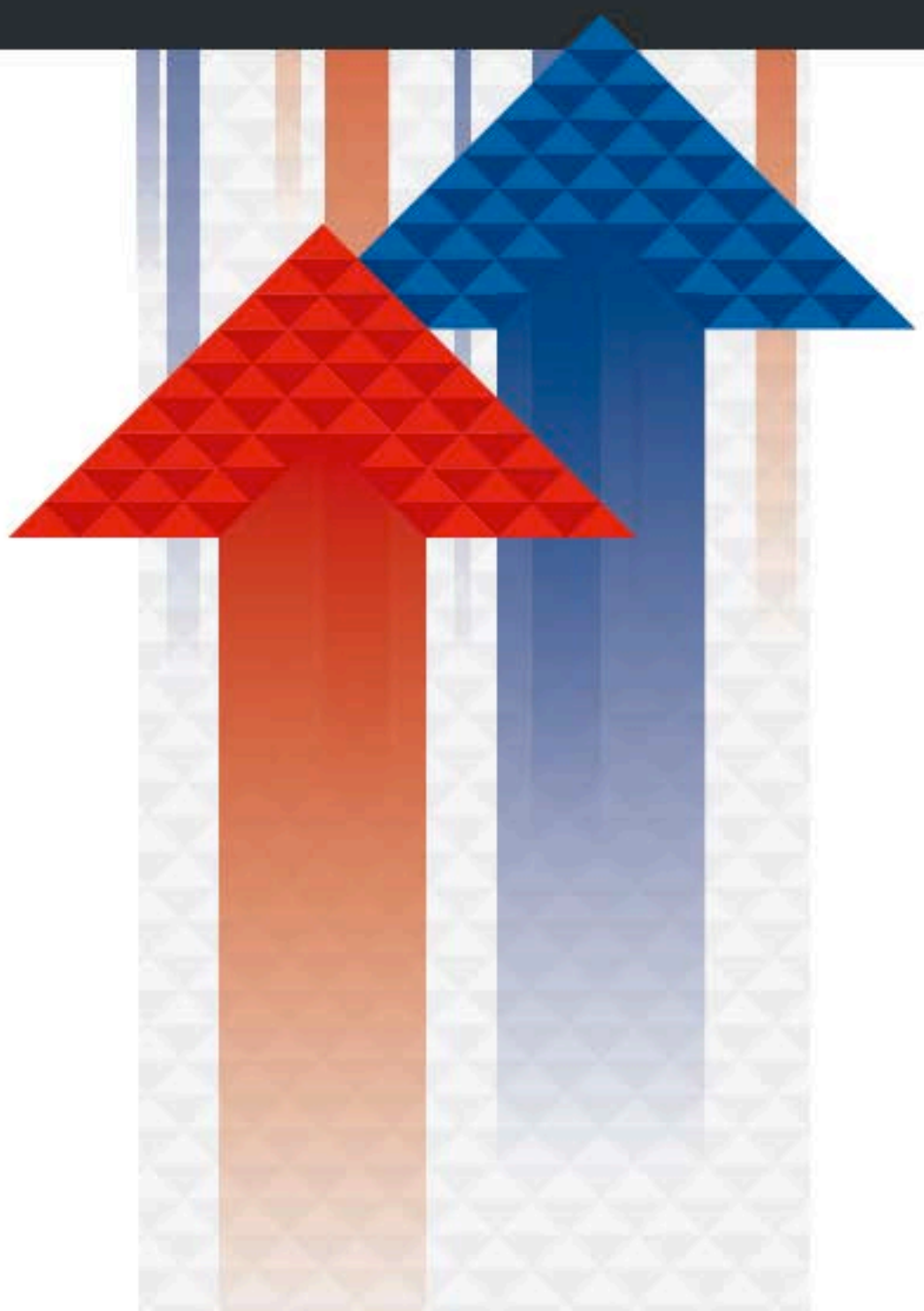
AmCham China
中 国 美 国 商 会

White Paper
American Business IN CHINA

2014 American Business in China White Paper
2014 年度美国企业在中国白皮书



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Chairman's Message

In the first year of the new Chinese leadership, we have already been presented with an economic reform agenda that will define the coming decade. While we now have a blueprint for the proposed reforms, the American Chamber of Commerce in the People's Republic of China (AmCham China) looks forward to their implementation. Though our member companies faced many challenges last year, this 16th edition of the annual *American Business in China White Paper* not only addresses these difficulties but also details the progress made in various sectors. Moreover, it offers practical solutions for addressing areas where inconsistencies, inefficiencies, and unfair practices persist. These chapters reflect the experiences faced by our over 1,000 member companies, spanning 21 industries and 17 cross-sector industrial and regional policies, in addition to contributions from our regional chapters in Dalian, Tianjin, and Wuhan and from the American Chamber of Commerce in Shanghai.

Though it will take time to fully implement the proposed reforms, some industries have already begun to experience positive changes, such as the food and beverage industry, following the initial streamlining of certain ministries. Renewed negotiation by US and Chinese government officials on a bilateral investment treaty and discussion of movement toward the use of a negative list for foreign investment approvals represent important progress on *White Paper* recommendations from previous years. Despite this progress, our members continue to face many challenges when it comes to issues of market access, licensing, and intellectual property rights (IPR). Although the development of the China (Shanghai) Pilot Free Trade Zone promises much in terms of creating an increasingly level playing field for foreign and domestic companies, many of our member companies remain unsure what benefits the zone will truly bring to their operations. Many were discouraged by the length of its initial negative list and to find that it was, for certain sectors, more restrictive than the Guiding Catalog on Foreign Investment in Industry.

In 2014, we will continue to advocate for our key policy priorities of investment, IPR, transparency, and standards.

China is the world's second-biggest economy, yet it maintains a more restrictive foreign investment regime than its major trading partners and requires approval of individual investments, while other countries require simple registrations or notifications. Especially as Chinese companies increasingly "go out" and invest in the US and other countries, it is becoming ever more vital for reciprocal, transparent, and international-standard investment policies to be applied in China.

While we have seen some improvements in the enforcement of IPR in China, our members continue to show misgivings about the protection of their intellectual property, which can be extracted through technology transfers or simply stolen. Strong, reliable IPR enforcement is necessary for innovation to flourish. Protection of IPR further encourages entrepreneurialism, supports private sector development, and promotes growth of high-tech ecosystems and high-paying jobs for educated workers.

Lack of transparency hinders industry understanding of and compliance with laws and regulations.

会长致辞

在中国新领导层执政的第一个年头，我们已经看到了将影响今后十年的经济改革日程。改革的蓝图已经拟定，中国美国商会期待着这一蓝图得以落实。尽管我们的会员企业去年面临很多挑战，但此第 16 版年度《美国企业在中国白皮书》不仅谈到了这些困难，还详述了不同行业取得的进步。此外，白皮书还提供了切实可行的解决方案，以解决实践过程中存在的不一致、低效和不公平现象。这些章节反映的是我们 1000 多家会员企业的亲身经历，涉及 21 个产业和 17 项跨行业的产业政策和地区政策，另外还有大连、天津和武汉办公室和上海美国商会提供的内容。

虽然要全面实施这些拟定的改革需要时间，但有些产业已经开始发生积极的改变，比如紧随某些部委初步精简步伐的餐饮业的变化。中美政府官员重启双边投资协定谈判以及外商投资审批转向使用负面清单的探讨都体现了之前《白皮书》所提议的重要进展。尽管有上述进步，但在涉及市场准入、许可审批和知识产权问题时，我们的会员企业仍然面临着很多挑战。中国（上海）自由贸易试验区在为中外企业创造更为公平的竞争环境方面带来了很多预期，但是我们的许多会员企业仍然不能确定自贸区能为他们的经营带来哪些实际益处。许多会员企业对初步负面清单的长度感到沮丧，并发现在某些领域，该负面清单比《外商投资产业指导目录》的限制更多。

2014 年，我们的主要政策建言仍将集中在投资、知识产权、透明度和标准。

中国是世界第二大经济体。然而，与主要贸易伙伴相比，中国的对外投资体制仍然有着很大的局限。中国要求对每项投资进行审批，而其它国家仅要求登记或通知即可。特别是随着中国企业日益“走出去”，在美国和其它国家进行投资，中国实施互惠、透明和国际标准的投资政策就变得更加至关重要。

尽管我们已经看到了中国在知识产权执法方面的一些改善，我们的会员企业仍然对其知识产权能否得到保护表现出了疑虑，因为其知识产权会通过技术转让被提取或者被直接窃取。强有力和可靠的知识产权执法是繁荣创新所必需的。保护知识产权也会进一步鼓励创业，支持私营领域的发展，推动高科技生态系统的发展，并为训练有素的工人提供高薪工作。

缺乏透明度影响产业界对法律法规的理解及守法合规。实际上，监管部门对法规解读、执行不一致及法律本身不明晰仍然是我们会员企业面临的最大挑战。此外，如果有充足的时间和

Indeed, inconsistent regulatory interpretation and their irregular enforcement and unclear laws remain as top challenges for our members. Additionally, foreign companies can help to share regulatory best practices if they are given sufficient time and opportunity to comment on proposed new rules.

We also recognize that standards development organizations (SDOs) play a key role in integrating the global economy. SDOs work best when they focus on technical quality and market relevance, regardless of the SDO's nature or country of origin. The Chinese government should advocate technical excellence which, in turn, will spur Chinese products to competitive global leadership.

Improvement in these four ares will result in benefits for both foreign and domestic companies operating in China, including increasingly smooth and efficient trade flows that fuel economic growth, the creation of jobs, expansion of the local tax base, support for the development of local suppliers, and the sharing of valuable managerial, technical, and research and development expertise.

While many AmCham China members maintain a "wait-and-see" approach toward the proposed reforms, it is clear that change is coming and that the old methods for success in China may no longer apply. Thus there will be a need for American businesses to refocus on the new government policies and re-evaluate business strategies and goals developed in the years of double-digit growth. Just as the Chinese leadership has acknowledged the challenges of implementing these economic reforms, the short term may prove difficult for some foreign businesses operating in China. However, we are all confident that these short-term trials will yield a more positive economic environment in the future, both in terms of a more balanced Chinese economy and a fairer and more market-driven playing field for foreign companies.

We are therefore encouraged by the continued progress made during the annual negotiations of the Strategic and Economic Dialogue, Joint Commission on Commerce and Trade, and other bilateral dialogues. AmCham China remains highly invested in the positive outcomes of these negotiations and firmly committed to supporting the American business community in China. The continued strength of US-China relations is vital to continued economic growth in both countries.

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

机会对拟定的新法规发表意见，外国公司能帮助提供监管方面的最佳实践。

我们也认识到，标准开发组织（SDOs）对全球经济的整合起着关键作用。不论其性质或起源国如何，如果标准开发组织首先关注技术质量和市场相关性，它的作用会最大。中国政府应该倡导先进技术，这将反过来促使中国产品在全球竞争中处于领先地位。

上述四个领域的改善将为在华运营的中外企业均带来益处，包括拉动经济增长的贸易流量会越来越高效顺畅、创造就业、扩大地方税基数、为当地供应商的发展提供支持，以及分享有价值的管理、技术和研发专业知识。

尽管中国美国商会的许多会员企业对拟定的改革持“观望”态度，但很显然变革就要到来，而中国取得成功的老办法可能也不再适用。因此，这就需要美国企业重新关注政府的各项新政策，并且重新评估在两位数增长的年代所制定的商业策略和目标。正如中国领导层承认实施这些经济改革会遇到各种挑战一样，在华运营的一些外资企业短期可能会遇到困难。然而，我们都相信，不论是在发展更加平衡的中国经济方面，还是在外资企业更加公平、市场化的竞争平台方面，短期的考验将会在未来创造出一个更为有利的经济环境。

因此，中美战略和经济对话、中美商贸联合委员会以及其它双边对话在年度谈判期间所取得的持续进展，令我们深受鼓舞。中国美国商会仍然对这些谈判的积极成果寄予厚望，并且坚定地致力于支持在华的美国工商业界。持续加强中美关系对两国经济的持续增长至关重要。

葛国瑞

中国美国商会会长

Part One:
Business Climate Overview
商务环境综述

China's Reform Agenda: Optimism and Uncertainty

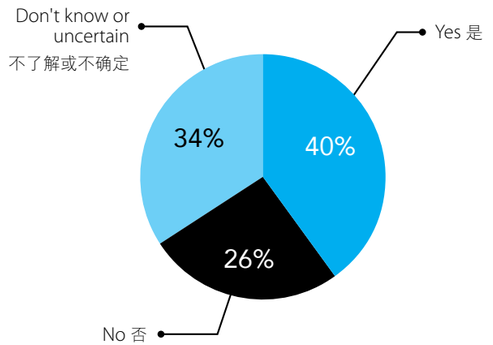
For American businesses operating in China, 2013 marked a year of many changes and increased expectations for reform. Stepping into his new governmental role as president of China in March 2013, Xi Jinping has laid out a detailed and potentially promising agenda, outlining not only much-needed economic reforms, but also political and social reforms. The chapters within this 16th annual *American Business in China White Paper* assess the state of American business in China from the practical, on-the-ground perspective of our members as they navigate this shifting environment. Though China's leadership has already begun to take action on some fronts—such as the anti-corruption and austerity campaigns and the streamlining of some government ministries and administrative processes—the proposed policies on their reform agenda that will have the greatest impact on the operating environment for foreign businesses in China have yet to be implemented. However, our members remain cautiously optimistic about the direction of the proposed reforms and are eager to share their experiences and best practices with the Chinese government and their Chinese counterparts in support of these efforts. We are also eager for China's reform blueprint to be put into action.

Rethinking China's Economic Model

After 35 years of blistering growth, China has in many ways re-established its place among the world's great nations. While China largely avoided the turmoil created by the global financial crisis, there is now a consensus that the current economic model has run its course and the nation's leaders now need to guide the country into uncharted waters. The current economic model is reaching its breaking point, with many sectors of the economy warping from growing strains. These strains manifest themselves in various ways: chaos in the credit system from perverse allocation incentives, toxic soil polluting the food supply and toxic air shrouding many of the nation's urban areas, soaring real estate prices, and ghost cities. Indeed, the Chinese leadership is acutely aware of the critical need for reform and the immense challenges that lie ahead.

While acknowledging the problems is a huge first step, solving them will require grappling with issues of unprecedented complexity. The next stage of development will require opening markets, reducing corruption, and consistent application of the rule of law to expand the base of those who benefit from economic growth. Already, the authorities have begun to test the levers of power, but in ways that raise anxiety about the future business environment.

Q Do you believe foreign firms are being singled out in the recent pricing or anti-corruption campaigns?
是否外资企业在定价或反腐活动中被刻意挑出



In particular, we have seen state-directed media campaigns targeting foreign companies that do nothing to promote the domestic economy and in fact deter much-needed investment in the most promising areas of growth. While foreign companies are not the only ones targeted by these campaigns, 40 percent of our members perceive that foreign companies are singled out by these campaigns, and such perception fuels the view that foreign investment is becoming less welcome in China. Clear policy and consistent, transparent application of the rule of law, including allowing companies to defend their interests without fear of retribution, are fundamental prerequisites to building a fair and predictable business environment so that businesses, domestic and foreign, can invest and expand with confidence.

中国的改革日程：乐观与期待

对于在华运营的美国企业而言，2013 年是充满变革和改革预期提升的一年。随着 2013 年 3 月习近平担任中国国家主席，承担新的政府角色，他已经制定了一份详尽且颇具前景的改革议程，不仅规划了急需的经济改革，而且还规划了政治和社会改革。第 16 版年度《美国企业在中国白皮书》的各章节从中国美国商会会员企业实际和切身的角度评估了在华美国企业的状况，他们身处这一正在变革的大环境中。虽然中国的领导层已经开始在一些领域采取行动，如反腐败、反奢侈浪费运动，以及调整部分国家部委和简化政府行政程序，但是对在华外资企业的运营环境将产生最大影响的改革政策在很大程度上还需落到实处。总体而言，我们的会员企业对当前改革的方向持谨慎乐观态度，并渴望与中国政府及其同行分享自己的经验和最佳实践以支持上述努力。我们期盼中国的改革蓝图将会变成现实。

中国经济模式的再思考

经过 35 年的快速增长以后，中国在很多方面已经重新确立了其世界大国的地位。虽然中国基本避免了全球金融危机造成的动荡，但是现在的共识认为目前的经济模式已走到了尽头，国家领导者现在必须把国家引向新的征程。目前的经济模式正处于拐点，许多经济领域因日益增长的压力而扭曲。这些压力表现在不同的方面：不合理的资源配制刺激造成的信贷体系混乱、有毒土壤污染食品供应、有害空气笼罩着中国的许多城市、飞涨的房地产价格和鬼城。的确，中国领导层清醒地意识到改革迫在眉睫，且今后必将面临巨大的挑战。

尽管承认问题存在是迈出了重大的第一步，解决起来则需要努力克服各种问题，其复杂程度前所未有。下一阶段的发展将需要开放市场、减少腐败以及依法治理并执法一致，这样才能使更多人群在经济增长的过程中获益。政府部门已经开始测试权力杠杆，但是采用的方式引起了对未来商务环境的担忧。

尤其是，我们看到国家管控的媒体机构正掀起针对外资企业的报道攻势，这对促进国内经济增长毫无益处，实际上只会遏制最有增长潜力领域发展所亟需的外商投资。尽管外资企业不是这些报道针对的唯一目标，但 40% 的会员感觉外资企业在此类报道中被凸显出来，从而使公众认为外国投资在中国正变得不受欢迎。明确的政策，透明一致的法治环境，使企业不用担心被报复就能维护自己的利益，都是建立一个公平且可预知的商务环境所需要的基本前提，从而使内外资企业都能满怀信心地投资和扩展。

改革议程

然而，我们的会员谨慎乐观地认为，尽管情况在可预见的未来可能会变得更加困难，但是经济改革如此关键，国家领导将会最终找到方法克服阻力，并向国际贸易和投资以及国内私营领域进一步开放。事实上，改革路线图在很大程度上已经在 2011–2015 年第 12 个五年规划中做了描述。例如，规划承诺建立公平、一致且透明的市场准入标准，同时要求加强竞争以支撑经济发展。我们强烈支持这一远见并且相信，通过开放市场和提供公平的竞争环境从而使所有的参与者，无论私营还是国有，也无论内资还是外资，都能公平地进行投资和竞争，中国将能够实现经济可持续发展所需要的新行业和创新。

“十二五”规划还提出加快开放服务行业。尤其是在服务领域，还有很大的空间放宽限制和释放潜能，从而以现代保险、金融服务、医疗保健、信息技术、物流、零售和电子商务等为基础推动新一轮经济增长。

习近平上任差不多是在五年规划的中期，他担任总书记和国家主席的第一年就确立了强大且有抱负的领导人形象。到目前为止，他的许多行动主要是针对内政，旨在打击政府中的腐败行为、加强企业治理、简化政府审批机制以及使党、政府和军队与中央领导层的思想保持一致。

2013 年 10 月，十八届三中全会后发布了一份包含 60

The Reform Agenda

Nevertheless, our members are cautiously optimistic that while the situation is likely to become more difficult in the foreseeable future, economic reform is so critical that the nation's leaders will ultimately find a way to overcome resistance and further open the economy to international trade and investment as well as the domestic private sector. In fact, the roadmap to reform has largely been described in the 12th Five-Year Plan for 2011-2015. For example, the plan promises to establish fair, consistent, and transparent market access standards while calling for enhanced competition to sustain economic development. We strongly support this vision and believe that by opening markets and leveling the playing field so that all actors, whether privately or state-owned, domestically or foreign-invested, can invest and compete fairly, China will enable the new businesses and innovations needed for the economy to grow sustainably.

Also in the plan is a push for opening the service sector. In the realm of services in particular, there is great room for liberalization and for unlocking the potential to drive a new wave of economic growth based on modern insurance, financial services, healthcare, information technology, logistics, retail, and e-commerce.

Entering office nearly halfway through the Five-Year Plan period, Xi Jinping, in his first year as party general secretary and state president, has established himself as a powerful and ambitious leader. Many of his actions thus far have primarily been inwardly focused and designed to reign in government corruption, improve governance, streamline government approval mechanisms, and align party, government, and military officials with the central leadership's thinking.

In October 2013, a 60-point Decision document was released following the Third Plenum of the 18th Party Congress, outlining government plans for improving the administrative system, clarifying the roles of the market and the state, and allowing a greater role to citizen-led non-governmental social service organizations. The key designated areas of reform included:

- More room given to the development of private enterprises, although public ownership is still emphasized;
- Liberalization of the financial system;
- Fiscal policy reform, including hints at a tax overhaul and realignment of fiscal authority;
- Rural land reform and urbanization, with expanded land-use rights for farmers, unified construction markets, and hints at hukou reform;
- Moderate expansions in market access and foreign investment; and
- More stringent environmental regulation.

The Decision emphasized economic development as its main objective, stating that the government must retreat from its role in allocating resources and focus instead on the five functions of macroeconomic management, market regulation, public service delivery, supervision of society, and environmental protection.

In March 2014, the "Two Meetings," or *liang hui*, suggested that the role of the state will indeed not be eliminated by the market, but rather that the market will be used as a tool to help the state enterprise and fiscal systems operate as more effective instruments for achieving state aims.

State-owned enterprises (SOEs) have increased their control over certain sectors of the economy in recent years, and government support for SOEs was overwhelmingly citied by AmCham China member companies as the most negative industrial policy, being chosen more frequently than all the other options combined. While the outcomes of both the Third Plenum and *liang hui* indicate that SOEs will continue to be supported and are expected to play an important role in China's economic development, they will also be charged to operate more effectively, improve their return on capital, and be subject to more intense competition and tighter regulation. Additionally, private capital will be permitted to enter previously restricted sectors and private direct investment in SOEs and in state-led investment projects will be encouraged. Both of these are viewed as steps in the right direction. While these proposed reforms are admirable, the ability to implement them remains in question. China's leaders likely realize more than anyone the difficulty of the tasks that lay ahead. Xi Jinping was quoted by Xinhua as saying, "The easier reforms that could make everyone happy have already been completed. The tasty meat has been eaten up. The rest are tough bones to crack…[We] should dare to gnaw even tough bones and dare to ford dangerous rapids."

Indeed, in an apparent effort to allay the challenges faced by his predecessors, including turf battles between different ministries and the influence of security forces, Xi Jinping has established and taken the lead of four high-level policy making groups—on deepening economic reforms, national security, internet security and informatization, and military reform—which highlight the most pressing issues facing China.

Piloting for Nationwide Free Trade

One vehicle for reform championed by Premier Li Keqiang that has been closely watched by our member companies was the establishment of the China (Shanghai) Pilot Free Trade Zone (Shanghai FTZ) in September 2013. While the excitement from the foreign business community following the announcement of the Shanghai FTZ has been muted by the lack of clear and immediate benefits for foreign companies and a longer-than-expected negative list, we view the Shanghai FTZ as a positive development. Reports indicate that the Shanghai FTZ negative list may be cut by 40 percent in 2014, a move we welcome.

个要点的《决定》文件，概述了政府行政体制改革的计划，明确了市场和政府的关系并且允许公民主导的非政府社会服务组织发挥更大的作用。改革的主要领域包括：

- 坚持强调公有制，但要给私营企业更多发展空间；
- 放宽对金融体系的管制；
- 财政政策改革，包括暗示税收改革和财政部门的重新调整；
- 农村土地改革和城镇化，包括扩大农民的土地使用权、统一建筑市场以及暗示户口改革；
- 适度扩大市场准入和外国投资；以及
- 更为严厉的环境监管。

《决定》强调经济发展是主要目标，声明政府必须从资源配置的角色中退出，把重点放在宏观调控、市场监管、公共服务提供、社会监督和环境保护这五大职能上。

2014 年 3 月，“两会”建议政府的角色不一定非要市场来取代，而是把市场当作帮助国有企业和财政体系更加有效运作的工具，以实现政府目标。

最近几年来，国有企业加强了对某些经济领域的控制，政府对国有企业的支持被绝大多数中国美国商会的会员企业评为最负面的产业政策，被选择的频率超过了所有其他选项的总和。尽管三中全会和“两会”表示将继续支持国有企业并且期望国有企业在中国的经济发展中发挥重要作用，但也要求国有企业更为有效地运营，提高资本收益率并接受更为激烈的竞争和更加严格的监管。另外，允许私营资本进入以前限制进入的行业，并且鼓励私营资本直接投资国有企业和政府主导的投资项目。这些都是沿着正确改革方向前进的步伐。

尽管这些拟定的改革令人称道，但是这些改革能否实施仍然是个问题。中国的领导人可能比任何人都更加清楚所面临的各项任务的难度。新华社引用习近平的话说：“容易的改革都已经做过了，好吃的肉都已经吃完了，剩下的都是难啃的骨头……［我们］应该敢于啃硬骨头，敢于涉险滩”。

的确，为努力缓解其前任领导人所面临的各种挑战，包括协调各部委的权力重叠和安全力量的影响，习近平已经成立了四个高级别的决策小组并担任组长 – 全面深化改革领导小组、国家安全领导小组、网络安全和信息化领导小组以及深化国防和军队改革领导小组。这些所突显的都是中国面临的最迫切的问题。

全国性自由贸易试点

由李克强总理倡导的、我们的会员企业密切关注的一个改革工具是 2013 年 9 月创建的中国（上海）自由贸易试验区（上海自贸区）。由于对外资企业没有明确且直接的益处，以及负面清单的长度超过预期，外国工商界在上海自贸区宣布后的兴奋心情已经减弱。但是尽管如此，我们依然认为上海自贸区是一个积极的进展。有报道称，上海自贸区的负面清单在 2014 年可能会减少 40%，此举我们非常欢迎。

最终，上海自贸区将成为经济改革的一个试验区，它的成功经验可以推广到全国。2013 年年底全国各城市掀起的申请创建自贸区试点的浪潮进一步支持了这一意图。中国政府官员声明这些自由贸易试验区的设立是为了提供公平、稳定、透明且可预测的投资环境，这使我们深受鼓舞。上海自贸区的意义在《投资政策》和《上海》这两章中将更为详细地讨论。

改革的外部驱动力

除了国内改革以外，2013 年中国政府暗示有意通过更为便利化的贸易与外国合作伙伴进行合作。

或许是为了承认更大的经济整合将会对国内企业产生的积极作用，尤其是伴随着国内企业加大了海外投资，中国政府 2013 年 5 月一改其对跨太平洋伙伴关系协议（TPP）的批评口吻，表示出加入该协议的兴趣。如果成功启动，跨太平洋伙伴关系协议将包含大约 8 亿人口以及全球经济的 40%。尽管在达成初步协议之前，中国不可能加入谈判，而初步协议本身的日期还不确定，但是中国政府对跨太平洋伙伴关系协议态度的改变激起了在中国更为自由地进行贸易的希望。

同样有趣的是，中国和美国于 2013 年 7 月宣布同意重新启动双边投资协定（BIT）的谈判。我们的会员企业因这一公告以及双边投资协定能够带来的益处而受到鼓舞。然而 2014 年《中国商务环境调查报告》的结果显示，因为双边投资协定谈判的结束时间仍然不明确，会员企业对这样一个协定的好处仍然感到不确定。有关双边投资协定及其对中国外商投资法规影响的进一步讨论，请参阅《投资政策》一章。

我们的会员企业还非常感兴趣的是中国将主办 2014 年

Ultimately, the Shanghai FTZ is to serve as a pilot project for economic reforms wherein its successes can be spread throughout the country. This intention is further bolstered by the wave of applications in late 2013 from cities across the country to develop their own pilot FTZs. We are encouraged by statements from Chinese government officials that these new pilot zones are intended to offer a fair, stable, transparent, and predictable investment environment. The implications of the Shanghai FTZ are discussed in greater detail in the Investment Policy and Shanghai chapters.

External Proponents of Reform

In addition to domestic reforms, the Chinese government signaled greater intent to cooperate with foreign partners through more liberalized trade in 2013.

In perhaps an acknowledgement of the positive role greater economic integration will have on its domestic companies, particularly as they increase investment overseas, the Chinese government in May 2013 reversed its critical tone towards the Trans-Pacific Partnership (TPP) and indicated interest in joining. If successful, the TPP will encompass approximately 800 million people and nearly 40 percent of the global economy. While it may be unlikely that China will join the negotiations before an initial agreement is reached—the timeline for which is itself uncertain—the Chinese government's shift in attitude towards the TPP prompted hope for greater trade liberalization in China.

In the same vein, China and the US announced in July 2013 that they had agreed to renew negotiations on a bilateral investment treaty (BIT). Our member companies are encouraged by this announcement and the benefits that a BIT can bring. Yet the results of the 2014 *China Business Climate Survey Report* show that, as it remains unclear when BIT negotiations will be concluded, member perceptions on the benefits of such a treaty remain uncertain. Further discussion of the BIT and its implications for China's foreign investment regulations can be found in the Investment Policy chapter.

Also of great interest to our members is China's hosting of the 2014 Asia-Pacific Economic Cooperation (APEC) meetings. In its host year, China has indicated interest in encouraging greater regional economic integration and promoting innovative development. As APEC strives to facilitate economic growth, cooperation, trade, and investment across the Asia Pacific, our members hope that China will take this opportunity to lead productive dialogues on open and competitive markets to produce innovation. Additionally, our member companies look forward to helping support China and working together to ensure a successful APEC year.

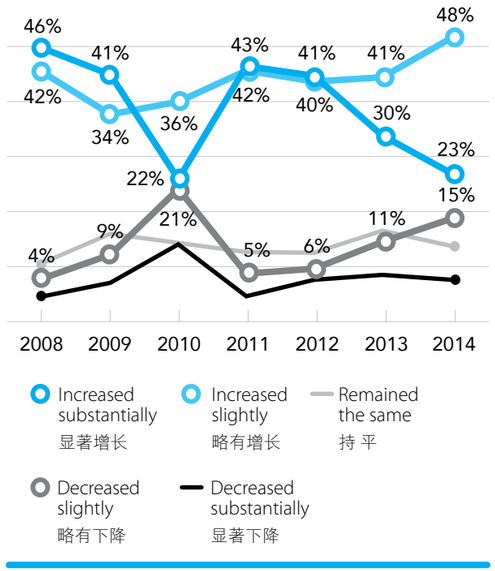
Ultimately, AmCham China supports China's greater participation and leadership in the World Trade Organization and other international economic organizations and continues to encourage China to abide by international standards and agreements.

Perspectives from the American Business Community: Cautious, Increasingly Pragmatic View of the Chinese Market

While discussions of reform have infused optimism into the foreign business community, the realization that the period of double-digit economic growth has run its course has led many foreign businesses to take a more pragmatic, sober assessment of China's overall business environment. Indeed, the opportunities for breakneck growth are increasingly difficult to come by for both domestic as well as foreign companies. Our members are certainly not alone in experiencing declines in revenue and profitability growth in China.

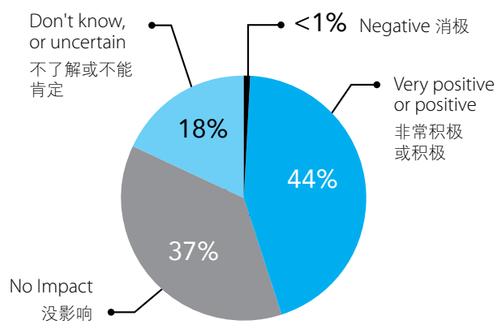
The 2014 *China Business Climate Survey Report* shows that, while many companies are still profitable in China, increasingly fewer companies are reporting substantial revenue increases, and those reporting slight increases or slight decreases are more prevalent. Indeed, costs are rising and, despite solid optimism for the short-term business outlook, companies are increasingly cautious about future investments, as revenue and profitability growth slow.

Q How do the last year's revenues from your China operations compare to the previous year?
企业上一年度在华的运营收入与前一年的比较



The impact of the stimulus measures rolled out after the global financial crisis has clearly worn off, with more AmCham China member companies scaling back expansion plans for China. For the first time in the *China Business*

Q What are your expectations for a US-China Bilateral Investment Treaty on your company's operations?
企业如何看待中美双边投资协定对运营的影响



亚太经济合作组织（经合组织）会议。在其主办之年，中国已经表示有意鼓励更大范围的区域经济一体化和促进创新发展。因为经合组织努力促进亚太地区的经济增长、合作、贸易和投资，我们的会员企业希望中国将会利用这个机会带头就开放竞争的市场展开富有成效的对话以便推动创新。另外，我们的会员企业还期待着为中国提供支持，共同努力确保经合组织会议的成功。

最后，中国美国商会支持中国更多地参与和领导世界贸易组织和其它国际经济组织，并且继续鼓励中国遵守国际标准和协议。

美国工商界的观点：谨慎、更加务实地看待中国市场

虽然改革的讨论给外国工商界注入了乐观情绪，但意识到两位数增长的时期已走到了尽头使得很多外资企业对中国的整体商务环境进行更为务实、冷静的评估。的确，无论内资企业还是外资企业都越来越难以获得快速增长的机会。在华收入和赢利增长下降的当然不仅仅是我们的会员企业。

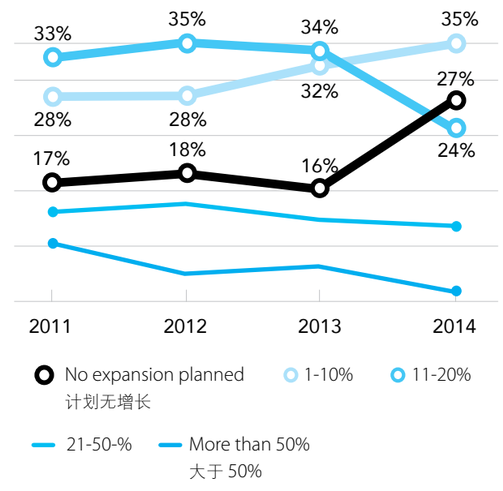
2014 年《中国商务环境调查报告》显示，尽管许多公司在华仍然赢利，但是报告收入大幅增长的公司越来越少，而报告略微增长或者略微下降的企业则更为普遍。的确，成本在上升，并且尽管对短期的商务前景持坚定的乐观态度，但是随着收入和赢利增长减缓，企业对未来的投资越来越谨慎。

全球金融危机后实施的经济刺激措施所带来的影响已明显耗尽，中国美国商会的更多会员企业正在缩减在华的扩张计划。在《中国商务环境调查报告》的结果中，绝大多数的会员企业计划 2014 年在华投资提高 10% 或者以下，计划不增加投资的企业占比急剧上升。仍有近一半的受访者把中国作为排名前三位的投资地。然而七年前，中国是绝大多数中国美国商会会员企业的首选投资地。这一比例已下降到 20%，受访者越来越多地把中国称为其企业的许多外国直接投资地之一。

对于其在华的现有业务，会员企业认为中国经济增速放缓是最大的风险。市场准入限制、对政府政策的担忧以及感觉外资企业受欢迎程度不如以前也导致会员企业缩减在华的扩张计划。尽管外资企业在中国过去 30 年的经济发展中发挥了积极作用，但是 40% 的受访者感觉受欢迎程度不如以前。

随着企业对未来在华经济机会的乐观态度下降，企业面临的挑战变得更加明显。法律不明确和适用不一致仍然是重要的挑战，但劳动力成本再次成为最担忧的问题，成本被普遍认为是感觉中国竞争力丧失的主要因素。外资企业面临的其他困难包括有利于国有企业的产业政策、互联

Q How much do you estimate your company will increase investment in China operations for the next year? (2011-2014)
企业对 2014 年在华运营投资增长的预期（2011-2014）



Climate Survey results, the majority of members plan to increase China investments by 10 percent or less in 2014, with the proportion of companies planning no increase in investment rising sharply. Nearly half of AmCham China member survey respondents still regard China as a top-three investment priority. However, seven years ago, China was the number one investment priority for a majority of AmCham China members. That proportion has declined to 20 percent, with respondents increasingly describing China as one of many foreign direct investment destinations for their company.

For their existing operations in China, member companies view the slowing of China's economy as the greatest risk. Market access restrictions, concerns with regard to government policies, and perceptions that foreign business faces a less welcome environment than before also contribute to the scaling down of member companies' expansion plans. Despite the positive role of foreign business in the development of China's economy over the past 30 years, two in five respondents perceive an environment less welcome than before.

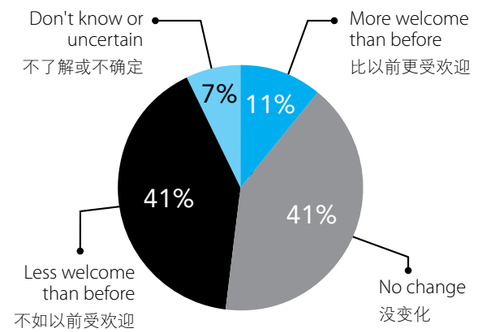
With companies less sanguine about future economic opportunities in China, the business challenges become more apparent. Unclear laws and their inconsistent application remain key challenges, but once again labor costs are the top concern, with costs in general recognized as the major contributor to China's perceived loss of competitiveness. Other difficulties that foreign businesses face include industrial policies that favor SOEs, internet censorship, and collecting and protecting data. For three consecutive years, companies have perceived China as losing competitiveness, with over 80 percent of member companies responding in 2013 citing China as having lost its competitive advantage to some or a great degree due to rising costs.

While China's proposed reforms seek to address many of these issues, their timeline is unclear and many fear the reforms will be too little, too late.

Despite these concerns, we remain confident that the government has the resolve to see the necessary reforms through. We maintain this confidence based on our experience operating in China and contributing to the economic miracle that has already taken place. Over the past three decades foreign companies have evolved as China has evolved, injecting US $1.5 trillion (RMB 9.08 trillion) in investment into the country and providing an innovative and positive driving force in the economy. Multinational companies have been instrumental in introducing talent and technology, spurring generations of young Chinese to enter the global workforce. By the end of the last decade, foreign-invested companies employed almost one in five members of China's urban workforce, even more than the number employed by SOEs, and accounted for a quarter of the country's industrial output. They also produced more than half of China's exports. As the development of the service sector becomes increasingly important for the rebalancing of China's economy, our member companies have much to offer in sharing their experiences and training the next generation of the labor force.

Despite the challenges ahead, our member companies by and large remain committed to and optimistic about their China operations and the continued development of the Chinese economy.

Q Do you feel foreign business is more or less welcome in China than before?
是否认为外资企业在中国受欢迎程度下降



网审查以及数据收集和保护。连续三年来，会员企业感觉中国正在丧失竞争力，2013 年超过 80% 的受访会员企业认为由于成本上升，中国已经在一定程度上或者在很大程度上丧失了其竞争优势。

虽然中国的拟定改革寻求解决上述诸多问题，但是改革的期限尚不明确，并且许多企业担心改革力度太小、太迟。

总之，我们相信政府有决心完成必要的改革。我们保持这种信心源于我们在华运营的经验以及我们为已经发生的经济奇迹所做出的贡献。过去 30 年来，外资企业随着中国的发展而发展，向中国注入了 1.5 万亿美元（9.08 万亿元人民币）的投资，为中国的经济提供了创新且积极的推动力。跨国企业帮助引入了人才和技术，激励中国的几代年轻人进入全球劳动力市场。截止上个十年末，外资企业雇用了近 20% 的中国城镇劳动力，甚至超过了国有企业雇用的人数，总产值占中国工业产值的四分之一。它们还生产了超过一半的中国出口产品。随着服务行业对中国经济的再平衡日益重要，我们的会员企业在分享经验和培训下一代劳动力方面还大有可为。

面对各种挑战，我们的会员企业总体上仍致力于在中国的运营和中国经济的持续发展，并对此持乐观态度。

2014 *White Paper* Recommendation Scorecard

The Recommendations Scorecard is an important tool that helps AmCham China track the progress made each year in its top areas of concern. The following table is an index of the priority recommendations from each of the 2013 and 2014 AmCham China *White Paper* chapters.

The progress rating indicates our members' perception of the level of progress—either high, moderate, or low—achieved by relevant government officials in resolving the priority challenge designated in each chapter of the 2013 *White Paper*. The final column indicates each chapter's priority recommendation for 2014.

Chapter	2013 Recommendation	Progress Rating	2014 Recommendation
Agriculture			
Chinese Government	Reduce barriers to foreign participation and investment in agriculture, in particular moving more agricultural products to encouraged status in the "Guiding Catalogue on Foreign Investment in Industry", and opening up the distribution and retail of seeds in China in line with China's WTO commitments.	Low Progress	Reduce barriers to foreign participation and investment in agriculture, in particular by moving more agricultural products to the "encouraged" category of the Foreign Investment Catalogue, and removing most agricultural segments from the "negative list" of the Shanghai Free Trade Zone.
US Government	Work with Chinese officials through bilateral dialogues including the JCCT, S&ED, and US-China Investment Forum to address investment restrictions faced by US agriculture producers.	Moderate Progress	Work with Chinese officials through bilateral dialogues, including the JCCT, S&ED, and US-China Bilateral Investment Treaty negotiations, to address investment restrictions faced by US agriculture producers.
Automotive Industry			
Chinese Government	Issue detailed management rules for the Phase 3 Standard of passenger car fuel consumption limits as soon as possible in order to facilitate compliance.	Moderate Progress	Issue detailed management rules for the Phase 3 Standard of passenger car fuel consumption limits as soon as possible in order to facilitate compliance.
Banking and Captital Markets (formerly Financial Services)			
Chinese Government			
• *Commercial Banking*	Raise and eventually eliminate the ceiling of ownership of foreign investors in local Chinese banks.	Low Progress	Raise the 20 percent investment ceiling imposed on foreign banks when investing in local Chinese banks, to incentivize foreign banks to transfer more of their expertise and best practices to their Chinese partners.
• *Credit Rating*	N/A	N/A	Follow prevailing international practices, such as the IOSCO Code, and remove mandatory ratings requirements from relevant financial sector rules.
• *Interbank Markets*	Further lift interbank limitations over foreign firms from the People's Bank of China (PBOC) and the National Association of Financial Market Institutional Investors (NAFMII).	Low Progress	Further lift interbank limitations over foreign firms from the PBOC and the NAFMII.
• *Liquidity Management*	N/A	N/A	Allow foreign banks to access the bond and certificate deposits (CD) markets for diversified sources of stable funding.
• *Private Equity*	Keep the international "see-through" income taxes practice to avoid double taxation.	Moderate Progress	Use "domestic in nature" treatment for foreign GP controlled RMB funds.
• *RMB Internationalization*	N/A	N/A	Release further information on the establishment of the China International Payment System.
• *Securities and Bonds*	Grant SJVs business licenses related to innovative products more flexibly; shorten the grace period for securities JVs to get new licenses.	Moderate Progress	More flexibly grant SJVs business licenses related to innovative products, and shorten the grace period for securities JVs to get new licenses.
Business Process Outsourcing			
Chinese Government	Create a government-sanctioned trade body that can act as a collective representative and advocate for central government, Model Cities, and domestic and multinational service providers.	Moderate Progress	Create a government-sanctioned trade body that can act as a collective representative and advocate for central government, Model Cities, and domestic and multinational service providers.

2014 年《白皮书》主要建议一览表

此主要建议一览表帮助中国美国商会追踪重点关注领域的年度发展进程。下表列出了中国美国商会 2013 及 2014 年白皮书各章节提出的主要建议。

相关政府官员积极应对 2013 年《白皮书》各章节所提及的挑战，并取得一定进展，进展评分正是表明了会员公司对政府相关改革进展的评价 --- 进展明显、有所进展或进展较慢。最后一栏列出 2014 年《白皮书》各章节的主要建议。

章 节	2013年白皮书主要建议汇总	进展评价	2014年白皮书主要建议汇总
农 业			
中国政府	采用科学的方法，评估中国的肉类、鱼类和其他农产品（包括熟制禽肉、苹果、梨和鲶鱼）的美国市场准入要求。	进展较慢	通过美中商贸联委会、美中战略经济对话和美中投资论坛等平台，加强双边对话，解决美国农业企业所面临的投资限制。
美国政府	通过美中商贸联委会、美中战略经济对话和美中投资论坛等平台，加强双边对话，解决美国农业企业所面临的投资限制。	有所进展	通过美中商贸联委会、美中战略经济对话和美中双边投资协定谈判等平台，加强双边对话，解决美国农业企业所面临的投资限制。
汽 车			
中国政府	尽快出台第三阶段标准中乘用车燃料消耗限制管理细则，便于相关主体遵守。	有所进展	尽快出台乘用车第三阶段燃料消耗量限值管理细则，便于相关汽车厂商遵守。
银行和资本市场（原为金融服务）			
中国政府			
• *商业银行*	提高并最终取消对外国投资者在本地中资银行的持股比例上限。	进展较慢	对外资银行投资本地中资银行时不超过 20% 的投资上限予以提高，以激励外资银行把更多的专业知识和最佳实践转让给中国的合作伙伴。
• *信用评级*	N/A	N/A	遵循通行的国际实践比如国际证券委员会组织 (IOSCO) 准则，并且取消相关金融行业规则的强制性评级要求。
• *银行间市场*	进一步取消中国人民银行和中国银行间市场交易商协会对外资企业进入银行间交易市场的限制。	进展较慢	进一步取消中国人民银行和中国银行间市场交易商协会对外资企业进入银行间交易市场的限制。
• *流动性管理*	N/A	N/A	允许外资银行进入债券和存款证 (CD) 市场以获得不同渠道的稳定融资。
• *私募股权*	保留国际通行的所得税一次征税的惯例，避免双重征税。	有所进展	对外资普通合伙人控制的人民币基金使用“内资性质”的待遇。
• *人民币国际化*	N/A	N/A	发布有关建立中国国际支付系统的更多信息。
• *证券和债券*	提高中外合资证券公司创新产品业务许可审批的灵活度，缩短合资证券公司取得新业务许可的宽限期。	有所进展	提高中外合资证券公司创新产品业务许可审批的灵活度，并缩短合资证券公司取得新业务许可的宽限期。
业务流程外包			
中国政府	设立一个由政府认可的专门的行业协会担任集体代表，为中央政府、示范城市和国内及国际服务供应商代言。	有所进展	设立一个由政府认可的专门的行业协会担任集体代表，为中央政府、示范城市和国内及国际服务供应商代言。

Chapter	2013 Recommendation	Progress Rating	2014 Recommendation
Civil Aviation			
Chinese Government	Continue opening up and reforming China's national airspace system to enable both growth and efficiency for all users.	Moderate Progress	Continue opening up and reforming China's national airspace system to enable both growth and efficiency for all users.
Civil Society			
Chinese Government	N/A	N/A	Broaden the range of civil society organizations that can register directly with the local bureau of civil affairs, expand the regulations to be applicable nationwide, and ensure an open and transparent registration process.
US Government	N/A	N/A	Better integrate civil society into existing government dialogues (e.g., US China Consultation on People-to-People Exchange (CPE) and the US-China Human Rights Dialogue), and support external dialogues such as China US Strategic Philanthropy (CUSP).
Clean Technology			
Chinese Government	Increase engagement with and participation of FIEs in the development of laws, regulations, standards, pilot programs, and financial incentive programs relating to clean technology, including by providing sufficient notice and comment periods prior to promulgation.	Moderate Progress	Continue to set targets and provide preferential policies and incentives for green and energy-efficient building construction and retrofit. A potential first step would be to develop national training and certification programs for building designers and operators.
US Government	N/A	N/A	Continue to collaborate with the Chinese government to conduct joint research on policy and technologies that will drive very low-energy buildings in China, such as the US-China Energy Research Center (CERC) Building Energy Efficiency project.
Both Governments	Continue to support bilateral US-China market development, trade promotion, and research initiatives by providing funding, speakers, and support from the relevant government agencies.	Moderate Progress	N/A
Competition Law			
Chinese Government	Issue a notice clarifying that international lawyers (including Chinese lawyers working in foreign law firms) are allowed to attend hearings alongside local counsel.	Low Progress	Issue a notice clarifying that foreign-qualified lawyers (including PRC-qualified lawyers working in foreign law firms) are allowed to attend hearings alongside local counsel.
Construction, Engineering, and Design			
Chinese Government	Formally issue regulations clarifying qualifications required to undertake EPC contracting.	Low Progress	Formally issue regulations clarifying qualifications required to undertake EPC contracting.
Customs			
Chinese Government	Continue to refine the management of the Customs clearance process.	Moderate Progress	Before implementing a voluntary disclosure clause, take temporary measures as soon as possible to solve self-reported issues.
Dalian			
Dalian Government	Timely completion and additional investment as needed in the transportation infrastructure, including the Fast Track Transit, subway, and bus lanes to reduce congestion.	Low Progress	Foster dialogue and consider feedback from foreign investors by holding regular meetings with FIEs, improving communications and transparency between enterprises and the Dalian government.
Direct Sales			
Chinese Government	Revise service center requirements from one per urban district to one per city.	Low Progress	Review and revise the Direct Sales Regulation, the Anti-*Chuanxiao* Regulations, and their associated administrative directives, bringing them in line with China's WTO commitments, standard international practices, and business reality in the China market.
Electronic Payment Services			
Chinese Government	Allow market access for other domestic and international EPS providers with clear licensing requirements.	Moderate Progress	Allow market access for other domestic and international EPS providers using clear and reasonable licensing requirements.
Express Delivery Services			
Chinese Government	The State Post Bureau (SPB) should revise its departmental rules to strictly conform to higher-level laws, procedures, and regulations, particularly administrative license regulations.	Moderate Progress	During the process of formulating administrative measures, respect suggestions made by foreign enterprises to make administrative measures more balanced and sensible.

章 节	2013年白皮书主要建议汇总	进展评价	2014年白皮书主要建议汇总
民用航空			
中国政府	继续开放和改革全国空域系统，使所有使用者都能实现增长，提高效率。	有所进展	继续开放和改革全国空域系统，使所有使用者都能实现增长，提高效率。
公民社会			
中国政府	N/A	N/A	扩大可直接在地方民政局登记的公民社会组织范围，将有关法规的适用范围扩展至全国，确保开放、透明的登记程序。
美国政府	N/A	N/A	将公民社会议题更好地加入现有政府对话（例如：中美人文交流高层磋商机制和中美人权对话）并支持中美战略慈善工作坊等外部对话。
清洁技术			
中国政府	提高外资企业在有关清洁技术的法律、法规、标准、试点项目和经济激励计划领域的参与度，包括在上述文件出台前留足充足的通知和征求意见期。	有所进展	继续为新建和改造绿色和节能建筑设定目标并提供相应的优惠政策和激励措施。作为第一步，可以先开发全国性建筑设计和运营的培训和认证项目。
美国政府	N/A	N/A	继续与中国政府开展合作，共同致力于诸如美中能源研究中心（CERC）建筑物节能项目等降低中国建筑物能耗的政策和技术研究。
双方政府	继续支持美中两国双边市场开发、贸易促进和研究项目，包括提供资金、发言人和相关政府部门的支持。	有所进展	N/A
竞争法规			
中国政府	发布通知，明确允许国际律师（包括在外资所工作的中国律师）与本地法律顾问一同出席和参与听证会。	进展较慢	发布通知，明确允许外国执业律师（包括在外国律师事务所工作的中国执业律师）与本地法律顾问一同出席和参与听证会。
建筑、工程和设计			
中国政府	颁布正式的法规，明确承揽工程采购施工一体化项目的资质要求。	进展较慢	颁布正式的法规，明确承揽工程采购施工一体化项目的资质要求。
海 关			
中国政府	继续改进海关通关的程序。	有所进展	在自愿披露制度制定实施前，能够尽早采取过渡性解决办法，解决企业自查自报的出路问题。
大 连			
大连市政府	及时追加投资，如期完成交通基础设施工程，包括快轨、地铁和公交车道，以缓解拥堵状况。	进展较慢	通过与外资企业定期举行会议，开展对话并考虑外国投资者的反馈意见；加强企业与大连市政府之间的沟通和透明度。
直 销			
中国政府	将关于设立服务网点的规定从每个市区设立一个修改为每个城市设立一个。	进展较慢	审核并修订《直销管理条例》、《禁止传销条例》以及配套法规，使之符合中国的入世承诺、国际惯例和中国市场的行业现状。
电子支付			
中国政府	发布明确的许可证要求，向其他国内和国际电子支付服务提供商开放市场。	有所进展	通过明确合理的许可要求，向其它国内和国际电子支付服务提供商提供市场准入。
快递服务			
中国政府	国家邮政局应当对部门规章进行修改，保持与上位法、相关程序和法规的一致性，特别是与行政许可规定的一致。	有所进展	在制定快递市场管理条例的过程中，应当尊重外资企业的建议，以加强条例的平衡性和合理性。

Chapter	2013 Recommendation	Progress Rating	2014 Recommendation
Food and Beverage			
Chinese Government	Improve coordination on supervision, and reduce overlap between regulators by strengthening interministry communication or establish a unified food safety authority.	High Progress	When promulgating laws, regulations, and standards, the government should provide more clarity and work with the industry to develop guiding documents that are released in conjunction with the policy and assign legal authority to official responses to regulation-related questions that are posted on the central government's website.
Government Procurement			
Chinese Government	Submit a revised GPA accession offer in line with those of current parties.	Low Progress	Submit a revised GPA accession offer in 2014 in line with those of current parties that would lead to the conclusion of China's GPA accession.
Healthcare Services, Pharmaceuticals, and Medical Devices			
Chinese Government			
• *Healthcare Services*	Further encourage private investment in healthcare by fully implementing the initiatives in Document 58 at all government levels and add healthcare services to the encouraged category of the Foreign Investment Catalogue.	Low Progress	Reduce taxes for private hospitals and allow chain hospitals to consolidate tax reporting of mature and new facilities, at least for facilities in the same city.
• *Medical Devices*	Utilize fair and market-oriented competition in order to encourage industry to provide higher-levels of medical and health services.	Moderate Progress	Further clarify the procedures of the simplified Re-registration Notice.
• *Pharmaceuticals*	Further development of the hospital bidding system based on the "quality first reasonable price" principle.	Moderate Progress	Further develop the hospital bidding system based on the international best practice of the "two-envelope system" which balances quality with reasonable price.
High-Tech Trade Promotion and Export Controls			
Chinese Government	Conduct greater outreach to Chinese companies to promote the implementation of compliance programs and transparency as a way to obtain US high-tech strategic items.	Low Progress	Conduct greater outreach to Chinese companies to promote the implementation of compliance programs and transparency as a way to obtain US high-tech strategic items.
US Government	Support high-tech trade promotion initiatives in the US and China by providing funding, speakers, and support from the relevant policy makers and agency officials.	Low Progress	Support high-tech trade promotion initiatives in the US and China by providing funding, speakers, and support from the relevant policy makers and agency officials.
Human Resources			
Chinese Government	Establish or clarify mechanisms for foreign employees to receive benefits under China's social insurance programs, or allow foreign employees to opt out of participation.	Low Progress	Establish or clarify mechanisms for foreign employees to receive benefits under China's social insurance programs, or allow foreign employees to opt out of participation.
US Government	Negotiate a tax totalization treaty with China.	Low Progress	Negotiate a tax totalization treaty with China.
Information and Communications Technology and Cyber Security			
Chinese Government	De-link product security credentials from the origin of its IP, including for foreign encryption technology and products at MLPS level three and above.	Low Progress	Ease FDI restrictions for telecom and Internet services sectors and permit FIEs a greater role in supporting China's socioeconomic development, market liberalization, and national informatization strategies in accordance with JCCT commitments.
US Government	Relevant agencies of the US government, including the Department of State, Department of Commerce, and FCC, should coordinate to engage with China on information security policy as it relates to trade and innovation.	Low Progress	Create opportunities for dialogue with Chinese counterparts and share lessons learned from best industry practices, light-regulatory approach, and competitive market strategies to promote sustained industry innovation and growth.
Both Governments	N/A	N/A	Continue open and frank bilateral cybersecurity dialogues, beginning by rebuilding bilateral trust for industry and socioeconomic growth of both nations.
Innovation Policy			
Chinese Government	Ensure that China's new strategic emerging industries and other indigenous innovation policies are non-discriminatory in all aspects, including procurement, standards, tax, IP, IT security, and technical innovation.	Low Progress	Ensure that China's new strategic emerging industries and other indigenous innovation policies are non-discriminatory in all aspects, including procurement, standards, tax, IP, IT security, and technical innovation.
Insurance			
Chinese Government	Review and approve branch applications by foreign-invested insurers (as has now been done with respect to sub-branch applications) in the same manner and at the same pace as applications by domestically invested insurers.	Moderate Progress	Put into practice the review and approval of branch applications by foreign-invested insurers in the same manner and at the same pace as applications by domestically invested insurers.

章 节	2013年白皮书主要建议汇总	进展评价	2014年白皮书主要建议汇总
食品饮料			
中国政府	通过加强部委间沟通或者建立一个统一的食品安全权威机构来改进协调和监管，减少监管部门职能的重合。	进展明显	出台法律法规及标准时，政府应使内容更加明确，并与产业合作撰写指导文件，与政策同步推出，并对中央政府网站上针对规定提出的相关提问的答复赋予法律效力。
政府采购			
中国政府	提交一份重新修改后的中国加入《政府采购协定》的出价清单，并与其他现有缔约方保持一致。	进展较慢	根据本章所述的条款，提交一份重新修改的中国加入《政府采购协定》的出价清单，该清单要与其他现有缔约方保持一致并能使中国最后完成加入《政府采购协定》。
医疗服务、医药和医疗器械			
中国政府			
• *医疗服务*	在各级政府中全面实行58号文件中的相关计划，以进一步鼓励医疗领域的民间投资，并将医疗服务纳入《外商投资目录》"鼓励类"中。	进展较慢	降低私立医院的纳税税率，允许连锁医院合并成熟医院和新开医院的税收报表，至少允许位于同一座城市的医院如此操作。
• *医疗器械*	营造公平、以市场为导向的竞争环境，鼓励行业提供高水平的医药卫生服务。	有所进展	进一步明确简化重新注册的程序。
• *药物行业*	在"质量第一，价格合理"的原则指导下继续改进医院招标采购制度。	有所进展	进一步完善"双信封"评价模式，确保贯彻质量优先、价格合理的原则，结合国际最佳实践，建立透明、规范的药品招标采购制度。
高科技贸易促进和进口管制			
中国政府	向中国企业加大推广力度，以促进合规计划的实施和提高透明度，藉此获得美国的高科技战略产品。	进展较慢	向中国企业加大推广力度，以促进合规计划的实施和提高透明度，藉此获得美国的高科技战略产品。
美国政府	通过由相关政策制定部门和官员提供资金、发言人等方面的支持，推动美中商业高科技贸易促进活动。	进展较慢	通过提供资金、发言人，并由相关政策制定部门和机构的官员给予支持，推进美中高科技贸易。
人力资源			
中国政府	在中国社保体系中建立或明确外籍雇员享受福利的制度，或者允许外籍雇员不参加社保。	进展较慢	在中国社保体系中建立或明确外籍雇员享受福利的制度，或者允许外籍雇员不参加社保。
美国政府	与中国政府就税务加总协议展开协商。	进展较慢	与中国政府就税务加总协议展开协商。
信息通讯技术和网络安全			
中国政府	将产品安全凭证与其知识产权来源地脱钩，这包括取消针对信息安全等级保护制度中对在三级及以上级别单位中使用外国加密技术和产品的限制。	进展较慢	根据在商贸联委会上的承诺，放宽外资直接进入电信与互联网服务行业的限制，允许外资企业在支持中国的社会经济发展、放宽市场限制和国家信息化战略方面发挥更大的作用。
美国政府	相关美国政府机构，包括美国国务院、美国商务部、联邦通信委员会应该在信息安全政策方面与中国进行沟通，因为信息安全政策关系到贸易与创新。	进展较慢	创造与中国对应部门开展对话的机会并且分享从最佳行业惯例、宽松的监管方式和竞争性市场战略中获得的经验教训，以便促进持续的行业创新和增长。
双方政府	N/A	N/A	自重建双边信任开始，继续进行公开、坦率的互联网安全双边对话，推动中美两国取得产业和社会经济的双增长。
创新政策			
中国政府	确保中国近期的战略性新兴产业和其他自主创新政策在创新、采购、标准、税收、知识产权、信息技术安全和技术创新方面不存在任何歧视性政策。	进展较慢	确保中国近期的战略性新兴产业和其他自主创新政策在创新、采购、标准、税收、知识产权、信息技术安全和技术创新方面不存在任何歧视性政策。
保 险			
中国政府	在审批分公司设立申请方面应对外资保险公司（如同目前针对分公司以下分支机构审批所实施的措施）和中资保险公司一视同仁。	有所进展	在审批分支机构设立申请时，对外资保险公司和中资保险公司的申请在审理和审批时间上一视同仁。

Chapter	2013 Recommendation	Progress Rating	2014 Recommendation
Intellectual Property Rights			
Chinese Government	Increase transparency and openness of IP legislative and regulatory activity by allowing AmCham China members adequate opportunity and sufficient time to provide comments.	Moderate Progress	Make the filing of a trademark in bath faith a clear basis of invalidating trademarks filed by third parties.
US Government	Support US industry's desire to interact with Chinese legislatures and ministries throughout the IP legislative and regulatory processes.	Moderate Progress	Share best practices from US Federal and State trade secret laws and its national trade secret strategy.
Investment Policy			
Chinese Government	Streamline inbound foreign investment approval processes by allowing investments in "encouraged" sectors to be filed for the record without project and foreign investment approvals from NDRC and MOFCOM.	Moderate Progress	Continue to engage and take into consideration input from the foreign business community regarding ongoing foreign investment management system reform initiatives nationwide and in the Shanghai FTZ.
US Government	Resist efforts to politicize Chinese inbound investment into the US and the national security review process of the Committee on Foreign Investment in the US (CFIUS).	Moderate Progress	Seek to improve understanding of the CFIUS process by: • Publishing updated guidance on the transactions that have been reviewed by CFIUS and have presented national security considerations—regardless of the home country of investor. • Publishing in the CFIUS annual report statistics on the average time to complete a review or investigation, broken down by country of the investor and sector.
Both Governments	Prioritize negotiation of a robust US-China bilateral investment treaty that: • Covers the pre-establishment phase of investment; • Reduces the number of sectors that are prohibited, restricted, or have JV requirements; • Allows only minimal exceptions to national treatment; and • Establishes and maintains equal competition among private and state-owned as well as foreign invested and domestically invested companies.	High Progress	Prioritize negotiation of a robust US-China bilateral investment treaty that: • Covers the pre-establishment phase of investment and uses a "negative list" approach; • Ensures FDI approval processes are transparent; • Allows all investors, including foreign investors, to have appropriate recourse if their investment is denied for improper reasons; and • Establishes and maintains equal competition among private and state-owned as well as foreign-invested and domestically invested companies.
Legal Services			
Chinese Government	Revise current regulations to allow international law firms to hire and admit to their partnerships qualified PRC lawyers and not require PRC qualified lawyers to give up their PRC lawyer's license when they join an international law firm.	Low Progress	Revise current regulations to allow international law firms to hire and admit to their partnerships qualified PRC lawyers and not require PRC qualified lawyers to give up their PRC lawyer's license when they join an international law firm.
Machinery Manufacturing			
Chinese Government	Eliminate restrictions on foreign investment in the machinery manufacturing industry and provide equal treatment to both foreign- and domestically invested enterprises.	Moderate Progress	Eliminate restrictions on foreign investment in the machinery manufacturing industry and provide equal treatment to both domestically and foreign-invested enterprises.
Media and Entertainment			
Chinese Government	Reduce non-tariff barriers to entry for all types of foreign media and minimize market access barriers for foreign media providers, including media censorship and control.	Low Progress	Reduce non-tariff barriers to entry for all types of foreign media and minimize market access barriers for foreign media providers, including media censorship and control.
Oil, Energy, and Power			
Chinese Government	Initiate comprehensive oil and gas legislation. This should include the designation of a specific regulator for the oil and gas sector.	Low Progress	Initiate comprehensive oil and gas legislation, including the designation of a specific regulator for the oil and gas sector and the clarification of third party access rights to pipeline infrastructure.
US Government	Relevant US government agencies, including the Department of State, Department of Energy and Department of Commerce, should engage their Chinese counterparts to introduce the US regulatory framework governing the oil and gas sector, especially in relation to shale oil and shale gas.	Moderate Progress	Relevant US government agencies, including the Department of State, Department of Energy, and Department of Commerce, should engage their Chinese counterparts to introduce the US regulatory framework governing the oil and gas sector, especially in relation to shale oil and shale gas.

章 节	2013年白皮书主要建议汇总	进展评价	2014年白皮书主要建议汇总
知识产权			
中国政府	提升知识产权立法和执法活动的透明度和公开性，允许美国商会会员企业对此充分表达意见和建议。	有所进展	使恶意抢注商标成为第三方申请的商标无效作废的明确依据。
美国政府	在知识产权立法和执法过程中，支持美国产业界实现与中国立法机构和相关部委保持互动的愿望。	有所进展	分享美国联邦和州的商业秘密法律以及美国国家商业秘密战略方面的最佳实践。
投资政策			
中国政府	简化境内外商投资审批程序，允许投资者在投资“鼓励类”产业时仅需备案，而无需再经过发改委的项目审批和商务部的外商投资审批。	有所进展	继续寻求并考虑采纳外资商界有关全国及上海自贸区现行外商投资管理体系改革的意见。
美国政府	抵制美国将来自中国境内的投资和美国外国投资委员会（CFIUS）的国家安全审查程序政治化的做法。	有所进展	通过以下举措增进对 CFIUS 国家安全审查程序的了解： • 发布更新版的 CFIUS 交易审批指南，强调不管投资者来自哪个国家，审批应依据国家安全考虑。 • 在 CFIUS 年报中公布有关 CFIUS 审批或调查案件平均所需时间，并且按照投资者来源国和行业进行细分。
双方政府	优先进行积极的中美双边贸易协定谈判： • 对投资准入前阶段作出规定； • 减少禁止、限制投资，或要求设立合营企业的行业的数量； • 尽可能缩小国民待遇的范围； • 营造并维护私营企业与国有企业、外资与内资企业之间的公平竞争。	进展明显	优先进行积极的中美双边贸易协定谈判，且在协定中包括以下内容： • 对投资前阶段做出规定，并采用“负面清单”管理模式； • 确保外商直接投资审批程序的透明度； • 允许包括外国投资者在内的所有投资者在投资申请被不合理地驳回时能够通过合适的渠道进行申诉； • 营造并维护保障私营企业和国有企业、外资企业和内资企业公平竞争的环境。
法律服务			
中国政府	修改现行监管制度，允许外国律师事务所雇佣中国执业律师在本所执业，不要求中国职业律师在外资所工作期间放弃中国律师执业资格。	进展较慢	修改现行监管制度，允许外国律师事务所雇佣中国执业律师在本所执业，不要求中国职业律师在外资律所工作期间放弃中国律师执业资格。
机械制造业			
中国政府	取消对外资企业投资机械制造业的限制，并给予外资与内资企业同等的待遇。	有所进展	取消对外资企业投资机械制造业的限制，并给予外资与内资企业同等待遇。
传媒娱乐			
中国政府	降低各类外国媒体非关税准入门槛，并尽量减少外国媒体提供者的市场准入壁垒，包括媒体审查和控制。	进展较慢	减少对所有外国传媒企业进入中国的非关税壁垒，并将外国媒体供应商的市场准入壁垒，包括媒体审查和管控，降至最少。
石油、能源和电力			
中国政府	启动石油天然气综合性立法。包括明确指定一个监管机构对石油天然气行业进行监管。	进展较慢	全面启动油气资源开发立法，包括指派专门的监管机构来负责监管石油天然气行业，并明确第三方对管道基础设施的使用权。
美国政府	美国相关政府部门，包括国务院、能源部、商务部应积极与中国对口部门联络，介绍美国在油气行业的监管框架，特别是页岩油和页岩气相关监管框架。	有所进展	美国相关政府部门，包括国务院、能源部、商务部应积极与中国对口部门联络，介绍美国在油气行业的监管框架，特别是页岩油和页岩气相关监管框架。

Chapter	2013 Recommendation	Progress Rating	2014 Recommendation
Real Estate			
Chinese Government	Eliminate market entry restrictions specifically applicable to foreign-invested enterprises put in place by Circular 171, and streamline the approval process.	Low Progress	Eliminate market entry restrictions specifically applicable to foreign-invested enterprises put in place by Circular 171 and streamline the approval process.
Retail and E-commerce			
Chinese Government	Apply the same regulations and standards for both foreign and domestic retailers.	Moderate Progress	Apply the same regulations and standards for both foreign and domestic retailers.
Shanghai			
Shanghai Government	Develop well-defined, highly intermediated financial markets by allowing depth in both the number and the competitiveness of market participants.	Moderate Progress	Improve transparency and rule of law concerning changes in regulations, policy-making processes, and compliance.
Standards, Certification, and Conformity Assessment			
Chinese Government	Allow non-Chinese testing organizations to carry out testing in China.	Moderate Progress	Allow non-Chinese testing organizations to carry out testing in China by opening up the application process for becoming a Chinese certified testing authority.
Tax Policy			
Chinese Government	Provide unified standards and transparent procedures concerning the application of anti-avoidance rules.	Low Progress	Roll out a pilot advance ruling regime that adopts features of systems in foreign jurisdictions, covering taxpayers with certain eligibility criteria.
US Government	Support US residents when their tax liabilities in China are not in accordance with the US-China tax treaty.	Moderate Progress	N/A
Tianjin			
Chinese government	Utilize a PR agency to assist Tianjin in creating a master plan to better brand and market the city.	Low Progress	Be bold in shaping Tianjin's new Free Trade Zone, and design it in an open way with opportunities for timely consultation with the business community.
Visa Policy			
Chinese Government	Unify work permit and visa application rules across various regions and publish all rules in writing, thus creating a transparent approach that does not hamper business activities.	Moderate Progress	Shorten the holding period of passports by the PSB when processing residence permits from 15 to five days.
US Government	Abolish discriminatory per-country caps on employment-based green cards.	Moderate Progress	N/A
Both Governments	Extend tourist and business travelers' visa validity to 10 years.	Low Progress	N/A
Work Safety			
Chinese Government	Increase lease and financing options for the investment in and use of access and safety equipment.	Low Progress	Revise and update current safety laws and regulations, such as JGL80- 1991 to prescribe and enforce strict parameters for various work at height methods.
US Government	Collaborate with the Chinese government and industry experts in sharing best-case practices.	Low Progress	Collaborate with the Chinese government and industry experts in sharing the latest laws and regulations for work at height.
Wuhan			
Hubei and Wuhan Governments	Publish clear requirements for state-owned enterprises regarding business payments and increase the measures used to enforce such standards.	Low Progress	Provide transparent and equal application of customs policies.
US Government	Increase the services available to both US and Chinese citizens at the US Consulate in Wuhan.	Moderate Progress	Increase the services available to both US and Chinese citizens at the US Consulate in Wuhan.

章 节	2013年白皮书主要建议汇总	进展评价	2014年白皮书主要建议汇总
房地产			
中国政府	取消 171 号文件针对外资企业的市场准入限制，简化审批手续。	进展较慢	取消 171 号文件针对外资企业的市场准入限制，简化审批手续。
零售业和电子商务			
中国政府	对内外资零售企业采用相同的监管要求和标准。	有所进展	对内外资零售企业采用相同的监管要求和标准。
上 海			
上海市政府	建立定义清晰、调控严格的金融市场，并提升市场参与者的数量和竞争力。	有所进展	提高法规变更、决策过程以及合规操作的透明度及法治程度。
标准、认证和许可			
中国政府	允许非中资检测机构在中国开展检测业务。	有所进展	中国政府应通过开放非中资检测机构成为中国认证的检测机构的申请程序，信守允许非中资检测机构在华开展检测业务的承诺。
税收政策			
中国政府	在反避税法规应用问题上，推出了统一标准，程序透明。	进展较慢	试点推行事先裁定制度，借鉴国外司法体系中的要点，应用于符合一定资格标准的纳税人。
美国政府	当美国居民在中国的纳税义务不符合《中美税收协定》时，支持美国居民。	有所进展	N/A
天 津			
中国政府	聘用一家公关公司帮助天津制定城市品牌构建和市场推广计划。	进展较慢	在建立天津新的自由贸易区方面更加大胆，以开放的方式设计，并及时与商业界协商沟通。
签证政策			
中国政府	制定成文的全国统一的就业证和签证申请制度，以提高不影响商务活动为前提的透明度。	有所进展	把公安机关处理居留许可时留存申请人护照的期限从 15 天缩短为 5 天。
美国政府	取消按国别分配工作绿卡的歧视性制度。	有所进展	N/A
双方政府	将旅行和商务签证的有效期延长至 10 年。	进展较慢	N/A
安全生产			
中国政府	推进金融租赁业的发展，以此促进施工平台和安全设备的投资和使用。	进展较慢	修改和更新如 JGJ80-1991 规范等现行的安全法律法规，规定并执行严格的高空作业标准。
美国政府	与中国政府和行业专家进行合作，分享相关最佳实践。	进展较慢	与中国政府和行业专家进行合作，分享最新的高空作业法律和法规。
武 汉			
湖北省与武汉市政府	针对国有企业对外业务支付制定明确要求。采取更多措施来执行上述标准。	进展较慢	提供透明且平等适用的海关规则。
美国政府	扩大美国驻武汉总领馆向美国公民和中国公民提供的服务范围。	有所进展	扩大美国驻武汉总领馆向美国和中国公民提供服务的范围。

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

Civil Society

Introduction

Civil society, comprised of social, non-profit, or non-governmental organizations (NGOs), plays a crucial role in how many countries function. The US, with a long tradition of philanthropy, has an active civil society working with government, businesses, and independently to address local and national issues. On the other hand, the civil society sector in China is, understandably, both fledgling and expanding, given its relatively recent start in the 1980s and only really began to grow a decade or so ago. Given China's many economic, social, and environmental challenges and the fast growth in the number of local civil society organizations, the opportunity exists to unleash the potential of this sector to make much greater contributions, especially in the areas of poverty reduction, environmental protection, protection of vulnerable groups, and the rule of law.

A thriving NGO sector could contribute to solving China's sustainability challenges, bringing tremendous benefits to businesses, including helping provide an educated and healthy workforce; reducing discrimination; improving and protecting the environment, which provides crucial water, biodiversity, and ecosystem services; expanding access to products and services such as healthcare, finance, and IT; developing productive labor relations; and supporting the government in monitoring corporate compliance.

NGOs also help to foster a better business environment in China by:

- Creating a more transparent and accountable government, legal, and corporate environment, contributing to more effective governance;
- Identifying and reaching out to marginalized and vulnerable communities that may exist below the radar of the government and businesses, helping to address socioeconomic inequalities, and contributing to strengthened social trust and stability;
- Incubating and developing innovative solutions to social and economic problems in partnership with other stakeholders; and
- Building a stronger rule of law by using the legal system to protect citizen rights and ensure that laws and regulations are enforced.

American businesses benefit from capable NGOs—both local and international. These NGOs provide on-the-ground knowledge, local creditability, and access to stakeholder groups, among other support that companies cannot obtain elsewhere. Foreign companies need transparency and trust in civil society as a whole, as they often partner or work with NGOs as part of their community engagement or corporate social responsibility programs.

Despite some promising changes in 2013, the regulations on civil society in China are still too restrictive. Despite the proud tradition of philanthropy in many other countries and the important role civil society plays in partnership with business to address social, economic, and environmental challenges, US government initiatives to share US civil society experiences in China are too few. These could include how the US government (both nationally and locally) works with NGOs, or how NGOs in the US collaborate with the business community. Sharing these experiences could help with China's sustainable development, help American businesses in China, and promote ties between the two countries.

Based on our insights into the opportunities and challenges for civil society development in China, AmCham China recommends that the Chinese government loosen its restrictions on civil society and increase support for NGOs—both local and international—so that they can play a stronger role in resolving China's development challenges. We are encouraged by recent trends, detailed below, but recognize that much more can be done across the country at a local level and not just in a few pilot cities. We encourage the US government to direct more resources to assisting the growth of China's civil society and share innovative programs, models, and organizations of how civil society can partner with businesses.

Ongoing Regulatory Issues

A number of long-term challenges face civil society development in China, including:

- The difficulty for local NGOs to register in China, due to the need for most organizations to find a government entity to supervise them, or due to a lack of a transparent process and criteria where direct registration is allowed with a local bureau of civil affairs. Recent reforms have eased these restrictions, but they are

公民社会

简 介

由社会非盈利或非政府组织（NGO）构成的公民社会在许多国家职能中扮演着重要角色。美国具有悠久的慈善传统，其公民社会与政府、企业合作活跃，并独立地处理地方和全国性问题。另一方面，考虑到中国的公民社会从二十世纪八十年代才开始起步，真正的发展时间仅十年左右，可以理解中国的公民社会为何尚处于幼年和扩展阶段。鉴于中国在经济、社会和环境等诸多方面面临的挑战以及地方公民社会组织数量的急速增加，这一领域将有机会释放巨大潜力，做出更大的贡献，特别是在扶贫、环境保护、保护弱势群体和法制方面。

非政府组织的蓬勃发展有助于解决中国在可持续性发展方面的挑战，并为企业带来巨大的益处，包括帮助提供受过良好教育的健康劳动力；减少歧视；通过改善和保护环境， 以保证重要的水资源、生物多样性和生态系统支持；扩大医疗、金融和 IT 等产品和服务的使用者范围；建立卓有成效的劳资关系；协助政府监督企业合规。

非政府组织还有助于在中国培育更加良好的商务环境：

- 创建更加透明和负责任的政府、法律和公司环境，实现更有效的治理；
- 识别并接触位于政府和企业视线之外的边缘及弱势群体，帮助应对社会经济不平等问题，并促进社会信任和稳定；
- 与其他利益相关方合作培育和发展社会及经济问题的创新解决方案；以及
- 用法律制度保护公民权利并确保法律法规的执行，加强法制建设。

精干的非政府组织（无论本地和国际）有益于美国企业。这些非政府组织提供本土知识、地方政府公信力以及与利益攸关团体的联系等等企业无法从其他地方获得的支持。外国企业需要公民社会整体保持透明度和信任度，因为他们经常与非政府组织在社区服务或企业社会责任项目中开展合作。

尽管 2013 年出现了一些可喜的变化，中国对公民社会的限制仍然过多。公民社会在其他许多国家有引以为豪的慈善事业，并且在与企业合作应对社会、经济和环境挑战方面扮演了重要的角色，但美国很少与中国分享公民社会方面的经验。可分享的经验包括美国政府（中央和地方）如何与非政府组织合作或美国的非政府组织如何与企业界协作。分享这些经验有助于中国的可持续发展，同时帮助在华的美国企业，促进两国之间的关系。

基于我们对中国公民社会发展的机会和挑战的见解，中国美国商会建议中国政府放宽对公民社会的限制，增加对非政府组织的支持（地方和国际），以便它们在解决中国发展所面临的挑战中扮演更重要的角色。近期趋势让我们倍感鼓舞（详见下文），但我们认为全国各地仍需开展更多工作，不能止步于少数试点城市。我们鼓励美国政府引导更多资源来协助中国公民社会的发展，并分享公民社会与企业合作的创新方案、模式和组织架构。

现存监管问题

中国公民社会发展面临许多长期挑战，包括：

- 由于大部分组织机构需要一个负责监管的政府机构，而直接在地方民政机关登记又缺乏透明的程序和标准，因此中国的地方非政府组织很难登记。近期的改革放宽了这些登记限制，但这些放宽措施具有高度的选择性，只针对某些领域和某些城市的非政府组织。
- 国际非政府组织在中国登记困难。2009 年云南省实施了在滇境外非政府组织备案机制，但尚未在中国其他地区推广采用。
- 缺乏针对大部分已登记非政府组织的税收优惠。非政

highly selective to NGOs working in certain fields and in certain cities.

- The difficulty for International NGOs to register in China. Experimentations that utilize a bei'an process for international NGOs were implemented in Yunnan province in 2009, but have not been replicated elsewhere in China.
- A lack of tax benefits for most registered NGOs. Even for NGOs that do register, they still do not receive the tax benefits that one would expect in the US. For example, only 150 NGOs in China are exempt from paying tax on donation income received. Additionally, limitations on tax benefits for individuals and corporations for their charitable donations for most NGOs, apart from NGOs directly supervised by the government, narrow donation fundraising options and discourage philanthropy.
- Restrictions on fundraising from the public, which is limited to around 50 NGOs and their partners that are directly supervised by government agencies or to NGOs who abide by restrictive conditions in certain pilot cities like Guangzhou that are experimenting with easing fundraising restrictions.
- Many NGOs lack sufficient transparency (governance, sources of income, expenditures, and program results), often generating distrust and discouraging donations.
- The difficult operating environment for NGOs working on rule of law issues in China—a critical issue for US businesses.

AmCham China congratulates the Chinese government on recent reforms in certain geographies to address these issues, as well as a welcome shift in the attitude of many of those in the government towards civil society. However, there is still more that needs to be done.

Recent Developments

Civil society experienced both positive and negative developments in 2013.

Increasing Examples of Innovative and Valuable Civil Society-Business Partnerships

A number of US companies are working closely with both international and local civil society organizations to further their corporate goals. Examples include:

- An American multinational company working with an international NGO to better understand China's water resource issues;
- Apparel companies working with a local Chinese NGO to identify suppliers who have breached environmental regulations; and
- Partnerships between major retailers and local charity foundations and international NGOs to provide employment for disabled persons and vocational training for migrant youth, train grocery suppliers on environmental sustainability, and support women workers within manufacturing supply chains.

Civil Society Organizations Becoming Important Forces in Addressing Issues of Concern to Businesses

Local and international civil society organizations in China have raised public awareness and influenced the government in positive ways. For example, in 2013, air pollution constituted a significant issue, affecting US business' expatriate recruitment in addition to the health of staff in China. Civil society organizations have played an important role in driving government progress in addressing this issue. Water pollution also continues to gain government attention with widespread social media campaigns empowering the public. The Green Choice Alliance of 50 local NGOs is working with businesses to reduce supply chain risks and improve supply chain standards by addressing water pollution.

Registration

In several cities, such as Shenzhen and Shanghai, new regulations have made it easier to register domestic civil society organizations. However, as this only applies to organizations working on certain issues (e.g., industrial associations, social services, volunteering, culture, sports, and the environment), it is important for the scope to be expanded to organizations working on other issues, to those working in other parts of the country, and for international organizations. Despite ongoing announcements by various local entities of further reforms and support for NGOs, there is a lack of consistency and transparency in the enforcement of these regulations both locally and nationally.

Inconsistent Support for NGOs

There have been a number of instances in 2013 where registered NGOs have had their operations or programs restricted by local governments. These restrictions have affected groups that serve as important partners for the business community by working to improve labor conditions in supply chains. For example, some projects of both domestic and international NGOs focused on improving labor conditions and empowering workers to take action in their communities were closed down.

Support for Civil Society Groups

The Chinese government has begun to expand its incubation services, provision of office space and training, and funding for some civil society organizations. There are also increasing numbers of academic centers that can support nonprofits and their leaders. In addition, the government has begun outsourcing services to nonprofits, providing them with funding and improving government efficiency.

府组织即使已经登记，也难以获得在美国通常可获得的税收优惠。例如，中国仅有 150 个非政府组织享受捐赠收入免税。此外，非政府组织要受政府直接监督，个人和企业对大部分非政府机构的慈善捐赠也存在税收优惠限制，限制了捐赠资金的募集方式，不利于慈善事业发展。

- 限制向公众募资：仅限于约五十家非政府组织——受政府机构直接监督的非政府组织及其合作伙伴，在广州等放宽筹资限制的试点城市中符合严格限制条件的非政府组织。
- 许多非政府组织缺乏透明度（治理、收入源、开支和项目成果），通常导致公信度降低并妨碍捐赠。
- 非政府组织处理中国法律问题时操作环境困难——而法律问题这是美国企业所面临的关键问题之一。

中国美国商会祝贺中国政府近期在一些地区针对以上问题展开的改革，并欢迎更多地方政府转变对公民社会的态度。尽管如此，仍有许多工作要做。

最新进展

2013 年的公民社会经历了积极和消极的发展。

公民社会和企业合作之间的创新和有价值的合作范例越来越多

许多美国企业正与国际和国内公民社会组织进行密切合作，推动实施其企业宗旨。例如：

- 美国跨国公司与国际非政府组织合作以更好地了解中国的水资源问题；
- 多个服装企业与中国当地一非政府组织合作查出违反环境法规的供应商；
- 大型零售商与当地慈善基金及国际非政府组织合作为残疾人提供工作，为青年民工提供职业培训，为杂货供应商提供环境可持续发展的相关培训，并为制造业供应链中的女工提供支持。

公民社会组织逐渐成为应对企业关键问题的重要力量

中国本土和国际公民社会组织提高了公众意识并对政府产生了积极的影响。例如，2013 年空气污染严重，这影响到美国企业的外国人招聘工作和在华员工的健康。公民社会组织在推动政府应对这一问题的过程中扮演了重要角色。公民社会组织通过进行广泛的社交媒体活动来影响公众，水污染问题也因此进一步得到政府的重视。目前 50 家地方非政府组织发起了绿色选择倡议项目，并与企业开展合作，通过解决水污染问题来降低供应链风险并提高供应链标准。

登 记

在深圳和上海等多个城市，新法规放宽了国内公民社会组织的登记要求。但这仅限于涉及某些问题的组织（例如：行业协会、社会服务、志愿者、文化、体育和环境），有必要将范围扩大到应对其他问题的组织、中国其他地区的组织以及国际组织。尽管许多地方部门先后宣布将致力于进一步改革，为非政府组织提供支持，但无论在中央还是地方层面，这些法规的执行工作缺乏一致性和透明度。

对非政府组织的支持不一致

2013 年，中国多次发生已登记非政府组织的运作或项目受到地方政府限制的情况。这些限制影响了这些组织作为企业界的重要合作伙伴改善供应链劳动条件的努力。例如，国内和国际非政府组织为改善劳动条件、提高工人社区自治力的一些项目被叫停。尽管这些组织此前都曾得到政府其他部门的支持、经过合法登记且未曾违反任何法律。

对公民社会团体的支持

中国政府已开始增强对部分公民社会组织的培育，为其提供办公场所、培训以及资金。也有越来越多的学术中心支持非营利组织及其领导人。此外，政府开始将服务外包给非营利组织，为它们提供资助，同时改善政府效率。但公民社会组织所能获得的资助依然太少，同时在有些情况下合同的授予程序缺乏透明度。

公众参与公民社会

2013 年 9 月 21–23 日在深圳举行的第二届中国公益慈善项目交流展示会是中国最大的非营利组织聚会，来自全国众多公民社会团体的代表参加了此次展会，许多公众人士也参与其中。众多本地、跨国公司和基金会参加了这次展会，但涉及某些问题的非政府组织未被允许参会。此类活动通过提高社会意识、支持非政府组织之间的社交联系和知识传播，培养基金会、企业和政府代表之间的跨领域协助，积极地推动公民社会领域的发展。

However, civil society organizations remain critical of the low amount of funding and lack of transparency in awarding such contracts in some cases.

Engaging the Public in Civil Society

The largest gathering of nonprofits in China took place September 21-23, 2013, in Shenzhen at the 2nd Charity Fair, representing many civil society groups from across the country, including members of the general public. The fair was well attended by local and multinational corporations and foundations, although NGOs working on certain issues were not allowed to attend. Such events help the civil society sector grow in a positive way by raising awareness, supporting networking and knowledge transfer between NGOs, and fostering cross-sector collaboration with foundations, businesses, and government representatives who also attended.

Limited Progress in Rule of Law

Despite some advances in rule of law cases, such as greater protection against workplace discrimination of employees with terminal and infectious diseases, cases in other areas have seen a step backwards in the rule of law. For example, in revising the Environmental Protection Law, the current draft restricts which NGOs can file environmental public interest lawsuits, limiting the potential for NGOs to help ensure environmental compliance.

Demand for Fiscal Transparency Increases

As in previous years, the demand for more transparency in order to rebuild trust has been strong, and many foundations and NGOs have made their financial reports public. The China Foundation Center's Foundation Transparency Index has helped drive this push for transparency among foundations. The government has been encouraging individual organizations to be transparent by expanding its efforts nationally, assessing NGOs based on management and transparency criteria. These evaluations use ratings systems, rewarding those who score well. However the government still has no systemic approach requiring all civil society organizations' financial reports be made publicly available, as exists in other countries.

A Lack of Engagement from the US in Increasing the Capacity of Civil Society in China

The US State Department, like many large international donors, has reduced its funding for many programs that might build civil society capacity in China and influence policy. There has also been a lack of interaction between civil society in the US and China, even though there is a need in China for more international expertise and resources. Civil society issues are not included in the US-China Strategic and Economic Dialogue or in the US-China Consultation on People-to-People Exchange (CPE). Neither the US or Chinese government is actively involved in the China-US Strategic Philanthropy Partnership (CUSP) established by the East-West Center in Hawaii and Beijing Normal University's Philanthropy Research Institute.

Recommendations

For the Chinese Government

- **Broaden the range of civil society organizations that can register directly with the local bureau of civil affairs, expand the regulations to be applicable nationwide, and ensure an open and transparent registration process.**
- Facilitate easier registration for international civil society organizations in China, with accompanying tax benefits, building on the system adopted in Yunnan province.
- Require all registered civil organizations to submit annual financial and performance reports and make this information publicly available to increase transparency and trust in the sector.
- Develop open and transparent processes for outsourcing to NGOs and ensure outsourcing contracts also cover core staff and administrative expenses that allow an NGO to recover the full costs of their activities.

For the US Government

- **Better integrate civil society into existing government dialogues (e.g., CPE and the US-China Human Rights Dialogue), and support external dialogues such as CUSP.**
- Focus on sharing ideas on how the government can work with civil society organizations, including different approaches to outsourcing services, seeding new ideas, and scaling proven ideas. Collaboration should seek to replicate, learn from, scale, and foster new ideas for addressing social problems with learnings from both countries and include exchanges and study tours.
- Share best practices on civil society organizations' transparency and ratings approaches to foster an open, competitive, and transparent civil society marketplace.
- Expand financial support for civil society organizations in China, directly or indirectly, through US NGOs.
- Establish a mechanism to support US civil society organizations wishing to enter China or to support those already operating in China.

法制进展有限

尽管某些案例取得了进展，比如对工作中因严重疾病或传染性疾病而受歧视的人群保护加大，其他一些案例却反映了法制方面的倒退。例如在修改《环境保护法》时，目前的草案限制了可提出公益环境诉讼的非政府组织，限制了非政府组织帮助维护环境合规的能力。

对财务透明度的呼声增强

与前些年一样，目前社会对于提高财务透明度的呼声很高，希望借此重新建立信任感，有许多基金会和非政府组织也已公开他们的财务报告。中国基金会中心的基金会透明指数有助于提高基金会的透明度。政府一直致力于在全国范围运用管理和透明度标准加大对非政府组织的评估，鼓励各基金会提高透明度。这些评估采用评分制，并对得分高的组织进行奖励。但政府仍然缺乏系统性方法，无法像其他国家一样要求所有公民社会组织公开财务报告。

在提高中国公民社会能力方面缺乏美国的参与

与许多国际主要捐赠人一样，美国国务院减少了对许多计划的资助，这些计划可能有助于建设中国公民社会能力并影响政策。此外，美国和中国的公民社会组织之间缺乏交流，而中国恰恰需要更多的国际专业能力和资源。中美战略与经济对话或中美人文交流高层磋商机制（CPE）并未提及公民社会问题。中美双方政府均未积极参与美国夏威夷东西方中心与北京师范大学中国公益研究院共同建立的中美战略慈善工作坊（CUSP）。

建 议

对中国政府的建议：

- **扩大可直接在地方民政局登记的公民社会组织范围，将有关法规的适用范围扩展至全国，确保开放、透明的登记程序。**
- 在云南省现行制度的基础上，促进放宽国际公民社会组织在中国的登记限制，提供税收优惠。
- 要求所有已登记的公民社会组织提交和公开年度财务和绩效报告，提高这一领域的透明度和信任度。
- 对非政府组织制定开放、透明的外包流程，确保外包合同涵盖核心员工费用和管理费用，以保证非政府组织能够收回其工作的全部成本。

对美国政府的建议：

- **将公民社会议题更好地融入现有政府对话机制（例如：中美人文交流高层磋商机制和中美人权对话）并支持 中美战略慈善工作坊等外部对话。**
- 重视分享政府与公民社会组织间合作的见解，包括外包服务、培育新理念以及推行成熟理念的各种方法。推动中美协作，基于两国的经验教训来复制、借鉴、推行和培养社会问题的处理方法，寻求新理念，进行交流学习和研究考察。
- 分享有关公民社会组织透明度和评分方法的最佳实践，培养开放、竞争和透明的公民社会市场。
- 通过美国非政府组织直接或间接加强对中国公民社会组织的财政支持。
- 建立机制，支持有意进驻中国或已在中国运行的美国公民社会组织。

Competition Law

Introduction

China's first comprehensive competition law, the Anti-Monopoly Law (AML), took effect in August 2008. Since then, continuous efforts have been made by the three AML enforcement authorities, the Ministry of Commerce (MOFCOM), the National Development and Reform Commission (NDRC), and the State Administration for Industry and Commerce (SAIC), to develop a regulatory framework by formulating implementing rules and regulations and increasing enforcement activities. In 2013, these authorities and the courts all intensified their AML enforcement activities. Their cooperation with foreign competition authorities also improved and they made substantial progress in publishing cases investigated or approved by the authorities so that the public can better understand enforcement practices.

Despite these positive developments, concerns persist regarding: ❶ the possibility that the AML will be used as a tool of industrial policy and protectionism; ❷ the lack of certainty and transparency of the MOFCOM review process; ❸ inadequate coordination and staffing in enforcement agencies; and ❹ the blocking of foreign counsel from attending meetings and hearings with the enforcement authorities.

Recent Developments

MOFCOM Simplification of Procedures

On February 11, 2014, MOFCOM promulgated the "Interim Regulations on Applicable Standards for Simple Cases regarding Concentrations of Business Operators" which became effective on February 12, 2014 (the "Simple Case Standards") in response to the continuing concern over delays in obtaining pre-merger clearance from MOFCOM. The Simple Case Standards clarify the standards MOFCOM will use to distinguish simple cases from other cases. Furthermore, it reflects MOFCOM's commitment and effort to develop a more effective and transparent pre-merger review process. However, the Simple Case Standards do not address the review procedures and timeline regarding a simple case, nor do the Simple Case Standards address the procedures and timeline regarding MOFCOM's review of other (non-simple) cases. AmCham China will be monitoring how the Simple Case Standards will be implemented and how they will change MOFCOM's current review process.

MOFCOM Strengthening of Enforcement Measures

On March 27, 2013, MOFCOM published and sought public comments on its draft "Regulations Relating to Imposing Restrictive Conditions on Concentration of Business Operators" (Draft Regulations). After the Draft Regulations are finalized and come into force, they will replace the "Interim Provisions of the Ministry of Commerce on Implementing Assets or Business Divestiture Related to Concentration of Business Operators" (Interim Provisions) which were promulgated by MOFCOM and became effective on July 5, 2010. Compared to the Interim Provisions, the Draft Regulations establish more detailed procedures on the imposition by MOFCOM of restrictive conditions on its conditional approval of a proposed concentration of business operators. Furthermore, the Draft Regulations provide the pre-merger reporting applicants with certain guidelines regarding how to apply for and negotiate with MOFCOM for the remedies for MOFCOM's conditional approval of the transaction. Finally, the publication of these Draft Regulations signals MOFCOM's efforts to provide clearer guidance and transparency to its conditional approval process.

MOFCOM Enforcement Activities

MOFCOM's merger review remains the most visibly active component of Chinese anti-monopoly enforcement.

Certain decisions from 2013 are of particular interest, including the following examples:

- On April 16, 2013, MOFCOM approved Glencore's acquisition of Xstrata but imposed both structural and behavioral conditions. AmCham China recognizes that MOFCOM's decision was published with an increased level of detail demonstrating its recognition of the need to be more transparent. However, unlike the EU or the US, MOFCOM analyzed the import as well as the product markets for relevant mineral concentrates (copper, lead, and zinc). MOFCOM required Glencore to divest the Las Bambas mine in Peru which, reports at

竞争法

引 言

《反垄断法》是中国首部综合性竞争法律，于 2008 年 8 月生效施行。之后《反垄断法》三大执法机构即商务部、国家发展和改革委员会(发改委)和国家工商行政管理总局(工商总局）一直都在努力建立完善监管框架，先后制定了相关配套法规和实施细则，同时加强了执法。2013 年，上述三大执法机构和法院均加大了《反垄断法》的执法力度。他们还加强了与国外竞争主管部门的合作，同时在公开调查案件和批准案件方面取得实质性进步，以便公众更好地理解各项执法行为。

虽然取得了上述诸多积极进展，业界对以下情况依然存在不少担忧：❶《反垄断法》可能被用作一项产业政策工具和保护主义工具；❷ 商务部的审查程序缺乏确定性和透明度；❸ 执法机构人员力量不足，机构之间缺乏协调；❹ 不允许外国律师与执法机构会谈或参加执法机构举行的听证会。

最近进展

商务部简化有关程序

2014 年 2 月 11 日，商务部颁布了《关于经营者集中简易案件适用标准的暂行规定》，该项规定于 2014 年 2 月 12 日生效（以下简称“简易案件标准”），目的是解决一直以来商务部审查核准并购案时间过长、经常延误的问题。该简易案件标准明确了商务部区分认定简易案件的标准。另外，这一暂行规定也体现了商务部在构建一套更为有效、透明的并购审查程序方面的决心和努力。但上述简易案件标准并没有规定简易案件的审查程序和时限，更没有解决商务部审查其他（非简易）案件的程序和时限等问题。中国美国商会将继续关注简易案件标准的实施情况，以及该标准会如何影响商务部目前的审查程序。

商务部加强执法措施

2013 年 3 月 27 日，商务部发布了《经营者集中附加限制性条件的规定（征求意见稿）》（“草案”）并公开征求意见。该草案通过生效后，将取代 2010 年 5 月 7 日商务部颁布实施的《关于实施经营者集中资产或业务剥离的暂行规定》（“暂行规定”）。与暂行规定相比，草案中对商务部附条件批准经营者集中时附加限制性条件的程序作了更为详细的规定。另外，草案中还对并购申报人如何申请以及如何和商务部协商确定获得商务部附条件批准的救济措施提供了部分指引。最后，公布该草案本身就表现了商务部在提高其附条件审批程序的指导性和透明度方面所做出的努力。

商务部执法活动

商务部实施的并购审查依然是中国反垄断执法活动中最显眼和活跃的环节。

2013 年，商务部审查的如下并购案决定颇为典型，值得一提：

- 2013 年 4 月 16 日，商务部批准了嘉能可收购斯特拉塔案，但同时附加了结构性条件和行为性条件。中国美国商会认为，商务部在决定中更为详细地披露了案件细节的做法表明商务部也认识到需要提高其审批程序的透明度。然而，与欧盟或美国不同的是，商务部分析了相关精矿（铜、铅和锌）的进口和产品市场。商务部要求嘉能可剥离其在秘鲁的拉斯邦巴斯矿，而一直以来根据相关报道，该矿很可能被中资公司或中资控股公司组成的财团所收购。另外，商务部还要求嘉能可在 2013 年至 2020 年 12 月 31 日，每年向中国客户提供铜精矿。以上要求充分体现了商务部所考量的国家安全因素和有关铜矿以及铜精矿供应方的竞争因素。而与此不同的是，欧盟和美国都没有在铜精矿上附加救济措施，但欧盟要求嘉能可剥离其在一家锌制

the time and today indicate, is likely to be acquired by a consortium of Chinese and Chinese-controlled companies. Glencore was further required to provide long-term contracts through December 31, 2020 to Chinese customers for the supply of copper concentrates, reflecting MOFCOM's national security as well as competition-related concerns over the supply of copper and copper concentrates. By contrast, neither the EU nor the US imposed remedies on copper concentrates, while the EU required Glencore to divest a minority shareholding in a zinc producer and imposed other behavioral remedies in that market without regard for shareholder nationality.

- On April 22, 2013, MOFCOM published its conditional clearance for the acquisition of 100 percent of Gavilon by Marubeni. MOFCOM imposed "hold-separate" remedies, including, among other remedies, the establishment of separate soybean subsidiaries of Marubeni and Gavilon for exports and sales of soybeans to China and the establishment of a firewall between the two subsidiaries. Similar to the Glencore/Xstrata decision, the Marubeni/Gavilon decision shows MOFCOM's sensitivity regarding transactions in strategically important industrial sectors, such as those in which China relies heavily on imports. MOFCOM is outside the anti-trust enforcement mainstream as both the US Federal Trade Commission and the European Commission cleared this case unconditionally in 2012.
- On August 13, 2013, MOFCOM announced its conditional approval of Baxter International's US $4 billion (RMB 24.2 billion) acquisition of Swedish medical technology company Gambro AB. According to the approval condition, Gambro was required to sell its global continuous renal replacement therapy business and terminate an original equipment manufacturer production agreement with Japan's Nipro Corporation regarding hemodialysis by March 31, 2013. This case is significant because it is the first time that authorities conducted an analysis of the post-merger coordination effects between competitors arising from an OEM production agreement and required the termination of said agreement.
- On August 27, 2013, MOFCOM granted conditional clearance of MediaTek's US $4 billion (RMB 24.2 billion) acquisition of MStar by imposing "hold-separate" remedies. Both MediaTek and MStar primarily engage in the design and manufacture of integrated circuit chip products for multi-media display and wireless communications devices. MOFCOM requires the two parties to submit their detailed operational plan within three months of the decision and the transaction can close only after MOFCOM approves such an operational plan. The pre-approval of the operational plan by MOFCOM eliminates any uncertainties that may arise during the lengthy negotiation for the operational plan, which reflects MOFCOM's concern in ensuring the implementation of its decision.

NDRC Enforcement Activities

The NDRC had a remarkable year in 2013 as it distinctly expanded its enforcement of the AML through a series of high-profile actions. The following key cases demonstrate the NDRC's determination to aggressively enforce the AML and its willingness to disclose its investigations in the future:

- In January 2013, the NDRC levied US $56.8 million (RMB 353 million) in fines against six liquid crystal display (LCD) manufacturers (including two Korean companies and four Taiwanese companies) for such companies' participation in a price-fixing cartel agreement (the LCD Case). This case was a significant milestone in the development of anti-monopoly enforcement in China and signaled the first time that PRC authorities imposed such large penalties on foreign companies. Although the penalties imposed were much less than those imposed by the antitrust enforcement authorities in the US and EU against the same companies for the same conduct, the penalties were the highest ever levied by the NDRC at that time. It also marked the first time that the NDRC investigated and punished foreign companies for their non-compliance with the AML. The LCD Case investigation took six years and the penalties were issued following decisions made by the US, EU, and Korea, which signals that the NDRC intends to join the international crackdown on international cartels. A noteworthy issue is that the LCD Case was investigated under China's Price Law since the investigated behavior took place before the AML came into effect. The Price Law fixes fines for such behavior at five times the illegal gains, while the fines under the AML should be based on a certain percentage of the investigated companies' turnover of the preceding year. That is to say, if the NDRC applied the AML to reach its decisions, the fines imposed on the six LCD companies would have been much higher.
- Less than two months after the LCD Case, two provincial counterparts of the NDRC in Guizhou and Sichuan provinces imposed significant sanctions (US $71.8 million, or RMB 449 million) on two state-owned, high-end liquor enterprises for setting minimum resale prices for their respective distributors' sales of white spirits products. This was the first penalty imposed for resale price maintenance activities (the White Spirits Case).
- In August 2013, the NDRC concluded a lengthy investigation of nine Chinese and foreign infant formula companies. It determined that each of the companies had entered into resale price maintenance (RPM) arrangements with their downstream distributors whereby the infant formula companies would impose fines and reduce supplies to distributors violating the RPM stipulations. The NDRC levied an unprecedented penalty of US $110 million (RMB 670 million) on six of the nine companies, with full immunity granted to three companies in return for their cooperation during the

造企业中的少数股权，以及针对该市场附加其他行为性补救措施，但并不涉及股东的国籍。

- 2013 年 4 月 22 日，商务部附条件批准了日本丸红 100% 收购美国高鸿控股。本案中商务部采取了“分离—独立”的救济措施，包括但不仅限于要求分别设立相互独立的丸红大豆子公司和高鸿大豆子公司向中国出口和销售大豆，并在两家子公司之间建立防火墙。与嘉能可收购斯特拉塔案的审查决定类似，丸红收购高鸿的审查决定也表明了商务部审查涉及对中国具有战略意义的重要行业交易时十分敏感，如进口依存度较高的行业。而 2012 年美国联邦贸易委员会和欧洲委员会都对此案做出了无条件批准的决定，商务部的此项决定与反托拉斯执法主流意见存在较大差别。
- 2013 年 8 月 13 日，商务部附条件批准了美国百特国际有限公司以 40 亿美元（242 亿元人民币）的价格收购瑞典医药技术公司金宝公司。根据商务部附加的批准条件，金宝必须出售其在全球范围内持续性肾脏替代治疗业务，并在 2013 年 3 月 31 日前全面终止与尼普洛签订的血液透析代工生产协议。该案的重要意义在于相关监管机构首次对一份代工协议可能造成的并购后竞争者协同效应进行分析，并据此要求终止该协议。
- 2013 年 8 月 27 日，商务部附条件批准了联发科以 40 亿美元（242 亿元人民币）收购晨星半导体，但附加了“分离－独立”的救济措施。联发科和晨星的主营业务都是设计、制造用于多媒体显示屏和无线通讯设备的集成电路芯片。商务部要求两家公司在审查决定发布后三个月内分别提交详细的运营计划，且待商务部批准上述运营计划后方可完成该收购交易。这种要求提交运营计划作为批准并购交易前提的安排，排除了就上述运营计划进行协商的漫长过程中可能出现的任何不确定因素，反映了商务部为确保其审查决定充分执行而做出的考虑。

发改委的执法活动

2013 年，发改委通过一系列的高调行动，显著地加强了其在反垄断法执法领域的权力。以下经典案例充分展示了发改委以激进的方式执行反垄断法的决心，以及今后披露相关调查的意愿：

- 2013 年 1 月，发改委对六家液晶面板生产企业（包括两家韩国公司和四家台湾公司）开出了共计 5680 万美元（3.53 亿元人民币）的罚单，理由是这六家企业合谋价格垄断，操纵液晶面板价格（液晶面板案）。该案在中国反垄断执法史上具有里程碑式的重要意义，也是中国政府第一次对外国企业处以如此高额的罚款。尽管中国政府开出的这张罚单比美国和欧盟的反垄断主管部门针对同样企业的同样行为所做出的处罚要轻得多，但在当时却是发改委开出的最大的一张罚单。该案也是发改委首次针对外国公司违反《反垄断法》行为进行的调查和处罚。发改委对液晶面板案的调查长达六年，而且中国的处罚决定紧随美国、欧盟和韩国的处罚，这也显示了发改委加入打击国际价格垄断全球行动的决心。值得一提的是，液晶面板案的调查依据的是《中华人民共和国价格法》，因为启动调查时《反垄断法》尚未出台。《价格法》中规定针对上述行为的处罚金额应当是非法所得的五倍，而《反垄断法》中则规定应当根据受调查企业上一年的营业额，按照一定的比例计算处罚金额。也就是说，如果发改委依据《反垄断法》来做出处罚决定的话，上述六家液晶面板制造商所面临的罚单金额恐怕还要高得多。
- 液晶面板案之后不到两个月，贵州省发改委和四川省发改委对两家国有高端白酒企业做出了高达 7180 万美元（4.49 亿元人民币）的天价处罚决定，原因是这两家企业分别与各自经销商达成并实施白酒销售价格纵向垄断协议。这是首个针对白酒销售价格纵向垄断行为做出的处罚（白酒案）。
- 2013 年 8 月，发改委对九家中国和外国婴幼儿配方奶粉企业进行的漫长调查终于有了结论。发改委认定这九家企业分别与各自的下游经销商签订了限制转售价格协议（RPM），而根据该协议，这些婴幼儿配方奶粉的生产者可以对违反协议规定的经销商处以罚款或者减少供货。对此，发改委创历史地对九家企业中的六家处以 1.1 亿美元（6.7 亿元人民币）的天价罚款，却对配合调查的三家企业完全免除处罚（婴幼儿配方奶粉案）。白酒案和婴幼儿配方奶粉案显示发改委正在不断扩大调查的范围。2013 年，发改委不仅查处横向价格垄断行为，还逐步加大了打击限制转售价格等纵向价格垄断行为的力度。
- 2013 年 9 月 4 日，发改委的省级机构——广东省物价局公布了对两家河砂企业滥用市场支配地位、以不公平的高价销售河砂、大量囤积河砂造成河砂价格飞涨的行为予以处罚的决定。这两家企业的行为加剧了市

investigation process (the Infant Milk Formula Case). The White Spirits Case and the Infant Milk Formula Case illustrate the increasing breadth of NDRC investigations. In 2013, the NDRC not only acted against price-related cartel activities in 2013, but also gradually intensified its enforcement against RPM policies.

- On September 4, 2013, the Guangdong Price Bureau, a local office of the NDRC, announced its decision to fine two river sand companies for abuse of a dominant market position by charging unfairly high prices and stockpiling supplies to sharply raise the prices of river sand. These actions exacerbated the scarcity and price fluctuations of river sand. The NDRC imposed fines on the two companies equivalent to two percent of their annual sales revenues (the River Sand Case). The River Sand Case is the first case where the NDRC directly relied on the AML's "excessive pricing" prohibition.

The publication of these cases demonstrates the NDRC's increasing transparency, which will in turn help business operators better understand and comply with the AML.

SAIC Enforcement Activities

In July 2013, Zhang Mao, the head of the SAIC, revealed that international packaging giant Tetra Pak was under investigation by the SAIC for "suspicious abuse" of its dominant market position. Initiation of such investigation had been rumored for years. The investigation covered 20 provinces and municipalities and is regarded to be the first major and high-profile investigation conducted by the SAIC. On March 5, 2014, Zhang Mao indicated to the media that the SAIC had made initial progress on the investigation of Tetra Pak and that the results of the investigation will be published following completion of the investigation.

The launch of a platform for publishing anti-monopoly cases was announced at a media conference held by the SAIC on July 29, 2013. The SAIC published 12 cases that it had already concluded. It is worth noting that the SAIC is not obligated under the AML to publish the results of its investigations. Therefore, such publication demonstrates the SAIC's determination to improve the transparency of its enforcement activities. As of July 2013, the SAIC had authorized its provincial-level counterparts in Jiangsu, Jiangxi, Zhejiang, Liaoning, Chongqing, Henan, Hunan, Sichuan, Yunnan, Heilongjiang, Hubei, and Ningxia to investigate 23 cases, 12 of which have since been concluded. The 12 published cases all relate to horizontal monopoly agreements, three of which involve monopoly agreements between business operators while the other nine involve monopoly agreements reached through industry associations.

In addition, the SAIC is also making efforts with its draft "Regulation on the Prohibition of Conduct Eliminating or Restricting Competition through Abuses of Intellectual Property Rights" (the SAIC Regulation). The SAIC Regulation aims to provide guidance on how the AML should be implemented in the context of intellectual property rights (IPR) and has tremendous significance for competition within China and for companies doing business in China. This will be particularly to the extent, if any, that the final regulation limits intellectual property (IP) holder's rights to exclude others from practicing patented differentiating technologies beyond narrow international norms and replaces those rights with a compulsory licensing regime based on mere commercial necessity that also shifts the burden to the IP holder to show unreasonable harm. If, as contemplated in the current draft SAIC Regulation, the abuse of IPR is defined broadly to include agreements and conduct that are deemed not to violate competition laws in other countries, the SAIC Regulation could also have a chilling effect on investment in China and on the competitiveness of established and emerging Chinese companies that rely upon IPR to differentiate their products and to compete.

Judicial Enforcement Activities

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

One high-profile case is between Qihoo 360 and Tencent. Qihoo 360 claimed that Tencent had abused its dominant market position in the online instant communications services market. On March 29, 2013, the Guangdong High People's Court held that Tencent did not violate the AML. For the first time, the court's decision contained detailed analysis of the definition of relevant market and alleged abusive conduct. Qihoo 360 appealed the case to the SPC. The second instance trial was heard by the SPC in late November 2013, but no result has been published as of the time of writing.

Bilateral Cooperation with Other Jurisdictions

China's AML enforcement authorities have been actively cooperating with the authorities in other jurisdictions. In September 2013, MOFCOM partnered with a German company to hold the "International Symposium on Anti-Monopoly Law in China and Germany" discussing the merger review process and detailed remedies. On September 17, 2013, the Director General of MOFCOM's Anti-Monopoly Bureau met with the Deputy Assistant Attorney General of the US Department of Justice's Antitrust Division and a Commissioner of the US Federal Trade Commission, exchanging opinions regarding anti-monopoly cooperation between China and the US.

场上河砂紧缺的状况，造成河砂价格剧烈波动。发改委对两家公司处以相当于其年销售额 2% 的罚金（河砂案）。河砂案是发改委做出的首例直接依据《反垄断法》规定的禁止“以不公平的高价销售商品或者以不公平的低价购买商品”进行处罚的案例。

这些案件的公布也证明了发改委正在不断提高透明度，这反过来也将有助于相关企业经营者更好地了解并遵守《反垄断法》。

工商总局的执法活动

2013 年 7 月，国家工商总局局长张茅透露，工商总局正在对全球包装巨头利乐“涉嫌滥用”市场支配地位进行调查。有关开展此项调查的传言已流传多年。这项调查涉及 20 个省、区、直辖市，而且被认为是工商总局承办的首例高调大案。2014 年 3 月 5 日，张茅向媒体透露，工商总局对利乐的调查已经取得初步进展，最终结果将在调查完结之后公布。

2013 年 7 月 29 日，工商总局在一次媒体发布会上宣布推出一个反垄断案例发布平台，之后工商总局在该平台公布了由其审结的 12 个案例。值得一提的是，《反垄断法》中并没有规定工商总局公布调查结果的义务。因此，工商总局公布案例的举措充分表明了工商总局决心提高其执法活动的透明度。截止 2013 年 7 月，国家工商总局已授权江苏、江西、浙江、辽宁、重庆、河南、湖南、四川、云南、黑龙江、湖北和宁夏等 12 个省级工商局对 23 个案子进行调查，其中 12 例已经结案。这 12 个已公布案例全部都与横向垄断协议有关，其中 3 例涉及企业经营者之间的垄断协议，其他 9 例涉及通过行业协会达成垄断协议。

另外，工商总局也正致力于起草《工商行政管理机关禁止滥用知识产权排除、限制竞争行为的规定》（工商总局规定）。工商总局规定旨在对《反垄断法》在涉及知识产权案例下的适用问题做出指引。该规定对中国市场竞争秩序以及在华运营企业均有重大意义。特别是该规定正式出台后将明确知识产权所有人只能根据有限的国际通行规则，禁止他人使用自己的专利技术。该规定中还规定了一种基于商业必要性的强制许可制度，这样知识产权所有者就需要承担证明自己遭受不合理损害的责任。该规定草案目前的版本中对知识产权滥用的界定十分宽泛，其中包括了一些在其他国家并不认为是违反竞争法的协议和行为。工商总局的这一规定会对在华投资的外资企业、以及依靠知识产权来获取产品差异化优势和提高企业竞争力的老牌和新兴中资企业造成一种寒蝉效应。

司法部门的执法活动

2012 年 5 月，最高人民法院出台了《最高人民法院关于审理因垄断行为引发的民事纠纷案件应用法律若干问题的规定》（“规定”）。该规定中明确了反垄断诉讼中的有关问题，包括起诉、受理、管辖、证据规则、民事责任等。该规定发布后，反垄断诉讼案件呈上升趋势。

其中著名的奇虎 360 诉腾讯一案引起了各界的广泛关注。奇虎 360 主张腾讯滥用其自身在网络即时通讯服务市场上的支配地位。2013 年 3 月 29 日，广东省高院判决腾讯并未违反《反垄断法》。该院的判决中首次包括了详细分析，界定了相关市场和滥用行为。之后奇虎 360 又上诉至最高人民法院，2013 年 11 月最高人民法院对此案进行了二审，截至本文撰写时，二审结果尚未公布。

与其他国家开展双边合作

中国反垄断法执法部门一直以来与其他国家的相关部门保持积极合作关系。2013 年 9 月，商务部与一家德国公司共同举办了《中德反垄断法国际研讨会》，会上讨论了并购审查程序和具体救济措施等问题。2013 年 9 月 17 日，商务部反垄断局局长会见了美国司法部反托拉斯局副局长和一名美国联邦贸易委员会委员，双方就中美反垄断合作等事宜交换了意见。

现存监管问题

执法机构人员配备及机构间协调

商务部已经认识到中国存在行政审批迟滞的问题。中国美国商会理解造成延误的部分原因是因为商务部负责审查人员不足，无法及时审完不断激增的交易申报，且商务部的官员一直在很努力地加快审查速度。

根据《反垄断法》及其配套法规之规定，国家发展和改革委员会（发改委）主要负责监管垄断定价问题，国家工商行政管理总局（工商总局）主要负责监管滥用市场支配地位以及其他不涉及价格的垄断行为。然而，虽然我们理解发改委和工商总局之间有一份非公开的监管谅解备忘录，但若出现同时涉及价格和非价格相关垄断行为时，现有公开的法律法规中却缺乏指导规定，不清楚应该由谁来主管相关的案件。在 2013 年 7 月 31 日至 8 月 1 日国务院

Ongoing Regulatory Issues

Staffing and Coordination of Enforcement Agencies

MOFCOM is aware of the concerns over approval delays in China. AmCham China understands that such delays are caused in part by a shortage of officials to review the increasing number of reported transactions and that MOFCOM officials are working hard to accelerate the review process.

Under the AML and its implementing regulations, the NDRC primarily oversees monopoly pricing concerns and the SAIC is mainly responsible for regulating abuse of market dominance and other non-price-related monopoly activities. However, although we understand that there is an unpublished memorandum of understanding between the NDRC and the SAIC, no published regulations provide guidance on cases involving both price-related and non-price-related monopolistic conduct. It is unclear whether such a case would be handled by the NDRC or the SAIC. At a forum held by the Expert Advisory Board of the State Council Anti-Monopoly Commission on July 31 and August 1, 2013, senior officials from the NDRC and the SAIC indicated that in the event a complaint involves both price and non-price violations of the AML, the agency that opens a file first will be in charge of the investigation and decide the penalties. These officials further indicated that the NDRC and the SAIC are continuing to strengthen coordination and exchange of information.

Exclusion of Foreign Counsel

In the absence of implementing regulations, foreign counsel is often not permitted to participate in MOFCOM meetings in merger control proceedings. This is true even when the lawyers in question are accompanied by local counsel from Chinese law firms and do not seek to practice Chinese law. This is inconsistent with international practice, where parties are routinely permitted to instruct international counsel and local counsel to appear together before competition authorities, thus ensuring more efficient communication of evidence and analysis across jurisdictions. Permitting attorneys from foreign law firms to attend proceedings under the AML would likewise enable Chinese authorities to evaluate direct presentations of analysis developed under prevailing principles of international competition practice.

Increasing Transparency

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

Previously, the only enforcement decisions required to be published by the Chinese government were those by MOFCOM blocking transactions or imposing conditions. Beginning in November 2012, MOFCOM took the lead and began to publish on its website information on all reported concentration transactions that were approved by MOFCOM without conditions (734 in total from August 2008 to December 2013). Although the information on cleared transactions is limited to the names of the transactions and the participating business operators, it provides the public with an enhanced understanding of the regulatory environment.

Starting in 2013, MOFCOM began to publish such information on a quarterly basis. In addition, while MOFCOM has been publishing its conditional approvals, MOFCOM attached the parties' final commitments to the decisions for Glencore/Xstrata, Baxter/Gambro, and MediaTek/MStar in 2013. These actions demonstrate MOFCOM's willingness to provide more transparency in its merger review. In contrast, other enforcement authorities (NDRC and SAIC) selectively publish their enforcement decisions in their own discretion.

AmCham China commends MOFCOM for continuing to improve its practice of issuing written enforcement decisions in a timely and fully reasoned manner. We recommend that enforcement decisions of the NDRC and the SAIC be published as they occur. While published decisions must protect confidential business information, they should include meaningful summaries of the relevant evidence, as well as analysis and conclusions. To the extent that full enforcement decisions cannot be published, the authorities should consider publishing case summaries or enforcement reports providing guidance.

The competition agencies also have made significant efforts to solicit input from the public in connection with draft implementing measures. More formal and widely publicized opportunities to comment are encouraged.

Leniency Provision

Article 46 of the AML provides that if a business operator voluntarily reports to the NDRC regarding monopolistic agreements in which it has entered, or will enter, and provides material evidence, the AML enforcement authorities have discretion to exempt or mitigate the business operator from punishment. The "Regulations on Procedures for Administrative Enforcement of Anti-Price Monopoly" issued by the NDRC effective as of February 1, 2011 (the NDRC Regulations) further clarified the leniency provisions in the AML. The leniency provisions in the NDRC Regulations provide that the first business operator that voluntarily reports and provides material evidence to the NDRC regarding pricing-related monopolistic activities may be exempt from punishment, the second voluntary reporting business operator may receive a more than 50 percent reduction of punishment, while the rest who voluntarily report may receive no more than a 50 percent reduction of the penalty.

反垄断委员会专家咨询组举行的的一次研讨会上，发改委和工商总局的高级官员谈到，如果一项投诉既涉及价格垄断违法行为，又涉及非价格垄断违法行为，则由先受理投诉的部门负责开展调查并决定惩罚。上述官员还表示发改委和工商总局正在继续加强两个部门之间的监管协调和信息共享。

国外律师受排斥

由于没有颁布实施条例，在并购规制程序中，外资律师事务所聘用的外国律师通常不被允许参加与商务部召开的会议，即便他们有中国律师事务所的本地律师陪同、而且并不寻求在中国执业。这与国际实践的做法不一致，国际上的做法是，允许相关方的国际律师和本地律师在竞争事务主管当局面前一起出现，从而确保跨越了不同司法辖区域的证据和分析传达更加高效。允许外国律师事务所的律师参加反垄断法规定的相关程序，有助于中国的执法机构直接听取外资所律师根据国际竞争实践的通行原则所作的相关分析并进行评估。

提高透明度

透明且可预期的执法使得广大企业能够制定符合相关竞争法律的商业战略。实施细则、主管机关的解释性指南和行政部门及法院公布的决定对此起着关键性作用。公布执法决定能够为各公司提供指导，也能教育各公司遵守法律。

此前，中国政府唯一规定需要公开的是商务部有关阻止交易继续或附加条件的执法决定。从 2012 年 11 月开始，商务部带头在其官网上公布商务部无条件批准的经营者集中交易案件信息（自 2008 年 8 月至 2013 年 12 期间，共计 734 起）。尽管被公告的获批交易案件信息仅限案件名称和参与集中的经营者，但此举却提升了公众对于监管环境的了解和信心。

从2013年开始，商务部开始按季度公开上述信息。另外，2013 年，商务部在公布附条件批准的决定的同时，还附上了嘉能可 / 斯特塔拉、百特 / 金宝以及联发科 / 晨星等案中各方的最终承诺。相较之下，其他执法机构（发改委和工商总局）则依然酌情决定有选择性地公开执法决定。

中国美国商会赞赏商务部不断完善其现行做法的努力，及时并以完全合理的方式发出书面执法决定。我们建议发改委和工商总局及时地发布执法决定。虽然公开决定时必须保护商业秘密，但公开应包括对相关证据有意义的总结、分析以及结论。不公开完整的执法决定时，相关部门可以考虑公开案件综述或执法报告，为执法实践提供指导。

政府主管部门在征求公众对实施细则草案的意见上也已做出了很大的努力。希望在对草案进行公开征求意见时，给予公众更多正式的、广泛告之的建言机会。

宽恕制度

《反垄断法》第 46 条规定，经营者主动向反垄断执法机构报告达成垄断协议的有关情况并提供重要证据的，反垄断执法机构可以酌情减轻或者免除对该经营者的处罚。2011 年 2 月 1 日生效的发改委《反价格垄断行政执法程序规定》（发改委规定）中进一步细化了《反垄断法》中规定的上述宽免条款。根据发改委规定，经营者主动向政府价格主管部门报告达成价格垄断协议的有关情况并提供重要证据的，政府价格主管部门可以酌情减轻或者免除对该经营者的处罚。第一个主动报告达成价格垄断协议的有关情况并提供重要证据的，可以免除处罚；第二个主动报告达成价格垄断协议的有关情况并提供重要证据的，可以按照不低于 50% 的幅度减轻处罚；其他主动报告达成价格垄断协议的有关情况并提供重要证据的，可以按照不高于 50% 的幅度减轻处罚。

2013 年，发改委处理的一系列案件中都涉及到了宽免决定。例如，在婴幼儿配方奶粉案中，有三家企业因为在调查中主动报告了自己的违法行为并提供重要证据而被免除处罚。其他六家企业也基于在调查中的配合程度而被处以不同数额的罚金。显然发改委在决定是否对受调查的经营者予以免除或减轻处罚时，合作态度是他们考量的一个重要因素。尽管上述宽免条款在今后的案件中会被经常适用，以激励经营者主动向发改委披露垄断行为，但该宽恕制度中也强调了执法机关“可以”授予免除或减轻处罚，这也就意味着发改委在决定是否免除或减轻对经营者的处罚时保有很大的自由裁量权。

销售额的计算

《反垄断法》第 46 条中规定，对达成并实施垄断协议的经营者处以该经营者上一年度销售额百分之一以上百分之十以下的罚款。但该表述中并未明确：❶ 该销售额指的是被调查企业的销售额还是其所在集团（如有）的总销售额；❷ 该销售额是指经营者在受调查市场上的销售额还是企业所有业务经营的销售额；❸ 该销售额是指国内市场还是也包括国际市场上的销售额。

在白酒案中，发改委分别对贵州茅台股份有限公司和

In 2013, a series of NDRC cases invoked the leniency program. For instance, in the Infant Milk Formula Case, three manufacturers were granted immunity as they voluntarily reported their infringement and provided important evidence over the course of the investigation. The other six companies received different levels of penalties based on the extent to which they had cooperated with the authorities. It appears that a cooperative attitude is an important consideration for the NDRC when deciding whether to grant immunity or lighter treatment to the investigated business operators. Although it is anticipated that the leniency provisions will be frequently invoked in the future so that companies will be incentivized to disclose monopoly activities to the NDRC, the NDRC rules stress that the authority may grant immunity or leniency, which ensures that the NDRC retains its discretion whether to mitigate or exempt the business operator from punishment.

Calculation of Turnover

Article 46 of the AML provides that the fine imposed on a business operator who engages in monopoly agreements should be no less than one percent but no more than 10 percent of its "turnover" in the previous year. However, it was previously unclear whether this term referred to: ❶ the investigated entity's turnover or that of group companies, if any; ❷ the turnover generated in the investigated market or the entity's full scope of business; and ❸ the turnover in the domestic market or overseas markets as well.

In the White Spirits Case, the penalties were imposed on the distribution entities of Kweichow Moutai Co., Ltd. and Wuliangye Group instead of the headquarters themselves. Furthermore, the NDRC expressly stated the fines were calculated based on the "turnover involved in the case." Additionally, in the Infant Milk Formula Case, the NDRC appears to have restricted the basis for the calculation of the fine to the turnover of the local entities that were involved in the activities under the investigation, rather than seeking to impose a fine based on the worldwide turnover. Thus, it seems that the NDRC only used the turnover of the entities that were affected or investigated. These cases provide welcome clarification, but it remains to be seen whether such decisions will be followed in future cases.

MOFCOM's Merger Review

In 2013, MOFCOM continued to refine its substantive approach to merger analysis and strengthen its review procedures. AmCham China encourages MOFCOM to consider the following issues as it drafts new implementing regulations:

- MOFCOM reviews often last longer than reviews in other jurisdictions, typically extending into Phase II even in the absence of any clear competition concerns. These delays may reflect procedural requirements for non-transparent consultations with other ministries and trade associations and for approval at higher levels within MOFCOM, the Anti-Monopoly Commission, or even the State Council. These delays may also reflect constraints on MOFCOM's resources. While these are understandable, unnecessary delay may jeopardize the conclusion of a transaction. AmCham China hopes the Simple Case Standards will facilitate MOFCOM's review of straightforward transactions and recommends that MOFCOM issue implementation rules regarding the "fast track" procedures and timeline as soon as possible.
- Although MOFCOM uses the EU definition of reportable concentrations, MOFCOM has not adopted the corresponding EU practice of excluding from review joint ventures which are not independently autonomous. Consequently, many joint ventures not subject to review in other jurisdictions trigger review by MOFCOM. This in turn consumes scarce resources at MOFCOM and contributes to delays and the growing backlog of applications. What worsens the situation is that there is no clear guidance on the concept of "joint control" with respect to the establishment of joint ventures. MOFCOM should clarify when the establishment of joint ventures should be reported.
- MOFCOM personnel continue to frame investigations in terms of China's national competitiveness instead of a particular market's competitiveness.
- It is unclear whether sales made into Chinese export processing zones for further manufacturing and re-export are considered "sales into China" in the merger review process. Such sales are not treated as imports into China for customs purposes or as foreign exchange transactions.
- The enforcement agencies should adopt a shared policy specifying whether conditions for clearance imposed—and thus approved—by MOFCOM may ever be subject to later review by the NDRC or SAIC. While the NDRC and SAIC have a statutory consultative role to play in MOFCOM merger reviews, that role has increasingly expanded to the point that the NDRC and SAIC are effectively second and third tiers of investigation, requiring responses from the parties to investigative requests. MOFCOM should affirmatively assert its role as the agency of jurisdiction to minimize such requests and thereby reduce the burden on the parties to address multiple levels of review.

