



AMERICAN BUSINESS IN CHINA

美国企业在中国

2010 White Paper



AmCham-China

中 国 美 国 商 会

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Editor's Note: AmCham-China has identified a top priority recommendation in each chapter. They are indicated in bold. For a complete list, please see page 10.

All currency is converted based on a US \$1=RMB 6.83 exchange rate.

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Chairman's Message

This year marks the 12th annual publication of the American Chamber of Commerce in the People's Republic of China's (AmCham-China) *White Paper on the State of American Business in China* (*White Paper*). We are pleased to publish it again with contributions from AmCham Shanghai and AmCham-Southwest China.

This year's edition continues our tradition of presenting the views and insights of our member companies on trade and commercial issues affecting the US business community in China. Our members' on-the-ground perspective enables us to recommend specific goal-oriented policy adjustments to foster a more conducive environment for prosperity and growth. We appreciate the many opportunities we have been given to meet with both Chinese and US government leaders to discuss our recommendations, and look forward to continuing that dialogue this year.

The recommendations outlined in this *White Paper* support a long-term vision for strong economic growth and improving bilateral relations. AmCham-China believes that in the next 30 years of US-China relations, we can achieve "Three One Trillions." Within three decades, we can see US \$1 trillion each of US annual exports of goods and services to China, US companies' annual production in China for that market, and cumulative Chinese investment in the US. Successfully accomplishing these objectives will result in outstanding long-term economic growth and job creation in both countries.

Specifically, the 2010 *White Paper* emphasizes the importance of continuing and cementing the momentum towards a strong and sustained recovery to the global economic downturn in both countries. A theme throughout the *White Paper* is member companies' optimism in the short and medium-term about the strength of the Chinese economy, tempered by growing concern about certain aspects of the regulatory environment.

Within this framework, we highlight the importance of ensuring consistent implementation and enforcement of Chinese law at all levels of government. We also focus on maintaining open and competitive markets to foster the most conducive environment for innovation and economic growth. And finally, when disputes do arise between the US and China, as happens between any two countries with such high levels of interaction, we encourage the use of established international resolution mechanisms.

The benefits of bilateral US-China leadership and collaboration are clearer than ever. Continued dialogue and engagement during the global recession was a critical stabilizing force. This cooperation has prevented the onset of a deeper economic crisis and paved the way for a nascent recovery globally. Leadership shown by both countries also helped stabilize the global economy

主席致词

中国美国商会已是第十二年发布《美国企业在中国》白皮书。我们很高兴上海美国商会和西南美国商会对今年白皮书的部分章节亦有所贡献。

今年的《白皮书》一如既往地阐述了会员企业对一些影响在华美国企业贸易与商业问题所持有的观点和理解。会员在华的实践经验，使我们能够提出具体的政策调整建议，从而营造一个更加有利于企业繁荣发展的商务环境。中美两国政府为我们提供了许多难能可贵的机会，与两国领导人就我们的建议进行沟通讨论，对此我们深表感谢，同时也希望今年与两国政府继续推进这一对话。

本年度《白皮书》中的建议旨在支持促进经济强劲增长和改善双边关系这一长期愿景。中国美国商会确信在未来 30 年的中美关系中，可以实现“三个 1 万亿”的目标，即：美国对华商品和服务年出口额达到 1 万亿美元；美国企业在中国产值实现 1 万亿美元；中国对美累计投资达到 1 万亿美元。成功实现这些目标将为中美两国经济带来长期强劲的增长，并创造更多的就业机会。

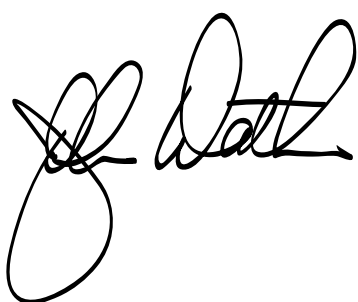
2010 年《白皮书》尤其强调了中美两国携手摆脱全球经济衰退，继续保持和巩固强劲复苏的重要性。中国美国商会会员对中国经济实力的中短期发展前景持乐观态度，而对中国一些监管环境中的问题则越来越关注，这一基调贯穿于本年度《白皮书》。

在这一框架之下，我们强调了确保中国各级政府统一实施和执行法律的重要意义。同时，我们也着眼于如何保持开放和竞争的市场，从而创造一个最有利于创新和经济发展的商务环境。最后，与任何两个有着如此巨大的相互影响的国家一样，中美两国之间若出现争端，我们鼓励利用已经建立的国际争端解决机制予以解决。

中美两国的领导层和双边协作能够带来的利益比以往任何时候都要明显。在全球经济不景气时期，持续不断的对话与交流是至关重要的稳定力量。这种合作将会避免更加严重的经济危机的爆发，也为全球经济逐渐复苏奠定了坚实的基础。中美两国所表现出的领导能力也有助于全球经济在最艰难时期的稳定发展，尤其是在两国实行的大规模经济刺激方案的作用中。简而言之，虽然近来出现了一些公开的分歧，但中美两国之间的双边关系仍然保持稳定，并取得了巨大的成效。


through the most difficult period, particularly with the implementation of large stimulus packages in both countries. In short, the US-China bilateral relationship continues to be strong and productive despite several recent public disagreements.

It is critical for the US and China to continue this spirit of collaboration. The challenges facing both countries and the entire world – climate change, sustained economic recovery and a fundamental realignment of global imbalances – cannot be confronted through the efforts of one country alone. As two of the world's largest economies, it is imperative for the US and China to maintain a long-term perspective on the benefits of ensuring a constructive bilateral relationship. AmCham-China looks forward to playing a positive role as the US and China work together to tackle the many challenges they face together.

A handwritten signature in black ink, appearing to read 'John D. Watkins, Jr.', with a large, stylized initial 'J'.

John D. Watkins, Jr.
Chairman
The American Chamber of Commerce in the People's Republic of China

中美两国应当延续这种合作精神，这一点至关重要。中美两国乃至整个世界所面临的挑战 — 气候变化、如何实现经济持续复苏，以及如何从根本调整全球经济失衡的状态 — 不可能仅凭一己之力便得到解决。作为全球两个最大的经济体，中美两国有必要以长远的眼光来看待确保建设性的双边关系所带来的益处。中国美国商会希望在中美两国携手合作、共同应对当前挑战的过程中做出积极的贡献。

A stylized, handwritten signature in black ink, consisting of several loops and fluid strokes, representing the name Hu Jinsheng.

华金声
主席
中国美国商会

2010 White Paper Priority Recommendations Table

2010 年度白皮书重点关注问题一览表



White Paper Priority Recommendations Table

The table below is an index of all priority recommendations in the 2009 and 2010 AmCham-China *White Papers*. The progress on each issue from 2009 has been tracked throughout the past year and rated on a scale of zero to five according to following guidelines: (5) = Complete resolution; (4) = Partial resolution; If neither (5) nor (4) has been achieved, one point was added for each of the following: (+1) = Avenue for dialogue on issue established; (+1) = Received feedback from government; (+1) = Incremental progress; (0) = No progress.

Industry/Issue	2009 Recommendation	2009 Progress Rating	2010 Recommendation
Agriculture			
<i>US Government</i>	Remove Section 727 in the 2009 US Omnibus Appropriations Act (previously Section 733).	4	Continue to engage in positive, constructive discussions which would permit a staged re-introduction of US beef that allows for immediate 30-month bone-in imports, moving to a full OIE import regime in a staged process.
<i>Chinese Government</i>	Reconsider restrictions on foreign investment in agricultural industries introduced in NDRC's November 2007 Foreign Investment Catalogue and eliminate equity caps for foreign investors in such industries.	2	Reconsider restrictions on foreign investment in agricultural industries introduced in its November 2007 Foreign Investment Catalogue and eliminate equity caps for foreign investors in such industries.
Beijing			
	Research and implement incentives to attract the establishment of FIE headquarters in Beijing.	5	Ensure equal application of financial and policy incentives to companies in the Zhongguancun Innovation Model Park irrespective of nationality or equity composition to foster sustainable innovation. Initiate dialogue with industry to explore best practices for fostering innovation in China.
Central China/Wuhan			
	Help facilitate the development of international-quality services by prioritizing investment for and establishment of international schools and hospitals.	4	Help facilitate the development of international-quality services critical to attracting foreign investment and developing a vibrant business community. Prioritize the establishment of international schools and hospitals and increase the transparency and consistent implementation of business registration processes.
Civil Aviation			
<i>US Government</i>	Continue to support and fund active engagement between the FAA and the Department of Transportation and their counterparts in China.	5	Continue to share best practices on civil and military dual-use air traffic control with Chinese civil aviation and military authorities.
<i>Chinese Government</i>	Implement the recommendations in the ACP's GARA Phase I Report (<i>Catalyzing Growth in China's Regional and General Aviation Sectors</i> .)	4	Continue moving towards a more flexible airspace and airway structure and away from today's rigid structure to accommodate civil aviation growth, GA needs, and national defense and security requirements. Implement an expanded, nationally managed, common-use airspace system; adopt full ICAO airspace classification standards; and grant greater influence to civilian authorities, where possible.
Competition Law			
	Ensure that foreign companies and the international law firms representing them have direct access to anti-monopoly regulators (such as anti-monopoly enforcement authorities) and that companies have the right to counsel of their choice (including international counsel) in any proceedings or investigations.	1	Allow foreign lawyers representing undertakings to attend and participate in hearings alongside local counsel.
Construction, Engineering and Design			
	Allow initial establishment at Grade A for FIDES that meet the qualification requirements.	0	Formally issue regulations clarifying qualifications required to undertake EPC contracting, and consistently enforce EPC contracting rules, especially at the local level.

白皮书重点关注问题一览表

下表列出中国美国商会 2009 及 2010 年白皮书中主要关注的建议。过去一年已对 2009 年白皮书中相关建议进展进行了追踪，并按下列评分标准予以排序：（5）= 彻底解决；（4）= 部分解决；若（5）或（4）均未实现，出现以下任一种情形即可加一分：（+1）= 就现存问题展开对话；（+1）= 从政府方面得到反馈；（+1）= 取得更多进展；（0）= 没有任何进展。

行业 / 问题	2009 年白皮书主要建议汇总	2009 年 进展 排序	2010 年白皮书主要建议汇总
农业			
对美国政府	应取消《2009 年综合拨款法案》第 727 款（原第 733 款）的规定。	4	继续进行积极的、有建设性的协商以准许分阶段地重新进口美国牛肉，先允许为期 30 个月的带骨牛肉进口，然后分阶段全面实行世界动物卫生组织规定的进口体制。
对中国政府	对于 2007 年颁布的《外商投资产业指导目录》中限制外资进入的农业产业，中国国家发改委可否重新考虑，并取消对外国投资人在上述产业中的最高持股比例限制。	2	对《外商投资产业指导目录》中限制外资进入的农业产业，可否重新考虑调整并取消对外国投资人在上述产业中的最高持股比例限制。
北京			
	研究并实施激励机制，以吸引外商投资企业在北京设立总部。	5	确保对中关村国家自主创新示范园区的国内外公司实行同等的金融和政策优惠，促进创新的可持续发展。开展与业界对话以探讨推进中国创新的最佳实践经验。
华中地区 / 武汉			
	通过加大对国际化学校和医院的投资建设，以推进国际化水平的服务质量。	4	帮助促进具有国际水准的服务业的发展，以吸引外资及打造生机勃勃的商业氛围。优先设立国际学校和医院，提高企业注册程序的透明度和执行的一致性。
民用航空			
对美国政府	继续支持和资助美国联邦航空局和交通部与中国相关部门的成功合作。	5	继续与中国民航和军事机构分享关于军民两用空中交通管制制的最佳实践。
对中国政府	酌情考虑美中航空合作项目在第一阶段报告（《推动中国支线航空业和通用航空业的发展》）中提出的建议。	4	建设更加灵活的空域和航线体系，摆脱当前的僵化结构，以适应民航业的发展、通用航空需求以及国防和安全要求。实现一个覆盖面更广、全国性管理的共用空域系统；采用国际民用航空组织的空域分类标准；并且尽可能扩大民用航空管理部门的影响力。
竞争法			
	确保外国公司和代表外国公司的国际律师事务所能够直接与反垄断监管部门接触（如反垄断执法部门），并在任何诉讼或调查中有权选择法律顾问（包括国际法律顾问）。	1	允许代表经营者的外国律师与本土法律顾问一同出席听证会。
建筑、工程和设计			
	允许外商投资设计企业首次申请即可获得甲级设计资质。	0	正式颁布法规，明确规定 EPC 总承包的资质要求。在地方层面落实 EPC 总承包规定。

Industry/Issue	2009 Recommendation	2009 Progress Rating	2010 Recommendation
Corporate Social Responsibility			
<i>US Government</i>	Continue to engage in discussion and cooperation projects with Chinese counterparts to identify challenges and share best practices in operational areas such as environment and product safety.	4	Continue to engage in discussion and cooperation projects with Chinese counterparts to identify challenges and share best practices in areas such as the environment, compliance, product safety and community development.
<i>Chinese Government</i>	Continue to promote CSR equally for all companies, avoiding limiting innovation with inflexible mandates. Take steps to raise awareness of the operational elements of CSR, in particular.	3	Strengthen the legal and institutional framework to facilitate the registration and operations of international and national not-for-profit and non-governmental organizations.
Cosmetics			
	Streamline existing system of multi-departmental administration, phase out requirement for pre-commercialization approval and strengthen post-commercialization supervision.	2	Amend the 1989 Regulations Concerning Hygiene Supervision of Cosmetics to address the lack of safety evaluation and information pre-warning systems; the failure to differentiate between products in the regulatory process; the lack of coordination and confusion over jurisdiction between government regulatory departments; and the overemphasis on pre-production approval and lack of emphasis on post-commercialization supervision.
Customs			
<i>US Government</i>	Continue to work with Chinese authorities to promote rule of law in the customs and trade regulation area, to ensure collaboration on best practices such as self-assessment, C-TPAT validation, and AEO programs, and to increase efficiency and transparency.	N/A	Pass and enact the Customs Facilitation and Trade Enforcement Reauthorization Act of 2009 (S.1631).
<i>Chinese Government</i>	Initiate and improve central programs, such as administrative ruling for classification and valuation, and provide detailed implementation rules for district/local customs authorities to facilitate consistency of implementation and enforcement across different points of entry.	2	Create a formal channel between GAC and the business community through trade associations, such as AmCham-China, to increase transparency, facilitate communication on and increase compliance with new customs laws and regulations.
Dietary Supplements			
	Replace SFDA's product registration process with a notification system like that in the US. Access should be based on a list of approved ingredients.	1	Replace SFDA's product registration process with a notification system.
Direct Sales			
	Provide market access and increase transparency by (1) simplifying the approval process, (2) duly informing companies regarding the approval progress and (3) speeding approvals according to the 90-day process in the Direct Selling Administration Regulations.	3.5	Revise service center requirements from one per district to one per city; delegate the SCEP approval authority to the provincial level; and simplify the approval process to only require SCEP approval, while changing to a reporting system for service center set up and opening. Only allow companies to operate direct selling in an approved province or city with a service center reporting system once the company license is granted.
Climate Change, Energy and the Environment (Entitled "Environmental Protection, Climate Change and Energy Efficiency" in 2009)			
<i>Environmental Protection</i>	Launch US-China industry and government collaboration projects on climate change and environmental protection.	4.5	Develop capacity-building workshops and training for sub-central ministries and regulators to ensure consistent and implementation of environmental laws and regulations at all levels.
<i>Energy</i>	Create long-term national policies together with local implementing regulations that encourage the development of renewable energy. Provide financial incentives for grid operators to upgrade grid infrastructure and capacity.	2	

行业 / 问题	2009 年白皮书主要建议汇总	2009 年 进展 排序	2010 年白皮书主要建议汇总
企业社会责任			
对美国政府	继续与中方开展对话和合作项目以充分认识当前挑战，并分享环境和产品安全等领域的最佳实践经验。	4	继续与中方开展对话和合作，以充分认识当前挑战，分享环境、产品安全及社区发展等领域的最佳实践经验。
对中国政府	继续推行企业社会责任在各企业中平等地执行，避免因权限不灵活而限制创新的现象发生，特别要采取措施以提升企业对企业社会责任所包含的各项操作因素的认识。	3	建立法制框架促进国际与国内非营利、非政府组织注册登记。
化妆品			
	改革现行化妆品行业多部门管理的体制，淡化上市前审批，加强上市后监管。	2	修改《化妆品卫生监督条例》（1989 年），以解决下列问题：安全性评估及预警制度缺乏；管理过程中未将产品加以区分；政府监管部门之间缺乏协调，管辖权混乱；监管部门重上市前审批，轻上市后监管。
海关			
对美国政府	继续与中国主管部门合作，推动海关和贸易管理领域的法治，开展经验共享（例如自我评估、C-TPAT 确认、AEO 计划）领域的合作，提高效率和透明度。	N/A	通过并实施 2009 年《海关便利化和贸易执法再授权法案》(S.1631)。
对中国政府	启动并改善全国性统一的各种方案，例如归类和估价的行政裁定，并为地方一级海关部门制定实施细则，以确保不同下属海关在实施法律法规和执法中的一致性。	2	通过行业协会（例如中国美国商会）在中国海关总署和商界之间建立一个正式的沟通渠道，以促进交流，协助制定新的海关法律法规，推进业界的合规工作。
膳食补充剂			
	参照美国的通报制度，取代国家食品药品监督管理局的产品注册程序。市场准入应当以经批准的膳食补充剂成分清单为基础。	1	用公示制度取代国家食品药品监督管理局的产品注册过程。
直销			
	通过 1) 简化审批程序、2) 适时通知公司有关审批进展情况及 3) 按照条例中规定的 90 天期限加快审批进程，来推动市场准入和增加透明度。	3.5	将有关服务网点设立规定从每市区一个降至每座城市一个，并将审批权限下放到省级。将审批过程简化，只需对设立计划进行审批，并建立一套有关建立及开设服务网点的报备体系。允许企业在获得许可之后，即可通过服务网点报备制度在获批的省 / 市内进行直销经营。
气候变化、能源与环境 （2009 年白皮书此章节标题为“环境保护、气候变化和能源效率”）			
环境保护	在气候变化和环境保护方面开展美中两国政企合作项目。	4.5	对地方部委和监管部门开展能力建设研讨及培训，以确保环境法律法规在各级部门得到统一的实施和执行。
能源	制定长期的国家政策以及地方实施条例，鼓励可再生能源的发展。为电网运营商升级电网基础设施和能力提供财政激励。	2	

Industry/Issue	2009 Recommendation	2009 Progress Rating	2010 Recommendation
Export Controls			
<i>US Government</i>	Carry out a full review and revision of antiquated export control regulations, in line with the recommendations of the January 2009 National Academies report.	3	Review lists of controlled items in light of actual technical capabilities in China and what is readily available in China from non-US sources.
<i>Chinese Government</i>	Continue to press Chinese companies to implement internal compliance programs, improving their ability to receive controlled US items and ensure compliance with China's own export control laws and regulations.	2	Increase outreach to Chinese industry to increase education pertaining to export control compliance and requirements.
Financial Services			
<i>Financial Institutions</i>	Eliminate foreign debt quotas, or at a minimum, exempt from the quotas, all trade finance and project lending. Enhance foreign bank participation in domestic currency market.	1	Allow foreign banks to underwrite financing facilities for non-financial enterprises and also issue the relevant administrative guidelines as soon as possible.
<i>Investment Services</i>	Further open the securities and fund management industries to foreign investment by allowing controlling stakes in fund management JVs and creating a path to entry for foreign fund management firms as WFOEs.	1	Provide further clarification for investors regarding administrative jurisdiction of the PE market and streamline the approval process while ensuring that foreign investors are able to operate on the same basis as their domestic counterparts.
Food and Product Quality and Safety and Dietary Supplements (Entitled "Food and Product Quality and Safety" in 2009)			
<i>US Government</i>	Continue to support the FDA's mission in China and provide expanded resources to it.	4	Increase opportunities for public-private cooperation and collaboration to promote sharing of best practices and improvements to the quality of the supply chain.
<i>Chinese Government</i>	Improve the regulatory framework governing food and product safety, and increase enforcement and compliance with regulations.	2	Issue remaining implementation regulations for the FSL and increase consistent enforcement and compliance through capacity-building and allocation of sufficient resources to relevant agencies at all levels of government.
Government Procurement			
	Submit an improved, commercially meaningful People's Republic of China WTO GPA accession offer as soon as possible.	0	Submit a commercially meaningful, revised GPA accession offer within the first half of 2010.
Healthcare, Medical Equipment and Devices			
	Improve the renewal process for product registration by creating an exemption of type-testing when there are no substantial changes to the product affecting safety or efficacy during the previous four years and no significant adverse events that could be attributable to the performance of the product.	0	Remove requirements for type testing during the product approval and registration process.
Human Resources			
	Continue clarifying the ambiguities in the Labor Contract Law and its implementation rules, including statutory terms for permitted uses, at both the national and local levels to ensure consistency and ease of compliance.	0	Speed up issuance of national judicial interpretations by the Supreme People's Court to clarify the ambiguities in the Labor Contract Law and its implementation rules, including clarification on the statutory terms for permitted uses of labor, such as the temporary, auxiliary and substitute positions for labor dispatch employees.
IICT Policy (Entitled "ICT/Telecom" in 2009)			
	Adopt transparent, market-based policies that do not discriminate between domestic and foreign companies, technologies or intellectual property in terms of market access, procurement, standards, or enforcement of competition and IP laws.	1	Withdraw and modify discriminatory procurement, standards, tax, IP, IT security and other policies to allow full participation of foreign companies including, but not limited to, companies contributing to China's innovative capacity. China's innovation policies should promote competition rather than individual domestic competitors.

行业 / 问题	2009 年白皮书主要建议汇总	2009 年 进展 排序	2010 年白皮书主要建议汇总
出口管制			
对美国	采纳国家科学院在 2009 年 1 月的报告中提出的建议，对不合时宜的出口管制法规进行全面的审议和修订。	3	根据中国国内的实际技术能力和除美国之外的其他供应商的供应能力，对管制清单进行审核。
对中国	继续力促中国企业实施内部合规计划，提高其获得受管制的美国商品的能力，确保其遵守中国自身的出口管制法规。	2	加大对各行各业的教育广度和力度，使其充分了解出口管制合规责任和要求。
金融服务			
金融机构	取消外债配额，或者至少将所有贸易融资和项目贷款从该配额中去除。提高外资银行在国内货币市场上的参与度。	1	允许外资银行为非金融企业承销融资工具，并尽快出台相关的管理规定。
投资服务	进一步向外商投资开放证券和基金管理行业，允许外资拥有中外合资基金管理公司的控股权，允许国外基金管理公司通过设立外商独资企业的方式进入中国。	1	就 PE 市场的行政管辖权向投资者做出进一步的澄清，简化审批程序，同时确保外国投资者能够与国内投资者享有同等待遇。
食品 and 产品质量与安全及膳食补充剂（2009 年标题为“食品及产品质量与安全”）			
对美国	继续支持美国食品药品监督管理局在中国所肩负的使命，并为此提供更广泛的资源。	4	增加政府与企业的合作机会，以促进分享最佳实践经验和改善供应链质量。
对中国	改进和完善食品及产品安全监管体系，加大执法力度，提高合规水平。	2	出台《食品安全法》实施条例，加强政府各级相关部门的能力建设和资源配置，促进统一的执法及企业的合规工作。
政府采购			
	尽快提交一份改进的、具有商业意义的中华人民共和国加入 GPA 的出价清单。	0	在 2010 年上半年提交一份具有实质意义的、经修改的中国加入 GPA 的出价清单。
医疗设备、器械和卫生保健			
	当产品没有发生重大改变以致影响其安全性并溯其前四年的功效、而且不存在因产品性能导致的重大不良事件时，可豁免进行型式测试，从而改进和加快产品注册的续期程序。	0	取消产品审批和注册流程中的型式测试要求。
人力资源			
	继续澄清《劳动合同法》及其实施条例中的模糊内容，包括关于合法劳动用工方式的法律术语，在全国和地方各级确保执法的一致性和法律的遵守。	0	最高人民法院加快发布关于《劳动合同法》及实施条例中模糊内容的司法解释，包括对有关劳务派遣在临时性、辅助性及替代性工作岗位适用范围的条款加以明晰。
创新、信息与通信技术政策（2009 年标题为“信息与通信技术”）			
	为鼓励中国的自主创新，应采取透明、基于市场的政策，在市场准入、采购、标准或竞争和知识产权法的执法方面，不区分国内、国外公司、技术或知识产权。	1	取消或修订歧视性程序、标准、税收、知识产权、IT 安全及其它政策，允许外国公司全面参与，其中包括但不限于对中国的创新能力做出贡献的公司。中国的创新政策应促进竞争，而非仅使个别国内竞争者受益。

Industry/Issue	2009 Recommendation	2009 Progress Rating	2010 Recommendation
Insurance			
	Allow foreign insurance companies to enjoy national treatment by granting new branch licenses on a concurrent basis.	3	Ensure uniform enforcement of the new Insurance Law and allow foreign insurance companies to enjoy national treatment by granting new branch licenses on a concurrent basis.
IPR Protection			
	Continue the pioneering efforts of the US Embassy and government in recent years, with greater internal coordination and cooperation with industry.	1	Engage with the US to address issues involving standardization and antitrust law, permit foreign rights holders to participate in an identical manner with Chinese rights holders in standardization matters.
Legal Services			
	The Chinese and US government should pursue a dialogue to establish a common understanding for allowing qualified domestic lawyers to practice Chinese law in foreign law firms in China.	2	Revise current law to permit Chinese lawyers to practice Chinese law as associates and partners in foreign law firms.
Media & Entertainment			
	Fully implement new policies covering news and financial publishing to ensure separation of regulation from market participation and avoid having regulators and licensees of foreign news organizations participating in the industry.	4	Allow foreign news companies to hire Chinese-credentialed reporters.
Pharmaceuticals			
	Fully implement RDP to protect innovators' intellectual property. Establish an effective patent linkage system that prevents copies of patent protected medicines from receiving government marketing approval.	2	Fully implement regulatory data protection to protect innovators' IP. Establish an effective patent linkage system that prevents copies of patent protected medicines from receiving government marketing approval.
PRD			
	Maintain openness to trade and investment and resist pressures to enact protectionist measures. Encourage an open and competitive business environment.	N/A	N/A
Real Estate			
	Streamline and speed up the approval process for the establishment of real estate FIEs. Eliminate restrictions specifically applicable to foreign investors regarding market entry into the real estate sector, including those first put in place by Circular 171.	1	Allow foreign investors to play a more active role in helping the Chinese government promote a sustainable and mature real estate market through eliminating market entry restrictions specifically applicable to foreign-invested enterprises put in place by Circular 171 and streamlining the approval process.
Retail			
	Treat domestic and foreign retailers equally for registered capital requirements assessed on additional outlets.	3	Revise the Measures on the Administration of Foreign Investment in Commercial Sectors and other related regulations in line with China's WTO commitments and common international practices.
Science, Technology, Industrial Policy			
	Ensure sustainable innovation through measures that are open to all individuals and entities irrespective of nationality or equity composition.	2	See IICT Policy recommendation.
SMEs			
	Raise the threshold for qualifications to the 20 percent tax rate.	N/A	N/A

行业 / 问题	2009 年白皮书主要建议汇总	2009 年 进展 排序	2010 年白皮书主要建议汇总
保险			
	在申请新的分支机构设立许可证过程中，外国保险公司享受与中国公司同等的国民待遇。	3	确保新《保险法》得到统一的执行，允许外资保险公司享有国民待遇，可同时取得多家分支机构的批文。
知识产权保护			
	继续落实美国大使馆及政府近年来的开创性举措，进一步加强与业界的内部协调协作。	1	与美方合作，共同解决标准化和反垄断法相关问题，允许国外版权所有者与中国版权所有者一样参与标准化工作。
法律服务			
	中美政府应当开展对话，达成允许获得执业资格的国内律师在国内办理中国法律事务的共识。	2	修订现行法律，允许中国律师以律师和合伙人的身份在外资律师事务所从事中国法律服务活动。
传媒娱乐业			
	全面执行涉及新闻和出版业的新政策，确保监督管理与市场参与的分离，避免监管机构和获批的外国新闻机构同时参与该产业。	4	允许外国新闻公司聘用经过中国认证的记者。
制药业			
	完全实施监管数据保护，保护发明人的知识产权。建立有效的专利连结机制，防止专利药品的仿制品获得政府向合法受保护产品颁发的上市销售许可。	2	全面实施监管数据保护，以保护创新者的知识产权。建立有效的专利链接制度，防止仿制药获得政府销售许可。
珠江三角洲			
	保持对贸易和投资的开放，抵制制定保护主义措施的举措。鼓励建立一个开放性的、充满竞争力的商业环境。	N/A	无
房地产			
	简化并加快设立外商投资房地产企业的审批流程，取消尤其是适用于境外投资者进入房地产行业市场准入的各种限制，包括 171 号文首先规定的那些限制。	1	允许境外投资者发挥更加积极的作用，推动中国政府取消市场准入限制，特别是第 171 号文中针对外资企业的规定，简化审批流程，推动建立一个具有可持续性、成熟的房地产市场。
零售业			
	在检查审批新增店铺申请时，在最低注册资本方面给予国内外零售企业同等待遇。	3	修订《外商投资商业领域管理办法》和其它相关法规，使之符合中国加入世贸组织时所做的承诺以及其它通用的国际惯例。
科学、技术与产业政策			
	通过向所有个人和实体开放、不因国籍或股权结构而异的政策措施，确保可持续创新。	2	详见“创新、信息与通信技术政策”章节建议
中小企业			
	提高获得征收 20% 税率的公司资质。	N/A	无

Industry/Issue	2009 Recommendation	2009 Progress Rating	2010 Recommendation
Southwest China/Chengdu			
	Reduce local levies, such as the Price Adjustment Fund Levy, to lower the cost of doing business in Chengdu and increase its attractiveness to foreign investors.	3	Accelerate talent development through internal training initiatives and expanded efforts to attract new talent. For example, adopt talent development projects to attract and retain highly talented managers. Municipal governments are encouraged to expand on current incentive policies to further attract coastal and overseas talent.
Standards			
	Make standard setting processes transparent, open and non-discriminatory. Allow all companies to fully participate as voting members within Chinese technical committees	0	See IICT Policy recommendation.
Tax			
	Initiate a long-term study focused on repealing the Business Tax and extending the VAT system to cover some or all of the taxable objects now covered by the Business Tax.	0	Initiate a long-term study focused on repealing the BT and extending the VAT system to cover some or all of the taxable objects now covered by the BT.
Tianjin			
	Prioritize the completion of the link between the Binhai light rail and the main train station.	3	Improve the service quality and organization of the Tianjin train station.
Transportation & logistics			
	Allow logistics service providers a grace period for the preparatory work before implementing the Management Measures for Advance Manifest, including separate implementation considerations for express clearance needs of industry.	4	Shorten the four-hour manifest data requirement to improve the competitiveness of the Chinese EDS industry.
US Visa Policy			
<i>US Government</i>	Review the SAO process to reduce current delays and only focus investigative resources on those who may pose a legitimate threat	4	Abolish per-country immigrant visa caps, removing artificial bottlenecks for US companies to recruit employees from high-demand countries like China.
<i>Chinese Government</i>	N/A	N/A	To promote transparency, publish all visa rules in writing. Publish proposed visa rules in advance to give the public notice and an opportunity to comment. Where possible, visa policies should be uniform rather than determined by individual consulates and localities.
YRD			
	Continue efforts to integrate the Yangtze River Delta region with a focus on creating a seamless regulatory environment and a common social security policy among provinces in the region.	1	Continue efforts to develop Shanghai into an international trading hub by supporting financial sector reforms that enhance the operating environment for both foreign and domestic firms and encourage the development of new financial services institutions and products.

行业 / 问题	2009 年白皮书主要建议汇总	2009 年 进展 排序	2010 年白皮书主要建议汇总
西南地区 / 成都			
	减少诸如价格调控基金等地方性费用征收项目，以降低成都市商业经营成本，吸引外国投资者。	3	通过内部培训计划及努力吸引新人才以加快人才开发，如通过开展人才开发项目以吸引和保留高级管理人才。鼓励当地政府继续实施当前激励政策，以进一步吸引沿海地区及海外人才。
标准			
	确保标准制定过程的透明、公开和非歧视性。所有企业均应有权作为投票成员全权参与中国技术委员会的工作。	0	详见“创新、信息与通信技术政策”章节建议。
税收			
	启动一项长期性研究，目标在于取消营业税，同时扩大增值税系统，涵盖目前营业税所包括的部分或全部征税对象。	0	开展旨在取消营业税、扩大增值税范围以覆盖所有目前由营业税覆盖的部分或全部应税对象的长期研究。
天津			
	连接滨海轻轨与主火车站的环线工程应优先完工。	3	提高天津火车站的服务质量和组织能力。
运输和物流			
	在实施《舱单管理办法》前给予物流服务供应商宽限期，以便他们进行相应的准备工作，包括考虑物流业快速通关的需求。	4	缩短四小时提前申报舱单数据的要求，提高中国快递服务业的竞争力。
美国签证政策			
对美国政府	评估“签证安全建议”程序以减少当前的延误现象，将审查资源集中于那些可能对美构成潜在威胁的个别人。	4	撤销针对每个国家的移民签证上限，解除美国公司从中国等高需求国家招聘员工的人为限制。
对中国政府	无	N/A	提高透明度，公布所有书面签证规定。提前公布将实施的签证规定，提醒公众注意并为其提供参与意见的机会。如有可能，签证政策应有全国统一标准，而非因地而异。
长江三角洲			
	继续努力推进长江三角洲地区的一体化，应着重于在该地区各省份之间创造无缝隙的监管环境和统一的社会保障政策。	1	通过支持金融行业改革，以继续推进上海成为国际贸易中心的进程。金融改革将改善国内外企业的运营环境，鼓励发展新金融服务机构和产品。

Part One

The Business Climate for American Firms in China

美国企业在华商务环境



The Business Overview: The US-China Commercial Relationship

China's recovery from the global recession underscores the country's fundamental and growing economic strength. Annual GDP growth topped eight percent in a year when most major economies saw negative growth and few external observers at the beginning of the year thought this goal would be achieved. This expansion was in large part due to the government's RMB four trillion (US \$584 billion) stimulus package.

In the wake of this, AmCham-China members overwhelmingly continue to see the Chinese market as a tremendous growth opportunity. China remains a highly desirable destination for investment and a major global priority for American companies. If anything, China has grown in relative importance during the global recession, and American companies operating here have improved their profit margins compared to their margins in other markets.

It is also clear that China faces challenges in the transition from export-led growth to domestic demand-led growth. As the stimulus spending finishes, the extraordinary level of government investment ends, monetary policy is normalized and steps are taken to improve the sustainability and quality of economic growth, the future path is uncertain.

A short list of relevant challenges includes: improving the efficiency of capital allocation, reducing the environmental burden of growth, increasing flexibility of the labor market, shifting to clean energy while still providing the huge increases in energy required to support economic and population growth, addressing widening income inequality, strengthening the social safety net (especially healthcare delivery and an underfunded pension system), moving up the value-added curve as unit labor costs increase, supporting growth of an underdeveloped services sector, and reforming education to address future needs of a much more complex society and economy.

Many observers have commented that China is at a turning point. Structural changes are needed. The un-

derlying question facing respondents of AmCham-China's 2010 *Business Climate Survey* is whether China, in moving towards domestic demand-led growth, will continue its unfinished project of becoming a market economy through "reform and opening," or resort to supporting its state-owned sector and narrowing market access for imported products and foreign-invested enterprises operating in China.

The optimism that American companies have consistently felt over the 12 years we have conducted the *Business Climate Survey* has been based on over three decades of gradual, but consistent, reform and opening measures leading the economy toward becoming a market economy open to foreign participation and well integrated with global investment and trade flows. The Chinese government promised, and delivered, basic stability of macroeconomic policy in a framework of continuous market opening. The result was an extraordinary level of foreign direct investment, which has always been more important for the transfer of management skills and technology than for funding, and sustained economic growth at levels unprecedented for a large developing economy. China has been successful, we have contributed substantially, and we have prospered together. But will it continue?

AmCham-China's 2010 *Business Climate Survey* reflects the American business community's increasingly mixed views on the future of China's business environment. While most members continue to be optimistic about China's market potential, many have begun questioning their long-term viability in China as they consider the obstacles presented by an increasingly difficult regulatory environment. Many new industrial policies show signs of protectionism that arouse concern over whether market access for both foreign-invested enterprises and trading partners will narrow significantly in the years ahead. We also observe that progress toward greater reliance on market-oriented mechanisms has slowed, allowing a return to reliance on administrative measures to manage the economy.

In the United States, the process of de-leveraging the

2010 年度白皮书商务环境综述

中国从全球经济衰退中的复苏，充分显示出中国良好的基本面和持续增强的经济实力。当绝大多数主要经济体以负增长为过去一年画上句号时，中国的 GDP 年增长率却超过 8%，而在年初，外界的市场观察人士几乎没有人认为这一目标能够成为现实。经济的迅速扩张在很大程度上得益于中国政府的 4 万亿元人民币（合 5840 亿美元）经济刺激方案。

正鉴于此，中国美国商会的会员企业继续坚定地将中国市场视其为巨大的发展机遇。中国仍然是美国企业理想的投资目的地，也是其全球业务的重中之重。此外，中国的重要性在全球经济衰退时期得以相对凸显，在华美国企业的利润率与其它市场相比，有所提高。

然而在经济增长从出口拉动型向内需驱动型转变的过程中，中国无疑也面临着诸多挑战。随着政府巨额投资刺激政策的逐步退出，货币政策将回归正常，政府也会出台措施以保持经济发展的可持续性 & 提高经济增长的质量。因此未来之路仍有一些不明确性。

我们在此简要列举一些相关的挑战：改善资本配置效率，减轻经济发展的环境负担；提高劳动力市场的灵活性；在满足经济发展与人口增长所需能源大幅增长的同时，实现向清洁能源的转变；着手解决收入差距日益扩大的问题；加强社会保障网络建设（尤其是加强医疗保健服务的提供及解决养老金收不抵支的问题）；面对源于单位劳动力成本的增加而上移增值曲线；支持尚未得以充分发展的服务产业领域；以及推行教育改革以应对未来日趋复杂的社会与经济要求。

许多观察人士评论说，中国正处于一个转折点，需要进行结构性改革。对于中国美国商会 2010 年度《商务环境调查》的受访企业而言，其面对的一个根本问题是：中国在逐步向内需驱动型增长转变的过程中，是否会继续坚持其通过“改革开放”建设市场经济这一“未竟事业”，还是会采取支持国有经济，限制进口产品及收紧外商投资企业市场准入政策

的相关措施。

在我们开展《商务环境调查》的十二年间，美国企业对中国市场始终保持乐观态度，基于三十多年来中国政府渐进、但却坚持不懈地推行改革开放政策，力求引导经济向鼓励外商参与、充分融入全球投资与贸易的市场经济方向迈进。中国政府承诺在持续市场开放的框架之下保持宏观经济政策的基本稳定，并且做到了这一点，从而使外商直接投资达到了惊人的水平。但与资金的流入相比，外商直接投资所带来的管理能力与技术的输入往往显得更为重要。与此同时，中国这个庞大的发展中国家也实现了空前而持续的经济的发展。中国取得了巨大的成功，在华美国企业为此做出了重要的贡献，双方也实现了共同繁荣。但这一局面是否能继续？

中国美国商会 2010 年度《商务环境调查》反映出美国商界对中国未来商务环境越来越多的矛盾心态。虽然大多数会员企业依然看好中国市场的发展潜力，但考虑到愈发严峻的监管环境所带来的影响，许多企业已经开始对其在中国的长期发展能力表示质疑。许多新的行业政策已经表现出保护主义的迹象，中国是否会在未来几年加大对外商投资企业及贸易合作伙伴的市场准入限制这一问题，引起了广泛的关注。我们还注意到，中国在加强市场导向型机制方面的进展已有所放缓，正在回到更多依赖行政手段来管理经济的状态。

在美国，银行系统及家庭去杠杆化的过程尚未完成；经济已重回成长轨道，但失业率仍然居高不下。据预计，要使失业率回落至其长期趋势水平尚需时日。美国自身也面临着诸多严峻的挑战。因此，我们预计中美两国之间的贸易摩擦将加剧，而如何缓解世界经济失衡将成为两国更加关注的政治焦点。但这并不意味着两国必然能够在政策措施方面达成一致。

中国美国商会呼吁中美两国以长远的角度看待确保建设性双边关系所能带来的益处。作为全球两个最大的经济体，坚持支持促进经济强劲增长和改善双边关系这一长期愿景十

banking system and households is incomplete. Economic growth has resumed but unemployment remains at high levels. It is expected to take some years for unemployment to decline to the level of its long-term trend. The United States faces its own list of formidable challenges. As a result, we expect an increase in trade tensions and a sharper political focus in both countries on mitigating global imbalances. That will not, however, necessarily lead to agreement on policy measures.

AmCham-China urges both countries to maintain a long-term perspective on the benefits of ensuring a constructive bilateral relationship. As two of the world's largest economies, it is imperative to adhere to a long-term vision for strong economic growth and strengthening bilateral collaboration. As part of this vision, AmCham-China believes that in the next 30 years of US-China relations, we can achieve "Three One Trillions." This includes US \$1 trillion each of US annual exports of goods and services to China, US companies' annual production in China for that market, and cumulative Chinese investment in the US.

Within this framework, we remain committed to our view that dynamic markets, with robust competition and open to global flows of goods, services, capital and people remain the best hope for successfully achieving the Three One Trillions' objectives and ensuring the sustained prosperity of both China and the United States.

US Corporate Outlook for China

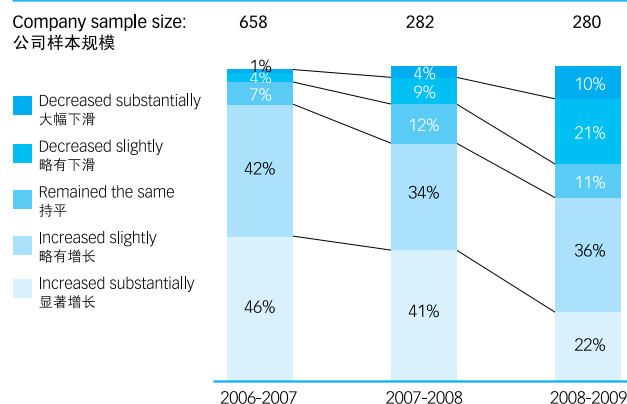
Market Optimism

Overall, AmCham-China member companies note that China remains a bright spot in the global economy. Although substantially more firms reported a "slight" or "substantial" decrease in profits from 2008 to 2009 than from 2007 to 2008 (31 percent versus 13 percent, Figure 1), the percentage of member companies reporting that they were "profitable" or "very profitable" in 2009 in the Chinese market was virtually unchanged from 2008 (71 percent versus 74 percent, Figure 2). Given the global economic slump, these profitability figures demonstrate the strength of China's economic growth and explain why US companies view China as a global priority.

With some exceptions, US companies are generally expanding operations in China. Nearly four in five survey respondents (79 percent) indicated that their company will expand investment in China in 2010, and more than half of respondents (51 percent) indicated that investment growth will exceed 10 percent (Figure 3).

Change in Revenue of China Operations Compared to Previous Year (2006-2009)

企业在华运营收入较前一年的比较 (2006-2009年)

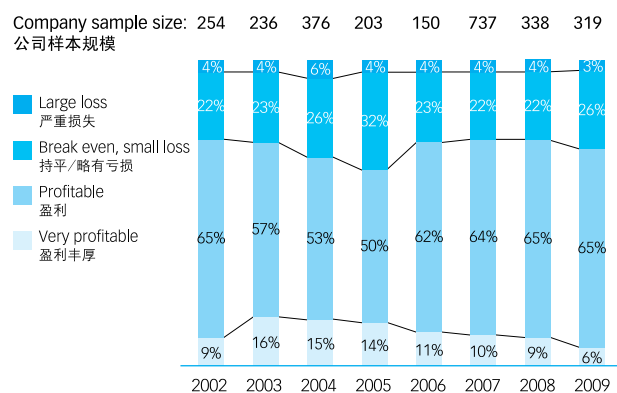


Source: 2010 AmCham-China Business Climate Survey
资料来源: 2010年中国美国商会商务环境调查

1

Profitability of China Operations (calendar years 2002-2009)

企业2002年至2009年在华盈利情况



Source: 2010 AmCham-China Business Climate Survey
资料来源: 2010年中国美国商会商务环境调查

2

Moreover, the vast majority of US firms in China are focused on market opportunities in China. Among the respondents to AmCham-China's 2010 *Business Climate Survey*, 58 percent report that their top reason for being in China is to produce or source goods and services in China for the Chinese market, rather than for export (Figure 4). The popular perception in America that US companies mainly go to China to offshore US manufacturing is simply untrue. Indeed, only about one in 10 member companies report that they have operations in China primarily for exports to the American market. The sourcing by global buyers in China is often from local enterprises or those owned by other foreign investors and parents, such as those from Taiwan, South Korea, Hong Kong and Japan.

The focus of US companies in China continues to extend beyond China's first-tier cities (Beijing, Shanghai

分必要。作为这一愿景的一部分，中国美国商会确信在未来30年的中美关系中，可以实现“三个1万亿”的目标，即：美国对华商品和服务年出口额达到1万亿美元；美国企业在华产值实现1万亿美元；中国对美累计投资达到1万亿美元。

在这一框架之下，我们坚信，充满活力的市场，加之强大的竞争力和对全球商品、服务、资本和人员流动的开放程度，依然是成功实现“三个1万亿”目标并确保中美两国持续繁荣的最大希望。

美国企业对中国的展望

对市场的乐观预期

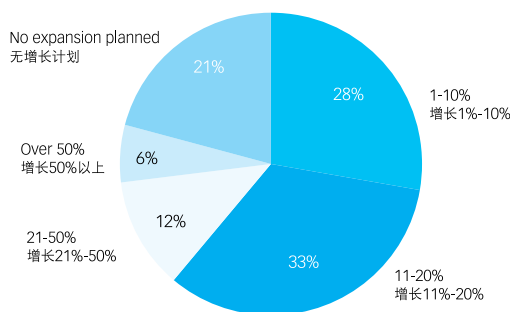
总体而言，中国美国商会会员企业认为中国仍然是全球经济的亮点。但表示2008-2009年利润较2007-2008年“略有下滑”或“显著下滑”的企业明显增多（从上一年的13%升至31%）（如图1所示），称2009年在中国市场“盈利”或“盈利丰厚”的会员企业比例与2008年基本持平（上年度为74%，本年度为71%）（如图2所示）。鉴于全球经济的不景气，这些盈利数据证明了中国经济增长的强劲势头，也说明了美国企业将中国视为全球重要市场的原因所在。

除一些特例外，美国企业普遍拓展其在华业务。近五分之一的受访者（79%）表示其所在公司将在2010年扩大其对华投资，而超过半数的受访者（51%）称其投资增长幅度将超过10%（如图3所示）。

此外，中国市场的发展机遇是绝大多数在华美国企业关注的焦点。在中国美国商会2010年度《商务环境调查》的

Estimated Increase in Investment in China Operations for 2010 企业对2010年在华投资增长的预期

Company sample size = 232
公司样本规模



Source: 2010 AmCham-China Business Climate Survey
资料来源：2010年中国美国商会商务环境调查

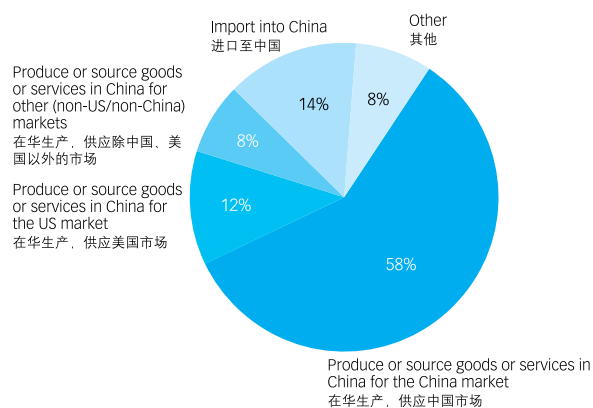
3

受访者中，有58%的企业称其进入中国市场的首要目的是面向中国市场进行生产、采购产品与服务，而并非为了出口（如图4所示）。美国企业进入中国市场的主要目的是为了向外转移本国制造业务，这一美国人所普遍认为的观点是完全错误的。实际上，只有十分之一的会员企业表示他们在中国开展业务主要是为了向美国市场出口商品与服务。在中国采购商品与服务的国际买家通常来自中国本土企业，或其他国家或地区海外投资者和母公司的下属企业，比如台湾、韩国、香港和日本的企业。

Top Goals and Strategies in China

企业在华首要目标和战略

Company sample size = 264
公司样本规模

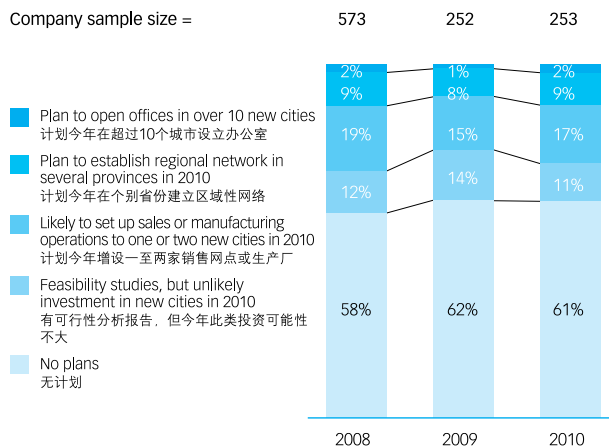


Source: 2010 AmCham-China Business Climate Survey
资料来源：2010年中国美国商会商务环境调查

4

This year, beyond the 1st-tier cities Beijing/Shanghai/Guangzhou, does your business plan to expand into 2nd- and 3rd-tier cities (e.g., Dalian and Chengdu)?

除北京、上海、广州等一线城市外，企业今年是否有拓展到二、三线城市的计划（如大连和成都）



Source: 2010 AmCham-China Business Climate Survey
资料来源：2010年中国美国商会商务环境调查

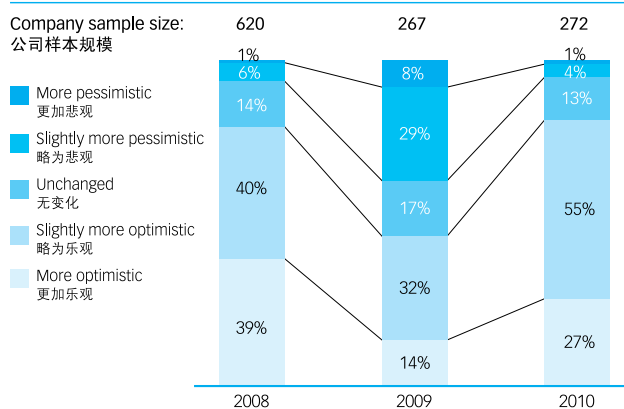
5

and Guangzhou). Multinationals are continuing their expansion into smaller cities that are rapidly developing. In the 2010 AmCham-China *Business Climate Survey*, 39 percent of member companies report that they were planning feasibility studies or were likely to open a presence in at least one second-tier city (Figure 5). This expansion beyond the traditional international hubs is a crucial trend among US companies. It demonstrates confidence in the future buying power of Chinese consumers throughout the country.

US companies also remain optimistic about China's overall economic future. Nearly twice as many firms report being optimistic about the year ahead in the 2010 *Business Climate Survey* as did in 2009 (82 percent versus 46 percent, Figure 6). Given the deep fears at the start of 2009 that China might slip into recession, these results are not surprising. Yet the strength of confidence extend far beyond this short-term comparison.

How would you describe your company's business outlook in China compared to last year?

2008-2010年间企业较前一年对其在华投资前景预期的变化

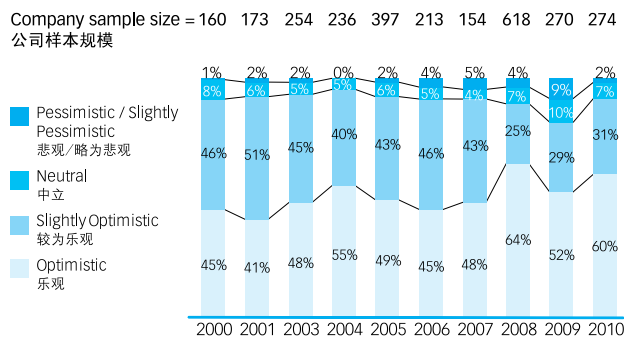


Source: 2010 AmCham-China Business Climate Survey
资料来源：2010年中国美国商会商务环境调查

6

How would you describe your five-year business outlook in China?

企业自2000-2010年中对未来五年在华发展的展望



Source: 2010 AmCham-China Business Climate Survey
资料来源：2010年中国美国商会商务环境调查

7

The medium term also saw the highest level of optimism in three years. More than nine out of 10 (91 percent) survey respondents said that they were optimistic about their five-year outlook in China, notably higher than the 81 percent optimistic five-year outlook in 2009 (Figure 7). There is a clear sense that rather than reaching a plateau, China's economy still has the potential for rapid growth over the medium term, propelled by its second and third-tier cities, and assuming an appropriate policy mix.

Yet, signs of pessimism remain amidst the general optimism about China's market potential. Half of all respondents rank a Chinese economic slowdown "in the coming years" as one of their top-three risks for the coming years. This ranks far above all other concerns, although a global slowdown trailed not far behind at 42 percent (Figure 8). Additionally, nearly half (44 percent) of all US companies report canceling or postponing investment in China in 2009 (Figure 9).

Regulatory Concerns

The overall optimism in the short and medium term comes amid growing concerns about regulatory trends. For the first time, inconsistent interpretation and implementation of laws emerged as the top business concern among AmCham-China members, narrowly edging out human resources (HR), which had been the top concern in the previous three surveys (Figure 10).

The growing perception that China still lacks the regulatory structure or political will — or both — to implement laws evenly throughout the country, and apply them uniformly to all companies, be they foreign or domestic, has the potential to hamper China's future economic development severely. It is important that China continues to upgrade its regulatory enforcement and legal structures to ensure a strong business environment. Without confidence in provincial and municipal government-level enforcement, US companies may grow hesitant to invest in China's western and inland provinces. These are the very places that most need capital investment, and, perhaps more importantly, the types of international best practices and management training that US companies can help provide. A regulatory environment that takes for granted foreign investment in developing regions risks leaving those areas behind their more developed counterparts.

Another challenge that remains is HR. While no longer the number one operating challenge, it has been a top issue for many years and was only barely displaced from the top spot this year by concerns over inconsistent regulatory enforcement. A deeper breakdown of HR concerns shows increasing wages as the biggest

在华美国企业关注的重点仍然是将业务扩大至国内一线城市（北京、上海和广州）以外的地区。跨国公司不断开拓迅速发展的中小城市市场。中国美国商会 2010 年度《商务环境调查》显示，有 39% 的成员企业表示他们正在计划开展可行性分析或有可能进入至少一个二线城市（如图 5 所示）。将业务拓展至传统国际中心城市以外的地区是美国企业一个非常重要的发展趋势。这表明他们对于未来中国各地消费者的购买力抱有很强的信心。

此外，美国企业对中国的整体经济前景也仍然持乐观态度。在 2010 年度《商务环境调查》中，对未来一年经济展望表示乐观的企业数量几乎是 2009 年调查结果的两倍（上年度为 46%，本年度为 82%）（如图 6 所示）。由于在 2009 年年初外界普遍担心中国可能也会陷入经济衰退，因此调查结果并不意外。但企业的信心远远超出了这组短期对数字所显示的情况。

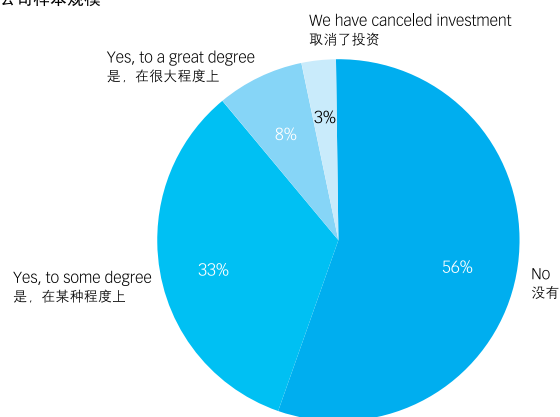
对于中期发展前景，持乐观态度的企业比例也创下了三年来的最高纪录。在调查中，有超过十分之九（91%）的受访企业表示看好未来五年其在中国的发展，远远高于 2009 年调查中 81% 的比例（如图 7 所示）。企业明显感觉到，由于中国二三线城市的发展动力强劲，如果政府能出台适当的政策，那么中国经济不会就此进入平台期，从中期看仍然具备快速增长的潜力。

然而在普遍乐观的情绪之下，对中国市场发展潜力表示悲观的迹象也依然存在。在所有受访企业中有一半的企业，将“今后几年内”中国经济增长放缓视为其未来几年所面临的三大风险之一。企业对这一问题的担忧远远高于对其他问题的关注，而紧随其后的是对全球经济放缓的担忧（42%）（如图 8 所示）。此外，有近半数（44%）的美国企业表示曾在 2009 年取消或推迟在华投资（如图 9 所示）。

In the last 12 months, has your company postponed any planned investment into China?

过去一年中企业是否暂缓对中国的投资计划

Company sample size = 266
公司样本规模



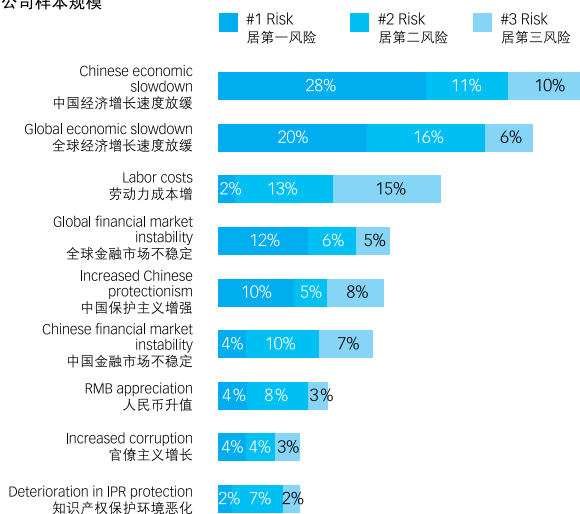
Source: 2010 AmCham-China Business Climate Survey
资料来源：2010 年中国美国商会商务环境调查

9

Top Risks for the Coming Years

企业面临的主要风险

Company sample size = 274
公司样本规模



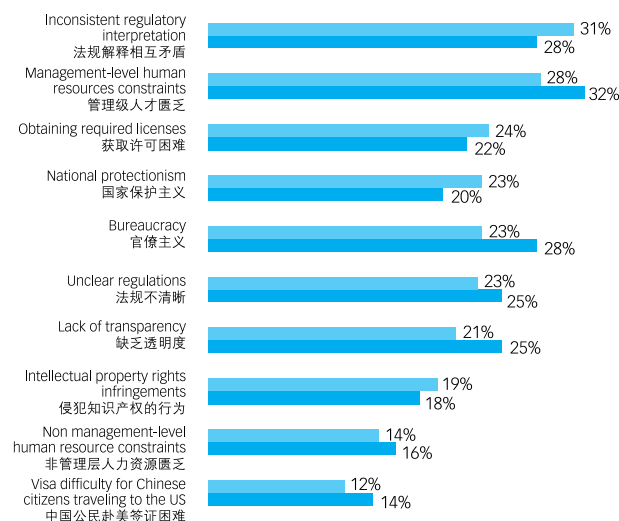
Source: 2010 AmCham-China Business Climate Survey
资料来源：2010 年中国美国商会商务环境调查

8

Issues Reported as a Top-Five Business Challenge

企业在华运营的五大挑战

Company sample size = 311 (2009) 318 (2010)
公司样本规模



Source: 2010 AmCham-China Business Climate Survey
资料来源：2010 年中国美国商会商务环境调查

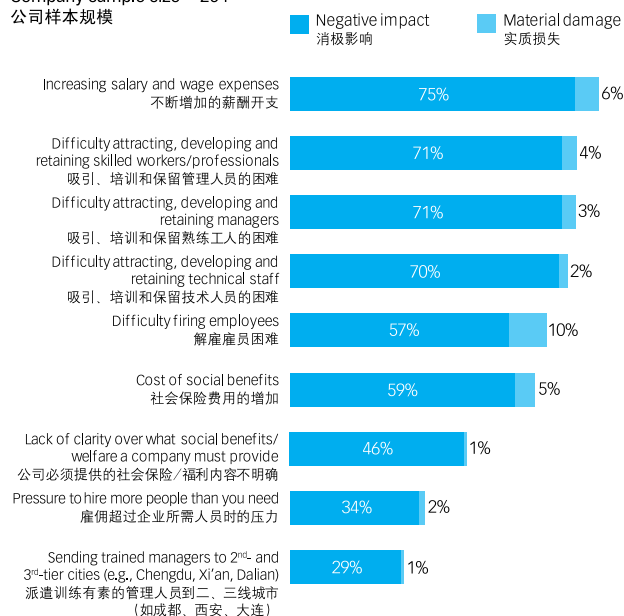
10

concern, but it is only one among several deemed important by AmCham-China member companies. More than 70 percent of survey respondents say their company had experienced either “negative impact” or “material damage” attracting, developing and retaining each of three categories of employees: managers, skilled workers and technical staff (Figure 11). “Difficulty firing workers” ranked highest in causing “material damage,” with one in 10 companies giving this answer. This last point is a reflection of the Labor Contract Law, which provides critical protections for workers, but lacks clarity over the contractual obligations between employers and workers, and definitions of certain categories of workers, which may create disincentives to hire.

How do the following human resources issues affect your business operations in China?

相关人力资源问题对企业在华运营产生的影响

Company sample size = 254
公司样本规模



Source: 2010 AmCham-China Business Climate Survey
资料来源：2010年中国美国商会商务环境调查

11

Still, the top business challenges following HR constraints all pertain to the regulatory environment, underscoring the unease over China's trends in this arena. Increasing anxiety about obtaining required licenses and national protectionism, coupled with consistent concern about bureaucracy in China, all temper the optimism felt towards China's market potential.

AmCham-China looks forward to working with the Chinese government to promote policies that encourage open markets, fair competition and rapid innovation.

For the Chinese Government

Inconsistent Implementation and Enforcement

China has achieved substantial legislative progress with the promulgation of landmark laws in recent years, such as the Anti-Monopoly Law, Labor Contract Law and amended Patent Law. These laws represent significant steps forward as China continues to build and reform its regulatory system. Further, the trend towards transparency in the legislative process, particularly in opening draft laws and regulations for comment, is very welcome.

These laws form the basis for a more predictable, and therefore, efficient marketplace. The next challenge, which grows more apparent each year, is that of robust, transparent and uniform implementation. US companies have seen progress in many areas, but have yet to see the type of consistent enforcement that would strengthen general business conditions. Progress in this area is critical to maintaining an open investment environment that benefits both consumers and producers.

Protectionism/Market Access Barriers

While China continues to develop a strong legal framework, some government initiatives seem focused on meeting short-term goals at the expense of long-term progress.

i. Innovation Policy

AmCham-China strongly supports China's push to become an innovative society. Indeed, AmCham-China member companies have spent billions of dollars investing in world-class research and development centers, which provide China's top engineers many of the tools that they need to innovate.

However, AmCham-China strongly believes that competition is the most effective way to promote innovation with limited and non-discriminatory government intervention. Experience around the world shows that pro-competitive and non-discriminatory policy approaches that respect intellectual property rights and recognize the global nature of innovation are the most effective ways to promote innovation. AmCham-China looks forward to helping the Chinese government implement market-based policies that most effectively foster innovation in China.

Furthermore, according to AmCham-China's 2010 *Innovation Policy Survey*, there is a wide perception that US companies are losing out on sales to state-owned enterprises (SOE) in addition to government

监管担忧

尽管企业对中国中短期的总体发展前景表示乐观，但他们对于监管趋势的担忧也日益加深。“法律解释相互矛盾”以微弱的差距，首次超过“管理人才匮乏”这一在前三年调查关注度中一直排名首位的问题，成为中国美国商会会员企业面临的最具挑战性问题（如图 10 所示）。

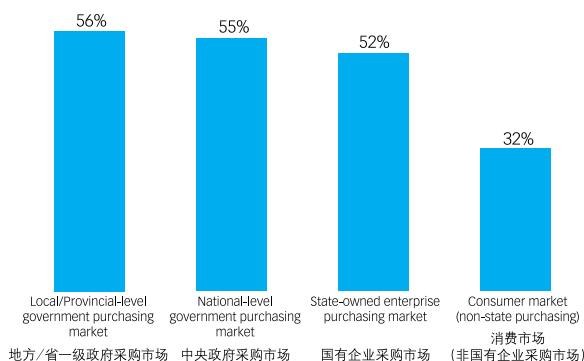
企业越来越多地感觉到，中国仍然缺乏在全国范围内实现公平执法并对所有企业（无论是外资企业抑或国内企业）均一视同仁的监管架构或政治意愿（抑或两者都有所欠缺），这种看法有可能给中国未来经济的发展造成巨大的负面影响。中国必须不断提高其执法能力和完善法律架构，以确保创造一个健康的商务环境，这一点至关重要。美国企业对各省市层面执法工作的信心缺乏，这可能会动摇其对中国西部地区及内陆省份进行投资的决心。而恰恰正是这些地区对投资有着最为迫切的需要，不仅如此，更重要的是它们还需要美国企业所能够带来的国际成功营运模式及管理培训方面的丰富经验。低估外商投资在推动欠发达地区发展中的作用，这样的监管氛围会更进一步加大这些地区与相对发达地区之间的差距。

人才问题仍然是企业面临的另一大挑战。尽管人才问题已不再是企业在经营中面临的巨大挑战，但多年来它一直是困扰企业的首要问题之一，直到今年才勉强被执法缺乏一致性这一问题所取代。通过对人才问题进一步细化分析，发现工资上涨是中国美国商会会员企业最为关心的问题，除此之外还有一些问题也同样引起了企业的关注。在调查中有超过

Under China's indigenous innovation policy, in what segments of the market do you feel that your business is losing out, or will lose out?

在中国自主创新政策影响下，企业在哪方面的市场正在或将会处于不利情形

Company sample size = 66
公司样本规模



Source: AmCham-China Innovation Policy Survey
资料来源：2010 年中国美国商会创新政策调查

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70% 的受访者表示其所在公司在吸引、培养和留住三类员工——管理人员、熟练工人、技术员工——方面遭受了“不利影响”或“实质损失（如图 11 所示）”。“解雇员工困难”是造成“实质损失”的最主要的原因，有十分之一的企业选择了这一项。这反映出虽然《劳动合同法》为劳动者提供了重要的保障，但它却未能明确雇主和劳动者之间的合同义务并对某些类别的劳动者做出界定，这可能会影响企业的人员雇佣。

紧随人才制约问题之后，企业面临的其它主要业务挑战都无一例外属于监管环境问题的范畴，进一步突显了企业对在监管领域发展态势的担忧。企业对难以获得必要的经营许可和国家保护主义表示了越来越深切的担忧，加之长期以来对中国官僚主义的顾虑，都会影响美国企业对中国市场发展潜力的乐观预期。

中国美国商会期待与中国政府共同努力，推动制定鼓励市场开放、公平竞争及加快创新的国家政策。

给中国政府的建议

法律实施和执法缺乏一致性

近年来，中国在立法工作方面取得了巨大的进展，颁布了一些具有划时代意义的法律，例如《反垄断法》、《劳动合同法》以及修订后的《专利法》。这些法律的颁布意味着中国在不断建设与改革其监管体系的过程中又向前迈出了一大步。此外，我们对立法程序逐渐趋于透明，尤其是公开法律法规草案征求公众意见的做法表示格外赞赏。

这些法律的颁布为建立可预知性更高，因而也更加有效的市场奠定了基础。接踵而来的挑战在于如何使这些法律得到切实、透明和统一的执行，这一问题的重要性也在逐年提高。美国企业在许多方面都看到了中国的进步，但中国在执法统一性方面仍表现得不尽如人意，而统一的执法工作在优化整体商务环境方面发挥着重要作用。若想保持一个对消费者和生产商都有利的开放的投资环境，促进执法工作的统一性是十分关键的一步。

保护主义 / 市场准入壁垒

虽然中国坚持不懈地建立健全法律体制，但政府采取的一些措施却似乎只注重于实现短期目标而忽略了长期发展的需要。

procurement as a result of China's innovation policies (Figure 12). In the *Report of the Working Party* for China's WTO accession agreement (Paragraph 46), China committed that, "the Government of China would not influence, directly or indirectly, commercial decisions on the part of state-owned or state-invested enterprises." We understand this as a commitment that SOE procurement will be based on commercial and market factors, rather than any preferences given to domestic enterprises in government procurement. The experience of our members doing business with SOEs is that this is not the case.

ii. WTO Agreement on Government Procurement

China has been responsive to most of its express WTO commitments, underscoring the government's work on market reform over the past decade. Yet a glaring exception is China's failure—more than eight years after joining the WTO—to join the Agreement on Government Procurement (GPA).

Accession to the GPA would signal to the world China's commitment to being a serious, responsible member of the WTO and a leading global economy. Furthermore, as a member of the GPA, China would have the added benefit of avoiding protectionism by other countries, including the US. AmCham-China strongly urges China to meet its commitment to join the GPA "as quickly as possible," as provided in its 2001 WTO accession agreement.

Trade Tensions

AmCham-China is troubled by the trend on the part of both the Chinese and US governments to use tariffs as a first resort in resolving trade disputes. AmCham-China is particularly concerned by the tendency of the Chinese government to deploy trade measures on a tit-for-tat retaliatory basis even in the absence of credible evidence of injury to domestic industry.

The US economy is showing signs of revival, while China's growth is once again robust. However, the recoveries are still in their early stages and could be put off course by policies based more on domestic political considerations than sound long-term economic planning.

For the US Government

President Obama has stated that export promotion is a top US goal, which AmCham-China whole-heartedly supports. We believe the US government can work towards this by focusing on specific issues in the US-

China relationship.

Maintaining Open Markets

Creeping protectionism in trade policies threatens export promotion and is a serious threat to a US-China economic relationship that benefits both countries.

During difficult economic times, there is a natural inclination to blame other countries for economic fluctuations and job losses. However, time and time again, experience has shown that maintaining open markets and avoiding retaliatory trade wars are the most effective ways to promote job creation and economic recovery. AmCham-China urges the US government to focus on established international channels, such as the WTO dispute resolution mechanism, to resolve disagreements when they arise.

Currency

AmCham-China strongly supports progress toward a free floating market valuation of China's currency, the *renminbi* (RMB). China's continued integration into the world economy makes such a move not only inevitable, but also stabilizing in the long term by helping to prevent global imbalances. China's large global trade surplus and huge accumulation of foreign exchange reserves provide strong evidence that its currency is undervalued. Now that the global financial crisis is gradually coming to an end, we join others in suggesting it would be appropriate to continue to move towards a market-based valuation of the RMB that will help prevent global imbalances from developing and speed China's move towards a market economy.

However, while currency is an important issue, AmCham-China is concerned that the US is placing disproportionate emphasis on RMB valuation. The current trade imbalance with China has not significantly affected America's overall trade deficit, but has rather absorbed shrinking deficits with other Asian countries like South Korea and Japan. Moreover, RMB revaluation would likely result only in a modest decrease in the current trade deficit between the US and China, while focusing on other price distortions, such as factor pricing in China, would possibly result in greater adjustments.

In the months and years leading up to the summer of 2008, the RMB appreciated by about 20 percent against the dollar. Since then, it has remained virtually steady at approximately 6.83 RMB to one dollar. Many in the US have argued that this unfairly hurts American manufacturers. While it is true that there is a negative impact on the margin and that a continued apprecia-

1. 创新政策

中国美国商会强烈支持中国为建设创新型社会而做出的努力。实际上，中国美国商会成员企业已经投入了数以百亿计美元的资金，用于建设世界一流的研发中心，也为中国顶尖工程师带进了许多必要的创新工具。

然而，中国美国商会坚信，在有限的、非歧视性的政府干预环境下的竞争是促进创新最有效的手段。全世界的经验表明，制定和推行尊重知识产权、认可创新的全球化本质、鼓励竞争、不偏不倚的政策是促进创新的最有效的方法。中国美国商会期待着为中国制定和实施以市场为基础的、最能有效促进创新的政策尽一己之力。

此外，根据中国美国商会 2010 年度《创新政策调查》结果显示，美国企业普遍认为，在政府采购政策之外，中国的创新政策也使其在与国有企业的竞争中处于不利地位，导致销售损失（如图 12 所示）。中国在《中国加入 WTO 工作组报告书》中（第 46 段）承诺，“中国政府将不直接或间接地影响国有企业或国家投资企业的商业决定。”我们认为这一承诺即表明，国有企业在采购中将根据商业及市场因素做出决定，而非依据在政府采购中向国内企业倾斜的政策。但据我们的会员企业与国有企业的业务往来，实际情况却并非如此。

2. WTO《政府采购协定》

对于其明确做出的大多数的 WTO 承诺，中国都做出了积极的响应，过去十年间政府为促进市场改革付出了巨大的努力。然而，有一个明显的例外情况，即在成功入世八年多后的今天，中国依然未能加入《政府采购协定》(GPA)。

加入 GPA 即意味着中国向世界宣告其力求成为一个严肃的、负责任的 WTO 成员国以及全球领先的经济体的承诺。此外，作为 GPA 成员国，中国也将避免受到包括美国在内的其他国家保护主义的影响，从而享有更大的利益。中国美国商会强烈敦请中国政府履行其在 2001 年加入 WTO 的议定书中做出的“尽快”加入 GPA 的承诺。

贸易摩擦

中美两国政府都倾向于将关税作为解决贸易争端的首要手段，这一趋势令中国美国商会倍感困扰。而尤令中国美国

商会担忧的是，中国政府似乎倾向于针锋相对地采取报复性贸易措施，甚至是在没有可信证据证明国内产业受到影响的情况之下。

美国经济正显示出复苏的迹象，而中国再一次迎来强劲的增长势头。然而复苏仍然处于初步阶段，如果两国的政策更多地基于国内政治考量，而不是基于合理的长期经济规划，则有可能令经济复苏偏离轨道。

给美国政府的建议

奥巴马总统曾宣称促进出口是美国的首要目标，对此中国美国商会全力支持。我们相信，通过着力于中美关系中的具体问题，美国政府一定能够向这一目标迈进。

维持开放的市场

在贸易政策中保护主义的抬头不利于出口的发展，也会给“双赢”的中美经济关系造成巨大的威胁。

在经济面临严峻考验的时期，将经济震荡和居高的失业率归罪于其他国家可能源自一种本能的倾向性反应。但历史经验一次又一次地证明，只有维持开放的市场和避免报复性的贸易之争，才是促进就业和经济复苏的最有效途径。中国美国商会促请美国政府着眼于通过诸如 WTO 争端解决机制等现行国际渠道来解决两国间出现的争议。

货币

中国美国商会强烈支持人民币货币实现自由浮动的市场化汇率机制。随着中国不断融入世界经济，实行人民币自由浮动汇率机制不仅具有必然性，而且也有助于防止全球经济失衡，从而实现长期稳定。中国可观的全球贸易顺差以及庞大的外汇储备强有力地证明了人民币处于被低估状态。目前全球金融危机的影响已逐渐消褪，我们也认为现在是继续推动人民币向市场化汇率转变的理想时机，这将有助于避免全球经济失衡的加剧，并加速中国向市场经济目标迈进的步伐。

然而，虽然货币问题非常重要，但美国政府过分强调了人民币汇率问题的严重性，对此中国美国商会深表关注。目前与中国之间的贸易失衡并未对美国的整体贸易赤字水平产生严重的影响，而是吸收了美国与韩国、日本等亚洲其他国家之间的赤字缩减额。此外，人民币重新估值可能只会使美

tion of the currency since then would be justified, there are two factors that should be considered when assessing this policy.

First, in many cases, products manufactured in China for the US market would be produced in other countries—like Mexico or Vietnam—if they were not made in China. A revaluation of the RMB is unlikely to bring a huge number of American jobs back to the US, although it might help the employment situation in other developing countries.

Second, while the RMB has remained stable against the dollar throughout the US recession, it has lost tremendous value against other international currencies. Thus, other countries have been significantly more impacted by the weakness of the RMB than the US has.

AmCham-China urges the US government to focus on issues that are causing greater injury to American companies in China, such as tariffs, weak IPR protection, innovation protectionism, standards, compulsory licensing, limitations on foreign ownership and uneven application of the law in China. Indeed, respondents to AmCham-China's *Business Climate Survey* consistently list these issues, rather than currency, as their top challenges and priorities.

Export Control Policy

AmCham-China supports US government policy to restrict the export of sensitive dual-use technologies not easily available from other sources. However, in many instances, restricted items are widely available from competitors.

Based on a survey of the business community in China, nearly all US sales lost to respondent companies due to export controls were filled by other non-US companies. While AmCham-China understands the national security elements and considerations of dual-use export control policy and licensing decisions, it is difficult to reconcile how US national security is enhanced by turning down potential orders that, in the end, are filled by companies from countries that are often among the closest allies of the US.

While the total loss to US companies due to current export control policies is very difficult to quantify, it is estimated to reach billions of dollars each year. Export controls result in lost US sales, not only through license application denials, but also through loss of repeat purchases and after-sales service contracts. In addition, there are many transactions that are never pursued by US and Chinese companies because of their belief that the export would not be approved or due to their hesi-

tation to undergo the long and unpredictable licensing process.

We therefore support the current ongoing review of US export control regulations and look forward to subsequent revisions in line with our recommendations (see Export Controls chapter).

Benefits of Cooperation

One lesson learned from the last year is that when the US and China work together, as they did with their twin fiscal stimulus packages and on energy and environment, the results can be extremely positive.

In late 2008, the world was on the edge of a financial disaster that likely would have taken both the US and Chinese economies into an abyss. However, both governments were able to lead the way toward a plan to guide the global economy through the most difficult period.

The US and China have also demonstrated the positive effects of bilateral cooperation on the environmental front. During President Obama's 2009 visit to China, the two countries announced seven joint efforts aimed at promoting clean energy production and other related objectives, including the Energy Cooperation Program (ECP) based out of AmCham-China. Collectively, these programs demonstrate that the US and China have tremendous potential to achieve progress when working in collaboration, marking what we hope is a new phase in fighting the long-standing problems of global climate change and the need for more clean energy sources. The ECP is an example of the positive role that US companies, with their access to leading technologies, can play in solving the massive energy problems faced by both countries.

The progress that Beijing and Washington were able to make on these two critical fronts—stabilizing the global economy and clean energy—should be fully appreciated. Leaders in both countries clearly see the value of cooperation. AmCham-China calls for continued focus on mutually beneficial ways to achieve sustainable, global economic growth, gradual reduction of global imbalances and a more secure future.

Key Recommendations

For the Chinese Government:

- Work to ensure transparent, consistent and uniform implementation and enforcement of

中两国之间的贸易赤字略有下降，而着眼于其他价格扭曲问题（例如中国的生产要素定价机制）将有可能发挥更大的贸易平衡调节作用。

在 2008 年夏季之前的数年间，人民币对美元大约升值了 20%。之后，人民币对美元汇率基本维持在 6.83 的水平。美国许多人士纷纷指出，美国制造商因此受到了不公平的伤害。虽然美国制造商的利润率确实受到了不利的影响，而且美国有理由认为中国在 08 年夏季后应继续人民币升值的步伐，但在对这一政策做出评价时应当考虑两个因素：

首先，就许多案例而言，供应美国市场的产品若不在中国生产，它们也会转到墨西哥或越南等其他国家生产。人民币的重新估值虽然可能有助于改善其他发展中国家的就业状况，但并不太可能给美国重新带来大量的就业机会。

其次，虽然在美国经济衰退期间人民币对美元保持稳定，但人民币对其他国际货币出现了大幅贬值。因此，其他国家因人民币疲软而受到的影响比美国更加明显。

中国美国商会促请美国政府着重解决目前对在华美国企业造成更大损害的问题，例如关税问题、知识产权保护力度不够、倾向性的创新政策、标准、强制许可、对外资持股的限制以及中国各地执法不统一等等。实际上，中国美国商会《商务环境调查》反馈，企业长期以来将上述问题，而不是货币问题，列为其面临的首要挑战和优先关注的问题。

出口管制政策

美国政府对难以通过其他渠道获取的敏感性军民两用技术的出口加以限制，中国美国商会支持这一政策。但在许多情况下，受到出口管制的多数商品都能很容易地从美国企业的竞争对手处获得。

一项针对中国商界的调查显示，美国受访企业因出口管制而损失的销售额几乎全部被其他非美国企业瓜分。虽然中国美国商会理解美国在双重用途产品出口管制政策和审批决策中的国家安全因素及考量，但很难说明拒批潜在的订单能在何种程度上增强美国的国家安全，因为这些订单最终都由与美国关系最密切的盟国企业来获得。

虽然很难用精确的数字来量化因现行出口管制政策给美国企业造成的损失，但据估计这一数字每年高达数十亿美元。出口管制直接导致美国出口额的下降，一方面是因为许可证

申请遭拒，另一方面是因为重复购买和售后服务合同的丢失。此外，对于许多交易，由于他们认为无法获得出口许可，或者不愿办理过程冗长且审批结果难以预知的许可手续，中美两国企业都避而远之。

因此，我们支持美国政府目前对出口管制法规和政策开展的重新审视工作，并希望可以根据我们提出的建议（请参阅“出口管制”章节）做出修订。

合作的益处

过去一年的经验告诉我们：只要中美两国愿意携手合作，诸如两国在财政刺激计划和能源与环境问题上的合作，就能够结出累累硕果。

2008 年年底，随着金融风暴的席卷而来，世界经济岌岌可危，中美两国经济都面临陷入深渊的可能。然而，两国政府都表现出了卓越的领导力，通过积极制定应对方案，引领全球经济度过了最艰难的时期。

中美两国在环境领域的双边合作也取得了积极的成效。在 2009 年奥巴马总统访华期间，中美两国宣布了七项旨在促进清洁能源生产及其它相关领域发展的合作协议，其中包括根据中国美国商会提议而推出的“中美能源合作计划”。这些合作项目表明：只要携手合作，中美两国共同进步的前景将无限广阔。我们希望这标志着两国在应对全球气候变化这一长期性问题，以及满足日益增长的清洁能源需求方面将开启一个全新的篇章。凭借领先的技术，美国企业能够协助中美两国解决其所面临的严峻的能源问题，在两国合作中发挥积极的作用，“中美能源合作计划”很好地证明了这一点。

北京和华盛顿在清洁能源和稳定全球经济大局两大关键领域所取得的进展，值得所有人敬佩。两国领导人无疑看到了合作的价值。中国美国商会促请两国政府继续致力于以互惠互利的方式，实现全球经济的可持续发展，逐步缓解全球经济失衡，建设一个更加安全的未来。

主要建议

给中国政府的建议：

- 努力确保现有法律得到透明、一致、统一的实施

existing laws.

- Adopt pro-competitive and non-discriminatory policy approaches that respect IP and recognize the global nature of innovation to most effectively foster innovation in China.
- Submit an improved, commercially meaningful WTO GPA accession offer within the first half of 2010.

For the US Government:

- Prioritize and focus resources on issues that can substantially improve the business environment for US companies in China, including strengthening IPR enforcement and ensuring non-discriminatory, pro-competitive innovation policies.
- Increase export promotion efforts, including revising US export control policy to reflect commercial realities and increase US competitiveness.

For Both Governments:

- Re-commit to continued bilateral cooperation and avoid protectionist policies that would lead to trade wars and retaliation.
- Adopt policies that focus on sustainable medium and long-term economic growth rather than short-term political and economic goals.

和执行。

- 采取鼓励竞争的非歧视性政策，尊重知识产权，认识到创新的全球化特点，从而最有效地促进中国的创新。
- 在 2010 年上半年提交一份具有商业意义的、改进的中国加入 WTO GPA 的出价清单。

给美国政府的建议：

- 优先并将资源主要集中于解决能够显著改善在华美国企业运营环境的工作，包括加强知识产权的执行力度以及确保采取鼓励竞争的非歧视性创新政策。
- 进一步促进出口，包括修订美国的出口管制政策，以反映出商业的实际情况并提高美国的竞争力。

给双方政府的建议：

- 重新致力于确保双边合作关系的持续发展，避免会导致贸易战和报复的保护主义政策。
- 采取能够促进中长期经济可持续发展的政策，而不仅仅追求短期政治与经济目标。

Climate Change, Energy and the Environment

Introduction

Over the last 30 years, China's impressive economic growth has lifted millions of people out of poverty—a record unparalleled in world history—and created an engine that has propelled global growth and development. However, these economic achievements have come with high price tags of environmental degradation, energy insecurity, unsustainable levels of resource consumption and more. Indeed, China is now almost certainly the largest national emitter of carbon dioxide (CO₂).

In 2009, during a visit to the US, Chinese Premier Wen Jiabao stressed that China has been in a “learning state” since its reform and opening up. It is now imperative for both China and the world that China becomes a leader in promoting sustainable development through resource conservation and economic restructuring. Similarly, as the highest per capita emitter of CO₂, the US must also take a leadership role in developing and adopting energy-efficient and clean energy technology across the transport, construction, industry and energy sectors.

Even more effective would be a coordinated and collaborative effort between the US and China focused on environmental protection and clean energy development. Today's global challenges of climate change and resource consumption cannot be confronted by one nation alone. Rather, they require coordinated leadership and sustained efforts across all nations, especially from the US and China as the largest consumers of energy.

Promoting clean energy and environmental technology development is particularly important currently given the hundreds of thousands of job opportunities these sectors represent. Continued job creation and the innovation clean energy development fosters is critical to ensuring a strong and sustained recovery from the global recession for both the US and China.

AmCham-China commends China's recent strides in positioning itself as a leader in clean energy and

increased energy efficiencies, as well as in reducing carbon emissions. Through investment in clean energy solutions, supportive regulatory policies and international engagement, China has signaled its intention to address the urgency of carbon emissions and environmental impact.

The US government has also taken strides in 2009 to combat climate change and promote clean energy development. The American Clean Energy and Security Act, also known as the Waxman-Markey Bill, passed in the US House of Representatives in June 2009 and is on the legislative calendar for the US Senate. This is a positive step towards elevating the conversation on combating climate change in the US at the national level.

Recent Developments

AmCham-China commends the high-level bilateral cooperation between the US and Chinese governments to develop clean energy solutions and cooperation. During the Strategic and Economic Dialogue in July 2009, the two governments signed the Memorandum of Understanding to Enhance Cooperation on Climate Change, Energy and the Environment. President Obama's 2009 visit spurred further cooperation, as the US and China signed seven agreements on clean energy. They included agreements on shale gas resources, electric vehicles, solar power development, establishment of a US-China Clean Energy Research Center and in support of the US-China Energy Cooperation Program, an AmCham-China-initiated public-private partnership focusing on clean energy projects.

China has also independently made great strides in combating climate change and promoting clean energy development. At the executive session presided over by Premier Wen Jiabao in August 2009, the State Council passed a draft regulation requiring environmental impact assessments for new projects in order to prevent pollution or ecological destruction from the very beginning of a project's conception. This regulation reflects China's recognition of the need to incorporate

气候变化、能源与环境

综述

过去 30 年来，中国经济的飞速发展使得数以亿计的人们摆脱了贫困，在世界发展史上写下了前所未有的，也为全球经济发展创造了巨大的动力。然而伴随着经济上的成功，中国也付出了巨大的代价，出现了环境恶化、能源安全问题、资源过度消耗等影响社会可持续发展的问題。无疑，中国如今是世界上最大的二氧化碳排放国。

2009 年，国务院总理温家宝在访美期间曾强调，自改革开放以来，中国一直抱着“学习的态度”。如今，中国通过资源保护和经济结构调整，成为促进可持续发展方面的主导力量，这无论对于中国还是世界而言都具有十分重要的意义。同样，作为人均二氧化碳排放量最高的国家，美国也必须发挥其领导作用，在运输、建筑、工业和能源等领域积极开发和应用高能效的清洁能源技术。

中美两国在环境保护和清洁能源开发方面的协调与协作应该能够带来更大的成效。仅凭一个国家的力量无法解决当今世界在气候变化和资源消耗方面所面临的挑战。这需要协调统一的领导和所有国家持续不懈的努力，尤其是像美国和中国这样的世界能源消耗大国。

鉴于清洁能源与环保技术领域能够创造成千上万的就业机会，促进这些领域的发展在目前显得尤为重要。清洁能源的开发可不断创造就业机会并促进创新，这对确保中美两国在全球经济衰退的形势下，以强有力的步伐朝着经济持续复苏方向迈进发挥举足轻重的作用。

近来，中国在清洁能源与提高能效方面做出了很好的表率，同时在碳减排方面也取得了很大的进展，对此中国美国商会表示赞赏。通过投资清洁能源解决方案，出台支持性的法规政策，以及开展广泛的国际交流，中国已经向世界表明了其解决碳排放和环境影响等迫在眉睫的问题的决心。

2009 年，美国政府在应对气候变化和促进清洁能源开发方面也取得了巨大的进展。2009 年 6 月，美国众议院通过《美国清洁能源与安全法案》（又称《瓦克斯曼 - 马凯气候变化议案》，现已提上美国参议院的立法日程。这是美国在国家层面开展应对气候变化的对话迈出的积极一步。

最新进展

中国美国商会对中美两国政府积极通过高层双边合作，以开发清洁能源解决方案和促进协作所做出的努力表示赞赏。在 2009 年 7 月的战略与经济对话期间，两国政府签署了《关于加强能源、气候变化和环境方面合作的谅解备忘录》。奥巴马总统 2009 年的访华进一步促进了双方的合作，在访华期间中美两国签署了七项清洁能源方面的合作协议，其中包括页岩气、电动汽车和太阳能的合作开发协议，中美清洁能源研究中心的成立，以及中国美国商会为了支持中美能源合作计划而发起的针对清洁能源项目的政企合作模式。

中国在独自应对气候变化和促进清洁能源开发方面也取得了巨大进步。在 2009 年 8 月温家宝总理主持的常务会议上，国务院通过了一项制度草案，要求新开工项目必须通过环境影响评价，旨在从项目的源头抓好防治污染或生态破坏的工作。这项制度的出台反映了中国政府已经意识到将应对气候变化纳入其经济社会发展规划之中的必要性。中国政府把确保经济可持续发展放在一个重要的地位，中国美国商会对这一做法表示赞许，同时鼓励建立一套透明的监督和评价机制，以确保应对气候变化的新政策法规能在全中国范围内得到有效实施。

为了应对气候变化问题，中国采取的关键举措之一是出台一系列的能源政策，始于 2007 年 6 月颁布的《中国应对气候变化国家方案》。为配合这一方案，国家又陆续出台了一系列工业、交通及建筑行业的能源节约政策。时至今日，中国已制定了到 2010 年能源密度降低 20% 的目标；通过了国家可再生能源标准，要求全国 15% 的电力供应来自于

combating climate change into its economic and social development planning. AmCham-China applauds the importance placed on ensuring sustainable economic development, and encourages instituting transparent monitoring and evaluation mechanisms to ensure that new policies and regulations targeting climate change are effectively implemented nationwide.

Key to China's climate change mitigation efforts have been its slew of energy policies, initially unveiled in June 2007 as China's National Climate Change Program. This program has been supported by a number of industry, transportation and construction energy conservation policies. To date, China has adopted a goal to reduce national energy intensity by 20 percent by 2010, passed a national renewable energy standard calling for China to derive 15 percent of its power from renewable resources and promoted infrastructure for green development, dedicating one-third of China's 2009 stimulus package to infrastructure that promotes energy efficiency.

To meet these goals, China set targets of closing inefficient coal-fired power plants and wasteful factories and increasing the energy efficiency of larger enterprises. The Top 1000 Energy-Consuming Enterprises Program, which helps implement and monitor energy-saving targets for China's largest industries, is on track to meet its goal for 2010 according to research from the Lawrence Berkeley National Laboratory. China has closed more inefficient and wasteful facilities than called for in the plan. Combined, these efforts have reduced energy intensity more than 13 percent since 2005.

In addition, at the State Council Meeting on Climate Change, Energy Saving and Emissions Reduction in June 2009, Premier Wen Jiabao not only confirmed the government's commitment to reducing the environmental impact of the top 1000 enterprises, but also moved to tie job performance of provincial governors to environmental management performance. Furthermore, the establishment of the National Energy Commission (NEC) in January 2010 emphasizes the increasing importance of energy security to China's development goals, rhetoric supported by a number of financing, taxation and investment policies promoting clean and alternative energy development.

During development of China's 12th Five-Year Plan, the government has signaled a continuing intention to combat climate change and environmental degradation through reducing energy intensity and expanding renewable energy sources. In addition, China has actively engaged the international community. In September 2009, Premier Wen Jiabao made the first-ever address by a Chinese state leader to the United Nations Gen-

eral Assembly, emphasizing China's commitment to combating climate change while maintaining the principle of differentiated responsibilities and the need for developing economies to be able to continue to grow.

Yet, China still lacks a comprehensive, cross-sector and definable national roadmap to realize its energy vision and commitments. Further, it is not yet clear whether the recently established NEC, the supra-ministry administrative body tasked to address and oversee the handling of the nation's energy and environmental challenges, will be vested with sufficient authority and capacity to successfully coordinate and lead the large number of stakeholders, administrative bodies and interest groups involved in these crucial areas. Moreover, some policies aimed at increasing energy security and environmental protection may well increase the level of government intervention, possibly stunting innovation and potentially leading to less efficient allocation of resources, the emergence of shortages, counterproductive pricing and financial losses.

AmCham-China looks forward to working with both the US and Chinese governments on adopting and implementing climate change mitigation strategies that encourage the private sector to continue to innovate and compete.

Overarching Issues

Legislative Transparency

To encourage investment in clean energy and environmental technology development, AmCham-China encourages the relevant ministries to publish all trade and economic-related laws, regulations and rules in advance of adoption and to provide a comment period in line with China's 2008 Joint Commission on Commerce and Trade (JCCT) transparency commitment. Currently, new trade, economic and financing-related administrative regulations and departmental rules and regulations are often either announced or immediately implemented without sufficient notice. The lack of transparency and predictability discourages both foreign and domestic investors from committing resources to renewable energy development in China.

Consistent Implementation and Enforcement

AmCham-China also encourages the central-level ministries and authorities to conduct capacity-building trainings with local and provincial authorities to ensure consistent implementation and enforcement of environmental laws and regulations throughout China. Sub-central level enforcement is often inconsistent, which prevents China from realizing the full potential

可再生能源；同时推动绿色基础设施建设，将中国 2009 年经济刺激计划的三分之一用于促进能源效率的基础设施建设。

为了实现上述目标，中国政府制定了关闭低能效的燃煤电厂和高耗能高污染企业、提高大型企业的能效指标。据劳伦斯 - 伯克利国家实验室的研究显示，旨在帮助中国一些最大型企业贯彻并监督其节能目标的“千家企业节能行动”正在有序开展并可望实现其 2010 年度目标。中国累计关闭的能源效率低、资源浪费大的工业设施数量已超过了计划要求。在这些努力的共同作用下，2005 年以来，中国能源强度已经降低 13% 以上。

此外，在 2009 年 6 月的国家应对气候变化领导小组暨国务院节能减排工作领导小组会议上，温家宝总理不仅明确了中国对降低 1000 家重点耗能企业环境影响的承诺，而且进一步提出将省级政府的工作绩效与环境治理成效挂钩。2010 年 1 月国家能源委员会的成立进一步突显了能源安全对实现中国发展目标的重要性正不断提高，与之配套出台了一系列推动清洁替代能源发展的融资、税收和投资政策。

在制定第十二个五年计划期间，中国政府已经持续传递出通过降低能源强度和扩大可再生能源应用等手段应对气候变化和环境退化的意愿。此外，中国也积极参与国际合作与交流。2009 年 9 月，温家宝总理发表了中国国家领导人在联合国大会上的首次讲话，强调了中国应对气候变化所做出的承诺，同时强调了应当坚持有区别的责任原则，使发展中国家有能力保持经济持续发展的必要性。

然而，中国要想实现其能源利用愿景和兑现承诺，仍然缺乏一个全面的、跨部门的和可明确界定的国家路线图。此外，最近成立的国家能源委员会，这一设立于部门之上的、被委以重任负责应对和监督处理国家能源和环境问题的行政管理机构，是否具有足够的权威和能力来成功地协调和领导这些关键领域所涉及的数量众多的利益相关方、行政管理部門和利益集团，这一点尚不得而知。而且，一些旨在加强能源安全和环境保护的政策完全可能加大政府的干预程度，也许还会阻碍创新并有可能导致资源的低效配置、资源短缺、适得其反的定价效果和经济损失。

中国美国商会期待与中美两国政府共同努力，通过并实施缓解气候变化的战略，以鼓励私营经济领域持续创新和不断增强竞争力。

全局性问题

法制透明度

为鼓励对清洁能源及环保技术开发进行投资，中国美国商会促请相关部委依据中国在 2008 年中美商贸联合委员会会议上所做的透明度承诺，在制定通过相关经济贸易法律、法规和规章前，做到事先向社会发布并提供一个征求意见稿。目前，与贸易、经济和融资相关的行政法规和部门规章制度常常未经充分公示就予以颁布或者立即实施。透明度和可预见性的缺失打击了中外投资者投入大量人力物力促进中国可再生能源发展的信心。

统一的实施与执行

中国美国商会还希望中央各部委及主管部门对地方及省级主管部门开展能力建设培训，以确保环境法律法规在全国范围内得到统一的实施和执行。地方政府的执行工作往往缺乏统一性，这阻碍了中国的环境政策充分发挥其效力和达到预期的成效。例如，由于执法一致性的缺乏，使得电价能够被人多地设定在一个较低的水平。这也常常使严格遵守地方法律法规的外商投资企业在与国内企业的竞争中处于劣势。例如，对于垃圾再生能源发电项目，由于监控与检查标准、法规和制度在执行当中的不一致性，使得外商投资企业难以在一个公平的环境中与本土企业开展竞争。

透明的采购程序

地方有关清洁能源基础设施项目的公开招标程序与条件容易助长企业主要以价格进行竞标、而不是以质量和项目的长期发展能力来取胜的倾向。中国政府对于合理投资回报的规定远低于国际标准，这使同时具有经济和政治导向的地方国有企业处于竞争优势地位。繁琐的合同条款主要依靠个人关系来管理风险，同样向本土竞争企业倾斜。与国际标准相比，投标期限非常短，这进一步限制了竞标质量，同时助长了地方政府弃质保量的做法。

中国美国商会促请各级有关部门采用并遵守招标文件与特许经营草案的标准模板。因此，应当尽可能减少对标书的修改，并在投标程序之前完成修改，而不是在已经选定竞标人之后的“议标阶段”进行修改。提倡公开、透明的招标程序将有助于确保挑选出价值和品质兼具的理想技术，并鼓励私营领域的长期创新。

and intended benefits of its environmental policies. Inconsistent enforcement, for example, allows electricity tariffs to be set at artificially low levels. It also often puts foreign-invested enterprises (FIE) that abide by a policy of strict compliance with local laws and regulations at a disadvantage when competing with domestic companies. For example, inconsistent enforcement of standards, regulations and rules governing the monitoring and inspection of energy from waste plant operations create an uneven playing field between local companies and FIEs.

Transparent Procurement Processes

Local public tender processes and terms and conditions for clean energy infrastructure projects tend to encourage bidding based primarily upon price rather than the quality and long-term viability of projects. Government guidelines for acceptable returns are low by international standards, putting local state-owned companies with both financial and political objectives at an advantage. Onerous contractual terms and conditions, which rely primarily on personal relationships to manage risk, also tend to favor local competitors. Bidding timeframes are very short by international standards, which further limit the quality of bids and incentivize local governments to reward quantity over quality.

AmCham-China urges the relevant ministries at all levels to adopt and adhere to standard templates for Tender Documents and Draft Concession Agreements. Accordingly, any modification to the bid should be minimized and implemented prior to the tender process rather than during the “negotiation period” after a bidder has been selected. Encouraging an open and transparent tendering process will help ensure selection of the optimum technology at the best value and quality, and encourage long-term innovation by the private sector.

