不违反相关法律法规的前提下开发多元化市场。
- 加大力度支持进出口信贷。《意见》进一步要求支持银行业金融机构摒弃以往盲目扣贷、抽贷、断贷、压贷的做法，特别是对发展前景良好但暂时受困的外贸企业。同时敦促银行业金融机构满足各企业合理的资本需求。
- 加强对中小微外贸企业的财政支持。为加强对中小微外贸企业的财政支持，要求各地加强政府、银行和企业之间的联系，并推出“清单样式管理”。此外，鼓励对中小微外贸企业提供出口信用保险的举措。
- 助推外贸企业能力建设以应对汇率风险。为助推外贸企业能力建设以应对汇率风险，建议保证人民币汇率基本稳定，同时各地应当为外贸企业提供更多的公共服务，例如针对汇率套期保值的培训和咨询服务；鼓励银行业金融机构对外汇产品进行革新完善；提高基层银行业金融机构服务能力；提高首次外汇对冲账户数量；提高业务办理便利性；通过内部评估和激励政策加大力度发展外汇。
- 持续完善跨境交易人民币结算环境。为持续完善跨境交易人民币结算环境，建议支持中国人民银行本地分行以及商务主管部门的发展，加强针对跨境交易人民币结算的合作与训练。要求分行为外贸公司提供全面金融服务，包括人民币交易融资与结算，同时完善产品、提供更具创新性的服务。
- 推动企业更好地利用网络渠道扩展贸易交易。建议加快中国进出口商品交易会等展会的数字化、智能化建设，加强与跨境电商平台的联动和互促，积极应用虚拟现实、增强现实、大数据等技术。同时，鼓励举办云展览、虚拟展位等新型展览模式。此外，鼓励举办国家级展会、专业展会、专题展会，帮助企业利用网络渠道，增加订单数量。鼓励商会、贸

field of international shipping in accordance with laws and regulations is to be improved and all localities are expected to coordinate and assist in the logistics of goods transportation.

- Promote the accelerated development of cross-border e-commerce to improve quality and efficiency: Taking inspiration from the cross-border e-commerce export overseas warehouse supervision model, the opinions are for an introduction of policies that facilitate the return and exchange of cross-border e-commerce exports in a timely manner, carry out pilot projects in a timely manner, handle tax rates, and set forth the systems necessary to guide enterprises towards the full use of the current export tax rebate policy for the goods that have been sold.
- Increase export credit insurance support: To increase export credit insurance, the opinions encourage China Export and Credit Insurance Corporation to support foreign trade companies to develop diversified markets within laws and regulations.
- Increase credit support for import and export: This opinion further entails supporting banking institutions to move away from previous practice of blindly holding back loans, withdrawing loans, cutting off loans, or suppressing loans, especially for foreign trade enterprises that have good development prospects but are temporarily trapped. It urges banking institutions to meet the reasonably capital needs of enterprises.
- Strengthen financial support for small, medium, and micro foreign trade enterprises: To strengthen financial support for small, medium, and micro foreign trade enterprises, all localities are asked to strengthen the connection between government, bank, and enterprise, and to carry out a “list-style” management. Additionally, increasing the support of export credit insurance for small, medium, and micro foreign trade enterprises is encouraged.
- Accelerate the improvement of foreign trade enterprises’ ability to deal with exchange rate risks: To improve foreign trade enterprises’ ability to deal with exchange rate risks, recommendations are made to maintain the basic stability of the RMB exchange rate, for all localities to provide foreign trade enterprises with more public services such as training and consultation on exchange rate hedging, encourage banking institutions to innovate and optimize foreign exchange products, improve the service capabilities of grassroots banking institutions, increase the number of first-time foreign exchange hedging accounts, improve the convenience of business handling, and strengthen support for foreign exchange through internal assessment and incentives.
- Continue to optimize the RMB settlement environment for cross-border trade: In order to continue optimization of the RMB settlement environment for cross-border trade, recommendations are made to support local branches of the People’s Bank of China and competent commercial departments to strengthen cooperation and training on cross-border RMB settlement. Branches are asked to provide foreign trade enterprises with comprehensive financial services covering RMB trade financing and settlement and to strengthen their products and create more innovative services.
- Promote enterprises to make good use of online channels to expand trade transactions: Recommendations have been made to accelerate the digital and intelligent construction of exhibitions such as the China Import and Export Fair, strengthen the linkage and mutual promotion with cross-border e-commerce platforms, and actively apply virtual reality, augmented reality, big data, and other technologies. New exhibition modes such as cloud exhibitions and virtual booths are also highly encouraged. Furthermore, national exhibitions, professional exhibitions, and special exhibitions are encouraged to help companies take advantage of online channels and increase its orders. The chamber of commerce, trade promotion agencies, agencies stationed abroad, and associations of overseas Chinese-funded enterprises are encouraged to actively help exhibition organizers and exhibitors connect with buyers overseas.
- Encourage innovative, green, and high value-add products to the international market: It is encouraged for local industry, commerce, traditional Chinese medicine, and other departments to support pharmaceutical companies by members of the International Human Drug Registration Coordination Conference, the Pharmaceutical Inspection Cooperation Program, the World Health Organization, etc. All localities are also asked to create a favorable policy environment and to make good use of relevant funds such as special funds for foreign economic and trade development. Regions are also encouraged to develop, expand, and improve the quality of second-hand car export business.
- Strengthen the cultivation and construction of import promotion platforms: Important promotion platforms are to be further developed by better leadership, creating a new batch of important trade promotion and innovation demonstration zones, expanding the import of high-quality products, and improving consumption.
- Support the stable development of processing trade: To support the stable development of processing trade, recommendations are made regarding increasing stable development of labor-intensive foreign trade industries in China, guarantee jobs, and help rural revitalization and coordinated regional development. Products with high added value and low pollutant output such as large medical equipment and intelligent robots are to be incorporated into the catalog of maintenance products.

### US Creating Helpful Incentives to Produce Semiconductors and Science Act of 2022 (CHIPS Act)

The US CHIPS Act was signed into law on August 9, 2022. The CHIPS Act provides roughly US \$280 billion in funding for domestic research and manufacturing capacity of semiconductors. US \$200 billion is for R&D and commercialization,

易促进机构、驻外机构、海外中资企业协会等，积极帮助展会主办方和参展商与海外买家建立联系。

- 鼓励创新、绿色、高附加值产品流入国际市场。鼓励当地产业、商业、中药及其他部门支持国际人用药品注册技术协调会成员、药品监管合作计划、世界卫生组织旗下的制药公司。要求各地创造一个利好政策环境，更好利用相关资金尤其是特定资金发展对外经济贸易。同时鼓励各地区发展、扩大、提高二手车出口业务质量。
- 加强对进口促进平台的培养与建设。在更出色的领导下，重点促进平台将进一步发展，进而创立新一批重点贸易促进和创新示范区，增加高质量产品进口量，促进消费。
- 支持加工贸易稳定发展。为支持加工贸易稳定发展，建议加大力度保证中国劳动密集型外贸产业的稳定发展，保障就业，助力乡村振兴和区域协调发展。高附加值、低污染的产品，例如大型医疗设备和智能机器人，将列入维修产品目录。

## 美国《2022年创造有利半导体生产的激励措施和科学法案》（以下简称《芯片法案》）

美国《芯片法案》于2022年8月9日正式签署为法律。《芯片法案》提供近2800亿美元，资助美国半导体研究和制造产能发展。其中2000亿美元用于研发和商业化，剩余的部分用于发展半导体制造业、劳动市场、税款抵减、前沿技术相关项目以及无线供应链。

具体而言，第103条禁止联邦财政援助的接受方在中国投资制造半导体，或在中国从事任何“涉及半导体制造的重大扩张”的重大交易。

为保护美国国家安全、保障国外政策利益，美国商务部工业与安全局于2022年10月7日发布两条新规。第一条，针对特定先进计算半导体芯片、超级计算机终端使用相关交易以及与《实体清单》上的实体进行的交易均颁布出口限制。第二条，针对特定半导体量产料件以及特定集成电路(IC)终端使用相关交易出台全新控制措施。

## 美国可能进行的对外投资审查

关于建立对外投资审查机制的讨论始于2022年，要求政府批准对特定境外投资进行审查。美方提出的立

法草案为《国家关键能力预防法案(2022)》。草案提出建立一个国家安全审查流程，对针对美国境内关键能力并来自“受关注国家”(如中国、俄罗斯)的境外投资进行审查。然而在美国国会内部，对于该草案的意见仍不统一。支持者表示该草案可以带来许多好处，比如能够提升中美企业贸易透明度。反对者质疑该草案可能会加大对外商投资的行政权力，原因在于，草案对国家安全的定义模糊，一旦通过，对国家安全也会带来影响。鉴于涉及到的产业部门众多，这就意味着需要成立新的执法机构，同时也会为美国经济和政府带来沉重的后勤负担。

## 结论

2022年受新冠疫情持续影响，全球经济复苏态势缓慢。中国政府于2023年2月17日起宣布新冠时代终结，因此2023年全球经济复苏形势较前年更乐观。2022年，经政府不懈努力，中国宏观经济稳定增长，吸引外资数额达到1891.3亿美元，同比增长8%。商会及其会员对中国所取得的成就表示赞赏。为了进一步实现《第一阶段经贸协议》项下承诺，中国政府于2022年持续压减《负面清单》，出台各种法律法规，为中国企业和外商投资企业构建一个更加公平的竞争环境。商会成员均对中国市场表现出浓厚的兴趣。

但是，如本章所述，在华美国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。

## 建议

### 对中国政府：

- 继续履行开放承诺，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，使外商投资企业在能够提供更全方位的服务。
- 在以网络安全为代表的领域中，更好地统筹

and the rest is for semiconductor manufacturing, workforce development, tax credits, programs aimed at leading-edge technology and wireless supply chains.

Specifically, Section 103 prohibits recipients of Federal financial assistance to invest in manufacturing semiconductors in China or to engage in any significant transaction “involving the material expansion of semiconductor manufacturing” in China.

Furthermore, on October 7, 2022, the Department of Commerce’s Bureau of Industry and Security (BIS) released two rules related to protect US national security and foreign policy interests. Firstly, there are now restrictive export controls on certain advanced computing semiconductor chips, transactions dealing with supercomputer end-uses, and transactions which involve entities on the Entity List. Secondly, new controls have been imposed on certain semiconductor manufacturing items and transactions dealing with certain integrated circuit (IC) end uses.

### Potential Outbound Investment Screenings by the US

Talks of outbound investment screenings began in 2022, calling for instituting a requirement on obtaining government approval for certain outbound investments. The drafted legislation proposed is called the *National Critical Capabilities Defense Act of 2022*, and requires a national security screening process for outbound investments that are deemed critical capabilities in the United States if they are related to a country of concern e.g., China or Russia. However, there is still mixed reactions towards the proposed legislation in the US Congress, with proponents alluding to benefits such as more transparency between US companies and China for the US; however, opponents question the risk of increased executive power over foreign investment due to the current legislation’s ambiguous details regarding the use of national security and the implications if such a law were passed. For all the sectors that are covered, this would mean the creation of a new bureaucracy to carry out the new legislation as well as significant logistical burdens for both US business and the government.

### Conclusion

Although the recovery of the global economy in 2022 was slowed due to the continuing COVID pandemic, the outlook for 2023 is cautiously more optimistic as the Chinese government announced the end of the COVID pandemic era on February 17, 2023. The Chinese government maintained stable growth of the macro economy through its efforts, and successfully attracted foreign capital at the amount of 189.13 billion US dollars (in 2022), with a growth rate of 8 percent. AmCham China and our members applaud such an achievement. In addition, in order to further fulfill its commitments

under the Phase I Agreement, the Chinese government continued narrowing down the items on the Negative List in 2022 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.

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*

- Continue fulfilling its commitments regarding an opening-up policy by further shortening the Negative List, 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.

协调对同一或类似事项拥有管辖权的多个部门对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。

# Tax Policy

## Introduction

China's tax policy is heavily influenced by changes in the macroeconomic environment. The State Administration of Taxation strives to create tax policies that encourage foreign investment and stimulate domestic economic growth, rather than solely focusing on increasing tax revenue.

In 2020, the fiscal and tax authorities issued a series of preferential tax policies to support pandemic prevention and control, as well as the resumption of work and production. Most of these policies were extended until the end of 2021. The adoption of the Stamp Tax Law also reduced the tax burden on taxpayers by simplifying tax items and rates. Furthermore, the implementation of digital electronic invoices in three areas has opened up new opportunities for corporate finance and tax management, while promoting digital upgrading and intelligent transformation of tax collection and administration, and reducing the cost of tax collection and payment.

The revision of the Administrative Penalties Law, adoption of a new tariff adjustment plan, and introduction of duty-free policies for imports during the 14th Five-Year Plan period, as well as the improvement of export-related policies, all serve to further enhance China's tax policies. Additionally, tax policies are being improved to support research and development, scientific and technological innovation, and entrepreneurship. The enhancement of advance pricing arrangements and mutual negotiation procedures helps to avoid double taxation. Furthermore, China is promoting regional preferential tax policies to fuel the development of regional economies. All of these measures aim to attract investment, stimulate economic growth, and promote sustainable development.

Although AmCham China appreciates recent tax policies, foreign-invested companies and taxpayers still face long-term challenges in China. For instance, there are inappropriate restrictions on favorable policies for R&D activities under the current economic development policy, and eligibility for tax relief for internal restructuring of cross-border groups is difficult to obtain. Moreover, repeated collection of consumption taxes and non-compliance phenomena of evading consumption tax have emerged due to the lack of effective local supervision and inspection.

AmCham China welcomes Supportive measures, but also urges the Chinese government to ensure that preferential tax policies are implemented clearly and consistently, and provided on an equal basis to foreign-invested enterprises. We hope that the government will review the challenges and issues proposed in this chapter and work with us to advance the reform of tax systems, creating a better business environment.

## Fiscal and Tax Policies in Response to the Pandemic

To address the severe economic and social impacts of COVID-19, the fiscal and tax authorities in China implemented a range of preferential tax policies in 2020 to support pandemic prevention and control, as well as the resumption of work and production. However, the implementation of most of these policies was postponed to late 2021, in order to provide targeted assistance to market players affected by the pandemic.

Despite these efforts, the pandemic continued to cause economic disruptions in 2022. Additionally, over the past two years, frequent natural disasters in both international and domestic markets have presented even more challenges for enterprises. In light of these ongoing difficulties, AmCham China supports financial and tax relief measures for industries and market players affected by COVID-19 and natural disasters. We recommend that:

- Regional fiscal and tax preferential policies are appropriately introduced to help affected social subjects' tide over difficulties brought by COVID-19 and natural disasters;
- Responsible market entities are encouraged to provide support to areas affected by the pandemic and natural disasters, and preferential policies are introduced for additional deductions for donations and other expenditures as appropriate.
- 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.)

# 税务政策

## 引言

**中** 国因应宏观经济环境变化而制定其税收政策。国家税务总局制定税收政策并非仅以创造税收收入为主要目标，而同时期待这些税收政策起到鼓励外国投资、刺激国内经济增长的作用。

2020 年财税部门出台的一系列支持疫情防控和助力复工复产的税费优惠政策大部分延期执行至 2021 年底；《印花税法》通过，对税目税率进行了适当简并，减轻了纳税人税负；三地全电发票试点方案落实，在推进税收征管数字化升级和智能化改造，降低征纳成本的同时也对企业财税管理也带来了新机遇。

《行政处罚法》的修订，新关税调整方案通过，“十四五”进口免税政策出台，出口相关政策进一步完善；税收政策也在不断完善，向研发、科技创新和创业倾斜。预约定价安排计划完善预约定价安排和相互协商程序机制进一步被推动，以避免双重征税；同时，中国也在进一步推动区域性税收优惠政策，促进区域经济蓬勃发展。上述这些措施都旨在吸引投资、刺激经济增长、促进可持续发展。

虽然近期出台的税收政策很受商会欢迎，但在华经营的美国及其他外商投资企业和纳税人仍面临长期挑战，如在目前的发展方针下研发活动的扶持政策仍有不适当的限制，申请跨境集团内部重组税务减免的资格困难重重，存在重复征收消费税问题，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。

商会欢迎这些支持措施，并敦促中国政府确保税收优惠政策明确且一致地执行、平等地提供给外商投资企业。我们希望政府可以审阅本章提出的挑战和问题，并与商会合作，继续改革税制，改善营商环境。

## 应对疫情的财税政策

为应对新冠疫情对经济社会发展带来的严峻影响，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，新冠疫情对经济的影响仍在持续。近两年，频发的国际、国内自然灾害也为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：

- 基于新冠疫情及自然灾害影响，适度出台区域性财税优惠政策，帮助受影响社会主体渡过难关；
- 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，特殊经济区域的建立对新冠疫情下的经济增长及高质量发展起到了重要作用。2021 年，从财税制度领域，值得关注的特殊经济区域及其优惠财税政策主要包括：

### 横琴粤澳深度合作区

横琴粤澳深度合作区（简称“横琴合作区”）于 2021 年 9 月正式公布，区域涵盖横琴与澳门特别行政区之间，以及横琴与中华人民共和国关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



## Regional Preferential Tax Policies

The current economic situation is complex and volatile due to the ongoing COVID-19 pandemic. However, the establishment of special economic zones has been instrumental in promoting economic growth and high-quality development. In 2021, there are several special economic regions that deserve attention with respect to fiscal and taxation policies.

### *Guangdong-Macao In-Depth Cooperation Zone in Hengqin*

One such region is the Guangdong-Macao In-Depth Cooperation Zone in Hengqin, which was officially announced in September 2021. This zone 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. The Cooperation Zone in Hengqin benefits from various preferential fiscal and tax policies, including:

- Preferential policies of enterprise income tax: For eligible industrial enterprises in Cooperation Zone in Hengqin, the enterprise income tax shall 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 in the period when the expense is incurred; income derived from new overseas direct investment by tourism, modern service industry and high-tech industry enterprises set up in the Cooperation Zone in Hengqin shall be exempted from enterprise income tax.
- Individual income tax policy for domestic and foreign talents: For high-end talents and talents in short supply at home and abroad working in the Cooperation Zone in Hengqin, the portion of their individual income tax burden exceeding 15 percent shall be exempted; for Macao residents working in the Cooperation Zone in Hengqin, the portion of their individual income tax burden exceeding the Macao tax burden shall 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 shall 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 links in key

fields such as integrated circuits, artificial intelligence, biomedicine, civil aviation, etc.; eligible corporate venture capital enterprises shall 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 shall 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 institutions purchasing domestic equipment for self-use shall be given a tax rebate. Support the implementation of policies of Yangshan Special Comprehensive Free Trade Zone in specific areas of special customs supervision areas where conditions are met.
- Other preferential tax policies: Study and explore 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 fiscal and tax authorities jointly released relevant documents, stipulating that enterprises in encouraged industries set up in Qianhai Shenzhen-Hong Kong Modern Service Industry Cooperation Zone (hereinafter referred to as “Qianhai Cooperation Zone”) can be levied on enterprise income tax at a preferential rate of 15 percent. Relevant policies expired on December 31, 2020.

In May 2021, the fiscal and tax authorities released another blockbuster document, which further expands the scope of industries that can enjoy preferential enterprise income tax policies on the basis of continuous implementation of the preferential enterprise income tax rate in Qianhai Cooperation Zone and relaxes the standard for the proportion of prime operating income to the total income that meets requirements. The policy went into force from January 1, 2021 to December 31, 2025.

AmCham China welcomes and supports the introduction of preferential policies and regional systems, so the majority of member companies and market entities can enjoy a more friendly and convenient tax environment.

## Tax Legislation and Reform Draft

### *Stamp tax*

On June 10, 2021, the 29th Session of 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 force on July 1, 2022. The *Interim Regulations of the People's*

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”管住的税收政策体系等。

## 浦东新区

《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；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。
- **进出口相关的优惠政策：**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，提出了对设立在前海深港现代服务业合作区（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 5 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。

商会欢迎并支持财税部门出台具有区域性特色的优惠政策制度，以便在促进区域经济蓬勃发展的同时，从财税角度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》”），将于 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，对税目税率进行了适当简并，以减轻纳税人税负，并根据当下经济现实对现行税制作出部分调整。随着《印花税法》的出台，我国现行 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》总体上保持了现行税制框架和税负水平基本不变。其主要变化，举例如下：

- **税目：**比如新增“融资租赁合同”作为单列税目；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（即适用税率为 0.025%）的政策上升到了法律层面。
- **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。

*Republic of China on Stamp Tax* promulgated by the State Council on August 6, 1988 (hereinafter referred to as the “*Interim Regulations*”) shall be abrogated simultaneously.

The *Stamp Tax Law* adopted this time generally maintains the framework of the current stamp tax system, appropriately simplifies the tax items and rates to reduce the tax burden of taxpayers, and makes partial adjustment to the current tax system based on current actual 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 terms of tax legislation.

Compared with the *Interim Regulations* and other existing provisions, the current tax framework and tax burden level of the *Stamp Tax Law* generally remain unchanged. The main changes are as follows:

- **Tax items:** For example, add “financial leasing contract” as a separate tax item; take “securities transactions” as a separate taxable item and add the issuance of share-based depository receipts for trading objects in addition to stocks and delete the items of “rights, licenses” and “other account books.”
- **Tax rate:** lower the applicable tax rate for contracts for work, construction projects, and transportation from 0.05 percent to 0.03 percent; lower the applicable tax rate of “letter of transfer of trademark exclusive right, copyright, patent right, and proprietary technology use right” in “property transfer documents” from 0.05 percent to 0.03 percent; and stipulate the policy of halving stamp tax on capital books (i.e., applicable tax rate of 0.025 percent) from a legal level.
- **Taxation basis:** The *Stamp Tax Law* makes clear whether the tax basis includes VAT tax from a legal level, that is, the listed value added tax is excluded; this law also stipulates the method for determining the tax basis under special circumstances that 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 scattered in different documents and provides for more statutory deductions and exemptions. For example, in order to adapt to the development trend of e-commerce in recent years, this law stipulates that electronic orders made by individuals and e-commerce operators are exempted from stamp tax; it also authorizes the State Council to reduce or exempt from stamp tax for residents’ housing demand guarantee, restructuring and reorganization of enterprises, bankruptcy, support for the development of small and micro enterprises and other cases, which is also reported to the Standing Committee of the National People’s Congress for filing.
- **Tax payment method and period:** In the *Stamp Tax Law*, the current method of own tax payment is not abolished. However, in the *Interim Regulations*, the

stipulation that “If the tax payable is less than 10 cents, it will be exempt from stamp tax” is canceled. If the amount of tax payable is more than 10 cents, the final amount of tax less than 5 cents is not counted, and the final amount of tax less than 5 cents is calculated as 10 cents”; in terms of the period of tax payment, the *Stamp Tax Law* makes clear that stamp tax is levied quarterly, annually, or per time. Stamp tax 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 bank settlement within five days from the end of each week.

- **Location of tax payment:** The *Stamp Tax Law* clearly defines the location of tax payment. For example, if the taxpayer is an organization, it shall declare and pay stamp tax to the local competent tax authorities where its establishment is located. Where the real property right is transferred, the taxpayer shall report and pay stamp tax to the local competent tax authorities where the immovable property is located.
- **Taxation administration:** According to the *Stamp Tax Law*, where a taxpayer is an entity or individual outside China and has an agent within China, its domestic agent shall be the withholding agent; taxpayers who have no agents in China shall declare and pay the stamp tax on their own, with specific measures to be formulated by the competent tax authorities under the State Council. Moreover, the *Stamp Tax Law* stipulates that the securities registration and clearing institution is the withholding agent of stamp tax on securities transactions. Different from the *Interim Regulations*, the *Stamp Tax Law* stops retaining specific penalty provisions that independently apply to stamp tax, and 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* and relevant laws and regulations.

## Pilot of Digital Electronic Invoices in Three Places

On November 30, 2021, the Guangdong Provincial Tax Service, State Taxation Administration, the Shanghai Municipal Tax Service, State Taxation Administration, and the Inner Mongolia Autonomous Region Tax Service released the *Notice on Carrying out the Pilot of Comprehensive Digital Electronic Invoices*. This Notice mandates the implementation of the pilot of comprehensive digital electronic invoices through the national unified electronic invoice service platform starting December 1, 2021. The purpose of the pilot is to provide taxpayers with free online services for digital electronic invoice issuance, delivery, inspection, and other related services within 24 hours. This initiative aims to realize electronic invoicing in all fields, links, and elements.

The pilot of comprehensive digital electronic invoices is a critical measure by tax authorities to deepen the reform of tax

- **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。

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

collection and administration, promote digital upgrading, and enhance intelligent transformation of tax collection and administration in all aspects. It also aims to reduce the cost of collection and payment. Compared to the previous methods for the management of paper or electronic invoices, the contents of this announcement have undergone significant changes that have profound implications for future tax collection and administration.

- **New invoice type:** new types of invoices under digital electric invoices include electronic invoices (special VAT invoices) and electronic invoices (ordinary invoices).
- **Cancellation of specific format requirements:** Digital electric invoices may be delivered in the form of data messages instead of specific formats such as PDF and OFD. It allows enterprises to customize invoice elements and eliminate the concept of combined invoice.
- **Cancellation of special-purpose equipment requirements:** With a universal digital certificate, taxpayers can not only issue digital electric invoices on the computer webpage, but also issue digital electric invoices at anytime and anywhere through the client and mobile terminal after all functions of the e-invoice service platform are launched.
- **Credit line:** Tax authorities shall, by relying on dynamic “credit + risk” system and in light of factors such as the taxpayer’s risk degree, tax payment credit rating, and actual business situation, exercise quota management over the total amount of invoices issued by pilot enterprises within a natural month.
- **Application based on assigned invoice code:** In this pilot, the application process of specific invoice number segment is eliminated through “the assignment code system”. After the invoice information is generated, the system will automatically assign a unique invoice number.
- **New means of delivery:** Under the mode of digital electric invoices, the “tax digital account” is taken as delivery entrance. After digital electric invoices are issued, the invoice information will be automatically sent to the “tax digital account” of both the invoicing party and the drawee, immediately available for inquiry and downloading by enterprises receiving the invoice.
- **Multistate tracking:** The pilot of digital electric invoices has added additional management over the invoice “entry status.” This practice helps to promote entry-archiving integration, supports direct connection with ERP and other financial software of large-size enterprises in the future, and enables integrated operation of invoice reimbursement, entry and archiving.
- **New process of red-letter invoice:** The “entry status” of digital electric invoices also affects the process of issuing red-letter invoices.

The implementation of digital electric invoices brings a significant change to the way tax authorities manage the invoice information chain, from issuance to filing. With this new system, tax authorities can fully monitor and control invoice information, leading to a profound impact on the digitization and intelligent transformation of tax collection and administration. However, this also presents new opportunities and challenges for enterprises in terms of fiscal and tax management. One of the benefits is the convenience of invoice issuance, as well as reducing the time difference between issuance and revenue recognition. Nevertheless, this reform also affects the management of issuance, entry methods, document filing, and tax risk control.

## Issues Related to Export Policies and Permanent Establishment

### *Analysis on the Influence of the Amendments to Administrative Penalties Law from the Perspective of Customs*

The *Administrative Penalties Law* of the People’s Republic of China was revised in January 2021 and came into force on July 15, 2021. This amendment provides a clearer definition of administrative penalties, introduces new types of penalties, and establishes regulations on comprehensive administrative enforcement, information disclosure, whole-process recording of penalties, legal review of major punishment decisions, among other things. These changes expand the authority to set penalties, adjust the scope of hearings, and set time limits for handling cases.

Given these changes, it is expected that a series of customs laws and regulations relating to administrative penalties, including the *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*, will be revised as well. These changes will have an impact on the production and operation activities of import and export enterprises. This article will briefly discuss the expected changes in administrative penalty rules of the customs based on the newly revised *Administrative Penalties Law*.

- **New circumstances in which no penalty is imposed:** In this amendment to the Administrative Penalties Law, the principle of “no penalty for the first violation” is introduced. It’s expected that the administrative penalty rules of the customs will also introduce this provision, and the “list of no penalty for the first violation” may be released in the future to clarify relevant matters. Moreover, the revised *Administrative Penalties Law* introduces new provisions concerning subjective fault. To this end, the procedural rules about subjective fault determination of the parties may be developed in the

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。

## 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有关的制度规定，适当扩大了行政处罚设定权限，同时对听证范围、办案期限等也作出调整。

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，以新修订的《行政处罚法》为基础，对海关行政处罚规则的预期变化作如下的简要讨论。

- **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，为此下一步在海关领域可能将研究出台有关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的体系中。

- **调整相关的时限规定**：为提高行政效率和公正执法，《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的修改，例如：除非法律、法规、规章另有规定，行政机关应当自行政处罚案件立案之日起九十日内作出行政处罚决定。现行的海关行政处罚规则尚未对此时限作出规定。海关行政处罚条例的修订是否会在上述九十日规定的基础上再作调整，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，海关行政处罚规则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等“三项制度”纳入《行政处罚法》是此次修订的一大亮点。这些内容未来也将在海关行政处罚的法规体系中得以充实。

基于上述讨论，我们建议企业应做好事前的风险防范工作，以提高依法治企能力，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，同时依法维护权益。

### 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》（简称“《协调制度》”）2022年转版同步调整，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年间完成最新一轮的修订无人机、玻璃车窗、通信天线等一批在国际贸易中颇具影响

field of customs in the future, in a bid to ensure the implementation of the above provisions.

- **Standardize the types of administrative penalties:** On the basis of warning, fine, confiscation of illegal income/property, order to suspend production or business, temporary seizure or revocation of license, administrative detention, and other existing types of administrative penalties, the revised *Administrative Penalties Law* introduces new categories such as notification of criticism, lowering of qualification level, restriction on production and business operation, order to close down, and restriction on business operation. As the entry and exit inspection and quarantine are integrated into the customs system and the customs enterprise credit management and AEO (Authorized Economic Operator) systems are implemented, the types of customs administrative penalties in the future will be expanded as per the provisions of the *Administrative Penalties Law*. It's expected that administrative penalties in the field of inspection and quarantine as well as the promotion and demotion system of the enterprise credit rating management of customs will be integrated into the system of customs administrative penalties.
- **Adjust relevant time limits:** To improve administrative efficiency and promote fair law enforcement, the *Administrative Penalties Law* adjusts key time limits for handling cases, hearing cases and accountability, from which it can be foreseen 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 organ shall make a decision on administrative penalty within 90 days from the date of filing the case for administrative penalty. In current customs administrative penalty rules, no time limit has been 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 the principle of 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 of the customs.
- **Enhance the transparency of the punishment process:** One of the highlights of this amendment is to incorporate three systems, namely, the system of publicity for administrative law enforcement, the system of recording the whole process of law enforcement and the system of legal review of major law enforcement decisions into the *Administrative Penalties Law*. In the future, these contents will also be enriched in the legal system of the customs administrative penalty.

In light of the aforementioned discussion, it is recom-

mended that enterprises prioritize risk prevention to bolster their ability to manage operations in accordance with legal requirements, strengthen compliance management, and stay updated on regulatory changes. In the event of potential administrative penalties, enterprises should proactively establish a response mechanism, conduct impact assessments, cooperate with investigations, and protect their rights and interests in compliance with the law.

### *Tariff Adjustment Plan for 2022*

The Customs Tariff Commission of the State Council has recently released the Tariff Adjustment Plan for 2022 (Shui Wei Hui [2021] No. 18), specifying that tariff items and import & export tariffs on some commodities will be adjusted from January 1, 2022. Noteworthy, the items of import and export tariffs in China in 2022 will be adjusted synchronously with the change version of Harmonized Commodity Description and Coding System (hereinafter referred to as "Harmonized System") in 2022, with the total number of 8-digit commodity codes upon adjustment reaching 8,930.

The adjustment aims to achieve several objectives, including diversifying import sources, expanding the import of high-quality consumer goods, advanced technology, key equipment, energy and resources, and implementing the important contents of the 14th Five-Year Plan. The plan aims to foster a new development pattern that promotes both domestic and international cycles and drives green and low-carbon development. In general, this adjustment mainly involves the following contents:

### *Transforming the Harmonized System and Meeting Industry Development Needs--Deep Involvement of China Customs in the Revision of the Harmonized System*

The latest round of revision of the Harmonized System has been completed in 2021, of which influential "Chinese solutions" in international trade to 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. For example, these revisions mainly include:

- To address the demands of advancing technology, trade of new products, and resolution of international trade conflicts, various updates have been made to the existing items and sub-items, including modifications to pertinent notes and provisions. For example: introduce new category of 88.06 for drones, and new sub-category of 8708.22 for glass windows, etc.
- To better align with international conventions and address the heightened global interest in this matter, novel items and sub-items have been introduced. For example, to address health concerns, new sub-item

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。这些修订主要包括，举例如下：

- 为了满足新技术发展及新产品贸易需求，解决国际贸易争端，新增部分品目、子目，并修订部分注释及条文。例如：为无人机新增品目88.06等，为玻璃车窗新增子目8708.22等。
- 为回应国际社会的普遍关注以及更好履行国际公约，新增部分品目和子目。例如，出于对健康问题的关注，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等。

### 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，对可提高车辆燃油效率并减少尾气排放的汽油机颗粒捕集器、可用于土壤修复的泥煤等环保低碳相关商品，实施较低的进口暂定税率。
- 其它实施低于最惠国税率的进口暂定税率情形，比如，为满足国内产业对关键零部件、原材料、资源等方面的需求，对高纯石墨配件，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关键零部件，实施较低的进口暂定税率。

### 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日起对东盟十国中的文莱、柬埔寨、老挝、新加坡、泰国、越南六国和中国、日本、新西兰、澳大利亚等四个非东盟成员国开始生效。因此，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的稳定，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”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。



of 3002.51 for cell therapy drugs and new sub-item of 3006.93 for placebo and blind kits for clinical trials are introduced.

*Focus on Meeting Domestic Economic Demand, Leverage on the International Market in a Coordinated Way--954 Items Are Subject to Temporary Import Tax Rates*

- In an effort to alleviate the financial strain on patients and promote overall health and well-being, the application of zero tariffs to radium chloride injections, a novel anti-cancer medication, will be implemented. Additionally, a reduced temporary tax rate for certain medical products, including intracranial thrombectomy stents and artificial joints, will also be introduced.
- To fuel green and low-carbon development of China's industries, low temporary import tax rates will be applied to environment-friendly and low-carbon commodities, such as particle traps for gasoline engines that can enhance vehicle fuel efficiency and reduce emissions as well as peat used for soil remediation.
- In certain cases, temporary import tariff rates that are lower than the MFN tariff rates may be applied. This can occur, for instance, to fulfill the needs of domestic industries for essential components, raw materials, and resources. As such, key components such as high-purity graphite parts, high-voltage cables for high-speed trains, membrane electrode assemblies for fuel cells, and bipolar plates will be subject to a reduced temporary 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 Partnership (RCEP) has entered into force 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.
- Aside from the RCEP, China applied tariff rates to select goods from 28 countries or regions in 2022, in accordance with existing free trade agreements and preferential trade arrangements. Notably, China will reduce tax rates even further in bilateral free trade agreements with several nations including New Zealand, Peru, Costa Rica, Switzerland, Iceland, South 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.

*Focusing on Industry Development Demand, Facilitating Industrial Transformation and Upgrading--Import and Export Tariffs on Many Goods will be Adjusted*

- To accommodate the growth of domestic industries and evolving market conditions, the temporary import tax rates on certain goods, including amino acids, lead-acid battery parts, gelatin, pork, and m-cresol, will be eliminated and the MFN rate will be reinstated. Additionally, export duties on phosphorus and crude copper have been raised to maintain strict limitations on industries that consume high levels of energy, pollute the environment, and deplete natural resources. This is aimed at driving the transformation and upgrading of these industries and promoting high-quality development.
- 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 from 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 Five-Year Plan Period*

In line with China's objectives of promoting scientific and educational advancement and fostering innovation-driven development, the Ministry of Finance, General Administration of Customs, and State Administration of Taxation jointly released the *Notice on Import Tax Policies Supporting Science and Technology Innovation* in April 2021. Under this policy, relevant import links for scientific research, technological development, and educational supplies that cannot be produced domestically or meet performance demands will be subject to tax reduction or exemption, as well as for books and materials imported by publication import institutions for the aforementioned purposes. This policy will remain in effect from January 1, 2021, to December 31, 2025.

In addition, the Ministry of Finance, General Administration of Customs and State Administration of Taxation released the *Notice on Administrative Measures for Import Tax Policies Supporting Science and Technology Innovation* during the 14th Five-Year Plan Period (hereinafter referred to as "Administrative Measures") as a supporting document for the *Import Tax Policies Supporting Science and Technology Innovation*, 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.

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科技部、国家发展改革委、工业和信息化部、教育部、文化和旅游部、中央宣传部，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 and 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，2022 年中国研发支出总额超过人民币 3 万亿元比 2021 年增长 10.4%。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、更有用和更有效。

2021 年度，财政部和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，进一步加强对研发和创新活动的政策支持。根据目前的经济发展方针，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，商会促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。还需注意的是 BEPS 2.0 的最低税额对可退还的税收抵免给予了更优惠的税收待遇。此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。这在当下宏观环境较为困难，各企业均寻求转型、重新定位的大背景下，可以提高和保障企业向高精尖方向发展得积极性。
- 制造型企业新产品、新工艺商业化量产前的试生产费用定性。由于行业特性的关系，每当制造型企业

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

Goods falling under Category 1 are exempt from import duties, import value-added tax, and consumption tax, while those under Category 2 are exempt from import value-added tax only. Approved foreign-funded research and development centers can also benefit from tax exemption, as well as other entities such as approved importers of publications with import permits.

It's important to note that the list of organizations eligible for duty-free policies is determined 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, provincial departments overseeing science and technology, finance, taxation and commerce, as well as customs overseeing local entities eligible for duty-free policies. For example, the approving departments for foreign-funded R&D centers include provincial commercial authorities, as well as provincial finance and taxation departments and customs overseeing 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 shall not be less than USD 8 million; where it is a non-independent legal entity (such as internal departments), the total R&D investment shall not be less than USD 8 million;
- No less than 80 full-time research and test development personnel;
- 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.

## Strengthening 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.

To provide more policy support for R&D and innovation activities, in 2021, the Ministry of Finance and State Administration of Taxation 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 Administration of Taxation, *Announcement No.13 [2021]* of the Ministry of Finance and State Administration of Taxation and *Announcement No.28 [2021]* of State Administration of Taxation. Under the current economic development policy, there are still inappropriate restrictions on policies in favor of R&D activities. In view of this, the AmCham China recommends as follows:

- All industries are allowed to implement additional deductions policy. At present, the industries listed in the Special Administrative Measures for Foreign Investment Access (Negative List) do not enjoy additional deductions, covering wholesale and retail, accommodation and catering, leasing and business services, entertainment, etc. In light of the professed desire of Chinese Government to shift the economy towards services as well as increasing input in IT application and digitization and transformation of traditional operation modes among various industries, AmCham China urges another review on restricted industries.
- Start-ups are in need of R&D tax credits such as cash rebates. Innovative start-ups at the early stage often suffer from 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 China consider establishing a similar mechanism. We should also note that, the minimum tax in BEPS 2.0 gives more favorable tax treatment to refundable tax credits. When assessing tax refundable, this can be used as a consideration.
- Introduce an additional deduction rate by stages to support innovative start-ups. By raising the amount of additional deductions for initial expenses, the support for innovative small enterprises can be maximized. For example, Hong Kong SAR (China) provides a 300 percent additional deduction for the first HKD 2 million (RMB 1.8 million, USD 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 becoming increasingly important.
- Enterprises in encouraged industries other than manu-

开发并生产一个新的产品或者应用一套新的工艺，在达到商业化量产指标之前（例如良品率、效率等），均需要经过一段时间的试生产和改进的过程。这一阶段的投入，在会计处理时通常直接冲减研发支出，在归集高新企业研发费用时亦被剔除。这些投入虽然一般不太会根本性地改变新产品或新工艺的设计、配方或者基础结构，但是却是验证一项新研发成果是否真正意义上可以应用的不可或缺的环节。如果能够通过解释或者立法，明确企业试生产新产品或者新工艺所发生的成本/费用可以作为高新技术企业的研发费用进行核算，对于制造型企业的创新投入，将会起到显著鼓励和提升作用。

- **大型样机研发投入费用的定性。**对于生产制造大型机械设备或者装备的企业而言，通常研发活动除了自主启发式的研发外，相当重要的一类研发活动是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。并且，由于研发出的样机价值较高，且一般均有实用价值，可以用于出售。对于此类的研发投入，目前会计上出于与销售配比的原则，一般计入主营业务成本进行核算，在归集高新企业研发费用时应被剔除。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，我们建议，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和协定规定最终确定新的全球税收制度体系的细则。对此，许多跨国企业正在研究可能需要对自身集团结构和供应链做出的调整，以促进未来的合规和缓解过度的税收风险。对与中国跨境经营的企业也是如此，许多企业将需要通过重组为其亚洲和中国业务的进一步发展打下良好的基础。

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的进展。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

facturing 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 and IT services in the context of digital economy. By extending the scope of application of this preferential policy, it will help speed up the pace of China's economic transformation and upgrading.

Regarding incentives for high-tech enterprises, AmCham China further recommends that:

- The optimization of proportions and compliance rules for income and R&D expenses is crucial for high-tech enterprises. However, existing laws and regulations can complicate the calculation of the proportion of income generated from high-tech products/services and R&D expenses, as they can be affected by the income from equity investment business, such as restructuring and disposal, which is not a regular occurrence for most enterprises but can have a significant impact. To address this, it is recommended that such income be excluded from the total income/income statistical calculation, except for investment companies. This can reduce uncertainty in evaluating high-tech enterprises, without compromising necessary structural adjustments. This is particularly important given the current macro environment and many enterprises seeking transformation and repositioning, as it can improve and sustain their motivation for advanced and sophisticated development.
- Trial production costs of manufacturing enterprises prior to commercialization of new products and new processes should be classified as R&D expenses of high-tech enterprises. Manufacturing enterprises usually need to go through a trial production and improvement period before achieving commercial mass production targets. This investment is excluded from R&D expenses of high-tech enterprises and is written off as a cost at the time of accounting treatment. However, these investments are an essential step to verify whether a new research result can be applied in a real sense. If these costs can be accounted for as R&D expenses of high-tech enterprises, it will significantly encourage and promote innovation among manufacturing enterprises. Therefore, it is suggested that legislation or interpretation clarify the nature of trial production costs and allow them to be accounted for as R&D expenses of high-tech enterprises.
- The nature of R&D investment for large prototypes produced by enterprises manufacturing large mechanical equipment or equipment should be reevaluated. In addition to independent heuristic R&D activities, these enterprises often engage in targeted R&D activities to meet the needs of the market or downstream customers. The prototypes developed are of high practical significance and may be sold to customers. Although the current accounting principles require such R&D

investment to be included in the main business cost in line with the principle of matching with sales, these investments are often quite innovative and advanced, leading to the emergence of intellectual property rights such as invention patents and utility models. Therefore, we suggest that the rigid rules of accounting should be reevaluated and the R&D investment for such large prototypes recognized as R&D expenses of high-tech enterprises. This will facilitate the transformation to advanced and sophisticated manufacturing processes and the upgrading of China's manufacturing industry.

### Great Difficulties in Obtaining Eligibility for Tax Relief for Internal Restructuring of Cross-Border Groups

Currently, the most significant development in international taxation is the BEPS 2.0 tax reform led by G20/OECD. China, as a key member of the BEPS Inclusive Framework, is working towards finalizing the details of a new global tax regime, including new domestic laws and agreements that will go into effect from the 2023 and 2024 tax years. In response to this, many transnational enterprises are considering potential changes to their group structures and supply chains to ensure future compliance and mitigate excessive tax risks. This is particularly true for companies operating across borders with China, many of whom seek to establish a strong foundation for further growth of their businesses in China and Asia through restructuring.

To facilitate such restructuring and minimize associated tax costs, AmCham China calls for prompt and significant relaxation of the conditions for reducing or exempting cross-border group restructuring. *Circular No. 59* is the primary tax regulation in this area, which outlines that the following three types of cross-border restructuring within a wholly-owned enterprise group are eligible for tax deferral:

- A non-resident enterprise transfers the equity of another resident enterprise (non-resident to non-resident) to a resident enterprise that has a 100 percent direct holding relationship with it; where non-resident subsidiaries are not allowed to obtain more favorable PRC agreement withholding tax capital gains and tax rates when (assumed) further transferring 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;
- A resident enterprise contributes assets or equity interests to its directly and wholly owned non-resident subsidiary (resident to non-resident). In a resident to

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，我们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：
  - 进一步强化国家税务总局层面的预约定价安排 / 相互协商程序团队，当跨国企业本国和中国之间寻求双边预约定价安排时，深化其公司集团内不同中国实体所属的下级税务机关之间的协调。近年来在国家税务总局层面倾注了更多的资源，人力的充沛可以帮助国家税务总局节省与下级税务机关及外国税务机关之间的沟通时间。
  - 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，纳税人有时会发现自己在流程的某个阶段“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，我们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的时间内对程序的各个阶段作出回应。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，我们注意到，简化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。我们理解，这样的程序可能无法适用于双边预约安排定价，而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，纳税人需要就双边预约安排定价的进展情况与纳税人与有关部门进行更有条理或及时的沟通。
- 预约定价安排的盈利能力要求：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。如果能够允许将利润调整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的盈利目标，我们认为是更加合理的。我们注意到，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。我们注意到，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，实操中从中国税务部门获得相互协商程序退税十分困难，成功的案例尚不多见。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可令谈判讨论难以达成结果。最好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，争取实现退税。
- 海关：通过预约定价安排或 TP 审计达成的 TP 安

non-resident transaction, even if the resident enterprise meets the criteria for special tax treatment under Circular 59, it must still report the built-in gains of the assets or equities contributed to the offshore entity. 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 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 transferor 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 can’t meet this requirement. Therefore, other more practical alternatives should be considered.

## Improving APA and MCP Regimes

The State Administration of Taxation (SAT) has been actively promoting the implementation of advance pricing arrangements (APAs) and mutual consultation procedures (MCPs) to provide taxpayers with greater tax certainty in their transfer pricing arrangements and avoid instances of double taxation. To this end, the SAT has made significant progress in facilitating negotiations on APAs and MCPs with relevant authorities. In October 2021, the SAT’s Annual Report on Advance Pricing Arrangements in China for 2020 revealed a milestone achievement, as the number of concluded unilateral and bilateral APAs reached a record high following the peak in 2019. In 2021, the SAT and its competent authorities convened online meetings to advance bilateral negotiations on pending APAs and MCP cases, without substantive obstacles, to mitigate the impact of the COVID-19 pandemic. These successes are the result of the SAT’s increased resource allocation to the program, as well as its commitment to complying with OECD’s MCP standards and treatment by a unified team at the SAT. These measures supplement relevant tax guidance policy updates in Announcements No. 64 [2016] and No. 6 [2017] of the SAT, supporting China’s adherence to its minimum standard commitments under Article 14 of the BEPS Action Plan and improving the use, effectiveness, and timeliness of the dispute settlement mechanism.

Despite encouraging progress of the Chinese government on this front, some effective 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 Action Plan for Base Erosion and Profit Shifting (BEPS)* sets out 14 minimum standards, which include a review and negotiation process for bilateral advance pricing arrangements and mutual consultation procedures that should be completed within 24 months. In the recently released 2020 annual report, it was revealed that 78 percent of the bilateral advance arrangements signed in 2020 were concluded within two years of formal application. Additionally, the average signing time of the State Administration of Taxation for mutual consultation procedures initiated after January 1, 2016 was 30.7 months, which is higher than the agreed time frame of 24 months, but lower than the global average of 35 months, according to the mutual consultation procedure statistics for 2020 recently issued by the OECD. AmCham China congratulates the State Administration of Taxation on these achievements but recognizes that further improvement is necessary. Therefore, we recommend that the State Administration of Taxation takes effective steps to achieve the following goals:
  - To further enhance the efficiency and effectiveness of advance pricing arrangements and mutual consultation procedures, AmCham China suggests that the State Administration of Taxation should continue to strengthen its team dedicated to these activities. Additionally, deeper coordination should be established among tax authorities at the lower levels of different Chinese entities within a corporate group, especially when transnational enterprises seek bilateral advance pricing arrangements between their home country and China. In recent years, the State Administration of Taxation has increased its resources for this purpose. This can help the State Administration of Taxation streamline communication with tax authorities at lower levels and foreign tax authorities, saving valuable time.
  - To improve transparency and communication, we recommend that the State Administration of Taxation establish a centralized platform for taxpayers to check the status of their advance pricing arrangement applications and to communicate with relevant authorities during the process. This platform should provide up-to-date information on the progress of applications, including the stage reached, any issues identified, and the expected timeline for completion. This will help to reduce uncertainty and ensure that taxpayers are aware of the status of their applications, enabling them to plan accordingly.

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海关当局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，我们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。这将有助于促进跨境贸易，据我们了解，这将使中国成为第一个能够解决由于税收和海关双重认定导致双重征税问题的国家。

关于与其他机构合作问题，中国美国商会也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在许多发达地区是可行且普遍的，中国的纳税人难以使用这种方式进行调整，主要是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。

## 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。

我们建议允许受托方在计算代扣代缴消费税时抵扣所耗应税原材料中已纳的消费税，以此消除重复征收消费税的问题。

### 价值链上个阶段重复征收消费税的问题

根据现行消费税法的抵扣机制，用于连续生产应税消费品的，符合特定情形的所纳消费税税款准予按规定抵扣。然而，未纳入特定情形抵扣范围内的应税成品油

产品（例如煤油馏分物、溶剂油）不能适用抵扣机制，这与包括其他成品油产品在内的大部分应税产品的连续抵扣机制不一致。因此，制约了该类产品的产业发展及纳税总收入的增长。

我们建议将消费税抵扣机制扩展到所有成品油产品，消除重复征收消费税的问题。以此为各产业提供更为公平的竞争环境，从而加强中国经济的竞争力、效率以及纳税总收入的增长。

## 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，由此损害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。

我们建议中央政府将至少 10% 的消费税收入与省、市及地方政府分享，消费税收入的分享将有助于激励各级地方政府加强消费税征管力度。

## 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。



In addition, such a platform can facilitate more efficient communication between taxpayers and relevant authorities, allowing for timely resolution of any issues or concerns that may arise during the process. Finally, we recommend that the State Administration of Taxation continue to enhance its resources and technical capabilities to improve the efficiency and effectiveness of advance pricing arrangements and mutual consultation procedures. This may include the use of technology and automation to streamline processes and improve data sharing, as well as the development of more sophisticated risk assessment tools to identify potential transfer pricing issues before they arise. By investing in these areas, the State Administration of Taxation can help to reduce the burden on taxpayers and ensure that China remains an attractive destination for foreign investment.

- **Profitability requirements for advance pricing arrangements:** In the context of advance pricing arrangements, the current practice is that if a company's annual profit falls outside the quartile, the tax authority will adjust it to the middle of the quartile range. However, we believe that it would be more reasonable to adjust the profit to the highest level of the lower quartile, which would help achieve the required profitability targets during the 3–5-year period of the bilateral advance pricing arrangement. Although some local tax authorities allow for adjustments to the lower quartile during the implementation of advance pricing arrangements, this is not a standard nationwide practice. Therefore, AmCham China suggests that the State Administration of Taxation provide guidance to allow for adjustments to the lower quartile during the implementation of advance pricing arrangements.
- **Tax Rebate through Mutual Agreement Procedures:** Tax rebate through mutual agreement procedures is a widely adopted practice in many jurisdictions. We have observed that China's preferential tax regulations allow taxpayers going through mutual agreement procedures to enjoy tax rebates. In recent years, tax rebates have been included in several mutual consultation procedure cases. However, the reality is that it is extremely challenging to obtain tax rebates through mutual consultation procedures from Chinese tax authorities, with very few cases being successful. Discussions and negotiations for advance pricing arrangements under mutual agreement procedures are complicated by the unlikelihood of obtaining tax rebates through this route. Therefore, it is recommended that taxpayers seek tax rebates when both the advance pricing arrangements and tax rebates through mutual negotiation procedure cases can be discussed simultaneously.
- **Customs:** Taxpayers may encounter difficulties in dealing with Chinese customs when implementing transfer pricing (TP) arrangements through advance

pricing arrangements or TP audits, and vice versa. This is a common issue faced by taxpayers in many jurisdictions due to conflicting positions between tax and customs authorities. Recently, AmCham China has observed an ongoing pilot program in Shenzhen, where the State Administration of Taxation and customs authorities have been discussing how to solve the issue of double taxation of corporate income and import pricing under the advance pricing arrangements/joint adjudication framework. If the pilot proves successful, it is hoped that the State Administration of Taxation will work with the General Administration of Customs to promote this framework to other provinces and cities, which will facilitate cross-border trade. Furthermore, as far as we know, this would make China the first country to solve the problem of double taxation caused by dual identifications of taxation and customs.

AmCham China also recommends that the State Administration of Taxation collaborate with the State Administration of Foreign Exchange (SAFE) to address cross-border payment and receipt issues arising from the implementation of transfer pricing adjustments. In the management of transfer pricing policies and risks, multinational enterprises often make transfer pricing adjustments at the end of the fiscal year to regulate the profitability of local entities and align their financial results with the group's transfer pricing policy. While year-end transfer pricing adjustments through the issuance of debit or credit notes are feasible and common in many developed regions, Chinese taxpayers face challenges in making adjustments due to the strict exchange control rules imposed by SAFE on cross-border payments and receipts. Therefore, it is essential for the State Administration of Taxation and SAFE to collaborate and develop a framework that facilitates cross-border transactions related to transfer pricing adjustments.

## Practical Issues on Consumption Tax

### *Repeated imposition of consumption tax related to consigned processing*

To prevent repeated imposition of consumption tax on taxable goods of the same volume, the *Consumption Tax Law* includes a continuous deduction mechanism for the continuous production of taxable refined oil. However, this mechanism does not apply to commissioned processing, and when the trustee calculates the withholding consumption tax, they are not permitted to deduct the consumption tax paid on the taxable raw materials. As a result, enterprises are indirectly forced to favor high-cost production modes, which ultimately hinders the long-term development of China's economy and growth of total tax revenues.

To address this issue, we recommend allowing trustees to deduct the consumption tax paid on the taxable raw materials consumed when calculating the withholding consump-

- 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。

tion tax. By doing so, repeated collection of consumption tax can be prevented, promoting fair and sustainable growth of businesses and the economy.

### ***Repeated imposition of consumption tax at all stages of the value chain***

The current deduction mechanism for consumption tax allows for deduction of the tax payable in specific circumstances for goods used in continuous production of taxable consumer goods. However, for certain taxable oil products such as kerosene distillates and solvent oils, the deduction mechanism does not apply, unlike most other refined oil products, which have a continuous deduction mechanism. This inconsistency impedes the industrial development of these products and limits the growth of gross tax income.

To address the issue of repeated collection of consumption tax, we recommend extending the current consumption tax deduction mechanism to cover all refined oil products, including those that are not currently covered. This would create a more level playing field for all industries and promote competitiveness, efficiency, and growth of the gross tax income in the Chinese economy.

### ***We suggest that the central and local governments share revenue from the consumption tax.***

In China's current tax collection framework, local tax authorities collect tax revenue which is then transferred to the central government, with distribution to central, provincial, municipal, and local governments in varying proportions. Retained tax revenue by local tax authorities is utilized to incentivize and maintain desirable tax behaviors at the local level. However, the existing consumption tax collection mechanism results in all revenue collected by local governments being turned over to the central government, without sharing among provincial, municipal, and local governments.

This consumption tax revenue distribution mechanism does not encourage local governments to collect consumption tax, as the collection of consumption tax may decrease the profitability of local businesses, indirectly reducing enterprise income. Furthermore, without sufficient effective local supervision and inspection, cases of consumption tax evasion have arisen in several areas, damaging the country's total tax revenue. In addition, compliant enterprises selling products with consumption tax costs face an unfair competitive environment due to the presence of non-compliant enterprises selling tax-free products.

To address these issues, we recommend that the central government shares at least 10 percent of the consumption tax revenue with provincial, municipal, and local governments. This sharing of consumption tax revenue would encourage

local governments at all levels to strengthen collection and management of consumption tax, promoting fairness and equity in the tax system while boosting the overall growth of gross tax revenue.

## **Recommendations**

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

- Ensure that industries and market entities 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;
- In order to address the issue regarding repeated imposition of consumption tax related to consigned processing, AmCham recommends to crack down on consumption tax evasion to create a fair environment for companies who comply with the law.



# Visa Policy

## Introduction

**F**oreign residents in China constitute a diverse population and include students, diplomats, foreign professionals and their families, entrepreneurs, laborers, and traders. Streamlined entry/exit and employment visa policies are essential for both foreign-invested and domestically-invested enterprises in China that hire foreign nationals. China's immigration reform has accelerated and policies to attract foreign talent and streamline immigration subject to compliance with the laws of foreign countries are being prioritized against the backdrop of China's aging population and the need to transition its economy to high-value products and services.

There have been positive improvements in the visa application system over the past few years. We recognize that China in 2016 joined the International Organization for Migration, a UN agency, and in 2018 the National Immigration Administration, responsible for China's immigration policy, was formed. AmCham China wishes to commend the relevant authorities for making the system more transparent and easier to navigate, although we are pleased to recommend additional improvements to streamline the visa process and enhance the ability of companies to access a broader pool of foreign talent which will grow China's economy. Any effort to streamline the visa process should prioritize the removal of geographic restrictions on certain policies and the standardization of procedures nationwide to overcome geographic barriers to development.

In 2022, COVID-19 continued to mutate, the global epidemic situation remained precarious, and the continuous emergence of new domestic epidemics led to visa issues and immigration. In order to adapt to the new situation of epidemic prevention and control and the new features of COVID-19 variation, China also continuously adjusted its prevention and control policies to issue a series of favorable policies in 2022, such as simplifying entry visa applications and reducing entry quarantine time. Recently, China issued favorable policies to ensure and promote international exchanges such as no mandatory quarantine, no Health Declaration Code requirement, resuming Chinese citizens' ordinary passport application and renewal, reactivating visas issued before March 28, 2020, and resuming the issuance of various types of visas and port visas in a series of beneficial policies effective January 8, 2023.

## In the post-COVID-19 era, China has taken new measures to optimize its entry and post-entry quarantine policy

Effective June 2022, most Chinese Consulates and Embassies abroad no longer required a PU invitation Letter for working (Z) visa, business (M) visa, and visitor (F) visa applications.

Effective August 2022, foreign nationals with valid APEC Business Travel Cards (Excluding Virtual cards) and foreign students holding valid Chinese residence permits for study were allowed to enter China without new visas. For foreign students who intend to go to China for long-term academic education; new students may apply for study visas directly from the Chinese Visa Application Service Center with the original and photocopy of the Admission Letter issued by a school or other entities in China and the original and photocopy of "Visa Application for Study in China" (Form JW201 or Form JW202), while returning students may apply for study visas with proof of return to school. The requirements for other categories of visa application remain unchanged.

Following the above announcement, China released interim facilitation measures for cross-border travelers on December 27, 2022, which came into effect on January 8, 2023, resulting in the following changes:

- No need to apply for Health Declaration Code prior to entry.
- No quarantine required after entry.

On March 14, 2023, the National Immigration Administration issued a further adjustment to the visa and entry policies for foreigners in China, as effective from 00:00 on March 15, 2023.

1. Foreigners with valid visas issued before March 28, 2020, will be allowed to enter China.
2. The following visa-free policies will be resumed: Hainan 59 country visa-free entry policy, 15-day visa-free travel for cruise groups at Shanghai ports, visa-free entry to Guangdong Province for foreigners' group from Hong Kong and Macau SARs, and visa-free entry to Guilin of Guangxi Autonomous Region for tourist groups from ASEAN countries.

# 签证

## 引言

简化出入境及工作签证政策对于在华聘用外国公民的外资企业、国内企业都至关重要。在中国人口老龄化、经济需要向高价值产品和服务转型的背景下，中国加速了移民改革，并且在符合外国法律规定的前提下将吸引外国人才及简化移民手续视为重中之重。在华外国居民是一个多元化的群体，其中包括学生、外交官、外国专业人员及其家属、企业家、劳动者和贸易商。2016年，中国加入了联合国的国际移民组织，并于2018年成立了国家移民管理局，主要负责中国移民政策相关事宜。

过去几年，签证申请制度有所改善。在有关部门的努力下，签证体系更加透明、操作更加便捷，对此，中国美国商会（商会）非常赞赏。不过，商会也提出了一些改进建议，希望有关部门能简化签证流程，帮助企业聘用更多外籍人才，从而推动中国经济发展。简化签证流程的工作应以取消某些政策的地域限制为重点，并在全中国范围内实现流程标准化，解决制约发展的地域障碍。

2022年，新冠病毒仍在持续变异，全球疫情仍处于流行态势，国内新发疫情不断出现仍导致签证问题和移民面临着特殊情况。为适应疫情防控新形势和新冠病毒变异的新特点，中国在这一年里也不断优化防控政策，发布了一系列利好政策，如简化入境签证申请及减少入境隔离时间等。近日，中国政府陆续发布了保障促进中外人员交流交往的利好政策，如入境免隔离、无需申请健康码、恢复中国公民申请护照或换发、恢复2020年3月28日前签发且仍在有效期内的签证入境功能等、恢复签发外国人各类赴华签证及口岸签证业务，这些利好政策都已于2023年1月8日起陆续开始生效。

## 后新冠肺炎疫情时代，中国优化入境签证申请及入境后隔离的新举措

2022年6月起，大部分中国驻外使领馆相继发布通知免除了工作签证（Z）、商务签证（M）及访问签证（F）等申请中的邀请函（PU）要求。

2022年8月起，允许持有效APEC商务旅行卡（不包括虚拟卡）人员、持有效学习类居留许可的外国留学生入境中国，相关人员无需重新申办赴华签证。在华接受学历教育的长期留学人员，新生凭中国境内招收单位出具的录取通知书原件及复印件、《外国留学人员来华签证申请表》（JW201或JW202表）原件及复印件，在读生凭返校证明，直接向中国签证申请服务中心申办学习类签证。

2022年12月27日，国务院相关部门继续发布了关于中外人员往来暂行措施的通知，该通知将于2023年1月8日起生效，主要包含以下内容：

- 入境前无需申请健康码
- 入境后无需隔离

2023年3月14日，国家移民管理局发布了进一步调整外国人来华签证及入境政策，决定自2023年3月15日零时起调整签证及入境政策。

一、对来华外国人持2020年3月28日前签发且仍在有效期内签证的，准予入境。

二、恢复海南入境免签、上海邮轮免签、港澳地区外国人组团入境广东免签、东盟旅游团入境广西桂林免签政策。

继该通知发布后，中国驻美国、加拿大、法国、韩国、新西兰、泰国、墨西哥、波兰、中国香港等驻外使

Following that, the PRC consular posts in some regions (including US, Canada, France, South Korea, New Zealand, Thailand, Mexico, Poland, Hong Kong SAR) issued notice on further adjustments for foreigners' entry visa application effective 00:00 on March 15, 2023.

1. Foreigners with valid visas issued before March 28, 2020, will be allowed to enter China.
2. All categories of Chinese visas can be applied for.
3. Port visas are no longer suspended.
4. The following visa-free policies will be resumed: Hainan 59 country visa-free entry policy, 15-Day visa-free travel for cruise groups at Shanghai ports, visa-free entry to Guangdong Province for foreigners' group from Hong Kong and Macao SARs, visa-free entry to Guilin of Guangxi Autonomous Region for tourist groups from ASEAN countries.

AmCham China recognizes that a number of airlines have continued to increase round-trip flights to China recently after the implementation of the above policies, to provide additional convenience for international travelers. In addition, since January 8, 2023, most Chinese Consulates/Embassies abroad have successively released a notice eliminating the need to apply for a Health Declaration Code while requiring only one nucleic acid test 48 hours before boarding the first flight. From March 2023, Chinese Consulates/Embassies abroad, such as Thailand, Singapore, and New Zealand, have successively issued notices that Antigen Rapid Test (ART, including ART home testing kit) results will be accepted for air passengers flying directly to China instead of PCR test results.

## Recent Developments around Chinese visas

### *Expanded Eligibility for Recent Graduates*

The Shanghai Foreign Expert Bureau optimized the policy for Outstanding Foreign University Graduates working in Shanghai, rolled out in "Five New Towns" (Jiading, Qingpu, Songjiang, Fengxian, and Nanhui), relaxed the definition of "fresh graduates" from one year after graduating from university to two years, expanded the applicable areas for fresh graduates with a bachelor's degree to "Zhangjiang National Innovation Demonstration Zone & China (Shanghai) Pilot Free Trade Zone," "Lingang New Area" and "Hongqiao Business District," canceled the requirement for employment by designated enterprises such as "foreign-funded R&D centers," "regional headquarters of multinational companies," and "investment companies," and extended those policies to all enterprises in Shanghai on the "Scientific and Innovation Occupation List." Previously, recent foreign graduates could apply for work authorization only if they were sponsored by companies registered in one

of China's Free Trade Zones (FTZs) or Hi-Tech Parks recognized by the Shanghai municipal government.

The implementation of this policy means that, in practice, outstanding foreign graduates in China who are employed by a company registered in Five New Towns (Jiading, Qingpu, Songjiang, Fengxian, and Nanhui), "Zhangjiang National Innovation Demonstration Zone & China (Shanghai) Pilot Free Trade Zone," "Lingang New Area" and "Hongqiao Business District," and enterprises in Shanghai on the "Scientific and Innovation Occupation List" can apply for work authorization if they hold a bachelor's or master's degree issued by Shanghai universities. Additionally, foreign students graduating from "world-renowned" universities outside China in theory can also benefit from this policy.

AmCham China welcomes the creation of a more flexible environment that provides more talent options for companies in China and attracts more talented foreign students to live and work in mainland China. AmCham China also continues to recommend that similar policies be implemented nationwide and will continue to pay attention to the availability of work permits for 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,
- Category C: Foreign nationals who engage in temporary, seasonal, non-technical, or service-related work.

Foreign nationals may 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 provide documentation, including a tax certificate, 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 expiration of the current permits.

领馆发布公告：决定自北京时间 2023 年 3 月 15 日零时起，就外国人来华签证作如下调整：

一、恢复 2020 年 3 月 28 日前签发且仍在有效期内的签证入境功能。

二、驻外签证机关恢复签发外国人各类赴华签证，具体要求详见办证须知。

三、口岸签证机关恢复签发符合法定事由的各类口岸签证。

四、恢复海南入境免签、上海邮轮免签，港澳地区外国人组团入境广东免签、东盟旅游团入境广西桂林免签政策。

商会注意到以上政策出台后，多家航空公司近期持续增设往返中国的航班，为国际旅客提供方便。除此之外，中国驻外使领馆于 2023 年 1 月 8 日后相继发布了关于登机前无需申请健康码，只需要 48 小时以内做一次核酸检测，并于 2023 年 3 月起，陆续有中国驻外使领馆如泰国、新加坡、新西兰等发布通知允许搭乘赴华直飞航班人员以抗原检测（包括用试剂盒自测）替代核酸检测的通知。

## 中国签证相关的最新进展

### 扩大应届毕业生对象范围

上海外国专家局优化了外籍优秀应届毕业生申请政策，增设了“五个新城”（嘉定、青浦、松江、奉贤、南汇）；放宽了应届毕业生年限从 1 年至 2 年内，扩大本科应届生适用范围至“双自地区”、“临港新片区”和“虹桥商务区”；取消了“外资研发中心”、“跨国公司地区总部”、“投资性公司”等特定企业聘请；在全市推广至“科创职业清单”名录内所有企业。在此之前，外籍应届毕业生只有在中国的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，在实际操作中，受雇于“五个新城”（嘉定、青浦、松江、奉贤、南汇）、“双自地区”、“临港新片区”、“虹桥商务区”、“科创职业清单”注册的公司，且在上海高校就读的优秀外籍应届毕业生，如果持有本科或硕士学位，就可以申请工作许可。此外，从中国外的“世界知名”大学毕业的外国学生理论上也可以享受该政策。

商会欢迎中国创造更灵活的环境，为在华企业提供更多的人才选择，同时吸引更多优秀的外籍学生来中国大陆生活和工作。商会依然建议在全国范围内推广这些政策，并持续关注外国雇员获得工作许可的发展。此外，上海发布的公告中使用了“世界知名大学”一词，商会希望这在实践中不会导致毕业于非政府认定的“世界知名”大学的合格毕业生被拒发中国工作许可。相反，任何获得认可的大学的合格毕业生如果获得工作职位的话，都应该能够获得中国的工作许可证。

### A 类外国人工作许可证申请纳税要求

《外国人来华工作许可服务指南》于 2017 年 4 月推出，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，年龄不满 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。

外国人员须满足六个标准中的任意一个才能获得 A 类工作许可证，其中一个标准是必须每年至少缴纳收入总额的规定最低税额，还要提供文件，包括税务证明，表明外籍人员的所得税支付记录符合 A 类的要求。如果企业未能缴纳 A 类签证所需的税款，可能会受到严厉的处罚，包括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。

在 2022 年的《白皮书》中，商会建议政府标准化全国的纳税要求，并且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），采取更灵活的做法，不对其进行不必要的处罚。商会注意到，2022 年中国关于确定资格和起征点所需文件的指导更加透明和明确，商会对此表示欢迎，并希望能够继续保持下去。

商会还注意到，地方政府在某些情况下表现出一定程度的灵活性，这些未能满足相关纳税要求的情况主要是新冠肺炎疫情导致的。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，企业需要提供详细的解释信来证明其状况。



In the 2022 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 do not meet the required threshold (except in cases of outright fraud).

AmCham China in 2022 observed that 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 that companies will need to provide a detailed explanation letter in support of their positions. AmCham China welcomes the improvement of flexibility although the requirements of local governments are different. AmCham China recommends that the same standard and flexibility 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 instead can now complete the declaration form online. The utility and durability of paperless online self-declaration have been affirmed widely. In the 2022 White Paper, we recommended that the government implement a similar system nationwide. AmCham China has seen there are some promotions and progress in other cities such as Guangzhou, Shenzhen, Xiamen, Suzhou, and Beijing on this Self-Help Declaration program in 2022. 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.

## Ongoing Challenges with Chinese Visas

### *R-Talent Visa*

The Chinese government launched the R-talent visa (R visa) in January 2018 in nine provinces and municipalities across

China (including Beijing). The R visa offers fewer restrictions and a longer period of validity for “high-end foreign talent” which the government believes is needed to promote China’s social and economic development. During the epidemic, if one applied for an R visa, the PU letter could be waived.

As we discussed in the 2022 White Paper, AmCham China continues to find the R visa to be less effective than described in the regulations. Over the past year, AmCham China has received feedback from multiple member companies that they seldom apply for R visas for their employees because the assessment criteria for employees who qualify for an R visa is not unified across the locations where it is being piloted, resulting in uncertainty about approval criteria. In practice, final approval is still very much subject to the discretion of local authorities.

At present, entry visa application requirements are gradually returning to the requirements before the epidemic, and the advantage of the invitation letter (PU) exemption for R visas vanished. AmCham China continues to urge the relevant authorities and departments to adopt a standardized procedure and a transparent set of assessment criteria for the R visa to ensure companies can utilize its benefits for qualified employees as intended, and also introduce more matching benefit policies for R-visa applications.

### *Chinese Permanent Residence (PR) Card*

More and more foreigners have become interested in Chinese Permanent Residence Card applications for better living, working, and entering China by enjoying more benefits and privileges. The standard processing time is 6 months after submission. In practice, however, AmCham China has observed that only a small portion of applicants can obtain a PR card within 6 months, while in the majority of cases it takes 6-12 months after submission.

## Recommendations

### *For the Chinese Government*

- Grant multiple entries Chinese business (M) or reunion (Q) visa with 6- or 12-months validation term.
- Expand new policies for recent graduates and interns nationwide as opposed to restricting them to certain geographic localities.
- Revise current regulations to permit foreign nationals to hold Work Permits that allow them to work in multiple locations consistent with the reasonable needs of their business.
- Shorten work authorization processing periods for Chinese Permanent Residence Card applications.

商会对灵活性的提升表示欢迎，但各个地方政府的要求不同，商会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。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，在线自主申报系统的使用性和稳定性得到广泛地肯定。在 2022 年的《白皮书》中，商会建议在全国实施类似的系统，2022 年，商会注意到这一领域在其他城市有了推广和进展，比如广州、深圳、厦门、苏州、北京等地都陆续推出了自助申报系统。新冠肺炎疫情之下，人们需要像去年那样遵守社交距离规定，在线流程高效便捷，所以极有价值，商会继续建议在全国范围内推广此类自主申报系统。

## 中国签证的现存问题

### R- 人才签证

2018 年 1 月，中国政府在全国 9 个省市（包括北京）推出 R- 人才签证（R 签证）。R 签证对“外籍高端人才”限制较少，有效期较长，政府认为这可以促进中国社会经济发展。疫情期间，申请 R 签证时，还可以免交邀请函（PU），但正如 2022 年的《白皮书》中所述，商会发现 R 签证的效果仍不尽如人意。过去一年，商会收到了多家会员企业的反馈，他们表示很少为员工申请 R 签证，因为符合 R 签证资格员工的评估标准在各试点地区不统一，导致审批标准具有不确定性。在实际操作中，最终是否批准在很大程度上仍由地方主管部门自行决定。

目前，入境签证申请条件逐渐趋于恢复至疫情之前的要求，R 签证可以免交邀请函（PU）这一优势也消失殆尽。所以商会促请相关机构和部门对 R- 签证实施标准化程序，采取一套透明的评估标准，确保企业能够按照规定让符合条件的员工享受相应益处，并推出更多申请到 R- 签证后的配套利好政策。

## 中华人民共和国外国人永久居留身份证

越来越多的外国人趋于申请外国人永久居留身份证，以便于享受和中国公民相同权利，从而更好地在中国工作和生活，以及进出中国。申请外国人永久居留身份证的标准处理时间为提交后 6 个月，在实际操作过程中，商会观察到只有一小部分申请人可以在 6 个月内获得永久居留身份证，而在大多数情况下，一般需要 6-12 个月的审批时间。

## 建议

### 对中国政府：

- 签发半年多次或一年多次的商务（M）签证和探亲（Q）签证；
- 将应届毕业生和实习生的新政策推广到全国，而不是仅限于特定地区；
- 对 R- 签证实施标准化程序，采取一套透明的评估标准，确保企业能够按照规定让符合条件的员工享受相应益处。
- 进一步缩短中国永久居留许可证申请审批时间。



**Part Three:**  
**Industry-Specific Issues**  
第三部分：具体行业问题

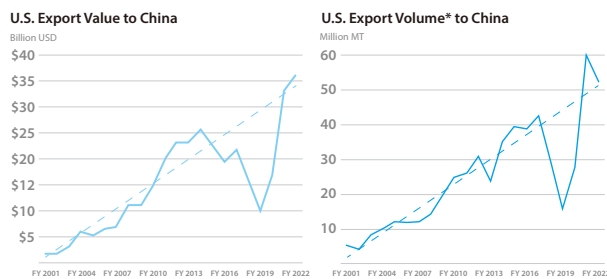
# Agriculture

## Introduction

**A**mCham China would like to applaud the government of China for the progress achieved in the agricultural and food production in 2023. 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 2023, the CCP Central Committee and State Council released the 2023 No. 1 Document which called for enhanced efforts to stabilize production and ensure the supply of grain and important agricultural products, to boost the construction of agricultural infrastructure, to strengthen support for agricultural science, technology, and equipment.

In fiscal year 2022, US agricultural exports to China reached a record high of US \$36.4 billion, making China the largest export market for US agriculture for the second consecutive year. This increase in exports was driven by higher agricultural prices and strong demand despite lower volumes for most products due to multiple factors, including Russia-Ukraine conflict.

### US Agricultural exports to China FY2022



Source: USDA

China’s large population of 1.4 billion and growing middle class make it a significant market for US agricultural exports. However, some longstanding structural and regulatory issues continue to hinder the unleashing of full potential of bilateral agricultural cooperation. US exporters still face challenges in the form of non-tariff barriers such as non-science based sanitary and phytosanitary measures and complex regulatory procedures add extra cost to Chinese consumers while we face a global food inflation.

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 market access challenges affecting our member companies. AmCham China members intend to work together with the 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 to agricultural modernization and food security.

## Seed Industry

### Market Access Challenges

AmCham China is disappointed that the *Special Administrative Measures on Access to Foreign Investment* (National Negative List) and the *Free Trade Zone Special Administrative Measures on Access to Foreign Investment* (FTZ Negative List) (2021 edition) did not remove restrictions on the agriculture industry with respect to share ownership of joint ventures of certain crop seeds, remaining the same with 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 recommend, 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.” According to the Chinese government’s agricultural modernization development guidelines that 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 effi-

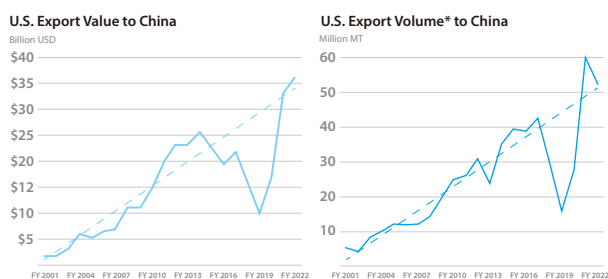
# 农业

## 引言

**中** 国美国商会（以下简称商会）祝贺中国政府 2022 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绿色可持续性现代化和农村发展的重要性，同时注重提高食品安全。2023 年 2 月，中共中央和国务院发布 2023 年中央一号文件，强调粮食和重要农产品的稳定产出和供应，加强农业基础设施建设，推动农业科技和设备进步。

2022 财年，出口中国的美国农产品价值创下高达 364 亿美元的记录，中国连续第二年成为美国农产品的最大出口市场。尽管俄乌冲突等多种因素导致产品数量减少，但农产品价格上涨和中国的强劲需求推动了美国农产品的出口增长。

### 2022 财政年度美国对中国的农产品出口



来源：美国农业部 (United States Department of Agriculture)

中国庞大的 14 亿人口规模和持续增长的中产阶级使其成为美国农产品出口的重要市场。然而，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。美国农产品出口商仍面临非关税壁垒的挑战，如非科学的卫生和植物检疫措施。在全球面临食品通胀的同时，复杂的监管程序增加了中国消费者的支出成本。

尽管商会会员企业对日益紧张的中美关系深感担忧，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。在中国国家种子振兴战略的背景下，2021 年版国家负面清单仍然要求玉米品种培育和种子生产须由中方控股。商会继续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，相关限制将放慢中国农业部门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，中国所投资的传统育种公司将缺乏竞争力，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。与之相比，中国企业，如先正达、

ciency 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. In contrast, Chinese companies like Syngenta, DBN, and Longping enjoys unrestricted access to crop biotechnology markets in the Americas.

At the end of 2022, there are around 20 local GMO corn seed varieties passed review in the Bio-tech committee review meeting. It means that the commercialization of GM crops being kicked off in 2023.

We strongly and urgently urge the Chinese government to allow foreign investors to engage more widely and fairly in seed technology innovation and crop production, to change FDI negative list, allowing the exiting foreign investment on corn seed can survive under the fair local competition circumstance.

## Seed Industry

### *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 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 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 to 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.

### *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 about Essentially Derived Varieties (EDV) in China Seed Law Revision. 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

大北农、隆平高科等，在美国可以自由经营转基因农作物种子。

在 2022 年底农业农村部牵头组织的生物技术安全评审委员会上，近 20 个本地转基因玉米品种已经过会通过技术评审。2023 年中国将开始大面积种植转基因作物。

商会强烈敦促中国政府允许外国投资者公平地参与种子技术创新和农作物生产。尽快修订负面清单相关条款，让已经在中国玉米产业存续多年的外商投资公平地参与到行业竞争中。

### 种子和育种材料的进口和出口

商会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。这将减少商会会员企业因多余的审批、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。

### 种子假冒和知识产权保护

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，包括农业部、公安部和国家市场监管总局，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，特别是玉米的技术规范。

商会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，来有效保护育种者的 PVP 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。商会特别建议政府：

- 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，加强植物品种保护执行。

### 农业化学品行业

#### 农药注册数据互认计划

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试验。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



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 plant variety protection (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-developed 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 of OECD.

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.

Chinese government highlights that China will continue the high-level opening up and will harmonize with the global regulations and technical standards. Ministry of Commerce takes initiative to liaise with the relevant ministries, preparing to apply for join OECD GLP lab system, steadily to fulfill Mutual Acceptance of Data. In this process, AmCham China urges MARA should, at the same time, accept the test reports from overseas GLP laboratories according to the international common practice and taking the similar market access registration standard as other industries in China.

### *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 leading 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 ensure 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 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

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。

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联系，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。中国政府近期明确表示将继续高水平对外开放，主要将在规则和技术标准方面与国际接轨。商会敦促在申请加入经合组织良好实验室体系的过程中，农业农村部应进一步响应国家高水平对外开放的要求，按照国际惯例和中国其他各行业市场准入注册规则，接受海外良好实验室检测报告。

## 农药中添加的非法成分

政府（包括来自农业农村部、国家市场监督管理总局、公安部及其下属部门的官员）对生产和使用假农药的行为进行持续打击，以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指导，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，以及在其他有关国家（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），以使病人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。商会欣喜地看到，根据中美两国在 2020 年 1 月签署的《第一阶段协议》，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

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 2021, with 2 products approved by MARA. In 2021, MARA released its decision on safety evaluations relatively timely following the NBC meeting, which AmCham China commends as a positive development and encourages MARA to keep 20 working days after NBC meeting as a standard timeline for releasing decision. We are pleased that under the terms of the Phase One Agreement between the US and China signed in January 2020 that 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 food processing (FFP). In light of this commitment, we offer our 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. AmCham noticed MARA removing in-country field trial requirement in early 2022 for newly approved products, which is considered an encouraging development, AmCham China members recommend that MARA makes exemption of in-country field trial as a standard practice for all GMOs for FFP, and keeps the good momentum to consider exempt other types of in-country studies. 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, 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 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 genetical-

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利益相关者进行深入探讨，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在特定控制条件下使用的产品分别对待（如将饲料酶与转基因微生物区分对待），并考虑应用基因编辑等先进技术。

商会会员企业建议农业农村部，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。商会会员企业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。

商会会员企业认为，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。2023 年中央一号文件提出加快玉米大豆生物育种产业化步伐。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

ly-engineered 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 2023 Central No.1 Document proposed to accelerate the commercialization of GM corn and soybean. 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 scientifically-based standards, can help mitigate the impacts of any delays, and is a useful technique to control risk and reduce costs.

## Fertilizer

Fertilizer productions grew significantly in China in 2000s and have resulted excess capacities. The excess capacities had made China the largest fertilizer exporter in the world, generating excessive carbon emissions, depleting non-renewable resources such as phosphate rocks, and creating many environmental burdens.

For example, China has an overwhelming NPK fertilizer processing industry with over 100 million metric tons capacity. 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 transportations and handlings, increasing costs for growers.

A lean fertilizer industry structure with controlled capacities and more efficient processing and transportation will help lower fertilizer costs for growers and reduce energy consumption and carbon emission.

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 right solutions for growers. Biotechnology has a 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 supports 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 documents 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.

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。

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。生物技术在提高养分利用效率、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《第一阶段协议》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。

## 肉禽类贸易

中美两国的牛肉和猪肉贸易对中国人民至关重要，确保中国消费者继续获得安全、营养丰富、价格合理的蛋白质。中美《第一阶段协议》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。

《第一阶段协议》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《第一阶段协议》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和药物管理局（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限量的标准草案，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。

## 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 (African Swine Fever) outbreak in the past several years, US exports of pork to China reached a record high of US \$2.28 in 2020, but dropped 26 percent to US \$1.74 billion in 2021 due to a rebuild in China's hog herd. The US poultry export 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 of the beef hormone MRLs. The ban on pork imports with traces of ractopamine remains.

China removed the ban of US poultry export 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 US and China also removed the risk of a ban of export 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%, 30% and 37% respectively on top of regular import duties. Fortunately, the Chinese government has been offering exemptions to importers of retaliation tariffs on US beef, poultry and pork imports in the past two years. While Phase One Agreement expired on Dec 31, 2021, The US meat industry faces uncertainties whether the Chinese government will continue to offer such exemptions beyond 2022. The retaliation duties have had a huge impact on US market share, especially in

the price competitive imported pork market. AmCham China urges the two governments to negotiate a solution to these pending issues to create a more predictable environment for the meat trade.

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

### *Agricultural Machinery Subsidies*

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 certificate and complete filing for the subsidy. As provincial agricultural authorities have substantial autonomy regarding subsidy implementation, and policies differ from province to province, agricultural machinery manufacturers are faced with extra burden due to different filing requirements and the system setup, and still have difficulties in 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.

## Regenerative Agriculture

Agriculture is the most vulnerable to climate change, while agricultural activities impact the climate and the environment. Soil is the basis of agriculture. It is a living, breathing ecosystem that does more than simply provide nutrients for plant growth. Healthy soil uses plants' photosynthesis to pull carbon from the atmosphere, improves water quality, increases drought resilience and enhances farmer livelihoods.

Activities that improve soil, plant, and animal health can improve resilience to climate change. Regenerative agriculture practices such as no-till or reduced till cultivation, and planting cover crops, can ensure that plants and soil are in the best condition to tolerate drought and erratic rainfall.

AmCham members applaud the release of Implementation Plan on Carbon Reduction and Sequestration in Agricultural and Rural Areas in 2022, where conservation tillage and carbon sink is listed as one of the ten actions to be encouraged for green development. AmCham is also glad to see that China has made efforts to protect the black soil over the years.

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因几例高致病性禽流感病例而禁止整个国家的禽产品出口。

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，在过去两年中，中国政府就美国牛肉、家禽和猪肉进口，给予进口商豁免反制性关税的待遇。然中美第一阶段贸易协议已于2021年12月31日到期，美国肉类行业仍然面临中国政府在2022年以后是否继续采取这项豁免反制措施的不确定性。反制性关税对中国的市场份额具有巨大影响，尤其是在价格十分敏感的进口猪肉方面。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，为肉类贸易创造更加稳定的环境。

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

### 农机补贴

自2004年以来，补贴和其他优惠政策推动了中国农业机械化设备的销售，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，如归档要求、系统设置等均存在差异。随着三合一的推广应用，因各地系统不同，给企业带来了较大负担。商会敦促各省级机构采取统一的省级补贴政策和归档管理办法，以营造健康的商业环境，提高农业效率。同时，商会建议农业农村部继续鼓励和支持先进技术及智能农机。

## 再生农业

农业极易受到气候变化的影响，而农业活动同时会影响气候和环境。作为农业的基础，土壤是一个活的生态系统。土壤不仅仅为植物生长提供营养，健康的土

壤利用植物的光合作用从大气中吸收碳，改善水质，增强抗旱能力并改善农民的生计。

改善土壤、植物和动物健康的活动可以提高对气候变化的适应能力。免耕或减耕栽培以及种植覆盖作物等再生农业实践可以确保植物和土壤处于最佳状态，以耐受干旱和不稳定的降雨。

商会对2022年出台的《农业农村减排固碳实施方案》表示赞赏，其中将保护性耕作和碳汇列为绿色发展十大鼓励行动之一。商会也很高兴看到多年来中国为保护黑土地做出的努力。

商会建议：①中美政府深化在农业技术、气候行动和可持续发展方面的对话与合作，以支持中国采用再生农业实践。②引入有针对性的公共补贴，以刺激再生农业方法以及活跃碳信用市场的开发，帮助最大限度地减少所需变革对农民的经济影响。③建立认证体系，使其更具透明度，并纳入更强有力的气候变化考虑因素，进而大规模地支持可持续和再生农业操作规范。④推广相关教育计划，旨在鼓励社会广泛了解土壤健康和生物多样性以及科学采用再生农业实践的重要性，比如组织农民和年轻的农业企业家培训。⑤鼓励发展再生农业方法并将其纳入自愿碳市场机制，以利用市场力量推动农业绿色发展。

## 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，简化农业生物技术监管流程及相关的审核时间



We recommend ❶ Chinese and US government deepen talks and cooperation on agricultural technology, climate action and sustainable development to support China regenerative agricultural practice adoption. ❷ Introduce targeted public subsidies to stimulate the development of regenerative agriculture methods and an active carbon credit market to help minimize the economic impact of needed changes on farmers. ❸ Establish the certification system to make it more transparent and take more consideration into climate change, thereby supporting sustainable and regenerative agricultural practices at scale. ❹ Promote relevant educational programs designed to encourage broad societal understanding of the significance of soil health and bio-diversity and scientific adoption of regenerative agriculture practices, e.g. training for farmers and young agricultural entrepreneurs. ❺ Increase investment in R&D for low carbon agriculture, including seeds for regenerative agriculture, and raw material traceability solutions, etc.

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 the completion 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 Chinese agriculture sector by further opening the industry up to foreign investment in wheat, maize, soybean, and rice breeding and seed production, genetical 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 agrochemical industry, allow pesticide registration to continue based 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.
- 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*

- After the completion of the Phase One Agreement to strengthen communication with the Chinese

表。相关的认证程序应按照规定计划期限定期进行。

- 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。

# Automotive Industry

## Introduction

Over the past year, the global COVID-19 pandemic has caused a series of challenges in the automotive industry, including a severe hit to the macroeconomy, reduced consumer demand for vehicle purchasing, limited production capacity, and disrupted supply chains, leading to a decline in commodity sales, such as vehicles. In response, both China's central and local governments have implemented a series of policies to stabilize the economy and support vehicle buyers. These measures include a tax reduction on fuel vehicle purchases, the creation of a unified national vehicle market, the gradual lifting of restrictions on car purchases and driving second-hand vehicles in limited areas, and the promotion of "NEVs for Rural Areas" activities. Although these policies have helped stabilize the market and consumption, the pandemic has significantly impacted their implementation, and production and consumption in 2022 fell short of initial expectations.

According to the China Association of Automobile Manufacturers, total vehicle sales in 2022 saw a year-on-year growth of 2.1 percent, reaching 26.864 million. NEVs experienced explosive growth, with annual sales exceeding 3.8 million and a market share of 25.6 percent, completing the target of 20 percent by 2025 set in the "New Energy Vehicle Industry Development Plan (2021-2025)" ahead of schedule.

Despite these positive developments, challenges related to the integration of globalized resources in the industry remain in 2022. The automotive industry is transitioning from traditional manufacturing to a high-tech industry of electrification, connectivity, and intelligence, and technology competition is increasingly becoming the main pillar of national strategic competition, raising the risk of technology decoupling. For the automotive industry, the question of whether R&D, technology roadmap, and products, which integrate technology and data, can face the same challenges as the rest of the world is a significant issue. The automotive industry relies heavily on a highly globalized supply chain, and therefore, supply chain stability is crucial to the industry's development. Escalating conflicts in markets, supply chains, industry policies, military, and geopolitics between major countries and regions pose even greater challenges for the globalization of the automotive industry and its technology. Major countries and regions, such as China, the

U.S., Europe, Japan, and South Korea, have all introduced new chip development strategies and supporting policies, making chip competition increasingly intense.

Since the end of 2022, the Chinese government has gradually adjusted its dynamic zero COVID-19 policy, which lasted for nearly three years, and the country has now entered the post-pandemic era. Going forward, the Chinese economy and automotive industry will continue to face challenges in various aspects, including reinfections, economic recovery, rebuilding consumer confidence, geopolitical uncertainties, and supply chain stability.

Therefore, the Chinese automotive market requires continuously optimized policies, extended relief measures to unleash demand, a more favorable policy environment, and supportive measures to stabilize industry development and encourage innovation. All of these factors are critical to companies, many of whom are members of the American Chamber of Commerce.

## Transparent, foreseeable, and consistent policy environment

AmCham China members are facing long-term challenges regarding policy coordination and stabilization in the People's Republic of China. The Chinese automotive industry is overseen by multiple government agencies, resulting in overlapping responsibilities and policy uncertainties. Moreover, the lack of coordination among these agencies has led to varying policy requirements across different regions, increasing operating costs for companies.

To address these challenges, member companies are calling for enhanced coordination and cooperation among Chinese departments, the optimization of the regulatory and management environment of the industry, and the establishment of a cohesive and consistent policy environment for industry development. They emphasize the need for increased transparency, consistency, and predictability of policies to support the industry's growth.

### Transparency

Transparency is crucial during the policy-making and imple-

# 汽车制造业

## 引言

回顾 2022 年,上半年在多地散发疫情的影响下,宏观经济遭受较大冲击,消费者购车需求释放受阻、生产产能受限,供应链不稳定甚至中断,汽车等大宗商品消费明显下降;其后,中央和地方政府出台系列政策稳定经济和促进汽车消费,措施包括减征部分燃油车购置税、突出建设全国统一汽车大市场,鼓励限购地区逐步增加指标投放、放宽购车人员资格限制,落实全面取消二手车限迁,开展新能源汽车下乡活动等。这些措施对稳定车市,恢复汽车消费起到了明显的拉动作用。但全年来看,疫情的发展仍然对政策的实施造成了影响,2022 年全年的产销仍然略显疲软、不及年初预期。

根据中国汽车工业协会统计,2022 年中国汽车市场总销量为 2686.4 万辆,同比增长 2.1%。其中,新能源汽车持续爆发式增长,全年销量超 380 万辆,市场占有率达到 25.6%,提前完成《新能源汽车产业发展规划(2021-2025)》中设定改的 2025 年新能源汽车占比 20% 的目标。

2022 年,汽车产业的全球化资源整合仍然面临挑战。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,集技术和数据于一体的汽车行业的研发、技术路线、和产品能否和全球同步面临巨大挑战。汽车是供应链高度全球化的产业,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、行业政策、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。

2022 年底,中国政府调整了持续近三年的动态清零政策,中国将进入新的疫情和后疫情时代。展望 2023 年,中国经济及汽车行业仍然要面临经济复苏情况及重建消费者信心、国际形势的不确定性以及供应链稳定等多方面的挑战。

在这种背景下,中国汽车市场仍然需要持续不断的政策促进,包括延续优惠政策以进一步释放消费潜力、为行业提供更加宽松的政策环境、保障行业稳定发展、鼓励创新等,这对包括商会会员在内的汽车企业都至关重要。

## 透明、可预见、协调一致的政策环境

中国美国商会(以下简称商会)会员企业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,呈现出政策要求区域化的特点,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协调,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

政策的制定和实施过程中的透明度对于包括商会会员企业在内的外资企业尤为重要。目前,外资企业在汽车政策研究早期阶段的参与机会有限。在主管部门对政策进行预研和前期讨论阶段,也应保障政策的透明度和外资企业的参与度。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。

商会欢迎《外商投资法》及其相关管理条例的实施。该法为中国推动更开水平的对外开放提供了法治保障,

mentation stage, particularly for foreign-invested companies. At present, foreign companies have limited opportunities to participate in the early stages of policy research. Efforts should be made to involve foreign companies in pre-research and pre-discussion processes. By the time a policy draft is approved and open for public opinion, it may be too late to make meaningful changes.

The Chamber welcomes the implementation of the *Foreign Investment Law* and its related regulations, which provide legal protection for high-level opening up and specify the rights of foreign companies to participate in the standard-setting process. However, the Automotive Technical Standardization Committee has yet to accept a member from foreign companies.

The Chamber advocates for a more inclusive policy development process, gathering a wider range of opinions from companies, including foreign entities, in the early stages of policy and draft making. When the draft enters the stage of soliciting public comments, the government should provide feedback on the opinions submitted by the public and companies. If the final version includes important new content, the government should inform the public and ask for further opinions.

Ensuring that foreign companies can participate in the development of related laws and regulations, particularly those related to intelligent network connections, will benefit the consistency and consolidation of global laws and regulations. It will also help Chinese automobiles to become more competitive in the global market.

### ***Consistency and Predictability***

The automotive manufacturing process is typically lengthy, spanning several years from development to production. Therefore, the Chamber urges governments to introduce product-related policies, plans, and requirements at least three years ahead of schedule, especially regarding NEVs and ICVs. During the policy-making process, the Chamber hopes authorities will consider industry development, the overall market environment, and production capacity, allowing companies sufficient time to comply with regulations and make adjustments as necessary.

The Chamber recommends maintaining stability and predictability of the dual point system, while urging governments to commence research and planning for the system's next stage, and maintain the 2025 NEVs sales goal unchanged. Currently, the fuel consumption of EVs is calculated as zero, meaning that upstream emissions of EVs are also calculated as zero, providing stable expectations for the industry.

The subsidies for NEVs will expire at the end of 2022, and the policy allowing buyers exemption from purchase taxes will expire at the end of 2023. The Chamber strongly suggests that the government specifies and rolls out future policies for NEVs purchase tax exemption as soon as possible to stabilize

market expectations. Additionally, it is crucial to promote a series of supporting policies, including lifting, purchasing, and driving restrictions, and building more charging facilities. This will stimulate NEV development, reduce carbon emissions in the industry, and lay the groundwork for an intelligent industry transformation and upgrade.

According to the “*New Energy Vehicle Industry Development Plan (2021-2025)*,” goals to optimize the dual point system and build mechanisms to connect with the carbon trade market have been set, yet more details need to be settled. China aims to achieve carbon peaking around 2030, and authorities are working to draft plans and supporting policies for the industry to reach these carbon goals. The Chamber suggests that these policies be settled as soon as possible to allow enough time for companies to prepare and avoid undue burden. Furthermore, it is hoped that new policies will replace the old ones in an appropriate and gradual manner to avoid adversely impacting consumer confidence and vehicle consumption.

### ***Introduce coordinative and consistent policies and requirements.***

As the development of NEVs and ICVs progresses, the policy-making process has become increasingly complex and involves more government agencies. Some local governments have also introduced their own policies and requirements, leading to a lack of coordination across relevant government departments and inconsistencies in policy intention and implementation between central and local governments. This has resulted in excessive uncertainties for the industry, which heavily depends on the economy of scale. Establishing a unified national market and making coordinated policies and requirements are crucial, especially for ICVs that are still in the early stage.

The Chamber urges all involved government agencies to establish a consistent policy environment by improving coordination across departments and regions. We recommend that government agencies enhance communication and coordination in designing and implementing relevant policies, providing the industry with a more stable and predictable management environment, and lowering the compliance costs and risks.

In addition, we suggest that central and local governments further align policies and regulations. We also recommend that local new energy catalogs and free licenses not involve additional local requirements and standards other than national standards. Additionally, remote monitoring requirements for local NEVs and driving tests for local ICVs should be consistent with national requirements.

### ***Optimize policies, laws, and regulations related to an electric, intelligent, and connected industries***

The transformation of the automobile industry towards

尤其是外资企业参与到标准制定内容已经被写入《外商投资法》。但是，截至目前，汽车技术标准化委员会还没有来自外资企业的委员。

商会一直呼吁，政府在汽车政策、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。

保证外资企业平等参与汽车相关法规、特别是智能网联相关法规的制订，有利于与全球法规的协同统一，也有利于增加中国汽车在全球市场的竞争力。

### 连续性和可预见性

汽车制造具有长周期性，其产品的开发和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和智能网联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，给企业足够的合规过渡期，让企业有充分的时间做出调整。

商会建议保持乘用车双积分管理办法的稳定性和可预期性，政府尽早与产业开展下一阶段双积分政策的研究与规划。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。

新能源补贴于2022年底退出，新能源汽车免征购置税政策延续到2023年底。商会建议政府尽早明确并发布2023年之后的新能源车购置税政策，稳定市场预期。同时，建议加快推进一系列支持政策，如新能源汽车不限购限行、加快充电基础设施建设等，推动新能源汽车进一步发展，帮助加快汽车行业碳减排，为汽车行业智能化的转型升级奠定基础。《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衔接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，以上相关政策能尽快明确，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。不同部门之间政策间缺乏协调、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智能网联汽车来说尤为关键。

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性要求和标准。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应该和国家标准统一。

### 加快完善与电动化、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。随着行业技术变革的推进，现有政策与新技术发展不一致的问题日益凸显，监管机构面临如何加快制定与新技术相匹配的政策法规的难题。商会看到，政府已经注意到这个问题。2022年，工信部发布了《关于开展智能网联汽车准入和上路通行试点工作的通知（征求意见稿）》，进一步推动具备量产条件的搭载自动驾驶功能的智能网联汽车产品的发展，同时通过试点的方式获取经验，增加制定相关政策法规的技术依据。

商会建议政府主管部门尽早与产业开展下一阶段双积分政策的研究与规划，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。

electric, intelligent, and connected technologies is a clear trend and direction, and the government has set appropriate goals accordingly. However, as new technologies emerge, it becomes increasingly challenging for regulators to introduce laws and regulations that align with them as quickly as possible, given the inconsistency of existing policies. The Chamber is pleased to see that the government has recognized this issue, with the Ministry of Industry and Information Technology (MIIT) releasing an “Exposure Draft” in 2022 to promote the development of intelligent-connected vehicles (ICVs) equipped with autonomous driving functions and establish the technical foundation for relevant policies and regulations through piloting.

In order to further support the development of ICVs and NEVs, the Chamber recommends that responsible government departments undertake research and planning for the dual point system for the next stage, and elaborate on policies related to charging facilities such as public charging stations and access in older neighborhoods. It is also important to amend the *Road Traffic Safety Law*, the *Highway Law*, and the *Surveying and Mapping Law* in a timely manner, streamlining the testing application process, and promoting mutual recognition of test licenses to create a more conducive environment for innovation.

As digital technologies continue to develop, the automobile, information technology, and other industries will increasingly integrate with one another. As a result, it is essential to strengthen communication and coordination among traditional automotive industry authorities, as well as other regulators such as those responsible for information, mapping, and traffic management. By working together in policy formulation and implementation, we can promote innovation and the development of these industries.

### ***Ensure a stable and smooth supply chain of the automotive industry***

The automotive industry operates within a long and internationalized supply chain that typically encompasses multiple sectors. Consequently, any disruption to a particular section or regional supply chain can have significant implications for the global industry. As the industry undergoes digitization and intelligent development, it becomes increasingly necessary to foster closer relationships between upstream and downstream components of the supply chain. Recent events, such as sporadic COVID-19 outbreaks in China, regional electrical shortages, mounting raw material costs, and chip shortages faced by electric vehicle manufacturers, have all highlighted the challenges the industry must overcome to maintain the stability of the supply chain. Furthermore, geopolitical conflicts add further uncertainty to the situation.

In light of these challenges, the Chamber recommends the establishment of a “graded supply guarantee system.” This

system would enable governments to prioritize the production and operation of key industries and companies and maintain the security and stability of supply chains during emergencies, such as epidemics and natural disasters. This would be achieved by assessing the importance of a company’s supply chain and the potential impact on people’s well-being and work if it were to be disrupted. Ultimately, such a system would enhance the resilience, security, controllability, and overall benefits of the supply chain for all stakeholders across the globe.

The Chamber would also like to take this opportunity to express its appreciation for the Chinese government’s COVID-19 policy adjustments and for the support and assistance provided by relevant agencies during the pandemic to help address work, production, and logistics-related challenges faced by the industry.

## **Data security and ICVs**

### ***Data and information security in the automobile industry***

Three upper laws for China’s data security, *Cybersecurity Law*, *Data Security Law*, and *Personal Information Protection Law*, were enacted together with the *Management of Automobile Data Security (Draft Provisions)* and *Measures on Security Assessment of Outbound Data Transfer*. Under the background of the globalization of automobile market and supply chain, there must be data exchange with foreign countries in R&D of intelligent connected vehicles (ICVs) via independently owned enterprises, joint ventures (JVs), and foreign-funded companies, ranging from recall management and after-sales service to auto-driving algorithm iteration and upgrades based on traffic information. Recommendations from the Chamber are:

- Organize experts from the industry to study and confirm the connotation and extension of automobile data, produce a management list of automobile data and clarify personal information & data and other automobile data not involved in national security and that have been desensitized for R&D of ICVs, allow free flow of data and information, and establish a fast-track review mechanism to facilitate data flow necessary for the normal operation and management of multinationals.
- Accelerate the drafting and release of standards for automobile data security, including data classification and identification of important data, etc. and pay full attention to industry opinions and balance national supervision and industrial development when formulating regulations and standards.
- Release the timeline and nodes upfront for data security standards which are supposed to be included in the management of automobile production access to create

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。

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。

### 确保汽车产业供应链稳定畅通

汽车产业链长、涉及面广、国际程度高，某一环节、某一地区供应链出现断裂，都可能会给全球的汽车产业带来重大影响。现阶段汽车产业电动化和智能化的发展，也对汽车产业供应链上下游的关系提出了更高的要求。2022年，中国国内疫情多发对汽车产业供应链的正常运行带来严重冲击；区域性用电紧张也对汽车产业供应链造成挑战；电动汽车的发展也遭遇了原材料价格增长、芯片短缺等供应链难题，叠加地缘政治冲突等不稳定因素，供应链稳定性已经成为汽车企业不得不解决的难题。

商会建议建立“分级保供机制”，即根据供应链企业一旦断供对民生和经济影响的敏感程度，确定保供优先级，以便政府能在未来面对疫情、自然灾害、或突发紧急情况时，能够及时保障重点工业、重点企业的稳定生产运营和产业链的安全稳定，打造更具韧性、更加安全可靠、更能服务全球的汽车产业链。

另外，商会认可中国防疫政策的调整，也感谢相关部委在疫情期间为解决企业复工复产和物流运输等问题做出的支持与帮助。

### 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，《汽车数据安全管理办法（试行）》，《数据出境安全评估办法》

等法规也已经发布并实施。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，如召回管理，售后服务，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：

- 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。对于跨国企业正常管理所必需的数据，建立快速审查机制。
- 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。
- 对于计划纳入汽车生产准入管理的数据安全标准，提前公布纳入管理的时间节点，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，同时，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：



a stable and predictable regulatory environment for the industry and reduce compliance costs and risks borne by enterprises.

## ICVs

As the automobile industry is facing profound changes as it becomes more intelligent, well connected, and electrified with benefits shared by all stakeholders, ICVs and auto-driving have become one of the most important strategic directions for the automobile industry. ICVs require coordinated development of multiple industries supported by technology advancement in line with policies, laws, and regulations. There are existing barriers in technological development and application have to be removed to accelerate the development of ICV technologies and market in China. AmCham China proposes the following measures:

### Testing on public roads

Conducting a comprehensive set of tests in a variety of actual road conditions, encompassing different roads and driving scenarios, is essential for the development of auto-driving. The data required for these tests can only be collected from real public roads and is crucial for analysis. China's vast territory, complicated roads, and traffic scenes require sufficient actual road testing to ensure the safety and functionality of auto-driving. However, current regulatory restrictions on actual road testing have impeded the development of auto-driving. Some cities, including Beijing, have opened some expressways for testing, which the Chamber warmly welcomes. We fully understand the potential safety concerns of competent authorities regarding testing auto-driving on actual roads. However, the Chamber still recommends that the competent authorities and decision makers consider opening up as many actual scenarios as possible for the development and testing of auto-driving under the following conditions:

- Manufacturers submit safety materials for the review and approval by competent authorities.
- Manufacturers have the ability to guarantee the performance and safety of auto-driving products.
- Manufacturers undertake safety responsibilities for auto-driving tests on actual roads.
- Safety officers are equipped to intervene the auto-driving function at any time during the test.

In addition, the Chamber aims to establish effective communication channels with decision makers and legislative branches to actively participate in the formulation and revision of legal frameworks related to auto-driving. By working collaboratively, we can promote the legislation of auto-driving and support its development and application in China.

### Pilot projects for the access and on-road traffic of ICVs

The piloting of access and on-road traffic of ICVs plays a significant role in exploring the access and on-road traffic of auto-driving vehicles. However, companies still need to conduct road tests and demo operations in various places to facilitate R&D and technology verification. Therefore, it is recommended that the government continues to support road tests and demo operations with favorable policies while promoting access pilots.

Regarding enterprise design and development, safety guarantee, safety monitoring, and other capabilities in pilot policies, we recommend that, in addition to the declaration by the company itself, competency assessments should be extended to the group's ability in resource sharing and R&D capabilities of the China headquarters or overseas headquarters (for JVs or wholly-owned automobile companies).

Furthermore, the Chamber hopes that the experience accumulated from pilot operations will facilitate the rapid construction of an ICV production access management system and the promulgation of important laws and regulations for the development of ICVs, such as the revision of the *Road Traffic Safety Law* and *Surveying and Mapping Law*. Emerging fields such as data security, network security, and cross-border data transmission should also be coordinated with the development of the automobile industry.

### Application of high-definition map and collection of geographic information

Auto-driving maps play a critical role in ensuring the safety and reliability of auto-driving vehicles. However, there are currently no specific regulatory requirements for auto-driving maps in China. The existing regulations only require the application of spatial position technology processing before the publication, sale, dissemination, display, and use of navigation e-maps. This limitation on elevation information and position accuracy has a negative impact on auto-driving, thus undermining safety.

The Chamber recommends that auto-driving vehicles be allowed to use un-deflected auto-driving maps while ensuring national security. Moreover, it is recommended to make elevation data available to support R&D and commercialization of auto-driving technology. The Chamber believes that national security and industrial development shall be well balanced, and responsibilities and requirements for auto suppliers and map providers should be clearly and rationally set to protect the legitimate rights and interests of all stakeholders and contribute to the healthy development of the industry.

In the formulation of specific regulations for auto-driving maps, the Chamber suggests deep communication with

- 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。
- 厂商具备保障自动驾驶产品性能安全的能力。
- 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。

同时，商会希望能够与相关决策者及立法机构的进行有效的沟通交流，探讨相关法规框架的进一步制修订，共同推进自动驾驶相关立法，促进自动驾驶在中国的发展和运用。

### 智能网联汽车准入和上路通行试点

智能网联汽车准入和上路通行试点对于探索自动驾驶车辆的准入与上路通行有重大意义，但是同时企业从研发和技术验证角度仍有在各地进行道路测试和示范运营的需求，建议政府在推动准入试点的同时，对于道路测试和示范运营继续予以支持和政策保障。

关于试点政策中对于企业设计开发、安全保障、安全监测等能力的要求，我们建议除申报企业自身拥有之外，集团能力资源共享、中国区总部或者海外总部研发中心的能力（对于合资或独资汽车生产企业）均可以被包括在能力考核的范围之内。

另外，我们希望通过试点运行的经验积累，快速推进智能网联汽车生产准入管理体系建设，推动智能网联汽车发展相关的重要法律法规，例如《道路交通安全法》、《测绘法》的修订，以及数据安全、网络安全、数据跨境传输等新兴领域与汽车行业发展的融合与统筹。

### 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。平衡国家安全和产业发展

的需求，清晰、合理地规范汽车厂商、地图供应商在处理高精地图数据时的责任和要求，保护各方参与者的合法权益，促进行业健康发展。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：国家强制性标准与推荐性标准，在标准的设立原则、制定流程、实施要求和对产业的影响等方面，都有着显著的差别，在实操层面，仍然存在将推荐性标准纳入强制实施范畴的现象，对产品准入政策和企业的产品规划，都带来了很大的不确定性。

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，特别是通信、网络安全标委会，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

中国新能源汽车自2021年进入快速发展阶段，2022年全年销量超680万辆。面对这样高速发展的形势，尽快明确新能源汽车的后续支持政策，为新能源汽车市场的稳定和快速发展提供良好的政策环境，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

automobile companies and research institutions to clarify the data items that need to be regulated and to determine appropriate management methods in consideration of the needs of auto-driving and the Internet of Vehicles (IoV) as a whole. By doing so, the Chamber hopes to support the development of a regulatory framework that promotes the safe and reliable development of auto-driving technology.

*Establish a standard system consistent with international standards and engage foreign capital in technical committees, national standards, and recommended standards*

Since 2018, China has issued guidelines for the development of a national industry standard system for Internet of Vehicles (IoV). By 2025, over 400 relevant standards for Intelligent Connected Vehicles (ICVs) will be produced in China. However, challenges and concerns exist for the industry in terms of the significant differences between national mandatory standards and recommended standards, which can create uncertainty for access policies and product planning for companies.

To address these challenges, the Chamber recommends that Chinese standardization authorities actively engage in international standardization efforts and establish mandatory bottom-line standards that the industry must follow. Recommended standards can then be adopted by enterprises voluntarily based on their needs. The communication and network security standards committee should also invite foreign-invested enterprises to participate in the standardization process, disclose drafted standards and final texts to establish a globally-unified system of standards and regulations for ICVs that can support exports.

Furthermore, the Chamber suggests that a technology evaluation committee and corresponding evaluation process be established for new technologies for ICVs that have not yet been governed by formulated standards or whose standards conflict with current technical regulations. Corresponding certification exemptions should also be granted to encourage and promote technological innovation.

## Dual Carbon Goals

### NEVs

China's NEV industry gained significant momentum in 2021, with the annual sales of NEVs exceeding 6.8 million in 2022. To sustain this growth, relevant authorities must release supportive policies promptly to provide a clear direction for the market's stability and continued expansion. Additionally, local protective measures that hinder the industry's development should be lifted, and it is crucial to ensure that there are no restrictions on the traffic and purchase of NEVs. By adopting these measures, China's NEV industry

can be effectively nurtured and further flourish.

*Retain the incentives for NEVs, facilitate the high-quality development of NEVs.*

To ensure the stable and rapid growth of China's new energy vehicle (NEV) industry, it is recommended that relevant authorities adjust subsidy policies to shift subsidies from purchasing to implementation. As new energy products continue to enter the market, local governments can consider cancelling restrictions on NEV purchases, providing preferential treatment for NEV parking, and allocating more subsidies for charging facilities. However, previous subsidy policies should be adjusted annually and implemented immediately upon release to avoid creating instability and increasing R&D costs due to frequent policy changes. Therefore, it is suggested that the authorities avoid revising technical standards in subsequent policy stipulations.

In addition, the current policies exempting NEVs from auto-purchase tax have been extended until the end of 2023. To provide more certainty for the industry, it is recommended that the government confirm exemption plans for future years as soon as possible and minimize changes to technical standards.

NEVs play a crucial role in achieving "Dual Carbon" goals and reducing carbon emissions. Therefore, the relevant policies, such as the dual point system (CAFC/NEV) and incentive measures, should adhere to the basic principle of calculating electric consumption as zero during NEV usage.

To promote the high-quality development of the NEV industry, authorities should also diversify EV products while promoting their rapid growth. Thus, they can consider cancelling compulsory energy consumption limits on single vehicles.

*Inclusivity towards new charging facility technologies*

Charging facilities and services are crucial for the sustainable development of NEVs. Although central and local governments have released subsidy policies for charging facility construction, the utilization rate of these facilities is currently low. To promote industrial development and improve charging facility services, authorities can soon release bonus and subsidy policies for charging facilities. In addition, the high-power charging standard needs to be clarified promptly, and a more inclusive "exemption" system for new technologies related to charging and switching, such as vehicle-electricity separation, wireless charging, and vehicle-to-grid (V2G), needs to be established, along with special subsidy funds. Enterprises should be allowed to choose some technical pilot areas and conduct innovative applications with safety, with industrial security safeguarded,

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

首先，现行新能源汽车的补贴政策 2022 年底到期，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方面的优惠，同时加强充电基础设施相关补贴。此前的补贴政策每年需要进行调整，而且政策发布后马上就实施，政策的快速变化，一方面不利于企业的产品开发和生产规划，另一方面给整个行业运营带来不稳定性，增加研发和生产成本。在后续的政策制定中，建议政府避免每年修订新的技术标准。

目前新能源汽车免购置税政策已经延续到 2023 年底，希望政府可以尽快明确后续年份的减免方案，同时尽量保持技术标准的稳定。

鉴于发展新能源汽车对实现我国“双碳目标”的重要性，正确体现新能源汽车在碳减排方面的重要作用，建议在相关政策中（例如双积分体系 / 激励性措施）坚持新能源汽车使用阶段电耗按零排放进行核算的基本原则。

在促进新能源汽车的高速增长的同时，应保持电动车产品多样化以推动电动车和产业的高质量发展，因此建议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。同时尽快明确大功率充电标准，建立对充换电相关新技术（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。

### 尽快建立协调统一的汽车行业碳减排政策体系和法规要求

目前我国正在准备一系列降低温室气体排放的政策法规措施。我们建议国家汽车行业的主管部委与温室气体减排的主管部门进行积极沟通与协调，建立协调统一的碳减排政策和法规要求，避免重复规定或者政策上的不衔接。

合理划分汽车生产企业的碳排放管理边界和主体责任，避免将车辆使用阶段的燃料周期碳排放（如电力、汽柴油生产所产生的碳排放）责任归于汽车生产企业，同时积极推动绿电在汽车领域的使用。

建议政府部门制定政策，鼓励和协助企业开展跨省绿电交易，缓解不同地区绿电供应不均衡的问题，尤其是像北京这样受自然资源、地理环境限制而无法自主生产充足绿电供应的地区。

建议政府进一步完善绿色能源供给体系，制定相应政策，鼓励和推广生物质燃气，生物质燃料，地热等绿色可再生能源的供给。

### 下一阶段排放和油耗标准

#### 国七排放标准

考虑到新产品上市前数年企业即要做出产品决策，因此在政府在推行新的排放标准之前，应确保标准制定的透明度及企业的早期参与。通常企业需要对于至少未来 5 年的法规要求有明确预期以便安排生产、研发规划。建议主管机构能尽快与行业就国七排放标准的技术要求和实施规划进行讨论，尽早明确法规要求，给予企业足够的准备期。

#### 重型商用车下一阶段排放和油耗标准

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的制定和管理。

现行的商用车排放和油耗标准都没有温室气体的限值和要求。据统计，2020 年商用车以汽车总量 12% 占比，排放了超过 50% 的汽车总碳排放量，因此，商用

technical progress ensured, and users' benefits prioritized. Laws and regulations that impede the development of new technologies should be revised in a timely manner.

*Unified policy systems and regulations on carbon emission reduction in auto industry need to be established as soon as possible*

At present, China is implementing a series of policies and regulations aimed at reducing greenhouse gas emissions. To avoid duplicate regulations and inconsistent policies, it is advisable for the relevant ministries and commissions responsible for the automobile industry and greenhouse gas emission reduction to actively communicate and coordinate with each other, and establish unified policies and regulations related to carbon emission reduction.

It is essential to reasonably define the carbon emission boundary and main responsibility for auto manufacturers to prevent manufacturers from being blamed for fuel cycle carbon emissions during the usage of vehicles. Moreover, the promotion of eco-friendly electricity in the automobile industry needs to be actively encouraged.

To mitigate the impact of unbalanced supply of eco-friendly electricity in different regions, the authorities can release policies to support enterprises to trade eco-friendly electricity with different provinces. For instance, Beijing, which cannot independently produce such electricity due to lack of natural resources and local geography, can benefit from this policy.

The government should focus on improving the green energy supply system, by rolling out relevant policies, and encouraging the supply of renewable energy sources such as biomass gas, biomass fuel, and geothermal energy. These efforts will help to reduce greenhouse gas emissions, and achieve China's environmental goals.

*Standards for emission and fuel consumption in the next stage*

*China VII vehicle emission standards*

Prior to launching a new product, it is typical for enterprises to develop a product strategy. Therefore, it is essential for the government to ensure transparency in standard regulations and early engagement with enterprises. Enterprises typically require an understanding of upcoming regulations for the next five years at a minimum to prepare for their production and research and development initiatives. The authorities can promptly engage with industry representatives to discuss technical requirements and the implementation of the China VII vehicle emission standards. It is crucial for the regulations to be clarified as soon as possible to provide sufficient time for enterprises to prepare adequately.

*Standards for emission and fuel consumption from heavy-duty commercial vehicles in the next stage*

Since July 1, 2021, China has implemented the "Stage 6 Limits and Measurement Methods for Emissions from heavy-duty diesel vehicles" (China VI vehicle emission standards) nationwide. Currently, relevant government departments are considering the development of standards for emissions and fuel consumption from heavy-duty commercial vehicles in the next stage.

However, there are currently no limits or requirements for greenhouse gas emissions in existing standards for commercial vehicles. According to statistics, commercial vehicles account for 12 percent of the total existing vehicles, but emit over 50 percent of the total carbon emissions from the automotive sector. Therefore, the coordinated management of pollutants, greenhouse gases, and carbon dioxide emissions, as well as fuel consumption from commercial vehicles, plays a crucial role in the development of the commercial vehicle industry and achieving the dual carbon goals of carbon peak and carbon neutrality with the assistance of the auto industry.

Thus, reducing carbon dioxide emissions should be prioritized when setting up the next standards for pollutant and greenhouse gas emissions, as well as fuel consumption from commercial vehicles. This will contribute to the development of a sustainable and low-carbon transportation system in China. In addition, these two following steps can be taken in the short term:

- While setting up a management system for carbon dioxide emission from commercial vehicles (testing, recording, and uploading) when the fuel consumption standards in the next stage (Stage IV) are implemented. However, no further significant reductions in traditional pollutants such as nitrogen oxides are required, so that companies can pool their resources to reduce fuel consumption and improve energy efficiency, and enter a certain payback period on products under Stage IV fuel consumption standards.
- While implementing emission standards or fuel consumption standards of the next stage, since fuel consumption and carbon dioxide are positively correlated, but it is different for the relation between them and pollutants, departments and commissions in charge need to fully consider the coordination between the limit and management of traditional pollutants and carbon dioxide in order to reduce the workload and economic costs of enterprises in terms of compliance.

Furthermore, we recommend that the authorities learn from the management system for pollutant emission when managing the carbon dioxide emission from commercial vehicles in the next step, and focus on the in-use compliance emission levels during the actual road full lifecycle, to greatly reduce the actual carbon emission of vehicles.

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，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收期。
- 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。

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量。

## 市场准入

### 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。

目前一些限购城市插电式混合动力汽车或者进口插电式混合动力汽车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，建议对于纯电动汽车和插电式混合动力汽车同等对待，均可以获得地方免费牌照。建议以CCC证书或产品公告为获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。

### 各地 RTM 要求等不统一

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 万量大关，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。

基于对行业现状和发展趋势的理解，我们建议：

- 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。或，
- 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。

## 建议

### 对中国政府：

- 完善电动化、智能化、互联化产业相关政策法规。简化政策并提高行业的透明度和可预测性。
- 确保传统和新能源汽车产品线的汽车行业供应链稳定顺畅。
- 组织行业专家研究确定汽车数据的内涵和外延，制定汽车数据管理名录，明确个人信息数据和其他不涉及国家安全、已脱敏用于智

## Market access

*Different policies and standards pose challenges to access into local markets.*

*Establish coordinated and consistent policy requirements, and abandon local protective measures.*

China is currently the largest market for new energy vehicles (NEVs) in the world. The government has taken several measures to promote the development of this market, including the implementation of various incentives and the removal of local protective measures, with the goal of achieving equal market access. These actions are considered active and effective policies that are expected to be implemented at the local level in the near future.

However, there are still some challenges hindering the long-term development of NEVs. For instance, some cities limit the registration of plug-in hybrid electric vehicles (PHEVs) or imported PHEVs with free plates for NEVs, and certain municipal governments require registration before all parties can enjoy the incentives.

To address these challenges, it is recommended that the central and local policies and regulations should be unified, particularly with regard to local free plate policies. EVs and PHEVs should be treated equally and allowed to register with free plates for NEVs. To obtain free plates, vehicles should meet the requirements of the China Compulsory Certification (CCC) certificate and product announcement. Moreover, all local governments should abolish any protective measures aimed at NEVs, such as the establishment of local catalogs or the requirement for registration.

*RTM requirements in local areas are not unified.*

In November 2016, the Ministry of Industry and Information Technology of the People's Republic of China released *Notice on Enhancing Promotion and Safety Supervision of New Energy Vehicles* from the Ministry of Industry and Information of the People's Republic of China. Since its release, the NEV industry has undergone significant changes, with sales now exceeding three million. To better adapt and guide industrial development, we recommend that relevant government departments revise and update the policy instrument.

Currently, there are over 20 platforms at all levels that enterprises need to submit information to, both nationally and locally. Additionally, all platforms have extensive requirements on information sharing, creating difficulties for enterprises and wasting valuable resources for management.

Starting from the current situation and development trend of the industry, we recommend:

- To integrate local platforms into the national platform. Enterprises then only need to upload vehicle information and finish vehicle registration once for each. And national and all local platforms can obtain the data at the same time. Or,
- To replace all local platforms and instead focus on the building and management of a unified national platform. In this way, safety monitoring and industrial development of NEVs can be better supported.

## Recommendations

### *For the Chinese Government*

- Optimize policies, laws, and regulations related to electric, intelligent, and connected industries. Streamline policies and increase transparency and predictability for industry.
- Ensure a stable and smooth supply chain of the automotive industry for both traditional and NEV product lines.
- Organize experts from the industry to study and confirm the connotation and extension of automobile data, produce a management list of automobile data and clarify personal information & data and other automobile data not involved in national security and that have been desensitized for R&D of ICVs, allow free flow of data and information, and establish a fast-track review mechanism to facilitate data flow necessary for the normal operation and management of multinationals.
- Accelerate the drafting and release of standards for automobile data security, including data classification and identification of important data, etc. and pay full attention to industry opinions and balance national supervision and industrial development when formulating regulations and standards.

能网联汽车研发的汽车数据，允许数据和信息自由流动，建立快速审查机制，便利跨国公司正常经营管理所需的数据流动。

- 加快起草发布汽车数据安全标准，包括数据分类、重要数据识别等，在制定法规标准时充分听取行业意见，兼顾国家监管和行业发展。



# Banking and Capital Markets

## Introduction

In 2022, AmCham China observed several policy initiatives in the financial sector. The Intra-Market Connect has been implemented between the China interbank bond market (CIBM) and the exchange market, enabling investors to purchase and sell bonds traded on the other market through connected financial market infrastructures (FMIs). The *Futures and Derivatives Law* (FDL) is the first national-level statute that acknowledges the concept of a single agreement and safeguards close-out netting against bankruptcy laws. Additionally, apart from the existing settlement agency model, the People's Bank of China (PBOC) has adopted a multi-layer custodian model to safeguard the legal rights and interests of foreign beneficial owners under the arrangement. Moreover, it has been reported that the China Securities Regulatory Commission (CSRC) is developing two new exemptions to the short-swing profit rule for foreign investors to further simplify investment in the China A-share market.