Industrial Policy and Protectionism

Consistent with internationally accepted enforcement norms, most provisions of the AML seek to promote consumer welfare and economic efficiency. Nevertheless, concerns remain that the AML may sometimes be used to shield domestic markets from foreign competition and thus promote indigenous innovation and the development of national champions. Specific areas of concern include the following:

五粮液集团的下属分销企业，而不是对贵州茅台股份有限公司和五粮液集团进行了处罚。另外，发改委也明确表示罚款金额的计算是基于"涉案销售额"。另外，在婴幼儿配方奶粉案中，看起来发改委将计算罚金所依据的销售额限定在参与受调查行为的本地企业，而并未将其扩大到全球销售额。因此，发改委似乎仅依据受影响或受调查的企业销售额计算罚金。这些案例中所透露出的澄清性信息令人高兴，但将来发生的案例中是否也会沿用上述规则还有待观察。

商务部的并购审查

2013 年，商务部仍旧在继续完善其并购分析的实质方法，并加强相应的审查程序。中国美国商会鼓励商务部在起草新实施条例的过程中考虑以下问题：

- 商务部审查的时间常常较其他司法辖区要长，即便不存在任何明显的反竞争问题也会延续到第二阶段的审查。这种拖延似乎折射出存在于与其他部委和行业协会之间的非透明性协商，以及商务部、反垄断委员会甚至是国务院内部上级批准流程中的程序要求。这些拖延可能还反映出商务部在资源方面的匮乏。中国美国商会希望简易案件标准能够加快商务部对案情直接明朗的交易的审查速度，并建议商务部出台有关实施"快速"程序和时限的具体规定。
- 尽管商务部采用了欧盟对应当申报所做的集中定义，但商务部没有采用欧盟的相应做法，即未能将非完全独立的合资企业排除在审查范围之外。所以，许多在其他司法辖区不受反垄断审查的合资企业却在中国受到商务部反垄断审查。这反过来又消耗了商务部本来就稀缺的资源，进一步加剧了申请堆积、审批迟延的状况。更糟糕的是商务部并未对合营企业设立过程中的"共同控制权"做出明确指引。商务部应当在合营企业设立经营者集中申报时候予以明确。
- 商务部的工作人员继续倾向于从国家竞争力而非某一特定市场的竞争力出发来开展调查。
- 目前，关于向中国出口加工区销售用于再加工和再出口的产品是否视作"向中国销售"这一问题尚不清楚。这些销售在办理通关或外汇交易时并不被视为进口。
- 各执法部门应该采用统一的政策，明确商务部制定的批准条件是否还要经过发改委或工商总局的审查。尽管在商务部并购审查过程中，发改委和工商总局依法享有咨询建议权，但目前该权利已经扩张异化到发改委和工商总局可以自行进行第二轮和第三轮的调查，要求相关各方回应调查。商务部应当进一步明确和巩固自己的执法权限，从而减轻各方因为应付多重审查而承受的负担。

产业政策和保护主义

与国际通行做法相一致的是，《反垄断法》中多数规定旨在通过竞争来促进消费者福利并提高经济运行效率。尽管如此，仍然存在着这样的忧虑，即《反垄断法》有时可能被当作挡箭牌，用来保护国内市场免受外来竞争，推进"自主创新"和"国家领军企业"的发展。存在担忧的具体领域如下：

- 《反垄断法》第 7 条规定"国有经济占控制地位的关系国民经济命脉和国家安全的行业"，"国家对其经营者的合法经营活动予以保护"（虽然本条规定同时限制国有经济行业不得利用其控制地位损害消费者利益）。尽管第 7 条的规定有可能使《反垄断法》在特殊情况下做出有利于国有企业的解释，但发改委近期坚决处罚两家高端白酒国有企业（即白酒案）的做法使中国美国商会感到鼓舞。
- 推进产业政策的反竞争性协议可以适用一些豁免行为，包括：❶ 提升中小企业竞争力，❷ 对销量严重下降或产量增加做出反应，和 ❸ "实现节能、环保、救灾等公共利益"。
- 《反垄断法》中禁止滥用支配地位的规则禁止从事"没有正当理由"的某些活动。产业政策的考量可能会打破滥用行为与"正当合理"行为的平衡，例如，占市场支配地位的国内企业（包括国有企业）的排他性行为可能得到容忍，而外资企业的类似行为则可能受到惩处。
- 《反垄断法》要求禁止排除或限制竞争的经营集中，除非对竞争的有利影响超过了不利影响，或交易"符合公共利益"。此符合公共利益的豁免对明显具有反竞争效果但却能推进产业政策的经营集中予以放行。
- 《反垄断法》第 55 条规定，"经营者滥用知识产权，排除、限制竞争的行为，适用本法"。因此有人担心，外资公司在中国实施知识产权可能会因妨碍旨在推动自主创新的产业政策而被解释为"滥用"。

- Article 7 requires the state to "protect the lawful business activities" of state-owned enterprises (SOEs) in industries "that implicate national economic vitality and national security" (although it also prohibits such SOEs from abusing dominant positions to harm consumers). Although Article 7 may appear to call for the AML to be interpreted in favor of SOEs in specific cases, AmCham China is encouraged by the NDRC's sanctions upon the two state-owned, high-end liquor enterprises (i.e., the White Spirits Case).
- Anti-competitive agreements advancing industrial policies might be covered by exemptions, including practices ❶ enhancing the competitiveness of small- and medium-sized enterprises; ❷ responding to severe decreases in sales volume or production increases; and ❸ "achieving public interests such as saving energy, protecting the environment, providing disaster relief, etc."
- The AML rules against abuse of dominance prohibit certain conduct undertaken "without justification." Industrial policy concerns may tip the balance between abusive and "justified" practices, such that exclusionary practices by dominant domestic firms (including SOEs) may be tolerated, where similar practices by foreign firms would be penalized.
- The AML calls for the prohibition of concentrations that eliminate or restrict competition, unless pro-competitive effects outweigh any negative effects, or the transaction is otherwise "in the public interest." This public interest exception could be used to excuse patently anti-competitive concentrations that nevertheless advance industrial policies.
- Article 55 of the AML provides that the law shall "apply to actions taken . . . to eliminate or restrict competition by abusing intellectual property rights." There are concerns that enforcement of IPR by foreign companies in China may be construed as "abuses" to the extent that they interfere with industrial policies aimed to promote indigenous innovation.
- In 2011, MOFCOM issued measures establishing mechanisms for reviewing transactions involving foreign investments in Chinese enterprises on "national security" grounds. These rules permit consideration of a transaction's impact on China's "economic stability" and "social order," raising concerns that transactions inconsistent with China's industrial policies might be prohibited under this broad view of national security.
- In 2013, MOFCOM's conditional decisions relating to Glencore/Xstrata and Marubeni/Gavilon indicate MOFCOM's industrial policy considerations in its review of transactions related to sensitive sectors in China (such as raw materials, food, and agriculture).

Recommendations

- **Issue a notice clarifying that foreign-qualified lawyers (including PRC-qualified lawyers working in foreign law firms) are allowed to attend hearings alongside local counsel.**
- Ensure that all regulations and measures are published in draft form and allow formal and widely publicized opportunities for meaningful comment by all interested parties.
- Continue to clarify and streamline AML procedures, especially for merger review. For example, clarifying the division of regulatory authorities and when MOFCOM decisions will be subject to review by other authorities.
- Protect the IPR of both domestic and foreign rights holders and ensure that the AML is not used as a means to circumvent IP protection, including through compulsory licensing.
- MOFCOM should adopt explicit guidance on whether sales made into Chinese export processing zones for further manufacturing and reexport are considered "sales into China" for merger review jurisdiction.

- 商务部于 2011 年发布了出于“国家安全”理由对涉及外资对中资企业投资的交易进行审查的办法。这些规则允许就交易对中国“经济稳定”和“社会秩序”的影响加以考量，从而引发人们担心与中国产业政策不符的交易可能因国家安全方面的宽泛考虑而被禁止。
- 2013 年，商务部对嘉能可 / 斯特塔拉以及丸红 / 高鸿案的审查决定表现了商务部在审查涉及中国敏感产业（如原材料、食品和农业）的交易时对产业政策的考虑。

建 议

- **发布通知明确允许外国执业律师（包括在外国律师事务所工作的中国执业律师）与本地法律顾问一同出席和参与听证会。**
- 确保所有法规和规章草案都能加以公布并公开征求意见，听取各利益相关方的实质性建议。
- 继续阐明并简化《反垄断法》有关程序，尤其是并购审查的相关程序。例如，明确各监管机构的职责分工，以及商务部的审查决定是否还需经其他执法机构的再审查。
- 保护国内外知识产权持有人的权益，并确保《反垄断法》不会成为回避知识产权保护的手段，包括借助于强制许可制度。
- 关于向中国出口加工区销售用于再加工和再出口的产品是否被视为“向中国销售”这一问题，商务部应该出台明确的并购审查指导。

Customs

Introduction

Over the past year, the General Administration of Customs (GAC, also referred to as China Customs) has increased its efforts in trade facilitation, decentralization, customs regulation publicity, consistency of law enforcement, intellectual property protection, and other aspects of customs administration. Though these improvements have been well received by the business community, AmCham China members are still concerned about the negative impact brought about by the high proportion of inspections of imported and exported goods, and numerous reports of seizures of legitimate goods.

Recent and Ongoing Issues

Transparency and Engagement

China Customs has made remarkable progress in enhancing its openness and transparency. The 12360 Customs Hotline has made significant improvements in its advisory services. The GAC has provided more customer-friendly services including increasing the amount of information disseminated through its revised and updated official website. The use of media outlets such as WeChat and microblogs has created better channels for interaction between businesses and China Customs. The Customs Volunteer Initiative, launched by several local customs authorities, has played an active role in enhancing mutual understanding between businesses and China Customs and helped businesses improve their internal management. As a result, many businesses hold the Customs Volunteer Initiative in high regard.

AmCham China hopes that China Customs will make further efforts in the following areas: ❶ make public files that are directly related to the rights and duties of private parties in a timely manner; ❷ allow enterprises to have more opportunities to provide suggestions and express opinions in the formulation and amendment of customs regulations; ❸ publish general information pertaining to annual administrative penalties to act as a warning sign; ❹ improve the English translation of customs rules and regulations on the China Customs official website; and ❺ publish information regarding cooperation on Authorized Economic Operator (AEO) certification between the GAC and International Customs in a timely manner.

Trade Facilitation

Many enterprises' biggest expectation related to customs is trade facilitation. In 2013, the GAC made great progress in trade facilitation by expanding a paperless customs clearance model. As the model was rapidly applied to more regions and scopes of business, it has taken the place of traditional paper clearance and become the primary clearance mode. This development will play an extensive role in promoting China's international trade. China Customs also further improved the newly-implemented "declaration inland, clearance at port" system for inland import and export enterprises. AmCham China members speak highly of these two measures which reduce costs and improve the efficiency of import and export customs clearance.

In addition, the pilot project "one declaration, one inspection, one clearance" implemented by local customs authorities and quality inspection organizations in places like Guangzhou, Tianjin, and Fuzhou is highly anticipated by AmCham China members. AmCham China has stated that cooperation among customs and other branches of port law enforcement, especially inspection and quarantine organizations, will improve customs clearance efficiency. We look forward to substantive progress using similar cooperation that can be applied to the entire nation as soon as possible.

AmCham China hopes that China Customs will make further efforts in the following areas:

- Gradually reduce and eventually cancel the seize rate target.
- Expand the coverage and scope of the paperless customs clearance system, to result in full implementation.
- Simplify the examination and approval procedures for general withdrawn cargo to shorten processing times.
- Expand the scope of business for temporary declaration documents in the paperless clearance system and reduce the number of accompanying documents.
- Encourage and promote pre-declaration before arrival at port to accelerate port logistics.
- Establish a more convenient and flexible clearance system for imported goods brought by individuals for the urgent use of enterprises.

海 关

引 言

过去的一年间，海关总署（又称中国海关）在贸易便利化、简政放权、关务公开、执法统一性、知识产权保护等方面做出了一系列卓有成效的努力。尽管这些进展获得商界的高度评价，但中国美国商会会员对高比例的进出口货物查验及大量合法货物遭扣压带来的负面影响仍感关切。

现存监管问题

透明度和参与度

中国海关在提升开放度和透明度方面成效显著。12360海关热线的咨询服务水平不断提高。海关总署官方网站通过改版升级，增加了信息量，人性化服务程度得到进一步提升。微信、微博等新媒体方式的采用，使得海关和企业之间的互动交流渠道得到了优化。由部分地方海关发起的"海关志愿者"行动在增进关企双方了解，帮助企业改善内部管理等方面发挥了积极作用，得到了企业的高度评价。

中国美国商会希望中国海关在以下方面做出进一步努力：❶ 将对行政相对人权利义务有直接相关的文件及时予以披露和公开；❷ 在海关法规制定及修订过程中能够让企业有更多提供建议和表达意见的机会；❸ 对每年的行政处罚总体情况进行分析和披露以充分发挥法律的警示作用；❹ 完善中国海关官方网站上发布的海关政策法规的英文版；❺ 及时公布海关总署和国际海关的经认证经营者（AEO）认证合作信息。

贸易便利

贸易便利化是企业对海关的最大期待。2013 年，海关在贸易便利化方面的努力随着无纸化通关模式的推广而获得巨大进展。随着无纸化通关适用区域和企业范围的大幅度快速拓展，该通关模式逐步替代传统的纸质通关而成为中国海关的主流通关方式，对进一步促进中国国际贸易将产生深远和广泛的作用。中国海关还进一步提升和改进在年内对内陆进出口企业实行"属地申报、属地验放"制度。中国美国商会会员普遍感受到了以上两项新举措对企业降低进出口通关成本、提高通关时效的切实影响，对中国海关的以上举措予以高度评价。

此外，广州、天津、福州等海关和口岸质检机构之间实行"一次申报、一次查验、一次放行"的试点工作。对此，中国美国商会会员企业高度期待。中国美商会认为，海关和其他口岸执法部门，特别是检验检疫机构之间的合作协调将显著提高通关效率。我们期待类似的合作能够取得实质性进展并尽快在全国范围推广应用。

中国美国商会希望中国海关在如下方面做进一步努力：

- 海关逐步降低进出口货物查验率并最终取消查获率指标；
- 无纸化通关制度的覆盖、适用范围能够进一步扩大，以致全面实施；
- 简化对正常的口岸退运审批核准手续，缩短流程所需时间；
- 进一步扩大无纸化通关制度下暂存申报单据的企业范围；减少随附单据种类；
- 鼓励并推进货物抵达目的口岸前的预申报，加快口岸物流；
- 制定对个人携带企业急用的进口货物更加简便灵活的通关制度；

关税征收

影响并最终决定一个国家关税收入的核心因素包括进出口贸易总量、国际商品价格波动、关税税率调整、以及进出口商品的结构变化。中国美国商会认为目前中国中央政府每年下达硬性的关税征收任务指标不合理，这个制度的直接后果是绝大部分口岸海关为了完成硬性任务而轻视

Collection of Customs Duties

The core factors that influence and ultimately determine the tariff revenue of a nation include total volume of trade, international commodity price fluctuations, adjustments in customs duty rates, and changes in import and export commodity structure. AmCham China believes that it is not reasonable for the Chinese central government to set mandatory targets for the collection of customs duties. A direct consequence of this system is that most ports overlook or neglect WTO valuation rules and often set prices randomly to reach the mandatory targets, which has a negative impact on the operation of import and export enterprises. A more reasonable system would be a general annual customs revenue goal that can be adjusted in accordance with the reality of the four factors noted above.

AmCham China hopes that China Customs will fully implement the relevant pre-valuation audit and pre-classification framework issued in 2012 as soon as possible and consider the classification proposals by a GAC-approved third party to offer pre-classification services. If this kind of classification proposal is not in accordance with the final classification decision, import and export enterprises should not be responsible for inconsistent provisions. Additionally, the same harmonized system (HS) item may involve different specifications, models, quality and terms of trade, and widely differing prices. We suggest that the GAC should improve recognition and acceptance of the commodity prices set by enterprises in the price consultation mechanism. The GAC should add these enterprise-set prices to the price database and update the price information of different goods with the same HS code in a timely manner.

AmCham China hopes that the GAC is able to achieve the goal of collecting all due customs duties while avoiding over-levying duties on import and export enterprises.

Processing Trade Management System

In 2013, the GAC improved the existing management system for processing trade in specially controlled areas, positively affecting businesses involved in this type of trade. Key improvements included:

- resolving the flow of bonded goods between special supervision zones via the Deep Processing Transfer model;
- developing a new system for evaluating domestically traded processed goods; and
- revising the method of verifying trade-processing unit consumption to allow companies to choose their own product number, item number, worksheets, and other valuation models.

Growth in China's domestic processing trade industry has slowed over the past three years as a result of several factors, including a sluggish international market, sharply increasing domestic costs, and human resource shortages. AmCham China hopes China Customs will make further efforts in the following areas:

- Establish a credit verification system based on the Enterprise Resource Planning (ERP) system.
- Revise the rules on "non-licensed and non-dutiable" restrictions on the interchange between bonded materials with non-bonded materials, particularly regarding the potentially urgent need for materials in production.
- Modify the rules stipulating that imported equipment categorized as non-purchased be kept only for factory use, even after the customs supervision period is over.
- Simplify procedures for the carry-over of bonded materials between enterprises in and out of the special supervision zones.
- Formulate regulations on aspects of processing that take place overseas.
- Establish a management system for the increasing amount of "overseas processing" as soon as possible.
- Relax policy terms for import maintenance and remanufacture.

Enterprise Classification Management System

Most developed countries utilize an advance valuation and pre-classification system that allows industry to confirm valuation and classification prior to shipment and thus avoid delays in the customs clearance process. The GAC has adopted and modified such a management system. Over the past several years, the GAC has put many new systems into trial use, starting with the classification of Category A and Category AA enterprises, which enjoy simplified and expedited customs procedures. The GAC has gradually extended this system to additional enterprises, which demonstrates its trust in quality enterprises. In 2013, the GAC largely reduced the import and export inspection rate for Category AA enterprises, which not only favored Category AA enterprises in real terms, but also encouraged other enterprises to move forward and join the Category AA classification. AmCham China highly commends this trend and appreciates the GAC's efforts and accomplishments in promoting international trade facilitation and the mutual authentication systems AEO and the Customs-Trade Partnership Against Terrorism (C-TPAT).

Meanwhile, AmCham China believes that the existing classification management (Decree No. 197) still needs improvement. Due to huge differences in scale of operation and content of trade among various enterprises, some enterprises deal with billions or tens of billions of dollars in trade, with tens of thousands of import and export declarations and a similar volume of categories of commodities annually. It is understandable that inadvertent mistakes occasionally occur. However, China Customs does not distinguish these

或忽略 WTO 的估价规则而倾向于无端定价，从而对进出口企业的经营活动构成明显消极影响。更加科学的制度应该是确定一个年度关税征收目标，并可根据上述四个因素的实际情况对目标进行相应调整。

中国美商会成员希望海关总署于 2012 年下达的有关预审价以及预归类的框架性制度能够尽快全面实施，并考虑经海关审核的第三方提出的预归类建议，以便开展预归类服务。区域适用范围进一步扩大；此类归类建议书如果和海关最终归类决定不一致，不应该参照申报不符的条款追究进出口企业的责任。此外，鉴于同一调和关税制度（HS）项下可能包含很多不同规格、不同型号、不同品质、不同贸易条件的商品，相互间出现价格差异，有时甚至高达几十倍的差异。我们建议海关在价格磋商机制中，提高对企业核定的商品价格的认可和接受度。海关总署应将此类企业的定价加入商品价格数据库并及时更新同一 HS 编码下具体不同类别商品的价格信息。

中国美国商会希望中国海关在充分实现“应征尽征”目标的同时尽量避免对进出口企业征收“过头税”。

加工贸易管理制度

2013 年中国海关完善、改进现行加工贸易以及特殊监管区管理制度，对区内外加贸企业的营运将产生明显的积极作用，亮点有：参照深加工结转模式解决特殊监管区之间保税货物流转；重新修订加工贸易单耗核定办法、由企业自主选择料号、项号、工单等不同的核销模式以及新的加工贸易货物内销估价制度拟订。

中国境内加工贸易企业受到国际市场疲软、国内成本持续大幅度上升以及劳动力资源短缺等多方面因素影响，在最近的两三年间出现不同程度的下滑。中国美国商会对海关的加工贸易管理制度依然有很多期待，包括：❶ 建立基于企业 ERP 系统管理的信誉核销制度；❷ 取消因生产急需而发生的合理的进口料件串换商品仅限于‘不涉证、不涉税’的不合理规定；❸ 废除目前不作价设备解除监管后规定只能‘留厂自用’的不合理规定；❹ 简化特殊监管区和区外加工贸易企业之间的保税货物结转程序；❺ 制定对加工贸易中部分工序的境外加工管理制度；❻ 对越来越多的“出境加工”尽早设计制定管理制度；❼ 放宽进口维修以及再制造业务的政策限制。

企业分类管理制度

对进出口企业按照其自身管理水平实施差别化管理是国际海关一个先进管理理念，中国海关根据本国实际引入这一管理制度是海关创新的一个方面并在实践中发挥了积极作用。中国海关已采纳并修改了该管理制度。过去数年间，中国海关的很多新制度首先在 AA 类、A 类企业试行，简化和加速了通关，取得经验后再逐步扩大推广，体现了海关对优质企业的信任。2013 年，海关大幅度降低对 AA 类企业的进出口查验比例，让 AA 类企业获得实在利益的同时，对其他企业的升级产生了显著的推动作用。中国美国商会高度赞赏中国海关为推进全球贸易便利化，不断扩大和国际海关合作推行 AEO（经认证经营者）与海关－商界反恐伙伴计划（C-TPAT）相互认证制度方面所进行的努力以及取得的成就。

与此同时，中国美国商会认为现行企业分类管理（197 号署令）尚有进一步改进和完善的空间。由于企业之间在经营规模、贸易方式、贸易内容等方面差异巨大，其中一些每年进出口数额高达几十亿甚至数百亿美元，进出口申报数量高达数万次，进出口商品种类几万种，偶尔发生差错的情况在所难免，海关对这些非主观故意的、轻微的、程序性的、没有造成任何实际后果的行为不加区别，统一按照货物总价值 5% 至 30% 进行处罚，企业本已认为不太合理，而现行企业分类管理制度中一年内发生一次 3 万元以上行政处罚情况即予以降级处理的规定更让所有 AA 类企业难以接受。对所有 AA 类、A 类企业而言，海关的降级决定对企业的伤害远远超过行政处罚。

自愿披露

中国美国商会希望作为中国海关制度的重要组成部分的自愿披露（Volunteer Disclosure），得到进一步发展。该制度无论对海关管理还是企业的关务合规都具有十分重要的积极意义。目前中国各地海关在自愿披露问题上缺乏明确规定，部分企业将内部管控过程发现的问题主动反映给海关后导致海关缉私警察局介入并严厉查处的事例让跨国公司无法理解、无法接受，直接阻碍企业自愿披露其在管理运营中发现的不合规问题。中国美国商会了解到海关总署相关职能部门已经充分了解掌握企业的这一呼吁并表示接受企业的合理化建议，我们希望海关总署能够尽快启动相关法规的修订工作，使自愿披露这一先进的国际海关管理制度尽早在中国实施。

unintentional, minor, and procedural violations of little consequence from more serious and substantial violations. In both instances, enterprises are subject to a fine equivalent to five to 30 percent of the total value of the goods. This is not fair to these enterprises, particularly Category AA enterprises, considering that the current classification management system will downgrade any enterprise that has been subjected to a single fine exceeding RMB 30,000 (approximately US $5,000) in a given year. For any Category A or Category AA enterprise, the downgrading penalty from China Customs is much harsher and difficult to accept than administrative punishment.

Voluntary Disclosure

AmCham China members hope that voluntary disclosure, a crucial aspect of China's customs system, will be developed further. It plays a very important and positive part in the customs management of both customs authorities and businesses. Currently, local customs authorities across China have no clear-cut provisions for addressing voluntary disclosure. Some enterprises proactively disclose problems discovered in their internal management to Customs but, as a result, were punished severely by the Customs Anti-Smuggling Police Office. This kind of action is counterproductive because it directly deters voluntary disclosure of such internal management and operational issues. AmCham China understands that the GAC is fully aware of this problem and has considered an amendment. We hope that an amendment regarding voluntary disclosure will be implemented as soon as possible.

Import of Samples for use in Research and Development

There is an essential difference between the import of a very small quantity of sample cellphones for testing purposes and the import of a large quantity of cellphones as commodities into the market via general trade for network access and use. However, this difference is not distinguished in the existing customs management system, affecting the research and development (R&D) efforts of companies. We hope that the GAC will conduct an investigation into tax policy for the import of R&D samples, temporary imports and exports, temporary exports of old test equipment, and destructive testing of imported samples. The GAC should also actively coordinate with other governmental departments to put forward reasonable and proper solutions.

Recommendations

- **Before implementing a voluntary disclosure clause, take temporary measures as soon as possible to solve self-reported issues.**
- Revise the Detailed Rules for the Implementation of Customs Administrative Punishment, Regulations on Customs External Auditing, Measures on the Regulation of Inbound and Outbound Express Mail, and Measures on the Valuation of Bonded Goods for Domestic Sale as soon as possible.
- Lower the proportion of inspections required by customs clearance at port, abolish the inspection rate system, and expand the "one declaration, one inspection, one clearance" customs clearance system.
- Implement a fair and reasonable valuation system according to WTO valuation rules. Broaden the applied scope of the system of advance valuation and pre-classification as soon as possible.
- Revise the penalties in the existing system for enterprises which have been served one-time fines exceeding RMB 30,000.

研发用样品的进口

从贸易管制角度看，进口很小批量的用于测试的样品手机和作为商品，以一般贸易方式进入市场，与入网使用的大批量手机之间存在本质性区别。但目前海关实施贸易管制以及其他相关管理制度中，对此没有加以区别，成为研发企业的一块心病，期待海关在研发样品进口贸易管制、暂时进出口、旧测试设备临时进口、进口样品破坏性测试的税收政策等方面进行调研，积极反映并协调其他政府部门提出合理妥善的解决方案。

建 议

- **在自愿披露制度制定实施前，能够尽早采取过渡性解决办法，解决企业自查自报的出路问题。**
- 尽早修订、制定《海关行政处罚实施细则》、《海关稽查条例》、《进出境快件监管办法》、《保税货物内销估价办法》等规章。
- 降低口岸通关环节货物查验比例，取消查获率制度，推广‘三个一’通关模式。
- 按照 WTO 估价规则，实施更加公平合理的估价制度；尽快推进预审价以及预归类制度的实施范围。
- 尽早修订企业分类管理办法中 3 万元处罚降级的规定。

Government Procurement

Introduction

China's government procurement market has grown almost fourteen-fold over the last 10 years, reaching US $230 billion (RMB 1.4 trillion) in 2012. While the size and growth of the market is substantial, government figures do not take into account the significant purchases undertaken by China's state-owned enterprises (SOEs) in industries in which private competition is often restricted.

American businesses can supply many of China's government procurement needs with competitively priced, high-quality products. However, the market remains largely closed to foreign businesses. More than a decade ago, the Chinese government promised to join the World Trade Organization's (WTO) Agreement on Government Procurement (GPA), which requires parties to open most government procurement to foreign businesses. Despite that promise, the Chinese government has yet to submit a credible accession offer in line with those of other parties to the GPA.

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

Ongoing Regulatory Issues

Accession to the GPA

Slow Timeline for Accession

In its 2001 Protocol on Accession to the WTO, the Chinese government committed to become a party to the GPA "as soon as possible." However, China has yet to make a credible offer for GPA accession. China submitted its initial offer in December 2007, six years after signing its Accession Protocol. Most GPA parties expressed disappointment with the initial offer and urged China to quickly submit an improved offer. China submitted revised offers in July 2010 and November 2011. As noted in the 2013 *White Paper*, China's third revised offer, submitted in November 2012, remained largely deficient in its limited coverage of central and sub-central entities and sweeping exceptions that were left open for further specification through "revised offers in the future." The US, EU, and other GPA parties called on China to improve the offer by including coverage of SOEs, lowering the thresholds above which the GPA's non-discrimination disciplines apply, removing several broad exemptions, and expanding coverage of sub-central entities and services.

China submitted its fourth revised offer on December 31, 2013, fulfilling the commitment it made to the US and other GPA parties to make a new offer before the end of the year. While the new offer makes incremental gains, including extending coverage to additional provinces and adding several services, it still falls short of the procurement coverage made by other parties to the GPA.

AmCham China commends the Chinese government for making incremental improvements in its fourth revised offer. However, we urge the Chinese government to more fully address the key remaining issues, discussed below, in its fifth revised offer to be submitted in 2014, in order to take meaningful steps towards concluding its GPA accession.

Coverage of Central and Sub-Central Government Entities

At the central level, the fourth revised offer continues to severely limit coverage to "central government entities proper and their administrative agencies located in Beijing." In addition, the offer does not include the Ministry of National Defense or any of its defense-related entities, including the People's Liberation Army.

At the sub-central level, the offer expands coverage to the five provinces of Liaoning, Hebei, Hubei, Hunan, and Henan, as well as the municipality of Chongqing. While their inclusion constitutes a step forward, the new additions still result in coverage of less than half of the over 30 provinces and provincial-level regions that should be covered (not including Hong Kong, which is already a party to the GPA). Omitted sub-central entities include less-developed provinces where significant government investment and infrastructure projects are currently taking place.

政府采购

引 言

过去 10 年间，中国政府采购增长了几乎 14 倍，2012 年达到了 2300 亿美元（约 1.4 万亿元人民币）。尽管采购市场的规模和增长是实质性的，但是政府的统计数字并没有把中国的国有企业在限制非公有企业竞争的行业中进行的采购考虑在内。

美国企业能提供很多价格上有竞争力的高质量产品，以满足中国政府采购的需求。然而，政府采购市场很大程度上对外资企业仍然没有开放。10 多年以前，中国政府承诺加入世界贸易组织（WTO）政府采购协定（GPA），该协定要求各缔约方向外资企业开放大部分的政府采购项目。尽管有此承诺，但中国尚未提交一份与其他缔约方相一致的、具有真正意义的加入《政府采购协定》的出价清单。

向外资企业开放中国政府采购市场将会使中国有关实体以有竞争力的价格获得高质量的商品和服务。加入《政府采购协定》还会为中国提供消除地方保护主义和腐败的工具。中国美国商会鼓励中国加入世界贸易组织《政府采购协定》，在互利互惠的基础上进一步向美国和其它许多国家开放政府采购市场。

现存监管问题

加入《政府采购协定》

加入进展缓慢

早在 2001 年《加入世界贸易组织议定书》中，中国就承诺将努力"尽快"加入《政府采购协定》。然而，中国尚未提交一份加入《政府采购协定》真正意义上的出价清单。2007 年 12 月，在签订《加入世界贸易组织议定书》六年后，中国提交了初步出价清单。《政府采购协定》的绝大部分缔约方对该清单均表示不满，敦促中国尽快修订清单并重新提交。2010 年 7 月和 2011 年 11 月，中国分别提交了修改后的出价清单。正如《2013 年白皮书》中所指出的那样，2012 年 11 月，中国提交了第三次修改后的清单，该版清单依然存在诸多问题，例如，该清单限制了中央政府和地方各级政府实体的范围，并通过"留待在今后修改的清单中作进一步详细规定"的措辞预先设定了普遍适用的例外情形。美国、欧盟和其它《政府采购协定》缔约方呼吁中国将国有企业包含在清单内，降低《政府采购协定》非歧视原则适用的门槛，消除若干广泛的例外情形并扩大地方实体和服务行业的覆盖范围，以此来改进出价清单。

2013 年 12 月 31 日，中国提交了第四次修改后的出价清单，履行了其向美国和其它《政府采购协定》缔约方做出的于年底前提供新出价清单的承诺。尽管新的出价清单有了持续改进，包括把覆盖范围扩大到其它省份并且增加了一些服务，但它仍然达不到《政府采购协定》其它缔约方提供的采购覆盖范围。

对中国政府在第四次修改后的清单中所做的持续改进，中国美国商会表示赞赏。但是，我们促请中国政府在 2014 年将要提交的第五次修改后的清单中更为彻底地解决下文讨论的现存主要问题，以便采取切实措施加入《政府采购协定》。

中央政府和各级地方政府实体的覆盖范围

在中央层面上，第四版修改清单仍将覆盖范围严格局限于"中央政府实体及其在京的行政机构"。另外，该出价清单没有包括国防部或其任何国防有关的实体，包括中国人民解放军。

在地方层面上，第四版修改清单把覆盖范围扩大到辽宁、河北、湖北、湖南和河南五个省以及重庆直辖市。尽管把上述省市纳入地方政府采购的范围是一个进步，但在加入这些新的政府采购主体后，地方政府采购主体在中国总计 30 多个省、区和直辖市（不包括已经是《政府采购协定》缔约方的香港）中也仅占不到一半。未覆盖的地方政

In the past, China has expressed concern about US coverage of only 37 of its 50 states and of the lack of full coverage of other GPA parties' sub-central entities. Even when considering these restrictions, however, China's offer is still less comprehensive than that of other parties to the GPA.

Moreover, there are several limiting factors that make the expanded coverage less meaningful. First, the revised offer uses a positive list of covered sub-central government entities. Without knowing the entities that have been omitted from the list, other parties to the GPA are unable to assess the adequacy of coverage within each province and municipality. Second, the Chinese offer sets up a sequential approach under which four of the new provinces–Hebei, Hubei, Hunan, and Henan–would only begin to be covered three years after the others on the list.

Altogether, the restrictions on the scope and timeline for coverage are troubling and conflict with the Chinese government's obligation under its WTO Accession Protocol.

Coverage of State-Owned Enterprises

The Chinese government previously indicated in discussions with the US and in GPA Committee meetings that it would add to the list of covered entities under Annex 3 of the GPA, entitled "Other Entities which Procure in Accordance With the Provisions of This Agreement." However, the Chinese government has continued to resist calls to include its numerous SOEs that appear to procure regularly for governmental purposes (i.e., not with a view to commercial sale or resale, or for use in the production or supply of goods or services for commercial sale or resale).

We again encourage the Chinese government to clarify its position by either: ❶ issuing an unambiguous directive confirming that SOE procurements are non-government procurements and ensuring that all regulations and directives governing SOEs are consistent with China's commitments regarding the commercial independence of SOEs and other relevant WTO obligations; or ❷ including SOEs that procure for governmental purposes in its next revised offer.

Coverage of Service Sectors

AmCham China recognizes the Chinese government's efforts to extend coverage to additional service sectors. China's fourth revised offer covers four new categories: consultancy services related to installation of computer hardware, online information and database retrieval, sewage services, and maintenance and repair of motor vehicles. However, the offer does not include any new construction services.

We continue to encourage the Chinese government to provide services coverage in line with that of the US, which uses a negative list for its service commitments under the GPA with minimal sector exclusions, resulting in broader and higher-value coverage of services. Alternatively, as recommended in the 2013 *White Paper*, the Chinese government should positively list service sectors more broadly, perhaps by two-digit customs procedure codes instead of three or more digits, as currently listed.

AmCham China appreciates the transfer of entities that are part of China's central government from Annex 3 to Annex 1, where the thresholds are much lower than those in Annex 3.

Level of Thresholds

In its fourth revised offer, China made marginal changes to the thresholds above which the GPA's non-discrimination disciplines apply. However, its thresholds remain too high in relation to those of GPA parties. Moreover, China continues to propose even higher transitional thresholds for a five-year period. This is problematic, particularly given that more than 10 years have already passed since China first promised to accede to the GPA "as soon as possible."

China did not make any changes in its latest offer to the thresholds for central government procurement. At the end of the five-year phase-in period, those thresholds would be 200,000 Special Drawing Rights (SDRs) for goods and non-construction services and 15 million SDRs for construction services. During the first two years of the phase-in, China proposes a threshold of 500,000 SDRs for purchases of goods and services. By contrast, all GPA parties apply the same threshold for the procurement of goods and services by the central government—130,000 SDRs.

For construction services procured by sub-central government entities, the latest offer would begin the five-year phase-in period at 60 million SDRs, down from 100 million SDRs. It also lowers the final threshold to 20 million SDRs after the phase-in period, down from 30 million SDRs in the previous 2012 offer.

China lowered the threshold for construction services procured by Annex 3 entities to 40 million SDRs at the end of the five-year phase-in period, down from 100 million SDRs in the previous offer. The phase-in would start at 80 million SDRs in the first year, reduced from 200 million. For the procurement of construction services by all entities, the US and most other GPA Parties apply a five million SDRs threshold. Only Japan and Korea apply a higher construction threshold for sub-central and other entities.

AmCham China encourages the Chinese government to apply thresholds in line with those applied by current GPA parties from the time it implements the GPA.

Problematic Exceptions

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

府采购实体包括目前政府正在进行大量投资和正在大搞基础设施项目的欠发达省份。

过去，中国不仅对美国仅覆盖 50 个州中的 37 个州的做法表示关切，而且也对其他《政府采购协定》缔约方地方政府实体覆盖不足的现象表示了担忧。然而，尽管其他缔约方地方政府实体的覆盖有限，但中国出价清单的覆盖范围相比而言则更加有限。

此外，有几个限制性因素使覆盖范围扩大变得意义不大。第一，修改后的出价清单对所覆盖的地方政府实体采用正面清单。如果不知道已从清单中删除的实体，《政府采购协定》的其它缔约方就不能评估各省市内的覆盖范围是否充分。第二，中国的出价清单采取了按顺序加入的做法，根据这种顺序，新纳入的四个省，即河北、湖北、湖南和河南省，要在清单上的其它省市覆盖三年后才会纳入覆盖范围。

总之，对覆盖范围和时间的限制让人烦恼，也不符合中国政府在《加入世界贸易组织议定书》项下的义务。

国有企业的覆盖范围

中国政府此前在与美国进行的讨论中和在政府采购协定委员会会议上曾表示，中国将按《政府采购协定》附录 3 的规定增列覆盖的采购实体名单，名为“根据该协定规定进行采购的其他实体”。但是，中国政府依旧拒绝了将为数众多的国有企业纳入出价清单的要求，而国企的采购似乎经常带有政府性质（例如，不以商业销售或转售为目的，或不用于以商业销售或转售为目的的生产或服务）。

我们再一次鼓励中国政府通过以下方式明确立场：要么 ❶ 颁布明确的行政条例，声明国有企业采购不属于政府采购，并确保所有国有企业的相关规定和指导文件与中国关于国有企业商业独立的承诺相一致，与对世贸组织的其他承诺相一致；或者 ❷ 将带有政府采购性质的国有企业纳入中国的下一份出价清单。

服务行业的覆盖范围

中国美国商会认可中国政府为把覆盖范围扩大到其它服务行业所做出的努力。中国第四版次修改后的出价清单覆盖了四个新的类别：有关电脑硬件安装的顾问服务、在线信息和数据库检索、污水服务以及机动车维护和修理。然而，该清单没有包含任何新的建筑服务。

我们继续促请中国政府参考美国的标准来提供服务覆盖范围清单。美国根据其在《政府采购协定》项下的服务承诺所使用的清单是一个“负面清单”，已将排除的领域范围降到最低。因此，美国的清单覆盖了更广泛、更高价值的产业。另外一种选择是，中国政府应该积极地、更为广泛地增列服务行业，可以用两位数的海关代码取代现行的三位或者更多位数代码。

中国美国商会对于中国把属于中央政府部分的实体从附件 3 转移到附件 1 的做法表示赞赏，附件 1 的门槛比附件 3 的门槛要低得多。

门槛水平

在第四版修改清单中，中国将部分门槛调整至与《政府采购协定》非歧视原则下的门槛持平或略低的水平。但是，中国的门槛与《政府采购协定》的其它缔约方相比仍然过高。此外，中国依旧提出在为期五年的时间内采用更高的过渡期门槛。这是很成问题的，特别是考虑到自中国最初承诺“尽快”加入《政府采购协定》之后，已经过去了十多年。

中国在最新的出价清单中没有对中央政府的采购门槛做出任何更改。在五年的过渡期结束后，商品和非建筑服务的门槛为 200,000 特别提款权（SDR），建筑服务的门槛为 1500 万特别提款权。在过渡期的头二年，中国提出采购商品和服务的门槛为 500,000 特别提款权。相比之下，《政府采购协定》的所有缔约方对中央政府采购商品和服务都适用同样的门槛，即 130,000 特别提款权。

对于地方政府实体采购的建筑服务，最新的出价清单规定五年过渡期的门槛从 1 亿特别提款权降低到 6000 万特别提款权。该清单还把过渡期后的最终门槛从之前 2012 年出价的 3000 万特别提款权降低到 2000 万特别提款权。

中国把五年过渡期结束后附件 3 所列实体采购建筑服务的门槛从以前的 1 亿特别提款权降低到 4000 万特别提款权。过渡开始第一年的门槛从 2 亿降低到 8000 万特别提款权。对于所有实体采购的建筑服务，美国和其它大多数《政府采购协定》缔约方均适用 500 万特别提款权门槛。只有日本和韩国对地方政府和其它实体适用较高的建筑门槛。

中国美国商会促请中国政府在执行《政府采购协定》时适用的门槛与目前的《政府采购协定》缔约方所适用的门槛保持一致。

First, China continues to propose that it be granted the ability to "deviate from the principle of national treatment" in "singular procurement cases" when a specific procurement may "impair important national policy objectives." As detailed in previous editions of the *White Paper*, this provision is extremely broad and would completely circumvent the core GPA principles of non-discrimination and market access. It would also add unpredictability to China's procurement process as any procurement could be subject to this exception.

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

Third, broad gaps in coverage are carved throughout China's latest revised offer, even outside of the general exemptions. As noted earlier, central government entities covered under the GPA are restricted to entities located within Beijing. In the notes applicable to Annexes 1-4, the revised offer retains a provision stating that exceptions will be specified "in the revised offers in the future," adding further ambiguity to the scope of coverage.

Fourth, China maintains its ability to extend the benefits of the GPA only to providers of goods and services from GPA parties that have provided "access for the suppliers and service providers of China to [their] market." This provision appears to substitute the WTO's dispute settlement rules with China's unilateral judgment.

Finally, the new offer maintains China's request to delay implementation of its GPA obligations by three years, down from five years in its 2012 offer. For Hebei, Hubei, Hunan, and Henan provinces, this would mean a delay of six years after China accedes to the GPA. There is no provision in the revised GPA for delayed implementation of all GPA obligations.

Domestic Government Procurement Regime

Tendering and Bidding Law

There has long been discussion about the reconciliation between China's Government Procurement Law and its Tendering and Bidding Law, although there was little apparent progress in 2013. To date, the application of the Government Procurement Law is defined by the nature of the funds used, not by the nature of the purchasing entity. However, in practice, discretion is often left to the purchasing entity to decide which law to apply, adding more uncertainty to China's government procurement regime. Reconciling these two major laws governing China's procurement practices as part of China's GPA accession negotiations is critical, particularly with respect to SOE procurement. An alternative to reconciliation of the two laws may be for China to enact a new law (or even amend the Government Procurement Law) to provide for implementation of GPA obligations by the SOEs that it covers and their exemption from the Tendering and Bidding Law.

Government Procurement Law

China released two major draft regulations in 2010 for comment that sought to further clarify practices related to procurement of domestic products. The two draft regulations are the "Implementing Rules of Government Procurement Law" (State Council draft regulation) released by the State Council Legislative Affairs Office in January 2010, and the "Administrative Measures on Government Procurement of Domestic Products" (MOF draft regulation) released by the Ministry of Finance (MOF), the Ministry of Commerce, the National Development and Reform Commission (NDRC), and the General Administration of Customs in May 2010.

The State Council draft regulation proposed defining "domestic product" for the first time by the percentage of "domestic production cost," and the MOF draft regulation quantified the percentage as 50 percent. However, the two draft regulations provided two similar but different equations for calculating the percentage of domestic production cost, with different Chinese terms used. In addition, the MOF further revised its draft regulations in August 2010 to require that the cost of "other non-Chinese factors" (mainly the depreciation of imported manufacturing equipment and the amortization of royalties paid to foreign intellectual property owners) be deducted from the value added in China. This could make a major difference for multinational corporations (MNCs) operating in China when calculating the percentage of their products made in China.

It is essential for both GPA parties and international business interests to assess China's government procurement regime with a consistent concept of domestic product. The MOF has indicated it recognizes the conflict between the two draft regulations' definition of "domestic product" and their calculation methodologies. It also plans to streamline the "Implementing Rules of Government Procurement Law" and have the "Administrative Measures on Government Procurement of Domestic Products" provide the sole definition and methodology for calculating "domestic production." The MOF has made significant revisions based on industry comments, including adding a provision on dispute settlement procedures and plans to publish a revised draft of the "Administrative Measures on Government Procurement of Domestic Products" soon. However, neither of the two draft regulations has been publicly issued for comment again since 2010. AmCham China looks forward to the opportunity to review and comment on the revisions made to the two draft regulations before final promulgation and hopes the concept of "domestic product" will be more

资金的性质，而非采购实体的性质。然而在实践当中，采购实体经常可以自行决定适用哪部法律，这为中国政府采购体制带来了更多的不确定性。作为中国加入《政府采购协定》谈判的一部分，理顺这两部约束中国采购实践的主要法律之间的关系至关重要，尤其对于国企采购。理顺这两部法律的一个替代方法是，中国制定一部新的法律（或修订《政府采购法》），对该法所涉及的国有企业履行《政府采购协定》义务及其不受《招标投标法》管辖的特例做出规定。

《政府采购法》

2010 年，中国颁布了两部法规草案（征求意见稿），旨在进一步明确有关本国产品采购的实践。这两部法规草案分别是 2010 年 1 月国务院法制办公室颁发的《政府采购法实施条例（征求意见稿）》以及 2010 年 5 月财政部、商务部、国家发改委和海关总署颁发的《政府采购本国产品管理办法（财政部征求意见稿）》。

在草案中，国务院首次建议按"本国生产成本"所占比例来定义"本国产品"，而财政部的草案更将这一比例量化为 50%。然而，两部草案提出了两种相似但又不同的计算本国生产成本比例的公式，而且中文表述也是截然不同。此外，2010 年 8 月，财政部对其草案做出了进一步修订，并要求"其他非中国因素"（主要是进口生产设备的折旧值以及支付给外国知识产权人的专利使用费的摊销额）所带来的成本应从中国的增值部分中扣除。如遵照这一要求，在华运营的跨国公司在计算其中国制造的产品的成本比例时会得到截然不同的结果。

至关重要的是《政府采购协定》缔约方和国际商界使用统一的本国产品概念来评估中国的政府采购。财政部已经表示承认两部法规草案对"本国产品"的定义及其计算方法之间存在冲突。财政部还计划精简《政府采购法实施条例》并且由《政府采购本国产品管理办法》对"本国产品"的唯一定义和计算方法做出规定。财政部已经根据行业意见做了重大修订，包括增加了争议解决程序的规定，并计划不久发布《政府采购本国产品管理办法》修订草案。但是，自 2010 年以来，这两部法规草案就再没有发布公开征求意见稿。中国美国商会期待有机会在最终颁布前对这两部法规草案的修订内容提出建议和意见，并且希望"本国产品"这一概念能有更明确的定义，既能符合国际实践又能带动跨国公司参与中国政府采购市场，并使其享受公平待遇。

此外，国务院起草的法规草案之第十条规定，给予本

成问题的例外情形

在其最新的出价清单中，中国政府未能消除以前对其一般特例情形的担忧。

首先，中国继续建议，在某些采购可能会"损害重大国家政策目标"的情况下，中国可以在这"单一采购"中"不适用国民待遇原则"。正如《白皮书》以前的版本中所指出的那样，该条款极端宽泛，完全可以借此来规避非歧视和市场准入这两项《政府采购协定》的核心原则。该条规定还会增加中国采购过程的不可预测性，因为任何采购都可能适用于这一特例。

第二，中国坚持要求修改后的《政府采购协定》第五条项下的本国含量、采购抵消或技术转让要求适用其特例。正如《白皮书》以前的版本中所指出的那样，中国作为世界第二大经济体不应该因为允许它使用过渡性措施作为其加入的部分条款就被视作发展中国家。根据修改后的《政府采购协定》，抵消和其他过渡措施只有经各缔约方准许才可允许使用。

第三，即便是在一般性特例之外，中国提交的修改清单在适用范围上依然与协定要求有较大差距。如前所述，适用《政府采购协定》的中央政府实体的范围仅限于在京实体。在附录 1–4 的说明中，修改后的出价清单保留了一条规定，即除外情形将在"今后提交的修改清单"中予以详细规定，这使得适用范围的模糊性进一步加深。

第四，中国坚持在相关缔约方已向"中国的货物和服务供应商提供了[其市场]的准入"，中国才会授予这些缔约方的货物和服务供应商《政府采购协定》的相关优惠。这一表述反映了中国对世界贸易组织的争端解决规则的单方面判断。

最后，新的出价清单坚持中国履行其《政府采购协定》义务的要求要推迟三年，在 2012 的出价清单中为五年。对于河北、湖北、湖南和河南等省而言，这就意味着在中国加入《政府采购协定》后要推迟六年。在修改后的《政府采购协定》中不存在推迟履行所有协定义务的规定。

国内政府采购体制

《招标投标法》

虽然关于理顺《中国政府采购法》和《招标投标法》之间关系的讨论为时已久，但 2013 年这方面的进展仍不明显。到目前为止，《政府采购法》的适用主要依据使用

clearly defined in a way that encourages MNCs' participation in China's government procurement market on an equal footing and in line with international practice.

Furthermore, Article 10 of the State Council draft regulation grants a 20 percent price preference to domestic goods, projects, or services. We understand some countries give domestic products preferential treatment, but the margin should not be so large as to greatly distort market mechanisms and hinder normal price competition and research and development (R&D). AmCham China recommends removing or decreasing the 20 percent preferential treatment to five percent and looks forward to seeing such changes reflected in the next published draft regulation for comments as well as in the final regulation.

In addition, the MOF released the draft of "Administrative Measures on Government Procurement that are not Subject to Public Tendering" on October 18, 2012. After soliciting public comments, the MOF published the final "Administrative Measures on Government Procurement that are not Subject to Public Tendering" on December 19, 2013, which went into effect on February 1, 2014.

Delinking Indigenous Innovation from Government Procurement

In December 2006, the Ministry of Science and Technology (MOST), NDRC, and MOF issued the "Administrative Measures on the Accreditation of National Indigenous Innovation Products (for Trial)." These measures required Indigenous Innovation Product (IIP) accreditation applicants to be both China-registered enterprises and to have at least the right of use of related intellectual property and possess ownership of trademarks in China. In April 2010, the MOST, NDRC, and MOF issued the "Draft Notice on Launching the Accreditation of National Indigenous Innovation Products" and requested comments from interested parties. The draft notice would have required IIP accreditation applicants to be both China-registered enterprises and to have at least the right of use of related intellectual property and trademarks in China, but a final version has yet to be released.

In June 2011, the MOF revoked three government regulations that linked indigenous innovation to government procurement. The regulations were "Evaluation Measures on Indigenous Innovation Products for Government Procurement," "Administrative Measures on Budgeting for Government Procurement of Indigenous Innovation Products," and "Administrative Measures on Government Procurement Contracts for Indigenous Innovation Products." The State Council also issued a measure requiring governments of provinces, municipalities, and autonomous regions to eliminate by December 1, 2011 any catalogues or other measures linking innovation policies to government procurement preferences. Since MOF's announcement, most local provinces and cities have stopped implementing local IIP policy. AmCham China applauds those important steps toward leveling the playing field in the government procurement market.

Unfortunately, examples of local violations persist, as detailed in the 2013 *White Paper*. AmCham China encourages continued enforcement of the MOF decision to void national IIP regulations, and looks forward to the complete delinking of IIP accreditation from government procurement at the national and local level.

Standards and Government Procurement

AmCham China members have observed that the Chinese government has increasingly linked various technical standards with government procurement in the name of information security, environmental protection, and/or energy conservation. Such standards, testing, and certification requirements include: ❶ the China Certification Center Inc. certification applicable to 13 categories of "information security products"; ❷ the proposed information security standard for office equipment; ❸ the Certified Executive Compensation Professional certification and related "Catalogue of Government Procurement List of Energy Efficiency Products" and proposed "National Recommended Voluntary Certification for China Restriction of Hazardous Substances Compliance"; and ❹ the Chinese Trusted Computing Module and Multi-level Protection Scheme which requires procurement of ICT equipment with domestic IPs for networks classified at level 3 or higher.

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

Price Controls and Government Procurement

AmCham China members have observed that the Chinese government has increasingly linked price controls with government procurement in the name of austerity. For example, the MOF recently issued a trial directive on asset allocation standards for general office software that could significantly restrict market access for foreign software products and services. The directive would impose price caps, preferred licensing terms (such as a preference for a "business premise" site license), minimum terms for software life, and other requirements on procurement of software that would have the effect of discriminating against the purchase of foreign brands. Moreover, the directive defines "standard configurations" of desktop software to include only the operating system, office productivity, and anti-virus software, suggesting that procurement may not be authorized

国货物、工程或服务 20% 的价格优惠。我们理解一些国家会给本国产品以优惠待遇，但是优惠幅度不应该大到导致严重扭曲市场机制，并妨碍正常的价格竞争和研发的开展。中国美国商会建议取消 20% 的价格优惠待遇或者降到 5%，并期待在下一次发布的法规草案征求意见稿以及最终稿中看到上述变化。

另外，2012 年 10 月 18 日，财政部还发布了《政府采购非招标采购方式管理办法》公开征求意见稿。在公开征求意见后，财政部于 2013 年 12 月 19 日发布了《政府采购非招标采购方式管理办法》，该办法已于 2014 年 2 月 1 日起生效实施。

政府采购与自主创新脱钩

2006 年 12 月，科学技术部（科技部）、国家发展和改革委员会（发改委）以及财政部下发了《国家自主创新产品认定管理办法》（试行）。该办法要求自主创新产品（IIP）的申请人必须是在中国注册的企业，而且至少有在中国使用相关知识产权的权利并拥有商标的所有权。2010 年 4 月，科技部、发改委和财政部联合下发了《关于开展 2010 年国家自主创新产品认定工作的通知（征求意见稿）》并公开征求意见。该通知要求自主创新产品的申请人必须是在中国注册的企业，而且至少有在中国使用相关知识产权和商标的权利，但是最终版本还没有发布。

2011 年 6 月，财政部废除了三项将自主创新与政府采购挂钩的管理办法。这三项条例是：《自主创新产品政府采购评审办法》、《自主创新产品政府采购预算管理办法》和《自主创新产品政府采购合同管理办法》。此外，国务院还下发公告，要求各省、市、自治区政府在 2011 年 12 月 1 日之前废除将自主创新产品与政府优先采购挂钩的任何相关目录或措施。自从财政部的公告发布后，大多数省市已经停止执行当地的自主创新产品政策。中国美国商会欢迎这些旨在为政府采购市场打造公平竞争舞台的重要举措。

遗憾地是，正如 2013 年《白皮书》中所详述的那样，地方违规的事例仍然存在。中国美国商会鼓励继续执行财政部关于废除国家自主创新产品法规的决定，并且期待自主创新产品认定在国家和地方层面与政府采购彻底脱钩。

标准与政府采购

中国美国商会会员注意到，中国政府以信息安全、环保和／或节能的名义将多项技术标准与政府采购挂钩。这些标准、测试及认证要求包括：❶ 适用于 13 种“信息安全产品”的 CCCi 认证；❷“信息安全技术办公设备基本安全要求”征求意见稿；❸CECP 认证和相关的“节能产品政府采购目录”和“中国 RoHS 国推自愿性认证”实施意见；❹ 中国可信计算模块，以及“信息安全等级保护制度”要求级别三级及以上网络必须购买带有国内 IP 的 ICT 设备。

中国美国商会促请中国政府在实施这些标准时仅针对那些需要采用此类标准的项目和领域，而不是所有政府采购。而当需要采用此类标准和合格评估认证时，我们希望遵守“自我声明遵守”原则，而不是强制公开源代码或其他版权信息。我们也希望政府采购单位在购买技术时应该将技术性能作为选择依据，并且避免根据知识产权来源地的不同而歧视对待有关技术。

价格控制和政府采购

中国美国商会会员企业已经注意到中国政府在不断以节俭之名把价格控制与政府采购挂钩。例如，财政部最近下发了关于一般办公软件资产配置标准的试行指导意见，这可能会极大地限制外国软件产品和服务的市场准入。该指导意见会施行最高限价、优先许可条款（比如“营业场所”地点许可优先）、最低软件使用期以及其它软件采购要求，这将会对采购外国品牌产生歧视作用。此外，该指导意见把桌面软件的“标准配置”定义为仅包括操作系统、办公效率和杀毒软件，这就暗示采购其它类型的软件可能不会得到批准或者至少不会获得预算资金。该指导意见与软件采购的最佳实践不相符，没有充分考虑到软件产品和服务开发的速度，并且似乎是对采购本国软件产品和服务给予了事实上的偏待。

中国美国商会促请中国政府不要执行这一指导意见，因为它不仅导致对外国品牌事实上的歧视，而且可能使中国政府无法以最优性价比获得产品。

最新进展

商贸联委会有关政府采购的进展

在 2013 年 12 月举行的第 24 次商业和贸易联合委员会（商贸联委会）会议上，中国同意加快有关加入世界贸易组织《政府采购协定》的谈判并且将于 2014 年提交修改后的出价清单，该清单将在“整体上与《政府采购协定》各缔约方的覆盖范围相当”。中国在 2013 年 12 月 31 日提交

or, at a minimum, that the budget will not be made available for other types of software. This directive does not comport with best practices for software procurement, does not adequately take into account the speed with which software products and services are developing, and appears to put in place de facto preferences for procuring domestic software products and services.

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

Recent Developments

JCCT Government Procurement Developments

At the 24th Joint Commission on Commerce and Trade (JCCT) in December 2013, China agreed to accelerate its negotiations on accession to the WTO GPA and submit a revised offer in 2014 that is "on the whole commensurate with the coverage of GPA parties." China submitted its fourth revised GPA offer on December 31, 2013, fulfilling its earlier commitment to the US and other GPA parties.

The 24th JCCT fact sheet also stated that China agreed to avoid imposing domestic procurement preferences for government vehicles. In so doing, China decided not to finalize and implement the "2012 Draft Party and Government Organ Official Use Vehicle Selection Catalogue" or the "2011 Detailed Rules on the Administration of Optional Official Vehicle Catalogue for Party and Government Organs" that would have "effectively excluded vehicles produced by foreign and foreign-invested enterprises from important procurement opportunities." According to the US Trade Representative's 2013 Report to Congress on China's WTO Compliance, these measures would have prevented the Chinese government and Chinese Communist Party from procuring vehicles from such entities.

Recommendations

- **Submit a revised GPA accession offer in 2014 in line with those of current parties that would lead to the conclusion of China's GPA accession, according to the terms outlined in this chapter.**
- Repeal remaining policies that provide preferences for domestic or indigenous innovation products in government procurement, at both the central and local government levels, and ensure full revocation of IIP preferences already repealed.
- Immediately issue rules that make clear to government entities that products produced in China by foreign-invested enterprises are domestic products for purposes of government procurement.
- Where standards and conformity assessment qualifications must be required for government procurement, follow a principle of "self-declaration for compliance," which does not mandate the disclosure of source code or other proprietary information.
- Ensure that the choice of technologies in government procurement is performance based and technology neutral in terms of intellectual property (IP) origins.
- Repeal directive-imposed price caps, preferred licensing terms, minimum terms for software life, and other requirements on procurement of general office software by governmental agencies that would significantly discriminate against the purchase of foreign brands.

了第四版修改后的清单，履行了其早些时候向美国和其它《政府采购协定》的缔约方所做出的承诺。

第 24 次商贸联委会的情况说明书还声明，中国同意不对政府用车实施本国采购优待。为此，中国已决定不会最终通过并实施《2012 年度党政机关公务用车选用车型目录》（征求意见稿）以及《2011 年度党政机关公务用车选用车型目录管理细则》，这两部法规本可能会"实际上排除外国和外资企业生产的车辆获得重要的采购机会"。根据美国贸易代表向国会所做的 2013 年中国世界贸易组织合规性报告，上述措施本可能会阻止中国的党政机关从上述实体采购车辆。

建 议

- **根据本章所述的条款，提交一份重新修改的中国加入《政府采购协定》的出价清单，该清单要与其他现有缔约方保持一致并能使中国最后完成加入《政府采购协定》。**
- 取消中央和地方政府现行有关在政府采购中优先购买本国产品或自主创新产品的政策，确保全面废止已承诺取消的优先采购自主创新产品的政策。
- 立即出台相关规则，向相关政府实体说明在华外商投资企业生产的产品属于政府采购意义上的本国产品。
- 在适用标准和合格评估认证的场合，中国美国商会建议遵守"自我声明遵守"原则，而不是强制公开源代码或其他专有信息。
- 确保政府采购中选择技术时对知识产权（IP）原产地方面的考虑要基于性能和技术中立。
- 废除指导意见规定的最高限价、优先许可条款、最低软件使用期以及政府机构施加的、可能会对采购外国品牌造成重大歧视的其它要求。

High-Tech Trade Promotion and Export Controls

Introduction

China is the most important import partner for the US and the third largest export destination behind only our neighbors Canada and Mexico. Bilateral trade in goods between the US and China grew from US $147 billion (RMB 889 billion) in 2002 to US $562 billion (RMB 3.4 trillion) in 2013. The total value of licensed dual-use exports from the US to China continues to grow at an even faster rate. As the US and China look to capitalize on the potential future growth in bilateral high-tech trade, both countries have sought to improve cooperation and understanding on export controls.

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

❶ US export control policies do not fully account for foreign and indigenous availability, resulting in:
   a. decreased national security benefits for the US when other countries license the same technology under US export controls, and
   b. loss of sales by US firms to foreign competitors, negatively affecting the US defense industrial base;

   Such policy puts US companies at a disadvantage vis-à-vis non-US companies with a presence in China.

❷ Misperceptions by the Chinese government and among Chinese industry representatives about the restrictions imposed by US export controls have deterred Chinese companies from seeking US-origin items.

❸ A lack of transparency in China's export control regime has led to diversion concerns with regard to dual-use items.

❹ The lack of an established compliance culture among Chinese businesses hinders the ability of Chinese firms to acquire certain US export-controlled items.

To address these issues, AmCham China and AmCham Shanghai (hereafter referred to collectively as "AmCham") formed the Export Compliance Working Group (ECWG) in 2006. The mission of the ECWG is to facilitate civilian bilateral high-tech trade by serving as the liaison between government and industry. The ECWG believes that sustainable bilateral high-tech trade growth can be achieved through targeted efforts on US export control reform that account for foreign availability, an expansion of programs such as the Validated End-User (VEU) Program, the strengthening of the legal framework and enforcement of China's export control policies, and the promotion of a stronger compliance culture within Chinese companies.

AmCham's ECWG is a group of companies dedicated to facilitating high-tech trade between the US and China by improving the export control environment for US companies, promoting a security and compliance culture within the trade community in China, and helping US companies keep up with the changes in China's export regulations.

Ongoing Regulatory Issues

US Export Controls

Foreign Availability and Non-US Suppliers

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

Regarding items which are available in China from non-US firms, AmCham stresses that having items exported under a US export license is of much greater benefit to US national security than if those equivalent items are exported from another country. The license review process, conditions imposed on any license, and ongoing controls and monitoring are not the same as those associated with the US export

高科技贸易促进和出口管制

引 言

中国是美国最重要的进口贸易伙伴，也是仅次于其邻国加拿大和墨西哥的第三大出口目的地国。美中两国双边货物贸易额已从 2002 年的 1470 亿美元（8890 亿元人民币）跃升至 2013 年的 5620 亿美元（3.4 万亿元人民币）。获准对华出口的美国两用产品的贸易总额持续快速增长。鉴于美中两国都期望从未来的高科技双边贸易中受益，两国已努力在出口管制领域加强合作，增进理解。

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

❶ 美国出口管制政策未能充分考虑外国（第三国）及（中国）本土是否已有类似产品的情况，这将导致：
   a. 如果其他国家批准出口美国出口管制的技术，美国的国家安全利益会受到损害，以及
   b. 美国公司的销售份额流向外国竞争者，从而对美国国防工业基础造成负面影响；

   上述政策使美国公司与其他在华经营的跨国公司相比处于不利地位；

❷ 中国政府以及业内人士对美国出口管制的种种限制措施存在的误解，影响了中国公司进口原产于美国的产品。

❸ 中国出口管制制度缺乏透明度，导致两用物项外流的担心。

❹ 中国企业尚未建立规范的合规文化，降低了中国企业说服美国许可证授权官员颁发特定许可证的能力，削弱其获取美国出口管制产品的能力。

为了解决这些问题，2006 年中国美国商会和上海美国商会（以下称"美国商会"）成立了出口合规工作组(ECWG)。该工作组的使命是增进政府和行业之间的联络，推动双边民用高科技贸易的发展。出口合规工作组相信，通过有针对性地推动美国出口管制改革，将第三国产品供给考虑在内、推广诸如"验证最终用户"（VEU）项目在内的相关项目、推进完善中国出口管制政策法律框架、加强执法力度、以及鼓励中国企业营造更加浓厚的合规文化，将能实现两国高科技双边贸易的可持续增长。

美国商会出口合规工作组由一批致力于推动美中高科技贸易发展的企业组成。这些企业通过改善美国企业的出口管制环境，推动中国贸易行业内的安全及合规文化，以及帮助美国企业紧随中国出口管制法律的变化来实现此目标。

现存监管问题

美国出口管制

外国可获技术和第三国供应商

美国出口管制政策在某些情况下，对于中国已能自主生产或通过简单手续即可从美国以外的国家获得许可证并出口的产品，仍然要求两用产品出口许可证。美国商会认为，美国或多边体系无需管制中国已能自主生产的产品。此类限制既不会提高美国的安全保障，也不会对防止大规模杀伤性武器或常规武器扩散产生积极影响。因此，美国商会呼吁美国政府率先审核多边体系管制下的产品清单，并从中删除中国自主生产的产品。

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

control system. In addition to this direct national security impact, there is a secondary impact related to the economic disadvantage that US companies experience when they lose sales to non-US companies due to dual-use export controls. Each item that China acquires from a non-US business represents a lost US export opportunity and, in turn, harms US job creation, economic growth, and the stability of the US military industrial base. AmCham, therefore, requests the US government to review its processing times and approval criteria for issuing dual-use export licenses and bring these more in line with the practices of other multilateral regime members.

University Controls

Over the past several years China has been reforming its university system, in part by consolidating several key universities to create larger, cutting-edge schools better able to compete on the world stage. This process has often resulted in the combination of non-technical "colleges" with technical schools under the umbrella of one university. One of the obstacles facing US companies doing business in China is that several of these universities are on the US sanctions list. While only a specific department of a given university may be the focus of the sanction, the entire university is affected. The West China Hospital, for example, is now part of Sichuan University. Because Sichuan University also houses a branch of the sanctioned Chinese Academy of Engineering Physics, the entire University, including the West China Hospital, is placed under sanctions. This means that even US sales of aspirin to the hospital would require a license. The licensing process invariably introduces unnecessary difficulties and delays that cause the Chinese purchaser to seek another provider without similar requirements.

US companies that interact with these universities, as suppliers or as partners, are placed at a disadvantage vis-à-vis non-US companies with a presence in China. In most cases, the activities typically undertaken between the US companies and Chinese universities are not technical in nature, involve generic materials (i.e., EAR99 materials), and do not involve any of the targeted groups or activities for the sanction. However, even non-controversial activities such as recruiting, charitable events, and student development events are caught up in US export controls and require an export control license in order for US companies to participate.

AmCham does not question that these universities should be on the sanctions list. AmCham does, however, note that attempting to change the behavior of a portion of a given Chinese university by placing sanctions on the whole entity has not been effective to date, and does not seem likely to prove effective in the future based on current conditions. AmCham recommends establishing a simplified and expedited review process in order to work easily on EAR99 matters with sections of these universities that are outside of the sanction focus. We understand the risk of diversion needs to be analyzed, but hope that a process for granting general approvals is granted for certain parts of these universities that are in no way involved in controlled activities. AmCham also asks the US government to explore creating a process similar to the VEU program for these departments in order to streamline the process for exporting to, or working with, such departments within a sanctioned university on EAR99 matters.

End-Use Checks

The Bureau of Industry and Security (BIS) has published several changes to the US Unverified List (UVL) process that could directly impact Chinese companies purchasing US dual-use items from the US. While AmCham understands the need for the US government to conduct end-use visits, we believe expanding the UVL should be an absolute last resort for addressing the inability of the US government to visit an end-user. Instead, AmCham asks that both the US and Chinese governments increase their efforts to find a solution to any questions regarding end-use visits. AmCham welcomes the opportunity to facilitate the bringing together of US companies and their Chinese partners with both governments to work together to find a positive solution to any end-use visit concerns. AmCham also respectfully requests the Chinese government continue to increase its support for timely end-use visits, which are critical to facilitating high tech trade.

Validated End-User Program

In 2013, the BIS added several new validated end-users in China, bringing the total number of VEU entities to twelve. AmCham fully supports the VEU program as an important tool for facilitating legitimate exports to civilian end-users. The main advantage of VEU authorization is that it allows the export, re-export, and transfer of eligible items to specified end-users in China without needing to apply for an individual license for each transaction. This program puts US companies at a competitive advantage with foreign competitors and incentivizes civilian Chinese end-users to invest in trade compliance in order to reap significant business benefits. We urge the US government to continue strengthening and expanding the VEU program and making it more accessible to entities in China willing to commit to compliance and civil end-use only.

Education and Training

Export control myths continue to create misunderstandings that result in lost opportunities for US-China high-tech trade. Bringing together qualified commercial importers and exporters working on trade deals and educating them on export controls and the compliance process can be an effective path to debunking these myths and increasing US-China high-tech trade. It can also help focus government-to-government discussion on the primary issues, such as US license processing times and criteria in relation to

造成影响。中国每次从美国以外的企业进口一个产品，就表明美国丧失了一次出口机会，进而对美国就业机会、经济增长和美国军事工业基础的稳定造成危害。因此，美国商会敦请美国政府审查许可证处理时间和颁发两用物项出口许可证的审批标准，让该流程更加符合其他多边体系成员的做法。

大学管制

在过去几年里，中国对大学制度进行了改革，采用的措施包括合并几所重点大学，创建规模更大的一流大学，以提高在世界舞台上的竞争力。该过程的结果经常是，将非技术"学院"和技术学校合并到一所综合性大学。美国企业开展业务所面临的一大障碍是几所此类大学被列入了美国制裁清单。该制裁虽然只针对某所大学的某一特定学院，但整所大学都受到了影响，例如，现已成为四川大学一部分的华西医院。由于四川大学也包括受制裁的中国工程物理研究院的分院，因此，整所大学包括华西医院在内，都受到了制裁。这意味着，即使美国向该医院销售阿司匹林，也需要获得许可证。而许可证核发流程总是带来不必要的困难和延误，导致中国买家寻找无需类似要求的其他供应商。

相较于美国以外的企业（这些企业在中国拥有业务），美国企业如作为供应商或贸易伙伴与这些大学交流会处于劣势地位。在大多数情况下，美国企业和中国大学之间通常开展的活动本质上不具技术性，涉及的也只是一般材料（即 EAR99 材料），且不会涉及到任何与受制裁相关的目标群体或活动。但是，即使是招聘、慈善活动和学生发展活动等简单活动，只要参与的一方是美国企业，就要受到美国出口管制的限制，需要获得出口管制许可证。

美国商会并非质疑这些大学是否应列于制裁清单。但是，美国商会注意到，通过制裁整所大学来尝试改变该所中国大学某个学院的行为至今仍未取得成效，且根据现状，似乎也无法证明将来会有效。美国商会建议制定精简的快速审核流程，以与这些大学制裁重点对象之外的学院就 EAR99 事项顺利达成合作。我们理解需要分析转移风险，但对于这些大学中绝不会涉及任何扩散活动的某些学院，希望为其准予一般性审批的流程。美国商会还敦请美国政府为这些学院探索制定类似于 VEU 项目的流程，以简化向受管制大学中此类学院出口 EAR99 产品或与这些学院合作的流程。

最终用途审查

美国工业与安全局（BIS）已发布了对"美国未核实名单"（UVL）流程的几次修改，该流程可直接影响中国企业从美国购买两用产品。虽然美国商会理解美国政府需要进行最终用途访问，但我们相信，扩充 UVL 只是解决美国政府无法访问最终用户的绝对终极补救措施。相反，美国商会敦请美国政府和中国政府加大力度，共同寻找与任何最终用途访问问题相关的解决方案。美国商会非常乐意促进美国企业及其中国贸易伙伴与两国政府的合作，以共同寻找解决任何最终用途访问问题的积极方案。美国商会也敬请中国政府继续加大力度，支持对最终用途的及时访问，这对促进高科技贸易是不可或缺的。

经验证最终用户项目

2013 年，美国工业与安全局在中国新增了几家验证最终用户，使其实体总数达到十二家。美国商会全力支持将验证最终用户项目作为一个重要工具来促进向民用最终用户合法出口物品。项目授权的主要优势是允许向中国特定的最终用户出口、再出口和转让符合条件的产品时，无需就每次交易单独申请许可证。相比外国竞争者该项目让美国企业处于竞争优势，激励中国民用最终用户投资贸易合规，以便获得高额的商业利润。我们敦促美国政府继续加强验证最终用户项目建设并拓展其范围，让致力于合规投资的中国实体和仅为民用的最终用户更易于参与项目。

教育和培训

美国出口管制的神秘感引起的误解继续存在，导致美中两国高科技贸易机会的流失。召集有贸易往来的合格进口商和出口商，对他们进行出口管制和合规流程方面的培训是消除这些神秘感、发展美中高科技贸易的有效途径。这同样有助于两国政府关注讨论主要问题，比如与其他多边体系国家相关的美国许可证处理时间和标准，而不是侧重于错误的假设—和其他多边体系国家相比，美国针对基于名单的产品有更多的许可证要求。

为消除这些误解，出口合规工作组之前已推动开展针对美国出口商、中国进口商以及政府官员的教育培训，以期实现商业贸易机会的最大化，以及合规风险的最小化。然而，当前美中两国政府的预算限制打乱了以上交流的持续节奏。美国商会敦请美中两国政府共同寻找支持和资助此类项目的机会，藉由此类项目消除对出口管制的疑虑并

other multilateral regime countries instead of the incorrect assumption that the US has more license requirements for list-based items than other multilateral regime countries.

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

Chinese Export Controls

Diversion of Dual-Use Items

The lack of transparency in China's export control laws and regulations continues to cause concern regarding the diversion of items to harmful end-users or end-uses (e.g., entities and countries of proliferation and terrorism concerns). AmCham recommends China reach out to the US government, among others, to further explain the detailed processes of its export control system, especially as it relates to enforcement. In addition, AmCham requests the Chinese government to conduct more outreach and training to US industry with a presence in China. A clear and transparent Chinese export control system is critical for US-China relations and will help US-based companies comply more completely and effectively with Chinese export controls. In addition, AmCham urges China to clearly separate civilian and military programs in state-owned entities, to ensure dual-use items are not diverted from civil to military programs, thereby constraining high-tech commercial trade.

Joining Multilateral Regimes

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

Recent Developments

China Bans Nuclear-Related Exports to North Korea

On September 23, 2013, the Ministry of Commerce, Ministry of Industry and Information Technology, and the China Atomic Energy Authority released a North Korea-specific Dual-Use and Technology Control List. The list, which prohibits certain items for export to North Korea, was created to comply with several UN Security Council resolutions formulated in response to North Korea's nuclear weapons program.

China's list comprises the following:

- Nuclear Supplier's Group (NSG) Trigger List (INFCIRC/254/Rev.11/Part 1);
- NSG Dual-Use List (INFCIRC/254/Rev.8/Part 2);
- Certain missile items (S/2012/947);
- Certain chemical and biological items (S/2006/853); and
- Certain additional missile, nuclear, and chemical items from S/2009/364 and Annex III of S/RES/ 2094.

In creating its North Korea list, China has incorporated the complete and updated lists from the Missile Technology Control Regime (MTCR) and the NSG, which is at odds with the lists China utilizes for all other countries. The missile section contains a complete Chinese-translated version of the MTCR list, not the China-tailored "Regulations of the PRC on Export Control of Missiles and Missile-related Items and Technologies" currently in force for all other countries. In addition, China's current Nuclear Dual-Use List was last updated in 2007. In contrast, the North Korea-specific list is based on the NSG's 2010 version, which is the NSG's most up-to-date list. AmCham applauds China for putting this new restriction in place and recommends that China consider updating all its export control laws applicable to all countries by harmonizing both its missile list and its Nuclear Dual-Use List to correspond with the multilateral export control regimes.

Recommendations

For the US Government:

- **Support high-tech trade promotion initiatives in the US and China by providing funding, speakers, and support from the relevant policy makers and agency officials.**
- Take into account the availability of items in China from both domestic and foreign sources as the US government completes phase two of the export control reform effort and moves into phase three.

创造新的贸易机会。我们特别建议在现有两国政府活动中增加此类教育活动。

中国出口管制

两用物项转移

中国出口管制法律法规缺乏透明度，继续导致产品是否转移到有害的最终用户或用于有害的最终用途（如：出现扩散与恐怖主义问题的实体和国家）的担忧。美国商会建议中国主动与美国及其他有关政府沟通，进一步解释其出口管制体系的详细流程，尤其是执行方面。此外，美国商会敦请中国政府向在中国拥有业务的美国企业加大推广和培训力度。清晰透明的中国出口管制体系是改善中美贸易关系的关键，有助于总部设于美国的企业更全面、更有效地遵守中国出口管制法律。此外，美国商会还促请中国政府明确区分国有企业民用项目和军用项目，确保两用产品不会从民用项目流向军用项目，不会因此对高科技商业贸易造成限制。

加入多边体系

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

最新进展

中国禁止向朝鲜出口核相关产品

2013 年 9 月 23 日，商务部、工业和信息化部、以及中国国家原子能机构公布针对朝鲜的两用物项和技术管制清单。该清单禁止向朝鲜出口某些产品，旨在遵守联合国安全理事会作出的关于应对朝鲜核武器计划的数项决议。

中国的清单包括以下内容：

- 核供应国集团（NSG）触发清单（INFCIRC/254/ 修订版 11/ 第 1 部分）；
- 核供应国集团两用物项清单（INFCIRC/254/ 修订版 8/ 第 2 部分）；
- 某些导弹物项（S/2012/947）；
- 某些化学和生物物项（S/2006/853）；以及
- S/2009/364 和 S/RES/2094 附件 Ⅲ 中的某些附加导弹、核和化学物项。

中国在制定朝鲜清单时，加入了导弹及其技术管控制度（MTCR）和核供应国集团的完整更新清单，这些清单与中国用于所有其他国家的清单存在差异。导弹部分包括完整汉译版 MTCR 清单，并非中国定制的目前已生效的针对所有其他国家的《中华人民共和国导弹及导弹相关物项和技术出口管制条例》所附清单（导弹物项清单）。此外，中国当前的《核两用品及相关技术出口管制清单》最后一次更新于 2007 年。与此相反，针对朝鲜的清单是基于核供应国集团的 2010 年版本，这是核供应国集团的最新清单。对于中国实施该项新限制，美国商会表示赞扬，并建议中国考虑通过协调其导弹物项清单与核两用物项清单来更新适用于所有国家的所有出口管制法，以符合多边出口管制体系。

建 议

对美国政府的建议

- **通过提供资金、发言人，并由相关政策制定部门和机构的官员给予支持，推进美中高科技贸易。**
- 美国政府在完成出口管制改革第二阶段并进入第三阶段时，应考虑到中国是否可以从国内和国外获得相关产品。
- 如果受制裁中国大学的某些学院和受争议产品或数据不是美国出口管制关注的重点，考虑为这些学院制定精简的快速审核流程。

对中国政府的建议

- **向中国企业加大推广力度，以促进合规计划的实施和提高透明度，藉此获得美国的高科技战略产品。**
- 提高中国出口管制体系的透明度，加大对在中国拥有业务的美国企业在中国出口管制制度方面的推广和培训力度。
- 继续支持美国工业安全局最终用途审查，以促进美中两国的贸易。

- Consider establishing a simplified and expedited review process for sections of sanctioned Chinese universities when those sections and the product or data at issue are outside the focus of US export controls.

For the Chinese Government:

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

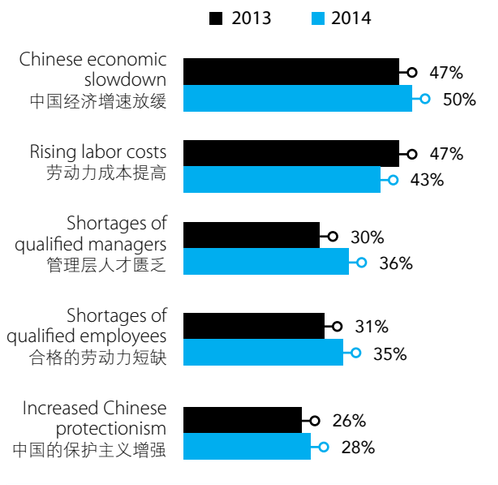
- 通过提供资金、发言人，并由相关决策部门和机构的官员给予支持，推进美中高科技贸易。
- 采用符合所有多边出口管制体系的出口管制法律法规，以进一步促进对全球出口管制规范的合规。

Human Resources

Introduction

Human resource issues pose a top business challenge facing AmCham China members. According to the AmCham China 2014 *Business Climate Survey*, labor costs and labor shortages continue to pose some of the greatest risks to our members' China operations.

Q What do you think are the greatest risks facing your China organization? (2013, 2014)
企业在华运营面临的主要风险 (2013-2014)



China is no longer a low cost market for production or service operations. Labor costs, driven by national government policy and laws of supply and demand, will continue to increase at 10 to 20 percent per year for the foreseeable future. At the same time, there are no pending changes in the education system or emerging migration patterns that will materially impact continued expectations for labor shortages, especially for skilled managerial and production positions.

A large majority of AmCham China member companies feel the impact of rising labor costs. Sustained strong year-over-year increases in wage rates for front-line labor and managerial employees has recently been exacerbated by increasingly rapid wage increases and mandatory social benefits costs for expatriates and locally hired foreigners.

Looking forward, multinational employers face little choice but to adjust their local operations in order to operate profitably in China. Many China-based companies that produce for the domestic market have reacted by moving operations inland to take advantage of somewhat lower costs, boosting productivity in higher-cost coastal areas, or passing on labor cost increases to their consumers. Some export-oriented producers have simply decided that other countries in the region offer a more attractive production base, shifting some operations out of China. The 2012 member survey of six AmCham organizations in Southeast Asia found that approximately 20 percent of respondents had active plans to relocate manufacturing operations from China to Southeast Asia.

AmCham China encourages the Chinese government to consider changes to the *hukou* system that would enable migrant workers to more easily settle in regions with a concentration of production facilities, bringing some stability to the current high turnover, supply-constrained environment. AmCham China also encourages a retraction of recent, more restrictive visa rules (as discussed in the Visa Policy chapter) to ease the administrative burden of employing foreigners in China for extended periods (such as recent changes to providing multi-year visas for executives of companies that relocate their Asian headquarters to China). Legislation requiring foreign workers to contribute to social insurance programs will continue to place unnecessary administrative and cost burdens on employees and their employers.

Ongoing Regulatory Issues

Human Resources

Development of Qualified Talent

Both multinational and local employers in China continue to confront a severe shortage of qualified employees, espe-

人力资源

引 言

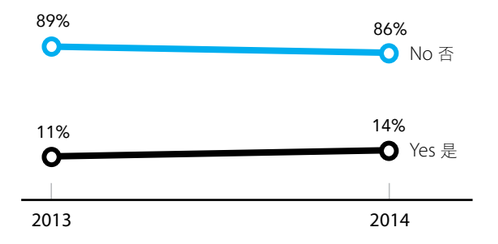
人力资源是中国美国商会会员企业面临的最为严峻的商业挑战。根据中国美国商会 2014 年度商务环境调查报告显示，劳动力成本和劳动力短缺仍旧是使会员企业的中国运营面临严峻挑战的因素。

中国已不再是企业生产和服务运营的低成本市场了。在中央政府出台的政策和供需法则的作用下，在可预见的未来，劳动力成本将以每年 10%–20% 的增长率继续上涨。同样，鉴于短期内教育体制和人口流动模式发生改变的可能性极小，因此也不可能实质性扭转当前人力资源继续短缺的预期，特别是在技术性管理人才和一线生产工人方面。

大多数中国美国商会的会员企业都受到了劳动力成本上升的影响。近期一线工人和管理人员薪资增长速度不断加快，再加上中国出台的外国人和在华工作的外籍人士缴纳强制性社会保险的规定，使得一线工人和管理人员的年薪增长率越发呈现出强劲、持续的特点。

为了在中国市场上盈利，跨国企业除了调整本地经营策略之外几乎没有其他选择。对此，很多在中国生产并销售产品的企业已经选择将企业搬迁至劳动力成本相对低廉的中国内陆地区，在劳动力成本较高的沿海地区则提高生产力，或者是选择将增加的劳动力成本转嫁给消费者。而部分出口型生产企业则直接选择将企业搬出中国，因为本地区的其他国家能够提供更具吸引力的生产基地。根据 2012 年中国美国商会东南亚六个分部的会员企业调查显示，约 20% 的受访者表示正在积极筹备将在华运营的生产线迁移至东南亚地区。

Q Has your company moved or is planning to move capacity outside of China or allocated investments outside of China due to rising labor costs?
企业搬离中国 / 计划将生产力移出中国 / 或投资中国以外地区，是否归结于人力成本的上升？



中国美国商会鼓励中国政府考虑改革户口制度，方便外来务工人员在生产企业密集地区定居，稳定当前高居不下的离职率，缓解当前劳动力供给不足的状况。中国美国商会还鼓励中国改变目前限制越来越多的签证制度（详见《签证政策》一章），降低为在华外籍员工续签签证所需支付的行政成本（比如近期新出台的为将亚洲总部迁至中国的公司高管提供多年期签证的政策）。法律要求外籍员工参保中国社会保险制度，仍将使企业及其员工承担不必要的行政和经济负担。

现存监管问题

人力资源

培养合格人才

在华的外资和内资企业依然面临合格雇员，特别是技术人才严重匮乏的现状。人力资源和社会保障部已经出台了一项培养 600 万具有职业技能的高等学校毕业生计划，同时还拨出 60 亿人民币资金用于为外来务工人员提供职业培训。中国美国商会支持中国政府在提升中高等院校以及职业教育和培训水平方面所做出的努力。

劳动法规

中国继续颁布新的劳动法律法规，同时加强了现有法律的实施。近期一份由美国国家经济研究局发布的评估报

cially in more skilled positions. The Ministry of Human Resources and Social Security has enacted a program to train six million high school graduates with vocational skills and allocated RMB 6 billion (approximately US $965 million) to provide vocational training for migrant workers. AmCham China supports the Chinese government's efforts to improve secondary, post-secondary, and vocational education and training.

Labor Regulations

China continues to enact new labor regulations and increase enforcement of existing laws. A recent assessment by the US National Bureau of Economic Research found that, in the past five years, China's labor laws have moved "from a fairly deregulated market to one that could be considered as restrictive as some of the most protective European economies and much more restrictive than the United States."

Notable developments include the following:

Amendment to the Labor Contract Law

In July 2012, the Legislative Affairs Committee of the National People's Congress (NPC) circulated draft revisions of the "Labor Contract Law of the People's Republic of China" (Labor Contract Law). The proposed revisions were a response to public pressure regarding abuse of dispatched labor in the PRC.

The Legislative Affairs Committee is seeking to add provisions that restrict the permitted scope for use of labor dispatch staff. Dispatched labor should only be used for "temporary, auxiliary, or substitute" positions. In this draft, "auxiliary" positions are defined as any role which does not relate to the core business of the company, or roles which are more "supportive" in nature. For "temporary" positions, employers will not be allowed to use labor dispatch staff for more than six months. "Substitute positions" refer to positions left unfilled because an employee has temporarily been absent, on leave, or training, etc. In addition, the draft revisions seek to clarify the requirement mandating equal pay for equal work when comparing salaries of directly hired employees and dispatched labor. More penalties are proposed in the draft to penalize violators, including forfeiture of illegal gains and fines.

According to recent reports, enactment of the draft revisions is not imminent. While this proposal remains in the deliberation phase, AmCham China continues to express concern about a lack of clarity in the law and supports any effort by the government to clarify such ambiguities. We recommend that the relevant agencies examine ways in which the law can be clarified in broad consultation with labor market participants.

Judicial Interpretation on Labor Disputes

The PRC Supreme People's Court has issued a draft interpretation on certain issues concerning the interpretation of laws applicable to labor dispute trials. In particular, the Court has provided its interpretation on issues relating to the enforceability of non-compete clauses and the effectiveness of an employer's internal rules and regulations.

In particular, the interpretation addresses the following:

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

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

❶ discussion with the Employee Representative Congress or all employees on the new proposed rules and regulations;

❷ negotiation with the trade union or employee representatives on the newly proposed rules and regulations; and

❸ announcement of the effective rules and regulations to all employees.

If a regulation is implemented without the prescribed democratic process, a violation of the regulation will not be recognized for the purpose of establishing grounds for termination.

Consultation with Labor Union for Termination

The draft interpretation specifies that if a company is unionized, the employer must consult with the relevant union prior to the termination of any employee. Any termination without consultation will constitute unlawful termination.

Non-Compete Restrictions

The draft interpretation now makes it mandatory for employers to stipulate the amount of compensation payable in respect of a non-compete clause in the employment contract. Payments for non-compete provisions must be made on time or within a month of the due date.

Under the ruling, a non-compete clause is not enforceable if an employee has been unlawfully terminated.

Lack of Unionization Distinction for Different Industries

The "Labor Law of the People's Republic of China" (Labor Law) mandates that all companies be open to collective

告显示，过去的五年里，中国的劳动法已经从“放松市场管制型转为严格管控型，其管控之严厉已经达到了某些保护程度最高的欧洲经济体的水平，比美国的管控程度要高得多”。

明显的进步表现在以下方面：

修订劳动合同法

2012 年 7 月，全国人大法工委发布了《中华人民共和国劳动合同法修正案》（草案）。该修正案草案正是对中国出现劳务派遣制度滥用这一引起全社会热议问题的回应。

全国人大法工委正在试图加入限制劳动派遣用工适用范围的相关条款。劳动派遣只能适用于“临时性、辅助性或替代性”的工作岗位。在这一稿草案中，“辅助性”岗位是指不从事企业主营业务的岗位，或者是属于提供“支持”性质的岗位。在“临时性”上，用人单位使用劳动派遣员工的时间不得超过六个月。“替代性岗位”是指用人单位的员工因为脱产学习、休假等原因暂时离岗造成的职位空缺。另外，该草案中还明确了同一企业内的派遣员工应该与正式雇佣的员工同工同酬的要求。草案中还加大了对劳动违法行为的惩罚力度，增加了包括没收非法所得和罚款等惩罚措施。

最新报告显示，该修正案近期不会出台。尽管该草案还处于审议阶段，中国美国商会仍旧对该法缺乏明确规定表示关切，并对中国政府在消除该法模糊规定上的任何努力均表示支持。我们建议相关部门在广泛征求劳动力市场相关主体的意见后，研究如何提升该法律的明确性。

劳动争议司法解释

中华人民共和国最高人民法院就审理劳动争议案件适用法律若干问题发布了一份司法解释草案。在这份征求意见稿中，最高院就竞业禁止条款的可执行力以及用人单位内部规章的效力等问题做出了司法解释。

该司法解释主要涉及以下内容：

内部规章制度必须通过“民主程序”

用人单位制定、修改或者决定直接涉及劳动者切身利益的规章制度或者重大事项，未经劳动合同法第四条规定的民主程序，不能作为人民法院审理劳动争议案件的依据。简单地说，民主程序包括：

❶ 在制定新的规章制度时应当经职工代表大会或全体职工讨论；

❷ 在制定新的规章制度时应当与工会或职工代表平等协商确定；

❸ 规章制度生效后应向全体职工公示。

如果用人单位未经民主程序就执行规章制度，劳动者违反上述规章制度的，用人单位不得以此为由与劳动者解除劳动合同。

解除劳动合同前征求工会组织意见

该司法解释征求意见稿中规定，建立工会的用人单位在解除员工劳动合同前必须首先征求相关工会组织的意见。未经征求工会意见即解除员工劳动合同的视作违法解除。

竞业禁止限制

该司法解释征求意见稿中要求用人单位在劳动合同的竞业禁止条款中必须明确经济补偿的数额。用人单位应及时支付经济补偿，或在合同约定的支付日期到期后一个月内支付。

根据该司法解释，如果非法解除劳动者的劳动合同，则劳动者无需执行合同中的竞业禁止条款。

工会组织缺乏行业差异性

《中华人民共和国劳动法》（劳动法）规定所有企业都可以签订集体合同。所有的合法工会都隶属于中华全国总工会。12 届全国人大和全国政协会议后，许多重点产业的监管部门都得到了优化。但是集体合同监管却未能得到优化。将集体合同监管也纳入优化内容有助于实现监管水平的整体优化。

外籍雇员加入中国社保制度

2011 年，中国发布《在中国境内就业的外国人参加社会保险暂行办法》，要求外籍雇员参加中国的社会保险引起了媒体的广泛关注和深入报道。中国美国商会 2012 年的《白皮书》也进行了详尽的讨论。尽管中央层面就此已经制定了相关法律法规，但目前真正实施的也只有北京和其他少数直辖市。不过地方法律专家认为该办法必将在全国范围内推广实施，只是时间早晚的问题。

在各地的实施细则上，中国美国商会促请各地政府继续考虑如下问题：

- **离开中国时返还养老金**——暂行办法第 5 条规定，如

contracts. All legal trade unions must be affiliated with the All-China Federation of Trade Unions. Following the 12th NPC and Chinese People's Political Consultative Conference, many regulatory bodies in key industries have been streamlined. However, collective contract oversight has been left out of the streamlining process. Including oversight of collective contracts would help achieve total streamlining of regulatory oversight.

Foreign Employee Participation in China's Social Insurance Schemes

The promulgation of the "Interim Measures for the Participation in Social Insurance of Foreigners Employed in China" (interim measures) in 2011 to require foreign employees to participate in China's social insurance programs was well covered in the press and in the 2012 AmCham China *White Paper*. While the new regulations have been enacted on a national level, enforcement currently is limited to Beijing and a few other municipalities. However, local legal experts conclude that the regulations are final and it is only a matter of time until these requirements are nationally enforced.

As local governments consider specific implementation policies, AmCham China urges continued consideration of:

- **Refund of Pension Benefits upon Departure from China**—Article 5 of the interim measures state that if a foreign employee leaves China before the age at which she or he qualifies for pension benefits, the employee may apply to receive a refund of the account balance; however, only *employee* contributions may be refunded. We urge the Chinese government to allow a full refund of both employee and employer pension contributions upon an employee's return to their home country.
- **Allow Opting Out of Healthcare and Maternity Coverage**—The interim measures allow foreign nationals as well as Chinese employees to receive care only at public hospitals or at private hospitals which charge the same prices as public hospitals. As many foreign national employees do not have sufficiently advanced Chinese language skills to navigate the Chinese medical system effectively, most will need to retain their existing private coverage despite mandatory enrollment in China's insurance system. We recommend that foreign employees be allowed to opt out of healthcare and maternity coverage if they can prove they have the relevant medical insurance coverage. Failing that, we recommend at a minimum that foreign national employees be allowed to use their social healthcare insurance at the hospital or clinic of their choice and be reimbursed up to the amount of the public pricing scheme.
- **Exemption from Unemployment Insurance**—The interim measures require unemployment insurance contributions from both foreign nationals working in China and their employers. According to China's labor and visa regulations, once foreign expatriates working in China become unemployed, they no longer hold a valid work visa and are therefore no longer permitted to reside in China. To address this contradiction, foreign employees should be exempt from participation in China's unemployment insurance scheme. If participation is required, we recommend that foreign employees be allowed to remain in China up to the maximum period during which Chinese nationals can enjoy unemployment benefits (24 months), or that benefits be payable overseas.

AmCham China also encourages the US government to request the opening of negotiations on a tax totalization agreement with China. We note that other countries have already concluded such agreements with China, thus enhancing the competitive advantage of their citizens in China.

Recent Developments

Potential Legal Consequences of Pollution

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

Change in Foreign Visa Laws

On July 22, 2013, the Chinese Administration for Exit and Entry updated the current visa system and made changes to the visa application process. Primary concerns with the adjustments include the following:

- **Lengthening of processing time**: Under the new rules, processing time for residence permits has been extended to a maximum of 15 working days though, in practice, the process could be faster. However, this is still up from the previous five to seven days in some localities, such as Shanghai or Beijing. This could lead to difficulties for foreigners seeking to travel outside the country for work, as the person's passport will need to be held by relevant authorities for processing.
- **Unclear definition of new R visa**: According to the new law, an R visa, or "talent visa," will be issued to "those

果外籍雇员在达到可以领取养老金的年龄之前离开中国，则可申请返还养老金账户中的余额；但可以申请返还的仅为个人账户的储存额。我们呼吁中国政府允许在外籍雇员回国时返还雇员及其公司缴纳的全部养老金。

- **允许不参加医疗和生育保险**——暂行办法只允许外籍雇员和中国雇员在公立医院或收费水平与公立医院相当的私立医院就医。由于许多外籍雇员的汉语水平不足以使其有效利用中国的医疗资源，其中大多数人在参加强制性医保后仍需保留现有的个人医保。我们建议，在外籍雇员能证明自己已经参加相应医疗保险的情况下，允许他们不参加社保中的医疗和生育保险。如果此举不可行，我们建议至少允许外籍雇员在他们选择的医疗机构使用社会医保并按公立医院的收费标准予以报销。
- **免于参加失业保险**——暂行办法要求在华外籍雇员及其所在公司同时缴纳失业保险。按照中国的劳动和签证法规，如果在华工作的外籍人士失业，其工作签证将失效，因而不能继续在中国境内逗留。为解决这一矛盾，外籍雇员应免于参加失业保险。如果必须参加，我们建议允许失业外籍人士继续在中国逗留，最长逗留时间不超过中国居民能够领取失业保险金的时间（24个月），或者允许外籍人士在海外领取失业保险金。

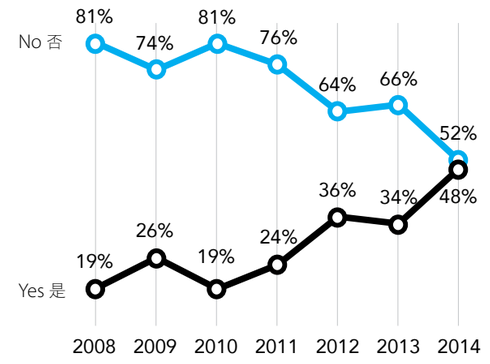
中国美国商会还鼓励美国政府就税务加总协议与中国政府展开协商。我们注意到，其他国家已经与中国签署了此类协议，这使其公民在中国更有竞争优势。

最新进展

污染可能造成的法律后果

今年，世界卫生组织（WHO）正式认定大气污染是诱发癌症的诱因，并声明全球每年有130万人因大气污染引发疾病而丧生。根据《劳动法》第88条第4款，用人单位需要对由于“劳动条件恶劣、环境污染严重，给劳动者身心健康造成严重损害”负责，并遭受行政处罚。因此，今后用人单位在污染严重地区（如北京）雇佣劳动者时，如果空气污染的影响得不到有效控制，遭到劳动者起诉的风险就会越来越大。中国政府尚未对用人单位为避免承担法律责任而应采取的补救措施做出规定。

Q **Have you or your organization experienced any difficulties in recruiting or retaining senior executive talent to work in China because of air quality issues?**
企业是否经历过由于中国空气质量问题在招聘高管人才时遇到困难



外国人签证法律修改

2013年7月22日，中国出入境管理局更新了现行签证制度，并修改了签证申请程序。可能造成问题的相关调整内容如下：

- **处理时间拉长**：根据新规则，居住证的办理时间延长至15个工作日内，尽管在实际操作中办理速度要快一些。然而，这比某些地区原来规定的5–7天（如上海或北京）要长。这一规定可能给需要离开中国去往他国工作的外国人带来麻烦，因为办理时需要将护照留在办事部门。
- **新的“R”类签证定义不清**：新规定中增加了一种“R”类签证，即“人才引进”签证。该签证将发给“中国需要的外国高层次人才和急需紧缺专门人才”。然而关于什么是“高层次人才”以及哪些是“急需紧缺”的“技能”，新规定中却没有涉及。尽管我们可以假定在高科技领域（特别是在中国的“十二五”规划（2011–2015）中确定的战略新兴产业相关领域）工作的人才应当属于高层次人才，但是因为缺乏明确性，为保险起见企业一般都会申请Z签证。R签证相关标准仍然在制定过程中，官方也没有公布出台的时间表。

who are high-level talents or whose skills are urgently needed in China." However, the new law fails to identify which "high-level talents" and what "skills" are in urgent need. While it can be assumed that individuals working in high-technology industries, particularly those related to the strategic emerging industries (SEIs) identified in China's 12th Five-Year Plan (2011-2015), the lack of clarity all but ensures that companies must apply for a Z visa. R visa category standards are still being formulated and there is no official timeline for when they will be released.

Please see the Visa Policy chapter for more information.

Recommendations

For the Chinese Government:

- **Establish or clarify mechanisms for foreign employees to receive benefits under China's social insurance programs, or allow foreign employees to opt out of participation.**
  - Allow a full refund of both employee *and* employer pension contributions upon employees' return to their home country.
  - Allow foreign employees to opt out of healthcare and maternity coverage if they can prove they have the relevant medical insurance coverage, or allow them to use their social healthcare insurance at the hospital or clinic of their choice and be reimbursed up to the amount of the public pricing scheme.
  - Exempt foreign employees from participation in China's unemployment insurance scheme, allow them to remain in China for up to the maximum period during which Chinese nationals can enjoy unemployment benefits (24 months), or make unemployment benefits payable overseas.
- Issue an interpretation of the Labor Contract Law providing definitions of "temporary," "auxiliary," and "substitute" positions.
- Continue to assess *hukou* reforms that enable sufficient and long-term relocation of migrant labor to areas facing the most severe labor shortages, with fewer obstacles to migrants settling in these areas and thus reducing continued rapid turnover and labor instability faced by many employers.
- Establish concrete guidelines for companies to mitigate liability stemming from the health issues caused by pollution.

For the US Government:

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

建 议

对中国政府的建议：

- **在中国社保体系中建立或明确外籍雇员享受福利的制度，或者允许外籍雇员不参加社保。**
- 在外籍雇员回国时允许返还其本人及其公司缴纳的全部养老金。
- 在外籍雇员能证明自己已参加相应医疗保险的情况下，允许其不参加医疗和生育保险，或者允许外籍雇员在他们选择的医疗机构使用社会医保并按照公立医院的收费标准予以报销。
- 外籍雇员可免于参加失业保险，允许失业外籍人士继续在中国逗留，最长逗留时间不超过中国居民能够领取失业保险金的时间（24 个月），或者允许外籍人士在海外领取失业保险金。
- 对《劳动合同法》进行解释，明确"临时"、"辅助"和"替代"岗位的定义。
- 继续评估户籍制度改革，确保外来劳动力能够顺利并长期定居在劳动力最缺乏地区，减少外来工在这些地区定居所面临的障碍，从而降低高居不下的离职率，增强劳动力稳定性。
- 减少因污染造成劳动者健康问题时企业所需承担的法律责任，并就此出台具体指引。

对美国政府的建议：

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

Innovation Policy

Introduction

Since 2006, the Chinese government has aggressively pursued the goal of indigenous innovation by employing a wide range of policies supported by financial and fiscal outlays. In 2013, China's new leadership shifted national focus from central government control to an open-market strategy as promulgated by the central government after the Third Plenum. AmCham China understands that China plans to liberalize the market, introduce state-owned enterprise (SOE) reform, encourage private investment (even for minority stakes in SOEs), and lift investment restrictions (in specific industry sectors and Chinese regions with equal opportunities and treatment for domestic and foreign firms). The central government's new attitude can potentially bring wide-ranging investment opportunities with technological spillover effects into domestic industry and thus raise China's technological profile through technological cooperation.

Globalization has changed how innovation and research and development (R&D) are carried out throughout the world. A company's ability to access and contribute to the global technological knowledge base can improve its innovation efforts. The hope is that with the introduction of China's market liberalization plans, foreign companies will be able to enjoy a relatively more level playing field vis-à-vis domestic counterparts and have better access to government benefits (e.g., technology research grants, tax incentives, and government procurement) and more effective legal protection of intellectual property rights (IPR). As traditional Chinese policies encouraging indigenous innovation reach their limits, short-term profits at the expense of international innovators and indigenous innovation built upon domestic standards will reduce the Chinese industry's ability to compete with global innovators.

AmCham China member companies have spent billions of dollars investing in world-class R&D centers in China. China's engineers and scientists have benefitted from this investment as they have been integrated into organizations that operate using global best practices. Indeed, many of China's most successful technology companies have drawn on Chinese talent developed at multinational facilities in China. Despite the significant gains that China has reaped from foreign investments in R&D in China, some of its policies limit the space for foreign participation in China's economy. For instance, the Strategic Emerging Industries (SEI) initiative and other similar policies favor domestic Chinese entities through targeted credit allocation, tax incentives, government procurement (GP) policies, standards setting and requirements, security regulations, subsidies, and competition law policy. China's IPR system has also made significant progress, but lax enforcement of foreign IPR undermines this progress. These preferences for domestic Chinese entities and uneven IPR enforcement raise concerns that such policies may result in Chinese firms benefitting from access to proprietary intellectual property (IP) to develop competitive domestic alternatives, further disadvantaging foreign-invested enterprises (FIEs). This is a loss for both foreign firms and for China. Foreign firms lose the opportunity to contribute cutting edge knowledge and Chinese companies and workers lose opportunities to be part of global networks of collaboration. To encourage innovation, the Chinese government should adopt policies that promote increased competition in the marketplace by both local and global firms.

Ongoing Regulatory Issues

Innovation Ecosystem

The continued development of a true innovation ecosystem in China is important for both Chinese and foreign companies. In order to build the essential and interdependent components of such a system, the government must foster a loose framework that will allow creative and innovative ideas to turn into commercial successes. Some of the essential elements include strong IP protection, mature legal and regulatory systems, enforceable property rights, and limited government subsidies. An example of an innovation ecosystem success story is the rapid development of hydraulic fracturing technology in the United States. Three primary elements in the United States' innovation ecosystem provided the building blocks for the new drilling technology to become commercially viable in a short period of time:

❶ IPR protection of the original inventor's rights;

❷ A predictable legal and regulatory system providing:

a. Strong property rights protection, allowing small landowners to lease their land for profit;

创新政策

引 言

自2006 年起，中国政府一直在努力实现“自主创新”的目标，出台了涵盖广泛的一系列政策及配套的金融和财政支持。2013 年，中国的新领导层决定把中央政府的权力转向逐渐由市场主导的战略上来，这也是十八届“三中全会”后中央政府所指示出的方向。中国美国商会理解，中国计划放宽市场限制，进行国有企业（国企）改革，鼓励民营投资（甚至允许在国企中占少数权益），以及取消外商投资限制（在特定的行业部门和地区给予内外资企业平等的机会和待遇）。中央政府的新态度可能会通过技术溢出效应给国内行业带来广泛的新投资机会，从而通过技术合作改善中国的技术状况。

全球化改变了整个世界开展创新和研发的方式。当一家公司有能力获取全球技术知识并对其有所贡献，它就能提升自身的创新水平。我们的希望是，随着中国扩大市场开放计划的实施，外资企业能够享受到一个相对更公平的与内资企业竞争的环境，并且能够更好地获得政府优惠（例如：科研补助、税收激励措施和政府采购等）以及对知识产权更有效的法律保护。随着中国鼓励自主创新的传统政策到达了极限，以牺牲国际创新者为代价的短期利润和基于国内标准的自主创新将会降低中国与全球创新者进行竞争的能力。

中国美国商会的会员公司已经投入数十亿美元的资金在中国建设了世界一流的研发中心。中国的工程师和科学家融入了这些全球最佳的机构，成为上述研发投资的受益者。的确，中国许多最成功的科技公司都吸收了在华跨国机构所培养出的中国人才。尽管中国已从外商在华进行的研发投资中取得巨大收获，但中国的一些政策却限制了外国主体参与中国经济的空间。例如，战略新兴产业（SEI）发展规划和其他类似政策通过有针对性的信贷分配、税收优惠、政府采购（GP）政策、标准制定和要求、安全法规、补贴和竞争法律政策，给予中国国内企业优惠待遇。中国的知识产权保护（IPR）体系也取得了巨大的进步，但是对于外国知识产权保护的执法不力，使进步的进程受到阻碍。鉴于以上给予国内企业优惠待遇的做法和知识产权的执法现状，不禁令人担心这些政策可能会使中国企业在模仿外资企业知识产权（IP）的基础上生产本土替代品，从而将外资企业（FIE）进一步置于不利地位。这对于中国企业及在华外资企业来说都是一种损失。外资企业失去了在尖端知识方面做出贡献的机会，而中国的企业和工人则失去了全球协作交流的机会。要鼓励创新，中国应该制定政策，促进本土和跨国公司共同参与竞争。

现存监管问题

创新生态系统

中国持续发展真正意义上的创新生态体系，对中资和外资企业都很重要。为了构建此系统需要的诸多相互依存的基本要素，政府必须培育一个宽松的大环境，使创意和创新思维能够转化为商业上的成功。其中一些必需的要素包括强有力的知识产权保护、成熟的法律和监管框架、可执行的财产权利以及一定数量的政府补贴。创新生态体系的一个成功案例便是近年来快速发展的美国水力压裂技术。美国创新生态系统的三大基本要素为这种新型钻探技术能够在短时间内转化为商业实践并获得成功提供了坚实的基础：

❶ 对原创发明人的知识产权保护；

❷ 一个可预测的法律和监管体系：

a. 对财产权利实施强有力的保护，允许小规模的土地拥有者出租土地获利；

b. 成熟的环保监管体系，明确规定采矿企业的责任；以及

❸ 一定数量的政府补贴，确保高效节能技术能够在市场上获得公平竞争的机会。

b. A mature set of environmental regulations that clearly outlined driller's responsibilities; and

❸ Limited government-provided subsides, allowing the most efficient technology to compete in the marketplace without prejudice.

One of the most important of these elements is IP protection (e.g., patents and data protection). This is the lifeblood of any enterprise that derives value from ideas. In a pharmaceutical company, for example, it takes more than a decade and well over a billion dollars to bring a new medicine from the lab to the pharmacy. Companies that pursue this work need assurance of a fair opportunity to recoup their investment. China has made substantial progress on this front by strengthening its patent system, committing to institutionalize intellectual property protections that support the growth of its biotech sector and, more broadly, by the development of an innovation economy.

A mature legal system and related institutional infrastructure is crucial to enforcing a company's rights and to maintaining stability in the system. IPR protection in particular should not be limited to government administrative measures through various campaigns at different times. A regularly enforced and supportive legal system and infrastructure, independent from local government administration and political authority, plus heavier penalties for offenders, have been proven worldwide to be more effective than the system China currently employs. AmCham China member companies are concerned that the government's current measures are temporary and ineffective at the local level, given the lack of support from the legal system. Efforts must be increased in all sectors to make sure that IPR is protected.

A regulatory system that is transparent, predictable, and aligned with global frameworks is also an important component of a well-functioning innovation ecosystem. In the case of the pharmaceutical industry, such system is particularly important for clinical trials, where emerging biopharmaceutical treatments are tested in large populations of patients, to enable more effective sharing of research and results. A transparent and predictable system benefits all participants in the market and allows companies to make decisions with confidence about the future.

Innovation is best achieved by market forces, not government intervention. In the long run, market-driven innovation is more successful than research and development chosen by the government. Open and fair government incentives for advanced technology development, such as China's Spark and Torch Programs, are a good method. Generally, however, direct government involvement in R&D reduces competition and thus may not be an effective path to innovation.

There is every reason to believe that, with a properly functioning innovation ecosystem, China will lead sectors that require innovation. This ecosystem would also facilitate international collaboration, benefitting Chinese companies and the economic well-being of the country and its citizens. The following issues highlight the need for China to develop an efficient and inclusive innovation ecosystem.

Strategic Emerging Industries

In October 2010, China's State Council promulgated the "Decision to Accelerate the Development of Strategic Emerging Industries" (the Decision). The Decision calls for China to rapidly increase investments in seven strategically targeted, knowledge-based industries to move China up the global value chain: next-generation information technology (IT), high-end equipment manufacturing, advanced materials, new energy vehicles, energy conservation and environmental protection, alternative energy, and biotechnology. The initiative extends the indigenous innovation drive and complements the 2007 Multi-Level Protection Scheme (MLPS), which claims to protect national security but, in effect, protects much of Chinese industry from international competition. The goal of the decision is to increase the seven targeted industries' share of GDP to 15 percent by 2020. For more information on the MLPS, see the Information and Communications Technology chapter.

Since the decision, various Chinese government ministries have published extensive guidance to promote SEIs. This includes dozens of sub-industry development plans targeted under the SEI initiative, and Ministry of Commerce (MOFCOM) guidance to encourage foreign investment in the seven strategic industries. These plans and policy documents clearly indicate that the government will use a broad range of policy incentives to encourage technology development. These policies support increased bank lending to the high-tech sectors, the creation of government-backed venture capital funds, the formulation of technical standards, and implementation of tax incentives for R&D, among other measures.

AmCham China welcomes specific recommendations in the Decision to allow foreign enterprises to participate in the initiative, including opportunities for participation in Chinese government-funded R&D, as well as standardization programs. We also note that the initial decision excludes any reference linking technology development to public procurement. For more information on delinking indigenous innovation from government procurement, please see the Government Procurement chapter.

AmCham China views these changes as a positive policy move. Our members look forward to being able to participate fully in SEIs as envisaged in these recommendations, as implementation proceeds.

上述要素中，知识产权保护（例如专利和数据保护）最为重要。这是确保企业能够源源不断地将创意转化为价值的基本保证。以医药公司为例，一种新药从实验室研发到投产销售通常需要十年，耗资则超过十亿美元。从事这种业务的公司需要确保能够获得回收投资的公平机会。中国在这一领域已经取得了相当的进步，专利体系得到长足发展，同时还承诺实现知识产权保护制度化，保障生物技术领域的发展，从而在更大程度上推进创新经济的发展。

一个成熟的法律体系及其相关“制度基础设施”，对于实现公司的权利以及保持体系的稳定性都至关重要。尤其是，知识产权保护不应该仅限于不定期的专项行动等行政执法形式来实现。经全球实践证明，一个立法科学、执行有力、且独立于地方政府和政治权力的法律体系和基础设施，加上对违法行为的严厉处罚，会比中国现有体系更加有效。中国美国商会的会员企业担心，如缺乏法律体系的有力支持，政府的现行措施将难以持久，也难以在地方层面发挥效用。各相关部门和行业都应该加大工作力度以保护知识产权。

一套运行良好的创新生态体系同时还需要一个透明、稳定且和国际接轨的监管体系。以医药行业为例，新兴的生物医药治疗手段在大量病人中进行试验，监管体系对于临床实验来说尤其重要，以便更加有效地分享研究和成果。透明且稳定的监管体系将造福所有市场主体，并使得企业增强对前景的信心，从而更好地进行决策。

促进创新的最佳途径是借助市场力量，而不是政府干预。长期来看，市场机制下的创新比由政府直接选定的研发创新更易成功。公开公正的政府激励措施能够推动高科技进步，例如，“星火计划”和“火炬计划”等项目即为证明。然而，一般来说，政府直接参与研发则会阻碍有效的竞争，因而并非是实现创新的最有效途径。

我们有理由相信，一旦建立起一套行之有效的创新生态体系，中国将引领那些创新驱动型领域的发展。同时这一创新生态体系还将有助于促进国际合作，造福中国企业、中国经济的发展以及人民的生活。下文将探讨中国建立一套有效的、包容性的创新生态体系的必要性。

战略新兴产业

2010 年 10 月，中国国务院颁布了《关于加快培育和发展战略新兴产业发展的决定》（下称《决定》）。该《决定》要求中国快速增加对七大目标、知识型产业的投资，以提升中国在全球价值链中的地位。这些产业分别是：新一代信息技术（IT）、高端装备制造、新材料、新能源汽车、节能环保、新能源和生物技术。上述举措是自主创新政策的延伸，也是对 2007 年“信息安全等级保护制度”（MLPS）的补充，此计划表面上是出于保护国家安全目的，实质上是为了保护诸多国内产业免于遭受国际竞争。该《决定》的目标是到 2020 年，将上述七大目标产业占 GDP 的比例提高到 15%。更多有关信息安全等级保护制度的内容，请参阅《信息与通信技术》一章。

自 2010 年颁布该《决定》以来，中国政府各部委已经公布了广泛的政策指导意见，促进战略新兴产业的发展。其中包括战略新兴产业发展规划下的多个子行业发展计划以及商务部发布的鼓励外商投资七大战略产业的指导意见。上述计划和政策文件清楚地表明，中国政府将采用广泛的政策激励措施来鼓励科技发展。这些政策支持银行加大对高科技行业的贷款力度、政府担保风险投资基金的建立、技术标准的制定以及研发税收刺激政策的执行等。

中国美国商会对该《决定》中有关允许外国企业参与该计划的具体建议表示欢迎，其中包括给予外国企业参与中国政府资助的研发项目以及标准化项目的机会。我们也注意到该《决定》初稿中去除了将技术开发与公共采购挂钩的条款。更多有关自主创新与公共采购脱钩的内容，请参阅《政府采购》一章。

中国美国商会认为以上变化是积极的政策举措。我们的会员企业期待着能够像上述建议所设想的那样，随着实施推进，全面参与到战略新兴产业中来。

知识产权保护

假种子和知识产权保护

知识产权保护是实现创新可持续发展的一项重要前提。企业只有在确保其创新成果不会被窃取或仿冒时才会投入创新研究。仿冒已经成为中资和外资企业共同担心的一大问题。

中国美国商会欣喜地看到，中国政府已经在加强知识产权保护方面做出了相当的努力。但中国当前的知识产权环境却一直抑制创新。例如，根据农业部的一项调查显示，即使是全国主要的种子品种，市场中流通的一半以上都是假种子。而咨询公司预测市场上流通的某些种子品种的假货率超过 80%。假冒种子在中国市场上的泛滥不仅损害了中资和外资种子企业的合法利益，同时还威胁到了中国的

Intellectual Property Protection

Counterfeit Seed and IP Protection

Intellectual property protection is a key prerequisite for sustainable innovation. Companies will only innovate when their innovations are safe from theft or counterfeiting. Counterfeiting is a common concern for both Chinese and American companies.

AmCham China is pleased to note that the Chinese government has made efforts to improve intellectual property protection. However, the intellectual property environment continues to discourage innovation in China. For example, according to a Ministry of Agriculture (MOA) investigation, even for nationally leading varieties, over half of the seeds on the market may be counterfeit. Consulting firms have estimated that over 80 percent of the volume for certain leading varieties on the market are counterfeit. The huge volume of counterfeit seed in China not only hurts legitimate domestically invested enterprises and foreign-invested seed enterprises, but also harms China's food security and farmers. Counterfeit seeds are of lower quality than genuine seeds, resulting in lower yields and higher risk for Chinese farmers, as well as lower national grain production for China.

One important area for improvement is the application time necessary to receive basic intellectual property protections. For example, breeders of new plant varieties can apply for IP protection called Plant Variety Protection under the "New Plant Variety Protection Regulations" effective since October 1997. However, FIEs have had great difficulty obtaining this type of IPR. Stronger intellectual property protection would remove counterfeiters from markets and benefit legitimate American and Chinese companies. For more seed-related information, please see the "Promotion of a Modern Crop Seed Industry" in the Agriculture chapter.

Services Invention Remuneration

In November 2012, the State Intellectual Property Office (SIPO) released a draft of the proposed Service Invention Remuneration (SIR) regulations for public comment. The SIR applies not only to inventions, but also to a broad and widely defined scope of proprietary technical capabilities and intellectual property. The regulation sets compensation guidelines for calculating employee inventor compensation based on the realized commercial value of the patent or IP. Due to SIR's ambiguously defined clauses linking commercial value with inventor's compensation, employers with R&D team investments in China are faced with great uncertainty when researching and developing new technological innovations. Thus, this type of regulatory structure for invention remuneration enforcement can pose significant difficulties if enacted into law.

AmCham China is concerned that the proposed SIR may create unreasonable non-market barriers for the establishment of foreign-owned R&D institutions or teams within Chinese borders. These barriers could deter FIEs from investing in China-based R&D infrastructure, block domestic industry's exposure to cutting-edge foreign technology and know-how, and stunt China's innovation and ecosystem development. AmCham China encourages Chinese regulators to continue working closely with industry to define more reasonable invention remuneration measures and encourage employee innovation. Please see the Intellectual Property Rights chapter for more information on this issue.

Subsidies for Domestic Enterprises

Since the 1980s, the Ministry of Science and Technology (MOST), the Ministry of Industry and Information Technology (MIIT), the NDRC, and their predecessors have sponsored incentive and benefit programs to promote R&D investment, particularly by SOEs. Recently, the MIIT signed a strategic memorandum of understanding with the China Development Bank to expand funding at the provincial and local levels for basic and applied research in priority areas identified in the MLPS.

In October 2010, the State Council announced it would begin to allow select FIEs to participate in these funding programs. To date, however, the funds have been almost exclusively channeled to domestically invested enterprises. Furthermore, Chinese enterprises with State High-Tech Development Plan funding gain a direct advantage in the marketplace, as Chinese consumers view state funding as government endorsement of the product. AmCham China encourages the Chinese government to provide FIEs equal access to R&D incentive programs. This will help expand R&D investment in China, offer more technology options to Chinese consumers and manufacturers, and further advance China's innovation economy.

Standards as a Tool for Innovation Policy

China has adopted unique standards and requirements across a wide range of industry sectors and products for reasons of environmental protection, energy conservation, and securing critical Chinese infrastructure. In many cases, these standards prevent FIEs from competing with their domestically invested counterparts. Such standards risk closing off FIEs from China's government procurement market and the broader critical infrastructure sectors that comprise a large portion of China's economy. China's expansive definition of critical infrastructure in policies, such as the MLPS, may extend these market access barriers to government and private sector activities that in other countries are open to foreign participation.

AmCham China encourages China to harmonize its standards regime with internationally recognized, market-driven standards. China's participation in the international standards development process would help realize its goal of promoting Chinese standards as international stan-

粮食安全，侵害农民的利益。假种子的质量要低于真种子，结果不仅产量低，还会使中国农民面临高风险，全国粮食减产。

一个需要改进的重要方面就是缩短基本的知识产权保护申请所需的时间。比如，育种者可以根据 1997 年 10 月生效实施的《植物新品种保护条例》，为培育的植物新品种申请知识产权保护，即植物新品种权。然而外资公司在申请上述知识产权保护时却困难重重。加强知识产权保护能够将假冒产品驱逐出市场，从而保护美国和中国企业的合法利益。更多有关种子行业的内容，请参阅《农业》一章中的"推进现代农作物种业"一节。

《职务发明条例》

2012 年11 月，国家知识产权局公布了《职务发明条例》草案（条例草案）并公开征求意见。该条例草案不仅适用于发明，而且也适用于定义广泛的专有技术能力和知识产权。该条例草案确立了根据专利或知识产权实现的商业价值来计算员工发明报酬的原则。因为该条例草案中把商业价值与对发明人报酬挂钩的条款定义不明确，在华进行研发团队投资的雇主在研究和开发新的技术创新时面临着极大的不确定性。因此，这种发明报酬执行的监管结构一旦制定成法律，将会造成很大的困难。

中国美国商会担忧，该提议的条例草案可能会对外资在中国境内建立研发机构或团队造成不合理的、非市场障碍。这些障碍可能会影响外资企业在华设立研发基础设施的投资，阻碍国内业界接受外国的尖端技术和知识，并且妨碍中国的创新和生态系统发展。中国美国商会鼓励中国监管部门继续与业界密切合作，以制定出更为合理的发明报酬机制，鼓励员工创新。更多相关内容请参见知识产权章节。

对内资企业的补贴

自上世纪八十年代以来，科学技术部（科技部）、工业和信息化部（工信部）和发改委、以及各自前身已经出台了多项激励和优惠计划，旨在促进国内企业，尤其是国有企业的研发投资。工信部近期与国家开发银行签订了一份战略谅解备忘录，以加大在省级和地方对"信息安全等级保护制度"中强调的重点领域中基础和应用研究的资助。

2010 年 10 月，国务院宣布开始有选择地允许外资企业参与这些政府资助项目。但迄今为止大部分的资金依然几乎无一例外地投向了中国国内企业。再者，从国家高科技研究发展计划中获得资助的中国企业，可以获得市场优势地位，因为中国消费者们往往将获得国家资助的相关企业产品视作是国家认可的产品。中国美国商会鼓励中国政府允许外资企业平等参与重点研发项目。这将有助于增加在华研发投资，为中国消费者和生产者提供更多的技术选择，并且进一步推动中国创新经济的发展。

标准作为创新政策的工具

出于环境保护、节约能源和保护重要基础设施等原因，中国出台了针对广泛的行业领域和产品的独特标准和要求。在很多情况下，这些标准都阻碍了外资企业与国内中资企业的平等竞争。这些标准的运用可能使外资企业无法进入中国政府采购市场以及占中国经济相当大比例的诸多重大基础设施部门。中国在诸如"信息安全等级保护制度"等政策中对"重大基础设施"定义非常宽泛，可能会将市场准入壁垒扩展至政府和民营部门的活动，而这些领域在其它国家一般都对外资开放。

中国美国商会鼓励中国将其标准制度与国际认可的、市场驱动的标准相融合。中国参与国际标准制定过程有助于实现推动中国标准成为世界标准的目标，同时还能鼓励创新、提高市场效率、增加中国产品对外出口。更多有关这些问题的内容，请参阅《标准、认证与合格评定》一章。）

最新进展

2013 年 11 月举行的中国共产党十八届三中全会后，中国新领导层就发布了国家战略改革计划（《关于全面深化改革若干重大问题的决定》），对知识产权执行更有力的监管保护。紧接着三中全会，中国启动了地方省级知识产权专门法院试点项目，江苏和广东等省宣布参与和积极建立知识产权法院，以加强中国的知识产权保护制度。

中国深化改革和加强知识产权保护与执法的决定，不仅能保护投资者的利益，而且能确保根据三中全会的目标使中国的技术环境促进持续创新和鼓励民间投资，中国美国商会对此表示赞赏。更多有关知识产权问题的内容，请参阅《知识产权》一章。

dards. It would also encourage innovation and market efficiency, and facilitate the export of Chinese products to the global market. Please see the Standards, Certification, and Conformity Assessment chapter for more information on these issues.

Recent Developments

In 2013, after the Third Plenum of the 18th Party Congress in November, China's new leadership promulgated national strategic reform plans ("Decision on Major Issues Concerning Comprehensively Deepening Reform") to enforce stronger regulatory protection of IPR. On the heels of the Third Plenum, China launched a local provincial specialized IPR Court Pilot program, and provinces such as Jiangsu and Guangdong announced their participation and active establishment of the courts to strengthen China's IPR protection system.

AmCham China commends China's decision to deepen reform and to strengthen IPR protection and enforcement not only to protect the interests of investors, but also to ensure that China's technological environment fosters sustainable innovation and encourages private investment in accordance with Third Plenum objectives. Please see the Intellectual Property Rights chapter for more information on IPR issues.