Financial Incentives

Clean energy and environmental technology development is an area ripe for Sino-US cooperation. AmCham-China urges both the Chinese and US governments to encourage collaboration through instituting tax incentives for Sino-US joint ventures promoting renewable energy, co-funding locally-developed technology in China by Sino-US joint ventures giving priority to R&D programs proposed by the US private sector in cooperation with Chinese universities and encouraging favorable bank lending terms for Sino-US clean energy projects to provide much needed credit and working capital.

Specific Issues

Circular Economy Law

The Circular Economy Law was passed on August 29, 2008, and went into effect January 1, 2009. AmCham-China welcomes the law’s added emphasis on circular economy (CE) principles of “Reduce, Reuse and Recycle.” While the CE principles are fundamental to the environmental security and sustainable growth of China, implementation of CE principles has so far been ineffective in achieving its aims due to unclear distribution of responsibilities and weak coordination among government organizations. In addition, incentives for older industries to make operations greener, financial support, consistent standards and public awareness and participation are all lacking. AmCham-China urges China to continue to implement CE principles and further support their development.

Some areas in which China can support CE development is through a healthy remanufacturing industry. While China has acknowledged the importance of this growing industry, regulations still restrict the import and export of cores, the used products and equipment used in remanufacturing. Loosening restrictions on the import and export of core would help promote the development of a circular economy.

Moreover, remanufactured finished goods (RFG) are still defined as used products by China, even though most developed economies treat them as new. As such, RFGs face much stricter import restrictions into China. As the local industry is not yet mature enough to support and develop a viable and sustainable market, the import of RFGs would fill this gap until local industry is able to. AmCham-China recommends that RFGs offering the same level of quality and warranty as original products, whether domestically produced or imported, be treated as new products. Moreover, we encourage policies that support the development of remanufacturing services and increase public awareness of the benefits of RFGs to the economy, environment and consumer.

Electricity and Power Generation

Coal continues to account for 80 percent of China’s current power generation. Increasing the efficiency and reducing the environmental impact of coal as an electricity source will be key for energy policy in China. The Chinese government has made commitments to close many small thermal power plants with a combined capacity of 50,000 megawatts (MW), and to construct larger, more energy-efficient replacements. This has resulted in average efficiency of China’s coal power

财政激励

清洁能源与环境技术开发是中美两国一个成熟的合作领域。中国美国商会促请中美两国政府对促进可再生能源发展的中美合资企业制订税收激励措施，共同向中美合资企业在本地开发的技术提供资助，优先支持美国私营企业与中国大学院校合作开展的研发项目，同时提倡银行向中美清洁能源项目给予优惠的贷款条件，提供急需的信贷和营运资本。

具体问题

《循环经济法》

2008年8月29日，《循环经济法》颁布，并于2009年1月1日开始施行。该法案进一步强调了“减量化、再利用、资源化”的循环经济原则，对此中国美国商会表示欢迎。虽然这三大循环经济原则为中国人民实现环境安全与可持续发展奠定了基础，但由于责任分配不明确，各政府机构间缺少协作，迄今为止这些原则并未能得到有效的落实。此外，中国政府未能以有效的激励手段鼓励传统产业“绿色”经营，同时也缺少财政支持、一致的标准以及公众意识和参与。中国美国商会促请中国政府继续实施循环经济原则，并进一步支持其发展。

在中国某些地区可通过再制造产业的健康发展支持循环经济的进步。虽然中国已经意识到这一成长型行业的重要意义，但法规仍然限制毛坯（即用于再制造的旧产品和旧设备）的进出口。放宽对毛坯进出口的限制将有助于促进循环经济的发展。

此外，虽然大部分发达经济体都将再制造产成品（RFG）视为新产品，中国仍然将其定义为二手产品。因此，在进口再制造产成品方面，中国施加了更为严格的限制。由于本地工业尚不够成熟，不足以支撑和发展一个可行的、可持续的市场，再制造产成品的进口可以填补这个空白，直至本地工业具备这一能力。中国美国商会建议将与新产品具有同等质量和保修服务水平的再制造产成品（无论国产抑或进口）都视为新产品。另外，我们鼓励出台相关政策，支持再制造产品服务的发展，加强公众对再制造产成品有益于经济、环境和消费者的意识。

电力与发电

中国目前80%的电力供应仍然来自煤炭发电。提高煤

炭发电效率并减少其对环境的影响将是中国能源政策的关键所在。中国政府已经承诺关闭总装机容量达5000万千瓦的小型火电厂，并建设规模更大、能效更高的替代电厂。这将促使中国燃煤电厂的平均效率快速向发达国家看齐。2005年中国燃煤电厂的平均效率估计为32%，与美国大致处于同等水平，但到2030年有望接近40%。此外，中国在开发先进清洁煤技术方面也发挥了主导作用，其中包括煤制油、煤制气、煤化工项目以及洁净煤发电项目（例如在建的天津绿色煤电项目）的发展。

碳捕集与封存 (CCS)

碳捕集与封存技术也有可能减少煤炭对环境的影响。中美两国已经开始通过新近建立的美中清洁能源联合研究中心在碳捕集与封存技术开发方面开展合作。中国美国商会对此项合作表示赞赏，同时建议中美两国通过示范项目以及其他研发活动就碳捕集与封存技术和其他极具前景的煤炭技术继续开展合作。

热电联产 (CHP)

提高整体能效和减少煤炭使用的另一种方法是增加以天然气为基础的分布式能源热电联产的应用。2004年第一条西气东输管道建设完工，第二条西气东输管道也将于2011年竣工，此外凭借连接中国、土库曼斯坦和乌兹别克斯坦的中亚天然气管道项目，四川盆地充足的天然气储备以及新的液化天然气供应，未来几年中国的天然气供应是相对有保障的。

目前的重点在于如何更加环保、有效地利用天然气。随着热电联产效率的显著提高，减少了燃料消耗并大大降低了二氧化碳和氢氧化物的排放量，中国政府正积极推动分布式能源热电联产的发展。但中国目前以用户为基础的分布式发电与热电联产的发展都面临着源于法规政策的商业与技术障碍。尤其是缺乏电网接入、当前天然气的定价结构以及针对热电联产终端用户的财政激励措施的欠缺等问题，妨碍了热电联产作为传统燃煤发电的替代性方案充分发挥其效力并实现全面发展。

智能电网

中国电力输送系统的效率仍然非常低，在输送过程中估计会损失8%的电力。相比之下，据世界资源研究所的数据显示，发达国家在电力输送过程中的平均损耗率为2.5%。

plants rapidly moving toward those of developed countries. It is estimated that the average efficiency of China's coal-fired fleet was 32 percent in 2005, roughly on par with US levels, but is expected to approach 40 percent by 2030. China has also taken a leadership role in developing advanced clean coal technologies, including the development of coal to liquids, gas and chemicals projects, and clean coal power generation projects such as the GreenGen project under construction in Tianjin.

Carbon Capture and Sequestration (CCS)

One technology that may potentially improve the environmental impact of coal is carbon capture and sequestration. The US and China have already begun to cooperate in the development of CCS technology through the newly established US-China Clean Energy Research Center. AmCham-China commends this collaboration and recommends that the US and China continue to cooperate on CCS and other promising coal technologies, through demonstration projects, and other research and development initiatives.

Combined Heat and Power (CHP)

Another way to increase the overall energy efficiency and reduce the use of coal is increasing use of natural gas-based Distributed Energy Combined Heat & Power (DECHP). With the construction of the first West-East pipeline completed in 2004, the second West-East Pipeline set to be completed by 2011, the Mid-Asia Gas Line linking China with Turkmenistan and Uzbekistan, the abundant natural gas reserve in the Sichuan basin, and the new liquefied natural gas supplies coming on line, natural gas supplies in China for the next few years are relatively secure.

Now, the focus is on how to utilize natural gas more efficiently and through more environmentally friendly methods. The Chinese government is actively promoting DECHP, as the significant increase in efficiency with CHP results in lower fuel consumption and substantially reduced CO₂ and NO_x emissions. However, current development of customer-based DPG and CHP in China has encountered both commercial and technical barriers that are rooted in regulatory policies. In particular, lack of access to the national grid system, current pricing structure for natural gas and lack of financial incentives for CHP end-users prevent the full realization of CHP's potential and viability as an alternative to conventional coal generation.

Smart Grid

China's electricity transmission system remains highly

inefficient. The country is estimated to lose eight percent of its electricity during transmission. By contrast, developed countries lose an average of 2.5 percent in transmission according to the World Resources Institute. Additionally, China faces issues in connectivity to the grid from renewable sources.

China's 11th Five-Year Plan for the Electrical Power Industry moves the country towards a more efficient grid, while connecting the grid nationally. Last year, China's stimulus package included RMB 150 billion (US \$22 billion) for infrastructure construction, including rural power. According to analysis in the *China Greentech Report 2009*, China is focusing on long-distance, high-voltage transmissions through the development of Ultra High Voltage (UHV) Transmission. China's UHV standards are among the highest in the world. China seeks to deliver 64 gigawatts (GW), 10 percent of the power load, through UHV by 2015 and 260 GW by 2020.

Despite this progress, foreign businesses working on smart grid technology in China face many issues. The market is dominated by state-owned enterprises (SOE). Barriers to entry for foreign companies remain high and companies are concerned about intellectual property (IP) issues related to technology transfers. Moreover, financing challenges remain, as government incentives, subsidies and tax breaks are often limited to domestic companies.

Intermittent Renewable Energy

Solar

China has worked to stimulate the domestic market for solar energy, particularly focusing on expanding its capability to produce affordable solar electricity with sustainable technologies and industrial processes and create a domestic market for such panels. Reports indicate that the central government plans to amend its previous solar capacity goal of 1.8 GW by 2020 to 2 GW by 2011, and 10-30 GW by 2020 in upcoming legislation.

To support such projected growth, China has begun to introduce state-sponsored incentives to encourage the development of both ground and roof-mounted solar systems. For example, in 2009, the Ministry of Finance and the Ministry of Housing and Urban-Rural Development partnered to offer a subsidy of RMB 15-20 (US \$2-3) per installed watt of electricity generation for companies building integrated photovoltaic and roof-mounted systems.

Similarly, in the Golden Sun subsidy program to en-

此外，中国还面临着可再生能源与电网连接的问题。

中国针对电力行业的第十一个五年计划要求提高电网效率，同时实现全国各大电网的联网。去年，中国的经济刺激方案中有 1500 亿元人民币（合 220 亿美元）用于基础设施项目的建设，其中便包括农村电力项目。《中国绿色科技报告 2009》分析表明，中国正着力于通过超高压（UHV）输电系统的建设促进远距离高压输电的发展。中国的超高压标准处于世界的领先地位。中国力求到 2015 年通过超高压输电输送 64000 兆瓦的电量，占用电负荷的 10%，到 2020 年使这一数字将提高至 26 万兆瓦。

尽管取得了这些进展，但在中国从事智能电网技术的外商投资企业仍然面临着诸多问题。这一市场仍被国有企业所控制，外商投资企业面临的市场准入门槛仍然很高，同时企业对与技术转让有关的知识产权问题也存有疑虑。此外，由于往往只有国内企业才能够享有政府激励政策、补贴和税务减免优惠，融资方面的挑战也依然存在。

间断性可再生能源

太阳能

中国积极促进国内太阳能市场的发展，尤其是着力于通过可持续发展的技术与工业流程扩大其生产经济实惠的太阳能电力的能力，并开创太阳能电池板的国内市场。有报告指出，中国中央政府计划在即将出台的立法中，将之前到 2020 年使太阳能发电容量提高至 1800 兆瓦的目标修改为到 2011 年提高至 2000 兆瓦，以及到 2020 年提高至 10000-30000 兆瓦。

为了支持这一发展目标，中国已开始推出由国家资助的项目以鼓励地面及屋顶太阳能系统的发展。例如在 2009 年，中国财政部以及住房和城乡建设部共同就光电建筑一体化与屋顶安装型系统向企业提供 15-20 元 / 瓦（合 2-3 美元 / 瓦）的补贴。

同样，在鼓励太阳能示范项目的“金太阳”补助计划中，中国政府向并网光伏发电项目按总投资的 50% 给予补助，偏远无电地区的独立光伏发电系统按总投资的 70% 给予补助。进一步的措施将为中国发展健康的太阳能产业以及实现太阳能发电容量的目标奠定基础。此外，各省市政府也已采取行动，推动当地太阳能产业的发展。为了使外商投资企业成为中国政府更有效的合作伙伴，帮助中国实现其太阳能及

可再生能源发展目标，中国美国商会促请中国政府允许外商投资企业和国内企业一样享有政府补贴及其他财政优惠。

太阳能制造商的发展离不开市场对其产品的长期、可持续性需求，也需要近期的政策支持以帮助其进行技术投资，从而降低成本，使太阳能成为一种重要的发电能源。有利的市场结构将起到至关重要的作用。作为世界能源消耗大国以及太阳能生产方面的领导者，中美两国能够通过政策的实施使太阳能发电成本降低至与传统发电成本相当的水平，从而刺激需求，同时促进国内高科技产业的健康发展，创造更多的就业机会。

风能

在中国可再生能源发展的过程中，风能具有巨大的发展潜力，但同时也面临着诸多挑战，外商投资企业需要面对一个非常艰难的商业环境。2006 年，中国政府制订了到 2010 年风力发电装机容量达到 5000 兆瓦的目标。目前中国的风力发电装机容量已经达到 12000 兆瓦，2007 年就超过了最初制定的目标。根据到 2020 年可再生能源要占中国能源消费的 15% 这一总体目标，《可再生能源中长期发展规划》制订了使风力发电装机容量达到 10 万兆瓦的目标。

然而，尽管风力涡轮机建设与安装取得了巨大的进展，风力发电效率仍然很低。虽然中国已是全球第五大风力涡轮机生产国，但中国的风力发电量仅占总发电量的 0.8%，而世界平均水平为 2%。其中一大原因是无法实现有效的风力发电并网以及在风力涡轮机建设与安装方面缺少国家质量标准。

外国投资者以及外商投资企业能够为制订必要的国家风力涡轮机生产标准提供帮助，并带来提高风电并网效率方面的专长，他们的参与会令风电产业获益匪浅。中国国家发展和改革委员会于 2009 年 12 月 25 日发布通知，要求取消新的风力发电厂所使用的风力涡轮机部件的国产化率必须达到 70% 的规定，对此中国美国商会表示赞赏，同时也期待这一规定能够在各级政府中得到统一的执行。

尽管取得了这一进展，但保护主义和自主创新仍然是风能产业面临的主要问题。中国的政府采购政策倾向于国内风能产业。国有企业在风电场开发市场中占有 88% 的份额，并继续以低于成本的价格竞标项目，进一步妨碍了市场竞争。2009 年对进口风力涡轮发电机的关税进一步提高，希望进入中国风电市场的外商投资企业在资本、政府补助以及通过

courage pilot solar projects, the government has offered a 50 percent subsidy for total on-grid solar project investment and 70 percent for off-grid projects. Further steps will provide the primary framework for developing a robust solar industry in China and for reaching capacity goals. Additionally, provincial and municipal governments have taken initiatives to drive local solar development. To enable FIEs to become more effective partners for the Chinese government in promoting its solar and renewable energy goals, AmCham-China urges China to grant FIEs equal access to and consideration for government subsidies and other financial incentives.

Solar manufacturers require both long-term sustainable demand for their products and near-term policies to enable investment in technology that will drive down costs and enable solar power to become a significant source of electricity generation. A supportive market structure will be critical. As the largest energy consumers and leaders in solar manufacturing, both the US and China can create such demand by implementing policies that drive solar costs to grid parity while promoting development of robust, high-technology domestic industries that also provide jobs.

Wind

Wind power holds tremendous potential in China's renewable energy development, but it faces many challenges and provides a difficult business environment for foreign-invested companies. In 2006, China's government set a target of 5 GW of installed wind power by 2010. China has now installed 12 GW of wind power, having passed the initial target in 2007. Within the overall goal of deriving 15 percent of energy from renewable sources by 2020, the Medium and Long-Term Plan for Renewable Energy sets a wind installment target of 100 GW.

However, despite massive growth in wind turbine construction and installment, wind power remains inefficient. While China is the fifth largest global producer of wind turbines, China's wind energy accounts for only 0.8 percent of power generation, compared with a two percent global average. One reason is inefficient connection of wind-generated power to the power grid and a lack of national quality standards in wind turbine construction and installation.

The industry would benefit greatly from the participation of foreign investors and companies that could assist with the necessary development of national turbine manufacturing standards and provide expertise on improving the grid connectivity of wind power. AmCham-China applauds the National Development

and Reform Commission's December 25, 2009 notice removing the 70 percent locally-manufactured component requirement for all turbines used in new wind power projects and looks forward to consistent implementation across all levels of government.

Despite this progress, protectionism and indigenous innovation remain major issues in the wind industry. China's government procurement policies give preference to the domestic wind energy industry. SOEs hold 88 percent of the wind farm development market, and continue to bid on projects below costs, further driving down competition. Tariffs on imported wind turbine generators rose in 2009 and foreign-invested companies that wish to participate in China's wind market have limited access to capital, government subsidies and emission reductions credits provided through the Clean Development Mechanism (a mechanism of the Kyoto Protocol). AmCham-China urges increased transparency, competition and equal access to government subsidy programs in the wind market to better enable China to meet its wind power targets.

Clean Transportation

At the end of 2008, China had 12,000 diesel locomotives, many of them running with old and high-emission diesel engines. With the availability of high efficiency and low emission diesel engines, there is huge potential for China's rail sector to reduce greenhouse gas emissions and improve fuel efficiency by replacing old diesel engines with modern high efficiency engines. The retrofitted and remanufactured locomotives will provide China with a fleet of new energy efficient locomotives at significant savings on the components, materials, and energy needed to make new locomotives. AmCham-China encourages the Ministry of Rail to implement pilot projects to explore the feasibility of and develop best practices for retrofitting China's diesel locomotives with modern diesel engines.

Energy Efficient Building and Design

According to Tsinghua University's *China Annual Construction Development Study* of 2008, China will add more office floor space between 2010 and 2020 than currently exists in the US. Moreover, the study reports that in the last four years, while floor space grew at six percent annually, energy use of China's buildings grew at 10 percent annually, meaning energy intensity has grown even faster than actual floor space.

In contrast to other clean energy sectors, many of the solutions to achieve energy efficient building and design are fairly mature and relatively low-cost. Barriers to entry include lack of adequate enforcement, lack of

清洁发展机制（《京都议定书》下的一项机制）获得减排信用额方面受到限制。中国美国商会促请中国政府提高风电市场透明度，鼓励市场竞争，并推行公平的政府补助计划，从而实现其风电目标。

清洁运输

截至 2008 年底，中国拥有 12000 辆柴油机车，其中有许多采用的是高排放的老式柴油发动机。随着高能效、低排放柴油发动机的推出，中国铁路行业在通过更换老式柴油发动机，使用现代化高能效发动机来减少温室气体排放及改善燃油经济性方面拥有巨大的潜力。通过翻新改造，中国将拥有一支高能效的新型机车车队，大大节省生产新机车所需要的零部件、材料及能源费用。中国美国商会促请中国铁道部通过开展试点项目的方式，分析以现代化柴油发动机更新中国柴油机车的可行性，并寻找出最理想的做法。

高能效建筑与设计

清华大学《2008 中国建筑节能年度发展研究报告》指出，2010 年至 2020 年，中国新增办公建筑面积将比美国现有办公建筑面积还要大。此外，该研究发现，在过去四年中，虽然建筑面积以 6% 的年增长率增长，但中国建筑物的能源消耗量却在以每年 10% 的速度增长，这表明能源强度的增长速度甚至比实际建筑面积的增长速度还要快。

和其他清洁能源领域不同，许多提高建筑与设计能效的解决方案已经相当成熟，成本也相对较低。缺少充分的执行，在能耗及成本方面缺乏透明度，以及尚未出台优惠政策鼓励采用最具能效的设计方案是这一市场存在的障碍。由于设计和操作不当，一些绿色环保技术未能发挥应有的成效。

2006 年，中国出台了《绿色建筑评价标准》，并于 2007 年发布了详细的评价鉴定试行办法。但仍然有必要增强政策施行的一致性，改进绿色建筑产品的标识管理并出台更加全面的标准，以此从根本上影响绿色建筑市场。此外还需要对建筑物的能源效率进行审计，并制定更为完善的建筑物规范。美国在华企业界可利用其在制订培训与审计计划，打造其他平台方面的经验与专长与中国政府就最佳实践进行交流合作。

减少建筑物设计与施工中原材料的使用是增强建筑物长期可持续性和提高能效的重要方法。通过减少建筑施工与维护过程中脚手架的使用，便可减少钢铁及其他材料的用量，

使施工与维护变得更加环保、安全。同样，在建筑物施工与维护的过程中使用高能效的机械（例如电动机械）不仅能够减少建筑所需原材料用量和建筑能耗，还能够保障工人的安全与健康。

全局性建议

- 对地方部委和监管部门开展能力建设研讨及培训，以确保环境法律法规在各级部门得到统一的实施和执行。
- 根据中国在 2008 年中美商贸联合委员会会议上所做的透明度承诺，在制定通过所有经济贸易法律、法规和规章时，应事先向社会发布并提供一个征求意见稿。
- 鼓励采用与国际接轨的一致的招投标程序，确保符合国际标准的高质量清洁能源项目，并为外商投资企业和国内企业创造一个更加公平的竞争环境。
- 对促进清洁能源和环境技术开发的中美合资企业提供财政激励措施以促进其发展。

具体建议

《循环经济法》

- 将再制造产成品视为新产品，放宽进口限制。

电力与发电

- 继续支持中美两国在开发更加清洁的煤炭技术方面的合作，特别是 IGCC。
- 鼓励分布式能源热电联产的发展，并在法规政策与财政优惠措施上将其视为一种可再生能源。

智能电网

- 继续通过鼓励国内企业及外商投资企业参与电力输送市场建设全国性智能电网。
- 建立保护知识产权的技术转让机制，鼓励外商对智能电网技术领域的投资。

transparency about energy use and cost, and policies that do not provide incentives to adopt the most energy efficient design practices. Some green technologies do not perform as expected due to incorrect design and operation.

China published the Green Building Standard in 2006 and provisional detailed certification guidelines in 2007. However, more consistently enforced policies, better labeling for Green Building products and more comprehensive standards are needed to fundamentally affect the green building market. Further, audits of energy performance of buildings are needed, as well as increasingly progressive building codes. The US business community in China can draw upon its experience and expertise in developing training and auditing programs and other platforms for best practice sharing with the Chinese government.

Promoting the reduction of raw materials used in design and construction of buildings would be a significant step in increasing a building's long-term sustainability and energy efficiency. By reducing the amount of scaffolding needed to construct and maintain edifices, less steel and other materials are consumed, making construction and maintenance significantly "greener" and safer. Also, employing energy-efficient machines, such as those with electric engines, in the construction and maintenance of buildings would not only reduce the amount of raw materials needed for construction and the embodied energy of the buildings, but also promote the safety and well-being of the workers.

Overarching Recommendations

- **Develop capacity-building workshops and training for sub-central ministries and regulators to ensure consistent implementation of environmental laws and regulations at all levels.**
- Publish in advance and allow a public comment period on all trade and economic-related laws, regulations and rules in line with China's 2008 JCCT transparency commitment.
- Encourage the adoption of consistent bidding processes in line with international practice to ensure high-quality, international-standard clean energy projects and a more level playing field between FIEs and domestic companies.
- Provide financial incentives for the development of Sino-US joint ventures promoting clean energy and environmental technology development in China.

Specific Recommendations

Circular Economy Law

- Categorize RFGs as new products and relax import restrictions into China.

Electricity and Power Generation

- Continue to support US and China collaboration on developing clean coal technologies.
- Treat DECHP as a renewable energy with regards to regulatory policies and financial incentives.

Smart Grid

- Continue to move towards a national smart grid by encouraging both domestic and foreign transportation of electricity.
- Create mechanisms for technology transfer that protect IP and encourage foreign investment in smart grid technology.

Solar Power

- Create a supportive regulatory environment for solar industry development by providing incentives for investment in pilot projects and implementing policies that drive solar costs to grid parity.
- Introduce a feed-in tariff to spur solar investment and development.
- Allow FIEs equal access to and consideration for government subsidies and other financial incentives to help promote solar energy development.

Wind Power

- Continue to support US-China government and industry cooperation to continue improving the efficiency of wind power generation in China.
- Develop national standards for wind turbine generator manufacturing.

Clean Transportation

- Implement pilot programs to further explore the feasibility and benefits of retrofitting old diesel locomotives with modern diesel engines.

太阳能

- 向示范项目投资提供优惠并实施相应的政策使太阳能发电成本降低至与传统发电成本相当的水平，为太阳能产业的发展创造一个有利的监管环境。
- 引入上网电价政策，促进太阳能投资与发展。
- 允许外商投资企业和国内企业一样享有政府补贴及其他财政优惠，帮助促进太阳能的发展。

风能

- 继续支持中美政府与产业合作，不断提高中国风力发电的效率。
- 针对风力涡轮发电机的生产制订国家标准。

清洁运输

- 开展试点项目，进一步分析以现代化柴油发动机更新中国柴油机车的可行性与优势。

高能效建筑与设计

- 确保《绿色建筑标准》得到更加一致的施行，增强审计工作，提高绿色建筑产品的标识管理并实施更加全面的标准。
- 减少建筑物设计与施工中原材料的使用，并在建筑物施工与维护过程中使用高能效的机械，例如电动机械。
- 颁布立法和补助性政策，使新老建筑实现高能效。
- 针对法规要求以及有关各种绿色建筑技术整合与应用的设计和操作办法，对重要参与者开展教育和培训。

Energy Efficient Building and Design

- Ensure auditing and more consistent enforcement of the Green Building Standard, better label Green Building products and adopt more comprehensive standards.
- Promote the reduction of raw materials used in the design and construction of buildings, and employ energy-efficient machines, such as those with electric engines, in the construction and maintenance of buildings.
- Introduce legislation and subsidies to incentivize high performance in new and existing buildings.
- Educate and train key players on code requirements, as well as design and operational guidance on the integration and application of various green building technologies.



Competition Law

The Anti-Monopoly Law of the PRC (AML), which took effect in August 2008, is the most significant development in the history of Chinese competition policy. As China's first comprehensive competition law, the AML is a significant step in China's continuing transition from central planning to a market economy.

With some exceptions, the AML's framework and substantive provisions are generally consistent with prevailing worldwide antitrust regulatory practices. The AML addresses the three principal areas of antitrust regulation: anti-competitive monopoly agreements involving multiple firms; exclusionary and predatory unilateral conduct by firms with substantial market power (abuse of dominance); and mergers, acquisitions, and other transactions that may restrict or reduce competition. Beyond regulating private anti-competitive conduct, the AML also includes a limited provision to address administrative monopoly, or the misuse of official authority to protect or promote favored firms. But while the AML incorporates many well-established principles, several key implementation regulations remain unclear or have yet to be promulgated.

If the AML is implemented to promote consumer welfare and economic efficiency in accordance with established worldwide practices, and is enforced in a transparent and nondiscriminatory manner, it should help markets better serve Chinese consumers while improving overall Chinese economic efficiency. To the extent that it is instead implemented to benefit favored companies at the expense of consumers and competitors, the promise of the AML will be unrealized.

Enforcement Structure

The AML prescribes a two-tier enforcement structure consisting of the interagency Anti-Monopoly Commission responsible for policymaking and coordination of one or more anti-monopoly enforcement authorities. The Anti-Monopoly Commission itself does not have enforcement power. The State Council has designated three enforcement authorities. The Anti-Monopoly

Bureau of the Ministry of Commerce (MOFCOM) is responsible for merger review. The Price Bureau of the National Development and Reform Commission (NDRC) and the Anti-Monopoly and Anti-Unfair Competition Enforcement Bureau of the State Administration for Industry and Commerce (SAIC) separately share responsibility for enforcement with respect to conduct. Specifically, the SAIC has jurisdiction over all monopoly agreements and abuse of dominant market positions except pricing violations, over which the NDRC has jurisdiction.

AmCham-China is concerned that this division may hinder coherent AML enforcement. First, although we understand that an unpublished memorandum of understanding is intended to coordinate enforcement by the NDRC and SAIC, it remains unclear how the NDRC and SAIC will address cases involving both price and non-price conduct. Second, coordination by the Anti-Monopoly Commission notwithstanding, MOFCOM, SAIC and NDRC may have different approaches to defining markets, gauging market power and balancing policy goals when applying the many public interest exceptions of the AML. Third, MOFCOM may review mergers on the basis of anticipated anti-competitive conduct, even if such conduct falls within the purview of SAIC. Published guidelines delineating the division of authority and detailed guidelines for implementation would enhance regulatory certainty and facilitate compliance with the AML.

While the AML focuses on administrative enforcement, it also allows private actions to recover damages resulting from AML violations. The Supreme People's Court has assigned jurisdiction for such actions to courts responsible for intellectual property (IP) disputes. However, critical questions remain, such as standing to assert claims, the standards for measuring damages and the procedures to handle parallel private actions and administrative investigations.

Transparent Rulemaking and Enforcement

Transparent and predictable enforcement allows com-

竞争法

《中 华人民共和国反垄断法》（以下简称《反垄断法》）于2008年8月生效，这是中国竞争政策发展史上最重要的里程碑。作为中国第一部全面的竞争法案，《反垄断法》是中国从中央计划经济不断向市场经济过渡迈出的一大步。

除了少数规定外，《反垄断法》的整体框架和大部分规定都与国际反垄断监管机构的通用做法相一致。对于反垄断规定的三大主要领域，《反垄断法》都有所涉及：多家企业间的反竞争垄断协议；占据巨大市场份额的企业实施的排外、掠夺性的单边行动（滥用市场支配地位）；以及可能限制或削弱竞争的并购和其他交易。除了对私有公司反竞争行动进行调控外，《反垄断法》还包含一条反行政垄断（即滥用职权保护或促进受惠公司）的限制性规定。然而，尽管《反垄断法》将诸多成熟的原则纳入其中，但仍有几项关键的执行规定并不明确或尚未公布。

如果《反垄断法》旨在依照国际惯例造福消费者、提高经济运行效率，并得到透明、公正的实施，它应能帮助市场更好地服务于中国消费者，同时提高中国经济的整体运行效率。如果以牺牲消费者和竞争者的利益为代价促进受惠公司，《反垄断法》的承诺将无法实现。

执法框架

《反垄断法》规定采用双重执法框架，其中包括一个政府部门间的反垄断委员会，负责制定政策和协调一个或多个反垄断执法机构的工作。该反垄断委员会本身并没有执法权力。国务院已经指定了三个执法机构。商务部反垄断局负责并购审核，国家发展和改革委员会物价司联手国家工商行政管理总局反垄断与反不正当竞争执法局共同负责行为规定的执法工作。具体而言，国家发改委负责非法定价行为，而国家工商行政管理总局则负责除此之外的所有垄断协议和市场支配地位滥用行为。

中国美国商会担心这样的职能划分可能不利于在实施《反垄断法》的过程中保持一致。首先，尽管我们知道有一份未公布的谅解备忘录旨在协调国家发改委与国家工商行政管理总局的执法工作，但国家发改委与国家工商行政管理总局将如何处理同时涉及价格和非价格行为的案例仍不明确。其次，尽管反垄断委员会从中进行协调，但在执行《反垄断法》中许多涉及公共利益的特殊规定时，商务部、国家工商行政管理总局以及国家发改委其界定市场、衡量市场支配力和协调政策目标的方法可能不尽相同。最后，商务部可能以预先的反竞争行为为由，重新审查并购，即使这种行为应事先由国家工商行政管理总局审查。颁布实施办法，阐明执法过程中的职权划分和指导方针，将有助于增强监管的确定性，并促进各公司遵守《反垄断法》。

《反垄断法》以行政执法为主，但也允许私人提起诉讼，针对《反垄断法》违规行为索要赔偿。最高人民法院已经将这类诉讼的管辖权交由负责知识产权纠纷的法院。但是，仍有一些重要问题有待解决，例如提出赔偿要求、衡量赔偿金的标准以及平行处理私人诉讼和行政调查的程序。

透明的规则制定和执法

透明、可预测的执法使得广大企业能够制定符合竞争法的商业战略。正式的执行规定、监管机构出台的具体指导方针以及行政管理部门和法院公布的裁定对此起着重要作用。但是，《反垄断法》仅仅就实质性竞争规定和执法程序提供指导。

商务部的规则制定举措令中国美国商会深受鼓舞。2009年1月，商务部出台了五套指导意见，包括《关于经营者集中申报的指导意见》、《关于经营者集中申报文件资料的指导意见》、《反垄断申报表》和《关于反垄断审查的指导意见》。商务部还公布了《关于对未依法申报的经营者集中调查处理的暂行办法》、《关于对未达申报标准涉嫌垄

panies to plan commercial strategies that comply with competition laws. Formal implementing regulations, interpretive guidelines from regulators and the published decisions of administrative agencies and courts are critical to these efforts. However, the AML provides only high-level guidance on substantive competition rules and enforcement procedures.

AmCham-China is encouraged by MOFCOM's rule-making initiatives. In January 2009, MOFCOM issued four sets of guiding opinions, including Guiding Opinions on the Notification of Concentrations between Undertakings, Guiding Opinions on Notification Materials Concerning Concentrations between Undertakings, Anti-Monopoly Notification Form, and Guiding Opinions on Anti-Monopoly Review. MOFCOM also released for public comment before promulgation the Provisional Measures on the Investigation and Handling of Concentrations between Undertakings Not Notified in Accordance with Law, the Provisional Measures on the Collection of Evidence on Suspected Monopolistic Concentrations between Undertakings that do not Meet the Notification Thresholds, the Provisional Measures on the Notification of Concentrations between Undertakings, the Provisional Measures on the Review of Concentrations between Undertakings, and the Guiding Opinions on Definition of Relevant Market. AmCham-China was pleased to have the opportunity to comment on the Provisional Measures on the Review of Concentrations.

The Anti-Monopoly Commission subsequently issued the Guiding Opinion on Definition of Relevant Market on July 6, 2009. MOFCOM followed by promulgating the final Measures on the Notification of Concentrations of Undertakings on November 21, 2009 and the Measures on the Review of Concentrations between Undertakings on November 24, 2009. SAIC, for its part, promulgated the Regulations on Procedures for Lodging and Investigating Cases of the Abuse of Dominant Market Positions on June 5, 2009. These developments confirm that the Chinese government is embarking on a sustained effort to implement the AML through the issuance of regulations and guidance documents.

Transparent Enforcement

Published enforcement decisions provide guidance and an opportunity to educate companies about compliance.

AmCham-China welcomes the issuance by MOFCOM of increasingly detailed decisions with respect to merger notifications. We note, however, continuing shortcomings in this regard. First, clearances without condition should be published as a matter of pub-

lic record to enable companies to understand which kinds of concentrations have not attracted conditions. Second, while additional published detail is welcome, the length and degree of detail in published decisions remains sparse in comparison to that found in the EU, US and other leading jurisdictions. Third, to our knowledge, none of the concentrations notified to MOFCOM under the AML have been purely domestic concentrations. To the contrary, all have been foreign related. This constitutes selective enforcement to the detriment of US and other foreign investors, fostering purely domestic concentrations even at the expense of consumer welfare.

This perception of unequal treatment is aggravated by the promulgation on June 22, 2009 of the revised Regulations Concerning the Acquisition of Domestic Enterprises by Foreign Investors. These regulations specify that filing of an anti-monopoly notification for concentrations that meet the notification thresholds is a precondition for foreign investment approval. Yet, these regulations include criteria extraneous to consumer welfare and national security in the military-political sense namely, involvement of key industries, actual or potential impact on national economic security and control of famous brand names or venerable Chinese trademarks by a foreign investor are all triggers for MOFCOM review. AmCham-China hopes that enforcement of the AML will narrow, rather than preserve, such protectionist provisions.

AmCham-China recommends that the enforcement authorities develop procedures for publishing all enforcement decisions in a timely and fully reasoned manner. While published decisions must protect confidential business information, they should include meaningful summaries of the relevant evidence, as well as analysis and conclusions.

Behavioral Rules

The AML's behavioral rules target two types of anti-competitive conduct: restrictive agreements (monopoly agreements) and abuses of dominant market positions (i.e., anti-competitive single-firm conduct). The AML's behavioral provisions are generally consistent with prevailing international practices. However, as implementing regulations remain sparse and no enforcement decisions have been issued, it is difficult to assess how actual enforcement converges with international practice.

AmCham-China has several concerns about enforcement, including a possible presumption that the exercise of core intellectual property rights (IPR) will be deemed an abuse of dominance and that delegation

断的经营者集中证据收集的暂行办法》、《经营者集中申报暂行办法》、《经营者集中审查暂行办法》以及《关于相关市场界定的指南》的征求意见稿。中国美国商会很高兴能有机会就《集中审查暂行办法》发表意见。

反垄断委员会随后于 2009 年 7 月 6 日出台了《关于相关市场界定的指南》。商务部于 2009 年 11 月 21 日公布了最终的《经营者集中申报办法》，并于 2009 年 11 月 24 日公布了《经营者集中审查办法》。国家工商行政管理总局于 2009 年 6 月 5 日出台了《滥用市场支配地位案件程序规定》。这些发展表明中国政府正着手通过出台管理办法和指导文件来坚持不懈地执行《反垄断法》。

透明的执法

公布的执法裁定可提供指导，帮助公司做到遵纪守法。

中国美国商会对商务部公布越来越详细的并购申报裁定表示欢迎。但是，我们也注意到这方面存在很多不足。首先，不施加条件的批准案例应作为公共记录予以公布，使公司能够了解哪些集中无需受到条件限制。其次，尽管我们欢迎公布更多细节，但与欧盟、美国和其他领先司法行政区相比，所公布裁定中细节的长度和范围仍然不够。最后，据我们所知，依照《反垄断法》向商务部申报的集中都不是纯国内性质的。相反，所有集中都涉及外资。这就造成选择性的执法，有损美国及其他外国投资者的利益，而鼓励纯国内的集中，有时甚至以牺牲消费者的利益为代价。

2009 年 6 月 22 日公布的修订版的《关于外国投资者并购境内企业的规定》，使这种不平等待遇更为明显。这些规定明确表示，对达到通报标准的集中提出反垄断申报是外国投资获批的前提。但是，这些规定包括与消费者利益和国家军事政治安全无关的标准。也就是说，对主要行业的参与、对国家经济安全的实际或潜在影响，以及外国投资者对中国驰名商标或商标的控制都会触及商务部的审查。中国美国商会希望缩小《反垄断法》的实施范围，而不要保留这类带有保护主义色彩的规定。

中国美国商会建议执法机构制定相关程序，以便及时有效地公布所有执法裁定。公布的裁定必须保护机密的商业信息，但也应包括相关证据纲要以及分析和结论。

行为规定

《反垄断法》的行为规定主要针对两种反竞争行为：限制性协议（垄断协议）以及滥用市场支配地位（即反竞争单一企业行为）。一般来说，《反垄断法》的行为规定与国际通用实践相一致。但是，由于实施办法依然很少，也未曾公布过任何执法裁定，因此很难判定实际执法过程是否与国际实践相一致。

中国美国商会对执法存在几点顾虑，包括行使核心知识产权有可能被认为是滥用支配地位，而国家工商行政管理总局授予省工商局重大执法权力将可能导致执法的不一致。

禁止占据支配地位的公司提出不合理的定价

《反垄断法》严禁占据支配地位的公司提出不合理的定价。尽管欧盟委员会条约中也有类似的规定，但除非存在排外的、掠夺性的行为，否则全球竞争监管部门很少会以收取过高的价格为由，对占据支配地位的公司提起执法诉讼，这是因为高价会促使其他经营者参与价格竞争、进入市场和/或开发替代商品。在中国大力执行这一规定可能会导致直接的价格管制或阻碍占据支配地位的公司进行合理的定价。《价格法》已经为某些商品定价的外部管制提供了框架，其它价格可以由市场决定。通过禁止占据支配地位的公司提出不合理的定价来改变市场价格，对于中国的经济改革而言也许将是一种倒退。

针对垄断协议的豁免

垄断协议豁免的范围十分宽泛，包括所谓的危机和出口卡特尔豁免以及无限期公共利益豁免。维持极端竞争限制（如限价），也不要求在实现目标的同时尽可能地放宽豁免限制。对限制性实践（如合理原则）益处的评估方法以及预期咨询指导的可用性仍不明确。

合理原则标准

《反垄断法》禁止占据支配地位的公司在没有正当理由的情况下从事搭售、歧视性待遇、交易抵制、低于成本的定价、限制性或排外性交易。尽管这一规定似乎借助合理原则，以平衡具有市场支配力的企业在竞争促进和反竞争的具体实践，但执法机构处理这一问题的方法仍不明确。中国美国商会尤其担心在没有明确指导的情况下，执法机构也许会以可能发生这类行为为由，拒绝提议的集中或附加不合理的条件。

by the SAIC of substantial enforcement authority to provincial industry and commerce bureaus will lead to inconsistency in enforcement.

Prohibition of Unfair Pricing by Dominant Firms

The AML prohibits dominant firms from unfair pricing. Although an analogous provision exists in the European Commission Treaty, worldwide competition authorities rarely initiate enforcement actions against dominant firms for charging unfairly high prices unless accompanied by other exclusionary or predatory conduct because high prices incentivize other undertakings to compete on price, enter the market and/or develop substitute goods. Aggressive enforcement of this provision in China could lead to direct price regulation or deter rational pricing practices by dominant firms. The Price Law already provides a framework for explicit regulation of the pricing of certain commodities, leaving other prices to be market determined. The prohibition of unfair pricing by dominant firms to change market prices would be a major step backward for China's economic reforms.

Exemptions for Monopoly Agreements

The scope of exemptions available for otherwise prohibited monopoly agreements is extremely broad, including exemptions for so-called crisis and export cartels, and an open-ended public interest exemption. There are no disqualifications for extreme competition restraints (e.g., price-fixing), nor requirements that exemptions be as unrestrictive as possible while still achieving their objectives. The methodology for appraising the benefits of restrictive practices (e.g., rule of reason) and the availability of prospective advisory guidance remains unclear.

Rule of Reason Standards

The AML prohibits dominant firms from engaging in tying, discriminatory treatment, refusal to deal, below-cost pricing and restrictive or exclusive dealing without justification. Although this qualifier appears to invite the rule of reason approach to balancing the pro-competitive and anti-competitive aspects of specific practices by firms with market power, the enforcement authorities' approach to this issue is unclear. AmCham-China is particularly concerned that in the absence of clear guidance, enforcement authorities may invoke the potential for such conduct as grounds for rejecting or attaching unreasonable conditions to a proposed concentration. The potential for bundling indeed appears to have been the core argument in MOFCOM's decision in the Coca-Cola-Huiyuan notification.

Mandatory Minimum Penalties

The AML's provisions for mandatory minimum fines raise risks of excessive penalties and over-deterrence. If the NDRC or SAIC find an AML behavior rule infringement, Articles 46 and 47 of the AML set a fine of between one and 10 percent of the infringing company's annual sales revenues. The AML does not state whether the calculation refers to sales revenues achieved in China and/or the relevant market affected by the illegal conduct.

AmCham-China urges that implementing rules specify that the sales revenue benchmark refers to revenues in the relevant product market in China only. This would make the AML consistent with US and EU antitrust laws. Moreover, we are concerned that the one percent of annual sales revenue mandatory minimum penalty is inconsistent with international practice and may result in penalties grossly disproportionate to harm in minor cases and thereby constitute a basis for abusive enforcement, potentially forcing otherwise law-abiding companies out of the market.

Leniency Policy

The AML allows enforcement authorities the discretion to waive or reduce penalties for participants in monopoly agreements who disclose their misconduct and cooperate with authorities. Similar amnesty and leniency programs have succeeded in uncovering cartels in other jurisdictions, but such programs rely on concrete assurances of leniency for disclosing misconduct. As leniency will better encourage cartels to voluntarily disclose misconduct, the program should include guarantees of waived or reduced penalties.

Merger Review

Merger control is the principal compliance concern for US companies under China's existing antitrust rules. Whereas the rules against monopoly agreements and abuse of dominance require companies to abstain from anti-competitive commercial practices, the merger control rules require review of transactions that trigger the notification thresholds, regardless of their actual impact on competition in China. Consequently, it is important that Chinese authorities structure the reporting requirements and review procedures consistent with their task to avoid undue burdens on Chinese enforcement personnel and impediments to direct investment by companies.

While US companies report that MOFCOM investigation teams involved in merger reviews are increasingly familiar with international practice, a number of

事实上，可能的捆绑销售似乎是商务部对于可口可乐 - 汇源申报决定的核心论点。

强制性最低罚款

《反垄断法》中有关强制性最低罚款的规定使罚款过重，过度威慑的风险增大。《反垄断法》第 46 和 47 条规定，如果国家发改委或国家工商行政管理总局发现一起《反垄断法》违规行为，必须对相关公司处以年度销售收入 1% 以上、10% 以下的罚款。《反垄断法》并未规定计算时是以在华实现的销售收入为准，还是以在受到非法行为影响的相关市场的销售收入为准。

中国美国商会促请，在实施细则中明确指出销售收入仅以在华相关产品市场的收入为准。这将使《反垄断法》与美国和欧盟反垄断法相一致。此外，我们担心以年销售额的 1% 作为强制性最低罚款与国际惯例不符，并可能导致罚款与少数案件中造成的损害不成比例，从而构成滥用职权的理由，这可能会导致原本遵纪守法的公司被迫退出市场。

宽恕政策

《反垄断法》允许执法机构享有裁量权，对主动承认错误并积极予以配合的垄断协议参与方免除或减轻罚款。在其他司法行政区，类似的特赦和宽恕制度在调查卡特尔行为方面取得了巨大成功，但这一制度需要确保对自行揭发非法行为的机构予以宽恕。宽恕制度将更好地鼓励卡特尔参与方自愿揭发非法行为，该制度应包括对免除或减轻罚款的保证。

并购审核

在中国现有的反垄断规定下，并购管制是美国公司所关注的主要合规问题。针对垄断协议和滥用支配地位的规定要求公司避免反竞争商业实践，而并购管制规定要求对达到申报门槛的交易进行审核，而不管对在华竞争产生怎样的实际影响。因此，中国监管机构有必要制定符合其工作的报告要求和审核程序，避免给中国执法人员造成不必要的负担，并避免妨碍企业的直接投资。

据美国企业反映，负责并购审核工作的商务部调查团队越来越熟悉国际实践，但仍有一些问题，包括商务部工作人员倾向于调查国家或经济体的竞争力，而非经营者的竞争力，例如集中对中国竞争力而非相关市场竞争的影响。

实施程序

尽管商务部和国家工商行政管理总局在 2009 年颁布的实施办法和指导文件与国际通用实践相一致，但诸多问题依然存在。

阐明实施办法

中国美国商会促请相关部门澄清，向中国出口加工区进行的用于再制造和再出口的销售是否被视为需要满足申报要求的对华销售。由于它们不属于需要办理海关手续的进口贸易或外汇贸易，因此有必要加以澄清。

《反垄断法》采用了欧洲的方法，仅要求对集中进行申报，包括企业控制权的并购。但是，最近的实施办法草案可能会被解释为对少数股东进行过多的惯例和常规保护。这将使许多少数股权投资转变为应报告的集中。

中国美国商会希望，在确定是否必须按照《经营者集中申报办法》第 7 条第 2 款的规定进行申报方面，设定了合并计算非控制性交易的两年期时间窗口，这意味着不在两年期限范围内的少量投资可免于进行反垄断审核。

中国美国商会还担心拟定的实施办法表明，许多不受其他国家并购审核影响的合资企业（包括非完整职能型合资企业）将成为应报告的集中。我们注意到，《关于经营者集中界定的指导意见》第 7 条并没有按照职能范围对合资企业加以区分。

中国美国商会欢迎按照国际实践阐明，在确定是否必须按照《经营者集中申报办法》第 7 条第 1 款进行申报时，只计算卖方所涉及部分的营业额（而非卖方的总营业额）。

提交说明

中国美国商会对商务部多次阐明申报内容和程序表示欢迎。但是，中国美国商会仍然担心有关部门滥用职权，要求提交不必要的翻译件和做出非实质性的澄清，造成申报的延误或成本的提高。

实施办法存在的其他问题

中国美国商会发现，在中国的法律体系下，律师与当事人之间的保密范围有别于其他司法管辖区。但是，这对依照

disturbing features continue to arise. These include a tendency on the part of MOFCOM personnel to couch investigations in terms of competitiveness of countries or economies rather than undertakings (i.e., the impact of a concentration on China's competitiveness rather than competition in the relevant market).

Implementing Procedures

While the promulgation by MOFCOM and SAIC of implementing regulations and guidance documents in 2009 converged with prevailing international practices in many respects, concerns remain.

Clarification on Implementation Measures

AmCham-China urges guidance on whether sales into Chinese export processing zones for further manufacturing and re-export are considered sales into China for purposes of triggering notification requirements. Because they are not treated as imports into China for customs purposes or as foreign exchange transactions, clarification is necessary.

The AML only requires notification of concentrations, including mergers and acquisitions of control over a business, following the EU approach. The recent draft implementing measures, however, could still be construed to treat many customary and routine protections for minority shareholders as conferring control. This would transform many minority investments into reportable concentrations.

AmCham-China hopes that the two-year window for aggregation of non-controlling transactions for purposes of determining whether a notification is required under Article 7(2) of the Measures on the Notifications of Concentrations of Undertakings signifies that lesser investments that do not fall within the two-year window are exempt from anti-monopoly review.

AmCham-China is also concerned that the proposed implementing measures suggest that many joint ventures (JV), including non-full function JVs, which are not subject to merger review in other countries, would qualify as reportable concentrations. We note that Article 7 of the Guiding Opinions on the Definition of Undertakings in Concentrations does not distinguish among JVs by the extent of functionality.

AmCham-China welcomes clarification in accordance with international practice that only the turnover of the relevant portion of the seller's business (rather than turnover of a selling entity as a whole) is calculated for purposes of determining whether a notification is required under Article 7(1) of the Measures on the No-

tification of Concentrations of Undertakings.

Submission Clarifications

AmCham-China welcomes MOFCOM's multiple clarifications on notification content and procedures. AmCham-China remains concerned, however, about the potential for abuse of administrative discretion to unduly delay or raise the cost of notifications by requiring unnecessary translations and non-substantive clarifications.

Other Issues with the Implementation Measures

AmCham-China acknowledges that the scope of attorney-client confidentiality under the Chinese legal system differs from that in other jurisdictions. Yet it plays an essential role in evaluating and facilitating the conduct of international transactions in accordance with applicable laws. AmCham-China urges MOFCOM to follow International Competition Network recommendations by giving due consideration to legal privileges applicable in foreign jurisdictions when assessing mergers.

The proposed implementing measures recognize the notifying parties' right to make statements and bring a defense. In our February 2009 comments, AmCham-China recommended specific procedures to reinforce the notifying parties' right of defense.

Once MOFCOM determines that a concentration does not raise anti-competitive concerns, there is no reason to delay the transaction until the expiration of the applicable review period. We recognize that MOFCOM has such authority once a review enters the second phase. MOFCOM should be given the authority even in the first phase and should be willing to immediately inform the notifying party upon its decision not to initiate a further review or block a transaction.

Adoption of a short-form notification procedure for transactions that do not present material competitive concerns would dramatically ease the burdens on parties and regulators alike.

Finally, AmCham-China cautions against the abridgement of IP rights in the name of anti-monopoly at the expense of consumer welfare and innovation.

Remedies

Structural remedies designed to address specific anti-competitive risks of a concentration (e.g., divestitures) are generally the most reliable and readily adminis-

相关法律评估和推进国际交易行为起着至关重要的作用。中国美国商会呼吁商务部采纳国际竞争网络的建议，在审核并购交易时充分考虑国外管辖区适用的法律特权。

拟定的实施办法赋予申报方陈述和抗辩的权利。在我们2009年2月的评论中，中国美国商会就旨在增强申报方抗辩权的具体程序提供了建议。

一旦商务部确定集中不会导致反竞争问题，就没有理由再将交易推迟到审核期结束。我们意识到，一旦审核进入第二阶段，商务部便拥有这种权力。但即使在第一阶段，商务部也应被授予这种权力，并且在决定不再进行进一步审核或批准一项交易后应立即通知申报方。

对不会引起严重竞争问题的交易采用简单的申报程序将大大减轻对申报方和监管机构等造成的负担。

最后，中国美国商会反对用反垄断名义、以牺牲消费者福利和创新为代价限制知识产权。

救济措施

旨在应对集中的特定反竞争风险的结构性救济措施（如剥离）最为可靠，并易于管理。相反，行为性救济措施会对执法部门和交易方造成持续监督的成本和负担，并增加对消费者产生不利影响以及阻碍促进竞争行为的风险。但是，拟定的实施办法采用了两种行为性救济措施：强制实施知识产权许可以及强制网络准入。这可能会被曲解为鼓励这些在其他司法管辖区被认为是极为复杂、矛盾而特殊的救济措施。

保留权力和申报门槛

《国务院关于经营者集中申报标准的规定》使得商务部能够要求对未达到营业额标准的集中进行申报。中国美国商会希望相关机构慎重对待这一保留权力，而不要任意使用。这一权力主要用于解决司法问题难以解决的案件。中国美国商会呼吁澄清哪些情况需要使用这一权力，并对程序后果做出适当解释。

对中国本土法律顾问的要求

由于没有颁布实施条例，外资律师事务所聘用的律师不得代理商务部的并购管制诉讼，即便这些律师是拥有当地执业资格的中国公民。这与国际实践不一致，对提出申报的外

国经营者存有偏见。允许国际律师（包括外资企业中有资质的中国律师）直接与商务部沟通，会将更成熟的司法管辖区的外资企业的反垄断经验带到并购管制程序中。

带有保护主义色彩的《反垄断法》使用

《反垄断法》中有许多与国际实践相一致的规定旨在通过竞争来造福消费者，并提高经济运行效率。但是，一些规定似乎使得《反垄断法》的实施成为一种保护主义和行业政策手段。以下规定存在一定问题：

《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，以及依法实行专营专卖的行业，国家对其经营者的合法经营活动予以保护”，虽然该法案也规定国有企业不得利用其控制地位或者专营专卖地位损害消费者利益。尽管从技术上而言，第7条的规定并不旨在让国有企业免受《反垄断法》的约束，但该项特别待遇的行业覆盖范围以及性质均不明确。中国美国商会担心，第7条规定可能会为把《反垄断法》作为一种行业政策手段加以利用提供法律依据。

第11条规定“行业协会应当加强行业自律，引导本行业的经营者依法竞争，维护市场竞争秩序”。尽管一些行业协会已经在努力抑制卡特尔行为（如保险单统一定价），但中国美国商会担心，此规定会使行业协会能够扮演监管或协调部门的角色，这可能与全面、公平地贯彻《反垄断法》的根本性原则不一致，尤其是有些活动会引发国内行业间卡特尔行为的产生。

第13、14和15条也存在相关的豁免问题。虽然第13条和第14条禁止了垄断协议，但第15条规定如果垄断协议是为了增强中小企业的竞争力或“为了保障对外贸易和对外经济合作中的正当利益”，则不适用于第13条和第14条的规定。这些豁免情况可能会被解释为偏向国内产业，推动或保护国民经济命脉和促进国内卡特尔行为的产生。

第27条允许《反垄断法》监管机构考虑所提议的交易对“其他相关经营者”和“国民经济发展与公共利益”的潜在影响。这似乎虑及了保护国内竞争者，以及利用并购审核程序酌量国内的宏观经济问题。中国美国商会担心，监管机构的某些决定在一定程度上是基于对中国经营者的保护而非对消费者利益的保护。

tered. Behavioral remedies, conversely, impose costs and burdens of continued supervision on both the agencies and transaction parties, and increase the risks of unintended harmful effects on consumers as well as deterring pro-competitive conduct. Proposed implementing measures, however, single out two behavioral remedies: compulsory licensing of IP and compulsory access to networks. This may be misinterpreted as encouraging these remedies, which are complex, controversial and exceptional in other jurisdictions.

Reserve Power and Notification Thresholds

The Rules of the State Council on Notification Thresholds for Concentrations of Undertakings preserve MOFCOM's ability to require a notification of concentrations that do not satisfy the turnover thresholds. AmCham-China hopes that this reserve power will be used only sparingly, and that it does not operate as a catch all, reaching cases where jurisdictional issues may be difficult to resolve. AmCham-China urges clarification of the circumstances under which this power will be used, together with an explanation of the procedural consequences.

Requirement for Local Chinese Counsel

In the absence of implementing regulations, lawyers employed by non-Chinese law firms are prohibited in MOFCOM merger control proceedings—even when the lawyers in question are Chinese nationals with local bar qualifications. This is inconsistent with international practice and creates an impression of bias against foreign undertakings that make notifications. Allowing international lawyers, including qualified Chinese nationals employed by foreign firms, to appear before MOFCOM would bring the antitrust experience of foreign firms from more mature jurisdictions to the merger control process.

Protectionist Uses of the AML

Many provisions of the AML, consistent with international practice, are aimed at promoting consumer welfare and economic efficiency through the competitive process. Still, several provisions appear to allow the enforcement of the law as an instrument of protectionism and industrial policy. Below we have highlighted specific articles that may be problematic in their current forms:

Article 7 requires the state to “protect the lawful business activities” of state-owned enterprises (SOE) in industries “that implicate national economic vitality and national security” or “in which there are legal monopolies,” although it also prohibits such SOEs from abus-

ing dominant positions to harm consumers. Although Article 7 is not technically drafted as an SOE exemption from the AML, both the scope of sectors covered and the nature of the special treatment outlined are ambiguous. AmCham-China is concerned that Article 7 provides a basis for enforcing the AML as an instrument of industrial policy.

Article 11 states that “trade associations shall strengthen self-discipline of the industries, provide guidance for enterprises in the industry to compete lawfully and protect the order of market competition.” Although there have been efforts by some trade associations to curb cartel behavior (e.g., uniform pricing of insurance policies), AmCham-China is concerned that this provision provides trade associations with the ability to take on regulatory or coordinating roles that are potentially inconsistent with full and fair application of the AML's underlying principles, particularly roles that may facilitate cartel behavior among domestic industries.

Articles 13, 14 and 15 have related exemption issues. Anti-competitive agreements prohibited under Articles 13 and 14 may be exempted by Article 15 if they enhance the competitiveness of small and medium-sized enterprises or advance “legitimate interests of international trade and foreign economic cooperation.” These exemptions could be interpreted to favor domestic industry and promote or protect national champions and facilitate domestic cartels.

Article 27 permits AML regulators to consider potential effects of the proposed transaction on “other relevant business operators” and “on the development of the national economy and public interest.” This appears to allow for the protection of domestic competitors and the use of the merger review process to consider domestic macroeconomic issues. AmCham-China is concerned that some decisions made by regulators may be based, in part, on protecting domestic business operators, rather than consumer welfare.

Risks to IP Rights Holders

IP protection issues in China are creating concern among many US companies that the AML may be enforced in a manner that undermines legitimate IP rights.

Article 55 states that the AML shall not apply to the “exercise of IPR pursuant to the stipulations in laws and administrative regulations relating to intellectual property” but “shall apply to actions taken ... to eliminate or restrict competition by abusing intellectual property rights.” The AML does not, however, clarify the distinction between legitimate exercises of IPR and

对知识产权拥有者的风险

中国的知识产权保护问题令许多美国公司不禁担心：《反垄断法》可能会以有损合法的知识产权的方式实施。

《反垄断法》第55条规定，“经营者依照有关知识产权的法律、行政法规规定行使知识产权的行为，不适用本法；但是，经营者滥用知识产权，排除、限制竞争的行为，适用本法”。然而，《反垄断法》并没有具体说明如何对合法的知识产权行使和滥用加以区分。美国公司尤其担心不合理的市场界定方法可能会导致知识产权拥有者被视为在市场中占据支配地位，而他们单方面拒绝向竞争者授予其知识产权的使用权、或根据其知识产权的商业价值收取版权税，都可能被认定为滥用市场支配地位。修订版《专利法》和《知识产权领域反垄断执法指南》草案中范围有所扩大的强制性许可规定引起了市场担忧。中国美国商会鼓励制定指导方针来确保《反垄断法》的执法工作，避免影响知识产权在中国的用途和价值。

重叠问题

除了《反垄断法》之外，中国的法律秩序目前还包含《反不正当竞争法》和《价格法》等多项法律法规中的众多其他竞争规定。迄今为止，这些竞争规定尚未得到正式的修正或废除。总的来说，《反垄断法》和其他这些法律都没有具体阐明，先前的竞争规定是否继续与《反垄断法》同时适用，以及将如何解决矛盾之处。虽然《立法法》和《行政处罚法》含有相关规定，但中国美国商会建议对先前的竞争规定进行正式的修正，以便使《反垄断法》及其实施细则成为中国唯一适用的反垄断法案。

商标的规定）。

- 对国有企业、贸易协会以及国内外公司一视同仁，公平地贯彻、执行《反垄断法》。
- 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。
- 阐明并简化《反垄断法》有关程序，尤其是并购审核相关程序；加快审核过程；豁免某些明确界定的交易范畴，尤其是小型收购交易或与中国国内市场无关的交易。
- 公布所有裁定（包括交易的批准），并且更详细地公布有条件批准和不予批准的裁定。

建议

- 允许代表经营者的外国律师与本土法律顾问一同出席听证会。
- 制定的实施办法能够采纳国际竞争网络建议和其他竞争监管机构通用的最佳实践。
- 确保所有实施办法以草案的形式对外公布，让国内外感兴趣的各方提供有意义的建议。
- 修订《关于外国投资者并购境内企业的规定》，取消与竞争法不一致的带有保护主义色彩的规定（如国家经济安全审查以及保护中国驰名商标和

abuses. US companies are particularly concerned that unsound approaches to market definition may lead to findings that IP holders are dominant in markets for their own technology, and that their unilateral refusal to license their IP to competitors or charge royalties commensurate with the commercial value of their IP may be condemned as abusive. Expanded compulsory licensing provisions in the amended Patent Law and draft SAIC Guidelines Concerning Anti-Monopoly Enforcement in the Area of Intellectual Property Rights arouse additional concern. AmCham-China encourages the adoption of guidelines ensuring that AML enforcement does not undermine the purpose and value of IPR in China.

Overlap Issues

In addition to the AML, the Chinese legal order currently contains a number of other competition provisions scattered in various laws and regulations, such as the Anti-Unfair Competition Law and the Price Law. To date, these competition provisions have not formally been amended or abrogated. In general, neither the AML nor those other laws contain specific provisions guiding whether the prior competition provisions continue to apply concurrently with the AML and how conflicts will be resolved. While the Law on Legislation and the Law on Administrative Penalties contain some provisions on this issue, AmCham-China recommends that prior competition provisions be formally amended to make the AML and its implementing rules the only applicable anti-monopoly regime in China.

foreign and foreign-invested, companies.

- 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.
- Clarify and streamline relevant AML procedures, especially for merger review; implement expedited clearances; and exempt certain clearly defined categories of transactions, especially small acquisitions or those that have no connection to the Chinese domestic market.
- Publish all decisions including clearances, and publish conditional clearances and rejections in greater detail.

Recommendations

- **Allow foreign lawyers representing undertakings to attend and participate in hearings alongside local counsel.**
- Adopt implementing measures embracing the recommendations of the International Competition Network and other prevailing best practices of competition authorities.
- Ensure that all implementing measures are publicized in draft form to allow meaningful comment by foreign and domestic interested parties.
- Amend the Regulations on the Acquisition of Domestic Enterprises by Foreign Investors to remove protectionist provisions inconsistent with competition law (such as national economic security review and protection of famous brands and venerable trademarks).
- Apply and enforce the AML equally to SOEs, trade associations and domestic, as well as



Corporate Social Responsibility

Corporate social responsibility (CSR) has attracted much attention and undergone many changes in China in recent years. AmCham-China is encouraged to see CSR become increasingly embedded in daily business operations, but implementation still challenges firms in China.

AmCham-China believes that CSR efforts should comply with existing laws and also exceed minimal legal requirements. Business goals should include transparency, strong environmental protection, product and food safety, and outstanding labor conditions throughout the supply chain. Other important CSR initiatives include community investment programs and public-private partnerships. We are encouraged that US companies are focusing on these goals, and we believe that they can increasingly do this in the years ahead.

Effective CSR requires strong engagement between all levels of government, community organizations and businesses. Strict corporate governance in the business community and regulatory compliance leads to stronger relationships, identification of opportunities and the mitigation of existing or potential risks.

Recent events have shown us that the great issues of our time cannot be addressed without global involvement and commitment. Where companies can partner with the government or public sector, community organizations have great potential to solve public interest issues effectively and promote sustainable development in their communities. CSR has played and continues to play a crucial role in addressing these issues.

Significant Developments

China's CSR Progress

AmCham-China commends the Chinese government on supporting the new CSR guidelines for Banking and Financial Institutions by China Banking Associations in addition to the State-owned Assets and Supervision and Administration Commission CSR guidelines published in 2008.

In addition, the Shanghai Stock Exchange and China Securities Index Co., Ltd. published its first Social Responsibility Index in mid-2009. This index provides systematic processes to assist companies in identifying their non-financial risks and support CSR in the context of their business strategy and is an important benchmarking tool for companies committed to managing, measuring, and reporting their impact on society and the environment.

Increased CSR Reporting

AmCham-China applauds the great efforts that Chinese companies and multinational corporations (MNC) have taken to report their CSR activities. There has been a significant increase in CSR and sustainability reporting by companies operating in China. We encourage the Chinese government to expedite issuing the specific reporting requirements and guidelines to strengthen the credibility of these reports.

Challenging Economic Climate

AmCham-China has been encouraged by Chinese and American corporations' enduring commitment to CSR during a difficult financial year. According to AmCham Shanghai's 2008-2009 *Managing Corporate Social Responsibility in China Survey*, almost half of American companies indicated that the financial crisis has not affected their 2009 CSR plans.

Private Foundation Forum/Civil Society

In July 2009, over 500 representatives from private and public foundations, and grassroots non-governmental organizations (NGO) across China participated in the first National Private Foundation Forum. The forum was a clear call for increased transparency and stronger cross-sector partnerships. The forum organizing committee issued the Self-Discipline Declaration of China Private Foundations, which highlighted the need and desire for private foundations in China to set up self-regulation mechanisms. AmCham-China commends the National Private Foundation Forum's call to in-

企业社会责任

近年来，企业社会责任在中国受到广泛关注并经历诸多改变。中国美国商会欣喜地看到企业社会责任已越来越多地被纳入到企业日常运营中，但对其而言企业社会责任的执行仍面临诸多挑战。

中国美国商会认为企业社会责任运作应遵从现行法律，并应超越最低法律规定。企业社会责任目标应包括：确保供应链整体实现业务透明、符合环保标准、保障产品和食品安全及创造良好的劳动条件。重要的企业社会责任举措还包括建立社区投资计划以及政企合作伙伴关系。商会欣喜地看到美国企业正致力于实现这些目标，相信在未来几年内企业将持续为此目标而努力。

企业社会责任的有效履行需要各级政府、团体组织及企业的积极参与。业界严格的公司治理及一致的监管环境加固了上述三者间关系，明确发展机遇，并缓解了现存或潜在危机。

近期事件表明，只有全球性的参与和贡献才能有效解决当今时代的重大问题。企业与政府、公共部门及社区组织的合作具备有效解决公众利益问题、推进社区可持续发展的潜力。企业社会责任已经、并将继续在解决这类问题时发挥其关键作用。

重大进展

中国企业社会责任进展

中国政府对中国银行业协会颁布的《中国银行业金融机构企业社会责任指引》，以及国有资产监督管理委员会于2008年颁布的《关于中央企业履行社会责任的指导意见》都给予极大支持。对此，中国美国商会表示赞赏。

此外，上海证券交易所与中证指数有限公司于2009年中期首次联合发布了上证社会责任指数。该指数提供系统的

操作流程，以协助企业明确其非金融性风险，支持企业将企业社会责任纳入其商业战略框架。该指数已成为企业用于公司管理、评估及公布其对社会和环境影响的对标工具。

企业社会责任活动报道增加

中国美国商会赞赏中国企业及跨国公司为报道其企业社会责任活动所付出的努力。随着在华运营企业的社会责任和可持续发展的报道的显著增加，我们希望中国政府尽快颁布对此类报道的具体要求及指导原则以增强其公信力。

经济形势的挑战

中美企业在去年经济衰退时坚持履行其企业社会责任承诺，令中国美国商会深受鼓舞。据上海美国商会《2008年~2009年在华企业社会责任管理调查》显示，近一半美国企业表示金融危机并未影响其2009年企业社会责任计划。

非公募基金会发展论坛 / 公民社会

2009年7月，来自全中国私募与公募基金会及民间非政府组织的500多位代表参加了首届中国非公募基金会发展论坛会议。论坛明确呼吁提高透明度，加强跨部门伙伴关系。论坛组委会发布的《中国非公募基金会自律宣言》强调了非公募基金会在华建立自律机制的需要和愿望。中国美国商会赞同非公募基金会论坛对于加强透明度、经营责任及跨部门伙伴关系的倡导。

ISO 26000

国际标准化组织于2009年9月公布了迄今为止最全面的社会责任国际指导标准——ISO 26000标准，作为一项国际标准草案，该标准进入公开征求意见阶段。正式标准计划将于2010年底公布发行。

crease transparency, accountability and cross-sector partnerships.

ISO 26000

The International Organization for Standardization (ISO) published ISO 26000, the most comprehensive international guidance standard overview of social responsibility to date, in September 2009 as a Draft International Standard and made it available for review and comment. The guidelines are scheduled to be published in late 2010.

The proposed guidelines build upon well-established CSR pillars such as the UN Global Compact, International Labor Organization's labor standards, Global Reporting Initiative and Social Accountability Initiative's Social Accountability 8000 Standard. However, ISO 26000 differs in that its central theme focuses on "organizational social responsibility." It provides not only guidance on the underlying principles of CSR, the core subjects and issues pertaining to social responsibility, but also elaborates on ways to integrate socially responsible behavior into existing organizational strategies, systems, practices and processes.

AmCham-China believes that the voluntary ISO 26000 guidelines will provide transparent benchmarks and guidelines for good practices amongst businesses, governments and NGOs. Therefore, we encourage both the Chinese and American governments to continue engaging in this multi-stakeholder process.

Specific Issues

Support for Civil Society

The unprecedented donations and relief efforts after the devastating 2008 Sichuan Earthquake increased understanding of the important roles civil society can play in community development projects. We encourage the Chinese government to establish a strong legal and institutional framework to foster the development of civil society's involvement and increase the transparency and accountability of donations in China.

We are also encouraged to learn from the Ministry of Civil Affairs (MOCA) that the draft Charity Law has been submitted to the State Council, which will continue to solicit public comments on the draft. AmCham-China is aware that the Charity Law has already been discussed several times and has gone through rounds of public comments. We are hopeful that the Chinese government will continue to solicit public comments on any updates of the Charity Law draft. Further, AmCham-China hopes that the draft law will be pro-

mulgated within two years, as Mr. Wang Zhengyao, general director of the charity department of MOCA, told *China Daily* on November 3, 2009.

Capacity Building Private Foundations

Despite their growing role, private foundations do not yet meet the needs of the Chinese community. Some foundations lack assets to make a real impact or independence from their founding corporations, while others are hindered by a shortfall of professional staff and ineffective internal governance. Furthermore, there are still many challenges in the NGO and foundation development process, including society's inadequate understanding of them, outdated legislation and difficulties raising funds. Additionally, most private foundations have limited transparency and do not voluntarily disseminate information, hindering society's awareness of them and their effectiveness.

While AmCham-China anticipates the growth of private foundations in China to continue over the next 10 to 20 years, we encourage them to embrace international best practices and adapt them to China's communities to enable them to develop fully. By strengthening capacity-building and enhancing cross-sector partnerships, private foundations can become incubators of new ideas, develop innovative approaches to address social needs, reshape civil society, and define new relations between the state and society in China.

CSR Awareness in Enterprises

The Economics Division of China Academy of Social Sciences and China's Social Sciences Press released the Corporate Social Responsibility Blue Book 2009 (Blue Book) in October 2009. The book reports that the general level of CSR in Chinese enterprises remains relatively low.

The authors of the Blue Book have evaluated the top 100 Chinese enterprises' CSR level from four aspects: responsibility management, market responsibility, social responsibility and environmental responsibility. The CSR levels of central enterprises and state-owned financial enterprises are generally higher than private enterprises, other state-owned enterprises and foreign-funded enterprises. We are encouraged to see a continuous drive by the Chinese government and business associations to increase CSR awareness and practices. AmCham-China remains committed to promoting and sharing responsible business practices amongst its members and the community.

上述标准建立在完善的企业社会责任基础之上，诸如联合国全球盟约、国际劳工组织（ILO）劳工标准、全球报告倡议组织（GRI）、社会道德责任标准 SA8000。ISO 26000 标准与上述标准不同之处在于其旨在建立“组织的社会责任”。它不仅提供企业社会责任基本指导原则、社会责任相关核心议题，且详述将社会责任行为纳入企业现有组织战略、体系、实践及流程的方式。

中国美国商会相信具有自愿性质的 ISO26000 标准指导原则将为企业、政府及非政府组织提供优秀实践的透明基准以及指导原则。因此，商会建议中美两国政府继续参与此项由多方利益相关者共同参与的标准化建设进程。

具体问题

支持公民社会

2008 年四川地震发生后，规模空前的捐助和救灾活动使公众日益认识到公民社会在社区发展中所发挥的重要作用。商会建议中国政府建立强有力的法律体制框架，以加强公民社会的参与度，增强捐款透明度及问责制。

商会欣喜地获悉，民政部《慈善法》草案已提交至国务院，并将继续向公众征求意见。该草案已经过数次讨论，并多次向公众征求意见。商会希望中国政府就该草案的修订内容继续征询公众意见。此外，中国美国商会希望该草案将在两年内正式颁布实施，正如 2009 年 11 月《中国日报》对民政部社会福利和慈善事业促进司司长王振耀的报道中所述。

建立非公募基金会的能力

尽管非公募基金会的作用日渐增强，但尚不能满足中国社会的需求。某些基金会因缺乏资金而无法发挥其实质作用或独立于创建企业，其他基金会因缺乏专业管理人员及有效的内部管理而停滞不前。此外，非政府组织及基金会在发展过程中仍面临众多挑战，包括社会对其缺乏足够的了解，法律法规滞后以及募款困难。再者，多数非公募基金会缺乏透明度，相关信息无法流动，这也影响了公民对这些基金会及其有效性的认识。

中国美国商会期望未来十至二十年中国非公募基金会能够得以长足发展。商会支持基金会借鉴国际最佳实践以适应中国社会实际情况，并促进其充分发展。通过加强能力建设

与促进跨行业伙伴关系，非公募基金会将发展成为新思想孵化器，开创新方式以满足社会需要，重塑公民社会以及定义新的国家与社会之间的关系。

企业社会责任意识

2009 年 10 月，中国社科院经济学部与社科文献出版社联合出版《企业社会责任蓝皮书 2009》。该书认为中国企业社会责任总体水平仍然相对较低。

该蓝皮书作者从企业责任管理、市场责任、社会责任及环境责任四个方面评估中国 100 强企业的社会责任水平。中央企业与国有金融企业的社会责任水平一般高于民营企业、其他国有企业及外资企业。我们欣喜地看到中国政府、商业协会为不断促进企业提升社会责任意识及行为所做出的努力。中国美国商会将继续履行其在会员及社团中推广和交流企业社会责任行为的承诺。

总结

中国美国商会对中国政府为推动企业社会责任所付出的持续努力表示赞赏。商会相信在国有企业、民营企业及公民社会的共同努力下，将会最大限度地解决公众利益问题，并促进可持续发展。企业社会责任已经作为、并将继续成为其决定性因素。企业社会责任的有效运作需要多方利益相关者的持续参与，充分交流及广泛征询意见，以保证企业社会责任的可持续性发展。

建议

对中国政府：

- 建立法制框架促进国际与国内非营利、非政府组织注册登记。
- 继续推动所有企业平等地执行企业社会责任，通过向更多利益相关者及公众对新出台的法规和标准征求意见，为包括国有企业、跨国公司及民营企业在内的各类企业提供统一的标准与机制。
- 通过积极奖励措施继续提高企业社会责任意识。通过在企业间推进最佳实践经验交流及奖励企业社会责任突出贡献的企业，以鼓励各机构实施负责任的、可持续的商业行为。

Conclusion

AmCham-China commends the Chinese government's continued efforts to promote CSR. We believe that the combined endeavors of the public and private sectors, and civil society organizations will maximize the effect of solving greater public interest issues and sustainable development. CSR has been, and continues to be, a crucial element in this endeavor. Effective CSR will require a continued multi-stakeholder engagement, open dialogue and consultation to ensure the sustainability of CSR efforts.

Recommendations

For the Chinese Government:

- **Strengthen the legal and institutional framework to facilitate the registration and operations of international and national not-for-profit and non-governmental organizations.**
- Continue commitment to promote CSR equally to all companies and to apply a harmonized standard and mechanism to all types of companies, including SOEs, MNCs and private companies through greater stakeholder and public consultation in the development of new regulations and standards.
- Continue raising awareness by developing positive incentives to encourage responsible and sustainable business practices in all organizations through efforts like facilitating best practices sharing of companies and by rewarding companies that excel in CSR.

For the US Government:

- **Continue to engage in discussion and co-operation projects with Chinese counterparts to identify challenges and share best practices in areas such as the environment, compliance, product safety and community development.**
- Continue to invest and engage in bilateral environmental dialogues and technical cooperation programs.

对美国政府：

- 继续与中方开展对话和合作，以充分认识当前挑战，分享环境、产品安全及社区发展等领域的最佳实践经验。
- 继续参与双边环境对话及技术合作项目。



Customs

The 2009 slowdown in cross-border trade created significant challenges for China's General Administration of Customs (GAC) and trade agencies with regard to maintaining revenue and promoting a rebalanced domestic economy while facilitating international trade and enforcing trade and customs-related laws and regulations.

Significant Developments

AmCham-China appreciates the progress and achievements made in a number of areas in 2009, including:

- Cooperation with the trade community on implementing enterprise classification, paperless customs clearance and district e-ports integration to increase the efficiency of customs processes for compliant importers of record programs and facilitate trade;
- Maintaining revenue while improving transparency and uniformity and ensuring vibrant trade facilitation;
- Strengthening enforcement against contraband intellectual property rights and hazardous waste violations by working in partnership with the trade community;
- Promoting domestic sales and consumption of goods under a processing trade program;
- Conducting a study on restructuring the organization of GAC for optimizing functions, roles and responsibilities to increase trade compliance and efficiency;
- And collaborating with other customs administrations and the World Customs Organization on trade facilitation.

AmCham-China appreciates the opportunity to exchange views with the GAC through the submission of a September 2009 position paper which focused on ensuring harmonized and uniform customs regulations enforcement among different districts and also on GAC's Measures on Classified Management of Enterprises. AmCham-China looks forward to continued dialogue and collaboration with the GAC on

these and other issues.

Specific Issues

Implementation Uniformity, Consistency and Transparency

While there has been significant improvement in the level of transparency and consistency in implementation and enforcement of customs regulations, many customs districts still use differing processes and rules. This variance, often caused by unclear implementation regulations, results in unfair treatment and compliance concerns for businesses operating in different districts. Issues include inconsistent clearance procedures and documentation requirements for various categories of shipments (e.g., *de minimus*) across customs stations and unclear guidance and inconsistent implementation of rules governing tariff classification, valuation, and other customs matters.

Customs Valuation

Customs valuation is a technically challenging matter with complex legal and practical issues for all customs administrations. While the GAC has made significant progress on interpreting and implementing internationally recognized customs valuation rules, many technical legal and practical questions remain to be studied and addressed regarding revenue collection based on a fair and rules-based approach. Examples are related party transactions, royalties and license fees, administrative costs, distribution rights, franchise fees, and warranty costs. AmCham-China encourages the GAC to release more detailed rules on these issues and implement an advanced valuation ruling program consistent with international standards.

Corporate Customs and Trade Compliance Program

The GAC has upgraded its customs and trade compliance program with the implementation of new enterprise classification regulations. The trade community

海关

2009年跨境贸易的下滑给中国海关总署和贸易主管部门带来了极大的挑战，即在维持税收和促进国内经济平衡发展的同时，促进国际贸易的便利化和实施关贸相关的法律法规。

重大进展

中国美国商会对中国海关总署在 2009 年各方面所取得的进展和成果表示赞赏，其中包括：

- 与企业合作开展企业分类、无纸化清关和区域电子口岸一体化工作，以提高守法进口商的通关效率，促进贸易发展；
- 在维持税收的同时，提高透明度和统一性，并确保贸易的持续繁荣；
- 与贸易界携手合作，加大对违禁品知识产权侵权和进口危险废弃物违法行为的执法力度；
- 促进加工贸易货物的内销；
- 针对中国海关总署的机构改革开展调研，以优化职能与职责来促进贸易合规和提高海关效率；
- 与其他国家和地区的海关部门 and 世界海关组织协作，共同促进贸易便利化。

中国美国商会很高兴有机会在 2009 年以提交意见书的方式与中国海关总署建立对话渠道，我们的意见书就确保全国各地区海关执法工作的和谐与统一，以及完善中国海关总署公布的《企业分类管理办法》的相关建议进行了阐述。中国美国商会期待与中国海关总署就上述事宜及其它问题持续开展对话与合作。

具体问题

执法的统一性、连贯性和透明性

尽管在海关法的落实和执法工作中，透明度和一致性水平有了明显提高，然而许多地方海关仍然使用不同的程序和规则。这种细则差别性的实施，导致了在不同地区经营的企业面临不公平的对待和守法问题。存在的具体问题包括：各海关的各类货物装运量（如最低豁免量等）的清关程序和文件要求不一致；对关税分类、估价和其它海关事宜缺乏明确的指导，相关规定的具体执行也不尽一致。

海关估价

海关估价对于所有海关部门而言都是一项在技术上极具挑战性的工作，涉及复杂的法律和实践问题。尽管中国海关总署在阐释和执行国际公认的海关估价规定方面取得了显著进步，但仍有许多涉及公平、合法征税的技术、法律和实践问题需要研究和解决，例如：相关方交易、版税与许可费、管理费用、发行权、特许权使用费及担保费等。中国美国商会希望中国海关总署就这些问题公布更详细的规则，并实施符合国际标准的先进估价程序。

企业海关与贸易合规计划

中国海关总署通过执行新的企业分类规定，更新了其海关与贸易合规计划。贸易界认为，中国海关总署的持续性支持和鼓励对于企业制定海关与贸易合规计划有着十分重要的作用。通过这些努力，行业和政府将得以不断地携手改善海关工作并促进供应链的合规性与便利化。

事后纠错和自愿披露

为了提高合规性，许多企业希望能有更多机会纠正在编制和向海关部门提交文件过程中无意出现的错误。尽管目前

believes that continued support and encouragement from the GAC to establish corporate customs and trade compliance programs is critical for companies to institute such programs. Through these efforts, both industry and government will continue to mutually facilitate improvements in customs and supply chain compliance and facilitation.

Post-entry Correction and Voluntary Disclosure

In an effort to increase compliance, many businesses would appreciate greater opportunities to correct the unintentional errors made in the process of preparing and submitting documentation to customs authorities. While there are mechanisms and rules in place that technically allow businesses to correct such errors, they have often been difficult and cumbersome in practice. AmCham-China encourages the GAC to streamline and clarify the procedures and processes necessary for voluntary disclosure and correction of customs documentation to enhance compliance.

Solicitation of Comments in Rule-making and Policy-making Process

The American business community appreciates the opportunities to comment on draft rules and regulations, including customs and trade related laws and regulations, in an effort to ensure security compliance while also facilitating trade. We look forward to continuing this dialogue and exchange in an effort to promote effective customs and trade regulations, and increase compliance among industry members. To facilitate such exchange, AmCham-China encourages the establishment of an official channel between industry and the GAC to submit and collect comments for review and feedback. Increased exchange will enable the GAC to more effectively achieve its regulatory and security compliance objectives while also ensuring advanced exposure to innovative trade facilitation technology that will help maintain annual revenue.

Custom's Facilitation and Trade Enforcement Reauthorization Act of 2009

The trade community welcomes the introduction of the Customs Facilitation and Trade Enforcement Reauthorization Act of 2009 (S.1631) in the US Senate in August 2009, which re-authorizes customs facilitation and trade enforcement functions and programs. AmCham-China encourages its speedy passage and enactment.

AmCham-China also recommends instituting a regular US-China bilateral dialogue with industry participation on customs facilitation and trade enforcement. Consis-

tent bilateral engagement and collaboration on customs and trade issues is critical to enhancing facilitation and compliance.

Recommendations

For the Chinese Government:

- **Create a formal channel between GAC and the business community through trade associations, such as AmCham-China, to increase transparency, facilitate communication and increase compliance with new customs laws and regulations.**
- Work together with the business community to revise and enact detailed technical rules on customs valuation. Establish an advance valuation ruling program in line with international rules and standards that will protect revenue and also enhance trade efficiency and compliance.
- Provide detailed implementation rules and capacity training for sub-central customs authorities on issues such as tariff classification to facilitate consistent implementation of laws and regulations across different points of entry.
- Encourage businesses engaged in international trade to establish customs and trade compliance processes and programs; publish guidance literature to help businesses comply with these processes.
- Formulate a voluntary disclosure and post-entry correction program that exempts or mitigates the penalties for unintentional documentation errors.

For the US Government:

- **Pass and enact the Customs Facilitation and Trade Enforcement Reauthorization Act of 2009 (S.1631).**

已有的机制和规定允许企业纠正这些错误，但在实践过程中经常会碰到困难，且手续繁琐。中国美国商会期待中国海关总署制定清晰而简明的必要程序，允许自愿披露和纠正报关文件中的错误，以促进企业的合规工作。

在制定规章和政策的过程中征求意见

美国商界很高兴能有机会就各项法律法规的草案（包括与海关和贸易有关的法律法规）发表意见。我们期待继续推进这一对话和交流，以完善海关与贸易法律法规，促进业界成员的合规工作。为了促进交流，中国美国商会建议在行业和中国海关总署之间建立一个征求意见和提供反馈的官方渠道。通过加强交流，中国海关总署将能够更有效地实现监管与安全合规目标，同时确保采用创新的贸易便利化技术，帮助维持年度税收。

2009 年《海关便利化和贸易执法再授权法案》

贸易界对 2009 年 8 月美国国会颁布的 2009 年《海关便利化和贸易执法再授权法案》表示欢迎，该法案对海关便利化和贸易执法的职能与程序进行了再授权。中国美国商会鼓励迅速通过并实施这一法案。

中国美国商会还建议定期就海关便利化和贸易执法开展中美双边对话。两国在海关和贸易问题上的持续性参与和协作，对于促进便利化和改善合规工作具有至关重要的作用。

- 积极鼓励从事国际贸易的企业制定海关和贸易合规程序与计划，并发布指导文件帮助企业遵守这些程序。
- 制定自愿披露和事后纠错程序，消除或减少因文件无意出错而导致的罚款。

对美国政府：

- 通过并实施 2009 年《海关便利化和贸易执法再授权法案》。

建议

对中国政府：

- 通过行业协会（例如中国美国商会）在中国海关总署和商界之间建立一个正式的沟通渠道，以促进交流，协助制定新的海关法律法规，推进业界的合规工作。
- 与商界合作修订和实施详细的海关估价技术性规定。制定符合国际规则和标准的先进估价程序，在保护税收的同时提高贸易效率与合规性。
- 通过为地方海关部门提供具体的实施细则及提供相关能力建设培训，以确保下属海关尽可能保持在法律法规实施中的一致性，如针对关税归类等问题。

Export Controls

US Export Control Reform

AmCham-China commends the US government for making export control reform a priority. Although US export control reform will likely include dual-use and military export controls, AmCham-China is mainly focused on the reform of dual-use exports to China, as exports of US Munitions List items are prohibited to China.

President Obama has identified exports as a driver of jobs and economic recovery. Toward this goal, export control reform is an important path to boost US exports. To meet the objectives of creating jobs and economic growth through exports, the inclusion of China in US dual-use export control reform is critical. China is one of the US's largest and most important trading partners, and excluding China from reform would fail to promote fully US exports and US job creation.

Last year, AmCham-China's Export Compliance Working Group (ECWG) supplied one public and one proprietary response to the US Department of Commerce (US DOC) about the impact of US dual-use export control practices on American's lost commercial export sales and jobs. Export controls result in lost US sales not only through license application denials, but also through loss of repeat purchases and after-sales service contracts. In addition, there are many transactions that are never pursued by US and Chinese companies because of their belief that the export would not be approved or due to their desire not to go through the long and unpredictable licensing process.

Based on a survey of the business community in China, nearly all US sales lost due to export controls were filled by other non-US companies. AmCham-China recommends targeted reviews of the Commerce Control List based on an assessment of Chinese technical capabilities, as well as the availability of that item globally from non-US sources. The ECWG has provided, and continues to provide, market and technical assessments of China to the US government in order to encourage more targeted and relevant controls. In addition, the

ECWG recommends that the US government increase the resources in China available for supporting licensed transactions to help reduce delays and confusion surrounding compliance with US export controls.

US National Security Implications for Export Control Reform

While AmCham-China understands the national security elements and considerations in dual-use export control policy and licensing decisions, it is difficult to reconcile how US national security is enhanced by turning down potential orders that, in the end, are filled by companies from countries that are among the closest allies of the US. In contrast, from a national security perspective, the benefits of allowing US exporters to engage in the dual-use high-tech sector in China are much greater than denying these licenses where the order is only filled by another non-US company. Three such benefits are:

- Decreased risk of diversion through increased compliance measures promoted by the US government and industry;
- Deeper knowledge about the Chinese domestic market through engagement and participation;
- And increased financial strength and health of US companies through increased commercial sales, allowing them to channel more funds into research and development (R&D).

AmCham-China can provide numerous examples where US involvement in exports of dual-use items to China has resulted in the extension of compliance with US and international export control regulations to Chinese importers of US high-tech and strategic goods. AmCham-China's member companies recognize the importance of implementing rigorous compliance measures in both their US and China operations. As a result, the compliance programs of US-based companies are extended to their wholly foreign-owned enterprises and their customers and partners in China. These programs are designed to ensure compliance with US export control laws and regulations regarding adherence

出口管制

美国出口管制改革

中国美国商会赞赏美国政府将出口管制改革纳入其工作重点。尽管美国出口管制改革将可能涉及双重用途和军事产品出口管制两个方面，但由于美国军需品清单中所列出的产品是禁止出口到中国的，所以中国美国商会主要关注的是对华双重用途产品的出口改革。

奥巴马总统已经确定通过出口来带动美国就业增长和经济复苏。为了实现这一目标，出口管制改革成为促进美国出口的重要途径。为了达到通过出口创造就业机会和促进经济增长的目标，将中国纳入美国的双重用途产品出口管制改革范畴至关重要。中国是美国最大、也是最重要的贸易伙伴之一，因此，如果不能将中国纳入此项改革，将无法全面推动美国的出口和就业市场。

去年，中国美国商会出口合规工作组分别在不同场合，就美国双重用途产品出口管制工作对美国商业出口额和就业机会造成的损失向美国商务部做了回应。出口管制直接导致美国出口额的下降，一方面是因为许可证申请遭拒，另一方面是因为重复采购交易和售后服务合同的丢失。此外，对于许多交易，由于他们认为无法获得出口许可，或者不愿办理过程冗长且审批结果难以预知的许可手续，使得中美两国企业都避而远之。

对中国商界的一份调查显示，美国公司因出口管制而丢失的几乎所有出口销售都由其他非美国企业所接替。中国美国商会建议，美国应就清单产品，评估中国国内的技术能力和全球除美国之外的其他供应商的供应能力，从而对商业管制清单开展有针对性的审核。出口合规工作组已经提供并将继续为美国政府提供有关中国的市场和技术评估，以鼓励更多有针对性的相关管制措施。此外，出口合规工作组还建议美国政府增加在华资源，为许可交易提供支持，以帮助减少与美国出口管制合规相关的延误和误解。

出口管制改革对美国国家安全的影响

尽管中国美国商会了解在双重用途产品出口管制政策和审批决策中的对国家安全因素的考虑，但很难说明拒批潜在的订单能在何种程度上增强美国的国家安全，因为这些订单最终都由与美国关系最密切的盟国企业来接替了。相反，从国家安全角度来说，相比拒绝颁发许可证因而使订单落入非美国企业之手，允许美国出口商参与中国的军民两用高科技行业所带来的益处要大许多。这些益处主要体现在三个方面：

- 通过美国政府和行业推行更多合规措施，来降低转用风险；
- 通过积极参与，加深对中国国内市场的了解；
- 以及通过增加商业销售额来增强美国企业的财务实力，从而使他们有更多的资金投入研发工作。

中国美国商会有很多例子，以证明由于美国在对华出口双重用途产品方面的参与，已成功推动从美国进口高科技和战略性产品的中国进口商，能够更好地全面遵守美国和国际出口管制规定。无论是美国业务还是中国业务，中国美国商会的会员企业都已充分认识到严格实施合规措施的重要性。因此，目前美国企业的合规计划普遍涵盖他们的在华全资子公司及客户和合作伙伴，这些计划旨在确保企业符合美国出口管制法律法规中有关遵守审批条件，以及防止向中国军工企业或禁运国销售产品的相关规定。因此，遵守美国和国际出口管制法律和法规已经成为本土企业一种越来越普遍和标准的商业惯例。相形之下，向中国出口敏感的双重用途产品的其他非美国出口商则并不要求、推进或执行同等力度的合规措施。

此外，美国企业可通过与中国企业开展合作，对中国市场、能力以及政策和技术的最新趋势有更深入的了解。通过参与中国高科技行业的发展，美国企业能够更多理解有助于他们做出战略性商业决策的关键信息，从而提升自身的竞争力。同时，此举还有利于美国企业了解有关中国市场的深层次信

to license conditions and prevention of sales to entities involved with the Chinese military or US embargoed countries. Thus, compliance with US and international export control laws and regulations is propagated as an increasingly common and standard business practice among local enterprises. This spread of compliance is not required, incentivized or implemented by other non-US exporters of sensitive dual-use goods to China.

Furthermore, US company engagement with Chinese entities results in a deeper understanding of the Chinese market, capabilities and new trends in policy or technology. US participation in the Chinese high-tech markets makes US companies more competitive by increasing their access to key information that allows them to make strategic business decisions. It also allows US companies to gain the depth of information about the market that can be provided in reports such as those that the ECWG prepares in support of relevant US export control policies.

Lastly, increased funding for R&D is crucial for the US to maintain its global technological lead. Advancements in technology directly relate to greater national security as technological prowess increases both defense capabilities and the ability of the US to project power abroad.

Specific Issues

Importance of Including China in US Export Control Reforms

This year, AmCham-China, through the ECWG, will focus its efforts and activities on promoting export compliance and the business benefits of carrying out effective and verifiable compliance measures. AmCham-China encourages the US government to visit China and participate in these events before enacting meaningful export control reforms. AmCham-China believes that greater understanding of business and compliance practices in China will aid the US government in enhancing US national security, while reducing barriers to legitimate trade in the most dynamic and fastest growing market for US exports.

The US government seeks support and cooperation from the Chinese government and Chinese companies with regard to non-proliferation and anti-terrorism. AmCham-China sees the reform of dual-use export controls as an incentive to obtain the cooperation needed from China on these important issues. Implementation of measures that help streamline the US dual-use export licensing process to actively grow high-technology bilateral trade can be used to demonstrate and showcase the positive technology acquisition results of

fully verifiable transparency and compliance.

China as a Responsible Stakeholder in Export Control Compliance

As the US government carries out its export control system reform, the Chinese government and Chinese companies can also demonstrate their willingness to work as true partners with their US counterparts in eliminating proliferation of dual-use items and terrorist activities. Through the strengthening of China's implementation and enforcement of its own export control laws, the Chinese government can emphasize its commitment to acting as a full stakeholder in the global community. This will require that the State Council allocate greater financial and personnel resources to the Ministry of Commerce and other export control-related entities, but will also encourage equal treatment for China by the US and other nations. This equal treatment may include invitations for China to join the major international non-proliferation and export control regimes, ensure non-discriminatory treatment in the licensing of dual-use goods to China, and increase opportunities for cooperation with foreign companies in commercial technology and product development.

Obtaining the benefits of treatment as an equal and responsible stakeholder in export control compliance will require additional resources for relevant Chinese government agencies to implement fully China's export control laws and regulations, and to conduct outreach to educate Chinese industry about their compliance responsibilities. China's export control laws, regulations and control lists are scattered across various government websites, with limited guidance about how the export license application and review process works. Without easily-accessible information about how to comply, Chinese companies have great difficulty understanding their compliance responsibilities and requirements as exporters.

Chinese government transparency and accountability are necessary elements, but they alone are not sufficient for creating an effective export control system that enhances national security and promotes lawful activities. The Chinese government must create incentives for Chinese companies and exporters to be transparent about their export activities and practice sound internal management controls to avoid unauthorized exports. The ultimate benefit of all of these measures would be increased access for Chinese companies to the most advanced technologies in the world.

息，并提供相关市场报告，正如出口合规工作组为支持美国相关出口管制政策而提供的报告。

最后，增加研发资金对于美国保持其全球技术领先地位发挥至关重要的作用。技术实力可提升美国的国防能力和海外影响力，因此，技术进步与国家安全水平的提高息息相关。

具体问题

将中国纳入美国出口管制改革范畴的重要性

今年，中国美国商会将通过其出口合规工作组，致力于宣传出口合规和执行有效且可证实的合规措施所带来的商业益处。中国美国商会鼓励美国政府在颁布重要出口管制改革措施之前访问中国并参与这些活动。中国美国商会认为，加了解中国的商业惯例和合规行为将有助于美国政府增强美国国家安全，同时减少对这个美国出口最活跃、增长最快的市场中合法贸易的壁垒。

在防止核扩散和反恐领域，美国政府需要中国政府和中国企业的支持与合作。中国美国商会认为双重用途产品出口管制改革是对获得中国在这些重大问题上的合作的一种激励。美国可通过实施有助于简化双重用途产品出口审批程序的措施，来积极发展高科技领域的双边贸易，以证明和彰显可证实的透明度和合规能够带来积极的技术收购成果。

在出口管制合规方面，中国成为负责任的利益相关者

随着美国政府实施出口管制改革，中国政府和企业也会表明其愿意作为真正的合作伙伴，与美国政府和企业通力合作，共同消除双重用途产品和恐怖活动的扩散。通过加大自身的出口管制法律的实施和执法力度，中国政府能够凸显其致力于成为国际社会完全的利益相关者的承诺。这将需要国务院向商务部及其他相关出口管制部门分配更多的财务和人力资源，同时鼓励美国和其他国家给予中国平等待遇。所谓平等待遇可包括邀请中国加入国际重大防止核扩散和出口管制体系；在审批面向中国出口的双重用途产品时，确保给予其非歧视待遇；以及增加与国外企业在商业技术和产品开发方面的合作机会。

若希望在出口管制合规方面成为平等、负责任的利益相关者，中国相关政府机构需要投入更多资源，来全面实施中国有关出口管制方面的法律和法规，加大对相关行业的教育广度和力度，让他们充分了解自己的合规责任。中国有关出

口管制方面的法律、法规和管制清单分散在不同的政府网站上，有关出口许可证申请和审核程序步骤的指导性内容也很有限。如果没有方便获取的相关合规信息，中国企业就很难了解作为出口商他们需要承担的合规责任和需要遵守的要求。

虽然中国政府的透明度和责任感是必要的因素，但仅有这两个因素还不足以建立一个能够增进国家安全和促进合法活动的有效出口管制体系。中国政府必须鼓励中国企业和出口商提升其出口活动的透明度并落实合理的内部管措施，以防止非法出口。所有这些措施带来的最终益处是，中国企业将能够获得更多世界上最先进的技术。

建议

对美国政府：

- 根据中国国内的实际技术能力和除美国之外的其他供应商的供应能力，对管制清单进行审核。
- 在中美高科技工作小组的框架内，共同开发试点项目，在两个或更多具体的行业领域推进高科技贸易和合规工作。
- 美国政府中负责双重用途产品出口管制的部门和防止核扩散的部门之间加强协调和合作，制定共同的战略，与中国政府共同解决这两方面的问题。
- 简化许可证审批程序，提高透明度和效率。
- 对采用高质量、透明、有效的合规计划的中国本土企业和外商投资企业进行奖励。
- 增加美国商务部产业安全局在中国的资源，以加快许可证审批速度，最大程度地减少目前存在的有关出口许可证申请的不确定性。

对中国政府：

- 加大对各行各业的教育广度和力度，使其充分了解出口管制合规责任和要求。
- 投入更多的财力和人力资源，支持负责制定、实施和执行中国出口管制法律和法规的相关政府部门的工作。
- 加大中国出口管制法律法规的执法力度。
- 增强参与出口管制工作的中国政府机构的透明度和责任感。
- 推动中国政府积极加入所有的国际出口管制体系，包括瓦森纳协定。

Recommendations

For the US Government:

- **Review lists of controlled items in light of actual technical capabilities in China and what is readily available in China from non-US sources.**
- Work within the US-China High-Technology Working Group to jointly develop pilot projects to promote high-technology trade and compliance in two or more specific industry sectors.
- Increase coordination between the US government agencies responsible for dual-use export controls and non-proliferation so that a strategy can be adopted that addresses both topics with the Chinese government simultaneously.
- Streamline license process review procedures to make them more transparent and efficient.
- Reward Chinese entities, whether domestic or foreign invested, for adopting high quality, transparent and robust compliance programs.
- Increase US DOC Bureau of Industry and Security's resources in China to increase the speed at which license applications are reviewed and minimize the uncertainty that currently surrounds export license applications.