AmCham China appreciates the opening-up measures. However, China's progress and the level of capital market opening are relatively low, many of our members' issues have been pending for years unsolved. Furthermore, one additional concern raised across the financial sector is the scope of important data, as cross border data transfer is the nature of global financial business. The National Information Security Standardization Technical Committee (TC260) updated the consultation on *the Rules of Identification of Key Data* in March 2022. We understand that financial industry regulators will further lay out the detailed scope of important data. Our members would hope that the one leading regulator, saying PBOC, could lead the work and issue one consolidated version of important data for banking, securities, asset management, etc., for companies to comply with, but we heard that each financial regulatory authority will issue their own single version of important data expecting this year. AmCham China urges the establishment of a truly level playing field for foreign investors operating in China.

## Commercial Banking

### *Fixed Income Business*

AmCham China recognizes that increased involvement

of foreign financial institutions (FIs) in the onshore fixed income market can attract more global investors to China, leading to greater financial expertise, market stability, and growth.

However, AmCham China members still face restrictions on acting independently as lead underwriters for corporate bonds on the interbank market. Despite several AmCham China members applying for the necessary licenses from the National Association of Financial Market Institutional Investors (NAFMII) since October 2018, no US-based financial institutions (FIs) have received approval at the time of writing. In contrast, two European FIs secured lead underwriting licenses in 2019. Although the Phase One agreement included provisions to allow US FIs to become lead underwriters for corporate bonds on the interbank market, no foreign FIs were granted lead underwriting licenses between 2020 and 2022. AmCham China members will closely monitor the situation to see whether US FIs are granted licenses to become lead underwriters of corporate bonds in 2023.

### *Requirements for Financial Reporting*

The financial industry has experienced significant growth in recent years, alongside the increasing use of regulatory technology, which involves utilizing emerging technologies to aid in meeting compliance responsibilities. This has become widely adopted across the financial industry. In China, regulators have responded to these trends by imposing increasingly strict regulatory reporting requirements. Notably, the number of reports required to be filed has increased, data requests are becoming more granular, and the number of reports that need to be automatically generated is growing.

Foreign-invested financial institutions operating in China have been supportive and have worked to comply with these requirements. However, AmCham China has noted 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 vary across different regulatory agencies. These inconsistencies hinder the ability of foreign-invested FIs to meet existing reporting requirements by the specified deadlines.

# 银行业和资本市场

## 引言

2022年，中国美国商会（以下简称商会）见证了金融领域的一系列政策举措。中国银行间债券市场（CIBM）和交易所债券市场实现了市场内连接，一个市场的投资者可以通过连接的金融市场基础设施（FMI）在另一个市场购买和出售债券。《中华人民共和国期货和衍生品法》（FDL）是第一部承认单一协议概念、保护终止型净额结算免受破产法影响的国家级法规。除了目前的结算代理模式外，中国人民银行采用了多层托管模式，保护外国受益所有人的合法权益。此外，中国证券监督管理委员会（CSRC）据称正在制定两项针对外国投资者的短线利润规则豁免，以促进对中国A股市场的投资。

商会支持这些开放措施，但中国资本市场开放进程相对较慢、水平相对较低，商会会员的许多问题多年以来仍未得到解决。此外，跨境数据传输是全球金融业务的本质，金融领域的另一个关注点在于重要数据的定义。全国信息安全标准化技术委员会（TC260）于2022年3月更新了《重要数据识别指南》。据了解，金融监管机构将进一步明确重要数据的详细范畴。商会会员希望中国人民银行牵头并发布重要数据的统一版本，为银行、证券、资产管理等行业规范提供遵循。然而，各金融监管机构据称将在今年发布各自有关重要数据的单一版本。商会呼吁相关部门为在华经营的外国投资者建立真正公平的竞争环境。

## 商业银行

### 固定收益型业务

商会认为，在岸固定收益市场中纳入更多外国金融机构（FI），将有助于吸引更多的全球投资者来到中国，为中国提供更多金融专业知识，提升中国金融市场稳定性和进一步增长。

然而，商会会员仍然无法在银行间市场上独立担任公司债券主承销商。自2018年10月以来，尽管部分商会会员已向中国银行间市场交易商协会（NAFMII）申请了所需的许可证，但截至本报告编写的时间，总部位于美国的金融机构（FI）尚未获准，有两家欧洲金融机构在2019年获得了主承销商许可证。美国金融机构成为银行间市场上公司债券主承销商的资质已被纳入第一阶段协议，但相关部门在2020年至2022年没有向任何外国金融机构发放主承销商许可证。商会会员将继续关注这一情况，希望美国金融机构能在2023年获得公司债券主承销商许可。

### 财务报告要求

随着金融业的发展，监管技术也在不断涌现。利用新兴技术履行企业合规责任在金融业得到了广泛应用。对此，中国监管机构近年来对监管报告提出了更严格的要求：需要提交的报告类型增多，数据要求进一步细化，需要提交的自动生成报告数量增加。在华经营的外资金融机构对此给予支持并努力遵守要求。商会认为，许多报告要求中的重复内容较多，某些报告准则的实施较为仓促，不同监管机构的报告标准、检查、审核和提交程序差异较大，外资金融机构难以在规定期限内满足现有的报告要求。商会会员表示有1000多种报告需要提交，而报告要求仍在不断变化。商会认为政府可以重新考虑如此大规模报告的必要性，建议通过合并内容和减少重复进一步精简报告要求。这种改革将为监管机构和金融机构（包括商会会员）节省处理报告的时间、成本和资源。最重要的是，监管机构可以更加专注于明确技术解决方案，优化报告系统，并加强风险识别、预防和控制。

### 中国国债期货

2020年2月，财政部（MOF）和中国证券监督管理

According to AmCham China members, more than 1,000 categories of reports are required to be filed, the requirements for which are in continuing flux. Therefore, 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 reform will save time, cost, and resources associated with processing these reports for both regulators and FIs, including AmCham China members. Most importantly, it will enable regulators to focus on identifying technical solutions, optimizing their reporting systems, and strengthening risk identification, prevention, and control. This will ultimately lead to a more efficient and effective regulatory framework, which will benefit both regulators and financial institutions.

### ***China Government Bond Features***

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, and only one foreign bank has been included in early 2023. Foreign banks play a crucial role in enabling foreign investment in China's onshore bond market, resulting in significant exposure to China Government Bonds (CGBs). AmCham China strongly recommends expanding the pilot project to include more foreign banks without delay to enable them to manage their interest rate exposure effectively. This expansion will also facilitate the diversification of the investor base by bringing in experienced foreign banks with a proven track record in CGB futures trading. This diversification will enhance market depth, liquidity, price discovery, and pricing mechanisms, providing significant benefits to all market participants.

### ***Gold Import Licenses***

The Chinese government maintains strict licensing and regulatory requirements for physical gold and gold-product imports, limiting the number of foreign banks authorized to engage in such activities. Currently, only a few foreign banks hold the necessary licenses to import gold into China, and none of them are US-headquartered banks. AmCham China advocates for the expansion of gold import licenses to include US banks, which would promote a more balanced supply and demand dynamic in China's onshore gold market and enhance liquidity. Furthermore, it would enable US banks to introduce global best practices into China, advance the internationalization of China's gold market, improve connectivity between the Shanghai Gold Exchange and international gold trading platforms such as the CME

Group and the LBMA, and strengthen the Shanghai Gold Exchange's position in the global gold pricing system. AmCham China encourages the government to take action to issue gold import licenses to US banks, thereby contributing to the development of a more robust, integrated, and globally connected gold market.

### ***Open Market Operation (OMO) Primary Dealer Status***

The People's Bank of China (PBOC) maintains and discloses a yearly roster of institutions permitted to conduct Open Market Operations (OMO). However, only four foreign banks have been included in this list so far. AmCham China urges that more US-based banks be granted primary dealer status to conduct OMO. Compared to domestic banks, foreign banks have limited access to RMB-denominated capital, making OMO primary dealer status essential to help them more efficiently leverage RMB-denominated capital to serve the real economy.

In the current context of China's capital market and bond market reforms, obtaining OMO primary dealer status will be crucial in improving the efficiency and liquidity of China's onshore bond market, and instilling confidence in foreign banks operating in the onshore market. Therefore, AmCham China urges the PBOC to grant more US-based banks primary dealer status to conduct OMO, in order to further promote the development of China's onshore capital and bond markets.

### ***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 responsibilities of each department within a foreign-invested bank are well-defined, and the professional knowledge, skills, and experience required by each department head are unique. Compliance officers need to be familiar with regulatory requirements, general counsels must be knowledgeable about national laws, administrative regu-

委员会（CSRC）发布了《关于商业银行、保险机构参与中国金融期货交易所国债期货交易的公告》（第12号公告），允许符合条件的商业银行和保险公司在中國金融期货交易试点交易中国政府债券（CGB）期货。截至目前，五大中资银行参与了这一试点，仅一家外国银行在2023年初被纳入试点名单。在华外资银行为外资进入中国在岸债券市场提供便利，并积累了大量的中国债券敞口。商会敦促相关部门为更多外资银行提供试点项目，改善利率风险管理。成熟的外资银行拥有丰富的中国政府债券期货交易经验，更多外资银行的加入将使投资基础多样化，改善市场的深度、流动性、“价格发现”和定价机制。

### 黄金及其制品进出口准许证

中国对黄金及其制品进出口实行严格准许和要求。迄今为止，只有少数几家外资银行获得了中国进出口黄金及其制品的许可，其中没有总部设在美国的银行。商会敦促政府向美国银行发放黄金及其制品进出口准许证，以保证供需平衡，提高中国在岸黄金市场的流动性。这也将有利于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美国交易所运营商芝加哥商品交易所（CME）和伦敦金银市场协会（LBMA）等国际黄金交易平台的联系，提高上海黄金交易所全球黄金定价体系中的影响力。

### 公开市场操作（OMO）一级交易商资格

中国人民银行公布了允许进行公开市场操作（OMO）的机构年度名单。截至目前，仅有四家外资银行被列入该名单。商会敦促相关部门授予更多美国银行一级交易商资格并进行公开市场操作。与国内银行相比，外资银行难以获得同等的人民币计价资本。公开市场操作一级交易商资格将有助于外资银行有效利用人民币计价资本服务于实体经济。在中国资本市场（尤其是债券市场）改革中，授予外资银行公开市场操作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，增强外资银行对在岸市场的信心。

### 关键人员的轮岗要求

为了防止腐败和地方主义，中国政府一直以来会将监管关键人员的轮岗，但这并不适用于复杂且技术要求严格的行业。外资银行在关键人员轮岗上遇到了困难。《中国银

监会（CBIRC）关于银行保险机构员工履职回避工作的指导意见[2019]》规定，“关键人员”是指在机构中具有管理业务和风险控制决策权的人员。各级机构及其内部部门应结合自身实际和区域特点，确定具有这种权力或重大影响的人员范畴，符合各机构内部管理和风险控制的需要。

外资银行各部门的职责分工有严格规定，但各部门负责人所需的专业知识、技能和经验有所差异。例如，合规方面的负责人需要熟悉监管要求，总法律顾问需要熟悉国家法律、行政法规和监管规则，产品部门负责人需要了解管理的相关产品或技术，法人、零售和金融市场等业务部门负责人需要具备各自领域的不同专业技能。有些职位需要专业资格，如会计师、律师、反洗钱等；有些职位需要监管部门批准，如合规官、首席财务官、首席信息官等。因此，如果银行需要对具有管理和风控决策权或重大影响的内部部门负责人实施轮岗制度，负责人可能不具备担任其他部门负责人的专业资格和经验。首先，将部门负责人轮岗到其他部门在现实中难以实现；其次，轮岗可能会导致相关部门负责人对专业知识不够熟悉，从而削弱银行的内部控制能力，增加专业领域的风险。

外资银行一般通过较为完善的三线全面风险管理框架实现内控管理目标。在日常履职过程中，尤其是在信贷审批等关键环节，各部门负责人的业务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制约，道德风险由此得到控制。在流程上，外资银行建立了明确的职责分工、信贷权限和相互制衡机制。除了第一道防线的定期风险自查外，还有第二道防线的合规检查和第三道防线的内部审计，从而实现有效的风险控制。

根据《[原]中国银监会办公厅关于落实案件防控工作有关要求的通知[2012]》、《中国银监会办公厅关于银行自助设备管理风险提示的通知[2014]》和《中国银行业金融机构衍生产品交易业务管理暂行办法[2011]》等相关监管要求，外资银行应在衍生产品交易主管和交易员、分行行长、支行行长、委派会计、支行柜员等岗位中明确需要轮换的重要岗位，以防范风险。

商会呼吁监管部门考虑外资银行的实际情况，允许银行根据风险评估确定关键人员的轮换豁免期。

### 资产管理

国务院于2019年7月出台《关于进一步扩大金融

lations, and regulatory rules, product managers need to understand the relevant products or technologies they oversee, and business department heads such as those for corporate, retail, and financial markets require different professional skills in their respective fields. Some positions require professional qualifications, such as accountants, lawyers, anti-money laundering experts, and other professionals, while other positions such as compliance officers, chief financial officers, and chief information officers require approval from the regulatory authority.

If a foreign-invested bank is required to rotate department heads who have decision-making power or significant influence on operations management and risk control, it may be challenging because the heads of each department may not have the necessary professional qualifications and experience to serve in other departments. Additionally, rotating department heads could result in them not being sufficiently familiar with the professional knowledge required for their new role, which could weaken the bank's internal control level and increase the risk in their professional field. Therefore, such a practice may not be practical in reality, and alternative methods should be considered to achieve effective internal control and risk management within the bank.

Foreign-invested banks rely on a comprehensive three-line risk management framework to achieve effective internal control management. The heads of various departments are subject to matrix management, strict separation of front and back office, and post-separation mechanisms, which help to prevent moral hazard among personnel. Credit approval and other key aspects of business management are closely monitored, with a clear division of responsibilities, credit authority, and mutual checks and balances in place. To ensure risk control, regular risk self-inspections are conducted by the first line of defense, while compliance inspections are conducted by the second line of defense and internal audits by the third line of defense. By implementing this framework, foreign-invested banks are able to effectively manage and control various risks in their daily operations.

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

The State Council's *Measures for Further Opening Up the Financial Sector* in July 2019 has laid the foundation to further promote cross-border investment activities ever since. AmCham China members also witnessed increased willingness and efforts among regulators, industry and investors to participate in asset management through outbound and inbound capital flows. The industry is keen to meet the growing demand for diversified product offerings, and bring in global expertise and best class solutions that are aligned with investors' and the country's strategic thinking.

### Investor Suitability Assessment

AmCham China members acknowledge the unique context of joint liability requirements for asset managers and distributors in China, where liability for investor suitability resides with both parties. This is in contrast to other jurisdictions where liability rests with distributors who onboard the end clients. This creates challenges for asset managers who do not have visibility into the end clients and rely on distributors to conduct investor suitability assessments. Despite attempts by asset managers to mitigate this risk by requesting investor information from distributors, these requests are often rejected due to concerns around proprietary information. AmCham China suggests that regulators consider re-aligning the liability standard to better reflect practical and commercial realities, as joint liability does not necessarily enhance investor protection.

Furthermore, the current client suitability framework in China focuses on a singular product risk rank approach. As the product landscape evolves and client sophistication and demand increases, the suitability framework should shift towards a holistic/portfolio suitability approach rather than a product-based approach. This would better serve the evolving needs of clients and support the growth and development of China's asset management industry.

### Multiple Licenses/Agencies

China's asset management industry is comprised of asset managers from different segments (more than 7 sub-categories and licenses) which are subject to different regulatory regimes including CBIRC (banking and insurance) and CSRC (securities, futures, and fund management), on top of relevant requirements imposed by PBOC, SAFE, and other self-regulatory organizations (e.g., AMAC). Global managers need to put in substantial efforts to reconcile the incremental requirements before they step into a new segment (e.g., for a wealth management company / affiliate to engage in mutual fund business in China).

AmCham China members would welcome an "activity-based regulatory approach", i.e., the regulatory approach be set in accordance with the activity rather than the form

业对外开放的有关举措》，为推动跨境投资活动奠定了基础。商会会员见证了监管机构、行业和投资者通过出境资本流动参与资产管理的意愿和努力进一步加强。金融业致力于满足日益增长的多元化产品需求，引入符合投资者和国家战略思想的全球专业知识和最佳解决方案。

## 投资风险评估

商会会员了解到，为确保投资风险，中国在资产管理公司和分销商的共同责任方面有独特要求：在大多数情况下，资产管理公司并不了解第三方分销商的最终客户，因此必须借助分销商进行投资风险评估。这与其他大多数司法管辖区有明显区别。在其他司法管辖区，投资风险评估责任由分销商（作为“拥有”最终客户关系的一方）承担。虽然资产管理公司可以要求分销商提供投资者信息来降低责任风险，但这种要求通常会遭到分销商拒绝，因为分销商将这些专有信息作为商业秘密保存。鉴于法规对投资者的保护并未因为实施共同责任机制到加强（事实上，分销商通常是当地监管机构监督的重点对象），且资产管理公司难以核实此类信息，商会建议监管机构根据实际情况重新调整责任标准。

此外，中国的投资风险框架依赖于单一的产品风险等级方法。随着中国的产品格局演变，客户的复杂程度和需求不断增加，风险框架应调整为整体或组合风险方法。

## 多重许可 / 代理

中国的资产管理行业由不同领域的资产管理公司组成（超过 7 个子类别和相应的许可证），这些公司需要满足不同监管机构的要求，包括中国银行保险监督管理委员会（银行和保险）和中国证券监督管理委员会（证券、期货和基金管理）、中国人民银行、国家外汇管理局和其他自律组织（如中国证券投资基金业协会）。在进入新领域（例如，财富管理公司 / 联营公司在中国的共同基金业务）之前，世界经理人需要协调与日俱增的市场需求。

商会会员支持“以活动为基础的监管方式”，即根据活动本身而非开展活动的机构性质来制定监管方式。这种监管方式有利于统一和规范全球资产管理公司的市场准入、投资、风险和其他资产管理业务，投资者（例如从成本上）与其中国客户可以通过整体或组合方式管理财富。

## 跨境投资

截至 2022 年 12 月，国家外汇管理局（SAFE）已向机构投资者发放了总额价值 1597 亿美元的 QDII 配额。商会会员期待获得批准的总配额持续增加，但根据观察，每年增长率相对较小，约为 1.5%。商会会员希望继续推动 QDII 计划，为国内投资者提供接触离岸产品套件的关键跨境渠道，促进全球最佳实践的交流。此外，根据《保险资金境外投资管理暂行办法实施细则》，商会会员建议中国银行保险监督管理委员会考虑将私募信贷基金（如优先票据、夹层融资和特殊债务）作为 QDII 计划下中国保险公司可投资的合格海外资产类别之一。全球保险公司常年致力于增加对私募信贷的资产配置，提升欧盟偿付能力 II 框架下的资本效率。商会会员认为，扩大保险公司的合格投资范围将满足中国资产配置者日益增长的需求，进一步发展和完善金融市场。

此外，商会会员希望代表在中国境内申请 QDLP 许可的境外另类投资经理人提出建议。由于 QDLP 项目仍处于发展初期，其审批过程缺乏可供参考的先例，并在解释和执行方面存在一些地区差异。商会会员建议相关监管机构提供精细指导，促进 QDLP 工作流程标准化，鼓励并吸引成熟的另类投资经理人进入中国市场，提高在岸投资者的产品供应。

## 中国 A 股股权

根据过去 17 年中国股票的专业投资策略，商会会员见证了在岸和离岸市场的显著差异。在国内市场或 A 股市场中，商会在高增长领域发现了极具吸引力的机会，包括信息技术、医疗创新、新能源汽车（NEV）供应链、清洁能源技术以及高端酒业等领域。随着社会对包容性和可持续发展的关注与日俱增，政府计划在 2060 年前实现碳中和，在强大的政策支持以及日益富裕且更具环保意识的千禧一代的推动下，商会认为上述领域将长期提供大量优质的机会。基于广泛机会和客户需求，某商会会员在 2022 年为全球投资者推出了“中国科技领袖战略”。该战略主要以“中华通”作为投资渠道，操作简便。然而，商会会员看好的中小中型股和新上市公司未被列入合格名单。中国证券监督管理委员会近期计划扩大合格股票的范围，商会会员等外国投资者将从范围更广、层次更多的中国在岸股票市场中获益，商会会员对此感到乐观。

of institution carrying it out. This setting could enable more unified and standardized management of the market entrance, investment, risk, and other essential aspects of asset management business for global asset managers. It would also benefit investors (e.g., from a cost perspective) with clients in China now migrate towards a more holistic / portfolio approach to managing their wealth.

### ***Cross-border Investment***

As of December 2022, SAFE has released a total of US \$159.7 billion of QDII quotas to institutional investors across segments, while AmCham China members welcome the continued approval for increasing total quotas, it is observed that the year-on-year growth rate is relatively small at around 1.5 percent. AmCham China members would hope to continue promoting the QDII scheme as a key cross-border channel that would provide domestic investors' access to the offshore product suites and to foster knowledge exchange of global best practices. In addition, based on the *Implementing Rules for the Interim Administrative Measures on the Overseas Investment of Insurance Funds*, AmCham China members would propose that CBIRC to consider including Private Credit funds (e.g., senior, mezzanine and special situations debts) as one of the eligible overseas assets classes which Chinese insurers can invest in under the QDII scheme. AmCham China members have seen trend of global insurers working to increase asset allocation into private credit over the years, taking capital efficiency under the Solvency II framework into consideration. AmCham China members believe that broadening the scope of eligible investments for insurers will further meet the growing needs of asset allocators in China and will allow for further development and sophistication in the market.

In addition, AmCham China members also hope to make suggestions on behalf of overseas alternatives managers seeking to obtain a QDLP license in onshore China. As the QDLP program is still in its early days of development, we have noticed that there is a lack of precedents that we could take into consideration and some regional variations in the interpretation and implementation of the QDLP approval process. AmCham China members propose that the relevant regulatory bodies continue to provide fine-tuned guidance and promote the standardization of the QDLP workflow. AmCham China members believe such actions would further encourage and attract well-established alternatives managers to enter the Chinese market, thereby enhancing the product offerings available to onshore investors.

### ***China A-shares Equity***

Over the past 17 years of being invested in China equities via dedicated strategies, AmCham China members have witnessed significant heterogeneity across onshore and offshore markets. Within domestic markets or A-Shares, we see compelling opportunities emerge in high growth areas

including information technology, healthcare innovation, new energy vehicle (NEV) supply chain, clean energy technology as well as the high-end alcohol segment. In our view, given a greater focus on inclusivity and sustainable growth with a conscious effort to achieve net carbon neutrality by 2060, these segments are likely to provide a plethora of compelling opportunities over the long-term driven by strong policy backing and an increasingly wealthy and more environmentally conscious millennial population. On the back of the recognition of the wide opportunity set and strong client demand, one of the AmCham China members has launched a China Tech Leaders Strategy in 2022 for the global investor base; the strategy invests mainly through Stock Connect channels given the ease of operational set up; however, some small/mid-cap and newly listed companies that AmCham China members like might not have been included in the eligible list. AmCham China members are encouraged by CSRC's recent plan to expand the scope of eligible stocks, allowing foreign investors like us to benefit from the breadth and depth of China's onshore equity market.

### ***China Pension***

AmCham China members are excited about the pension market opportunities ahead, especially with a focus on third pillar pension. AmCham China members have garnered extensive expertise in China's pension landscape through their role as outsourced overseas managers for the National Social Security Fund, building on their existing partnership with the organization. This experience has primarily been focused on the first pillar context of China's pension system. Echoing the nationwide strategic initiative to promote third pillar pension for individual investors, AmCham China members are willing to participate as pilot third pillar product manager by bringing in global expertise that AmCham China members have been specializing in offshore, such as Asset Liability Match (ALM) and Liability Driven Investment (LDI) mechanisms. To provide context, one of the leading AmCham China members supervises over US \$260 billion of pension assets from second pillar and third pillar schemes. AmCham China members express their interest in engaging in the third pillar scheme through their applicable onshore licenses, such as bank wealth management joint venture companies and fund management company entities, among others.

### ***Custody Service***

#### ***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

## 中国养老金市场

商会会员密切关注未来养老金市场的机会，特别是第三支柱养老金（个人养老金计划）。在现有的合作基础上，作为全国社会保障基金的海外外包管理人，商会会员已经在第一支柱领域积累了相关的中国养老金经验。为响应促进个人投资私人养老金的全国性战略举措，商会会员愿意作为第三支柱产品的试点管理者参与其中，引入商会会员在海外积累的全球经验，如资产负债匹配（ALM）和负债驱动投资（LDI）机制。例如，商会有一个主要会员负责监管第二支柱和第三支柱计划共计超过 2600 亿美元的养老金资产。商会会员希望获批相关的在岸许可证以便参与第三支柱计划，包括但不限于银行理财合资公司和基金管理公司。

## 托管服务

### 基金会计和转让代理服务

2017 年 3 月，中国证券投资基金业协会（AMAC）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（PFSI）与私募基金管理人（PFM）之间的法律关系，确定了基金权益单位登记服务、估值核算服务、信息技术系统服务这三类私募基金服务业务的要求。《管理办法（试行）》要求预期在中国提供基金会计（FA）和转移会计（TA）服务的基金管理人申请成为 AMAC 会员。

据了解，AMAC 从 2019 年开始更新《管理办法（试行）》。与此同时，基金会计和转移会计服务的注册程序暂时搁置。因此，在过去两年中提交申请的商会会员或外资基金服务机构均未获批。然而，约有 45 家在 2019 年前注册 AMAC 的国内投资基金服务机构被允许继续开展基金会计和转移会计服务。

美国托管银行（特别是已经提交申请的托管银行）在国际市场上提供基金会计和转移会计服务，拥有丰富的专业知识和经验。为进入中国市场，这些银行已经在风险管理、日常运营、分业经营和人力资源等方面建立了合格的服务程序。商会敦促中国证券监督管理委员会和中国证券投资基金业协会批准外资基金服务提供商的注册资格，并及时颁布更新后的管理办法。为了加快这一进程，商会鼓励中国证监会和 AMAC 以“试行”的

方式批准合格的外资机构，尽早引入高质量的服务提供商也将有利于中国投资市场、国内投资基金及其投资者。

## 国内证券投资基金的结算业务

根据《中国证券登记结算有限责任公司结算参与人管理规则（2017 年修订版）》，申请者若以商业银行身份通过托管结算模式开展结算业务，须满足以下监管资质，包括但不限于：① 年末净资产达到 400 亿元人民币；② 在内地（如北京、上海、深圳）设有子公司。商会理解相关部门在监管方面的考虑，但上述要求为外资企业设置了极高的门槛，阻碍了外资企业为国内证券投资基金提供结算服务。因此，出于产品整合和成本效率的考虑，外资企业无法提供在岸托管服务。

商会支持中国证监会在 2020 年 7 月施行的《证券投资基金托管业务管理办法》（172 号令）。经过改革，中国证监会允许外资银行分支机构开展托管业务，并通过母公司的资本满足适用的净资产要求。商会鼓励中国证券登记结算有限责任公司（CSDC）考虑采取同样做法，即允许外资银行分行利用母公司的资本开展结算业务。与此同时，商会鼓励 CSDC 取消“在内地（如北京、上海和深圳）设立子公司”的要求。与国内竞争者相比，外资银行在国内的实地规模相对较小，更依赖于离岸能力。对于外资银行来说，在各地设立机构将增加为同一市场的客户提供服务的成本，并不符合企业的成本效益。商会建议中国证监会和中国结算正确认识外资银行业务的显著特点，为托管服务和结算服务提供简化且统一的市场准入程序，并允许外资银行分行为国内资金提供结算服务。

## 合格境外投资结算

2020 年 10 月，中国结算修订了关于合格境外投资结算的实施细则，首次明确了经纪商可以为合格境外投资机构开展结算业务。商会支持修订的内容，这一发展进一步丰富了结算参与者的类型，在托管银行的基础上新增了经纪商。在 A 股股票交易中，托管银行的结算模式因其在效率和资金转移成本方面的优势备受全球投资者青睐，而经纪商结算模式在期货及其衍生产品交易中表现良好。全球投资人和托管人的顾虑在于，如果经纪商结算模式适用于 A 股股票，交易效率可能有所下降，而交易对手风险可能有所上升。商会建议中国证监会明



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.

Companies have been following the updates made by AMAC regarding the Administrative Measures (Trial) since 2019. Members are aware that the registration process for FA and TA services has been suspended during this time. Unfortunately, this has resulted in no approval being granted to any foreign-invested fund service providers, including AmCham China members, who submitted their applications in the past two years. In contrast, around 45 domestically-invested fund service providers registered with AMAC prior to 2019 are still authorized to offer 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 regulatory considerations behind the above requirements. However, it is important to note that these requirements create very high thresholds for foreign participants, making it difficult for them to offer settlement services to domestic securities investment funds. The absence of a settlement function also prevents foreign participants from providing onshore custodial services, which can impact 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 relatively smaller presence in-country and are more dependent on offshore capabilities. 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 for A-share equity trade because of its advantages in efficiency and lower funds transfer costs. On the other hand, the broker settlement model performs well for futures and other derivatives trade. The concern from global investors and global custodians is that should broker settlement model also apply to A-share equity trade, working efficiency may decline and counterparty risk may rise. We suggest CSRC to further clarify that broker settlement model should not apply to A-share equity trade.

We suggest CSRC and CSDC clarify the requirements for foreign bank branches to become a QFI custodian as well as a QFI settlement member of CSDC. The effective requirements are set for the local incorporated banks, without consideration of foreign bank branches, in turn coming a barrier for foreign bank branches to provide direct QFI custody service to their global clients.

### ***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

确经纪商结算模式不宜适用于 A 股股票交易。

商会建议中国证监会和中国结算提供外资银行分行成为合格境外投资机构托管人和中国结算合格境外投资协会会员机构的明确要求。现行要求仅针对本地注册银行，并未考虑到外资银行分行，这为外资银行分行向全球客户提供直接 QFI 托管服务带来了障碍。

## 证券借贷代理

根据证券及期货事务监察委员会 (SFC) 的规则第 14A16 第 (5) 至 (7) 条和规则第 14B16 第 (5) 至 (7) 条，仅交易所参与者和合格机构可以通过沪港通及深港通进行证券交易，该条例允许离岸投资者通过香港市场交易上海和深圳上市的股票。商会了解到，中国证监会一直在与中国证券金融公司 (CSFC) 和行业参与者共同研究这一规则，但具体步骤尚未实现。商会鼓励中国证监会考虑以“试行”方式允许已获证监会批准的“核准借贷代理人”在沪港通及深港通上进行交易。核准借贷代理人包括代表离岸基金投资沪港通及深港通证券的代理人和托管人。

扩大对该项证券交易规则的参与将加强流动性，从而减少市场波动，稳定长期价格。目前，如果没有核准贷款代理人的参与，沪港通及深港通的交易量相对有限，证监会为其证券注册的活动不足就是一个例证。商会认为，在当前投资者生态系统中引入核准借贷代理人将刺激中国资本市场和 A 股市场（以人民币计价）的发展，国内参与者也将从中受益。

## 全球托管人的作用

全球托管人通过一体化的全球网络运作，为客户提供参与全球金融体系的机会。顶尖的托管人已在全球 100 多个证券市场开展业务。在包括美国在内的某些市场，全球托管人可以提供直接托管服务。而在许多其他市场，全球托管人通常指定当地“次级托管人”进入市场。在全球金融市场中，投资者与全球托管人、全球托管人与不同市场的当地次级托管人分别签订合同，以确保有效的投资者资产管理。

然而，在中国大陆市场，外国投资者被要求直接与当地次级托管人签订合同。在许多情况下，外国投资者

对此并不满意，因为这与全球惯例相悖；或合同双方为了确保满意，将会经历漫长的合同审查过程。商会鼓励中国大陆市场上的全球托管人获准，相关部门应取消外国投资者与本地次级托管人直接签订 QFI 和 CIBM 投资计划的要求。这不仅有利于投资者的资产管理，而且可以简化中国证监会的监管改革实施（即允许 QFI 指定不限数量的本地托管人，并实施中国人民银行的多层托管模式）。外国投资者应继续向中国证监会申请 QFI 资格或向中国人民银行注册 CIBM，在交易层面符合投资者身份的要求，便于市场监管，保证对投资者的监管和风险控制。

## 债券结算代理

在中国人民银行的指导下，中国债券市场基础设施建设有所进展，商会对此感到由衷的高兴。中国人民银行在 2020 年 2 月发布了一份内含 30 条意见的文件，在现有的债券结算代理 (BSA) 的基础上，引入了多层托管银行模式，通过中国银行间债券市场 (CIBM) 为外国投资者提供服务。这一进展为商会会员参与 CIBM 铺平了道路。为了吸引更多、更高质量的外资进入 CIBM，商会建议中国人民银行引入国际最佳实践。例如，中国大陆的债券结算代理人 (BSA) 目前同时负责 CIBM 中的交易和结算；而在全球金融市场上，交易和结算功能通常由不同的金融机构承担。这意味着全球托管人在大陆市场上必须指示其当地次级托管人（而非其交易部门）对 CIBM 交易进行结算。未经适当分离交易和结算行为将使全球托管人无法直接托管 CIBM 资产，从而导致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 BSA 方面采取国际最佳实践，分离交易和结算功能。商会希望中国人民银行颁布多层托管银行模式的详细指南，优化“债券通”账户结构，明确托管银行（包括外资银行分行）成为 CIBM 体系下的合格多层托管人的要求。

## QFI 第三方外汇

商会欣喜地看到，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》(公告〔2020〕第 2 号)。新规定取消了配额要求，简化了境外机构投资者汇入汇出资金以及货币兑换的管理要求。目前，需要汇出外币为其投资提供资金的境外

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. We have observed that the current participation in China Connect is restricted due to the absence of Approved Lending Agents, as evidenced by the limited activity recorded by the SFC for China Connect Securities. As AmCham China members, we are of the opinion that allowing Approved Lending Agents to operate within the existing investor ecosystem will accelerate the growth of China's capital and A-share markets (denominated in RMB), which would ultimately benefit domestic 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 for both the QFI and the CIBM investment schemes. This would not only facilitate better management of investor assets, but also would streamline implementation of the CSRC regulatory change to allow QFIs to appoint an unlimited number of local custodians and implementation of PBOC's multilayer custody model. To maintain supervision on the investors and control risks, foreign investors should continue to apply to CSRC for QFI qualification or register with PBOC for CIBM. And 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 introduce a multi-layer custodian bank model, apart from the existing Bond Settlement Agents (BSA) 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. We would hope PBOC could further promulgate the detailed guideline for multi-layer custodian bank model and consider the Bond Connect account structure, as well as the requirements for custodian banks, including foreign bank branches, to become a qualified multi-layer custodian under the CIBM Direct scheme.

### *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 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.

### **Securities**

On February 17, the Chinese regulators CSRC/SAC and stock exchanges released in total 165 revised/new rules and regulations to expand the registration-based regime across

机构投资者只需与其托管人共同执行境外汇款。外国投资者能更加灵活地与任何具备外汇交易能力的在岸对手进行交易。外国投资者期待外汇交易方的数量进一步增加，这将有利于实现最佳执行方式。外币汇入汇出将继续通过 QFI 托管人的在岸账户执行，以便监控。自去年以来，对 CIBM 投资者的相关限制已经放宽，CIBM 投资者可以与任何在岸交易对手汇入汇出用于结算的外币。

## 证 券

2月17日，中国证券监督管理委员会（CSRC）、中国证券业协会（SAC）和证券交易所共发布了165项修订及新出台的规则和条例，将注册制度适用范围扩大至所有上市板块、产品和活动。此前，该制度自2018年起分别在上海和深圳证券交易所的科创板和创业板进行试点。美国商会会员对证券监管机构进一步开放和改革市场的努力感到高兴。同时，商会认为以下几个方面有待改进，以提高中国股票市场的效率、透明度和吸引力。

### 共同投资机制

商会注意到，新规则并没有要求保荐机构的相关子公司在主板的IPO中共同投资。对此，商会建议逐步取消对科创板和创业板IPO的强制性共同投资要求，并统一所有上市板块的保荐人责任要求，具体包括：

- 第一，参考创业板，放宽科创板市场的共同投资要求，仅对四类股票（非营利性、红筹结构、加权投票机制和高价发行的股票）实施共同投资机制；
- 其次，基于共同投资的四种情况，将红筹公司的范围限定为“未在海外上市的公司”；
- 最后，随着IPO注册制改革不断深入，逐步取消所有上市板块的共同投资要求。

### 定价和配售改革

商会会员支持在各市场全面实施IPO注册制改革的决定。为进一步挖掘市场潜力、鼓励高质量市场发展，商会在定价和配售方面提出以下改革建议：

#### 在定价和分配方面赋予发行人和承销商更大灵活性

商会建议在IPO发行定价和股份分配方面赋予发行

人和承销商更多权力，取消包括公共基金、社会保障和养老基金在内的机构投资者最低分配比例上限。商会注意到，根据最新规则，网下股票优先分配给长期投资者的比例从40%上升至70%，合格境外机构投资者已加入长期投资者名单。

商会建议相关部门考虑更多的风险承担者。在此过程中，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分配决定。同时，监管机构可以列举出希望发行人和经纪人在定价时考虑的因素，从而为定价行为提供一定的指导。这样，就可以充分发挥市场的定价功能，使市场化的定价机制得以构建，有利于形成更合理的价格发现机制。

#### 取消“高价排除”和“定价不高于四个指标”的规则

根据最新规则，当发行价格超过科创板/创业板中“四个基准价格”中的最低价格时，主板IPO适用“≤3%的最高报价排除”要求和“特殊风险披露”要求。商会认为，注册制新股发行制度将缩小新股发行价格与二级市场价格的差距，投资者意识到风险后可以通过理性判断做出决定。因此，从长远来看，承销商以排除最高报价的方式人为调整报价的必要性有所降低。因此，商会会员建议取消所有市场和行业的“高价排除”和“定价不高于四个指标”限制，使报价合理且相对较高的投资者能够获得配售，而不是被排除在外。

#### 优化战略配售流程

此外，商会建议优化战略配售流程。根据科创板和创业板的有关实践，战略投资者通常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，导致投资风险相对较高。同时，缺少关键信息导致成熟的机构投资者难以通过内部审批程序，抑制其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之时或之后签署战略投资协议，保证投资成本和潜在收益的透明度，提升投资者的投资热情和信息明确性。

#### IPO 联席保荐人门槛

商会会员注意到，中国证监会的窗口指导目前只允

all listing boards, products and activities. This followed the regime's prior pilot on the STAR Market and ChiNext Board on the Shanghai and Shenzhen Stock Exchanges respectively since 2018. AmCham members are encouraged by securities regulators' effort to further liberalize and reform the market. Meanwhile, we also believe there are a few areas that can be improved to further enhance the Chinese stock market's efficiency, transparency and attractiveness.

### ***Co-investment Mechanism***

We noticed that the new rules do not require co-investment by relevant subsidiary of the sponsor institution in IPOs on the main boards. On this basis, we would continue to recommend the gradual cancellation of the mandatory co-investment requirements for IPOs on the STAR Market and ChiNext Board, and to ultimately align sponsors' responsibility requirements across all listing boards. Specifically:

- 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, weighted voting rights and shares issued at high prices.
- Second, in the four scenarios 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 on all listing boards in the long-term.

### ***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:

#### ***Grant more flexibility to issuers and underwriters in the pricing and allocation process***

We continue proposing more empowerment of issuers and underwriters in pricing and share allocation in IPO offering, and the lift of cap on the minimum allocation ratio for institutional investors including public fund, social security and pension fund. We acknowledge that the latest rules raised the ratio from 40 percent to 70 percent of off-net shares to be preferentially allocated to the long-term investors and added QFII to the list. We continue recommending that due consideration should 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, so as 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 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 the latest rules, the  $\leq$  three percent top price quote exclusion requirement and special risk disclosure requirement when offering price exceeds the lowest among the "four average price" in STAR/ChiNext Board apply to Main Board IPOs. We maintain that the registration-based IPO regime could narrow the gap between the issuance price of new shares and the secondary market price. Investors will also gradually become aware of the risks and make decisions based on rational judgement. There will thus be less need for underwriters to artificially adjust quotations and prices by eliminating the highest quotations in the long run. Therefore, AmCham China members continue to suggest the removal of 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 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.

### ***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

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。这一规则的初衷是为了确保充分发挥联合保荐的作用，促进顾问之间的积极协调，提高尽职调查的整体质量。然而，商会也注意到，现有的交易规模门槛限制了在岸外资证券公司参与 A 股一级交易。商会认为，在岸外资证券公司的积极参与将带来全球投资专业知识、提升运营效率、引入合规和内部流程方面的最佳实践和标准，有助于提高尽职调查的质量，推动在岸市场国际化。因此，商会建议降低交易规模门槛，在岸外资证券公司可以作为联合发起人更加积极地参与 IPO。

### 跨国企业分拆上市

出于业务发展和战略需要，许多跨国企业积极探索将其在华业务在 A 股市场上市的可能性。然而，相对严格的 A 股上市规则和复杂操作成为了外资企业需要面对的挑战。例如，A 股上市在同业竞争、独立性、关联方交易等方面有更高要求。跨国公司通常很难在商业模式和产品特点上完全区分中国和母公司的特许经营权。因此，如果把地域差异作为解决竞争问题的唯一要点，外资企业很难获得监管部门的批准。在实际操作中，为了最大限度地提高经营效率和利润，跨国公司通常在不同的关联公司之间共享资源，如专利、商标、研发能力、供应链、资金以及高级管理人员。此外，准备阶段的上市前指导、股权结构核查、资金流向尽职调查等通常要经历漫长的流程，外资企业及其工作人员难以适应。

商会希望监管机构根据实质重于形式的原则取消某些上市要求，提供更多的灵活性，鼓励更多外资企业进入中国在岸资本市场。

### 红筹架构上市

近年来，A 股上市制度改革取得重大突破，对于上市候选公司的结构有更大的包容性。截至目前，部分在中国大陆以外注册但主要业务在中国运营的公司（即“红筹公司”）已成功在科创板和主板上市。然而，目前的上市规则依旧严格，仅允许在行业、规模和创新特点上符合标准的红筹公司在 A 股市场上市。由于程序冗长且存在不确定性，众多红筹公司只好寻求其他解决方案，将其注册地从海外迁至中国大陆，耗费了大量时间和成本。随着国内资本市场进一步发展，商会希望海外注册

公司能获得更宽松的上市制度（基于目前“中华通”计划和更国际化的 A 股资本市场。

### IPO 二次发售

目前的窗口指导不建议在 A 股 IPO 中转让旧股。然而有些股东持股时间较长，考虑到投资持有期和流动性，通过 IPO 退出确实是实际面临的需求，而在 IPO 之前的私募股权转让对投资者来说并不方便。目前，在接近 IPO 申报日期间进行的股权转让将影响新股东的锁定期（在目标 IPO 申报日前 12 个月内成为股东的公司需要 36 个月的锁定期），现有股东的股权转让更加难以实现。由于 A 股 IPO 漫长的审查和批准过程以及严格的锁定规则，现有股东不得不等待很久才能撤出原有投资。

商会建议取消对 IPO 二次发售的部分限制，例如允许一级和二级发售相结合、允许某些类型的现有股东在 IPO 期间转让旧股等。

### IPO 机构投资

目前，在上海证券交易所和深圳证券交易所的现有指导下，科创板和创业板都实施了 IPO 制度，10% 的机构投资者在 IPO 后需要六个月的锁定期。科创板的机构投资者将从六类机构投资者（共同基金、社会保障基金、养老金、年金、保险和合格境外机构投资者）中抽签选择；创业板的机构投资者通过抽签或按比例决定。商会理解指导意见在保障市场表现和稳定的重要作用，但该规则影响了被选中的机构投资者的售后交易策略。商会认为，取消现有指导意见将提升市场效率。

此外，商会为科创板和创业板持续吸引国内外战略投资感到高兴。然而，商会注意到，目前仅主权财富基金和养老基金有资格作为基石投资者参与 A 股 IPO。由于全球投资者仍然渴望深入参与中国在岸 A 股资本市场，商会建议扩大该投资规则的适用范围，将更多离岸多头投资者和外国企业投资者纳入基石投资，推动实现机构投资多元化，优化上市公司的股权结构。提供更多基石投资者资格也有助于 A 股与国际资本市场的进一步融合和接轨，增强其在全球投资者中的影响力。

### “中华通”产品

商会会员支持“中华通”交易领域实现规模化和多

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.

### ***Multinational Company's Spin-off Listing***

Due to business development needs and strategic considerations, many multinational enterprises are actively contemplating the possibility of listing their China business in A-share markets. However, the relatively strict A-share listing rules and certain operational complexities have presented challenges for foreign companies in achieving this. For example, A-share listing have higher requirements in areas of competition with controlling shareholder, independence, related party transactions, etc. For multinational companies, it is usually difficult to distinguish their China franchise completely from the parent company in terms of business model and product characteristics. It would thus be hard for them to obtain regulatory approval if the difference in geography is the only point to address the issue of competition. In actual practice, to maximize operational efficiency and profits, it is common for multinational companies to share resources such as patents, trademarks, R&D capabilities, supply chain, funding, or even senior management personnel among different affiliates. In addition, the process of pre-listing guidance, shareholding structure verification and fund flow due diligence in the preparation phase are usually lengthy, making it difficult for foreign enterprises and their staff to comply with.

We hope that regulators can consider removing certain listing requirements based on the substance-over-form principles to provide more flexibilities to the process and encourage more foreign enterprises to tap into the onshore Chinese capital markets.

### ***Red-Chip Structure Listing***

The reform of A-share listing regime has made significant breakthroughs in recent years and demonstrated greater inclusiveness for listing candidates' corporate structures. So far, several companies that are incorporated outside mainland China but conduct most of their businesses in China ("red chip companies") have successfully listed on the STAR Market and Main Board. However, the current listing rules are still stringent and only allow red chip companies that meet certain criteria of industry, size and characteristics of innovation to list in A-share markets. Due to the lengthy

process and the uncertainties involved, numerous red chip companies have thus been forced to seek alternative solutions and relocate their registration place from overseas to mainland China, which is also time-consuming and costly. With further advancement of domestic capital markets, we hope to see a more relaxed listing regime for overseas incorporated companies (on top of the current Stock Connect schemes) and more internationalized A-share capital markets in the future.

### ***IPO Secondary Offering***

According to the current window guidance, it is not recommended to transfer old shares in A-share IPOs. However, in practice, some shareholders have held the stake for a very long time and do need to exit through IPO considering their investment holding period and liquidity needs. At the same time, equity transfer in the private market before IPO is inconvenient to investors. Currently, equity transfer conducted during the period close to the IPO filing date will also affect the lock-up period of the new shareholders (i.e. companies becoming shareholders within 12 months before the target IPO filing date are subject to 36 months lock-up period), thus making equity transfer of existing shareholders even harder. Due to the long review and approval process as well as the strict lock-up rules for A-share IPOs, existing shareholders have to wait for a very long period before they can exit from their original investment.

We suggest that certain restrictions on the IPO secondary offering to be removed. For example, allow a combination of primary and secondary offering or allow certain types of existing shareholders to transfer old shares at the time of IPO.

### ***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

样化。商会希望“中华通”的可投资范围进一步扩大，包括更多股票名称（甚至包括所有的 A 股）和更多产品种类，如 IPO、PIPES 和可转换债券、证券南向借贷和北向卖空等。这些产品及其功能将改善在岸资本市场定价和流动性，有助于离岸投资者进行对冲交易，管理交易成本，并实施更复杂的交易策略。同时，美国机构投资者希望增加和对冲在岸资本市场的风险，“中华通”产品是吸引其流入的关键。商会会员期待这些变化能早日实现。

### “中华通”规则

商会会员希望目前“中华通”特别证券名单的规则能有所调整。商会注意到，一旦某股票被列入“中华通”特别证券名单（只可卖出），除少数特殊情况，否则该股票将一直留在名单上。自 2014 年以来，超过 600 支股票被添加至“中华通”特别证券名单中，其中大部分进入名单的原因是从上证 180 或 380 指数中退出，或低于进入“中华通”的必要市值（自 2022 年 12 月改革为 50 亿人民币）。失去“中华通”购买资格将影响客户的投资组合策略，客户将因为“中华通”名单中的股票可靠性不足而降低信心，特别是“中华通”相较于 QFI 并不存在只可卖出不可买入的名单机制。

商会呼吁 QFI 和“中华通”的风险警示处理方式应保持一致。部分股票被列入“中华通”特别证券名单是因为相关证券交易所发出风险警示，通常是由于股票价格或流动性出现波动，或审计师对连续三年出现亏损的企业经营能力有所顾虑。对于国内投资者和合格境外投资者来说，风险警示不会导致只卖出不买入。只要投资者表示已了解风险警示，就可以继续买入或卖出该股票，这使“中华通”的参与者处于不公平的竞争环境中，从而导致对“中华通”参与群体的一致性缺乏信心。

### 大宗交易

商会鼓励将大宗交易窗口从合格境外投资者扩大到“中华通”参与者。大宗交易是机构投资者最大程度上减少价格下滑和影响成本的关键工具，以此实现大额交易的最佳执行方式，投资者也能够更有效地调整投资组合，增加可交易市场的吸引力。监管机构可以考虑采取分阶段的方式，建立一个独立的大宗交易机制以便联系参与者，为外国参与者提供更好的外国所有权管理框架。商会会员希

望看到在岸大宗交易窗口扩大到“中华通”参与者，使“中华通”参与者获得同合格境外投资者一样的机会。

在合格境外投资者方面，商会会员希望上海证券交易所和深圳证券交易所的大宗交易窗口保持一致。目前，上交所仅在上海主板收盘后的规定窗口允许交叉盘交易；而深交所通常都允许交叉盘交易（即 9:15-11:30 和 13:00-15:30）。商会希望延长上交所的窗口使两个交易所的窗口保持一致。

### 假期交易

商会支持近期宣布的“中华通”和 QFI 的 H-1 假期交易日统一。然而，每年仍有 4-5 天的 QFI 交易日处于香港的公共假期内，北向的股票因此无法连接。因此，美国商会会员要求通过“北向通”进行香港假期交易，以实现 QFI 和“中华通”的假期交易日统一。

### QFI 的预融资要求

商会会员建议监管机构考虑取消 QFI 的预融资要求。与“中华通”相比，合格境外投资的交易需要预先准备资金（即在 T-1 日提供现金）。该要求降低了 QFI 交易效率，并增加了市场参与者的操作难度，因为“中华通”并无预先提供资金的要求。取消 QFI 的预融资要求将使市场参与者通过 QFI 更有信心、更有效地获取在岸证券，避免预融资造成的流动性和操作上的挑战。

### 多资产经纪商模式

商会会员希望目前对单一资产经纪商的限制有所放松，并根据监管义务的全球最佳执行方式，允许投资者在交易中切换经纪商。

中国证监会于 2020 年 9 月 25 日出台的最新版合格境外投资者规则取消了对 QFI 可聘用经纪商的数量限制。但商会担心，根据上海证券交易所（SSE）和深圳证券交易所（SZSE）的规定，合格境外投资者通过一个经纪商购入“中华通”并由另一个经纪商出售的过程仍然存在阻碍。例如，上交所规定，一个证券账户只能指定一个经纪商，并需要通过该经纪商指定的参与者交易业务单元（PBU）进行证券交易。同一证券账户只有在重新指定经纪商并完成手续后，才能向另一经纪商下单，这一过程也受到上交所的管控。这些规定限制了合



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.

### ***Stock Connect Product Scope***

AmCham China members would welcome further expansion, diversification and strengthening of Stock Connect trading universe. We hope to see further expansion of the Stock Connect investible universe to include more names and potentially all A-shares as well as a greater variety of products, such as IPOs, PIPES and convertible bonds as well 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. 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 soon as possible.

### ***Stock Connect Rulesets***

AmCham China members would like to see some changes to the current rulesets around Stock Connect Sell-Only List. Specifically, we request that once a name is placed on Stock Connect, it stays on Stock Connect barring exceptional circumstances. Over 600 names have been added to the Stock Connect Sell-Only List since 2014, the vast majority of which are due to their name dropping out of SSE 180 / 380 indices or dropping below requisite market cap for entry into Stock Connect (RMB5bn since Dec 2022 reforms). Having names drop from Stock Connect buying eligibility disrupts client portfolio strategies, damaging confidence due to what is perceived as a lack of reliability on the names within Stock Connect, particularly compared to QFI where no such Sell-Only List mechanism exists.

We would also request that the treatment of Risk Alerts be aligned between QFI and Stock Connect. Some names are being placed on Stock Connect Sell-Only List due to the respective stock exchanges placing Risk Alerts on the name – usually due to a name's volatility in price or liquidity, or if a name records losses for three consecutive years and auditors raise concerns about the company's viability. For domestic investors and QFIs, a Risk Alert does not lead to a Sell-Only mandate, and they can continue to buy or sell

the name provided they acknowledge that they are aware of the Risk Alert. This creates an uneven playing field for Stock Connect participants and contributes to the aforementioned lack of confidence in the consistency of the Stock Connect population.

### ***Block Trades***

We would continue to encourage more 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 Connect participants to access just as QFI investors can.

On the QFI side, members would like to see alignment of the block trade windows for both SSE and SZSE. Currently, for SSE, crosses can only occur during a defined window after the close for mainboard Shanghai names, while on SZSE, crosses are generally allowed intraday (i.e., 9:15-11:30 and 13:00-15:30). We ask that the windows be aligned between the markets, with the main aim of this being that the SSE window be much extended.

### ***Holiday Trading***

We welcome the recent announcement to align the H-1 holiday trading days between Stock Connect and QFI. However, there are still 4-5 days per year where QFI trading is open yet Northbound Stock Connect is closed due to Hong Kong being on public holiday. AmCham members thus would request the completion of work to align the holiday trading days between QFI and Stock Connect. Finalizing the alignment of QFI and Stock Connect holiday trading days would be achieved by enabling Hong Kong holiday trading through Northbound Stock Connect.

### ***QFI Pre-Funding Requirement***

AmCham China members also recommend the regulators to consider the removal of the pre-funding requirement for QFI. The requirement for QFI trades to be pre-funded (i.e., cash available on T-1) creates a relative inefficiency and increases operational challenges for market participants compared to Stock Connect, where no such pre-funding requirement exists. Removing the pre-funding requirement for QFI would enable the market to access onshore securities

格境外投资者通过不同于最初购买股票的经纪商出售股票，因为这一过程需要重新指定经纪商或转移上交所/深交所托管，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方式的要求。

## 证券借贷

### 合格境外投资者制度

商会会员希望多头交易的适用规则能有所变化。在中国资本市场中，多头交易须遵守报升规则，其数量不得超过借入资金购买的股票。在合格境外投资者向交易策略不同的客户提供中国市场准入时，这一中国特有的规则将损害其内部交易部门独立操作风险头寸的能力。业界希望分离自有股份与借入股份，以防该规则影响交易员的多头交易能力。

此外，外国投资者希望监管机构允许所有 QFI（包括共同基金和对冲基金）进入在岸 SBL 框架，允许国际积极型基金参与融券卖空，有利于应对其他国际参与者的被动投资。该举措将改善“价格发现”，减少价格波动，提高中国证券的流动性。

### 股票市场交易互联互通机制

尽管以“中华通”为渠道的证券交易已经存在多年，但由于监管和实操障碍，市场参与程度相当有限。目前，“中华通”允许交易所参与者（EP）之间进行证券借贷。然而，实际的市场参与者是交易所参与者的附属机构或代理贷款人，并非交易所参与者本身。因此，商会建议扩大“交易所参与者”的定义（包括其附属机构和代理贷款人），在中证金融的机制下允许“中华通”参与者之间进行再融资证券借贷，实现推出该交易渠道的初衷。

## 债券和衍生工具

### 商品期货

国际大宗商品贸易价格波动风险较大，而借助金融衍生品交易，可以有效对冲现货贸易风险。以大豆国际贸易为例，在终端产品端（豆油和豆粕），企业依托国内大连商品交易所完善的金融衍生品，可以开展套期保值操作。在原材料端（进口大豆），目前定价中枢挂钩美国芝加哥交易所相关期货合约。但中国现行国际收支

政策对资本项目实施管制，并对从事境外衍生品交易实施严格的牌照管理制度，有迫切需求的实体企业无法直接开展外盘套保交易，影响了企业套期保值的效果。

商会欣喜地看到上海市人民政府印发了《中国（上海）自由贸易试验区临港新片区发展“十四五”规划》的通知（沪府发〔2021〕13号）和《中国（上海）自由贸易试验区临港新片区促进离岸贸易高质量发展的若干措施》，均提到将进一步试点更加开放的金融政策和措施为合规的离岸国际贸易提供便利。新加坡和香港的实践证明，提高金融衍生品交易的便利性是提升自贸港（区）建设的必要条件。综上，我们建议监管机构允许企业通过在上海自贸区开设离岸账户（FTE 账户），并通过该账户开展外盘套保交易，以便企业更好管理国际国内价格波动风险。

## 债券通

商会会员希望银行间债券市场（CIBM）和“债券通”之间的做市商身份脱钩。根据“债券通”目前的交易规则，银行间债券市场做市商身份是成为“债券通”做市商的前提。部分境外机构的在岸实体有意向申请成为“债券通”做市商，也有能力通过“债券通”机制在中国债券交易中介绍和服务新的海外客户。然而这些境外机构不是银行间债券市场做市商，中国人民银行和中国外汇交易中心（CFETS）自 2020 年 4 月以来没有授予任何新的“债券通”做市商。因此，商会呼吁将银行间债券市场做市商和“债券通”做市商的要求脱钩，允许符合条件的外资银行和在华经营的外资证券公司直接申请“债券通”做市商身份。该举措将引入高质量的外国投资者，加强中国与全球金融市场的联系，从而推动实现中国的人民币国际化和资本市场开放的目标。

### 银行间债券市场（CIBM）做市商

中国人民银行于 2020 年 12 月在中国银行间债券市场（CIBM）引入债券做市商备案机制，取代之前的审批机制。此后，中国外汇交易中心公布了实施细则，允许符合条件的金融机构申请银行间债券市场做市商身份，促进银行间债券市场的整体交易流动性。然而，2022 年并无新的银行间债券市场做市商注册，申报过程也比市场预期更加漫长，所以新增做市商数量十分有限，而且新机制并未引入外资金融机构。商会期待中国外汇

more confidently and efficiently through QFI without the liquidity or operational challenges created by pre-funding.

### ***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 brokers between buy and sell trades 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.

### ***Securities Borrowing and Lending***

#### ***Under QFI***

AmCham China members would like to see changes 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 impair the ability of trading desks within the same QFI to operate independent risk-management positions when providing China market access to clients with different trading strategies. 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.

Additionally, foreign investors 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.

## **Bonds and Derivates**

### ***Commodities Futures***

The price of bulk commodities is relatively volatile and financial derivatives can serve as an effective tool to hedge the risks of cash trading. Take soybean trading for an example, the price risks of finished goods (soybean oil and meal) can be hedged through Dalian Commodity Exchange (DCE) in China. In contrast, the price risks of raw material (imported soybeans) need to be managed through Chicago Board of Trade (CBOT), which is the pricing hub for most of the agricultural products. China has been tightly controlling the transaction under capital account over the years, maintaining license regime for offshore derivative trading with most manufacturers excluded.

AmCham China is pleased to see Shanghai government released two documents (14th FYP for Lingang New Area of Shanghai Free Trade Zone (FTZ) and Measures to promote high quality development of offshore trade of Lingang New Area of Shanghai FTZ) to pilot more open financial policies and measures to facilitate compliant offshore international trade. The practices of Singapore and Hong Kong has proved that the accessibility of globe financial derivatives trading is essential for a successful FTZ. We encourage China's regulators to allow enterprises to conduct hedge trading through CBOT under the Free Trade Enterprise (FTE) account in Shanghai FTZ so that enterprises can better manage price risks.

### ***Bond Connect***

AmCham China members would like to promote the decoupling of market-maker statuses between CIBM and Bond Connect. Under the current Bond Connect trading rule, CIBM market-maker status is a pre-requisite to be a Bond Connect market-maker. Onshore entities of some foreign institutions have the intention and willingness to apply for Bond Connect market-makers, as well as the capabilities to introduce and serve new overseas clients to trade China bonds via Bond Connect mechanism, but they are

交易中心加快审核进程，推动符合条件的境外金融机构成为银行间债券市场做市商，实现备案机制的本质。

### 中国期货交易所的境外中介 (OIs)

商会会员建议批准美国期货经纪商成为在岸期货交易所的境外中介 (OIs) 或境外经纪商 (OB)。境外中介或境外经纪商是不直接在在岸交易所交易的离岸实体，有权代表国际客户在国内期货公司设立账户。截至 2023 年 2 月，上海国际能源交易中心、大连商品交易所和郑州商品交易所共有 70 多家获批的境外中介及境外经纪商，包括来自中国香港、新加坡、法国、德国、瑞士、荷兰、日本和英国等地区和国家的公司。然而，目前尚未有美国实体被批准成为在岸期货交易所的境外中介及境外经纪商，但美国法规要求美国投资者通过美国期货经纪商进行投资。尽管中国正在推动商品期货国际化，美国投资者无法参与中国的在岸期货市场。此外，非美国投资者也受到影响。许多企业选择美国商品期货交易委员会 (CFTC) 监管的中介机构清算其全球期货流动，因为与其他中介机构建立清算关系需要大量时间和资源。虽然中国和美国的监管机构已就基本争议（美国客户的数据共享问题）达成协议，但中国监管机构和期货交易所仍未批准美国公司的境外中介及境外经纪商申请。

### 信用评级

国内信用评级行业在 2022 年变化较少。中国人民银行、中国证券监督管理委员会、国家发改委、财政部、中国银行保险监督管理委员会和其他监管机构主导的市场改革对国内高质量评级行业的积极影响尚未在市场上充分体现。以 AAA、AA+ 和 AA 三个评级档次为主的虚高信用评级依旧主导市场。商会注意到，过去的一年里的一些因素要求中国金融市场改革保持稳定，如新冠肺炎疫情和经济方面的挑战，特别是在房地产领域。

商会认为，信用评级行业并未合理应对以上变化。2021 年 8 月，中国人民银行正式发布《关于促进债券市场信用评级行业健康发展的通知》，督促地方信用评级机构在 2022 年 8 月前实现信用评级差异化。为调整保险投资的评级下限，银保监会于 2021 年 11 月发布《关于调整保险资金投资债券信用评级要求等有关事项

的通知》，对于在中国注册并获得许可的所有符合条件的 FI 发行人，取消其发行债券的投资下限，由此放宽了企业发行债券的投资下限。在一级市场的债券发行过程中，中国人民银行、中国证监会和中国银行间市场交易商协会 (NAFMII) 取消了对债券注册最低信用等级的强制要求。然而，商会注意到，以上举措并未涉及鼓励市场参与者（包括发行人和投资者）接受差异化评级，也未促进信用评级行业的改革以实现从监管需求驱动到市场驱动。

商会相信 2021 年的变化标志着中国金融市场和整体信用评级行业日益自由化。然而在 2023 年及以后，信用评级行业的重点在于推动改革和政策实施。

自 2019 年 12 月《信用评级行业管理暂行办法》生效以来，监管机构通过尽职调查过程、评级流程最低天数等规范性规定，对信用评级行业实行更加积极的监管。商会理解这些规定目的在于提高信用评级质量，但这种合规制度可能存在“抱令守律”的风险，难以提高实际质量。商会认为，监管机构的重点在于实质性合规，即在遵守法律的前提下坚持核心原则，给予信用评级机构一定的灵活性以实现合规和监管目标。

商会认为信用评级是重要的金融基础设施，提升更大规模的市场的透明度，加速了中国信用文化的发展。商会认为，信用评级机构应在信用市场改革中发挥基础性作用。国际信用评级机构的经验、最佳做法以及对中国市场的深入了解，将有利于加强政府管理水平，降低信用风险，提高市场透明度，从而高效推进中国资本市场的国际化进程。

### 评级质量评估

根据违约率测试，历史违约率将反映出评级结果的质量，即信用等级越高，违约率越低。信用等级变化分析和信用利差分析被用于评级质量评估，其中信用等级变化分析主要包括迁移率、上升 / 下降率等。

商会认为，信用评级的调整频率与等级有关：等级越高，评级的稳定性越强；等级越低，评级调整的频率越高。信用利差分析主要通过债券的发行利率、到期收益率或估值收益率与无风险债券收益率的差值反映不同信用等级对应的信用利差区别。商会认为，任何评价指

not CIBM market-makers. Emblematic of this situation, PBOC and CFETS have not granted any new Bond Connect market-makers since April 2020. We would thus like to call for the decoupling between CIBM market-maker and Bond Connect market-maker requirements, so that eligible foreign banks and foreign securities firms operating in China can apply for the Bond Connect market-maker directly. It will bring in high quality foreign investors and enhance China's connection to the global financial market. Allowing for more foreign market-makers in Bond Connect is also in line with China's goals of RMB internationalization and capital markets opening.

### ***CIBM Bond Market Makers***

PBOC introduced the filing mechanism for the bond market-makers in China Interbank Bond Market (CIBM) in December 2020 to replace the previous approval mechanism. CFETS published the implementation rule thereafter. This was an important step to further allow the qualified financial institutions to apply for the CIBM bond market-maker, and thus promote the overall trading liquidity in CIBM. In 2022, there was no new CIBM bond market-maker registered. The filing process was also prolonged than the market expectation, so the newly added market makers were very limited. In particular, no foreign financial institution was introduced under the new mechanism. We expect CFETS to expedite the review process, and promote the eligible foreign financial institution to become the CIBM bond market maker, which will reflect the nature of filing mechanism.

### ***Overseas Intermediaries (OIs) on Chinese futures exchanges***

AmCham China members also request the approval of US futures brokers to become Overseas Intermediaries (OIs) / Overseas Brokers (OBs) to onshore futures exchanges. OIs / OBs are offshore entities that do not trade directly on onshore exchanges but are authorized to set up accounts with domestic futures firms on behalf of international clients. As of Feb 2023, there are over 70 approved Overseas Intermediaries or Overseas Brokers on Shanghai International Energy Exchange, Dalian Commodity Exchange and Zhengzhou Commodity Exchange, including firms from Hong Kong, Singapore, France, Germany, Switzerland, Netherlands, Japan and the UK. However, no US entity has been approved as an OI or OB on onshore futures exchanges to date, while US regulations require that US investors invest via a US futures broker. As a result, US investors are unable to participate in China's onshore futures markets despite China's ongoing commodity futures internationalization.

Additionally, non-US investors are also affected because many choose to clear their global futures flows via US CFTC-regulated intermediaries, given the significant time and resources involved in establishing clearing relationships

with additional intermediaries. While Chinese and US regulators have reached an agreement on the underlying dispute (relating to US client data sharing), Chinese regulators and futures exchanges still have not proceeded with approving US firms' OI/OB applications.

## **Credit Ratings**

The domestic credit rating industry saw minimal changes during 2022. The impact of market reforms led by the PBOC, CSRC, the National Development and Reform Commission (NDRC), MOF, CBIRC and other regulators to promote a high-quality domestic rating industry has not been fully felt in the market. Inflated credit ratings continue to dominate the market with primarily three rating notches of AAA, AA+ and AA. We do recognize that there could be factors which called for stability in the reform of Chinese financial markets during the past year, including the impact of Covid pandemic and economic challenges especially in the real estate sector.

With the above observations as the backdrop, we note that adoption of the changes by the credit rating industry has been uneven. 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. 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. The investment floor for bonds issued by corporate issuers was relaxed. On the primary market bond issuance process, PBOC, CSRC, and NAFMII also removed mandatory requirements on minimum credit ratings from the bond registration process. However, we have observed that these initiatives have not encouraged market participants including issuers and investors to accept more differentiated ratings, nor have the initiatives facilitated the reform of the credit rating industry from one driven by regulatory demand to one driven by the market.

We continue to believe that the changes in 2021 signify the increasing liberalization of Chinese financial markets and the credit rating industry in general. However, it is critical that implementation of the changes and policies across the industry should be the focus in 2023 and beyond.

It has also been observed that regulators have undertaken more proactive supervision over the CRA industry since *Interim Measures for the Administration of the Credit Rating Industry* took effect in December 2019 through more prescriptive stipulations in areas such as due diligence process, minimum day count for rating process and so on. We appreciate that these requirements are meant to enhance the quality of credit ratings amongst CRAs, however such

标都有其局限性，因此建议监管部门综合参考多个评价指标，以获得更全面的评价结果。

### 在国内信贷市场建立投资等级

商会支持监管部门建立科学的、差异化的评级标准。商会认为，监管重点应在于高质量的信用分析和评级结果，而非在评级操作中一味注重规定性步骤，如尽职调查过程所需的固定天数等。

差异化的评级尺度有利于投资者根据风险和收益谱系的效率前沿（efficient frontier）定制其投资组合。评级缺乏差异化和 AAA 级发行人的断崖式违约是国内信贷市场中长期存在的问题。如果一味夸大评级，投资者难以鉴别高质量的发行人。与此同时，信用事件频发，市场对有效区分低信用风险和高信用风险的信用尺度有更大的需求。在投资者中，基于个人判断的投资等级概念逐渐成型，然而这在公开的信用评级行业中却缺乏共识。

商会建议中国金融监管部门利用合理可靠的信用评级建立投资等级和高收益的概念，促进中国信贷市场的健康发展。

### 建立国内评级与全球评级之间的经验联系

到目前为止，对中国信贷市场的全球投资数量仍然十分有限，主要原因之一在于中国信贷市场缺乏全球公认的基准，全球投资者难以评估其信用风险。

近年来，许多促进中国大陆和香港之间跨市场债券发行和交易的措施已经颁布，资本和交易基础设施等要素的自由流动连接了中国和其他离岸市场。

在管理方面，商会建议监管机构比较在岸国内市场与全球市场对同一发行人的信用评级，逐步建立市场共识，在信用尺度和评级符号上建立中国与全球的联系。

### 网络安全和跨境数据传输

我们注意到中国政府一直致力于加强数据治理，并取得值得称道的成就。近期出台的数据本地化法规和政策属于这一范畴，但是在客观上有关法规的实施未能顾及到多方市场参与者的实际情况，给在华外资金融机构

带来诸多挑战。我们理解，中国政府已经向世界表明将继续坚持改革开放的政策方向，但有关法规的实施需要顾及到潜在的影响，在实现法规和政策目标的同时，是否也增加了市场参与者的不合理的合规成本，进而有可能影响改革开放、继续吸引外资、推动中国整体经济社会发展的宏观大局。2017 年颁布的《网络安全法》，和 2021 年颁布的《数据安全法》、《个人信息保护法》，提出了对于部分数据本地化的要求并对数据跨境做出了严格的限制，我们理解该等安排出于国家安全考虑，但该做法缺乏对跨国集团公司开展正常商业活动的场景考量，后续出台的实施细则也为实施带来非常严峻的挑战。现在表述意见和建议如下：

### 数据出境限制

数据的跨境流动是跨国金融机构为客户提供国际化标准的产品和服务体验的基础，也是全面风险管理和遵守各司法管辖区金融监管要求的需要。2021 年《个人信息保护法》要求个人信息处理者因业务等需要，确需向中华人民共和国境外提供个人信息的一些特别情形，应当通过国家网信部门组织的安全评估。就此，2022 年 7 月网信部门出台了《数据出境安全评估办法》，生效日为 2022 年 9 月 1 日，对于不符合办法要求的数据出境活动，予以 6 个月的整改期。

然而，在落实数据出境安全评估的过程中，我们发现安全合规评估范围涵盖所有个人信息和重要数据的出境，出于成本和效益考量，跨国金融机构多采用区域枢纽集中运营，如完全依照网信办和其他监管要求，对外资金融机构的合规性成本不可预估。

考虑到跨国金融机构在整个集团内部采用相同高标准的信息安全管理体系，具备高标准的技术支持能力和安全保障能力，我们建议政府和监管部门在外资金融机构数据跨境的问题上坚持发展与安全相匹配的跨境数据流动原则，在不影响业务连续性的基础上稳步推进数据安全评估机制，保持可操作性和数据的安全有序流动，尽可能降低对业务发展的负面影响。具体来说，我们认为以下信息应并豁免安全评估，允许正常流动：

- 对为了完成客户交易所必需的个人信息，比如跨境付款中个人为收款人的收款人信息，贸易融资信用证等

prescriptive compliance regime may run the risk of becoming a “tick-the-box” exercise which is incapable of enhancing the quality of credit ratings. We believe that there are benefits from regulators focusing on substantive compliance, that is, compliance with core principles in a manner consistent with the rule of law, and giving CRAs the flexibility to meet those compliance and regulatory objectives in ways which are practical and meaningful for the CRAs.

AmCham China considers the credit ratings an important financial infrastructure, which 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.

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.

### *Establishing concept of Investment Grade in domestic credit market*

AmCham China fully supports the regulatory objective of establishing a scientific and differentiated rating scale for the domestic credit market. However, we believe that the regulatory approach should focus on promoting high-quality credit analysis and rating outcomes rather than prescribing specific steps in the rating operation, such as a fixed timeline for due diligence processes.

A differentiated rating scale will allow investors to tailor their portfolios to the efficient frontier of the risk-and-return

spectrum. The lack of rating differentiation and cliff defaults of AAA issuers have long been problems in the domestic credit market. If the practice of assigning inflated ratings is not changed, investors’ strong need to discern high-quality issuers will not be met. The frequency of credit events underscores the growing market demand for a credit scale that can distinguish low credit risk from high credit risk. While investors have begun to formulate a concept of investment grade based on their individual judgments, there is a lack of industry-level consensus as reflected in public credit ratings.

AmCham China encourages Chinese financial regulatory authorities to consider establishing a concept of investment grade and high yield using reasonable and reliable credit ratings. This will promote the healthy development of the Chinese credit market, meet the needs of investors, and ultimately benefit the overall economy.

### *Building empirical connections between domestic rating and global rating systems*

Currently, global investment in the Chinese credit market remains limited in volume, and a major contributing factor to this is the lack of globally recognized benchmarks for global investors to assess the credit risk of domestic credit bonds. In recent years, measures to facilitate cross-market bond issuance and trading between mainland China and Hong Kong have been introduced, and elements such as capital and trading infrastructure are already in place to form a connected market between China and other offshore markets.

To further facilitate cross-border investment, AmCham China suggests that regulators promote the comparison of credit ratings on the same issuers between the onshore domestic market and global market. This will help build market consensus and connections between the local and global credit scales and rating symbols. By doing so, investors will be better able to assess the credit risk of Chinese credit bonds and make informed investment decisions.

### **Cybersecurity and Data Cross-border Transfer**

We have observed that the Chinese government has been intensifying efforts to enhance data governance, and notable progress has been made in this regard. However, the implementation of recent policies and regulations on data localization appears to have overlooked the diverse circumstances of market participants, thereby posing challenges for foreign financial institutions operating in China. While we appreciate that the Chinese government remains committed to the principles of reform and opening, it is imperative to ensure that the implementation of these regulations takes into account the potential impact of achieving policy and regulatory objectives on increasing compliance costs that may be

单证中可能涉及的个人信息，境内法人或银行应境外银行服务提供方根据当地法律法规的规定而要求提供的个人信息，境内个人或法人因其境外开展业务的需要要求境内银行向境外提供的个人信息等；

- 对一些低敏感度的个人信息，比如已经采取去标识的个人信息，对公业务中基于业务联系需要而获取的个人信息等。

此外，数据跨境梳理和整改任务较为复杂，为避免对正常业务经营造成影响，我们建议：

- 将6个月整改期限适当延长；
- 鉴于安全评估（包括监管评估前数据处理者的自评）所需时间较长，我们建议对《办法》第12条有关评估结果有效期延长到5年；
- 同时建议网信办为重新评估制定一个简要程序（例如，在评估结果有效期届满前60日内已经进行过重新评估但暂未拿到评估结果，那么在有效期届满时无需暂停数据跨境传输）；
- 重新申报评估条件之一是“境外接收方所在国家或者地区数据安全保护政策法规和网络安全环境发生变化”，我们认为该等变化应是“重大变化”，希望有关部门能够做出进一步解释，便利有关工作的正常开展。
- 监管能尽快澄清一些未决事项，如对于境外执法机构调取境内数据，需要哪些部门审核批准，履行何种程序；以及适用域外效力的境外主体执行相关法律法规的实施细则等。

## 公有云和私有云

基于全球性质的运营管理模式，跨国金融机构与其母集团保持紧密的联系。在信息系统的使用上，除部分系统在中国本地部署外，在华外资金融机构多使用由集团提供的包括业务系统、管理系统、报表系统、协同办公系统等在内的多种类型的系统。随着金融科技日新月异的发展，多数跨国金融机构集团已采用云优先战略，并将众多与云兼容的应用程序部署或迁移到云上，以便提升运营效率和安全性，为客户提供更为先进的金融服务。

目前，中国监管机构对于跨国金融机构中国法人实体使用公有云或私有云缺乏明确的指导，这对在华外资金融机构充分利用母集团的科技架构优势，确保中国区

技术不落后全球其他领先市场造成一定影响。

对此，我们建议：

- 对于部分企业银行业务系统和内部协同办公系统（如Office365、Teams），允许外资金机构遵照集团部署，在确保客户和内部信息安全的前提下使用；
- 对于在华外资金机构中国本地系统上云的需求，恳请中国银保监会给出具体的监管要求：包括允许上云的种类（如公有云、金融云等）、准入要求、管理办法、时间表等；并出台对银行使用关联外包和第三方外包提供的云服务的相关政策；
- 希望监管部门能够逐步开放外资金机构与中国本地具备完善基础设施及成熟安全管理能力的云服务提供商进行合作，从而推动金融机构数字化转型的进程，顺应国家科技发展大局。

## 重要数据的定义和范畴

2022年3月，全国信息安全标准化技术委员会（TC260）更新了《重要数据识别规则（征求意见稿）》，代替了2022年1月的《重要数据识别指南（征求意见稿）》。商会认可TC260公开听取行业建议并及时颁布重要法规的努力。外国参与者是中国的重要组成部分，商会希望“重要数据”等关键术语的英文版本在法律法规和各类标准中保持一致。目前，不同法规中代表同一概念的“key data”、“critical data”和“important data”等不同表述使外国参与者感到困惑。商会建议在法律法规和各类标准中统一“重要数据”的英文术语。在国家层面，“重要数据”的定义应与《网络安全法》和《数据安全法》中的“危害国家安全和公共利益”相一致，并排除客户信息（在特定范围内）、交易数据、商业机密、公司运营数据等。

商会了解到，各行业主管部门将进一步规定“重要数据”的具体范围用于指导业务。对于金融行业，由于其服务链涉及商业银行、投资银行、资产管理、期货及衍生产品、私募股权等，目前分别由不同的银行和证券监管机构监管。商会希望央行为金融行业牵头发布统一的“重要数据”版本。如果每个金融监管机构都使用各自的“重要数据”版本，将极大增加企业为遵守法规的工作量，进而影响工作效率。



deemed unreasonable by market participants. It may affect the big picture of reform and opening up, attracting foreign investment, and promoting China's overall economic and social development. The promulgation of the *Cybersecurity Law* enacted in 2017, the *Data Security Law* and the *Personal Information Protection Law* enacted in 2021 have imposed strict restrictions on data localization and data cross-border transfer. We understand that these arrangements are due to national security concerns, but competent authorities have failed to consider the normal business activities conducted by multinational companies. The subsequent introduction of implementation rules also poses serious challenges. Therefore, our comments and suggestions are as follows:

### ***Outbound Data Transfer Restrictions***

Restrictions on outbound data transfer Cross-border data is the basis for multinational financial institutions to provide customers with international standard products and services. It also meets the need for comprehensive risk management and the compliance with financial regulatory requirements in different jurisdictions. In 2021, the *Personal Information Protection Law* required that personal information processors should provide outbound personal information in special cases due to business and other needs, and should pass the security assessment organized by the cyberspace departments. In July 2022, competent cyberspace departments introduced *Measures for Data Export Security Assessment*, with an effective date of September 1, 2022, providing a six-month rectification period for unqualified outbound data transfers according to the Measures.

However, in the security assessment process of outbound data transfer, we found that the security compliance assessment covers the transfer of all personal information and important data. Considering cost and benefits, multinational financial institutions mostly adopt regional hubs for centralized operations. The compliance costs for foreign financial institutions will be unmeasurable if they fully comply with the CAC and other regulatory requirements.

Multinational financial institutions have adopted the consistent and high-standard information security management system with high-standard technical support and security assurance capabilities. Therefore, we suggest that the government and regulatory authorities adhere to the principle of cross-border data transfer that matches development and security requirements for foreign financial institutions. Competent authorities should steadily promote data security assessment mechanisms without affecting business continuity, maintain the operability and safety of data transfer, and minimize the negative impact on business development. Specifically, we believe that the following information should be exempted from security assessment and allowed to transfer:

- For personal information required in completing

customer transactions, such as individual payee information in cross-border payments, personal information possibly involved in documents such as letters of credit for trade finance, personal information requested by domestic legal entities or banks to an offshore banking service provider in accordance with local laws and regulations, and personal information of domestic individuals or legal entities requested by domestic banks to the offshore due to their business abroad, etc.

- Less sensitive personal information, such as personal information with de-identification and personal information acquired in public business for business contact, etc.

In addition, it is complex to rectify and reform the data cross-border transfer. To avoid negative impact on normal business operations, we recommend that:

- The six-month rectification period be appropriately extended.
- Given the long time required for security assessments (including self-assessments by data processors before regulatory assessments), the validity period of the assessment results under Article 12 of the Measures be extended to five years.
- It is recommended that CAC develop a brief procedure for re-assessment. For example, if a re-assessment has been conducted within 60 days before expiration but the assessment result is not yet available, there is no need to suspend data cross-border transfer at the expiration of the validity period.
- One condition for re-declaring assessment is "changes in data security protection policies, regulations and network security environment in the country or region where the overseas recipient is located." We believe the changes should be "significant" and suggest competent authorities provide further explanation to facilitate the normal business operation.
- The regulators should promptly clarify undecided issues, such as departments responsible for review and approval of the access to domestic data by overseas law enforcement agencies, relevant procedures to be performed, and the implementation rules for relevant laws and regulations enforcement by overseas subjects with extraterritorial effects.

### ***Public and private clouds***

Due to the global operation and management model, multinational financial institutions maintain close ties with their parent groups. In terms of information systems, except for some deployed within in China, foreign financial institutions in China mainly use various systems provided by their groups, including business systems, management systems, reporting systems, collaborative work systems, etc. With the rapid development of financial technology, most multinational financial institutions have adopted a cloud-prioritized

## 跨境数据安全

中央网信办（CAC）发布新规，为跨境数据传输提供了进一步指导。然而，中国实体可以与其境外关联公司共享的数据范围仍然缺乏明确规定。商会会员希望监管机构理解外商独资或多数控股资产管理公司的离岸母公司需要某些数据 / 信息的必要性和重要性。商会建议有关资产管理公司在岸实体跨境数据共享的政策和法规考虑不同数据类型及其跨境共享原因的例外情况。具体而言，商会认为有两个典型的情况：其一是上市证券的在岸持股数据需要用于离岸监管报告和集团风险监控；其二是外国资产管理公司的中国在岸分支机构需要数据 / 信息用于行业和企业分析。商会认为分享这些研究数据不仅有利于包括中国投资者在内的全体投资者，也有利于中国整体资产管理行业，全球资产管理公司有更多机会雇佣中国在岸分析师。商会建议监管机构制定更加清晰一致的跨境数据共享规则条例。

## 环境、社会、治理投资

### 中国绿色金融激励机制

中国的政策制定者已经制定了在 2060 年前实现“去碳化”的前瞻性目标。为了在 2030 年之前达到碳排放峰值、在 2060 年之前实现碳中和，并保持 5% 以上的 GDP 年增长率，中国在未来十年将对目前的能源结构进行重大调整。

随着中国资本市场持续开放，全球资本和外国机构投资者不断涌入 A 股市场，中国企业获得了更好的海外融资条件。与此同时，中国和国际社会正在加强建设 ESG 相关计划的联系。对于中国的政策制定者和企业来说，与国际主流 ESG 和可持续发展法规、倡议和标准相结合并反映中国特色国情、增加对能源转型的投资以及优化可负担且安全的清洁能源，具有重要的战略意义。

商会会员支持中国在二十国集团绿色金融的国际实践中发挥领导作用，这些努力成功的关键在于制定一致的国际规则，激励私人资金支持实体经济转型。商会鼓励相关部门在国际层面上开展工作，制定兼容、明确、实用的绿色金融标准，并制定国内分类法，将金融资源引向与转型相关的项目和技术。更重要的一点在于确保环境法律法规的制定有利于绿色金融的发展，并将其反

映在金融机构的监管监督之中。

由于中国市场所有权集中、国内散户投资者占主导地位的历史特点，与香港及其他更发达的市场相比，境外投资者在中国 A 股市场上拥有的股份并不多。然而，在过去几年里，A 股公司数量被纳入全球指数，中国自上而下的改革开放了各种准入渠道，跨境资本因此流入中国，有效降低了企业风险，并提供了更多 ESG 领域的机会，国内上市公司因此对与国际资产管理公司合作充满动力。

中国目前在全国设立了六个省级绿色金融改革创新试验区，并批准了另外 23 个气候投融资试点地区。试点制度将积极开发和测试具有显著气候效益的重点项目，加强对排放数据质量的监管，并主动搭建国际交流合作平台。基于试点模式的初步成功，气候投融资可以逐步在中国各地推广。

对于金融机构来说，更多的政策激励有利于促进绿色金融的发展，商会认为可以通过以下方式实现这一点：

- 中国人民银行提供更多碳减排支持工具，例如优惠的审慎资本监管待遇；
- 提高货币政策中高标准绿色债券的合格抵押品比例；
- 提供税收优惠、利息补贴及其他激励措施，鼓励金融机构积极参与绿色金融产品的设计、发行和投资；
- 发放特殊的、有针对性的政府贷款；
- 扩大政府绿色采购；
- 使用混合融资和风险缓解工具，吸引非政府资金进入节能减碳领域。

### 中国碳市场的发展

碳定价系统是政府和行业的关键工具，有利于激励高排放企业去碳化，增加对低碳或零碳技术和解决方案的投资。自 2013 年以来，中国碳交易市场（ETS）持续发展，该市场于 2021 年 7 月正式启动，随即成为世界上最大的碳市场，二氧化碳总交易量高达 1.94 亿吨。虽然中国碳市场快速发展，但仍面临着障碍和挑战。

尽管中国已经承诺建立碳金融衍生品市场，但该市场目前仅允许现货交易。与此同时，中国排放交易计划的参与者数量和范围不足，金融机构目前无法参与其中。因此，排放交易计划的碳价格波动很大，流动性相对较

strategy for deploying or migrating numerous cloud-compatible applications to improve efficiency and security and provide advanced financial services to their customers.

Currently, there is a lack of clear guidance on the use of public or private clouds by Chinese legal entities of multinational financial institutions, which has impacted foreign financial institutions in China in taking full advantage of their parent group's technology so that their China-based technology will not lag behind other leading global markets.

In this regard, we recommend:

- For some banking systems and internal collaborative work systems (e.g. Office365, Teams), foreign financial institutions should be allowed to follow the deployment of their parent group in the premise of ensuring customer and internal information security.
- For the demand of local systems in China of foreign financial institutions to adopt the cloud strategy, CBRC is suggested to clarify specific regulatory requirements, including the types of cloud access (e.g. public cloud, financial cloud), access requirements, management, timelines and so on, as well as introduce policies on the use of cloud services provided by banks via affiliated outsourcing and third-party outsourcing.
- Regulatory authorities are suggested to allow the cooperation between foreign financial institutions and local cloud service providers with sound infrastructure and mature security management in China, to promote the digital transformation of financial institutions and comply with the national technology development.

### ***Definition and Scope of Important Data***

In March 2022, the National Information Security Standardization Technical Committee (TC260) updated the consultation on the Rules for Identification of Key Data, replacing the January 2022 consultation on *Guideline for Identification of Critical Data*. We extend our gratitude to TC 260 for its receptive attitude towards industry feedback and prompt issuance of crucial regulations. As foreign entities constitute a significant aspect of China's economic landscape, we recommend the establishment of consistent English terminology for key terms, such as "important data," across laws, standards, and regulations. Presently, the different terms of "key data," "critical data," and "important data" used interchangeably in various regulations create confusion for English-speaking readers. We propose the adoption of a uniform term, namely "important data," in all laws, standards, and regulations.

At the national level, we advise that the definition of "important data" align with the *Cybersecurity Law* (CSL) and *Data Security Law* (DSL), which refers to data that jeopardizes national security and public interests. We suggest the exclusion of customer information (within a specific threshold),

transaction data, trade secrets, corporate operation data, and similar information from the definition of "important data."

We understand that each industry authority will further delineate the detailed scope of "important data" to guide businesses. In the financial sector, the service chain encompasses commercial banking, investment banking, asset management, futures and derivatives, and private equities, which currently fall under different banking and securities regulatory agencies' purview. Therefore, we recommend that the central bank takes the lead and issues one consolidated version of "important data" for the financial sector. If each financial regulator issues its own version of "important data," it would substantially increase the workload of complying with the regulations and negatively impact working efficiency.

### ***Cross-border Data Security***

The Cyberspace Administration of China has recently issued new regulations to provide additional guidance on cross-border data transfer. Despite this development, there remains a lack of clarity on the extent of data that China entities can share with their offshore affiliates. AmCham China members are hopeful that regulators can gain a better understanding of why certain data or information is needed by the offshore parent of wholly or majority foreign-owned asset managers. In this regard, we would like to suggest that policies and regulations on cross-border data sharing by asset managers' onshore entities take into account exceptions based on the different types of data and reasons for their cross-border sharing.

We would like to highlight two examples to illustrate this point. First, onshore shareholding data of listed securities is required for both offshore regulatory reporting and group risk monitoring. Second, research analysis data/information of sectors and companies conducted by foreign asset managers' China onshore affiliates should also be shared. This sharing of research data not only benefits investors, including Chinese investors, but also the Chinese asset management industry as a whole. We believe that global asset managers will potentially hire more Chinese analysts onshore, leading to a boost in the industry's growth.

We urge for greater consistency and clarity among the various regulators in developing rules and regulations for cross-border data sharing. We hope that our suggestions can help to improve the regulatory framework and facilitate the growth of the asset management industry in China.

## **ESG Investing**

### ***Incentivizing Green Finance in China***

China has set a forward-looking goal to achieve carbon

低。商会建议负责碳交易市场运作的相关部门明确具体的排放上限，以稳定的、分阶段的方式扩大中国排放交易市场准入，逐步吸纳金融机构等第三方参与碳交易。

商会支持按照中国大陆以及大湾区的新兴国际标准，发展自愿性碳市场。

### 中国企业以欧盟《可持续金融分类方案》为基准

标普全球的数据显示，在中国（包括大陆、香港、台湾和澳门）2020年收入超过20亿美元的1265家上市公司中，622家公司具有超过75%的收入符合欧盟分类标准。有趣的是，在134家房地产行业的中国公司中，132家公司具有超过75%的收入符合分类标准，这表明整个房地产行业的大部分业务活动都有可能为环境可持续发展做出贡献，在ESG领域实现更多目标。

### 境内企业境外发行证券和上市

#### 中美审计合作

美国商会会员对美国上市公司会计监督委员会（PCAOB）、中国证券监督管理委员会和财政部于2022年8月达成的协议备受鼓舞。该协议允许美国上市公司会计监督委员会对中国的注册会计师事务所进行检查和调查。在香港试行的检查结果消除了中国离岸股票的不确定性，有利于进一步稳定中美关系。

商会期待已久的中国境内企业境外上市新规最终出台。新规为企业提供了更加清晰的程序和做法，减少了监管方面的不确定性，特别是在可变利益实体（VIE）方面。美国商会会员期待新规于2023年3月31日开始试行，并希望在此期间提供企业的反馈和建议。

然而，商会注意到，美国企业的数量在承销商代表性方面并未达到预期，特别是在与国有企业的交易中，主要原因是在普遍长期的环境不确定中，中国企业与美国企业合作时持谨慎保守态度。因此，相关部门需要恢复市场信心和信任。在过去四十年里，美国金融企业在中国企业的国际化和融资方面发挥了关键作用。商会认为，加强全球体系中的信任和合作精神符合中美双方利益。确保中美在审计和上市方面的长期可持续合作，保持开放的沟通渠道，将成为市场复苏的强大催化剂。

## 建议

### 对中国政府：

#### 商业银行

- 允许外资金融机构担任公司债券的主承销商；
- 理解外资银行业务的经营特点并采用不同的监管程序，特别是在跨境信贷管理和跨境融资方面；
- 允许外资银行参与中国政府债券期货交易的试点项目，推动投资基础多样化，改善市场深度、流动性和定价机制。

#### 资产管理

- 根据实际情况调整负债标准，适当性框架应向整体适当性发展；
- 将私募信贷基金纳入中国保险公司在QDII计划下可投资的合格境外资产类别；
- 引入资产负债管理（ALM）和负债驱动型投资（LDI）机制等全球实践，参与中国第三支柱养老金的试点项目。

#### 托管服务

- 批准合格的外国基金服务供应商在中国市场提供基金会（FA）和过户代理（TA）服务；
- 允许外资银行在中国的分行向国内证券投资基金提供结算服务；
- 允许获准的贷款代理人（包括代理人 and 托管人）通过“中华通”进行交易。

#### 证券

- 对跨国公司分拆上市、红筹公司上市、IPO二次发行以及IPO定价和配售流程放款限制；
- 扩大“中华通”的投资范围，包括所有上市A股、IPO、PIPE、大宗交易、可转换债券以及南向借贷沽空和北向卖空。

neutrality by 2060, with a peak in carbon emissions targeted before 2030. However, achieving these targets while maintaining an annual GDP growth rate of over five percent will require significant adjustments to China's energy structure in the next decade. As the Chinese capital market continues to open, foreign institutional investors are investing in the A-share market, and Chinese companies are benefiting from better overseas financing conditions.

To integrate with international ESG and sustainability regulations, Chinese policymakers and companies need to reflect China's unique reality while focusing on increasing investment in the energy transition for affordable, reliable, and clean energy. AmCham China members welcome China's leadership in green finance among the G20 and encourage the authorities to continue working at the international level to develop compatible, clear, and practical green financial standards. They also suggest developing a domestic taxonomy to channel financial resources towards transition-aligned projects and technologies, while ensuring that environmental laws and regulations encourage the development of green finance.

While the historic ownership concentration and domestic retail investor domination of the A-share market means that overseas investors do not own much of it, cross-border capital is flowing into China due to top-down reforms and the inclusion of A-share companies in global indices. Domestic listed companies are partnering with international asset managers to better mitigate risks and capitalize on opportunities in ESG fields.

China has set up six provincial level pilot zones for green finance reform and innovation and approved 23 additional pilot regions for climate investment and financing. These pilot regimes will actively develop and test significant climate-beneficial projects, strengthen emission data quality supervision, and build international exchange and cooperation platforms. If successful, these models could be scaled across China. For financial institutions, additional policy incentives can be introduced to promote green finance. This can be achieved by:

- Further expanding the PBOC's carbon emission reduction supporting tools, for example, through preferential prudential capital treatment?
- Increasing the proportion of qualifying collateral for high-standard green bonds in monetary policy operations.
- Providing tax incentives, or interest subsidies, and other appropriate incentives to encourage financial institutions to actively participate in the design, issuance and investment of green financial products.
- Issuing special and targeted government loans.
- Increasing government green procurement; and
- Through use of blended finance and risk mitigation instruments, attracting non-governmental funds to energy conservation and low-carbon sectors.

## *Development of China's Carbon Market*

Carbon pricing systems represent crucial instruments that governments and industries can utilize to encourage high-emitting companies to decarbonize and promote greater investment in low or zero-carbon technologies and solutions. China's national carbon trading market, established in 2013, was officially launched in July 2021 and swiftly became the world's largest carbon market, with a total trading volume of 194 million tons of CO<sub>2</sub>. Despite rapid development, China's national carbon market still faces a number of hurdles and challenges.

At present, only spot trading is permitted, and the number and scope of participants in the Chinese ETS are inadequate, particularly as financial institutions are currently unable to participate. As a result, carbon prices within the ETS fluctuate significantly, and liquidity remains low. To address these concerns, we would appreciate greater efforts to define specific emissions caps for sectors operating within the ETS, as well as an incremental and steady increase in access to China's ETS, gradually incorporating third-party participation from financial institutions in carbon trading.

Additionally, we endorse measures to establish voluntary carbon markets in accordance with emerging international standards in mainland China and the GBA.

## *Chinese companies benchmarking against EU Sustainable Finance*

Taxonomy regulation S&P Global's data reveals that out of the 1,265 listed companies in China, including Mainland, Hong Kong, Taiwan, and Macao, that earned revenue exceeding US \$2 billion in 2020, 622 of them meet the EU Taxonomy-Eligibility criteria, with a revenue proportion higher than 75 percent. Notably, in the "Real Estate" sector, 132 out of 134 Chinese companies meet the Taxonomy-eligibility criteria with a revenue ratio exceeding 75 percent. This suggests that the vast majority of business activities in the real estate industry could potentially contribute to achieving environmental sustainability goals. However, this also highlights the need for the sector to focus on ESG (Environmental, Social, and Governance) efforts to improve sustainability in the long run.

## **Overseas issuance and listing of securities by domestic enterprises**

### *US-China Audit Cooperation*

AmCham members are highly optimistic about the agreement reached in August 2022 between the Public Company Accounting Oversight Board (PCAOB), the China Securities Regulatory Commission, and the Ministry of Finance. This agreement allows the PCAOB to carry out inspections and

### 债券及其衍生产品

- 在中国监管机构的管理下，允许上海自贸区（FTZ）的企业在自由贸易账户下通过芝加哥期货交易所（CBOT）进行对冲交易。

### 信用评级

- 重视信用评级调整率与其等级之间的关联性：等级越高，评级稳定性越强；等级越低，评级调整频率越高；
- 采用合理可靠的信用评级，建立投资级和高收益的概念；
- 比较在岸国内市场与全球市场对同一发行人的信用评级，推动形成市场共识，建立中国与全球在信用尺度和评级符号上的联系。

### 网络安全和跨境数据流动

- 延长《数据出境安全评估办法》的6个月调整期；
- 允许企业使用与母公司一致的银行系统、内部办公系统（如 Office 和 Teams）以及运营模式；
- 发布公共云和金融云、访问要求、外国参与者治理等方面的详细要求和时间表。

### ESG 投资

- 自 2030 年和 2060 年“双碳”目标宣布以来，中国的 ESG 投资快速发展，监管机构的鼓励政策得到落实，金融机构和企业的积极性和参与度不断上升；
- 自 2020 年以来，机构在 A 股的持股比例攀升了 50% 以上，有利于资产管理公司利用其管理经验对行业产生积极影响；
- 数据显示，ESG 议题正在吸引更多关注，ESG 和碳主题的共同基金规模不断增长。

investigations on registered public accounting firms in China, and the outcome of the trial inspections in Hong Kong has removed a significant obstacle to the Chinese offshore stocks, which has also positively impacted the broader US-China relationship.

Moreover, AmCham welcomes the finalization of the much-awaited new rules governing domestic firms' overseas listings. The new rules provide a more transparent procedure and practice for firms to follow and reduce some regulatory uncertainties, especially related to VIE structures. Our members look forward to providing feedback and advice during the trial implementation period starting from March 31, 2023.

Despite these positive developments, it is concerning that US firms are not as represented as one would expect in the underwriter lineups, especially in deals involving state-owned enterprises (SOEs). This is due to Chinese firms' prudence and conservativeness in partnering with US firms, resulting from sustained general uncertainty. Therefore, restoring market confidence and trust is critical. Over the past four decades, leading US financial firms have played essential roles in the internationalization and financing of Chinese firms. We believe it is in the interest of both sides to maintain the spirit of trust and cooperation that underlies the global system. Ensuring a long-term and sustainable arrangement for US-China audit/listing cooperation, along with keeping open lines of communication, will be a significant catalyst for market revival.

## Recommendations

### *For the Chinese Government*

#### *Commercial Banking*

- Allow foreign FIs to act as lead underwriters for corporate bonds.
- Recognize the distinctive operating characteristic of foreign bank operations and apply differential regulatory procedures accordingly, particularly with respect to cross-border credit management and cross-border financing.
- 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*

- Consider re-aligning liability standard to better reflect the practical and commercial reality. The

suitability framework should evolve towards a holistic suitability approach.

- Include Private Credit Funds as one of the eligible overseas asset classes that Chinese insurers can invest in under the QDII scheme.
- Participate as a pilot into China's third pillar pension by bringing in global practices such as Asset Liability Match (ALM) and Liability Driven Investment (LDI) mechanisms.

### *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.
- Permit Approved Lending Agents including both agents and custodians to trade on the China Connect program.

### *Securities*

- Ease restrictions on multinational company's spin-off listing, red-chip companies' listing, IPO secondary offering, as well as IPO pricing and placement.
- Expand the investible scope under Stock Connect to include all listed A-shares and access to IPOs, PIPEs, block trades and convertible bonds as well as southbound SBL and northbound short-selling.

### *Bonds and Derivatives*

- Allow enterprises to conduct hedge trading through CBOT under the Free Trade Enterprise (FTE) account in Shanghai Free Trade Zone (FTZ)

### *Credit Ratings*

- Recognize the correlation between adjustment rate and the grade, i.e., the higher the grade, the stronger the stability of ratings, and the lower grade, the greater frequency of rating adjustments.
- Establish the concept of Investment Grade and High Yield using reasonable and reliable credit ratings.
- Promote the comparison of credit ratings on the same issuers between the onshore domestic market and global market, so as to gradually build market consensus and connections between the local and global on credit scales and rating symbols.





### *Cybersecurity and Cross-Border Data Flows*

- Extend the 6-month adjustment period for Measures for the Security Assessment of Outbound Data Transfer.
- Allow corporate banking system and intra-company office system (e.g., Office and Teams) to align with parent company's operating model for usage.
- Release detailed requirement and timeline for public cloud and financial cloud, access requirement, governance for foreign participants.

### *ESG Investing*

- China's ESG investment has received a significant boost since the announcement of the 2030/2060 dual carbon target, with encouraging policies from regulators and active participations from both financial institutions and companies continuing to implement and rise.
- Institutional ownership in A-share has climbed over 50% since 2020, which creates more room for asset managers to make difference and influence on industries through stewardship practices.
- Statistics show that ESG topics are attracting more attentions, with ESG and carbon themed mutual funds growing on fund sizes.



# Civil Aviation

## Introduction

**T**his Aviation Chapter summarizes China's recent aviation developments, and benefits of the US-China aviation relationship. It addresses areas that would benefit from further attention based on global aviation best practices while recognizing that China has made significant progress over the last decade.

The Chapter was prepared shortly after China announced plans to relax its zero-COVID policies, opening the door for more international travels, and increasing the prospects for aviation growth. We were pleased to see the elimination of quarantine requirements, "Five-One-Policy", load factor restrictions on inbound flights and onerous testing requirements for passengers and flight crews. We view this as a positive step that will result in the growth of global travel and economic activity, although the international market for China will not exceed more than 80 percent of 2019 levels, according to China's aviation regulator.

US companies are important suppliers of aviation technology, equipment, and services and have committed significant resources to assist China in reducing capacity constraints through improving capabilities and providing extensive aviation-related trainings. AmCham China's US-China Aviation Cooperation Program (ACP), with its 30 US members, was established in 2004 with a mission to facilitate joint safety, security, capacity, and efficiency-building activities that would benefit 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 operations. ACP remains committed to working on aviation issues that offer win-win opportunities for the United States and China.

## 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 the world's largest aviation market. According to IMF, China's GDP is projected to grow by 3 percent in 2022, and 5.2 percent in 2023.

Boeing's most recent Commercial Market Outlook (CMO) forecasts that China's commercial fleet will grow from around 3,900 aircraft in 2021 to more than 9,600 through 2041. It also estimates that China will need 8,485 new airplanes valued at US \$1.5 trillion to serve air travel and airfreight. This accounts for more than one-fifth of global aircraft deliveries over the next 20 years. The CMO also forecasts that China's civil aviation industry will require more than 412,000 new aviation personnel, including 126,000 pilots, 124,000 technicians and 162,000 cabin crew by 2041. Through 2041, China's passenger air traffic is estimated to grow at 4.9 percent per year with the country needing 1,570 widebody airplanes and 6,370 single-aisle airplanes to support an expanding network of international and domestic routes. Demand for commercial services to support the rapid and healthy growth of the fleet is valued at US \$545 billion. The Commercial Aircraft Corporation of China (COMAC) offers similar projections for China's aviation growth and needs.

With China's growth, along with its stellar safety record, the country has made some notable achievements that are important to the international aviation community. 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 given a priority for development and began operations in 2020. This work should translate into a more efficient air traffic flow system and help to reduce congestion at many of China's congested airports. And ACP is pleased to witness that CAAC has implemented Just Culture regulations by issuing the Management Rules on Reporting Information on Civil Aviation Safety, which further defines the principles, channels, and procedures for active reporting of safety information to identify hidden dangers in a timely manner and effectively guard against safety risks.

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 reduce burdens on aviation interests. Prior to 2019, Aviation

# 民航业

## 引言

### 本章

总结了中国民航业的发展近况，以及中美深化航空合作的优势。本章在认可中国民航业在过去十年中取得重大进展的同时，将讨论全球民航最佳实践中值得进一步关注的领域。

本章编写于中国宣布计划调整“清零”政策之后，政策的优化为更多国际旅行打开了大门，提高了民航业发展的预期。商会高兴地看到，检疫要求、“五个一”政策、入境航班的载客率限制以及对乘客和机组人员的繁琐核酸检测要求已取消。尽管中国航空监管机构表示中国的国际民航市场将不会超过 2019 年水平的 80%，商会仍将其视作积极的一步，这有利于全球旅行和经济活动的增长。

美国企业是航空技术、设备和服务的重要供应商，并已投入大量资源，通过提高能力和提供广泛的航空相关培训，协助中国减少产能限制。中国美国商会（以下简称商会）的中美航空合作项目（Aviation Cooperation Program, ACP）成立于 2004 年，包括 30 位美国会员企业，其使命是通过促进安全安保、能力提升和效率建设的联合活动，推动中国民航产业发展。中国民用航空局（CAAC）、美国联邦航空管理局（FAA）和美国运输安全管理局（TSA）对 ACP 的支持也是其成功运营的重要因素。ACP 将继续致力于解决航空问题，为中美提供双赢机会。

## 近期发展

即使全球运输业面临新冠肺炎疫情带来的挑战，有鉴于十余年稳定的经济增长，中国仍有望成为世界上最大的航空市场。国际货币基金组织预测，在中国 2022 年 GDP 增长 3% 的前提下，2023 年将增长 5.2%。

根据波音公司最新的《商业市场展望》（Commercial Market Outlook），中国的商用机队

将从 2021 年的 3900 架左右增长到 2041 年的 9600 多架。《展望》预计中国将需要 8485 架新飞机服务于航空旅行和空运，总价值达 1.5 万亿美元，占未来 20 年全球飞机交付量的五分之一以上。《展望》预测，到 2041 年，中国航空业将需要 412,000 多名新航空人员，包括 126,000 名飞行员、124,000 名技术人员和 162,000 名客舱人员；届时，其航空客运量将以每年 4.9% 的速度增长，将需要 1570 架宽体飞机和 6370 架单走道飞机来支持不断扩大的国际和国内航线网络。用于支持机队快速健康发展的商业服务需求价值高达 5450 亿美元。中国商用飞机公司（COMAC）对中国航空业的增长和需求也做出了类似的预测。

随着航空业增长及其出色的安全记录，中国已经取得了一些对国际航空界十分重要的显著成就。商会很高兴看到中国民用航空局已经采纳了 ACP 有关上海地区空域和地面优化、北京和西安大规模延误响应（Massive Delay Response）研究以及相关技术援助和培训活动中提出的许多建议。为了实现更加系统化的管理协调，中国民用航空局新设的民航运行管理中心、民航气象中心及其民航信息管理中心被列为优先发展项目，并在 2020 年开始运行。这项工作将打造一个更加高效的空中交通流量系统，有助于缓解中国许多机场正面临的拥堵问题。ACP 很高兴看到，中国民用航空局通过《民用航空安全信息主动报告管理办法》（Management Rules on Reporting Information on Civil Aviation Safety）落实了公平文化条例，进一步明确了主动报告安全信息的原则、渠道和程序，从而及时发现隐患，有效防范安全风险。

美国航空业受益于中国航空业的增长。中国采用与美国最佳实践一致的程序和标准使双方航空系统进一步协调，减少利益方面的负担。在 2019 年之前，航空产品和服务曾是美国对中国出口的最大类别之一，为美国

products and services traditionally have constituted one of the largest categories of U.S. exports to China, representing tens of thousands of US jobs. While there has been a downturn in US aviation exports to China since 2019, we remain hopeful orders and deliveries will resume soon to meet China's growing needs for aircraft, services, and parts. From July 2021 to June 2022, US \$4.65 billion of civil aircraft, engines, and parts were exported to China, a drop from US \$18.3 billion in 2018. There is an expectation that recovery will take time, but we are predicting a steady and healthy growth of the transportation sector. The International Air Transport Association (IATA) projects that global passenger business is expected to generate revenues of US \$522 billion. Passenger demand is expected to reach 85.5 percent of 2019 levels over the course of 2023. And the passenger numbers will surpass the four billion marks for the first time since 2019, with 4.2 billion travelers expected to fly. While there is an expectation that global cargo markets will come under increased pressure in 2023, revenues are expected to be US \$149.4 billion, which is US \$52 billion less than 2022 but still US \$48.6 billion stronger than 2019, according to IATA.

Investments in aviation and navigation technology indicate China's commitment to developing its own indigenous capabilities. The country will continue to invest in and promote its BeiDou Navigation Satellite System globally. In 2022, China's single aisle C919 received its "type" and "production" certificates, marking major milestones towards becoming a global aviation player. The aircraft is expected to be put into commercial operation by China Eastern Airlines in March this year. China is also moving forward with plans to produce the CR929, its first wide body commercial aircraft. In addition, Indonesia became the first country in Asia to take delivery of COMAC's ARJ21. While China intends to become a major global aviation supplier, its investments in domestic production also represent unique opportunities for increased collaboration with US equipment manufacturers and service providers. US engines, avionics, and parts are used on both the C919 and the ARJ21.

The pandemic created both challenges and opportunities for our two countries in addressing common issues related to safety and security, supply chain disruptions, aeromedical health, and aircraft maintenance. Continuing this collaboration is essential for addressing climate change issues and ensuring continued industry growth.

## Issues that Might Benefit from Further Attention

### *Full Resumption of Airline Travel between United States and China*

We are pleased that China has eliminated its zero-COVID control regulations with an aim to normalize international air travel, including elimination of the circuit breaker

mechanism on inbound flights, reduction of pre-departure screening to a single PCR test, and removal of quarantine periods for international passengers.

We also encourage China to implement a transparent slot assignment process in line with international norms and best practices to ensure fast recovery of traffic flows. Furthermore, China must adhere to the rights provided to U.S. carriers under the US-China Air Transport Agreement.

### *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. We are pleased that CAAC introduced the first "Slot Allocation Policy for Mail and Cargo Flights." Based on the functional positioning of airports and the imbalance of slot supply and demand, a classified, quantified and differentiated slot allocation policy was implemented for cargo and mail flights, with the aim of improving the daily utilization rate of mail and cargo aircraft and relevant services. 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 the 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.
- CAAC should extend the slot allocation reforms in 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.

提供了数以万计的就业机会。虽然美国对华航空出口自2019年以来有所下滑，商会仍期待订单和交付早日恢复，以满足中国对飞机、服务和零部件日益增长的需求。从2021年7月到2022年6月，价值46.5亿美元的民用飞机、发动机和零部件出口至中国市场，比2018年的183亿美元有所下降。尽管恢复出口需要时间，商会预测运输业将稳步健康发展。国际航空运输协会（The International Air Transport Association）预计全球客运业务将产生5220亿美元的收入；乘客需求将在2023年达到2019年水平的85.5%；乘客人数将自2019年以来首次突破40亿大关，预计将有42亿旅客乘坐飞机。国际航空运输协会称，2023年全球货运市场将面临更大的压力，收入预计为1494亿美元，尽管比2022年减少520亿美元，仍比2019年增加486亿美元。

对航空和导航技术的投资表明中国致力于发展本土能力。中国将继续在全球范围内投资和推广其北斗导航卫星系统。2022年，中国商飞C919（单通道飞机）获得了“型号”和“生产”认证，是中国参与全球航空业的重要里程碑。该飞机预计将于2023年3月由中国东方航空公司投入商业运营。中国也正在推进生产CRJ929（第一架宽体商用飞机），印度尼西亚成为亚洲第一个接收中国商飞ARJ21的国家。随着中国计划成为全球主要航空供应商，其国内生产投资提供了与美国设备制造商和服务供应商加强合作的独特机会。C919和ARJ21都使用了美国的发动机、航电设备和零部件。

新冠肺炎疫情为中美两国解决安全安保、供应链挑战、航空医疗和飞机维修等共同问题创造了挑战和机遇。坚持合作对于解决气候变化问题和确保行业持续增长至关重要。

## 有待关注的问题

### 全面恢复中美航空旅行

商会很高兴看到，中国已经取消了其严格的防控要求，致力于推动实现国际航空旅行正常化，包括取消入境航班的断路器机制、出境前检查减少为单次PCR测试以及取消国际乘客的检疫期。

商会鼓励中国按照国际规范和最佳实践推进透明的机位分配程序，以确保快速恢复交通流量。此外，中国必须遵守《中美航空运输协定》（U.S.-China Air

Transport Agreement）中提供给美国承运商的权利。

### 优化航班机位

中国的主要机场（包括北京、上海、广州和深圳）的机位限制阻碍了进一步增长。优化机位分配程序和利用率对于实现国务院制定的民航业发展和效率目标有其必要性。商会很高兴中国民用航空局出台了首个《邮件和货物航班的机位分配政策》（Slot Allocation Policy for Mail and Cargo Flights），基于机场的功能定位和不平衡的机位供需，对货邮航班实行分类、量化、差异化的机位分配政策，提高货邮飞机的日利用率和相关服务。为进一步改善航空服务，商会建议采取以下措施：

- 持续改进和优化国内外航空公司的机位分配程序，确保机位分配符合国际航空运输协会的全球机位指南；
- 开放机位和流量数据库，减少航空公司换季期间运营的不确定性；
- 建立公平透明的程序，确保及时重新分配未使用或使用不足的机位；
- 中国民用航空局应将上海浦东机场和广州白云机场的机位分配改革推广到其他机场，并允许航空公司之间进行“机位互换”，而非“拍卖”和“抽签加付费”；
- 延长重要机场的运营时间以增加运力，无需额外增加设施；
- 放宽或取消对日常运营的任意限制，应考虑实际使用情况，鼓励利用非高峰时段；
- 取消对全货机运营的日间时段限制和对联合航站楼运营的限制，允许外国货运公司在中国多个机场进行单次运营；
- 减少主要机场的地面延误。这种延误严重影响了下游联系、成本和客户的便利性。长时间延误也产生了更多排放，加剧空气污染。

### 更灵活的航线

中国民用航空局应采取更灵活的航线结构，允许运营商规划和经营更多入口/出口点，而非局限于目前“城市对”的限制。商会建议中国民用航空局取消目前基于城市对的进出港限制，允许运营商自由选择的进出港点。这一点在全球航空业从新冠疫情中逐渐恢复后尤为重要。

### *Allow for More Route Flexibility*

CAAC must adopt a more flexible route structure permitting operators to plan and operate via more entry/exit points, instead of limiting them to the current city-pair restrictions. We recommend CAAC chart a path towards eliminating the current entry/exit restrictions that are based on city pairs, allowing operators the freedom to utilize entry/exit points of their choosing. This is especially relevant as the global airline industry recovers from COVID-19 disruptions.

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. Flexible and timely re-routing reduces airport congestion and delays while delivering better customer service and increasing capacity. 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) to greatly improve the efficiency and quality of flight plan processing and international route coordination. We hope to see improvements in Shanghai's airspace and route system, 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 international and domestic hubs. Development of Beijing, Shanghai, and Guangzhou as designated hub airports is a high priority for U.S. and Chinese airlines alike.

China and the United States are both losing market share to third country airlines that transport passengers and cargo, outside 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 interline baggage checks for connecting passengers in Beijing Capital, Daxing and Shanghai Pudong airports. This will attract more passengers transferring to or from other cities in Northeast Asia, while also helping to attract more passengers and generate 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.

### *Specific 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 affected by a nationwide policy precluding 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 limit 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. We are also pleased that CAAC issued several policies to add flexibility and efficiency to scheduling cargo flights, for example simplifying the licensing procedures for international cargo routes, establishing a "green channel" for international air cargo services, etc. CAAC also issued its "14th Five-Year Special Plan for Air Logistics Development" in early 2022, which is the first special plan for the development of aviation logistics. This Plan provides precise guidance for building a high-quality, efficient, self-reliant, and controllable air logistics system.

AmCham China also encourages China to permit co-terminalization which allows 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.

We also call on China to address its overly complex, and regionally inconsistent customs regulations which hamper the evolution and growth of the domestic logistics industry. China's current customs procedures do not allow in-bound and out-bound goods to flow through 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. This has pushed some carriers to move hub operations to airports outside of China or avoiding these internal regions altogether.

As the need for air cargo services grows and networks become more complex, the need for greater scheduling flexibility has also increased. Demand for cargo services is not static, but fluctuates widely in response to holidays, seasons, and consumer demand. The Boeing Commercial Market Outlook (CMO) 2022-2041 has predicted robust demand for dedicated freighters to support global supply chains and growing express networks. Air cargo volumes will increase at an average compound rate of 4.1 percent annually over the next two decades. More flexible and timely procedures

目前，国际运营商不被允许根据持续变化的条件（如天气或其他沿途因素）改变飞行路线，这涉及复杂的军事批准过程。灵活及时的改道可以减少机场的拥堵和延误，同时改善客户服务、增加运力。这些措施需要航空公司、空中交通管理局和军方在合作决策（Collaborative Decision Making）过程中紧密协调。

商会很高兴中国现在有最先进的飞行计划处理中心（Flight Plan Processing Center），这大大提高了飞行计划处理和国际航线协调的效率和质量。商会期待看到上海的空域和航线系统得到改善，从而避免严重延误。

## 门户和枢纽机场

商会赞同中国将国际门户机场打造为更高效的国际和国内枢纽的计划。将北京、上海和广州发展为指定枢纽机场是美国和中国航空公司的高度优先事项。

中国和美国的航空业市场份额正向第三国航空公司流失，这些第三国航空公司在中国主要国际枢纽之外的机场运输乘客和货物。据估计，超过 40% 的中国二线城市由第三国航空公司从中国以外的枢纽提供服务。商会期待新政策能够促进货物和旅客的及时转运以及行李处理流程的简化，从而帮助中国从其他区域枢纽获得更大的环太平洋航空运输份额。

商会建议通过在北京首都机场、大兴机场和上海浦东机场对转机旅客进行联程行李检查来提高枢纽效率。该举措将吸引更多旅客在北京、上海或东北亚的其他城市转机，有助于吸引更多旅客，创造就业机会，从而实现机场增收。更多的高效枢纽运营和代码共享合作将为中国和美国的航空公司带来收益。

## 具体的货运业问题

国际货运和物流业依赖于时宜的航空运输，这对中国航空业愈加重要。中国禁止“机位协调”的机场向全货物运营商提供更多白天起降机位，快递和普通航空货运服务均受到了这一全国性政策带来的负面影响。快递和普通航空货运服务是中国对外贸易的核心，而该政策限制了中国在全球供应链中的竞争力。

商会高兴地获悉，中国民用航空局可能正在考虑进一步放宽“货运窗口”，即全货运业务的机位被限制在中国主要机场的夜间时段。这一进展将提供缓解航空

业发展困境。商会也很高兴得知民航局为提高货运航班安排的灵活性和效率所发布的相关政策，例如简化国际货运航线的许可程序、建立国际航空货运服务“绿色通道”等。中国民用航空局于 2022 年初发布了《“十四五”航空物流发展专项规划》（The 14<sup>th</sup> Five-Year Special Plan for Air Logistics Development），这是首个航空物流发展的专项规划。该规划为建设优质、高效、独立、可控的航空物流体系提供了准确指导。

商会鼓励中国开放航点串飞，即允许承运商用同一架飞机在外国两个及以上的地点提供服务，作为连续旅程的一部分。航点串飞有利于航空公司（尤其是全货机公司）将其业务与规模更大、发展更成熟的目的地相结合，发展对规模较小的内陆目的地的服务，从而最大限度地提高效率，降低成本，减轻托运人和制造商的市场风险。

商会呼吁中国调整其过于复杂且地区间不一致的海关法规，这些法规阻碍了国内物流业的发展和增长。中国目前的海关程序无法为通过门户机场出入境的货物提供合理的航空时间框架，阻碍了国际航空货物在中国中西部地区的流动，导致部分承运商将枢纽业务转移到中国以外的机场，或完全避开内陆地区。

随着航空货运服务需求增长和网络复杂化，航空调度需要更高的灵活性。货运服务需求并非一成不变，而是随着节假日、季节和消费者需求变化而显著波动。波音《商业市场展望》预测了 2022-2041 年对专用货机的强劲需求，以支持全球供应链和快递网络的快速增长。未来二十年，航空货运量将以平均每年 4.1% 的复合速度增长。更加灵活及时的程序将帮助航空货运公司按需调整时间表，从货运网络其他部分的安排中断中恢复过来。

中国主要机场极高的运营成本继续上升，阻碍了进一步发展。中国的航空费用是区域内最高的，而地方垄断提供的必要供应和服务（如燃料、货物处理和政府备案）严重拖累了效率提升。商会仍希望在中国民用航空局、机场、边检机构和航空公司的共同努力下，降低中国国际机场的运营成本。

## 航空安全

航空安全是运输业的重要组成部分，包括客运和货



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, are an expensive drag on efficiency. We remain hopeful that CAAC, airports, border agencies, and airlines can 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 to the entire industry. Information exchanges, and trainings conducted in partnership with other countries around the world is an important element of aviation security. China should proactively facilitate security assessments to recertify airports that have expired during the pandemic.

### *Enforcement of Dangerous Goods Supply Safety*

AmCham China recommends that the Chinese government impose stricter supervision on all three major supply chain stakeholders of dangerous goods air transportation: namely the 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). China General Aviation is moving forward steadily. By the end of 2022, the number of general-purpose aircraft registered nationwide was 3,177, an increase of 5.3 percent over the previous year's 3,018; there are 399 general-purpose airports, an increase of 7.8 percent

over the previous year's 370. The priority has shifted from increasing general aviation airport growth to how to more commercialize general aviation and to realize benefits to the community. The GABA sector requires more favorable government policies and incentives to continue expanding, while recognizing the needs for more commercial airspace.

We are pleased to see the attention given to continuous improvement of safety policies and regulations in the realm of GABA. The on-going discussion and increased focus on simplifying the validation process of general aviation manufactured equipment and establishment of UAV standards is good news. We also applaud CAAC's progress on establishing a low-altitude Flight Service Station system and development of 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 law enforcement, search and rescue, and firefighting).

AmCham China is pleased to see that the 14<sup>th</sup> 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.