Recommendations

- **Ensure that China's new strategic emerging industries and other indigenous innovation policies are non-discriminatory in all aspects, including procurement, standards, tax, IP, IT security, and technical innovation.**
- Allow the market to dictate decisions on appropriate joint venture partnerships for FIEs and to whom those FIEs transfer or license technology. Create clear and transparent standards for government approvals of joint venture scope of work.
- Continue working closely with industry players to define more reasonable invention remuneration measures and encourage employee innovation.
- Harmonize the standards regime with that of internationally recognized, market-driven standards instead of creating duplicative domestic standards. Where international standards are not available or not applicable, FIEs should have equal access participating in the creation of Chinese domestic standards.
- Enforce both domestic and foreign IP rights and respect the integrity of underlying IP rights in standards, competition, and IP enforcement.
- Cease using nationality of IP ownership as a market access condition or barrier.
- Allow FIEs equal access to R&D incentive programs.
- Strengthen and extend the mutual engagement of the US-China dialogue on innovation to promote policies that encourage innovation by both domestically invested enterprises and FIEs.

建 议

- **确保中国近期的战略性新兴产业和其他自主创新政策在创新、采购、标准、税收、知识产权、信息技术安全和技术创新方面不存在任何歧视性政策。**
- 允许由市场来决定外资企业建立合资企业的合作伙伴，及外资企业技术转让或许可的对象。明确制定并公布合营企业经营范围的行政审批标准。
- 继续与业界参与者密切合作，制定出更为合理的发明报酬机制，鼓励员工创新。
- 将标准制度与国际认可的、市场驱动的标准接轨，不再制定重复性国内标准。当国际标准不存在或者不适用时，外资企业应当平等地享有参与制定中国国内标准的权利。
- 加强对本国和外国知识产权的保护，在标准制定、竞争环境和知识产权执法活动中尊重相关知识产权权利的完整性。
- 不再将知识产权所有权国籍作为市场准入的一项条件或壁垒。
- 允许外资企业在进入研发扶持项目方面享有平等权利。
- 加强并拓展美中创新对话中双边的参与度，以促进鼓励外资与内资企业进行创新的政策。

Intellectual Property Rights

Introduction

AmCham China members continued to face intellectual property (IP) challenges in 2013, particularly in the areas of trade secrets, copyrights, trademarks, IP in standards and competition, and rewards and remuneration for service inventions. Though each area continues to receive increased attention from Chinese authorities, this chapter details the key issues which challenge both foreign and domestic companies operating in China.

Ongoing Regulatory Issues

Trade Secrets

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

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

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

Patent

The State Intellectual Property Office (SIPO) released a draft fourth amendment to the Patent Law in August 2012. The draft, which has already been submitted to the State Council Legislative Affairs Office (SCLAO), makes an ambitious bid for acquiring the *ex officio* administrative power to investigate patent infringements and award damages. Additionally, there are signals indicating that SIPO has been ramping up its efforts in the so-called "administrative protection" of patents. Many AmCham China members are very concerned about this trend of administrative expansion. Unlike other branches of IPR, patent disputes are inherently and necessarily technical, complex, and time-consuming, in order to ensure their effective resolution. As such, stronger judicial protection is a better approach, as administrative action would interfere with private disputes and make the process more complicated and protracted, potentially resulting in even more disputes. We note that some Chinese studies use foreign examples, such as the US Federal and International Trade Commissions, as references for the administrative protection of patents. However, these examples are not inherently applicable to the Chinese context as these agencies only intervene in very special and limited cases, are quasi-judicial in the exercising of their jurisdiction, and must follow strict procedures.

Another issue of continued concern is the quality of patents, especially utility model patents (UMP). We applaud SIPO's recent measures and plan to eliminate the fiscal incentives that inappropriately induce a flood of UMP applications and grants, many of which are motivated not by utility, but

知识产权

引 言

中国美国商会的会员企业在 2013 年依旧面临知识产权的挑战，尤其是在商业秘密、著作权、商标、知识产权标准和竞争以及职务发明的奖励和报酬等领域。虽然各个领域持续受到中国各有关部门的日益关注，但是本章要详细说明的是在华运营的内外资企业共同面临的挑战。

现存监管问题

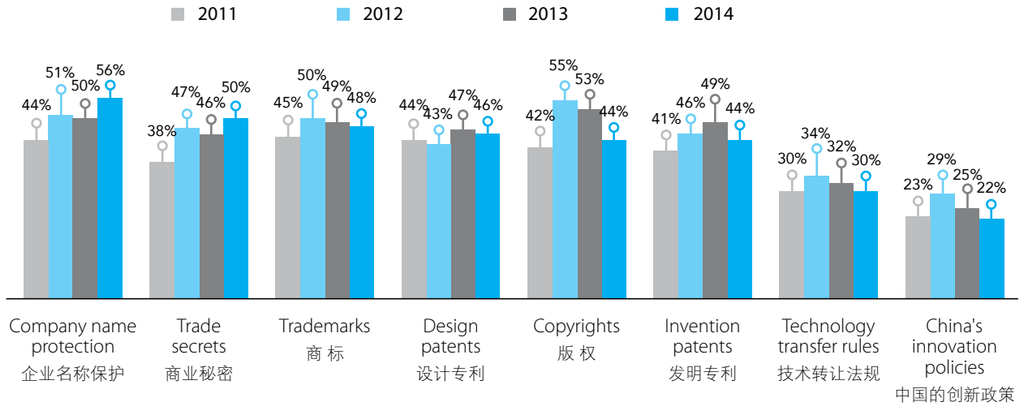
商业秘密

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

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

Q Please rank the following in terms of their importance with regard to protecting your company's intellectual property (2011-2014)

从保护企业知识产权角度出发，按照重要程度排列以下各个因素 (2011-2014)



solely by the ability to take advantage of fiscal subsidies. However, there are other ways that patent quality can be enhanced. For example, amendments to the Patent Law could set a higher bar for the inventiveness of UMPs; limit the remedies, particularly injunctive relief and damages, for UMPs; require examination and assessment upon the UMP patentees' initiation of infringement proceedings; and limit the assignability of UMPs. Stimulation of true innovation and the provision of fair treatment require proper institutions and mechanisms.

Copyright

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

The deterrent effect is likely contravened by inconsistent damages awarded by the courts. Even in cases where companies are conclusively shown to have blatantly used software known to be pirated in commercial operations, some judges continue to disregard prior court awards of adequate damage amounts in favor of unreasonably low amounts.

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

AmCham China urges the PRC legislature to amend the Copyright Law and Criminal Law to provide effective deterrence against software piracy.

IP in Standards and Competition

AmCham China members consider IP standard-setting to be a major global issue and China is among the most active contributors to the debate. AmCham China members have a strong interest in the determination of IP standards by standards development organizations such as the Standardization Administration of China (SAC) because their decisions can make or break specific companies or projects within a given industry.

In 2013, the SAC and SIPO jointly promulgated the long-discussed "Regulatory Measures on National Standards Involving Patents" (Measures) after soliciting public comments. For more information, see the Standards, Certification, and Conformity Assessment chapter.

AmCham China members strongly encourage close involvement with PRC standard-setting organizations in the development of balanced measures that take cognizance of international business and public interests.

Rewards and Remuneration for Service Inventions

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

The Shanghai Higher People's Court issued the "Guidelines for Hearing Disputes Concerning Rewards and Remuneration for Inventors or Designers of Service Inventions" (Shanghai Guidelines) in June 2013. AmCham China members view the Shanghai Guidelines as an initial step in the right direction and hope that any future national measures will provide flexible standards for determining appropriate rewards and remuneration for different industries and technologies.

Recent Developments

Trade Secrets

AmCham China is pleased to see that trade secret protection has recently attracted more attention from the Chinese government. In the first session of the 12th National People's Congress, held in March 2013, Mr. Ying Yong, the then-Chief Judge of the Shanghai Higher People's Court, introduced a bill that would establish a Trade Secret Law. AmCham China members strongly support this proposal and encourage open, in-depth deliberations.

A long-awaited revision of the AUCL is now working through the legislative drafting process. The AUCL represented China's first major effort to protect trade secrets 20 years ago, but the protection provided by the AUCL is outdated and inadequate. AmCham China members welcome an updated

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

专 利

2012 年 8 月，国家知识产权局公布了《专利法》第四次修订草案。该草案已经提交国务院法制办公室（国务院法制办），该草案大力支持扩大专利侵权调查和赔偿判决中的行政职务权力。另外，有迹象表明国家知识产权局已加大了"行政保护"专利的力度。中国美国商会的许多会员企业对这一行政权力扩大的趋势甚感担忧。与知识产权的其它方面不同，专利争议本质上必然会涉及复杂的技术性问题，解决起来既费时又费力。因此，更强有力的司法保护才是更好的办法，因为行政行动会干预私人争议，导致解决过程更为复杂和更耗时，有时甚至会导致更多争议。我们注意到，中国的有些研究报告中使用了外国事例，尤其是美国联邦和国际贸易委员会，作为行政保护专利的参考。然而，这些事例在本质上并不适用于中国的环境，因为此类机构仅干预非常特别而且有限的案件，它们在行使其管辖权时都是准司法性的，并且必须遵守严格的程序。

另外一个让人持续担忧的问题是专利的质量，特别是实用新型专利的质量。我们对国家知识产权局最近取消财政激励的措施和计划表示赞赏，这些激励措施不恰当地引发了大量的实用新型专利申请和授予，许多申请的动机不是因为实用，而是因为能够获得财政补贴。但是，还有其他方式来提高专利质量。例如，《专利法》的修订案可以对实用新型专利的创造性设置更高的标准要求；限制对实用新型专利的救济，尤其是禁令性救济和赔偿；要求对实用新型专利的专利权人启动诉讼程序进行审查和评估；并且限制实用新型专利的可转让性。要激励真正的创新和做到公平对待，需要建立适当的制度和机制。

著作权

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

这种震慑效果很可能因法院判处的损害赔偿金不一致而大打折扣。即使在公司被最终证明在商业运营中公然使用了明知为盗版的软件，有些法官仍然不顾法院先前判处的高赔偿金额而支持不合理的低赔偿金额。

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

中国美国商会促请中国立法机关修订《著作权法》和《刑法》，对软件盗版行为进行有效震慑。

知识产权标准和竞争

中国美国商会的会员企业认为知识产权标准的制定是一个全球性的重要问题，中国是这一辩论的最积极参与者之一。中国美国商会的会员企业对由标准制定机构，比如中国国家标准化管理委员会（标准委）确定知识产权标准有着强烈的兴趣，因为这些机构的决策能决定某个行业中的特定公司或项目的成败。

2013 年，国家标准委和国家知识产权局（SIPO）在公开征求意见后联合颁布了讨论已久的《国家标准涉及专利的管理规定》（《规定》）。要了解更多信息，请参见《标准、认证和合格评定》一章。

中国美国商会的会员企业强烈希望与中国的标准制定机构密切合作，制定出能够兼顾国际商业和公众利益的均衡措施。

职务发明的奖励和报酬

中国美国商会的会员企业依然认为对于某些雇主申请专利的雇员补偿要求过于严格。在授予一项专利后，《专利法》要求雇主就其申请的专利向员工支付"合理的报酬"，但是这种报酬是基于其员工在雇用过程中的技术成就。这些技术成就在中国的法律和实践中称为"职务发明"。《专利法实施细则》允许雇主通过协议或内部政策来决定向员

AUCL, especially if a new Trade Secret Law to consolidate the existing regime is not forthcoming.

AmCham China members have reported positive judicial developments affecting trade secrets, despite ongoing enforcement obstacles. The new Civil Procedure Law, which came into effect on January 1, 2013, added a pre-suit injunction mechanism to the civil procedure. Subsequently, a landmark judicial ruling issued this year granted the first pre-litigation injunction to a trade secret owner, an important step toward enhanced trade secret enforcement. AmCham China members strongly encourage PRC courts to continue expanding their engagement in positive, robust trade secrets protection.

Copyright

Revision of the Copyright Law

AmCham China members consider the ongoing draft amendment to the Copyright Law to hold encouraging potential. AmCham China applauds the leadership of the National Copyright Administration of China (NCAC) in hosting several rounds of discussion for public feedback on the amendment to the Copyright Law. Members have had multiple opportunities to submit their comments and feedback through position papers and round table discussions.

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

Criminal Law Amendment

AmCham China members are disappointed with stalled reforms to the Criminal Law, especially much-needed amendments clarifying criminal liability for enterprise end-user piracy. AmCham China urges the Chinese government to officially include the amendment of the Criminal Law regarding IP-related criminal liability on the legislative agenda.

Explicit criminal penalties for commercial use of pirated software are urgently recommended by AmCham China members, especially for violations of technological protection measures (TPM) and pre-installation piracy (or HDL piracy). This practice, widely adopted globally and in other developing countries, is a proven driver of piracy rate decline. Neither civil litigation nor administrative enforcement rival the efficiency of criminal enforcement to change the mindset and behavior of counterfeit software distributors, TPM violators, and piracy users.

Judicial Enforcement

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

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

Administrative Enforcement

AmCham China members also report relatively anemic copyright administrative enforcement. Compared with trademark administrative enforcement, copyright administrative enforcement has extremely limited manpower and resources. The NCAC is disconnected from local market enforcement agencies, many of whom are controlled by local government leaders because the NCAC does not have sufficient power to manage them. Local law enforcement bodies have excessive discretion regarding whether to take action upon reported violations, resulting in arbitrary decision making. In most cases, copyright administrative enforcement agencies fail to inform the copyright holders of their decisions in a timely and adequate manner. When agencies fail to transparently publish their decisions, copyright holders (and the public) cannot effectively monitor administrative enforcement actions or challenge them with due process.

Government and State-Owned Enterprise Software Legalization

China has made great strides in government software legalization in recent years–by November 2013, 92 percent of all Chinese city governments and 80 percent of county governments had completed software legalization–but the process is not yet complete.

工支付发明报酬的额度。如果没有任何此类协议或政策，则适用法定的最低金额。但是，中国美国商会的会员企业普遍认为这些报酬规定过于严格，因为它们未能提供各种机制对有关技术或行业的具体特征进行说明。

上海高级人民法院于 2013 年 6 月出台了《职务发明创造发明人或设计人奖励、报酬纠纷审理指引》(《上海指引》)。中国美国商会的会员企业认为《上海指引》是朝着正确方向迈出的第一步，希望国家今后出台的所有措施都能提供灵活的标准，为不同行业和技术确定适当的奖励和报酬。

最新进展

商业秘密

中国美国商会很高兴看到近来对商业秘密保护引起中国政府更多的关注。在 2013 年 3 月举行的第十二届全国人民代表大会第一次会议上，时任上海高级人民法院院长的应勇先生提交了适时制定商业秘密法的议案。中国美国商会的会员企业强烈支持这一提议并且鼓励进行公开深入的审议。

期待已久的《反不正当竞争法》的修订工作现在正通过立法起草程序进行。《反不正当竞争法》是 20 年前中国为保护商业秘密所做的第一次重要努力，但是由《反不正当竞争法》提供的保护已经过时且不充分了。中国美国商会的会员企业欢迎更新《反不正当竞争法》，特别是在能统一现有体系的新《商业秘密法》还没有出台的情况下。

尽管存在持续的执法障碍，但中国美国商会的会员企业已经看到了司法方面有关商业秘密保护的积极进展。2013 年 1 月 1 日开始生效的新《民事诉讼法》对民事诉讼增加了一项诉讼前禁令机制。随后，今年发布的一项标志性司法裁决破天荒地向一位商业秘密所有人授予了诉讼前禁令，这是向加强商业秘密执法迈出的重要一步。中国美国商会的会员企业强烈支持中国的法院继续扩大积极有力地保护商业秘密的行动。

著作权

《著作权法》的修订

中国美国商会的会员企业认为正在进行中的《著作权法》修订草案会带来令人鼓舞的效果。为《著作权法》的修订，中国国家版权局 (NCAC) 召集了几轮讨论，公开征求意见，发挥了领导作用，中国美国商会对此表示赞赏。中国美国商会的会员企业已有多个机会通过意见书和圆桌会议讨论提交他们的意见和反馈。

重要的是，中国美国商会的会员企业注意到，就执法问题提出的修订意见中，增加法定损害赔偿和举证责任重置已经在最新的修订草案中采纳。这些增补内容应该在法律的最终版本中得到保留。对《著作权法》的修订内容现在正由国务院法制办公室（国务院法制办）审查，中国美国商会的会员企业强烈促请国务院法制办和全国人民代表大会（全国人大）加快这一进程。中国美国商会的会员企业期望与国务院法制办和全国人大进行持续对话，并且欢迎通过对突出问题经常讨论来提高透明度。

《刑法》的修订

中国美国商会的会员企业对《刑法》的改革，尤其是迫切需要修订并澄清对企业最终用户盗版行为追究刑责的停滞不前表示失望。中国美国商会促请中国政府把有关知识产权刑事责任的《刑法》修订正式提到立法日程上。

中国美国商会的会员企业迫切希望对商业使用盗版软件，尤其是对违犯技术措施和预装盗版软件的行为（硬盘安装盗版软件行为）明确实施刑事处罚。这一做法已在全球和其他发展中国家广泛采用，经证明是降低盗版率的有效措施。在改变假冒软件分销商、技术保护措施违犯者以及盗版用户的习惯和行为方面，无论是民事诉讼还是行政执法都无法与刑事执法的效率相比。

司法执法

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

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

At the fifth round of the US-China Strategic and Economic Dialogue in July 2013, Chinese government officials agreed to implement software management systems that will promote the use of legal software by SOEs, including state-owned financial institutions, and to take decisive actions against Internet piracy and trade secret theft. China effected the agreement in August 2013 through the State Council-issued "Administrative Measures for Government Authorities' Use of Legalized Software," which imposes a relatively complete framework to implementing software legalization for authorities at all levels but leaves room for improvements such as third party audit provisions and anti-abuse clauses.

AmCham China members believe that the definition and types of software covered should be expanded from operating systems, productivity, and anti-virus software to expressly include Internet security software, multimedia software, and computer-aided design software, among others. In addition, AmCham China members suggest instituting further measures to encourage more enterprises to adopt ISO-certified Software Asset Management (SAM) best practices and to conduct third-party audits of software use.

Trademarks

A long awaited revision of the "Trademark Law of the People's Republic of China" (Trademark Law) was adopted on August 30, 2013 and will come into effect on May 1, 2014. Many of the changes introduced in the new law are likely to result in improvements of the current system, but will require further elaboration in the "Trademark Law Implementing Regulations" (IR), the State Administration for Industry and Commerce's (SAIC) "Trademark Review and Adjudication Rules," and a Supreme People's Court Judicial Interpretation (JI), all of which are expected to be issued in the first half of 2014.

While AmCham China members see this new Trademark Law in mostly positive terms, the new procedures for the handling of oppositions are of particular concern, as are a number of additional and long-standing issues that do not appear to have been adequately addressed in the new law. These issues are outlined below.

Bad Faith Trademark Filings

Article 7 of the new Trademark Law provides that applications for the registration of trademarks must comply with the principles of honesty and good faith. The addition of a positive obligation of good faith in the new Trademark Law is welcome, but the provision is not listed as a possible ground for opposition. Thus, it is unclear what practical effect this provision will have in the context of opposition against pirate filings moving forward.

Under the 2001 Trademark Law, it is extremely difficult for foreign companies who have yet to use their trademarks in China, or have yet to use them extensively, to challenge pirates who take advantage of the first-to-file rule to file applications for their trademarks in bad faith. AmCham China strongly encourages the PRC government to address the issue of bad faith filings in forthcoming legislation or administrative rules. Recent draft versions of the Implementing Regulations contain no reference to Article 7, and AmCham China is concerned that this may be a missed opportunity.

Certification Marks

The Criminal Law provides that counterfeiting registered trademarks is a crime when certain thresholds are met. As the criminal code does not distinguish between ordinary marks and certification marks, some courts have decided that the counterfeiting provisions of the Criminal Law do not pertain to certification marks. AmCham China strongly encourages the Chinese government to address this issue explicitly in an upcoming JI or amendment of the Criminal Law.

Moreover, the Criminal Law also criminalizes the production or sale of "substandard products" with sales revenue of RMB 50,000 (US $8264) or more. AmCham China members encourage the Chinese government to confirm that "substandard products" in the Criminal Law refers not only to safety standards represented by domestic safety certification marks, but foreign ones as well.

Well-Known Trademarks

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

Going forward, AmCham China encourages the PRC government to make the process for well-known mark determinations, made by the Trademark Office (TMO), the Trademark Review and Adjudication Board (TRAB), and the SAIC, more transparent and fair for foreign trademark holders.

Opposition Procedures

Under the new Trademark Law, oppositions can be filed by "interested parties," and there is no opposition appeal process if the opposed trademark is allowed registration by the TMO. In other words, if the TMO decides to approve the registration of an opposed trademark, the mark will become registered. If an opponent is dissatisfied with the TMO's decision, it can file a request with the TRAB to invalidate the subject trademark.

AmCham China members are concerned that the new oppo-

行政执法

中国美国商会的会员企业也注意到了相对软弱的著作权行政执法。与商标的行政执法相比，著作权行政执法的人力和资源极为有限。国家版权局与地方市场执法机构相分离，这些地方执法机构很多是由地方政府或领导负责，国家版权局没有充足的权力管理它们。对举报的违犯行为是否采取行动，地方执法机关拥有过多的自由裁量权，导致决策的随意性。在大多数情况下，著作权行政执法机构没有及时充分地把它们的决定通知著作权持有人。在机构未能以透明方式公布其决定时，著作权持有人（以及公众）就不能有效地监控行政执法行为，也不能通过正当程序对其进行质疑。

政府和国有企业软件正版化

最近几年来，中国在政府软件正版化方面取得了重要进展。截止到 2013 年 11 月，中国 92% 的市政府和 80% 的县政府已经完成了软件正版化，但是这一过程尚未完成。

在 2013 年 7 月举行的第五轮中美战略经济对话中，中国政府官员同意实施软件管理制度，促进国有企业，包括国有金融机构，使用正版软件，并且同意对互联网盗版行为和商业秘密盗窃采取果断行动。2013 年 8 月，中国通过国务院出台的《政府机关使用正版软件管理办法》对上述同意进行了落实，对各级政府部门实施软件正版化制定了相对完整的框架，但是也留下了改进的余地，比如第三方审计规定和反滥用条款等。

中国美国商会会员企业认为应当扩大适用软件的定义和范围，应当从操作系统、工作软件和防病毒软件，明确扩大至包括网络安全软件、多媒体软件和计算机辅助设计软件在内的其他系统。此外，中国美国商会建议出台进一步的措施，鼓励更多企业采用 ISO 认证的软件资产管理（SAM）最佳实践，并引入软件使用第三方审计制度。

商 标

期待已久的《中华人民共和国商标法》（《商标法》）修订案于 2013 年 8 月 30 日通过，并将于 2014 年 5 月 1 日起开始实施。这部新法中引入的许多改变有可能会改善现有的体系，但需要《商标法实施细则》、国家工商行政管理局（国家工商局）的《商标评审规则》和最高人民法院的司法解释（司法解释）做出进一步的说明，所有这些法规有望在 2014 年上半年出台。

尽管中国美国商会的会员企业对新《商标法》的积极评价居多，但异议处理程序尤为令人关注，因为一些新出现的和长期存在的问题在新法中似乎并没有得到充分解决。这些问题概述如下。

商标恶意抢注

新《商标法》第 7 条规定，申请商标注册必须遵守诚实信用的原则。我们欢迎在新《商标法》增加一项积极的诚信义务，但是这一规定并没有列为一条反对注册的理由。因此，这一规定在发生异议的情况下对抑制抢注有何实际效果尚不清楚。

根据 2001 年《商标法》，对尚未在华使用商标、或尚未在华广泛使用商标的外资企业来说，遇到商标遭他人利用“在先申请”规则恶意抢注时，提出商标侵权异议极为困难。中国美国商会强烈支持中国政府在即将通过的立法或行政规定中解决这一恶意抢注问题。《商标法实施细则》的最新草案版本中没有提及第 7 条，中国美国商会担心会因此错失进一步完善第七条规定的良机。

认证标志

《刑法》规定假冒注册商标一旦符合某些要素，就是犯罪。因为刑法没有区分普通标志和认证标志，有些法院已决定《刑法》中的假冒规定不适合认证标志。中国美国商会强烈支持中国政府在即将出台的司法解释或《刑法》修订案中明确解决这一问题。

另外，《刑法》还规定生产或销售“不合格产品”销售收入达到 50,000 元（8264 美元）或以上的为犯罪行为。中国美国商会的会员企业鼓励中国政府确认《刑法》中的“不合格产品”不仅指国内安全认证标志采用的标准，而且也包括外国安全认证标准。

弛名商标

新《商标法》禁止在商品、商品包装以及在广告或其他业务活动中不恰当地提及“弛名”商标，这是对现行实践所做出的受欢迎改变。引入禁止在广告中使用“弛名”商标的规定应该会给滥用商标的做法画上句号。

中国美国商会继续鼓励中国政府能够将商标局（TMO）、商标评审委员会（TRAM）和国家工商局制定的弛名商标确定过程变得对外国商标持有人更加透明和公平。

sition procedure could be a significant advantage for applicants of third party trademarks filed in bad faith, particularly if the quality of the TMO's examination of oppositions is not significantly improved under the new trademark regime. Under the new system, as it is currently envisioned, trademark pirates that win opposition challenges would effectively obtain perfected and exclusive rights to use a subject trademark in the PRC for the period in which it takes the interested third party to successfully invalidate the mark.

In order to avoid the new opposition procedure playing to the advantage of trademark pirates, AmCham China strongly recommends that "interested party" be construed liberally, allowing brand owners who are the victims of bad faith filings to file oppositions against applications that target other third-party trademarks filed by the same pirate. Additionally, the procedures for the handling of oppositions before the TMO should be more transparent, including further opportunity to comment as part of the opposition proceedings and mandatory oral hearing of both parties' cases before making a decision.

Enterprise Name Infringements

It is not uncommon for Chinese companies to register and use enterprise names that incorporate famous foreign trademarks, but AICs are generally reluctant to handle cases involving conflicts between registered trademarks and enterprise names. The new Trademark Law will provide a cause of action to the registrants of trademarks that are not well-known when the use of a trademark as an enterprise name is liable to mislead the public and otherwise constitutes unfair competition. According to the new law, such acts are to be handled under the AUCL. AmCham China members are concerned that the new Trademark Law does not go far enough to address the problem of bad faith enterprise name filings, and that the handling of such cases under the AUCL will further complicate efforts by trademark registrants to enforce their rights in such cases before the AICs.

In order to ensure that the changes to the new law are indeed improvements on the current system, AmCham China considers the following provisions necessary:

- The AICs need to be given the express power to deregister enterprise names that are the same or similar to the prior registered trademarks of third parties in the same or similar industries.
- The registration of enterprise names that are identical to a prior registered trademark, or enterprise names that are similar to a prior registered trademark but have been used in bad faith, should be considered prima facie "liable to mislead the public" and an act of unfair competition under the new law and the forthcoming JI.
- Trademark registrants should be provided with the right to challenge the registration of school names and land/street names before local government authorities on the same grounds that a registrant would challenge a registered enterprise name before an AIC.

Contributory Liability

The new Trademark Law now includes a provision that defines trademark infringement as including the "intentional provision of facilitating conditions" and "helping others carry out acts of infringing the exclusive right to use a trademark." The addition of this language in the new Trademark Law is a positive step, but AmCham China members seek further elaboration.

AmCham China members hope that the future IR and/or JI will include a list of additional specific acts that would be deemed as infringement, including the provision of premises (landlord liability), on-line services, technical/technological assistance, raw materials, equipment, and financial resources. In order to assist the AICs and the People's Courts with their handling of infringement complaints involving contributory liability, we encourage the Chinese government to take this opportunity to make explicit in the proposed JI that the term "intentionally" encompasses constructive knowledge.

AmCham China members are concerned about the persistent problem posed by online counterfeiting in China. In order to address this issue, AmCham China recommends the forthcoming JI provide detailed provisions clarifying the duty of care for online trade platforms and confirming the "necessary measures" required of online trade platforms (including the timing required for response to notice of alleged infringements on their sites). The JI should also confirm that rights holders do not require complete certainty that postings on trade platforms are infringing, and that rights holders can file notices and requests for take-down when they have conducted due diligence in good faith and have provided a reasonable basis for the take-down requests.

Recommendations

For the Chinese Government:

- **Make the filing of a trademark in bad faith a clear basis of invalidating trademarks filed by third parties.**
- Finalize the Copyright Law amendments in an expedited manner, reform the Criminal Law to include the criminal liability of enterprise end-user piracy, implement stronger civil remedies against piracy, and explicitly criminalize the commercial use of pirated software.
- Undertake comprehensive review of current trade

异议程序

根据新《商标法》，异议可由"相关各方"提起，但是在有异议的商标被商标局允许注册时，却没有异议上诉程序。换句话说，如果商标局决定批准对有异议的商标进行注册，则该商标将得到注册。如果异议方对商标局的决定不满意，它能向商标评审委员会提出申请，要求使标的商标作废。

中国美国商会的会员企业担心，新的异议程序可能非常有利于申请人恶意抢注第三方的商标，尤其是在商标局的异议审查质量按照新的商标体系没有明显改进的情况下。根据目前展望的新商标制度，遭到异议反对的商标盗用者可能会在相关第三方成功使标的商标作废前的期间内，有效取得在中国使用该标的商标的全部独占性的权利。

为了避免新的异议程序有利于商标盗用者，中国美国商会强烈建议对"相关方"进行从宽解释，允许作为恶意抢注受害方的商标所有人对由同一个盗用者针对其他第三方商标提出的申请提出异议。另外，商标局的异议处理程序应该更加透明，包括在做出裁决前提供更多机会使当事人能够在异议阶段发表意见，以及双方对案子必须履行的口头陈述。

企业名称侵权

中国企业注册并使用的企业名称中包含有外国著名商标的情况并不罕见，但是工商行政管理局一般不愿意处理涉及注册商标和企业名称冲突的案件。在使用一种商标作为企业名称容易误导公众并因此构成不正当竞争时，新《商标法》将会为非著名商标的注册人提供一个起诉理由。根据新商标法，此等行为将依据《反不正当竞争法》处理。中国美国商会的会员企业担心的是新《商标法》不会深入解决恶意抢注企业名称的问题，并且依据《反不正当竞争法》处理此类案件将使商标注册人通过工商行政管理局执行其在此类案件中的权利的努力更加复杂化。

为了确保新法的改变能确实改进目前的制度，中国美国商会认为有必要做如下规定：

- 需要给予工商行政管理局明确的权力，撤销相同或类似行业中与第三方先前的注册商标相同或类似的企业名称。
- 注册与先前的注册商标相同的企业名称，或注册与先前的注册商标类似但是恶意使用的企业名称，应该被认为是"容易误导公众"的初步证据并且是新的商标法和即将出台的司法解释项下的一种不正当竞争行为。
- 应该赋予商标注册人就学校名称和土地／街道名称的注册向地方政府部门提起异议的权利，提起的理由与商标注册人向工商行政管理局对注册的企业名称提起异议的理由相同。

分担责任

新《商标法》现在包含了一条界定商标侵权的规定，其中包括"故意提供便利条件"和"帮助他人实施商标专用权的侵犯行为"。新《商标法》中增加这一表述是积极的一步，但是中国美国商会期待进一步的阐述。

中国美国商会的会员企业希望未来的知识产权和／或司法解释将会包含一份被视为侵权具体行为的清单，包括提供场所（房东责任）、在线服务、技术援助、原材料、设备和财政资源等。为了帮助工商行政管理局和人民法院处理涉及分担责任的侵权投诉，我们鼓励中国政府利用这个机会在拟定的司法解释中明确"故意"这一概念包含推定知情。

中国美国商会的会员企业对中国的在线造假这一持续性问题很担心。为了解决这一问题，中国美国商会建议即将出台的司法解释做出详细规定，明确在线交易平台的审慎义务并且确定要求在线交易平台采取的"必要措施"（包括要求对声称网站被侵权的通知做出回应的时间）。司法解释还应该确定权利持有人不需要完全肯定交易平台上的帖子侵权就可以在执行善意的尽职调查并提供撤帖要求的合理根据后，提交撤下帖子的通知和要求。

建 议

对中国政府

- **使恶意抢注商标成为第三方申请的商标无效作废的明确依据。**
- 加快确定《著作权法》的最终修订，改进《刑法》把企业最终用户软件盗版行为列为刑事责任，对盗版行为实施更为有力的民事救济，并且把商业使用盗版软件明确定为违法行为。
- 对目前的商业秘密保护法律进行全面审查，简化并明确法院间的程序规则，并且限制行政机构对

secret protection laws, streamline and clarify procedural rules among courts, and restrain administrative agencies from requesting unnecessary disclosure of proprietary trade secret information.

- Refrain from further expanding administrative power in civil patent disputes and focus on improving patent quality in the new amendment to the Patent Law.
- Ensure that local enforcement agencies have clear responsibilities, centralized reporting lines, and proactive and transparent implementation of rules.
- Expand the definition and types of software covered by bilateral commitments on software legalization to explicitly include Internet security software, multimedia software, and computer-aided design software.
- Provide AICs with the power to deregister enterprise names that are the same or similar to the prior registered trademarks of third parties.
- Emulate the Shanghai Guidelines with respect to employer internal policies and agreements.
- Introduce a process for determining appropriate amounts of remuneration by using clear guidelines that take into account the respective field of industry and balance an employee's contribution to the invention with the contributions of the employer.

For the US Government:

- **Share best practices from US Federal and State trade secret laws and its national trade secret strategy.**

专有商业秘密信息不必要的披露要求。

- 确保地方执法机构责任清晰，有统一的报告责任制度，以及积极主动和透明的执行细则。
- 扩大软件正版化双边承诺所涉及软件的定义和类型，把互联网安全软件、多媒体软件和计算机辅助设计软件明确包括在内。
- 对与第三方先前的注册商标相同或类似的企业名称，赋予工商行政管理局取消此等企业名称注册的权力。
- 关于雇主内部政策和协议仿效《上海指引》。
- 通过清楚的指引提出一种确定报酬适当金额的程序，该指引要考虑各个行业领域并且要平衡员工和雇主对发明所做的贡献。

对美国政府

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

Investment Policy

Introduction

Official data show that, during the past two decades, China has become the world's leading recipient of foreign direct investment (FDI). In each of the past four years, annual inbound investment totaled more than US $100 billion (RMB 605 billion). Foreign-invested projects have made major contributions to the rapid development of the Chinese economy. Foreign investors did not just contribute capital, but also advanced management practices, technological innovation, and access to global distribution channels for Chinese products and services.

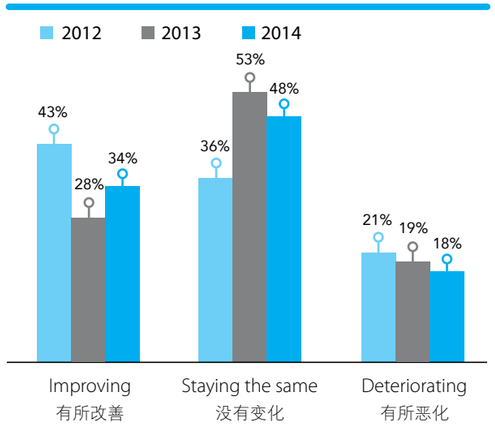
Despite these achievements, foreign investors have been hobbled by restrictive laws and regulations that effectively establish a separate and less favorable set of rules for foreign investors. AmCham China has long urged the Chinese government, particularly the Ministry of Commerce (MOFCOM) and the National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

This year, as AmCham China brings the 2014 *White Paper* to press, there are signs of significant reforms that would bring China closer to international standards governing foreign investment. These signs include:

- A resolution from the Third Plenum of the 18th Party Congress that calls for experimentation with a "national treatment plus negative list" approach to project approvals, opening of additional sectors to foreign investment, and unification of domestic and foreign investment laws and regulations;
- Establishment of the China (Shanghai) Pilot Free Trade Zone (Shanghai FTZ) to implement a three-year program of deep experimental reforms, aimed at promoting further financial liberalization, reforming the foreign investment management system, and supporting outbound investment;
- Ongoing nationwide reform of the foreign investment management system, including devolution of approval authority to provincial and local governments for many investment projects under US $300 million (RMB 1.82 billion), expanded use of *bei'an* (备案 filing for the record) company registrations, and the simplification and acceleration of the project approval application process; and
- Greater transparency in the formulation of new foreign investment regulations, such as MOFCOM and NDRC reaching out to solicit informal as well as formal input from AmCham China, foreign companies, and foreign investors on reform of the foreign investment management system.

AmCham China strongly supports these steps toward comprehensive reform of the foreign investment regime and improvement of the foreign investment management system. We note in particular the commitment of the Third Plenum to move toward unification of the investment regimes for domestic and foreign investors. These changes will bring long-term benefits to China's maturing and increasingly open economy.

The quality of China's investment environment is: (2012-2014)
中国投资环境的质量（2012-2014）



At the same time, AmCham China recognizes that reform of the foreign investment regime will take place over a period

投资政策

引 言

根据官方数据显示，过去二十年间，中国已经成为全球最大的外商直接投资（FDI）接受国。过去四年间，每年外商对中国境内的投资总额都超过 1000 亿美元（6050 亿元人民币）。外商投资项目为推动中国经济快速发展做出了巨大的贡献。外国投资者不仅贡献了资本，而且贡献了先进的管理经验、技术创新，还为中国产品和服务提供了进入全球市场的分销渠道。

尽管取得了上述成就，外国投资者们在中国依然受到限制性法律和法规的制约，并且这些法律和法规实际上已经构成了一套单独的、对外国投资者不利的规则体系。中国美国商会一直促请中国政府，特别是商务部和国家发展和改革委员会（发改委）放松对外国投资的管制，简化现行外商投资制度。

今年，中国美国商会出炉的最新 2014 年白皮书中包括的诸多内容都预示着中国将在外商投资领域进行重大改革，使外商投资监管制度更加贴近国际标准。其中包括：

- 十八届三中全会的决议指出要在项目审批、进一步开放外商投资领域和统一内外资投资法律和法规等方面试用“准入前国民待遇加负面清单”的管理模式；
- 建立中国（上海）自由贸易试验区（上海自贸区），进行为期三年的深化改革试验，从而进一步推进金融自由化、改革外商投资管理制度以及支持对外投资；
- 中国正在全国范围内开展外商投资管理制度改革，包括将投资额在 3 亿美元（18.2 亿元人民币）以内的投资项目审批权下放至省级或地方政府部门，扩大公司注册备案制度适用范围和简化项目审批申请程序，加快项目审批速度；
- 不断提高外商投资新法规制定的透明度，如商务部和发改委在制定外商投资管理制度改革的法规时征求中国美国商会、外资企业和外国投资者正式及非正式的意见。

中国美国商会非常支持中国在对外商投资制度进行全面改革、改进外商投资管理体系的过程中所作的上述努力和成绩。特别值得一提的是，三中全会承诺加快统一内外资法律法规。这些转变都将为中国经济的日趋成熟和更加开放带来长远的益处。

与此同时，中国美国商会也认识到外商投资制度的改革需要一定的时间，可能会面临来自目前受保护的行业和部门的强大阻力。当前提出的很多改革尚未落实到具体的监管法规操作层面。另外，中国有关政府部门还表明外商投资制度改革将和中国与包括美国在内的其他国家和地区进行的双边投资协定（BIT）谈判同步进行。国内改革的很多内容，比如负面清单的长度和内容，最终可能会取决于上述双边投资协定谈判中所达成的协议内容。

透明度和与外国商界保持公开交流将成为外商投资制度改革取得成功的关键。成功的改革需要修改现行外商投资法律和法规，针对必要领域制定新的规则以及在执法方面对内外资一视同仁。下文将重点讨论具体改革领域以及目前存在，未来亟待解决的相关问题。

最新进展

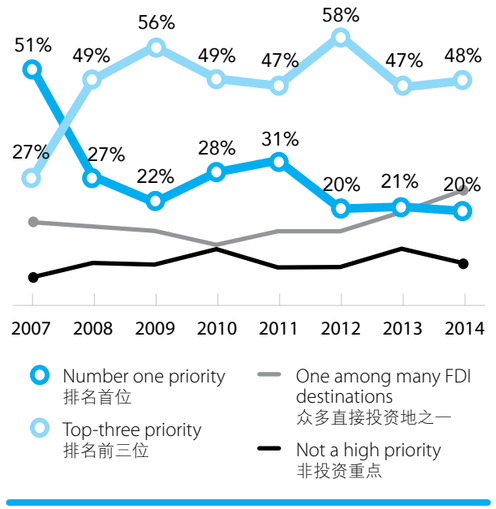
十八届三中全会确立外商投资改革方向

在习近平主席和李克强总理领导下，中国共产党第十八届三中全会启动了全面经济、政治和社会改革。这些改革框架都写入了 2013 年 11 月 15 日公布的《中共中央关于全面深化改革若干重大问题的决议》（三中全会决议）。尽管三中全会提及的经济改革主要集中在国内经济发展，但其中数个条款也直接涉及外商投资领域。

of time and that there may be significant resistance to change from protected sectors and industries. Many proposed reforms have yet to be specified in the form of specific regulatory changes. In addition, Chinese officials have indicated that the investment reform process will run in parallel with bilateral investment treaty (BIT) negotiations between China and the US, and with other countries and regions. Domestic reforms such as the length and content of the negative list may ultimately be subject to agreement during the BIT negotiation process.

Transparency and open communication with the foreign business community will be essential to successful reform of the foreign investment regime. Success of the reform program will depend on revision of existing foreign investment laws and regulations, issuance of new rules where necessary, and impartial execution of regulations for both domestic and foreign investors. The sections below discuss specific investment reforms and remaining issues that should be addressed over the coming months.

Q How does China rank in your company's near-term global investment plans?
中国在企业近期全球投资计划中的排名



Recent Developments

Third Plenum Foreign Investment Reforms

The Third Plenum of the 18th Party Congress initiated wide-ranging economic, political, and social reforms led by Party Secretary and President Xi Jinping and Premier Li Keqiang. These reforms are summarized in the "CCP Central Committee Resolution Concerning Some Major Issues in Comprehensively Deepening Reform" (Third Plenum Resolution), which was published on November 15, 2013. While the Third Plenum economic reforms focus primarily on reform of the domestic economy, there are also several provisions that directly address foreign investment.

Pre-Establishment National Treatment and Negative List

The Third Plenum Resolution includes a directive to "[e]xplore implementation of a management model for foreign investment with pre-establishment national treatment plus a negative list." (Section 9) While broad and exploratory, if implemented this directive would take China's foreign investment regulatory regime down a new path, replacing the Foreign Investment Catalogue and numerous sector-specific restrictions on foreign investment with "pre-establishment national treatment plus a negative list." This policy would permit foreign companies to establish new subsidiaries and new investment projects in the same range of industries, service sectors, and products as permitted for domestic companies, with the exception of those areas of business expressly included in a published negative list of prohibited or restricted industries, service sectors, or products. This approach to foreign investment restrictions reflects a standard accepted by most developed market economies and is supported by AmCham China. An initial pilot implementation plan has been rolled out in the Shanghai FTZ (see below), and AmCham China members look forward to further clarification as policies are refined.

Opening of Certain Service Sectors for Foreign Investment

The Third Plenum Resolution also calls for further opening of certain service sectors to foreign investment: "Move forward with the orderly opening up of finance, education, culture, healthcare and other service areas, lift limits on foreign investment in childcare, care for the elderly, architectural design, accounting and auditing, commerce and logistics, electronic commerce and other such service areas, further open up the general manufacturing industry." (Section 24)

This directive implies a loosening of current foreign investment prohibitions, restrictions, and administrative controls in a number of key service sectors where foreign investment has long been heavily restricted and where domestic companies have been protected from healthy foreign competition. However, Chinese officials have yet to further define how these reforms will be implemented. It remains unclear how and when these sectors will be opened up and whether the relevant government ministries and agencies have begun drafting specific implementation measures. We encourage the Chinese government to provide periods for public comment on all new draft regulations before they are promulgated in order to increase transparency and obtain feedback that can help ensure successful implementation of these reforms.

准入前国民待遇和负面清单

三中全会决议中提出"探索对外商投资实行准入前国民待遇加负面清单的管理模式"（第九条）。尽管该规定相对宽泛且带有探索性，但一旦予以实施，将改变中国现行外商投资监管制度: 中国现行的《外商投资产业指导目录》和众多行业禁止性规定将告别历史舞台，取而代之的是"准入前国民待遇加负面清单"的管理模式。这项新政策规定，除了"负面清单"中明确列出的禁止或限制进入的产业、提供或生产的服务或产品，外国公司都可以同中国公司一样，投资设立新的分支机构和投资项目，进入未列入负面清单的产业，提供和生产未列入清单的服务和产品。这种外资管理方式反映了大多数发达市场经济体所通行的标准，中国美国商会也支持这种新的管理方式。这种管理模式目前已经在上海自贸区进行初步试点实施（详见下文），中国美国商会会员期待随着相关政策的不断完善，具体措施也能得到进一步明确。

向外资开放部分服务业领域

三中全会决议中还提出要进一步推进部分服务业领域向外资开放，即"推进金融、教育、文化、医疗等服务业领域有序开放，放开育幼养老、建筑设计、会计审计、商贸物流、电子商务等服务业领域外资准入限制，进一步放开一般制造业（第 24 条）。"

这一条也隐含着要放松目前对外商投资一些重要服务业领域的禁止、限制和行政管控制度。而在这些重要的服务业领域，外资一直都被严格管控，受保护的内资企业也因此避免了外资的良性竞争。但是，中国相关部门还需进一步明确上述改革将如何实施。目前这些服务业领域何时以及如何开放，相关部委和机构是否已经开始起草实施细则都尚未明确。我们鼓励中国政府在颁布新的法规之前能够事先公布草案公开征求意见，在提高透明度的同时，也能获得有助于改革顺利实施的反馈意见。

统一内外资法律法规

三中全会决议堪称最重要的一点便是就内资和外资的关系问题单独作了表述："放宽投资准入。统一内外资法律法规，保持外资政策稳定、透明、可预期（第 24 条）。"

中国美国商会强烈支持这一最新表述中体现的精神，特别是内外资监管法律法规应当统一的提法。统一内外资监管机制是确保内外资企业公平竞争、提高中国市场健康竞争水平的唯一途径。只有在直接影响国家安全的领域才可以对外商投资实施特别限制，而且这种除外性限制的范围不管是在中国还是在美国，都应当有限且透明。

金融改革

三中全会决议中还特别指出要建立一套"健全的金融体系"，建立存款保险制度，完善金融机构市场化退出机制，加强金融基础设施建设（第十二条）。另外，决议还提出完善人民币汇率市场化形成机制，加快推进利率市场化，有序提高跨境资本和金融交易可兑换程度，建立健全宏观审慎管理框架下的外债和资本流动管理体系，加快实现人民币资本项目可兑换。与此同时，决议提出要完善监管协调机制，界定中央和地方金融监管职责和风险处置责任。有关金融改革的详细内容请参阅《银行和资本市场》一章。

中国政府对金融体系进行根本性改革的决心使中国美国商会深受鼓舞。这一改革对中国其他经济和投资改革的成功也具有重大意义，而且将会极大吸引更多外商来华投资。

我们认为三中全会中有关外商投资的新动向和新提法仅仅代表着政策重点的转换，并非一套具体的新政策。因此亟需包括全国人大、国务院以及商务部、发改委等主要部委和国家级机构尽快制定和修订相关法律法规，积极落实上述新提法，这样才能在国民待遇的基础上对外资开放更多领域。

上海自贸区

2013 年 9 月 29 日，上海自贸区正式成立。建立上海自贸区是为中国的经济改革和政府改革提供一块小规模的"试验田"，为相关改革在全国推广做准备。其中就包括外商投资、外资和货币管控制度改革。上海自贸区提出的诸多改革领域在三中全会决议中又再次予以强调，并提出将推广至全国。该决议中明确支持建立上海自贸区："建立中国上海自由贸易试验区是党中央在新形势下推进改革开放的重大举措"（第 24 条）。中国美国商会对上海自贸区的建立表示欢迎，并期待自贸区各项改革措施的全面部署和实施。

三中全会决议还指出鼓励建设其他自由贸易区："坚持世界贸易体制规则，坚持双边、多边、区域次区域开放合作，扩大同各国各地区利益汇合点，以周边为基础加快实施自由贸易区战略。改革市场准入、海关监管、检验检疫等管理体制，加快环境保护、投资保护、政府采购、电

Unification of Domestic and Foreign Capital Laws and Regulations

Perhaps most importantly, the Third Plenum Resolution establishes a new policy narrative on the relationship between foreign and domestic investment: "Broaden investment input. Unify domestic and foreign capital laws and regulations, maintain foreign capital policy stability, transparency, and predictability." (Section 24)

AmCham China strongly supports the spirit of this new narrative, particularly the concept that foreign capital laws and regulations should be unified with capital laws and regulations applicable to domestic Chinese companies. The unification of the foreign and domestic investment regulatory regimes is the only way to ensure a level playing field for foreign companies that will bring increased levels of healthy competition to the domestic economy. Only areas that directly impact national security should be subject to specific restrictions for foreign investors and the scope of this exception should be limited and transparent, both in China and in the US.

Financial Reforms

More specifically, the Third Plenum Resolution also calls for building a "sound financial system," setting up a deposit insurance system, allowing financial institutions to exit the market, and building a sound financial infrastructure. (Section 12) In addition, it refers to the need to allow the market to determine interest and RMB exchange rates, and calls for gradual promotion of cross-border capital flows, financial transaction convertibility, prudential supervision of foreign debt and capital flows, and acceleration of the process of opening up RMB capital markets. Furthermore, the role of central financial regulators and local regulators will be redefined through a mechanism of financial stability and regulatory coordination. See the Banking and Capital Markets chapter for more information on financial reforms.

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

We recognize that the new directives and narrative for foreign investment laid out in the Third Plenum Resolution represent only a shift of emphasis, not a specific set of new policies. It is critical that the National People's Congress (NPC) and the State Council as well as MOFCOM, NDRC, and other leading national government agencies, move aggressively to implement the new narrative through new and amended laws and regulations that will further open most sectors to foreign investment on a national treatment basis.

Shanghai Free Trade Zone

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

The Third Plenum Resolution also calls for the establishment of other FTZs as well: "Construction of free-trade zones will be sped up, with adherence to the rules of world trade system and insistence on bilateral, multilateral, and regional cooperation. Reforms will be carried out in market access, customs supervision, and inspection and quarantine management. Negotiations in emerging issues such as environmental protection, investment protection, government procurement, and e-commerce will be accelerated to form a global, high-standard network of free trade zones." (Section 25) Other cities/regions such as Tianjin, Qingdao, Chongqing, and Guangdong/Macao/Hong Kong have already announced plans to develop their own new FTZ projects.

AmCham China, including our regional chapters in Tianjin, Central China (Wuhan), and Northeast China (Dalian), looks forward to future dialogue with the government on all such new FTZs in order to increase transparency and maximize the contribution that foreign-invested companies can make to the development of the FTZs.

Shanghai FTZ Negative List

The Shanghai FTZ adopts a negative list for inbound foreign investment, a move later endorsed on the national scale in the Third Plenum Resolution. Under the negative list approach, foreign investment approvals within the FTZ will only be required for those industries on the list or that are otherwise designated as requiring approval by China's State Council. Investments in unlisted industries may simply file for the record (*bei'an* 备案) with administrative authorities and do not need to obtain investment approvals from MOFCOM or NDRC. The Shanghai FTZ also opens to foreign investors 23 service industries currently listed as "prohibited" or "restricted" in the Foreign Investment Catalogue, including banking, financial services, health care, and technology.

Released on September 30, 2013, the initial negative list contains nearly 200 categories (and nearly 2,000 subcat-

子商务等新议题谈判，形成面向全球的高标准自由贸易区网络"（第 25 条）。包括天津、青岛、重庆和粤港澳在内的其他城市和地区也已宣布计划建立自己的自由贸易区。

中国美国商会，包括我们在天津、华中（武汉）和东北（大连）的办公室，都期待未来就建立上述新的自由贸易区与中国政府进行对话，以期提高自贸区建立过程中的透明度，同时有助于外资企业为自贸区的建设做出自身最大的贡献。

上海自贸区负面清单

上海自贸区对境内外商投资采用"负面清单"管理模式，这一举措也得到了三中全会决议的支持。在负面清单管理模式下，在自贸区内，外资只有在投资清单上列明或是经国务院要求审批的行业时才需要提交审批。外商投资不在清单上的产业只需要向工商行政部门备案，不再需要经商务部或发改委审批。上海自贸区还向外国投资者开放了 23 项在现行《外商投资产业指导目录》中属于"禁止类"或"限制类"的服务类行业，包括银行业、金融服务、医疗和技术。

2013 年 9 月 30 日，上海自贸区发布了首份负面清单，该清单中包含了近 200 个类别（近 2000 个子类），其中一些类别是现行《外商投资产业指导目录》中所没有的。首份负面清单范围之广让许多外资企业倍感失望。但有关政府官员表示随着上海自贸区的不断发展，后续负面清单的范围也将不断缩小，最新版负面清单有望在 2014 年上半年发布。

中国美国商会鼓励中国政府不断优化、尽量缩小负面清单中所限制和禁止的外商投资领域，从而最大限度地吸引外资并从中获益。

境外投资审批改革

自贸区内中国企业海外投资审批程序也得到了简化。在上海自贸区注册的企业只需要进行工商备案就可以开展绝大多数形式的海外投资。然而，在目前全国通行的投资审批程序，包括发改委和商务部的双重审批，将继续适用于对某些"敏感"领域或产业的投资，并且部分非金融类投资，如投资海外资源或者设立海外特殊目的实体的，依然需要经过商务部审批。

上海自贸区金融改革

在"加快金融体系创新"方面，上海自贸区也是全国的领头羊，具体措施包括实施人民币资本账户可兑换，利率市场化、人民币跨境使用等。这些创新举措也得到了三中全会决议的支持。

2013 年 12 月 2 日，中国人民银行出台了《关于金融支持中国（上海）自贸区建设的意见》（《意见》），为上海自贸区的金融改革和全面发展提供政策支持。据中国人民银行上海分行行长张新介绍，按照已经确立的时间表，希望用三个月时间把《意见》的大部分措施落地实施，用半年的时间初步探索总结试验区改革成熟的经验，用一年左右的时间，基本形成可复制、可推广的金融管理模式。《意见》中提出的主要管理方式包括建立一种"分账管理制度"和"宏观审慎管理原则"。

改革将在"宏观审慎管理原则"下有序推进，进一步改革外汇配额管理制度，支持跨境交易和中资企业"走出去"（海外投资）。该意见指出，试验区跨境直接投资可与国家外汇管理局的前置核准脱钩，直接向银行办理所涉及的跨境收付、兑换业务。注册在试验区内的中外资企业、非银行金融机构以及其他经济组织可按规定从境外融入本外币资金。为了支持试验区发展总部经济和新型贸易，鼓励跨国公司和国有金融机构申请资金池管理许可，将进一步简化外币资金池管理。鼓励试验区内的企业开展双向人民币资金池业务，为其境内外关联企业提供经常项目集中收付业务。人民银行还支持银行开展面向境内客户的大宗商品衍生品的柜台交易。

上海自贸区将对居民和非居民采用"分账管理制度"。自贸区内的个人和企业均可在自贸区或上海地区的任何一家银行开立自由贸易账户，以便更好地享有自贸区内实施的各项自由化政策。这种自由贸易账户通常用作境外账户。资金可在居民自由贸易账户与境外账户、境内区外的非居民账户、非居民自由贸易账户或者其他居民自由贸易账户之间自由划转。根据跨境交易的需要，资金还可以在同一法律实体的居民自由贸易账户和境内账户之间进行划转。

中国美国商会支持中国通过上海自贸区进行初步金融改革，继而扩展至全国，从而实现资本和资金自由化的做法。但上述措施仍然需要在风险可控、稳步推进原则下，制订详细的实施细则，"成熟一项、推动一项"。截至 2014 年 2 月，人民银行上海分行和国家外汇管理局上海市分局都还没有就如何引入这些实施细则发布时间表。具体实施细则的部署需要遵循透明和有序的原则，允许中资和外资金融机构审阅并提出意见，从而避免因该政策长期存在不确定性而导致企业犹豫是否要到上海自贸区投资的情况。

egories), a number of which are not currently found in the Foreign Investment Catalogue. The extensive length of the initial negative list disappointed many in the foreign business community. Government officials, however, have indicated that this first iteration will be pared down in subsequent versions following further development of the FTZ, and an updated list is expected to be promulgated in the first half of 2014.

AmCham China encourages the Chinese government to steadily refine and minimize the number of restricted and prohibited industries on the negative list in order to maximize the benefits China can receive from increased foreign investment.

Outbound Investment Approval Reforms

The investment approval process for Chinese investment overseas is similarly simplified. For enterprises registered within the Shanghai FTZ, an administrative record filing will be sufficient to carry out most forms of overseas investment. However, the current national investment approvals process—comprising the dual oversight of the NDRC and MOFCOM—will continue to apply for investment in certain "sensitive" sectors or industries, and MOFCOM approval will continue to be required for certain non-financial investments such as investment in overseas resources or to create an overseas special purpose entity.

Shanghai FTZ Financial Reforms

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

On December 2, 2013, the People's Bank of China (PBOC) released the "Opinions of the PBOC about the Financial Support to the Construction of China (Shanghai) Pilot Free Trade Zone" (Opinions) to provide support for financial reform and the overall development of the Shanghai FTZ. According to PBOC Shanghai Chief Zhang Xin, the established timetable calls for reforms to be launched within three months and evaluated in six months, with formal policies to be fully implemented after one year. The Opinions' major management methods include setting up a "segregated account management system" and "macro-prudential management principle."

Reform will proceed under a "macro-prudential management principle" for further foreign currency quota management in order to support cross-border trade and domestic enterprises "going out" (investing overseas). According to the Opinions, fund remittance and conversion for cross-border direct investments into or originating out of the Shanghai FTZ will be handled directly by banks in the Shanghai region without prior clearance from the State Administration of Foreign Exchange (SAFE). Institutions in the FTZ will be able to finance RMB and foreign currency transactions from overseas. To support establishment of regional headquarters and development of innovation in the FTZ and to encourage multinationals and state-owned financial institutions to apply for cash pool management licenses, the foreign currency cross-border cash-pooling program will be simplified. Enterprises in the FTZ are encouraged to engage in round-trip RMB cash pooling business as well as centralized cross-border settlements under the current account for their domestic and overseas affiliates. The PBOC will also support the provision by banks of over-the-counter commodity derivative trading.

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

AmCham China supports liberalization of capital and currency controls through initial financial reforms in the Shanghai FTZ and more broadly across the national economy. However, the above-mentioned measures will require promulgation of detailed implementation rules based on the principles of risk control and incremental liberalization, using a process of "testing and liberalizing step by step." As of February 2014, neither the PBOC's Shanghai Branch nor Shanghai SAFE has released a timeline for introducing such rules. Specific implementation rules should be rolled out in a transparent and orderly fashion, allowing for review and comment by both domestic and foreign financial institutions in order to avoid prolonged uncertainty that can create hesitation among companies considering investing in the Shanghai FTZ.

Bilateral Dialogue

US-China Strategic and Economic Dialogue

In July 2013, the US and China convened the Fifth Meeting of the Strategic and Economic Dialogue (S&ED). At the S&ED, China made a variety of significant commitments related to foreign investment that, if fully implemented, could significantly improve the foreign investment environment in China and boost bilateral investment flows.

Broadly, China "committed to ensuring that economic entities under all forms of ownership have equal access to factors of production in accordance with the law, compete on a level playing field, and are treated equally by the law." Such

双边对话

中美战略与经济对话

2013年7月，中美两国举办了第五轮战略与经济对话。在本轮对话中，中国就外商投资方面做出了一系列重大承诺，如果这些承诺能够得以完全兑现，必将极大地改善中国外商投资环境，提高双边投资额。

总体而言，中国"承诺营造各类国内外企业依法平等获得生产要素、公平竞争和公平对待的环境。"上述原则是构建一个竞争性、有效率和公平的投资环境的基本要求，我们希望中国能够根据这些原则推进投资改革。

具体来说，中国承诺"实施更加积极主动的开放战略"，包括：

- "研究进一步主动扩大服务业开放的措施"
- "积极考虑进一步开放涵盖电子商务等的更多商业领域"
- "继续进一步向外资开放参与金融领域"
- "欢迎符合条件的外资银行参与跨境贸易和投资人民币结算业务"

中国在第五轮战略与经济对话中还承诺"建立中国（上海）自由贸易试验区，该试验区将试行新的外资管理模式，并营造各类国内外企业平等准入的市场环境"。

另外，中国还承诺"将逐步减少和下放外商投资核准事项"。中国美国商会完全支持上述努力，因为优化投资审批程序将有助于提高外商在华投资的效率、透明度和可预见性。我们鼓励中国在考虑对外商投资审批程序进行改革时能够参考本文在现存监管问题中所提出的相关建议。我们还鼓励中美两国在第五轮战略与经济对话后重启双方政府承诺的透明度对话，磋商解决投资审批程序中涉及的透明度问题。

最后，中国在中美第五轮战略与经济对话中做出的最重要的承诺是关于中美双边投资协定，具体内容详见下文。

中美双边投资协定谈判

2013年7月举行的第五轮中美战略与经济对话上，中国同意与美国进入投资协定下一轮的谈判。该谈判将以"负面清单"模式为基础，涉及投资的各个阶段（包括准入前或市场准入）。 中国美国商会对此举表示赞赏。基于中美两国承诺而展开的双边贸易投资协定，很有可能促进两国吸引外商投资，相互提高市场准入机制，并为投资者提供更有效的保护。中国正积极大力拓展向海外投资，以上做法便更具有实际意义。中国美国商会强烈支持中美双边贸易协定谈判提上重要日程并且稳步取得进展。为了使中美双边贸易协定取得积极进展，我们鼓励中国减少《外商投资产业指导目录》及上海自贸区负面清单中禁止、限制投资或者要求设立合营公司的领域。我们希望最终签订的双边投资协定中能够尽量减少国民待遇例外的情形，允许私企和国企、外资和中资都能同台公平竞争。

总之，我们鼓励两国在进行双边投资协定谈判时能够解决本文中所涉及的相关问题，并重点达成能够实现如下内容的承诺：

- 外国投资者能够获得不低于中国投资者的待遇；
- 外商直接投资审批程序确保透明；
- 包括外国投资者在内的所有投资者在投资申请遭到不合理拒绝后都能够通过合适的途径进行申诉。

上述改革必将增强中国美国商会会员企业为未来中国经济发展和增长做贡献的能力。

中资在美投资

根据荣鼎集团整理的数据显示，2013年，中资在美国完成的投资总额为140亿美元（847亿元人民币），是2012年投资额的两倍，投资案的总数量也比2013年有所增加。其中已完成的投资案包括中海油收购持有美国资产的加拿大油气公司尼克森，以及双汇国际收购全球最大的猪肉生产商史密斯菲尔德食品公司。

中国在美的对外直接投资不断增加已经给美国带来了诸多益处，不仅为美国创造就业机会和推动经济增长，而且还有助于美中两国在地市一级加强政治和文化交流。根据荣鼎集团的数据，截止2013年底，中国企业在美国创造了70,000多个全职工作岗位。

2011年，美国政府启动了"选择美国"计划，展示了美国欢迎包括中国投资在内的外国投资的承诺。这一计划与区域、州和地方经济开发机构进行合作，加强现有投资促进项目之间的协调，并且鼓励、推动和加快在美商业投资。"选择美国"计划为潜在投资者、地方政府和经济开发组织提供各类服务，同时还于2013年10月31日至11月1日在华盛顿特区举办了首届"选择美国"年度投资峰会，

principles are fundamental requirements for ensuring a competitive, efficient, and fair investment environment, and we hope that they will underpin China's investment reforms going forward.

More specifically, China committed "to implement a more proactive opening up strategy for foreign investment," including by:

- "studying measures on further proactively opening up of services sectors,"
- "actively considering to further open up more areas including e-commerce and commercial factoring,"
- "continu[ing] to further open up its financial sector to foreign participation," and
- "welcom[ing] participation by qualified locally incorporated foreign banks in RMB settlement of cross-border trade and investment transactions."

China also committed at the Fifth S&ED to "establishing the China (Shanghai) Pilot Free Trade Zone, which is to implement a new foreign capital administrative model on a trial basis, and create a market environment that provides equal access for all types of enterprises, domestic and foreign."

Additionally, China committed "to gradually decrease and decentralize its foreign investment reviews and approvals." AmCham China fully supports such effort, as streamlined investment approval processes will increase efficiency, transparency, and predictability for foreign investors in China. We encourage China to consider the recommendations made in the Ongoing Regulatory Issues section of this chapter when considering potential reforms to the foreign investment approval processes. We also encourage the US and China to address transparency issues related to the investment approval process when carrying out the transparency dialogue that both governments committed to resume following the Fifth S&ED.

Finally, the most significant commitment made by China at the Fifth S&ED related to the US-China BIT, as detailed further in the next section.

US-China Bilateral Investment Treaty Negotiations

At the Fifth S&ED in July 2013, China committed to enter into the next stage of negotiations on a US-China BIT using a negative list approach and covering all phases of investment (including "pre-establishment" or market access). AmCham China applauds this development, as a BIT based on these two commitments has the potential to facilitate increased investment flows and provide better market access and investment protections to investors of both countries. This is especially relevant as China seeks to significantly expand its outbound investment.

AmCham China strongly supports prioritization of and steady progress on a US-China BIT. As a positive step toward negotiating a BIT, we encourage China to reduce the number of sectors that are prohibited, restricted, or have JV requirements in the Foreign Investment Catalogue and in the Shanghai FTZ negative list. We hope the final BIT agreement makes minimal exceptions to national treatment and allows private and state-owned as well as foreign and domestic companies to compete on a level playing field.

Overall, we encourage negotiators to address the concerns laid out in this chapter when carrying out BIT negotiations, and to focus on commitments that will ensure that:

- Foreign investors are treated no less beneficially than domestic investors;
- FDI approval processes are transparent; and
- All investors, including foreign investors, have appropriate recourse if their investment is denied for improper reasons.

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

Chinese Investment in the US and CFIUS Review

According to statistics compiled by the Rhodium Group, 2013 saw US $14 billion (RMB 84.7 billion) worth of Chinese investments completed in the US, double the total deal value in 2012 with the total number of deals increasing as well. Completed deals included CNOOC's purchase of Nexen, a Canadian oil and gas company with US assets, and Shuanghui International's acquisition of Smithfield Foods, the world's largest pork producer.

Growing Chinese FDI in the US has already generated valuable benefits, including not only job creation and economic growth, but also closer political and cultural ties between the US and China at the regional and municipal levels. According to the Rhodium Group, Chinese-owned companies provided more than 70,000 full time jobs in the US by the end of 2013.

The US government showed its commitment to welcoming foreign—including Chinese—investment into the US by creating the SelectUSA program in 2011. The program works in partnership with regional, state, and local economic development organizations to enhance coordination among existing investment promotion programs and to encourage, facilitate, and accelerate business investment in the US. In addition to the variety of services that SelectUSA provides to potential investors, local governments, and economic development organizations, SelectUSA held the first annual SelectUSA Investment Summit October 31-November 1, 2013, in Washington, DC, and more than 650 international participants attended.

来自全球各地的 650 多名代表参加了本次峰会。

与全球绝大多数国家相比，美国对待外国投资的态度十分开放。美国对企业可新投资的领域未作任何限制。对外资并购也未设立任何正式的审批程序，仅仅是在涉及国防和国家安全时才需要经过审批。美国不会要求外国公司与美国公司成立合营企业。美国政府仅在外商投资极少数领域（如媒体和民用航空器）的时候才对外资所有权占比设上限。值得一提的是，如果中海油收购尼尔森或者双汇收购史密斯菲尔德案发生在中国，即一家外国企业准备收购一家占据市场龙头地位的中国公司，中国政府肯定不会批准这两个收购案。

尽管美国对外国投资相当开放，但很多中国投资者却由于对国家安全审查程序（由美国外国投资委员会（CFIUS）进行审查）缺乏足够了解而认为美国并不欢迎中国投资者。然而荣鼎集团的研究显示，2013 年，大多数拟在美投资的中国企业都能顺利走完 CFIUS 程序，获得审批或者找到其他妥协方案，而与 CFIUS 审批无关的商业因素才是导致投资交易失败的最重要的原因。事实上，每年只有约百分之五的外资并购交易需要接受 CFIUS 审查。

为了增进对 CFIUS 程序的了解，促进中国对美投资，我们建议 CFIUS 更新其发布的涉及国家安全考虑的交易审查案例指南，因为当前版本的指南已经有五年没有更新。此外，如果 CFIUS 能够在其年报中披露有关交易案审批或调查平均所需时间，且按照投资者来源国和投资领域进行分类，将有助于改善现状。

现存监管问题

缩小外商投资审批范围，简化外商投资审批程序

尽管事实证明外商投资极大地促进了中国经济的发展，外资在华投资却面临着诸多障碍。与中国同行相比，外国投资者承受了更多的投资限制和更繁琐的审批程序。《外商投资产业指导目录》长度惊人且覆盖 52 大类，170 多个子类；中资投资目录却只有几页纸，只包括 13 大类，7 个子类。国内投资者投资中资投资目录之外的大部分产业都不需要经过发改委审批，而与之形成鲜明对比的是，外商境内投资诸多重点领域且投资额较大的，绝大多数都需要经过发改委的审批。另外，国内投资者一般也不需要经过商务部的审批，但外国投资者进行的境内投资基本上都需要取得商务部的审批。

即使中资投资项目属于内资目录管控内容，且需要经过发改委审批的，内资投资审批程序也往往比外资投资相同产业所要经历的审批程序要简便快捷得多。比如，内资投资汽车制造业需要经过发改委的项目审批，外资投资该产业则需经国务院审批。就算法律法规中没有明确规定内外资投资者的差别待遇，实践中审批机关往往还是对内外资投资审批申请进行差别对待。

许多领域的投资改革已经在上海自贸区进行试点，且得到了三中全会决议的肯定和支持。尽管相关重要实施细节尚待明确，但毕竟这些改革是在朝着简化投资审批程序、保障中外投资者开展公平竞争的正确方向迈进。外国工商界尤其深受鼓舞的是，中国转向负面清单管理模式的决定。在这种模式下，外商投资任何未列入负面清单的领域就可以仅办理工商备案，而无需再经历商务部和／或发改委的投资审批程序。

然而中国美国商会也希望，尽管上海正在部署和改进改革试点，与此同时中国政府还应当继续简化现行的全国适用的外商投资审批程序，以期最终在全国范围内实现有限的负面清单管理。

这种国家层面的暂行改革措施可包括减少所要求的审批数量，改善投资环境。作为第一步，我们鼓励中国先允许外商投资“鼓励类”产业实施备案制，不再要求事先获得商务部和发改委的项目审批和外商投资审批。从中期来看，中国应当更加全面地推行国民待遇原则，对境内外国投资者与本国投资者执行同一审批程序（但作为例外，可以对少量的外商投资项目实行国家安全审查，如同美国对外国投资所采取的审查制度一样）。这将意味着不再需要发改委的项目审批和商务部的外商投资审批，实施项目审批的范围将大大缩减，仅需对国内投资目录中的项目实行项目审批制。这也将意味着不再需要对外商投资产业单独（范围正在逐步扩大）制定目录。

我们鼓励中国全面取消对外资和内资投资目录和项目审批制度，代之以投资行政备案制（但其他类型的审批，如反垄断审查、国家安全审查以及环保审批等应予保留）。唯独需要审批的外商投资应当局限于在上海自贸区内试行的负面清单，但我们同时也鼓励中国政府大幅缩减和改进当前的上海自贸区负面清单。鉴于美国不对中国或其他外国投资者作外商投资审批或项目审批要求，也没有通过投资目录进行投资限制，对于不存在国家安全担忧的内外资企业境内投资也没有实施差别对待，这将使中国能够更全

When compared to most other countries around the world, the US is remarkably open to foreign investment. There are no restrictions in the US on sectors in which foreign companies can make new (greenfield) investments. There is no formal approval process for foreign acquisitions, with the narrowly defined exception of those related to defense and national security. No foreign company is ever required to undertake a joint venture with an American company. The government imposes caps on foreign ownership in only a few sectors, such as media and civil aviation carriers. It is also relevant to note that had the successful CNOOC-Nexen or Shuanghui-Smithfield acquisitions involved a foreign company acquiring a market-leading Chinese company, neither deal would likely have been approved by the Chinese government.

Despite remarkable US openness to foreign investment, some Chinese investors perceive the US as unwelcoming of Chinese investment due to an insufficient understanding of the national security review process (as conducted by the Committee on Foreign Investment in the United States, or "CFIUS"). Nevertheless, according to Rhodium Group research, most Chinese firms have proven able to successfully navigate the CFIUS process or find mitigation solutions, and commercial factors unrelated to CFIUS approval were the most important reasons for collapsed deals in 2013. In fact, each year, only approximately five percent of all foreign mergers and acquisitions require CFIUS review.

To improve understanding of the CFIUS process and increase Chinese investment in the US, we recommend updating the published guidance on the transactions that have been reviewed and presented national security considerations, as the current version has not been updated in over five years. Additionally, in its annual report, it would be helpful if CFIUS published statistics on the average time to complete a review or investigation, broken down by country of the investor and sector.

Ongoing Regulatory Issues

Narrowing and Streamlining the Foreign Investment Approval Process

Despite the proven benefits of foreign investment to China's economy, foreign investors face numerous obstacles to investing in China while domestic investors face significantly fewer investment restrictions and less onerous approval procedures. Whereas the Foreign Investment Catalogue is quite lengthy and covers 52 categories and more than 170 subcategories of industries, the Domestic Catalogue is only several pages long and covers only 13 categories and seven subcategories of industries. The large number of industries outside the Domestic Catalogue that do not require NDRC approval for investments by domestic investors stands in sharp contrast to the requirement that NDRC approval be obtained for the majority of large inbound foreign investments in many key sectors. Similarly, while MOFCOM approval is generally not needed for domestic investors, foreign investors must obtain MOFCOM approval for almost all inbound investments.

Even where domestic investment falls within the Domestic Catalogue and requires NDRC approval, the domestic investment approval process is often less onerous than the process for foreign investment in the same industry. For example, although domestic investment in automobile manufacturing requires NDRC project approval, foreign investment in this sector requires State Council project approval. Even where regulations do not provide for disparate treatment of foreign and domestic investors, agencies often, in practice, treat applications of these parties differently.

Though significant implementation details remain to be clarified, many of the investment reforms being piloted in the Shanghai FTZ and contemplated in the Third Plenum Resolution are moving in the right direction toward streamlining the above described approval processes and putting foreign investors on a more level playing field with domestic investors. The foreign business community is especially encouraged by the decision to rely on a negative list for foreign investment approvals, allowing investments in any sector not included on the negative list to simply file for the record rather than undergo MOFCOM and/or NDRC investment approval processes.

AmCham China hopes, however, that while pilot reforms are rolled out and refined in Shanghai, the Chinese government will simultaneously continue to streamline the existing national foreign investment approval processes, with the ultimate goal of instituting a limited negative list nationwide.

Such interim reforms on the national level could include reducing the number of approvals required. As a first step, we encourage China to allow investments in "encouraged" sectors to be filed for the record, without the need to obtain project and foreign investment approvals from MOFCOM and NDRC. In the medium term, China could implement more fully the principle of national treatment by applying the same approval processes to inbound foreign investment that it applies to domestic investors (except that foreign investment in limited instances may still be subject to national security review, as is the case for inbound investment into the US). This means that the need for both project approval by NDRC and foreign investment approval by MOFCOM would be eliminated, and the range of projects subject to project approval would be significantly reduced to include only those covered by the Domestic Investment Catalogue. The need for a separate (and much larger) catalogue covering foreign investment would be eliminated.

We encourage China to eliminate all investment catalogues and project approvals, both domestic and foreign, and replace them with a system of administrative filing of investments

面地履行互惠原则。

按照上述步骤逐步简化投资审批程序不仅能够减轻政府无谓的行政负担，还能使中国吸引更多外商投资，通过外商的投资带来的先进技术、研发、营销和管理经验、增加的就业机会而获益。

抑制外商投资的产业政策

正如美国商会于 2012 年秋季发布的投资报告所述，中国政府官员被明确要求扶植“国企巨头”，特别是战略性新兴产业（SEI）中的国企巨头。中国官员实现上述目标可利用的一个主要途径便是通过境内外商投资审批程序，选择性地允许外国投资者进入中国广阔的国内市场，但前提是要求这些外国投资者承诺与政府倾向的中方合作伙伴组建合资企业、转让技术、在中国建立研发中心，和／或为合资企业提供进入国际市场的渠道。

上述产业政策可能是基于以下错误观念，即如果企业的所有权为中国股东而非外资所掌握，中国从该企业获得的利益更大，即使外资企业是在中国设立的。但是，企业投资和发展对一个国家的贡献并不仅限于对本国所有者或股东的利润分配。外国企业在华投资扩大了中国国内的税基，增加了就业机会，培育了本土供应商，培养了本土人才，分享了宝贵的管理、技术和研发经验，扩大了消费者的选择面等等，不一而足。随着本土劳动力质量的提升，以及中国市场的深化和扩张，所有的市场主体都可以从中获益。外商在华投资和中资在美投资均是如此。

中国美国商会鼓励中国政府认可外商投资为中国经济发展带来的诸多益处，减少对外商投资的条件和限制。特别是缩小《外商投资目录》和上海自贸区负面清单中“禁止类”和“限制类”产业的范围，减少对设立合营企业的要求，全面履行入世承诺，不再将本地研发、技术转让或其他业绩要求（不管是口头还是书面要求）作为授予外商投资审批的条件。同样地，我们提醒美国政府和国会注意到中国投资给美国带来的许多益处，并鼓励美国领导层切勿将投资问题政治化。

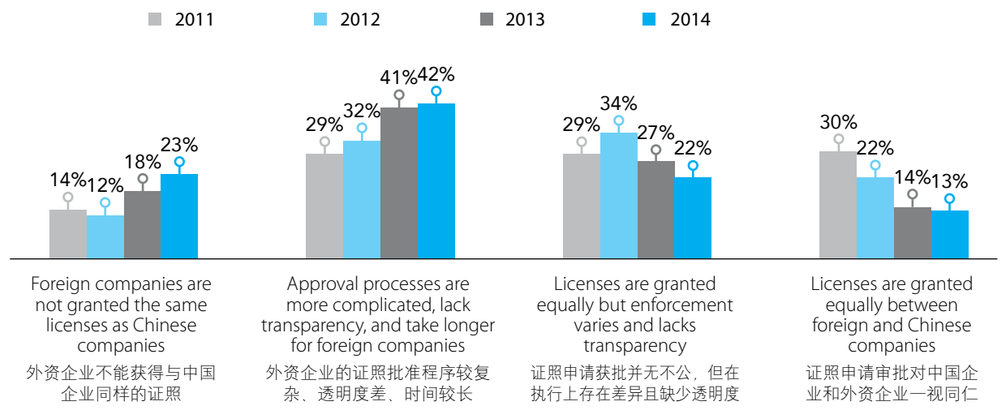
不透明的境内外商直接投资审批程序

如果相关部门愿意，相对不透明的境内外商直接投资审批程序使得中国的投资审批部门在审批中能够偏向国内投资者而不是国外投资者，有时甚至都没有书面依据，自然也就无法证明那些明显违反中国入世承诺或是违反“国民待遇”原则的歧视性法律法规的存在。依据措辞模糊的明文规则或是不成文的潜规则，审批机关经常无需明言就将外国投资挡在了某个领域之外。

政府官员仅仅通过不予颁布外商投资某些行业的投资和审批标准及程序，就能有效地将外资阻挡在上述行业之外。外资电子支付服务公司许多年以来一直面临着这一障碍，尽管世界贸易组织于 2012 年 7 月做出了一项要求中国消除这一障碍的裁决，但中国仍有待制定一套许可审批制度（详情请参阅《电子支付服务》一章）。

最后，审批程序的相对模糊性和审批机关掌握宽泛的

Q How are license approvals handled in your industry? (2011-2014)
企业所在产业相关许可申请情况（2011-2014）



for the record (though other types of approval, such as anti-monopoly, national security, and environmental approvals would remain). The only foreign investments that would require approval would be those included on the negative list that is being piloted in Shanghai, although we encourage the Chinese government to significantly shorten and refine the Shanghai negative list from its current lengthy form. This would enable China to more fully fulfill the principle of reciprocity, given that the US does not require foreign investment or project approvals for Chinese or any other foreign investment, does not restrict investment through an investment catalogue, and does not distinguish between foreign or domestic companies for the purposes of investments that do not implicate national security concerns.

Streamlining the investment approval processes in this step-by-step way would not only reduce unnecessary administrative burdens on the government, but would also enable China to benefit from greater foreign investment and the accompanying technological, research and development (R&D), marketing and management expertise, and employment opportunities that foreign investors provide.

Industrial Policies That Inhibit Foreign Investment

As described in the U.S. Chamber of Commerce Investment Report released in Fall 2012, Chinese government officials are expressly required to foster the development of "national champions," especially in "strategic emerging industries" (SEIs). One of the key tools available to Chinese officials for doing so is the inbound foreign investment approval process, which can be selectively used to grant foreign investors access to China's large domestic market in exchange for commitments to establish joint ventures (JVs) with favored Chinese partners, transfer technology, establish R&D capabilities in China, and provide the JV with access to international market channels.

These industrial policies may be based on the mistaken view that if a company is owned by Chinese shareholders, then China will benefit more than if the company is foreign-owned, even if the foreign-owned company is established in China. However, a country benefits from investment and growth of companies in many more ways than through the simple distribution of dividends to domestic owners or shareholders. Investment by foreign companies in China expands the local tax base, creates jobs, fosters development of domestic suppliers, contributes to development of the local work force, disseminates valuable managerial, technical, and R&D expertise, and expands consumer choice, among many other benefits. As the quality of the work force rises and the market deepens and expands, all market participants benefit. This is true for both foreign investment into China and Chinese investment into the US.

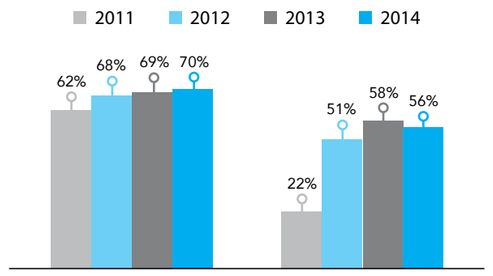
AmCham China encourages the Chinese government to recognize the various benefits that foreign investment provides to the Chinese economy by reducing conditions and restrictions on foreign investment. In particular, this could include reducing the number of sectors in the Foreign Investment Catalogue and the Shanghai FTZ negative list that are prohibited, restricted, or that require JVs, and more fully implementing World Trade Organization (WTO) commitments to not condition foreign investment approval upon R&D, technology transfer, or other performance requirements (whether imposed orally or in writing). Likewise, we remind the US government and Congress of the many benefits of Chinese investment into the US and encourage US leaders to avoid politicizing such investment.

Opaque Inbound FDI Approval Processes

The relatively opaque nature of inbound FDI approval processes enables China's investment approval authorities to favor domestic competitors over foreign investors, should they so desire, without leaving a paper trail of discriminatory written regulations that could clearly breach China's WTO obligations or otherwise violate the principle of "national treatment." Vaguely worded or unpublished rules or requirements are often applied in ways that impede foreign participation in a given sector without expressly stating this goal in writing.

Government officials can also effectively block foreign investment simply by failing to promulgate the investment and licensing approval requirements and procedures applicable to foreign investors in those sectors. Foreign-invested electronic payment services companies have faced this obstacle for many years, as China has yet to establish a licensing approval regime for such companies despite the July 2012 WTO ruling ordering China to do so (see the Electronic Payment Services chapter).

How do licensing requirements impact your business (2011-2014)?
证照申请对企业的影响（2011-2014）



自由裁量权造成了审批机关可以在任何法律明文要求之外，对具体的案件附加特定条件，通常是将技术转让作为取得市场准入的条件，或者是作为支持产业政策和本地竞争者利益的条件。

鉴于审慎调查对于企业的投资决定至关重要，限制外国企业在投资中国前开展审慎背景调查又进一步加剧了审批程序缺乏透明度的状况。这种限制使得这些企业面临巨大风险，其投资意愿受到打击。

为了解决上述问题，中国美国商会鼓励中国政府对现行投资审批程序进行修改，确保投资审批部门不再对外商投资提出"扭曲贸易"的要求，只要项目和投资申请不违反相关法律和法规，即予以审批通过。我们还建议中国政府允许外国投资者与中方合作伙伴共同提交合营企业投资申请并直接与审批机构沟通联络。以上措施将有助于提高审批透明度，鼓励外商扩大在华投资。

征求利益相关方、专家和政府部门的意见

按照包括《反垄断法》在内的各种法规，政府部门必须或者自行决定征求国内重点利益相关方的意见，包括本土竞争者的意见，并考虑其对拟订交易的反应。对于评估正在进行的审批应该（或不应该）考虑哪类反馈或应该（或不应该）如何考虑该反馈意见，尚未制定任何法定标准。上述意见征求的时间安排也常常不明确。围绕这些意见征求，不仅没有公开的意见征集程序，同时还缺乏一定的明确性，增加了审批程序中的不确定性和模糊性，也使中资企业有机会通过不恰当地影响审批机关来取得优势。

中国美国商会鼓励中国政府进一步具体规定相关审批部门在评估投资申请时予以考虑的利益相关方反馈意见的类型，并且向征求意见的利益相关方、专家、其他政府部门公布审批程序及其时限。

上诉程序

尽管中国法律允许对否决外商投资审批申请的决定进行上诉，但在实践中却很难获得有效的上诉支持。对比之下，美国的监管机构却经常因此被诉，且原告经常胜诉。

由于相关主管部门否决投资申请的理由非常宽泛，且外商投资者难以收集投资审批存在不当行为的有力证据，又担心受到报复，因此他们一般不愿意寻求行政复议或司法审查救助。这进一步滋养了审批机关借助审批程序对外资企业实施歧视的环境。

中国美国商会建议中国政府制定明确的项目审批和投资审批标准，只要投资和项目不违反相关法律或法规即予以批准。同时审批机关在否决申请时，应在规定的时间内以书面形式告知申请人否决申请的理由，从而使中国更好地履行对世界贸易组织的承诺。上述规定不仅能够提升中国行政复议和司法审查程序的有效性，还有助于遏制非法和不当行为，保障政府官员的公信力。

建 议

对中国政府：

- **继续寻求并考虑采纳外资商界有关全国及上海自贸区现行外商投资管理体系改革的意见。**
- 在下一版的《外商投资产业指导目录》和上海自贸区负面清单中减少对外商投资的行业限制，进一步优化和减少限制、禁止外商投资或要求设立合营企业的行业数量。
- 修订中央和地方的投资审批程序，规定只要项目或投资申请不违反相关法律、法规，就应当予以批准。
- 进一步明确审批征求意见阶段纳入考量的利益相关方反馈意见的类型，公布征求利益相关方、专家和其他政府部门意见的时限，以及其他目前尚未明确规定时限的审批项目的审批时限。
- 允许外国投资者与合营企业中方合作伙伴共同提交合营企业投资审批申请，允许外国投资者直接与审批机关进行沟通联络。
- 进一步采取相关措施，全面履行世界贸易组织和双边协定中的相关承诺，废除将研发、技术转让或其他（口头或书面）要求作为投资审批之前提的做法。

对美国政府：

- **通过以下举措增进对 CFIUS 国家安全审查程序的了解：**
- 发布更新版的 CFIUS 交易审批指南，强调不管投资者来自哪个国家，审批应依据国家安全考虑；
- 在 CFIUS 年报中公布有关 CFIUS 审批或调查

Finally, the relative opacity of the approval process and the broad discretion granted to the authorities foster an environment where government authorities can impose deal-specific conditions beyond any written legal requirements, often with the intent to force technology transfer as a condition of market access or support industrial policies and the interests of local competitors.

This lack of transparency in the approval process is exacerbated by restrictions that prevent foreign companies from performing due diligence background investigations prior to investing in China—a vital process in any business decision. Such restrictions put these companies at significant risk and discourage investment.

To address these concerns, AmCham China encourages the Chinese government to modify its investment approval processes to ensure that trade-distorting conditions on foreign investment are not imposed by investment approval authorities and that projects and investments are approved unless they violate specific laws and regulations. We also recommend that the Chinese government allow foreign investors to participate with their partners in submitting JV investment approval applications and communicating directly with approval authorities. Increasing transparency in these ways will increase efficiency and encourage greater foreign investment in China.

Consultation with Stakeholders, Experts, and Government Agencies

Under various regulations, including the Anti-Monopoly Law, government agencies are required or have the discretion to consult key domestic stakeholders—including local competitors—and take into account their reactions to proposed transactions. No legal criteria have been outlined regarding what type of feedback should (or should not) be considered or how that feedback should (or should not) be taken into account when evaluating the approval at hand. The timelines for such consultations are also often not specified. The absence of a public comment docket and lack of clarity surrounding these consultations increases uncertainty and opacity while also providing opportunities for Chinese companies to gain advantage by improperly influencing the approval authorities.

AmCham China encourages the Chinese government to further specify the type of stakeholder feedback that can be taken into consideration when evaluating investment applications, and to publish time lines for stakeholder, expert, and outside government agency consultations and other approval process steps that currently lack deadlines.

Appeal Processes

Although Chinese law allows for review of unfavorable foreign investment approval decisions, in practice it is extremely difficult for applicants to obtain effective recourse. In contrast, regulators in the US are commonly sued and plaintiffs often prevail.

Very broadly defined grounds for denying investment applications, difficulty producing solid evidence of inappropriate conduct, and fear of retribution often discourage foreign investors from seeking administrative or judicial review of investment approval decisions. This fosters an environment where approval authorities are able to use approval processes to discriminate against or extract concessions from foreign firms.

AmCham China recommends that the Chinese government establish clear criteria requiring approval of projects and investments unless they would violate specific laws or regulations if approved. Such criteria would supplement and make more meaningful China's existing WTO obligation to provide, if an application is denied, a written statement within a prescribed deadline detailing the reasons for the denial. This would not only improve the effectiveness of the administrative and judicial review procedures in China but would also help curb unlawful and inappropriate conduct and ensure accountability of government officials.

Recommendations

For the Chinese Government:

- **Continue to engage and take into consideration input from the foreign business community regarding ongoing foreign investment management system reform initiatives nationwide and in the Shanghai FTZ.**
- Loosen sectoral restrictions on foreign investment in future iterations of the Foreign Investment Catalogue and the Shanghai FTZ negative list, and further refine and minimize the number of sectors that are restricted, prohibited, or require JVs.
- Modify investment approval procedures at both the national and local level to require that projects and investments be approved unless they violate specific laws and regulations.
- Further specify the type of stakeholder feedback that can be taken into consideration when evaluating investment approvals, and publish time lines for stakeholder, expert, and outside government agency consultations and other approval process steps that currently lack deadlines.
- Allow foreign investors to participate with their proposed JV partners in submitting JV investment approval applications and communicating directly with approval authorities.
- Take further steps to implement more fully WTO and bilateral commitments not to condition investment approval upon R&D, technology transfer, or other (written or oral) requirements.

案件平均所需的时间，并且按照投资者来源国和行业进行细分；

- 继续采取相关措施，鼓励中国扩大在美投资。

对两国政府的建议：

- **优先进行积极的中美双边贸易协定谈判，且在协定中包括以下内容：**
  - 对投资前阶段做出规定，并采用“负面清单”管理模式；
  - 确保外商直接投资审批程序的透明度；
  - 允许包括外国投资者在内的所有投资者在投资申请被不合理地驳回时能够通过合适的渠道进行申诉；
  - 营造并维护保障私营企业和国有企业、外资企业和内资企业公平竞争的环境；
- 巩固现有对话和研究体系，对两国的外商投资审批程序分别进行回顾性检查，明确双方投资所面临的障碍，确立优化审批程序的改革措施，增进两国间互惠双边投资。

For the US Government:

- **Seek to improve understanding of the CFIUS process by:**
  - Publishing updated guidance on the transactions that have been reviewed by CFIUS and have presented national security considerations—regardless of the home country of investor.
  - Publishing in the CFIUS annual report statistics on the average time to complete a review or investigation, broken down by country of the investor and sector.
- Continue to support initiatives to encourage increased Chinese investment into the US.

For Both Governments:

- **Prioritize negotiation of a robust US-China bilateral investment treaty that:**
  - Covers the pre-establishment phase of investment and uses a negative list approach;
  - Ensures FDI approval processes are transparent;
  - Allows all investors, including foreign investors, to have appropriate recourse if their investment is denied for improper reasons; and
  - Establishes and maintains equal competition among private and state-owned as well as foreign-invested and domestically invested companies.
- Build on existing dialogues and research initiatives to examine Chinese and US foreign investment approval procedures, identify obstacles to investment in both countries, and identify reforms that could streamline approval processes and increase mutually beneficial bilateral investment.

Standards, Certification, and Conformity Assessment

Introduction

China's standardization system continues to grow rapidly, both in terms of the development of new standards and the revision and implementation of existing ones. AmCham China welcomes the positive developments in China's standardization system, including increased participation by foreign-invested enterprises (FIEs) in standards development and increased transparency in the standards notification and development process.

Despite this progress, China's standards system still imposes a number of barriers to market entry that remain a concern for AmCham China member companies. In order of significance, these barriers include:

1. the continuing inability of US testing organizations to obtain accreditation and carry out testing in China for all areas despite China's commitment at the 2012 US-China Joint Commission on Commerce and Trade (JCCT) to lift this barrier;
2. the refusal by some Chinese committees to adopt existing international standards, including those created by US-based standard bodies that are largely made up of and driven by international industry, such as the IEEE, despite encouragement from the Chinese government to do so;
3. the inability of FIEs to fully participate in all phases of China's commercial standards development; and
4. China's inconsistency in providing full transparency across all standards development and implementation processes.

To address these issues, a cooperative approach would benefit both the US and China. Creating a strong standards system in China would help regulate the market and promote the development of advanced technology. To that end, AmCham China proposes increasing cooperation between US industry and their Chinese government and industry counterparts to promote China's further integration into the international standards-setting process, China's adoption of internationally accepted standards, and its acceptance of foreign testing organizations. AmCham China believes all of these would benefit China with regard to its own innovation, attracting greater foreign investment and research and development while advancing the acceptance of Chinese-developed standards internationally.

Ongoing Regulatory Issues

Follow-through on Commitment Regarding Qualified Non-Chinese Testing Organizations

For years, China has restricted and controlled which organizations are allowed to perform testing for the China Compulsory Certificate (CCC). To date, only Chinese testing organizations have been certified to perform the testing. At the 23rd JCCT in December 2012, according to US briefing documents, "China confirmed that eligible foreign-invested testing and certification entities registered in China can participate in CCC mark-related work and China's review of applications from foreign-invested entities will use the same conditions as are applicable to Chinese domestic entities." Since then, however, no action has been taken to implement this commitment.

US third party testing bodies continue to be restricted to acting as an "agent" for customers seeking CCC testing for the China market. This means they are only able to facilitate the process, which includes ensuring that the documentation is in compliance with the related certification requirements and coordinating with local accredited testing labs and certification bodies on behalf of their manufacturing customers. However, they are prevented from performing related tests or issuing the related mark or approval. In order to fully implement China's JCCT commitment, AmCham China believes concrete steps need to be taken, including releasing a specific timeline and outlining a process for issuing a call for applications from foreign-invested and domestic third party testing organizations that would cover all CCC product areas.

Recognition and Adoption of International Standards and Due Process

Over the past two years, China's government and its industries have embraced some international standards, including those developed by standards development organizations (SDOs) located in the US. However, much more progress is needed in this area, as this partial harmonization between

标准、认定和合格评定

引 言

中国标准化体系建设在新标准制定与现有标准修订和实施两个方面继续迅速推进。中国标准化体系取得了积极进展，这些进展主要体现在外商投资企业（FIEs）对标准制定参与度的提高，以及标准通报和制定过程透明度的增加，中国美国商会对此表示欢迎。

尽管如此，中国的标准体系给市场准入施加的诸多障碍仍令中国美国商会的会员企业担忧。按重要性排列，这些障碍包括：

1. 尽管中国在中美商贸联合委员会（商贸联委会）会议上承诺消除相关障碍，但是美国检测机构仍然难以获得资格认可，因而无法在中国开展各领域的检测业务；
2. 即便中国政府鼓励接受国际标准，仍有一些中国的机构拒绝认可由设在美国的标准机构制定的现行的国际先进技术标准，尽管此等机构，如电气电子工程师协会（IEEE）是由国际业界组成和推动；
3. 外资企业不能充分参与各个阶段的中国商业标准制定；及
4. 在各项标准制定和实施过程中不能始终保持完全透明。

采取合作的方式处理上述问题将有益于中美两国。在中国建立完善的标准体系将有助于对市场的监管，且能促进先进技术的开发。为此，中国美国商会建议加强美国业界与中国政府及中国业界的合作，以推动中国进一步融入国际标准制定进程、采用国际公认标准并认可国外的检测机构。中国美国商会认为所有这些措施将有益于中国的创新，从而使中国吸引更多的外国投资和技术研发，使中国制定的标准得到国际认可。

现存监管问题

充分履行有关符合条件的非中资检测机构的承诺

多年来，中国对获准进行中国强制性产品认证（CCC）检测业务的机构施行限制和控制。至今，只有中资检测机构获得允许开展此项检测业务。据美国的简报文件，在2012年12月举行的第23届中美商贸联委会（JCCT）上，"中国确认在华注册的合格外资检测认证机构可以参与中国强制性产品认证标志有关的工作，并且中国审查外资机构提出的申请时将适用与中国国内机构相同的条件。"但是自那时起，中国并没有采取任何行动来履行这一承诺。

美国第三方检测机构继续受到限制，仅可以作为"代理人"，帮助客户在中国市场申请CCC 认证。这意味着美国检测机构只能作为制造业客户代表协助认证，包括确保所有的申请文件全部符合相关认证要求并负责与当地已经认可的检测机构和认证机构进行沟通协调，但不得直接检测、发放相关标志或出具核准证书。为充分履行中国在中美商贸联合委员会上的承诺，中国美国商会希望中国能够采取具体措施，包括公布一份明确的时间表，对涉及所有CCC产品领域的外资和国内第三方检测机构提出的申请要求出台相关程序。

国际标准的认可和采用以及科学程序

过去两年来，中国政府及其各行业接受了一些国际标准，包括位于美国的标准制定机构（SDOs）制定的标准。但是，在这一领域还有待取得更多的进展，因为这种国际标准和中国标准部分接轨的情况仍然是许多在华外资企业严重关注的问题。今年，国际标准化组织（ISO）选择了一名中国公民担任主席，国际电工委员会（IEC）也选择了一名中国公民担任副主席。中国美国商会很高兴地看到中国能够更多地参与国际标准组织的工作，但同时我们也希望中国能够像对待ISO和IEC一样平等地接洽和接受其他符

international and Chinese standards still remains a serious concern for many foreign companies in China. This year, the International Organization for Standardization (ISO) elected a Chinese national as president, and the International Electrotechnical Commission (IEC) elected a Chinese national as Vice Chair. While AmCham China is glad to see this greater involvement in international standards, we hope that China will equally engage with and accept other SDOs that meet international standard requirements of the World Trade Organization (WTO), as it has with the ISO and IEC.

In addition, many Chinese standards committees continue to create unique Chinese standards where internationally accepted technical standards already exist. These Chinese standards, which are often fragmentary adoptions and extractions from the existing international standards, are duplicative, create trade barriers restricting market entry or foreign technology imports, and hinder the export of Chinese technology to the global market.

From a practical point of view, no government, individual, or group of SDOs can singularly lead standards development for the innumerable technologies and applications in the global market. It is essential, therefore, that regulators be open to all existing globally recognized SDOs, including those that are US-based. Regulators should also base the decision to adopt a standard on the principles and due process of standard development, which include open participation, transparency, impartial voting rights, and consensus. In particular, the technical quality and market relevance of the standard, as accepted by users in the marketplace, should be given weight. By accepting these SDOs and by following these principles for adopting standards, AmCham China believes the Chinese government will not only improve its standards system but also promote the competitiveness of Chinese technologies and products in the global marketplace.

Therefore, AmCham China strongly urges the Chinese government to officially broaden its recognition of international SDOs beyond the ISO, IEC, and ITU to any organization that follows the WTO Technical Barriers to Trade (WTO/TBT) principles of transparency, openness, impartiality and consensus, relevance and effectiveness, coherence, and incorporation of developing country interests as detailed in WTO G/TBT/1/Rev.8. AmCham China is confident that US SDOs meet these qualifications.

Participation of Foreign-Invested Enterprises in Standards Setting

Standard quality is of critical importance to China's ICT industry as it enables companies to optimize investment, drive innovation, ensure interoperability, and safeguard information security. SDOs open to all interested parties ensure the development and adoption of high quality standards that yield global value and, more importantly, do not create conflict with existing internationally accepted global standards. In particular, SDOs could potentially serve as the vehicle to foster Chinese ICT industry growth by enriching its standards development process with foreign global ICT companies' experience and technological expertise.

Currently, in China's ICT industry, some technical committees (TCs) and subcommittees (SCs) limit or preclude foreign-invested enterprise (FIE) participation in the standards drafting process. For instance, TC8 of the China Communications Standards Association (CCSA) does not permit FIE participation in TCs or SCs, and China's Information Security Standardization Technical Committee (TC260) only permits FIE participation subject to TC or SC discretionary approval. FIE participation is often granted under "Observer" status with limited or no voting rights, TC electorate eligibility, standard drafting participation, and is often subject to inflated membership fees.

AmCham China recommends that the Standardization Administration of China (SAC) ensure all SDOs and working groups are open, transparent, and equitable to foreign and domestic companies alike by granting the same opportunities and rights to participate in the standards drafting process regardless of shareholder nationality. By adopting a more open attitude and welcoming foreign expert technical suggestions and opinions from global enterprises, China can minimize domestic and global standard compliance conflicts, facilitate the internalization of domestic firms, and enhance competitiveness in the global marketplace.

New Developments in Rulemaking

China's standardization authorities are continuing to improve their understanding of the intellectual property issues involved in standards setting and implementation. In December 2013, the SAC and the State Intellectual Property Office (SIPO) jointly promulgated the long-discussed "Regulatory Measures on National Standards Involving Patents (Interim)" based on public comments. The general approach adopted in the effective rules is consistent with international best-known practices—seeking RAND-based licensing commitments from essential patent holders, rather than resorting to compulsory licenses. However, we also note the Measures still include provisions that can be onerous or even unworkable. For example, during a standard development or amendment process, Article 19 of the Measures requires that, if a prior standard which involves patents is normatively referenced, patent holders shall be requested to give patent licensing statements again. This request may be onerous to the patent holders, and it may be even harder to implement when the said patent holders are not participating in the new standard setting activities.

Consortia Standards

China currently has a government-driven standardization process led by government or government-affiliated agencies. Industries with an interest in developing a particular

合世界贸易组织（WTO）国际标准要求的标准制定组织。

另外，在国际普遍认可的技术标准已经存在的情况下，中国许多标准委员会继续制定独特的中国版标准。这些中国版标准往往零散地借鉴和吸收各种现有国际标准，是一种重复并造成贸易壁垒，限制市场准入或外国技术进口，同时也阻碍了中国技术向全球市场的出口。

从实践角度讲，由于全球市场上的技术及其应用数不胜数，没有任何单独的一个政府、个人或几个标准制定机构能够独自承担全球市场上所有标准的制定任务。因此，至关重要的是监管者应该以开放的态度面对所有的标准制定机构，包括那些设在美国且已获得全球认可的标准制定机构。在采用某项标准时，监管者还应根据标准制定的原则和科学程序做出决定，这些原则和科学程序包括公开参与、透明度、公平的表决权以及协商共识。尤其是应重视标准的技术品质和市场相关度，即市场上用户的接受程度。中国美国商会相信，中国接受这些标准制定机构并遵循这些标准采用原则不仅将有助于改善中国的标准体系，而且有助于提升中国技术和产品在全球市场中的竞争力。

因此，中国美国商会强烈促请中国正式放宽认可国际标准制定机构的范围，从国际标准化组织（ISO）、国际电工委员会（IEC）和国际电信联盟（ITU）扩大至其他遵循世界贸易组织贸易技术壁垒协定（WTO/TBT/1/Rev.8）中规定的所有标准制定机构，规定包括透明、公开、公正与协商共识、相关性与有效性、协调性、以及兼顾发展中国家利益。中国美国商会相信设在美国的标准制定机构均符合上述要求。

外资企业参与标准制定

标准质量对中国的信息和通讯技术产业至关重要，因为它能够使公司优化投资、推动创新、保证互用性并且保障信息安全。标准制定机构应向所有利益相关方开放，以确保所制定和采用的高质量标准能产生全球价值，并且更为重要的是不会与国际普遍认可的现有全球标准发生冲突。尤其是，标准制定机构能够利用国外全球性信息和通讯技术公司的经验和技术知识来丰富标准制定程序，从而担当培育中国信息和通讯技术产业增长的潜在工具。

目前，在中国的信息和通讯技术产业界，有些技术委员会和技术分委会限制或阻止外资企业参与标准的起草过程。比如，中国通信标准化协会第 8 技术委员会不允许外资企业参与技术委员会或技术分委会，中国信息安全标准化技术委员会（第 260 技术委员会）虽然允许外资企业参与，但要经技术委员会或技术分委会裁量批准。外资企业往往被允许以“观察员”的身份参与，其投票权、技术委员会选举资格以及参与标准起草工作都受到限制或根本没有，并且经常要交纳高昂的会员费。

中国美国商会建议，中国国家标准化管理会（国标委）应确保所有标准制定机构和工作组对外资企业和中资企业同样公开、透明和平等，在标准起草过程中给予参与者相同的机会和权利。通过采取更为开放的态度并且对全球企业提供的外国专家技术建议和意见持欢迎态度，中国就能最大程度地消除国内标准与全球标准不相符的矛盾，促进国内企业的国际化，提高在全球市场中的竞争力。

规则制定的新进展

中国的标准化部门对标准制定和实施有关的知识产权问题上的理解正在不断深化。2013 年 12 月，国标委和国家知识产权局在征求公众意见后发布了讨论已久的《国家标准涉及专利的管理规定》（暂行）。这部业已生效的《规定》所采用的基本方法与最广为人知的国际通行做法保持了一致——向必要专利权人寻求基于合理无歧视原则的许可承诺而不是采取强制许可。但是，我们也注意到《规定》的某些条文可能仍然过于繁琐甚至不易实行。例如，第 19 条要求，在制修订国家标准过程中，如果引用一项先前的涉及专利的标准，应重新要求专利权人做出专利实施许可声明。这一要求对专利权人而言可能过于繁苛，特别是当上述专利权人没有参与到新标准制定活动中时，这一规定可能就更难于实施。

产业联盟标准

中国目前的标准化过程是由政府推动、并由政府机构或与政府有紧密关系的部门领导的。对有意制定标准的行业，必须首先得到负责标准起草过程的政府机构批准，并成为会员。三中全会之后，为了减政放权，鼓励更多企业参加标准化制定工作，国标委在 2013 年出台了多项政策，促进产业联盟标准化工作。联盟标准化将允许企业携手组成产业联盟，自发地制定自愿性的联盟标准。但某些联盟仍对外资企业的参与表现的犹豫不决。

中国美国商会认为联盟标准化是中国标准化制度发展的正确方向，更符合国际标准制定机构的做法。我们对中国政府在标准制定过程中鼓励企业贡献行业知识所做的努力表示赞赏，并促请中国遵守透明公开的国际规范，确保

standard must request approval to be a member from the appropriate government agency leading the standard's drafting process. Following the Third Plenum of the 18th Party Congress, the SAC issues several policies designed to decentralize and streamline the administrative process, encourage enterprise engagement in the standards drafting process, and promote a consortium standard development process. Although consortia standardization would permit interested companies to join together and form a consortia group to develop voluntary industry standards, some consortia still appear hesitant to allow inclusion of FIEs in the process.

AmCham China members view this development as a positive departure from Chinese standards development practices and more in line with international SDOs. We applaud the Chinese government's effort to integrate industry expertise and request China's adherence to international norms of transparency and openness to ensure equitable participation and fair treatment for all domestically invested enterprises and FIEs alike during the consortia standards participation process. Although industry is excited by consortia standardization developments, it is essential for Chinese regulators and standards committees to provide a clear set of rules and requirements to guide the healthy and orderly development of consortia standards and prevent industry abuse by select interests. AmCham China also requests the Chinese government to clarify its role in overseeing consortia standardization processes and state the inter-relationship between consortia and traditional standardization processes (i.e., industry and/or national standards) to improve industry understanding.

Recent Developments

National Standards Streamlining and Integration Work Plan

In July 2013, the State Council approved the SAC's plan to streamline and integrate mandatory standards to eliminate duplications. The streamlining and elimination of duplicative standards would be a welcome move, which would facilitate FIE compliance to national and industrial requirements.

Recommendations

- **The Chinese government should honor its commitment to allow non-Chinese testing organizations to carry out testing in China by opening up the application process for becoming a Chinese-certified testing authority.**
- Broaden recognition of international SDOs beyond ISO, IEC, and the International Telecommunication Union, to any organization which follows the WTO and technical barriers to trade principles on international standards development.
- The SAC should more closely monitor the activities of TC- and SC-level standards working groups to ensure that FIEs are allowed to participate in all phases of standards development activities on an equal basis with domestically invested enterprises.
- Chinese regulators should adopt existing global technical standards whenever available and avoid creating duplicative national standards or standards that diverge from prevailing global standards.
- Chinese regulators should adhere to international norms of transparency and openness in the consortia standards development process.

所有外资和中资企业在联盟标准制定过程中能平等参与并得到公平对待。尽管行业对联盟标准化制定活动感到兴奋，但至关重要的是中国的监管者和标准制定委员会提供一套清晰的规则和要求，引导联盟标准的健康有序制定，并防止行业为自身的利益而滥用。中国美国商会还促请中国政府明确其在监督联盟标准化过程中所起的作用并说明联盟和传统标准化过程（即行业和／或国家标准）之间的相互关系，以增进行业的理解。

最新进展

国家标准简化和整合工作计划

2013 年 7 月，国务院批准了国标委简化和整合强制性标准以消除重复的计划。简化和消除重复性标准是受欢迎的举措，有助于促进外资企业符合国家和行业要求。

建 议

- **中国政府应通过开放非中资检测机构成为中国认证的检测机构的申请程序，信守允许非中资检测机构在华开展检测业务的承诺。**
- 扩大对国际标准制定组织的认可范围，从 ISO、IEC 和国际电信联盟（ITU）扩大至其他遵循世界贸易组织贸易技术壁垒协定（WTO/TBT）关于国际标准制定原则的标准制定组织。
- 国标委应更密切地监督各技术委员会和技术分委会一级的标准工作组的活动，确保所有在华登记注册的外资企业都能够在与内资企业平等的基础上参与各个阶段的标准制定活动。
- 中国监管者应采用所有可用的现有的全球技术标准，避免制定重复性的国家标准或者与通行的全球标准相背离的标准。
- 中国监管者在联盟标准的制定过程中应坚持透明和公开的国际规范。

Tax Policy

Introduction

Like companies everywhere, American multinational companies seek certainty in their tax liability. In China, such certainty is lacking for the following reasons:

❶ Tax legislation in China is sparse, lacking in specificity, and vague in terminology. This grants broad discretion to relevant administrative agencies who have issued large numbers of circulars and other regulatory documents.

❷ These regulatory documents are often overly vague and at times in conflict with each other. Therefore, they can ultimately raise more questions than they answer.

❸ Facing this imperfect collection of rules, American companies are unable to proactively seek certainty through such tools as advance rulings and advance pricing agreements.

❹ When these rules are eventually enforced, American companies encounter inconsistency in decision-making among tax officials even on routine matters.

❺ Although the regulatory environment in foreign jurisdictions is often supported by case law, which can fill gaps in the interpretation of laws and regulations, in China there is a dearth of case law in tax, so those gaps often remain unfilled.

A combination of these and other factors creates a tax environment that imposes a high level of risk for American and other enterprises. The following recommendations to the Chinese government and the State Administration of Taxation (SAT) suggest ways to reduce uncertainty and provide greater fairness to US companies doing business in China.

Ongoing Regulatory Issues

Burden of Proof

The fundamental tax administration approach in China always places the burden of proof on the taxpayer and is rarely shifted to the tax authorities. In contrast, the US tax system has an elaborate set of rules that detail whether the government or the taxpayer bears the burden of proof to substantiate its case against the other and when the burden of proof is transferred from one to the other. For example, Section 7491 of the Internal Revenue Code states that US federal tax authorities have the burden of proof in any court proceeding with respect to a factual issue if the taxpayer introduces credible evidence with respect to the factual issue relevant to ascertaining the taxpayer's income tax liability.

Some multinational companies often experience difficulties in meeting the extensive documentation requirements imposed by Chinese tax authorities when trying to support legitimate tax positions. An example can be found in the remittance of service fees. When a US parent company renders services mainly from outside of China to its Chinese subsidiary, the US parent company should not be subject to Chinese enterprise income tax on the service fees unless it has a permanent establishment (PE) in China under the US-China bilateral income tax treaty.

Historically, if the US parent company wishes to take a no-PE tax position, such position needs to be agreed to by the Chinese tax authorities when the service fees are remitted out of China. During this process, the US parent company is usually asked to present detailed documentary evidence in Chinese to prove that its service personnel were situated outside of China when the service activities were carried out. These documents include, but are not limited to, service contracts, detailed travel records of US service personnel, timesheets by tasks and locations, group organizational charts, internal announcements, meeting minutes, and email correspondence. Some of these documents are difficult to retrieve and the lists of requested documents often vary by tax authorities in different cities or districts and are sometimes prescribed in a seemingly arbitrary manner. An initial round of requests for documentation is often followed by a fresh round of demands for additional information. Delay in presenting a named document jeopardizes the validity of the no-PE tax position. The sheer volume and the frequency of such information requests often creates significant administrative burdens for multinational companies. In fact, some taxpayers choose to voluntarily relinquish rightful no-PE positions because of the time and effort involved to meet the document requests.

税收政策

引 言

正如世界上所有企业一样，美国跨国公司希望谋求自身在纳税义务上的确定性。但由于下列原因，中国缺乏这种确定性：

❶ 中国的税收立法不足，在内容上偏于笼统，且术语含糊，这使得相关行政机构发布大量通知以及监管性文件，比如公告文件，从而赋予其宽泛的自行裁量权。

❷ 监管性文件通常过于笼统含糊，有时甚至相互矛盾。因此，最终引发的疑问可能比其给出的答案更多。

❸ 面对这些不够完善的各种规定时，美国企业经常无法采用事先裁定、预先定价协议等手段，主动谋求税责的确定性。

❹ 在这些规定执行过程中，美国企业甚至在一些例行业务上也会遭遇税务官员们各自决策不一致的情况。

❺ 在国外司法中，监管体系常常通过判例法支持，所以能填补法律法规解释的不足。然而在中国，由于税收法不采用判例法，这些不足往往难以填补。

上述及其他因素使美资和其他企业在中国面临高风险的税务环境。我们为中国政府和国家税务总局提出下列参考意见，以降低美国企业在中国开展业务面临的不确定性，并提升税务的公平性：

现存监管问题

举证责任

中国税收管理基本方法通常要求纳税人承担举证责任，且这种责任极少转移至税收机关。相比之下，美国税收系统便有一套详尽的法规，详细规定了应该由政府还是纳税人承担举证责任，佐证自身的反驳论点，以及何时转移举证责任。如《美国国内税收法》第 7491 节规定，如果纳税人能在事实认定问题上举出可信证据，证明纳税人的所得税税责，则在任何认定事实的诉讼程序中，举证责任应由美国联邦税务机关承担。

一些跨国公司在说明自己合法税务立场时，往往难以满足中国税务机关提出的大量的举证文件要求。以简单的服务费汇款为例便可见一斑。除根据《中美双边税收协定》所规定，除在中国设有常设机构（PE）情况外，当美国母公司向中国子公司提供服务时，美国母公司获得的服务费不应归属中国公司所得税的征税范畴。

一直以来，此类服务费汇往中国境外时，如果美国母公司希望享受非常设机构纳税者的免税身份时，必须征得中国税务机关同意。在审批流程中，税务机关往往要求美国母公司提交详细的中文版文件证据，以证明其开展服务活动时，其服务人员身处中国境外。这些文件包括但不限于服务合同、美国服务人员的详细旅行记录、按任务和地点分类的工时单、集团组织结构图、内部公告、会议记录和往来电邮。其中有些文件难以找回，且不同城市、不同地区的税务机关所要求的文件清单也往往有所不同，有时文件清单的要求似乎比较武断随意。往往是最开始已经要求提供一批文件，之后还要求提供补充信息。如果某个指定文件延迟提交，随即便会危及非常设机构纳税身份的有效性。这些要求涉及的信息量和频率都使跨国公司承受沉重的行政负担。事实上，由于满足这些文件的要求耗时费力，一些纳税人会选择自愿放弃合法的非常设机构纳税身份。

中国美国商会建议中国政府制定一套法规，在纳税人提交了基于事实的可信的证明材料，并表明其保存有相关的证明和记录材料，承诺材料随时可以供审计的前提下，明确规定举证责任转由税务机关承担的时间。一方面，除非有明确证据证实纳税人提交的信息有误，中国税务机关应采信纳税人提供的信息；另一方面，如果在审计过程中发现任何纳税人提交虚假信息，或纳税身份不实，应对该纳税人处以重罚，以此明确警示所有纳税人。在某些情况下，

AmCham China recommends the Chinese government develop a set of rules dictating when the burden of proof shifts to the tax authority if the taxpayer has submitted credible evidence with respect to the factual issue and indicated that it maintains the proof and records and that it is ready to be audited under the oath of penalty. On the one hand, Chinese tax authorities should trust the information submitted by taxpayers unless there is clear evidence indicating the contrary. On the other hand, if any taxpayer is found to have submitted false information or taken an unsupported tax position during audit, a heavy penalty should be imposed to send a clear message to the tax community. Chinese tax administration and collection law already allow a penalty of up to 500 percent of underpaid taxes in certain situations. Such rules should be rigorously applied in practice. This way, the vast majority of multinational taxpayers, who are law abiding and anxious to comply with Chinese rules, are rewarded by having their burden of proof reduced. The remaining companies that may otherwise consider tax evasions will give serious thought before doing so because of the potential punishment if such behavior is uncovered during subsequent tax investigations.

Advance Rulings

A plethora of surveys on tax risk management regularly highlight the fact that the primary objective for businesses in managing tax risks is to limit unwelcome tax surprises. A system of advance rulings would go a long way toward addressing these risks. With advance rulings, taxpayers can reduce the risk of penalties and interest when taking positions on their Chinese tax returns.

Advance ruling systems are relatively commonplace internationally and exist in many jurisdictions. According to statistics released by the Organization for Economic Cooperation and Development (OECD), 28 of 30 member countries, including Australia, Canada, France, Germany, and the US have implemented advance ruling systems, sometimes referred to as private rulings. Some 12 of 13 major non-OECD countries, including Singapore, South Africa, and Argentina, have adopted similar regimes.

Generally speaking, advance rulings have not been available to taxpayers in China, except for the advance pricing arrangement (APA) program in a transfer pricing setting. In practice, taxpayers often seek oral consultations from local tax officials. Although these oral opinions often provide valuable guidance to taxpayers, they are not binding and cannot provide the level of certainty needed to control tax risks. Chinese tax authorities previously considered rolling out a pilot advance ruling regime, adopting features of other systems in foreign jurisdictions and covering taxpayers with certain eligibility criteria. This would be a positive step to help taxpayers manage their tax risks in China more effectively. AmCham China recommends the acceleration of such an advance ruling system to create a more predictable tax environment for foreign investors.

Transfer Pricing

China has recently been at the forefront in the development of global transfer pricing standards. It has taken a leadership role in relevant efforts at the United Nations and actively participated in the OECD's ongoing projects. The SAT rightly seeks to be a world-class transfer pricing administration, but has been hampered by insufficient resources in the Tax Anti-Avoidance Division (the Division). Fewer than ten officials handle all transfer pricing matters for the SAT, ranging from overseeing audits to negotiating APAs. AmCham China members highly value the availability of APAs to help manage their global tax affairs and prevent double taxation, and are discouraged to see that the SAT's backlog of APA applications numbers more than 100 and continues to grow. AmCham China strongly urges the Chinese government to put more resources into transfer pricing, namely by increasing the number of officials working in the Division.

The SAT is currently updating and modernizing Chinese transfer pricing rules, currently found in Guo Shui Fa [2009] No. 2 "Implementation Measures of Special Tax Adjustments" (the Measures). AmCham China applauds this effort and offers two specific recommendations below for harmonizing the Measures with worldwide best practices. The Chinese government has expressed an unwavering commitment to the arm's length principle, which binds together the nations of the world through a vast network of tax treaties. Common application of the arm's length principle is an important factor in fostering international trade and facilitating cross-border investment by Chinese and foreign enterprises alike. Our focus here is not on cutting-edge issues like market premium, but on basic working principles.

AmCham China recommends the updated Measures firmly endorse the concept of the arm's length range. Article 41 of the current Measures is ambiguous but strongly suggests that taxpayers' results will not be accepted as arm's length unless they match or exceed the median result earned by a set of comparable companies. This practice is not consistent with true arm's length behavior: unrelated parties do not always reach the same result, but sometimes find a point of agreement that is higher and sometimes lower. More importantly, the insistence on the median or higher result is not consistent with international practice. If China and a treaty partner both insist on the median or higher result, double taxation can only be prevented if both countries agree on an exact arm's length price. In other words, rejection of the arm's length range concept is a recipe for contentious disagreement between countries. There are several options for implementing an arm's length range. For example, the Measures could adopt a formulaic interquartile range like the US or could provide that the range be based on facts and circumstances.

AmCham China further recommends that the Measures specifically provide that taxpayers' results will be reviewed on a multi-year basis. The current Measures are silent on

中国税务机关和税收法律已经准许处罚金额达到偷税额的500%。这些法规应在实践中严格执行。这样，那些遵纪守法、愿意履行中国法规的绝大多数跨国纳税人就能减轻举证责任的负担。而那些意欲逃税的公司将三思而行，因为一旦在后续税务调查中查出逃税情节，他们将承受重罚。

事先裁定

大量的税务风险管理调查往往会凸显一个事实，即公司进行税务风险管理的首要目的是减少突如其来的税务意外。引进事先裁定系统对消除这些风险大有裨益。有了事先裁定，纳税人在确定中国报税单上的纳税身份时，可以降低罚款和利益的风险。

事先裁定系统在国际上相对常见，许多司法体系都采用。事先裁定有时被称为私人裁定。据经济合作与发展组织（OECD）发布的数据显示，其 30 个成员国中有 28 个业已实施了该系统，包括澳大利亚、加拿大、法国、德国和美国等。而在 13 个主要非经合组织国家中，有 12 个国家采用了类似的制度，包括新加坡、南非和阿根廷。

通常而言，除了在转让定价情形中有预约定价协议（APA）方案之外，中国境内的纳税人尚未采用事先裁定。在实践中，纳税人往往会寻求与当地税务官员进行口头磋商。尽管这些口头意见常常能为纳税人提供宝贵的指导，却并不具备约束力，且不能提供足够的确定性以控制税务风险。中国税务机关此前曾考虑试点推行事先裁定制度，引用国外司法体系中的要点，应用于符合一定资格标准的纳税人。这将是一项积极举措，使中国境内的纳税人更高效地管理税务风险。中国美国商会建议中国政府加快颁行这样的事先裁定系统，为外国投资者营造更具确定性的税收环境。

转让定价

中国今年来一直处在全球转让定价标准开发的前沿。中国在联合国的相关行动中扮演了领导者的角色，并积极参与 OECD 正在进行的项目。国家税务总局致力于成为世界一流的转让定价管理机构，但这一努力却受制于该局反避税处（下文简称“该处”）的资源短缺。该处只有不到十名官员，这些官员需要处理包括从监督审计到预约定价协议（APA）谈判在内的所有转让定价事务。中国美国商会会员认为 APA 的推行具有非凡价值，便于他们管理全球税务、避免双重征税，但当看到国家税务总局积压的 APA 申请已超过 100 份，并持续增加时，商会不免担忧。

中国美国商会强烈期望中国政府在转让定价事宜上投入更多资源，即增加该处的人员职数。

国家税务总局目前正在更新中国转让定价法规，促使其现代化。现有的中国转让定价法规在国税发 [2009]2 号文件《特别纳税调整实施办法》（以下简称《办法》）中有详细体现。中国美国商会欢迎这项举措，并提出以下两条具体建议，以期使该办法与世界最佳实践协调相融。中国政府已作出承诺，坚定不移地奉行公平独立交易原则，如此一来，由税收协定构建的庞大网络便将世界各国凝聚起来。在中外企业一致发展国际贸易，促进跨境投资的过程中，公平独立交易原则的普遍应用成为了重要推动力。在这里，我们关注的不是市场溢价等前沿性技术问题，而是与转让定价相关的基本工作原理。

中国美国商会建议更新后的《办法》应秉持公平合理定价的概念。现行办法的第 41 条虽然模棱两可，但强烈暗示：除非纳税人的定价结果达到或超出一组同类公司的中间定位价值，该纳税人的定价结果不会被认可为符合公平定价原则。该做法与真正的公平定价行为并不一致：非关联方交易时不总是达成同样的定价，这些定价会时高时低。更为重要的是，坚持中间价位或高于中间价位的方法并不符合国际惯例。如果中国和协约伙伴双方都坚持中间价位定价或更有利的定价，那只有双方能达成一个互为对方接受的精确的公平定价，才能避免双重征税。换言之，否定公平定价概念将会造成国家间的分歧争议。中国在实施公平定价时，有几种选项可考虑。例如，《办法》可以借鉴美国的方法，采用公式化四分位范围法，或者根据事实和具体情况，规定一个范围。

中国美国商会进一步建议，更新后的《办法》应作出特别规定：税务机关应该在多年数据基础上，审查纳税人的定价结果。现行《办法》并未提及这个问题。按照通行惯例，纳税人和税务机关应该使用同类公司的多年数据，其原因在于，此举能消除商业周期、时间差异及其他类似因素产生的影响。上述理论基础同样适用于纳税人。现在实际的情形是，税务机关往往在纳税人利润薄弱的年份调整定价，而忽略纳税人在利润高的年份的超额纳税。采用一种稳定一致的方法，让纳税人与可比公司享受一致的税务政策，将会提升税务的公平性，使中国法规与国际最佳实践接轨。

this issue. Universal practice by both taxpayers and tax authorities is to use multi-year data for comparable companies. The reason for this is to eliminate the effect of business cycles, timing differences, and other similar factors. These rationales apply with equal force to the taxpayer. Under current practice, tax authorities cherry pick, making adjustments in years when taxpayers' profits are low, but ignoring taxpayers' overpayment of tax in years when profit is high. A consistent approach between treatment of comparables and the taxpayer would increase fairness and align Chinese rules with international best practices.

Foreign Partners and Partnerships

The Chinese tax treatment of foreign partnerships is not addressed in current PRC tax laws and regulations and is an issue with which many foreign investors must grapple. The current practice of local PRC tax authorities is to treat a foreign partnership as a corporation, which sometimes leads to unfair results. Take, for example, the case where a US partnership sets up a wholly foreign-owned enterprise (WFOE) in China and receives dividends from the WFOE. In determining whether a reduced withholding tax rate under an applicable tax treaty may apply, the local tax authorities will treat the US partnership as a US corporation and look to the US-China tax treaty. Since a US partnership is not liable for tax in the US, it does not qualify as a resident for purposes of the treaty, and the US-China tax treaty will not apply. This issue is particularly important for the private equity and venture capital industry where foreign partnerships are commonly used as investment vehicles. It would be helpful for the SAT to issue guidance clarifying the tax treatment of foreign partnerships and allow those within a foreign partnership to be considered for treaty benefits if the foreign partnership itself is treated as a pass-through entity in its own jurisdiction.

Another issue relevant to the fund industry (and for strategic investors as well) concerns the PRC tax treatment of foreign partners in a Chinese partnership. Many foreign investors have become partners in RMB funds, partnerships formed in China to make private equity or venture capital-type investments. However, the SAT has not yet issued comprehensive guidance on how a PRC partnership is taxed in China, and has only issued a few general rules treating a PRC partnership as a pass-through entity. As a result, there are no tax rules on how a foreign partner in a PRC partnership should be treated. This lack of guidance has resulted in considerable uncertainty for the fund industry, particularly with respect to how a foreign limited partner in an RMB fund should be treated.