For the Chinese Government:

- **Increase outreach to Chinese industry to increase education pertaining to export control compliance and requirements.**
- Increase financial and personnel resources assigned to government bodies involved in the development, implementation and enforcement of China's export control laws and regulations.
- Broaden enforcement of China's export controls.
- Increase transparency and accountability of the Chinese government bodies involved in export controls.
- Promote active engagement by the Chinese government with all international export control regimes, including the Wassenaar Arrangement.



Food and Product Quality and Safety and Dietary Supplements

The quality and safety of food and products produced in China remain high-profile issues worldwide (Figure 13). Concerns about food and product safety continue to erode confidence in the “Made in China” label, both internationally and within China. Safety and quality issues are not confined to China, but China receives great scrutiny as the world’s largest exporter. Several high-profile problems have revealed public disclosure and regulatory response problems. AmCham-China is pleased that a number of steps have improved the framework for ensuring safety and quality over the last year, but many challenges remain.

The level of food and product quality and safety is an important benchmark in economic development and standard of living. The US and Chinese governments, as well as companies and consumers, all have large stakes in the safety of Chinese foodstuffs and products. The two countries must continue to cooperate to improve the overall situation.

Significant Developments

Both the Chinese and the US governments have taken significant steps in the past year to bolster food and product safety protection. The US Government in the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2010 (Pub. L. 111-80) removed the regulatory impediment to the inspection of Chinese facilities that barred the import of cooked poultry from China.

In February 2009, the National People’s Congress passed the long-awaited Food Safety Law (FSL) that imposes uniform nationwide standards, provides for greater inspection and supervision, and increases penalties and fines for violations. Although official implementation guidelines have yet to be released, formal passage of the law is a positive step. The State Council in February 2010 established the Food Safety Commission to coordinate food safety efforts across the government. The State Council’s continuing efforts to increase coordination among the numerous agencies and bureaus responsible for food and product quality

and safety is a sign of China’s high-level commitment to reform enforcement and standards, although many proposals have not yet been fully implemented.

Specific Issues

Food Safety Law

AmCham-China commends the Chinese government for taking proactive measures to address food and product safety concerns. We encourage the relevant ministries to collaborate with industry on the implementation of and future revisions to the FSL to ensure effectiveness and compliance. Without clear implementation procedures, however, many processors in China are either unaware of the FSL’s impact on their operations or are not following the new law due to lax enforcement.

Accordingly, AmCham-China strongly urges the Chinese government to provide sufficient training and resources to the relevant departments and institutions to ensure consistent implementation and enforcement of the FSL. To better engage and share our expertise and experience in food safety, AmCham-China would embrace the opportunity for increased contact and collaboration with members of the National Food Standards Experts Committee and the National Food Safety Risk Assessment Expert Committee. Also, making public committee members’ names and professional affiliations would be a positive step.

AmCham-China also urges the government to recognize the importance of providing basic behavior-based food safety training to small and medium-sized food enterprises. There are more than 400,000 such enterprises integrated throughout the Chinese food supply chain. AmCham-China commends the partnerships the food industry and Chinese universities are exploring to deliver such training to help reduce the risks in the supply chain.

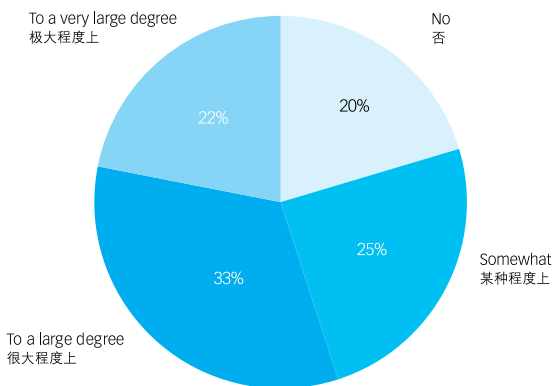
食品 and 产品质量与安全及膳食补充剂

中国生产的食品 and 产品的质量与安全问题是全球高度关注的问题（图 13）。无论国际还是国内，对食品 and 产品安全问题的担心继续影响着人们对“中国制造”的信心。虽然安全 and 质量问题并非中国独有，但由于中国是世界最大的出口国，从而其产品问题受到国际社会的广泛关注。其中几个备受关注的问题显示了其在公开披露及监管回应方面的不足。中国美国商会很高兴看到，在过去一年中，中国政府采取的许多措施已使产品安全 and 质量保障机制大为改观，不过挑战依然存在。

Is your company paying more attention to the product quality and safety issues of goods manufactured in China?

企业是否越来越关注在华制造产品的质量与安全问题

Company sample size = 260
公司样本规模



Source: 2010 AmCham-China Business Climate Survey
资料来源：2010年中国美国商会营商环境调查

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食品 and 产品的质量与安全水平是衡量经济发展和人民生活水平的重要基准。中国食品 and 产品安全与中美两国政府、两国企业及其消费者息息相关。两国需继续合作以改善食品及产品安全的整体状况。

重大进展

过去一年来，中美两国政府都采取了重要措施，以加大食品 and 产品安全的保护力度。美国政府在《2010 年农业、农村发展、食品药品管理以及相关机构拨款法案》(P. L. 111-80) 中取消了对中国设施检查的监管障碍，从而允许从中国进口禽类熟食产品。

2009 年 2 月，在全国人民代表大会上，中国通过了众盼已久的《食品安全法》。该法提出实施全国统一标准，加强有关部门的检查与监管，并加大对违法行为的处罚力度。尽管正式的实施条例还未公布，但《食品安全法》的正式通过表明中国在此方面已迈出了积极的一步。2010 年 2 月，国务院建立了食品安全委员会，负责协调政府的食品安全工作。尽管许多提议未能得到全面落实，但国务院为加强食品 and 产品质量安全主管机构和部门间的协调与合作做出了持续、大量的努力，表明了中国高层对于改革该领域执法和标准的决心。

具体问题

食品安全法

中国美国商会赞赏中国政府为解决食品 and 产品安全问题所采取的积极措施。我们鼓励相关部委与业界就《食品安全法》的实施和未来修订工作进行通力合作，并确保其有效实施。然而，若没有明确的实施程序，中国的许多食品加工企业或许对《食品安全法》对其运营的影响认识不足，或因为执法不严而不遵守这一新法。

因此，中国美国商会诚挚希望中国政府向有关部门及协会提供充分的培训和资源，以确保《食品安全法》实施和执行的一致性。为更好地利用并分享食品安全方面的专业知识和经验，中国美国商会希望有机会能够加强与食品安全国家

Draft Regulations on Administration of Recalling Defective Products

AmCham-China fully supports Chinese government efforts to establish a more uniform system of product recalls by standardizing and unifying product quality administration activities based on risk assessments and elevating product quality laws from ministerial rules and local laws to the level of state regulations.

We appreciated the opportunity to comment on the Draft Regulations on Administration of Recalling Defective Products (Draft Regulations) in May 2009 and look forward to being able to further support the important work of the State Council Legislative Affairs Office (SCLAO) in this area.

As noted in our submission, we encourage the SCLAO to clarify whether the Draft Regulations will be applicable to products which are to be exported from China to foreign countries, but are not otherwise marketed to consumers or end-users in China. AmCham-China proposes excluding products which are manufactured in China solely for export to foreign countries. Additionally, we recommend clarifying the definition of “recall” by making explicit that the remedial measures should be proportionate to the risk identified. Furthermore, to improve the coordination and efficiency of recalls, we urge AQSIQ to establish a centralized recall authority to handle all matters related to product recalls, where appropriate. Recalls should be coordinated with other agencies and other laws, such as the Consumer Protection Law. Lastly, in view of the large number of non-state standards, including industry standards and local standards, AmCham-China recommends that recalls be limited to state standards affecting public health and safety that pose a risk to public health and safety.

US-China Dialogue and Cooperation

AmCham-China commends the increased cooperation between China and the US on food and product safety issues. This was expressed during the opening of the first overseas US Food and Drug Administration (US FDA) office in Beijing in November 2008, with posts also open in Shanghai and Guangzhou, as well as the opening of the first US Consumer Product Safety Commission (CPSC) office in Beijing.

The new offices will increase coordination and collaboration between US and Chinese authorities, accelerate efforts to protect consumer health in both countries, and work with Chinese industries to better inform them of US FDA and CPSC standards.

In addition, the US and Chinese governments continue

to engage on the product and food safety issue through both the Strategic and Economic Dialogue and the US-China Joint Commission on Commerce and Trade meetings. We also applaud the successful completion of the Third US-China Consumer Product Safety Summit in China in October 2009 between the CPSC and China's General Administration of Quality Supervision, Inspection and Quarantine. Both organizations reaffirmed the importance of cooperation in ensuring consumer product safety.

Constructive engagement between governments remains a very effective method of improving food and product safety, and the US business community applauds the Chinese government for its openness in engaging constructively. We strongly urge the Obama administration to continue high-level economic dialogues that promote such issues as food and product safety.

Regulatory Environment

Food and product safety is regulated by a large number of agencies on the national, provincial and local levels. Although the cabinet-level taskforce assembled in 2007 to address the issue sought to improve coordination across agencies and provinces, capacity and resources remain major constraints.

Across China, there are still many instances of producers failing to comply fully with regulatory requirements. Examples of practices currently employed by food processors include blending expired product with product that still meets code and re-labeling the blend as current year production; using non-food grade chemicals to make food products; improper monitoring or management of pesticides and fertilizers; and not labeling product sold to traders or other re-processors, thus reducing traceability and quality control.

AmCham-China encourages Chinese regulatory agencies to increase industry compliance education and ensure consistent enforcement of existing regulations across agencies at all levels of government. Ensuring adequate resources for the full implementation and enforcement of existing safety standards would benefit companies in China by improving confidence in the “Made in China” brand while also ensuring product safety for consumers.

Supply Chain Management

US companies can positively impact the long-term safety of Chinese food and other products by bringing best practices and international standards to their Chinese operations. Tellingly, the AmCham-China 2010 *Business Climate Survey* indicates that among members paying

标准评审委员会和全国食品安全风险评估专家委员会成员的沟通与合作。同时，公开委员会成员名单及其专业隶属将是一项积极的举措。

中国美国商会同时呼吁政府充分认识向中小食品企业提供基于行为基本规范的食品安全培训的重要性。在中国的整个食品供应链上，有超过 400,000 家中小型企业。目前，食品行业和中国大学院校之间正在探索建立合作伙伴关系来提供这一类型的培训服务，帮助减少食品供应链上存在的风险，对此中国美国商会表示赞赏。

《缺陷产品召回管理条例》（送审稿）

中国美国商会全力支持中国政府为建立更加统一的产品召回体系而做出的努力，如规范和统一基于风险评估的产品质量管理活动，并将产品质量法律从部门规章和地方法规上升为国家法规和条例。

我们对有机会就 2009 年 5 月的《缺陷产品召回管理条例》送审稿参与意见表示感谢，并期望更多支持国务院法制办公室（法制办）在该领域的重要工作。

如我们在提交的建议中所述，我们鼓励国务院法制办阐明草案是否适用于中国出口到外国、而不另行销售给中国消费者或最终用户的产品。中国美国商会建议该规定中不应包括在中国制造且仅向外国出口的产品。另外，我们建议澄清“召回”的定义，明确说明救济措施应与所确认的风险成比例。此外，为提高召回的协调性及效率，我们促请国家质检总局在适当的情况下建立一个集中的召回部门，以处理所有与产品召回有关的事项。召回应与其它机构和其它法律，比如《消费者权益保护法》协调一致。最后，由于存在大量的非国家标准，包括行业和地方标准，中国美国商会建议应将召回制度限定于对公共卫生和安全产生影响并造成风险的国家。

中美对话与合作

中国美国商会赞赏中美两国之间在食品和食品安全问题方面不断增强的合作。2008 年 11 月美国食品及药物管理局在北京设立首个海外办事处，并随后分别在上海和广州设立办事处，美国消费品安全委员会也在北京设立了首个产品安全办事处，中国美国商会在这些办事处的成立仪式上都曾经表述过同样的赞赏之意。

这些办事处的设立将增进中美两国机构间的协调合作，

推进两国为保护消费者健康所做的努力。它们将加强同中国业界的合作，以更好地了解业界了解美国 FDA 和 CPSC 标准。

另外，中美两国政府继续通过战略与经济对话以及美中商贸联合委员会会议商讨产品和食品安全问题。我们同时对美国消费品安全委员会和中国国家质量监督检验检疫总局 2009 年 10 月在中国成功举行第三届中美消费品安全峰会表示赞赏。两大机构重申了为确保消费品安全进行合作的重要性。

两国政府间的建设性交流仍然是提高食品和食品安全的一个非常行之有效的方法，美国商界对中国政府在建设性交流中的开放态度表示赞赏。我们强烈呼吁奥巴马政府继续进行高层经济对话，以促进诸如食品和食品安全等问题的解决。

监管环境

食品和食品安全受国家、省及地方层面、众多机构的多头监管。虽然为解决这一问题，国务院于 2007 年成立了产品质量和食品安全领导小组，旨在加强各部委、省市和地方之间的协调工作，但是由于人力和资源不足，制约了其工作的开展。

在中国，仍然有许多生产者不能完全遵守监管要求。例如，目前食品加工企业的普遍做法包括：将过期产品混入符合质量规范的产品中，并在混合后的产品上重新贴上本年度出产的标签；将非食品级化学品用于制造食品；对杀虫剂和化肥的监测或管理不当；对出售给贸易商或者其它二次加工商的产品不提供产品标签，从而降低了产品的可追溯性和质量控制。

中国美国商会鼓励中国监管机构加强对行业合规要求的教育，并确保政府各级机构统一执行现有的法规条例。通过配置足够的执法资源，以确保现有安全标准得到全面实施和执行，在确保消费者产品安全的同时提升公众对“中国制造”品牌的信心，令广大中国企业全面受益。

供应链管理

通过向其在华业务引入最佳惯例和国际标准，美国企业能够为中国食品和其它产品的长期安全带来积极影响。据中国美国商会 2010 年商务环境调查显示，绝大多数对中国制造商品比较关注的会员企业越来越注重供应链管理（图 14）。企业必须确保积极参与供应链管理以保证产品质量。

more attention to China-made goods, the majority of them are increasing focus on supply chain management (Figure 14). Companies must ensure that they are fully engaged with their supply chain to ensure quality. US manufacturers should adopt risk management or mitigation approaches to reduce or eliminate risks in their supply chain.

Intellectual Property Rights Enforcement

Counterfeit products pose a significant challenge to improving China's product safety regime. Counterfeit drugs and medical devices, in particular, pose serious health threats to consumers, both in China and globally. Enforcement of intellectual property rights must be an important component of China's product quality protection efforts.

Recommendations for Food and Product Quality and Safety

For the Chinese Government:

- **Issue remaining implementation regulations for the FSL and increase consistent enforcement and compliance through capacity-building and allocation of sufficient resources to relevant agencies at all levels of government.**
- Clarify the scope and timeline for implementation of the Draft Regulations on Administration of Recalling Defective Products (Draft Regulations), as well as the role of various agencies in China's product recall regime.
- Ensure consistent enforcement and compliance of the Draft Regulations through encouraging transparency, capacity-building and allocation of sufficient resources to relevant agencies at all levels of government.
- Continue efforts to inform and educate regulators, manufacturers and producers about international standards and market requirements in the US.
- Make public the names and professional affiliations of experts sitting on relevant committees.
- Adopt international standards for food and product quality and safety, and implement verifiable testing processes.
- Ensure that a science-based approach is used to address food and product safety concerns.
- Promote the development of world-class supply chain management practices and encourage investment in a logistics network to sup-

port food and product safety, including cold chain logistics.

For the US Government:

- **Increase opportunities for public-private cooperation and collaboration to promote sharing of best practices and improvements to the quality of the supply chain.**
- Continue to engage at a high level with China on product safety through economic dialogues.
- Continue to support the US FDA and CPSC's missions in China and provide expanded resources to them.

Dietary Supplements

China holds great potential as a market for dietary supplements due to its continued economic growth, expanding consumer base, government healthcare reform and consumers' increasing awareness of these important products. However, significant barriers prevent not only US manufacturers from entering the market, but also stifle the potential of China's dietary supplement industry. Specific issues that need to be addressed are the State Food and Drug Administration's (SFDA) registration system, potency restrictions on ingredients and functional claims. As of early 2010, new dietary supplement regulations were still in the process of being drafted by the State Council together with the assistance of SFDA and a collection of industry experts. The final draft and its implementation regulations are expected to be issued in early 2010. AmCham-China applauds the government's efforts to develop and reform the system and encourages continued work toward creating more openness and transparency.

Specific Issues

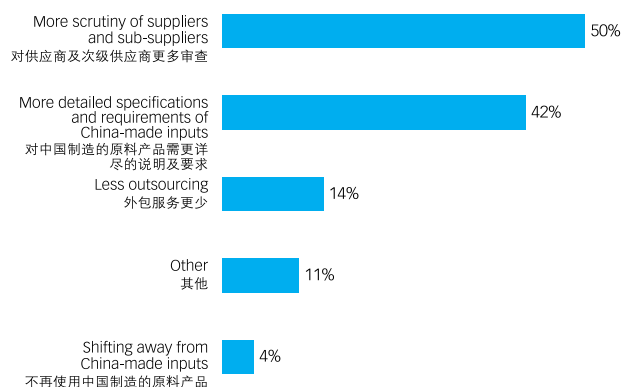
SFDA Registration System

Prior to market entry, manufacturers must register dietary supplements with SFDA through a process that requires enormous investment of both time and money. A typical registration takes two to four years to complete and costs between US \$30,000 (RMB 204,000) and \$200,000 (RMB 1.4 million) depending on the product's ingredients and claims. However, if an ingredient is new to the market, it can take as long as five years and cost up to US \$500,000 (RMB 3.4 million) to complete the registration process. Animal and human trials are required, which are redundant and create unnecessary barriers for companies that oppose animal testing.

If your company is paying more attention to China-made goods, in what areas are you focusing? (Respondents allowed to choose as many as apply)

如果企业正越来越多地关注在中国制造的产品，哪些领域是其关注重点。

Company sample size = 206
公司样本规模



Source: 2010 AmCham-China Business Climate Survey
资料来源：2010年中国美国商会营商环境调查

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美国制造企业应当采取风险管理或风险缓解方法以减少或者消除其供应链中存在的风险。

知识产权执法

假冒产品对中国产品安全体制的进步构成了重大挑战。尤其是假冒药品和医疗器械对中国及全球消费者的健康都构成了严重威胁。知识产权的保护和执法工作必须成为中国产品质量保护工作的一项重要内容。

有关食品 and 产品质量和安全的建议

对中国政府

- 出台《食品安全法》实施条例，加强政府各级相关部门的能力建设和资源配置，促进统一的执法及企业的合规工作。
- 阐明《缺陷产品召回管理条例》（送审稿）实施的范围、期限以及中国各类机构在产品召回制度中的作用。
- 通过鼓励政府各级相关部门提高透明度、加强能力建设以及增加资源配置，确保条例的统一执行和合规工作。
- 继续努力向监管部门、制造商和生产厂家推广介绍相关国际标准和美国市场的要求。

- 公开相关委员会专家的名单和其专业隶属。
- 采取食品 and 产品质量和安全的国际标准，执行可认证的检测程序。
- 确保采用基于科学的方法来应对食品 and 产品安全问题。
- 促进引入世界一流的供应链管理实践和鼓励物流网络的投资，以支持食品 and 产品安全，包括冷链物流。

对美国政府

- 增加政府与企业的合作机会，以促进分享最佳实践经验和改善供应链质量。
- 继续通过经济对话就产品安全问题与中国保持高层交流。
- 继续支持美国食品及药物管理局和美国消费品安全委员会在中国的发展宗旨，并向其提供更多的资源。

膳食补充剂

中国的膳食补充剂市场拥有巨大的潜力，主要原因来自：中国经济的持续增长，消费者群体的不断壮大，政府推行的医疗改革，以及消费者对于膳食补充剂的意识日益增强。然而，存在的一些主要问题，不仅阻碍了美国制造商进入中国市场，而且抑制了中国膳食补充剂行业的潜力。亟待解决的具体问题包括中国国家食品药品监督管理局的注册制度以及对于成分和功效说明的限制。截至2010年初，新的膳食补充剂法规仍在起草过程中，起草工作由国务院负责，由国家食品药品监督管理局和部分行业专家提供协助。最终草案及其实施条例有望在2010年初发布。中国美国商会对政府为发展和改革上述体制所做的努力表示赞赏，并鼓励继续努力以创建更加公开、透明的体制。

具体问题

国家食品药品监督管理局的注册制度

进入市场前，各制造商必须首先向国家食品药品监督管理局注册膳食补充剂。但这一程序需投入时间和资金。一般的注册过程通常需要二到四年才能完成，费用在三万美金（约

The development of the industry would benefit from a regulatory shift toward a system of notification that recognizes dietary supplement ingredients as safe on an individual basis, as well as when mixed together in a finished product. Although the current regulations do recognize a handful of ingredients, they do not recognize finished products containing mixtures of ingredients as safe unless the product in question completes SFDA's lengthy and expensive registration process.

However, many of the ingredients and finished products under scrutiny have been used in the US for decades and maintain a high level of safety. The US FDA implements mandatory adverse event reporting for dietary supplements, which provides information used to enhance the safety of dietary supplements.

The current registration system discourages companies from introducing new products. Waiting two to four years and spending US \$30,000 to \$200,000 (RMB 204,000 to 1.4 million) for a registration is unnecessarily burdensome to business development and leaves consumers with a sparse and somewhat antiquated selection of products. The disparity of products available to Chinese consumers compared to those in the US reflects this. For example, the US market offers approximately 60,000 individual products compared to roughly 4,000 in China.

AmCham-China supports and understands the importance of consumer protection. Thus, we understand that switching to a notification system is only appropriate and acceptable when there are matching controls over manufacturers. Europe and the US, which utilize the proposed notification system, currently require all manufacturers of dietary supplements to obtain and maintain a GMP license to provide necessary safety control measures for consumers. SFDA has already indicated that they are heading towards GMP license requirements in the future. AmCham-China supports this move and looks forward to working with SFDA on implementing a simplified product registration process.

Potency Levels

SFDA has potency-level restrictions that do not always coincide with current research. For example, the latest research from the National Academy of Science's Institute of Medicine indicates that pregnant women should supplement their daily diets with the following substances to meet their increased nutritional needs: calcium (Ca) 1300mg, iron (Fe) 25mg and folic acid (acidum folicum) 600mcg.

However, SFDA's Regulations for Application and Evaluation of Nutritional Supplements subsection IV

states, "Supplements should be reduced by 1/3 to 2/3 of the recommended dosage for pregnant women." Per SFDA regulations on daily intakes, calcium would be reduced by 50 percent, iron by 48 percent and folic acid by 44 percent.

With potency limitations in place, there is no room for the industry to adjust potencies to match current research. Furthermore, using the previous example, calcium, iron and folic acid taken below the recommended levels will not promote optimal health for pregnant women or their babies. In addition, limitations become a trade barrier to US companies that have time-tested, scientifically based products that have been used for decades, but are not allowed to enter China due to potency issues.

Conclusion

If the regulatory system shifts to a system of notification, the benefits to government, industry and consumers will be substantial. One such benefit would be savings in healthcare expenditures. Similarly, if dietary supplements become more readily available in potencies that reflect the latest in scientific and nutritional research, dietary supplements will complement these efforts by promoting health and lifestyle changes for Chinese consumers.

China's dietary supplement industry has great potential and growing numbers of consumers. Regulatory reform will expand China's dietary supplement market, benefiting both domestic and US enterprises, and most importantly, Chinese consumers. Furthermore, supporting industry expansion will create jobs, generate more tax revenue and support existing Chinese industries such as retail, shipping, distribution, and research and development.

Recommendations for Dietary Supplements

- **Replace SFDA's product registration process with a notification system.**
- Increase the transparency of the approval process and base dietary supplement approvals on ingredients, rather than products.
- Overhaul dietary supplement ingredient potency restrictions, or at a minimum, alter the restrictions so they are utilized as recommendations that serve as guidelines. We urge that the recommendations be made more flexible to coincide with the latest in nutritional science recommendations.

20.4 万元人民币) 到二十万美元 (约 140 万元人民币) 之间, 其差别主要取决于产品的成分和功效说明。然而, 如果是新上市的成分, 则需要花费长达五年的时间和高达五十万美元 (340 万元人民币) 的资金才能完成注册过程。此外还需要进行动物及人体试验, 但这一要求不但冗余, 尤其给反对动物试验的公司造成了不必要的负担。

如果把监管制度改为公示制度, 这将有利于该行业的发展, 因为公示制度认可食品补充剂成分无论单独存在还是混入到成品中都是安全的。虽然现行条例认可一部分成分, 但并不认可含有成分混合物的成品同样安全, 除非这种有疑问的产品完成了国家食品药品监督管理局所要求的冗长且昂贵的注册过程。

然而, 一些受到审查的成分和成品中有许多在美国已经使用了几十年、并且保持着很高的安全性。美国食品及药物管理局对膳食补充剂实行不良事件强制报告制度, 提供的信息可用于改进膳食补充剂的安全。

现行注册制度影响了公司新产品的引进。等待二到四年、花费三至二十万美元 (20.4 万元人民币到 140 万人民币) 进行注册给企业发展带来了不必要且繁重的负担, 同时导致可供消费者选择的产品少之又少且品种陈旧。这一点可以从中国和美国消费者可选择的产品品种数量的巨大差异中窥见一斑。比如, 美国市场提供大约 60,000 种产品, 而在中国只有约 4,000 种。

中国美国商会支持并理解保护消费者的重要性。我们理解, 只有对制造商实施相应的管控措施, 将监管制度改为公示制度才是适当的、可执行的。在采用公示制度的欧洲和美国等地, 目前要求所有膳食补充剂制造商取得并保持生产质量管理规范认证, 以便为消费者提供必要的安全控制措施。国家食品药品监督管理局已经表示将来要按照 GMP 认证要求的方向发展。中国美国商会支持这一举措并期待与国家食品药品监督管理局合作, 以简化产品注册过程。

功效水平

国家食品药品监督管理局对膳食补充剂的功效水平限制有时并不符合最新的研究结果。例如, 来自美国国家科学院医学研究院的最新研究表明, 孕妇应该在日常饮食之外补充下列物质以满足额外的营养需要: 钙 1300mg, 铁 25mg 和叶酸 600mg。

然而, 国家食品药品监督管理局颁布的《营养素补充剂申报与审评规定》第三条第 (四) 款中规定: “孕妇的每日摄入量应当控制在营养素推荐摄入量的 1/3 ~ 2/3 水平”。根据国家食品药品监督管理局对每日摄入量的规定, 钙应该减少 50%, 铁减少 48%, 叶酸减少 44%。

由于存在类似功效限制, 膳食补充剂行业难以根据当前的研究成果调整功效水平。此外, 就上述例子而言, 若实际摄取的钙、铁和叶酸低于推荐水平, 对于孕妇及其婴儿的健康都不是最有利的。另外对美国公司而言, 这些限制可能形成贸易壁垒, 即使它们的产品经受了时间检验及科学证明、且已经使用了数十年, 但由于功效限制仍无法进入中国。

结论

如果将监管制度改为公示制度, 将对政府、行业 and 消费者带来实质性的好处。其中之一便是节省医疗开支。同样, 如果膳食补充剂更加易于获得, 而且其功效能反应最新的科学和营养研究成果, 就能够为促进中国消费者的健康及生活方式的改变发挥更大作用。

中国的膳食补充剂行业拥有巨大的发展潜力和不断增长的消费者。监管改革将有助于发展中国的膳食补充剂市场, 使中美两国企业共同受益, 并最终令中国消费者受益。此外, 行业扩张将带来更多的就业机会, 产生更多的税收, 并给中国现有的行业如零售、航运、配送及研发等带来发展动力。

对膳食补充剂的建议

- 用公示制度取代国家食品药品监督管理局的产品注册过程。
- 提高审批过程的透明度, 并且以成分而非产品作为膳食补充剂批准的依据。
- 全面改革膳食补充剂成分和功效限制规定, 或至少对限制规定加以修改, 将其改为指导性的推荐。同时法规中的推荐内容应更加灵活、符合最新的营养科学建议。

Government Procurement

Introduction

China's large government procurement market continued to expand in 2008 and 2009, driven by the RMB four trillion (US \$584 billion) economic stimulus package and other financial crisis-related initiatives. Figures from the Ministry of Finance (MOF) indicate that China purchased at least RMB 599 billion (US \$88 billion) of goods and services in 2008, an increase of RMB 133 billion (US \$19 billion) over 2007 and more than triple the amount in 2003. In total, procurement accounted for 9.6 percent of fiscal expenditures and two percent of total GDP in 2008. However, these figures actually underestimate the size of the market because sub-central level public investment in infrastructure projects is not included.

China's government procurement market will continue growing as additional infrastructure projects come on line, including the building of highways, railroads and community health care facilities. American businesses, many of which source and produce goods in China for the Chinese market, can materially contribute to meet many of China's government procurement needs. AmCham-China encourages strengthened commitments to the fundamental principles of open markets, national treatment and non-discrimination by both the US and China.

China participates in global supply chains, with foreign-invested enterprises (FIE) contributing significantly as providers of goods and services, employers, and taxpayers. Therefore, preference favoring "domestic products" or "indigenous innovative products" are difficult to define and administer, and are counterproductive and inefficient. Protectionist policies will have an adverse affect on both employment and growth, and thus slow the global economic recovery.

Significant Developments

In 2008, China agreed to submit a revised offer to accede to the WTO Agreement on Government Procurement (GPA) "as soon as possible." In early October

2009, China submitted a report (the Report) to the WTO Committee on Government Procurement "on the progress of its accession negotiations." Unfortunately, the Report primarily provides China's rationale as to why it cannot meet the expectations of the current GPA Parties to provide a more meaningful offer. It did note that China intends to expand its list of covered central government entities and their "subordinate entities" (and "substantially lower the threshold levels" for this list), but only for those entities that are subject to China's Government Procurement Law.

At the US-China Joint Commission on Commerce and Trade (JCCT) meeting in October 2009, however, China stated that a revised offer would be submitted "as early as possible in 2010." AmCham-China welcomes this commitment to a timeframe.

At that JCCT meeting, China and the US agreed to establish a "multi-agency working group" that will meet regularly to discuss government procurement issues, including those related to purchases by state-owned enterprises (SOE) and "private parties that make purchases in accordance with national strategic objectives."

In September 2009, China made public the draft implementation regulations of the Tendering and Bidding Law and welcomed comments from US companies regarding these regulations. However, despite the opportunity to comment, foreign entities are nevertheless still prohibited from bidding on procurements by entities subject to this law. Furthermore the law permits a less transparent and disciplined bidding process, which is inconsistent with the Government Procurement Law.

In 2009, China confirmed on several occasions that it would treat foreign-invested Chinese enterprises the same as domestic Chinese enterprises for goods manufactured in China when it comes to government procurement. It also agreed to "issue rules in this regard." Unfortunately, it appears such treatment extends only to procurement entities subject to the Government Procurement Law, and not the Tendering and Bidding Law.

政府采购

综述

在过去的两年，得以四万亿元人民币（约 5840 亿美元）经济刺激计划以及其他金融危机应对举措的推动，中国规模庞大的政府采购市场持续扩大。

财政部数据显示，中国政府 2008 年商品与服务的采购规模至少达 5990 亿元人民币（约 880 亿美元），较 2007 年增长 1330 亿元人民币（约 190 亿美元），与 2003 年相比增长了两倍以上。总体而言，2008 年，政府采购金额在财政支出中的占比为 9.6%，约为国内生产总值的 2%。但由于各级地方政府对基础设施项目的投资并未计算在内，这些数据实际上低估了政府采购市场的规模。

随着其他基础设施项目的不断落实，包括公路、铁路和社区医疗保健服务设施的建设，中国的政府采购市场无疑将继续扩大。许多美国企业在中国采购原材料，并生产货品供应中国国内市场，他们在为满足中国政府采购市场需求的过程中发挥着积极的作用。中国美国商会敦请中美两国进一步加强对开放市场、国民待遇和无歧视等基本原则承诺的履行。

中国经济的多个层面已融于全球产业链和供应链，而在中国境内的外商投资企业作为商品和服务供应商、就业机会的创造者和纳税人为此做出了重大贡献。因此，有关“本国货物”或“自主创新产品”的倾向性政策既难以界定和管理，又缺乏效率，甚至可能会阻碍生产力的发展。贸易保护主义政策会负面影响就业市场和经济增长，进而抑制全球经济的复苏。

重大进展

2008 年，中国同意“尽快”向世界贸易组织提交加入《政府采购协定》修改后的出价清单。2009 年 10 月初，中国向 WTO 政府采购委员会提交了一份有关“中国加入 GPA 谈判进展情况”的报告（以下简称《报告》）。遗憾的是，《报告》的着重点在于说明中国无法根据现有 GPA 成员国的期望提

供更具实质意义的出价清单的理由。我们的确注意到，中国拟扩大出价清单所涵盖的中央政府实体及其“下级实体”范围（并为此清单“实质性地降低门槛”）的意图，但其也仅限于中国《政府采购法》的适用实体。

然而，在 2009 年 10 月举行的美中商贸联合委员会会议上，中国表示将“在 2010 年尽早”提交修改后的出价清单。中国美国商会对这一承诺表示欢迎。

在美中商贸联合委员会会议上，中美两国同意组建一个“多部门工作小组”，该工作小组将定期举行会议讨论政府采购问题，包括与国有企业采购以及“根据国家战略目标进行的私有机构采购”相关的问题。

2009 年 9 月，中国公布了《招标投标法实施条例》草案，并欢迎美国企业就这些规定提出意见建议。尽管有机会就此发表意见建议，但中国依然禁止外资企业参与由《招标投标法》适用实体组织实施的采购项目的投标活动。此外，《招标投标法》允许透明程度和规范程度更低的投标程序，不能与《政府采购法》保持一致。

2009 年，中国曾多次重申在政府采购问题上，在华的外商投资企业和国内企业享受同等待遇。中国还同意“出台相关规定”。但遗憾的是，这一待遇的涵盖范围似乎只是《政府采购法》（而不是《招标投标法》）规定范围内的采购实体。

同样在 2009 年，中国科学技术部（以下简称“科技部”）、国家发展和改革委员会（以下简称“国家发改委”）及财政部发布《关于开展 2009 年国家自主创新产品认定工作的通知》和《2009 年度国家自主创新产品申报说明》。《说明》中进一步阐述了自主创新产品的认定标准，要求申报国家级自主创新产品资格的产品必须具有中国自主知识产权，权益状况明确，且产品销售使用的商标初始注册地应为中国境内。这些标准使得大多数在华外商投资企业都很难达标。

Also in 2009, the Ministry of Science and Technology (MOST), National Development and Reform Commission (NDRC) and MOF issued the Circular on Launching Accreditation of Indigenous Innovative Products in 2009 and Instructions for National Indigenous Innovation Product Application Procedures in 2009 (Instructions). Criteria for indigenous innovative products are further specified in the Instructions, requiring products seeking national level indigenous innovative products status to contain Chinese proprietary intellectual property rights (IPR) with clearly defined Chinese ownership and the original registration location of the trademarks of these products to be China. Such criteria will make it extremely difficult for most products of foreign invested Chinese companies to qualify.

Finally, in January 2010, the Implementation Guidelines of the Government Procurement Law was released for comment. AmCham-China applauds the transparency of the comment process and appreciates the opportunity to provide input. However, the draft implementation guidelines raise concerns surrounding the limited scope of government procurement that would mandate an open process, preferences for domestic goods and services, and other provisions that run contrary to global best practices for procurement.

Specific Issues

Slow Accession to the GPA

China committed in its 2001 Protocol of Accession to the WTO that it would work towards becoming a Party to the GPA “as soon as possible.” The GPA is a “plurilateral” agreement in the WTO in which participation is voluntary. Currently there are 41 Parties to the GPA, with 18 “Observers” (China being one). The GPA sets forth the minimum rules required to ensure non-discrimination, fairness, best value and transparency in the procurement of goods and services by central and sub-central government agencies, and by select government-related entities as specified by each Party.

As noted in the 2009 *White Paper*, most GPA Parties were disappointed with China’s initial December 2007 GPA accession offer. Specifically, they request that a revised offer submission take into account the following changes: ❶ contractual value thresholds that are in line with the commitments of the existing Parties; ❷ expansive coverage of most Chinese government and government-related entities (at both the central and sub-central levels); ❸ coverage of most services, done in a “negative list” manner; ❹ exceptions that are equitable with the exceptions taken by existing GPA Parties; ❺ immediate implementation upon accession without transition periods.

In its 2001 WTO Accession Protocol (while still not yet a Party to the GPA), China committed to ensure that:

- ❶ All of its central and sub-central government entities conduct their procurements in a “transparent manner;”
- ❷ Where procurement proceedings are open to foreign participants, it will provide all foreign entities “equal opportunity to participate” in the bidding process in a most-favored nation manner.

Furthermore, with respect to SOEs, China committed to “ensure that all state-owned and state-invested enterprises would make purchases and sales based solely on commercial considerations, e.g., price, quality, marketability and availability, and that the enterprises of other WTO Members would have an adequate opportunity to compete for sales to and purchases from these enterprises on non-discriminatory terms and conditions.”

China further committed that it “would not influence, directly or indirectly, commercial decisions on the part of state-owned or state-invested enterprises, including on the quantity, value or country of origin of any goods purchased or sold, except in a manner consistent with the WTO Agreement.”

Then, in October 2009, the Report was submitted to the WTO Committee on Government Procurement. Unfortunately, this document primarily focuses China’s rationale as to why it cannot meet the expectations of the current GPA Parties.

Even before submitting its revised GPA offer this year, China should further move towards full conformity with the GPA disciplines, starting with fulfilling its 2001 WTO accession agreements regarding procurement and terminating its existing domestic preference rules. Increases in the number or severity of discriminatory measures would run counter to good faith efforts in GPA accession.

Coverage of Central Government and Sub-Central Entities

While the Report promises that, in its revised offer, China will expand its list of covered central government and “subordinate entities,” as well as “substantially lower the threshold levels” for this list, the Report makes clear that China intends only to cover entities that are subject to its Government Procurement Law, while “non-fiscal funding” central government entities (as the Report refers to them) subject to other procurement laws, such as China’s Tendering and Bidding Law, would be excluded completely. Given that the scope of the Government Procurement Law is artificially narrow, such a unilateral distinction will not allow for meaningful coverage of China’s government

最后，在 2010 年 1 月，国务院法制办公室出台了《中华人民共和国政府采购法实施条例（征求意见稿）》。中国美国商会对于征求意见过程中表现出的透明度表示赞赏，也有机会提出意见建议表示感谢。但《实施条例》草案引发了外界对政府采购范围界定过窄的担心，其中有关公开招标采购程序的规定、本国货物与服务优先待遇、以及其他许多规定都有悖于国际采购领域的最佳实践。

具体问题

加入 GPA 进展缓慢

中国早在 2001 年加入 WTO 的议定书中就表示它将努力“尽快”加入 GPA。GPA 是世界贸易组织的一个“多边”协定，各国凭自愿原则选择是否加入该协定。目前 GPA 有 41 个成员国和 18 个“观察员国”（包括中国）。GPA 设定了最低限度的规则，要求每个成员国指定的中央和各级地方政府机构及其选定的相关实体在采购商品和服务时，确保非歧视性、公平性、最佳价值和透明度。

正如在中国美国商会 2009 年的《白皮书》中所指出的一样，大多数 GPA 成员国对中国于 2007 年 12 月做出的初步出价表示失望。他们要求中国在修改出价清单时应考虑以下几点：（1）与现有成员国的承诺一致的合同价值门槛；（2）扩大涵盖到大部分中国政府和政府相关实体（中央及地方各级）；（3）以否定式列表的方式涵盖大部分服务；（4）与现有 GPA 成员国的例外相比不失公平的例外；（5）立即启动加入进程，而无过渡期。

尽管中国仍不是 GPA 成员国，但其在 2001 年《入世议定书》中承诺，确保：（1）中国的中央和各级地方政府都会以“透明的方式”实施政府采购；（2）在面向外国参与者开放的政府采购活动中，将依照最惠国待遇给予所有外国实体“平等参与”投标的机会。

此外，在国有企业方面，中国还承诺“保证所有国有和国家投资企业仅依据商业考虑进行购买和销售，如价格、质量、可销售性和可用性，并确认其他 WTO 成员的企业拥有在非歧视的条款和条件基础上，与这些企业在销售和购买方面进行竞争的充分机会。”

中国还进一步承诺“中国政府将不直接或间接地影响国有企业或国家投资企业的商业决定，包括关于购买或销售的任何货物的数量、金额或原产国，但以与《WTO 协定》相

一致的方式进行除外。”

随后于 2009 年 10 月，中国向 WTO 政府采购委员会提交了《报告》。遗憾的是，《报告》的着重点是为了说明中国无法达到现有 GPA 成员国期望的理由。

即便在今年提交修改后的 GPA 出价清单之前，中国也应当做出更大努力以求全面达到 GPA 的要求，而首当其冲的就是履行其 2001 年入世协议中有关采购的承诺，以及取消现行的国货优先政策。采取更多或是更严格的歧视性措施的做法与中国加入 GPA 的诚意背道而驰。

中央政府和各级地方政府实体的覆盖范围

虽然《报告》中承诺，中国将在其修改后的出价清单中扩大适用中央政府实体及“下级实体”的范围，并“实质性降低门槛”，但《报告》也明确了中国仅仅希望囊括《政府采购法》适用实体的意图，而中国《招标投标法》等其他采购法案所适用的“非财政支持”（《报告》中的提法）的中央政府实体将完全排除在外。由于《政府采购法》的范围被人为缩小，这种单边性的差别做法使得中国政府采购市场无法具有实质意义的覆盖面。此外，尽管承诺降低门槛，但《报告》也提醒称在降低门槛之前中国首先“要花相当长的时间来收集相关统计数据，以便就降低门槛的影响进行评估”。

中国加入 GPA 出价清单要想具有实质意义，就必须全面纳入各级地方政府实体，并与中央保持相对一致的门槛。这是中国能否达到美国或欧盟 GPA 市场准入覆盖范围的质量水平的关键所在。美国大部分政府采购活动都在联邦政府层面进行；而对于欧盟而言，由于其中央政府实体的采购规模相对较小，因此扩大了各级地方政府实体范围作为弥补。

即便是与欧盟相比，中国的地方政府采购市场规模要比现有 GPA 成员国大得多。中国加入 GPA 的最终协议应将这独特的现实情况考虑在内。

“其他实体”（包括国有企业）的覆盖范围

《报告》首次宣称，根据中国的理解，GPA 中所使用的“其他实体”指的是“政府相关机构”，这与中国国有企业“有着很大的不同”。《报告》明确指出，中国国有企业“是独立的市场实体，中国政府并不干预其正常业务活动”。如情况属实，则针对中国国有企业的那些法规和指令应受现

procurement market. Further, despite a promise to lower thresholds, the Report also warns that it will first “take a long period of time to collect relevant statistics for making assessment of the impact” of the proposed thresholds before they will be lowered.

For China’s GPA accession offer to be meaningful, sub-central coverage must be included, comprehensive and have comparatively consistent thresholds to central coverage. This is essential for China to reach the level of quality of the US or EU GPA market access coverage. Most US government procurement comes on the federal level. For the European Union—which has relatively small procurement by its central entities—larger sub-central coverage is provided to compensate.

Even compared with the EU, China has a far larger sub-central government procurement market than current GPA Parties. China’s final accession package should take into account these unique realities.

Coverage of “Other Entities,” Including SOEs

The Report first argues that “other entities,” as used in the GPA, is understood by China as being “government-affiliated institutions,” which “differ greatly” from Chinese SOEs. It explicitly states that Chinese SOEs “are independent market entities and the Chinese government does not intervene in the daily business activities of [these] enterprises.” If this is true, then regulations and directives that govern the Chinese SOEs are arguably subject to existing WTO disciplines, which should be true even for “other entities” engaging in commercial activities. Indeed, the 2008 JCCT “deliverables” appeared to reinforce this principle, stating that China’s “formal and informal policies related to software purchases by all Chinese private and SOEs will be based solely on market terms without government direction.”

In addition, China already committed in its 2001 WTO Accession Protocol to “ensure that all state-owned and state-invested enterprises would make purchases and sales based solely on commercial considerations.”

Given these unambiguous statements, AmCham-China urges the Chinese government to issue a directive confirming SOE procurements are non-government procurements that are subject to China’s existing WTO obligations, along with all SOE activities and Chinese government rules and directives that regulate them.

Coverage of Services and Construction Services

In the Report, China commits to increase the number of services and construction services. However, the Re-

port also notes—in light of the “initial stage of development” of the services sector in China—the “long period of time” it would take to expand these lists. Moreover, the Report provides no discussion on the thresholds for these lists, or whether they would be “negative” or “positive” lists.

Exceptions and Grace Periods

Finally, the Report states unequivocally that it will not change any of the exceptions and derogations made in its 2007 initial offer, regardless of how unequitable other GPA Parties might find them. The Report is also silent as to whether China would shorten the 15-year grace period it previously offered.

In sum, the Report to the WTO Committee on Government Procurement provides no assurances that it will consider the US and other GPA Parties’ concerns regarding China’s initial offer, and instead current GPA Parties should expect protracted negotiations with China to join the GPA. With no end in sight, the current situation is very discouraging. We urge a fundamental reconsideration of this negotiating position.

Limited Scope of the Government Procurement Law

China promulgated its new Government Procurement Law in January 2003, with the intent of improving transparency and reducing government costs and corruption. The Government Procurement Law is also intended to share the scope of what China will cover under the GPA. Following the law’s promulgation, MOF issued numerous implementation regulations, including those that established:

- Detailed procedures regarding the solicitation, submission and evaluation of bids in procurement proceedings;
- Rules on how individual procurements were to be published;
- Mechanisms for handling complaints and challenges by participants in government procurement proceedings.

In January 2010, draft implementation regulations for the Government Procurement Law were released for comment. AmCham-China appreciated the opportunity to provide comments and is encouraged by the transparency obligations being built into the government procurement process, and the move towards transmission of information by electronic means, as specified in the draft guidelines.

However, the draft guidelines also maintain criteria for

有 WTO 原则的约束，即便对于从事商业活动的“其他实体”而言也应当如此。的确，2008 年美中商贸联合委员会的“会议成果”似乎也强化了这一原则，称中国“与所有国内私有企业及国有企业软件采购相关的正式和非正式的政策将完全以市场条件为基础，而不考虑政府指导”。

此外，中国已经在其 2001 年《入世议定书》中承诺“保证所有国有和国家投资企业仅依据商业考虑进行购买和销售。”

鉴于这些明确的声明，中国美国商会敦促中国政府颁布一项指令确认国有企业采购属于非政府采购，国有企业采购和国有企业的一切活动以及中国政府针对所有这些活动所颁布的法规和指令均受中国现有 WTO 义务的约束。

服务和建筑服务的覆盖范围

在《报告》中，中国承诺增加服务与建筑服务种类的数量。但《报告》同时也指出，鉴于中国服务业尚处于“发展初期”，因此扩大清单覆盖范围将需要“相当长的时间”。此外，《报告》并未讨论这些清单的门槛，也没有说明将采用“否定式”清单还是“肯定式”清单。

例外与宽限期

最后，《报告》明确表示，不管其他 GPA 成员国认为是多么有欠公平，中国都不会更改其 2007 年初步出价清单中的例外和豁免项目。《报告》也没有提及中国是否会缩短之前出价清单中提出的 15 年宽限期。

总而言之，中国向 WTO 政府采购委员会提交的《报告》并未保证其会考虑美国及其他 GPA 成员国对中国初步出价清单存有的疑虑，相反，现有 GPA 成员国应当可以预料到，中国加入 GPA 的谈判将一拖再拖。由于前景不明，当前形势实在令人沮丧。我们敦促中国政府从根本上重新考虑这一谈判立场。

《政府采购法》范围有限

2003 年 1 月，中国颁布了新的《政府采购法》，力图提高透明度，降低政府成本并减少腐败。《政府采购法》也希望根据 GPA 来界定中国政府采购的覆盖范围。在《政府采购法》颁布之后，财政部发布了许多实施法规，其内容包括

- 关于政府采购活动中招标、投标及其评标的具体程序；
- 关于公布具体采购内容的规定；
- 对政府采购活动参与方投诉和争议的处理机制。

2010 年 1 月，国务院法制办公室出台了《中华人民共和国政府采购法实施条例（征求意见稿）》。中国美国商会对有机会提出意见建议表示感谢，此外，根据《实施条例》草案中的规定，透明度责任将被纳入政府采购活动，同时采用电子方式进行信息的传输，这令我们深受鼓舞。

但《实施条例》草案仍然保留了可采用“非公开”招标采购方式的情形，规定了“标准”门槛，低于这一门槛便可以采用非公开招标采购方式，同时也允许在投标过程中任意选择供应商。所有这些规定似乎都有悖于采购市场公开、公平竞争的国际惯例。

此外，商会还担心，草案中包括的“政府采购项目、采购程序性文件、采购结果等政府采购信息应当公开，但涉及国家秘密或商业秘密的除外”的规定，会使得公开政府采购活动的范围大大缩小，尤其是在并未界定何为“国家秘密”的情况下。

虽然《政府采购法》从总体上采纳了包括 GPA 和联合国《贸易法委员会货物、工程和服务采购示范法》等国际采购协定中普遍采用的程序性规定，但中国中央政府及各级地方政府仍保留在所有采购活动中优先考虑本国货物和服务的权利，且鲜有例外。

中国美国商会真诚希望《实施条例》草案应当遵守于 2009 年美中商贸联合委员会会议上做出的承诺，即在中国各级政府采购活动（包括中央政府、各级地方政府和国有企业采购）中，将在华外资企业的产品（例如在中国国内生产或是在中国境内实现增值的产品）作为“本国货物”。《实施条例》草案中用来确定产品是否为“本国货物”的公式过于复杂，且难以执行，同时也有悖于在政府采购中实施与正常贸易同样的原产地规则这一国际惯例。

《招标投标法》

在《政府采购法》颁布之后，中国财政部曾澄清，旨在根据 GPA 来界定中国政府采购覆盖范围的《政府采购法》并没有涵盖与“公共工程项目”相关的采购。这实在令人困惑，因为公共工程项目至少占据了中国政府采购市场的一半。实际上，这些项目受到另一法规的约束，即 2000 年 1 月颁

“non-open” procurement, “standard” threshold levels below which an open process is not mandated, and the random selection of suppliers through the bidding process. All of these provisions appear to run contrary to global best practices for open and competitive procurement markets.

Furthermore, AmCham-China is concerned that the scope of open government procurement procedures will be vastly narrowed with the inclusion of provisions stating that “government procurement shall be opened to the public except those related to state secrets or business secrets”, particularly as there is no definition of “state secrets.”

Although the Government Procurement Law generally provides for the procedural disciplines found in international procurement agreements, including the GPA and the UN Model Law on Procurement of Goods, it maintains blanket authority for Chinese government entities at both the central and sub-central levels to prioritize domestic goods and services in all procurement proceedings, with very limited exceptions.

AmCham-China strongly encourages the draft regulations to adhere to the 2009 US-China JCCT commitment to treat the products of FIEs in China, such as those manufactured or have value-added in China, as “domestic” for government procurement purposes across the various government procurement classes in China, including central, sub-central and SOE procurement. The equation offered in the draft regulations for determining whether a product can be considered “domestic” is overly complex, difficult to implement and not consistent with the international norm of applying the same rules of origin in government procurement as in the normal course of trade.

Tendering and Bidding Law

Following the Government Procurement Law’s promulgation, MOF clarified that the Government Procurement Law—which is intended to establish the scope of coverage for China under the GPA—does not cover procurements related to “public works projects.” This is troubling because such projects represent at least one-half of China’s government procurement market. Instead, these projects are subject to a different regulatory regime, (i.e., those that flow from China’s Tendering and Bidding Law, promulgated in January 2000). This regime raises more concerns because it lacks many of the disciplines under the Government Procurement Law. This is problematic in light of China’s promise in its 2001 WTO Accession Protocol to conduct all procurement proceedings “in a transparent manner” between WTO entry and GPA accession.

More importantly, AmCham-China believes that these two government procurement regimes should ultimately be consolidated, with the same access being granted to goods and services produced in China by foreign-invested firms in both regimes, so that the efficiency and quality of China’s government procurement market as a whole can benefit.

US companies strongly support having a merit-based, transparent, non-discriminatory, pro-competitive and technology-neutral procurement system for all goods and services, regardless of jurisdiction. We welcome the publication of the draft implementation regulations of the Tendering and Bidding Law on September 30, 2009, and the opportunity for US companies to comment on the draft. Such publications and draft regulation comment opportunities prior to implementation help ensure transparency in China’s government procurement market.

However, the continued discriminatory nature of China’s Tendering and Bidding Law regime negates any benefit such transparency would provide. Thus, we continue to urge China to bring the rules in this regime in line with the Government Procurement Law regime. Indeed, AmCham-China urges that the two regimes be consolidated so that “public works projects” are treated the same as all other government procurement projects.

Domestic Preferences

Prior to entering the GPA, China is permitted to maintain government procurement measures that favor domestic companies. However, there is strong concern that China is implementing progressively restrictive government procurement trade barriers often in a non-transparent manner even as it claims to be working towards opening and reforming its market ahead of GPA accession. For instance, following the global financial crisis, the State Council’s Notice on Further Strengthening Management of Government Procurement and the NDRC/Ministry of Commerce/Ministry of Industry and Information Technology’s Opinions on the Implementation of Decisions on Expanding Domestic Demand and Promoting Economic Growth and Further Strengthening Supervision on Tendering and Bidding for Construction Projects both re-emphasized the need to purchase domestic products in government procurement.

Foreign-Invested Enterprises as Domestic Chinese Enterprises

Many products sold by companies labeled “foreign” are produced in China, with research and the development also conducted in China. These “foreign” com-

布的中国《招标投标法》。这一法规引发了更多的疑虑，因为它缺少《政府采购法》所包含的许多基本原则。这似乎有悖于中国在 2001 年《入世议定书》中做出的承诺，中国承诺其将在入世后及加入 GPA 前“以透明的方式”开展所有采购活动。

更重要的是，中国美国商会认为，这两套政府采购体制最终应当合二为一，若在依据这两套体制组织实施的采购活动中，外商投资企业在华投资生产的商品和服务能够参与，将会提升中国政府采购市场的整体效率和质量。

美国企业强烈支持建立一个基于价值、高透明度、非歧视、鼓励竞争和技术中性的采购体系，对所有商品和服务一视同仁，而无论其所属何地。我们对国务院法制办公室于 2009 年 9 月 30 日颁布的《中华人民共和国招标投标法实施条例》草案表示欢迎，同时也对国务院法制办给美国企业就草案提出意见建议的机会表示赞赏。这些法规的出台以及在生效之前就草案提出意见建议的机会，将有助于确保中国政府采购市场的透明度。

然而，中国《招标投标法》所自有的差别性对待的规定的延续，会抵消这种透明度所带来的好处。因此，我们继续促请中国按照《政府采购法》来规范《招标投标法》中的相关法律规定。我们切实敦促中国将这两套法律规定合二为一，以便将“公共工程项目”列入“政府采购项目”范围。

国货优先

尽管在正式加入 GPA 之前，法律上允许中国实施偏向于国内企业的政府采购政策，而且中国表示在加入 GPA 之前将努力开放和改革市场。但人们担心的是，在政府采购方面，中国正以一种不透明的方式，更多地实施限制性的贸易壁垒。例如，在全球金融危机爆发后，在国务院《关于进一步加强政府采购工作的通知》以及国家发改委、商务部、工业和信息化部《关于贯彻落实扩大内需促进经济增长决策部署进一步加强工程建设招标投标监管工作的意见》中，都再次强调了在政府采购中选择本国货物的必要性。

将外商投资企业当作中国企业

许多由所谓的“外国”企业销售的产品其实都是在中国境内生产的，其产品研发活动也在中国境内。实际上，这些“外国”企业作为境内的合法实体，在华注册、经营并纳税。它们雇用了大量的中国雇员，创造并向中国境内转移技术，

为中国消费者服务。因此，将这些企业视为合法的中国企业是公平合理的。此外，在当前全球市场中，很难判断某一个产品是“本国货物”还是“外国产品”，因为产品的设计、开发、生产、销售和维修可能在许多不同国家展开，其中也包括中国。

这种对“本国货物”和“外国产品”不经推敲、较为主观的区分，以及政府优先采购本国货物的做法，实际上会对国内经济的可持续性和发展造成负面影响，同时使中国无法得到急需的高科技产品。以绿色节能技术为例，让目前被贴上“外资”标签的中国企业进入公平透明的政府采购程序，有助于中国获得最先进有效的环保技术，推动中国的可持续发展，实现其节能减排的远大目标。

在 2008 年 9 月举行的 JCCT 会议上，中美两国都同意致力于“确保在华的美资企业和在美的中资企业能够参与各自的政府采购市场”。在 2009 年 7 月的第一次“美中战略与经济对话（经济对话部分）”中，中国进一步承诺“在《政府采购法》项下，将外商投资企业在华投资生产的商品算作本土企业生产的国内产品”。随后在 2009 年 10 月的 JCCT 会议上，中国重申“将外商投资企业在华投资生产的商品算作本国货物，并将就此颁布法律法规”。

这一承诺完全独立于中国加入 GPA 的承诺，我们切实地期待，在中国加入 GPA 之前，美国企业即可进入中国的政府采购市场。商会促请中国立即出台相应的法律法规，明确规定在各级政府采购活动中，将外商投资企业作为中国企业对待。

此外，我们促请中国政府将这一承诺的覆盖范围扩大至《招标投标法》的适用实体，而不仅仅是《政府采购法》的适用实体。

“自主创新产品”优先政策

2006 年 12 月，科技部、国家发改委和财政部颁布了《国家自主创新产品认定管理办法（试行）》（以下简称“《办法》”）。《办法》明确规定“经认定的国家自主创新产品将在政府采购、国家重大工程采购等财政性资金采购中优先购买”。《办法》要求申请认定的国家自主创新产品“应具有自主知识产权，且权益状况明确”。产品具有自主知识产权是指“申请单位经过其主导的技术创新活动，在我国依法拥有知识产权的所有权，或依法通过受让取得的中国企业、事业单位或公民在我国依法拥有知识产权的所有权或使用权”。《办法》

panies in actuality are registered and operate in the Chinese market as domestic legal entities and employ large numbers of Chinese citizens, create and transfer technology to China, serve Chinese customers, and pay Chinese taxes. Thus, it is fair and reasonable to treat these companies as legal domestic Chinese enterprises. Moreover, in the current global marketplace, it is difficult to determine whether a product is “domestic” or “foreign,” as the design, development, production, distribution and servicing of a product may be performed in many different countries, including in China.

This untenable and subjective distinction between “domestic” and “foreign” in government procurement practices actually negatively impacts the sustained growth and development of China’s domestic economy, while depriving China of much-needed high technology. With green and energy-efficient technologies, for instance, a fair and transparent procurement process would include China-based companies now labeled as “foreign” and allow China to acquire the most advanced and effective environmental products needed to promote sustainable development and meet ambitious energy reduction goals.

At the September 2008 JCCT, China and the US agreed to work towards “ensuring that US-invested firms in China and Chinese-invested firms in the US will be able to participate in their respective government procurement markets.” During the first US-China Strategic and Economic Dialogue (S&ED) in July 2009, China further committed “to treat, under its Government Procurement Law, products produced in China by foreign-invested enterprises the same as products produced in China by Chinese enterprises.” Then, at the October 2009 JCCT, China reiterated that it “will require that products produced in China by foreign-invested enterprises... are treated as domestic products and will issue rules in this regard.”

This commitment is wholly separate from China’s commitment to accede to the GPA, and indeed the expectation is that US companies will have access to China’s procurement markets even prior to GPA accession. AmCham-China urges China to issue all appropriate “rules” making it clear that foreign-invested enterprises will be treated as domestic Chinese companies for purposes of government procurement at all levels of government immediately.

Further, we encourage China to expand this commitment to cover not just the entities subject to the Government Procurement Law, but also those subject to the Tendering and Bidding Law.

Preferences for “Indigenous Innovative Products”

In December, 2006, MOST, NDRC and MOF issued Administrative Measures for Accreditation of National Indigenous Innovative Products for Trial Implementation (Measures). The Measures clearly state that “accredited national indigenous innovation products shall be given preference in government procurement and procurement for national key projects that use fiscal funds.” The Measures request that products seeking national indigenous innovative product status “shall have indigenous intellectual property rights and definite owner,” which means that “applicants own the intellectual property rights...in China through their leading technical innovation activities, or Chinese enterprises, public institutions or citizens, by means of license arrangement...in China, have the ownership or right to use the intellectual property rights.” The Measures also stipulated that MOST, NDRC and MOF will develop Instructions for National Level Indigenous Innovative Product Application Procedures and National Level Indigenous Innovative Product Catalog separately to manage and supervise the accreditation of national indigenous innovative products.

In accordance with the Measures, several provinces and municipalities have developed and promulgated their own accreditation measures for indigenous innovative products, which consistently mandate government procurement preference for products accredited as indigenous innovative products. Some of these governments have also developed their own catalogs of indigenous innovative products, which receive government procurement preferences in these jurisdictions.

In December 2007, MOF issued two new measures that further restrict the possibility of Chinese government entities purchasing non-domestic goods and services, as part of the State Council’s implementation plan for the “State Medium and Long Term Science and Technology Development Plan” (2006-2020). The first measure, the Administrative Measures for Government Procurement on Initial Procurement and Ordering of Indigenous Innovative Products, requires that Chinese “indigenous innovative products” be given government procurement priority. The second measure, the Administrative Measures for Government Procurement of Imported Products, mandates additional approval and audit for government agencies when procuring imported products and technologies. Furthermore, these measures state that the MOF and MOST would jointly publish a national “indigenous innovative products catalog.”

In November 2009, MOST, NDRC and MOF issued the

还表示，科技部、国家发改委和财政部将负责国家自主创新产品认定工作的管理和监督，编制《国家自主创新产品申报说明》和《国家自主创新产品目录》。

一些省市已经依照《办法》编制和颁布了各自的自主创新产品认定办法，它们都无一例外地要求在政府采购中优先选择经认定的自主创新产品。其中一些地方政府还编制了本地的自主创新产品目录，这些产品在当地政府采购活动中可获得优先待遇。

2007 年 12 月，作为国务院《国家中长期科学和技术发展规划纲要（2006—2020 年）》实施计划的一部分，财政部发布了两部管理办法，进一步限制了中国政府机构购买非本国货物和服务的可能性。一是《自主创新产品政府首购和订购管理办法》，要求政府优先采购中国的“自主创新”产品。二是《政府采购进口产品管理办法》，规定政府机构采购进口产品和技术时必须获得额外批准和审计。此外，这两部办法还规定，将由财政部和科技部共同制订《政府采购自主创新产品目录》。

2009 年 11 月，科技部、国家发改委及财政部发布《关于开展 2009 年国家自主创新产品认定工作的通知》和《2009 年度国家自主创新产品申报说明》。这两份文件是中国政府为推动优先采购自主创新产品而采取的重要措施，其中明确规定了产品认定标准、认定程序以及中央和地方各级政府机构的职责，以便为《国家自主创新产品目录》的编制奠定基础。

这些目录已经成为外国企业参与政府采购方面又一个难以逾越的鸿沟。我们恳请中国政府考虑废止《国家自主创新产品认定管理办法（试行）》、《自主创新产品政府首购和订购管理办法》和《政府采购进口产品管理办法》。此外，我们也恳请中国政府考虑废止或修改《国家自主创新产品申报说明》，以履行其在 JCCT 会议上和中美战略与经济对话中做出的承诺：将外商投资企业在华生产的商品视同于本土企业在本国生产的商品。对所谓的“进口”商品实施歧视性的政策，同时限制非中国本土企业的市场准入，并不会促进中国创新能力的发展，相反还会有损于中国做出的在政府采购中将“外商投资企业产品”算作“本国货物”的承诺，因为这些管理办法中规定的标准将使得大多数外商投资企业的产品很难享受到优先待遇。允许各行各业的“外国”生产商全面参与中国的政府采购活动将有助于提高效率和减少浪费。

行业具体问题

2003 年，美国政府开始对中国的软件政府采购政策表示关切，因为财政部在其草拟的规定中要求所有中央和地方政府机构只购买国内开发的软件。这些政策将会对美国软件制造商进入中国市场造成不利影响，并可能为其它领域设置相同的壁垒提供先例。经多次双边磋商，在 2005 年 7 月举行的 JCCT 会议上，中国同意无限期中止在政府软件采购中推行这一存有争议的规定。

2007 年，这一问题再度出现，中国政府官员发表声明，表示国有企业应优先购买国产软件，这违反了《中国入世协定书》中有关国有企业的承诺，美国政府对此再次表示关切。在 2008 年 9 月举行的 JCCT 会议上，中国对此项政策做出澄清，指出不论是国有还是私营企业，在购买软件时的唯一依据是市场条款而非政府指令。2005 年和 2007 年也曾出现过类似的情况。当时中国宣布，政府采购应优先考虑采用中国国内的无线互联网标准，以及在“电子政务”项目中给予本国货物和服务优先待遇。

在政府采购操作中，国货优先的政策并不只是局限于软件和 IT 产品。在财政部第 119 号通知中，规定政府优先采购国产医疗设备产品，商会对此亦表示关切。此通知规定，政府采购项目中的进口产品须由专家组特批，并由专家组出具使用特定进口产品必要性的意见。这一规定并不符合中国加入 WTO 后通行的商务惯例。它同时也使中国患者失去了在现代化治疗中使用更急需的高科技产品的权利。

另外，政府在节能及绿色技术领域的若干采购政策也明显地向国内供应商倾斜。例如在风能领域，中国国内风力发电设备和关键部件的厂商获得了外国厂商所无法享受的信贷和优惠政策支持。在 2009 年的 JCCT 会议上，中国同意“取消对于风力涡轮机的国产化率要求”，对此我们深感鼓舞。

我们促请财政部和中国政府重新考虑这一政策，为进口产品提供一个基于技术、质量和价格的公平竞争平台。

总结

美国公司将保持与中美双方的接触，并提供必要的协助，以推动中国以公平而具有商业意义的方式加入 GPA，并促进企业进入中国和美国的采购市场。商会将继续与中国政府携手合作，倡导建立一个公平、透明的中国政府采购体系，为中国公共部门的消费者提供最优的价值。

Circular on Launching Accreditation of Indigenous Innovative Products in 2009 and Instructions for National Indigenous Innovation Product Application Procedures in 2009. These two documents marked a major step the Chinese government has taken to promote procurement of indigenous innovative products, with product criteria, accreditation process, and roles and responsibilities of government agencies at central and local levels all clearly defined for the purpose of developing the Catalog for National Level Indigenous Innovative Products.

These catalogs have created yet another burdensome government procurement obstacle for companies. We request that China consider repealing the Administrative Measures for Accreditation of National Indigenous Innovative Products for Trial Implementation, Administrative Measures for Government Procurement on Initial Procurement and Ordering of Indigenous Innovative Products and Administrative Measures for Government Procurement of Imported Products. We also request that China consider repealing or revising the Instructions for National Indigenous Innovation Product Application Procedures to honor its commitment at the JCCT and S&ED that for the purpose of government procurement, products produced in China by FIEs will be treated the same as products produced in China by Chinese enterprises. Discriminating against so-called “imported” products, while restricting market access by non-Chinese companies, will not contribute to the development of China’s innovative capacity, and in fact negates China’s commitments to treat products made by FIEs as Chinese products for purposes of government procurement, as the criteria in these measures will make it extremely difficult for most FIE products to qualify for preferences. Full participation of “foreign” producers across industries in government procurement proceedings improves efficiencies and reduces waste.

Sector-Specific Concerns

In 2003, the US government began raising concerns about China’s software government procurement policy, in which MOF was drafting rules mandating all central and sub-central government entities to purchase only software developed in China. Such policies would have adversely affected the access of US software manufacturers into the Chinese market, and could have set a precedent to establish similar barriers in other procurement sectors. After much bilateral engagement, China agreed at the July 2005 JCCT meeting to suspend its efforts to implement the problematic rules on government software procurement indefinitely.

In 2007, this issue returned when the US government again raised concerns after Chinese government of-

ficials indicated that SOEs should give priority for domestic software purchases. This violates China’s WTO Accession Protocol commitment with respect to SOEs. At the September 2008 JCCT meeting, however, the Chinese government clarified that its policy is that software purchases by Chinese enterprises, whether state-owned or private, must be based solely on market terms and not government direction. Similar issues arose in 2005 and 2007 concerning government procurement preferences for Chinese domestic wireless internet standards and domestic goods and services in “e-government” projects.

Domestic public procurement preferential practices extend beyond software and IT products. AmCham-China is also concerned about government procurement regulations per MOF notice No. 119, which favor purchases of domestic medical device products. For imports to be considered for inclusion in government procurement projects they must obtain special approval by a board of experts specifically assembled to explain the necessity of using imported goods in a given project. This is inconsistent with prevailing commercial practices in China after its accession to WTO. In addition, it leads to Chinese patients being deprived of much needed high technology products for therapies.

Similar discriminatory policies exist for energy-efficient or green technologies. In the wind energy sector, Chinese domestic producers of wind power equipment and critical constituent parts are given credit and preference over foreign producers, although we are pleased that—as part of the 2009 JCCT outcomes—China agreed to “remove local content requirements on wind turbines.”

We urge MOF and the Chinese government to reconsider and provide imported products with a level playing field competing with domestically-produced products based on technology, quality and price.

Conclusion

US companies will continue to engage China and the US proactively, providing facilitation as needed to ensure a fair and commercially meaningful accession to the GPA by China, and prompt access by companies to the Chinese and US procurement markets. We will continue to work with the Chinese government to advocate for a fair and transparent government procurement system in China, which would provide the best value to its public sector customers.

建议

- 在 2010 年上半年提交一份具有实质意义的、经修改的中国加入 GPA 的出价清单。
- 在修改后的出价中，扩大所含中央政府实体（及其下级实体）的覆盖面，将范围扩大至《招标投标法》的适用实体，而不仅仅是《政府采购法》的适用实体。
- 在修改后的出价中，全面囊括各级地方政府实体，只有这样中国才能够达到美国和欧盟 GPA 市场准入覆盖范围的质量水平。
- 此外，应尽快向中央、省市和地方国有企业传达明确的信息，重申中国在 2001 年加入 WTO 的议定书中所做出的承诺，保证国有和国家投资企业仅依据商业考虑、并以非歧视的方式进行所有采购，同时中国政府不应影响国有企业或国家投资企业所做出的商业决定。
- 列出非商业性采购（即政府采购）中参与采购的所有“其它实体”，从而在中国修改后的出价中全面囊括“其它实体”，如国有企业或国家投资企业。
- 在修改后的出价中，立即以“否定式”清单的方式全面囊括服务与建筑服务。
- 在中国修改后的出价中，降低出价清单各附件的门槛，使之与现有 GPA 成员国的门槛大体相当。
- 在中国修改后的出价中，修改例外清单与宽限期，使之与其他 GPA 成员国的市场准入规定相当。
- 在实施新的政府采购法律法规前，沿袭目前先公布草案的做法，为美国各利益相关方提供机会，就这些草案提出意见和建议。
- 将中国的《招标投标法》体制与《政府采购法》体制合二为一，以使“公共工程项目”纳入政府采购工程范围，允许外商投资企业同时参与依据该两套体制组织实施的政府采购活动。
- 废止现行在政府采购中优先选择本国货物或自主创新产品的政策，这些政策有悖于中国做出的“将外商投资企业在华投资生产的商品算作本土企业生产的国内产品”的承诺，同时也有悖于以公开、透明、非歧视的方式开展政府采购的国际惯例。
- 立即颁布法律法规，向中央和地方各级政府实体明确指明：在政府采购中，外商投资企业在华投资生产的商品应算作本土企业生产的国内产品。

Recommendations

- **Submit a commercially meaningful, revised GPA accession offer within the first half of 2010.**
- In China's revised offer for central government entities, expand the list of covered entities (and their subordinate entities) to cover those subject to not just the Government Procurement Law, but also the Tendering and Bidding Law.
- In China's revised offer for sub-central entities, provide comprehensive coverage, as only through such treatment can China achieve the same level of quality as the US and EU GPA market access coverage.
- In addition, immediately issue an unambiguous public directive to central, provincial and local SOEs reaffirming China's 2001 WTO Accession Protocol commitment to ensure that all purchases by SOEs and state-invested enterprises shall be based solely on commercial considerations, conducted in a non-discriminatory manner, and that the Government of China shall not influence commercial decisions made by SOEs or state-invested enterprises.
- Provide comprehensive coverage for "other entities," such as SOEs and state-invested enterprises, in China's revised offer by listing all "other entities" that are engaged in purchasing for non-commercial government purchases.
- In China's revised offer, provide comprehensive coverage immediately utilizing "negative" lists for services and construction services.
- Lower the thresholds in each annex of China's revised offer so as to be substantively comparable to current GPA Parties' thresholds.
- In China's revised offer, amend the exceptions and grace periods to be equitable with those found in other GPA Parties' market access provisions.
- Continue to publish draft government procurement rules and regulations prior to implementation, and provide opportunities for US interests to comment on such draft rules and regulations.
- Consolidate the government procurement regimes under China's Tendering and Bidding Law and its Government Procurement Law to treat "public works projects" the same as all other government procurement projects, and

to permit FIEs to participate in government procurements under both regimes.

- Repeal current policies that provide preference to domestic or indigenous innovation products in government procurement, which run contrary to China's commitment of treating products produced in China by FIEs the same as products produced in China by Chinese enterprises, and to global best practices of conducting government procurement in an open, transparent and non-discriminatory manner.
- Immediately issue rules that will make clear to all central and sub-central government entities that products produced in China by FIEs must be treated as domestic products for purposes of government procurement.



Human Resources

While attraction and retention were the primary human resources (HR) concerns of most US businesses in China in previous years, in 2009, cost control and aligning key talents to business objectives increased in importance. Still, as China's economy continues recovery, longstanding challenges will return: lack of qualified talent and insufficient labor market mobility.

For the third consecutive year, management-level HR constraints remain a top business challenge for member companies doing business in China. This may have a dampening effect on China's ability to continue economic reform and maintain a competitive advantage in the global economy.

AmCham-China has four key human resource concerns:

- long term challenges in the quality and mobility of the skilled labor;
- balancing workers' rights with a dynamic economic environment;
- uniform implementation of the Labor Contract Law;
- overloaded arbitration panels and courts preventing swift resolution of labor disputes.

Significant Developments

China's Talent Market – Cooling Down and Heating Up

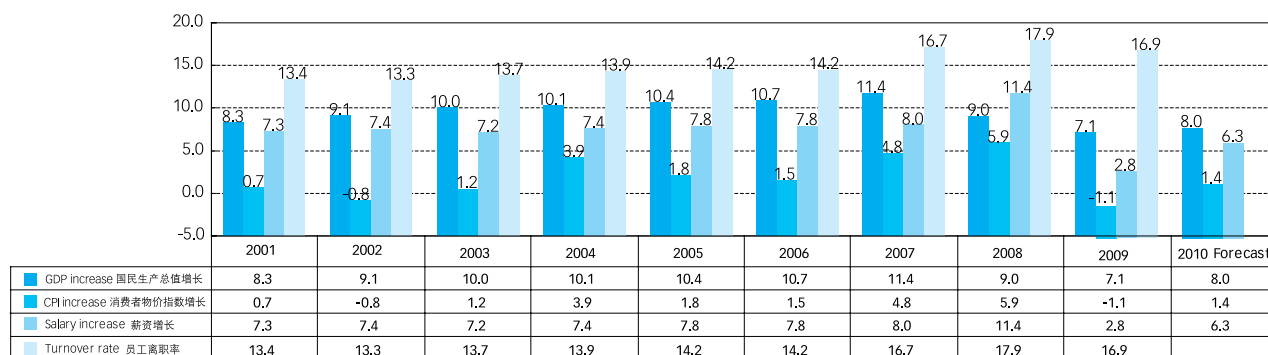
China's labor market has long been plagued by high voluntary turnover and salary increase rates. According to Watson Wyatt's Total Remuneration Survey for China, since 2001, salary increases have averaged more than seven percent a year, with a high of over 11 percent (Figure 15). In addition, voluntary turnover peaked at 17.9 percent in 2008 (Figure 16).

However, the global financial crisis significantly affected businesses in China, and companies began to look to control costs, including human capital. According to Hewitt Associates, by June 2009, more than 36.8 percent of companies in their China database had implemented hiring freezes (hiring for replacement only) and 21.8 percent had implemented complete recruitment freezes (no replacement hiring). These measures, along with a reduction in turnover, resulted in much lower salary increases, averaging only 2.8 percent in 2009 (Figure 15).

Meanwhile, China's economy has started to recover, with forecasts estimating GDP growth rate of above eight percent for China in both 2009 and 2010. This

Salary Increases and Turnover since 2001

自2001年薪资增长率与员工离职率



Source: Watson Wyatt Total Remuneration Survey, China 2001-2009
资料来源: 华信惠悦2001-2009中国总薪酬调查。

人力资源

最近几年，吸引与保留优秀人才是多数在华美企最为关注的人力资源问题。而 2009 年，成本控制和根据经营目标调整优秀人才结构对企业来说则变得更为重要。随着中国经济复苏，诸如缺乏合格人才、劳动力市场流动性小等长期存在的问题将重现。

管理层人力资源匮乏连续三年成为商会会员企业在华经营所面临的首要挑战。这将对中国经济继续推行经济改革及在全球经济中保持竞争优势的能力产生影响。

中国美国商会关注的人力资源问题主要包括以下四方面：

- 长期面临的挑战：技术工人的素质与流动性；
- 劳工权益与动态经济环境的平衡；
- 劳动合同法的统一贯彻和执行；
- 仲裁庭和法院负担过重无法及时解决劳动纠纷。

重大进展

中国人才市场——降温与升温

中国劳动力市场长期受到较高的员工离职率和薪酬上涨率的困扰。华信惠悦咨询公司在中国进行的薪酬调查指出，自 2001 年以来，中国员工薪酬年均增长率超过 7%，最高超过 11%（图 15）。此外，2008 年员工离职率高达 17.9%（图 16）。

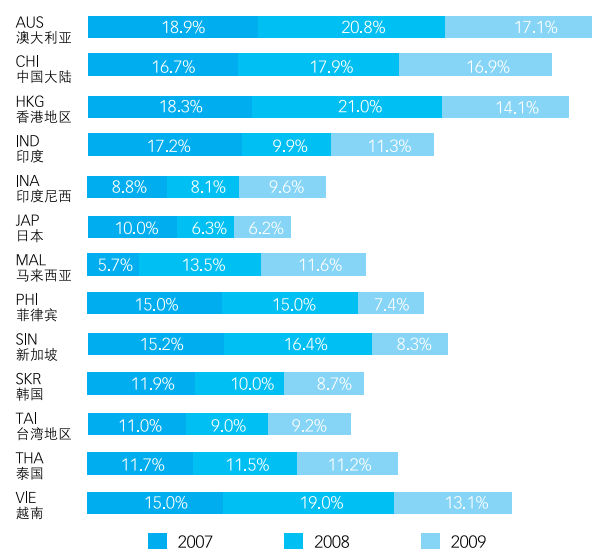
然而，企业由于在华经营受到全球金融危机的显著影响，开始加强对包括人力资本在内的成本控制。根据翰威特咨询公司调查，截至 2009 年 6 月，超过 36.8% 家公司在华冻结招聘（仅雇用可替代性员工），21.8% 的公司完全停止招聘（不雇用可替代性员工）。这些措施与员工主动离职率下降共同导致了薪酬增长幅度减小，2009 年平均涨幅仅为 2.8%（图 15）。

同时，中国经济复苏初见端倪，预计中国 2009 年与 2010 年国内生产总值增长率将高于 8%。这种正常增长似乎也对在华企业的人员编制计划及薪酬增长构成影响。翰威特咨询公司报告指出，大部分产业的绝大多数公司已计划于 2010 年放宽对招聘或人员编制的限制。随着经济的回暖，吸引、保留并激励管理级人才仍将是国内外企业所关注的问题。

中国雇员的薪酬增长率与主动离职率仍居亚洲首位，尤其当利用实际工资增长（工资增长率低于消费者物价指数）进行计算时，这一点更为明显。尽管中国的薪酬增长率从 2008 年的亚洲第二位跌至 2009 年的第六位，但有望于 2010 年重返至第二位。

通过亚洲地区员工主动离职率也可看出中国劳动力市场所面临的挑战：自 2007 年中国员工主动离职率位居亚洲第三位；2009 年这一比例虽有所下降，但仍达 16.9%，居亚洲第二位（图 16）。

Voluntary Turnover in Asia, 2007-2009
2007~2009 年亚洲地区员工主动离职率



Source: Watson Wyatt Total Rewards Salary Survey, Asia
资料来源：华信惠悦亚洲地区薪酬调查

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healthy growth seems also to impact headcount planning and salary increases for companies in China. According to the Hewitt Associates report, in most industries, the majority of companies had plans to relax recruitment or headcount freezes in 2010. As the economy rebounds, attracting, retaining and motivating management-level talent will remain an issue for both foreign and domestic companies.

China's salary increases and turnover rates remain among the highest in Asia. This is especially true when using Real Wage growth (salary increases less CPI). Although China's wage growth dropped to sixth in the Asia region in 2009 from second in 2008, it is expected to rebound to second again in 2010.

The challenges of China's labor market can also be seen when looking at voluntary turnover rates across Asia. China has the third highest turnover rates in Asia since 2007. In spite of the downturn, China had a 16.9 percent turnover across industries in 2009, second highest in Asia (Figure 16).

The Chinese government has made significant efforts to increase the quality of skilled labor in China and the qualified labor pool is expected to increase by an annual average of 2.4 percent to a total of 45 million within 20 years. By 2015, the total number of skilled workers aged 25-59 will exceed that of the US (Figure 17).

In spite of these developments, serious challenges remain. Both domestic and foreign-invested enterprises (FIE) have difficulties filling technical and managerial positions despite offering increasingly higher wages. An overwhelming majority of respondents to AmCham-China's 2010 *Business Climate Survey* indicate that these HR constraints negatively affect, and even materially damage, their China operations. There are three reasons for this trend. First, there is an increased demand for talent from both multinational companies (MNC) and domestic companies. Second, there is a gap between employers' needs and the skills that Chinese graduates possess. Third, despite recent relaxation of hukou (household registration) restrictions, mobility in China remains too restricted for the rising demand of skilled employees.

While the economic downturn may temporarily mitigate labor supply constraints, the underlying issues in China's labor market remain. The influx of MNCs entering China and the reform of state-owned enterprises (SOE) place strong pressure on the labor market. An average of 40,000 new FIEs entered China annually from 2003-2007. At the same time, the increased rate of urbanization, globalization and Chinese companies' movement up the value chain all increase demand for

qualified, senior talent. Accompanying this change has been a commensurate increase in wages in SOEs and private Chinese-invested businesses. The difference in wages in FIEs compared with domestic companies has narrowed substantially in recent years, increasing pressure on FIEs to attract and retain top talent.

Specific Issues

Supply of Qualified Talent

While the downturn may be driving a short-term surplus in China's labor supply, the mismatch between employers' needs and the skills possessed remains a problem. Increased demand for qualified talent combined, with severe shortages of middle managers and a large number of inappropriately skilled university graduates, places a burden on private and public companies as well as the Chinese government. In fact, the Ministry of Human Resources and Social Security (MOHRSS) estimates that 1.2 million of the 4.2 million university graduates in 2006 lacked the qualifications required in today's job market.

Companies need dramatic changes in Chinese talent, both in technical skills and management expertise, for fast-growing domestic and international teams. Internationalization of domestic companies requires highly-tuned communications and collaboration skills for successful global expansion.

For FIEs in China, the nature of their businesses has changed from low-end manufacturing to an increasing emphasis on research and development, financial analysis, and high-tech and service-oriented work. As many MNCs integrate their China businesses into global operations, they expect their Chinese colleagues to work collaboratively across boundaries, speak English fluently and have an international approach to solving problems.

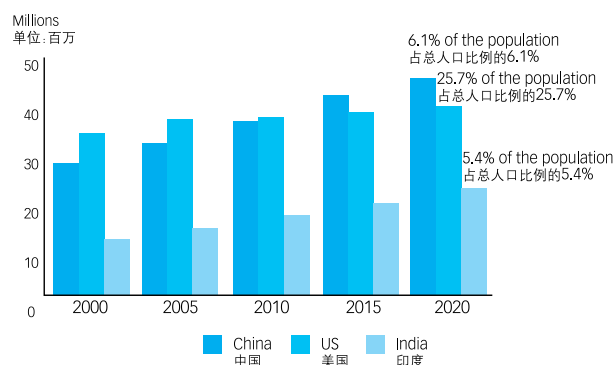
Some aspects of China's traditional education system contribute to the lack of appropriately skilled and qualified talent. China's schools favor rote memorization over practical application. This method of learning does not translate well to daily operational communications, especially in highly matrixed or internationalized organizations.

Another challenge is that there are relatively few business-university partnerships, including compulsory internships in university curricula. This leads to graduates with very strong theoretical skills, but with little work or practical experience. Companies have to invest significantly in training and development to bring their new hires up to par with their peers in other countries.

中国政府在提升熟练劳工质量方面做出了巨大努力。预计未来二十年内，熟练劳工数有望以年均 2.4% 的增长速度增至 4500 万。到 2015 年，25 ~ 59 岁的熟练劳工总量将超过美国熟练劳工人数（图 17）。

Skilled Labor Supply Aged 25-59

25~59岁熟练劳工供给情况



Source: Watson Wyatt Total Rewards Salary Survey, Asia
资料来源：华信惠悦亚洲地区薪酬调查

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在取得诸多进展的同时仍面临着严峻挑战。尽管中外企业向员工提供更高的薪酬，但仍面临着聘用技术和管理人才的困难。中国美国商会 2010 年商务环境调查数据表明，这类人力资源匮乏对绝大多数反馈企业的在华运营产生负面影响，甚至带来实质性的损失。出现这种趋势有以下三个原因：首先，跨国公司与国内企业对人才资源的需求日渐增长；第二，国内大学毕业生拥有的劳动技能与雇主的要求存在差距；第三，尽管近来放松了对户口（户籍登记）的限制，但与熟练雇员不断增长的需求相比，中国人才流动仍严重受限。

虽然经济低迷可能暂缓劳动力供应不足，但中国劳动力市场仍有潜在问题。跨国公司的涌入及国有企业改革对劳动力市场造成较大压力。2003 ~ 2007 年间，每年有平均 4 万家外资企业进入中国。同时，高度城市化及全球化，及国内企业在产业价值链上的攀升急需高素质人才。除此之外，国有企业及民营企业的薪酬也相应增长。近年来，外资公司与国内公司的薪金差距已极大缩小，这增加了外资公司吸引与保留高端人才的压力。

具体问题

合格人才供给

虽然经济低迷导致短期中国人才市场供给过剩，但在雇

主需求与劳动力自身技能不足之间仍存在矛盾。对合格人才需求增加、中层管理人员严重匮乏以及大量高校毕业生能力不足等因素给民营企业、国有企业及中国政府带来较大负担。人力资源与社会保障部估计，2006 年的 420 万高校毕业生中有 120 万人缺乏就业市场所需的职业技能。

企业需要中国人才在技术能力与管理技能方面发生极大转变，以满足快速增长的国内外人才队伍建设的需要。中资企业的国际化需要有优秀沟通和协作能力的人才以帮助实现其全球扩张的目标。

对于在华的外资企业来说，企业性质已从低端的加工制造业越来越多地向研发、财务分析、高科技及服务导向型业务发展。很多跨国公司将其在华业务融入全球运营中，因此也希望其中国雇员能够跨区域合作，讲流利英语，并以全球视角解决问题。

中国传统教育体制的某些方面导致其难以培养出有技能的合格人才。国内学校重机械记忆而轻实际应用能力的教学方式无法培养出很好的应用型人才，尤其无法满足高度矩阵式管理或国际化企业的人才需求。

另外，校企合作相对较少，包括大学教学中缺乏强制性实习要求，也成为另一挑战。这使得高校毕业生尽管具备扎实的理论技能，却缺少实际工作经验和能力。因此，企业不得不投入大量资金进行人才培训和发展，使其在华招聘的新员工与其他国家的新雇员保持相当的水平。

结论

中国美国商会对于中国政府向中等教育、中专及职业技术教育与培训领域增大投资、提高其质量和标准方面所作出的不懈努力表示支持。同时，我们相信这些努力能够创造出灵活的、与职业化紧密联系的教育或培训环境，使中国学生具备所需技能，以确保中国在世界经济中的竞争优势及在 21 世纪的和谐稳定发展。

建议

- 建立由国际商业社会组成的顾问委员会，以认定在华雇员所应具备的技能。该委员会可借助国际教育机构资源，为中国中高级教育机构提供建议：

Conclusion

AmCham-China supports the Chinese government's on going efforts to increase investment in, and the quality and standards of, the country's secondary, post-secondary and vocationally-targeted education and training sectors. We believe these efforts can be one means to create a more flexible, relevant and vocationally-tied educational/training environment, one that equips China's students with the skills and competencies needed to ensure China's competitive position in the world economy, as well as the country's harmonious and stable development throughout the 21st century.

Recommendations

- Establish an advisory committee composed of members of the international business community to identify the employee skills and competencies needed in China. With input from international educational entities, this committee could recommend ways for Chinese secondary and tertiary-level learning institutions to upgrade their students' skill sets and future employment opportunities through curriculum changes, business-academic partnerships, re-training programs and work-based apprenticeships.
- Review and modify the historic and national "985" and "211" projects to include more collaboration and input from China's domestic and international business communities to ensure that tertiary-level education and related research and development-focused training provide the skills and competencies required in China's current and future labor markets.

Labor Regulations

Significant Developments

Chinese employment rates increased in 2009 after decreasing in late 2008. In November 2008, MOHRSS promulgated measures to reduce labor costs and mitigate the effects of the global financial crisis on domestic employment. These included freezing the minimum wage rise and temporarily allowing local governments to reduce the rate of social security contributions in 2009 and allowing employers to defer payment on social security contributions while local governments fill in. Local governments have also offered social security contributions subsidies and employee-training to

employers who have minimized layoffs, and allowed companies experiencing "hardships" to apply for flexible schedules or comprehensive hour systems.

Meanwhile, MOHRSS has reaffirmed its commitment to the "serious and steady" implementation of the Labor Contract Law while working with enterprises to overcome challenges presented by it. AmCham-China fully supports increased protections for Chinese workers, including the right of employees to unionize, and believes advancement of workers' rights can be balanced with maintaining a flexible labor market allowing for vibrant and socially responsible economic growth.

According to media reports, the central government is planning to promulgate several important labor related regulations, such as a new Enterprises Wages Regulation, which will include rules on the definition of wage, minimum wage, wage payment, and legal liabilities, and an Enterprises Democratic Management Regulation. The latter will include rules on employers' obligations to form employee representative councils and the latter's rights and powers.

Local governments have also actively issued new labor regulations. For example, the Shanghai Higher Court issued its Opinions on the Employment Contract Law. Shanghai has been a pioneer in allowing foreigners working in Shanghai to participate in local social security plans and receive pension payments in China after they reach the statutory retirement age.

Recently the Shenzhen Municipal government promulgated the Shenzhen Municipal Employees Wages Payment Regulation (2009), making Shenzhen the first jurisdiction where employers are required to pay 300 percent overtime to employees working on legal holidays even if they are on the comprehensive hours system. Shenzhen is also the second city, after Shanghai, that requires employers to pay 300 percent overtime to employees, working on legal holidays, even those on the flexible schedule system.

Specific Issues

Labor Contract Law Implementation

The Implementing Rules for the Labor Contract Law fail to clarify the Labor Contract Law's statutory terms for permitted uses of labor, such as the temporary, auxiliary and substitute positions for labor dispatch employees. This creates ambiguity that will have to be resolved by labor arbitrators or courts on a case-by-case basis.

如何通过调整课程大纲、增加校企合作、实施再培训计划以及开展工作实习，以提升学生技能，拓宽其未来就业范围。

- 评估和修订现有的国家“985”及“211”工程，以涵盖更多来自国内外企业界的合作并听取其意见，确保高等教育、相关研究和基于发展的培训项目为中国现在及未来就业市场提供所需技能。

劳动法规

重大进展

中国就业率自 2008 年末出现下滑后，于 2009 年开始增长。2008 年 11 月，人力资源和社会保障部公布措施以降低劳动成本，缓解全球金融危机对国内就业带来的影响。这些措施包括停止增加最低工资、暂时允许地方政府降低 2009 年社会保障金缴纳比率、允许就业者推迟缴纳社会保障金而由当地政府垫付；地方政府向将裁员减至最低的雇主提供社会保障金补助及员工就业培训；为使企业度过困境，政府允许公司申请灵活或综合工时制。

同时，人保部重申“严肃、平稳地”执行《劳动合同法》承诺，与企业共同解决执行中出现的问题。中国美国商会完全赞同为中国雇员建立的保障措施，包括保障劳工加入工会的权利。中国美国商会相信只有保持劳动力市场的灵活性才能与不断提升的员工权益相平衡，而这一劳动力市场也必将带来充满活力的、具有社会责任的经济增长。

据媒体报道，中央政府正计划制定几项重要的劳动法规。如新的《企业工资条例（草案）》规定了工资、最低工资、工资支付及法律责任条款，以及《企业民主管理条例（草案）》，包括对雇主成立劳工代表委员会的责任及委员会的权利进行规定。

地方政府也积极颁布新的劳动法规。如上海市高级人民法院颁布了《关于适用〈劳动合同法〉若干问题的意见》。上海市在全国率先允许在沪工作的外籍人士加入当地社会保障计划，并允许其到法定退休年龄后在中国领取养老金。

最近，深圳市政府颁布了《深圳市员工工资支付条例》（2009），并在全国率先规定，即使企业实行综合工时

制，深圳市范围内的雇主需向在法定节假日工作的员工支付 300% 的加班工资。深圳成为继上海之后第二个建立此规定的城市。

具体问题

《劳动合同法》的实施

《劳动合同法实施条例》未能对《劳动合同法》中有关劳务派遣在临时性、辅助性及替代性工作岗位适用范围的条款予以明确阐述，因而由此产生的相关案件只能由劳动仲裁委员会或法庭依据具体情况解决。

中国美国商会 2009 年《白皮书》出版后，上海市高级人民法院于 2009 年 3 月颁布的《关于适用〈劳动合同法〉若干问题的意见》成为在该领域取得的又一重大进展。这表明地方政府着力解决《劳动合同法》执行中出现的各类问题已成为一种趋势。该《意见》包含众多与在华企业运营直接相关的条款，并阐明雇主与员工间的合同义务。

广东省也颁布了与《劳动合同法》执行相关的类似司法解释，但直至本文完稿前，《最高人民法院关于审理劳动争议案件适用法律若干问题的解释》的审议仍需时日。

另外，需进一步明确雇主与临时员工之间的关系界定及其合同义务。由于对此种用工形式的定义及合同义务缺乏明确规定，使得外资企业更不愿意雇用临时雇员（兼职或在工作项目期内产生的合同工）。在贯彻影响劳资关系的相关劳动法律法规之前，政府如给予包括企业在内的利益相关者更多听取其观点及建议的机会，将利于相关法律法规的遵守与执行。

中国美国商会继续支持所有国内外公司一致贯彻执行《劳动合同法》。中国美国商会认为所有在中国运营的企业应共同保护劳工权益。虽然《劳动合同法》实施后执法力度有所增强，但我们认为加强执法一致性将进一步敦促所有企业遵守法律。为保护劳工、雇主及工会的合法权利，相关劳动法律法规应在全国范围内统一执行。

仲裁庭和法庭负担过重

中国美国商会 2009 年《白皮书》中提到的有关劳动争议的仲裁与诉讼案件现在仍有增加。例如，北京 2009 年前三个月的劳动仲裁案件数量相当于 2008 年全年总数。

One area of significant progress in this area since the publication of AmCham-China's 2009 *White Paper* is the Opinions on Certain Issues in Application of the Employment Contract Law (the Opinions), issued by the Shanghai City Higher Court in March 2009. This is part of a trend where local governments are addressing the various questions about the implementation of the Labor Contract Law. The Opinions contain many provisions directly concerning foreign businesses operating in China that clarify contractual obligations between employers and employees.

Guangdong Province has issued a similar judicial interpretation related to the implementation of the Labor Contract Law. However, while a draft for the Supreme People's Court Interpretations on Certain Issues Related to the Application of Law in the Adjudication of Labor Disputes has been in circulation for some time, it has not been issued as of this publication.

One area that would benefit from further clarity is the definition and contract obligations between employers and temporary workers. FIEs are more hesitant to hire temporary workers (part-time or contracted-based on duration of projects) due to a lack of clarity concerning the definition and contractual obligations of such status. It would be helpful for compliance and enforcement if relevant stakeholders, including enterprises, were given greater opportunity to provide input and seek clarification on any proposed measures before the government adopts laws or regulations affecting labor relations.

AmCham-China continues to support consistent enforcement for all firms, foreign and domestic. We believe that all firms in China should demonstrate the same commitment to protecting workers' rights. While the enactment of the Labor Contract Law has improved enforcement, we believe emphasis on consistent enforcement would further bring all enterprises into full compliance with the Law. To protect the lawful rights of employees, employers and trade unions, we believe that labor laws and regulations should be implemented uniformly on a national basis.

Overburdened Arbitration and Judicial Panels

The trend for increasing labor disputes (both arbitrations and litigation), noted in the 2009 *White Paper*, has continued. For example, labor disputes in Beijing in the first three months of 2009 equal those for all of 2008.

As they did last year, a majority of AmCham-China members expect an increase in labor litigation in the next few years (Figure 18). While this indicates that the employees now are better aware of their rights, it also

burdens the arbitration panels and courts with an overload that slows the administration of justice.

To reduce the pressure on the labor arbitration system, MOHRSS issued Circular 124 on Strengthening Labor Dispute Mediation, requiring all companies with trade unions set up labor dispute mediation committees and all companies without them set up both trade unions and mediation committees.

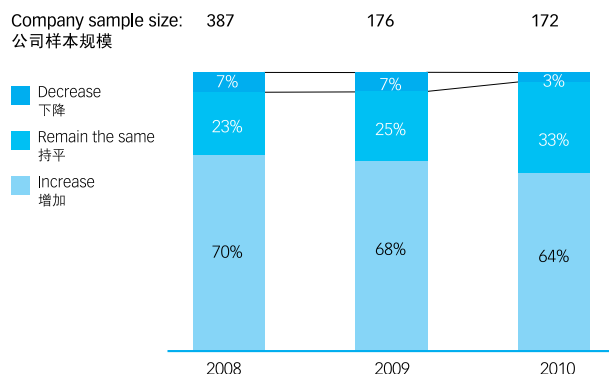
AmCham-China believes that both government and labor unions can play positive roles in solving labor disagreements and thus supports the introduction of local mediation mechanisms. Concurrently, we urge dedication of greater resources to overburdened arbitration panels and courts to help government initiatives effectively and efficiently advance the rights of both employees and companies.