#### Recommendations for GABA:

- Continue support for initiatives that would increase airspace usage at all altitudes. Increased direct routings enable GABA aircrafts to operate at optimum altitudes for greater fuel efficiency and reduced environmental impact.
- Further develop GABA airports, improve, and integrate access to commercial airports, and support competition amongst Fixed Base Operators (FBO) with standards for fueling and maintenance facilities.
- Differentiate regulatory surveillance/oversight and regulation requirements based on types of GABA aircrafts and operations to accurately match risk mitigation to the cost of regulation as well as the balance between development and safety.
- 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 a low altitude air-space infrastructure that integrates helicopter and fixed-wing traffic.
- Integrate helicopters and helipads into the development of a tiered hospital system, with a standardized emer-

运业务。中国民用航空局负责监管和实施中国大陆各机场的安全程序。航空安全应得到进一步加强，任何安全漏洞都会对整个行业造成长期的直接损害。信息交流和其他国家合作培训是航空安全的重要因素。中国应积极推动安全评估，对疫情期间认证过期的机场进行重新认证。

### 危险品供应安全的执行情况

商会建议中国对危险品航空运输供应链的三大利益相关者（即托运人、货代和航空公司）实施更加严格的监管。商会的会员企业努力遵守《中国民用航空危险品运输管理条例》（CCAR 276-R1）的要求，但仍对其他各方的执行情况有所顾虑。

商会支持对从事危险品航空运输的实体（特别是托运人和托运代理人）制定更全面有力的检查计划。利用中国危险品航空条例第 12 章——法律责任中对适用实体（如托运人、托运代理人、地勤人员、货物销售代理、运营商）执法能力的相关条例，有助于确保运营商的公平竞争环境。

### 通用航空和公务航空的发展情况

商会会员企业支持中国发展通用航空和公务航空（GABA）。中国通用航空正稳步向前发展。截至 2022 年底，全国已注册的通用飞机数量为 3177 架，比上一年的 3018 架增长了 5.3%；通用机场数量为 399 个，比上一年的 370 个增长了 7.8%。发展重点已经从通用机场的数量增长转向通用航空进一步商业化，从而实现其社会效益。通用航空部门的持续扩大需要更加优惠的政府政策和激励措施，以及对更多商业空域的需求。

商会很高兴地看到 GABA 领域的安全政策和法规持续改进。简化通用航空制造设备的验证过程和建立无人机标准得到了充分讨论和更多重视，这是一个很好的信号。商会赞赏中国民用航空局在建立低空飞行服务站系统上取得的进展，以及在湖南省、江西省和安徽省开展的试点项目，加强在低空空域使用权上的军民合作。

尽管具体挑战仍然存在，民用直升机行业展现出了巨大的增长潜力，更多直升机行业细分市场也将从中受益，如空中医疗服务和公共安全机队（包括执法、搜索救援和消防）。

商会高兴地看到，“十四五规划”包括采取行动以改善基础设施及其配套政策，这将提高中国运输业的效率和流动性，并通过创造更多就业机会和满足人道主义需求实现发展。商会成员将继续支持中国的劳动力发展。

综上，商会向中国的 GABA 行业提出以下建议：

- 继续提高所有高度的空域使用率，增加直达航线保证 GABA 飞机在最佳高度运行，从而提高燃油效率，减少环境影响。
- 发展 GABA 机场，整合商业机场通道，允许固定基地运营商（Fixed Base Operators）公平竞争，制定加油和维修设施的标准。
- 根据 GABA 飞机的类型和运营情况，区分监管监督要求，精准匹配风险缓解措施与监管成本，平衡发展和安全问题。
- 为航空公司提供获取国内航空信息的途径，以便制作国内安全飞行所需的海图和地图。
- 建立穿越市区的直升机航线，整合直升机和固定翼飞机的低空空域基础设施。
- 将直升机和直升机停机坪纳入医院分层系统，建立标准化的应急调度制度。
- 为空中医疗服务、运营商和相关公司所需的先进培训和设备提供政府资金、补贴和支持。
- 增加外国飞行培训公司在中国培训的机会。
- 出台相关文件，为航空公司和企业家提供培训，帮助企业了解 GABA 飞机在企业、个人和政府层面的价值主张。

### 统一审定程序，与国际标准接轨

中国民用航空局和美国联邦航空管理局于 2017 年 10 月签署了《适航实施程序》（Implementation Procedures for Airworthiness, IPA），这是中美航空关系发展的一个重要里程碑。美国企业愿意分享他们的经验和建议，实现 IPA 的预期价值，使中美两国都能从中受益。

IPA 致力于为航空产品和服务建立一个更可预测的监管环境，关键指标包括预期项目时长和项目技术范围。美国工业界已在 2021 年见证了初步实施 IPA 的益处，期待 IPA 在未来对更广泛的认证产生积极影响。其中，有关安全要素、特别关注清单（Special Emphasis Items）、规章重大差异（Significant Standards

gency 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/entrepreneurs to help business understand the value proposition of GABA aircrafts for corporate, personal, and government use.

### *Aligning Validation Processes with International Standards*

The CAAC and FAA signed the Implementation Procedures for Airworthiness (IPA) in October 2017, marking an 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 establish 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 Safety Elements, Special Emphasis Items (SEI), significant standards differences (SSD), CCAR 34, and CCAR 36 aspects are of particular interest.

AmCham China recommends that CAAC expands 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 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 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 to eliminate SEI, SSD, and AFTCB items over time. This collaboration is key to making the IPA a joint success for the US and China aviation industries, as is a process to collect industry feedback from individual projects to further improve 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 applicants.

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 updating 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.

In addition, we believe that CAAC should address how best to distinguish the validation process or requirements for a specific GA-related projects relative to commercial projects.

### *Climate Change and Sustainability*

Climate change is a critical global issue and has become one of the cornerstones of China's 14<sup>th</sup> Five-Year Plan. The 14th Five-Year Specialized Plan for Civil Aviation Green Development, which is the first green development plan in the history of China's civil aviation, 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 promote fuel efficiency.

AmCham China believes Chinese airports should set targets and strategies to become carbon neutral and welcomes the opportunity to share US expertise and experience.

We are pleased with China's plans to open temporary routes and 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. This is seen in several of China's newest constructed or airport expansion projects, including Daxing, Shenzhen and Chengdu.

Differences)、CCAR 34 和 CCAR 36 等方面的认证具有重要意义。

商会建议中国民用航空局与美国联邦航空管理局加强合作，为制造商提供 IPA 培训，并在整个行业内分享最佳实践。商会的会员企业支持中国民用航空局将适航认证程序系统化，并建立适航审批和管理体系。

商会在肯定中国民用航空局引入标准流程时间的同时，承认这些流量通常难以满足。在企业与其他机构合作的项目中也有类似的互利措施，如美国联邦航空管理局和欧盟航空安全局（EASA）都规定了流程时间。

商会会员支持通过 IPA 提高项目的可预测性和效率，这也是中国民用航空局与美国联邦航空管理局的共同愿景。商会鼓励中国民用航空局与美国联邦航空管理局继续合作，明确并简化特别关注项（SEI）、规章重大差异（SSD）和需要进一步建立技术信心的领域（AFTCB）。商会鼓励中国民用航空局与美国联邦航空管理局在未来取消 SEI、SSD 和 AFTCB 项目，这是 IPA 在中美航空业获得共同成功的关键，有助于收集行业对个别项目的反馈，进一步改进 IPA 以及中国民用航空局与美国联邦航空管理局的实施程序。

为了提高项目的可预测性，商会建议中国民用航空局为每个项目类型建立从接收申请到项目分配的标准流程时间，包括简化审定（SV）、有限技术认可审查（LTV）和全面技术认可审查（FTV），以及简化审定（SV）从项目分配到审定批准的标准流程时间。流程应包括每个安全要素，特别是 SEI 和 AFTCB，以便申请人和中国民用航空局在项目审定中达成共识，减少中国民用航空局、美国联邦航空管理局和申请人整体所需的流程时间和资源。

商会会员认为，项目工作计划应当包括具体程序和流程时间，这将有助于工作团队在整个项目过程中及时更新工作计划。为支持这种灵活的特定项目协议，商会建议中国民用航空局委托认证中心的工作团队负责工作计划的内容和更新，以避免因工作计划更新而增加的流程时间，确保美国联邦航空管理局、原始设备制造商和中国民用航空局能够专注于最高安全风险的领域。

鉴于未来几年将有更多的认证和验证量，商会建议中国民用航空局提高效率，缩短标准流程。商会认

为，尽管航空业的快速发展带来了更多监管方面的挑战，IPA 仍然是中国民用航空局在大量工作中的长期推动者。

此外，商会认为，中国民用航空局应进一步区分通用航空特定项目及其相关的商业项目所需的审定过程或要求。

## 气候变化和可持续发展

气候变化现已成为一个重要的全球问题，是中国制定“十四五规划”的基石之一。《“十四五”民航绿色发展专项规划》（The 14th Five-Year Specialized Plan for Civil Aviation Green Development）是中国民航历史上第一个绿色发展规划，其中包括多个主题的指导意见，如制定民航绿色发展蓝皮书、优化航线结构、提升燃油效率等。

商会认为，中国机场应制定实现碳中和的目标和战略，商会愿就此美国在这一领域的专业知识和经验。

商会很高兴看到中国计划开通临时航线，建设数字化、智能化的维护和修理系统，以确保飞机的安全、可靠和高效运行。中国正在打造更环保、更智能、更可持续发展的机场，最新建设的几个机场或机场扩建项目包括大兴、深圳和成都。

可持续航空燃料（sustainable aviation fuel, SAF）对实现航空业的碳中和目标至关重要，SAF 产业将成为新兴低碳产业在国际竞争中的焦点、气候变化国际话语权的竞争方向和航空制造业的高端发展领域。与北美和欧洲相比，中国的可持续航空燃料产业发展需要更多关注。

商会很高兴看到中国民用航空局最近向中国石化镇海炼油厂颁发了生物航空燃料的适航证书。该燃料将在日后应用于中国各地的飞机航行，标志着大规模生产的生物喷气燃料首次服务于中国航空业。

此外，全球民用航空业对可持续航空燃料的高需求与可持续航空燃料的低供应之间的矛盾将在中短期内持续存在。中国这类国家将需要更多的政府指导和支持。

推动建立高效的空域系统管理也将有利于运力提升和节能减排，最大化节能减排（ECER）相关项目的效益。精心规划机场滑行道和登机口布局，并采用配备了最新导航技术的飞机程序和航线操作，将大幅缩短飞

Sustainable aviation fuel (SAF) will play a critical role in achieving carbon neutrality goal for the aviation industry, and the SAF industry will become a focus area of international competition among emerging low-carbon industries, a direction for international competition for discourse on climate change and high-end development of the aviation manufacturing sector. Compared with North America and Europe, China's development of sustainable aviation fuel industry will require more attention.

AmCham China is pleased that CAAC recently awarded an airworthiness certificate to Sinopec Zhenhai Refinery of China Petroleum and Chemical Corporation for its bio-jet fuel. The fuel will be later used for flights across China. This will mark the first time that large-scale produced bio-jet fuel will serve the aviation industry in China.

In addition, in the foreseeable short to medium term, the contradiction between the high demand for sustainable aviation fuel in the global civil aviation industry and the small supply of sustainable aviation fuel in the world will continue to exist. There is definitive need for more government direction and support from countries like China.

Progress and continued efforts to create effective and efficient national airspace system management also will have direct benefits on capacity, energy saving, and emissions reduction, while maximizing the benefits of ECER-related programs. Well-planned airfield taxiway and gate layout design also can substantially reduce aircraft taxi times while continuing to adopt procedures and airline operations that utilize the capabilities of aircraft equipped with the latest navigation technologies.

AmCham China also recommends that CAAC/ATMB continue to adapt the capabilities of mature 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, airlines, and airports, to reduce stress on the airspace system by safely incorporating efficiency.

## Conclusion

China has made remarkable progress in developing its aviation system. AmCham China commends the CAAC and other Chinese stakeholders for their dedication to making China one of the largest, safest, and fastest growing aviation sectors in the world. The content of this Paper was intended to highlight areas that might benefit from further improvement while recognizing the unique challenges that the country faces and remarkable progress that has been made to date. Aviation remains one of the safest industries in the world due in great part to the close partnerships that exists between industry and government.

The US-China Aviation Cooperation Program (ACP) was established for the sharing of safety information and experience that would mutually benefit both countries. I encourage readers to learn more about ACP's signature training programs, and technical assistance activities and become more involved in the growing US-China aviation relationship that historically supports tens of thousands of U.S. jobs and important economic and cultural exchanges.

## Recommendations

### *For the Chinese government*

- Policies and procedures to increase efficiency of airspace and airport operations including implementation of 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 while optimizing hub airport design to better integrate air and ground systems to enhance runway and taxiway operational efficiency; we also recommend further relaxation or elimination of the "freighter window to provide welcome market relief".
- Adoption of policies and procedures to advance the development of China's general aviation and business aviation (GABA) sector to realize the economic development benefits, including, among other measures, support for initiatives that would increase the usage of airspace at all altitudes, such as increasing direct routings enabling GABA aircrafts to operate at optimum altitudes for greater fuel efficiency and reduced environmental impact.
- Alignment of validation processes with international best practices by, for example, standardizing the validation projects flowtime, procedures, and processes among all certification centers with simplified safety focused validation.
- Advance green and sustainable development measures of China's aviation sector, increasing the investment and the use of Sustainable Aviation Fuel (SAF) and adoption of 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.

### *For both governments*

- Full resumption of airline travel between United States and China and adherence to rights already given to U.S. carriers under the U.S.-China Air Transport Agreement.

机滑行时间。

商会建议中国民用航空局空中交通管理局（ATMB）进一步调整成熟技术，并将其应用于国家空域系统，包括在程序、测量、通信和决策支持方面的最佳实践，从而加强中国空中交通管理系统的所有参与者（包括空中交通中心、航空公司和机场）的能力，安全整合效率，减少空域系统的压力。

## 总结

中国的航空系统取得了长足进步。商会赞扬中国民用航空局和其他中国利益相关方付出的努力，使中国航空业成为世界上最大、最安全和发展最快的航空部门之一。本章的内容强调了仍有待改进空间的领域、中国面临的独特挑战和迄今取得的显著进步。航空业仍然是世界上最安全的行业之一，这在很大程度上归功于行业和政府之间的密切伙伴关系。

中美航空合作项目（ACP）旨在分享安全信息和有利于两国发展的经验。中美航空合作历年来提供了数以万计的美国就业岗位和重要的经济文化交流机会。商会鼓励相关方进一步了解 ACP 的特色培训项目和技术援助活动，深入参与不断发展的中美航空关系。

## 建议

### 建议中国政府：

- 出台相关政策和程序以提高空域和机场的运营效率，参照国际规范和最佳实践，对国内外承运商实施透明的机位分配程序，以确保快速恢复交通流量，推动未来增长；优化枢纽机场设计，整合空中和地面系统，提高跑道和滑行道的运营效率；进一步放宽或取消“货运窗口，缓解市场压力”。
- 采取政策和程序以推进中国通用航空和公务航空（GABA）的发展，实现经济发展效益。其中包括提高所有高度空域使用率的举措，如增加直接航线和鼓励 GABA 飞机在最佳高度运行，从而提高燃油效率，减少对环境的影响。

- 将审定过程与国际最佳实践接轨，例如简化安全重点审定，实现所有认证中心的项目审定流程、程序和过程标准化。
- 优化中国航空业的绿色可持续发展措施，增加对可持续航空燃料（SAF）的投资和使用，采用配备最新导航技术的飞机程序和航线运营，实现绿色发展的预期效果。

### 建议两国政府：

- 全面恢复中美航空旅行，遵守中美航空运输协议中已经授予美国航空公司的权利。

# Direct Sales

## Introduction

**D**irect selling is a business model that involves selling products and services directly to consumers without the involvement of intermediaries. This model is widely used around the world and provides significant opportunities for entrepreneurship, contributing to overall economic prosperity. To promote fair competition and protect the interests of consumers, laws have been enacted to regulate direct selling.

In China, the direct selling business model has gained substantial popularity since its introduction in the early 1990s. However, along with the direct selling boom, the pyramid scheme business model is also gaining popularity. Pyramid schemes are widely considered fraudulent or illegal as they promise compensation for enrolling others into the scheme rather than selling physical products or providing actual services.

It is important to distinguish between legitimate direct selling and illegal pyramid schemes to protect consumers and maintain a healthy business environment. Laws and regulations should be strictly enforced to prevent the spread of fraudulent business practices and ensure fair competition in the direct selling industry.

The Chinese government has been committed to cracking down on illegal pyramid schemes and has adopted strict regulatory policies to curb their spread. 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 shall have a strong business credit score and no major illegal business records for five consecutive years before filing an application;
- 2) Registered capital should 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 selling, 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 selling 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

# 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，它为个人提供创业机会，也有助于繁荣经济发展。作为市场发展的一部分，直销基本上能为不同国家接受，并通过相关法律法规的制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，“传销”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》。《直销管理条例》对直销企业实施严苛的准入条件，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，这一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年以来爆发的新冠疫情影响，中国直销行业遭遇严峻挑战，呈整体下行态势。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%，中国市场近二年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年底的权健事件引发舆论持续发酵，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。



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” 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 COVID-19 outbreak, direct sellers have resumed production and operations in order 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 the Double Cycle, 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 selling 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 show 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 (hereinafter, “AmCham China”) appreciates the efforts the Chinese government is making to facilitate the 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 imposes 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 that violated business ethics and harmed consumers by exaggerating the efficacy of their products continue to hurt the entire direct selling industry.

## 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》对直销企业实施严苛的准入条件,要求直销企业在中国投资设厂,产品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,但对长期扎根、投资中国市场的信心并未改变,对市场的认识在不断深化,并探索完善运营模式,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,对直销企业在销售、薪酬、人员招聘和培训以及日常经营方面均有严格管控,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活动以及新兴电商经营模式带来的非公平竞争,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。根据我国相关法律,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、保健品市场监管人员少、任务重,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获得售

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 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 have 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: ① meeting the needs and protecting the lawful rights and interests of consumers; ② resolving public misunderstandings about the direct selling industry and establishing a positive image of the direct selling industry as a whole; ③ abiding by the World Code of Conduct and regulating direct selling enterprises to operate in compliance with the law; ④ enhancing industry cohesion, improving direct selling-related regulations, and promoting the healthy development of the direct selling industry in China.

### **Recommendations**

#### *To the Ministry of Commerce, State Administration for Market Regulation, and the State Council*

- We recommend that the Ministry of Commerce resu-

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。

### 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，可允许直销产品可以代工。

### 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。我们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、备案等事项，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；
- 建议国家市场监管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。

me 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.

- 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.

- 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。

# Education

## Introduction

The implementation of the reform and opening policy 44 years ago marked a new era in the development of education in China. Over the past four decades, both primary education (for ages 6-11) and lower secondary education (for ages 12-14) in China have achieved 100 percent gross enrollment rates as of 2021. Additionally, China has consistently exceeded the benchmark of spending 4 percent of GDP on education for the past nine years.

Outside of domestic education progress, China has also been active in international education exchanges since reform and opening in the 1980s. Chinese students began going abroad for study, and the opening of expatriate schools initiated the beginning of international education in China. Forty years later, the international education industry in China is one of the largest in-person exchange between the US and China. The number of international students from mainland China enrolling in US institutions increased from around 2,770 in 1980 to 290,086 in 2022. US universities benefit from increased diversity and the benefit of international students' fees. As the middle class in China continues to grow, education preferences of Chinese parents have diversified. There has been a rapid growth in investment into international schools and private education over the past decade. The education quality and internalization level has increased in China through education exchange. This bilateral education exchange has benefited students of both countries.

2022 marks another year where international education exchange was continually impacted by China's strict COVID-19 control measures. With limited flights, lengthy quarantines, and other travel restrictions, the number of Chinese students going to the United States decreased from 372,532 in 2019-2020 to 290,086 in 2021-2022. The number of US students studying in China dropped 85 percent percent compare to pre-pandemic level. For international students going to China, student visa approval resumed in August 2022, which allowed some international students to return to China for entry into full-time degree programs. At the same time, strict COVID prevention policies impacted the normal operation of the international schools. Thanks to recent changes in epidemic control policies to allow for

more lenience, we expect normal school operations to resume throughout 2023.

As a result of Chinese companies and entities being able to open expatriate schools, 14 new expatriate schools opened in 2022. For bilingual schools, new regulations on private education have come into effect. For the tutoring industry, tutoring institutions declined by 92.14 percent from 124,000 to 9,728 after one year of the "Double Reduction Policy," while 87 percent of the 263 online institutions shut down. The survivors' share prices fell by more than 90 percent on the stock markets. At the same time, vocational training has become an important driver for stabilizing the education sector amidst these industry changes. This sub-sector is witnessing an increase in development due to favorable policies, which provide opportunities for fast-growing companies to participate in activities such as training for skilled work in advanced manufacturing and the development of new materials. Overall, the financing and investment deals in the education industry decreased to RMB 2.4 billion in the first half of 2022.

2022 was an ever-changing year with challenges and opportunities for the education industry. As discussed throughout this chapter, issues have arisen due to the more challenging regulatory environment, the impact of the pandemic, and difficulties for foreign teachers.

## 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, the international schools are now an important part of China's education ecosystem. In 2022, the number of expatriate schools have grown to over 140 across mainland China. Meanwhile, the demand for international education among China's middle class has driven the rapid growth of bilingual schools. In 2022,

# 教育

## 引言

**改** 革开放政策实施 44 年来，中国教育发展已然进入一个崭新时代。四十年后的 2021 年，中国的小学（6~11 岁）和初中（12~14 岁）入学率都已经达到 100%。教育支出连续九年超过国民生产总值（GDP）的 4%。此外，自上世纪八十年代来，中国开始参与国际教育交流活动，重新与世界构建联系。中国学生开始奔赴海外留学。各地开办外籍学校，标志着中国国际教育的诞生。四十年后，中国国际教育成为中美两国最大的面对面交流项目之一。1980 年，中国大陆赴美留学生数量约为 2770 人。2022 年，这一数字跃升至 290086 人。留学生更加多样化让美国大学从中受益，这些大学的财政状况也有所提升。随着中国人生活水平的提高，中国家长对教育的需求也越来越多元化。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。在经过教育交流后，中国的教育质量与国际化水平都得到了提升。中美双边开放给两国都带来了好处。

2022 年，国际教育交流活动依然因新冠肺炎疫情管控措施面临重重困难。航班数量的减少、入境隔离政策以及其他旅行禁令的实行使得赴美中国留学生数量持续降低，由 2019-2020 学年的 372532 人次跌至 2021-2022 学年的 290086 人次。来华的美国留学生数量较疫情前下跌了 85%。学生签证于 2022 年 8 月续签的部分来华留学生可以返华继续攻读全日制学位。与此同时，严格的新冠肺炎疫情防控政策已让国际学校的正常运作从多个方面受到了影响。不过自去年年底疫情管控政策不断调整，中国美国商会（以下简称商会）期盼今年，国际学校可以重新正常运作起来。

2022 年，中国公司与实体开办的外籍学校一共有 14 所。去年颁布的整顿私立教育的新规定对双语学校的效果显著。“双减政策”实施一年以来，中国的教育培训机构数量从 124000 锐减至 9728，下降了 92.14%。

此外，263 家网校中的 87% 也因此倒闭。留存下来的培训机构股价也下跌了超过 90%。职业教育也因而变成了教育行业的压舱石。在利好政策的加持下，职业教育正迎来发展，也为从事诸如高级制造业技能培训、新型材料开发等业务的快速发展的公司提供机遇。总体来看，2022 年上半年，教育行业融投资金额下降至 24 亿元人民币。

这是教育行业瞬息万变的一年，充斥着挑战与机遇。如我们在本章整章所讨论的那样，当前面临着重重困难，例如更具挑战性的中国监管环境、后疫情影响、外教招聘和挽留方面的难题。

## 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流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。2022 年，外籍学校数量已增长至 140 余家。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。2022 年，双语学校数量超过 530 所，是外籍学校数量的四倍。2022 年，新冠疫情管控措施严重影响了上述学校的日常运营。政策变动也对双语与外籍学校产生了影响。我们将在后文中展开讨论。

商会注意到，地区内是否拥有国际 K12 小学教育是吸引外商投资与外国人才的关键因素。在新冠疫情期间，许多 1.5 线以及 2 线城市的国际学校都在外教招聘与挽留方面遇到重重困难，继也让地区内的外国公司面临诸多挑战。若这些公司依靠外籍员工主持当地业务运营工作，那么为外籍员工和其家庭提供包括国际学校在内的生活保障就显得尤为重要。



the number of bilingual schools reached over 530, 4 times the number of expatriate schools. The COVID-19 control measures are still heavily impacting the functioning of these schools in 2022, and the policy changes have already had an impact on both bilingual and expatriate schools. We will elaborate into details in the following parts.

Regional Chapters of AmCham China note that international K-12 primary education availability is key to attract foreign investment and expatriate talent to the regions. Throughout the COVID-19 epidemic, many international schools in Tier 1.5 and 2 cities have faced recruitment and retention challenges that in turn have led to challenges for foreign companies in the region. If the companies rely on international staff or company representatives to manage the local operations, resources for international expatriates and families like international schools is imperative.

### ***The Future Impact of COVID-19 and Post Pandemic Development***

Starting in early 2022, the global community has begun to resume pre-pandemic life. Since late November, mainland China has undergone a transformation from a strict “Zero-COVID policy” to an era of “living with COVID.” With the cancellation of quarantine policies on January 8, 2023, we anticipate that international flights will soon return to pre-pandemic levels.

In 2022, continued travel restrictions, lockdowns, and frequent off-campus requirements heavily impacted the operation of international schools. As these schools rely on a high percentage of foreign faculty, they have experienced turnover rates of up to 40 percent, as teachers have exited China due to COVID-restricting measures. However, it may take a relatively long time for these schools to resume recruiting new faculty to pre-pandemic levels due to strict health policies and arbitrary lockdowns, which have hurt confidence in the country and caused people who want to work in China to hesitate due to drastic changes in public policies. As a result, some schools have begun building plans for internships and apprenticeships to better prepare exceptional instructors to combat the loss of faculty.

Apart from the departing teachers, international schools face a drop in foreign student enrolment. The strict COVID policy has accelerated the outflow of foreign families from China, while other expatriates hesitated to come. This trend has changed the demographic of the student body in many schools, boosting the numbers of Chinese with at least one parent holding a foreign passport.

For parents who chose to stay, they were increasingly concerned about the quality of education. The frequent shift away from the classroom to online learning has made these families wondering whether the investment in private education is worth the cost. Due to the lockdown

and the border holding up the exam papers in May 2022, students at Shanghai’s international schools were forced to abandon the IB exams, which are equivalently essential to the Gaokao for kids attending international schools. All of these have an impact on parents’ confidence in China’s international schools.

## **One Year Review of the New Policy Implementation**

### ***For Expatriate Schools***

To improve the business environment, promote opening levels, and attract more overseas talent, the Chinese government at every level is now improving related supporting services for expatriates by providing more opportunities for expatriate 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 entities to open this type of school. In 2022, fourteen expatriate schools opened to accept students. The new expatriate schools are mostly located in first-tier cities or provincial capitals in Guangdong, Hubei, Beijing, Sichuan, and Henan. Guangzhou has seen the fastest growth, with five new expatriate schools, followed by Shenzhen with three new schools. While expatriate schools are developing rapidly in many places across the country, the “one campus and two types of schools” school-running model is also appearing in many places to promote the integration of Chinese culture or multiculturalism in these schools. As more schools open, we expect the competition among expatriate schools to intensify.

We appreciate the government’s efforts to provide more education opportunities for expatriate families. However, these schools are now facing greater challenges in obtaining textbooks and academic books for their libraries. Typically, these schools purchase textbooks and academic-related books through book importers and publishers in China. In 2021, the Ministry of Education announced a ban on books in school libraries that engage in “Western veneration.” As a result of this policy, expatriate schools are finding it increasingly difficult to import textbooks and library books. We recommend that the government develop a different implementation strategy for expatriate schools and establish clear criteria and standards for foreign book imports. Expatriate schools will not be able to maintain a high academic standard without sufficient books for academic purposes.

### ***For Private K-12 Bilingual Schools***

Private K-12 bilingual schools have been impacted by the new regulations on schools offering international education, which have been in effect for over 18 months. The effects of these regulations have been noticeable. In addition to limiting capitalization, commercialization, and industry monopolies for private compulsory education, the new

## 新冠疫情对未来的影响及后疫情发展

自 2022 年初，全世界开始回归到疫情前的生活。自去年十一月底以来，中国大陆地区也在不断调整疫情管控措施。随着 1 月 8 日隔离政策的解除，商会期待国际航班数量可以尽快恢复到疫情前水平。

2022 年，持续的旅行禁令、频繁的封城以及各式各样的离校要求已严重影响了当年国际学校的运行状况。上述学校的教职员中，外国教职员占据很大比例。因疫情限制措施的实施，大量外国教职员选择离开中国，导致这些学校的人员流动率一度高达 40%。要想将员工规模恢复到疫情前水平，这些学校仍需要较长的时间来招募新的外国教职员。这主要是因为疫情管控政策与封城举措让外籍人士对华信心受损，意图来华工作的外籍人员也因公共政策的急剧变化而犹豫不决。部分学校已开始制定实习与培训计划，储备优秀教师人才，应对教职员的流失问题。

除了外籍教师的流失问题，国际学校外国学生的入学率也有所下降。新冠疫情政策加速外籍家庭外流，意图来华的外国人才也开始观望。这一趋势使得许多学校的生源结构发生变化，父母双方至少有一人持有外国护照的中国学生数量因大幅上升。

而选择留下来的外籍父母也开始越发担心教育质量。频繁的居家网课开始让这些家庭思考私立教育是否物有所值。2022 年 5 月，上海封城，IB 考试试卷无法及时送达，许多上海国际学校的学生因而不得不放弃参加这次对他们来说和高考一样重要的考试。以上因素影响了外籍父母对中国国际学校的信心。

## 新政策实施一年回顾

### 外籍学校

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。2021 年 11 月发布的《首批营商环境创新试点改革事项清单》降低了对外籍学校组织者 / 赞助人的门槛要求，允许中国实体开办此类学校。2022 年，十四家外籍学校开办，开始招募学生。新开办的外籍学校大部分集中在广东、湖北、北京、四川与河南等地的一线城市或省会城市。广州有五所新开办的外籍学校，成为外籍学校数量增长最快的城市。深圳有三所，位列第二。外籍学校在全国多个地方快速发展的同时，许多地区的学校开始推行“一校两制”的

运行模式，来推动中国文化或多元文化与校园的融合。随着学校数量增加，我们预计外籍学校之间的竞争也会变得激烈。

商会感谢中国政府在为外籍家庭子女提供更多教育机会的方面作出的努力。然而，现在这些学校面临着更大的挑战。上述学校的图书馆中缺少教科书与学术书籍的储备。一般情况下，这些学校会从中国的书籍进口商与出版商那里购买教科书与学术相关书籍。2021 年，教育部对学校图书馆中涉及“西方崇拜”的书籍实施禁令。外籍学校也因此越来越难以购买到教科书与图书馆藏书。我们建议中国政府对外籍学校采取不同的政策执行标准，并在外国书籍进口方面划定明确的标准。外籍学校若没有足够的学术书籍储备将无法继续维持高学术标准。

### 私立 K12 双语学校

自针对提供国际教育的私立 K12 双语学校的新规实施以来，已经过去了 18 个月的时间。新规造成的影响较为显著。除去限制私立义务教育的资本化、商业化与行业垄断，新规还发出了一个非常明确的信号：中国学生必须接受国内教育，并在接受义务教育期间参加中考。因而，审查必将愈发严格，学校管理的自主性将会降低，私立学校双语学校的生存空间也会缩减。

- **教科书与课程：**2021 年的法规要求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 年级的学生不能学习境外课程。事实上，学校也为此开发出自己的课程与教科书。所有教科书都必须获得教育部门的批准。目前教育部门的随机抽查已变得更加频繁，预计未来也将会对外国教科书的使用进行更严格的审查。
- **录取与招生：**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。在这些新的招生规则影响下，学校和学生家庭都面临着不确定性。可以招收本地中国学生的双语学校将仍会有很高的需求量。然而一些家庭开始考虑，在面临如此不确定性的情况下，如此高的教育支出是否值得。
- **校名变更：**自去年来，包括上海、广州、深圳在内的超过十个城市一百多所双语学校已经更改了校名。其中，有近半数学校的官方校名中出现了“国际”和“双语”等字样。

加上新冠疫情防控政策影响，上述举措已经催生出公众对双语学校的信任危机。虽然中国境内的国际教育

regulations also send a clear message that Chinese students must receive domestic education and take the high school entrance exam during compulsory education. As a result, the new regulations will inevitably lead to stricter scrutiny, limited autonomy of school management, and a reduced living space for private bilingual schools.

- **Textbook and Curriculum:** The 2021 regulation mandates that schools use government-directed textbooks in the compulsory education stage, prohibiting the use of foreign textbooks. This means that foreign curricula are not allowed for Chinese students from grade 1 to grade 9. In response to this change, schools have developed their own curricula and textbooks, which must be sanctioned and approved by the education authorities. As a result, there have been more random inspections from the education authorities, and stricter scrutiny for the use of foreign textbooks is expected in the future.
- **Admissions and Enrollment:** Since 2020, bilingual schools are required to follow the same admission timeline and process as public schools. As a result, both schools and families face uncertainty regarding enrollment. Bilingual schools that are open to local Chinese students continue to experience high demand. However, some families are starting to question the cost-benefit of spending a significant amount of money with such uncertainty.
- **Change of Names:** Since last year, over 100 bilingual schools in more than ten cities, including Shanghai, Guangzhou, and Shenzhen, have changed their names. Almost half of these schools had originally included words such as “international” and “bilingual” in their names.

The aforementioned actions, combined with the effects of COVID-19 restrictions, have led to a crisis of public trust in bilingual schools. Despite the demand for international education in China remaining strong, parents have started to hesitate to send their children to bilingual schools, resulting in a recent decrease in enrollment. In response to these changes, many leading bilingual schools have started developing strategies to adapt to the new environment, such as strengthening localized curricula, integrating resources, and highlighting the international competitiveness of China’s education.

We believe that private schools provide greater autonomy and that numerous pilot programs and educational reforms are initiated in private schools. It is also essential to recognize that economic growth and the improvement of people’s standard of living generate diverse education demands. Therefore, we recommend that the Chinese government impose appropriately different implementing policies for non-public schools.

### *Difficulties Facing Foreign Teachers*

Foreign teachers play a crucial role in bringing a unique skill

set to the classroom and enabling students to benefit from learning foreign languages and subject material directly from native speakers. However, it is currently very difficult to find local employees who can replace their expertise. Currently, foreign teachers enjoy individual income tax-exempt allowances for housing, language training, and children’s education, but these allowances are set to expire on December 31, 2023.

### *Individual Income Tax Reform*

If the individual income tax reform is enacted, it will have a significant impact on the decisions of employers and foreign nationals to live and work in China. The costs of providing a quality international school education for the children of foreign nationals living in China are already among the highest in the world. These international schools are predominantly led and staffed by foreign educators, who will also be affected by the elimination of tax-exempt allowances for foreign nationals. To continue providing these foreign employees with a competitive salary and benefits, international schools will face the challenge of providing similar employee packages without significantly increasing school fees. It is anticipated that school expenses will increase by at least 10 to 15 percent to maintain the foreign employees at a similar level of compensation after the removal of these tax-exempt benefits. This anticipated increase in school fees will only compound the impact of the increased taxes paid by foreign nationals in China.

### *Priority on Education Improvement*

In 2022, the Chinese government continued to implement the “Double Reduction” policy, which aims to reduce the workload of students and the burden of after-school training. This policy was optimized and enforced at all levels of government, and the private education sector underwent reform and supervision. Preschool education saw a complete prohibition of superior education and shut down of preschool training classes, while commercial operation of curriculum-based off-campus tutoring was banned and strict approval and regulation were enforced. Private education also faced strong supervision, with some institutions being shut down or given a deadline for rectification.

Since the 20th National Congress of CPC in 2022, education has been prioritized as a fundamental and overall strategy for high-quality development and equity. The party has emphasized the importance of coordination between education, science and technology, and human resources, highlighting education as a strategic tool for the country to compete internationally.

Although there were no major changes in China’s education policy in 2022, there were updates for each education track.

需求依然旺盛，但是父母已经开始犹豫是否要把孩子送到双语学校上学，这也是双语学校入学率降低的原因。为此，许多一流的双语学校开始制定新的策略，以适应新的环境，包括强化地方课程、整合资源、突出中国教育的国际竞争力等。

我们认为，更多的自主性是私立学校的优势之一。许多试点项目与教育改革都是在私立学校率先开展的。同样还需要认识到的是，随着经济发展，人民生活水平提高，教育需求也变得多样化。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。

### 外籍教师面临的困难

外籍教师具有独特的技能组合，可以帮助学生直接向外语母语人士学习外语和学科材料并从中受益。目前很难找到能取代外籍教师的中国本地教职员工。当前，外籍教师享有个人所得税免税政策，涵盖住房、语言培训、子女教育等方面。但该政策将于2023年12月31日到期。

### 个人所得税改革

这项个人所得税改革政策一旦生效，将对雇主和外籍人员决定是否来华居住和工作产生重大影响。目前，在华外籍人员子女接受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

校将在不大幅增加学费的前提下，为员工提供同等待遇，此番做法可谓是一项挑战。预计上述免税补贴取消后，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将外籍人员在中国缴纳更高个税的影响复杂化。

## 2022年教育公益属性愈加凸显，中国更加强调教育强国的战略意义

随着中国2021年“双减”政策颁布，2022年各地方政府实施细节逐步完善、逐渐落地，对民办教育的监管改革进一步深化。2021年行业格局重塑，2022年在学前教育、学科培训及民办教育三大领域延续强监管模式。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；民办义务教育同样进入严监管时代，被限期整改或关停。

2022年，在二十大的背景下，教育趋势呈现新的发展态势。教育公益属性愈加凸显，在以往教育公平与高质量发展的基础上，强调教育的基础性、先导性、全局性的战略地位。在二十大报告首次把教育、科技、人才进行“三位一体”统筹安排、一体部署，并摆放在论述“全面建设社会主义现代化国家的首要任务”（即“高质量发展”）之后的突出位置。不难看出，教育在中国在新发展时期的战略发展地位更高、在国际竞争中的关键作用。

2022年中国教育行业政策方向并没有大的变化，各教育赛道的政策更新如下：

领域	政策	主要内容
学前教育	2021.12.9教育部等九部门印发《“十四五”学前教育发展提升行动计划》	<ul style="list-style-type: none"> <li>• 进一步推进学前教育普及普惠安全优质发展。强化公益普惠。坚持巩固提高。推进科学保教。加快学前教育立法进程，推进依法治教。</li> <li>• 到2025年，全国学前三年毛入园率达到90%以上，普惠性幼儿园覆盖率达到85%以上，公办园在园幼儿占比达到50%以上。</li> </ul>
义务教育	2022.1教育部印发《普通高中学校办学质量评价指南》 2022.3教育部、中央编办、民政部和市场监管总局联合印发了新修订的《面向中小学生的全国性竞赛活动管理办法》	<ul style="list-style-type: none"> <li>• 建立科学评价体系，推动普通高中高质量发展。</li> <li>• 正确处理考试升学与发展素质教育的关系，将高考升学率作为全面实施素质教育的客观结果之一，不给年级、班级、教师下达升学指标，不将升学率与教师评优评先及职称晋升挂钩，不公布、不宣传、不炒作高考“状元”和升学率。</li> <li>• 取消学前教育阶段各类竞赛和义务教育阶段学科类竞赛，大幅削减竞赛数量，基本斩断竞赛与培训挂钩的利益链，遏制竞赛横生的乱象，缓解竞赛带来的培训热，减轻因竞赛带来的学生过重课外负担。</li> </ul>

Sectors	Policies	Highlights
Pre-school	The Ministry of Education, together with other eight departments, issued the “14th Five-Year Plan of Action for the Development and Improvement of Preschool Education” on December 9, 2021.	<ul style="list-style-type: none"> <li>• Push forward the inclusive, beneficial, safe and high-quality development of preschool education. Make social benefits more accessible. Continue to improve and consolidate the sector. Improve the education of infants in a scientific way. Accelerate the legislative process of preschool education and promote the rule of law.</li> <li>• By 2025, the national preschool gross enrollment rate for the first three years of schooling will reach more than 90 percent, the coverage of inclusive kindergartens will reach more than 85 percent, and the percentage of children in public kindergartens will reach more than 50 percent.</li> </ul>
Compulsory Education	The Ministry of Education issued “Guidelines for Evaluating the Quality of General High School Operation” in January 2022. The Ministry of Education, together with the Central Editorial Office, the Ministry of Civil Affairs and the General Administration of Market Supervision, issued the newly revised “Measures for the Administration of National Competitions for Primary and Secondary School Students” in March 2022.	<ul style="list-style-type: none"> <li>• Establish a scientific evaluation system to promote high-quality development of general high schools.</li> <li>• Handle the relationship between the examination and the development of quality education correctly, and take the college enrollment rate as one of the objective results of the comprehensive implementation of quality education. Stop assigning index for students entering higher education to grades, classes, teachers, or linking the rate of advancement to the evaluation of teachers’ merit and professional title promotion, or announcing, publicizing or speculating on the enrollment rate and the students ranking the first in the entrance examinations for colleges and universities.</li> <li>• Abolish all kinds of competitions at the preschool level and subject competitions at the compulsory education level, reduce the number of competitions, cut off the chain of interests linking competitions and tutoring, curb the chaos caused by the competitions, alleviate the tutoring fever brought about by the competitions, and reduce the excessive extracurricular burden of students due to the competitions.</li> </ul>
K12 Curriculum-Based Tutoring	In February 2022, the Ministry of Education, together with the Central Editorial Office and the Ministry of Justice, issued the “Opinions on Strengthening the Administrative Enforcement over Education and the Comprehensive Management over Off-campus Tutoring” .	<ul style="list-style-type: none"> <li>• Strengthen the administrative enforcement over off-campus tutoring and carry out severe punishment on law-breaking behaviors.</li> <li>• According to the Administrative Punishment Law, Education Law and Law on Promotion of Privately-run Schools, education authorities at all levels have the law enforcement power upon off-campus tutoring institutions.</li> </ul>
Higher Education	The Ministry of Education, Ministry of Finance and National Development and Reform Commission jointly issued the “Opinions on Promoting World-class Universities and World-class Disciplines” in February 2022. Issued the “Opinions on Opening Online Courses Management of Colleges and Universities from the Ministry of Education and Other Four Ministries” in April 2022.	<ul style="list-style-type: none"> <li>• Meet the needs of national strategies, target at cutting-edge science and technology and key areas, and optimize the development of disciplines and human resources.</li> <li>• Build up the international cooperation and explore the new supporting mechanism for bilateral exchanges with world’ s high-level universities, make talents more competitive in the international community, integrate into the global innovation network, and actively shoulder the responsibility to improve education development and make breakthroughs related to human existence.</li> <li>• To meet the urgent needs of strategic areas during the 14th Five-Year Plan, when it comes to disciplines construction, thorough investigation is required for the listing, development stage and quality of under-construction disciplines, the layout of basic subjects, science, engineering,</li> </ul>

K12学科类培训	2022.2教育部、中央编办、司法部联合印发《关于加强教育行政执法 深入推进校外培训综合治理的意见》	<ul style="list-style-type: none"> <li>● 加强校外培训监管行政执法工作，对违法违规行为严惩重罚。</li> <li>● 依据《行政处罚法》《教育法》《民办教育促进法》，各级教育行政部门对校外培训机构同样拥有执法权。</li> </ul>
高等教育	<p>2022.2教育部、财政部、国家发展改革委印发《关于深入推进世界一流大学和一流学科建设的若干意见》</p> <p>2022.4《教育部等五部门关于加强普通高等学校在线开放课程教学管理的若干意见》</p>	<ul style="list-style-type: none"> <li>● 服务国家战略需求，瞄准科技前沿和关键领域，加大力度优化学科专业和人才培养布局</li> <li>● 提升国际合作交流水平，探索与世界高水平大学双向交流的留学支持新机制，提升人才培养国际竞争力，深度融入全球创新网络，主动承担涉及人类生存发展共性问题的教育发展和科研攻关任务。</li> <li>● 以“十四五”期间国家战略急需领域作为指引调整建设学科的指南，对拟建设学科的匹配度、水平和发展质量等进行综合考查，尤其是加大基础学科、理工农医和哲学社会科学学科布局。</li> <li>● 高校对在线开放课程教学管理负主责，要健全在线开放课程管理制度，加强课程教学服务与管理，严格课程选用管理，严肃考核评价。</li> </ul>
素质教育	<p>2021.3《义务教育质量评价指南》</p> <p>2021.8《全民健身计划（2021-2025年）》</p> <p>2021.11《全民科学素质行动规划纲要》</p>	<ul style="list-style-type: none"> <li>● 素质教育在义务教育阶段逐渐得到强化和重视。</li> <li>● 升学制度改革进一步细化落地，各细分领域出利好政策。</li> <li>● 加强青少年科学素质培养。</li> <li>● 完善青少年科学素质监测评估。</li> <li>● 保障学生校内外体育运动时间。</li> </ul>
职业教育	2022.1教育部、工业和信息化部、财政部、人力资源社会保障部、应急管理部、国务院国资委、市场监管总局、中国银保监会联合印发新修订的《职业学校学生实习管理规定》	<ul style="list-style-type: none"> <li>● 工信部门要鼓励先进制造业企业、“专精特新”企业、产教融合型企业以及有条件的中小企业等积极参与实习。</li> <li>● 财政部门要落实职业学校生均拨款制度，统筹考虑学生实习安全保障相关支出和学费水平，科学合理确定生均拨款标准。</li> <li>● 人力资源社会保障部门要加强对所属技工学校实习的管理，结合劳动保障监察加强执法，并积极探索职业学校实习生参加工伤保险办法。应急管理部门要将实习安全责任履行情况作为安全生产检查的重要内容。</li> <li>● 国资部门要指导支持国有企业特别是大型企业将积极规范参与职业学校实习工作。市场监管部门要将有实习违规行为的企业信息纳入社会信用体系，并按规定进行失信联合惩戒。</li> <li>● 银保监会要依法监管职业学校学生实习责任保险和人身意外伤害保险。</li> <li>● 全局性呈现人才培养概貌。新版《简介》系统体现中职、高职专科、高职本科人才培养体系架构，全面展现职业教育各层次各类型专业基本信息。</li> <li>● 适应性，优化职业教育类型特征。《简介》匹配新技术和产业变革需要，同时注重科学文化知识、专业类通用技术技能培养、科学精神、工程思维、质量、安全、绿色等现代产业理念要求。</li> <li>● 促进贯通融通培养。体现职普融通理念，列举职业院校贯通培养中每一层级接续高一层级的专业，为学生继续学习时的专业选择提供参考。</li> </ul>

		<p>agriculture, medicine, philosophy and social sciences in particular.</p> <ul style="list-style-type: none"> <li>• Colleges and universities hold the main responsibility for the open online courses. Hence it is essential to optimize open online courses management system, improve teaching services and management and pay close attention to course selection and evaluation.</li> </ul>
Quality-oriented Education	<p>“Guidelines for the Quality Evaluation of Compulsory Education” in March 2021                  “National Fitness Program (2021-2025)” in August, 2021                  “Outline of the Nationwide Scientific Literacy Action Plan” in November 2021</p>	<ul style="list-style-type: none"> <li>• Quality-oriented education is gradually strengthened and valued in the compulsory education stage.</li> <li>• The structural reform of further studies has been further refined, and favorable policies have been made in various sub-areas.</li> <li>• Strengthen the cultivation of teenagers’ science literacy.</li> <li>• Improve the monitoring and evaluation of teenagers’ science literacy.</li> <li>• Guarantee students’ on-campus and off-campus exercise time.</li> </ul>
Occupational Education	<p>The Ministry of Education, Ministry of Industry and Information Technology, Ministry of Finance, Ministry of Human Resources and Social Security, Ministry of Emergency Management, State-owned Assets Supervision and Administration Commission of the State Council, State Administration for Market Regulation and China Banking and Insurance Regulatory Commission jointly issued the revised “Regulations on the Management of Internships for Vocational School Students” in January 2022.</p>	<ul style="list-style-type: none"> <li>• Industry and information technology departments need to encourage advanced manufacturing enterprises, specialized and sophisticated enterprises, industry-education integration enterprises and other qualified SMEs to offer internship.</li> <li>• Finance departments need to implement the vocational school per capita funding system, take internship safety and security-related expenditures and tuition into consideration, and set scientific and reasonable determination of the average per capita funding standards.</li> <li>• Human resources and social security departments need to strengthen the management of the technical schools affiliated to internship, combined with labor security supervision to strengthen law enforcement, and actively get the vocational school internship students covered by work-related injury insurance. Emergency management departments need to fulfill the responsibility of internship safety as an important part of the production safety inspection.</li> <li>• State-owned departments need to guide and support state-owned enterprises, especially large enterprises, and ensure the participation of vocational school internships. Market supervision departments need to make sure enterprises having internship violations be recorded in the social credit system, and carry out joint discipline for breach of trust based on regulations.</li> <li>• The Banking and Insurance Regulatory Commission needs to supervise vocational school student internship liability insurance and personal accident insurance in accordance with the law.</li> <li>• Display the overall personnel training system. The newly revised “Introduction” has introduced personnel training system for students in secondary vocational school and with higher vocational bachelor degree and higher vocational associate degree, which is a full display of basic information on all levels and types of vocational education.</li> <li>• Optimize vocational education features. The “Introduction” matches the needs of new technologies and industrial changes, while focusing on scientific and cultural knowledge, general technical skill development,</li> </ul>

语言教育	<p>2022.1 教育部、国家乡村振兴局、国家语委联合印发《国家通用语言文字普及提升工程和推广助力乡村振兴计划实施方案》</p> <p>2022.11 教育部、国家语委印发《关于加强高等学校服务国家通用语言文字高质量推广普及的若干意见》</p> <p>2022.12 国家语言文字工作委员会对《国家语言文字推广基地管理办法（试行）》进行修订，印发《国家语言文字推广基地管理办法》</p>	<ul style="list-style-type: none"> <li>• 加大国家通用语言文字推广力度，全面提高普及程度和质量。</li> <li>• 开展国家通用语言文字高质量普及行动。</li> <li>• 加强高校语言文字工作，服务国家通用语言文字高质量推广普及。</li> <li>• 截至目前，已认定北京语言大学等 122 家推广基地。推广基地围绕推广普及国家通用语言文字这一中心工作。</li> <li>• 二十大报告提出“教育、科技、人才是全面建设社会主义现代化国家的基础性、战略性支撑”“推进文化自信自强，铸就社会主义文化新辉煌”，强调要“加大国家通用语言文字推广力度”。</li> </ul>
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## 新机遇

### 职业教育政策依然利好

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》，5 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（修订草案）》，《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》），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》首次提出“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》指出要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。

### 教育数字化

今年的二十大报告中首次提出要推进教育数字化，建设全民终身学习的学习型社会、学习型大国。凸显出教育数字化的重要意义，以及在教育数字化上这一年做的努力。从打造数字教育的中国方案来看，从平台建设、供给能力，满足学习需求，运用各类数字技术，建设高质量数字教育体系等方面是发展的重点，也是机遇所在。



		<p>scientific spirit, engineering thinking, quality, safety, green and other requirements of modern industrial concepts.</p> <ul style="list-style-type: none"> <li>• Promote consecutive and integrated training method. Guided by the consecutive and integrated training method, it is essential to list all consecutive professions for students to choose in future education.</li> </ul>
Language Education	<p>In January 2022, the Ministry of Education, the National Rural Revitalization Bureau, and the National Language Commission jointly issued the "Implementation Plan for the National Popularization and Promotion of the Common Language and Writing Project and the Promotion of the Rural Revitalization Plan."</p> <p>In November 2022, the Ministry of Education and the National Language Commission issued "Several Opinions on Strengthening the High-Quality Promotion and Popularization of the National Common Language and Writing in Higher Education Institutions."</p> <p>In December 2022, the National Language Commission revised and issued the "Management Measures for National Language Promotion Bases (Trial)."</p>	<ul style="list-style-type: none"> <li>• Increasing the accessibility and quality of the promotion.</li> <li>• Carry out actions to promote the Standard Spoken and Written Chinese Language in a high-quality way.</li> <li>• Advance the high-quality promotion of the language in colleges and universities.</li> <li>• By now, 122 bases including Beijing Language and Culture University are confirmed. The promotion bases' focus is to promote the Standard Spoken and Written Chinese Language.</li> <li>• According to the report of the 20th National Congress, education, science and technology and human resources are the fundamental and strategic foundation to build a modern socialist country in all respects; we need to strengthen the culture confidence and independence and bring to socialist culture to the next stage; and it is important for us to put more efforts in promoting the Standard Spoken and Written Chinese Language.</li> </ul>

## New opportunities

### Vocational Education

Since the government released the "Implementation Plan on National Vocational Education Reform" in 2019, a number of favorable policies have been introduced to vigorously promote the development of vocational education. These policies aim to encourage the construction of vocational schools, improve vocational skills, and integrate production and education. In April 2021, at the National Vocational Education Conference, President Xi Jinping emphasized that vocational education has a promising future with huge potential for development as China continues on its journey of building a modern socialist country in an all-round way.

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*. Additionally, 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 Skill Training for College Graduates in the Graduation Year*. These policies demonstrate the government's continued commitment to deepening

vocational education policy and promoting the sector's development.

With increasingly stringent policy restrictions over K12 curriculum-based tutoring, more and more funds and enterprises are likely to rush into the vocational education sector, creating a new stage of development for vocational education.

From a capital investment perspective, the overall policy trend of vocational education aims to eliminate the risks associated with capital entry and boost the development of vocational education. However, the government must also strengthen regulation and management to promote standardization and prevent excessive profit-seeking of capital. On May 14th, 2021, the State Council revised the *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 relevant risks associated with capital entry. Nevertheless, private education's fundamental task is to "adhere to the public benefits of education, strengthen the education of socialist core values for the educated, and foster virtue through education" to prevent excessive profit-seeking of capital.

The *Draft Revision of the Vocational Education Law of the People's Republic of China* was released in June 2021, and the *Vocational*

全国一体化数字教育平台建设存在很多挑战，需要自上而下地赋能各地，很多地区还没有解决建设智慧教育平台的问题，存在地方市场的缺口。当前，数字教育发展不均衡不充分的问题依然存在，在一些偏远地区、贫困家庭，仍然存在值得关注的数字鸿沟。数字教育的中国方案强调数字科技对教育事业的引领作用。通过教育数字化推动数字教育产业发展，为教育事业提供更多创新性技术应用，解决数字教育供给不足和供给不力的问题。教育培训机构的数字化水平不一，难以实现数字教育的全面推广。因此，政策将要培育和扶持一批数字教育科技企业，为教育数字化提供技术支持，解决教育数字化的供给短板。

## 汉语（国家通用语言文字）推广

2022年初，教育部、国家乡村振兴局、国家语委联合印发《国家通用语言文字普及提升工程和推普助力乡村振兴计划实施方案》。11月教育部、国家语委印发《关于加强高等学校服务国家通用语言文字高质量推广普及的若干意见》。12月国家语言文字工作委员会对《国家语言文字推广基地管理办法（试行）》进行修订，印发《国家语言文字推广基地管理办法》。12月8日国际中文教育大会在京召开，时任国务院副总理孙春兰出席会议并发表主旨演讲。不难看出，汉语推广的重要性和战略性。创新信息化、数字化和智能化建设是汉语推广的主要发展方向。

## 面临的挑战

教育部发布的《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，鼓励选用中国出版社翻译出版、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。

职业教育拥有政策利好，但是外国资源本土化、落地方式面临很大挑战。各地方职业教育发展不平衡，职业教育国际化的水平不一。如何更好的引进外资，需要进一步的指导。

## 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的通知，以便企业调整战略。

## 2022年K12教育培训行业及市场

2022年是中国“双减”政策落地的第一个完整年度，随着该政策进一步的实施，K12学科类培训市场及行业机构不断及进行着压缩、转型、退出和重构。根据中国国务院在10月28日的相关报告披露，2021年底前实现了学科类校外培训机构100%的转为非营利机构；累计排查校外培训机构17.2万个、材料24.3万份、人员40.5万人，累计出动执法检查人员132万人次；K9阶段线下学科类培训机构数量由原来的12.4万个压减至4932个，压减率96%，线上学科类培训机构由原来的263个压减至34个，压减率87.1%。同时，根据政策的相关要求，不得开展面向学龄前儿童的线上培训，严禁以学前班、思维训练班等名义面向学龄前儿童开展线下学科类培训。可以预计，中国境内K12学科类教育培训市场和行业发展空间不复存在。

随着学科类教育培训市场及行业得到了有效整治，中国政府“双减”政策及行动的重点，开始转移到学科类培训隐形变异和非学科类培训的监管上。中国教育部分别于2022年11月和12月联合多部门发布了防范治理学科类隐形变异培训和规范K12非学科类校外培训的相关政策。按照政策规定，K12阶段的体育（或体育与健康）、艺术（或音乐、美术）学科，以及综合实践活动（含信息技术教育、劳动与技术教育）等按照非学科类进行管理。下一步，这些细分领域的非学科类教育培训市场及行业机构，或许将受到上述政策的持续影响。

## 高等教育

### 招生

美国国际教育协会（IIE）最新发布的《美国门户开放报告》表明，虽然中国仍是赴美留学生第一大生源国，但选择赴美的中国留学生数量在过去二十年间持续下降。下降幅度从2020/21年度的-14.8%再到2021/22年度的-8.6%，这背后有着许多因素，例如新冠疫情、地缘政治紧张、一般安全问题等。过去几年间，缺少线下招生机会也可能是造成部分数量下降的原因。毕竟在

*Education Law* is expected to accelerate its implementation. Furthermore, the draft states that “the expenditure structure shall be optimized, and the newly-added education funds shall be weighted towards vocational education,” which could help improve the vocational education sector’s operational capacity by investing more funds in public colleges. The government should support the development of vocational talents and attract more students who are willing to pursue vocational education by enhancing the social status of skilled talents. This could enhance the market positioning and awareness of vocational education in academic education.

On October 12th, 2021, the CPC Central Committee and the State Council jointly issued the *Opinions on Promoting the High-Quality Development of Modern Vocational Education*, which aims to promote the development of vocational education by improving the diversity of school-running patterns, strengthening regulation and management, and encouraging capital investment. The document outlines key development targets for vocational education, including the completion of a modern vocational education system, the promotion of vocational skill-based society, and the improvement of the overall quality and scale of vocational education by 2025. By 2035, the aim is to lead the world in vocational education and build a vocational skill-based society that meets the needs of economic and social development. For the first time, the *Opinions* included specific enrollment targets for vocational undergraduates by 2025 and encouraged listed companies to engage in vocational education. These measures demonstrate the government’s commitment to promoting the high-quality development of vocational education and improving the social status of skilled talents.

The “Opinions on Promoting the High-Quality Development of Modern Vocational Education,” issued on October 12th, 2021 by the General Office of the CPC Central Committee and the General Office of the State Council, also emphasized the importance of international cooperation in the development of vocational education. The document suggests strengthening the level of Sino-foreign cooperation in running schools, operating model Sino-foreign cooperative education institutions and projects, expanding the platform for Sino-foreign cooperation and exchange, and encouraging vocational education to go global. Furthermore, the “Outline of the People’s Republic of China’s 14th Five-Year Plan for National Economic and Social Development and Long-Range Objectives for 2035” also prioritizes enhancing the adaptability of vocational and technical education, which includes emphasizing the characteristics of vocational education, improving the top-level design, creating a new school-running pattern, improving the quality of education, and deepening the integration of vocational education and general education.

### **Digitalization of education**

The digitalization of education has been recognized as a priority by the Chinese government, as outlined in the report

of the 20th National Congress. The aim is to create a society that promotes lifelong learning and to build a high-quality digital education system that meets the needs of students. Platform construction and supply capacity are seen as key to this effort, but there are many challenges to creating an all-in-one digital education platform, including inconsistencies in local markets and imbalances and inadequacies in digital education.

To address these challenges, the Chinese policy for digital education emphasizes the leading role of digital science and technology. Innovative technologies are needed to make education resources more accessible and to close the digital gaps that exist in some remote regions and poor families. The government is providing support to digital education science and technology enterprises to address supply shortcomings and provide a foundation for digital education. Overall, the focus is on meeting the needs of students and building a high-quality digital education system that can support lifelong learning.

### **Promotion of Chinese language**

Earlier this year, the Ministry of Education, the National Rural Revitalization Bureau, and the State Language Commission jointly released the *Implementation Plan for the Project of Popularization and Enhancement of the National General Language and Script and the Plan of Promoting Popularization to Help Rural Revitalization*. In November, the Ministry of Education and the State Language Commission issued *Opinions on Strengthening Higher Education Institutions to Serve the High-Quality Promotion and Popularization of the National General Language and Script*. In December, the State Language and Script Work Committee revised the *National Language and Script Promotion Base Management Measures (for Trial Implementation)*, and the *Management Measures for National Language Promotion Bases* were issued. On December 8th, the International Conference on Chinese Language Education was held in Beijing, where Vice Premier Sun Chunlan delivered a keynote speech. All these actions demonstrate the importance and strategic nature of promoting the Chinese language. The promotion of the Chinese language is moving towards information-based, digital, and intelligent innovation as the main development direction.

### **Challenges**

The Ministry of Education has recently issued the *Measures for the Management of Instructional Materials for Effective Teaching and Learning in Primary and Secondary Schools*, which mandates that overseas teaching materials should not be used in compulsory education schools. However, in cases where Chinese teaching materials are insufficient for higher education institutions, secondary vocational schools, Chinese-foreign cooperative education institutions, or approved overseas programs, foreign teaching materials

此期间，对院校的主要印象只能来源于网络信息与国内媒体，而不是以往的亲临参观。中国学生的选择越来越多样化，在申请时会选择多个国家的院校，英国和加拿大是仅次于美国的最受青睐的目的地。

高等院校想要在这种情况下招收并留住学生就需要做出更多的努力。可以考虑实施的方法有疫情后加强实地参与，增加中国学生的奖学金机会，改善外国学生可以使用的资源。

## 个人信息保护法

《中国个人信息保护法》(PIPL) 自 2021 年 11 月 1 日起生效。PIPL 旨在保护个人信息，适用于任何处理或收集中国境内人员个人身份信息 (PII) 的组织或个人。中国颁布的这一全新数据隐私政策随即引起了美国大学及其在华团队的重视。考虑到各美国大学在华的独特任务，PIPL 会在很多场景下被触发。例如：聘用本地员工、收集校友或潜在学生（及家长）的活动报名信息、运营面向中国民众中文网站、与中国高校合作参与中外合作办学项目等。高等教育领域可能随之出现的影响及新变化值得加以思考，包括：

- 个人被赋予了更多权利，可以自主决定如何处理其个人信息，同时个人有权撤回其先前确认的同意书。
- 中国网络安全管理局 (CAC) 制定了更加严格的数据境外传输和分享政策，并要求在达到个人信息传输上限时，境外数据传输需事先经过安全评估；反之，数据处理方和接收方需要签署标准合同条款。
- 数据处理方和接收方在境外数据传输及分享过程中均将承担更多责任，确保数据安全传输。
- 14 岁以下（含）儿童的个人信息均判定为敏感信息，在举办活动过程中，各大学应注意对未成年人进行保护，并妥善处理学生及其监护人的敏感信息。
- 违反 PIPL 的企业将需要缴纳高达五千万人民币或上一年度营业额 5% 的处罚金，或将面临企业停业。

## 合作趋势与机遇

在国际教育领域，中国始终坚持着互利共赢的发展理念。在 2021 年，51 项与海外高等学府的合作交流项目获得批准，半数项目涉及理工学科。在《关于深化现代职业教育体系建设改革的意见》等政策支持下，职业教育的国际化进程正稳步发展，为中外教育合作提供了

新方向。为同“十四五规划”的发展目标步调一致，“留学海南”建设持续发展，将为留学生及海外高校提供高质量的教育创新合作平台。

在高等教育领域，中国将更加注重培养高素质专业人才。中国高等教育发展将聚焦于创新性和前沿性的科学研究。国内大学聚焦农业发展，将开设一系列农业科学领域的新专业，助力农村现代化。

国际教育资源仍为中美两国大量双边人才流动的最大源泉。学术交流与人才流动为促进两国交流及教育发展起到了重要的作用。新冠肺炎疫情影响逐渐消退，海外高等教育学府、学者及领导也将迎来崭新的国际教育合作机遇。

## 给中美两国政府的建议

考虑到当前面临的挑战，针对中国留学生的学生签证政策应清晰明确，同时我们也建议“留学美国 (Education USA)”以及使领馆官员可以加大对潜在学生及其家庭的宣传力度。国内外政治问题导致信息混杂。我们应让学生及其家庭相信，他们在美国学习是受欢迎的。此外，还要让他们了解，合格的毕业生将获得留美就业机会及留美必需的签证。

can be adopted. Moreover, Chinese publishing houses are encouraged to translate, publish, and photocopy outstanding foreign teaching materials. With strict regulations in place, foreign content publishers need further policy guidance on the introduction of foreign reading and electronic materials, as well as the localization of foreign teaching materials.

Despite policy support for vocational education, challenges still exist in the localization and promotion of foreign resources. There is significant regional imbalance in the development and internationalization of vocational education, and further guidance is needed to improve the introduction of foreign investment.

## Recommendations

The government's timely communication of the trend and policy direction regarding the use of foreign materials for publication is crucial for enterprises to adjust their strategies accordingly. It is important for the government to provide clear and transparent guidance on the use of foreign materials in publications to avoid confusion and ensure compliance with regulations. By doing so, enterprises can effectively plan and execute their business strategies in accordance with government policies, which will ultimately contribute to the overall development of the publishing industry.

### K12 curriculum-based tutoring sector and market in 2022

As the "Double Reduction" policy enters its second year, the K12 curriculum-based tutoring industry continues to undergo significant transformation, consolidation, and restructuring. The State Council's report on October 28 revealed that all curriculum-based off-campus tutoring institutions have been converted into non-profit organizations by the end of 2021, with a total of 172,000 institutions, 243,000 teaching materials, and 405,000 personnel investigated and 1.32 million law enforcement inspectors deployed. The number of curriculum-based off-campus tutoring institutions for K9 students has been reduced by 96 percent, from 124,000 to 4,932, and the number of online curriculum-based off-campus tutoring institutions has decreased by 87.1 percent, from 263 to 34.

Furthermore, the policy strictly prohibits online tutoring for preschool children and offline disciplinary tutoring for preschool children disguised as preschool classes or thinking training classes. Therefore, it is evident that the K12 curriculum-based tutoring market and sector will have no further room for growth. As such, it is necessary for industry players to adapt to the new regulatory environment and explore other areas for development.

In light of the improved situation in the curriculum-based tutoring sector and market, the "Double Reduction" policy

has shifted its focus towards the regulation of subject-based training and non-subject-based training. In November and December 2022, the Chinese Ministry of Education, along with multiple departments, issued policies to prevent the invisible variation of subject-based training and regulate K12 non-subject-based out-of-school training. The policies stipulate that K12 physical education (or sports and health), art (or music and art) subjects, and comprehensive practical activities (including information technology education, labor, and technology education) will be regulated according to non-disciplinary categories. As a result, these subsegments will continue to be affected by the policies mentioned above.

## Higher Education

### Recruitment

According to the latest IIE OpenDoors report, China continues to be the top source of international students to the United States. However, there has been a consistent decline in the number of Chinese students choosing the United States as their destination over the past two years. This trend has been attributed to several factors, including the COVID pandemic, geopolitical tensions, and general safety concerns. Additionally, a lack of in-person recruitment opportunities over the past few years may have also contributed to some of the declines, as perceptions were largely shaped by online information and domestic media, rather than interactions with institutions themselves. As a result, Chinese students have increasingly diversified their options, applying to post-secondary institutions in multiple countries, with the United States and Canada being the most favored destinations after the United States.

In order to counteract these challenges, educational institutions will need to put in more effort to attract and retain students. Some strategies to consider include increasing in-person engagement efforts post-COVID, providing more scholarship opportunities for Chinese students, and enhancing resources for supporting foreign students.

### Personal Information Protection Law

The *Personal Information Protection Law (PIPL)* of China, which went into effect on November 1, 2021, is designed to safeguard personal information and is applicable to any entities or individuals in China who deal with personally identifiable information (PII). US universities and their teams in China have taken notice of this new data privacy policy. Depending on the specific mission of each university and its office in China, PIPL may be applicable in various scenarios, such as hiring local employees, collecting event registrations from alumni or prospective students (and parents), operating China-focused websites, and establishing collaborative programs with Chinese higher



education institutions. Given these potential impacts, it is important for the higher education industry to carefully consider the new changes including:

- Individuals are entitled to make changes on how to process their personal data and even request to withdraw their previous consent from the organizations.
- The Cybersecurity Administration of China (CAC) sets stricter rules on outbound data transfer and sharing. Before data transferring, authorities also request outbound data transfer security assessment when reaching the amount of personal information. When the limit is not reached, the data processors and data recipients need to sign standard contractual clauses.
- More data security responsibilities on both data processors and data recipients in the process of international data transfer and sharing.
- Any Personal Information (PI) of a minor under the age of 14 is defined as sensitive personal information (SPI). When hosting events, universities shall follow principles on protecting minors and securely process SPI from students and their guardians.
- Fines on organizations increase up to RMB 50 million or 5 percent of the previous yearly revenue and may lead to business cessation when violating PIPL.

### *Partnership Trends and Opportunities*

China is committed to pursuing win-win partnerships in global educational cooperation. In 2021, 51 joint programs with overseas higher education institutions were approved, with half of them focused on STEM-related subjects. This progress is supported by policies such as the “Opinions on Deepening the Reform of Modern Vocational Education System Construction,” which is driving the steady internationalization of vocational education and opening up new opportunities for Sino-foreign educational collaborations. Additionally, the development goals of China’s 14th Five-Year Plan include the construction of the “Study in Hainan” brand, which is promoting collaboration among international students and overseas universities to foster high-quality innovation in education.

At the post-secondary level, China is implementing strategies to cultivate highly skilled professionals. Emphasis is being placed on innovative and cutting-edge scientific research in higher education, and many universities across the country are introducing agricultural science majors to support the development of rural modernization.

International education continues to be the primary means of people-to-people exchange between China and the United States. Bilateral talent exchange and academic collaboration are critical and effective methods of promoting educational development and maintaining communication between the two countries. As the effects of Covid-19 continue to

subside, new opportunities will arise for foreign institutions, scholars, and leaders.

### **Government suggestions**

To address current challenges, it is crucial for student visa policies for Chinese students to be clear and transparent. We recommend that Education USA and embassy consular officers increase their outreach efforts to potential students and their families. Domestic and international political issues have resulted in mixed messages, and it is important to reassure students and their families that they are welcome to study in the United States. Additionally, qualified graduates should be reassured that employment opportunities and visas will be available to them. 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

The Russia-Ukraine conflict that broke out in February 2022, combined with the COVID-19 epidemic, has made the already severe global energy supply even worse, and there is still great uncertainty about where this crisis will eventually go. At the same time, as the “dual carbon” goal is approaching, it is imminent for the energy industry to accelerate industrial upgrading through technological innovation and promote high-quality transformation of the industry. In this context, the report of the Twentieth National Congress of the Communist Party of China in October 2022 highlighted the importance of “the rice bowl of energy must be in one’s own hands,” and also emphasized the need to consider to China’s “coal rich, gas poor” assessment of their domestic resources. The energy resource endowment of oil and less gas, adhere to the establishment first and then destroy it, implement the “dual carbon” strategy and energy transformation in a planned and step-by-step manner, highlight the word “stable,” and emphasize the insistence on green and low-carbon energy while emphasizing the word “stable.” Consumption. The report proposes to improve the regulation of total energy consumption and intensity, focus on controlling fossil energy consumption, and gradually shift to a “dual control” system for total and intensity of carbon emissions. It is proposed to promote the clean, low-carbon and efficient use of energy, and promote the clean and low-carbon transformation of industry, construction, transportation, and other fields. In terms of supply-side reform, it is proposed to further promote the energy revolution, strengthen the clean and efficient utilization of coal, increase the exploration and development of oil and gas resources and increase reserves and production, accelerate the planning and construction of new energy systems, coordinate hydropower development and ecological protection, and actively and safely develop nuclear power. Strengthen the construction of energy production, supply, storage and marketing system to ensure energy security.

In 2022, the newly installed capacity of wind power and photovoltaic power generation across the country will exceed 120 million kilowatts, reaching 125 million kilowatts, breaking through 100 million kilowatts for three consecutive years, setting a new record high. The new installed capacity of renewable energy in the whole year was 152 million

kilowatts, accounting for 76.2 percent of the country’s newly installed power generation capacity and has become the main body of my country’s newly installed power generation capacity. Among them, wind power increased by 37.63 million kilowatts, solar power increased by 87.41 million kilowatts, biomass power generation increased by 3.34 million kilowatts, conventional hydropower increased by 15.07 million kilowatts, and pumped storage increased by 8.8 million kilowatts. By the end of 2022, the installed capacity of renewable energy exceeded 1.2 billion kilowatts, reaching 1.213 billion kilowatts, accounting for 47.3 percent of the total installed capacity of power generation in the country, an increase of 2.5 percentage points from 2021. Among them, 365 million kilowatts of wind power, 393 million kilowatts of solar power, 41 million kilowatts of biomass power generation, 368 million kilowatts of conventional hydropower, and 45 million kilowatts of pumped storage. The American Chamber of Commerce in China AmCham China noticed that not only the governments of the two countries have a strong intention to cooperate on this issue, but the companies of the two countries can also achieve complementary advantages in terms of technology. Jointly addressing climate change and strengthening cooperation in the energy field have become one of the few areas of cooperation between China and the United States.

## Oil and Gas

In the aftermath of the 2021 global energy crisis, many countries have reevaluated and adjusted their energy policies. A widely accepted consensus is that the phasing out of fossil fuels must not be rushed and that the stability of energy supply must be given high priority. Despite the rapid development of renewable energy in China, the proportion of non-fossil energy in primary energy consumption is expected to be only about 25 percent by 2030, with fossil fuels continuing to determine the peak of carbon emissions. Given this, natural gas, as the cleanest fossil fuel, is essential for replacing coal as a key energy source until renewables can fully take over. Despite ranking sixth in the world for total proved natural gas reserves, with 8.4 trillion cubic meters as of the end of 2020, China ranks first globally in natural gas imports, sourcing from major natural gas resource countries worldwide. Considering energy security, China should focus on increasing the exploitation of domestic shale gas and balancing its import demand.

# 能源

## 引言

2022年2月爆发的俄乌冲突，叠加新冠疫情因素，令本已严峻的全球能源供应雪上加霜，而这场危机将最终走向何方仍存在极大的不确定性。与此同时，随着“双碳”目标日益临近，能源行业通过技术革新加速产业升级，促进行业高质量转型也迫在眉睫。

在此背景下，2022年10月中国共产党第二十次全国代表大会的报告，突出了“能源的饭碗必须端在自己手里”的重要性，同时也强调要坚持立足中国“富煤、贫油、少气”的能源资源禀赋，坚持先立后破，有计划分步骤实施“双碳”战略和能源转型，突出一个“稳”字，在强调稳字当头的同时强调坚持绿色低碳能源消费。报告提出完善能源消耗总量和强度调控，重点控制化石能源消费，逐步转向碳排放总量和强度“双控”制度。提出推动能源清洁低碳高效利用，推进工业、建筑、交通等领域清洁低碳转型。供给侧改革方面，提出深入推进能源革命，加强煤炭清洁高效利用，加大油气资源勘探开发和增储上产力度，加快规划建设新型能源体系，统筹水电开发和生态保护，积极安全有序发展核电，加强能源产供储销体系建设，确保能源安全。

2022年，全国风电、光伏发电新增装机突破1.2亿千瓦，达到1.25亿千瓦，连续三年突破1亿千瓦，再创历史新高。全年可再生能源新增装机1.52亿千瓦，占全国新增发电装机的76.2%，已成为我国电力新增装机的主体。其中风电新增3763万千瓦、太阳能发电新增8741万千瓦、生物质发电新增334万千瓦、常规水电新增1507万千瓦、抽水蓄能新增880万千瓦。截至2022年底，可再生能源装机突破12亿千瓦，达到12.13亿千瓦，占全国发电总装机的47.3%，较2021年提高2.5个百分点。其中，风电3.65亿千瓦、太阳能发电3.93亿千瓦、生物质发电0.41亿千瓦、常规水电3.68亿千瓦、抽水蓄能0.45亿千瓦。

中国美国商会（以下简称商会）注意到，两国政府不仅在此项议题上有较强的合作意向，两国企业在技术方面也能实现优势互补。共同应对气候变化，加强能源领域合作，已成为中美两国为数不多的合作领域之一。

## 石油和天然气

经过2022年全世界范围的能源危机，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》）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。

## Sino-US Energy Cooperation

Climate change has emerged as a rare area of cooperation between China and the United States. As the two countries with the most significant impact on climate change, they share common interests and ample room for collaboration in promoting the transition to a cleaner, low-carbon, and more efficient global economic model. After several rounds of consultations, the AmCham welcomes the signing of the Joint Declaration between the two countries, which is expected to translate the discussions and agreements on energy cooperation into concrete actions.

According to the Joint Declaration, both sides plan to accelerate their efforts in addressing the climate crisis during the critical decade from 2021 to 2030. They will cooperate in controlling methane emissions, combating illegal deforestation, and promoting clean energy. The United States and China will also collaborate on emission reduction standards, clean energy, industrial decarbonization, circular economy, and carbon capture, utilization, and storage (CCUS) and establish a “Working Group on Enhancing Climate Action in the 2020s” to focus on concrete actions during this decade.

Regarding carbon dioxide emissions, the two countries aim to collaborate on policies that support the effective integration of low-cost, intermittent renewable energy; transmission policies that encourage efficient balancing of electricity supply and demand across broad geographies; distributed generation policies that promote the integration of solar, storage, and other clean power solutions closer to electricity users; and energy efficiency policies and standards to reduce electricity waste. China reiterated its commitment to phasing down coal consumption during the 14th Five-Year Plan and accelerating this work. Meanwhile, the United States has set a goal of achieving 100 percent carbon-free electricity by 2035. The Joint Declaration also mentions their respective commitments to eliminating support for unabated international thermal coal power generation.

Compared with the policies, measures, and technologies to decarbonize industry and power, including through circular economy, energy storage and grid reliability, CCUS, and green hydrogen as well as increased deployment of renewable energy involved in *China-US Joint Statement Addressing the Climate Crisis* issued in April 2021, the *U.S.-China Joint Glasgow Declaration on Enhancing Climate Action in the 2020s* proposed more concrete contents for cooperation, which is more consistent with the energy measures in *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”). In order to promote a better implementation of Sino-US energy cooperation, AmCham suggests:

- It is necessary to establish and launch relevant mechanisms involving Chinese and American enterprises, and support two countries to strengthen policy and technical exchanges and cooperation in addressing climate change and promoting clean energy development;
- In the fields of power system and new energy, with the support of relevant government departments of both sides, more can be done to establish communication and cooperation mechanisms to vigorously promote the demonstration pilot, promotion and application of clean and low-carbon technologies among Chinese and American enterprises;
- Efforts should be made to establish a pragmatic action plan to promote China and the United States to maintain global energy security, strengthen cooperation in the field of natural gas, new energy as well as hydrogen energy, including natural gas power generation, the application of hydrogen energy in power generation and transportation, cooperate in the field of CCUS, and work with the international community to maintain the security and stability of the global industrial and supply chain;
- Chinese and American government, think tanks and enterprises should strengthen exchanges and cooperation in such fields as energy transformation, power system and new energy, and support and develop policies to promote energy transformation and clean energy development.

## Energy Transformation

AmCham has noted that the Joint Declaration emphasizes the reduction of carbon dioxide emissions through clean power, which highlights the significance of the transformation and green development of power in the energy revolution. As electricity is the most widely used energy and is derived from primary energy sources, it plays a critical role in the transition from high-carbon energy to low-carbon energy. However, power generation requires substantial amounts of fossil energy and water resources, and generates significant amounts of air pollutants, such as dust, sulfur dioxide, and nitrogen oxides. Therefore, power system reform is particularly crucial in the context of China’s “dual carbon” strategy. It is evident that clean power is a priority for both China and the United States, and its promotion is crucial to the achievement of the common goal of reducing carbon emissions.

## Natural Gas Power Generation

Although the specific paths of carbon neutrality adopted by countries all over the world in energy transformation are different, such paths will not be separated from the category of clean utilization of fossil energy and the development of new energy. Even under China’s “dual carbon” strategy, the continuous improvement of clean energy strategy does not mean that the significance of fossil energy should be ignored.

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：

- 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；
- 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，把主要篇幅给了清洁电力，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”目标的重要组成部分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。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、调节性能出色、建设周期短和选址灵活等优势，是响应特性、发电成本、供电持续性综合最优的调峰电源。国家能源局章建华局长在“统筹能源安全保障和绿色转型发展”讲话中明确指出“系统消纳能力是新能源发展的必要条件”。12 亿千瓦以上的新能源并网对电力系统调峰能力提出了较高的要求，要全面实施火电机组灵活性改造，因地制宜发展天然气调峰电站，加快抽水蓄能电站建设和新型储能研发应用，增强系统灵活调节能力，提高新能源消纳和存储能力。

### 因地制宜发展高效燃机电厂，精准布局分布式是天然气发电主要发展途径

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、京津以及周边。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、

### Natural Gas Power Generation: Supporting Dual Carbon Goals and Power Grid Reliability

Natural gas power generation plays a crucial role in achieving the “dual carbon” goals and ensuring the safety and reliability of the power grid. In 2020, thermal power (coal power, gas power, etc.) still dominated China’s installed power generation capacity, followed by hydropower, wind power, solar power, nuclear power, and biomass power generation. While renewable energy power generation has not fully utilized its natural advantages, natural gas power has proven to be advantageous in terms of rapid start-up and shut-down, strong load increase and reduction capacity, excellent regulation performance, short construction cycle, and flexible site selection. As per Director Zhang Jianhua’s remarks on coordinating energy security and green transformation, “systematic consumption capacity is a necessary condition for the development of new energy.” The grid connection of over 1.2 billion kilowatts of new energy necessitates enhancing the peak load regulation capacity of the power system. To address this, it is crucial to fully implement the flexible transformation of thermal power generation units, develop natural gas peaking plants, accelerate the construction of pumped storage power stations, and enhance the regulation capacity of the system while improving the consumption and storage capacity of new energy.

### Development of High-Efficiency Gas-Fired Power Plants and Distributed Energy Resources Planning

To develop high-energy efficiency gas-fired power plants, careful planning for distributed energy resources is necessary to match local conditions. Currently, regions with high environmental quality requirements, strong affordability of electricity prices, and multiple-gas source guarantees, such as the Yangtze River Delta, Pearl River Delta, Beijing, Tianjin, and their surrounding areas, are experiencing rapid development in natural gas power generation. With the improvement of environmental protection requirements in economically developed key areas and the formulation of implementation plans for dual carbon goals, these central urban areas remain the primary regions for gas and electricity development. It is important to conduct scientific demonstrations of new project site selection in economically developed areas such as the Yangtze River Delta, Pearl River Delta, Shandong Peninsula urban agglomeration, coastal cities, or cooling, heating, and power load centers, as well as natural gas-producing areas. It is essential to carefully select the appropriate generating units, taking into account factors such as gas source availability, gas prices, user demand, and electric heating prices, in order to reduce investment risk. Moreover, in order to leverage the complementary advantages of both heavy-duty and light-duty gas turbines, it is important to develop both centralized heavy-duty gas turbine projects and distributed light-duty gas turbines that are suitable for local conditions. Attention should also be given to developing peak and frequency modulation power

stations, multiple energy combined supply, high-efficiency generation units, and the “integration of wind, solar energy, and gas (storage)” project.

### Ensuring Natural Gas Supply and Coordinated Development of Gas and Electricity Industries

To ensure the smooth operation of natural gas power generation, the stable supply and appropriate price of natural gas are crucial factors. Fortunately, with the ongoing national oil and gas reform and the continuous development of natural gas infrastructure in various regions, the stable supply of natural gas through multiple channels is becoming increasingly achievable.

Regarding policy mechanisms, it is recommended to establish and refine a market operation mechanism that facilitates coordinated and sustainable development among resource supply, pipeline transportation, and user consumption. This will help reduce the risks caused by the uncertainty of natural gas resource supply and fluctuations in natural gas prices. Additionally, efforts should be made to coordinate and balance the natural gas production, supply, storage, and marketing systems, establish a fair, open, transparent, and orderly market environment, build a simulation platform for natural gas supervision, transactions, and operations, and promote the comprehensive opening of infrastructure and resource supply.

### Policy Support for Gas and Electricity Development in Power Market

Comprehensive market-oriented reform of the electricity sector is imperative. This involves accelerating the development of independent markets for electricity distribution, improving the connectivity between medium and long-term markets, spot markets, and auxiliary service markets, and expanding the scale of market-oriented transactions. Additionally, the reform of the power grid system must be deepened to promote the consumption of renewable energy and facilitate the development of a new power installation mechanism that focuses on peaking capacity and energy storage. In order to support low-carbon energy and peaking resources, a market-oriented price formation mechanism for power and other energy types should be established. This should include a pricing system that promotes and incentivizes low-carbon energy in the power spot market and strengthens the construction of auxiliary service market systems, including the creation of a capacity market that demonstrates the value of reserve capacity.

### Integrating Gas Power with Other Energy Sources for Coordinated Development

To effectively address the issue of renewable energy curtailment, gas peaking plants should be constructed in regions with abundant natural gas and wind-solar resources. The

北方推进清洁供暖的省会城市，在新项目选址上要科学论证，做好机组选型，落实气源、气价、用户需求、电热价格等边界条件，减少投资风险。此外，在发展集中式重型燃机项目的同时，也要因地制宜发展分布式轻型燃机，做到轻重并举、优势互补。重点发展调峰调频电站、多能联供高效机组以及“风光气（储）一体化”项目。

### 保障天然气供应，建立健全气电上下游产业协调发展机制

支持天然气发电，天然气的供应和价格至关重要。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，将实现天然气多渠道的稳定供给。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。

### 建立和完善电力市场政策体系支持气电发展

全面推进电力市场化改革，加速培育发展配售电环节独立市场主体，完善中长期市场、现货市场和辅助服务市场衔接机制，扩大市场化交易规模。深入推进电网体制改革，促进可再生能源消纳，加快形成以调峰能力和储能为基础支撑的新增电力装机发展机制。完善电力等能源品种价格市场化形成机制，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。

### 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，也从侧面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，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。对于气电调峰，促进可再生能源接入，保障新型电力系统安全稳定和电力系统碳达峰都具有重要意义。

### 积极探索天然气发电由“低碳”向“零碳”能源的过渡

对于当前燃气发电厂或新建的燃气发电厂，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。在燃烧后技术层面，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% 氢气燃烧。欧洲、美国、日本和中国都在大力发展氢能产业，掺氢燃烧是燃气轮机实现低碳乃至零碳的重要路径。

商会认为，在合适的情况下，通过政府示范和鼓励，在有条件的情况下，支持燃气轮机逐步掺烧氢气或者加装碳捕获装置，将是实现燃气轮机零碳未来的重要探索和尝试。大力促进氢能发展，推动多种能源融合发展。同时，关注和利用碳交易、自愿减排交易等手段引导低碳天然气加速向“脱碳天然气”过渡，加强气电产业链上游油气数字低碳开采、中游“碳中和气”运营交割、下游气电企业“核证减排”等碳资产合作机制，促进天然气产业上中下游主体加强合作、协同发展，促进和推动天然气发电不断降低碳排放。

### 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推出的巨大压力，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，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。

integration of natural gas with wind or solar power generation, as well as the coupling of wind, solar, hydrogen, and gas power generation systems, can improve renewable energy output levels, grid operation reliability, and power output capabilities. This integrated development of gas power and renewable energy will promote the achievement of dual carbon goals and indirectly address natural gas supply challenges to ensure energy security. The National Energy Administration supports the integration of natural gas power generation and renewable energy development projects, providing opportunities for coal and oil and gas enterprises to participate in these projects. Close coordination between central and local governments is required to explore policy systems and new models to support this integrated development, which is significant for peaking carbon dioxide emissions, promoting renewable energy access, and ensuring safety and stability of the new power system.

### *Exploring the Transition of Natural Gas Power Generation to Zero-Carbon Energy*

To achieve zero-carbon power for existing or new gas power plants, hydrogen can be used as a fuel or carbon capture, utilization, and storage (CCUS) can be adopted. CCUS technology is continuously developing globally, and some gas power plants have already begun demonstrating it. With further technological advancements and cost reductions, CCUS is expected to become a vital way for gas power plants to reduce carbon emissions. The most advanced HA-class gas turbines can currently achieve a mixed burning ratio of 50 percent hydrogen and are projected to achieve 100 percent by 2030. The hydrogen energy industry is vigorously developing in Europe, the United States, Japan, and China, where hydrogen-mixed combustion is an important pathway for gas turbines to achieve low-carbon and even zero-carbon emissions.

AmCham believes that government support for gas turbines to gradually mix hydrogen or install carbon capture devices through demonstration and encouragement will be an essential exploration towards a zero-carbon future for gas turbines. The development of hydrogen energy and the integrated development of multiple energy sources should be vigorously promoted. Additionally, carbon trading, voluntary emission reduction trading, and other means should be used to guide low-carbon natural gas to accelerate the transition to “decarbonized natural gas.” It is vital to strengthen the digital low-carbon extraction of oil and gas in the upstream of the gas and power industry chain, the operation and delivery of “carbon neutral gas” in the midstream, and carbon asset cooperation mechanisms of gas and power enterprises in the downstream, such as “certified emission reduction.” This will promote the cooperation and coordinated development of entities in the natural gas industry and enhance natural gas power generation to reduce carbon emissions continuously.

### *Wind Power*

China has a significant amount of wind resources. Over the years, the country has made great strides in promoting and implementing the construction of onshore and offshore wind power. However, as the scale of wind power construction continues to grow, the challenges of grid connection and power consumption have become increasingly apparent, presenting significant limitations to the industry’s development. For example, wind power is facing great pressure from the imminent introduction of state subsidies. *Notice on Improving the Wind Power Feed-in Tariff Policy* issued by the National Development and Reform Commission in May 2019 clearly clarified that the feed-in tariff of newly approved offshore wind power projects is determined through competition and if all offshore wind power units are connected to the grid after 2022, the guidance price in the year of grid connection shall be implemented.

AmCham recommends that the Chinese government enhance the policy support mechanism for the entire offshore wind power chain, covering equipment manufacturers, investment and construction parties, and not hastily withdraw subsidies. It is advisable to establish a gradual phase-out mechanism for subsidies, for instance, by gradually reducing the subsidies over time and offering additional local financial incentives. This will help achieve a virtuous cycle of extending the offshore wind power industry chain and promoting the transformation and upgrading of local economies through subsidies. By avoiding the “rush loading tide” of offshore wind power that solely pursues scale and overlooks quality, the development of the offshore wind power industry can be more sustainable and effective.

### **Aviation Sustainability**

#### *Climate Change and Sustainability Action*

Low carbon energy transition is the key to achieving carbon neutrality in the aviation industry, with two main approaches available. The first is the change of aircraft to accommodate new sources of energy, such as electric and hydrogen aircraft, but according to cutting-edge technology research, unlike ground vehicles, aircraft have to overcome the gravitational force of the earth while maintaining a certain speed forward and therefore have high requirements for energy density, which is why the commercialization of electric and hydrogen aircraft, especially in the medium to long haul, is almost impossible in the short to medium term. The second is that the aircraft remains unchanged and new forms of energy will be used to adapt to the original aircraft, which is Sustainable Aviation Fuel (SAF). SAF is a liquid fuel with an energy density even higher than traditional fossil fuels, so it can achieve a low-carbon transition under the existing supply chain system (aircraft engine design and manufacturing, aviation fuel transport, storage and refueling in the airport).

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”。

## 航空可持续能源

### 气候变化和可持续发展行动

低碳能源转型是航空业实现碳中和的关键，主要有两种方式，一是航空器变化来适应新的能源形式，如电动飞机、氢能飞机，但是根据前沿技术研究，不像地面车辆，飞机要在克服地球引力的同时保持一定速度前行，因此对能量密度有较高要求，所以在中短期内，电动飞机和氢能飞机的商业化尤其在中长航程上的商业化运用几乎不可能。二是航空器不变，新的能源形式来适应原有的航空器，这就是可持续航空燃料（SAF），可持续航空燃料依然是液体燃料，能量密度跟传统化石燃料比甚至更高，因此能在现有供应链体系（飞机发动机设计与制造、航油在机场的运输、存储和加注）下，实现低碳转型。

可持续航空燃料将在航空业实现碳中和目标中扮演至关重要的角色，其产业也将成为新兴低碳产业国际竞争的重点领域，是国际应对气候变化话语权争夺和航空制造高端领域发展的方向。相较于北美和欧洲，中国在可持续航空燃料产业上的发展，有明显的落后，且短期内看不到突破的迹象。

但是可持续航空燃料的产业链较长，从上游的农林种植 / 市政废弃物收储，到中游的石油化工，再到机场终端的储存加注，其中还有适航审定、可持续认证、与碳市场的链接等国际国内规则标准问题，民航行业无法把控。因此需要民航行业各相关环节如民航局、科研院所、机场、航油保障、航空公司、飞发制造商等先团结协作，然后共同与产业链上下游如原材料供应、石化炼制、能源主管部门等推进可持续航空燃料产业发展。

### 能源转型 - 清洁低碳的液体燃料

煤炭发电转向风光天然气等发电，燃油车转向新能

源车，是能源转型的重中之重，但是飞机、轮船等动力装置的特点，它们依然需要高密度的液体燃料，因此，清洁低碳的液体燃料如可持续航空燃油、生物柴油等，也应当在能源转型中占据一定地位。

相比于美国在《可持续航空燃料大战略》、《削减通胀法案》、欧盟在“Fit For 55”一揽子措施“ReFuel EU Aviation”法案中对可持续航油的政策支持力度，中国在这方面的政策支持几乎没有。尽管航空和航海的排放占比较小，但是用可持续航油等解决他们的排放问题，才能构成中国 2030 年碳达峰、2060 年碳中和目标的完整版图。而且可持续航油产业链的发展，对中国的循环经济、国际标准制定等方面也有相当大的推动作用。

此外，可预见的中短期内，全球民航业对可持续航油的需求很大与全球可持续航油供给较小之间的矛盾将持续存在，这表明需要中国登上游戏舞台，将在可再生电力 / 新能源车方面的成功产业政策复制到可持续航油产业上，为全球民航减排提供有效供给。

## 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；
- 在发展集中式重型燃机项目的同时，也要因地制宜发展分布式轻型燃机，做到轻重并举、优势互补；
- 建立和完善电力市场政策体系支持气电发展；
- 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；
- 通过政府示范和鼓励，在有条件的情况下，支持燃气轮机逐步掺烧氢气或者加装碳捕获装置。大力促进氢能发展，推动多种能源融合发展；
- 健全政策扶持机制，给予海上风电包括设备



SAF will play a critical role in achieving carbon neutrality goal for the aviation industry, and the SAF industry will become a focus area of international competition among emerging low-carbon industries, a direction for international competition for discourse on climate change and high-end development of the aviation manufacturing sector. Compared with North America and Europe, China's development of sustainable aviation fuel industry is obviously lagging behind, and there is no sign of breakthrough in the short term.

However, the value chain of sustainable aviation fuel is relatively long, from upstream agricultural and forestry planting/municipal waste collection and storage, to midstream petrochemical, and then to storage and filling at airport terminals, besides including the international and domestic rules and standards such as airworthiness certification, sustainable certification, linking with carbon market. The civil aviation industry is unable to control most of the aspects mentioned above. Therefore, it is necessary for all relevant parties in the civil aviation industry, such as the Civil Aviation Administration, scientific research institutes, airports, aviation fuel supplier, airlines, and aircraft manufacturers, to unite and cooperate first, and then cooperate with the upstream and downstream of the value chain such as raw material supply, petrochemical refining, and government departments of energy, etc. to promote the development of sustainable aviation fuel industry.

### *Energy Transition: Clean and low-carbon liquid fuels*

The transition from coal-based power generation to wind/solar/natural gas based power generation, and from fossil fuel powered vehicles to new energy vehicles is the top priority of energy transition. However, due to the characteristics of power plants of airplanes and ships, they still need high-density liquid fuels. Therefore, clean and low-carbon liquids Fuels such as sustainable aviation fuel and biodiesel should also occupy a certain position in the energy transition.

Compared with the policy support for sustainable aviation fuel in the United States in the "Sustainable Aviation Fuel Grand Strategy" and "Inflation Reduction Act" and the EU in the "Fit For 55" package of measures— "Refuel EU Aviation" bill, China's efforts in this regard Policy support is almost nonexistent. Although aviation and marine emissions account for a relatively small proportion, addressing their emissions with sustainable aviation fuel is essential part of the full picture of China's carbon peak in 2030 and carbon neutrality in 2060. Moreover, the development of the sustainable aviation fuel industry chain has also played a considerable role in promoting China's circular economy and the formulation of international standards.

In addition, in the foreseeable short to medium term, the contradiction between the high demand for sustainable aviation fuel in the global civil aviation industry and the small supply of sustainable aviation fuel in the world will continue to exist, which shows that China needs to enter into this game. The successful industrial policy of renewable power/new energy vehicles can be copied to the sustainable aviation fuel industry in China, with providing an effective supply for global civil aviation emission reduction.

## Recommendations

### *For the Chinese Government*

- Ensure fair competition between foreign-funded enterprises and domestic enterprises and avoid local protectionism in energy bidding;
- Ensure the supply of natural gas and establish the coordinated development mechanism of upstream and downstream industries of gas and electricity;
- While developing the centralized heavy-duty gas turbine project, China should also develop the distributed light-duty gas turbine according to local conditions, so as to achieve the development of both light and heavy duty gas turbine and draw on complementary advantages;
- Establish and improve the power market policy system to support the development of gas and electricity;
- Strengthen the horizontal integration of gas power with wind power, photovoltaic, hydrogen energy and other energy sources to realize the coordinated development of gas power industry;
- If possible, support gas turbines to gradually mix hydrogen or install carbon capture devices through government demonstration and encouragement. It should push forward the development of hydrogen energy and promote the integrated development of multiple energy sources;
- Improve the policy support mechanism, give policy support to the whole chain of offshore wind power, including equipment manufacturers and investment and construction parties, and avoid arbitrary cancellation of subsidies;
- Establish a subsidy phase-out mechanism, mobilize the enthusiasm of local financial subsidies, and realize the virtuous cycle of extending the offshore wind power industry chain and promoting the transformation and upgrading of local economy through subsidies.

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；
- 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。

***For the Chinese and American Governments:***

- Establish and launch relevant mechanisms involving Chinese and American enterprises, and strengthen policy, technical exchanges and cooperation between two countries in addressing climate change and developing clean energy;
- In the fields of power system and new energy, with the support of relevant government departments of both sides, establish communication and cooperation mechanisms to vigorously promote the demonstration, pilot, promotion and application of clean and low-carbon technologies between Chinese and American enterprises;
- Establish a practical action plan to promote China and the United States to maintain global energy security, strengthen cooperation in the field of natural gas, new energy as well as hydrogen energy, including natural gas power generation, the application of hydrogen energy in power generation and transportation, as well as CCUS, and work together with the international community to maintain the security and stability of the global industrial and supply chain;
- Chinese and American government, think tanks and enterprises should strengthen exchanges and cooperation in such fields as energy transformation, power system and new energy, and support and develop policies to promote energy transformation and clean energy development.



# Express Delivery Service

## Introduction

**I**n 2022, China's express delivery industry experienced a significant slowdown in growth compared to previous years, largely due to the COVID-19 pandemic's downward impact on international, Hong Kong, Macau, and Taiwan business.

According to statistical data released by the State Post Bureau of the People's Republic of China, the express delivery sector was expected to record business revenue and business volume of RMB 1.05667 trillion and 110.58 billion parcels, respectively, for 2022, representing a year-on-year growth of 2.3 percent and 2.1 percent, respectively. Among these figures, the business volume of domestic intra-city delivery reached 12.80 billion parcels, a decrease of 9.3 percent year-on-year. Meanwhile, the volume of domestic remote delivery increased by 4.0 percent year-on-year to reach 95.77 billion parcels. However, the business volume of international and Hong Kong, Macau, and Taiwan business decreased by 4.1 percent year-on-year, reaching 2.02 billion parcels. Looking ahead, the State Post Bureau expects the sector's business revenue to increase to RMB 1.13 trillion in 2023, a year-on-year increase of approximately 7 percent.

The American Chamber of Commerce in China (AmCham China) anticipates that relevant regulators will solicit input from various industry players, including foreign-funded enterprises, and consider the unique characteristics of the industry in policy development and supervision to improve predictability and transparency. Express delivery companies look forward to better coordination with industry authorities and promoting sustainable and healthy industry development through open communication with regulators.

The express delivery service industry (EDS) acknowledges the competent authorities' commitment to establishing systems and standards for express business license approval. However, many challenges and obstacles remain for enterprises in the business processes, including application, renewal, and information changes of express business license. We hope that postal authorities will announce the necessary documents and specific requirements for related business in advance and provide prior notification for newly added permit management requirements.

With the promulgation and implementation of laws and regulations on cybersecurity, data security, and personal information protection, more stringent compliance requirements have been imposed on economic activity participants in various industries. The express delivery industry faces additional challenges in terms of cross-border data transmission and personal information protection. International express delivery businesses play a crucial role in global trade, and AmCham China urges relevant authorities to consider the industry's characteristics when making decisions that could impact day-to-day operations, particularly regarding data management and assessment systems.

The express delivery sector supports the efforts of relevant governmental departments to promote environmentally friendly express packaging. However, we hope that the authorities will consider the unique characteristics of cross-border transportation during the policy development process and avoid adopting "one-size-fits-all" requirements for international and domestic express deliveries. Furthermore, we expect relevant governmental departments to provide more guidance and support to the industry in the areas of packaging, new energy vehicle application, and carbon emission calculation system construction.

## Existing Regulatory Issues

### *Regulation and Policy-making Transparency*

The express delivery industry has identified certain shortcomings in the current system of policy development and consultation. Industry stakeholders are sometimes not adequately consulted, and the relevant authorities often prioritize the participation of domestic enterprises in the development of laws, regulations, and standards for the industry. This has resulted in a lack of information and preparedness among international express enterprises, particularly foreign-invested ones, for regulatory changes.

To address this issue, China has emphasized the importance of granting national treatment to all foreign-invested enterprises, ensuring their equal participation in standard-setting, and protecting their intellectual property rights and legitimate interests. Equal participation in policy recommendations will facilitate better cooperation between regulators

# 快递服务

## 引言

2022 年中国快递行业受新冠疫情等因素影响，行业整体增速较往年明显放缓，其中国际 / 港澳台业务出现下降趋势。

根据国家邮政局公布的统计数据，2022 年，快递业务收入累计完成 10566.7 亿元，同比增长 2.3%。全年快递业务量累计完成 1105.8 亿件，同比增长 2.1%。其中，国内同城快递业务量累计完成 128.0 亿件，同比下降 9.3%；国内异地业务量累计完成 957.7 亿件，同比增长 4.0%；国际 / 港澳台业务量累计完成 20.2 亿件，同比下降 4.1%。国家邮政局预计 2023 年全行业快递业务收入将达到 1.13 万亿元，同比增长 7% 左右。

商会期待相关监管部门在政策的制定和具体的监管中，能够听取包括外资企业在内的各类企业意见，并充分考虑快递行业特点，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。

行业理解主管部门在快递业务经营许可审批系统化和标准化方面所作的努力，但是企业在快递业务经营许可的申请、延续、信息变更等业务办理过程中，仍然遇到诸多困难与挑战。希望邮政管理部门对快递业务经营许可相关业务办理所需要提交的全部材料以及具体要求提前进行书面公示，并对新增加的许可管理要求提前正式通知。

伴随着多项涉及网络安全、数据安全、个人信息保护的法律法规颁布实施，全社会不同行业的经济活动参与者面临着更为严格的合规要求。快递行业也将由此在数据跨境传输、个人信息保护等方面面临更多的挑战。国际快递业务对于全球贸易至关重要，我们提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。

快递行业完全支持相关政府部门在绿色低碳环保发展上的努力，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，在快递行业的包装、新能源汽车应用、碳排放计算体系建设等方面给予行业更多的指导与支持。

## 现存监管问题

### 监管与政策制定透明度

一段时间以来，针对国际快递行业的法律法规及标准制定过程中及在监管的具体要求与尺度方面，偶见未事先与行业进行充分沟通，时有在前期调研与征求意见阶段仅邀请部分内资企业参与的情况，国际快递企业特别是外资企业无法及时获取政策制定及监管要求细节的相关信息，企业因此缺少足够的时间为监管要求的变动进行准备。

2022 年 12 月召开的中央经济工作会议强调，“要落实好外资企业国民待遇，保障外资企业依法平等参与政府采购、招投标、标准制定，加大知识产权和外商投资合法权益的保护力度。”外资企业平等参与标准制定、平等参与政策建言，是外资企业国民待遇的重要组成部分，这一方面有助于企业更好地配合相关部门的监管工作，确保企业正常业务的平稳运行，保证相关行业的健康稳定有序发展，另一方面也有助于进一步推进高水平对外开放，提升贸易投资合作质量和水平，提高贸易便利化程度，激发经济活力，助力走出疫情大流行后中国经济的全面复苏。

商会建议相关部门在重大政策法规正式生效实施前应提前进行公示，充分听取包括外资企业在内的行业各方意见及建议，确保外资企业在内的所有企业都能拥有行业相关信息的获取渠道。建议归并简化并统一各项监

and enterprises, ensuring that operations run smoothly, and the industry develops in a healthy and stable manner. Moreover, it will advance high-level opening up, improve the quality of trade and investment cooperation, enhance trade facilitation, and stimulate economic vitality, thus promoting China's economic recovery after the pandemic.

AmCham recommends that relevant authorities should make public announcements in advance of major policies and regulations, consult with all stakeholders, including foreign-invested enterprises, and ensure access to industry-related information. Regulatory requirements should be consolidated, simplified, and unified to ensure regulatory uniformity. Moreover, a grace period should be provided to enterprises with policy interpretation and compliance guidance when major policies and standards are released, so that they can prepare for compliance.

### *Express business license*

The express business license is a fundamental license for enterprises operating in the express delivery industry, particularly for international express delivery companies. The industry recognizes and appreciates the efforts of competent authorities since 2020 to standardize and systematize the approval process for express business licenses. However, there remain significant obstacles and challenges for enterprises when it comes to business processes such as license application, renewal, and information changes.

To address these challenges, it is recommended that the postal administration publicly announce the required documents and specific requirements for related business processes in advance, in written form. Currently, the State Post Bureau and provincial and municipal postal management departments do not make available to enterprises the list of materials necessary for license approval, causing them to rely on indirect knowledge gained through the "Express Business License Management Information System" without full knowledge of all materials required for license extension. Publicizing the materials and requirements for business processing in writing will enable enterprises to better prepare for licensing compliance.

For newly added license management requirements, it is suggested that the postal administration formally notify enterprise headquarters, fully consider the time required to prepare relevant materials, and establish a grace period for the implementation of new requirements. To ensure fairness, transparency, and predictability in the business environment, the postal administration should treat all industry enterprises equally, standardize regulatory scale and specific requirements.

It is also recommended that the postal management departments provide express business license training annually to headquarters of enterprises so that they can better coordinate

with their branches. Currently, the industry lacks a comprehensive understanding of license management requirements, which causes considerable uncertainty in the license application, change, and renewal process. Training enterprises on postal administration's management requirements in advance will provide them with a clear understanding, shorten the application process, and enable the entire industry to operate in a healthy and orderly manner.

### *Cross-border data transmission*

Cross-border data transmission is an essential component of international express delivery service contracts. As a result, personal information such as the sender's/recipient's name, phone number, address, and contents of the parcel must be provided to parties outside of China for cross-border trade and transport. Effective management of cross-border data transmission requires close cooperation and information sharing between regulators and the industry to ensure compliance.

We suggest that regulators communicate with the industry regarding laws, regulations, and implementation plans to clarify compliance requirements. This includes identifying whether the international express delivery industry is considered a critical information infrastructure operator, developing a list of important data in the industry, and introducing guidelines for the security assessment of outbound data.

Given the lengthy preparation and waiting periods required to obtain data assessment results, we recommend that industries with frequently updated data, such as international express, be allowed to apply for assessments on a regular basis. Enterprises without a poor security assessment record should be allowed to continue their cross-border data transfer activities while undergoing the security assessment.

We advise against making cross-border data transmission compliance a prerequisite for business license applications or extensions without prior notification to the international express delivery industry. In the event that a security assessment of outbound data is to be included as a condition for license approval or extension, formal notice should be provided to allow relevant enterprises sufficient time to prepare.

### *Personal Information Protection*

The State Post Office, in collaboration with relevant departments, has undertaken significant efforts to promote personal information protection in the express industry, with a focus on enhancing the personal information protection system of the postal express industry. A critical starting point for industry regulatory bodies to bolster personal information protection has been the de-identification of the express bill. The international express industry wholeheartedly

管要求，保证监管统一性。在重大政策标准发布时，建议视具体情况给予企业一定的准备期以便于企业做好充分准备，并给予企业具体的政策解读与合规指导。

## 快递业务经营许可

快递业务经营许可是快递企业从事快件经营最基本的许可证之一，国际快递企业对于维护和管理快递业务经营许可证尤为重视。行业深刻理解自2020年以来，主管部门在快递业务经营许可审批系统化和标准化方面所作的努力，也理解作为早期连入国务院全国一体化在线政务服务平台的行业许可门户，许可审批方面需要更为谨慎。但是企业在快递业务经营许可的申请、延续、信息变更等业务办理过程中，仍然遇到诸多困难与挑战。

建议邮政管理部门对快递业务经营许可相关业务办理所需要提交的全部材料以及具体要求提前进行书面公示。目前国家邮政局及省市级邮政管理部门没有正式面向企业公开发布许可审批相关材料的具体清单，企业对于办理许可申请、变更、延续业务所需的材料内容主要通过“快递业务经营许可管理信息系统”得以间接了解，难以事先了解许可延续审批所要求的全部材料，将业务办理的材料与要求进行书面公示将有助于企业更好的做好许可相关的合规准备工作。

对新增加的许可管理要求，建议以正式通知的形式告知企业总部，并充分考虑相关材料准备客观所需时间，为新要求的执行相应设定过渡期。在具体监管上，建议邮政管理部门对全行业所有企业一视同仁，统一监管尺度，统一具体要求，营造公平透明可预期的营商环境。

建议邮政管理部门面向总部企业进行年度快递业务经营许可培训，以便于企业更早更好地统筹安排各分支机构的快递业务经营许可相关工作。目前行业内普遍对许可管理要求缺乏深入全面的理解，给企业正常的许可申请、变更、延续业务办理带来巨大的不确定性。面向企业总部进行许可相关的培训将帮助企业提前了解邮政管理部门针对许可管理要求的全貌，提前进行相关工作的准备，缩短申请周期，推动全行业健康有序地开展经营活动

## 数据跨境传输

对于国际快递行业，数据的跨境传输是履行企业与客户服务合同的必要条件。从国际快递服务的业务客观

属性来看，与国际快递服务直接相关的个人信息，例如寄件人/收件人的姓名、电话号码、地址等个人信息不可避免地需要向境外提供，这些信息是国际贸易和跨境运输过程中必不可少的，有时也是境外的监管机构（如海关等）所要求的必须信息。没有这些信息的跨境传输作为前提，将无法实现国际快递的运输寄递配送服务。对国际快递数据跨境传输的有效管理，需要相关主管部门同行业之间紧密合作并进行信息共享，以便于企业更好地同总部及境外其他分支机构开展沟通与协作，前瞻性地开展数据跨境传输的合规工作。

希望相关主管部门可以与行业提前分享立法与法律法规执行计划，帮助企业厘清合规要点，例如国际快递行业是否将被认定为关键信息基础设施运营者、国际快递行业重要数据清单的编制计划、是否会出台针对国际快递行业的数据出境安全评估细则等。

基于已出台的相关法律法规要求，企业获得数据评估结果将需要较长的准备时间和等待期，对于国际快递这类数据不断更新的行业，在业务实践中可能出现需要频繁申请的情况。建议在安全评估期内仍然允许此前没有安全评估不良记录的企业继续开展数据出境活动。

建议行业主管部门应避免在没有事先告知国际快递行业的情况下将数据跨境传输合规作为许可申办或延期等的前置条件。如果行业主管部门考虑将数据出境安全评估纳入许可申请或延期的审批条件，应提前正式通知，给相关企业留出准备时间。

## 个人信息保护

近期，国家邮政局联合相关部门不断推进快递业个人信息保护工作，完善邮政快递业个人信息保护制度体系方面，其中快递面单的去标识化是行业主管部门推进个人信息保护的重要抓手。国际快递行业对于主管部门在个人信息保护方面做出的努力表示欢迎与支持。

2022年，许多制定中的法规或标准中出现了要求对快递寄递运单信息进行加密或去标识化处理的要求，包括《快递市场管理办法》（修订草案征求意见稿）、《寄递用户个人信息保护要求》（征求意见稿）、《寄递服务用户个人信息安全管理规定》（草案公开征求意见稿）等。如《快递市场管理办法》（修订草案征求意见稿）第四十九条规定：“经营快递业务的企业应当按照法律、



welcomes and supports the personal information protection measures implemented by competent authorities.

In 2022, many regulations or standards under development required the adoption of express waybills to include encryption or de-identification of the personal information of the sender and the receiver, including *Administrative Measures for Express Delivery Market (revised draft for comment)*, *Requirements for the Protection of Personal Information of Express Delivery Users (draft for comment)*, *Management of Personal Information Security of Express Delivery Service Users (draft for comment)*, etc. For example, Article 49 of *Administrative Measures for Express Delivery Market (revised draft for comment)* stipulates that “the express delivery enterprises shall, in accordance with laws, administrative regulations and the provisions of the State Council postal administration, put in place management systems and operating procedures of the production, use, storage, destruction of express waybills (including electronic waybill), and protect information security with the personal information of the sender and the receiver on the waybills encrypted or de-identified without completely displaying natural persons’ identity information.”

Different from domestic express delivery not involved in cross-border transport, international express waybills need to comply with local requirements of regulators in different countries and regions. In this sense, it is not proper to impose requirements of encryption and de-identification on international express delivery as the domestic industry. In the regulation practice, de-identification requirement is generally implemented exclusive to domestic express delivery by the competent authorities of the industry at all levels. However, clear specifications for international express delivery are absent in regulations and standards. For example, the national standard *GB/T 41833-2022 Express Electronic Waybill* effective from February 1, 2023, clarifies that the standard is applicable to the domestic electronic waybills without mentioning relevant requirements for international ones.

We recommend that the relevant departments provide written clarification regarding personal information protection requirements, such as de-identification, as stipulated in regulations or standards, specifically stating that these requirements apply only to domestic express. If necessary, separate specifications can be made for international express. This will help avoid confusion and ensure that the personal information protection requirements are appropriately tailored to the unique nature of international express delivery services. It will also enable international express companies to comply with relevant regulations and standards in a more streamlined and efficient manner.

## Green Express

In recent years, the Chinese government has been actively promoting green and low-carbon development strategies to protect the environment. On May 17, 2022, the General

Office of the State Council released the *Fourteenth Five-Year Plan for the Development of Modern Logistics*, which once again emphasized the importance of advancing the development of green logistics. The State Postal Bureau and other departments have also recently introduced various policies related to green express delivery, including the promotion of green packaging, the use of new energy vehicles, and the implementation of energy-saving and low-carbon measures in outlets and distribution centers.

The express delivery sector fully understands and supports the efforts of the competent authorities in protecting the ecological environment. Being environmentally friendly and sustainable in production and operation is also an important corporate social responsibility of the sector. The industry is committed to working with the government and other stakeholders to promote green logistics and contribute to the building of a sustainable China.

## Packaging

As the international express delivery industry is unique in its cross-border nature, with packages being delivered to various countries worldwide, it may not be feasible to implement the same green packaging policies as those for domestic express services. However, we believe that it is still essential for the industry to make efforts to reduce its carbon footprint and protect the environment.

We suggest that relevant government departments work with the industry to develop green packaging policies that are practical and feasible for international express delivery services. This could include promoting the use of biodegradable materials and reducing excessive packaging, as well as exploring innovative solutions to minimize the environmental impact of the industry’s operations.

We also recommend that the government provide guidance and support to the industry to adopt more sustainable practices, such as the use of renewable energy and the deployment of green logistics solutions. By working together, we can build a more environmentally friendly and sustainable express delivery industry that meets the needs of businesses and consumers while protecting the planet for future generations.

## The Use of New Energy Vehicles

China’s central and local governments at all levels have introduced a number of policies and opinions to encourage the use of new energy vehicles (NEVs) to replace traditional fuel vehicles in which special requirements have been laid down for the use of transport and distribution vehicles in the express delivery industry. Some regions even stipulate the proportion of NEVs in the new or replaced express logistics vehicles. However, we also note that the differences between international express and domestic express have not been

行政法规以及国务院邮政管理部门的规定，建立快递运单（含电子运单）制作、使用、保管、销毁等管理制度和操作规程，采取加密、去标识化等安全技术措施保护快递运单信息安全，不得完整显示自然人身份信息。”

与不涉及跨境运输的国内快递有所不同，国际快递的运单需要满足不同国家和地区监管机构对于运单的相关要求，因此不宜要求采用与国内快递完全等同的加密、去标识化等要求。在实际业务监管中，各级行业主管部门仅对国内快递业务执行去标识化的要求，对于国际快递业务一般表示目前暂不作要求，而缺少法规标准层面对于国际快递要求的明确规范。例如，在2023年2月1日起实施的国家标准《GB/T 41833-2022 快递电子运单》中明确该标准适用范围为国内电子运单，未明确国际快递业务的相关要求。

考虑到正在建设中的邮政快递业个人信息保护制度体系的严谨性，以及未来各级行业主管部门在个人信息保护要求监管上的统一性，我们建议相关部门以书面形式明确相关法规或标准中的去标识化等个人信息保护要求仅适用于国内快递，如有必要可对国际快递另行加以规定。

## 绿色快递

近年来中国政府不断推进绿色低碳发展策略，2022年5月17日国务院办公厅发布的《“十四五”现代物流发展规划》中再次要求“推动绿色物流发展”。国家邮政局等部门近期也陆续出台多项快递绿色环保相关的政策，聚焦快递行业的绿色包装、新能源车辆推广、网点与分拨中心的节能低碳等发展方向。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也是快递行业应尽的企业社会责任。

## 包装

目前陆续出台的绿色快递包装相关政策中，一些具体的规定主要还是从国内快递的角度进行制定，如推广使用循环包装，减少过度包装和二次包装，促进包装减量化，可降解包材应用等。对于国际快递，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。

我们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，从制度与标准角度明确适用于国际快件的绿色包装要求。

## 新能源车辆应用

在新能源车辆应用方面，中央和各级地方政府陆续出台政策意见推动新能源汽车替换传统燃油汽车，并对快递行业使用的运输配送车辆提出特别要求，部分地区规定了快递行业新增或更新车辆采用新能源汽车在快递物流车中的占比。同时，我们也注意到部分省市制定相关指标和要求时没有考虑到国际快递与国内快递的差异。

国际快递业务为满足更高的时效性要求，所使用的机动车既承担口岸到网点的运输任务，也承担网点到用户的“最后一公里”投递。同时，部分地区的针对快递行业所使用的电动汽车的充电桩等配套基础设施以及路权政策等还不完善，如果要求快递企业短期内大量更换电动车辆可能会对企业的正常经营带来巨大的经济成本与行政成本。

我们建议交通运输、城市管理等相关监管机构在制定针对快递行业的新能源汽车使用要求时，充分考虑国际快递行业的特点，平稳推进。同时建议出台支持快递行业新能源货车通行路权配套政策，如减少新能源快递车辆在城市内的通行限制，加快新能源快递车辆的基础设施建设，如充电桩、供开展寄递服务时使用的停车位等。如果这些措施能够更多的出台，将增加快递行业加大新能源汽车使用的动力。

## 快递行业碳排放计算体系

快递行业是交通运输领域的组成部分，随着中国持续推进绿色低碳发展策略，交通运输领域的碳排放计算体系也正处于研讨制定过程中。考虑到快递对于民众生产生活的重要性与其业务形式的复杂性与独特性，我们希望从快递行业视角提出碳排放计算体系构建的相关建议。

建议明确邮政快递行业碳排放统计范围，并通过供应链上下游协同推进邮政快递行业碳达峰、碳中和目标。推进快递行业的绿色低碳发展涉及到下游企业的共同参

considered by some provinces and cities when developing relevant indicators and requirements.

To ensure faster delivery, the motor vehicles of international express are used for both the transportation from the port to the outlets, and the “last mile” delivery. Meanwhile, the supporting infrastructure, including charging stations and right of way policies for electric vehicles used by the express delivery industry in some cities are still lacking in progress. As a consequence, if express delivery companies are required to switch to a large number of electric vehicles on a short notice, it may bring considerable economic and administrative costs to the normal operation of enterprises.

We recommend that transportation and urban management regulators take into full account the characteristics of the international express industry when developing requirements for the use of new energy vehicles and to phase in the new policy. It is also recommended to introduce supporting policies that give the right-of-way to new energy trucks in the industry, for example, reducing the traffic restrictions of NEVs for delivery in the city, and accelerating the construction of infrastructure, such as charging piles and parking spaces exclusively for delivery services. These measures will stimulate greater adoption of new energy vehicles in the express delivery industry.

### *Carbon Emission Calculation System of Express Delivery Industry*

The express delivery sector is a crucial component of the transportation industry. As China continues to pursue its green and low-carbon development strategy, efforts are underway to develop a carbon emission calculation system for the transportation industry. Given the importance of express delivery to daily life and production, as well as its unique attributes, we hope to contribute to the development of this system from the perspective of the express delivery industry.

To achieve green and low-carbon development in the sector, it is essential to coordinate upstream and downstream enterprises in the supply chain and clarify the statistical scope of carbon emissions. This will ensure that the sector is on track to meet its goals of carbon peak and carbon neutrality. As such, we recommend that responsibilities and accountabilities for carbon emission reduction be clearly defined for upstream and downstream enterprises. The reporting authorities for the express delivery industry should also be clearly identified to avoid confusion caused by multiple government departments overseeing carbon emissions reporting. This will facilitate the sustainable development of the industry.

To achieve consistency with global efforts towards carbon emission reduction, we suggest that the development of the carbon emission calculation system for China’s express

delivery industry align with international standards such as the Greenhouse Gas Accounting System (GHG Protocol).

Furthermore, we recommend that the carbon emission calculation system for the express delivery industry be based on the business model. The different business models of international and domestic express services will lead to varying calculation boundaries, so it is important to take the characteristics of the international express business into consideration during the development of the carbon emission calculation system. The competent authorities of the industry and other relevant government departments should gradually phase in the calculation system and segment the direct and indirect carbon emission sources of the express delivery industry. It is also suggested that transnational enterprises should regularly report their headquarters’ carbon emissions. Given the diversity of express delivery service modes, such as direct-sale, franchise, agency, and other modes, it is important to prioritize the operability of calculating carbon emissions and consider the characteristics of industry and service modes when taking gradual steps towards carbon emission statistics.

## Recommendations

### *For the Chinese Government*

- AmCham recommends that relevant departments should make public announcements in advance before major policies and regulations come into effect and consult with all parties in the industry, including foreign-invested enterprises, to ensure access to industry-related information. It is recommended that the regulatory requirements be consolidated, simplified, and unified to ensure regulatory uniformity. When major policies and standards are released, a grace period is suggested to be given to enterprises with policy interpretation and compliance guidance so that they can gear up for the compliance.
- It is recommended that the postal administration shall make public the required documents and specific requirements for the related business in writing in advance. For the newly added license management requirements, we suggest informing the enterprise headquarters in the form of a formal notice and setting a grace period for the implementation of the new requirements. It is recommended that the postal administration treat all enterprises in the industry equally, unify the regulatory scale and specific requirements, and create a fair, transparent, and predictable business environment. It is suggested that the postal management departments provide express business license training on an annually basis for the headquartered enterprises.

与，建议明确上下游企业在碳减排方面的责任划分，明确邮政快递行业的报告范围，避免企业向多个政府部门重复报告碳排放，通过上下游协同推动邮政快递行业的可持续发展进程。

建议参考国际现行碳排放计算标准制定邮政快递行业的碳排放计算体系。鉴于碳减排是全球共同关注的话题，希望行业主管部门及相关政府部门在制定行业碳排放管理体系时充分考虑国际现行标准，如温室气体核算体系（GHG Protocol）等。

建议建立基于业务模式为基准的邮政快递行业的碳排放计算体系。由于国际快递和国内快递的业务模式不同会导致计算边界不同，因此，建议行业主管部门及相关政府部门在制定邮政快递业的碳排放计算体系过程中，充分考虑国际快递业务的特性，稳步推进邮政快递行业的碳排放计算，细分快递行业的直接与间接的碳排放源，并建议允许跨国企业以全球总部的形式定期向社会公开报告。此外，鉴于快递服务模式的多样性，包括直营、加盟、代理等模式，建议充分考虑计算碳排放的可操作性以及行业企业服务模式的特点，循序渐进推进对于外包收派所产生碳排放的统计。

## 建议

### 对中国政府：

- 建议相关部门在重大政策法规正式生效实施前应提前进行公示，充分听取包括外资企业在内的行业各方意见及建议，确保外资企业在内的所有企业都能拥有行业相关信息的获取渠道。建议归并简化并统一各项监管要求，保证监管统一性。在重大政策标准发布时，建议视具体情况给予企业一定的准备期以便于企业做好充分准备，并给予企业具体的政策解读与合规指导。
- 建议邮政管理部门对快递业务经营许可相关业务办理所需要提交的全部材料以及具体要求提前进行书面公示。对新增加的许可管理要求建议以正式通知的形式告知企业总部，并为新要求的执行相应设定过渡期。建议邮政

管理部门对全行业所有企业一视同仁，统一监管尺度，统一具体要求。建议邮政管理部门面向总部企业进行年度快递业务经营许可培训。

- 建议在数据跨境传输安全评估期内仍然允许此前没有安全评估不良记录的企业继续开展数据出境活动。建议行业主管部门避免在没有事先告知国际快递行业的情况下将数据跨境传输合规作为许可申办或延期等的前置条件。
- 建议相关部门以书面形式明确相关法规或标准中的去标识化等个人信息保护要求仅适用于国内快递，如有必要可对国际快递另行加以规定。
- 建议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，从制度与标准高度明确适用于国际快件的绿色包装要求。
- 建议相关监管机构在制定针对快递行业的新能源汽车使用要求时，充分考虑国际快递行业的特点，平稳推进，并出台支持快递行业新能源货车通行路权配套政策。
- 建议给予快递行业特点构建快递行业碳排放计算体系。

- We suggest allowing companies with good security assessment record to continue their data transfer activities across borders during the security assessment period. It is recommended that the competent authorities should avoid making cross-border data transmission compliance a pre-requisite for business license applications or extensions, etc., without prior notification to the international express delivery industry.
- We suggest that the relevant departments clarify in writing that personal information protection requirements such as de-identification stipulated in the regulations or standards are only applicable to domestic express, and, if necessary, international express can be specified separately.
- 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 to clarify the green packaging requirements in its systems and standards.
- We suggest for transportation and urban management regulators to take into full account the characteristics of the international express industry when developing requirements of the use of new energy vehicles and phase in the new policy. We also recommend introducing supporting policies that give the right-of-way to new energy trucks in the industry.
- We suggest to develop a carbon emissions calculation system for the express delivery industry.