It is unclear whether a foreign limited partner who has no involvement in the management of an RMB fund should be treated as having a PE in China. The answer to this question will have important consequences for the foreign limited partner. For example, if the foreign limited partner is regarded as having a PE in China by virtue of being a partner in an RMB fund, dividends allocated by the RMB fund to the limited partner will be subject to PRC enterprise income tax at a rate of 25 percent, with possible deductions for related costs and expenses. In contrast, if the foreign limited partner is not deemed to have a PE in China, dividends allocated to it will be subject to PRC withholding tax at a rate of 10 percent of the gross amount, with a possibility for a lower rate if a tax treaty applies. Again, it would be helpful if the SAT would issue comprehensive rules on the taxation of PRC partnerships and, considering the uniqueness of a foreign limited partner in an RMB fund, give preferential treatment to such a partner.

Rules on Reorganizations

Guidance issued by the SAT in 2009, Cai Shui [2009] No. 59 (Circular 59), provides rules on the enterprise tax treatment of reorganizations. However, foreign investors have encountered problems when attempting to carry out tax-free reorganizations in China or "special reorganizations" as referred to in Circular 59. Some of these problems arise because Circular 59 is not clearly drafted; others result from inconsistent implementation by tax officials who were unfamiliar with the rules or wanted to protect tax revenues.

One serious problem with Circular 59 is the stringent requirement to qualify for tax-free cross-border reorganization. Under Circular 59, cross-border reorganizations are allowed only in three situations, all of which require the transferee to be wholly and directly owned by the transferor. This requirement often cannot be met because the transferor will indirectly own 100 percent of the transferee, preventing multinational corporations from carrying out tax-free cross-border reorganizations in China, even when there are compelling business reasons to do so. Pre-2009 guidance on cross-border reorganizations took a more lenient—and preferable—approach. It required that ❶ the transferor directly or indirectly own 100 percent of the transferee; or that ❷ the transferee own 100 percent of the transferor; or that ❸ the transferor and the transferee be 100 percent under common ownership, a set of conditions found in other Chinese law (e.g., the Anti-Monopoly Law).

Another problem with Circular 59 relates to the rules on asset acquisitions. One requirement to qualify for a tax-free asset acquisition is that the buyer must acquire at least 75 percent of the assets of the target company. However, Circular 59 does not specify whether the 75 percent threshold is to be measured by the fair market value of the target company's assets or the book value of such assets, and we have seen different standards used by PRC tax officials.

To resolve the issues discussed above and to provide certainty and fair treatment to businesses, AmCham China recommends that the SAT issue more detailed rules clarifying the requirements for asset acquisitions.

外国合作人和合伙企业

中华人民共和国的现行税收法规并未对外国合伙企业在中国纳税作出规定，这也是许多外国投资者必须应付的问题。中华人民共和国基层税务机关的现行做法是将外国合伙企业视为法人团体，有时这将导致不公平结果。例如，如果美国合伙企业在中国设立外商独资企业（WFOE），并从中获取红利，在确定能否根据适用的税收协定，应用降低后的预扣税率时，基层税务机关会视美国合伙企业为美国法人团体，并参照中美税收协定。由于美国合伙企业在美国不承担税责，根据协定立文宗旨，其不具备居民资格，因此中美税收协定不适用。由于外国合伙企业通常被用作投资工具，对私募基金和风险投资行业来说，该问题尤其重要。如果国家税务总局能颁行指南，阐释对外国合伙企业的税务处理，并在外国合伙企业被自身司法认定为传递实体时，考虑给予其税收协定优惠待遇，这将有助于解决问题。

关乎基金产业（战略投资者亦然）的另一个问题也涉及中国合伙企业中的外国合伙人在中华人民共和国的税务处理。人民币基金是指成立于中国，进行私募基金或风险投资类投资的合伙企业，许多外国投资者已成为此类基金的合伙人。然而，国家税务总局尚未发布全面的指南，指导如何对中国境内的中华人民共和国合伙企业征税，而仅仅只是发布了一些笼统的法规，将中华人民共和国合伙企业视为传递实体。如此一来，便没有税收法规来规定如何对中华人民共和国合伙企业征税。指南的缺乏导致了基金产业极大的不确定性，尤其是有关人民币基金中的外国有限责任合伙人应该如何纳税的不确定性。

尚不明晰，如果外国有限责任合伙人未进入人民币基金的管理层，是否应该视其为在中国设有常设机构。对这一问题的回答将对外国有限责任合伙人产生重要影响。例如，如果因为外国有限责任合伙人是人民币基金的合伙人，就认定其在中国有常设机构，其从人民币基金中获得的红利将适用税率为 25% 的中华人民共和国企业所得税，并可能因为相关成本或开支，得到税款减免。反之，如果不将外国有限责任合伙人视为在中国设有常设机构，则其获得的红利将适用税率为总额 10% 的中华人民共和国预扣税，而如果有税收协定适用，还可享受更低的税率。如果国家税务总局能颁行全面法规，规定对中华人民共和国合伙企业的征税办法，并考虑人民币基金中外国有限责任合伙人的独特性，予以此类和合伙人优惠待遇，这将有所裨益。

重组法规

国家税务总局于 2009 年颁发财税【2009】59 号文件（以下简称"59 号文"）作为指南，规定了对重组业务的企业税务处理办法。然而，当外国投资者在中国试图实施免税重组业务时，或 59 号文中的"特殊性重组业务"时，也遭遇了难题。有些难题的起因是 59 号文条款不明晰，其他则来自于对文件执行有误，这是因为有些税务机关对法规不熟悉，或希望保护本地公司。

59 号文的一个严重问题是对免税跨境重组的资质要求严苛。根据 59 号文，只有在三种情况下才能允许跨境重组，且所有情况要求受让方由转让方 100% 直接控股的规定。这样的要求通常很难满足，比如转让方可能间接 100% 控股受让方公司，导致跨国公司无法实施免税跨境重组业务，即使有充分的业务理由要求进行此类重组，也是如此。2009 年之前的跨境重组指南便采取了更宽松但也更可取的办法，即要求 ❶ 转让方 100% 直接或间接控股受让方；或 ❷ 受让方 100% 控股转让方；或 ❸ 转让方和受让方为双方 100% 共同控股，此要求在中国其他法律中也有提到，比如反垄断法。

59 号文的另一问题涉及资产收购。要进行免税资产收购，59 号文规定收购资产比例不低于被收购企业总资产的 75%。然而，59 号文并未明确规定，这 75% 的门槛限制是由被收购公司资产的公平市场价值还是账面价值来衡量。不同地区的税务官员可能执行不同的标准。

为解决上述问题，及为企业经营提供确定性和公平的税务处理办法，中国美国商会建议国家税务总局出台更详细的法规，澄清资产收购的前提条件。

最新进展

增值税（VAT）执行

自 2013 年 8 月 1 日起，在全国范围内的运输业和一些现代服务行业推行了《营业税改征增值税试点方案》（以下简称"试点方案"）。该方案于 2012 年 1 月 1 日首先在上海颁行，随后在 2012 年年底前推广到其他 8 个省市，旨在杜绝重复征税。由于试点方案仅在某些地区施行，竞争扭曲随之出现，因此预计 2013 年该方案将推广至全国。此外，试点方案还覆盖了新型服务行业，包括广播电影电视制作行业、分销行业和广电行业。中国政府已经进一步确认，在 2015 年前该方案将覆盖中国的所有服务业。

Recent Developments

VAT Implementation

The "Business Tax (BT) to Value-Added Tax (VAT) Transformation Pilot Program" (pilot program) for the transportation industry and certain modern service industries has been rolled out nationwide since August 1, 2013. This program was first launched in Shanghai on January 1, 2012 and then expanded to eight more provinces and cities by 2012 with the purpose of eliminating double taxation. The nationwide rollout in 2013 had been anticipated because of the distortion in competition created by the pilot program in certain areas. In addition, new service industries, including radio, film and television production, and distribution and broadcasting were included within the scope of the pilot program. Moreover, the Chinese government has confirmed the program will expand to cover all service industries in China by 2015.

AmCham China members welcome the nationwide expansion of the pilot program and encourage the Chinese government to include more service industries, such as postal and telecommunications services, finance and insurance services, and real estate. AmCham China members are pleased to see the Ministry of Finance (MOF) and SAT have taken into consideration experience gained from the prior pilot program and introduced some positive changes and clarifications in the newly-issued Caishui [2013] No. 37 (Circular 37), which formalized the national implementation of the pilot program.

In August 2013, the SAT issued Bulletin [2013] No. 47 (Bulletin 47) providing nationwide implementation guidance for the application of zero-rated VAT treatment on qualifying taxable services. Bulletin 47 introduces welcome changes, further clarifying the scope of the zero-rated VAT and how VAT refunds are calculated.

In September 2013, the SAT issued Bulletin [2013] No.52 (Bulletin 52) extending the application of VAT exemption treatment on qualifying cross-border services to the whole country. The guidance has long been awaited as it focuses on the implementation of the VAT exemption. AmCham China members are pleased to see such clarifications, especially the clarification of nationwide implementation of VAT exemption.

However, Bulletin 52 is not sufficiently detailed and some issues remain unresolved, for example, whether or not a service will be deemed to be cross-border. Another issue is whether VAT exempt treatment applies when the service recipient in the contract is different from the service beneficiary or if the service recipient is located outside of China while the service beneficiary is located within China. AmCham China members expect further nationwide clarifications on these issues.

Recommendations

- **Roll out a pilot advance ruling regime that adopts features of systems in foreign jurisdictions, covering taxpayers with certain eligibility criteria.**
- Develop a set of rules dictating when the burden of proof shifts to the tax authorities, if the taxpayer has submitted credible evidence with respect to the factual issue and indicated that it maintains the proof and records that it is ready to be audited under oath of penalty.
- Increase SAT staff to handle APAs and other transfer pricing matters.
- Revise Circular 2 to incorporate the arm's length range concept and reliance on multi-year data to be consistent with global best practices in transfer pricing administration.
- Issue guidance clarifying the tax treatment of foreign partnerships and specifically allow partners of a foreign partnership to be considered for treaty benefits if the foreign partnership itself is treated as a pass-through entity in its own jurisdiction.
- Issue comprehensive rules on the taxation of PRC partnerships and, considering the uniqueness of a foreign limited partner in an RMB fund, give preferential treatment to such a partner.
- Revise Circular 59 to allow tax-free reorganization treatment where the transferor's ownership in the transferee is indirect or the parties are otherwise under common ownership.

中国美国商会欢迎该试点方案在全国推行，支持中国政府将更多的服务业纳入其中，包括邮电通信业、金融保险业和房地产业。中国美国商会很高兴地看到，财政部（MOF）和国家税务总局从先前的试点方案中汲取经验，充分考量，继而在新出台的财税 [2013] 37 号文件（以下简称"37 号文"）中引入了积极的改变和阐释，该文对试点方案的全国施行进行了规范。

2013 年 8 月，国家税务总局出台了公告 [2013] 第 47 号（以下简称"47 号公告"），为全国范围内对合格应税服务施行增值税零税率税务处理提供实施指南。47 号公告引入了很好的变化，即进一步阐明了增值税零税率的应用范围，以及增值税退税的计算方法。

2013 年 9 月，国家税务总局出台了公告 [2013] 第 52 号（以下简称"52 号"公告），在全国范围内推广合格跨境服务增值税豁免管理办法。由于指南着重于增值税豁免的执行问题，人们对此期盼已久。中国美国商会很高兴看到这样的阐释出台，尤其是对全国施行增值税豁免的阐释。

然而，52 号公告并不如预期的详细，且有些问题仍悬而未决，例如，如何定义一项服务是否为跨境服务。另一个问题是，当合同中的服务对象并非服务受益人，或者服务对象身处中国境外，而服务受益人身处境内时，增值税豁免税务处理是否适用。中国美国商会希望中国政府能在全国范围内对这些问题作出进一步的阐释。

建 议

- **试点推行事先裁定制度，借鉴国外司法体系中的要点，应用于符合一定资格标准的纳税人。**
- 制定一套法规，明确规定当在纳税人提交了基于事实的可信的证明材料，并表明其保存有相关的证明和记录材料，承诺材料随时可以供审计并愿承担相应法律责任的前提下，举证责任将转由税务机关承担的时间点。
- 增加国家税务总局内处理预约定价及其他转让定价事务的人员。
- 在修订 2 号文时，体现公平独立交易范围的概念，规定使用多年的可比数据进行转让定价裁决，以期在转让定价管理方面与全球最佳实践接轨。
- 出台指南，阐明对外国合伙企业的税务处理办法，尤其是在外国合伙企业被本国税务主管机构认定为传递实体时，考虑给予其合伙人税收协定优惠待遇。
- 颁行全面法规，规定对中华人民共和国合伙企业的征税办法，并考虑到人民币基金中外国有限责任合伙人的独特性，酌情予以其优惠待遇。
- 修订 59 号文，当转让方间接持有受让方的所有权或两者存在共同所有权关系时，允许业务按免税重组进行税务处理。

Visa Policy

Introduction

China's rapid growth, shifting demographics, and aging population have opened new opportunities for economic immigration from developed as well as developing countries. This development underscores the need for China to modernize its regulatory framework and enhance administrative capacity in order to accommodate increasing immigration.

On June 30, 2012, the National People's Congress (NPC) promulgated a new PRC Exit-Entry Administration Law (New Law).

On July 12, 2013, the 15th Executive Meeting of the State Council passed the PRC Administrative Rules Applicable to the Entry and Exit of Foreigners (Rules). The Rules, which were drafted in line with the New Law that became effective on July 1, 2013, are designed to interpret and clarify various aspects of the visa and residence permit aspects of the New Law. The Rules came into effect on September 1, 2013.

Recent Developments

The New Law and the Rules more closely regulate foreigners entering, living, and working in China. The Rules revise and expand the types of visas issued to foreigners to the following categories:

"M" visa: The "M" visa replaces the original "F" business visa and will be issued to foreign individuals who come to the PRC for commercial and trade missions. The "F" visa has been re-defined for purposes of short-term exchange activities and visits and for researchers.

"R" visa: The "R" visa (which was introduced in the New Law) is for highly skilled foreigners and professionals in short supply in the PRC. The Rules do not specifically define "highly skilled" or set out any specific criteria to qualify for such status; these are expected to be addressed in future guidelines.

"Q" visa: The "Q" visa is for individuals who come to the PRC to see family members and for adoption purposes. There are two types of "Q" visa: a "Q1" visa that allows the visa holder to reside in China and a "Q2" visa that allows the foreigner to stay in the country on a short-term basis (less than 180 days).

"S" visa: The "S" visa is for immediate family members (i.e., spouses, parents, children who are minors, and in-laws) of foreigners who are residing in the PRC for work or study purposes. There are two types of "S" visa: an "S1" visa that allows the visa holder to reside in China and an "S2" visa that allows the foreigner to stay in the country on a short-term basis.

Work-study program/internship: Foreign students who hold a student residence permit and who wish to participate in a work-study program or an internship off campus must obtain the consent of the school and submit details of the program or internship (e.g., location, duration, etc.) to the Public Security Bureau (PSB). The government will provide details of specific documents that must be submitted at a later stage.

Clarification of terms "stay" and "reside": Foreigners who enter the PRC under a "Z" work visa, "X" study visa, "J" journalist visa, "Q" family reunion visa, or "S" private affairs visa are eligible to have the visa converted into a "residence permit" that allows the individual to reside in the PRC. Individuals holding other types of visas are permitted to stay in the PRC only for the period designated in the visa. A request for an extension of a visa must be submitted to the PSB, along with relevant supporting documentation.

Illegal residence: The following constitute illegal residence in the PRC under the Rules:

- Staying or residing in the PRC for a period that exceeds the term stated in the visa, stay permit, or residence permit;
- Staying in the PRC for a period that exceeds the stipulated visa-free period without applying for a stay/resident permit;
- Foreigners exceeding the stipulated areas for stay or residence; or
- Other circumstances evidencing illegal residence.

Processing time for residence permit: For residence permit applications, the PSB is to process and make a decision

签证政策

引 言

中国的快速发展、人口结构的变化以及人口老龄化，均为来自发达国家以及发展中国家的经济移民创造了新的机会。这也凸显出中国必须按照现代化的要求对其监管框架进行改革并提高其行政能力，以适应不断增长的移民需求。

2012 年 6 月 30 日，全国人大颁布了新的《中华人民共和国出境入境管理法》（《新法》）。

2013 年 7 月 12 日，国务院第 15 次常务会议通过了《中华人民共和国外国人入境出境管理条例》（《条例》）。《条例》根据于 2013 年 7 月 1 日生效的《新法》起草，旨在对签证和居留证相关的各个方面予以解释和阐明。《条例》已于 2013 年 9 月 1 日起开始实施。

最新进展

《新法》和《条例》加强了对外籍人士入境及在华工作、生活的监管力度。条例修订了签发给外国人的签证类别并且扩大到以下类别：

"M" 字签证："M" 字签证取代以前的 "F" 字商务签证，将签发给来中国进行商业贸易活动的外国人员。"F" 字签证被重新定义为签发给来华从事短期交流活动、访问和进行研究的人员。

"R" 字签证："R" 字签证（《新法》中引入）签发给中国需要的外国高层次人才和急需紧缺的专门人才。《条例》没有对 "高层次" 具体定义，也没有列出符合此等地位的任何具体标准；希望这些内容在今后的指引中能具体规定。

"Q" 字签证："Q" 字签证签发给因探亲和寄养等原因来中国的人员。"Q" 字签证有两种类型："Q1" 签证允许签证持有人在中国居留，"Q2" 签证允许外国人在中国短期停留（不超过 180 天）。

"S" 字签证："S" 字签证签发给因工作或学习等事由而在华居留的外国人的直系亲属（即配偶、父母、未成年子女和姻亲）。"S" 字签证有两种类型："S1" 字签证允许签证持有人在中国居留，"S2" 字签证允许外国人在中国短期停留。

勤工俭学 / 实习：持有学习类居留许可并且想在校外参加勤工俭学或实习的外国留学生必须取得学校的同意并且向公安机关提交勤工俭学或实习的详细说明（比如地点、持续时间等）。政府将在以后公布必须提交的具体文件的详细内容。

澄清 "停留" 和 "居留"：根据 "Z" 字工作签证、"X" 字学习签证、"J" 字记者签证、"Q" 字家庭团聚签证或 "S" 字私人事务签证进入中国的外国人有资格把签证转换为 "居留证"，允许持证人员在中国居留。持有其他类别签证的人员仅允许在签证上所指定的期限内在中国停留。申请签证延期的必须向公安机关提交申请以及相关证明文件。

非法居留：根据《条例》，以下情形构成在华非法居留：

- 在中国停留或居留的时间超过了签证、停留证或居留证上所规定期限的；
- 在中国停留的时间超过了免签证期限而没有申请停留证 / 居留证的；
- 外国人停留或居留的地区超出规定范围的；或
- 证明为非法居留的其他情形。

居留证的办理时间：对于居留证申请，公安机关要在文件充分提交后不超过 15 个工作日内对签证进行审理并做出决定。

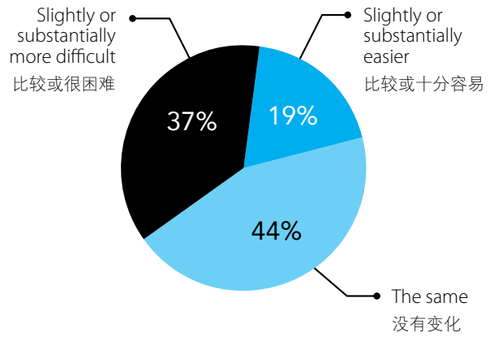
生物识别数据：外国人在申请居留证时必须向公安机关提供个人指纹或其他有效的生效识别数据。

on visa approval no more than 15 working days after the submission of sufficient documents.

Biometric data: Foreigners must provide their fingerprints or other valid biometric data to the PSB when applying for a residence permit.

The following sections detail our recommendations for making China's work permit and visa policy more uniform, transparent, and friendly to foreign investment.

Was it easier this year for your expatriate employees to get visas and work permits?
今年外籍员工是否更容易获得签证或工作许可



Decrease Work Permit and Residence Permit Processing Time

Chinese immigration procedures are very complicated. At the minimum, foreign employees must apply for working documents at five different government agencies which can take up to 10 weeks or more.

Since the New Law entered into effect, local PSBs have adopted a more stringent approach to visa applications by extending the processing time for residence permits (initial, renewal, or amendment) to 15 working days, instead of the previous processing time of five working days. Most importantly, the PSB will hold an applicant's passport for 15 working days and expedited service is normally not available except for extraordinary cases. There is no guarantee that the passport holder will be able to use a visa collection receipt and passport photo page copy for domestic travel during this period. Furthermore, international travel may not be possible during this period.

Being without a passport during such a period is problematic as the foreign national:

- Effectively cannot travel outside of China for business or personal reasons for a month-long period.
- May not be able to check into hotels.
- Cannot retrieve money from a Chinese bank teller window or exchange foreign currency.

This particularly affects executives who travel frequently, including those with regional responsibilities and consultants who have multiple projects throughout China. This loss of productivity adds significant cost to doing business in China.

AmCham China recommends shortening the holding period of passports by the PSB when processing residence permits to five working days, as it was before the New Law was implemented.

Original Document Requirement

In some regions, including Beijing, individuals are required to submit an original diploma, birth certificate, or marriage certificate in addition to their passport for work permit and residence permit processing. This has been an ongoing concern for several years. For most individuals who have not recently obtained such documents, locating and obtaining the originals can be problematic.

Visa application procedures at the PSB previously required only a copy of the employer's business license, but now require the original, which can be inconvenient and, if the original is lost, it is quite difficult to replace. The PSB should be able to cross check the legitimacy of a business license with the Administration for Industry and Commerce if provided a copy.

AmCham China recommends that notarized or legalized copies of original documents (authenticated by a local Chinese Embassy or Consulate) be accepted for work permit and residence permit applications across all regions in China.

Visa Conversion

It is no longer possible under the New Law to convert an "L" or "F" visa to a "Z" visa. The applicant must leave China to obtain a single entry "Z" visa, then return to China and apply for a multiple entry residence permit.

AmCham China recommends that the conversion of other types of visas to Z visas within China be resumed to reduce the cost of doing business in China.

Differing Definitions of Criminal Charges

Criminal charges such as disorderly conduct, drunk driving, or similar convictions in foreign countries may not count as criminal charges under Chinese law but rather as administrative violations. There is no clarity regarding whether applicants who may not have committed crimes under

以下内容是我们为使中国的就业证和签证政策对外商投资更加统一、透明和友好而提出的详细建议。

减少就业证和居留证办理时间

中国的入境程序非常复杂。外国员工最少必须在五个不同的政府机构申请工作文件，耗时长达 10 个星期甚至更长时间。

自从《新法》生效以来，地方公安机关对签证申请采取了更为严格的方式，把居留证（初领、更新或修改）的办理时间延长到 15 个工作日，而不再是原先的五个工作日。更为重要的是，公安机关会留存申请人的护照 15 个工作日，除了特殊情况外，通常不会提供加急办理服务。在这段期间，不能保证护照持有人使用签证留存回执和签证照片页复印件进行国内旅游。此外，在此期间也不可能进行国际旅游。

外国公民这段期间没有护照会造成以下麻烦：

- 实际上在长达一个月的时间里不能在中国境外因公或因私旅行。
- 可能无法入住宾馆。
- 不能从中国的银行出纳窗口取钱或兑换外币。

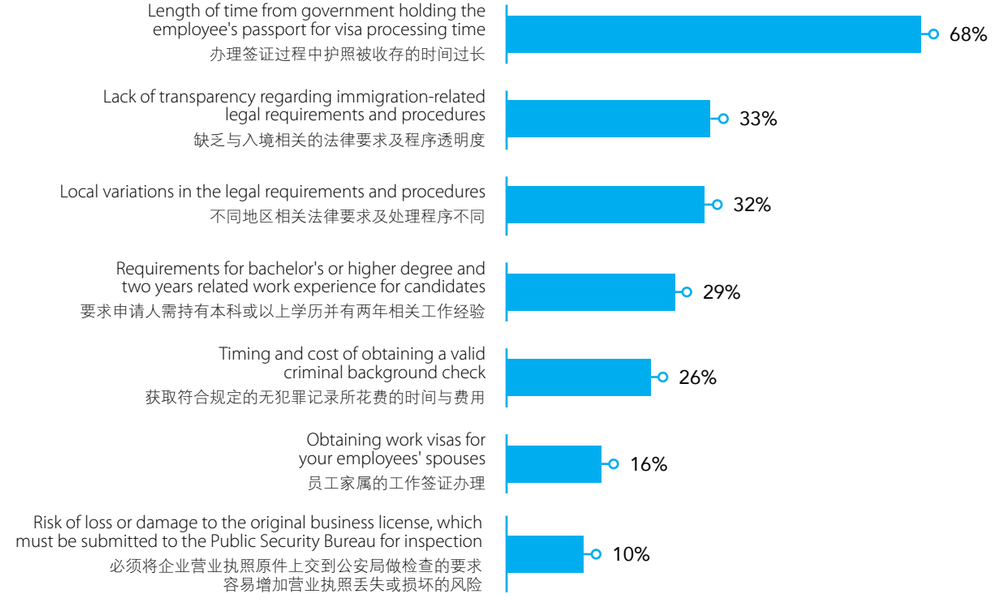
这尤其影响频繁旅行的高级管理人员，其中包括那些负责地区业务的管理人员以及在中国各地开展多个项目的咨询顾问。这种生产效率损失极大地增加了在中国做生意的成本。

中国美国商会建议公安机关在办理居留证时把护照的留存期限缩短到《新法》实施前规定的五个工作日。

文件原件的要求

包括北京在内的一些地区，办理就业证和居留证的申请人除了提交护照以外还需

Since the new visa law and regulations came into effect in July and September 2013 (Foreigner Exit-Entry Administration Regulations of the PRC), what have been the greatest obstacles in obtaining visa and work permits for expatriate employees? (Please choose up to three)
自 2013 年 7 月及 9 月的新签证政策开始实施后（《中华人民共和国外国人出入境管理法》），外籍员工获得签证或工作许可面临的最大障碍是什么（最多选择三项）



Chinese law may still receive a visa. The Ministry of Human Resources and Social Security should clearly define what acts constitute a criminal conviction for purposes of visa or residence permit disqualification. Applicants should not be disqualified from obtaining a work visa due to convictions that are not considered to be a crime in China.

Ongoing Issues

Concerns from International Schools

The availability of high quality international schools in China is critical to the ability of foreign corporations to attract the best personnel to support their operations and investment in China.

International schools require teachers whose mother tongue is the language of instruction at the school—usually English, but also German, French, etc.—and who have experience teaching foreign curricula such as the International Baccalaureate. As a result, international schools cannot localize most teaching positions and must employ a very high percentage of expatriates. For example, the three largest international schools in Beijing employ over 500 expatriates.

Thus, international schools are highly affected by visa regulations. To the extent that the New Law impedes their ability to attract the best possible staff members and operate as efficiently as possible, they would benefit from some flexibility in their application.

The following three visa issues are of particular concern to schools:

❶ the regulations governing the use of **substitute teachers**;

❷ the requirement that all foreign employees have a Bachelor's degree to work in a school, even if they are not teachers; and

❸ the requirement that teachers have **two years of experience** before a visa application can be processed.

Substitute Teachers

Teachers employed at international schools may miss work for a number of reasons: illness, death of a family member back home, attendance at a professional training program, or when accompanying a group of students on an educational, sports, or community service trip.

International schools frequently need to employ substitute teachers at all levels of classes from pre-K through senior middle school. Often they need to cover many classes in a single day. As a result, several different people may work just a few days per month.

Many spouses of expatriate parents do not want full time work but are qualified to work on an occasional basis as substitute teachers. Given the current visa regulations, it is extremely difficult and costly to find people who can fulfill this role. Paying for a visa—and calculating the social benefits payable—for people who only work a few days per month is disproportionately expensive and complicated.

AmCham China suggests that schools should be allowed to employ substitute teachers who possess a Z dependent visa for occasional work. All applicable individual income taxes should be paid and social benefits should be paid each month on a pro rata basis as follows:

> days worked/21 days per month * maximum monthly contribution

Bachelor's Degree for Non-teachers

Certain positions at international schools which require native English (or other foreign language) speakers do not require a Bachelor's degree. For instance, teachers in England working with children under age three receive specialized training in a two-year tertiary course, after which they receive a diploma. These teachers are referred to as nursery nurses and are given responsibility for a full class once trained. Some international schools would like to be able to hire nursery nurses for classes of very young children.

AmCham China recommends that nursery nurses be granted visas on the same basis as teachers provided their employers agree that they will be in charge only of children aged three and under.

Two Years of Experience; Processing Time

Unlike regular business employment contracts, teacher employment contracts run on a specific schedule, generally starting at the beginning of August and ending at the end of July. Unlike business employees, teachers must start their work on a specific date, when school opens for the year. There is little to no flexibility with starting dates.

Under current rules the authorities do not begin processing visa applications until at least two years have passed from the teacher's first day of employment, usually July 31. This means that the visa will not be approved until September, which is after the start of the new school year. In effect, schools often cannot employ teachers with less than three years of experience.

Example: A teacher has a contract in his or her home country running from August 1, 2014 until July 31, 2016. He or she begins teaching in August 2014, finishes the second year of teaching in early June 2016, and is on holiday for the summer. The teacher has been offered a job at an international school in Beijing and will have two years of experience before starting. Although the teacher finished working

要提交文凭、出生证明或结婚证明原件，这已成为持续多年的一个问题。对大多数不是近期才取得上述文件的申请人来说，找到并取回这些文件的原件会很麻烦。

公安机关签证申请程序以前只需要雇主的营业执照复印件，但是现在需要原件，这很不方便并且一旦文件丢失，补办手续相当麻烦。在提供复印件的情况下，公安机关应该可以与工商局核实营业执照的合法性。

中国美国商会建议中国各地在受理就业证和居留证申请时，能接收经公证或法律认可的原件复印件（经当地中国大使馆或领事馆认证）。

签证转换

根据《新法》，“L”或“F”签证不能在境内转换为“Z”签证。为申请单次入境“Z”签证，申请人必须离境申请，然后再返回中国申请多次往返居留许可。

中国美国商会建议恢复在中国境内把其他类别签证转换为“Z”字签证的规定，以降低在中国经商成本。

犯罪指控的不同定义

扰乱治安行为、醉酒驾驶或类似定罪等在国外属于刑事犯罪，而根据中国法律可能不算作刑事犯罪，而是行政违法行为。对于依据中国法律可能没有构成刑事犯罪的申请人是否仍然可以获得签证没有明确的规定。为便于确定是否有资格获得签证或居留证，人力资源和社会保障部应该明确定义何种行为构成刑事犯罪。申请人不应该由于在中国不属于刑事犯罪的指控而被取消获得工作签证的资格。

现存问题

国际学校的担忧

在中国拥有高质量的国际学校对外国企业能否吸引到最优秀的人才来开展其在华的业务经营和投资至关重要。

国际学校需要母语为学校教学语言的老师，该语言通常是英语，但也有德语、法语等，并且老师要具有教授国际文凭课程等外国课程的经验。因此，国际学校的大多数教学岗位不能聘用当地人才，而且必须雇用很高比例的外籍人员。例如，北京最大的三所国际学校雇用的外籍人员超过 500 名。

因此，国际学校受签证条例的影响非常大。鉴于《新法》对其吸引最优秀的员工和高效运营形成了阻碍，如果在适用中能有一定的灵活性或能使其受益。

以下三个签证问题是学校特别担忧的：

❶ 有关使用代课老师的规定；

❷ 要求所有在学校工作的外籍员工具有学士学位，即使他们不是老师；以及

❸ 要求老师在申请签证前拥有两年工作经验。

代课老师

受雇于国际学校的老师可能会因多种原因而缺勤：疾病、家里亲人亡故、参加专业培训项目或带领学生外出参加教育、体育或社区服务活动等。

国际学校需要频繁地雇用从学前班到高中各个年级的代课老师。他们经常需要在一天内给多个班上课。因此，几个人可能每个月只工作几天。

许多已做父母的外籍夫妻不想在学校做全职工作，但有条件偶尔担任代课老师。考虑到目前的签证规定，要找到担负此工作的人员极为困难并且成本极高。为每月仅仅工作几天的人员支付签证费用以及各种应付的社会福利昂贵且复杂，非常不划算。

中国美国商会建议允许学校雇用拥有 Z 字眷属签证的代课老师从事临时工作。每月按下列公式计算应缴纳的所有适用的个人所得税以及各种应付的社会福利：

> 工作天数 / 每月 21 天 * 最大月工作量

非教学人员的学士学位

国际学校的某些岗位要求母语为英语的人员担任，但不需要学士学位。比如，英国从事三岁以下儿童教育的老师只要接受为期两年的服务课程专门培训后获得毕业证书即可胜任。这些教师被称为保育员，一旦授受了培训，他们就可以承担起整个班级的责任。有些国际学校希望能够为由年龄很小的儿童组成的班级雇用保育员。

中国美国商会建议应该按与老师相同的情况向保育员签发签证，只要他们的雇主同意他们将仅负责三岁或三岁以下儿童的教育工作。

两年工作经验；签证申请受理时间

与定期的企业雇用合同不同，教师雇用合同都是按特定时间安排执行的，一般是八月开始，七月结束。与企业员工不同，老师必须在学校开学的具体日期开始工作。开

in June, the Chinese authorities will not begin processing the visa application until after the end of the contract on July 31. This does not leave enough time for the teacher to begin work in the first or second week of August in Beijing, and it is not feasible for teachers to start work a month or two later, after the visa is ready. Because schools must operate on a very particular schedule, one month late is the same as being one year late.

AmCham China recommends that if a teacher will have two years of experience by the time he or she starts the new position in China, a visa application be accepted for processing early enough to allow issuance of the visa in time for the start of the employer's school year.

Recommendations

- **Shorten the holding period of passports by the PSB when processing residence permits from 15 to five days.**
- Resume the conversion of other types of visas to a "Z" visa within China.
- Refrain from disqualifying visa applicants from obtaining work visas due to convictions that are not considered to be a crime in China.
- Allow international schools to employ substitute teachers who possess a "Z" dependent visa for occasional work.
- Grant nursery nurses visas on the same basis as teachers provided their employers agree that they will be in charge only of children aged three and under.
- Start processing visas for teachers who will have two years of experience by the time he or she starts a new position in China early enough to allow issuance of the visa in time for the start of the school year.

始日期几乎没有灵活性可言。

根据目前的规则，从老师被雇用的第一天（通常是 7 月 31 日）起至少两年过后有关部门才开始处理签证申请。这就意味着签证要到 9 月才能获得批准，而 9 月已过了新学年的开学日期。实际上，学校往往不会雇用教学经验少于三年的老师。

*示例：*一名教师在其本国有一份合同，合同期限从 2014 年 8 月 1 日至 2016 年 7 月 31 日。该教师从 2014 年 8 月开始授课，2016 年 6 月初结束授课，并开始过暑假。该教师从北京的一所国际学校获得了一份工作，并且在开始工作前将拥有两年的教学经验。虽然该老师在 6 月就结束了工作，但是中国有关部门直到合同于 7 月 31 日终止后才会开始处理其签证申请。这样的话，如果这位老师要想从 8 月份的第一周或第二周开始在北京工作，时间就不够了，而让老师在一、二个月后等签证准备好了再开始工作也不可行。因为学校必须按非常特定的时间表进行运作，晚一个月与晚一年性质是一样的。

中国美国商会建议，如果一名老师在中国开始其新的工作职位时将拥有两年的教学经验，应对签证申请尽可能早地受理并处理，以便及时签发签证使老师能赶上学校的新学年开始。

建 议

- **把公安机关处理居留许可时留存申请人护照的期限从 15 天缩短为 5 天；**
- 恢复在中国境内把其他类别签证转换为“Z”字签证的做法；
- 不因在中国不属于刑事犯罪的指控而取消申请人获得工作签证的资格；
- 允许国际学校雇用拥有 Z 字眷属签证的代课老师从事临时工作；
- 按与老师相同的情况向保育员签发签证，只要雇主同意他们仅负责三岁或三岁以下儿童的教育工作。
- 对于在中国开始其新的工作职位时将拥有两年教学经验的老师，应尽可能早地处理其签证申请，以便及时签发签证使老师能赶上学校的新学年开始。

Work Safety

Introduction

Despite a slowdown in the pace of its economic growth, China continues to experience significant expansion in construction and infrastructure projects. In 2013, the construction industry accounted for seven percent of China's total GDP and the construction workforce grew to more than 41 million. Additionally, the 12th Five-Year Plan (12th FYP) set a goal of increasing the gross output of the construction industry by approximately 15 percent annually.

Chinese authorities aim to ensure continued development in both urban and rural regions through the coordinated execution of large-scale construction and housing projects across the country. Yet construction activity remains plagued by concerns over work safety conditions at construction sites. The total number of accidents in the construction industry within China is second only to that of its mining sector. Based on official statistics, from January 1 to December 31, 2013, there were 512 work safety accidents in municipal administered housing projects, which resulted in 665 deaths. Accidents and fatalities increased by 5.13 percent and 7.21 percent, respectively, compared with the same period in 2012. Of these accidents, at least 60 percent resulted from falls from heights or collapsed structures. With a fatality rate of 9.87 per 100,000 workers, China's occupational fatality rate is far higher than countries with industry-recognized standards such as the US, EU, Singapore, and Australia.

The widespread use of unsafe scaffolding practices led the Ministry of Housing and Urban-Rural Development (MOHURD) to commit to eliminating 50 percent of scaffolding usage in construction sites by 2015. To this end, the Chinese government has also sought to explore innovative and technology-driven solutions as well as implementing stricter safety regulations.

However, work safety laws remain underdeveloped and do not provide a clear methodology for safety compliance. Some provinces have attempted to develop local work at height regulations to address work safety challenges, but there are no all-encompassing, integrated national-level work at height standards for both the construction and non-construction sectors. Unlike the US, Australia, EU, Singapore, Brazil, and the International Labor Organization, China presently does not have stringent regulations for worker safety when working above ground level.

The 2002 Production Safety Law provides some general occupational safety requirements (for instance, that a business engaged in construction or manufacturing must provide safe working conditions and that these businesses have an obligation to provide personal protective equipment to employees according to national or industrial standards), however, the law does not appear to mandate specific procedures in regard to height operation or fall protection.

Similarly, the construction work at height regulation JGJ 80-1991 provides only broad guidelines on work at height safety requirements and is lacking in detailed fall prevention plans, risk management and control measures, safe work procedures, permit-to-work systems, accidents and investigations, employer responsibility, etc.

In addition to the enhancement of regulations along internationally accepted standards at the national level, AmCham China encourages greater investment in access equipment such as aerial work platforms, enforced use of safety equipment, solid risk management standards, and greater emphasis on employer responsibility as key tools for enabling work at heights safety improvements. This could help to bring China's occupational fatality rates to a level on a par with "moderately developed countries" and serves the 12th FYP's objective of ensuring a "safer and better life" for Chinese citizens.

Ongoing Regulatory Issues

Lease Financing Options for Access Equipment

Quality access and safety equipment is used around the world in lieu of scaffolding as a way to ensure safety when working at heights. However, the Chinese market has not yet been able to take advantage of available technologies. The lack of leasing and rental options for access equipment constricts the use of such products in China and presents a barrier for US manufacturers who wish to participate in the market. This issue is evident in aging construction equipment fleets as a result of poor maintenance. The Chinese government is encouraged to develop the lease financing industry, thereby giving the construction industry greater access to both locally and foreign-manufactured equipment.

安全生产

引 言

尽管中国经济发展速度放缓，但建筑和基础设施项目却依旧保持了强劲的增长。2013 年建筑业占中国 GDP 总量约 7%，建筑工人总数已超过 4100 万人。另外，第十二个五年计划（“十二五规划”）制定了建筑业总产值每年增长大约 15% 的目标。

中国政府旨在通过协调发展全国范围内的大型建筑和住房项目来确保城市和农村的持续发展。但是，对建筑工地安全生产条件的担忧仍旧是建筑行业的一大困扰。全国建筑业事故的总量仅次于采矿业。据官方统计，从 2013 年 1 月 1 日到 12 月 31 日，在市政管理的住房项目中共发生 512 起安全生产事故，导致 665 人死亡。与 2012 年同期相比，事故和死亡人数分别增加 5.13% 和 7.21%。这些事故中至少有 60% 是由于高空坠落或建筑物结构倒塌所致。中国每十万工人中有 9.87 个死于工伤事故，中国的工伤死亡率远远高于美国、欧盟、新加坡和澳大利亚等已经建立了行业公认标准的国家。

缺乏安全保障的脚手架在建筑工地的广泛应用，促使住房和城乡建设部（住建部）决定到 2015 年将脚手架的使用量减少一半。为了实现这一目标，中国政府已经开始研究创新性和技术驱动型的解决方案，并执行更加严厉的安全法规。

但中国目前的安全生产法律体系依然很不健全，不能提供一套明确的安全法规指导方法。有些省份已经开始尝试制定本地的高空作业法规，来应对安全生产的挑战，但是建筑和非建筑行业仍然没有全方位的综合性国家高空作业标准。与美国、澳大利亚、欧盟、新加坡、巴西和国际劳工组织不同，中国现在没有针对地面以上工作的严格的安全生产法规。

2002 年颁布的《安全生产法》规定了一些基本的职业安全要求（比如从事建筑或制造业的企业必须提供安全生产条件，此类企业有义务根据国家或行业标准向员工提供个人保护装备），但是该法似乎没有就高空作业或坠落保障规定具体的程序。

同样，建筑高空作业法规 JGJ80–1991 仅对高空作业安全要求规定了大概的指导方针，缺少详细的坠落预防计划、风险管理和控制措施、安全生产程序、施工许可证制度、事故和调查、雇主责任等。

除了增强符合国际通行标准的国家级安全法律法规体系外，中国美国商会还鼓励大力投资诸如高空作业平台等施工升降设备，强制使用安全设备，建立完备的风险管理标准，并强化施工企业的责任，以此作为改进高空安全作业的主要手段。这些举措可以有助于将中国的工伤死亡率降低至“中等发达国家”的平均水平，并有助于实现“十二五”规划中提出的保障全国人民都能过上“更安全更美好生活”的目标。

现存监管问题

金融租赁施工平台

以高质量的施工平台和安全设备替代脚手架的使用，从而确保高空作业的安全性是一种国际通行的做法，然而中国市场尚未能够充分利用现有的技术。施工平台租赁体系的缺失限制了这些产品在中国的使用，也阻碍了有意进入中国市场的美国生产商的参与。以上问题集中表现在建筑设备由于缺少维护保养而大批老化。我们鼓励中国政府加快发展金融租赁业，为建筑业能够更广泛地使用本土和进口设备创造条件。

中国《安全生产法》和高空作业法规的有限范围及细则

检查和监督

《安全生产法》没有规定可量化或可强制执行的标准，也未能为希望实现安全生产的施工单位、承包商或劳动者提供明确的指引。该法第 38 条只规定“定期进行安全生产

Limited Scope and Detail of China's Production Safety Law and Work at Height Regulations

Inspections and Oversight

The Production Safety Law does not mandate quantifiable or enforceable standards and provides no transparent guidelines for employers, contractors, or workers who wish to engage in safe work behavior. Article 38 of the law calls for "regular inspections over production safety" but does not stipulate requirements as to the frequency of inspections.

International regulations specifically call for inspection timetables depending on the equipment used to conduct work at height safety audits. For example, Singapore's 2011 Workplace Safety and Health (Scaffolds) Regulations call for scaffolding inspections every seven days or less if the scaffolding structure is exposed to adverse weather conditions.

Risk Management Framework

An additional concern is Article 31 of the Production Safety Law, which calls for the elimination of techniques and equipment that may seriously endanger safety during manufacturing operations. While well intentioned, the Article provides no clear methodology to help prioritize these hazards, nor does it identify alternative methods for work at height. Furthermore, without clear mandates for enforcement, workers do not get training and are therefore unaware of the benefits from work safety or the use of safety equipment.

The Chinese government is encouraged to issue specific national codes on the prevention of falls from heights at two meters and above. A positive example is Australia's General Falls Code, which aids in effective risk assessment and reduction of unsafe work at heights. The code lays out levels of work safety, from least to most hazardous, under a Hierarchy of Controls framework. Chinese stakeholders can benefit from a similarly transparent classification of hazard levels. In Australia, national codes of practice are coupled with government and industry-sponsored training initiatives which are implemented in accordance with national laws. These two strategies provide a clear and standardized structure for reducing potential hazards from work at heights, including use of aerial work platforms or ladder usage. Such a framework would give the Chinese government an explicit means for enforcing industry regulations and practices, and would also help introduce work safety analysis to key stakeholders.

Risk Management and Safety Licensing

Countries around the Asia-Pacific region are enacting regulations requiring robust permit-to-work systems and safe work method statements to control risk of falls of two meters or greater. These transparent processes provide clear methodologies and involve key stakeholders in the risk review and management process. The designation of a work at height safety assessor for each project, a thorough inspection of planned work, and a continuous review process at the job site linked to issuance and maintenance of licenses, are key success elements of these systems.

AmCham China recommends Chinese authorities to introduce similar risk management processes and provide training on the use of safe equipment that can be used in lieu of scaffolding.

Recent Developments

Proposed Amendment to the 2002 Production Safety Law and JGJ 80-1991

In June 2012, the Legislative Affairs Office of the State Council announced it was seeking public review on a draft amendment to the Production Safety Law. The main focus of the amendment was an expansion of the regulatory scope of the law to cover additional industries including metallurgy, rail transportation, and movement of dangerous goods. However, the proposed amendment does not address concerns over work at height in the construction industry and provides no concrete guidelines for reducing unsafe scaffolding practices.

The Safety and Technology Standard for Height Operation in Construction (standard JGJ 80-1991) is a mandatory standard which categorizes types of height operation. While its general provision (article 2.01) requires that all necessary safety measures for height operations must be taken into account at the inception of the project, the specific "necessary safety measures" for any given type of construction project are not defined.

For example, for operations which require the sealing of towers or other structures, Article 4.1.1 states that any scaling operation must be achieved either by utilizing supported scaffolds or ascending lifts. However, it also appears that ladders are an acceptable form of scaling device. The Article does not outline any procedures for worker safety in scaling operations and does not address whether any personal arrest systems or fall protection systems must be in place. Overall, it appears that full discretion is given to the employer as to what types of safety precautions must be put into place—in effect, saying "protect the worker" without actually outlining what adequate protection entails.

Furthermore, JGJ 80-1991 also lacks a clear definition of employer responsibility and accountability. As the regulation was released over 23 years ago, AmCham China encourages its revision be completed to reflect the major changes the construction industry has undergone over the past two decades.

AmCham China suggests that Chinese authorities improve the Production Safety Law and standard JGJ 80-1991 by

检查”，却对检查频率未作具体要求。

国际监管法律中明确要求根据高空作业安全审计对使用的设备制定详细的检查时间表。例如，新加坡《职业安全与健康（脚手架）条例 2011》中规定必须每七天对脚手架进行一次安全检查，若脚手架曝露在恶劣天气环境中，则检查周期更短。

风险管理框架

另外，《安全生产法》第 31 条要求淘汰可能严重危害生产运营安全的技术和设备。虽然立意很好，但却未能就如何判定危险系数提供明确的方法，也未明确替代高空作业的其他方法。此外，由于缺乏明确的强制执行措施，工人们也无法获得有关内容的培训，因此也不知道安全生产和使用安全设备的各种益处。

我们鼓励中国政府出台全国通用的操作准则，专门针对两米及两米以上高空作业的情况预防坠落。澳大利亚的《防坠通则》就很值得借鉴。该法确保了风险评估的有效性，减少了高空不安全生产行为。该法在分级管控的框架下，将职业安全按照危险系数高低进行分类，从最不危险到最危险。中国相关部门可加以借鉴，制定明确的危险级别分类并从中受益。在澳大利亚，全国通用操作准则还配合有政府和行业资助的培训项目，按照国家法律予以实施。上述两项战略构成了一个清晰、标准化的框架，可以有效地降低高空作业的潜在风险，包括高空作业平台的使用或梯子的使用。上述清晰的监管框架将成为中国政府执行相关行业法律和实践的有力工具，也会有助于向主要的利益相关方提供作业安全分析。

风险管理和安全许可

当前，亚太地区各国都纷纷颁布相关法律法规，建立健全的施工许可证制度和安全施工方案制度，以降低施工中两米及两米以上高空坠落的风险。这些制度透明、清晰，明确提出了各种降低风险的方法，且主要利益相关方均能参与风险检查和管理过程。每个工程都必须指定高空安全评估员，对施工计划进行彻底检查，以及对施工现场进行持续的安全检查并将检查结果与施工许可证的发放和吊销挂钩，这些措施都是确保上述制度有效实施的重要因素。

中国美国商会建议中国政府部门引入类似的风险管理流程，并提供如何使用安全设备（能用于取代不安全的脚手架）的培训。

最新进展

2002 年《安全生产法》和 JGJ 80–1991 规范的修订

2012 年 6 月，国务院法制办公室发布了《安全生产法》修正案草案并公开征求意见。该修正案的主要目的在于扩大该法的监管范围，将冶金、铁路交通以及危险物品运输等行业纳入该法的调整范围。然而该修正案并未涉及建筑行业高空作业安全问题，也未能就减少不安全脚手架使用制定具体的指引。

《建筑施工高处作业安全技术规范》（JGJ80–1991 规范）是一个强制性的规范，对高空作业进行了分类。尽管其基本规定（第 2.01 条）要求在项目启动之初就必须把所有必要的高空作业安全措施考虑在内，但是并没有对任何特定类型建筑项目的“必要的安全措施”予以具体定义。

例如，对于要求封闭塔楼或其它建筑结构物的作业，第 4.1.1 条规定任何登高作业必须借助脚手架或登高设施来完成。然而，梯子似乎也是一种可以接受的攀登形式。该条没有概述攀登作业的任何安全生产程序，也没有涉及是否必须要有任何个人防坠落系统或坠落保护系统。总体来看，似乎是把必须安排何种安全预防措施的自主权全部交给了施工单位，结果就是仅提到“保护工人”却没有具体说明需要哪些适当的保护措施。

此外，JGJ80–1991 规范还缺少对施工单位责任和义务的明确定义。因为该规范是 23 年前发布的，中国美国商会鼓励有关部门对其进行修订以反映建筑行业在过去 20 年来所发生的重大变化。

中国美国商会建议中国政府部门引入与高空作业和脚手架质量相关的国际通行标准，从而进一步完善《安全生产法》和 JGJ80–1991 规范。要求并强制使用高空作业平台和个人保护装置等提供防坠保护的技术和安全设备，是国际公认的保障施工环境安全的做法。

我们还建议借鉴美国、欧盟、新加坡和澳大利亚的相关做法，明确脚手架的安装、维护和拆卸环节的质量要求。上述国家根据作业高度、材质和施工水平来对脚手架的使用进行监管，比如，美国限制扣件式钢管脚手架使用高度不得超过 38.1 米，木柱脚手架使用高度不得超过 18.28 米。

值得注意的是，住建部和国家安全生产监督管理局都已通过不同的方式启动了建筑施工安全生产标准的监管工

incorporating internationally accepted standards on work at height and scaffolding quality. Requiring and enforcing the use of technologies and safety equipment with fall protection such as aerial work platforms and personal protective equipment are internationally acknowledged practices for ensuring safe working environments.

We also recommend introducing transparent scaffolding quality requirements for the installation, maintenance, and deconstruction stages, as present in regulations in the US, EU, Singapore, and Australia. These countries regulate the use of scaffolding based on height, material, and working levels. For instance, the US restricts utilization of tube and coupler scaffolding over 38.1 meters in length or wood pole scaffolding over 18.28 meters in length.

It is noteworthy that both MOHURD and the State Administration of Work Safety (SAWS) have commenced regulatory efforts on construction work safety standards using different approaches. MOHURD's efforts are directed towards legislative drafting and work at height technology evaluation, led by the Construction Work Safety Standards Committee of leading domestic experts under the command of the China Academy of Building Research. Meanwhile, SAWS' efforts in regulatory enforcement are based on comprehensive comparisons of Chinese policies with those of North America, the EU, and Asia.

AmCham China's Work Safety Committee's policy advocacy will be continuously directed to support ongoing regulatory efforts from both ministries.

Work Safety Committee Organized Reverse Trade Mission

In June 2013, AmCham China's Work Safety Committee, with support from the US Embassy in Beijing and funding from the US Trade and Development Agency (USTDA), led a delegation of Chinese officials from MOHURD and SAWS to the United States to meet with US work safety agencies including the US Occupational Safety and Health Administration (OSHA) and the National Institute for Occupational Safety and Health Administration. The Chinese delegates learned about the history of work safety development in the US, its current laws and regulations, as well as work safety training schemes implemented by OSHA. Live demonstrations of work at height equipment were provided by local manufacturers. The mission provided an opportunity to show US work at height best practices while encouraging Chinese policy makers to revise current work safety regulations to meet international standards.

Recommendations

For the Chinese Government

- **Revise and update current safety laws and regulations, such as standard JGL 80-1991, to prescribe and enforce strict parameters for various work at height methods.**
- Increase leasing and financing options for investment in and use of access and safety equipment.
- Introduce a more detailed and complete risk management process.
- Place greater emphasis and clarity on employer responsibility on safe work at height practices and introduce regulatory audits to ensure responsibilities are met.

For the US Government

- **Collaborate with the Chinese government and industry experts in sharing the latest laws and regulations for work at height.**
- Support the use of technology, access, and safety equipment within China and provide training on the use of quality products.

作。住建部的工作针对的是立法起草和高空作业技术评估，该项工作在中国建筑科学研究院的指导下由国内主要专家组成的建筑施工安全标准化技术委员会负责牵头。同时，国家安全生产监督管理局的监管执法工作则是在中国政策与北美、欧盟和亚洲政策的综合比较的基础上进行的。

中国美国商会安全生产委员会的政策宣传将继续对上述二个部门正在进行的监管努力予以支持。

安全生产委员会组织的反向贸易代表团

2013 年 6 月，中国美国商会安全生产委员会在美国驻华使馆的支持下，由美国贸易发展署资助，带领一个由中国住建部和国家安全生产监督管理局官员组成的代表团前往美国，访问了包括美国职业安全与健康管理局（OSHA）和职业安全与健康管理局国家研究所在内的美国安全生产机构。中国代表团成员了解了美国安全生产的发展历史、现行的法律法规以及职业安全与健康管理局实施的各种安全生产培训计划。美国本土的生产厂家现场示范了高空作业设备。这次活动提供了一个很好的中美高空安全工作的交流机会，同时也鼓励中国政策制定者修订现行的安全生产法规以符合国际标准。

建 议

对中国政府的建议

- **修改和更新如 JGJ80-1991 规范等现行的安全法律法规，规定并执行严格的高空作业标准。**
- 推进金融租赁业的发展，以此促进施工平台和安全设备的投资和使用。
- 引入一种更为详细完整的风险管理流程。
- 更加强化和明确施工单位在高空安全生产实践方面的责任，并且引入监管审计以确保责任得到落实。

对美国政府的建议

- **与中国政府和行业专家进行合作，分享最新的高空作业法律和法规。**
- 支持中国在全国范围内推广使用相关技术、施工平台和安全设备，并且提供相关设备的操作培训。

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

Agriculture

Introduction

As food security and food safety increasingly become global concerns, international stakeholders, including China, have risen to address these critical issues. While largely self-sufficient in the production of rice, wheat, and corn, China faces significant challenges in meeting its food security, safety, and sustainability goals. China's large and growing population, limited water and arable land, changing food consumption habits, environmental concerns, growing demand for processed foods, rising incomes, and corresponding increase in overall demand for food all make it increasingly difficult for China to ensure plentiful and safe food for its population.

The quality, efficiency, and sustainability of food systems are essential to meeting market demands. While China's policy over the past three decades to modernize its agriculture sector has provided many benefits for its people, greater international cooperation and trade can help further reduce strains on China's food systems and contribute to meeting the 12th Five-Year Plan (12th FYP) goals for food and nutrition security. For example, China's agriculture trade rules and regulations are much more restrictive in comparison to those of China's manufactured goods sector. Furthermore, limitations on foreign agricultural investment, unscientific restrictions of the market, lack of transparency, and discriminatory policies prevent China from fully reaping the benefits of open trade and investment.

AmCham China members are well positioned and eager to contribute to the full development of China's food systems through the use of modern agricultural practices, competitively priced agricultural products, and value-chain inputs. Indeed, the US-China Agriculture and Food Partnership (AFP), established in late 2013, offers the opportunity to bring together public, private, and non-governmental organization stakeholders from both countries for win-win projects and initiatives to build bilateral and global capacity in food security, safety, and sustainability. AmCham China members look forward to continuing such collaboration with Chinese counterparts, government, and stakeholders in 2014.

Ongoing Regulatory Issues

Restrictions on Foreign Investment in Agriculture

The National Development and Reform Commission (NDRC) and the Ministry of Commerce (MOFCOM) published an updated "Guiding Catalogue on Foreign Investment in Industry" (Foreign Investment Catalogue) in December 2011. The updated catalogue further increased restrictions on foreign participation in many sectors of China's agricultural industry.

Additional restrictions were introduced in such areas as seed breeding, production, and distribution; grain origination and storage; oilseeds processing; and corn processing. Grain logistics was added to the restricted list while, in practice, restrictions on corn processing were expanded to value-added downstream food products. Additionally, restrictions on seed production were expanded beyond field crops and restrictions on oilseeds processing were also expanded beyond soybeans to all oilseeds crops.

The revised catalogue also continues to prohibit foreign investment in the "development and production of transgenic plant seeds" and, for the first time, prohibits foreign companies from engaging in biotech research and development (R&D). This is despite the fact that ag-biotechnology has been widely adopted in major agricultural countries across the world as a way to deliver substantial agronomic, environmental, economic, and social benefits to farmers and society.

The growing restrictions on foreign investment in China's agriculture industry block both farmers' access to advanced technologies and consumers' access to safe and affordable agricultural products by limiting business opportunities, competition, and efficiency, and ultimately reducing innovation, slowing industry development, and raising prices of food products. China's agriculture investment restrictions are also at odds with the objectives of China's 12th FYP, which emphasizes the need to shift more resources to agriculture and food production in order to improve people's lives and meet China's food security and safety needs. Likewise, the agriculture investment restrictions are contrary to Chinese government policy that recognizes the

农 业

引 言

随着粮食安全和食品安全日益成为全球关注的问题，包括中国在内的许多利益相关方都开始着手解决这一严峻问题。虽然中国在水稻、小麦和玉米上已经基本实现自给自足，但在实现粮食安全、食品安全和可持续性等目标上依然面临诸多挑战。中国人口众多且持续增长、水资源和耕地资源有限、民众的饮食消费习惯不断变化、环境问题不断加剧、对加工食品的需求增长、人民收入提高，及其所带来的对食物整体要求的提高，都使得为国民提供充足且安全的粮食变得愈加艰难。

粮食体系的质量、效率和可持续性是满足市场需求之根本。尽管在过去 30 年中，中国为实现农业现代化所出台的政策为百姓带来了诸多实惠，然而扩大国际合作和贸易应有助于进一步减少中国粮食系统面临的问题，也有助于实现“十二五”规划中确立的粮食安全和食品安全的相关目标。例如，中国农业贸易的法律法规要比制造业领域的规则和监管严格得多。另外，对外商投资农业的限制、对市场不科学的限制、透明度的缺乏以及歧视性政策都阻碍了中国从开放的贸易和投资中充分受益。

中国美国商会会员企业已经做好准备，并热切期望能够凭借自己所拥有的现代农业经验、价格极富竞争力的农产品以及价值链上的优势，为中国粮食体系的全面发展贡献力量。实际上 2013 年下半年建立的中美农业与食品合作项目 (AFP)，为聚合两国农业领域的公共部门、私人企业和非政府组织等利益相关方，开发双赢项目和计划，提高两国乃至全球在粮食安全、食品安全和可持续性方面的能力提供了机会。中国美国商会的会员企业希望今年能够与中国同行、相关政府部门以及其他利益相关方继续推进此类合作。

现存监管问题

对外资投资农业的限制

中国国家发展和改革委员会和中国商务部于 2011 年 12 月发布了修订的《外商投资产业指导目录》(外商投资目录)。该目录进一步增加了外资参与中国农业诸多领域的限制。

在其他领域，比如种子培育、生产和销售，粮食收购和仓储，油籽加工和玉米加工等则增加了新的限制。粮食物流也被加入到限制清单中。在实际操作中，玉米加工限制已经扩张至下游高附加值产品。另外，对种子生产的限制已经超出了田间作物，对油籽加工的限制不仅限于大豆，而是扩展到所有的油籽作物。

修订后的目录亦继续禁止外商投资“转基因农作物种子开发和生产”，并且首次禁止外国公司从事生物技术的研发。目前全球主要农业大国都已经广泛采用农业生物技术，促进了农业经济、环境保护、经济发展和社会进步，使全体农民乃至整个社会受益。

中国对外资进入农业领域越来越严格的限制政策会减少商业机会、抑制竞争和降低效率，最终会导致抑制创新，减缓行业发展和推高农产品价格，从而阻碍农民获得全球最先进的农业技术，妨碍消费者享用物美价廉的安全农产品。“十二五”规划中强调将加大对农业和食品生产的投入，提高人民生活水平，实现中国粮食安全和食品安全的目标，而农业领域对外商投资的种种限制，却有悖于“十二五”规划中的相关目标。另外，上述限制也与中国认可农业国际化、鼓励中国企业海外投资农业生物技术领域的相关政策相违背，且中国企业海外投资农业生物技术领域的做法已经得到了美国及其他国家的普遍欢迎，美国批准双汇收购史密斯菲尔德食品公司即是明证。

benefits of internationalization by encouraging overseas investments in ag-biotechnology—investments which are generally welcomed by the US and other countries, as was demonstrated with the US's approval of Shuanghui's acquisition of Smithfield Foods.

Seed Industry

Promotion of a Modern Crop Seed Industry

The Chinese government has been making positive efforts to modernize the crop seed industry by revising and publishing important seed regulations and policies.

Recent discussion regarding modification of "The Seed Law of the People's Republic of China" (Seed Law) has focused on specifying the management roles of different government agencies, reinforcing germplasm protection, and mandating simplified variety registration for non-staple crops (e.g., vegetables). AmCham China members believe that substantial reform is required to accelerate the modernization of the seed industry and we welcome revision of the Seed Law. However, we emphasize the importance of ensuring that the final revised Seed Law treat all industry participants equally, including foreign-invested seed companies. When finalizing modifications to the Seed Law, we hope the Chinese government will keep these considerations in mind as well:

❶ Market forces should play an important role in seed industry development, and the government management process should be transparent;
❷ Considering its importance for breeding and R&D, the import & export of germplasm should not be further hindered; and
❸ Reforms to the variety registration process should not decrease the speed with which a new variety can be introduced to the market, and the process should be transparent.

In addition, in December 2012, the State Council issued the "Seed Industry 12th FYP." The 12th FYP listed government-funded projects with specified R&D targets aimed at modernizing the seed industry and encouraged local seed companies to engage in international collaboration and overseas business expansion.

In December 2013, the State Council issued the "Opinions on Deepening Reform of Seed Industry and Improving Innovation Capabilities," which reinforced and encouraged enterprise-focused commercial breeding.

Foreign-invested seed companies are eager to support and participate in the modernization of the Chinese seed industry through collaboration and partnership. AmCham China looks forward to more detailed measures regarding how our member companies can participate in such programs, and how the intellectual property of our member companies can be protected during this cooperation. For more information on intellectual property issues in the seed industry, please see the Innovation Policy chapter.

Seed Registration

The current registration process for seeds is opaque and time-consuming in comparison to those of other countries, particularly the US where there is no mandated registration process. Significant delays and uncertainty discourage investment in seed R&D, impeding the development of the Chinese seed industry and agriculture industry as a whole. AmCham China encourages the Chinese government to reform the current hybrid seed variety registration system to increase speed, fairness, and transparency for all industry participants.

On December 27, 2013, the Ministry of Agriculture (MOA) issued the "Measures for Main Crop Variety Registration" (MOA Decree 2013 No. 4). The new regulations, if implemented, would raise the bar for variety registration, set stricter registration standards, and allow for green channel policies where qualified seed companies may conduct seed variety registration field trials themselves with protocols pre-approved by the National Variety Registration Committee (though more detailed regulations required for implementation of green channel policies will be promulgated at a later date). These reforms are positive steps that, if implemented fairly, would improve the overall quality of new varieties and increase the efficiency of the registration process.

When the regulation is executed, AmCham China urges the MOA to treat Joint Ventures (with Chinese company ownership of greater than 50 percent) equally with local seed companies and, if qualified, allow them access to green channels. Foreign seed companies, including Joint Ventures, can significantly contribute to China's national goal of food security.

Seed Import and Export

Significant changes to seed import and export rules are necessary to streamline the existing lengthy and onerous approval processes. Under the "Technologies Import and Export Regulations" (TIER) and "Measures on the Regulation of the Protection of Crop Genetic Resources of China," germplasm exports from China can be restricted if endogenous germplasm is used. Even when endogenous germplasm is not used, exporting seeds for research purposes is cumbersome, particularly for multinational corporations with breeding stations around the world, requiring multiple approvals on a sample-by-sample basis. This process includes approvals from multiple authorities within the MOA, registration with MOFCOM (for TIER compliance), phytosanitary certification, and approvals from provincial authorities. Approval processes at the provincial level are especially time consuming and unpredictable, slowing the transfer of technology to Chinese farmers. Moreover, the MOA has recently strengthened regulation over germplasm export controls,

种子行业

推进现代农作物种业

中国政府已经采取积极措施，修改和制定了几部重要的种子监管法律法规和政策，以期实现农作物种业现代化。

目前《中华人民共和国种子法》（《种子法》）的修改主要集中在明确不同政府部门的管理职责，加强种质保护，简化非主食作物（如蔬菜）品种的登记程序。中国美国商会会员企业相信加快种子行业的现代化需要进行彻底的改革，我们也支持对《种子法》进行修改。然而，我们强调最终出台的《种子法》修正案应当对种子行业中的所有参与主体一视同仁，包括外资种子公司。我们希望中国政府在最终出台该法修正案之前能够考虑以下建议：

❶ 让市场在种子产业发展过程中发挥重要作用，且确保政府管理程序透明；

❷ 鉴于种子培育和科研的重要性，不应当再继续阻碍种质进出口；

❸ 品种登记程序改革不应当减缓新品种投入市场的速度，且该登记程序应当公开透明。

此外，2012 年 12 月，国务院发布了《现代农作物种业“十二五”规划》，该规划中列出了由政府出资、完成规定的研发目标的诸多项目， 以期实现种业现代化，并鼓励本地种业公司参与国际合作和进行海外业务拓展。

2013 年 12 月，国务院发布了《深化种业体制改革提升创新能力的意见》，该意见中再次强调并鼓励企业提高自主创新能力，构建商业化育种体系。

外资种业公司十分希望能够通过建立合作伙伴关系，支持和参与中国种业现代化进程。中国美国商会希望看到中国出台更多细则，对我们的会员企业如何参与相关项目，以及在合作中如何保护我们会员企业的知识产权作出更为详细的规定。

种子登记

与其他国家相比，中国现行的种子审定程序缺乏透明度且耗时较长，而美国却没有规定强制性的审定程序。种子审定迟延以及其不确定性会影响种子研发投资的积极性，从而阻碍中国种业乃至整个农业的发展。中国美国商会鼓励中国政府对现行的杂交种子品种注册体系进行改革，实现对所有参与企业登记注册的快速化、公平化和透明化。

2013 年 12 月 27 日，农业部出台了《主要农作物品种审定办法》（农业部令 2013 年第 4 号）。新办法若实施，品种审定门槛将进一步提高，审定标准将更为严格；同时将允许符合要求的种业公司享受绿色通道政策，在按照国家品种审定委员会预先批准的程序进行的前提下，自行实施种子品种登记田间试验（但有关该绿色通道政策的实施细则还有待日后发布）。这些改革措施堪称品种审定领域的积极进步，如能得到公正有效的实施，必将提升新品种的整体质量，提高审定程序的效率。

一旦该办法实施，中国美国商会促请农业部能够将中外合营种子企业（中方占股 50% 以上）与内资种业公司一视同仁，允许符合条件的合营企业申请享受绿色通道政策。外资种业公司，包括中外合营种业公司，能够对中国落实粮食安全目标做出重大贡献。

种子进出口

为了改变现行审批程序冗长且繁琐的现状，需要对当前的种子进出口制度进行重大改革。根据中国的《技术进出口管理条例》（TIER）和《农作物种质资源保护管理办法》，如果某出口种质中使用了内源种质，那么该项出口将受到严格限制。即使未使用内源种质，为研究目的而进行的种子出口监管程序依然十分繁琐，对育种基地遍布全球的跨国公司来说更是如此，要求审批时必须提交审查每一份样品，且需要经过多道审批程序。上述审批程序包括获得农业部多个司局的批文，完成商务部登记备案（TIER 合规程序）， 取得植物检疫证书以及省级相关部门的审批。省一级的审批程序尤为耗时且不可预期，从而降低了技术转化为中国农民所用的速度。另外，农业部近期加强了对种质出口的监管，甚至会要求出具实验室试验报告，这就加重了相关企业的负担，也减缓了种子品种开发的速度。

国际农产品贸易

针对美国农产品出口采取的贸易救济措施

中国美国商会关注到，中国继续对美国出口至中国的多种家禽产品征收高额的反倾销税和反补贴税。对美国的出口家禽征收如此高昂的税收实属不必，而且对市场以及中国的消费者都造成了负面影响。我们鼓励中国取消对美国进口家禽征收反倾销和反补贴税，或者至少在未来的中期复审中考虑降低对美国出口商的上述税额。

经美国申请，世界贸易组织的一个争端解决专家小组于 2013 年 9 月发布最终裁决，认定中国商务部的反倾销 /

requiring lab test reporting in some cases, thus increasing the burden on companies and slowing the development of seed varieties.

International Agricultural Commodity Trade

Trade Remedy Proceedings against US Agricultural Exports

AmCham China notes with concern that the Chinese government continues to impose substantial anti-dumping and countervailing duties (AD/CVDs) against a wide range of US poultry exports to China. Levying such prohibitively high duties on US poultry exports is unnecessary and has a disruptive effect on the market and Chinese consumers. We encourage China to eliminate AD/CVDs on US poultry imports or, at a minimum, give US exporters the opportunity to reduce these duties through future interim reviews.

In response to a request from the US, a World Trade Organization (WTO) Dispute Settlement Panel issued a final ruling in September 2013 that identified several substantive and procedural errors in MOFCOM's AD/CVD investigation. We urge MOFCOM to take these findings into account and promptly issue a revised determination that fully comports with the WTO's conclusions.

US agricultural companies acknowledge that our Chinese counterparts have likewise voiced concerns about market access for certain Chinese agricultural products in the United States. To promote more robust and mutually beneficial US-China agricultural trade, we urge US authorities to employ a science-based approach to Chinese requests for US market access for meat, fish, and produce (in particular, cooked poultry, catfish, apples, and pears).

Livestock and Meat Issues

Significant potential for increased trade in beef and pork between the US and China exists; however, in order for such trade to increase, China will need to implement a more risk-based standards structure. This would ensure food safety while also providing Chinese consumers with products at lower prices.

Due to increased demand and shrinking domestic beef supplies, China's total global beef imports from January to October 2013 totaled 831,018 tons, up 110 percent from the same period in 2012. Despite the surge in imports, however, beef prices in China averaged US $4.64 (RMB 28.07) per pound in early December 2013 and continued to edge higher, up 21 percent from last year. In response to these record prices, the Chinese government has been searching the globe for new sources of supply.

One key source of supply that remains off limits is US beef. Since the detection of bovine spongiform encephalopathy (BSE) in the US 10 years ago, China has shut US cattle producers out of the Chinese market. Limited conditions for the importation of boneless beef from cattle under 30 months of age were unilaterally announced in June 2006 but, as of December 2013, no US product has shipped due to the unscientific and extremely onerous nature of the import conditions set by the Chinese government on US producers and government authorities. No progress has since been made.

AmCham China encourages the Chinese government to re-open its market to US beef imports in light of the internationally recognized "negligible risk" level of BSE in the US, as confirmed by the World Organization for Animal Health (OIE) in May 2013. This puts the US in the same risk category as most of China's suppliers and ahead of Canada, which regained access to China's market in 2008.

Potential for expanded trade in pork between the US and China exists as well, especially as Chinese costs of production escalate in sectors ranging from grain to labor to environmental protection. The October 2013 acquisition by China's largest pork processor, Shuanghui International, of Smithfield Foods, the largest integrated pork producing company worldwide, speaks to the complementarity of the two countries' meat industries.

China's import behavior has generally been commodity price driven. However, US exporters hope to develop more mature trade based on consistent sales relationships with larger-scale users, such as meat processors, large restaurant chains, and retailers. Nevertheless, barriers to trade make this difficult. For example, China and the US have different regulations for the usage of production technologies such as ractopamine, a feed additive approved by both the US Food and Drug Administration and Codex Alimentarius. US exporters meet China's zero tolerance import requirement, but at higher cost with little additional safety benefit. Other impediments include restrictions on the import of US chilled and processed meats, the latter in violation of the bilateral agreement on meat, wheat, and citrus products signed between the US and China in 1999.

AmCham China is encouraged by the Chinese government's recently stated commitment to food safety and by its intention to employ a more risk-based standards structure. This should allow for the establishment of more realistic standards for common risks such as the presence of pathogens on raw meat. Given resource constraints, China should conduct similar risk assessments of new production technologies that could potentially benefit both the local livestock industry and consumers with lower cost, more sustainably produced meat.

Barriers to Grains Derived from Biotechnology

In recent years, China's biotech approval process has gone from being slow but predictable to even slower, unpredictable, and nontransparent. Because of China's position as a major buyer of US commodities, the arbitrary nature of the

反补贴调查程序中出现数个实质性和程序性错误。我们促请商务部认真考虑专家组裁决，迅速修改和发布征税决定，从而遵守世贸组织裁决。

美国的农业企业也了解中国同行就某些中国农产品能否进入美国市场存在的担忧。为了促进美中农业领域贸易的健康和互惠发展，我们促请美国各机构采用科学的方法，评估中国的肉类、鱼类和其他农产品（特别是熟制禽肉、鲶鱼、苹果和梨）进入美国市场的要求。

牲畜和肉类问题

美中两国的牛肉和猪肉贸易还存在很大的提升空间；然而，为了扩大牛肉和猪肉贸易，中国将需要实施一种基于风险评估的产品标准结构。这不仅能提高食品安全，还能够让中国消费者享受到更低廉的价格。

鉴于国内牛肉需求增加但供给萎缩的现状，从 2013 年 1 月到 10 月，中国从他国进口的牛肉总量达 831018 吨，比 2012 年同期增长了 110%。尽管进口量激增，中国国内的牛肉价格在2013年12月初依然达到了4.64美元(28.07元)／每磅的高价，且继续走高，价格比去年提高了 21%。为了应对牛肉价格过高的问题，中国政府一直在全球寻找新的供应源。

美国虽然是牛肉出口大国，美国牛肉却一直被拒在中国市场大门外。十年前，自从美国牛肉中检出牛脑海绵状病后（疯牛病），中国就一直禁止进口美国牛肉。2006 年 6 月，中国单方面宣布有条件地进口 30 月龄以下的无骨牛肉，但截止 2013 年 12 月，由于中国政府对美国生产商和美国相关政府部门所提出的进口条件过于繁琐且缺乏科学依据，美国牛肉实际上还是无法进入中国。迄今为止这个问题没有取得任何进展。

中国美国商会鼓励中国政府依照 2013 年 5 月经世界动物卫生组织（OIE）确认、且获得国际认可的美国牛肉致“疯牛病”的风险属于“可忽略”级的事实，重新从美国进口牛肉。OIE 确认的美国牛肉的风险与绝大多数向中国出口牛肉的供应商属于同一级别，甚至比加拿大牛肉的风险级别还要低，但加拿大牛肉却在 2008 年得以重返中国市场。

美中两国扩大猪肉贸易的潜力也十分巨大，特别是鉴于中国粮食、人力和环境保护等因素造成生产成本不断攀升。2013 年 10 月，中国最大的猪肉加工企业双汇国际收购全球最大的生猪生产商和猪肉供应商史密斯菲尔德一案就充分显示了两国肉类行业的互补性。

中国的进口行为一向都受商品价格驱动。美国的出口商们希望与大客户，如肉类加工企业、大型餐饮连锁企业以及各类零售商建立更为长期、稳定和成熟的贸易关系。然而贸易壁垒的存在使得这个愿望很难实现。例如，中国和美国对使用生长技术的监管程度存在差异，以莱克多巴胺为例，美国食品药品管理局和国际食品法典委员会都已经批准其为一种合法的饲料添加剂。美国的出口商要想进入中国猪肉市场就必须满足中国对莱克多巴胺零容忍的进口要求，这样势必就增加了出口成本，却基本上没有增加食品安全上的好处。其他贸易壁垒包括限制进口美国冷冻和加工肉类，后者违反了美中两国于 1999 年签署的有关肉类、小麦和柑橘产品双边协定。

中国政府近期打算采用基于风险评估的标准结构，承诺加强食品安全的做法，使中国美国商会深受鼓舞。中国应当建立更为务实的标准，允许诸如生肉中有病原体这类普通风险的存在。鉴于资源有限，中国应当对新型生产技术实施类似的风险评估，这样能够促进国内牲畜行业的发展，使消费者享用物美价廉的肉类。

对生物技术生产粮食的限制

近年来，中国生物技术审批程序的发展趋势从缓慢但可预期变成更慢、不可预期且不透明。鉴于中国是美国大宗商品主要进口国这一事实，目前中国武断的审批程序必将剥夺中国消费者享用由新技术实现增产、抗虫、除草、增质和环保的农产品带来的种种好处。另外，问题多多的审批程序也削弱了中国获取稳定的粮食供应源、平息国内通胀压力和保持社会稳定的能力。

截至 2013 年 6 月，距离中国上次批准一项进口和使用新型大豆、玉米、棉花或油菜生物技术特性的申请过去了 19 个月。而当时还有 19 种大豆、玉米、棉花和油菜生物技术特性等待获得最终的安全证书和开展当地研究批文。这种审批上的迟延已经成为阻碍双边贸易发展的一大因素。等到中国终于开始着手审批这些积压已久的生物技术审批申请时，真正获得批准的只有 11 个，比例仅为 58%，其他 8 个申请均遭否决。

美国及全世界的农民都希望帮助中国实现粮食安全的目标。然而，为了高效且持续地实现粮食生产和增产，企业必须具备将新生物技术特性商业化的能力，如此才能增加产出，提高质量，最终为中国消费者提供更多价廉物美的健康食品和纤维。如果在新种子技术审批上继续迟延，到时候损害的不仅是中国的粮食安全，更是全球的粮食安全。

current Chinese approval system is effectively depriving Chinese consumers of the benefits of agricultural products derived from new technologies used to increase yields, fight pests and weeds, enhance quality, and improve environmental performance. Additionally, the problematic approval system weakens China's ability to secure stable sources for its grain supply, ease domestic inflation pressure, and maintain social stability.

As of June 2013, it had been 19 months since a new soybean, corn, cotton, or canola biotech trait had been approved for import and use in China. In addition, there were 19 soybean, corn, cotton, and canola traits waiting for final safety certificates or for approval to initiate required local studies. Such delay of approvals is a major disruption to trade flows. When China finally acted on this backlog of biotech approvals, it issued approvals for only 11, or 58 percent, of pending applications, while rejecting the others.

Farmers in the US and throughout the world want to help China meet its food security needs. However, in order to efficiently and consistently produce and increase production of crops, companies must be able to commercialize new biotech traits that can increase yields, improve quality, and ultimately provide Chinese consumers with more affordable and healthy food and fiber. Continuing delays in approving these new seed technologies will weaken not only Chinese, but also global, food security.

AmCham China members are concerned that the approval process has become overly political, requiring high-level attention to advance applications through the MOA. We urge the Chinese government to issue safety certificates in a timely fashion based on a functional regulatory framework and a sound scientific evaluation system.

Tariff Rate Quotas

A number of issues prevent Chinese Tariff Rate Quotas (TRQs) from fulfilling their potential to support US-China trade relations and the Chinese domestic agricultural market:

❶ TRQ quota levels have not been adjusted since China's WTO accession in 2001 and do not meet the increasing demand in China for corn, sugar, cotton, and other agricultural commodities.

❷ A majority of the import quotas (about 90 percent of the wheat import quota, for example) is reserved for state trade. TRQ volume allocated to each private applicant is often too small to be commercially viable for making one shipment. Traders have to combine TRQs of a dozen private recipients to make a Panamax shipment.

❸ A lack of transparency in the administration of TRQs inhibits efficient utilization of quotas and increases the cost of agricultural trade. Traders find it difficult to find out who has received TRQs and how much was allocated.

❹ Quota distributions are unpredictable and often at odds with the needs of the market. Quotas are often released at times when importers do not need to import, while quotas are often *not* released at other times when importers *do* need to import.

AmCham China requests the Chinese government regularly review TRQ levels according to actual market demand and to establish a more transparent and market oriented TRQ allocation system. We also recommend reducing the number of agricultural commodities subject to TRQs so that demand can more efficiently be met by the market. Implementing these changes will enable Chinese TRQs to function more efficiently, as envisioned under China's WTO accession agreement.

TCK in Wheat

The Chinese government agreed not to apply sanitary-phytosanitary (SPS) measures in a manner that would act as a disguised trade restriction as part of the US-Sino Agricultural Cooperation Agreement signed in 1999. However, exports of US soft white wheat into China are often delayed and importers are required to "treat" cargoes for *Tilletia controversa Kuhn* (TCK) spore presence even though spore counts fall within a tolerance agreed upon between the US and China. While China has never officially stated that TCK spore counts in such shipments had exceeded the agreed upon level, delays and unnecessary treatment still occur.

AmCham China requests the Chinese government abide by the US-China memorandum of understanding (MOU) for TCK certification and establish a more transparent TCK system for reporting to affected parties when treatment is required at the discharge port. Abiding by the MOU and improving transparency will lower costs and increase efficiency for all parties involved.

Recent Developments

Shanghai Free Trade Zone

Though AmCham China members hoped the Chinese government would reduce restrictions on agricultural investment as part of the upcoming national economic reforms, initial government proposals have actually introduced greater restrictions.

AmCham China applauds the Chinese government's decision to establish a pilot free trade zone (FTZ) in Shanghai as a way to move forward national efforts to build a more market-oriented economy. Furthermore, the adoption of a negative list format for the zone is broadly considered a positive step toward expanding market access for foreign investment in the long term. However, the negative list of investment restrictions published in Fall 2013 kept in place all of the restrictions on the agricultural industry as listed in the 2011 Foreign Investment Catalogue and introduced new restrictions as well.

中国美国商会的会员企业担心审批程序过度政治化，因为农业部对此类申请设定了非常严格繁琐的审批程序。我们促请中国政府能够建立高效运转的监管框架和全面科学的评估体系，从而做到及时发放安全证书。

关税配额制度

若干问题阻碍了中国关税配额制度充分发挥其潜力来支持美中贸易关系和中国国内农业市场。

❶ 关税配额水平自 2001 年中国加入世界贸易组织之后就未作过调整，该水平无法满足中国对玉米、糖类、棉花和其他农产品日益增长的需求。

❷ 绝大多数进口配额（例如 90% 的小麦进口配额）都专门留给了国有贸易。私人申请者所能获得的关税配额额度过小，甚至无法满足一次进出口贸易的需求。贸易商们必须聚集多个私人申请者的配额才能满足一次巴拿马型散货船的装运。

❸ 关税配额管理缺乏透明度，抑制了配额使用的效率并增加了农业贸易成本。贸易商很难获知哪些人获得了配额以及具体数量等信息。

❹ 配额分配缺乏预测性，经常与市场的实际需求不符。配额往往在进口商没有进口需求时发放，而等到他们需要进口时往往又迟迟不发放。

中国美国商会请求中国政府根据市场实际需求定期评估关税配额水平，并建立更加透明、以市场为导向的关税配额分配制度。同时我们还建议减少需要配额的农产品数量，从而更加有效地满足市场的需求。实施上述转变将使中国的关税配额制度更加充分有效地发挥作用，实现中国入世的相关承诺。

小麦矮腥黑穗病（TCK）

在 1999 年美中两国签署的农业合作协定中，中国政府承诺不会以卫生和植物检疫措施（SPS）的名义实施变相的贸易限制。然而美国向中国出口的软白麦却经常被扣留，要求出口商对软白麦进行矮腥黑穗孢子处理，即便是其中的孢子数量完全在美中协议中允许的范围内也还是要进行上述处理。尽管中国从来没有正式声称此类货物中的 TCK 孢子数量超过协定标准，但扣留和不必要的处理依然无法避免。

中国美国商会请求中国政府遵守美中两国关于 TCK 证明的备忘录，同时建立一个更为透明的 TCK 制度，以便在卸货港需要对货物进行处理时能及时告知相关主体。遵守备忘录以及提高透明度将有助于相关各方降低成本和提高效率。

最新进展

上海自由贸易区

尽管中国美国商会的会员企业希望中国政府在今后全国性的经济改革中能够减少对农业投资的限制，但从目前政府改革举措看，实际上对农业投资领域施加了更多的限制。

中国美国商会对中国政府在上海试点建立自由贸易区的决定表示欢迎，这是向市场经济转化迈出的重要一步。另外，自贸区内实行的"负面清单"模式被广泛认为积极预示着外资市场准入范围从长远看将得以不断扩大。然而，2013 年秋季发布的投资限制"负面清单"中不仅将 2011 年外商投资目录中对农业投资的限制全部吸收，另外还引入了一些新的限制。

上海自贸区拥有深海港口基础设施，同时临近一个巨大的食品消费市场，因此非常适合经营现代农业加工和贸易产业。中国美国商会促请中国政府在下次修改"负面清单"时将农业加工和贸易产业从该清单中除去，从而保障中国消费者能够充分享受上海自贸区可能带来的种种益处。

建 议

对中国政府的建议：

- **减少对外资参与和投资农业的限制，特别是将更多的农产品移至外商投资目录之"鼓励"类，同时删除上海自贸区"负面清单"中的大多数农业产业。**
- 不论对进口还是国产农作物，均实施更为透明、科学的农业产业监管体系。取消对美国牛肉、家禽、猪肉和转基因生物制品不科学的进口限制。
- 实现种子注册程序的快速化、公平化和透明化。
- 取消对美国出口家禽征收反倾销和反补贴税，或者至少通过未来的中期评审，给予美国出口商降低上述税收负担的机会。

With its deep sea port infrastructure and its proximity to a huge food-consuming market, the Shanghai FTZ is well positioned to develop a modern agricultural processing and trading industry. AmCham China urges the Chinese government to remove the agricultural processing and trading sectors from the negative list when it is further revised, in order for Chinese consumers to fully realize the potential benefits of the Shanghai FTZ.

Recommendations

For the Chinese Government:

- **Reduce barriers to foreign participation and investment in agriculture, in particular by moving more agricultural products to the "encouraged" category of the Foreign Investment Catalogue, and removing most agricultural segments from the negative list of the Shanghai Free Trade Zone.**
- Implement a more transparent and science-based regulatory system across all agricultural sectors, both for imported commodities and domestically cultivated crops. Remove unscientific restrictions on the importation of US beef, poultry, pork, and genetically modified organism (GMO) products.
- Improve the speed, fairness, and transparency of the seed registration process.
- Eliminate anti-dumping and countervailing duties on US poultry imports or, at a minimum, give US exporters the opportunity to reduce these duties through future interim reviews.

For the US Government:

- **Work with Chinese officials through bilateral dialogues, including the JCCT, S&ED, and US-China Bilateral Investment Treaty negotiations, to address investment restrictions faced by US agriculture producers.**
- Employ a science-based approach to Chinese requests for market access for meat, fish, and produce, including cooked poultry, apples, pears, and catfish.
- Engage in bilateral dialogue, workshops, and in-depth scientific exchanges to support the implementation of transparent, science-based regulatory systems, transparent and WTO-compliant agricultural trade policies, and open market access and investment opportunities in China.

对美国政府的建议：

- **通过中美商贸联委会、中美战略经济对话和中美双边投资协定谈判等平台，加强双边对话，解决美国农业企业所面临的投资限制。**
- 采用科学的方法，评估中国的肉类、鱼类和其他农产品（包括熟制禽肉、苹果、梨和鲶鱼）的美国市场准入要求。
- 开展双边对话、研讨会和深入的科技交流，支持中国实施透明、科学的监管体系，实施透明且符合世贸组织规则的农业贸易政策，以及开放市场准入和投资机会。

Automotive Industry

Introduction

The Chinese automotive market is increasingly integrated into the global market and acts as a driver for global firms' strategic planning. For example, weakening sales in the EU market has lead foreign manufacturers to focus on China, contributing to the rise in sales of luxury cars in the Chinese market.

China's automobile sales totaled 21.9 million vehicles in 2013, a 13.9 percent increase which far exceeded initial forecasts of seven percent growth following the significantly lower rates of growth of 2.5 percent and 4.3 percent in 2011 and 2012, respectively. This resurgence in growth is expected to continue throughout 2014 due to anticipated economic stimulus from the central government and strong economic growth and demand for automobiles in second- and third-tier cities and interior provinces.

Ongoing Regulatory Issues

Regulatory Transparency and Coordination

AmCham China welcomes the release of draft policies for public comment and encourages greater transparency with regard to automotive policy. China's automotive industry—one of the most highly regulated industries—is encumbered with many redundant and inconsistently applied regulations issued by central and local authorities. Additionally, coordination and communication between various levels of authority remains inadequate.

Cooperation between Chinese regulatory authorities to define and clarify key concepts, requirements, and roles and responsibilities would improve industry efficiency and transparency. Furthermore, cooperation amongst various local governments to unify standards and provide a level playing field for automakers regardless of the place of manufacture would promote the development and adoption of new technology, the rapid and healthy development of the Chinese automotive industry, and enhanced competitiveness in the global market. To further promote a spirit of policy-making transparency in China, AmCham China encourages the Chinese government to establish a formal automotive policy development mechanism. This would provide a way to publicly share proposals, seek legitimate comments, and provide adequate lead time prior to their implementation—thereby increasing efficiency and contributing to the development and global competitiveness of the Chinese automotive industry.

Government Procurement

AmCham China welcomes the Chinese government's steps towards leveling the playing field for foreign-invested enterprises (FIEs) and domestically invested enterprises in the China market by removing indigenous innovation policies from government procurement. One encouraging step is the national directive canceling official cars for general use below the vice-ministerial level. These are the same vehicles discussed in prior US-China dialogues on Government Procurement. However, a timetable for implementation has yet to be announced.

Unfortunately, inconsistent practices remain in some areas. The revised requirements for government vehicle fleet procurement also set new thresholds for auto manufacturers wishing to sell vehicles to government officials below the vice-ministerial level. Under the new guidelines, a vehicle manufacturer must hold a broad array of "industrial property rights" including, "improvement and recognition rights, technology transfer rights and the right of sale in the domestic and overseas markets of the models" in the catalog. This is a more rigorous standard for intellectual property (IP) ownership compared to previous procurement guidelines, introducing requirements that have no relationship to the manufacturer's ability to make and service the vehicle.

In February 2012, the Ministry of Industry and Information Technology (MIIT) released a draft catalog of vehicles available for government procurement, listing 412 vehicles—none of which were produced by joint ventures (JVs) with international original equipment manufacturers (OEMs). During the 2012 US-China Joint Commission on Commerce and Trade (JCCT) negotiations, the Chinese government committed to revise the catalogue but the new version has yet to be finalized. We urge the concerned government agencies to take concrete actions in response to the national directive. In addition, local interpretation and implementation of the policy remains a concern for multinational companies.

AmCham China suggests that the Chinese government set

汽车工业

引 言

中国汽车市场正在加快融入全球市场，成为全球企业战略规划中的一个推手。例如，由于欧洲市场销售疲软，外国制造商把重点转向了中国，导致中国市场豪华汽车销量上升。

2013 年，中国的汽车销售总量为 2190 万辆，同比增长 13.9%，这一增幅远远超过了 7% 的最初预测，因为在此前的 2011 年和 2012 年，汽车销量增幅明显放缓，分别为 2.5% 和 4.3%。由于预期中央政府会实施经济刺激措施以及二、三线城市和内陆省份的经济增长和对汽车的需求皆强劲，这一增长势头有望在整个 2014 年延续。

现存监管问题

监管透明度和协调问题

中国美国商会欢迎中国政策草案公开征求意见并鼓励进一步提高汽车政策的透明度。作为中国管制最严的行业之一，汽车行业充满了许多由中央和地方监管部门发布的重复且适用不一致的法规。另外，各级监管部门之间的协调和沟通仍然不足。

中国各汽车监管部门之间需要加强合作，界定和明确基本概念和要求、明确各自的监管职能和责任，这将有助于提升行业效率和透明度。此外，各地方政府之间也应开展合作，统一相关标准，在不考虑制造地的情况下为汽车制造商提供公平的竞争环境。这将推动新技术的开发和采用，促进中国汽车行业的快速健康发展，并提高汽车行业在全球市场的竞争力。为了进一步提升中国政策制定工作的透明度，中国美国商会鼓励中国建立一套正式的汽车政策制定机制。通过这一机制公开立法计划，征求公众意见并在正式实施前为汽车生产厂商留出充分时间进行准备 —从而提高中国汽车行业的效率并有助于促进该行业的发展和全球竞争力。

政府公务车采购

中国美国商会欢迎中国政府取消政府采购中的自主品牌的要求，为内外资企业在华经营营造公平竞争环境。2013 年发布了一项国家条例，取消了副部级以下一般用途公务用车。这些车辆正是以前美中政府采购对话中讨论过的车辆。然而，实施办法和时间表还没有公布。

遗憾的是，不一致的做法在某些领域依然存在。修订后的政府公车采购要求（《党政机关公务用车选用车型目录管理细则》）对进入一般公务用车采购目录的企业设置了新门槛。根据新规定，汽车制造商必须拥有申报车型的诸多“工业产权”，包括“申报车型产品改进及认可权、产品技术转让权及国内外市场销售权”。与之前的采购指南相比，这一版目录中增加了对知识产权的严格要求，而这些要求与汽车生产企业制造汽车并提供相关服务的能力并无关联。

2012 年 2 月，工业和信息化部（工信部）发布了党政机关公务用车车型目录草案，其中有 412 种车型上榜，但其中没有一种车型出自于国际原始设备制造商（OEM）组建的中外合资企业。在 2012 年中美商贸联委会（JCCT）谈判期间，中国政府承诺修订目录，但新的版本尚未最终确定。我们促请有关政府部门根据国家政令采取切实的行动。另外，地方政府对政策的解读和执行情况也令跨国企业十分担忧。

中国美国商会建议中国政府建立相关机制，以便更好的协调中央的政策制定与地方的执行工作，确保全国政策的一致性。

新能源汽车政策

中国政府大力支持新能源汽车行业的发展，但很多支持政策都仅惠及国产新能源汽车，且限制相关外资企业的充分参与。比如，购买新能源汽车享受优惠条件仅适用于工信部发布的《车辆生产企业及产品公告》（ 中列出的车型。

up a mechanism to better coordinate policy making at the central level and implementation at the local level to ensure nationwide consistency policies.

New Energy Vehicle Policies

The Chinese government strongly supports the development of new energy vehicles (NEVs), yet a number of policies benefit locally produced NEVs and limit full participation by FIEs. For example, NEV vehicle purchase incentives apply only to vehicles in the "MIIT Product Catalog." Because vehicles imported to China appear in a separate catalogue, the China Compulsory Certification, only locally produced NEVs qualify for these benefits. While both domestically produced and imported vehicles have the China Compulsory Certification and are listed in the Ministry of Environmental Protection emissions catalog, the MIIT product catalog does not include imported vehicles.

Approval for domestic vehicle production requires manufacturers to possess an understanding or "mastery" of one of the three key NEV systems: on-board energy, power driving, and/or vehicle control systems. Hybrid vehicles are defined to be energy-efficient vehicles, which are not eligible for NEV subsidies. However, hybrid vehicles are subject to the same market entry policies as NEVs. Moreover, though hybrid vehicles equipped with lithium batteries are considered mature products, they are still regulated as products in the development stage and their sale is restricted to certain areas. No published government document explicitly applies to the matters related to such regulation. Furthermore, the Guiding Catalogue on Foreign Investment in Industry issued by the National Development and Reform Commission (NDRC) in 2011 includes NEV energy batteries in the encouraged category and eligible for preferential policies, but requires batteries with an energy density to be greater than or equal to 110 Wh/kg and battery life greater than or equal to 2000 charge cycles, with foreign investment capped at 50 percent in battery manufacture. No such requirements exist for other key NEV components.

These policies run counter to China's objective of encouraging NEV sales and use in China and, in certain instances, also run counter to WTO rules. AmCham China encourages the Chinese government to adopt policies that support the sale and use of NEVs in China, limit conditions to vehicle performance instead of manufacturer qualifications, and promote an equitable and non-discriminatory policy environment for FIEs and their JVs.

Charging Standards

China's direct current (DC) charging standards are not aligned with global standards and are instead based on China's unique engineering experiences and are influenced by the state-owned enterprise State Grid. State Grid appears to be opposed to the development of public fast charging stations and has obstructed further standards development. Lacking a pulse-width modulation definition, China's alternating current (AC) charging standards may prevent vehicles from charging at maximum efficiency, if at all, depending on the given grid connection. AmCham China recommends that the Chinese government join global efforts in harmonizing AC/DC charging standards.

Emissions Standards

AmCham China supports the Chinese government's policies on drafting and implementing more stringent emissions standards. In order to implement emissions standards and reduce vehicle emissions more efficiently, fuel supply and pull-ahead emissions standards should follow the same principle.

AmCham China hopes the Chinese government will also consider the sustainability of emissions standards. China currently applies Economic Commission for Europe (ECE) emissions standards and is expected to continue utilizing ECE standards through the sixth vehicle emissions standard stage in both Beijing and China as a whole.

Regarding the implementation of emissions stage five, we have noticed that many cities are considering pull-ahead implementation. Automotive manufacturers hope the time table for pull-ahead implementation areas will be announced at least six months in advance to ensure that OEMs have enough time to prepare for and compete for a stable share of the market.

Fuel Consumption Regulation

AmCham China supports the Chinese government's policies on energy saving and emissions reduction. Initiatives to actively promote more stringent fuel consumption standards and regulations, such as the MIIT Phase 3 Standard for passenger car fuel consumption limits, are worthwhile. However, automotive manufacturers hope that detailed management rules can be issued as soon as possible in order to facilitate OEM compliance. When developing detailed administrative rules, international practices should be considered. At the same time, manufacturers require more flexibility in practice, and should be allowed to group freely, without resorting to administrative orders to cease production on noncompliant manufacturers. Regarding Phase 4 (2016-2020) Standards development, AmCham China believes that state-of-the-art auto industry energy-saving technologies and Phase 3 Standards implementation results should be fully considered. Appropriate, realistic, and scientific goals will further encourage the development of China's automotive industry and also support China's fuel consumption targets.

Automotive End of Life Policies

China's current End-of-Life Vehicle (ELV) policy is detailed in the NDRC's Auto Recovery Technology Policy. Issued on

由于进口汽车单列为一类，往往只有中国国产的新能源汽车才可以申请相关优惠。虽然国产汽车和进口轿车同时拥有中国 3C 强制认证，也都列入了环境保护部排放目录，但工信部的《产品目录》却将进口汽车排除在外。

汽车生产企业要想获得国内汽车生产资格就必须至少掌握三者之一的核心技术：车载能源系统、驱动系统和/或车辆控制系统。混合动力汽车被界定为节能汽车，没有资格享受新能源汽车补贴。但是混合动力汽车要受制于与新能源汽车一样的市场准入政策。另外，虽然装有锂蓄电池组的混合动力汽车被认为是成熟产品，但是仍然被规定为开发阶段的产品，混合动力汽车被限制仅在某些领域销售。政府没有任何文件明确适用于与此规定有关的事项。此外，国家发展改革委员会（发改委）在 2011 年发布的《外商投资产业指导目录》中把新能源汽车的能量型动力电池列为鼓励类，有资格享受优惠政策，但是要求新能源汽车的电池能量密度要达到或超过 110Wh/kg，循环寿命达到或超过 2000 次，且电池生产企业的外资比例不得超过 50%。而对新能源汽车其他关键零部件则未作此类要求。

上述政策与中国确立的鼓励新能源汽车销售和使用的目标背道而驰，而且在某些情况下还违背了世界贸易组织规则。中国美国商会鼓励中国政府制定相关政策，鼓励新能源汽车的销售和使用，将选车条件限定在汽车性能方面而取消对汽车生产商资格的限制，为外资汽车企业及其合资企业营造一个公平、非歧视性的政策环境。

充电标准

中国的直流电充电标准与全球标准不一致，而是基于中国独有的工程经验并受国家电网这一国有企业的影响。国家电网似乎反对发展公用快速充电站并且阻止进一步的标准制定工作。因为缺少对脉冲宽度信号的定义，中国的交流电充电站可能会使车辆无法以最高的充电效率进行充电，甚至根本无法充电，而这具体要取决于电网的连接情况。中国美国商会建议中国政府与全球一起努力协调统一交流电/直流电充电标准。

排放标准

中国美国商会支持中国政府关于起草和实施更为严厉的排放标准的政策。为了实施排放标准和更为有效地减少汽车排放，燃料供应和提前实施的排放标准应该遵循相同的原则。

中国美国商会希望中国政府考虑排放标准的可持续性。中国目前应用的是欧洲经济委员会（ECE）的排放标准，并且有望在第六阶段继续在北京和全国范围内采用欧洲经济委员会的排放标准。

关于排放五阶段的实施， 我们注意到许多城市都在考虑提前实施。汽车制造商希望，对于那些提前实施的地区，最好能提前至少六个月公布实施时间表，以确保车企有足够的时间做好准备，为获得稳定的市场份额而开展竞争。

燃料消耗法规

中国美国商会支持中国政府所制定的节能减排政策。制定并积极推广更为严格的燃料消耗标准和法规是非常必要的，比如工信部的《第三阶段乘用车燃料消耗量评价方法及指标》中确立的乘用车燃料消耗限值等。但是汽车生产企业希望相关管理细则能够尽快出台，便于外资厂商达成合规要求。在制定管理细则时应该考虑国际惯例。同时，制造商在实践中需要有更多的灵活性，应该允许他们自由组合，而不要借助行政命令来停止不合规制造商的生产活动。在第四阶段（2016–2020）标准制定方面，中国美国商会认为应当充分考虑最先进的汽车节能技术以及第三阶段标准的实施结果。恰当、务实且科学的目标将进一步促进中国汽车行业的发展，同时有助于中国实现燃料消耗目标。

汽车报废政策

2006 年 2 月 6 日，发改委制定发布了《汽车产品回收利用技术政策》，确立了现行汽车报废政策，为汽车报废和回收提供指导。遗憾的是，中国却一直没有为此制定后续政策、标准和实施细则。

中国美国商会希望中国在制定后续措施时，能够与相关国际规则和标准保持一致，同时避免给外资厂商增加不必要的负担。

标准协调

中国汽车行业在标准和法规方面实现了与全球的有效协调，特别是在世界车辆规章协调论坛（WP.29）框架下的全球技术法规（GTR）立法程序。此外，中国工信部也积极参与全球法规制定过程。中国美国商会鼓励中国政府能够更加开放地借鉴采用全球技术法规，同时避免不必要的技术要求，以便降低消费者的成本并缩短新产品市场投放的周期。详情请参阅《标准、认证和许可》一章。

February 6, 2006, this policy provides guidance for scrapping and recycling vehicles. Unfortunately, follow-up policies, standards, and implementation details have yet to be issued.

AmCham China hopes these follow-up measures will be harmonized with relevant international regulations and standards to ensure compliance while avoiding unnecessary burdens on OEMs.

Standards Harmonization

China's automotive industry has harmonized with global standards and regulations, particularly the global technical regulation rulemaking process under the World Forum for Harmonization of Vehicle Regulations (WP.29) framework. Additionally, China's MIIT is actively involved in the drafting of global regulations. AmCham China encourages the Chinese government to take a more open approach to harmonizing global technical regulations, while avoiding redundant technical requirements, in order to reduce costs to consumers and accelerate the introduction of new products to the market. For additional information please see the Standards, Certification, and Licensing chapter.

The Economic Cooperation Framework Agreement

The Economic Cooperation Framework Agreement (ECFA) was signed between mainland China and Taiwan in 2010. The agreement's "early harvest" list of tariff concessions covers 539 Taiwanese products and 267 mainland Chinese goods. Under the agreement, mainland markets will also open in 11 service sectors including banking, securities, insurance, hospitals, and accounting, while Taiwan will offer wider access in seven areas, including banking and entertainment.

However, the automotive sector is limited to certain components within the ECFA. AmCham China encourages additional components and assembled goods be covered by the ECFA framework on tariff reductions. Such moves would spur growth in regional cost competitiveness and high-quality supplier base capabilities, which will boost development and promote long-term cross-straits cooperation.

Recent Developments

Repair, Replacement, and Return Regulation

China's Repair, Replacement, and Return "3R" Regulation went into effect on October 1, 2013. This regulation involves the responsibilities and obligations of consumers, manufacturers, importers, distributors, repair firms, Chinese quality and technical supervision departments, and other relevant parties. As OEMs have differing opinions on the content of the 3R Regulation, and conflicts are likely during implementation, AmCham China suggests that lines of communication between the General Administration of Quality Supervision, Inspection, and Quarantine (AQSIQ) and OEMs be kept open, and hopes that the relevant authorities will further consider industry opinions in implementing the 3R Regulation.

Recall

AmCham China members are committed to providing high-quality automotive products to Chinese consumers and supporting the efforts of the Chinese government to protect consumer interests and promote automotive product quality.

The Defective Auto Product Recall Management Rules (Recall Rules) which were drafted by AQSIQ and enacted on January 1, 2013 were designed to protect consumer interests. AmCham China welcomes initiatives to protect these interests, including the Recall Rules. However, the implementation details of the Recall Rules require further clarification. AmCham China also suggests that the recall process be standardized, including the establishment of a communication mechanism between authorities and OEMs to effectively promote recalls.

Recommendations

- **Issue detailed management rules for the Phase 3 Standard of passenger car fuel consumption limits as soon as possible in order to facilitate compliance.**
- Establish a formal automotive policy development mechanism to publicly share proposals, seek legitimate comments, and provide adequate lead time prior to implementation.
- Ensure that NEV policies do not discriminate based on manufacturer or place of manufacture.
- Establish a formal, transparent process for project approvals.
- Further standardize the recall process, including the establishment of a communication mechanism between authorities and OEMs.
- Revise government procurement guidelines to limit the qualifying criteria to attributes of the vehicle, not the vehicle manufacturer.

海峡两岸经济合作框架协议（ECFA）

2010 年，中国大陆和台湾签署了《海峡两岸经济合作框架协议》（ECFA）。该协议分别将 539 项台湾产品和 267 项大陆产品纳入到关税减让“早期收获”产品清单。根据该协议，大陆将向台湾开放包括银行、证券、保险、医院和会计行业在内的 11 个服务行业，同时台湾也将对大陆开放包括银行和娱乐业在内的 7 个行业。

然而，在 ECFA 框架内，汽车行业的开放却仅限于部分零部件。中国美国商会鼓励在 ECFA 项下的关税减让能够纳入更多的零部件种类和装配产品。上述举措将提升地区成本竞争力以及高质量供应商基础能力，从而促进两岸汽车行业的发展和长期合作。

最新进展

修理、更换和退货法规

中国的《家用汽车产品修理、更换、退货责任规定》（“三包规定”）于 2013 年 10 月 1 日起正式实施。新规定中规定了消费者、生产者、进口商、经销商、修理商、中国质量和技术检验监督部门以及其他相关主体的义务和责任。鉴于外资汽车生产厂商对上述三包规定的内容持有异议，未来实施中也很可能出现冲突，因此中国美国商会建议国家质量监督检验检疫总局和外资厂商之间应当保持沟通，并希望相关部门在实施上述新规定的过程中，能够进一步考虑行业意见。

召 回

中国美国商会的会员企业一直致力于为中国消费者提供高质量的汽车产品，支持中国政府为保护消费者权益和提高汽车质量而做出的努力。

由质检总局起草、已于 2013 年 1 月 1 日起生效实施的《缺陷汽车产品召回管理条例》（“召回条例”）旨在保护消费者权益。中国美国商会欢迎中国制定上述召回条例、保护消费者权益的做法。但中国还需要进一步细化上述召回条例的实施细则。中国美国商会也建议实现召回程序的标准化，包括建立相关政府部门和外资厂商的沟通机制，从而更有效地实施召回制度。

建 议

- **尽快出台乘用车第三阶段燃料消耗量限值管理细则，便于相关汽车厂商遵守。**
- 建立一套正式的汽车政策制定机制，便于公开提案、征求意见以及在正式实施前进行充分宣传。
- 确保新能源汽车政策不会造成厂商歧视和生产地歧视。
- 建立一个正式、透明的项目审批程序。
- 继续推进召回程序标准化，包括建立一个政府和外资汽车厂商之间的沟通机制。
- 修改政府采购规则，将资格标准限定在汽车性能本身，而非车辆生产企业。

Banking and Capital Markets

Introduction

AmCham China believes that regulatory reform in China's capital markets is an important key to the new administration's economic reforms and Chinese firms' global expansion. Foreign-invested financial entities can positively contribute to these reforms by sharing global best practices and increasing healthy competition.

AmCham China applauds the State Council's July 2013 decision to prioritize interest rate liberalization and reform the credit structure and the People's Bank of China's (PBOC) subsequent announcement to remove the lending rate floor. We also welcome the State Council's approval of the China (Shanghai) Pilot Free Trade Zone (Shanghai FTZ) in September 2013, in conjunction with further reforms in the financial services sector. We believe the Shanghai FTZ will support nationwide financial sector reforms that will eventually facilitate another round of domestic economic growth.

We additionally are pleased to see that during the 2013 Strategic and Economic Dialogue, the US and Chinese sides both agreed to resume negotiations on a Bilateral Investment Treaty. We believe the proposed pre-establishment national treatment and negative list approaches can effectively promote open trade between the two countries. We encourage China to highlight the financial services industry in the subsequent negotiation process.

Other positive developments in 2013 include the following:

- The China Banking Regulatory Commission (CBRC) announced plans to establish a deposit insurance system and exit mechanism for insolvent banks.
- The State Administration for Foreign Exchange launched a foreign currency cash pooling program and accelerated RMB Qualified Foreign Institutional Investors (RQFII) approvals.
- The China Securities Regulatory Commission (CSRC) unveiled an initial public offering reform plan, which can serve as a major step toward introducing a new system of registration, and granted foreign banks mutual fund distribution qualifications.

As China continues to push forward market-oriented reforms and expand its international footprint, the financial services industry will play an increasingly prominent role. AmCham China encourages a more accelerated pace of reform in this sector.

Sector Developments and Ongoing Concerns

RMB Internationalization

AmCham China understands that currency internationalization involves a demanding process of risk mitigation and control. China also faces unprecedented challenges in governing cross-border transactions. Despite these challenges, RMB internationalization made significant progress in 2013, due in part to government policies.

According to the most recent statistics provided by the Society for Worldwide Interbank Financial Telecommunication and the Bank for International Settlements, RMB usage in traditional trade finance—Letters of Credit and Collections—grew from an activity share of 1.89 percent in January 2012 to 8.66 percent in October 2013, propelling the RMB to the second most used currency in this market, overtaking the Euro and ranking behind only the USD. The RMB is also now the world's ninth most actively traded currency. As of October 2013, the RMB remained stable in its position as the twelfth most frequently utilized payments currency.

In 2013, the PBOC, CBRC, CSRC, and the China Insurance Regulatory Commission (CIRC) put forward several industry-wide reforms, including some through the FTZ. These reforms include the PBOC circular on "Qualified Foreign Institutional Investors' Investment on the Interbank Bond Market," the PBOC Circular on "Further Promoting Interest Rate Liberalization," the PBOC's "Opinions on Leveraging the Role of Finance in Supporting the Construction of the China (Shanghai) Free Trade Zone," and the ongoing discussion between the CSRC and the Hong Kong Securities and Futures Commission on "Mutual Recognition for Cross Border Fund Operations between Hong Kong and mainland China."

Despite these advances, China still does not have a secure, efficient, and resilient system of payment and settlement that would facilitate RMB internationalization. AmCham

银行和资本市场

引 言

中国美国商会相信，中国资本市场的监管改革是新政府推行经济改革和中国企业实现全球扩展的一个关键所在。外资金融实体可以通过分享全球最佳实践和促进健康竞争，为改革做出贡献。

2013 年 7 月，国务院决定优先放开市场利率和改革信贷结构，随后中国人民银行宣布取消贷款利率下限，中国美国商会对此表示赞赏。我们还对国务院于 2013 年 9 月批准建立中国（上海）自由贸易试验区（上海自贸区）以及在金融服务行业进行进一步改革表示欢迎。我们相信上海自贸区将会支持全国金融行业的改革，这些改革最终会促进国内经济的又一轮增长。

另外我们还高兴地看到，在 2013 年中美战略经济对话期间，中美双方都同意恢复双边投资协定的谈判。我们相信拟定的准入前国民待遇和负面清单的做法能够有效地促进两国之间的贸易开放。我们鼓励中国在随后的谈判过程中着重突出金融服务行业。

2013 年其它方面的积极进展包括：

- 中国银行业监督管理委员会（银监会）宣布建立存款保险制度和破产银行退出机制的计划。
- 国家外汇管理局启动外币现金池项目，加速审批人民币合格境外机构投资者 (RQFII)。
- 中国证券监督管理委员会（证监会）推出了 IPO（首次公开发行）改革计划，这是向引入新的注册制迈出的重要一步，并且证监会批准了外资银行销售共同基金的资格。

随着中国继续推进市场化改革并扩大其在国际上的影响，金融服务行业将会发挥日益突出的作用。中国美国商会鼓励中国加快这一行业的改革步伐。

行业进展和现存问题

人民币国际化

中国美国商会理解货币国际化涉及到严格的风险降低和控制过程。中国还面临着前所未有的管理跨境交易的挑战。尽管存在这些挑战，人民币国际化在 2013 年依然取得了重大进展，部分原因在于政府的政策。

根据环球同业银行金融电信协会 (SWIFT) 和国际清算银行提供的最新统计资料，人民币在传统贸易金融——信用证和托收——中的使用从 2012 年 1 月占活动份额的 1.89% 增长到 2013 年 10 月的 8.66%，推动人民币成为这一市场上使用量第二多的货币，超过了欧元，仅排在美元之后。人民币也是世界排名第九的交易最活跃的货币。截至 2013 年 10 月，在最频繁使用的支付货币方面，人民币稳定保持了排名第十二的地位。

2013 年，中国人民银行、银监会、证监会和中国保险业监督管理委员会（保监会）提出了多项全行业的改革措施，包括通过自贸区进行的一些改革。 这些改革包括中国人民银行发布的《合格境外机构投资者投资银行间债券市场》的通知、中国人民银行发布的《进一步促进利率市场化》的通知、中国人民银行《关于金融支持中国（上海）自由贸易试验区建设的意见》以及中国证监会和香港证券及期货事务监察委员会正在进行的关于“香港和中国大陆跨境基金运作互认”的讨论。

尽管取得了这些进展，但是中国仍然没有一个能促进人民币国际化的安全、有效并具弹性的支付和结算体系。中国美国商会愿意通过与中国的监管部门讨论和分享最佳实践和经验，来支持加快人民币的国际化进程。虽然上海自贸区的战略计划将会进一步加快这一进程，但是中国美国商会建议，应将试点业务的范围从指定的中国商业银行扩大至外资商业银行。

China is willing to support the acceleration process of RMB internationalization by discussing and sharing best practices and experiences with China's financial regulators. Although the strategic initiatives of the Shanghai FTZ will further accelerate this process, AmCham China suggests extending piloting business to foreign commercial banks in addition to the designated Chinese commercial banks.

Commercial Banking

In 2013, all banks operating in China experienced challenges stemming from the slowdown of the Chinese economy, the introduction of many new regulations, increased competition, the entry of internet companies into traditional banking services, and the increased pace of market liberalization. While the latest CBRC statistics show that foreign banks hold only 1.93 percent of total industry assets, most foreign commercial banks still value the Chinese market and continue to explore business models and products that fit with the Chinese market and their market position.

AmCham China welcomes actions taken by the Chinese government in 2013 to further liberalize and deepen financial markets, such as removing the lending rate ceiling, launching certificates of deposit, expanding the long-term debt quota pilot project, allowing RMB two-way cashing pooling, increasing the RQFII quota, allowing more foreign banks to issue credit cards, and giving licenses to distribute mutual funds to some qualified foreign banks. Moreover, in its annual year-end work conference, the CBRC said it will lower the requirements for foreign banks to enter, conduct RMB business, and on working capital for bank branches, while further supporting banking reform in the Shanghai FTZ and other pilot financial reform zones. Regulators have also remained vigilant against financial risks by increasing oversight of shadow banking activities and enhancing financial consumer protection.

AmCham China welcomes these policy developments and believes their implementation will foster the emergence of a vital and healthy Chinese banking industry. Our members have a strong interest in partnering with Chinese banks as they endeavor to develop international networks, to help China advance its financial systems.

The PBOC and CBRC are developing Deposit Insurance and Recovery and Resolution regulations, which will have a profound impact on the capital requirements and daily operations of banks. AmCham China member banks request more transparency in the drafting process of these regulations. Foreign banks should be able to obtain information regarding the new schemes as well as be able to provide comments, in order to be better prepared for their implementation once the regulations are formalized.

The Shanghai FTZ is highly regarded by both the Chinese government and foreign investors as a key initiative for experimenting with financial reform. Both the PBOC and CBRC have announced measures to support the initiative. However, while key principles are on point, institutions need clear operational procedures to conduct business and develop new products, which are in alignment with regulatory intentions. AmCham China member companies welcome opportunities to engage with Chinese regulators regarding experimentation of measures within the zone.

During the State Council Executive Meeting on January 8, 2014, Premier Li Keqiang asked the Chinese government to move to a negative list model when handling government approvals. In its 2013 Work Conference, the CBRC also called for regulatory reform, decentralizing the authority to market and delegate power. AmCham China members would like to see the negative list approach be adopted in the daily supervision of the banking industry and the reduction of approvals and licenses needed for banks to offer new services and products, provided that they can be held accountable for the financial risks involved and that their customers are capable of making informed purchasing decisions.

As China looks to reform state-owned enterprises and open up the banking market to private enterprises, foreign banks are still subject to a 20 percent investment ceiling when investing in a local Chinese bank. AmCham China urges banking regulators to revisit this arrangement and raise the ceiling, even if in a gradual manner, to incentivize foreign banks to transfer more of their expertise and best practices to their Chinese partners.

Securities and Bonds

Innovation in Business Licenses

AmCham China welcomes the CSRC's moves to allow securities joint ventures (SJVs) to participate in the A-share stock market and shorten the operating period required to apply for new licenses from five to two years. As all SJVs are independent and managed under strict corporate governance rules, new licenses incentivize foreign shareholders of SJVs to introduce additional products and experience into China's capital markets.

Unfortunately, unnecessary measures such as regulated capital requirements and detailed ratings thresholds hinder securities firms' participation in specific business sectors, such as private placement bonds, assets-backed securitization and mezzanine financing. Notably, some underwriting and advisory services that securities firms regularly provide do not deploy capital, thus limiting the risk and need for related capital requirements.

Given the need for higher competition and innovation in the above subsectors, AmCham China urges regulators to more flexibly grant business licenses related to innovative products to SJVs. AmCham China also suggests that the Chinese government open the market for mergers and acquisitions

商业银行

2013 年，所有在华运营的银行都经历了因中国经济增速放缓、许多新法规的引入、竞争加剧、互联网企业介入传统的银行服务、以及市场自由化步伐加快所带来的挑战。虽然银监会的最新统计显示外资银行仅占行业总资产的 1.93%，但是大多数外资银行仍然重视中国市场并继续探索适合中国市场及其市场地位的业务模式和产品。

中国美国商会欢迎中国政府 2013 年为进一步放宽和深化金融市场而采取的行动，比如取消贷款利率上限、推出存款证、扩大长期债务配额试点项目、允许人民币双向现金池、提高 RQFII 额度、允许更多的外资银行发行信用卡、以及向一些合格的外资银行颁发共同基金销售许可等。另外，在每年例行的年终工作会议上，银监会表示将会降低外资银行进入门槛、开展人民币业务以及分行营运资金的要求，支持上海自贸区和金融改革试点区的银行业改革。同时，监管部门仍然对金融风险保持警惕，提高了对影子银行的监督并加强了金融消费者权益保护工作。

中国美国商会对这些政策进展表示欢迎，并相信这些政策的实施将有助于培育出一个健康且富有活力的中国银行业。随着中国内资银行努力开拓国际业务网络，我们的会员企业有着强烈的兴趣与中国内资银行开展合作，帮助中国推动金融体系的发展。

中国人民银行和保监会正在制定存款保险、追偿和解决法规，这将会对银行的资本要求和日常运营产生深刻影响。中国美国商会的会员银行希望这些法规的起草工作能够更具透明度。外资银行应该能够获得有关新方案的信息并能够就此发表意见，以便为法规正式出台后的实施做好准备。

上海自贸区受到了中国政府和外国投资者的高度赞誉，被认为是试验金融改革的一个关键计划。中国人民银行和保监会已经宣布了支持这一计划的措施。然而，尽管主要原则都已阐明，但是机构需要的是明确的操作程序，以便开展业务和开发符合监管意图的新产品。中国美国商会会员企业欢迎有机会就自贸区内的试验措施与中国的监管部门进行交流。

在 2014 年 1 月 8 日举行的国务院常务会议期间，李克强总理要求中国政府在处理政府审批时借鉴负面清单的模式。在其 2013 年的《工作报告》中，保监会也要求进行监管改革，向市场下放权力。中国美国商会的会员企业希望，在银行业的日常监督中能够推行负面清单的做法，同时监管部门能够减少银行提供新服务所需的审批和许可要求，前提是它们需要对所涉及的金融风险负责并确保它们的客户能够做出知情的购买决定。

虽然中国希望改革国有企业和向民营企业开放银行业市场，但是外资银行在投资中国本地银行时仍然受到 20% 的投资限制。中国美国商会促请银行监管部门重新审视这一安排，提高投资上限（即使是采取渐进的方式），以便激励外资银行把更多的专业知识和最佳实践传递给中国的合作伙伴。

证券与债券

创新业务许可

中国美国商会欢迎证监会允许中外合资证券公司参与 A 股市场交易，并将合资证券公司申请新业务许可的经营年限要求从五年缩短至二年。由于所有的中外合资证券公司均属独立经营且按照严格的公司治理结构进行管理，新业务许可有利于激励合资证券公司的外方股东为中国资本市场引入更多新产品和经验。

但是，包括法定资本要求、过细的评级门槛在内的一系列不必要的限制措施，都阻碍了证券公司从事私募债券、资产证券化和夹层融资等业务。值得一提的是，证券公司部分常规承销和咨询服务并不动用资本，因此控制了风险，降低了对资本金的需求。

鉴于上述行业对竞争和创新的要求较高，中国美国商会促请中国监管部门在向中外合资证券公司发放创新产品许可时能够更加灵活。中国美国商会还建议，中国支付能够向所有在中国注册运营的证券公司平等开放并购咨询和投标服务市场。另外，对风险有限且资本到位的新业务，应当缩短许可申请的宽限期。

监管框架和信用评级体系不透明

过去十年来，中国的债券市场取得了长足的发展，目前已经成为亚洲第二大债券市场。中国的债券资本市场受到包括央行、银监会、证监会、半官方机构中国银行间市场交易商协会（NAFMII）、国家发展和改革委员会（发改委）以及财政部在内的多头监管。在很多情况下，公司发债需要获得不止一家监管部门的审批，因此造成了审批周期长、重复审批和审批程序不透明等问题。

为了改革债券市场，中国美国商会建议中国政府应建立

advisory and bidding services equally to all China-based securities firms. Moreover, the grace period for new licenses should be shortened for business lines with limited risk and deployed capital.

Non-transparent Regulatory Structure and Credit Rating System

China's bond market has grown significantly over the past decade and is now the second largest in Asia. China's debt market is governed by a large number of regulatory bodies, including the PBOC, CBRC, CSRC, the quasi-governmental National Association of Financial Market Institutional Investors (NAFMII), National Development and Reform Commission, and the Ministry of Finance. In many cases, companies require approval by more than one regulator to issue bonds, resulting in time-consuming, repetitive, and unclear procedures.

To reform the debt capital market, AmCham China recommends that the Chinese government establish a transparent regulatory structure with clarified roles between regulatory bodies in the bond market, and promote self-regulatory bodies to encourage market participation and an accurate and transparent credit rating system. Both moves would benefit the further development of China's exchange bond market. AmCham China urges regulators to clarify criteria and requirements for issuers and investors to enter the bond market, and to further lift the capital requirements for financial bonds issuance. China should also establish a unified, linked, and multi-currency clearing platform to centralize global bond trading transactions outside of the exchange market and attract foreign participation.

Over-the-Counter Financial Derivatives

AmCham China supports the CSRC's initiative in setting up over-the-counter financial derivatives among securities firms. We suggest that SJVs be granted full access to this market from the outset, and also propose increasing the connectivity between the above market and the inter-bank, China Financial Futures Exchange (CFFEX), and other exchange markets for the sake of maintaining liquidity.

Recent PBOC Report on Liberalizing the Capital Account

AmCham China members took note of reports released by the Survey and Statistics Department of the PBOC in February and April 2012 and January 2013, which described the implementation roadmap for China of RMB internationalization, capital account liberalization, and more market-oriented interest and exchange rates. AmCham China welcomes the measures taken by the Chinese government to facilitate the realization of these goals. We encourage Chinese authorities to continue in this direction, liberalizing cross-border capital flows and allowing market mechanisms to determine currency values and deposit and lending rates.

Private Equity

The establishment of the CSRC as the industry regulator for the private equity (PE) industry in June 2013 increased industry confidence that regulations would evolve towards predictability and consistency. However, a policy vacuum exists for the following issues, primarily due to uncoordinated approaches between related regulators during this transition period.

Nature of RMB Funds Managed by Foreign General Partners

The long-awaited pilot regulations in Shenzhen's Qianhai Economic Zone, which are expected to provide some clarity on the domestic treatments that foreign general partner (GP) controlled RMB funds registered in Qianhai can enjoy, have not yet been released. One of the key reasons behind the delay is reportedly due to disagreements between key regulators regarding which agency should take the lead in developing such policy, although the draft regulations have already been put in place. AmCham China recommends the utilization of a "domestic in nature" treatment for foreign GP controlled RMB funds.

Income Tax Rules for Partnerships

The State Administration of Taxation has been drafting partnership income tax rules since March 2012. However, the rules, even in draft format, have not yet been released for industry comment, reportedly due in part to a lack of support from other ministries. AmCham China recommends that international "see-through" income tax practices be utilized to avoid double taxation. We additionally recommend that regulators keep the 20 percent tax rate for both individual and institutional partners, as already adopted by the majority of local governments, and refrain from taxing foreign LPs as if they have permanent establishments in China.

Variable Interest Entities and the No. 10 Document

Regulatory uncertainties associated with variable interest entities (VIEs) have harmed foreign investors' confidence in those industries and overseas listed Chinese companies that adopt the VIE structure. While some regulators have expressed their intention to revise Document No. 10, from the 2006 "Interim Provisions for Foreign Investors to Merge Domestic Enterprises," and/or adopt controlled liberalizations for those enterprises domiciled in certain areas, revisions have yet to be made. The revision of Document No. 10 would likely affect the legal structure and the compliance practices of those companies listed overseas, including the performance of their share price.