Recommendations

- **Speed up issuance of national judicial interpretations by the Supreme People's Court to clarify the ambiguities in the Labor Contract Law and its implementation rules, including clarification on the statutory terms for permitted uses of labor, such as the temporary, auxiliary and substitute positions for labor dispatch employees.**
- Improve coordination between local governments in adopting local implementing rules on the Labor Contract Law, to ensure consistency and ease of compliance.
- Increase transparency of the legislative and rule-making process and engage enterprises or trade organizations in drafting new laws and regulations related to labor and employment law.
- Initiate and improve dialogues between national and local federations of trade unions and enterprises or their trade organizations.
- Emphasize fully uniform enforcement of labor laws and regulations to further bring all enterprises into full compliance with the Labor Contract Law.
- Increase budget and staffing for labor arbitration commissions and courts so they can competently and effectively handle the sharp increase in labor disputes.

Do you expect to see an increase, decrease, or the same amount of labor litigation in the next few years?

企业对未来几年劳动诉讼案件数量的预期



Source: 2010 AmCham-China Business Climate Survey
资料来源: 2010年中国美国商会商务环境调查

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如大多数中国美国商会会员去年预计, 今后几年内劳动诉讼案件还会继续增加(图 18)。这说明现在从业者维权意识增强, 但同时也加重仲裁庭及法庭的负担, 降低司法行政效率。

为减轻劳动仲裁机制的压力, 人社部颁发了《关于加强劳动人事争议调解工作的意见》(人社部发〔2009〕124号), 要求已设立工会的所有公司设立劳动争议调节委员会; 尚未成立工会的企业要将工会组建与调解组织建设同步推进。

中国美国商会相信政府与工会在解决劳动争议问题上能够起到积极作用, 因此商会支持引入地方仲裁机制。同时, 商会敦促为负担过重的仲裁庭及法庭提供更多帮助, 从而协助政府采取有效措施保护雇主与雇员的权益。

建议

- 最高人民法院加快发布关于《劳动合同法》及实施条例中模糊内容的司法解释, 包括对有关劳务派遣在临时性、辅助性及替代性工作岗位适用范围的条款加以明晰。
- 加强地方政府根据《劳动合同法》的内容在当地贯彻相关劳动法规的协调能力, 保证法律执行的一致性与可执行性。
- 增加立法机关及其立法程序透明度, 允许企业或贸易组织参与起草与劳动及就业相关的新法规。
- 推进及改善国家与地方总工会和企业或其行业组

织之间对话。

- 加强劳动法律与法规贯彻执行, 敦促所有企业全面遵守《劳动合同法》。
- 增加劳动仲裁委员会及法院的预算和工作人员, 使其能够有效地处理日见增多的劳动争议。

Intellectual Property Rights

The commitment of the Chinese government to protection of intellectual property (IP) has continued to evolve significantly in recent years. While the government has taken steps to address many older issues, such as widespread counterfeiting and piracy, significant structural problems remain unresolved, including local protectionism, disproportionately low resource allocation to copyright enforcement and varying local practices. Newer issues in such areas as antitrust law, “security review” and inventor remuneration for patents, standardization practices involving IP rights, genetic resource disclosures, “junk” patents, government procurement, and market access have also evolved. These can significantly affect both the enforceability of IP rights and the value of IP-intensive products and have also raised heightened concerns about the linkage between industrial policy and IP protection in China, including concerns over national treatment for foreign IP rights and foreign-invested enterprises. AmCham-China members are increasingly concerned about these disturbing industrial policy trends.

AmCham-China has taken an active role in commenting on China’s IP laws, including the Patent Law, Patent Law implementing regulations and standardization rules. We greatly appreciate the opportunity given us to make such comments and we look forward to providing comments on the drafts of the Trademark and Copyright law revisions, as they become available.

Bilaterally, IPR talks under the US-China Joint Commission on Commerce and Trade (JCCT) resumed in 2009, following a hiatus after the US filing of a WTO case. AmCham-China believes that sustained, effective JCCT IPR talks and other bilateral dialogues, in close coordination with industry, are vital to addressing pressing IP concerns, new and old, and to ensuring that prior commitments are fully implemented. AmCham-China believes there is great potential to deliver concrete, meaningful results, particularly where Chinese laws and policies are clear and China has made explicit JCCT commitments, such as ensuring China’s state-owned enterprises (SOE) are using legally licensed software.

Technical capacity building and cooperation talks between patent authorities US Patent and Trade Office (USPTO) and China’s State Intellectual Property Office (SIPO), as well as the patent authorities of Europe, Japan and several other countries, have continued and are deepening. This too is very positive given the importance of patents to innovation and competitiveness. Other dialogues, on areas such as trademarks, copyright, criminal justice cooperation in IPR, pharmaceutical and medical devices, are also critical.

Another example of win-win cooperation was the establishment of a joint US-China Clean Energy Research Center during President Obama’s 2009 trip to China, which will facilitate joint research and development of clean energy technologies by scientists from both countries.

However, several ongoing, overarching IP issues continue to negatively impact the development of both foreign and domestic industry. First, China’s continued failure to adequately enforce IP rights continues to cost China’s trading partners, including US knowledge-based industries, billions of dollars in lost exports. America’s copyright industries of software, films and sound recordings are a prime example. Lack of effective copyright enforcement is also retarding the growth of China’s innovative IP industries. More deterrent enforcement and greater coordination between criminal and administrative authorities are needed to ensure that China is to be a place where IP can develop and thrive.

AmCham-China is concerned about relatively low copyright damage awards in the courts, a low incidence of preliminary injunctive relief for trademarks and copyrights, frivolous assertion of low quality patents, anticompetitive consequences of assertion of unexamined design and utility model patents, narrow scope of claims for many invention patent grants, limited scope of protection for plant varieties and lack of plant patents and other increasingly technical issues that affect the value of many types of IP rights that are of great importance to US companies.

知识产权

近年来，中国政府在知识产权保护方面的工作取得了很大的进展。中国政府采取了积极步骤来解决盗版猖獗、假货横行等很多长期存在的问题，但重大的结构性问题依然没有得到解决，包括本土保护主义、版权执法资源严重不足、以及各地执法标准的不统一。反垄断法、“安全审查”、专利发明人的报酬、涉及知识产权的标准制定工作、遗传资源披露、“垃圾”专利、政府采购和市场准入等领域的新问题又接踵而至。这些问题会对知识产权的执法能力和知识产权密集型产品的价值产生重大影响，也因此加剧了外界对于中国产业政策和知识产权保护之关联性的担忧，包括对于国外知识产权和外商投资企业能否享有国民待遇的担忧。中国美国商会成员正在日益关注这些令人担忧的产业政策走向。

中国美国商会积极参与了中国的《专利法》、《专利法实施细则》和标准化法规等知识产权法律意见公开征求活动。能够有机会提出这些建议，我们感到非常高兴。我们希望在《商标法》与《著作权法》修订草案出台时也能够提出相关意见。

继美国向世贸组织提交中国申诉案致使中美之间产生隔阂之后，两国于 2009 年在美中商贸联合委员会的框架下，恢复了知识产权领域的对话。中国美国商会认为，通过与业界密切合作，开展持续且有效的 JCCT 知识产权会谈及其它双边对话，对解决迫在眉睫的新旧知识产权问题以及确保充分履行之前的承诺有着至关重要的作用。中国美国商会相信，这些对话极有可能带来具体且有意义的成果，尤其是在中国法律和政策比较明晰以及中国向 JCCT 做出明确承诺的领域，包括确保中国国有企业使用合法授权软件方面。

专利管理当局，美国专利商标局、中国国家知识产权局与欧洲、日本和一些其他国家的专利管理当局之间的技术能力建设和合作对话继续深入开展。鉴于专利对创新和竞争力的重要性，这类合作具有非常积极的意义。另外，在商标、版权、知识产权刑事保护司法合作、制药和医疗设备等领域开展的其他对话也非常重要。

在奥巴马总统 2009 年访华期间，中美两国联合成立了一家清洁能源研究中心，以推进两国科学家共同研究和开发清洁能源技术，这也是双赢合作的又一范例。

然而，目前存在的一些重大知识产权问题依然会对国内外行业的发展产生不利影响。首先，中国知识产权执法力度不够，导致与中国开展贸易的合作伙伴损失数十亿美元的出口额，其中包括来自美国的知识型产业。美国的软件、电影和唱片版权行业就是最好的例证。由于缺乏有效的版权执法，也阻碍了中国创新知识产权行业的发展。只有刑事执法部门与行政执法部门加大执法力度和加强有效合作，才能确保中国知识产权行业的发展与繁荣。

中国美国商会关注的问题包括：法院判决的版权侵权赔偿金相对较低；针对商标和版权授予临时禁令性救济的情况较少；随意申请低质专利；因主张和申请未经审查的设计和实用新型专利而导致的反竞争后果；所授予的诸多发明专利的权利范围较窄；植物多样性保护范围有限；缺乏植物专利；以及其他一些日益凸显的技术性问题，这些问题对美国企业许多极重要的知识产权的价值造成了负面影响。

其次，中国推出的促进自主创新的措施使得知识产权所有者国籍成为了中国政府采购市场和潜在的国有企业采购市场的进入壁垒。从贸易角度看，将知识产权所有者国籍规定为市场进入障碍是前所未有的，也是难以让人接受的，因为它违背了创新精髓在于其全球性的真正本义。这种带有倾向性的做法正延及中国国有企业的商业活动，因而引发了外界对于国民待遇的担忧。

最后，中国制定了一系列的与专利、标准和竞争政策相关的措施，而一旦中国政府认定相关知识产权有违“公共利益”或存在滥用知识产权或“滥用市场主导地位”的情形，则相关知识产权本身存在着被这些措施削弱或取消的风险。前述的术语并无明确定义，因此国外业界普遍担心中国政府在实施这些措施时是否会偏袒本土竞争对手。

Second, measures announced by China to promote “indigenous innovation” have made nationality of IP ownership a market access barrier to Chinese government, and potentially SOE, procurement. Stipulating nationality of IP ownership as market access barrier is unprecedented and unacceptable from a trade perspective, and undermines the truly global nature that lies at the heart of innovation. Extending such preferences to the commercial activities of China’s SOEs raises concerns about national treatment.

Finally, a range of Chinese measures relating to patent, standards and competition policies threatens to weaken or eliminate underlying IP rights themselves if the Chinese government determines they are against the “public interest” or if abuse of IP or “abuse of dominance” is found. These terms are undefined, and foreign industry is concerned about whether these will be implemented in a way that advantages domestic competitors.

Lack of transparency in drafting of competition law enforcement guidelines in IPR is of special concern. Enforcement becomes irrelevant if a rights holder loses the underlying right. AmCham-China is also concerned about selective application of the Anti-Monopoly Law, which to date has largely focused on foreign-foreign mergers and not considered anticompetitive effects of Chinese-Chinese mergers. If these disturbing trends are carried over to IPR content, foreign rights holders may be significantly disadvantaged in this market in a manner that could offend WTO requirements.

If not addressed, these problems could pose a threat to the long-term competitiveness of a wide range of America’s strongest knowledge based industries, given that China is, or will soon be, the world’s largest market for many cutting-edge products and services. The inability of US companies to capture the value of their IP in China directly impacts job growth and the health of companies in both the US and China.

Respecting and enforcing foreign IP rights must be viewed as an integral element of China’s overall export to domestic-demand economic growth model, as well as an essential underpinning of China’s advance toward an innovation and knowledge-based economy.

Significant Developments

Interest in IP filings in China remains strong. Although a decline in patent filings to the USPTO was reported in the first few months of 2009, presumably related to the recession, the Chinese Patent Office reported a 16 percent increase in patent filings, mostly Chinese, in the first nine months of 2009 over the same period in the previous year. This increase is, in part, a response to

the Chinese government’s push to promote innovation and encourage patent filings. China was also the fifth largest filer of Patent Cooperation Treaty patents in the world for 2009, with an annual increase of 31.6 percent. These trends indicate the importance placed on IP and innovation as a driver for continued economic growth.

AmCham-China is concerned about a rapid ramp-up in lower quality patents due to subsidies and inventor remuneration schemes. In particular, SIPO data reveals a statistically significant increase in patent applications at year end, as well as a significant increase in service patent grants for Chinese companies and in non-service patent grants for foreigners in 2009, which may suggest an effort to use statistics to demonstrate that China is “innovating.”

AmCham-China’s 2010 *Business Climate Survey* reveals an increase in the percentage of members who believe protection of IPR is very or critically important to their business, rising from 65 percent in 2009 to 70 percent in 2010 (Figure 19). However, despite strong levels of IP filings and the importance placed on protection of IPR by industry, China’s environment for innovation is still hobbled by weak enforcement of laws and regulations protecting IP. According to the 2010 *Business Climate Survey*, 74 percent of member companies responded that China’s enforcement of IP was either “ineffective” or “totally ineffective,” a slight increase over 2009 (Figure 20). While China has made great efforts to improve the body of IP laws and regulations, enforcement of these regulations is now needed to ensure the continued growth and development of IP in China.

Patent

On October 1, 2009, China’s new Patent Law came into effect. Since 2006, AmCham-China has submitted three sets of comments on the new law. AmCham-China appreciates the opportunity to provide input and looks forward to future opportunities to contribute. We applaud the release at the end of 2009 of implementation regulations and the judicial interpretation as they are essential for increasing compliance with the Patent Law, which includes numerous terms and provisions requiring further clarification and explanation. Going forward, AmCham-China urges the State Council Legislative Affairs Office to release implementation regulations concurrently with new IP laws to promote compliance more effectively.

The new Patent Law made numerous amendments to the previous law, including revisions to design patents, heightened patentability standard (absolute novelty was adopted), joint-ownership revisions, preliminary injunction procedures, international patent exhaustion

在起草与知识产权相关的竞争法实施指导规定的过程中，缺乏透明度的问题引起了特别的关注。若知识产权所有者失去了基本权利，则执法也就失去了意义。中国美国商会还对《反垄断法》执行过程中的差别性对待表示担忧，该法律迄今为止主要关注的是外国企业之间的并购，而没有考虑过中国企业间的并购所产生的反竞争后果。如这些令人担忧的趋势蔓延到知识产权领域，则有可能出现违反世贸组织要求的情形，令在中国市场的国外知识产权所有者面临非常不利的境地。

由于中国已经是或即将成为全球最大的尖端产品和服务市场，因此这些问题若得不到解决，会对美国强大的知识型产业的长期竞争力形成威胁。若美国企业无法在中国获取应有的知识产权价值，会直接影响到中美两国的就业市场和企业的良性发展。

中国应将尊重和保护国外知识产权视为其由出口导向到内需拉动型经济增长的模式中不可分割的一部分，同时它也是中国向创新型和知识型经济迈进的重要基础。

重大进展

中国的知识产权申报数量持续增加。可能由于经济衰退的原因，2009 年前几个月美国专利商标局的专利申请数量呈下滑态势，而 2009 年前九个月，中国专利局的专利申请数量却同比增长了 16%，其中大多数来自中国本土企业。这一增长部分归因于中国政府推进创新和鼓励专利申请的措施。2009 年，就专利合作条约专利申请数量来说，中国排名世界第五，年度申请数量增长率为 31.6%。这些趋势体现了知识产权和创新作为经济持续增长推动力的重要性。

在补助金和发明人报酬计划的推动下，低质专利的申请数量迅速增加，中国美国商会对这点表示担忧。来自中国国家知识产权局的数据显示，截至 2009 年底，专利申请数量大幅上升，而授予中国企业的职务发明专利和授予外国企业的非职务专利数量也大幅增加，中国政府可能是想通过统计数据来证明中国在不断“创新”。

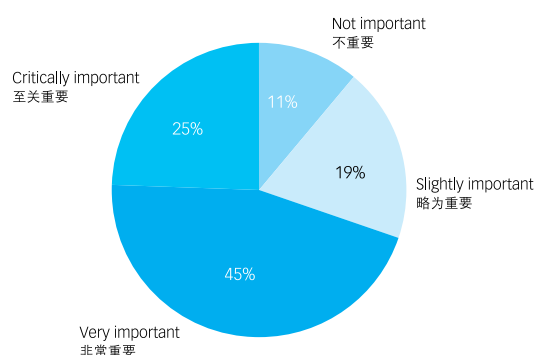
中国美国商会发布的 2010 年《商务环境调查》显示，认为知识产权保护对其业务发展非常或至关重要的会员企业所占比例已从 2009 年 65% 上升至 2010 年的 70%（图 19）。然而，尽管知识产权申报数量在增加，业界也对知识产权保护给予了关注，但由于知识产权保护方面的法律和法规执行力度较弱，中国的创新环境依然很严峻。根据 2010

年《商务环境调查》，74% 的会员企业表示，中国的知识产权执法“无效”或“完全无效”，这一比例较 2009 年有小幅增加（图 20）。尽管中国在改进知识产权法律和法规内容方面做出了很大的努力，但只有真正有效地执行这些法律和法规才能确保中国知识产权领域的持续增长与发展。

How important is the protection of intellectual property rights to your business?

知识产权对企业发展的重要性

Company sample size = 277
公司样本规模



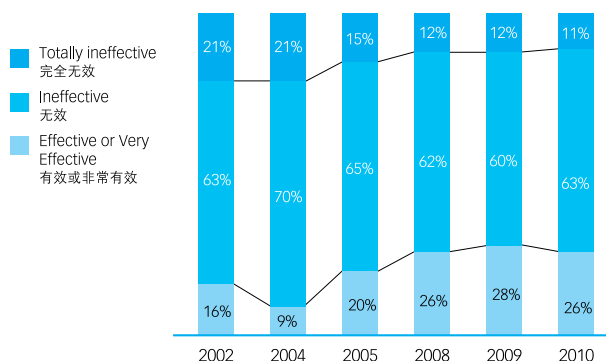
Source: 2010 AmCham-China Business Climate Survey
资料来源：2010 年中国美国商会商务环境调查

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How would you rate China's enforcement of intellectual property rights? (2003, 2006, 2007 data unavailable)

企业对中国政府保护知识产权执行力的评估

Company sample size: 219 210 331 389 129 146
公司样本规模



Source: 2010 AmCham-China Business Climate Survey
资料来源：2010 年中国美国商会商务环境调查

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专利

中国的新《专利法》于 2009 年 10 月 1 日生效。自 2006 年以来，中国美国商会已经就此项新法递交了三份意见书。中国美国商会很高兴有机会提供意见，并期待未来能有更多机会发表其意见和建议。中国政府于 2009 年底颁布

and new rules on inventor remuneration.

Some revisions could be problematic without implementation regulations to clarify their meaning. Chief among these are changes to the provisions on compulsory licensing. Although SIPO has yet to grant a single compulsory license, and has thus far indicated that its procedures will be transparent and fair, there is concern about the inherent conflict of interest that may exist in a government structure where the agency that grants patents can also compel licensing. In the new law, a compulsory license may be applied for if a patentee has failed, without a legitimate reason, to sufficiently exploit his patent after three years from grant and four years from filing. The meaning of “sufficiently exploit” needs clarification in the implementing regulations.

Also, the new Patent Law stipulates that a compulsory license may be granted for any national emergency or extraordinary circumstances where it would be in the “public interest.” The exact scope and definition of “public interest” should be specified. Similar concerns over China’s national interests exist in secrecy review of overseas patent applications.

Some other compulsory licensing changes include the incorporation of the Doha Declaration into the Patent Law whereby compulsory licenses may be granted to manufacture patented pharmaceuticals for export to designated nations; for semiconductor technology only in situations with a public interest objective; and linking the Patent Law to the Anti-Monopoly Law by counteracting determined monopolies through compulsory licensing.

AmCham-China recommends that the regulations and the regulators adopt a very strict interpretation of these new laws, such that compulsory licenses only be granted in the direst circumstances.

There have been other noteworthy patent-related developments in China. In March 2009, the Supreme People’s Court issued an opinion which, among other things, encourages local courts to increase the costs to infringers “dramatically” by raising compensation awards, which would both increase deterrence and lower costs of enforcement for IP owners. Two recent cases involve particularly large damage awards. One case involved a US \$23 million (RMB 157 million) utility model patent infringement settlement after a US \$48 million (RMB 328 million) first instance judgment. Another case awarded US \$2.9 million (RMB 19.8 million) in damages and US \$235,000 (RMB 1.6 million) in legal expenses to the patentee for design patent infringement. However, AmCham-China is concerned that the majority of these cases have been brought

against foreign companies, and that patents asserted are frequently unexamined utility model and design patents. Similar judgments have not been awarded for core patents involved in key industries, including the IT and pharmaceutical sectors. Moreover, many pharmaceutical companies complain of the widespread introduction of generic copies for their pharmaceutical products, difficulties in enforcing process patents and lack of clinical data exclusivity.

The case involving a utility model patent brought a heightened awareness of this type of Chinese patent. Utility model patents do not exist in the US. Utility model patents are examined for formalities only, have a 10-year term (as opposed to 20 for invention patents) and have a lower inventive step requirement, making them harder to invalidate. In 2009, less than one percent of utility model patents were filed by foreign entities. Furthermore, the majority of these patents were non-service inventions, filed by individuals outside of the scope of employment and may be of lower quality.

These statistics reflect the larger concern that Chinese companies may be inclined to assert low-quality unexamined patents in their local jurisdictions, to coerce out-of-locality defendants to pay high damages or cross-license IP rights. Many local jurisdictions may also be subsidizing the filing of these patents, and local government officials may also be rewarded or recognized for the increased filings by their localities.

The above mentioned case underscores that utility model patents can be strongly enforced and receive high damage awards, typically against foreign companies, and that they can be asserted for malicious or anticompetitive purposes. Moreover, China lacks a clear remedy for abusive or unfounded patent litigation.

While AmCham-China welcomes increased cooperation between the US and China on a range of IP initiatives, including the joint development of new technologies, we believe forced transfer of patents or other IP and related information would be counterproductive to the promotion of an innovation-based society in China. Such transfers should only occur, if at all, under highly restricted circumstances consistent with the WTO’s Trade-Related aspects of Intellectual Property Rights Agreement.

Trademark

AmCham-China members appreciate the opportunity to provide input during the drafting of China’s new Trademark Law. AmCham-China commends the drafters for aiming to decrease the backlog of cases in the Trademark Office. Although earlier drafts included

了相关实施条例和司法解释，这对于强化《专利法》的合规工作至关重要，我们对此表示赞赏，但该《专利法》中有诸多术语和条款需要做进一步的澄清和解释。今后若可能，中国美国商会希望国务院法制办公室能够在颁布知识产权新法的同时出台实施条例，以更有效地促进合规工作。

新《专利法》对旧版做了很多修改，包括对外观设计专利的修改、提高可专利性标准（采用绝对新颖性标准）、对共同所有权的修改、申请临时禁令救济的程序、国际专利权耗尽原则和有关发明人报酬的新规定。

因没有实施条例来阐明其具体含义，有些修改可能会产生问题。其中最让人疑惑的是对强制许可条款的修改。尽管中国国家知识产权局并未曾授予过任何的强制许可，并表示其程序将是透明和公平的，但我们依然对政府结构中可能存在的内在利益冲突表示担心，因为专利行政部门有权实施强制许可。按照新《专利法》的规定，如果自专利权被授予之日起满三年，且自提出专利申请之日起满四年，无正当理由未实施或者未充分实施其专利的，则可授予强制许可。“充分实施”一词的含义需要在实施条例中阐述清楚。

此外，新《专利法》还规定，国家出现紧急状态或者非常情况时，或者为了公共利益的目的，也可授予强制许可。“公共利益”的具体范围和定义应详细阐明。类似对中国国家利益的担心，也存在于向外国申请专利时需要进行保密审查的规定。

对强制许可条款的一些修改还包括将《多哈宣言》纳入《专利法》，据此国家可授予专利药品的强制许可，供制造和出口到指定的国家；限于为了维护公共利益的目的，可授予半导体技术的强制许可；通过授予强制许可来对抗垄断行为，以此将《专利法》与《反垄断法》联系在一起。

中国美国商会建议相关管理机构对这些新法做出严谨的解释，例如只有在最不得已的情况下才可实施强制许可。

中国还在专利方面取得了的其他显著进展。2009年3月，最高人民法院发布了一份意见书，鼓励各地法院通过增加赔偿金来大幅度抬高知识产权侵权成本，这有助于加强知识产权执法力度并降低专利权人的执法成本。最近出现的两起案例都涉及了巨额赔偿金。在第一批案例中，一审判决赔偿4800万美元（合3.28亿人民币）之后，终审判决的实用新型专利侵犯赔偿金额为2300万美元（合1.57亿人民币）。而在另一起外观设计专利侵权案中，专利权人获得了

290万美元（合1980万人民币）的侵权赔偿金和23.5万美元（合160万人民币）的诉讼费。然而，中国美国商会担心，大多数这类案件都是针对外国企业的，主张的专利经常是未经审查的实用新型专利和外观设计专利。而对于信息技术和制药等主要行业的核心专利，并没有出现过类似的判决。此外，很多制药企业都对市场上大量出现其专利药的仿制品、难以实施工艺专利和缺乏临床数据专有权表示不满。

这项涉及实用新型专利的案件提高了人们对中国这种专利的认识。实用新型专利在美国并不存在。实用新型专利只进行形式审查，这种专利的有效期为10年（而发明专利的有效期限则为20年），创造性要求低，因此更难以宣布其无效。2009年，外国企业提交的实用新型专利申请所占比例不到1%。此外，实用新型专利大多属于非职务发明，由个人在在职务范围之外申报，因此专利的质量可能更低。

以上统计数据所反映出的一个更大的担忧是，中国企业可能倾向于在本地辖区内申请未经审查的低质专利，借此迫使非本地被告支付高额赔偿金或互授权。很多地方也可能会为这类专利申请提供补贴，而当地政府官员可能会因当地专利申请数量的增加而获得奖励或表扬。

以上提及的案例再次表明，实用新型专利执法力度强，并可获得高额赔偿金，尤其是当被告涉及外国企业的时候，另外，此类专利申请可被用于恶意或反竞争的目的。此外，中国对滥用专利司法程序或无事实根据的专利诉讼缺少明确的法律救济措施。

尽管中国美国商会欢迎中美两国加强在一系列知识产权项目方面的合作，包括合作开发新技术，但我们认为强制转让专利或其他知识产权以及相关信息会对中国构建创新型社会产生不利影响。这类强制许可如确有必要，也必须根据世贸组织《与贸易有关的知识产权协议》相关规定在高度限制性的情况下方能实施。

商标

中国美国商会会员非常高兴有机会在中国起草新的《商标法》的过程中提供相关意见。中国美国商会建议起草者将减少商标局积压工作为目标。尽管早期的草案中规定，不会以“相对理由”审查商标从而确保该商标不会与之前提交的申请或注册相冲突，但中国美国商会还是对最新草案能够取消该条款以及由此减少工作积压的做法表示认可。

provisions whereby a trademark would no longer be examined on “relative grounds,” thus ensuring that the trademark does not conflict with earlier filed applications or registrations, AmCham-China applauds the removal of this provision from the most recent draft and the subsequent backlog decrease.

In line with AmCham-China’s recommendations, China is looking to resolve its backlog delays through additional means. For example, the China Trademark Office has significantly increased capacity by instituting a massive hiring and training program to decrease the examination time from around three to one and a half years by 2011. Progress has been notable so far with current examination times of two years.

While foreign companies have traditionally had problems with abusive registrations of trademarks in China’s first to file system, Chinese companies have also increasingly faced similar problems. In litigation, Chinese companies are increasingly looking to protect their trademarks abroad. Beijing-based Wangzhihe recently won a trademark infringement case against an infringer in Germany. There were no damages, but the German company’s trademark was invalidated. Some famous US companies have complained of numerous “squatted” marks, sometimes numbering in the dozens to over one hundred. We encourage China to provide stronger protection against abusive registrations, including sanctioning where appropriate trademark agents, patent agents and lawyers that knowingly file IP rights knowing that they are solely derived from another party. We believe that China should also work constructively with other countries to address the problems of abusive registrations.

Customs border enforcement maintains high approval in our *Business Climate Survey* as an effective way to protect trademark infringing products from reaching the US or other locations.

There remains concern that it is often difficult to get local Administration of Industry and Commerce (AIC) cooperation on enforcement actions without undue effort. AmCham-China urges greater emphasis on strong and uniform enforcement across all jurisdictions. One helpful step would be publishing administrative cases on IPR enforcement online, regardless of whether such cases are initiated by complaint of the rights holder or on an ex-officio basis. Publishing the data would enable IPR holders to determine which administrative agencies are actively supporting IPR enforcement, allowing them to protect their rights better and to remain informed of ex-officio steps undertaken to protect their rights.

Copyright

Progress on the reform of China’s Copyright Law has remained relatively slow. Having gone without revision for nearly 10 years, the current law needs updates. However, it has not been included within the National People’s Congress’ (NPC) legislative agenda to date. It remains unknown when a comprehensive amendment of the law will officially start. The NPC passed, however, certain updates to provisions of the law at its recent session in March 2010, in response to the WTO recommendations in the dispute between US and China on IPR protection. In addition, the National Copyright Administration of China (NCA) began to advocate publicly for a more comprehensive amendment to the Copyright Law in 2009, and many experts expect the amendment with the next NPC.

There was an increase in the number of Chinese domestic companies taking an active role in advocating for stronger copyright protection via legislative change and improvements in judicial protection in 2009, especially in the publishing and entertainment industries. Companies have also pushed for more resources to fight piracy through administrative complaints and by taking infringers to court. This is largely due to fast-growing domestic industries reliant on copyright protection and the ever-increasing threat of digital piracy on the growth of these industries.

Foreign companies have looked at developments in such areas as secondary liability, deep linking, user-generated content (UGC) and peer-to-peer (P2P) liability, as well as rapid growth in China’s Internet environment. AmCham-China remains concerned about business models and social developments that have not always deterred widespread infringement. We are concerned, for example, about litigation involving the recording industries and Baidu, the availability of P2P entertainment software content and difficulties in protecting sports broadcasts, among other matters.

Although rights holders are increasingly seeking civil remedies because they can receive some level of compensations from infringers, civil damages awarded by courts are still considered low by international standards and do little to deter infringement. In addition, the burden of evidence on right holders, especially those based in foreign countries, remains extraordinarily high due to notarization and legalization requirements. Another issue is the lack of transparency within the administrative enforcement process. AmCham-China companies generally believe that controlling IP infringement will be extremely difficult without effective criminal enforcement. AmCham-China also encourages greater engagement and transparency in rulemaking

根据中国美国商会的建议，中国希望借助更多手段来解决因工作积压导致拖延的问题。例如，中国商标局通过实施大规模的招聘和培训计划显著提高了其处理能力，目标是在2011年之前将商标审查时间从三年左右减少到一年半。迄今为止，中国商标局已经取得明显的进展，目前的审查时间为两年。

由于存在商标注册优先权的规定，一直以来外国企业在中国都面临着商标恶意注册的问题，但现在越来越多的中国企业也面临着同样的问题。在诉讼中，中国企业也愈来愈重视其商标在境外的保护工作。总部位于北京的王致和食品有限公司最近在一起针对德国企业的商标侵权案中胜诉。这起案件虽没有判决赔偿金，但该德国企业的商标已被宣布无效。一些美国知名企业曾抱怨，有很多的“抢注”标识，有时数量高达几十个到上百个。我们鼓励中国加大对商标注册权滥用行为的打击力度，包括惩治那些明知知识产权已为他人专有但还提出相同知识产权申报的商标代理商、专利代理商和律师。

正如我们在商务环境调查中所高度肯定的，海关边境执法依然是防止商标侵权产品流入美国或其他地区的有效方式。

但令我们感到担心的是，如果不付出巨大的努力，一般很难能够让地方工商管理部门配合执法。中国美国商会促请中国政府能够高度重视加强各地区的强有力和统一的执法工作。一个有用的举措是在网上公开有关知识产权行政执法的案例，无论该等案件是由权利人提起或是由职权部门提起。公开这些资料将有利于知识产权所有者了解哪些行政机构能积极协助它们开展知识产权执法，从而使他们能够更好地维护自己的权利，了解可以通过哪些职权部门步骤来保护他们的权利。

版权

中国的《著作权法》改革进展依然较为缓慢。该法已经近十年没有做实质性修订，因此需要更新。然而，迄今为止，该法的全面修订依然没有被纳入全国人民代表大会的立法议程。何时正式开始对《著作权法》进行全面修订尚不得而知。不过，全国人民代表大会已经听取世贸组织就中美两国在知识产权保护方面的争端提供的意见，并在2010年3月份召开的大会上对该法的某些条款进行了修订。此外，中国国家版权局已于2009年开始公开提议对《著作权法》进行全面修订，很多专家预计修订工作将在下届全国人民代表大会上进行。

2009年，有更多中国企业，尤其是出版和娱乐行业的企业，积极倡议通过修改立法和改进司法保护来加大版权保护力度。企业还通过行政举报和司法诉讼，增加了打击盗版方面的资源投入。这很大程度上要归因于中国国内有赖于版权保护相关行业的迅速发展和数字盗版给这些行业造成的前所未有的威胁。

外国企业一直在关注诸如次级责任、深度链接、用户原创内容和P2P责任等方面的进展，以及中国互联网行业的迅猛发展。中国美国商会担心商业模式和社会发展难以有效遏制猖獗的侵权活动。例如，我们一直在关注唱片行业与百度之间的诉讼、P2P娱乐及软件内容的可获得性和体育转播权保护的难度等等。

尽管版权所有者愈来愈多地寻求民事救济，因为这种方法可以让他们从侵权者处获得一定的赔偿，但法庭提供的民事赔偿金额跟国际标准相比依然很低，因此对打击侵权活动几乎难以发挥作用。此外，因公证和法律方面的要求，权利人（尤其是外国企业）得承担非常大的举证责任。另一个问题便是行政执法过程中缺少透明度。中国美国商会会员企业普遍认为，如果缺少有效的刑事执法，打击知识产权侵权活动将会变得异常艰难。中国美国商会还鼓励包括受理版权相关案件的法院在内的中国主管机构更多地参与法规制定工作，增加法规制定工作的透明度。由于刑法中过时的相关规定和司法解释中设定的模棱两可的门槛，使人们难以追究网络盗版行为的法律责任。

但依然有机会改善盗版问题。例如，在过去的十年中，得益于中国政府采取的一些措施，中国的计算机软件盗版率已有所下降，然而这种趋势目前已停滞不前，据国际数据公司(IDC)的数据显示，计算机软件盗版率依然维持在80%，这是不可接受的。国际数据公司公布，2008年中国的电脑销量仅次于美国，已达到4800万台，超过了日本、德国和英国的总和，并有望在两年内超过美国。然而，就每台电脑的软件销量来说，中国在全球排名第49位。中国所有厂商从每台电脑中获得的软件销售收入落后于印度，仅为越南的一半。

美中商贸联合委员会知识产权工作小组在11月份召开的会议上，对中国向国内和JCCT做出的确保其国有企业和大型企业采用合法授权软件的承诺进行了讨论。要确保这一承诺的成功落实，有效的合规措施必不可少。中国美国商会建议，国务院国有资产监督管理委员会（国资委）应要求所有下属企业必须每年向国资委和国家版权局提交证明材

by Chinese agencies, including the courts on copyright-related matters. Outdated rules in the criminal law and ambiguous thresholds set forth in judicial interpretations make it very difficult to prosecute online piracy cases effectively.

There is opportunity for progress on piracy issues. For example, China's computer software piracy rate has dropped in the past 10 years on the basis of several measures taken by the Chinese government, but progress has stalled and the computer software piracy rate remains at an unacceptable 80 percent, according to the International Data Corporation (IDC). The IDC reports that PC sales in China reached 48 million in 2008, second only to the United States. China's PC sales exceed that of Japan, Germany and Britain put together, and are on track to exceed US sales in two years. Yet, in terms of software sales per computer, China ranks 49th in the world. Software revenue from all vendors per PC in China lags behind India, and is half that of Vietnam.

China's domestic and JCCT commitment to ensure its SOEs and other large enterprises use legally licensed software was discussed in the November JCCT IPR Working Group. Effective compliance measures are necessary to ensure successful implementation. AmCham-China recommends that all enterprises managed by the central State-Owned Assets Supervision and Administration Commission (SASAC) be required to certify annually to SASAC and NCA, subject to government audit and verification by relevant software manufacturers, that they are properly licensed for all software that resides on their computers, including operating system and applications software.

Internet piracy has also been an ever-growing concern for both industry and government. According to the statistics available from public sources, 40 percent or even more civil copyright cases filed in Beijing and Shanghai involve online infringements. This implies that digital piracy has become the major form of copyright violation with China now having the world's most Internet users (nearly 400 million).

Controlling Internet piracy has also become a major topic in bilateral and multilateral trade discussions. The IPR Working Group under the JCCT has set Internet piracy as one of its key issues. Dialogue on the issue has already begun. For entertainment-focused industries, UGC piracy is still the top priority. Progress is visible in terms of new pressure placed on UGC websites by the courts, copyright owners and even advertisers. Some UGC websites have started to implement new measures to reduce infringement, but the scale of digital infringement within the UGC environment remains large.

There has been some progress in enforcement against online software piracy. A recent online software piracy case was successfully closed after four defendants were sentenced and nearly US \$2 million (RMB 13.7 million) in monetary penalties were assessed. However, the Internet service providers, Internet content providers and software companies that provided financial support to and profited through click-through advertising on the site's online distribution of pirated Windows software were not penalized.

Recommendations

For the Chinese Government:

- **Engage with the US to address issues involving standardization and antitrust law, permit foreign rights holders to participate in an identical manner with Chinese rights holders in standardization matters.**
- Adopt strict interpretation of compulsory licensing and permit it in only the direst circumstances.
- Comprehensively amend the Copyright Law as early as possible to better address digital piracy better.
- Continue to promote a transparent legislative process by providing opportunity for comment on new Copyright and Trademark Law amendments.
- Relax the burden of evidence required by courts on right holders in pursuing infringers, and requesting evidence preservation order.
- Better coordinate all agencies involved in controlling piracy to streamline the process for administrative enforcement and the transfer of cases to criminal prosecutions.
- Amend the Criminal Code or issue a new SPC Judicial Interpretation as early as possible to establish, at a minimum, appropriate thresholds for copyright piracy without a profit motivation, and criminal prosecution of corporate end-user software piracy and online piracy and bring the criminal theories in line with the current or new IPR laws.
- Continue to improve the speed of trademark examination.
- Continue to award larger damage including punitive damage awards for IP-related court judgments as a stronger deterrent to IP infringers. Increase statutory compensation of RMB 500,000 (US \$73,206) to accommodate new situations.
- Increase copyright administrative enforcement.

料，证明他们计算机内的操作系统和应用软件等所有软件都是经合法授权的，相关证明材料须接受政府部门的审计和相关软件生产企业的确认。

网络盗版也成为行业和政府日益关心的问题。根据公开的统计数据，在北京和上海的民事版权案中，有 40% 或甚至更多的案件涉及网络侵权。中国目前拥有全球数量最大的互联网用户群体（网民数量接近 4 亿），这意味着数字盗版已经成为版权侵犯的主要形式。

打击网络盗版也成为双边和多边贸易会谈中的重要话题。美中商贸联合委员会知识产权工作小组已将网络盗版确定为其重点关注问题之一。有关该问题的对话已经开始。对娱乐行业来说，用户原创内容盗版依然是最需关注的问题。法院、版权所有人甚至是广告商都对用户原创内容（UGC）网站施加了新的压力，这方面取得的进展也是显而易见的。有些 UGC 网站已经开始采取新举措来减少侵权行为，但用户原创内容领域的数字侵权数量依然很大。

中国政府在打击网络软件盗版的执法方面也取得了一定进展。在对近期一起网络软件盗版案的审理中，法庭最终将四名被告绳之于法，并判其支付近 200 万美元（约合 1370 万元人民币）的经济赔偿金。然而，为该网站提供经济支持并通过该网站上的盗版 Windows 软件在线传播页面刊登交互式广告并从中获利的互联网服务供应商、互联网内容供应商和软件公司却并未受到制裁。

建议

对中国政府：

- 与美方合作，共同解决标准化和反垄断法相关问题，允许国外版权所有人与中国版权所有人一样参与标准化工作。
- 对强制许可做出严谨解释，只有在最不得已的情况下才可实施强制许可。
- 尽早对《著作权法》进行全面修订，更好地解决数字盗版问题。
- 允许公众对新修订的《著作权法》与《商标法》提供意见，继续推进透明的立法程序。
- 减轻知识产权所有人在起诉侵权者和申请证据保全时的举证责任。
- 加强参与打击盗版工作的各机构之间的合作，简

化行政执法和向刑事检控部门移交案件的流程。

- 尽早修订《刑法》或颁布新的最高人民法院《司法解释》，针对非营利版权盗版以及企业终端用户软件盗版和网络盗版的刑事诉设立合理的下限门槛，并使刑事理论与当前或新的知识产权法保持一致。
- 继续加快商标审查速度。
- 在与知识产权相关的法院判决中，继续判决更高金额的损害赔偿金，包括惩罚性赔偿，以加大对知识产权侵权者的打击力度。还可视新的情况增加人民币 50 万元（合 73,206 美元）的法定赔偿金。
- 加强地方版权局的版权行政执法力度。同时提高各地工商行政管理局执法工作的一致性和统一性。
- 履行目前美中商贸联合委员会承诺，执行中国现行法律的规定，确保中国国有企业和上市公司使用正版软件。具体而言，国务院国有资产监督管理委员会和国家版权局应强制规定，国资委的所有下属企业必须每年向国资委和国家版权局提交证明材料，证明他们计算机内的操作系统和应用软件等所有软件都是经合法授权的，相关证明材料须接受政府部门的审计和相关软件生产企业的确认。
- 在网上公开知识产权相关行政案例。

对美国政府：

- 继续将中国落实企业、电脑生产商和政府软件正版化的工作，以及履行 JCCT 承诺作为美中商贸联合委员会的工作重点之一。
- 通过参与更多合作调查，为中国相关机构和司法部门提供更多技术方面的协助，并提供更多执法培训。
- 支持政府机构间在专利和商标方面的合作。
- 继续将网络盗版视为中美贸易会谈的重点话题之一，继续对盗版网站施压。
- 与有同样利益的、在美国的中国知识产权所有者联系，建立跨境、跨行业（包括中国新兴的高科技和研发等行业）合作关系，共同推进知识产权执法工作。
- 提高美国驻华使馆与美国政府间就尖端、跨机构知识产权保护问题的协调；厘清知识产权、创新、标准以及反垄断政策相互间的复杂关联性，以确保中国以非歧视性方式执法。

ment. Improve consistent and uniform enforcement and implementation among local AICs.

- Implement existing JCCT commitments and existing Chinese law regarding ensuring use of legal software by China's state-owned and publicly listed companies. Specifically, SASAC and NCA should mandate that all central SASAC-managed enterprises be required to certify annually to SASAC and NCA, subject to government audit and verification by relevant software manufacturers, that they are properly licensed for all software that resides on their computers, including operating system and applications software.
- Publish IP-related administrative cases online.

For the US Government:

- Maintain China's implementation of enterprise, PC maker and government software legalization and JCCT commitments as priorities in the JCCT.
- Lend more technical assistance to relevant Chinese agencies and judicial bodies by engaging in more cooperative investigations and provide more training to law enforcement.
- Support cooperation on an office-to-office basis for patents and trademarks.
- Keep Internet piracy as one of the key topics on the US-China trade talks and thus maintain pressure on the piracy websites.
- Reach out to Chinese rights holders with similar interests in the US to form cross-border and cross-sector alliances in promoting IPR enforcement, including engaging China's emerging high tech and research sectors.
- Improve coordination between the US Embassy and Washington, DC on cutting-edge, cross-agency IPR issues; address the complex linkages among IP, innovation, standards and antitrust policies to ensure that China enforces its laws in a non-discriminatory manner.



Tax

Introduction

China's tax regime underwent many significant changes in 2009. The State Administration of Taxation (SAT) released a series of regulations standardizing and codifying tax practices, providing greater clarity on issues such as transfer pricing compliance, the super deduction of research and development (R&D) expenses, non-resident tax management and stock option programs. Tax administration and enforcement were strengthened, in part to respond to the pressures created by the global economic downturn.

AmCham-China particularly commends the SAT on continued efforts to improve the value-added tax (VAT) and business tax (BT) systems. We look forward to continued reform towards a more comprehensive and effective system.

Significant Developments

Related Party Transfer Pricing

The Chinese tax authorities have continued to expand their transfer pricing framework. Since the launch of Circular 2 (the Implementation Regulations for Special Tax Adjustments) in early 2009, which now acts as the key source for transfer pricing guidance within China, more new regulations have been released. They have focused on increasing revenue through improved investigations and tax risk management in large-scale multinational corporations.

New documentation requirements, including an annual filing of related-party transactions and contemporaneous documentation, were introduced by the SAT in 2009. Many of the SAT's other actions were aimed at increasing revenues through strengthened investigatory practices. These included launching nationwide coordinated audits targeting specific groups and industries, introducing a database used to compile information on a nationwide basis and select appropriate targets, and creating detailed procedures that large enterprises should follow to manage their taxation risks. Although

the circulars only offer "suggestions," rather than mandatory requirements, to companies to minimize tax risk, the tax authorities have implied that failure to follow these suggestions will attract their attention.

The expansion of China's transfer pricing (TP) regime is generally welcome, and further development of tax regulations, as well as additional time to implement the new system, should ensure a fair system for both taxpayers and the Chinese government. We urge the SAT and local tax authorities to respect the client's documentation and, at a minimum, allow a reversal of the burden of proof for taxpayers who have complied with TP documentation requirements.

Cost sharing agreements, introduced by Circular 2, have yet to be clarified, and further explanation is also needed regarding business tax implications. Meanwhile, during audits, the tax authorities are not only allowed to use "secret comparables," but also to ask other taxpayers for assistance in the investigation arbitrarily. Restricting these practices, while providing more information on the implementation of cost sharing agreements and BT and allowing TP documentation to create a burden of proof reversal, will strengthen China's regime. It will also promote further alignment with international norms such as those contained in the Organization for the Economic Cooperation and Development Transfer Pricing Guidelines.

Super-Deduction of Fixed Assets

In April 2009, the SAT clarified the accelerated deduction allowed for certain fixed asset acquisitions under the new Enterprise Income Tax (EIT) Law. It provides that qualifying fixed assets must involve advanced technology or product innovation or be operated under certain adverse physical conditions. Once the depreciation method is determined, it is irrevocable. The accelerated deduction as a special mode of tax expense, though, is not an additional deduction such as is allowed under the "super-deduction" rules for certain R&D expenses. Rather, it can only help the enterprise reduce its tax liability for the current income year by

税务

综述

中国的税收机制在 2009 年经历了诸多重大变革。国家税务总局颁布了一系列规章，规范税收行为，提高税收实务的透明度，如税务转让定价合规工作、研发费用的加计扣除、非居民税收管理、以及股票期权计划等。税收管理与税收执行得到了加强，部分原因来自应对全球经济衰退所造成的压力。

中国美国商会特别赞赏国家税务总局一直以来在改善增值税和营业税体系方面所作出的不懈努力。我们期待对税收制度的进一步改革，使其更为全面、有效。

重大进展

关联方税务转让定价

中国税务机关一直以来都在持续不断地扩大税务转让定价框架的范围。自 2009 年二号文(《特别纳税调整实施办法》)颁布以来，又陆续出台了很新规章。但是二号文依然是目前规范中国境内税务转让定价的主要规章。无论是二号文还是此后新颁发的规章，都无一例外地着重通过加强对大型跨国公司的调查和税收风险管理，增加财政收入。

2009 年国家税务总局还颁布了新的文件要求，包括关联交易的年报制度和同期资料的制度。国家税务总局的很多其他举措也都旨在通过加强调查行动增加财政收入。这些举措包括发起针对特定团体和产业的全国性协同审计，引入用于汇编全国信息和选择适当目标的数据库，创设了大企业在管理其税收风险时应当遵循的详细程序。尽管这些文件只是向企业提出将税收风险最低化的“建议”而非强制要求，但是税务机关同时也暗示，如果未能遵守这些建议，税务机关将会对企业给予特别“关注”。

中国税务转让定价机制范围的扩大，总体而言为大家所

接受和欢迎，对税收规章的进一步发展以及为实施新体系增加了时间，应能确保对纳税人和中国政府双方的公平。我们强烈建议国家税务总局和地方税务机关能够尊重客户的文件资料，至少应该允许已经遵守税务转让定价文件要求的纳税人不用承担举证义务。

二号文所提出的成本分摊协议仍有待进一步的明确，对于营业税的影响也需做进一步的说明。同时，在审计期间，税务机关不仅可以使使用“保密的可比信息”，还可要求其他纳税人在调查过程中提供协助。倘使能够限制这类行为，同时提供更多关于成本分摊协议实施的信息，允许采信税收转让定价文件资料从而撤销举证义务，将有助于中国税收机制的强化。不仅如此，它将能够进一步促进中国与如经济合作与发展组织关于税务转让定价指南规定等国际规范相接轨。

固定资产的加计扣除

2009 年四月，根据新《企业所得税法》，国家税务总局明确允许对某些固定资产进行加速折旧。该法规定，符合资格的固定资产必须是涉及高新技术、产品创新的固定资产或是在某些恶劣物理环境下操作的固定资产。折旧方法一旦确定就不可再撤销。加速折旧作为一种税收支出的特别模式，本身不是额外折旧，不同于类似某些研发支出的加计扣除规则。加速折旧只能帮助企业通过提前主张折旧扣除，降低当年度的税收责任。在经济学上，这一做法类似于获得政府的免息贷款，提高了纳税人当期的现金流量。

研发费用的加计扣除

与很多其他发达国家一样，中国非常注重其长期创新目标的实现，制定了研发费用加计扣除的激励措施。中国美国商会对国家税务总局颁发文件明确研发费用加计扣除激励，降低不同地区税务机关在适用研发费用加计扣除时的差异性深表赞赏。

claiming depreciation deductions in advance. It is economically like an interest-free loan from the government that increases a taxpayer's liquidity in the current period.

Super-Deduction of Research and Development Expenses

China, like many other developed countries and fully consistent with its long-term innovation goals, grants an R&D super-deduction incentive. AmCham-China applauds the SAT for issuing a circular clarifying and standardizing the rules covering this important incentive, reducing the variation in application by tax authorities in different localities.

However, the circular's wording will likely cause local tax officials to apply this incentive narrowly. For example, there are eight defined categories of acceptable expenses with no mention of items such as depreciation and rental of buildings used for R&D activities, compensation for external staff providing R&D services, various costs and fees related to intellectual property rights, and costs incurred for equipment testing, intermediate testing and trial production, acquisition costs of samples, prototypes and normal testing measures, and inspection charges for trial products. The circular should be amended to make clear that the list is not exhaustive and that relevant expenditures not falling within the defined eight categories are to be allowed.

A goal of this super-deduction incentive is to promote R&D in China. For various legal and group policy reasons, though, foreign companies interested in conducting R&D in China typically wish to own any intellectual property created by the R&D within a group company that is domiciled outside China. As such, they typically arrange for Chinese R&D service companies, whether related or unrelated, to perform the actual R&D activities under a cost-plus or other contractual arrangement. If the circular were amended to allow the super-deduction incentive in these situations, it could significantly promote the amount of R&D activities conducted by foreign-owned groups in China.

Business entities, whether Chinese or foreign-owned, have a choice of where in the world to conduct R&D activities. An important part of this decision is the budgeting of all relevant costs, including tax costs. As the super-deduction incentive is a material benefit that can reduce tax cost, it is important to China that such business entities include this R&D incentive benefit when they budget R&D costs for China and the other countries where they may conduct their R&D. Under the circular, business entities will seldom be reasonably assured that their R&D projects will qualify, and if quali-

fied, whether all relevant expenditures will qualify. As such, they will typically not include the R&D incentive benefit in their budgeting calculations. This will have the effect of increasing budgeted costs in China relative to other countries and cause some significant projects to be conducted outside China. We urge consideration of approaches that better assure early qualification of projects and budgeted expenditures.

Anti-Treaty Shopping Rules and Practices

In 2009, tax authorities implemented a series of new practices and rules to limit the availability of tax treaty benefits to foreign claimants. Xinjiang tax authorities denied tax treaty benefits to a Barbados special purpose vehicle (SPV) in early 2009 on the grounds that the SPV was not a resident of Barbados because it lacked economic substance there. As a result, normal tax was imposed on the gain realized by the SPV from the sale of its interest in a PRC portfolio company.

In November 2009, the SAT issued guidelines for the interpretation of the term "beneficial owner" in tax treaties to which China is a party. An offshore recipient of dividend, interest, and royalty income will not be entitled to a reduced withholding tax rate under an applicable tax treaty if it does not qualify as a beneficial owner of the income or the underlying assets. The SAT guidelines define a "beneficial owner" as a person who has ownership or control rights over the income or the underlying rights or assets. A beneficial owner must be engaged in "substantive operational activities" such as manufacturing, distribution, or management, and may not be a "conduit company" that is formed merely "to evade or reduce tax liabilities or to transfer or accumulate profits."

Taxation of Capital Gains Derived by Offshore SPVs

Also in 2009 the application of a general anti-avoidance rule (Article 47) in the EIT Law and the promulgation of a set of specific rules on taxing capital gains derived by offshore SPVs took place. Under Article 47 of the EIT Law, PRC tax authorities have the right to adjust the income tax liabilities of an enterprise if the enterprise is found to have implemented "any arrangement with no reasonable business purpose to reduce the amount of its taxable income." In early 2009, implicitly applying this rule, Chongqing tax authorities imposed tax on the gain realized by a Singapore fund from the sale of an SPV in Singapore, which in turn held interest in a Chongqing company.

In December 2009, the SAT issued the Notice on Strengthening the Management of Enterprise Income

然而，遗憾的是，文件本身的措辞却可能导致地方税务官员狭义适用该激励措施。例如，该文规定了八种可被接受的费用，但却没有提到诸如用于研发活动的房屋的折旧和租金、给提供研发服务的外部人员的报酬、知识产权相关成本与费用、进行设备测试、中间测试及试生产而发生的成本费用、获得样品和原型的成本、落实常规测试措施的成本、试验品检测费等项目。应当对该文件进行修订，进一步明确文件本身并未一一列举的费用，文件所规定的八种费用之外的其他相关支出也可允许加计扣除。

加计扣除激励措施的目标之一就是推动中国的研发工作。由于法律上的原因和集团政策原因，外国公司大都希望通过获得由注册于中国之外的集团公司研发创造的知识产权，在中国开展研发工作。由于这一原因，他们通常都会安排中国的研发服务公司以成本加成或其他合同安排的方式，从事实质上的研发活动，而无论该研发服务公司是否为其关联公司。如对二号文的修订能允许将加计扣除适用于该类情形，则将大大提高中国境内外资公司的研发活动数量。

无论是中资还是外资商业实体，都会斟酌和选择究竟在世界上哪一个国家或地区开展研发活动。在决策时，很重要的一个因素就是包括税务成本在内的所有相关费用的预算。加计扣除作为一项可以在实质上降低税务成本的利益，对于中国来说有着非常重要的意义，因为商业实体在权衡其在中国和其他国家开展研发活动的成本预算时，会将加计扣除的优惠考虑在内。根据二号文规定，商业实体无法获得合理保证其研发项目是否符合加计扣除的资格，或者即使符合资格，是否所有支出都能适用加计扣除。因此，在做预算时，这些商业实体自然不会将研发激励优惠计算进去。这样导致的结果就是与其他国家相比，在中国开展研发活动的预算成本会更高，很多重要项目就会选择在中国境外进行。我们强烈建议考虑采纳一些方法，能够更好地确保在早期阶段即可确定项目和预算费用是否有资格适用加计扣除。

违反条约的规则与实践

2009年，税务机关实施了一系列的新举措和规定，限制外国申请人获得国际税收协定给予的优惠。新疆税务机关于2009年初拒绝了一家巴巴多斯特殊目的实体就税收协定优惠提出的申请，理由是該特殊目的实体在巴巴多斯没有实质性的经济活动，因而不属于巴巴多斯的居民公司。结果，这家特殊目的实体出售其在一家中国公司中的权益所得须按普通税收规定缴税。

2009年11月，国家税务总局颁发了关于如何理解和认定中国作为税收协定缔约国的“受益所有人”一词的指导规定。股息红利、利息和特许权费的离岸接受人如果不符合该所得或所得据以产生的财产的受益所有人条件，则无权享受相关税收协定所规定的较低的预扣税率。国家税务总局将“受益所有人”定义为所得或所得据以产生的权利或财产具有所有权和支配权的人。受益所有人必须从事“实质性的经营活动”，如制造、经销或管理，且不得是为“逃避或减少税收、转移或累积利润”等目的而设立的“导管公司”。

由离岸特殊目的实体产生的资本收益的税收

2009年，实施了《企业所得税法》反避税规则（第四十七条），颁布一系列关于离岸特殊目的实体产生的资本收益的税收规则。根据《企业所得税法》第四十七条的规定，企业实施其他“不具有合理商业目的的安排而减少其应纳税收入或者所得额”的，税务机关有权按照合理方法调整。2009年初，重庆税务机关对一家新加坡基金出售一家新加坡特殊目的实体（其对重庆一家公司持有权益）的所得征税，执行了第四十七条的规定。

2009年12月，国家税务总局颁发了《关于加强非居民企业股权转让所得征收企业所得税管理的通知》（国税函[2009]698号），该《通知》的生效日期往回追溯至2008年1月1日，对众多通过境外控股公司开展对华投资业务的企业造成了很大的影响。根据698号通知的规定，可对非居民企业转让中国居民企业的股权（即直接转让）所取得的所得征收所得税，而且在某些情况下，可对通过出售持有中国居民企业股权的境外中间控股公司（即间接转让）所取得的所得征收所得税。该《通知》要求外国企业在持股结构涉及在税率较低或免税国家或地区的中间控股公司时，向相关中国税务机关披露所有在中国企业进行的间接股权转让。需要进行披露的信息和资料包括股权转让协议，境外投资方与其所转让的境外控股公司在资金、经营、购销等方面的关系，境外投资方所转让的境外控股公司的生产经营、人员、账务、财产等情况，境外投资方所转让的境外控股公司与中国居民企业在资金、经营、购销等方面的关系，境外投资方设立被转让的境外控股公司具有合理商业目的的说明以及税务机关要求的其他相关资料。

Tax Collection of Proceeds from Equity Transfers by Non-resident Enterprises (Guoshuihan [2009] No. 698), which is effective retroactive to January 1, 2008 and will have a significant impact on the many companies that use offshore holding companies to invest in China. Under Circular 698, capital gains tax may be imposed on the sale of a PRC resident enterprise by a non-resident company (i.e., a direct transfer) and, in some cases, on the sale of an offshore intermediary holding company owning a Chinese resident enterprise (i.e., an indirect transfer). This circular requires foreign entities to disclose all indirect transfers of interests in PRC entities to the relevant PRC tax authorities in cases where the holding structure involves an intermediate holding company in a low or no-tax jurisdiction. Information and materials subject to disclosure include the equity transfer agreement, representations regarding the relationship among the entities involved, representations regarding the operation, employees, bookkeeping, assets of the intermediate holding company, representations regarding the business purpose of the intermediate holding company and other materials requested by the tax authority.

Specific Issues

Business Tax

To ease pressures and disputes resulting from the revised service test principles under the new BT regime, SAT issued several tax incentives in the second half of 2009. These include BT exemption for exports from construction, cultural and sports service companies, and specifications on BT exemption for services from overseas entities or individuals provided to domestic entities or individuals.

Applying a BT to exports of services from domestic companies will not only weaken the international competitiveness of service exports from China, but also harm the export structure, further hampering the development of the services industry. In this vein, in addition to encouraging service exports from the construction, culture and sports industries, it would be beneficial to service export growth for the government to issue tax incentives encouraging exports by domestic entities or individuals in the transportation, finance and insurance, technology, media and telecommunications, entertainment, and other service sectors.

The application of BT to services provided by overseas parties to domestic parties presents challenges for tax collection and administration and increases the cost to domestic customers of purchasing services from overseas entities or individuals, negatively impacting inflation and healthy domestic and overseas economic de-

velopment. In addition, tax exemptions rules are issued separately from the BT Regulations of the Ministry of Finance and SAT, requiring frequent follow-up and monitoring, creating additional administrative burden.

Lastly, most developed countries do not maintain turnover taxes aside from a comprehensive VAT or goods and services tax system. Continued separation of the VAT and BT systems has created many issues, such as heavy administrative costs for both the government and taxpayers, uneven tax burdens and, in many circumstances, double taxation. Although the revisions to the VAT and BT regulations in 2009 are encouraging, AmCham-China urges additional fundamental changes to create a more effective indirect tax system. We continue to recommend a long-term project to study the repeal of the BT with an extension of the VAT system to cover some or all of the taxable objects now covered by the BT for the purpose of preventing double-taxation.

Value-Added Tax Reform

To strengthen development, improve competitive advantages and risk resistance capabilities of Chinese enterprises, and overcome the negative impact from the global financial crisis, the Chinese government has reformed the existing VAT system. It has allowed, on a national basis, general VAT taxpayers to claim input VAT credit on new purchased equipment. AmCham-China applauds this major change, which aligns Chinese VAT law and practice with that of most other developed countries.

However, this VAT reform is limited to claiming input tax credit on equipment investment only. It does not change the present inability to reclaim VAT input tax credit for other investments such as buildings and construction or for motor vehicles. This hurts certain industries and can adversely affect important areas such as low-income housing, highways, airports, rural road construction and other infrastructure construction.

In addition, enterprises focused on R&D also will often not benefit from the VAT reform. Many R&D enterprises are non-general VAT taxpayers and therefore cannot credit input tax on any equipment purchases. This clearly increases R&D costs and impedes innovation and technological advancement.

Further, many leasing companies are not general VAT taxpayers. Thus, they are neither allowed to credit input tax on lease equipment purchases nor issue VAT invoices to the lessee. This makes lessees unable to claim input tax credit on purchased fixed assets and will severely impede development of the weak Chinese financial leasing industry. Moreover, under the current

具体问题

营业税

为减轻新营业税体系下服务征税核算原则带来的压力和争议，国家税务总局在 2009 年下半年度颁发了一些税收优惠政策，包括建筑、文化和体育服务公司出口免营业税、海外实体或个人向国内实体或个人提供服务免营业税。

对国内企业的服务出口征收营业税不仅会降低中国服务出口的国际竞争力，同时更会对出口结构造成损害，进一步阻碍中国服务行业的发展。有鉴于此，除鼓励建筑、文化和体育行业出口外，政府更应推出税收优惠政策，鼓励国内运输、金融和保险、技术、传媒、通信、娱乐和其他服务类企业或个人出口，促进服务出口的增长。

对海外实体或个人向国内实体或个人提供的服务征收营业税，给税收征收和管理都带来了挑战，同时也增加了国内消费者购买海外实体或个人服务的成本，造成物价上涨，并损害了国内外经济的健康发展。此外，由于免税规定由财政部和国家税务总局的营业税规章分别发布，因此要求更频繁的跟踪和监管，带来了额外的管理负担。

最后，大部分发达国家都不将流通税作为独立于综合性增值税及商品和服务税系统之外的独立税种。持续将增值税与营业税系统分开已经造成了很多问题，如对政府和纳税人都造成了沉重的管理成本，税务负担不平衡，而且在很多情况下，还会导致双重征税。尽管 2009 年对增值税和营业税规章的修订是鼓舞人心的，但中国美国商会仍建议进行更多的根本性修订，创建一个更为有效的间接税体系。我们继续建议中国开展一个长期研究项目，研究撤销营业税、扩大增值税范围以覆盖某些或全部现在由营业税覆盖的应税对象的可能性，以避免双重征税。

增值税改革

为促进中国企业发展，提高竞争优势和风险抵御能力，克服全球金融危机带来的负面影响，中国对现行增值税体系进行了改革，允许全国范围内的一般增值税纳税人申请所购买新设备的进项增值税税额抵扣。中国美国商会对此一重大变革表示赞赏，这一举措使得中国的增值税法律和实践与大部分的发达国家的做法更为接近。

遗憾的是，增值税改革仅限于设备投资的增值税进项抵

扣。它并没有改变目前无法就建筑工程、汽车等领域的其他投资项目申请增值税进项抵扣的状况。这对若干行业造成了损害，并且可能会对保障性住房、高速公路、机场、乡村公路建设和其他基础设施建设等重要领域造成不利影响。

此外，侧重于研发的企业通常也不会从增值税改革中受益。很多研发企业都不属于增值税一般纳税人，因而不能就购买的设备申请增值税进项抵扣。这就明显增加了研发成本，阻碍了创新和技术进步。

不仅如此，很多租赁公司也不属于一般纳税人范畴。因此，他们既不能将就购买的租赁设备申请增值税进项抵扣，也不能向承租人开具增值税发票。如此一来，承租人也无法就采购的固定资产申请增值税进项抵扣，这将严重阻碍依然脆弱的中国融资租赁行业的发展。此外，在目前的流通税体制下，由于就租赁收入征收的营业税不得抵扣，导致租赁企业的税负进一步加重。

中国美国商会建议，要解决上述诸多问题，中国应立即考虑采用一个完全消费型增值税体系，合并增值税和营业税的应税范围。

进口增值税减免政策调整

除进行增值税改革外，国家税务总局还对与进口设备相关的税收激励政策做了相应调整。这些调整包括取消某些进口设备的进口增值税豁免，原因是由于进口商现在可以享受进口增值税退税，因此不再需要上述减免税政策。

一般增值税纳税人自其客户处接收数额巨大的出项增值税，可以很快申报并获得进口增值税退税。然而，对于一个几年都无法接收大额出项增值税的新企业来说，进口增值税意味着当期进口设备成本的增加，这会极大地增加其资金需求和财务支出。

一些最初计划在中国建设大型集成电路项目的外国企业，在计算了因进口增值税而显著增加的成本后，都决定将投资转向其他亚洲国家。此外，取消进口增值税减免还会直接增加消费者购买商品和服务的成本，损害某些行业的健康发展。例如，中国医院需要进口大量美国和欧盟生产的 PET-CT、MR 和 CT 设备。额外的 17% 的增值税负担最终都转嫁给了消费者，增加了病人的医疗费用，阻碍了医治技术的进步。中国美国商会建议恢复全额免除进口增值税政策。

Turnover Tax regime, the tax burden of leasing enterprises is further increased due to the application of the non-reclaimable BT to rents.

To solve the aforementioned issues, AmCham-China suggests China soon consider the benefits of adopting a full consumption-type VAT system and consolidating the taxable scopes of VAT and BT.

Adjustment Policy on Exemption of Import VAT

In line with the VAT reform, the SAT has also made corresponding adjustments to tax incentive policies related to imported equipment. These adjustments include an elimination of the tax exemption for import VAT on certain equipment imports. The logic presumably is that no exemption is needed due to the new ability of the importer to reclaim the import VAT paid.

Where an existing general VAT taxpayer collects significant output VAT from its customers, it will be able to quickly reclaim any import VAT it pays. However, for a new enterprise that will not receive significant output VAT for several years, the import VAT represents a current increase in the costs of its imported equipment and significantly increases its financing needs and its financial expense.

Some foreign enterprises originally planning to establish major integrated circuit projects in China have decided to shift their investment to other Asian countries after factoring in the significantly increased cost of this import VAT. Additionally, the elimination of the import VAT exemption will directly increase the cost of goods and services to consumers and hamper the healthy development of certain industries. For example, Chinese hospitals import significant numbers of PET-CT, MR and CT devices that are only produced in the US and EU. The additional 17 percent import VAT is ultimately transferred to consumers, increasing patients' medical costs and access to life-saving technologies. AmCham-China suggests that the full VAT import exemption be reinstated.

Strengthening Tax Management of Non-Residents

On October 1, 2009, in an effort to standardize and strengthen tax management, the SAT specified that non-residents must apply for approval and/or file certain records to enjoy the treatment and protections afforded under tax treaties. AmCham-China applauds this standardization as it addresses a long-standing issue.

AmCham-China believes that some procedures still need to be further specified or improved. For example, when non-residents apply the same tax treaty in different tax jurisdictions within China, they must go through procedures with each jurisdiction's tax authorities.

Additionally, various administrative rules issued in 2009 place a heavy administrative burden and impractical timelines on non-resident taxpayers. For example, Circular 3 stipulates that a non-resident taxpayer is responsible for filing a withholding income tax return within seven days after the commercial payment is due, should the withholding agent fail to remit the correct amount of tax. This is extremely unrealistic. Moreover, the lack of sufficient preparation and lead time before Circular 124 went into effect provided taxpayers with no opportunity to institute the necessary information tracking system, causing significant delays in commercial payments.

In considering further issuance of regulations and rules, we suggest reviewing procedures in other developed countries to help narrow the differences in requirements with which taxpayers must comply and help smooth implementation. This will help standardize compliance procedures and reduce the cost of compliance for taxpayers, regardless of their base country.

Enterprise Income Tax on Mergers and Acquisitions

AmCham-China applauds the significant supplement to the new EIT Law (M&A rules) issued in 2009 by the SAT concerning mergers, acquisitions and liquidations. These M&A rules provide solid regulatory support to M&A activities, which are crucial to the health and development of the recovering Chinese economy.

The SAT has incorporated many international standards into these new M&A rules. There is great potential for variations in applying these complex rules within the increasingly sophisticated and multi-layered Chinese economy. Thus, AmCham-China urges a more active dialogue with the SAT and relevant regional and local tax authorities to both smooth the implementation of these new rules, as well as to narrow the potential differences likely to arise in practice among the various regions and localities within China.

In addition, these rules were issued in May 2009, but are retroactive to January 1, 2008. AmCham-China suggests that the SAT consider issuing guidance to regional and local tax bodies to deal with transitional issues facing taxpayers conducting affected transactions during this almost one and one-half year period from

加强非居民税收管理

2009年10月1日，为规范和加强税收管理，国家税务总局规定，非居民只有申请批准和/或进行相关备案后才能享受税收协定提供的待遇和保护。中国美国商会对此深表赞赏，这一规定解决了一个长期性问题。

中国美国商会认为，一些程序性规定仍需进一步明确或改进。例如，非居民需要在中国境内不同税务管辖区域中申请适用同一税收协定的，还必须遵循每一管辖区域税务机关所制定的程序。

此外，2009年颁布的各种管理规定也给非居民纳税人带来了沉重的行政负担和不切实际的时间要求。例如，三号文规定扣缴义务人未依法扣缴或者无法履行扣缴义务的，非居民企业应于扣缴义务人支付或者到期应支付之日起7日内，到所得发生地主管税务机关申报缴纳企业所得税。这条规定非常不切实际。不仅如此，124号文在缺乏充分的准备和前置时间的情况下匆匆生效，不给纳税人指定必要信息追踪系统的机会，导致商业付款严重迟延。

考虑到将来还会出台新的规章和规定，我们建议中国借鉴其他发达国家的程序，缩小纳税人必须遵守的各国要求间的差异性，促进各项规章和规定的顺利执行。这将有助于规范合规程序，降低纳税人的合规成本，而无论纳税人处于哪个国家。

并购中的企业所得税

中国美国商会赞赏国家税务总局在2009年颁发的新《企业所得税法》中对有关并购、破产的重要补充规定（以下简称“并购规定”）。这些并购规定给并购活动提供了坚实的政策性支持，这对于正在复苏的中国经济的健康发展非常重要。

国家税务总局在这些新并购规则中纳入了很多国际标准。中国经济正变得日益成熟和复杂，这些复杂的规则在应用中充满了潜在的变数。因此，中国美国商会促请与国家税务总局和各地税务机关开展更为活跃的对话，以推进这些新规则的顺利实施，减少中国各地在实践中可能出现的不一致性。

此外，尽管这些规定是2009年5月颁发的，但是其效力却可追溯至2008年1月1日。中国美国商会建议国家税

务总局考虑向各地税务机关颁发指导规定，以处理过渡期间（自2008年1月1日至2009年5月）发生相关交易的纳税人所面临的过渡期问题。该指导规定应赋予各地税务机关广泛的权限，认可善意行事的纳税人所采取的受影响之交易行为的合理税收待遇。

个人所得税

2009年出台了一系列的个人所得税政策，其中规定了员工取得上市公司股票增值权或限制性股票时的个人所得税计算方式。

应税收入的计算是以股票在授予日和行权日之间的市场价格的算术中间值为基础。这一计算方式旨在平衡纳税人和国家之间的利益平衡以及预期收益与实际收益之间的平衡。

总体而言，自2005年以来，国家针对上市公司的股票激励制定了较为完善的个人所得税机制，并颁布了相关的法规。然而，由于不同的股票交易所采用的管理规定存在差异，给个人所得税的精确计算带来了挑战。例如，一些境外存托机构的股票登记要求有别于中国的股票登记要求，中国关于如何确定股票登记日的股票市场价格的规定较为模糊。中国美国商会促请税务机关能够为其注册地股票登记要求不同于中国的境外存托机构，提供其他的计算个人所得税的方式。

461号文规定了关于二级子公司和30%持股结构的新要求，由于461号文的规定，供职于外国上市公司在中国子公司的员工，由于这些海外上市公司不是二级子公司，这些员工的股权收入就不能享受35号文所规定的优惠税收待遇。这些公司包括大部分美国上市公司在各行业的子公司，包括金融服务、信息技术和通信等。事实上，对公司控股结构没有控制权的中国子公司的员工将会承担更加沉重的税收负担，因为他们不能享受35号文所规定的优惠税收待遇。中国美国商会促请税务机关重新审视461号文所规定的条件，增加适当的宽限范围。

the January 2008 effective date to the May 2009 issuance date. Such guidance should provide regional and local tax bodies with broad authority to accept reasonable tax treatments of affected transactions adopted by taxpayers acting in good faith.

Individual Income Tax

The series of Individual Income Tax (IIT) policies in 2009 included a provision specifying the method of calculation for employees receiving stock appreciation rights and restricted stock in listed companies.

Taxable income is calculated based on the arithmetic mean between the stock's market price on the date of registration and the market price on the date the stock is vested. This aims to balance the interests between taxpayers and the state and expected income and actual income.

Generally, the IIT regime for stock incentives of listed companies is well-established in China along with relevant regulations issued since 2005. However, differences between administrative regulations of different stock markets present challenges for accurate IIT calculation. For example, stock registration requirements of some overseas depositaries are different from those in China, which imposes ambiguity in determining market price on the date of stock registration. AmCham-China urges the tax authorities to provide alternate means of calculation for overseas depositaries whose home countries have different stock registration requirements than those in China.

Due to the new requirements of Circular 461, which impose a two-tier layer and 30 percent share holding structure, employees of the China subsidiary of an overseas listed company may not benefit from the preferential tax treatment under Circular 35 when it becomes equity income, as most of the China subsidiaries of those overseas listed companies are not within the second tier of their company. This includes subsidiaries of most of US listed companies spanning all industries, including financial services, IT and telecommunications. In fact, employees of these subsidiaries who have no control over the corporate holding structure will suffer a higher tax burden as they cannot enjoy the preferential tax treatment under Circular 35. AmCham-China urges the tax authorities to review the conditions set under Circular 461 and to introduce certain relaxation.

Recommendations

Business Tax

- **Initiate a long-term study focused on repealing the BT and extending the VAT system to cover some or all of the taxable objects now covered by the BT.**
- Consider enacting long-term BT policies encouraging export of services by domestic entities to promote the China's competitiveness in this regard.
- Specify the scope of services exempted from BT provided by overseas entities or individuals to domestic Chinese entities or individuals.
- Amend current BT and VAT rules to encourage the leasing industry.

Transfer Pricing

- Initiate a project to determine whether the new extensive TP contemporaneous documentation and lengthy reporting requirements are sufficiently effective at discouraging tax avoidance and preventing loss of tax revenues to warrant the significant compliance costs to the business community.
- During TP investigations, accept that losses can legitimately occur, especially in economic downturns.
- Base TP audits on publicly disclosed information and discontinue use of "secret comparables." Do not require companies that are not the direct subject of a TP investigation to submit confidential information or encourage them to inform on their competitors.
- Allow for TP functional and risk analyses on an integrated business basis, rather than on a segmentation basis.

Deductions

Super-Deduction Over Fixed Assets

- Adopt super-deductions for non-major or non-key fixed assets which also satisfy criteria for super-deductions.
- Consider use of other methods, such as life service deduction, in addition to sum-of-the-years'-digits and double declining balance methods.

建议

营业税

- 开展旨在取消营业税、扩大增值税范围以覆盖所有目前由营业税覆盖的部分或全部应税对象的长期研究。
- 考虑制定旨在鼓励国内企业服务出口的长期性营业税政策，促进中国在这一领域的竞争力。
- 具体阐明境外实体或个人向中国国内实体或个人提供服务时的免征营业税范围。
- 对当前的营业税规定和增值税规定进行修订，鼓励租赁行业的发展。

转让定价

- 启动研究项目，以确定新的转让定价同期资料以及长篇累牍的报告要求是否能够有效打压避税行为和避免税收损失，因为它们给商界带来了巨大的成本。
- 在转让定价调查期间，须认可合理发生的损失，尤其是在经济低迷时期。
- 将转让定价审计建立在公开披露的信息之上，停止使用“保密的可比信息”。停止要求非转让定价调查直接对象的公司提交保密信息或鼓励他们提供关于竞争对手的信息。
- 在整体商业基础上而不是在细分市场基础上，对转让定价进行功能和风险分析。

扣除

关于固定资产的加计扣除

- 对于达到加计扣除标准的非主要或非关键性固定资产也应允许加计扣除。
- 考虑采用除年数总和法和双倍余额递减法以外的其他方法，如生命服务扣除法。

研发费用

- 明确研发额外扣除政策的实施和操作流程，如：提供企业是否应采用检查核准体系或记录保存体

系等指导性规定。

- 澄清和阐明与实施相关的事项，如研发项目执行所需的重要信息、研究成果报告以及政府部门能够接受的评价结论等。
- 阐明由控股公司进行的集中开发的实际研发费用的分摊方法，为纳税人和税务机关提供选择方案 and 标准。

增值税

- 考虑研发企业在固定资产方面的高投入，对基础产业的非一般纳税人和研发企业实施优惠政策，以平衡研发企业与其他企业的税收负担。
- 全面实施消费型增值税体系，合并增值税和营业税的应税范围。
- 启动关于增值税制度重大改革的政府研究项目，旨在消除出口中的增值税成本。

关于进口增值税减免政策调整

- 允许对特定行业实行永久免除增值税，或至少将增值税免除的范围扩大至“鼓励类”设备、稀有大型设备以及依靠外国政府贷款、国际金融机构贷款或出口信用项目进口的设备。

非居民税收管理

- 进一步规范和简化中国境内非居民获得税收协定下的保护和利益的程序。
- 阐明 698 号通知中关于转让境外中间控股公司并由此间接转让中国居民企业的股权时的 12.5% 实际税负的规定。
- 目前 698 号通知中规定的履行扣缴义务和提交相关资料的时限太短，需要制定一个更为合理的时间期，以便于企业满足合规要求。

并购中的企业所得税

- 在国家税务总局和相关地方税务机关之间开展积极对话，确保 2009 年企业所得税并购规定得到统一执行。例如，对“商业目的”和“商业合理性”进行定义和量化，以避免不同的税务机关之间的

R&D Expenses

- Clarify implementation and operational procedures under R&D additional deduction policy. For example, provide guidance on whether enterprises should adopt an examination and approval system or record-keeping system.
- Clarify and expound on implementation-related issues such as key information required in R&D project performance and research outcome reports, and the appraisal conclusion acceptable to government departments.
- Explain the apportionment method of actual R&D expenses in centralized development by holding companies to provide options and a criterion for both taxpayers and the authorities.

Value-Added Tax

- Consider enacting preferential policies for non-general tax payers of basic industry and R&D enterprises due to their high investment in fixed assets so as to balance tax burden among companies.
- Fully implement a consumption-based VAT system and integrate taxable scopes of VAT and BT.
- Initiate a government project to study major changes to the VAT system with the goal of eliminating VAT cost for exports.

Adjustment Policy on Exemption of Import VAT

- Allow permanent VAT exemption for certain industries, or at a minimum, extend the exemption for “encouraged” equipment, rare large-scale equipment and equipment imported with support from foreign government loans, international financial organization loans or export credit projects.

Tax Management of Non-residents

- Further standardize and simplify procedures for non-residents in China to receive coverage and benefits under tax treaties.
- Clarify the 12.5 percent effective tax rate on equity transfers of offshore intermediate holding companies through which indirect transfers of PRC resident enterprises are made as specified in Circular 698.

- Extend current timelines with respect to the withholding obligation and the submission of documentation specified in Circular 698 to a more reasonable period to facilitate compliance.

Enterprise Income Tax on M&A

- Implement an active dialogue between the central-level SAT and the relevant regional and local tax authorities to ensure consistent implementation of the 2009 EIT M&A rules. For example, define and quantify “commercial purpose” and “commercial reasonableness” to avoid subjectivity or inconsistency among different tax authorities; clarify the definitions of “substantial business” and “business continuity.”
- Issue guidance to regional and local tax bodies to deal with transitional issues facing taxpayers conducting affected transactions during the almost one and one-half year period from the January 2008 effective date to the May 2009 issuance date of the EIT M&A rules.

Individual Income Tax

- Provide alternatives for overseas depositaries whose home countries have different stock registration requirements than that of China and review the conditions set under Circular 461 to introduce certain relaxation.

主观性和不一致性；明确“实质经营性”和“持续经营”的定义。

- 向各地税务机关颁发指导规定，以处理过渡期间（自2008年1月1日至2009年5月）发生相关交易的纳税人所面临的过渡期问题。

个人所得税

- 对注册地国与中国在股票登记要求方面存在差异的海外存托机构提供其他变通计算方法，对461号文所规定的条件进行重新审视，予以适当的宽松。



Visa Policy

Introduction

More than 30 years into normalized diplomatic relations, the time is ripe for US and China visa policies to grant each other's citizens the rights that the governments provide citizens of many other nations. Some key steps toward normalization include: adopting a treaty investor visa provision in the US-China bilateral investment treaty (BIT) currently under negotiation, creating a reciprocal agreement to grant longer validity periods for non-immigrant visas and removing quotas that create longer waits for Chinese than for other nations' citizens.

China should take steps to make its immigration laws more uniform and transparent, including publishing proposed visa rules to give the process greater transparency and allow for public comment.

On the US side, the government should leverage immigration policy to spur exports. President Obama has highlighted the importance of exports to drive growth and economic recovery. With this goal in mind, Congress should lift the H-1B temporary worker visa cap, remove the per-country immigrant visa quotas and further reduce delays associated with Visas Mantis security advisory opinions (SAO), often referred to as "administrative processing."

It is important to adopt a long-term view of visa policy. Issuance of visas to qualified travelers between the two countries is essential to sustaining the flow of international trade necessary to climb out of the global recession. Both countries need to resist protectionism and adopt immigration policies that will result in long-term economic growth and job creation.

Significant Developments

Reduced US Processing Times

In early 2009, SAO times spiked, taking 16 to 17 weeks after the visa appointment, in contrast with an average of three to four weeks during 2008. This was a serious

problem for US high-tech companies in China, including those in the aerospace and semiconductor industries. In 2009, 50 percent or more of the employees, customers and partners of such companies are subject to SAOs. Delays meant that customer and project meetings, and training sessions often had to be postponed or canceled, putting US companies at a disadvantage compared with other countries. Furthermore, by severely jeopardizing corporate relations with Chinese government agencies and provincial governments, delays hampered business activities when the US should have been working to make it easier for American companies to bring foreign business partners to the US.

AmCham-China's 2009 *White Paper* made recommendations to alleviate these hardships, including that the US Congress and federal agencies involved in the SAO process direct sufficient resources to reduce extreme waiting times. AmCham-China applauds the May 2009 announcement from the State Department on its efforts to reduce SAO delays. Since that time, SAOs have consistently taken approximately three weeks. Moreover, persons subject to SAOs can now receive visas with the maximum validity allowed per the reciprocity agreement between the US and China, for most visa categories (except A and L).

AmCham-China commends the State Department for reducing wait times.

Demand for US Visas Continues to Grow

Worldwide, there was a 12.7 percent drop in demand for US non-immigrant visas during fiscal year 2009. Yet, Chinese applications for non-immigrant visas increased 15 percent during the same period. In fact, a State Department study projects that through 2020, the number of non-immigrant visa applications by Chinese will increase faster than that of any country except for Mexico.

签证政策

综述

中美外交正常化已逾 30 年，美中政府应已做好准备，将美中签证政策中给予其它国家公民的权利同样给予双方国家的公民。迈向正常化的重要步骤包括：在当前正在谈判的美中双边投资协定中加入条约投资人签证条款、签署对等互惠协议以延长非移民签证的有效期，取消导致中国公民花费更长签证等待时间的配额规定。

中国政府应采取措施，使移民法更加统一和透明，包括公布拟定的签证规定，推动相关进程更加透明化，并允许向公众征求意见。

就美国而言，美国政府应调整移民政策，以刺激出口。奥巴马总统一直强调出口对于拉动增长和实现经济复苏的重要性。为实现这个目标，国会应解除对 H-1B 临时工作签证的限制，取消按国家划分的移民签证配额，进一步减少由于“签证安全建议”（现已成为“行政处理程序”）而造成的签证延误。

制定签证政策应基于长远眼光，这一点尤为重要。在两国间向符合要求的旅行人员颁发签证对推进国际贸易流通、摆脱全球经济危机至关重要。中美两国应抵制贸易保护主义，制定既能拉动经济长期增长又能增加就业岗位的移民政策。

重大进展

缩短赴美签证的处理时间

在 2009 年初，由于“签证安全建议”审查次数急剧增多，在签证预约后仍需等待 16 至 17 周，而在 2008 年间，平均等待时间仅为 3 至 4 周。这对美国在华高科技公司（包括航空和半导体公司）产生了影响。2009 年，半数或半数以上的上述公司的雇员、客户及合作伙伴需要通过“签证安全建

议”审查。拖延意味着经常要推迟或取消客户会议、项目会议及培训，而这将使美国公司处于不利的地位。此外，由于签证延误可能会严重影响相关公司与中国政府机构及各省级政府的关系，因此当美国政府采取措施帮助本国公司吸引国外合作伙伴到美国开展业务之际，这些拖延实际上妨碍了商务活动的开展。

中国美国商会在 2009 年《白皮书》中提出相关建议以缓解此类问题，包括建议美国国会及涉及“签证安全建议”程序的联邦机构分配足够的资源，以减少过长的等候时间。美国国务院于 2009 年 5 月宣布将缩短“签证安全建议”程序的等候时间，中国美国商会对此表示赞赏。自此，“签证安全建议”程序只需约 3 周时间。此外，就大多数签证类型（A 类和 L 类除外）而言，需要接受“签证安全建议”审查的申请者现在可以获得美中互惠协议中规定的最长有效期的签证。

中国美国商会对美国国务院缩短签证等候时间的做法表示赞赏。

赴美签证需求持续增长

2009 财政年度，全球赴美非移民签证需求下降了 12.7%。然而，中国赴美非移民签证的申请者人数同期增长 15%。实际上，美国国务院一项研究预测，至 2020 年，中国赴美非移民签证申请者人数的增长速度将超过除墨西哥以外的任何其他国家。

Applicants' Citizenship	Visa Type	Total Visas Issued	Percentage of Visa Applications Approved
PRC citizens	B1, B2, B1/B2	2009: 362,185	Approx. 85%
		2008: 333,426	82.7%
		2007: 299,889	81.3%
		2006: 265,971	78.6%
	All non-immigrant visas	2009: 524,944	Approx. 85%
		2008: 455,279	81.7%
Worldwide	B1, B2, B1/B2	2009: 3,409,573	79.7%
		2008: 3,945,629	79.0%
		2007: 3,736,487	78.1%
		2006: 3,415,733	77.2%
	All non-immigrant visas	2009: 5,804,180	82.8%
		2008: 6,603,044	80.8%
		2007: 6,444,285	79.6%
		2006: 5,836,718	79.6%

Source: US Embassy

The group leisure travel program resulting from the December 2007 US-China Memorandum of Understanding on facilitating tourism was implemented on June 1, 2008. The US Consular Mission in China began making group visa appointments and accepting visa applications submitted directly by designated travel agencies. Waits for most group appointments are under 10 days. The program covers applicants residing in the following provinces:

Beijing, Shaanxi, Shandong, Shanxi, Tianjin, Hubei, Hebei and Hunan (apply at Beijing);

Anhui, Shanghai, Zhejiang and Jiangsu (apply at Shanghai);

Guangdong, Guangxi and Hainan (apply at Guangzhou);

Heilongjiang, Jilin and Liaoning (apply at Shenyang);

And Chongqing, Sichuan and Yunnan (apply at Chengdu)

Consular Post	Number of Visas Issued through Group Leisure Travel Channel	
	FY 2009	June 1 - Oct. 30, 2008
Beijing	2,854	1,097
Chengdu	Unavailable	0
Guangzhou	1,406	344
Shanghai	2,256	1,035
Shenyang	Unavailable	0

Source: US Embassy

The US Consular Mission in China has dedicated 72 service windows for interviewing applicants as well as fingerprinting, intake and cashier services:

US Consulate	Total No. of visa section windows	Non-immigrant Visas issued in FY
Beijing	23	208,737
Shanghai	12	152,536
Guangzhou*	30	61,465
Shenyang	3	29,347
Chengdu	4	23,463

Source: US Embassy and State Department

* Guangzhou also issued 22,479 immigrant visas

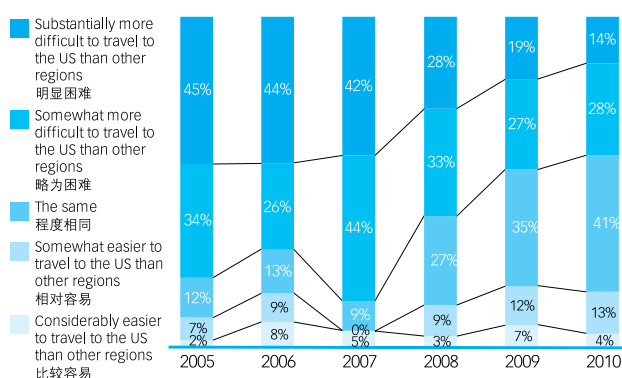
According to the US Embassy, typical wait times during 2009 for non-immigrant visa appointments were three to four weeks, with a peak of four and a half in summer.

Notably, the AmCham-China 2010 *Business Climate Survey* revealed that, while demand for visas continues to increase, member companies feel that the visa application process has improved recently. Compared to 2009, four percent fewer members believe that it is harder for PRC citizens to travel to the US than other regions (Figure 21). Fewer companies indicated having lost sales to non-US firms or intentionally avoiding arranging meetings in the US for employees, customers and suppliers because of US visa concerns (Figures 22 and 23).

In the last year, how difficult was it for the Chinese citizens you work with (employees, customers, and suppliers) to travel to the United States, relative to other regions?

与您接触的中国公民（雇员，客户，供应商）在赴美国与赴其他地区旅行的难易程度比较

Company sample size = 408 80 64 472 227 220
公司样本规模



Source: 2010 AmCham-China Business Climate Survey
资料来源：2010年中国美国商会商务环境调查

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AmCham-China recognizes the value of the Consular Mission's public outreach efforts and customer service initiatives. We encourage the US Congress and State Department to continue vigilance to ensure sufficient resources and staffing are allocated to the US Consular Mission in China to deal with the increasing demand for visas. And we encourage the State Department to plan for issuing visas at the US Consulate in Wuhan.

申请者身份	签证类型	签证数量	签证率
中国公民	B1, B2, B1/B2	2009: 362,185	约 85%
		2008: 333,426	82.7%
		2007: 299,889	81.3%
		2006: 265,971	78.6%
	所有非移民签证	2009: 524,944	约 85%
		2008: 455,279	81.7%
		2007: 401,331	79.7%
		2006: 347,832	77.6%
全球	B1, B2, B1/B2	2009: 3,409,573	79.7%
		2008: 3,945,629	79.0%
		2007: 3,736,487	78.1%
		2006: 3,415,733	77.2%
	所有非移民签证	2009: 5,804,180	82.8%
		2008: 6,603,044	80.8%
		2007: 6,444,285	79.6%
		2006: 5,836,718	79.6%

来源：美国大使馆

2007 年 12 月中美两国签署了旨在促进两国旅游业发展的谅解备忘录后，团体旅游计划于 2008 年 6 月 1 日起正式实施。美国驻华领事机构开始受理由指定旅行社直接提交的团体签证预约和申请。预约等待时间一般在 10 天以内。该计划适用于以下省份的申请者：

北京、陕西、山东、山西、天津、湖北、河北和湖南（在北京申请）；

安徽、上海、浙江和江苏（在上海申请）；

广东、广西和海南（在广州申请）；

黑龙江、吉林和辽宁（在沈阳申请）；

重庆、四川和云南（在成都申请）

领事机构	通过团体旅游渠道颁发的签证数量	
	2009 财政年度	2008 年 6 月 1 日至 10 月 30 日
北京	2,854	1,097
成都	不详	0
广州	1,406	344
上海	2,256	1,035
沈阳	不详	0

来源：美国大使馆

美国驻华领事机构开设了 72 个服务窗口，提供申请者面谈、指纹识别、收取资料和出纳服务。

美国领事馆	签证处窗口总数	2009 财政年度颁发的非移民签证
北京	23	208,737
上海	12	152,536
广州*	30	61,465
沈阳	3	29,347
成都	4	23,463

来源：美国大使馆和美国国务院

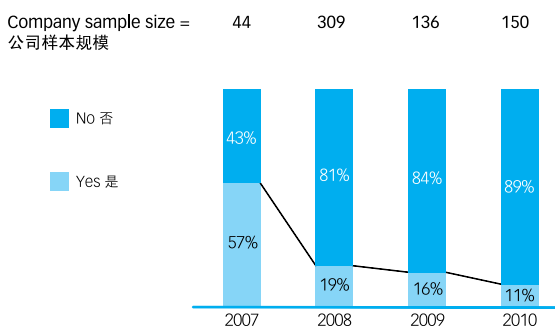
* 广州领事机构还颁发了 22,479 个移民签证。

据美国大使馆称，2009 年申请非移民签证预约等候时间通常为 3 至 4 周，夏季高峰期需 4 周半。

中国美国商会 2010 年营商环境调查显示，值此赴美签证需求持续增长之际，会员企业感到签证申请程序近来有明显改善。与 2009 年相比，认为中国公民赴美较去其它地区更为困难的会员企业数量减少了 4%（图 21）。还有少数会员企业指出，由于考虑赴美签证问题，他们的销售机会旁落于非美国公司，而且他们尽量避免在美国为雇员、消费者和客户安排会议（图 22 和 23）。

For 2009, have you lost significant sales or business relationships to non-US competition because your customers either refuse to apply for visas to the US or have been rejected for visas?

在 2009 年，企业是否曾因客户遭到拒签或拒绝申请美国签证而导致巨大销售损失，并使其所建立的商业关系转向非美国竞争对手？

Source: 2010 AmCham-China Business Climate Survey
资料来源：2010 年中国美国商会营商环境调查

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中国美国商会赞赏领事机构的公众宣传工作和客户服务计划。我们鼓励美国国会和国务院继续确保为美国驻华领事机构配备足够的人力和资源，以满足不断增长的签证需求。同时，我们鼓励美国国务院制定相应计划，允许美国驻武汉领事机构开设签证业务。

AmCham Corporate Visa Programs

American chambers throughout China cooperate with the US consular posts in Beijing, Shanghai, Guangzhou and Chengdu to facilitate visas for employees of member companies. These corporate visa programs continue to benefit our members by reducing visa appointment wait times and time spent waiting at the visa section on the interview day.

These programs also benefit the posts because applicants are screened to verify that they are legitimate businesses, a key individual at each company verifies the applicant's legitimate need to travel and AmCham staff screens the application materials to ensure they are complete before they are passed to the post. We appreciate the strong continued cooperation.

Consular Post	Number of Visas Issued through AmCham-China Corporate Visa Programs	
	FY 2009	FY 2008
Beijing	8210	11718
Shanghai	7876	12759
Guangzhou	2326	2676
Chengdu	272	448
Shenyang*	535	unavailable

Source: US Consular Mission in China

* The Shenyang corporate visa program was not administered in cooperation with AmCham in FY 2009 but will be in FY 2010.

New Form DS-160, Non-Immigrant Visa Application

Effective March 2010, all non-immigrant visa applicants in China now use the new State Department Form DS-160, Non-immigrant Visa Application. This web-based form combines and replaces previous Forms DS-156, 157 and 158. It can be viewed by State Department and Department of Homeland Security personnel worldwide. The State Department plans added functionality, including online fee payment, appointment scheduling, and fraud and security checks.

AmCham-China is pleased that one goal of the DS-160 is to reduce interview-day wait times in the visa section, and also to have participated in a pilot test of the DS-160 prior to its implementation on a wider basis.

While implementation of the DS-160 is still in its early stages, AmCham-China asks the State Department to consider providing a fully translated form in Chinese, both at the time the questionnaire is being completed and at the time the form is printed, even if all answers must be in English. This would allow applicants to print the entire DS-160 form for review before submission

and resolve connectivity or technical issues with the online form.

China Insists That J-1 Visa Holders Must Return Home for Two Years

In 2009 the US Department of State published an updated J-1 exchange visitors' skills list for the first time since 1997. At the Chinese Ministry of Foreign Affairs' request, this list subjects almost all Chinese J-1 visa holders to a two-year foreign residence requirement following their US visit. AmCham-China believes the list is overly inclusive.

The State Department consulted the Ministry of Foreign Affairs in compiling the list of "specialized knowledge and skills that are deemed necessary for the development" of China so that J-1 visa holders whose programs are related to those fields will return to China to use their skills. The list for China includes almost all possible fields.

AmCham-China supports the J-1 visa program because it promotes better international relationships through the exchange of cultural information and provides valuable experiences for the US sponsors and the exchange visitors. AmCham-China also appreciates any concerns the Ministry has about potential brain drain from China. Nevertheless, we believe that this can best be stemmed by improving job opportunities in China, not by limiting the mobility of talented Chinese citizens. AmCham-China companies work hard to create good job opportunities in China.

To maximize the potential of the J-1 visa program, we recommend that the Ministry of Foreign Affairs only list those few skills most essential to China's development so that other Chinese who use the J-1 exchange visitor program will retain the flexibility to apply for US visas after their exchanges, should the need arise.

Specific Issues for the US Government

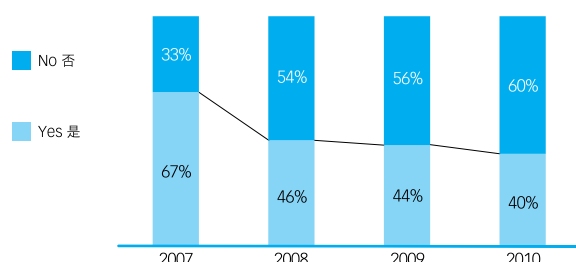
Per-Country Immigrant Visas Caps Hinder US Companies

The total number of employment-based immigrant visas that can be issued per year is 140,000. In 1976, Congress created equal per-country caps—no more than seven percent of the total can be issued to nationals of any one country. This means that, despite China's huge population, it is assigned the same percentage of employment-based immigrant visas as Iceland or Belgium. The result is that US companies who sponsor individuals from China for an employment-based immigrant visa must wait for years longer on waiting lists

Do you intentionally avoid arranging meetings in the US for suppliers, customers, employees because of concerns about obtaining visas?