# Food and Beverage

## Introduction

**T**he outbreak of COVID-19 over the last three years had a huge impact on the food retail industry, with some member companies experiencing significant revenue losses and cost increases. During this period, and in the subsequent resumption of production, AmCham China has diligently studied the situation and commends the Chinese government's efforts in responding to the needs of affected companies. Policy adjustments and inter-agency coordination have been crucial in helping these firms gradually recover from the pandemic's impact.

AmCham China hopes that the Chinese government will continue to aid companies in resuming production and operations while building a regulatory system for food safety that is scientific, rigorous, and future-oriented. The government can achieve its goal of strict management through the implementation of quality standards, strict regulation, and enhanced enforcement. Legally, food producers and manufacturers bear the primary responsibility, making risk assessment and hazard analysis crucial for preventing and controlling food safety risks. AmCham China believes that companies should be given a certain degree of autonomy to implement internal risk management processes. Furthermore, it encourages larger companies to share relevant experience and corporate culture with SMEs to promote the effective implementation of food safety management measures across the industry.

## Continue to Support Food Operators in the Post-Epidemic Period

During the pandemic, food operators spent a great deal on logistics, sanitizing, and COVID prevention and control, and carried out digitalization, intelligence and business format innovation to ensure supplies of daily necessity goods and contribute to employment stabilization. We are grateful for the relief policies by the government, which helped reduce some cost pressure especially for small and medium-sized enterprises.

In the post-epidemic era, food operators are facing the global headwinds of economic downturns, as well as increasing costs

of food materials, rental, logistics, labor and loans. It is hoped that the central and local governments can continue to support the industry with encouraging policies and help guarantee a smooth transition into the high-quality development.

## Uniform regulation and enforcement in food and beverage industry

### *Inconsistent local enforcement of food safety*

China attaches great importance to food safety, and the State Council issued the *Opinions on Deepening Reforms to Strengthen Food Safety* in May 2021, 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.

AmCham China recognizes China's efforts to improve food safety but urges the government to implement unified enforcement and regulation to address regional differences and local authorities' discretion. Inconsistent enforcement across China is a result of the decentralized food safety system and local governments' different interpretations of central government policies. Therefore, AmCham China recommends that local governments adopt a service-oriented, open, and scientific approach to ensure consistent and unified regulation.

To achieve this, the Chinese government needs to provide a clear and unified description of the entire system of food laws, regulations, and standards, and clarify the relationship between food safety standards and non-food safety standards, as well as the responsibilities of relevant regulatory authorities. Regulatory authorities and the industry have different understandings of national standards, ind-

# 食品与饮料

## 引言

2020年暴发的新冠肺炎疫情对食品零售行业造成了巨大的冲击，部分会员企业营收锐减，成本激增。在疫情初期全社会对新冠病毒极其传染途径尚未充分了解情况下，中国美国商会（以下简称商会）看到包括国家市场监督管理总局（以下简称总局）在内的多个监管机构密集出台应对疫情的指导性文件，帮助企业了解病毒特点、疫情防控、以及各类潜在风险，并在此期间和随后的复工复产阶段充分了解受影响企业的情况和需求，通过政策调整和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逐渐恢复。

商会希望中国政府在帮助企业恢复生产经营的同时，打造科学、严谨、面向未来的食品安全监管体系。政府可以通过实施质量标准、严格监管，加强执法来实现其严格管理目标。在法律上，食品生产经营企业是第一责任人，因此风险评估、危害分析对食品安全危害防控至关重要。商会认为应赋予企业一定的自主权，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和企业文化，推动食品行业有效实施食品安全管理措施。

## 后疫情时期继续对食品经营者进行支持

在疫情期间，食品经营者在物流、消杀、防控管理方面做出了大量投入，并且进行了数字化、智能化和模式创新，保证了民生食品的日常供给，稳定了社会就业。也感谢政府提供的纾困政策，帮助部分中小企业缓解了一些成本压力。

在后疫情时代，全球经济下行，食材成本上涨，房租、物流、用工、贷款成本压力持续。希望中央和地方政府能够给与行业持续的政策关注，为食品经营高质量发展做好过渡保障。

## 食品饮料行业的统一监管与执行

### 食品安全地方执法不一致

中国高度重视食品安全这一民生工程，2021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，但商会呼吁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不一致的情况。商会希望各地能够朝着服务产业、开放和讲科学的方向发展，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。



ustry standards, corporate standards, and group standards for non-food safety, which affects the implementation of these standards.

AmCham China recommends that regulatory authorities at all levels consistently enforce laws and regulations and listen to advice and suggestions from industry associations to avoid inconsistent law enforcement across different locations and companies. Furthermore, AmCham China recommends that the government provide detailed, scientific, and reasonable supporting measures or guidance documents to help grassroots agencies understand how to enforce laws and regulations.

To improve food safety, AmCham China suggests that the government improve food safety inspection and monitoring procedures and establish a national team for food safety sampling to allocate adequate resources for inspections throughout the food management process from source materials to final products. Provincial and local governments should also coordinate across sectors and multi-levelly to strengthen the management and regulation of food safety and related risks.

Overall, 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, to contribute to food safety in China.

### **Professionalism of 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 established 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.

### **China strengthens credit regulation**

AmCham China has observed that China is currently developing a credit-based regulatory mechanism to improve market integrity, which includes the establishment of a unified searchable and sharing system for credit records of market entities and a "blacklist" for those with credit issues.

These measures, combined with random inspection and public release oversight and an Internet Plus government services model, aim to gradually build a credit rating system for regulation and encourage business honesty. These innovative regulatory measures are beneficial for companies with good credit, as they provide better protection for their rights and interests.

However, AmCham China also recognizes that the credit rating system requires a significant amount of corporate data, a large portion of which is mandatory to disclose. It is crucial that governments and relevant departments at all levels effectively protect companies' data, especially when it involves sensitive information such as technology and employee data. Therefore, AmCham China recommends the issuance of laws to guide regulation, clarify regulatory measures, improve the professional capacity of regulators, and ensure that public officials fulfill their obligations. This will help to ensure that the credit rating system operates transparently and effectively while protecting companies' data and promoting a fair and just business environment.

### **Penalties on importers instead of brands**

The Chinese government has been continuously reinforcing the regulation of imported food safety, while also proactively taking measures to enhance customs clearance efficiency and optimize the business environment. On October 1st, 2020, the General Administration of Customs (GAC) eliminated the requirement for first-time imported prepackaged food label filing, streamlining the customs clearance procedures for imported prepackaged food and improving the business environment at ports. AmCham China appreciates this move, as it promotes the business development of relevant importers.

As the food import trade continues to grow, so does the number of food importers. AmCham China has observed that several imported food sampling failures stem from importers' failure to meet their main responsibility for food safety, such as importing food without Chinese labels and neglecting to scrutinize products according to Chinese food safety standards, resulting in excessive use of food additives.

AmCham China believes that the existing regulations do not clearly define the responsibilities of manufacturers and operators (importers) of imported food. When regulators announce information on imported food sampling failure, relevant department notifications of "unqualified products" cause a large number of media exposures and unjustified damage to corporate reputations. This highly impacts the credibility of brands and producers and does not penalize or warn importers who fail to fulfill the main responsibility of food safety.

AmCham China suggests amending the *Measures for Sampling Inspection of Food Safety* to emphasize importers' main responsibilities when regulators publish information

商会建议全国各级监管部门落实标准化执法，避免出现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。此类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。

### 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的有效性、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、更有效果、更高水平地向前推进。

### 中国加强信用监管

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。

### 惩罚进口商而不是品牌方

中国政府在不断加强进口食品安全监管的同时，也在积极采取措施提高通关效率和优化营商环境。2020年10月1日，海关总署取消首次进口预包装食品标签备案要求，简化了进口预包装食品通关手续，优化了口岸营商环境，有利于相关进口企业的业务发展，商会对此表示赞赏。

随着食品进口贸易的增长，从事相关进口业务的企业也在不断增加。商会注意到，有不少进口食品抽检不合格是由于进口商未履行食品安全主体责任造成的，例如：进口食品不加贴中文标签；未按中国食品安全标准审核产品，导致食品添加剂超范围超限量使用等。

商会认为目前的法规对进口食品的生产者和经营者（进口商）的责任界定还不够清晰。相关部门进行“不合格产品信息通报”却造成生产商和品牌方面临大量媒体曝光而无端遭受声誉损失，也严重影响了品牌方和生产商的信誉；而对于未履行食品安全主体责任的进口商却没有起到应有的惩戒和警示作用。

商会建议对《食品安全抽样检验管理办法》进行修订，公示进口食品抽检不合格信息时应突出进口商的主体责任，即公示进口商信息及产品品类名称，生产商及品牌信息无需发布，但可以允许有关方面进行查询。

海关总署并于2021年发布了第249号法令。增加了“进出口食品生产经营者对其生产经营的进出口食品的安全负责”的条款。商会希望监管部门能加快细化进口食品生产商和进口商的安全责任划分，有的放矢。

### 进一步提升信息沟通渠道

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质量。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

on imported food sampling failure. Specifically, to publish importers' information and product category rather than the manufacturer and brand information. Relevant parties should be allowed to make inquiries.

GAC added a new clause that "import and export food manufacturers and operators are responsible for the safety of the food they produce and operate" in the Administrative Measures on Import and Export Food Safety and published Decree No.249 in 2021. AmCham China hopes that the regulatory authorities can refine the division of responsibilities for the safety of imported food between manufacturers and importers soon, and conduce more precision enforcement of accountability.

### Further enhance information and communication channels

AmCham China hopes to further improve the communication to the industry and to consumers regarding food safety information, 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 faithfully represent food safety situation and help keep the public properly informed.

### Further improve the punitive damages system to mitigate the negative impact of professional claimants on the industry

In 2018, AmCham China 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 everyday 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 everyday 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.

AmCham China recommends that the Chinese government:

- Make amendments to the Implementing Regulations of the Law on the Protection of Consumer Rights and Interests or clarify the definition of "reasonable consumption" in the relevant judicial interpretations to give enforcement standards to grassroots agencies.
- Identify different levels of risks, for example, by excluding non-substantive food safety issues such as labeling defects and focusing on serious food safety issues such as illegal additives and excessive heavy metals. Handle claims for unreasonable compensation in a careful manner, with a maximum on punitive damages and a limit on the number of purchases protected, and encourage public interest litigation and class actions, allowing customers with relevant claims to defend their rights through a more transparent and managed organization or group that is not profit-oriented.
- Fully implement the State Council's Guiding Opinions on Strengthening and Standardizing Regulation During and After the Matter to "strictly regulate malicious reporting for illegal profit making", effectively protect the legitimate rights and interests of real and platform economy participants, and crack down on extortion in the name of "fighting fraud", and protect consumer rights through more transparent, non-profit channels to have social governance participate in addressing professional claims.
- Direct the system to focus on food safety issues with significant risks, find a balance between combating counterfeit and substandard products and maintaining healthy business development, handle unreasonable compensation claims in a prudent manner, and exclude purchases for the purpose of claiming from consumer protection.

Another noteworthy point is that in December 2020, the Supreme People's Court issued the *Interpretation of Applicable*

的言论和资源优势，全面客观真实反应食品安全的全貌，让公众逐步形成正确认知。

## 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。但我们也看到，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，如最高人民法院今年就出台了《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。

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，职业索赔所耗费的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。

商会建议：

- 修改《消费者权益保护法实施条例》或在有关司法解释中予以明确“合理消费”等相关定义，给予基层执法机构衡量尺度。
- 建议区分问题的风险程度，比如，排除标签瑕疵等非实质性的食品安全问题，将重点放在非法添加、

重金属超标等严重食品安全问题上；同时审慎处理不合理赔偿要求，对于惩罚性赔偿设置最高限额，设置购买数量受消费者保护的上限；推广应用公益诉讼/集体诉讼，使有相关诉求的群体可以通过一个管理更透明、不以营利为目的的组织或群体进行维权。

- 建议贯彻执行国务院《关于加强和规范事中事后监管的指导意见》，“对恶意举报非法牟利的行为，要依法严厉打击”。切实保护实体企业和平台经济参与者合法权益，打击以“打假”为名的敲诈勒索行为。通过更透明、不以营利为目的的渠道保护消费者权益，使职业索赔回到社会共治的应有轨道。
- 引导该制度将重点放在重大风险食品安全问题上。寻求打击假劣产品和维护企业健康发展的平衡点，审慎处理不合理赔偿要求，以索赔为目的的购买不予保护。

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作出具体澄清，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。

## 在新原料新食品添加剂等方面加强监管创新

近年来，随着人们健康意识的不断提升，具有营养

*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.”
- That an operator fails 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.

### 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 granted approval 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.

### 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 senior managements of large retail 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 whether they are deliberate/malicious or have granted, authorized and instructed others to take certain actions when judging if they should be held legally accountable. 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 2020 when the fight against COVID-19 began, 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 consideration of nutrition and health into 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

All member companies of AmCham China agree that the

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。

## 关于食品安全法实施条例“处罚到人”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，应充分考虑其是否存在“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程度。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。

## “健康中国 2030”

### 社会共治 建设“健康中国 2030”

2020年在抗击新冠疫情的过程中，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中，努力为消费者提供既美味又健康的产品。

## 以实际行动积极落实“健康中国”战略

商会会员企业一致认为，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，并为推动“三减三健”工作采取了以下切实行动：

- 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12岁以下儿童开展市场营销活动。

## 构建政府、企业、社会共治格局，建设“健康中国”

共建共享是建设“健康中国”的基本路径。政府出台的一系列纲领性文件都强调了政府主导、统筹社会、行业和个人三个层面的力量，形成健康促进的强大合力。

为此，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，

food and beverage industry has a 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 the stated path for high-quality development. Since the launch of the Healthy China strategy, the food and beverage industry has explored and achieved remarkable success in product diversification and enhancing the nutrition and health value of products, and has taken the following substantive actions to support “three less and three healthy” (less oil, less sugar and less salt, and healthy teeth, healthy bones and healthy weight).

- **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 literacy through education and promotion of balanced diets and active lifestyle.
- **Responsible marketing:** vigorously promote the concept of reasonable diet and healthy lifestyle in marketing activities, and do not conduct marketing activities targeting children under 12 years old.

### ***Joint governance of the government, enterprise and society to build a healthy China***

Facilitating the distribution of obligations and benefits is a fundamental approach to cultivating a robust and healthy China. The government has issued a series of guidance documents that accentuate its leadership and the coordination between society, industry, and individuals to establish a robust joint force.

To achieve this objective, AmCham China expects policy-makers to base their nutrition and health policies on scientific facts and research data while considering the practical experience of the industry. Additionally, it is crucial to provide adequate time to industry associations and companies to voice their opinions. The “three less and three healthy” call to action necessitates the involvement of multiple stakeholders. For instance, promoting and implementing the call to action requires addressing the distinct needs of consumers and guiding companies to develop diverse products that cater to varying tastes and health needs.

The industry needs to intensify communication and interaction with the professional community to address shared issues while fostering mutual trust. Together, they can drive the development of regulations, standards, and policies of

nutrition and health in a positive and proactive direction under the guidance of regulators, establishing an excellent atmosphere of social governance that is critical to building a healthy China.

The year 2021 witnessed the robust implementation of the Healthy China Action Plan. Member companies anticipate the chance to contribute to the creation of relevant action plans and share relevant data, scientific research findings, and management experience of their companies with decision-makers. Moreover, AmCham China urges government regulators and scientific research institutions to enhance their efforts to popularize science and actively disseminate scientific knowledge about food and beverages, vital nutrients and additives, and label interpretation of prepackaged foods to consumers. This effort will eliminate misunderstandings that arise from incorrect or incomplete information and help consumers make informed choices for a balanced diet.

Strengthening the fight against food safety rumors is the only way to prevent panic caused by food rumors and increase public confidence in food safety. AmCham China is willing to actively participate in and support nutrition and health education activities.

### **Improving the Business Environment for Food and Beverage**

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.

#### ***Continue to optimize food safety system and stimulate the industry’s innovation in areas of nutrition and health***

Concurrently, AmCham China recognizes that the national focus has shifted towards the areas of nutrition and health, in addition to ensuring food safety. AmCham China believes that including nutrition labels and other non-food safety related content under the food safety category for management is increasingly detrimental to the industry’s development, particularly with the implementation of the Healthy China 2030 Blueprint and the Healthy China Action Plan (2019-2030). Therefore, AmCham China recommends the removal of content that does not involve food safety issues from the food safety standard system. This would alleviate constraints and pressure on companies, reduce unnecessary waste of regulatory resources, and guide companies towards greater research and development in the areas of nutrition and health. As a result, companies can more actively participate in national planning for nutrition and health and align themselves with the new national plan for the development of the food industry.

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。

2021年是《健康中国行动》深入实施的一年，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、预包装食品的标签解读，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。

## 改善食品饮料行业的营商环境

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：

### 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。

### 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。



As China advances with supply-side reforms in the food industry, it is simultaneously accelerating the implementation of the Healthy China strategy. As more Chinese consumers seek healthier foods, AmCham China recommends that authorities further ease restrictions on companies selling foods based on health benefits. For instance, it is commonly known that DHA (docosahexaenoic acid, an omega-3 fatty acid) promotes healthy brain and eye development. Nonetheless, in China, advertisements promoting the health benefits of DHA are currently restricted to infant formulas. Removing these restrictions would enable consumers to access more information about food composition and nutritional benefits, ultimately allowing them to make healthier dietary choices.

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 provide specific technical guidance documents for corporate management and government regulation on labeling management measures, including allergen and imported food labeling. This will allow companies a reasonable transition period of 2-3 years to adjust their packaging and reduce pressure during the implementation of these measures. It will also help avoid any potential challenges that may arise after the measures are introduced.

Furthermore, AmCham China recommends that scientific and regulatory research be conducted on the recycling of packaging materials. Laws and regulations should be established for the use of recycled packaging materials to promote practical applications and enable companies to participate in and explore sustainable packaging solutions.

To facilitate product innovation, AmCham China encourages the establishment of a green channel for the import of raw materials and samples for research and development purposes. Currently, the complex and time-consuming import filing requirements hinder product innovation. Therefore, AmCham China suggests that national regulatory agencies consider allowing a certain degree of flexibility in the import of food materials and samples for non-production and sales purposes through simplified import and write-off filings. This approach can not only achieve effective regulatory purposes

but also promote companies' continuous innovation.

### *Accuracy and efficiency of food testing methods*

Currently, the predominant approach to ensuring food safety in China involves relying on end-product testing methods and complying with national mandatory standards. However, there is a lack of focus on preventive measures, such as environmental and process monitoring. To address this gap, the Chinese government should promote environmental monitoring in the production process, particularly for pathogenic bacteria, in order to regulate and control food safety at the source.

When it comes to food testing methods, both food companies and government regulation rely heavily on national mandatory standards. While rapid testing methods can streamline current testing practices, the testing of microorganisms, which are a critical indicator of food safety, is completely reliant on traditional testing methods outlined in national standards. These microbiological testing methods can be time-consuming and require highly skilled operators, and due to the nature of microbiological indicators, re-testing is not possible. To ensure accuracy and efficiency, AmCham China recommends adopting international standards or establishing an advanced testing system that is mutually recognized by organizations such as AOAC, FDA, USDA, and European AFNOR, to meet the need of major food companies for advanced food safety testing methods. Furthermore, it is recommended that the current food safety testing methods be changed to non-mandatory, recommended standards so that companies can choose testing methods that align with their own conditions and meet their food safety standard limits.

While some inspection regulations allow for the use of rapid testing methods, guidelines for integrating and comparing the results with mandatory national standards are often lacking. As a result, these methods are not commonly implemented in practice. To address this, AmCham China suggests that the Chinese government establish a mechanism for coordinating and comparing rapid testing methods with conventional results based on national standards, as well as an evaluation system for selecting appropriate rapid testing methods. This will enable China's food contamination testing procedures to align with international standards.

### *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.

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。

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。商会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。

### 食品饮料产品的海关监管

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。

#### 《食品进出口安全管理办法》

为贯彻落实习近平主席提出的“四个最严”食品安全要求，完善食品进出口管理，海关总署在 2021 年 3 月 21 日发布第 249 号令，正式公布了《进出口食品安全管理办法》，该《办法》自 2022 年 1 月 1 日起实施。

商会会员企业寻求在若干领域的明确性，并提出了以下改进建议：

- 草案中提到，中国海关总署将按照有关规定对食品进出口经营者实行“信用管理”制度，明确什么是“企业信用管理的有关规定”；
- “信用管理”的具体内容是否涉及黑名单及相关惩戒；
- 明确进口商审核制度的具体要求，以便指导进口商有效实施审核，如是否包括对其境外食品生产供应商获得注册的审核、以及该审核的具体形式等；

- 明确食品进出口安全理事会在按照相关法律（包括列出具体法律）履行其对食品进出口安全的监督职能，并详细说明法律规定的哪些活动。例如，食品进出口管制委员会可以监督、检查和审查从事食品进出口实体的活动，包括密封或扣留食品装运，关闭被发现违规食品进出口企业的相关生产经营场所。最后，在总局各部门之间应明确规定执行措施草案的责任分工。

### 宠物食品监管部分

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。

目前宠物食品没有国家强制性标准或安全标准，只有 2018 年发布的规章及 2014 年发布的两个推荐性国标。宠物食品产品标准亟待修订。从对宠物的科学营养负责的角度，尽快出台宠物食品法规和标准的框架和计划，逐步完善宠物食品监管体系，设立宠物食品膳食营养指南及宠物食品国家标准，能够进一步优化宠物食品行业的市场环境，推动更加优质创新高品质的产品研发和供给。

## Food Import and Export Safety Regulations

To implement President Xi Jinping's "strictest" food safety requirements, and improve food import and export management, the General Administration of Customs (GAC) released the *Administrative Measures on Import and Export Food Safety* (GACC Degree 249) which came into effect on January 1, 2022.

Members companies look for clarity in several areas and make the following recommendations to improve the Draft:

- Make clear what are the relevant provisions of corporate credit management, as the Draft mentions that GAC will implement a "credit management" system for food import and export operators in accordance with the relevant provisions.
- Clarify whether the specific content of "credit management" involves blacklisting and related disciplinary actions.
- Clarify the specific requirements of the importer audit system, in order to guide them to effectively execute the audit, such as whether it includes the registration of its overseas food suppliers, and what the specific form of the audit is.
- State that the Import and Export Food Safety Board performing its oversight functions for import and export food safety by relevant laws (including listing which laws), and detail what activities are included. For example, the Board oversees, inspects, and reviews the activities of entities engaged in food import and export, including sealing or detaining food shipped, and closing the relevant manufacture plant of food import and export establishments who are found in violation of law. Finally clarify that divisions of the General Administration of Customs should take responsibilities defined in the Draft.

### Pet food regulations

Thanks to the systematic supervision of customs departments, the import of pet food into China is becoming increasingly standardized. However, this process still entails complex inspection and quarantine procedures, resulting in lengthy waiting times before pet food can enter the Chinese market. As an emerging industry, the pet food sector requires diverse product offerings that match the growing market size and meet the evolving needs of Chinese consumers. To support the sustainable development of the Chinese pet food industry, AmCham China recommends that the relevant authorities allow for small batches of pet food products to be imported, primarily for the purpose of gauging Chinese consumer feedback on new products. This could be achieved by implementing a filing system that records product names, quantities, and intended uses. The import regulation process should also be streamlined to the extent possible while ensuring compliance with product inspec-

tion and quarantine requirements. These measures would allow new pet food products to enter the Chinese market more quickly, enabling manufacturers to better understand Chinese consumers' preferences and needs, and facilitating the industry's growth.

The US-China meat trade has great potential for growth, both for direct consumption and as feed for animals. In light of rising production costs in China and a widening supply gap for high-quality meat products and pet food, AmCham China welcomes China's recent lifting of the ban on US poultry meat exports. However, restrictions on pet food containing chicken ingredients, which are considered poultry products and end-products, remain in place. AmCham China hopes that the Chinese and US governments will continue to engage in constructive negotiations and exchanges on this issue and work to open up import access for poultry-related products as soon as possible, promoting the expansion of bilateral trade. AmCham China believes that more open trade cooperation will enable Chinese consumers and industry to access safe, reliable, and sustainable food and pet food supplies, as well as raw materials.

At present, there are no national mandatory standards or safety standards for pet food, except the regulations issued in 2018 and the two recommended national standards issued in 2014. The standard of pet food products needs to be revised urgently. From the perspective of caring for the scientific nutrition of pets, the framework and plan of pet food regulations and standards should be introduced as soon as possible, the pet food regulatory system should be gradually improved, and the pet food dietary nutrition guidelines and national standards for pet food should be set up, which can further optimize the market environment of the pet food industry and promote the R&D and supply of products with higher quality and innovation.

### Further optimize the single-window financial services to facilitate business data docking

AmCham China's food and beverage companies have greatly benefited from the customs' single-window services, which provide convenience and accessibility for import procedures. AmCham China is grateful for the efforts made by the General Administration of Customs and relevant government departments to implement the single-window services and streamline the trade process. Currently, the single-window function has been extended to financial services, which is an important step forward.

However, some of AmCham China's companies that have a large import volume still need to manually fill in more detailed information, some of which overlaps with the existing data in the customs system. To improve efficiency and reduce labor costs, AmCham China recommends optimizing the single-window financial services by enabling companies to easily dock their data or import data in bulk.

## 建议进一步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。

## 婴配乳品部分

### 加快对境外企业生产的婴幼儿配方乳粉配方注册的现场核查工作进度

自中国实施婴幼儿配方乳粉产品配方注册管理制度以来，中国婴幼儿配方乳粉行业得到了进一步规范，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，自2018年2月起，总局对境外企业婴幼儿配方乳粉配方注册申请的审批工作大大放缓。而自2020年初暴发新冠肺炎疫情以后，由于疫情原因无法安排境外考察，导致总局对境外企业婴幼儿配方乳粉配方注册的审批工作陷入停滞，境外考察何时重启目前看来遥遥无期。这显然与众多的境外企业申请不匹配，不仅导致一批符合要求的境外申请企业迟迟无法获得注册许可以开展生产经营，使得企业的生产和经营遭受严重损失，也使得中国消费者失去了更多的产品选择。

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。

### 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。

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）。

### 优化特殊医学用途配方食品临床试验的要求

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

These measures can not only save companies' time and costs but also enhance the accuracy and efficiency of data processing. Overall, AmCham China believes that continuous improvement of the single-window services is crucial to promote further development of China's import industry and facilitate more efficient and seamless trade flows.

## Baby Dairy

### *Accelerate the progress of on-site verification for the registration of infant and young children formula milk powder produced by overseas manufacturers*

AmCham China recognizes the positive impact that China's formula registration system has had on standardizing the industry, restoring consumer confidence, and promoting market health. The organization fully supports the Chinese government's strict management through the formula registration system and commends SAMR for its efforts and achievements in this regard.

However, AmCham China is concerned that SAMR has significantly slowed down the approval of applications for registration of infant and young children formula milk powder from overseas manufacturers since February 2018. The outbreak of COVID-19 has further complicated matters, as SAMR has been unable to conduct onsite verifications of overseas manufacturers. This situation is not in line with the increasing number of applications from overseas manufacturers and has resulted in many eligible overseas manufacturers failing to get registered, leading to significant losses on production and operation, and fewer choices for Chinese consumers.

To expedite the registration process, AmCham China recommends that SAMR consider remote video verification and coordination with food regulatory authorities in countries where authorized overseas manufacturers of infant and young children formula milk powder are located. AmCham China urges SAMR to fulfill the relevant provisions of the US-China Phase I agreement to expedite the onsite verification and registration of foreign-invested manufacturers of infant and young children formula milk powder. 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, reflecting the principle of treating Chinese and foreign-invested companies equally.

AmCham China also recommends that SAMR optimize the current inspection process for foreign-invested companies. SAMR should notify overseas regulatory agencies and overseas factories of foreign-invested companies that need to be inspected in advance and publish annual inspection plans or schedules so that companies can make necessary preparations in advance, such as procuring raw materials.

### *Adjust advance ruling results on classification to a 10-digit customs commodity code*

As cross-border e-commerce continues to develop, Chinese consumers are increasingly purchasing overseas commodities. However, many of these goods have complex compositions, such as complementary food for infants and young children, and their classification can vary between different customs offices. To address this issue, in 2018, the General Administration of Customs (GAC) issued *the Interim Administrative Measures on Advance Ruling*, which prioritizes the classification of imported and exported goods eligible for advance ruling and applies to the entire customs territory. Companies can apply for an advance ruling on the classification of their goods prior to importing them from their local customs or port authority, which helps to mitigate the challenges posed by inconsistent classification across Chinese ports.

However, in practice, local customs authorities often only provide an 8-digit customs commodity code instead of the full 10-digit code when issuing an advance ruling on the classification. The last two digits of the code can contain information related to the classification of the goods and may result in different classifications being issued by local authorities. Consequently, the goods cannot be circulated between domestic bonded areas through phase II of the Golden Customs System. This is significant as the flow of goods imported through the cross-border 1210 Model is often reserved for products requiring expedited delivery and is a crucial step in the logistics network of many companies.

Therefore, AmCham China recommends that GAC amend the provisions in the Interim Measures to require customs to provide a complete customs commodity code of 10 digits or a reference ruling for the last two digits. Additionally, AmCham China suggests that companies choose the classification (8 or 10-digit code) that best suits their needs when applying for advance rulings.

### **Optimize the requirements for clinical trials of formula foods for special medical purposes**

Clinical trials conducted in the pediatric population pose unique challenges, including ethical considerations, inclusion criteria, and evaluation methods. The State Administration for Market Regulation (SAMR) has established guidelines for drug clinical trials in the pediatric population in document No. 48 [2016], titled *Technical Guidelines for Clinical Trials of Drugs in Pediatric Populations*. According to these guidelines, clinical trials in children should be designed with the principle of using the smallest sample size, collecting the fewest specimens, and causing the least amount of pain possible, provided that the evaluation requirements are met.

In cases where data from clinical trials conducted on foreign pediatric populations are available, SAMR allows for the use of

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”。

建议：

- 参照药物原则，对于 10 岁以下人群、尤其是发病率较低人群的疾病特定性全营养配方（1-10 岁的食物蛋白过敏配方，1-10 岁的难治性癫痫配方）的临床试验灵活要求，在确认不存在显著病因种族差异后，允许豁免临床实验，或者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；

## 可持续发展

为了在未来几年向着碳中和目标顺利推进，亟需在所有市场推动相关政策的制定——政策进展的优先事项包括：反映商业活动社会成本的机制，使企业能够最大程度地减少其碳足迹的各项规则，以及使消费者转向可持续消费的各种解决方案。因此，美商会建议中国政府从下述各项规则和标准入手，制定相关政策：

### 制定“游戏规则”

- **碳移除规则（内部碳抵消、外部碳抵消以及自然气候解决方案）**：确保碳移除规则明确而公平，这也会使企业更有信心制定碳移除计划并加大相关投入，最终帮助中国实现其在应对气候变化方面的抱负。具体而言，内部碳抵消和外部碳抵消的努力，以及自然气候解决方案（NCS）将在商业界的净零碳排放进程中起到重要作用：首先，将高质量的内部碳抵消、外部碳抵消作为有效的碳补偿工具得到官方认可，并且有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、生物多样性和水质表现，政府应将其纳入主流并加以推广。
- **碳标签和环境声称**：基于企业为其产品提供的环境声称，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“游戏规则”之外，要想实现净零碳排放，还需要关键新技术、创新企业管理途径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

**包装：鼓励发展一个正常运作的食品级再生塑料市场，尤其是允许使用食品级再生 PET（rPET）作为食品接触材料，如饮料包装瓶，希望相关法规标准尽快出台，以便让食品饮料企业有更多路径助力到双碳目标的实现。**

- 为食品包装中的再生塑料引入食品级监管框架，结合政府法规和标准，以确保食品接触材料的安全基线。这样，与食品直接接触的再生塑料可以得到进一步采用，并逐渐成为常态。
- 支持设计和实施可负担、有效的强制性生产者责任延伸计划。
- 将具有创新和监管认可技术的供应商与回收基础设施（包括轻型塑料包装）对接起来。
- 完成针对食品接触级 rPET 材料进行风险评估，加快制订国际通行的食品接触级 rPET 的许可审批制度和相关产品和标准的制定，推动 rPET 在食品包装领域的应用，让食品级 rPET 应用成为食品饮料行业权新的碳中和发力点。

**针对消费者对 rPET 安全性的担忧，开展消费者教育，逐步打消大家的顾虑。农业：出台公共政策，支持更快地向再生农业转型**

- 改革认证体系，使其更具透明度，并纳入更强有力的气候变化考虑因素，进而大规模地支持可持续和再生农业操作规范。
- 引入有针对性的公共补贴，以刺激再生农业方法以及活跃碳信用市场的开发，帮助最大限度地减少所需变革对农民的经济影响。
- 推广相关教育计划，旨在鼓励社会广泛了解土壤和生物多样性现状、组织对自然生态系统的依赖性以及再生农业价值。包括在年轻的农业企业家中开展关于再生农业生产的广泛培训，以鼓励更多的对再生农业生产规范的采用。
- 增加对低碳农业的研发投资，包括用于再生农业的

such data. However, certain conditions must be met, including that there are no significant differences in disease epidemiology, etiology, pathogenesis, and disease progression prognosis among regions, and there are no significant clinical pharmacology and therapeutic differences among ethnic groups when evaluating adult patient trial data at home and abroad.

For rare diseases in children, the guidelines recommend that a reasonable sample size should be determined based on the disease’s epidemiology, trial evaluation methods, and statistical assumptions.

### Recommendations

- Referring to the principle of drugs, to adopt flexible clinical trial requirements for disease-specific full nutrition formulas for kids aged within 10 years, especially for diseases with low incidence (like formula for food protein allergy or refractory epilepsy for 1-10 years old), 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;

## Sustainable Development

In order to make progress towards achieving carbon neutrality goals in the near future, it is imperative that policy developments are advanced in all markets, with a focus on mechanisms to reflect the social costs of business conduct, regulations that enable businesses to minimize their carbon footprint, and solutions that enable consumers to shift to sustainable consumption. Consequently, AmCham recommends that the Chinese government develop policies based on the following rules and standards:

### 1. Establishing “rules of the game”:

- **Carbon removal rules (internal carbon offsets, external carbon offsets, and Natural Climate Solutions):** Clear and equitable carbon removal rules will inspire companies to develop carbon removal plans and increase relevant investments, which will ultimately assist China in achieving its ambitious climate change targets. Internal carbon offsetting, external carbon offsetting, and Natural Climate Solutions (NCS) will play important roles in the business community’s progress towards 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:** To ensure that consumers can make environmentally conscious

choices based on the environmental claims that companies provide for their products, clear and equitable regulations are required. For instance, with the introduction of carbon labeling schemes and standardized claims, companies and brands communicate about their environmental efforts in a transparent, comparable, and truthful manner. This practice will also enable consumers to make eco-friendly product choices.

- In addition to establishing clear “rules of the game,” achieving net zero carbon emissions necessitates new key technologies, innovative corporate management, and low-carbon infrastructure to drive overall market transformation, which cannot be achieved without legislative and regulatory support.

### 2. Packaging: The government should encourage the development of a functioning market for food-grade recycled plastics, especially by allowing the use of food-grade recycled PET (rPET) as a food contact material, such as beverage bottles.

- Introduce a food-grade regulatory framework for recycled plastics in food packaging that incorporates government regulations and standards to ensure a baseline of safety for food contact materials, in which way recycled plastics that directly contact with food can be further used regularly.
- Encourage the design and implementation of affordable and effective mandatory programs to extend manufacturer responsibilities.
- Align suppliers with innovative and regulatory-approved technologies with recycling infrastructure, including lightweight plastic packaging materials.
- Complete the risk assessment of rPET materials for food contact as soon as possible. Accelerate the formulation of an internationally accepted approval system for food-contact rPET and develop related products and standards. Promote the application of rPET in the food packaging field and make the application of food-grade rPET a new carbon-neutral force in the food and beverage industry.
- Respond to consumers’ concerns about the safety of rPET by gradually dispelling them through consumer education.

### 3. Agriculture: make public policies to support a faster transition to regenerative agriculture

- Reform the certification system to make it more transparent and take more consideration into climate change, thereby supporting sustainable and regenerative agricultural practices at scale.
- Introduce targeted public subsidies to stimulate the development of regenerative agriculture methods and an active carbon credit market to help minimize the economic impact of needed changes on farmers.

种子，以及原材料可追溯性（到农场 / 种植园 / 渔船层面）（数字）解决方案。

## 塑料包装回收

塑料是一种高效材料，有助于食品工业开发安全、质量合格、产品保护和保存适当水平的包装，同时使其能够实现减少包材消耗的目标。从塑料转换到其他效率较低的材料有可能产生更多的食物垃圾，或更多的包装材料，从而增加对环境和气候变化的影响。

我们看到来自食品行业的商会会员公司希望为循环经济做出贡献，助力包装材料回收再利用，同时最大限度地减少食品浪费和包装对整体环境的影响，包括对气候变化的影响。

同时，我们也看到食品工业面临的主要挑战之一是塑料包装的收集和回收。不一致的收集和回收设施意味着由薄塑料薄膜制成的包装物通常会被填埋、丢弃在社区或海洋，无论这些材料在技术上是否可回收。

目前，食品公司的卷膜包装更加创新及环保，软包装薄膜使用同一种类的塑料材料，不管是单层还是多层的软包装薄膜，技术上可以被循环使用。商会及食品会员公司希望能够与政府和回收行业合作，改善国内废物收集、分类和回收系统。

就生产者责任延伸而言，我们建议个人、公司、政府和其他组织在防止浪费和积极参与回收工作方面可以发挥作用。生产者责任延伸系统可用于以无害环境的方式管理消费后塑料包装物，并有助于循环经济。

我们相信，工业界、政府和民间社会共同努力解决这一复杂和多方面的问题，将对废物产生更好的成果和影响。

## 化学回收

塑料包装材料难以收集和回收。对于软塑料包装来说，这一挑战更加严峻。我们希望，在可能的情况下，所有软包装可以被收集并进行回收，并将回收材料引导到有价值的新市场应用中，以满足其用途。

目前，化学回收是将大量软塑料包装和其他混合聚乙烯 / 聚丙烯回收为食品级回收成分的切实可行方法。

尽管塑料废物的化学回收是一个新兴行业，我们相信，如果化学回收在可信、道德、安全和环保的条件下开发和运行，它可以在塑料循环经济中发挥重要作用。

目前，食品级化学回收塑料的应用在中国还处于空白区域。我们建议相关部门考虑针对化学回收塑料在食品工业中的应用开展相关调研，商会会员企业愿意支持相关试点项目及调研项目，并提供国外化学再生塑料在用于食品级包装的最佳实践，期待化学再生塑料在中国落地。

## 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，更好地与政府沟通。
- 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。



- Promote relevant educational programs designed to encourage broad societal understanding of the current state of soil and biodiversity, human dependence on natural ecosystem and value of regenerative agriculture, including organizing broad training for young agricultural entrepreneurs about regenerative agriculture to encourage more implementation of regenerative agriculture practices.
- Increase investment in R&D for low carbon agriculture, including seeds for regenerative agriculture, and raw material traceability (to the farm/plantation/fishing vessel) (digital) solutions.

## Plastic Waste

Plastic is an efficient material that enables the food industry to create packaging that meets safety, quality, product protection, and preservation requirements while also enabling the industry to achieve packaging reduction goals. However, transitioning away from plastic to less efficient materials could result in increased food waste and environmental impact. Our corporate members from the food industry recognize the need to contribute to a circular economy where packaging materials are recycled or reused, while minimizing overall environmental impact, including on climate change.

The collection and recycling of plastic packaging remains a significant challenge for the food industry. Inconsistent collection and recycling facilities mean that thin plastic film wrappers often end up in landfills, communities, or oceans, regardless of whether the materials are technically recyclable. To address this challenge, food companies have made their flexible film packaging more innovative and sustainable by using a single type of plastic, either as a single layer or multi-layer, which makes it recycle-ready. AmCham China and our corporate members from the food industry are eager to collaborate with government and the recycling industry to improve waste collection, sorting, and recycling systems in China.

We believe that everyone has a role to play in preventing waste and engaging in recycling, including individuals, companies, governments, and other organizations. Extended producer responsibility systems can be useful in managing post-consumer plastic waste in an environmentally sound manner and contribute to a circular economy.

Ultimately, we believe that industry, government, and civil society must work together to address this complex and multifaceted problem and achieve better outcomes and impacts on waste reduction.

## Chemical Recycling

The collection and recycling of plastic packaging materials, particularly flexible plastic packaging, present a significant

challenge. We strongly advocate for the collection of all flexible packaging for recycling, with the recycled materials directed towards new and valuable market applications that are suitable for their properties. Currently, chemical recycling represents a feasible approach for recycling large volumes of flexible plastic packaging and mixed polyethylene/polypropylene into food-grade recycled content. While still in its early stages, we believe that chemical recycling has the potential to play a crucial role in a circular economy for plastics, provided it is developed and operated in a responsible, ethical, safe, and environmentally sustainable manner. Despite this potential, the use of food-grade chemical recycled plastics in China remains unexplored territory. We urge relevant government agencies to conduct research into the application of chemical recycled plastics in the food industry. Our corporate members at AmCham China are eager to support relevant pilot projects and research and offer international best practices for the use of chemical recycled plastics in food-grade packaging. We eagerly anticipate the approval of chemical recycled plastics for food packaging in China.

## 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 realistic, 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.

### 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。

- 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.

### *To the US government*

- Strengthen exchange 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.



# Healthcare

## Pharmaceutical

### *Intellectual Property Protection System: Innovative Medicine*

Protecting the patent for innovative medicines is crucial due to the significant investment of time, money, and risk involved in the research and development process. To encourage innovation in this area, it is essential to improve the intellectual property protection system for new drugs, considering the unique characteristics and patterns of research and development. The revised “*Patent Law of the People’s Republic of China*,” effective from June 1, 2021, recognizes two key tendencies regarding drug patents: the need to establish a compensation system for the patent term and the addition of an early nine-point resolution mechanism for drug patents. This signals China’s ongoing efforts to optimize the intellectual property protection environment for pharmaceutical innovation. However, despite these positive steps, there is still much work to be done to ensure adequate protection of the property rights of innovative drugs in practice.

First, there is no relevant definition of “innovative drugs” under the patent law system. The second is data protection for innovative biological products. The definition of innovative drugs and modified new drugs of biological products determines the strength of data protection for biological products in China.

#### Recommendations

- **Clarify the Defined Scope of Innovative Medicines:** AmCham recommends that the “*Patent Law Implementation Rules*” should clearly define the scope of innovative medicines. According to their proposal, innovative drugs refer to chemical and biological products that have been approved for listing in China for the first time and have complete safety and effectiveness data as the basis for listing. This definition aligns with the purpose of the patent term extension system, which is to compensate for the time and resources invested in the research and development process of innovative drugs. It is also consistent with the definitions and practices of other countries worldwide.
- **Improve the Data Protection System for Innovative**

**Biological Products:** Regarding biological products, AmCham suggests that they should receive the longest protection period, particularly modified new drugs that have additional clinical advantage data, such as new indications, dosage forms, or routes of administration. This approach would incentivize companies to develop products with clinical advantages and discourage low-level repetition and clustering.

### *Patent Linkage System: An Early Resolution of Patent Dispute*

The pharmaceutical industry is considered a growing industry worldwide, thanks to its increasing reliance on information technology and biotechnology. Although China has established a pharmaceutical intellectual property legal and protection system, the country’s pharmaceutical development model is still less developed than that of developed nations. Joining the World Trade Organization (WTO) has exposed China’s pharmaceutical industry to enormous pressure and challenges, which require innovative solutions to keep pace with global developments.

The development of pharmaceutical innovation is closely related to the strength of intellectual property protection. The “*Fourth Amendment to the Patent Law*” passed in October 2020 came into effect on June 1, 2021, which introduces patent term compensation and early settlement of patent disputes mechanism, etc.

On July 4th, 2021, the National Medical Products Administration (NMPA) and the National Intellectual Property Administration jointly issued the “*Implementation Measures for the Early Resolution Mechanism of Drug Patent Disputes (Trial)*”. The patent linkage system is the backbone of the connection between drug approval and judicature. It involves determining the validity and infringement of drug patents. The approval waiting period should consider the actual situation of drug regulatory review and the objective time of judicial judgment. However, the current implementation measures only set a waiting period of nine months for the registration application of chemical generic drugs, and the waiting period does not apply to biological products.

China has adopted an administrative and judicial “dual-

# 医疗

## 第一部分：药品

### 知识产权保护体系：创新药

创新药研发投入时间长、成本高、风险大，药品专利保护显得非常重要。基于新药研发的特点和规律，完善医药创新相关的知识产权保护政策，能够更好地激励创新主体长期投入新药研发。2021年6月1日始，修改后的《中华人民共和国专利法》（以下简称《新专利法》）正式实施，其中对于药品专利有两个倾向：一是规定了药品专利期限的补偿制度，二是新增药品专利早期九分解决机制。这表明了中国正在不断优化医药创新的知识产权保护环境。然而，在实际情况执行中，对创新药的产权保护仍然有很多的路要走。

一是关于在专利法体系下并没有“新药”的相关定义。二是对于生物制品创新药的数据保护。生物制品创新药和改良型新药的界定决定了中国生物制品数据保护强度。

#### 建议

- **明确创新药品的界定范围：**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。
- **完善对生物制品创新药的数据保护制度：**对生物制品创新药应当提供最长的保护期，尤其通过增加临床优势数据的改良型新药（包括新适应症、新剂型、新给药途径等）来激励企业对于具有临床优势制品的进一步研发，减少扎堆以及低水平重复。

### 知识产权保护体系：专利纠纷早期解决机制“专利链接”

医药行业作为信息技术与生物技术运用最广泛的领域之一，是世界公认的朝阳产业。我国药品知识产权法律体系和保护制度已基本建立起来，但与发达国家相比，我国的医药发展模式还不成熟，加入WTO后医药行业始终面临巨大的压力和挑战。

医药创新发展与知识产权保护的力度密切相关，《新专利法》引入了专利权期限补偿和专利纠纷早期解决机制等条款。

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）》。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，目前专利链接制度下的批准等待期显然没有考虑到纠纷处理的实际周期，导致专利纠纷解决机制有效性降低。

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

track system” for patent infringement/invalidation disputes, and according to the TRIPS agreement and domestic laws, the final adjudication power lies with the court. Research indicates that it takes an average of 23 months from the acceptance of an invalidation request to the rendering of a first-instance judgment and an average of 37 months from the acceptance of an invalidation request to the rendering of a second-instance judgment. In the past six years, the Beijing Intellectual Property Court has taken an average of 28 months to try patent infringement cases involving pharmaceuticals. If either party is not satisfied with the first-instance judgment and files an appeal, it will take at least another four months.

Additionally, the current generic drug review cycle for the drug regulatory department is approximately one to one and a half years. Therefore, the approval waiting period under the current patent linkage system does not consider the actual cycle of dispute resolution, resulting in a reduction in the effectiveness of the patent dispute resolution mechanism.

According to the *Measures for the Implementation of the Early Resolution Mechanism for Drug Patent Disputes (Trial)*, as long as the generic drug applicant asserts the category III patent claim, it may be approved. The patentee cannot take effective measures to protect his patent rights against such declarations and the concept of drug listing in the current implementation measures is not clearly defined, so the patentee cannot ensure the prevention of patent infringement. For a long time, the forced imitation of generic drugs became more common when the basic patent is valid. Article 6 of the *Measures for the Implementation of the Early Resolution Mechanism for Drug Patent Disputes (Trial)* stipulates that “when applying for drug listing authorization, chemical generic drug applicants should make a statement on each drug patent related to the generic drug in comparison with the patent information that has been disclosed on the Chinese listed drug patent information registration platform,” “within 10 working days after the generic drug application is accepted, the generic drug applicant shall notify the listing authorization holder of the corresponding statement and the basis for the statement.” The statement must include the technical solution of the generic drug, a comparison table of the relevant patent claims, and relevant technical materials, but only if it falls outside the scope of the relevant patent right. However, in practice, generic drug companies may fail to promptly notify the listing authorization holder and may not provide the required basis for their statement, leading to significant obstacles in the follow-up process for the listing authorization holder.

The *Implementation Measures for the Early Resolution Mechanism of Drug Patent Disputes (Trial)* stipulates that chemical drug listing authorization holders to register for pharmaceutical active ingredient compound patents, pharmaceutical composition patents containing active ingredients, and pharmaceutical use patents, while biological products can

only register patents for the sequence structure of active ingredients and patents for medical use.

## Recommendations

- **Set up a 24-month Waiting Period for Approval:** More reasonable and practical, and the mechanism should be applied consistently to chemicals and biologicals.
- **Generic Drugs Claiming Category III Claim Should not be Approved Until All Valid Patents of Their Generics Have Expired:** AmCham recommends that the relevant policies (trial implementation measures or follow-up laws and regulations) of the early resolution mechanism of patent disputes specify that the NMPA will only approve the generic drug application for category III claim after all valid patents listed on the Chinese listed drug patent information registration platform have expired.
- **Clarify the Concept of “Listing” in the Measures for the Implementation of the Early Resolution Mechanism for Drug Patent Disputes (Trial):** It is recommended to clarify that the “listing” mentioned in the current “Measures” should include not only direct market sales but also participation in tender bidding, medical insurance negotiations and other promised sales.
- **Clarify the Legal Consequences of Generic Drug Companies Violating the Measures for the Implementation of the Early Resolution Mechanism for Drug Patent Disputes (Trial):** One is to clarify the legal consequences of non-notification, delayed notification, and failure to provide the basis for the declaration by generic drug applicants; the second is to clarify the legal consequences of generic drug companies violating their commitments and listing after directly submitting category III claim.
- **Reduce type restrictions on patent information registration platforms and cancel the differential management of biological products and chemical drugs in the early dispute resolution mechanism:** AmCham suggested that other than process patents, including patents protecting active ingredients, preparations, and related uses of listed drugs, should be included in the types of patents that can be registered on the platform. Under the premise of not exceeding the scope of its claims, the scope of protection of a patent during its extended patent term should be allowed to cover drugs containing the same active ingredient and adaptation symptoms approved by the NMPA.
- **Adopt the European approach proposed in the Proposed Amendments to the Implementing Regulations of the Patent Law (Draft for Comments) published in November 2020, i.e. “Date of Grant of Listing License - Date of Patent Application - 5 years”:** The European patent term extension calculation is straightforward, which can avoid a large administrative burden due to the complicated calculation of various dates and the excessive disputes arising from it.

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。长期以来，在基础专利有效情况下仿制药强行仿制情况将会越来越普遍。

《药品专利纠纷早期解决机制实施办法（试行）》第6条规定，“化学仿制药申请人提交药品上市许可申请时，应当对照已在中国上市药品专利信息登记平台公开的专利信息，针对被仿制药每一件相关的药品专利作出声明”，“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。

《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。

#### 建议（关于优化专利纠纷早期解决机制“专利链接”）

- **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
- **主张专利三类声明的仿制药应该在其仿制的所有有效专利期到期后才能获得批准：**商会建议在专利纠纷早期解决机制的相关政策（试行实施办法或后续法律法规）中明确，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。
- **厘清《药品专利纠纷早期解决机制实施办法（试行）》中关于“上市”的概念：**建议明确目前的《办法》所述的“上市”，应该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。
- **明确仿制药企业违反《药品专利纠纷早期解决机制实施办法（试行）》的法律后果：**一是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；二是明确仿制药企业直接递交三类声明后违反承诺并上市的法律后果。
- **减少专利信息登记平台的专利类型限制，取消在早**

**期纠纷解决机制对生物制品和化学药品进行区别对待：**为了提高早期解决专利纠纷机制的有效性，不应为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。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。

- **采纳2020年11月公开的《专利法实施细则修改建议（征求意见稿）》中提出的欧洲方式，即“上市许可授予日-专利申请日-5年”：**欧洲的专利期延长计算方式简单直接，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。

#### 药品试验数据保护

药品试验数据，指药品上市申请人根据要求所提交的药品上市注册申请文件数据包中与药品有效性相关的非临床和临床试验数据。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）》，针对不同的药品类型给予不同的数据保护期。但是，一方面，作为上位法法律支撑的《药品管理法实施条例》目前尚未修订，另一方面相关监管机制未提及，相关配套规章制度也尚未出台，中国整体的药品实验数据保护体系亟待完善。

#### 建议

- **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：**建议从立法层面启动《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，为数据保护实施办法提供上位法支撑；建议国家药监局继续开展《药品试验数据保护实施办法（暂行）》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。
- **相关主管部门在药品审评审批过程中应实际执行对新型化学成份药品的6年数据保护期：**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）



## Data Protection in Drugs Trials

Drug trial data refers to the non-clinical and clinical trial data related to drug effectiveness in the drug listing registration application data package submitted by the drug listing applicant according to the requirements. The State Drug Administration issued the *Provisional Measures of Implementation for Data Protection in Drug Trials (Draft for Comment)* on April 26, 2018, aiming to give different data protection periods for different types of drugs. However, on one hand, the *Regulations for the implementation of the Drug Administration Law* as the legal support of upper law has not yet been revised; on the other hand, the relevant regulatory mechanism has not been mentioned, and the relevant supporting rules and regulations have not yet been issued. Therefore, China's overall data protection system for drug trials still needs to be improved.

### Recommendations

- Further Improve Drug Data Protection at the Legislative Level of Revision in Laws and Formulation in Detailed Rules:** AmCham proposes that the revision of the *“Regulations for the Implementation of the Drug Administration Law”* should commence at the legislative level. This should include the introduction of relevant provisions such as defining the principles of drug test protection, which would provide crucial legal support for the implementation measures of data protection. Additionally, AmCham recommends that the State Drug Administration continues to develop the *“Measures of Implementation for Data Protection in Drug Trials (Provisional)”* along with its supporting documents to fully execute the relevant provisions of drug trial data protection.
- Relevant Authorities Should Implement a 6-year Data Protection Period for New Chemical Ingredients in the Process of Drug Review and Approval:** To enhance intellectual property protection and incentivize innovation in the medical sector, it is recommended that the relevant authorities implement the 6-year data protection period for new chemical entities specified in Article 35 of the *Regulations for the Implementation of the Drug Administration Law* (2002 edition, i.e. Article 34 of the 2019 edition) during the drug review and approval process. No generic drugs should be approved for listing within 6 years from the date when a drug containing a new chemical ingredient is first approved in China.
- China's Data Protection System for Trials Should be in Line with International Standards to Provide a Longer Data Protection Period for New Drugs Approved for Listing in China:** To align with international standards and promote innovation in the pharmaceutical industry, it is recommended that China implement a trial data protection system similar to that of the US or Europe. The current effective market exclusivity period resulting from China's national data protection system exceeds

six years, indicating the need to consider a longer data protection period for new drugs approved for listing in China. The EU provides an eight-year data exclusivity period and a two-year market exclusivity period for new drugs, with a one-year extension available if a new indication with significant clinical benefit is approved during the data exclusivity period. The US offers an independent data protection period for new clinical explorations, such as new indications, and further extends the data protection period for bio-innovative drugs to 12 years. Thus, China could consider these international examples in developing its own trial data protection system to provide greater support for innovation in the pharmaceutical industry.

- Clarify the Scope of “New Drugs” Eligible for Data Protection System:** It should be clear that new drugs that can enjoy drug data protection refer to “chemical drugs and biological products that have obtained listing approval for the first time in China and have complete and sufficient safety and effectiveness data as the basis for listing.”

## Adjustments on National List of Essential Medicines

Since the *“Implementation Opinions on Establishing a National Essential Medicines System”* was officially promulgated in 2009, the national essential medicines system has been actively and orderly promoted.

So far, China has released three editions of the National Essential Drug List, namely 2009, 2012 and 2018 editions.

### Recommendations

- Prioritize the Basic Drug Demand for Disease Prevention and Treatment in Major Chronic Diseases (Cardiovascular Disease, Diabetes, Severe Mental Disorders, Autoimmune System, etc.) and Tumors (Lung Cancer, Liver Cancer, Gastric Cancer, Esophageal Cancer, Colorectal Cancer, Breast Cancer, etc.).**

## Volume-Based Procurement (VBP) of Medicines

As the State Council have promoted VBP of drugs, and with the organization and guidance of the National Health Insurance Board and other relevant departments, China has successfully carried out seven batches of the national collection up to now, covering a total of 294 kinds of drugs. The recent seventh batch of national collection successfully procured 60 drugs involving 31 therapeutic categories, including not only drugs for common and chronic diseases.

### Recommendations

- Rational Use and Management of Drugs in Hospitals**

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。

- **中国的试验数据保护制度应与国际标准接轨，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：**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衔接。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。【经验参考：欧盟立法规定新药被授予8年的数据独占期以及2年的市场独占期。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。美国则是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。】
- **厘清享受药品数据保护制度的“新药”的范围：**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”。

## 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“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。

### 建议

- **优先考虑重大慢性疾病心血管疾病、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。**

## 药品集中带量采购

党中央、国务院推进药品集中带量采购，在国家医保局等相关部门组织和指导下，截至目前已顺利开展七批国家集采，共覆盖294种药品，最近第七批国家集采成功采购60种药品，涉及31个治疗类别。

### 建议

- **医院药品合理使用和管理要权衡临床疗效和安全性：**药品品种选择不能一刀切，既要保留集采品种，也要保留原研品种，保障药物配比的多样化，并进行科学化管理。
- **药品的价值评价应结合经济性、临床疗效和安全性：**实现最大程度的保证临床利益，又能保证合理用药，才是最规范、合理的举措。
- **特殊级别的药物应该一药一策、科学化管理：**尤其特殊人群（如老人、妇女、儿童及其他特殊用药人群），应根据临床需求和患者用药习惯，保证原研药的使用，充分发挥临床药师作用，加强药物管理的有效性和合理性。
- **增强“三医”联动：**针对医疗改革的各项举措，例如带量采购（VBP）、按疾病诊断相关分组付费（DRG）/按病种分值付费（DIP）等等，这些措施的施行和推广对疾病诊疗、科室管理、科研工作等都提出了更高的要求，因此需加强三医联动，以保障患者合理用药为核心，分层管理，不搞“一刀切”，优化临床药品使用目录。

## 药品支付方式改革

国家医保局自成立以来，连续四次开展医保药品目录准入谈判，将上百种临床价值高的新药纳入目录。但我们也要看到，与发达国家相比，我国创新药品的临床应用存在一定差距。创新药研发难度大、投入高，一旦获得成功，能有效减轻患者病痛并提升生活质量，是当前许多患者的新希望与新诉求。但是由于疾病诊断相关分组（Diagnosis Related Groups, DRG）政策影响，一些高价值的创新国产药品，因为DRG政策可能面临的支付受限的问题。

由于很多医疗机构过去较少使用创新药品，临床治疗费用的相关历史数据较少，目前所测算的相应病组权重系数和支付标准并未充分考虑创新药品的治疗费用，患者在院内使用创新药品时，其实际产生的费用可能会超过相应病组的支付标准，进而导致医疗机构不愿配备使用高价创新药品。中国目前的药品支付制度改革处于试点阶段，因此建议政策制定部门完善相应的配套政策。

**Needs to Balance Clinical Efficacy and Safety:** The choice of drug varieties cannot be one-size-fits-all. It is necessary to retain not only the VBP varieties, but also generic varieties, to ensure the diversification of drug ratios, and to carry out scientific management.

- **The Value Evaluation of Drugs Should take Economy, Clinical Efficacy, and Safety into consideration:** It is the most standardized and reasonable measure to achieve the greatest degree of clinical benefit and rational drug use.
- **Special Grade Drugs Should be Managed Scientifically with “One Drug and One Policy”:** Especially for special populations (such as the elderly, women, children, and other special medication groups), the use of generic drugs should be guaranteed according to clinical needs and patients’ medication habits. The hospital should give full play to the role of clinical pharmacists, and strengthen the temperature, effectiveness, and rationality of drug management.
- **Strengthen the “Three Medical Departments Cooperation” (Medical Care, Medical Insurance, Medicines):** The implementation and promotion of various medical reform measures, such as Value-Based Purchasing (VBP) and payment by Diagnosis Related Groups (DRG) or Diagnostic Intervention Packet (DIP), have raised the bar for disease diagnosis and treatment, departmental management, research, and other areas. As a result, it has become imperative to strengthen the “Three Medical Linkages,” with a particular focus on ensuring the judicious use of medication by patients, implementing tiered management, avoiding a one-size-fits-all approach, and optimizing the clinical drug use catalog.

### *Innovation in Payment Methods of Drugs*

The National Healthcare Security Administration has made significant efforts in negotiating access to the medical insurance drug list, resulting in the inclusion of hundreds of new drugs with high clinical value. However, China still lags behind developed countries in the clinical application of innovative drugs. Developing innovative drugs is a challenging and high-investment endeavor, but it can significantly improve the quality of life for patients. Unfortunately, the Disease Diagnosis Related Groups (DRG) policy may pose payment restrictions for some high-value innovative drugs.

One major issue is that many medical institutions have not commonly used innovative drugs in the past, resulting in limited historical data on clinical treatment costs. As a result, the weight coefficients and payment rate for corresponding disease groups may not fully consider the treatment costs of innovative drugs. Patients who use innovative drugs may face expenses exceeding the payment standard of the corresponding disease group, causing medical institutions to be hesitant in equipping and using high-priced innovative drugs.

Given China’s current drug payment system reform, it is recommended that policy-making departments improve the corresponding supporting policies to ensure the sustainable development of innovative drugs.

### **Recommendations**

- **Explore the payment mode of innovative drug in transition period under “DRG Payment System”:** Negotiating drugs that do not account for the total amount of medical insurance during the transition period can adopt the excluded payment method by item or the supplementary payment method based on the DRG group payment. After 2-3 years accumulation of clinical use data, subdivision of DRG and the weight of disease groups can be dynamically adjusted.
- **Focus on Drug Policy Convergence:** For drugs with high value and urgent clinical needs, representative medical institutions with sufficient sample size can be selected to carry out clinical use-related data calculations, and experts in pharmacy, clinical, pharmaco-economic, medical insurance management, etc. can be organized to discuss and adjust the relative weight and basic rate.

### *“Dual Channel” for NRDL-Listed Medicines*

In May 2021, the National Healthcare Security Administration and the National Health Commission jointly released the “Guiding Opinions on Establishing and Improving the “Dual Channel” Management Mechanism for Negotiating Drugs in National Medical Insurance”. This policy provides negotiation services for patients through two channels: designated medical institutions and designated retail pharmacies, which aims to accelerate drug access in hospitals and expand reimbursement scope for retail pharmacies. The policy has been implemented in more than 10 provinces as of October 2021.

However, regional policy differences may affect the equity of patients in different regions, and the current policies may not fully address the treatment needs of elderly patients with chronic diseases, such as cardiovascular disease or osteoporosis. Therefore, further efforts are needed to improve the effectiveness and equity of the “Dual Channel” Management Mechanism, and ensure that it meets the needs of all patients.

Furthermore, there are also issues with the pricing of drugs on the NRDL list. The prices of some drugs on the list are still relatively high, which affects the affordability of patients and the sustainability of the medical insurance fund. In addition, the pace of updating the NRDL list is relatively slow, which cannot fully reflect the needs of clinical treatment and drug innovation. Finally, the promotion of the clinical application of listed drugs needs to be strengthened, and relevant measures should be taken to promote rational drug use and optimize the use of medical resources.

## 建议

- **探索构建 DRG 付费体系下创新药品设置过渡支付模式，优化相关政策顶层设计：**谈判药品在过渡期内不占医保总额控制，过渡期内可采用 DRG 组外按项目付费除外的支付方式或 DRG 组支付基础上的补充性支付方式，经过 2—3 年的临床使用数据积累，动态调整 DRG 细化分组和病组权重。
- **注重和国谈药品政策衔接：**如果不能给到谈判药品过渡期身份，及时更新创新药品相关病种的 DRG 分组，对于药品价值高，临床急需的药品，可选取样本量充分且具有代表性的医疗机构开展临床使用相关数据测算，组织药学、临床、药物经济学、医保管理等专家共同商讨调整权重费率。

## 医保目录双通道

2021 年 5 月，国家医保局和国家卫健委联合发布了《关于建立完善国家医保谈判药品“双通道”管理制度的指导意见》，通过定点医疗机构和定点零售药店两个渠道为患者提供谈判药品，为谈判药品加速在医院落地以及扩大零售药店的报销范围提供了政策指导。截至 2021 年 10 月，已有超过 10 个省份公布了各自的双渠道政策和 / 或指定的定点零售药房名单。

然而不同地区的政策可能存在差异，会对不同地区之间患者的公平性产生影响；此外，在国家医保药品目录的落地实施方面还存在一些问题：一是“入院难”问题仍然存在。部分医疗机构仍以谈判药品纳入双通道为由延迟或不考虑谈判药品进院，降低了就医效率和用药可及性。二是对医保支付标准的理解和执行不一致。在医保目录实施过程中，不同的机构对医保支付标准的理解和执行存在差异，容易造成医院之间的误解和医保报销的错误。

## 建议

- **优化“双通道”政策的运行机制：**建议制定统一的医保目录执行政策，并将过往的所有谈判药品纳入“双通道”管理；对适用于“双通道”管理的谈判药品按照治疗领域进行分类管理。
- **完善医院的挂号和保障供应：**考虑调整重大慢性门诊统筹的医疗保障政策，如取消需要特定药品上市流程的二级目录；加强对医疗机构药品供应谈判的评估。

- **对医保支付范围的限定进行标准化：**建议国家医保局制定指南并提供培训，以规范医保支付范围限制的设定。如果支付范围与药品标签内容一致，建议删除关于支付范围限制的描述以避免出现错误的解释。

## 药品零售

### (1) 药品零售价格及支付限制

2015 年以后我国逐步建立以市场为主导的药品价格形成机制。国家发改委等七部门在 2015 年发布《关于印发推进药品价格改革意见的通知》，除麻醉药品和第一类精神药品外，取消药品政府定价，完善药品采购机制和发挥医保控费作用，药品价格主要由市场竞争形成。

根据《中共中央、国务院关于深化医疗保障制度改革的意见》（中发〔2020〕5 号）、《国家医疗保障局关于印发〈关于做好当前药品价格管理工作的意见〉的通知》（医保发〔2019〕67 号）、《国家医疗保障局关于全面排查并取消医保不合理限制的通知》（医保函〔2022〕254 号）等文件精神，均强调应充分发挥市场在资源配置中的决定作用，以医保支付结算价为基础，建立以市场为主导的药品价格形成机制。

目前，针对参与集采的医保定点零售药店，全国已有超过 20 个省份发文对零售药店的集采产品价格或医保支付标准有明确的价格限制规定。政策对于中选产品要求以零差价或不高于 15% 的加价进行销售，对于未中选产品价格及支付或无明确要求。

由于公立医疗机构与社会药房处在两种不同的价格成本体系之内，两者之间现阶段不太可能形成公平竞争，部分地区对零售药店集采药品严格的价格管控或无法覆盖药店成本。

## 建议

- **取消特殊地区的医保支付限制，帮助患者更好获得药品：**建议取消此类医药招采环节中不合理的限制，保障参保人多元化用药需求，充分发挥医保支付结算价的引导作用，进一步优化医保基金使用，增强医保服务的便民性，提升公众的获得感。
- **国家进一步明确零售药店药品定价自主性，鼓励通过市场竞争调整零售药品价格，减少对于零售环节**

## Recommendations

- **Optimize the Operation Mechanism of the “Dual Channel” Policy:** It is recommended to formulate a unified policy for the implementation of the NRDL-listed drugs and includes all previously negotiated drugs in the “dual-channel” management; the negotiated drugs applicable to the “dual-channel” management should be classified and managed according to the therapeutic field.
- **Improve Hospital Registration and Guarantee Supply:** Consider adjusting the medical security policy for outpatient coordination of major chronic diseases, such as canceling the secondary catalog that requires specific drug listing procedures; strengthening the evaluation of medical institutions’ drug supply negotiations.
- **Standardization of Payment Limits for Medical Insurance:** It is recommended that the National Medical Insurance Administration formulate guidelines and provide training to standardize the setting of medical insurance payment coverage limits. If the scope of payment is consistent with the contents of the drug label, it is recommended to delete the description of the limitation of the scope of payment to avoid erroneous interpretations.

## Retail Drugs

### (1) Price and Payment Limits of Retail Medicine

Yes, that’s correct. China has been implementing a market-oriented drug pricing mechanism since 2015. The *Notification on Printing and Distributing Opinions of Promotion Drug Price* issued by seven government departments including the National Development and Reform Commission in 2015 called for the cancellation of government pricing of most drugs, except for narcotic drugs and first-class psychotropic drugs. The aim of this policy is to promote drug procurement and encourage market competition to determine drug prices, while also strengthening the role of medical insurance in controlling medical expenses.

According to the *Opinions of the Party Central Committee and the State Council on Deepening the Reform of the Medical Security System*, the *Notice of the National Medical Security Administration on Printing and Distributing the Opinions on Current Drug Price Management* and the *Notice of the National Medical Security Administration on Comprehensive Investigation and Cancellation of Unreasonable Restrictions on Medical Insurance* and other documents, the decisive role of the market in resource allocation should be fully utilized to establish a market-oriented drug price formation mechanism based on the settlement price of medical insurance.

Despite the implementation of a market-oriented drug price formation mechanism in China since 2015, market

access policies such as medical insurance negotiations and value-based pricing continue to have a significant impact on drug prices. Consequently, drug manufacturers are unable to exercise independent pricing. This indicates that the market-oriented mechanism has not fully exerted its influence in regulating drug prices. In addition, some regional policies have imposed restrictions on the sale price of drugs in retail pharmacies.

Currently, over 20 provinces have issued directives that designate retail pharmacies to participate in value-based pricing of medical insurance and impose price limits on such pricing or on the payment rate of medical insurance. The policy mandates that selected products be sold at a zero price difference or at a maximum of 15 percent increase in price. However, there are no clear requirements for the price and payment of unselected products.

Given that public medical institutions and social pharmacies operate under different pricing and cost systems, it is currently difficult to establish a level playing field for fair competition between the two. Moreover, the stringent price controls imposed on retail pharmacies in some regions may not cover the full cost of their operations.

## Recommendations

- **Remove Restrictions on Medical Insurance Payment in Special Areas to Help Patients Better Access Medicines:** It is recommended that restrictions on the inclusion of certain drugs in the insurance drug list be lifted to ensure the provision of diverse drug options for the insured population. This will allow for the full utilization of the medical insurance payment settlement prices as a guiding mechanism, leading to the optimization of medical insurance fund usage and enhancement of convenience in medical insurance services. Ultimately, these measures will improve public access to medical insurance and promote equitable and efficient utilization of medical resources.
- **The State Further Clarifies the Autonomy of Drug Pricing in Retail Pharmacies to Encourage Adjustments in Retail Drug Prices Through Market Competition and Reduces Unnecessary Policy Intervention:** To fully leverage the market’s role in regulating drug prices in retail pharmacies, it is recommended to enhance the price management policies of these pharmacies. At present, there is a lack of clear national-level regulations regarding the pricing of drugs purchased through designated medical insurance pharmacies under VBP and the payment rates for medical insurance. Industry stakeholders’ suggestions on the price increase rate should be taken into consideration while adhering to the principle of “appropriately increasing the price on the basis.”
- **Continue to Improve the Relevant Regulations in Retail Pharmacies such as Price Increase Ratio of**

**不必要的政策干预：**建议发挥市场对零售药店药品价格的调节作用，完善零售药店价格管理政策，在国家层面未对医保定点药店集采产品的定价与医保支付标准给出明确规定，仅给出“允许其中选价格基础上适当加价”的要求前提下，充分将行业对于加价率的建议纳入考虑范围。

- **继续完善零售药店中选药品加价比例等相关规定，审视“医零同价，或允许零售不高于医院售价 15% 的加价进行销售”的科学性：**建议开展相关课题深入研究药店经营成本、集采对药店的影响等因素，并在其基础上结合患者与医保基金接受程度制定定价与支付上限，赋予其广泛的学术支撑。

## (2) 药品网络销售

2022 年 12 月 1 日，由国家市场监督管理总局、国家药品监督管理局制定的《药品网络销售监督管理办法》以及《药品网络销售禁止清单（第一版）》正式实施。《办法》聚焦保障药品质量安全、方便群众用药、完善药品网络销售监督管理制度设计等方面，对药品网络销售管理、第三方平台管理以及各方责任义务等作出规定。这一万众瞩目的政策的出台，标志着药品网络销售在经过最初的禁止期以及后来的试点探索期后，如今正式走入规范监管时代。

在更好的保障了用药安全的同时，也有媒体指出，由于新规改变了消费者的部分用药习惯，也有人表达了些许担忧。

与此同时，网售药的部分配套机制仍存在不足之处，在线处方药医保支付支持与在线处方流转就是两个较为突出的例子。网售处方药医保支付机制的健全性仍有待提升。尽管近年来随着互联网+医疗服务医保支付工作的推进，互联网医疗机构为参保人提供的常见病、慢性病线上复诊服务，各地可依规纳入医保基金支付范围，但互联网零售药店的医保支付力度仍无法与线下零售药店的支付力度相提并论。线下实体医疗机构与线上零售药店的电子处方流转也存在一定程度上的不顺畅。线下医院就诊开方、线上零售药店售药的流程仍未完全打通。

### 建议

- **科学制定对药品网售的监管政策：**在进一步的填补政策空白、严打违规行为的前提下，继续鼓励互联网+医药经营创新，审慎推进对网售处方药监管的

收紧步伐，避免在处方药网络销售的监管政策的推进上一刀切执行。

- **持续完善药品网络销售配套政策：**增强消费者网络购药的便捷性、安全性、经济性。重点完善网售处方药医保报销机制、鼓励增强在线药事服务水平、建立电子处方信息共享平台并顺畅线下与线上处方流转。

## (3) 药品零售企业

中国商务部 2022 年 9 月发布的《2021 年药品流通行业运行统计分析报告》显示，按销售渠道分类，2021 年药品在中国对终端销售中，对医疗机构销售额 13296 亿元，占终端销售额的 70.9%，同比上升 1.5 个百分点；对零售终端和居民零售销售额 5471 亿元，占终端销售额的 29.1%，同比下降 1.5 个百分点。这与包括美国在内的严格实行医药分开的一部分欧美国家正好相反。

2021 年 10 月中国商务部发布的《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%。药品零售行业集中度逐渐提升、医药分离稳步推进是国际趋势。美国早在 18 世纪已实现医药分离，并已实现较高的连锁药店集中度，其排名前十的连锁药店的市场份额占比高于 85%。政策扶持连锁药房、连锁药房集采价格优势、药师人才充足等因素推动美国零售药房行业集中度提升的主要原因。截至目前，中国药品零售行业随在政府指引下将会进一步集中并茁壮成长，但与实现头部连锁企业占绝大多数市场份额的指导目标仍有差距。

### 建议

- **通过政策扶植进一步加强零售药店重点能力建设，并鼓励提升药品零售在社会分工中的定位：**完善政策指导，加快医药分开并引导处方外流，推动药品供应保障朝着专业化、多元化方向发展。
- **完善社会药房药师政策法规，促进社会药房药事服务高质量发展：**推进《中华人民共和国药师法》草案制定，探索社会药店开展药学服务的实施规范、探讨医保支付药店药品调剂费、药学服务费等工作。与企业、社会共同开展执业药师药学服务技能培训。

**Selected Drugs and Review the Scientific Nature of “The Same Price for Hospital and Retail or Allow Retail to Sale with a No Higher than 15 percent of Price Increase”:** To ensure the fairness and effectiveness of the VBP policy, it is crucial to conduct comprehensive research on various factors that can affect the operation of pharmacies, such as operating costs and the impact of VBP. Based on the findings of this research, pricing and payment caps for VBP drugs can be formulated in a manner that is compatible with the financial capacity of medical insurance funds and patient acceptance. This approach will ensure that the VBP policy is supported by sound academic research and is implemented effectively to provide patients with better access to affordable medicines.

## (2) Online Retail Drugs

On December 1, 2022, the State Administration of Market Regulation and National Medical Products Administration officially implemented *Measures for the Supervision and Administration of Online Drug Retail and Prohibited List of Online Drug Retail (First Edition)*. The *Measures* focus on ensuring the quality and safety of drugs, making it easier for the masses to access drugs, and improving the design of the supervision and management system for online drug retail. The newly introduced policy outlines regulations for the management of online drug retail, third-party platform management, and the responsibilities of all parties involved. This long-awaited development signifies the formal initiation of standardized supervision for online drug retail, following the initial ban and subsequent pilot explorations.

The newly implemented regulations have improved medication safety, but some media sources have raised concerns that the changes in regulations could affect the medication habits of some consumers.

However, there are still certain deficiencies in the supporting mechanisms for online drug retail. Notably, there are issues related to medical insurance support for online prescription drugs and online prescription circulation. The reliability of the medical insurance payment mechanism for online sales of prescription drugs needs to be improved, as the medical insurance payment of Internet retail pharmacies still lags behind offline retail pharmacies. Although localities have included online follow-up consultation services provided by internet medical institutions for insured persons into the scope of medical insurance fund payment, the circulation of electronic prescriptions between offline physical medical institutions and online retail pharmacies is not yet fully developed. There is a need to streamline the process of prescribing prescriptions in offline hospitals and selling medicines in online retail pharmacies.

### Recommendations

- **Formulate Regulatory Policies for Online Drug**

**Retail Scientifically:** It is recommended to continue encouraging innovation in the internet + pharmaceutical industry, while also addressing policy gaps and cracking down on any violations. It is important to prudently promote the regulation of online retail of prescription drugs, avoiding a one-size-fits-all approach. By doing so, the development of the industry can be facilitated while ensuring the safety and quality of medication for consumers.

- **Continue to Improve Supporting Policies for Online Drug Retail:** It is recommended to prioritize the enhancement of convenience, safety, and cost-effectiveness in online drug purchases for consumers. Additionally, efforts should be directed towards improving the medical insurance reimbursement mechanism for online sales of prescription drugs, promoting the development of online pharmaceutical services, establishing an electronic prescription information-sharing platform, and streamlining the flow of offline and online prescriptions.

## (3) Retail Pharmacies

In September 2022, the Ministry of Commerce released the *2021 Statistical Analysis Report on the Operation of the Pharmaceutical Circulation Industry*, which shows that in China, drug sales in medical institutions reached RMB 1,329.6 billion in 2021, accounting for 70.9 percent of total sales, a 1.5 percentage point increase compared to the previous year. In contrast, retail and residential sales were RMB 547.1 billion, accounting for 29.1 percent of total sales, and experiencing a year-on-year decrease of 1.5 percent. This differs from the strict separation of medicines in some European and American countries, such as the United States.

In October 2021, the Ministry of Commerce issued a set of guidelines titled *Guiding Opinions on Promoting the High-Quality Development of the Pharmaceutical Distribution Industry during the 14th Five-Year Plan Period* to facilitate the development of the pharmaceutical distribution industry. The guidelines set forth an objective to cultivate and establish 5-10 specialized and diversified drug retail chain enterprises with over RMB 50 billion by 2025. The top 100 drug retail companies are expected to account for more than 65 percent of the total drug retail market, and the drug retail chain rate should approach 70 percent. The gradual increase in the concentration of the pharmaceutical retail industry and the steady advancement of the separation of pharmaceuticals are international trends, and the US achieved this as early as the 18th century, attaining a relatively high concentration of chain pharmacies with the top ten chain pharmacies having a market share of over 85 percent. Policy support for chain pharmacies, chain pharmacy VBP price advantages, and adequate pharmacist talent are the main reasons for the increase in the concentration of the US retail pharmacy industry. While China's pharmaceutical retail industry has thrived and will continue to consolidate under the government's guidance, it still falls short of achieving the

## 非处方药

非处方药（又称 OTC，英文 Over-The-Counter 的缩写）作为医药产业发展的重要组成部分，在公众防病治病、自我保健中发挥重要作用，具有巨大的社会价值和经济学意义。同时《健康中国 2030 战略》也坚持强调“以预防为主”，推动由疾病治疗向健康管理转变。

但是，非处方药作为药品的重要组成部分和类别，在中国没有单独的监管机构和监管资源配置。这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。中国的非处方药品也仍存在品种落后、数量少、对于公众的可及性过低等现状。大量消费者普遍通过各种渠道从境外购买非处方药。

中国从 2000 年 1 月 1 日根据《处方药与非处方药分类管理办法》开始施行处方药与非处方药分类管理，主要对药品分发、销售和使用，即药品上市后的流通环节进行集中管理。然而，对于上市前的注册准入环节，并没有根据非处方药特点设置单独的准入门槛，而是采用与处方药相同的审批流程和技术要求体系。这使非处方药的创新和上市注册面临巨大挑战。非处方药产品无法根据现行的处方药注册路径进行申报，在实质上甚至面临无注册上市路径的困境。区别于处方药临床优势的创新，非处方药的创新应聚焦基于患者需求的定制化创新，包括基于疾病场景的细化、产品特征的改良和生活方式的融合等等。多样性才是 OTC 立项创新的合理标准，比如更方便的剂型、提高适口性等。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的特点，从而导致中国被认为是全球范围内非处方药注册最严格、上市审批时间最长的国家之一。

非处方药产品中存在一类属于“临床价值明确，无法推荐参比制剂的化学药品”。按照仿制药申请路径，此类药品无法按照中国参比制剂遴选的要求选择参比制剂。例如：感冒咳嗽类产品、维生素矿物质类产品等均有长期使用历史或治疗窗很宽等特点文献研究已很充分，在国外都已通过文献研究数据进行疗效和安全性评估。在国家药监局药审中心《关于发布〈化学仿制药参比制剂遴选申请资料要求〉的通告（2020 年第 32 号）》中，明确美国 OTC 专论品种无法推荐参比制剂。对于这类非处方药，无法遴选到明确的参比制剂成为其仿制药申

报的主要障碍，直接影响在全球上市基础良好的 OTC 产品仿制药的开发与上市申请，这是行业面临的共性问题。

### 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。

- **多部委联合出台非处方药行业指导性意见：**建议国务院发布《加快非处方药行业发展实施意见》，多部委联动建立非处方药单独的科学监管和法规体系。
- **加快完善药品分类管理制度：**建议建立基于风险管理、全程管控、科学监管、社会共治的全生命周期非处方药监管体系。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。
- **尽快落实非处方药上市注册的配套文件制定工作：**商会期待中国尽快落实《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，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，建立更合理的、符合非处方药（OTC）特性的、能够正确评价其安全有效性的审评审批标准，例如 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。
- **设立非处方药中特殊品种名单：**针对非处方药中“临床价值明确，无法推荐参比制剂的化学药品”对于这类临床价值明确且应用广泛、参比制剂不明确的非处方药产品，建议推进相关品种名单的正式发布，组织遴选标准制剂，规范技术要求。可发挥优势企业的技术能力，协助建立个药药学研究技术要求，



objective of leading chain enterprises occupying a significant market share.

### Recommendations

- **Further Strengthen the Key Capacity of Retail Pharmacies through Policy Support and Encourage and Improve the Positioning of Drug Retail in the Social Division of Labor:** Improve policy guidance, accelerate the separation of medicines, and guide the outflow of prescriptions, and promote the development of drug supply guarantees in the direction of specialization and diversification.
- **Improve Policies and Regulations for Pharmacists in Social Pharmacies to Promote High-Quality Development of Pharmaceutical Services:** Promote the formulation of the draft of the “*Pharmacist Law of the People’s Republic of China*”, explore the implementation of pharmaceutical services in social pharmacies, and explore the medical insurance payment of drug dispensing fees and pharmaceutical service fees in pharmacies. Carry out training of licensed pharmacists’ pharmaceutical service skills with enterprises and society.

### OTC Medicines

OTC drugs, commonly known as Over-The-Counter drugs, constitute a crucial element in the advancement of the pharmaceutical industry and assume a pivotal role in disease prevention, treatment, and self-care, thus holding immense social and economic significance. Simultaneously, the *Healthy China 2030 Strategy* emphasizes the imperative of “prevention first” and endeavors to facilitate the paradigm shift from disease treatment to health management.

It is worth noting that in China, OTC drugs are not regulated by a separate agency and are not allocated specific regulatory resources. This lack of dedicated oversight for OTC drugs has severely hindered the revision of laws and regulations and the innovation of the regulatory system for this category of drugs. As a result, the innovation and development of OTC drugs in China have stagnated, with limited variety, quantity, and accessibility to the public. This situation is in contrast to the important role that OTC drugs play in disease prevention, treatment, and self-care, as well as their significant social and economic value. Additionally, the *Healthy China 2030 Strategy* emphasizes the importance of prevention, making it all the more crucial to address these regulatory gaps and promote the development of OTC drugs in China.

Since January 1, 2000, China has implemented the *Measures for the Classification of Prescription Drugs and Non-prescription Drugs* to manage drug distribution, sales, and use. However, the current regulatory system lacks a dedicated agency and resource allocation for OTC drugs, which impedes the revision of laws and regulations and the innovation of the

regulatory system for OTC drugs. The absence of a separate access threshold for OTC drugs during the pre-listing registration access round and the adoption of the same approval process and technical requirement system as prescription drugs create challenges for the innovation and market registration of OTC drugs in China. OTC drugs require a different approach to innovation, focusing on customized innovations based on patient needs, refinement based on disease scenarios, improved product features, and integration of lifestyles. Diversity is a reasonable standard for OTC project innovation, such as more convenient dosage forms and improved palatability. However, the strict technical standards and long approval time in China do not align with the safety and effectiveness characteristics of OTC drugs that have been extensively used and verified. Therefore, China is considered to have one of the strictest non-prescription drug registration processes and the longest marketing approval time in the world.

Within the category of OTC drug products, there exists a subset of “chemical drugs with a clear clinical value, for which a Reference Listed Drug (RLD) cannot be recommended.” Due to the requirements for the selection of a Chinese RLD within the generic drug application route, such drugs cannot be designated as reference preparations. This is true for products such as those used to treat colds and coughs, as well as vitamin and mineral supplements. However, given their long-standing history of use and wide therapeutic windows, ample literature research has been conducted, and foreign countries have relied on this literature to evaluate the efficacy and safety of such products.

In the *Notice on Issuing Requirements for Application Materials for Selection of Chemical Generic RLD* (No. 32, 2020), issued by the Center for Drug Evaluation of the National Medical Products Administration, it is made clear that an RLD cannot be recommended for OTC monographs in the United States. For this particular type of OTC drug, the inability to select a clear RLD poses a significant challenge to its generic drug application, thereby directly impacting the development and listing application of OTC products within the global market.

### Recommendations

- To address the issues outlined above, AmCham recommends directing attention towards reforming and innovating the drug review and approval system, while keeping a close eye on international regulatory developments. Specifically, we propose the establishment of a separate legal and scientific regulatory system to cover the entire life cycle of OTC products, achieved through innovative regulatory tools, standards, and methods. This approach will effectively tackle outstanding challenges that hinder the R&D innovation and high-quality development of OTC products, expedite the healthy growth of the OTC industry, and ultimately meet the drug needs of the public. **Multiple ministries and commissions to jointly issue guiding opinions for**

允许以药学研究和质量提升的方式支持仿制药申报或一致性评价申请。

- **鼓励境外原研非处方药产品引进**：商会建议考虑直接批准在境内作为非处方药上市管理。完善境外原研非处方药产品的引进吸收机制，包括：接受境外临床研究数据，减免境内验证性临床要求。对于境外原研非处方药产品进口注册申请，明确如何衔接原产国与国家药监局发布的 OTC 说明书范本中适应症与用法用量等内容。（建议前置于注册申报前）开放关于“OTC 适宜性评价”要求的咨询与讨论。

## 罕见病

2021 年 9 月，全国罕见病学术团体主委联席会议发布《中国罕见病定义研究报告》，提出将“新生儿发病率小于 1/ 万、患病率小于 1/ 万、患病人数小于 14 万的疾病”列入罕见病。十四五规划提出，要全面推进健康中国建设，把保障人民健康放在优先发展的战略位置，坚持预防为主方针，深入实施健康中国行动。罕见病用药保障是健康中国战略不可忽视的重要一环，提升罕见病用药保障水平对“健康中国”建设具有重要意义。

目前，中国尚未对罕见病药物保障进行国家层面的专门战略规划，但已有十余个省市地方探索建立了针对罕见病药物的保障模式。然而整体看来，我国的罕见病防治以及药物保障情况在全国来看还存在一些显著的问题。

首先是我国目前没有形成罕见病防治与罕见病药物保障政策的整体体系。在罕见病政策起步较早的美国、欧盟和日本，普遍重视罕见病防治与保障制度的顶层设计。我国由于没有系统规范的纲领性罕见病法规、政策及相对应的专管协调部门，一方面导致无法完善相应的罕见病综合保障政策，另一方面无法确保各部门对罕见病全链条政策的解读及信息的一致性，在一定程度上也影响了罕见病疾病及药物保障政策与政策执行效率。此外，基于罕见病创新药品研发成本较高、患者人数有限、单价相对高昂等特性，当前并没有单独的药品价值评估方法以及针对罕见病特点动态上调的医保谈判阈值。

### 建议

- **建立多主体参与的高值罕见病药物保障机制**：由中央政府部门主导，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，确保包括将目前仍不在基本医疗保险范围内的超罕见病用药等高值罕见病用药全部纳入救助基金保障范围，基本解决当前超罕见病药物由于单价原因无法纳入基本医保的问题，且保持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。以此为前提，在罕见病保障制度进一步完善前，妥善确保罕见病患者在部分先行先试已纳入保障地区的治疗延续性。

- **健全罕见病防治与保障工作协作与沟通机制**：商会建议，国家层面应尽快推出纲领性罕见病法规及政策，建立起涵盖罕见病诊疗、研发、生产、流通、使用、医疗保障等环节的国家层面的规划，并进一步加强地方部门对罕见病的认识。参考现有的国际经验，商会建议我国由国务院等综合性部门牵头，建立负责罕见病保障的专管机构，明确各部门间职责分工，共同建立健全有效的协同机制，加快目录的动态更新以及罕见病的界定工作，并由专人定期解决和协调出现的问题。【经验参考：美国在《罕见药法案》出台之前，在 FDA 设立下属机构——罕见病药品开发办公室（OOPD），主要负责罕见病药物的认定工作，并与 FDA 另一下属机构药物评估与研究中心（CDER）相互配合完成对罕见病药物的上市审批。】
- **进一步厘清中国罕见病认定标准并动态更新罕见病目录**：罕见病定义及认定标准与后续药品研发、注册、多层次保障等众多准入环节息息相关，将直接影响患者医疗需求满足程度。商会建议国家进一步厘清罕见病定义及认定标准，在现有罕见病目录更新机制下，进一步完善其动态调整机制，明确增加病种的具体规则、依据和程序。同时相关部门应紧密协同，及时调整审评审批制度和财税等政策的优惠范围，鼓励罕见病制药产业发展，降低患者用药成本。
- **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

**the OTC drug industry:** We recommend that the State Council issue *Implementation Opinions on Accelerating the Development of the OTC Industry*, and that several ministries and commissions collaborate to establish a distinct scientific supervision and regulatory system for OTC products. This approach will help to effectively drive the growth and development of the OTC industry while ensuring that adequate regulation is in place to protect public health and safety.

- **Accelerate the improvement of the drug classification management system:** We recommend the establishment of a full life-cycle OTC drug supervision system that relies on risk management, whole-process control, scientific supervision, and social co-governance. To facilitate the healthy growth and development of a high-quality OTC industry that can meet the needs of multi-level medication, we urge the adoption of policies that encourage such development. Moreover, to strengthen scientific and technological support and regulatory capacity building, we recommend establishing a separate regulatory agency and team for OTC products, as well as improving modern scientific regulatory standards, new tools, and new methods. These improvements include establishing OTC registration and regulatory departments within the State Drug Administration, as well as creating OTC review and approval sub-centers or departments.
- **Implement the supporting policies for listing registration of OTC:** AmCham hopes that China will swiftly implement the necessary supporting documents for the listing registration of OTC products under the *Drug Administration Law* and *Measures for the Administration of Drug Registration*, and release relevant regulations and guidelines, such as the *Technical Guidelines for Listing and Registration of OTC Chemical Drugs (Draft for Comment)*. By doing so, we aim to establish more reasonable review and approval standards that accurately reflect the unique characteristics of OTC products and correctly evaluate their safety and effectiveness. For instance, we suggest implementing an OTC registration/transition review system, management measures for label inserts of non-prescription drugs, and regulatory basis and principles for dual-span products designed for different indications or applicable populations. Our goal is to facilitate the high-quality development of OTC products, advance the modernization of the drug regulatory system and regulatory capabilities, and protect and promote public health.
- **Create a List of Special Varieties of OTC Drugs:** We recommend promoting the official release of a list of relevant varieties for over-the-counter drugs that have “clear clinical value and cannot recommend reference preparations.” This initiative would help to organize the selection of standard preparations and standardize technical requirements. It would also allow enterprises with advantageous technical capabilities to make full

use of their expertise, support the establishment of individual pharmaceutical research technical requirements, and enable pharmaceutical research and quality improvement to assist in generic drug declarations or consistency evaluation applications.

- **Encourage the Introduction of Overseas Generic OTC Drug Products:** AmCham recommends considering direct approval for listing management as an OTC drug in China to streamline the approval process. We also suggest improving the introduction and absorption mechanism of overseas generic OTC products by accepting overseas clinical research data and reducing or exempting domestic verification clinical requirements. For the import registration application of overseas generic OTC products, it is important to clarify how to link the indications, usage, and dosage in the OTC package insert template issued by the country of origin and the National Medical Products Administration (NMPA). It is recommended to discuss these requirements for “OTC Suitability Evaluation” in an open consultation and discussion forum.

### Rare Disease Drugs

In September 2021, the National Rare Disease Academic Society released a research report that redefined rare diseases in China as a condition that satisfies at least one of the following three criteria: an incidence among newborns of less than 1/10,000, a prevalence of less than 1/10,000, and an affected population of less than 140,000. The 14th Five-Year Plan aims to comprehensively promote the construction of a healthy China, prioritize the protection of people’s health, adhere to the principle of prevention first, and implement the Healthy China Action in-depth. Therefore, improving the security of rare disease drugs is an integral part of the strategy.

Currently, China has not yet implemented a specific national strategic plan to secure rare disease drugs, although more than ten provinces and cities have explored and established a protection model for it. The United States, the European Union, and Japan, where rare disease policies started earlier, generally attach importance to the top-level design of rare disease prevention and protection systems. In contrast, China’s lack of systematic and standardized programmatic rare disease laws and regulations, and corresponding coordination departments, has hindered the development of corresponding protection policies. Moreover, this lack of coordination affects the interpretation of the whole chain policy of rare diseases by various departments, which hinders the efficiency of policy implementation to some extent.

In addition, innovative rare disease drugs have high R&D costs, limited patient populations, and relatively high unit prices, which require independent drug value evaluation methods and dynamically increased medical insurance negotiation thresholds for rare disease characteristics.

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。【经验参考：天津血友病诊疗医院在各地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：**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。
- **完善高值罕见病药品的“双通道”供应：**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，通过定点医院、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。
- **加强患者及患者组织在罕见病药物全生命周期研发中的参与：**在罕见病领域，通过建立患者网络和倡导团体，赋予患者在研究环节一定的参与度。目前，患者组织在许多方面都发挥极其重要的作用：提高公众意识、收集疾病信息、为受影响的家庭提供支持和信息、维护患者登记和生物库标本收集、鼓励基础研究和资金资助，并与科研高校、研发企业和卫生当局建立沟通网络等。

## 儿童药

近年来，随着二、三胎政策的全面开放，人们越来越多的关注集中在儿童用药安全上。世界卫生组织(WHO)指出，儿童潜在用药错误是成人的三倍或更高不断上升的用药需求和匮乏的儿童用药品，使得当前我国儿童用药过程中存在着很多问题。例如在现阶段，我国未针对儿童疾病进行用药风险高低的分类，同时临床使用和患者对于替代政策存在理解差异，对于医生培训和患者教育仍不足，提供给医患的儿童仿制药信息不足。

## 建议

- **在研发上市生产环节，基于儿童特殊性差异化制定生物等效性评价标准、指南和指导原则，保证治疗疗效一致：**目前已从立法层面制定鼓励儿童药品研发清单和研发指导原则，引导药品说明书修订，对于儿童药给予优先审评审批，专用药数据保护，讨论儿童药市场独占期等方面进行激励。但因尚未建立系统的儿科研究制度，缺少基于儿科人群的特殊性建立差异化的儿童仿制药审评技术标准，儿童用药信息不足，同时缺乏针对仿制药替代前后效果评价的措施。建议基于儿童特殊性差异化制定生物等效性评价标准、指南和指导原则，保证治疗疗效一致。
- **加强儿童药品临床效果评价，提高儿童药品临床应用的合理性：**应当基于风险和等效性进行分类替代，同时加快完善儿童基药目录的构建，建立一套完整的儿童药品风险分类机制，包括疾病分类、药品风险分类和药品等效性分类，基于儿童疾病、药品风险分类和替代策略，对药品进行等效性分类。
- **在儿童基药目录的构建中设置差异化遴选标准：**药品组成上，建议基于儿童特殊的用药需求，根据儿童疾病谱特点，差异化设置儿童基药目录的结构及涵盖的疾病种类。

## 第二部分：医疗器械

### 医疗器械带量采购

自2019年《治理高值医用耗材改革方案》和2021年《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》(以下简称《指导意见》)以来，我国的高值耗材集采政策框架已经基本建立，加上中央政府层面对国内高值耗材持续性集采降价工作的丰富经验，整体模式已经逐渐成熟。总体上来说，国家医保局过往3年组织的冠脉支架、人工关节、脊柱类医用耗材以及大部分省际采购联盟集中带量采购基本遵循了上述指导原则。

但自2022年开始，各地医保局在开展该项工作时，开始明显出现一些指导性原则相悖的情况，部分地方医保局在单次带量采购工作中的品种遴选以及品种范围上出现激进情形。中央指导性政策文件《国务院办公厅关于印发治理高值医用耗材改革方案的通知》(国办发〔2019〕37号)明确指出，“对于临床用量较大、采购金

## Recommendations

- Establish a guarantee mechanism for high-value rare disease drugs with multi-subject participation:** To promote the establishment of funds for rare diseases, the central government department can collaborate with the development of medical insurance, such as basic medical insurance, serious illness insurance, and special disease medical insurance, as well as commercial health insurance. This collaboration can improve the functional positioning and connection mechanism among all parties involved, and establish a clearer multi-level guarantee path for high-value rare disease drugs. Effective tools such as financial or curative effect risk sharing can be used to achieve this goal. This will ensure that all high-value rare disease drugs, including those for ultra-rare diseases that are not currently covered by basic medical insurance, are included in the coverage of the rescue fund. This solves the problem of ultra-rare disease drugs not being included in basic medical insurance due to their high unit price, while also keeping the payment for patients within an acceptable range. Furthermore, social assistance and charities should be encouraged to participate in the development of a multi-level guarantee system for high-value rare disease drugs. This joint effort can improve the benefits of rare disease patients. Before the rare disease insurance system is further improved, it is crucial to ensure the continuity of treatment for patients with rare diseases in some areas that have already been included in the insurance coverage.
- Improve the coordination and communication mechanism in the prevention and protection of rare diseases:** AmCham has recommended that the national government introduce comprehensive rare disease regulations and policies as soon as possible. This would include a national plan covering all aspects of rare disease diagnosis and treatment, research and development, production, distribution, use, and medical security. Additionally, AmCham suggests that the awareness of rare diseases be further strengthened among local departments. To establish an effective coordination mechanism, AmCham recommends that the State Council and other comprehensive departments establish a specific management agency responsible for rare diseases and clarify the division of responsibilities among various departments. This would facilitate the dynamic update of the catalog of rare diseases and ensure that any issues that arise are regularly resolved and coordinated by dedicated personnel.
- China's rare disease identification standards need to be further clarified and the list of rare diseases needs to be dynamically updated:** 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. AmCham recommends that the government further clarify the definition and identification standards of rare diseases, improve its dynamic adjustment mechanism based on the existing rare disease catalog update mechanism, and clarify the specific rules, basis, and procedures for adding new diseases to the current list. Besides, relevant departments should coordinate closely to adjust the review and approval system and the preferential scope of fiscal and taxation policies to encourage the development of the rare disease pharmaceutical industry and reduce drug costs for patients.
- Strengthen the rare disease diagnosis and treatment collaboration network for usage and drug procurement and establish a regional service center:** The member hospitals of the Rare Disease Cooperative Diagnosis and Treatment Network, which was established by the National Health Commission, have the responsibility of providing centralized diagnosis and treatment for rare diseases nationwide and taking on academic leadership tasks. These hospitals should have priority access to rare disease drugs, particularly innovative drugs and drugs that have been included in the priority review list after entering the list of three batches of new drugs urgently needed in clinical practice.
- Recruitment and distribution are inclined to the rare disease drug policy:** In order to improve the availability and accessibility of rare disease drugs, various provinces have implemented preferential policies on drug bidding and procurement platforms, including separate management and priority listing of rare disease drugs. In hospitals, a green channel can be established for the procurement of rare disease drugs with clear therapeutic effects, simplifying the procurement process and improving patient outcomes. Additionally, it is important to examine the impact of value-added tax reform on the circulation of rare disease drugs and consider introducing policies to exempt rare disease drugs from circulation frequency requirements. This will help ensure that rare disease drugs are properly allocated and distributed at multiple levels, including remote areas.
- Improve the "dual-channel" supply of high-value rare disease drugs:** The ultimate goal of high-value rare disease drugs used in Rare Disease Cooperation Network hospitals should be to enhance the quality of medical treatment and avoid evaluating rare disease drugs solely based on indicators such as the proportion of drugs used and average cost per dose. This can be achieved by promoting the rational use of rare disease drugs, strengthening pharmaceutical management, improving pharmaceutical services, and accumulating experience in the use of innovative drugs. Furthermore, improving the "dual-channel" drug supply model is also critical. To achieve this, rare disease drugs should be included in the management scope of special drug use in local medical insurance. This will enable hospitals and pharmacies to adopt a "dual-channel" drug supply model, and designated specialty drug

额较高、临床使用较成熟、多家企业生产的高值医用耗材，按类别探索集中采购”；《国家医疗保障局等八部门联合印发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》（医保发〔2021〕31号）中也明确“高值医用耗材集中带量采购的品种范围，主要为部分临床用量较大、采购金额较高、临床使用较成熟、市场竞争较充分、同质化水平较高的高值医用耗材”。但在一些地方主导的带量采购项目操作中，不仅没有明确的带量采购启动触发机制，将竞争不充分的相对创新的产品纳入带量采购，而且同时开展众多品类耗材的带量采购。

集中带量采购工作具有工作量大、周期长、专业性强、相关部分多的特点。不成熟的集中带量采购项目将会在集采遴选标准、集采价格、创新品种以及特殊品类、集采公平性、沟通机制等方面暴露出局限性，不仅对在中国依法经营的药品和医疗器械跨国企业造成了一定的困扰和负担，而且不利于市场竞争的形成和医疗技术的发展，最终影响相关疾病的治疗效率和社会成本。

#### 建议（关于集采遴选标准）

- **地方医保局应遵循中央指导性意见中提出的集采遴选标准：**科学选择带量采购品种，有的放矢，循序渐进，首先聚焦于个别产品，优先选择临床用量较大、采购金额较高、临床使用较成熟、市场竞争较充分、同质化水平较高的产品。
- **设置临床主流产品中标率保底机制：**建议从细分竞价单元以及入围规则等角度，适当保证一定的中标率，保障临床能够选择多样化的产品。从保障患者治疗质量角度，要保证市场主流产品中标率，否则在临床执行过程中，疾病治疗的质量将难以保障。
- **保留部分非中选产品和新产品的挂网资格：**建议明确采购中标量以外的剩余量，并且采购过程中不应直接排除价格适宜的非主流产品，使采购中选产品能够更大程度满足不同病患的特殊需求。【经验参考：在国家冠脉支架、骨科类以及各省其他高值医用耗材的集中带量采购中，保留了未中选产品的挂网资格。】
- **基于医疗技术和相应耗材产品的发展阶段，制定适宜的带量采购触发机制：**医用耗材的发展推动着医疗技术的发展，耗材产品通常要经过研发导入期、发展期、成熟期和衰退期，医疗技术的发展同样如此。建议从临床用量、采购金额、临床使用是否成熟、

市场竞争是否充分、同质化水平等角度予以评估和设立带量采购触发机制，为产业和技术发展提供稳定预期。

- **开展带量采购的后续综合评估：**通过对过往带量采购经验和实际执行情况进行分析总结，持续优化带量采购标准，提高集采工作的可行性。

#### 建议（关于集采价格）

- **坚持以“量价挂钩，以量换价”原则指导价格联动工作：**建议国家医保局明确价格联动的基本原则，同时指导各地医保局在实施价格联动时，以具体的量来设置具体的限价，避免出现违背核心原则的措施，例如部分地方医保局要求企业拟报价格不得高于全国其它已实施集中带量采购中选的最低价。
- **基于产品差异性设置合理的价格区分：**建议对于功能相近但适用于不同适应症，且产品设计、研发及生产成本均有巨大差异的产品，设置合理的价格区分，并确保竞争的公平性，使最终中选产品能满足临床不同患者的多样性需求。
- **设置合理报价和价格平衡机制，避免极低价预期：**医用耗材带量采购可以有效压低耗材高价格的“虚高”部分，但也应避免贴近工业成本的逐底式竞争。建议国家一方面设置合理的报价限价，给企业明确的预期，另一方面设置合理的价格平衡机制，充分考虑到产品质量、价格、供应等因素，避免最终因过低的价格影响到耗材使用培训、物流配送和伴随服务，进而影响到带量采购的落地执行效果。
- **在各层级的带量采购项目中推行现场报价：**带量采购对企业经营影响巨大，关乎生存。由于网络报价有安全风险，建议在各层级的带量采购项目均采用更加公正、公开、公平的现场报价。

#### 建议（关于创新品种以及特殊品类）

- **明确创新医用耗材不纳入或暂缓纳入集中带量采购范围：**2022年国家医保局发布《国家医疗保障局对十三届全国人大五次会议第4955号建议的答复》，首次明确在集中带量采购之外为创新产品保留市场空间。商会建议中国的医用耗材集采工作按照临床成熟度和医疗技术发展现状，遵照前述原则区分临床成熟产品和创新产品，并且不纳入集中带量采购范围。

pharmacies will be able to receive medical insurance reimbursement through designated hospitals, responsible physicians, and retail pharmacies.

- **Strengthen the participation of patients and patient organizations in the development of rare disease drugs throughout the life cycle:** Empowering patients to participate in research in the field of rare diseases can be achieved by establishing patient networks and advocacy groups. Patient organizations currently play a critical role in raising public awareness, gathering disease-related information, providing support and information to affected families, maintaining patient registries and biobank specimen collections, encouraging basic research, and collaborating with scientific research universities, enterprises, and health authorities to establish communication networks. By fostering these networks and promoting patient engagement, the rare disease community can better support research and development efforts, ultimately improving patient outcomes.

### *Pediatric Medicine*

In recent years, with the full liberalization of the second and third-child policies, there has been an increase in concern about the safety of pediatric medicines. According to the World Health Organization (WHO), potential medication errors in children are three times higher than that of adults. The growing demand for medication and the lack of children's medicines have resulted in various challenges in the current medication process for children in China. For instance, China has yet to classify the high and low risks of drug use for pediatric diseases. Furthermore, there are discrepancies in clinical use and patients' comprehension of alternative policies, inadequate doctor training and patient education, and insufficient information about pediatric generic drugs provided to doctors and patients.

#### Recommendations

- **Listing and production, formulate bioequivalence evaluation standards and guidelines based on children's specific differences to ensure consistent treatment efficacy in the process of R&D:** Currently, the legislative level is encouraging the development of a list and guidelines for pediatric drug development to guide the revision of drug instructions, prioritize the review and approval of pediatric drugs, protect medical use data, and discuss the exclusivity period of the pediatric drug market. However, due to the lack of a systematic pediatric research system, there is a shortage of technical standards for establishing a differentiated pediatric generic drug review based on the unique needs of the pediatric population. In addition, there is insufficient information on pediatric medications, and a lack of measures for evaluating the effects of generic drugs before and after substitution.

- **Improve the Rationality of Clinical Application of Pediatric Medicine by Strengthening the Evaluation of Clinical Effects of It:** To improve the medication process for children, it is necessary to establish a comprehensive pediatric medicine risk classification mechanism based on disease and drug risks, as well as drug equivalence classification. This can be achieved by accelerating the construction of a pediatric medicine list and developing guidelines for pediatric drug development. The evaluation of generic drugs should be based on risk and equivalence, taking into account the particularities of the pediatric population. Currently, there is a lack of technical standards for differentiating pediatric generic drug review, insufficient information on pediatric medications, and a lack of measures for evaluating the effects of generic drugs before and after substitution. Therefore, it is important to establish a systematic pediatric research system to ensure the development of appropriate technical standards and effective evaluation measures.
- **Set differentiated selection criteria in the construction of essential pediatric medicine list:** One suggestion for improving pediatric medication safety is to establish a differentiated evaluation system based on risks and equivalence for class substitution. In addition, it is important to expedite the development of a comprehensive pediatric drug list, which should incorporate a mechanism for classifying pediatric drugs based on disease and risk, as well as alternative strategies. To further address the specific needs of pediatric patients, it is recommended to differentiate the structure of the essential pediatric drug list and the types of diseases covered, taking into account the unique characteristics of the pediatric disease spectrum.

### Medical Devices

#### *Volume-Based Procurement (VBP) of Medical Devices*

Since the introduction of the 2019 *Reform Plan for the Governance of High-value Medical Consumables* and the 2021 *Guiding Opinions on the VBP and Use of High-value Medical Consumables Organized by the State*, China has established a policy framework for VBP of high-value medical consumables, and with the central government's rich experience in continuous VBP and price reduction of domestic high-value consumables, the overall model has gradually matured. In the past three years, the VBP of coronary stents, artificial joints, spinal medical consumables, and most inter-provincial procurement alliances organized by the NHSA has followed the guiding principles laid out above.

However, since the Healthcare Security Administration of various places began carrying out this work in 2022, some situations that clearly contradict the guiding principles have

### 建议（关于集采公平性）

- **设置科学可执行的签约量考核机制：**医用耗材的使用特点决定了临床的实际需求和采购前预计需求肯定存在差异，科学可执行的签约量考核机制也是最终临床使用需求保障和带量采购结果完整落地的重要组成部分。
- **对市场需求大的企业实行“弱淘汰”保护机制：**为了市场供应结构的稳定性以及临床治疗的安全性，建议对于市场需求量大的企业（如市场需求前 80% 的企业，不同类别产品有差异）基于降价的基础上进行弱淘汰或不淘汰。
- **平等对待内、外资企业，保证带量集采的公平竞争：**建议科学优化政府采购进口产品审核指导标准中的主要性能指标，取消此指导标准中采购比例限制，放宽医疗机构采购进口产品的范围，给予外资企业公平竞争的机会，助力中国医疗科技发展。如果参照政府采购进口产品审核指导标准中的主要性能指标且严格执行 100% 采购本国产品，或者某些医疗器械只能采购本国产品，则会出现市场上仅有一至两家企业甚至无企业提供该产品的情况，既有碍于我国人民健康水平的提高和医学的发展，也可能形成市场垄断现象。
- **综合考虑进口与国产一致性的考量标准：**进口与国产论证应在货物、工程和服务符合同等标准下展开。商会建议不仅考虑货物、服务的可获得性和商业条款，同时建议将货物、服务的品质纳入选择本国产业的前提条件，以期促进产业发展并维持一定的质量标准。此外，为避免法律法规政策的落实偏差，以期促进理解一致，建议梳理并明确相关法律法规规范性文件中对于“本国产业”、“本国货物、工程和服务的界定”以及“中国境内生产产品”的定义。

### 建议（关于沟通机制）

- **充分调研和听取临床意见：**具体到临床使用的安全性来说，在带量采购品种遴选和工作方案设计方面，离不开对临床技术发展状况、规律以及临床医务人员的调研工作。有些医用耗材产品，现阶段存在临床发展成熟度差异较大且大部分尚不成熟、单品种采购金额不大、市场竞争不充分这样突出的特点。商会建议在前期品类的遴选基础上，进一步开展更细致和深入的临床调研工作，充分了解不同品

类、不同品种产品在临床使用上的差异性和发展规律性，充分听取临床专家意见，综合考虑产品质量、材质、疗效，对治疗目的、临床功效、产品质量类似的同类医用耗材采购量合并，统一竞价，从而更有针对性地开展分类采购工作，切实保障临床安全使用。

### 医疗器械支付方式改革：DRG/DIP 支付方式改革

2018 年起，我国开始施行以按疾病诊断相关分组（DRG）与按病种分值（DIP）付费为核心的医保住院支付方式改革，以此来促进医疗资源利用的标准化，激励医院和医生主动规范医疗服务行为、控制成本。目前，全国已经有 350 多个统筹地区开启支付方式改革，随着改革的不断深入，建议政策制定部门进一步完善改革中存在的一些局限性，例如目前很多地方基金监管模式依然是基于“按项目付费”的规则来设定，不太符合目前“打包付费”的现状。

#### 建议

- **完善 DRG 下医保基金监管制度：**建议基于支付方式改革，规范知识库、规则库管理，推动医保基金智能监控向高层次发展。建议各地在国家指导下建立完善事前、事中、事后全流程监管模式，促进医保管理的精细化和标准化，保障支付方式改革可持续发展的良性运行。此外，在设定支付方式改革付费下基金监管指标时，还需要考虑医疗质量安全、医疗服务效率、医疗行为监管等具体指标的设定与考核、监管。
- **完善核心要素管理与调整机制：**各地在权重及分值设定中，建议可引入权重调整专家论证机制，了解临床实际诉求、纠偏历史数据。配合医改政策，对于国家医学中心、国家区域医疗中心的相关学科给予相应病组系数加成，推动学科高地发展。
- **设立多主体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。

### 医疗器械支付方式改革：高值创新医疗技术

根据国家医保局已经印发的《DRG/DIP 支付方式改革三年行动计划》，DRG/DIP 分组及病组支付标准设定通常是基于历史数据来进行测。因此，DRG 或 DIP 分组系统中的支付标准不能完全覆盖高值创新医疗技术的



emerged. Some localities have shown radical approaches in the selection and scope of varieties for single VBP works. The central guiding policy document *Notice of the State Council on Printing and Distributing the Reform Plan for Governance of High-value Medical Consumables* clearly states that “for high-value medical consumables with large clinical usage, high purchase amount, mature clinical use, and production by multiple companies, explore centralized procurement by category.”

The *Guiding Opinions on Carrying out the VBP and Use of High-value Medical Consumables by the National Organization*, jointly issued by eight departments including the NHSA, also clarifies that “the range of varieties of high-value medical consumables that are purchased in a centralized manner is mainly some high-value medical consumables that have a large amount of clinical use, a high purchase amount, mature clinical use, sufficient market competition, and a high level of homogeneity.” However, some localities conducting VBP projects lack clear trigger mechanisms, and relatively innovative products with insufficient competition are included in the VBP. Additionally, VBP for many categories of consumables are carried out at the same time.

The VBP is a process with heavy workload, long cycle, high professionalism, and many related parts. Immature VBP projects expose limitations in centralized procurement selection criteria, centralized procurement prices, innovative varieties and special categories, centralized procurement fairness, and communication mechanisms. This not only causes certain troubles and burdens for pharmaceutical and medical device multinational companies operating in China following the law, but it also impedes market competition and the development of medical technology, ultimately affecting the treatment efficiency and social costs of related diseases.

#### Recommendations (Selection criteria of VBP)

- **Local Healthcare Security Administration should follow the selection criteria of VBP proposed in the central guidance:** To ensure the efficient and effective implementation of VBP projects, a systematic and targeted approach is recommended. The first step should be to focus on individual products, prioritizing those with large clinical usage, high purchase amounts, mature clinical use, sufficient market competition, and a high level of homogeneity. This approach will allow for a more scientific and strategic procurement process, ultimately benefiting both patients and healthcare providers.
- **Set up a guaranteed mechanism for the bid-winning rate of mainstream clinical products:** To optimize the bidding process, it is suggested to consider subdividing bidding units and implementing shortlisting rules. This approach can ensure a reasonable bid-winning rate and provide clinics with a diverse range of product choices. It is also crucial to prioritize the quality of patient treatment by ensuring the bid-winning rate of mainstream products in the market. Failing to do so may compro-

mise the quality of disease treatment during clinical implementation.

- **Retain the qualifications of some unselected products and new products:** To improve the effectiveness of procurement, it is advisable to specify the quantity of products to be procured beyond the standard amount. Furthermore, during the procurement process, it is important to not exclude non-mainstream products that have reasonable prices, as these may meet the specific needs of patients with different diseases. This can help ensure that selected products better cater to the unique treatment requirements of patients.
- **Formulate an appropriate trigger mechanism for VBP based on the development stage of medical technology and corresponding consumable products:** The development of medical consumables is closely linked to the advancement of medical technology. Typically, consumable products undergo various stages such as the R&D introduction period, development period, maturity period, and decline period. Similarly, medical technology follows a similar trajectory. Therefore, it is suggested that evaluation of consumables be based on factors such as clinical usage, purchase amount, maturity of clinical use, market competition, and homogeneity level. This will aid in establishing a trigger mechanism for VBP, which in turn will provide a stable and predictable environment for the growth of industrial and technological development.
- **Carry out follow-up comprehensive evaluation of VBP:** through the analysis and summary of past VBP experience and actual implementation, continue to optimize the VBP standards and improve the feasibility of centralized procurement.

#### Recommendations (Price of VBP)

- **Follow the principle of “linking price with quantity and exchanging price with quantity”:** To ensure a fair and reasonable price for high-value medical consumables, it is important for the National Health Security Administration (NHSA) to establish clear guidelines on price linkage. However, it is also necessary to provide specific limits for local health security administrations when implementing price linkage, based on the specific volume of procurement. This will prevent measures that may violate core principles, such as some local administrations requiring that the proposed price by enterprises not exceed the lowest price selected by other centralized procurements across the country. By setting specific limits and avoiding such measures, a balance can be struck between promoting competition and ensuring a fair and stable market for high-value medical consumables.
- **Set reasonable price divisions based on product differences:** It is advisable to establish rational pricing distinctions among products that share similar functions but cater to different indications, while bearing

成本，可能会导致医生惧用甚至拒用高值创新医疗技术，从而对于新上市的创新药品、创新耗材及医疗技术在临床上使用存在一定阻碍。比起 DRG, DIP 由于组数庞大，通过大数据直接呈现新技术的应用情况，由于标准滞后约束医院发展的影响更小，对医院的支付更“友好”。

为避免 DRG 打包支付背景下，医疗机构和医生诱导重症患者、拒用高值创新医疗技术。对于今后如何更好地将高值创新医疗技术纳入医疗器械支付方式改革，国外以及国内各地的高值创新医疗技术的支付政策值得学习与思考。

### 建议

- **设立高值创新医疗技术在 DRG/DIP 分组及病组支付中的短期支付机制：**【经验参考：美国通过新技术附加支付、异常值支付等短期支付机制，对评估结果良好的高值新技术的使用予以补偿，以消减医疗机构可能面临的超支风险。】
- **国家层面出台“创新除外政策”指导意见：**鼓励各地结合本地实际情况开展 DRG 下创新技术 / 药品除外政策探索。在发挥 CHS-DRG 引导规范医疗行为作用的同时，激发新药新技术创新动力。
- **完善新技术纳入 DRG 病组的审核规范和流程标准。**

### 实验室自建检测方法 (LDTs)

实验室自建检测方法，英文缩写 LDTs (laboratory developed tests)，是指医疗机构检验部门自行研发、验证和使用的检测方法，仅在医学检验部门内部使用，不作为商品出售给其他医学检验部门、医院及个人。

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 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。”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。”这说明

国家和地方已经从政策层面对实验室自建检测方法规范发展的关切做出了积极回应。

然而，目前我国临床医学诊疗的实验室自建检测方式，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。中国医学诊断未来的发展需要更多新的检测技术和检测项目的研发和应用。

### 建议

- **鼓励开发应用于临床医学诊疗的实验室自建方式。**
- **相关部门加快建立实验室自建检测方法的管理要求和技术规范。**
- **实现公立与私立检测系统互认：**实验室自建检测方法不应该严格限制在研发机构内部使用，也应该允许提供给其它需要的医疗机构。很多独立检验中心或检测机构根据医院临床需要开发出 LTD 项目，检测机构本身没有患者来源。受仪器设备和技术人员能力及检测需求数量所限，医院实验室很难开发出很多临床需要的 LDT 项目，需要与实力强大的第三方检验中心合作。这样的合作最终将直接惠及中国患者。

### 国产替代

“十三五”规划纲要提出：“开发一批进口依赖度高、临床需求迫切的高端、主流医疗器械和适宜基层的智能化、移动化、网络化产品，推出一批基于国产创新医疗器械产品的应用解决方案”。“十四五”规划纲要要求，坚持自主可控、安全高效，分行业做好供应链战略设计和精准施策，推动全产业链优化升级。

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”。《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。

然而，在该《通知》在落实过程中，有些地方出现

in mind the substantial differences in product design, R&D, and production costs. This approach ensures equitable competition and ensures that the chosen products fulfill the varying needs of different patient groups in clinical settings.

- **Set up a reasonable quotation and price balance mechanism to avoid extremely low-price expectations:** The implementation of VBP for medical consumables has the potential to effectively mitigate the issue of artificially inflated prices. However, care must be taken to avoid a race-to-the-bottom competition that could compromise product quality and negatively impact the provision of ancillary services, such as training and logistics support. To strike a balance between these concerns, it is recommended that the government establish reasonable pricing guidelines that provide clear expectations for manufacturers. Additionally, a pricing equilibrium mechanism that accounts for factors such as product quality, cost, and supply should be put in place to prevent excessively low prices that could undermine the success of VBP.
- **Carry out on-site quotations in VBP projects at all levels:** VBP has a huge impact on business operations and is related to survival. Due to the security risks of online quotations, it is recommended that more open and fair on-site quotations be adopted for mass procurement projects at all levels.

#### Recommendations (Innovative and special categories)

- **Clarify that innovative medical consumables are not included or temporarily included in the scope of VBP:** In 2022, the NHSA responded to Proposal No. 4955 of the Fifth Session of the Thirteenth National People's Congress and outlined the need to reserve market space for innovative medical products outside of procurement. AmCham suggests that China's centralized procurement of medical consumables should differentiate between clinically mature products and innovative products based on the principles mentioned above, taking into consideration the status quo of medical technology development. Innovative products should not be included in the scope of centralized procurement, while mature products can be subject to centralized procurement.

#### Recommendations (Fairness in VBP)

- **Set up a scientific and executable contract quantity assessment mechanism:** The unique nature of medical consumables necessitates a distinction between actual clinical demand and pre-purchase estimated demand. Therefore, it is essential to establish a scientifically sound and feasible mechanism for assessing contract quantities. Such a mechanism is crucial for ensuring the final clinical demand is met and for effectively implementing VBP results.
- **Implement a "weak elimination" protection mech-**

#### anism for companies with high market demand:

To ensure market supply stability and patient safety during clinical treatment, it is recommended that companies with high market demand, such as the top 80 percent of companies with different product types, should undergo weak or no elimination based solely on price reductions.

- **Equal treatment for domestic and foreign-funded enterprises to ensure fair competition:** It is recommended to optimize the main performance indicators in the review standard guidance for government procurement of imported medical products in a scientifically sound manner. Furthermore, it is suggested that the procurement ratio restrictions in this standard guidance be cancelled, and the scope of medical institutions allowed to purchase imported products be relaxed. These measures will enable foreign-funded enterprises to compete fairly and contribute to the development of China's medical technology. If the main performance indicators in the standard guidance for reviewing imported products for government procurement are referred to and 100 percent procurement of domestic products is strictly enforced, or if certain medical devices can only purchase domestic products, there may be only one or two companies, or even none, in the market. This situation not only impedes the improvement of the health of our people and the development of medicine but may also lead to a market monopoly.
- **Comprehensively consider the standards of consistency between import and domestic production:** To ensure fair competition between imported and domestically produced goods, projects, and services, it is recommended to conduct a demonstration that is based on meeting the same standards. In addition to considering the availability and commercial terms of goods and services, AmCham suggests including the quality of goods and services as a prerequisite for selecting domestic industries, to promote industrial development and maintain certain quality standards. To prevent deviations in the implementation of laws, regulations, and policies, and to promote a consistent understanding, it is recommended to sort out and clarify the definitions of "domestic industry," "domestic goods, projects and services," and "products produced in China" in the normative documents of relevant laws and regulations.