一个透明的监管框架，明确各监管主体对债券市场的监管职能，推动建立行业自主监管主体，鼓励市场参与，建立准确透明的信用评级体系。这些举措都将有利于中国交易所债券市场的进一步发展。中国美国商会促请各监管部门明确债券发行人和投资人进入债券市场的标准和要求，进一步取消金融债券发行的资本要求。中国还应该建立一个统一、互联且多币种结算的交易平台，实现交易所市场以外的全球债券交易的集中化，并吸引外国投资者参与交易。

场外金融衍生品

中国美国商会支持证监会建立证券公司间场外交易金融衍生品的计划。中国美国商会建议一开始就授予中外合资证券公司完整的市场准入资格，并建议基于保持流动性的考虑，加强上述市场与银行间市场、中国金融期货交易市场（中金所）以及交易所市场之间的关联。

中国人民银行最近关于开放资本账户的报告

中国美国商会的会员企业注意到了由中国人民银行调查统计司于2012年2月和4月以及2013年1月发布的报告，其中描述了中国人民币国际化、资本账户开放以及推进利率和汇率市场化的执行路线图。中国美国商会对中国政府为促进这些目标的实现而采取的措施表示欢迎。我们鼓励中国政府部门继续向这一方向迈进，放宽对跨境资本流动的限制并允许由市场机制来决定货币价值和存贷款利率。

私募股权

2013年6月确定中国证监会为私募股权行业的监管部门，这一决定提升了行业信心，业界普遍认为监管举措将会向着可预测和一致的方向演进。然而，由于在过渡期内有关监管部门之间未能协调好各自采用的方式，导致下列问题方面存在一个政策真空期。

由外国普通合伙人管理的人民币基金的性质

期待已久的深圳前海经济区试点法规有望在某种程度上明确在前海注册的外国普通合伙人控制的人民币基金能够享有内资待遇，但该试点法规至今还没有出台。据传，延迟背后的一个主要原因是由于两个主要部门之间就哪个机构应牵头制定上述政策意见不一，尽管法规草案已经到位。中国美国商会建议对外资普通合伙人控制的人民币基金采用“内资性质”的待遇。

对合伙企业的所得税规则

自2012年3月起国家税务总局就一直在起草合伙企业所得税规则。然而，至今也没有发布即便是草案形式的规则以征求行业意见，据传部分原因是缺少其它部委的支持。中国美国商会建议使用国际通行的“穿透”所得税惯例以避免双重收税。我们还建议监管部门对个人和机构合伙人保持绝大多数地方政府已经采用的20%的税率，并且应避免对外国有限合伙企业（LP）征税，就如同它们在华拥有常设机构一样。

可变利益实体和10号文件

与可变利益实体（VIE）有关的监管不确定性已伤害了外国投资者对上述行业的信心，也伤害了采用可变利益实体结构的中国海外上市公司。虽然有些监管部门打算修订10号文件《关于外国投资者并购境内企业暂行规定》和／或对注册地位于特定区域的上述企业实行有控制的放开，但是至今还没有进行修订。对10号文件的修订可能会影响海外上市公司的法律结构和合规实践，包括其股票价格的表现。

私募基金法规草案

据传有十个以上的部委和局正在审查关于私募基金的法规草案。这些有望由国务院发布的法规将会对如何监管私募股权行业建立一个清晰且有权威的监管框架。但是，行业担心的是，私募股权经理和他们的基金可能会被要求向与证监会有关的行业协会提交信息，这会对私募股权经理造成过度的负担。这种做法可能会与该行业自主管理的全球趋势背道而驰。

银行间市场

目前中国银行间市场中尚无中外合资证券公司获得承销商业票据或中期票据的业务许可。尽管理论上证监会确定的“AA”级门槛应该对所有主体同等适用，但合资证券公司的评级事实上完全取决于中国合资方的评级，并不考量外方的全球信誉和业绩。因此，合资证券公司事实上被排除在该市场之外。

中国美国商会促请中国人民银行和中国银行间市场交易商协会承认外资企业的全球经验，引入更多竞争，授予票据发行方更多自主权，允许他们基于服务和价格自主评估选择承销商。上述承销商应该包括所有在中国本地注册的银行和符合最低要求且合法登记的证券公司。外资金融

Draft Regulations on Private Placement Funds

More than ten ministries and bureaus are reportedly reviewing draft regulations on private placement funds. These regulations, expected to be at the State Council level, will establish a clear and authoritative regulatory framework regarding how the PE industry should be regulated. However, the industry is concerned that the information PE managers and their funds will potentially be required to file with the CSRC-affiliated industry associations will create an undue burden on the managers. Such an approach would go against the global trend of a self-managed industry.

Interbank Markets

There are no SJVs licensed to underwrite commercial paper or mid-term notes in the inter-bank market. Although the CSRC-rated "AA" threshold appears to be applied on an equal basis, the rating of an SJV is in fact decided entirely by that of its Chinese partner, not on the global credentials and performance of the foreign partner. Thus, in practice, SJVs are excluded from the market.

AmCham China urges the PBOC and NAFMII to recognize foreign firms' global experience, thereby introducing more competition and allowing the issuer more freedom in selecting the underwriter based on its own assessment of both service and price. The pool of underwriters should include all locally incorporated banks and securities firms who would have passed the minimum requirements and are fairly registered. Foreign firms have been providing such services globally for decades. National treatment for foreign financial institutions will provide Chinese firms better products, more alternatives, and lower costs.

Credit Rating

New or amended regulations for credit rating agencies have been put in place worldwide including in the US, EU, Japan, Australia, Argentina, Hong Kong, Singapore, Canada, and Brazil. These credit ratings agencies come together in the International Organization of Securities Commissions (IOSCO). That organization's Fundamental Code of Conduct for Credit Rating Agencies is currently being reviewed and the IOSCO recently announced the creation of supervisory colleges for internationally active credit rating agencies. These colleges will serve as a resource for supervisors by facilitating the exchange of information, consultation, and cooperation. This will help ensure that credit rating agencies are regulated consistently across the globe, a critical issue in light of the international nature of credit ratings and their usage.

Unfortunately, China's bond market is still governed by a large number of regulatory bodies, resulting in a lack of unified supervision and fundamental laws and standards for credit rating agencies. These bodies do not follow global standards on regulating credit rating agencies. AmCham China believes it is important for Chinese regulators to follow the G-20 consensus on regulating credit rating agencies in line with international standards.

In view of the interconnectivity of the global financial system, AmCham China recommends that the Chinese government adopt measures to encourage competition in its domestic credit rating industry by both local and foreign credit rating agencies, which will serve to promote the quality and transparency of credit ratings issued within China. Such opening of the domestic credit rating industry will also meet the need for less well-known issuers to gain market access by having information and analysis of their credit widely available on a comparable basis. This will also aid the development of China's debt capital markets, including its bond markets.

In addition, to accelerate progress in reducing reliance on credit rating agencies in China, AmCham China recommends that regulators follow prevailing international practices and remove mandatory ratings requirements from relevant financial sector rules. Credit ratings should constitute one, but not the only, way of assessing credit risk. Another option may be to include ratings in regulations as one alternative—but not the sole option—to assess credit risk. Additionally, such actions would also require that individual ratings assigned by credit ratings agencies be judged on the performance and accuracy of the rating, rather than become an administrative requirement for issuers and buyers of debt securities. This would also promote better risk management in the financial services sector and contribute to the overall healthy development of capital markets in China.

Recent Developments

AmCham China appreciates efforts made by Chinese financial regulators to coordinate the exchange and interbank markets. In particular, the recent opening of the interbank market to securities firms in underwriting debt financing instruments for non-financial enterprises through NAFMII Decree [2012] No. 18 is welcomed as it makes significant progress towards allowing more options for issuers.

In 2013, the PBOC's medium-term note market developed rapidly, with indications that the CSRC is interested in developing a corporate bond market. With the gradual deregulation and reform of interest rates, the bond market has begun to develop as well. A key requirement to develop the market is a reliable yield curve based on significant secondary market trading. AmCham China encourages further developments in this regard.

Liquidity Management

Deposits, interbank borrowing and lending, and shareholder's equity are the main funding sources for foreign banks in China. However, deposits and interbank funding tend to be relatively unstable and short in tenor. The dependence on capital injection by offshore shareholders as the only source

企业在这方面已具备数十年的全球经营经验。给予外资金融机构国民待遇，将有助于它们为中国券商提供更好的产品，使他们有更多的选择同时降低成本。

信用评级

在世界范围内，包括美国、欧盟、日本、澳大利亚、阿根廷、香港、新加坡、加拿大和巴西等国家和地区都已制定了针对信用评级机构的新法规或者经修订的法规。这些信用评级机构都属于国际证券委员会组织(IOSCO)。该组织的《信用评级机构基本行为准则》目前正在接受复审，IOSCO 最近宣布为国际上活跃的信用评级机构建立监理小组。这些小组将作为监理人资源促进信息、咨询和合作交流。这将有助于确保信用机构在全球得到一致监管，鉴于信用评级及其用途的国际性质，这一点非常重要。

遗憾的是，中国的债券市场仍然由多个监管机构管辖，导致对信用评级机构缺乏统一的监督和基本的法律和标准。这些机构不遵守监管信用评级机构的全球标准。中国美国商会认为，对中国监管部门而言，重要的是遵守 G-20 国家就根据国际标准监管信用评级机构所达到的共识。

考虑到全球金融系统的互连性，中国美国商会建议中国政府采取措施鼓励国内信用评级行业的本地和外资信用评级机构展开竞争，这将有助于促进在华发布的信用评级的质量和透明度。如此开放国内信用评级市场也将满足那些知名度稍逊的发布机构获得市场准入的需要，使它们的信用信息和分析能够在对比的基础上获得更广泛的采用。这也将有助于包括债券市场在内的中国债务资本市场的发展。

此外，为了加快推进中国减少对信用评级机构的依赖，中国美国商会建议监管部门遵循通行的国际实践，取消相关金融行业规则的强制性评级要求。信用评级应是一种但不是唯一种评估信用风险的方法。另一种选择是在法规当中把评级规定为评估信用风险的一种替代方法 — 但不是唯一的选择。此外，上述措施还应要求由信用评级机构做出的个人评级应根据评级的表现和准确性予以判断，而不应成为对债务证券发行人和购买者的行政要求。这还会更好地促进金融服务行业的风险管理，有助于中国资本市场的整体健康发展。

最新进展

中国美国商会感谢中国金融监管部门在协调交易所市场和银行间市场方面所做出的努力。特别是近期中国银行间市场交易商协会发布了 2012 年第 18 号公告，允许证券公司参与非金融企业债务融资工具主承销业务。这份公告广受欢迎，标志着中国在允许发债人获得更多选择方面取得了重大进展。

2013 年，央行中期票据市场迅猛发展，有消息显示证监会有意建立一个企业债券市场。随着利率改革和放松管制的进一步推进，债券市场也已起步发展。发展债券市场的一个重要方面就是基于二级市场交易建立可靠的受益曲线，中国美国商会鼓励在这一方面的进一步发展。

流动性管理

存款、银行间借贷和股东权益是在华外资银行的主要筹资渠道。然而，存款和银行间融资相对不稳定并且期限短。依靠离岸股东的资本注入作为唯一可靠的筹资渠道会对外资银行在资产和负债管理方面造成重大挑战。即使股东权益也隐含着一定程度的风险。中国的外汇管制限制了离岸股东向其在华分支机构的运作提供融资。总而言之，如果发生流动性危机，外资银行将会面临更高的风险。

因为在华的外资银行通常资产规模较小并面临着更大的流动性管理挑战，中国美国商会希望能够放松有关资本进入要求的政策，例如，同意外资银行通过离岸母公司提供的直接和间接担保进行信用增级和允许由市场来决定债券发行的结果、规模、期限和价格。

建 议

人民币国际化

- 发布有关建立中国国际支付系统的更多信息。

商业银行

- 对外资银行投资本地中资银行时不超过 20% 的投资上限予以提高，以激励外资银行把更多的专业知识和最佳实践转让给中国的合作伙伴。

证券和债券

- 提高中外合资证券公司创新产品业务许可审批

of reliable funding presents a significant challenge to foreign banks in their assets and liability management. Even shareholder's equity implies a certain amount of risk. China's foreign exchange controls limit the availability of funding from offshore shareholders to their branch operations in China. Altogether, in the event of a liquidity crisis, foreign-invested banks would face elevated risks.

As foreign banks in China are usually small in assets and face greater liquidity management challenges, AmCham China hopes that policies relating to capital access requirements can be relaxed, for example, by accepting credit enhancement through direct or indirect guarantees provided by offshore parent companies, and allowing the market to determine the outcome, size, tenor, and price of the bond issuance.

Recommendations

RMB Internationalization

- **Release further information on the establishment of the China International Payment System.**

Commercial Banking

- **Raise the 20 percent investment ceiling imposed on foreign banks when investing in local Chinese banks, to incentivize foreign banks to transfer more of their expertise and best practices to their Chinese partners.**

Securities and Bonds

- **More flexibly grant SJVs business licenses related to innovative products, and shorten the grace period for securities JVs to get new licenses.**
- Open merger and acquisition advisory or bidding businesses equally for all the China-based securities firms.
- Grant full access for SJVs to over-the-counter financial derivatives.

Private Equity

- **Use "domestic in nature" treatment for foreign GP controlled RMB funds.**
- Keep the international "see-through" income taxes practice to avoid double taxation, keep the 20 percent tax rate for both individual and institutional partners, as already adopted by the majority of local governments, and do not tax foreign LPs as if they have permanent establishment in China.

Interbank Markets

- **Further lift interbank limitations over foreign firms from the PBOC and the NAFMII.**
- Allow issuers to select the best service provider for commercial paper and mid-term notes issuance business.

Credit Rating

- **Follow prevailing international practices, such as the IOSCO Code, and remove mandatory ratings requirements from relevant financial sector rules.**

Liquidity Management

- **Allow foreign banks to access the bond and certificate deposits (CD) markets for diversified source of stable funding.**

建议

人民币国际化

- **进一步公布有关人民币跨境支付系统（CIPS）建设的信息。**

商业银行

- **将外资银行投资本土中资银行的20%投资上限提高，以鼓励外资银行将其专业知识和最佳实践转移给中资合作伙伴。**

证券和债券

- **更灵活地为合资证券公司创新业务发放许可，并缩短合资证券公司取得新业务许可的宽限期。**
- 向中国境内的证券公司同等开放并购咨询和投标业务。
- 授予中外合资证券公司进入场外金融衍生品市场的完整权利。

私募股权

- **对外资普通合伙人控制的人民币基金使用"内资性质"的待遇。**
- 保留国际通行的所得税"穿透"征税的惯例，避免双重征税。保留绝大多数地方政府目前所采用的对自然人合伙人和机构合伙人均适用20%所得税税率的做法，同时不要对外国有限合伙企业（LP）征税，就如同它们在华拥有常设机构一样。

银行间市场

- **进一步取消中国人民银行和中国银行间市场交易商协会对外资企业进入银行间交易市场的限制。**
- 允许发行人在发行商业票据和中期票据时自行选择最佳服务供应商。

信用评级

- **遵循通行的国际实践，比如国际证券委员会组织（IOSCO）准则，并且取消相关金融行业规则的强制性评级要求。**

流动性管理

- **允许外资银行进入债券和存款证（CD）市场以获得不同渠道的稳定融资。**

Business Process Outsourcing

Introduction

The outsourcing services industry has benefited from increasing Chinese government support in the past decade. First officially identified in the 11th Five-Year Plan as a priority industry for development, the sector continues to receive promotion and sustained focus in the 12th Five-Year Plan (12th FYP). The industry, encompassing both information technology outsourcing (ITO) and business process outsourcing (BPO), is recognized as a key component in China's long-term strategy to advance domestic economic growth. By strengthening China's capabilities in information technology and business services-related industries and by offering large scale employment opportunities for graduates, outsourcing can act as a strategic pillar for a more knowledge-based economy.

Continued focus on building a robust and sustainable industry foundation is critical, not only to support the increasing needs of the domestic Chinese market, but also to ensure that China gains a greater share of the booming offshore outsourcing market. AmCham China recognizes and appreciates that the Chinese government has provided a broad range of policies to cultivate growth in the outsourcing industry.

As the market has developed in recent years, however, a number of common critical challenges for service providers increasingly hinder growth. Mature international outsourcing providers play a valuable role in bringing best practices to market, fostering local talent, developing training initiatives, and establishing quality benchmarks. However, China's current policies, which restrict flexibility and growth of foreign-invested companies, risk discouraging foreign investment in this sector. Applying less-restrictive policies will increase multinational service providers' commitment to China and thus accelerate the depth of knowledge, management experience, and quality in the market that buyers of BPO services demand.

Additionally, procurement policies that favor domestic companies over multinational providers act as an explicit barrier to market entry and growth. These factors, combined with a lack of uniformity in policy and regulatory implementation across cities, raise serious questions for multinational providers seeking to build a case for further investment. These issues are further compounded by the highly fragmented nature of the market, limited buyer demand, talent shortages, and cost issues.

Finally, the current lack of a unified industry voice to engage with the government impedes the development of a channel through which service providers can address the above issues. Formation of an industry-wide trade body would allow both parties to work together in advancing a compelling marketing strategy for China's offshore and domestic outsourcing capabilities.

Addressing these issues will help the market to build an increasingly credible reputation for high-quality outsourcing services. This will support the achievement of the targets recently released in the "Outline of Development Plan for China's International Service Outsourcing Industry (2011-2015)," jointly issued by China's National Development and Reform Commission (NDRC) and Ministry of Commerce (MOFCOM). These targets include over 40 percent revenue growth per annum from offshore outsourcing projects alone, reaching in excess of US $85 billion (RMB 514.3 billion) by 2015, representing 28 percent of China's service trade exports.

Ongoing Regulatory Issues

Policy, Geographic, and Market Fragmentation

China's efforts to encourage the development of the outsourcing market, both in terms of the creation of Model Cities and the establishment of thousands of service providers, undoubtedly expands market options. However, the rapid rise in options has also created challenges related to market fragmentation and a lack of uniformity.

Model Cities are in de facto competition with one another and have varying policy interpretations and incentive options in order to attract businesses. There is a lack of coordination in differentiating the cities in order to allow targeted sector specialization or value propositions. This imposes significant due diligence efforts and costs on service providers in identifying suitable locations for their individual business needs as well as in comparing the alternative incentive offerings each city provides. In addition, there is inconsistency

业务流程外包

引 言

在过去十年里，服务外包产业的发展受益于中国政府对此产业不断增加的支持力度。中国政府在“十一五”规划中首次正式将服务外包业列为优先发展产业，在“十二五”规划中继续强调了支持和推动该产业发展的政策导向。服务外包业包括信息技术外包和业务流程外包，现已成为推动中国国内经济增长长期战略中的一项重要内容。服务外包能够增强中国在信息技术和商业服务相关产业的实力，为大学毕业生提供大规模的就业机会，是中国建设知识型经济的一个战略性支柱产业。

继续努力构建一个健康、可持续的行业基础意义重大，这不仅能够为中国国内市场日渐增长的需求提供支持，还可以确保中国在日益繁荣的离岸外包市场中不断扩大市场份额。中国美国商会了解并赞赏中国政府为培育和发展外包产业所制定的一系列政策。

然而，随着近年来市场的发展，服务外包供应商所共同面临的一系列关键性挑战越来越阻碍着该产业的发展。成熟的国际服务外包供应商在引进市场最佳实践、培养本土人才、开展培训活动和建立质量标准等方面发挥着重要的作用。但是，目前相关政策却限制了外资企业的灵活性及其增长，抑制了其对外包产业的投资动力。放宽对跨国服务供应商的政策限制有利于提升他们在华投资的信心，从而加快改善包括知识储备、管理经验和服务质量在内的业务流程外包服务采购商所要求的市场要素。

另外，那些偏向国内企业、轻视跨国供应商企业的采购政策会对市场准入和发展构成明显障碍。这些因素，加之各城市在政策和法规实施上缺乏一致性，对跨国供应商在华探索成功案例从而加大投资造成了严峻的挑战。而该市场高度分割、买方需求有限、人才匮乏以及成本过高又使得这些问题进一步复杂化。

最后，目前缺少一个向政府沟通行业统一呼声的渠道，阻碍了服务供应商通过有效渠道处理以上问题。建立一个行业协会将使政府和行业双方协调工作，共同制定出令人信服的市场战略，从而有助于提高中国离岸和本国服务外包能力。

解决这些问题将有助于市场赢得并持续增加其高质量外包服务的信誉。这将有助于推进国家发展和改革委员会（发改委）和商务部近期联合发布的《中国国际服务外包产业发展规划纲要（2011–2015）》中目标的实现。这些目标包括承接离岸外包业务执行额年均增幅保持 40% 左右，2015 年达到 850 亿美元 (5143 亿元人民币)，使其占中国服务贸易出口额比重达到 28%。

现存监管问题

政策、地域和市场分割

中国政府创建“服务外包示范城市”，建立数千家服务供应商等促进外包市场发展的努力无疑使市场得以提供更多的选择。但是，选择的突然增加带来了与市场分割和缺乏统一性相关的挑战。

为吸引业务，各示范城市之间实际上在争相出台各自的政策解读和激励措施。但由于缺少协调，各城市未能形成各自特色，也就无法形成目标行业专业化或各自的价值定位。这就造成服务供应商需要投入大量人力物力开展尽职调查，比较各城市给予的优惠政策，确定开展经营的合适地点。另外，各城市在许可证发放程序和时间上的规定也各不相同，加重了企业在华跨地区拓展业务时的审批和行政负担。

中国可以参考印度模式的成功经验，在行业发展初期就成立一家行业协会和商会，为整个行业代言。这一组织名为全国软件和服务企业协会（NASSCOM），其服务对象既包括本国企业也包括跨国公司，在印度发展外包产业的初期就协助制定统一的全国性政策和实施细则。这样的

in the licensing and processing procedures and time frames presented by each city, adding bureaucratic and administrative burden to businesses seeking to expand.

China could look to India as a model for success, where the early formation of an industry-wide trade body and chamber of commerce served as a voice for the industry. Known as the National Association of Software and Services Companies (NASSCOM), the organization serves both domestic and multinational enterprises and facilitated the formation of uniform, country-wide policies and implementation procedures in India early in the sector's development. Such an organization could also provide the marketing power of a unified industry voice in promoting China's outsourcing services abroad.

In addition to the geographical and promotional fragmentation, outsourcing buyers face the challenge of identifying suitable providers from among the thousands of newly established outsourcing companies. This challenge is illustrated in the growth in the number of registered outsourcing companies from 3,000 in 2009 to over 23,500 by the end of 2013. As an emerging market, dynamic growth in the number of new businesses is inevitable and welcome but, ultimately, industry consolidation will support the emergence of industry leaders offering high-quality services while building a solid reputation for China in terms of industry capability. Such industry consolidation is beginning to occur amongst some of the larger Chinese ITO enterprises, resulting in stronger and more mature players in this sector of the industry.

Complex and Ambiguous Licensing and Regulatory Environment

In addition to the lack of uniformity between the Model Cities, companies also face a wide range of conflicting ministerial policies and business categorizations. In 2007, and again in 2011, the revised "Guiding Catalogue on Foreign Investment in Industry," jointly issued by the NDRC and MOFCOM, defined outsourcing as an "encouraged" sector. Its definition covered businesses engaged in "such information technology and business flow outsourcing services as system application management and maintenance, information technology supportive management, bank background service, financial settlement, human resource service, software development, call center, and data processing." However, a number of these business areas are also subject to restricted or prohibited foreign investment categorizations, particularly in call center and human resources outsourcing.

Even in areas explicitly encouraged, the multitude of licensing and accreditation government agencies that must be engaged is problematic and excessively time consuming for foreign investors. For example, until recently, many foreign-invested enterprises (FIEs) experienced delays of over one year in gaining recognition as Advanced Technology Services Enterprises (ATSEs), delaying their ability to access the multitude of positive incentives available to companies meeting the criteria.

This complexity is exacerbated by the requirement that an enterprise must again apply for relevant recognition and licenses when seeking to expand into additional provinces or cities across China. While the current climate allows for incremental financial advantages to be gained by companies between different local governments, greater uniformity and minimized processing would be more advantageous in the longer term.

AmCham China recommends the creation of either a centralized recognition authority or a uniform approach and improved coordination between local governments in implementing rules and processing procedures related to licensing, accreditation, and incentive application requirements. In addition, AmCham China requests the re-evaluation of restricted and prohibited foreign investment categorizations impacting businesses engaged in call center and human resources outsourcing.

Increasing China's Attractiveness as an Offshore Destination

While China's visibility as an offshore outsourcing destination has increased substantially in recent years, the reality is that it must still overcome a reputation for a weak service culture and a limited choice of quality providers with advanced capabilities. While many international companies are beginning to test China as an outsourcing destination, the size and scale of their commitment remains very small and limited in scope compared with their engagements in other markets.

In order to attract further offshore business in the BPO industry, participants in the Chinese market need to remain vigilant in continuing to address key concerns, including:

- The need for the government's ongoing commitment to the development of language capabilities, particularly English, in the workforce;
- Limitations in the availability of advanced human resource and management skills, and the escalating cost of sourcing these skills;
- Negative perceptions of intellectual property rights (IPR) enforcement, including trade secret protection;
- The need for a more advanced data security framework and increased flexibility in data hosting regulations for foreign-invested providers;
- Negative perceptions of complex foreign exchange regulations; and
- Labor regulations which are perceived as being insufficiently flexible to meet the needs of the outsourcing industry.

组织能够提供行业步调一致的营销力量，促进中国服务外包产业市场的国际化拓展。

除了上述在地域和推广促进方面出现分割外，服务外包采购商面临的另一大问题是如何在数千家新成立的服务外包公司中找到最合适的供应商。这种挑战可以从注册外包公司数量的增长中得到印证，2009 年外包公司数量为 3000 家，到 2013 年底已增至 23，500 家。作为一个新兴市场，新成立的服务外包企业如雨后春笋般快速成长的局面是必然的，也是可喜的。但是，最终唯有实现行业整合才能让提供高质量服务的领头企业脱颖而出，并为中国服务外包业赢得良好声誉。这种行业整合在中国的大型信息技术外包企业已悄然开始，使这一行业领域出现了更强大、更成熟的企业。

复杂且模糊的许可申请和监管环境

除了示范城市之间缺乏一致性外，公司还必须面临各部委政策和业务分类相冲突的情况。2007 年与 2011 年，国家发改委和商务部联合先后两次修订并发布了新的《外商投资产业指导目录》，该目录将服务外包业列为“鼓励”类，根据该目录的定义，鼓励外商投资的服务外包业包括“信息技术和业务流程服务外包，如系统应用管理和维护、信息技术支持管理、银行后台服务、财务结算、人力资源服务、软件开发、呼叫中心和数据处理等”。但其中部分业务领域，特别是呼叫中心和人力资源外包，又属于限制或禁止外商投资的类别。

即使在某些被明确列为“鼓励类”的领域，外国投资者仍需要取得多个政府部门的审批和许可，其数量之多造成了诸多问题。例如，直到最近，很多外商投资企业申请“技术先进型服务企业”认定时都经历了一年多的拖延，导致他们迟迟无法享受符合要求的公司可享有的各种优惠待遇。

还有规定要求，企业若计划将业务拓展至中国其他省份或城市，必须再次申请相关认定和许可，这一要求使得问题变得更为复杂、难办。尽管目前的环境能够使企业根据各地方政府不同的激励政策措施获得更多财务优惠待遇，但从长期来看，加强各地政策间的一致性、减少行政程序则更有利发展。

中国美国商会建议建立一家中央级认定机构或设立统一程序，加强各地方政府间在许可、认证和优惠待遇申请的处理方面的协作，促进政策有效实施，优化处理程序。另外，中国美国商会建议重新评估影响外企投资的呼叫中心和人力资源外包领域的限制类和禁止类产业类别。

提高中国作为离岸服务外包目的地的吸引力

近几年，中国作为离岸服务外包目的地已经逐步得到更多的认可，但事实上有些方面仍存在着负面的评价，比如服务意识淡薄以及能力强的合格供应商数量有限，这些都是需要改进的方面。虽然很多跨国公司开始尝试将中国作为其服务外包的供应国，但与其他市场相比，他们所承诺的数量和规模都很小，参与范围也很有限。

为了在业务流程外包行业吸引更多的离岸业务，中国市场的参与者应该保持警觉，继续解决以下关键问题：

- 中国政府需要继续加强培养员工的外语能力，尤其是英语水平；
- 高级人力资源和管理技能缺乏，且获得上述技能人才的成本越来越高；
- 中国在知识产权执法，包括商业秘密保护方面的负面印象；
- 需要一个更先进的数据安全体系，提高对外资供应商数据托管管理法规的灵活度；
- 对于复杂的外汇管理体系的负面印象；以及
- 劳动法规体系缺乏灵活性，不能满足外包行业的需求。

中国美国商会鼓励中国政府继续致力于加强教育培训工作，完善法律法规框架，着力解决以上问题。如不能有效转变国际社会对中国服务外包市场的上述负面看法，对中国外包产业的投资将会停滞不前。

吸引、培养及管理人才的挑战

尽管有了一系列政策支持服务外包产业培训人才的需要，但无论是服务外包企业还是共享服务企业，在上述及相关领域仍面临着挑战。目前，许多外资与中资企业正面临着人才瓶颈危机，直接危及到整个行业快速健康的发展。缺乏具备适当技能的管理人员、缺少相关的培训资源，加上吸引和留住劳动力的问题以及不断上升的劳动力成本，都已成为阻碍整个行业前进的因素。

中国美国商会鼓励在示范城市中开展相关项目，提高行业对于人才的吸引力，例如：企业与职业培训机构之间的合作及相应的实习机会、国际培训计划、管理人才培养项目以及跨地区人才流动计划与激励机制。

AmCham China encourages the Chinese government to sustain its focus on improving the educational, training, legal, and regulatory framework that will address these issues. Without a significant positive shift in global perceptions of China's limitations in these areas, investment in China's outsourcing industry will remain stagnant.

Talent Attraction, Development, and Management Challenges

While a number of policies support the talent training needs of the industry, both outsourcing and shared services organizations continue to face challenges in these and related areas. Both FIEs and domestically invested enterprises are facing a talent bottleneck crisis, threatening the rapid and healthy growth of the industry. A shortage of skilled management and relevant training resources, combined with labor attraction and retention issues and escalating labor costs are all hindering the industry's advancement.

AmCham China encourages the development of programs across the Model Cities that increase talent attraction through business and vocational training institute partnerships and internships, international training initiatives, management trainee training programs, and candidate relocation campaigns and incentives.

Barriers to the Domestic Market for MNCs

In order to achieve a sustainable business model, outsourcing companies rely on scale and volume across multiple clients and projects in order to create an efficient cost structure and justify ongoing investment. China's outsourcing capability is still perceived to be relatively immature and the procurement of outsourcing services is largely led by a limited number of multinational companies (MNCs) with relatively small-scale projects.

Creating a healthy and sustainable market will not only depend on increased offshore demand, but also the growth of the domestic market's acceptance of the outsourcing model. The domestic market currently offers huge potential, but this market remains relatively untapped and reluctant to trust or engage with service providers. The gradual recognition of the business benefits of outsourcing is expected to take many years. To ensure its progress, active government encouragement of the sector will remain essential.

However, multinational service providers are extremely discouraged by Chinese government procurement policies which limit their ability to enjoy a share of the anticipated growth in the domestic market. As discussed in the Government Procurement chapter, these policies currently favor domestic enterprises and explicitly discourage the purchase of services from FIEs. While AmCham China recognizes and encourages the Chinese government's objective of fostering domestic business development and capability, it should also be recognized that mature FIEs can help to significantly accelerate perceptions of China as a high-quality destination for outsourcing services. With the government and state-owned enterprises (SOEs) representing a key market for potential large-scale outsourcing services, the restrictions in this market discourage investment by multinational providers and undermine the development of the broader BPO market in China. AmCham China encourages the Chinese government to lift these restrictions by implementing policies that are in line with China's World Trade Organization (WTO) commitments, and by fulfilling China's promise to join the WTO Agreement on Government Procurement on strong commercial terms.

The flexible investment models offered in India as it emerged as an offshore destination, particularly those allowing foreign companies 100 percent ownership options, long-term incentives, and a stable regulatory environment, encouraged very large-scale foreign investment. The training and best practice experience fostered in the market by MNCs inevitably led to a cross fertilization of knowledge between multinational and local Indian companies as resources moved within the industry. This quickly cultivated a large talent pool of strong management and operational skills enabling India to establish its reputation as a high-quality services delivery location.

A more open model would similarly help China's rapid advancement in building the resource, management, and operational expertise to deliver proven outsourcing capabilities. This would, in turn, improve China's reputation, encourage increased confidence in the procurement of its services, and create a greater market size which can be enjoyed by both domestic and multinational providers alike.

Barriers to Entry for Outsourced Contact Center Services

Entry to the outsource call center market in China is highly problematic for MNCs. Currently, all companies seeking to operate call centers (both foreign-invested and wholly Chinese domestic-owned) must obtain a Telecommunications Business License issued by the Ministry of Industry and Information Technology (MIIT). Until recently, all foreign companies obtaining such licenses were required to enter into a joint venture (JV) and could not exceed 50 percent of the JV's registered capital. This policy has been highly unpopular in an industry where JVs have, in most cases, proved unviable as a long-term solution and led to failure in other markets across the globe.

In April 2010, the State Council announced an exception to the JV requirement for foreign-owned call centers that operate in the Model Cities and that render all services only to customers located outside China. While AmCham China commends the increased flexibility this policy offers call center service providers, the reality is that multinational providers do not believe this change will have a significant impact on their business growth. The services rendered will

跨国公司进入国内市场的障碍

为了实现可持续发展的业务模式，服务外包公司通常为多家客户和项目提供服务，依靠规模和数量效应来实现有效的成本结构，并支撑持续的投资。中国服务外包市场的能力看起来依然相对不成熟，其外包服务的采购基本依靠少数跨国公司引导，且项目规模相对较小。

建立健康可持续发展的服务外包市场不能仅仅指望离岸需求的增长，还需要国内市场不断接受外包这一商业模式。目前，中国国内服务外包市场潜力巨大，但依然处于开拓不足的阶段，企业普遍不愿信任服务供应商，或者不愿意与服务供应商合作。预计中国企业逐步认同外包模式的优点还需要许多年的时间。为保证该产业的发展，政府给予该产业积极鼓励将是至关重要的。

然而，中国的政府采购政策却限制了跨国服务供应商在中国国内市场的预期增长中分享市场的能力，这令人十分失望。正如在《政府采购》一章中所探讨的那样，中国现行的政府采购政策偏向国内企业，并明显不鼓励购买外商投资公司的服务。中国美国商会认同并鼓励中国政府培养国内企业发展和增强实力的目标，但是同时还认为成熟的外商投资公司能够极大地帮助人们转变对中国的认识，使其成为高质量服务外包的目的地。政府和国有企业代表潜在的大规模外包服务的重要市场，跨国公司在该市场中所受的种种限制将直接影响他们在本产业的投资，进而影响中国整个业务流程外包市场的发展壮大。中国美国商会鼓励中国政府取消上述限制，落实符合中国加入世界贸易组织时承诺的相关政策，同时按照严格的商业条款兑现中国加入世界贸易组织《政府采购协定》的承诺。

印度在成为离岸外包产业目的地后采用了灵活的投资模式，特别是允许外资公司拥有企业 100% 的所有权，享有长期的激励措施、以及稳定的监管环境，吸引了大规模的外国投资。随着行业内资源的流动，跨国公司所开展的培训以及行业最佳实践经验也必然促成跨国公司和印度本国企业之间的知识交流和融合。这些做法快速培养了大批具有高超管理和运营技能的人才，使印度得以确立其优质服务供应国的声誉。

中国同样需要采取更加开放的模式，它将有助于迅速构建资源、管理和运营技能，打造提供优质外包服务所必备的各项能力。这将进一步帮助中国提高其国家声誉，提升市场对采购其服务的信心并扩大市场规模，使中外企业均能从中获益。

进入外包呼叫中心服务市场的障碍

跨国公司进入中国外包呼叫中心市场时遇到重重困难。目前，打算经营呼叫中心的企业（包括外资企业和纯内资企业）必须先取得中国工业和信息化部（工信部）核发的电信业务许可证。直到最近，所有取得该许可证的外国企业均必须先组建一家合资公司，且所占比重不得超过该合资公司注册资本的 50%。这一政策在呼叫中心外包行业极其不受欢迎，因为在此行业中，合资公司的形式作为长期解决方案大多被证明并不成功，并且在全球的其它市场中均已经失败。

2010 年 4 月，国务院宣布对部分外资呼叫中心取消合资规定的限制，但条件是外商呼叫中心须在示范城市运营，并且其服务只面向中国境外客户。中国美国商会赞赏此举提高了呼叫中心服务供应商的灵活度，但是事实上提供此类服务的跨国公司却认为上述变化不会对他们的业务增长产生多大的作用。面向中国境外客户提供服务需要具备语言技能的人力资源，但与印度和菲律宾等公认的成功国家相比，中国具备外语能力的人力资源相对有限，且成本较高，销售机会将受到极大地限制，这样便进一步抑制了外商在中国市场的投资，因为对大多数成熟的服务外包供应商来说，选择在中国建立呼叫中心，为英语国家市场提供大规模的英语支持服务目前还不大可行。但在中国设立面向周边邻国提供离岸支持服务的呼叫中心却非常合适，如大连市作为为韩国和日本客户提供离岸服务的基地取得了成功，但服务供应商依然担心业务扩展空间的问题。

为了吸引成熟的服务外包供应商进驻中国市场，至关重要的是制定政策允许成立外商独资企业经营呼叫中心，且允许它们面向国内市场提供服务。工信部 2014 年 1 月发布了《关于中国（上海）自由贸易试验区进一步对外开放增值电信业务的意见》，对外资开放呼叫中心及其他业务，便是朝正确改革方向迈出的一步。

进入外包人力资源服务市场的障碍

跨国企业在华提供人力资源服务外包（HRO）受到各种限制。该行业需要接受包括商务部、工信部、教育部、财政部以及人力资源和社会保障部等众多政府部门的监管。服务供应商需要遵守上述部委制定的相关政策，但这些政策对于外商投资企业的经营范围和方向的规定有时存在明显的矛盾。由于没有一个单一的中国政府协调部门或是经授权的行业协会统一负责行政审批，因此需要从多个其他

require resources with language skills to service foreign markets and, given the limited scalability and high cost of these resources relative to proven locations such as India and the Philippines, the sales opportunities are extremely restricted. This further depresses foreign investment in the market, as utilizing China as a destination for high-volume English language support services is not yet considered a viable strategy for most mature outsource providers. Using China to service neighboring regional countries is a viable option, as seen in the success enjoyed by Dalian as an offshore hub for Korea and Japan but, again, ongoing scalability remains a concern to service providers.

In order to attract mature outsource providers to the China market, the promotion of policies allowing wholly foreign-owned call center operations that can also service the domestic market is essential. MIIT's release of the "Opinions on Further Opening up Value-added Telecom Services in China (Shanghai) Free Trade Zone" in January 2014—opening calling center services, among others, to foreign capital—is a step in the right direction.

Barriers to Entry for Outsourced Human Resource Services

MNCs operating in China in the provision of human resource outsourcing (HRO) services are subject to a range of restrictions. This sector has the oversight of a multitude of regulatory jurisdictions, including MOFCOM, MIIT, the Ministry of Education, the Ministry of Finance, and the Ministry of Human Resources and Social Security. Service providers are required to navigate the policies issued across these ministerial jurisdictions, which, at times, can be in direct conflict regarding scope and direction for FIEs. Without a single coordination point within the Chinese government or a sanctioned trade body, obtaining approvals and disseminating new regulations and policies that may override those of other ministries remains a significant barrier to success and growth.

HRO companies are seeing an evolving market need for value-added integrated human resources (HR) services for both recruiting and retaining talent, cutting costs, managing the broad and complex range of HR services, adhering to labor regulations, as well as meeting procedural provincial administrative requirements and navigating differences in tax and employment-related law. In this environment, multinational providers are finding they are significantly disadvantaged in competing with domestic providers across the full portfolio of services. Due to their state ownership, Chinese players such as the Foreign Enterprise Service Company (FESCO) and China International Itellectech Corporation (CIIC) have been able to achieve a dominant position through privileged access to resources and information. Additionally, with certification services and certain transactions associated with the Labor Bureau provided only by domestic companies approved by the Ministry of Labor, they are effectively able to enjoy a monopoly status in the market.

Global HRO service providers that have made significant investment in China believe that the lifting of the multiple restrictions on their offerings is essential to facilitating ongoing investment in the market. With these companies bringing both best practices for the increasingly complex HR-related needs of businesses and offshore business opportunities through their global client base, they can contribute significantly in establishing China's ability to deliver high-value, knowledge-based services in this space. The current absence of a level playing field is hampering the growth of global HRO players and the incentive for ongoing investment in China.

Recent Developments

1,000-100-10 Project

In 2006, MOFCOM launched the 1,000-100-10 Project with the stated aim of fostering the development of 1,000 domestic enterprises with outsourcing capabilities, encouraging 100 MNCs to transfer their offshore outsourcing business to China, and developing a base of 10 internationally qualified Model Cities across China as outsourcing hubs.

Many objectives of this project have been achieved. Policies have continued to be issued and updated to create an attractive financial and business framework that encourages further development. Such policies include a wide range of tax incentives as well as financial, IPR, human resource training, business and public services, and infrastructure support to attract providers and in-house shared services support centers. As a result of these efforts by the government, China now boasts over 23,500 registered outsourcing service providers employing over five million staff, of which over 65 percent are college-educated. Industry revenue has expanded from US $13.8 billion (RMB 83.5 billion) in 2009 to over US $90 billion (RMB 544.5 billion) in 2013 according to statistics from MOFCOM, and 29 cities have been approved as "Model Cities for Service Outsourcing."

A number of promising indicators have also been noted in 2013. Firstly, the establishment of the China (Shanghai) Pilot Free Trade Zone offers multinational outsourcing companies an environment in which a number of restrictions have been lifted and pave the way for growth, if reforms are rolled out across multiple cities.

Additionally, in 2013, tax incentives for ATSEs operating in the Model Cities and providing offshore services were extended to 2018 and criteria were relaxed, providing a supportive tax environment for both domestic and multinational companies operating in the sector. Similarly, the favorable policies regarding Model City subsidies, training support, and coordinated development of both offshore and onshore service outsourcing support strategies were also extended, signaling continued central government guidance and support to help Model Cities attract outsourcing operators.

相关部委获取批文，或是解决部委间出台的新法规和新政策相矛盾的情况，这些因素对跨国企业在华成功与发展构成了巨大障碍。

人力资源服务外包公司面对着不断变化的市场需求，要求公司提供高附加值的人力资源整体服务方案，服务范围包括：招聘和留住人才、削减成本、广泛的人力资源管理服务、确保用工行为合法合规、满足各省级部门的行政程序规定、执行不同的税务法规和劳务相关的法律。在这一背景下，从事人力资源服务外包的跨国企业与国内供应商竞争时，在提供上述一整套服务方面处于绝对的劣势。国内同类公司如外企人力资源服务有限公司（FESCO）和中国国际技术智力合作公司（中智公司），凭借其国有背景，在获取资源和信息方面享有特别优势，从而能够获得行业支配的地位。另外，涉及劳动证明及某些与劳动局相关的业务只能由人力资源和社会保障部批准的国内企业来做，中国公司实际上享受市场垄断地位。

已在中国进行了大量投资的国际人力资源服务外包供应商认为，取消对其业务范围上的各种限制，对于他们继续投资中国市场至关重要。国际人力资源服务外包供应商不仅可以引入最佳实践以满足商界日渐复杂的人力资源服务需求，还可以依靠其国际客户资源，扩展中国离岸服务外包的商机，从而为提升中国高附加值、知识型服务的能力做出重大贡献。当前缺乏一个公平竞争的平台，阻碍了国际人力资源服务外包供应商在华业务增长，也不利于中国吸引更多的投资。

最新进展

“千百十”工程

2006 年，商务部启动了“千百十”工程，该工程的目标是培育 1000 家中国的服务外包企业，推动 100 家跨国公司将其服务外包业务转移到中国，在全国发展 10 个具有国际竞争力的“示范城市”作为服务外包中心。

该工程的众多目标都得以实现。中国相继出台并完善相关政策，营造具有吸引力的财务和商业框架，以促进进一步发展。上述政策广泛涉及税收激励措施，并在金融、知识产权、人力资源培训、商业和公共服务以及基础设施等方面提供支持，以吸引供应商和企业内部共享服务支持中心。在政府上述努力的推动下，中国目前注册登记的服务外包供应商已超过 2.35 万家，雇用员工超过 500 万人，其中接受过高等教育的占比超过 65%。根据商务部的统计，全行业收益额从 2009 年的 138 亿美元 (835 亿元人民币) 增长到 2013 年的 900 亿美元 (5445 亿元人民币)，同时已有 29 个城市被批准成为“服务外包示范城市”。

2013 年还达成了许多可喜的指标。首先是建立了中国 (上海) 自由贸易试验区，这为跨国外包公司提供了一个取消了众多限制的环境，并且如果改革试点在多个城市铺开，这将为跨国外包公司的增长铺平道路。

另外，在 2013 年，对在示范城市运营并提供离岸服务的技术先进型服务企业实施的税收优惠政策将延长到 2018 年，并且放宽了享受优惠的标准，这为外包行业的国内公司和跨国公司提供了一个税收扶持环境。同样，有关示范城市补贴、培训支持、以及离岸和在岸服务外包支持战略协调发展的优惠政策也被延长，表明了中央政府对帮助示范城市吸引外包运营商的持续指导和支持。

建 议

- **设立一个由政府认可的专门的行业协会担任集体代表，为中央政府、示范城市和国内及国际服务供应商代言。**
- 成立一个中央认定部门，或者在各地方政府间制定统一、内部相协调的程序，确保各示范城市在实施有关补贴和税收优惠政策及申请程序时内容和程序上的一致性及易操作性。
- 取消政府和国有企业采购外国企业服务方面的限制和政策阻碍，包括执行符合中国入世承诺的政策以及加入《政府采购协定》。
- 通过各种形式的人才培训计划加快人才培养，如：企业与职业培训机构之间的合作及相应的实习机会、国际培训计划、管理人才培养项目以及跨地区人才流动计划与激励机制。
- 取消在华面向中国国内客户提供服务的外国呼叫中心运营商必须成立一家合资公司且出资比例不超过合资公司注册资本 50% 的规定。

Recommendations

- **Create a government-sanctioned trade body that can act as a collective representative and advocate for the central government, Model Cities, and domestic and multinational service providers.**
- Create either a centralized recognition authority or a uniform, coordinated approach between local governments for each Model City to create consistency in and ease of compliance with local implementing rules and application procedures for related subsidies and tax incentives.
- Lift restrictions and policy impediments on government and SOE procurement of services from foreign-invested enterprises, including by implementing policies that are in line with China's WTO commitments and by joining the GPA.
- Accelerate talent development through business and vocational training institute partnerships and internships, international training initiatives, management trainee training programs, and candidate relocation campaigns and incentives.
- Cancel the requirement for foreign-owned call center operators to enter into a JV with no more than 50 percent of the JV's registered capital if providing services to domestic customers.

Civil Aviation

Introduction

AmCham China commends the Chinese government for its continued efforts to develop a healthy and sustainable civil aviation sector. In July 2012, the "State Council Opinions on Promoting Civil Aviation Development" set several key development targets for the industry including a transport growth rate of 12.2 percent for 2011-2020, an improved safety record, general aviation growth of 19 percent, and increased access to air services for more of the population. China's civil aviation system is forecasted to be as large as the US system in approximately two decades.

China is well on its way to achieving its goal of transforming from a "large aviation nation" to a "powerful aviation nation." According to the International Air Transport Association (IATA) Airline Industry Forecast for 2013-2017, routes within or connected to China will be the single largest driver of global aviation growth, accounting for 24 percent of new passengers (227 million) during the next five years. China's top three airlines are now among the world's top 10 carriers, while none were listed in 2000. Beijing Capital International Airport is now the world's second busiest after Atlanta and, by 2020, China is expected to add 97 new airports. Boeing's Current Market Outlook forecasts that China's airlines will add over 5,580 new transport airplanes valued at US $780 billion (RMB 4.72 trillion) during the next 20 years. This unprecedented expansion provides significant opportunities for airplane and aviation services sales, airport design and construction, and other related needs. The rapidly emerging general aviation (GA) sector is in the early stages of development, offering exciting opportunities for experienced US GA companies who have much to offer. Moreover, China has become an integral and growing part of the global aviation supply chain for a wide variety of aviation products and services and is making progress on its plans to enter the large commercial airplane manufacturing market.

Meaningful cooperation between the US and Chinese governments on aviation is essential to realizing these business opportunities. The US Federal Aviation Administration (FAA) and the Civil Aviation Administration of China (CAAC) continue to enjoy a close partnership that has benefited both sides for many years. AmCham China's affiliated US-China Aviation Cooperation Program (ACP) brings together US industry and government agencies from both countries—CAAC, FAA, the US Trade and Development Agency (TDA), and the US Transportation Security Administration (TSA)—in a unique and active forum for bilateral cooperation.

Efforts to reduce constraints on the healthy and sustainable development of civil aviation in China have been largely successful, however, significant challenges remain. Further efforts are needed to open up and modernize China's airspace system, reduce inefficiencies and congestion, realize environmental benefits, and accommodate growth. Addressing these challenges remains the top priority for AmCham China aviation member companies.

Ongoing Regulatory Issues

Reforming China's Airspace System

Opening up and reforming China's national airspace management system is critical to meeting China's forecasted aviation growth, enabling improved system efficiencies, and reducing the environmental impact of the aviation industry. More efficient airspace utilization is the best way to reduce fuel burn, air pollution, flying time, and delays.

The surge in air traffic has significantly increased demands on the country's large and complex airspace system. Although the system has a world-class safety record and is handling its growth reasonably well, it exhibits signs of stress, including increasing delays at airports nationwide. These delays are largely the result of limited availability of national airspace for civil aviation (less than 20 percent of China's airspace is managed by the CAAC) and a ripple effect from overly congested airports. In order to accommodate forecasted growth in the civil aviation sector, China must accelerate plans to improve airspace utilization and airport capacity.

Increasing Civil-use Airspace and Capacity

Increasing the amount of civil-use airspace and expanding flexibility of operational procedures is the most cited and essential reform necessary for China to meet increasing demand for aviation services. The lack of system flexibility often results in delays, inefficiencies, and potentially unsafe situations.

民用航空

引 言

中国美国商会对中国政府为发展健康和可持续的民用航空业所做的不懈努力表示赞赏。2012 年 7 月，《国务院关于促进民用航空业发展的若干意见》确立了民用航空业几大重点发展目标，其中包括：从 2011 至 2020 年航空运输量年增长 12.2%；改进安全；通用航空业年增长 19%，以及让更多人享受航空服务。预计二十年后，中国民航业的规模将比肩美国。

中国目前正在努力实现从一个“航空大国”向“航空强国”的转变。国际航空运输协会（IATA）《2013–2017 民航业展望》显示，中国国内或通往中国的航线增量，在全球民航业发展中一枝独秀。未来五年，全球新增航空旅客（2.27 亿人次）中，中国市场的贡献率将达 24%。中国的三大航空公司已经跻身世界前十之列。而在 2000 年，还没有一家中国公司入围。北京首都国际机场目前是世界上第二繁忙的机场，仅次于美国的亚特兰大机场。预料到 2020 年，中国将新增机场 97 座。据波音公司的《当前市场展望》预计，在未来二十年，中国的航空公司将新引入 5,580 架运输机，总价值达 7,800 亿美元（4.72 万亿人民币）。这种前所未有的扩张态势，为飞机和民航服务销售、机场设计与建设以及其他相关需求，带来了巨大的机遇。正在快速发展的中国通用航空业仍处于发展初级阶段，为经验丰富的美国通用航空企业提供了令人兴奋的商机。不仅如此，中国已经成为全球航空供应链中必不可少的快速成长部分，提供众多航空产品和服务，现正在实施进入商用大飞机制造市场的计划，并取得了进展。

中美两国政府开展卓有意义的航空业合作，对于实现这些商机至关重要。美国联邦航空局（FAA）和中国民用航空局（民航局 CAAC）继续保持着密切的合作关系，使得双方多年来获益匪浅。中国美国商会下属的美中航空合作项目（ACP）把美国航空业和两国的政府机构连接在一起，其中包括民航局、美国联邦航空局、美国贸易发展署，以及美国运输安全管理局，并以一种独特而活跃的论坛形式实现双边合作。

中国努力减少制约因素，实现中国民航业的健康可持续发展所做的工作，在很大程度上是卓有成效的，但依然面临着巨大的挑战，需要进一步开放空域系统，并使之现代化，提高效率，缓解拥堵，落实环境效益，以及适应行业增长的需要，这些依然是中国美国商会航空业会员企业的当务之急。

现存监管问题

改革中国空域系统

为满足航空业预期增长的需求，改进系统效率，以及减少航空业对环境的影响，关键一点就是要开放和改革中国空域管理系统。而降低油耗、减少空气污染、缩短飞行时间和避免航班延误的最好办法就是提高空域的利用率。

空中交通流量的快速增长对中国庞大而复杂的空域系统提出了更高要求。尽管该系统有着世界水准的安全记录，一直相当好地应对着自身的成长，但已呈现压力迹象，如全国各地越发突出的机场延误现象。这些延误主要起因于民航对空域的使用受限（中国民用航空局控制的空域不足 20%）以及机场旅客过度拥挤造成的连锁反应。为了适应民航业的预期增长，中国必须加快制定计划，提高空域使用率和机场容量。

增加民用空域，扩大容量

增加民用空域范围、增强运营规程的灵活性等措施是经常被提到、且必须进行的改革内容，如此才能满足中国航空不断增长的需求。缺少灵活性的运营体系则通常会导致航班延误、低效率和不安全隐患。

国务院和中央军委联合发布的《关于深化我国低空空域管理改革的意见》，是中国政府积极迈出的第一步，以

The State Council and Central Military Commission's "Guidelines for Management Reform of Low-Altitude Airspace" are a good first step toward better utilization of airspace resources for general aviation. AmCham China hopes that this low-altitude reform will ultimately lead to reform of mid- and upper-altitude airspace as well so that all users can benefit.

Enhancing Efficient Usage and Operational Flexibility of Airspace

China is encouraged to develop an Air Traffic Flow Management (ATFM) framework to include a System Wide Information Management (SWIM) system and a Collaborative Decision Making (CDM) model, similar to what is in place in the US. These tools can greatly expedite inter-agency information sharing and help the authorities more effectively and efficiently manage China's airspace and reduce flight delays. Another best practice, utilized by many countries, including the US, to consider is co-locating military and civilian controllers to better share flight information data.

Wide-body Aircraft on Domestic Routes—Not the Right Solution for Congestion Issues

Increasing the use of wide-body aircraft on domestic routes is not a viable alternative to pushing forward with the hard work of airspace system reform. Most wide-body aircraft are designed for long range flights and thus carry extra structural weight that reduces efficiencies on short-haul flights. Wide-body aircraft typically have 10-20 percent higher per-seat operating costs on short-haul flights compared to narrow-body aircraft which are optimized for shorter routes. This leads to increased fuel burn and emissions which conflicts with China's own national energy conservation and emissions reduction objectives. While there are a handful of high-density domestic routes into slot-constrained airports where wide-body aircraft are necessary, it is difficult to consistently fill these larger aircraft during periods of off-peak demand. US experience offers an interesting illustration: wide-body aircraft are used on only one percent of domestic flights today, down from eight percent in the 1980's, as airlines worked to optimize network efficiencies.

Air Carrier Operations

China represents one of the largest markets for US passenger and air cargo airlines. AmCham China's air carrier members have the following recommendations to strengthen the air transportation sector—many of which will equally benefit Chinese airlines.

Flight Slots Utilization

China's major hub airports, including Beijing, Shanghai, and Guangzhou, are slot-constrained. Optimizing slot utilization is necessary to meet the growth and efficiency targets set by the State Council. The CAAC continues to make improvements in several areas: increasing airport capacity, opening new and flexible flight paths, and introducing online slot monitoring. US airlines commend the CAAC's efforts to strengthen the slot allocation process and recommend the following steps for further improvements:

- Continue to improve and optimize slot allocation procedures and slot utilization in accordance with the IATA Worldwide Slot Guidelines.
- Consider extending airport operational hours at key airports to add capacity without the need for additional facilities.
- Ease or eliminate arbitrary limitations on daily operations which do not consider actual use patterns. Encourage more use of off-peak hours.
- Pay greater attention to reducing ground delays at major airports. Such delays have a significant impact on down line connections, impact costs, and inconvenience customers. Lengthy delays also generate more emissions and increase air pollution.

Gateway Airport Improvements

Continued emphasis on improving the operation of China's international gateway airports is needed to make them more efficient international and domestic hubs. Development of Beijing, Shanghai, and Guangzhou as true hub airports is a high priority for US and Chinese air carriers alike. Policies that facilitate timely transfers of cargo and passengers as well as streamlined baggage handling should be developed. Consider incorporating more automated people movers (APMs) into the design of the largest new terminals to address extreme walking distances. True world-class hub airports can help China capture a larger share of Pacific Rim air traffic from other regional hubs.

US-China Flight Restrictions

AmCham China supports the US government in encouraging their Chinese counterparts to lift all restrictions on the number of flights between the US and China. Further liberalization will benefit airlines on both sides of the Pacific, giving passengers more choices and allowing Chinese airlines to benefit from full access to the US market.

Air Cargo

The international logistics industry, which heavily depends on just-in-time air transportation, will play an increasingly important role as China moves up the value chain in product exports. However, as discussed in the Customs chapter, cumbersome customs regulations and low process efficiency continue to hinder the growth of a modern logistics industry in China. For example, the low priority given to cargo airlines for takeoff and landing slots at Chinese airports impedes timely express cargo delivery. This restricts

更好实现对通用航空领域航空资源的利用。中国美国商会希望，这一低空空域改革也能够最终带动中、高空空域的改革，使得所有使用者受益。

提高空域使用效率和运营灵活性

我们支持中国借鉴类似于在美国所采取的方式，制定出一个空中交通流量管理（ATFM）框架，其中包括全系统信息管理（SWIM）体系和协同决策（CDM）模式。这些手段将能极大加快各机构之间的信息共享，帮助主管部门更有效地进行空域管理，减少航班延误。另一个可供参考的最佳实践是，把军航与民航空管人员派驻至同一地点，以便更好地共享航班信息数据。该方法已经被包括美国在内的许多国家所采用。

在国内航线使用宽体客机——并非解决拥堵问题的良策

增加宽体客机在国内航线的使用并非推进空域体系改革的良策选项。大多数宽体客机都设计用于长途飞行，因而承载了额外的结构重量，导致短途飞行效率降低。通常在短途飞行中，宽体客机较之具备短途飞行优化性能的窄体客机而言，每座运营成本高出 10–20%。这就导致了油耗及排放的增加，与中国自身的国家节能减排目标冲突。对于不可避免要使用宽体客机的机场来说，尽管仅有少量高密度运行的国内航班机场，且其航班运行时刻非常受限，却很难在非高峰时段让这些大型飞机满载。美国的经验提供了一个有趣的证明：随着航空公司致力于优化航班网路效率，其国内航班宽体客机的使用率已从上世纪 80 年代的 8% 下降至如今的 1%。

航空公司的运营

对美国的客运和货运航空公司来说，中国是最大的市场之一。中国美国商会的航空公司会员有如下建议，用以加强航空运输业，其中很多也将使中国各航空公司受益。

航班时刻的使用

中国主要的枢纽机场，包括北京、上海和广州，都有着航班时刻限制。航班时刻的优化利用是实现国务院提出的增长和效率目标的必由之路。民航局在如下领域继续取得了进展：提高机场运力、开通灵活的新航路，以及引入航班时刻在线监控系统。美国的航空公司赞赏民航局为优化航班时刻分配流程所做出的努力，同时还建议采取以下步骤，以作进一步改进：

- 根据国际航空运输协会（IATA）制定的《全球起降时刻指南》，继续改善和优化航班时刻分配程序及利用。
- 考虑延长枢纽机场的运营时间，在不增加设施的基础上提高运力。
- 放松或取消未考虑实际使用状况的随机性日常运营限制。鼓励更多地使用非高峰时段。
- 进一步重视在主要机场减少地面延误。此类延误会对下游航班衔接产生严重影响，增加成本，并给用户造成不便。长时间的延误还将导致更多排放，增加空气污染。

门户机场的改进

有必要持续强调改进国际性门户机场运营，使之成为更高效的国际国内枢纽。大力发展北京、上海以及广州机场，使之成为真正意义上的枢纽。这对于美中两国的航空运输企业而言，具有同样的重要性。应当制定政策，推动及时转移货物乘客，以及行李的顺畅处理。考虑将更多旅客助行系统纳入新的大型航站楼设计中，以解决长距离步行问题。建立起真正的世界级枢纽机场，有助于中国从其他地区性枢纽机场手中争得更多太平洋地区的客货流。

美中航班限制

美国政府鼓励中国政府取消所有针对美中两国之间航班数量的限制，中国美国商会对这一做法表示支持。进一步的自由化将使太平洋两岸的航空公司都受益，乘客的选择余地更大，中国的航空公司将因为全面进军美国市场而受益。

航空货运

随着中国在产品出口价值链上地位的提升，国际物流业将发挥日益重要的作用，而物流业的发展主要依赖准时的空中运输。但正如在海关章节中所论述的，海关通关规章繁琐和处理效率低下，将继续阻碍中国现代物流业的发展。例如在中国的机场，货运航班的起降时刻在分配上没有得到优先安排，从而影响了快递货物的及时送达。这不仅限制了快递货运航空公司及其客户出口行业的发展，也削弱了中国在全球供应链上的竞争力。由于没有高效的海关程序，使保税货物难以在实际的航空时间框架内通过中国的门户机场，中国中西部地区的国际航空货运业的发展将受到阻碍。新实行的增值税也可能会刺激基本分拣与集中托运作业移至周边国家的枢纽机场。

the growth of express cargo airlines and their customers in export industries and reduces China's competitiveness in the global supply chain. The lack of practical customs procedures to allow goods in-bond to flow through China's gateway airports in realistic aviation time frames will hamper the growth of international air cargo to China's central and western regions. The new value-added tax (VAT) could also create an incentive to move essential sorting and consolidation activities to hub airports in neighboring countries.

As the need for air cargo services grows and networks become more complex, the need for greater scheduling flexibility increases. Demand for cargo services is not static, but fluctuates widely in response to holidays and consumer demand. More flexible procedures are needed that allow air cargo carriers to match schedules to demand and also recover from schedule disruptions elsewhere in their networks.

Jet Fuel

Jet fuel at Chinese airports is only provided by a limited number of state-owned oil companies. In line with the spirit of the Decision of the Third Plenum of the 18th Party Congress to eliminate administrative monopolies, opening the jet fuel market to other international providers would help bring prices in line with global market levels and benefit all airlines, Chinese and foreign alike.

General and Regional Aviation

General aviation includes all aviation except military and scheduled commercial carriers. It includes private aircraft operated by individuals and corporate flight departments, charter/air taxi on-demand commercial operations, air tourism, civil helicopter aerial work, and disaster relief/aeromedical transportation.

In the 12th Five Year Plan (2011-2015) for China Aviation Development, the Chinese government formalized its commitment to develop a substantial GA sector capable of making major contributions to economic and social development in China. The CAAC's commitment to GA development was reinforced at the US-China Aviation Symposium held in September 2013 where GA was listed as one of the top priorities for 2014-2015, calling for stronger collaboration efforts between the US and China in this field. GA growth depends heavily on Chinese government action to improve the physical and policy infrastructure. The ACP developed a series of recommendations to support GA growth:

- Reform low altitude airspace design, including more airspace and a higher maximum altitude for GA to enable safe, efficient, and comfortable operations of small aircraft.
- Improve the Flight Service Station (FSS) system to provide weather and other flight planning information and filing services over the internet.
- Develop GA airports, improve GA access to commercial airports, and support Fixed Base Operators (FBOs) with standards for fueling and maintenance facilities, and all other functions.
- Differentiate safety regulations between GA and air carriers and between various types of GA to accurately match the mitigation of safety risk to the cost of regulation.
- Differentiate economic regulation between GA and commercial air carriers and between various types of GA, recognizing the inverse relationship between cost and volume to GA operators.
- Facilitate the use of foreign pilots and take steps to train more pilots and mechanics to support business aviation growth.

Import Duty and VAT burden on GA

The high import duty (six percent) and VAT (17 percent) imposed on GA aircraft sales have been a significant constraint on GA development in China. A draft proposal to levy a consumption tax for business jets would further discourage development, contrary to the State Council's guidance. AmCham China recommends reduction of the import duty and VAT taxes to a level consistent with that imposed on transport aircraft and dropping the proposed consumption tax.

Regulatory Challenges

Aligning CAAC Certification Processes with International Standards

The CAAC has created a new aircraft certification center in Shanghai. It is important that certification and validation activities performed there align with international practices.

Companies report that certification and validation activities in China are often handled differently from those in other nations. Examples of observed behavior include requirements for documents and technical data that are not typically required; adoption of certification-style processes in validation procedures; and funded travel for meetings.

AmCham China member companies believe these difficulties are the result of the great challenges the certification center faces in starting a new operation and handling a heavy workload. The CAAC is encouraged to work closely with the FAA, the European Aviation Safety Agency, Transport Canada, and other aviation authorities to ensure the new certification center aligns consistently with other regulatory bodies around the world.

Increase Regulatory and Technical Inspection Staff at the CAAC

The relatively low and inflexible headcount limit of approximately 300 regulatory staff at CAAC headquarters poses a

市场对货运服务需求的增长以及网络的日益复杂，对更加灵活的航班时刻的要求也随之增加。货运服务的需求并非静态的，会随着节假日的到来和客户的需求而大范围波动，因此需要更加灵活的程序，以便货运航空公司能够根据需求来匹配航班时刻，并能调整航线网的其它机场发生的时刻误差。

航 油

中国只有少数几家国有石油公司可以向航空公司供应航空燃油。依据中共十八届三种全会决议消除行政垄断的精神，向其他国际石油公司开放航空燃油市场，有助于将价格降至国际市场水平，从而使全体中外航空公司受益。

通用航空业及公务航空业

通用航空是指除了军用或定期商用航空之外的其他所有航空活动。包括个人和企业航空部门运营的私人飞机、包机／空中计程商用航空业务、空中游览飞机、民用直升机空中施工、救灾飞机和航空医疗运输机。

在《中国民用航空发展“十二五”规划（2011–2015）》中，中国政府正式提出承诺，大力发展通用航空业，为中国经济和社会发展做出重大贡献。在 2013 年 9 月举办的美中航空论坛上，民航局强调了民航局对通用航空业发展的承诺，并将通用航空业列为 2014–2015 年间重点工作之一，呼吁中美双方在该领域的进一步合作。通用航空业的发展亟需中国政府采取措施，改进基础设施和政策。美中航空合作项目提出了一系列建议，以支持通用航空业的发展：

- 改革低空空域设计，包括为通用航空发展分配更多的空域，以及提高通航飞行高度上限，以保障小型飞机的安全、高效和舒适的运营。
- 改进飞行服务站（FSS）系统，提供天气和其他飞行计划信息，实现网上提交服务申请。
- 开发建设通用航空机场，提高通用航空对商用机场的使用率，支持固定基地运营（FBO）建设，制定燃油和维护设施标准，以及其他功能标准。
- 针对通用航空和商业运输航空的安全规章应有所不同，而且针对不同类型的通用航空的安全规章也应不同，从而有针对性地减缓安全风险。
- 认识到通用航空的运营成本与运行人数量之间存在负相关关系，针对通用航空和商业运输航空的经济规章要有不同，而且针对不同种类的通用航空的经济规章也应不同。
- 为公务航空运营商雇佣外籍飞行员提供便利条件，并逐步培训飞行员和机械工程师，以支持公务航空增长。

通用航空进口关税及增值税

对通用航空飞机销售征收高额的进口关税（6%）和增值税（17%），已经成为中国通用航空发展的一个重大障碍。对公务机征收消费税的建议草案，将进一步抑制发展，同时也有悖于国务院发布的指导意见。中国美国商会建议，削减进口关税和增值税税率，使其与运输飞机所适用的税率相当，并放弃拟议的征收消费税的计划。

监管方面的挑战

使中国民用航空局（民航局）航空器审定程序符合国际标准

民航局已在上海新开设航空器审定中心。重要的是，在此进行的航空器审定及验证工作应符合国际惯例。

据一些公司反映，中国进行的审定及验证工作常常与其他国家的处理方式不同。例如，对通常并无要求的文件及技术资料提出要求；在验证过程中采用取证式程序；会议差旅要求资助等。

中国美国商会会员企业认为，正是由于审定中心在启动新的业务和处理繁重的工作时所面临的重大挑战，才造成上述种种困难。因此，希望民航局与美国航空联邦局、欧洲航空安全局、加拿大交通部，以及其他民航当局紧密合作，确保新的航空器审定中心与全球其他监管机构的审定程序接轨。

增加中国民用航空局监管人员和技术检查人员

民航局机关编制上限约 300 人，数量相对较少，且没有弹性，这对中国所保持的优异安全记录造成潜在风险，也制约了中国民用航空业的可持续发展。过去五年里，这个问题一直没有得到任何改进，中国美国商会《白皮书》对此表示高度重视。尽管该行业迅猛发展，编制限制从 1998 年至今却一直未有改变。与全球其他国家航空监管部门的人员配备水平相比，民航局重点部门的人员配备严重不足。与此相比，美国联邦航空局总部工作人员则有约 4,000 名，而其业务中还不包括中国民用航空局所承担的

risk to China's excellent safety record and a constraint on sustainable growth of the industry. This issue has been highlighted in the AmCham China *White Paper* for the past five years with no progress demonstrated. The headcount limit has remained in place since 1998 despite the rapid growth of the industry. Key CAAC departments are significantly understaffed compared to staffing levels at other global aviation regulators. FAA headquarters, for example, has approximately 4,000 employees; and the CAAC also performs airline economic regulatory functions that are not part of the FAA's responsibilities.

Also affected are CAAC staffing levels in offices responsible for safety audit and validation/approval processes. These include maintenance facility inspections, validations of Type Certificates (VTC) and Supplemental Type Certificates (VSTC), and production authorities. Increased staffing is highly important since US aviation businesses are widely reporting operating impacts from difficulties in receiving timely approvals from the CAAC across these categories.

AmCham China recommends the establishment of a commission to benchmark staffing levels of other countries' aviation regulators and increases to regulatory and inspection staffing levels at the CAAC. AmCham China and ACP stand ready to assist in this effort.

CAAC Parts Manufacturing Authorization (PMA) Process Needed

The CAAC is encouraged to establish a Parts Manufacturing Authorization (PMA) process, which is needed to permit foreign suppliers of parts and components for the Commercial Aircraft Corporation of China (COMAC) ARJ-21 and C919 aircraft to sell replacement parts directly to COMAC's airline customers. Without such a PMA process, parts required to support post-delivery airline operations would need to flow through COMAC, which is impractical and will be viewed by airlines as a disadvantage in operating COMAC aircraft types.

Recommended CAAC Website Improvements

The CAAC is encouraged to dedicate resources to an overhaul of its website to make it a more effective tool in communicating up-to-date CAAC regulations including China Civil Aviation Regulations, Airworthiness Directives, and other airworthiness-related documents to the world. The current lack of English translations of CAAC documentation is not only an impediment to overseas suppliers who must comply with these regulations, but also a potential safety issue as each company is forced to translate the regulations on their own.

Recent Developments

General Aviation Policies

China continues to take steps to encourage general aviation development and operations. The "Regulation on General Aviation Flight Approval and Management" released by the CAAC in November 2013 simplifies procedures for flight mission and flight plan approval. The new regulations eliminate the requirement for flight mission approval, except under nine specific exceptions (operations in border areas, forbidden zones, sensitive operations, etc.). Approval of individual flight plans are still required and must be submitted prior to flight. This shift in policy is a positive step towards supporting the continued growth of general aviation.

Aircraft Import Duty Regime

In August 2013, China's State Council adopted a change to the aircraft import duty regime that has the unintended consequence of taxing efficiency and subsidizing fuel consumption. The change involves setting import tariff rates for transport aircraft between 25 and 45 tons at 500 percent the tariff rate for aircraft above that range (five percent for aircraft in the range; one percent for aircraft above). The change creates an unusual multi-tiered categorization that differs from global practices. Unintended consequences occur because the 45-ton dividing line cuts through the narrow-body airplane category. The largest narrow-body airplanes (seating 180-215 passengers) tend to be very close to 45 tons with the lightest, most fuel-efficient models just below and heavier, less efficient models above. This incentivizes airlines to buy the heavier, less efficient models leading to increased fuel consumption and emissions and an unfair playing field within this product category. AmCham China encourages the Ministry of Finance and Ministry of Commerce to reexamine this import duty to fully understand the unintended consequences and revise or, better yet, eliminate it entirely.

Recommendations

- **Continue opening up and reforming China's national airspace system to enable both growth and efficiency for all users.**
- Develop an Air Traffic Flow Management (ATFM) framework that incorporates a System Wide Information Management (SWIM) system and collaborative decision making (CDM) among air traffic control, airlines, and airport authorities to alleviate delays.
- Implement reforms at the CAAC to increase headquarters staffing levels, align certification processes with international standards, develop a Parts Manufacturing Authorization (PMA) process, and improve the CAAC's website to include English-

航空公司的经济监管职能。

中国民用航空局还面临着缺乏专门人员执行安全审核和验证／批准流程的问题。包括维修设备检查、型号取证认定（VTC）、补充型号认可证审定（VSTC）、以及制造授权。增加民航局工作人员至关重要，因为美国民航企业广泛反映，难于及时得到民航局在此领域的各类批准，已经很大程度地影响了他们的业务运行。

中国美国商会建议，成立一个委员会，以确定其他国家航空监管机构的人员配备水平基准，并相应增加民航局监管人员和检查人员的数量。中国美国商会和美中航空合作项目愿意随时提供相关协助。

中国民用航空局急需制定零部件制造商审批（PMA）程序

希望民航局制定零部件制造商审批（PMA）程序，准许中国商用飞机有限责任公司（中国商飞公司 COMAC）ARJ-21 项目及 C919 项目的外国零部件供应商，直接向中国商飞公司的航空公司客户销售更换件。没有该批准程序，能支持飞机交付后航空公司营运的零部件就必须经过中国商飞公司这个流程，这是不现实的，而且从航空公司的角度来看，这不利于运营中国商飞公司的机型。

建议改善民航局网站

鼓励民航局调动资源，彻底检查其网站，使之成为更有效的工具，以与全球交流民航局最新的政策规章，包括中国民航规章、适航指令以及其他适航相关文件。民航局文件现缺少英文版本，迫使每个公司都以自己的方式来理解和诠释这些规章，这不仅会成为海外供应商必须遵守民航局规章的障碍，而且会导致潜在的安全隐患。

飞机进口关税制度

2013 年 8 月，中国国务院更改飞机进口关税制度，对税收效率和油耗补贴产生了意想不到的结果。此次调整将空机重量在 25–45 吨范围的飞机税率改为 5 倍于空机重量在该范围之上的飞机（空机重量介于 25–45 吨的飞机税率为 5%，空机重量在 45 吨以上的飞机税率为 1%）。此次更改基于不正常的分类，异于全球惯例，导致了意想不到的结果。因为 45 吨的分界线恰好将窄体飞机的范畴割裂。最大的窄体飞机（载客量 180–215 位）趋于非常接近 45 吨的空机重量，最轻，最省油的机型恰在此以下，而更重、更耗油的机型都在其上。这刺激了航空公司都去购买更重、更耗油的机型，因而增加了耗油及排放，使得这一产品市场竞争环境不公平。中国美国商会希望财政部及商务部重新审核此项进口关税，充分了解其引发的意外后果，对其加以修改，或者最好是完全取消之。

建 议

- **继续开放和改革全国空域系统，让所有使用者都能实现增长，提高效率。**
- 开发空中交通流量管理（ATFM）框架，使之与全系统信息管理（SWIM）系统结合使用。在空管部门、航空公司、机场当局共同决策下，减少航班延误。
- 民航局实施改革，增加总部人员编制，使航空器审定程序符合国际标准，制定零部件制造商审批（PMA）程序，改进民航局网站，使之含有英文版的适航规章。
- 优化中国主要枢纽机场的起降时刻分配和运行程序
- 理顺货运航空公司的海关监管工作，增加其航班灵活性。
- 继续加强通用航空业基础设施和政策建设，促进通用航空业的发展，包括对进口通用航空飞机实施适用优惠税收政策。

最新进展

通用航空政策

中国会继续采取措施，鼓励通用航空发展及运营。2013 年 11 月民航局发布《通用航空飞行任务审批与管理规定》，简化了飞行任务及飞行计划的审批程序。新的规定取消了飞行任务审批的要求，九项特殊情况除外（如边境地区运营、禁区运营、敏感运行等等）。飞行计划仍需进行审批，审批申请须在飞行前提交。此次通用航空政策的变动，为支持通用航空继续发展迈出了积极的一步。

language airworthiness regulations.

- Optimize slot utilization and operational procedures at China's major hub airports.
- Streamline customs regulations and increase scheduling flexibility for air cargo carriers.
- Continue to strengthen the physical and policy infrastructure to enable GA growth, including more favorable tax policies for import of GA aircraft.

Clean Technology

Introduction

China is at the forefront of global clean technology development. Its renewable energy manufacturing and installation capacities are already the world's largest and it remains one of the most dedicated investors in new clean technologies. Despite the significant progress achieved, long-term sustainable development of China's clean technology market will require proactive solutions for certain challenges that have emerged in recent years, including industry overcapacity, lack of regulatory consistency, the need for clear unified quality standards, and international trade tensions.

We were pleased to see that China's 12th Five-Year Plan (12th FYP) placed great emphasis on advancing the clean technology sector. However, major policy reforms are still needed to fully achieve China's ambitions in this field. As more facilities are incorporated into current programs and pilot programs are scaled up, implementation of energy conservation and efficiency programs at the facility level will require more oversight and dedicated resources. China will be able to accelerate innovation and obtain high returns on its investments in clean technology only if it can reinforce equitable competition in a well-regulated, transparent market.

AmCham China member companies stand ready to work with their Chinese counterparts and global partners to overcome these hurdles and challenges. We look forward to working with Chinese companies to promote the growth of renewable energy, energy efficiency, emissions reductions, smart grid solutions, and other clean technology sectors.

Ongoing Regulatory Issues

Industry Consolidation and Transparency

Overcapacity poses the greatest threat to the short term recovery and long term development of China's renewable energy industry, especially for the solar photovoltaic (PV) and wind sectors. Foreign-invested enterprises (FIEs), including many AmCham China member companies, have advanced technology and expertise that can be utilized to assist the Chinese industry in consolidating and upgrading its capacity. However, a lack of regulatory transparency in recent years has created an uncertain, higher-risk environment discouraging FIEs from participation. AmCham China encourages the Chinese government to support FIEs by instituting a more transparent mergers and acquisition review procedure and streamlined intragovernmental consultation mechanisms. Closer cooperation between international and domestic players can both improve Chinese industry competitiveness and reduce trade frictions abroad.

Tax Policy and Innovation

Innovation is key to driving down clean technology costs and increasing competitiveness. Non-discriminatory tax policies play a vital role in fostering innovation in China. In 2012, China's State Intellectual Property Office received more than 650,000 applicants for invention patents, many of which were developed by foreign-invested Chinese research facilities. One of China's core innovation-promoting tax policies is the High and New Technology Enterprise (HNTE) program. However, the HNTE requires the company to own or hold an exclusive global license for its intellectual property (IP) in China; its research and development (R&D) centers must have both a manufacturing and an R&D component in China; and, most importantly, the company must disclose a significant amount of information to Chinese authorities that is often considered to be trade secrets or highly sensitive. As discussed in the Innovation Policy chapter, such requirements discourage foreign investment as they are not competitive with similar policies in other countries, thus hindering China's innovation growth. AmCham China encourages the Chinese government to consider flexibility in IP ownership, facility requirements, and information disclosure in its tax programs in order to encourage more FIEs to bring innovative clean technology activities to China.

Standards and Enforcement

Grid assets have a long operating life, often in service for at least 25 years. Therefore, it is crucial that grid-wide parity, efficient standards, and connectivity issues are established and implemented early on in their development, in order to ensure and maximize the long-term benefits of these assets. This is especially important in the emerging application of distributive power generation of renewables like solar PV and wind. Many project developers, often consumers of their own renewable power generation, are both new to the

清洁技术

引 言

中国正走在全球清洁技术开发的前沿。中国可再生能源生产能力和安装容量已位居世界第一，并且中国一直是专注致力于新清洁技术领域投资的国家之一。尽管取得了显著进步，中国清洁技术市场要实现长期可持续发展依然需要采取积极措施，以应对近年来出现的种种挑战，包括产能过剩、监管不一致、缺乏明确统一的质量标准，以及国际贸易紧张局面等等。

我们很欣喜地看到，中国的“十二五”规划中重点强调了要加快推进清洁技术产业发展。然而要全面实现这一雄心壮志，中国尚需在这一领域推进重大政策改革。随着现有项目设备进一步扩大，试点项目实现规模化，设备层面节能增效项目的实施将需要更多的监督和专属的资源供给。中国只有在确保市场监管有力、公开透明，并强化市场中的公平竞争后，方可加速创新，并在所投资的清洁技术领域取得高回报。

中国美国商会的会员企业已经做好准备，期待与中国同行和全球合作伙伴共同应对这些障碍和挑战。我们期待与中国企业开展清洁技术合作，共同推进可再生能源、能效、节能减排、智能电网解决方案及其他清洁技术领域的进步。

现存监管问题

行业整合和透明度

产能过剩对中国可再生能源产业的短期复苏和长期发展都造成了巨大的威胁，特别是太阳能光伏行业（PV）和风能行业。外资企业，包括很多中国美国商会的会员企业，拥有先进的相关技术和经验，能用于帮助中国可再生能源的产业整合与产能升级。然而，近年来，由于监管缺乏透明度而导致市场不确定性较大，风险较高，使得外资企业的投资积极性受到影响。中国美国商会鼓励中国政府增加并购审查程序的透明度，理顺政府部门间意见征询机制，为外资参与可再生能源产业提供支持。国内外相关主体加强合作不仅能够提高中国产业竞争力，还可以减少国际贸易摩擦。

税收政策和创新

创新是降低清洁能源成本、提高产业竞争力的关键。非歧视性税收政策更是中国推动创新的关键。2012 年，中国国家知识产权局收到了超过 65 万件创新专利申请，其中很多是由外商投资的中国研究机构开发的。中国鼓励创新的核心税收政策之一就是针对高新技术企业的税收优惠政策。然而，高新企业认定中要求该企业必须在中国所有或持有一项获得全球独占许可的自主知识产权，该企业的研发中心必须在华分别拥有一座生产和研发机构，同时，更重要的是，该企业必须向中国相关政府部门披露大量通常被认为是商业秘密或具有高度敏感性的信息。如创新政策一章所述，这些要求与其他国家的类似政策相比毫无竞争力，因此会打击外商投资的积极性，进而阻碍中国创新的发展。中国美国商会鼓励中国政府考虑放宽在税收优惠政策中对知识产权所有权、设备和信息披露上的要求，从而鼓励更多的外资企业在华开展创新性清洁技术事业。

标准和执行

电网资产运营时间较长，一般至少可以使用25年。因此，在电网资产开发早期便建立并执行全网市电同价、高效标准和接入机制等政策至关重要，如此才可以确保上述资产的长期利益及利益最大化。这一点对新兴应用的可再生能源分布式发电，如太阳能光伏和风能分布式发电尤为重要。许多项目开发商，同时也是自家可再生能源发电的消费者，都是新能源发电市场的新兵，需要有信心相信其所发电力能够适应市场需求并能够最终接入总电网从而实现投资回报。中国美国商会建议中国政府考虑与中国美国商会的会员企业以及相关行业工作组联合开展国际经验研究，从而

power generation market and need confidence that their generated electricity can be balanced and integrated with the overall grid in order to fully commit to their investments. AmCham China suggests the Chinese government consider conducting a joint study with AmCham China member companies and industry working groups to leverage international experience in the development of effective localized standards for renewable energy products and applications. Also, AmCham China encourages the Chinese government to take steps at the local level to effectively enforce implementation of standards.

Key Sector Updates and Assessments

12th Five-Year Plan for Energy Development

On January 1, 2013, the State Council issued its 12th FYP for Energy Development (Energy Plan) which aims to promote efficient energy use by strengthening China's energy production and supply, reducing reliance on overseas suppliers, and optimizing the nation's energy mix. The Energy Plan places a cap on total coal usage of four billion metric tons of standard coal, and another cap on total energy consumption of 6.15 trillion kilowatt hours, each by 2015. Energy consumption per unit of GDP is to be reduced by 16 percent over 2010 levels, with the contribution of non-fossil fuels to China's energy mix to be raised to 11.4 percent. The Energy Plan also encourages further development of China's coal-bed methane and shale gas resources with 2015 targets of 20 and 6.5 billion cubic meters, respectively. AmCham China finds all of the targets set forth in the Energy Plan encouraging. In order to achieve these targets, the Chinese government will need to address the discussed challenges to implementation.

Green Buildings

On January 1, 2013, the Ministry of Housing and Urban Development and the National Development and Reform Commission (NDRC) issued a Green Building Action Plan. The plan calls for one billion square meters (and 20 percent of all urban buildings) to be green buildings by 2015. Under the plan, the Ministry of Finance and State Administration of Taxation will study and develop preferential tax and credit policies to further incentivize the building and purchase of green buildings.

While green buildings and energy efficiency have emerged as a focal point of the 12th FYP, implementation of relevant policies has been relatively weak. For example, the number of green building projects in China still remains a fraction of its potential—estimated at less than one percent of the newly built environment. Key barriers to the development of green buildings include:

- Lack of focus and capability from provincial governments to implement targets;
- Recent regulations on insulation materials that drastically affect energy-efficient building development;
- Insufficient economic incentives to justify energy-efficient design and solutions for certain types of buildings and projects;
- Lack of talent for integrated design and operations and management;
- Mismatch of energy efficiency incentives for builders, owners, and users;
- Low energy cost reduction potential in some regions due to low electricity rates; and
- Lack of consumer awareness.

To achieve the 12th FYP goals, AmCham China encourages the government to take more resolute measures to ensure implementation of green and energy-efficient building standards at the provincial and local level. The government must also address barriers associated with insufficient technical skills through training and certification programs for building designers and operators. Continued preferential policy support must also be given to green building owners and developers. To address mismatches of incentives between owners and tenants, green leasing (where tenants and owners agree to collaborate to improve the environmental performance of buildings) could be implemented more widely.

Furthermore, while the government has been a driver of improvements to building energy efficiency through targets and incentives, it could play a larger role by mandating that all government buildings meet green building standards and adopting a national building energy efficiency program. Similar to the US Environmental Protection Agency's ENERGY STAR initiative, such a program would certify buildings as energy efficient and provide technical training and access to energy service companies, to help buildings achieve high levels of efficiency. In the US, programs focused on building energy performance certification have cut over US $230 billion (RMB 1.39 trillion) in energy costs and reduced the equivalent of 1.8 billion metric tons of carbon dioxide emissions (equivalent to retiring 509 coal-fired power plants). There is potential for similar savings in China.

Renewable Energy

Encouragement for Sustainable Solar PV Development

Over the last two years, China's solar PV producers and domestic solar PV market has suffered from excess capacity and corporate debt. Responding to these concerns, multiple Chinese agencies have stepped up with new policies and plans to reinvigorate the PV industry.

First, the government established domestic deployment of solar PV a priority of its 12th FYP. On July 4, 2013, the State Council issued "Several Opinions on Promoting the Healthy Development of the Photovoltaic Industry" to raise the 2015 PV target from 21 gigawatts (GW) to 35 GW, and called for the

开发出适合中国新能源产品和应用的本地标准。同时，中国美国商会鼓励中国政府采取有效措施，加强地方标准执行力度和效果。

行业重大新动态和评估

能源发展“十二五”规划

2013 年 1 月 1 日，国务院发布了《能源发展“十二五”规划》（能源规划），该规划旨在加强中国能源生产和供应，降低对海外能源供应的依存度以及优化国家能源结构，进而提高能源使用效率。该能源规划规定到 2015 年，能源消费总量控制在 40 亿吨标煤，用电量控制在 6.15 万亿千瓦时。单位国内生产总值能耗比 2010 年下降 16%，非化石能源消费比重提高到 11.4%。该能源规划还鼓励进一步开发中国煤层气和页岩气勘探开发力度，实现到 2015 年，煤层气、页岩气商品量分别达到 200 亿和 65 亿立方米。中国美国商会认为能源规划确立的每个目标都十分鼓舞人心。为了实现上述目标，中国政府需要采取实际行动解决上述挑战。

绿色建筑

2013 年 1 月 1 日，住房和城乡建设部和发改委联合发布了《绿色建筑行动方案》。该方案中要求“十二五”期间，完成新建绿色建筑 10 亿平方米；到 2015 年末，20% 的城镇新建建筑达到绿色建筑标准要求。财政部和国家税务总局将根据该方案研究制定相关税收优惠和减免政策，从而进一步鼓励建造和购买绿色建筑。

尽管绿色建筑和节能增效已经成为“十二五”规划中的重点工作，但相关政策的执行力度相对较弱。例如，中国的绿色建筑项目数量远远少于预期，在新建建筑中的比例甚至不到 1%。绿色建筑发展所遇到的主要障碍包括：

- 省级政府执行时缺乏重点和能力，以致于无法完成既定目标；
- 近期出台的绝缘材料监管法规严重影响节能建筑开发；
- 对某些建筑和项目采用节能设计和解决方案缺乏有效的经济激励措施；
- 缺乏精通项目整体设计、运营和管理的人才；
- 对建筑商、业主和使用者的节能激励措施之间缺乏协调；
- 部分地区电费较低造成降低能源成本空间不大；
- 消费者缺乏节能意识。

为了实现“十二五”规划中确立的相关目标，中国美国商会鼓励中国政府采取更为坚决的措施，确保省级及地方一级绿色、节能建筑标准落到实处。中国政府还应当通过对建筑设计者和运营者进行培训和认证，解决他们技能不足问题。同时还要继续给予建筑业主和开发商优惠政策支持。为了使针对业主和租户的节能激励措施更加协调，应当大力推广实施绿色租赁（租户和业主同意共同提高建筑的环保效能）。

另外，虽然政府已经通过制定各类目标和激励措施，成为提高建筑物能效的重要推动者，但政府还应当发挥更大的作用，强制规定政府部门建筑必须满足绿色建筑标准，并推出一项全国性的建筑物节能项目。与美国环境保护署的“能源星”计划类似，上述项目将对建筑物是否节能进行认证，提供相关技术培训，帮助与相关能源服务企业建立合作，帮助建筑物达到更高的节能标准。在美国，各类建筑物能效认证项目已经实现降低的能源成本超过 2300 亿美元（1.39 万亿人民币），已经减少了 18 亿公吨二氧化碳排放当量（相当于关闭了 509 个燃煤发电厂）。中国也有望实现类似的节能成就。

可再生能源

鼓励太阳能光伏可持续发展

过去的两年间，中国太阳能光伏制造商以及国内太阳能光伏市场都遭受了产能过剩和企业债务缠身的打击。为了解决这些问题，中国诸多相关政府部门纷纷出台新政策和规划以重振光伏产业。

首先，中国政府“十二五”规划中将国内太阳能光伏行业部署作为一项重点任务。2013 年 7 月 4 日，国务院发布了《国务院关于促进光伏产业健康发展的若干意见》，规定到 2015 年总装机容量从 2100 万千瓦上升至 3500 万千瓦以上，建设 100 个分布式光伏发电规模化应用示范区、1000 个光伏发电应用示范小镇及示范村。2013 年 8 月，发改委发布了《关于发挥价格杠杆作用促进光伏产业健康发展的通知》，该通知将全国分为三类太阳能资源区，并相应制定了光伏电站标杆上网电价。这些上网电价将适用于 2013 年 9 月 1 日后备案（核准），以及 2013 年 9 月 1 日前备案（核准）但于 2014 年 1 月 1 日及以后投运的光伏电站项目。

另外，为了加快太阳能光伏行业的整合，提高产业竞

building of 100 large-scale PV power generation demonstration areas and 1000 PV demonstration towns and villages. In August 2013, the NDRC released the "Notice on the Effect of Price Leverage to Promote the Healthy Development of the Solar Photovoltaic Industry" which divides the nation into three solar PV zones and establishes benchmark on-grid solar prices. These on-grid prices are available for all projects filed or approved after September 1, 2013 or which commence operation after January 1, 2014.

Furthermore, the Chinese government has raised the entrance barrier to the industry in an effort to accelerate solar PV sector consolidation and boost industry competitiveness. On November 28, 2013, the Ministry of Industry and Information Technology (MIIT) published a list of 134 Chinese PV enterprises which have conformed to "PV Manufacturing Industry Norms and Conditions." This list was reduced to 109 in its finalized publication on December 31, 2013. Selection criteria for this list was based on various factors such as minimum R&D input as a percentage of revenue and solar cell and module conversion efficiency. This new policy aims to provide tax rebates and other incentives to industry players that are perceived to be strong and sustainable, excluding those that invest solely in the expansion of uncompetitive production capacity. The MIIT will reexamine the renewal of listed companies and identify newly qualified entrants every six months.

Subsidies and Incentives for Distributive Power Generation

The Chinese government is actively raising installation targets and promoting renewable power generation through subsidies and incentives. AmCham China applauds the Chinese government's increased commitment to and support of renewable energy application. As a next step, we encourage the Chinese government to consider a tailored distributed solar PV subsidy schedule that accounts for regional differences in solar endowment to ensure efficient market adoption and prevent over-capacity. In addition, a more differentiated subsidy program that promotes use of high conversion efficiency solar PV cells would ensure market adoption of best-in-class technology.

AmCham China would also like to encourage the Chinese government to provide the same magnitude of support and subsidies in distributed wind power generation. Small to medium scale (100 kW or below) compact wind power generators can be installed in populated districts, complementing distributive solar PV facilities. Such a hybrid renewable power generation approach can enhance renewable power application in power hungry Chinese cities.

Demonstration and Deployment of Grid-Scale Integration

Scaling is another key to driving down the cost of renewable energy adoption. China's National Energy Administration (NEA) has released a plan to build 100 New Energy Cities in China. Following the "New Energy Demonstration City and Industrial Park Notice" released in 2012, the NEA released a new management regulation in 2013, "New Energy Demonstration City Classification Management," with details on the goals and tasks for each level of government. According to the Energy Research Institute of the NDRC, there remain three main challenges: development of new energy city concepts, implementation of the New Energy Cities plan, and formulation of supporting investment and subsidy policies. AmCham China member companies look forward to assisting Chinese city governments and partners in urban planning and design, new energy technology innovation, and solution implementation.

Smart Grid

Over the past year, China has continued its mission to transform the world's largest grid into the world's most efficient and technologically advanced grid. While its pace of development is impressive, several problems remain to be resolved. Ultra-high voltage transmission deployment delays have exacerbated wind curtailment problems in northern China, and ultra-high voltage alternating current transmission stability remains an ongoing concern. Energy storage installation has accelerated, but the market is entirely driven by one-off demonstration projects and will quickly stall without continued subsidy support. The State Grid and central government's support for distributed solar PV generation is praiseworthy, but a lack of advanced monitoring capability in the distribution grid may lead to voltage stability problems. Finally, although smart meter deployment will open up the market for a range of demand side management applications and services, current power pricing mechanisms limit effective utilization. In short, the infrastructure is falling into place but the ability to realize its full benefits is not.

At present, incompatible technology standards, limited market access, IP risk, and lagging market reforms stand in the way of more fruitful cross-border business exchange on smart grid solutions. With regard to communication protocols, technology performance, and electric vehicle charging standards, incompatible requirements have restricted cross-border technology trade. American companies have developed software to utilize smart grid data but, without market access and IP protection guarantees, these companies cannot risk bringing this technology to China. On the customer side of the meter, a number of beneficial technologies like small-scale energy storage and automated demand response cannot realize attractive returns due to lacking market incentives and limited subsidy support. AmCham China member companies encourage the Chinese government to accelerate smart grid development with more market oriented policies and open up discussions on how to incentivize cross-border cooperation on development of standards, best practices, and technologies.

争力，中国政府还提高了行业准入标准。2013 年 11 月 28 日，工业和信息化部（工信部）发布了 134 家符合《光伏制造行业规范条件》的中国光伏企业名单。2013 年 12 月 31 日颁布的最终版本的名单中准入企业数量减少至 109 家。该名单的选择标准基于诸多因素，如最低研发投入和研发投入占总销售额的最低比例以及太阳能电池和太阳能电池组建的光电转化率等。这一新政策还为实力雄厚及实现可持续发展的行业主体提供退税和其他激励措施，但对于从事不具有竞争力的产能扩张的企业则不能享受上述优惠措施。工信部将每隔六个月对上榜企业进行复查，并确定新增上榜企业。

分布式发电补贴和激励措施

中国政府积极提高装机目标，通过补贴和其他激励措施来推动可再生能源发电。中国美国商会对中国企业进一步承诺和支持可再生能源应用的做法表示欢迎。下一步我们鼓励中国政府考虑基于各地在太阳能资源禀赋上的差异，因地制宜地制定区域补贴政策，确保市场应用效率，防止出现产生过剩。另外，采用推广高转化率太阳能光伏电池使用的更加差别化补贴政策将有助于市场引进最先进的技术。

中国美国商会还鼓励中国政府对分布式风能发电提供同等力度的支持和补贴。在人口稠密地区安装中小型（100 千瓦或以下）小风电发电机来作为分布式太阳能光伏发电设备的补充。这种混合型可再生能源发电模式有助于提高中国缺电城市的可再生能源应用。

示范项目和规模化电网并网

规模化是降低可再生能源应用成本的另一项重要手段。中国国家能源局已发布一项规划，确立了在中国建立 100 座新能源城市的目标。根据 2012 年发布的《关于申报新能源示范城市和产业园区的通知》，2013 年国家能源局又新发布了一项有关新能源示范城市分类管理的法规，对各级政府的目标和任务作了详细的规定。根据发改委能源研究院的研究结果，新能源城市建设领域面临三大挑战：明确新能源城市相关概念、实施新能源规划方案以及制定配套投资和补贴政策。中国美国商会的会员企业期待在城市规划和设计、新能源技术创新和解决方案实施等方面为中国各市级政府和相关合作伙伴提供帮助。

智能电网

去年，中国继续致力于将全球最大规模的电网升级改造成为全球技术最先进、最高效的电网之事业。尽管发展速度惊人，但依然存在着几个未决问题。超高压输电布线迟延加剧了中国北方风电弃风限电现象，同时超高压交流电传输的稳定性也是目前存在的另一大问题。能源存储安装速度已经加快，但市场却完全由一次性的示范项目驱动，一旦停止补贴就会迅速停顿。国家电网和中央政府对太阳能光伏发电的支持力度值得赞扬，但缺乏先进的监管输电网的能力可能会导致电压不稳定的问题。最后，尽管推广部署智能电网将打开一个广阔的需求方管理应用和服务市场，但现行的电力定价机制限制了有效使用。总而言之，虽然相关技术设施已经到位，但并不具备充分发挥基础设施效能的能力。

目前技术标准不兼容，市场准入受限，知识产权风险以及市场改革滞后等问题阻碍了智能电网解决方案跨国业务的发展。在通信协议、技术性能和电动车充电标准等方面标准不兼容的问题也限制了跨国技术贸易。美国企业拥有成熟先进的智能电网数据运用软件，但由于未获市场准入以及缺乏知识产权保护，这些公司并不愿意冒险将其技术引入中国。在电表客户端领域，包括小型储能器和自动需求响应等一系列颇具收益前景的技术都受限于缺乏市场激励措施和补贴支持有限而无法实现预期收益。中国美国商会的会员企业鼓励中国政府加快智能电网发展，出台更为市场化的政策，并鼓励公开探讨如何激励标准开发、最佳实践和技术领域的跨境合作。

大气污染

2013 年 1 月席卷中国的重度雾霾可能是对中国需要坚持不懈治理空气污染的最好提醒，中国政府也由此加快立法步伐，以应对这一举国关注的热点问题。2013 年 7 月，国务院发布了大气污染防治十大要点，随后又在 9 月份发布了《大气污染防治行动计划》（大气污染行动计划），针对上述十大要点框架制定了详细的执行措施。大气污染行动计划规定到 2017 年全国所有城市 PM 值降低 10%。

大气污染行动计划同时还规定尽量减少中国对煤炭资源的依存度，到 2017 年使煤炭占能源消费总量比重降低到 65% 以下，并且规定京津冀、长三角、珠三角等区域新建项目禁止配套建设自备燃煤电站。很多省、直辖市也纷纷发布旨在降低 PM 含量的本地行动计划，为各地方政府落

Air Pollution

The thick smog and haze that enveloped China in January 2013 was perhaps the most visible reminder of its continuing struggles with air pollution, provoking the Chinese government to push forward legislative initiatives to respond to this issue of growing national concern. In July 2013, the State Council released a ten-point framework to prevent and control air pollution, followed in September by the "Action Plan on Prevention and Control of Air Pollution" (Air Pollution Action Plan) that provided detailed implementing measures for the 10-point framework. Of its major aims, the Air Pollution Action Plan calls for a 10 percent reduction in particulate matter (PM) for all cities nationwide by 2017.

The Air Pollution Action Plan also seeks to minimize China's reliance on coal by reducing its share of the national energy consumption mix by 65 percent by 2017 and prohibiting the approval of new coal-fired plants in the Beijing-Tianjin-Hebei regional cluster and in the Yangtze and Pearl River Delta regions. Local action plans focusing on PM reduction have also been issued by a number of provinces and municipalities to provide more concrete guidance for local governments carrying out the aims of the Air Pollution Action Plan.

To fund these initiatives, state media announced plans to invest US $277 billion (RMB 1.7 trillion) to tackle air pollution within the next five years, with the majority of the funding targeting cities in northern China where pollution is most serious. AmCham China applauds the Chinese government's commitment to improving air quality and investing into the long term health of its environment and citizens. If provided guidance, AmCham China member companies are willing to invest in and support China's Air Pollution Action Plan. Additionally, we encourage the Chinese government to enhance enforcement and monitoring, particularly with regard to coal caps, in order to ensure that air quality targets are achieved in a sustainable manner.

US-China Energy Cooperation Program

The US-China Energy Cooperation Program (ECP) serves as the commercial implementing arm of US-China clean energy collaboration. In 2013, the ECP achieved several outcomes with bilateral government support, including the following:

- Released a study of US wind farm operational best practices to introduce to Chinese industry stakeholders key standards related to wind farm development, construction, operation, management, and grid connection;
- Released a comparative study on PV grid integration standards in China, the US, and the European Union, in partnership with the China Electricity Council and China Electric Power Research Institute (CEPRI);
- Implemented a smart grid automatic demand response pilot project in Tianjin in partnership with the Tianjin Economic-Technological Development Area, CEPRI, and the State Grid Corporation of China (State Grid);
- Launched the Eco-City Initiative, a program to promote live commercial eco-city demonstration projects that can serve as operable, sustainable, duplicable business models for Chinese eco-city development;
- Launched the Integrated Smart Grid Communication Model Study with CEPRI and State Grid and;
- Launched the Distribution Data Integration, Management and Visualization technology for operations, engineering, and asset management with CSGEPRI and China Southern Grid.

Recommendations

For the Chinese Government:

- **Continue to set targets and provide preferential policies and incentives for green and energy-efficient building construction and retrofit. A potential first step would be to develop national training and certification programs for building designers and operators.**
- Experiment with green leases (where tenants and owners agree to collaborate to improve the environmental performance of buildings), to address the mismatch of incentives between owners and tenants.
- Consider tailoring the distributed solar PV subsidy schedule to account for regional variation in solar endowment to ensure efficient market adoption.
- Develop a more differentiated subsidy program that promotes use of high conversion efficiency solar PV cells to ensure market adoption of best-in-class technology.
- Provide the same magnitude of support and subsidies that have been allocated for distributed solar to distributed wind power generation as well.
- Establish a single information source regarding grid standards development, in which foreign firms can participate from early stages of discussions.
- Invite foreign companies with innovative technologies to participate in national smart grid demonstration projects.

For the US Government:

- **Continue to collaborate with the Chinese government to conduct joint research on policy and technologies that will drive very low-energy buildings in China, such as the US-China Energy Research Center (CERC) Building Energy Efficiency project.**
- Develop a corresponding project, perhaps also under the CERC umbrella, to conduct joint research into smart grid solutions, standards, and policies.

实《大气污染防治行动计划》提供了更为具体的指引。

在配套资金方面，据国家媒体的报道，下个五年内将投入 2770 亿美元（1.7 万亿人民币）来解决大气污染问题，且这些资金将主要投向中国北方污染最为严重的城市。中国美国商会对中国政府改善空气质量、投资长期环境和民众健康的承诺表示欢迎。中国美国商会的会员企业愿意在相关指引之下投资和支持中国落实《大气污染防治行动计划》。另外，我们鼓励中国政府加强实施和监管力度，特别是在控制煤炭消费总量方面，由此来确保持续地达到空气质量目标。

美中能源合作项目

- 美中能源合作项目（ECP）是美中清洁能源合作一项商业化执行项目。2013 年，在两国政府的共同支持下，ECP 取得了以下成绩：
- 发布了一项关于美国风能电厂运营最佳实践的研究，并向中国的行业利益相关方推介风能电厂开发、建造、运营、管理和电网接入领域的一系列核心标准；
- 发布了一项有关中国、美国和欧盟光伏电网并网标准的比较研究，该研究系与中国电力企业联合会和中国电力科学研究院（CEPRI）合作完成；
- 与天津经济技术开发区、中国电力科学研究院和国家电网在天津联合实施了一项智能电网自动需求响应试点项目；
- 启动了生态城市计划，该项目旨在现场推广商业生态城市示范项目，力争使其成为中国生态城市发展的一个可操作、可持续、可复制的商业模式；
- 与中国电力科学研究院和国家电网共同启动了集成智能电网通讯模式研究；
- 与中国南方电网科学研究院和中国南方电网共同启动了适用于运营、工程和资产管理的集成数据分配管理和可视化技术研究。

建 议

对中国政府的建议：

- **继续为新建和改造绿色和节能建筑设定目标并提供相应的优惠政策和激励措施。作为第一步，可以先开发全国性建筑设计和运营的培训和认证项目。**
- 试点绿色租赁（租户和业主同意合作提高建筑物环保效能），以解决针对业主和租户的激励措施不协调的问题。
- 考虑根据各地太阳能禀赋上的差异，因地制宜地制定太阳能光伏补贴政策，确保市场应用效率。
- 制定更具差异化的补贴项目，推广使用高转化率的太阳能电池，确保市场应用最先进的技术。
- 为分布式风力发电提供与太阳能光伏发电同等力度的支持和补贴措施。
- 建立电网标准开发的单一信息源，并确保外资企业能够从早期就参与标准开发。
- 邀请掌握创新技术的外国企业参与国家级智能电网示范项目。

对美国政府的建议：

- **继续与中国政府开展合作，共同致力于诸如美中能源研究中心（CERC）建筑物节能项目等降低中国建筑物能耗的政策和技术研究。**
- 可以依托 CERC，开发相应的项目，进行智能电网解决方案、标准和政策的联合研究。
- 联合开展有关历史上美国城市（如洛杉矶和纽约）改善空气质量之举措的案例研究，以及发电燃料转换项目和煤炭总量控制的案例研究，从而为中国落实《大气污染防治行动方案》提供更多的最佳实践和经验教训。
- 继续支持旨在推广部署美国清洁能源技术和服务进入中国市场的政府 – 私营部门合作计划，如美中能源合作项目。

- Conduct joint case studies of historical air quality improvement programs in US cities such as Los Angeles and New York, as well as power generation fuel-switching programs and coal caps, in order to derive best practices and lessons learned to inform China's Air Pollution Action Plan.
- Continue to support public-private partnerships that deploy US clean technologies and services in the market, such as the US-China Energy Cooperation Program.

Construction, Engineering, and Design

Introduction

Growth of the construction, engineering, and design industry continued at a steady pace over the past year. In particular, there have been an increasing number of mergers and acquisitions (M&A) in this sector, primarily for the purpose of obtaining greater market share and penetrating upstream and downstream industries in China. M&As have especially been undertaken by foreign companies with cutting-edge technology and the global resources to support their business operations.

On the other hand, the regulatory environment for foreign construction and engineering companies generally remains unchanged, except for a few relaxations in the proposed Shanghai Free Trade Zone (Shanghai FTZ). AmCham China considers these relaxations an encouraging sign for foreign firms in this sector, and will keep a close eye on their further implementation and development.

Ongoing Regulatory Issues

Engineering and Design Sector

Open Grade A Classification to More FIDEs

The legal regime applicable to foreign-invested design enterprises (FIDE) remained unchanged in 2013. In order for an FIDE to apply for a Design Qualification (DQ), its initial application must be for Grade B or below, regardless of its size, experience, and international track record. The only way an FIDE is able to apply directly for a Grade A DQ would be if the FIDE already holds a Grade One (or above) construction qualification in the same industry.

These restrictions unfairly discriminate against qualified and experienced foreign companies that otherwise already satisfy all the relevant requirements for a Grade A DQ. Such companies are generally neither interested nor competitive in Grade B engineering projects and, therefore, have little reason to apply for a Grade B DQ. AmCham China recommends the Chinese government allow FIDEs, which otherwise meet the requirements, to directly apply for a Grade A DQ without first applying for and obtaining a Grade B DQ.

Clarify the Transfer of Qualifications Following M&A

More foreign companies are seeking to obtain DQs through M&A, which provide an effective route for companies looking to enhance or expand their capabilities in China.

However, a 2007 regulation from the Ministry of Housing and Urban-Rural Development (MOHURD) states that when foreign investors acquire domestic enterprises, the qualifications and licenses possessed by the original enterprise(s) must be reassessed and reapproved. Since the criteria for reassessment are currently not known, risks increase for all parties involved and the continuity of the qualifications and licenses of the acquired company are endangered. When a license is reevaluated and potentially revised down a level, the legal ability to conduct projects changes and forces the company's approved business plan to change. This risk makes planning for post M&A operations uncertain.

AmCham China encourages the Chinese government to allow DQs to be transferred through M&A without the need for reassessment or reapproval.

Construction Sector

Remove Market Exclusions for FICEs

Foreign-invested construction enterprises (FICEs) entering China face unusually burdensome hurdles through various regulations. One of the biggest hurdles is market exclusion. Wholly foreign-owned FICEs are restricted to undertaking foreign-funded projects or projects with foreign investment equal to or more than 50 percent, except for projects that cannot be undertaken by Chinese construction enterprises because of technical difficulties. This regulation restricts foreign construction companies to a limited area of the construction market.

AmCham China believes such market exclusion prevents foreign construction companies from playing a substantial role in the Chinese market, as well as from bringing advanced technology and know-how in this area to China.

建筑、工程和设计

引 言

过去一年里，建筑、工程和设计行业呈持续稳步增长态势。特别是，该领域兼并与收购（并购）的数量增加，其主要目的是为了占有更多的市场份额和进入中国的上下游产业。从事并购业务的公司主要是那些拥有尖端技术和国际资源支撑的外国公司。

另一方面，除了正式批准设立的上海自由贸易试验区（简称上海自贸区）的政策有所放宽之外，针对外资建筑和工程公司的监管环境总体上并未改变。中国美国商会将这些放宽政策视为对该领域外国公司的一种鼓励信号，并将密切关注这些政策的进一步落实与发展。

现存监管问题

工程及设计行业

对更多外资设计公司开放甲级资质认证

适用于外资设计公司的法律制度在 2013 年没有变化。外资设计公司若要申请设计资质，无论其规模、经历与国际业绩记录如何，其初始申请只能为乙级或乙级以下。只有在其申请前已在相同行业获得一级或以上级别的建筑资质情况下，外资设计公司才能直接申请甲级公司设计资质。

这些限制性规定对符合条件并具有行业经验的外资企业造成歧视，这些外资企业其实已经达到甲级设计资质的所有条件。这些外资企业一般对于乙级工程项目既不感兴趣也没有竞争优势，因此没有理由申请乙级设计资质。中国美国商会建议中国政府允许符合要求的外资设计公司直接申请甲级设计资质，而无需首先申请获得乙级资质。

并购后资质转让有待明确

更多的外资企业正在寻求通过并购来获得设计资质，这对于希望在中国提高或扩充其实力的企业来说不失为一条有效的途径。

然而，住房和城乡建设部（住建部）于 2007 年颁布的法规指出，如果外商并购中国企业，对于被并购企业所持有的资质认证和许可证必须经过重新审核和批准。由于重新审核的标准目前尚未明确，其中涉及到的所有相关方所面临的风险将加大，并将危及被收购公司的业务连续性。当许可证被重新审核并且其等级有可能被调低一级时，企业执行项目的法律能力会发生变化，其已获批准的经营计划也将被迫更改。这将使并购后的经营计划面临不确定性。

中国美国商会鼓励中国政府允许通过并购进行设计资质转让，而无需再经过重新审核或批准。

建筑行业

放开对外资建筑企业的市场准入限制

外资建筑企业进入中国需要面对十分繁重的政策障碍。其中最大的障碍之一就是市场准入限制。除了中资建筑企业因技术难题而无法承接的项目外，外商独资建筑企业仅限于承接外资项目或外资达到 50% 及以上的项目。这项规定使得外资建筑公司囿于有限的建筑市场范围。

中国美国商会认为，这类市场准入限制妨碍了外资建筑公司在中国市场重要作用的发挥，也阻碍了该行业先进技术和专业人才的引入。

修订联合体资质认证

在中国乃至全球范围内，由两家或多家建筑公司共同合作承揽单个项目是很常见的做法。然而，根据中国法律的规定，项目规模不得超过联合体中最低资质公司的承揽范围。而国际通用的准则是项目规模不得超过最高资质公司的承揽范围。鼓励资质差异较大的双方进行合作将使双方主攻各自擅长的领域，并藉此创造机会分享技术，从而为公司自身及整个行业的发展做出贡献。

Revise Consortium Qualifications

It is common practice in China and around the world for a consortium of two or more construction companies to combine forces on a single project. However, according to Chinese law, the scope of a project may not exceed the qualifications of the lowest-ranked member of the consortium. The international standard, however, is for the scope of the project to not exceed the qualifications of the highest-ranked member. Encouraging the pairing of firms of different ranks allows each firm to specialize for its part of the project while creating an opportunity to cross-pollinate skills and technologies that benefit the individual firms as well as contribute to the overall development of the industry.

AmCham China recommends the Chinese government amend the consortium qualification requirement in the Construction Law to conform to international practice.

Project Management Sector

Clarify Project Management Qualifications

Conflicting regulatory regimes restrict foreign-invested enterprises (FIEs) from providing project management services. On the one hand, the National Development and Reform Commission (NDRC) currently requires companies wishing to provide engineering consulting services, including project management, to obtain an Engineering Consulting Enterprise Qualification Certificate. On the other hand, MOHURD requires foreign companies that wish to undertake project management services to establish a local entity and obtain qualifications in at least one of six categories (i.e., survey, design, construction, supervision, tendering agency, or cost control).

It is not clear whether FIEs must satisfy the regulations of both the NDRC and MOHURD before they can offer project management services. The documents in question are the NDRC's "Measures for Recognizing the Qualifications of Engineering Consulting Entities" (Circular 29) and MOHURD's "Trial Measures for the Administration of Construction Engineering Projects" (Circular 200).

In addition, FIEs attempting to satisfy MOHURD's regulations are further confused by selective application of a separate law (Decree 155), allowing an enterprise that is not an FICE or an FIDE to provide project management services. FIEs can satisfy Decree 155 by obtaining one of three qualifications (supervision, tendering agency, or cost control) and qualifying as a foreign-invested engineering services enterprise (FIESE). However, guidelines for the implementation of Decree 155 have yet to be issued and local authorities in many cities have cited this fact as a reason for refusing to accept FIESE qualifications.

AmCham China looks to the Chinese government to issue clarifying rules as soon as possible, in order to enable companies to operate in a consistent regulatory environment.

Engineering Procurement Construction Sector

Clarify Regulations for EPC Contracting

Construction projects with an engineering, procurement, and construction (EPC) contracting component are expanding around China, but the qualification system does not currently address these projects effectively. Both the "Guiding Opinions Concerning Nurturing and Development of Project General Contractor and Engineering Project Management Enterprises" (Circular 30) and the "Explanation Letter Concerning Market Entry for Project General Contracting" (Circular 161) appear to allow EPC contracting, provided the contractor holds an appropriate supervision, engineering design, or general construction qualification and contracts the construction activities to appropriately qualified subcontractors. However, there are still many local officials who do not accept the filing of such EPC contracts if the contractor only holds a DQ. This apparent discrepancy effectively prevents entities with only a DQ from undertaking EPC contracting, which is expressly permitted by Circular 30 and Circular 131.

AmCham China hopes the qualifications will be clarified and implementation will be consistent in order to increase transparency and regulatory uniformity within the industry.

Contract Filing with Local Government Authorities

Various engineering, design, and construction contracts that govern the life-cycle of a construction project must be filed with local authorities. Both national and local level governments have issued a series of model texts for such contracts, for the purpose of guiding contracting activities among different parties. The model texts are normally encouraged to be adopted and filed, while Chinese laws allow the parties to adopt their own form of contract or make necessary amendments to the model texts. However, the experience of many foreign market players reflects that some local authorities put extra restrictions on the contents of the contracts (e.g., requiring the use of a model text, requiring the parties input all relevant information into an online system which will generate a form of contract for the parties to sign, and refusing to accept separate forms of contracts).

AmCham China hopes local authorities can be open to different forms of contracts, in addition to those of a strict model-text format, which are all protected by freedom of contract under Chinese contract law.

中国美国商会建议中国政府修订《中华人民共和国建筑法》中对联合体资质认证的相关要求，使之与国际接轨。

项目管理行业

明确项目管理资质

相互冲突的监管制度限制了外资企业提供项目管理服务。一方面，国家发展和改革委员会（简称发改委）要求从事工程咨询服务的企业（包括项目管理）必须获得工程咨询企业资质认证；另一方面，住建部则要求从事项目管理服务的外资企业需在本地建立实体企业并在以下六大门类中获得至少一项专业资质，即勘察、设计、建筑、监理、招投标代理及造价咨询）。

不清楚外资企业是否需要同时符合发改委与住建部两者的要求，才能提供项目管理服务。这里提到的文件是：发改委颁发的《工程咨询单位资格认定办法》（ 29 号令）以及住建部颁布的《建设工程项目管理试行办法》（200 号令）。

在住建部的各项法规让外资企业难以适从，而其中 155 号令更让许多外企困惑。155 号令允许非外资建筑企业和非外资设计公司企业提出申请，获批准则可以提供项目管理服务。外资企业如果拥有监理、招投标代理或成本控制三项中的任一资质便可符合 155 号令的要求，达到外商投资建设工程服务企业的资质。然而，由于 155 号令的具体实施细则尚未出台，许多城市的地方机构以缺少事实根据为由拒绝接受外资企业的工程服务资质。

中国美国商会希望中国政府能尽快出台明确的规章制度，为企业运营提供一个统一的政策环境。

工程、采购、施工行业

明确有关工程采购施工承包的法规

在建筑项目中纳入工程、采购、施工承包的方法已逐步在中国推广，但现有的资质认证系统还不能有效地满足项目的需求。《关于培育发展工程总承包和工程项目管理企业的指导意见》（30 号令）以及《关于工程总承包市场准入问题说明的函》（161 号令）看似均允许工程采购施工承包，只要承包商具有适当的监理、工程设计或总承建资质，并将建筑活动适当地分包给具有资质的分包商。然而，如果承包商只具有设计资质，许多地方官员仍然不接受其提出的设计采购施工承包申请。这完全阻碍了只具有设计资质的主体参与工程采购施工承包，而这又是 30 号令和 131 号令明确允许的。

中国美国商会希望这些资质要求得到明确和统一实施，以便加强本行业的透明度和监管的一致性。

地方政府部门合同备案

每个建筑项目各个阶段的各类工程、设计和施工合同必须向地方政府提交备案。国家和地方政府针对此类合同都拟定了一系列示范文本，以指导不同当事方之间的合同签订事宜。一般来说，中国政府鼓励采用、提交示范文本合同，但同时，中国法律也允许各方采用各自的合同版本，或者使用经过必要修订的示范文本合同。在实际操作中，许多外国公司反映，一些地方政府增加了对合同版本的限制（比如，要求使用示范文本合同；或者要求各方将所有合同信息输入在线网络示范文本合同系统，然后合同各方在打印出的网络示范文本合同上签字；而拒绝接受企业方各自的合同）。

中国美国商会希望，除了严格的示范文本合同格式，地方政府也能接受其它形式的合同，范本合同及其它形式的合同都同样受到《中华人民共和国合同法》契约自由的保护。

最新进展

建筑项目施工合同（示范文本）发布

住建部和国家工商行政管理总局于 2013 年 4 月 3 日联合发布了《施工合同示范文本》。与 1999 年发布的示范文本相比，针对建筑项目在实施过程中出现的复杂问题，新版本增加了相应的解决机制。最重要的变更包括：双向担保约定（发包人向承包人提供付款担保，承包人向发包人提供履约保证书），详细的价格调整公式，与正常担保期相关的缺陷责任期，除传统诉讼或仲裁之外的争议调解程序，以及不同类型的价格确定模型（例如，总额定价、单位计价、成本加佣金）。

新版本对于发包人和承包人的权利和义务规定更加均衡。中国美国商会欢迎新版示范文本的发布，这为市场参与者提供了良好的标准和参考。

Recent Developments

Issuance of New Model Text for Construction Project Contracts

MOHURD and the State Administration of Industry and Commerce jointly promulgated the "Contracts for Construction (Model Text)" on April 3, 2013. Compared with the previous version of the model text issued in 1999, this new version has introduced a number of mechanisms to address complex issues that arise during a construction project. The most significant changes include provisions for: a two-way guarantees arrangement (payment guarantee from the owner to the contractor and performance bond from the contractor to the owner), a detailed price adjustment formula, a defect liability period given in relation to the normal guarantee period, a dispute mediation procedure in addition to traditional litigation or arbitration, and different types of price determination models (e.g., lump sum pricing, unit pricing, and cost plus commission).

This version is more balanced in stipulating rights and obligations between the owner and the contractor. AmCham China welcomes the promulgation of this new model text, which provides a good standard and reference for market players.

New Policy regarding FIDE and FICE in the Shanghai Free Trade Zone

The establishment of the Shanghai FTZ and the issuance of the "General Plan for the China (Shanghai) Pilot Free Trade Zone" by the State Council in September 2013 resulted in two rules that relaxed treatment of FIDEs and FICEs. The requirement that the direct investor of an FIDE must be an engineering design company with a corresponding track record has been removed for an FIDE providing engineering design services in Shanghai established within the pilot zone. FICEs that are wholly foreign-owned and established within the pilot zone are allowed to undertake US-China jointly invested projects in Shanghai, regardless of the ratio of foreign to domestic investments in the project.

Both relaxations are encouraging signs for foreign companies in this sector. Due to the short time period since the promulgation of the Shanghai FTZ, actual results are yet to be seen. AmCham China welcomes these incentive measures and expects the relaxed rules will be successfully implemented in Shanghai and can eventually be adopted nationwide.

"Several Opinions Regarding the Engineering Survey and Design Industry" by MOHURD

MOHURD issued this guiding document in February 2013 to address current issues in the survey and design industry and the direction of future development, reiterating the goal of building a more market-oriented and internationalized industry. It proposed simplifying the engineering design qualification system, improving the bidding system for survey and design projects, implementing project insurance and guarantee policies for survey and design companies still in their infancy in China, and broadening the scope of services to include initial stage consulting, general contracting, and design and consulting integrated services.

AmCham China applauds the Chinese government's guidance for the industry and believes the attainment of these goals can be expedited with more participation by foreign players in this sector.

Recommendations

- **Formally issue regulations clarifying qualifications required to undertake EPC contracting.**
- Allow FIDEs to directly apply for a Grade A DQ without first applying for and obtaining a Grade B DQ.
- In line with international norms, relax the requirement that consortia must default to the qualification level of the lowest qualified consortium member.
- For companies that are not FICEs or FIDEs, clarify the requirements for qualifying as providers of project management services.
- Apply more flexibility when reviewing design and construction contracts filed with local authorities.
- Issue specific project management qualification standards that remove the ambiguity existing between current NDRC and MOHURD regimes.

上海自由贸易试验区有关外资设计公司和外资建筑企业的新政策

上海自贸区于 2013 年正式成立。2013 年 9 月国务院印发《中国（上海）自由贸易试验区总体方案》，其中有两项政策放宽了对外资设计公司和外资建筑企业的限制：对于在试验区内成立、为上海提供工程设计服务的外资设计公司，新政策已取消要求其直接投资商必须是具备国际业绩记录的工程设计公司。在试验区内成立的外商独资建筑企业允许承接上海的美中联合投资项目，不论项目的中外投资比例是多少。

这两项放宽政策是对该行业外国公司的一种鼓励。因为上海自贸区的成立时间尚短，上述两项政策的实际效果还有待观察。中国美国商会欢迎这些激励措施的颁布，并期望这些放宽政策能够在上海成功实施并最终在全国推广。

住建部《关于进一步促进工程勘察设计行业改革与发展的若干意见》

住建部于 2013 年 2 月印发该指导文件，以解决勘察设计行业目前存在的问题，指导未来发展方向，重申构建更具市场导向性和国际化行业的目标。该文件建议简化工程设计资质系统，改善勘察设计项目的招标系统，实施在中国刚刚起步的勘察设计公司项目保险和担保政策，扩大服务范围，将初期咨询、总承包和设计咨询综合服务囊括在内。

对于中国政府对该行业做出的指导，中国美国商会表示赞赏，并相信随着越来越多的外国公司参与这一行业，这些目标能够更快地实现。

建 议

致住建部：

- 颁布正式的法规，明确承揽工程采购施工一体化项目的资质要求。
- 允许外资设计公司直接申请甲级设计资质，而无需先申请并获得乙级资质。
- 与国际标准接轨，放宽关于联合体资质以联合方所拥有最低资质为最终资质的限制。
- 明确非外商投资建筑企业和外商投资设计公司从事项目管理服务的要求。
- 地方政府部门审核设计施工合同时应更加灵活。

致住建部和发改委

- 出台具体的项目管理资质标准，消除发改委和住建部相关法规之间含糊不清的规定。

Cosmetics

Introduction

In the last decade, China's cosmetics industry has undergone rapid growth, becoming the world's second largest cosmetic consumer market after the US. The pace of urbanization and rising levels of disposable income among Chinese citizens has accelerated cosmetics consumption as well as development of the industry. For many Chinese consumers, cosmetics have become a necessity. In China, total sales of large- and medium-sized cosmetics companies were over US $33 billion (RMB 200 billion) in 2013. The Cosmetics Industry 12th Five-Year Plan sets out to increase sales to US $38 billion (RMB 230 billion) by 2015, maintaining an annual growth rate of 12 percent through 2020. By 2020, the GDP contribution made by the cosmetics industry is projected to exceed US $82.6 billion (RMB 500 billion).

Despite this growth, cosmetics consumption per capita in China is less than 10 percent of that in developed countries. The further development of the cosmetics industry depends on government support. In contrast to the self-regulatory approach generally accepted by the industry globally, China's supervision system requires examination and approval before a product is launched. This not only inhibits the China market from integrating into the global market, but also hampers development of the cosmetics industry within China. When writing laws and regulations, the relevant departments should aim at encouraging cosmetics companies to take responsibility for providing safe and high-quality products for customers. Furthermore, regulations should adopt international best practices.

Recent Developments

AmCham China appreciates the efforts made by the Chinese government to develop the cosmetics industry, particularly the acceleration of administrative approval reforms and the cancellation and decentralization of approval authority in several central government departments.

The State Council issued the "Notice Regarding Strict Control of New Administrative Procedures" in September 2013. This notice seeks to align with the spirit of the 18th CPC National Congress and the "Report on State Council Institutional Reform and Transformation of Government Functions" passed in the first session of the 12th National People's Congress, by closely controlling the number of new administrative approval procedures. The China Food and Drug Administration (CFDA) convened a discussion on the revision of the "Regulations Concerning the Hygiene Supervision over Cosmetics" (Regulations) on September 5, 2013. AmCham China looks forward to the revision of the Regulations to establish a supervisory system that is more compatible with the development of the Chinese cosmetics industry and is in line with international best practices.

Ongoing Regulatory Issues

Revision of the "Regulations Concerning the Hygiene Supervision over Cosmetics"

AmCham China believes a more science-based and efficient supervisory system can be established by revising the Regulations so as to ensure the safety of customers, promote technical innovation, and promote the development of China's cosmetics industry. AmCham China hopes that revision of the Regulations will reflect the principles discussed in the following paragraphs.

❶ In the cosmetics industry, supervision generally takes place after a product has been launched. Review and approval processes conducted in advance should be reduced because products share the rapidly changing attributes of the fashion industry – a move that complements the development of the cosmetics industry.

❷ In the last two decades, consumer safety issues have not been a large problem in China's cosmetics industry. Therefore, we suggest maintaining the current definitions and classifications within the cosmetics industry. Mature international markets as well as developing markets in Southeast Asia have strengthened in-market supervision.