企业是否因签证问题而尽量避免将美国安排为与雇员、消费者及供应商的会面地点？

Company sample size = 57
公司样本规模



Source: 2010 AmCham-China Business Climate Survey
资料来源: 2010年中国美国商会商务环境调查

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中国美国商会商务签证服务

中国美国商会与驻北京、上海、广州和成都的领事机构合作，为商会会员企业申请赴美签证提供便利。通过缩短签证预约及面谈当日在签证处的等候时间，这些商务签证服务将继续使会员获益。

领事机构同样也能从这些服务中获益，因为申请签证公司是已经被筛选审查过的合法公司，公司的主要负责人也已核实了旅行的必要性，同时由商会把关，以保证申请材料在递交领事馆前已准备齐全。中国美国商会希望继续加强相关合作。

领事机构	通过中国美国商会商务签证服务颁发的签证数量	
	2009 财政年度	2008 财政年度
北京	8210	11718
上海	7876	12759
广州	2326	2676
成都	272	448
沈阳*	535	无

来源: 美国驻华领事机构

*2009 财政年度，美国驻沈阳领事机构还未与中国美国商会就商务签证服务进行合作，该合作将于 2010 年展开。

非移民签证申请采用新的 DS-160 表格

美国国务院于 2010 年 3 月推出新的 DS-160 申请表，供中国赴美签证申请者使用。该表格以网上形式提供，综合了以往的 DS-156, 157 和 158 表格，并取而代之。美国国务院和国土安全部官员通过该表格查看全球申请者的资料。国

务院还计划增加该表格的功能，比如在线费用支付、预约安排以及欺诈和安全检查。

中国美国商会很高兴地看到，使用 DS-160 申请表的目的之一是缩短面谈当天在签证处的等候时间，同时还能在大规模推广使用前对其进行试点测试。

鉴于 DS-160 申请表尚在初期实行阶段，中国美国商会提请国务院考虑提供一份完全汉化的表格，包括在即将完成调查表和打印表格时提供中文翻译，即使所有问题需用英文回答。此举将方便申请者在提交前将全套 DS-160 表格打印出来检查。此外还要解决在线表格存在的连接或技术问题。

中国政府坚持 J-1 签证持有者需回国居住两年

2009 年，美国国务院自 1997 年以来首次公布了一份有关 J-1 交流访问者技能范围的最新清单。应中国外交部要求，该清单使几乎所有中国 J-1 签证持有者都受到在访美结束后必须回国居住两年的限制。中国美国商会认为该清单涵盖的范围过于宽泛。

美国国务院曾就确定“中国发展所必需的专业知识和技能”清单征求中国外交部的意见，以便相关项目的中国 J-1 签证持有者届时能回国效力。该清单几乎包括了所有领域。

中国美国商会支持 J-1 签证项目。通过文化信息交流，J-1 签证项目为美国赞助商和交流访问者提供了富有价值的经验，增进了国际关系。中国美国商会也理解外交部对可能发生人才外流所持的担忧。但我们认为，为防止人才外流，应增加在中国的工作机会，而非限制有才能的中国公民的流动。商会会员企业一直努力在中国创造好的工作机会。

为最大限度发挥 J-1 签证的作用，如相关需求增长的话，我们建议中国外交部仅将中国发展所必需的少数技能列入清单，以便其他持有 J-1 签证的中国公民能在交换期满后自由决定是否继续申请美国签证。

美国政府的具体问题

针对各国的移民签证限制阻碍美国企业发展

每年颁发的赴美工作移民签证为 14 万份。1976 年，美国国会规定了每个国家申请该签证的平等上限——颁发给各国公民的签证不得超过总数的 7%。这意味着尽管中国人口

than for individuals from other countries.

For example, as of March 2009, a US company obtaining a second-preference immigrant visa for a PhD was not subject to any wait for Russian candidates, but had to wait four years for Chinese candidates. (Second-preference visas are generally reserved for professionals holding advanced degrees filling positions for which the US Department of Labor has determined there is no available qualified US worker).

It is not uncommon for companies to wait six years, or even longer, before an immigrant visa is issued and the beneficiary can enter the US and begin work.

These per-country caps should be abolished by Congress, thus removing artificial bottlenecks for US companies to recruit employees from high-demand countries. These caps serve no legitimate purpose for either US businesses seeking top talent, or for the US government.

Lift the H-1B Visa Cap

AmCham-China advocates lifting the cap on H-1B temporary worker visas, which are available to professionals whose services are sought by a US employer in a specialty occupation. Congress has set a cap of 65,000 visas per year. H-1B petitions can be filed each year beginning April 1. Before the global economic recession, so many petitions were filed that the cap was reached on April 1, the very first day that petitions could be filed. But for work beginning in FY 2010, due to the global recession, the cap was not reached until December 21, 2009. This is evidence that the market can regulate the number of H-1B visas issued and no cap is needed.

Lifting the cap would give US companies access to the best candidates, spurring competitiveness and productivity, sorely needed during current economic difficulties. A Harvard Business School December 2008 study shows that increased levels of H-1B admissions lead to increased levels of invention without reducing the level of domestic invention. This finding is consistent with prior studies.

Lifting the cap would also increase net jobs for US workers by making US companies more productive. In contrast, a lower cap on H-1B visas drives skilled workers to competitor nations, as well as requiring US employers to consider taking projects to workers abroad.

H-1B workers do not undercut US wages because employers must pay the prevailing wage. The employer

must also pay the US government a fee of US \$1500 (RMB 10,245) earmarked for US student scholarships and training of US workers. So far nearly \$2 billion (RMB 13.6 billion) has been raised for this purpose.

Finally, a significant number of H-1B workers are foreign nationals who have received advanced degrees from US universities and trained at US companies. Due to backlogs for green cards, there is no other way for these individuals to remain in the US. It is counterproductive to educate and train high-skill workers in the US, but force them work in competitor nations.

Continuing Issues with Administrative Processing

While AmCham-China commends the State Department for reducing SAO wait times to approximately three weeks after the interview, these delays are still problematic for US companies, especially because applicants often have to wait several additional weeks before the interview.

As mentioned, delays require postponing or canceling customer meetings, project meetings, conferences and training sessions. This puts US companies at a disadvantage since customers and partners may choose to do business in competitor nations. These delays also jeopardize US companies' relations with Chinese government officials who need visas.

AmCham-China appreciates the national security justification for administrative processing but encourages the State Department to reduce unnecessary delays and propose several specific improvements.

First, AmCham-China recommends a review of the SAO administrative process to identify ways that the applicant pool subject to SAO review can be narrowed. Investigative resources should be focused on those few individuals who may pose a legitimate threat to increase national security and reduce delays for legitimate business travelers who pose no threat. This should involve: (a) reviewing the Technology Alert List (TAL) by an interagency agreement every two years to remove non-critical technologies and make the TAL easier to use; (b) sharing with consular officers up-to-date profiles of applicants that may pose a threat while allowing officers to apply their discretion to waive administrative processing for applicants who do not fit the profile; and (c) removing what seems to be a presumption that an applicant who has been subject to an SAO and received a clearance to travel to the US needs to be subject to it again as part of every future application. In contrast, we believe it may be more efficient to presume that persons who have been cleared should

众多，但分配给中国的赴美工作移民签证和冰岛或比利时的比例是相同的。结果是，同来自其它国家申请同样签证的个人相比，赞助该中国签证申请者的美国公司需要在等候名单上等待更长的时间。

例如，截至 2009 年 3 月，在一家美国企业为博士学位拥有者申请第二优先移民签证过程中，俄罗斯申请者无需等待，而中国申请者则需等待四年。（第二优先签证通常颁发给持有高学位的专业人员，填补美国劳工部认为没有合格本国人员担任的岗位）。

在申请人获得移民签证进入美国开始工作前，需求企业等候 6 年或更长时间的情况并不罕见。

美国国会应取消针对每个国家的上限限制，以消除美国企业从高需求国家招聘员工时遇到的人为瓶颈。这些限制只能作用于无合法目的的寻求高端人才的美国企业和美国政府。

取消 H-1B 签证配额上限

中国美国商会建议取消 H-1B 临时工作签证配额上限。H-1B 临时工作签证颁发给处于特殊行业的美国公司所需要的专业人士。国会设定每年颁发该类签证的上限为 6 万 5 千份，并从每年 4 月 1 日开始提交申请。全球经济衰退前，申请量极大，以至于在开始提交申请的第一天（即 4 月 1 日）就达到了配额上限。但 2010 年财政年度，受全球经济衰退的影响，直到 2009 年 12 月 21 日才达到该上限。这表明市场能够调节 H-1B 签证的颁发数量，而无需设定上限。

取消上限规定有助于美国公司挑选到最合适的人才，促进竞争力和生产力，这两者是当前经济衰退下所急需的。哈佛商学院 2008 年 12 月的一份研究报告显示，H-1B 签证颁发的增长促进了创新水平的提高，同时当地创新水平也并未因此而降低。此发现符合之前的研究结果。

取消上限能使美国企业更具生产力，从而增加美国工人的就业机会。相比之下，如果将 H-1B 签证上限要求降低，就会促使技术工人流向其它竞争国，同时美国企业不得不考虑将项目交给国外工人。

持有 H-1B 签证的工人并不会削弱美国的工资水平，因为雇主必须按目前正常的工资水平向他们支付工资。同时，雇主还需向美国政府缴纳一笔 1500 美元（10,245 人民币）

的费用，专门用于美国学生奖学金和工人培训。目前已筹措用于此目的资金近 20 亿美元（136 亿人民币）。

最后，有相当数量持有 H-1B 签证的工人是获得美国大学高等学位并在美国公司受训的外籍人士。由于长期拿不到绿卡，使其无法留居在美国。美国培养并培训了高技术工人，却迫使他们到竞争国去工作，这与其初衷相违背。

行政处理程序仍存在问题

美国国务院将面谈后等待“签证安全建议”审查的时间缩短为约 3 周，中国美国商会对此表示赞赏。不过延迟仍然给美国企业带来问题，特别是当申请者在面谈前还需等待几周时间。

如前文所述，拖延意味着推迟或取消客户会议、项目会议及培训。这将置美国公司于不利的地位，因为其客户或合作伙伴可能会因此到竞争国开展业务。这些延误也将对美国公司和需要获得赴美签证的中国政府官员的关系造成影响。

中国美国商会赞赏为捍卫美国国家安全而实行的行政处理程序，但鼓励国务院减少不必要的延误，并提出如下具体改进措施。

首先，中国美国商会建议对“安全签证建议”行政程序进行审查，以确定如何才能缩小需接受“安全签证建议”审查的申请者范围。应该集中对那些可能会增加国家安全风险的少数人进行审查，而减少对不存在任何威胁的合法商务旅行者的签证延误。这包括：(a) 通过每两年一次的部门间协议审核技术警戒列表，删除非关键技术，使该列表更便于使用；(b) 与领事机构官员共享可能存在威胁的申请者最新资料，同时允许他们根据自己的判断，免除对不存在任何威胁的申请者行政处理审查；(c) 取消对于曾接受过“安全签证建议”审查并得到赴美许可的申请者，在以后赴美申请中均需接受审查的假定。相反，我们认为若假定那些已获许可的申请者非特殊情况下无需再接受任何额外审查，则会更具效率。

其次，中国美国商会建议国务院在签证面谈前收集所有必备数据，再开始行政处理程序。该建议可以被视为国务院新近采取的，在面谈前借助 DS-160 表格（非移民签证申请）收集签证申请者电子信息这一做法的延伸。

第三，我们建议美国大使馆仔细审核签证申请者资料，

not be subject to additional checks unless special facts warrant it.

Second, AmCham-China recommends that the State Department collect all necessary data and begin administrative processing before interviews. This would be a logical extension of the State Department's recent implementation of efforts to collect visa applicants' information electronically before the interview with Form DS-160, Non-immigrant Visa Application.

Third, we recommend that the US Embassy carefully review individual visa applications to determine whether an SAO is really necessary under the guidelines. We recommend that the State Department provide necessary training needed by officers to carry this out.

Specific Issues for the Chinese Government

Increase Transparency of Visa Rules

To promote transparency, AmCham-China urges the Chinese government to publish all visa rules in writing and publish proposed visa rules in advance to give the public notice and opportunity to comment.

Examples of unpublished rules include document requirements, age restrictions and requirements related to residence registration (see below). Another example is that the Chinese embassies in the US and Mexico temporarily suspended visa issuance in May 2009 due to the outbreak of the H1N1 flu without providing any public written notice.

Clarify Visa Application Requirements

Discrepancies on required documents for visa application processing exist between local Chinese immigration authorities. For example, the submission of an original diploma is required in Beijing, while a certified diploma copy is needed in Shanghai. These differences and lack of cohesiveness create confusion and have resulted in rejected or delayed visa issuance.

In such cases where the visa is rejected or delayed, the US foreign executive may choose to postpone or cancel their business trip, or handle such business in another location outside of China, hampering local Chinese business activities. We suggest the visa process be reviewed and a unified list of required documents be decided upon for all cities across China, with exception to certain regions, eliminating confusion and unnecessary delays.

Requirement of an Original Diploma

The requirement for submitting original diplomas for visa administrative processing causes numerous delays. For many, locating and obtaining original documents from abroad while residing in China has proven problematic and time consuming, causing delays in travel and impeding business activities. We recommend that certified copies of original diplomas or transcripts be accepted for visa applications and the requirement of a diploma for technical specialists and experts in specific industries, such as engineering or agriculture, be dropped.

Age Restrictions

For those visa applicants between the ages of 59-64, obtaining a work permit or renewing a work permit is a very cumbersome process with many barriers, such as repeated phone conversations, submission of additional documents and sometimes many application rejections before final visa processing. For applicants 65 years and above, the Ministry of Human Resources and Social Security refuses to provide a work permit as they have reached the Chinese age of retirement.

For many organizations, including both international and Chinese, specialized foreign expertise are needed for the advancement and success of business operations and knowledge transfer. AmCham-China recommends that work permit restrictions for those over 65 be lifted. In addition, although we agree that visa applicants approaching the age of 65 should be forewarned of the retirement age in China, these applicants should not be treated differently than applicants of a lower age group.

Dependants Over Age 18

Once a child has reached the age of 18, the local security bureau will not renew their dependant visa. This regulation has a direct impact on those foreign employees with children and/or a family residing with them in China. For instance, some children may still be enrolled in high school or unemployed while applying for university after the age of 18. In such cases, a dependant visa is necessary given that a student or working permit would not be granted.

Other dependants over the age of 18 who should qualify for a dependant visa include those with permanent handicaps requiring full dependency on their parents into adulthood. At present, there are no visa regulations supporting handicapped individuals. Here we recommend the dependant age be raised to 21 with a special exception for those dependents with disabilities.

确定是否有按国务院规定执行“安全签证建议”审查的必要。建议国务院为使馆官员提供必要的相关培训。

中国政府的具体问题

提高签证规定的透明度

为提高透明度，中国美国商会敦促中国政府公布所有书面签证规定，提前公布将要实施的签证规定，告知公众并给予其提供建议的机会。

未公布的规定包括文件提交要求、年龄限制和户籍相关要求（如下）。另一个例子是由于 H1N1 流感爆发，中国驻美国和墨西哥使馆曾于 2009 年 5 月暂停颁发签证，但却未提供任何书面通知。

明确签证申请要求

中国各地移民机构对签证申请所要求的文件存在差异。比如，北京要求申请者提交文凭原件，而上海则只需要提供经过证明的文凭副本。上述差异和缺乏一致性造成了混乱，并曾导致拒签或签证颁发延迟。

在上述拒签或颁发签证延迟的案例中，来自美国的企业管理者可能会选择推迟或取消差旅，或在中国之外的其它地方处理业务，这样就妨碍了中国本土企业的商务活动。我们建议重新评估签证申请程序，在中国各城市（个别地区除外）制定统一标准，规定签证所需文件，以减少混乱和不必要的延误。

对文凭原件的要求

签证行政处理程序要求提交文凭原件，这导致了很大延误。对许多人来说，居住在中国却要从国外取回文件原件既费事又耗时，导致出行延误，妨碍商务活动。我们建议在申请签证时，接受经核实的文凭或成绩单副本，取消对特定行业（如工程或农业）技术专家的文凭要求。

年龄限制

对年龄在 59 岁到 64 岁之间的签证申请者来说，想要获得或延长工作许可要经过复杂程序，遇到诸多障碍：如反复进行电话交谈，提交附加文件，有时在进入最后签证处理程序前申请还会被多次拒绝。对于年龄在 65 岁及以上的申

请者，人力资源和社会保障部拒绝为其提供工作许可，因为他们已经达到了中国的退休年龄。

对于许多国际和国内组织来说，他们需要外国专家以确保其商务运作和知识转移取得进展并获得成功。中国美国商会建议，取消对那些具有特定专业技术、年龄在 65 岁以上专家的工作许可限制。另外，虽然可提前告知接近 65 岁的签证申请者中国的退休年龄，但不应将他们和年龄较小的申请者区别对待。

年龄在 18 岁以上的家属

一旦孩子的年龄达到 18 岁，中国当地公安局将不再延长他们所持有的依亲签证。该规定对于那些带着孩子和 / 或一家人在中国生活的外国员工造成了直接影响。例如，一些超过 18 岁的孩子在申请大学时可能正处于高中在读或无业状态。针对上述情况，考虑到他们可能拿不到入学或工作许可，有必要向他们颁发依亲签证。

其他年龄超过 18 岁，符合颁发依亲签证的家属还包括那些身体有永久残疾、虽已成年但仍需完全依靠其父母的申请者。目前还没有相关签证规定支持此类残疾申请者。在此我们建议，将依亲签证持有人年龄限制提高到 21 岁，对那些身体有残疾的家属给予特殊照顾。

两国政府的具体问题

条约投资人签证

在 2008 年第四次中美战略经济对话上，中美双方同意启动“双边投资协定”谈判。美方加入双边投资协定中的很大一部分内容包括允许投资者获得签证以对其国外投资进行管理的条款，即 E-2 条约投资人签证。超过 70 个国家的投资者可以申请该签证。中国美国商会认为，中美双边投资协定应包含条约投资人签证条款。

中国投资者获得 E-2 签证将有助于增加中国在美国的外商直接投资。外商直接投资是推动美国经济创新、出口和就业的关键力量。美国商务部认为，为投资者提供签证是“有意到美国投资的投资者认为最重要的一点”，同时这也是判断“投资或管理投资难易程度的一个关键指标”。

鉴于美国投资者获得中国条约投资人签证将有助于保护他们在双边投资协定下的权利，因此双边投资协定的目标之

Specific Issues for Both Governments

Treaty Investor Visas

During the fourth meeting of the Strategic Economic Dialogue in 2008, the US and China agreed to launch BIT negotiations. The great majority of BITs entered into by the US have included a provision allowing investors to qualify for visas to administer their investments in the other country, known as E-2 treaty investor visas. They are available to nationals of more than 70 countries. AmCham-China believes that a treaty investor visa provision should be included in the US-China BIT.

Giving Chinese investors access to E-2 visas will help increase Chinese FDI in the US. FDI is a key driver in the US economy for innovation, exports and jobs. The US Department of Commerce believes that availability of visas for investors is “one of the more important issues facing those interested in investing in the US,” as well as a “key indicator of how easy it will be to make or administer an investment.”

Giving US investors access to Chinese treaty investor visas will also help protect their rights under the BIT. One goal of the BIT is to ensure that US investors can engage the top managerial personnel of their choice to manage their investments, which can only happen with access to investor visas.

Extend Visa Validity

The US government sets visa validity on a reciprocal basis with foreign governments. AmCham-China is pleased that the US and Chinese governments this year were able to agree to extend C1 (transit)/D (crew) visa validity from six to 24 months.

AmCham-China strongly advocates that visas for all non-immigrant classifications be issued for longer validity periods. This is convenient for travelers and conserves consular resources. Minimizing the visa renewal frequencies is especially relevant given that the State Department has proposed increasing non-immigrant visa application fees.

Currently, for Chinese nationals B-1/B-2 visas are only valid for up to one year, as opposed to 10 years for many nationalities. H-1B visas are only valid for up to three months, as opposed to three years for many nationalities.

Increase Passport Validity

AmCham-China encourages the US and Chinese

governments to recognize each other's passports as automatically extended for six months beyond the expiration date shown on the identification page. The US has reached such agreements with over 100 countries, but we understand that China has rebuffed US offers to enter into such an agreement. This inconveniences Chinese travelers because, under US law, an individual may only be admitted as a non-immigrant for a period ending six months before the passport's expiration date. As a result, individuals may have to procure a new passport to obtain their visas—or their trips may be cut short—because their passports do not have a sufficient period of validity.

Recommendations

For the US Government:

- **Abolish per-country immigrant visa caps, removing artificial bottlenecks for US companies to recruit employees from high-demand countries like China.**
- Lift the numerical cap on H-1B temporary workers.
- To improve the non-immigrant visa application process, strive to further reduce unnecessary delays associated with Visas Mantis security advisory opinions (SAO); improve the DS-160 form, focusing on its Chinese translation, the ability to print the form for proofreading and the website's connectivity.

For the Chinese Government:

- **To promote transparency, publish all visa rules in writing. Publish proposed visa rules in advance to give the public notice and an opportunity to comment. Where possible, visa policies should be uniform rather than determined by individual consulates and localities.**
- Waive the restriction on issuance of work permits for those above age 65. Additionally, sons and daughters of work visa holders should be admitted with dependent visas up to age 21 and, in the case of sons and daughters with permanent handicaps, without age limit.
- Allow visa applicants to submit certified copies of diplomas or transcripts in lieu of original diplomas.

一即为确保美国投资者聘请到其所认可的高层管理人员对其投资进行管理，而这只有通过条约投资人签证才能实现。

延长签证有效期

美国政府本着与他国政府对等的原则规定了签证有效期。中国美国商会很高兴地看到，美中两国政府今年同意将 C1（过境）/D（航务人员）类签证的有效期从 6 个月延长到 24 个月。

中国美国商会强烈建议延长所有非移民签证的有效期，这既能方便旅游者，又可节约领事机构资源。鉴于美国国务院提议增加申请非移民签证的费用，最大程度减少签证续签频率尤为必要。

目前，中国公民持有的 B-1/B-2 和 H-1B 签证有效期最长分别为 1 年和 3 个月，而很多其他国家公民则为 10 年和 3 年。

延长护照有效期

中国美国商会鼓励美中两国政府能够互相承认，对方公民的护照在到期后可自动延长六个月的有效期。美国已同 100 多个国家达成了此类协议，但据我们了解，中国并未接受美国为达成此类协议的相关提议。这给中国赴美旅游者造成了不便。因为根据美国法律，个人在持有 6 个月以上有效期的护照时才能以非移民身份进入美国。这样，因为护照没有足够的有效期，他们要么必须申请新护照来获得签证，要么缩短行程。

建议

给美国政府的建议：

- 撤销针对每个国家的移民签证上限，解除美国公司从中国等高需求国家招聘员工的人为限制。
- 取消 H-1B 临时工作签证的人数限制。
- 改善非移民签证申请程序，进一步减少因“签证安全建议”导致的延误；改善 DS-160 表格，主要是提供中文译文，便于申请者将表格打印出来检查，保证网络的连接性。

给中国政府的建议：

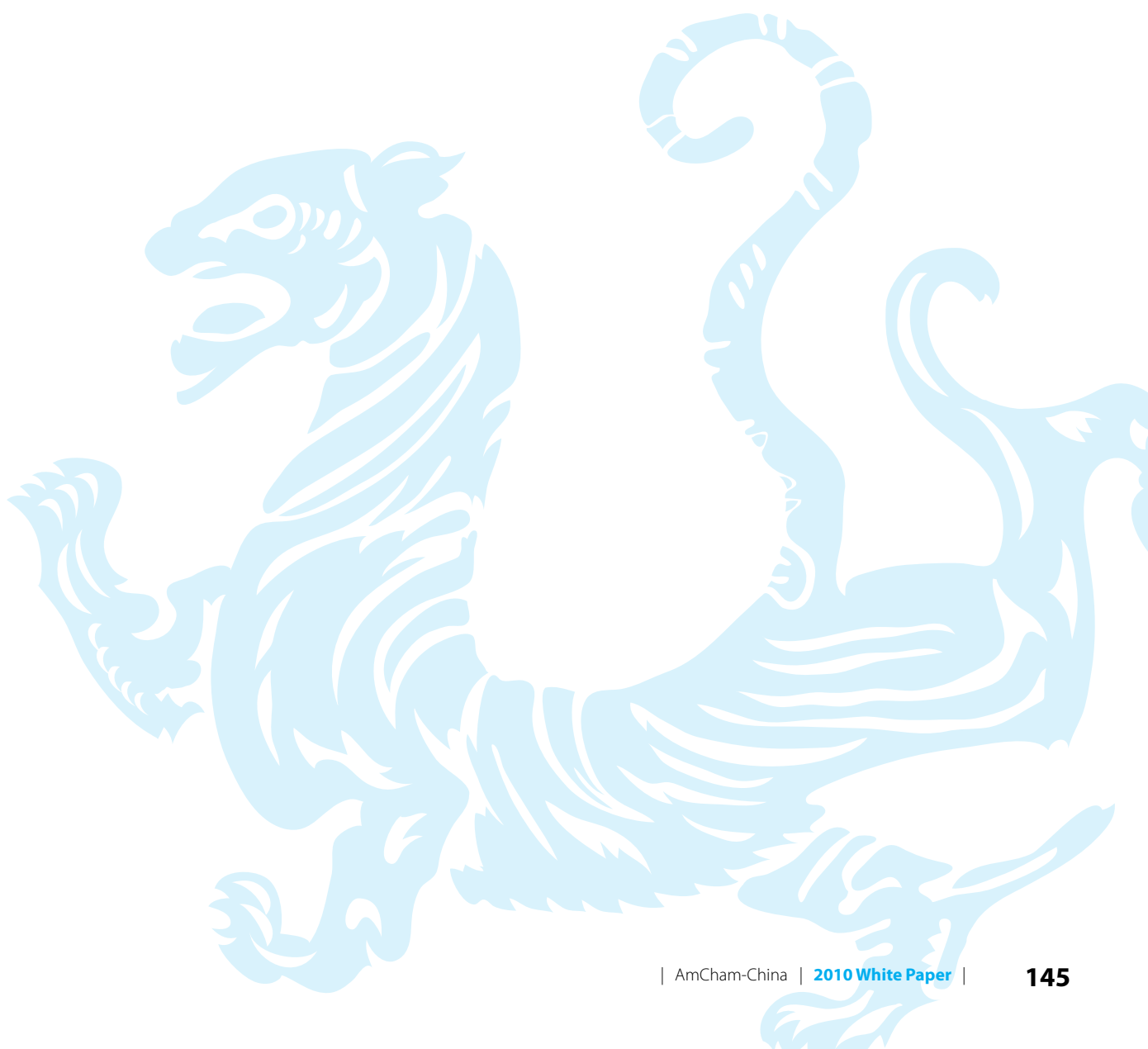
- 提高透明度，公布所有书面签证规定。提前公布将实施的签证规定，提醒公众注意并为其提供参与意见的机会。如有可能，签证政策应有全国统一标准，而非因地制宜。
- 取消对拥有特定行业专业技术、年龄在 65 岁以上人员颁发工作许可的限制。另外，将签证持有者子女的依亲签证年龄规定提高到 21 岁，如果其子女有永久身体残疾，则允许他们不限年龄地持有该签证。
- 允许签证申请者提交经证明的文凭或成绩单副本，而非文凭原件。

给两国政府的建议：

- 将条约投资人签证条款列入目前正在谈判的双边投资协定。
- 就颁发具有更长有效期的非移民签证达成互惠协议。美中两国政府能够互相承认，对方公民的护照在到期后可自动延长六个月的有效期。
- 外交部应缩小美国国务院 J-1 交流访问者技能清单中的技能范围，减少参与交换项目的中国公民需到外国居住两年这一固定要求的人数。

For Both Governments:

- Include a treaty investor visa provision in the BIT currently under negotiation.
- Reach a reciprocal agreement to issue non-immigrant visas valid for longer periods. The US and China should recognize each other's passports as automatically extended for six months beyond the expiration date shown on the identification page.
- The Ministry of Foreign Affairs should narrow the list of skills to be included in the US State Department's J-1 Exchange Visitor Skills List, so that fewer Chinese who participate in exchange programs are subject to the inflexible two-year foreign residence requirement.



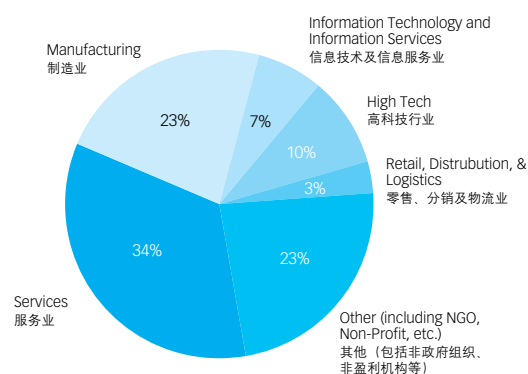
Preamble and Survey Data

Every year since 1999, AmCham-China has asked its members to share their experiences about doing business in China. This provides extensive data about their views on the operating environment, their successes, their business challenges, their outlook for the future and their suggestions about how to improve the business climate. This year, 388 members participated in the survey, comprising a diverse collection of businesses with varying amounts of experience throughout China, from small and medium-sized enterprises to the world's largest multinational corporations. This survey represents the most current and thorough compilation of insights to date from companies on the front lines in China, and the trends gleaned from the data underpin our assessments, conclusions and recommendations in the *White Paper*. Our hope is that this 2010 *Business Climate Survey* offers useful information to both policymakers and decision makers regarding the challenges facing American companies and what it takes to be successful in the competitive China marketplace.

Industry Representation among Survey Respondents

问卷反馈企业所涉及的行业

Company sample size = 388
公司样本规模



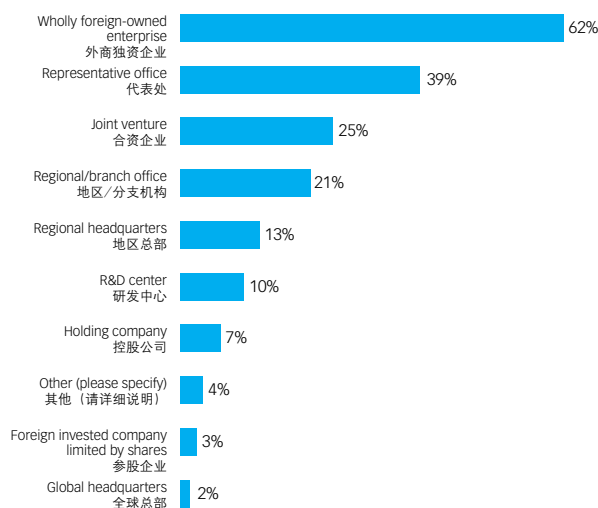
Source: 2010 AmCham-China Business Climate Survey
资料来源: 2010年中国美国商会商务环境调查

1

Which of the following legal entities does your company have in China? (Choose all that apply)

企业在华经营的形式

Company sample size = 382
公司样本规模



Source: 2010 AmCham-China Business Climate Survey
资料来源: 2010年中国美国商会商务环境调查

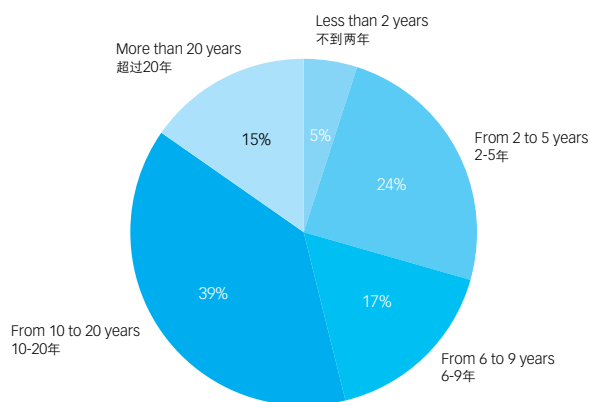
2

商务环境序言及调查结果

中国美国商会自 1999 年以来，每年都会向会员们征询其在华经商的一些经验。会员们应邀提供了反映其观点的大量相关信息，其中包括运营环境、成功经验、商业挑战、发展展望以及改善商务环境等方面的建议。今年，388 名分布在全国各类行业的会员公司参与了调查，其中有中小型企业，也不乏国际性的跨国公司。该调查凝聚了活跃在中国前沿企业的最新见解；数据分析呈现出的趋势印证了我们在白皮书中的若干评估、结论与相关建议。我们期望，借助 2010 年商务环境调查问卷数据，政策制定者和决策者能了解到有关美国企业所面临的挑战，及其在充满竞争的中国市场中获胜所需的条件。

How long has your company had a physical presence in China? 企业在中国建立实体时间

Company sample size = 385
公司样本规模



Source: 2010 AmCham-China Business Climate Survey
资料来源：2010年中国美国商会商务环境调查

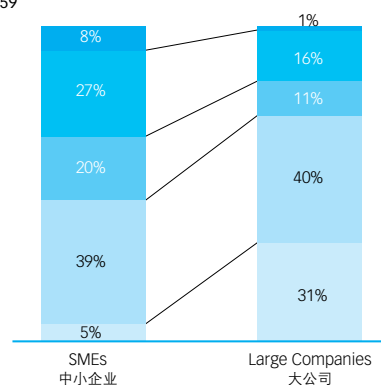
3

Length of Time in China for Small and Medium-sized Enterprises Compared to Large Companies

中小企业与大企业在华运营时间的比较

Company sample size = 359
公司样本规模

■ Less than 2 years
 <2年
 ■ From 2 to 5 years
 2-5年
 ■ From 6 to 9 years
 6-9年
 ■ From 10 to 20 years
 10-20年
 ■ More than 20 years
 >20年

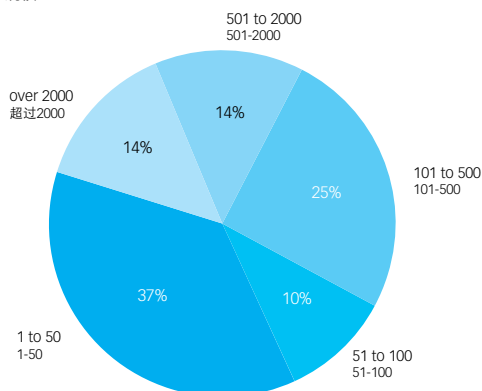


Source: 2010 AmCham-China Business Climate Survey
资料来源：2010年中国美国商会商务环境调查

4

How many employees does your company have in China? 企业在华雇员人数

Company sample size = 378
公司样本规模

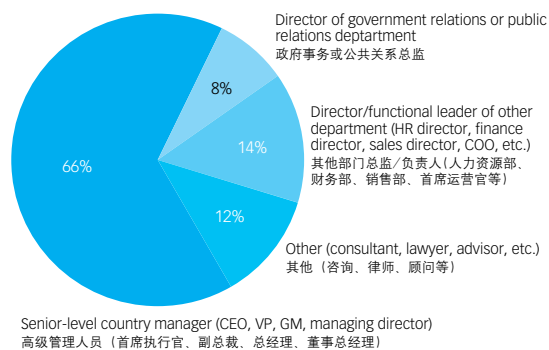


Source: 2010 AmCham-China Business Climate Survey
资料来源：2010年中国美国商会商务环境调查

5

Survey Respondent's Position in his/her Company 问卷反馈人员的职务

Company sample size = 388
公司样本规模

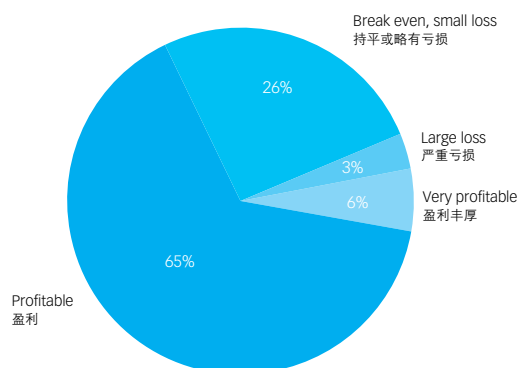


Source: 2010 AmCham-China Business Climate Survey
资料来源：2010年中国美国商会商务环境调查

6

How would you characterize your company's financial performance in China in 2009? 企业2009年在华财务业绩状况

Company sample size = 319
公司样本规模

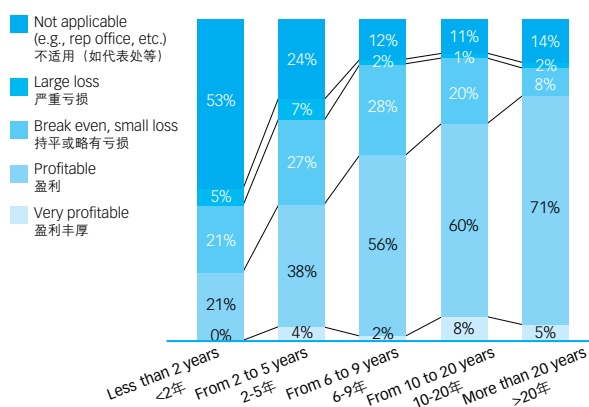


Source: 2010 AmCham-China Business Climate Survey
资料来源：2010年中国美国商会商务环境调查

7

Profitability by Length of Time in China 企业盈利状况随其在华时间长短的变化

Company sample size = 388
公司样本规模

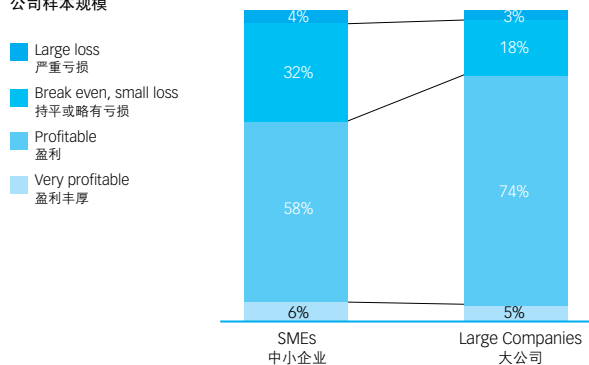


Source: 2010 AmCham-China Business Climate Survey
资料来源：2010年中国美国商会商务环境调查

8

Profitability of China Operations for Small and Medium-sized Enterprises Compared to Large Companies 中小企业与大企业在华盈利比较

Company sample size = 388
公司样本规模

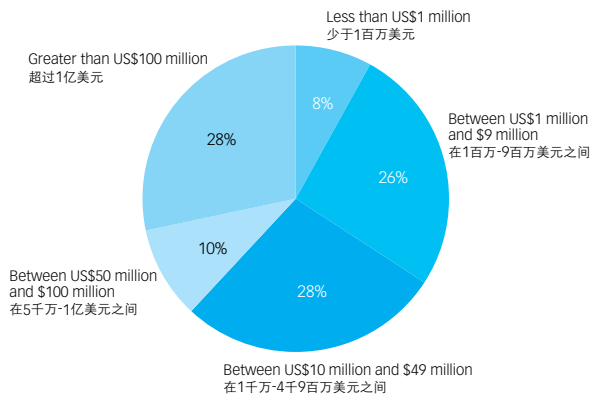


Source: 2010 AmCham-China Business Climate Survey
资料来源：2010年中国美国商会商务环境调查

9

What are your estimated total annual China revenues for 2009? 企业2009年在华总收入

Company sample size = 202
公司样本规模

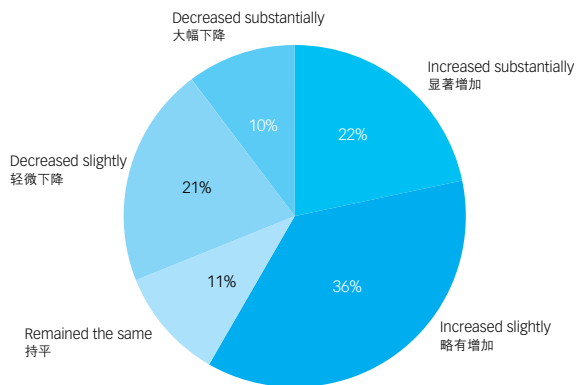


Source: 2010 AmCham-China Business Climate Survey
资料来源: 2010年中国美国商会商务环境调查

10

How does the (estimated) 2009 revenue of your China operations compare to the 2008 results? 企业2009年在华运营收入与2008年的比较

Company sample size = 280
公司样本规模

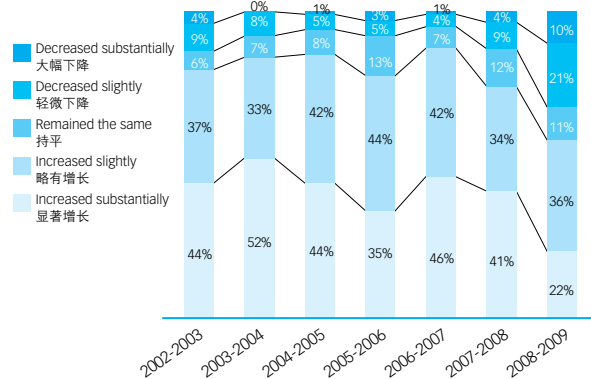


Source: 2010 AmCham-China Business Climate Survey
资料来源: 2010年中国美国商会商务环境调查

11

Change in Revenue of China Operations (calendar years 2002-2009) 2002-2009年企业在华运营收入变化

Company sample size = 231 213 334 126 658 282 280
公司样本规模

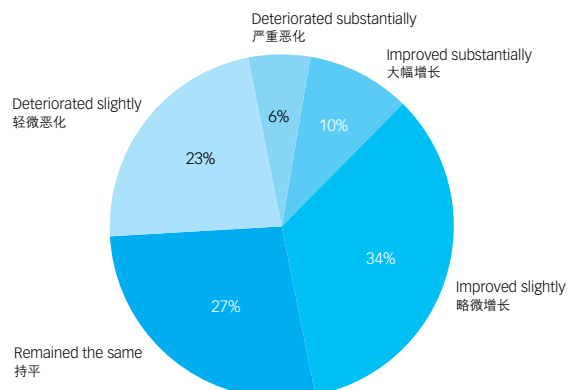


Source: 2010 AmCham-China Business Climate Survey
资料来源: 2010年中国美国商会商务环境调查

12

How did operating margins of your China operations in 2009 compare to 2008 results? 企业2009年较之2008年在华运营利润率比较

Company sample size = 273
公司样本规模

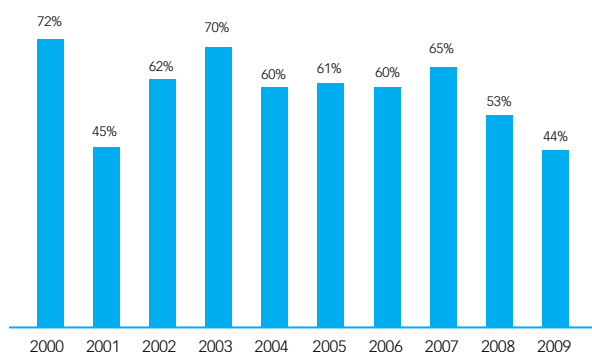


Source: 2010 AmCham-China Business Climate Survey
资料来源: 2010年中国美国商会商务环境调查

13

**Percentage of Companies with Increased Operating Margins
(calendar years 2000-2009)**

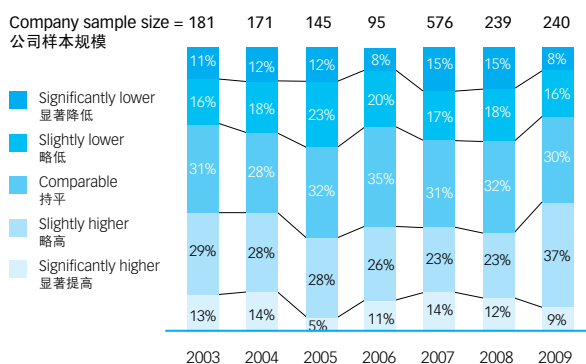
2000-2009年在华运营利润率增长企业的百分比

Source: 2010 AmCham-China Business Climate Survey
资料来源: 2010年中国美国商会商务环境调查

14

**China Margins Compared to Worldwide Margins
(calendar years 2003-2009)**

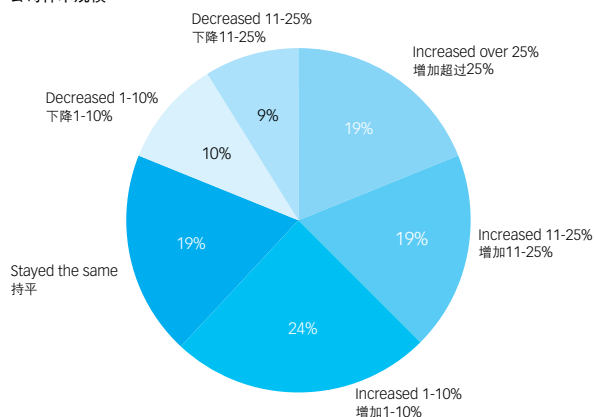
2003-2009年企业在华利润率与其在全球利润率的比较

Source: 2010 AmCham-China Business Climate Survey
资料来源: 2010年中国美国商会商务环境调查

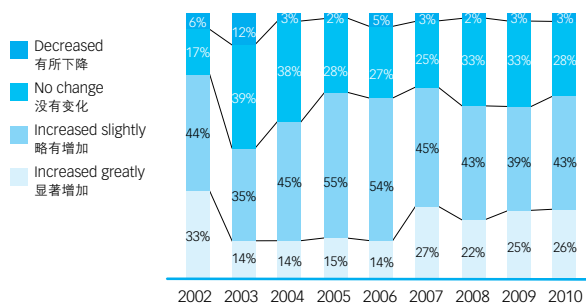
15

**How did your company's production in China change over the
past year?**

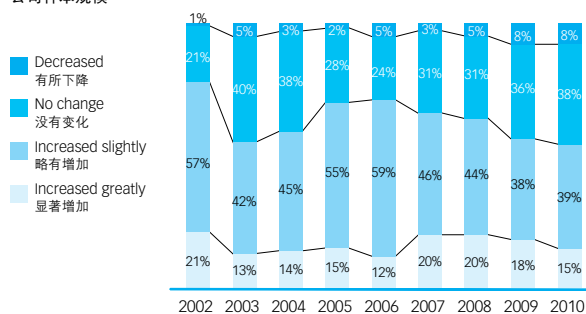
企业在华生产产量与上一年的比较

Company sample size = 201
公司样本规模Source: 2010 AmCham-China Business Climate Survey
资料来源: 2010年中国美国商会商务环境调查

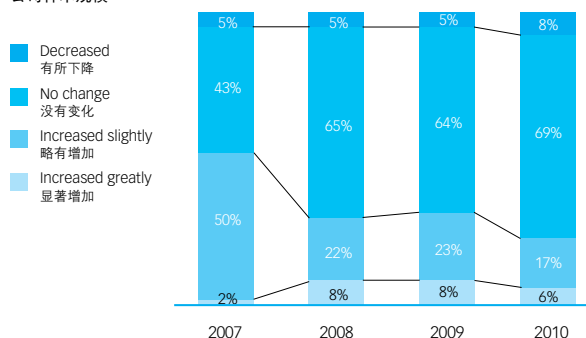
16

**Perceived Change in Competition from PRC Firms (2002-2010)
来自中国企业的竞争压力变化(2002-2010年)**Company sample size = 102 252 215 351 171 138 586 282 260
公司样本规模Source: 2010 AmCham-China Business Climate Survey
资料来源: 2010年中国美国商会商务环境调查

17

**Perceived Change in Competition from Foreign Firms (2002-2010)
来自非中国企业的竞争压力变化(2002-2010年)**Company sample size = 115 251 181 290 183 136 592 276 260
公司样本规模Source: 2010 AmCham-China Business Climate Survey
资料来源: 2010年中国美国商会商务环境调查

18

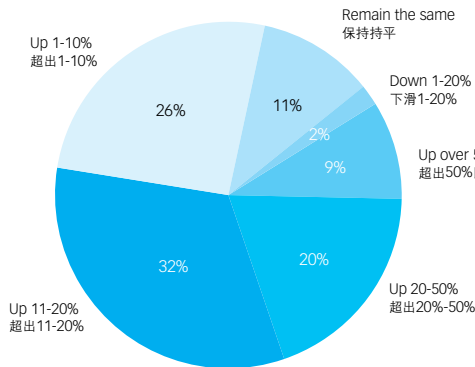
**Perceived Change in Competition from Imports (2007-2010)
来自进口产品竞争方面的变化(2007-2010年)**Company sample size = 127 414 244 260
公司样本规模Source: 2010 AmCham-China Business Climate Survey
资料来源: 2010年中国美国商会商务环境调查

19

What is your company's forecast for 2010 China revenues compared to 2009 results?

企业2010年相比2009年对其在华营业收入的预测

Company sample size = 278
公司样本规模



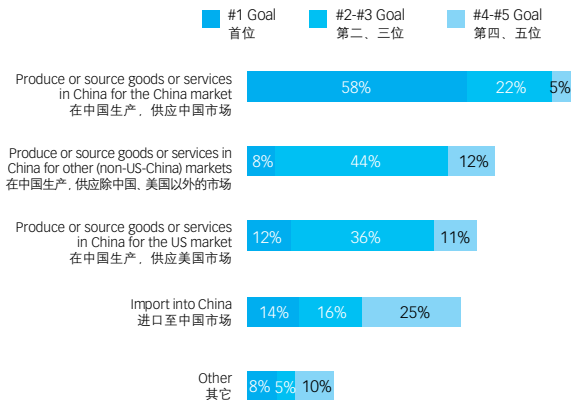
Source: 2010 AmCham-China Business Climate Survey
资料来源: 2010年中国美国商会商务环境调查

20

Top-Five Goals and Strategies in China

美企在华五大主要战略目标

Company sample size = 264
公司样本规模



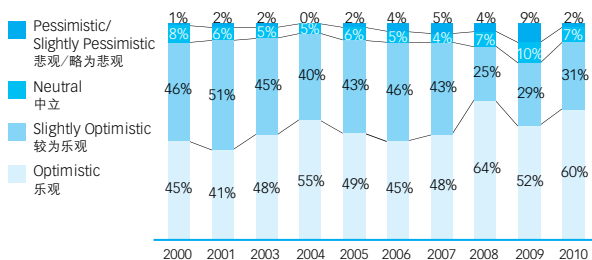
Source: 2010 AmCham-China Business Climate Survey
资料来源: 2010年中国美国商会商务环境调查

21

How would you describe your five-year business outlook in China?

企业自2000-2010年中对未来五年在华发展的展望

Company sample size: 254 236 397 213 154 618 270 274
公司样本规模



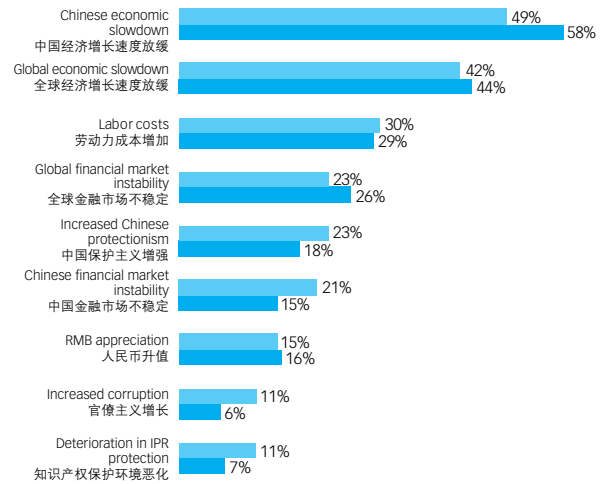
Source: 2010 AmCham-China Business Climate Survey
资料来源: 2010年中国美国商会商务环境调查

22

Top Risks for the Coming Years

2009年至2010年企业面临的主要风险

Company sample size = 270 (2009) 274 (2010)
公司样本规模



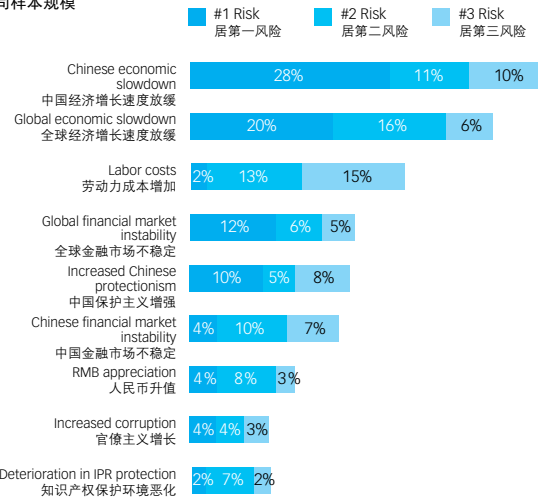
Source: 2010 AmCham-China Business Climate Survey
资料来源: 2010年中国美国商会商务环境调查

23

Top Risks for the Coming Years

企业面临的主要风险

Company sample size = 274
公司样本规模



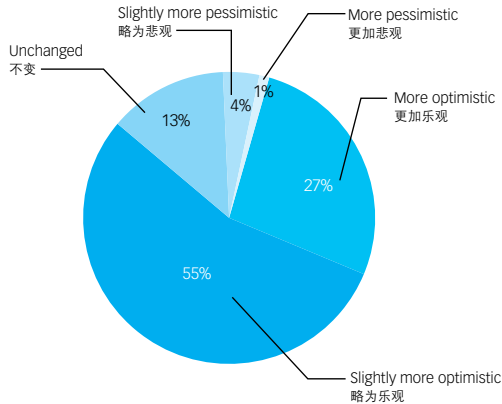
Source: 2010 AmCham-China Business Climate Survey
资料来源: 2010年中国美国商会商务环境调查

24

How would you describe your company's 2010 business outlook in China compared to 2009?

与2009年相比，企业对2010年发展的展望

Company sample size = 272
公司样本规模



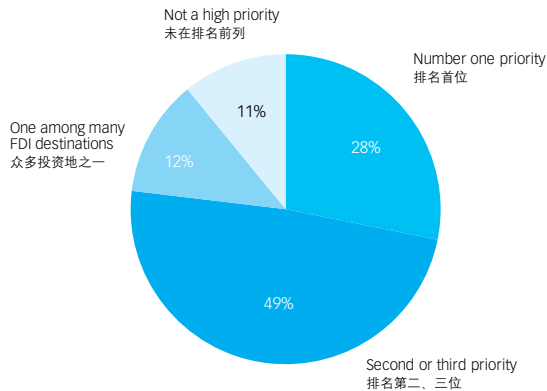
Source: 2010 AmCham-China Business Climate Survey
资料来源：2010年中国美国商会商务环境调查

25

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

中国市场在企业近期全球投资计划中的排名

Company sample size = 238
公司样本规模



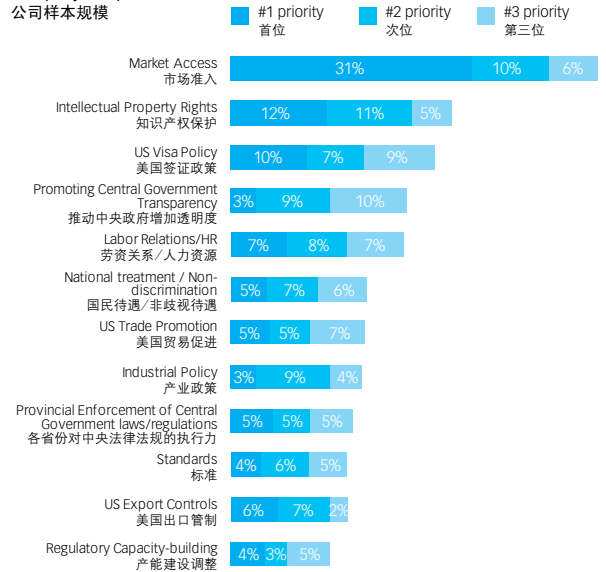
Source: 2010 AmCham-China Business Climate Survey
资料来源：2010年中国美国商会商务环境调查

26

What should AmCham-China's government advocacy priorities be in 2010?

2010年中国美国商会与美中两国政府沟通交流所涉及内容的排序

Company sample size = 275
公司样本规模



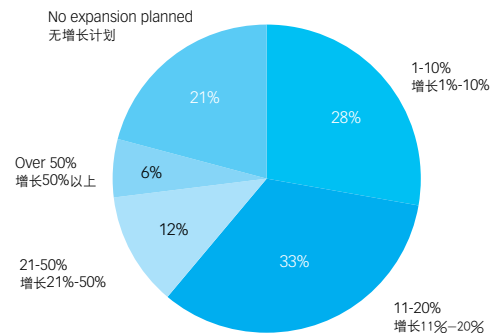
Source: 2010 AmCham-China Business Climate Survey
资料来源：2010年中国美国商会商务环境调查

27

Estimated Increase in Investment in China Operations for 2010

企业对2010年在华投资增长的预期

Company sample size = 232
公司样本规模

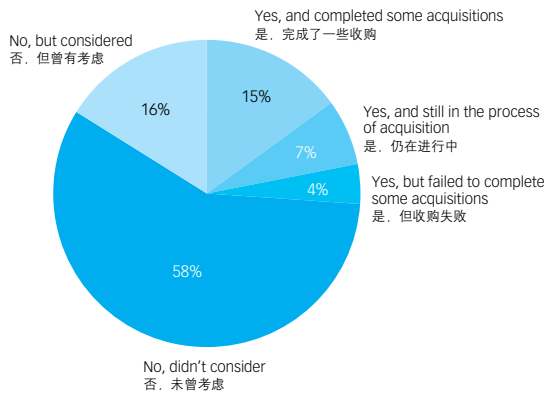


Source: 2010 AmCham-China Business Climate Survey
资料来源：2010年中国美国商会商务环境调查

28

Did your company pursue an acquisition of a PRC company or a PRC company's assets in the last 24 months on its own behalf? 企业是否曾在过去两年中试图收购一家中国本土企业或其资产?

Company sample size = 215
公司样本规模

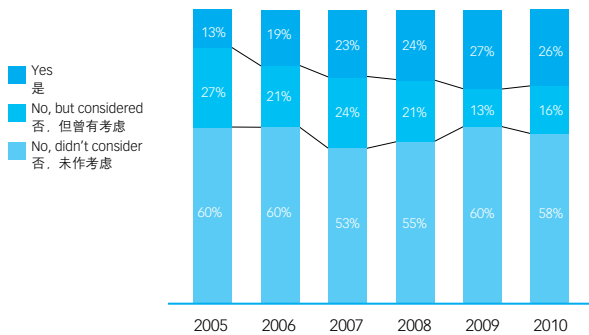


Source: 2010 AmCham-China Business Climate Survey
资料来源: 2010年中国美国商会商务环境调查

29

Did your company pursue an acquisition of a PRC company or a PRC company's assets in the last 24 months on its own behalf? 企业是否曾在过去两年中试图收购一家中国本土企业或其资产?

Company sample size = 362 205 161 558 216 215
公司样本规模

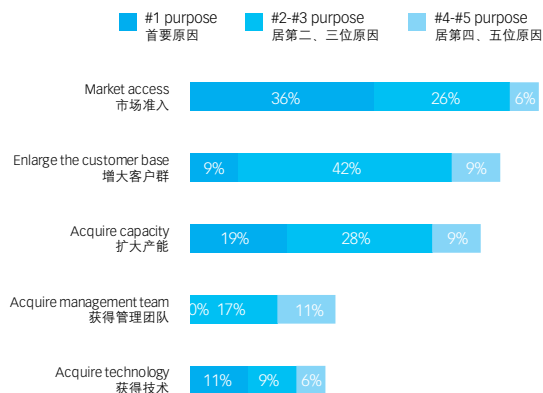


Source: 2010 AmCham-China Business Climate Survey
资料来源: 2010年中国美国商会商务环境调查

30

Top-Five Reasons for Pursuing M&A in China 企业在华并购的五大主要原因

Company sample size = 53
公司样本规模

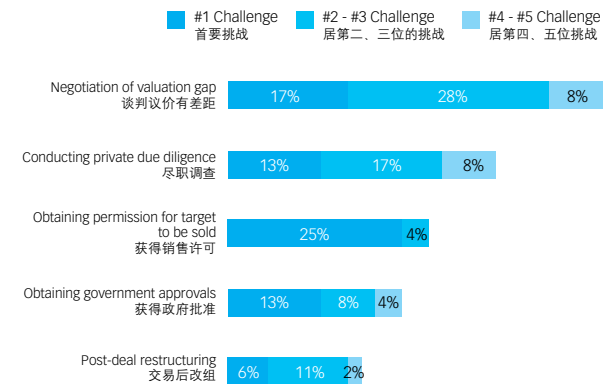


Source: 2010 AmCham-China Business Climate Survey
资料来源: 2010年中国美国商会商务环境调查

31

Top-Five Challenges in Pursuing M&A in China 企业在华并购的五大主要挑战

Company sample size = 53
公司样本规模

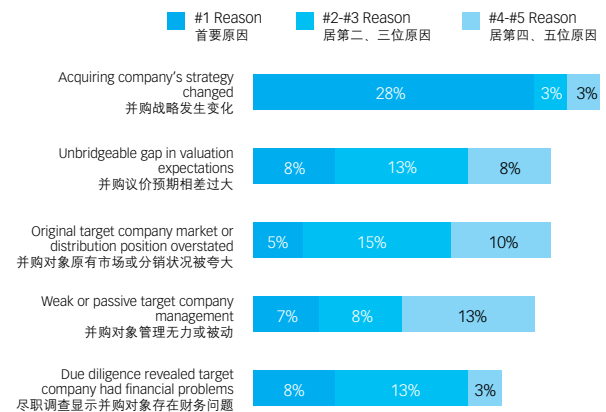


Source: 2010 AmCham-China Business Climate Survey
资料来源: 2010年中国美国商会商务环境调查

32

Top-Five Reasons for Failing to Complete M&A in China 企业在华并购失败的五大主要原因

Company sample size = 60
公司样本规模



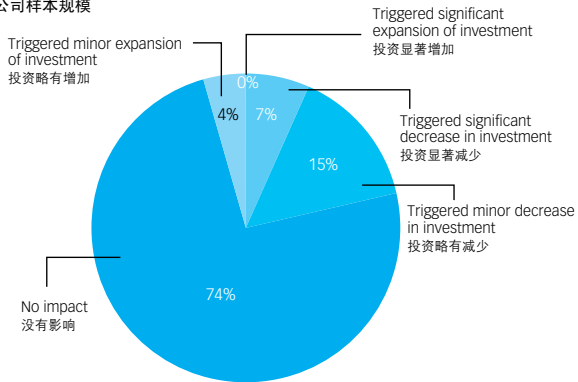
Source: 2010 AmCham-China Business Climate Survey
资料来源: 2010年中国美国商会商务环境调查

33

From January 2008, enterprise income tax has been applied equally to both domestic and foreign firms. How has the absence of tax incentives impacted your business strategy?

自2008年1月起，中国对国内外企业征收相同的企业所得税。税收奖励政策的取消对企业发展战略构成何种影响？

Company sample size = 224
公司样本规模



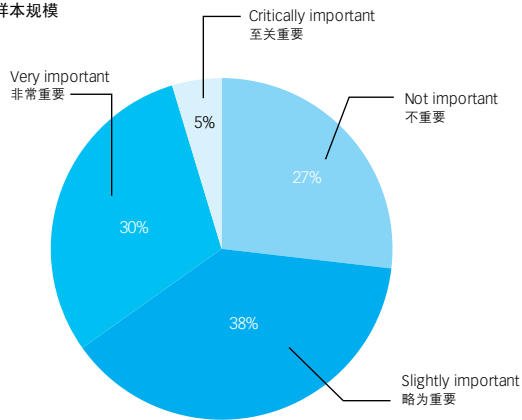
Source: 2010 AmCham-China Business Climate Survey
资料来源：2010年中国美国商会商务环境调查

34

How important were favorable tax policies for your initial decision to invest in China?

优惠的税收政策对企业最初决策在华投资的作用

Company sample size = 236
公司样本规模



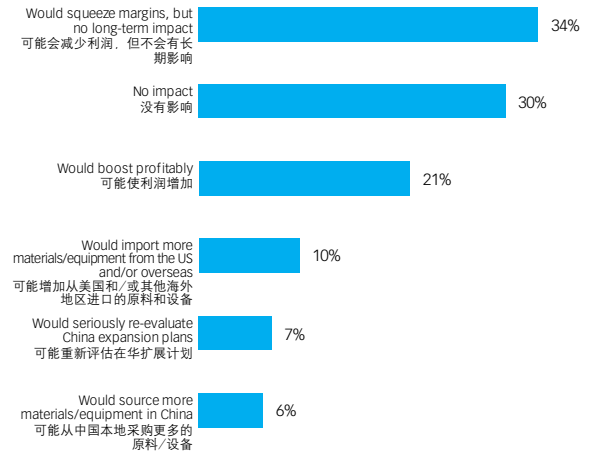
Source: 2010 AmCham-China Business Climate Survey
资料来源：2010年中国美国商会商务环境调查

35

How would a 5% RMB Yuan revaluation/weaker US dollar in the next 12 months affect your business?

未来一年中，人民币对美元汇率5%的升/贬值对企业的影响

Company sample size = 220
公司样本规模



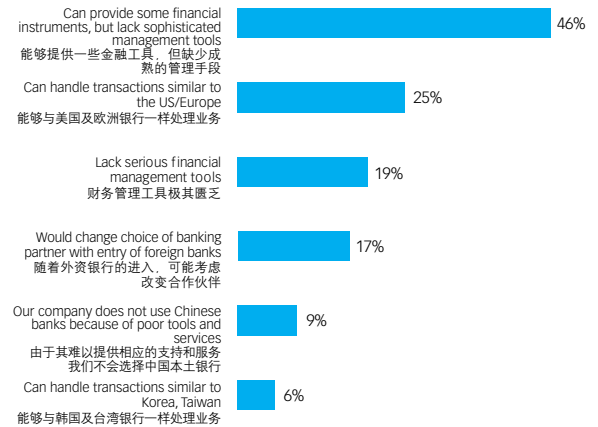
Source: 2010 AmCham-China Business Climate Survey
资料来源：2010年中国美国商会商务环境调查

36

How would you rate Chinese domestic banks' ability to provide the banking services you need?

对中国本土银行提供服务能力的评价

Company sample size = 205
公司样本规模



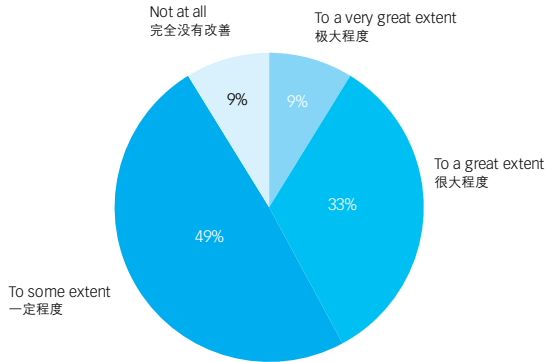
Source: 2010 AmCham-China Business Climate Survey
资料来源：2010年中国美国商会商务环境调查

37

To what extent do you believe China's recent economic reforms (last three years, i.e., 2007-2009) have improved the climate for US business in China?

中国近期的经济改革(2007年-2009年)对美国企业在华商务环境的改善程度

Company sample size = 273
公司样本规模



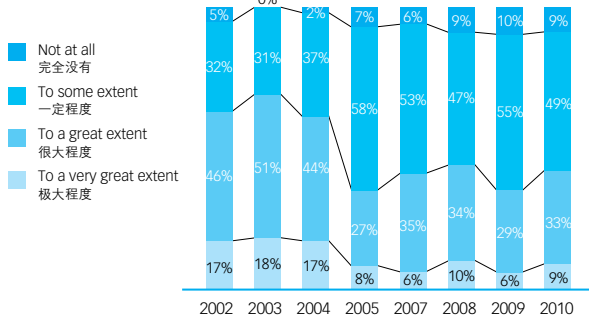
Source: 2010 AmCham-China Business Climate Survey
资料来源: 2010年中国美国商会商务环境调查

38

To what extent do you believe China's recent economic reforms (last three years, i.e., 2007-2009) have improved the climate for US business in China?

企业历年来对“过去三年(2007-2009)中国经济改革对美国企业投资环境影响程度”的反馈

Company sample size = 208
公司样本规模



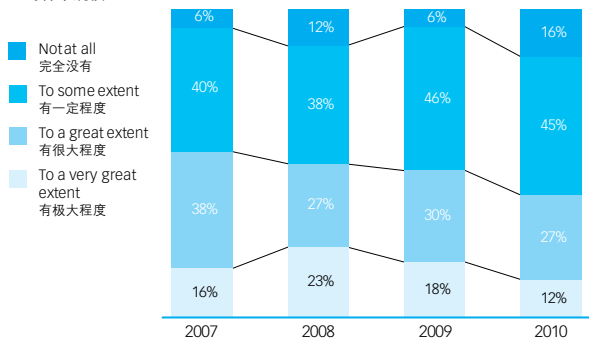
Source: 2010 AmCham-China Business Climate Survey
资料来源: 2010年中国美国商会商务环境调查

39

To what extent do you believe the quality of the US-China commercial relationship affects your business? (2007-2010)

美中贸易关系对企业运营的影响程度(2007-2010年)

Company sample size = 141
公司样本规模



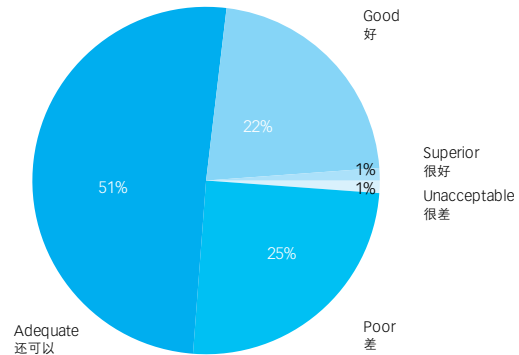
Source: 2010 AmCham-China Business Climate Survey
资料来源: 2010年中国美国商会商务环境调查

40

How would you rate China's compliance with its WTO commitments?

企业对中国履行入世承诺情况的评价

Company sample size = 258
公司样本规模



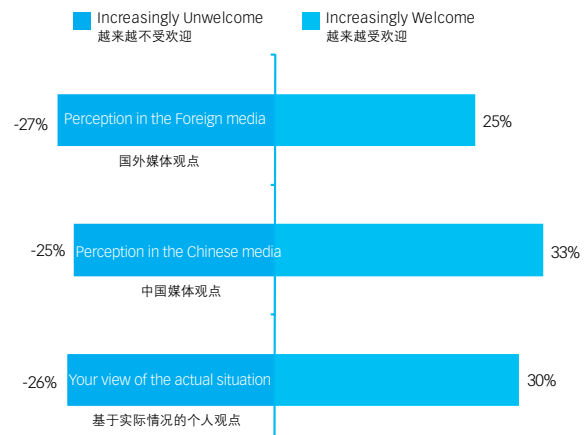
Source: 2010 AmCham-China Business Climate Survey
资料来源: 2010年中国美国商会商务环境调查

41

Compared to 2008, please rate the welcomeness of foreign companies to participate and compete in the Chinese market.

与2008年相比, 外资企业参与和竞争于中国市场所受欢迎程度

Company sample size = 235
公司样本规模



Source: 2010 AmCham-China Business Climate Survey
资料来源: 2010年中国美国商会商务环境调查

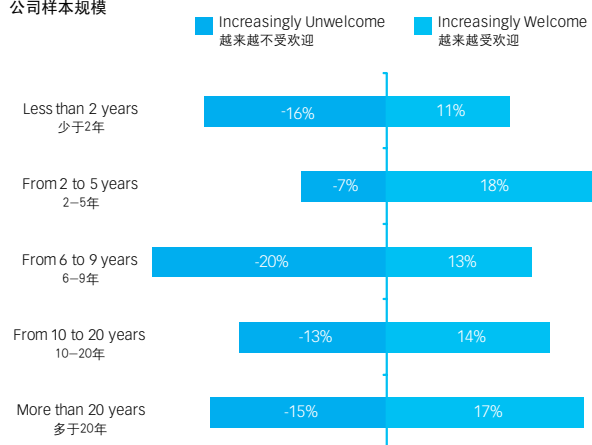
42

Perceived Welcomeness of Foreign Companies to Participate/Compete in the Chinese Market by Length of Company's Time in China

企业在华时间长短与外资企业参与或竞争于中国市场所受欢迎程度

Company sample size = 198

公司样本规模



Source: 2010 AmCham-China Business Climate Survey
资料来源: 2010年中国美国商会商务环境调查

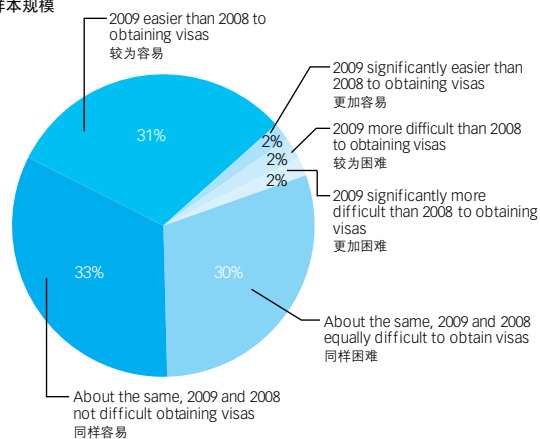
43

How does 2009 compare with 2008 in terms of ease of travel to the US for Chinese citizens?

与2008年相比, 2009年中国公民赴美签证的变化

Company sample size = 212

公司样本规模



Source: 2010 AmCham-China Business Climate Survey
资料来源: 2010年中国美国商会商务环境调查

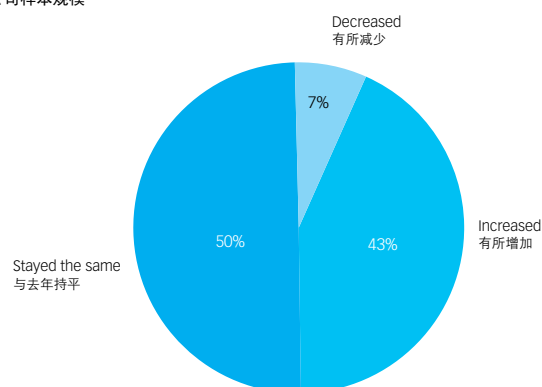
44

In the last year, the volume of counterfeit products of my organization's products produced in China has...

过去一年企业产品在中国被仿冒的数量.....

Company sample size = 105

公司样本规模



Source: 2010 AmCham-China Business Climate Survey
资料来源: 2010年中国美国商会商务环境调查

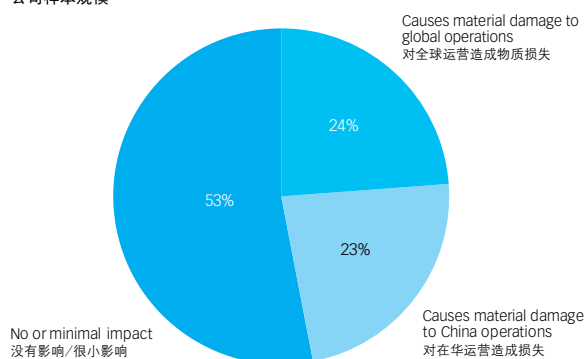
45

What is the extent of damage caused by China-originating IPR infringements of your company's products?

源于中国的知识产权侵犯对企业产品造成的损害程度

Company sample size = 93

公司样本规模

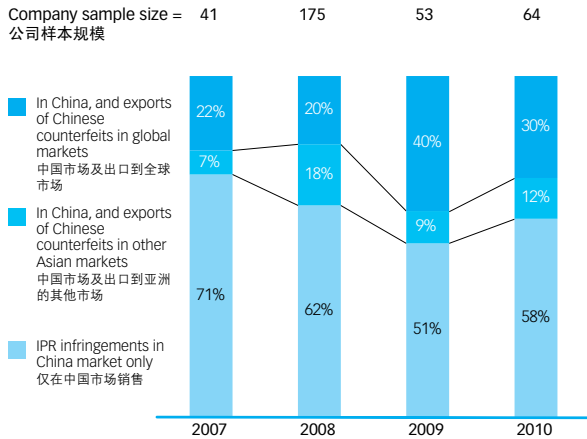


Source: 2010 AmCham-China Business Climate Survey
资料来源: 2010年中国美国商会商务环境调查

46

In what markets are there products originating from China that infringe on your company's intellectual property rights?

源自中国的侵权产品所销往的区域范围比较 (2007-2010年)

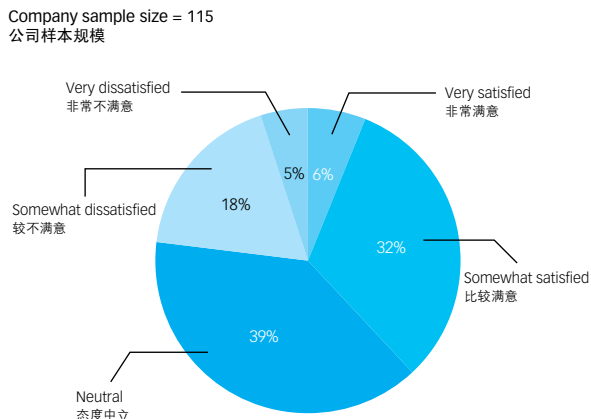


Source: 2010 AmCham-China Business Climate Survey
资料来源: 2010年中国美国商会商务环境调查

47

If you have taken administrative action regarding IPR infringement, how satisfied were you with the level of cooperation from the relevant PRC officials?

企业通过行政手段打击侵权行为时, 与相关政府部门合作情况满意度

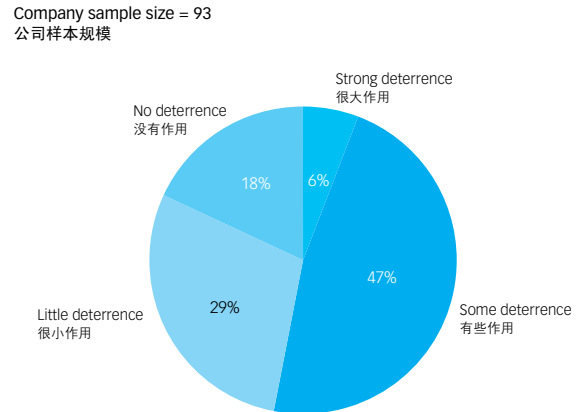


Source: 2010 AmCham-China Business Climate Survey
资料来源: 2010年中国美国商会商务环境调查

48

If you have taken administrative action regarding IPR infringement, do you think the result will deter other infringers?

企业通过行政手段打击侵权行为对其他侵权者类似行为产生的震慑作用

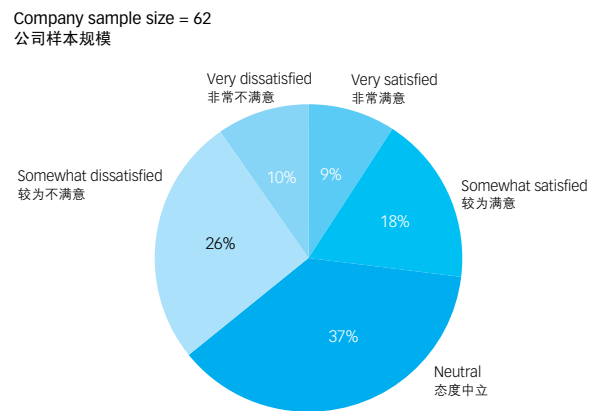


Source: 2010 AmCham-China Business Climate Survey
资料来源: 2010年中国美国商会商务环境调查

49

If you have brought any cases regarding IPR infringement to court, were you satisfied with the level of cooperation from the PRC courts?

企业将侵权行为诉诸法律时, 与中国司法机关合作情况的满意度

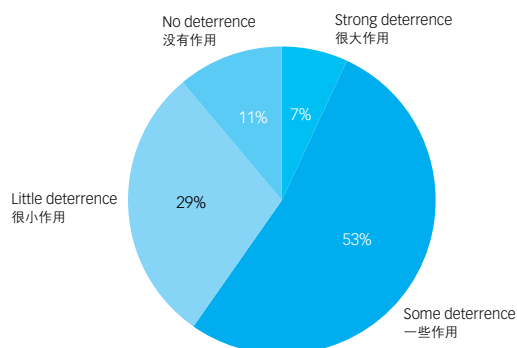


Source: 2010 AmCham-China Business Climate Survey
资料来源: 2010年中国美国商会商务环境调查

50

If you have brought any cases regarding IPR infringement to court, do you think the result will deter other infringers? 企业将侵权行为诉诸法律，会对其他侵权者类似行为起到的阻止作用

Company sample size = 72
公司样本规模



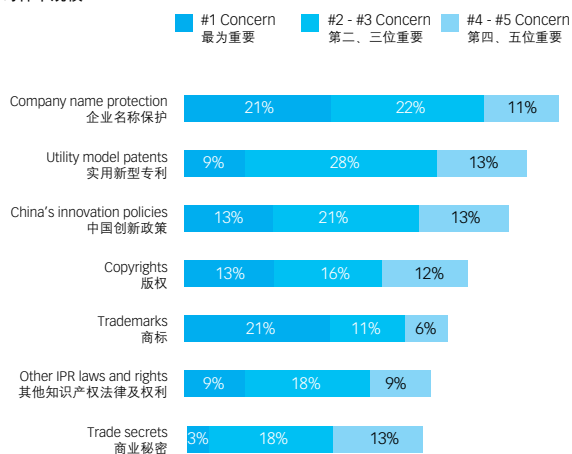
Source: 2010 AmCham-China Business Climate Survey
资料来源：2010年中国美国商会商务环境调查

51

The most important intellectual property rights issues to your business are... 对企业运营最为重要的知识产权问题是...

对企业运营最为重要的知识产权问题是...

Company sample size = 194
公司样本规模

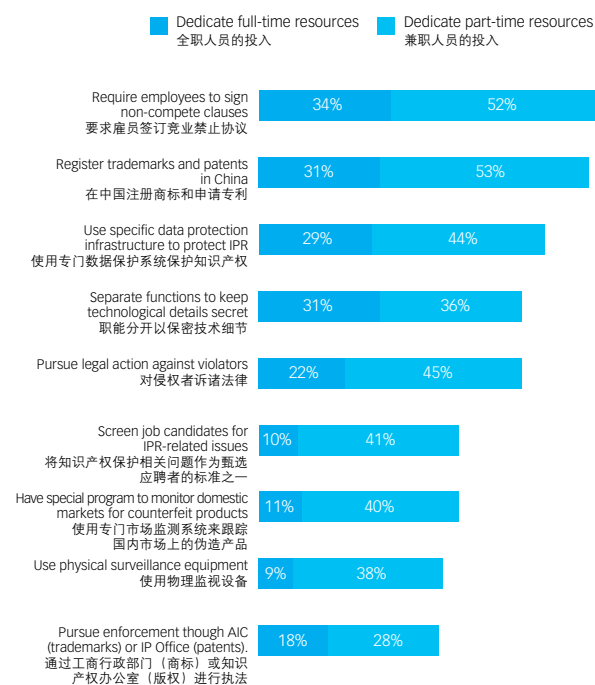


Source: 2010 AmCham-China Business Climate Survey
资料来源：2010年中国美国商会商务环境调查

52

Top-Nine Measures Used to Protect Intellectual Property in China 在中国保护知识产权的九项最重要措施

Company sample size = 183
公司样本规模

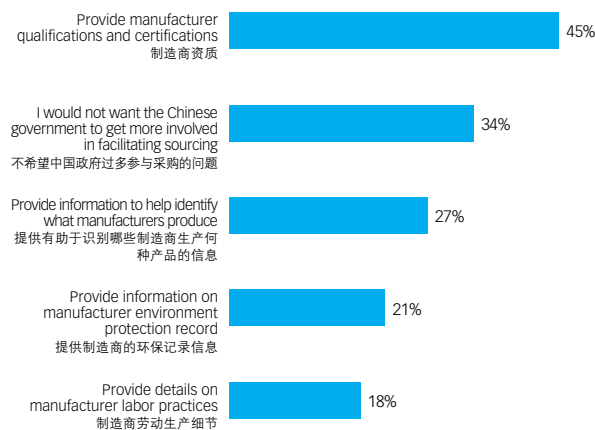


Source: 2010 AmCham-China Business Climate Survey
资料来源：2010年中国美国商会商务环境调查

53

In what areas would you want to see the Chinese government strengthen its role in facilitating sourcing from China? 企业希望中国政府在哪些方面加强其影响力，以推动在中国地区的采购。

Company sample size = 205
公司样本规模

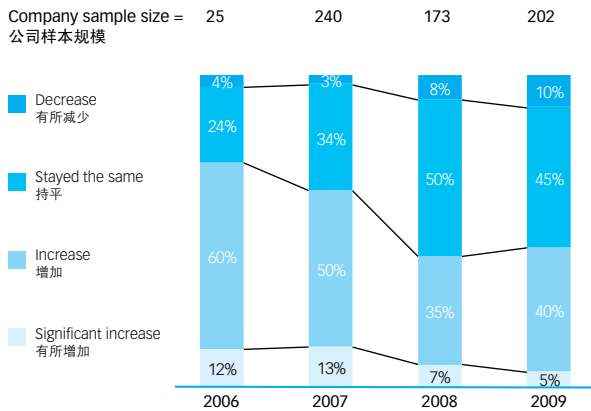


Source: 2010 AmCham-China Business Climate Survey
资料来源：2010年中国美国商会商务环境调查

54

How has the value of products your company sources from China changed from last year? (calendar years 2006-2009)

与上年相比，企业从中国采购产品数量的变化 (2006-2009年)



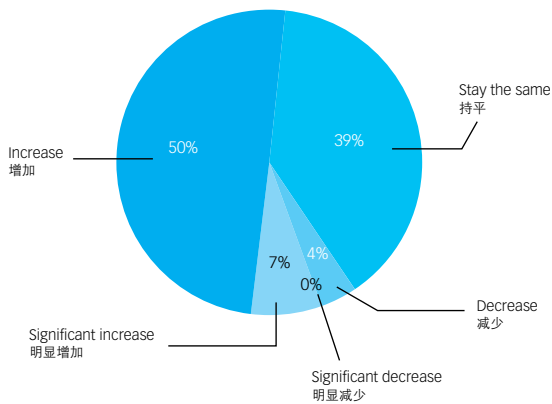
Source: 2010 AmCham-China Business Climate Survey
资料来源：2010年中国美国商会商务环境调查

55

What changes do you expect in volume of products sourced from China in 2010?

企业对2010年从中国采购产品数量的预期

Company sample size = 202
公司样本规模



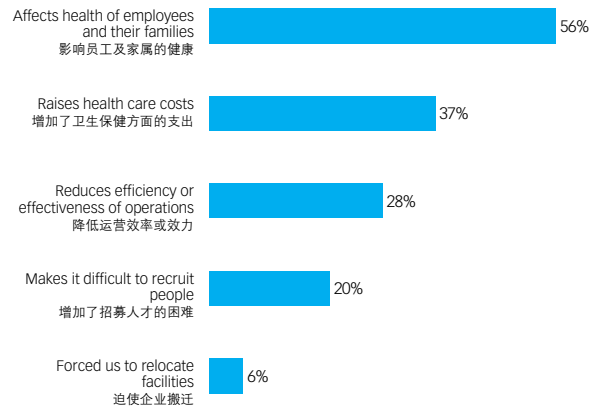
Source: 2010 AmCham-China Business Climate Survey
资料来源：2010年中国美国商会商务环境调查

56

How has pollution affected your business in China?

环境污染对企业在华运营的影响

Company sample size = 199
公司样本规模



Source: 2010 AmCham-China Business Climate Survey
资料来源：2010年中国美国商会商务环境调查

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Part Two

Industry Issues

具体行业问题



Agriculture

US-China agricultural ties continue to expand their growth of recent years. China is the second largest export market for US agricultural products, while the US is China's largest supplier of agriculture products. While various trade and compliance issues remain significant, concerns over food safety and meat trade became predominant issues in 2009.

Significant Developments

In 2009, the US exported US \$14.3 billion (RMB 97.2 billion) of agricultural, fish and forestry products to China. From January to November 2009, the US exported US \$13.1 billion (RMB 89.1 billion) in agricultural products and an additional US \$1.2 billion (RMB 8.2 billion) in fish and forestry products—the highest amounts since the countries re-opened trade.

China's Catalogue Guiding Foreign Investment in Industry (Investment Catalogue), most recently updated in 2007, continues restricting new investment in certain areas of agricultural processing and technology development. AmCham-China remains concerned that limiting foreign investment in China's agricultural sector and actively trying to manage food prices will limit competition and efficiency, ultimately leading to underinvestment, a lack of innovation and slower development.

AmCham-China applauds the passage of the US Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act 2010 (Pub. L. 111-80), which removed regulatory impediments to the inspection of Chinese facilities that barred imports of cooked poultry from China. This resolves a long-standing point of contention between the US and China, while maintaining the highest standards of food safety.

AmCham-China notes China's application of anti-dumping duties to US poultry exports in 2009. There is concern that the anti-dumping investigation may not meet the criteria and transparency required by China's WTO commitments. AmCham-China encour-

ages healthy dialogue and cooperation through official channels for these types of disputes.

Specific Issues

Specific agricultural issues that concern US exporters generally fall into two categories: measures that lack risk-based justification and those that appear to run counter to China's WTO commitment to national treatment for foreign investors.

WTO Commitments

China's agricultural sector has experienced tremendous liberalization since WTO accession in both trade and production policy. While AmCham-China applauds the progress, there is concern that China is backsliding on transparency and fair enforcement of rules. China's WTO commitments include implementation of a Tariff Rate Quota (TRQ) system and elimination of non-tariff barriers for agricultural commodities. However, TRQs remain too small to be commercially viable for some commodities. There are also problems with the administration of TRQs that make filling the quotas difficult.

In addition, China's rules on the collection of value-added tax (VAT) are applied in a manner that discriminates against imports of agricultural products. While imported agricultural products are subject to a 13 percent or 17 percent VAT, domestically produced products receive full VAT exemptions or deductions that completely eliminate or substantially reduce domestic VAT charges for domestic products. The additional VAT charges put imported agricultural products at a significant disadvantage in the Chinese markets, and likely violate WTO national treatment rules.

In recent years, China has introduced major subsidies on agricultural production that act as significant incentives to domestic production, thereby displacing imports. China maintains price support programs for a number of products, including wheat, corn, rice and pork. China also pays direct subsidies to producers of these products, as well as beef, dairy and specialty

农业

最近几年，中美在农业领域的合作不断加深。中国是美国第二大农产品出口市场，美国是中国最大的农产品供应国。尽管各种贸易和合规问题依旧重要，但在 2009 年，食品安全和肉类贸易问题更为突出。

重大进展

2009 年，美国向中国出口了价值 143 亿美元（合人民币 972 亿元）的农业、渔业和林业产品。2009 年 1 月到 11 月，美国向中国出口的农产品价值 131 亿美元（合人民币 891 亿元），其中渔业和林业产品价值增加了 12 亿美元（合人民币 82 亿元），出口总额创中美两国重新开放贸易以来最高。

于 2007 年修订、目前仍在执行的《外商投资产业目录》（《投资目录》），对外商在农业加工和技术开发一些领域的投资予以限制。中国美国商会对此仍然担心，中国限制外国投资农业领域及对食品价格的管控，将影响竞争和效率，最终导致投资不足，缺乏创新以及缓慢发展。

对美国通过的《2010 年农业、农村发展、食品药品及相关机构拨款法案》（公法 111-80）中国美国商会表示欢迎，因为该法案消除了从中国进口禽类熟食产品时对中国设施进行检验监管方面的障碍，解决了中美两国之间长期争论的一个问题，同时也保持了食品安全的最高标准。

中国美国商会注意到，中国在 2009 年对美国出口的禽类产品实施了反倾销关税，但相关的反倾销调查可能并未达到中国入世承诺时所被要求的标准和透明度。对此类争端，中国美国商会鼓励通过官方渠道开展良好的对话和合作。

具体问题

美国出口企业所关注的具体农业问题大体分为两类：缺乏风险评估依据而采取的措施；以及有悖中国作出的、让外

国投资者享有国民待遇的入世承诺而制定的办法。

入世承诺

自加入世界贸易组织以来，中国大大放宽了农业领域贸易和生产方面的政策限制。中国美国商会对取得的进步表示赞赏，但是仍然有所担心，在提高透明度和保证公平执法方面，中国正踌躇不前。根据入世承诺，中国应对农产品实行关税配额制度，取消非关税壁垒。但目前对一些商品分配的关税配额依然过少，缺乏相对的商业价值。同时在配额管理中也存在问题，配额使用不便。

另外，中国增值税征收制度对进口的农业产品实行差别对待。进口的农业产品需交纳 13% 或者 17% 的增值税，但是国内生产的农产品则享受增值税全额免征或减征，从而基本取消或实质性地减少了国内产品的增值税费。此情形使这类产品在中国市场上处于较为不利的地位，这或许违反了中国入世承诺的国民待遇原则。

最近几年来，中国对农业产品实行主要补贴，以作为对国内产品的重要激励措施，并由此取代进口。中国对大量农产品包括小麦、玉米、大米和猪肉实行价格扶持计划，向这些产品以及牛肉、牛奶和特殊农作物的生产企业支付直接补贴，同时还向农业生产企业和加工企业提供税收减免待遇，这些都是刺激国内生产企业的重要措施。

中国进口猪肉、植物油和大豆并进行储备。这些产品进口时，被免征增值税。但是我们担心这些产品最终被转移至国内的优势企业，同时由于免征增值税，压缩了其它交纳增值税费的国内外行业企业的利润空间，使这些少数企业不公平地获利。中国美国商会支持中国提高增值税政策的透明度和可预测性。我们相信这样会使中国的农业市场更加健康，更具有可持续性。

检疫制度在全国范围内的执行也不统一，并被当作技术

crops. Finally, China provides tax exemptions to agricultural producers and processors that also act as significant incentives to domestic producers.

China has imported pork, vegetable oil and soybeans and placed them in reserves. These products were imported VAT free and there is a concern that they will eventually be released into the hands of domestic champions, also VAT free. This would depress margins for other industry players who are subject to VAT charges, domestic or foreign, and unfairly reward a select few companies. AmCham-China supports a more transparent and predictable VAT policy in China. We believe this will lead to a healthier and more sustainable agricultural market.

Quarantine regulations are also enforced inconsistently across China and are sometimes used as technical barriers to trade. Specifically, it appears quarantine and food safety standards applied to imported products are erratically applied to domestic products. There is a lack of transparency surrounding the General Administration for Quality Supervision, Inspection and Quarantine's (AQSIQ) Quarantine Inspection Permit (QIP) and Meat Quarantine Import Permit (MQIP), the Ministry of Commerce's (MOFCOM) automatic registration form (ARF), and the Ministry of Agriculture's (MOA) animal feed and feed additive registration processes. These unclear and inconsistent processes can inhibit trade.

Another trade constraint is the long test-and-hold quarantine inspection procedure required for import and clearance of meat and poultry. The inspection, which can take up to one month, inhibits development of trade in chilled meat, which is a significant commercial component of the US red meat trade with South Korea and Japan.

Investments in Agricultural Industries

As discussed in the 2009 *White Paper*, AmCham-China is concerned that restricting foreign investment in a number of agricultural industries will slow the reform and opening up of Chinese agriculture. Activities concerning wholesale retailing and logistics of certain oils, foodstuffs and agricultural products appear to violate China's WTO commitments to allow wholly foreign-owned companies to engage in related wholesale and agency sales. Restricting investment in the development of plant seeds and plant seeds developed using biotechnology also run counter to China's aims of attracting investment for modernizing agriculture. AmCham-China views efforts to decrease foreign participation in China's agricultural development as negative and detrimental to development of an efficient agricultural sector.

Beef Access

As discussed in the 2009 *White Paper*, China has maintained a complete ban on US beef since 2003. The US cattle population received a controlled risk status by the World Organization for Animal Health (OIE) in May 2007, which allows for the trade of all beef and beef products with effective removal of specified risk materials. Yet, China is the last country in Asia to maintain a complete ban. China has offered to open the market under certain conditions and AmCham-China urges the US and Chinese governments to engage in positive, constructive discussions which would permit a staged re-introduction of US beef that allows for immediate 30-month bone-in imports, moving to a full OIE import regime in a staged process.

H1N1 Import Ban on Pork

China banned the import of US pork in April 2009 due to the occurrence of the H1N1 virus in humans. Shortly after China instituted the ban, the Food and Agriculture Organization of the United Nations (FAO), the OIE, the World Health Organization (WHO) and the WTO issued a joint statement definitively declaring that the H1N1 virus cannot be contracted through pork consumption. After months of negotiation, it was announced in November 2009 that China would lift its ban. However, to date China has not lifted the import ban. AmCham-China encourages China to follow through on its commitment, as it has been proven scientifically and supported by major international health authorities that the imported pork poses no threat to humans.

Ractopamine in Pork

China has de-listed 11 US pork plants from exporting to China due to the residual presence of Ractopamine, an FDA-approved Beta Agonist feed ingredient, widely used in the US hog industry. De-listing of these US plants appears not to have been based on risk assessment. Experts speculate that the abuse of animal health products inside China, including the Beta Agonist Clenbuterol, is the reason for the ban.

Due to past food safety crises involving fatalities from the ingestion of tainted pork, China banned the use of all Beta Agonists in 2002. It has justified the de-listing of US pork plants based on its domestic ban. The US has argued that, given the significantly different properties of Clenbuterol and Ractopamine, China should complete a risk assessment of Ractopamine and establish a safe tolerance level for meat products.

性贸易壁垒。具体而言，适用于进口产品的检疫标准和食品安全标准，似乎并未一致地适用于国内产品。国家质量监督检验检疫总局的检疫检查许可证和肉产品检疫进口许可证，商务部的自动登记表以及农业部的动物饲料和饲料添加剂注册程序缺乏透明度。这些不明确、不一致的程序会影响贸易发展。

在肉类和禽类进口和清关时，检疫检验程序中的检查和扣留时间过长，这也是另一种贸易限制。该检验程序可能持续一个月时间，使冷鲜肉贸易难以有效发展，而冷鲜肉贸易是美国与韩国和日本红肉贸易中重要的商业组成部分。

农业投资

正如 2009 年《白皮书》所指出的，中国美国商会担心，由于大量农业产业限制外资进入，中国农业的改革和开放步伐将因此放缓。有关部分油、食品和农产品的批发、零售和物流的行为似乎违反了中国的入世承诺，即允许外商独资企业从事相关的批发和代理销售。对植物种子培育以及对运用生物技术培育的植物种子实行投资限制，同样与中国吸引投资实现农业现代化的目标背道而驰。中国美国商会认为，减少外资参与并不利于中国农业的发展，并且有损农业市场效率的提高。

牛肉市场准入

正如 2009 年《白皮书》所指出的，2003 年以来，中国一直完全禁止进口美国牛肉。2007 年 5 月，世界动物卫生组织认定美国为疯牛病可控风险的国家，根据该认定，所有牛肉和牛肉制品在有效去除规定的危险物质后，均可进行贸易。然而，中国目前是最后一个完全禁止进口美国牛肉和牛肉制品的亚洲国家。中国曾提出在某些条件下开放相关市场，而牛肉行业也呼吁中美两国政府进行积极的、有建设性的协商，准许分阶段地重新进口美国牛肉，先允许为期 30 个月的带骨牛肉进口，然后分阶段全面实行世界动物卫生组织规定的进口体制。

H1N1 病毒导致的禁止猪肉进口

2009 年 4 月，由于发生了人感染 H1N1 病毒，中国禁止进口美国猪肉。中国实行上述禁令之后不久，联合国粮农组织、世界动物卫生组织、世界卫生组织和世界贸易组织发布联合声明，明确宣布不会通过猪肉消费而感染 H1N1 病毒。经过数月的谈判，中国于 2009 年 11 月宣布将取消对

猪肉进口的禁令。但是到目前为止，中国尚未取消该进口禁令。中国美国商会鼓励中国政府落实其承诺，因为进口猪肉不会对人构成威胁已经得到主要国际卫生机构的科学证明和支持。

猪肉中的莱克多巴胺

中国因在猪肉中发现了莱克多巴胺残留，将 11 家美国猪肉生产企业从进口商名单中去除。莱克多巴胺属于美国食品药品监督管理局批准的乙型受体素（Beta Agonist），在美国的养猪行业使用非常广泛。上述将美国猪肉生产企业除名的做法似乎并非建立在风险评估的基础上。专业人士推测，中国国内滥用动物保健产品（包括乙型受体素克仑特罗）是导致中国颁发上述禁令的原因。

鉴于曾发生过因食用受污染的猪肉而导致死亡的食物安全问题，中国于 2002 年颁布了所有乙型受体素使用的禁令。中国禁止美国猪肉生产企业向中国出口产品，正是以国内禁令为依据。美国认为，鉴于克仑特罗和莱克多巴胺在性质上有很大差异，中国应该对莱克多巴胺进行风险评估，并制定一个肉制品中安全耐受度标准。

2009 年 12 月 8 日，中国商务部宣布了对莱克多巴胺进出口的完全禁令，从 2009 年 12 月 9 日开始生效。虽然有些人把这视为是中国政府要停止假冒莱克多巴胺产品在中国生产和销售的信号，但另外一些人则认为此举的目的是旨在加强其禁止含莱克多巴胺的猪肉（包括美国猪肉）进入中国的立场，以保护其国内猪肉生产企业。

牛羊肉和禽类的零病原体标准

中国目前对进口的肉类和禽类执行的病原体标准与联合国全球标准食品法典要求的标准有很大不同。中国一直对生牛羊肉和禽类中含有的沙门氏菌和李斯特氏菌等常见病原体执行零耐受度标准。一般认为，如果不首先将生肉和禽类进行辐照处理，就不可能彻底消除这些肠道的致病细菌。

2008 年，病原体检测次数、被除名企业的数量以及针对美国企业的警告数量均大幅增加，使得在中国国内需求空前高涨的关键时刻，美国与中国的猪肉和禽类贸易却被严重干扰。有证据表明，中国国内并未执行零耐受的病原体标准。此外，中国对部分重金属、兽药和其它残留，仍采用最大残留限量标准，这些标准与全球标准食品法典及其它国际性标准都不相一致。

On December 8, 2009, MOFCOM announced a complete ban on the import and export of Ractopamine, effective December 9, 2009. While some see this as a sign that the Chinese government is looking to shut down the production and sale of fake Ractopamine products in China, others believe the intent of this measure is to strengthen their stance against allowing pork containing Ractopamine, including US pork into China, to protect their domestic pork producers.