#### Recommendations (Communication Mechanisms)

- **Fully research and listen to clinical opinions:** For the purpose of ensuring the safety of clinical use, it is essential to consider the selection of products with quantity procurement and the design of work plans in conjunction with the research work on the development status and laws of clinical technology and clinical medical staff. However, some medical consumable products exhibit significant differences in clinical development maturity, with most of them being immature

了层层加码的现象，直接导致了采购中止，对在华外资医药企业正常经营活动造成直接冲击。我们认为，通过立法在政府采购过程中保护本国产品和企业，借此歧视他国的产品和企业本身是和 WTO《政府采购协定》中的非歧视原则相冲突的。并且，此现象长期以来将会进一步挫伤外资在华的长期投资发展热情。

### 建议

- **按照国际通行规则平等对待本国和跨国企业：**商会呼吁中国加快加入 WTO《政府采购协定》进程，并且遵照“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。
- **统一各部门对药品和医疗器械等特殊产品的审批和认定：**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。

### 慢特病医用护理耗材的可及性

近几十年来，随着疾病模式的转变和人口老龄化趋势，各类癌症及慢性病的年发病及死亡人数呈持续增加趋势。为减轻这些患者的疾病负担，提高居民的预期寿命和生活质量，国务院在《健康中国 2030》、《关于实施健康中国行动的意见》、《中国防治慢性病中长期规划》等文件中多次提出加强门诊慢性病、特殊疾病（以下统称慢特病）的防控和保障。

但是，从患者实际生活中我们仍旧看到一些政策上的短板，较为典型的例子如，目前的医疗保险门诊医保政策、长处方政策中对一些癌症慢性病患者、残疾群体患者在维持生存的延续性治疗中，需获得长期自用的护理医用耗材（如胰岛素注射针头、造口袋、血液透析、导尿相关用品等）得不到基本可及和降低负担的保障，而这些医用耗材在临床价值和安全性方面已经受到临床广泛长期认可和患者真实世界中常年使用，同时医疗机构也会定期对患者使用此类耗材进行指导。

从部分慢特病患者群体处了解，部分省市的医疗机构、医保部门仍然认为门诊医疗保障只包括药品保障，而不包括此类患者自用医用耗材。加之各省市普遍未对

慢特病患者群体自用医用耗材实行长处方政策（有的医疗机构甚至一次门诊只给患者处方一个自用护理耗材），这就造成这部分慢特病病患者在门诊处方自用护理耗材时往往不能获得足够的延续性治疗，只能在其它场所购买，让患者承担了不必要的医疗支出，也加大了患者采购到不合格耗材从而导致病情加重的风险，甚至让部分患者直接放弃办理门诊特殊疾病 / 慢性病政策，让门特慢医保政策的实际保障效果不能得到充分体现。

目前，随着恶性肿瘤、罕见病等重特大疾病得到全社会高度关注，我们比任何时期都更有条件，为广大慢特病患者群体权益提供全方位、全周期的综合保障。

### 建议（关于建立全方位、全周期的慢特病患者综合保障）

- **患者全生命周期保障：**迫切需要全面落实中国整合型医疗卫生服务体系要求，构建全生命周期保障体系，助力患者早日回归正常生活与工作。
- **医用护理耗材临床应用质量保障：**迫切需要严格遵循医疗质量安全监管要求，加快推广临床指南及规范，以“安全有效、满足患者真实需求”作为临床应用的首要原则，普及特 / 慢病群体自用护理耗材正确管理方式。
- **多层次医疗保障：**迫切需要积极响应《关于深化医疗保障制度改革的意见》，大幅降低患者的疾病负担，绝不能让患者“因贫弃疗”造成身体慢性“腐烂”直至死亡，决不能让冲击社会道德底线的事件发生。

### 建议（关于建立健全慢特病群体自用护理耗材防治标准）

- **从被动管理到主动管理：关口前移，提前干预。比如：**针对严重并发症的干预，加速推动正确的临床护理理念，抢抓治疗“黄金期”，最大限度保住患者的生理机能。
- **从住院保障到健康保障：**以人为本，多层保障。以基本医疗保险为主体改善对基本医疗服务、医用耗材的支付，从住院保障延伸到门诊保障，将特 / 慢病群体自用护理耗材等纳入门诊保障类目，并尽可能纳入长处方管理，确保门诊可以开到特 / 慢病群体自用护理耗材并得以享受正常医保待遇。
- **从生存权到发展权保障：**不仅关注患者的生理健康，还要关注心理健康、社会健康；不仅关注院内诊疗

at this stage. In addition, the purchase amount of a single variety is usually small, and market competition is limited. In this context, AmCham recommends that further detailed and in-depth clinical research be conducted to understand the differences and development patterns of different categories and varieties of products in clinical use. It is also crucial to seek input from clinical experts, comprehensively consider product quality, materials, and therapeutic effects, and integrate the procurement of similar medical consumables with similar therapeutic purposes, clinical efficacy, and product quality to bid in a unified manner. By doing so, a more targeted and effective approach can be employed for classified procurement, ultimately ensuring the safety of clinical use.

### ***Innovation in Payment Methods: DRG/DIP***

Since 2018, China has implemented medical insurance hospitalization payment reform based on Diagnosis-Related Grouping (DRG) and Diagnosis-Intervention Packet (DIP) to promote the standardization of medical resource utilization and encourage hospitals and doctors to regulate medical service behaviors and control costs. Currently, over 350 coordinated regions nationwide have initiated payment reform. As the reform deepens, policy-making departments should consider improving limitations in the current reform. For instance, in many places, the fund supervision model is still based on the “pay by project” rule, which does not align with the current “package payment” status quo.

#### **Recommendations**

- **Improve the supervision system of the DRG medical insurance fund:** To further enhance the effectiveness of the payment method reform, it is recommended to promote the development of intelligent monitoring of medical insurance and to standardize the management of both knowledge base and rule base. To achieve this, it is suggested that all localities should establish and improve a whole-process supervision model that covers the pre-, during, and post-payment stages under the guidance of the state. This will help promote the refinement and standardization of medical insurance management, ensuring the sustainable and healthy operation of the payment method reform. Additionally, when setting the fund supervision indicators for the payment method reform, it is recommended to consider specific indicators such as medical quality and safety, medical service efficiency, and medical behavior supervision. By doing so, we can establish a more comprehensive and effective supervision system that not only controls costs but also ensures the provision of high-quality medical services.
- **Improve the management and adjustment mechanism of core elements:** To ensure the accuracy and fairness of the weight and score setting in different regions, it is suggested to introduce an expert argumentation mechanism for weight adjustment, which can take into

account the actual clinical demands and correct any historical data discrepancies. Furthermore, to align with the medical reform policy, it is recommended to provide discipline group coefficient bonuses to relevant disciplines in the National Medical Center and the National Regional Medical Center, in order to promote the development of discipline highlands.

- **Establish a multi-subject evaluation and dispute resolution mechanism:** Establish and Improve the mechanism for controversial issues discovery, solution research, and results feedback.

### ***Innovation in Payment Methods: High-Valued Innovative Consumables***

According to the *Notice of the National Healthcare Security Administration (NHSA) on Printing and Distributing the Three-Year Action Plan for the Reform of DRG/DIP Payment Methods*, the setting of payment standards in the DRG/DIP system is generally based on historical data. As a result, the payment standards may not fully cover the costs of high-value innovative medical technologies, which may lead to doctors being reluctant to use them, thereby hindering the clinical use of new-listed innovative medicines, consumables, and technologies. Compared with DRG, DIP has a larger number of groups and utilizes big data to showcase the application of new technologies. The lag in setting standards has a lesser impact on hospital development, making it more “friendly” to hospital payments.

To avoid medical institutions and doctors from shirking critically ill patients and refusing to use high-value innovative medical technologies under the background of DRG package payment, it is worth studying and considering payment policies for high-value innovative medical technologies abroad and around the country to better incorporate them into the reform of medical device payment methods in the future.

#### **Recommendations**

- **Establish a short-term payment mechanism for high-value innovative medical technology in DRG/DIP and disease group payment:** [Experience reference: the United States compensates the use of high-value new technologies with good evaluation results through short-term payment mechanisms such as new technology additional payment and outlier payment, to reduce the risk of overspending that medical institutions may face.]
- **Guidance on “Innovation Exclusion Policy” issued at the national level:** Encourage all localities to explore innovative technology / drug exclusion policies under the DRG considering local conditions. While giving full play to the role of CHS-DRG in guiding and standardizing medical behaviors, it also stimulates the power of innovation in new drugs and new technologies.

环节，还要关注社会支持系统；不仅要确保患者减少并发症、后遗症发生率，还要扶持他们回归正常的工作和生活。

- **从物资投入到人才投入：**立足于三级康复医疗服务体系，通过康复大学等渠道批量培训护师、护工，将康复医院的健康教育、医学科普延伸到患者家属，重点强化社区、居家等院外康复能力；通过在医学院校增设康复医学专业，将康复医学专业人才充实到地市级、县区级。

## 器械创新定义

医疗器械产品由于其自身的发展规律，存在迭代速度快、改良性强的特点。为了保障医疗器械的安全、有效，鼓励医疗器械的研究与创新，促进医疗器械新技术的推广和应用，推动医疗器械产业发展，原国家食品药品监督管理总局于2014年组织制定了《创新医疗器械特别审批程序（试行）》，新修订的《创新医疗器械特别审查程序》自2018年12月1日起施行。该文件的出台，不仅优化了医疗器械审评审批工作，提高了工作质量和效率，而且也促进了产业的创新发展。

但是，随着国家医保局组织开展的医用耗材集中带量采购工作以及医疗服务价格改革工作的推进，医疗器械相关创新产品在市场准入和临床应用环节遇到了很多的问题，其中最重要的问题是国家医保局层面尚未明确创新医疗器械的定义，导致各地在实际的准入工作中无章可循，或者管理手段单一，并不区分临床成熟产品和创新产品，这些问题对临床的创新应用和产业界的创新研发带来了极大的挑战。因此，在市场准入和临床应用环节，现阶段明确创新医疗器械的定义是一件亟需解决的事项。

### 建议

- **明确界定创新器械的范围：**清晰的创新器械定义可以为各级医保局开展带量采购、医保支付、医疗服务价格改革等监管工作奠定基础。另一方面，也明晰了企业的经营预期和战略规划，为医药产业供给侧高质量发展提供机制保障。

## 大型医用设备配置管理

国家卫生健康委员会国家药品监督管理局于2018年5月22日印发的《关于印发大型医用设备配置与使

用管理办法（试行）的通知》（国卫规划发〔2018〕12号）规范性文件中明确规定：大型医用设备是指使用技术复杂、资金投入量大、运行成本高、对医疗费用影响大且纳入目录管理的大型医疗器械。

此外，大型医用设备的检查费、治疗费一直是医疗机构医技收入的重要来源。这都导致了医疗机构上马大型医用设备的“冲动”。为促进大型医用设备科学配置和合理使用，根据《国务院办公厅关于保留部分非行政许可审批项目的通知》（国办〔2004〕62号），2005年以来，国家对大型医用设备按规划实行配置管理。

### （1）大型医用设备配置管理目录

按照《国务院关于修改〈医疗器械监督管理条例〉的决定》（国务院令 第680号），大型医用设备配置管理目录分为甲、乙两类，分别由中央和省级负责配置管理。

### （2）大型医用设备配置管理体系

中国的大型医用设备配置管理体系逐步完善。1995年7月，原卫生部发布《大型医用设备配置与应用管理暂行办法》（卫生部令 第43号），第一次明确了大型医用设备的概念，对其品类目录采取动态调整的方式，有效地加强了大型医用设备的宏观配置和管理；2004年12月多部委联合下发《大型医用设备配置规划与使用管理办法》（卫规财发〔2004〕474号），该管理办法将大型医用设备管理品目分为甲、乙两类，分别由国务院卫生行政部门和省级卫生行政部门管理，建立了大型医用设备分级分类配置许可制度。截至目前，国家卫生健康委员会研究提出了完善大型医用设备配置使用的“1+5”管理框架，即1个条例《国务院关于修改〈医疗器械监督管理条例〉的决定》（国务院令 第680号）加5个配套制度办法，进一步聚焦了重点，细化了措施，初步建立了事前、事中、事后评估监管模式，有助于加快形成适宜我国现阶段的大型医用设备全生命周期管理体系。

### （3）中国大型医用设备配置与使用现状

中国甲类大型医用设备主要包括重离子放射治疗系统、质子放射治疗系统、正电子发射型磁共振成像系统（PET/MR）和高端放射治疗类设备4类。

中国乙类大型医用设备主要包括X线正电子发射断层扫描仪（PET/CT，含PET）、内窥镜手术器械控制系

- **Improve the review norms and process standards for incorporating new technologies into DRG disease groups.**

### **Laboratory Developed Test (LDTs)**

Laboratory Developed Tests (LDTs) are diagnostic tests developed, validated, and used by medical institution laboratories for internal use only. These tests are not sold as commercial products to other medical institutions, hospitals, or individuals. The revised *Regulations on the Supervision and Administration of Medical Devices* issued by the State Council on March 18, 2021, has drawn significant attention in the industry. Article 53 of the regulation proposes that qualified medical institutions may develop their own in vitro diagnostic reagents for internal use based on clinical needs, under the guidance of licensed physicians. The State Council has also issued an opinion on supporting Pudong New Area's high-level reform and opening up to build a leading area for socialist modernization, allowing qualified medical institutions to develop their in-vitro diagnostic reagents within the pilot scope. The policy responses from the state and local governments reflect their positive attitudes towards the development of laboratory self-built testing methods.

However, in terms of quality and variety, the LDTs of clinical medical diagnosis and treatment in China lag far behind developed countries such as the United States. There are only a few clinical medical diagnostic laboratories in China, mostly used for clinical research, which cannot meet the increasing demand for personalized and precise clinical diagnosis and treatment. Therefore, the future development of Chinese medical diagnosis requires the development and application of more advanced testing technologies and items.

#### **Recommendations**

- **Encourage the development of LDTs applied to clinical medical diagnosis and treatment.**
- **Speed up the establishment of management requirements and technical specifications for LDTs in relevant departments.**
- **Realize mutual recognition of public and private testing systems:** Expanding the use of Laboratory Developed Tests (LDTs) beyond research and development institutions could bring significant benefits to the wider medical community. Currently, many independent testing centers or institutions have developed LDTs tailored to the clinical needs of hospitals, but are restricted from providing these tests to other medical institutions due to regulatory limitations. In reality, testing centers themselves have no patient sources and are limited by the availability of instruments, technical personnel, and the number of testing needs, making it challenging for hospital laboratories to develop a wide range of LDT items for clinical use. As such, collaboration between powerful third-party testing centers

and hospitals could help address these limitations and ultimately benefit Chinese patients.

### **Domestic Substitution**

The 13th Five-Year Plan outlines the development of high-end and mainstream medical devices that are currently imported and in urgent clinical need, as well as the launch of application solutions for domestic innovative medical device products that are intelligent, mobile, and networked, suitable for grassroots use. The 14th Five-Year Plan emphasizes the need for independent controllability, safety, and efficiency in medical device production, and encourages the optimization and upgrading of the entire industrial chain through precise policy implementation and supply chain strategic design.

AmCham has observed that various departments and regions have been following corresponding policies to support the national plan's top-level design, particularly in government procurement and domestic substitution of imports. The *Notice on Printing and Distributing the Guiding Standards for Reviewing Imported Products in Government Procurement* (2021 Edition) issued by the Ministry of Finance and the Ministry of Industry and Information Technology in May 2021 has had the most extensive impact, with many medical products falling under its scope. Most of the items in the *Notice* suggest "all purchases of domestic products" for government procurement, including high-end medical equipment such as gene sequencers, imaging, and nuclear medicine.

However, the implementation of the *Notice* has led to some layers of overweight in certain areas, resulting in the suspension of procurement and a direct impact on the normal business activities of foreign-funded pharmaceutical companies in China. We believe that the legislative protection of domestic products and enterprises during government procurement, thereby discriminating against products and enterprises of other countries, conflicts with the principle of non-discrimination in the WTO Agreement on Government Procurement. This phenomenon may further dampen the enthusiasm of foreign capital for long-term investment and development in China.

#### **Recommendations**

- **Treat national and multinational companies equally in accordance with internationally accepted rules:** AmCham is urging China to accelerate its accession process to the World Trade Organization's "Government Procurement Agreement." This would align with the people-oriented development concept of "Healthy China 2030" and ensure equal treatment for both imported and domestic products of foreign-funded enterprises. It would also facilitate the smooth introduction of innovative medical technologies and products to meet the increasing demands of scientific research and clinical practice. By promoting fair competition

统（手术机器人）、64排及以上X线计算机断层扫描仪（64排及以上CT）、1.5T及以上磁共振成像系统（1.5T及以上MR）、直线加速器（含X刀）和伽马射线立体定向放射治疗系统6类。

当前，中国大型医用设备的配置水平与欧美、日本等发达国家相比仍存在明显差距。然而，大型医用设备作为重要的卫生资源，其配置水平应当与经济社会发展相适应，因此未来制定合理的长期配置规划势在必行。

### 建议

- **制定科学、合理的大型医用设备的长期配置规划：**考虑到中国目前的大型医用设备的配置水平与欧美、日本等发达国家相比仍存在明显差距，建议制定更为科学、合理的长期配置规划，分阶段逐步提高设备总体配置水平，在设备数量增加的同时，更加注重设备质量的提升。
- **定期评估大型医用设备的使用情况：**卫生主管部门应对大型医用设备的使用情况进行及时准确的评估和反馈，对设备使用过程中出现的违规和不合理使用现象进行及时的纠正，并优化相应政策。

## 第三部分：医疗服务

### 外籍医疗专家引进

近年，中国吸引外商投资增长的态势一直在持续，在《中华人民共和国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》多次提到在医疗与医疗科技发展方面的发展目标，包括加快建立现代医院管理制度、支持社会办医、发展高端医疗设备、建设具有国际影响力的高水平医疗中心等。引进国际医疗临床专家、医疗科技人才，管理人才等可促进国内医疗行业的中长期规划与发展。目前，我国在引进外籍专家的政策制度等方面日趋完善，入境签证的申请办理流程也在逐步便捷，但在引进海外临床专业专家的实践中还存有一些挑战。

### 建议

- **希望临床专家能够以医生的身份入境，入境后发放与医生身份相符工作居留许可：**根据目前在引进国际医疗专家的实践中，由于外籍专家无法在还在直

接获得在我国的短期行医许可，因此医疗机构以医疗相关管理岗位的身份为外籍专家发放邀请函申请入境，在入境后以管理岗位身份首先获得工作居留许可。医疗机构再为专家申请在华短期行医许可证导致实际工作内容与工作许可中的身份不相符。

- **提高发放行医许可的认证门槛，确保国际临床专家的技术能力和质量实实在在的为国内临床医疗发展添砖加瓦：**目前进入国内行医的外国专家年资层次不齐，技能水平不等。建议邀请国家卫生健康委员会、在某些专科领域突出的三级公立医院专科领域突出的专家、私立医疗资深管理者等专业人士共同参与和制定更符合国内公立或社会办医医疗机构需求的、可助力帮助国内医疗向好发展的外籍医生华短期行医许可证标准。
- **开放在海外申请在华短期行医许可证，使得国际专家入境后可立即参与临床活动。这也会大大减轻海外专家携带大量原件入境的负担，规避在国际运输快递中丢失原件的风险：**为了让外籍专家入境后在最快的时间内开展临床工作，聘请方会建议专家提前将专业证明、学历证明原件从海外快递到国内，由工作人员签收提前开始办理申请。但此操作存有原件丢失的风险，事实上在过往的实际操作中发生过原件丢失的情况。建议建立健全通过与海外使领馆等机构的有效配合的机制，从而实现在海外，即可申请在华行医许可证的便利政策。
- **实现国际专家在国内多点执业，可跨省开展专业服务或业务交流等：**国际临床专家入境后，应可以在多个领域多家医院提供服务与支持，使其在签证有效期或者工作证有效期内最大化发挥其最大价值，为国内临床技术、医疗管理等领域发挥作用。因此，建议在医疗领域，开放对外籍医生同样实施多点执业政策。这需要出入境管理局、劳动部门、卫生健康委员会等多行政部门的协同合作来实现。

### 外资医院税收

外资营利性医疗机构作为公立医疗机构的有效补充，为中国患者提供无异于中国公立医院的专业医疗服务，且通过其自身优势引入中国的先进医疗仪器设备、国际认可的诊疗方案以及舒适人性化的就医环境为中国患者提供丰富的医疗资源。



and non-discriminatory policies, China can attract more foreign investment and encourage long-term growth and development in the country.

- **Unify the approval and identification of special products such as drugs and medical devices by various departments:** for special products, such as drugs and medical devices, the Food and Drug Administration has identified imported products and domestic products through approval. Judgment should be made according to the approval documents issued by the Food and Drug Administration to avoid potential conflicts in the determination.

### *Accessibility of Medical Care Consumables for Chronic Diseases*

In recent decades, there has been an increase in the incidence and mortality rates of various cancers and chronic diseases due to changes in disease patterns and population aging. To alleviate the disease burden of patients and enhance the quality of life, the State Council has issued several policy documents, including Healthy China 2030, *Opinions on Implementing the Healthy China Action*, and “China’s long-term plan for the prevention and treatment of chronic diseases,” emphasizing the need to strengthen the prevention, control, and protection of chronic diseases, including outpatient chronic diseases and special diseases.

However, there are still some policy shortcomings that impact the lives of patients. For instance, current outpatient medical insurance policies and long-term prescription policies do not guarantee access to long-term self-use nursing medical consumables, such as insulin injection needles, ostomy bags, hemodialysis, catheterization related supplies, and others, which are essential for the survival maintenance and clinical care of some cancer patients with chronic diseases and disabled patients. These consumables have clinical value and have been widely and long-term clinically recognized and used by patients. Furthermore, medical institutions regularly guide patients on the use of such consumables.

However, some medical institutions and medical insurance departments in some provinces and cities do not consider self-use medical consumables as part of outpatient medical insurance policies. Additionally, long-term prescription policies for self-use medical consumables for patients with chronic diseases are not implemented across all provinces and cities, and patients are often prescribed only one nursing consumable for self-use per outpatient visit, leading to inadequate access to continuous treatment. As a result, patients may give up on the outpatient special disease/chronic disease policy, and the actual protection effect of the special slow medical insurance policy cannot be fully reflected.

As society becomes more aware of major diseases such as malignant tumors and rare diseases, China has a unique opportunity to provide comprehensive protection for

the rights and interests of patients with chronic diseases, including outpatient chronic diseases and special diseases.

### Recommendations

- **Full life cycle protection for patients:** It is urgent to fully implement the requirements of China’s integrated medical and health service system, build a full life cycle protection system, and help patients return to normal life and work as soon as possible.
- **Quality assurance of clinical application of medical nursing consumables:** Ensuring medical quality and safety is of utmost importance and it is imperative to strictly adhere to regulatory requirements. It is also crucial to expedite the implementation of clinical guidelines and standards and prioritize the principle of “safety, effectiveness, and meeting patients’ actual needs” in the application of clinical technology. Moreover, promoting proper management of self-use nursing consumables for individuals with chronic and special diseases is essential to improve patient outcomes.
- **Multi-level medical security:** It is urgent to actively respond to the *Opinions on Deepening the Reform of the Medical Security System* to greatly reduce the disease burden of patients. Patients must not be allowed to “abandon treatment due to poverty” to cause chronic “rot” until death, and events that impact the bottom line of social morality must not occur.
- **From passive management to active management of disease:** Intervene in advance. For example: for the intervention of severe complications, accelerate the promotion of correct clinical nursing concepts, seize the “golden period” of treatment, and preserve the physiological functions of patients to the greatest extent.
- **From hospital coverage to health coverage:** people-oriented, multi-layered insurance. Improve the payment of basic medical services and medical consumables with basic medical insurance as the main body, extend from inpatient protection to outpatient protection, include special/chronic disease groups’ self-use nursing consumables into the outpatient protection category, and include long-term prescription management as much as possible to ensure outpatient clinics can provide special/chronic disease groups with self-use nursing consumables and enjoy normal medical insurance treatment.
- **From the protection of the right to survival to the right to development:** not only pay attention to the physical health of patients, but also pay attention to mental health and social health; not only pay attention to the diagnosis and treatment in the hospital, but also pay attention to the social support system; not only to ensure that patients reduce the incidence of complications and sequelae, It is also necessary to support them to return to normal work and life.
- **From material investment to talent investment:**

限制合资医疗机构开设分支机构以及同一品牌经营范围内所有医疗机构需独立纳税的现状使得盈利周期相较于多数行业更长的外资医疗服务机构财务回报不佳，企业所得税税负亦不足以真实体现医疗机构实际经营成果。同时，中国企业所得税税制尚未采用国际上多数国家通行的同一实际控制人范围内多家公司合并纳税的方式，医疗服务行业作为民生行业亦未列入现行中国企业所得税法享受优惠税率（低于标准税率 25%）的行业名目，一定程度上弱化了外资医疗机构的现金流表现，冲击了外资共建中国卫生健康领域的意愿和热情。

投资医疗机构前期投入大、经营期资本性支出频发，以同一品牌运营的集团内医疗机构间占用资金产生的利息收入却因实际控制方位于境外的外资属性不能适用中国增值税法有关企业集团内利息收入免征增值税的政策。外资企业集团不属于增值税法上企业集团的认定，进一步加剧了外资医疗机构在华税务负担。

### 建议

- **营利性医疗机构其提供的医疗服务应被明确纳入增值税免税范围。**
- **地方政府应针对医疗卫生领域的特点给予资金扶持或财政支持：**医疗卫生特别是医院 / 医疗机构属于中国政府公布的鼓励类行业，关系民生，应该引导更多优质资源向医疗卫生领域倾斜。人才共建方面，推进外籍个人津补贴相关的个人所得税优惠政策继续延期必将有利于外资医疗机构在中国的长足发展。

## 公共卫生应急管理

中国美国商会建议中国政府在更新中国公共卫生应急响应和管理体系时充分利用私营部门，将私立医院纳入国家应对体系有助于政府充分利用私营部门的专业知识、专业技能和资源。私营医疗保健部门可以在提供技术支持、供应和设施方面发挥补充作用。

在新冠疫情期间，由于药品和设备被优先提供给公立医院，一些私立医院和诊所无法提供其全部服务能力。部分私立医院甚至被迫关闭，给这些私立医院和诊所造成巨大的经济损失。

为构建高效的公共卫生应急体系，中国美国商会建议中国政府将私立和公立医疗服务提供者视为同一体系的合作伙伴，使民营医院能够继续为患者服务，并在缓

解公共医疗资源紧张方面发挥积极作用。值得注意的是，在香港特别行政区，有一些与私立医院建立公私合作伙伴关系的举措有助于减轻公共部门的负担。随着中国进入下一个规划阶段，应该认真探索并考虑规模。

## 医疗服务目录

医疗服务价格是医疗服务价值的体现，它不仅是医疗机构向患者实施收费的依据，同时也是医疗服务相关临床技术实现市场准入的重要载体之一，直接影响着医疗机构、医务人员和医疗技术提供方的市场供给行为，对医疗费用控制、资源配置、医疗质量、效率公平等具有政策引导作用，因此医疗服务价格改革是我国政府近年来医药卫生体制改革的重要工作之一，同时也是“医药、医疗、医保”联动改革的重要内容。

截至目前，国家医保局正在按照服务产出为导向、医疗人力资源消耗为基础、技术劳务与物耗分开为原则，分类整合现行价格项目。同时，各试点城市在国家医保局的指导下推进医疗服务价格改革的工作。然而，基于历史情况，全国医疗服务价格项目仍然存在一些挑战。

首先，由于国家医保局层面尚未出台全国性医疗服务价格项目目录，各地的医疗服务价格项目目录并不统一，各统筹地区结合各自经济发展水平、临床诊疗水平和疾病状况等因素制定了现行的目录供医疗机构向患者收费。

其次，现阶段为了更好地衔接医疗服务价格改革工作，国家医疗保障局于 2021 年 12 月向各省、自治区、直辖市和新疆建设兵团下发《国家医疗保障局办公室关于建立医疗服务价格重要事项报告制度的通知》，要求各地在“实施医疗服务调价触发评估、确定调价总量、制定或调整医疗服务价格、新增医疗服务价格项目、重点工作任务的落实进展、重要的医疗服务价格政策调整，以及其他医疗服务价格重要事项”时实行国家、省、地市分级报告程序，省级医保局重要事项向国家医保局报告。该通知要求实施一年以来，对各省医保局医疗服务价格管理工作，特别是新增医疗服务价格项目工作，造成了一定的影响。一是各省对重要事项的界定范围不统一、报告程序不公开，出现“凡事皆报告”的情况；二是报告的审核周期不明确、审核进度不公开，各省的价格项目新增工作相比以往，普遍延长了近半年的审批时间，实质性地影响了医疗机构相关诊疗服务工作的开展，

Based on the level-three rehabilitation medical services system, train nurses in batches through rehabilitation universities and other channels, and extend health education and medical science popularization in rehabilitation hospitals to patients' families; focusing on strengthening communities, homes and other out-of-hospital rehabilitation ability; by adding rehabilitation majors in medical colleges, the rehabilitation medicine professionals will be enriched at the prefecture, city and county levels.

### **Definition of Innovative Medical Devices**

Medical devices have unique characteristics of fast iteration and continuous improvement. To ensure the safety and effectiveness of medical devices and encourage research and innovation, the former State Food and Drug Administration established the *Special Approval Procedure for Innovative Medical Devices (Trial)* in 2014. Recently, the revised *Special Examination Procedure for Innovative Medical Devices* has been implemented since December 1, 2018, which optimizes the review and approval process, improves the quality and efficiency of work, and promotes industry innovation.

However, despite these efforts, innovative medical devices have encountered obstacles in market access and clinical application due to the implementation of medical consumables VBP by the NHSA and the reform of medical service pricing. One of the most critical problems is the lack of a clear definition of innovative medical devices at the NHSA level, resulting in inconsistent management methods across different regions and no clear rules to follow. This situation poses significant challenges to innovative clinical applications and research and development in the industry. Therefore, it is crucial to clarify the definition of innovative medical devices and establish consistent standards for market access and clinical application.

### **Recommendations**

- **Clearly define the scope of innovative devices:** A clear definition of innovative devices can lay the foundation for medical security administration at all levels to carry out regulatory work such as volumed-based purchases, medical insurance payments, and medical service price reforms. On the other hand, it also clarifies the company's business expectations and strategic planning, providing a mechanism guarantee for the high-quality development of the supply side of the pharmaceutical industry.

### **Configuration Management for Large-scale Medical Devices**

The National Health Commission and the State Drug Administration jointly issued the *Management Measures for the Configuration and Use of Large-scale Medical Equipment (Trial)* on May 22, 2018, which clearly defined large-scale

medical equipment as those that use complex technology, require significant capital investment and operating costs, have a significant impact on medical expenses, and are included in catalog management.

In the past, inspection and treatment fees for large medical equipment have been an important source of medical technology income for medical institutions, leading to a rush to acquire such equipment. To promote the scientific allocation and rational use of large-scale medical equipment, the state has implemented a plan-based allocation system since 2005, in accordance with the *Notice of the General Office of the State Council on Retaining Some Non-Administrative Licensing and Approval Items* (Guo Ban [2004] No. 62).

#### **(1) Large-scale medical devices configuration management catalogue**

In accordance with the *Decision of the State Council on Amending the Regulations on the Supervision and Administration of Medical Devices* (Decree No. 680 of the State Council), the large-scale medical equipment configuration management catalog is divided into two categories, A and B, which are managed by the central and provincial governments respectively.

#### **(2) Large-scale medical devices configuration management system**

China's large-scale medical equipment configuration management system is gradually improving. In July 1995, the former Ministry of Health issued the *Interim Measures for the Configuration and Application Management of Large Medical Equipment* (Order No. 43 of the Ministry of Health), which clarified the concept of large medical equipment for the first time and adopted a dynamic adjustment method for its grouping catalog, which effectively strengthened the macro allocation and management of large-scale medical equipment. In December 2004, multiple ministries and commissions jointly issued the *Management Measures for the Configuration, Planning and Use of Large-scale Medical Equipment*. The *Measures* divides the large-scale medical equipment management items into two categories, A and B, which are managed by the health administrative department of the State Council and the provincial health administrative department respectively and establishes a classification and allocation licensing system for large-scale medical equipment. Up to now, the National Health Commission has researched and proposed a "1+5" management framework to improve the configuration and use of large medical equipment, that is, a regulation *Decision of the State Council on Amending the Regulations on the Supervision and Administration of Medical Devices* (Decree No. 680 of the State Council) adding 5 supporting systems and measures has further focused on key points, refined measures, and preliminarily established a supervision model of pre-, in-process, and post-event evaluation, which will help accelerate the formation of a large-scale medical equipment life cycle management system suitable for current China.

同时也大大滞后了相关临床新技术的市场准入工作，尤其是在最近的感染新冠病毒的危重患者救治方面，一些关键技术也因此未能及时在临床实现应用。

针对医疗服务价格重要事项报告制度导致的审批效率低下这一情况，2022年7月，国家医疗保障局在《国家医疗保障局办公室关于进一步做好医疗服务价格管理工作的通知》（医保办发〔2022〕16号）中也提出，“要加快新增医疗服务价格项目受理审核进度，切实加强创新质量把关，旗帜鲜明支持医疗技术创新发展。对优化重大疾病诊疗方案或填补诊疗空白的重大创新项目，开辟绿色通道。对以新设备新耗材成本为主、价格预期较高的价格项目，做好创新性、经济性评价”，但目前从各地的实际情况来看，新增医疗服务价格项目的审核仍然没有得到有效改善。

最后，从医疗服务自身发展的角度，医疗服务的数字化程度越来越高，创新数字化医疗技术的立项和定价也应该得到更多的重视。中国正在成为全球最具创新活力、新产品新技术开发与应用最广泛的市场之一。在医疗科技领域，手术机器人、人工智能、人机交互、5G、大数据等前沿技术在创新数字化智能解决方案上的应用，为临床治疗精准化、个性化提供了有力的技术支持。随着《“十四五”全民医疗保障规划》“促进医疗技术创新发展和临床应用”的落地实施，创新数字化医疗技术将不断为医生提供更好更多的治疗方法和手段选择，为患者提供更精准更个性化的临床服务，积极服务健康中国战略目标的实现。

## 建议

- **技耗分离**：“技耗分离”改革措施能更好地兼顾技术创新、临床诊疗与价格管理的良性发展，更有利于医疗服务价格项目体现医务人员的技术劳务价值。商会建议，在新增、修订和完善医疗服务价格项目时，以服务患者需求为第一要务，以临床价值为导向，强调“疗效优先、价格合理”，优先将临床应用优势、经济学价值显著的耗材进行技耗分离，同时保障患者的自主选择权。
- **提高新增 / 修订医疗服务项目申请和审批效**：商会建议国家医疗部门在现行的重要事项报告制度下简化对地方新增 / 修订医疗服务项目的申报流程，加快受理审核进度，促进医疗技术创新发展和临床应

用。对资源消耗大、价格预期高的新增价格项目，开展创新性、经济性评价。对优化重大疾病诊疗方案或填补诊疗空白的重大创新项目，开辟绿色通道，保障患者及时获得更具有临床价值和成本效益的医疗服务。同时，商会建议国家尽快出台统一的新增 / 修订医疗服务项目管理规范或审批标准，用以指导各地参照标准或规范进行立项审批，简化审核工作程序，提高新增 / 修订项目质量和审批效率。

- **医疗服务价格动态调整**：医疗服务项目的定价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，避免因片面压低医疗服务项目价格而淘汰技术创新型医疗器械，降低服务质量和医疗质量安全。商会建议各地优先启动和实施带量采购相关医疗服务价格专项调整，将定价偏低的项目优先纳入价格动态调整范围，更好地激励医务人员提升医疗服务能力、诊疗能力。
- **创新数字化医疗技术的立项和定价**：商会希望有关部门进一步考虑数字化技术对医疗服务质量、能力与效率的提升作用，针对创新数字化医疗技术建立专门的准入和定价机制、评价体系。给予新技术2-3年临床自主定价使用时间，在此过渡期内完善临床数据和证据的收集和积累，过渡期结束后参考卫生技术评估结果，综合各相关部门意见后再出台统一的医疗服务价格管理文件。
- **常态化政企沟通**：商会建议在医疗服务目录编制过程当中，国家医保局尽量广泛的开展与包括医疗机构和企业在内的各利益关联方的沟通和意见征求工作。

## 日间手术

日间手术是指医疗机构在保障医疗质量安全前提下，为患者提供24小时内完成住院全流程诊疗服务的医疗服务模式。日间手术管理模式因其时间短、效率高、病床周转快、患者疾病负担低的特点，在国际上被广为推崇。近年来，在国家 and 地方政策的支持、鼓励和引导下，国内开展日间手术的医疗机构数量、日间手术量快速增长，改变了我国围绕择期手术的临床路径和住院治疗模式，构建形成了一种新型的医疗服务模式，有效提高了医疗资源的利用率，提升了患者满意度、加快医疗机构床位周转效率、缓解大医院“住院难、住院贵”问题。

国家卫健委分别于2016年、2019年和2022年发布了三批共708个日间手术推荐术式。《日间手术推荐

### (3) Status quo of Large-scale medical devices configuration in China

China's Class A large-scale medical equipment comprises heavy ion radiation therapy systems, proton radiation therapy systems, high-end radiation therapy equipment, and positron emission magnetic resonance imaging systems (PET/MR). Meanwhile, China's Class B large-scale medical equipment encompasses six categories, including X-ray positron emission tomography scanners (PET/CT, including PET), endoscopic surgical instrument control systems (surgical robots), 64-row and above X-ray computed tomography scanners, 1.5 T and above magnetic resonance imaging systems, linear accelerators (including X-knife), and gamma ray stereotactic radiotherapy systems. Despite these technological advancements, there is still a notable disparity between China's large-scale medical equipment configuration level and those of developed countries such as Europe, America, and Japan. Thus, it is vital to establish a reasonable, long-term allocation plan that aligns with the country's economic and social development to ensure that large-scale medical equipment remains a valuable healthcare resource.

#### Recommendations

- **Formulate a scientific and reasonable long-term allocation plan for large-scale medical equipment:** Considering that there is still a significant gap between China's current allocation level of large-scale medical equipment and developed countries such as Europe, America, and Japan, it is recommended to formulate a more scientific and reasonable long-term allocation plan to gradually increase the overall equipment configuration level in stages, and pay more attention to the improvement of equipment quality while increasing the number of equipment.
- **Regularly evaluate the use of large medical equipment:** The competent health department shall make timely and accurate evaluation and feedback in response to the use of large medical equipment, and promptly correct the violations and unreasonable use of the equipment during the use of the equipment, and optimize the corresponding policies.

## Medical Services

### *Introduction of Foreign Medical Experts*

In recent years, China has been actively attracting foreign investment and has set development goals in healthcare and medical technology in its 14th Five-Year Plan for Economic and Social Development (2021-2025) and Long-Range Objectives through the Year 2035. These goals include establishing a modern hospital management system, supporting social medical care, developing high-end medical equipment, and building a world-class medical center with

international influence. The recruitment of international clinical experts, medical science and technology talents, and management professionals is seen as a way to promote the long-term development of the domestic medical industry. While China is improving its policy system and visa application processes to facilitate the entry of foreign experts, there are still challenges in attracting and integrating overseas clinical professionals.

#### Recommendations

- **Clinical experts should be able to enter the country as doctors, and after entering the country, they will be issued with a work residence permit in line with their doctor status:** according to the current practice of introducing international medical experts, since foreign experts cannot obtain a short-term permit to practice medicine in China directly while they are still in the country, medical institutions issue invitation letters for foreign experts to enter the country as medical-related management positions, and after entering the country, they will first obtain a work residence permit as a management position. The medical institution then applies for a short-term permit for the expert to practice medicine in China, resulting in the actual work content not matching the status in the work permit.
- **Raise the certification threshold for issuing permits to practice medicine to ensure that the technical competence and quality of international clinical experts actually add to the development of clinical medicine in China:** At present, foreign experts entering China to practice medicine have different levels of seniority and skills. It is recommended that the National Health Commission, experts in certain specialties of tertiary public hospitals, and senior private medical managers be invited to participate in the development of a short-term license for foreign doctors to practice medicine in China that is more in line with the needs of domestic public or socially run medical institutions and that can help domestic medical care to develop for the better.
- **Open the possibility of applying for a short-term permit to practice medicine in China from abroad, allowing international experts to engage in clinical activities immediately upon entry.** This approach would also alleviate the burden on overseas experts from carrying a large number of original documents into China and mitigate the risk of losing them during international transportation. To ensure that foreign experts can begin clinical work as soon as possible after their arrival, the hiring party may advise them to send their original professional and academic certificates from overseas to China beforehand, and the staff can sign for them to initiate the application process in advance. However, this approach carries the risk of losing the originals during the operation, as there have been incidents of this in the past. It is advisable to establish and improve effective cooperation mechanisms

目录》中所推荐的术式，来源于在国内日间手术开展较早、实施日间手术量较大的医疗机构中所实施的日间手术术式，以二、三级手术为主，四级手术推荐最少。《日间手术推荐目录》的发布一方面为医疗机构更好地开展日间手术提供了参考，另一方面由于部分地方卫生行政部门将推荐目录作为医疗机构开展日间手术的依据，在一定程度上限制了医疗机构在日间开展目录外术式，以及探索三、四级日间手术的积极性。其次，日间手术的医保政策仍处于探索期，国家尚未发布统一指导意见，各地根据本地情况出台政策，因此各地日间手术在医保支付范围、支付方式上的政策差异较大。

### 建议

- **鼓励地方探索开展日间手术术式**：商会希望国家卫健委能够指导地方卫生行政部门合理使用推荐目录，鼓励和引导各地有能力的医疗机构探索开展适宜的日间手术术式，包括目录外三、四级手术，并及时将目录外术式以及适宜的三、四级手术纳入推荐目录。
- **日间手术纳入医保支付管理体系**：商会建议国家医保局能将日间手术纳入医保支付管理体系，指导地方医保管理部门进一步合理明确日间手术医保支付范围、标准、支付方式等政策，积极引导和鼓励医疗机构开展日间手术，提高医院服务效率，控制医疗费用，提高参保患者就医获得感。

### 跨境医疗

根据国家卫计委《关于推进医疗机构远程医疗服务的意见》国卫医发〔2014〕51号（以下简称《远程医疗意见》），“医疗机构与境外医疗机构之间开展远程医疗服务的，参照本意见执行”，该意见对涉及境外医疗机构的远程医疗活动作了一定的规定。如果开展跨境医疗活动，则只能在医疗机构间进行，并且是基于邀请才可进行。在当互联网医疗与跨境医疗相结合时，首先面临的问题是医师执业活动合法性的问题。《远程医疗意见》明确：（远程医疗）受邀方应当认真负责地安排具备相应资质和技术能力的医务人员，按照相关法律、法规和诊疗规范的要求，提供远程医疗服务，及时将诊疗意见告知邀请方，并出具由相关医师签名的诊疗意见报告。而目前未取得《外国医师短期行医许可证》的外国医师在中国的任何诊疗行为都属于非法行医。因此，当

下普遍使用的跨境二次诊疗意见的处方权保留在中国境内的诊治医疗机构（所谓的“treating hospitals”），而外国医生只能提供传统的咨询建议，其建议的治疗方案可能难以落地用于当地，为患者提供实质帮助。这也导致参与跨境远程会诊的机构数量众多，但其服务质量缺乏专业评估和监管，安全性和有效性等难以得到保证。

除此之外，在跨境医疗的过程中，将会涉及到患者就诊经过、医疗影像等信息和数据的跨境调取。这是涉及医疗数据跨境传输常见的应用场景之一。2021年9月1日起施行的《数据安全法》和《个人信息保护法》于2021年11月1日正式生效。同时《数据出境安全评估办法》自2022年9月1日起施行。它对国内数据出境提出了强制性的申报和评估要求。该办法明确了需要通过所在地省级网信办向国家网信办申报数据出境安全评估的几种情形：（一）数据处理者向境外提供重要数据；（二）关键信息基础设施运营者和处理100万人以上个人信息的数据处理者向境外提供个人信息；（三）自上年1月1日起累计向境外提供10万人个人信息或者1万人敏感个人信息的数据处理者向境外提供个人信息；（四）国家网信办规定的其他需要申报数据出境安全评估的情形。以下情形属于数据出境行为：（一）数据处理者将在境内运营中收集和产生的数据传输、存储至境外；（二）数据处理者收集和产生的数据存储在境内，境外的机构、组织或者个人可以查询、调取、下载、导出；（三）国家网信办规定的其他数据出境行为。从现有法律框架看，我国个人信息出境必须通过以下三条路径之一：①安全评估：通过网信部门组织的安全评估；②标准合同：按照网信部门制定的标准合同与境外接收方订立合同；③认证：按照网信部门规定经专业机构进行个人信息保护认证。

《个人信息保护法》将“医疗健康”信息视为敏感信息，医疗行业中的大量患者相关信息均会因其“医疗健康”的属性落入敏感个人信息的范畴。同时含有遗传信息的基因学检测可能会被归为重要数据。这就意味着对于跨境医疗这项服务，需要承担更多地压力，在满足跨境合规性前提下同时满足不同业务场景的需求。

### 建议

- **实施跨境远程会诊医师专业评估机制，探索构建跨境远程会诊服务评估体系**：设立评估标准，建立评

with overseas embassies and consulates to facilitate the convenient policy of applying for a medical practice license in China while overseas.

- **Achieve the international experts in the domestic multi-point practice, can carry out professional services or business exchanges across provinces:** To fully utilize the expertise of international clinical experts, it is important to enable them to provide services and support to multiple hospitals in China during the validity period of their visa or work permit. This will maximize their value and allow them to contribute to various areas of clinical technology and medical management. Therefore, it is recommended to implement a policy that allows foreign doctors in the medical field to practice in multiple locations. Achieving this will require coordination among multiple administrative departments, such as the National Immigration Administration, the labor department, and the National Health Commission of the PRC. By enabling international clinical experts to practice in multiple locations, China can enhance its medical resources and improve the quality of healthcare services provided to its citizens.

### *Taxation of Foreign-Funded Hospitals*

Foreign-funded for-profit medical institutions serve as an effective complement to public medical institutions, offering Chinese patients access to professional medical services and abundant medical resources. These institutions introduce advanced Chinese medical instruments and equipment, internationally recognized treatment solutions, and comfortable and humane medical environments to the Chinese market. However, restrictions on opening branches of joint venture medical institutions and the independent taxation of all medical institutions within the same brand have resulted in longer profit cycles and poor financial returns for foreign medical service providers. In addition, the current corporate income tax system in China does not allow for the consolidation of multiple companies within the same beneficial owner for tax purposes, and the medical service industry is not included in the list of industries that enjoy preferential tax rates. As a result, the cash flow performance of foreign medical institutions is weakened, which affects the willingness and enthusiasm of foreign investors to invest in China's healthcare sector.

Investing in medical institutions requires large upfront investments and frequent capital expenditures during the operation period. However, the interest income generated from funds occupied among medical institutions within the group operating under the same brand name is not eligible for VAT exemption under Chinese VAT law due to the foreign ownership attribute of the actual controller located outside of China. Furthermore, foreign-invested enterprise groups are not recognized as enterprise groups under the VAT law, which further aggravates the tax burden of foreign-invested medical institutions in China.

### **Recommendations**

- **Profit medical institutions whose medical services are provided should be explicitly included in the VAT exemption.**
- **Local governments should provide financial support or fiscal support for the characteristics of the healthcare sector:** healthcare, especially hospitals/ medical institutions, are among the encouraged industries announced by the Chinese government and are related to people's livelihood, so more quality resources should be directed to the healthcare sector. In terms of talent co-build, promoting the continued extension of personal income tax preferences related to allowances for foreign individuals will certainly benefit the long-term development of foreign medical institutions in China.

### *Public Health Emergency Management (PHEM)*

AmCham China has proposed that the Chinese government should collaborate with the private sector to update the national public health emergency response and management system. Integrating private hospitals into the national response system would allow the government to utilize the expertise, professional skills, and resources of the private sector. The private healthcare sector can offer valuable technical support, supplies, and facilities to complement public hospitals in providing comprehensive medical services during emergencies.

During the COVID-19 pandemic, private hospitals and clinics were unable to operate at full capacity due to drug and equipment prioritization for public hospitals. As a result, some private hospitals had to shut down, incurring significant economic losses. To establish an effective public health emergency response system, AmCham China recommends that the Chinese government should view private and public healthcare providers as partners in the same system, where private hospitals can continue to provide quality care and play a significant role in easing the burden on public healthcare resources.

It is noteworthy that Hong Kong SAR has initiatives in place to establish public-private partnerships with private hospitals to help alleviate the pressure on the public healthcare system. As China enters its next planning phase, the government should carefully consider and explore similar partnerships at a larger scale.

### *Healthcare Service Directory*

The Healthcare Service Directory is a critical component of the medical services industry, serving not only as the foundation for pricing patients but also as an important platform for market access for medical technologies related to clinical services. As such, it has a direct impact on the behavior of medical institutions, medical professionals, and

估系统。国内医疗机构可与评估系统中有资质的境外医疗机构签署长期合作协议，境外医师审批程序从简。使有资质的境外医疗机构的医师合法、合规地提供高质量及可落地的第二诊疗服务。

- **建立以医疗数据作为特殊数据的跨境流动机制：**结合医行业的特性设计有针对性的行业规则，既做好个人权益及数据安全的保护，又兼顾医疗服务的效率。同时，积极实现中国数据治理规制与国际数据治理规制的融合，将助力中国与境外医药企业、高校和医院更加深度的合作。同时除了《办法》以外，也建议能够出配套的案例和指南，更多基于具体业务场景的指南，从而形成一些最佳实践，以便数据的跨境更加能够规范，也更加有利于企业的操作。

## 公立和私立医疗检测互认

一直以来，为了减少人民群众就医负担，多地多政府开展惠民行动，在全国鼓励、开展不同程度的检验互认（医疗机构应当标注其相应的互认范围+互认标识。如：“全国 HR”“京津冀 HR”“北京市西城区 HR”等）的措施和举措。

2022年6月，国家四部委联合印发《关于印发医疗机构检查检验结果互认管理办法的通知》，正式推出医疗机构检查检验结果互认管理办法（以下称“互认管理办法”）。2022年8月，四川省卫生健康委员会、四川省医疗保障局、四川省中医药管理局联合印发了《四川省医疗机构检查检验结果互认工作实施方案》。四川省将健全完善检查检验结果互认体系及质控标准，不断扩大互认范围。实施方案明确规定2024年6月底前全省各地（三州除外）以市为单位实现检查检验结果互认；力争2024年12月底前依托全民健康信息平台二期，建成全省检查检验结果互认信息支撑系统；2025年12月底前基于全省检查检验结果互认信息支撑系统，实现检查检验资料的数字化存储、传输、共享及结果调阅。方案中同时公布了第一批16项临床检验结果互认项目清单，以及第一批53项医学影像检查结果互认项目清单。

虽然各地有计划逐步、逐阶段推进此项工作，但由于各级别各类医疗机构的检查检验标准、质量把控标准不尽一致且信息系统无法完全互联互通，即使是公立系统内的各级医院，真正能够做到检查检验互认互通的机构还是屈指可数、公私医院结果互认的案例更是少之又少。互认的形式也多仅限于下级医院承认上级医院。所

以，在病情稳定的患者看来，在外院进行的多项检验、检查往往拿到上级医院就诊时，并不受到承认，需要重新进行病情评估和各项检查检验，经济负担加重。而在国家医保支付端，又不得不为这些重复检查检验来买单。究其原因，有多方面的因素：

第一，公立医院引领检查检验互认的“先行先试”，私立医疗机构还未能整体融入互认体系建设。

第二，检查检验互认所采用的质量标准和范畴不同。一部分社会办医的医院会采用国外主流国家通行的临床医疗标准来指导和判定其临床检验标准。由于人种因素等而引起的异常值偏差确实会给检查检验结果互认带来难度。

第三，数据没有实现互联互通。从客观层面出发，实现患者数据和检查、检验信息的互联互通需要建立在强大的信息支持系统之上，以便于帮助医院管理层做出以“数据为导向”的决策。

### 建议

- **将同等资质民营医院检查检验诊断和报告质控纳入统一标准构建体系并提供接入渠道：**针对各区级、市级、部级、国内外投资医疗机构临床检查检验标准不一致的问题，是否能设立与各层级相适应的标准委员会（例如由各省医学会负责临床检查检验专委会牵头，医保局等相关单位为辅），以便将有资质且符合相关临床检查检验标准的社会办医医疗机构纳入统一的质量层级的考核体系，促进公私医疗机构的关口对接。
- **多元化的激励政策：**由于公立医院在中国医疗系统中的主体地位，政府应多出台激励政策，加强引导公立医院主力推动建立互认机制，民营机构为辅。公立医院系统因每天接诊量众多，对于下一级或者同级别外院检查检验结果是否互联互通，普遍缺乏内在动力来进行有效推进和改革。为了鼓励和健全互认机制的建立，相关政府监管机构可以考虑采用互认奖励机制（可以是经济奖励或者政策奖励）或进行互认次数机构排名，以提升医疗机构之间互认的内生动力。建立民营医院机构检查检验报告评分机制，以加强和提升整个行业的质量体系建设。
- **民营医院应该更加积极推进质控管理水平：**努力融入和更加严格地执行国家相关标准。同时，鼓励卫



medical technology providers, and plays a significant role in guiding policies related to medical cost control, resource allocation, medical quality, efficiency, and fairness. As part of the broader reform efforts of the medical and health system, medical service price reform has emerged as a critical priority for the government in recent years and is integral to the linkage reform of “medicine, medical care, and medical insurance.”

To date, the National Health Care Security Administration has been categorizing and integrating existing price items in line with service output orientation, medical human resource consumption, and the separation of technical labor and material consumption. Furthermore, each pilot city has been advancing the work of medical service price reform under the guidance of the National Health Care Security Administration. However, several challenges persist concerning the national medical service price items, based on historical circumstances.

Firstly, the absence of a national catalog of medical service price items at the National Health Care Security Administration level has resulted in non-uniform catalogs across regions, with each region developing its own current catalog to cater to their respective levels of economic development, clinical treatment levels, and disease conditions. Secondly, in order to better align with medical service price reform work, the National Healthcare Security Administration (NHSA) issued a *Notice of the Office of the National Health Insurance Administration on the Establishment of a Reporting System for Important Medical Service Price Matters* in December 2021. This requires localities to implement national, provincial, and municipal hierarchical reporting when “implementing medical service price adjustment trigger assessments, determining the total amount of price adjustment, setting or adjusting medical service prices, new medical service price items, progress in implementing key tasks, and other important medical service price matters.” However, the scope of the definition of important matters is not uniform, and the reporting process is not open, resulting in an “all matters have to report” situation. Additionally, the report of the review cycle is unclear, and the review progress is not open. This has substantially delayed the market access of new clinical technologies, particularly in the recent critical treatment of patients infected with COVID-19, where some key technologies have not been applied promptly in clinical settings.

To address the inefficiency of the approval process caused by the reporting system of important medical service prices, the National Health Insurance Board proposed, in its *National Healthcare Security Administration Board on the Further Improvement of the Management of Medical Service Prices Notice* ([2022] No. 16) in July 2022, to accelerate the progress of the acceptance and review of new medical service price items, strengthen the quality of innovation gate-keeping, and support the development of medical technology innovation. However, the review of new medical service price items remains unresolved globally.

Finally, as healthcare services become increasingly digital, the establishment and pricing of innovative digital healthcare technologies should receive more attention. China has emerged as one of the most innovative and dynamic markets globally, with extensive development and application of new products and technologies in medical technology. Cutting-edge technologies such as surgical robots, artificial intelligence, human-computer interaction, 5G, and big data in innovative digital intelligence solutions have provided strong technical support for precise and personalized clinical treatment. With the implementation of the 14th Five-year Plan for Universal Medical Security and the promotion of the development and clinical application of medical technology innovation, innovative digital medical technology will continue to provide doctors with better and more treatment methods and means to choose, patients with more accurate and personalized clinical services, and will actively serve the realization of the strategic goal of a healthy China.

### Recommendations

- Separate charges for service items and special supplies:** The reform measures can better take into account technological innovation, clinical treatment and the benign development of price management, more conducive to medical services price items reflect the value of the technical services of medical personnel. The AmCham China suggested that when adding, revising and improving medical service prices, the first priority should be to serve the needs of patients, with clinical value as the guide, emphasizing “efficacy first, reasonable prices,” giving priority to the clinical application of the advantages of consumables with significant economic value for the separation of technology and consumption, while safeguarding the patient’s right to make their own choices.
- Improve the efficiency of application and approval of new and revised medical service programs:** AmCham China recommends that the national medical sector streamline the reporting process for new and revised local medical service projects within the existing reporting system for important matters. This would serve to accelerate the progress of acceptance and review, as well as promote the development of medical technology innovation and clinical application. Furthermore, it has been suggested that innovative and economic evaluations be conducted for new price items that are associated with high resource consumption and high price expectations. For major innovative projects that optimize the treatment plan of major diseases or fill the treatment gap, a green channel should be opened to ensure that patients receive timely medical services with more clinical value and cost-effectiveness. Simultaneously, AmCham China recommends that the state introduce unified project management norms or approval standards for new and revised medical services as soon as possible. This will guide local reference standards or norms for project approval, simplify the review

健委利用好各类政策工具（例如世行贷款），为民营医院相关信息系统平台和数据对接建设提供资金支持和保障。

- 在《互认管理办法》基础上，监管机构发布配套的**案例和指南**：建议配套指南手册更多基于具体实际业务场景和痛点，形成一些最佳实践集锦，以便公立医疗系统与有同等资质社会办医医疗系统的检查检验结果互认能更加规范，同时也更加具有操作性。

## 第四部分：补充类别

### 女性健康：甲状腺

解决低出生率和人口老龄化成为政府高度关注的问题。国家的“十四五”规划强调，全面推进健康中国建设，实施积极应对人口老龄化国家战略，制定人口长期发展战略、优化生育政策、促进人口长期均衡发展。

甲状腺疾病是一组常见的内分泌疾病，主要包括甲减、甲亢、甲状腺结节、甲状腺癌等，中国成人的甲状腺疾病患病率高达 50% 以上。甲状腺功能与女性生殖能力关系密切。

此外，优生优育一直是中国人口政策工作的重要内容。2021 年国务院出台《国务院关于优化生育政策促进人口长期均衡发展的决定》和《国务院关于印发中国妇女发展纲要和中国儿童发展纲要的通知》，明确了提高优生优育服务水平、促进人口长期均衡发展的政策法规体系和促进健康孕育以及健全妇幼健康服务体系的主要目标，提倡优生优育，加强产前检查，提高人口素质。

由于甲状腺疾病会危害到体内几乎所有的器官和组织，特别是育龄女性，如果未能早发现早治疗，将严重损害母婴健康。因此，社会应重视育龄女性甲状腺疾病的早筛、早诊、早治。国内指南一致推荐对育龄女性进行甲功筛查。2019 年中华医学会内分泌学会联合围产医学分会发布的《妊娠和产后甲状腺疾病诊治指南（第 2 版）》建议，支持国内有条件的医院和妇幼保健部门对妊娠早期妇女开展甲状腺疾病筛查，最好是在妊娠前筛查。2022 年中华预防医学会妇女保健分会联合中华医学会内分泌学会发布《孕产期甲状腺疾病防治管理指南》，明确建议国内有条件的医院和妇幼保健部门对所有备孕妇女进行甲状腺疾病筛查，有利于尽早发现甲状腺功能异常并给予干预。

### 建议

- **鼓励甲状腺疾病检查纳入备孕女性检查项目清单**：国内有条件的医院和妇幼保健部门对所有备孕女性进行甲状腺疾病筛查，有利于尽早发现甲状腺功能异常并给予干预，从而使育龄女性甲功正常后再去怀孕，有利于母婴健康。
- **鼓励女性年度体检中增加甲状腺功能检查项目**：早筛查将有利于甲状腺疾病早诊早治，既可以提高女性人群的整体健康。

### 女性健康：骨骼健康

健康的家庭是一个健康社会和健康中国的核心组成部分。《“健康中国 2030”规划纲要》提出，要“立足全人群和全生命周期两个着力点，提供公平可及、系统连续的健康服务，实现更高水平的全民健康。”《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。”骨质疏松症的防治是女性全生命周期健康管理中必不可少的一环，是女性更年期及绝经期需重点管理的疾病之一。女性一生发生骨质疏松性骨折的危险性也高达 40%，高于乳腺癌、子宫内膜癌和卵巢癌发病的总和。骨质疏松已成为我国 50 岁以上人群，特别是威胁中老年女性的重要健康问题。

近年来，我们看到国家不断加大对妇女宫颈癌、乳腺癌筛查工作投入力度，越来越多妇女从中受益。“两癌”检查项目也被纳入基本公共卫生服务内容。与此同时，希望国家关注骨质疏松症这一“沉默”的杀手。随着中国人口老龄化的加速，国家需立足当下，展望未来关键十年，抓住疾病干预和管理的窗口期，首先从政策上给予更多关注、支持与投入，积极倡导并提高全社会女性的骨骼健康意识，提高骨质疏松症的防控与保障水平，降低女性骨质疏松症和骨折的患病率和发生率，助力健康中国 2030 的实现。

### 建议

- **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。推动落实社区重点人群骨质疏松风险筛查。

process, and enhance the quality of new and revised projects while also improving approval efficiency.

- **Dynamic adjustment of medical service prices:** To ensure that the pricing of medical service items is ethical, technologically advanced, and affordable for health insurance funds while remaining cost-effective, a fully balanced approach should be adopted. This will prevent the elimination of technically innovative medical devices due to excessively low prices of medical service items, which could ultimately reduce the quality of service and compromise medical safety. AmCham China recommends that localities prioritize the initiation and implementation of special price adjustments for medical services related to volume purchasing. Additionally, underpriced items should be included in the scope of dynamic price adjustments. These measures will better incentivize medical personnel to improve their medical service capabilities and treatment capabilities
- **Innovative digital medical technology establishment and pricing:** AmCham China hopes that the relevant departments will further consider the role of digital technology in improving the quality, capacity and efficiency of medical services, and establish a special access and pricing mechanism and evaluation system for innovative digital medical technology. Give the new technology 2-3 years of clinical autonomy in pricing use, improve the collection and accumulation of clinical data and evidence during this transition period, and after the end of the transition period, refer to the results of health technology assessment and integrate the views of all relevant departments before issuing a unified medical service price management document.
- **Regular communication between government and enterprises:** AmCham China recommends that the National Healthcare Security Administration conduct communication and consultation with stakeholders, including medical institutions and enterprises, as widely as possible during the preparation of the medical services catalog.

### *Ambulatory Surgery*

Ambulatory surgery is a medical service model where medical institutions provide patients with the full process of inpatient care within a 24-hour period while ensuring medical quality and safety. The day surgery management model is widely respected internationally due to its short duration, high efficiency, quick bed turnover, and low patient disease burden. In recent years, China has experienced a rapid increase in the number of medical institutions carrying out day surgery and the volume of day surgery, thanks to the support, encouragement, and guidance of national and local policies. This has led to a change in the clinical pathway and inpatient treatment model of elective surgery in China, creating a new medical service model. Day surgery has

effectively improved the utilization of medical resources, enhanced patient satisfaction, accelerated the efficiency of bed turnover in medical institutions, and alleviated the issue of “difficult and expensive hospitalization” in large hospitals.

The National Health Commission has released three batches of 708 recommended day surgery procedures in 2016, 2019, and 2022, respectively. These procedures were derived from ambulatory surgery procedures performed in medical institutions where ambulatory surgery has been carried out earlier and where a larger volume of ambulatory surgery has been performed in China. The secondary and tertiary procedures are the main ones, with quaternary procedures being the least recommended. The publication of the Ambulatory Surgery Recommendation Catalogue provides a reference for medical institutions to better carry out day surgery. However, it has to some extent limited the enthusiasm of medical institutions to carry out procedures outside the catalog and to explore level 3- and 4-day surgery during the day. Additionally, the medical insurance policy for ambulatory surgery is still in the exploration period, with the country yet to issue unified guidance. Localities have introduced policies according to local conditions, resulting in a wide variation in the policy on the scope of medical insurance payment and payment methods for ambulatory surgery.

### **Recommendations**

- **Encourage local exploration of ambulatory surgery procedures:** The AmCham China hopes that the National Health Commission will guide local health administrative departments in the rational use of the recommended catalog, encourage and guide capable medical institutions around the country to explore appropriate day surgery procedures, including off-catalogue level 3 and 4 procedures, and promptly incorporate off-catalogue procedures as well as appropriate level 3 and 4 procedures into the recommended catalog.
- **Inclusion of ambulatory surgery in the medical insurance payment management system:** The AmCham China suggested that the National Health Care Security Administration should include ambulatory surgery in the medical insurance payment management system, guide local medical insurance management departments to further clarify the scope of medical insurance payment for day surgery, standards, payment methods and other policies, actively guide and encourage medical institutions to carry out ambulatory surgery, improve the efficiency of hospital services, control medical costs, and improve the sense of access to medical care for insured patients.

### *Cross-Border Healthcare*

In accordance with the *Opinions on Promoting Telehealth Services for Medical Institutions* issued by the National Health Commission, cross-border telehealth services between

- **将健康骨骼管理作为更年期妇女健康重点领域工作：**建议将健康骨骼管理纳入各地区“十四五”妇女发展规划和行动方案。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、综合干预和应急救治为一体的全方位卫生健康服务体系。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。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。
- **提高骨骼健康管理相关的公共卫生预算：**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。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。

## 女性健康：生殖健康

2021年6月，中共中央国务院印发《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。党的二十大报告指出，优化人口发展战略，建立生育支持政策体系。落实我国的人口战略，除了关注背后的经济社会环境因素，提升公众生育意愿以外，还需关注女性生育力的保护。国务院印发《中国妇女发展纲要（2021年-2030年）》提出“生殖健康和优生优育知识全面普及，促进健康孕育，减少非意愿妊娠”和“减少非医学需要的人工流产”。

首先，由于人群科学避孕意识不强，长效避孕方式使用率下降，我国未育女性人工流产形势严峻，不孕不育发病率逐年升高，严重影响我国女性生育力。

其次，干预时机偏晚，长效可逆避孕方法可及性不足。

生育政策事关我国人口大计，目前我国人工流产现状和不孕不育形势严峻，加强女性生育力保护刻不容缓。为减少非医学需要人工流产，保护未育女性生育能力，建议在社区层面构建生育健康的服务体系，尤其在人工流产率高的地区，全面提升社区基层卫生机构“生育友好型”长效可逆避孕技术的可及性和服务能力。

### 建议

- **“更早一步”将生育力保护关口前移至社区：**充分借助社区卫生服务中心的辖区管理和人群覆盖优

势，在基层医疗机构开展面向育龄女性提供“宣教—评估—干预”一条龙生育健康服务，普及生育健康和科学避孕知识，做好生育规划和生育力保护工作。

- **放宽对于基层医疗机构开展“生育友好型”长效可逆避孕方法的资质管理要求，提升可及性：**对于有利于人群生育力保护的长效可逆避孕类手术操作，例如非高危的皮下埋植手术，同终止妊娠类手术区别管理，放宽相关资质申请条件和管理要求，便于并鼓励社区基层医疗机构积极开展，扩大人群覆盖
- **为上述生育支持服务政策配备高危手术转诊、相关技术规范编制、以及人员技术能力培训等支持配套措施：**需要澄清的是，基于循证医学的长效避孕并非一味降低生育水平，而是为女性长期保存生育力，减少意外妊娠和人工流产对生育力的伤害，从而选择最优生育时机、最大化健康劳动力人口供给。

## 慢病防控：血脂管理

十年来，从基本公共卫生服务能力和补助标准的提高，可以看出我国在多渠道医疗保障方面所取得的进展，人均基本公共卫生服务经费补助标准由2012年的25元提高到目前的84元，基层机构开展的项目从10类扩展到12类。我国已将高血压、糖尿病管理纳入国家基本公共卫生服务均等化，并取得了较明显的成效，但血脂异常管理相对滞后，成为我国心脑血管疾病防控的“短板”。

当前心脑血管疾病已成为我国居民的第一位死因，占总死亡构成的40%以上。高血压、糖尿病、血脂异常（三高）是导致我国心脑血管疾病攀升的三大高危因素，令人担忧的是，中青年人群心脑血管疾病的高致死率导致社会劳动力的巨大损失，农村人口的心脑血管疾病激增的态势十分严重。应对这一重大的公共卫生问题，采取国家行动迫在眉睫。

### 建议

- **把血脂管理纳入现有的基本公共卫生服务项目：**优化国家基本公共卫生服务项目，将血脂管理纳入现有国家基本公共卫生服务项目中高血压、糖尿病的管理标准实现“三高共管”，把“预防为主、防治结合”落到实处，将关口前移，通过综合管理有效遏制心脑血管疾病的高发，早日实现心脑血管疾病下降的拐点，降低我国居民心血管疾病发病率、死亡率将

medical institutions outside of China should adhere to certain provisions. Such activities can only be carried out between medical institutions and are based on invitation only. The main challenge when combining Internet healthcare with cross-border healthcare is the legality of physician practice activities. The Opinions require the inviting party to carefully arrange qualified medical personnel to provide telehealth services in compliance with relevant laws and regulations, and to issue a treatment report signed by the relevant physician. Any medical treatment provided in China by foreign physicians without the *License for Foreign Physicians to Practice Medicine for a Short Period of Time* is considered illegal. Therefore, the prescription right for cross-border secondary medical opinions is reserved for Chinese medical institutions, while foreign doctors can only provide traditional consultation advice. This has led to a lack of professional evaluation and supervision, and difficulty ensuring the safety and effectiveness of services provided in cross-border teleconsultations.

Cross-border healthcare involves the transmission of patients' consultation history and medical images, which falls under the *Data Security Law* and the *Personal Information Protection Law* that took effect on November 1, 2021. The Data Exit Security Assessment Measures will come into effect on September 1, 2022, and require mandatory declaration and assessment requirements for domestic data exit. The Measures specify several circumstances that require the declaration of data exit security assessment, such as data processors providing important data outside the country or handling personal information of more than 1 million people. From the existing legal framework, the exit of China's personal information must go through one of the following three paths: passing the security assessment organized by the cyberspace administration, concluding a contract with the overseas recipient in accordance with the standard contract formulated by the cyberspace administration, or obtaining personal information protection certification by professional institutions.

Medical and health information is considered sensitive information under the *Personal Information Protection Law*, and a large amount of patient-related information in the medical industry will fall into this category. This means that for cross-border medical services, more pressure is needed to meet the needs of different business scenarios while complying with cross-border regulations. Additionally, genetic tests containing genetic information may be classified as important data, further highlighting the importance of complying with data security laws in cross-border healthcare.

### Recommendations

- **Implement a professional assessment mechanism for cross-border teleconsultation physicians and explore the construction of an assessment system for cross-border teleconsultation services:** set up assessment standards and establish an assessment system.

Domestic medical institutions can sign long-term cooperation agreements with qualified overseas medical institutions in the assessment system, and the approval process of overseas physicians is simplified. This will enable qualified physicians from overseas medical institutions to legally and compliantly provide high quality and practical second medical services.

- **Establish a mechanism for the cross-border flow of medical data as special data:** design targeted industry rules that take into account the characteristics of the medical industry to protect the rights and interests of individuals and data security, while taking into account the efficiency of medical services. At the same time, actively realizing the integration of China's data governance regulations with international data governance regulations will help China to cooperate more deeply with overseas pharmaceutical enterprises, universities and hospitals. At the same time, in addition to the Measures, it is also recommended that supporting cases and guidelines be issued, more guidelines based on specific business scenarios, so as to form some best practices, so that the cross-border data can be more regulated and more conducive to the operation of enterprises.

### *Mutual Recognition System for Public and Private Medical Tests*

For a significant period of time, local governments have been taking actions to ease the financial burden on the public regarding medical treatments. These actions have encouraged mutual recognition of testing nationwide, whereby medical institutions should mark their corresponding scope of mutual recognition, and mutual recognition marks such as "national HR," "Beijing-Tianjin-Hebei HR," and "Beijing Xicheng District HR," among others, are used.

In June 2022, the State's four ministries and commissions issued a notice officially launching administrative measures for the mutual recognition of inspection results of medical institutions. This measure is referred to as *Administrative Measures for the Mutual Recognition of inspection results*. Additionally, in August 2022, the Sichuan Provincial Health Commission, Sichuan Provincial Medical Security Bureau, and Sichuan Provincial Administration of Traditional Chinese Medicine jointly issued the Implementation Plan for Mutual Recognition of Inspection Results of Medical Institutions in Sichuan Province. The program's aim is to improve the mutual recognition system of inspection results and quality control standards while expanding the scope of mutual recognition.

However, the implementation of these measures is gradual and divided into stages. This is because various medical institutions have inconsistent inspection standards and quality control standards, and their information systems are incompletely interconnected. This makes it difficult for many institutions to achieve mutual recognition of inspection

健康中国的国家战略和慢病防控的目标落到实处。

- **加强基层医疗建设和推进分级诊疗：**社区基层医生和家庭医生承担直接接触患者的重要职能。除了开展疾病教育、筛查、初步诊断，随访管理等工作外。应在基层医疗机构和二三级医院之间做好患者上下转诊的同时，要保证用药衔接，合理配置医疗资源，促进基本医疗服务均等化，提升基层医疗机构对疾病的诊疗水平，推动高质量分级诊疗落地。

## 慢病防控：糖尿病管理

我国糖尿病患者人群庞大，并逐年攀升，目前我国已成为全球第一大糖尿病人群国家。糖尿病前期患者人群更为庞大，糖尿病前期人群若不进行干预大部分患者将进展为糖尿病，有 52.8% 的葡萄糖耐量异常的糖尿病前期患者将进展为糖尿病。

### 建议

- **糖尿病可防可控，关键在于早防早治：**实施高危人群一级预防，推动关口前移，利用居民档案和各类体检信息开展机会性筛查，并尽早进行生活方式干预及糖尿病预防药物治疗。包括增加筛查：利用社区和基层医疗机构定期筛查，尤其是糖尿病高危人群，如有糖尿病前期史、年龄  $\geq 40$  岁、体重指数  $\geq 24\text{kg/m}^2$  和中心型肥胖、一级亲属有糖尿病史等人群，应进行糖尿病筛查。
- **糖尿病前期生活方式干预和药物治疗：**对筛查发现的糖尿病前期人群进行糖尿病教育和生活方式干预，并及早使用具有预防证据的药物如二甲双胍，减少糖尿病前期进展为糖尿病的发生风险。
- **规范糖尿病全病程管理体系：**加强医院对基层医疗机构的培训和技术指导，利用分级诊疗制度，建立基层医疗机构对糖尿病前期患者早期发现及治疗以及糖尿病全程综合管理的机制，促进糖尿病全病程的防治结合管理。
- **促进分级诊疗制度的联动，增加医院对基层医疗机构糖尿病患者管理的指导：**提高基层医疗机构服务水平，进一步完善家庭医生签约服务以及对糖尿病患者的定期用药和生活教育指导。
- **糖尿病患者的全程管理：**对于糖尿病患者强化血糖管理的重要性，针对糖尿病患者的个体化血糖管理目标早治疗，早获益，提高血糖的达标率，控

制率，减少远期并发症发生，从而进一步减少社会经济负担。

## 数字化医疗

数字医疗是利用全新的数字技术赋能医疗行业。通过前沿的数字技术（包括人工智能、云计算、区块链、机器人自动化等等）和医疗核心和生态场景融合，通过数据驱动和体验优化最终实现以患者为中心，为医疗生态参与方带来全体体验和价值。

《“健康中国 2030”规划纲要》提到数字技术与医药健康深度融合，医健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。生物技术（BT）和信息技术（IT）数字医疗大趋势以及 9 大方向和场景包括：深化医药研发、药品生产、药品营销、市场服务、可持续化发展等环节的数字化应用，创新提供服务模式和产品，医疗数字化服务普惠应用，积极发展互联网医院，创新人工智能医疗和数字疗法。

数字化可持续发展，领先的数字化企业一方面要积极创造经济价值，确保企业自身可持续发展；另一方面也要考虑社会的可持续性，主动承担更多的社会责任。42% 的首席信息官（CIO）认为，在未来三年中，可持续发展将成为技术在组织内部发挥最重要影响力的领域。而那些成功将可持续发展融入数字化转型的开拓者组织已经实现了比同行更高的收入增速。面对大气变暖、资源能源短缺等全球问题，医疗企业的领导者需要站在比减排更高的维度，更全面地思考组织对环境的影响。2023 年，医疗企业可以通过以下三种方式制定相关战略，实现环境效益与经济效益双赢。① 让可持续发展成为企业战略的核心；② 利用传达明确的可持续发展目标；③ 设法通过可持续发展战略和数字化能力落地提高盈利能力。

目前许多国家已经将数字化技术应用与部署作为国家级战略，并通过各相关战略计划加以落实。中国的医疗数字化进程也逐步加快，尤其是新冠疫情对线下活动的限制进一步催化了行业数字化的变革。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

results. Moreover, the few mutual recognitions that occur are usually lower hospitals recognizing higher hospitals, and private medical institutions have not yet been integrated into the construction of the mutual recognition system.

The quality standards and categories used in mutual recognition of inspection and inspection also differ among social hospitals. For example, some social hospitals use the prevailing clinical medical standards of foreign mainstream countries to guide and judge their clinical inspection standards, which could cause outliers' deviation due to ethnic factors. This deviation, in turn, brings difficulty to the mutual recognition of test results.

Finally, data is not interconnected. Patient data and examination and inspection information should be interconnected to help hospitals make data-oriented decisions. This interconnection needs to be built on a robust information support system. Patients with stable conditions have to bear additional financial burdens since their tests and examinations conducted in other hospitals are often not recognized when they are treated in higher hospitals. This results in the need to re-evaluate the condition and various examinations and examinations, which increases the economic burden. At the end of the Medicare bill, they have to pay for these repeated tests.

### Recommendations

- **Inclusion of equally qualified private hospital examination test diagnosis and report quality control in a unified standard building system and provision of access channels:** In response to the inconsistency of clinical examination test standards at the district, municipal, ministerial, and domestic and foreign investment medical institutions, is it possible to establish a standards committee that is compatible with each tier (e.g. led by the provincial and municipal medical associations responsible for clinical examination test special committees, supplemented by relevant units such as medical insurance bureaus) so that socially run medical institutions that are qualified and meet the relevant clinical examination test standards can be included in the assessment system of a unified quality tier to promote the alignment of public and private medical institutions at the gateway.
- **Diversified incentive policies:** To better promote the establishment of mutual recognition mechanisms in China's healthcare system, the government should introduce more incentive policies that primarily focus on strengthening the guidance of public hospitals, with private institutions playing a supportive role. As public hospitals receive a vast number of daily visits, they may lack the intrinsic motivation to effectively promote and reform the interoperability of test results from the next level or from outside hospitals at the same level. To encourage and improve the establishment of mutual recognition mechanisms, relevant government regulatory agencies could consider implementing a mutual

recognition incentive mechanism, such as financial or policy incentives, or ranking the number of institutions for mutual recognition. This would help enhance the endogenous motivation for mutual recognition among medical institutions. Additionally, the industry as a whole would benefit from establishing a scoring mechanism for inspection and test reports of private hospitals, which would further strengthen and enhance the quality system.

- **Private hospitals should be more active in promoting quality control management levels:** Strive to integrate and more strictly implement relevant national standards. At the same time, the Health Care Commission is encouraged to make good use of various policy tools (e.g., World Bank loans) to provide financial support and security for the construction of information system platforms and data interfacing related to private hospitals.
- **Supervision departments should issue supporting guidelines on the basis of the "Mutual Recognition Management Approach":** It is recommended that the supporting guidebook be based more on specific actual business scenarios and pain points, forming some best practice collections so that mutual recognition of examination and test results between public medical systems and socially run medical systems with equivalent qualifications can be more standardized and at the same time more operative.

## Additional Healthcare Segments

### Women's Health

#### Thyroid Disease

The government is highly concerned with addressing the low birth rate and aging population. As part of China's Five-Year Plan, there is a strong emphasis on promoting a healthy China, implementing a national strategy to cope with population aging, developing a long-term population strategy, optimizing fertility policies, and achieving long-term balanced population growth.

Thyroid disorders are a common group of endocrine diseases that include hypothyroidism, hyperthyroidism, thyroid nodules, and thyroid cancer. The prevalence of thyroid disorders among Chinese adults is over 50 percent.

Eugenics has always been an integral part of China's population policy. In 2021, the State Council released the Decision of the State Council on Optimizing Fertility Policy for Long-term Balanced Population Development and the Circular of the State Council on Issuing the Program for the Development of Chinese Women and the Program for the Development of Chinese Children. These policies clarified the regulatory system for improving eugenics services, promoting long-term balanced population growth, and enhancing maternal

况下，数字化转型将成为医疗和医药企业的必然选择。这些被数字化深度赋能的医疗和生命科学企业会成为更高效、更有弹性和更强大的“无边界”的智慧医疗企业，是未来的行业新领导者和长跑者。正是因为有这些智慧医疗企业，大家将会有更多的机会实现共赢合作，构建生态系统推进智慧医疗和健康中国 2030。

### 建议

- **制定透明、创新、基于大数据的医疗行业数字化战略：**推动企业的数字化转型和战略规划，战略和组织先行。数字化时代，打破了医疗和生命科学行业对传统商业模式的认知。如何能够深刻洞悉患者需求、如何能够为患者提供更好更优的服务与体验、如何能够更高效地医疗企业运营、如何能够更快地进行行业创新，成为医疗企业深入思考并付诸实践的关键转型方向，如何打造数字化时代的核心竞争力。
- **推动医疗数字化服务普惠应用：**① 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。② 完善“网络问诊”，帮助患者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。③ 通过数字化推动药企与患者的互动，例如医学问答机器人可以主动回答患者的相关问题；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。④ 在精准医疗诊断领域，随着利用更成熟的生物信息、基因检测、多组学分析等更多技术进步以及数据的丰富，数字化诊断也在帮助多种疾病的预防、筛查、诊断、疗效等全周期管理。
- **建立由政府部门、保险公司以及第三方数字化服务公司构建数字化创新支付机制：**随着大数据、互联网数字化技术的发展，技术和创新也在推进国内医保支付的改革，其中包括实现以DIP/DRG成为医保支付的新方式实现保证疗效为基础的费用管理，长期转型以价值为基础支付体系。
- **推进数字化研发的进程：**推动大数据、人工智能、云计算等技术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，从而大大缩短新药开发周期，降低开发成本。

- **推进数字化临床试验：**加速临床匹配，实现更自动化的数据采集和更智能的数字分析，开展以患者为中心的数字化高质量临床试验，从而促进未来制药行业研发创新。目前数字化临床实验仍然处于早期，数字化临床创新企业应更多围绕临床产品的数字化升级和数据扩展开展工作。
- **推进数字化工厂和供应链：**采用最新的自动化、信息化和智能化技术，将与生产相关的人、机、料、法、环等诸多要素的数据和流程统一整合，以满足企业生产运营阶段在安全合规、产能提升、质量保障、风险预测、资产利用、人员效率等业务方面的数字化转型需求，服务于企业整体经营策略的转型以及行业合规要求的升级。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。
- **鼓励生物医学企业建立复合型数字化营销渠道和沟通平台：**生物医药企业依靠“互联网+”技术，建立。一方面，可以有效提高渠道掌控力，面向医生和患者提升学术内容和产品推广信息传播的精准度，有效降低销售成本。另一方面，还可以通过个性化定制服务同时从患者、医生处获得反馈数据，增强信息反馈及时性和全面性，为产品和服务优化提供支撑，进而有效改善医生、患者的服务体验，并提升用户粘性和依从性。
- **推进数字疗法创新：**利用数字化技术的应用实现全生命周期的健康管理（包括预防，治疗和康复），利用科技能够更好的提高患者的参与度，结合药物改善以慢病为主的疾病的疗效，降低成本，实现智慧医疗会呈现百花齐放产业态势。从2017年开始，全球已经有多个数字疗法获得药监认证，2022年开始随着数字疗法更多受到关注，在医疗核心的临床医治和康复过程也正在开始发挥作用，同时在更多临床适应症（比如：心理疾病、慢性疼痛、语言障碍、睡眠障碍、过敏性疾病）上展现更多的可能性。



and child health service systems. The main objectives include advocating eugenics, strengthening prenatal checkups, and improving the quality of the population.

Thyroid disorders can negatively impact almost all organs and tissues in the body, especially in women of childbearing age. Failure to detect and treat them early can severely damage the health of both the mother and child. Therefore, it is crucial for society to pay attention to the early screening, diagnosis, and treatment of thyroid disease in women of childbearing age. Domestic guidelines recommend thyroid screening for women of childbearing age. In 2019, the Chinese Society of Endocrinology, in association with the Perinatal Medicine Branch, published the Guidelines for the Diagnosis and Treatment of Thyroid Disorders in Pregnancy and Postpartum (2nd edition). It recommends that hospitals and maternal and child health care departments in China should support early screening for thyroid disorders in women, preferably before pregnancy. In 2022, the Chinese Society of Preventive Medicine Women's Health Care Branch, in conjunction with the Endocrinology Branch of the Chinese Medical Association, released the Guidelines for the Management of Thyroid Disease Prevention and Control during Pregnancy and Childbirth. It recommends that hospitals and maternal and child health care departments in China should screen all women preparing for pregnancy for thyroid disease. This will aid in the early detection of abnormal thyroid function and timely intervention.

### Recommendations

- **Encourage thyroid disease screening to be included in the checklist for women preparing for pregnancy:** Hospitals and maternal and child health departments in China that are in a position to do so screen all women preparing for pregnancy for thyroid disease, which is conducive to early detection of abnormal thyroid function and intervention, so that women of childbearing age can have normal thyroid function before getting pregnant, which is beneficial to maternal and child health.
- **Add thyroid function tests to women annual physical exams:** early screening will facilitate early diagnosis and treatment of thyroid disease, which will improve both the overall health of the female population.

### Bone Health

Ensuring a healthy family is essential for the well-being of society and for achieving a healthy China. The Healthy China 2030 plan recognizes the importance of providing accessible and continuous health services throughout the entire lifespan of the population. The 2019 Report on the Development of Maternal and Child Health in China further emphasizes the need to target the health needs of menopausal women and to carry out health education and osteoporosis diagnosis and treatment. Osteoporosis is a critical disease that affects women during menopause, with a 40%

lifetime risk of osteoporotic fractures, which is higher than the combined incidence of breast, endometrial and ovarian cancers. Osteoporosis has become a significant health issue for people over 50 years old in China, particularly middle-aged and elderly women.

In recent years, China has made significant progress in cervical and breast cancer screening for women, which has been integrated into basic public health services. However, we must also pay attention to osteoporosis, which is often referred to as the "silent" killer. With the aging of China's population, there is a pressing need to address this issue by increasing attention, support and investment from the policy, promoting awareness of women's bone health across society, improving prevention and control measures, and reducing the prevalence and incidence of osteoporosis and fractures among women. Addressing osteoporosis will help achieve the goal of a healthy China by 2030 by focusing on disease intervention and management and promoting women's health throughout their lives.

### Recommendations

- **Raise awareness and educate women about bone health: actively mobilize more social forces to participate in health literacy:** Encourage health and health industry societies and associations to organize experts to carry out various forms of health science popularization activities for the public. Promote the implementation of osteoporosis risk screening for key populations in the community.
- **Bone health management should be regarded as a key area of work for menopausal women's health:** It is recommended that healthy bone management be incorporated into the 14th Five-Year Plan and action plans for women's development in each region. Prioritize the establishment of a comprehensive health and health service system that integrates publicity and education, consultation and guidance, screening and assessment, comprehensive intervention and emergency treatment for postmenopausal women with osteoporosis and other major chronic diseases in women. Promote the implementation of osteoporosis risk screening for key populations in the community and enhance the accessibility of medication for menopausal women and elderly women. Advocate for the inclusion of drugs in the medical insurance catalog with outstanding clinical efficacy and good safety in the national essential drug catalog.
- **Improve public health budgets related to bone health management:** Rely on the multi-level medical insurance system, increase public financial subsidies to further improve the affordability of bone density screening and osteoporosis treatment medication. Promote priority inclusion of bone health management services for key populations into the financial and public health service budgets for maternal and child health care in regions with conditions.

- **加速医疗产业园区数字化转型**：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。比如国内依托京津冀、长三角、粤港澳大湾区、成渝地区双城经济圈等重点区域，加速的医疗产业园区和产业集群数字化转型。积极探索平台企业与产业园区联合运营模式，丰富技术、数据、平台、供应链等服务供给，提升线上线下相结合的资源共享水平，引导各类要素加快向园区集聚。围绕共性转型需求，推动共享制造平台在产业集群落地和规模化发展。

## 职业健康安全

职业健康安全指的是企业生产经营活动中对职业病危险因素的控制和消除。中国目前的职业健康安全管理的重要对象为中小企业从业人员以及医护人员。

关于中小企业从业人员，中国市场主体中大部分是中小企业，就业人群占规模以上工业企业从业人员总数的一半以上。2022年国家卫健委调查显示，10人以上企业中存在一种及以上职业病危害因素的企业数量占总数的93.46%，粉尘、化学毒物和噪声是主要的职业危害因素。与此同时中小企业普遍存在企业主体责任落实不到位，职业安全卫生管理人员配备不足，作业人员安全健康意识淡薄，个体防护装备配备不理想，管理制度不完善等问题。

关于医护人员，国家卫健委发布数据显示，2021年中国卫生人员总数已达到1398.3万人，其中90%以上分布在医院和基层医疗卫生机构。近年以来，这个庞大医护人员群体的职业健康开始受到广泛关注。尽管医疗行业监管部门和医疗机构对会导致传染性疾病的生物性危害相对重视，但对医疗机构内广泛存在的其它职业危害如化学性危害（有害溶剂，有毒气体，药物粉尘等）和物理性危害（噪声，电离辐射，电磁辐射等）认识普遍存在不足。这些危害会在工作场合中对医护人员造成严重的职业健康损害甚至职业病。目前，监管部门对相关的医疗卫生机构的职业安全管理系统尚缺乏相应的监管，医疗机构自身也缺乏专业的职业健康管理。

### 建议（中小企业从业人员职业健康安全）

- **加强中小企业作业场所的监督检查**：建议政府相关

部门督促中小企业建立健全职业病防治和安全生产责任制，落实用人单位主体责任并提供必要的经费保证，为作业人员创造符合要求的工作环境和条件。

- **规范中小企业个体防护装的配备和管理**：在工程措施不能完全消除工作场所职业安全健康隐患的情况下，中小企业应该积极规范化个体防护装备的配备及管理，以有效应对因安全生产事故、自然灾害和公共卫生事件带来的影响。
- **提高中小企业从业人员的职业健康安全意识**：建议中小企业通过定期培训，提高劳动者安全和健康技能，提升作业人员主动要求职业安全健康的意识。在按照安全生产法第五十一条为企业员工投保安全生产责任险的基础上，敦促安全生产责任险承保保险公司按照《安全生产责任保险事故预防技术服务规范》提供职业安全健康事故的预防和教育培训服务。

### 建议（医护人员职业健康安全）

- **明确和细化《中华人民共和国职业病防治法》在医疗卫生行业的实施和监督管理**：各级医疗机构需严格遵守《中华人民共和国职业病防治法》，强化医护人员的职业危害防护和健康管理。
- **落实医疗卫生机构的职业病防治主体责任**：根据职业病防治法规，制订行政法规和部门规章，落实医疗卫生机构的职业病防治主体责任，提请医疗机构建立职业危害防护和健康管理相关的制度和落实日常资金支持。
- **推动医疗机构内设置职业危害防护和健康管理专门机构**：职业健康行政管理部门应对医疗卫生机构加强监督指导和管理，推动医疗机构设置职业危害防护和健康管理专门机构，引进专业的职业危害防护和健康管理专业人员，开展职业病相关危害因素的监测，将医务人员纳入职业健康监测范围，并采取有效的职业病防护措施。

## 医疗商业保险

2020年，中共中央国务院发布《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。

## Reproductive Health

To ensure a healthy and balanced population development in China, the State Council released the *Decision on Optimizing the Fertility Policy for Long-term Balanced Population Development* in June 2021. This policy implemented a “three-child” fertility policy, accompanied by supporting measures. In line with the 20th Party Congress report, China’s population development strategy requires the establishment of a fertility support policy system and attention to the protection of women’s fertility, among other economic and social factors and enhancing public willingness to have children.

The State Council also issued the *Outline for the Development of Chinese Women (2021-2030)* that aims to improve reproductive health education, promote healthy motherhood, reduce unwanted pregnancies, and non-medically necessary abortions. However, China faces challenges in protecting women’s fertility due to the low awareness of scientific contraception and declining use of long-acting contraceptive methods, leading to a serious incidence of abortion among infertile women and an increasing infertility rate.

The timing of pregnancy intervention in China is also delayed, and there is limited accessibility to long-acting reversible contraceptive methods. Given these challenges, strengthening female fertility protection is an urgent matter. To reduce non-medically necessary abortions and protect the fertility of infertile women, it is recommended to establish a service system for reproductive health at the community level, particularly in high-abortion areas. This includes improving the accessibility and service capacity of community-based primary health institutions, with a focus on birth-friendly, long-term reversible contraceptive technologies.

### Recommendations

- **Community should get involved in the promoting the reproductive health to the community:** take full advantage of the community health service center’s district management and population coverage, it has launched a “education-assessment-intervention” one-stop fertility health service for women of childbearing age in grassroots medical institutions to popularize the knowledge of fertility health and scientific contraception and do a good job of fertility planning and reproductive health.
- **Loosen the qualification requirements for primary care institutions to carry out “fertility-friendly” long-acting reversible contraceptive methods to improve accessibility:** for long-acting reversible contraceptive surgeries that are beneficial to the fertility protection of the population, such as non-high-risk subcutaneous implantation, they should be managed differently from pregnancy termination surgeries, and the relevant qualification application requirements and management should be relaxed. This will facilitate and encourage community-based primary care institutions to actively

carry out these procedures and expand the coverage of the population.

- **Provide support measures such as referral for high-risk surgeries, preparation of relevant technical specifications, and training of personnel technical capacity for the above-mentioned fertility support service policy:** It should be clarified that evidence-based long-acting contraception does not simply reduce fertility levels, but preserves women’s fertility in the long term, reduces the damage to fertility caused by unintended pregnancies and abortions, and thus selects the optimal time to have children and maximizes the supply of healthy labor force. It is about preserving women’s fertility for the long term, reducing the damage to fertility from unintended pregnancy and abortion, and thus choosing the optimal time to have children and maximizing the supply of a healthy workforce.

## Chronic disease prevention and management

### Blood Lipid Management

Over the past decade, China has made significant progress in improving its medical security through various channels, as evidenced by the enhancement of basic public health service capacity and subsidy standards. Specifically, the per capita subsidy standard for basic public health services has increased from 25 yuan in 2012 to 84 yuan presently, while the range of projects offered by grassroots institutions has been expanded from 10 to 12 categories. In addition, China has integrated hypertension and diabetes management into its national equalization of basic public health services, yielding noticeable results. However, there remains a shortfall in diabetes management, which constitutes a drawback in the prevention and control of cardiovascular and cerebrovascular diseases in China.

Currently, cardiovascular diseases account for over 40% of all deaths in China, making them the leading cause of mortality in the country. Hypertension, diabetes, and blood lipid abnormalities constitute the three major high-risk factors exacerbating cardiovascular diseases in China. Alarming statistics reveal that the high mortality rate among the young and middle-aged population caused by cardiovascular diseases has resulted in a significant loss of social workforce, while the upsurge of cardiovascular diseases in the rural population is extremely concerning.

### Recommendations

- **Incorporate lipid management into existing basic public health service programs:** Optimize the national basic public health service programs, incorporate lipid management into the management standards of hypertension and diabetes in existing national basic public health service programs, and realize the joint

2022年5月中共中央国务院国务院办公厅发布的《“十四五”国民健康规划》在做优做强健康产业方面提出，增加商业健康保险供给。鼓励围绕特需医疗、前沿医疗技术、创新药等增加新型健康保险产品供给，鼓励保险机构开展管理式医疗试点，促进医、险定点合作。增加商业健康保险的供给，不仅可以为国家的医保体系减轻压力，也可以让国民在健康保障方面有更多的选择，尤其是丰富未成年人、老年人和次标体等特定人群的保障供给。

2022年5月，银保监会向业内下发《保险业标准化“十四五”规划》（以下简称《规划》）。根据规划要求，到2025年，要进一步完善保险标准化工作机制，建立结构清晰、覆盖全面、效用突出的保险标准体系。在社会民生方面养老和健康是公众关注的热点话题。《规划》提出推动制定商业保险与医疗、社保部门的数据共享和交换标准，促进普惠型保险的健康发展。

### 建议

- **加强商业健康保险的顶层设计，促进多部门职能对接：**商会建议由政府主导及参与商业健康保险顶层设计与规划。希望在国务院总协调下，进一步明确各部门（医保局、银保监会、财政、卫健等）管理商业健康保险的目标和职能，形成产品设计、数据交互、风险防范、医疗服务对接的协同体系。
- **厘清基本医疗保险和商业健康保险的支付范围和支付水平：**在国家医保局建立价值导向、规则透明的基本医保目录评审机制的基础上，鼓励保险企业将更多的基本医保目录外医疗费用、健康管理服务纳入保障范围。在设计普惠型商业健康保险产品时，商业保险公司注意满足重特大疾病、慢性病、罕见病等特殊人群的健康保障需求，为支付能力不足群体提供费率或赔付倾斜。努力实现商业保险与基本医保形成差异化的补充，减轻患者因病致贫及返贫的经济负担。
- **鼓励商业健康险多层次发展：**建议保险机构围绕特需医疗、前沿医疗技术、创新药等新兴医疗领域增加商业健康保险产品供给。
- **鼓励保险机构建立管理式医疗试点，将商业健康保险纳入全生命健康管理服务：**促进医疗机构和保险机构定点合作，鼓励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，推动商业保险由支付方向健康管理方转变。

- **加强商业保险与医疗部门的数据共享：**在安全风险可控前提下，加快健康保险信息系统和全国统一的医疗保障信息平台建设，为医保和商保的前置健康管理、精细化定价和风控审核提供数据支撑，为保险公司提供必要的脱敏业务数据信息，使其更有针对性地开发健康保险产品，推动各商业保险企业提升运用数据服务经济社会发展的能力。
- **出台对不同团体/人群参保商业健康险的鼓励政策：**增加企业和个人购买商业健康险产品的税优政策，鼓励企业为其员工和家属购买团体商业补充健康险。拓宽税优型产品的保障覆盖面，简化税优申报操作流程，降低投保人享受税优权益门槛。鼓励民众购买长期医疗险。增加覆盖老年人、低收入人群参保商业健康险（尤其是普惠型保险）的鼓励政策，并进行一定补贴。
- **支持医疗相关公司参与商业健康保险和基本医疗保障衔接的政策设计中：**医疗服务提供方、生物制药企业以及医疗器械制造企业能够在政策制定中，能够提供特定疾病领域、患者支付能力等方面的洞见，助力商业健康保险长足发展。

### 人类遗传资源管理法则

《中华人民共和国人类遗传资源管理条例》目前禁止外方单位采集、分析、运输样本和相关数据。该条例对于外方单位的定义是“外国组织及外国组织、个人设立或实际控制的机构”，且“外方单位”采用了“境外”而非“国外”的概念，使香港、澳门、台湾投资的企业也被界定为“外方单位”。即便有些机构已经取得药物临床试验资格（GCP），但有外资成分（包括香港）的机构（无论该机构是否有中方合作单位）最终很少获批。很多在华创建并运营多年的机构受此所限无法开展相关临床试验。

从全球实践经验来看，该条例比较罕见。跨国药企和医疗器械公司受此影响不得不延迟先进科研成果进入中国市场。在华医疗机构如无法开展相关临床试验，将不利于提升医院的科研水平，开展循证医学研究，促进合理用药。

根据中国目前的人类遗传资源法规要求，对于涉及外方的临床研究项目，在开始临床试验或其他利，但中国特有的人类遗传资源审批程序已成为开发过程中严重延迟和不确定性的根源。人类遗传资源法规还限制此类

management of three conditions: hypertension, diabetes and dyslipidemia. Put the policy of prevention-oriented and combined prevention and treatment into practice, move the key part of management forward, effectively curb the high incidence of cardiovascular and cerebrovascular diseases through comprehensive management, achieve the inflection point of declining cardiovascular and cerebrovascular diseases at an early date, and reduce the incidence of cardiovascular diseases and mortality of Chinese residents to put the national strategy of Healthy China 2030 and the goal of prevention and control of chronic diseases into practice.

- **Strengthen primary care construction and promoting graded care:** Community primary care physicians and family physicians assume the important function of direct patient contact. In addition to carrying out disease education, screening, initial diagnosis, and follow-up management. They should do a good job of referring patients up and down between primary care institutions and secondary and tertiary hospitals while ensuring the interface of medication and rational allocation of medical resources. Promote the equalization of basic medical services, improve the level of treatment of diseases in primary medical institutions, and promote the implementation of high-quality graded treatment.

## Diabetes Management

The population of diabetics in China is huge and rising year by year, and now China has become the world's first country with the largest diabetic population. The population of pre-diabetic patients is even larger, and most of the pre-diabetic patients will progress to diabetes if they do not intervene, and 52.8% of the pre-diabetic patients with abnormal glucose tolerance will progress to diabetes.

### Recommendations

- **Diabetes should be prevented and controlled in early prevention and early treatment:** Implement primary prevention in high-risk groups, promote forward movement of gates, use resident records and information from various medical examinations to carry out opportunistic screening, and early lifestyle interventions and preventive drug treatment for diabetes. This includes increased screening: regular screening using community and primary care institutions, especially for people at risk for diabetes, such as those with a history of prediabetes, age  $\geq 40$  years, body mass index  $\geq 24$  kg/m<sup>2</sup> and central obesity, and first-degree relatives with a history of diabetes, should be screened for diabetes.
- **Pre-diabetic lifestyle interventions and medications:** Diabetes education and lifestyle interventions for people with prediabetes identified by the screening and early use of medications with evidence of prevention, such as metformin, to reduce the risk of developing prediabetes progressing to diabetes.
- **Standardize the management system of the whole course of diabetes:** strengthen the training and technical guidance of hospitals to primary medical institutions, use the hierarchical diagnosis and treatment system, establish the mechanism of early detection and treatment of pre-diabetic patients and comprehensive management of the whole course of diabetes in primary medical institutions, and promote the integrated management of prevention and treatment of the whole course of diabetes.
- **Promote the linkage of the hierarchical diagnosis and treatment system and increase the guidance of hospitals on the management of diabetic patients in primary care institutions:** improve the service level of primary care institutions and further improve the contracted services of family doctors as well as the guidance of regular medication and life education for diabetic patients.
- **Improve whole management of diabetic patients:** the importance of intensive blood glucose management for diabetic patients, individualized blood glucose management goals for diabetic patients' early treatment, early benefit. Improve the rate of blood glucose compliance and control, reduce the occurrence of long-term complications, thus further reducing the socio-economic burden.

## Digital Transformation in Healthcare

Digital Medical refers to the utilization of advanced digital technologies, such as artificial intelligence, blockchain, cloud computing, robotic automation, and more, to enhance and revolutionize the healthcare industry. By integrating these cutting-edge technologies with core medical and ecological scenarios, we can create a patient-centered experience and deliver value to all parties involved in the medical ecology through data-driven and experience-optimized solutions.

The Healthy China 2030 Planning Outline recognizes the need for the deep integration of digital technology and medicine and health. To achieve this, the digital transformation of the medical and health industry is critical. By leveraging the vast amounts of data and rich application scenarios in the medical and health industry, we can promote the integration of digital technology across all aspects of research and development, production, circulation, and application. The nine major directions and scenarios of biotechnology and information technology in digital healthcare include: digital applications in pharmaceutical R&D, drug production, drug marketing, market services, sustainability, innovative service delivery models and products, universal application of medical digital services, active development of internet hospitals, and innovative artificial intelligence medical and digital therapies.

Many countries have made digital technology adoption and deployment a national strategy, with various related strategic plans in place. The digitalization of healthcare in China

样本和各种数据（包括在世界各地必须报告的关键的不良事件信息）的使用、分析和转移（包括出口），除非接受方实体和转移申请获得批准或允许。人类遗传资源审查流程将临床开发时间延长数月，引发知识产权所有权的不确定性，甚至导致企业完全终止某些研究。我们注意到，人类遗传资源办公室最近对人类遗传资源管理进行了流程改进，提高了备案和批准的首次受理率，并缩短了审查时间。

### 建议

- **建立科学的人类遗传资源管理体系：**建议简化人类遗传资源审批流程，缩短审批时间，并允许匿名数据（特别是不良事件报告）在无需批准或仅需简短通知的情况下进行传输。这将在合理保护个人数据的同时实现更快速的审批。
- **添加 Rh 阴性人群需要的抗 RhD 免疫球蛋白 (RhoGam) 的进口许可：**RhoGAM 是用于治疗怀孕期间 Rh 不相容的注射剂，可以阻止 RhD 阴性孕妇免疫系统对胎儿的 Rh 阳性血细胞作出反应。很多 RhD 阴性孕妇和产妇需要接受 RhoGam 注射。国内因为 RhD 阴性者太少无法制备 RhD 免疫球蛋白，因此 RhD 免疫球蛋白的进口许可将促进 RhD 阴性患者和产妇的安全。

### 疫苗及预防性生物制品

“预防为主”一直以来都是落实《健康中国 2030》战略的重点。此次新型冠状病毒肺炎疫情爆发以来，全球的政府、科学界和医疗行业都积极探索和应对这一前所未有的全球公共卫生挑战。疫苗接种被广泛公认为是全球最成功和最具经济成本效益的卫生干预措施之一。因此，研发出有效、且可被广泛使用的疫苗和其它预防性生物制品对于高效应对全球公共卫生问题至关重要。加强国际间在疾病控制和创新预防性产品研发等方面的合作是不可或缺的。此外，加强紧急卫生和传染病管理及响应机制仍然是中国政府的重要议题。

除了疫苗这一预防性生物制品之外，医疗界也在积极开展对其它高效预防性生物制品的研发，以丰富预防性医疗手段和技术的多样性。其中，预防用单克隆抗体（单抗）便是一种创新型的预防性生物制品；预防用长效单抗则具有更长的半衰期，能够为目标人群提供更持久、持续的免疫保护。然而，中国现行的生物制品分类

方式将预防用和治疗用功能分开，且预防用生物制品等均为疫苗，这可能导致全球范围内出现的创新型预防用长效单抗在中国无法纳入预防用生物制品类别。若中国能更新当前的预防性生物制品的分类和监管方式，以确保科学的产品注册分类并指导其使用，将能更进一步促进创新，增强疾病预防措施的多样性与可及性。

### 建议

- **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标准和最优实践看齐，从而提高中国公民获得创新疫苗 / 免疫的机会：**中国疫苗标准与国际标准的融合不仅会加快创新疫苗的引入，还将有效帮助中国疫苗制造商进入国际市场。
- **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。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。
- **在粤港澳大湾区、海南博鳌乐城等开展药品监管创新“先行先试”等准入改革措施的地区，加速推进创新疫苗在内地早日上市：**特别是已在香港和澳门地区上市使用的创新疫苗，将有助于推动港澳和内地在免疫规划、公卫体系、居民生活、生物医药产业等方面的深度融合与共同发展。
- **更新当前生物制品的分类和监管方式：**确保科学的预防性生物制品注册分类并指导其使用，更进一步促进技术和产品创新，增强疾病预防措施的多样性与可及性。
- **国家免疫规划的疫苗采购不因进口还是本地生产的疫苗来区分：**国家药监局批准上市的疫苗应该都有平等的机会，这样能为中国百姓，特别是儿童和老年人，获得高质量疫苗保护提供可持续供应保障。

### 负面清单：基因治疗及相关技术

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。2022 年发布的《“十四五”生物经济发展规划》提出，要加快发展高通量基因测序技术，推动以单分子测序为标志的新一代测序技术创新，不断提高基因测序效率、降低测序成本。发展基因诊疗、干细胞治疗、免疫细胞治疗等新技术，强化产学研用协同

is also gaining momentum, particularly with the COVID-19 pandemic accelerating the shift towards digitalization. The healthcare and life sciences industry is characterized by high technology, high investment, long cycle time, high risk, and high return. For healthcare and pharmaceutical companies to achieve long-term sustainable development, they must continuously innovate, comply with regulations, and reduce costs while improving efficiency. Digital transformation is therefore an inevitable choice for medical and pharmaceutical companies, and the smart medical enterprises that emerge from this transformation will be more efficient, resilient, and powerful. These companies will become the future leaders of the industry, creating win-win opportunities and building an ecosystem to promote smart medical and Healthy China 2030.

### Recommendations

- Develop a transparent, innovative, big data-based digital strategy for the healthcare industry:** In order for companies to drive successful digital transformation, it is crucial to prioritize strategy and organization. The healthcare and life sciences industry has been disrupted by the digital era, requiring companies to gain deep insight into patient needs and provide better services and experiences. It is also important for companies to operate more efficiently, innovate faster, and build core competencies in the digital era. These transformation directions should be thoroughly considered and implemented by medical companies.
- Promote the application of medical digital services for inclusively:**

  - 1 Promote the digitalization of hospitals, nursing homes and other public service institutions resources, and actively develop Internet hospitals. Encourage social forces to participate in the “Internet + medical” construction, innovation in the provision of service models and products.
  - 2 Improve “Internet consultation” to help patients participate in medical services and drug treatment in a more active capacity, and gaining knowledge of diseases and drugs through websites, mobile applications and other channels.
  - 3 Promote interaction between pharmaceutical companies and patients through digitalization, such as medical Q&A bots that can proactively answer patient-related questions. Online follow-up management system can collect feedback from patients at any time. Smart pill boxes can remind patients to take their medication in a timely and accurate manner, providing a better medical experience for patients. Evidence-based medical reference materials assisted by artificial intelligence technology provide physicians and pharmacists with convenience and protection for rational drug use and exploration of over-specified drugs.
  - 4 In the field of precision medical diagnosis, with the use of more mature bioinformatics, genetic testing, multi-omics analysis and other technological advances as well as the abundance of data, digital diagnosis is also helping the whole cycle of prevention, screening, diagnosis and efficacy management of many diseases.
- Establish a digital innovation payment mechanism built by government departments, insurance companies and third-party digital service companies:** With the development of big data and Internet digital technology, technology and innovation are also advancing the reform of domestic health insurance payment, including the realization of DIP/DRG as a new way of health insurance payment to achieve guaranteed efficacy-based cost management and long-term transformation of a value-based payment system.
- Promote the process of digital R&D:** One approach to improving drug development is to integrate big data, artificial intelligence, cloud computing, and other technologies with biopharmaceuticals. By using computer simulations, calculations, and budgeting to analyze the relationship between drugs and receptor biomolecules, we can design and optimize lead compounds during the drug candidate design and screening process. Additionally, through querying and comparing a knowledge base of big data, advanced synthetic routes of target compounds can be recommended by artificial intelligence during compound synthesis and preparation. This approach can significantly reduce the new drug development cycle and associated costs. Overall, the comprehensive integration of these technologies has the potential to improve the efficiency and efficacy of drug development.
- Advancing digital clinical trials:** Accelerating clinical matching for more automated data collection and smarter digital analytics. Conducting digital, high-quality patient-centered clinical trials that will drive future pharmaceutical industry R&D innovation. Digital clinical trials are still in their early days, and digital clinical innovation companies should work more around the digital upgrade and data expansion of clinical products.
- Promote digital factory and supply chain construction:** The implementation of the latest automation, information technology, and intelligent technology can unify and integrate data and processes related to production, including people, machines, materials, methods, and the environment. This integration meets the digital transformation needs of enterprises in various business aspects, such as safety compliance, capacity enhancement, quality assurance, risk prediction, asset utilization, and personnel efficiency during the production operation stage. It can serve the overall transformation of business strategy and the upgrade of industry compliance requirements. With the joint promotion of automation, IoT, and other next-generation information and communication technologies, digital production makes the pharmaceutical production process visible, controllable, and intelligent. This helps to reduce the unavoidable deviations and errors in manual operations and ensures the transparency of information and process compliance. The collected data can be analyzed

联动，加快相关技术产品转化和临床应用，推动形成再生医学和精准医学治疗新模式。

然而，2021年12月发布的全国版和自贸区版《外商投资准入特别管理措施（负面清单）》虽然在条目上较上一版有进一步缩减，但是有关“禁止投资人体干细胞、基因诊断与治疗技术开发和应用”的规定继续保留了对外资准入的禁止。该描述对于细胞基因疗法相关的药品是否落入投资准入负面清单范围会产生不同理解和认识。投资准入负面清单管理是完善和开放的市场监管体系中的重要组成部分。随着我国不断扩大开放领域，进一步放宽市场准入，外资准入负面清单也相应不断缩减和调整。

值得注意的是，《生物安全法》于2021年4月15日生效。《生物安全法》对生物技术的发展和應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。”与此相关，国务院于2019年7月1日颁布的《人类遗传资源管理条例》也对中国人類遗传资源（“人遗”）的管理设定了明确的限制与要求，其主管部门，科技部人类遗传资源管理办公室（“人遗办”）也已经在此领域积累了丰富的监管经验。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放宽对基因治疗技术的外国投资限制，并依靠《生物安全法》和相关法规对此类投资进行管理，而不是直接禁止投资。

### 建议

- **制定针对特定行业的负面清单：**建议进一步完善外商投资准入负面清单相关条目管理，加强表述的规范性及确定性，努力避免政策表述模糊情况的出现。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，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。
- **促进人体细胞和基因产业发展纳入生物医药产业发展协调促进机制：**2021年12月发布的《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》第7条，“市政府、浦东新区人民政府应当将促进人体细胞和基因产业发展纳入生物医药产业发展协调促进机制，在风险可控的前提下，支持符合条件的多元化投资主体开展人体细胞、基因技术研发和

推进产业化进程”。商会建议，允许企业对“人体干细胞、基因诊断与治疗技术开发和应用”进行细分，并结合《生物安全法》的框架规定，对拟投资的特定细分领域的安全性、可控性、必要性等进行可行性论证，以期实现局部的、逐步的、有序的开放，为创新技术的引入、落地、发展留有空间。

- **允许药品形式进行管理的细胞基因疗法相关技术开发和应用：**建议应以《生物安全法》和《人类遗传资源管理条例》等法律法规为依据，将《外商投资准入特别管理措施（负面清单）（2021年版）》中“禁止投资人体干细胞、基因诊断与治疗技术开发和应用”的表述修改为“禁止投资人体干细胞、基因诊断与治疗技术开发和应用（以药品形式进行管理的细胞基因疗法相关技术开发和应用除外）”。

### 负面清单：基因检测实验室

外商在华投资设立基因检测实验室可以包括两种形式：① 检测实验室获取医疗机构执业许可证，开展临床检测项目；② 检测实验室无医疗机构执业许可证，提供检测服务仅支持科学研究。

外商投资医疗机构，现行负面清单要求只能合资。如果中外机构在提供临床诊断服务之外，需要使用临床收集的人体样本进行研究，同样会受到科技部人遗办的监管。此外，从技术角度而言，使用基因测序技术进行疾病的临床诊断，相比较使用基因编辑等技术进行临床治疗而言，其风险是很低的。

对于外商投资设立基因检测实验室涉及的第2种情形，因为不涉及诊断与治疗，所以外商投资企业从事这类业务不应该受到负面清单的限制，但是由于检测需要接触人体样本，涉及人类遗传监管，外资公司仍然很难开展相关活动。

### 建议

- **允许中外合资的公司申请医疗机构职业许可证：**建议对于中外合资的公司，在满足卫健委相关要求的前提下，应该允许其申请医疗机构执业许可证，并在诊疗科目内包含临床细胞分子遗传学专业，也就是提供临床基因检测服务。这里不涉及产品的开发或注册，而是应用相关产品提供临床诊断服务，虽然可能会涉及基因诊断技术的临床应用问题，但是



to enable continuous improvement of drug quality, resulting in quality improvements and cost reductions.

- **Encourage biomedical enterprises to establish composite digital marketing channels and communication platforms:** Biomedical enterprises rely on “Internet+” technology to establish. On the one hand, it can effectively improve channel control, enhance the accuracy of academic content and product promotion information dissemination for doctors and patients, and effectively reduce sales costs. On the other hand, it can also obtain feedback data from patients and doctors at the same time through personalized customization services, enhance the timeliness and comprehensiveness of information feedback, provide support for product and service optimization, and then effectively improve the service experience of doctors and patients, and enhance user stickiness and compliance.
- **Promote digital therapy innovation:** The use of digital technology applications to achieve full lifecycle health management (including prevention, treatment and rehabilitation), the use of technology can better improve patient engagement, combined with drugs to improve the efficacy of diseases mainly chronic diseases, reduce costs, to achieve intelligent medicine will show a hundred flowers industry trend. Since 2017, several digital therapies have been certified by pharmacovigilance worldwide, and as digital therapies receive more attention starting in 2022, they are beginning to play a role in the core clinical healing and rehabilitation process of healthcare, while showing more possibilities in more clinical indications (e.g. mental illness, chronic pain, speech disorders, sleep disorders, allergic diseases).
- **Accelerate the digital transformation of medical industrial parks:** Encourage the establishment of industrial Internet platforms and digital transformation promotion centers in the biopharmaceutical sector, conforming to international standards. Deepen the digitalization of pharmaceutical research and development, drug production, marketing, and market services. Accelerate the digital transformation of pharmaceutical industrial parks, particularly in key regions such as the Beijing-Tianjin-Hebei, Yangtze River Delta, Guangdong-Hong Kong-Macau-Great Bay Area, and Chengdu-Chongqing area twin-city economic circle. Actively explore the joint operation model of platform enterprises and industrial parks, enriching the supply of technology, data, platforms, supply chains, and other services. Improve the level of resource sharing, combining online and offline efforts to guide the gathering of various factors. Focus on common transformation needs and promote the landing and scale development of shared manufacturing platforms in industrial clusters.

## Occupational Health and Safety

Occupational safety and health (OSH) involves identifying, assessing, and controlling hazards that arise during production and operation activities. In China, the focus of occupational health and safety management is mainly on small and medium-sized enterprises’ employees and medical personnel. Since most market players in China are small and medium-sized enterprises, their employed population accounts for more than half of the total number of employees in industrial enterprises. A survey conducted by the National Health and Medical Commission in 2022 revealed that 93.46% of enterprises with more than 10 employees have one or more occupational hazard factors, such as dust, chemical poisons, and noise. Small and medium-sized enterprises also face challenges such as unclear roles and responsibilities in occupational safety and health, a lack of occupational safety and health management personnel, low awareness of occupational safety and health, ineffective personal protective equipment, and inadequate safety management systems.

In addition to small and medium-sized enterprises, medical personnel have also recently received widespread attention regarding their occupational safety and health. According to data released by the National Health and Medical Commission, the total number of medical personnel in China reached 13.983 million in 2021, with more than 90% working in hospitals and primary medical institutions. While healthcare-related regulatory authorities and medical institutions pay attention to biological hazards that cause infectious diseases, there is generally a lack of awareness of other occupational hazards that exist in medical institutions, such as chemical and physical hazards. These hazards can cause severe occupational health damage and even occupational diseases to medical personnel in the workplace. However, regulatory authorities currently lack sufficient supervision of the occupational safety management system of relevant medical institutions, and medical institutions themselves lack professional occupational health management personnel.

### Recommendations (for small and medium-sized enterprises)

- **Strengthen the supervision of small and medium-sized enterprises’ workplaces:** Relevant government departments should urge small and medium-sized enterprises to establish and improve the occupational disease prevention system and safety production responsibility system, carry out the responsibility of the main body, and provide necessary financial support, and provide a safe working environment and conditions.
- **Standardize the allocation and management of Personal Protective Equipment (PPE) for small and medium-sized enterprises:** When engineering measures cannot eliminate occupational safety and health hazards in the workplace, small and medium-sized enterprises should actively standardize the allocation and management of personal protective equipment to effectively respond to the impact of

其业务活动可由卫健委和药监局加以监管，可以有效管控风险。卫健委对于医疗机构的设立和运营监管已经有了比较成熟的经验。药监局对于检测实验室所使用的产品也有明确的监管要求。

## 优生优育

根据第七次全国人口普查（以下简称七普）和联合国《世界人口展望（2022）》的数据，近十几年来，我国人口总量持续增长，然而增速放缓，“十四五”及中长期总人口将相继经历零增长、负增长。同时，七普数据也反映出我国人口发展中面临着一些结构性矛盾，如劳动年龄人口和育龄妇女规模下降，老龄化程度加深，总和生育率下降，出生人口数量走低等。从2020年来看，新冠肺炎疫情增加了生活的不确定性和对住院分娩的担忧，进一步降低了居民生育的意愿。还有人们生育时间的推迟，以及生育养育成本的提高，这些都导致出生人口规模缩减，这是我国经济发展特别是工业化、城镇化发展到一定阶段的客观结果。另一方面，国家层面要通过政策支持生育，放缓出生人口减少趋势，积极应对老龄化。

首先是多种因素影响，不孕不育发病率逐年提升，患者从首诊到进入有资质的辅助生殖中心治疗耗时长，降低了治疗成功率。不孕不育病因复杂，同时受环境污染、生育年龄推迟、生活压力等各种因素影响。

因此，建议加强生殖健康和不孕不育疾病的宣传教育，提升患者认知；同时，建议建立不孕不育患者分级诊疗服务体系和转诊标准，缩短有需求的患者进入正规辅助生殖中心的时间，提升治疗的成功率，避免因为在基层无资质机构或者其他科室反复治疗，延误了辅助生殖治疗的时机，错过了怀孕的最佳时间。充分发挥三级医疗机构的优势，实现基层患者的转诊，使优势资源下沉，同时发展和提升基层机构的专业水平和人员素质。

其次，国家新人口政策背景下，多元化的生育需求和特殊人群生育力保存的未满足需求的增长。

最后，助力国家人口和生育支持政策的落地实施，提升生殖健康服务能力，需要进一步规范辅助生殖服务机构的标准化建设，建立统一的高标准的质量控制体系。

除了优生，优育也是人口政策的重点。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。

## 建议

- **加强生殖健康和不孕不育疾病的宣传教育，并建立不孕不育患者分级诊疗服务体系和转诊标准：**缩短有需求的患者进入正规辅助生殖中心治疗的时间，提升治疗的成功率。
- **提升辅助生殖技术应用的可及性：**适时升级和完善相关法规，满足单身女性适时生育和对生育力保存，如卵子冷冻的医学和社会学需求，有效满足人口新格局下多元化的生育需求及保护民族生育力；政府部门可适时选择需求和呼声较高的城市借鉴多国成功经验基础上，就单身女性冻卵政策进行试点，完善生育力保存的相关政策规定，同时建立相关质量监控体系，确保生育力保存的有效稳定推进，为政府部门相关政策和法规的逐步决策调整提供依据。
- **推动并规范辅助生殖服务机构的标准化建设：**在既往各省市的标准和数据基础上，建立统一的高标准的辅助生殖质控体系，不断提升我国辅助生殖技术服务能力和质量标准。
- **将无创产前筛查技术应用于孕妇常规检查：**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。

## 第五部分：特殊疾病

### 肺癌

肺癌是中国发病率和死亡率最高的恶性肿瘤。近年来随着分子生物医学的突飞猛进，肺癌领域作为精准治疗的“先遣部队”，已经在靶向治疗、免疫治疗等领域取得突破，临床对肺癌分子分型的分析需求亦不断增长。

由于我国肺癌患者的基数庞大，对于肺癌罕见靶点（临床上通常定义为5%或以下）的患者总体量巨大。肺

production safety accidents, natural disasters, and public health incidents.

- **Improve small and medium-sized enterprises' awareness of occupational health and safety:** small and medium-sized enterprises should improve workers' safety and health skills through regular training and raise workers' awareness of occupational safety and health. On the basis of purchasing safety production liability insurance for enterprise employees in accordance with Article 51 of the *Work Safety Law*, insurance companies underwriting work safety liability insurance should provide occupational safety and health accident prevention and education and training services to companies in accordance with the "Specifications for accidents prevention technical service on work safety liability insurance."

#### Recommendations (for medical personnel)

- **Strengthen the supervision of the healthcare industry in accordance with the "Law of the People's Republic of China on Prevention and Control of Occupational Diseases 2016(2016 Occupational Diseases Law)":** strengthen the occupational hazard protection and health management of medical personnel.
- **Clarify the main responsibility of medical and health institutions for occupational disease prevention and control:** According to the regulations on occupational disease prevention and control, formulate administrative regulations and departmental rules, implement the main responsibility of medical and health institutions for occupational disease prevention and control, and request medical institutions to establish systems related to occupational hazard protection and health management and implement daily funds support.
- **Promote the establishment of specialized institutions for occupational hazard protection and health management in medical institutions:** Occupational health administrative departments should strengthen supervision, guidance, and management of medical and health institutions; promote the establishment of specialized institutions for occupational hazard protection and health management in medical institutions; introduce professional occupational hazard protection and health management personnel; carry out monitoring of occupational disease-related hazards; Include medical personnel in the scope of occupational health monitoring; take effective occupational disease prevention measures.

### Commercial Health Insurance

In 2020, the Central Committee of the Communist Party of China and the State Council published *Opinions on deepening the reform of the medical security system*, which outlined the goal of building a comprehensive medical security system by 2030.

This system will consist of basic medical insurance, medical assistance, supplementary medical insurance, commercial health insurance, charitable donations, and mutual aid. To achieve this goal, it is necessary to accelerate the development of commercial health insurance and study the future direction of expanding the scope of insurance products.

In May 2022, the General Office of the State Council issued a plan to improve policies on national health that proposed increasing the supply of commercial health insurance to optimize and strengthen the health industry. The plan encourages insurance agencies to carry out pilot programs of managed medical care and promote designated cooperation between medical care and insurance. Increasing the supply of commercial health insurance can reduce the pressure on the national medical insurance system and provide citizens with more choices in health security, particularly for groups such as minors, the elderly, and substandard individuals.