❸ The Chinese cosmetics industry has been leading the world in terms of market size after some 30 years of development following China's period of reform and opening-up. The industry has become highly concentrated with increased robustness in the area of product safety. Development of the Chinese cosmetics industry over the next 20 years should include revi-

化妆品

引 言

在过去的十年间，中国的化妆品行业经历了快速的变化和成长，成为全球仅次于美国的化妆品消费第二大国家。城镇化进程的加速和居民可支配收入的提高，促进了化妆品的消费，从而也推动了化妆品行业的发展，当前化妆品已被许多人视为生活必需品。据相关统计，中国 2012 年大中型规模以上化妆品企业的销售总额已经达到 1900 亿元人民币。《化妆品行业“十二五”发展规划》提出了到 2015 年的目标是销售额达到 2300 亿元，从目前到 2020 年的年增长率目标维持在 12%。与此同时，行业在 2008 年创造了超过 250 万个就业机会，实现劳动收入 53 亿元人民币，为中国 GDP 贡献 1640 亿元人民币。到 2020 年，为中国 GDP 的贡献额预计将增长至 5000 多亿元人民币。

尽管数据令人振奋，但中国当前人均化妆品消费仅有百余元人民币，不足发达国家的十分之一。化妆品行业的进一步发展急待得到政府的鼓励和支持。与国际上普遍接受的以行业自律为主的做法不同，目前中国的监管体系仍着重于市前审批。这不仅阻碍了中国市场操作与国际接轨的进程，也不利于国内化妆品市场的健康、快速发展。主管部门在制定相关法律法规时应以鼓励化妆品企业承担责任，为消费者提供安全优质的产品为目标，同时考虑到化妆品行业的独特性，借鉴国际的经验和实践。

重大进展

中国美国商会欣喜地看到中国政府为行业发展所作出的各项努力，并表示由衷的感谢。尤其在新一届中央政府成立后，着力于推进改革行政审批制度，取消和下放中央政府若干部门审批的事项。李克强总理也曾在不同场合表示过政府会用壮士断腕的决心推进改革、简政放权和政府职能转变，做到“言必行，行必果”。

国务院于 2013 年 9 月发布的“国务院关于严格控制新设行政许可的通知”（国发〔2013〕39 号），文中明确要求各方严格贯彻落实党的十八大有关深化行政审批制度改革的精神和十二届全国人民代表大会第一次会议审议通过的《国务院机构改革和职能转变方案》，严格控制新设行政许可，切实防止行政许可事项边减边增、明减暗增。国家食品药品监督管理总局也于 2013 年 9 月 5 日召开化妆品卫生监督条例修订研讨暨启动会。中国美国商会由衷地期待一个更有利于中国化妆品行业发展并与国际接轨的监管环境的建立。

具体问题

《化妆品卫生监督条例》修订

中国美国商会认为通过《化妆品卫生监督条例》的修订可以建立更加科学、高效的监管体系，既确保消费者安全，又促进技术创新，推动中国化妆品行业继续健康快速发展。商会认同国家食药监总局在《条例》修订启动会上提出的总体思路、立法理念，希望体现以下修订原则。

❶ **尊重化妆品行业自身特点和发展规律**

化妆品是很安全的大众快速消费品，应以事后监管为主、减少事前审评审批以顺应化妆品行业的发展规律；

❷ **把握现实国情的基础上，充分借鉴国际成熟经验**

过去二十多年我国化妆品行业健康稳定发展，除了局部皮肤刺激和过敏情况外没有发生过涉及严重人身伤害的产品安全性事件，建议保持目前化妆品定义和化妆品分类的相对稳定。同时，国际成熟市场的化妆品法规甚至包括东南亚等发展中国家都把化妆品的监管重点放在了以原料为基础的风险管理制度，同时加强上市后监管的力度。

❸ **在立足产业发展现状的基础上，注重立法的前瞻性**

sion of the Regulations to create a new model of product safety supervision that requires companies to bear the responsibility of product safety seriously or face the consequences.

❹ The key to safety supervision is the clear assignment of responsibilities, as shown through the experiences of food and drug safety supervision. We suggest that cosmetics companies assume the responsibility for product quality safety and regulatory compliance. Supervisory authorities should primarily utilize post-product launch measures to encourage and facilitate self-regulation throughout the industry.

To this end, AmCham China recommends the following concrete actions regarding the revision of the Regulations:

❶ Market access:
- Maintain the current definitions and classifications within the cosmetics industry.
- Reduce the number of product varieties that require registration and approval before their introduction into the market.
- Implement a filing system similar to the one used for the domestic cosmetic products system for imported non-special-purpose cosmetics.
- Delete the definition of new raw materials.
- Limit the raw materials requiring registration and approval to special functional raw materials with relatively high science-based risk (preservatives, colorants, sun-screening agents, hair-dyes, and special-purpose cosmetic active ingredients).
- Establish a holistic regulatory management system on ingredients and finished products to avoid repeated registrations.
- Simplify or exempt the pre-registration process for special-purpose cosmetics that already have a positive list of active ingredients.

❷ Process supervision and post-supervision system:
- Establish such measures as production regulations, adverse reaction monitoring and reporting, enterprise safety evaluation, enterprise production review, and spot-check of product market supervision.

❸ Product effectiveness claims:
- Primarily rely on industry self-regulation for product effectiveness claims.
- Establish principle-based guidelines for effectiveness claims and verification tests.

❹ Establish a modern risk management system:
- Define the main body responsible for product safety.
- Establish a safety evaluation guide to define system requirements for safety evaluations.
- Establish a nationwide cosmetic ingredient exposure statistics system to enhance the public's ability to assess risks.
- Enhance communication with industry regarding safety and risk.
- Enhance the transparency of decision making regarding risk by disclosing risk evaluation plans, procedures, and results to the public.

Corporate Income Tax and Consumption Tax on Cosmetics Companies

Allow Cosmetics Sales Companies to Deduct Advertising Expenses before Tax

According to the "Notice on Advertising Expenses Deduction before Tax," "advertising expenses incurred by cosmetics manufacturing and sales companies that do not exceed 30 percent of the annual sales revenue of that company may be deducted." The Ministry of Finance's Tax Division interprets this regulation as applying to cosmetic sales companies. However, in practice, some local tax departments do not realize that this policy applies to cosmetic sales companies.

AmCham China advocates that the Tax Division of the Ministry of Finance further regulate the implementation of this regulation among local tax authorities.

Reduce the Consumption Tax on Makeup and Perfume Products

Makeup and perfume products are now subject to a 30 percent consumption tax because they are considered luxury items. But as cosmetics have become daily consumer goods, a consumption tax of this level has become outdated.

AmCham China recommends that the tax authorities reduce the consumption tax on makeup and perfume in order to boost the consumption of cosmetics in the domestic market.

In-Market Supervision of the Cosmetics Industry

Penalties Imposed by Local AICs on Cosmetics Significantly Increased in 2013

Administrations for Industry and Commerce (AICs) at the district and county levels imposed higher penalties on the cosmetics and toothpaste industry in 2013 as compared to the previous year. The number of investigations against cosmetics companies, including AmCham China members, also significantly increased in 2013. It is not always clear how these investigations are aimed at regulating the market or protecting consumers. Local AIC law enforcement officials can seemingly interpret regulations and make judgments arbitrarily, causing confusion and placing extra burden on the companies.

与可行性

中国化妆品行业经过改革开放三十余年的发展市场规模已经位居世界前列，产业集中度相对较高，企业产品安全意识显著增强，建议此次《条例》修订充分考虑我国未来 20 年化妆品行业发展的前景，开创产品安全监管新模式，从制度上实现企业真正承担起产品质量安全责任。

❹ 在强化政府监管的基础上，注重落实各方责任，共同构建社会共治的良好局面

食品药品安全监管的经验教训说明，厘清责任、促成社会共治是实现产品真正安全监管的根本途径，建议由化妆品企业承担产品质量安全、合规的责任，监管部门主要通过事后监管督促企业确保产品的合规性，从监管制度建设上鼓励和促进行业自律。

为此，中国美国商会就《化妆品卫生监督条例》的修订提出如下建议：

❶ 市场准入：

保持目前化妆品定义和化妆品分类的相对稳定，减少上市前注册审批的产品种类，对进口非特殊用途化妆品实施与国产产品类似的备案制；

摒弃新原料的定义和概念，将需要注册审批的原料限定在安全风险相对高的特殊功能原料（防腐剂、着色剂、防晒剂、染发剂和特殊用途化妆品功效成份），把原料管理与产品管理有机结合，对已有功效成份肯定列表清单的特殊用途化妆品简化或免除事前注册。

❷ 事中事后监管制度：

建立良好生产规范、不良反应监测和汇报、企业安全评估员、企业生产核查和产品市场监督抽查等制度。

❸ 产品功效宣称：

以行业自律为主，制定化妆品功效宣称及验证试验的原则性指导意见。

❹ 建立现代化风险管理制度：

明确产品安全责任主体，制定安全评价指南，明确企业安全性评价的制度要求；

建立全国化妆品暴露统计系统，提升公共风险评估能力；

加强与行业关于安全风险方面的交流，公开政府风险评估计划、过程、结果，增加风险决策透明度。

化妆品企业所得税、消费税

允许化妆品销售企业税前扣除宣传费

根据财政部与国家税务总局联合发布的《关于广告费和业务宣传费支出税前扣除政策的通知》（财税[2012]48号）的规定，“对化妆品制造与销售企业发生的广告费和业务宣传费支出，不超过当年销售（营业）收入 30% 的部分，准予扣除。”根据财政部税政司的解读，该政策包括化妆品销售企业，但在实际操作中，仍有地方税务机关认为销售企业不符合政策，不能享受该政策待遇。

中国美国商会呼吁财政部税政司进一步规范地方税务机关对法规的解读和执行。

降低彩妆品和香水的消费税

目前彩妆品和香水须作为奢侈品征收 30% 的消费税。但彩妆和香水类在内的化妆品，如口红等已经成为人们的日常消费品，继续征收高额消费税已经不合时宜。

中国美国商会呼吁适当减免彩妆和香水类产品的消费税，推动国内市场化妆品的消费。

化妆品的市场监督

2013 年化妆品的工商处罚明显增加

和 2012 年相比，2013 年省级以下，尤其是区县一级工商管理部门对化妆品、牙膏等产品的处罚力度明显加强，商会化妆品企业受到调查的案例数量在 2013 年大幅增加。这些调查有时并不单纯以规范市场和保护消费者为主要目的，地方工商执法人员在解读法规、作出判定时，具有很大的主观性和随意性，为企业带来的很大的困扰和负担，不利于消费市场的培育和发展。

中国美国商会呼吁工商主管部门严格规范地方工商的执法行为，减少对市场不必要的干预，保证执法的一致性。

AmCham China advocates the State AIC to strictly regulate law enforcement among the local AIC officials by ensuring only disciplined and transparent market interventions and above all ensuring consistency in law enforcement.

Recommendations

- **Allow cosmetics sales companies to deduct advertising expenses before tax.**
- Reduce the consumption tax on makeup and perfumes.
- Ensure disciplined, transparent, and consistent local AIC law enforcement operations.

建 议

- **不宜采用肯定列表的方式管理所有新原料；按照行业实际情况调整政策，让新原料注册具有实际的可操作性。**
- 进一步简化特殊用途化妆品审批程序，取消国产特殊用途化妆品省级食药部门的生产能力审核环节。
- 将进口非特殊化妆品的审查备案，改为与国产非特殊用途化妆品一样的上市后备案。

Direct Sales

Introduction

Direct selling was recognized as a legitimate industry in China in 2005 upon promulgation of the Regulation on Direct Sales Administration (Direct Sales Regulation). AmCham China applauds the Chinese government's compliance with its World Trade Organization (WTO) obligation to open the direct sales market. More could be done, however, to further support the development of the industry, including making the Direct Sales Regulation less cumbersome to comply with and easier for the government to administer, as well as making direct sales more accessible to consumers.

AmCham China believes the success of licensed direct sales companies in recent years has demonstrated that direct sales benefit China not only by introducing new products and an alternative shopping channel for consumers, but also by bringing many employment and income opportunities to hard-working Chinese citizens. These benefits complement the objectives listed in the 12th Five-Year Plan and can help stimulate domestic consumption and increase the living standard of Chinese citizens.

Ongoing Issues

Reputation of the Industry and the Need to Unfetter Direct Selling

Since its emergence in China, direct selling (*zhixiao*) has been widely misunderstood. Pyramid selling (*chuanxiao*), often disguised as direct selling, proliferated and persisted in spite of continuous government efforts to eradicate such practices. Although the legitimate direct sales industry seeks to distinguish itself from *chuanxiao*, the government tends to view *chuanxiao* as inspired by the direct sales industry. Consequently, the government maintains stringent regulations to limit the expansion of the industry, and continues to hold a suspicious attitude toward direct sales, producing several negative results:

❶ Legitimate companies are unjustly fettered by regulations, which force them to adopt new business models based on practices that have proven unsuccessful overseas for years.

❷ To stay viable under stringent regulations, legitimate companies are often forced to adopt policies which, while not violating the letter of the law, often reside in a legal grey area. This pressure exposes legitimate companies to challenges by interest groups, the media, and, at times, local authorities. These challenges were particularly acute in 2013, as the media and other institutions were under revenue pressure caused by social and technological changes (such as the rise of digital media), and chose to adopt unjust practices to achieve revenue targets.

❸ Many companies, including some Internet companies, do not claim to be engaging in direct selling nor do they own a direct selling license. However, these companies fail to comply with the Direct Sales Regulation, despite using a direct sales business model. This practice not only causes confusion in the market, but also results in unfair treatment for the licensed companies who are put at a disadvantage.

Globally, developed market economies acknowledge that legitimate businesses should be permitted to operate using a wide variety of business structures. Rather than fettering legitimate direct sales businesses through overly stringent regulations, the government should specifically target fraudulent scams, identified by their use of specific fraudulent sales practices, and appropriately sanction them.

Chinese supervising authorities have overseen direct selling for nearly two decades, though regulation dates only to 2005. Given this experience, it should be clear that certain fundamental and distinctive differences exist between legitimate direct sales and fraudulent scams. For example, the requirement that sales personnel make upfront investments in inventory, the absence of a return-and-refund policy for consumers, the lack of a bona-fide, fully implemented buy-back policy for the individual direct sellers, and compensation based purely on the number of people recruited are the marks of *chuanxiao*. Legitimate direct selling does not involve such practices and includes adequate consumer safeguards. These distinctions should be clearly reflected in the relevant laws and regulations and could form the basis of future regulatory reviews. In the meantime, there should be more education of consumers and government enforcement agencies on such distinctions.

直 销

引 言

2005年中国政府颁布《直销管理条例》（以下简称《条例》），标志着直销在中国获得合法行业地位。中国切实履行其加入世贸组织的承诺开放国内直销市场，中国美国商会对此非常赞赏。中国美国商会也期待中国能进一步加强对行业发展的支持，使《条例》更加便利于企业遵照执行和政府监管，同时使直销更广泛地服务于消费者。

我们相信，近年来获批直销许可企业的业绩已经表明，直销行业不仅在引进新产品和提供新购物渠道方面有利于整个中国的发展，而且还为勤劳的中国人民带来了许多就业和创收的机会。同时，直销也有助于加快实现中国第十二个五年规划，刺激国内消费并提高中国人民的生活水平。

现存监管问题

行业声誉和放宽直销法规的必要性

自从在中国出现以来，人们对直销普遍存在误解。欺诈性传销经常谎称自己是直销经营。尽管政府严厉打击，欺诈性传销仍然猖獗。尽管合法直销行业一直想要与传销划清界限，但是政府仍倾向于认为后者是前者的衍生物，始终对直销行业持严格限制和怀疑的态度。由此产生如下负面影响：

❶ 合法企业受到法规不公平的约束，被迫采用新的商业模式，而这些模式在海外多年的实践中已被证明是失败的。

❷ 企业要想在这样的条件下生存，往往被迫游走在法律边缘的“灰色地带”，虽然属于合法经营，但却会面临来自利益集团、媒体、有时甚至是某些地方政府的挑战。这些挑战在2013年表现得尤为严重。因为媒体和其他机构因社会和技术变革（如数字媒体的兴起）承受收入压力，所以就选择采用不公正的做法达到营收目标。

❸ 许多企业（包括一些互联网企业）并未表明正在从事直销以及是否已获得直销许可，但实际采用了直销业务模式。这些企业并不遵循《条例》，从而引发市场混乱，导致持有许可的企业遭受不公平待遇且处于劣势。

在全球范围内，市场经济发达的国家都允许合法企业采用各种不同的业务模式。政府不会通过过于严格的法规限制合法直销企业的发展，而是采用明辨欺诈性销售的方法，对伪装成合法企业的诈骗进行惩处。

在中国，虽然最新的直销监管法规出台于2005年，但是监管部门已经监督管理直销市场近二十年，在区分直销与传销方面应该拥有丰富的经验。例如，传销的特点主要包括：要求销售人员加入时大量购货、无退货政策、缺少有效的人员退出机制、按招募人数计酬。合法直销从不允许这些做法，而且会在运营中通过完善的保障机制，确保消费者的合法权益。这些区别除了应该在《条例》中得以充分反映，亦应该成为未来修订《条例》的基础，同时对于消费者和政府执法机构来说，这方面的公共教育也有待加强。

许可申请

企业必须达到多项严格的要求才能取得直销许可，这些要求包括最低人民币8000万元（约合1300万美元）的注册资本、最低人民币2000万元（约合330万美元）的保证金、外资企业必须拥有三年的直销行业经验、初期有限的经营地域且企业在其销售产品的每个市区／县都必须设立服务网点。这些要求以及过长的审批时间存在诸多负面影响，包括导致许可延误，使得部分企业无照开展直销经营活动。这不仅对合法的企业不公平，还会给政府的监管带来诸多挑战，同时也使得消费者和公众对此产生混淆。

License Application Process

Companies must meet several stringent requirements to obtain a direct sales license. These include requirements for a minimum US $13 million (RMB 80 million) initial investment, a minimum US $3.3 million (RMB 20 million) consumer protection bond, three-year prior direct sales history for foreign-invested enterprises (FIEs), limited initial geographic approval, and a service center in every urban district in which a company sells products. These requirements, plus the unnecessarily lengthy approval period, have the negative effect of deterring license applications and inducing companies to conduct direct sales without a license. This is not only unfair to legitimate companies, but also makes government supervision very challenging, creating confusion for consumers and the general public.

Service Center Establishment

Direct sales service center requirements continue to be a significant challenge, not only for companies applying for a license, but also for companies that are already licensed. The Direct Sales Regulation specifies that all direct sales companies must have a branch office in every province in which it operates and a "service center" in every urban district in which it sells products. A company that uses sales personnel who, by definition, work outside of fixed retail locations could face the potential requirement of setting up a service center in every one of China's 2,861 urban districts.

It is economically daunting to set up so many service centers and impractical to have to do so prior to realizing sales. This requirement often produces two undesirable consequences. First, to abide by the regulation, companies must simultaneously adopt two different business models to meet both the requirements of direct sales and for non-direct sales. Second, as it is quite impossible to restrict individual sales personnel to selling within the "allowable" urban districts—indeed, such a restriction may violate the Anti-Monopoly Law—companies are exposed to charges for operating out of bounds.

Furthermore, the current approval process for service centers is tremendously burdensome in terms of time, cost, complexity, and work not only for the companies, but also for the government. We are encouraged by the 18th Party Congress Third Plenum Decision which indicates the government is determined to greatly simplify administrative processes. We look forward to a market-oriented service center policy that is simple and practical.

Change in Direct Selling Supervisory Authority

In October 2011, the Chinese government announced a change that affects the supervisory authority over direct selling. Under Directive 2011(48), the State Council announced that Administration of Industry and Commerce (AIC) and Quality Supervision bureaus below the provincial level will no longer be "vertically" managed. About the same time, the State Administration for Industry and Commerce (SAIC) announced its plan to delegate supervision authority over direct selling to AIC bureaus at the district/township level. With the resolution of the Third Plenum of the 18th Party Congress, the implementation of these two policies is imminent.

The implementation of these two changes could mean provincial-level AICs that are more experienced in overseeing direct selling would no longer have any supervisory authority over issues happening at the local level. Due to ambiguity in relevant regulations and a lack of experience of lower-level AICs with direct selling, this delegation of authority would likely result in widely varying applications of regulations, leading to unwarranted harassment, and even penalization, of direct selling companies' local operations or sales personnel. With thousands of districts and townships in China, it would be very difficult for direct selling companies to confront this new challenge.

Need to Update Direct Selling Regulations and Administrative Directives

The Direct Sales Regulation and many of its associated administrative directives have been in effect for eight years. During this time, the ongoing operation and government supervision of direct selling businesses have provided a wealth of experience upon which the government and industry can draw upon to jointly develop updated and improved regulations. Current regulations can be excessively restrictive, and some are completely disconnected from the market or business reality. Examples of regulations in need of revision include:

- **Training requirements**—The definition of training should be made clear. The regulations imply that training is for "personnel intending to sign up as a sales agent" (meaning those not yet affiliated with the company). In the business world, a company does not usually provide training to someone who is not yet affiliated with the company, regardless of whether or not they use a direct sales model. We understand the government is concerned that many citizens might be tricked by deceptive schemes, but regulations that treat members of the public as company personnel are tremendously burdensome. Furthermore, regulations stipulate that new sales agents must receive training and pass a training exam before receiving a license, all training materials must be kept on file for three years, and trainers must have graduated from college and been employed by the company for at least one year. Such specific requirements do not reflect industry needs, especially regarding trainers, as the best trainers are often experienced distributors that do not necessarily fit the above qualifications.
- **Recruitment fee requirements**—China currently prohibits direct sales agent recruitment fees. While large

设立服务网点

无论对于正在申请许可的企业还是已经持有许可的企业，有关直销服务网点的规定都是一项巨大的挑战。现行《条例》规定，直销企业必须在其营业的各个省份设立一个分支机构，并且在开展直销经营的每个市区／县设立一个"服务网点"。如果一家企业要在全国通过直销员在固定零售点以外地区开展业务，这家企业将面临着需要在 2861 个市区／县设立服务网点的挑战。

设立这么多网点不仅耗资巨大，而且在实际开展销售之前这样做也不现实，由此往往产生两种不良结果。首先，为了遵守该规定，直销企业必须同时采用两种不同的经营模式：直销业务模式和非直销业务模式；其次，由于很难约束所有直销员都在"许可"的市区／县从事直销—当然此约束很有可能已经违反了反垄断法的规定，企业会为此面临处罚。

无论对企业还是对政府而言，服务网点的审批程序耗时长、成本高、过程复杂且工作任务繁重。十八届三中全会《决定》表明了政府要简化行政程序的决心，我们为此深受鼓舞，也期待政府出台简单实用、以市场为导向的服务网点政策。

直销监管权力变化

2011 年 10 月，中国政府宣布了一项改变直销监管权力的新规。国务院办公厅 2011 年第 48 号文宣布取消工商、质监省级以下垂直管理。几乎同时，国家工商行政管理总局按照既定规划，将直销监管权力下放给各区／乡镇级工商行政管理局。随着十八届三中全会决议的出台，这两项政策的实施已迫在眉睫。

这两项变化可能意味着更富有直销监管经验的省级工商行政管理部门将不再监管地方一级出现的问题。由于相关法规尚不明晰，并且低级别的工商行政管理部门对直销了解有限，这项权力的下放可能导致法规在各地执行情况迥异、尺度不一，并且可能给直销企业在各地的分支机构以及直销员带来不必要的麻烦甚至是处罚。中国有数千个区级／乡镇级行政单位，直销企业将面临极大的管理挑战。

完善《条例》和配套法规的必要性

《条例》及配套法规自生效实施至今已有 8 年，随着行业的发展和监管的深入，政府和行业都积累了丰富的经验，能够共同对《条例》进行完善。有些现行法规过于严格，有些甚至完全脱离市场实际。需进一步完善的条例包括：

- **培训要求**——应明确定义"培训"。根据《条例》，培训是指针对那些"拟招募的直销员"（即那些尚未与公司签约的人员）。在商业运营中，无论一家企业是否从事直销都不会为尚未与公司签约的人员提供培训。我们理解政府担心公众会受到欺诈性传销的危害，但是将公众看作企业人员的规定给企业造成沉重负担。同时，《条例》要求新加入的直销员必须接受培训并通过考试才能获得许可；所有培训材料必须存档三年；直销培训员必须具有大学文凭，并受雇于该公司至少一年。这些具体要求并未体现行业实际需求，特别是关于直销培训员的要求，因为最好的培训师往往来自资深直销员，但他们未必符合上述条件。
- **招募费用要求**——目前，中国禁止收取直销员招募费用。大额费用应当禁止收取，但是象征性的费用，有助于确保提交加入申请者是真正对直销感兴趣的人。
- **报酬限制**——《条例》对于直销员可以获得的报酬类型及数额加以限制。国家工商行政管理总局颁布的《禁止传销条例》规定基于新招募直销员销售业绩（常称为"团队计酬"）的计酬方式属于传销的特征。以市场为基础的计酬方式和多层次计酬方式是其他行业的普遍做法，因此以上两项规定是对直销行业的歧视和不平等待遇，应予以放宽限制并使之符合国际惯例。
- **获准销售产品类别**——对于直销企业的产品范围限制应该放宽并使之符合国际惯例。较好的做法是规定哪些产品不得通过直销销售，如明令禁止销售的产品（如枪支或毒品）、家畜和新鲜农产品、大宗商品（如棉花、大米和金属）以及难以确定价值的产品（如宝石、贵金属和金融服务）等。
- **地域审批**——根据当前不成文的惯例，进入开展直销经营的企业最初往往只能获得一个省份的审批。在经历了一个不确定的等待期后，才有可能获得其他省份的审批，但一般每次不超过五个省。政府应根据市场需求进行地域审批，以避免无许可经营。

中国美国商会建议对以上及相关规定进行修订，以消除造成困扰并助长传销和无照企业的不切实际的规定。

行业平台或协会进展

2011 年秋季，商务部宣布成立直销行业管理委员会。该管理委员会有可能作为直销行业协会行使职能。直销行

fees should be prohibited, a nominal fee is necessary to limit new agent applications to only those who are genuinely interested in becoming direct sales agents.

- **Compensation restrictions**—The Direct Sales Regulation limits the type and amount of compensation direct sales agents can receive. The Regulations on the Prohibition of Pyramid Selling (Anti-*Chuanxiao* Regulations) issued by the SAIC calls compensation based on the sales volume of new recruits (commonly called "group compensation") a characteristic of *chuanxiao*. Both restrictions are discriminatory and unfair to the direct sales industry, as market-based compensation and multi-level compensation are common practices in all other businesses and industries. They should be relaxed and brought in line with international practice.
- **Permissible product categories**—Limits on products direct sales companies can sell should be minimized and brought in line with international practice. A better alternative is to define what cannot be sold through direct sales, such as products forbidden in the open market (for example, firearms or drugs), livestock and fresh produce, large commodities (such as cotton, rice, and metals), and products whose value is difficult to determine (such as gems, precious metals, and financial services).
- **Geographic approval**—Current unwritten practice seems to indicate that companies entering China's direct sales market may initially receive geographic approval for only one province. Companies may eventually receive approval for additional provinces, usually no more than five provinces at a time, after an unspecified waiting period. The government should grant geographic approvals based on market needs in order to avoid unauthorized operation of direct sales operations.

AmCham China recommends the revision of these and other regulations in order to remove the impractical provisions that cause disputes and facilitate the proliferation of *chuanxiao* and unlicensed companies.

Development of an Industry Platform or Association

In the fall of 2011, the Ministry of Commerce (MOFCOM) announced the establishment of a Direct Selling Industry Management Committee. This management committee could potentially serve as a direct sales industry association. AmCham China welcomes this development, as the direct sales industry needs a platform to enhance communication with the government, strengthen industry standards, and share best practices within the industry.

Recent Developments

As of November 25, 2013, MOFCOM has issued 40 direct sales licenses. Of these 40, 21 were granted to FIEs, 10 of which are US companies. It is estimated that the total size of the licensed direct sales business in China in 2012 exceeded US $14.3 billion (RMB 90.3 billion).

On November 22, 2013, the Supreme People's Court, the Supreme People's Procuratorate, and the Ministry of Public Security jointly issued a new judicial interpretation that "*chuanxiao* activity featuring group-based compensation with the purpose of selling commodities whose bonuses are calculated on the basis of sales volume will not be considered a crime." The de-linking of compensation based on group volume with criminal activity, though not a full recognition of the legitimacy of compensation based on group volume, which is normal practice in any selling profession worldwide, is nevertheless a step in the right direction.

Recommendations

- **Review and revise the Direct Sales Regulation, the Anti-*Chuanxiao* Regulations, and their associated administrative directives, bringing them in line with China's WTO commitments, standard international practices, and the business reality in the China market. Specifically:**
  - **Remove the clause that "compensation based on sales volume of people recruited by a sales agent" is a defining characteristic of *chuanxiao*.**
  - **Clarify the difference between recruitment activities and training programs.**
  - **Relax product category restrictions.**
  - **Allow geographic expansion to be market driven.**
- Enhance market access and transparency by simplifying and increasing the speed of the license approval process.
- Revise service center requirements from one per urban district to one per city, and simplify the service center approval process.
- Expedite the establishment of a China direct selling industry association.

业需要一个平台以加强与政府沟通、优化行业标准并在业内分享最佳实践，中国美国商会对此表示欢迎。

最新进展

截至 2013 年 11 月 25 日，已经有 40 家企业获批中国商务部的直销经营许可，其中外商投资企业 21 家，美资企业占 10 家。据估计，2012 年中国获批直销许可企业的总规模超过 143 亿美元（约合人民币 903 亿元）。

2013 年 11 月 22 日，最高人民法院、最高人民检察院和公安部共同对"团队计酬"给予了新的司法解释，即"以销售商品为目的、以销售业绩为计酬依据的单纯的'团队计酬'式传销活动，不作为犯罪处理"。尽管这并未对团队计酬合法性给予充分肯定，但是不将团队计酬这一世界各地销售行业的普遍做法作为犯罪处理，这已经是朝着正确方向迈进了一步。

建 议

- **审核并修订《直销管理条例》、《禁止传销条例》以及配套法规，使之符合中国的入世承诺、国际惯例和中国市场的行业现状。具体包括：**
  - **从传销的定义性特征中删除"组织者或者经营者发展人员，通过对被发展人员以其发展的人员销售业绩为依据计算和给付报酬"这一条款。**
  - **明晰招募活动和培训项目的差异。**
  - **放宽产品类别限制。**
  - **允许以市场为导向进行地域扩展。**
- 通过简化审批程序、加快审批速度，提高市场准入并增加透明度。
- 将关于设立服务网点的规定从每个市区／县设立一个修改为每个城市设立一个并简化许可审批过程。
- 加快建立中国直销行业协会。

Electronic Payment Services

Introduction

China's electronic payment service (EPS) industry continued to contribute to and benefit from China's transformation into a consumption-led economy in 2013. As consumer retail spending grew to US $3.4 trillion (RMB 20.7 trillion, 13.6 percent year-on-year) in 2013, bank card penetration reached 47.5 percent, a significant increase in the use of bank cards over cash. With 242 million online shoppers, China's online retail sales are expected to exceed US $490 billion (RMB 3 trillion) by 2015, up from about US $280 billion (RMB 1.7 trillion) in 2013. Cross border e-commerce represents a growing proportion of online shopping. According to *The Economist*, China's e-commerce market will surpass the existing markets in the US, Japan, UK, France, and Germany combined by 2020. AliPay, the payment arm of the Alibaba Group, has surpassed PayPal to become the world's largest e-commerce payment provider.

In tandem with this exponential growth, the People's Bank of China (PBOC) granted licenses in seven batches to 250 third-party payment providers (3PPP) or non-financial institutions between 2011 and 2013. In collaboration with related agencies, the PBOC also issued a host of regulations governing mobile payment standards, chip card standards, bank card acquiring businesses, prepaid cards, and cross-border e-commerce payments, to steer the fast-growing industry toward innovative and healthy development. More notably, the National Development and Reform Commission (NDRC) enacted a regulation to eliminate the bank card swipe fee in February 2013.

On July 16, 2012, the World Trade Organization (WTO) issued a panel decision on the EPS dispute between the US and China. The panel's ruling confirms that China's market access commitments require it to allow foreign EPS suppliers to establish entities in China that will be permitted to provide RMB-denominated EPS. To date, however, such market access regulations have yet to be issued, preventing foreign EPS providers from fully participating in, and contributing to, the industry's development.

Ongoing Regulatory Issues

Building a Competitive Market

China remains the only G-20 or BRIC (Brazil, Russia, India, China) country to have only one EPS scheme available for domestic transactions. China UnionPay (CUP) is the only company permitted to provide EPS for RMB-denominated transactions.

By issuing dual-branded, dual-currency (DBDC) cards with international EPS providers such as Visa and MasterCard, CUP provides over 150 million Chinese cardholders with access to millions of merchants and ATMs worldwide that would otherwise be unavailable to them. This highlights the value of international EPS providers, especially in maximizing benefits to customers, nurturing domestic innovation, benefiting trade, and integrating China with global practices. Due to the lack of regulations allowing participation by foreign EPS providers and the attendant denial of market access, DBDC cards have emerged as the primary bankcard product offered to Chinese consumers by foreign players. As such, international EPS providers look forward to gaining direct access to China's domestic EPS market.

As the 18th Party Congress Third Plenum Decision called for greater competition in the economic field, AmCham China hopes to see the provision of greater and more direct participation by foreign EPS providers in the domestic market.

Recent Developments

Market Access

Following the issuance of the WTO's panel report on July 16, 2012, the US and China agreed on a deadline of July 31, 2013 for China's compliance with the ruling. The deadline has passed but China has yet to issue regulations that would allow the establishment and operation of foreign-funded payment card companies in China.

AmCham China urges the expedited promulgation of these new regulations to which China has committed itself, and hopes that they include reasonable requirements that allow foreign EPS suppliers to provide RMB-denominated services through their global processing networks without a lengthy waiting period.

电子支付服务

引 言

2013 年，中国的电子支付服务（EPS）行业继续为中国向消费型经济转型做出贡献并从中受益。2013 年消费者零售消费额增长到 3.4 万亿美元（人民币 20.7 万亿元，同比增长 13.6%），银行卡渗透率达到 47.5%，较之于现金，银行卡的使用大幅提高。中国网上购物人数为 2.42 亿，2013 年中国网上零售销售额为 2800 亿美元（人民币 1.7 万亿元），到 2015 年这一数字有望超过 4900 亿美元（人民币 3 万亿元）。跨境电子商务占网上购物的比例呈持续增长态势。据《经济学家》杂志预测，到 2020 年中国的电子商务市场将会超过美国、日本、英国、法国的现有市场总和。阿里巴巴集团的支付工具支付宝（AliPay）已经超越贝宝（PayPal）成为世界最大的电子商务支付服务提供商。

随着这一指数式的增长，中国人民银行在 2011 年到 2013 年间分七批向 250 个第三方支付运营商（3PPP）或者非金融支付机构颁发了牌照。中国人民银行还与相关部门协作，出台了大量关于移动支付标准、芯片卡标准、银行卡收单业务、预付卡和跨境电子商务支付的法规，以引导这一快速增长的行业实现创新和健康的发展。更值得一提的是，国家发展改革委员会（发改委）在 2013 年 2 月颁布了一项降低银行卡刷卡手续费的法规。

2012 年 7 月 16 日，世界贸易组织就美中电子支付服务争议作出专家组决定。专家组判定中国所做的市场准入承诺要求中国必须允许外国电子支付服务提供商在中国建立实体，并允许其从事人民币结算的电子支付服务。但是，到目前为止，此等市场准入法规还没有发布，阻止了外国电子支付服务提供商充分参与该行业的发展和为该行业的发展做出贡献。

现存监管问题

建立竞争性市场

中国是 20 国集团或“金砖四国”（巴西、俄罗斯、印度和中国）中唯一一个国内交易只适用单一电子支付服务系统的国家，中国银联（银联）是目前唯一一家可以提供人民币结算交易电子支付服务的电子支付服务公司。

银联通过与 VISA 和万事达等国际电子支付服务提供商发行双币种双标识卡，使中国国内超过 1.5 亿的双标识卡持卡人在全球数以百万计的商户和 ATM 机上消费或取款，这是凭借银联自身的力量所难以实现的。这一事实充分说明了国际电子支付服务提供商的重要性，特别是在实现客户利益最大化、促进国内创新、推动贸易发展、以及帮助中国融合全球实践等方面。由于缺少允许外国电子支付服务提供商参与的法规以及由此造成的市场准入被拒，外国提供商只能通过双币种双标识卡向中国客户提供其银行卡产品。因此，国际电子支付服务提供商期待能直接进入中国国内的电子支付服务。

随着第十八届三中全会呼吁在经济领域引入更多竞争，中国美国商会希望看到外国电子支付服务提供商更大规模、更直接地参与国内市场。

最新进展

市场准入

世界贸易组织专家组报告发布后，美中双方商定中国应在 2013 年 7 月之前履行专家组决定。上述期限已过，但是中国尚未发布允许外资电子支付企业在华设立和运营的法规。

中国美国商会敦促尽快颁布中国已承诺的这些新法规，并且希望这些法规包含允许外国电子支付服务提供商无需

Chip Standards

In 2013, the PBOC continued to accelerate the migration of magnetic stripe cards to PBOC 3.0, a chip standard issued by the PBOC. This move aims to shift all new RMB-denominated bank cards to PBOC 3.0 in economically developed geographical areas by 2015.

Though intended to provide improved fraud-proof service for cardholders, this migration project has triggered concerns about the compatibility of PBOC 3.0 with the internationally accepted Europay, MasterCard, and Visa (EMV) chip card standard. It is unclear whether the two standards will be able to interoperate smoothly on a mass scale. By 2015, China will have 150 million inbound travelers and 88 million outbound travelers. A compatible acceptance environment is important both for PBOC 3.0 cardholders traveling abroad and EMV card holders visiting China. AmCham China encourages the PBOC to work with both domestic and international EPS providers to allow EMV chip standards to be used for domestic transactions when the EPS market opens up to international EPS providers. It is equally important to make the PBOC 3.0 standard accessible to foreign EPS providers without technical or economic restrictions.

For the 150 million DBDC cards in circulation, AmCham China suggests that chip migration be postponed beyond the January 1, 2015 target date if a commercially feasible solution cannot be implemented by such date.

Bank Card Swipe Fees

In February 2013, the NDRC enacted a regulation which lowered bank card swipe fees by an average of 25 percent across various merchant categories. The regulation was a product of a 16-month negotiation among the major participants in this two-sided market, merchants vs. issuers and acquirers.

One component of the fee is the interchange fee, which is the amount of money transferred from the acquiring bank to the issuing bank each time a credit, debit, or pre-paid product is used. It is important to understand that cuts and caps on the interchange limit the interest of issuers in investing in new product issuance if their revenue is limited, while their costs and potential losses are not. Growth in new technologies for online transactions, contactless chips, mobile, and other technologies could be limited if issuers lack the funds or incentive to invest. Also, issuers would likely either need to increase cardholder fees and/or bank account fees or reduce cardholder benefits. This was the unintended consequence of regulatory intervention in the US under the Durbin Amendment, and also in Australia. The intended result of lowering costs for consumers at the point of sale was not realized.

AmCham China suggests that Chinese pricing regulators be cautious of unintended consequences from regulatory intervention and consider liberalizing bank card swipe fees, in line with the spirit of the Third Plenum that pricing should be driven by the market.

Recommendations

- **Allow market access for other domestic and international EPS providers using clear and reasonable licensing requirements.**
- Allow EMV (Europay, MasterCard, and Visa) standards to be used for domestic transactions when the market opens up. Make the PBOC 3.0 chip standard accessible to international EPS providers.
- Liberalize bank card swipe fees to let the market drive prices.

漫长的等待期就能通过其全球处理网络提供人民币结算服务的合理要求。

芯片标准

2013 年，中国人民银行继续加快由磁条卡向以央行发布的芯片卡 PBOC3.0 为标准的芯片卡过渡的步伐。此举旨在确保到 2015 年，经济发达地区新发行的所有人民币银行卡都必须采用 PBOC3.0 标准。

尽管这一举措的初衷在于为持卡人提供更好的防欺诈服务，但 PBOC3.0 引发了此标准与国际通行的 EMV 芯片卡标准兼容问题的担忧。这两种标准在大规模使用的情况下能否顺畅对接至今尚不清楚。到 2015 年，中国预计将迎来 1.5 亿的境外游客，同时出境游客也将达到 8800 万人。对于出国旅行的 PBOC3.0 持卡用户和来华旅游的 EMV（欧洲支付、万事达和 VISA）持卡用户来说，实现境内外银行卡兼容都很重要。中国美国商会鼓励中国人民银行与国内和国际电子支付服务提供商合作，一旦电子支付服务市场向国际电子支付服务提供商开放时，即允许 EMV 芯片卡标准用于国内交易。因此，确保国外电子支付服务供应商没有技术或经济上的限制使用 PBOC3.0，这一点也不容忽视。

对于流通中的 1.5 亿张双币种双标识卡，中国美国商会建议，如果在 2015 年 1 月 1 日这一目标日期前不能执行一种商业上可行的解决方案，则应把芯片迁移的时间推迟到上述目标日期以后。

银行卡刷卡费

2013 年 2 月，发改委颁布法规，规定各不同类别的商户把银行卡刷卡费平均降低 25%。该法规是此双边市场的主要参与者，商户、发卡行和收单方经过为期 16 个月的谈判后所达成的成果。

银行卡刷卡费的一部分是交换费，这是每次使用信用卡、借记卡或预付卡产品时向收单行转移到发卡行的金额。重要的是要明白，交换费的减少和设置上限会限制发卡行投资发行新产品的兴趣，因为它们的利润受到了限制而它们的成本和潜在风险却没有得到限制。如果发卡行缺少投资的资金或动机，在线交易、非接芯片和移动新技术以及其它技术的发展可能会受到制约。另外，发卡行可能需要提高持卡人费用和／或银行账户费用或者减少持卡人的利益。在美国这是根据《杜尔宾修正案》监管干预造成的预期外后果，在澳大利亚也是如此。为消费者和商户降低在消费点的成本的初衷并没有能够实现。

中国美国商会建议，中国的定价监管部门应根据十八届三中全会倡导的市场定价原则，谨防因监管干预造成预期外的后果，并考虑放宽对银行卡刷卡费的管制。

建 议

- **通过明确合理的许可要求，向其它国内和国际电子支付服务提供商提供市场准入。**
- 在市场开放时允许 EMV（欧洲支付、万事达和 VISA）标准用于国内的交易。允许国际电子支付服务提供商使用 PBOC3.0 芯片标准。
- 放宽对银行卡刷卡费的管制，让市场来决定价格。

Express Delivery Services

Introduction

Following the reform and opening up of China's economy, express delivery services (EDS) have emerged and transformed into a thriving industry. The express delivery industry continues to develop steadily and quickly, promoting economic development and US-China trade, supporting industrial and commercial enterprises, and providing services for Chinese consumers. The express delivery industry is also playing an increasingly vital role in the development of China's services and logistics industries, as well as serving as a driver of employment and stability. However, the express delivery industry in China still faces several problems. The industry is failing to see a scale effect and competitiveness is not at an optimal level. In some instances, express delivery services suffer from low quality and efficiency. Together, these obstacles bring about uncertainty and challenges to the development of the express delivery industry in China.

Ongoing Regulatory Issues

Restrictions on Foreign Investment

Under Article 5 of the "Guiding Catalogue on Foreign Investment in Industry" (Foreign Investment Catalogue), the transportation, warehousing, and postal industries, as well as domestic letters of EDS all fall under the "prohibited" investment category. Such restrictions on foreign investment in these industries inhibit the ability of domestic clients and consumers to select and benefit from services based on quality and speed of service. Foreign-invested enterprises (FIEs) have been instrumental in raising standards of service in China and their exclusion from the domestic letters market in these industries slows their development. AmCham China encourages the Chinese government to move transportation, warehousing, postal, and domestic letters express services to the "encouraged" category in the Foreign Investment Catalogue.

Administrative Measures on the Express Market

After the State Post Bureau (SPB) finished establishing 357 prefecture-level postal authorities at the end of 2012, the "Administrative Measures on the Express Market" (Administrative Measures) was enacted in March 2013. Supervision by postal authorities of express delivery companies has been extended to the prefecture level, which may result in discrepancies due to inconsistent enforcement. Given the network-based and intensive operation of express services, the artificial segmentation of an integrated market will incur new barriers to trade, hinder free distribution of goods and services, and reduce the potential for commercial development.

The express delivery industry is a highly market-oriented service industry and customer satisfaction is the key gauge of a company's service capability. Strengthened pre-approvals will not ensure orderly competition, safety, or service quality. Simultaneous or post-supervision processes are more effective while complicated administrative license processes will severely hinder the development of the industry. The current administrative approval of new branches takes as long as one year, seriously hindering the productivity of companies.

Meanwhile, stipulations in the Administrative Measures, such as regulations on business and geographical scope, have exerted a significant impact on FIE operations in China and also violated China's WTO accession commitments.

In 2013, the SPB accelerated its work on legislation regarding administrative measures for the express delivery market. Some of the regulations in the forthcoming Administrative Regulations will not be advantageous for the development of China's express delivery industry. The national standards for express delivery services were made in 2012, aimed at improving industry service standards. However, the new Administrative Regulations may make the currently recommended national standards compulsory, making it a legal basis for administrative punishment. This will greatly impact the operations of express delivery companies in China.

Universal Service Fund

According to Article 17 of the revised "Postal Law of the People's Republic of China" issued in 2009:

> "The state shall establish the postal universal service fund (USF). The specific methods of fund collection, and the use, supervision, and inspection of the fund will be legislated by the financial department of the State Council in conjunction with relevant depart-

快 递

引 言

自中国经济改革开放以来，中国快递服务业从无到有，已发展成为一个朝气蓬勃的行业。快递业保持稳定和快速的发展促进了国民经济的发展、推动了中美贸易、支持了工商企业发展，服务于中国消费者。在推动发展现代服务业、振兴现代物流业、增加就业、维护社会稳定等方面，也正在发挥着日益重要的作用。但是，中国快递服务业自身还面临着不够大不够强、行业竞争无序等问题，服务质量和效率还不够高，这些阻碍因素都给快递业的发展带来了不确定性和新的挑战。

现存监管问题

外商投资限制

《外商投资产业指导目录》（《外商投资目录》）第五条明示，交通运输、仓储和邮政业以及国内信件快递服务均属于外商不能参与投资的"禁止类"行业。这些条款限制了国内客户和消费者根据服务的质量和速度自主选择服务并从中获益的权利。一直以来，外资企业对提高中国的服务标准起到了积极的促进作用，禁止外资企业投资国内信件快递业务将减缓相关产业的发展速度。中国美国商会促请中国政府将交通运输、仓储和邮政业以及国内信件快递服务在《外商投资目录》中调整为"鼓励类"。

快递市场管理

国家邮政局于2012年底完成在全国市地一级设立357个邮政监管机构之后，《快递市场管理办法》也于2013年3月开始正式施行，邮政部门对快递企业的监管已经具体到地级市一级。在各地市一级邮政局对当地快递企业日常业务的监管中，若对相关法规的执行尺度不一，将容易造成执法上的差异。快递业是一个高度网络化、集约化经营的行业，人为地割裂快递市场的整体性，将会阻碍商品和服务的自由流动，不利于快递业的整体发展。

快递行业是一个高度市场化的服务性行业，客户的满意度是衡量企业服务能力的主要标准。强化前置审批并不能保证快递市场的有序竞争、安全和服务质量。事中和事后监管才是更有效的监管手段，冗长繁琐的行政许可程序会严重阻碍行业的发展。现有的新设分支机构审批竟长达一年之久，严重影响了企业的生产效率。

同时，《快递市场管理办法》中的相关规定，例如对业务范围和地域范围的新的要求，对外资快递企业在华运营构成了严重影响，也违反了中国的入世承诺。

2013年国家邮政局进一步加快了对快递市场管理条例立法的工作，但即将出台的《快递市场管理条例》中将涉及的一些规定并不利于中国快递业的发展。2012年国家制定了快递服务国家标准，旨在提升行业服务标准，然而在新的《快递市场管理条例》中可能会将该推荐性的国家服务标准上升为强制性标准，并作为行政性处罚的依据，这一规定将对快递企业的经营活动带来极大影响。

邮政普遍服务基金

2009年发布的《中华人民共和国邮政法》第十七条规定:

> *"国家设立邮政普遍服务基金。邮政普遍服务基金征收、使用和监督管理的具体办法由国务院财政部门会同国务院有关部门制定，报国务院批准后公布施行。"*

2013年，财政部和国家邮政局提议建立邮政普遍服务基金，向在中国境内从事快递经营活动的所有快递企业按不同标准征收邮政普遍服务基金，用于支持向中国偏远的贫困地区提供基本邮政服务。

然而，征收邮政普遍服务基金并不是国际通行做法。在有限的几个征收邮政普遍服务基金的国家，都允许快递企业从事邮政普遍服务业务，并且公布详细的征收标准。

ments, and will be promulgated and implemented after approval by the State Council".

In 2013, the Ministry of Finance (MOF) and the SPB proposed to establish a USF and to collect funds from express delivery companies operating within China using different standards, in order to fund basic postal services for some remote, poverty-stricken areas in China.

However, the use of a USF is not an international practice. In the few countries that do collect a USF, express delivery companies have access to the service area of the universal postal service, and detailed standards used to collect the USF are promulgated. More importantly, collecting the USF from express delivery companies often leads to the companies charging customers. Ultimately, this practice violates the government's instructions to promote the healthy development of the logistics industry.

Recommendations

- **During the process of formulating administrative measures, respect suggestions made by foreign enterprises to make administrative measures more balanced and sensible.**
- Adhere to China's WTO accession commitments, completely open the domestic business market, provide the foreign enterprises with equal treatment as afforded to domestic enterprises, and eliminate unreasonable requests on foreign enterprises.
- Revise the SPB's departmental rules to align higher-level laws, procedures, and regulations, particularly administrative license regulations.
- Issue related policy based on the opinions reflected by the industry when the MOF and the SPB formulate USF measures.

更重要的是，向快递企业征收邮政普遍服务基金导致的后果是，企业常常将提高的部分转嫁消费者。并且这一做法也有悖于中国政府促进物流行业健康发展的指导意见。

建 议

- **在制定快递市场管理条例的过程中，应当尊重外资企业的建议，以加强条例的平衡性和合理性。**
- 应当遵守中国的入世承诺，完全开放国内快递市场，授予外资企业与内资企业同等的国民待遇，取消对外资企业的不合理要求。
- 国家邮政局应当对部门规章进行修改，保持与上位法、相关程序和法规的一致性，特别是与行政许可规定的一致。
- 财政部和国家邮政局对邮政普遍服务基金的征收应在充分听取行业意见的基础上出台相关政策。

Food and Beverage

Introduction

In 2013, China continued to make significant progress in food safety. The formation of the China Food and Drug Administration (CFDA) and its local branches will potentially improve the effectiveness of communication and coordination among ministries and local government departments. Further, the government is actively improving cohesion in government supervision, unifying food safety standards, and toughening penalties for non-compliance.

However, inconsistencies remain between food safety policies and their implementation. While improvements have been made toward capacity building in food safety supervision, the government is encouraged to continue building an effective dialogue mechanism for communicating with the food industry, as well as promoting an environment that is conducive to a pragmatic, science-based discussion of food safety and its supervision.

Ongoing Regulatory Issues

Ambiguity of Laws and Disparity in Policy Interpretation

Food and beverage manufacturers have faced challenges from local authorities stemming from differing interpretations and enforcement of laws, regulations, and standards.

Despite attempts by the central government to draft concise laws and regulations, it is still difficult to ensure uniform interpretation among local authorities. Although training and guidance are provided to local officials, effective explanations and clarifications of directives are lacking. In many cases, authorities in different provinces—or even different counties—can hold differing interpretations of directives. Contributing to such disparity is a common reluctance by local officials to seek authoritative guidance on policies and regulations from higher governing bodies.

To promote consistent policy deployment at the local level, AmCham China urges the Chinese government to provide clarifying details and additional training programs when promulgating laws, regulations, and standards. One vehicle for such training could be through food safety monitoring centers, as the government has committed to expanding its network of centers to 32 in 2014 and to cover all counties by 2015. These monitoring centers could also play a role in communicating policy issues between local industry and the central government. Regulators are also encouraged to coordinate with the industry to develop guidance documents that can be issued in conjunction with new policies and to clarify existing policies.

Lack of Clarification Channels

When challenged by local authorities over vague regulations, food companies currently have few official channels through which they can seek clarification of laws and regulations. Local authorities often refuse to escalate issues for further clarification from the central government. Issues that do reach higher levels of government often receive inadequate attention, even in instances where further action should be taken. Although helpful in providing guidance on regulations, clarifications provided by the central government through its website have no legal basis and are easily rejected by local authorities. Similarly, positions taken by industry associations on such topics, though representative of industry opinion, are seldom acknowledged by local authorities as such groups are not considered authoritative.

AmCham China hopes that the Chinese government will establish channels to directly connect companies seeking clarification of regulations and standards with relevant authorities. To further facilitate this process, the government can attach legal authority to responses posted on its official websites.

Rectification of Non-Food Safety Issues

The Chinese government is rightly taking strong measures against companies that do not comply with national food safety standards by implementing increasingly harsh penalties for food safety breaches. Like their Chinese counterparts, US food manufacturers and operators in China strive to abide by Chinese laws, regulations, and standards on food safety. However, many companies have been challenged by local authorities or penalized for non-food safety issues such as incorrect label font sizes or the misuse of symbols on labels. Further, the challenges and penalties are sometimes based on subjective interpretations of regulations, and companies are rarely provided with opportunities for recourse.

食品及饮料

引 言

2013 年，中国在食品安全领域继续取得重大进展。国家食品药品监督管理总局（CFDA）及地方分支机构的组建将会改善各部委、各级政府部门间的沟通与协调。此外，中国政府正积极协调政府监管，统一食品安全标准，并加重对违法违规行为的处罚。

然而，食品安全政策的内容与其执行仍未协调统一。中国政府在食品安全监管能力建设方面取得了一定进展，但我们仍建议其继续构建与食品行业沟通的有效对话机制，并为务实而科学地探讨食品安全与监管问题营造有利的环境。

现存监管问题

法律规定不明晰及政策解读不一致

由于各地方监管部门对法律法规及标准的解读及执行不一致，食品及饮料生产企业面临巨大的挑战。

虽然中央政府努力制定清晰的法律法规，但要保证地方监管部门解读一致仍有难度。同时，虽然对地方官员提供了培训及指导，但仍缺乏对规定的有效解释与说明。在很多情况下，不同省份、甚至不同县之间的监管部门都可能对规定有不同解读。造成上述不一致情况的原因主要是地方官员不愿向上级主管部门就政策与规定寻求权威指导。

为促进政策在地方层面的统一执行，中国美国商会敦促中国政府在颁布法律法规及标准时提供详尽说明及专项培训。培训或可选择食品安全风险监测中心作为平台，因为中国政府已表示将在 2014 年将中心数量扩至 32 个，并在 2015 年覆盖全国所有县。这些监测中心还可帮助地方企业与中央政府间就政策事项进行沟通。监管者还应与业界协调，制定指导文件，使之与新政策同步出台并对现有政策进行说明。

缺少确认渠道

目前因模棱两可的规定而面对地方监管部门的质询时，食品企业缺少寻求对法律法规进行释疑的官方渠道。地方监管部门往往因不愿事态升级而拒绝向中央政府请求说明。而报至上级政府的事项也往往得不到充分关注，即使是在该类事项需要采取进一步措施的情况下。中央政府在其官方网站上的说明虽对法规有一定指导意义，却缺乏法律基础，很容易被地方政府束之高阁。与此类同，行业协会对该类问题的立场虽然能代表业界观点，却因不代表官方而很少得到地方监管部门的承认。

中国美国商会希望中国政府能建立渠道，把寻求规定及标准说明的企业与监管部门直接联系起来。为进一步推动该进程，政府应赋予其官网答复以法律效力。

非食品安全问题的整改

中国政府正对违反国家食品安全标准的企业采取严厉手段，对食品安全违法违规行为的处罚也越来越重，这一举措是正确的。与中国食品企业一样，在华美国食品生产和经营商也在努力严格遵守中国食品安全法律法规及标准。然而，很多企业由于标签字号或标识使用不当等非食品安全问题被地方监管部门质询或处罚。此外，质询与处罚有时基于对规定的主观解读，且涉事企业鲜有补救机会。

中国美国商会建议中国政府在以下两种情况下，在处罚前允许企业进行整改：❶ 当对是否违法违规有明显且合理的异议时；❷ 按照中国食品安全法的定义，违法违规行为对产品安全没有影响。

改善产品检测政策

在修订食品安全法的同时，中央政府也加强了食品安全监管体系。该体系的一大核心是样品检测，监管部门藉此区分食品安全及质量问题。然而，在现有检测标准及政策环境下，食品生产商在面临可能存疑的检测结果时缺乏补救机会。

AmCham China recommends that the Chinese government allow companies to rectify and improve (*zheng gai 整改*) an offending issue prior to assigning penalties when: ❶ there is obvious and justifiable disagreement on the existence of non-compliance, or ❷ the non-compliance does not impact a product's safety, as defined by China's Food Safety Law.

Improvements in Product Testing Policies

Along with revisions to the Food Safety Law, the central government has strengthened the food safety supervision regime. A significant element of the regime is sample tests that authorities rely on to isolate food safety and quality issues. However, current testing standards and policies have created an environment where food manufacturers lack recourse against potentially flawed test results.

Under current legislation, companies can apply for retesting of a product if the first test of the sampled products produces an unfavorable result. While this is a well-intentioned process designed to protect food manufacturers and operators, companies sometimes encounter difficulties in finding labs that are willing to perform retests. Many labs are reluctant to contradict the findings of labs that performed the initial tests, and choose not to accept retest requests. Unable to find labs willing to accept their retest applications, companies have no choice but to accept their assessed penalties. AmCham China would be supportive of a government mandate for qualified labs to accept retest applications.

Process Supervision vs. Sampling Inspection

Food safety is more effectively achieved through improved oversight of food manufacturing processes rather than an emphasis on sample testing. AmCham China urges the Chinese government to strengthen the supervisory mechanism that ensures effective tracing along each step of the food production process.

Inspection is another area where increased cooperation between China and foreign regulatory regimes would be welcomed. In this regard, the agreement in late 2013 between the Chinese government and the US Food and Drug Administration to permit the stationing of additional US food inspectors, drug inspectors, and food experts—all with full diplomatic privileges and immunities—at the US Embassy in Beijing is a critical step in the right direction. Further cooperation in this area would contribute towards the Chinese government's own goal of enhancing supervision and inspection efforts.

Recent Developments

Increase in Frivolous Whistleblowing

In recent years, the Chinese government has actively promoted social governance, where consumers are encouraged to play an active role in safeguarding food safety. While AmCham China welcomes this development, the use of monetary incentives to reward whistleblowers has resulted in the emergence of a growing group of "professional claimants" who enrich themselves by exploiting ambiguous regulations. An overwhelming majority of the issues being challenged by these unscrupulous individuals involve minor labeling errors that do not affect the product's safety. Repeated complaints to local authorities on such issues divert manufacturer and government resources away from actual food safety issues.

AmCham China suggests distinguishing legitimate food safety complaints from those that are frivolous through legislation and/or limits on government penalties for certain food-related violations. Minor labeling error whistleblowers should not be rewarded monetarily.

Product Labeling Approval

Food producers often face inquiries from local authorities on labeling-related issues. Inconsistent interpretation of laws and regulations can make it difficult for companies to determine the lawfulness of their product packaging. To avoid penalties and delays, many companies are willing to subject their products to a government check or approval process prior to launch.

Taking the label filing procedure issued by the China Inspection and Quarantine Services for imported products as a good reference, AmCham China recommends that the Chinese government establish an optional approval procedure so that companies can choose to secure advance approval of a label or packaging.

Role of Media and Food Safety Experts

Science's role in articulating food safety risks cannot be emphasized enough as public confidence in food safety is critical for the industry. However, the communication of food safety risks to the public has been mismanaged over recent years due to numerous unbalanced, nonfactual, and negative media reports.

Many companies have experienced unnecessary government scrutiny and damage to their image following such reports, which come about from a lack of sufficient food science knowledge and a desire for sensationalism. If unchecked, such reporting will impact consumer confidence and impede both industry development and consumption growth. The draft version of the revised Food Safety Law provides for a unified outlet to release important food safety communications—a move that is fully supported by AmCham China.

As part of its food safety drive, the Chinese government is requiring food safety training and certification for all relevant staff at food manufacturing enterprises. AmCham China believes that relevant media professionals (e.g., management, reporters, and editors), as key stakeholders

在当前法律环境下，企业产品初检结果不佳时，可申请复检。该流程原本旨在善意地保护食品生产与经营者，但企业有时却找不到愿意提供复检的实验室。很多实验室都不愿与初检实验室的结果相左，因而不接受企业的复检申请。由于找不到愿意接受复检的实验室，企业别无选择，只得接受处罚。中国美国商会支持中国政府出台硬性指令，要求有资质的实验室接受复检申请。

流程监管 vs. 抽检

食品安全的有效保证，应重在对食品生产流程的监管，而非一味强调产品抽检。中国美国商会敦促中国政府加强监管机制，以保证对食品生产流程各环节进行有效追溯。

检验也是我们乐见的中外监管部门的合作领域。中国政府与美国食品药品监督管理局于 2013 年末达成关于允许新增美国食品监察员、药品监察员及食品专家（全部享有充分外交特权与豁免）进驻美国驻华大使馆的协议，朝这个方向迈出了重要一步。美中在该领域的进一步合作也将有助于中国政府实现加强自身监管与检查力度的目标。

最新进展

恶意举报增加

近年来，中国政府积极推进社会共治，鼓励消费者积极参与，保障食品安全。中国美国商会对此表示赞赏，然而，对举报者进行物质奖励却催生了一个逐渐壮大的群体——“职业索赔人”，这些人利用模棱两可的规定牟取私利。这类不讲原则的个人所举报的问题绝大多数都只是无关紧要的标签瑕疵，并不影响产品安全。就该类问题向地方监管部门的反复投诉无谓消耗了企业与政府的资源，使其无力顾及食品安全的实质性问题。

中国美国商会建议通过立法与／或对某些食品相关违法违规行为设置处罚上限，将合理的食品安全投诉与上述投诉区分开来。同时取消针对标签问题进行恶意举报的物质补偿。

产品标签审批

食品生产商常常收到来自地方监管部门就标签相关事宜的质询。对法律法规解读的不一致让企业很难确定其产品包装是否合法。为避免处罚与延误，不少企业宁愿在其产品发布前接受政府的检查或审批。

以中国检验检疫服务网出台的进口产品标签注册备案流程为参考，中国美国商会建议中国政府建立非强制性审批流程，让企业能够得到标签及包装的预审批。

媒体与食品安全专家的角色

科学在阐明食品安全风险方面发挥着极其重要的作用，因为公众对食品安全的信心对行业至关重要。然而，近年来由于大量失衡、失实和负面的媒体报道，与公众就食品安全方面的沟通进行得并不顺畅。

此类报道多是缘于食品科学知识不足和刻意炒作，致使很多企业都因此受到不必要的政府监管及商誉损失。若不加约束，此类报道将影响消费者信心，阻碍产业发展与消费增长。近期征求意见的食品安全法修订版草案规定了发布重要食品安全信息的统一平台——中国美国商会完全支持该举措。

作为食品安全工作的一部分，中国政府要求所有食品生产企业相关人员接受食品安全培训及认证。中国美国商会认为：相关媒体从业者（如管理层、记者、编辑等）作为促进食品安全的重要利益相关方应当接受类似的培训及认证，从而保证能够就食品安全问题做出准确客观的报道。

中国美国商会同时建议中国政府建立危机响应系统——如食品安全专家委员会——就食品安全问题向公众提供及时、科学的解释。食品产业也有意与政府携手加强食品安全公众教育，以重振消费者信心。

建 议

- **出台法律法规及标准时，政府应使内容更加明确，并与产业合作撰写指导文件，与政策同步推出。并对中央政府网站上针对规定提出的相关提问的答复赋予法律效力。**
- 针对地方食品安全监察官员开展更多的培训项目，以保证对国家法律的统一解读与执行。
- 将食品安全监管重新聚焦食品生产流程，而非产品抽检；当企业存在不影响食品安全的违法违规行为时，应在处罚前给予企业整改的机会。允许微生物复检，以保证检测结果反映产品真实质量并指定有资质的实验室接受复检申请。
- 涉及不影响食品安全的问题时，取消／减少对举

in promoting food safety, should receive similar training and certification to ensure that they are qualified to produce accurate and unbiased reports on food safety issues.

AmCham China also recommends the Chinese government to establish a crisis response system—such as a food safety expert committee—to provide timely, science-based explanations of food safety issues to the public. The industry would also welcome an opportunity to work with the government on other initiatives to strengthen public education in food safety to rebuild consumer confidence.

Recommendations

- **When promulgating laws, regulations, and standards, the government should provide more clarity and work with the industry to develop guiding documents that are released in conjunction with the policy and assign legal authority to official responses to regulation-related questions that are posted on the central government's website.**
- Develop more training programs for local food safety supervision officers to ensure uniform interpretation and enforcement of national laws.
- Refocus food safety supervision on the food manufacturing process, not sample testing; provide companies with opportunities to rectify violations that do not impact food safety before issuing penalties for such violations.
- Allow microbiological retests so that test results can reflect the true quality of products and mandate that qualified labs accept applications for retests.
- Eliminate/reduce monetary rewards to whistleblowers for reporting issues that do not impact food safety.
- Build a system to undertake optional label checks and approvals to allow companies to seek official opinions on new products prior to their launch.
- Provide training and certification for media professionals who report on food safety issues. Establish a food safety crisis response mechanism where government-designated experts would provide the public with timely updates on food safety issues. Collaborate with the food and beverage industry on food safety communication and education with the public.

报人的物质奖励。

- 建立标签非强制检查与审批系统，以便企业在新产品上市前有机会征询官方意见。
- 为报道食品安全问题的媒体工作者提供培训及认证。建立食品安全危机响应机制，在该机制下，政府应指定专家向公众提供食品安全问题的最新动态。与食品饮料企业携手开展食品安全传播与公众教育。

Healthcare Services, Pharmaceuticals, and Medical Devices

Introduction

The healthcare services, pharmaceuticals, and medical device industries in China continue to face old challenges and new opportunities. While encouraged by the emphases on healthcare, standards of living, and innovation in the 12th Five-Year Plan, these industries face a number of policy and regulatory impediments that challenge their ability to deliver world-class, innovative medical and pharmaceutical products and services to patients throughout China.

Improving the affordability and accessibility of quality healthcare services to the public is a fundamental goal of the current healthcare reform plan in China—a goal which the industry fully supports. However, AmCham China is concerned that particular developments under the banner of healthcare reform may be contrary to the development of safe, innovative, and competitive markets in healthcare services, pharmaceuticals, and medical devices. Key challenges facing the pharmaceuticals and medical device industries include current tendering processes and proposed fixed-price mark-ups on drugs and medical devices, which challenge the ability of foreign-invested enterprises (FIEs) to viably conduct business in China.

We also see considerable scope for additional reform to increase both domestic and foreign private sector participation in China's healthcare services and medical equipment and device industries. To facilitate such private investment, we encourage clarifying the policy incentives for private healthcare, simplifying registration requirements for medical devices, reforming hospital sector reimbursement, and harmonizing China's classification standards with international norms.

Ongoing Regulatory Issues

Healthcare Services Issues

Tax Rates for Private Hospitals

While the Chinese government has attempted to improve the taxation environment over the years, private hospitals are still responsible for a unified corporate tax rate of 25 percent. This equals the highest of all tax rates for businesses and organizations in China, yet the government is actively seeking to lure private capital—both foreign and domestic—to expand healthcare coverage and promote healthcare reform.

At the same time, the Chinese government has announced policies encouraging investment in multi-site hospitals, which AmCham China supports. However, current tax regulations do not allow hospital chains to offset initial losses at new facilities. A new facility generally cannot make a profit during the first three-to-four years because of the length of time needed to obtain the required business and healthcare licenses. The current inability to offset new facility losses against existing facility profits for large hospital chains is a deterrent to their investment.

Therefore, we recommend that the Chinese government adjust its tax policies in the following two ways to create a friendlier environment for these private hospitals. First, reduce the tax rate for private hospitals to 15 percent. Second, allow chain hospitals to consolidate tax reporting for mature and new facilities, at least for facilities located in the same city. These two proposed amendments to the Chinese government tax policies will have an immediate and marked impact on new investment in the healthcare services sector.

Insurance Reimbursement at Private Hospitals

Private hospitals in China are a key piece of the country's overall healthcare service effort. Such development will help relieve the pressures of overcrowding in the public system and reduce capacity constraints in the provision of high-quality medical care.

However, the current system of government insurance reimbursement discourages most people in China from using private facilities as private, for-profit providers are currently not eligible for any form of government insurance reimbursement. Although private hospital rates are generally higher than the *yibao* (医保, government-provided social health insurance) reimbursement rates, the inability of patients to receive even partial reimbursement for services provided means that those using private healthcare in China must either bear the full cost by themselves or utilize a commercial insurer.

医疗服务、医药和医疗器械

引 言

中国的医疗服务、医药和医疗器械行业既面临旧的挑战又迎接新的机遇。尽管“十二五”规划中强调了医疗、生活水平与创新的重要性，使上述行业受到鼓舞，但同时，他们也面临着许多不利的政策与监管措施，使得他们为全中国患者提供世界一流的、具创新性的医药产品及服务的能力受到挑战。

提高公众获得和负担高品质医疗服务的能力，这是中国目前医疗改革计划的一个根本目标，也得到了全行业的大力支持。然而，中国美国商会担心某些以医疗改革名义出现的具体变化可能会有悖于在医疗服务、药品与医疗器械领域建立一个具有安全性、创新性、和竞争性市场机制的目标。药品与医疗器械行业所面临的主要挑战包括现有的药品与医疗器械的招标程序以及在议的固定价格加成，这些方面都危及了外资企业在华的商业生存。

我们也看到，中国还需要进一步加大改革力度，以提高本国与外国私营企业在中国医疗服务和医疗器械行业的参与度。为了促进上述民间投资，我们鼓励中国政府明确对于私营医疗领域的政策优惠措施，简化医疗器械的注册要求，改革医疗费用报销制度并实现中国相关法律法规与国际接轨。

现存监管问题

医疗服务问题

私立医院的纳税税率

虽然中国政府多年来一直努力改善税务环境，但是私立医院仍然需要缴纳 25% 的统一企业所得税。 为了扩大医保范围和推进医保改革，政府正在积极寻求吸引来自国内外的民间投资，而上述税率是中国企业和组织所需缴纳的各项税赋中最高的一项。

同时，中国政府已经公布了鼓励投资建立连锁医疗机构的政策，对此中国美国商会表示支持。然而，现行的税收法规不允许连锁医院冲抵其新开医院的初期经营亏损。新开医院由于需要时间取得必需的营业执照和医疗许可，一般很难在开业后的最初三至四年实现赢利。对于大型连锁医院而言，目前尚不允许用现有医院的利润来冲抵新开医院的亏损，这无疑阻碍了投资。

因此，我们建议中国政府在以下两个方面调整税收政策，以便为私立医院营造一个更为友好的环境。首先，把私立医院的纳税税率下调至 15%。其次，允许连锁医院合并成熟医院和新开医院的税收报表，至少允许位于同一座城市的医院如此操作。对税收政策的这两项修改将会对医疗服务行业的新投资产生立竿见影的影响。

私立医院的医疗保险报销

中国的私立医院是国家整体医疗服务系统的重要组成部分，鼓励私立医院的发展将有助于缓解公共医疗系统人满为患的压力，改善优质医疗服务资源不足的现状。

目前私立医疗服务机构尚未被纳入国家的基本医疗保障体系，这使得多数中国的患者不会选择到私立医院就医。尽管私立医院的收费标准普遍高于医保报销标准，但由于患者无法享受和公立医院同等的医保报销待遇，因此中国的患者在私立医院就医只能选择全部自费或者使用商业医疗保险。

中国美国商会建议民政部和国家卫生和计划生育委员会（以下简称为卫计委）将以赢利为目的的私立医院纳入国家基本医疗保险适用的范围，并允许私立医院自由设定高于医保报销标准的服务价格。这将为医疗服务提供商创造一个市场，有助于缓解公共医疗系统面临的压力，同时也将促进对私立医院的投资并鼓励私立医院之间的竞争，从而整体提高临床医疗服务的质量。

2013 年 9 月 18 日，中国保险监督管理委员会（以下简

AmCham China recommends that the Ministry of Civil Affairs and the National Health and Family Planning Commission (NHFPC) allow private, for-profit hospitals to receive *yibao* reimbursement for healthcare services provided in China at the prevailing *yibao* reimbursement rates and allow them to set their own prices on top of *yibao* at their own discretion. This will create a marketplace for healthcare service providers to ease pressure on the public system. It will also encourage investment in private hospitals and competition among private hospital operators, resulting in an overall improvement of clinical quality.

On September 18, 2013, the China Insurance Regulatory Commission (CIRC) released the "Replies to Issues for Supporting the Development of the Shanghai Free Trade Zone," advocating the setting up of professional foreign health insurance organizations in the Shanghai Free Trade Zone (Shanghai FTZ). This is a positive sign that the Chinese government is strengthening its efforts to open the market to foreign insurance companies. However, detailed follow-up regulations have not yet been released.

We understand that it takes time for Chinese regulators such as the NHFPC and CIRC to work collaboratively on the regulations to accompany the creation of the Shanghai FTZ. International insurance companies are very eager to support the government and share their best practices to improve the current medical reimbursement system.

Physicians' Licenses for Multiple Practice Sites

In 2011, the then-Ministry of Health (MOH) issued a policy extending the validity of physician licenses to multiple practice sites. Beijing and several other jurisdictions also issued regulations permitting physicians to maintain two valid places of practice. In reality, however, this regulation has been very difficult to implement because applicants require approval from both their primary and secondary employers. Public hospital presidents have been reluctant to grant such approval, fearing a loss of the full efforts of their medical staff. However, in actuality, many doctors already travel to second practice sites in other cities without the benefit of formal licensing. This puts the medical staff at risk and reduces the number of senior medical personnel in major east coast cities on weekends.

This policy, along with the new draft legislation issued in January 2014, would be more effective if physicians could apply directly to the health bureau for second site licenses, so long as they agree to meet their 40 obligatory hours per week for their primary employer. Furthermore, medical leadership is excluded from the right to multi-site practice in the newly proposed legislation. The secondary employer must also agree to cover the physician's malpractice costs. The resulting mobility of senior medical practitioners would help to reduce the over-concentration of patients in level three hospitals by distributing physicians to other hospitals in the same city.

Medical Device Issues

"Supervision and Administration Measures for Medical Devices (Revised Draft)"

There was a strong focus on the development of regulations for medical devices in 2013, reflecting the issue's growing importance. On February 12, 2014, the Chinese government passed the "Supervision and Administration Measures for Medical Devices (Revised Draft)" during a State Council Executive Meeting.

The release of the revised draft is a welcome step. AmCham China member companies also look forward to the release of the accompanying rules and regulations outlined in the draft and are eager to provide comments on behalf of the industry. Below are several key issues in need of further clarification:

- Several key concepts, such as registration agent and legal representative, have not been clearly defined, aligned, or reflected in the existing "Measures for the Administration of Medical Device Registration."
- Class II and Class III medical devices may be subject to local clinical trials unless they are included in the "Clinical Trial Exemption List" (List). We hope industry can be involved in developing the List and exchange ideas before registering products not included in the List.
- Foreign registration or filing applications may still require market approval from the applicant's country of origin before approval may be received in China.
- Published regulations and notices do not spell out procedures for importing urgently required medical devices.
- The CFDA currently requires re-registration for all software version changes from the approved version regardless of the significance of the change. This requirement significantly burdens medical equipment companies and delays important updates to medical device software. AmCham China recommends that the CFDA simplify the re-registration process.

AmCham China urges the China Food and Drug Administration (CFDA) to publish the relevant draft regulations, collect comments in a timely manner, take industry feedback into consideration when refining the regulations, and ensure a smooth transition to the new medical device administrative system.

Unified Standards for Medical Device Post-Market Surveillance

AmCham China suggests that the CFDA provide training and unified standards to both local authorities and industry in order to reduce the regulatory burden on industry

称为保监会）发布了《支持上海自由贸易区发展问题的批复》，支持在上海自由贸易试验区（上海自贸区）建立专业的外资健康保险机构。这是中国政府加大力度向外资保险公司开放市场的积极信号。但是，详细的后续法规还没有出台。

我们理解，在上海自贸区正式建立后，卫计委和保监会等中国监管部门仍需要一定时间共同制定配套的政策法规。国际保险公司非常希望能够支持政府部门推动医保体系的不断完善，并愿意分享最佳实践经验。

医师多点执业

2011 年，卫生部出台了允许医师多点执业的政策。 此后北京市和其他多个省市发布了相关规定，允许医师有两个正式执业地点。但在实践中，这一规定很难执行，因为医师申请两个执业地点必须同时获得第一雇主和第二雇主的批准。由于担心骨干医师流失，公立医院的院长通常不愿意批准这种申请。因此在现实中，很多医生在没有取得正式许可的情况下，选择其它城市作为第二个执业地点。这一做法不仅给医疗人员带来了风险，而且使得东部沿海主要城市在周末出现资深医疗工作者数量下降的现象。

我们建议政府允许医师直接向当地卫生行政主管部门申请第二点执业执照，其前提是申请医师需承诺为第一雇主工作的时间达到每周 40 小时，这样的政策与 2014 年 1 月颁布的新立法草案相结合，实施起来会更有效。新一轮的立法草案并未给予医院管理层多点执业的权利，我们建议应该要求第二雇主承担医师的医疗事故成本。这样才能够促进资深医务人员的流动，如果医师借此分流到同一城市的其它医院行医，将有助于疏解三级医院患者过度集中的状况。

医疗器械问题

《医疗器械监督管理条例》（修订草案）

2013 年中国加强了医疗器械领域的法规制定、修定工作，凸显了这一问题的重要性。2014 年 2 月 12 日，中国政府在国务院常务会议上审议通过了《医疗器械监督管理条例》（修订草案）。

修订草案的出台是深受欢迎的一步，中国美国商会及会员企业也期待草案中涉及的许多配套规章制度尽快出台并在出台前征求公众意见。目前，我们关注的问题包括以下方面：

- 在现行的《医疗器械注册管理办法》中，有几个关键概念，如医疗器械注册人、代理人等，并没有得到明确定义、统一或者显示。
- 除非包含于《临床试验豁免目录》中或者符合豁免原则，否则第Ⅱ类和第Ⅲ类医疗器械可能需要进行在中国境内开展的临床试验。我们希望在目录制定时也能征求来自企业的意见，并且对未包含在目录中的产品进行前期沟通。
- 进口医疗器械的注册或备案申请仍然需要获得申请人所在国家（地区）的上市证明后才能在中国提交注册（备案）申请。
- 已发布的法规和通知没有明确规定进口急需医疗器械的程序。
- 医疗器械软件因版本经常更新（通常不涉及技术变化）需不断重新注册，对监管部门和企业来讲都是负担，且延误了医疗设备软件的及时更新，希望能对医疗器械软件更新的注册程序予以简化。

中国美国商会促请中国国家食品药品监督管理总局（国家食药局）发布相关法规草案，给予征集意见和接受反馈的合理时限，在完善法规时把行业反馈意见切实考虑在内，并给予具有操作性的法规实施过渡期，确保向新医疗器械管理制度的平稳过渡。

医疗器械上市后统一监管标准

中国美国商会建议国家食药局向地方药监部门和行业提供培训和统一标准，以便减轻因监管尺度和法规理解不一致造成的的监管负担。尤其应解决的一个问题是目前中国的中文说明书和包装标签内容要求不够明确，操作性不强。

中国美国商会对国家食药局新制定的不良事件监控、召回和投诉制度表示赞赏。成立于 2012 年初的国家食药局投诉举报中心已在处理不良事件方面获得了很多经验。然而复杂的报告提交程序仍给外资企业造成负担。美商会建议简化对国外不良事件报告提交的要求，即常规地（按月或按季度）提交统计数据而非每个不良事件的收集数据，并且允许使用国际上通用的编码方式（即将是 ISO 标准）而不是非标准的中文翻译方式。相信这将会使得对不良事件的管理更加有成效。

members caused by different understandings of the rules. A particular issue which should be addressed is the current lack of clarity regarding Chinese label compliance, which is difficult to implement.

AmCham China applauds the CFDA's newly established system for adverse event monitoring, recall, and complaints. The CFDA Complaint and Report Center, founded in early 2012, has gained experience in handling adverse events. However, it remains challenging for many foreign companies to submit reports due to complex requirements. AmCham China recommends simplifying foreign adverse event reporting to only require reporting of tabulated data on a regular (monthly or quarterly) basis instead of the current requirement of reporting raw data on individual events. We additionally recommend allowing the use of internationally accepted coding schemes (which are soon to become International Organization for Standardization standards) instead of the current use of non-standardized Chinese translations. Such change would facilitate more efficient and effective monitoring of adverse events.

Duplicative Product Registration and Testing

AmCham China supports the "Notice No. 9 on Medical Device Re-Registration" (Notice) issued by the CFDA in December 2013. The Notice, effective January 1, 2014, provides new guidelines on the re-registration of expired medical devices (excluding in-vitro diagnostic reagents), materials for re-registration, as well as the evaluation procedure. However, one problem with the Notice is that it is difficult for the industry to follow and needs further clarification and more detailed guidance.

Meanwhile, the increasing demand for medical device re-registration imposes considerable redundant obligations on both supervision departments and industry players. The direct consequences include interference with new product registration and approval, as well as depriving patients of access to medical technologies which have been proven to be safe and effective.

Country-of-Origin Approval Requirements

In 2000, the State Food and Drug Administration (SFDA), the CFDA's predecessor, announced the regulatory requirement of country-of-origin approval for the supervision and administration of medical devices and emphasized this requirement in 2009 through the issuance of Notice No. 82.

AmCham China members appreciate the need for quality control of medical devices entering China. However, this country-of-origin requirement is problematic for many FIEs as approval requirements vary widely across different countries and regions.

As the medical device business globalizes, many medical devices may lack registration in their place of production or where their manufacturer is based. Examples include devices purchased from an Original Equipment Manufacturer (OEM) and products made solely for export or for a specific destination. Many medical device FIEs applying to register their products in China have already registered their products in one of the International Medical Device Regulators Forum (IMDRF) member countries, such as Australia, Canada, the EU, Japan, or the US. The IMDRF's predecessor, the Global Harmonization Task Force (GHTF), audited all manufacturing facilities, regardless of location, based on GHTF guidelines.

AmCham China requests reconsideration of the current country-of-origin approval requirements in addition to the acceptance of registration applications for medical devices approved by IMDRF member countries, regardless of the location of production. This is a more effective way to ensure the safety of imported medical device products, while still permitting devices to enter the market in a reasonable period of time.

Unique Device Identification

The IMDRF released the final version of the unique device identifier (UDI) document in September 2013. This document aims to reinforce post-market supervision for registered medical devices, solve the problem of inconsistent UDIs, and improve global information traceability and administrative efficiency.

AmCham China is pleased to learn that China's drug supervision team, as an official member of the IMDRF and a member of the IMDRF UDI special task force, has actively engaged in the drafting and discussion of the aforementioned document. The US has officially implemented the new guidelines, and European countries are preparing to do the same. We hope the Chinese government will also solve problems of implementing medical device UDI through international coordination. China can then gradually develop supervision and implementation guidelines for medical device traceability control, further improving the supervision system for medical device and related industries.

Software Registration and Submission Requirements

In April 2012, the CFDA published the "Basic Requirements of Application for Medical Device Software Registration." In order to build on this progress, we recommend further improvement in four key areas:

❶ The CFDA currently requires re-registration for all software version changes from the approved version, regardless of the significance of the change. This requirement significantly burdens medical equipment companies and delays important updates to medical device software. AmCham China recommends that

重复的产品注册和检测

中国美国商会支持 2013 年 12 月由国家食药局发布的《关于医疗器械重新注册有关事项的通告》（国家食药局 9 号通告）。该《通告》于 2014 年 1 月 1 日起生效，其中对到期医疗器械（不包括体外诊断试剂）的重新注册、重新注册需要的资料以及评价程序提供了新的指引。然而行业遵照执行却有困难，《通告》仍需要更细化的阐释和指导。

同时我们也注意到，医疗器械再注册的相关要求不断增加，给监管部门和行业造成了相当大的重复工作和人力资源的浪费。其直接后果是，延缓了新产品注册批准，使中国患者无法尽早用上经证明安全有效的医疗技术和产品。

原产国审批要求

在 2000 年发布的《医疗器械监督管理条例》中规定了对原产国的要求，并且在 2009 年，国家药监总局通过发布《第 82 号通知》强调了这一要求。

中国美国商会会员企业对进入中国的医疗器械需接受质量管控的要求表示理解。然而，上述原产国要求却给许多外资企业造成困扰，因为各国或各地区的审批要求差异很大。

随着医疗器械业务不断全球化，许多医疗设备可能没有在原产国或生产商登记国注册，比如从一家贴牌代工企业购入的设备，或者是仅供出口或仅在特定区域销售而生产的产品。许多外资医疗器械公司在中国申请注册的产品实际上已经在国际医疗器械监管者论坛（IMDRF）的某个会员国完成注册，如澳大利亚、加拿大、欧盟、日本或者美国。而 IMDRF 的前身，即全球协调工作组（GHTF），会依据 GHTF 发布的统一准则对其会员国的生产工厂进行审核，无论其生产厂设在何处。

中国美国商会请求修改现行的原产国审批要求，接受已经获得任一 IMDRF 会员国审批的医疗器械的注册申请，而不受该上市审批为法定生产商所在国（地区）或实际生产地所在国（地区）的限制。只有这样才能在更有效地保障进口医疗器械产品安全性的同时，确保进口医疗器械能够及时进入中国市场服务病患。

设备唯一标识

2013 年 9 月，国际医疗器械监管机构论坛（IMDRF）发布了设备唯一标识（UDI）文件的最终版本。该文件旨在加强对已注册的医疗器械的上市后监管，解决设备唯一标识不一致的问题，并提高全球信息可追溯性和管理效率。

中国美国商会很高兴了解到，中国的药品监督团队作为 IMDRF 的正式成员以及 IMDRF 设备唯一标识特别任务小组的成员积极参与了上述文件的起草和审议。目前，美国已经正式实施了新的指导准则，欧洲国家也正在准备实施。我们希望中国政府也将通过国际协调来解决医疗器械设备唯一标识的实施问题。这样中国就能逐步制定医疗器械追溯控制的监督和实施准则，从而进一步改进医疗器械和相关行业的监督体系。

软件注册和申报要求

2012 年 4 月，国家食药局发布了《关于医疗器械软件注册申报基本要求的说明》。为了取得这方面的进展，我们建议进一步改进以下四个关键领域的工作：

❶ 国家食药局目前要求所有软件变更都需要重新注册，即使没有明显变化。这一注册要求极大地增加了医疗器械软件企业的负担，也延误了医疗器械软件的重大更新。中国美国商会建议国家食药局简化注册程序，对于只有细微变动（如使用目的没有变化，无新增功能，对病人安全无明显影响等）的软件，允许采用简单的补充注册或备案。

❷ 国家食药局的软件注册程序要求企业提交大量配有中文翻译的技术文档，而这些技术文档大部分都不能直接用于判定医疗器械软件的安全性和有效性。为了减少因这一要求带来的负担，中国美国商会建议国家食药局按照一事一议的原则，只在需要时才要求提交详细的技术资料，包括使用者要求规格、系统设计构造规格、风险管理文件和验证与确认报告在内的技术文档及其中文翻译。或者，国家食药局也可考虑采用定期审计制度，以确保医疗器械软件的安全性和有效性。

❸ 国家食药局要求注册有关软件核心算法的技术文档。这一举措触动了企业的核心知识产权。我们担心，这些技术规格可能在未经企业同意的情况下遭到外泄。中国美国商会会员企业希望国家食药局在内部建立有效保护申请人知识产权制度并保证，一旦遭泄露，即强力执行相关知识产权保护法律。

❹ 国家食药局强制规定，要求实施适用于商用现用软件、而不适用于大多数医疗软件的 GB/T 25000.51–2010 《软件产品质量要求与评价（SQuaRE）》标准

the CFDA simplify the re-registration process by allowing simplified supplementary registration or record filing for software with minimal changes (e.g., no change to the intended use (or indications for use), no newly added functions/features, no significant impact to patient safety).

❷ The CFDA's software registration process requires companies to submit a significant amount of technical documentation with Chinese translation, much of which is not directly related to the determination of the safety and effectiveness of medical device software. In order to reduce the bureaucratic burden of this requirement, AmCham China recommends requiring submission of detailed technical documents, including User Requirements Specifications, System Design Architecture Specifications, Risk Management Files, and the Verification and Validation Report, and their Chinese translation only on a case-to-case basis. Alternatively, the CFDA could consider periodic audits of systems in order to ensure the safety and efficiency of medical device software.

❸ The CFDA requires registration for technical documentation related to the software's core algorithms. This touches on a company's core intellectual property (IP). We are concerned that these technical specifications may be divulged without the company's consent. AmCham China member companies would like guarantees from the CFDA that applicant IP is protected internally and, if breached, IP protection-related regulations would be strongly enforced.

❹ The CFDA mandates the GB/T 25000.51-2010 Software Product Quality Requirements and Evaluation (SQuaRE) standard (ISO/IEC 25051:2006 IDT), which is designed for commercial, off-the-shelf software, and not applicable to most medical software. Although neither the US nor the EU have adopted this standard, the CFDA requires that medical software devices comply with the SQuaRE standard. AmCham China suggests that the CFDA reconsider the adoption of this standard for medical software devices and follow international best practices to relieve companies of unnecessary burdens and encourage the development of the medical device software industry in China.

Centralized Procurement and Tendering for Medical Supplies

AmCham China appreciates that since the program of centralized procurement and bidding for medical supplies began in 2010, local governments have openly communicated with the medical device industry. The MOH and five ministries jointly issued the "Working Guidance of Public Procurement on High-Value Medical Consumables (Interim)" on December 17, 2012. While this is a good start, it does not fully take into account the complexities of the high-value consumables industry. We hope that these improvements in the system will create a standardized, impartial, and transparent bidding process that prioritizes quality and reasonable prices, keeping the following considerations in mind:

- It is not appropriate to copy the tendering model of pharmaceuticals because of their significant differences.
- The policies on the collection of cost, insurance, and freight (CIF, or port) prices, which are to be used for price control, should be reconsidered.
- Duplicate bidding is a heavy burden to manufacturers, distributors, and government resources, and should be dissuaded and gradually abandoned.
- New technologies and other aspects of a product should be considered in the procurement process.
- Procurement procedures should be simplified and transparent.
- Product classification should be adequately defined and standardized.

Although pharmaceuticals and medical technologies both require high investment in research and development (R&D), there are many differences between these two sectors, as described below.

- **Cost** —The cost of medical devices, including production, transportation, sales, and service, is fundamentally different from that of the pharmaceuticals. This difference indicates that the pharmaceutical model of centralized procurement cannot be copied directly by medical device companies. In the example of implantable medical devices, doctors must perform complex surgical procedures to implant medical devices into their patients. Such procedures incur further costs via pre- and post-operative services, intensive training of doctors, and technical support for surgical implants during the procedure (e.g., pacemakers) and after surgery (e.g., pacemaker settings). Conversely, pharmaceuticals can be used by patients with simple instructions.
- **Life Cycles**—Medical devices and drugs have very different life cycles. Pharmaceutical patent periods will last more than 18 years after approval is obtained, while the average life expectancy of an innovative medical device patent is 18 months.
- **Process of Manufacture**—As pharmaceuticals can be produced in batches, marginal costs are decreased. Marginal costs for medical devices are much higher as the devices must be produced individually.

At present, some provinces are seeking to combine the price mark-up management of implanted (intervention) medical devices with their centralized tendering on high-value

(ISO/IEC 25051:2006 IDT)。尽管美国和欧盟都没有采用这一标准，国家食药局却要求医疗软件器械必须符合 SQuaRE 标准。中国美国商会建议国家食药局重新考虑是否要求医疗软件器械采用这些标准，并沿用国际最佳实践来减轻企业不必要的负担，鼓励中国医疗器械软件开发行业的发展。

医疗用品的集中采购与招标

中国美国商会感谢自 2010 年该医疗用品集中采购和招标项目实施以来，地方政府与医疗器械行业一直保持着开诚布公的交流。2012 年 12 月 17 日，卫生部会同其他五部委联合发布了《高值医用耗材集中采购工作规范(试行)》。这是一个良好的开端，但未能考虑到高值医用耗材行业的复杂性。我们希望能够对相关规定加以完善，以质量和合理价格作为优先考虑，建立一套公正、透明的标准化招投标程序。主要考虑因素包括：

- 医疗器械与药品的根本性不同使得其招标模式不可照搬药品模式。
- 取消对口岸价的采集及将其作为价格管控手段的相关规定。
- 重复招标对制造商、分销商和政府资源都是一种沉重负担，应予以劝阻并逐步摒弃。
- 产品的新技术及其他方面应该在采购过程中予以考虑。
- 采购过程应该简化并透明。
- 产品分类应该予以充分定义和标准化。

虽然药品和医疗技术具有研发成本高的相似性，两者还是有很大区别的，正如下文所列：

- **成本**——医疗器械生产、运输、销售和服务医疗技术的成本与药品的成本有根本性的区别，直接决定了在集中采购中不可直接照搬药品模式。以植入性医疗器械为例，医生必须经过复杂的手术过程在患者体内植入医疗器械，医疗技术公司为此需在手术前和手术后服务上投入相当大的成本：包括培训医生掌握手术成功所必需的操作技能；以及在手术室进行外科手术植入过程期间（例如，起搏器、脊柱手术等）和手术后（例如，起搏器设定）提供技术支持。药品只需要患者简单地使用说明书就可直接使用。
- **生命周期**——医疗器械与药品生命周期也有很大不同，一种药品的专利期，在获得批准后通常为 18 年或更长；而一个创新型医疗器械的平均寿命是 18 个月。
- **生产方式**——一种药品可以分批次生产，其中，制成其它丸剂的成本很低（边际成本）；医疗器械需要单个生产，其中，边际成本相比较而言较高。

目前部分省份正在尝试将对植（介）入类医疗器械价格加成管理与各省高值医用耗材集中采购结合在一起。如某省份明确“进口产品按含税口岸价格加合理差率进行价格比较”，作为招标上限价的参考依据。我们担心此做法是对医疗器械价格和利润一刀切的行政干预，如上所述，医疗器械与药品不同，在其生命周期内，行业需要投入巨大的支持。另一方面，进口医疗器械以“口岸价”为计算基础，“口岸价”难以涵盖在华运营外资企业在中国本土巨大的运营成本，然而国内企业却以“出厂价”为基础，这无疑增加了内资企业的竞争优势，而这对外资企业来说是不公平的。

医疗用品采购目前遭受着重复招标造成的沉重负担。《高值医疗用品集中采购指南》（试用版本）规定每个地区和医疗机构不应重复招标。企业应该仍然接受省、市和医疗机构的投标。2012 年，全国 12 个省的 67 个城市发起以城市为基础的集中医疗用品采购项目，使采购项目超过了 75 个。为了帮助减轻企业负担，建议医疗用品集中采购以地区或者省为基础，不允许任何形式的重复招标。

2008 年的《全国高值医用耗材集中采购目录》现在需要更新和完成。因为医疗器械行业的独特性，过去的六年间已出现大量的新技术和产品。中国美国商会建议创建标准化的采购目录以及产品分类和质量评价标准。我们进一步建议，卫计委在设计新产品和技术的评价指标时要特别注意新技术、材料和工艺的创新。

医疗物品集中采购程序应该予以改进。每个省的集中医疗用品采购期目前至少是两年，在这两年间，别的省份已公布了改进程序。这就使得新产品不可能上市，并且产品一旦上市后就很难进行更新。中国美国商会建议，每个省在执行集中采购计划期间应明确新产品改进的时间框架和规则，并且定期执行新产品改进。另外，各省应努力改善评价专家池，确保它们拥有足够数量的、根据专业分类并了解医疗器械行业的专家。

我们建议对资质文件目录和价格标准实施标准化，以便减轻企业负担。目前，各省要求企业在医疗用品集中采

consumables. For example, some provinces specify that the reference for the tendering ceiling price of an imported medical device is "the CIF price plus a reasonable markup." AmCham China is concerned that this approach will serve as an administrative intervention for medical device prices and profits. As mentioned, the life cycle of medical devices is different from that of pharmaceuticals, requiring large amounts of investment. On the other hand, the price of imported medical devices is based on the CIF price. It is difficult for large FIEs in China to cover their high operating costs when the costs for domestic manufacturers are based on factory prices. This unfairly increases the competitive advantage of domestic companies

The 2008 "National Catalogue for Centralized Procurement of High-Value Medical Supplies" is in need of updating and completion. Due to the unique nature of the medical instrument industry, an abundance of new technologies and products have appeared in the intervening six years. AmCham China recommends the creation of a standardized procurement catalogue, as well as standards for product categorization and quality evaluation. We further recommend that, when designing evaluation indices for new products and technologies, the NHFPC pay special attention to innovations in new technologies, materials, and techniques.

Procedures for the centralized procurement of medical supplies should be improved. Each province's centralized medical supply procurement period is currently at least two years, during which other provinces have announced a procedure for augmentation. This makes it impossible for new products to go on the market and creates difficulties in making updates once the product has appeared on the market. AmCham China recommends that each province clearly state the time frame and rules for the augmentation of new products during the implementation of the centralized procurement plan, and periodically undertake the augmentation of new products. In addition, provinces should work to improve their pools of evaluation experts, ensuring that they have adequate numbers of specialized experts who are grouped according to specialty and understand the medical device industry.

We recommend standardizing qualification document catalogues and price standards in order to reduce the burden on enterprises. Currently, the qualification documentation requested by each province for submission from enterprises, during centralized medical supply procurement, is overly complex. Ideally, the materials each enterprise is required to submit should be minimized in order to improve efficiency.

In addition, in order to reduce the wide variety of non-uniform and unpredictable fees levied during the procurement of medical supplies, each province should clarify that cities are not to organize the centralized procurement of high-value medical supplies. Centralized procurement of low-value medical supplies should also be incorporated into the provincial-level centralized procurement framework as quickly as possible. If municipalities collect fees during centralized procurement of medical supplies, these must be approved by the controlling body, and proof of payment and payment standards should be publicly announced.

In addition to these recommendations, we believe medical device procurement should be conducted transparently and centrally guided by clear rules and criteria from the NHFPC. Procurement should also be in line with national trade policies and international trade agreements, including those of the World Trade Organization. Thus, biases favoring domestically invested companies over FIEs should be eliminated from the procurement process. Finally, medical device procurement would be more efficient if conducted at a single level (either national or provincial) to simplify procedures and reduce redundant work for participating companies.

Pharmaceutical Industry Issues

Pharmaceutical Tendering and Pricing

In 2013, the Chinese government introduced new tendering policies which provide effective guidelines for managing drugs on the National Essential Drug List (NEDL) at the central and local levels.

The State Council released "The Opinions of Strengthening the Essential Drug System and the Implementation Mechanism at Grassroots Levels" in February 2013. This document set the tone for essential drug tendering and procurement at the provincial level, outlining a "Two Envelope Model" which will place a stronger emphasis on quality rather than "lowest-price wins." The model will:

- Place equal consideration between the two envelopes of pricing and quality;
- Improve assessments surrounding the quality of drugs;
- Ensure that, if a drug's bidding price is significantly lower than its competitors, the government will investigate the cause of the price differentiation; and
- Mandate that, within a similar price range, drug quality will be the primary consideration.

AmCham China welcomes this increased emphasis on drug quality and believes these policies will benefit patients, encourage innovation, and promote the healthy development of the pharmaceutical industry. This is an important step towards the development of concrete and transparent guidelines for drug procurement. We anticipate the enforcement of these policies and hope for continuing opportunities for all healthcare stakeholders to provide comment on future reforms.

购期间提交的资质文件过于复杂。为提高效率，理想的做法是把要求企业提交的资料减至最低。

另外，为了减少医疗用品采购期间征收的各种非统一、不可预知的费用，各省应该明确各城市不得组织高值医疗用品集中采购。低值医疗用品的集中采购也应该尽快地纳入省级集中采购框架。如果各市在医疗用品集中采购期间收取费用，则这些城市必须经管理机构批准，并且应公开支付依据和支付标准。

除了这些建议外，我们相信，如果国家卫生和计划生育委员会制定清晰规定与标准并使之得到遵守，同时采用透明的程序与集中式方法，医疗器械采购程序便可得到完善。采购程序也应与全国贸易政策及世界贸易组织相关协议等在内的国际贸易协议保持一致。采购过程中偏向内资企业而歧视外资企业的做法应被废除。最后，如果实施单一制医疗器械采购（国家级或省级），简化采购程序，减少竞标企业不必要的工作，将有助于进一步提高采购效率。

制药行业问题

医药招标和定价

2013 年，中国政府公布了新的招标政策，为中央和地方层面上管理国家基本药物目录中的药物提供了有效的指导准则。

2013 年 2 月，国务院发布了《关于巩固完善基本药物制度和基层运行新机制的意见》。该文件为省级基本药物招标和采购工作奠定了基调，明确要求遵循质量优先、价格合理的原则，进一步完善"双信封"评价模式。该模式将：

- 同等考虑定价和质量这两个评价指标；
- 改进围绕药品质量的评估工作；
- 确保如果一种药品的投标价格显著低于其竞争对手，政府将对价格差异的原因进行调查；以及
- 规定在类似价格区间内，药品质量将是首要考虑事项。

中国美国商会欢迎这一更加强调药物质量的举措，并且相信这些政策能够使患者受益、鼓励创新并促进制药行业的健康发展。这也是朝着制定具体透明的药物采购指导原则迈出的重要一步。我们期待着这些政策得到切实有效的落实，并希望能够有更多机会让所有医疗领域的利益相关方对今后的改革发表意见和建议。

国家基本药物目录

中国美国商会对国家基本药物目录（NEDL）建立以来取得的成就表示赞赏。自三年多之前推出 NEDL 以来，中国在加强国家基层医疗卫生服务体系建设方面取得了巨大成就。基层医疗卫生机构逐步取消了以药养医的做法，公众用于药品的支出也因此大幅下降。

然而，基本药物制度（EDS）在实施过程中也出现了诸多问题，值得监管部门关注。首先，因为很多常用处方药和品牌药未被纳入基本药物目录，使得许多不发达地区的患者无法从基层医疗卫生机构获得这些药品，只能转而到二级和三级医院就医。其次，很多生产优质药品的医药企业由于对基本药物制度缺乏信心，不愿意将其产品列入基本药物目录。

中国美国商会就此提出如下建议：

- 限制 EDS 的药品总数。制定 EDS 的依据应当是具备较高发病率高且已有成熟治疗方案的常见病目录，EDS 应当根据疾病谱变化及时更新。NEDL 旨在满足中国民众的基本医疗卫生需求，其与国家基本医疗保险药品目录（NRDL）所要满足的更广泛的需求之间有明显区别。NEDL 覆盖药品范围过广可能会增加现有三大医保体系的负担。
- 允许医疗卫生机构处方"非基本"药物。为了保证患者从同等途径获得"基本"药物和"非基本"药物，监管部门应当允许医疗卫生机构处方一定数量的"非基本"药物。另外，相关法律法规中不应强制规定二、三级医院处方基本药品的最低比例。
- 保留独立定价药物的单独定价政策。国家食药局和其他三家部委一直在推动实施新的药品生产质量管理规范，并将实施一项新的评估计划来保证仿制药品质量的稳定性。但是，不同医药公司生产的药品质量必然存在差异，这也是可预见的未来医药行业面临的一大问题。因此中国美国商会建议中国政府保留 NEDL 独立定价药品单独定价的政策。这些药品应当仍由医院按非基本药物使用。
- 完善"双信封制"招标法。中国美国商会建议相关部门实行基于质量和价格的分类或综合评估法。上述做法已经广泛用于二、三级医院集中采购非基本药品。
- 在更新 NEDL 的同时发布相关配套政策。为了确保 EDS 的成功实施和可持续性，NEDL 的更新过程应

National Essential Drug List

AmCham China applauds the success of the NEDL. Since the NEDL was introduced over three years ago, China has made great progress in developing a strong national primary healthcare service system. The practice of relying on drug revenues to subsidize medical services has been increasingly phased out in primary medical and healthcare institutions (MHIs). As a result, the cost of medicine for the general public has decreased dramatically.

However, the implementation of the Essential Drug System (EDS) has given rise to problems that require attention from regulators. First, in many underdeveloped regions, patients are seeking care at secondary and tertiary hospitals because primary MHIs lack frequently prescribed drugs and branded drugs because they are not included within the EDS. Second, many pharmaceutical companies that produce high-quality drugs are reluctant to register their products on the NEDL due to a lack of confidence in the EDS.

AmCham China proposes the following recommendations:

- Limit the number of drugs in the EDS. The list should be based on a catalogue of common diseases with high incidence rates and mature treatment solutions. The EDS should be updated according to the evolution of the disease spectrum. The NEDL is designed to meet the basic healthcare needs of Chinese citizens, which should be clearly separated from the broader needs helped by the National Reimbursement Drug List (NRDL). A lengthy NEDL would also increase the burden on the three-tiered medical insurance system.
- Allow MHIs to prescribe "nonessential" drugs. To ensure the accessibility of both "essential" and "non-essential" drugs, regulators should allow MHIs to prescribe a certain number of "non-essential" drugs. Additionally, regulations should not force secondary and tertiary hospitals to set a mandatory percentage of prescriptions for essential drugs.
- Maintain a separate pricing policy for independently priced drugs. The CFDA and three other ministries have urged the enforcement of new good manufacturing practices and will launch a new evaluation plan to ensure quality consistency of generic drugs. Nevertheless, differences in quality between pharmaceutical companies will continue to be problematic for the foreseeable future. AmCham China therefore recommends the Chinese government maintain a separate pricing policy for independently priced drugs in the NEDL. These drugs should still be used in hospitals as non-essential drugs.
- Improve the "Two Envelope" tendering practice. AmCham China suggests that related authorities conduct a categorized or a comprehensive evaluation based on both quality and price. This practice is already widely used by secondary and tertiary hospitals for centralized procurement of non-essential drugs.
- Simultaneously release renewal policies with new NEDLs. To ensure the success and sustainability of the EDS, the NEDL renewal process should be in line with the formulation of related pricing and reimbursement policies. These related policies should be released simultaneously with the renewed NEDL.

Regulatory Data Protection

One of the best ways to encourage and reward innovation within the pharmaceutical sector is to strengthen regulatory data protection (RDP) and to establish an effective legal system. However, the current Drug Registration Regulation (DRR) is ambiguous in key concepts such as "new chemical entity" (NCE) and "unfair commercial use" as well as data protection implementation measures. This ambiguity leads to inconsistency in law enforcement, discouraging both domestic and foreign innovation in the industry.

AmCham China supports government efforts to improve the regulatory data protection practice in China. We propose the following recommendations:

- Modify the DRR by developing a clear definition of "New Drug" and "NCE."
- Connect the revised data protection provisions to drug registration regulations, in line with internationally accepted RDP standards and procedures.
- Ensure that marketing approval will not be granted to a generic drug applicant if a patent exists on the drug (patent linkage).
- Put in place an effective notice mechanism to enable patent holders to file and take infringement actions in a timely manner.
- Establish an efficient mechanism to stay a subsequent applicant's drug review process when a patent holder initiates infringement action.

Recent Developments

The Chinese government has canceled the China Compulsory Certification system for six types of imported medical devices since the government reorganization in 2013. This change solved the issue of overlapping supervisory responsibilities, which have troubled the industry for a long time.

The CFDA released the "Simplified Procedures for Re-Registration" in December 2013. This new regulation aims to build a more efficient review system by reducing the application requirements for product re-registration and relieving its burden on the industry. The CFDA has further enhanced the transparency of the released regulation. The limitation periods on calls for comments on the regulations are in full compliance with WTO rules. Furthermore, the NHFPC has issued policies to attract social resources and

当与相关定价和报销政策的修订过程同步。相关配套政策应当与更新后的 NEDL 同时发布。

行政审批数据的保护

加强行政审批数据的保护和建立一套有效的配套法律制度是鼓励和回报医药行业创新的最佳途径之一。然而，现行的《药品注册管理办法》中包括"新型化学成分"、"不公平的商业使用"在内的相关概念定义模糊，数据保护实施办法也不清晰。这就导致了执法上缺乏统一性，不利于医药行业内资和外资企业的创新。

中国美国商会支持政府在加强行政审批数据保护方面的工作，并提出以下建议：

- 修改《药品注册管理办法》，明确"新药"和"新型化学成分"的定义。
- 在修改《药品注册管理办法》的同时修订数据保护规则，使数据保护规则与国际通行的行政审批数据保护标准和程序保持一致。
- 如果某药品已申请取得专利（专利链接），则不批准其仿制药的上市申请。
- 建立实施有效的通知机制，保证专利持有人能够及时提出侵权诉讼。
- 建立有效的机制，确保在专利持有人提起侵权诉讼后能够暂停后续申请人的药品审查程序。

最新进展

自 2013 年政府部门重组以来，中国已经取消了六种进口医疗器械的中国强制认证 (CCC) 制度。这一改变解决了长期困扰的多重监管问题。

2013 年 12 月，国家食药总局发布了《关于医疗器械重新注册有关事项的通告》。这一新的法规旨在通过减少产品重新注册的申报要求来减轻企业负担。国家食药监局进一步增强了文件公布的透明度，很多法规征求意见的时限完全符合 WTO 规定的时限要求。卫生计生委出台了相关政策进一步鼓励社会办医，鼓励医生多点执业。

国家明确表示了继续深化医改的决心。

医疗卫生合作项目

美中医疗卫生合作项目（HCP）是一项旨在在中美政府及医疗行业间建立更紧密且长期合作关系的协作计划。

自 2012 年 HCP 与卫生部下属卫生部人才交流中心签订首个谅解备忘录以来，HCP 与美国贸易发展署、美国使馆和其他美中两国合作伙伴一起，开展了一系列公共和私营部门能力建设项目，其中包括：

2012 年和 2013 年组织中国高级卫生管理人员赴美国学习考察；

2013 年组织美国卫生应急响应培训；

组织美中医疗卫生使命 / 路演活动，与中国医疗卫生界同仁共同探讨新的医疗理念、趋势和新技术，活动范围涵盖 9 个省市，包括重庆、广西、海南、黑龙江、河南、湖北、湖南、辽宁和云南；以及

举办了多场有关卫生改革、医疗保险、临床数据标准和其它领域的监管与政策对话及研讨会。

HCP 还负责主导开展技术协作和交流讨论会，在美中两国开展医疗卫生行业人员培训和能力建设活动，并努力发现和应对医疗改革框架下出现的新市场机会。

建 议

医疗服务

- **降低私立医院的纳税税率，允许连锁医院合并成熟医院和新开医院的税收报表，至少允许位于同一座城市的医院如此操作。**
- 就中国政府向外资保险公司开放保险市场的政策出台详细的实施细则。
- 只要医师承诺为第一雇主行医的时间达到每周 40 小时，就允许其直接向当地卫生行政主管部门申请第二点执业执照。

医疗器械

- **进一步明确简化重新注册的程序。**
- 修改目前的原产国审批要求，接受已经获得任一 IMDRF 会员国审批的医疗器械的注册申请，而不受该上市审批为法定生产商所在国（地区）或实际生产地所在国（地区）的限制。
- 在招标中，充分考虑到药品与医疗器械的不同以

investments in private hospitals, and extending the validity of physician licenses to multiple practice sites.

Overall, the Chinese government has clearly expressed its determination to continually to improve its healthcare reform efforts.

Healthcare Cooperation Program

The Healthcare Cooperation Program (HCP) is a collaborative initiative to build closer working relations and long-term cooperation between the US and Chinese governments and industry in the healthcare sector.

Since signing its first Memorandum of Understanding with the Health and Human Resources Development Center (HHRDC) at the MOH in 2012, the HCP has conducted a number of public-private capacity building projects with the US Trade and Development Agency, US Embassy, and other US and Chinese partners, including the following:

- Chinese Senior Health Executive Study Tours in the US in 2012 and 2013;
- Health Emergency Response Training in the US in 2013;
- US-China Health Missions/Roadshows to introduce new healthcare concepts and technologies to Chinese audiences, covering over nine provinces, including Chongqing, Guangxi, Hainan, Heilongjiang, Henan, Hubei, Hunan, Liaoning, and Yunnan; and
- Holding a number of regulatory and policy dialogues and workshops on health reform, medical insurance, clinical data standards, and other areas.

The HCP is also leading discussions on technical collaborations and exchanges, developing personnel training and capacity building in the healthcare industry between the US and China, and working to identify and address new market opportunities under the healthcare reform framework.

Recommendations

Healthcare Services

- **Reduce taxes for private hospitals and allow chain hospitals to consolidate tax reporting of mature and new facilities, at least for facilities in the same city.**
- Release detailed regulations explaining the Chinese government's policies regarding opening the insurance market for foreign insurance companies.
- Allow physicians to apply directly to health bureaus for their second site licenses, as long as they agree to meet their 40 obligatory hours per week for their primary employer.

Medical Devices

- **Further clarify the procedures of the simplified Re-registration Notice.**
- Amend the current country-of-origin approval requirement, SFDA announcement No. 82, to accept registration applications of medical devices approved by IMDRF member countries, regardless of the location of production.
- Provide sufficient consideration to the differences between medical devices and pharmaceuticals, including the special operational model of medical device companies in China, when developing policies regarding centralized tendering, the requirement of price controls based on the CIF price, and the further development of the tendering model.

Pharmaceutical Industry

- **Further develop the hospital bidding system based on the international best practice of the "two-envelope system," which balances quality with reasonable price.**
- Modify the Drug Registration Rules (DRR) by developing a clear definition for "New Drug" and "NCE."
- Optimize the pricing system by using pricing as a tool to reward quality, ensure safety, and encourage innovation.

及医疗器械行业在我国经营模式的特点，删除将口岸价作为限价依据的要求，进一步建立符合医疗器械特性以及行业特性的招标模式。

制药行业

- **进一步完善"双信封"评价模式，确保贯彻质量优先、价格合理的原则，结合国际最佳实践，建立透明、规范的药品招标采购制度。**
- 修改《药品注册管理办法》，在其中明确定义"新药品"和"新型化学成分"。
- 完善药品定价机制，将价格作为奖励优质药物、确保药品安全和鼓励企业创新的工具。

Information and Communications Technology and Cyber Security

Introduction

Greater liberalization of the information communications technology (ICT) sector in China would spur faster development of China's technological capabilities and stimulate innovation, having significant economic impact across many sectors of China's economy. The importance of the ICT sector to China's development is clearly evidenced in its 12th Five-Year Plan, national "informatization" programs, and in the 18th Party Congress Third Plenum Decision released in November 2013. An open, equitable, transparent, and non-discriminatory environment is imperative for the sustainable and substantial development of the ICT sector. In this regard, a number of policy challenges need to be well addressed to foster the development of the ICT sector in China.

The ICT industry serves global networks and provides products and services across borders, interconnected by the Internet and produced via complex supply chains that span the globe. As such, the ICT sector requires close international policy coordination and consensus-building between governments around the world. Furthermore, rapid advances in technology and product innovation present new and evolving policy challenges that can be addressed only by close coordination between industry and regulators. Key areas such as information security, cyber security, and critical information infrastructure protection all rely on cross-border information sharing of threats and broad deployment of leading technologies, global standards, and best practices.

Recent media revelations of information security breaches have dampened cross-border investment and cooperation opportunities in the ICT sector, leading some governments to discriminate against foreign technology in an attempt to protect critical national information infrastructure. The principle of technology neutrality has been seriously challenged due to increasing misunderstanding and mistrust, which is ultimately against the interests of every country.

Other challenges for the ICT industry include:

- Difficulties in managing multi-national regulatory requirements that govern operations and affect the global supply chain;
- Diverging national regulatory or technological requirements and mandates;
- Diverging standards and conformity assessment regimes; and
- Discriminatory testing and certification regimes that require disclosure of commercial secrets.

Such issues create market barriers and limit growth of the ICT sector in China and abroad.

Ongoing Regulatory Concerns

Market Access for Telecom and Internet Services

China has formulated an ambitious informatization macro-strategy that lays the foundation for a national network infrastructure, which seeks to achieve socioeconomic and industrial development objectives by promoting information consumption. Although this strategy could present many business opportunities, the current policy environment restricts foreign direct investment (FDI) in ICT. For instance, in telecommunications, foreign investment in telecom services is capped at 49 percent for basic services and 50 percent for value-added services (VAS). Moreover, high minimum capital requirements and opaque approval standards have effectively prevented foreign investment in China's telecommunications sector.

In spring 2013, the Ministry of Industry and Information Technology (MIIT) released the "New Telecom VAS Pilot Draft Regulations" that allow current telecom license holders to launch services not included in the "Telecommunications Service Business Catalogue" (Catalogue) under a two-year pilot program. At roughly the same time, the MIIT released a revised draft version of its 2003 Catalogue with extended coverage including both traditional and emerging information communication services, such as cloud computing and social media applications. Together, the draft pilot regulations and revised catalog would extend China's restrictions on foreign investment in the telecommunications sector to cover all new and emerging ICT products and services. Not only would this create significant entry barriers to foreign investment in China's ICT sector, it would curtail competition, impinge the introduction of new technologies and services—including cloud computing, and greatly hinder the development of China's ICT sector.

信息通信技术和网络安全

引 言

中国进一步放宽对信息通信技术（ICT）行业的限制将会助推中国技术能力的更快发展并激励创新，对中国经济的众多领域都会产生重大经济影响。信息通信技术产业对中国发展的重要性已经在“十二五”国家“信息化”发展规划以及 2013 年 11 月发布的十八届三中全会的决定中得到了充分体现。为了实现信息通信技术产业的可持续和实质性发展，至关重要的一点是要建立一个公开、公平、透明并且无歧视的环境。在这一点上，中国需要处理好若干政策挑战，以促进信息通信技术产业的发展。

信息通信技术产业服务全球网络，并提供由互联网连接的、通过覆盖全球的复杂供应链生产的跨境产品和服务。因此，信息通信技术产业需要世界各国政府间达成共识并进行密切的国际政策协调。此外，迅猛的技术进步和产品创新提出了新的不断变化的挑战，这些挑战只有通过行业和监管部门的密切协调才能得到解决。信息安全、网络安全和关键信息基础设施保护等关键领域都要依靠跨境信息共享来识别各种安全威胁，同时需要广泛部署各种领先技术、全球标准和最佳实践。

最近媒体对信息安全漏洞的报道抑制了信息通信技术产业的跨境投资与合作，导致一些政府歧视外国技术，以期保护关键的国家信息基础设施。由于越来越多的误解和不信任，技术中立的原则已受到严重挑战，这最终会不利于各国的利益。

信息通信技术产业面临的其它挑战包括：

- 对管辖着运营业务并影响着全球供应链的跨国监管要求进行管理，存在困难；
- 各国监管或技术要求和强制规定不一致；
- 标准和达标评估体制不一致；以及
- 要求披露商业秘密的歧视性检测和认证体制。

上述问题造成了市场障碍并限制了信息通信技术产业在中国及国外的发展。

现存监管问题

电信与互联网服务的市场准入

中国制定了雄心勃勃的信息化宏观战略，为国家网络基础设施奠定了基础，并力图通过促进信息消费实现社会经济和工业发展目标。虽然这一战略可能提供很多商业机会，但是目前的政策环境限制了外国直接投资进入信息通信技术产业。例如，在电信行业，外资对基础服务领域的投资上限为 49%，对增值服务领域为 50%。另外，最低出资要求较高以及不透明的审批标准实际上也阻止了外资进入中国的电信行业。

2013 年春，工业和信息化部（工信部）发布了《新电信增值服务试点条例草案》，允许现有的电信牌照持有人依照一个为期两年的试点项目提供未包含于《电信业务分类目录》（《目录》）中的服务。差不多同一时间，工信部发布了对 2003 年《目录》的修订版草案，扩大了覆盖范围，把云计算和社会媒体应用等传统和新兴的信息通信服务包括在内。试点条例草案和修订版目录一起扩大了中国对外资进入电信行业的限制，覆盖了所有新兴的信息通信技术产品和服务。这不仅会对外商投资中国的信息通信技术产业造成了重大的准入壁垒，而且还会抑制竞争、阻碍新技术和服务（包括云计算）的引入，并且极大地妨碍中国信息通信技术的发展。

中国美国商会建议中国的监管部门放宽外国直接投资进入电信与互联网服务的限制，使外商投资企业（外资企业）在中国的“信息化”规划中发挥更大的作用。

AmCham China recommends Chinese regulators to ease FDI restrictions for telecom and Internet services and give foreign invested enterprises (FIEs) a greater role in China's "informatization" initiatives.

Cloud Computing

As the consumer market demands change in an era of rapid technological development and information consumption, ICT technology companies are faced with greater competitive pressures to migrate services to the cloud and Internet to provide flexibility and cost economization benefits for consumers. There are vast opportunities in this area for global technology companies in China's rapidly growing technology market, but regulatory restrictions for the cloud and Internet VAS limit FIE investment. In addition to the equity cap and investment restrictions noted above, cloud computing technology providers face a number of market entry barriers in China, including:

- Mandatory source code or IP disclosure requirements in testing and certification regimes related to government procurement;
- Prescriptive technology adoption requirements, often in the form of domestic standards that diverge from global standards; and
- Operational restrictions such as privacy measures, data center colocation, and cross-border data flow restrictions.

At the 24th US-China Joint Commission on Commerce and Trade (JCCT), China agreed to provide foreign enterprises fair and equitable participation in the development of its strategic emerging industries (SEIs), including cloud computing. China also made a commitment to the development of SEI-supporting policies compliant with World Trade Organization (WTO) requirements, as well as equitable treatment to qualified domestic and foreign enterprises alike. China also committed to establish relevant mechanisms led by MOFCOM to conduct the compliance review. AmCham China recommends that the Chinese government fulfill these commitments in an expeditious manner, removing investment and other restrictions that prevent foreign investment in cloud computing in China, as well as facilitating China's deployment of cloud computing technologies by adopting global standards and policies that reflect the international and borderless nature of this emerging industry. AmCham China also recommends that information exchange and dialogue between relevant Chinese government agencies and FIEs be conducted regularly under the newly established mechanism.

Information Security and IP-Based Market Access Restrictions

In 2007, the Ministry of Public Security (MPS), the leading body tasked with combating cyber-crime and protecting critical infrastructure, promulgated the Multi-Level Protection Scheme (MLPS). Designed to secure critical Chinese infrastructure information systems, MLPS classifies information networks in China according to their relative impact on national security, social order, and economic interests. Classification levels range from one to five, one being the least critical and five being the most critical. According to the MLPS regulations, IT security products in systems classified at level three or above must contain only domestic IP.

At the 23rd JCCT, China agreed to review and conduct further dialogues with the US on the MLPS requirement for indigenous IP for systems level three and above. In the meantime, Chinese regulators have increased the level of urgency of MLPS compliance for government systems and critical information infrastructures through domestic industry consultations, conferences, national mobilization of MLPS compliance inspections, and special funding for domestic enterprises to develop MLPS level three and above technology applications.

Ultimately, product security is a function of how a product is made, used, and maintained, not where or by whom it was made. But the Chinese government is not the only government taking biased origin-of-IP approaches to information security. The US Congress passed a measure, Section 515 of the Consolidated Appropriations Act of 2014, in its continuing resolution to fund the government, prohibiting the Justice and Commerce Departments and NASA from buying information technology systems that were produced, manufactured, or assembled by an entity that is owned, directed, or subsidized by China, unless federal law enforcement officials give their approval. The measure has met significant opposition and is likely not to be renewed or to be or significantly revised.

Information security is of vital importance to governments and industry alike. FIEs with global experience have the technical expertise and data intelligence to ensure that the most advanced security technologies are developed to maximize security and reliability for information systems. AmCham China recommends Chinese regulators remove domestic IP product requirements for MLPS security levels three and above. AmCham China also recommends that US regulators amend Section 515 of the Consolidated Appropriations Act of 2014 to focus on technical specifications (e.g., manufacture, use, maintenance) and not on by whom or where products are made. Additionally, AmCham China recommends that American and Chinese regulators continue to engage in open and frank dialogue on information security standards and protocols.

Commercial Encryption Regulations

The ICT industry has highly anticipated the release of the revised "Commercial Encryption Regulations" (Regulations), which have been in effect since 1999. Under the Regulations, encryption is classified as a state secret

云计算

在如今这个技术迅猛发展的信息消费时代，消费者市场需求不断发生变化，信息通信技术企业要想转向云计算和互联网服务，向消费者提供低成本高灵活度的产品和服务，面临着更大的竞争压力。在中国快速增长的技术市场，这一领域对于全球技术企业来说存在巨大的机会，但是云计算和互联网增值服务的监管限制举措阻碍了外资企业的投资。除了上述股权上限和投资限制外，云计算技术提供商在中国面临着大量的市场准入壁垒，其中包括：

- 在与政府采购有关的检测和认证体制中强制要求公开源代码或知识产权；
- 经常以有别于全球标准的国内标准规定技术采纳要求；以及
- 运作限制，比如隐私权措施、数据中心托管和跨境数据流限制。

在第 24 次中美商贸联合委员会（商贸联委会）会议上，中国同意允许为外资企业提供公平、公正地参与发展包括云计算在内的战略性新兴产业的待遇。中国还承诺制定符合世界贸易组织（世贸组织）要求的战略性新兴产业扶持政策，同时承诺平等对待合格的内外资企业。中国还承诺由商务部建立相关机制开展合规审查。中国美国商会建议，中国政府尽快履行这些承诺，取消阻止外商在华投资云计算的相关限制，并采用与国际上一致的全球标准和政策来推动云计算技术的部署工作，以反映该新兴产业的无国界性质。中国美国商会还建议中国政府的相关机构和外资企业之间根据这一新建立的机制开展经常性信息交流和对话。

基于信息安全和知识产权的市场准入限制

2007 年，中国公安部（负责打击网络犯罪和保护重要基础设施的主要政府机构）颁布实施了《信息安全等级保护管理办法》（管理办法）。该管理办法旨在确保中国主要基础设施信息系统的安全，它按照该系统对国家安全、社会秩序和经济利益的相对影响来划分中国的信息网络。信息安全等级分为五级，一级表示最不重要，五级表示最重要。按照该管理办法的规定，三级或以上级别的系统必须购买只含国产知识产权的信息技术安全产品。

在第 23 次中美商贸联委会上，中国同意与美国就三级或者以上级别的系统只包含国产知识产权这一安全信息等级保护要求进行讨论和开展进一步对话。同时，中国监管部门通过国内业界咨询、会议、全国范围的安全信息等级保护合规检查、以及提供专项资金供国内企业开发三级及以上技术应用等方式，加快了要求政府系统和重要信息基础设施符合安全等级保护制度的合规步伐。

说到底，产品安全事关一种产品是如何制造、使用和维护的，而无关在哪里制造或由谁制造。但在对待信息技术方面，中国政府并不是唯一持知识产权产地偏见的政府。美国国会最近通过了《2014 年综合拨款法案》，该法案第 515 条继续拨款以禁止美国司法部、商务部和国家航空航天局（NASA）购买由中国拥有、管理或资助的实体所生产、制造或组装的信息技术系统，除非取得联邦执法官员的批准。该措施遭到了极大反对，未来有可能不会沿用，或者有可能做出修改或重大修改。

信息安全对政府和行业同样至关重要。具有全球经验的外资企业拥有技术知识和数据情报，确保开发出最先进的安全技术，为安全系统提供最大限度的安全性和可靠性。中国美国商会建议，中国的监管部门取消信息安全等级保护三级及以上安全系统只购买国产知识产权产品的要求。中国美国商会还建议，美国的监管部门修订《2014 年综合拨款法案》第 515 条，把重点放在技术规格（比如制造、使用、维护等）上，而不是放在产品由谁制造或者在哪里制造上。另外，中国美国商会建议美国和中国的监管部门继续就信息安全标准和协议进行公开、坦诚的对话。

商用密码管理条例

信息通信技术产业非常期望发布《商用密码管理条例》（《条例》）的修订版，该条例自 1999 年起就已生效。根据该《条例》，加密技术属于国家机密，在中国从事加密技术进口、开发和出售的实体必须取得中国国家密码管理局（SEMB）颁发的许可证，包括使用外国加密技术的特别许可证。此外，该条例还要求在华销售的加密产品要接受包括公共源代码在内的检测。

尽管该《条例》的修订工作已进行了多年，但是中国国家密码管理局和国务院法制办公室至今仍未发布该修订版的征求意见稿。

中国美国商会依然认为，市场上广泛销售的加密产品不应纳入管制范围，商用密码不应归类为国家机密，同时，不应要求在华从事商用加密产品的进口、开发或销售的企业必须取得许可证，也不应要求它们接受产品安全检测和评估，以避免披露源代码和专有知识产权的问题。

and entities importing, developing, and selling encryption technology in China must obtain licenses from the State Encryption Management Bureau (SEMB), including a special license to use foreign encryption technology. Furthermore, the regulations also require that foreign encryption products sold in China undergo testing that includes disclosure of source code.