Zero Pathogens in Red Meat and Poultry

China continues to enforce pathogen standards on imported meat and poultry that are unscientific and that differ from those of the UN's global standard food code (CODEX). China maintains a zero-tolerance standard for common pathogens, such as salmonella and listeria, in uncooked red meat and poultry. The complete elimination of these naturally occurring bacteria is generally considered unachievable without first subjecting raw meat and poultry to irradiation.

Pathogen detections, plant de-listings and warnings issued against US plants increased substantially in 2008, resulting in a severe disruption of the US pork and poultry trade with China during a time of unprecedented demand. Evidence suggests no domestic enforcement of the zero-tolerance pathogen standard. China also maintains maximum residue levels (MRL) for certain heavy metals, veterinary drugs and other residues that are inconsistent with CODEX and other international standards.

Quotas

While China has generally implemented its TRQ system for agricultural products according to WTO commitments, some aspects of the administration of these TRQs hinder, rather than facilitate, trade. The size of TRQ allocations for commodities, such as sugar and corn is too small to be commercially viable. Allocation of TRQs for commodities such as cotton and poultry is not transparent and prevents broader participation and market information sharing. Additionally, the government does not publish a list of quota holders once the allocations have been made, which complicates marketing efforts for US suppliers.

re-introduction of US beef that allows for immediate 30-month bone-in imports, moving to a full OIE import regime in a staged process.

- Both China and the US should refrain from using technical barriers to trade as retaliatory measures in trade disputes.

For the Chinese Government:

- **Reconsider restrictions on foreign investment in agricultural industries introduced in its November 2007 Foreign Investment catalogue and eliminate equity caps for foreign investors in such industries.**
- Ensure that domestic and import inspections and enforcement are uniform in practice and policy.
- Remove the ban on the importation of US beef and establish an import regime consistent with OIE standards. Accept a staged re-introduction of US beef that allows immediate 30 month bone-in and then moving to full OIE standards in a staged process.
- Establish MRLs for Ractopamine in imported pork in accordance with CODEX draft standards.
- Develop and enforce phytosanitary measures that are scientifically-based and practical, thereby eliminating non-tariff trade barriers for US agricultural products.
- Abolish non-transparent quotas and registration systems and ensure that TRQ allocations are large enough to be commercially viable.
- Ensure equal treatment for imports and domestic products in terms of VAT enforcement.
- The MOA should consider simplifying animal feed registration requirements for imported feeds.

Recommendations

For the US Government:

- **Continue to engage in positive, constructive discussions which would permit a staged**

配额

尽管整体而言，中国已根据入世承诺，执行农产品关税配额制度，但是在关税配额管理的某些方面却阻碍、而不是推动了贸易的发展。糖和玉米等商品的关税配额过小，相对缺少商业可行性。棉花和禽类等商品的关税配额分配不透明，影响了外资企业更广泛地参与和分享市场信息。此外，在配额分配完成后，政府并不公布配额持有者名单，这使得美国供应商更加无法应对复杂多变的市场。

建议

对美国政府：

- 继续进行积极的、有建设性的协商以准许分阶段地重新进口美国牛肉，先允许为期 30 个月的带骨牛肉进口，然后分阶段全面实行世界动物卫生组织规定的进口体制。
- 中国和美国都应当避免使用技术性贸易壁垒作为解决贸易争端的报复性措施。

对中国政府：

- 对《外商投资产业指导目录》中限制外资进入的农业产业，可否重新考虑调整并取消对外国投资者在上述产业中的最高持股比例限制。
- 确保对国内产品和进口产品的检验保持政策与实践的一致性。
- 取消对进口美国牛肉所实施的禁令，建立与世界动物卫生组织标准一致的进口体制。同意分阶段重新进口美国牛肉，先允许为期 30 个月的带骨牛肉进口，然后分阶段全面实行世界动物卫生组织规定的进口体制。
- 根据 Codex 的标准草案，对进口猪肉制定莱克多巴胺的最大残留限量标准。
- 制定和执行科学、实用的植物检疫措施，从而消除针对美国产品的非关税贸易壁垒。
- 撤消不透明的配额和注册制度，确保足够的关税配额，并更具有商业可行性。
- 确保在征收增值税时，对进口产品和国内产品给予平等对待。
- 对进口饲料，农业部应适当考虑简化动物饲料的登记要求。

Civil Aviation

Introduction

Worldwide, the civil aviation industry continues to be fragile, but is beginning to show signs of improvement. While the airline industry saw an overall six percent drop in passenger traffic and an 18 percent drop in cargo in 2009, China has maintained positive growth, recovering more rapidly than other regions. According to the Civil Aviation Administration of China (CAAC), domestic traffic was up 23 percent in the third quarter and the overall industry recorded a profit of US \$1.4 billion (RMB 9.4 billion) during the same period based on strong domestic demand and a moderation of fuel costs. China has substantially improved its aviation infrastructure to accommodate this growth.

Long term, China is a significant and rapidly growing market for all sectors of civil aviation. It is also an integral and growing part of the global supply chain for a wide variety of aviation products and services, with plans to enter the large commercial airplane market. AmCham-China commends the Chinese government for placing a high priority on healthy and sustainable civil aviation development—for both the air transportation system and the manufacturing sector.

Cooperation between the US and Chinese governments on aviation is crucial to expanding business opportunities for US companies. The US Federal Aviation Administration (FAA) and the CAAC have enjoyed a close, mutually beneficial relationship for many years. AmCham-China's US-China Aviation Cooperation Program (ACP), a public-private partnership with 40 US member companies, works closely with the FAA and the US Trade and Development Agency (USTDA), contributing to a positive relationship between American aerospace companies and China's government regulators, ministries and aviation industry.

Despite progress reducing constraints on the healthy and sustainable development of civil aviation in China, significant challenges remain that will require attention from both governments. The need to continue opening

up and modernizing China's airspace system to reduce inefficiencies, realize environmental benefits and accommodate growth remain top priorities.

Significant Developments

Airspace Modernization

One key milestone in modernizing China's airspace system has been publication of the China Civil Aviation Performance-Based Navigation (PBN) Implementation Roadmap in October 2009 in accordance with the requirements of the International Civil Aviation Organization (ICAO). As CAAC reports, PBN can promote "civil aviation safety, increase airspace capacity." We commend the Chinese government, and in particular CAAC, for their leadership in implementing PBN.

AmCham-China also commends the CAAC's resolution to expedite PBN applications and organize implementations in accordance with the requirements of the ICAO and Asia/Pacific PBN Implementation Planning, as stated in their report. The CAAC has also expressed interest in expanding cooperation with the US FAA and the ACP on key airspace modernization technologies such as Automatic Dependant Surveillance-Broadcast and Ground-Based Augmentation Surveillance.

Energy and Environment Cooperation

Interest in expanding US-China cooperation on environmental issues gained momentum in 2009. The FAA, USTDA and CAAC signed an Aviation Environmental Partnership agreement in April 2009 to address aviation environmental issues. Cooperation will include sharing aviation environmental best practices, leading to private sector opportunities in this rapidly developing area. Aviation will also be a focus for the new Energy Cooperation Program (ECP) that was launched at the October 2009 US-China Joint Commission on Commerce and Trade meeting.

民用航空

引言

全球民航业依然疲弱，但已显示出好转的迹象。尽管 2009 年航空业客运量和货运量分别下滑 6% 和 18%，但中国却保持了正增长，复苏速度比其它地区都要快。来自中国民用航空局的数据显示，受益于强劲的内需增长和燃料成本的下降，第三季度国内运量增长 23%，全行业的同期利润为 14 亿美元。中国继续大力改善其航空基础设施，以适应这一增长。

从长远看，对于民航业各领域而言，中国是一个意义重大、发展迅速的成长型市场。同时，对于众多航空产品与服务而言，中国也是全球供应链中不可或缺且日益增长的一部分，而且其已计划进入大型商用飞机市场。中国美国商会盛赞中国政府高度重视民航业的健康可持续发展，以促进空运系统和制造业日臻完善。

中美两国政府在航空领域的合作具有至关重要的意义，能够为美国企业创造更多商机。多年来，美国联邦航空局和中国民用航空局一直保持着密切、互惠的合作关系。中国美国商会的美中航空合作项目属于政企合作项目，共有四十家美国成员公司参与。该项目与美国联邦航空局和美国贸易和发展署保持着密切合作，为美国航空企业与中国政府监管机构、各部委及航空业建立积极关系做出了重要贡献。

尽管中国在减少影响民航业健康可持续发展的限制因素方面取得了进展，但依然存在巨大的挑战，需要两国政府部门给予高度关注。目前的重点仍然是中国空域系统的开放和现代化，以消除低效率，实现环境效益，并适应行业增长的需要。

重大进展

空域现代化

2009 年 10 月按照国际民用航空组织的要求所公布的《中国民航基于性能的导航实施路线图》，是中国空域系统现代化进程中的一个重要里程碑。中国民用航空局称，基于性能的导航 (PBN) 能够“提升民航安全性，并增加空域运力”。我们十分赞赏中国政府，尤其是中国民用航空局在实施 PBN 方面发挥的领导作用。

同时，对中国民用航空局按照国际民用航空组织和亚太地区 PBN 实施计划的要求，加快 PBN 应用并组织实施的决议，中国美国商会大加赞赏。中国民用航空局还表示，有意加强与美国联邦航空局和美中航空合作项目在广播式自动相关监视和陆基增强监视等主要空域现代化技术领域的合作。

能源与环境合作

2009 年，中美两国对于开展环境问题方面的合作表现出了更大的兴趣。2009 年 4 月，美国联邦航空局、美国贸易和发展署和中国民用航空局签署了一项航空环境合作协议，以解决航空环境问题。合作内容将包括分享航空环境最佳实践，为企业在这一快速发展的领域带来了商机。在 2009 年 10 月美中商贸联合委员会会议上推出的新能源合作项目中，航空业也将是一个重要内容。

ARJ-21 认证

美国联邦航空局计划着手对中国民用航空局的 ARJ-21 支线喷气机认证进行“影子审查”。一旦完成，“影子审查”将通过证明该飞机符合最高的安全标准，帮助促进该项目在商业上取得成功，从而惠及中国民用飞机制造业和众多美国供应商。

ARJ-21 Certification

The US FAA plans to commence shadow certification of the CAAC's certification of China's ARJ-21 regional jet. If completed, shadow certification will help promote the commercial success of the program, benefiting both China's civil aircraft manufacturing industry and numerous US suppliers, by demonstrating that the airplane meets the highest safety standards.

US-China Aviation Cooperation Program

ACP achievements in 2009 include:

- Graduation of the fourth round of Executive Management Development Training for up-and-coming CAAC leaders and initiation of the fifth round.
- Graduation of the first round of Air Traffic Management Executive Training.
- Completion of a study on "Airport Sustainability Best Practices Strategies." In conjunction with this study, an Aviation Environmental Partnership for CAAC and airport officials visited five US airports, as well as the FAA.
- Completion of the first USTDA General Aviation and Regional Aviation (GARA) Study and roadmap and a CAAC high-level orientation visit to the US (Washington, DC and Alaska).

Safety

The CAAC was awarded the 2009 Aviation Week & Space Technology Distinguished Service Award from the Flight Safety Foundation for its achievements in aviation safety. China now enjoys one of the top safety records worldwide, with over 15 million safe flight hours, a testament to its disciplined approach to safety management.

Aviation Financing

In 2009, China adopted and began implementing The Convention on International Interests in Mobile Equipment (Cape Town Treaty) and the associated Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment (the Protocol), which creates international standards for registration of ownership, security interests, leases and conditional sales contracts. This will help lower financial costs for Chinese airline companies for leasing aircraft equipment and diversify financing channels. AmCham-China commends the Chinese government on this important step.

Specific Issues

Modernization of Airspace System

Opening up and modernizing China's national airspace system is critical to meeting forecasted aviation growth, enabling improved system efficiencies and reducing environmental impact. To achieve these goals, China must address standardization and interaction of all system components within an integrated plan to optimize overall system performance. This will require a partnership of regulators, governmental agencies, military authorities, airspace service providers, aircraft manufacturers, domestic and foreign airlines, airports, and other users.

China's large and complex airspace system is experiencing significant demand increases. Although the system has a remarkable safety record and is performing at a moderately efficient level, it exhibits signs of stress, including increasing delays at congested airports such as Beijing and Shanghai. To accommodate predicted civil aviation growth, China must aggressively pursue plans that will enhance operations today and also address future needs. China's biggest challenge is not technical, but rather managing and embracing the cultural and organizational change needed to implement growth and innovation. US companies have much to offer as China continues airspace modernization and AmCham-China looks forward to continued cooperation between industry and government.

The most often cited constraint is the relative lack of both civil use airspace and flexibility in the system. Opening up the airspace and increasing the flexibility of operational use is essential for China to meet the increasing demand for aviation services. Over 80 percent of China's airspace is controlled by the Chinese military which manages airspace safety and national security.

According to Chinese civil aviation regulations, airspace is classified into four categories (A, B, C and D). The technical requirements for the airspace are in line with ICAO standards. However, there is no further segmentation of the airspace into E, F or G categories as in most other ICAO member nations. In the ICAO system, A through D are considered "controlled," while E through G are "uncontrolled." The current airspace classification and control mechanisms have resulted in a rigid flight operation process, which is not able to accommodate flight maneuver requests especially in adverse weather. This leads to delays, inefficiencies and potentially unsafe situations.

美中航空合作项目

2009 年航空合作项目取得的成绩包括：

- 针对中国民用航空局管理人员开设的高级管理培训班已顺利完成第四期，并已开始第五期培训。
- 空中交通管理高管培训班已顺利完成第一期。
- 完成了关于“机场可持续发展最佳实践战略”的研究。同时，由中国民用航空局和机场管理人员组成的航空环境合作代表团访问了五个美国机场及美国联邦航空局。
- 完成了首个由美国贸易和发展署资助的通用 / 支线航空研究和发展路线图，并组织了美国民用航空局高层人员访美（华盛顿特区和阿拉斯加州）。

安全性

中国民用航空局因在航空安全领域的成就而被飞行安全基金会授予 2009 年航空和空间技术周刊杰出服务奖。中国目前拥有全球最高安全记录之一，安全飞行时间超过 1500 万小时，这充分证明了其严格的安全管理方法。

航空融资

2009 年，中国采纳并开始实施《移动设备国际利益公约》（《开普敦公约》）及相关的《移动设备国际利益公约关于航空器设备特定问题的议定书》（简称《议定书》），《开普敦公约》制定了关于所有权登记、担保物权、租赁和有条件销售合同的国际标准。这将有助于降低中国航空公司航空器设备融资租赁成本，并使融资渠道实现多元化。中国美国商会对中国政府的这一重要举措表示肯定。

具体问题

空域系统的现代化

国家空域系统的开放和现代化是满足航空业发展、提高系统效率和减少环境影响的最根本需要。为了实现这些目标，中国必须在综合规划之内推动所有系统元件的标准化和互用性，以优化整体性能。这将需要与监管机构、政府部门、军事机构、航空服务提供商、飞机制造商、国内外航空公司、机场和其他使用者建立合作伙伴关系。

中国庞大而复杂的空域系统正面临需求的急剧增长。尽

管该系统安全记录卓著，运营效率较好，但已显现出巨大压力，例如，在北京和上海等地拥挤的机场中所出现的延误情况越来越严重。为适应和满足民航业的预期增长，中国必须积极地制定计划，既要增加当前运力，又要满足未来需求。中国面临的最大挑战不是技术，而是为了实现增长和创新所需要的管理文化和组织结构上的变革。随着中国继续推进空域现代化，美国企业有能力在此方面给予大量的协助，同时中国美国商会期待行业和政府之间继续开展合作。

最常提到的限制因素是民用空域和系统灵活性的缺乏。空域的开放和运营灵活性的提高对于中国满足不断增长的航空服务需求十分重要。中国超过 80% 的空域由中国军方控制，同时由其负责空域管理和国家安全防卫。

根据中国民航法规的规定，空域分为四类（A、B、C 和 D 类）。中国空域技术要求与国际民用航空组织的标准保持一致。但是，中国的空域并没有像国际民用航空组织的其它成员国那样被进一步划分为 E、F 或 G 类。在国际民用航空组织系统中，A 到 D 被视为“管制的”，而 E 到 G 则表示“非管制的”。当前的空域分类和管制机制导致航班运营流程呆板，无法适应航班调整要求，尤其是当遭遇恶劣天气的时候。这会导致延误、低效率和潜在安全隐患。

让军用和民用两方面更好地分享中国空域可显著提高整体空域处理能力。随着监视与导航设备的现代化和数字通信网络的建设，将有利于使用者更为有效地利用空域。

美国航空公司在华运营情况

除了空域限制之外，还有另外几个问题也大大削弱了国外航空公司在中国市场上的竞争力。

首先，在华运营的国外航空公司仅能通过中国民用航空局下属的外航服务公司雇佣当地员工。航空公司不得直接雇佣当地员工。加大人才市场的开放力度更有助于国外航空公司发现和聘请最优秀人才，建立和培养其中国本土员工队伍。

其次，中国只有一家公司负责向航空公司供应喷气燃料，即中国航空油料集团公司。由于缺乏竞争，限制了航空公司通过谈判获得灵活的燃料供应合同条款的能力。其结果，航空公司经营成本中占比最大的燃料成本持续增加，在目前艰难的市场环境中，这无疑是雪上加霜。相比燃料供应商所处的竞争不足的环境，航空公司却要面对异常激烈的市场竞争。一个更加开放、竞争机制更为完善的航空燃料供应市场将有

Better sharing of the Chinese airspace between military and civilian users would significantly increase overall airspace handling capacity. This, with modernization of surveillance equipment, navigation equipment and the construction of digital communications networks, will further facilitate efficient usage of airspace for users.

US Air Carriers' Operations in China

In addition to the airspace constraints, several other issues significantly impair foreign airline carriers' competitiveness in the Chinese market.

First, foreign airlines operating flights to China can only employ local staff through the Foreign Aviation Service Corporation (FASCO) which is subordinate to the CAAC. Airlines cannot hire local employees directly. A more open market for talent would better enable foreign airlines' to identify and hire the best talent and develop their own local personnel in China.

Second, only one company offers jet fuel to airlines in China: the China National Aviation Fuel Group Corporation. (CNAF). The lack of competition limits airlines' ability to negotiate flexible fuel supply contract terms. Consequently, airlines face increased costs for fuel—the largest portion of an airline's operating cost—in an already difficult market. While the fuel supplier operates in an environment of constrained competition, airlines face a highly competitive environment. More open competition in the supply of aviation fuel would improve the competitiveness of both domestic and foreign airlines.

Third, Global Distribution Systems (GDS) are major computer reservation system operations that book and sell tickets for multiple airlines. Today, state-owned Travelsky is China's only provider of GDS. Allowing more GDS providers will increase choices for consumers and lead to improved service for both passengers and airlines.

Finally, US air cargo carriers face difficulties obtaining takeoff and landing slots that allow them to best meet their customers' needs and integrate China efficiently into their worldwide networks.

General and Regional Aviation Development

General aviation development in China continues to be severely constrained by airspace limitations, lack of general aviation (GA) airports suitable for personal and business transportation, and a lack of a comprehensive policy and regulatory environment. Improvements in regulations and policies, access to airspace and development of GA airports would support both economic

and social development in China and the US GA industry, which was hard hit by the economic downturn.

In 2007, AmCham-China initiated phase one of a GARA project with funding from USTDA. The Phase I Final Report concludes that developing the GA and RA sectors of civil aviation would provide major economic and social benefits to China. Creating an infrastructure of airports, heliports, aircrafts and trained pilots would improve China's transportation system, supplement infrequent smaller market airline service and provide air service to communities where there is no airline service. These developments could also be used to support disaster relief efforts. This expanded GA sector would result in a 10–20 percent annual growth in GA over the next five years, directly generating 33,000–60,000 high-value jobs for pilots, mechanics and managers, and indirectly providing another 132,000 to 240,000 jobs in other businesses from improved transportation.

The GARA Phase I Report also provides a "Regulatory Roadmap" for China to accomplish in 15 years what the US did in 100 years. This would be achieved by adopting international best practices based on experience in the US and other countries with developed GA and RA sectors. These included: opening airspace to GA operations; reducing fees for airspace and airport use; reducing the high 22 percent duty/VAT tax on GA aircraft imports (which discourages new technology purchases, adds unnecessary costs to Chinese GA operators, discourages GA activity and discriminates against foreign manufacturers); and creating many more GA airports with longer, paved runways, fuel and service facilities, lights, and instrument approaches. Building GA airports is far cheaper than commercial ones and they enable more trained pilots, flight instructors and mechanics, and the establishment of flight schools and service facilities.

Based on CAAC's favorable response to the Phase I report, a second Phase (General Aviation Implementation Support) was initiated to provide a comparison of the Chinese and US regulations and policies affecting GA growth. A Phase II report was prepared and workshops are scheduled to take place in 2010 consisting of six modules, which will address important GA regulatory gaps between the US and China, including safety, GA airports, airworthiness, flight standards, operators and associations. The Phase II Report also recommends setting up a GA Task Force to support regulatory and policy improvements.

One of the most important benefits of a strong GA industry is the ability to provide emergency air rescue operations when disasters strike. GA received accolades in 2009 for its critical role in the Sichuan

助于提升国内外航空公司的竞争力。

再次，全球分销系统是用于预订和销售多家航空公司机票的大型计算机预订系统。如今，国有企业信天游是中国唯一的 GDS 供应商。增加 GDS 供应商将能够为消费者提供更多选择，同时有助于改善为乘客和航空公司提供的服务。

最后，美国货运航空公司在争取有利的起飞和降落时段方面存在困难，使得它们难以很好地满足客户需求以及有效地将中国业务整合到全球网络之中。

通用航空业和支线航空业的发展

由于空域限制、缺乏适合个人和商业运输的通用航空机场以及缺乏全面的政策和监管环境，中国通用航空业继续受到严重的制约。法规 and 政策的完善、空域的利用以及通用航空机场的发展将为中国的发展与社会发展以及深受经济衰退影响的美国通用航空业提供支持。

2007 年，在美国贸易和发展署的资助下，中国美国商会启动了通用航空和支线航空一期项目。最终报告称，发展通用航空业和支线航空业将为中国带来巨大的经济和社会效益。创建一个由机场与直升机场、飞机和经过培训的飞行员组成的基础架构可改善中国的运输系统，弥补小型市场航线服务，并为没有航线服务的社区提供空运服务。这些设施还可用于支持救灾工作。通用航空业可因此在未来五年内实现年均 10–20% 的增长，从而直接为飞行员、机械师和管理人员提供 33000 至 60000 个高薪工作岗位，同时由于航空运输服务的改善，能够间接地为其它领域创造 132000 至 240000 个工作岗位。

通用航空和支线航空一期报告还提供了一个“监管蓝图”，展示中国将如何通过借鉴美国及其他国家在通用航空和支线航空领域的成熟经验，以 15 年的时间完成美国用 100 年才取得的成就。具体方案包括：向通用航空业开放空域；减少空域和机场的使用费；降低目前高达 22% 的通用航空业飞机进口关税 / 增值税（高额税费削弱了购买新技术的兴趣，给中国通用航空运营商增加了不必要的成本，减少了通用航空活动，同时构成了对国外制造商的歧视性待遇）；以及建造数量更多的配备更长跑道、燃料和服务设施、照明灯及仪表设备的通用航空机场。建造通用航空机场的成本远低于商用机场，也有助于培训更多的飞行员、飞行教练和机务人员，并建立飞行学校和服务机构。

基于中国民用航空局对一期报告做出的积极回应，二期项目（通用航空业的实施支持）随即启动，对影响通用航空业增长的中美两国法规和政策进行了比较。二期报告目前已经完成，双方计划将于 2010 年举行主题研讨会，重点探讨解决中美两国在通用航空业监管方面的差异，包括安全性、通用航空机场、适航、飞行标准、运营商和协会等。二期报告还建议中国民航局成立一个通用航空任务小组，为完善法规和政策提供支持。

能够在发生自然灾害时提供紧急空中救援，是建设一个强大的通用航空业带来的最大益处之一。2009 年，因通用航空业在四川地震救灾工作中发挥了重要的作用，在全国人民代表大会和中国人民政治协商会议上得到嘉奖。随着中国致力于增强本国的救灾能力，关键点之一就是要发展直升机以及确保直升机在恶劣环境中安全飞行的技术。然而，美国对两用技术的出口管制限制了美国企业提供双赢解决方案的能力。由于美国的出口管制导致中国航空领域的技术多来自国内和其他非美国公司，这严重影响了美国的竞争力（参见“出口管制”一章）。

机场

为了满足全国不断增长的空运需求，中国计划新建 97 个商用机场，同时改扩建 144 处现有有机场设施，这要求中国在 2010 年前投入 200 亿美元（约合人民币 1366 亿元），并在 2020 年之前再投入 440 亿美元（约合人民币 3005 亿元）。我们十分赞赏中国为发展交通运输基础设施而做出的努力，并鼓励继续实施相关计划。

这一轮机场建设的浪潮为美国企业提供了巨大的商机，参与新建、改建机场设施的设计和建设，以及提供设备和技术。此外，中国有能力设计和建设采用最新环保技术的机场，并在机场的可持续性发展方面走在世界最前列。

大多数中国机场在设计招标时，都要求参与投标的设计公司拥有在华项目经验，这对新进入或尚未进入中国、但却试图参与这一市场的美国公司产生了不利的影响。中国美国商会建议取消这一要求，从而让更多拥有最时尚设计理念的国际性机场设计公司积极参与到中国机场的建设中来。

航空专用可持续性生物燃料

目前，在全球人类活动导致的碳排放中，约有 2% 来自航空业。联合国政府间气候变化专门委员会预测，随着全球

earthquake disaster relief effort from both the National People's Congress and the Chinese People's Political Consultative Conference. Helicopters and technologies for their safe operation in challenging environments are a key focus as China develops better disaster relief capabilities. However, US export controls for dual-use technologies limit the ability of US companies to offer win-win solutions. Export controls are often placed on technologies that are already available in the Chinese marketplace, either indigenously or from non-US companies, undermining US competitiveness (please see Export Controls chapter).

Airports

To meet the growing demand for air travel throughout the country, China is planning 97 new commercial airports and will renovate 144 existing facilities, requiring a US \$20 billion (RMB 136.6 billion) investment by 2010, and an additional US \$44 billion (RMB 300.5 billion) by 2020. We commend China on its dedication to transportation infrastructure development and encourage continued plan execution.

This airport construction boom offers significant opportunities for US companies to participate in designing, constructing, and equipping new and renovated facilities. Furthermore, China can design airports that incorporate the latest environmentally-friendly technologies and potentially lead the world in airport sustainability.

Most Chinese airports' design competitions require bidding design companies to have Chinese project experience, which precludes new US companies trying to enter this market. AmCham-China suggests removing such a threshold requirement, thus permitting Chinese airports to get substantially more and active participation from international airport design firms that have experience with the most modern designs.

Sustainable Biofuels for Aviation

Today, aviation accounts for about two percent of man-made global carbon emissions. The UN's Intergovernmental Panel on Climate Change forecasts that this will increase to three percent in 20 years with increases in global demand for air travel. In October 2009, the ICAO adopted an aggressive target for global annual average fuel efficiency improvement of two percent for the airline industry through 2020. This will require a partnership among governments, airlines and manufacturers and effort in three areas: more efficient airplanes, improved air traffic management and fuel changes—particularly introducing sustainable biofuels.

Within the next 20 years, the US and China will have the two largest aviation systems in the world. It is crucial that our two countries work together to improve overall aviation environmental performance.

In the last two years, the feasibility of using sustainable biofuels in aviation—a key component of aviation's strategy for lowering carbon emissions—has been proven through ground and flight tests. These advanced-generation biofuels derive solely from plant sources that do not distort the global food chain, compete with fresh water resources or lead to unintended land-use changes. Unlike other modes of transportation (e.g., cars, which can shift to batteries), biofuels are aviation's only viable alternative to fossil fuels.

China could be an early adopter of such technology, leading to significant economic, social and environmental benefits, including reduction of greenhouse gas emissions. US companies are exploring opportunities to move forward with China on aviation biofuels. Development of appropriate US and Chinese government policies, specifically to support commercialization, are needed to realize the opportunities.

China's Growing Role in Aviation Financing

During the economic downturn, Chinese banks and lessors have demonstrated their ability to provide capital to both domestic and international airlines for aircraft acquisitions. The China Banking Regulatory Commission has made great progress in coordination with other Chinese government agencies to open the operating lease market in China. However, being competitive with international lessors requires a conducive financing and leasing infrastructure in China to ensure that Chinese lessors can compete.

In 2009, China adopted the Cape Town Treaty and the associated Protocol. The Cape Town Treaty creates international standards for ownership registration, security interests, leases and conditional sales contracts. It is helpful to aircraft leasing companies because it provides legal remedies, such as aircraft repossession for payment defaults. For the airlines, it will lower the cost of aircraft financing, potentially saving the global aviation industry billions of dollars annually. As a key aircraft market, China's treaty participation is important and welcomed. However, China still needs to take additional steps to realize the Cape Town Treaty's full benefits by making additional qualified declarations. Key among these is one addressing de-registration of aircraft in the case of airline bankruptcies allowing for a quick process that avoids cumbersome court procedures.

空运需求的增长，这一比例将在今后二十年内提高至 3%。2009 年 10 月，国际民用航空组织制定了在 2020 年之前使全球航空业年均燃油效率提高 2% 的宏伟目标。这需要政府、航空公司和制造商之间开展合作，并在三个方面做出共同努力：更高效的飞机、更完善的空中交通管理以及燃料革新，尤其是推出可持续性生物燃料。

未来 20 年内，中美两国将拥有全球最大的两大航空系统。因此两国需要通力合作，共同提高航空领域的总体环保绩效，这具有至关重要的意义。

过去两年里，在航空领域使用可持续性生物燃料的可行性，通过地面和飞行测试得到了验证，这是航空业破减排战略的重要构成部分。这些先进的生物燃料将仅源于那些不会破坏全球食品链、不会与淡水资源竞争、也不会导致预期范围外土地使用变化的植物资源。与其它运输方式（例如汽车可改用电池驱动）不同，在航空运输领域，生物燃料是能够替代化石燃料的唯一可行选择。

中国有能力成为这一新技术的先行者，从而带来巨大的经济、社会和环境效益，包括减少温室气体排放。美国公司正在积极寻找机会与中国共同研发航空用生物燃料。为了抓住机遇，中美两国政府需要制定必要的政策，支持生物燃料的商业化生产。

中国在航空融资领域的地位不断提升

在全球经济衰退期间，中国的银行和贷款机构业已证明它们有能力为国内外航空公司提供购买飞机所需的资金。中国银监会会同其它中国政府部门，在开放国内经营性租赁市场方面取得了重大进展。但是，要具备与国际贷款机构竞争的實力，中国需要一个有利的融资和租赁基础架构。

2009 年，中国采用了《开普敦公约》及相关《议定书》。《开普敦公约》制定了关于所有权登记、担保物权、租赁和有条件销售合同的国际标准。它提供了法律救济措施，如在拖欠付款时可收回飞机，因此对飞机租赁公司来说很有帮助。对于航空公司而言，它将降低飞机融资成本，每年可为全球航空业节省资金数十亿美元。作为一个重要的飞机市场，中国加入该公约具有重要意义，也深受欢迎。但是，中国仍需要采取进一步的措施、做出进一步符合要求的声明，来实现采用《开普敦公约》所带来的全部益处。其中一项是当航空公司破产时迅速注销飞机登记事宜，以避免繁琐的诉讼程序。

另一挑战在于中国实体无法成立特殊目的机构，国外银行通常利用 SPV 来为跨地区飞机融资交易提供便利。这使中国国内银行在竞争中处于劣势地位。

最后，飞机进口税制度不利于中国租赁企业。目前，航空公司在进口飞机时需要缴纳 7% 的税费（6% 的增值税 + 1% 的进口税），而国内租赁企业若希望直购飞机，则需要缴纳 17% 的税费。

高速铁路和航空业

铁道部表示，中国计划在 2020 年前建设长达 16000 公里的高速铁路（时速可高达 350 公里），覆盖中国绝大多数大中城市。该计划包括北京 - 上海、北京 - 深圳（途经武汉）、上海 - 成都（途经合肥）以及杭州 - 深圳等线路，主要侧重于经济更发达、同时也是航空公司主要市场的东部和中部地区。

若在规划阶段能够慎重考虑高速铁路和航空业的有机结合和综合利用，两者可形成互补关系，促进中国整体利益的发展。举例来说，在欧洲，乘客可搭乘高速铁路前往机场进行长途旅行，反之亦然。同样地，上海虹桥机场的一体化交通枢纽将高速铁路、地方铁路和公路交通融为一体，是一个很好的案例。在中国政府酝酿投资决策时，很重要的一点是不要减少对航空领域的投资。中国的经济增长需要航空和铁路的同步稳定发展。

建议

对中国政府：

空域

- 建设更加灵活的空域和航线体系，摆脱当前的僵化结构，以适应民航业的发展、通用航空需求以及国防和安全要求。实现一个覆盖面更广、全国性管理的共用空域系统；采用国际民用航空组织的空域分类标准；并且尽可能扩大民用航空管理部门的影响力。

美国航空公司的运营

- 取消仅允许从外航服务公司雇用本地员工的限制，

Another challenge is Chinese entities' inability to set up Special Purpose Vehicles, which are typically used by banks outside of China to facilitate multi-jurisdictional aircraft financing transactions. This puts Chinese banks at a competitive disadvantage.

Finally, the aircraft import tax regime disadvantages Chinese leasing companies. Currently, airlines that import planes are subject to a tax rate of seven percent (six percent VAT plus one percent import duty,) while Chinese leasing companies wishing to purchase aircraft directly face a 17 percent total tax.

High-Speed Rail and Aviation

According to the Ministry of Railways, China plans to build 16,000 km of high-speed (up to 350 km/h) railway by 2020, covering most of China's largest cities. The plan, including routes from Beijing to Shanghai, Beijing to Shenzhen via Wuhan, Shanghai to Chengdu through Hefei and Hangzhou to Shenzhen, focuses on the eastern and central regions, where the economy is more vibrant, which are also airlines' key markets.

High-speed rail and aviation can complement each other for the overall benefit of China, especially if integration is carefully considered in the planning phase. In Europe, for example, high-speed rail feeds passengers seamlessly into airports for longer routes, and vice-versa. Likewise, the Shanghai Hongqiao Airport integrated transportation hub brings together high-speed rail, local rail and road transport, serving as a model. As the Chinese government considers investment decisions, it is important that aviation investment not be reduced. Smooth development of both aviation and rail is needed to support China's economic growth.

Recommendations

For the Chinese Government:

Airspace

- **Continue moving towards a more flexible airspace and airway structure and away from today's rigid structure to accommodate civil aviation growth, GA needs, and national defense and security requirements. Implement an expanded, nationally managed, common-use airspace system; adopt full ICAO airspace classification standards; and grant greater influence to civilian authorities, where possible.**

US Airlines' Operations

- Lift the restriction on hiring airline staff only from FASCO to allow direct hiring or competition among multiple staffing suppliers.
- Open the market for supply of aviation fuel to competition.
- Encourage increased dialogue and coordination between CAAC and US cargo airlines when implementing the US-China air services agreement, particularly the cargo open skies portion in 2011. Ensure proper resources are allocated for cargo airlines operating global networks, particularly required takeoff and landing slots.

General Aviation

- Establish a cross-department task force within CAAC for the implementation of recommendations in ACP's report to develop a healthy GA industry and robust disaster relief capabilities.
- Reduce the excessive 22 percent import duty / VAT tax on GA aircraft imports to the same level as commercial aircraft (seven percent total).

Airports

- Maintain and bolster transparent bidding processes for airport design in line with international standards; ensure bids comply with the letter and spirit of international procurement regulations and cannot unnecessarily or artificially restrict competition; and maintain and bolster the process for filing protests with strong transparency. Eliminate the requirement for prior Chinese experience for firms bidding on airport design project, thus increasing choice among international firms.

Sustainable Biofuels

- Prioritize sustainable aviation biofuel development by assigning the issue to the appropriate regulatory agency with high-level oversight. Propose a timeline for biofuel adoption by airlines and promote commercial viability of appropriate biofuel feedstocks to ensure production requirements related to the timeline can be met by domestic industry.

允许美国航空公司直接雇用或在竞争基础上从多家人力供应商处雇用。

- 开放航空燃料供应市场，促进竞争。
- 鼓励中国民用航空局和美国货运航空公司增进对话与合作，共同落实美中航空服务协议，尤其是协议中关于 2011 年货运开放天空的部分。确保向网络遍布全球的货运航空公司分配合适的资源，尤其是所需的起飞和降落时段。

通用航空

- 在中国民用航空局内建立跨部门任务小组，采用航空合作项目报告中的建议，发展健康的通用航空业，提高强大的救灾能力。
- 将高达 22% 的通用航空飞机进口关税 / 增值税降至与商用飞机持平（7%）。

机场

- 按照国际标准，采用并推进透明的机场设计招标投标流程；确保招标投标活动符合国际采购法规的规定和精神，而非不必要地或人为地限制竞争；采用并推进高度透明的投诉流程。取消关于机场设计项目竞投公司必须具备在华项目经验的要求，让更多国际公司参与进来。

可持续性生物燃料

- 重视可持续性航空生物燃料的开发，由适当的主管部门实施高层监管。针对航空公司何时采用生物燃料提出一个时间框架，促进相关生物燃料原料的商业可行性，确保国内行业能够按照前述时间框架的要求满足相关生物燃料的商业生产需求。

航空融资

- 做出必要的声明，充分实现《开普敦公约》的益处，尤其是有关在航空公司破产的情况下对飞机进行注销的声明。
- 在进口飞机税费方面，对国内租赁企业与航空公司一视同仁（6% 的增值税 + 1% 的进口税）。

对美国政府：

- 继续与中国民航和军事机构分享关于军民两用空中交通管制的最佳实践。

Aviation Financing

- Make needed declarations to realize the full benefits of the Cape Town Treaty, particularly those regarding de-registration of aircraft for airline bankruptcy cases.
- Treat Chinese leasing companies the same as airlines with respect to tax treatment for imported aircraft (six percent VAT plus one percent import duty).

For the US Government:

- **Continue to share best practices on civil and military dual-use air traffic control with Chinese civil aviation and military authorities.**



Construction, Engineering and Design

The construction industry in China has grown along with the Chinese economy, with the RMB four trillion (US \$584 billion) Chinese stimulus package fueling recent construction and infrastructure development. Streamlining and improving China's construction industry, taking advantage of international expertise, and efficiently building high-quality infrastructure essential to continued development are now top concerns.

Foreign-invested construction, engineering and design companies can contribute to the construction industry's development in China through sharing best practices, technical expertise and management experience. However, many doors remain closed to foreign-invested companies in these sectors, preventing China's construction industry from realizing its full potential and impeding China's overall development.

Significant Developments

Low-Income Housing

The issuance of the Several Opinions on Promoting the Healthy Development of Real Estate Market (Circular 131) on December 20, 2008 has helped to increase focus on the issue of low-income housing. It sets the goal of resolving housing problems for 7.5 million urban low-income families and seeks to resolve relocation, maintenance and redevelopment issues for 2.4 million families in existing forest zones, reclaimed lands, mining and other poorly developed areas. AmCham-China urges the release of detailed implementation rules for Circular 131 as soon as possible.

General Contracting

A Model Contract Text for General Contracting (Model Contract) was released for comment by the Ministry of Housing and Urban-Rural Development (MOHURD) on February 6, 2009. A first for MOHURD, it will assist contractors who undertake construction projects involving both engineering design and construction works. AmCham-China applauds and encourages the

publication of model contracts.

Large-Scale Engineering Supervision Enterprises

On November 12, 2008, MOHURD issued the Guidance Opinions on the Establishment of Project Management Enterprises by Large-Scale Engineering Supervision Enterprises (Order 226) encouraging local construction authorities to identify large-scale engineering supervision enterprises. It encourages and gives preference to enterprises with comprehensive supervision qualifications at the Grade A level, as well as tendering agency and cost control qualifications. Furthermore, it encourages these enterprises to establish project management companies.

Green Building

Following establishment of the "green building" system in recent years, the government has continued to promote the green building certificate system. Related evaluation standards, construction material choices and expert panels are expected soon.

Procurement

A decade after promulgation of the Bidding Law of the People's Republic of China, the Implementation Rules for the Bidding Law drafted by the National Development and Reform Commission (NDRC) were issued for comment on September 29, 2009.

Specific Issues

Ministry of Construction Decree 113 - Regulations on the Administration of Foreign-Invested Construction Enterprises

Decree 113, which lays down the threshold qualifications requirement, serves as a market barrier for foreign construction companies in China. These companies must establish a local presence by creating either a wholly foreign-owned enterprise (WFOE) or a joint

建筑、工程和设计

得 益于四万亿人民币（5840 亿美元）经济刺激方案的助推，中国的建筑业伴随着中国经济共同成长。如何实现中国建筑业的优化整合，充分利用国际专业资源，高效地建设国家持续发展所必需的高质量基础设施，是业界关注的焦点。

外商投资的建筑、工程和设计公司能够向中国企业传授最佳实践、技术专长与管理经验，从而为中国建筑业的发展做出贡献。然而在这些领域，外资企业仍然面临着非常高的准入门槛，这使得中国建筑业无法充分发挥其潜能，同时也影响了中国的整体发展。

重大进展

保障性住房

2008 年 12 月 20 日《国务院办公厅关于促进房地产市场健康发展的若干意见》（国办发〔2008〕131 号）的出台进一步加强了人们对于保障性住房供给的关注。《意见》提出，要解决中国 750 万城市低收入家庭的住房问题，同时力求基本解决 240 万户现有林区、垦区、煤矿等棚户区居民住房的搬迁、维修及改造问题。中国美国商会希望有关部门尽快出台该《意见》的具体实施细则。

工程总承包

2009 年 2 月 6 日，中华人民共和国住房和城乡建设部（MOHURD）发布了《工程总承包合同示范文本》（征求意见稿）。该《合同示范文本》作为住房和城乡建设部出台的首个工程总承包合同示范文本，对参与工程设计及建筑施工的建筑项目承包商起到了帮助作用。中国美国商会对此举表示赞赏，同时也鼓励出台更多合同示范文本。

大型工程监理单位

2008 年 11 月 12 日，住房和城乡建设部发布《关于大型工程监理单位创建工程项目管理企业的指导意见》（建市[2008]226 号），鼓励地方建设主管部门选择有条件的大型工程监理单位。《指导意见》鼓励优先选择具有甲级综合工程监理企业资质、甲级工程招标代理机构资格、甲级工程造价咨询企业资质的大型工程监理单位。此外，《指导意见》还鼓励这些单位创建工程管企业。

绿色建筑

在近年来建立“绿色建筑”体系之后，中国政府大力推进绿色建筑认证办法的制定与完善。预计将很快出台相关的评估和建筑材料选择标准，并成立相关专家小组。

采购

在《中华人民共和国招标投标法》颁布十年之后，由国家发展和改革委员会起草的《招标投标法实施条例》于 2009 年 9 月 29 日出台，并征求社会各界的意见。

具体问题

建设部第 113 号令——《外商投资建筑业企业管理规定》

第 113 号令规定了外国建筑企业在中国从事建筑活动所需具备的资格和必要条件，为外国建筑企业设立了入市门槛。外国建筑企业必须在中国境内设立某种形式的中国法律实体（即外商独资企业或中外合资企业）。此法律实体成立后必须申请适当等级的建筑业企业资质，以成为一家外商投资建筑业企业。

venture with a Chinese firm. This entity must then apply for the appropriate construction grade qualification in order to become a Foreign-Invested Construction Enterprise (FICE).

To establish a FICE, both domestic and foreign construction companies must meet onerous capital and staffing requirements. Furthermore, Chinese law does not allow the use of financial instruments (e.g., bank guarantees, insurance bonds or a parent company's guarantee) to satisfy the requirements, which is inconsistent with international best practice and disproportionately harms smaller firms with specialized expertise. AmCham-China believes that registered capital requirements, as currently designed, are unnecessarily high and restrict construction investments.

Although recognition of foreign qualifications has ameliorated some issues with regards to staffing requirements in Decree 113 and the Regulations on the Administration of Foreign-Invested Construction Project Design Enterprises issued by the former Ministry of Construction, now designated the Ministry of Housing and Urban Rural Development (MOHURD), the international staff of foreign construction companies must still satisfy onerous requirements to work in China. Although Decree 114's Implementation Regulations temporarily relaxed the requirement that the foreign staff of foreign construction companies must reside in China for three to six months per year to work at Foreign-Invested Design Enterprises (FIDE), uncertainty remains as it is unclear how long the relaxation will stay in force and foreign staff must still undergo a complicated process to be accredited as technical personnel by MOHURD.

In addition to cumbersome licensing procedures and requirements, the scope of projects FICEs are allowed to undertake is also limited. Currently, WFOE construction companies are restricted to foreign-funded projects or those that Chinese construction enterprises cannot undertake due to technical difficulty. In the latter case, foreign companies must cooperate with Chinese construction enterprises. This means foreign companies have access to less than 10 percent of the Chinese construction market.

In addition, FICEs without special grade qualifications can only undertake projects valued at less than five times the company's registered capital, according to the Qualification Grading Standards for Construction Enterprise (Decree 82). This minimum registered capital limit unnecessarily burdens foreign construction companies by requiring them to invest significant registered capital to qualify for large-scale infrastructure projects.

Consortium Qualifications

The Construction Law of the People's Republic of China (effective March 1, 1998) specifies that where two or more contractors undertake construction work together, the scope must not exceed the qualifications of the lowest-ranked member of the consortium. However, international practice provides that a consortium will qualify based on the qualifications of the highest-ranked member of the consortium. AmCham-China recommends that the Chinese government amend this requirement to conform with international practice, enabling China to benefit from the best international practice, expertise and technology available.

Contractual Arrangements

Further market barriers facing FICEs prohibit them from entering into contractual relationships with Chinese-invested construction enterprises. While the Provisional Regulations on the Administration of Foreign Enterprises Engaging in Construction Engineering Design Related Activities in China (Decree 78) allow contractual relationships between foreign designers and Chinese design institutes, similar contractual relationships are not expressly permitted for construction operations, requiring foreign investors to establish a Chinese entity before undertaking any construction work in China.

Engineering and Design Works Sector - Decree 114

Decree 114 places strict personnel and capital requirements on foreign engineering and design companies in China, which bear little if any relationship to a company's capability. These serve as a market barrier, especially to small-scale specialized design companies. Like construction companies, a foreign engineering and design company must establish either a WFOE or Sino-foreign joint venture. This Chinese legal entity must also apply for the appropriate design qualification to become a FIDE. In addition, the Implementation Rules to the Administrative Regulations on Foreign-Invested Construction Engineering Design Enterprises (Circular 18) impose strict personnel and capital requirements. These are especially onerous for small and medium-sized enterprises that comprise a large portion of highly-specialized architectural and engineering firms.

Upgrading of Qualifications

Under Article 17 of the Regulations on the Administration of Qualifications for Construction Project Surveys and Designs (Decree 160), Grade A and Special Class construction enterprises can apply for Grade A design

其次，建立外商投资建筑业企业时，无论国内还是国外建筑公司都必须满足有关资本与员工方面的多项要求。此外，中国法律不允许利用例如银行保函、保险债券或母公司担保函等金融票据来满足相关要求。我们认为此规定不但违反了国际惯例，而且对拥有专门技术的较小型公司产生了极大的负面影响。中国美国商会认为，目前此规定对注册资本的要求很高，这不仅没有必要，而且限制了对建筑业的投资。

尽管有关认可外商专业资质的规定在一定程度上改善了原建设部（现更名为住房和城乡建设部）第 113 号令和第 114 号令（即《外商投资建设工程设计企业管理规定》）对人员配置要求的一些问题，但是外国建筑企业在外籍员工在华工作时间方面仍面临着繁琐的要求。虽然第 114 号令的实施条例暂时放宽了有关外商投资设计企业的外国员工必须每年在中国居住三至六个月的要求，但目前尚不知道这一放宽政策将延续多长时间，外国员工仍然必须通过繁琐的程序才能获得住房和城乡建设部的专业技术人员身份认可。

除了繁琐的审批流程与诸多的要求之外，外商投资建筑企业在项目承接范围方面也受到了限制。目前，外商独资建筑公司只可承包外资投入项目或中国建筑企业无技术能力承包的工程。而且，后者还规定外国公司只可承包与中国建筑企业合作进行的工程。此举意味着外国建筑公司在中国建筑市场的占有份额不足 10%。

此外，《建筑业企业资质等级标准》（建建[2001]82 号）明确规定，未获得特级资质的外商投资建筑公司仅能够承包低于公司注册资本金五倍的工程。规定注册资本最低限额意味着外国建筑公司必须投入大量的注册资本，背负不必要的负担，才可获得承包大型基础设施项目的资质。

联合体资质

1998 年 3 月 1 日颁布生效的《中华人民共和国建筑法》明确规定，两个以上不同资质等级的单位实行联合共同承包的，应当按照资质等级低的单位的业务许可范围承揽工程。但国际惯例一般认为，联合体的资质应由联合体中资质等级最高的成员决定。中国美国商会建议中国政府对这一规定进行修订，使其与国际惯例保持一致，同时也使中国受益于最合理的国际惯例、最佳的国际专长以及最先进的技术。

合约关系

外商投资建筑企业还面临着其他入市限制，包括不得与

中资建筑企业确立合同关系。虽然《关于外国企业在中华人民共和国境内从事建设工程设计活动的管理暂行规定》（建设部第 78 号令）允许外国设计公司与中国设计机构合作设计，但此规定在建筑施工中并未得到明确许可。因此，外国投资者必须在中国境内设立某种形式的实体才可开展相关建筑活动。

工程设计领域——第 114 号令

第 114 号令对在华外国工程设计公司规定了严格的人员与资本要求，而这些要求基本与企业的能力无关。这些规定构成了市场壁垒，对于小型专业设计公司而言尤为如此。与对建筑业企业的要求一样，外国工程设计公司必须以外商独资企业或中外合资企业的形式在当地建立中国法律实体。实体建立后，必须申请适当的设计资质，成为外商投资建筑工程设计企业。其次，《外商投资建设工程设计企业管理规定实施细则》（建设部第 18 号通知）也在员工与资金方面规定了严格的要求，这尤其令大部分由高度专业化的建筑和工程厂商组成的中小型企业倍感压力。

资质升级

依据《建设工程勘察设计资质管理规定》（建设部第 160 号令）第 17 条，已具备甲级和特级施工资质的企业首次申请甲级工程设计资质时，可以将过往的工程总承包业绩作为工程业绩予以申报。然而，《建设工程勘察设计资质管理规定实施意见》（建市〔2007〕202 号）在很大程度上削弱了第 160 号令做出的承诺，该实施意见规定，外商投资企业不得从甲级资质起步，除非他们已具备一级建筑企业资质。此外，第 202 号通知进一步要求在申请甲级设计资质时，只可使用总承包业绩所含的设计工程。此举使得多数外商投资设计企业，尤其是初次进入中国的企业或只从事工程设计的企业，不能享受该新放宽的规定。

中国美国商会对于住房和城乡建设部颁布第 160 号令，并使其与国际惯例保持一致的做法大为赞赏。但是，我们迫切希望住房和城乡建设部能够允许所有的外商投资设计企业享受到放宽后的规定，并可在首次申请时申请甲级资质。

建设工程设计领域的并购

2007 年，住房和城乡建设部颁布了《关于建设工程企业发生改制、重组、分立等情况资质核定有关问题的通知》（建市[2007]229 号），旨在阐明勘察、施工、设计、监理企业

qualifications in their initial applications using previous performance records as a contractor in China. However, the Opinions on Implementation (Circular 202) severely undermined the promise of Decree 160 by prohibiting FIDEs from beginning at Grade A, unless they already hold a Grade 1 construction qualification. Moreover, it specifies that firms may only use, as reference, design work included in general contracting performance records when applying for Grade A design qualifications. The majority of FIDEs—especially those new to China or focusing solely on engineering and design activities—do not benefit from the newly relaxed rules.

While AmCham-China applauds MOHURD for introducing Decree 160 in accordance with international practice, we urge MOHURD to allow all FIDEs to enjoy the relaxed rules and apply for Grade A qualification in their initial applications.

M&A in Construction Works, Engineering and Design

In 2007, MOHURD issued the Circular Concerning Relevant Issues Associated with Verification of Qualification Construction Project Enterprises on System Reform, Reorganization and Division (Circular 229) to clarify re-qualification issues in the restructuring or merger of prospecting, construction, design, supervision and tendering agency enterprises. According to Circular 229, when foreign investors acquire domestic enterprises, the qualifications and licenses possessed by the original enterprise(s) must be reassessed and approved by the appropriate construction authorities. However, the criteria for reassessment remain unclear and foreign investors remain uncertain about their ability to retain the original enterprise's licenses and qualifications, a major criterion when tendering for a project. Thus, uncertainty about the transfer of licenses and qualifications leaves construction companies unable to determine if they have the legal ability to undertake projects. Circular 229 does little to resolve the risk of losing qualifications when foreign investors acquire Chinese companies.

Project Management Sector

Foreign construction, engineering and design companies could add great value to China's construction project management over the long term. The extensive transfer of project management technology and expertise has already benefited Chinese contractors and developers. Unfortunately, China's conflicting regulatory regimes governing project management inhibit these transfers.

MOC's 2004 Trial Measures for the Administration of Construction Engineering Projects (Circular 200) require enterprises that wish to undertake project management services to establish a local entity and obtain qualifications in one or more of the prospecting, design, construction, supervision, tendering agency or cost control categories.

This serves as a market entry barrier for foreign project management companies as only FICEs and FIDEs with one or more of the six qualifications can undertake project management services in China. The 2007 Regulations on the Administration of Foreign-Invested Construction Engineering Service Enterprises (Decree 155) may allow for non-FICE or FIDE foreign-invested enterprises, as some local commerce bureaus (e.g., Beijing) are now accepting applications from foreign companies to establish Foreign-Invested Engineering Service Enterprises (FIESE). However, until implementation rules for Decree 155 are issued, the uncertainty of the application for FIESEs in other cities will remain. The absence of the implementation rules has been cited by some local authorities as the reason for refusing to accept such qualifications, leading to inconsistent practices for the FIESE application across different cities.

Additionally, according to National Development and Reform Commission's 2005 Measures for Recognizing the Qualifications of Engineering Consulting Entities (Circular 29) and the Implementation Notice, any company engaging in engineering consulting services in China must hold an Engineering Consulting Enterprise Qualification Certificate and practice within the profession and service scope therein stipulated. Project management falls within the scope of engineering consulting services, and thus enterprises wishing to undertake project management services need to obtain an Engineering Consulting Enterprise Qualification Certificate.

These inconsistent regulations are detrimental to development of the construction industry in China. Further clarification about the scope of authorities and qualifications is urgently needed to improve the Chinese construction industry's overall efficiency by nurturing project management technology.

EPC Projects

While Engineering Procurement Construction (EPC) contracting is expanding for construction projects in China, the MOHURD qualification system does not specifically address the needs of these projects. Both the Guidance Opinions Concerning Nurturing and Development of Project General Contractor and Engineering Project Management Enterprises (MOC [2003] No. 30) in February 2003 and the July 2003 Explanation

和招标代理机构在改制、合并过程中涉及的资格重新审核的问题。依据第 229 号通知，外国投资者收购了国内企业后，原企业拥有的资质和经营许可证必须由相应的建筑行政主管部门重新进行评估和核定。然而，第 229 号通知对重新评估的标准并未做出明确规定，外国投资者也无法确定是否能够继续获得原企业的经营许可证及资质。当建筑企业与设计公司投标时，经营许可证与资质级别是有关方面考虑的主要标准之一。因而，许可证与资质方面的不确定因素使得建筑企业无法确定自己是否具有承包工程的法律能力。另外，中国公司在被外国公司收购后面临可能失去其原有资质的风险，而如何降低此风险，第 229 号通知也未提及。

项目管理领域

长远来看，外国建筑、工程和设计企业可为中国的建筑项目管理创造巨大价值。许多中国承包商和开发商都已经因项目管理和专长的转让而获益。但遗憾的是，中国相互冲突的项目管理监管体制很大程度上制约了技术的转让。

建设部《建设工程项目管理试行办法》（建市[2004]200 号）要求，如想提供项目管理服务，企业必须在中国当地建立法律实体，并取得工程勘察、设计、施工、监理、招标代理、造价咨询等一项或多项资质。

第 200 号通知实际上构成了外国项目管理企业的市场准入障碍，因为只有具备这六种资质中的一项或多项的外商投资建筑企业和外商投资设计企业，才可在华提供项目管理服务。除了建立外商投资建筑业企业及外国投资设计企业，《外商投资建设工程服务企业管理规定》（建设部 2007 年第 155 号令）也许可以为外国投资公司提供除外商投资建筑企业及外商投资设计企业之外的市场进入选择，一些地方的商务部门（如北京）正在接受外国公司建立外商投资工程服务企业（FIESEs）的申请。但由于第 155 号令还没有颁布相关的具体实施规定，在其他城市申报建立外商投资工程服务企业仍然具有不确定性。一些地方主管部门就曾将缺少具体实施规定作为拒绝接受此类申请的理由，使得不同城市对待外商投资工程服务企业申报有着不同的处理方式。

此外，依据国家发改委《工程咨询单位资格认定办法》（2005 年第 29 号令）以及实施通知，任何在华参与工程咨询活动的企业都必须持有工程咨询企业资格证书，并根据资格证书中所规定的行业及服务范围开展相应的业务。因项目管理被包括其中，所以希望提供项目管理服务的企业需要获得工程咨询企业资格证书。

这些缺乏一致性的规定不利于中国建筑业的发展。进一步明确授权范围与资质要求是以通过发展项目管理技术来提高中国建筑业的总体效率的迫切需要。

EPC 项目

虽然中国建设项目的设计、采购、施工 (EPC) 总承包模式正逐步发展，但住房和城乡建设部的资质体系并未明确解决这些项目的需求。该部于 2003 年 2 月颁布了《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》（建市[2003]30 号），同年 7 月又颁布了进一步的意见《关于工程总承包市场准入问题说明的函》（建市函[2003]161 号）。这两个文件似乎都允许 EPC 总承包模式，条件是 EPC 承包商必须持有适当的设计资质并将施工工程分包给持有适当资质的分包商。然而，工程设计、施工及其他合同在当地建设主管部门的登记要求在实际操作中不尽相同，这意味着只有具有相应资质的企业方能签订此类合同并进行登记。这使得仅具备设计资质的实体无法承担 EPC 总承包工作。

建筑行业的节能减排

2008 年 7 月，国务院颁布了《民用建筑节能条例》以及若干相关规定。虽然这些新法规清楚地表明了中国希望改进能源利用效率的愿望，但是仍然存在诸多不确定因素，例如政府如何制定节能标准，以及各地如何有效执行这些节能标准。

建议

EPC 总承包领域（建设部 2003 年第 30 号及 161 号令）

- 正式颁布法规，明确规定 EPC 总承包的资质要求和在地方层面落实 EPC 总承包规定。

工程建筑领域（第 113 号令）

- 减少限制外商独资和外商投资建筑企业进入中国市场的障碍。
- 参照国际通行做法，降低注册资本的要求。可考虑允许利用母公司的财力、债券或其它担保协议作为替代方案，部分或全部取代过高的注册资本要求。

Letter Concerning Market Entry for Project Ultimate Contracting (MOC [2003] No. 161) appear to allow EPC contracting, provided the contractor holds an appropriate design qualification and contracts the construction activities to appropriately qualified subcontractors. However, the registration requirements for engineering design, construction and other contracts with local construction authorities vary in practice, meaning only entities with corresponding qualifications can enter and register such contracts. This effectively prevents entities with only a design qualification from undertaking EPC contracting.

Energy Conservation in Construction Industry

The State Council issued the Provisions on Energy Conservation in Civil-use Buildings in July 2008 in conjunction with other relevant regulations. While these new regulations clearly demonstrate China's desire to improve its energy conservation rating, a number of uncertainties remain, including definitions for Energy Conservation Standards and local application of these standards.

Recommendations

EPC Contracting Sector (MOC [2003] Nos. 30 and 161)

- **Formally issue regulations clarifying qualifications required to undertake EPC contracting, and consistently enforce EPC contracting rules, especially at the local level.**

Construction Sector (Decree 113)

- Remove market barriers that restrict WFOEs and FICEs.
- Reduce registered capital requirements, in line with international norms. Use the fiscal strength of the parent company, bonding or other guarantee arrangement as an alternative to, or partial or complete replacement for, high registered capital requirements.
- Relax the registered capital requirement stating that the maximum value of work undertaken cannot exceed five times registered capital.
- Abolish the three-month residency requirement for foreign service providers.
- Permit contractual collaborations in the construction sector between foreign and Chinese construction enterprises.
- In line with international norms, relax the

requirement that consortia must default to the qualification level of the lowest qualified consortium member.

Engineering and Design Sector (Decree 114)

- Permanently relax the 25 percent requirement and the six-month residency requirement for foreign service providers, further clarifying Circular 18.
- Allow initial Grade A establishment for FIDEs meeting qualification requirements.
- Clarify the qualification criteria for how a local firm would be "re-assessed" upon acquisition.

Project Management Sector (Circular 200)

- Remove the requirement that only FICEs and FIDEs can engage in project management.
- Issue specific project management qualification standards.
- Clarify the scope of the two qualifications governed respectively by MOHURD and NDRC.

Engineering Services Sector (Decree 155)

- Issue, as soon as possible, the Decree 155 Implementation Rules to allow foreign companies to establish FIESEs and apply for relevant qualifications throughout China.

Energy Conservation Sector

- Issue a comprehensive set of applicable Energy Conservation Standards and local enforcement of the relevant standards.

- 放宽所承包工程的最高限额不得超过注册资本五倍的要求。
- 废除外国服务提供者必须每年在华居住三个月的要求。
- 允许中外建筑公司建立合同关系。
- 放宽联合体内按资质等级最低成员的业务许可范围承揽工程的规定，使之与国际惯例保持一致。

工程与设计领域（第 114 号令）

- 进一步明确第 18 号通知的规定，永久放宽对外国服务提供者的 1/4 人数比例要求以及六个月居住期的要求。
- 允许符合资质要求的外商投资设计企业首次申请即可获得甲级设计资质。
- 明确制定内资企业在收购后被重新评估企业资质的相关标准。

项目管理领域（第 200 号通知）

- 废除只允许外商投资建筑企业和外商投资设计企业从事项目管理服务的要求。
- 应颁布具体的项目管理资质标准。
- 澄清由住房和城乡建设部以及国家发改委分别主管的两项资质的具体范围。

工程服务领域（第 155 号令）

- 尽快颁布第 155 号令的实施细则，允许外国公司建立投资工程服务企业，并可申请全国性的通用资质。

节能领域

- 应颁布一系列全面、可适用的节能标准，并加强地方对相关标准的执行力度。

Cosmetics

Data from the China Association of Fragrance, Flavor and Cosmetic Industry (CAFFCI) indicates that, despite the global economic downturn, the Chinese cosmetics market and consumer demand for cosmetics have continued to grow rapidly. According to CAFFCI, gross sales of China's cosmetics manufacturing industry reached RMB 140 billion (US \$20.5 billion) in 2009, a 7.7 percent increase from 2008. The total value of imports and exports were US \$700 million (RMB 4.8 billion) and US \$1.3 billion (RMB 8.9 billion) in 2008, respectively, up 49.9 percent and 1.2 percent from 2007.

Significant Developments

On June 17, 2010, the Instructions for Use of Products of Consumer Interest—General Labeling of Cosmetics (GB5296.3-2008) and the requirement for complete ingredients labeling in Chinese will be officially implemented by China's General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ). This will help promote the adoption of international industry standards by China's cosmetics industry.

Thanks in part to the efforts of relevant industry associations and government departments, the PRC Advertising Law and the Measures for Administration of Cosmetic Advertising (Measures) are slated for amendment. The amended Advertising Law is expected to be promulgated in 2011 at the earliest, and the updated Measures will be released as early as possible, in line with the amended Advertising Law.

AmCham-China appreciates this development and looks forward to working with the State Administration of Industry and Commerce (SAIC) and other related government departments to implement the amended laws and improve current overlap and contradiction between laws and regulations.

In addition, since the State Food and Drug Administration (SFDA) officially assumed the supervision of cosmetics hygiene in September 2008, it has promulgated a series of policies to reinforce its supervision.

AmCham-China commends the SFDA for increasing its exchange with industry members and actively soliciting and responding to feedback.

Specific Issues

Outdated Regulations Concerning Hygiene Supervision of Cosmetics

The Regulations Concerning Hygiene Supervision of Cosmetics promulgated by the State Council in 1989 are the highest-level administrative cosmetics regulations. The drastic changes in China's economy and cosmetics industry since 1989, however, have not been matched by changes in the laws and regulations ruling cosmetics. The 1989 regulations leave China's cosmetics industry without a unified, coordinated and efficient system of cosmetics supervision that ensures product safety. Conversely, this lack of coordination hampers industry innovation and technological development.

We urge any amendment to the Regulations Concerning Hygiene Supervision of Cosmetics to address the lack of a government safety evaluation and warning system; the failure to differentiate between products in the regulatory process; the lack of coordination and confusion over jurisdiction between government regulatory departments; and the overemphasis on pre-production approval and lack of emphasis on post-commercialization supervision.

Product Registration

Domestic Special-Purpose Cosmetics

In an application for registration of domestic special-purpose cosmetics, the hygiene conditions of production enterprises need to be examined and verified by the provincial-level public health authorities, which typically requires a period of two months. However, like with hygiene licensing of production enterprises, after the provincial-level examination, the SFDA examination re-verifies the same information verified by the provincial authorities. The table below outlines the in-

化妆品

据 中国香料香精化妆品工业协会数据显示，尽管全球经济出现衰退，中国化妆品市场消费需求仍继续快速增长。据统计，2009 年中国化妆品产业销售总额达 1400 亿元人民币（约合 205 亿美元），较 2008 年增长 7.7%。2008 年进出口总额分别为 7 亿美元（约合 48 亿元人民币）和 13 亿美元（约合 89 亿元人民币），较 2007 年分别增长 49.9% 和 1.2%。

重大进展

2010 年 6 月 17 日，中国质量监督检验检疫总局正式执行《消费者使用说明——化妆品通用标签》（GB5296.3 - 2008）及要求化妆品行业提供全成分标识。这将有助于推动中国化妆品产业采纳国际行业标准。

在相关行业协会及政府部门的努力下，《中华人民共和国广告法》及《化妆品广告管理办法》计划将被修订。修订后的《广告法》最早有望于 2011 年颁布，与此法保持一致的最新措施也将尽早颁布。

中国美国商会对此表示赞赏，并期望与国家工商行政管理局及其他相关政府部门合作，执行修订法律，改善目前多重法规以及法规之间互相矛盾的现象。

此外，自 2008 年 9 月国家食品药品监督管理局正式接管化妆品卫生监督管理职责以来，已公布一系列政策对其加强监管。中国美国商会对国家食品药品监督管理局加强与业内人士交流并积极听取建议和意见的做法表示赞赏。

具体问题

《化妆品卫生监督条例》滞后

国务院颁布的《化妆品卫生监督条例》（1989 年）是目前最高级别的化妆品专业行政法规。1989 年至今，中国

经济及化妆品产业都发生了巨大变化，但化妆品法规和监管体系并未随之发生改变。《化妆品卫生监督条例》（1989 年）造成化妆品行业缺乏统一协调、确保产品安全有效的监督机制，并阻碍了行业创新及技术发展。

商会敦促中国政府修订《化妆品卫生监督条例》，以解决下列问题：安全性评估及预警机制缺乏；管理过程中未将产品加以区分；政府监管部门之间缺乏协调，管辖权混乱；监管部门重上市前审批，轻上市后监管。

产品注册

国产特殊用途化妆品

省级卫生监督机构受理审核生产家庭特殊用途化妆品企业卫生状况，申请注册时间通常需要 2 个月。然而，通过省级卫生监督机构审核后，国家食品药品监督管理局需再次审核已核实信息。下表为生产企业每次审核所备资料：

中国美国商会建议采取以下措施中的任意一项：（一）取消省级生产企业卫生条件审核；（二）允许对生产企业的卫生安全性试验与省级卫生监督部门的卫生条件审核同时进行。卫生条件审核时，产品配方、产品标签标识及说明书应免于审查；（三）将省级卫生监督部门生产企业卫生条件审核流程改为依据产品类别而非个别产品进行审核。

进口非特殊用途化妆品

目前，国产非特殊用途化妆品监管制度仅要求省级卫生监督机构进行上市后备案，而进口非特殊用途化妆品仍需国家食品药品监督管理局进行上市前备案。鉴于全球贸易及经济影响以及中国加入世贸组织承诺，中国美国商会建议通过简化或取消现行流程，取消进口非特殊用途化妆品上市前申请要求，对国产与进口化妆品实行统一监管制度。建议取消进口非特殊用途化妆品备案资料审核，转为由企业承担必要责任。

Information to be Examined and Verified	Application for Issue or Renewal of Hygiene License	Examination and Verification of Hygiene Conditions of Production Enterprises by Provincial-Level Public Health Authorities	SPDA Examination and Approval
Application Form	✓	✓	✓
Product Formula	N/A	✓	✓
Brief Description and Sketch Drawings of Production Process	✓	✓	✓
List of Production Equipment	✓	✓	✓
Product Labels & Instruction Book	N/A	✓	✓
Copy of Hygiene License	✓	✓	✓

formation required for each examination and approval.

AmCham-China therefore recommends either: (1) Canceling provincial-level examination and verification of the hygiene conditions of production enterprises; (2) allowing the hygiene safety test to be carried out simultaneously with the provincial-level public authorities' examination and verification of the hygiene conditions of production enterprises, and the omission of the product formula, product labels and instruction book from the latter; or (3) reformulating the provincial-level public health authorities' examination and verification of hygiene conditions of production enterprises as an examination and verification process based on product category rather than that for individual products.

Imported Non-Special Purpose Cosmetics

Currently, the supervision and regulation system for domestic non-special purpose cosmetics requires only post-commercialization filing by the provincial-level public health authorities. However, imported non-special purpose cosmetics still require pre-commercialization filing with the SFDA. Given trade and economic impacts and China's WTO commitments, AmCham-China recommends adopting a unified supervision and regulation system for both domestic and imported products by simplifying or canceling the current procedures and requirements for pre-commercialization filing for imported non-special purpose cosmetics. AmCham-China strongly recommends canceling the examination of filing information of imported non-special purpose cosmetics and shifting the responsibility to enterprises.

Increase Transparency of Review of Chinese Names of Products

Since the beginning of 2009, industry members have

encountered difficulties during the review of the Chinese names of products when launching new products or modifying or renewing approval documents. AmCham-China recommends the adoption of detailed and transparent rules for examination and verification processes, and specific implementation guidelines to ensure uniform enforcement.

Registration of New Chemical Substances

In the May 2009 draft Measures for Environmental Management of New Chemical Substances (Measures), the Ministry of Environmental Protection (MEP) further clarified the applicable laws and regulations for cosmetics. However, it holds cosmetics producers and domestic importers or distributors of raw materials responsible for registration of new chemical substances in the industry. Because of the large human, material and financial cost of such registration, many of these entities are unwilling to register new chemical substances.

In addition, because cosmetics producers are downstream customers of the raw materials and new chemicals producers and distributors, they are often unable to register new chemical substances used in cosmetics products correctly, particularly if imported. Therefore, cosmetics companies that can neither force producers or distributors to register new chemical substances, nor correctly register new substances themselves, are currently subject to punishment under the Measures.

To improve safety and regulations in the cosmetics industry, AmCham-China encourages the MEP to exempt cosmetics enterprises that are merely end-users of raw materials from being required to register new chemical substances and enhance compliance by raw materials producers, importers and distributors with registration requirements by reducing registration costs, speeding

待审核资料清单	卫生许可证申请或换证	省级卫生监督机构的生产企业卫生条件审核	国家食品药品监督管理局许可审批
申请表	✓	✓	✓
产品配方	N/A	✓	✓
生产工艺简述及简图	✓	✓	✓
生产设备清单	✓	✓	✓
产品标签及说明书	N/A	✓	✓
卫生许可证复印件	✓	✓	✓

增加产品中文名称审核透明度

2009年初在推出新产品或修改产品批准文件时，业内人士遇到中文名称审核难题。中国美国商会建议有关部门在审核过程中采纳详细透明的规程，实施具体准则以确保执法的统一性。

新化学物质注册

2009年5月，环境保护部在《新化学物质环境管理办法（修订）》（征求意见稿）中进一步明确化妆品行业适用法规。但该办法要求化妆品生产商与国内进口商或原材料经销商负责登记化妆品中使用的新化学物质。由于新化学物质登记需要耗费大量人力、物力及资金成本，许多化妆品企业不愿就此方面进行登记。

此外，作为原料与新化学物质生产商及经销商的下游客户，化妆品生产企业通常无法正确注册生产中使用的新化学物质，特别是进口化妆品。因此，化妆品企业目前正受到此管理办法的查处，因为企业既不能强迫生产商或经销商进行新化学物质登记，其自身也无法完成正确的登记工作。

为改善化妆品行业的安全性与法规，中国美国商会建议中国环境保护部豁免针对原料最终用户化妆品企业登记新化学物质的要求。通过降低登记所需费用、加快登记流程、加强已新登记原料的保护力度，从而鼓励原料生产商、进口商和经销商遵从相关法律。此外，商会敦促环境保护部修改《中国现有化学物质名录》，收录所有未包括在名录中但广泛使用的化妆品原料。

最后，由于化妆品新原料的定义不够明确，使得企业难

以遵从相关法律规定。中国美国商会建议进一步明确新原料认定范围，认定那些不在现有肯定列表中的防腐剂、着色剂、防晒剂和染发剂为新材料，并允许企业可以对其进行申报，使其获批后得以在化妆品中应用。

采用动物试验替代方法

目前，随着人们对动物福利的关注，以及快速发展的毒理学试验技术可达到具有同等水平的准确、便捷的试验方法，欧美国家已开始逐渐取缔化妆品及其原料的动物试验。

但是，中国仍要求所有已备案或注册的特殊用途化妆品及进口非特殊用途化妆品进行动物毒理实验，这严重阻碍了中国化妆品进出口贸易。商会敦促中国认可在安全风险评估报告中由国外实验室出具的按照已被验证的动物替代实验方法得出的实验结果及数据。

建立产品配方微小变更补正程序

对注册后配方发生微小变化但不影响安全性的产品，例如普通成分（非防腐剂、着色剂、防晒剂、染发剂和限用物质）含量在±10%之内的改变等，中国美国商会建议中国政府仅要求其进行简易的补正程序并保留原有批件的有效性。现行条例规定，如产品发生微小配方变化，必须作为全新产品通过重新检验及提交资料进行登记。此规定未能提高产品安全性，却增加了监管机构及化妆品生产企业的负担。

最后，中国美国商会建议取消现行产品批准文件有效期规定，因其缺乏足够科学依据。化妆品企业是否遵守行业法规应根据上市后监督机制进行验证，而非对延续许可做出要求。

the process and reinforcing the protection of newly registered raw materials. In addition, we urge the MEP to revise the Catalogue of Existing Chemical Substances in China to include all widely used cosmetics raw materials that are still not included in the Catalogue.

Lastly, the lack of clarity regarding the definition of new raw materials makes it difficult for companies to comply with relevant regulations. AmCham-China suggests further clarifying the definition of new raw materials and widening the scope to include certain preservatives, coloring agents, sunscreen agents and hair dyes, which are currently restricted. This would allow a process through which companies can apply to register these substances, thereby subjecting them to rigorous examination and approval, thus ensuring their safe usage in future cosmetics products.

Accept Alternatives to Animal Testing

Currently, European and American countries have gradually begun to outlaw animal testing of cosmetics and raw materials. Due to concerns over both animal welfare and the rapid development of toxicology test technology producing methods that can achieve comparable levels of accuracy, convenience and efficiency.

In China, however, animal testing is still required for all filed or registered special-purpose cosmetics and imported non-special purpose cosmetics, seriously impeding the import and export of cosmetics for China. AmCham-China urges China to recognize test results and data issued by foreign labs from alternative test methods in the safety risk evaluation report.

Establish Revision Procedure for Minor Formula Changes

For products with minor formula changes after registration or filing that do not affect safety, such as 10 percent more or less of a common ingredient (other than preservatives, colorants, sun-screening agents, hair colorants and restricted substances), AmCham-China encourages the government to require only a registration revision and maintaining the validity of originally approved documents. Current regulations require products with minor formula changes to be treated as entirely new products with regards to registration through re-inspection and re-submission of information. This does not enhance product safety, but does unnecessarily burden regulatory agencies and cosmetics producers.

Finally, AmCham-China recommends removing the validity period for product approval documents, as the existing validity period lacks scientific basis. Industry

compliance with regulations should be based on post-market supervision rather than requiring a renewal of approval.

Establishing a Cosmetics Safety Evaluation System

The unfortunate recent public safety incidents have highlighted the importance of shifting the focus of supervision and administration from “hygiene” to “safety.” As cosmetics are composed of many raw materials, the safety of finished products is based largely on the safety of their raw material components.

The Scientific Committee for Consumer Products in the EU and the Cosmetics Ingredient Review in the US emphasize the evaluation of raw materials in examining product safety. In China, however, there is no risk evaluation agency for cosmetics safety. Current supervision and administration place particular emphasis on the inspection and licensure of finished products without highlighting the fundamental factor of the products’ raw materials. We recommend that a cosmetics safety and risk evaluation system be established to create standards that strengthen the biological, chemical and physical evaluation of raw materials. This will promote safety throughout the entire cosmetics process from “raw materials to end user.”

Unclear and Contradicting Industry Standards

The formulation and enforcement of national standards for cosmetics is essential for the healthy and sustainable development of the cosmetics industry in China. Effective standards, however, are hindered by repetitive regulatory processes and unclear, contradictory product standards.

Currently, the Ministry of Health (MOH) and AQSIQ administer two different cosmetics standards. The MOH promulgated the new Standards for Cosmetics Hygiene in January 2007, while AQSIQ uses the 1987 Standards for Cosmetics Hygiene, or GB7916-87. The 1987 Standards have not been updated in over 20 years and include many provisions inconsistent with the present conditions of the cosmetics industry. Furthermore, it contradicts the 2007 MOH Standards for Cosmetics Hygiene in certain aspects, making it difficult for cosmetics enterprises to follow the conflicting production requirements. Unification of cosmetics hygiene standards will not only enable enterprises to comply better with government requirements, but also give the government a unified law enforcement standard.

AmCham-China is aware that a number of government departments in China are drafting versions of Cosmet-

《化妆品安全性评估体系》建立

最近不幸发生的公共安全事故突出了从“卫生”监督到“安全”监管的重大转变。化妆品由众多原料构成，其产品安全性很大程度上取决于其主要原料成分是否安全。

欧盟消费品科学委员会及美国化妆品成分审查委员会共同强调在进行产品安全性检测时必须包括原料评估，但中国并未设立化妆品风险评估机构。目前的监督管理部门特别强调对成品的检查及许可证颁发，并未强调产品原料的基本成分。商会建议建立化妆品安全及风险评估机制，以制定标准加强对原料生物、化学及物理方面的评估。这将提升化妆品从“原料到最终用户”整个过程的安全性。

行业标准模糊矛盾

化妆品国家标准的制定与执行对于中国化妆品行业的健康和可持续发展必不可少。然而，重复监管程序及模糊矛盾的产品标准阻碍了其有效标准的制定。

目前，卫生部及国家质量监督检验检疫总局实施两套不同化妆品标准。卫生部在 2007 年 1 月颁布《化妆品卫生规范》，而国家质检总局仍使用 1987 年发布的《化妆品卫生标准》，即国标 GB7916 - 87。由于 GB7916-87 已有二十多年未作更新，因此其中许多规定已不符合化妆品行业目前的发展状况。此外，该标准的许多规定与《化妆品卫生规范》2007 版相矛盾，化妆品企业无法按照相互矛盾的要求进行生产。统一化妆品卫生标准不仅能使企业明确了解政府的要求，也使得政府相关部门在执法时有统一的标准。

据中国美国商会了解，中国多个政府部门包括国家质检总局、卫生部及部分省级食品药品监督管理局正着手起草《化妆品良好生产规范》。为避免浪费行政资源重复制订标准，以及标准不统一导致的混乱，我们鼓励相关部门共同制订统一的《化妆品良好生产规范》。

多重管理

目前多个政府部门对化妆品的生产和销售及标签标识进行监管，导致重复许可、重复立法、重复监管、法规标准不一致、执法混乱等一系列问题。

中国美国商会呼吁有关政府机构明确职能，设立专门机构负责化妆品法律、法规及标准的管理工作，以减少多重管理。

生产企业的双重许可证制度

目前，中国要求化妆品生产企业遵守双重行政许可证制度。国家食品药品监督管理局根据现行《化妆品卫生监督条例》对化妆品生产企业实施卫生许可证制度，化妆品企业每两年申请复审，每四年申请换证。国家质检总局根据《中华人民共和国工业产品生产许可证管理条例》对化妆品生产企业实施生产许可证制度，化妆品企业必须每年申请复审及每五年申请换证。这两种生产许可的内容和要求基本相同，但为了获得审批，化妆品生产企业需要耗费大量的人力物力资源，必须经过省级和国家数级政府审核与批准。

我们欣喜地注意到，中国新《食品安全法》的颁布和实施取消了食品行业卫生及食品生产双重行政许可证制度。相对于食品，化妆品更为简单且安全风险较低。商会期待国家考虑对化妆品采用同样政策，实施单一许可制度，以节约政府行政资源，同时降低企业经营成本。

中国美国商会建议中国逐步取消现行行政许可制度，重新设立“化妆品生产企业质量管理规范”，由企业按照规范要求具体执行，并由省级政府机构对企业定期审核。

税务相关问题

企业所得税法

商会欣喜地获悉，中国美国商会 2009 年《白皮书》关于提高广告费和业务宣传费税前扣除比例的建议，在财政部（MOF）及国家税务总局（SAT）联合发布的《关于部分行业广告费和业务宣传费税前扣除政策的通知》（财税[2009] 72 号文件）中有所体现。这些政策，包括将广告费和业务宣传费税前扣除比例提高至年销售额 30%，反映了政府的支持，并将对中国化妆品行业进一步发展发挥积极作用。

然而，如本文所述，仅化妆品生产企业享受该比例的税前扣除政策。目前，大多数化妆品企业都采取生产与销售分开的经营模式，广告和业务宣传费用主要属于销售公司范畴，这就限制了新广告政策的预期影响力。因此，中国美国商会建议实施财税[2009] 72 号文的政策，使得只要销售母公司生产化妆品的企业，无论产品产自是国内还是国外，均可适用 30% 的税前扣除比例。

ics Good Manufacturing Practices (GMP), including AQSIQ, MOH and some provincial-level food and drug administrations. To avoid wasting administrative resources on the formulation of repetitive standards that cause confusion, we encourage relevant departments to jointly establish a unified Cosmetics GMP.

Overlapping Regulatory Supervision and Administration

Currently, multiple government departments supervise and administer cosmetics production, sales and labeling. The result has been a series of problems, such as redundancy in licensing, legislation and supervision, inconsistency of regulations and standards, and uncoordinated enforcement.

AmCham-China strongly urges relevant government agencies to clarify their respective duties, leaving one department responsible for the administration of cosmetics laws, regulations and standards to reduce administrative redundancy.

Double Licensing Requirement for Cosmetics Producers

At present, China requires a double licensing process for cosmetics producers. According to the current Regulations Concerning Hygiene Supervision of Cosmetics, the SFDA oversees a hygiene license system for cosmetics companies, which must apply for a review of the license every two years and for the renewal of the license every four years. In accordance with the PRC Regulations on the Administration of Production License for Industrial Products, the AQSIQ concurrently oversees licensing for cosmetics producers, which must apply for an annual review of the license and renewal of the license every five years. The licenses issued by SFDA and AQSIQ are essentially identical in content and requirements, but to obtain them cosmetics producers need to expend significant human and material resources and must undergo several layers of examination and approval by provincial and central governments.

We are very pleased to note that the promulgation and implementation of China's new Food Safety Law has eliminated a similar system of double administrative licenses for hygiene and production in the food industry. Compared with food, cosmetics are simpler and the safety risks are lower. We encourage China to streamline and unify administrative licensing policy for cosmetics companies as soon as possible to reduce the administrative burden and costs on regulatory agencies and industry.

AmCham-China recommends China phase out the existing administrative licensing system and reformulate it as the Standards for Quality Administration of Cosmetics Production Enterprises, specifying the requirements for cosmetics producers and incorporating a system of regular examination by provincial government agencies.

Tax-Related Issues

Enterprise Income Tax

We are pleased that the suggestions put forth in the AmCham-China 2009 *White Paper* to increase the pre-tax deductible amount for advertising and publicity expenses were represented in the Notice on the Policy for Pre-Tax Deduction of Advertising Fees and Business Publicity Expenses for Some Industries (Cai Shui [2009] No. 72 Document), jointly issued by the Ministry of Finance (MOF) and the State Administration of Taxes (SAT). These policies, which increased the pre-tax deductible amount to 30 percent of advertising and publicity expenses, reflect the government's support and will play an active positive role in the further development of the Chinese cosmetics industry.

However, as currently written, only cosmetics producers enjoy the increased pre-tax deductible. Currently, the majority of cosmetics companies separate their production and distribution processes into separate enterprises, with advertising and publicity expenses under the distribution enterprise. This limits the intended impact of the new advertising policy. Therefore, AmCham-China recommends the Cai Shui [2009] No. 72 be enforced so that as long as a cosmetics company sells the cosmetics of its parent company regardless of their origins, the 30 percent pre-tax deductible is applicable.

Consumption Tax on Beauty and Makeup Products

Due to the Chinese tax and tariff system for cosmetics, retail prices are significantly higher than in other markets, often by as much as 30 percent. Increasing numbers of Chinese citizens are going abroad for travel and to purchase cosmetics overseas in competing markets, causing the Chinese government to lose significant value-added tax income. The industry is particularly concerned about the 30 percent consumption tax on beauty and makeup products, including cosmetics and perfume products. Beauty and makeup products have become standard in the lives of many Chinese, so classifying such products as "luxury" greatly restricts development of such products and places a heavy economic burden on the growth of the industry and on consumers.

美容、修饰类化妆品消费税

中国对化妆品实行税收和关税制度使得中国市场化化妆品零售价格远远高于其他市场，差距高达 30%。越来越多的中国公民去境外旅行并在海外购买化妆品，相当一部分购买力从中国市场流失到了竞争市场，中国政府也相应损失了一大笔增值税收入。业界特别关注对美容及修饰类产品，包括化妆品和香水产品征收 30% 的消费税。鉴于化妆品已成为中国消费者的日用产品，因此将化妆品列为“奢侈品”将大大限制此类产品开发，并对整个行业发展和消费者造成沉重经济负担。

化妆品广告管理法规

中国美国商会高度赞赏相关行业协会及政府部门修改旨在消除歧义、规范化妆品行业标准的《中华人民共和国广告法》（1995 年）及《化妆品广告法管理办法》（1993 年）所付出的努力。目前涉及化妆品广告的法律规范执法层面的不一致性仍然给行业造成很大困扰。中国美国商会建议中国政府可以明确将修改后的《广告法》和《化妆品广告管理办法》定义为化妆品广告管理执法的唯一依据，以更好、更明确地指导企业的广告行为，并成为规范各级执法者的指导原则。

建议

- 修改《化妆品卫生监督条例》（1989 年），以解决下列问题：安全性评估及预警制度缺乏；管理过程中未将产品加以区分；政府监管部门之间缺乏协调，管辖权混乱；监管部门重上市前审批，轻上市后监管；
- 简化或取消现行流程及进口非特殊用途化妆品上市前申请要求，对国产与进口产品采取统一监管制度；
- 已接受备案信息仅采用书面审核程序：如接受申请信息，应在 5 个工作日时间提供申请编号。如拒绝，须提供额外必要书面手续及相关时限通知；
- 为与《食品安全法》保持一致，联合多家专业标准化委员会建立科学统一安全标准体系，并确保由单一政府专门部门或标准化委员会制定及修订相关标准；
- 将产品注册程序标准化，公布标准以确保其公开性和透明度，以及建立在科学评估基础之上；

- 确保强制性标准仅适用于原料和产品安全性；
- 加强标准体系的扁平化，多制定通用型标准，减少制定针对单独产品的垂直型标准；
- 制定禁用物质和安全剂量水平检测方法标准的同时，应考虑产品中禁用成分自然残留水平（即本底）；
- 制定化妆品安全信息统一发布制度，包括国家化妆品安全性一般情况信息，风险预警信息，以及化妆品安全事故及其处理信息；
- 通过采取以下建议中的一项，以简化进口特殊用途化妆品注册流程：或取消化妆品生产企业卫生条件省级审核；允许国家食品药品监督管理局与省级卫生监管机构对化妆品生产企业同时进行卫生条件安全审核；或基于产品类别，而非个别产品重新制定省级卫生监管机构卫生条件审核流程；
- 执行具有详细透明规则的审核流程，采取具体实施准则以确保其统一执行；
- 审查与产品安全性无关的非技术问题时应充分考虑化妆品行业产品名称审核及批准方面的特性；
- 考虑化妆品生产商及管理者的保持产品名称一致性的重要性。除非对消费者造成的可能损害，否则允许继续保留被广泛认可的产品名称。

Laws and Regulations for Administration of Cosmetics Advertising

AmCham-China greatly appreciates the efforts of the relevant industry associations and government departments on amending the 1995 PRC Advertising Law and the Measures for Administration of Cosmetic Advertising (1993) in an effort to eliminate ambiguity and standardize advertising practices in the cosmetics industry. Currently, inconsistency in the enforcement of laws and regulations concerning cosmetics advertising is still greatly confusing to the industry. AmCham-China encourages the Chinese government to clarify explicitly that the amended Advertising Law and the Measures for Administration of Cosmetics Advertising are the sole basis governing cosmetics advertising to enhance compliance by industry and ensure uniform enforcement by regulatory agencies at all levels.

Recommendations

- **Amend the 1989 Regulations Concerning Hygiene Supervision of Cosmetics to address the lack of safety evaluation and information pre-warning systems, the failure to differentiate between products in the regulatory process, the lack of coordination and confusion over jurisdiction between government regulatory departments, and the over-emphasis on pre-production approval and lack of emphasis on post-commercialization supervision.**
- Adopt a unified supervision and regulation system for both domestic and imported products by simplifying or canceling the current procedures and requirements for pre-commercialization filing for imported non-special purpose cosmetics.
- Adopt only a formality examination and verification process for received filing information. If information is accepted, grant the filing number within five working days. If not accepted, provide notice on necessary additional formalities and related time limits.
- In line with the spirit of the Food Safety Law, integrate the multiple professional standardization committees to establish a scientific and unified safety standards system, and ensure that standards are formulated and amended by a single government department or standardization committee.
- Standardize the procedures for products registration and publish standards to ensure that they are open, transparent and based on scientific assessments.
- Ensure that mandatory standards only focus on the safety of raw materials and products.
- Strengthen the flat standards system by adopting more universal standards and reducing the formulation of vertical standards that target individual products.
- When setting standards for the methods used to test for banned substances and safe-dosage levels, consider current research on the levels of natural residues (e.g., background residues) of banned ingredients in products.
- Develop a unified system for the release of cosmetics safety information, including information on general conditions of national cosmetic safety, risk warning information, and information on cosmetics safety accidents and their handling.
- Streamline the registration process for imported special-purpose cosmetics to either cancel provincial-level examination and verification of the hygiene conditions of production enterprises; allow the SFDA's hygiene safety test to be carried out simultaneously with the provincial-level public authorities' examination and verification of the hygiene conditions of production enterprises; or reformulate the provincial-level public health authorities' examination and verification process to be based on product category rather than individual products.
- Adopt detailed and transparent rules for examination and verification processes, and specific implementation guidelines to ensure uniform enforcement.
- When reviewing non-technical aspects of products unrelated to product safety, fully consider the unique characteristics of the cosmetics industry in reviewing and approving product names.
- Consider the importance of maintaining consistent product names for cosmetics producers and regulators. Allow names that have already been widely approved, unless there is potential harm to the consumer.



Direct Sales

The Chinese government has largely complied with its WTO obligations of passing regulations and opening its direct selling market. We applaud the progress, but note that many issues remain unresolved. Fixing these areas would allow room for healthy and vibrant industry development. AmCham-China remains enthusiastic about China's market prospects despite challenges and encourages the government to continue to modify its regulations to maximize direct selling industry benefits for Chinese consumers.

Significant Developments

In 2005, China's State Council issued the Direct Selling Administration Regulations (Regulations) and the Ministry of Commerce (MOFCOM) began approving license applications the following year. In 2007, direct selling operations in China officially began and today, of the 24 licensed direct selling companies, approximately three-quarters are actively conducting direct selling operations, with the rest remaining inactive. As of the end of November 2009, 12 companies were waiting for application approval. Many companies with neither direct selling licenses nor pending applications nonetheless actively run some form of direct selling, albeit under a different name. AmCham-China commends the Chinese government's efforts to improve the direct selling industry environment and to eliminate fraudulent scams.

Having operated in China's budding direct selling market for a few years, AmCham-China member companies have acquired a deep understanding of China's unique market circumstances, and have adapted their operations to suit market conditions. However, an efficient and constructive regulatory framework—one which is most effective for the regulators, the industry and the public—remains to be established. Furthermore, because companies vary in size and experience, we encourage sufficient flexibility in regulations to accommodate the diversified needs of all players.

Specific Issues

Licensing Process

Understandably, the Chinese government often uses the licensing process and geographical restrictions to control the direct sales industry's growth. However, such controls unnecessarily burden companies looking to comply with regulations, while allowing companies that ignore the law to thrive illegitimately. Such consequences have created endless challenges for the authorities. While the Regulations indicate that the approval process takes 90 days, many companies continue waiting more than 18 months for approval with little clarity on timing or the issues affecting the process. Even after authorization, companies face the further obstacle of needing to establish service centers and secure local government approval before beginning operations.

Service Center Establishment

Service center requirements continue to be a significant challenge. Current law specifies that a direct selling company must have a branch office in every province in which it operates, and a "service center" in each urban district in which it sells products. The latter stipulation requires a company to set up 2,861 service centers to cover all of China's urban districts. AmCham-China believes this is unnecessarily burdensome for companies. The stringency of these geographical restrictions makes it nearly impossible for companies to ensure full legal compliance. To abide by the geographical direct selling license restrictions, companies must simultaneously adopt two different business models: one to meet the requirements of direct sales and the other for non-direct sales.

AmCham-China urges the Chinese government to simplify the service center approval and establishment process. Service center expansion decisions should be left to individual companies on the basis of their development needs.

Specifically, AmCham-China asks the government to

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中国政府已基本履行了其加入世贸组织时对直销行业的相关承诺：即颁布直销法规、开放国内直销市场，对此我们表示赞赏。但同时也注意到仍有许多问题尚待解决，而解决这类问题将更有助于促进健康积极的行业发展。尽管面临挑战，中国美国商会仍对中国的市场前景充满信心，鼓励中国政府对现行法规做出适当调整，让中国消费者能在最大程度上享受直销行业所带来的益处。

重大进展

2005 年，中国国务院颁布了《直销管理条例》（以下简称《条例》）。次年，商务部开始启动许可申请审批。2007 年，中国的直销产业正式拉开序幕。目前国内已有 24 家获得许可的直销企业，其中约有四分之三的企业正在积极开展直销业务，其余数家尚待开展。截至 2009 年 11 月末，有 12 家企业的申请尚在审批中。然而，有许多未持有直销许可或未提出申请的企业，也在以不同的名由开展某些形式的直销经营活动。中国美国商会对于中国政府为改善直销行业环境、打击欺诈等违法行为所做出的努力表示由衷的赞赏。

在中国这一新兴的直销市场，通过近年来的运营，中国美国商会直销行业的会员公司对中国特有的市场环境有了深入理解，并为适应市场环境而对其运营方式进行了调整。然而，一套高效且具有建设性，并且对于监管机构、直销行业及公众都具有效力的法规框架仍有待建立。此外，因为各企业的规模与经验各不相同，我们希望此类法规具有足够的灵活性，以满足所有直销企业的多样化需求。

具体问题

许可程序

我们对于中国政府通过许可程序及地域限制来管理直销行业发展的做法表示理解。然而，此类措施为那些遵纪守法

的企业带来了不必要的负担，却让那些无视法律的经营者得以大行其道。这种局面也使监管机构面临持续的挑战。尽管根据《条例》规定，审批程序需要 90 天时间，但许多企业却在长达 18 个月的等待之后仍未获得审批，而且尚不明确审批进度和影响审批进程的原因。即便在通过审批之后，企业仍要面临设立服务网点并需要在开始营业之前获得地方政府批准的困难。

设立服务网点

有关设立服务网点的规定仍是企业所面临的巨大挑战。现行法律规定，直销企业必须在其营业的各个省份设立一个分公司，并且在其销售产品的每个市区设立一个“服务网点”。根据后一条规定，一家营业范围覆盖中国全部市区的企业必须设立 2,861 个服务网点。中国美国商会认为这种规定给各企业带来了不必要的负担，且地域限制几乎不可能使各企业完全符合直销的法律规定。为应对直销许可规定的地域限制，企业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。

中国美国商会敦请中国政府简化服务网点审批与设立程序。服务网点范围是否需要扩大应由各企业根据其发展需要自行决定。

中国美国商会尤其希望中国政府考虑对服务网点审批程序进行两大调整。首先，各省市所需的服务网点数量应根据企业的市场需求决定。因此，各市区服务网点的规定——在该城市开展直销业务的先决条件，应减至每个城市只设立一个服务网点。其次，应简化现有的审批程序。现有审批程序要求申请直销许可的企业，应首先向商务部提交一份服务网点设立计划，而此前需获得区级、市级和省级相应机构的批准，方能在商务部审批通过。获得许可后，企业根据已获准的服务网点设立计划设立服务网点，并再一次取得区级、市级和省级相应机构的批准，才能在市区范围开展直销业务。

consider making two key adjustments to its service center approval process. First, the number of service centers required in any province or city should be dependent on a company's market-driven needs. Thus, the requirement for service centers in each district as a pre-condition to starting city-specific direct selling operations should be reduced to one service center per city. Second, the current approval process requires a company to submit a service center establishment plan (SCEP) to MOFCOM after first receiving district, city and provincial-level approvals when applying for the direct selling license. Once granted, the company must set up the service center according to the approved SCEP and obtain district, city and provincial-level approvals again before beginning direct selling operations in that city district. In time, cost, complexity and work, this process is overly arduous. AmCham-China urges MOFCOM to:

- Revise the service center requirement from one per district to one per city;
- Delegate the SCEP approval authority to the provincial level only;
- And eliminate the requirement for actual service center approval prior to beginning business, while changing to a reporting system for service center opening and relocation.