In 2022, the China Banking and Insurance Regulatory Commission also issued the Insurance Industry Standardization Plan for the 14th Five-Year Plan period, which aims to improve the insurance standardization mechanism and establish an insurance standard system with a clear structure, comprehensive coverage, and outstanding effectiveness by 2025. The plan also proposes to promote the formulation of data sharing and exchange standards between commercial insurance and medical and social security departments to promote the healthy development of inclusive insurance, particularly for the healthcare of the elderly, which is a hot topic of public concern.

#### Recommendations

- **Strengthen the top-level design of the commercial health insurance industry and promote the connection of multi-departmental functions:** AmCham suggests that the government should lead and participate in the top-level planning of commercial health insurance. We hope that under the general coordination of the State Council, the goals and functions of various departments (Medical Insurance Bureau, Banking and Insurance Regulatory Commission, Finance, Health, and Health, etc.) in managing commercial health insurance will be further clarified, and a collaborative system of product design, data interaction, risk prevention, and medical service docking will be formed.
- **Clarify the payment limits of national medical security and commercial health insurance:** Based on a value-oriented, rule-transparent basic medical insurance catalog review mechanism by the National Medical Insurance Administration, commercial insurance companies should include more medical expenses and health services outside the national medical insurance catalog into the scope of coverage. When designing inclusive commercial health insurance products, commercial insurance companies should pay attention to special groups such as people with critical

癌罕见靶点突变频率较低的特性，虽然已经进入精准治疗时代，且国家不断推出利好政策，整体上肺癌罕见靶点的知晓度相较常见靶点而言仍旧较低，面临着对诊疗选择新进展的认知有限、临床送检率低、检测平台少等问题。

### 建议

- **肿瘤精准检测是实现精准治疗的第一步**：商会建议扩大对非小细胞肺癌驱动基因突变的综合检测，推动基于二代测序的多基因联检等检测手段，并将其作为肺癌精准诊断和合理用药的依据。
- **积极提升患者和整个肺癌诊疗生态圈对肺癌罕见靶点筛查重要性的认知。**
- **由国家医保局有序地指导，将安全有效、费用适宜且收费标准明确的肿瘤基因检测项目按程序纳入国家或地方医保支付范围**：最大程度发挥医保基金的全民保障作用，让肿瘤患者从中获益。

illness, chronic diseases, and rare diseases, and provide premium rates or payment preferences for the groups with insufficient payment ability. We should try to realize the differentiated supplementation of commercial insurance and basic medical insurance and reduce the economic burden of patients falling into poverty due to illness and returning to poverty.

- **Encourage the multi-level development of commercial health insurance:** AmCham suggests that insurance institutions increase the supply of commercial health insurance products around special medical care, cutting-edge medical technology, innovative drugs, etc.
- **Encourage insurance companies to establish managed care pilot programs and incorporate commercial health insurance into full-life health management services:** Government should promote designated cooperation between medical institutions and insurance companies, encourage commercial health insurance to include integrated solutions covering disease prevention, diagnosis, treatment, and rehabilitation, and promote the transformation of commercial insurance from payment method only to health management.
- **Strengthen data sharing between commercial insurance and government departments related to health:** On the premise of well-developed data risk management, the government should strengthen the building of a health insurance information system and a national medical security information platform to provide data support in the following pre-health management, refined pricing, and risk management; provide insurance companies with necessary desensitized business data information, enable them to develop more targeted health insurance products based on the database.
- **Introduce policies to encourage different groups of people to participate in commercial health insurance:** carry out more preferential tax policies for enterprises and individuals to purchase commercial health insurance products and encourage enterprises to purchase group commercial supplementary health insurance for their employees and their families; Expand the insurance coverage of tax-preferential products, simplify the tax-preferential declaration operation process, and lower the threshold for insurance applicants to enjoy tax-preferential rights and interests; Encourage more people to purchase long-term medical insurance; Pursue incentive policies for commercial health insurance (especially inclusive insurance) to cover the elderly and low-income groups.
- **Get healthcare companies involved in the policy design of the combination between commercial health insurance and national medical security:** medical service providers, biopharmaceutical companies, and medical device manufacturers can provide insights into specific disease areas and patients' capability to pay in policy design, which helps the development of commercial health insurance.

## *Regulations of Human Genetic Resources Management*

Currently, the Regulations on Human Genetic Resources Management in the People's Republic of China prohibit foreign entities from collecting, analyzing, and transporting samples and related data. The term "foreign entities" refers to foreign organizations and institutions that are established or effectively controlled by foreign organizations or individuals. The concept of "foreign" applies to enterprises invested in Hong Kong, Macao, and Taiwan as well, categorizing them as "foreign units." Despite some institutions obtaining GCP status, institutions with a foreign component, including Hong Kong, are rarely approved in the end, regardless of whether they have a Chinese partner. Consequently, many institutions established and operating in China for many years are restricted from conducting relevant clinical trials due to this regulation.

This regulation is relatively rare in global practice, and multinational pharmaceutical and medical device companies have been compelled to delay the entry of their advanced research results into the Chinese market. If medical institutions in China are unable to conduct relevant clinical trials, it will hinder improving the research level in hospitals, conducting evidence-based medical research, and promoting rational drug use.

Clinical research projects involving foreign parties under China's current human genetic resources regulations require clinical trials or other benefits to begin. However, China's unique human genetic resources approval process has become a significant source of delay and uncertainty in the development process. The regulations also limit the use, analysis, and transfer (including export) of such samples and various data (including critical adverse event information that must be reported worldwide) unless the recipient entity and transfer application are approved or permitted.

The human genetic resources review process has extended clinical development for several months, leading to uncertainty about intellectual property ownership and even causing companies to terminate certain studies. Nevertheless, the Office of Human Genetic Resources has recently improved its management of human genetic resources, leading to increased first-time acceptance rates for filings and approvals and reduced review times.

### **Recommendations**

- **Establish a scientific system for human genetic resource management:** It is recommended to simplify the human genetic resources approval process, reduce the approval time, and allow anonymous data (especially adverse event reports) to be transferred without approval or with only a short notification. This would enable faster approvals while reasonably protecting personal data.



- **Import license for the addition of anti-RhD immunoglobulin (RhoGam) required by Rh-negative populations:** RhoGam is an injectable used to treat Rh incompatibility during pregnancy, which can prevent the immune system of RhD-negative pregnant women from responding to the Rh-positive blood cells of the fetus. Many RhD-negative pregnant women and mothers need to receive RhoGam injections. The import license for RhD immunoglobulin would promote the safety of RhD-negative patients and mothers because there are too few RhD-negative individuals in the country to prepare RhD immunoglobulin.

### *Vaccination and Biological Products*

Prevention has always been the primary focus of the Healthy China 2030 blueprint. Since the outbreak of COVID-19, governments, the scientific community, and the medical industry worldwide have actively explored and addressed this unprecedented global public health challenge. Vaccination is widely recognized as one of the most successful and cost-effective health interventions in the world. Therefore, it is critical to develop effective and widely applicable vaccines and other preventive biologics in response to global public health issues. Increasing international cooperation in disease control and developing preventive products is necessary. Meanwhile, strengthening emergency management and response mechanisms for health and infectious diseases remains a key issue for the Chinese government.

In addition to vaccines, the medical industry has been actively developing other highly effective prophylactic biologics to diversify preventive medicine tools and techniques. One such innovation is the prophylactic monoclonal antibody (mAbs), which has a longer half-life to provide more durable immune protection. However, the current classification of biologics in China separates prophylactic and therapeutic functions and categorizes prophylactic biologics as vaccines. This may result in innovative prophylactic long-lasting monoclonal antibodies available globally unable to be classified as prophylactic biologics in China. If China could update the current classification and regulation of prophylactic biologics to ensure scientific registration and guidance in application as well as encourage innovation, it would enhance the diversity and accessibility of disease prevention measures.

#### **Recommendations**

- **Increase vaccination rates for all ages to achieve China's goals in disease prevention and public health.**
- **Comply the domestic regulatory environment with international standards and best practices, thereby expanding access to innovative vaccines/immunizations for Chinese citizens:** The integration of China's vaccine standards with international standards will not

only accelerate the introduction of innovative vaccines, but will also facilitate Chinese vaccine manufacturers to enter the international market.

- **Establish an open and transparent mechanism for dynamic adjustment in the national immunization program:** Competent authorities should ensure that any revision of the mechanism is based on public opinion. The government should provide clear evidence-based evaluation criteria for potential vaccine inclusion in the national immunization program.
- **Accelerate the launch of innovative vaccines in the Mainland areas with access reform measures such as "leading and exploratory pilot" of innovative drug regulatory (e.g., the Guangdong-Hong Kong-Macao Greater Bay Area and Boao Lecheng, Hainan):** In particular, the innovative vaccines already marketed in Hong Kong and Macao will promote the deep integration and joint development of immunization planning, public health system, residents living and biomedical industry between Hong Kong, Macao and the Mainland.
- **Update the current classification and regulation of biologics:** Ensure scientific registration and classification of biologics, provide guidance in the application, encourage technology and product innovation, and enhance the diversity and accessibility of disease prevention measures.
- **Vaccine procurement for the national immunization program should differentiate imported and domestic vaccines:** All vaccines approved for launch by the National Medical Products Administration should have equal access to guarantee the sustainable supply for the Chinese population, especially children and the elderly, to receive high-quality vaccine protection.

### *Negative List*

#### *Gene Diagnostics and Therapy*

The biopharmaceutical industry is currently focusing on the development of gene therapy and related technologies as they have tremendous potential to enhance therapeutic effects and improve patient health. Gene and cell therapy are already benefiting from these technologies. The 14th Five-Year Plan on Bioeconomic Development, published in 2022, calls for the acceleration of high-throughput gene sequencing technology development, promotion of new single-molecule sequencing technology, improvement of gene sequencing efficiency, and reduction of sequencing costs. It is essential to develop new technologies such as gene therapy, stem-cell therapy, and immune cell therapy, and to strengthen the synergy between industry, academia, research, and application. This will help convert related technology products into clinical applications, leading to the emergence of a new treatment model for regenerative and precision medicine.





However, despite the December 2021 national and FTZ versions of the *Special Administrative Measures (Negative List) for the Access of Foreign Investment*, which reduced the entries compared to the previous one, foreign investment in the development and application of human stem cell, gene diagnosis, and therapeutic technology is still prohibited. The description of whether cellular gene therapy-related drugs are included in the negative list has led to different interpretations and perceptions. Negative list management of investment access is essential to maintain a sound and open market regulatory system. As China continues to expand its open areas and market access, the negative list for foreign investment access should be streamlined accordingly.

Notably, the *Biosecurity Law* took effect on April 15, 2021. The Law specifies legal requirements and corresponding restrictions on the development and application of biotechnology to “protect national security and public interests.” Similarly, the *Regulations on Administration of Human Genetic Resources* promulgated by the State Council on July 1, 2019 also clarifies restrictions and requirements to manage human genetic resources (HGR) in China. Its competent authority, the Office of Human Genetic Resource Administration (OHGRA) of the Ministry of Science and Technology has therefore accumulated rich regulatory experience in this area. Given the restrictions of the *Biosecurity Law* and its legal framework, AmCham China hopes that competent authorities consider relaxing restrictions on foreign investment in gene therapy technologies and managing investments based on the *Biosecurity Law* and related regulations instead of strict prohibition.

### Recommendations

- **Develop industry-specific negative lists:** It is recommended that the entry management in the negative list for foreign investment access be further improved for normative standardization and certainty instead of ambiguity. To regulate foreign investment and gene therapy industry in sync, AmCham China urges the government to issue regulations, such as industry-specific negative lists, to clarify policy boundaries and ensure compliance while promoting effective R&D and innovation activities of multinational companies in China.
- **Promote the development of human cell and gene industries into a coordinated promotion mechanism for biomedical industry development:** According to Article 7 of the *Regulations for Promoting the Innovation Centers of Zhangjiang Bio-Pharmaceutical Industry in Shanghai Pudong New Area* issued in December 2021, “the Government of the City and Pudong New Area should facilitate the development of human cell and gene industries as part of the coordinated promotion mechanism for biomedical industry, and support qualified diversified investment entities in the research of human cells and gene technology and the development of the industrialization process with controlled risk.” AmCham China recommends that companies be allowed to segment “human stem cell, gene diagnosis

and therapy technology development and application,” and to conduct feasibility studies on the safety, controllability and necessity of investing in specific segment within the framework of the *Biosecurity Law*, achieving a progressive and orderly opening up for the introduction, implementation and development of innovative technologies.

- **Allow the development and application of cellular gene therapy-related technologies in the form of pharmaceuticals:** Based on laws and regulations such as the *Biosecurity Law* and the *Regulations on Administration of Human Genetic Resources*, it is suggested that the statement “Prohibit investment in the development and application of human stem cell, gene diagnosis and therapy technologies” in the *Special Administrative Measures (Negative List) for the Access of Foreign Investment (2021)* be amended to “Prohibit investment in the development and application of human stem cell, gene diagnosis and therapy technologies (except for the form of pharmaceuticals).”

### Genetic testing laboratory

There are two ways for foreign investors to invest in genetic testing laboratories in China: ❶ The testing laboratory obtains the Practice License of Medical Institution to carry out clinical testing projects; ❷ The testing laboratory without Practice License of Medical Institution only can provide testing services only to Support scientific research.

For foreign-invested medical institutions, the current negative list requires only joint ventures. If Chinese and foreign joint institutions need to use clinically collected human samples for research in addition to providing clinical diagnostic services, they will also be supervised by the government. From a technical point of view, the risk of using gene sequencing technology for the clinical diagnosis of diseases is quite low compared to using gene editing and other technologies for clinical treatment.

As for the second case involving the establishment of a genetic testing laboratory involving foreign investment, foreign-invested enterprises should not be restricted by the negative list for engaging in this type of business since it does not involve diagnosis and treatment. However, testing requires human samples, so it involves human genetic supervision, which means it is still difficult for foreign companies to carry out related activities.

### Recommendations

- **Allow joint ventures to apply for Practicing License for Medical Institution:** At the requirements of the National Health Commission, it is recommended that joint ventures should be allowed to apply for the Practicing License for Medical Institution and include the specialty of clinical cytomolecular genetics in the



diagnosis and treatment subjects, i.e., provide clinical genetic testing services. Only the application of relevant products, rather than the product development or registration, is involved to provide the services. Although it may concern the clinical application of genetic diagnosis technology, the operation can be regulated by the National Health Commission and the National Medical Products Administration to effectively control the risks. The National Health Commission has rich experience in regulating the establishment and operation of medical institutions, while the National Medical Products Administration also has clear product requirements for the testing laboratories.

### **Improvement on Birth Outcome and Child Development**

Based on data from the Seventh National Population Census and the United Nations' "World Population Prospects (2022)," China's total population has continued to increase over the past decade, albeit at a slowing rate. In the medium and long term, the total population is expected to experience zero growth and eventually negative growth. The census data highlights several structural challenges in China's population development, such as declining numbers of working-age individuals and women of childbearing age, deepening aging trends, decreasing total fertility rates, and fewer births. The COVID-19 pandemic has further decreased residents' willingness to give birth due to increased life uncertainty, delayed childbearing age, and increased costs, ultimately leading to a smaller birth population. This outcome is a result of China's economic development, especially the stages of industrialization and urbanization.

One of the pressing issues is the increasing incidence of infertility, which reduces the success rate of treatment due to lengthy wait times for patients to enter qualified assisted reproductive centers. Addressing this issue requires increased public awareness and education about reproductive health and infertility diseases, as well as the establishment of a hierarchical diagnosis and treatment system with referral standards for infertile patients. Doing so can help shorten wait times, increase the success rate of treatment, and prevent delays in assisted reproductive treatment that could cause patients to miss the ideal age for pregnancy. Leveraging tertiary medical institutions and improving the professional level and personnel quality of primary hospitals are also necessary steps.

Secondly, with the new national population policy, the demand for diversified reproductive needs is growing. Finally, to support the implementation of population and family planning policies and improve the capacity of reproductive healthcare services, there is a need to standardize assisted reproductive service institutions and establish a unified and high-standard quality control system.

Apart from birth outcome improvement, child development is another focus in population policies. Preventing birth defects and improving population quality have long been the government's priorities. To actively respond to the aging trend, improve the population structure and maintain the demographic advantage, in July 2021, the three-child policy has been launched in the *Decision of the Central Committee of the CPC and the State Council on Improving Birth Outcome and Child Development for Long-term Balanced Population*. In September 2021, the State Council issued the *Outline for Women's Development in China (2021-2030)* and the *Outline for the Development of Children (2021-2030)*, promoting of the complementary family planning policies and economic and social policies.

### **Recommendations**

- **Strengthen the advocacy and education on reproductive health and infertility diseases, and establish grading diagnosis and treatment service system and referral criteria for infertility patients:** shorten the time for patients to receive treatment in formal assisted reproduction centers and improve the success rate of their treatment.
- **Improve the accessibility of assisted reproductive technology:** improve relevant regulations to meet the medical and sociological needs of single women for timely fertility and fertility preservation, such as oocyte cryopreservation, as well as the diversified fertility needs, and protect the national fertility in the new demographic pattern. Meanwhile, we recommend that competent authorities draw on the successful experience of other countries and timely select cities with high demand and urgent request to pilot the oocyte cryopreservation policy for single women. While improving the policy provisions on fertility preservation, competent authorities should establish a relevant quality monitoring system to provide quantitative and qualitative data for the decision-making and adjustment of policies and regulations.
- **Promote the standardization of assisted reproductive service institutions:** Based on the previous standards and data from provinces and cities, competent authorities should establish a unified and high-standard quality control system for assisted reproduction, and continuously improve the service capacity and quality standards of assisted reproductive technology in China.
- **Apply noninvasive prenatal test (NIPT) to the maternal routine examination:** It is recommended that the National Health Commission should draw on the experience of countries, such as Belgium, the Netherlands, Australia, and the United States, to provide noninvasive prenatal test for pregnant women. In this way, this safe, reliable, and economical technology can benefit all pregnant women and play a greater role in preventing birth defects and ensuring the population quality.



## Specific diseases and treatment

### *Lung Cancer*

Lung cancer is the malignant tumor with the highest morbidity and mortality in China. In recent years, with the rapid development of molecular biomedicine, lung cancer treatment, as the “advance force” of precision treatment, has made breakthroughs in the fields of targeted therapy and immunotherapy, and the clinical demand for molecular typing of lung cancer is also increasing.

Due to the large group of lung cancer patients in my country, the sample size of patients with rare lung cancer rare targets (usually defined as 5% or less in clinical practice) is also large. Rare targets of lung cancer have the characteristics of low mutation frequency. Although we have entered the era of precision therapy and the Chinese government continues to introduce supportive policies, the overall awareness of rare lung cancer targets is still lower than that of common targets. There are challenges such as limited awareness of rare target therapy, low clinical submission rate, and few detection platforms.

### Recommendations

- **Precise tumor test is the first step to achieving precise treatment:** AmCham recommends expanding the comprehensive detection of non-small cell lung cancer driver gene mutations, promoting detection methods such as multi-gene joint detection based on next-generation sequencing, and using them as the basis for accurate diagnosis of lung cancer and rational drug use.
- **Actively enhance the awareness of patients and the entire lung cancer diagnosis and treatment ecosystem on the importance of screening for rare targets in lung cancer.**
- **Guided by the National Healthcare Security Administration, tumor gene testing projects that are safe, effective, appropriate, and clear in charge standards should be included in the scope of the national or local medical insurance payment:** to maximize the role of medical insurance funds so that tumor patients benefit from it.



# ICT

## Introduction

The Information and Communications Technology (ICT) sector plays a vital role in China's informatization strategy, viewed as essential for the country's modernization. China has set ambitious goals for boosting its ICT power by 2025, focusing on strengthening digital infrastructure, enhancing technology innovation, promoting high-quality growth of the digital economy, and implementing effective digital governance. As China seeks to shift to an innovation-driven, intelligent, and green economy, policymakers have prioritized ICT development and data governance.

China's ICT governance system is a complex matrix of interlocking strategies, laws, measures, regulations, and standards. It covers rules for data protection, cybersecurity, critical infrastructure, encryption, internet content, and industrial policies supporting the ICT sector. In recent years, Chinese policymakers have made significant efforts to establish a complete governance system balancing security with innovation and digital economy growth, favoring domestic ICT companies over foreign ones through ICT hardware, software, and services localization. Data and cybersecurity regulations are also being used as strategic tools to protect China's interests amid rising tensions with the West and global competition in high-tech sectors.

AmCham China advocates for openness, stability, and clarity in China's ICT policy environment. However, recent trends toward restricting data flows and market access indicate a tendency to overemphasize data security, cybersecurity, and localization, damaging China's global investment reputation and interaction with the world. Renewed commitments to open the ICT sector and rational, commercially manageable data governance and cybersecurity policies would promote continued prosperity for both China and the US.

From the perspective of US businesses, restrictive data and cybersecurity policies and localization trends present a dilemma. While the ICT sector is dynamic and vital to China's economy, the domestic policy environment has become more restrictive, creating increased uncertainties and reducing foreign investments. These policies disincentivize foreign investment in China, resulting in unintended consequences.

This ICT Chapter will cover the following topics:

- **Data Governance** (including Data localization and cross-border data transfer; Personal Information and Privacy)
- **Cyber Security Law** (including Critical Information Infrastructure; The Multi-Level Protection Scheme; Cybersecurity Review Regime; Cybersecurity Inspections; Cybersecurity Vulnerabilities)
- **Cryptography Law**
- **Export Control Regulations**
- **Market Access Barriers** (including Cloud Computing; Other VATS; Government Procurement)
- **Recommendations** (including For the Chinese Government and For the US Government)

## Data Governance

### *Data localization and cross-border data transfer*

China imposes a complicated matrix of restrictions on the storage, movement and access to data across borders making it very difficult and costly for foreign companies to manage their global operations. Data localization requirements vary in scope of application and strictness and largely include 3 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 added data localization requirements for companies handling PI reaching a volume threshold and specified security assessment mechanisms companies need to comply for cross-border transfer of PI. China's Ministry of Industry and Information Technology (MIIT) also published a new interim regulation clarifying

# 信息技术

## 引言

**信** 息通信技术业是中国信息化战略的关键组成部分，对中国现代化建设有着重要的推动作用。中国十四五规划制定了雄心勃勃的目标，即到2025年，信息通信行业整体实力进一步提升，建成强大的数字基础设施、技术创新能力大幅增强、实现数字经济的高质量增长、构建高效能的数字化治理体系。随着中国经济向创新驱动、智能、绿色发展转型，信息通信技术和数据治理成为中国政策制定者的工作重点。

中国的信息通信技术治理体系由战略、法律、措施、法规和标准等组成，这些要素相互交错，构成一个复杂的矩阵，内容涵盖了数据保护、网络安全、关键基础设施（CI）、加密、互联网内容等相关规定，以及支持信息通信技术业发展的产业政策。近年来，中国的政策制定者为构建完整的治理体系做出了巨大努力，以在安全、促进创新和数字经济发展以及信息通信技术硬件、软件和服务的本地化（即优先选择国内公司而非外资公司）之间取得平衡。在与西方国家之间的紧张关系与日俱增以及高科技领域全球竞争不断加剧的情况下，数据和网络安全法规和本地化也被用作战略杠杆工具，作为保护中国利益的对策。

中国美国商会（以下简称商会）持续呼吁中国在信息通信技术行业构建开放、稳定、清晰的政策环境。近年来中国在信息通信技术行业数据流动、市场准入限制等方面呈现愈发严格的趋势，似乎表明中国过度强调数据安全、网络安全及本地化，而忽视了开放和效率，这将损害其全球投资信誉及与外界的互动。重新承诺并采取具体行动开放该行业并制定合理的商业数据治理及网络安全政策将推动中美两国产业持续繁荣。

从美国业界的观点来看，中国对数据和网络安全的

限制性政策及本地化趋势使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资企业最难驾驭的行业，尤其是近年来，随着中美双边关系紧张程度有所加剧，国内政策环境变得更加受限和不确定。虽非其本意，但相关政策不利于业内外资企业增加在华投资，反而自然地导致其缩减在华投资。

本章节主要探讨以下几个话题：

- **数据治理**（包括数据本地化和跨境数据传输；个人信息和隐私）
- **《网络安全法》**（包括关键信息基础设施；网络安全等级保护制度；网络安全审查制度；网络安全检查；网络安全漏洞）
- **《密码法》**
- **《出口管制法》**
- **市场准入壁垒**（包括云计算；其他增值电信服务；政府采购）
- **建议**（包括对中国政府和美国政府）

## 数据治理

### 数据本地化和数据跨境传输

中国对跨境数据的存储、流动或访问施加了一系列复杂的限制措施，导致外资企业管理全球业务运营难度加大、成本高昂。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



how firms should handle sensitive industrial and telecoms data (*Measures for Data Security Management in the Field of Industry and Information Technology*).

In July 2022, CAC officially released *Outbound Data Transfer Security Assessment Measures* that took effect on September 1, 2022, and provided a 6-month transition period. The Security Assessment is an important implementation for the PIPL, the DSL and the CSL and a major part of the overarching cross-border data transfer regulatory regime built upon the three laws. The Measures (Article 4) require firms to apply for CAC-led security assessment for following conditions (Article 4):

- Where the data handler provides important data abroad.
- Critical information infrastructure operators and data handlers handling the personal information of over 1 million people providing personal information (PI) abroad.
- Data handlers with a cumulative provision abroad of the personal information of more than 100,000 people or the sensitive personal information of more than 10,000 people since 1 January of the previous year providing personal information abroad; and
- Other circumstances where the state cybersecurity and informatization department provides data export security assessment must be applied for.

The security assessment mechanism imposed on data processing organizations by the Chinese government has raised concerns due to its heavy compliance burdens and costs without significant benefits to core national security interests. Furthermore, the intrusive nature of the required information, such as the physical location of data centers and IP addresses, may adversely affect normal business relationships between overseas headquarters and their Chinese operations and other third-party service providers.

Moreover, the current cumulative scope of personal information, which includes transfers of employee data, is not a meaningful risk indicator and deviates from the scope of national security. For example, multinational companies may need to transfer employee data to their overseas headquarters for the purpose of administering and processing employee benefits, which should not require a security assessment by the CAC.

Data localization requirements may hinder the growth of a robust digital economy and global trade, as seamless cross-border data flow is essential for both. These requirements can increase costs and administrative burdens for businesses, limit innovation, and reduce competition. As such, it is important to strike a balance between data security and privacy concerns, while promoting an open and efficient environment for businesses to operate.

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).

Our recommendation for China is to avoid implementing data localization policies and instead continue to support the free flow of data based on trust. In cases where restrictions on cross-border data transfer are necessary, we suggest China carefully define “important data” and establish clear carve-outs for the commercial sector to prevent confusion and reduce barriers to foreign investment. Additionally, we recommend that China actively engage in multilateral frameworks such as the APEC Cross-Border Privacy Rules System and the APEC Privacy Framework, and participate in regional and global forums to develop more robust international data exchange and protection frameworks. Collaboration between the public and private sectors, including multinational corporations, should also be fostered to address data security concerns and share international best practices. This approach will benefit both China and foreign businesses operating in China, promoting a more vibrant and competitive digital economy.

### *Personal Information and Privacy*

Since becoming effective on November 1, 2021, the PIPL serves as China’s fundamental law governing personal information (PI). There have been some legislative and enforcement developments in 2022, such as the release of three pathways for the exit of personal data, namely security assessments, protection certification and standard contracts. (*Please refer to the following section for more details on cross-border data transfer*). According to public information, in 2022, more than 5,000 lawsuits have been generated in the field of personal information protection in China, mainly involving sensitive personal information, massive personal information, personal information in special fields and business scenarios, etc.

Prior to the release of PIPL, several lines on personal information protection from the CSL, together with a recommended national standard GB/T 35273 were the primary regulatory tool for privacy-related matters. The PIPL is undoubtedly much more granular and comprehensive than the CSL. But the principles and legal bases for processing PI under

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》新增了有关数据本地化要求: 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, 并规定了个人信息跨境传输时企业需要遵守的安全评估机制。中国工业和信息化部还发布了一项新的暂行规定, 明确企业应如何处理工业和电信领域的敏感数据(《工业和信息化领域数据安全管理办法》)。

2022 年 7 月, 国家互联网信息办公室正式公布《数据出境安全评估办法》(以下简称《办法》), 自 2022 年 9 月 1 日起施行, 并提供了 6 个月的过渡期。安全评估是《个人信息保护法》、《数据安全法》和《网络安全法》的重要实施内容, 也是建立在这三部法律之上的数据跨境传输总体监管制度的重要组成部分。《办法》(第 4 条) 要求企业在下列情形下向国家网信部门申报数据出境安全评估:

- 数据处理者向境外提供**重要数据**;
- 关键信息基础设施运营者和处理 **100 万人以上个人信息的数据处理者向境外提供个人信息**;
- 自上年 1 月 1 日起**累计向境外提供 10 万人个人信息或者 1 万人敏感个人信息的数据处理者**向境外提供个人信息;
- 国家网信部门规定的其他需要申报数据出境安全评估的情形。

安全评估机制给数据处理机构带来了沉重的合规负担, 增加了其合规成本, 却对维护国家核心安全利益毫无益处。此外, 安全评估所要求的信息侵扰性较强, 如境内外数据中心的名称和机房的物理位置、IP 地址、境外法人的个人信息等。这一要求可能会对企业与境外总部及其中国业务与其他第三方服务提供商的正常业务关系产生负面影响。

事实上, 鉴于各种类型个人信息之间存在差异, 传输数据的数量本身并非有意义的风险指标, 也严重偏离了国家安全的范围。例如, 为便于管理安排员工福利, 一家跨国公司可能需要在取得员工同意的情况下将其在华实体的员工信息传输到境外总部。这种情况对所有在

华经营的跨国企业来说都相当普遍, 因此传输员工信息既不应纳入累计范围, 也不应向国家网信办申报数据出境安全评估。

数据跨境顺畅流动对数字经济强劲发展和全球贸易来说至关重要。数据本地化要求会增加企业成本, 加重企业行政负担, 限制企业的创新能力, 降低竞争强度, 对跨国公司全球业务的发展和运营产生消极影响。

除《网络安全法》、《数据安全法》和《个人信息保护法》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)。

商会建议中国坚持“信任的数据自由流动”原则, 不再实施数据本地化政策。至于涉及可能需要限制跨境传输的信息类别(如国家安全相关信息)等特殊情况, 商会建议中国对“重要数据”做出精准定义, 明确“重要数据”的范围不包括商业领域数据, 以避免混淆或不确定性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。此类框架将惠及中国和在华外资企业。商会还鼓励中国政府部门促进公私合作, 与包括跨国公司在内的私营单位合作, 解决数据安全问题, 分享国际最佳实践。

## 个人信息和隐私

自《个人信息保护法》于 2021 年 11 月 1 日起施行后, 已经成为中国个人信息保护领域的基础性法律。2022 年, 有关个人信息保护立法及执法方面取得一些进展, 如发布了个人信息出境的三个途径, 即安全评估、个人信息保护认证、标准合同。(关于数据跨境传输的更多细节, 请参考本章后续内容)。根据公开信息, 2022 年中国个人信息保护领域新增 5000 多起诉讼, 主要涉及侵犯敏

the CSL have been carried into the PIPL. The PIPL is also somewhat aligned with China's Civil Code on PI protection and GB/T 35273 *Personal Information Security Specification*. Although GB/T35273 is only a recommended national standard, it has been much discussed and consulted within the technology sector during the drafting process. Other than these domestic regulations, traces of reference to the GDPR are also visible.

With the 3 newly released PI policies for cross-border data transfer mechanism ("Security Assessment Measures for Cross-Border Data Transfer", "Specification for Security Certification of Personal Information Cross-Border Processing Activities v2.0", "Provisions on Standard Contract for Personal Information Cross-border Transfer (published in February 2023)"), China has built a complete regulatory regime governing cross-border data flows that is focused on addressing national security concerns. However, imposing overarching national security considerations on the governance of personal information raises concerns for data-intensive businesses operating across the border and the "long-arm" enforcement and "retaliatory" measures further complicate efforts to promote cross-border digital trade and also imposes economic and administrative costs and burdens on foreign companies with global operations.

Given developments over the past year, we have the following recommendations for the Chinese government:

- Further clarify the definition and scope of sensitive personal information. The PIPL provides for more stringent obligations to protect sensitive personal information, including but not limited to obtaining separate consent from data subjects, adopting 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 cities and municipalities to meet the aforementioned protection obligations.
- Clarify the legal bases for processing sensitive personal information or provide further clarifications on articles regarding collection and processing of PIs.
- Carve out "business contact information" of individuals (such as an individual's name, position name or title, business electronic mail address or business fax number and any other similar information about the individual, not provided by the individual solely for his/her personal purposes) from the definition of "personal information", similar to the practice of PDPA in Singapore, which expressly excludes "business contact information" from personal data.

## Cybersecurity Law

### *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 Critical Information Infrastructure (CII) CII Operator (CIIO), the overlap with newly promulgated PIPL and DSL have created uncertainty in the foreign business community.

In September 2022, CAC released the Decision on Revising the *Cybersecurity Law of the People's Republic of China (Draft for Comment)* calling for public comments. The purpose of this revision is to improve the coordination of the *Cybersecurity Law* and the newly implemented *Administrative Punishment Law*, *Data Security Law*, and *Personal Information Protection Law*, improve the legal responsibility system, and further ensure cyber security of China.

Key changes include:

- Revising the legal liability clauses for violating the general provisions of network operation security protection. The draft proposes to adjust the types and ranges of administrative penalties for acts that violate network security protection obligations or endanger network operation security.
- Revising the legal liability clauses for the security protection of CII. Further improve the administrative penalties for CIIOs regarding illegal acts.
- Revising the legal liability clauses for network information security. The draft integrates legal responsibilities for violations of network information security obligations and adjusts the range of administrative penalties and prohibition measures. New provisions on legal liability for illegal acts that are not stipulated by laws and administrative regulations are added.
- Revising personal information protection related legal liability clauses. Amending those PIP liability clauses in the *Cybersecurity Law* to make violators subject to PIPL and related regulations. (Network operators, network product or service providers who violate the relevant articles of the *Cybersecurity Law* on the protection of personal information shall be punished in accordance with the PIPL and related administrative regulations.)

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

感个人信息、海量个人信息、特殊领域和商业场景的个人信息等。

在《个人信息保护法》出台之前，《网络安全法》中有关个人信息保护的几条规定以及推荐性国家标准 B/T 35273 是指导个人隐私监管工作开展的主要法律依据。毫无疑问，相较《网络安全法》，《个人信息保护法》更为深入全面。但《个人信息保护法》延用了《网络安全法》中有关个人信息处理基本原则及法律基础。《个人信息保护法》也在一定程度上与中国民法中关于个人信息保护的规定和 GB/T 35273《信息安全技术个人信息安全规范》保持一致。尽管 GB/T35273 仅是推荐性国家标准，但在起草过程中，技术部门对其进行了深入探讨，广泛征求意见。除了上述国内法规外，《个人信息保护法》还借鉴了欧盟《通用数据保护条例》(GDPR)。

随着 3 项针对个人信息跨境传输机制政策的陆续颁布（《数据出境安全评估办法》、《个人信息跨境处理活动安全认证规范 V2.0》、《个人信息出境标准合同办法（2023 年 2 月发布）》），中国已经建立了完善的信息跨境流通监管制度，主要针对国家安全问题。然而，将凌驾一切的国家安全考虑强加于个人信息治理之上，使得跨境经营数据密集型企业忧心忡忡，“长臂”执法和“报复性”措施使得推进跨境数字贸易进一步复杂化，也给在全球性经营的跨国企业增加了经济行政成本和负担。

回顾过去一年取得的进展，商会希望向中国政府提出以下建议：

- 进一步明确敏感个人信息的定义和范围。《个人信息保护法》对敏感个人信息保护提出更为严格的要求，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，跨国公司及其子公司组织难以履行上述保护义务。
- 进一步明确处理敏感个人信息的法律依据或进一步明确有关收集和处理个人信息的条款。
- 明确规定“业务联系信息”（如个人姓名、职位名称或头衔、业务电子邮件地址或业务传真号码以及关于个人的任何其他不是由个人出于个人目的提供的类似信息）不属于“个人信息”的定义范围，类似于新加坡《个人数据保护法》的做法，即明确“业务联系信息”不属于个人信息。

## 《网络安全法》

### 《网络安全法》

自 2017 年 6 月 1 日起施行的《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。这为区别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。执行不均衡、定义范围宽泛、关键技术定义不充分，如关键信息基础设施运营商的定义，以及与新颁布的《个人信息保护法》和《数据安全法》内容重叠等问题都给外国商界造成了不确定性。

2022 年 9 月，国家网信办发布了《关于修改〈中华人民共和国网络安全法〉的决定（征求意见稿）》，向社会公开征求意见。此次修订的目的是为了做好《网络安全法》与新实施的《行政处罚法》、《数据安全法》、《个人信息保护法》之间的衔接协调，完善法律责任制度，进一步保障中国的网络安全。

主要修改内容包括：

- 修改有关违反网络运行安全一般规定的法律责任条款。《征求意见稿》拟对违反网络安全保护义务、危害网络运行安全的行为，调整行政处罚方式及处罚力度。
- 修改关键信息基础设施安全保护的法律责任条款。进一步对关键信息基础设施运营者有关违法行为的行政处罚措施。
- 修改网络信息安全法律责任条款。《征求意见稿》整合了违反网络信息安全保护义务的法律义务，调整了行政处罚和禁止规定的适用范围，新增了法律、行政法规未规定的违法行为所适用的法律责任条款。
- 修改个人信息保护法律责任条款。对《网络安全法》有关个人信息保护责任条款进行修改，使违法者受到《个人信息保护法》和相关法规的约束。（网络运营者、网络产品或服务的提供者违反《网络安全法》中关于个人信息保护相关规定的，依照《个人信息保护法》及有关行政法规的规定处罚）。

商会继续敦促中国政府修订《网络安全法》及配套实施条例中不必要的繁琐条款（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公平对待

regular mechanisms to enhance dialogue and accountability around implementation of the CSL.

### ***Critical Information Infrastructure***

*The Security Protection Regulations for Critical Information Infrastructure* was officially promulgated on July 30, 2021, and came into force on September 1, 2021. According to this CII 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.

In October 2022, SAC released China's first national standard for critical information infrastructure security protection GB/T 39204-2022 *Information security technology – Cybersecurity Requirements for Critical Information Infrastructure Protection*, effective May 1, 2023. The standard is developed to implementing the requirements of the CSL and the *Critical Information Infrastructure Protection Regulations* to protect the operational security of CII. It put forward cybersecurity requirements for CII protection in the areas such as analysis and identification, security protection, testing and evaluation, monitoring and early warning, active defense, incident disposal, etc., aiming to take necessary measures to protect the continuous operation of CII business and its important data from damage.

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.

We are concerned that all of the TC260 standards designed to support the implementation of MLPS 2.0 Regulations have been issued prior to the issuance of the Draft Regulations and may lead to inconsistencies with the final versions. 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.

AmCham China remains concerned about the fact that the MLPS applies to all network operators, which would include a large swath of the commercial sector. 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.

### ***Cybersecurity Review Regime***

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.

CAC, together with 12 administrations including NDRC, MIIT, MPS, SAMR, and more jointly issued *Cybersecurity Review Measures*, which came into force as of February 15, 2022. To our knowledge, no other major global economy has a similarly intrusive and non-transparent cybersecurity review mechanism in place.

According to the *Cybersecurity Review Measures*, a cybersecurity review is to be triggered by the following scenarios: ❶ an assessment by a CIIO that procurement of certain network products and services and the data processing activities conducted by network platform operators that may potentially impact national security (Article 2); ❷ companies with 1 million users seeking IPO listing overseas; ❸ or upon the suggestion by any member of the Cybersecurity Review Working Mechanism, subsequently approved by the Central Cybersecurity and Informatization Commission (Article 16), that the presence of certain network products and services in the market or the data processing activities 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 10, the cybersecurity review is focused on assessing the following factors of risks to national security associated with activities under its scope:

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，借鉴国际优秀做法，建立常规机制，围绕实施《网络安全法》加强对话和问责。

## 关键信息基础设施

《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日起施行。根据规定，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，对外资企业来说，规则仍需要清晰一致，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措施。

2022年10月，国家标准化委员会发布了中国第一项关键信息基础设施安全保护国家标准 GB/T 39204-2022《信息安全技术关键信息基础设施安全保护要求》，将于2023年5月1日正式实施。该标准的制定是为贯彻落实《中华人民共和国网络安全法》《关键信息基础设施安全保护条例》等法律法规有关要求，保护关键信息基础设施的运行安全。从分析识别、安全防护、检测评估、监测预警、主动防御、事件处置6个方面对关键信息基础设施保护提出了网络安全要求，旨在采取必要措施保护关键信息基础设施业务的持续运行及其重要数据免受损害。

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》对两类运营者采取不同的适用规定，该方法还应对信息基础设施运营者和网络运营者做出明确区分，并在整个监管环境中进行统一。关键信息基础设施运营者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者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者制定的法规也不应当适用于网络运营者。

## 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。

商会建议商会理解所有TC260（国家信标委）标准旨在推动《网络安全等级保护条例草案2.0》的实施，但商会注意到，这些标准是在《等级保护条例草案2.0》发布前发布，可能会导致标准与最终版《网络安全等级保护条例草案2.0》不一致。商会建议上述推荐性标准应仅为参考性的最佳做法，不应具有法律约束力，进而提出超出已发布法律法规范围之外的额外要求。

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者，而适用于所有网络运营者，将大量商业领域的运营者囊括在内。条例规定第三级及以上级别系统与中国公安系统的局级系统对接，此要求过于宽泛且具有侵扰性，或将给会员企业带来重大风险。商会还对在这些网络上进行的所有技术维护都须本地化的要求表示关切，这将对许多跨国公司采用的全球运营模式造成负面影响，并带来不应有的风险和负担，但是却并没有为这些公司创造相应的安全利益。

## 网络安全审查制度

《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。

国家网信办、国家发改委、工信部、公安部、国家市场监督管理总局等在内的12个部门联合修订发布了《网络安全审查办法》（以下简称《办法》），自2022年2月15日起施行。据商会所知，全球其他主要经济体均未施行侵扰性程度如此之高且不透明的网络安全审查机制。

根据《办法》规定，在以下情形下应当进行网络安全审查：① 关键信息基础设施运营者采购网络产品和服务，网络平台运营者开展数据处理活动，影响或者可能影响国家安全的（第二条）；② 掌握超过100万用户个人信息的网络平台运营者赴国外上市的；③ 网络安全审查工作机制成员单位认为影响或者可能影响国家安全的网络产品和服务以及数据处理活动，经中央网络安全和信息化委员会批准后，依照本办法的规定进行审查（第

- The risk that critical information infrastructure could be illegally controlled, interfered with or damaged, due to use of 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.
- The risk that core data, key data or massive personal information could be stolen, disclosed, destroyed, or illegally used or illegally transferred abroad.
- The risk that critical information infrastructure, core data, key data or massive personal information could be influenced, controlled and maliciously exploited by a foreign government, and the risk to network information security, existing in the listing.
- Other factors that may place CII security, cybersecurity, and data security at risk.

Many of the criteria used to establish supply chain security as provided in the updated *Cybersecurity Review Measures* remain 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, raising concerns that the cybersecurity review process could be abused to retaliate against foreign countries, entities or individuals.

We also recommend that the CAC remove the 1 million PI threshold that triggers Cybersecurity Review, as it is not necessarily an indicator of risk and would subject companies to increased compliance burdens and costs.

AmCham China remains concerned that China’s cybersecurity review regime, with vague criteria and broad scope, could be used to discriminate against foreign technology providers. The final Cybersecurity Review Measures appear to obfuscate the distinction between legitimate security concerns and discrimination against certain technologies on the basis of point of origin. Any cybersecurity review regime should be based on agreed technical standards for security rather than product or service origin. AmCham China urges that the cybersecurity review regime comply with China’s WTO commitment to openness and fair trade and provide an equal competition market for foreign companies.

### **Cybersecurity Inspections**

The final *Internet Security Supervision and Inspection Provisions*

by *Public Security Organs (the Provisions)* went into effect 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 Public Security Organs “PSO” s 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, intellectual property, 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.

We strongly recommend that MPS refrain from conducting system scanning or other intrusive exercises and allows 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 in any threat information 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. There is no update on the draft Measures since the public review 4 years ago, and considering the MIIT Regulation mentioned in the next paragraph already was officially published and took effective, there is no answer how CAC will handle with their draft Measures.

十六条)。《办法》强调事前审查、事中和事后持续监管的重要性，意味着即使供应商或采购活动通过了初步审查程序，仍会受到后续审查，且初步审查的结果可能受到影响。

《办法》第十条规定，网络安全审查重点评估相关对象或者情形的以下国家安全风险因素：

- 产品和服务使用后带来的关键信息基础设施被非法控制、遭受干扰或者破坏的风险；
- 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；
- 产品和服务提供者遵守中国法律、行政法规、部门规章情况；
- 核心数据、重要数据或者大量个人信息被窃取、泄露、毁损以及非法利用、非法出境的风险；
- 上市存在关键信息基础设施、核心数据、重要数据或者大量个人信息被外国政府影响、控制、恶意利用的风险，以及网络信息安全风险；
- 其他可能危害关键信息基础设施安全、网络安全和数据安全的因素。

修订版《网络安全审查办法》对于保障供应链安全的诸多标准仍较为主观抽象。在没有可用于评估的公认量化标准的情况下，无法客观评判“产品和服务的安全性、开放性、透明性、来源的多样性”。“因为政治、外交、贸易等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。大家不禁担忧网络安全审查程序可能被用来反制外国、实体或个人。

商会建议国家网信办删除《办法》中掌握超过 100 万用户个人信息的网络平台运营者须进行网络安全审查的相关规定。此标准并非风险指标，且增加了企业的合规负担和成本。

商会仍然担心，由于中国网络安全审查制度中的标准模糊不清且过于宽泛，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的开放市场、公平贸易等承诺，为外国企业创造公平的竞争环境。

## 网络安全检查

《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者开展现场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、知识产权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。

商会强烈建议公安部避免系统扫描等侵入性检查，允许公司自证合规性，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

为预防可能危害国家安全、社会公共利益及网络安全的网络安全威胁信息泄露，配合《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》旨在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



*The Regulation on Administration of Network Product Security Vulnerabilities* had public review in June 2019 and final released in July 2021 and took effective in September. MIIT, CAC and MPS jointly announced the release, meaning the ministries found a way to coordinate and the implementation of the Regulation will be led by MIIT. There are some positive changes such as removal of that patching or preventive measures for relevant products should be released within 90 days after the vulnerability is identified. However, the final Regulation also raised new requirements such reporting the vulnerability to Cybersecurity Threat Information Sharing Platform under MIIT within 2 days after the vulnerability identified. The new requirements are greatly diverted from CVD practices and international standards. Most of the time, vulnerabilities need more than 2 days to be patched and MIIT's collection of zero-day vulnerability info challenges the industry norm of notifying the supplier only and poses significant risks to the industry. This is also detrimental to Chinese technology firm's global expansion plan as potential clients will naturally have concern that Chinese firms share zero-day vulnerability info with government agencies. We strongly recommend that MIIT review the soundness of the requirement and follow global industry standard practices.

Three vulnerability-related national standards were released on November 25, 2020, by TC260 and will go into effect on June 1, 2021.

- *GB/T30276-2020 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. 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 mandatory requirements to disclose unmitigated vulnerabilities to other parties is not aligned with the industry practice CVD and could create additional risk and security concerns. 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 and their enforcements with well-established and broadly adopted best practices and industry standards, as articulated in International Organization for Standardization (ISO) international standards such as ISO/IEC 29147 (2018).

## Cryptography Law

China's *Cryptography Law* was enacted on 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,"

有关政府部门报告。自从《管理办法草案》于4年前发布向社会公开征求意见以来，一直未有内容更新。考虑到下一段介绍的工信部条例已经正式公布并施行，国家网信办将如何处理其《管理办法草案》仍不得而知。

工信部于2019年6月发布《公共互联网网络安全威胁监测与处置办法（征求意见稿）》（以下简称《征求意见稿》），自2021年9月起正式施行。工信部、国家网信办和公安部联合发布该办法，意味着各部委已协调一致，且该办法的实施将由工信部主导。《征求意见稿》做出了一些积极变化。比如取消“在发现漏洞起的90日内应发布相关产品的补丁或预防办法”的要求。但《征求意见稿》增加了新要求：在发现漏洞起的2日内应将漏洞信息上报至工信部建立的网络安全威胁信息共享平台。该要求严重偏离了协同漏洞披露的做法及国际标准。大多数时候，漏洞需要2天以上的时间才能修复，工信部对零日漏洞信息的收集挑战了只告知供应商的行业规范，给行业带来了重大风险。也不利于中国科技公司的全球性发展布局，因为潜在客户可能会下意识担心中国公司向政府机构报备零日漏洞信息。商会强烈建议工信部重新审议此要求是否合理，并借鉴全球行业标准的做法。

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，自2021年6月1日起施行。

- 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。修复已发现的产品/服务漏洞是一个技术问题，许多相关产品和服务存在全球供应链使其更为复杂。商会认为，强制要求向其他各方披露未解决的漏洞不符合协调漏洞披露的行业惯例，可能会造成额外的风险和安全隐患。商会

强烈促请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其实施与成熟并广泛采用的最佳实践和行业标准相结合，遵循ISO国际标准（如ISO/IEC 29147（2018））中阐明的做法。

## 《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日起施行。《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。

③ the commitment that “government bodies and their employees” will not employ “administrative measures to force a transfer of commercial cryptography technology,” ④ not disclose IP during the certification process, and ⑤ avoid burdensome and duplicative testing and certification requirements.

Nevertheless, concerns remain. The Law is unclear with 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: ① the Amended Draft does not implement, and is inconsistent in some provisions, with the spirit of the Cryptography Law and its provisions;

② 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;” ③ a failure to protect the interoperability of international standards and use of internationally standardized encryption algorithms; ④ the Amended Draft proposes an extensive and unprecedented import license/export control scheme; and ⑤ the failure to provide for the protection of sensitive intellectual property while granting of intrusive enforcement powers to regulators. We hope to see at least one more open solicitation of comments before the Regulations become finalized.

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

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:“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》做出一系列更新,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。商会希望在终版《修订草案》发布之前能够至少一次向社会公开征求意见。

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“核心功能”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。

2021年11月5日,商务部发布了《中国禁止和限制进口技术目录》(商务部公告第37号),其中有关于加密的规定。商会认为“65软件和信息技术服务业”中的“数据加密技术”(编号:216502X)的定义不够明确,如“软件和信息技术服务业”一词未对“服务”以及“软件即服务(SaaS)”进行澄清,对停留在云端、托管在中国境外服务器、不被用户下载到中国的软件也没有明确的说法。

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

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.

On November 5, 2021, MOFOM released *the Catalogue of Technologies Prohibited and Restricted from Import* (MOFCOM Announcement No.37) with provisions on cryptography. We think the definition of the term “data encryption technology” (Number:216502X) under “65 Software and information technology service industry” is not sufficiently clear, such as the term “software and information technology service industry” lacks clarification on “service” as well as “software as a service(SaaS)”, there is no definitive statement regarding software that stays on the cloud, hosted on servers outside China, and does not get downloaded by users into China.

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. 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 Regulations

*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. 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).

On December 30, 2022, MOFCOM published a draft *Catalogue of Technologies Prohibited and Restricted from Export (For Soliciting Public Comment)*, proposing significant changes to the Catalog. The most affected industries are internet/information technology, solar/new energy, autonomous driving, and biotechnology. Examples would be added for “personalized information push technology based on data analysis,” which has been restricted for export since 2020, making it more difficult for international cooperation in data-related areas and AI.

## 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 2022. 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

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日起施行，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。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。

《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）。

2022年12月30日，中国商务部发布了《中国禁止出口限制出口技术目录（征求意见稿）》，对该目录进行了大幅度修改。受影响最大的行业包括互联网/信息技术、光伏/新能源、自动驾驶和生物技术。该目录在信息处理技术类别增加了“基于数据分析的个性化信息推送服务技术”的控制要点。此技术自2020年以来一直被限制出口，导致数据相关领域和人工智能的国际合作更加困难。

## 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）》，促进了增值电信业务开放，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。

私有云的使用同样重要。例如，金融领域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业务相关许可的限制。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业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

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 companies 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

As part of China's efforts to promote high-level opening up, China released in 2022 the fourth amendment to the *Administrative Provisions on Foreign-invested Telecom Enterprises* (FITE) promulgated in 2001. The amended rules, taking effect on May 1, 2022, removed some inconsistency between various regulations and streamlined license application process, heralding possible further relaxations of the restrictions on foreign ownership in FITEs, especially in basic telecom services. Previously, the government has eased up the restrictions over foreign ownership of FITEs in certain categories of VATS, such as VPN services. Under these

recent policies foreign investors are permitted to exceed the 50 percent cap on their shareholding in an FITE.

While welcoming those changes, 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.

### Government 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 features 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", also called "information technology innovation (Xinchuang)" products appear frequently throughout China's national development 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 preference domestic technology over foreign-made equivalents.
- The apparent expansion of "indigenous 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.
- 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, which 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

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业务许可的要求。

## 其他增值电信业务

为进一步提升对外开放水平，中国在2022年对2001年颁布的《外商投资电信企业管理规定》（以下简称《规定》）进行了第四次修订。修订版自2022年5月1日起施行，消除了各种规定之间的一些不一致之处，并简化了经营许可证申请流程，预示着可能进一步放宽对外商投资电信企业外资所有权的限制，特别是在基础电信服务领域。此前，政府已经放宽了对外商投资电信企业在某些类别增值税中的外资所有权的限制，如VPN服务。根据最新政策，允许外方投资者在试点区域投资电信企业的持股比例超过50%上限。

虽然上述修改内容备受欢迎，商会仍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。

## 政府采购

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问题有所改善（见《白皮书》政府采购章节），但信息通信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通信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。

财政部于2022年7月发布的《中华人民共和国政府采购法（修订草案征求意见稿）》（以下简称征求意见稿）多次提到“支持本国产业”或“维护国家安全”。征求意见稿还提出建立“安全审查制度”。在华外商投资企业必然已经遵守规范中国境内企业活动的各类安全相关法律、法规和标准。商会会员企业很难理解为何要在征求意见稿中增加一个单独的安全审查制度，这超出原有安全审查流程的范围，只会加重外商投资企业的负担，且涉嫌差别性对待。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企业的现实情况，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。
- 鼓励国家和地方各级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



companies to do business in China, its origin predates such friction, and its roots lie to a substantial extent in industrial policy.

- The potential 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. 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.”

The draft revision of the *Government Procurement Law (GPL)* for public comment released by Ministry of Finance (MOF) in July 2022 has multiple references to “support domestic industries,” or “safeguard national security.” It also included a “security review system.” FIEs in China must already comply with the full range of Chinese security laws, regulations, and standards that govern corporate activity within the country. Our members do not 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. 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. Instead, “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 can 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. Such standards shall not set vague criteria to either directly or indirectly exclude foreign brands.
- 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.
- Either not to include additional review mechanism in the GPL or to set a measure that is to ensure foreign companies can also be equally treated. 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.

## 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:
  - The implementing regulations for the CSL should not go beyond the scope of the CSL as stated within its original text.
  - (already addressed in CII decree) The cybersecurity review should not be based on a company’s country of origin or nationality of the company’s shareholders. Clear standards and transparent criteria are needed for companies to measure their ability to comply with regulatory requirements.
  - Remove intrusive system scanning and pen-testing in cybersecurity inspection and recognize company-led testing results.
- Most countries do not regulate the importation and domestic use of cryptographic features in “mass

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。
- 要么《中华人民共和国政府采购法（修订草案征求意见稿）》不再新增安全审查制度，要么制定措施确保外资公司也能得到平等对待。此外，上述提及的相关领域合同术语未明确定义，商会敦促进一步澄清，并在征求意见稿中规定，非固定期限采购合同可以包含各方的退出机制，并遵守合同中规定的任何价格调整机制。

## 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。
  - （已在关键信息基础设施相关法令中得以解决）网络安全审查不应基于公司的来源国或公司股东的国籍。企业需要清晰透明的标准来衡量其自身守法能力。
  - 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要求，并认可公司主导的检测结果。
- 大多数国家都不会对进口或在国内使用的大众消费品的加密功能做出规定。政府不应监管包括大众消费品在内的，进口或在国内使用的商业应用、产品或服务的加密功能。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。

- 中国应当重新考虑“数据本地化”政策，调整数据跨境传输安全评估要求范围，切实关注国家安全相关问题，并遵循透明客观的程序予以实施。员工信息不应纳入累计范围之内。
- 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。
- 中国应向外资企业开放云计算服务业务，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，即增值电信相关许可不适用于如金融、物流或医疗（如果在网上提供）在内的有关服务。
- 确保政府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“本地、可控”的标准仅适用于狭义的国家机密和国家安全相关领域。
- 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：

- 以美国的长期利益而非政治驱动为出发点，战略性地设计政策；让企业界充分参与政策制定过程。
- 将出口管制限制的范围缩小到具有特定国家安全影响的领域。
- 继续鼓励双边在一般商业和民用领域的合作，充分利用中国不断提升的创新能力和创新能力，以造福人类。

market” consumer products. The government should not regulate the importation or domestic use of cryptographic features in 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.

- Reconsider “data localization” policies and adjust the scope of security assessment requirement for cross-border data transfer to focus on real national security-related issues and adopt transparent and objective implementation procedures. Exclude employee data from the cumulative scope.
- Proactively participate in existing multilateral frameworks, such as the Osaka Track, the APEC Cross-Border Privacy Rules System and the APEC Privacy Framework.
- Open up cloud computing service and telecom service market to FIEs following 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 “indigenous and controllable” criteria only apply to a set of narrowly defined areas concerning state secrets and national security.
- 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*

- Design policies from a strategic perspective out of America’s long-term interest, instead of being driven by politics; fully engage the business community in policymaking process.
- Narrowly define the scope of export control restrictions to areas with specific national security impact.

- Continue to encourage bilateral collaboration in general commercial and civil sectors that benefit human welfare to take advantage of China’s growing innovation capacity.
- Initiate dialogs with China on mutually concerned issues, such as cybercrimes, data security, climate change, etc.
- Promote cooperation with Chinese agencies in international forums for the development of frameworks for standard setting and encourage the admission of China in the international standards and ethical frameworks.

- 就共同关心的问题，如网络犯罪、数据安全、气候变化等，与中国开展对话。
- 促进与中国机构在国际论坛上的合作，共同参与标准制定框架，并鼓励中国采用国际标准和伦理框架。

# Insurance

## Introduction

China's insurance sector has experienced remarkable growth in recent years, making it one of the largest insurance markets in the world. China Daily reported that the Insurance Industry is expected to grow by 11 percent in 2023 across most sub-sectors.

The insurance industry in China has undergone significant reforms since the country's opening up to the global market in the late 1970s. As a result, the sector has become an essential part of China's financial system, providing vital protection to individuals and businesses against risks associated with life, health, property, and casualty.

The Chinese insurance market is dominated by several large state-owned enterprises, but there is an increasing number of privately-owned insurers and foreign companies entering the market. The industry is highly competitive, with companies competing based on product offerings, pricing, and customer service. As most foreign-invested insurance companies are relatively 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 streamlines administration. However, since the reform, members of the Chamber have noticed that local regulations issued by the provincial CBIRC bureaus may impose different requirements for the same matter, which increases the cost of compliance and the operating burden of companies that is in contrast to the purpose of the reform. We suggest that CBIRC coordinate the implementation of laws, administrative regulations and rules by its resident bureaus in order to maintain consistency in administrative management over business operation and local regulatory principles. This will reduce the unnecessary difficulties that face the insurance companies when expand and operate in different regions due to the different requirements of local regulatory requirements.

#### Administrative approvals

When proceeding with the administrative approval of the establishment and opening of a new branch of an insurance company, the members of AmCham China noted that the regulatory authorities had suspended such administrative approvals, and the timing of the relevant approvals for the reopening of approvals has not yet been clarified. New insurance companies that have already obtained the qualification to establish before the relevant approval is suspended by the regulatory authorities cannot apply for commencement approval. This has led to the failure of all preparatory work such as personnel recruitment and office space leasing due to the opening, resulting in the default of signed lease contracts and employee and agent employment contracts, which not only caused losses to insurance companies' investments, but also affected the social image of the insurance industry. AmCham China recommends that the CBIRC clarify as soon as possible the specific time for resuming the administrative approval of the establishment and opening of new branches of insurance companies, and give special

# 保 险

## 引 言

**中**国的保险业近年来经历了显著增长，已成为世界上最大的保险市场之一。《中国日报》报道称，保险业预计在 2023 年各个子行业中增长 11%。

自 20 世纪 70 年代末中国对全球市场开放以来，中国的保险业经历了重大改革。因此，该行业已成为中国金融体系的重要组成部分，为个人和企业提供了关键的人寿、健康、财产和意外等风险保护。

中国的保险市场由几家大型国有企业主导，但越来越多的私人保险公司和外国公司进入市场。该行业竞争激烈，公司竞争的基础是产品供应、定价和客户服务。由于大多数外商投资的保险公司规模较小，中国美国商会（以下简称商会）呼吁中国银保监会调整对小型保险公司的过度监管要求，以免这些对大型保险公司适用的要求无意中扼杀竞争。商会还呼吁银保监会明确声明，外商投资的保险公司可以直接向其实体部门（个人保险、财产保险或再保险）提交任何申请，而无需首先通过国际合作和外商投资组织监管部门，以避免不必要和歧视性的处理延迟。

随着中国履行承诺，放宽个人保险的外资股比限制，并给予外资和国内投资的保险公司、再保险公司、保险中介和保险资产管理公司平等待遇，商会会员企业有信心能够为中国客户带来更多高质量的产品和服务，并运用他们的专业知识推动中国保险业增长。

## 现行监管问题

### 市场准入和发展挑战

#### 监管和合规成本

中国银保监会开展属地监管改革，旨在进一步推动

简政放权。商会会员企业对此表示热烈欢迎。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运营扩展时因地方监管法规要求不同而面临的不必要的困难。

#### 行政审批

商会会员企业在进行保险公司新分支机构的设立和开业的行政审批时注意到监管部门暂停了此类行政审批事项，并且对于重新开放相关审批的时间至今尚未明确。对于在监管机构暂停相关审批前已经取得筹建资格的保险公司新设机构，也无法申请开业审批，导致已经签署的租赁合同、员工和代理人聘用合同面临违约，这不仅造成了保险公司投资的损失，也影响了保险行业的社会形象。商会建议银保监会尽快明确恢复受理险公司新分支机构的设立和开业行政审批的具体时间，并对于此前获得筹建资格且已经开业准备就绪的新机构开业申请给与特殊受理的机会。

#### 履职回避

2022 年 12 月银保监会办公厅向各地银保监局和各保险公司下发了《关于进一步做好保险机构员工履职回避工作的通知》，这是对 2019 年 12 月发布的《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）的补充和说明。《通知》扩大了 50 号文中需要进行履职回避的“关键人员”范围，基本包含了保险公司总公司和省级分公司的全部职能部门负责人。50 号文还要求全国性银行保险机构员工不得在本人成长地担任省级和地市级分支机构主要负责人。

opportunities for the opening of new institutions that have previously obtained the preparation qualification and are ready to open a business.

### Recusal from performing duties

In December 2022, the General Office of the China Banking and Insurance Regulatory Commission issued the *Notice on Further Improving the Work of Avoidance of Employees of Insurance Institutions* to local banking and insurance regulatory bureaus and insurance companies, which is a supplement and explanation to the *Guiding Opinions of the China Banking and Insurance Regulatory Commission on the Recusal of Employees of Banking and Insurance Institutions (CBIRC [2019] No. 50)* issued in December 2019. The Circular expands the scope of “key personnel” who need to be recused from performing their duties in Document No. 50, including the heads of all functional departments of insurance company headquarters and provincial branches. Document No. 50 also requires that employees of national banking and insurance institutions must not serve as the main responsible persons of provincial, prefectural and municipal branches in the place where they grew up. AmCham China believes that the above regulatory requirements are of great significance for group or large companies to prevent fraud risks. However, most of the foreign-funded insurance companies and Sino-foreign joint venture insurance companies in China are small and medium-sized insurance companies, with simple equity structures, centralized management of key company decisions, and very limited approval authority of branches. Therefore, members of AmCham China suggest that for provincial branches of insurance companies of varied sizes, the requirements for job rotation and avoidance of growth should take into account the actual situation and adopt differentiated requirements to avoid further increasing the challenge of foreign insurance companies attracting outstanding talents in the industry.

In addition, the rotation requirements of some key personnel and important positions of the head office in Document No. 50 face great difficulties in actual operation, such as accounting, risk control, investment, actuarial calculation, compliance and other positions require specific professional knowledge and rich practical experience in their respective fields, which makes it difficult to rotate between different positions. The requirement of job rotation will also make it impossible for talents to continue to maintain their positions in key positions in professional fields, which will easily cause the loss of outstanding talents, increase the difficulty of enterprises to obtain and cultivate talents, and correspondingly increase considerable labor costs. Key personnel and employees in important positions play a vital role in the operation management and business development of the enterprise, and maintaining the stability of these employees and supporting their career development are indispensable factors for the compliance operation of the enterprise and the high-quality development of the industry. AmCham

China suggests that the regulatory authorities could allow key personnel with strong professionalism to appropriately extend the rotation exemption period based on the results of the risk assessment of insurance institutions.

### **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* 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 (PIPL)* and the *Draft Measures of Security Assessment Measures for Cross-Border Data Transfer*, members believe that it makes more sense if the security assessment 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 the calculating methods for the data amount be specified. We also believe that there should be some generally accepted transfers that can either be fast tracked or exempted, e.g. transfers of employee data to foreign JV partners or parent companies. Otherwise, it will be incredibly burdensome for both companies and the CAC to manage. We also recommend that in such cases, it might be more appropriate to waiver such an assessment, instead of adopting a filing approach on an annual basis. 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 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 the Risk Self-Assessment requirement be simplified or exempted for data transfers that do not contain important data or personal information. We ask for further clarification and guidance on required materials needed for cross boarder data transfer be released by the authority.

### **CBIRC’s 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* (the Draft Informatization Regulations) in October 2015 and notifying the WTO of a revised version in April 2016. The *Measures for the Regulation of Informatization Work of Insurance Intermediaries* took effect in early 2021. They require insurers to give priority to “secure and controllable” products during procurement of IT hardware and software.

商会认为以上的监管规定对于集团化或大型公司防范舞弊风险有重要意义。但是，在华外资保险公司、中外合资保险公司中大部分为中小型规模的保险公司，股权结构简单，公司关键决策集中由总公司统一管理，分公司审批权限十分有限。因此，商会建议对于不同规模的保险公司省级分公司，轮岗和成长地回避的要求应当考虑实际情况，采取差异化的要求，避免进一步加大外资保险公司吸引行业优秀人才的挑战。

此外，50号文对于总公司的部分关键人员和重要岗位的轮岗要求在实际操作中面临较大困难，比如财会、风控、投资、精算、合规等岗位需要特定的专业知识和各自领域丰富的实践经验，这导致不同岗位间难以进行轮岗。轮岗的要求也会使得人才无法继续维持其在专业领域关键岗位的任职，从而极易造成优秀人才流失，加大企业获得和培养人才的难度，也相应的增加了可观的人力成本。关键人员和重要岗位员工对于企业的经营管理和业务发展起着至关重要的作用，保持这部分员工的稳定性以及支持他们的职业生涯发展是企业合规经营，以及行业的高质量发展所必不可少的因素。商会建议监管部门可以基于保险机构风险评估结果，允许专业性较强的关键人员适当延长轮岗豁免期。

## 网络安全相关挑战

虽然商会会员企业理解中国监管机构在管理新技术和解决网络安全方面面临挑战，但商会认为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宽，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《跨境数据传输安全评估办法（草案）》，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。商会认为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绿色通道，或者成为例外的特殊情况。否则，无论是对企业还是中央网络安全和信息化委员会办公室来说，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《保险中介机构信息化工作监管办法》

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，于2021年1月出台了《保险中介机构信息化工作监管办法》（以下简称《办法》）。《办法》要求保险公司在采购IT硬件、软件时，优先考虑“安全可控”的产品。

《办法》和《网络安全审查办法》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。《办法》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。商会敦促澄清“安全可控”的定义，便于确保保险公司保留酌情权，在不同供应商和技术供应商之间基于IT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，请参阅白皮书信息通信技术章节。

## 语音通话和短信服务

2020年8月，工业和信息化部（MIIT）就《通信短信息和语音呼叫服务管理规定（征求意见稿）》公开征求意见。该草案规定未经客户明确同意，不得向其发送商业性短信息或拨打商业性电话。对于保护客户免受通过非法获取客户联系信息而开展的电话营销策略等相关条款，商会表示热烈欢迎。工信部表示，该草案旨在促进短信息服务和语音呼叫服务的高质量发展。因此，商会建议工信部将持牌保险公司等金融机构运营的呼叫中心与电话推销机构雇佣的呼叫中心区分开来，因为保险公司运营的呼叫中心持牌经营，并接受工信部或其地方局的年度检查。商会还建议，对短信息和语音呼叫服务的任何限制都应将保险公司为确保产品质量和服务的连续性而向其客户提供的服务排除在外。该草案应明确规定什么是“明确同意”，以及如何取得明确同意，以便行业达到合规预期。商会还建议工信部安排一系列会议，邀



The 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 Measures 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.

### *Voice call and SMS service*

The *Draft Administrative Regulations for Short Message Services and Voice Call Services* were 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

### *Complaint handling and mediation mechanisms*

AmCham China appreciates the unremitting efforts of the CBIRC and its dispatched agencies in cracking down on “malicious complaints” over the past 22 years, including through cooperation with law enforcement authorities as recommended by the Chamber of Commerce. These efforts have created a more equitable environment for the high-quality development of China’s insurance industry.

“Malicious complaints” refers to the practice of certain persons or organizations leading customers to obtain a “full surrender” of a life insurance policy by registering a complaint in exchange for a customer commission or enabling customers to purchase insurance policies through designated agents. The scam may result in a life policyholder losing the original benefit protected by the policy, an increase in scrap rates, a waiting period that needs to be recalculated, or being rejected when the holder attempts to reapply. AmCham China suggests again that the CBIRC firmly crack down on “malicious insurance”, continue to coordinate the strength of the whole industry, collect clues, establish a blacklist with the Insurance Association, and ban individuals or organizations who participate in or assist in “agent surrender” nationwide for life.

Since the outbreak of the new crown pneumonia epidemic, with the surge in the phenomenon of “malicious complaints”, more consumers choose to complain directly to the regulatory authorities rather than to the insurance company first, which has caused a waste of regulatory resources. In order to maintain the orderly ecological environment of the insurance industry and protect the legitimate rights and interests of consumers more fairly, the Chamber suggests that insurance associations broaden the application of multiple adjustment mechanisms in the insurance industry, such as adding a rapid adjustment process before the acceptance and transfer of complaints from regulatory authorities, and directing consumers’ complaints to regulatory organizations such as insurance companies or industry associations, so as to provide an opportunity for insurance companies and consumers to quickly negotiate and resolve disputes. The Chamber also recommends that regulators publicize and encourage consumers to give preference to non-regulatory means to resolve disputes.

In addition, in the execution of complaints, insurance companies often encounter situations where customers tear up the signed reconciliation agreement and request to change the reconciliation agreement, resulting in unnecessary waste of public resources. AmCham China suggests that after the industry association, insurance mediation center and other institutions issue the mediation letter, it should be judicially confirmed through the local people’s court, so that the mediation document has real legal effect, protects the hard work of all parties to the complaint mediation, improves the efficiency of complaint mediation, and also prevents some customers who try to obtain unreasonable benefits from disrupting the stable order of the social and financial 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

请行业代表参加，征求其反馈意见，以便更好地了解法规草案对行业运营的影响。

## 人寿保险

### 投诉处理和调节机制

商会赞赏银保监会及其派出机构自 2022 年以来对于打击“恶意投诉”所做出的不懈努力，包括通过如商会建议的与执法部门的合作。这些努力为中国保险业的高质量发展营造了更加公平的环境。“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。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、报废率上升、等待期需要重新计算，或者在持有人试图再投保时被拒绝。商会建议银保监会坚定对“恶意投保”打击，继续统筹全行业力量，收集线索，联合保险业协会建立黑名单，对于参与或协助“代理退保”的个人或组织在全国范围内终身禁业。

新冠肺炎疫情爆发以来随着“恶意投诉”现象的激增导致更多消费者选择直接向监管部门投诉而不是首先向保险公司进行投诉，这造成了监管资源的浪费。为了维护保险行业有序的生态环境，更加公平的对消费者合法权益进行保护，商会建议保险业协会拓宽保险行业多元调节机制的应用，比如在监管部门投诉受理转办前增设快速调节的流程，将消费者向监管的投诉引导至保险公司或者行业协会等多元调节组织，从而为保险公司和消费者提供一个快速协商和解决纠纷的机会。商会同时建议监管部门宣传和鼓励消费者优先选择非监管途径化解纠纷。

此外，在处理投诉的执行中，保险公司时常遇到客户撕毁已经签署的调解协议并要求更改调解协议内容的情况，造成了不必要的公共资源浪费。商会建议行业协会、保险调解中心等机构出具调解书后，通过当地人民法院进行司法确认，使得调解书具有真正的法律效力，保护投诉调节各方的辛苦努力，提升投诉调解的效率，也避免部分企图获得不合理利益的客户扰乱社会和金融行业的稳定秩序。

### 外币计价保单 (FCDPs)

外币计价保单 (FCDPs) 为客户提供了传统人寿保险的保护和财富管理优势，同时还提供了额外的外汇风

险管理。这些优势意味着外币计价保单可为人民提供替代性外汇投资产品。FCDPs 是国际市场上一种重要的保单类别。然而，由于外汇管制政策的限制，期限超过一年的 FCDPs 禁止在中国市场出售。此类限制政策对在国际市场上积累了大量 FCDPs 经验的外商投资保险公司产生了极大的不利影响；也可能会诱使一些人逃避外汇管制，在香港或其他地方购买一些产品。如果中国市场允许出售 FCDPs 产品，那么对上述行为的控制效果可能更佳。商会敦促中国政府在中国自由贸易区开展长期 FCDPs 产品出售试点，实现中国保险市场的产品创新，为中国家庭提供更多的选择以满足其金融需求。而仅仅通过放宽外汇管制、允许在香港购买此类产品并非最佳解决方案。

### 保险公司资本保证金的管理

商会敦促银保监会明确可持有资本保证金的银行应符合的条件，包括可能受到重大处罚的违规范围。《保险公司资本保证金管理办法》要求，存托银行在过去三年内无重大处罚记录，但却未对“重大处罚”进行明确定义。近年来，针对银行的监管愈发严格，许多银行因违反监管规定而受到处罚，保险公司很难确定一家银行是否符合存托银行的条件。同时，商会建议增加符合资金保证金存放银行条件的银行数量，将符合相同条件的外资银行纳入其中。目前，资本保证金只能存放在内资银行，违背了中国为外资和内资金融机构创造公平竞争环境的承诺。

### 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

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 on the Chinese 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* require that the depository bank not have incurred a major penalty in the past three years but lack a clear definition of "major penalty." Supervision of banks has become tighter in recent years with a number of banks penalized for regulatory violations which makes it difficult to determine whether a bank meets the requirements to serve as a depository 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 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 the fifth plenary session of the 19th Central Committee of the Communist Party of China in October 2020. The fourteenth five-year plan 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 annuity and ❹ developing pillar three pension. 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 in Chongqing in June 2021 offered pension insurance products. AmCham recommends that the experiences of these pilots be summarized and participation expanded to other regions in China and other financial products. We recommend that national policies for Chinese IRA (individual retirement account) 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.

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, approves applications to this effect so that global pension service providers with many years of experience and expertise will 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

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击掌称赞。

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、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（包括宁波）、重庆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；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。我们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

中国保险业的市场主体多种多样。内资和外资保险公司在股权结构、规模、产品和分销渠道等方面存在较大差异。目前的监管结构未对保险公司进行区分，因此所有类型的保险公司都适用相同的监管要求。这不仅给外商投资的保险公司（此类公司的市场份额总计不到 2%）增加了不必要的合规负担，而且相对于内资保险公司，更阻碍了外资保险公司的发展。因此，商会建议银保监会发布监管规则和指导方针，根据财产保险公司和意外伤害保险公司的规模和经验，更加准确地对其进行区分，进而促进竞争和市场增长。

保险相关法规模棱两可，特别是在如何将法规应用于外资保险公司方面，给法规实施带来了挑战。例如，《保险机构独立董事管理办法》和《保险公司股权管理办法》

皆规定其适用于外资保险公司，但均未提供实施细节。外资保险公司必须常常咨询银保监会才能取得实施方面的指导，但有时银保监会官员给予的指导却并不一致。商会建议银保监会提供书面解释和说明，减少歧义和不确定性。

外资保险公司可以利用其国际布局和网络及丰富经验帮助中国企业扩展国际业务，包括在一带一路地区扩大业务范围。然而，税收法规对保险业区别对待。根据增值税相关法规规定，在境外开展建筑项目、博览会、展会及其他业务的中国企业，其在境外取得的收入可享受免征增值税的优惠。此外，部分经营旅游服务的企业，其提供餐饮住宿、交通服务取得的收入，也享受增值税免税待遇。然而，境外旅行意外保险费（特别是保障境外合同工和外派人员的保险）却不享受增值税免税优惠。此外，在开曼群岛、新加坡和香港等允许未经认可保险出售的国家和地区，来自中国的保险公司通常为此类管辖区内的风险直接投保。不幸的是，与再保险保费不同，此类直接投保产生的保费既不能免除增值税，也不能从增值税应税收入中扣除。商会继续建议银保监会与财政部（MOF）和国家税务总局（STA）沟通协调，对保险业平等对待，对此类境外风险直接投保产生的保费免征增值税。

此外，保险公司通常在不同省份设有多个分支机构，如果要求每个分支机构独立完成增值税申报，则此类合规工作的运营成本将会过于高昂。考虑到企业所得税可以合并申报，且增值税法征求意见稿中提到了“合并申报”的原则，商会建议财政部和国家税务总局加快颁布“增值税合并申报”的详细实施条例。

根据现行税收法规规定，增值税进项税额增量部分可以在符合具体条件的情况下申请退税，现金流管理得以改善，从而使企业从中受益。迄今为止，仍未有相关法规对历史增值税进项税额增量的细节进行明确。商会建议国家税务总局考虑扩大增值税进项税额增量的退税范围，涵盖规定时期内的历史份额。

此外，增值税专用发票在 2020 年试点企业和新建企业中取得了突破性进展。主要提供无形服务的保险公司和其他金融机构进一步普及电子发票的使用，可以提高企业的运营效率。因此这一转变备受欢迎。

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 and the Administrative Measures on Equity in Insurance Companies 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 several branches located in 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

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 the 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 who primarily provide intangible services could be 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 feel 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, there are still some problems, and the following suggestions are now put forward according to the implementation of the centralized procurement of high-value medical consumables:

#### *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 different, and medical institutions increase the number of products that require production enterprises to bear non-quality problems when implementing them. The reasons for product return and replacement are more complex, involving product damage, expiration period,

## 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：

### 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

### 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。

### 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、

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。

## 再保险

2016年，银保监会正式实施中国风险导向的偿付能力体系(C-ROSS,即偿二代)，各地方银保监局纷纷对保险公司遵守C-ROSS的情况进行检查。虽然对保险业的偿付能力进一步加强系统化监管相当合理，但是商会认为对于中国分保公司和在其本国司法辖区具有良好财务评级、信誉良好的境外再保险公司之间开展的跨境交易而言，C-ROSS对其施加了不合理的资本费用和抵押品要求。商会认为这毫无道理可言，因为银保监会可以采用其他成本较低的方法来确定此类离岸再保险公司是否可靠，如通过与离岸再保险公司所属国家的监管机构进行协商。此外，跨境再保险交易的反向加权阻碍了跨境再保险交易，其不良后果是将风险集中在中国，而非广泛地分散风险。因此，商会敦促银保监会重新考虑C-ROSS第8章信用风险最低资本，防止风险集中，同时银保监会要确定保险业遵守新版国际财务报告准则(IFRS)规则的基础。

商会还担心，C-ROSS框架将风险集中在国内，会对国际再保险公司产生不利影响，因为它会过高评估信用风险，甚至对那些在本国司法管辖区内接受合规监管的国际再保险公司提出了抵押品要求，而这些国家的合规监管符合国际保险监管人协会(IAIS)的建议，满足互相承认的要求。

## 经纪人

### 许可证

2015年《外商投资产业指导目录(2015年修订)》将外资保险经纪公司从“限制类”投资类别中删除。2017年1月《国务院关于扩大对外开放积极利用外资若干措施的通知》明确放宽保险中介机构外资准入限制，进一步加强中国经济对外开放。此外，国务院总理李克强在2018年政府工作报告中明确表示，政府计划“放开外商资保险经纪公司经营范围限制”。

2020年，中国政府发布了一系列法规、规章和通知，

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, is not conducive to the normal use of the winning product in medical institutions.

**Recommendation:** Improve the detailed terms of the return and exchange agreement, and clarify the responsibilities of enterprises and medical institutions

### *The issue of the implementation of supporting policies.*

In the rules for the centralized procurement of high-value medical consumables of the National Medical Security Bureau, it clearly stipulates 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 have always been difficult to implement, especially the problem of payment collection, which is generally concerned by 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.

**Recommendation:** Local medical insurance departments should carry out special supervision of payment collection by medical institutions to ensure timely settlement of winning products; allow enterprises to select a certain number of distributors within a reasonable range.

### *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 the comprehensive performance of all aspect and only evaluate based on price.

## **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 transactions between Chinese-ceding insurers and reputable offshore reinsurers with financially sound ratings in their home jurisdictions. AmCham China believes that such capital charges and collateral requirements are unreasonable because CBIRC has other, less costly means to ascertain the soundness of such offshore reinsurers, including by established means of consultation with the offshore reinsurers' home country supervisors. Moreover, the adverse weighting of cross-border reinsurance transactions discourages cross-border reinsurance transactions with the perverse consequence of concentrating risk in China rather than dispersing risk more widely. AmCham China therefore urges CBIRC to reconsider C-ROSS Chapter 8 Credit Risk Minimum Capital to prevent such unfortunate concentration of risk while CBIRC determines the basis for insurance industry compliance with new International Financial Reporting Standards (IFRS) rules.

AmCham China is also concerned that by concentrating risk onshore, the C-ROSS framework will adversely affect international reinsurers by overweighting credit risk and imposing collateral requirements even for those international reinsurers subject to compliance supervision in their home jurisdictions which satisfies the requirements for mutual recognition in accordance with the recommendations of the International Association of Insurance Supervisors (IAIS).

## **Brokerages**

### *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 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 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.

皆有积极意义。商会一家会员企业取得了期待已久的新许可证，允许开展更为广泛的商业活动。这些进展都值得欢迎；然而，根据中国银保监会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》，许多符合条件的外资保险经纪公司在两年多前已提交申请扩大在华业务范围，但仍尚未取得中国银保监会的批准。

过去两年，互联网保险市场发展迅速。但对外资保险经纪公司经营范围的许可限制阻碍了其互联网业务的发展。商会敦促银保监会向符合条件的外资保险经纪公司发放允许扩大经营范围的许可证。此举符合政府对外资和内资保险经纪公司给予平等待遇的承诺，并可以使具有深厚行业经验和专业知识的外资保险经纪公司帮助塑造中国互联网保险市场，造福中国消费者。银保监会任何非审慎的拖延都会破坏平等对待所有市场主体（无论是国内还是国外）的原则，并剥夺中国消费者接触可提供小规模商业风险、汽车保险、个人人寿和意外保险的其他经纪公司的机会，进而破坏市场竞争。

### 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》自2021年2月1日起施行。《办法》要求，凡申请经营互联网保险业务的，均应遵守《办法》规定。商会注意到关于《办法》企业面临两大挑战：

- 《办法》缺乏明确的实施指导，因此公司需联系银保监会负责备案流程的工作人员（于北京办公），咨询具体执行指导意见。会员企业发现，由于银保监会工作人员数量相对较少，无法满足在中国市场开展业务的保险中介机构的需求，因此口头回复往往较慢。
- 根据互联网保险业务许可证的备案流程，中国境内任何保险中介机构申请开展互联网保险业务都应提交申请至银保监会指定的一个电子邮箱，并由中央层面进行处理。这导致商会会员企业的申请处理严重延迟。

随着中国持续推动互联网保险业务的发展，商会建议银保监会发布备案流程的详细实施规定，并提供书面解释及指导，减少不确定性。我们建议将许可证申请审查等行政流程下放给地方部门，促进完善需求管理，提高效率，加快申请处理。

### 保险资金的投资

中国持续放宽对投资工具的限制，打开了新的投资渠道和市场，商会对此表示赞赏。商会促请在确定在资本市场投资的保险资金资格时，应考虑保险公司母公司的规模和投资经验，如此一来可有助于促进知识从成熟市场转移到中国；还可助力缓解本地投资新资产类别方面经验丰富，业务水平精湛的人才的短缺问题。商会希望中国能够尽快出台相关监管政策，为此类新资产类别及保险资本提供必要的风险对冲工具。

### 境外投资资质

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质。同时，国家外汇管理局却为前几年已获取境外投资资质的保险机构增加了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

国务院增值税改革的目标是降低企业尤其是服务业的税负，但事实情况却截然相反。自2016年全面实施营业税改征增值税改革后，中国保险公司的税负显著增加。主要原因是改革将增值税的适用范围扩大到了企业债等固定收益投资产品的利息收入，而这些收入在营业税范畴内时免税。此外，改革还将应税保费相关产品的税率从5%提高到6%。虽然进项增值税可以抵扣，但可抵扣比例不足，因此保费收入的税率在实践中基本保持不变。保险公司征税增加，短期内降低了保险公司的盈利能力，深刻影响了其定价和精算实务，损害了中国投保人的利益。商会建议国家税务总局与相关部门协调，恢复对公司债券和债务项目利息收入的免税利好，或至少采取“截止点”的方式，对改革前发行的债券免征增值税。我们还建议国家税务总局加强保险业相关规定的



The Internet insurance market has been developing rapidly over the past two years, yet the ability of foreign-invested insurance brokers 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 is 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 (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 volume 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 should 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.

### ***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. We also hope that related regulatory policies will be issued in the near term to provide the necessary risk-hedging tools for these new asset classes and for insurance capital in general.

### ***Overseas investment qualification***

As the asset scale of China's insurance market continues to grow, the demand for domestic insurance funds for global allocation has become more prominent. However, according to public market information, since 2018, no insurance institution or insurance asset management company has successfully obtained overseas investment qualifications. At the same time, the State Administration of Foreign Exchange has increased the QDII (Qualified Domestic Institutional Investor) investment quota for insurance institutions that have obtained overseas investment qualifications in previous years. The Chamber of Commerce recommends that the CBIRC support insurance institutions to carry out overseas investment according to their own capabilities under the premise of prudence and orderliness. In recent years, the exchange rate of RMB against major foreign currencies has maintained two-way fluctuations and is generally stable. By approving and supporting more insurance institutions to invest abroad, the overseas investment capacity of insurance institutions can be improved, and China's insurance funds can benefit from investment opportunities in the international market. Improving the capacity of overseas investment can also enhance the capacity of Chinese insurance companies to strengthen financial protection for the people.

### ***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

清晰性和一致性，在全国范围内统一增值税的适用范围，并扩大进项增值税的扣除范围。同时，我们很高兴外资保险公司的代表处再次被确定免征增值税。

## 建 议

### 对中国政府：

#### 所有权

- 发布详细的实施办法，说明如何取消保险业业务的外资股本上限。
- 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。
- 履行中国取消人身险企外资股本上限的承诺，取消外资健康保险公司参与中国健康保险行业的所有非审慎障碍。

#### 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“适用监管机构”，包括其与适用标准的兼容性，并审查该法中各项措施的有效性。
- 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。
- 明确银保监会《保险中介机构信息化工作监管办法》中“安全可控”的定义，并规定保险公司有权基于 IT 系统的安全性和可靠性而非基于原产国做出采购决策。

#### 许可证

- 增加外商投资申请许可证的发放数量，确保外商投资和国内投资保险公司待遇平等，促进养老和健康保险行业的良性竞争。

#### 销售和服务渠道

- 进一步开放互联网保险渠道，允许包括重症

产品在内更多种类的保险产品在全国范围内在线销售。

- 保证外资保险公司分支机构申请审批与内资保险公司申请审批方式相同、审批速度一致，并确保将其付诸实施。

#### 税务问题

- 恢复对公司债券和债务项目利息收入的免税利好，或至少采取“截止点”的方式，对改革前发行的债券免征增值税
- 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，对境外风险直接投保产生的保费免征增值税，为保险业提供平等待遇。

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 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 State Taxation Administration, 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 those 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.
- Promptly revise the 2004 Interim Provisions on the Regulation of IAMCs to further clarify the removal of any restrictions on foreign ownership of IAMCs.
- 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 in the Law.
- Re-define risk of data transfer under the Personal Information Protection Law to be based off of 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 foreign-invested applicants and ensuring equal treatment for foreign-invested and domestically invested insurance providers.

#### Sales and Service Channels

- Further open the Internet insurance channel by allowing more types of insurance products, including critical illness products, to be sold online nationwide.
- Put into practice the review and approval of branch applications by foreign-invested insurers in the same manner and at the same pace as applications by domestically invested insurers.

#### Tax Issues

- 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.
- Expand tax incentives for tax-deferred annuities.
- Increase coordination between CBIRC, the Ministry of Finance (MOF) and the 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.



# Legal Services

## Introduction

**F**oreign 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,
- Prohibition on 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. These restrictions moreover give weight to the belief overseas that the Chinese legal and justice systems are unfair and biased against foreign parties.

## 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 180 days a year in China. Such requirement is not imposed on PRC law firms operating overseas,

# 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严重阻碍了中国内地企业和外国企业获取高度专业化的法律意见和咨询服务，更剥夺了中国职业律师在外国律师事务所工作、培训及升迁的机会。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。尽管COVID-19政策的转变增加了外国律师的旅行便利性，但该政策的许多影响已经要求律师事务所重新考虑他们在中国大陆的人员安排。

and it will greatly impair the ability of foreign law firms to staff their offices in China. It imposed a continuation of hardship throughout 2020-2023 because of the continued quarantine policies, flight cancellations, and worldwide travel restrictions imposed in response to COVID-19. Despite the shift in COVID-19 policies increasing ease of travel for foreign lawyers, many effects of the policy have already required law firms to reconsider their staffing arrangements in mainland China.

### 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 bureaus in each province or municipality would then file the annual renewal applications with the central-level MOJ. This prior practice provided local justice bureaus 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 impact 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 and again in 2023.

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 additional 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 suspend 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

## 外国律师事务所续期注册

2019年初，司法部建立了外国律师事务所中国办事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要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。

一些中国美国商会（以下简称商会）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。然而，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，这会给美国律师事务所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，并为中国和国外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。目前的惯常做法是，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



law firms and companies to hire as counsel or in other positions requiring specialized legal backgrounds.

- Enable Chinese companies to expand more efficiently 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 25<sup>th</sup> 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,
- Furthers 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 economy 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 taxed only 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 (2020 edition)* (2020 National Negative List) effective as of July 23, 2020, "investment in Chinese legal matters" continues to be classified as "prohibited." It was

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：

- 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《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）（2020年版）》（外商投资负面清单）于2020年7月23日开始生效，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

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 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 shall have been engaged in the practice 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 his/her 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 during the registration and renewal of a representative office of a foreign firm require that each Chief Representative or representative demonstrate that he or she has physically worked outside mainland China for three or two years, respectively. This practice, lacking any 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 Zone. 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 Bureau 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 Bureau 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 many 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**

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。

### 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《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，商会多家律师事务会员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

商会在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
- 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，我们敦促政府简化要求，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，改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。

**restrictions on the ability of foreign law firms to provide advice on China law business matters should be reasonable and practical.**

- Revise current regulations to allow foreign law firms to hire and admit to their employment and partnerships PRC-qualified lawyers without requiring them to suspend their PRC lawyer's license when they join a foreign law firm.
- 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.**

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。

# Manufacturing

## Introduction

The Chinese manufacturing 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. 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 2023 China Business Climate Survey, 58 percent of AmCham China respondents in the Resources and Industrial sector reported being treated unfairly as compared to their domestic competitors while 36 percent reported that they were 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 promising, 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.

## Business Environment

Despite the myriad of challenges that have arisen in recent years, the vast majority of foreign companies operating in China still see the advantages the China market offers. These include complete supply chains, top-notch infrastructure, speed in product development, an educated workforce, and a growing domestic market. However, the business environment for American companies operating in China has become increasingly difficult.

The import tariffs on US-made products going into China and Chinese products going into the US have hurt manufac-

# 机械制造业

## 引言

**中**国制造业是中国劳动力就业行业分布的关键领域。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。新冠疫情的防控措施也让制造业面临了特别的挑战。2020年初，早期防疫措施使得中国诸多制造业企业陷入完全或部分停摆状态，导致制造行业面临更加严峻的挑战。在华制造业企业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。在中国美国商会（以下简称商会）于2021年底进行的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，这一比例在2020年的数据为38%（相较于2019年）。

根据中国在2015年5月提出的“中国制造2025”，政府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”的目标包括，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%。尽管在国际舆论下，中国政府不再继续公开强调“中国制造2025”，也没有完成其设定的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，全国人民代表大会于2021年3月通过“第十四个五年计划”，强调发展基于互联网、大数据和人工智能的技术，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2023年《中国商务环境调查报告》，在资源和工业行业，58%的会员企业表示自己受到了平等对待，同时有36%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。

“中国制造2025”中的自主保障目标可以解读为保护主义，与2020年1月1日颁布的中国《外商投资法》规定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2022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。

商会在往年发布的《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，为所有企业包括外资企业、内资企业、国有企业提供公平竞争环境。

## 商业环境

尽管近年来中国面临诸多挑战，但绝大多数在华经营的外国公司仍然认为中国市场存在优势，包括完整的供应链、一流的基础设施、产品开发的速度、劳动力的教育水平和不断增长的国内市场。然而，美国公司在华经营的商业环境已变得越来越糟糕。

中美两国互相对进口产品征收进口关税，损害了两国制造商的利益，导致了贸易、就业和税收的减少。特别需要注意的是，对于一间美国100%控股的中国工厂，美国不具备对直接商用的商品征收关税的合理理由。这些美国外资实体支付美国的税收，支持美国的就业。两



turers in both countries, resulting in reduced trade, employment, and tax revenue. In particular, there is no sound reasoning for the imposition of tariffs by the US on goods with straight commercial applications when the factory in China is 100 percent US owned. These US wholly-foreign owned entities pay US taxes and support US jobs. The imposition of export controls by both governments have also been challenging for US companies operating in China.

US Department of Commerce BIS (Bureau of Industry and Security) created the Military End User list in December of 2020. The list sanctions US companies from sharing goods and technologies to MEU companies in China, Russia, Venezuela, and Burma. In the years since then, BIS has continued to identify and add more companies to the MEU list. BIS acknowledges the list is not comprehensive of all MEU companies and places the burden on US companies to conduct due diligence. US companies are therefore required to conduct their own investigations with their partners and suppliers in China to determine MEU status. For those Chinese companies determined to be MEU, the US company must apply for an export license with Department of Commerce in order to send goods and technologies with certain Export Control Classification Number (ECCN) to those MEU companies. The process may take up to 6 – 9 months. As an alternative, the US company may select to work with a different company/supplier outside of China to avoid any export issues.

On October 17, 2020, China’s National People’s Congress Standing Committee passed The Export Control Law of the People’s Republic of China, which became effective on December 1, 2020. It is the first comprehensive export control of the country and sets out export control measures to safeguard national security, ensure non-proliferation, and standardize export controls. This policy imposed export restrictions on certain raw material that US companies buy from Chinese suppliers, such as high strength aluminum bars, which may be used on military products. Chinese suppliers must apply for an end user certificate from China’s Ministry of Commerce, with supporting documents from the buyer (US company in this case) stating the material will only be used for commercial purposes. The certificate must be renewed every 6 months.

Another challenge comes in the form of inconsistent regulatory interpretations for US companies operating in China. In some cases, these are caused by local governments in China lacking funding and fining US foreign invested enterprises to make up for revenue shortfalls.

Under the former Made in China 2025, the Chinese government mandated numerous indigenous innovation policies and announced high domestic content goals which appear to be tantamount to import substitution. Even if the former MIC 2025 program has ended in name, core elements of the program do not appear to have been terminated.

AmCham China members remain concerned that 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 industry development.

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.

Finally, for manufacturing companies in particular, the rolling lockdowns experienced across China over the past three years have been disruptive to business. For an industry unable to “work from home,” these work stoppages, supply chain complications, and restrictions on the movement of our teams have resulted in diminished productivity and forfeited growth.

We see a clear need for China to open up and, in these turbulent times, to give more preferential advantages to get the economy going once again.

## Market Trends

As the end of 2022 approaches, the global economy is visibly slowing down. Many experts have started to forecast an inevitable global or regional recession. The Conference Board (TCB) issued a report in October that outlined many paths leading to recessions.

Looking purely from a China perspective, these major factors may trigger a recession:

- **Weak External Demand:** in 2021, exports of goods and services as a percent of GDP in China was 20.01 percent. The European Union and the US ranked as the second and third largest trade partners, accounting for 13.7 percent and 12.5 percent of China’s foreign trade, respectively. With the ongoing Russia-Ukraine conflict and energy crisis in Europe, rampant inflation

国政府实施的出口管制对在华经营的美国公司来说也是一个挑战。

美国商务部工业与安全局在2020年12月提出了“军事最终用户”(MEU)清单。该清单旨在对中国、俄罗斯、委内瑞拉和缅甸的“军事最终用户”公司进行制裁,禁止美国公司与其分享商品和技术。在此后的几年里,工业与安全局继续认定并将更多的公司加入“军事最终用户”清单。工业与安全局表示,该清单并不全面涵盖所有的“军事最终用户”公司,并将进行尽职调查的责任交给美国公司。因此,美国公司需要自行对其在华合作伙伴和供应商进行调查,以确定其“军事最终用户”身份。对于那些被认定为“军事最终用户”的中国公司,美国公司必须向商务部申请出口许可证,以便向这些公司发送和分享具有特定出口控制分类编号(ECCN)的货物和技术。这一过程可能需要长达6至9个月。替代方案就是,美国公司可以转而选择与中国境外的公司或供应商合作,以避免任何出口问题。

2020年10月17日,全国人大常委会通过了《中华人民共和国出口管制法》,该法于2020年12月1日开始生效。这是中国第一部全面的出口管制法规,规定了出口管制措施,以保障国家安全、防止核武器扩散以及规范出口管制。该法规对美国公司从中国供应商采购的部分原材料施加了出口限制,比如高强度铝型材,这种材料可能用于军事产品。中国供应商必须向中国商务部申请最终用户证书,并由买方(美国公司)提供证明文件,说明该材料仅用于商业目的,该证书必须每6个月更新一次。

两国政府对在华经营的美国公司的监管解释存在不一致,这也是美国公司面临的另一个挑战。在某些情况下,由于中国地方政府缺乏资金,有时甚至通过对美资企业进行罚款以弥补收入的不足。

根据原“中国制造2025”计划,中国政府颁布了多项自主创新政策,并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,但该计划核心内容的实施似乎并没有停下脚步。

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,抑制外商投资,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。尽管“中国制造2025”计划可能已经正式翻篇,然而基于该政策的财政支持或补贴仍然存在,虽然方式隐晦,但仍造成了不小的问题。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,也可能会加剧中美两国政府之间的贸易争端。

最后,特别是对制造企业来说,过去三年中国各地经历的反复“封控”对行业造成了破坏。对于一个无法“远程办公”的行业来说,工厂停工、供应链复杂化以及对员工出行的限制,导致生产力下降、增长停滞。

商会认为,在这个动荡时期,中国需要进一步扩大开放,优化营商环境,重振经济发展。

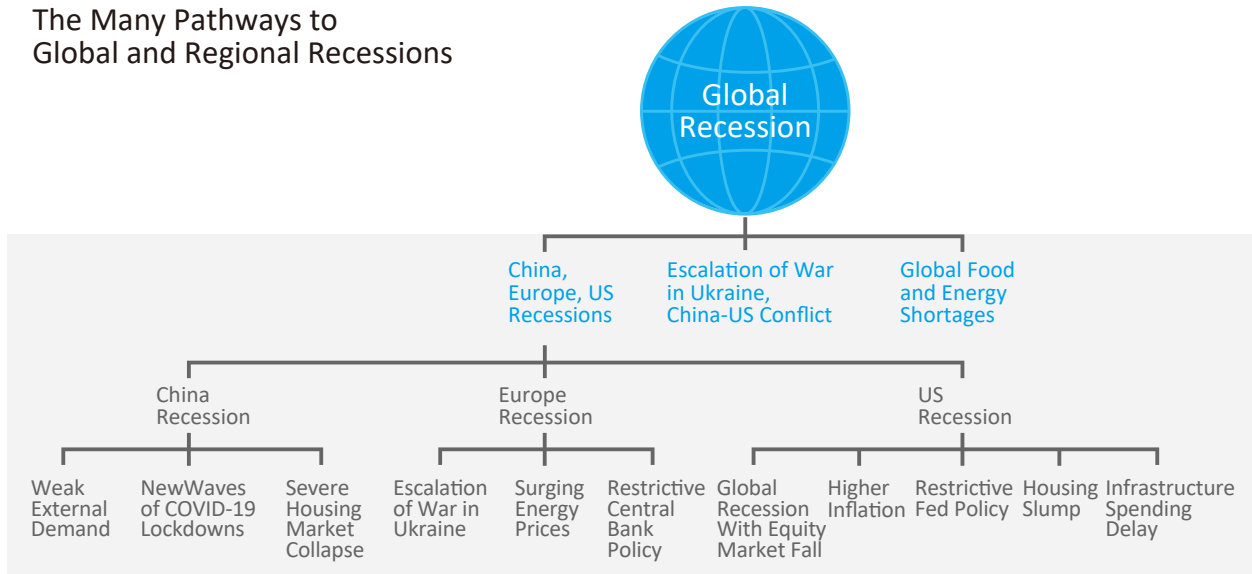
## 市场趋势

从2022年底来看,全球经济明显放缓。许多专家已经开始预测,出现全球或区域性的经济衰退难以避免。世界大型企业联合会(TCB)在10月份发布的一份报告概述了导致经济衰退的诸多路径。

单纯从中国的角度来看,以下因素是可能引发经济衰退的主要原因。

- 外部需求疲软:2021年,中国的商品和服务出口占GDP的比例为20.01%。欧盟和美国位列第二和第三大贸易伙伴,分别占中国对外贸易的13.7%和12.5%。随着俄乌冲突的持续和欧洲的能源危机、高企的通货膨胀以及美联储加息,两国都面临着各自的经济衰退风险,可能导致对中国商品的需求疲软。
- 房地产市场风险:从2021年开始,中国的房地产市场出现了下滑,房地产价格断崖式下跌。中国国家统计局的数据显示,今年1月至8月,房地产开发投资下降了7.4%,比前7个月多了1个百分点。商品房销售总额为人民币8.59万亿元(合1.19万亿美元),下降27.9%,而住宅房销售下降30.3%。

## The Many Pathways to Global and Regional Recessions



Source: The conference Board, 2022

and the Federal Reserve’s interest rate hikes, both are facing their own recession risks and may result in weak demands for Chinese goods.

- **New Waves of Covid-19 Lockdowns:** China continued its zero-Covid policy and enforced strict lockdowns. In the spring of 2022, Shanghai went through a month-long lockdown, while in May Beijing lockdowns persisted for several weeks. Almost every other major city has experienced lockdowns, shutdowns, and interruptions. Travel in and out of China has slowed to a trickle since the start of the pandemic.
- **Severe Housing Market Collapse:** Starting from 2021, China’s housing market has declined as property prices fell precipitously. “Data from China’s National Bureau of Statistics shows that real estate development declined by 7.4 percent from January to August this year – 1.0 percentage point more than in the first seven months. Commercial housing sales totaled RMB 8.59 trillion (US \$1.19 trillion), down 27.9 percent, while residential sales decreased by 30.3 percent.” Concerned that many Chinese families cannot afford rising prices, the Chinese government busted the housing bubble. Some of the largest real estate developers, such as Evergrande, collapsed. The housing sector represents one-fifth of Chinese GDP. A housing crash has serious implications for China’s domestic economy and many related industries.

Some trends such as external market demands continued to weaken, while other trends such as zero-Covid policy experienced dramatic changes. The National Health Commission abandoned its zero-Covid strategy on December 7 with the publication of its 10-point national plan. This reversal of the policy has significant impacts on the manufacturing sector and the broader supply chain. In the short term, many plants experienced absenteeism and disrupted operations due to

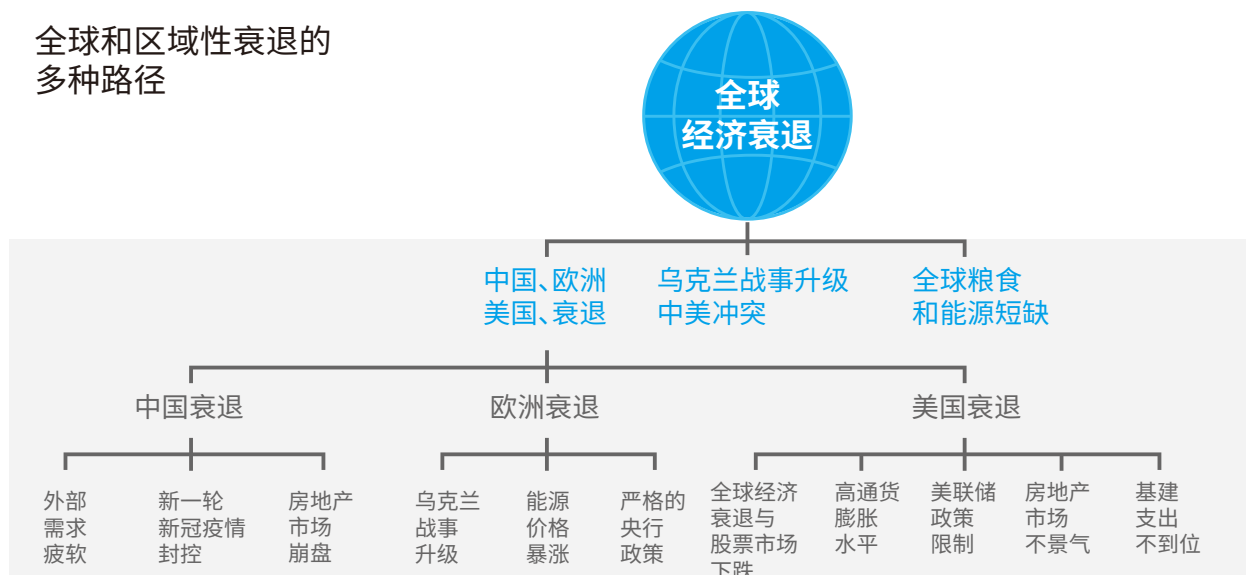
rising infection cases. Despite business continuity planning and health safety measures, manufacturing companies experienced waves of sick leaves, especially for companies with plant operations in multiple locations across China. The disruption did not only impact manufacturing companies’ internal production, but also their external supply base and logistics operations in the entire supply network. In 2023, the Chinese economy might experience a distinct “two halves” with H1 with growth below forecasts but significantly above in H2. After the initial waves of Covid infections, the economy would rebound. This would be similar to the reopening of several other East Asian economies.

### COVID Impact & Supply Chains

In 2022, China saw its biggest challenge to date preventing the spread of COVID-19 infections across the country. Since the start of the pandemic, China had maintained a stringent set of COVID-19 policies that created barriers for international businesses. As the more contagious Omicron variant became the dominant strain globally, China’s Dynamic-Zero COVID Strategy resulted in more frequent and widespread lockdowns, introducing significant disruptions and unpredictability to the supply chain.

The most direct impact is suppliers’ inability to deliver material and parts on schedule. Since workers were restricted from entering/leaving factories/homes, companies created a closed loop system and turned office rooms into makeshift dorms to maintain a minimum onsite crew. Those who remained onsite ensured critical items were shipped out on time, but could not reach anywhere near the output of fully staffed production. As production fell behind, the repercussion of shortages was felt through the entire supply chain. To combat this, suppliers maintained additional inventory and built ahead of schedule

## 全球和区域性衰退的多种路径



来源：世界大型企业联合会，2022

由于担心许多中国家庭无力承担不断上涨的房价，中国政府刺破了住房泡沫。一些大型房地产开发商走向破产，比如恒大。中国房地产行业占中国 GDP 的五分之一，房地产崩盘对中国国内经济和诸多相关行业带来了严重影响。

部分趋势继续下行，外部市场需求疲软，而其他趋势经历了巨大变化，比如“清零”政策。国家卫健委在12月7日公布了“国十条”，从而放弃了其新冠“清零”政策。这种政策的变化对制造业和更广泛的供应链产生了重大影响。短期之内，由于感染病例增加，许多工厂出现了缺勤和运营中断的情况。尽管备有维持业务连续性的计划以及采取了健康安全措施，制造业公司面临的是一波又一波的病假潮，特别是那些在中国多个地方设有工厂的企业。运营的中断不仅会影响到制造企业的内部生产，也会影响到其外部供应基地和整个供应网络的物流运作。2023年，中国经济可能会出现明显的“两半”，即上半年明显低于市场预期，在下半年显著高于市场预期。在最初的新冠感染过峰后，经济会出现反弹。这一点类似于其他几个东亚经济体重新开放时的情况。

### 新冠疫情影响与供应链

2022年，中国曾面临迄今为止最大的新冠肺炎疫情防控挑战。自新冠肺炎疫情爆发以来，中国一直保持着严格的防控政策，影响了国际业务。随着传染性更强的“奥密克戎”成为全球的主导毒株，中国的“动态清零”

战略使得封控变得更为频繁和广泛，严重干扰了供应链，增加了不可预测性。

最直接的影响就是供应商无法按期交付材料和零配件。由于工人被限制进入或离开家庭和工厂，公司建立了闭环系统，将办公室房间变成临时宿舍，以保证现场保有最低限度的工人数量。现场工人确保了关键物品的按时发运，但无法达到接近全员的产出速度。由于生产速度滞后，整个供应链都感受到捉襟见肘。为了应对这种情况，供应商准备了额外的库存，并提前生产，以保证交货不受意外停产的影响。然而，这增加了经营成本，而且并非所有的公司都有能力提前生产，公司经常发现自己在下一轮疫情爆发之前赶上了上一轮爆发晚期的订单。中国 GDP 增长相对于前几年的低迷也能够很好的体现这些带来的影响。中国 2022 年第二季度 GDP 环比下降 2.6%，当时整个上海从 4 月开始被封控了两个多月。2022 年，中国的实际 GDP 增长为 3.0%，这将比年初设定的目标低 2.5%。

随着封控达到了覆盖全城的规模，货物运输面临更多挑战。尽管道路关闭和航班取消造成的物流中断持续较短，但需要公司投入资源来监测和缓解。另一方面，由于对入境旅客的防疫要求减少了国际商业航班的需求和供应，货运能力不足长期以来一直是货物进出中国的一个问题。在最初的努力尝试中，各公司转而采用海上运输，导致港口和海洋通道承载力达到了瓶颈。例如，在 4 月和 5 月的上海封控期间，从中国到美国或欧洲的

to protect delivery from unplanned production stoppage. However, this adds to the cost of doing business and not all companies have the capacity to build ahead, as they often find themselves catching up on late work orders from the previous COVID-19 outbreak before the next one hits. The impact from these disruptions manifested in the country's sluggish GDP growth relative to previous years. China's 2022 Q2 GDP fell by 2.6 percent quarter-on-quarter, when the entire city of Shanghai was locked down for more than two months starting in April. For 2022, China has reached 3.0 percent real GDP growth, which is 2.5 percent below its target set at the start of the year.

As lockdowns reached city-wide scale, the transportation of goods faced increased challenges. Logistics disruptions caused by road closures and flight cancellations, though often short-lived, require companies to dedicate resources to monitor and mitigate. On the other hand, as quarantine requirements for incoming passengers suppressed the demand and supply of international commercial flights, reduced cargo capacity has long remained an issue for transporting goods into and out of China. Initial mitigation efforts saw companies switching to sea shipping, which resulted in bottlenecks at ports and in ocean lanes. For example, during the Shanghai lockdown in April and May, shipment delays from China to US/Europe have quadrupled since the previous months. Freight cost from China to US West Coast, during the same time, reached as high as US \$7,970 per 40 ft dry container in June 2022, compared to US \$3,070 in the same month one year prior. The congestion has since improved, and freight cost for China to US West Coast has dropped to US \$2,470 per 40 ft container, but is still 80 percent higher than before the pandemic.

Lockdowns and quarantine requirements have also limited the movement of subject matter experts (SMEs), both domestically and internationally. The knowledge possessed by SMEs is critical to process improvement and value creation. For example, SMEs are the only ones within the company authorized to approve qualification activities for new manufacturing processes. Companies have adapted to the travel barriers by implementing virtual solutions that promote collaboration and exchange of ideas. Qualification is completed via remote witnessing where SMEs are able to watch the process and receive data in real time. As quarantine requirements are reduced to single digit days for international travelers, more companies are willing to bear the cost of the extra travel days. Nonetheless, in the few instances where SMEs are unable to complete the quarantine (e.g. health, schedule reasons) and virtual is not an option (e.g. site audit), companies are forced to delay the realization of those opportunities.

However, in December 2022, China started removing many of its COVID related restrictions and opening up to international communities. Quarantine for international travelers was removed and COVID-19 test was no longer needed

for domestic travel. Changes in the policy also eliminated centralized quarantine and lockdowns for those who test positive for COVID-19. These are significant changes that removed operational barriers for the supply chain, returning to a pre-pandemic status quo. Although the changes resulted in massive waves of COVID-19 infections across the country, it did not create sustained disruptions in the supply chain. Looking forward to 2023, disruptions previously mentioned will hopefully become a thing of the past. As China joins the rest of the world on the course of pandemic recovery, growing demand should inject a much-needed boost to the country's manufacturing and supply chain operations.

## Power Supply Issues

China's remarkable economic growth over the past four decades has lifted hundreds of millions of people out of poverty, turning the country into a leader in many industries but also the world's largest carbon emitter, accounting for one-third of global carbon dioxide (CO<sub>2</sub>) emissions. Continued robust development of China's manufacturing industry has led to high energy consumption and high pollution and emission.

China's President Xi Jinping proposed a global development initiative during his address in the general debate of the UN General Assembly's 76th session in September 21, 2021. He pledged that "China will strive to peak carbon dioxide emissions before 2030 and achieve carbon neutrality before 2060." He highlighted the need to accelerate transition to a green and low-carbon economy while achieving green recovery and development.

Against this backdrop, an increasing number of companies have set their own sustainable development goals as part of their company strategy, they are incorporating renewable energy such as wind and solar in their development strategies, seeking to realize their sustainability targets through purchasing and using renewable energy to increase the share of green electricity in total power consumption.

China boasts the biggest installed renewable energy capacity across the globe and its market are undergoing continuous reform; however, mechanisms available for corporates to procure renewable energy now remain limited. The renewable transactions are mainly driven by noneconomic incentives with three types of buyers, including corporations with the internal decarbonization targets or supply chain compliance requirement, industry buyers seeking to expand the production while constrained by the energy intensity targets, and power users who have gaps to meet RPS targets. Currently there are mainly three options for power user companies to procure green electricity in China, such as invest in distributed renewable energy projects, directly purchase electricity generated by renewable energy or purchase Green Electricity Certificates (GECs).

货物延误数量比前几个月翻了两番。在同一时期，从中国到美国西海岸的运费在 2022 年 6 月高达每 40 英尺干货集装箱 7970 美元，而一年前的同期则为 3070 美元。此后，拥堵情况有所改善，中国至美国西海岸的运费已降至每 40 英尺集装箱 2470 美元，但仍比新冠疫情爆发之前高出 80%。

封控和防疫要求也限制了中小企业在国内和国际上的流动。中小企业拥有的知识对于流程改进和价值创造至关重要。例如，有些中小企业是其所属公司内部唯一有权批准新制造工艺资格认证的机构。公司通过线上解决方案，促进合作和交流，适应旅行限制。资格认证是通过远程见证完成的，中小企业能够观看这个过程并实时接收数据。随着国际游客入境集中隔离的要求天数减少到个位数，更多的公司愿意承担额外天数的差旅费用。尽管如此，在少数情况下，如果中小企业派遣人员无法完成集中隔离（如健康、日程安排等原因），而业务又无法通过线上开展（如现场审计），公司就不得不推迟这些时机。

然而，在 2022 年 12 月，中国开始取消诸多与新冠疫情有关的限制，并向国际社会开放。取消了对国际游客的防疫要求，国内出行也不再需要进行核酸检测。政策的变化还取消了对新冠阳性患者集中隔离和封控的规定。这些变化意义重大，打破了供应链的运营障碍，恢复到了疫情之前的状态。尽管这些变化导致全国各地出现大规模的新冠感染浪潮，但并没有对供应链造成持续的破坏。展望 2023 年，之前造成的负面影响一去不复返。随着中国与世界其他国家一起走上治愈新冠疫情创伤的道路，中国的制造业和供应链业务亟待需求的持续增长，为其注入动力。

## 电力供应问题

过去四十年来，中国经济的迅速增长帮助数以亿计的人口摆脱了贫困，使中国成为许多行业的领导者，但同时也成为世界上最大的碳排放国，占全球二氧化碳（CO<sub>2</sub>）排放总量的三分之一。中国制造业持续的强劲发展导致了高能源消耗和高污染排放。

2021 年 9 月 21 日，习近平主席在第 76 届联合国大会一般性辩论中发言时提出了一项全球发展倡议。他承诺，“中国将于 2030 年前二氧化碳排放达到峰值，努

力在 2060 年前实现碳中和”。他强调，在实现绿色复苏和发展的同时，需要加速向绿色和低碳经济过渡。

在此背景下，越来越多的公司将自己的可持续发展目标作为公司战略的一部分，他们将风能、太阳能等可再生能源纳入发展战略，力求通过购买和使用可再生能源实现可持续发展目标，提高绿色电力在总电力消费中的比重。

中国拥有全球最大的可再生能源装机容量，其市场正在经历持续的改革。然而，目前仍然缺乏企业采购可再生能源的机制。可再生能源交易主要由非经济激励措施驱动，有三类买家，包括有内部脱碳目标或供应链合规要求的企业、寻求扩大生产同时受制于能源强度目标的行业买家，以及距离满足 RPS 目标还有差距的电力用户。目前，企业电力用户在中国采购绿色电力主要有三种选择，包括投资分布式可再生能源项目、直接购买可再生能源发电或购买绿色电力证书（GEC）。

然而，中国的绿色电力市场仍在建设之中，因此，商业电力消费者对于绿色电力的采购选择出现了担忧。许多公司面临的障碍包括缺乏采购途径，可再生资源有限或不存在，以及监管障碍。政府需要大力改善可再生能源电力的采购方案，减少阻碍企业向净零排放过渡的监管障碍。许多公司还遭遇了电力供应紧张的状况，迫使工厂减产，威胁到中国庞大经济的发展速度，给全球供应链带来更大压力。我们希望政府采取措施，提高电力供应的弹性和可靠性。

## 建议

### 对中国政府：

- 在过去的几年里，美国的在华制造商目睹了严重的电力短缺，特别是在夏季，这导致了电力供应的中断。商会希望看到中国政府采取具体措施，确保电力的稳定供应。由于商会致力于实现双碳目标，商会也希望中国政府能够加强商会会员企业对风能和太阳能等绿色能源的利用。
- 整合碳市场、绿色电力市场和绿色证书市场，

However, China's green electricity market is still under construction, thus concerns occur among commercial power consumers in terms of possible options to procure green power. Many companies are facing obstacles including lack of procurement, limited or no availability of renewables, and regulatory barriers. Governments need to significantly improve renewable electricity procurement options and reduce regulatory hurdles that are stopping businesses from transitioning to net-zero. Many companies also suffered power supply crunch, forcing factories to cut production, threatening to slow the country's vast economy and place even more strain on global supply chains. We would expect the government to take measures to enhance the resilience and reliability of power supply.

## Recommendations

### *For the Chinese government*

- In the past few years, US manufacturers in China witnessed severe power shortages especially in Summer, which led to disruptions of power supplies. We would like to see the Chinese government take concrete measures to ensure stable power supply. As we are committed to the dual carbon target, we would also hope the Chinese government can enhance our access to green power, such as wind and solar.
- Integrate the carbon market, green electricity market and green certificate market to ensure that the globally recognized Energy Attribute Certificate (EAC) meets local and national compliance requirements and is recognized by major reporting bodies, especially multinational companies operating in China. Develop transparent and credible international standards for the development of renewable energy attribution certification and tracking systems.

### *For both governments*

- Export controls are in place to protect certain strategic advantages of each country, but should present minimal interference with commercial trade between the two countries. AmCham encourages both countries to establish fair and transparent policies based on national interests. Leveraging export controls as a tit-for-tat tactic ultimately results in unnecessary losses for business on both sides. Under existing export control restrictions, AmCham recommends expediting the export license application process and extending the license validity period, which would allow timely capture of business opportunities.

确保全球公认的能源属性证书（EAC）符合地方和国家的合规要求，并得到主管审批机构的认可，特别是对于在华经营的跨国公司。为可再生能源属性认证和跟踪系统的发展制定透明、可信的国际标准。

### **对两国政府：**

- 实行出口管制是为了保护国家的特定战略优势，但应对两国间商业贸易造成的影响降至最低。商会鼓励两国建立基于国家利益且公平和透明的政策。以出口管制作为针锋相对的策略，最终会给双方业务带来不必要的损失。在现有的出口管制下，商会建议加快出口许可证的申请程序，并延长许可证的有效期限，以便企业及时抓住商业机会。



# 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 was the largest theatrical market globally for two consecutive years in 2020 and 2021. However, due to the COVID-19 pandemic, total box office receipts in 2022 dropped to about RMB 30 billion, down 36.4 percent compared to 47 billion in 2021, but still ranking second in the world. As the production quality of China's domestic films continues to improve, China has the potential to regain its position as the world's number one market.

In recent years, supported by the largest Internet user base in the world, China's online audiovisual business has been expanding dramatically. According to the China Internet Network Information Center, China's online audiovisual users have increased to 994.9 million by June 2022. 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 development of the media and entertainment industry and taken action to combat piracy. Chinese IP authorities launched the annual Sword Net campaign targeting online copyright infringement since 2005.

Despite the size and market opportunities in China, the media and entertainment industry in China remains largely off-limits to foreign investment with little sign 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 2022, at the opening ceremony of the 5th China International Import Expo (CIIE), Chinese President Xi Jinping reiterated that

“China remains committed to the fundamental national policy of opening up to the outside world, pursues a mutually beneficial strategy of opening-up, and adheres to the right course of economic globalization.” AmCham China therefore urges China to fully implement its commitments by promoting reciprocity in market access, removing discriminatory regulations, and continuing to prioritize and protect intellectual property (IP) rights.

## Ongoing Challenges

### Film

#### Foreign investment restrictions

Under the *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 ver.) foreign companies have been prohibited from establishing or operating film production companies, distribution companies, and film import businesses in China. 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 regulations. Despite a statement in the 2022 Government Work Report stating that, “We will see that the negative list for foreign investment is fully observed and ensure national treatment for all foreign-invested enterprises” and the *Foreign Investment Law* promising 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 October 2022, at the 20th National Congress of the CPC, General Secretary Xi has stated that China will promote a high standard of market opening and “steadily expand institutional opening up with regard to rules, regulations, management, and standards.” He also said that China will shorten negative lists and “foster a world-class business environment that is market-oriented, law-based, and internationalized.” Unfortunately, foreign investors in the film and

# 媒体与娱乐业

## 引言

**中**国的媒体和娱乐业丰富了国内市场的内容并推动了经济增长。中国在 2020 年和 2021 年连续两年成为全球最大的票房市场。然而，由于新冠疫情的影响，中国 2022 年的总票房下降到约 300 亿元人民币，与 2021 年的 470 亿相比，下降了 36.4%，位居世界第二。随着中国国产电影制作质量的不断提高，中国仍有可能再次成为世界第一大票房市场。

近年来，鉴于中国拥有世界上最大的互联网用户群体，中国的互联网视听业务一直在蓬勃发展。根据中国互联网络信息中心的数据，截至 2022 年 6 月，中国的互联网视听用户数量已经达到 9.949 亿。互联网视听业务为消费者提供了一系列享受电影、电视节目、音乐和多媒体内容的机会。

中国政府在媒体和娱乐业的发展中起到了重要的推动作用，并采取诸多举措严厉打击了盗版行为。自 2005 年以来，中国知识产权机构每年都会发起针对网络侵权的“剑网”行动。

然而，中国的媒体和娱乐业在很大程度上仍然是外商投资的禁区，且几乎没有任何改善的迹象。2022 年 1 月 1 日生效的《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》”）依旧禁止外商对文化和媒体娱乐行业的投资。

要解决长期存在的市场准入挑战和监管障碍，以便为所有国内外媒体和娱乐公司提供一个公平的竞争环境，并让公司充分发挥其投资潜力，还有很多工作要做。2022 年 11 月，在第五届中国国际进口博览会开幕式上，中国国家主席习近平重申“中国坚持对外开放的基本国策，坚定奉行互利共赢的开放战略，坚持经济全球化正确方向”。因此，

中国美国商会（以下简称商会）敦促中国全面履行其承诺，增强市场准入的互惠性，取消歧视性法规，并继续优先考虑和保护知识产权。

## 持续挑战

### 电影行业

#### 外商投资限制

根据《外商投资产业指导目录》（2005 年版）的相关规定，短期之内，外国公司可以成立合资企业来制作和发行电影和电视剧。然而，这条规定的效力实际上只持续了短短数月。从 2007 年修订的《外商投资产业指导目录》开始，中国开始禁止外国公司设立或经营电影制作公司、发行公司和电影引进业务。《负面清单》制度的第一版于 2016 年发布，在这一制度下，针对外国公司的禁令延续了下去。外国娱乐公司只有在严格的监管下，才被允许与国内企业合作，根据逐个项目共同制作电影。《2022 年政府工作报告》表示“将深入实施外资准入负面清单，落实好外资企业国民待遇”。同时，2020 年 1 月 1 日生效的新《外商投资法》也承诺将在一些方面给予外国投资者平等待遇。尽管如此，影视制作、发行和网络视频平台仍未从负面清单中删除。

2022 年 10 月，在中国共产党第二十次全国代表大会上，习总书记表示，中国将推动高标准的市场开放，“稳步扩大规则、规制、管理、标准等制度型开放”。总书记还提到，中国将缩减负面清单，并“营造市场化、法治化、国际化一流营商环境”。不幸的是，实际上，电影和电视市场的外国投资者受到了更大的限制，这一点将在本章中进行讨论。商会会员希望继续向美国影视制作方开放电影制作市场，这不仅有利于中国国内影视业

television market in recent years have actually been subject to tighter restrictions, as demonstrated in this chapter. AmCham China members continue to hope that the film production market will be opened to US film and TV producers, which will not only benefit the development of China's domestic film and television industry, but provide China's rich cultural traditions greater exposure to the world.