Although the Regulations have been under revision for a number of years, the SEMB and the State Council Legislative Affairs Office have not yet released a revised version for public comment.

AmCham China continues to advocate that widely available commercial encryption products should not be regulated, that commercial encryption not be classified a state secret, and that companies should not be required to obtain a license to import, develop, or sell commercial encryption products in China, nor undergo product security testing and evaluation that requires disclosure of source code and proprietary IP.

Recent Developments

Shanghai Free Trade Zone

China's plans for the Shanghai Free Trade Zone (Shanghai FTZ), as outlined by the State Council's "General Plans for Governing Operations of Shanghai's Pilot Free Trade Zone" (General Plans), includes significant opportunities for market opening in the ICT sector. Of particular interest is the use of a negative list management approach and a greater reliance on market forces to achieve industrial development goals. According to the General Plans and the initial negative list, four sectors in the ICT industry will be more open to foreign investment in the Shanghai FTZ. These are classified under the heading of "Value-added Telecommunication Services: Information Transmission, Software, and Information Technology Services." While many restrictions remain in place with the initial negative list, including in most cases a 50 percent cap on foreign equity ownership, the Shanghai municipal government has indicated that the negative list will be revised on an annual basis, providing opportunities for further opening in the future. As a sign of further progress, the MIIT and Shanghai Municipal government released further opening measures and areas of VAT services on January 6, 2014.

AmCham China welcomes the Chinese government's effort to liberalize the market with the introduction of the Shanghai FTZ, and recommends regulators further lift investment and licensing restrictions for FIE investment in the zone as well as permit ongoing industry dialogue with both domestic and foreign industry to refine the Shanghai FTZ's ICT sector administrative rules and widen the list of industry sectors open to foreign investment. AmCham China also recommends that US regulators hold ongoing dialogue with their Chinese counterparts and provide clarification on US telecom and Internet industry regulations to support China's development and US industry's trade and investment relations in China.

Personal Information Protection

In recent years, personal information protection and privacy has become increasingly important to businesses, consumers, and governments in ensuring personal safety and preventing identity theft in an era of rapid technological development. To this end, AmCham China welcomes the MIIT's publication of the "Telecom and Internet User Personal Information Protection Regulations," which went into effect on September 1, 2013. Guidelines for personal information protection are very important to building consumer confidence and also support operators of telecom and Internet services in data sharing for many legitimate business processes, including preventing and assessing risks, improving products, and managing relationships with customers.

Ultimately, regulators worldwide are aiming to protect privacy without creating heavy procedural burdens for the transfer and use of personal information that would stunt the growth of technology and information-driven industries. In light of the global and borderless nature of the Internet and emerging communication technologies, these efforts require close coordination between governments around the world, as well as with industry leaders developing new products, services, and technologies.

AmCham China recommends Chinese regulators to adopt a light-handed regulatory approach and work closely with industry players to implement flexible personal information protection measures that have minimal impact on global supply chain operations and information security measures.

Information Consumption and China Broadband Strategy

A rapid and reliable broadband network is critical for the deployment of advanced applications such as telemedicine and cloud computing, as well as advanced emergency response systems, efficient and reliable government systems, and cultural industries. In August 2013, the State Council released the "Guidelines to Promote Information Consumption and Boost Domestic Demand" by promoting information consumption and creating investment opportunities in ICT (e.g., broadband and 4G Long-Term Evolution (LTE)). Shortly thereafter, the MIIT released the "Broadband China Strategy and Implementation Plan" to significantly expand China's broadband network coverage by 2020.

AmCham China welcomes the Chinese government's efforts to develop a national broadband network and create a fixed broadband network convergence between cable, Internet, and telecommunications networks. AmCham China recommends Chinese regulators lift investment restrictions in ICT

最新进展

上海自由贸易区

根据国务院《上海自由贸易试验区总体方案》（《总体方案》）所概述，中国为上海自由贸易区（上海自贸区）制定的计划包含有信息通信技术产业市场开放的重大机会。特别引人关注的两点是，使用负面清单管理方法以及更多地借助市场力量来实现产业发展目标。根据《总体方案》和初步负面清单，信息通信技术产业中的四个行业将在上海自贸区内进一步向外资开放。这些行业归类在“增值电信服务：信息传输、软件和信息技术服务业”这一范畴下。尽管在初步负面清单中仍然存在许多限制，包括在大多数情况下的外资持股最高 50% 的限制，但是上海市政府已表示负面清单将每年予以修订，为将来进一步开放提供机会。作为加快开放步伐的一个信号，工信部和上海市政府于 2014 年 1 月 6 日发布了针对增值电信服务的更多开放措施和领域。

中国美国商会欢迎中国政府通过创建上海自贸区放宽市场限制所做的努力，并且建议监管部门进一步取消自贸区内对外资企业的投资和许可限制，并继续与国内外业界开展对话，以完善上海自贸区信息通信技术行业的管理规则和扩大向外国投资开放的行业领域。中国美国商会还建议美国的监管部门与中国的对应部门举行持续对话，阐明美国电信和互联网产业法规，以支持中国的发展和支持美国业界的对华贸易和投资关系。

个人信息保护

面对技术迅猛发展的时代，近年来，无论对于企业、消费者还是政府来说，要想确保个人安全和防止身份盗用，个人信息保护和隐私权保护都变得日益重要。为此，中国美国商会欢迎工信部发布并于 2013 年 9 月 1 日生效的《电信和互联网用户个人信息保护规定》。个人信息保护指导准则对建立消费者信心非常重要，并且也支持电信和互联网服务运营商为多种正当业务过程进行数据分享，包括防止和评估风险、改进产品以及管理与客户的关系等。

从根本上来说，世界范围内的监管机构都努力确保在保护隐私权的同时不给个人信息的转移和使用造成沉重的程序负担， 因为这种程序负担会阻碍技术和信息驱动型产业的发展。鉴于互联网和新兴通信技术全球无国界的性质，这些努力需要世界各国政府开展紧密协作，也要求各国政府与开发新产品、服务和技术的业界领先企业开展协作。

中国美国商会建议，中国监管部门采取灵活的监管方式并与业界参与者紧密合作，以执行灵活的个人信息保护措施，尽可能地减少对全球供应链运作和信息安全措施的影响。

信息消费和中国宽带战略

快速可靠的宽带网络对远程医学和云计算等先进应用以及先进的应急响应系统、高效可靠的政府系统和文化产业至关重要。2013 年 8 月，国务院发布了《关于促进信息消费扩大内需的若干意见》，借以促进信息消费，创造信息通信技术产业（例如宽带和 4G LTE（长期演进技术））的投资机会。之后不久，为了实现到 2020 年显著扩大中国的宽带网络覆盖，工信部出台了《“宽带中国”战略及实施方案》。

中国美国商会对中国发展国家宽带网络以及实现有线电视网、互联网与电信网之间的固定宽带网络融合所做的努力表示欢迎。中国美国商会建议中国监管部门取消对信息通信技术行业的投资限制，允许外资企业在帮助实现中国的信息化和社会经济发展目标方面发挥更大的作用。中国美国商会还建议美国的监管部门与中国的对应部门举行对话，改善美国信息通信技术企业目前的贸易和投资环境，确保有机会参与中国的信息化项目。

电信 4G 牌照

2013 年，信息通信技术产业密切注视着令人高度期待的 4G 牌照发放事宜。2013 年 12 月，在对 TD-LTE 进行大规模的商业试用后，工信部向三大国有电信运营商中国移动、中国电信和中国联通发放了三个 TD-LTE 牌照。接下来有望对 LTE 频分双工（FDD）技术进行试用和许可。

中国美国商会建议中国的监管部门继续与业界的利益相关方密切合作，通过采用电信业的全球标准和最佳实践，支持整个全球供应链的技术连续性和互通性。中国美国商会还鼓励中国参与全球技术计划和标准制定组织。

建 议

对中国政府

- **根据在商贸联委会上的承诺，放宽外资直接进入电信与互联网服务行业的限制，允许外资企业在支持中国的社会经济发展、放宽市场限制**

sectors and permit FIEs to play a greater role in contributing to China's informatization and socioeconomic development objectives. AmCham China also recommends US regulators hold dialogues with their Chinese counterparts to improve the current trade and investment environment for US ICT companies and ensure opportunities to participate in China's informatization initiatives.

Telecommunication 4G Licenses

The ICT industry has closely followed the highly anticipated release of 4G licenses in 2013. The MIIT released three Time-Division LTE (TD-LTE) licenses to state-owned telecom carriers China Mobile, China Telecom, and China Unicom in December 2013, following large-scale commercial TD-LTE trials. LTE Frequency Division Duplex (FDD) technology trials and licensing are expected to follow.

AmCham China recommends Chinese regulators to continue working closely with industry stakeholders to support the continuity and interoperability of technology across the global supply chain with the adoption of global standards and best practices in telecommunications. AmCham China also encourages Chinese participation in global technology initiatives and standard development organizations.

Recommendations

For the Chinese Government:

- **Ease FDI restrictions for telecom and Internet services sectors and permit FIEs a greater role in supporting China's socioeconomic development, market liberalization, and national informatization strategies in accordance with JCCT commitments.**
- Utilize existing global standards and policies that reflect the international and borderless nature of the ICT industry, facilitating China's participation in the global cloud computing and Internet VAS ecosystem for interoperability.
- De-link MLPS security levels three and above with domestic IP product requirements for government procurement as product security is a function of the product's technical specifications (e.g., made, used, maintained) and not based on by whom or where the product was made.
- Adopt a light-handed regulatory approach to privacy and personal information protection and conduct ongoing industry consultations to ensure measures do not adversely affect global supply chain operations and weaken information security measures.
- Work with industry stakeholders to support the continuity and interoperability of technology across the global supply chain with the adoption of globally accepted standards and best practices in telecommunications.

For the US Government:

- **Create opportunities for dialogue with Chinese counterparts and share lessons learned from best industry practices, light-regulatory approach, and competitive market strategies to promote sustained industry innovation and growth.**
- Do not renew Section 515 of the 2014 Consolidated Appropriations Act as product security is a function of the product's technical specifications (e.g., made, used, maintained) and not based on whom or where the product was made.
- Continue open and frank bilateral information security dialogues to clear misconceptions and clarify US encryption regulations and export restrictions that have prevented Chinese investment in the US market.
- Hold dialogues with Chinese counterparts on US data privacy laws and facilitate dialogue with US industry on industry self-regulated principles for user information protection and data security. Hold ongoing dialogues with Chinese counterparts and provide clarification on US telecom and Internet industry regulations to support China and create opportunities for the US ICT industry in China to deepen foreign trade and investment in China.
- Work with China and other global stakeholders to jointly develop a universal set of information protection principles to facilitate industry and supply chain compliance across borders.
- Include and encourage Chinese participation in global technology initiatives and standard development organizations.
- Continue dialogue with Chinese counterparts to adopt industry-accepted and widely-vetted 4G encryption technology for interoperability across borders, facilitate the industry's global operations, and ensure supply chain information security.

For Both Governments:

- **Continue open and frank bilateral cybersecurity dialogues, beginning by rebuilding bilateral trust for industry and socioeconomic growth of both nations.**
- Continue dialogue and work together to ensure the sustainable development of China's cloud industry in accordance to the 24th JCCT commitments.

和国家信息化战略方面发挥更大的作用。

- 利用现有反映信息通信技术产业全球无国界性质的全球标准和政策，促进中国参与全球云计算和互联网增值服务生态系统，实现互通性。
- 将信息安全等级保护制度中安全级别三级及以上系统与政府采购国产知识产权产品的要求脱钩，因为产品安全只事关产品的技术规格（例如：如何制造、使用和维护）而无关由谁制造或在哪里制造。
- 对隐私权和信息保护采取灵活的监管方式并进行持续的行业协商，以确保措施不会对全球供应链运作产生不利影响和削弱信息安全措施。
- 与业界的利益相关方密切合作，通过采用电信业全球公认的标准和最佳实践支持全球供应链的技术连续性和互通性。

对美国政府

- **创造与中国对应部门开展对话的机会并且分享从最佳行业惯例、宽松的监管方式和竞争性市场战略中获得的经验教训，以便促进持续的行业创新和增长。**
- 不再采用《2014 年综合拨款法案》第 515 条的规定，因为产品安全只事关产品的技术规格（例如：如何制造、使用和维护）而无关由谁制造或在哪里制造。
- 继续进行公开、坦诚的信息安全双边对话，以消除误解并阐明阻止中国投资美国市场的美国加密法规和出口限制规定。
- 与中国的对应部门举行有关美国数据隐私法律的对话，并与美国业界就用户信息保护和数据安全的行业自律原则进行对话。与中国的对应部门举行持续对话并且阐明美国的电信和互联网产业法规，以支持中国的发展，并为美国在华信息通信技术企业创造机会，以促进对华贸易和投资。
- 与中国和全球其它利益相关方密切合作，联合制定一套通用的信息安全原则，以促进行业和供应链的跨境合规性。
- 吸纳并鼓励中国参与全球技术计划和标准制定组织。
- 继续与中国的对应部门开展对话，以采用行业公认的、广泛审查的 4G 加密技术实现跨境互通性，为行业的全球运作提供便利，并确保供应链信息安全。

对两国政府

- **从重建双边信任开始，继续进行公开、坦率的互联网安全双边对话，推动中美两国取得产业和社会经济的双增长。**
- 根据在第 24 次商贸联委会上的承诺，继续对话并共同努力确保中国云计算产业的可持续发展。

Insurance

Introduction

China's insurance industry grew modestly in 2013. Total insurance premiums rose to US $284 billion (RMB 1.72 trillion), an increase of 11.2 percent from US $256 billion (RMB 1.55 trillion) in 2012. Primary property and casualty (P&C) premiums increased 17.2 percent to US $107 billion (RMB 648.1 billion), while life insurance premiums rose 7.86 percent to US $176 billion (RMB 1.07 trillion). Health insurance premiums rose to US $18.6 million (RMB 112.35 million), an increase of 30.22 percent from 2012 due to an expansion of the health insurance system. The gains are attributable in part to improvements in the control of solvency capacity, funds utilization and other risks, market order, and service quality. Despite last year's gains, the China Insurance Regulatory Commission (CIRC) cautions that 2014 may be a very difficult year for the industry. Restrictions on ownership, market entry, expansion, and product offerings by foreign-invested insurance companies and ancillary businesses continue to impede innovation and deprive consumers of choice.

Ongoing Regulatory Issues

Market Access

US insurance companies, many of which have decades of experience serving consumers around the world, want to deliver their products to Chinese consumers. But, in order to do so, they need a license to operate in China, after which their foreign-invested insurance company needs to be accorded national treatment and allowed to compete on a level playing field with their domestically invested counterparts. Unfortunately, foreign-invested insurers continue to face delays in issuance of licenses and new product approvals, as well as artificial ownership caps and other barriers. AmCham China continues to favor removal of these barriers in the Shanghai Free Trade Zone (Shanghai FTZ) and nationwide.

Life Insurance

AmCham China continues to be disappointed by the lack of progress on the relaxation of the 50 percent cap on foreign ownership in life insurance. This cap has been in place since China was admitted to the WTO in 2001 and no longer has any justification as domestically invested insurers have grown large and enjoy an aggregate market share of nearly 95 percent. The equity cap is the main disincentive for foreign life insurers to invest in serving the China market. It also results in governance shortcomings in foreign-invested life insurers as, all too often, the domestic investors in such companies are unable or unwilling to make the additional investments needed to grow the business. AmCham China continues to recommend lifting the 50 percent equity cap on foreign ownership on life insurance.

Property Insurance

The "Administrative Measures for the Representative Offices of Foreign Insurance Institutions" in China require that a foreign insurance company be in continuous existence for at least 20 years, and the "Administrative Rules on Foreign-Invested Insurance Companies" require that the company be in continuous existence for at least 30 years and maintain a representative office for at least two years before it can establish an insurance company in China. AmCham China believes that the 20- and 30-year seasoning requirements are unreasonably long, constitute an unfair market entry barrier compared to domestically invested companies (which can be established de novo), and take no account of a company's reorganization even if the core business remained intact. Moreover, several of our property insurance members report lengthy and indefinite delays, extending several years, in obtaining licenses to operate an insurance company for unclear reasons even after satisfying all seasoning requirements. AmCham China recommends that seasoning requirements be shortened, corporate reorganizations be taken into full account when determining continuity, and, after seasoning requirements have been satisfied, the issuance of licenses not be subject to additional delays without adequate justification.

Insurance Asset Management Companies

AmCham China applauds the increased issuance of licenses for insurance asset management companies (IAMC) in the last three years. However, CIRC continues to regulate this industry on the basis of the "Interim Provisions on the Regulation of IAMCs" which require that IAMCs have at least two founding shareholders, even though the Company Law, as amended in 2005, effectively requires only

保 险

引 言

2013 年，中国保险行业有小幅增长。总保费收入增至 2840 亿美元（1.72 万亿元人民币），较 2012 年的 2560 亿美元（1.55 万亿元人民币）增长了 11.2%。财产险和意外险（"P&C"）保费收入增长 17.2%，达到 1070 亿美元（6481 亿元人民币），人寿保险保费收入增长 7.86%，达到 1760 亿美元（1.07 万亿元人民币）。由于健康保险体系的扩大，健康保险保费收入与 2012 年相比增至 1860 万美元（1.1235 亿元人民币），增幅达 30.22%。保费增长的部分原因在于对偿付能力控制、资金运用、其他风险、市场秩序和服务质量方面所做出的改善。尽管去年实现了增长，中国保险监督管理委员会（保监会）告诫称，2014 年对于保险业来说，可能是非常艰难的一年。外资保险公司在所有权、市场准入、业务拓展、产品经营及配套业务方面所面临的限制继续阻碍行业创新，同时也剥夺了消费者选择的权利。

现存监管问题

市场准入

美国的保险公司希望将自己的产品提供给中国的消费者，它们当中很多企业在服务全球消费者方面已经拥有几十年的丰富经验。然而要实现这一愿望，美国保险公司需要先取得在华经营许可，之后还需获得平等的国民待遇以及与中资保险公司在同一舞台进行公平竞争的机会。但遗憾的是，外资保险公司仍面临着许可发放和新产品核准拖延、人为的所有权限制及其它障碍。中国美国商会一如既往地支持在上海自由贸易区（上海自贸区）和全国范围内取消这些障碍。

人寿保险

人寿保险公司至今仍受 50% 的外资持股比例限制且几乎没有进展，中国美国商会对此感到失望。这一限制自 2001 年中国入世之日起便已存在，但是随着中资人寿保险公司已经发展壮大，占据的市场份额超过 95%，这种限制已经没有道理。对于打算在中国进行投资以更好服务中国市场的外国人寿保险公司来说，此持股上限规定是一个重大阻碍。此外，该上限规定还造成外资人寿保险公司在治理方面出现缺陷，因为此类公司中的国内投资人往往不能或不愿为业务增长投入所需的额外资金。中国美国商会继续呼吁取消该 50% 的外资人寿保险持股比例限制。

财产保险

《外国保险机构驻华代表机构管理办法》要求外国保险公司持续经营至少 20 年时间才能在中国设立代表机构，《外资保险公司管理条例》则要求外国保险公司持续经营至少 30 年时间并且要在中国设立代表机构至少 2 年才能在中国设立保险公司。中国美国商会认为这种 20 年和 30 年的经营年限要求（即使核心业务保持不变且不考虑公司重组的情况）太长且不够合理，与内资公司（可以是新设）相比，构成了一种不公平的市场准入壁垒。另外，几个财产保险业会员公司报告称即使满足了所有的经营要求，获取保险公司营业许可时也会因不明原因遇到漫长且无止境地拖延，有时长达几年时间。中国美国商会建议应缩短这种经营年限要求，并且在确定持续经营年限时充分考虑公司重组的情况；同时，在满足经营年限要求的情况下没有充分理由不得额外拖延营业许可发放。

保险资产管理公司

过去三年中，保险资产管理公司许可的发放数量有所增加，中国美国商会对此表示肯定。但是保监会依然根据《保险资产管理公司管理暂行规定》来对该行业实施监管，要求此类公司至少有两名发起人股东，而 2005 年修订后的《公司法》则只要求一名发起人股东。换句话说，所有保险公司必须与第二家公司合资来管理其资金。这对投资人寿保险公司的外商来说影响非常大，即便假定他们能够以可接受的条款找到另一个发起人股东，他们却在自己的保

one founding shareholder. In other words, all insurance companies are required to partner with a second company to manage their own funds. This has a particularly serious impact on foreign investors in life insurance companies who are forced to become minority shareholders in their own IAMCs, even assuming that another founding shareholder can be enlisted on acceptable terms.

Health Insurance

AmCham China welcomes CIRC's September 29, 2013 decision to support the establishment of specialized foreign-invested health insurance institutions in the Shanghai FTZ. Several US-invested specialist health insurers with many years of experience, who wish to help expand China's health insurance market, remain on the sidelines while waiting years for a license to be issued, constituting de facto barriers to market entry. We hope that applications to approve foreign-invested health insurance institutions in the Shanghai FTZ will be evaluated on a non-discriminatory basis, allowing US-invested health insurers to bring their expertise to China. We further hope that the Shanghai FTZ approval procedure will soon be extended nationwide.

Enterprise Annuities and Individual Tax-Deferred Pension Pilot Program

Although a number of US and other foreign-invested life and property insurers have received licenses to operate in China, specialist pension insurers inexplicably continue to be denied market entry. Despite the expansion of the scope of investment for enterprise annuity funds effective May 1, 2013, the Ministry of Human Resources and Social Security (MOHRSS) has yet to issue any enterprise annuities licenses to foreign-invested insurers. As a result, many internationally known financial institutions are excluded from the market and Chinese consumers are denied access to the products and expertise of these firms. We urge MOHRSS to eliminate market entry barriers based on the nationality of the shareholder by issuing enterprise annuities to foreign-invested insurers.

To develop China's pension system and encourage people to buy commercial pensions, Shanghai has been preparing an individual tax-deferred pension insurance pilot program since 2009, but the launch has been postponed since the preferential tax policies involve the interests of many government bodies. We hope this pilot program will be launched as soon as possible, and that foreign-invested insurers will be allowed to participate in the program in the same manner as domestically invested insurers.

Sales and Service Channels

Branching

AmCham China welcomes CIRC's March 15, 2013 "Measures on the Administration of Market Access by Branches and Sub-branches of Insurance Companies" which simplified the processing of applications and formally leveled the playing field between foreign-invested and domestically invested insurers with respect to branch as well as sub-branch approvals. AmCham China remains concerned, however, that foreign-invested insurers are still denied approval of concurrent branch applications. AmCham China urges CIRC to accept, review, and approve concurrent branch applications of qualified foreign-invested insurers, many of which were previously effectively barred from submitting multiple concurrent branch applications.

Sales Agent Certification

Under CIRC's 2013 "Measures for the Supervision and Administration of Insurance Sales Personnel" and follow-on regulations issued by local insurance regulatory bureaus, a two certificate (A and B) qualification system has been established limiting many sales personnel to provincial rather than nationwide markets. AmCham China believes that this system is unnecessarily complex and has a particularly adverse impact on telemarketing.

AmCham China also believes that sales agents should be allowed to register as independent contractors or agency employees rather than as insurance company employees which is unduly costly.

Bancassurance

Since a regulatory change in 2011, sales through the bancassurance channel have declined significantly and are a significant cause of the overall slowdown in premium growth. Since insurance sales personnel were banned from selling insurance products in bank branches, bank sales staff became the main force for selling insurance products through bancassurance. Bank sales staff have limited experience in selling insurance products, however, particularly in medium- and small-sized bank branches which are under great pressure to promote savings and loan products while insurance products are not prioritized. These factors have led to the decline in bancassurance sales. AmCham China urges qualified insurance companies to be allowed to station sales representatives, who will be clearly identified as insurance company personnel, in bank offices to assist with consumer inquiries.

The "Guidelines on the Supervision and Administration of Insurance Business Conducted by Commercial Banks as Agents," jointly promulgated by CIRC and the China Banking Regulatory Commission (CBRC) in March 2011, allowed insurers and banks to decide the number of insurance partners in accordance with their own conditions, not requiring the cap of three insurers per bank branch which discriminated against medium- and small-sized insurance companies. But the limit has yet to be expressly removed and has in fact been reiterated in the January 2014 Notice on Further Regulating the Sales Activity of Commercial

险资产管理公司中被迫成为小股东。

健康保险

对于保监会 2013 年 9 月 29 日关于支持在上海自由贸易区建立外资专业保险机构的决定，中国美国商会表示欢迎。一些专业的美资健康保险公司希望帮助拓展中国的健康保险市场，虽然他们拥有多年从业经验，但却一直徘徊在中国市场的大门之外，始终未获得许可的发放，这构成了事实上的市场准入壁垒。我们希望对上海自贸区外资健康保险机构的审批能基于无差别待遇进行评估，允许美资健康保险公司把他们的技术专长带到中国。我们也希望上海自贸区的审批程序能够很快在全国推广。

企业年金和个税递延型养老保险试点项目

虽然美国和其它国家的一些外资人寿保险及财产险公司已经拿到了在华经营许可，但外资专业养老保险公司仍不明原因地继续被排斥在中国市场之外。尽管中国人力资源和社会保障部（人保部）自 2013 年 5 月 1 日起扩大了企业年金的投资范围，但还没有向外资保险公司发放任何企业年金经营许可。结果，很多国际知名的金融机构均无缘于中国市场，中国消费者也因此无法享受到这些公司提供的产品和专业服务。我们呼吁人保部通过向外资保险公司发放企业年金保险许可，消除基于股东国籍的市场准入壁垒。

为了发展中国的养老保险制度，鼓励人们购买商业养老保险，自 2009 年起上海就一直在准备个税递延型养老保险试点项目，但因为税收优惠政策涉及到许多政府部门的利益，试点项目启动一再推迟。我们希望该试点项目尽快启动，并且对外资保险公司与内资保险公司一视同仁，允许其参与该试点项目。

销售和服务渠道

设立分支机构

我们支持保监会于 2013 年 3 月 15 日颁发的《保险公司分支机构市场准入管理办法》，该办法就分支机构的审批简化了申请过程并且正式给予了外资保险公司与内资保险公司同等的待遇。但是，中国美国商会仍然担心外资保险公司同时设立多个分支机构的申请会被拒绝。中国美国商会呼吁保监会能够受理、审查和批准合格的外资保险公司同时设立多个分支机构的申请，实际上这些保险公司中有许多曾经被禁止提交同时设立多个分支机构的申请。

销售代理认证

根据保监会 2013 年颁布的《保险销售从业人员监管办法》以及随后由地方保险监督管理局发布的条例，双证（A 证和 B 证）资格制度已经建立，此制度将众多销售从业人员限制在省级市场而不是全国范围的市场。中国美国商会认为这一制度存在不必要的复杂程序，且尤其不利于电话营销。

中国美国商会还认为应该允许销售代理注册为独立承包商或代理商员工，而不是保险公司员工，因为后者造成不必要的高成本。

银行保险业

自监管规定于 2011 年发生改变以来，通过银行保险渠道实现的销售量呈显著下降趋势，成为保费收入增长总体放缓的一个主要原因。由于禁止保险销售人员在银行里推销保险产品，因此银行销售人员就成为银行推销保险产品的主力。但是银行销售人员在推销保险产品方面经验有限，尤其是在中小分行，推广存贷产品的压力很大，导致他们对保险产品并不重视。这些因素造成了银行保险销售的下降。中国美国商会呼吁允许合格的保险公司在银行分理处驻留自己的销售代表（佩戴标注清楚的保险公司人员身份标牌），协助处理客户的咨询。

保监会和中国银行业监督管理委员会（银监会）于 2011 年 3 月联合发布的《商业银行代理保险业务监管指引》允许保险公司和银行按照自身情况决定其保险业务合作对象的数量，并未要求其遵循每家银行网点最多只可与三家保险公司建立合作关系这一构成对中小保险公司歧视的限制。但是该比例限制并未被明确取消，实际上在 2014 年 1 月发布的《关于进一步规范银行代理保险业务的通知》中却被再次强调。我们促请银监会和保监会明令取消每家银行网点最多只可与三家保险公司合作这一限制，为消费者提供更多选择。

保险资金的投资

中国美国商会赞赏继续放宽对投资工具的限制，这一举措允许开放新的投资渠道和市场，尤其是资本市场和房地产市场，并且为保险资金提供了必要的风险对冲工具。但是，中国美国商会呼吁在确定保险资金在资本市场和房地产市场的投资资格时应把保险公司母公司的规模和投资经验考虑在内。

Banks as Insurance Agents. We urge the CBRC and CIRC to expressly remove the cap of three insurers per bank branch in the interest of enhancing consumer choice.

Investment in Insurance Funds

AmCham China applauds the continued loosening of restrictions on investment vehicles that have opened new investment channels and markets, in particular capital and real estate markets, and provided necessary risk-hedging tools for insurance capital. However, AmCham China urges that the size and investment experience of the corporate parents of insurance companies be taken into account when determining qualifications to invest insurance funds in capital and real estate markets, among others.

Pension Insurance

AmCham China welcomes Caishui [2013] No. 103 (Circular 103), jointly issued on December 11, 2013 by the Ministry of Finance, MOHRSS, and the State Administration of Taxation. Circular 103 defers individual income tax for enterprise and occupational annuities as of January 1, 2014. AmCham China believes that tax-deferred annuities are an important means for people to provide financial security for themselves and their families after retirement and under other circumstances that affect their ability to work. The United States has a 40-year history of implementing tax-deferred annuities and US insurers have extensive experience operating such programs. Our member companies are ready and willing to apply their expertise and experience in China in accordance with Chinese law and regulations.

Products

Property Insurance

Although property insurance companies are authorized to provide master policies, the prohibition on offering group-wide master policies is very inefficient, forcing insurers to offer separate policies to a group company's subsidiaries wherever in China they may be located. This prohibition has a particularly deleterious impact on foreign-invested insurers like AmCham China members because their branch networks are smaller than domestically invested insurers, in part because regulations in effect prior to 2013 subjected foreign-invested insurers to more onerous branch licensing procedures. In addition, minimum annual premium and minimum investment requirements limit the ability of insurers to offer master policies to smaller clients.

Reinsurance

CIRC released the "Notice on Certain Issues Concerning Reinsurance Transactions Conducted by Foreign-Invested Insurance Companies with their Affiliates" (draft for solicitation of comments) in late December 2012. AmCham China is pleased that this Notice has yet to be finalized and hopes that it will be withdrawn. AmCham China continues to believe that the proposed restrictions, including pre-approval by CIRC, on related party reinsurance transactions unfairly discriminate against foreign-invested insurers as domestically invested insurers do not face a comparable restriction under the "Regulations on the Administration of Reinsurance Business (2010)." Moreover, AmCham China is not aware of any basis for the restrictions proposed in the Draft Notice under the international best supervision practices promoted by the International Association of Insurance Supervisors (IAIS). To the extent that any restriction is necessary, there is no need for the multiple redundant and unnecessary qualifications on related parties proposed in the Draft Notice. A single credit rating threshold should suffice.

Brokerages

AmCham China was disappointed to see that insurance brokerages continue to be classified as a restricted industry in the 2011 edition of the "Guiding Catalogue on Foreign Investment in Industry," a restriction that has no apparent prudential justification. Foreign-invested insurance brokerages:

❶ Are only allowed to broker large-scale commercial risks in the commercial P&C market. Large-scale commercial risks include annual premiums exceeding US $63,000 (RMB 400,000) and investment exceeding US $23.6 million (RMB 150 million), which constitute only about 20 percent of the market;

❷ Are excluded from the automobile insurance market, with the exception of some enterprise motor insurance; and

❸ Are only allowed to broker group life and accident insurance in the personal insurance field, excluding them from the individual insurance market.

The result is a drastic limitation on the scope of business of foreign-invested insurance brokerages to the detriment of consumers. The Chinese government has stated that a growth model centering on small- and medium-sized enterprises (SMEs) and private consumption is essential for China to develop a more sustainable economy. However, because foreign intermediaries are barred from servicing SMEs and private consumers, they cannot bring their global experience to support the growth of these sectors. The license restriction also prevents foreign intermediaries from contributing full value to product innovation and the development of professional insurance distribution in China. AmCham China believes that full participation by foreign-invested brokerages, like other insurance institutions, is essential to the development of an international financial center and hopes that the restriction will be removed in the Shanghai FTZ.

养老保险

中国美国商会欢迎由财政部、人力资源和社会保障部以及国家税务总局于 2013 年 12 月 11 日联合发布的财税［2013］103 号（103 号《通知》）。根据 103 号《通知》，自 2014 年 1 月 1 日起企业年金和职业年金的个人所得税递延缴纳。中国美国商会认为，个税递延年金是人们在退休后以及在自己的工作能力受到影响的情况下为自己和家人提供财务保障的一个重要手段。美国实施个税递延年金已有 40 年历史，而且美国保险公司拥有运作此类项目的丰富经验。我们的会员企业已经准备好并且乐意根据中国的法律法规将自己的技术专长和经验应用于中国。

产 品

财产保险

虽然财产保险公司被批准提供总保险单，但是禁止提供集团性的总保险单则导致效率低下，因为这迫使保险公司必须向集团公司的子公司分别提供保险单，无论这些子公司在中国位于何地。此规定对于包括中国美国商会会员企业在内的外资保险公司具有十分不利的影响， 因为 2013 年以前有效的法规使外资保险公司必须接受更繁琐的分支机构许可批准程序，从而导致其分支机构网络小于内资保险公司。另外，年保险费最低要求和最低投资要求也限制了保险公司向较小客户提供总保险单的能力。

再保险

保监会于 2012 年 12 月发布了《外资保险公司与其关联企业从事再保险交易若干问题的通知》（征求意见稿）。中国美国商会对此通知尚未出台表示欣慰，并希望最终将其收回。中国美国商会仍然认为对关联方再保险交易提出的限制（包括由保监会预审）是对外资保险公司的不公平待遇，因为《再保险业务管理规定》（2010 年）对内资保险公司并没有类似限制。此外，中国美国商会不清楚根据国际保险监督官协会所推广的最佳监督方法，该通知中提出的限制依据何在。即便确实需要有所限制，也没有必要在上述通知中就关联方规定多种多余和不必要的资格条件，一个信用评级门槛就足矣。

保险经纪

在 2011 年的《外商投资产业指导目录》中，保险经纪公司仍被划定为限制性行业，中国美国商会对此表示失望，因为这一限制并无明确依据。对外资保险经纪公司的限制包括：

❶ 在商业财产和意外险市场只能从事大型商业风险的保险经纪服务。大型商业风险包括的年保费超过 63,000 美元（40 万元人民币），投资额超过 2,360 万美元（1.5 亿元人民币），而此类业务总量只占总市场份额的 20%；

❷ 无缘机动车保险市场，仅能承保某些企业摩托车保险；

❸ 在人身保险方面，只能为团体寿险或意外险提供经纪服务，而无缘个人寿险市场。

这就使外资保险经纪公司的业务范围严重受限，消费者的利益也因此受到损。中国政府提出，以中小企业和私人消费为中心的增长模式对于中国发展更加可持续的经济而言至关重要。但是，外国中介机构被禁止向中小企业和私人消费者提供服务，导致无法利用其全球性经验来支持这些行业的发展。营业许可限制还使得外国中介机构无法对中国的产品创新和专业保险分销的发展贡献全部价值。中国美国商会认为外资保险经纪公司是否能够像其它保险机构一样全面运营对国际金融中心的发展来说至关重要，因此希望上海自贸区能够取消这一限制。

税收优惠政策

养老保险

103 号《通知》首次批准了企业年金和职业年金的个人所得税递延缴纳。中国美国商会支持对退休帐户的税收递延待遇并希望提高此类资金的上限规定以减轻政府和退休人员家庭赡养老龄人口的负担，同时也增加可用于投资的储蓄。

健康保险

中国政府发布《深化医药卫生体制改革的意见》后通过加强健康保险扩大了医保范围，中国美国商会对此表示欢迎。该方案承认商业健康保险是社会基本医保的补充，并肯定了其重要性。

税收优惠政策是鼓励人们购买商业健康保险，特别是购买赔偿责任险的重要手段。美国专业健康保险公司在这一业务方面经验丰富，他们希望得到在华经营许可，为该行业的发展助力。

Tax Incentives

Pension Insurance

Circular 103 authorizes individual income tax-deferral for enterprise and occupational annuities for the first time. AmCham China supports tax-deferred treatment for retirement accounts and hopes that the ceiling on such contributions will be raised to further alleviate the burden of supporting an aging population currently borne by the government and retirees' families, while increasing savings for investment.

Health Insurance

AmCham China welcomes the government's expansion of healthcare by focusing on health insurance following the issuing of the National Healthcare Reform Guidelines. These guidelines recognize the importance of commercial health insurance as a supplement to the government-supported basic health insurance system.

Tax incentives are an important stimulus to the purchase of commercial health insurance, especially indemnity products. US specialist health insurers have rich experience in this field and are eager to be licensed so that they can assist its development.

Advisory, Remuneration, and Regulatory and Compliance Costs

Advisory

A number of local governments in China have established international business advisory councils to provide a resource for seeking advice from international business leaders. AmCham China recommends that CIRC follow suit in order to access the knowledge and experience of international industry leaders to promote the development of the insurance industry in China on a sound and prudential basis.

Remuneration

CIRC issued the "Rules and Guidelines for the Management of Remuneration of Insurance Companies" in July 2012 to tighten regulation of insurance company governance, as well as to improve incentive and restraint mechanisms. However, rigid remuneration standards present obstacles in the competition for talent. The one size fits all model also unfairly handicaps foreign-invested insurers because the remuneration structure of foreign insurers typically differs from that of domestic insurers. AmCham China recommends that CIRC limit the application of the Guidelines with respect to foreign-invested insurers to a "for reference" status only, which we understand has been the practice of the CBRC with respect to foreign-invested banks.

Regulatory and Compliance Costs

Our members, who have extensive international experience, find that the costs of operating in China are very high compared to most other markets. Administrative and compliance burdens are particularly onerous, including information technology (IT) requirements and rules regarding claims, finance, and compliance personnel for new branches. AmCham China urges CIRC to simplify and take measures to reduce costs wherever possible.

Recent Developments

There were several significant regulatory accomplishments in 2013. Among the most notable were the following:

- Promulgation of the "Measures on the Administration of Market Access by Branches and Sub-branches of Insurance Companies on Branching;"
- Issuance of Circular 103 on tax-deferral for enterprise and occupational annuities;
- Further liberalization of investments using insurance funds; and
- The Decision of the Third Plenum on health insurance.

We remain disappointed, however, in the remaining barriers to market entry and expansion that US- and other foreign-invested insurers face. Domestic insurers and insurance brokerages, particularly larger companies, continue to enjoy more regulatory favor with respect to ownership structure and access to capital, allowing them to benefit at the expense of foreign-invested insurers and to the disadvantage of consumers.

Consequently, foreign-invested insurers have generally lost market share in China despite a modest uptick last year. As of year-end 2013, the market share of foreign-invested insurers stood at a mere 3.92 percent, down from six percent in 2004 and up only slightly from 3.49 percent in 2012. The decline in personal insurance has been particularly sharp, falling from 8.9 percent in 2005 to 4.8 percent in 2012 and 5.56 percent in 2013. Even the largest foreign-invested life insurer's market share is less than one percent. The market share of foreign-invested P&C companies, who were previously excluded from the motor third party liability insurance market, continues to barely register at 1.28 percent in 2013. Foreign-invested health and pension insurers continue to be excluded from the market altogether. Meanwhile, foreign-invested insurance brokerages are restricted to large-scale commercial risks and group life and accident insurance, and are essentially excluded from the automobile insurance market.

顾问委员会、薪酬标准以及监管与合规成本

顾问委员会

中国一些地方政府成立了国际商务顾问委员会，为获得国际商界领袖的咨询建议提供了资源。中国美国商会建议保监会也这样做，以获得国际业界领袖的知识和经验，以完善和审慎的方式推进中国保险行业的发展。

薪酬标准

保监会于 2012 年 7 月发布了《保险公司薪酬管理规范指引》，以加强对保险公司治理的监管，并改善激励和约束机制。但是，僵化的薪酬标准阻碍了人才吸引方面的竞争。同时，由于外国保险公司的薪酬结构通常都不同于国内保险公司，这种一刀切模式还造成了对外资保险公司的不公平。中国美国商会建议，针对该指引对外资保险公司的适用性，保监会将该指引作为仅“供参考”。据我们了解，银监会对外资银行即采取此做法。

监管与合规成本

中国美国商会的会员具有广泛的国际经验，他们发现在中国的经营成本与其它大多数市场相比非常之高，行政与合规负担尤为沉重，包括信息技术（IT）要求和对新分支机构的理赔、财务与合规人员的相关规定。中国美国商会敦促保监会通过简化程序，采用措施来尽可能地减少成本费用。

最新进展

2013 年中国取得了多项重大监管成就，其中最重要的有以下几点：

- 颁布了《保险公司分支机构市场准入管理办法》；
- 发布了关于企业年金和职业年金递延缴纳的 103 号《通知》；
- 进一步放宽了保险资金的投资规定；以及
- “三中全会”有关健康保险的决定。

然而，美国和其他外资保险公司在市场准入和业务拓展方面仍受到制约，我们对此感到失望。中资保险公司和保险经纪公司，特别是规模较大的公司，在所有权结构和融资方面继续享有政策优势并因此受益，但同时却损害了外资保险公司和消费者的利益。

在这样的政策环境下，尽管去年中国的保险市场有小幅增长，但外资保险公司的中国市场份额却普遍出现了下滑。截至 2013 年底，外资保险公司的市场份额仅为 3.92%，比 2004 年的 6% 大幅降低，比 2012 年的 3.49% 仅略有回升。个人保险业务的下降尤为明显，从 2005 年的 8.9% 跌至 2012 年的 4.8% 和 2013 年的 5.56%。即便是最大的外资人寿保险公司所占市场份额也不到 1%。此前一直无缘交强险市场的外资财产和意外险公司，其 2013 年的市场份额仅为 1.28%。外资健康和养老保险公司仍无法进入中国市场。与此同时，外资保险经纪公司目前从事大型商业风险和团体寿险、意外险的经纪服务受到限制，而且完全无缘机动车保险市场。

建 议

销售和服务渠道

- **在审批分支机构设立申请时，对外资保险公司和中资保险公司的申请在审理和审批时间上一视同仁。**
- 在商业银行网点销售保险产品方面，明确取消对合作保险公司的数量限制。

许 可

- 通过为外资保险公司发放许可来提升养老金和健康保险行业的竞争。
- 取消对外资保险中介机构业务范围的限制，允许他们向中小企业和个人消费者提供服务，在保险市场的所有细分领域贡献能力。

所有权

- 放开人寿保险公司外资方持股比例不得超过 50% 的限制。
- 与《公司法》保持一致，允许单一创始股东建立保险资产管理公司。

产 品

- 允许外资保险经纪公司为任何规模的商业风险、机动车保险、个人人寿和意外保险提供经纪服务，藉此享有和中资保险经纪公司同样的待遇。

Recommendations

Sales and Service Channels

- **Put into practice the review and approval of branch applications by foreign-invested insurers in the same manner and at the same pace as applications by domestically invested insurers.**
- Expressly remove all limits on the number of insurance companies whose products may be sold by commercial bank branches.

Licenses

- Increase competition in pension and health insurance by licensing foreign-invested applicants.
- Remove restrictions on the scope of business of foreign-invested insurance intermediaries to allow service to SMEs and individual consumers, so that they can fully contribute their capabilities to clients in all segments of the insurance market.

Ownership

- Lift the 50 percent cap on foreign ownership of life insurers.
- Allow insurance asset management companies to be established by a single founding shareholder in accordance with the Company Law.

Products

- Allow foreign-invested insurance brokerages to broker commercial risks regardless of scale, automobile insurance, and individual life and accident insurance to the same extent as domestically invested insurance brokerages.

Tax Incentives

- Expand tax incentives for tax-deferred annuities.

Structural

- Establish a separate department in CIRC to regulate health insurance at the same level as the life insurance and property insurance departments.
- Create an international advisory council in CIRC to provide high-level advice from international industry leaders.
- Adopt remuneration standards that allow flexibility to insurance companies to reward performance while controlling risk.

税收优惠政策

- 扩大个税递延年金税收优惠政策。

结构性改革

- 保监会设立一个独立部门来管理健康保险，该部门与人寿保险监管部和财产保险监管部属于平级部门。
- 保监会设立国际顾问委员会，获取国际业界领袖提供的高水平咨询建议。
- 通过薪酬标准，允许保险公司自行制定业绩奖励政策并控制风险。
- 放宽对保险公司投资无担保债券的限制。

Legal Services

Introduction

In mainland China, non-PRC law firms face a wide range of market access constraints, especially: ❶ an unnecessarily difficult, delayed, and unpredictable registration process for the establishment of offices; ❷ the inability to employ PRC-qualified lawyers so that they can provide comprehensive legal services to their clients; ❸ prohibitions against participation in important meetings at government departments involving their clients; and ❹discriminatory taxation.

These constraints impose a significant, measurable impact on foreign firms' ability to operate in China. In 2013, AmCham China, in cooperation with the European Chamber of Commerce in China and the American Chamber of Commerce in Shanghai, surveyed mainland China offices of member non-PRC law firms that are registered with the Ministry of Justice (MOJ) to practice in China. In that survey, respondents cited regulatory constraints and discriminatory taxation among the top three challenges impacting their practices. The most often cited regulatory constraint was the suspension of the licenses of PRC-qualified lawyers while employed by non-PRC law firms.

Quite simply, these policies make it very difficult for foreign firms to serve their clients. Despite the Chinese economy's comparatively large size and good performance, the vast majority of respondents reported that, in 2012, five percent or less of their firm's global revenue was attributable to mainland China business. A large number of respondents also noted that revenue either decreased or was much lower than their firm's operations elsewhere; with the majority noting that profits per equity partner were below the firm-wide norm. Given this scenario, the two most important regulatory reforms requested by survey respondents were: ❶ allowing PRC-qualified lawyers to retain their licenses while employed by foreign firms, and ❷ providing foreign law firms equal tax treatment with their PRC counterparts. AmCham China urges the adoption of such reforms.

The Chinese government's continued restrictions in this sector significantly limit the options available to mainland Chinese and foreign companies seeking sophisticated legal advice and counsel and deprive PRC-qualified lawyers of the opportunity to work for, receive world-class training in, and become principals of foreign law firms. Moreover, the current restrictions are inconsistent with international best practices and result in the unwillingness of many foreign investors to use Chinese law as the governing law of contracts, or to submit themselves to the jurisdiction of Chinese courts or arbitration tribunals for dispute resolution.

These restrictions also conflict with the general principle of reciprocity, given that most of China's major trading partners allow PRC law firms to establish full service offices in their jurisdictions.

Ongoing Regulatory Issues

Burdensome Representative Office Registration

Foreign law firms face burdensome regulatory approval procedures not applicable to PRC law firms. When applying to establish a representative office, a foreign law firm must demonstrate "a need to establish a representative office to start legal service operations." Authorities evaluate such need based in part on the "social and economic development conditions" of the proposed location, the "development needs" for legal services in such location, and other similarly vague considerations that are potentially inconsistent with China's WTO commitment to eliminate geographic and quantitative limitations on the number of representative offices that foreign law firms can establish in mainland China.

These vague, undefined conditions unnecessarily and unreasonably lengthen the approval process to up to nine months. Moreover, the length of the approval process is unpredictable and often subject to protracted delays. The application process for establishing an office can and should be substantially streamlined.

Furthermore, a foreign law firm must wait three years after establishing a representative office before opening an additional office, thus limiting their growth. Foreign law firms have reported substantial difficulties and delays in the processing of these applications as well. This restriction impairs the ability of foreign law firms to serve clients in interior provinces, which are key targets of the 12th Five-Year Plan for economic development.

法律服务

引 言

在中国内地，非国内注册成立的律师事务所面临着诸多市场准入制约，尤其是：❶ 成立办事处所需的注册手续过于繁杂，过程漫长而且批准结果难以预料；❷ 无法雇用中国执业律师来为客户提供全方位法律服务；❸ 不允许出席客户与政府部门之间的重要会议；以及 ❹ 差别性的税收政策。

这些限制对外国律师事务所在华运营造成了重大影响。2013 年，中国美国商会与欧盟商会以及上海美国商会携手对在中国司法部登记、于中国内地提供法律服务的非中国律所会员开展了相关调查。该调查中，根据受访律所反馈的信息，监管限制和差别性税收制度占据了影响业务经营的三大挑战中的两大挑战。其中反映最强烈的监管限制是中国执业律师在受雇于非中国律所期间其执业资格自动中止的规定。

显而易见，这些政策导致外国律师事务所在为客户提供法律服务时面临重重困难。尽管中国经济总量和增长速度都较为突出，但绝大多数受访律所表示，2012 年他们在中国内地的业务收入占其全球收入的比例不会超过 5%。相当多的受访律所还表示他们在中国内地的业务收入要么减少，要么远远低于其他国家和地区分所的业务收入；大多数受访律所都表示，平均到每位权益合伙人的利润低于全所的平均水平。鉴于此，受访律所最希望在如下两个监管领域进行改革：❶ 允许中国执业律师受雇于外国律师事务所期间保持其执业资格，❷ 对外国律师事务所实行与中国律师事务所同等的税收标准。中国美国商会促请相关部门采纳上述改革措施。

中国政府对外国律师事务所的上述持续限制不仅严重阻碍了中国内地和外国公司获得高度专业化的法律意见和咨询服务的机会，更剥夺了中国执业律师在外国律师事务所工作、接受全球顶级培训并获得升迁的机会。除此之外，现有的限制也不符合国际最佳实践，导致许多外国投资者不愿意使用中国法作为合同的适用法，也不愿意选择中国法庭或仲裁庭处理解决争端。

以上限制还违反了互惠原则，因为绝大多数的中国主要贸易伙伴都允许中国律师事务所在其本国建立具备提供全面服务资质的分所。

现存监管问题

代表处登记程序繁琐

外国律师事务所面临中资律所无需适用的、繁琐的监管审批程序。在申请设立代表处时，外国律师事务所必须提交证明“需要设立代表处开展法律服务业务”的文件。而审批机关则根据拟设立的“社会经济发展状况”、法律服务的“发展需求”以及其他类似的含糊笼统的考量标准来决定是否予以审批，这些考量标准可能与中国人世承诺中有关取消外国律师事务所在中国内地设立代表处的地理和数量限制的承诺不一致。

由于存在这些含糊笼统、界定不清的考量标准，代表处设立周期最长可达九个月，这既无必要，也不合理。此外，审批时间缺乏可预测性，而且经常遭到无故拖延。因此应当重点改革优化代表处设立申请审批程序。

另外，外国律师事务所一旦在某地开设了一家代表处后，必须要等到三年后才能再开设另一家代表处，这一规定也限制了外国律师事务所的业务发展。外国律师事务所均表示在此类申请过程中同样也遭遇了重重困难和延误。这种限制损害了外国律师事务所为内陆省份客户提供法律服务的能力，而内陆省份正是“十二五”规划中提出的重点经济发展区域。

Limited Scope of Practice for PRC-Qualified Lawyers in Foreign Firms

Foreign law firms with representative offices in China are unable to hire or admit to their partnerships qualified PRC lawyers with active PRC law licenses. Under current regulations, any PRC national who possesses a national license to practice law in China and wishes to join a foreign law firm with a representative office in China must first surrender his or her license to the MOJ and may not practice PRC law. Removing this prohibition would significantly expand training and future employment opportunities for mainland Chinese law students and lawyers, and enhance foreign law firms' capacity to represent clients doing business in mainland China and Chinese companies looking to expand their global commercial and investment activities.

Foreign law firms provide the integrated, seamless service across different jurisdictions and areas of law needed by multinational companies. Giving Chinese companies greater access to such legal services would allow them to expand more efficiently and successfully by enabling integration of their counsel in China with a worldwide team of legal specialists. Removing the prohibition on foreign law firms' hiring of PRC-qualified lawyers would also expand the pool of trained and experienced PRC-qualified lawyers for PRC law firms and companies to hire as counsel or in other positions requiring specialized legal backgrounds.

AmCham China urges the Chinese government to revise current regulations to allow international law firms to hire and admit to their partnerships qualified PRC lawyers, so that they may provide comprehensive legal services to their clients.

Restricted Appearance before Government Agencies

Appearance and participation by foreign lawyers in many types of meetings involving their clients and mainland Chinese government departments is often prohibited, restricted, or permitted only conditionally on a non-transparent and case-by-case basis. The lack of clear, consistently enforced regulations permitting foreign lawyers to participate in such proceedings deprives both foreign and Chinese clients of adequate representation in these meetings relating to areas of non-Chinese law and prevents clients from determining the composition of their own legal teams in meetings with Chinese government officials. This both limits clients' ability to understand government proceedings in their international context and limits the quality of information clients are able to provide to mainland Chinese government officials relating to the clients' activities and obligations in China and abroad. Overall, it creates an uneven playing field and fosters the impression that the Chinese government may engage in arbitrary and discriminatory treatment with respect to foreign companies when their legal counsel is barred or restricted from participation.

To the best of our knowledge, no other leading economy imposes such limitations or restrictions or permits only inconsistent, non-transparent access to government officials. Such restrictions and inconsistent application frustrate the right of international law firms to advise foreign and Chinese clients on the impact of the Chinese legal environment—a right that is clearly established in China's Protocol of Accession to the World Trade Organization (WTO) as well as in State Council regulations.

AmCham China urges the Chinese government to clearly provide in writing that foreign lawyers are permitted to participate in meetings between their clients and Chinese government departments.

Discriminatory Taxation

Representative offices of foreign law firms are subject to higher PRC income taxes than PRC law firms carrying out the same activities. Profits of foreign law firms in China are subject to two levels of income taxation, while profits of PRC law firms are only subject to a single level of income taxation. This discrepancy exists because foreign law firms are denied the ability to be treated as partnership enterprises for PRC tax purposes. As a result, foreign law firms are taxed first at an enterprise income tax rate of 25 percent at the entity level. To the extent that they are repatriated, after-tax profits are then subject to tax a second time at an enterprise income tax rate of 10 percent. In the event that after-tax profits are paid to partners resident in China, the rate is as high as 45 percent in the form of individual income tax on those partners.

In addition, foreign firms are denied the preferential tax calculation method granted to PRC law firms that significantly drives down the domestic firms' effective income tax rate. PRC law firms can enjoy a cap on their profits subject to PRC income tax regardless of the amount of such actual profits. The cap varies by location and local practice. In Beijing, the cap is equal to 25 percent of revenue. This can result in an effective income tax rate of 17.5 percent (i.e., 25 percent of revenue assuming a profit margin of 50 percent multiplied by the highest applicable income tax rate of 25 percent on revenue of PRC firms as the single incidence of income tax payable. Shanghai has been known to use a lower cap of 20 percent (resulting in a 14 percent effective income tax rate), and certain firms in Guangzhou enjoy an even lower rate using a simplified effective income tax rate of five percent (i.e., no cap or deemed profit rate calculation is used; the effective rate is directly applied).

To address this inequity and comport with the principles of non-discrimination in the US-China bilateral tax treaty, AmCham China recommends that the Chinese government provide international law firms with treatment equivalent to that of PRC law firms for PRC income tax purposes.

中国律师在外国律师事务所的执业范围受限

外国律师事务所在中国设立的代表处不能雇用持有中国律师执照的律师或任用持有中国律师执照的律师作为合伙人。依据现行法律法规，任何持有中国律师执业证并在中国执业的中国公民，如希望加入外国律师事务所的中国代表处，必须首先向中国司法部门上缴其律师执业证并放弃执业中国法律。取消该项限制将会在相当程度上扩大中国内地的法律专业学生和律师接受培训和未来就业的机会，并提高外国律师事务所在中国内地的业务能力，更好地为在华客户和寻求扩大国际商业与投资机遇的中国客户提供法律服务。

外国律师事务所向跨国企业提供其所需的高度整合的、跨领域跨司法管辖区的法律服务。如果中国公司有更多机会获得此类法律服务，其国内法律顾问便能与世界各地的法律专家团队一同合作，从而使中国公司实现更高效、更成功的业务扩张。如果取消禁止外国律师事务所聘用中国执业律师的限制，那么，训练有素且经验丰富的中国律师的数量也将会增加，使得中国国内律师事务所和企业能够聘请他们担任法律顾问或其他需要专业法律背景的职位。

中国美国商会促请中国政府修改相关的现行法律法规，允许外国律师事务所在中国设立的代表处雇用持有中国律师执照的律师或任用持有中国律师执照的律师作为合伙人，以便他们为客户提供全面的法律服务。

律师参与政府会议受限

中国目前通常禁止、限制或者在不透明的基础上有条件地个案允许外国律师出席和参与其客户与中国政府部门之间的各类会议。缺乏明确且一致的允许外国律师参与上述会议的相关规定，导致了外国律师的中外客户在上述会议中无法就非中国法律问题充分阐明观点和立场，也影响了客户自主选择法律团队成员以参与该等会议的权利。这不仅限制了客户在国际背景下理解中国政府程序和规则的能力，同时也影响了客户向中国政府官员提供其在中国及境外活动和义务的相关信息的质量。总之，这造成了不公平竞争的状况，而且会给人造成一种负面的印象，即鉴于外资企业所聘请的律师被禁止或限制参与该等会议，中国政府可能武断地或区别地对待外资企业。

据我们所知，全球其他主要经济体中都没有上述限制或在不透明的基础上仅就个案允许外国律师会见政府官员。上述限制以及不一致性，妨害了外国律师事务所向中外客户就中国法制环境提供咨询的权力，——而这一权利已经明确地写入中国入世承诺以及中国国务院的相关法规中。

中国美国商会因此敦促中国政府明文规定允许外国律师出席其客户与中国政府部门间的会议。

差别性税收

与从事同样业务活动的中国律师事务所相比，外国律师事务所代表处在中国缴纳的所得税更高。外国律师事务所在中国的利润需要缴纳双重所得税，而中国律师事务所的利润只需要缴纳一次所得税。之所以存在这一差别，是因为中国现行法律不承认外国律师事务所在中国税法上的合伙企业地位。因此，外国律师事务所首先要在企业层面缴纳 25% 的企业所得税，税后的利润还要再次纳税，即对汇回母国的利润按照 10% 的税率征收企业所得税。而一旦将税后利润支付给在中国常驻的合伙人，合伙人还需要缴纳最高可达 45% 的个人所得税。

另外，外国律师事务所还不享受中国律师事务所享受的优惠税收计算方法，而这一计算方法大幅降低了中国律师事务所的实际所得税税率。不论实际利润如何，中国律师事务所可以在计算所得税应纳税额时享受利润封顶待遇。各地对封顶的规定并不相同，执行情况也不一样。在北京，上述利润封顶等于收入的 25%。这可以将北京市的中国律师事务所的实际所得税税率降低为 17.5%（即收入的 25%，假定利润率为 50%，再乘以所得税最高税率 25%），而中国律师事务所的收入只作为一次应纳所得税额。上海的利润封顶较低，为收入的 20%（实际所得税税率为 14%），而广州的部分律师事务所甚至可以享受更低的税率，直接将实际所得税税率简化为 5%（即在计算时不涉及利润上限，直接适用实际税率）。

为解决这种不平等并与《中美税收协定》中的各项非歧视性原则保持一致，中国美国商会建议，中国政府为国际律师事务所在中国所得税征收方面给予与中国律师事务所同等的待遇。

其他市场准入问题

外国律师事务所还面临很多其他限制和监管负担，这削弱了他们在中国的执业能力。其中包括：❶ 律所首席代表变更和外国律师变换其任职律所时所需履行的程序过于繁杂；❷ 不能或难以聘用外籍非法律专业人士；❸ 外国律师（特别是首席代表）工作签证期为一年的限制；及

Other Market Access Problems

Foreign law firms also face a number of other restrictions that impair their ability to operate in China. These include: ❶ an unnecessarily difficult process to change the chief representative of a firm and for foreign lawyers to transfer firms; ❷ an inability to, or difficulty in, hiring foreign non-legal professionals; ❸ the limitation of one-year work visas for foreign lawyers (especially chief representatives); and ❹ protracted procedures (sometimes up to a year and a half) for obtaining work permits.

AmCham China encourages the Chinese government to allow international law firms to hire foreign non-legal professionals, improve the procedures for registering chief representatives and transferring representatives, increase the length of time visas are valid for representatives, and decrease work permit approval times. Doing so will improve foreign law firms' ability to effectively serve their clients, both foreign and domestic, in China.

Recommendations

- **Revise current regulations to allow foreign law firms to hire and admit to their partnerships PRC-qualified lawyers and not require them to give up their PRC lawyer's license when they join a foreign law firm.**
- Clearly provide in writing that foreign lawyers are permitted to participate in all meetings between their clients and Chinese government departments.
- Simplify the requirements, eliminate the unpredictability, and reduce the review period for the establishment of representative offices as well as the opening of additional offices.
- Provide foreign law firms with treatment equivalent to that of PRC law firms for PRC income tax purposes.
- Allow foreign law firms to hire foreign non-legal professionals, improve the procedures for registering and transferring representatives, increase the length of time visas are valid for representatives, and decrease work permit approval times.

Recent Developments

Growth of PRC Law Firms in Foreign Jurisdictions

PRC law firms continue to open law offices outside of China and practice law in foreign jurisdictions. This trend is consistent with the increasingly global business operations of Chinese companies. In fact, some PRC law firms have reportedly urged the State-owned Assets Supervision and Administration Commission to establish rules requiring Chinese state-owned enterprises to use PRC law firms for China outbound transactions. Such requirement would seriously limit the range and quality of legal services available to Chinese clients, undermine the rationale for many foreign law firms to establish offices in China, and potentially violate China's national treatment obligations under the WTO.

PRC law firms' growth abroad is largely not subject to protective trade barriers that restrict their ability to practice law. In the US, EU, and Japan, PRC law firms are able to establish offices, hire local lawyers, and engage in comprehensive corporate law and litigation services. In the US, nearly 10 PRC law firms have established offices and practice US law, some now for over a decade. The clear trend around the Asia-Pacific region, including Japan, South Korea, Hong Kong, Singapore, and elsewhere is to open domestic legal services markets to participation from foreign law firms.

❹ 取得工作许可的时间一般相对较长（有时甚至需要一年半）。

中国美国商会希望中国政府允许国际律师事务所聘请外籍非法律专业人士、改进首席代表的注册和调动程序、延长首席代表的签证有效期、及减少工作许可的审批时间。这将会提高外国律师事务所在中国有效地为中外客户提供服务的能力。

最新进展

中国律师事务所在境外的发展

中国律师事务所继续拓展海外市场，并在外国司法管辖区内提供法律服务。这一趋势符合中国公司日益增长的国际业务需求。事实上，据报道，部分中国律师事务所正在促请国有资产管理委员会（国资委）制定相关法规，要求中国国有企业境外交易必须聘用中国律师事务所。此种要求将严重限制上述中国客户获得法律服务的范围和质量，同时也将冲击许多外国律师事务所在华设立代表处的初衷，并可能违反中国在世界贸易组织下的国民待遇承诺。

中国律师事务所之所以能在海外发展，很大程度是因为当地政府并未出台限制其执业的保护性贸易壁垒。在美国、欧盟和日本，中国律师事务所可以在当地设立办事处，聘请当地律师，并提供全面的公司法律咨询和诉讼服务。在美国，近 10 家中国律师事务所已经设立了办公室并提供美国法律相关服务，其中部分律所在美执业已经超过了 10 年。在亚太地区，如日本、韩国、香港、新加坡等国家和地区，开放法律服务市场、允许国际律师事务所提供法律服务已成为一个显著趋势。

建 议

- **修改现行监管制度，允许外国律师事务所雇佣中国执业律师在本所执业，不要求中国职业律师在外资律所工作期间放弃中国律师执业资格。**
- 明文规定允许外国律师参与其客户与政府部门间的所有会议。
- 简化代表处设立要求、尽可能消除不可预测性因素、并缩短设立代表处以及开设新代表处的各项审核时间。
- 在中国所得税方面予以外国律师事务所与中国律师事务所同等的待遇。
- 允许国际律师事务所聘请外籍非法律专业人士、改进首席代表的注册和调动程序、延长首席代表的签证有效期、及减少其工作许可的审批时间。

Machinery Manufacturing

Introduction

In 2013, China's machinery manufacturing industry experienced steady development despite insufficient demand—particularly overseas demand, an overcapacity of lower-end products, and low capacity for high-end products. China has attached great importance to the restructuring and adjustment of the manufacturing industry. The government is promoting innovation, developing strategic emerging industries (SEIs), strengthening industrial basics, and integrating information technology in industrialization and green development, among other initiatives.

At the Third Plenum of the 18th Party Congress in November 2013, the Chinese government vowed to allow the market to play a decisive role in resource allocation, relax market access and investment restrictions, and further open up the general manufacturing industry.

Despite the significant improvements the Chinese government has made in recent years, AmCham China member companies continue to face policy challenges, including foreign direct investment (FDI) restrictions, industry overcapacity, and a lack of regulatory consistency. AmCham China encourages the Chinese government to consider the issues addressed in this chapter to support higher value machinery manufacturing.

Ongoing Regulatory Issues

Restrictions on Foreign Investment

The 2011 "Guiding Catalogue on Foreign Investment in Industry" (Foreign Investment Catalogue), jointly issued by the Ministry of Commerce and the National Development and Reform Commission, increased restrictions on foreign investment in certain machinery sectors by raising required technology thresholds and changing the requirements with regard to the size of equipment.

Foreign parties are still prevented from setting up wholly foreign-owned enterprises or holding majority ownership in several key manufacturing sectors. Moreover, the 2011 Guiding Catalogue for Industrial Upgrading and Restructuring offers preferential treatment to domestic companies with lower required technology thresholds and equipment size requirements.

Foreign-invested enterprises (FIEs) have ample expertise to contribute to the development of China's machinery manufacturing sectors. AmCham China recommends the Chinese government implement equivalent investment requirement standards for both domestically invested enterprises and FIEs. For additional information, please see the Investment Policy chapter.

Industry Consolidation

In the 12th Five Year Plan (12th FYP), the Chinese government placed great emphasis on industrial consolidation in order to promote industry upgrading and revitalization. With leading technologies, experience, and know-how, AmCham China member companies are poised to play a key partnering role in consolidating and upgrading China's machinery manufacturing capacity. However, complicated and unclear mergers and acquisitions (M&A) review procedures and intra-government consultation mechanisms impede further participation. AmCham China encourages the Chinese government to welcome participation by FIEs by instituting more transparent M&A review procedures and intra-government consultation mechanisms. Furthermore, FIEs should be treated in the same manner as their domestically invested counterparts with regard to review standards.

Government Procurement

Government procurement plays an important role in some subsectors of machinery manufacturing. As discussed in the Government Procurement chapter, China's definition of government procurement in its Government Procurement Law is narrower than the definition in the World Trade Organization's (WTO) Government Procurement Agreement (GPA). AmCham China encourages the Chinese government to increase transparency regarding government procurement procedures; treat both domestic and international suppliers equally; harmonize its GPA offer and domestic Bidding Law with WTO rules; include government agencies, public institutions, and state-owned enterprises as procurement entities according to international norms; and take concrete steps towards joining the WTO GPA.

机械制造业

引 言

2013 年，中国的机械制造业取得了稳定发展，尽管面临需求不足，尤其是海外需求不足、低端产品产能过剩、和高端产品产能不足的现状。中国高度重视制造业的结构调整。政府正在采取措施促进创新、发展战略性新兴产业、加强工业基础、推进信息技术与工业化和绿色发展相融合。

在 2013 年 11 月举行的十八届三中全会上，中国政府表示将允许市场在资源配置方面发挥决定性作用、放宽市场准入和投资限制，并进一步放开一般制造业。

尽管中国政府最近几年来在政策制定方面已经取得了显著的改善，但中国美国商会的会员企业却一直面临着政策挑战，包括外商直接投资限制、行业产能过剩以及监管缺乏一致性等问题。中国美国商会促请中国政府在支持高价值链机械制造业时考虑以下问题。

现存监管问题

对外商投资的限制

2011 年由中国商务部（商务部）和国家发展和改革委员会（发改委）联合发布的《外商投资产业指导目录》（以下简称《外商投资目录》），提高了所需的技术门槛并更改了有关设备规模的要求，从而增加了对外商在部分机械领域投资的限制。

许多关键机械制造领域依然不允许外资以组建独资企业或外资控股合资企业的形式经营。另外，2011 年发布的《产业结构调整指导目录》对内资企业的技术门槛和设备规模要求相对较低，给予内资企业优惠待遇。

外资企业有着丰富的专业知识，可以为中国机械制造业的发展贡献力量。中国美国商会建议中国政府对中资和外资企业一视同仁，执行同等的投资要求标准。（详情请参阅《投资政策》一章。）

行业整合

在“第十二个五年规划”（十二五规划）期间，为了促进全行业的升级换代和振兴，中国政府重点强调了行业整合。中国美国商会会员企业凭借领先的技术、经验及技术专长，能够发挥合作伙伴的关键作用，参与中国机械制造业的整合与升级。但是由于中国现行并购审查程序以及政府部门之间的内部征求意见机制既复杂也不透明，降低了外资企业进一步参与的可能性。中国美国商会鼓励中国政府通过提升并购审查程序和政府部门之间意见征求机制的透明度，来提高外资企业的参与度。以及对外资企业应执行与中资企业同等的审查标准。

政府采购

政府采购在机械制造业的部分子行业中发挥着重要的作用。正如在政府采购一章中所述，中国的《政府采购法》中对政府采购的定义比世界贸易组织《政府采购协定》中的定义狭窄。中国美国商会鼓励中国政府提升政府采购程序的透明度，平等地对待国内和国际供应商，使政府采购协定出价和国内《招投标法》与世界贸易组织的规则保持一致；根据国际规则，将政府部门、公共机构、国有企业作为政府采购实体，并采取具体的措施加入世界贸易组织《政府采购协定》。

创 新

中国美国商会理解中国政府期望通过激励措施促进高新技术企业（HNTE）认定来鼓励创新。为了支持这一举措，中国美国商会的会员企业已经在中国建立研究与发展中心（研发中心）或与中国的同行建立合作项目，进行了大量投资。然而，外资企业担心高新技术企业认定的现有知识产权资格标准将会使外资企业处于不利地位，扭曲企业的全球创新和知识产权战略。我们建议中国高新技术企业认定的知识产权标准应该：❶ 进行修改以允许跨国公司总部能够拥有知识产权所有权，或 ❷ 允许向其在中国的关联方

Innovation

AmCham China understands the Chinese government's desire to encourage innovation by promoting High and New Tech Enterprise (HNTE) certification with incentives. AmCham China member companies have already invested millions of dollars by setting up research and development (R&D) centers in China or by partnering with Chinese counterparts to support such initiatives. However, foreign companies are concerned that current intellectual property (IP) ownership qualification criteria for HNTE certification will put foreign companies at a disadvantage, distorting the company's global innovation and IP strategy. We suggest China's HNTE certification IP criteria should either: ❶ be amended to allow for IP ownership by multinational corporation (MNC) headquarters, or ❷ allow for non-exclusive licenses for Chinese affiliates. AmCham China member companies lead innovation worldwide and their experience could be a valuable reference to Chinese companies. We suggest the Chinese government grant equal opportunities to foreign companies to provide input when the "Key High- and New Technology Areas Supported by the Nation," which includes the HNTE stipulations, is updated. Further recommendations on these issues can be found in the Innovation Policy chapter.

Mining

AmCham China welcomes Chinese government efforts to improve safety and raise the technological and operational standards of the domestic mining industry. In particular, embracing mechanization and international best practices would help create a safer, more efficient industry. Foreign-invested machinery manufacturers have experience in providing safe, high-quality, and advanced technology. Closer cooperation among international and domestic players could further improve mine safety and efficiency.

Clean Energy Machinery

High efficiency gas fired Distributed Energy & Combined Heat and Power (DE&CHP) systems can play a significant role in energy conversion and emission reduction and improve circular economy systems. AmCham China has long been supportive of China's considerable efforts of tackling energy efficiency and emission issues. AmCham China recommends the Chinese government focus on the development of small/mid-sized (less than 50 MW) and multiple-unit DE&CHP systems in industrial and commercial areas to ensure high system operation reliability and efficiency (above 70 percent). In the meantime, AmCham China urges the development of DE&CHP power grid connection regulations be expedited. The regulations should encourage both the central and local governments to provide incentives including, but not limited to, lower gas prices, tax credits, low interest loans, and/or subsidization of a project's first capital cost to promote DE&CHP deployment. We suggest the Chinese government consider setting up an intra-government agency to coordinate the responsibilities of gas pipeline distribution network planning, gas pricing, electricity distribution network planning, grid connection, and industrial energy management.

Non-Road Diesel Engine Emissions Regulation

AmCham China understands the rapid advances the Chinese government is trying to make in its regulatory policies and supports government efforts to ensure manufacturer compliance with standards. In particular, AmCham China welcomes efforts by the Chinese government to improve engine emission compliance. AmCham China recommends the Chinese government move at a pace that allows industry to meet all the new standards. Appropriate lead time (two to three years) should be given to implement new regulations and regulations on a nation-wide basis and to address concerns arising from inconsistencies with regional regulations. Fuel quality should match the relevant emission level nation-wide.

Remanufacturing

The "Circular Economy Promotion Law of the PRC" issued in January 2009 was an important milestone for the development of the remanufacturing industry in China. President Xi Jinping called for both countries to improve cooperation in remanufacturing during his visit to the US in February 2012.

It is very encouraging to see that the management system of the remanufacturing industry has improved in the past year. To ensure the healthy and quick development of this emerging industry in China, AmCham China would like to recommend China join the APEC Pathfinder for Remanufacturing, alongside most other countries in the region, ensuring that remanufactured products follow the same technical standards as original new products. As such, China would allow the free flow of cores and remanufactured finished goods (RFG) across borders.

Rail

Passenger and freight are two pillars of the modern rail system. While rail equipment and passenger rail equipment are specified in the encouraged category of the Foreign Investment Catalogue, freight rail equipment is not specified. We recommend that freight rail equipment be noted specifically and placed in the next Foreign Investment Catalogue in the encouraged sector.

Maintenance of freight diesel locomotives is a highly professionalized task. For the sake of improved efficiency and safety, AmCham China recommends the Chinese government encourage railway companies to employ freight locomotive manufacturers to perform maintenance tasks, while railway companies focus on railway operations and management.

进行非独占的许可。中国美国商会的会员企业在世界范围内引领创新，其经验可以作为中国企业有价值的借鉴。我们建议中国政府在对包括高新技术企业认定规定在内的“国家重点支持的高新技术领域”进行修订时，让外资企业有同等机会发表意见。有关此类问题的更多建议可参阅《创新政策》一章。

采矿业

中国美国商会对中国政府在改善国内采矿行业安全性及提高技术与操作标准方面所做出的努力表示欢迎。特别是，推广机械化并采用国际最佳实践将有助于行业安全与效率的提高。外资制造商在提供安全、优质和高新技术方面具有丰富的经验。内外资企业紧密的合作将有助于进一步提高采矿业的安全性和效率。

清洁能源机械

高效的燃气分布式能源与热电联产（DE&CHP）系统能够在能源转化和减少排放方面发挥重大作用，并且有助于促进循环经济的发展。中国美国商会长期以来一直支持中国为解决能源效率和排放问题所做的巨大努力。中国美国商会建议中国政府重点发展面向工业和商业应用的中/小型（低于5万千瓦）多个机组分布式能源及热电联产系统，以保证系统运行的高可靠性和高能效（70% 以上）。同时，中国美国商会呼吁尽快制定分布式能源及热电联产系统发电上网规定。鼓励中央政府和地方政府制定支持政策，这些政策包括但不限于降低燃气价格、税收抵免、低利率贷款和/或项目首期资本成本补贴等，以促进分布式能源及热电联产系统的部署。为了促进燃气分布式能源的发展，我们建议中国政府建立一个跨部门的机构来促进各相关职能部门的协调，综合考虑燃气供应、管道规划、燃气价格、配电网络规划、上网以及工业能源管理等因素。

非道路移动机械用柴油机排气污染物规定

中国美国商会理解中国政府希望在非道路移动机械用柴油机排气污染物监管政策方面能够取得快速进展，并支持中国政府为确保制造商符合排放标准而做出的努力。特别是，中国美国商会欢迎中国政府为改进发动机排放合规方面所做出的努力。中国美国商会建议中国政府采取适当的推进步伐，使该产业能够达到所有新排放标准。在全国范围内实行新法规时应该给予该行业适当的准备时间（2–3年），并应解决因各地区法规不一致而产生的问题。燃油质量应该与全国的相关排放要求水平相符。

再制造产业

2009 年 1 月实施的《循环经济促进法》是中国再制造产业发展的一个里程碑。2012 年 2 月，时任副主席习近平先生在其访美期间曾呼吁中美两国加强再制造产业的合作。

再制造产业的管理体制在过去的一年有了非常鼓舞人心的改善。为了保证这一新兴产业在中国健康和快速的发展，中国美国商会建议中国加入亚太经合组织“再制造探路者”机制，与该地区的其它大多数国家一道确保再制造产品与原型新产品执行同样的技术标准。因此，中国应该允许核心部件和再制造制成品的跨境自由流动。

铁 路

客运和货运是现代铁路系统的两大支柱。外商投资产业目录中明确规定了铁路设备和客运铁路设备属于鼓励外商投资产业，但却未对货运铁路设备做出具体规定。

我们建议应明确货运铁路设备的地位，在下一版的外商投资产业目录中将其列入鼓励外商投资类。

货运柴油机车的维护是一项高度专业化的工种。为了提高能效和安全，中国美国商会建议中国政府鼓励铁路公司雇佣专业的货运机车制造商进行维护工作，而铁路公司则重点负责铁路的运营和管理。

建 议

- **取消对外资企业投资机械制造业的限制，并给予外资与内资企业同等待遇。**
- 优化并购审批程序，提高审批透明度，允许外资企业更大范围地参与行业整合。
- 根据 WTO 的政府采购协定的原则，允许外资企业获得与内资企业同等待遇参与中国的政府采购。
- 在实施发动机排放监管政策之前，执行清晰的监管框架以确保整个行业都已经具备遵守监管规则的能力。
- 允许核心部件和再制造制成品的跨境自由流动，并且确认再制造产品与原新产品执行同样的技术标准。

Recommendations

- **Eliminate restrictions on foreign investment in the machinery manufacturing industry and provide equal treatment to both domestically and foreign-invested companies.**
- Streamline M&A approval procedures and increase transparency to allow FIEs to make a greater contribution to industry consolidation efforts.
- Provide national treatment for foreign firms in China's government procurement, in compliance with WTO GPA principles.
- Implement a clear regulatory framework prior to enforcing engine emission regulations to ensure readiness and compliance among the entire industry
- Allow the free flow of cores and RFG across borders, and confirm that remanufactured products follow the same technical standards as original new products.

Media and Entertainment

Introduction

The media and entertainment industry plays an increasingly critical role in China, providing information to Chinese citizens and meeting their demand for world-class entertainment and cultural activities. As China's international footprint continues to expand, this industry will play a prominent role in the development of China's global image, reputation, cultural influence, and economic interests.

Demand in China for international news media and entertainment content increased significantly in 2013, yet international participation in the sector continued to be restricted. Despite some copyright enforcement efforts, policies such as censorship and market access restrictions continued to create conditions where piracy and intellectual property rights (IPR) violations proliferate. In recent years, the spectacular growth of the Chinese Internet contributed to a whole new set of piracy problems. In addition, working conditions for journalists have deteriorated since the 2008 Olympics, making it more difficult for journalists to tell China's story to the world. Finally, in the financial field, censorship and other regulations create transparency issues and foster nondisclosure, malpractice, and corruption.

These problems have ramifications not only within China, but also for China as it reaches out to the rest of the world. While cultural and artistic development is a significant element of the 12th Five-Year Plan (12th FYP), censorship and other restrictions threaten to undermine this effort. China's rich heritage of excellence in entertainment and the arts can best be perpetuated and brought to international attention by fostering initiatives that educate, regulate, and reinforce the commercial value of creative works, but only if the need to protect IPR is emphasized.

AmCham China encourages the increasingly globalized orientation of China's media and entertainment industry as exemplified by the announcement in February 2012 of an agreement to increase the number of US films appearing on Chinese movie screens. However, additional improvements in the operating environment need to occur.

Ongoing Regulatory Issues

Cross-Sector Issues

Piracy

AmCham China applauds the progress in legislation and enforcement of IPR and the announcement in November 2013 of plans to establish an intellectual property (IP) court, as discussed in the Intellectual Property Rights chapter. However, for the media and entertainment industry, IPR violations remain rampant, as evidenced by the huge market in pirated products and content, both online and offline. As discussed in the censorship section below, such violations are often encouraged by government regulations and censorship.

The rapid growth of online distribution has multiplied the possible ways, ease, and speed with which IPR violations occur. While IPR appears to be respected where Chinese companies have bought rights for the use of IP online, enforcement of IPR still lags behind growing piracy via user-generated content and person-to-person platforms.

Occasional enforcement campaigns demonstrate that authorities have the ability to disrupt illegal channels, but organized piracy continues unabated. Despite current Internet controls, it is still possible to illegally download music, images, and even whole television programs and films via Chinese search engines.

AmCham China encourages the Chinese government to build on the progress made during the IPR enforcement campaign of 2010-2011 by continuing to strengthen IPR enforcement, increasing damage awards, and fighting Internet piracy by requiring online platforms to protect IPR and assist in enforcement efforts.

Censorship

The Chinese government argues that censorship and other restrictions on media and entertainment are necessary because of their cultural impact. However, it appears that censorship is often also used to restrict market access for foreign television programming, music, and films, while having the undesirable side effect of fostering piracy.

传媒和娱乐

引 言

传媒和娱乐行业在中国的作用日渐重要，向中国百姓传播信息，满足大众对具有世界水准的娱乐和文化活动的需求。随着中国国际影响力继续扩大，该行业在推动中国全球范围内的形象、声誉、文化影响和经济利益等方面的发展将发挥更加突出的作用。

2013 年，中国对世界新闻媒体和娱乐内容的需求大幅增加，但该领域的国际参与度依旧受限。尽管政府在版权执法方面做出了一些努力，但有些规定，比如审查制度和市场准入限制，仍旧助长了侵犯知识产权行为的滋生。近年来中国互联网的迅猛发展，又带来了一系列全新的侵权问题。另外，自 2008 年奥运会以来，记者的工作环境不断恶化，记者向世界报道中国的困难增加。最后，在金融领域，审查制度和其他相关法规造成市场透明度方面的问题，导致信息不公开、玩忽职守和腐败现象。

这些问题所造成的后果并不局限于中国境内，随着中国影响力的扩大，还波及到了世界其他地区。尽管文化和艺术发展是“十二五”规划中列出的重点内容，但审查制度及其他限制性规定却可能影响上述努力。只有通过推动各种举措来宣传、管理、增强原创作品的商业价值，才能使中国在娱乐和艺术方面丰厚的遗产精华得以最好的保存并获得国际重视，但其前提是要强调知识产权保护的必要性。

中国美国商会支持中国传媒和娱乐业的日趋国际化，2012 年 2 月宣布的一项增加中国电影屏幕上美国电影数量的协议就是这个趋势的例证之一。然而该行业的运营环境需要作进一步的改善。

现存监管问题

跨行业问题

盗 版

中国美国商会赞赏中国在知识产权立法和执法方面取得的进展和 2013 年 11 月公布的设立知识产权法院的计划，本书《知识产权》一章也会对此进行讨论。然而传媒和娱乐业内的知识产权违法现象依然很猖獗，在线、离线盗版商品和内容的巨大市场便是例证。正如下文审查制度一节所述，政府的监管和审查制度往往促成了上述违法现象的发生。

网上发行的迅猛发展增加了知识产权违法行为发生的途径、便利性和速度。虽然在中国公司购买了网络知识产权使用权的领域，知识产权看来得到了尊重，但知识产权的执法行动依然落后于盗版活动的蔓延，这些盗版活动多来自于用户自创内容以及个人对个人交流平台。

偶尔实施的执法行动表明当局是有能力摧毁非法渠道的，但是有组织的盗版却依然势头不减。虽然当前有互联网控制措施，但是依然可以通过中国的搜索引擎非法下载音乐、影像甚至完整的电视节目和电影。

中国美国商会鼓励中国政府以 2010–2011 年知识产权执法大检查中所取得的成绩为基础，继续加强知识产权执法，提高司法赔偿金的数额，通过要求在线平台保护知识产权和协助执法来切实打击互联网盗版。

审查制度

鉴于传媒和娱乐的文化影响力，中国政府主张有必要对其实施审查制度和其他限制。但实际情况是审查制度常常成为限制外国电视节目、音乐和电影进入中国市场的借口，并且产生了滋生盗版的副作用。

中国的审查经常导致影、视、音乐作品的进口过程冗长，

China's censorship process regularly results in lengthy delays on film, television, and music entry, creating an environment in which a market for pirated products can thrive. For example, legitimate DVD/Blu-Ray film discs require censorship approval by the General Administration of Press, Publications, Radio, Film, and Television (GAPPRFT), which takes at least one month. Meanwhile, pirated DVDs appear within a few days, stealing the market from legitimate businesses. Likewise, though foreign programming is severely restricted on Chinese cable television, the Chinese Internet contains every episode of many American television programs in pirated versions. Thus, Chinese consumers are still able to access "forbidden" products despite government censorship. In effect, such censorship only encourages piracy while unsuccessfully protecting the Chinese market from competition, undermining the sector's profitability and inhibiting the sector's ability to create new entertainment and cultural works. Streamlining the censorship process will reduce artificial bottlenecks that encourage piracy, while fostering greater creativity, innovation, and competitiveness of the domestic industry and enhancing profitability of the industry overall.

Finally, censorship of the Internet through site blockages and technical bottlenecks clearly disadvantages both international and Chinese media and entertainment companies. Foreign companies are forced to base servers and information systems offshore, and many foreign and large Chinese companies also require virtual private networks (VPNs) in order to access the information they need. This raises costs and becomes a factor when companies consider investing in China. Meanwhile, small Chinese operators and end-users suffer a competitive disadvantage because they cannot access vital information and content in a timely fashion.

Lack of Regulatory Clarity and Enforcement

Many Chinese government agencies claim a role in regulating media, entertainment, and culture, and a wide variety of laws and regulations set regulatory and market access restrictions on the industry.

Lack of clarity about these various roles, and in the regulations themselves, inhibit the development of the entertainment and media industry in China. Laws, often vague and inconsistently enforced, lead to unbalanced treatment among industry players. Moreover, as the Ministry of Culture (MOC), GAPPRFT, and other regulators issue conflicting proclamations in a battle for oversight, the lucrative trade in online piracy continues.

International companies are often confronted with vague and inconsistent regulations, making planning and implementation of business initiatives difficult. In addition, outdated regulations have failed to account for the rapid development of Internet and wireless technology, leaving vast areas of online content and service offerings operating with unclear guidelines. Unclear regulations and inconsistent investment approvals also cause China to lag far behind international standards, particularly in retail distribution of books and periodicals.

AmCham China recommends regulatory agencies, including the Ministry of Industry and Information Technology (MIIT), GAPPRFT, MOC, State Council Information Office (SCIO), and others, establish clearer lines of authority as well as transparent regulatory drafting processes that allow for public comment at an early stage. In addition, we recommend expediting approval processes for foreign participation and investment in the Chinese media and entertainment market.

Sector-Specific Issues

Film

Despite an agreement in February 2012 at the government-to-government level where China committed to allowing importation of additional 3-D and large-format films on a revenue-sharing basis, China continues to restrict distribution of international films on a commercial scale in China. For example, regulators currently limit the number of films imported on a revenue-sharing basis to 34 films a year, of which 14 must be "enhanced format" films such as 3-D or IMAX. An additional 30 films are permitted on a low, flat-fee or "buy-out" basis. China also maintains an import and distribution duopoly, managed by the GAPPRFT, which dictates what films may be imported and when they may be released.

AmCham China applauds the agreement to allow importation of an additional 14 enhanced format films. At the same time, we note that even with this deal implemented, many regulatory barriers remain in place.

As stated above, censorship and regulatory barriers to legitimate means of film distribution remain in place, allowing piracy to flourish. The Chinese film industry alone is estimated to have lost over US $2.2 billion (RMB 14 billion) during 2010 as a result of piracy. This figure rises dramatically when foreign films are included.

According to the Motion Picture Association of America (MPAA), between 2003 and 2012, China's box office grew from US $120 million to $2.7 billion (RMB 726 million to 16.3 billion). In 2012, China became the second largest box office in the world and in the first nine months of 2013 it increased its box office by 34.9 percent to US $2.9 billion (RMB 17.5 billion). The MPAA estimates that by June 2013 there were at least 15,380 film screens in China with at least 12 being added each day.

With the number of film screens rising at this rate, and fast growth expected for the next five to 10 years, an effective distribution system and antipiracy control measures will be central to the commercial viability of new venues.

从而使得盗版产品能够乘虚而入，大行其道。例如，合法的 DVD ／蓝光电影碟片需要国家新闻出版广播电影电视总局（“广电总局”）的审查批准，而这种审查批准过程至少要一个月。与此同时，盗版 DVD 在几天内上市，窃取合法企业的市场。同样地，虽然外国节目在中国的有线电视受到严格限制，但中国互联网包含许多盗版美国电视节目。因此，虽然政府实施审查制度，但中国消费者仍然能够访问“遭禁”产品。实际上，这样的审查制度不仅未能成功保护中国市场不受竞争影响，还破坏了行业的盈利能力、抑制该行业创造新的娱乐和文化作品的能力，并鼓励了盗版。优化审查程序将有助于消除鼓励盗版的人为瓶颈，同时激励创意和创新水平及提升国内产业的竞争力，提高整个行业的盈利水平。

最后，通过屏蔽网站和技术瓶颈来对互联网进行审查，显然使国际和国内传媒娱乐公司处于竞争劣势。外国公司被迫在境外设立服务器和信息系统，而且很多外国和中国的大公司还需要搭建虚拟专用网络（VPN），以便获得其需要的信息。企业的成本因此增加，成为企业考虑投资中国时的一个不利因素。与此同时，中国的小运营商和最终用户则处于竞争劣势，因为他们无法及时获得至关重要的信息和内容。

监管制度缺乏清晰度和执行力

很多中国政府部门都声称在传媒、娱乐和文化方面负有监管职责，众多法律和法规都对该行业进行了监管和市场准入限制。

各部门监管职责不明确，相关法律法规不清晰都阻碍了中国娱乐和传媒产业的发展。相关法律条文往往含糊不清，执法缺乏一致性，导致平行的行业参与者受到不同的对待。然而，当文化部、广电总局以及其他监管部为争夺执法权而发布相互矛盾的公告时，暴利的网上盗版交易却在继续。

面对内容模糊、不一致的各项规章制度，跨国企业在制定和执行业务计划方面的难度大大增加。另外，过时的规定未能考虑到互联网和无线技术的迅猛发展，使得在线内容的广大领域和服务供应没有明确的指导原则。法规的不明确和投资审批的不一致，还造成中国，尤其在书刊杂志的零售发行发面远远落后于国际标准。

中国美国商会建议包括工信部、广电总局、文化部、国务院新闻办公室在内的各监管部门能够明确地划分监管职权，并实施透明的规章起草程序，以便提早征求公众意见。此外，我们还建议加快对外商参与和投资中国传媒和娱乐市场的审批程序。

具体行业问题

电 影

尽管根据 2012 年 2 月签订的一项政府间协议，中国承诺，在收入分享模式下，允许增加 3D 电影和巨幕电影的进口量。但中国实际上依然对国际影片的商业发行作出了种种限制。例如，监管机构目前把按照收入分成基础上进口影片的数量限制为每年 34 部，其中 14 部必须为 3D 或 IMAX 等的“增强格式”影片。另外 30 部影片则允许以低价、固定费用或“买断”方式进口。此外，中国还保持了广电总局实施的进口和发行双头垄断，以此可以任意限定所进口电影的种类和发行时间。

中国美国商会对允许进口另外 14 部增强格式电影的协议表示赞赏。同时，我们注意到，即便协议得到履行，仍然留存若干监管壁垒。

如上所述，审查制度和监管壁垒对合法发行的电影造成的影响依然存在，并给盗版泛滥创造了条件。2010 年，单是中国电影业因盗版受到的损失估计就已超过了 22 亿美元（140 亿元人民币）。如果将外国电影包括在内，该数字还将大幅上升。

根据美国电影协会（MPAA）提供的数字，从 2003 年到 2012 年，中国的票房收入从 1.2 亿美元增至 27 亿美元（从 7.26 亿人民币增至 163 亿人民币）。2012 年，中国票房位列世界第二，2013 年的前 9 个月，中国票房增加 34.9%，增至 29 亿美元（175 亿人民币）。美国电影协会估计，截至 2013 年 6 月，中国共有至少 15,380 块电影屏幕，每天增加至少 12 块。

随着电影屏幕数目以这样的速度增加以及预计未来 5–10 年的快速增长，有效的发行制度和反盗版控制措施对新影院的商业可行性将起到关键作用。

发行更多的外国电影，取消市场操纵或任意设置的封锁期，采取积极行动打击盗版，将会增加对优质娱乐产品的市场需求，造福中国国内电影产业。中国观众也将因此成为总体国际电影市场上的一个更大因素，从而鼓励外国电影制作商更愿意迎合中国观众的需求。

Distribution of more foreign films, without market manipulation or arbitrary blackout periods, combined with a robust campaign to curb piracy, would benefit the domestic industry by building market demand for quality entertainment products. It would also make the Chinese audience a bigger factor in the overall international market, making it more likely that foreign filmmakers will cater to this audience.

Television

Non-market mechanisms severely restrict foreign television content in China. The government effectively prohibits Chinese cable operators from carrying foreign channels, limiting such channels to hotels and residential compounds where a high percentage of foreigners live. Meanwhile, imported content is barred from Chinese stations during prime time, with additional restrictions and quotas making it difficult for those in China to watch international content. At the same time, foreign channels are required to "assist" China Central Television with access to the home markets of foreign channels.

Since regulation and censorship do not actually prevent the Chinese people from obtaining international television content, the effect of non-market mechanisms is simply to foster piracy.

AmCham China recommends that the Chinese government sharply reduce quotas and restrictions on foreign television content, as well as publish detailed regulations on domestic television partnerships and collaborations with foreign content producers. This would ensure a competitive industry driven by transparency and mutual cooperation, and increase the quality of aired programming for the benefit of the Chinese public.

Live Entertainment

Market access for live entertainment continues to be restricted by a lack of transparency, excessive regulation and bureaucracy, and other restrictive practices that stifle growth in the industry. For example, the staging of live events requires securing a license or *piwen* (批文) in advance. However, this process requires submission of information such as event crew and support staff rosters not typically available until a show is nearly ready to open. Furthermore, no reason is given when a license application is rejected. Providing an official explanation for rejected *piwen* applications would be very helpful to managers, artists, and agents for future planning.

Additionally, until a *piwen* is approved, ticket sales cannot be advertised or marketed. As a result, the customary international practice of selling shows as a package is rendered virtually impossible, and chances to acquire corporate sponsorships that require budgeting in advance are diminished.

After the *piwen* is approved, visa-granting officials must receive a notification letter based on the exact same event crew and performer names submitted for the *piwen* request. However, most international performing units do not know which contracted personnel will visit China more than one month prior to the show opening, let alone six to nine months before when the *piwen* is requested. As a result, performing units are forced to seek exceptions and crisis-manage in order to obtain necessary visas. In addition, the requirement that touring personnel obtain a "Z" work visa that they must then convert into a year-long residence permit, despite the fact that most tours remain in China less than three months, imposes unnecessary delays and administrative burden.

This difficult environment for staffing live events is damaging and contradictory to the spirit of open exchange in culture and arts that was championed in the 12th FYP. We encourage the Chinese government to allow performers from abroad to enter China on business visas instead of work visas.

Other barriers to successfully holding live events exist as well. The Public Security Bureau (PSB) provides security for live events. However, for any given event, it is not clear what the scope of the PSB's role or the fees it charges will be since they are not published. Meanwhile, the number of seats set aside for security purposes usually exceeds the number of security personnel attending the event, and the number of seats required varies without explanation. Such practices reduce the selling capacity of an event, while the set-aside tickets often find their way to scalpers who sell them at a discount, driving consumers away from legitimate sales channels and undermining the commercial viability of the event.

The lack of transparency and clear guidelines regarding the *piwen*, compounded by other issues from security to visas, deter world-class performers from coming to China. AmCham China urges the Chinese government to streamline and clarify relevant procedures and regulations, not only for the benefit of live entertainment venues, producers, and artists, but also for the benefit of China's cultural industry overall.

Music

Important sources of income generally available for those in the music industry in the West, such as royalties from the sale, public performance, and broadcast of music, are mostly unavailable in China. This is to a certain extent caused by the unwillingness of Chinese consumers to pay for music downloads and the limited availability of legitimate download sources. Weak enforcement of IPR is another factor. To the extent that music downloads generate income at all, that income is typically a function of money spent on advertising on the platform from which the download occurs.

Continuing restrictions on international record companies that want to make and sell music in China also foster piracy and hinder the development of China's own music industry.

电 视

非市场化机制严重限制了外国电视节目进入中国。除去外国人相对密集的地方，比如酒店和外国人居住区，政府有效地禁止了国内有线电视运营商播放外国频道。而且，进口的节目不允许在黄金时段播出，加上其他的限制及配额，中国境内观众很难看到国际节目。同时，作为在以上有限渠道获得播放的条件，外国频道通常被要求“协助”中央电视台进入该外国频道的本土市场。

鉴于管制和审查实际上并未有效地阻止中国人收看国际电视节目，这种非市场机制只能催生盗版。

中国美国商会建议中国政府大幅减少在外国电视内容上的配额和限制，且出台中外电视内容制作商合作的管理细则。这将确保形成一个透明、合作、竞争的行业氛围，同时提高电视节目的质量，造福中国观众。

现场演出娱乐节目

现场演出娱乐节目的市场准入仍旧受到限制，比如缺乏透明度，过度监管，官僚体制，及扼杀市场成长的其他限制措施。例如，现场演出需要预先获得许可证，或“批文”。但是，批文程序要求提供的信息，如演员和支持团队名单，通常只有在临近演开始之前才能确定。此外，当许可申请未获得批准时也不说明原因。对被拒绝的申请提供官方解释将非常有益于管理人、艺术家和代理人进行今后的策划。

此外，在获得批文之前，票务无法进行宣传和推广。因此，以打包形式出售演出票的国际惯例几乎不可能，还因为需要事先作出预算而减少了获得公司赞助的机会。

在获得批文后的签证申请阶段，签证官要求必须提供一份告知函，函中演职人员必须与批文申请中的人员名单一致。但大部分国际演出单位在正式开演一个多月之前都无法最终敲定来华演出的人员，于 6–9 个月之前提出批文申请之时确定名单，则更是难上加难。为此，演出单位被迫寻求免责条款或进行危机管理来取得签证。另外，获得工作签证（Z 类）的演职人员入境后必须将签证换成一年期的居住证，这条规定没有考虑到大部分的巡演在中国都待不满三个月的事实，从而造成了不必要的延误和行政负担。

外国演职人员来华参加现场演出活动所面临的种种困难，对市场造成了巨大打击，且有悖于“十二五”规划中主张的开放文化艺术交流的精神。我们建议中国政府为来华演出的演员颁发商务旅行签证而非工作类签证。

此外，成功举办现场演出还有其他一些障碍。公安局为现场演出提供安全保障。但是，对于任何演出来说，公安局扮演什么角色、收取哪些费用都不清楚，因为这些都不公布。同时，为安保目的留出的座位数量通常都会超过参加活动的安保人员的人数，而且所要求的座位数量常常变化，又不加以解释。这样的做法降低了演出活动的销售能力，那些预留座位的票往往落入了黄牛党手里，然后折价出售，将消费者带离了合法销售渠道，影响了演出活动的商业活力。

批文申请缺乏透明度和明确的指导原则，加上从安保到签证的一系列问题，都会严重阻碍世界级演员来中国表演。中国美国商会敦促中国政府简化并明确相关程序和规定，这不仅有益于现场娱乐演出会场、制作商和艺术家，而且也有益于中国的总体文化行业。

音乐作品

在西方，音乐产业重要收入来源是来自音乐销售的版税、公开表演和广播的特许权使用费，大多数在中国却无法获得。这在一定程度上是因为中国消费者不愿意为音乐下载付费，以及合法下载源供应有限。另一个因素是知识产权保护执法不力。即使音乐下载可以产生收入，通常也是来自下载音乐的平台的广告收入。

对希望在中国生产并销售音乐作品的国际唱片公司采取的持续限制滋生了盗版，并阻碍了中国本土音乐行业的发展。如果美国公司可以在中国国内落地，将会带来就业机会和专业经验，引领市场增长和本地音乐作品的发展，正如在其他国家实践过的那样。此外，这还将使得国内音乐艺术家能够加强国际联系，扩展中国的海外影响力。

因此，中国美国商会促请中国政府允许美国与其他外国唱片公司同中国公司享受同等待遇，在音乐领域进行全方位投资及经营，包括有权利和有能力与艺术家签约、录制和制作实体形式的音乐作品并通过互联网和移动平台营销和发行。

平面媒体

驻派中国的美国和其他外国记者的工作环境依然不容乐观，并且在过去两年中更加恶化，甚至面临被驱逐出境的威胁。由于记者证和签证均没有获得续签，14 年来第一位被驱逐出境的美国籍记者被迫于 2012 年 5 月离开。第二

The presence of US companies would bring jobs and expertise, leading to market growth and development of locally produced music, as has happened in other nations. In addition, it would allow domestic musical artists to acquire international contacts, which would lead to more opportunities for China to expand its cultural footprint abroad.

AmCham China therefore urges the Chinese government to permit American and other foreign sound recording companies to invest and operate in all facets of the music business in the same manner as Chinese companies. This includes the right and ability to sign artists and to record, produce, market, and distribute recorded music in physical form as well as over Internet and mobile platforms.

Print Media

Working conditions for US and other foreign correspondents in China remain extremely challenging and have worsened over the past two years under the threat of expulsion. The first American reporter to be expelled from China in 14 years was forced to leave in May 2012 when her press credentials and visa were not renewed. A second American reporter who had been based in Beijing for the past 18 years was expelled in 2013 when the Chinese government refused to grant him a resident journalist visa.

According to the Foreign Correspondents' Club of China (FCCC), the Chinese government continues to grant or withhold visas on political grounds, punishing media whose coverage of Chinese affairs it finds distasteful, in violation of international standards. Continued use of restrictive rules on reporting, physical violence against reporters, and delays in issuing visas have set back any progress made in openness of reporting prior to the 2008 Olympics. Rules introduced before the Olympics allowing foreign correspondents to travel freely and to interview anyone who agrees, without prior government permission, are frequently ignored by local authorities and not enforced by the central government.

For the third year in a row, the Ministry of Foreign Affairs (MOFA) has slowed visa approvals for temporary assignments and new resident correspondents. A new requirement that applicants be interviewed at overseas Chinese diplomatic missions further slowed approvals of work visas.

The adversarial, and at times hostile, conditions for journalists create a situation in which the mistreatment itself becomes part of the story, tarnishing China's international image. It also means that foreign journalists are unable to fully report China's story abroad, creating a sense of mistrust and skepticism for even good news about economic, cultural, and other developments coming out of China.

In addition to restrictive working conditions for journalists, China continues to restrict or hamper information gathering and distribution in the Chinese market. For example, limitations on financial information providers and news media inside China create distrust and suspicion outside of the country. Rules restricting what information providers may publish are broad, giving regulators wide leeway to punish providers. In addition, the definition of state secrets remains vague enough to encompass data routinely released in other societies. Thus, it is unclear whether financial information providers are liable for circulating economic and business data that have not been officially released. Such transparency issues have led many foreign investors to pull back from Chinese companies, making it more difficult for Chinese companies across industries to raise capital outside China. These same concerns often mean that Chinese companies are also greeted with suspicion when they attempt to expand operations outside China.

Though China has become the world's second-largest economy, it still releases much of its official economic data in an erratic way that is prone to embargo breaks, especially by well-connected Chinese state media. Accurate and timely data release, with dates and times scheduled in advance, is important for effective policy planning, economic and business reporting, business forecasting and investment, and for the economy as a whole.

Moreover, China has a growing pool of highly talented, multilingual journalists, but they are forbidden to work as journalists for foreign media companies. Changing this regulation would create jobs, increase competition, and improve the quality of reporting on China, thereby also improving understanding of China abroad.

AmCham China recommends that the Chinese government reduce limitations on financial information and news providers, allow foreign news organizations to hire Chinese reporters, and follow a regular schedule for the official release of economic data.

Recent Developments

Film

A controversy about value-added tax (VAT) payable on China box office remittances to Hollywood studios was reportedly resolved by the MPAA and GAPPRFT in the second half of 2013 on the basis that VAT would not be deducted from the studios' share and outstanding remittances would be paid. The controversy coincided with the introduction of a new VAT system in China and related to whether remittances to the studios were to be inclusive or exclusive of VAT.

The popularity and box office share of purely domestic motion pictures increased substantially in 2013. According to figures published by China Media Monitor Intelligence, the total value of the Chinese box office in 2013 was US $3.46 billion (RMB 20.9 billion), of which US $1.81 billion (RMB 10.9 billion), or 55 percent, was from domestic films.

位被驱逐的美国籍记者在北京工作达 18 年之久，于 2013 年离开，因为中国政府拒绝向他提供常驻记者签证。

中国外国记者俱乐部 (FCCC) 称，中国政府继续基于政治立场给予或拒绝签证，惩罚其认为对中国进行负面报道，违反国际标准的媒体。继续实施对记者报道的限制性规定和暴力行为，以及延迟签证的发放，使得北京奥运会前出现的公开报道环境一去不复返。奥运之前实施的规定允许外国记者无需政府事先批准便可以自由旅行并采访同意接受采访的任何人，而如今地方政府经常无视上述规定，中央政府也不予以贯彻执行。

外交部连续三年放慢了对临时特派记者和新任常驻记者的签证审批。近期中国又出台新规定，要求签证申请人到当地的中国使领馆进行面试，进一步延长了签证发放时间。

外国记者在华面临的不友善甚至有时是充满敌意的工作环境本身也成为了他们报道的一部分，损害了中国的国际形象。这还意味着外国记者无法在海外全面报道中国的情况，从而使读者对来自中国的经济、文化和其他方面的正面新闻也产生了不信任和怀疑态度。

除了记者面临的重重限制之外，中国还一直限制或阻碍中国市场信息的收集和发布。例如，对中国境内金融信息提供者和新闻传媒的限制导致境外对中国产生了不信任和怀疑。限制信息供应商发布内容的规定过于宽泛，造成监管者拥有诸多借口来惩罚供应商。此外，“国家机密”的定义依然模糊不清，甚至还包括在其他国家中都是例行发布的数据。这样，就不清楚金融信息提供方是否要因传播尚未被正式发布的经济和商业数据而承担责任。这种透明度问题使得很多外国投资人对中国公司敬而远之，使各行业的中国公司更加难以在境外筹集到资金。由于同样的问题，中国公司试图将经营范围扩展至中国境外时也会受到怀疑。

中国已经成为全球第二大经济体，但是大多数官方经济数据的发布却没有固定的模式可循，而且常常被手眼通天的中国国家传媒机构泄露。事先定好发布日期和时间以及兼具时效性和准确性的数据发布，对于有效的政策规划、经济和商业报告、业务预测和投资，以及总体经济都至关重要。

此外，中国高素质、多语种的记者人才越来越多，但是他们被禁止担任外国传媒公司的记者。改变这一规定将会创造就业机会、加强竞争、提高关于中国的报道质量，增进海外对中国的了解。

中国美国商会建议中国政府减少对金融信息和新闻供应商的限制，允许外国新闻机构聘用中国记者，并按照定期时间表公布官方经济数据。

最新进展

电 影

据报道，向好莱坞电影公司支付中国票房收入的增值税问题已经由美国电影协会和广电总局于 2013 年下半年解决：不会从好莱坞电影公司的份额中扣除增值税，并且将会支付未付的款项。这场讨论正值中国推出新增值税制度之时，所以涉及到向好莱坞电影公司支付的费用是否应包含增值税的问题。

2013 年，中国国产电影的人气和票房均出现大幅增长。根据 China Media Monitor Intelligence 发布的数据，2013 年中国票房的总额为 34.6 亿美元（209 亿人民币），其中有 18.1 亿（109 亿人民币），既 55% 来自国产电影。

电 视

2013 年，广电总局推行的严格限制措施影响了中国大陆对国外电视节目模式的进口或授权。这些限制为中外合作开发电视节目创造了激励条件，因为合作开发的内容在现行监管体系下可被视为国内节目。新规则限制每个卫星频道每年只能进口一个国外电视节目模式，并且播放时间不得早于晚上 10 点。此外，在 2014 年，仅有四个音乐选秀节目（包括外国和国内的）获准在卫星电视频道上播放。每周卫星电视频道总播放时间的 30% 必须由以下内容组成：新闻、国内制作的动画以及关于经济、文化、教育、生活服务或者农业的纪录片。监管注意力集中在卫星频道，是因为卫星频道面向的是全国。地面广播频道一般都局限在省级，并且较少涉及外国利益。

建 议

- **减少对所有外国传媒企业进入中国的非关税壁垒，并将外国媒体供应商的市场准入壁垒，包括媒体审查和管控，降至最少。**
- 在传媒和娱乐领域打击知识产权侵权行为，提高知识产权侵权司法赔偿金的数额，增强其震慑力。
- 明确划分工信部、广电总局、文化部、国务院新

Television

In 2013 the GAPPRFT imposed severe limitations affecting the importation or licensing of foreign formats for television programs in Mainland China. These restrictions created an incentive for the Sino-foreign co-development of television content as such content is regarded as domestic for regulatory purposes. The new rules restrict each satellite channel to importing just one foreign format each year which cannot be broadcast prior to 10 PM. Moreover, only four licenses have been made available for foreign or domestic talent music shows to be broadcast on satellite television during 2014. Thirty percent of total weekly broadcast time on satellite television channels must be made up of content including news, domestically produced animation, and documentaries on economics, culture, education, life services, or agriculture. Regulatory attention is focused on satellite broadcast because the footprint is national. Terrestrial broadcasters are generally confined to provincial footprints and are of less relevance to foreign interests.

Recommendations

- **Reduce non-tariff barriers to entry for all types of foreign media and minimize market access barriers for foreign media providers, including media censorship and control.**
- Fight IPR violations in all media and entertainment sectors, and increase judicial damage awards in order to enhance their deterrent capabilities.
- Establish clearer lines of authority among the MIIT, GAPPRFT, MOC, SCIO, and other media and entertainment regulatory agencies, and institute a transparent regulatory drafting process that allows for public comment.
- Reconcile *piwen* and visa application procedures for live entertainment personnel to support China's goals of cultural exchange and development, for example by allowing personnel from abroad to enter China on business visas instead of work visas.
- Eliminate the television quota system, restrictions on prime time broadcasts, and restrictions on foreign channels' market access, and publish detailed regulations on television partnership and collaboration for foreign content producers.
- Allow the US sound recording industry to sign artists and record, produce, market, and distribute recorded music in physical form as well as over Internet and mobile platforms.
- Prevent the harassment of reporters and sources, prosecute those who use violence against reporters, reduce delays in visa issuance and renewal for journalists, and eliminate the interview requirement prior to annual renewal.

闻办公室以及其他媒体娱乐产业监管机构的权限，启动透明的可公开征求意见的规章起草程序。

- 简化现场表演演职人员批文和签证申请程序，促进中外文化交流和发展，例如允许来华表演人士取得商务旅行签证而非工作签证进入中国。
- 取消电视配额制度，对黄金时段节目播出的限制和针对外国频道市场准入的限制，向外国节目制作商公布与国内电视开展合作的详细规定。
- 允许美国录音行业与艺术家签约，通过实体形式，互联网形式和移动平台的形式录制、制作、推广和发行这些音乐作品。
- 预防对记者和信息源的骚扰，起诉对记者使用暴力的人员，减少对记者签证发放和续签程序中的的拖延，取消年度续签前需接受面谈的要求。

Oil, Energy, and Power

Introduction

The energy sector continues to be one of the key contributors to China's sustainable economic growth. With continued urbanization increasing energy demand and recent regulatory pressure on air quality standards, unconventional energy sources like shale gas, tight gas, and coal bed methane continue to command the focus of many energy policy makers. The magnitude of China's unconventional energy resources and the speed with which it is reforming its energy mix are unrivaled elsewhere. For these reasons, China's unconventional energy sector has also attracted much international attention.

In 2013, the Chinese government provided significant support to the energy sector, including the facilitation of mutually beneficial foreign involvement. Overall, authorities reduced bureaucracy, increased transparency, and slightly eased imports of equipment, personnel, and technology in the sector. Twenty-five offshore blocks of conventional energy were offered for foreign cooperation. Regarding unconventional energy, notable developments include publication of the Shale Gas Industry Policy, establishment of the Shale Gas Development Standardization Committee, shale gas training for all winners of the second round of bidding for shale blocks, and preparation of the upcoming, highly anticipated third round of bidding for shale blocks.

In response to these positive developments, some American firms have increased their investments in successful projects and begun to slate plans for new projects in China, especially in onshore shale gas and deep-water endeavors in the South China Sea. AmCham China applauds the progress made in 2013, which enabled American firms to further contribute to China's energy security and we look forward to continued, mutually beneficial reforms.

Ongoing Regulatory Issues

Limited Access to Data

US energy companies wanting to invest in China are discouraged by the limited availability of data, especially when compared to other countries that are competing for oil and gas investment. In China, most oil and gas-related data are considered state secrets and treated accordingly. The shortage of oil and gas-related data available to energy companies significantly reduces their ability to understand the local industry and weakens their perceived benefit of investing in China when compared to the benefits of investing in other countries that are more transparent. Such restrictions threaten the development of unconventional resources in China. In the US, large amounts of reliable data are readily available for purchase and analysis. This access to information allows rapid evaluation of potential resource reserves and related investment proposals. AmCham China requests that industry data be made accessible in line with international practice.

Lack of Regulatory Framework

The regulatory framework of China's energy sector is complex and opaque. For example, the Chinese government regulates all exploration, development, and production of oil and gas in China. The National Development and Reform Commission and the National Energy Administration (NEA) are the principal oil and gas industry regulators. However, given the industry's importance, a number of additional governmental agencies play critical roles, including the Ministry of Land and Resources, the Ministry of Environmental Protection, the State Oceanic Administration, the Ministry of Commerce, and the State Administration of Foreign Exchange.

Due in part to the large number of agencies involved in energy sector oversight, the regulatory framework, capital and foreign exchange controls, related reporting, and permitting processes for the oil and gas sector in China are complex, overlapping, and often opaque.

Clear regulations outlining the requirements applicable to resource development would address questions surrounding production sharing contract (PSC) and official development plan (ODP) approvals, land use, and the associated potential environmental, health, and safety costs. Such regulations would also unite all parties involved under a common understanding and expectation of their respective roles and responsibilities. AmCham China suggests the Chinese government promptly promulgate clear regulations on unconventional resource development.

石油、能源和电力

引 言

能源领域仍是中国经济可持续增长的重要支柱之一。随着城镇化进程，能源需求不断增加，以及近来针对空气质量标准的监管压力越来越大，页岩气、致密气和煤层气等非常规能源资源继续成为许多能源决策者重点关注的行业。中国非常规能源资源规模之大，当前能源结构调整的速度之快，都是其他国家无可比拟的。基于这些原因，中国的非常规能源领域业已引起了国际上的很多关注。

2013 年，中国政府为能源领域提供了大力支持，包括在互利基础上为外国公司参与创造便利。总体而言，主管部门减少了官僚作风，增加了透明度，并略微放松了对该领域设备、人员和技术方面的进口限制。中国拿出了 25 个近海常规能源区块作为中外合作项目。在非常规能源方面，令人瞩目的进展包括发布了《页岩气产业政策》、成立了页岩气标准化技术委员会、为所有获得第二轮页岩气区块的中标者提供页岩气培训，并为即将开始的、备受期待的第三轮页岩气区块招标做好准备工作。

针对这些积极的进展，一些美国企业增加了其在华已成功项目上的投资，并开始制定新的项目计划，特别是中国南海的近海页岩气和深海项目。2013 年的这些进展使美国企业得以进一步为中国的能源安全做贡献，对此中国美国商会表示欢迎，并期待中国继续进行互惠互利的改革。

现存监管问题

有限的技术资料

相较于其他努力吸引石油天然气投资的国家，希望在中国投资的美国能源公司对中国可供利用的有限技术资料感到失望。在中国，大部分油气相关资料都被视作国家秘密，并作相应的保密处理。能源公司不能获得相关油气资料，极大降低了其了解当地产业的能力，减少了其在华投资的可预期收益，无法与在政策更透明的国家投资所获得的利益进行比较。这些局限是中国非常规资源开发的巨大障碍。在美国，市面上有大量可靠资料可以随时购买进行分析。有了这些信息，可以快速评估潜在资源储量以及相关投资计划书。中国美国商会请求按照国际通行做法提供行业资料。

缺乏监管框架

中国能源领域的监管框架既复杂又不透明。例如，中国政府对中国境内石油天然气的勘探、开发和生产实行全程监管。国家发展与改革委员会和国家能源局是油气产业的主要监管机构。然而，鉴于该行业的重要性，许多其他政府部门亦扮演着重要的角色，包括国土资源部、环境保护部、国家海洋局、商务部和国家外汇局。

能源行业的多头监管在一定程度上造成了中国油气行业监管框架中资本与外汇管控、有关报告和批准程序的复杂、相互重叠以及常常模糊不清的状况。

针对资源开发制定相关法规，明确相关要求将有助于解决产量分成合同（PSC）和正式开发方案（ODP）的审批、土地使用及其环境、卫生和安全成本等方面的一系列潜在问题。上述监管法规同时应当统一各相关方，就各自的职责和义务达成共识和统一预期。中国美国商会建议中国政府尽快出台清晰的非常规资源开发监管法律。

关税免除

尽管外资企业投资石油天然气行业可以享受免征进口关税的优惠，但申请免税的程序繁琐耗时。另外，近年来关税免除的数额大幅缩小，同时还要受到统一配额调控的限制，而这种配额限制的目的是控制进口技术的数量。中国美国商会建议中国政府尽可能地促进有助于中国提高开发自有资源速度的核心技术和设备的进口。

Duty Exemptions

Although foreign-invested enterprises in the oil and gas industry may receive exemptions from import duties, the process is cumbersome and time consuming. Furthermore, in recent years, the amount of the duty exemption has been gradually reduced and has become subject to a centralized quota which has essentially served to limit the amount of technology imported. AmCham China recommends that the Chinese government do everything it can to facilitate the importation of key technologies and equipment that will assist China in developing its energy resources more rapidly.

Market and Mineral Access Concerns

Limited Access to Pipelines

The most effective way to transport significant volumes of onshore gas is through a pipeline system. However, access to pipelines and ancillary infrastructure in China can be difficult, with China's existing gas pipelines predominantly owned and operated by national oil companies (NOCs). Additionally, construction of new pipelines is highly expensive and frequently redundant to existing infrastructure.

Therefore, non-discriminatory access to pipelines under transparent tariffs is a key issue for any international oil company (IOC) considering tight gas and shale gas production in China. No legislation on third party pipeline access exists in China. Currently, the only way to address this issue is through a PSC. AmCham China encourages legislation to clarify third party access rights to pipeline infrastructure.

Land Acquisition

Only limited surface land-use rights are available for foreign-invested oil and gas exploration activities. Almost all prospective acreage in China is held by one of the three NOCs: Sinopec, China National Petroleum Company (CNPC), or China National Offshore Oil Company (CNOOC). Only Chinese-owned entities are eligible to obtain acreage licenses. As a result, there is currently no way for IOCs to hold acreage on their own. Even NOCs find it difficult to obtain blocks approved for foreign cooperation, leaving IOCs with limited opportunities to assist in the development of China's oil and gas resources. IOCs need greater access to prospective acreage to enable more active participation and the accelerated development of unconventional energy in China.

Shale Resource Stakeholder Contracts

Existing Chinese PSC structures for conventional oil and gas development projects clearly and consistently address the unique aspects of those projects, which has resulted in decades of bilateral investment for individual projects.

Shale oil and gas projects have specific technical and commercial characteristics that differ from conventional oil and gas projects. There are currently no clear and consistent joint study agreements (JSAs), PSCs, or ODPs that reflect the particularities of shale operations. Key differences between conventional and shale oil and gas contracts are described in the following paragraphs.

Timeframe for Exploration, Appraisal, Development, and Production Periods

Unlike conventional oil and gas development, shale resource development involves a high degree of overlap between different stages of field development, requiring the operator to simultaneously continue exploration and appraisal in some areas, while performing development in others. Such overlap is necessary to identify the most commercially productive areas, introduce new technologies, and optimize drilling and completion programs. As a result, developing a large shale prospect usually requires an investment of decades of time and many billions of dollars. Model contracts and guidelines should incorporate appropriate modifications taking into account the overlap in development phases and the length of time required to fully develop an area.

Relinquishment

Current non-shale PSCs focus on exploiting a delineated resource on a specified block. Under contract, shale resource development continually seeks to improve drilling of resources and enhancing individual well performance. Current shale JSAs provide for initial exploration but do not account for thorough appraisals of an entire block. When JSAs are concluded, the current PSCs require the project developer to relinquish any unexplored surface acreage; however, this happens before an understanding is made about what could be developed. It is this gap, this lack of an appraisal period in the PSC, which presents a problem.

To elaborate, in unconventional resource development, exploration must continue for a longer time across the block. In cases where production is possible, appraisal and pilot production programs are necessary to test the commercial viability given engineering costs and technology constraints within the field. Only after the completion of these multi-well, multi-year assessments will the true economics for field development be understood and then an ODP can be drafted. This differs greatly from conventional oil and gas development, in which a handful of wells and seismic data can reliably identify productive areas. As a result, requiring the developer to relinquish surface acreage according to a rigid schedule is not appropriate for shale gas exploration and development.

Official Development Plan

The ODP is the development plan prepared and approved for a specific oil or gas field. According to current model PSCs,

市场准入和资源获取问题

无法获得输送管道

大批量输送陆上天然气的最有效方式就是通过管道系统。然而，由于中国现有的天然气输送管道绝大多数是由国家的各石油公司所有和运营，因此很难使用中国的天然气管道及附属设施。另外，铺设新管道成本高昂，而且经常造成现有基础设施的浪费。

因此，能否不受歧视地使用管道系统并透明收费价格是任何国际石油公司考虑在中国投资致密气和页岩气生产时最关心的问题。中国目前尚没有规范第三方使用管道系统的相关法律。当前只能通过产量分成合同来解决这一问题。中国美国商会建议制定相关法律，明确第三方对管道基础设施的使用权。

土地征用

目前，外商投资油气勘探开发活动时只能取得有限的地上土地使用权。在中国，几乎所有有望出油气的区域都由中石化、中石油或中海油三大国家石油公司之一持有。只有中资企业才有资格获得油气区域的开采许可。因此，国际石油公司目前无法自行持有油气区。即使是国家石油公司都很难获得已获批进行中外合作开采的油气区，使得国际石油公司在协助中国开发油气资源方面机会十分有限。国际石油公司需要更多地获得有望出油气的区域的开采权，以确保他们能够更加积极地参与、更快地推进中国非常规能源的开发。

页岩气资源利益相关方协议

中国现有的传统油气开发项目的产量分成合同能够清楚且一致地解决这些项目涉及的特定问题，确保了数十年来每个项目上双边投资的顺利进行。

页岩气项目的技术要求和商业特性有别于传统油气项目。但目前在页岩气开发上尚没有确立明确且一致的、能够充分体现页岩气项目特点和要求的联合研发协议(JSA)、产量分成合同或正式开发方案。常规油气开发合同和页岩气开发合同的主要区别将在下文中详述。

勘探、评估、开发和生产阶段时间表

与传统油气资源开发不同，页岩气资源开发所涉及到的气田开发不同阶段之间存在高度重叠，要求运营商必须能够做到在一些区域进行勘探和评估的同时，也能在其他地方进行开发。这种重叠性的特点对于确定商业产出率最高的区块、引入最新技术、进而实现项目钻探和生产效率最大化方面十分必要。因此，开发一个大型页岩气项目通常需要数十年的持续投资，涉及金额高达数十亿美元。因此相关标准化合同范本和指引中应当充分考虑页岩气开发阶段重叠，以及完整开发周期较长的特点，并在此基础上作相应的修改。

权利放弃

目前非页岩气产量分成合同主要解决在特定区块中特定资源的开采。根据合同，页岩气资源开发一直旨在提高资源钻探效率和单个油井的出产量。目前的页岩气 JSA 适用于初期勘探，但却无法适用于整个区块的完整评估。JSA 签订后，目前的 PSC 要求项目开发商放弃任何未经开发的地表矿区，然而一旦放弃，也即意味着开发商不可能再知道能否开发出何种资源。因此 PSC 中缺少对评估阶段的规定就成为了问题。

展开说，在非常规资源开发中，勘探过程必须在整个区块持续更长一段时间。一旦该区块具备生产的可能性，还要对其进行评估和试生产，由此来确定在当时工程成本和技术限制的条件下对该区块进行商业开发的可行性。只有完成这些多油井、多年的评估后，才能了解油田开发的真正经济效益，并起草 ODP。与常规油气开发完全不同的是，页岩气开发过程中并没有充足、可靠的矿井和地震资料可供参考，确定产区难度较大。因此，要求开发商严格遵循时间表，放弃地表探区的做法不适合页岩气勘探开发。

正式开发方案

正式开发方案（ODP）是针对某个油／气田制订并批准的开发方案。根据目前的产量分成示范合同，正式开发方案包括可采储量、开发井网、开采剖面、经济分析等内容。然而，在页岩气开发项目中的正式开发方案发挥的却是动态指引的功能，且必须具备一定的灵活性，随着开发项目的推进根据实际需要适时进行修改。

就页岩气产量分成合同而言，国际石油公司要整理勘探、评估环节或试开发项目中所获得的全部资料以完成正式开发方案。然而，许多重要新信息通常都是在正式开发方案获得批准，钻探页岩进入开发阶段时才出现的。为了实现页岩产量最大化，该正式开发方案必须保持相应的灵活性，允许根据最新获取的信息随时准确调整页岩开发方法。上述灵活性是确保页岩气开发取得成功的基础。因此，

an ODP includes data such as recoverable reserves, development well patterns, production profiles, and economic analysis, among other information. However, in the context of a shale gas development project, an ODP instead functions as a dynamic guide to development, and must remain pragmatically flexible for modification as development progresses.

For a shale gas PSC, an IOC will compile an ODP using all available data collected during the exploration and appraisal phases, or during a pilot development program. Still, significant new information often arises following approval of the ODP during the development period when shale formation drilling has already started. In order to maximize shale formation productivity, the ODP must be sufficiently flexible to allow prompt and appropriate adjustment of the way in which particular shale formations will be developed in response to newly acquired information. This flexibility is essential to success in shale gas development. The ODP should therefore be regarded as a forecast, or non-binding guidance document, for the direction of shale gas development. It cannot function as a mandatory, fixed governing document.

Recent Developments

International Involvement in China

The success of international involvement in China's oil and gas industry last year was mixed. Much progress was made in Bohai Bay and the South China Sea for many operators, with numerous new exploration agreements being signed. While onshore, the first shale gas PSC was granted and there was significant press about IOCs planning to work with NOCs in shale JSAs. Still, similar to the second round shale block bid winners from last year, there has not yet been much real activity on the blocks that were recently part of JSAs. AmCham China believes this is partly due to the lack of a clear and concise regulatory framework for executing these JSAs. Not all JSAs will result in pursuant PSCs and some blocks will not justify further investment. The identification of productive blocks will require more work on the current JSAs as well as additional JSAs.

Actions by China's National Energy Administration

Establishment of the Shale Gas Development Standardization Committee

On July 5, 2013, the NEA, at the suggestion of the CNPC, created the Shale Gas Development Standardization Committee. The committee's goal is to provide guidance through the development of 81 technical standards by 2015. AmCham China views this development as a great step in the right direction for China and hopes the committee will not hesitate to seek input from the US Department of Energy in order to meet deadlines, reinforce standards, and reduce operator uncertainty.

Shale Gas Industry Policy

On October 22, 2013, the NEA issued the Shale Gas Industry Policy, recommending further reforms to promote shale gas development. AmCham China recognizes this policy as another step in the right direction. Still, it is not clear what, if any, impact this policy will have for US companies trying to do business in China, as it appears it was written for second round shale gas bid winners, which included no foreign companies.