Compensation Restrictions

Current compensation regulations stipulate that direct sellers can only be compensated based on personal sales and only up to 30 percent of personal sales volume. This cap applies to all types of compensation, including commissions, bonuses and other economic benefits. This effectively removes all incentive for career development as a direct seller, and inhibits companies from motivating their sales representatives through traditional means. Such restrictions also put direct selling companies in China at a great disadvantage relative to businesses using other distribution channels, such as retail and insurance.

Furthermore, such restrictions are inconsistent with worldwide practices. Globally, governments recognize that direct selling companies rely on experienced sales people for marketing services and mentoring services for new direct sellers. Therefore, they allow direct selling companies to compensate their sales people for such activities. The UN's Consumer Product Code has an internationally accepted definition of direct selling, under which salespeople may earn compensation from the sales of both products and services. Even South Korea, the only country other than China that limits income received by direct selling agents, limits the percentage of company, not personal, sales. This provides

the opportunity for greater economic reward and companies greater means to motivate their sales forces.

Limited Permissible Product Categories

The Regulations limit direct sales companies to products from five categories: cosmetics, dietary supplements, cleaning products, health exercise equipment and small kitchenware. Relaxation of China's restrictions of product categories, in line with international best practices, would benefit the country's manufacturing and direct selling industry's development and give consumers access to a wider array of products and value propositions. Worldwide practices only limit restricted goods (i.e., firearms and prescription drugs), perishable goods (i.e., foods and fresh produce), goods whose value cannot be determined by the average consumer immediately (i.e., gemstones, investment packages) and bulk commodities (i.e., metals) from direct selling.

The Regulations also require MOFCOM approval for expansion within an approved product category. This is a burden to both product development and marketing, both vital factors to company's success. We urge MOFCOM to change this approval requirement to a reporting system whereby a company is only required to keep the government informed of product additions within the category.

Direct Selling Association

AmCham-China supports the establishment of a Direct Selling Industry Association in China recognized by the Chinese government to help facilitate industry self-regulation and the healthy and vibrant development of the industry.

National Treatment Issues

The Regulations still require foreign-invested companies to have at least three years of direct selling experience in other markets before applying for a license in China. As there is no similar restriction for domestic companies, AmCham-China is concerned that this regulation runs counter to China's "national treatment" obligations under its WTO accession agreement and urges relevant authorities to remove the requirement.

Recommendations

- **Revise service center requirements from one per district to one per city; delegate the SCEP approval authority to the provincial**

这套程序要求的时间长、成本高、过程复杂且工作量繁重。中国美国商会期望商务部能够：

- 将服务网点设立数量由每个市区设立一个改为每座城市设立一个；
- 将服务网点设立计划的审批机构级别仅限于省级；
- 以及取消在开始营业前必须通过服务网点实际审核的规定，改为建立一套关于服务网点开设与迁移的报告体系。

报酬限制

根据现行的报酬规定，直销员仅可根据其个人销售业绩取得报酬，且最多不超过个人销售额的 30%。该上限适用于所有类型的报酬，包括佣金、奖金及其他经济利益。这严重打击了直销人员职业发展的积极性，并为企业通过传统方式激励其销售代表造成了妨碍。此类规定还使中国的直销企业与其它零售和保险业比较时处于劣势。

此外，此类规定也不符合国际通用做法。国际上，各国政府均认可直销企业通过经验丰富的直销员提供营销支持服务，并为新加入的直销员提供指导的做法。因此，各国政府均允许直销企业对其销售人员的这类行为给予报酬。联合国《消费品法典》中有国际公认的直销定义，根据该定义，直销人员可根据其所售产品和提供的服务获得报酬。即使在韩国——除中国外限制直销人员收入的唯一国家——也仅是限制企业而非个人销售额的百分比。这意味着个人可以有机会获取更高额的经济奖励，企业也能够获得更多激励直销人员的途径。

有限的获准产品类别

《条例》将直销企业的产品范围限制为五大类别：化妆品、食品补充剂、清洁产品、健身器材以及小型厨具。中国若能根据国际惯例放宽产品种类限制，将有利于中国制造业和直销行业的发展，并为消费者提供更多种类的产品以及更多的价值建议。依据国际惯例，仅受限商品（如枪支和处方药）、易腐商品（如食品和新鲜农产品）、价值无法立即由普通消费者判定的商品（如宝石和投资产品）以及大宗商品（如金属）不能采用直销形式。

《条例》还要求在获准目录内增加产品类别时，需获得商务部批准。这对于产品的开发和推广——这两大企业成功要素造成障碍。我们促请商务部修改此项规定，采用一套报

告体系，使企业仅需在同类别下新增产品时向政府部门报备即可。

直销协会

中国美国商会支持在中国建立一个经政府认可的直销行业协会，以便促进行业自律和健康发展。

国民待遇问题

《条例》还规定外资企业必须在其他市场拥有至少三年的直销行业经验，方可在中国申请许可。由于对内资企业尚无类似限制，中国美国商会认为该规定有悖于中国入世协议中的“国民待遇”义务，并呼吁有关机构废除这项规定。

建议

- 将有关服务网点设立规定从每市区一个降至每座城市一个，并将审批权限下放到省级。将审批过程简化，只需对设立计划进行审批，并建立一套有关建立及开设服务网点的报备体系。允许企业在获得许可之后，即可通过服务网点报备制度在获批的省/市内进行直销经营。
- 审核并修订直销法规，使之符合中国的入世承诺和标准国际惯例。
- 废除或减少对报酬体系的限制，例如允许直销人员就销售和营销支持服务获得报酬。
- 放宽产品类别限制，使中国法规与国际惯例接轨，并简化获准类别中新增产品的审批过程。
- 取消外资企业在中国以外地区拥有三年直销经验的规定，促进从事直销业务的外资和内资企业享有同等非歧视性待遇。

level; and simplify the approval process to only require SCEP approval, while changing to a reporting system for service center set up and opening. Only allow companies to operate direct selling in an approved province or city with a service center reporting system once the company license is granted.

- Review and revise direct selling regulations to bring them in line with China's commitments and standard international practices.
- Eliminate or reduce restrictions on compensation such as allowing direct sellers to receive remuneration for sales and marketing support services.
- Relax restrictions on product categories to bring China's regulations in line with international practices and simplify the process of adding products within the approved categories.
- Remove the requirement that foreign-invested companies have three years' direct selling experience outside of China and promote non-discriminatory, equal treatment of foreign and domestic companies in the direct selling business.



Financial Services

Introduction

In the wake of the global financial crisis, China's financial sector has demonstrated its resilience with strong credit growth and earnings performance by its listed banks throughout 2009 and into 2010. We credit China's regulators and central bankers for keeping the system relatively liquid and solvent, and an engine of growth in China. More recently, moves by the authorities to introduce financial derivatives, margin lending, RMB trade settlement with Hong Kong and Southeast Asia, and to rein in credit growth are welcomed by the market as both prudent and forward-thinking measures.

AmCham-China welcomes the commitment from both the US and Chinese governments to cooperate more fully on financial services-related issues. The responsible parties from both governments have a keen interest in ensuring that effective, uniform, transparent and efficient regulation of financial services companies in both markets proceeds apace, and AmCham-China pledges to support those efforts wherever possible.

Nevertheless, the massive expansion of credit from the banking system in China raises concerns about future levels of non-performing loans (NPL), and the medium-term stability of both the financial system and China's overall economic recovery. At the same time, foreign financial institutions remain concerned about certain aspects of China's regulatory environment. Indeed, more than three years after the completion of China's WTO accession phase-in period, foreign financial institutions—even those locally incorporated in China—have yet to find an even playing field for their products, investments and financing channels.

Commercial Banking

Foreign banking and securities institutions remain unable to realize their full potential in product development and rollout. Rules against locally-incorporated foreign banks, long waiting periods for RMB and other licenses, and the need for approvals from multiple reg-

ulators are contributing factors. We urge the Chinese authorities to address the issues below expeditiously, following consultation with industry and others.

Developing and Selling Innovative Financial Products

Since 2006, the interest rate swap business has developed rapidly in China. According to relevant regulations, only a small number of financial institutions designated as bond market makers or settlement agents that have been active in the interest rate swaps (IRS) market can conduct these transactions directly with non-financial institution customers. Therefore, the major IRS counterparties of banks are still inter-bank market participants. Many non-financial institution customers need to hedge interest rate risk, but the majority of banks cannot provide them with the relevant products and services.

AmCham-China urges the China Bank Regulatory Commission (CBRC) and other relevant regulators to relax these restrictions on designating financial institutions as market makers to improve the efficiency of hedging interest rate risk for non-financial institution customers and the efficiency of the IRS market. We also recommend issuance of clear and specific operational measures for RMB credit derivatives as early as possible to promote the development of China's derivatives market.

Administrative Guidelines for Underwriting Debt Facilities

Since December 2008, foreign banks have been permitted to participate in inter-bank trading and underwriting of the debts of non-financial enterprises. However, to date, the authorities have yet to issue detailed implementation rules for the underwriting of debt financing facilities of non-financial enterprises by foreign banks. Foreign banks' participation in domestic debt markets will promote fixed-income product innovation and enhance financing channels for domestic enterprises to expand. AmCham-China therefore recommends that

金融服务

综述

继全球金融危机爆发以来，在 2009 年以及 2010 年之初，中国金融行业以强劲的信贷增长势头和上市银行出色的盈利表现展现了其强大的应变能力。我们认为在维持金融系统流动性和相对良好的偿付能力的过程中，中国的监管部门和央行官员功不可没，他们为中国经济的发展创造了巨大的动力。近来，中国政府在引入金融衍生品、发展贷款、与香港和东南亚之间的人民币跨境贸易结算以及控制信贷增长速度方面，其审慎而高瞻远瞩的举措受到市场的广泛欢迎。

中美政府承诺将在金融服务相关问题上展开更加全面的合作，对此中国美国商会表示欢迎。中美双方有关部门对如何快速推进对两国金融服务公司有效、统一、透明的监管予以了极大的关注，而中国美国商会必将尽可能对此给予大力支持。

然而，中国银行系统信贷规模的急剧膨胀引起了人们对未来不良贷款水平以及金融系统，乃至中国整体经济复苏的中期稳定性的担忧。同时，外资金融机构仍然对中国监管环境的某些问题存有疑虑。的确，在中国入世过渡期结束后三年多来，外资金金融机构——即便是那些在华设立法人实体的外资金金融机构——仍然未能为其产品、投资和融资渠道找到公平竞争的平台。

商业银行

外资银行和证券公司仍然无法在产品开发和推向市场方面充分发挥其潜力。针对在华外资法人银行的规定、人民币及其他业务许可较长的审批时间，以及需要获得多个监管部门批文的要求是造成这一局面的原因。我们促请中国有关主管部门会同业界及其他方面，迅速解决以下阐述的各项问题。

开发与销售创新金融产品

自 2006 年以来，中国利率掉期交易得到了迅猛发展。依据相关规定，仅有少数经认定作为债券做市商的金融机构或是在利率掉期交易市场具备经验的结算代理方可与非金融机构客户直接开展此类交易。因此，银行的主要利率掉期交易对手方仍然是银行间市场参与者。许多非金融机构客户需要对冲利率风险，但大多数银行却无法为他们提供相应的产品和服务。

中国美国商会促请中国银行业监督管理委员会（以下简称“中国银监会”）及其他有关监管部门放宽这些对批准金融机构作为做市商的限制，从而帮助非金融机构客户更有效地对冲利率风险，并提高利率掉期交易市场的效率。同时，我们也建议尽快针对人民币信用衍生品出台明确的操作规定，以促进中国衍生品市场的发展。

债券工具承销管理规定

自 2008 年 12 月以来，外资银行已获准为非金融企业在银行间市场交易和承销债券。但迄今为止，有关部门仍未就外资银行对非金融企业的债券融资工具的承销出台具体的实施细则。外资银行参与国内债券市场将推动固定收益产品的创新，并为国内企业增强融资渠道，帮助他们拓展业务。因此，中国美国商会建议中国人民银行允许外资银行为非金融企业承销融资工具，并尽快出台相关的管理规定。

销售共同基金

向外资银行开放国内基金代销市场可有助于培养本地投资者的财富管理经验。外资银行拥有完善、成熟、久经考验的基金选择与配置、投资组合分析与管理以及投资者教育培训机制。如果能够进入中国市场，国内银行不仅能够借鉴外国在基金代销与财富管理方面的经验与专长，还能够促进中

the People's Bank of China (PBOC) allow foreign banks to underwrite financing facilities for non-financial enterprises and also issue the relevant administrative guidelines as soon as possible.

Selling Mutual Funds

Opening the agency sales of domestic funds to wholly foreign-owned banks can play a role in stimulating the development of the wealth management experience of local investors. Foreign banks have complete, mature, market-proven systems for the selection and configuration of funds, portfolio analysis and management, and investor education. If introduced into China, this experience will not only serve as a good source of reference for the agency sales of funds and wealth management by Chinese banks, but will also promote product innovation by China's domestic funds industry. Therefore, AmCham-China urges CSRC to clarify application requirements and procedures as soon as possible so that foreign-funded legal-person banks can participate in the direct distribution of domestic mutual funds.

Non-Bank Financial Institutions

Non-bank financial institutions (NBFI) remain an underdeveloped segment of China's financial system. Compared with other financial markets, there is great potential for the development of NBFIs in China. However, the policy framework continues to lag, making the operation of NBFIs difficult.

We urge the regulators to work to expand the range of product and financing options available to NBFIs—and allow foreign players to compete on an even footing with domestic ones—to improve access to alternative sources of financing for Chinese consumers, small and medium-sized enterprises (SME) and large businesses. In particular, AmCham-China recommends the following improvements:

Bank Cards

Expedite comments process on bank regulation drafts; allow NBFIs to issue bank cards

Although banking regulations allow locally registered commercial banks to issue bank cards, NBFIs are excluded. Furthermore, most institutions continue to await the promulgation of new bankcard regulations, which are needed to outline the modalities for credit and debit card issuance and clearing/settlement. We recommend that CBRC expedite the process of seeking comments on draft versions of these regulations from industry participants, including global card issuers. As part of the broadening of choice and competition with-

in the market, NBFIs should be allowed to issue cards and perform settlement operations related to cards.

End China UnionPay's monopoly on clearing and settlement of card transactions

A competitive market-based system for transactions clearing will help Chinese consumers, SMEs and the overall Chinese economy. A strong and competitive payments market that includes multiple participants will help to meet several objectives in China's strategic blueprint, particularly the development of a consumer led and driven economy. A competitive payments market would provide choices for, and improve services to, consumers through the development of innovative products and better quality services, as well as through lower fees for services.

Such a market would also benefit domestic Chinese payments networks by spurring innovation and product development for payment service providers. Continued innovation is necessary for domestic payments networks as they expand beyond China's borders and seek to compete in the global market as international payments providers. Eliminating a monopoly in the electronic payments industry would also offer greater protection against systems failures and risks to China's financial industry and would make the Chinese payments industry more robust and secure.

Many Chinese banks are already members of global payments processing networks. Providing these banks with effective choices in electronic payments networks would give them leverage to influence the types and costs of services offered by global payments providers, making them competitive in the international market. Allowing a payments industry with multiple players to flourish will assist in building China's merchant acceptance infrastructure, which is crucial to the development of China's electronic payment and retail industries. No single payments network can do this alone in any market, particularly one as vast as China. A more extensive merchant acceptance infrastructure will enable banks in China to grow their business in the electronic payments sector and will make electronic payments a more viable option for consumers in China. In particular, we recommend that the PBOC encourage the widespread installation and development of card machines and other equipment from competing brands to boost consumer spending across China.

Leasing

Leasing remains an underdeveloped area of financial intermediation in China. While many developed countries enjoy leasing penetration rates of over 20 percent,

国国内基金业的产品创新。因此，中国美国商会促请中国证监会尽快明确申请要求与程序，以便外资法人银行可参与国内共同基金的直接分销。

非银行金融机构

非银行金融机构仍然是中国金融系统中有欠完善的部分。与其他金融市场相比，中国非银行金融机构有着巨大的发展潜力。但政策框架仍然有所滞后，使得非银行金融机构难以有效开展业务。

我们促请监管部门扩大非银行金融机构的产品范围和融资选择，并允许外资机构与中国国内机构公平竞争，从而使中国消费者、中小企业以及大型企业能够更好地通过其他可行渠道进行融资。具体而言，中国美国商会建议在以下方面做出改进：

银行卡

加快银行法规草案的征求意见程序：允许非银行金融机构发行银行卡

尽管银行业法规允许本地注册的商业银行发行银行卡，但是却不包括非银行金融机构。此外，大多数机构仍然在等待新银行卡法规的出台。这些法规需要阐明信用卡和借记卡发行及清算/结算的形式。我们建议中国银监会加快就相关法规草案向业界参与者（包括全球发卡机构）征求意见的程序。为了进一步丰富市场选择，促进市场竞争，应当允许非银行金融机构发行银行卡并开展相关结算业务。

终止中国银联在卡业务的清算和结算方面的垄断

以市场为基础的业务清算竞争体系无论对于中国消费者、中小企业乃至整体经济都有所裨益。面向各种参与者开放的强大的竞争性支付市场将有助于实现中国一些战略蓝图目标，尤其是促进以消费为主导的经济的发展。竞争性支付市场会通过创新产品的开发和更优质的服务，以及更加低廉的服务收费为消费者带来更为丰富的选择，并改善服务质量。

这样一种市场也会推动支付服务供应商的创新与产品开发，从而令中国国内支付网络从中受益。随着中国国内支付网络跨出国门，以国际支付服务供应商的身份参与全球市场的竞争，持续创新便是必不可少的条件。消除电子支付行业的垄断局面也将为中国金融业提供更好的保护，使其免受系

统故障和市场风险的影响，同时也令中国支付行业更加健全，更加可靠。

许多中国国内银行已经加入了全球支付处理网络。为这些银行提供有效的电子支付网络选择将使他们有能力影响全球支付服务供应商所提供的服务类型与成本，提高其在国际市场中的竞争力。面向多种参与者开放支付市场、实现共创繁荣将有助于构建中国的商户受理架构，这对中国电子支付与零售行业的发展有着至关重要的作用。无论在哪一个市场，任何一种支付网络都无法独自做到这一点，对于中国如此庞大的市场而言更是如此。更加广泛的商户受理架构将有助于国内银行发展其电子支付业务，并令电子支付成为中国消费者更为切实可行的选择。具体而言，我们促请中国人民银行鼓励广泛安装、发展竞争性品牌的取款机和其他设备，刺激中国消费支出。

租赁

租赁业务仍然是中国金融中介领域不尽完善的部分。许多发达国家的租赁业务渗透率已超过 20%，而中国租赁业务渗透率却仍然不足 5%。为了改善中国的租赁业务，中国美国商会促请中国主管部门采取以下措施：

由中国银监会管理的租赁公司和由商务部管理的租赁公司

根据现行法规，中国允许两种类型的租赁公司：银行关联租赁公司及“融资”租赁企业。前者受中国银监会监管，而后者由商务部监管。尽管从理论上说这两种租赁公司均可提供经营租赁和融资租赁服务，但实际上银行关联租赁公司可通过其已有的获得银行资产负债表的渠道开展金额更大的票据租赁业务。此外，由于各省、市及国家管理规定不尽相同，因此对融资租赁企业的监管仍然不甚明确。我们促请主管部门对银行关联租赁公司和融资租赁企业在业务范围、融资渠道以及其他监管要求方面的差异做出澄清，同时允许非银行关联租赁公司进入中国的银行间及企业债券市场。

立即解决与租赁相关的增值税问题

中国所有的租赁企业——不论是外资抑或本土企业——都在扩大资产规模方面面临着巨大的障碍。租赁公司都知道，现行增值税体系规定，要想有资格享有增值税退税，公司必须同时是某些固定资产的所有者和最终使用者。虽然租赁公司是资产的所有者，但却很少会是资产的最终使用者。最终

China's lease penetration remains under five percent. In order to improve the leasing business in China, AmCham-China recommends that Chinese authorities take the following steps:

CBRC-Regulated and MOFCOM-Regulated Leasing Companies

Under current regulations, China allows two types of leasing companies: bank-affiliated leasing companies and "financial" leasing companies. The former are regulated by the CBRC, while the latter are regulated by the Ministry of Commerce (MOFCOM). Although each can theoretically engage in the provision of both operating and capital leases, the reality is that bank-affiliated firms are able to provide larger ticket leases through their ready access to bank balance sheets. In addition, the regulation of financial leasing companies continues to be unclear because of variation among municipal, provincial and national-level regulations. We urge the authorities to clarify the distinction between bank-affiliated leasing companies and financial leasing companies in terms of scope, access to financing and other regulatory requirements, and allow non-bank affiliated leasing companies access to China's interbank and corporate bond markets.

Immediately Resolve Lease-Related VAT Issues

All lease businesses in China—foreign and domestic—face a major obstacle growing their asset base. Leasing companies understand the current value-added tax (VAT) system to stipulate that VAT rebate eligible businesses must be both the owners and end-users of certain fixed assets. While leasing companies are the owners of assets, they are rarely the end-user. End-users, instead, are the operator of the asset. The result is that neither the lease company nor the operator end-user can benefit from the VAT tax rebate available to owners of capital equipment. To get around this issue, many leasing companies and end-users are conducting sale-lease back arrangements. To remove the tax disincentive to leasing, AmCham-China suggests extending the same tax exemptions and benefits to equipment and financial leasing enterprises that purchase and lease equipment for businesses, as if they were both the owners and end-users.

Develop a Collateral Registration System

China does not have a uniform commercial code that allows a nationwide collateral registration system codifying the classification and tracking of assets across different geographic areas. As a result, asset-based lenders, like leasing companies, are hesitant to extend credit on moveable assets like equipment and vehicles

for fear that those assets will be lost or re-collateralized, thus jeopardizing the position of the lease company as first lien holder. AmCham-China recommends that China's government take the steps needed to develop a sound credit information center and establish a national collateral registration system.

Small-Sum Loan Companies/Small and Medium-Sized Enterprise Financing

In 2009, AmCham-China welcomed the advent of small loan companies (SLC) in China as a new chapter to address financing gaps for SMEs. To date, dozens of SLCs have been approved and are operating around the country. However, very few SLC licenses have been granted to companies with foreign shareholders despite a lack apparent prudential justification.

Uniform Implementation of Pilot Programs Across Regions

Different provinces in China appear to apply SLC regulations unevenly, at times approving or rejecting applications from foreign investors in an ad hoc manner. Different provinces also apply lending caps to SLCs and other restrictions that appear to conflict with regulations issued by the CBRC. AmCham-China urges the central-level CBRC to increase capacity of provincial authorities to implement and enforce relevant SLC regulations uniformly.

Encourage Foreign Players to Develop the SLC Market

Although the regulations on SLCs were issued in 2008, Chinese authorities have yet to approve meaningful numbers of foreign entrants into this market. To date, there have only been a handful of foreign-invested SLCs approved in China, mostly those from major financial institutions such as Citigroup, HSBC and Standard Chartered. To provide more sources of capital to SMEs in China, we urge the CBRC and relevant municipal and provincial authorities to allow smaller foreign institutions to receive SLC licenses.

SLCs Becoming Full Banking Institutions

Currently, the path by which an SLC can become a bank is obscured by arcane requirements on asset concentration, geographic scope and limitations on leverage. Such requirements dampen the interest of both domestic and foreign investors in establishing SLCs since their long-term strategy cannot be accurately predicted from the outset of the investment. We urge the Chinese authorities to amend the implementation guidelines to allow SLCs a clear path to become banking institutions provided they meet capital adequacy, profitability and

使用者往往是资产的经营者。其结果便是租赁公司和经营资产的最终使用者都无法从针对资本设备所有者的增值税退税政策中受益。为了规避这一问题，许多租赁公司和最终使用者都会做出售后回租安排。为了消除税务问题对租赁业务的影响，中国美国商会建议将为企业购买和租赁设备的那些设备和金融租赁公司同时视为所有者和最终使用者，使他们能够享有同样的税务减免政策。

建立抵押登记制度

中国在全国性抵押登记制度方面没有统一的商业法典，对不同地区资产的分类及跟踪做出规定。因此，像租赁公司这些以资产为基础的贷方在就设备和车辆等移动资产提供信贷时显得犹豫不决，担心这些资产会丢失或被再次抵押，因而有损租赁公司作为优先留置权持有者的地位。中国美国商会促请中国政府采取必要的措施建立完善的信贷信息中心，并出台全国性的抵押登记制度。

小额贷款公司 / 中小企业融资

2009 年，小额贷款公司在中国出现，对此中国美国商会表示欢迎，认为这为解决中小企业融资障碍开启了一个新的篇章。迄今，已有数十家小额贷款公司获批，在全国各地开展业务。尽管如此，很少有外资参股的小额贷款公司能够获得经营许可——虽然这种做法缺少审慎、正当的理由。

试点项目在各地区统一实施

中国不同省市在实施小额贷款公司法规方面似乎没有统一的做法，有时会即兴批准或拒绝外国投资者的申请。不同的省市还会要求小额贷款公司遵守贷款上限及其他一些限制，这似乎有悖于中国银监会出台的规定。中国美国商会促请中国银监会加强各省市主管部门的能力，使小额贷款公司相关法规得到统一的执行贯彻。

鼓励外资参与发展小额贷款公司市场

尽管有关小额贷款公司的法规早在 2008 年便已出台，但中国主管部门仅批准了为数不多的外国投资者进入这一市场。迄今只有少数外资小额贷款公司获准在华经营，其中大多数来自花旗集团、汇丰和渣打等大型金融机构。为了使中国中小企业获得更多的融资渠道，我们促请中国银监会及相关省市主管部门允许规模较小的外资机构也能够获得小额贷款公司许可。

小额贷款公司转制为全方位银行机构

目前，在资产集中性、地域范围以及杠杆限制方面令人难以理解的要求使得人们无法明确小额贷款公司如何才能转制成为银行。这些要求遏制了外国及本土投资者对建立小额贷款公司的兴趣，因为从投资之初便无法准确预测其长期战略。我们促请中国主管部门修订实施条例，明确允许小额贷款公司在达到资本充足率、盈利能力以及内部控制等目标的前提下便可转制为银行。重要的是，如果外资控股超过 20% 的小额贷款公司能够达到其他法定要求，那么也不应当禁止它们转制成为银行。

证券与投资服务

在过去的一年中，中国在证券领域取得了巨大的进展，对此中国美国商会表示欢迎。2009 年 6 月，中国证监会正式公布了有关新股发行的指导意见，这意味着暂停八个多月的 IPO 的重启。2009 年 10 月中国创业板的开市为促进中小企业的发展和改善中国资本市场的深度与结构起到了积极的作用。中国美国商会对在券商综合治理收官之后恢复合资证券公司的审批工作，以及近来在推出众所期待的金融衍生品方面做出的努力也表示欢迎。

此外，有许多合格境外机构投资者 (QFII) 申请获批。2009 年 10 月，国家外汇管理局将单家 QFII 机构的投资额度上限由 8 亿美元 (合 55 亿元人民币) 提高到 10 亿美元 (合 68 亿元人民币)；就每次投资额度申请规定了 5000 万美元 (合 3.4 亿元人民币) 的门槛；同时将 QFII 制度下一些基金的投资本金锁定期缩短至三个月，将其他合格投资者投资本金锁定期缩短至一年。据国家外汇管理局提供的数据显示，截至 2009 年 9 月末，中国已经累计向 78 家 QFII 批出 157 亿美元 (合 1072 亿元人民币) 投资额度。

中国美国商会对中国主管部门在批准 QFII 方面所做出的努力，如上述将单家 QFII 机构的投资额度上限由 8 亿美元 (合 55 亿元人民币) 提高到 10 亿美元 (合 68 亿元人民币) 的决定，以及所采取的其他旨在进一步发展 QFII 制度的举措表示赞赏。我们希望能够有更多 QFII 申请获批，同时也希望 QFII 制度能够进一步完善。我们也期待中国企业能够通过合格境内机构投资者 (QDII) 计划增加对海外的投资。我们欢迎中国主管部门逐步加大产品与市场的投资范围。

中国监管部门不断向外资企业和私募股权 (PE) 投资者征求意见建议，以进一步发展国内 PE 和风投市场。尽管面临经

internal control targets. Importantly, foreign-sponsored SLCs with more than 20 percent foreign shareholding must not be prohibited from becoming banks if they meet the other statutory requirements.

Securities and Investment Services

AmCham-China welcomes the tremendous progress made by China in the past year in the securities area. In June 2009, the China Securities Regulatory Commission (CSRC) formally issued opinions on new share issuance, marking the resumption of initial public offerings after a suspension of more than eight months. The advent of Chinext, previously the "Growth Enterprise Board," in October 2009 has played a positive role in promoting the development of SMEs and improving the depth and structure of China's capital market. AmCham-China also welcomes the resumption of the examination and approval of joint venture securities companies, which was suspended during the comprehensive rectification of securities dealers, and recent movements toward the long-awaited launch of financial derivatives.

In addition, a number of Qualified Foreign Institutional Investor (QFII) applications have been approved. In October 2009, the State Administration of Foreign Exchange (SAFE) also raised the upper limit for single qualified investors applying for QFII investment quotas from US \$800 million (RMB 5.5 billion) to US \$1 billion (RMB 6.8 billion), set a threshold of US \$50 million (RMB 3.4 billion) for each application for investment quota, and shortened the lock-in period to three months for the investment principal of some funds under the QFII system and to one year for the investment principal of other qualified investors. According to data provided by SAFE, the investment quota granted to 78 QFIIs had reached US \$15.7 billion (RMB 107.2 billion) by the end of September 2009.

AmCham-China commends the Chinese authorities for their approval of additional QFIIs and for the decision to increase the maximum quota for certain single QFII holders from US \$800 million (RMB 5.5 billion) to US \$1 billion (RMB 6.8 billion) and other steps taken to develop further the QFII program. We hope more QFII applications will be approved and that enhancements to the QFII system will continue. We look forward to an increase in the investment of Chinese funds overseas through the Qualified Domestic Institutional Investor (QDII) program. We welcome this trend towards the approval of investments in a greater range of products and markets.

Chinese regulatory agencies continue to seek advice from foreign corporations and private equity (PE) in-

vestors to further develop the domestic PE and venture capital markets. Despite the economic downturn, many PE investors remain optimistic about China. However, while PE and venture capital are increasingly important parts of China's financial sector, there remain serious concerns about the ability of foreign investors to compete in China on a level playing field with their domestic counterparts.

Credit Rating Agencies

In October 2009, Chinese regulatory authorities issued draft regulations on the Administration of Credit Investigations.

AmCham-China believes it is important to follow the G-20 consensus to regulate credit rating agencies in line with international standards, such as the International Organization of Securities Commission's Fundamental Code of Conduct for Credit Rating Agencies. This will help ensure that credit rating agencies are regulated consistently across the globe, a critical issue in light of the international nature of the credit ratings and their usage. Internationally consistent regulation of credit rating agencies in China would be one of the foundations to broaden and accelerate capital markets development, similar to the wide usage of credit ratings in global capital markets.

The regulation on credit rating agencies should focus on avoiding potential conflicts of interest and enhancing transparency through the disclosure of ratings performance information. Credit ratings agencies must remain independent and accountable. Actions to avoid include prescribing the methodologies or criteria to be used by credit rating agencies, and intervening on the content or substance of credit ratings by the regulatory bodies or mandating liability standards. Such actions will jeopardize the independence of credit rating agencies and the value of ratings in the market.

As some variances remain between the draft regulations and international standards, AmCham-China recommends that Chinese regulatory authorities make necessary revisions to ensure international consistency and to preserve the independence of credit rating agencies.

In addition, to prevent undue reliance on credit ratings in China, AmCham-China believes that regulators should follow prevailing international practices and remove mandatory ratings requirements and minimum prudential ratings from relevant financial sector rules. Such actions would require that individual ratings assigned by credit ratings agencies be judged on the performance and accuracy of the rating, rather than

济衰退的挑战，许多 PE 投资者仍然对中国持乐观态度。然而，虽然 PE 和风投在中国金融业的地位愈发重要，但人们仍然担心外国投资者能否与中国国内投资者展开公平的竞争。

信用评级机构

2009 年 10 月，中国监管部门就信用调查管理出台了规定草案。

中国美国商会认为，遵守 G-20 峰会上达成的共识，使信用评级机构与国际标准（例如：由国际证监会组织（IOSCO）制定的《信用评级机构操守准则的基本原则》）相接轨，有着至关重要的作用。这将有助于确保全球信用评级机构都能够得到统一的监管，鉴于信用评级及其运用范围的国际化特点，这一点非常重要。和信用评级在全球资本市场的广泛运用相类似，中国对信用评级机构的监管与国际保持一致将是拓宽并加快资本市场发展的前提条件之一。

对信用评级机构的监管应当着重于避免潜在的利益冲突，并通过披露评级表现信息以提高透明度。信用评级机构必须保持独立性和问责制。应当避免的行为包括：规定信用评级机构应当采用哪些方法或标准，以及在信用评级内容或实质问题方面受到监管部门的干涉，或是强制规定义务标准。这些行为有损于信用评级机构的独立性，也不利于评级服务在市场中的价值。

由于中国一些规定草案和国际标准之间仍然存在着一些分歧，中国美国商会建议中国监管部门对这些草案做出必要的修订，确保与国际接轨，并维持信用评级机构的独立性。

此外，为了防止中国市场对信用评级的不恰当的依赖，中国美国商会认为监管部门应当遵循国际惯例，取消相关金融业规定中的强制性评级要求和最低审慎评级要求。这些措施要求根据表现和评级的准确性对信用评级机构所做出的具体评级进行判断，而不应成为对债券发行机构和购买者的管理要求。同时这也将改善金融服务领域的风险管理，并促进中国整体资本市场的健康发展。

私募股权

2009 年，中国有关私募股权的法规出现了许多变化。通过允许省级和地方主管部门对外商投资项目进行审批，有效推动了审批流程的分散。然而，不同政府机构及监管部门之间的指导规定和法规要求仍然存在着一些令人困惑、有时

甚至是自相矛盾的问题，令投资者无所适从。中国美国商会建议中央政府加强各部委之间审批工作的协调，加快审批程序，并出台指导意见，同时下放审批权限，从而避免地方主管部门重复监管。此外，中国美国商会促请中国政府在单一平台上集中发布所有相关的中央及地方政府法律法规，帮助投资者更好地了解投资形势。

人民币基金

2008 年 10 月，中国国家发展和改革委员会（以下简称“国家发改委”）制定了外资风投企业的基本投资范围、运作模式与业绩考核标准，首次为由外资公司管理的人民币基金的市场发展奠定了基础。海外基金经理或投资者可在上海、北京、天津以及其他省市设立外资股权投资管理企业。2009 年 6 月，上海浦东新区政府通过试行管理办法，明确允许外国投资者在当地设立基金管理企业。主要规定包括：

- 法律形式：外商投资股权投资管理企业应当以有限责任公司形式设立，而非有限合伙企业形式；
- 注册资本：注册资本不应低于 200 万美元（合 1370 万人民币）。此外，注册资本应当在营业执照签发之日起三个月内到位 20% 以上，余额在两年内全部到位；
- 股东资格：外商投资股权投资管理企业应至少拥有一个投资者，该投资者或其关联实体的经营范围涵盖股权投资或股权投资管理业务；
- 管理人员资格：外商投资股权投资管理企业在申请设立时，应当拥有两名以上同时具备下列条件的高级管理人员：有两年以上从事股权投资或股权投资管理业务的经历；有两年以上高级管理职务任职经历。

尽管取得了这些进展，但由外资机构管理的人民币基金似乎仍然受到商务部外商投资目录的制约，使许多外国投资者无法实现募集人民币资金的目的。此外，人们对于人民币基金投资的审批程序仍然知之甚少，不同地区的执行标准也不统一。

中国美国商会促请地方主管部门以公平、透明的方式实施新的法规。中国政府不断改革，以求为私募股权创造更加有利的发展环境，对此中国美国商会表示欢迎，同时也促请商务部、国家工商行政管理总局、国家发改委以及其他有关主管部门制订进一步的措施，为投资者实现与国际惯例相一致的结构与灵活性。

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.

Private Equity

There have been a number of changes to the Chinese regulations in 2009 for the PE sector. There is a movement towards decentralization of the approval process by allowing foreign-invested projects to be approved at the provincial and local levels. However, investors continue to face confusing, and at times contradictory, guidance and regulations from various government ministries and regulators. AmCham-China recommends that the central government strengthen the coordination of examination and approval power between ministries/commissions, accelerate the process of examination and approval, and issue guiding opinions while delegating the authority for examination and approval to avoid overlapping supervision among departments at the local level. In addition, AmCham-China recommends that the Chinese government publish all relevant central and non-central government laws and regulations in one place to help investors understand the broader investment landscape.

RMB-Denominated funds

In October 2008, the National Development and Reform Commission (NDRC) set out the basic scope, operation mode and result assessment standard of foreign-invested venture capital enterprises, the first salvo in the development of a market for RMB funds managed by foreign firms. Managers or investors of overseas funds may set up foreign-invested equity investment management enterprises in Shanghai, Beijing, Tianjin and other regions. In June 2009, the government of Pudong, Shanghai passed provisional administrative measures, expressly allowing foreign investors to establish fund management enterprises there. Major provisions include:

- Legal form: A domestic fund management enterprise must be a limited liability company rather than a limited partnership;
- Registered capital: The registered capital shall not be lower than US \$2 million (RMB 13.7 million). Furthermore, 20 percent of the registered capital shall be paid within three months from the day the business license is issued and the balance shall be paid in full within two years;
- Qualifications of shareholders: There should be at least one investor engaged in equity investment or the equity investment management business;
- And qualifications of managers: There should be at least two managers with over two years of experience in the management of equity investment or equity investment management business and over two years of experience in holding senior executive office.

Despite these advances, it appears that RMB-denominated funds managed by foreign institutions will still be subject to MOFCOM's foreign investment catalogue, defeating the purpose of raising RMB funds for many foreign investors. Furthermore, the process by which RMB-fund investments are approved remains little understood, and unevenly applied across different jurisdictions.

AmCham-China urges local authorities to implement the new regulations in an even and transparent manner. AmCham-China welcomes the Chinese government's continued reform efforts towards creating a more conducive environment for the PE sector and encourages MOFCOM, the State Administration for Industry & Commerce, NDRC and other relevant authorities to put forth additional measures that will allow similar structure and flexibility that investors are accustomed to on an international basis.

Recommendations

For PBOC:

- **Allow foreign banks to underwrite financing facilities for non-financial enterprises and also issue the relevant administrative guidelines as soon as possible.**
- Develop a competitive payments market that includes multiple participants, and in particular, encourage the widespread installation and development of card machines and other equipment from competing brands among SMEs to boost consumer spending across China.

For MOFCOM:

- **Provide further clarification for investors regarding administrative jurisdiction of the PE market and streamline the approval process while ensuring that foreign investors are able to operate on the same basis as their domestic counterparts.**
- Continue to institute a legal and regulatory system that provides equal treatment to domestic and foreign PE investors.

建议

给中国人民银行的建议：

- 允许外资银行为非金融企业承销融资工具，并尽快出台相关的管理规定。
- 面向多种参与者开放支付市场，鼓励公平竞争，具体而言，应鼓励在中小型企业中广泛安装、发展竞争性品牌的取款机和其它设备，刺激中国消费支出。

给中国商务部的建议：

- 就 PE 市场的行政管辖权向投资者做出进一步的澄清，简化审批程序，同时确保外国投资者能够与国内投资者享有同等待遇。
- 继续建立法律监管制度，使国内及外国 PE 投资者享有同等待遇。
- 对有海外基金参与投资的人民币基金以及没有海外基金参与投资的人民币基金实施相同的监管审批程序。
- 出台进一步的措施，就外商投资合伙企业的组建与管理提供指导意见和制订公认的标准。

给中国银监会的建议：

- 放宽对金融机构参与利率掉期市场的限制，允许更多外资银行直接与非金融机构客户开展利率掉期交易。
- 尽快就人民币信贷衍生品出台具体明确的操作规定，促进中国衍生品市场的发展。
- 加快就银行卡相关法规草案向业界参与者（包括全球发卡机构）征求意见的程序。
- 允许非银行金融机构发行银行卡并开展相关结算业务，从而进一步丰富市场选择，促进市场竞争。
- 提高各省市主管部门的能力，使小额贷款公司相关法规得到统一的贯彻执行。
- 允许规模较小的外资机构也能够获得小额贷款公司许可。
- 重新审视小额贷款公司相关实施条例并做出修订，明确允许小额贷款公司在达到资本充足率、盈利能力以及内部控制等目标的前提下便可改制为银

行。如果外资控股超过 20% 的小额贷款公司能够达到其他法定要求，则也应当允许它们改制成为银行。

给中国银监会和商务部的建议：

- 将为企业购买和租赁设备的设备及金融租赁公司都视为所有者和最终使用者，使他们能够享有同样的税务减免政策。
- 消除中国银监会和商务部双重许可证发放制度之间的一致性。

给中国证监会的建议：

- 尽快明确申请要求与程序，以便外资法人银行可参与国内共同基金的分销。
- 建立完善的信用信息中心，并出台全国性抵押登记制度。
- 确保征信机构相关法规与国际惯例相一致，维持信用评级机构的独立性。与国际接轨，取消相关金融业规定中的强制性评级要求和最低审慎评级要求。
- 继续逐步增加 QFII 和 QDII 额度。

- Implement the same pre-investment regulatory approval process for investment opportunities that have offshore funds co-investing with RMB funds as a RMB fund investing without an offshore fund co-investor.
- Introduce additional measures to provide guidance and establish accepted standards for the formation, administration and management of foreign-invested partnerships.

For CBRC:

- Relax restrictions on participation in the interest rate swap market by financial institutions and allow more foreign banks to conduct IRS transactions directly with non-financial institution customers.
- Issue clear and specific operational measures for RMB credit derivatives as early as possible to promote the development of China's derivatives market.
- Expedite the process of seeking comments on draft versions of regulations on bankcards from industry participants, including global card issuers.
- Allow NBFIs to issue cards and perform settlement operations related to cards as part of the broadening of choice and competition within the market.
- Increase capacity of provincial authorities to implement and enforce relevant SLC regulations uniformly.
- Allow smaller foreign institutions to receive SLC licenses.
- Revisit the implementation guidelines for SLCs and amend them to allow SLCs a clear path to become banking institutions provided that they meet capital adequacy, profitability and internal control targets. Allow foreign-sponsored SLCs that meet the statutory requirements to become banks, even those with more than 20 percent foreign shareholding.

For CBRC and MOFCOM:

- Extend the same tax exemptions and benefits to equipment and financial leasing enterprises that purchase and lease equipment for businesses, as if they were both the owners and end-users.
- Eliminate inconsistencies between the dual CBRC and MOFCOM licensing regimes.

For CSRC:

- Clarify application requirements and procedures as soon as possible so that foreign-invested legal-person banks can participate in the distribution of domestic mutual funds.
- Develop a sound credit information center and establish a national collateral registration system.
- Ensure regulations governing credit reporting agencies are in line with international practices and preserve the independence of credit rating agencies. To maintain international consistency, remove mandatory ratings requirements and minimum prudential ratings from relevant financial sector rules
- Continue to increase QFII and QDII quotas over time.



Innovation, Information and Communications Technology Policy

Overview

AmCham-China welcomes China's drive to establish an innovation-based economy. Improved intellectual property (IP) protection, more open and competitive markets, combined with educational, financial and legal system reforms, will strengthen China's competitiveness and accelerate its transformation from the world's factory to a leading global innovator.

However, AmCham-China is concerned about the direction of China's policies to promote innovation. AmCham-China member companies have spent billions of dollars investing in world-class research and development (R&D) centers and providing China's engineers with global best practices and many of the processes and tools that they need to innovate. However, policies that China is adopting under the banner of "indigenous innovation" are increasingly closed and protectionist in nature, threatening to limit foreign participation in China's economy. Domestic innovation should be encouraged, but more closed policies, whether in procurement, standards, IP, security requirements, or selective enforcement and application of competition and IP laws, undermine, rather than advance, domestic innovation.

Specifically, the current innovation drive has manifested itself in policies favoring Chinese products, services and standards over those imported or produced by foreign-invested firms in China. In the long run, these preferences will reduce competition in the marketplace, discourage innovation and deprive Chinese companies and workers of opportunities to capitalize on international best practices.

We remain unclear how limiting competition will promote an innovative Chinese society. Numerous studies, such as the Organization for Economic Cooperation and Development *Reviews of Innovation Policy: China 2008* report, show that pro-competitive and non-discriminatory policy approaches that protect IP rights and facilitate the global nature of innovation are the

most effective way to promote innovation.

Moreover, drawing national boundaries around innovation goes against the nature of innovation in itself. Research and development today is truly global, involving collaboration between teams around the world. Ideas and technologies are licensed through market driven transactions for further use and development across borders, between partners, and between competitors. This is how new products and services are created.

China is a central participant in and beneficiary of today's global innovation ecosystem, evidenced by the fact that China's patent authority now leads the world in number of applications. Building walls or barriers around China's innovation and market in an increasing number of strategic sectors will retard, not accelerate, innovation. China's trading partners will be tempted to respond by adopting similarly protectionist policies. Furthermore, China's continued failure to adequately enforce IP is hindering the growth of its domestic knowledge-based industries and costing China and its major trading partners exports and jobs.

It is unsustainable for China to retain open access to foreign markets for China's most competitive exports while closing its own markets and failing to enforce IP rights of the most competitive knowledge-based and innovative exports of China's trading partners. AmCham-China urges China to pursue policies that provide a level playing field for all innovative companies in China. We strongly believe that history has demonstrated this type of competitive environment to be the best stimulator of innovation.

Innovation Policies

China's innovation policies, foreshadowed in the 11th Five-Year Plan, are moving from design to implementation. Increasingly closed and specific policies are being announced under the banner of promoting "indigenous

创新、信息与通信技术政策

综述

中国美国商会对中国发展创新型经济的举措表示欢迎。更完善的知识产权保护体系、更加开放、更有竞争性的市场，以及教育、金融和法律体系的改革，将提高中国的竞争力，并推动其从世界工厂向全球领先创新基地的转型。

但是，中国美国商会对中国促进创新的政策方向心存担忧。中国美国商会会员公司已经投入数以百亿美元的资金用于建立世界一流的研发中心，给中国工程师带来了全球最佳实践以及创新所需的许多流程和工具。然而，围绕中国“自主创新”的相关政策却日益显示出倾向于国内、带有保护主义的色彩，影响了外国公司在中国的发展。自主创新应受到鼓励，但无论是在有关采购、标准、知识产权、安全要求方面，还是在有选择性地执法及适用竞争法与知识产权法等方面更加倾向于国内的政策，只会削弱、而非促进自主创新。

具体而言，当前创新推进工作的直接结果是，中国制定了一系列偏向国内产品、服务和标准的政策，相形之下进口的或由在华外资企业生产的产品、服务和标准则处于不利地位。就长期而言，这些优惠政策会削弱市场竞争、阻碍创新，并使中国公司和劳动者逐渐失去利用国际最佳实践的机会。

我们尚不清楚，限制竞争将如何促进中国向创新型社会的转型。据多项调查（如经济合作与发展组织发布的《2008年中国创新政策回顾》报告）显示，将保护知识产权和推动创新全球化作为核心宗旨的促进竞争和非歧视政策，是促进创新最有效的方法。

此外，将创新划分国界与创新的本质相悖。如今的研发活动真正实现了全球化，涉及全球各团队之间的协作。理念和技术通过市场驱动型交易在不同国家、合作伙伴及竞争者之间进行许可和授权，以实现进一步的开发和利用。新产品和新服务由此应运而生。

中国是当今全球创新生态系统中的主要参与者和受益者，目前中国的专利申请数量居于世界前列。在越来越多的战略性领域中对中国的创新和市场设置壁垒，将会妨碍而非加速创新。中国的贸易合作伙伴会因此采取类似的保护主义政策。此外，中国在知识产权保护和执法方面始终显得力度不够，也阻碍了国内知识型产业的发展，并给中国及其主要贸易合作伙伴的出口和就业市场造成了负面影响。

中国最具竞争力的出口商品可以自由进入国外市场，但对于来自中国贸易伙伴的最具竞争力的知识型和创新型出口商品，中国却关闭国内市场并在知识产权保护和执法方面表现不力，这种做法并非长久之计。商会促请中国制定相关政策，使所有在华创新企业都有施展的空间。我们坚信，历史已经证明这种竞争环境是促进创新的最佳方式。

创新政策

第十一个五年计划中所预示的中国创新政策正从设计阶段进入实施阶段。中国为促进“自主创新”，正出台愈加倾向国内的、以及更为特殊的政策。这些政策通过税收激励措施、政府采购规定、标准、安全要求、津贴、以及利用竞争政策加大对由国家控制的重要产业的保护力度，籍此更多地支持中国实体。许多人甚至将对国外知识产权保护和执法不力视为中国的一个战略性决策，旨在给国内留出时间以开发出具有竞争力的本土替代方案。举例来说，在早期的中国经济刺激草案中，曾专门指出让一些特定IT领域将自主研发投资的目标明确放在替代进口产品之上。

具体问题

旨在打造“技术替代品”的政府计划

尽管中国积极鼓励外商在众多行业进行投资，但自

innovation.” These policies favor Chinese entities through tax incentives, government procurement (GP) regulations, standards, security requirements, subsidies and increased protection for key state-controlled industries from competition policy. Many also view the failure to enforce foreign IP as a strategic decision to allow China time to develop competitive domestic alternatives. For example, early drafts of China’s stimulus package specifically called out import substitution as an explicit objective of domestic R&D funding in a number of IT sectors.

Specific Issues

Government Program to Create “Technology Substitutes”

While China actively encourages foreign investment in a diverse range of industries, since 2006, it has sought to develop Chinese “alternatives” for proven and commercially viable technology. This includes the 2008 “corehi-technology” program, which aims over the next five years to build replacements for foreign operating systems, semiconductors, civil aircraft, renewable energy and other “strategic industries.” More specifically, this program has been manifested in the creation of China’s indigenous wireless standards such as WAPI and TD-SCDMA, which have so far proven commercial failures. AmCham-China encourages China to revisit this strategy, as government resources would be better used creating a dynamic and robust finance system, adequate IPR protection and other pro-competitive policies that foster innovation.

Preferential Loans and Export Credits

To encourage the innovative ability of domestic Chinese firms, the Chinese government has embarked on an aggressive campaign to provide preferential state loans and export credits to these firms. While these types of non-market advantages have been well documented in cases of Chinese companies operating in third-world countries, particularly Africa and South-East Asia, it is happening in China’s domestic market as well. For example, some major Chinese telecommunications companies have effectively put in “zero bids” for major contracts in China by relying on state loans. This creates an uneven playing field for foreign-invested companies, reducing competition in the marketplace and thus discouraging innovation in China.

Government Subsidized R&D for Domestic Enterprises

China has sponsored incentive and benefits programs led by the Ministry of Science and Technology (MOST),

Ministry of Industry and Information Technology (MIIT), and National Development and Reform Commission (NDRC) to promote indigenous innovation investment, particularly by state-owned enterprises (SOE). One example is MIIT’s 11th Five-Year Plan. This includes further expansion of provincial and local-level R&D funding for basic and applied research in priority areas identified in the Medium to Long-Term Strategic Plan for the Development of Science and Technology. These programs almost exclusively favor Chinese enterprises. More importantly, experience has shown this type of top-down approach to fostering innovation counters accepted best practices.

Foreign Firms Excluded from High-Tech Tax Breaks

Significant tax benefits geared toward high technology research enterprises have been implemented, including lower corporate tax rates (15 versus 25 percent). However, nationality of IP ownership produced by the enterprise is a key qualifier for these breaks. To date, thousands of Chinese enterprises have been licensed as high-tech firms and enjoy these tax benefits, creating unfair market conditions for foreign firms investing in China and employing Chinese staff.

Government and SOE Procurement to Favor “Domestic Goods”

China’s Medium to Long-Term Strategic Plan for the Development of Science and Technology has focused on public procurement’s role in advancing innovation by accelerating the diffusion of innovative products. However, the implementation plans released in 2006 and further detailed in 2007 call for preferential procurement of products deemed to be “indigenous innovation.” Chinese government agencies at the central and sub-central level have now developed lists for products qualifying as “indigenous innovation.” In November of 2009, the Chinese government published accreditation criteria for “indigenous innovation” products (Circular 618), to be used in awarding preferential treatment in the government procurement (GP) process. Qualification requirements include Chinese ownership of IP and Chinese ownership of the original trademark of the product. Use of nationality of IP ownership as a market access criterion is unprecedented anywhere in the world. Furthermore, we are unclear how this encourages firms to innovate.

Separately, China is adopting unique technology and IT security standards and requirements across a range of products that threaten market access to China’s GP market and the broader critical infrastructure sectors that comprise the largest sectors of China’s economy.

2006 年以来，也一直在寻求开发公认商用技术的中国“替代方案”。这包括 2008 年的“核高基”计划，其目标是在未来五年内找到国外操作系统、半导体、民用飞机、可再生能源和其他“战略性产业”的替代品。更具体地说，中国制定了 WAPI 和 TD-SCDMA 等本土无线标准，但迄今为止，事实证明这些标准在商业上是不成功的。中国美国商会鼓励中国重新审视这一战略，努力创建一个充满活力的金融系统，加强知识产权保护力度，制定有助于推动创新的其他促进竞争的政策，这样政府资源将能够得到更好的利用。

优惠贷款和出口信贷

为了提高国内企业的创新能力，中国政府已经开始着力为这些企业提供优惠国家贷款和出口信贷。在第三世界国家（尤其是非洲和东南亚）开展业务的中国公司均享有这些非市场优势，中国本土市场亦是如此。举例来说，一些大型中国电信公司依靠国家贷款在中国以“零成本”接下了多笔大单。这对外资公司很不公平，削弱了市场竞争并因此阻碍了中国的创新。

面向国内企业的政府研发津贴

中国已经实施了科学技术部、工业和信息化部以及国家发展和改革委员会旨在促进本土（尤其是国有企业）创新投资的多项激励和优惠计划，例如工业和信息化部的第十一个五年规划。这包括进一步扩大对科技发展中长期发展规划中重点领域基础和应用研究的省级和地方研发资助。这些计划几乎无一例外地偏向中国企业。更重要的是，经验表明这种自上而下促进创新的方法与公认的最佳实践背道而驰。

外国公司无法获得高科技减免税

针对高科技研发企业的重大税务优惠已经实施，包括公司税率从 25% 下降至 15%。但是，企业知识产权所有权的国籍是获得这些优惠的关键条件之一。迄今为止，已有数千家中国企业已获高科技企业认证并享有这些税务优惠，形成了对在华投资和雇用中国员工的外国企业的不公平市场环境。

“本国货物”优先的政府采购和国有企业采购

《国家中长期科学和技术发展规划纲要》着重强调了政府采购在加快创新产品的推广和促进创新方面的关键作用。但是，于 2006 年公布并在 2007 年进一步细化的实施细则

要求优先采购“自主创新”产品。中国中央政府和下属政府部门现已制定符合自主创新条件的产品清单。2009 年 11 月，中国政府公布了“自主创新”产品认定标准（618 号通知），用于在政府采购流程中给予优惠待遇。资格认定要求中包括了知识产权和产品原商标所有权均为中国国内拥有的要求。将知识产权的国籍作为市场准入标准在全球范围内尚属首次，而且，这将如何鼓励企业创新尚不清楚。

中国对众多产品都在采用特殊的技术和 IT 安全标准与要求，严重影响到了中国政府采购市场以及对中国经济贡献最大的其他重要基础设施行业的市场准入。

中国政府推行的国货优先政策的影响在光纤产业中可见一斑。在中国市场上，美国企业的光纤销售份额已因此下降了一半。这个例子表明自主创新标准和产品清单可能会对进口产品、外资所拥有的知识产权和目前正为中国政府采购市场服务的外国公司构成歧视。其中许多政策明显与世界贸易组织《政府采购协定》中阐明的原则相矛盾，中国须放弃这些政策，以兑现其遵照严格的商业条件（参见“政府采购”章节）加入《政府采购协定》的承诺。然而，中国似乎并没有放慢推行新政策的步伐。

政府对国有企业采购的影响

作为软件合法化工作的一部分，中国政府还鼓励国有企业购买国产软件及其他商品。然而，世界贸易组织明确承诺，国有企业采购应完全基于商业考虑，而不受政府影响。中国政府最近在 2009 年美中商贸联合委员会和战略与经济对话上也做出了这样的承诺。对于国有企业来说，他们并没有执行国务院软件合法化工作的要求，而且在针对这一点的协商中，由于知道政府强制执行的几率可忽略不计，因此他们普遍拒绝完全照做。这其中包括中国财力最雄厚的国有企业和公开上市公司。

建议：

对中国政府：

- 在如今紧密相连的全球经济中，资本、技术和创意在各国间自由流动。单个产品中包含的创新可能是全球多家中心的研发成果。旨在通过拒绝外资参与来促进自主创新的、带有保护主义倾向的

One example of the impact of government policies that give preference to Chinese sources is in the optical fiber industry. The share of US optical fiber sold in the Chinese market has been driven down by half. This example shows the potential of indigenous innovation criteria and lists to discriminate against foreign products, foreign-owned IP and firms currently serving the Chinese GP market. Many of these policies clearly contradict the principles outlined in the WTO Agreement on Government Procurement (GPA) and would have to be abandoned for China to meet its commitment to join the GPA on strong commercial terms (please see Government Procurement chapter). However, China continues to implement new policies.

Government Influence over SOE Procurement

The Chinese government has also encouraged SOEs to purchase domestic Chinese software and other goods as part of its software legalization effort. This is despite an explicit WTO commitment and recent commitments by the Chinese government at the 2009 US-China Joint Commission on Commerce and Trade (JCCT) and Strategic and Economic Dialogue (S&ED) that SOE purchasing would be based solely on commercial considerations, without government influence. SOEs, for their part, have not complied with the software legalization effort by the State Council, and in negotiations on this point, generally refuse to fully legally comply with knowledge that the likelihood of government enforcement is negligible. These include China's richest state-owned and publicly listed companies.

Recommendations

For the Chinese Government:

- In today's interconnected global economy, capital, technology and ideas flow largely unimpeded across national boundaries. Innovation embodied in a single product can come from R&D that takes place globally in multiple centers. Measures with a protectionist leaning designed to bolster domestic innovation at the expense of foreign participation will likely redirect resources to more open and advantageous investment environments abroad.
- AmCham-China urges the Chinese government to promote an open, market-based, pro-competitive model of innovation, embracing today's global economy. This includes implementing policies that are in line with China's WTO agreements in maintaining a fair, open

and merit-based economy, and fulfilling China's promise to join the WTO GPA on strong commercial terms by liberalizing the domestic GP market at the central, provincial and municipal level.

For the US Government:

- The US government must fully understand the implications China's indigenous innovation drive has on long term US-China relations and overall economic competitiveness. It is in the interest of the US government to engage relevant senior stakeholders fully within the Chinese government at the leadership level of ministries such as MIIT, NDRC, MOST and the State Council to create a meaningful dialogue. Such engagement could be structured under the current S&ED and the JCCT.

Information and Communications Technology (ICT) Policy

The Role of ICT in an Information Economy

Particularly in light of the recent global economic downturn, there is an opportunity to promote economic transformation through innovation. Such a transformation could lead to accelerated high value-added growth, a stronger investment environment, continued high GDP growth rates, lower per-unit GDP consumption of scarce resources (e.g., energy and water) and the opportunity for further global integration.

The Chinese government has intelligently linked innovation in the information and communications technology (ICT) industry with overall industrial advancement and high-quality economic growth. This viewpoint is clear in both the Indigenous Innovation and the Harmonious Society programs, and should, depending on how they are implemented, positively support continued growth of a dynamic, important and globally-integrated market. This is particularly significant given that China is facing an imbalanced economy lacking key resources. Thus, ICT has been identified as a way to increase efficiency within major industrial sectors, critical infrastructure, and government administrations. Yet administrative barriers due to government inefficiencies and political agendas have stifled the development of broadband development and ICT upgrade within key sectors, such as the power grid, the public water supply and health care delivery.

措施将可能使资源流失到国外更开放、更有利的投资环境中。

- 中国美国商会促请中国政府推行开放、基于市场、促进竞争的创新模式，融入当今的全球化经济。这包括实行与中国的世界贸易组织协定相符的政策，通过从中央和省市各级实现国内政府采购市场自由化来维持公平、开放的绩效型经济，并兑现中国遵照严格的商业条件加入世界贸易组织《政府采购协定》的承诺。

对美国政府：

- 美国政府必须充分了解中国的自主创新推进工作对中美长期关系和整体经济竞争力的影响。美国政府应与工业和信息化部、国家发展和改革委员会、科学技术部及国务院等部门的领导开展有意义的对话。这可通过当前的战略与经济对话和中美商贸联合委员会实现。

信息与通信技术（ICT）政策

信息与通信技术在信息经济中的作用

尤其鉴于最近的全球经济衰退，通过创新可以促进经济转型。这样的转型可能会加快高附加值增长、改善投资环境、继续实现 GDP 强劲增长、降低稀缺资源（如能源和水）的单位 GDP 消耗，并有机会进一步实现全球一体化。

中国政府明智地将信息与通信技术行业的创新与整体工业进步、高质量的经济增长联系在一起。这一观点在自主创新与和谐社会政策中得到了清晰的体现，如若实施得当，应有助于中国这一充满活力、地位重要、全球一体化的市场实现持续增长。由于中国正面临经济失衡的难题，重要资源也面临着短缺，这一点显得尤其重要。因此，信息与通信技术被普遍认为是带动主要行业、重要基础设施和政府部门提高效率的一个途径。但是，由于政府效率不高和政治议程而造成的管理障碍，抑制了电网、公共供水和医疗保健等主要行业的宽带发展和信息与通信技术升级。商会建议中国政府通过协调各部门，最好包括国务院，来解决其中一些问题。

美国被认为是利用技术来解决迫在眉睫的发展和经济问

题的领先者。此外，信息经济为中美合作创造了绝佳的机遇。中国美国商会建议，美国政府积极地与中国中央和省级利益相关者开展持续的实质性对话，促进信息自由流动和“信息化”对整体经济发展的价值。中国美国商会期待为这些计划提供支持。

具体问题

网络融合

2010 年初，在期待了近 10 年之后，中国开始采取具体的措施，以期在五年内实现固网宽带网络融合。通过为中国的广播和电信运营公司提供拓展进入对方领域的对等性权利，网络建设可能会实现迅猛发展。中国美国商会会员作为中国网络融合领域不可或缺的参与者，能够提供大量的行业经验与专长。

但与此同时，外界担心国内企业会因为采购优惠政策而比外资企业拥有更多优势。中国美国商会建议中国政府在采购网络融合所需的商品和服务时能保持技术中立、基于市场的方法，最终使消费者以最实惠的价格获得最新的技术。

互联网发展

据官方统计数据显示，中国目前的互联网用户数量位居世界第一，其中包括宽带用户和移动互联网用户。这种增长被归因于互联网访问成本的降低、手机以及关键应用和内容的发展，如博客、视频共享、电子商务以及其他形式的动态互联网平台。

中国政府在其加入世界贸易组织的承诺中认可了信息自由流动对于经济健康可持续发展的重要性。然而，去年还是以“净化网络环境”为由推出了许多政策，这些政策可能会影响中国互联网的发展，从而削弱美国公司在市场中的竞争力。这包括目前已经不再推行的被称为“绿坝 - 花季护航”软件的互联网过滤软件和限制个人注册互联网域名。

此外，现有及计划之中的对在华外国互联网服务的限制，大大削弱了中国融入全球化经济的能力。中国美国商会建议中国政府制定能够平衡文化和经济利益的互联网法规，同时意识到互联网全球一体化的趋势，以便为各国间不受约束的互动和商贸往来创造机遇。

AmCham-China recommends the Chinese government re-focus its efforts at a cross-ministerial level, preferably within the State Council, to address some of these issues.

The US is a recognized leader in using technology to solve pressing development and economic issues. Additionally, the information economy offers a bright opportunity for US-China cooperation. AmCham-China recommends that the US government engage in sustained and substantial dialogue with central and provincial stakeholders to promote the value of the free flow of information and “informatization” to overall economic development. AmCham-China looks forward to supporting such initiatives.

Specific Issues

Network Convergence

In early 2010, after nearly 10 years of anticipation, China initiated concrete steps to realize fixed broadband network convergence over a period of five years. By giving Chinese broadcasting and telecom operating companies the reciprocal right to expand into each other’s areas of business, there is likely to be a boom in network build out and growth. AmCham-China members can offer substantial industry experience and expertise as integral players in the convergence of China’s networks.

Yet at the same time, there are concerns that domestic firms may be given advantages over foreign-invested firms through preferential procurement policies. AmCham-China recommends the Chinese government maintain a technology-neutral and market-based approach in the procurement of goods and services required for network convergence, which ultimately provides consumers access to the latest technology at the best prices.

Internet Growth

According to official statistics, China now has the largest internet user-base in the world, including broad band users and mobile internet subscribers. This growth has been attributed to the decrease in cost over internet access, mobile handsets, and the development of “killer-applications” and content such as blogging, video sharing, e-commerce and other forms of dynamic internet-based platforms.

The Chinese government, in its WTO commitments, recognized the importance of free flow of information to healthy and sustained economic development. Yet there have been a number of policies introduced in the

last year in the name of “creating a healthy internet environment” that may hamper the vibrancy of the Chinese internet, thereby decreasing the competitiveness of US firms in the market. This includes the now retracted internet filtering software labeled the “Green Dam Youth Escort Software” and restrictions placed on registration of internet domain names by individuals.

Additionally, the existing and planned restrictions over foreign internet services in China greatly reduce the ability for China to integrate into a globalized economy. AmCham-China recommends the Chinese government formulate internet regulations that balance both cultural and economic interests, while recognizing the trend of a single, globalized internet that creates opportunities for unfettered interaction and commerce between nations.

Telecom Value-Added Services - Market Access Barriers

China limits foreign direct investment in telecommunications to 49 percent for basic services and 50 percent for Value-Added Services (VAS). AmCham-China urges China to remove these restrictions to promote a robust VAS market that encourages innovation and technological advancement. The requirement that foreign telecom service providers may enter into joint ventures only with existing state-owned telecom providers is also problematic. A third factor limiting market entry opportunities for US telecommunications providers in China is the overly narrow definition of VAS for value-added network service licensing, inconsistent with generally accepted international practices.

A robust VAS market is critical to long-term market development, including the success of China’s operations hub and off-shoring/outourcing programs, service innovation, enterprise productivity, and the healthy development of the new media industry. Restrictions on market access threaten to limit growth of VAS and slow China’s progress towards these goals.

Cyber Security and Information Security Policy

Cyber security is an issue that has gained international attention recently due to a realization that nations increasingly rely on information systems and networks for the operation of governments, militaries, businesses and critical infrastructure. Facing new and emerging threats from inadequate security measures, a rapidly growing cyber criminal element, and nation states building relevant military capabilities of both offensive

电信增值服务 (VAS)——市场准入壁垒

中国限制电信业中的外国直接投资，规定基础服务中的外资比例不得超过 49%，增值服务中的外资比例不得超过 50%。中国美国商会促请中国取消这些限制，形成鼓励创新和技术进步的充满活力的增值服务市场。此外，外国电信服务供应商只有通过与其有国有电信公司合资才能进入中国电信市场的规定也存在问题。电信增值服务执照审批过程中对增值服务的定义范围过于狭窄，与国际通行做法相矛盾，这是第三个限制在华开展业务的美国电信供应商获得市场准入机会的原因。

一个充满活力的增值服务市场对于市场的长期发展至关重要，这包括中国运营网络中心和离岸外包 / 业务外包项目的成功、服务创新、企业生产力及新传媒行业的健康发展。市场准入限制对中国经济带来威胁，很可能限制增值服务的增长，延缓中国实现这些目标的进程。

网络安全和信息安全政策

网络安全最近引起了全世界的关注，这是因为各国越来越依赖信息系统和网络来支持政府、军事、商业和重要基础设施的运作。面对因安全措施不当而产生的新威胁、急速增加的网络犯罪以及正在构建相关攻防军事能力的国家，政府一直在制定旨在保护政府系统和重要网络架构的新法规。

中美两国媒体均报道过重大网络攻击事故，包括针对大型公司、政府和重要基础设施（包括电力行业）的攻击传言。不幸的是，许多人对网络安全的观点很狭隘，试图通过将网络局限在境内来确保其安全。如今的网络 and 系统全球互通，因此这些方法便失去了作用，最终事与愿违。此外，美国和其他国家政府在出台民用政策之前公开寻求提高网络领域的军事能力，这令中国政府对其真实意图感到不安。

尽管美国和西方国家被认为是网络安全领域的先驱，但过去几年里，中国一直在努力强化信息安全监管，以加大对信息系统的保护。显然，中国扩大监管和发展信息安全产业的工作尚未有效地结合这些方面的全球实践和经验，因此很可能会过分地限制国外产品的市场准入。中国也可能会因为将一些世界领先的信息安全产品拒之门外，降低互操作性和可使用性，使系统更易受到风险的影响，而不利自身的信息保护工作。

重大进展

2009 年和 2010 年初，中国采取了新措施来保护网络安全和打击网络犯罪。在其他国家有所行动之后，中国于 2010 年 2 月正式宣布成立国务院网络安全协调小组。尽管该小组的职责尚不清楚，但中国很可能在 2010 年采取更多积极的措施来保护网络安全。

在成立国务院协调机构的同时，工业和信息化部发表公开声明称，中国将实施“国产关键软硬件推广计划”。中国美国商会了解，这项计划旨在鼓励甚至要求中国政府和重要基础设施 IT 系统使用国产替代技术来确保国家安全。

2009 年，中国政府尤其是公安部还加大了对网络犯罪移交检察机关的力度、效率和范围，捣毁了众多地下犯罪窝点并关闭了非法网站。此外，中国还于 2009 年修订了《侵权责任法》，要求公用事业和服务供应商对消费者信息保密，并要求运营商采取合理的安全措施来防止盗窃和未经授权的使用。

尤其值得一提的是，工业和信息化部于 2009 年新推了一系列立法措施来提升中国电信网络的安全性，电信网络是中国许多行业的通信支柱。其中一些规定旨在鼓励举报网络安全事故，检测并清除僵尸网络，同时提高保护中国域名系统和路由基础架构的能力。

具体问题

中国国家认证认可监督管理委员会信息安全测试与认证管理办法

2007 年 8 月，中国国家认证认可监督管理委员会公布了关于对防火墙和反垃圾邮件产品等 13 类信息安全产品进行测试和认证的管理办法。原计划于 2009 年 5 月 1 日开始执行这一强制性市场准入机制，但中国政府随后将这些规定的范围缩小至仅限于政府采购，并且将实施日期推迟了一年。这是因为国外业界担心中国的监管体制会要求外国公司向中国政府提供源代码、产品设计及其它形式的敏感知识产权，用于进行详细审查。尽管该政策的范围有所缩小，但我们仍十分担心中国将采取与全球公认惯例和实践不符的体制。

严格的加密规定

1999 年，中国国家密码管理局宣布，该局将要求所有

and defensive nature, governments have been enacting new regulations aimed at protecting government systems and critical cyber infrastructure.

Major incidents of cyber hacking have been reported by both Chinese and US media, including purported attacks on major corporations, governments and critical infrastructure, including the power sector. Unfortunately, many have taken a narrow-minded view of cyber security and sought to secure and defend networks as if they were confined within national borders. Today's networks and systems are interconnected on such a global scale that these approaches become ineffective and ultimately counterproductive. Additionally, the US government and others have publicly sought to expand military capabilities in the cyber realm often before civilian policy is announced, creating discomfort and unease within the Chinese government regarding true intentions.

While the US and Western nations are considered leaders in cyber security, over the past several years, China has been working to increase regulation of information security to strengthen protection of information systems. It is apparent that much of China's drive to expand regulation and develop its information security industry has not effectively incorporated global practice and experience in these areas, setting it on a path that will overly and unnecessarily restrict market access for foreign products. China may also disadvantage its own effort to protect information by shutting out some of the world's leading information security products from its market, reducing interoperability and workability and making their systems more vulnerable to risk.

Significant Developments

China adopted new measures in 2009 and early 2010 to protect cyber security and fight cyber crime. Following moves by other nations, in February of 2010, China formally announced the creation of a State Council level cyber security coordination group. While the role and responsibility of this group is unknown, it is likely China will take more pro-active measures to defend and secure its cyber space in 2010.

Along with the creation of a State Council Coordination body, MIIT made public statements that China will implement a "Domestic Critical Software/Hardware Promotion Plan." AmCham-China understands that the goal of this plan is to promote, or in cases mandate, Chinese government and critical infrastructure IT systems use of domestic technology alternatives for the purposes of national security.

The Chinese government, most notably the Ministry of Public Security, also increased the tempo, speed and scope of cyber crime prosecution in 2009. It was credited with breaking a number of underground criminal rings and shutting down illicit websites. Additionally, in 2009, China revised its criminal tort law to stipulate requirements upon public utilities and service providers that customer information be kept confidential, and operators provide reasonable security measures to prevent theft and unauthorized use.

In particular, in 2009, MIIT introduced a flurry of new legislative measures to bolster the security of China's telecom networks, the backbone of communications for many industries in China. This includes regulations designed to encourage the reporting of cyber security incidents, the detection and eradication of zombie computer networks otherwise known as "botnets," and increased ability to safeguard China's domain name system and routing infrastructure.

Specific Issues

CNCA Information Security Testing and Certification Regulations

In August of 2007, the Chinese National Certification and Accreditation Administration (CNCA) initiated a regulatory push to test and certify 13 types of information security products such as firewalls and anti-spam products. While initially planned to be a mandatory market access mechanism implemented on May 1, 2009, the Chinese government has since reduced the scope of these rules to GP only and delayed the implementation date by one year. This reduction was due to concerns from the foreign trade community that China's regulatory regime unduly places requirements on foreign companies to provide source code, product design and other forms of sensitive IPR to the Chinese government for detailed review. While the scope of this policy has since been reduced, we are still extremely concerned that China is moving to implement a regime that is inconsistent with globally accepted norms and practices.

Arduous Encryption Rules

In 1999, China's State Encryption Management Bureau (SEMB) announced that it would mandate that all foreign technology providers use Chinese indigenously developed encryption technology, notably algorithms. While the government in 2000 provided a written clarification that such rules only applied to products in which encryption was the core commercial functionality, there are still a number of areas for concern due to recent developments. For example, in December of 2009, China announced the implementa-

外国技术供应商使用中国自主研发的加密技术，尤其是运算法则。尽管政府于 2000 年以书面形式阐明这些规定仅适用于核心商业功能为加密的产品，但鉴于最近的发展，仍存在许多问题。举例来说，2009 年 12 月，中国宣布对几类加密产品的进口实行新的审查制度。此外，在智能卡等细分市场，中国规定国有企业若未在加密机构进行严格的测试，则不得购买国外技术，而这是大多数中国美国商会会员都不愿意做甚至不能做的事情。国家密码管理局还将实行相关政策，要求在政府以及电网和电信网络等重要基础设施进行采购之前对国外加密技术进行审查，在某些情况下，甚至禁止采购国外技术。

重要基础设施保护体系造成障碍

自 2007 年以来，中国公安部一直在努力实施旨在保护国内重要基础设施的政策体系。这项被称为信息安全等级保护制度（MLPS）的技术措施对中国的信息网络进行了分级，分级依据是在系统遭到破坏或攻击后对国家安全、社会秩序和经济利益的危害程度。信息安全等级保护制度进一步规定，信息安全保护等级分为五级，其中第五级最为重要（如军事和国防网络）。信息安全等级保护制度还要求第三级以上的实体（包括中国大多数国有企业和政府机构）只能购买带有自主知识产权的 IT 安全产品，并且传统 IT 产品必须遵守严格的测试和审查指导办法。2009 年 12 月，中国公安部宣布，该部门将努力在 2012 年之前完成第三级以上信息系统的整改和合规工作，这可能会对向中国重要基础设施运营商提供产品和解决方案的中国美国商会会员产生严重的影响。

建议

对中国政府：

中国美国商会越来越担心，中国政府将会制定和出台对在华外资技术供应商不利的政策。中国应将网络安全看作一个全球性的问题，遵守公共标准等国际管理规定，确保中国信息网络上信息的自由流动。中国美国商会提出以下建议：

- 对于与国家安全无关的系统（如非军事和外交网络），中国政府应取消审查源代码和采用自主研发技术的要求和障碍。这适用于中国强制认证、信息安全等级保护制度和加密体系。

- 遵守网络安全领域的国际惯例和实践。这就包括加强与美国商会会员企业的国际对话，以提高透明度并加深彼此之间的了解。在制定中国政策时，中国政府应在政策公布之前听取外国利益相关者的意见，以避免情况趋向复杂。

对美国政府：

- 中国美国商会建议美国政府与中国利益相关者就网络安全问题开展有效的对话。这应当要求美国政府的贸易和安全职能部门的相关各方全部参与其中。美国应积极建议中国政府改变不仅对在华美企不利、同时也有损中国整体发展的政策。最后，美国政府应寻找可以开展积极合作的领域（如打击网络犯罪），以建立相互之间的信任和理解。

监管标准与合规评估

近年来，中国不断增加行业的测试和认证负担，对消费者的健康与安全、环境以及产品的质量水平都无多大益处。在执行这些严格且重复的要求时，中国在无形之中提高了成本，阻碍了国内行业的创新发展，并损害了消费者的利益。2009 年就有两个例子可以说明这一点：修改中国强制认证程序以及发布与中国环境标准有关的目录草案。

具体问题

中国强制认证程序

2009 年 7 月，中国国家质量监督检验检疫总局公布了第 117 号《强制性产品认证管理规定》，这项规定于 2009 年 9 月 1 日生效。该法令包含两大监管调整，这些调整将进一步加重认证程序的负担。首先，它规定中国强制认证的有效期为五年。在这五年内产品无需重新测试，但必须每年进行工厂检查，以便在五年后重新认证。其次，先前的 GB 9254 标准已更新为 GB 9254:2008——信息技术设备的无线电骚扰限值和测量方法国家标准。更新后的标准要求 IT/电信产品的认证需进行更多测试。

这项新规定于 2009 年 9 月 1 日生效，因此到目前为止，拥有有效中国强制认证证书的企业还未面临如何重新申请中

tion of a new regime to audit several types of encryption products upon importation into Chinese borders. Additionally, in certain market segments, such as smart cards, China has mandated that Chinese SOEs cannot procure foreign technology without undergoing arduous testing with the encryption authorities, something most AmCham-China members are unwilling, or even unable, to do. SEMB is also working to implement policies that will require review or in some cases prohibit foreign encryption technology by not only the government, but also critical infrastructure which includes the power grid, telecom networks and other major market segments.

Critical Infrastructure Protection Regime Creates Barriers

Initiated in 2007, China's Ministry of Public Security has been moving to implement a policy regime designed to protect and safeguard domestic critical infrastructure. This technical measure, called the multi-level protection scheme (MLPS), classifies information networks in China according to their ability to influence national security, social order and economic interests if the system was damaged or attacked. MLPS further stipulates that systems will be classified from level one to level five, with five at the extreme end of importance (such as military and defense networks). The MLPS regime also requires that at level three and above, which includes most of China's SOEs and government agencies, entities must only procure IT security products with domestic IP, and also subject traditional IT products to rigorous testing and review guidelines. In December of 2009, China's Ministry of Public Security announced that it would seek "full compliance" by level three systems in China before 2012, which could have serious implications for AmCham-China members who provide products and solutions to critical infrastructure operators in China.

Recommendations

For the Chinese Government:

AmCham-China is increasingly concerned that the Chinese government is formulating policies that will create barriers for foreign technology providers in China. It is critical that China view cyber security as a global issue, requiring adequate alignment with international governance bodies, such as the Common Criteria, to ensure the free flow of information across China's information networks. AmCham-China makes the following recommendations:

- For systems not related to national security (i.e., non-military and diplomatic networks), the Chinese government remove requirements and barriers to review source code and implement domestic proprietary technology. This would apply for the China Compulsory Certification (CCC), MLPS and encryption regime.
- Move to embrace global norms and practices in the area of cyber security. This includes increased international dialogue with AmCham-China member companies, with the aim to increase transparency and understanding. The Chinese government should seek to incorporate the views of foreign stakeholders in the formulation of Chinese policies, before they are published to avoid further complications.

For the US Government:

- AmCham-China recommends that the US government works to create ample dialogue with relevant Chinese stakeholders on cyber security. This should include bringing "all sides to the table," from both the trade and security functions of the US government. The US should actively recommend the Chinese government alter its policies that would be detrimental to not only American industry in China, but to Chinese development overall. Finally, the US government should seek areas for positive engagement and cooperation to build mutual trust and understanding, such as cyber crime.

Regulatory Standards & Conformity Assessment

In recent years, China has continued to increase the testing and certification burdens on industry that provide little or no benefit to the health and safety of consumers, the environment, or the quality levels of products. In implementing these arduous and often repetitive requirements, China thwarts the development of its own industry's innovation and harms its consumers by driving up cost for no benefit. Two cases exemplifying such activity in 2009 are the changes to CCC procedures and the issuance of the draft catalogue related to China's environmental standards.

国强制认证的问题。中国国家认证认可监督管理委员会尚未公布中国强制认证续期的详细实施办法和程序。从目前的情况来看，申请者必须每五年申请一次新的中国强制认证，即使在这期间产品没有发生任何变动。申请将要求提交完整的申请表、完成产品测试，并通过工厂检查。这些要求将对企业造成更多不必要的负担，从而浪费了时间和资金。

此外，更新后的 GB 9254:2008 新增了两项测试：1 GHz 以上辐射干扰测试和第六类非屏蔽平衡连接线测试。这两项测试将增加测试所需的时间、成本和样机数量。新规定要求申请者必须提供相关产品的所有制造商和工厂的具体名称。过去，如果产品在多家工厂制造而成，那么申请者可简单注明有“多个”工厂和制造商。这项新规定与其它国际认证要求不符，因此企业面临更沉重的负担，以满足中国认证部门的特殊要求。

环境标准

2009 年 10 月 9 日，工业和信息化部节能与综合利用司公布了第一批《电子信息产品污染控制重点管理目录》（征求意见稿）草案。第一批目录草案涉及移动电话终端、电话机（固定和无线）以及与个人电脑相连的打印设备，但业内人士预计今后会有更多产品被纳入其中。工业和信息化部已将目录有关的三项标准作为国家标准通知世界贸易组织技术性贸易壁垒。一经批准和实施，这些标准将使所涉产品在进行中国强制认证时面临更多强制性的测试和认证程序，对行业造成不必要的沉重负担。

美国业界建议，中国政府应当改变制定更多标准和认证要求的趋势，而是开始精简程序并取消繁冗的测试。如果已有国际标准，我们建议使用这些公认的程序，并共同促进互惠的测试和认证。

低效率、重复性的标准给国内外企业带来了巨大负担，会阻碍中国的创新，采纳以下建议将有利于中国发展创新型社会。中国美国商会和美国商界期待与中国政府和行业携手制定能够妥善保护消费者和环境的标准。

建议：

对中国政府：

- 根据具体情况管控认证的有效性（举例来说，如果产品的重要部件没变，五年后就不需要重新测试）。
- 在增加测试要求或改变认证规定之前公开征求企业意见，并考虑是否存在类似的国际要求。
- 允许外国公司全面参与中国的标准制定，因中国公司在世界各地都能享受这一待遇。
- 如果相关产品领域的公认国际惯例允许公司自行评测，则应接受公司的评测结果。
- 取消不必要的测试要求。
- 简化测试和认证程序。
- 建立测试和认证过程中的知识产权保护体系。

重要建议

对中国政府：

- 取消或修订歧视性程序、标准、税收、知识产权、IT 安全及其它政策，允许外国公司全面参与，其中包括但不限于对中国的创新能力做出贡献的公司。中国的创新政策应促进竞争，而非仅使个别国内竞争者受益。
- 加强知识产权（包括国外知识产权）的保护和执法工作，在标准、竞争及知识产权执法方面要尊重所涉及的重要知识产权的完整性。对于中国法律有明确规定的以及中国在美中商贸联合委员会框架下做出明确贸易承诺的领域，应增加执法资源，加大执法力度。
- 采取鼓励而非排斥进口的内需拉动增长政策。
- 中止将知识产权国籍作为市场准入条件或壁垒。
- 采用国际 IT 及 IT 安全标准，允许外国公司全面参与中国的标准制定工作。
- 中国、外国政府和外国 IT 安全专家应深化关于 IT 安全问题的对话。
- 加入通用标准互认协定，有很多发达国家的政府借助这一国际平台和社区来共同应对和解决常见

Specific Issues

China Compulsory Certification Procedures

China's General Administration for Quality Supervision, Inspection, and Quarantine (AQSIQ) in July 2009 issued Order No. 117, Regulations Concerning the Management of Compulsory Product Certification, which went into effect on September 1, 2009. The order contains two primary regulatory changes that will create further burdens in the certification process. First, it stipulates that CCC certification is valid for five years. The product does not need to be re-tested during this five-year period, but annual factory inspection will be required in order to renew certification after five years. Second, the previous GB 9254 standard has been updated to GB 9254:2008, Information Technology Equipment - Radio Disturbance Characteristics - Limits and Methods of Measurement. The updated standard requires additional testing for certification of IT/telecom products.

This new regulation has been in effect since September 1, 2009, so enterprises with valid CCC certifications have not yet faced the issue of how to re-apply for CCC certification renewals. The CNCA has not yet published the detailed implementation measures and procedures for CCC renewal. As it currently stands, an applicant must apply for a new CCC every five years, even if the product has not changed within those years. The application will require submission of a complete set of forms, completion of product testing and completion of a factory inspection. These requirements will place additional unnecessary burdens on enterprises, wasting time and money.

In addition, the updated GB 9254:2008 adds two tests: the radiation disturbance test above 1 GHz, and the test of the unshielded balance connection wire in Category 6. These two additional tests will increase the time, money and number of sample machines required for testing. The new regulation stipulates that the applicant must provide the specific names of all manufacturers and factories producing the item. In the past, if a product was manufactured at multiple factory locations, the applicant could simply mark "various" for the factories and manufacturers. This new regulation is not in accordance with other international certification requirements, so enterprises face greater administrative burdens in order to meet the special requirements of the Chinese certification department.

Environmental Standards

On October 9, 2009, the Energy Conservation and Resources Utilization Department of the MIIT released a

draft of the first Catalogue of Electronic Information Products for Priority Control of Pollution (Catalogue) for public comment. This first draft Catalogue covers mobile phone terminals, telephone sets (fixed and wireless) and printing equipment connected to PCs, but industry anticipates more products to be added in the future. MIIT has notified the three standards related to the Catalogue to the WTO-Technical Barriers to Trade as they are national standards. These standards, if approved and implemented, will lead to additional mandatory testing and certification procedures under CCC for the covered products and place a huge and unnecessary burden on industry.

US industry recommends that the Chinese government reverse its trend of creating more standards and certification requirements and instead begin the process of streamlining procedures and removing redundant testing. If international standards exist, we suggest using these established processes and working toward reciprocal acknowledgement testing and certification.

Adopting the recommendations below would be beneficial to China's development into an innovative society as inefficient and repetitive standards are a burden to Chinese and foreign companies alike and stifle innovation in China. AmCham-China and the US business community look forward to working with the Chinese government and industry in developing standards that appropriately protect the consumer and the environment.

Recommendations

For the Chinese Government:

- Regulate the validity of certification according to the specific situation (e.g., if the product has not changed any critical components, the product should not be re-tested after five years).
- Invite public comments from enterprises and consider the presence or absence of comparable international requirements before adding testing requirements or changing certification rules.
- Allow foreign companies to participate fully in standards development in China, as Chinese companies are allowed to do internationally.
- Accept company self-valuation results if this is the accepted international norm in the product area.
- Remove redundant testing requirements.

的 IT 安全挑战、标准、认证标准及要求。

- 继续与外国政府和各行各业就标准政策开展对话，对于国家标准中使用的专利，中国应采取基于市场（合理、非歧视性）的许可政策，并取消有关强制许可的规定。
- 争取于 2011 年依据严格的商业条件加入世界贸易组织《政府采购协定》，承诺从中央到省市地方各级都推行基于绩效的、透明的、促进竞争的采购政策。
- 中国及其贸易合作伙伴应确保履行中国的现行入世承诺，即国有企业和国家投资企业将仅根据商业考虑来购买商品和服务，政府不得施加影响或制定歧视性规定。

对美国政府：

- 通过战略与经济对话和中美联合贸易委员会与中国政府就具体的创新政策和问题持续开展高层对话，并加强对这些问题的重视程度，交流沟通问题的严重性以及在政治和经济上的不可持续性。

- Streamline testing and certification processes.
- Establish systems to protect IPR during testing and certification processes.

Overarching Recommendations:

For the Chinese Government:

- **Withdraw and modify discriminatory procurement, standards, tax, IP, IT security and other policies to allow full participation of foreign companies including, but not limited to, companies contributing to China's innovative capacity. China's innovation policies should promote competition rather than individual domestic competitors.**
- Enforce IP rights, including foreign IP rights, and respect the integrity of underlying IP rights in standards, competition and IP enforcement. Enforcement resources should be increased and enforcement actions ramped up in areas where China's law is clear and where China has made explicit JCCT trade commitments.
- Adopt domestic demand-led growth policies that encourage, rather than exclude, foreign imports.
- Cease using nationality of IP ownership as a market access condition or barrier.
- Adopt international IT and IT security standards and allow full participation of foreign companies in China's standards development.
- China, foreign governments and foreign IT security experts should deepen dialogue on IT security issues.
- Join the Common Criteria Recognition Agreement, the international forum and community where leading governments address common IT security challenges, standards, certification standards and requirements.
- Continue dialogue with foreign governments and industries on standards policies and adopt market-based (reasonable and non-discriminatory) licensing policies for patents used in China's national standards and refrain from compulsory licensing.
- Join the WTO GPA on strong commercial terms in 2011, committing to merit-based, transparent and pro-competitive procurement policies at central, provincial and local levels.
- China and its trading partners should ensure

and enforce China's existing WTO commitment that state-owned and state-invested enterprises will procure goods and services based on commercial considerations only, with no influence or discrimination by the government.

For the US Government:

- Engage China in a sustained, senior level dialogue on overarching and specific innovation policies and issues through the S&ED and JCCT and raise the importance of these concerns at a head of state level, communicating the serious politically and economically unsustainable nature of the problem.



Insurance

China's insurance market has maintained steady growth and become the world's sixth largest market. This is partly attributable to positive structural changes, improved market order, better risk control and a progressive legal framework under the direction of the China Insurance Regulatory Commission (CIRC). US insurers have continued confidence in and commitment to the China market and have increased investment, continued best practices transfers to their China operations and made other developmental contributions to the insurance industry.

However, market access issues continue to restrict US and other foreign insurers in most cities, limiting the scope of their geographical expansion, investment options and product offerings. These barriers continue to deny Chinese consumers and society the full benefits of a robust and competitive insurance industry, preventing individuals from effectively insuring their health and property, and companies from more efficiently managing their risk. Although the insurance industry grew 39 percent from 2007 to 2008, foreign insurers' market share actually shrank from six to four percent over the same period.

As insurance plays an increasingly important role in China, all insurance companies, including those with US investment, actively contribute. A level playing field is critical, as a fair and open business environment benefits consumers and the long-term interests of the industry.

Significant Developments

On October 1, 2009, the new Insurance Law came into effect. It creates favorable conditions for the development of the industry through expanded scopes of business and investment channels for insurance companies, improved conduct requirements for market participants and strengthened consumer protection. US insurance companies welcome the new Insurance Law and believe China's insurance industry will benefit as the new Law helps to level the playing field. AmCham-China commends CIRC for inviting public comments

on the Insurance Law and corresponding administrative rules' revision processes. AmCham-China looks forward to further engagement with CIRC.

Throughout 2009, CIRC continued to direct the industry towards profit-driven growth through balanced structure and rational market conduct. It devoted significant supervisory resources to intensify enforcement against irregularities, investigating thousands of cases and penalizing offenders, even at senior levels.

Starting in January 2009, CIRC also introduced a risk-based supervisory approach, which classifies insurers into four groups based on performance indicators in solvency, corporate governance, fund utilization and operations, each resulting in different supervisory actions. While both approaches may work well with current market conditions, in the long run, the risk-based approach will more efficiently use regulatory resources and impose less onerous regulatory burden on prudent firms.

Specific Issues

International insurance companies want to compete fairly in the China market. Although they are allowed market entry, their ability to compete fully is hampered, to the detriment of Chinese consumers. An overwhelming number of American and other foreign insurers operating in China are registered in China and are therefore Chinese companies; yet, they still face regulatory discrimination. Currently, insurance industry competition is restricted in the areas below.

Geographical Barriers

Branch Office and Sub-branch Office

The establishment of branches and sub-branches is critical to market expansion in a country as large as China. Yet, as described in the 2009 *White Paper*, there is a persistent pattern of unequal treatment.

Article 81 of the new Insurance Law provides that the

保 险

中国保险业持续稳定发展，已经成为全球第六大保险市场。这在一定程度上归功于积极的结构性改革、市场秩序的改善、风险控制能力的提高，以及在中国保险监督管理委员会（以下简称“中国保监会”）指导下法律框架所取得的不断进步。美国保险企业始终对中国市场抱有坚定的信心与承诺，他们不断增加投资，将一流的经营模式引入其在华业务，同时也为中国保险业的发展做出了诸多其它贡献。

然而，在中国大多数城市，市场准入问题依然困扰着美国和其他外国保险企业，它们在地域扩张、投资选择和产品种类等方面都面临着限制。这些障碍继续使得中国消费者乃至整个社会都无法真正享受到保险业蓬勃发展、有序竞争所带来的利益，使得个人无法有效地为其健康和财产投保，企业难以更为有效地管理其风险。虽然从2007年到2008年，中国保险业增长了39%，但同期外资保险公司的市场份额实际上却从6%下滑至4%。

随着保险业在中国的地位变得日益重要，包括美资保险公司在内的所有保险企业都能够为此做出积极的贡献。至关重要的一点是，中国需要建立一个公平竞争的平台，因为公平、开放的商业环境不仅造福于消费者，也有利于行业的长期发展。

重大进展

2009年10月1日，新《保险法》生效。它扩大了保险公司的业务范围与投资渠道，提高了对市场参与者的行为要求，同时加强了对消费者的保护，从而为保险业的发展创造了有利的条件。美国保险企业对新《保险法》表示欢迎，并相信新法案将有助于建立公平的竞争平台，令中国保险业从中受益。在《保险法》及相关管理细则的修订过程中，中国保监会广泛征求公众意见，中国美国商会对此表示赞赏，同时也期待着与中国保监会进一步合作。

2009年，中国保监会通过调整行业结构和整顿市场行为，指导整个行业朝着盈利驱动型发展目标迈进。它投入了巨大的管理资源，加大对违规行为的监管力度，调查案例达数千起，同时对违规人员（甚至包括高管）施以处罚。

同时，自2009年1月起，中国保监会还引入了以风险为基础的监管模式，这种模式根据偿付能力、企业管治、资金利用和业务经营等绩效指标将保险公司划分为四组，针对每一组采取不同的监管措施。虽然就目前的市场条件而言，这两种方法都能起到很好的效果，但长远而言，以风险为基础的监管方法更有利于监管资源的有效利用，同时也减轻了合规守法企业的监管负担。

具体问题

国际保险企业希望在中国市场公平地开展竞争。虽然中国允许外资保险企业进入其市场，但它们开展充分竞争的能力却受到了限制，这不利于中国消费者的利益。绝大多数美资及其他外资在华保险企业都是在中国注册成立的国内企业。但他们在监管方面仍然面临着差别性的待遇。目前，保险业的竞争受到了以下几个方面的限制：

地域障碍

分支机构

对于像中国这样庞大的市场，设立分支机构对业务扩张起着举足轻重的作用。但正如2009年度《白皮书》中所言，不平等待遇始终存在。

新《保险法》第八十一条规定，国务院保险监督管理机构应当对保险公司设立分支机构的申请进行审查，自受理之日起六十日内作出批准或者不批准的决定。但符合资格的外资保险公司往往需要等待更长的时间才能收到设立分支机构的批复。

insurance regulatory authority under the State Council shall examine applications to establish a branch and render a decision whether or not to approve within 60 days of the receipt of application materials. Qualified foreign insurers experience much longer waits before receiving approval to establish branches.

Chinese-invested insurance companies, even if newly established, characteristically receive multiple branch approvals concurrently on the same day or within days of each other. Conversely, foreign-invested insurance companies rarely, if ever, receive multiple branch approvals concurrently.

Moreover, central-level CIRC often reserves for its own examination and approval matters involving the establishment of sub-branches by wholly foreign-owned and Chinese-foreign joint venture (JV) insurance companies. This has triggered delay concerns among foreign insurers regarding the sub-branch approval process. It also impedes the expansion of foreign-invested insurance companies to the central and western regions of China where the need for capital and economic development is greatest. As the new Insurance Law becomes effective, AmCham-China urges even and uniform application of the Insurance Law for branch establishment by foreign companies.

A separate barrier to geographic expansion in the Administrative Measures on Insurance Company Management is the requirement that an insurance company have no record of penalties imposed during the previous two years. Some AmCham-China companies have been penalized for minor infractions and are thus prohibited from establishing branches and sub-branches for two years at a time. We believe that such prohibition should apply only to serious violations, lest responsible insurance companies be restricted from offering their products to consumers in some localities.

Investment Barriers

Equity Cap on Life JVs

Freedom to capitalize the business and reap resulting profits encourages insurance companies to invest and grow their businesses, as is true in other industries. The 50 percent cap on foreign-invested personal insurance companies is a major disincentive for foreign insurers to invest, introduce advanced products and otherwise serve the China market. All too often, their partners are either unwilling to make additional investments needed to expand the business, or are mere rent-seekers awaiting an opportunity to cash out without contributing beyond the initial share of the JV's registered capital.

Dual Investment

In a late 2007 draft rule governing management of equity in insurance companies, CIRC barred foreign insurers from simultaneously investing in multiple entities in China engaged in the same business. The rule was never formally enacted, but its spirit seems to be in effect, as no foreign companies have been approved for dual investments since 2008.

In September 2009, CIRC issued a revised draft rule for public comment. It states that "two or more insurance companies (defined as companies with less than 25 percent equity holding by foreign investors), if controlled by the same entity or mutually controlled, shall not enter into business of the same competitive nature or of a conflict of interest." The definition of "control" remains vague and it is unclear if foreign companies can make dual investments in two domestic companies without "control." AmCham-China recommends that for the sake of clarity and transparency, CIRC explain its current rules and confirm that dual investments by foreign insurers are permissible within reasonable parameters.

Foreign Currency Conversion

US insurance companies have committed to the China market and are increasing China operations investment for growth and solvency purposes. However, when foreign funds are wired in, they have to stay in designated bank accounts until they are converted into renminbi (RMB). During this "parking period," the funds are subject to great currency exposure as the RMB has tended to appreciate over time. Moreover, the process of converting foreign currency into RMB is usually lengthy and the approved amount of conversion is often uncertain. This process, in addition to creating an unstable environment for foreign insurers, also restricts foreign insurers' ability to pay claims to Chinese clients in RMB in a timely manner. AmCham-China therefore suggests that for the sake of creating a predictable investment environment for foreign insurers, the procedure for foreign currency conversion be expedited and made more transparent.