### Theatrical Film – Revenue Share and Quota

The *US-China Film Memorandum of Understanding* (MOU) was signed in 2012 to settle a WTO dispute in lieu of China 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 must 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, which is far below international norms. Under these terms, the MOU was required to be updated in 2017, including a commitment by China to enhance benefits to the US. To date, however, a new MOU has yet to be reached between the two countries. In the spirit of maintaining communications and constructive efforts, AmCham China urges that a new MOU be concluded to allow foreign film producers to receive a share of their gross box office revenue 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 holiday, Lunar New Year holidays, or and 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 encouraging 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. According to the National Radio and Television Administration (NRTA), China's online audiovisual revenue in licensed and filed institutions doubled from RMB 173.82 billion in 2019 to RMB 359.47 billion in 2021. Ongoing market access restrictions prevent foreign companies from competing on a level playing field in this fast-growing market.

### Foreign Investment Restrictions

For over a decade China has prohibited foreign investment in online audiovisual services. Instead, foreign companies must license their content to domestic companies which distribute to the Chinese market.

### Quota Restrictions and Content Review

In 2014, the Notice on Further Implementation of Provisions Concerning the Administration of Online Foreign Films and TV Dramas was 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 NRTA and the China Film Administration, both under the Party's Central Publicity Department). The Notice caps the online distribution of foreign content at 30 percent and requires online distributors to submit all 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, 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 of unauthorized piracy sources by Chinese citizens to access these programs online.

In September 2018 the NRTA issued the 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 the broadcast of overseas programming have yet to be officially promulgated in their 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

的发展，而且会为中国丰富的文化传统提供更大的世界曝光度。

### 院线电影——票房分账和配额

《中美电影谅解备忘录》(以下简称“《谅解备忘录》”)于2012年签署，以解决世贸组织的争端，履行中国应尽的义务。根据《谅解备忘录》的条款，中国每年允许总共34部外国电影进入国内，其中14部电影必须是“增强格式”(如3D或IMAX)。这34部电影受制于分账协议。该协议称，美国电影制作公司只能获得每部电影总票房收入的25%，而这一比例远远低于国际标准。根据其条款，《谅解备忘录》需要在2017年进行更新，内容包括承诺中方将基于该《谅解备忘录》提高美方的收益。然而，迄今为止，双方仍未对新的《谅解备忘录》达成一致。本着保持沟通和努力推进的精神，商会敦促双方签署一份新的《谅解备忘录》，允许外国电影制片方按照国际标准获得其应得的电影总票房收入。

### 旺季的上映日期和限制

尽管存在引进电影获准在中国上映的情况，但许多电影的上映仍会被推迟数周乃至更长时间。此外，往往只有提前四到六周的时间确定引进电影的上映日期，不仅阻碍了宣发规划，而且极大地限制了营销机会。同时，中国政府还实行“国产电影保护期”策略，在此期间不得发行新的外国电影。保护期属于歧视性政策，目的是为了保护国产电影，减少其面临的竞争。保护期通常定于暑期、春节假期或重要政治事件期间。

延期上映、临时通知上映日期，以及限制在旺季上映新的外国电影作品，不仅是对外国电影的歧视，而且还减少了中国的总票房收入，同时迫使中国观众和娱乐消费者转向非法渠道购买未经授权的影视内容。

### 互联网视听服务

中国的互联网视听产业发展迅速。根据国家广播电视总局的数据，中国获得特许和备案的机构的互联网视听收入从2019年的1738.2亿元翻番到2021年的3594.7亿元。持续的市场准入限制使外国公司无法在这个快速增长的市场上进行公平竞争，在某些情况下甚至无法进行任何竞争。

### 外商投资限制

十多年来，中国一直禁止外商投资互联网视听服务。外国公司必须将其内容授权给国内公司，由其在中国市场代为发行。

### 配额限制和内容审查

2014年，原国家新闻出版广电总局(该局对该行业的职责现由国家广播电视总局和中国电影局分担，二者均隶属于中共中央宣传部)发布的《关于进一步落实网上境外影视剧管理有关规定的通知》，将境外内容的互联网传播比例限定为30%，并要求互联网发行商提交内容以进行审查。每年只有两个窗口期供互联网发行商提交内容以进行登记和审查。此外，当局要求以整季的形式提交外国电视剧，而此前的要求则是可以以每一集为单位提交。这一规则实际上推迟了国内观众观看外国电影的时间，延误了其能发挥最大价值的窗口。在当局制定的30%的境外内容比例的限制下，实际市场中，美国影视内容被限制在10%的比例以下。

这些规定大大减少了在中国发行的美国电视节目的数量。这些限制也让更多的中国观众为了收看这些节目而去网上购买未经授权的盗版资源。

2018年9月，国家广播电视总局发布了《境外电视节目引进、播出管理规定》(征求意见稿)的新版草案。该法规草案进一步加强对境外内容的控制，不仅提出了通用的30%的境外内容上限，而且规定30%的配额要按类别适用于电影、电视、动画、纪录片和“其他”节目，包括教育、科技、文化、综艺和体育节目。

虽然尚未正式颁布这些关于播出境外节目的规定最终版本，但是，自2021年初以来，这些市场准入限制已被网络视频平台实际执行。商会会员对此深表关切。美国的电影和电视公司仍然面临着极其不确定和不平衡的竞争环境。在没有正式宣布或正式颁布条例的情况下，全行业从2021年4月1日开始对动画片适用30%的境外内容上限。此外，还发布了其他未经正式宣布的限制措施，将按类别划分的配额限制扩大到包括纪录片和其他境外电视节目在内的其他类别。2022年6月1日，国家广播电视总局发布了新的国内互联网视听作品行政许可制度，对院线和网络内容适用相同的审查规则，从而正式确立了政府对互联网视听作品的进一步严格监管。

documentaries and other overseas TV programs. On June 1, 2022, the NRTA issued a new system of administrative licensing for domestic online audiovisual works, applying the same censorship rules for theatrical and online content, thus formalizing a further tightening of government oversight for online audiovisual content.

We urge China to act in line with the spirit as well as the letter of the *Foreign Investment Law* and remove these restrictions that have adversely impacted US film and TV programs licensed in China for online distribution. The current practices have resulted in delays, effectively curtailing day-and-date releases and in practice placed additional caps on the availability of foreign content.

The above policy changes, including the quota and content review process, are inconsistent 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 urges 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 other measures and remove all quota restrictions (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 the implementation of all regulations, decrees, and notices that are not 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 content 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, long-standing regulations limit the total airtime of foreign content broadcasts on domestic television, including complete bans

on foreign programming during prime time. AmCham China continues to urge that these restrictions be relaxed.

### Intellectual Property Protection

#### Internet Piracy

The National Copyright Administration of China (NCAC) has initiated Special Enforcement Campaigns on copyright infringement every year since 2005. These campaigns have resulted in positive and lasting changes to the video-hosting landscape and created an environment that 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 needs to 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*. The China National Intellectual Property Administration (CNIPA) recently published a three-year Plan (succeeding the prior 2020-2021 plan) to implement the 2019 Guidelines. CNIPA’s plan specifies 114 measures in six categories (with deadlines). The Plan contains relevant items to the copyright industries. AmCham China hopes that the Guidelines will be effectively implemented, and additional concrete steps will be taken to strengthen IPR protection (including copyright, patent, and trademark).

To address the challenges 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,
- Implement the *Guidelines*, criminalize internet offenses that may lack a demonstrable profit motive but that impact rights holders on a commercial scale. Lower the “500 copies” criminal threshold, streamlining evidence processes, establishing a list of repeat infringers, regulating websites to “remove infringing content, disrupt pirated website links, [and] stop the dissemination of infringing information,” separately define criminal violations regarding circumvention of technological

我们敦促中国按照《外商投资法》的精神和内容以及给国务院领导的声明和承诺予以落实外资企业国民待遇，改善以市场为基础的世界级商业环境，并取消阻碍美国电影和电视节目在中国获得网络发行许可的限制。这些限制延误了影视作品的发行，极大地减少了上映的内容，并对境外内容的可用性设置了额外上限。

上述政策变化，包括配额和内容审查程序，不符合“依法治国”的承诺，也不符合2020年1月1日生效的《外商投资法实施条例》第七条的规定，即“未经公布的不得作为行政管理依据”。

商会敦促中国政府：

- 取消对互联网视听市场的外商投资限制，允许外国公司经营在线流媒体服务；
- 允许获得院线发行许可的影片在网络视频平台上发行，而无需经过额外的数轮内容审查；
- 撤销所有其他相关措施，取消所有配额限制（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》和《关于网上境外影视剧管理的通知和办法》，以及《关于引进电视节目模式的声明和规则》）；
- 撤销并停止执行所有未正式公开宣布或发行的条例、法令和通知。

## 电视业务

尽管互联网视听服务处于稳中有进的状态，但电视仍然是全国范围内拥有最多国内受众的渠道。中国禁止外商投资于电视业务，包括电视制作公司。中国的地方有线电视网络在未经政府批准或引进许可的情况下，不得转播外国卫星频道。传入中国的外国卫星频道需要从政府拥有的加密卫星平台进行下行传输，这些频道只向高端酒店（三星级及以上）和外国居民社区提供。每个频道的年费仍然高得令人望而却步，价格为100000美元。此外，长期推行的严格法规限制了国内电视播放的外国内容的总时长，其中还完全禁止在黄金时段播放外国节目。商会继续促请中国政府放宽这些限制。

## 知识产权保护

### 互联网盗版

自2005年以来，中国国家版权局每年都会发起针

对侵权行为的专项执法行动。这些行动给视频托管领域带来了积极的持久变化，并创造了有利于数字媒体经济增长的合法环境。

然而，外国电影的非法下载和流式传输在中国仍然事关紧要。许多非法网站利用P2P网络和应用程序，提供未经授权的非法电影和电视节目副本以供实时流媒体访问。这些链接通过社交媒体平台迅速传播。许多移动应用程序和设备也汇集了盗版内容，对美国和中国合法电影业构成了威胁。中国必须继续努力对这些P2P网络、网站和移动内容聚合器进行监管，它们都对合法互联网媒体和娱乐业的持续发展构成了重大威胁。

2019年11月24日，中共中央和国务院联合发布了《关于强化知识产权保护的意见》（以下简称《意见》）。中国国家知识产权局最近公布了《意见》的三年实施计划（接替之前的2020至2021年计划）。该计划规定了6个类别的114项措施（含截止日期）。该计划包含与版权行业有关的项目。商会希望《意见》能够得到有效实施，并希望政府能够采取更多的具体措施来加强知识产权保护（包括版权、专利和商标）。

为了应对网络盗版的挑战，商会敦促通过以下行动为数字媒体提供充分的保护：

- 颁布新的规定，有效解决由视频聚合网站和移动应用程序造成的大量互联网盗版行为；
- 执行《意见》，将可能缺乏明显盈利动机但对权利人产生商业影响的互联网侵权行为定性为犯罪。降低“500次”的刑事门槛，简化证据程序，建立重复侵权者名单，监管网站“删除侵权内容，破坏盗版网站链接，并阻止侵权信息的传播”，单独定义有关规避技术保护措施（TPM）或贩卖规避技术的刑事违法行为；
- 消除“实体”和“个人”犯罪之间的法律区别；
- 对侵权行为提供具有震慑力的民事和刑事处罚；
- 为电子商务平台运营商建立适当的责任制度，并制定合适的措施，对盗版生态系统中的核心网站进行通知和撤除。

### 盗 摄

尽管在2021年，由于影院的关闭，非法盗摄行为在中国乃至全球范围内的有了明显的减少，但处理中国

protection measures (TPMs) or trafficking in circumvention technologies,

- Eliminate legal distinctions between crimes of “entities” and “individuals;”
- Provide deterrent-level civil and criminal penalties for infringement,
- Establish an adequate liability regime for e-commerce platform operators as well as satisfactory measures for notice and takedown of websites central to the piracy ecosystem.

### Camcorder Piracy

Illicit theatrical camcording in the region remains a significant challenge in China, although in 2021 there was a notable decrease in illicit camcording in the country and globally because of theater closures. In general, the quality of films camcordered in China has improved over the years, threatening the legitimate theatrical and home entertainment markets. Live streaming of theatrical broadcasts of films online is a growing concern. Industry analysis identified as many as 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 need to 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 promulgated the 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 fully 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. Industry analysis from Mintel, a market intelligence and research firm, predicted 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, estimated 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 Universal Beijing Resort, another Sino-US joint venture, opened in September 2021. The entry of top international brands injected new energy into China’s theme park market, increasing the professional level of the industry while also increasing demand for high quality theme park experiences.

The COVID-19 pandemic had a significant impact on 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 with 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 even experienced a boom in attendance in late 2020 through early 2022.

In addition to growing competition in this fast-expanding market, challenges with respect to the issuance of counterfeit tickets and pirated goods still plague the market, while

的影院非法盗摄仍然是一个重大挑战。总而言之，这些年来，在中国盗摄的影片质量有所提高，已经威胁到合法的影院和家庭娱乐市场。院线影片的在线播放日益受到关注。业内分析认为，2018年和2019年，来自中国电影院的非法盗摄多达53部。虽然中国一向在以积极配合的态度努力防止盗摄，但中国政府仍需要制定更有效的威慑措施。商会敦促政府加强民事、行政和刑事处罚，以阻止电影院出现非法盗摄行为。

### 盗版设备和应用程序

中国的空白媒体设备制造业在全球居于领先地位。空白媒体设备允许安装第三方、预装或购买后的应用程序，使消费者能够获得盗版内容。商会会员十分乐于与中国政府合作，制定解决方案，以应对这些空白媒体设备带来的挑战。

### 修订后的《著作权法》

中国于2020年11月发布了修订后的《著作权法》，且其已于2021年6月1日生效。这是自2010年以来对中国《著作权法》的首次修订。修订后的该法包含一些积极的改革，包括：

- 可争取的“惩罚性”赔偿的最高金额从50万元人民币（76300美元）提高到500万元人民币（763000美元）；
- 在审查初步证据时将举证责任转移给侵权被告；
- 对技术保护措施（TPM）的保护，使版权作品的数字交易成为可能。

至关重要的一点是，中国应正确执行修订后的《著作权法》，以确保遵守其国际承诺，包括提供充分和有效的TPM保护。中国应进一步修订其法律框架，使其国内的版权保护和执法标准与全球标准和最佳做法保持一致，并以此来更好应对数字时代的版权保护挑战。虽然我们的会员在2020年见证了执法框架的一系列明显改进，特别是修订后的《著作权法》提高了惩罚性赔偿的最高标准，但中国仍应继续坚定地执行《关于强化知识产权保护的意见》及其在第一阶段协议中的承诺，包括承诺确保所有网站将“删除侵权内容，屏蔽或断开盗版网站链接，停止侵权信息传播”。

## 主题公园行业

主题公园越来越受到中国游客的欢迎。根据美国公司艾奕康（AECOM）的数据，中国境内大约有160个规模不等的主题公园，是十年前的三倍。2019年，中国最受欢迎的十大主题公园迎来了6038万游客，比上年增长1%。市场情报和研究公司英敏特（Mintel）的行业分析显示，从2017年到2022年，主题公园市场的零售额以每年17.7%的平均速度增长，于2022年达到892亿元人民币（138亿美元）。中国的主题公园市场拥有巨大的发展潜力。AECOM的副总裁吉井贵思（Chris Yoshii）估计，中国主题公园的年人均参观率约为0.16，仅为美国的四分之一。巨大的发展潜力吸引了知名的外国品牌和中国运营商投资主题公园市场。2016年，中美合资的上海迪士尼度假区开始运营；另一家中美合资的主题公园，北京环球度假区于2021年9月开业。国际顶级品牌将为中国的主题公园市场注入新活力，发挥其强大的内容制作能力并提供其知识产权保护方面的国际经验。

持续的新冠疫情对世界各地的文化和旅游产业造成了重大影响。在新冠疫情爆发期间，中国的许多主题公园被迫关闭，游客数量大幅下降。但是，随着疫情迅速得到控制，加上对全球和国际旅行的重大限制，许多曾倾向于国际旅行的中国游客转向国内度假。国内的主题公园行业也逐渐恢复，一些公园甚至出现了游客激增的情况。从2020年8月至2022年年初期间，中国的国内旅游业几乎已经恢复到新冠疫情前的水平。

但中国的主题公园行业也正面临着自己的挑战。市场快速扩张，竞争也日益激烈。伪造门票和盗版商品的问题仍然困扰着市场；同时，保护核心知识产权的相关成本则相对较高。许多中小型主题公园缺乏品牌建设经验，难以实现产品和客户体验与市场中的其他产品的差异化。其运营模式仍然主要依靠门票销售获得利润，缺乏二次消费机会和足够的产品多样性来吸引游客。

主题公园行业的国内外投资者在中国的经营不断遇到挑战，要点总结如下。商会相信，以下问题得到解决后，中国的文化和旅游产业将会受益，该产业的国内外投资者也均将受益：



the costs associated with the protection of core IP remain 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 as they lack secondary consumption opportunities and sufficient 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.** After the outbreak of COVID-19, China imposed strict limits on the entry of foreign nationals. Senior corporate executives were 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 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. After the reopening of visa types, many still report difficulty scheduling an appointment or confusion regarding documentation requirements.
- **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. Unfortunately, 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 can 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.
- **Governance of Joint Venture Company.** Government and Chinese local partners sometimes regard the joint venture companies as part of State Owned Enterprises and push the joint ventures to follow SOE systems. For joint venture companies, the Chinese government should encourage both foreign and Chinese local partners to introduce and bring best business operational practices into the cooperation.
- **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 stated that it 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 remaining 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. Limited visa appointments and opaque rules make the issuance of Chinese visas for core foreign staff challenging.

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

- **疫情期间外籍员工返华。**新冠疫情暴发后，中国严格限制外国公民的入境。公司的高级管理人员可以获得中国签证返华，但非管理层的员工、技术人员和专业人员却很难获得签证。由于缺乏外国员工定期提供的专业知识，许多中外合资项目会停滞不前。此外，我们的会员发现，行业与中国驻外使、领馆之间关于申请中国签证的沟通渠道变得分散无序。虽然来华签证申请已重新开放，但仍有许多会员企业反馈申证预约困难，对准备的文件资料说明不明确。
- **行政审批程序。**随着外国投资者在中国规划合资企业，建设主题公园，也产生了新的运营和管理模式。现有的行政审批程序落后于这些创新运营模式的步伐，导致审批过程缓慢且层级过多。如果加快监管审批程序，市场环境将得到改善，并促进国内和外国企业之间的合作。可以引入特定行业的负面清单，或获批可投资的管辖区和责任清单，进而防止监管的前提条件阻碍后续的批准。
- **合资公司的治理。**政府和中国当地的合作伙伴有时会将合资公司视为国有企业的一部分，并敦促合资企业遵循国有企业制度。对于合资公司，政府应鼓励外国和中国当地的合作伙伴引进最佳的商业运作实践，并将其融入合作。
- **知识产权保护。**一系列强有力的知识产权保护机制对于行业的持续创新至关重要。伪造门票和仿造产品的问题仍然困扰着中国的主题公园行业。这些假冒商品和相关的生产活动遍布全国各地，给企业维护其知识产权带来了挑战，维权往往必须在省和地方一级进行。
- **中美关系的不确定性。**尽管美国新政府有望寻求中美在全球公共领域的合作，但两国在关键领域的竞争将继续存在，相互之间，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、产品和商品保持 25%（有时甚至更高）的关税。这些关税给外国投资者带来了不确定性，增加了主题公园行业的运营成本。

鉴于以上挑战，商会敦促中国政府制定透明的政策，进一步满足国际专业人员、员工和人才跨境流动的需要。我们建议政府建立一个与新冠疫情有关的正式机制，促进中国国内主管部门和海外领事馆、大使馆之间的沟通，帮助业界了解有关中级和高级技术人员返回中国的程

序。相关措施将减轻企业与中国和海外所有相关机构沟通的负担。

为了刺激中国的经济复苏，商会建议政府分配财政支持并优化税收结构，以激励投资，降低运营成本，并减轻新冠疫情期间财政损失的影响。为了促进知识产权保护，我们建议政府将地方执法部门在打击跨省、跨地区打假方面的经验制度化，建立跨地区打假和知识产权保护机制，并降低企业在多个省或地方维护其知识产权所面临的必要成本。同时，应努力加强市场监管，打击危害该行业的非法活动，包括大规模销售伪造门票和假冒纪念商品。

## 建 议

### 对中国政府：

- 消除市场准入障碍，允许外国企业 100% 拥有电影电视制作和发行公司，以及互联网视频服务公司。完成更新《谅解备忘录》所需的谈判，使分账比例符合国际标准，增加引进电影的数量，并消除市场障碍。
- 取消旺季引进电影的限制，允许美国电影制片方灵活决定发行日期。
- 消除阻碍外国投资者在视听服务行业活动的实际限制，取消互联网视频服务中外内容的配额限制，允许以每集为基础对外国电视剧进行内容审查，并推动建立更加透明、简化和快速的内容审查程序。
- 确保遵守《外商投资法》及其实施细则，拒绝为任何未公布的法规提供法律依据。
- 制定透明和平衡的政策，进一步优化来华工作的外国公民及其家人申请中国签证的流程。

### 对美国政府：

- 与中国展开合作，审查美国公司在中国媒体和娱乐行业面临的投资限制，为美国公司提供更大的市场准入。

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.
- Develop transparent and balanced policies to further optimize the visa application process for foreign nationals and their families coming to work in China.

### *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.

- 完成更新《谅解备忘录》所需的谈判，解决整个章节中讨论的诸多问题。
- 鼓励中国政府坚定落实《全面推进北京市服务业扩大开放综合试点工作方案》等改革试点工作中的精神，促进中国媒体和娱乐业的创新。
- 寻求机会并鼓励与中国相关政府实体分享美国在版权保护方面的最佳实践。

# Real Estate

## Introduction

The gradually improved sustainable financial system and responsible investors concerned about sustainable development have released positive signals to support the green transformation of the real estate industry.

With the gradual completion of the regulation of the domestic real estate industry, the market is expected to return to rational and healthy development, opening new vectors of opportunities for development.

This chapter combines insights from across the industry. The first section presents an overview of the changing market, the second section outlines higher level policies and industry trends for 2023, the third section presents on-the-ground perspectives and highlights the high-impact areas for future development. The chapter concludes with key takeaways and recommendations.

## Market Challenges

Over the past few decades, the Chinese real estate market has undergone dynamic changes, reflecting the evolving tastes of an increasingly globalized culture, particularly in first-tier cities like Beijing, Shanghai, Shenzhen, and Guangzhou. Real estate products, ranging from housing to commercial space, are quickly adapting to meet the new, more mature market desires and needs.

The peak demand for new housing has passed, and the central government has responded with plans for controlled adjustments to the changing needs of the population. This includes an annual 2.5 percent reduction in total new housing supply until 2035, as announced during the 20th Party Congress. Additionally, the post-pandemic rise in inflation has triggered corrective measures such as increased interest rates, resulting in many people losing confidence in pursuing new developments as a place to live. This has led to increased competitiveness within the real estate development sector. Despite the current disruptions, the real estate sector in China is not coming to an end, but rather is undergoing a shift in focus, leading to new and fertile grounds for market dynamism.

## Office Buildings Market

In 2022, the office market in China faced one of its most challenging years in recent history. The combined effects of epidemic control measures, anchor tenant transformations, and shrinking demand resulted in a weak market. Across China's office building market, most demands saw significant declines compared to 2021. Common trends included increased new supply, sluggish demand, rising vacancy rates, and decreased rents. Even Tier 1 cities, which are typically the most mature and resilient markets in China, experienced significant drops in market demand. Shanghai was the best-performing market among Tier 1 cities, with net absorption reaching nearly 600,000 sqm in 2022, but still 50 percent less than in 2021. Shenzhen followed closely, falling from the net absorption of 1.15 million sqm last year sharply to around 430,000 sqm this year, a drop of over 60 percent. Guangzhou saw net absorption shrink from 480,000 square meters last year to only 130,000 square meters. The Beijing market experienced the most significant drop, from 1.13 million sqm in 2021 to around -2000 sqm in 2022.

Over the past three years, the market has seen significant ups and downs due to the severe impact of the pandemic. However, a combination of factors has led to a sharp turnaround in China's office building market in 2022. Three key factors influenced the market demand trend in 2022:

- The scattered recurrence of the epidemic continues to affect the activeness of office leasing.
- Companies generally hold conservative expectations and are not willing to expand their offices during uncertain times.
- The majority of companies maintain a strategy of cost reduction and efficiency improvement in office leasing.

The TMT industry, which had been a major driver of office demand, has experienced a significant decline in demand. The shifting landscape of industry development has entered a transformation period. Looking ahead to 2023, there is an anticipated increase in demand for innovative and technologically advanced spaces, but the rise in vacancy rates is inevitable due to the surplus of new supply in comparison to demand. This requires positive changes in the key factors mentioned above.

# 房地产

## 引言

**逐** 渐完善的可持续金融体系和关注可持续发展的投资者为支持房地产行业进行绿色转型释放了积极信号。

随着国内房地产行业监管的逐步确立，市场有望回归理性健康发展，新的发展契机也由此应运而生。

本章介绍了全行业的发展概况：第一部分概述了瞬息万变的市场环境；第二部分对 2023 年国家政策方向和的行业趋势进行概述；第三部分从实践角度出发，着重关注对未来行业发展会产生深远影响的领域；最后一部分提出针对性的意见建议。

## 市场挑战（疫情期间）

过去几十年来，中国房地产市场持续火爆，风云变幻。随着日益全球化的文化品位迅速发展变化，尤其是在北京、上海、深圳、广州等一线城市，从住房到商业空间，房地产商品也在迅速发展，以满足全新的、更加成熟的市场需求。

中国政府在中国共产党第二十次全国代表大会上宣布针对人民群众不断变化的需求采取可控的应对措施的一系列计划，即到 2035 年，每年新增住房供应总量减少 2.5%，从中可以看出，新增住房的需求高峰已经过去。由于疫情后通胀上升，国家采取经济调整措施上调利率，这使很多人购买新房的信心受挫，并导致房地产开发竞争加剧。尽管如此，目前的混乱并不意味着中国房地产行业走到尽头，而是标志着房地产行业的重心转移，这激发了市场活力，为市场发展厚植沃土。

## 写字楼市场

2022 年是中国写字楼市场有史以来最艰难的一年。

疫情管控、主要租客转型以及需求萎缩最终导致市场疲软。从目前中国写字楼市场的总体情况来看，与 2021 年相比，大多数地区的需求均大幅下降。新房供应增加、购房需求低迷、空置率上升以及租金下降成为常态。中国写字楼市场中最成熟、最具韧性的市场——一线城市市场需求同样大幅下降。一线城市中表现最佳的上海，2022 年净吸纳量达到约 60 万平方米，但仍比 2021 年下降了 50%。排名第二位的是深圳，净吸纳量从去年的 115 万平方米锐减至今年的 43 万平方米，降幅超过 60%。广州市场净吸纳量从去年的 48 万平方米下降至 130000 平方米。北京市场出现净吸纳量最大降幅，从 2021 年的 113 万平方米下降至 2022 年的负 2000 平方米。

过去三年的新冠疫情期间，由于疫情封城的严重影响，市场经历了更大的起伏。然而，一系列因素促使 2022 年中国写字楼市场实现快速反弹。影响 2022 年市场需求趋势的三个关键因素为：

- 疫情的零星复发持续影响写字楼租赁的活跃度，
- 公司对财务预期通常持保守态度并且不愿在经济不稳定时期扩大公司规模。
- 大多数公司在写字楼租赁方面均采取节省成本、提高效率的策略

科技媒体以及通信公司的写字楼租赁需求已大幅下降。工业部门该需求增量最大，工业发展的外部环境不断变化，正在经历转型期。展望 2023 年的市场趋势，预计对全新的、更具创新性的、技术更加先进的办公空间的需求将上升，但与需求相比，考虑到新房供应量，空置率的上升不可避免，这将需要上述关键因素发生积极变化。

根据目前防疫优化政策的推进情况，在 2023 年，将实施更加全面科学的防疫计划。2023 年第一季度后，疫情的影响将逐渐减弱，对写字楼租赁市场的影响应该

In line with the current promotion of epidemic prevention and optimization policies, a more comprehensive and scientific epidemic prevention plan will be implemented in 2023. The impact of the epidemic is expected to gradually weaken after the first quarter of 2023, resulting in a significant reduction of its impact on the office leasing market. Additionally, the Central Economic Work Conference at the end of the year has again emphasized the general tone of ensuring economic growth. With a stronger market expected, enterprises' willingness to expand should be conducive to the release of office demand.

### *Design Services Market*

The prevailing approach to design for real estate development in China has largely relied on showrooms. Traditionally, showrooms are constructed to showcase different phases of a project prior to its actual construction. This approach primarily aims to attract buyers and ensure the successful sale of housing units, serving as the driving force of the real estate economy. Consequently, a disproportionate amount of resources, such as materials and labor, have been devoted to creating short-term buildings that generate capital. While this system has been a focal point of design attention and energy, it is now losing its momentum, as the "showroom mentality" fades and design power is redirected towards new horizons.

Despite the possibility of painting a bleak picture of the last 18 months in the Chinese real estate market, closer scrutiny reveals new opportunities emerging in response to the need for more innovative design and construction to cater to the evolving needs of the population. The urban landscape is increasingly becoming important and valuable, a trend that is reflected in the highest levels of policymaking in China. For instance, the 20th National Congress of the CCP introduced the concept of "green development and harmonious coexistence between man and nature," underscoring the importance of sustainable development.

## **Trends and Opportunities in 2023**

### *Green development*

In October 2022, the report of the 20th National Congress of the Communist Party of China emphasized the importance of 'promoting green development and harmonious coexistence between man and nature.' Following this, the National Development and Reform Commission (NDRC) drafted and published a set of documents on November 29, 2022, outlining major national goals such as Carbon Dioxide Peaking and Carbon Neutrality ('Dual Carbon'). The General Outline for the Preparation of Feasibility Study Report of Government Investment Projects (Draft for Soliciting Opinions) mandates the consideration of resource and environment factors for proposed projects, including

the analysis of local water resources, atmospheric environment, ecological carrying capacity, energy consumption control requirements, carbon emission intensity, and pollution reduction indicators. Additionally, the draft requires a thematic analysis of the project's impact on resource utilization efficiency, energy-saving effect, environmental and ecological impact, 'dual carbon' targets, economic impact, and social impact assessment. This policy trend indicates that China is progressively promoting green transformation in future land development projects with an ESG and 'dual carbon' perspective.

Moreover, the urban renewal action has been integrated into China's "14th Five-Year Plan." The General Office of the Ministry of Housing and Urban-Rural Development issued the Notice on the First Batch of Urban Renewal Pilot Work in 2021, which outlined plans to carry out pilot work in 21 cities (districts) including Beijing. Additionally, the Ministry of Housing and Urban-Rural Development published a draft for soliciting opinions on preventing large-scale demolition and construction in the implementation of urban renewal action, emphasizing the need for strict control of demolition and construction and the simultaneous development of retention, construction, and demolition. This shift from large-scale incremental construction to both inventory upgrading and incremental structural adjustment is an important step towards changing the way urban development and construction is approached. The trend of policy reflects an increasing focus on environmental, social, and governance (ESG) performance requirements for real estate companies. Reducing the incremental consumption of steel and cement can directly contribute to reducing implied carbon emissions in the construction industry, while maintaining local cultural characteristics and creating a harmonious living atmosphere. Low-carbon retrofits and renovations are also encouraged by the International Resources Committee, which has the potential to significantly reduce greenhouse gas emissions by improving building material efficiency across the building inventory. By improving building material efficiency, the Group of Seven (G7) countries alone could reduce greenhouse gas emissions by over 80 percent within the residential building materials cycle by 2050.

### *Sustainable Finance*

In light of the "dual carbon" policy, real estate development projects and inventory renovation projects that incorporate sustainable development planning and design are expected to experience rapid growth. Given that the real estate industry is capital-intensive, a sustainable financial system is essential for achieving its green transformation. Green finance, also known as the sustainable financial system, encompasses institutional arrangements that facilitate green economic transformation through financial instruments such as green credit, green bonds, green equity index, green development funds, green insurance, carbon finance, and related policies. Currently, green credit and green bonds are

会大大降低。此外，年底的中央经济工作会议再一次强调，经济工作的总基调是确保经济发展。随着市场愈发强劲，企业的扩张意愿有利于释放写字楼租赁需求。

## 设计服务市场

到目前为止，中国房地产开发设计的理解仍然基于展厅设计。展厅通常是在项目建造之前为展示项目未来的各个阶段而设计和建造的空间。展厅是房地产经济的驱动力，用来吸引买家，确保房屋销量。因此，房地产商投入大量材料和人力建造短期建筑，以期达到吸引资金为目的。在很长的一段时间内，展厅系统扮演着吸引设计焦点，激发设计能量的角色，但如今，这一机制的热度逐渐下降，“展厅心态”正在消退，设计理念正朝着新的前沿领域迈进。

诚然，我们可以将过去 18 个月内中国房地产市场的描绘得黯淡无光（这正是外媒舆论针对这段时间中国事态发展的主流叙事），但是仔细观察就会发现，如今需要更具创新性的设计和建筑来满足人民群众快速变化的需求，而这为中国房地产市场带来了新的机遇。价值方面，由于城市景观变得越来越重要，越来越有价值，中国最高决策层开始关注城市景观的重要性。例如，中共二十大报告提出了“推动绿色发展，促进人与自然和谐共生”的精神。

## 2023 年趋势和机遇（后疫情时代）

### 绿色发展

根据 2022 年 10 月二十大报告中提到的“推动绿色发展，促进人与自然和谐共生”的精神，国家发改委于 2022 年 11 月 29 日起草公布了若干涉及碳达峰、碳中和（“双碳”）等国家重大目标的文件。其中在《政府投资项目可行性研究报告编制通用大纲（征求意见稿）》中要求对拟建项目进行资源环境要素保障，包括不限于分析当地的水资源、大气环境、生态等承载能力及其保障条件，以及能耗、碳排放强度和污染减排指标控制要求等。同时，该征求意见稿要求对项目影响效果进行专题分析，如资源利用效率分析、项目节能效果分析、环境和生态影响分析、碳排放与“双碳”目标影响分析、经济影响和社会影响评价等。政策趋势体现了中国正逐步从 ESG 和“双碳”的角度推动未来土地开发项目的绿色转型。

此外，实施城市更新行动已纳入中国“十四五”规划纲要中。住建部办公厅 2021 年印发《关于开展第一批城市更新试点工作的通知》，指出为积极稳妥实施城市更新行动，决定在北京等 21 个城市（区）开展第一批城市更新试点工作。同年，住建部就《关于在实施城市更新行动中防止大拆大建问题的通知（征求意见稿）》公开征求意见，要求严格控制大拆大建，坚持留、盖、拆并举。实施城市更新行动是要由过去大规模的增量建设转向存量提质改造和增量结构调整并重，是转变城市开发建设方式的重要抓手。政策趋势体现了对房地产企业提出更高的环境、社会及治理（ESG）绩效要求，一方面尽可能减少钢铁、水泥等增量消耗，对减少建筑行业隐含碳排放有直接贡献；另一方面也是在维护地方文化特色，营造和谐生活氛围方面有所助益。国际资源委员会也在鼓励低碳改造和翻新，因在整个建筑存量中提升建材效率，有巨大的温室气体减排潜力。仅七国集团（G7），到 2050 年，通过提升建材效率（包括使用再生材料）可将住宅建材循环中的温室气体排放减少 80% 以上。

### 可持续金融

在“双碳”的相关政策下，具备可持续发展理念规划和设计的房地产开发项目或存量改造项目预期将迅速发展。房地产为资本密集型行业，因此其绿色转型将离不开可持续金融体系的助力。所谓绿色金融或者可持续金融体系，是指通过绿色信贷、绿色债券、绿色股票指数和相关产品、绿色发展基金、绿色保险、碳金融等金融工具和相关政策支持经济向绿色化转型的制度安排。目前房地产行业在实践过程中的可持续金融工具以绿色信贷和绿色债券为主。

截至 2023 年 2 月底，人民银行、财政部、发改委、生态环境部（原环境保护部）、银保监会和证监会等相关主管单位已经陆续印发可持续金融相关的政策及标准，包括不限于 2016 年《关于构建绿色金融体系的指导意见》和《绿色债券支持项目目录（2021 年版）》等，以动员和激励更多社会资本投入到绿色产业，发展绿色信贷、推动证券市场支持绿色投资、设立绿色发展基金、发展绿色保险、完善环境权益交易市场、丰富融资工具、支持地方发展绿色金融、推动开展绿色金融国际合作。

根据国际能源署（IEA）2022 年统计，全球建筑行业在 2021 年对能效的投资比 2020 年增长了大约 16%，



the primary sustainable financial instruments utilized in the real estate industry.

To this end, the People's Bank of China, the Ministry of Finance, the National Development and Reform Commission, the Ministry of Ecology and Environment (formerly the Ministry of Environmental Protection), the China Banking and Insurance Regulatory Commission, and the China Securities Regulatory Commission have issued policies and standards related to sustainable finance. These policies include, but are not limited to, the Guiding Opinions on Building a Green Financial System in 2016 and the Green Bond Endorsed Projects Catalogue (2021 Edition). The purpose of these policies is to encourage greater investment in the green industry, develop green credit, promote securities market support for green investment, establish green development funds, develop green insurance, improve the environmental rights and interests trading market, enrich financial tools, support local development of green finance, and promote international cooperation in green finance.

Based on 2022 statistics from the International Energy Agency (IEA), investment in energy efficiency in the global construction industry increased by approximately 16 percent in 2021 compared to the previous year, amounting to around US \$237 billion. The majority of this growth occurred in European countries that have implemented public investment plans for energy efficiency, including Germany, the United Kingdom, and Italy. Meanwhile, stable investment has been maintained in the United States, Canada, and Japan.

According to the China Green Bond Market Report 2021 issued by the Climate Bonds Initiative (CBI) and the China Bond Research and Development Center of the China Central Depository & Clearing Co., Ltd., green bonds are primarily invested in green residential buildings, public buildings, industrial buildings, green industrial parks, green renovation of low-income neighborhoods, and smart cities. The data provided by CBI shows that the proportion of global green bonds invested in green buildings was about 30 percent in 2021, while the corresponding proportion in China was less than 10 percent. Thus, there exists significant potential for future development of China's green bond market for green buildings.

In recent years, the domestic real estate market has shifted from high-speed growth to rational development due to policy influences, resulting in limited green credit statistics related to real estate projects. Interviews with active market participants suggest that real estate projects adhering to sustainable development concepts and green building standards are more likely to obtain loans with favorable interest rates, compared to those that do not meet such standards. Green loans or green bonds can be used as alternative ways to reduce the financial burden of real estate companies and seek financial channels for transformation, with earmarked grants available to alleviate the increased construction costs incurred by low-carbon transformation.

Moreover, financing through sustainable financial methods promotes green branding, where companies can use their own green and sustainable development labels to access a broader audience, especially institutional investors focusing on sovereign wealth funds, pension funds, or insurance funds that have long-term investment value and reflect social responsibility. Sustainable financial methods also help to enhance the value of companies and real estate projects and form a green premium, with lower capital costs and return requirements.

In summary, the growing emphasis on sustainable finance and the increasing number of socially responsible investors who prioritize sustainable development have sent positive signals to support the green transformation of the real estate industry.

### *Emergence of ESG concepts in China*

#### *ESG will become the outpost of public REITs in China*

On April 30, 2020, the National Development and Reform Commission (NDRC) and the China Securities Regulatory Commission (CSRC) jointly issued a notice to advance the relevant work of pilot projects of real estate investment trusts (REITs) in the field of infrastructure and guidelines for publicly offered infrastructure securities investment funds (for trial implementation). This announcement marked the opening of China's public real estate investment trust funds (REITs) market.

Publicly offered REITs are standardized financial products that convert underlying assets, such as real estate or rights and interests, into public listing transactions with strong liquidity through asset securitization. Unlike the common publicly offered REITs with commercial real estate as the underlying in the international market, China's publicly offered REITs mainly focus on infrastructure REITs, with underlying assets that include infrastructures such as transportation, energy, municipal administration, warehousing, industrial parks, and government-subsidized rental housing.

Infrastructure publicly offered REITs are a new type of financial product that fills the gap in the domestic capital market and meets the diversified investment needs of investors.

ESG considerations are focused on environmental, social, and governance issues, providing a comprehensive approach to sustainable investment. By adopting good ESG practices, fund managers can effectively screen underlying assets for REITs, improve anti-risk measures, ensure sustainable project management, and provide stable returns for investors. This, in turn, attracts high-quality institutional investors who seek sustained and stable appreciation and returns. From a macro and long-term perspective, ESG introduces

总额约为 2370 亿美元投资。增长主要发生在实施了能效公共投资计划的欧洲国家，包括德国、英国和意大利等，而在美国、加拿大和日本等国家也保持了稳定的投资。根据气候债券倡议组织 (CBI) 与中央国债登记结算有限责任公司中债研发中心发布的《中国绿色债券市场年度报告 2021》显示，当前绿债主要投向绿色住宅建筑、公共建筑和工业建筑、绿色园区、绿色棚户区改造和智慧城市等。根据 CBI 数据显示，2021 年全球绿债投向绿色建筑的占比约为 30%，而该比例于中国仅占不到 10%，因此中国绿色建筑的绿债市场未来发展空间巨大。

近年来由于政策影响，国内房地产市场从高速增长逐步趋于理性发展，与房地产项目相关的绿色信贷统计数据相对有限。根据与活跃市场参与者访谈，同一条件下，符合可持续发展理念及绿色建筑标准的房地产项目一般有望相对提高获得贷款的成功率，并可能获得相对优惠的利率。绿色贷款或绿色债券可作为降低房地产企业财务压力的可选途径，或寻求转型金融渠道，专款专用，缓解因低碳转型而增加的建筑成本。

此外，企业通过可持续金融手段融资也利于绿色品牌的宣传和推广，例如利用本身绿色、可持续发展的标签使其更容易获得更广泛的受众，特别是主权基金、退休基金或保险基金这类型专注长期投资价值和社会责任的机构投资者，其较低的资金成本和回报率要求亦将有助于提升企业和房地产项目的价值，形成绿色溢价。

综合上述，逐渐完善的可持续金融体系和关注可持续发展的责任投资者为支持房地产行业进行绿色转型释放了积极信号。

## 中国 ESG 概念的兴起与实际应用

### ESG 将成为中国公募不动产投资信托基金的前哨站

2020 年 4 月 30 日，国家发改委和证监会发布《关于推进基础设施领域不动产投资信托基金 (REITs) 试点相关工作的通知》和《公开募集基础设施证券投资基金指引 (试行)》，正式开启中国的公募不动产投资信托基金 (REITs) 市场。公募 REITs 是通过资产证券化，将不动产等底层资产或权益转化为流动性较强的公开上市交易的标准化金融产品。

与国际上普遍常见以商业不动产作为底层资产的公

募 REITs 不同，目前中国的公募 REITs 主要集中于基础设施 REITs，其底层资产目前主要包括交通、能源、市政、仓储、园区等基础设施和保障性租赁住房。基础设施公募 REITs 是一种新型金融产品，填补了国内资本市场的空白，满足投资者多元化投资需求。

ESG 重点关注环境、社会和治理这三个维度下的多个议题。拥有良好的 ESG 实践将能帮助基金管理人对拟发行 REIT 底层资产的筛选，提高 REIT 的抗风险能力，有助于底层项目的可持续运营管理，确保稳定的基金收益率，进而吸引更多优质的机构投资者，带来持续稳健的升值及回报。从宏观视角和长远周期的角度看，不论是上市前、上市后还是未来扩募阶段，ESG 为底层资产投资者、基金管理人和公募 REITs 投资者提供了新的投资工具和完整的分析维度。

伴随着国内不动产行业的整治逐步完成，市场预计将回归理性和健康发展，中国将有望开放以商业不动产作为公募 REIT 的底层资产，以降低不动产行业由于金融、政策、气候或疫情造成的系统性风险，并促进资金流动性，健全不动产市场。同时，根据国内的政策趋势，相关政府部门对于未来新 REIT 的发行亦可能提出和 ESG 及碳排放相关的可行性研究要求作为资产上市的必要门槛。

2022 年 11 月中旬，国家发改委颁布《国家发展改革委关于进一步完善政策环境加大力度支持民间投资发展的意见》的通知，明确提出支持民间投资项目积极参与 REITs 项目试点，证监会副主席李超于 2022 年 12 月 8 日进一步表示将扩大 REITs 试点范围，尽快覆盖到新能源、水利、新基建等基础设施领域，加快打造 REITs 市场的保障性租赁住房板块，研究推动试点范围拓展到市场化的长租房及商业不动产等领域。

因此，建议商业不动产的持有者应尽早开展 ESG 相关提升工作，吸引关注 ESG 的租户、投资者和金融机构，有效发挥绿色溢价，提升租金收益和估值，以顺应潜在的 ESG 合规政策要求，同时为响应 REIT 市场可能的利好政策做好准备。

ESG 评级将对房地产公司的品牌塑造和资本获取起到关键作用。

越来越多资本方已制定自身资产组合的 ESG 目标，在投资政策中积极考虑 ESG 评价因素，一方面是积极推

new investment tools and complete analysis dimensions for underlying investors, fund managers, and public offering REIT investors, both before and after the raising stage.

As the domestic real estate industry's regulation gradually reaches completion, the market is expected to return to a rational and healthy state. China is expected to broaden the underlying assets of public offering REITs to include commercial real estate. This move is aimed at reducing systemic risks associated with finance, policy, climate, or epidemics in the real estate industry, promoting capital liquidity, and improving the real estate market. Additionally, in line with domestic policy trends, relevant government departments may require feasibility studies related to ESG and carbon emissions as necessary thresholds for asset listings in future REIT issuances.

In November 2022, the National Development and Reform Commission (NDRC) released a statement outlining plans to support private investment projects in REIT pilot schemes. The move was reiterated by Li Chao, Vice Chairman of the China Securities Regulatory Commission (CSRC), on December 8, 2022, who indicated that the pilot scope of REITs would be expanded to cover new energy, water conservancy, new infrastructure, and government-subsidized rental housing. In addition, there are plans to study and promote the expansion of the pilot scope to market-oriented long-term rental housing and commercial real estate.

To prepare for potential ESG compliance policy requirements and to respond to potential favorable policies in the REIT market, it is recommended that commercial real estate holders undertake ESG-related upgrading work as soon as possible. This will help attract tenants, investors, and financial institutions concerned about ESG, leverage green premiums, and improve rental income and valuation.

### ESG Rating and accessibility to capital

An increasing number of capital funds have adopted ESG objectives for their asset portfolios and are actively incorporating ESG evaluation factors into their investment policies. This not only promotes the global shift towards sustainable development, but also recognizes that strong ESG performance can enhance asset resilience. In fact, data indicates that the Morgan Stanley Capital International (MSCI) Emerging Markets ESG Leading Index outperformed the MSCI Emerging Markets Index between July 2016 and August 2022, showing lower volatility and a higher Sharpe ratio, resulting in increased income.

As funds implement their ESG objectives, the pressure is transmitted to the actual operations and managers of target projects. With the help of periodic rating results from various international rating standards, projects with better ESG performance are gradually favored, while those with poor ESG performance are withdrawn from asset portfolios. ESG performance is generally assessed through rating results,

which serves as an important basis for investment and credit decisions by investors and financial institutions. It is also an important tool for companies and target projects seeking to secure sustainable financing.

### *Green Building developments*

The United Nations' 2021 Global Status Report for Buildings and Construction reveals that the global construction industry accounts for a significant portion of carbon emissions. Specifically, construction-related emissions constitute 37 percent of total global energy-related carbon emissions, while the production of building materials is responsible for 43 percent of the total construction industry emissions. Steel and cement materials, in particular, are key culprits in this regard.

The latest research from the Intergovernmental Panel on Climate Change (IPCC) suggests that the building and construction industry has enormous potential to contribute to the global climate change mitigation goals established in the Paris Agreement. This potential can be realized through a variety of measures, including increasing the utilization rate of existing buildings, enhancing the energy efficiency of new buildings, using efficient lighting equipment, integrating renewable energy into buildings, and utilizing low-carbon or recyclable building materials.

To achieve the net-zero target, which is crucial for mitigating climate change, operating emissions from buildings must be reduced by over 95 percent compared to current levels. These reductions will offer cost benefits to building users and enhance energy security. Many leading real estate companies have already taken action to create 'low-carbon' or 'zero-carbon' buildings. This includes using passive design during planning and design to reduce building energy consumption, utilizing low-carbon building materials during construction to meet green building standards, such as LEED, and reducing energy consumption on the construction site through prefabricated buildings. Additionally, green power can replace traditional energy systems by building capacity, purchasing green power, and green certificates.

During the operation stage, enhancing digital abilities, implementing data traceability and verification to meet regulatory requirements, and utilizing scientific and technological means to facilitate low-carbon operation and maintenance of real estate can all help save energy and reduce labor costs.

### Green building standards

In 2021, the State Council issued the Circular on the Action Plan for Carbon Peak by 2030. This plan outlines a number of key strategies to achieve carbon peak by 2030, including measures to promote advanced green building technologies.

动全球向可持续发展方向转型，另一方面也体现出资本方对 ESG 绩效可提升资产韧性的认可。数据显示，2016 年 7 月至 2022 年 8 月期间，明晟公司 Morgan Stanley Capital International (MSCI) 新兴市场 ESG 领先指数的表现优于 MSCI 新兴市场指数，且展现了更低的波动率和更高的夏普比率，具有更强的增厚收益效果。

资本方在实际践行自身 ESG 目标过程中，目标压力自然向标的项目的实际运营和管理者传导，借助各类国际评级标准的定期评级结果，逐步重新布局 ESG 表现更佳的标的，并退出 ESG 绩效表现欠佳的资产组合，而 ESG 绩效表现好坏一般通过 ESG 评级结果呈现。因此，ESG 评级一方面是投资者或金融机构在形成投资或授信决策时的重要依据，另一方面也是企业或标的成功获取可持续融资的重要工具。

## 绿色建筑发展状况

根据联合国发布的《2021 全球建筑建造业现状报告》，全球建筑行业相关碳排放占全球能源相关碳排放总量的 37%，建材生产占建筑行业总排放 43%，其中钢材、水泥材料的生产是排放重点。

政府间气候变化专门委员会 (IPCC) 最新研究显示，建筑建造业在达成《巴黎协定》的全球减缓气候变化目标中大有潜力可挖，包括提高现有建筑物使用率、提升新建筑物能效、使用高效照明设备、建筑物进行可再生能源整合以及应用低碳或可循环建材等脱碳路径。与当前水平相比，若向净零目标迈进，建筑物的运营排放需减少 95% 以上，且这些减排均具有一定成本收益，对建筑物的使用者和能源安全有利。部分较领先的房地产企业已经率先开始打造“低碳”或“零碳”建筑体，例如在规划设计使用被动式设计，减少建筑体能源消耗支出；在建造施工阶段使用低碳建材，以符合绿建、LEEDs 等认证的标准，利用装配式建筑的方式减少施工现场的能源消耗。同时，通过建筑产能、采购绿电、绿证等方式实现绿色电力替代传统能源系统。在运行阶段提升自身数字化能力，落实数据可追溯，可验证，以应对监管要求，也通过科技化等手段助力房地产低碳运维，帮助节能和减少人工支出。

## 中国实施绿色建筑标准政策

2021 年国务院发布《国务院关于印发 2030 年前碳

达峰行动方案的通知》指出：

- 推进先进绿色建筑技术示范应用：加快新型建筑工业化，大力发展装配式建筑，推动建材循环利用，强化绿色设计和绿色施工管理，以及推动建筑垃圾资源化利用，杜绝大拆大建
- 深化可再生能源建筑应用，推广光伏发电与建筑一体化应用。到 2025 年，城镇建筑可再生能源替代率达到 8%，新建公共机构建筑、新建厂房屋顶光伏覆盖率力争达到 50%

同年，住房和城乡建设部在《建筑节能与可再生能源利用通用规范》中发布国家标准：

- 新建项目：新建公共建筑平均设计能耗在 2016 年节能设计标准基础上降低 20%，碳排放强度要下降 40%；强制要求新建建筑安装太阳能系统
- 新建、扩建和改建建筑及既有建筑项目：节能改造工程的建筑节能与可再生能源建筑应用系统的设计、施工、验收与运行管理要求进行覆盖建筑全过程的碳排放计算

中国建筑材料联合会也在《推进建筑材料行业碳达峰、碳中和行动倡议书》中倡议：

- 建筑材料行业在 2025 年前全面实现碳达峰
- 水泥等行业要在 2023 年前率先实现碳达峰

近日住房和城乡建设部印发《“十四五”建筑节能与绿色建筑发展规划》明确，到 2025 年，城镇新建建筑全面建成绿色建筑，建筑能源利用效率稳步提升，建筑用能结构逐步优化，建筑能耗和碳排放增长趋势得到有效控制，基本形成绿色、低碳、循环的建设发展方式，为城乡建设领域 2030 年前碳达峰奠定坚实基础。

## 绿色写字楼

随着绿色低碳发展成为行业新趋势，碳达峰、碳中和策略已将写字楼市场推向绿色发展的新阶段。根据我们对市场的观察，绿色低碳已经成为部分世界 500 强企业写字楼选址的重要考量之一。客户需求的升级会促进写字楼资产的升级，这也是很多知名企业作为租户选择具有国际认证的写字楼项目的原因。ESG 概念已逐步融入写字楼运营和管理的生命周期。从开展碳足迹核查到绿色产品认证，从建立减碳产品服务体系到采用更智能

- To achieve this goal, the plan emphasizes the need to accelerate the industrialization of new buildings, promote the use of prefabricated buildings, and encourage the recycling of building materials. Additionally, the plan calls for the adoption of green design and construction management practices to minimize the environmental impact of construction projects. Efforts will also be made to promote the efficient utilization of construction waste and to eliminate large-scale demolition and construction.
- The plan also highlights the importance of renewable energy in buildings, particularly the integration of photovoltaic power generation. By 2025, the plan aims to achieve an 8 percent renewable energy substitution rate for urban buildings and a 50 percent photovoltaic coverage rate for new public institution buildings and new factory building rooftops. These efforts will help to further reduce carbon emissions from the building sector and promote sustainable development.

In the same year, the Ministry of Housing and Urban-Rural Development also issued new national standards in the General code for energy efficiency and renewable energy application in buildings. These standards include several important requirements for new and existing building projects.

- For new projects, the standards call for a 20 percent reduction in average design energy consumption for new public institution buildings compared to 2016 energy-saving design standards. In addition, the carbon emission intensity of new buildings should be reduced by 40 percent. It is also mandatory to install solar systems in new buildings to promote the use of renewable energy.
- For new, expanded, and reconstructed buildings, as well as existing building projects, the standards require the calculation of carbon emissions throughout the entire building process. This includes the design, construction, acceptance, and operation management within the building energy conservation and renewable energy building application system for energy-saving renovation projects. These measures will help to ensure that buildings are designed and constructed with energy efficiency and renewable energy in mind, promoting sustainable development and reducing carbon emissions.

The China Building Material Council has also made a commitment in the Initiative to Promote Carbon Peak and Carbon Neutralization in the Building Materials Industry. According to this initiative, the building materials industry in China aims to achieve carbon peak by 2025. In addition, cement and other related industries should take the lead and achieve carbon peak by 2023.

In a recent development, the Ministry of Housing and Urban-Rural Development has issued the 14th Five-Year

Plan for Building Energy Conservation and Green Building Development. This plan sets a clear goal that by 2025, all new urban buildings in cities and towns will be constructed as green buildings. The plan also aims to improve the energy utilization efficiency of buildings, optimize the building energy consumption structure, and effectively control the trend of building energy consumption and carbon emissions. By achieving these goals, it will be possible to lay a strong foundation for the urban and rural construction sector in China to reach the peak of carbon emissions before 2030.

### *Green office building*

The green and low-carbon development trend is driving the office building market towards a new era of sustainability. Our market observation suggests that being environmentally friendly has become an important factor in the location selection process for some Fortune Global 500 companies. Customer demand for sustainable buildings is promoting the upgrade of office assets, leading many tenants to choose office buildings with international certifications such as WELL and LEED. The ESG concept is increasingly being integrated into the life cycle of office building operation and management. From carbon footprint verification to green product certification, from carbon-reduction product services to smarter energy management systems, the trend towards green, low-carbon, and environmentally friendly office buildings is on the rise.

Intelligent building is also a crucial direction for high-quality development in this industry. With the digital economy gaining a larger share in China's economy, many office building managers are exploring intelligent/digitalized building options. New technologies and applications are empowering office building assets, deeply integrating with various stages of the assets' life cycle, such as investment, development, construction, promotion, operation, and asset management. This will reshape the value system and service logic of the entire office building asset.

China's office building market is currently undergoing a phase of high-quality development. With this growth comes a greater need for advancing a building's entire life cycle, including its platform-based development, operation, and maintenance. To achieve this, there is a push towards digitalization, networking, automation, intelligentization, and low carbonization in the future. Understanding China's new development philosophy and embracing new technologies, models, and innovative application scenarios is essential to maximize the potential value of office building projects and break the market deadlock under the new development pattern. From product and culture to model and space innovation, rejuvenation thinking is the key to enhancing the vitality of these projects.

### *Biodiversity regulations*

Investors are increasingly paying attention to biodiversity

的能源管理系统，绿色、低碳、环保的写字楼新趋势即将大行其是。

智能建筑也是建筑业高质量发展的重要方向。随着数字经济在中国经济占据比重逐渐增加，智能化/数字化建筑已经成为众多写字楼管理者不断尝试的方向。各种新技术和新应用已经开始为写字楼资产赋能，与资产生命周期的各个主要阶段如投资、开发、建设、推广、运营和资产管理等深度融合。这将重塑整个写字楼资产的价值体系和服务逻辑。

中国的写字楼市场已经进入高质量发展时代。市场对建筑的全生命周期有了更高的要求，即从数字化、网络化到自动化、智能化，再到未来的低碳化，都是基于平台的开发、运营和维护。理解中国新发展理念，通过采用新技术、新模式和创新应用场景，实现项目潜在价值最大化，将是新发展模式下打破写字楼市场僵局的关键。从产品到文化，从模式创新到空间创新，思维的创新是提升项目活力的根本。

### 房地产行业开始重视生物多样性法规

与气候变化相关的自然挑战还有其他方面，比如目前越来越多投资者关注到的生物多样性议题，两者在某种程度上既相互影响，也需各自独立评估。世界经济论坛在 2022 年的研究显示，虽然目前关于如何量化生物多样性并将其纳入投资决策的指导很少，但已有多个行业和投资者联盟正在努力开发相关知识库、市场工具和指标以及报告框架，作为金融机构和投资者更全面和科学地评估投资风险和机遇的工具。

为了减缓气候变化，房地产企业、国际倡议和监管机构可能忽视了生物多样性和基于自然的解决方案。而生物多样性恰恰可为房地产行业与城市建设提供了更多选项和益处，如从生活质量的提升、资产保值到生态系统服务，这些改善方向可助力减少城市热岛效应和降低洪水的可能性。

生物多样性和基于自然的解决方案正开始被纳入房地产报告框架和认证计划，包括前文提及的 GRESB。GRESB 中已对建筑部门如何为生物多样性改善做出贡献提出了建议，包括在发展过程中考虑生物多样性影响，防止污染，以及利用自然生态系统作为基础设施。生物多样性被归纳至 ESG 相关问题，需要在 GRESB 标准中

进一步展现。可预见未来随着标准进一步发展，生物多样性主题将更加突出。

伴随房地产企业开始意识到自身对生物多样性丧失采取行动的责任，监管也开始迎头赶上。英国作为最早一批关注气候变化的国家，在评估生物多样性影响方面也体现了一定的先进性。评估生物多样性净收益 (Biodiversity Net Gain-BNG) 预计将在 2023 年成为英格兰对新开发项目的强制要求，并规定任何开发项目都必须致力为提升生物多样性做出一定比例的贡献，以期逆转物种数量缩减的态势，如项目开发过程要考虑绿化面积设计，避免对自然生态物种生活区产生干扰，维护林地、湿地和湖区面积等。虽然生物多样性一直以来可能处于建筑业考虑的优先事项中较低的位置，但监管、行业倡议组织和其他利益相关方对生物多样性影响的关注度正在持续升温。

### 碳汇收益助力中国大型项目发展

要实现“双碳”目标，除了要减少二氧化碳排放，如何提升“碳汇”能力，增加对二氧化碳的吸收也是关键所在。所谓碳汇是通过自然或者人工方式，把大气中的二氧化碳吸收并储存固定下来，以降低碳浓度。其中生态碳汇一般所指为森林、草原、湿地和海洋等。

近年来《联合国气候变化框架公约》缔约方大会和《二十国集团领导人罗马峰会宣言》皆表达了发展生态碳汇以应对气候变化的重要性。而目前我国推进生态碳汇的举措主要包括：天然林资源保护、退耕还林还草、防护林体系等重点生态工程建设；提升森林、草原、湿地的碳贮存和碳吸收能力；依托海岸带生态保护和修复重大工程，重点保护和修复红树林、海草床等生态系统，增加海洋生态系统的碳贮存和碳吸收能力等。

良好的生态系统不仅对生物多样性产生贡献，亦可能从碳减排的角度产生经济效益。在动则上万亩地的产城融合开发项目或是大型旅游景点项目中，房地产企业可探索在对原有土地进行改良的同时，保留或增加天然林资源和植被的面积，以提升固碳能力产生碳汇，并待 CCER 市场重启后（即经国家核证的温室气体自愿减排交易市场），寻求通过碳交易实现生态碳汇于碳减排的经济效益。

另一方面，“可测量、可报告、可核查”是确认碳减

issues, which are linked to climate change and need to be evaluated separately. However, there is little guidance on how to measure biodiversity and incorporate it into investment decisions. Industry and investor coalitions are working to develop knowledge bases, market tools, indicators, and reporting frameworks to help assess investment risks and opportunities more scientifically.

Biodiversity has been overlooked in efforts to mitigate climate change in the real estate industry, but it can offer benefits such as improving living and working conditions, preserving assets, and providing ecosystem services that reduce the risk of flooding and urban heat island effects. Biodiversity and nature-based solutions are being incorporated into real estate reporting frameworks and certification programs, including the GRESB. Recommendations in GRESB call for developers to consider biodiversity impacts, prevent pollution, and use natural ecosystems as infrastructure. The biodiversity theme will become more prominent in the future as GRESB standards continue to develop.

Real estate companies are starting to recognize their responsibility to address biodiversity loss, and regulation is beginning to catch up. As one of the early countries concerned about climate change, Britain has been at the forefront of assessing the impact of biodiversity. Biodiversity Net Gain (BNG) is set to become a mandatory requirement for new development projects in England in 2023. This means that any development project must contribute a certain proportion towards improving biodiversity to reverse the trend of species decline. For instance, during project development, green areas should be designed in a way that does not interfere with the living area of natural ecological species, and woodland, wetland, and lake area should be preserved. While the construction industry may not have prioritized biodiversity, concerns about its impact are growing among regulators, industry advocacy groups, and other stakeholders.

### ***Carbon sink benefits for large-scale project developments in China***

Achieving the “dual carbon” goal requires more than just reducing carbon dioxide emissions. It is equally important to enhance the “carbon sink” capacity and increase carbon dioxide absorption. A carbon sink is a method, whether natural or artificial, to absorb and store carbon dioxide in the atmosphere to reduce carbon concentration. Ecological carbon sinks typically refer to forests, grasslands, wetlands, and oceans.

Both the Conference of the Parties to the United Nations Framework Convention on Climate Change and the Rome Summit Adopts G20 Leaders’ Declaration have emphasized the importance of developing ecological carbon sinks to combat climate change. Currently, measures to promote ecological carbon sequestration in China include the protec-

tion of natural forest resources, returning farmland to forests and grasslands, and the shelter forest system. Enhancing the carbon storage and absorption capacity of forests, grasslands, and wetlands, as well as protecting and restoring marine ecosystems, such as mangroves and seaweed beds, are also important strategies.

Good ecosystems not only contribute to biodiversity but can also generate economic benefits through carbon emission reduction. In production-city integration development projects or large-scale tourist attractions, real estate companies can explore ways to preserve or increase the area of natural forest resources and vegetation while improving the land to enhance carbon sequestration capacity and generate carbon sinks. This can lead to economic benefits through carbon trading once the CCER market restarts after national certification of greenhouse gases.

Accurately measuring the emission reduction of ecological carbon sinks is crucial for achieving a cost-effective balance between initial investment costs, carbon prices, and carbon emission reduction. Real estate companies must address this main issue when seeking to balance the ecological and economic benefits of carbon sinks. To ensure the measurable, reportable, and verifiable nature of carbon emission reduction, carbon sink emission reduction projects must follow methodological accounting and monitoring to quantify carbon reductions. Furthermore, ownership must be determined through rigorous design, validation, measurement, and certification procedures before participating in voluntary emission reduction trading.

## **New Frontiers**

### ***Landscape as operating ground for sustainable transformation***

It’s clear that there is a growing awareness of the importance of outdoor spaces in China, and that real estate companies need to consider the quality of these spaces in order to meet the needs of the public and the demands of higher levels of development. The next stage of design and construction will need to focus on both inward and outward development, with inward development focusing on improving the quality of new urbanization and enhancing urban cores, and outward development focusing on strategic development of peri-urban areas to connect urban and rural areas and to develop new infrastructure for prioritized industries.

This transformation in real estate and urbanization presents new design challenges, but also new business opportunities. By considering the urban landscape as an operative ground, real estate companies can not only meet the demands of the public and the government, but also create new value through innovative and sustainable design solutions.

The future of sustainable real estate in China is closely linked

排量的重要前提。碳汇减排项目需要遵照方法学核算和监测将减碳量化，并通过严格的设计、审定、计量和核证程序后确定所有权，才能参与自愿减排交易。

如何真实准确地测量生态碳汇的减排量，并且在前期投入成本、碳价和碳减排量之间取得成本效益的平衡，将是房地产企业在寻求兼顾碳汇的生态和经济效益时需要解决的核心问题。

## 新前沿

### 景观是实现可持续发展的基石

很明显，人们越来越意识到户外空间在中国的重要性，房地产公司需要考虑这些空间的质量，以满足公众的需求和更高水平的发展要求。下一阶段的设计和建设需要注重内向和向外发展，内向发展侧重于提高新型城镇化质量和增强城市核心，外向发展侧重于城市周边地区的战略发展，以连接城市和农村地区，并为优先产业发展新的基础设施。

房地产和城市化的这种转变带来了新的设计挑战，但也带来了新商机。通过将城市景观视为一个可操作的场地，房地产公司不仅可以满足公众和政府的需求，还可以通过创新和可持续的设计解决方案创造新的价值。

中国可持续发展房地产的未来与该国的雄心勃勃的2060年碳中和目标密切相关。房地产行业已经在可持续发展方面做出了重大努力，并计划在未来实现更宏伟的目标。ESG的出现正在促进可持续项目开发、融资和治理的整体方法。虽然在科技进步、建筑材料碳中和和总体设计等领域取得了进展，但可持续性在规模上发挥了最佳作用。城市景观包括交通、供水、商业和生产系统，其影响比单个建筑大得多，影响深远。

### 城市周边地区和工业区

中国可以通过进一步优化工业房地产的设计，特别是工业开发区、创新园区和生态工业园区的设计，在可持续性方面进行重大创新。在大多数情况下，这些开发区往往位于城市周边地区，作为城市生活中不受欢迎的基础设施被挤出城市核心区，然而其存在却对城市核心区的运作至关重要。在此方面，中国已经有一个好的开始，这些年以来，工业园区也已经发生了很多变化。不幸的是，除了为满足政策审批所有要求而采取的权宜之计，例如

放置所需数量的绿化屋顶和太阳能板，我们并没有取得其他新的进步。为减轻工业区和高新技术开发区对环境的负面影响，在可持续发展领域，我们还有很多工作要做。而要做到这一点，需要将这些开发区视为其周围生态系统的一个组成部分。例如，工业园区和办公园区可容纳更多密集绿地。密集绿地可以与周围植物融为一体用作自然碳汇。又如，可以采用基于自然且技术优化的方案，将工厂的就地污水处理系统设计成用于截留径流和/或净化污水的系统。

城市功能在未来能否顺利发挥取决于如何顾及与看待城市周边地区，即城市核心区毗连地区。迄今为止，随着城市不断向外扩张，很少有人考虑这些地区的发展。如今，发展增速正在放缓，为适当规划和利用这些地区以提高城市化的整体质量提供了契机。将城市和乡村之间的过渡区域建设为工业和农业开发区而非住宅区或商业区，对于确保密集的城市核心区不断繁荣至关重要。如果这些地区成为郊区或城市蔓延地区，或会提高城市核心区的衰退风险，最终导致城市人口的流失以及基础设施的迁移。如果这些周边地区开发不当，过去30-50年在城市中心发展上所做的努力将会付诸东流。

发展良好的城市周边地区能增强城市的复原力，改善环境质量，例如生成新鲜空气，为炎热的内城区降温、提供自然碳汇、改善生物多样性，还可以带来社会和经济效益，如提供人们休闲娱乐以及旅游的场所以及替代经济活动提供机会。

### 景观是实现可持续发展的功能性基础设施

如上所述，良好的生态系统不仅对生物多样性产生贡献，亦可能从碳减排的角度产生经济效益。在这一方面，中国可以参考美国和欧洲正在实施的自然资本核算体系，即通过赋予水、树木、污染和碳排放等功能性景观指标货币价值来计算碳减排。设计师能够利用该系统将景观解决方案作为功能性的基础设施来展示，这意味着景观和规划的设计方案已经超越了景观原本的功能（即观赏性绿地或为人类创造城市绿色空间网络），景观设计开始成为应对气候变化的新方案。快速发展的数据库和设计工具，如iTree已经广泛用于量化功能性景观指标，如碳封存和储存、径流截留和缓解污染。这与本章开头概述的ESG、绿色发展和碳减排目标，以及工业区尚未开发的潜力息息相关。鉴于这些基础设施项目有规模巨大、



to the country's ambitious 2060 carbon neutrality goal. The real estate sector has already made significant efforts towards sustainability, with more ambitious goals planned for the future. The emergence of ESG is promoting a holistic approach to sustainable project development, financing, and governance. While progress has been made in areas such as prop-tech, carbon neutrality of construction materials and overall design, sustainability works best at scale. The urban landscape, which encompasses systems of transport, water, commerce and production, has a much larger and far-reaching impact than individual buildings.

### *Peri-urban areas and Industrial zones*

China can advance its sustainability efforts by focusing on designing more sustainable industrial real estate, including industrial development zones, innovation parks, and eco-industrial parks. These developments are often located in peri-urban areas and are crucial to the functioning of urban cores. While China has made progress in developing eco-industrial parks, there is still room for improvement beyond "tick the box" solutions such as adding green roofs and solar panels. China has been a pioneer in developing environmentally friendly industrial parks since the 2000s, with policies such as the EIP Demonstration Program, Circular Transformation of Industrial Parks, and Low-Carbon Industrial Park Program.

To mitigate the negative environmental impact of industrial and innovation zones, they must be considered as an integral part of their surrounding ecological system. This can be achieved through the integration of dense green zones that serve as carbon sinks and the implementation of on-site water systems that recapture runoff and purify sewage. Proper development of peri-urban areas, which are critical to ensuring the dense city core continues to thrive, is also necessary. These areas, which include industrial and agricultural development zones, must not become suburbs or urban sprawl, as this could lead to a draining of the city's population and shifting out of infrastructure. Instead, they should be thoughtfully developed to improve the overall quality of urbanization and prevent the deterioration of urban centers.

Developing peri-urban areas properly can enhance cities' resilience and provide various benefits, including environmental advantages like generating fresh air, carbon sinks, and biodiversity, as well as social and economic benefits such as recreational opportunities and alternative economic activities.

### *Landscape as sustainable infrastructure*

China can leverage natural capital accounting, a system used in the US and Europe, to assign monetary value to landscape metrics such as carbon reduction, water, trees, and pollution. This approach allows designers to view landscapes as performative infrastructure, capable of addressing climate issues beyond ornamental greening and public green spaces. Design tools such as iTree are already

widely used to quantify performative landscape metrics like carbon sequestration and storage, runoff capture, and pollution mitigation. These efforts align with ESG, green development, and carbon reduction goals, presenting a huge opportunity for state-owned enterprises to collaborate with international partners in developing sustainable industrial infrastructure projects.

It is important to remember that the landscape is not only a critical environmental resource, but also a cultural medium and a key platform for social and economic interactions. As China's development progresses to more human-centric stages, the nation is exploring its global identity through culture, business, and the shaping of its built environment. The emergence of ESG real estate development provides an opportunity for design and government-led spatial planning to collaborate in more symbiotic processes and establish a resilient backbone for China's sustainable development. As the economy prepares to rebound, the "new normal" remains undefined but presents opportunities for a fresh start.

## Conclusion

China's real estate market has entered a new phase of development with a focus on higher quality and better master planning, driven by government-mandated targets. The implementation of the ESG concept has started to bear fruit, bringing forward a comprehensive approach to sustainable project development, financing, and governance. As Chinese policy reflects higher ESG performance requirements for real estate companies, there is a great opportunity for American and Chinese companies to work together for the greater benefit of China and the world's ecology. While great progress has been made in green building development supported by national carbon reduction targets, there is still much to be done in reshaping underlying value systems and sales mechanisms to fully achieve sustainable development goals.

## Recommendations

### *For the Chinese government*

- Continue to support the focus on green building projects and prioritize thoughtful and strategic development of peri-urban areas as urban-rural transition zones.
- Direct design efforts towards the public realm within cities and involve American companies with expertise in China in government-led development projects to maximize benefits.

范围广阔，国有企业与国际公认的合作伙伴合作成为其实现的最佳方案。

最后，尽管环境问题迫在眉睫，但是我们不应忘记景观本身也是一种文化媒介，是社会和经济交流的主要舞台。当前，中国的发展达到更高水平，更加注重以人为本，与此同时，我们仍应通过文化、商业和不断塑造周围建筑环境（房地产），继续探索全球化的特征。随着ESG 房地产开发的出现和实际应用，设计与政府主导的空间规划可以相互耦合，成为中国可持续发展新飞跃的有力支撑。随着经济的复苏，尽管“新常态”仍未明确，但却蕴含着令人耳目一新的机遇。

## 结 论

在政府规定的目标推动下，中国房地产市场进入了一个新的发展阶段，重点是提高质量和更好的总体规划。ESG 概念的实施已经开始取得成果，为可持续项目开发、融资和治理提出了全方位的解决方案。由于中国的政策反映了对房地产公司更高的 ESG 绩效要求，美国和中国公司有很大的机会合作，为中国和世界生态带来更大的益处。尽管在国家减碳目标的支持下，绿色建筑发展取得了巨大进展，但要全面实现可持续发展目标，在重塑基础价值体系和销售机制方面仍有很多工作要做。

## 建 议

### 对中国政府：

- 继续支持关注绿色建筑项目，并优先考虑将城市周边地区作为城乡过渡区进行深思熟虑的战略性发展。
- 将设计工作引向城市内的公共领域，并让在中国拥有专业知识的美国公司参与政府主导的开发项目，以实现收益最大化。

# Retail & E-Commerce

## Introduction

The Retail market in China in 2022 was down by 0.2 percent over the previous year, a sharp decline from the 12.5 percent overall growth in 2021 according to figures from the National Bureau of Statistics. China's retail sales of consumer goods, a major indicator of consumption growth, reached RMB 43.97 trillion in 2022. The low growth figures are likely a result of market uncertainties resulting from a series of COVID-19 lockdowns, subsequent mass infections, and the gradual easing of restrictions in the latter half of 2022.

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 31.3 percent of China's total retail sales in 2022, a significant increase from 24.5 percent the year prior representing over RMB 13 billion in consumption.

The *Regulations on Optimizing the Business Environment* went into effect on January 1, 2020, and the government at the national and provincial levels have prioritized its implementation. 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 businesses return to work.

Moreover, the Central Economic Work Conference held

in December 2022 injected confidence for China's 2023 economic development. The meeting emphasized economic stability as a top priority and set goals to boost domestic consumption by increasing personal income and encouraging the participation of private capital in key national projects. Additionally, China will make greater effort to attract foreign capital and "grant foreign-funded enterprises national treatment."

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). To cope with the shock of the past three 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. Additionally, the Provisions on Supervision and Administration of Trademark Agency was issued in 2022, signaling efforts to strengthen the governance and supervision of intellectual property protection.

Firstly, we recommend that SAMR strengthen reviews of anti-unfair competition across these new patterns of busi-

# 零售和电子商务

## 引言

**国**家统计局的数据显示，2022年，中国零售市场的增长率同比下降0.2%，与2021年12.5%的整体增长率相比呈大幅下降。2022年，中国消费增长的主要指标消费品零售总额达到人民币43.97万亿元。由于新冠疫情引起的一系列封锁、其后的大规模感染以及自2022年下半年管控措施的不断调整增加了市场不确定性，这可能是导致该低增长数据的原因。

尽管受到新冠疫情的影响，零售行业线上和线下业务模式仍在加速整合，新型的业务模式，如家到家业务、无接触配送、直播带货和社区团购等，发展势头猛烈。2022年，线上零售额占中国零售总额的31.3%，相比于前一年的24.5%（超过130亿元人民币）有显著增长。

自2020年1月1日起，中国优先在国家和省一级层面优先实施《优化营商环境条例》。优化企业设立、税收和保障网上流程，政府服务更加规范。零售业的监管机构已经实施了改革，签发一证多址许可证，免除对轻微行政违规的处罚，提供一站式行政服务选项，并建立了“申请人承诺制”，旨在简化经营多个餐饮场所的大型连锁企业的许可证发放流程。

政府对跨境电商行业给予了大力的政策支持，中国美国商会（以下简称商会）会员企业特别感谢政府在新冠疫情期间为支持商界而推行的政策，例如减税减租、减少或豁免社会保障缴费支出，以及为确保交通运输系统安全运作，政府在新冠疫情暴发期间的协调工作，政府的种种努力都有助商界回归正轨。

此外，2022年12月举办的中央经济工作会议也为2023年中国经济发展注入了新自信。该会议强调将经济稳定作为重中之重，并确立了通过增加个人收入和鼓

励私人资本参与国家重点项目来推动国内消费的目标。此外，中国将加大吸引外资力度，“落实好外资企业国民待遇”。

美国零售商努力确保在中国市场开展负责合法的经营活动。美国零售商积极响应中国政府的倡议与要求（例如，商会会员企业踊跃参与2020年1月发起的“保价格、保质量、保供应”的“三保”运动）。为缓解过去三年疫情带来的冲击，业界开始优先发展全渠道零售，其方式包括线上和线下门店、私人品牌、电子商贸服务、零售创新和跨境电子商贸。

## 规范电商行业的不正当竞争 / 不正当竞争活动

新冠疫情催生了特殊的市场环境。2020年，家到家业务，尤其是社区团购，吸引了大量资金和融资。社区团购是一种新型的购物形式。一般情况下，社区负责人代表一个社区成员使用微信等社交媒体应用大量订购日常必需品和食品。电商行业采用的商业模式往往将揽客的优先权置于盈利之前。其多为现金密集型商业模式，依靠补贴和大量投资来维持运营。这些模式不利于高水平、竞争激烈的零售业的长期稳定发展。

商会很高兴能看到国家市场监督管理总局（以下简称总局）将“加强反垄断和反不正当竞争”列为其2023年的工作重点。此外，政府在2022年出台了《商标代理监督管理规定》，展现了中国在加强知识产权保护治理和监督方面作出的努力。

首先，商会建议总局加强对上述新型商业模式的反不公平竞争审查，特别是关于社区团购的审查，并建议总局努力改善市场秩序并为鼓励低价的补贴设立规范化标准。在新冠疫情得到控制后，为了吸引新的客户群体，排挤竞争对手，许多公司都对商品和服务进行降价，有时某些商品或服务价格甚至低于其生产成本，以此在市

ness, especially with respect to 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 in 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 subsidies 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. Moreover, in the past year, abrupt lockdowns and mass COVID-19 infections resulted in unforeseen supply chain disruptions and closures of brick & mortar retail stores.

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 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 the guideline on rolling out a pilot program to improve the business environment in 6 cities including Beijing, Shanghai, Chongqing, Hangzhou, Guangzhou and Shenzhen. In 2022, the measures were expanded to include "higher-level facilitation for cross-border commerce, a fair competition order, and innovative regulation." Additionally, the State Council also approved the establishment of pilot zones for cross-border e-commerce in 33 cities and areas including Langfang, Yuncheng, Baotu, Anshan, and Lhasa. We look forward to further implementation methods which could aid in recovery from adverse effects of prevention measures taken to curb the spread of COVID-19 throughout the past three years.

## Flexible Work Policies for the Retail Sector

Over the past 25 years, 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 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 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. Implementation of the comprehensive system and flexible system (collectively referred to as "special work hours") however, is limited to certain positions and subject to prior approval from the labor authority. Localities can, however, independently formulate procedures for approval of special

场上建立垄断地位。在他们站稳脚跟之后，就能大幅度提高价格，并获得可观的利润。这种行为违反了反垄断法和反不正当竞争法，并构成了垄断和不正当竞争。除此之外，这种低价同样扰乱了快速消费品渠道的定价体系，构成了恶性竞争。为了加强中国的反垄断能力，中国于2021年11月宣布成立国家反垄断局。我们希望能够直接与该局进行透明的沟通，以期从行业发展的角度了解关键议程和工作重点。此外，《反垄断法》修订草案的公布为执法提供依据，我们十分期待相关解读。

其次，商会建议政府继续加强对电商部门的监督与管理。创新商业模式的出现、管理经验的缺乏以及人力短缺使电商平台更有可能进行不正当或不平等竞争。为了保护消费者的权利和隐私，电商实体需要受到和传统的实体零售商同等的监督和管理，特别是在食品安全、产品质量、价格监管和税收等方面。

此外，名义上，传统零售商和电商平台在政府补贴、税收激励、人力资源政策和政府服务方面享有同等待遇。现实中，地方政府向电商部门提供了大量补贴，这些电商平台包括向农村地区提供服务、或业务扩展到国际物流或海外仓储的电商平台。这些平台允许卖方直接在其平台上注册或从事人才招聘和培训活动。同时，符合标准的电商平台还可以享受中小型高新技术企业和“技术先进”型企业的税收减免。种种资源倾斜使得电商平台能够降低其与实体经济中的传统零售商相比的运营成本，从而扰乱了零售定价，并加剧了线上平台和线下零售商之间的不正当竞争。

## 国内零售市场监管

在全国范围内，特别是在运输物流、限售令以及为控制疫情传播而制定的政策方面，拥有多个分店的传统零售企业面临着政策执行在各地不一致、不统一的问题。同时，商会会员企业缺乏统一的渠道获取全国范围内所有相关的政策信息。此外，在过去一年中，不时的封控和大规模的新冠感染致使供应链中断和许多实体零售店的关闭。

商会会员企业也缺少适应新政策的前置时间。为了满足中央政府控制汽车尾气排放的指示，或为了回应中央政府下发的控制新冠疫情的紧急政策，地方政府在没有事先通知的情况下，发布了诸如限制卡车尾气排放和吨位要求的临时交通政策。这些政策没有给企业留出足

够的时间进行调整。除此之外，各地还限制了某些塑料制品的使用。在地方执行的政策可能比中央政府颁布的政策更严格、适用范围更广，在某些情况下，这两套政策或有重叠。

2021年，国务院印发《关于开展营商环境创新试点工作的意见》，部署在北京、上海、重庆、杭州、广州、深圳6个城市开展营商环境创新试点。2022年，这些措施扩大到包括“持续提升跨境贸易便利化水平、维护公平竞争秩序、进一步加强和创新监管”。此外，国务院还批准在廊坊、运城、包头、鞍山、拉萨等33个城市和地区设立跨境电商试点。商会期待看到政府采取措施进一步帮助人们从过去三年疫情管控措施带来的不利影响中恢复过来。

## 零售部门灵活用工政策

在过去25年里，中国的灵活就业、灵活用工政策和法规未能跟上灵活工作/零工经济的快速崛起，监管机构在执行这些政策时，并未表现出太大的灵活性。我国的工时制度主要有三种：标准工时制、综合工时制、不定时工时制。零售业和餐饮业遵守标准工时工作制，即每天工作不超过8小时，每周工作5天。综合工时制以周、月、季或年为基础计算工作时间。不定时工时制的工作时间并不固定，不过，雇主仍应保证雇员有足够的休息时间。但是，能够实行综合工时制和不定时工时制（统称为“特殊工作时间”工作制）的职位十分有限，并须事先得到劳动部门的批准。由于各地可以自主制定特殊工作时间工作制的审批程序，不同辖区的执行标准杂乱无章。

近年来，劳动力需求模式的变化导致零售业的营业模式随之发生了巨大的改变，“节日效应”越来越明显。零售活动开始分为高峰期和非高峰期，影响到了劳动力需求。因此，标准工时制无法满足现代零售业的需要。在零售业采用综合工时制将有助于零售商根据消费者的需求安排其员工的轮班，以提高工作效率。不定时工作制，尤其是针对管理人员的不定时工作制，将在中高级管理人员根据其临时或周期性业务需要作出雇用决定时，使他们拥有更弹性的选择。

与兼职工作相比，特殊工时工作制为工人提供了更强的保护，维护了他们的社会保障和社会福利权利，提供了劳动安全和健康保护、职业培训和正式的劳动纠纷

work hours, which has resulted in some confusion around the standards for implementation in different jurisdictions.

In recent years, the retail industry has undergone substantial changes to its business model as patterns in labor demand have shifted. The “holiday effect” is becoming more pronounced, as retail activity is characterized by peak and off-peak periods, which affects labor demand. As a result, the standard system of work hours is 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 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.

Compared to 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 formal labor dispute resolution processes. 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 add to the imbalance in regulatory behavior between online and offline retailers 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. Different permissions should be granted by industry. Regulations should be implemented with a degree of flexibility so as 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 policy has 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.

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 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 to 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 that accord with measurable, unified standards, while improving the consistency of law enforcement on these issues at China’s ports. At the same time, we hope that the government 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)*, and that a growing number of comprehensive pilot zones for cross-border e-commerce have been approved in 2022.

China continued to enrich the *List of Cross-border E-commerce Retail Imports* in 2022, adding 29 new product categories including ski equipment, tomato juice, and golf equipment. AmCham China expects that the government will continue to expand the list, 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 authorizes judges to apply Article 2 of the *Anti-Unfair Competition Law* more broadly to any act that “disrupts market competition order, infringes the legal rights and interests of other business operators or consumers,”

解决程序。目前，零售业工人只能选择兼职的工作形式，如果不改革特殊工时工作制的审批程序，将难以施行零售业的劳动保护，并会加剧线上和线下零售商之间的前述不平衡监管行为。目前，电商平台可以通过建立特许经营零售店、依赖合作伙伴或通过第三方租赁公司实现弹性工时。然而，这些形式往往不会确立明确的雇佣关系，而且其中相当一部分雇员没有入保中国的社会保险。

商会敦促政府对特殊工时工作制进行调整，扩大应用特殊工时工作制行业的范围。行业应拥有不同的工作权限。法律法规的实施应具备一定的灵活性，以便为中国经济的持续发展和企业创新留出空间。与此同时，监管机构应注重确保国家政府发布的政策在地方得到连贯一致的执行，并向地方人力资源和社会保障单位发布清晰指示，明确适用规则，简化并加速审批程序。

## 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，一直保持稳定，维护了该行业的发展。中国海关总署 (GACC) 作为这一领域的重要监管机构，将继续以优先风险管理的方式对该行业进行监管，以确保跨境电商零售进口能够健康有序发展，促进高质量消费，并推动中国经济发展。

在新冠疫情的影响下，跨境交易产生了诸多限制，尽管跨境电商进口商需要应对一些国家在仓储、物流和客户服务方面的挑战，但他们仍然将高质量产品提供给了国内的消费者。商会对零售部门未来的持续发展充满信心，并相信其能在中国经济发展中发挥积极作用。

中国海关总署可以逐步制定基于风险管理原则的评估标准和纪律措施，以此杜绝虚假交易，并降低次级销售相关的风险，继而支持零售行业的发展。这些标准使各权力机构能够制定符合可衡量的统一标准的合规策略，同时提高中国海关针对这些问题执法的一致性。与此同时，商会希望政府能够尊重跨境电商零售进口行业的不断发展，允许相关机构在遵守规定方面具备一定灵活性，并选择合理合规的执法模式。

跨境电商零售业已被纳入《鼓励外商投资产业目录 (2020 年版)》，2022 年，有越来越多的跨境电子商务综合试验区获得了政府的批准，对此我们倍感喜悦。

2022 年，中国扩大了《跨境电子商务零售进口商品清单》，增加了 29 个新产品类别，包括滑雪设备、番茄果汁和高尔夫设备。商会预计，中国政府将继续扩大该清单，允许通过跨境电子商务零售渠道进口更多高质量的国际产品。该清单作为一份“正面清单”，列明了获准进口到中国的产品。

## 不正当竞争和电子商务

2022 年 3 月 16 日，最高人民法院出台了《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》。最高人民法院于 2021 年 8 月 18 日发布了征求公众意见的草案，该解释于 2022 年 3 月 20 日正式生效。以下几点值得注意：

- 第一条授权法院将《反不正当竞争法》第二条的适用范围扩大到“扰乱市场竞争秩序，损害其他经营者或者消费者合法权益”的行为，
- 第二条允许将可能损害竞争优势关系的竞争实体定义为“其他经营者”，
- 第三条明确了确定“商业道德”的标准，
- 第四条至第十五条则是《反不正当竞争法》第六条提及的关于保护商业标识的详细规定。整体上，这些条目明确了“有一定影响的标识”的定义，说明了标识作为商品 / 服务标识能够和不能被视为正当使用的情况，澄清了违反《商标法》第十条第一款的商标将不受《反不正当竞争法》的保护，并提供了确定商标相似性 / 同一性和混淆行为的方法，
- 第十七条列举了欺骗、误导相关公众的行为，第十八条明确了因虚假或者引人误解的商业宣传行为受到损失的当事人应举证证明其相关损失，
- 第二十三条明确了法定损害赔偿适用于虚假宣传、商业诽谤、网络不正当竞争行为 ( 以前仅适用于商标侵权、商业秘密盗用 )。

2021 年 8 月 31 日，总局发布了《关于修改〈中华人民共和国电子商务法〉的决定 ( 征求意见稿 )》起草说明，以征求公众意见。拟议修改包括：

- 电子商务平台运营者在卖家提交反通知后到必须采取行动的时间从 15 天延长到 20 天，
- 平台内经营者提出担保，用于赔偿潜在的知识产权侵权所造成的损失的，则电子商务平台经营者可以暂时中止所采取的措施；



- Article 2 allows for competing entities that may cause damage to competitive advantages to be defined as “other business operators,”
- Article 3 clarifies the criteria for determining “business ethics,”
- Articles 4 to 15 are detailed provisions for the protection of commercial signs as referenced by Article 6 of the *Anti-Unfair Competition Law*. Together, they clarify the definition of “signs with certain influence”, illustrate situations where signs cannot function as goods/services identifier and circumstances that could be viewed as fair use, clarify that signs violating Article 10.1 of the *Trademark Law* are not protectable in the context of *Anti-Unfair Competition Law*, and provide methods to determine similarity/identity of signs and market confusion,
- 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 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:

- The time in which an e-commerce platform operator must take action after a seller has filed a counter-notification was extended from 15 days to 20 days,
- If the business operator provides a guarantee for compensation for losses caused by potential intellectual property infringement, the e-commerce platform operator 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.,
- Clarify the compliance requirements for platform operators to maintain the competition order, and also provide measures operator compliance.

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 regulations, it is subject to severe administrative penalties, including being added to a publicized black list. This black list system is applicable to certain severe IP infringements, including ❶ infringement of trade secrets, commercial defamation, organization of false transactions, and other unfair competition practices that seriously disrupt fair competition; and ❷ 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, and focus on key issues related to the order of online market transactions, such as platform selection, illegal evaluation, etc.

## 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

- 平台内经营者提交虚假的不存在侵权行为的声明将加倍承担赔偿责任；
- 有关部门可以限制严重侵权者开展相关网络经营活动，直至吊销网络经营相关许可证。

2021年8月17日，国家市场监督管理总局发布了《禁止网络不正当竞争行为规定》，面向社会公开征求意见。草案全面概述和列举了《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，而且还包括利用技术手段在互联网上进行不正当竞争。以下几点值得注意：

- 细化了线上虚假宣传的定义。虚假排名和虚假用户评价等行为可能会被禁止；
- 明确了网上商业诽谤的行为，禁止了雇佣网络水军恶意攻击当事人的行为。未经证实的风险预警可能构成诽谤，
- 在现行法律的基础上，从反不正当竞争的角度，規制恶意拦截、非法数据捕获、“二选一”竞争模式等新的热点问题，
- 明确平台运营商维护竞争秩序的合规要求，并提供合规措施。

2021年7月30日，总局发布了《市场监督管理严重违法失信名单管理办法》。根据《办法》第二条的规定，当事人违反法律、行政法规的，给予较重行政处罚，包括依照本办法规定列入严重违法失信名单。这一黑名单制度适用于一些严重侵犯知识产权的行为，包括：① 侵犯商业秘密、商业诋毁、组织虚假交易等严重破坏公平竞争秩序的不正当竞争行为；② 故意侵犯知识产权；提交非正常专利申请、恶意商标注册申请损害社会公共利益；从事严重违法专利、商标代理行为；

2021年3月15日，即世界消费者权益日，总局公布了《网络交易监督管理办法》。该文件贯彻落实《电子商务法》，是完善和促进相关法律法规的重要部门规定。《办法》重点关注线上社交网络、线上直播等新型经营形式和新型线上交易模式，重点关注与线上市场交易秩序有关的关键问题，如平台选择、非法评估问题等。

## 建 议

### 对中国政府：

- 政府各监管机构，特别是总局，应该加强线上和线下零售业中反不正当竞争的审查，重点确保传统零售商和线上电商平台不会构成助长不正当竞争的行为。政府还应规范零售业和电商行业的补贴标准，并确保所有符合标准的零售商能平等获得补贴。
- 确保全国和各级政府关于零售和电商部门政策的一致性和统一性，特别是在运输、物流、限塑和疫情管控政策方面。建立统一的信息获取渠道，定期公布和更新相关政策信息。
- 改革特殊工时工作制，扩大适用特殊工时工作制的行业范围，以此更好地适应企业经营和中国当代经济发展的需要。
- 基于既定的风险管理原则制定评价标准和纪律措施，以杜绝虚假交易，并减少跨境电商零售进口部门次级销售相关风险。
- 修订《互联网广告管理暂行办法》，明确产品广告中不影响产品完整性的意外或无意的失实之处与蓄意虚假推销零售产品的宣传之间的区别，并禁止职业打假人向零售商索取过分或无理的损害赔偿。

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

**S**ports 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 years since seven-year build-up since China was awarded the hosting rights to the Winter Olympic Games and Winter Paralympic Games 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 had been growing 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.

However, with restrictions related to the COVID-19 pandemic continuing in China long after they had eased around the world, the three years of the pandemic (2020-22) saw a cratering in the industry, with domestic leagues forced to play in spectatorless "COVID bubbles," while international events in China came largely to a halt. Despite the end of China's Zero-COVID's policy at the end of 2022, events scheduled for 2023 in China that had already been canceled include the Chinese F1 Grand Prix (April) and the AFC Asian Cup (June-July). It is to be hoped that 2023 will see a return of international sporting events to China, but it is expected that this rebound will be gradual.

# 体 育

## 引 言

**体**育具有广泛的经济、社会、教育和个人健康效益。中国认可体育的价值，而其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为战略为指导。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，市场应在体育资源配置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。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。习近平主席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。据中国官方媒体称，中国现在有3.46亿的冬季运动参与者，这超过了之前定下的3亿人目标；然而，由于缺乏对冬季运动“参与者”的实际定义，这个数字在很大程度上只具有象征意义。

## 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。

虽然世界各国相继放松了与新冠疫情有关的限制措施，但中国的相关政策一直持续到去年年底。三年（2020-2022年）的疫情管控措施让体育行业收到重创，国内联赛被迫在没有观众的“新冠泡泡”环境中进行，而在中国举办的国际赛事则基本停摆。尽管中国的新冠动态清零政策已经在2022年底结束，但计划于2023年在中国举行的活动已经被取消，包括中国F1大奖赛（4月）和亚足联亚洲杯（6-7月）。人们希望在2023年能看到国际体育赛事回归中国，但预计这种反弹将是循序渐进的。

从政府的基本支持力度和预计的增长潜力上看，这

Given the underlying government support and projected growth potential, this still remains 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 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.

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. It is unclear how many of these targets were achieved.

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.

In June 2022, the revised *Law on Physical Culture and Sports* was passed, effective from January 1, 2023, as the first major revision since the law's initial enforcement in 1995. The revisions included a focus on youth and school sports, anti-doping, athlete rights protection, protection of sporting IP, and professional sports system development, all with the stated aim of making sports a driving force for economic and social development.

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"

仍然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，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，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行之有年了，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。目前尚不清楚这些目标有多少已经实现。

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。

2022年6月，《中华人民共和国体育法》修订通过，自2023年1月1日起生效，这是该法自1995年实施以来的首次重大修订。修订内容包括重点关注青少年和校园体育、反兴奋剂、运动员权利保护、体育知识产权保护和职业体育系统发展，这些都是为了使体育成为经济和社会发展的动力而提出的目标。

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，商会指出，对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



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.

After a tough time for professional soccer in China in 2021, with Chinese Super League (CSL) club Jiangsu Suning going bankrupt just four months after winning the domestic league, and several other clubs experiencing severe financial difficulties, 2022 was perhaps even worse. The CSL continued to operate, but the shadow of COVID-19, which prevented fans from attending the games, made commercial operations challenging. A new rule introduced prior to the start of the 2021 season to remove from a team's official name any words of a sponsorship or commercial nature also hit potential sources of income. In a development that was symbolic of the upheaval facing the league, Guangzhou FC, which won the CSL title seven years in a row 2011-17 and again in 2019, finished 17<sup>th</sup> in 2022 amid the financial pressures facing its owner, the real estate developer Evergrande, and was relegated. 2023 began with yet more uncertainty, as a wide-ranging corruption investigation saw the detention of high-profile figures, including former national team player and manager Li Tie and CFA President Chen Xuyuan.

## 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.

专业管理仍是一个挑战。商会希望定期与政府接触，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宣布破产，其他几个俱乐部也经历了严重的财务危机，而 2022 年形式则更加严峻。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，也让商业运作面临挑战。2021 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。广州俱乐部曾在 2011 到 2017 年连续七年获得中超联赛冠军，并在 2019 年再次获得冠军，然而在其所有者——房地产开发商恒大集团所面临的财政压力下，广州俱乐部在 2022 年仅获得第 17 名并遭遇降级，这样的故事象征了中国国内联赛所面临的动荡。2023 年刚开年就出现了更多的不确定性，在一场大范围的腐败调查中，包括前国家队球员兼教练李铁和中国足协主席陈戌源在内的高官均被拘留调查。

## 体育直播

几十年来，中国法院一直没有承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（在 2019 年商会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：

### 1. 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。

### 2. 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。

## ***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 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 esports 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 esports 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 "esports 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 a full-medal

event at the upcoming 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 esports 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.

### 3. 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，包括中国篮球协会和中国足协在内的国内投资联赛的收入都将因成功应对这些挑战而增加。因此，应对这些挑战，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；
- 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全奖赛事。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。

## 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。
- 加强与包括美国职业体育联盟等在内的私营产业（包括国外和国内）合作，开发最佳实践，推动国内职业体育联盟和体育教育行业快速发展。
- 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获得同等待遇。

# Tourism & Hospitality

## Introduction

The past 3 years of COVID-19 prevention measures in China have severely impacted the Tourism and Hospitality industries across the country. While many global markets felt the impact of COVID-19 in 2020, China's COVID-Zero Policy led to 3 years of unpredictable business operations, making it difficult to maintain clear targets and compliance measures.

After China's January 8, 2023 decision to remove quarantine measures for inbound travelers, followed by the move to lower COVID-19's classification from "A" to "B" level infectious disease, cities across China have seen great opening and removal of epidemic prevention measures. While the Hospitality industry has experienced a rebound in confidence and profitability within Q1 2023, the Tourism industry has yet to see the same certain recovery on the horizon.

## Tourism

Since January 8, 2023, China has abandoned stringent COVID-19 containment measures and severely limited exit and entry. However, South Korea, Japan, and other countries have announced new COVID entry restrictions on Chinese outbound travelers, making people likely to have a cautious attitude to outbound travel. A survey from Horwath HTL on three types of international tourist markets, revealed that nearly 60 percent of respondents do not expect outbound tourism in China to recover at a strong pace in Q1. The good news is the reopening unleashes the domestic Meetings, Incentives, Conferences, and Exhibitions (MICE) consumers, Leisure travelers, and Free Independent Travelers (FIT) markets' vitality and demand. According to the data, more than 40 percent of the respondents believe it will help drive a strong rebound in MICE and Corporate as it is just needed for economic activities.

Chinese online travel service company Ctrip released the "2023 Spring Festival Travel Summary Report" on January 27. The report shows that, as the first Spring Festival since 2019 where people do not have to spend their New Year locally, China's travel market has delivered the brightest performance since COVID-19. On Ctrip's platform, domestic

and international travel orders during the Spring Festival saw a three-year peak, with travel orders increasing four-fold compared to the 2022 Spring Festival.

While further opening of visa issuance and international flight availability is needed to approach a pre-pandemic normal, the domestic market for travel has made strides throughout Q1 2023. However, domestic consumer confidence and desire to travel has still not fully recovered. During the Chinese Spring Festival Holiday, the greatest period of travel in mainland China, officials projected a return to 2019 norms that was not yet been realized. According to the Ministry of Culture and Tourism's estimation, the seven-day long holiday saw domestic tourism revenue reach RMB 375.84 billion, a year-on-year increase of 30 percent, recovering to 73.1 percent of the amount for the same period in 2019. With greater relaxation of travel policies, AmCham China hopes to see further normalization throughout the rest of the calendar year.

## Hotels

The hotel industry was one of the first industries opened to foreign investment in 1978 with reform and opening. While the first foreign hotels were joint-venture hotels that appeared in larger cities like Beijing and Guangzhou, greater diversification occurred quickly. By the 1990s, the domestic hotel industry began to soar. Despite ongoing foreign investment, more than 95 percent of hotels in China remain domestic-invested. The share is even higher among middle- and lower-range hotels.

Headquartered in Shanghai, Jin Jiang International is the largest domestic hotel group in China, in terms of hotel numbers. Targeted at budget travelers, the majority of Jin Jiang hotels are select-service hotels. In 2019, Shanghai Jin Jiang International generated almost 21 billion yuan in revenue, earning it a place in the Chinese Fortune 500.

After China's reopening in early 2023, market sentiment has returned to a quite positive perception of potential market growth for foreign hotel brands in China. Regionally, the highest regional market sentiment index is found in China's southern Hainan province – a popular beach destination for travelers.

# 旅游业和酒店业

## 引言

**中**国过去三年的新冠肺炎疫情防控措施严重影响了国内的旅游业和酒店业。虽然全球许多市场在 2020 年都受到了新冠疫情的影响，但中国的“清零”政策导致了长达三年的商业运作困难，使其难以保持明确目标和合规措施。

中国于 2023 年 1 月 8 日决定取消对入境旅客的检疫措施后，新冠肺炎疫情的防控标准从甲类传染病降为乙类传染病，中国各地大规模开放并取消防疫措施。虽然酒店业在 2023 年第一季度内信心和盈利能力有所提升，但旅游业尚未出现类似的复苏前景。

## 旅游业

自 2023 年 1 月 8 日起，中国放弃了严格的新冠肺炎疫情防控以及严格限制出入境的措施。然而，韩国、日本和其他国家已经宣布对中国出境旅游者实施新的新冠疫情入境限制，中国游客可能对出境旅游持谨慎态度。来自浩华（Horwath HTL）的一项关于三类国际旅游市场的调查显示，近 60% 的受访者认为中国出境旅游在第一季度不会迅速恢复。从积极的一面来看，重新开放出入境旅游释放了国内会议、奖励旅游、大型企业会议、活动展览和节事活动（MICE）消费、休闲旅游和国外自主旅游（FIT）市场活力和需求。数据显示，超过 40% 的受访者认为，出入境旅游作为经济活动的刚需，此次恢复将有助于推动会展和企业的强劲反弹。

中国在线旅游服务公司携程网于 2023 年 1 月 27 日发布了《2023 年春节旅游总结报告》。报告显示，2023 年春节作为 2019 年以来中国人民无需就地过年的第一个春节，中国旅游市场交出了自新冠疫情以来最亮眼的

成绩单。在携程平台上，春节期间的国内和国际旅游订单出现了三年来的高峰，旅游订单较 2022 年春节增加了四倍。

虽然签证签发和国际航班供应有待进一步开放以恢复疫情前常态，但国内旅游市场在 2023 年第一季度已取得长足进步。不过国内消费者的信心和旅游欲望仍未完全恢复。在中国内陆，春节假期是国内旅游的高峰期，官方预测国内旅游将恢复到 2019 年常态，但这一预期并未实现。根据文化和旅游部的估计，春节七天长假期间，国内旅游收入达到 3758.4 亿元人民币，同比增长 30%，恢复到 2019 年同期的 73.1%。随着旅游政策的进一步放宽，商会希望在 2023 年接下来的时间里看到进一步常态化发展。

## 酒店业

自 1978 年改革开放起，酒店业是中国最早向外资开放的行业之一。虽然第一批外资酒店多为北京、广州等较大城市的合资酒店，但酒店业迅速走向多样化发展。到 20 世纪 90 年代，国内酒店业开始高速发展。尽管外资持续涌入，中国 95% 以上的酒店仍然属于国内投资，该比例在中低档酒店中甚至更高。

锦江国际总部设于上海，是中国酒店数量最多的国内酒店集团。锦江酒店以经济型旅客为目标客户，大部分是精选酒店。2019 年，上海锦江国际创收近 210 亿元人民币，在中国财富 500 强中赢得了一席之地。

中国在 2023 年初重新开放后，酒店业市场重振积极情绪，认为外资酒店品牌在中国的潜在市场将有所增长。从区域上看，中国南部海南省（热门海滩旅游目的地）的市场情绪指数最高。

Region	Overall Sentiment Index
Hainan	42
Southwest	39
North	34
Mid-South	31
Northeast	18
Northwest	15
East	9

### Expansion

Foreign brand hotels are still seen as premium options in the growing domestic hotel market. The reputation of foreign brands is still associated with better service and management standards than their local Chinese counterparts. Many foreign brands are looking to capitalize on this reputational advantage and brand recognition to expand throughout Tier 1 and 2 cities. All expansion plans and construction, however, was placed on hold during the COVID-19 pandemic. After further market recovery is realized, private owners and foreign brands will continue to push their expansion efforts in China.

Currently, most foreign brands rely on an “ownership” model of local expansion. In this model a private owner of a property or property developer will pitch their property as a potential brand destination to suitable foreign brands. Foreign hotel brands with greater numbers of loyalty members are more attractive to owners during this bidding process. After negotiations, a deal will be struck between the foreign brand and the owner where the owner will have to pay to modify the property based on brand needs, but the brand will provide the overall management of the hospitality and services onsite.

While franchise ownership models for foreign hotels are developed and utilized in Macao and Hong Kong, they are much less common in mainland China. This remains to be an extremely attractive option for foreign brands to consider in the future.

### Consumer Controversy

In recent years, foreign brands have fallen prey to internet campaigns designed to damage the good reputation of their management practices in China. These campaigns send consumers to test the cleaning practices of prominent hotel chains in China’s tier 1 cities and have often only targeted foreign brands. After the first videos were posted in 2017, hotels now spend considerable resources training

their staff and preparing for these nearly annual attempts to hurt their image. Many foreign brands suspect that local competitors are behind the creation of this campaign in an attempt to hurt the image of foreign hospitality giants and gain market share.

### Cruise Industry

Between 2006 and 2020, prior to the onset of the COVID-19 pandemic, China’s international cruise market experienced significant growth, with an average annual rate exceeding 50 percent. During this period, China surpassed Germany, Australia, and the United Kingdom to become the world’s second-largest cruise market after the United States. Shanghai is now among the world’s top five cruise homeports and is firmly positioned as the leading Asian cruise homeport, driving the Asia-Pacific region to become the third-largest market after North America and Europe.

Pioneered by international cruise lines such as Costa Cruises, Royal Caribbean Cruises, and MSC Cruises, this emerging market has been characterized by the deployment of a total of 23 luxury cruise ships in China, including 12 flagship cruises, at a cost of 79 billion yuan. Annual marketing investments of 3.6 billion yuan have stimulated Chinese consumer interest in cruise vacations, resulting in the creation of a promising market with stylish product concepts, first-class ship hardware and service standards, and suitable distribution models.

In 2019, the number of Chinese and foreign tourists embarking from China’s homeport reached 2 million. According to a study conducted by the Shanghai Academy of Social Sciences in 2021 entitled “The Contribution of the Cruise Industry to the Chinese Economy,” the direct economic contribution of the international cruise industry to China is valued at 14 billion yuan. This value is derived from ship supply, port tax, and ship maintenance, which accounts for 27 percent, headquarters economy, which accounts for 40 percent, and domestic consumption by tourists and crew, which accounts for 33 percent. The international cruise industry falls under the “trade in services” category with overseas output and domestic input. The growth of this emerging market has developed the cruise industry chain and the cruise economic circle, including manufacturing, operation, service, and consumption clusters. In 2019, the direct and indirect contribution of the cruise industry to various sectors of the national economy totaled 35.8 billion yuan, creating employment for 67,000 people and a salary of 11.6 billion yuan.

In 2018, 10 ministries, including the Ministry of Transport and the National Development and Reform Commission, released a document entitled “Opinions on Promoting the Development of China’s Cruise Economy,” which predicted that the annual cruise passenger number in China will reach 14 million by 2035. By that time, China’s cruise market, industry,

地区	整体情绪指数
海南	42
西南部	39
北部	34
中南部	31
东北部	18
西北部	15
东部	9

## 行业发展

在不断增长的中国酒店市场中，外资酒店仍被视为高端选择。外资品牌较同行本土品牌更好的声誉与其更高质量的服务和更高的管理标准有关。许多外资品牌希望利用这种声誉优势和品牌认可度在一线和二线城市全面扩张。然而，所有扩张计划在新冠肺炎疫情期间都被搁置了。在市场进一步恢复后，私营业主和外资品牌将持续推动在华扩张的努力。

目前，大多数外资品牌依靠“所有权”模式进行在华扩张。在这种模式下，房产的私人业主或房产开发商会将其房产作为潜在品牌目的地，向合适的外资品牌进行推介。在竞标过程中，拥有更多忠诚客户的外资酒店品牌对这些业主更具吸引力。外资酒店品牌和业主之间将协商达成协议，业主须根据酒店品牌方的需求支付物业修改费用，但酒店品牌方将提供现场接待和服务整体管理。

虽然外资酒店的特许经营所有权模式在澳门和香港地区得到了发展和应用，但这一模式在中国内陆并不常见。对于外资品牌来说，这一模式仍然是可以在未来考虑使用的极具吸引力的选择。

## 有关消费者的争论

近年来，网络上出现了一些旨在损害外资品牌在华经营的良好声誉的活动，外资品牌已经成为其牺牲品。这些活动派消费者去中国一线城市著名连锁酒店测试其清洁卫生情况，而且往往只针对外资品牌。在2017年第一批相关视频发布后，酒店投入很多资源对员工进行培训，并为这些几乎每年出现的有损名誉的企图做准备。

许多外资品牌怀疑本土同行竞争者是这一活动的幕后推手，意图伤害外资酒店巨头的良好形象并获得市场份额。

## 邮轮业

2006-2020 新冠疫情爆发前的14年里，中国国际邮轮市场以50%以上的年均增长率呈现出爆发式的成长。从无到有，弯道超车，超越德国、澳大利亚和英国，一跃成为仅次于美国的全球第二大邮轮市场，并驱动亚太地区成为北美和欧洲之后的第三大区域性市场，上海跻身全球五大邮轮母港行列，稳居亚洲邮轮母港之首。

以歌诗达、皇家加勒比、地中海邮轮为代表的国际邮轮公司是新兴市场的拓荒者，前后总计在华部署23艘豪华邮轮，包括为中国市场定制造价总计790亿元的12艘旗舰邮轮，每年市场营销投入总计高达36亿元，用时尚的产品理念、一流的船舶硬件和服务水准及符合国情的分销模式，激发了中国消费者对邮轮度假方式的热情，打开了全球最具潜质的邮轮市场。

2019年，从中国母港登船的中外游客为200万人次，根据上海社会科学院2021年发布的《邮轮对中国的经济贡献》研究报告，国际邮轮对中国的直接经济贡献为140亿元，其中船供、港务税费和船舶维修占27%，总部经济40%，游客和船员境内消费33%。国际邮轮属于服务贸易板块，产出在境外，投入在境内，新市场的成长带动了邮轮产业链的发展，推动了包括制造群落、经营群落、服务群落和消费群落在内的邮轮经济圈的形。2019年邮轮的直接贡献和对国民经济各部门的间接贡献，加总后对中国经济的总体贡献为358亿元，创造就业6.7万人，薪酬116亿元。交通运输部和国家发改委等十部委在2018年发布的《关于促进我国邮轮经济发展的若干意见》文件中预期，至2035年中国邮轮旅客年运输量将达到1,400万人次。届时中国邮轮市场、行业和经济规模将比肩美欧，对中国的总体经济贡献将达到5,300亿元，其中54%的贡献值源自总部经济、船供、港口和薪酬，32%来自游客和船员的消费，15%来自船舶的建造和维修。

国际邮轮公司是中国邮轮行业的领头羊，通过合资合作、人才、专业知识和技能输出、船舶管理等方式，带动了本土邮轮品牌的崛起，形成了外资、中资和中外合资多元化市场主体的格局，帮助行业在航运技术、安全、环保、清洁能源、港口设施和服务对标国际水准，



and economy are expected to be comparable in size to those of the United States and Europe, with an overall economic contribution to China of 530 billion yuan, of which 54 percent will be derived from the headquarters economy, ship supply, ports, and salaries, 32 percent from tourist and crew spending, and 15 percent from ship construction and maintenance.

International cruise lines have played a pivotal role in driving the growth of China's cruise industry, collaborating with local brands through joint ventures to share their expertise, skills, ship management, and other resources. This has resulted in a diverse market landscape that includes foreign and Chinese investment, as well as joint ventures, which has raised the industry's benchmark to meet international shipping standards in areas such as technology, safety, environmental protection, clean energy, port facilities, and services. As a result, China has been able to import, apply, and assimilate related manufacturing industry, advanced design, and supply chain management technologies from abroad. For example, the China State Shipbuilding Corporation and Carnival Corporation have cooperated on China's first large-scale luxury cruise ship project. The construction of cruise ships is an essential aspect of the shipbuilding industry, similar to the aerospace industry, as it can contribute to the overall technological advancement of the manufacturing industry.

Furthermore, international cruise ships have significant social value and represent the internationalization of coastal cities, which have enriched people's lives and fostered the exchange of cultures and public opinion.

It is worth noting that a country's population size and income level alone are not sufficient to ensure a thriving cruise market. For instance, Japan was once the world's second-largest economy in 1968, but its cruise market ceased operations forty years ago. In contrast, China's GDP per capita in 2019 was only a quarter of Japan's, yet its cruise market size was ten times larger. Cruise is a high-investment and high-risk industry that requires substantial capital, technology, and talent thresholds, with supply creating demand, and capacity creating the market. The success of China's cruise market is attributed to the country's reform and opening-up policy, which has encouraged foreign investment. Over the past decade, the local government has invested 20 billion yuan in nine dedicated cruise terminals, created a favorable business environment for the cruise market, and strengthened the investment confidence of leading enterprises in the international cruise industry, making China the premier destination for cruise capital, talent, technology, and other resources in the Asia-Pacific region.

### *Challenges in the business environment*

The policy uncertainty and market access issue have caused international cruise lines to face difficulties in planning and investing in their operations in China. The administration's decisions on routes have a significant impact on the industry,

as international cruise lines need to obtain approval from the Chinese government to operate in Chinese waters. The unpredictability of government policies has made it difficult for these companies to plan for the long term, leading to a lack of investment in the market.

Additionally, market access issues have made it challenging for international cruise lines to operate in China. The Chinese government requires international cruise lines to form joint ventures with Chinese partners and to register their ships in China, which can be a time-consuming and costly process. Furthermore, the process of obtaining licenses and permits for operations can be complicated and opaque, which further hinders market access for international cruise lines.

The challenges faced by international cruise lines highlight the need for the Chinese government to create a more stable and predictable business environment for the industry. The government can provide greater clarity on its policies and regulations, streamline the process for obtaining permits and licenses, and provide greater support for international cruise lines to form joint ventures with Chinese partners. By doing so, the government can encourage more investment in the industry and promote the growth of China's cruise market.

### *Intervention of Multiple Administration in International Lines*

The international cruise industry is susceptible to external factors such as epidemics, natural disasters, and international relations, which are common to cruise markets worldwide. Nevertheless, the Chinese market is distinctive in that it is characterized by excessive governmental administration intervention in the economy, which frequently magnifies the impact of external factors. In addition to the COVID-19 pandemic, China's National Tourism Administration has canceled international cruise lines several times over the last decade. For example, the suspension of China-Japan lines in 2011 and 2013, the suspension of China-Korea lines in 2015 and 2017, and the suspension of Korean lines in 2017, which have yet to be reinstated. The tourism authorities only verbally informed travel agencies with a deadline to affect the international cruises, and there were no written documents for each route cancellation.

Cruise ships require one to one and a half years in advance to deploy and sell routes in a region. The suspension forced cruise lines to redeploy routes, refund and change tickets, compensate and resolve disputes with tourists, and resell new routes to alternative ports, which completely disrupted the normal operation. As cruise lines have limited room for changes in the short term, the economic losses are significant. During the three years of COVID-19, international cruise lines have suffered from the business environment and profitability model in China's international cruise market. The cruise industry depends greatly on uncontrollable factors, including force majeure like the COVID-19

并且推动相关制造业引进、消化和吸收国外先进的设计、制造和供应链管理技术。例如中国船舶集团和嘉年华集团在中国首制大型豪华邮轮项目上的合作。邮轮建造被誉为造船工业皇冠上的一颗明珠，就像航天业的发展一样，可以助推制造业整体工艺技术的提升。国际邮轮还具有不可估量的社会价值，是沿海都市国际化的标志，丰富人民的幸福生活，推动中外文化和民意的交流。

一个国家的人口规模和收入水平是邮轮市场发展的必要但非充分条件。早在1968年日本就已成为世界第二大经济体，四十年来其邮轮市场止步不前。2019年日本人均GDP是中国的四倍，而其邮轮市场规模仅为中国的十分之一。邮轮是供给创造需求、运力创造市场的行业，同时又是高投入、高风险的行业，资金、技术和人才门槛高。中国邮轮市场的蓬勃发展得益于国家改革开放和鼓励外资的政策，地方政府在疫情爆发前的十余年里斥资200亿元，建造了9座邮轮专用码头，为邮轮市场的发展创造了良好的营商环境，鼓舞了国际邮轮行业头部企业的投资信心，使中国成为亚太地区邮轮资本、人才、技术等要素资源集聚的门户，这是中国邮轮行业发展史给我们最重要的启示。

### 营商环境的挑战

国际邮轮是过去三年最受重创的行业，中国是疫情爆发后第一个停运邮轮航线的国家，也是唯一至今没有复航的国家。虽然进入2023年防疫政策已做出重大调整，国务院联防联控机制从公共卫生的角度已撤销对邮轮运营的禁令。2022年12月27日，国务院应对新型冠状病毒感染疫情联防联控机制外事组发布《关于中外人员往来暂行措施的通知》，指出对国际邮轮，先开展试点，再逐步放开。然而，国际邮轮公司并未立即对禁令的解除做出积极的反应，立即恢复国际航线的运营，因为复航政策并未完全到位，国际邮轮公司仍对由于政策原因导致的营商环境的不确定性感到忧虑。

过去十余年共有五家知名国际邮轮品牌进入中国市场，已有三家在疫情前和期间退出市场，包括公主邮轮、诺唯真邮轮和歌诗达邮轮，主要原因是营商环境的挑战而对市场失去信心。现在仅存的两家包括皇家加勒比邮轮和地中海邮轮也因营商环境的挑战而信心受挫。国际邮轮公司主要因为政策原因面临两大挑战，一是行政决定对航线的冲击，二是市场准入问题。

### 多重行政管理对国际航线的干预

国际邮轮是易受外部环境因素如疫情、自然灾害、国际关系影响的行业，这是世界各地区邮轮市场的共性。然而中国市场的特点是政府在经济生活中的过多的行政干预会常常放大外部因素的影响。过去十年，除了新冠疫情，从中国出发的国际邮轮航线曾多次被前国家旅游局叫停，如2011年和2013年中日航线的叫停，2015年和2017年中韩航线的叫停，2017年韩国航线的叫停至今没有撤销。旅游主管部门每次叫停航线没有书面文件，只是口头传达到旅行社，限期停售叫停航线，通过旅行社禁令波及国际邮轮。

邮轮需要提前一年到一年半的时间在一个地区部署和售卖航线，叫停航线迫使邮轮公司重新部署航线、退票、改签、补偿、处理与游客的纠纷，然后重新售卖新的航线、重新寻找替代停靠部署航线，销售节奏被彻底打乱。由于邮轮公司在短期内回旋余地有限，经济损失惨重。疫情三年，国际邮轮公司对中国国际邮轮市场的营商环境和盈利模式进行了灵魂拷问。邮轮是看天吃饭的行业，疫情和自然灾害是不可抗力，让国际邮轮公司感到失望、忧虑、无助的是国际关系因素和行政决定对国际邮轮市场不可预测的影响。

虽然国际航空航线在同一时期也受到同样外部事件的影响，但由于国际航空公司的监管部门只是隶属交通部的中国民航管理总局，不受旅游主管部门政策的影响，所以民航航线仍在继续运营。但是国际邮轮航线的管理受制于交通运输和旅游主管部门的双重管理，高频次的航线叫停对中国国际邮轮市场的生存和发展是致命的。

### 建议

- **敬请国务院、交通运输部、文化和旅游部考虑：**参照管理国际航空航线的方法管理国际邮轮航线，避免行政命令对国际航线的过多干预。国际航空航线由交通运输部监管，国际邮轮航线的监管部门是交通运输部，同时受到文旅部出境游政策的制约。当由于自然灾害和国际关系事件发生时，国际航空业务也会受到影响，但由于国际航空公司的监管部门单一，影响范围和持续时间短，至少不

pandemic and other natural disasters. International cruise lines are disappointed and concerned at the unpredictable impact of international relations and administration decisions on the cruise market.

Although international airline routes have been affected by the same external events during that period, the routes continue to operate as the international airlines are only regulated by the General Administration of Civil Aviation of China under the Ministry of Transport and are not affected by the policies of tourism authorities. However, international cruise lines are subject to the dual management of the transport and tourism authorities. The high frequency of line suspension is detrimental to the survival and development of China's international cruise market.