Actions Taken as Part of US-China Energy Agreements

In 2011 and 2012, the US and China signed the US-China Shale Gas Resource Task Force Work Plan and several subsequent agreements, including a US-China Memorandum of Understanding establishing a shale gas technical program. This program took shape in 2013 as the US-China Shale Gas Training Program, which was cosponsored by China's NEA and the US Trade and Development Agency and organized by the US-based Gas Technology Institute. Three multiday workshops were conducted, focusing on: 1) reservoir characterization; 2) health, safety, and the environment; and 3) drilling and completion. A fourth and final workshop is planned for 2014. AmCham China welcomes the development of a constructive, short-term framework for cross-Pacific cooperation in the energy sector.

The 13th Annual Oil and Gas Industry Forum was held in Xi'an, Shaanxi province in September 2013. This event historically brings together American and Chinese policy makers, China NOCs, oil and gas SOEs, and their US peers for discussions on the most pertinent topics to the industry. This year, the forum was again dominated by discussions on shale gas development, water use in unconventional energy use, equipment technology, and coal bed methane.

AmCham China member companies participated in these and many other conferences and forums in 2013. However, these activities primarily served as publicity events. AmCham China encourages both governments to closely consider the needs and wants of Chinese NOCs, oil and gas SOEs, and their US peers to identify goals and redefine the purpose of these regular meetings to find areas for cooperation. These events are for both American and Chinese operators and service companies to discuss with policy makers from both governments accelerating the development of oil and gas resources, as well as meeting the goals of the respective governments.

Recommendations

For the Chinese Government

- **Initiate comprehensive oil and gas legislation, including the designation of a specific regulator**

正式开发方案应视作一份针对页岩气开发方向的预测性、非约束性指引文件，而不是一份僵化、强制性的管制文件。

最新进展

外资参与中国油气开发

去年，外资参与中国油气开发的进程中既取得了成绩，也存在不足。取得的成就主要体现在诸多运营商新签订了多个允许其在渤海湾和南中国海区域进行油气开发的协议。在陆上油气开发方面，签订了页岩气首个产量分成合同，媒体也对多家国际石油公司计划与中国国家石油公司共同研究起草页岩气 JSA 作了大幅报道。但与此同时，与去年第二轮页岩气区块招标中的中标公司的情况类似，目前这些新近纳入 JSA 的页岩气区块还没有太多实质性的开发活动。中国美国商会理解造成这一现象的原因之一是目前针对这些 JSA 的签订实施尚无清楚明确的监管框架。并非所有的 JSA 最后都会有后续的 PSC，且有些区域也并不值得继续投资。勘定有产出的矿区要求加强改进已有的 JSA，以及签订补充 JSA 协议。

中国国家能源局采取的相关举措

成立页岩气标准化技术委员会

2013 年 7 月 5 日，根据中国石油天然气集团公司（中石油）的建议，国家能源局成立了页岩气标准化技术委员会。成立该委员会的目的是到 2015 年确立 81 项目技术标准，为页岩气开发提供指引。中国美国商会认为这标志着中国朝页岩气开发的正确方向上迈出了一大步，同时希望该委员会积极借鉴美国能源部的经验，以期在规定的时间内确立、加强上述标准，同时减少实际操作中的不确定性。

页岩气产业政策

2013 年 10 月 22 日，国家能源局发布了《页岩气产业政策》，建议进一步改革促进页岩气开发。中国美国商会认为该项产业政策是中国朝这一正确方向迈出的又一大步。然而，尚不清楚目前该产业政策对计划在中国开展相关业务的美国公司是否有影响，或有多大影响，因为该产业政策主要是针对第二轮页岩气招标的中标公司，而这些公司中并没有外资企业。

美中能源协议下的相关举措

在 2011 和 2012 年，美国和中国还签署了《美中页岩气资源工作组工作计划》以及数个后续协议，包括双方为合作开展页岩气技术项目而签订的一份美中谅解备忘录。该项目成型于 2013 年，名称为美中页岩气培训项目。该项目由中国国家能源局和美国贸易发展署联合主办，位于美国的燃气技术研究院负责组织实施。该培训项目共组织了三次多天的专题研讨会，内容主要集中在：❶ 储层表征；❷ 卫生、安全和环境；❸ 开采和完工。第四次即最后一次研讨会计划将于 2014 年举办。中国美国商会对双方在能源行业跨太平洋合作所取得的这一建设性短期框架成果表示欢迎。

2013 年 9 月，第 13 届石油天然气工业论坛于陕西省西安市举行。此次论坛历史性地将美中两国相关政策制定者、中国国家石油公司、国有油气企业及其美国同行们汇聚一堂，共同讨论该行业最前沿、最重要的问题。今年，该论坛的讨论重点将再一次锁定页岩气开发、非常规能源使用中的水资源使用、设备技术和煤层气等议题。

2013 年，中国美国商会的会员企业积极参加了上述研讨会、论坛及其他诸多相关会议和论坛。然而上述活动大多数还仅限于宣传公关。中国美国商会鼓励两国政府都能深入思考中国国家石油公司、国有油气企业及其美国同行们的需求和期望，从而确定目标，重新定位定期举行会议的目的，并积极寻找合作领域。上述这些活动对美国和中国的相关运营商和服务公司都有利，活动为他们提供了与美中两国政府相关政策决策者展开讨论的机会，从而促进两国政府加快油气资源开发步伐，早日实现各自目标。

建 议

对中国政府的建议

- **全面启动油气资源开发立法，包括指派专门的监管机构来负责监管石油天然气行业，并明确第三方对管道基础设施的使用权。**
- 制定明确的页岩气资源开发利益相关方协议范本（JSA、PSC 和 ODP），且确保该范本能够针对某具体区块进行相应的调整适用。
- 依照国际惯例，放宽对资料提供方面的各种限制，公开某些目标盆地的资料供行业研究。

for the oil and gas sector and the clarification of third party access rights to pipeline infrastructure.

- Create clear stakeholder contract templates (JSA, PSC, and ODP) for the development of shale resources that can then be customized for a specific block.
- Relax restrictions on the availability of data in line with international practice and open up data on targeted basins for industry analysis.
- Provide more onshore acreage opportunities for direct IOC access, direct foreign cooperation with NOC/Chinese partners (i.e., no Foreign Cooperation License is needed, direct participation via PSC similar to the offshore license round).

For the US Government

- **Relevant US government agencies, including the Department of State, Department of Energy, and Department of Commerce, should engage their Chinese counterparts to introduce the US regulatory framework governing the oil and gas sector, especially in relation to shale oil and shale gas.**
- Undertake dialogue with Chinese counterparts to secure the implementation of bilateral agreements on shale gas development.
- Look for opportunities to share US experience in oil and gas industry standards (American Petroleum Institute) and regulation (Bureau of Land Management and Minerals Management Service) creation as well as data warehousing of subsurface data (State Oil & Gas Conservation Commissions and Minerals Management Service).

- 为国际石油公司提供更多直接取得陆上矿区开发权的机会、外商直接与中国国家石油公司／中方合作伙伴开展合作的机会（例如，取消外商合作经营许可的要求，以及比照近海开发许可，允许通过签订 PSC 直接进行参与），以及第三方对国家石油公司管道设施的可靠使用权。

对美国政府的建议

- **美国相关政府部门，包括国务院、能源部、商务部应积极与中国对口部门联络，介绍美国在油气行业的监管框架，特别是页岩油和页岩气相关监管框架。**
- 与中国政府开展对话，确保双方有效执行在页岩气开发领域的双边协议。
- 寻找机会分享美国在油气产业标准（美国石油学会）和监管法律制定（美国土地管理和矿物管理服务局）以及次表面资料存储（美国国家石油和天然气保护委员会以及美国矿物管理服务局）相关方面的经验。

Real Estate

Introduction

The central government in 2013 continued its efforts to dampen speculation in the housing market by introducing new policies aimed at restricting purchasing demand. Investment demand has fueled rising home prices, especially in tier-one cities, making it difficult for first-time home buyers to enter the market. However, city governments have exercised discretion when implementing policies at the local level. The central government has indicated that these policies are likely to remain in place for the foreseeable future.

Slow recovery of the global economy, in conjunction with rapid rental increases, has led to caution among many firms when leasing space in China's tier-one cities. Although tier-two cities are experiencing higher vacancy rates, leasing activity remains static. As a result, declines in rents have been more pronounced in tier-two cities. However, demand for self-use space has allowed some developers to offset financial pressure in these markets by selling space in the strata-title market rather than hold them for lease. Over the medium to long term, the central government's focus on developing the services sector should lead to increased demand for high-quality office space.

While retail sales growth has decelerated somewhat across China, the retail industry remains a bright spot in the Chinese economy. Rapid growth of the e-commerce industry and a slowdown in luxury retail sales significantly altered the commercial retail property landscape in 2013. As a result, greater importance has been placed on property management and accurately gauging tenant mixes at retail projects. Meanwhile, growth in online shopping has had a beneficial effect on the non-bonded warehouse market.

Under these conditions, AmCham China member companies still face several challenges in China's real estate market. Given the large and critical role that real estate plays in China's economy, it is important that the government remove barriers to entry for foreign investors in the real estate sector, ensure the quality and professionalism of construction, and improve transparency and efficiency by creating publicly accessible property rights registries.

Ongoing Regulatory Issues

Market Entry Barriers

Six years on, the "Opinions on Regulating the Entry into and the Administration of Foreign Investment in the Real Estate Market" (Circular 171) continues to impose extensive restrictions on market entry by foreign investors. The regulation stipulates that branches and representative offices of foreign entities, as well as foreign individuals, may only purchase properties for their own use, while direct offshore ownership of PRC properties is otherwise not permitted. A foreign investor buying into a foreign-invested real estate enterprise or a domestically funded real estate project is subject to greater scrutiny and current rules effectively bar their participation in the market.

AmCham China encourages the Chinese government to revisit Circular 171 and allow more foreign investors into the Chinese real estate market. This will help spread advanced management techniques and construction practices, while increasing overall transparency in the sector.

Consistency of Quality and Regulatory Enforcement

The rapid development of real estate in China has at times led to problems. Regulatory enforcement is inconsistent, construction materials are sometimes suspect, and professional real estate management is lacking. These factors may lead to market destabilization, poor investment decisions, or defective construction. The government has recently proposed to increase site inspections and improve regulation on construction materials. Progress in these areas would result in a more stable real estate market and higher quality assets.

While there have been some improvements in quality, these have been very slow to materialize. AmCham China encourages the Chinese government and local development companies to partner with more experienced firms from the US and elsewhere to accelerate the introduction of international best practices, increasing the overall quality of the industry for its participants.

房地产

引 言

2013 年，中央政府继续通过出台旨在限购的新政策抑制住房市场的投机活动。投资需求刺激了住房价格上涨，特别是在一线城市，这使得首套房购买者难以进入市场。然而，市一级政府在地方层面上执行政策时则行使自由裁量权。中央政府已经表示上述政策在可预见的未来可能继续存在。

由于全球经济复苏缓慢，加之房租快速上涨，导致许多企业在中国一线城市租赁办公场地时趋于谨慎。二线城市则空置率较高，租赁需求也没有什么起色。其结果是，在二线城市听到了更多租金下调的声音。然而，由于市场存在购买自用场地的需求，使得一些开发商可以通过在分层所有权市场出售场地而不是出租，来纾解财务压力。从中长期来看，中央政府对发展服务业的重视应该会促进优质办公场地需求的增加。

虽然中国的零售额增速有所减缓，但零售行业仍然不失为中国经济的一个亮点。电子商务业的快速增长和奢侈品零售额下降显著改变了 2013 年的商业零售地产局面。其结果是，零售项目更加重视物业管理和准确衡量租户构成。同时，在线购物的增长也对非保税仓库市场产生了有利的影响。

在此环境下，中国美国商会会员企业在中国房地产市场仍然面临诸多挑战。鉴于房地产在中国经济中所扮演的主要角色和发挥的重大作用，政府应取消外国投资者进入房地产市场的准入限制，确保建筑质量及专业性，并通过建立对公众开放的物权注册体系来改善透明度和效率，做到这几点十分重要。

现存监管问题

市场准入壁垒

《关于规范房地产市场外资准入和管理的意见》（171 号文）自生效以来已有六年。至今，它仍然为外国投资者的准入设立了重重限制。根据该意见，外企分支机构、办事处及外籍个人只允许购买自用性住房，且不能直接跨境持有中国房产权。外国投资商人股外资房地产企业或参与中资房地产项目需接受更为严格的审核，并且当前的法规实际上限制了外资的参与。

中国美国商会鼓励中国政府对 171 号文做出修订，准许更多外国投资者进入中国房地产市场。这将有助于推广先进的管理方式和建筑实践，同时增进产业整体的透明度。

质量监管及法规执行的一致性

中国房地产在快速增长的同时也带来了诸多问题，如法规执行不一致，建筑用料有时存在质量问题，缺乏专业的房地产管理。这些因素可能会导致市场失衡，投资决策失误或建筑缺陷。政府已于近日表示将加大现场检查力度，完善针对建筑材料的相关法规。如能奏效，这些措施将进一步稳定房地产市场并提高资产质量。

尽管资产质量有所提高，但进展步伐十分缓慢。中国美国商会鼓励中国政府和房地产开发商与经验丰富的美国或他国企业合作，加速借鉴国际最佳实践，以提升行业与行业参与者的整体素质。

合同与产权的执行及透明度

中国在改善合同和产权管理以及执行的透明度和一致性方面并无太大进展，中国美国商会和其他机构多次重申，这一情况不利于投资。

地方对于产权权益注册的管理，包括土地使用权、租赁、抵押和其他权益，以及与担保优先权有关的条例都涉及多重繁杂的法规，而且执行起来也不尽统一。在此情况下，真正的产权、抵押权权益人由于无法掌握准确的信息，较难执行其权益并可能受到竞争第三方的侵害。地方法院在使用适用法律时也不尽一致，继而导致执法缺乏明确性和

Transparency and Enforcement of Contract and Property Rights

Little progress has been made to address the lack of transparency and consistency in the administration and enforcement of both contractual and property rights, a disincentive to investment consistently cited by AmCham China and others.

The local administration of property rights and interests registration, including land use rights, leases, mortgages, and other rights and interests in real property, as well as rules governing the priority of public security rights, involves a complex multiplicity of regulations that are neither clear nor consistently observed by local authorities. Due to the resulting limited availability of accurate information, bona fide holders of property rights or liens can have difficulty enforcing their rights or find their rights undermined by competing third parties. This lack of clarity and reliability also carries over into enforcement, as local courts do not always apply laws consistently. Chinese media have reported cases of rampant corruption and abuse of power by local officials who hold enormous sway in decisions concerning the approval of real estate development projects. Although it is encouraging to see these cases illuminated by the media, stricter enforcement is essential to ending the abuse.

The Ministry of Housing and Urban-Rural Development (MOHURD) is spearheading the creation of public, readily accessible provincial or national property rights and interests registries, with a view towards improving urban planning, real estate transaction efficiency, and construction and quality standards. In order to accelerate this process, the initiative was elevated to the State Council level, underscoring its importance to the central government's anti-corruption campaign and the forthcoming property tax implementation. AmCham China supports this initiative and would like to see its rapid implementation.

The recent increase in incidents involving landlords changing contractual terms mid-lease or arbitrarily not adhering to previously agreed-upon terms is also cause for concern. This trend may be largely attributable to the recent landlord-favorable shifts in the market. AmCham China respects the challenges that likely exist in regulating a rapidly transforming market. Yet the enforcement of contractual obligations is an absolute necessity and remains a cornerstone in any market economy looking to attract and retain leading global corporations.

Property Tightening Measures

In 2013, the central government reiterated that a 20 percent capital gains tax will be levied on home sellers who dispose of their properties within five years. Price control targets will also be set for local governments. Down payment and mortgage loan interest rates for second home purchases will be raised in cities with soaring home prices. In addition, non-local families with one or more homes, as well as non-local families who have not made tax payments or social security payments for the required period of time, will be banned from buying homes in the cities where they reside.

Older policies still in effect include one providing that only local Chinese residents currently owning one property may purchase additional properties. Non-locals and foreigners (or locals with two or more properties) will not be allowed to purchase any additional property. The minimum down payment on a second home has increased from 50 percent to 60 percent. Owners who sell their property within five years of purchase will be required to pay a tax on sale. Local governments are expected to create a cap on price growth, based upon changes in local income and various affordability measures. This requirement particularly targets second- and third-tier cities that are experiencing rapid development.

Recent government measures have been aimed at restricting demand for new homes. However, there have been fewer plots of land sold for residential use which has contributed to rising prices in recent years. AmCham China believes the Chinese government should refrain from interfering with the market—evidence shows that government intervention has not curbed the rise of housing prices—and focus on developing a housing management system. For example, the government can concentrate on building affordable housing while leaving commercial housing prices up to market. Many large metropolitan cities from around the world offer practical lessons and best practices that could serve as reference points for Chinese officials when formulating their own policies. The key for the Chinese government is to improve its system of land deployment.

Sustainability and Green Building

In recent years Chinese national authorities have taken a number of important steps to lower the environmental impact of real estate construction and maintenance.

The Ministry of Finance (MOF) and MOHURD published a joint circular on March 11, 2011, outlining policy on the development of renewable energy architecture. On May 14, 2011, MOHURD issued the "Notice on Further Promoting Energy Saving Work for Public Buildings," in which it pledged to reduce energy consumption per unit area by 10 percent for public buildings and by 15 percent for large public buildings during the 12th Five-Year Plan (12th FYP) period (2011-2015).

However, compliance with these policies has not met the central government's expectation as "green building" floor space totaled only 100 million square meters as of July 2013, well behind the target of one billion square meters set out in the 12th FYP. The 12th FYP also calls for green buildings to account for 20 percent of all new buildings in major cities by 2015.

可靠性。中国媒体曾多次报道贪污行为，以及地方官员滥用职权左右地产项目审批的现象。媒体能对此进行曝光令人感到欣慰，但当务之急是加大执法力度，终止滥用职权的行为。

中国住房和城乡建设部（住建部）正积极推动建立公开并易于使用的省级或国家级产权权益注册体系，这将有利于改善城市规划，提高房地产交易效率以及建筑质量标准。为了加快这一过程，此项行动计划上升到了国务院层面，突显了中央政府对于反腐倡廉和即将实施的房产税的重视。中国美国商会支持这一行动计划，并希望它能得到尽快实施。

近期业主在租约履行期间更改合同条款或随意不遵守约定条款的现象不断增多也令人担忧。出现这一趋势的主要原因是近期租房市场正不断向业主市场转变。中国美国商会承认对这种瞬息万变的市场进行监管的难度很大。然而，履行合同义务绝对必要，而且一直是任何市场经济体吸引和留住世界一流企业的重要基石。

房地产紧缩措施

2013 年，中央政府重申将对不满五年出售房产的卖房者征收 20% 的资本利得税。同时还将为地方政府设定价格调控目标。购买第二套房的首期付款和按揭贷款利率将在住房价格飙升的城市予以提高。另外，拥有一套或多套住房的非本地家庭以及缴纳税收或社保基金未能达到规定期限的非本地家庭将被禁止在他们居住的城市购买住房。

之前出台的政策中，有一项仍规定：只有那些目前拥有一套住房的中国本地居民方可购买新房产。非本地居民及外籍人士（或拥有两套或两套以上住房的本地居民）不允许购买新房产。购买第二套房的最低首付由 50% 上调至 60%。出售购买不满五年的住房须全额征收营业税。地方政府被要求按照当地收入水平和负担能力设定房价增长上限。这项要求主要针对房价正在迅速攀升的二线及三线城市。

政府最近的措施旨在限制对新住房的需求。然而，以住宅为用途而出售的土地量减少，造成了近几年来房价上涨。中国美国商会认为政府应该减少干预市场的行为（事实证明干预并未遏制房价上涨），而集中精力制定好房地产制度，比如，提供一定量的保障性住房，及在大、中城市提供廉租房，而让市场决定商品房的价格。在房地产制度方面，许多国家的大城市的正反两方面的经验都值得借鉴。另外，政府关键是要有效地配置和使用土地资源。

可持续性发展和绿色建筑

近年来，国家各部委采取了一系列重要举措来降低房地产建设和维护对环境的影响。

2011 年 3 月 11 日，财政部和住建部联合下发通知，阐述了推进可再生能源建筑项目的政策。2011 年 5 月 14 日，住建部下发了《关于进一步推进公共建筑节能工作的通知》。通知指出，争取在“十二五”规划期间 (2011–2015) 实现公共建筑单位面积能耗下降 10%，其中大型公共建筑单位面积能耗下降 15%。

但是，这些政策的执行情况并没有达到中央政府的预期，截止到 2013 年 7 月“绿色建筑”的面积仅有 1 亿平方米，大大低于“十二五”规划中制定的 10 亿平方米的目标。“十二五”规划还要求到 2015 年绿色建筑要占到主要城市所有新建建筑的 20%。

根据美国绿色建筑协会报告，截至 2013 年 7 月，中国有 1,500 多座经 LEED（能源与环境设计先锋奖）认证的建筑，显示了中国中央政府致力于改善中国建筑环境的承诺。LEED 与中国开发商之间的持续合作将有助于促进中国在绿色建筑建设和认证方面取得成就。LEED 已促请金融街控股股份有限公司—— 一家在环境管理方面取得领先业绩的国有开发商——向北京和全中国的其它开发商宣传推广 LEED 认证。

中国美国商会的会员企业欢迎中国政府继续采取相关举措推进建筑行业的节能工作。鉴于中国新建建筑数量之多，中国想要成功地控制能源需求，减少建筑业的总体能耗，这些举措十分重要。中国美国商会的会员企业在这一领域具有丰富的经验，已准备好继续协助中国开展上述工作，并且希望政府能够在确保公平市场准入、保护知识产权方面继续予以支持和鼓励。

最新进展

保障性住房

前国务院总理温家宝曾表示，尽管将 2012 年开工的保障房数量较原定目标下调了 20%，中国仍计划在 2015 年年底之前修建 3600 万套保障房。2012 年 10 月，北京市住房和城乡建设委员会宣布，已经为北京本地低收入家庭兴建了 16 万套享受国家补贴的公租房。北京市政府还称将继续紧密监控这一政策的实施，并鉴于最近保障性住房

The US Green Building Council reported that, as of July 2013, there were over 1,500 Leadership in Energy and Environmental Design (LEED) certified buildings in China, demonstrating the Chinese central government's commitment to improving China's built environment. Continued cooperation between LEED and Chinese developers will facilitate China's achievements in the green building construction and certification process. LEED has urged Financial Street Holdings, a state-owned developer with a track record of leadership in environmental stewardship, to promote LEED certification to other developers in Beijing and throughout China.

AmCham China members welcome the government's continued efforts to integrate greater energy efficiency into the building sector. Given the level of new building construction in China, these initiatives are essential if China is to successfully manage its energy demands and reduce the overall energy footprint of the building sector. Given their wealth of expertise in this sector, AmCham China members remain prepared to continue assisting China in these efforts and look forward to continued government support and encouragement in ensuring fair market access and protection of intellectual property rights.

Recent Developments

Affordable Housing

Former Premier Wen Jiabao stated that China still plans to build 36 million affordable housing units by 2015, despite cutting its original target number of construction starts by 20 percent for 2012. In October 2012, the Beijing Commission for Housing and Urban Development stated that 160,000 state-subsidized homes targeting local, low-income households had been built in the city. The government further stated it will closely monitor implementation of the policy, stipulating that new developments designed for affordable housing will be rented instead of sold, following public outcry over reported graft and exploitation. Private investors will have to wait for what could be several years to sell the residential units and at a price approved by the government. For investors who do not sell, at current rental rates, it would take 30 years on average to break even.

President Xi Jinping has since reiterated the central government's commitment to affordable housing by increasing the supply of land for such projects. In October 2013, the National Association of Financial Market Institutional Investors (NAMFII) expanded access to China's interbank bond market. Local governments and property developers can now issue medium- to long-term notes in order to fund the construction of affordable housing.

In October 2013, the Beijing city government announced plans to build 70,000 affordable homes following continued price increases in the city. Land for about 20,000 "self-use" homes was to be released in 2013 and there are plans to release land for 50,000 more in 2014. These homes are to be priced 30 percent below surrounding properties.

AmCham China supports the government's decision to continue to create housing for various income levels. We hope the government will carefully take market demand and scale into account when planning investments in affordable housing projects and also allow foreign-invested developers to benefit from the incentives provided by investing in this segment of the housing market.

Property Taxes in Shanghai and Chongqing

The local governments of Shanghai and Chongqing have initiated a trial period during which they will levy an experimental property tax in order to slow the increase in housing prices and boost tax revenue. Tax rates in Shanghai range from 0.4 to 0.6 percent of a home's value while in Chongqing they range from 0.5 to 1.2 percent. However, the Shanghai property tax applies only to residents' second homes and the first homes of non-residents and will only be imposed on homes with more than 60 square meters per person living there. The Chongqing property tax applies only to villas and other types of high priced residential properties. By comparison, the Brookings Institution found that property taxes in the United States generally range between 0.5 to one percent.

China's local governments have long relied on one-time land sales and development permits to fund their annual budgets. The property tax trial period is an attempt to move towards annual, recurring streams of income. While there has been no official announcement, the central government has hinted that the policy will likely be expanded to other first- and second-tier cities.

Recommendations

- **Eliminate market entry restrictions specifically applicable to foreign-invested enterprises put in place by Circular 171 and streamline the approval process.**
- Adopt effective measures to enhance transparency and the enforcement of regulations and policies governing the real estate sector.
- Create readily publicly accessible registries for provincial and national property rights and interests.

领域爆出的贪污渎职和以权谋私现象，新建保障房将通过以租代售的方式提供给广大市民。私人投资者须数年之后才能出售住宅，且售价需经政府批准。对于不出售房产的投资者来说，按目前的租金计算，一般需 30 年才能收回成本。

习近平主席已重申，中央政府将通过加大保障性住房项目的土地供应致力于保障房建设。2013 年 10 月，中国银行间市场交易商协会 (NAMFII) 扩大了对中国银行间债券市场的准入。为了提供保障房建设资金，地方政府和房地产开发商现在可以发行中长期票据。

2013 年 10 月，面对北京市住房价格的持续上涨，北京市政府宣布将计划建设 7 万套保障住房。2013 年北京市出让了大约供建设 2 万套“自住型”住房的土地，2014 年计划再出让供建设 5 万套自住型住房的土地。这类住房的定价将比周边房地产的价格低 30%。

中国美国商会支持中国政府继续建设适用不同收入群体住房的决策。我们希望中国政府能充分根据市场的住房需求决定保障房的规模，并允许外资开发商参与投资这一领域并享受相关政策优惠。

上海和重庆的房产税试点

为了遏制住房价格上涨和增加税收收入，上海市和重庆市地方政府启动了房产税征收试点工作。上海的房产税率为房产总价的 0.4–0.6%，重庆的房产税率为房产总价的 0.5–1.2%。但是，上海的房产税仅适用于居民的第二套住房以及非本地居民的首套住房，并且仅对人均居住面积超过 60 平方米的住房征收。重庆的房产税仅适用于别墅和其它类型的高价住宅房产。相比之下，布鲁斯金 (Brookings) 学会发现美国的房产税率一般在 0.5% 到 1% 之间。

长期以来，中国地方政府的年度财政收入一直依赖于一次性的土地出让收入和开发许可收入。房产税试行方案试图为地方政府提供一种经常性的年度收入。虽然还没有正式出台，但是中央政府已经暗示房产税政策将有可能推广到其它一线和二线城市。

建 议

- 取消 171 号文件针对外资企业的市场准入限制，简化审批手续。
- 采取有效措施提升有关房地产行业政策法规的透明度及执行力度。
- 建立对公众开放的省级和国家级产权权益注册体系。

Retail and E-commerce

Introduction

The growing buying power of Chinese consumers and the corresponding expansion of the retail sector both play increasingly critical roles in China's economic development. The need to improve the competitiveness and openness of the retail sector has become more urgent with the issuing of the 12th Five-Year Plan. The Chinese government has stated its aims to increase the role of the service industry and the government is depending on domestic consumption to help drive the economy.

In 2013, the Chinese government continued to make progress in this direction by taking measures to promote the development of the circulation sector (which includes wholesale, retail, and logistics); streamlining and reorganizing government agencies to improve efficiency and the provision of public services; establishing the Shanghai Free Trade Zone, giving signs of further opening to foreign investment; promoting sales of energy saving products across the country; and regulating and promoting e-commerce development by both local and foreign-invested retailers. These positive moves will improve efficiency, competitiveness, and sustainable development of the retail sector and lower costs for Chinese consumers while contributing to China's economic structural upgrading.

Foreign retailers play an important role in China's retail industry, particularly in best practices sharing, standards development, job creation, corporate social responsibility, sustainability, and compliance. These contributions help China's retail industry develop in a sustainable manner. AmCham China hopes the Chinese government will facilitate the contributions of foreign companies by applying the same regulations and standards for both foreign and domestic retailers, clarifying ambiguous laws and regulations, and standardizing national practices for sector development.

Ongoing Regulatory Issues

Lack of equal national treatment for foreign-invested retailers and the ambiguity of certain laws and regulations dominate the concerns of AmCham China members in the retail sector. The most burdensome of such practices, which AmCham China members urge the Chinese government to end, are outlined below.

Single-Purpose Commercial Prepaid Cards (Shopping Cards, Gift Cards)

Following the issuance of the "Administrative Measures on Single-Purpose Commercial Prepaid Cards" in September 2012, the Ministry of Commerce (MOFCOM) issued a document clarifying the implementation of these measures with more detailed content for various articles.

We appreciate MOFCOM's efforts in improving the transparency of policy making in this area. Both the government's concerns in protecting consumer rights and preventing corruption and retailers' interests and rights are considered. However, standards are still implemented differently from one city to the next.

Moreover, China still lacks a national standard on the issuing of invoices or fapiao in prepaid card sales and during sales promotions or discounts. The interpretation of the "Anti-Unfair Competition Law of the PRC" (Anti-Unfair Competition Law) and related State Administration for Industry and Commerce (SAIC) rules is different from local Administrations of Industry and Commerce (AICs). What is commonplace in one city or district might be deemed "commercial bribery" elsewhere.

AmCham China encourages further clarification of SAIC regulations and rules on the above-mentioned issues, and the standardization of national practices in this sector.

Food Safety

Food safety was one of the most critical issues not just for the retail sector but also for the whole economy in 2013. The National People's Congress, China's highest legislative body, and the State Council, China's highest governing body, have taken significant actions to try to improve domestic food safety. These actions include revising the PRC Food Safety Law; reorganizing government organizations dealing with food safety, including the General Administration of Quality Supervision, Inspection, and Quarantine (AQSIQ), SAIC, MOFCOM, and Ministry of Agriculture (MOA); establishing China's Food and Drug Administration (CFDA); and

零售与电子商务

引 言

中国消费者购买力增强，由此带来的零售业快速增长，这些已成为推动中国经济发展的重要力量。随着十二五计划的发布，提高零售业竞争力和开放程度急需提上日程。中国政府已经明确了提高服务业比重，并且正在依靠国内消费来拉动经济增长。

2013 年，中国政府通过采取相关措施。继续在促进零售业的发展方面取得进展。如加快流通业（包括批发、零售和物流）改革和发展；简化和改革政府机构以提高公共服务的效率；建立上海自由贸易区，发出进一步向外资开放的信号；推动节能惠民产品在全国的销售；规范和促进内外资零售企业电子商务发展等。这些积极的举措在促进中国经济结构转型升级的同时，还将提高零售业的效率、竞争力和可持续发展能力并且降低中国消费者的购物成本。

外资零售商在中国零售业中发挥着重要作用，特别体现在国际经验共享、行业标准制定、创造就业机会、企业社会责任、可持续发展和合规等方面。这些贡献有助于中国零售业实现更加可持续的发展。中国美国商会希望中国政府对内外资零售企业实施同等的法规要求和标准，澄清模糊的法律法规并且在全国规范行业发展，从而便于外资零售商做出更大贡献。

现存监管问题

对外资零售商缺乏同等的国民待遇以及某些法律法规含糊不清是中国美国商会会员企业最为关注的问题。以下列出了一些最为繁琐的做法，促请中国政府能够予以解决。

单用途商业预付卡（购物卡、礼品卡）

继2012年9月发布了《单用途商业预付卡管理办法》后，商务部又发布了一个文件，该文件对《管理办法》相关条款的执行和落实做出了更为详细的规定。

我们赞赏商务部为增强该领域政策制定的透明度所做出的努力。政府在保护消费者权利、防止腐败、维护零售商的权益等方面均予以考虑。然而，有些条款在不同城市落实程度仍不相同。

另外，中国目前还没有预付卡销售以及促销或打折销售期间开具发票的全国性标准。各地方工商行政管理局对《中华人民共和国反不正当竞争法》（《反不正当竞争法》）以及国家工商行政管理总局相关规则的理解也有所不同，在一个城市或地区很普通的做法在别的地方可能会被视为“商业贿赂”。

中国美国商会鼓励国家工商行政管理总局就上述问题对其法规准则及全国零售行业惯例进行规范和明确。

食品安全

2013 年，食品安全不仅对零售业而且对整个国民经济都是最关键的问题之一。中国最高的立法机关全国人民代表大会和中国最高的行政机关国务院已经采取了一系列重大举措，努力改善国内食品安全现状。这些措施包括修订《中华人民共和国食品安全法》；改组涉及食品安全的政府机构，涉及国家质量监督检验检疫总局（国家质检总局）、国家工商行政管理总局、商务部和农业部；建立国家食品药品监督管理总局；以及开展全国食品安全宣传周等。中国美国商会高度赞赏中国政府部门在食品安全领域所采取的这些重大举措。

然而，在某些领域中国政府可以进行改进以便更为有效地监督食品安全。从零售的角度看，食品安全监管体系过于依赖供应链的终端，也就是零售环节。事实上，到达零售环节的食品可能已经存在安全隐患。建议政府在整个供应链内建立和加强更为科学的管理和控制方法，如从农户及加工中心和屠宰场开始。这些环节需要培训和支持并且需要按照已有的严格规定接受检查。然而农户和食品供应商往往表示他们从未接受过检查。目前一些政府部门正

conducting a National Food Safety Publicity Week, among other efforts. AmCham China highly appreciates these actions taken by Chinese authorities to deal with the challenges in the food safety area.

However, there are some areas in which the Chinese government could improve to make the supervision of food safety more effective and efficient. From a retail perspective, the system of food safety relies too heavily on the end of the supply chain, that is, at the point of retail. By the time foods reach the point of retail, they may have already been subject to any potential safety hazards. More scientific management and controls need to be created and reinforced within the supply chain, starting with farmers and including processing centers and slaughterhouses. These entities need training and support and need to be inspected against the rigorous regulations already in place. Too often farmers and food suppliers indicate they have never undergone inspection. Several agencies are implementing traceability systems in retail outlets which do not actually help to improve safety, instead tracking data that should be well-managed by suppliers. As a result, retailers are subjected to the expense of implementing unique systems and processes that are not effective.

AmCham China strongly suggests that the Chinese government combine the efforts of the CFDA, MOFCOM, and SAIC to determine a standardized system of traceability and the best timing for the implementation of such a system. We also encourage agencies to focus on defining the highest areas of risk and implementing systems that address these first. The retail industry is prepared to work collaboratively with the CFDA, MOFCOM, and SAIC to create a world-class food safety system. The participation and perspective of companies, including suppliers, is helpful in this process. Finally, we are prepared to engage relevant food safety agencies from other markets in which we operate in order to select the best practices for implementation in China.

Retailer-Supplier Relations and Channel Fees

Channel fees, the fees for the size and number of chain stores, continued to be an important issue affecting retailer-supplier relations in 2013. While we appreciate initiatives standardizing the market in this area, there is still widespread inconsistency among the interpretation of the Anti-Unfair Competition Law and related SAIC rules by local AICs.

AmCham China encourages further clarification of the SAIC regulations and rules regarding channel fees, and the standardization of national practices in this area.

E-commerce

The Chinese government continued to support e-commerce development in 2013. The National Development and Reform Commission (NDRC) and 12 other agencies jointly issued the "Notice on Further Promoting Healthy and Quick Development of E-commerce" in April 2013. AmCham China applauds this initiative toward increased efficiency and competitiveness of the Chinese e-commerce market, which will not only benefit Chinese consumers but also contribute toward the Chinese government's goal of increasing the role of service industries and domestic consumption in the Chinese economy.

However, restrictions remain on foreign-invested retailers' ability to provide certain e-commerce services. AmCham China believes the following restrictions should be lifted as a next step in providing an open and dynamic e-commerce market for consumers:

❶ E-commerce/online sales are still in the restricted category of the 2011 revision of the "Guiding Catalogue on Foreign Investment in Industry" (Foreign Investment Catalog). AmCham China suggests e-commerce/online sales be removed from this category or, preferably, moved to the encouraged category;

❷ According to the State Council's revised "Provisions on the Administration of Foreign-Invested Telecom Enterprises," a foreign-invested telecom enterprise operating value-added telecom services is restricted by a 50 percent cap on the foreign investors' capital contribution. AmCham China encourages the Chinese government to further open the telecommunication sector to foreign e-commerce companies by allowing them to set up and operate open online marketplaces, expanding choice for customers, increasing price competitiveness, and developing small- and medium-sized businesses.

Retail Corporate Structure and Demand for WFOEs by Local Governments

In recent years, more and more city governments, and sometimes even district governments, require retailers to set up wholly foreign-owned enterprises (WFOEs) in their cities and districts. Retail is a capital-intensive business. Often the cost of investment in a store results in financial losses during the first years of a store's operation. Local governments demand that a store register as a WFOE in order to receive tax revenues. Though the store loses money in its first years, the city gets no tax income and, importantly, the losses incurred by the business become trapped in the legal structure and are not available to be used for the purpose of taxes for the larger entity. This increasingly common phenomenon to demand registration of stores as WFOEs is tax inefficient and onerous. AmCham China suggests that government agencies at all levels take measures to promote a nationwide unified and open market system and stop this practice. Alternate structures should be explored, for example, whereby WFOEs are only established at the provincial level and provincial governments distribute the taxes collected to cities.

在零售环节实施可追溯体系，实际上这种体系无助于提高安全水平，只是改善了应由供应商妥善管理的跟踪数据。到头来，零售商还得承担那些毫无作用的特有系统和流程的实施费用。

中国美国商会强烈建议国家食品药品监督管理总局、商务部和国家工商行政管理总局统一协调相关监管工作，确定一个规范化的追溯体系，找到实施此体系的最佳时机。我们也鼓励各个监管部门重点确定风险最高的监管领域并且建立优先解决这些领域问题的体系。零售行业已经做好准备与国家食品药品监督管理总局、商务部和国家工商行政管理总局共同协作，创造一个世界水平的食品安全监管体系。在这一过程中，包括生产企业和供应商在内的企业将会参与进来，他们的意见也会有所帮助。最后，我们也准备从我们开展业务的的其他国家和市场中邀请相关的食品安全监管机构参与，以便将最佳国际惯例引入中国。

零售商——供应商关系和渠道费

渠道费，即零售商按照连锁店规模和数量向供应商收取的相关费用，在 2013 年继续成为影响零售商——供应商关系的一个重要问题。尽管我们对相关部委规范该渠道费的措施表示赞赏，但一些地方工商行政管理局对《反不正当竞争法》以及国家工商行政管理总局关于"商业贿赂"的解释仍然很不一致。

中国美国商会鼓励国家工商行政管理总局进一步澄清有关渠道费的法规和政策，并且在全国范围内进行规范和统一。

电子商务

2013 年，中国政府继续支持电子商务的发展。2013 年 4 月，国家发展和改革委员会（发改委）与其他 12 个部门联合发布了《关于进一步促进电子商务健康快速发展有关工作的通知》。中国美国商会赞赏这一旨在提高中国电子商务市场效率和竞争力的举措。这不仅使中国的消费者受益，而且有助于中国政府实现提高服务业及国内消费在经济中占比的目标。

但是中国对外资零售商的限制依然存在，这影响了外资零售商提供相关电子商务服务的能力。中国美国商会认为下一步应当取消这些限制，以便为消费者营造一个开放且充满活力的电子商务市场：

❶ 电子商务／网上销售在 2011 年修订的《外商投资产业指导目录》中仍然属于"限制"类。中国美国商会建议将电子商务／网上销售从限制类别中删除，最好将其列入"鼓励"类。

❷ 根据国务院修订后的《外商投资电信企业管理规定》，经营增值电信业务的外方投资者出资额不得超过 50%。中国美国商会鼓励中国政府进一步开放电信业，允许外资电子商务公司设立和开放网上市场。此举将扩大客户的选择范围、提高价格竞争力，并且有助于中小企业的发展。

零售公司结构和地方政府对外商独资企业的要求

近年来，越来越多的市政府，有时甚至是区政府，要求零售商在其市、区建立外商投资法人机构。零售业是一种资本密集型产业，新店投资的成本常常造成店铺运营的最初几年都处于亏损状态。地方政府要求店铺注册为法人机构以便获得税收收入，然而店铺在运营的头几年亏损，地方政府不能从中得到税收收入。更重要的是，店铺产生的损失因法律结构的限制无法从税收角度用于汇总纳税和母公司的税收抵扣。这种把店铺注册为法人机构的要求越来越多，不仅在税收上无效率，并且给企业带来很大麻烦。中国美国商会建议各级政府机构采取措施促进建立一个全国范围内统一开放的市场体系，并停止这种注册要求。政府应当寻求其他体系结构，比如，在省级设立一个外商投资法人机构然后由省政府向各个城市分配所收取的税收。

中国美国商会很高兴看到在中央政府层面已经建立了跨部委的机制，该机制努力消除行业垄断和地区封锁，允许商品和生产要素在全国市场自由流通。我们建议这种机制应该在指导地方政府要求零售商在各城市和地区设立外商投资法人机构方面发挥积极作用。

价格监管

许多零售企业，包括中国美国商会的会员企业，都因为国家发改委现行价格监管法规中定义的"价格欺诈"而受到重罚。零售商必然会偶尔出错，但这并不一定意味着他们是有意欺骗顾客的。

目前各地政府在价格执法的标准上差异很大，且对待国内零售企业和跨国零售企业的检查、执法标准也不一致。价格执法官员往往没有考虑到零售业务的复杂性，由于这种复杂性，零售商往往不能完全控制其所有店铺的促销活动。制造商／供应商也经常进行影响定价的促销。最重要的是，现行的执法体制没有考虑到零售企业间竞争带来的

AmCham China is happy to see that mechanisms have been established across ministries to try to eliminate trade monopolies and regional blockades, allowing for the free movement of goods and production factors on markets throughout the country. We suggest this mechanism play an active role in guiding local governments to standardize the requirement for retailers to set up WFOEs in local cities and districts.

Pricing Regulations

Many retailers, including AmCham China members, have been heavily fined because of price fraud according to its definition in the current NDRC pricing regulations. Retailers are bound to make mistakes once in a while, but this does not necessarily mean they have the intention of cheating customers.

The current level of enforcement by local governments is inconsistent from city to city and between multinational companies and local retailers. Enforcement officials often do not take into account the complexity of the modern retail business, wherein retailers often do not have complete control over the promotions occurring in all of their stores. Manufacturers often run promotions that affect pricing. Importantly, the current enforcement regime does not consider having low prices to be a consumer-friendly dynamic or competition to be good for consumption. It is common international practice for retailers to compare prices and adjust their prices to encourage competition, allowing customers to win. However, these actions sometimes conflict with current NDRC price regulations, resulting in penalties. AmCham China suggests the NDRC consider the intention of retailers in this area and revise the current regulations so that competition is encouraged and customers' rights are really protected.

Professional Faultfinders

In 2013, AmCham China members continued to experience problems caused by so-called professional faultfinders—a challenge unique to the Chinese market. These faultfinders (often organized, even under the auspices of a law firm) understand the regulatory environment and laws affecting retail very well and go to retail outlets and find mistakes with pricing, labels, or product quality. Having identified a problem, they attempt to blackmail store management, demanding compensation under threat of reporting the problem to the government and media, in effect, attempting to extort retailers.

Such behavior is not professional and resembles that of organized crime members. It is common for these faultfinders to physically abuse store management and cause disruptions affecting ordinary customers. Their actions offer virtually no value for consumers and domestic consumption. The faultfinders appear to focus exclusively on foreign retailers because those are the companies most concerned with reputation, compliance, and ethics.

Faultfinders also create problems for Chinese government agencies who must deal with a high number of cases. Numerous cities condone this type of activity and offer rewards to these professional faultfinders.

AmCham China has noticed the NDRC is revising its "Regulation on Price Case Reporting" and sought public opinion in September 2013. In articles 12 and 13 of the draft regulation, the NDRC seeks to create barriers for compensation claims professionals during the administrative appeals process, distinguishing compensation claims professionals from ordinary consumers. AmCham China views these articles as a step in the right direction.

AmCham China suggests that the NDRC continue to create barriers for professional faultfinders in the administrative appeals process. The National People's Congress and Supreme People's Court should do the same in various legal procedures. AmCham China wishes to see the creation of an inhospitable environment for professional faultfinders to aid the smooth development of China's market economy.

Recent Developments

Sector Growth

Although the rate of retail sector growth slowed slightly in 2013, overall sector growth remains robust. In 2013, total consumption of retail commodities reached US $3.86 trillion (RMB 23.4 trillion), up 13.1 percent from the previous year (1.2 percentage points lower than 2012's growth of 14.3 percent). The contribution rate of consumption to GDP growth is 50 percent.

In 2012, 321 foreign enterprises were newly approved in the retail sector with actual foreign investment reaching US $1.9 billion (RMB 11.5 billion). Of the top 100 retailers in 2012, 22 were mainly foreign–invested with sales of US $67.6 billion (RMB 408.9 billion), representing 17.2 percent of sales made by top 100 retailers.

The 18th CPC Congress set goals of building a more economically well-off society, promoting healthy economic development and upgrading economic structure in the years leading up to 2020. We believe this long-term goal will be favorable to many service industries, including the retail sector.

Recommendations

- **Apply the same regulations and standards to both foreign and domestic retailers.**
- Further clarify the Anti-Unfair Competition Law and related SAIC rules. Establish standardized national practices to avoid discrepancies in the interpretation of what constitutes commercial bribery by local AICs in the case of channel fees and

价格下降能使消费者受益并带动消费。零售企业在比较竞争对手价格之后调整价格以推动竞争并让利消费者是一项国际通行的做法。但是这些行动有时可能与国家发改委目前的法规在字面上冲突。中国美国商会建议国家发改委考虑零售企业的主观意图，修改当前的法规，以便鼓励竞争，使消费者的利益真正得到保护。

职业投诉人

2013 年，中国美国商会成员继续经历了由所谓的"职业投诉人"（也称"职业打假人"、"职业索赔人"等）造成的各种问题——这是中国市场独有的一种挑战。这些投诉人（通常是有组织的，甚至是在律师事务所的保护下）非常了解零售业的相关监管环境和法律，他们专门到零售网点寻找定价、标签或产品质量方面的过失。确定问题后，他们就试图勒索零售商管理层人员，以向政府和媒体投诉作为威胁索要钱财，企图敲诈零售商。

此等行为有损行业发展，类似于有组织犯罪。这些投诉人通常公开扰乱商店的正常经营秩序，并妨碍普通消费者的购物。他们的行动实际上对消费者和国内消费没有任何价值。他们似乎专门针对外资零售商，因为外资零售商最注重声誉、合规和商业道德。

职业投诉人也给相关政府机构制造了麻烦，这些机构必须处理很多这样的案件。然而很多地方容忍这种行为并且向这些人提供奖励。

中国美国商会已经注意到国家发改委正在修订其《价格举报受理规定》并且于 2013 年 9 月公开征求意见。在该规定草案的第 12 条和第 13 条中，国家发改委试图在行政复议过程中对职业投诉人的行为设置障碍，并把他们和普通消费者区别开。中国美国商会认为这些条款在正确的方向迈出了重要一步。

中国美国商会建议国家发改委继续在行政复议过程中对职业纠错人设置障碍。全国人民代表大会和最高人民法院在各类法律程序中也应该如此。中国美国商会希望看到中国营造出不利于职业投诉人的营商环境，以帮助中国市场经济顺利发展。

最新进展

行业增长

虽然零售业 2013 年的增长率有所放慢，但是整个行业的增长仍然保持强劲态势。2013 年，社会消费品零售总额达到了 3.86 万亿美元（人民币 23.4 万亿元），比上年增长 13.1%（相比 2012 年 14.3% 的增长率降低了 1.2 个百分点）。消费对 GDP 增长的贡献率为 50%。

2012 年，全国新批准零售业外商投资企业 321 家，实际利用外资达到 19 亿美元（人民币 115 亿元）。2012 年，全国零售百强企业中有 22 个是外资企业，销售额为 676 亿美元（人民币 4089 亿元），占全国零售百强企业销售额的 17.2%。

中共第十八届全国代表大会确立了今后到 2020 年建立小康社会、促进经济持续健康发展并升级经济结构的目标。中国美国商会相信这一长期目标将有利于包括零售业在内的众多服务行业的发展。

建 议

- **对内外资零售企业采用相同的监管要求和标准。**
- 进一步规范、明确《反不正当竞争法》和国家工商行政管理总局关于"商业贿赂"的相关规定。建立规范化的全国性标准，以避免各地方工商行政管理局在渠道费和预付卡促销等情况下对"商业贿赂"进行解释时发生分歧。
- 通过制定有效、统一的体系规范食品安全监管：
  - 邀请生产企业 / 供应商参与这一过程；
  - 确定可追溯工作的重点；
  - 请国家食品药品监督管理总局、商务部和国家工商行政管理总局统一协调相关监管工作；
  - 邀请零售商和供应商参与；以及
  - 参考欧盟和美国等其他市场，以其作为基准。
- 发布更为灵活的增值电信行业开放政策，允许外资电子商务公司设立并经营开放的网上商城等增值电信业务。

prepaid card sales promotions.

- Standardize food safety supervision by developing a single system and a single plan that is effective and efficient:
  - Engage suppliers in this process;
  - Identify the key traceability aspects that are essential to track;
  - Ask various ministries to work collaboratively across the CFDA, MOFCOM, and SAIC;
  - Invite participation by retailers and suppliers; and
  - Use other markets such as the EU and the US as benchmarks.
- Revise the Foreign Investment Catalogue and remove e-commerce from the restricted category. Issue more flexible policies in opening the value-added telecommunication service sector to allow foreign e-commerce companies to set up and operate open online marketplaces.
- Incorporate changes into regulations requiring authorities to consider the intent of retailers in cases of price fraud. Revise the current pricing regulations so that competition is encouraged and customers' rights are really protected.
- The central government should issue guiding principles and policies to provincial and municipal governments in order to standardize the requirement that retailers must set up WFOEs in local cities and districts. Work with tax authorities for alternative regulations so that losses are not captured in legal entities.
- Continue to discourage the prevalence of professional faultfinders. Eliminate rewards paid to professional faultfinders at local levels on the basis that they do not represent the interests of consumers at large.

- 修改相关法规，要求各执法部门在处理价格欺诈情况时考虑零售商的主观意图。修订现行的定价法规，以便鼓励竞争并使顾客的权利真正得到保护。
- 中央政府应该面向省、市级地方政府发布指导原则和政策，统一对外资零售企业在各地市、区设立外商独资法人机构的要求。与税务部门合作制定、修改相关法规，以避免法人机构的设立给连锁零售企业带来税务损失。
- 继续阻止职业投诉人的猖獗行为。取消地方政府层面上向职业投诉人的奖励和报酬，因其不代表大多数消费者的利益。

Part Four:
Regional Issues
区域性问题

Provincial and Local Investment Environment

As AmCham China member companies expand throughout China, they must increasingly interact and cooperate with provincial and local governments. However, implementation of central government regulations may vary from region to region and foreign companies often face inconsistent and unclear operating environments. As second- and third- tier cities continue to develop and attract foreign investment, local policies and the local investment environment are becoming increasingly important to our members.

AmCham China member companies consistently seek to engage local stakeholders, share and promote best practices, and contribute to China's development wherever their business operations may be located. While these companies experience many of the same issues discussed in the industry and cross-sector chapters of the *White Paper*, this section highlights the region-specific challenges that they face in four major cities: Dalian, Shanghai, Tianjin, and Wuhan. Contributions were made by AmCham China's Northeast China, Tianjin, and Central China chapters, as well as from our fellow chamber, the American Chamber of Commerce in Shanghai. Though each region has its unique challenges and opportunities, three key issues resonate throughout this section: the need for an open, non-discriminatory, and business-friendly environment; human resource constraints; and bureaucratic hurdles which hinder efficient customs procedures.

Business-friendly Infrastructure

The development of business-friendly policies not only attracts foreign investment and know-how, but also improves the overall environment in China's cities. AmCham China member companies are appreciative of recent improvements in infrastructure including the expansion of Tianjin's subway system and additions to Dalian's North Railway Station and International Airport. However, traffic congestion and corresponding pollution continue to be problematic, and more needs to be done.

Service-related infrastructure, particularly the infrastructure related to healthcare and education, is vital to attracting and retaining the best talent whether foreign or Chinese. Additionally, simplifying the process for foreign law firms to open up local branches in Chinese cities would help advance the quality of business-related services throughout China, while improving the overall business climate. This is particularly important as localities develop special trade zones aimed at reducing market barriers and expanding financial products.

Indeed, much excitement and anticipation surrounds China's widely-touted new free trade zone in Shanghai (Shanghai FTZ). Following the establishment of the Shanghai FTZ, other cities throughout China have begun submitting plans for their own business-friendly trade zones, including the recent announcement of plans to develop a new free trade zone in Tianjin. AmCham China members encourage the future development of such free trade zones and anticipate the results of financial reforms throughout all of China's cities.

Human Resources

Human resource issues, including the rising cost of labor, related management-level human resource constraints, and shortages of qualified employees, have remained among the top five business challenges facing foreign companies in China for the past five years, according to AmCham China's most recent *China Business Climate Survey Report*. Human resource shortages are a threat to sustainable growth and refer to both the quality of the expatriate workforce as well as the local talent pool.

The mandatory enrollment of expatriates in China's social insurance program and other burdensome requirements act as a brake on further investment. AmCham China recommends that central and local governments encourage Chinese universities to expand their number of cooperative programs with international educational institutions, welcome foreign business training consultants, and facilitate reciprocal visits with relevant agencies and organizations.

Customs

Despite a number of improvements in customs procedures in the major trade hubs in China, challenges remain that must be addressed in order to boost efficiency. The complexity of customs clearance procedures and inconsistent implementation of customs regulations create a confusing web that reduces the efficiency of member companies' operations.

省市及地方投资环境

随着中国美国商会会员企业业务扩展到全中国，他们势必越来越多地与省市和地方政府进行互动和合作。但是，由于各地对中央政府法规执行各异，外资企业经常面临不一致和不明确的运营环境。随着二、三线城市继续其发展和吸引外商投资的步伐，地方政策和地方投资环境对我们的会员企业正变得日益重要。

无论其业务运营位于何地，中国美国商会会员企业始终寻求本地利益相关者的参与，分享和推广最佳运营实践，为中国的发展做出贡献。虽然这些企业面临着《白皮书》行业和跨行业章节中所讨论的诸多问题，但是本部分的重点是他们在大连、上海、天津和武汉这四个主要城市所面临的区域性挑战。本部分的内容由中国美国商会在东北、天津和华中的分办公室以及我们的合作组织上海美国商会提供。尽管每个地区都有其独特的挑战和机会，却有三个关键共性问题：需要一个开放、无歧视和益于营商的环境；人力资源限制；以及妨碍海关程序效率的官僚障碍。

益于营商的基础设施

制定益于营商的政策不仅有利于吸引外商投资和技术，而且有助于改善中国各城市的整体环境。中国美国商会会员企业对包括天津地铁系统扩建，大连增建北方铁路站和国际机场在内的若干基础设施改善表示赞赏。然而，交通拥堵和由此造成的污染问题仍然存在，还需要做更多的工作。

服务业相关基础设施，尤其是与医疗和教育有关的基础设施，对吸引和留住外国和中国的顶级人才都极其重要。除此之外，简化外资律师事务所在中国各城市开办分支机构的流程将有助于提升全国范围内的商业服务质量，同时改善整体商业环境。随着各地开发旨在减少市场障碍和扩展金融产品的特别贸易区，这一点尤为重要。

的确，中国大张旗鼓宣传的上海自由贸易试验区（上海自贸区）让人倍感兴奋和充满期待。上海自贸区建立后，中国其他城市也纷纷开始提交益于营商的自贸区计划，其中包括最近公布的天津建设自由贸易区的计划。中国美国商会会员企业鼓励未来发展更多此等自由贸易区，并期望中国所有城市都取得金融改革成果。

人力资源

根据中国美国商会最新的《中国商务环境调查报告》，人力资源问题，包括不断上升的劳动力成本、管理层人才匮乏以及合格员工短缺等，仍然是过去五年来外资企业在中国面临的五大商务挑战。人力资源短缺指高质量外籍劳动力及本地人才库的短缺，是对可持续发展的一大威胁。

强制要求外籍员工加入中国社会保险项目以及其他繁琐的要求，阻碍了进一步投资。中国美国商会建议，中央和地方政府鼓励中国的高等院校增加与国际教育机构之间的合作项目的数量，欢迎外国企业培训顾问来华传授，促进与相关机构和组织的互访。

海 关

尽管中国主要贸易中心的海关程序有了很多改进，但挑战依然存在，必须予以解决以便提高效率。复杂的通关程序以及海关法规执行的不一致造成了混乱，降低了会员企业的运营效率。例如，在武汉，由于海关程序过度复杂化，许多企业仍需要依靠第三方来办理通关程序。在上海，尽管上海海关与中国检验检疫局进行了整合，但对于外资企业的文件提交要求并没有随之简化，导致了重复的报关工作和费用的增加。

这些官僚性障碍抑制了所在地区吸引新投资。中国美国商会会员企业欢迎地方海关就推广使用电子通关系统和澄清复杂的法规所做出的最新努力。这些努力将使海关政策变得更加公平、透明，也将有助于促进贸易和降低成本。在新海关法规出台前后，建立一个确保听取各利益相关方意见建议的反馈机制，也将起到鼓励新投资的作用。

For example, in Wuhan, many companies still rely on third parties to complete customs clearance procedures because of unnecessary complications. In Shanghai, despite the integration of Shanghai Customs and Shanghai China Inspection and Quarantine, the required paperwork that must be filed by foreign companies has yet to be streamlined, increasing duplicative declaration work and costs.

These bureaucratic hurdles discourage new investment in these regions. AmCham China member companies welcome renewed outreach from local Customs offices in regard to the use of e-clearance systems and the clarification of complex regulations. In addition to making customs policies more transparent and non-discriminatory, these efforts would promote trade and reduce costs. Feedback mechanisms that engage stakeholders before and after new customs regulations are passed would also encourage new investment.

Dalian

Introduction

Dalian's strategic location on China's northeast coast has greatly influenced its rapid development over the last twenty years. As a major international shipping and logistics hub and regional financial center, it offers an attractive environment for continuing economic growth. The local government has been successful over the years in attracting foreign investment and international tourism as it attempts to transform the city from a heavy industrial city to a new high tech and tourist center for China. The city's infrastructure has also developed rapidly to accommodate this growth. While there is still room for further development of the transportation infrastructure, the completion of the Dalian North Railway station in late December 2012, connecting the city to the northeast region, marked an important step in the right direction.

Dalian has experienced steady GDP growth over many years. Within the context of China's slowing economic growth rate, Dalian's own economic environment remains quite stable. During the first half of 2013, Dalian's GDP reached US $62.5 billion (RMB 378 billion), an increase of 9.3 percent over the first half of 2012, while government fiscal revenue totaled US $6.9 billion (RMB 42.4 billion), up 13.1 percent.

With a government committed to supporting foreign investment, there is still ample opportunity for new foreign-invested enterprises (FIEs) to take advantage of the opportunities the city provides. There are, however, a number of areas where further improvements must be undertaken to attract new foreign investment or even retain the existing investments, which are detailed throughout this chapter. AmCham China wants to work with local officials to further improve the overall business environment in Dalian and help the city continue as a growth engine for China.

Ongoing Issues

Healthcare

The overall health care industry in Dalian has improved over the past few years, however, foreign companies in this sector still lack a sufficient number of English-speaking doctors and nurses, forcing them to outsource for private onsite care to meet the needs of their non-Chinese-speaking patients. Additionally, navigating the Dalian healthcare system still requires strong Chinese language skills. Although international healthcare companies offer services to assist their members in utilizing local providers, it is increasingly common for the non-Chinese-speaking community in Dalian to travel to cities like Beijing or Hong Kong for routine medical care.

While encouraged by the development of the Dalian healthcare industry, international medical providers still face challenging regulatory and licensing delays in the development of new foreign-invested medical facilities. AmCham China believes that a more transparent and supportive regulatory regime would foster new investment in Dalian, as well as needed improvements in local healthcare facilities.

Education

For expatriate families, local educational opportunities for children remain a key factor in deciding whether to move to Dalian. There are currently only two schools in Dalian providing a Western-style educational program. The Dalian American International School provides American-style education for grades K-12 and is located in the Golden Pebble Beach area. The Maple Leaf International School has several campuses located throughout Dalian with two locations dedicated to using a Canadian curriculum—a K-9 program located in the downtown area, and grades 10-12 in the Golden Pebble Beach area. Due to its remote location, the Golden Pebble Beach area lacks sufficient infrastructure. Although transportation such as light rail does exist in this area, it is difficult to access without private transportation.

Customs

In 2013, great efforts were made by Dalian Customs to implement favorable policies outlined by the central government. These improvements included: the implementation of a paperless declaration system in less than three months, expansion of the Harmonized Tariff Schedule Pre-classification Social Service, and increased accessibility to information about new regulations through innovative measures such as the Customs and Enterprise Talks, 12360 hotline, and use of social media services such as QQ and WeChat.

大 连

引 言

大连市在中国东北海岸的战略位置对其过去二十多年来的快速发展产生了极大影响。作为一个主要的国际航运和物流枢纽及地区金融中心，大连市为经济持续增长提供了一个极具吸引力的环境。随着当地政府逐步将大连从一个重工业城市转型为中国的一个高新技术和旅游中心，多年来大连在吸引外商投资和国际旅游方面卓有成效。与这种发展相适应，大连的城市基础设施也得到了快速发展。虽然交通基础设施还有进一步发展的空间，但 2012 年 12 月底连接东北地区的大连北站的竣工标志着大连已朝正确的发展方向迈出了重要的一步。

多年来，大连的 GDP 稳定增长。在中国经济增长速度总体放缓的背景下，大连自身的经济环境仍然相当稳定。2013 年上半年，大连的 GDP 达到 625 亿美元（3780 亿元人民币），较 2012 年上半年增长 9.3%，政府财政收入共计 69 亿美元（424 亿元人民币），增长 13.1%。

有了政府对外商投资的全力支持，新落户的外资企业仍有充分的机遇来利用大连所提供的各种发展机会。然而，为了吸引新的外商投资，甚至为了留住现有的投资，大连还有很多方面需要进一步改善，具体内容在本章中会详细叙述。中国美国商会希望与地方官员共同努力，进一步改善大连的整体商务环境，帮助大连继续成为中国的经济增长点。

现存监管问题

医疗保健

大连市的医疗保健行业在过去几年里整体有所提高，然而该行业的外资企业仍然缺乏足够的会讲英语的医生和护士，这使得它们只能借助外包进行私人上门护理，以满足不懂中文的病人的需要。另外，在大连的医疗保健机构就医仍然需要很好的中文能力。虽然国际医疗保健企业会帮助其成员使用当地医疗机构提供的服务，但是不懂中文的外籍人士前往北京或香港等地进行常规医疗保健的情况越来越普遍。

在被大连医疗保健行业的发展所鼓舞的同时，国际医疗服务商在开设新的外资医疗设施时仍然面临着各种监管和许可审批拖延的问题。中国美国商会认为更加透明和支持性的监管体制将会有益于大连吸引新的投资和改善当地医疗保健设施。

教 育

对于外籍人士的家庭而言，孩子在当地接受教育的机会仍然是决定是否搬迁至大连的主要考虑因素。目前，大连只有两所提供西式教育的学校。位于大连金石滩地区的大连美国国际学校提供幼儿园至 12 年级的美式教育。枫叶国际学校在大连有多个校区，其中两个校区专门使用加拿大的课程——提供幼儿园至 9 年级教育的校区位于大连市市区，提供 10–12 年级教育的校区位于金石滩地区。由于位置偏远，金石滩地区缺少足够的基础设施。虽然该地区确实有轻轨这样的交通设施，但是如果没有私人交通工具还是很难到达。

海 关

2013 年，大连海关为实施中央政府规定的优惠政策做了大量工作。这些改进包括：在不到三个月内实行无纸化报关系统、扩大关税预归类协调社会化服务以及通过创新性的措施（比如海关和企业对话、12360 热线以及使用 QQ 和微信等社会媒体服务），提高公众对相关新法规的了解。

然而，海关法规的解释和执行方面仍然存在不一致的地方，这造成业务运营的不可预知性，使企业难以增加和拓展在大连的业务。这些困难也阻碍新的外资企业在大连投资。中国美国商会建议实行一种更为积极主动的方法，通过建立更加有效的意见征求机制来保证各项新政策的执行一致。在新法规批准前后引入预先通知和反馈程序将会

However, Customs regulations are still inconsistent when it comes to interpretation and implementation, creating unpredictability in operations and making it difficult for existing enterprises to grow and expand their presence in Dalian. These difficulties also inhibit new enterprises considering investment in Dalian. AmCham China recommends a more proactive approach to align new policies by establishing a more effective mechanism to solicit feedback. An advanced notification and feedback process, both before and after a new regulation is passed, would build a solid implementation process, helping enterprises adjust with minimal disruption to their business operations.

Transportation and Traffic Congestion

The ambitious plans of the local government to improve the transportation system in Dalian are underway. The long awaited high-speed train and Dalian North Railway station opened in late December 2012, connecting northeastern China and reducing commuter times by as much as 70 percent. The new international terminal in Dalian International Airport was completed in 2011, while Dalian's new airport in Jinzhou Bay is scheduled for completion in 2015. However, direct air routes from the US to cities in China's northeastern region remain limited. Increasing the number of direct international routes would foster local growth and potentially increase foreign investment in Dalian. Additionally, the Dalian metro system, originally scheduled for completion by 2012, has been delayed, as has the completion of the "Number 8" Fast Track.

Traffic congestion in Dalian represents a significant and growing challenge. People living and working downtown face long delays and heavy traffic at most times during the day, which worsen during rush hour or in bad weather conditions. A general shortage of taxis and extremely overcrowded buses and trains indicate that the city urgently needs to complete and then expand its subway system. For those who work or live in the Dalian Development Zone or Golden Pebble Beach area, the need for increased access to the light rail station and other forms of public transportation is crucial. In many remote locations, local taxi drivers often overcharge customers and refuse to use their meters, thus making it expensive to get around even locally.

The construction of a bridge from the Dalian Development Zone to the downtown area has provided a much smoother traveling experience, however, the eight-lane Xinghai Bay Bridge, which will connect the downtown area with Dalian's high-tech zone, remains under construction. During the summer, major freeway construction doubled commute times and the availability of downtown parking continues to present challenges for commuters.

We believe that the city needs to prioritize the rapid completion of these transportation projects to help solve the growing congestion within the city. AmCham China also strongly urges the city government to hold regular meetings with industrial leaders to share progress on these important infrastructure projects.

Golden Pebble Beach Infrastructure

The Dalian government has invested heavily in the Golden Pebble Beach area, developing it as a key location for schools of all levels, including international schools, as well as transforming the area into a destination holiday resort. What used to be an old fishing and farming village is now a growing metropolitan area, attracting both tourists and a large student population. This increase in population necessitates greater investment in infrastructure. For example, the international school is unable to maintain reliable temperatures throughout its complex and other areas lack gas lines. Likewise, sewage lines are still nonexistent in housing complexes built more than eight years ago. Consequently, the waste from these housing complexes flushes directly into rivers and the ocean, creating environmental harm and health issues when consumers buy seafood and swimmers try to use the waters.

Recommendations

For the Dalian Government:

- **Foster dialogue and consider feedback from foreign investors by holding regular meetings with FIEs, improving communications and transparency between enterprises and the Dalian government.**
- Further improve Customs procedures by establishing a more effective mechanism to solicit feedback and an advanced notification and feedback process both before and after a new regulation is passed.
- Clarify and simplify the regulatory and licensing measures regarding the establishment of international medical providers to improve healthcare provisions to the local community.
- Continue to fund and expedite existing transportation projects such as high-speed rail and subway projects to lighten traffic congestion; provide regular updates on their progress to create credibility amongst the investor community.
- Make access to public transportation in remote areas more convenient and strictly enforce regulations regarding taxi drivers and illegal taxi services.
- Improve infrastructure in the Golden Pebble Beach area to reduce environmental and health issues.

构建一种稳健的实施过程，还有助于企业在最小的干扰下进行业务经营调整。

交通运输和交通拥堵

地方政府改善大连交通运输体系的宏大计划正在进行之中。期待已久的高铁和大连北站于 2012 年 12 月底开通，把中国东北连为一体并将火车出行时间缩短了 70%。大连国际机场的新国际航站楼于 2011 年建成，而位于金州湾的大连新机场预计将于 2015 年竣工。但是，从美国飞往中国东北地区各城市的直达航线仍然有限。增加国际直达航线的数量将会促进当地发展并且增加外商在大连投资的可能性。另外，原定于 2012 年完成的大连地铁系统延期，"8 号"快速通道的竣工也同样延期。

大连市的交通拥堵是一个重大且不断增长的挑战。生活工作在市区的人们白天大多数时间出行都会面临长时间延误和交通堵塞，上下班高峰时间或遇到恶劣天气时情况就更糟糕。出租车普遍不足以及公交车、火车过度拥挤的状况表明大连急需完成并且进一步扩建地铁系统。对工作生活在大连开发区或金石滩地区的人们来说，增加轻轨车站数量和其它公共交通方式最为紧要。在许多偏远地区，当地出租车司机经常向乘客漫天要价并且拒绝使用计价器，因此即便在当地区域内乘车车费也很高。

从大连开发区到市区的大桥使出行更加顺畅。不过连接市区和大连的高新技术产业 园区的八车道星海湾大桥目前还在建设当中。

夏天各条主要高速公路的施工使上下班时间延长了一倍，而市区停车位不足则仍然是开车上下班人们最头疼的事。

我们认为大连市需要优先快速完成这些建设项目才能有助于解决市区内不断增加的拥堵问题。中国美国商会也强烈呼吁市政府定期与产业代表碰面，通报这些重点公共建设项目的进展情况。

金石滩基础设施

大连市政府已在金石滩地区投入巨资，要把该地区开发成为包括国际学校在内的各类学校的主要聚集地，并把该地区转型成为一个度假胜地。这里过去曾是一个捕鱼和耕种的古老村庄，现在正发展为一个都市，吸引着旅游者和大量的学生。人口的增长使得加大基础设施投资成为必要。例如，国际学校都无法保证其整幢教学楼的可靠供暖，很多地区没有通天燃气。同样，八年前建造的住宅楼里现在还没有排污管道，导致这些住宅楼里的污水直接排进了河里和海里，造成环境危害以及对海鲜消费者和在这些水域游泳者的健康问题。

建 议：

对大连市政府的建议：

- **通过与外资企业定期举行会议，开展对话并考虑外国投资者的反馈意见；加强企业与大连市政府之间的沟通和透明度。**
- 建立更为有效的反馈意见征求机制，并在新法规批准前后引入预先通知和反馈过程，以此来进一步改善海关程序。
- 明确并简化有关建立国际医疗机构的监管和许可批准措施，以改善向当地社区提供的医疗保健服务。
- 继续投资和加快现有的交通运输项目的建设，如高铁和地铁项目，减轻交通拥堵；定期通报项目的进展，赢得投资者的信任。
- 为偏远地区提供更为便利地公共交通设施，并严格整治出租车司机和非法出租车运营。
- 改善金石滩地区的基础设施，减少环境和健康问题。

Shanghai

This chapter was contributed by The American Chamber of Commerce in Shanghai (AmCham Shanghai).

Introduction

Shanghai is at the center of China's economic reform agenda with the launch of the China (Shanghai) Pilot Free Trade Zone (Shanghai FTZ) in September 2013. The Shanghai FTZ has the potential to create significant benefits for Shanghai and China, as well as foreign investors and businesses. In 2013, Shanghai also made other progress toward its key 2020 development goals—in the financial services, customs, and logistics sectors—but there remain areas where additional progress is needed such as reducing bureaucracy, addressing human resources constraints, and improving trade facilitation.

The American Chamber of Commerce in Shanghai (AmCham Shanghai) and AmCham China are committed to assisting Shanghai in successfully developing the Shanghai FTZ and achieving its 2020 development goals. We look forward to deeper engagement with government authorities and the American business community to support implementation of these goals and to enhance our longstanding partnership with the Shanghai Municipal Government.

Ongoing Regulatory Issues

China (Shanghai) Pilot Free Trade Zone

The Shanghai FTZ was created as an experimental space to test major policy reforms and help advance municipal objectives such as becoming a logistics and trading hub, further developing the service sector, attracting additional foreign investment, and becoming an international financial center by 2020.

The Shanghai FTZ merges four bonded zones—the Yangshan Deep Water Port, Pudong International Airport, and two zones in Waigaoqiao—in the far eastern edge of Shanghai's Pudong district. This new zone was officially launched on September 29, 2013 and has a total geographic area of 28.78 square kilometers.

While the new Shanghai FTZ promises more economic freedom to companies established within its boundaries, this liberalization is proceeding at a deliberate pace. In October 2013, the Chinese government unveiled the "Special Administrative Measures (Negative List) on Foreign Investment Access to the China (Shanghai) Pilot Free Trade Zone (2013)." While the use of a negative list should allow for greater business opportunities, the initial version of the negative list included 200 categories and was more restrictive than initially expected by the international business community.

Chinese officials have repeatedly said that future versions of the negative list will have fewer limitations. The American business community welcomes this commitment and encourages future updates to the negative list that will promote trade liberalization and reduce trade barriers.

For more information, please refer to the Shanghai FTZ section of the Investment Policy chapter.

Developing Shanghai into an International Financial Center

In 2009, the State Council declared Shanghai would establish itself as one of the world's preeminent international financial centers by 2020. The ambitious plan calls for a mature financial system that boasts well-established financial institutions, advanced markets and globally competitive financial products and services, as well as advanced tax, credit, regulatory, and legal systems. According to the 2013 Xinhua-Dow Jones International Financial Centers Development Index, Shanghai currently ranks among the top 10 international financial centers and financial markets, placing sixth overall in both cases. Moreover, it ranked number one in terms of growth and development. However, as it ranked outside the top 10 in the same index for service level and environment, Shanghai needs to continue to improve its administrative framework and liberalize regulatory restrictions in certain areas including its legal system and cap on foreign ownership in the insurance sector.

Customs and Logistics

Shanghai Customs was among the pioneers in China in the development of an e-clearance Customs declaration system. However, according to the 2013-2014 *AmCham Shanghai Trade Environment Satisfaction Survey* report, only 35 percent of respondent companies use the e-clearance system. Greater outreach on the program would lead to an increase in American business participation.

上 海

本章内容由上海美国商会提供。

引 言

随着中国（上海）自由贸易试验区（下称“上海自贸区”）于 2013 年 9 月启动，上海成为了中国经济改革的中心。上海自贸区拥有为上海和全中国以及外国投资者和企业带来重大利益的潜力。2013 年，上海在实现其 2020 年关键发展目标的道路上，也取得了其它方面的进步，包括在金融服务、海关和物流等领域，但是有些方面仍有待进一步改善，如消除官僚主义、解决人力资源制约因素以及提高贸易便利性等。

上海美国商会和中国美国商会共同致力于助力上海成功发展上海自贸区并实现其 2020 年发展目标。我们期待与政府部门和美国商界建立更深入的沟通交流，以支持这些目标的实现，并继续深化我们与上海市政府建立的长期合作关系。

现存监管问题

中国 （上海）自由贸易试验区

上海自贸区是作为一个试验区而创建的，目的是为了检验重大政策改革，并帮助推进上海市的发展目标，即建成物流和贸易中心、进一步发展服务行业、吸引更多的外国投资、以及到 2020 年建成国际金融中心等。

上海自贸区位于上海浦东新区的最东边，合并了四个保税区——洋山深水港、浦东国际机场和外高桥的两个保税区。这一新区于 2013 年 9 月 29 日正式启动，面积总计为 28.78 平方公里。

尽管新设立的上海自贸区承诺为在区内注册成立的企业提供更大的经济自由度，但是开放的脚步显得比较谨慎。2013 年 10 月，中国政府公布了《中国（上海）自由贸易试验区外商投资准入特别管理措施（负面清单）（2013 年）》。虽然使用负面清单的做法本应当带来更大的商业机会，但是负面清单的 2013 版包含了 200 个类别，限制程度超出了国际商界最初的预期。

中国官员反复强调，未来会对负面清单进行调整，减少限制类别。美国商界欢迎这一承诺并鼓励对负面清单进行更新，使得其有助于促进贸易自由化和减少贸易壁垒。

如需了解更多信息，请参阅《投资政策》一章的上海自贸区部分。

将上海建设成为国际金融中心

2009 年，国务院宣布将于 2020 年将上海建设成为全球著名的国际金融中心（IFC）。要实现这一意义深远的宏伟蓝图，上海将需要建成成熟的金融体系，拥有久负盛名的金融机构、先进的金融市场、众多具有国际竞争力的金融产品和服务，并能够提供先进的税收、信贷、监管和法律服务在内的配套体系。根据 2013 年新华一道琼斯国际金融中心发展指数，上海目前位居国际前十大金融中心和金融市场之列，均名列第六位。另外，上海还高居增长和发展的榜首。然而，上海在该指数的服务水平和环境排名中未能进入前 10 名，因此上海需要继续在若干领域改善管理框架和放宽监管限制，包括其法律体系和保险行业的外资持股限制等。

海关与物流

上海海关是中国采用电子通关系统的先行者。但是，根据上海美国商会《2013–2014 年度贸易环境满意度调查》报告，只有 35% 的受访企业使用电子通关系统。进一步扩大这一项目的适用范围将有助于提高美国企业的参与度。

相比较而言，上海海关在帮助外资企业了解海关关税分类评级方面取得了重大进步，只有 26% 的受访者不知道自身海关分类评级。然而，上海出入境检验检疫局在这一方面仍面临挑战，超过半数的受调查者不知道他们的检验检疫评级。

In contrast, Shanghai Customs has made significant progress in helping foreign companies understand Customs classification grades, with only 29 percent of respondents not knowing their classification. However, the Shanghai China Inspection and Quarantine (CIQ) still faces challenges in this regard with more than half of those surveyed not knowing their CIQ Grade.

Among the most interesting results of the AmCham Shanghai survey was that 70 percent of respondents viewed increased clearance speed as a greater benefit to cutting costs than lower tariff rates. In this regard, the integration of Shanghai Customs and CIQ has not yet translated into reduced paperwork for foreign companies. Currently, enterprises must submit declarations separately to each agency, though their requirements are almost identical, which increases duplicative declaration work and costs.

For more information, please refer to the Customs and Express Delivery Services chapters and the 2013-2014 *AmCham Shanghai Trade Environment Satisfaction Survey*.

Human Resources Constraints

Attracting, developing, and retaining skilled workers and professionals continue to be leading challenges for businesses in Shanghai. According to AmCham Shanghai's 2013–2014 *China Business Report*, 82 percent of companies surveyed identified finding, training, and retaining talent as a critical business challenge, continuing what has been identified as a persistent issue over the past 10 years of the report.

As China's coastal cities have matured, access to cost-effective skilled labor and management has diminished. Steep annual wage increases, as well as an aging population and greater social mobility among local employees, have created ongoing challenges to business growth. In Shanghai, average annual urban wages increased by four percent to US $13,000 (RMB 78,673) in 2012—significantly above the national average of US $7,730 (RMB 46,769). Shanghai also has the nation's second highest monthly minimum wage at US $268 (RMB1,620), behind only Shenzhen which raised its minimum wage in February 2014 to US $299 (RMB 1,808).

For more information, please refer to the Human Resources chapter.

Recent Developments

Shanghai's Business Climate

In 2013, according to the Shanghai Municipal Statistics Bureau, Shanghai's GDP expanded 7.7 percent, up from 7.5 percent in 2012, matching the national average of 7.7 percent. In 2013, the total import and export trade volume between the US and Shanghai increased to US $50.65 billion (RMB 306.43 billion) or one percent more than in 2012. Overall, the Shanghai Customs District import-export level amounted to US $812.14 billion (RMB 4.9 trillion) in 2013, an increase of 1.4 percent from 2012. This amount reflects the total value of goods passing through Shanghai Customs, including goods sent to and from other regions of China.

In 2013, contracted foreign direct investment into Shanghai increased 10.3 percent in 2013 to US $24.63 billion (RMB 149 billion). By the end of August 2013, according to the Shanghai government, 432 multinational companies had designated Shanghai as their regional headquarters and there were 361 foreign-invested research and development centers.

Service Sector Growth

The Shanghai government emphasizes service sector development and is aiming for that industry segment to account for roughly two-thirds of the city's economy by 2015. Government programs and the rapid maturation of the local economy are moving the city rapidly towards this target. Ongoing development of the Shanghai FTZ can also make an important contribution.

AmCham Shanghai's 2013–2014 *China Business Report* showed the extent to which US companies are taking advantage of growing service sector opportunities. In 2013, services accounted for more than half (52 percent) of US companies' revenue, an 11 point jump from the previous year.

The growing importance of services is also captured in terms of top-line GDP growth. While Shanghai's economy grew 7.7 percent over the first three quarters of 2013, the expansion of the services sector component was much greater, coming in at 9.1 percent over the same period, according to figures published by the Shanghai Statistics Bureau. Official data show the service sector accounted for 61.6 percent of Shanghai's economy through the first three quarters of 2013, up from 60.4 percent in 2012.

Financial Services Reforms

China is pushing ahead with a broad set of financial reforms aimed at modernizing its capital markets and easing state control over interest rates. The Shanghai FTZ will serve as a pilot site for several other financial sector reforms including convertibility of the RMB, eased restrictions on the capital account, and liberalized interest rates. The city also plans to loosen regulations regarding investment in securities and the cross-border flow of funds.

However, these liberalizations will have limits, as it is expected that the People's Bank of China will maintain direct control of exchange rates and that deposit rate liberalization will only be allowed in foreign currency accounts.

For more information, please refer to the Financial Services chapter.

上海美国商会本项调查最令人关注的结果之一即 70% 的受访者认为提高通关速度对降低成本的好处大于降低关税税率。在这一方面，上海海关和上海出入境检验检疫局之间的配合和某些工作程序的合并还有待看到成效，尚未真正减少外资企业需提交文件的工作量。目前，企业必须向该两个机构分别提交报关文件，尽管它们的要求几乎相同，这就导致了重复性的报关工作和成本的增加。

如需了解更多信息，请参阅《海关》和《快递服务》两章以及《2013–2014 年度上海美国商会贸易环境满意度调查报告》。

人力资源制约因素

如何吸引、培养以及保留熟练工人和专业人士依然是沪上外资企业所面临的一大挑战。根据上海美国商会的《2013–2014 年度中国商业报告》，82% 的受访企业认为，找到、培训和保留人才是企业面临的主要商业挑战，这是该报告中过去十年来反映出的一个持续性问题。

由于中国的沿海城市已经迈入发展的成熟期，要想获得高性价比的熟练工人和管理人才已经变得很困难。工资每年直线上升，加之人口老龄化和本地员工的社会流动性增加，都给企业增长造成了持续的挑战。2012 年，上海市的城市人口平均年薪增长了百分之四，达到了 13000 美元（人民币 78,673 元）——这远远超过全国平均水平的 7730 美元（人民币 46769 元）。在最低工资标准方面，上海也是中国排名第二高的城市，最低月工资为 268 美元（人民币 1620 元），仅次于深圳，后者刚于 2014 年 2 月把最低月工资标准提高到了 299 美元（人民币 1808 元）。

如需了解更多信息，请参考《人力资源》一章。

最新进展

上海的营商环境

根据上海市统计局的资料，2013 年上海的 GDP 增长了 7.7%，较 2012 年的 7.5% 有所提高，这与全国 7.7% 的平均增长相吻合。2013 年，美国与上海之间的进出口贸易总额增长至 506.5 亿美元，较 2012 年增长百分之一。总体来看，上海海关区的进出口规模总计达 8121.4 亿美元（4.9 万亿元人民币），比 2012 年增长了 1.4%。这一数字反映了通过上海海关的商品总价值，包括运往中国其他地区以及从中国其他地区运来的商品。

2013 年，上海合同外商直接投资增长了 10.3%，达到 246.3 亿美元（1490 亿元人民币）。根据上海市政府的统计，截至 2013 年 8 月底，累计有 432 家跨国企业在上海设立地区总部，有 361 个外资研发中心落户上海。

服务业增长

上海市政府很看重服务业的发展，目标是到 2015 年使该行业在全市经济总量中所占的比重达到约三分之二。在政府项目的带动下，加上本地经济的快速成熟，上海正在快速迈向这一目标。上海自贸区的持续发展也将为此做出重要贡献。

上海美国商会《2013–2014 年度中国商业报告》反映了美国企业正在把握中国快速增长的服务业所带来的商业机会。2013 年，服务业收入占比超过美国企业收入的一半（52%），较上一年提高 11 个百分点。

日益重要的服务业也体现在 GDP 增长的主要来源方面。根据上海市统计局公布的数据，虽然 2013 年前三个季度上海经济的增长率为 7.7%，但是服务业的发展要快得多，同比增幅达 9.1%。官方数据显示，2013 年前三个季度服务业占上海经济的比重为 61.6%，较 2012 年的 60.4% 有所增长。

金融服务改革

中国正在推进广泛的金融改革，目标是实现资本市场现代化和放宽国家对利率的管制。上海自贸区将为其他多项金融改革，包括可兑换的人民币、放宽资本账户限制和利率市场化等担当试验区。上海市还计划放开对证券投资和跨境资金流动的管制。

但是，这些措施的放宽将有一定的限度，据预计，中国人民银行将会保持对汇率的直接管制，而且存款利率市场化将仅限于外币账户。

如需了解更多信息，请参考《金融服务》一章。

中小企业

越来越多的美国中小企业希望在上海乃至全中国寻求投资项目、出口贸易和业务拓展机会。上海美国商会近三分之一的会员都属于小型企业和个人企业家，即雇员人数在 500 人以下的企业。仅在 2013 年一年，上海美国商会的中小企业会员数量就较上一年增长了 20%。

更多的美国中小企业正带着他们的最新技术、管理经

Small and Medium Enterprises

The number of US Small and Medium Enterprises (SMEs) targeting Shanghai and China as destinations for investment, export sales, and business expansion continues to climb. Nearly one-third of AmCham Shanghai members are small businesses and entrepreneurs, which are defined as businesses with fewer than 500 employees. In 2013 alone, SME membership at AmCham Shanghai grew 20 percent from the year before.

More US SMEs are expanding into China to take advantage of growing business opportunities, bringing with them the latest technology, management expertise, and industry leadership. According to the US Commerce Department, China is the third largest export market for US SMEs, registering US $36.4 billion (RMB 220 billion) in export sales in 2011. US SMEs also represented 92 percent of total US exports to China in 2013. However, according to AmCham Shanghai's 2013 *Viewpoint on Opportunities for U.S. Small and Medium Business in China*, 86 percent of US SMEs in China have never used a US government service to support their business.

AmCham Shanghai and AmCham China are committed to supporting US SMEs in China. AmCham Shanghai's SME Center, an online and offline resource, is a prime example of how a privately led initiative can help support US SMEs as they address the challenges of doing business in China.

Yangtze River Delta Integration

In recent years, the economic growth of the Yangtze River Delta (YRD) has steadily increased to the point where the region now boasts more than 4,000 US enterprises and investment projects. These companies and projects are taking advantage of new manufacturing and research and development clusters, many of which include advanced-level services, high-tech research firms, and top American brands.

Many of these American companies are implementing high-end manufacturing and importing high-tech manufacturing equipment to tap into the rapidly growing opportunities in the expanding domestic consumer sector. To support US companies active in the region, AmCham Shanghai opened its YRD Center in Suzhou in October 2013.

American firms are helping the YRD region accelerate its transformation from a manufacturing hub into a high value-added, integrated region, boasting a wide range of modern business services, logistics, research and development, high-tech, and retail firms.

Customs and Logistics

In 2013, the Shanghai Customs district processed US $812.14 billion (RMB 4.9 trillion) in import-export value. Of that, US $441.40 billion (RMB 2.7 trillion), or more than 50 percent, was trade generated specifically between Shanghai and the rest of the world. This value has increased 1.1 percent since 2012 and demonstrates the increasing importance of Shanghai as a shipping and logistics hub, as well as a driver of China's international trade.

The development of the Shanghai FTZ should further facilitate the already expanding logistics sector in China, which has grown 30 percent annually. It is expected to allow the establishment of wholly foreign-owned shipping management enterprises within the zone and reduce the proportion of foreign companies in joint ventures within international shipping enterprises.

Recommendations

To the Shanghai Government:

- **Improve transparency and rule of law concerning changes in regulations, policy-making processes, and compliance.**
- Reduce the number of restrictions on the negative list and engage the US business community on ways it can support FTZ development.
- Strengthen outreach to US SMEs on Chinese and US government services to improve two-way trade and investment.
- Strengthen coordination in the YRD on economic and market reforms, infrastructure development, and policy decision-making and implementation.

验并以行业领军者的身份来到中国，希望在中国拓展业务，把握日益增多的商机。根据美国商务部的数据，中国是美国中小企业的第三大出口市场，2011 年的对华贸易出口额达 364 亿美元（人民币 2200 亿元）。2013 年美国中小企业占美国向中国出口总量的 92%。但是，根据上海美国商会的 2013 年《美国中小企业在华发展机遇观点》，86% 的美国在华中小企业从来没有使用过美国政府提供的服务来支持其业务发展。

上海美国商会和中国美国商会致力于支持在华美国中小企业的发展。上海美国商会成立的中小企业中心是一个显著的例子，它提供在线和实体资源，展示了一项由私营领域发起的项目如何来帮助和支持美国中小企业解决其在华经营中所遇到的各种挑战。

长三角经济一体化

近年来，长江三角洲（下称“长三角”）的经济稳步增长，现在拥有 4000 多个美资企业和投资项目。这些企业和项目正在运用该地区的新兴制造设施和研发集群开展经营，其中包括很多先进水平的服务和高科技研究企业以及美国高端品牌。

这些美资企业中有很多在从事高端制造业和高科技制造设备进口，以挖掘中国不断扩展的消费行业内快速增长的机会。为了给活跃在该地区的美资企业提供支持，上海美国商会于 2013 年 10 月在苏州建立了长三角业务中心。

美资企业正在帮助长三角地区从制造中心加速转变为高附加值一体化地区，使之拥有广泛的现代商业服务、物流、研究与开发、高科技和零售企业。

海关与物流

2013 年，上海海关关区处理的进出口商品价值为 8121.4 亿美元（人民币 4.9 万亿元）。其中的 4414 亿美元是由上海与世界其他地区之间产生的贸易额，占比超过 50%。该进出口值比 2012 年提高了 1.1 个百分点，这表明上海作为航运和物流中心以及中国国际贸易引擎的地位正变得日益重要。

上海自贸区的发展应该会进一步促进不断扩展中的中国物流行业，该行业的年增长率达到了 30%。据外界预期，上海自贸区将会允许在区内设立外商独资的航运管理企业，并降低外资企业在国际航运企业的合资公司中所占的投资比重。

建 议

给上海市政府：

- **提高法规变更、决策过程以及合规操作的透明度及法治程度。**
- 减少负面清单限制条款的数量，鼓励美国商界积极参与和支持上海自贸区的发展。
- 加强中国和美国政府对美国中小企业的服务覆盖面，以促进双向贸易和投资。
- 加强长三角地区的经济与市场改革、基础设施发展以及政策决策与执行的协调工作。

Tianjin

Introduction

With a population exceeding 13 million, Tianjin is one of China's largest cities. It is also one of only four cities that report directly to the central government. Often overshadowed by neighboring Beijing, it is also not widely known beyond China's borders. AmCham China members in Tianjin continue to believe the city has significant potential for further development, as should be proven over the next few years.

In recent years, massive amounts of investment have been pumped into the continuing development of infrastructure in both central Tianjin and the neighboring Tianjin Binhai New Area (TBNA). The latter includes the Tianjin Economic Development Area (TEDA), the Yujiapu Financial Area, the Sino-Singapore Eco-City, the Binhai Tourism Zone, and the Dongjiang Free Trade Zone. In fact, TBNA has been promoted so widely, many visitors often think TBNA is the core living and business district of the city.

The city has a solid manufacturing base and its economy has continued to grow in recent years at one of the fastest rates of any municipality or province in the country. The opening of several new hotels and shopping centers last year brought the city's service infrastructure into better balance, especially for visitors. Recent efforts to beautify the Hai Riverside area and develop more green space in the city have likewise been positive. Many feel that further development of tourism and other service sectors will bring greater benefits in the years ahead.

AmCham China encourages the respective government bodies to continue these and other efforts to make Tianjin an even better city, a "delightful and pleasurable Tianjin" that can compete successfully for and support more national and regional corporate headquarters. We believe the new free trade zone (FTZ) is a significant opportunity. We also urge the government to address several quality of life issues and attract a broader range of professional services, as detailed in the following paragraphs.

Ongoing Regulatory Issues

Free Trade Zone

In late 2013, Tianjin announced its application to establish a FTZ following a similar announcement in Shanghai. Given the close alignment between President Xi's economic reform agenda and the contributions that the American business community can make in creating a more market oriented, internationally competitive, and innovative China, we urge Tianjin's leaders to be bold in shaping their new FTZ. The more market opening options it offers, the more successful the FTZ will be. We also believe that our member companies and foreign consultants can play an important role in its success alongside their domestic counterparts. A key early task will be to ensure that the process of shaping the FTZ is well articulated and communicated to the business community, and as open as possible with ample opportunity for timely consultation along the way. If this new FTZ can truly unleash the contributions our member companies and other foreign companies can make, we see it as a breakthrough milestone for Tianjin's development and international reputation.

Financial Sector Reform

Tianjin would likewise benefit from deepening financial reform by accelerating innovation in financial systems and encouraging new financial products. This will help develop a diversified, multi-level financial system and improve the overall investment environment of Tianjin.

Labor Unions

Although labor union regulations apply nationally, a number of member companies have reported that Tianjin's interpretation and implementation of these regulations are more restrictive, even in some cases punitive, when compared to other cities and provinces. Companies with multiple locations across China have reported that their Tianjin operations have been more negatively impacted in this regard, making Tianjin a more costly city in which to operate than other Chinese cities. We urge the Tianjin government to review their policies related to labor unions and benchmark how other cities are implementing them.

天 津

引 言

天津有1300多万人口，是中国最大的城市之一，也是中央政府四个直辖市之一。由于常常被临近的北京盖过，天津在国外还不是广为人知。中国美国商会的天津会员企业一直认为天津有进一步发展的重大潜力，未来几年将为此作证。

近年来，大量的投资注入了天津市区和毗邻的天津滨海新区的基础设施的持续开发。滨海新区包括天津经济技术开发区（泰达）、于家堡金融区、中国－新加坡天津生态城（中新生态城）、滨海旅游区和东疆保税港区。实际上，天津滨海新区的地位得到了如此广泛的提升，以致于许多游客经常认为滨海新区就是天津的生活和商务中心区。

天津拥有扎实的制造业基础，经济近几年来持续增长，是中国增长速度最快的省／市之一。对游客而言，去年开业的几家新宾馆和购物中心使天津的基础服务设施更为完善。天津最近美化海河沿岸区域和发展城市绿地的努力同样产生了积极作用。许多人认为，进一步发展旅游业和其他服务业将使该城市今后更加受益。

中国美国商会鼓励天津政府在这些方面和其它方面继续努力，使天津成为一个更美好的城市，成为"天天乐道、津津有味"的现代大都市，成为更多国内大企业和国际企业区域总部所在地。我们认为新的自由贸易区是一个重大机遇。我们也呼吁政府部门关注若干生活质量问题，吸引多元的专业服务企业，详情请见下文。

现存监管问题

自由贸易区

2013年底，天津继上海之后宣布申请建立自由贸易区。鉴于习近平主席的经济改革日程与美国商业界在建立一个更为市场化、具有国际竞争力且有创新能力的中国方面能做出的贡献不谋而合，我们呼吁天津的领导层大胆塑造其新自由贸易区。自由贸易区提供的市场开放选择越多，就越成功。我们也相信商会的会员企业及国外的咨询公司能与中国同行一道于自贸区的成功方面发挥重要作用。初期的一项主要工作就是确保把建立自由贸易区的过程很好地诠释并传达给工商业界，并且在此过程中要尽可能开放，提供充分及时的协商机会。如果这个新的自由贸易区能够真正发挥我们的会员企业及其他外资企业的作用及贡献力量，我们会将此视为天津发展和赢得国际声誉的一个突破性的里程碑。

金融行业改革

通过加快金融系统创新和鼓励发展新的金融产品，深化金融改革同样将使天津受益。这将有助于发展一个多元化、多层次的金融体系并改善天津的整体投资环境。

工 会

虽然工会法规在全国均适用，但是一些会员企业报告称，与其他城市和省份相比，天津对这些法规的解读和实施限制更多，甚至在有些情况下是惩罚性的。在中国多地运营的企业报告称，他们在天津的业务受到了这方面更多的负面影响，使天津的运营成本高于其他国内城市。我们呼吁天津市政府审查其有关工会的政策并参照其他城市的实施标准。

交通执法

我们赞赏市政府为加强交通执法所做的努力。天津市区街道上的交通警力明显增加，这一点很受欢迎。然而，由于道路上机动车数量不断增加，使交通状况持续恶化，我们认为可能需要进一步的解决方案。建立更多的公交车道和自行车道就是两个切实可行的解决方案。

污 染

与临近的北京一样，天津也持续遭受着中国最差的空气质量的影响。这有可能会赶走投资者和企业，需要引起

Traffic Rule Enforcement

We applaud the efforts of the government to enforce traffic rules. The visible increase of traffic police on Tianjin's city streets is welcome. However, as the growing number of cars on the road continues to aggravate traffic conditions, we believe further solutions may be necessary. Establishing more dedicated bus and bike lanes are two practical solutions.

Pollution

Like neighboring Beijing, Tianjin continues to experience some of the worst air quality in China. This has the potential to drive out investors and employers and needs special attention. We encourage the government to be transparent with pollution readings and to focus on targeting the main causes of air pollution, including construction, manufacturing, energy production, and automobile exhaust.

Customs Supervision Systems

AmCham China member companies feel Tianjin needs to continue to benchmark itself against other major Asian customs ports. We recommend speeding up the upgrade of the customs supervision system so that it is aligned with international practices. This will boost trade, improve customs clearance efficiency, and reduce operating costs.

Small- and Medium-sized Enterprises Center

Growing cities often attract entrepreneurs seeking to set up new ventures. Small business owners have suggested the creation of a single office to assist them through the process of setting up a new business, dealing with issues ranging from business licenses to visa requirements to tax procedures. Such office would encourage more businesses to locate in Tianjin. Additionally, key firms in the service sector, including law firms, accounting firms, and various consultants initially may only set up small operations, but should be welcomed into the city as they are a catalyst for additional investments by other firms.

At present, the city appears to be focused on assisting large companies who are looking to invest in Tianjin, while smaller firms have reported that the process of setting up a new business is challenging and confusing. Approvals are handled by a range of different agencies with no clear roadmap and no single point of contact. We encourage the Tianjin government to take concrete measures to support investment by small firms in addition to large firms, since small- and medium-enterprises are key drivers of innovation and jobs.

Recent Developments

Tourism

An estimated 500,000 tourists annually board ships departing from Tianjin's Dongjiang Cruise Ship Terminal. More needs to be done to encourage these domestic and international visitors to spend more time in Tianjin during their travels, allowing the city to serve as more than a mere transit point. Although tourists often come to Tianjin for weekend stays, we believe the potential for tourism is much greater. We suggest the following actions to promote Tianjin's tourism industry:

- Build a well-staffed visitor center near the train station that provides bilingual maps and contact details for hotels, restaurants, and sites of interest in Tianjin.
- Place information kiosks throughout the city with information on the city's key attractions.
- Develop a city brand campaign to increase the city's visibility and market it as a tourist destination.
- Host more major events like marathons and concerts, and dedicate more resources to publicizing them.
- Ensure city websites are regularly updated with comprehensive information for visitors and residents alike.
- Create a plan specifically focused on capturing more business from tourists who presently transit Tianjin for the cruise lines.
- Improve taxi services, including the service attitude of drivers and their knowledge of the city, and ensure there are adequate taxis around major hotels and cultural attractions.

Xian Nong

A new pedestrian retail area, Xian Nong, opened in Tianjin's Five Avenues Area. This area combines Tianjin's historic architecture with a new entertainment venue. We support the development of similar leisure and shopping-related areas across Tianjin, especially those that preserve historic architecture and create unique points of interest.

Subway

We applaud the development of Tianjin's existing subway network. In addition to lines five and six, currently under construction, we encourage further development, such as the extension of lines to more development zones and suburban areas. This should allow for increased mobility and accessibility while addressing chronic traffic congestion.

特别的注意。我们鼓励市政府对污染数据保持透明并集中治理造成空气污染的主要原因，包括建筑施工、生产制造、能源生产和汽车尾气排放。

海关监管体系

中国美国商会会员企业认为天津需要继续参照亚洲其他主要海关港口来进行港口建设。我们建议加快升级海关监管体系，与国际惯例保持一致。这将促进贸易，提高通关效率，并降低营运成本。

中小企业中心

成长中的城市经常会吸引那些寻求建立新企业的创业者。小企业主建议成立一个专门的机构来协助其办理建立新企业的手续，处理营业执照、签证、税收等方面的问题。这样的机构将会鼓励更多的企业落户天津。另外，主要的服务类企业，包括律师事务所、会计师事务所和各种咨询公司，最初可能只是小规模运营，但也应该欢迎其落户天津，因为他们是其他企业进一步投资的催化剂。

目前，天津似乎更看重帮助那些希望在天津投资的大公司，而小企业则称建立新公司的手续困难且复杂。审批手续由一系列不同的机构办理，没有明确的说明，也没有专人负责。我们鼓励天津市政府采取具体措施在支持大型企业的同时给予小企业支持，因为中小企业是创新和就业的主要推动力。

最新进展

旅 游

据估计每年有 50 万名游客从天津东疆邮轮码头乘邮轮出海旅游。在这方面还需要做更多的工作才能鼓励国内外游客在其旅行途中在天津逗留更多时间，使天津不仅仅只是一个中转点。尽管游客经常来天津过周末，但我们认为旅游业的潜力要远大于此。我们建议采取以下行动推动天津旅游业的发展：

- 在火车站附近建一个人员配置齐全的游客中心，提供天津宾馆、饭店和旅游景点的中英文地图和联系方式。
- 在全市设置信息亭，提供有关天津主要景点的信息。
- 开展城市品牌宣传活动，提高天津的关注度并把天津作为一个旅游目的地进行推广。
- 主办更多像城市马拉松比赛和音乐会等活动，投入更多资源进行活动宣传。
- 确保定期更新城市网站，向游客和居民提供良好的综合信息。
- 专门针对目前从天津中转乘邮轮旅游的游客制定计划，从他们当中开发更多业务。
- 提高出租车服务水平，包括提高司机的服务态度以及他们对天津的了解程度，并确保在各主要宾馆和文化景点附近有足够的出租车。

先 农

先农是一个新的步行零售区，设在天津的五大道一带。该区域把天津的历史文化建筑和新的娱乐场所结合在一起。我们支持在天津开发类似的休闲和购物区，特别是开发那些保留历史文化建筑并且创造独特旅游景点的区域。

地 铁

我们赞同天津发展现有的地铁网络。除了目前在建的五号线和六号线以外，我们鼓励进一步的发展，比如把线路延伸到更多的开发地区和郊区。这应该会加大流动性和可达性，同时解决交通长期拥堵的问题。

建 议

对天津市政府的建议

- **在建立天津新的自由贸易区方面更加大胆，以开放的方式设计，并及时与商业界协商沟通。**
- 参照国内和国际其他主要金融城市建设天津的金融体系并解决由此产生的任何不足之处。
- 公布目前全市范围内的污染数据，并实施计划减少空气污染。
- 通过实施工会法与全国各地的做法保持一致，加强天津的城市竞争力。
- 致力提高交通便利，吸引游客游览城市。
- 加大交通执法力度和停车管理，同时考虑出台更多方案解决交通拥堵。
- 建立一个中心，通过一套综合性的配套措施来加快和帮助中小企业登记注册。

Recommendations

For the Tianjin Government:

- **Be bold in shaping Tianjin's new Free Trade Zone, and design it in an open way with opportunities for timely consultation with the business community.**
- Benchmark Tianjin's financial system against other major domestic and international centers and address any resulting shortcomings.
- Publicize current pollution readings around the city and implement a plan to reduce air pollution.
- Strengthen Tianjin's competitiveness with other cities by aligning regulation of labor unions with national practice.
- Focus efforts on encouraging tourists to visit the city by making it more accessible.
- Aggressively enforce traffic rules and parking ordinances while considering further solutions to traffic congestion.
- Create a center to promote and assist with the registration of new SMEs, with a comprehensive suite of support options.

Wuhan

Introduction

The city of Wuhan, capital of Hubei province, continues to experience rapid economic growth fueled, in large part, by the central government's "Rise of Central China Plan." The region continues to pursue comprehensive infrastructure construction, development of higher-end products, green economic growth, a cleaner environment, and increased consumption. The Hubei provincial government is also prioritizing seven strategic emerging industries: next-generation information technology, energy conservation and environmental protection, alternative energy, biotechnology, high-end equipment manufacturing, advanced materials, and new energy vehicles.

In 2013, Hubei's GDP rose 10 percent to US $413.3 billion (RMB 2.5 trillion), 2.2 percent higher than the national average. Wuhan's GDP similarly rose 10 percent in 2013, to US $148.8 billion (RMB 900 billion). To date, 200 Fortune 500 companies have invested in Wuhan, the most of any city in central China. More than 530 American companies have invested in Wuhan. The Wuhan city government continues to make progress in infrastructure development, improving the business environment, air quality, traffic flow, and international education for expatriate children.

Despite this healthy overall growth, the manufacturing sector is still experiencing a slowdown and is expected to remain flat into 2014. Additionally, acquiring high-level management talent continues to present a challenge to American businesses operating in the region.

AmCham China welcomes further government efforts in the areas of business-to-business payments, international-standard medical care, talent training and recruitment, customs clearance procedures, and improved traffic and pedestrian safety. We also look forward to expanded US Citizens Services at the US Consulate in Wuhan.

Ongoing Regulatory Issues

Business to Business Payments

One significant challenge for foreign companies based in Wuhan is the long delay in receiving payments, which often occurs months after the contractual payment period. As cash flow is the lifeblood of all companies, a long delay in receiving payments negatively affects a foreign enterprise's decision to invest in central China. This situation also impacts small- and medium-sized Chinese vendors since they receive payment only after their customer receives payment.

A higher percentage of on-time payments would make central China a more attractive investment environment for foreign companies, as well as improve the business environment for local small- and medium-sized enterprises. AmCham China requests that the relevant central and local government agencies publish clear requirements for all companies, particularly state-owned enterprises (SOEs), regarding payments and take steps to enforce such standards.

Medical Care in Wuhan

Medical care for the English-speaking community in Wuhan is improving rapidly. The two main hospital systems have excellent facilities, diagnostic capabilities and medical skills, and are actively interacting with academic institutions and hospitals in the US, France, Germany, Australia, United Kingdom, and other developed countries. Many hospitals have VIP clinics or other advanced services designed for foreigners; however, foreigners are unable to communicate freely with medical staff in English and usually need a Chinese friend to accompany them to the hospital. There is only one international family medicine clinic in Wuhan open two half-days per week, staffed with an American family physician licensed in the US and in China. Fiscal incentives that encourage international-standard medical care providers to offer additional services would facilitate medical developments in Wuhan, thus encouraging more foreigners to invest, live, and work in Wuhan.

Recruitment of Talent

While the overall level of management talent in central China continues to rise, it remains difficult for companies to find and retain staff with international-standard business and management skills. Many university students in China graduate with strong technical skills but are weaker in management and communication skills. AmCham China

武 汉

引 言

湖北省省会武汉市借力中央政府“中部崛起”的战略，保持经济发展快速增长的势头。该地区一直致力于全面的基础设施建设，发展高端产品，推动绿色经济增长，促进环境保护和消费。湖北省政府还致力于优先发展以下七大战略新兴产业：新一代信息技术、节能环保、替代性新能源、生物技术、高端装备制造、新材料和新能源汽车。

2013 年，湖北省 GDP 突破 2.5 万亿元，约合 4133 亿美元，增速达 10%，比全国平均增速高出 2.2 个百分点。2013 年，武汉的 GDP 同样增长了 10%，达到 9000 亿元，约合 1488 亿美元。迄今为止，世界五百强企业中已有 200 家投资武汉，在中国中部地区所有城市中排名第一。在武汉投资的美资企业也已超过 530 家。武汉市政府持续在发展基础设施、提升商务环境和空气质量、改善交通状况和加强外籍子女国际教育方面取得进步。

尽管总体经济发展良好，但制造业的发展速度继续放缓，预计 2014 年的增长水平将与 2013 年持平。另外，高层次管理人才招聘难依然是在该地区运营的美国企业所面临的一大挑战。

中国美国商会欢迎相关政府部门继续加大在提高企业间支付效率、提供符合国际标准的医疗服务、加强人才培训和招聘、简化海关清关程序以及改善交通和行人安全方面的工作力度。我们还期待美国驻武汉领事馆扩大对美国公民的服务。

现存监管问题

企业间支付

驻武汉的外国企业面临的最大挑战之一便是付款严重延迟，经常要在合同约定的付款期满好几个月之后才能收到货款支付。鉴于现金流是任何公司赖以生存的血液，收款长期延迟将严重打击外资企业在中国中部地区投资的积极性。这种延迟也会影响中国的中小型供货商，因为他们的客户只有收到付款后才能支付所欠货款。

提高付款准时率将有助于中国中部地区提高对外商投资的吸引力，同时也能改善当地中小企业的商务环境。中国美国商会促请相关中央、地方政府部门制定发布适用于各类企业特别是国有企业付款事宜的明确规定，并采取相关措施有效地实施这些标准。

武汉市的医疗保健水平

武汉市说英语人士聚集区域的医疗保健水平正在快速提高。武汉市的两家主要医院系统具有优良的设施、诊断能力和医疗技术水平，并积极与美国、法国、德国、澳大利亚、英国和其他发达国家的学术机构和医院进行交流。很多医院开设了贵宾诊室或是专为外国人订制的高端医疗保健服务。但是外国人在此无法用英文与医护人员进行直接沟通，必须在中国朋友的陪伴下去医院就医。全武汉仅有一家国际化家庭诊所，每周营业两天半，有一位同时具有美国和中国医生执照的美籍家庭内科医生在此行医。另外，采用财政激励措施来鼓励国际标准的医疗保健机构进驻武汉提供额外医疗服务，有助于提升武汉市医疗发展水平，并能因此吸引更多的外籍人士来武汉投资、生活和就业。

人才招聘

尽管中国中部地区人才管理总体水平一直处于上升趋势，但企业依然很难聘请且留住具有国际水准的商业和管理人才。中国很多大学毕业生技术水平很高，但缺乏管理和沟通技能。为解决这一问题，中国美国商会建议中国政府鼓励中国高校与相关的国际教育机构建立联系，欢迎外国商务培训咨询机构在华建立办事处，促进互惠型访问以扩大最佳实践分享。武汉市政府持续不懈地努力提高当地生活质量水平，必将吸引更多高层次管理人才来湖北发展。

recommends that the Chinese government improve this area by encouraging Chinese universities to establish links with international educational institutions, welcoming foreign business training consultants to establish offices in Wuhan, and facilitating reciprocal visits to encourage sharing of best practices. The Wuhan government's continuing efforts to improve the quality of life in Wuhan will also attract more high-level leadership talent.

Customs Clearance

The consistency and transparency of Wuhan's customs policy as well as the efficiency of the customs clearance process continue to improve. Nevertheless, many companies still must rely on third parties to complete customs clearance procedures due to unnecessary complications. To further promote foreign investment in Wuhan, AmCham China suggests that Wuhan Customs provide equal treatment and benefits to both local and foreign-invested manufacturers and research and development (R&D) centers. Such changes should include exempting imported R&D equipment and service parts from value-added tax and simplifying the customs clearance procedure for training and educational materials. More transparent and equal application of customs policies would also improve the efficiency of shipments through customs, encouraging more foreign R&D investment in Wuhan.

Traffic

AmCham China applauds the Hubei government's significant investment in comprehensive infrastructure development: roads, airport, shipping, and an urban rail system. Improvements on this scale are impossible without some disruption of traffic flow. However, one safety concern is that sidewalks are often removed during the construction phase, increasing the danger for pedestrians and cyclists. AmCham China recommends that the Wuhan government provide stronger supervision to construction contractors, requiring that contractors provide safe pedestrian walkways to minimize safety risks and optimize traffic flow during construction projects. Other suggestions for increasing traffic flow include designating special bus lanes to promote public transportation and enforcing the prohibition of parking in bus stops. When residents can travel more safely, Wuhan becomes a more welcome place not only for its citizens but also for foreign investment.

Air Quality

Since designating air quality as one of the ten top priorities to improve the quality of life for residents, the Wuhan government has taken numerous measures to improve air quality. These include monitoring pollution emissions and reducing the amount of emissions from buses, coal boilers, and kitchens. The Wuhan government has also increased the use of natural gas and renewable sources of energy. Additionally, the Wuhan government has installed PM2.5 monitoring instruments at ten monitoring stations and publishes PM2.5 data, as well as PM10, SO2, and NO2 levels, on a real-time basis. In 2013, Wuhan adopted a more stringent air quality standard.

AmCham China recommends that the Wuhan municipal government ensure the new pollution standards are fully followed by relevant entities. The government should adopt higher vehicle emission standards and create incentives to encourage high-efficiency energy (e.g., combined cooling, heating, and power technology—CCHP), electrical vehicles, improved industrial energy efficiency, waste reuse, and recycling.

Recent Developments

Temporary Preferential Policy Adoption

To support the manufacturing industry, the Wuhan government in May 2013 announced "16 Preferential Policies to Accelerate Industry Growth." These policies include reducing various taxes and fees, providing subsidies for staff development, and loosening certain regulations to help businesses reduce costs. However, these preferential policies expire at the end of 2015. AmCham China recognizes and appreciates the government's efforts to improve the business environment in Wuhan and hopes such preferential policies can be continued beyond 2015.

American Services at the US Consulate Offices in Wuhan

In the spring of 2012, US Ambassador Gary Locke announced that the US Consulate in Wuhan would expand significantly, including adding full consular and visa services. Current forecasts project the Consulate to be fully in operation by the end of 2015. In the summer of 2012, a second officer, a Public Affairs Officer, was added. These improvements should encourage more American businesses to move to central China. We look forward to continuing developments and welcome even closer cooperation between the Wuhan and US governments, business community, and citizens.

New International School Building

The presence of international schools is another key factor foreign companies consider when deciding whether to invest in a location. AmCham China applauds the significant investment that the Wuhan Economic and Technical Development Zone is making to build new international school facilities, providing a higher-quality educational environment for the children of expatriate personnel working in Wuhan.

海关清关

武汉海关在增强清关政策的一致性和透明度以及提高清关效率方面不断取得进步。然而，由于通关手续复杂，很多公司依然需要依靠第三方来完成海关清关程序。为了进一步推动武汉市外商投资，中国美国商会建议武汉海关为本地和外资生产商和研发中心提供同等的待遇和优惠。这些变化应包括免征进口研发设备和维修件增值税，并简化培训和教育材料的清关手续。更透明更平等地实施海关政策还可以提高海关货运效率，鼓励更多外资增加对武汉的研发投资。

交 通

中国美国商会对湖北省政府大力投资全面的基础设施建设——即公路、机场、航运和城市铁路系统——之举措表示欢迎。如此大规模的基建更新改造势必对当前交通运行状况造成一些负面影响。上述项目建设过程中产生的一大安全隐患便是：施工通常需要占用人行道，由此增加了步行和骑车的路人的安全风险。中国美国商会建议武汉市政府加强对施工承包商的管理，确保承包商建设安全的行人道，在施工过程中尽量降低安全风险，保证施工期间交通运行最优化。另外还建议政府开辟公交车专用车道，加强公共交通，严格执行禁止社会车辆在公交车站停泊的规定，从而保证交通顺畅。如果交通出行安全系数提高，武汉市民生活条件也将得以改善，对外商投资的吸引力也会更强。

空气质量

自从武汉市政府将空气质量列为向市民承诺的改善生活质量的十件实事之一， 市政府采取了多项措施以改善空气质量。具体包括加强污染物排放监管，降低公交车、燃煤锅炉和厨房油烟的排放量。武汉市政府也加大了天然气和其他可再生能源的使用。此外， 武汉市政府还在 10 个环境监测站安装了 PM2.5 监测仪器，并公布 PM2.5、PM10 以及二氧化硫和二氧化氮水平的实时监测数据。2013 年，武汉市执行了更为严格的空气质量标准。

中国美国商会建议武汉市政府应努力将新的污染标准落到实处，确保相关各方都能严格遵守。武汉市政府应当采用更高的机动车排放标准，出台激励措施，鼓励推广使用高效能源（如集制冷、供热和供电于一体的冷热电联供系统技术 CCHP）、电动汽车、提高工业用电能效、废物回收循环再利用等。

最新进展

出台临时优惠政策

为了支持制造业的发展，2013 年武汉市政府出台了“工业保增长 16 条”，包括税费减免、员工开发补贴，放松对企业的监管以帮助企业降低成本等并将于 2015 年底到期。中国美国商会认同并赞赏武汉市政府在改善武汉商务环境方面所作出的不懈努力，并希望以上优惠政策能够延期。

美国驻武汉总领馆提供美国公民服务

2012 年春，时任美国驻华大使骆家辉先生宣布美国驻武汉领事馆将大幅扩大业务范围，包括新增全部的领事和签证服务。预计武汉领事馆将于 2015 年底正式开展新增业务。2012 年夏天，驻武汉总领馆还新招聘了一名二等公共事务官员。上述举措将有助于吸引更多的美国企业往中国中部地区迁移。我们期待着更多进展，并欢迎武汉市政府与美国各级政府、商界和公民继续加深合作往来。

新建国际学校

国际学校的数量和质量是外资企业考虑是否在当地投资的另一个重要因素。中国美国商会赞赏武汉市经济技术开发区斥巨资兴建国际学校设施、为在汉工作的外籍人士子女创造高水平教育环境的努力。

建 议

对湖北省与武汉市政府的建议

- **提供透明且平等适用的海关规则。**
- 就国有企业商业付款制定清晰的标准，并加大上述标准的执行力度。
- 通过为合格的医疗机构提供鼓励措施，推动建立符合国际标准的医疗设施。
- 与国际教育机构和国际企业建立深厚联系，帮助更多中国中部高校大学毕业生获得学习国际级管理技能的机会。
- 继续鼓励公共交通的使用，以缓解城市交通拥堵、停车难和污染等问题。
- 确保武汉全市有安全的人行道。

Recommendations

For the Hubei and Wuhan Governments

- **Provide transparent and equal application of customs policies.**
- Publish clear requirements for SOEs regarding business payments and increase the measures used to enforce such standards.
- Encourage international-standard healthcare facilities to operate in Wuhan by providing incentives to qualified operators.
- Establish strong links with international educational institutions and global businesses so that more central China university students have opportunities to learn international-standard management skills.
- Continue to encourage the use of mass transportation systems by reducing traffic congestion, parking problems, and pollution.
- Ensure pedestrians have safe places to walk throughout the city.

For The US Government

- **Increase the services available to both US and Chinese citizens at the US Consulate in Wuhan.**

对美国政府的建议

- 扩大美国驻武汉总领馆向美国和中国公民提供服务的范围。

Acronyms 缩写表

3PPP	Third-party Payment Providers
ACFTU	All-China Federation of Trade Unions
ACP	Aviation Cooperation Program
AD	Airworthiness Directive
AEO	Authorized Economic Operator
AFP	US-China Agriculture and Food Partnership
AIC	(Local) Administration of Industry and Commerce
AML	Anti-Monopoly Law of China
APA	Advance Pricing Arrangement
APM	Automated People Mover
AQSIQ	General Administration of Quality Supervision, Inspection, and Quarantine
ATFM	Air Traffic Flow Management
ATSE	Advanced Technology Services Enterprises
AUCL	Anti-Unfair Competition Law
BIS	Bureau of Industry and Security
BIT	Bilateral Investment Treaty
BRIC	Brazil, Russia, India, China
BSE	Bovine spongiform encephalopathy
BT	Business Tax
CAAC	Civil Aviation Administration of China
CAGR	Compound Annual Growth Rate
CBD	Central Business District
CBRC	China Banking Regulatory Commission
CCAR	China Civil Aviation Regulations
CCC	China Compulsory Certificate
CCHP	Combined Cooling, Heating, and Power
CDM	Collaborative Decision Making
CECP	Certified Executive Compensation Professional
CERC	US-China Energy Research Center
CFDA	China Food and Drug Administration
CFFEX	China Financial Futures Exchange
CFIUS	Committee on Foreign Investment in the United States
CIIC	China International Intellectech Corporation
CIPS	China International Payment System
CIQ	China Inspection and Quarantine
CIRC	China Insurance Regulatory Commission
CMDE	Center for Medical Device Evaluation
CMDSA	China Medical Device Standardization Association
CNOOC	China National Offshore Oil Company
CNPC	China National Petroleum Company
COMAC	Commercial Aircraft Corporation of China
CPE	US China Consultation on People-to-People Exchange
CPPCC	Chinese People's Political Consultative Conference
CRRT	Continuous Renal Replacement Therapy
CSRC	China Securities Regulatory Commission
C-TPAT	Customs-Trade Partnership against Terrorism
CUP	China Union Pay
CUSP	China-US Strategic Philanthropy
DBDC	Dual-branded Dual-currency
DECHP	Distributed Energy Combined Heat and Power
DQ	Design Qualification
DRR	Drug Registration Regulation
EASA	European Aviation Safety Agency
ECFA	Economic Cooperation Framework Agreement
ECP	US-China Energy Cooperation Program
ECWG	Export Compliance Working Group
EDS	Essential Drug System
EDS	Express Delivery Services
ELV	End of Life Vehicles
EMC	Electromagnetic Compatibility
EMV	Europay, MasterCard, Visa
EPC	Engineering, Procurement, and Construction
EPS	Electronic Payment Service
ERP	Enterprise Resource Planning
ESCO	Energy Service Company
FAA	US Federal Aviation Administration
FBO	Fixed Base Operators
FCCC	Foreign Correspondents' Club of China
FDI	Foreign Direct Investment
FESCO	Foreign Enterprise HR Service Company
FICE	Foreign-Invested Construction Enterprise
FIDE	Foreign-Invested Design Enterprise
FIE	Foreign-Invested Enterprise
FIESE	Foreign-Invested Engineering Services Enterprise
FSS	Flight Service Station
FTA	Free Trade Accounts
FTZ	Free Trade Zone
FYP	Five-Year Plan
GA	General Aviation
GAC	General Administration of Customs
GAPPRFT	General Administration of Press, Publications, Radio, Film, and Television
GHTF	Global Harmonization Task Force
GMP	Good Manufacturing Practices
GPA	Government Procurement Agreement
GTR	Global Technical Regulation
HCP	Healthcare Cooperation Program
HDL	Hard Disc Loading
HHRDC	Health and Human Resources Development Center
HNTE	High and New Technology Enterprise
HRO	Human Resource Outsourcing
HS	Harmonized System
IAIS	International Association of Insurance Supervisors
IAMC	Insurance Asset Management Companies
IATA	International Air Transport Association
ICT	Information and Communications Technology
IEC	International Electrotechnical Commission
IIP	Indigenous Innovation Product
ILAC	International Laboratory Accreditation Cooperation
IMDRF	International Medical Device Regulators Forum
IOC	International Oil Company
IOSC	International Organization of Securities Commission
IP	Intellectual Property
IPR	Intellectual Property Rights
IR	Implementing Regulation
ISO	International Organization for Standardization
IT	Information Technology
ITO	Information Technology Outsourcing
ITU	International Telecommunication Union
JCCT	US-China Joint Commission on Commerce and Trade
JI	Judicial Interpretation
JSA	Joint Study Agreement
JV	Joint Venture
LCD	Liquid Crystal Display
LEED	Leadership in Energy and Environmental Design
LP	Limited Partner
M&A	Mergers and Acquisitions
MEP	Ministry of Environmental Protection
MHI	Medical and Healthcare Institutions
MIIT	Ministry of Industry and Information Technology
MKU	Minimum Marketing Unit
MLPS	Multi-level Protection Scheme
MNC	Multinational Corporation
MOA	Ministry of Agriculture
MOC	Ministry of Culture
MOF	Ministry of Finance
MOFA	Ministry of Foreign Affairs
MOFCOM	Ministry of Commerce
MOH	Ministry of Health
MOHRSS	Ministry of Human Resources and Social Security
MOHURD	Ministry of Housing and Urban-Rural Development
MOLAR	Ministry of Land and Resources
MOST	Ministry of Science and Technology
MOU	Memorandum of Understanding

MPAA	Motion Picture Association of America
MPS	Ministry of Public Security
MTCR	Missile Technology Control Regime
MTPL	Motor Third Party Liability
NAFMII	National Association of Financial Market Institutional Investors
NASSCOM	National Association of Software and Services Companies
NCAC	National Copyright Administration of China
NCE	New Chemical Entity
NDRC	National Development and Reform Commission
NEA	National Energy Administration
NEDL	National Essential Drug List
NEV	New Energy Vehicle
NGO	Non-governmental Organization
NHFPC	National Health and Family Planning Commission
NIIP	National Indigenous Innovation Product
NIOSHA	National Institute for Occupational Safety and Health Administration
NOC	National Oil Company
NPC	National People's Congress
NRDL	National Reimbursement Drug List
NSG	Nuclear Suppliers Group
ODP	Official Development Plan
OEM	Original Equipment Manufacturer
OIE	World Organization for Animal Health
OSHA	Occupational Safety and Health Administration
P&C	Property and Casualty
PBOC	People's Bank of China
PLA	People's Liberation Army
PMA	Parts Manufacturing Authorization
PPPH	US-China Public Private Partnership on Healthcare
PSB	Public Security Bureau
PSC	Product Sharing Contract
PVP	Plant Variety Protection
QFII	Qualified Foreign Institutional Investors
R&D	Research and Development
RDP	Regulatory Data Protection
RMF	Remanufactured Finished Goods
RPM	Resale Price Maintenance
RQFII	RMB Qualified Foreign Institutional Investors
S&ED	US-China Strategic and Economic Dialogue
SAC	Standardization Administration of China
SAFE	State Administration of Foreign Exchange
SAIC	State Administration for Industry and Commerce
SAM	Software Asset Management
SAT	State Administration of Taxation
SAWS	State Administration of Work Safety
SCIO	State Council Information Office
SCLAO	State Council Legislative Affairs Office
SDO	Standards Development Organization
SDR	Special Drawing Rights
SEI	Strategic Emerging Industries
SEMB	State Encryption Management Bureau
SFC	Securities and Futures Commission
SFDA	State Food and Drug Administration
SIPO	State Intellectual Property Office
SIR	Service Invention Remuneration
SJV	Securities Joint Venture
SOA	State Oceanic Administration
SPB	State Post Bureau
SPC	Supreme People's Court
SPS	Sanitary Phytosanitary
SQuaRe	Software product Quality Requirements and Evaluation
SWIM	System Wide Information Management
TCK	Tilletia controversa Kuhn
TDA	US Trade and Development Agency
TEDA	Tianjin Economic Development Area
TIER	Technologies Import and Export Regulations
TMO	Trademark Office
TPM	Technological Protection Measures
TRAB	Trademark Review and Adjudication Board
TRQ	Tariff Rate Quota
TSA	US Transportation Security Administration
UDI	Unique Device Identification
UHV	Ultra-high Vacuum
USF	Universal Service Fund
UVL	Unverified List
VAS	Value-added Service
VAT	Value-added Tax
VEU	Validated End-User
VIE	Variable Interest Entities
VPN	Virtual Private Network
VSTC	Validation of Supplemental Type Certificate
VTC	Validation of Type Certificate
WAH	Work at Heights
WFOE	Wholly Foreign-owned Enterprise
WHO	World Health Organization
WTO	World Trade Organization
YRD	Yangtze River Delta

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