### Recommendations

- AmCham China advocates for the State Council, the Ministry of Transport, and the Ministry of Culture and Tourism to consider adopting a management framework for international cruise lines that is similar to that of international air routes. This would involve avoiding excessive administrative intervention on international cruise lines. Currently, the State Ministry of Transport regulates international air routes while international cruise routes are subject to regulation by both the Ministry of Transport and the Ministry of Culture and Tourism's outbound travel policy. While both the international airline and cruise businesses may be impacted by natural disasters and international relations, the single regulatory authority for the former limits the scope and duration of such impacts, unlike the latter. The international cruise business is under the dual supervision of both the Ministry of Transportation and the Ministry of Culture and Tourism. The policies governing domestic travel agencies have been extended to international cruise lines, thereby amplifying the impact of force majeure events due to the Ministry of Culture and Tourism's policy. To ensure the stability of the international cruise industry, it is necessary to exclude the intervention of the Ministry of Culture and Tourism in international cruise lines. As long as international air routes between China and neighboring countries remain operational, international cruise lines should be allowed to continue operating. This issue is not only relevant to foreign international cruise lines but also impacts the survival and development of Chinese international cruise lines.
- Contemplate lifting the 5-year suspension of Korean routes by the Ministry of Culture and Tourism, as this move would offer a substantial boost to the industry. In contrast, the prospects of China's home

port cruise business experiencing healthy growth appear dim if the routes connecting two major international destinations remain suspended.

- The State Council's recent issuance of a document to allow foreign travel agencies to enter the outbound travel market, and the removal of the marketing of outbound products from the negative list for foreign companies, means that all foreign travel agencies, regardless of whether they are direct foreign investment companies or reinvestment companies in China, should be able to benefit from this open policy. In the international cruise industry, the marketing channel trend is primarily dominated by direct sales. The successful implementation of the opening-up policy and the issuance of outbound travel licenses are critical factors that will influence the confidence of international cruise lines in revitalizing their business in China. Therefore, it is recommended that the Ministry of Culture and Tourism and the Shanghai Bureau of Culture and Tourism work together to eliminate administrative barriers during the implementation process, resolve policy deadlocks, and facilitate the smooth execution of the opening-up policy and issuance of outbound travel licenses.
- While China has made significant strides in promoting tourism and opening up its economy to foreign investment, there are still issues of unequal treatment towards foreign hotel brands that need to be addressed regarding speed of licensing, ease of visa issuance, and cracking down on online consumer exposé campaigns targeting foreign brands only.
- Streamline the management of cruise lines under one Ministry and encourage greater regional travel opportunities by increasing flexibility of routes and issuing more outbound travel licenses for foreign firms.

会出现航线叫停的情况。而国际邮轮业务事实上受到交通部和文旅部的双重监管，监管国内旅行社的政策被扩展到国际邮轮公司，不可抗力事件由于文旅部政策因素被放大。为了确保国际邮轮公司有一个稳定的运营环境，应当排除文旅主管部门对国际邮轮航线的干预。只要中国与邻国的国际航空航线还在运营，就应当允许国际邮轮航线继续运营。这个问题不仅关系到外资国际邮轮公司，同时也关系到中资国际邮轮公司的生存和发展。

- **敬请国务院、文化和旅游部考虑：**国际邮轮停靠韩国航线已经叫停五年，建议文旅部考虑取消禁令，这对业界的信心将是一个巨大的提振。反之，两大国际航线目的地一地不能去，很难设想中国母港邮轮业务会有健康的发展。
- **敬请国务院、文化和旅游部考虑：**国务院已明确发文向外资旅行社开放出境游市场，出境游产品营销对外资已不属于负面清单，不管旅行社是外资直接投资还是在华外资企业再投资，都应可以享受开放政策。国际邮轮行业营销渠道结构的发展趋势是直销主导，出境游资质开放政策的落实关系到国际邮轮公司在华复苏业务的信心，建议文旅部和上海文旅局协调排除执行过程中的行政壁垒，解开政策死循环，落实出境游资质的开放政策。

# 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.

## Civil Engineering and Work at Height

Among the top five injuries in the construction industry, fall injuries from working at heights ranks first. Workplace falls are likely to cause serious personal injuries, even death. In order to reduce the negative impact of work-related injuries and deaths, the latest *Work Safety Law of the People’s Republic of China*, Chapter II (Safeguards for Work Safety of Business Entities), Article 51, requires that production and business

units must participate in industrial injury insurance in accordance with the law and pay insurance premiums for their employees. Production and business units belonging to high-risk industries and fields stipulated by the state shall apply for production safety liability insurance. These measures, on the one hand, can provide some guarantees for the compensation of work-related injury and accidents in enterprises. On the other hand, to prevent or reduce accidents in production in the insured enterprises and reduce the compensation risk, the insurance institution will also take certain technical measures to assist the insured in accident prevention. For example, training services can be provided to the insured enterprises, such as safe or compliance operation.

In national standards for fall protection, the updated standards (Fall Protections – Safety Belts) GB 6095-2021 also provides better protection for workers working at heights, with stronger protection equipment requirements. The new standard requires that full body harnesses must be used in fall arrest applications. Full body harnesses are designed in such a way that they significantly reduce the likelihood of severe injury or fall, compared to traditional belts and half-body harnesses. Full body harness can provide users with more reliable protection during the fall, alleviate the impact force during the fall, reduce the force on the waist and important organs, and distribute the impact force to the muscles that can bear the impact more, such as thighs or hips. In contrast, if a traditional belt is used, when a fall occurs, the person may slip out of the belt and fall. Even if the person does not slip and fall to the ground, the impact of the fall will cause serious damage to the waist or vital organs of the person, even death.

To sum up, it is recommended to strengthen the implementation and enforcement of the new *Production Safety Law* and the new national standards (Fall Protection - Safety Belts), to provide practical and reliable safety guarantee for workers working at heights.

## Enhance the Supervision and Management of Personal Protective Products

“Outline of the Healthy China 2030 Plan” in 2022 pointed out that the high incidence of pneumoconiosis and occupational poisoning should be curbed, the occupational health promo-

# 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安全法规来防控新冠疫情。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。

## 保障高空作业人员安全

在建筑行业的前五大伤害中，高处作业的坠落伤害居于首位。一旦发生坠落，通常会导致较为严重的人员伤害，甚至死亡。为了降低由于工伤或死亡带来的负面影响，最新的《中华人民共和国安全生产法》，第二章（生产经营单位的安全生产保障）第五十一条的要求：生产经营单位必须依法参加工伤保险，为从业人员缴纳保险费。属于国家规定的高危行业、领域的生产经营单位，应当投保安全生产责任保险。这些措施，一方面可以给企业的工伤事故赔付提供一些保障；另一方面，保险机构为防止或减少投保单位发生生产安全事故，降低赔付风险，也会通过一定的技术措施，协助投保单位开展事故预防工作。比如向投保单位提供安全操作或合规作业等培训服务。

在坠落防护的国家标准层面，GB 6095-2021（坠落防护 安全带）。标准的更新升级，也从坠落防护装备要求的方面给作业人员提供了更好的安全保障。新的标准要求：在坠落制动应用中，必须使用全身式安全带。相对于以往的腰带、半身式安全带，全身式安全带可以在坠落过程中给使用者提供更加可靠的保护，可以缓解坠落冲击力，减小人员腰部和重要器官的受力，把冲击力分散至大腿或臀部等更能承受冲击的肌肉群。反之，如果使用传统的腰带，当坠落发生时，人员可能从腰带中滑落发生坠落，即使人员不滑落跌落至地面，但坠落冲击力会给人员的腰部或重要器官造成较大的伤害，甚至导致死亡。

综上所述，建议加强宣贯及落实新《安全生产法》及新的《坠落防护安全带》国家标准，给高处作业人员提供切实可靠的安全保障。

tion work of employers should be carried out, and industrial accidents and occupational diseases should be prevented and controlled. In the prevention and control of manufacturing safety accidents and occupational diseases, personal protective equipment, as the last line of defense to protect workers, has played an important role. The management of personal protective equipment is also directly related to the incidence of industrial accidents and the incidence of occupational diseases.

In 2019, after the State Council canceled the management of industrial product production licensing for special labor protection equipment, it adopted in-process and post-event supervision as the means to regulate personal protection equipment. In combination with the inspection data published by local government departments in recent years, the main problems are: ❶ Most quality problems are related to masks. The main problems are the filtration efficiency and level of protection, some items not meeting GB standard requirements, and some products having low filtration efficiency for particles and therefore poor protective performance. ❷ The focus of spot-check on in-process and post-event supervision in various regions is mainly on masks and gas masks, while the spot-check and supervision on other types of personal protective equipment, such as harness, reusable respirators, and other products, are relatively infrequent. The overall quality of personal protective equipment in China still has much room for improvement.

In order to further improve the overall quality of China personal protective equipment and ensure the occupational safety and health of workers, it is recommended to model regulations after those of other developed countries, adopt government mandatory certification measures for personal protective equipment (such as the mandatory certification of particulate respirators by NIOSH in the United States), or strengthen the provision of authoritative third-party certification services recognized by the market and users, to improve the overall quality of personal protective equipment from the source. On this basis, strengthen the market supervision and legal penalties for all types of personal protective equipment, to provide reliable assurances for further reducing the incidence of industrial accidents and occupational diseases.

### Elevate performance and training level of firefighters' personal protective equipment

Firefighters' personal protective equipment (PPE) and accompanying training should ensure their safety and full combat effectiveness during each mission and also their long-term occupational health after retirement. To this end, PPE should have the highest possible fit and comfort to ensure ease of use and flexibility in various scenarios.

According to some survey feedback from grassroots commanders and information from professional channels

(for instance, research on firefighter's PPE by Tianjin Fire Research Institute), there are some common problems on the 18 sets of firefighters' PPE currently in use, including but not limited to: deficiencies in the design of individual product and insufficient compatibility between products. This can result in movement restrictions or straining against the equipment (caused by multifarious, excessive, or overly heavy equipment). For various reasons, some fire stations even cannot ensure one set of some primary equipment for each firefighter.

In addition, due to the lack of systematic training on PPE, firefighters are not familiar with all functions of the equipment. Some firefighters do not even understand the basic functions of the primary battle personal protective equipment they are using, including the operating procedures. Some firefighters place greater emphasis on completion time and speed of donning than on the proper procedures and outcomes, which directly affects the effectiveness of protective equipment.

Based on the above situation, from the consideration of people-oriented, high-quality, and safe development, we suggest that:

- Greater attention be paid to the voices of front-line rescuer commanders and fighters in the selection of main battle equipment. A way to obtain feedback from them should be established.
- Attention on the compatibility of PPE in order to maximize the effectiveness of each PPE item. Clear requirements on this point should be made in the national or industry standards for relevant products, and implementation should be enforced. Compatibility should also be considered from the design stage.
- PPE manufacturers' expertise should be leveraged to strengthen training on PPE theory and practice. Manufacturers, in cooperation with end user units, should establish a multi-dimensional training and assessment mechanism, so as to achieve the balance of ensuring combat effectiveness and the safety and health of firefighters in the long run.

### 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* has also been 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 recent years.

## 强化个人防护用品的监督管理

2022年《“健康中国2030”规划纲要》指出要遏制尘肺病和职业中毒高发势头，开展用人单位职业健康促进工作，预防和控制工伤事故及职业病发生。在安全生产事故及职业病的预防和控制中，个人防护用品作为保护工人的最后一道防线，发挥了重要的作用。个人防护用品管理水平也直接关系到工伤事故的发生率和职业病的发病率。

2019年国务院取消特种劳动防护用品的工业产品生产许可证管理后，采用了事中事后监管的方式对个人防护用品进行监管，结合这几年各地政府部门公布的抽查数据来看，主要问题有：① 抽查中经常会出现较多口罩类产品的质量，问题主要集中在过滤效率、防护效果等项目不符合标准要求，产品对颗粒物的滤除能力低，防护效果差。② 各地事中事后监管抽查的重点主要集中在口罩产品上，其它种类个人防护用品如安全带、防毒面具等产品抽查和监管的力度相对较弱。中国个人防护用品的整体质量仍然有很大的提升空间。

为了进一步提升中国个人防护用品的整体质量，保障工人职业安全健康，建议参考其它发达国家的实践经验，采取个人防护用品的政府强制性认证措施（如美国通过国家职业安全卫生研究所对颗粒物防护口罩的强制性认证），或加强提供被市场和广大用户认可的、具有权威性的第三方认证服务，从源头上提升个人防护用品的整体质量，在此基础上，加强各类个人防护用品的市场监管和违法处罚力度，为进一步降低工伤事故和职业病的发生率提供可靠的防护用品物质保障。

## 提升消防员个人防护装备的综合性能和培训水平，确保消防员的安全、战斗力和职业健康

消防员的个人防护装备（PPE）和相配套的培训应当确保其每次执行任务时的安全和战斗力的充分发挥及退役后的长期职业健康。为此，PPE应具备尽可能高的合适度和舒适度，以保证各种场景下的使用便利性和灵活性。

根据一些来自基层指战员调查反馈及专业渠道的信息（如天津消防研究所关于消防员个人防护装备的研究），目前在用的18件套消防员个人防护装备存在一些共性

的问题，包括但不限于：单个产品设计上的不足、各类产品之间的兼容性不够等造成单兵战斗力不能充分发挥或无用功偏多（比如装备杂、多、重）；甚至由于各种原因，有些消防站尚无法做到主战装备人手一套等。

另外，由于PPE的系统性培训不足，造成消防员对产品功能的熟悉程度不够（甚至部分消防员对其所用主战个人防护装备的基本功能不了解、操作程序有瑕疵等）；考核重时间和速度的多，重程序和效果的少，这直接影响了防护装备效能的发挥。

基于上述情况，从以人为本、高质量和安全发展的角度考虑，建议：

- 应当提高一线消防指战员在主战装备选用上的发言权，建立基层消防指战员信息反馈机制；
- 应当重视消防装备之间的兼容性，以便发挥各装备的最大效能，建议措施包括：各相关产品的国家或行业标准应对此提出明确的要求并确保得到落实；产品从设计阶段开始即应同步考虑这一问题等；
- 鼓励并充分利用装备生产企业的力量，加强基层使用单位的培训和实训，与使用单位协同建立多维度的培训考核机制，做到保障战斗力和保障消防人员安全健康的有机统一。

## 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格外重要。

## 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



The hazardous chemicals industry has 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 particularly 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 have developed international best practices.

### *Hazardous Chemical Storage*

Many provinces and cities are facing a shortage of hazardous chemical warehouse space resulting in unmet storage demand. 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. For one, 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 do not speak to each other the chemical industry faces unnecessary challenges in the transportation and storage of chemical substances. 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 seek to 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. (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 and 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 *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

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。

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和普通仓库。

这将允许化学行业以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

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 renovated (expanded), and more than 160,000 kilometers of rural roads were newly rebuilt.

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 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.

## 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.
- Elevate the overall performance and training level of firefighters' personal protective equipment to

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。

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段视认性，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。

- 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的<sup>1</sup>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。
- 提升消防员个人防护装备的综合性能和培训水平，确保消防员的安全、战斗力和职业健康

ensure the safety, combat effectiveness and occupational health.

- 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：区域性问题的**



# Northeast

## Introduction

In 2022, the Northeast region of China was met with a challenging situation, as it faced both the imperative of disease control and the need for industrial upgrading and relocation. Given the differences in control measures and industrial structures across the three provinces, there was a discernible gap in the economic growth rates. In the region, Heilongjiang Province registered the highest economic growth rate, achieving a GDP of RMB 1.59 trillion and a nominal growth rate of 6.86 percent, which was 1.56 percent higher than the national average. The service sector, which made up the largest proportion of Heilongjiang's economy at 48 percent, grew at a rate of 3.80 percent, providing crucial support for the province's overall economic growth.

Liaoning, the largest province in the Northeast region, had a GDP of RMB 2,897.5 billion in 2022. It is projected to become the first province in the Northeast to surpass RMB 3 trillion in 2023, with a nominal growth rate of 5.04 percent, which is close to the national average of 5.30 percent. The tertiary industry in Liaoning resembles that of Heilongjiang, and although the growth rate of the secondary industry has slightly decreased by 0.1 percent, the tertiary industry has grown by 3.40 percent, serving as the primary driver of the economy.

Jilin Province has consistently had the smallest economy and lowest ranking among the three provinces in Northeast China. In 2022, Jilin faced significant difficulties not only due to the longer period of disease control but also because of the decline in the automotive industry, which is a pillar industry for the province. As a result, the economy experienced negative growth, with a nominal growth rate of -1.24 percent. The secondary industry suffered the most severe decline, with an actual growth rate of -5.10 percent, rendering the industrial economy sluggish.

## Business environment for foreign companies

In 2022, the Northeast region of China continued to attract substantial investments, indicating the positive changes in the business environment. Notably, Heilongjiang province saw the completion and operation of the Lianshun Green Biomedical Industry Project, which had a total investment of over RMB 12 billion. Additionally, Changchun began construction on the Audi FAW New Energy Vehicle Project, with an investment exceeding RMB 30 billion, while Shenyang witnessed BMW Brilliance's announcement of a new power battery project with an investment of approxi-

mately RMB 10 billion.

In Liaoning province, the focus was on effectively connecting with RCEP and constructing the Northeast Land-Sea Corridor, leading to a 27.7 percent growth in China-Europe freight trains and a 4.7 percent growth in sea-rail intermodal transportation. Several cities, including Shenyang, Dalian, Dandong, and Yingkou, were approved as national-level foreign trade transformation and upgrading bases, while Anshan became a cross-border e-commerce comprehensive experimental zone. Additionally, Dandong Port and Huludao Port expanded their opening with approval from the State Council, and Yingkou Economic and Technological Development Zone became a national-level import trade promotion and innovation demonstration zone. The pilot free trade zones were constructed at a high level, and the Taiping Bay Cooperation and Innovation Zone saw new progress.

The 2022 Liaoning Fair was productive, and the 9th China-Central Asia Cooperation Forum was successfully held. Economic and trade negotiations with South Korea and Japan yielded positive results, and investment promotion weeks were conducted in the Pearl River Delta, Yangtze River Delta, and Beijing-Tianjin-Hebei region, deepening cooperation between Jiangsu-Liaoning, Beijing-Shenyang, and Shanghai-Lianyungang. The actual amount of investment attracted increased by 19.2 percent, and the actual use of foreign capital increased by 89.5 percent, achieving significant outcomes in building a new pattern of high-level opening up.

Jilin province has been fully committed to stabilizing foreign investment and trade, organizing over a hundred foreign economic and trade exchange activities, and successfully establishing open platforms such as the Changchun Import Trade Innovation Demonstration Zone, the Hunchun Market Procurement Trade Pilot, and the Yanji Cross-border E-commerce Comprehensive Pilot Zone. The province's foreign trade import and export has grown by 3.6 percent, with exports growing by 42.1 percent, ranking fifth in the country in terms of growth rate and surpassing the national average by 31.6 percentage points. Furthermore, the province's cross-border e-commerce import and export has grown by 68.1 percent.

On the Heilongjiang side, the province's average annual growth rate of import and export trade is 15.6 percent, with an average annual growth rate of 20.1 percent in import and export trade with Russia. The China-Russia Eastern Gas Pipeline has been officially put into use, and the establish-

# 东北地区

## 引言

2022年，中国东北地区面临着复杂形势，一方面要满足疫情防控要求，另一方面又有着产业升级和转移需求。由于东三省在疫情防控措施和产业结构上的差异，在经济增长率上也存在着明显差距。在东北地区，黑龙江省经济增长率最高，国内生产总值达到1.59万亿元，名义增长率为6.86%，比全国平均水平高1.56%。服务业在黑龙江经济中占比最大，为48%，增长率为3.80%，成为该省整个经济增长的关键支柱。

辽宁作为东北地区经济体量最大的省份，2022年GDP达到28,975亿元。预计到2023年，辽宁将成为东北地区第一个GDP突破3万亿元的省份，名义增长率为5.04%，接近全国平均水平5.30%。辽宁的第三产业与黑龙江相似，虽然第二产业的增长率略微下降了0.1%，但第三产业增长了3.40%，成为经济发展的主要动力。

吉林省在中国东北三省中，经济规模一直最小，排名最低。2022年，吉林省陷入疫情长期防控和汽车行业不景气带来的巨大困境，而汽车行业一直以来都是该省的支柱产业。经济出现负增长，名义增长率为-1.24%。第二产业的下滑最为严重，实际增长率为-5.10%，工业呈现萧条之象。

## 营商环境

2022年，中国东北地区继续大力吸引投资，体现了当地营商环境的不断改善。值得注意的是，黑龙江省的联顺生物科技有限公司绿色生物医药产业项目竣工投产，该项目总投资超过120亿元。此外，长春市开始建设奥迪一汽新能源汽车项目，投资超过300亿元，而在沈阳市，华晨宝马宣布投资约100亿元的新动力电池项目。

辽宁省将重点放在了有效对接RCEP和建设东北陆

海通道上，中欧货运列车运力增长27.7%，海铁联运增长4.7%。沈阳、大连、丹东、营口等多个城市批准成为国家级外贸转型升级基地，鞍山成为跨境电商综合实验区。此外，丹东港和葫芦岛港经国务院批准扩大开放，营口经济技术开发区成为国家级进口贸易促进和创新示范区。高水平建设自由贸易试验区，太平湾合作创新区取得新进展。

2022年辽洽会成果丰硕，第九届中国-中亚合作论坛成功举办。日韩经贸谈判取得积极成果，在珠三角、长三角、京津冀地区开展招商周活动，深化江苏-辽宁、北京-沈阳、上海-连云港合作。实际引资额增长19.2%，实际利用外资增长89.5%，在构建高水平对外开放新格局方面取得重大成果。

吉林省全力稳外资稳外贸，组织百余场对外经贸交流活动，长春进口贸易创新示范区、珲春市场采购贸易方式国家试点、延吉跨境电商综试区等开放平台成功获批。全省外贸进出口增长3.6%，其中出口增长42.1%，增速位居全国第五，高出全国31.6个百分点。此外，全省跨境电商进出口增长68.1%。

黑龙江省进出口贸易年均增长15.6%，对俄进出口贸易年均增长20.1%。中俄东线天然气管道已正式投入使用，中国（黑龙江）自由贸易试验区获批成立。龙广与深哈合作继续深化，深哈产业园区作为产业聚集地，发挥了重要的示范效应。

尽管东北三省及其主要城市都在积极谋求进一步发展，但目前尚未取得实质性的政策突破。为进一步优化营商环境，有效吸引外资和人才，建议重点关注以下问题并出台相关解决方案。

## 调查结果和建议

中国东北地区一直在积极寻求更大发展，优化商业

ment of the China (Heilongjiang) Pilot Free Trade Zone has been approved. The cooperation between Longguang and Shenzhen-Harbin continues to deepen, with the Shenzhen-Harbin Industrial Park serving as a carrier for gathering industries and exerting a significant demonstration effect.

Although the Northeastern provinces and their major cities are actively seeking further development, no substantial policy breakthroughs have been made yet. To further optimize the business environment and effectively attract foreign investment and talent, it is recommended to focus on the following issues and introduce relevant solutions.

## Findings and recommendations

Northeast China has been actively seeking further development to optimize its business environment and attract foreign investment and talent. However, there are several issues that need to be addressed to achieve this goal. Here are some suggestions to improve the business environment in Northeast China.

### *Issue 1: Foreign Community Relations*

Foreign entities in second tier cities of Northeast China have difficulty sustaining relations, leading to reduced innovation and economic progress. One solution could be increasing official cooperation with organizations such as AmCham China or creating government-sponsored organizations focused on international business, similar to Beijing's IBLAC. Furthermore, local governments could allow for vetted foreign nationals of good standing, such as green card holders, to join as international advisors in local government level organizations such as CPPCC.

### *Issue 2: Education and Career Opportunities*

Although there has been a positive change in post-COVID zero policy practices, schools and education institutions in Northeast China struggle to attract replacement international teachers and commercial employees. Local governments could provide support and incentives for international enterprises that contribute positively to Chinese commercial business endeavors, providing opportunities for intercultural engagement for international families and their children. Additionally, investing in international-style and quality-level medical resources and promoting academic cooperation with foreign business communities could enhance the region's attractiveness for potential international clientele. Local governments could also encourage innovation and critical thinking from a young age through inclusive and diversified curriculums and promote academic cooperation with foreign business communities to enhance local university programs in economics or business.

### *Issue 3: Non-Payment and IP Theft Concerns*

Non-payment issues and unwritten demands for subcontractors and bidders to localize their production to win contracts affect foreign firms' willingness to do business in Northeast China. Local government could regulate bidding contracts to

not disadvantage foreign firms based on domestic manufacturing preferences and demands. Additionally, local authorities could play a bigger role in liaising with Northeast China firms and SOEs to encourage them to honor their contracts and resolve commercial payment disputes. Strengthening the enforcement of IP and trademark rights could set Northeast China apart as a differentiator for foreign trade and investment.

### *Issue 4: Limited Career Opportunities*

High-tech industry and overall service domains in Northeast China have limited career opportunities, and total rewards and compensation are not competitive compared to East or South China. Local government could enhance investment in relative industries to offer attractive positions continuously and drive competitive reward and recognition programs for talent acquisition, including but not limited to individual income tax deduction, refund, and housing fund.

In conclusion, addressing these issues can help Northeast China further optimize its business environment and attract foreign investment and talent. By implementing these solutions, local governments can create a more competitive and attractive business environment for both domestic and foreign entities.

## Ongoing Issue

### *Health Care for Expatriates*

The Northeast Chapter of the American Chamber of Commerce in China has reported a significant increase in demand for medical treatment from investors, foreign friends, and members of the public who hold international commercial medical insurance in the northeast region. As pandemic controls are lifted and more foreigners return to major cities in the region, this demand is expected to continue to rise.

To meet this demand, we suggest that local hospitals establish VIP sections or international departments that can provide additional services to help foreign patients navigate the unfamiliar medical system. It is also important for local governments to coordinate the formation of international supporting teams that can facilitate clear communication between expatriate patients and local hospitals' doctors and nurses, especially in emergencies. Bilingual hotlines should also be promoted through various channels to provide easy access to medical support for foreigners.

The availability of international medical resources is a crucial factor in attracting foreign investment, as it helps to eliminate concerns about language barriers in medical treatment, especially in first aid, and ensures that foreigners receive emergency and proper treatment when necessary. Therefore, it is in the interest of local governments to invest in the necessary infrastructure and resources to provide high-quality medical services to the international community in the northeast region. This will help to attract more foreign investment and talent to the region, which will contribute to its overall economic growth and development.

环境，吸引外资和人才。然而，实现这一目标，还有待解决一些问题。以下是针对改善中国东北地区商业环境的建议。

### 问题 1：与外商投资企业的关系

中国东北地区的二线城市往往难以维持其与外资企业的关系，导致创新不足、经济停滞。一个解决方案是，当地政府加强与诸如中国美国商会（以下简称商会）等组织的合作，或者创建由政府赞助的国际商业组织，类似于北京的 IBLAC。此外，地方政府可允许通过审查的外国公民，如绿卡持有者，作为国际顾问加入地方政府层面的组织，比如政协。

### 问题 2：教育和就业机会

虽然中国不断调整疫情防控措施，但在中国东北地区，学校和教育机构在吸引国际教师和企业雇员上仍有困难。对为中国经济做出积极贡献的外企，地方政府可为其提供支持及奖励，为外商家庭和子女提供跨文化交流的机会。另外，投入国际化优质医疗资源，促进与外商业界的学术合作，也可增强对潜在国际客户的吸引力。地方政府还可通过提供包容性和多样化课程，鼓励从小培养创新和批判性思维，并促进与外商业界的学术合作，以提升本地大学经济或工商专业。

### 问题 3：对拖延欠款和盗用知识产权的担忧

拖延欠款以及招标时对分包商和投标人提出将生产本地化的不成文要求导致外国公司对在中国东北地区开展业务态度犹豫。地方政府可对招标合同进行监管，避免外国公司由于对国内制造业的“保护主义”倾向而受到不公平对待。此外，地方政府应加强与当地企业和国企的沟通，鼓励其履行合同，解决商业支付纠纷。加强对知识产权和商标权的执行力度，使中国东北地区在外贸和投资方面具备区别于他的优势。

### 问题 4：有限的就业机会

东北地区高新技术产业和整体服务领域的就业机会有限，与华东或华南地区相比，总收入和报酬没有竞争力。地方政府可加强对相关产业的投资，持续提供有吸引力的岗位，并出台有竞争力的奖励与表彰措施，以吸引人才，包括但不限于减免个人所得税、个税返还和住房公积金。

总之，解决这些问题可以帮助中国东北地区进一步优化商业环境，吸引外资和人才。通过实施这些解决方案，地方政府可为国内和国外实体创造更具竞争力和吸引力的商业环境。

## 持续存在的问题

### 外籍人士医疗保障

据商会东北办公室的观察，在东北地区享有国际商业医疗保险的投资者、外国友人和公众的医疗需求大幅增加。随着疫情防控政策放开以及越来越多的外国人返回到东北地区，预计医疗需求还将继续上升。

为满足这一需求，商会建议当地医院设立 VIP 科室或国际医疗部，帮助外籍患者适应不熟悉的医疗环境，为他们提供更多医疗服务。地方政府应协调组建专业支持团队，协助外籍患者与医生护士间无障碍沟通，特别是在急诊情况下。另外，还需通过各种渠道推广双语热线，为外籍人士提供便捷的医疗支持。

享有国际医疗资源是吸引外资的关键因素，有助于消除对医疗救治上语言障碍的担忧，确保外籍人士在必要时得到紧急和适当治疗。因此，投资必要的基础设施和资源，为东北地区的外籍人士提供高质量医疗服务，符合地方政府利益，也将有助于吸引更多外资和人才，促进东北地区经济的繁荣和发展。

# AmCham Shanghai

*Thank you to the team at AmCham Shanghai for preparing this regional analysis for AmCham China's 25<sup>th</sup> Annual White Paper.*

## Introduction

The year 2022 presented a distinct set of challenges for Shanghai. The city underwent a widespread lockdown from March 28 to May 30, which was further compounded by sporadic lockdowns in various communities and districts. These restrictions had a significant and lasting impact on businesses for over two months, with the industrial output experiencing a sharp decline. Moreover, the mandatory testing requirements and travel restrictions imposed during this time further limited consumption. Even after the lockdown was lifted, the lingering uncertainty surrounding COVID-19 caused consumers to exercise caution in their spending. As a result, Shanghai's economy experienced a considerable downturn. According to the Shanghai Statistics Bureau, industrial output in March 2022 — before the official lockdown began — was RMB 326.6 billion, down 7.7 percent from the previous year. By April, industrial output had plummeted 61.6 percent year-on-year to RMB 136.4 billion, before recovering slightly in May to RMB 246.7 billion (-28.3 percent y-o-y) as closed-loop set-ups allowed some businesses to resume operations. Consumption followed a similar trend, sinking from RMB 123.1 billion in March (-18.9 percent y-o-y) to RMB 71.7 billion in April (-48.3 percent) before edging up to RMB 94.82 billion (-36.5 percent) in May.

Despite the challenging circumstances posed by the city-wide lockdown, Shanghai's economic vitality allowed for a steady recovery after the lockdown was lifted. Although COVID uncertainty made consumers cautious, the Shanghai government took active measures to stabilize growth and economic indicators showed signs of improvement toward the end of the year. Despite a 5.7 percent decrease in Shanghai's GDP in the second quarter of 2022 compared to the previous year, the rate of decrease moderated to 1.4 percent for the first three quarters overall. In 2022, Shanghai maintained its position as the largest economy of any Chinese city, with a total GDP of RMB 4.5 trillion (down 0.2 percent from 2021) and per capita GDP of RMB 178,000. Furthermore, Shanghai's export and import volume reached RMB 10.4 billion, up 3.2 percent from 2021.

By December, Shanghai's industrial output surged to RMB 406.9 billion, which was down by 8 percent year-on-year. However, the industrial output in strategic emerging indus-

tries, such as information technology, biotech, and new energy, grew by 5.8 percent year-on-year in 2022, reaching RMB 1.7 trillion, as specified in the 14th Five-year Plan. In the services sector, Shanghai's financial industry grew by 5.2 percent to RMB 862.6 billion, while the information communication and technology sector grew by 6.2 percent to RMB 378.9 billion.

Overall, consumption decreased by just 9.1 percent in 2022, and average disposable income increased by 2.0 percent from 2021, amounting to RMB 79,610. Retail sales amounted to RMB 1.6 trillion. To promote the introduction of new products, Shanghai launched a plan that resulted in the opening of 1,073 flagship stores or concept stores in 2022, which is a nationwide-high.

Utilized foreign capital reached RMB 23.96 billion, up 0.4 percent from 2021. After bottoming out in early 2022, the number of foreign direct investment projects rebounded from a combined 42 projects in April and May to 788 projects in November and December. Another 60 multinational corporations opened regional headquarters in Shanghai, bringing the total to 891. The number of foreign-funded research and development centers increased by 25, reaching a total of 531 in 2022.

## Consumption boost

The role of consumption in Shanghai's economic development cannot be overstated. The 14th Five-year Plan's 3+6 industrial system, a blueprint for manufacturing development, has for the first time included fashion and consumer products as one of the six key industry clusters. This inclusion underscores the importance of these sectors as foundations for industrial growth, alongside the three leading industries of integrated circuits, biomedicine, and artificial intelligence.

In response to the economic downturn caused by COVID and in line with national guidance, the Shanghai government has ramped up its policy efforts to boost consumption, promote market development, and strengthen both domestic and international demand. Measures to promote international demand focus on improving convenience for international travelers, including easier access to Chinese visas and more payment methods, as well as tax-free shop-

# 上 海

感谢上海美国商会团队为中国美国商会第 25 期年度白皮书准备了这份区域分析报告。

## 引 言

**对** 上海来说，2022 年是不寻常的一年。从 3 月 28 日到 5 月 30 日的全市封控，加上前后各社区和行政区的零星封控，连续两个多月的时间里，企业发展受到了严重影响。除了产业产值受到严重影响外，消费也因核酸检测要求和出行限制大大减少。即使在解除封控后，新冠疫情的不确定性也使消费者持谨慎态度。结果是，上海经济遭受了严重衰退。根据上海市统计局的数据显示，2022 年 3 月（正式封控开始前）的产业产值为 3266 亿元人民币，比上一年下降了 7.7%。截至 4 月，产业产值同比下降 61.6%，下降至 1364 亿元人民币，5 月略有回升，回升至 2467 亿元人民币（同比下降 28.3%），原因是闭环管理使部分企业得以恢复运营。消费也呈类似趋势，从 3 月份的 1231 亿元人民币（同比下降 18.9%）下降到 4 月份的 717 亿元人民币（同比下降 48.3%），5 月份小幅上升至 948.2 亿元人民币（同比下降 36.5%）。

尽管如此，上海自身的经济活力助力其经济在解除封控后稳步复苏。此外，虽然“清零”政策一直持续到 12 月，但上海市政府齐心协力稳定经济增长，使经济指标在年底前有所好转。例如，尽管上海 2022 年第二季度的 GDP 与 2021 年相比下降了 5.7%，但前三个季度的整体降幅放缓至 1.4%。上海 2022 年全年 GDP 总额为 4.5 万亿元人民币（比 2021 年下降 0.2%），人均 GDP 为 17.8 万元人民币，仍是中国所有城市中最大的经济体。进出口额达到 104 亿元人民币，比 2021 年增长 3.2%。

截至 12 月，产业产值激增至 4069 亿元，同比下降 8%。2022 年，战略性新兴产业（“十四五”规划）——信息技术、生物技术和新能源等产业产值同比增长 5.8%，达到 1.7 万亿元人民币。服务业方面，上海金融

业增长 5.2% 至 8626 亿元人民币，信息通信与技术增长 6.2% 至 3789 亿元人民币。

全年消费仅下降 9.1%。平均可支配收入较 2021 年增长 2.0% 至 79610 元人民币。零售额达 1.6 万亿元人民币。作为上海鼓励推出新产品计划的一部分，2022 年在上海开设了全国最高级别的 1073 家旗舰店或概念店。

外资利用达 239.6 亿元人民币，比 2021 年增长 0.4%。外国直接投资项目数量在 2022 年初触底后，从 4 月和 5 月的 42 个项目反弹至 11 月和 12 月的 788 个项目。另有 60 家跨国公司在上海开设了地区总部，总数达到 891 家。外资研发中心数量增加了 25 个，2022 年总数达到 531 个。

## 消费增长

长期以来，消费一直是上海经济发展的关键。在上海市“十四五”规划中详述的制造业发展蓝图——3+6 产业体系中，时尚类和消费类产品首次被纳入六大重点产业集群之一。这一纳入意味着，时尚类和消费类产品与三大主导产业（集成电路、生物医药和人工智能）一起，将成为产值增长的基础。

在国家指导下，特别是为了应对新冠疫情造成的经济衰退，上海市政府加大了提振消费、促进市场发展和加强国内外需求的政策力度。促进国际需求的措施侧重于为国际旅行者提供更多便利化的服务，例如让他们更容易获得中国签证、为他们提供更多的付款方式，以及在国际游客经常光顾的旅游景点、酒店和其他场所提供免税购物。同时，在 2022 年 5 月的《上海市加快经济恢复和重振行动方案》中，上海强调了从以下四个方面来提振消费：① 为购买汽车、家电等大件物品提供政府补贴；② 建设多用途仓库和其他配送基础设施，以适应供应链需求；③ 推出购物节和促销活动，创造新的购物

ping at tourist spots, hotels, and other facilities frequented by international tourists.

Furthermore, Shanghai's May 2022 *Action Plan to Facilitate Economic Recovery* emphasized four aspects to boost consumption, including providing government subsidies for big-ticket purchases such as automobiles and home appliances, building multi-purpose warehouses and other distribution infrastructure to accommodate supply chain needs, introducing shopping festivals and promotional events to create new shopping trends, and supporting the development of the tourism, sports, and cultural industries through a mix of subsidies and loans.

Building on last year's momentum, the Shanghai government is continuing to focus on consumption to fuel economic growth. The January 2023 *Action Plan to Boost Confidence, Expand Demand, and Promote Growth Stabilization* aims to encourage consumption through activities such as festivals, cultural events, and exhibitions. Subdistricts have also announced specific plans to boost consumption, such as the Xuhui district government's monetary rewards of up to RMB 5 million for qualified companies setting up headquarters in Xuhui and up to RMB 10 million for creating new sales models or forms, following the municipal government's initiative.

## Digital economy

As one of the rapidly expanding sectors in the country, the digital economy in China has witnessed a significant increase from RMB 11 trillion in 2012 to RMB 45 trillion in 2021. In the wake of last year's lockdowns, Shanghai's digital economy played a crucial role in mitigating the adverse effects. During the first half of 2022, the value added in the information communication, software, and information technology grew by 5.3 percent year-on-year. Moreover, the revenue generated by the digital economy between January and May of the current year saw a remarkable growth of 8.0 percent, compared to a decline of 1.3 percent in Shanghai's aggregate above-scale service sector (which comprises companies with an annual revenue above RMB 20 million). In the same period, the integrated circuit industry witnessed a growth of 13.3 percent, while artificial intelligence grew by 14.7 percent.

The Shanghai government has recognized the immense potential of this industry and has outlined a 14th Five-year Plan for the Digital Economy in July 2022. The plan has set a target of increasing the GDP of Shanghai's digital economy by RMB 3 trillion and elevating its share of GDP to 60 percent by the end of 2025. The plan comprises several measures, including expanding the scope of new industries included in the digital economy, such as digital health, intelligent manufacturing, low-carbon energy, digital retail, digital finance, and intelligent city. Another measure is to cultivate new elements of the data economy, including data-related products and services, digital content, digital trades, digital design, and digital

security. The plan also focuses on improving the digital new infrastructure, such as software and algorithms, cloud and intelligent computing, new-generation internet, blockchain, and the metaverse. Additionally, the plan aims to establish intelligent new terminals, such as intelligent and connected vehicles, intelligent commercial terminals, intelligent household appliances, and intelligent medical devices. The government will empower digital enterprises by identifying and promoting industry leaders and high-growth companies and facilitating resource-sharing. The plan also includes the establishment of dedicated areas for digital economy development. To achieve these objectives, Shanghai will provide hardware and software infrastructure, policy support, and financial assistance.

## Reform and opening

Shanghai has made significant progress in enhancing its business environment and expanding market access for foreign enterprises. The city has implemented various policy measures to reduce administrative burdens and remove market barriers for foreign investment. For instance, the Negative List for Foreign Investment Access in Pilot Free Trade Zones has been substantially reduced from 190 restrictions in the initial version in 2013 to just 27 in 2022. Moreover, the *Method to Further Open Up the Service Sector in Shanghai* aims to promote a more flexible and institutionalized environment for foreign businesses. The policy seeks to improve market entry rules, establish a legal mechanism for resolving international business disputes, and enhance protection of intellectual property rights and other confidential data.

The *Procedures on the Administration of Approval and Filing of Foreign Investment Projects* has also streamlined administrative processes, such as removing the need for financial reports and proof of funds during the approval process. Digitalization has also made the filling and approval process more efficient, benefiting both foreign and domestic companies. Other policy efforts such as the *Notice on Streamlining the Government, Delegating Power, and Improving Government Services and the Measures to Lower Administrative Costs and Promote Energy of Market Entities* aim to improve regulatory efficiency and government services, and simplify administrative processes further.

These policy measures reflect Shanghai's commitment to reform and opening up, and are designed to boost foreign companies' confidence in investing in the city. The city's ongoing efforts to improve its business environment are critical to retaining foreign businesses' interest in the region. The 2022 *China Business Report* survey showed a record-low 55 percent of member companies were optimistic about the five-year business outlook in China, compared to 78 percent in the previous year. Despite the recent relaxation of zero-COVID measures, Shanghai's continuous commitment to reform and opening up remains an essential factor in attracting foreign investment.

趋势；④通过补贴和贷款的组合政策支持旅游、体育和文化产业的发展。

继去年的势头之后，上海市政府继续侧重在消费领域推动经济增长。2023年1月的《上海市提信心扩需求稳增长促发展行动方案》旨在通过节日、文化活动和展览等活动促进消费。在上海市政府的倡议下，街道也宣布了促进消费的具体计划。例如，徐汇区政府宣布，符合条件的企业在徐汇区设立总部可享有最高500万元人民币的奖励，创造新销售模式或形式的可享有最高1000万元人民币的奖励。

## 数字经济

数字经济是中国发展最快的产业之一，其全国规模从2012年的11万亿元人民币增长到2021年的45万亿元人民币。上海的数字经济缓解了去年封控的部分影响；2022年上半年，信息通信、软件和信息技术的增加值同比增长5.3%。1月至5月，数字经济收入比2021年同期增长8.0%，明显好于上海规模以上服务业企业（服务业中年收入超过2000万元人民币的企业）1.3%的下滑。同期，集成电路产业产值增长13.3%，人工智能产业产值增长14.7%。

上海市政府在2022年7月发布的《上海市数字经济发展“十四五”规划》中强调了该行业的增长潜力。该规划的目标是到2025年底，上海数字经济的GDP增加3万亿元人民币，并将其占GDP的比重提高到60%。具体措施包括：①通过鼓励发展数字健康、智能制造、低碳能源、数字零售、数字金融、智慧城市等领域，拓展数字经济新产业；②培育数字经济的新要素，包括数据相关产品和服务、数字内容、数字贸易、数字设计和数字安全；③完善软件与算法、云计算和智能计算、新一代互联网、区块链、元宇宙等数字化新基础设施；④建设智能网联汽车、智能商用终端、智能家电、智能医疗设备等智能新终端；⑤通过识别和提拔行业领导者和高增长公司以及促进资源共享来增强数字企业的能力；⑥确定数字经济发展领域。为实现上述目标，上海将提供硬件和软件基础设施、提供政策和财政方面的支持。

## 改革开放

上海逐步扩大了对外资企业的市场准入，不断改善营商环境。2022年生效的《自由贸易试验区外商投资准

入特别管理措施(负面清单)》对外商投资只有27项限制，而2013年发布的第一版有190项限制。在市级层面，《上海市新一轮服务业扩大开放若干措施》提出，要加强政策支持和改善制度环境，消除外商的市场准入壁垒，如为外商提供更灵活的市场准入规则，建立解决国际企业纠纷的法律机制，加强知识产权、版权、商业信息和其他数据的保护。

上海市政府还实施了减轻外商行政负担的政策，例如2021年12月发布的《上海市外商投资项目核准和备案管理办法》。《上海市外商投资项目核准和备案管理办法》明确删减了审批所需的文件，删除了财务报告、资金证明等项目。申请过程也已数字化，加快了项目进展。国内外公司的填写和审批流程相同（负面清单所列项目除外）。同时，上海印发了《上海市深化“放管服”改革工作要点》的通知，努力精简行政程序，提高监管效率和公正性，提升政府服务水平。同时，《上海市2022年优化营商环境十大重点事项》以海关检查和清关、跨境资金、信用修复以及税务和社会保障相关处理等问题为抓手。类似的政策措施包括《关于进一步降低制度性交易成本更大激发市场主体活力的若干措施》，进一步简化了行政程序。

这些政策措施代表了新的市场改革努力，旨在增强外国企业在上海的信心。在上海美国商会去年7月至8月进行的《2022年中国商业环境报告》调查中，55%的会员公司对中国五年商务前景持乐观态度，而上一一年这一比例为78%，创历史新低。尽管新冠疫情“清零”的结束大概率会改善外国公司对商业前景的态度，但当地政府承诺坚持改革开放的举措仍然至关重要。

## 长三角地区

自2018年长三角一体化发展升级为国家级战略以来，上海市政府等长三角地区的政府一直以促进融合发展的政策为核心。截至2022年，长三角地区41个城市可评估138种居住服务，包括自2022年10月起在户籍地以外的城市发放身份证，24亿人获得了长三角社保卡。发展基础设施也增强了长三角地区的连通性；截至2022年，长三角地区高速铁路运营里程为6542公里，比2018年增长54.7%。2021年长三角自贸试验区联盟的成立也促进了区域经济合作。2021年，上海、江苏、浙江和安徽的进出口额达3.1万亿元人民币，占中国自



## Yangtze River Delta area

Since the integrated development of the Yangtze River Delta (YRD) was upgraded to a national-level strategy in 2018, the Shanghai and other YRD governments have emphasized policies to facilitate the integration. As of 2022, 138 types of residential services can be assessed across the 41 cities in the YRD area, including since October 2022 the issuance of ID cards in cities other than where someone has household registration, and 2.4 billion people have obtained YRD social security cards. Infrastructure development has also improved connectivity; as of 2022, there are 6,542 kilometers of operational high-speed railway in the YRD, a 54.7 percent increase from 2018. The establishment of the YRD Pilot Free Trade Zone Alliance in 2021 has also boosted regional economic cooperation. In 2021, exports and imports for Shanghai, Jiangsu, Zhejiang and Anhui amounted to RMB 3.1 trillion, or 46.2 percent of the total trade volume of China's free trade zones. The region's utilized foreign capital reached RMB 1.0426 trillion, or 48.9 percent of the total for free trade zones nationwide.

## Five new cities

The *Shanghai Master Plan 2017-2035* specifies the development of five new “nodal cities” — Jiading, Songjiang, Qingpu, Fengxian and Nanhui — that will serve as centers of public infrastructure for the region and provide specific international functions such as manufacturing, transportation and exhibitions. In the *Fourteenth Five-year Plan for the New Cities*, the Shanghai government targets a combined GDP of RMB 1.1 trillion and 3.6 million residents for the five new cities. To maximize the utility of the new cities, the plan encourages industries to concentrate according to specific features of each new city. For instance, as a traffic hub between Shanghai and Nanjing, Jiading will serve as a trial zone for intelligent transportation with an industrial focus on new energy vehicles, intelligent sensors and other related technologies. With easy access to Hongqiao Airport and Hongqiao Train Station, Qingpu will focus on exhibition activities, culture, tourism, and other green industries. Besides industry development, Shanghai will also develop more public infrastructure such as hospitals, transportation and schools to accommodate residents' needs. By 2035, the local government will also roll out a comprehensive talent acquisition policy that includes housing and social securities to attract more people to settle in the new cities.

## Talent acquisition

Shanghai attracts the highest number of foreign talents — high-end or otherwise — of any Chinese city. According to the Shanghai government, between April 2017 and the end of 2022, the city issued over 370,000 foreigner work permits, of which 71,000 were Type A permits for high-end talents. Yet as host to a vast number of multinational firms and

regional headquarters, Shanghai suffers a shortage of foreign talents, which was exacerbated during the three years of zero-COVID. Shanghai has taken measures to encourage more foreign workers, such as streamlining the administrative process for foreigners to get work permits; the *Notice to Improve Work Permit Approval for Foreigners* released in 2021, introduced three major changes, namely a greater number of visas available for high-end talents, waiver of the non-criminal record, and the addition of a fast-track “green” channel for special talents in designated key industries.

Despite the recent policy improvements, high living costs, household registration requirements and severe limitations on visa applications during the pandemic have made it difficult for companies to attract suitable talents — foreign or Chinese. The impending removal of non-taxable treatment on benefits such as children's education in January 2024 will also severely impact the ability of foreign companies to attract or retain high-level talent. In addition, as other cities roll out talent support policies, Shanghai policy risks losing its competitiveness when it comes to local talent, particularly new graduates. In Suzhou, for example, recent graduates can receive monthly rent subsidies up to RMB 800 for their first three years in the city, while “in-demand” talents can receive one-time subsidies of RMB 120,000. In Hangzhou, recent graduates can receive up to RMB 50,000 in subsidies when they change their hukou to Hangzhou (RMB 10,000 for undergraduates, RMB 30,000 for graduates, and RMB 50,000 for doctorates). In addition to rent subsidies, Hangzhou also provides funds of up to RMB 1 million for high-end talents to purchase homes. Nanjing similarly provides monthly rental subsidies for the first three years — RMB 600 for those with undergraduate degrees, RMB 800 for those with master's degrees, and RMB 2000 for those with doctorates. Up to RMB 2 million in house-purchasing funds is also provided for high-end talents.

## Recommendations

### *To the Shanghai Municipal Government*

- Provide more talent incentives such as rental and home purchase subsidies

### *To the Chinese Government*

- Extend the non-taxable benefits for expatriate employees
- Facilitate the quicker issuance of visas for foreign students and workers

由贸易区贸易总额的 46.2%。全区利用外资 1.0426 万亿元人民币，占全国自贸区总量的 48.9%。

## 五个新城

《上海市城市总体规划（2017—2035 年）》明确了嘉定、松江、青浦、奉贤和南汇五个新的“节点城市”的发展，这些城市将作为该地区的公共基础设施中心，并在制造业、交通和展览等方面发挥特定的国际功能。在《“十四五”新城规划》（《关于本市“十四五”加快推进新城规划建设工作的实施意见》）中，上海市政府的目标是五个新城 GDP 合计达到 1.1 万亿元人民币，居民数量为 360 万。为了最大限度地发挥新城的效用，规划鼓励各产业根据每个新城的具体特点进行产业集中。例如，作为上海和南京之间的交通枢纽，嘉定区将作为智能交通的试验区，以新能源汽车、智能传感器和其他相关技术为重点产业。青浦区交通便利，可直达虹桥机场和虹桥火车站，将以会展活动、文化、旅游等绿色产业为重点产业。除了产业发展，上海还将发展更多的公共基础设施，如医院、交通和学校，以满足居民的需求。到 2035 年，当地政府还将推出全面的人才引进政策，包括住房和社会保障，吸引更多人在新城定居。

## 人才引进

上海是中国所有城市中引进外籍人才数量最多的城市——高端人才或其他。据上海市政府统计，2017 年 4 月至 2022 年底，全市共发放外国人来华工作许可证 37 万多份，其中 7.1 万份为高端人才甲类许可证。然而，作为众多跨国公司和地区总部的所在地，上海也难免遭受外籍人才短缺的窘境，在新冠疫情清零的三年中，这种情况尤为严重。上海已采取措施鼓励引进更多外籍工作者，例如简化外国人来华工作许可的行政程序；2021 年发布的《关于完善外国人来华工作许可审批的通知》发布了三大变化，即增加高端人才签证数量、免除无犯罪记录、增加指定重点行业特殊人才快速“绿色”通道。

尽管政策最近有所改进，但高生活成本、户籍要求和新冠疫情期间对签证申请的严格限制使公司难以吸引合适的外国或中国人才。即将于 2024 年 1 月取消对子女教育等福利的非应税待遇，也将严重影响外国公司吸引或留住高层次人才的能力。此外，随着其他城市推出人才支持政策，上海市的政策在本土人才，尤其是应届

毕业生方面面临失去竞争力的风险。以苏州为例，应届毕业生在苏州的前三年每月可获得高达 800 元人民币的租房补贴，而“抢手”的人才可一次性获得 12 万元人民币的补贴。在杭州，应届毕业生户口改为杭州可获得最高 5 万元人民币的补贴（本科生 1 万元，研究生 3 万元，博士生 5 万元）。除租房补贴外，杭州还为高端人才提供高达 100 万元人民币的购房资金。南京同样提供前三年的月租金补贴——本科学历 600 元，硕士学历 800 元，博士学历 2000 元，还为高端人才提供高达 200 万元人民币的购房资金。

## 建 议

### 对上海市政府：

- 提供更多的人才激励举措，如租房和购房补贴。

### 对中国政府：

- 扩大外籍员工的非应税福利。
- 加快为外国学生和工作签证签发签证的流程。

# Southwest China – Sichuan Province

## Introduction

**A**s a major province in China’s economy, population, resources, and science and education, Sichuan has unique advantages in cooperation with the United States. The United States has always been a significant partner for Sichuan in terms of investment and trade. From January to December 2022, 38 new US enterprises invested in Sichuan, contributing 143 million US dollars in foreign direct investment (FDI). As of December 2022, a total of 1,587 foreign-invested enterprises (institutions) from the United States have been established in Sichuan, with FDI reaching US \$1.894 billion since 1998. The United States ranks as the fourth-largest source of foreign investment in Sichuan. In 2022, the total import and export volume between Sichuan and the United States reached RMB 194.99 billion.

The American Chamber of Commerce in China is committed to promoting cooperation and exchanges in China, particularly by serving as a bridge to promote investment and development opportunities in Sichuan to US companies. Over the years, numerous iconic American companies such as Intel, Dell, and Microsoft have established and expanded their presence in Sichuan. According to the *2021 Annual Report on Foreign Investment*, the primary industries invested in by the United States in Sichuan include manufacturing, information transmission and software, information technology services, wholesale and retail industries, scientific research, and technology services.

## Business environment

Sichuan has implemented many business environment reform measures, and constantly achieved new breakthroughs in service level, market development, regulatory mechanism, legal construction and other aspects, so that the construction of business environment step by step.

- **Preferential policies:** Sichuan Province has developed a series of preferential policies to encourage foreign investment. For example, the implementation of “one case, one discussion” and increasingly efficient policies, as well as tax incentives and industrial support.
- **Convenient Transportation:** Located in the center of

Southwest China, Sichuan Province is blessed with favorable transportation conditions. Cities such as Chengdu and Chongqing have become important logistics centers in Southwest China, providing convenient transportation and logistics services for foreign businesses.

- **Talent advantage:** Sichuan Province has a large number of universities and scientific research institutions, as well as a relatively complete talent training system. In addition, Sichuan has rolled out a series of talent introduction policies to attract outstanding talents from home and abroad.
- **Market potential:** Sichuan Province has a huge population base and growing market demand, especially in some emerging industries, such as artificial intelligence, new materials, new energy, etc., which has huge market potential. Meanwhile, it also has rich resources and industrial opportunities in manufacturing, agriculture, tourism and other industries.
- **Developed technology industry:** Sichuan Province has a number of high-level technology industrial parks and research and development centers, providing foreign businesses with opportunities to cooperate with Chinese technology enterprises.

## Challenges

### Data security

AmCham China has below recommendations regarding data security:

- Clarifying the guidelines on the cybersecurity vulnerability testing by public security organs. Engage in discussion on the scope of the testing and data that will be collected from the testing and how such data will be stored and processed.
- Clarifying the guidelines on the localized data storage and data management processes that are being applied as part of Data Security Law of the People’s Republic of China.
- Clarifying the requirements related to handling of data of foreign enterprises and of Foreign nationals by China nationals working for Foreign enterprises.

# 四川 / 中国西南地区

## 引言

**四**川作为中国的经济大省、人口大省、资源大省和科教大省，对美合作具有得天独厚的优势。在四川对外交流合作中，美国一直是四川重要的投资来源地和经贸合作伙伴。2022年1—12月，美国在川新设外商投资企业38家，外商直接投资（FDI）1.43亿美元。截止2022年12月，美国在川累计设立外商投资企业（机构）1587家，外商直接投资（FDI）总额18.94亿美元（1998年以来数据）。美国是四川第4大外资来源地。2022年，我省与美国进出口总额达1949.9亿元。

中国美国商会（以下简称商会）致力于推动美国企业对华交流合作，特别为推动美国企业来川投资发展、增进四川与美国友好交往搭建了桥梁，多年来，英特尔、戴尔、微软等一大批标志性美国企业扎根四川发展。根据2021年度外商投资年报显示，美国在川主要投资行业为制造业、信息传输/软件和信息技术服务业、批发和零售业、科学研究和技术服务业等。

## 商业环境

2023年初起，四川省积极实施多项营商环境改革措施，在服务水平、市场发展、监管机制、法治建设等方面不断实现新突破，使营商环境建设一步步迭代升级并在以下几方面展现突出优势：

- **政策支持**：2023年初以来，四川省制定了一系列优惠政策，以鼓励外商投资。例如实行“一事一议”和“引进来，上马快”等政策，以及税收优惠和产业扶持等。
- **交通便利**：四川省地处中国西南地区的中心位置，具有得天独厚的交通条件。成都、重庆等城市已经成为西南地区的重要物流中心，可为外商提供便利的运输和物流服务。

- **人才优势**：四川省拥有众多的高校和科研机构，以及较为完善的人才培养体系。此外，四川省还推出了一系列人才引进政策，以吸引国内外优秀人才。
- **市场潜力**：四川省拥有庞大的人口基数和不断增长的市场需求，特别是在一些新兴产业领域，如人工智能、新材料、新能源等，具有巨大的市场潜力，同时在制造业、农业、旅游业等行业也拥有丰富资源和行业机会。
- **发达的科技产业**：四川省拥有多个高水平的科技产业园区和研发中心，为外商提供了与中国科技企业合作的机会。

## 挑战

### 数据安全

商会就数据安全方面有以下建议：

- **明确公安机关网络安全漏洞检测工作指引**。参与讨论测试范围和将从测试中收集的数据，以及如何存储和处理这些数据。
- **明确作为《中华人民共和国数据安全法》一部分适用的本地化数据存储和数据管理流程指南**。
- **明确为外国企业工作的中国公民处理外国企业和外国公民数据的相关要求**。

### 医疗行业

- **对医疗行业的监管环境**：中国对于医疗行业的监管比较严格，外资医疗企业需要遵守相关的法规和政策，包括市场准入、医疗器械注册、药品审批等。此外，不同地区的监管政策和标准也存在差异。
- **激烈的市场竞争**：四川地区已有不少公立和民营医疗进驻，市场竞争激烈。外资医疗品牌需要制定切实可行的市场策略，提高产品和服务的竞争力，才能顺利在四川发展。

## *Healthcare Industry*

- **Regulatory environment:** China has strict supervision on the healthcare industry, and foreign-invested medical enterprises need to comply with relevant laws and policies, including market access, medical device registration, drug approval, etc. In addition, regulatory policies and standards vary from region to region.
- **Fierce market competition:** there are many public and private medical services in Sichuan, and the market competition is fierce. Foreign medical brands need to develop feasible market strategies and improve the competitiveness of products and services in order to develop smoothly in Sichuan.
- **Talent introduction and training:** There is a great demand for professionals in the medical field, and foreign-funded medical enterprises need to find suitable talents, train and manage them. At the same time, due to language and cultural differences, there may be communication barriers between foreign employees and local employees.
- **Regional cultural differences:** There are differences in cultural backgrounds and medical and health concepts in different parts of China. Foreign-funded medical enterprises need to understand local cultural characteristics and market demands and formulate targeted marketing strategies.
- **Price and cost pressures:** China's healthcare market is price sensitive and foreign healthcare companies need to control costs while providing high-quality products and services.

- 人才引进和培养：医疗领域对专业人才的需求较大，外资医疗企业需要寻找合适的人才，并进行培养和管理。同时，由于语言和文化的差异，外籍员工和本地员工之间的沟通也可能存在障碍。
- 地域文化差异：中国各地的文化背景和医疗健康观念存在差异，外资医疗企业需要了解当地的文化特点和市场需求，制定针对性的营销策略。
- 价格和成本压力：中国医疗市场价格敏感，外资医疗企业需要控制成本，同时提供高质量的产品和服务。

# Tianjin

## Introduction

**T**ianjin continues to be one of China's largest and most important cities for industry. With a population of approximately 15 million residents, it is one of the four largest cities in China and is the largest port city in Northern China. Tianjin serves as an industrial and transportation hub for Beijing and for Northern China and its economy is 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 home to many US companies, expatriate staff and their families. During recent years, however, several prominent senior executives chose to leave Tianjin citing COVID-19 related travel restrictions and harsh epidemic prevention measures as the primary drivers for their departure.

The data shown within this chapter is based on responses by AmCham China Tianjin Chapter members to the 2023 *AmCham China Business Climate Survey (BCS) Report* conducted in late 2022. The results reflect the business climate in 2022 and the predictions of Tianjin based member companies for the year ahead. The Tianjin Chapter solicited inputs from 75 member companies based in Tianjin and received 40 completed responses from senior level company executives across four core business categories representing small, medium and large companies.

At the time the 2022 Business Climate Survey was taken, the Zero-COVID policy was still in effect in China and the survey results are strongly influenced by this policy. On December 7, 2022, China departed from its Zero-COVID policy and almost everything involving the COVID virus protocols changed abruptly, with most prior virus tracking, restrictions, procedures and protocols vanishing. The sudden loosening of these virus protocols brought their own set of challenges to AmCham China Tianjin companies, to our employees and to our communities, in both positive and negative results, and we are still working through many of these new challenges today.

## COVID-19 Pandemic and Travel Restrictions

At the time of the survey, the business impacts from the

continued presence of COVID-19 and the Chinese Government's COVID-zero policies were still enforced strongly and impacting the experiences of our member companies. In Q4 2022, COVID-19 prevention measurements continued to impact business operations in China negatively due to ongoing lockdowns and forced closures, with Tianjin companies reporting overall worse impacts as compared to the national data.

These negative impacts of the COVID virus were collected against those affecting Financial, Human Resources, Travel and Manufacturing.

- For Finance, Slightly Negative and Significantly Negative responses to Revenues increased from 54 percent in 2021 to 85 percent in 2022.
- For Human Resources, Slightly Negative and Significantly Negative responses to Employee Headcount increased from 39 percent in 2021 to 63 percent in 2022.
- For Travel Disruptions, Slightly Negative and Significantly Negative responses to Local Quarantine Policies increased from 74 percent in 2021 to 92 percent in 2022.
- For Manufacturing Disruptions, Slightly Negative and Significantly Negative responses to Plant Operations increased from 45 percent in 2021 to 80 percent in 2022.

Member companies reported that 57 percent of them would plan to change their investment plans in 2023 if travel restrictions did not change within the next six months. This figure demonstrates the severity with which members perceived their business and daily life to be impacted by the strong COVID-19 prevention measures.

Members also reported that 80 percent of them regard COVID-19 pandemic restrictions as the most important reason for considering or moving capacity outside of China, up from 75 percent reported in 2021. Although many companies do not currently plan to leave the region, uncertainty regarding COVID recovery and a boost to business sentiment has resulted in hesitancy to further investment beyond a maintenance level for 2023.

AmCham China Tianjin strongly supports the decision by the central and the local Tianjin municipal government to loosen COVID policies and allow for less restrictive travel policies.

# 天 津

## 引 言

**天**津是中国最大和最重要的工业城市之一。作为中国四大直辖市之一，天津常住居民约1500万，是中国北方最大的港口城市。作为北京和中国北部的工业和交通枢纽，天津的经济发展依靠悠久的制造业和不断增长的服务业。主要产业包括航空航天、汽车、石油、航运和物流、微电子和制药。

天津是许多美国公司、外籍员工及其家人的在中国的定居地。不过最近几年，由于新冠疫情严格管控和旅行限制，一些知名的高级管理人员由此离开了天津。

本篇中的数据是基于中国美国商会（以下简称商会）天津办公室会员企业在2022年底开展的2023《中国商务环境调查报告（BCS）》。本篇中的数据是基于天津会员企业在调研活动中的反馈，反映出其对于当地2022年商业环境的评价，以及对未来一年的预测。商会天津办公室向在津的75家会员企业征询意见，共收到40份来自四个核心业务类别公司高管的有效结果。这些公司分别代表了大、中、小型企业。

2022年商务环境调查期间，中国仍在执行动态清零的新冠疫情防控政策，对调查结果影响较大。自2022年年底，中国逐步调整其防疫政策，不再进行流调、旅行限制等相关措施。防疫政策的突然改变给商会会员企业、商会员工以及整个商会带来了一系列挑战，既有积极结果，也有消极影响。直至今日商会在努力应对这些新挑战。

## 新冠疫情和旅行限制

如上所述，调查期间，中国政府仍严格执行动态清零的疫情防控政策，对商会会员企业影响较大。2022年第四季度，由于持续的疫情封锁和强制停业，对企业在

华运营不断造成负面影响；而与全国数据相比，在津会员公司所反馈的总体影响程度更为严重。

针对财务、人力资源、旅行和生产，新冠疫情所造成的负面影响包括：

- 财务方面，对收入的轻微和重大负面反应从2021年的54%增加到2022年的85%。
- 人力资源方面，对员工人数的轻微和重大负面反应从2021年的39%增加到2022年的63%。
- 旅行方面，对当地隔离政策的轻微和重大负面反应从2021年的74%增加到2022年的92%。
- 生产方面，对工厂运营的轻微和重大负面反应从2021年的45%增加到2022年的80%。

会员企业称，如未来六个月内仍实行旅行限制，57%的会员企业将在2023年改变其投资计划。这一数字表明，会员企业认为其业务和日常生活严重受到疫情防控政策的影响。

此外，80%的会员企业表示，或会因疫情防控考虑将产能迁出中国，这一比例甚至高于2021年的75%。尽管许多公司目前尚未计划离开该地区，但对新冠疫情防控 and 提振企业信心的不确定性导致企业对2023年继续在华投资犹豫不决。

商会天津对中央和天津市政府关于放开疫情防控和旅行限制政策表示强烈支持。

对于疫情期间，商会感谢天津市政府与会员企业就疫情态势和变化保持常态化的沟通交流，这对营造健康的商业环境至关重要。商会期待与当地政府继续保持高层次的沟通与合作。

## 美中贸易关系

中美贸易关系紧张局势持续影响着商会在津会员企业。



We would also like to thank the Tianjin municipal government as they maintained increased dialogue during the COVID-19 crisis in 2022 which allowed our members to stay updated and aware of ongoing changes during this challenging time. Frequent communication is essential to a healthy business environment. We look forward to continuing this elevated level of communication and cooperation with the local government.

### US-China Trade Relations

The ongoing trade tensions between the US and China continue to impact our member companies in Tianjin. Furthermore, a continued strong surge of nationalistic sentiment helped empower a “buy China” campaign creating additional headwinds for foreign brands and businesses.

At the time of the survey, our member companies reported a decrease in their prior year’s optimism, with said optimism being down in almost all domains. The pessimistic and slightly pessimistic responses increased across all metrics including:

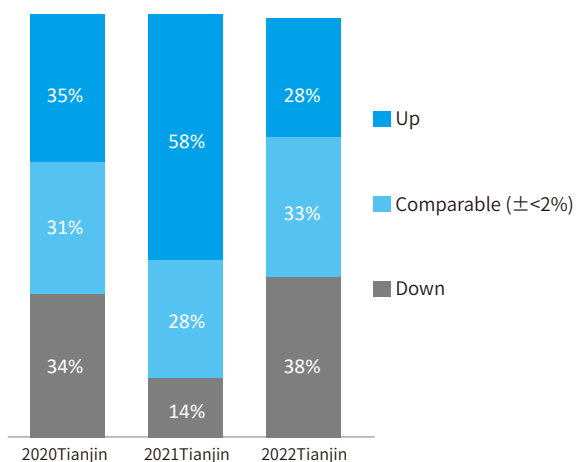
- US-China Relations: from 44 percent in 2021 to 63 percent in 2022.
- Economic Recovery / Growth: from 37 percent in 2021 to 52 percent in 2022.
- Regulatory Environment: from 31 percent in 2021 to 44 percent in 2022.

### Tianjin Member Companies’ Current Situation, Challenges and Opportunities

#### Financial Performance

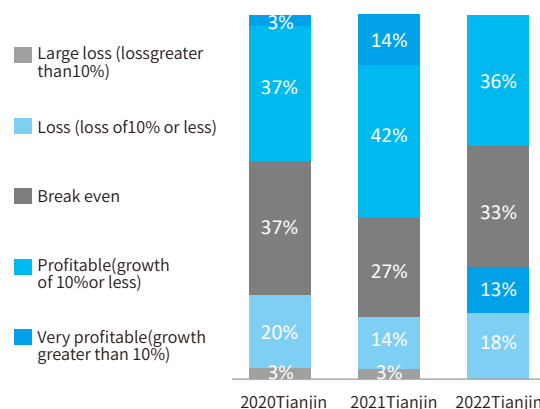
Tianjin members reported that their 2022 revenues are estimated to decline to approximate 2020 levels and 64 percent of our members companies expect to be not profitable in 2022.

**Q9. How does the estimated 2022 revenue of your company’s China operations compare with 2021 results?**



\*No significant difference compared with the national data.

**Q11. How would you characterize your company’s financial performance in China in 2022?**



There was a general loss of optimistic sentiments among Tianjin Chapter members regarding the two-year outlook on a range of issues. The broad categories summarized over the past two years are:

Factor	Optimistic or slightly optimistic	Neutral	Pessimistic or slightly pessimistic
Domestic market growth	2022 65% 2023 47%	2022 17% 2023 18%	2022 34% 2023 42%
Competitive pressure	2022 40% 2023 18%	2022 35% 2023 47%	2022 25% 2023 34%
Cost competitiveness	2022 35% 2023 18%	2022 23% 2023 42%	2022 42% 2023 39%
Profitability potential	2022 60% 2023 32%	2022 15% 2023 26%	2022 25% 2023 42%

#### HR Challenges

Labor costs and rising salaries / wages continued to be the top HR challenges for members, followed by difficulty terminating employees. While US-China tensions and geopolitical concerns topped the China-wide responses from member companies, Tianjin companies did not flag this as impacting their ability to find and hire qualified staff.

此外，民族主义情绪持续高涨助长了“支持国货”运动，也给国外品牌和企业带来了更多阻力。

调查期间，会员企业称较上一年，乐观情绪几乎在所有领域都有所下降。但悲观和略微悲观情绪在所有指标当中都有所上升，包括：

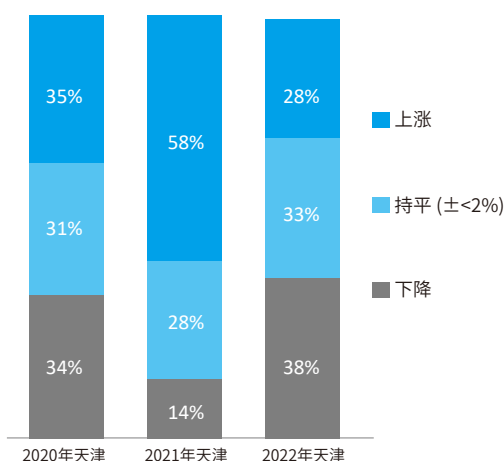
- 中美关系：从 2021 年的 44% 上升至 2022 年的 63%。
- 经济复苏 / 增长：从 2021 年的 37% 上升至 2022 年的 52%。
- 监管环境：从 2021 年的 31% 上升至 2022 年的 44%。

## 商会天津会员企业的现状、挑战和机遇

### 财务表现

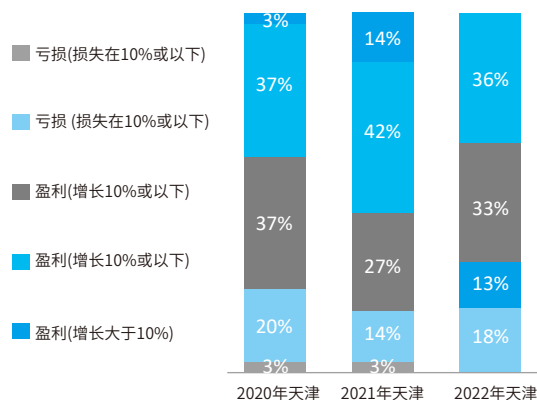
据在津会员企业报告，其 2022 年的收入预计会下降到接近 2020 年的水平，64% 的会员企业预计在 2022 年没有盈利。

**Q9. 贵公司的中国业务 2022 年的预计收入与 2021 年相比如何？**



\*与全国数据相比无显著差异。

**Q11. 您如何描述贵公司 2022 年在中国的财务表现？**



在一些问题上，天津分会会员企业对未来两年的前景普遍不抱有乐观情绪。过去两年所概括的大致分类如下：

因素	乐观或略微乐观	中立	悲观或略微悲观
国内市场增长	2022 65% 2023 47%	2022 17% 2023 18%	2022 34% 2023 42%
竞争压力	2022 40% 2023 18%	2022 35% 2023 47%	2022 25% 2023 34%
成本竞争力	2022 35% 2023 18%	2022 23% 2023 42%	2022 42% 2023 39%
利润潜力	2022 60% 2023 32%	2022 15% 2023 26%	2022 25% 2023 42%

### 人力资源挑战

劳动力成本和工资 / 薪金上涨仍是会员企业在人力资源方面面临的首要挑战，其次是解雇员工的困难。尽管中美关系紧张和地缘政治问题在会员企业的反馈中居于首位，但天津会员企业并非因此寻找和雇佣合格员工的方面受其影响。

**Q36. 请最多选择三个贵公司在人力资源方面的主要挑战？**

2022 全国	2022 天津	2023 全国	2023 天津
劳动力成本总额(44%)	劳动力成本总额(57%)	中美关系紧张和地缘政治担忧(43%)	劳动力成本总额(53%)
薪水和工资成本上升(42%)	薪水和工资成本上升(45%)	社保成本(37%)	薪水和工资成本上升(44%)
中美关系紧张和地缘政治担忧(28%)	解雇员工困难(28%)	薪酬和工资成本上升(31%)	解雇员工困难(31%)

### 中国市场的商业机会

国内消费的增长和中产阶级规模的不断扩大，是商会会员企业列为在中国不同行业里的重要机会。值得注

**Q36. Please select up to THREE of your company's top human resources challenges?**

2022 National	2022 Tianjin	2023 National	2023 Tianjin
Total labor costs (44%)	Total labor costs (57%)	US-China tensions and geopolitical concerns (43%)	Total labor costs (53%)
Rising salary and wage costs (42%)	Rising salary and wage costs (45%)	Total labour costs (37%)	Rising salary and wage costs (44%)
US-China tensions and geopolitical concerns (28%)	Difficulty terminating employees (28%)	Rising salary and wage costs (31%)	Difficulty terminating employees (31%)

**Business Opportunities in the China Market**

Growth in Domestic Consumption, the Rise of an Increasingly Sizable and Affluent Middle Class top the list important opportunities for our members in China across different sectors. It is important to note that 3 sectors flagged ongoing economic and market reforms as the third greatest opportunities for their China operations.

**Q20: Which of the following are important opportunities for your China business?**

Technology & other R&D-intensive industries	Resources & Industrial	Consumer	Services
Adoption of digital technologies (e.g., artificial intelligence, cloud solutions, 5G, IoT) (33%)	Opportunity to leverage China for other emerging markets (50%)	Growth in domestic consumption/Rise of an increasingly sizable and affluent middle class (53%)	Growth in domestic consumption/Rise of an increasingly sizable and affluent middle class (50%)
cover more of China's domestic market (e.g., entering new cities, regions) (33%)	China's New Infrastructure Initiative (50%)	Increasing consumer demand for foreign brands/ quality (53%)	Globalization of Chinese companies and increased outbound investment (50%)
Ongoing economic and market reforms (33%)	Preferential foreign direct investment policies (38%)	Ongoing economic and market reforms (29%)	Ongoing economic and market reforms (50%)

★ Different when compared to National Survey result

When asked what the Chinese Government could do to encourage greater foreign investment, Tianjin members stated that the Chinese Government's continuous efforts in the three aspects could encourage foreign investment:

- Increasing the transparency, predictability, and fairness of the regulatory environment;
- Allowing foreign enterprises to enter business or

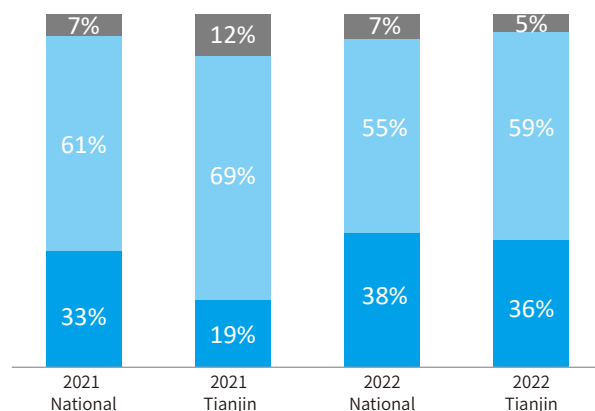
- product segments that are currently restricted;
- Ensuring greater protection of intellectual property.

**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. The number of member companies reporting their observation that foreign companies are treated unfairly as compared to domestic companies significantly increased in 2022. This increase was observed across all reported business categories.

When asked specifically where unfair treatment is observed, Regulatory Enforcement tops the list of unfair treatment areas, with Licensing and Market access and Government Financial Support/Subsidies sharing second place.

**Q29. How are foreign companies in your industry treated by government policies and enforcement actions relative to domestic companies?**



- Foreign companies receive preferential treatment vs. domestic companies.
- Foreign companies are treated equally vs. domestic companies.
- Foreign companies are treated unfairly vs. domestic companies.

**The Importance of Favorable US – Chinese Relations in the China Market**

All respondents think US-China relations is important to their business, especially for the Technology and Resources & Industrial sectors. 39 percent of respondents expect US-China relations to 'deteriorate' in 2023 and optimism about bilateral relationships is lower than in 2022. One of the impacts from the current US-China trade tensions is that companies are delaying or canceling their China investment decisions, at 25 percent up 9 percent from last year.

Looking to the future, further reductions in tariff and further opening Chinese market to foreign companies are top two areas where members hope that substantive progress can be made in future bilateral trade talks.

意的是，有 3 个行业将正在进行的经济和市场改革作为其在华业务的第三大机遇。

### 问题 20. 以下哪些是您在华业务的重要机会？

技术和其他研发密集型产业	资源和工业	消费者	服务
采用数字技术 (如人工智能、云解决方案、5G、物联网) (33%)	其他在华新兴市场机会 (50%)	国内消费增长/日益庞大和富裕的中产阶级 (53%)	国内消费增长/日益庞大和富裕的中产阶级 (50%)
拓展在华市场及业务 (如开拓新城市、地区) (33%)	中国新基建倡议 (50%)	消费者对国外品牌/质量持续增长的需求 (53%)	中国公司全球化和对外投资增长 (50%)
持续进行的经济和市场改革 (33%)	外商直接投资优惠政策(38%)	持续进行的经济和市场改革 (29%)	持续进行的经济和市场改革 (50%)

★ 不同于全国数据

对于中国政府需采取哪些措施以吸引更多外资，天津会员企业表示，中国政府可在以下三个方面发力吸引外资：

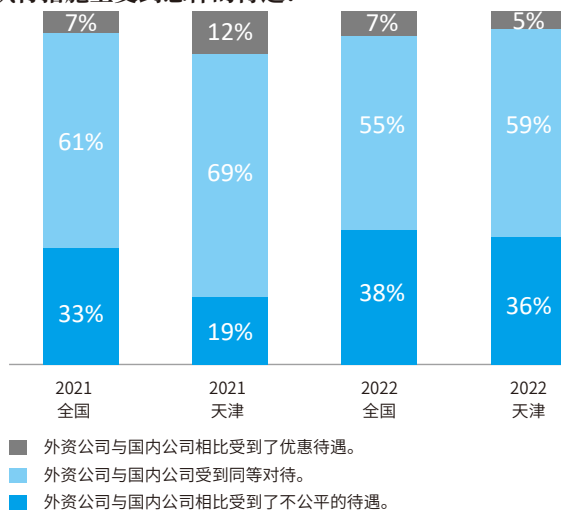
- 提高监管环境的透明度、可预测性和公平性。
- 取消外商企业在华经营业务或产品领域的限制。
- 加强对知识产权的保护。

### 中国市场的商业挑战

显然，商会会员企业仍青睐在华经济机会，但同时也看到了挑战。根据报告，2022 年，认为外资公司与国内公司相比受到不公平待遇的会员企业数量明显增加，涉及报告中的各个商业领域。

当被问及具体在哪些方面受到不公平待遇时，第一位是监管执法，许可和市场准入以及政府财政支持 / 补贴位居第二。

### Q29. 与国内公司相比，贵行业的外资公司在政府政策和执行措施上受到怎样的待遇？



### 良好的中美关系在中国市场的重要性

所有受访企业均认为中美关系对其业务十分重要

要，尤其在技术和资源及工业领域。39% 的受访企业预计 2023 年中美关系将 "恶化"，对双边关系的乐观程度低于 2022 年。目前中美贸易摩擦造成的影响之一是，25% 的企业将推迟或取消其在中国投资，比去年增加了 9%。

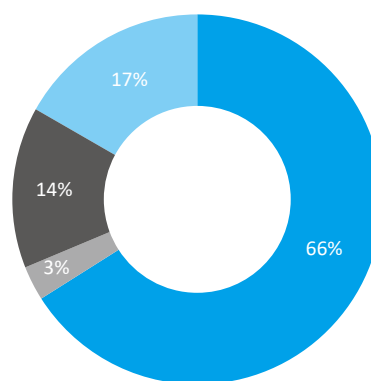
展望未来，在之后的双边贸易谈判中，会员企业尤为希望在进一步降低关税和中国扩大其市场开放程度两方面取得实质性进展。

### 中国的环境 (E)、社会 (S) 和治理 (G) 战略

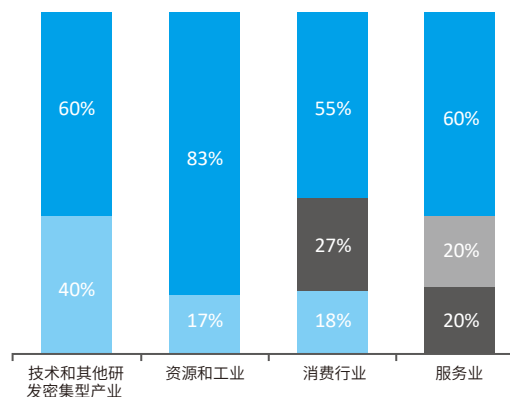
作为评估企业运营的一个重要指标，ESG (环境、社会、社会和治理) 主要用于评估企业在环境问题、社会问题 and 公司治理问题上的表现。随着中国企业正在经历从财富驱动到价值创造的 "范式转变"，ESG 变得愈加重要，其共同财务指标、业务指标、品牌价值及其他指标一起，成为综合评价企业发展的新视角。

超过 80% 的受访企业表示，他们正在或计划在中国实施 ESG 战略。大多数受访企业认为在中国实施 ESG 战略将有助于其品牌建设。

### 问题 21. 贵公司在中国的运营中是否实施环境 (E)、社会 (S) 和治理 (G) 战略



- 是的，我们在中国有 ESG 战略，它与我们的全球 ESG 战略一致
- 是的，我们依据中国市场的情况修改了全球 ESG 战略
- 我们公司在全球范围内拥有 ESG 战略，但尚未在中国实施
- 我们公司没有 ESG 战略发密集型产业



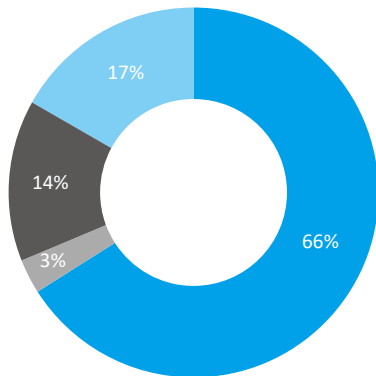
区域性  
问题

## Environment (E), Social (S), and Governance (G) Strategies in China

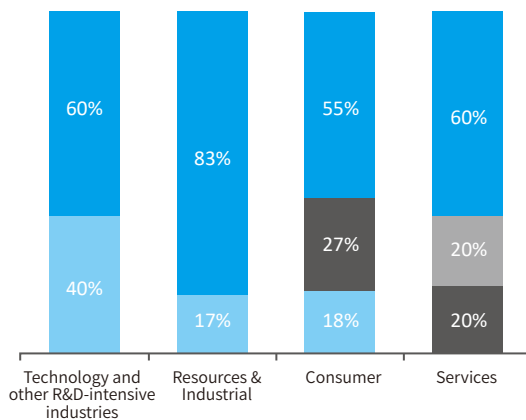
As an important indicator to evaluate the businesses operations, ESG (Environmental, Social, Social and Governance) is mainly used to evaluate the performance of enterprises in environmental issues, social issues and corporate governance issues. As companies in China are experiencing a “paradigm shift” from wealth-driven to value-creating, ESG has become more and more important, and together with financial indicators, business indicators, brand value and other indicators, it has become a new perspective for comprehensive evaluation of enterprise development.

More than 80 percent of respondents reported that they were taking or planned to take actions to implement ESG strategies in China. Most of the respondents believed the implementation of ESG strategy in China would help their branding.

### Q21 Does your company implement the Environment (E), Social (S), and Governance (G) strategies in China operations?



■ Yes, we have ESG strategy in China and it is aligned with our global ESG strategy  
■ Yes, we modified our global ESG strategy and tailor-made it in the China market  
■ Our company has ESG strategy at global level, but does not implement it in the China operation yet  
■ Our company does not have ESG strategy



The top three key areas of member companies' ESG strategies in China are:

- Diversity, equity and inclusion (DEI)
- Governance and Business ethics
- Climate change

## Conclusion

Members have indicated in our most recent *BCS Report* that China continues to be a most critical market and they have demonstrated this with a willingness to continue to invest their capital. Tianjin continues to be of the utmost importance to our member companies and to customers all over the world.

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. The removal of China's Zero-COVID policy and its corresponding dramatic lessening on travel restrictions is a very welcome development and its positive effects will ripple through the economic fabric of the country.

The question remains if our member companies will be able to pick up their economic activities where they left off in 2019, or if the market has been permanently altered by the COVID-19 pandemic. Lasting economic impacts from COVID and from its experiences cannot be ignored and our member companies will be choosing their path forward in 2023.

We look forward to working with the Tianjin Municipal Government to overcome these challenges together and help to create an environment for our businesses, our communities, and our people to thrive and grow.

## Recommendations

### For the Tianjin Municipal Government

- **Quickly restore 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 quickly as possible. We would like to recommend that the Tianjin government set up special return processes and procedures to facilitate this return movement and make the experience easy and pleasurable.
- **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 2022 *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

会员企业在中国实施 ESG 战略的前三个关键领域为：

- 多样性、公平和包容 (DEI)
- 治理和商业道德
- 气候变化

## 结 语

在商会 2023 年 3 月初发布的《中国商务环境调查报告》中，会员企业表示中国是最重要的市场，仍有意愿继续在华投资。天津对商会会员企业和全球客户仍至为关键。

商业的蓬勃发展建立在可预测性上。在这个充满挑战的时代，营造良好的营商环境，首先是要消除那些影响商业界顺利运作的因素。中国取消“动态清零”政策以及旅行限制的决定广受欢迎，其积极影响将在国内整个经济结构中产生连锁效应。

现在的问题是，会员企业能否重启他们自 2019 年以来停滞的业务，或者市场是否受新冠疫情影响而不同以往。新冠疫情影响对经济造成的持久影响不容忽视，商会会员企业将在 2023 年对其发展道路做出选择。

商会期待与天津市政府合作，共克时艰，以期为企业、社会和人民创造一个繁荣而蓬勃发展的商业环境。

力恢复和扩大投资激励政策，超越中国其他省市地区，确保天津继续成为适宜外商投资的目的地。

- **密切产业和地方政府的合作。** 商会希望在政策制定方面能建立政府与工业界更为密切的合作机制，为外资企业提供建言献策的机会，持续对影响外资企业商业环境的政策提供更多的建议。
- **增开国际航班。** 天津是一个国际大都市，在津安家落户的公司在全球都设有办事处和业务关系。鉴于此，天津需增开往返国际航班，有助于商业关系的往来，并应大力发展本地旅游业，造福企业、民生。
- **提高天津港利用率。** 天津港作为天津市最重要的商业资产之一，是商会会员企业供应链运作不可或缺的组成部分。加大对这一重要商业基础设施投资将有助于天津和在津会员企业的发展。

## 建 议

### 对天津市政府：

- **迅速恢复正常签证服务和签证处理服务 / 为美国和中国公民提供办事渠道。** 首要的是允许外国人入境，特别是其家人能尽快返津团聚。商会建议天津市政府通过开通特殊回国程序，协助外商顺利返津。
- **出台新的投资激励政策。** 天津曾采取行之有效的投资促进政策。在 2023 年《中国商务环境调查报告》中，商会会员企业强调天津、上海和广东均以接受外资而闻名。会员企业认为，天津市政府应加大在津外资吸引力，并在其高度发展的开发区和市辖区范围内努

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.

- **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.
- **More international flights.** Tianjin is an international city and the companies that call Tianjin home have business offices and relationships all over the world. Given this, Tianjin needs more international arrival and departure flights to facilitate these business relationships and encourage greater local tourism for the betterment of its businesses and its people.
- **Greater utilization of the Port of Tianjin.** The Tianjin Port is one of the most important business assets in the city. It is integral to the supply chain operations for all our companies. Greater investment in this important business infrastructure asset will help to grow our local businesses and ensure Tianjin continues to move forward.





## Wuhan/ Central China

### Introduction

**W**uhan remains the commercial, financial and transportation center of Central China despite being the city where the COVID-19 virus was first discovered and the city most impacted by the virus. In 2022 despite numerous disruptions attempting to keep Covid cases at a minimum, Hubei still managed a Gross Regional Product gain of 4.7 percent, the highest among provinces with economic output above RMB 5 trillion. Foreign direct investment increased 11.1 percent, foreign trade 14.9 percent, and urban resident income 5.8 percent. Despite tensions in the US-China relationship, in AmCham China's 2023 *Business Climate Survey* 86 percent of Central Chapter member companies reported feeling as welcome or more welcome than before, and the same percentage reported 2022 revenues were expected to be the same or higher than 2021. The economic recovery and local government efforts to encourage foreign investment led to higher-than-average figures compared to other regions in China.

Hubei's infrastructure development also continued in 2022. The world's fourth and Asia's first professional air cargo hub, Ezhou Huahu Airport, became operational, and the total high-speed rail track for Hubei Province exceeded 2000km. Thus, Wuhan remains a key city for the connectivity of people and supply chains in the Central China region.

With more than one hundred colleges and universities and 1.2 million university students, Wuhan is a key source of talent for AmCham China businesses and an attractive city in the region to set up offices. The number of national level research centers, enterprise technology centers, and innovation centers in Hubei reached 88. In the 14th Five-Year Plan (FYP) the Wuhan municipal government 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 issued a similar and complimentary "4+6+8" plan for targeted industry development. Foreign-invested enterprises (FIEs) who invest in these industries are likely to receive additional support from the Wuhan municipal and Hubei provincial governments.

Member companies in the Central China Chapter applaud the removal of COVID restrictions and ongoing efforts to improve infrastructure, attract top talent, and improve health care for expatriates in the region. Nevertheless, challenges remain for member companies. Topping the list among member companies in the Central China chapter are tensions in the US-China relationship. Member companies in Wuhan and Hubei also continue to struggle with access to international health care, bureaucracy in international schools, collecting payments from SOEs, and a shortage of qualified employees across the region.

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 local governments.

### Ongoing Issues

#### *Health Care for Expatriates*

AmCham China Central China chapter recognizes the significant steps the Wuhan government has taken to improve health care offerings for expatriate residents. Most major hospitals have established VIP sections which provide additional services to help foreign patients navigate the unfamiliar medical system. Nevertheless, when expatriates go to the hospital, it is quite challenging for them to communicate clearly with the doctors and medical staff primarily due to language barriers. In emergencies, proper care could be delayed due to the language barrier and the different process of registering for care. The language barrier in addition to navigating different hospital processes can act as additional sources of stress for expatriates during an emergency. AmCham recommends adopting policies and providing incentives to encourage foreign health care providers to set up an international hospital in Wuhan and/or recruit more foreign medical professionals to Wuhan hospitals. Also, establishing a network of English translators who can facilitate clear communication between expatriate patients and the health care workers is imperative to ensure quality care for expatriate staff in the region. These small, but important changes can allow for greater safety and make Wuhan a

# 武汉 / 华中

## 引言

**尽管** 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。尽管 2022 年采取了很多封控措施来最大程度上控制新冠疫情，湖北地区的 GDP 增长率仍然达到了 4.7%，是经济体量 5 万亿元以上的省份中最高的。外商直接投资增长 11.1%，对外贸易增长 14.9%，城镇居民收入增长 5.8%。尽管中美关系紧张，但在中国美国商会（以下简称商会）发布的 2023 年《中国商务环境调查报告》中，华中办公室 86% 的会员企业表示感觉和以前一样受欢迎或更受欢迎，同样比例的企业表示 2022 年的收入预计将与 2021 年持平或更高。与中国其他地区相比，得益于华中地区经济复苏，地方政府鼓励外商投资，该地区经济数据高于全国平均水平。

湖北也在 2022 年继续开展基础设施建设。世界第四座、亚洲第一座专业航空货运枢纽——鄂州花湖机场投入使用，湖北省的高铁总里程超过 2000 公里。因此，武汉仍然是华中地区人员和供应链连接的关键城市。

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，也是该地区设立办事处的理想之地。湖北拥有多达 88 个国家级研究中心、企业技术中心和创新中心。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。湖北省也针对特定行业的发展出台了类似的“4+6+8”计划。投资这些行业的外资企业可能会得到武汉市和湖北省政府的额外支持。

商会会员企业对武汉做出的一系列努力表示支持，包括取消新冠肺炎疫情的相关限制、改善基础设施、吸引顶尖人才以及改善该地区外籍人士的医保服务。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，其首要关注的是紧张的中美关系。武汉市乃至湖北省的会员企业仍面临一些困难，包括难以获得国际医疗服务、国际学校存在官僚主义、国有企业付款存在困难、地区缺乏合格员工等。

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

### 外籍人士的医保服务

商会华中办公室赞赏武汉市政府为改善外籍居民的医保服务水平做出的诸多努力。大部分大型医院都设立了 VIP 部门，提供额外服务，帮助外国患者了解他们不熟悉的医疗系统。然而，当外籍人士前往医院时，他们很难与医生和医务人员进行清晰的沟通，主要原因是存在语言障碍。在紧急情况下，由于语言障碍和医疗登记的程序不同，可能无法及时得到合适的医疗处理。在紧急情况下，除了需要研究不同医院的程序外，语言障碍也是外籍人士的另一大痛点。商会建议制定政策，提供激励措施，鼓励外国医疗机构在武汉设立国际医院和/或引进更多外国医疗专业人员到武汉医院工作。另外，建立专业的英语翻译网络，能够保证外籍患者和医护人员之间清晰沟通，对于提高该地区外籍工作人员的医护质量至关重要。这些改变虽然微不足道但极其重要，可以提高在武汉生活的安全感，使武汉成为外资企业更青睐的生活和投资目的地。

more attractive living and investment destination for foreign invested enterprises.

### ***Bureaucracy for International Schools***

AmCham China recognizes the substantial support the Wuhan government has given to international schools operating in the city. However, challenges remain because many regulations are the same in international schools as for local schools. Many students in international schools are family members of foreign business staff, consulate staff, or high-level talent in the region, who offer great benefits to the city of Wuhan and Hubei Province at large. Many of the needs of foreign students are unique and challenging due to the diversity of the community, parent expectations, and requirements of home countries. AmCham China recommends simplifying the ability to start new initiatives and complete new school licensing applications in order to provide international schools the flexibility to meaningfully adapt to the needs of their target consumers.

### ***Foreign Enterprise and SOE Payment Challenges***

Foreign Invested Enterprises (FIE) often have difficulty collecting payment from Chinese State-Owned Enterprise (SOE) companies. This may be, in part, due to the lack of the FIE companies' understanding of the complicated purchasing and payment approval processes in Chinese SOE companies, however, the result is still challenging and frustrating for FIEs. The slow payment approval process can often lead to difficult cash flow challenges, especially for the small to medium-sized FIEs who tend to be less liquid than their larger counterparts. Our recommendation for the Chinese government would be to establish a "Service Window for Foreign Invested Enterprises" within the relevant government bureaus to help guide and facilitate FIEs through the arcane process of approvals and to arbitrate between FIEs and SOE companies in case of dispute. In addition to making foreign investment more attractive, it would also help avoid unnecessary and lengthy legal action.

### ***Attracting & Retaining High-and-Mid-Level Talent***

The Report of the 20th National Congress of CPC elevated talents to a highly strategic position, designating it as a primary resource by even writing it into the CPC Constitution. Wuhan and Hubei governments have released effective policies on attracting global talent, top-level experts, and entrepreneurial talents to the region. The governments brought in top level technology and vibrant start-ups, which have contributed significantly to recent economic development. Such policies are 'Huanghe Yingcai', 'Wuhan Yingcai', and '3551 Talent.'

Nevertheless, recruiting high-and-mid-level (executive

or senior level) talent remains a challenge for enterprises in Wuhan. Those talents compose the majority and core strength of an enterprise's development. Central China member companies list their top three HR priorities as engaging and retaining employees, finding and onboarding talent, and developing talent. Shanghai, Shenzhen and Guangzhou have made very bold policies to attract high-and-mid-level talents. If Wuhan aims to enhance, or even retain its position as one of the top tier "high-tech" cities in China, it must retain and attract talented senior managers and business leaders.

Both the Hubei and Wuhan governments should 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 development of the local talent pool. An ever-growing pool of talented senior managers and team leaders will reinforce Wuhan/Hubei's current and future economic growth.

### ***Improve Tourism to Wuhan***

The Wuhan and Hubei governments have been working for years to make the region a more attractive international destination, including massive investment in infrastructure and hosting multiple international events. Nevertheless, few international tourists come to Wuhan, which leads to fewer opportunities to showcase the city and encourage expatriates to move here and invest in the region. Wuhan is a great city for families and has many resources and opportunities for foreign business and investment. The more people who visit Wuhan, the more companies will want to invest and have employees live in Wuhan. Having more globally recognized brands and amenities will help recruit new talent to Wuhan as a world class city. AmCham recommends partnering with a global international resort theme park to attract more international tourists and increase awareness of Wuhan. Some examples include SeaWorld, Legoland theme park, Six Flags, Universal, Disney World.

### ***US-China Relations Impact***

AmCham China Central China member companies reported rising tension in the US-China relationship as their biggest business challenge in 2022 and expect it to remain a key challenge in 2023. AmCham China recognizes that while differences between world powers is inevitable, mutual respect is needed to find a floor in the relationship and start making real progress. In recent years, the US government has adopted a more defensive tone when addressing these differences, while China also tends to take a hostile tone when reacting to differences. AmCham China recommends the US Government adopt a more cooperative posture when engaging China on areas of global importance. The top recommendations Central Chapter member companies have

## 国际学校的官僚主义

武汉政府对在该市运营的国际学校给予了实质性支持，商会对此表示认可。然而，挑战依然存在，因为国际学校的许多规定与当地学校的规定是一样的。许多国际学校的学生是外资企业工作人员、领事馆工作人员或该地区高层次人才的家庭成员，他们为武汉市和整个湖北省做出了巨大贡献。由于社区的多样性、家长的期望以及的各自不同国别的风俗习惯，外籍学生拥有很多独特且不易满足的需求。商会建议简化采取新措施和完成新学校许可申请的要求，以便为国际学校提供灵活性，更好地适应其目标消费者的需求。

## 外资企业和国有企业的付款难题

外资企业往往难以从中国国有企业收取款项。部分原因可能是由于外资企业对中国国有企业复杂的采购和付款审批流程缺乏了解。然而，其结果仍然对外资企业带来了挑战和负面影响。缓慢的付款审批流程往往会给现金流施加压力，特别是对于中小型外资企业来说，它们的流动性往往不如大型企业。商会建议中国政府，在相关政府部门设立“外资企业服务窗口”，帮助指导和促进外资企业完成复杂的审批流程，并在外资企业和国有企业之间发生争议时进行仲裁。这不仅能够进一步吸引外商投资，还有助于避免不必要的和漫长的法律诉讼程序。

## 吸引和留住高层次人才（湖北和武汉政府）

中国共产党第二十次全国代表大会的报告将人才的战略地位提升到了另一个高度，将人才认定为重要资源，甚至将其写入了《中国共产党章程》。湖北省和武汉市政府已经出台有效的政策，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，包括“黄鹤英才”、“武汉英才”以及“3551 人才计划”。

然而，中高层次人才短缺（高管或高级人才）仍然是武汉企业面临的主要挑战。中高级人才构成是企业发展的核心优势。因此，华中办公室会员企业将寻找、雇用、吸收合适的人才作为企业前三大人力资源优先事项。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。

湖北省和武汉市政府应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、培养和奖励高层次人才，丰富本土人才储备，不断推动和促进当地经济发展。

## 推动武汉旅游业发展

湖北省和武汉市政府多年来一直致力于将当地打造为更具有国际吸引力的旅游目的地，包括大规模投资基础设施和举办多项国际活动。然而，很少有国际游客来到武汉，减少了展示城市和鼓励外籍人士在当地生活和投资的机会。武汉非常适合家庭生活，并有许多供外商投资的资源和机会。来武汉旅游的人越多，就会有更多的公司愿意在武汉投资，让员工生活在武汉。拥有更多全球知名的品牌和设施将有助于为武汉这个世界级的城市引进新的人才。商会建议与全球国际主题公园合作，吸引更多的国际游客，提高武汉的知名度，包括海洋世界、乐高主题公园、六旗、环球、迪士尼乐园。

## 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 2022 年面临的首要运营挑战，并预计 2023 年这一挑战仍将持续存在。商会认为国家之间存在差异是不可避免的，但应以相互尊重为前提开展对话，并致力于取得实质进展。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，而中国在面对分歧时也倾向于秉承敌对的态度。商会建议美国政府在与中国就具有全球意义的领域进行接触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首要建议是恢复正常的签证处理服务，避免交流中的针锋相对，降低对中国商品的关税和 / 或提供更多的关税豁免，缩小出口管制的范围，重新开启民间交流，并启动第二阶段贸易正式谈判。

## 建议

### 对武汉市政府、湖北省及华中其他省政府:

- 商会建议鼓励外国医疗机构在武汉设立国际医院和 / 或为武汉医院引进更多的外籍医疗专业人员，并建立全天候的专业英语翻译网络。

for the US government are restore regular visa channels, avoid tit-for-tat exchanges, reduce tariffs on Chinese goods and/or provide more tariff exclusions, narrow the scope of export control, restart person-to-person exchanges, and initiate formal Phase 2 trade negotiations.

## Recommendations

### *For the Wuhan municipal government, the Hubei, and other Provincial governments of Central China*

- **AmCham recommends incentivizing foreign health care providers to set up an international hospital in Wuhan and/or recruit more foreign medical professionals to Wuhan hospitals as well as establish a network of English translators available 24/7.**
- Simplify the ability for international schools to start new initiatives and complete new school licensing applications.
- Establish a “Service Window for Foreign Invested Enterprises” within the relevant government bureaus to help guide and facilitate FIEs through the arcane processes and to arbitrate between the FIEs and the SOE companies in cases of dispute.
- 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.
- Partner with a global brand international resort theme park to attract more international tourists and increase awareness of Wuhan.

### *For the US Government*

- When possible, adopt a more cooperative posture when engaging China on areas on global importance. Restore regular visa channels, avoid tit-for-tat exchanges, reduce tariffs on Chinese goods and/or provide more tariff exclusions, narrow the scope of export control, restart person-to-person exchanges, and initiate formal Phase 2 trade negotiations.

- 简化国际学校采取新措施以及完成新学校许可申请的要求。
- 在相关政府部门设立“外资企业服务窗口”，帮助指导和促进外资企业完成复杂的审批流程，并在外资企业和国有企业之间发生争议时进行仲裁。
- 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制定此类政策，能够以有效吸引此类人才，满足市场需求。
- 与全球国际度假和主题公园品牌合作，吸引更多国际游客，提高武汉的知名度。

#### 对美国政府：

- 可能的话，与中国就具有全球意义的领域进行接触时采取更加合作的姿态。恢复正常的签证处理服务，避免交流中的针锋相对，降低对中国商品的关税和 / 或提供更多的关税豁免，缩小出口管制的范围，重新开启民间交流，并启动第二阶段贸易正式谈判。

## Acronyms 缩写表

<b>3PL</b>	Third-Party Logistics
<b>AAL</b>	Approved Agent Lender
<b>ABAC</b>	Anti-Bribery and Anti-Corruption
<b>ACP</b>	US-China Aviation Cooperation Program
<b>AEO</b>	Authorized Economic Operator
<b>AFNOR</b>	Association Francaise de Normalisation
<b>AFTCB</b>	Areas for Further Technical Confidence Building
<b>AI</b>	Artificial Intelligence
<b>AIC</b>	Administration for Industry and Commerce
<b>AMAC</b>	Asset Management Association of China
<b>AMB</b>	Anti-Monopoly Bureau
<b>AMC</b>	Anti-Monopoly Commission
<b>AMEA</b>	Anti-Monopoly Enforcement Agency
<b>AML</b>	Anti-Money Laundering
<b>AML</b>	Anti-Monopoly Law
<b>AMR</b>	Administration for Market Regulation
<b>ANAC</b>	"National Civil Aviation Agency of Brazil"
<b>ANPRM</b>	Advance Notice of Proposed Rulemaking
<b>ANSI</b>	American National Standards Institute
<b>APA</b>	Advance Pricing Arrangements
<b>APEC</b>	Asia-Pacific Economic Cooperation
<b>API</b>	Active Pharmaceutical Ingredient
<b>APU</b>	Auxiliary Power Unit
<b>AQSIQ</b>	General Administration of Quality Supervision, Inspection, and Quarantine
<b>ASF</b>	African Swine Flu
<b>ASME</b>	American Society of Mechanical Engineers
<b>ASTM</b>	American Society for Testing and Materials
<b>ATC</b>	Air Traffic Control
<b>ATFM</b>	Air Traffic Flow Management
<b>ATMB</b>	Air Traffic Management Bureau
<b>ATSE</b>	Advance Technology Services Enterprise
<b>AUCL</b>	Anti-Unfair Competition Law
<b>B2C</b>	Business to Consumer

<b>BAPA</b>	Bilateral Advance Pricing Arrangement
<b>BASA</b>	US-China Bilateral Aviation Safety Agreement
<b>BCM</b>	Billion Cubic Metres
<b>BCS</b>	(AmCham China) Business Climate Survey
<b>BEPS</b>	Base Erosion and Profit Sharing
<b>BIS</b>	Bank of International Settlements
<b>BIS</b>	US Bureau of Industry And Security (Department of Commerce)
<b>BJCDZ</b>	Beijing Comprehensive Development Zone
<b>BRF</b>	Belt and Road Forum
<b>BRI</b>	Belt and Road Initiative
<b>BSA</b>	Bond Settlement Agent
<b>CAAC</b>	Civil Aviation Administration of China
<b>CAAM</b>	China Association of Automobile Manufacturers
<b>CAC</b>	Cyberspace Administration of China
<b>CBA</b>	China Basketball Association
<b>CBIRC</b>	China Banking and Insurance Regulatory Commission
<b>CBP</b>	(US) Customs and Border Protection
<b>CBPR</b>	Cross-Border Privacy Rules
<b>CBRC</b>	China Banking Regulatory Commission
<b>CCAR</b>	China Civil Aviation Regulations
<b>CCC</b>	China Compulsory Certification
<b>CCDI</b>	Central Committee for Discipline Inspection
<b>CCID</b>	China Center For Information Industry Development
<b>CCL</b>	US Commerce Control List
<b>CCMC</b>	Communist Chinese Military Companies
<b>CCPS</b>	Cybersecurity Classified Protection Scheme
<b>CCS</b>	China Classification Society
<b>CCU</b>	Chinese Cooperation Unit
<b>CCUS</b>	Carbon Capture, Utilization, and Storage
<b>CDM</b>	Collaborative Decision-Making Model
<b>CDS</b>	Credit Default Swap
<b>CEN</b>	European Committee for Standardization

<b>CENELEC</b>	European Committee for Electrotechnical Standardization
<b>CFIUS</b>	The Committee on Foreign Investment in the US
<b>CFSTC</b>	China Financial Standards Technical Committee
<b>CFTC</b>	(US) Commodity Futures Trading Commission
<b>CGB</b>	China Government Bond Futures
<b>CIBM</b>	China Interbank Bond Market
<b>CII</b>	Critical Information Infrastructure
<b>CIIE</b>	China International Import Expo
<b>CIIO</b>	Critical Information Infrastructure Operator
<b>CIRC</b>	China Insurance Regulatory Commission
<b>CIT</b>	Corporate Income Tax
<b>CMBS</b>	Commercial Mortgage Backed Securities
<b>CMCT</b>	City Maintenance and Construction Tax
<b>CMDE</b>	Center for Medical Device Evaluation
<b>CNIS</b>	China National Institute of Standardization
<b>CNOOC</b>	China National Offshore Oil Corporation
<b>CNPC</b>	China National Petroleum Corporation
<b>CNVD</b>	China National Vulnerability Database
<b>COI</b>	Certificate of Incorporation
<b>COO</b>	Country of Origin
<b>CPPCC</b>	Chinese People's Political Consultative Conference
<b>CPPTPP</b>	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
<b>CRA</b>	Credit Rating Agency
<b>CRE</b>	Commercial Real Estate
<b>CRM</b>	Credit Risk Mitigation
<b>CRM</b>	Cybersecurity Review Measures
<b>C-ROSS</b>	China Risk-Oriented Solvency System
<b>CSDC</b>	China Securities Depository and Clearing Corporation Limited
<b>CSL</b>	Cybersecurity Law
<b>CSPs</b>	Cloud Service Providers
<b>CSR</b>	Corporate Social Responsibility
<b>CSRC</b>	China Securities Regulatory Commission
<b>CT</b>	Consumption Tax

<b>CTF</b>	Counter-Terrorism Financing
<b>CTL</b>	Counter-Terrorism Law
<b>CVD</b>	Coordinated Vulnerability Disclosure
<b>DCEP</b>	Digital Currency/Electronic Payment
<b>DCM</b>	Dual Circulation Model
<b>DF Test</b>	Durability Test
<b>DIP</b>	Diagnosis Intervention Packet
<b>DOC</b>	(US) Department of Commerce
<b>DOE</b>	(US) Department of Energy
<b>DOJ</b>	(US) Department of Justice
<b>DRG</b>	Diagnosis-related Grouping
<b>DSL</b>	Data Security Law
<b>DTA</b>	Double Taxation Agreement
<b>DTCC</b>	(US) Depository and Trust Clearing Corporation
<b>DVP</b>	Delivery Versus Payment
<b>E&amp;P</b>	Exploration and Production
<b>EA</b>	Enterprise Annuity
<b>EAR</b>	(US) Export Administration Regulations
<b>EASA</b>	European Aviation Safety Agency
<b>ECCN</b>	Export Control Classification Numbers
<b>ECER</b>	Energy Conservation and Emissions Reduction
<b>ECL</b>	Export Control Law
<b>ECO</b>	Export Compliance Program
<b>ECP</b>	US-China Energy Cooperation Program
<b>ECRA</b>	US Export Control Reform Act
<b>ECWG</b>	Export Compliance Working Group
<b>EDV</b>	Essentially Derived Varieties
<b>EIA</b>	Environmental Impact Assessments
<b>EIA</b>	Energy Information Administration (of the US)
<b>EPA</b>	US Environmental Protection Agency
<b>EPR</b>	Extended Producer Responsibility
<b>EQ</b>	Exempted Quantity
<b>ERC</b>	(US) End-User Review Committee
<b>ESG</b>	Environmental, Social, and Corporate Governance
<b>ETF</b>	Exchange Traded Funds



<b>ETOPS</b>	Extended Range Twin Engine Operations Performance Standard
<b>ETS</b>	Emissions Trading System
<b>EU</b>	European Union
<b>EUR</b>	Estimated Ultimate Recovery
<b>FA</b>	Fund Accounting
<b>FAA</b>	Federal Aviation Administration
<b>FAO</b>	Foreign Affairs Office
<b>FAQ</b>	Frequently Asked Question
<b>FCDP</b>	Foreign Currency Denominated Policies
<b>FCPA</b>	Foreign Corrupt Practices Act
<b>FDA</b>	(US) Food and Drug Administration
<b>FDI</b>	Foreign Direct Investment
<b>FDPR</b>	Foreign Direct Product Rule
<b>FEB</b>	Foreign Experts Bureau
<b>FI</b>	Financial Institution
<b>FIE</b>	Foreign-Invested Enterprise
<b>FIL</b>	Foreign Investment Law
<b>FMCG</b>	Fast Moving Consumer Goods
<b>FPPC</b>	Flight Plan Processing Center
<b>FRAND</b>	Fair, Reasonable, and Non-Discriminatory
<b>FSIS</b>	USDA Food Safety Inspection Service
<b>FTA</b>	Free Trade Agreement
<b>FTP</b>	Free Trade Port
<b>FTV</b>	Full Technical Validation
<b>FTZ</b>	Free Trade Zone
<b>GA</b>	General Aviation
<b>GAAP</b>	Generally Accepted Accounting Principles
<b>GABA</b>	General and Business Aviation
<b>GACC</b>	General Administration of Customs of China
<b>GAPP</b>	General Administration of Press and Publication
<b>GAS</b>	General Administration of Sport
<b>GATS</b>	General Agreement on Trade in Services
<b>GB</b>	Guobiao (National Standard)
<b>GBA</b>	Greater Bay Area
<b>GDP</b>	Gross Domestic Product
<b>GDPR</b>	(EU) General Data Protection Regulation

<b>GE</b>	Genetically Engineered
<b>GFE</b>	Guangzhou Futures Exchange
<b>GFMA</b>	Global Financial Market Association
<b>GHG</b>	Greenhouse Gas
<b>GLP</b>	Global Logistic Properties
<b>GLP</b>	Good Laboratory Practice
<b>GMO</b>	Genetically Modified Organism
<b>GMP</b>	Good Manufacturing Practice
<b>GMRA</b>	Global Master Repurchase Agreement
<b>GPA</b>	(WTO) Agreement on Government Procurement
<b>GPL</b>	Government Procurement Law
<b>GPU</b>	Ground Power Units
<b>HACCP</b>	Hazard Analysis and Critical Control Points
<b>HAKA</b>	Hong Kong Autonomy Act
<b>HKEX</b>	Hong Kong Exchanges and Clearing
<b>HNFTP</b>	Hainan Free Trade Port
<b>HNTE</b>	High And New-Technology Enterprise
<b>HR</b>	Human Resources
<b>IAIS</b>	International Association of Insurance Supervisors
<b>IAMC</b>	Insurance Asset Management Company
<b>IATA</b>	International Air Transport Association
<b>ICT</b>	Information and Communications Technology
<b>ICV</b>	Intelligent and Connected Vehicle
<b>IEC</b>	International Electrotechnical Commission
<b>IEEE</b>	Institute of Electrical and Electronics Engineers
<b>IFSD</b>	in-flight Shutdown
<b>IGBT</b>	Insulated-gate bipolar transistor
<b>IIT</b>	Individual Income Tax
<b>ILO</b>	International Labour Organization
<b>IMCT</b>	International Multi-Center Trial
<b>IMO</b>	International Maritime Organization
<b>IOC</b>	International Oil Company
<b>IOM</b>	International Organization of Migration
<b>IoT</b>	Internet of Things

<b>IoV</b>	Internet of Vehicles
<b>IP</b>	Intellectual Property
<b>IPA</b>	"Implementation Procedures for Airworthiness"
<b>IPO</b>	Initial Public Offering
<b>IPR</b>	Intellectual Property Rights
<b>IRCS</b>	Internet Resource Collaboration Service
<b>IRM</b>	Information Rights Management
<b>ISO</b>	International Organization for Standardization
<b>ITU</b>	International Telecommunication Union
<b>JCCT</b>	US-China Joint Commission on Commerce and Trade
<b>LBMA</b>	London Bullion Market Association
<b>LDAR</b>	Leakage Detection and Repair
<b>LLP</b>	GMO Low Level Presence
<b>LNG</b>	Liquefied Natural Gas
<b>LTV</b>	Limited Technical Validation
<b>M&amp;A</b>	Mergers and Acquisitions
<b>MAD</b>	Mutual Acceptance of Data (OECD)
<b>MAP</b>	Mutual Agreement Procedure (OECD)
<b>MARA</b>	Ministry of Agriculture and Rural Affairs
<b>MCA</b>	Ministry of Civil Affairs
<b>MCU</b>	Microcontroller Unit
<b>MEE</b>	Ministry of Ecology and Environment
<b>MEM</b>	Ministry of Emergency Management
<b>MEU</b>	Military End-User / End-Use
<b>MEWP</b>	Mechanized Elevation Work Platforms
<b>MIC 2025</b>	Made in China 2025
<b>MIIT</b>	Ministry of Industry and Information Technology
<b>MLPS</b>	Multi-Level Protection Scheme
<b>MNC</b>	Multinational Corporation
<b>MNR</b>	Ministry of Natural Resources
<b>MOE</b>	Ministry of Education
<b>MOF</b>	Ministry of Finance
<b>MOFA</b>	Ministry of Foreign Affairs
<b>MOFCOM</b>	Ministry of Commerce
<b>MOHRSS</b>	Ministry of Human Resources and Social Security

<b>MOHURD</b>	Ministry of Housing and Urban-Rural Development
<b>MOJ</b>	Ministry of Justice
<b>MOST</b>	Ministry of Science and Technology
<b>MOT</b>	Ministry of Transportation
<b>MoU</b>	Memorandum of Understanding
<b>MPS</b>	Ministry of Public Security
<b>MRL</b>	Maximum Residue Level
<b>MSA</b>	Market Supervision Administration
<b>MSW</b>	Municipal Solid Waste
<b>NAFMII</b>	National Association of Financial Market Institutional Investors
<b>NAV</b>	Net Asset Value
<b>NBA</b>	US National Basketball Association
<b>NBC</b>	National Biosafety Committee
<b>NBS</b>	National Bureau of Statistics
<b>NCAC</b>	National Copyright Administration of China
<b>NDRC</b>	National Development and Reform Commission
<b>NEA</b>	National Energy Administration
<b>NEV</b>	New Energy Vehicle
<b>NGO</b>	Non-Governmental Organization
<b>NHC</b>	National Health Commission
<b>NHSA</b>	National Healthcare Security Administration
<b>NIA</b>	National Immigration Administration
<b>NIOSH</b>	National Institute For Occupational Health And Safety (of the US)
<b>NIPA</b>	National Intellectual Property Administration
<b>NMPA</b>	National Medical Products Administration
<b>NO</b>	Network Operator
<b>NOC</b>	National Oil Company
<b>NPC</b>	National People's Congress
<b>NPC</b>	National Pipeline Company
<b>NPCSC</b>	Standing Committee of The National People's Congress
<b>NPO</b>	Non-Profit Organization
<b>NRA</b>	Non-Resident Account
<b>NRDL</b>	National Reimbursement Drug List

<b>NRTA</b>	National Radio And TV Administration
<b>NSC</b>	National Supervision Commission
<b>NTCAS</b>	National Technical Committee of Auto Standardization
<b>O2O</b>	Online-To-Offline
<b>OA</b>	Occupational Annuity
<b>OECD</b>	Organisation for Economic Cooperation and Development
<b>OEM</b>	Original Equipment Manufacturer
<b>OFAC</b>	Office of Foreign Asset Controls
<b>OGIF</b>	US-China Oil and Gas Industry Forum
<b>OII</b>	Overseas Institutional Investor
<b>OMO</b>	Open Market Operation
<b>OSCCA</b>	Office of State Commercial Cryptography Administration
<b>OSHA</b>	US Occupational Safety and Health Administration
<b>P2P</b>	Peer-To-Peer
<b>PAPR</b>	powered air-purifying respirators
<b>PBOC</b>	People's Bank of China
<b>PCS</b>	Punitive Compensation System
<b>PE</b>	Permanent Establishment
<b>PFF</b>	Professional faultfinder
<b>PFM</b>	Private Fund Management
<b>PFSI</b>	Private Fund Service Institution
<b>PFTZ</b>	Pilot Free Trade Zone
<b>PHEV</b>	Plug-in Hybrid Energy Vehicle
<b>PHIS</b>	(USDA) Public Health Information System
<b>PI</b>	Personally Identifiable Information/ Personal Information
<b>PI</b>	Personal Information
<b>PIPL</b>	Personal Information Protection Law
<b>PIRP</b>	Patent Information Registration Platform
<b>PMA</b>	Parts Manufacturering Authorization
<b>POA</b>	Power of Attorney
<b>PPE</b>	Personal Protective Equipment
<b>PRC</b>	People's Republic of China
<b>PSB</b>	Public Security Bureau
<b>PSC</b>	Production Sharing Contracts
<b>PSO</b>	Public Security Organ

<b>PSU</b>	Professional Supervisory Unit
<b>PTE</b>	Patent Term Extension
<b>PVP</b>	Plant Variety Protection
<b>QCE</b>	Generic Consistency Evaluation
<b>QFII</b>	Qualified Foreign Institutional Investor
<b>R&amp;D</b>	Research and Development
<b>RCEP</b>	Regional Comprehensive Economic Partnership
<b>RDP</b>	Regulatory Data Protection
<b>RECAT</b>	Wake Turbulence Recategorization
<b>REIT</b>	Real Estate Investment Trusts
<b>RFG</b>	Remanufactured Finished Goods
<b>RMB</b>	Renminbi (Chinese Yuan)
<b>ROBE</b>	Regulations on Optimizing the Business Environment
<b>RPM</b>	Resale Price Maintenance
<b>RQFII</b>	Renminbi Qualified Foreign Institutional Investor
<b>SAC</b>	Standardization Administration of China
<b>SAFE</b>	State Administration of Foreign Exchange
<b>SAFEA</b>	State Administration for Foreign Experts Affairs
<b>SAIC</b>	State Administration for Industry and Commerce
<b>SAMR</b>	State Administration for Market Regulation
<b>SAPPRFT</b>	State Administration of Press, Publication, Radio, Film, and Television
<b>SAR</b>	Special Administrative Region
<b>SASAC</b>	State-Owned Assets Supervision and Administration Commission
<b>SBL</b>	Stock Borrowing and Lending
<b>SCS</b>	Social Credit System
<b>SDO</b>	Standards Development Organization
<b>SDR</b>	Special Drawing Right
<b>SEC</b>	(US) Securities and Exchange Commission
<b>SECAD</b>	State Export Control Administrative Department
<b>SEI</b>	Special Emphasis Items
<b>SESAR</b>	Single European Sky ATM Research
<b>SFC</b>	Securities and Futures Commission (of Hong Kong)
<b>SGX</b>	Singapore Exchange

<b>SHFTZ</b>	Shanghai Free Trade Zone
<b>SME</b>	Small and Medium-Sized Enterprise
<b>SOE</b>	State-Owned Enterprise
<b>SPB</b>	State Post Bureau
<b>SPC</b>	Supreme People's Court
<b>SPS</b>	Sanitary and Phytosanitary Measures
<b>SSD</b>	Significant Standards Difference
<b>STA</b>	State Taxation Administration
<b>SV</b>	Streamlined Validation
<b>SWIM</b>	System Wide Information Management
<b>SZSE</b>	Shenzhen Stock Exchange
<b>TA</b>	Transfer Accounting
<b>TAP</b>	Temporary Activity Permit
<b>TBL</b>	Tendering and Bidding Law
<b>TC</b>	Technical Committee
<b>TC180</b>	China Financial Standardization Technical Committee
<b>TC260</b>	China National Information Security Standards Technical Committee
<b>TGL</b>	Temporary General Licenses
<b>TMO</b>	Trademark Office
<b>TP</b>	Transfer Pricing
<b>TPA</b>	Third-Party Access
<b>TPM</b>	Technological Protection Measures
<b>TPR</b>	Trade Policy Review (Conducted By WTO)
<b>TRAD</b>	Trademark Review and Adjudication Division
<b>TRIPS</b>	Agreement on Trade-Related Aspects of Intellectual Property Rights
<b>TRQ</b>	Tariff Rate Quota
<b>TSA</b>	"US Transportation Security Administration"
<b>UAV</b>	Unmanned Aerial Vehicles
<b>UEL</b>	Unreliable Entity List
<b>UK</b>	United Kingdom
<b>VAT</b>	Value-Added Tax
<b>VATS</b>	Value-Added Telecommunications Services
<b>VBP</b>	Volume-based Procurement
<b>VFR</b>	Visual Flight Rules
<b>VIE</b>	Variable Interest Entity

<b>VOA</b>	Visa on Arrival
<b>VOC</b>	Volatile Organic Compound
<b>VPN</b>	Virtual Private Network
<b>WFOE</b>	Wholly Foreign-Owned Enterprise
<b>WHT</b>	Withholding Tax
<b>WMC</b>	Wealth Management Company
<b>WMD</b>	Weapon of Mass Destruction
<b>WSL</b>	Work Safety Law
<b>WTO</b>	World Trade Organization
<b>WTO/TBT</b>	World Trade Organization Agreement on Technological Barriers to Trade
<b>YOY</b>	Year-on-Year
<b>YRD</b>	Yangze River Delta
<b>YREB</b>	Yangze River Economic Belt

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