Product Barriers

Mandatory Third Party Liability Insurance for Auto (MTPL)

Currently, foreign insurers are not allowed to write MTPL coverage. This restriction has effectively blocked foreign firms from China's auto insurance market, which accounts for 70 percent of the property and casualty (P&C) market. MTPL has received tremendous public attention, sometimes controversial, since its

中资保险公司（即便是新设立的企业）往往能够在同一或几天之内收到有关多个分支机构设立的批复。相反，外资保险公司却很少能够一次收到有关多个分支机构设立的批文。

此外，外资及中外合资保险公司设立分支机构申请事项通常由中央一级的保险监督管理机构负责审批。这引发了外资保险公司对分支机构审批程序的普遍担忧。同时这也阻碍了外资保险公司向中国中西部地区扩张的步伐，而这些地区正是经济发展最快、也是最亟需资金的地区。随着新《保险法》的生效，商会促请中国在施行《保险法》有关外资公司设立分支机构的法律规定方面体现出公平、统一的原则。

另外，《保险公司管理规定》要求申请设立分支机构的保险公司在最近两年内无受处罚的记录，这一规定也限制了保险公司的地域扩张能力。商会的一些成员企业曾因轻微的违规行为而受过处罚，因而两年内不得设立分支机构。我们认为这一禁止性规定只应适用于重大违规行为，以免相关保险公司无法向某些地区的消费者提供服务。

投资障碍

寿险合资公司的持股限制

企业拥有资本化的自由权并从中获利，是保险公司大力投资和发展自身业务的动力所在，各行业皆如此。对外资寿险公司在合资公司中的持股比例 50% 的上限要求，严重地挫伤了外资保险公司投资中国市场、引入先进产品和有效地服务于中国市场的积极性。通常的情况是，他们的合作伙伴并不愿做出更多必要的投资来拓展业务，或仅仅只是等待变现机会的“寻租者”，除了向合资公司投入最初的注册资本外，不愿做出更多的投资。

并行投资

2007 年底，中国保监会公布了《保险公司股权管理办法》的草案，严禁外资保险公司同时在华投资参股多家业务相同的实体。虽然这一管理办法并未正式颁布，但该管理办法的精神似乎一直在执行，因为自 2008 年尚未有一家外资保险公司获得投资参股多家同类保险公司的批文。

2009 年 9 月，中国保监会发布了修订后的草案，用于征求公众意见。该草案规定，“两个以上的保险公司（是指外资股东出资或持股比例占公司注册资本不足 25% 的保险

公司）受同一机构控制或者相互之间存在控制关系的，不得经营存在利益冲突或者竞争关系的同类保险业务”。“控制”一词的定义仍然含糊不清，同时也没有明确说明外资公司是否能够在不存在“控制”关系的前提下同时对两家国内公司进行投资。出于澄清和透明度考虑，商会促请中国保监会对当前的管理办法进行解释，并确认外资保险公司可在合理范围内进行并行投资。

外币兑换

美国保险公司一直致力于中国市场的发展，为了扩展业务和提高偿付能力，不断增加对其中国业务的投资。但汇入的外汇资金在兑换成人民币之前必须存放在指定银行账户内。在这段“滞留期”内，这些资金面临着巨大的外汇风险，因为人民币正处于一个长期的升值通道。此外，外币兑换人民币的程序通常十分繁复，所能获批兑换的金额也往往不确定。这一过程不仅使外资保险公司面临不稳定的局面，也会削弱外资保险公司以人民币及时向中国客户支付赔偿的能力。因此，商会建议中国政府加快外币兑换程序，提高透明度，为外资保险公司创造一个可预知的投资环境。

产品障碍

机动车交通事故责任强制保险（以下简称“交强险”）

目前，外资保险公司不允许承保交强险。这一限制使外资保险公司无法进入中国的机动车保险市场，而机动车保险占中国财产保险市场的 70%。交强险自推出以来，引起了社会的广泛关注，也带来了不少的争议。随着交强险实施进入第三年，许多省份出现了承保损失。机动车保险业务的承保损失已经对整个财产保险市场带来了影响。

相比之下，由于出色的风险控制、定价和数据管理能力，美国私家车保险市场在过去十年间一直保持着盈利局面。这些乃是成熟市场的标准经营模式，但在中国还未能得到采用。开放交强险市场将有助于吸引外资保险公司，鼓励他们 will 一流的经营模式引入中国，从而改善交强险乃至整个机动车保险市场的表现。从长远而言，这将令保险业及消费者受益匪浅。

政治风险保险 (PRI)

政治风险保险可保护企业免遭因政治性事件（例如：企业的境外业务所在国的政府征收或国有化等行为或事件）造

inception. As MTPL moves into its third year, underwriting losses have arisen in many provincial markets. The underwriting losses in the auto insurance segment have impacted the overall P&C sector.

By comparison, the US private passenger auto segment has been profitable over the past 10 years, attributable to superior risk control, pricing and data management skills. These are standard practices in mature markets, but have yet to be utilized in China. Opening MTPL will attract foreign companies and encourage them to bring best practices to China to improve the performance of MTPL and the auto insurance market as a whole. Such improvements will benefit industry and consumers in the long run.

Political Risk Insurance (PRI)

PRI enhances foreign trade and investment by protecting companies from financial losses caused by events that are political in nature, (i.e., acts or events such as government expropriation or nationalization in a foreign country where the company operates). Such coverage is increasingly important as Chinese companies follow the “Go Out” overseas trade and investment policy, particularly in countries with less mature governance systems that are susceptible to sudden changes in law or policy.

In China, however, the only PRI provider is a government monopoly (Sinosure) sometimes acting in cooperation with multilateral development institutions. The barrier to market entry for all private insurers harms Chinese traders and exporters by limiting the availability and range of PRI alternatives. Although several foreign companies have extensive experience and worldwide networks to serve their PRI customers, they cannot make their capabilities available to Chinese customers.

Limitations on International Brokers

Under current rules, international brokers are limited to large-scale commercial risks. This restriction has effectively blocked foreign brokers from other lines of business such as small and medium-sized enterprises (SME), which contribute 60 percent of China’s GDP. SMEs are largely underserved by insurance because SMEs have low risk awareness and insurers have high distribution costs. International brokers can bridge the gap with their broad experience and risk management expertise. In addition, international brokers will provide strong support for SMEs going overseas by using their global networks.

Enterprise Annuities

AmCham-China applauds the Chinese government for beginning to include enterprise annuities as supplemental coverage in the social insurance policy framework. We note, however, that the qualification process is rather opaque and complicated, discouraging international companies from participating in this underserved market. As a consequence, enterprise annuities are likely to expand more slowly and in a more limited range of products from less experienced providers than if the process is made less complicated and more transparent.

Recommendations

- **Ensure uniform enforcement of the new Insurance Law and allow foreign insurance companies to enjoy national treatment by granting new branch licenses on a concurrent basis.**
- Remove requirements for foreign insurance companies to establish JVs in order to enter the personal insurance market, or at the very least, remove the current 50 percent equity cap.
- Permit foreign insurance companies to make dual investments in entities in the same line of business within reasonable parameters (to be clearly defined).
- Open MTPL and PRI to foreign P&C carriers.
- Allow international brokers to provide brokerage services to Chinese SMEs.
- Expedite and increase the transparency of the process of converting foreign currency into RMB.

成的经济损失，从而促进外贸和投资。随着中国企业实施“走出去”的海外贸易和投资政策，这种保险的重要性日益凸显，这在管治体系有欠成熟、容易受法律或政策突然变更影响的国家显得尤为重要。

但在中国，只有一家政府垄断机构（中国出口信用保险公司）提供政治风险保险，它有时会与多边发展机构合作。由于所有私营保险公司都面临着市场准入障碍，使得政治风险保险的可获得性和选择性受到了很大限制，有损于中国贸易及出口企业的利益。虽然一些外资公司在政治风险保险服务方面有着丰富的经验和全球化网络，但他们却无法将这些优势引入中国市场，令国内客户受益。

对国际保险经纪公司的限制

根据现行规定，国际保险经纪公司只可从事大型商业风险的保险经纪服务。这一限制已经严重阻碍了外资保险经纪公司向中小企业等其他各类机构提供服务，而中小企业在中国国内生产总值中所占比例高达 60%。目前针对中小企业的保险服务极度匮乏，一方面是因为中小企业的风险意识不强，另一方面是因为保险公司需要承担很高的分销成本。而凭借其丰富的经验和强大的风险管理专业能力，国际保险经纪公司能够很好地填补这一空白。此外，国际保险经纪公司可利用自身全球性网络为走出国门的中小企业提供强有力的支持。

企业年金

中国政府目前已经开始将企业年金作为补充和完善社会保障体系的有力手段，中国美国商会对此表示赞赏。但我们要指出的是，资格审定程序过于复杂，有欠透明，阻碍了国际企业参与这一刚刚起步的市场。若能够简化审定程序，提高透明度，将有利于加快企业年金服务市场的发展，吸引经验丰富的保险公司提供更多、更为完善的产品。

建议

- 确保新《保险法》得到统一的执行，允许外资保险公司享有国民待遇，可同时取得多家分支机构设立的批文。
- 取消对外资保险公司必须设立合资公司方能进入中国寿险市场的限制，或者至少是取消对外资公司 50% 的持股上限要求。
- 允许外资保险公司在合理范围（需明确界定）内投资参股多家同类保险公司。
- 向外资产险公司开放交强险和政治风险保险市场。
- 允许国际保险经纪公司向中国中小企业提供保险经纪服务。
- 加快外币兑换人民币的程序，提高透明度。

Legal Services

Introduction

In 2007, the State Council issued its Opinions on Expediting the Development of the Service Sector (Opinions), which set the goal of growing the service sector in China to RMB 2.7 trillion (US \$394 billion) by 2010 from approximately RMB 1 trillion (US \$146 billion) in 2005. One of the main goals of the Opinions is to cultivate internationally competitive domestic service companies with knowledge of advanced foreign practices and management experience. To achieve these goals and grow the service sector effectively, China must attract and support development of high-value service industries like commercial and investment banks, and consulting and real estate companies. One thing these businesses have in common is a dependence on the counsel and services provided by experienced lawyers and law firms.

Law firms impact companies' decisions about where, when and how to invest in one country versus another. All major economies with service sectors totaling more than 60 percent of the basic economy allow foreign law firms to practice both international and local law. However, China does not. International law firms in China face a broad range of restrictions concerning market access, resulting in an inability to hire qualified PRC lawyers to practice Chinese law. This restriction impedes the growth of China's high-tech and high-value service sectors, employment opportunities for qualified Chinese lawyers, and the globalization of leading Chinese companies. It also impedes the development of domestic firms by allowing them to practice without healthy competition, and by preventing qualified PRC lawyers from working in foreign firms with broader international practices.

Specific Issues

Key Issue: Limited Scope of Practice

Although international law firms face a broad range of restrictions concerning market access in China, the overriding issue is foreign firms' inability to hire quali-

fied PRC lawyers with active PRC law licenses in China. Under current regulations, any PRC national who possesses a national license to practice law in China, but who wishes to join the office of a foreign law firm in China, must first surrender his or her license to the PRC Ministry of Justice and may not practice PRC law. This rule applies to all foreign law firms which open a representative office in China, including those from the EU, Japan, Canada and Australia. The result is that foreign law firms are prohibited from hiring qualified PRC lawyers to practice law as associates or partners.

Removing the prohibition against PRC lawyers practicing PRC law while working in foreign law firms would expand employment opportunities for Chinese law students and lawyers, and at the same time, enhance the ability of foreign law firms to represent clients doing business in China and Chinese companies looking to assume greater roles in worldwide commercial and investment activities. Over time, it will also expand the pool of PRC lawyers with relevant experience and training available for domestic firms, in-house corporate counsel positions and other positions requiring specialized legal backgrounds.

Chinese companies seeking to globalize would benefit from the integration of their principal Chinese counsel with a worldwide team of specialists. Multinational companies often rely on full-service international law firms precisely because they seek integrated, seamless service across different areas of law and jurisdiction. Enabling Chinese companies to rely on a single integrated legal service provider for support in China and abroad will allow them to expand more efficiently and successfully.

China's regulations run counter to a long-standing practice in the United States. At present, any of the leading Chinese law firms are free to establish offices in the US, and in fact, such expansion is currently taking place. Chinese law firms are free to hire the best local attorneys in their US offices (as well as in their offices within China) and practice the local law of these jurisdictions. AmCham-China encourages China to grant

法律服务

综述

2007年，国务院出台了《关于加快发展服务业的若干意见》（以下简称《意见》），提出了到2010年实现中国服务业规模从2005年的1万亿元人民币（合1460亿美元）增至2.7万亿元（合3940亿美元）的目标。

《意见》提出的其中一个主要目标：学习先进的外国实践和管理经验，培养具有国际竞争力的国内服务型企业。要想实现这些目标并有效促进服务业的发展，中国必须吸引商业银行和投资银行、咨询公司以及房地产公司等高端服务产业，并促进其发展。这些企业都有一个共同点，即都需要富有经验的律师和律师事务所提供法律咨询及相关服务。

律师事务所对企业有关投资地点、时机和方式的决策有着重要的影响力。所有服务业在基础经济中比例超过60%的主要经济体，都允许外国律师事务所同时办理国际和国内法律事务，但中国却不允许。在华的国际律师事务所所在市场准入方面面临着诸多限制，因而无法聘用中国执业律师来办理中国法律事务。这一规定阻碍了中国高科技和高端服务业的发展，影响了中国执业律师的就业机会，同时也限制了中国领先企业的国际化进程。另外，这一规定使国内律师事务所所以不健康的竞争方式发展业务，禁止具有资质的中国律师受聘于国际执业经验更加丰富的外资律师事务所，因而也影响了国内律师事务所的发展。

具体问题

主要问题 — 执业范围有限

尽管国际律师事务所在中国市场准入方面面临诸多限制，但其中最重要的问题是外资律师事务所无法在中国聘用具有中国法律执业资格的国内律师。根据现行规定，如果持有国内律师执业许可的中国公民希望受聘于外资律师事务所的驻华办事处，那么他/她必须先放弃其中国司法部所授予

的执业资格，并不得办理中国法律事务。这一规定适用于所有在华开设办事处的外资律师事务所，包括欧盟、日本、加拿大和澳大利亚的律师事务所。这一规定导致外资律师事务所无法聘用中国执业律师以律师或合伙人的身份办理中国法律事务。

如果能够取消对受聘于外资律师事务所的中国律师办理中国法律事务的限制规定，则可为中国法律院校毕业生和国内律师创造更多的就业机会，同时也能够增强外资律师事务所代表客户处理在华事务的能力，并有助于中国企业更好地在国际商业与投资活动中扮演更加重要的角色。随着时间的推移，这也将为中国培养出更多具有相关经验和培训经历的中国律师，使他们能够胜任国内律师事务所、企业内部法律顾问以及其他要求专业法律背景的工作。

寻求国际化发展的中国企业将会从其中国法律顾问和一个全球性专家团队的融合中获益匪浅。跨国公司往往会选择提供全方位服务的国际律师事务所来为其提供有关法律各个层面的综合、完善的服务。让中国公司能够通过一家提供全方位法律服务的公司，为其在国内外的发展提供支持，这将有助于他们更加高效、成功地拓展业务。

中国的这一规定与美国长期以来的惯例正好相反。目前，任何领先的中国律师事务所都可自由在美国设立办事处，而且事实上这种拓展目前正在进行中。中国律师事务所在美国设立的办事处（及其在中国国内的办事处）可自由聘用当地最优秀的律师，并办理这些司法管辖区的法律事务。中国美国商会吁请中国政府给予外资律师事务所聘用符合资质的中国执业律师的同等权利，并允许他们在受聘驻外律师事务所期间能够以律师和合伙人的身份办理中国法律事务。

代表客户与政府机构接洽

目前，中国也不允许外国律师出席涉及其客户与某些政府部门的会议。这一限制剥夺了外国公司对此类与会人员构

foreign firms the same right to hire qualified Chinese lawyers and allow them to continue to practice PRC law as associates and partners in foreign law firms in China.

Appearance before Government Agencies

Foreign lawyers are also currently barred from participating in meetings at certain government departments involving their clients. Such exclusions deprive foreign companies of the right to determine the composition of their own teams in meetings with Chinese government officials, reduces their ability to understand the proceedings and their context, and, to the best of our knowledge, have no parallel in any other leading economy. It constitutes an uneven playing field and fosters the impression that the Chinese government engages in arbitrary and discriminatory treatment with respect to foreign investors and other companies.

Representative Office Registration

China maintains separate regulatory schemes for domestic law firms, foreign representative offices and Hong Kong/Macau firms. Representative offices of foreign law firms face tighter scrutiny and regulatory approval procedures than domestic counterparts. 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 needs based, in part, on the “social and economic development conditions” of the proposed location, the “development needs” for legal services there, and similar considerations.

A foreign law firm must wait three years after establishing a representative office before opening another, limiting the growth of foreign law firms to a rate of one office every three years. The approval procedure is unduly lengthy and opaque. Foreign firms have reported substantial difficulties and delays in the processing of applications to open representative offices in China and changing chief representatives, impairing their ability to serve clients and provide much-needed global services to Chinese companies in interior provinces, key targets for economic development.

Taxation Schemes

Representative offices of foreign law firms are taxed according to national policy much like those of foreign corporations. First, the entity is taxed on its enterprise income and then individual employees are taxed on personal income, resulting in double taxation on income. Conversely, domestic firms may be organized as partnerships and treated as pass-through entities for

tax purposes. The partners and employees are taxed on their income, but the entities are not taxed. Moreover, the tax rates for domestic law firms are often set at a local level. Local law firms in some localities are believed to be taxed at negotiated single-digit or low double-digit rates while foreign firms are taxed at 25 percent (reduced from 33 percent as of January 1, 2008), plus five percent business tax.

Recommendations

- **Revise current law to permit Chinese lawyers to practice Chinese law as associates and partners in foreign law firms.**
- Allow foreign lawyers to participate in meetings between their clients and Chinese government departments.
- Address the inequitable tax treatment of foreign legal firms offering foreign legal advice to Chinese companies, either by granting an exception to the business taxes normally imposed on their representative offices, or by allowing them a more appropriate form of legal presence in China.
- Review and simplify the requirements for foreign law firms to expand into multiple cities in order to provide much-needed foreign legal advice to Chinese companies in the country’s interior provinces.

成的决定权，使他们难以了解进展过程和背景形势。而据我们所知，其他任何主要经济体都没有类似的做法。这形成了不公平的竞争舞台，同时也给人一种印象：即中国政府给予外国投资者和其他公司主观、差别性的待遇。

代表机构的注册

中国对国内律师事务所、外资律师事务所驻华代表机构以及香港 / 澳门的律师事务所仍实施不同的监管政策。与国内律师事务所相比，外资律师事务所的代表机构面临着更严格的审查和监管审批程序。在申请设立代表处时，外资律师事务所必须证明其“有在华设立代表机构开展法律服务业务的实际需要”。监管机构会依据拟设代表处所在地的“社会经济发展状况”、当地的法律服务“发展需要”以及类似因素对此进行评估。

外资律师事务所设立一家代表处后，如欲增设代表处，则必须等待三年，这就将外资律师事务所的发展速度限制在每三年新开一家代表处。审批程序耗时过长，而且极不透明。外资律师事务所普遍反映，在其申请设立驻华代表机构和更换首席代表的过程中存在许多困难和拖延现象，这大大影响了他们对国内各省市客户的服务，以及为国内企业提供急需的全球服务的能力，而这些省份正是当前国家经济发展的重点区域。

税收方案

外资律师事务所的代表机构在税收待遇方面与其他外国公司的代表机构相类似，须依照国家政策纳税。首先向律所征收企业所得税，然后再向员工征收个人所得税，这就产生了双重课税的问题。相反，国内律师事务所可注册为合伙企业，享受穿透性税收待遇，即合伙人和员工需缴纳个人所得税，但律所无需纳税。此外，国内律师事务所的税率往往由地方一级的部门负责制定。一些地方的律师事务所只需按照一位数或较低两位数的税率纳税，而外资律师事务所则需缴纳 25%（2008 年 1 月 1 日之前为 33%）的所得税外加 5% 的营业税。

建议

- 修订现行法律，允许中国律师以律师和合伙人的身份在外资律师事务所从事中国法律服务活动。
- 允许外国律师出席其客户与中国政府部门之间的会晤。
- 中国政府应采取措施，解决为中国公司提供外国法律咨询服务的的外资律师事务所面临的不平等税收待遇，可以免除对其代表处征收的营业税，或者使他们在华执业的法律形式更适当。
- 审查并简化对外资律师事务所的要求，让他们能够更方便地向更多城市发展业务，为内地省份的中国企业提供急需的外国法律咨询服务。

Media and Entertainment

AmCham-China believes that China's sustained growth and transformation depend heavily on communication and the flow of information triggered by a healthy, thriving and open media industry for domestic and international players. Over the last year, international media have continued to play a key role in communicating China's views to the world.

Significant Developments

In a highly publicized decision, the WTO formalized a judgment calling on China to allow foreign companies to import reading materials, films for theatrical release and audiovisual entertainment products, including distribution of music and other sound recordings over the internet. The ruling requires China to overturn discriminatory practices relating to capital requirements, joint venture partnerships and distribution channel controls faced by US companies. Implementation of the WTO ruling holds potential for broad improvements in market access and development of China's media environment.

Increasingly, website controls are impacting business and revenues. After an earlier freeze on individuals registering domain names in December 2009, new website registration rules announced in February 2010 instituted an arduous application and registration process. This creates high administrative hurdles for the registration of personal websites and exposes thousands of entrepreneurial services to undefined approval criteria.

Continued regulatory ambiguity in the online sector allows an increasing level of website censorship, with reports of hundreds of sites being shut down or blocked in early 2010. Thousands of other foreign online services remain inaccessible, completely reducing market and trade access for affected firms. In addition, both the US Congress and Obama administration are voicing increasing concern over China's treatment of cyber attacks, censorship and discrimination of US-based online firms.

In a welcome development, the ascension of the State

Council Information Office (SCIO) in 2009 as the regulator of foreign financial information providers was met with a positive response. While the SCIO has played an overall favorable role to date, the full scope of its oversight and the impact of future policy decisions has yet to emerge.

Specific Issues

Market Barriers

Outdated regulations continue to restrict the establishment and growth of international media enterprises in China. Copyright infringement also remains rampant, serving as a *de facto* barrier to market development.

Foreign publishers are restricted in their ability to invest in, wholly own and produce publications in China.

Chinese Nationals as Reporters for Foreign Media

At present, foreign media companies are not permitted to hire Chinese nationals as journalists, limiting opportunities for both foreign enterprises and aspiring Chinese professionals. China has a growing pool of highly talented, multilingual individuals studying journalism. Allowing them to pursue work in China with foreign companies would not only create jobs, but would also expand investment in China and increase competition in the media sector.

Such diversification would benefit China's economy and consumers by encouraging China's top talent to stay in the country instead of looking abroad. The result would be a robust and dynamic media sector that offers Chinese consumers high-quality market-driven products. The training, experience and skill development that could be available to all journalists as a result of mutual collaboration would inevitably raise the standards of Chinese media practice and expand the knowledge of complex markets and issues of domestic and international audiences. Greater general understanding of China and its business climate will, in turn, encourage increased investment.

传媒娱乐业

中国美国商会相信，中国的可持续性增长和转型在很大程度上依赖于信息沟通和信息交流，而无论对于国内企业还是国际企业，信息沟通和交流都需要一个健康、繁荣和开放的传媒产业。在过去的一年，国际传媒产业继续在向世界传递中国观点的过程中发挥了重要作用。

重大进展

世界贸易组织在一次高度公开的裁定中，呼吁中国允许外国公司进口图书资料、影院发行的影片以及音像娱乐产品，包括通过互联网发行的音乐制品和其他录音制品。该裁定还要求中国撤消针对美国企业的歧视性行为，这些歧视性行为分别涉及资本要求、合资合伙以及分销渠道控制等。世贸组织裁定的执行将有助改善市场准入条件，推动中国传媒产业环境发展。

网络监管对企业及其利润的冲击正在逐渐加大。自从 2009 年 12 月开始冻结个人申请域名之后，2010 年 2 月中国又宣布了新的网站注册规定，开始实行严苛的申请注册程序。这一行为给个人网站的注册制造了管理障碍，致使数千家企业服务机构不得不面对模糊的审批标准。

由于对在线产业的监管制度持续不明确，还导致网站审查有增无减，仅在 2010 年初，就有数百家网站被关闭或阻止。数千家其他国外网络服务机构目前仍然无法访问，这一行为全面限制了相关企业进入市场和从事商贸活动。此外，对于中国政府的网络攻击处置办法、网络审查制度以及对美国网络企业的差别待遇，美国国会和奥巴马政府也开始不断表明自己的忧虑。

在积极进展方面，2009 年，国务院信息化工作办公室（国信办）成为外国金融信息提供商的监管部门，此举得到积极反响。不过，虽然截止目前国信办整体上发挥了积极作用，但其完整的监管范围以及未来决策对其产生的影响尚待明确。

具体问题

市场障碍

过时的监管制度仍然对国际传媒企业在中国的建立和发展造成限制。版权侵权仍然猖獗，并且成为市场开发的实际障碍。

外国出版企业在中国投资、独资和制作出版物的能力仍然受到限制。

中国国民担任外媒记者

目前，不允许外国传媒企业聘用中国国民担任记者，这不仅限制了外国企业的机会，同时也限制了有志向的中国专业人士。现在，学习新闻专业的高素质、多语种人才越来越多。如果允许这些专业人才在外国企业就业，不仅能够创造就业机会，而且还将扩大外国企业在中国的投资，增加传媒产业的竞争。

这种多元化措施还可鼓励中国的顶级人才留在中国，而不是着眼国外，从而对中国的经济和消费者有利。其结果将产生一个强健的、活跃的传媒产业，中国消费者将获得高质量的、以市场为驱动的产品。由于相互合作，所有记者都能获得培训、经验和技能发展，这将必然提高中国传媒产业的执业标准，增强对于复杂市场以及国内国际受众的认识。而且，由于对中国以及中国企业环境的整体认识的增强，反过来也会鼓励企业增加投资。

电影发行

对外国电影公司的监管程度过高，导致严肃的影片创作和发行几乎无法实现。目前的监管制度规定，每年引进的外国影片数量不得超过 20 部，并且必须在利润共享的基础上才可引进，致使盗版活动进一步猖獗。目前，美国政府已经

Film Distribution

Foreign film companies are regulated to a degree that makes serious film creation and distribution nearly impossible. By limiting the import of foreign films to just 20 per year on a revenue-sharing basis, current regulations fuel widespread piracy. The WTO process has been invoked on behalf of the US film industry to address and challenge a number of regulatory and copyright related obstacles to market entry. Expansion of the market to allow the distribution of more foreign films without market manipulation or arbitrary black-out periods, combined with a robust campaign to curb piracy, will benefit the domestic industry by building market demand for quality entertainment products.

Live Entertainment

Market access for live entertainment is restricted through several punitive regulations and accompanying bureaucracy. China's approval process for live events, which requires obtaining a license, or "*piwen*," hampers business growth by delaying the ability to market and sell shows, and undermines confidence in the event planning process. *Piwen* approval requires submitting information that is not typically available until a show is nearly ready to open. However, before a *piwen* is approved, ticket sales cannot be advertised or marketed, greatly limiting opportunities. Also, the successful theatrical management strategy of selling shows as a package or subscription completely disappears, and chances to acquire corporate sponsorships that require planning for the next fiscal year are diminished.

Compounding the current roadblocks to effective event management, changing and inconsistent visa applications and approval for members of performing companies create risk of event disruptions and delays. Equally imposing rules for bonding and logistics on event materials add to the complexity and disjointed timeline for execution with predictable outcomes and quality.

Music

Nations that openly host international record companies almost universally witness an expansion of available opportunities for local artists to record and distribute music. However, continuing restrictions on making and selling music are stifling the development of the Chinese music industry and hindering China's economic and cultural development. China's burdensome censorship requirements deny Chinese consumers access to new popular recordings, driving products to the black market. The in-country presence of US companies would bring jobs and expertise in a wide variety

of areas, leading to market growth and development of locally produced music.

Opening the door to the best international talent, while protecting it against theft and piracy, is in China's business and cultural exchange interests. Fundamental reform of the country's entertainment regulations will unleash creativity and talent that can be harnessed to promote China's culture and talent to domestic and international consumers.

Regulatory Neutrality

China's media industry regulations often create higher barriers to entry for foreign, as compared to domestic, firms. For example, in print and publishing, clear conflicts of interest persist and licensing restrictions remain skewed toward local firms. An objective and transparent process, by which an international auditing organization can offer its services in China, even if not state-owned or formally state-approved, is necessary to provide a fair range of choice to media in China.

Lack of Regulatory Clarity and Enforcement

Lack of clarity among media regulations adds to the opaqueness of the industry regulators' roles and responsibilities. Laws are often vague and enforcement inconsistent and unbalanced across industry players. These conditions create roadblocks to growth in numerous media sectors.

SCIO was named regulator for foreign financial information providers (FFIP) in early 2009, replacing Xinhua News Agency. AmCham-China welcomes the removal of the previous conflict of interest, which we have advocated in previous *White Papers*. To date, SCIO has demonstrated relative neutrality and has applied its new authority without a heavy hand.

The full scope of SCIO's responsibility remains undefined though, and the industry is closely watching how they will handle content monitoring and the commercial information that FFIPs are obliged to provide. The importance of an unobstructed flow of accurate and timely financial data was underscored by the global financial crisis and has an essential part to play in ensuring China's economic growth.

Online, print and television media face a debilitating set of vague regulations that make it impossible to plan and implement initiatives efficiently. The Chinese government regularly blocks online business sites, and outdated regulations fail to account for the rapid development of Web 2.0 technologies, leaving vast areas of online content and service offerings operating with

代表美国的电影产业提起世贸程序，直接就与市场准入相关的一系列监管制度和版权障碍提出异议。如果中国能够扩大市场，允许更多外国影片进入中国发行，而不进行市场操纵或者任意设置封锁期限，同时强力打击盗版，那么将形成对高质量娱乐产品的市场需求，从而有利于中国国内产业。

直播娱乐产品

中国政府通过多项惩罚性监管规定及相应的官僚机构，限制直播娱乐产品的市场准入。直播娱乐产品的审批程序要求取得许可证，即“批文”，这种审批程序延误了企业参与市场和销售演出产品的能力，阻碍了企业成长，影响了企业在策划娱乐活动过程中的信心。批文程序要求提供的信息通常只有在演出即将开始之前才可提供。然而，在获得批文之前，不能发布广告，不能售票，从而极大地限制了各种机会。此外，原本可能通过打包销售和预订成功实现的演出管理战略，现在已经完全行不通，并且，由于企业赞助需要提前一个财年做计划，因此获得企业赞助的机会也相应减少。

除了演出监管造成的效率障碍，演出公司成员签证的申请和审批手续也一再更改，甚至相互矛盾，从而造成演出中断和延误的风险。同样突出的问题还包括对演出材料的抵押和物流规定，这些规定增加了演出达到预期效果和质量的难度，并且在时间安排上更加支离破碎。

音乐产品

那些给予国际唱片公司公开支持的国家都几乎无一例外地发现，本地艺术家录制和发行音乐产品的机会越来越多。然而，中国政府持续性地限制音乐产品的制作和发行，窒息了中国音乐产业的发展，阻碍了中国经济文化事业的进步。中国的审查规定繁复，不允许中国消费者购买最新流行音乐产品，从而将音乐产品引向黑市。如果美国公司可以在中国国内出现，那么这些公司将会在广大领域带来就业机会和专业经验，引领市场增长和本地音乐产品的发展。

如果中国政府敞开大门，引进国际性人才，同时防止偷窃和盗版，那么此举将有利于中国的相关产业和文化交流。如果中国政府能够从根本上改革本国的娱乐产业管理制度，那么此举将释放出创造力和才能，进而中国可能利用这些创造力和才能，将中国的文化和底蕴推广至国内和国际消费者。

监管制度的中立性

中国的传媒产业管理制度给外国企业造成的障碍往往高于国内企业。例如，在印刷和出版业，明显的利益冲突仍持续存在，许可证制度仍然向本地企业倾斜。为了让传媒企业在中国获得公平的机会，建立客观、透明的程序，允许国际审计机构（无论是否为国家所有，是否经过国家正式批准）在中国开展业务是必要的。

监管制度缺乏透明度和执行力

由于传媒产业监管制度缺乏透明度，致使监管机关的角色和职能变得更加不透明。整体上，法律制度往往是模糊的，而执行经常自相矛盾，有失公平。这些现状成为影响传媒产业发展的障碍。

2009 年初，国信办取代了新华社，成为外国金融信息提供商的指定监管机构。对于这种利益冲突的解除，中国美国商会表示欢迎，这一点我们在去年的白皮书中已有说明。截止目前，国信办表现得相对中立，未在行使职权时使用高压手段。

然而，国信办的完整职权范围仍然没有明确，各传媒产业都在密切关注国信办将如何进行内容监控，以及如何处理外国金融信息提供商必然提供的商业信息。受 2008 年和 2009 年全球性金融体系灾难的影响，准确、及时和无障碍流通金融数据的重要性被降低了，尽管如此，金融数据的流通在确保中国经济增长的过程中，仍然发挥着关键作用。

网络媒体、印刷媒体和电视媒体面对的一整套不利于其发展的模糊的监管制度，致使企业无法规划和高效地执行创新项目。中国政府定期阻止在线商业网站，但过时的监管制度无法应对快速发展的 Web 2.0 技术，致使大范围的在线内容和在线服务缺乏明确指导。由于文化部、新闻出版总署以及其他监管机关在其相互冲突的监督权力下，连续发布相互冲突的公告声明，致使大范围的网络盗版仍然有机可乘，有利可图。

在图书和期刊的零售发行方面，由于监管制度的不透明和对外国投资的审批缓慢，中国严重落后于国际标准。虽然外国传媒公司可以通过版权许可协议与中国杂志合作，但有关规定尚不明确。

在电视产业，涉及商业结构和商业内容的监管制度不透

unclear guidelines. As China's Ministry of Culture (MOC), General Administration of Press and Publication (GAPP), and other regulators continue to issue conflicting proclamations in their battle for oversight, the doors remain open to the expansive and lucrative trade in online piracy.

China lags far behind international standards in retail distribution of books and periodicals due to unclear regulations and slow approval of foreign investment. Foreign media companies may collaborate with Chinese magazines through copyright licensing agreements, but the rules for this are not clear.

In the television sector, vague rules regarding business structure and content leave foreign enterprises exposed to costly regulatory decisions and arbitrary censorship.

Piracy, Censorship and Bureaucracy

Non-tariff barriers in China damage business opportunities for international companies across the spectrum of media interests at an alarming rate, with online piracy again emerging as the primary problem.

Despite periodic crackdowns during phases of high visibility, organized piracy has long been tolerated. Intermittent enforcement demonstrates both the ability of authorities to disrupt illegal channels, and their lack of will to remedy the situation permanently. The rapid growth of online businesses in China has accelerated the speed and volume of illegal dissemination of films, music and various printed works, consequently thrusting issues of regulation and compliance into the spotlight.

Coupled with ineffective regulations and weak enforcement of laws, online piracy has devastated legitimate media enterprises, creating huge disincentives for market entry or additional investment. Chinese firms that once tolerated the practice are now taking aggressive legal actions against violators to protect their own growing investments in content creation and distribution. It is clear that both the online business ecosystem and the general public have much to gain through access to a thriving, vibrant and competitive media sector that offers high quality, protected news and entertainment.

Unauthorized internet censorship and its direct impact on business is another major threat to growth. Inconsistent decisions to censor and block entire websites represent a growing unfair trade practice. A variety of premier US online firms suffered blockages throughout 2009, while their Chinese competitors thrived. AmCham-China urges the development of a clear policy framework promoting user-generated content and new

media platforms, while including the protection of intellectual property rights (IPR) and licensing.

Censorship in journalism remains rife. The restriction or harassment of reporters and their sources remains an issue of great concern. As recently as November 2009, The Associated Press, citing an investigation by a Beijing lawyer, reported that "dozens of China's increasingly assertive journalists have been beaten, detained or sued over the past two years," with more than 30 instances occurring in 2008 to 2009 alone. Foreign reporters have faced harassment and violence as well. Increasingly the Ministry of Foreign Affairs is threatening not to renew the accreditations of select foreign reporters. AmCham-China encourages the government to end such practices in favor of open global practices where media plays a substantial role in continued communication, understanding and economic development.

Bureaucratic roadblocks also substantially hamper access to information and business approvals for new media initiatives. News organizations seeking to access government information efficiently are instead frequently diverted through slower government media channels or blocked from access to non-government channels. Similar time-delay tactics are used in other arenas, affecting applications for business licenses, investment, live events and more.

There are technical roadblocks too. Access to offshore business-related websites is discernibly slower than for local websites, even when web-delivery acceleration tools are used. Such delays put Chinese end-users at a competitive disadvantage.

The Need for Change

Without renewed efforts at clarity and equal enforcement of laws, the recent gains in the media industry will be slowed and ultimately reversed. China's restrictive regulatory climate is already isolating the local market from the broader community of continued global innovation. China is falling behind other countries in basic technologies such as online commerce, pay-per-view downloadable video, mobile entertainment and more.

Recommendations

Journalism and Information Services

- **Allow foreign news companies to hire Chinese-credentialed reporters.**

明，致使外国企业被迫面对高成本的监管决定和任意性的审查制度。

盗版、审查制度和官僚制度

在传媒产业利害关系的方方面面，中国的非关税壁垒都在冲击着国际性公司所享有的商业机会，而网络盗版则再次成为首要问题。

虽然在盗版充斥的阶段，中国政府定期打击盗版，但是有组织的盗版行为被一直容忍存在。断断续续的执法行为一方面表明相关部门有能力切断非法渠道，另一方面也表明相关部门缺乏永久改变现状的决心。随着中国网络商业活动的快速发展，电影作品、音乐作品和各种印刷作品的非法传播速度和传播数量也在不断增加，从而将监管制度和合规操作问题推到前台。

再加之监管制度的低效和法律执行的无力，网络盗版摧毁了合法的传媒企业，成为严重影响企业参与市场和增加投资的不利因素。中国企业曾经一度容忍这种盗版行为，不过现在，它们开始向违法者积极采取法律措施，保护它们在内容创造和内容发行上不断增长的投资。很明显，如果传媒产业能够繁荣、活跃和有竞争性，并且能够提供高质量的、有保护的新闻和娱乐产品，那么无论是网络商业生态系统，还是一般公众，都将从中获益良多。

互联网审查制度没有经过正式授权，但却对商业活动产生直接影响，这是行业发展面临的另一项重要挑战。对网站进行审查和阻止整个网站的决定自相矛盾，表明一种不公平的产业行为正在抬头。在整个 2009 年，许多重量级美国网络公司都遭到过阻止，而其在中国的竞争对手则经历了繁荣发展。中国美国商会敦促制定明确的政策框架，在开发用户生成内容和新媒体平台的同时，也应包括知识产权保护和许可证制度。

在记者产业，审查制度仍然普遍。我们仍然极其关注对新闻报道人员及其来源的限制和困扰。最近在 2009 年 11 月，美联社援引了一起针对北京律师的调查事件，其报道指出：“在过去两年间，有数十名坚持维权的记者遭到殴打、拘留或起诉”，仅在 2008 年和 2009 年，就发生过 30 多起。外国新闻报道人员也同样受到限制。某些外国记者越来越多地被外交部告知其将不再被更换认证文件。中国美国商会希望中国政府不再进行此类做法，转而采取开放的国际惯例，让媒体持续为保持沟通、理解和经济发展发挥实质性作用。

官僚制度严重影响了新兴传媒组织的信息权和获批权。那些希望有效获得政府信息的新闻机构，往往要么因为效率低下的政府媒体渠道而丢失方向，要么被禁止利用非政府渠道。类似的拖延情况也发生在其他领域，从而影响企业申请营业执照、进行投资和举办实况演出等等。

此外，还存在技术障碍。访问海外商业相关网站的速度明显低于访问本地网站，即便使用网络加速工具也是如此。这种延迟使得中国的最终用户在竞争中处于不利地位。

变革的需要

如果不在提高法律的明晰度和执行的公平性上继续努力，那么传媒产业新近所取得的进展将会放缓，并且最终有可能走向倒退。中国的限制性监管环境正在将中国本地市场与更广泛的、持续性的全球创新群体隔离。中国已经在基本技术方面落后于其他国家，如：网络商务、收费观看的可下载视频、移动娱乐等等。

建议

记者行业和信息服务

- 允许外国新闻公司聘用经过中国认证的记者。
- 全面实施新的规定，允许中国境内的国际记者在不经事先通知的情况下，到中国各地采访，且受访者不受限制，并消除地方当局对记者的困扰。
- 国信办应确立如下目标：向中国消费者提供世界范围内可获得的、相同的金融商务信息，确保平等竞争，以及提高市场的透明度。

网络内容

- 明确具体哪些机构负责监督新兴技术，如：Web 2.0 和网络新闻内容。针对内容出版商建立一套书面的、合法的补救手段，促进协商，在阻止或关闭网站或出版活动之前，提供一定的改正时间并实现内容规则的标准化。
- 重点精简网站域名注册程序，尤其应取消本人亲自注册要求。
- 考虑设立一个中立性的审计机构，以提高网络使用的透明度，推动建立基于一定标准的广告模式，

- Fully implement new rules allowing international journalists in China to travel throughout the country and interview all subjects without prior notification, and eliminate harassment by local authorities.
- SCIO's goals should be to provide consumers in China with the same global financial and business information available throughout the world, ensure a level playing field, and improve market transparency.

Online Content

- Clarify which agencies have supervision over emerging technologies such as Web 2.0 and online news content. Establish a system of written and legal redress for content publishers to promote discussion, allow time for corrections and standardize content rules before blocking or shutting down websites or publishing operations.
- Significantly streamline the website domain name registration process, and in particular, remove in-person registration requirements.
- Consider creating a neutral auditing body to improve transparency of web usage and promote metrics-based advertising models to benefit the growth of the Chinese online industry.

Audiovisual Content

- Allow the vertically integrated production, publishing, distribution and marketing of sound recordings in physical and electronic form, and permit foreign companies to engage fully in these processes in the manner of investment of their choosing.
- Allow US record companies to acquire or establish foreign-invested enterprises (either wholly foreign-owned, majority foreign-owned or controlled, or minority foreign-owned or controlled, at the election of the US company) for the purpose of engaging the full range of aforementioned economic activity.
- Permit the US sound recording industry to invest and operate in all facets of the music business in China, and in the same manner as Chinese record companies including the right/ability to sign artists, record, produce, market and distribute recorded music in physical form as well as over internet and mobile platforms.

- Increase the number of foreign films approved for domestic distribution and cease the imposition of arbitrary blackout periods on foreign films.
- Allow foreign enterprises to invest in and hold a majority share for production (i.e., for the actual production of content such as movies and television series), and distribution and publication of audiovisual products in all formats, including new media.
- Streamline the currently cumbersome censorship process for films and other audiovisual contents and establish a film rating system.

Distribution

- End the discriminatory treatment of foreign retailers by allowing them to obtain retail licenses.
- Accelerate the administrative process for approving foreign investment in retail sales and distribution of books and periodicals. Clarify how foreign and Chinese publishers may cooperate to protect their rights and licenses.

Industry Oversight

- Establish clearer lines of authority among the Ministry of Industry and Information Technology, State Administration for Radio, Film, and Television, MOC, GAPP, SCIO, and other media and entertainment regulatory agencies; and institute a transparent regulatory drafting and promulgation process that allows for public comment.
- Terminate China's discriminatory practices with respect to foreign media. The current censorship regime delays or prevents US copyright owners from providing legitimate products to the market in a timely fashion. This includes the blocking of websites such as Facebook and Twitter.

Copyright

- Effectively enforce laws against IPR infringement in the online sector through relatively inexpensive re-publishing of copyrighted licensed content by penalizing those websites displaying copyrighted information without formal licensing agreements.
- Increase efforts to stop the sale of pirated audiovisual media by street vendors.

以促进中国网络产业的成长。

音像内容

- 允许对物理和电子格式录音制品的制作、出版、发行和经销进行垂直整合，允许外国公司以其选择的投资方式完全参与上述流程。
- 允许美国唱片公司收购或组建外资企业（允许美国公司选择建立外商独资企业、外商持有或控制多数股权的企业或者外商持有或控制少数股权的企业），以使其能够全方位参与上述经济活动。
- 允许美国唱片公司投资和经营中国音乐产业的各个领域，并且获得与中国唱片公司相同的待遇，包括签约艺术家、录音、制作、经销，以及通过物理形式或者通过互联网和移动平台发行产品的权利或能力。
- 增加国内发行的外国影片数量，停止针对外国影片任意设置的封锁期。
- 允许外国企业投资各种形式（包括新媒体）音像制品的制作（即实际的内容制作，如：电影、电视剧等）、发行和出版，并且允许外国企业持有多数股份。
- 精简目前针对电影及其他音像内容的繁复的审查程序，建立电影评级系统。

发行

- 终止对于外国零售商的歧视性待遇，允许外国零售商取得零售营业执照。
- 对于外商投资图书和期刊的零售和发行业务，提高行政审批程序的速度。明确中外出版企业应如何合作以保护自身权利和许可证。

产业监督

- 明确划分信息产业部、国家广播电影电视总局、商务部、新闻出版总署、国信办以及其他媒体娱乐产业监管机构的权限，启动透明的管理制度起草和公告程序，允许公众提交意见。
- 终止针对外国媒体的歧视性行为。目前的审查制度延误或阻止了美国版权所有者及时地向市场供应合法产品。其中包括阻止 Facebook 和 Twitter 等网站。

版权

- 有效执法，防止网络知识产权侵权，通过处罚那些没有签署正式许可协议擅自发布版权内容的网站，相对降低重新发布版权许可内容的费用。
- 增加打击街头贩卖盗版影像制品的力度。

许可制度

- 改善针对大型促销活动的政府监督框架，如：贸易展会、演出和大型音乐会等，为监控参加人数制定更好的内容指导和框架方案。

Licensing

- Improve the government oversight framework for event-based promotions such as trade shows, plays and major concerts, and develop better content guidelines and framework for monitoring attendance numbers.



Medical Equipment, Devices and Healthcare

Significant Developments

In April 2009, after years of quiet discussion, China's State Council issued a policy paper on the long-term plan for China's healthcare reform, including 20 specific laws and regulations. This move is designed to counter acknowledged weaknesses and failures in the current system, such as underinvestment by government, imbalanced resource allocations between urban and rural populations, an undeveloped insurance system, and a chaotic drug and device distribution system.

Key elements of the reforms include: universal access to basic health insurance, introduction of an essential drugs supply system, improved primary health facilities, equitable access to public health services and a pilot reform of state-run hospitals.

While some of these goals will take time to reach, the government's commitment to widespread and substantially increased investment is nonetheless encouraging. Increased spending will bring basic healthcare to millions who previously could not afford it or who were hindered by lack of capacity.

Near term, increased investment will also bring opportunities to various industry players as new and improved healthcare facilities make care and coverage available to more patients. Along with new infrastructure, capital equipment and medical supplies, increased healthcare investment will stimulate a greater demand for drugs, more premium facilities and demand for supplemental insurance from the growing band of middle and upper-income Chinese.

Healthcare reform represents a significant opportunity for the government to make a mark in instituting healthcare benefits for all Chinese and improving the nation's health. It also provides an opportunity for industry to act as a partner in helping China provide greater coverage and the highest levels of care to its citizens. However, several issues remain that prevent greater access to the most beneficial drugs and medical technology.

Specific Issues

Efficient Product Registration and Testing

Approving access to medical devices is a major function of the State Food and Drug Administration (SFDA). Although there has been recent improvement, currently, resources at the SFDA remain inadequate to handle the thousands of applications facing the system. AmCham-China looks forward to continued dialogue with the relevant authorities on standardizing and streamlining requirements for test reports and standards, thus eliminating redundant testing of the same types and standards (such as registration inspection, customs inspection and other types of access inspection and testing).

AmCham-China urges an increase in the resources and capacity necessary to enhance the effectiveness and speed of the medical device registration process.

Separating the Registration Process for New and Re-registered Products

AmCham-China commends the SFDA on the release of the revised draft Regulations of Medical Device Registration (Draft Regulations) for comment. However, to improve registration efficiency further, we suggest that the SFDA institute different registration processes for new and existing products, as well as simplified filing mechanisms for re-registering products that have undergone no changes, and specific documentation requirements for those with alterations.

Re-Registration Process

SFDA issued interim provisions last year on the re-registration of medical devices, including a stipulation that when no changes have been made to products, product standards or directions of use, a statement to this effect, rather than product registration standards, test reports and directions of use, be submitted by the manufacturer. This was critical in ensuring valid re-registration and avoiding unnecessary duplication of testing.

医疗设备、器械和卫生保健

重大进展

经 过多的平静讨论之后，中国国务院于 2009 年 4 月公布了关于中国医疗改革长期计划的政策文件，其中包括 20 项具体的法律法规。此举旨在改进当前体制中公认的不足，如政府投资力度不够、城乡资源分配不均、医疗保障制度不完善以及药品和设备分销系统混乱无序等。

改革的重点要素包括：推进基本医疗保障制度建设，建立基本药物供应保障体系，完善基层医疗卫生服务设施，促进基本公共卫生服务逐步均等化，以及推进公立医院改革试点。

尽管其中一些目标尚需时日方能达成，但政府对于加大投资的承诺十分鼓舞人心。通过加大投入，将使数百万以前负担不起或条件受限的群体能够获得基本医疗服务。

就近期而言，投资的增加还将为众多行业参与者带来机会，因为全新和改进后的医疗设施将使更多患者能够得到医疗卫生服务，并被纳入医疗卫生服务覆盖范围。随着中国中高收入阶层的不断壮大，医疗投资的增多加上全新的基础设施、大型医疗设备和医疗用品，将刺激对药品、更先进的设施和补充医疗保险的需求。

医疗改革对于政府而言，是为全体中国人民创造医疗福利和提升国民健康的绝佳机会，同时，它也为整个行业提供合作机会，以推动中国扩大医疗卫生服务的覆盖范围，为广大群众提供更高水准的医疗卫生服务。但是，仍有几方面问题阻碍更多人获得最有效的药物和医疗技术。

具体问题

高效的产品注册和检测

医疗器械审批是国家食品药品监督管理局的一项主要职能。虽然工作近来有所改善，但国家食品药品监督管理局目前的资源仍不足以处理成千上万的申请。中国美国商会期待与有关部门就检测报告的标准化和要求的简化开展持续对话，从而避免相同类型和标准的重复检测（如注册检查、海关检查以及其它类型的准入检测）。

中国美国商会呼吁增加资源和能力，提高医疗器械注册程序的效率和速度。

区别对待新产品和重新注册产品的注册程序

中国美国商会对国家食品药品监督管理局公布《医疗器械注册管理办法（修订草案）》（征求意见稿）予以肯定。但是，为进一步提高注册效率，我们建议国家食品药品监督管理局针对新产品和现有产品制定不同的注册程序。对于重新注册的产品，若没有任何变动，应简化提交机制，而产品如有变化，则应落实具体的文件要求。

重新注册程序

去年，国家食品药品监督管理局公布了关于医疗器械重新注册的暂行管理规定，其中规定：对于产品、产品标准和说明书均没有变化的重新注册项目，生产企业应当提交没有变化的声明，不再提交注册产品标准、注册检测报告和说明书。这一规定对于确保有效的重新注册和避免不必要的重复检测有着非常重要的作用。

然而，医疗器械属于高科技行业，且因国家和业界标准日新月异，出现细微的产品变动在所难免，因此 2009 年真正免于重新检测的企业少之又少。为了发挥国家食品药品监

However, few enterprises were actually exempted from re-testing in 2009, given the inevitable minor product changes in an industry involving high technology and the rapidly updated state and industry standards. To achieve the intended benefits of the SFDA's interim provisions, AmCham-China encourages allowing use of original product registration standards and testing reports in cases where product changes do not affect the item's safety, efficacy or intended application and continue to comply with the original registration standards. We suggest only requiring additional testing for the altered part with a report focused on the differences, rather than repeating testing for whole machines or products.

Replacing Product Type Testing with Quality Management Systems

Although it is apparent from the new Draft Regulations that the SFDA realizes the benefits of the quality management systems (QMS), type testing is still required in the Draft Regulations. Type testing not only lengthens the registration processes, but also lacks reliability in ensuring product safety and quality as compared with the QMS. To increase science-based medical device management, AmCham-China urges the SFDA to abolish completely the type testing system and adopt the QMS.

Avoiding Overlapping Supervision

Currently, there is overlapping government supervision of medical device registration and access. For example, recent US-China Joint Commission on Commerce and Trade (JCCT) discussions have focused on duplicative conformity assessment and certification requirements by different Chinese agencies that result in higher costs and lengthy delays. Several categories of medical equipment—including many of our member companies' top exports, such as pacemakers, dialysis equipment, ultrasound and X-ray equipment—require approval by the SFDA and the China Compulsory Certification (CCC) mark issued by the General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ). These are nearly identical approval processes, including product testing and factory inspections. Significant efficiencies can be made by ending such redundancy. Furthermore, China's General Administration of Customs also requires testing for products that have already gained SFDA and AQSIQ approval, adding further registration redundancy.

Access to Clinical Data from Clinical Trials Conducted Outside of China

AmCham-China commends the October 2009 JCCT

announcement that China will adopt a risk-based approach that will not automatically lead to clinical trials for medical devices in a given class and consider the use of results from clinical trials conducted outside of China to support a local clinical trial exemption.

We encourage the SFDA to accept clinical evidence from a variety of sources, including foreign data, when trials have not been deemed necessary to demonstrate safety and efficacy in other markets.

Access to Innovative Diagnostics and Therapy Devices

Capacity to provide access to new and high-tech medical devices and treatments is critical to improving coverage and quality of care. Each purchase of certain Class A and B medical equipment (i.e., linear accelerators, PET scanners, surgical robots, etc.) must have explicit approval by the Ministry of Health even after receiving marketing approval. The installed base of almost all of these modalities is substantially below the per-capita installed base in other countries and also below the World Health Organization (WHO) recommended availability. The use of costly technology has often been cited as a reason that healthcare in China is considered expensive. However, the use of some of these high-value technologies can actually reduce healthcare costs due to more efficient care, shorter hospital stays, more accurate diagnosis and earlier detection of diseases that become more costly to treat if diagnosed later. Although the fees charged for these modalities are lower than in almost all other parts of the world, the reimbursement levels are also lower. We recommend that there be a more liberal policy for hospitals to acquire Class A and Class B modalities to quickly reach WHO recommended levels of availability for products and greater discretion granted to hospitals in acquiring the technologies necessary to providing a world standard of care.

Country of Origin vs. Country of Export

Formulating a reasonable system of access to innovative diagnostics and therapy devices is important to improving China's capacity. One impediment to introducing innovative products into the Chinese market is the requirement for items produced outside of China to receive prior approval in the country of export. This lengthens the approval timeline for importers, who cannot start the application process in China until receiving approval in the country of export.

In fact, many companies locate manufacturing plants based on a country's overall production efficiency. In some cases, the country of production may be a small

督管理局暂行管理规定的作用，中国美国商会呼吁，在产品变动不影响安全、功效或应用且仍然符合原注册标准的情况下，允许使用原先的产品注册标准和检测报告。我们建议仅要求对发生变化的部分进行检测，报告应侧重于差异，而无需对整个机器或产品进行重复检测。

以质量管理体系替代产品型式测试

尽管从新的管理办法草案中不难看出，国家食品药品监督管理局意识到了质量管理体系的益处，但该草案仍要求进行型式测试。与质量管理体系相比，型式测试不仅会使注册程序更耗时，而且在确保产品质量安全方面缺乏稳定性。为了加强科学的医疗器械管理，中国美国商会呼吁国家食品药品监督管理局完全摒弃型式测试体系，而采用质量管理体系。

避免重复监管

目前，政府对医疗器械注册和准入的监管存在重叠的情况。举例来说，最近美中商贸联合委员会 (JCCT) 重点讨论了不同机构重复的合规评估和认证要求，这些要求导致成本升高、耗时更长。一些医疗设备（包括我们许多会员公司的主要出口产品，如起搏器、透析设备、超声波和 X 光设备）需要获得国家食品药品监督管理局的批准和国家质量监督检验检疫总局发放的中国强制认证标志。这些审批程序几乎一样，包括产品检测和工厂检查。消除这种重复可实现重大进步。此外，中国海关总署还要求对已经获得国家食品药品监督管理局和国家质量监督检验检疫总局批准的产品进行检测，导致注册程序更加繁琐。

使用在中国境外进行的临床试验得出的临床数据

美中商贸联合委员会于 2009 年 10 月宣布中国将采用一种风险导向方法，不会自动对既定类别的医疗器械进行临床试验，并考虑使用在中国境外进行的临床试验得出的结果，这样便无需在当地开展临床试验。中国美国商会对此十分赞赏。

当其他市场认为无需通过试验来证明安全性和功效时，我们鼓励国家食品药品监督管理局采用来自各种渠道的临床证据（包括国外数据）。

使用创新诊疗设备

全新的高科技医疗器械和疗法对于提高保障和护理质量而言十分重要。即便在获得营销批准后，购买某些 A 类和

B 类医疗设备（如线性加速器、PET 扫描仪、手术机器人等）仍然必须获得卫生部的明确批准。几乎所有这些设备的装机量都远低于其他国家的人均值，同时也低于世界卫生组织的推荐值。中国常常将医疗费用高企的部分原因归咎于昂贵技术的使用。然而，实际上，一些高价值技术的使用能够降低医疗成本，因为它们能够提高治疗效率，缩短住院时间，提高诊断的准确率，并及早检测出疾病（如果发现得晚，治疗费用可能会更高）。尽管在中国这些设备的收费比世界上几乎所有其它地区都要低，但报销水平也相对较低。我们建议放宽医院购买 A 类和 B 类设备的政策，以迅速达到世界卫生组织建议的可用性水平，并方便医院购买提供世界一流的医疗服务所需的技术。

原产国与出口国

建立合理的创新诊疗设备准入制度对于提高中国的医疗水平至关重要。在中国境外生产的产品必须事先在出口国获得批准，是阻碍中国市场引入创新产品的一个因素。在获得出口国的批准之前，进口商不得启动在中国的申请流程，导致审批时间延长。

事实上，许多公司根据国家的整体生产效率来设立工厂。有时候，生产国可能是一个小市场，因此公司并不在当地注册。中国美国商会建议取消这一要求。

目前，新医疗器械的审批也需要进行型式测试。但是，对于许多创新型医疗器械来说，所需的型式测试因现有实验室资源不足而无法完成。因此，我们建议采用国外检测报告，以简化流程并避免注册延误。

对于已获美国食品及药物管理局批准的新医疗器械，中国美国商会鼓励国家食品药品监督管理局对一些外国实验室进行授权，允许技术审评中心使用经这些机构认证的检测报告来进行评估。这将有助于减少阻碍中国患者获得新的先进医疗技术的繁琐程序。

禁止从发生疯牛病的国家进口含牛成分的医疗器械

中国美国商会强烈建议国家食品药品监督管理局采用科学流程来降低疯牛病 (BSE) 通过医疗器械传播的风险，如《动物源性医疗器械产品注册申报资料撰写指导原则》中概述的流程。世界卫生组织、世界动物卫生组织和国际标准组织开发的两种科学控制疯牛病的基本选择是从源头处监管和控制使用牛成分的流程。

market, so the company may never seek registration there. AmCham-China recommends removing this requirement.

Type testing is also currently required for approval of new medical devices. However, for many innovative medical devices, the required type testing cannot be completed given the existing laboratory resources. Therefore, we suggest recognizing test reports from abroad to streamline the process and avoid registration delays.

For new medical devices already approved by the US Food and Drug Administration, AmCham-China encourages the SFDA to accredit select foreign laboratories and allow test reports certified by these organizations to be admitted for evaluation by the Technical Evaluation Center. This will alleviate redundancies that hinder Chinese patients' access to new advanced medical technology.

Ban on Medical Devices Containing Bovine Components from BSE-Affected Countries

AmCham-China strongly suggests that the SFDA adopt a science-based process for mitigating the risk of bovine spongiform encephalopathy (BSE) transmission from medical devices, such as the process outlined in China's Guideline on Drafting Application Materials for Registering Animal Derived Medical Devices. The two basic options for science-based control of BSE, developed by the WHO, the World Organization of Animal Health and the International Standards Organization, are regulation of the source and control of the process for using bovine materials.

China's ban represents a zero-tolerance approach that is neither based on accepted international practice, nor scientific risk assessment. This ban is believed to violate China's obligations under the World Trade Organization (WTO) Agreement on Application of Sanitary and Phyto-Sanitary Measures. AmCham-China recommends that the ban be lifted and that manufacturers of all medical devices be allowed to present science-based evidence that material in their devices is safe under the requirements of the February 2009 Guideline on Drafting Application Materials for Registering Animal Derived Medical Devices. In addition to fully bringing China in compliance with its WTO obligations, lifting the ban will ensure that Chinese patients continue to have access to the most advanced medical technologies, many of which contain bovine material from US sources and are safely and effectively being used worldwide.

Improved Surveillance System

In 2009, the SFDA called for comments on various draft regulations, including the Regulation on Supervision and Administration of Medical Devices. As a result, many revisions were made to the technical guidelines for evaluation and the methods of adverse event surveillance and reevaluation. Subsequent efforts are underway to reform unclear regulations, inconsistent regulatory interpretations and lack of transparency.

AmCham-China is eager to see implementation of these changes. We encourage full compliance with WTO principles and Global Harmonization Task Force (GHTF)/Asian Harmonization Working Party (AHWP) rules during this process.

Private Healthcare

As part of healthcare reform policy, to increase available appropriate care for all levels of society, the government will encourage the entry of private capital to supplement the public system. Currently, as a restricted investment category in the National Development and Reform Commission's Catalogue Guiding Foreign Investment in Industry, there are many restrictions on foreign investment in private healthcare.

Reimbursement from the Urban Employed Worker Health Insurance is not available to patients seeking care at premium service hospitals, which charge higher rates than the public system. These patients tend to be the biggest contributors to the social insurance pool and would like to be allowed to port the same total reimbursement to whatever hospital they choose.

A policy allowing patients seeking care at any licensed facility, public or private, to get the same level of reimbursement, if willing to pay price differentials out of pocket, would be consistent in allowing for choice in healthcare and encouraging private investment.

Recommendations

- **Remove requirements for type testing during the product approval and registration process.**
- Improve access to innovative technology by reducing requirements for government approval of high-tech equipment purchases by hospitals.
- Avoid redundancy in medical device recall regulation.
- Allow use of results from clinical trials con-

中国的禁令既不是基于公认的国际实践，也不是基于科学的风险评估。这项禁令被认为违背了中国在世界贸易组织《实施卫生与植物卫生措施协定》中的义务。中国美国商会建议撤销这条禁令，允许所有医疗器械的制造商提供科学证据，证明其器械所采用的材料符合 2009 年 2 月公布的《动物源性医疗器械产品注册申报资料撰写指导原则》中的安全要求。除了使中国充分履行其世界贸易组织的义务之外，取消这条禁令还将确保中国患者继续能够使用最先进的医疗技术（其中许多包含来自美国的牛成分），并且正在全球得到安全而高效的利用。

改善监测体系

2009 年，国家食品药品监督管理局针对多项管理条例草案征求意见，其中包括《医疗器械监督管理条例》。对评估技术指导原则和不良事件监督与重新评估方法做了诸多修正。目前中国正在努力对不明确的法规、不一致的监管解释和较低的透明度进行改革。

中国美国商会希望这些改变能早日得到落实。我们建议在这个过程中完全遵守世界贸易组织原则和全球医疗器械协调工作组 / 亚洲医疗器械法规协调组织的规定。

私人医疗保健

作为医疗改革政策的一部分，为了向社会各阶层提供更多适当的医护服务，政府将鼓励私人资本进入公共系统。目前，作为国家发展和改革委员会《外商投资产业指导目录》中受到限制的投资类别，外商投资私人医疗保健领域受到诸多限制。

城镇职工医保报销系统不允许为在提供高端服务的私立医院接受治疗的患者报销任何医疗费用，因为这些医院的收费高于公共医疗卫生系统的收费标准。这些患者是社保体系最大的贡献者，他们希望无论选择什么医院就诊，都能获得同等的报销额度。

中国若能出台相应政策，允许在任何经授权的公共或私人机构寻求治疗的患者都享受同等的报销额度，而差价部分由患者自负，将有助于患者拥有更多的选择，也有利于鼓励私人投资。

建议

- 取消产品审批和注册流程中的型式测试要求。
- 通过降低政府对医院购买高科技设备的审批要求，使医院用上更多的创新技术。
- 避免医疗器械召回管理办法中的重复性要求。
- 允许采用在中国境外进行的临床试验得出的结果。
- 接受全球医疗器械协调组织或亚洲医疗器械法规协调组织先前发布的医疗器械审批文件，而不论其原产国、制造国或法定制造国。
- 实施与全球医疗器械协调组织和亚洲医疗器械法规协调组织公布的医疗器械指导原则文件相一致的管理办法、规定和通知。
- 允许城镇职工基本医疗保险系统向私人医疗机构开放医保报销服务，而无论其收费高低，只要患者愿意按照保险公司制定的定额分摊条款承担部分费用。

ducted outside of China.

- Accept documentation of prior approval for medical devices issued by the GHTF or the AHWP, regardless of its country of origin, manufacture or legal manufacture.
- Implement regulations, rules, and notices that are consistent with medical device guidance documents issued by the GHTF and the AHWP.
- Allow reimbursement from the Urban Employed Worker Basic Health Insurance to be ported to private institutions independent of the price point as long as the patient is willing to pay the co-pay determined by the provider.



Pharmaceuticals

Over the last few years, China has undertaken a comprehensive review of its healthcare system with a goal of broad reform. In 2009, the government approved a plan to invest RMB 850 billion (US \$124 billion) into the healthcare system over the next three years and announced its four pillars of healthcare reform: enhancing the medical insurance system, improving the basic drug delivery system, upgrading local healthcare facilities and revamping public hospitals.

While there are many encouraging signals, challenges remain for the research-based pharmaceutical industry, including: appropriate healthcare funding, prescribing and dispensing practices, hospital bidding procedures, government pricing and reimbursement policies, and the protection of intellectual property (IP). Lack of progress on these key issues hampers growth in this sector and increases the risk of patients not receiving the highest quality care and products.

AmCham-China commends the substantial efforts of the Chinese government to improve healthcare and the business and investment environment for innovative pharmaceutical companies operating in the country. AmCham-China welcomes the opportunity to maintain an open channel for dialogue with the government as it implements reforms and to provide input based on our members' experience and expertise.

Addressing Healthcare Costs and Financing

Despite substantial progress on healthcare reform, China's percentage of its GDP spent on healthcare remains very small compared with other countries of comparable economic development.

A large segment of Chinese patients pay most of their healthcare expenses out-of-pocket. For this reason, AmCham-China supports the Chinese government's announced healthcare reform goals of expanding public health insurance and promoting greater availability of private health insurance. AmCham-China is committed to working with the Chinese government to share their member companies' experiences and expertise in the

process of developing a financially sustainable healthcare system.

Specific Issues

Ensuring Best Medical Practices

China permits hospitals and physicians both to prescribe and dispense medicine. This may encourage prescription writing based upon financial motives rather than best medical practices. This unfortunately is exacerbated by inadequate funding of hospital and physician services. China has committed to restructure hospital financing and establish a sustainable system to eliminate hospital mark-ups of pharmaceuticals as part of its newly-announced healthcare reforms. We encourage swift action on this to address the current conflict of interest. AmCham-China would welcome the opportunity to share our industry experience and provide input where helpful.

Ensuring Access to Essential Drugs

China's development of a comprehensive essential drugs policy aimed at making pharmaceuticals available to the underserved populations across China is an extremely commendable goal. Such a positive step will help ensure affordable access for patients to necessary drugs. Implementation details are still under consideration by the central and provincial-level governments who will be procuring the products on the list to be sold to patients without markup.

It remains critical that the new procurement mechanism be transparent and consistent. It should include provisions for appeal, provide patients with choices and early access to innovative medicines, and not be based solely on the cost, but rather, also on quality, relative value and reliability of supply. To ensure a system that guarantees the most needy patients access to the best products, it is critical that provincial and local-level governments provide for consistent and uniform implementation of the essential drugs policy, and that there is a mechanism through which implementation is

制药业

近年来，中国一直着手进行全面的医药卫生体制改革。2009 年，国务院通过医改方案，明确 3 年内将投入 8,500 亿元人民币（1,240 亿美元）用于医疗改革，并公布了医改的“四大支柱”，即：加快建设医疗保障体系，建立健全药品供应保障体系，全面加强公共卫生服务体系建设，进一步完善医疗服务体系。

尽管医改传达的信号令人鼓舞，但一些与医疗经费投入、开方与配药模式、医院招标程序、政府定价和补偿政策以及知识产权保护等相关问题仍然是行业所面临的挑战。这些重大问题一直未有明显的进展，制约了医药行业的发展，也增加了患者无法获得最佳治疗和最优药品的风险。

中国美国商会希望中国政府继续致力于促进中国医疗卫生事业的发展，并为在华开展业务的创新型制药企业提供更优良的商务环境。在医改推进过程中，中国美国商会非常期待能够有机会与政府保持开放的沟通渠道，及时为政府部门提供行业经验和观点。

医疗费用和投入

尽管医改已取得重大进展，但与其他经济发展水平相当的国家相比，中国医疗卫生投入占 GDP 的比例仍非常低。

中国患者中有大部分需自付医疗费用。为此，中国美国商会支持中国政府出台旨在扩大公共医疗保险覆盖面及促进私人医疗保险发展的改革。中国美国商会致力于与中国政府携手合作，分享会员企业在建立具有资金保障可持续性的医疗制度方面的经验与专业知识。

具体问题

关于合理用药

中国允许医院和医生既开方又配药。这可能会鼓励医院和医生出于经济利益开方，而非基于最佳医疗实践。不幸的是，医院经费不足和较低的诊疗费又使得这一问题雪上加霜。作为新出台医改方案的一部分，中国已经承诺通过改革医院补偿机制以取消药品加成。我们鼓励对此采取迅速行动，以解决现有的利益冲突。中国美国商会非常希望能有机会分享我们的行业经验并提供有益建议。

关于基本药物可及性

中国为解决贫困人口的药品供应问题而建立基本药物制度的做法非常值得称赞。这种积极举措将有助于确保患者可以负担得起所需的基本药品。中央与省级政府仍在研究基本药物招标采购、统一配送及实现零差率销售的具体实施办法。

新招标采购政策的透明度和一致性仍至关重要。政策中还应该包括申诉条款，提供患者自主选择权并能使患者尽早获得创新药品，而不应仅考虑成本因素，还应更关注质量、相对价值和供应的可靠性。要想使这一制度真正满足患者所需，省市及地方政府有必要制定并实施协调、统一的基本药物政策，并建立机制以对具体实施情况进行监督和审查。

关于临床试验申请审批

虽然近期情况已有所好转，但与其他国家相比，中国的临床试验申报要求仍然相当繁复。申报者不能用新公布的信息进行补充申报，并且每一份临床试验送审资料都必须反复经过整套的审批程序。此外，中国的临床试验申报仍包括大量的临床前及临床要求。总体而言，这些要求使得制药公司很难将中国患者纳入其地区性或全球性临床试验中，以加快具有深远意义的新疗法在中国的推出。

monitored and reviewed.

Clinical Trial Application Approval

Although there have been recent improvements, China's clinical trial application (CTA) submission requirements remain burdensome compared to other countries. CTA applicants are unable to supplement their applications as new information becomes available and must repeat full procedures for every clinical protocol. In addition, China maintains comparatively extensive pre-clinical and clinical requirements. Together, these make it extremely difficult to integrate Chinese patients into regional or global trials intended to expedite the availability of meaningful new therapies in China.

In order to mitigate some of these arduous requirements, AmCham-China recommends that the State Food and Drug Administration (SFDA) review its regulations to enable China's medical community to participate in global clinical trials, attract further clinical trial investment and, more importantly, enable patients to have the earliest possible access to innovative medicines.

IP Protection

Regulatory Data Protection

China's regulatory procedures permit the SFDA to grant marketing approval to products that have previously been approved outside of China if applicants can submit published material and reference decisions by foreign regulatory agencies and conduct limited local clinical trials. However, this can create significant safety concerns around products introduced into China via this drug registration pathway. By approving copy versions without the manufacturer's clinical data package, the SFDA cannot ensure that the product in the data package and the product in the marketing application are the same, or equivalent. Through the absence of this data, widespread availability of unsafe drugs in the marketplace could occur, unnecessarily putting patients at risk.

In addition, reliance on summary data or approvals from outside China gives an unfair commercial advantage to non-originator companies because they do not incur the cost of generating their own clinical data to prove safety and efficacy.

Patent Linkage

Patent linkage ensures that marketing approval will not be granted to a generic drug if a valid patent exists. While Articles 18 and 19 of China's updated Drug

Registration Regulation refer to publication of patents associated with drug registration and a maximum "two-year period" for submitting a registration application before the patent on the drug expires, it does not explicitly address the circumstances and proceedings for disputes over the patent status of new products.

The updated regulation states that if an infringement dispute occurs during application, it "should be resolved according to patent laws and regulations." However, the Patent Law requires sales in the marketplace before an infringement suit can be filed. In addition, the "Bolar Exemption" provision in the new Patent Law exempts production of patented products from infringement as long as they are "for the purpose of submitting information necessary for an administrative approval." As a result, AmCham-China member companies have not been able to resolve patent disputes prior to marketing approval.

To avoid costly patent litigation and increase market predictability, we urge China to allow patent holder companies to file patent infringement suits before marketing authorization is granted to non-patent holders and the infringing company has market sales. In addition, the SFDA should implement a form of automatic postponement of drug registration approval pending resolution of the patent dispute.

Counterfeit Pharmaceuticals

Pharmaceutical counterfeiting is a global public health problem. The solution requires implementation of adequate drug safety regulations at the national and local levels, as well as multilateral cooperation. China's enforcement of laws regulating the various links in the drug manufacturing and supply chain (including the export of Active Pharmaceutical Ingredients (API)) and China's commitment to multilateral cooperation remain inadequate.

China has yet to enforce or, in some cases, put into place, laws that thoroughly address drug counterfeiting. Nor does it provide the resources and commitment necessary to combat this growing problem. For example, although China's drug laws prohibit "fake" medicines, criminal liability is contingent upon proof of actual harm. This burdensome and excessive evidentiary requirement all but precludes effective criminal prosecution against counterfeiters.

To help resolve these issues, we urge China to enforce and amend its drug laws as necessary to prohibit and criminalize the manufacture, distribution, import or export of any pharmaceutical that is deliberately and fraudulently mislabeled with respect to source or

为在一定程度上减轻这些严苛要求的影响，中国美国商会建议中国国家食品药品监督管理局（药监局）能够更新相关管理办法，从而使中国的医疗部门能够参与全球性临床试验，进一步吸引临床试验投资，更为重要的是，能够使患者尽早获得创新药品。

关于知识产权保护

监管数据保护

根据中国的监管程序，如果申请者可提交公开发表的资料 and 外国监管机构做出的参考性监管决策，药监局有权向已在中国境外获得批准的产品发放销售许可证。只有为数不多的产品才需要在当地进行临床试验。不过，通过此种药品注册途径引入中国的产品可能产生重大的安全隐患。药监局批准的只是副本文件，而没有获得制药公司的整套临床数据，因此无法确保临床数据中的产品与销售申请中的产品相同或等效。由于原始数据的缺乏，市场上可能会充斥着不安全的药品，从而使患者面临不必要的风险。

此外，对概括性数据或境外监管部门批准意见的信赖反而让非原药品开发商受益，这难免有失公允，因为这些厂商无需投入大量的人力物力就可以拥有自己的临床试验数据来验证其安全性和有效性。

专利链接制度

专利链接制度确保了在专利有效存在的情况下，将不会对仿制药品发放销售许可。虽然修订后的《药品注册管理办法》第 18 条和第 19 条规定涉及到与药品注册有关的专利发布，以及在药品专利期届满前可最早“提前 2 年”递交注册申请，但并未明文规定针对新产品专利状态所产生争议的具体情况和诉讼程序。

修订后的《药品注册管理办法》规定，如果申请期间发生专利权纠纷，“应按照专利的法律法规解决”。但是，《专利法》规定，只有产品在市场上发生销售行为，才能提起侵犯专利权的诉讼。此外，新修订的《专利法》中“Bolar 例外”条款规定，只要是“为获得行政审批所需要的信息”而实施专利的行为，不视为侵犯专利权。因此，中国美国商会会员企业就无法在该侵权产品获得销售许可之前解决专利纠纷。

为避免代价高昂的专利诉讼并增强市场的可预见性，我们呼吁中国政府允许专利持有公司在侵权公司获得销售许可

并上市销售之前，就可以对其提起侵犯专利权的诉讼。此外，专利纠纷未决期间，药监局应自动延迟对该药品的注册审批。

假药

药物制假是全球性的公共健康问题。解决假药问题需要中央和地方层面充分落实药品安全监管，并加强多边合作。中国在药品生产和供应链各个环节（包括原料药出口）监管法规的执行方面以及在多边合作方面的努力都还需要进一步加强。

中国仍未出台或是（在某些情况下）实施相关法律以彻底解决药物制假问题，也未提供此类必要的执法资源或做出必要承诺来打击这一日益猖獗的问题。例如，尽管中国的药品法律法规严禁“假”药，但必须根据实际伤害证据确定刑事责任。这种繁复、过于严格的取证要求几乎使制假者能够逃脱中国药品法律法规的制裁，免遭刑事起诉。

为了解决这些问题，我们呼吁中国必须制定及 / 或修订其药品法律法规，禁止任何故意错标来源或名称的药品（符合世界卫生组织对假药的定义）的生产、配送和进出口，将这些行为归为刑事犯罪，并取消需要证明其伤害作用或有质量问题的要求。此外，中国应通过确立与外部各方就假药问题进行沟通的单一联络点，来增强国际执法合作。中国还应成立由执法部门、监管机构和海关共同组成的部门间药品特别行动小组，以确保各有关监管和执法机构之间能够实现充分的协调。其中每一位小组成员都应有权对药物制假链条的各个环节（包括假药、相关包装和原材料的制造商、批发和零售商、出口商，以及向假药制造商供应原料的原料药生产商）进行调查和起诉。

另一忧虑是原料药的使用和监管。《药品管理法》规定，大多数化学品和其它原料药一般被视为药品，但在实际情况，原料药是否被视为药品及其是否在监管范围内，往往都是由当地监管机构来决定的。《药品管理法》规定，化学品厂商只有在其“选择”向药监局进行原料药产品注册时，才须接受药监局的监督管理。如果某家化学品公司生产原料药，但不对外宣布该原料药将用于成品药生产，则药监局会认为其不具备对该未经注册的生产商的监管权。

此外，现有体制使得化学品厂商或对原料药的预期用途不闻不问，或悍然选择不遵守药监局的现行法规，肆无忌惮地向国内外销售和运输原料药。化学品生产商这种违规的不道德行为极大地推动着假药贸易的发展，有时甚至助长和纵

identity (consistent with the WHO definition of a counterfeit medicine), without the need to prove harmful effects or deficient quality. In addition, China should advance global enforcement cooperation by identifying a single contact point to communicate with external parties about counterfeit medicines. It should also create an interagency pharmaceutical task force of law enforcers, regulatory authorities and customs agents to ensure adequate coordination among the various relevant authorities. These officials should have the investigative powers and mandate necessary to prosecute all links in the counterfeit drug chain, including manufacturers, wholesale and retail distributors, exporters of counterfeit medicines, and related packaging and raw materials, as well as API producers who supply their products to drug counterfeiters.

Another concern is the use and regulation of APIs. Bulk chemicals and other APIs are generally deemed pharmaceuticals under the Drug Administration Law, but in practice, whether an API is regarded as a pharmaceutical or left unregulated is often up to the local regulator's discretion. According to the Drug Administration Law, chemical companies are subject to SFDA oversight only when a chemical company "chooses" to register an API product with SFDA. If a company manufactures an API, but elects not to declare that it will be used in a finished pharmaceutical product, the SFDA has said that it lacks authority over the unregistered manufacturer.

In addition, the current system permits chemical manufacturers to sell and ship API products to locations within China and abroad with either no regard for the intended use of the API or flagrantly choosing not to comply with existing SFDA regulations. These unregulated and unethical practices by chemical companies contribute significantly to, and in some cases aid and abet, the counterfeit drug trade. More troubling is the fact that the unregulated distribution of API products may expose patients to serious and significant health risks and degrade consumer confidence in the Chinese and global medicinal supply chains.

prescription and dispensing functions.

- Ensure a comprehensive essential drugs policy that provides patients with choice and earliest possible access to innovative medicines. Ensure that the mechanism established by the central and provincial governments to procure and administer the products on the Essential Drugs List is transparent, consistent, includes provisions for appeal, provides patients with choices and early access to innovative medicines, and is not based solely on the cost.
- Ensure consistent and uniform implementation of the essential drugs policy at the provincial and local-levels and establish a mechanism through which implementation can be monitored and reviewed.
- Review the current CTA approval process and develop internal procedures that are consistent with international best practices.
- Eliminate the existing loophole that enables chemical companies to usurp the authority of the SFDA when manufacturing APIs. Impose criminal penalties for companies manufacturing drug substances that promote them as APIs, without a required SFDA registration.

Recommendations

- **Fully implement regulatory data protection to protect innovators' IP. Establish an effective patent linkage system that prevents copies of patent protected medicines from receiving government marketing approval.**
- Collaborate with key industry stakeholders to develop long-term solutions for a financially sustainable healthcare system that separates

容了假药贸易的气焰。更令人担忧的是，原料药的分销规管不力既打击了消费者对中国和全球药品供应链的信心，又给患者带来了严重的健康风险。

建议

- 全面实施监管数据保护，以保护创新者的知识产权。建立有效的专利链接制度，防止仿制药获得政府销售许可。
- 与重要的行业利益相关者合作，共同为建立具有长期性、资金保障可持续性的医疗体制提供解决方案，实现开方与配药职能的分离。
- 确保基本药物政策能够提供给患者自主选择权并能使患者尽早获得创新药品。确保由中央和省级政府制定的基本药物采购、管理办法透明且一致。政策中还应该包括申诉条款，提供患者自主选择权并能使患者尽早获得创新药品，而不应仅考虑成本因素。
- 确保在省和地方层面协调、统一地实施基本药物政策，并建立一种机制来对具体实施情况进行监督和审查。
- 更新临床试验申报的现有程序，制定符合国际最佳实践的内部流程。
- 完善原料药管理制度。对未经药监局注册而擅自生产原料药的生产厂商进行严格的刑事处罚。

Real Estate

Real estate plays a central role in China's continued growth and stability, with related development investment accounting for 12 percent of China's GDP as of the third quarter of 2009, compared with only three to five percent in the US since 1998. Furthermore, as of September 2009, real estate-related credit and financing made up about 17 percent of all financial institution loans. The sector also contributes significantly to the country's total investment in fixed assets, trailing only infrastructure and employment.

Given the rapid rise in land and residential housing prices over the past year, there is concern that China's real estate market may be forming a bubble. While AmCham-China recognizes that economic development and urbanization support continued growth in the real estate market, we trust that the Chinese government will work to implement measures to stabilize the market to both encourage real estate investment and prevent the formation of a bubble, which has been the source of trauma in other economies in recent years.

Despite some progress, greater consistency and transparency in the implementation of regulations and in the registration of property rights at both provincial and local levels would benefit foreign and domestic firms, as well as the broader investment environment. AmCham-China believes this would bolster investor and consumer confidence and demand while contributing to market stability.

Significant Developments

In 2009, significant real estate policies were issued at the central and local levels. These policies generally have been supportive of real estate investment at the national and local levels. The key announcements include:

Registered Capital of Real Estate Development Projects Reduced

In May 2009, the State Council released the Notice Concerning the Adjustment of Capital Fund Ratio for

Fixed Assets Investment Projects. It reduced minimum registered capital as a percentage of project funding in a real estate development project from 35 percent to 20 percent for affordable housing and ordinary commodity housing development projects, and 30 percent in other real estate development projects. AmCham-China welcomes this move, which lowers the bar for market entry, promotes competition in the Chinese real estate market and stimulates economic growth.

Promotion of Property Consumption in Beijing

In January 2009, during the height of the global economic downturn, the Beijing Construction Committee, with eight other Beijing Municipal government agencies, issued the Implementation Opinions on the Promotion of the Healthy Development of the Beijing Real Estate Market (*Jing Jian Ban* [2009] No. 43), which suspended the enforcement of the Circular on Regulating the Purchase of Real Estate by Entities and Individuals (*Jing Jian Jiao* [2007] No. 103) through December 31, 2009.

The suspension aimed to promote property consumption by granting the same preferential mortgage policies for second-home buyers as for first-home buyers, thus reducing business and commercial taxes on second-hand housing purchases. Furthermore, foreign individuals no longer had to satisfy a one-year residency period in Beijing to purchase real estate and could also purchase more than one real estate unit. Purchased premises were no longer restricted to personal use. Additional policies aimed at developers provided credit for small to medium-sized housing as well as construction and planning guidance. AmCham-China supports these new policies, which encourage development and expansion of the real estate market in China.

Insurance Funds Authorized to Invest in Real Estate Sector

A number of amendments to the Insurance Law were promulgated in late February 2009. The law allowed insurance funds to invest in the real estate industry

房地产

房地产业对中国的持续发展和稳定做出了重要贡献，截至 2009 年第三季度，相关业务的投资在中国国内生产总值（GDP）中所占比例达 12%，而美国自 1998 年以来这一比例仅为 3% 至 5%。此外，截至 2009 年 9 月，与房地产相关的信贷融资约占金融机构总资产的 17%。房地产业在全国固定资产投资中所占比重很大，仅次于基础设施和就业。

考虑到过去一年中土地和住房价格的迅速攀升，有人担心中国的房地产市场可能会出现泡沫。中国美国商会认识到，经济发展和城市化在支撑着房地产市场的持续发展，我们相信中国政府会努力落实各项措施，保持房地产市场稳定，鼓励房地产投资并防止泡沫出现，而这正是近年来其他国家出现经济危机的起因。

尽管取得了一些进展，但提高各个省市及地方的法规实施和物权登记的一致性和透明度，不仅将惠及国内外房地产公司，而且有益于投资的大环境。中国美国商会相信，这将提升投资者和消费者的信心，有利于市场稳定。

重大进展

2009 年，中国中央和地方政府出台了几项有关房地产业的重要政策。这些政策支持着中央和地方各级房地产投资。其中重要政策包括：

减少房地产开发项目的注册资本

2009 年 5 月，国务院发布了《关于调整固定资产投资项目资本金比例的通知》，下调注册资本在房地产开发项目资金中所占比例，经济适用房和普通商品房项目的最低资本金比例从 35% 下调至 20%，其他房地产开发项目下调至 30%。中国美国商会对这一措施表示欢迎，该措施降低了市场准入门槛，推动了中国房地产市场中的竞争，并刺激了经济发展。

促进北京的住房消费

2009 年 1 月，全球经济衰退达到极点，北京市住房和城乡建设委员会与其他 8 家市政机构共同颁布了《促进北京房地产市场健康发展的实施意见》（京建办[2009]43 号），同时截至 2009 年 12 月 31 日前暂停执行《关于规范境外机构和境外个人购买商品房的通知》（京建交[2007]103 号）。

暂停执行《关于规范境外机构和境外个人购买商品房的通知》，旨在让购买第二套住房的居民，比照购买第一套住房的居民，享受到同样的优惠贷款政策，从而促进住房消费，降低购买二手房的营业税和交易税。另外，此举取消了境外个人在京购房的 1 年居住期限限制和限购 1 套房的数量限制。所购房屋用途不再限于自用。而其他一些面向开发商的政策不仅为中小型住房提供了贷款，还为建设和规划提供了指导意见。中国美国商会支持这些旨在鼓励开发和拓展中国房地产市场的新政策。

保险基金获准投资房地产领域

《保险法》的修正案已于 2009 年 2 月底颁布。修正案允许保险基金自 2009 年 10 月起投资房地产业。观察家们认为此项修改将推动房地产价格上涨，也有望在机构整顿投资的过程中稳定价格。中国美国商会欢迎机构投资，因为机构投资有助于市场走向成熟，并提高开发质量。下一步，我们鼓励中国给予美国公司和其他外资保险公司这种投资机会。

关于在京设立地区总部的奖励办法

2009 年 6 月最新颁布的《关于鼓励跨国公司（MNC）在京设立地区总部的若干规定》旨在进一步鼓励跨国公司在首都北京设立地区总部。在其中一项重要规定中，将跨国公司母公司在中国累计实缴注册资本总额从不低于 3000 万美元下调至不低于 1000 万美元（从人民币 2.05 亿元下调至 6800 万元）。其他规定包括：对在京新注册设立和新迁入

starting from October 2009, a change which observers believe has begun to boost real estate values. It is also expected to help stabilize prices as institutions tend to pursue en bloc investments. AmCham-China welcomes institutional ownership because such investment will help the market mature and lead to better quality developments. As a next step, we encourage opening such investment opportunities to US corporate investors and more widely to foreign-invested insurers.

Beijing Regional Headquarters Incentive

In June 2009, the newly revised Provisions on Encouraging Multinational Corporations to Locate Regional Headquarters in Beijing were issued to further promote establishing regional headquarters of multinationals in the capital. One key provision decreases required foreign parent companies' paid-in registered capital in China from US \$30 million to US \$10 million (from RMB 205 million to RMB 68 million). Other provisions include: rental subsidies and owner-developed or purchased building subsidies for newly-established and relocated regional headquarters; revenue-based financial incentives and preferential policies; and financial incentives for personnel of regional headquarters.

AmCham-China welcomes this policy which encourages American companies to continue expansion in China and provides them a greater stake in the orderly development of Beijing. AmCham-China member companies would like to use incentive plans such as this to work closely with the Beijing and other local governments, as well as China's central government to promote continued real estate growth, especially for sustainable urban development and planning.

Specific Issues

Foreign-invested Real Estate Development Enterprises Continue to Face Market Entry Barriers

Regulatory and practical restrictions continue to create hurdles for foreign investors ready to participate and compete effectively in the Chinese real estate market. For example, the Opinions on Regulating the Entry into and the Administration of Foreign Investment in the Real Estate Market (Circular 171) is still in effect, which continues to impose extensive restrictions on market entry by foreign investors. PRC branches and representative offices of foreign entities, as well as foreign individuals, may purchase properties only for their own use. Direct offshore ownership of PRC properties is otherwise not permitted. A foreign investor buying into a real estate foreign-invested enterprise (FIE) or a domestically-funded real estate project will be subject

to greater scrutiny. In addition, the registered capital of a real estate FIE is required to be no less than 50 percent of the total investment for projects over US \$10 million (RMB 68.5 million), while the minimum ratio ranges from 33.3 percent to 40 percent for normal FIEs. These restrictions keep the bar significantly higher for market entry by foreign participants.

China's Real Estate Bubble?

China's rapid urbanization, economic growth and recent fiscal stimulus have worked together to drive demand and price increases in the real estate market. Growth in the residential sector has been particularly torrid, with aggregate residential floor space sold in the first 10 months of 2009 up 50 percent over all of 2008. Given the bullish market, many fear the market has entered a bubble, where prices have increased too quickly in response to government-backed bank lending. In the meantime, developers worry that recent increases in land values mean that future developments will need to be priced high to ensure profitable yields on their investment, a phenomenon that would potentially destabilize the market, considering the level of median household incomes in China.

There are signs that the government is paying close attention to this and aims to help cool the residential market. Specifically, in December 2009, China introduced a new tax that requires anyone selling a second-hand residence within five years of purchase to pay a sales tax of 5.5 percent, which extends the taxable period from the previous two years. AmCham-China believes these types of policies will help stabilize the market by reducing churn and speculative purchasing for investment purposes.

Inexperienced Developers May Destabilize Market

One result of the availability of credit has been the entry into the market of large numbers of new and inexperienced state-owned enterprises and other developers. This is a risky trend that may lead to market destabilization. Many of these developers commit to projects without conducting proper due diligence or financial analysis of the property, putting their investment at risk.

AmCham-China suggests that these developers be encouraged to partner with more experienced developers from the US or elsewhere to ensure profitable and well-managed investments that are also in line with long-term development plans for the respective municipality.

北京的地区总部租赁、自建或购买办公用房给予补助；按营业收入给予资金奖励、享受优惠政策；以及对地区总部的主要负责人给予资金奖励。

该政策鼓励美国公司继续在华拓展业务，进一步参与北京的有序化建设，中国美国商会对此表示欢迎。商会的会员企业将借助此类奖励计划，与北京市政府、其他地方政府以及中央政府密切合作，推动房地产业，特别是可持续城市发展和规划继续向前发展。

具体问题

外资房地产开发企业仍然面临市场准入壁垒

政策和实际执行方面的限制继续成为境外投资者进入中国房地产市场，并参与有效竞争的障碍。例如，《关于规范房地产市场外资准入和管理的意见》（171号文）仍然有效，对境外投资者进入市场依然有严格的限制。境外机构在境内设立的分支、代表机构和境外个人只可以购买自用、自住的商品房。在境外直接拥有境内住房是不允许的。境外投资者并购房地产企业或境内房地产项目将受到更严格的审查。此外，投资总额超过1000万美元（合6850万人民币）的外资房地产企业，其注册资本不得低于投资总额的50%，而普通外资企业的最低比例仅为33.3%到40%。这些限制条件大大提高了外商投资房地产业的市场准入门槛。

中国的房地产业出现泡沫了吗？

在中国快速城市化、经济高速增长和近期财政刺激的共同作用下，房地产市场需求旺盛，价格一路攀升。住宅领域的增长尤其火爆，2009年前10个月累计售出的住宅建筑面积超出2008年全年销售量的50%之多。考虑到牛市行情，许多人担心市场泡沫已现。由于政府支持银行借贷，房地产价格出现过快上涨。同时，开发商担心，近期土地价格上涨意味着未来的开发必须提价，以确保投资收益，而考虑到中国中等家庭收入水平，这可能会成为破坏市场稳定的潜在因素。

有迹象表明，政府正在密切关注此事，并试图为住宅市场降温。值得一提的是，2009年12月，中国增设了一个新税项，规定不足五年的二手房转让必须缴纳5.5%的营业税，缴税期限从两年前起算。中国美国商会相信，通过减少市场动荡和以投资为目的投机性购买等此类政策，将有助于稳定市场。

开发商缺乏经验可能破坏市场稳定

获得信贷的一个结果就是大量缺乏经验的国有企业和和其他开发商进入房地产市场。这是一个危险的趋势，可能破坏市场稳定。此类开发商承接项目，却不开展适当的房地产尽职调查或进行财务分析，而这只能增加其投资的风险性。

中国美国商会建议，鼓励这些开发商与来自美国或它国、经验丰富的开发商合作，这样既能保证投资得到妥善管理，赚取利润，还符合各个城市的长期发展规划。

透明度、信息和执法

中国美国商会反复提出的物权管理和执行缺乏透明度，以及其他法规的执行缺乏一致性的情况至今仍未见改善。

目前，有关物权权益登记的法律法规是由地方政府部门发布和实施的，结果导致各地的规章复杂多样，模糊混乱，甚至地方相关部门也未能完全遵守。而且在执行时，地方法院并不能完全依法办事。中国媒体多次报道，一些拥有房地产开发项目审批决定权的地方官员腐败成风，滥用职权。虽然这些案件得以在媒体上曝光，但杜绝滥用职权才是关键。

现有的物权权益（如土地使用权、租赁权、抵押权和其他房物权益）登记制度以及有关担保权优先顺序的规定很模糊，在全国范围内的实施不一致。而且提供的信息准确性有限。结果导致很多物权所有人或质权人在行使其权利时遇到困难，或发现其权利面临由利益冲突的第三方所造成的潜在风险。中国美国商会鼓励落实全国统一的登记制度，从而改进城市规划，提高房地产交易效率，改善建设和质量标准。

建议

- 允许境外投资者发挥更加积极的作用，推动中国政府取消市场准入限制，特别是第171号文中针对外资企业的规定，简化审批流程，推动建立一个具有可持续性、成熟的房地产市场。
- 采取有效措施，加强有关房地产领域各项法规 and 政策的透明度及其执行力度。此外，采取其他措施整顿房地产开发和审批过程中的腐败现象。
- 采用一项全国性的房地产权以及相关抵押权利的登记与备案制度，并出台相关实施办法，确保其在各地得到一致的贯彻落实。

Transparency, Information and Enforcement

The lack of transparency in the administration and enforcement of property rights has consistently been cited by AmCham-China and others as detrimental to investment, but little progress has been made to improve this situation to date.

Currently, rules for the registration of property rights and interests are issued and administered locally, producing a complex multiplicity of regulations that are confusing and not always observed by local authorities. Moreover, when it comes to enforcement, local courts do not always apply laws consistently. Chinese media have reported rampant corruption and abuse of power by local officials who hold enormous sway in decisions about the approval or rejection of real estate development projects. It is encouraging to see these cases illuminated by the media spotlight, but an end to the abuse is critical.

The existing system of registration of property rights and interests, such as land use rights, leases, mortgages and other rights and interests in real property, as well as rules governing the priority of security rights, are vague and not consistently enforced nationally. Moreover, there is limited availability of accurate information. As a result, bona fide holders of property rights or liens may have difficulty enforcing their rights or find their rights undermined by the competing interests of third parties. AmCham-China encourages implementation of a national registry, with a view towards improving urban planning, real estate transaction efficiency, and construction and quality standards.

Recommendations

- **Allow foreign investors to play a more active role in helping the Chinese government promote a sustainable and mature real estate market through eliminating market entry restrictions specifically applicable to foreign-invested enterprises put in place by Circular 171 and streamlining the approval process.**
- Adopt effective measures to enhance transparency of regulations and policies governing the real estate sector and the enforcement of those regulations and policies. Take further steps to combat corruption in the real estate development approval process.
- Implement a national scheme for the registration and recording of real property interests as well as related security interests together with guidelines for consistent application across all jurisdictions.



Retail

China's retail sector has been developing in recent years, but still faces several problems that prevent full maturation. Unequal regulatory practices unduly burden foreign-invested retailers, resulting in a marketplace that lacks full competition. The effect for consumers is significant in prices, product safety, corporate social responsibility and industry standards. Improving the competitiveness and openness of the retail sector is critical, and will only become more so with domestic consumption an increasingly important component of the Chinese economy.

Significant Developments

In 2009, total consumption of retail commodities reached RMB 12.5 trillion (US \$1.8 trillion), up 16.9 percent from the previous year. It remains to be seen what continued impact the global economic downturn will have on the retail sector, but government estimates predict eight percent growth in 2010, and total retail sales of RMB 20 trillion (US \$2.9 trillion) by 2020.

In accordance with its WTO commitments, China has removed most restrictions on foreign-invested retailers, including those governing location, proportion of ownership and the number of outlets. Of the top 100 retailers in 2008, 19 are foreign invested. In 2008, foreign-invested retailers owned 4,613 stores, an increase of 13.1 percent compared to 2007.

On September 12, 2008, the Foreign Investment Administration Department (FIA) of the Ministry of Commerce (MOFCOM) issued a regulation decentralizing store opening approvals. In December 2008, MOFCOM issued guidelines for local commerce bureaus on the examination and approval of store-opening applications.

Since its implementation, the store approval decentralization regulation adopted by the Chinese government has effectively simplified the approval procedures for new foreign-invested retail stores and reduced operating costs and delays associated with the examination and approval process. AmCham-China applauds these moves to streamline the approval process and the re-

sulting positive effects on the development of the retail sector in China.

However, despite the simplification of procedures related to the opening of stores by foreign retailers and the number of store openings, discriminatory treatment and a lack of transparency still exist in certain areas of government administration over the retail industry. These issues continue to restrict the expansion of foreign retailers and discourage foreign investors from contributing their expertise, which would benefit the Chinese consumer and overall marketplace.

Specific Issues

Restrictions on Ownership

According to the National Development and Reform Commission's (NDRC) Catalogue Guiding Foreign Investment in Industry and MOFCOM's Measures on the Administration of Foreign Investment in Commercial Sectors, retailers operating more than 30 stores in China and selling pharmaceuticals, grains, vegetable oil, sugar, cotton or other commodities of varying brands from different suppliers cannot be more than 49 percent foreign-owned. Hong Kong and Macao investors can own this type of retail chain outright. AmCham-China recommends easing this ownership restriction for foreign investors and lifting the 49 percent ownership limit.

Restrictions on Tobacco

In March 2007, the NDRC issued new rules on tobacco licensing, the Administrative Measures for Tobacco Monopoly License (Measures), which prohibit foreign commercial enterprises from conducting wholesale or retail tobacco business. According to the Measures, as of January 2009, no foreign-invested retailer is allowed to directly sell tobacco in China.

These restrictions put foreign retailers at a clear disadvantage to their domestic competitors. AmCham-China urges the elimination of the restriction.

零售业

虽然中国的零售业近年来一直在发展，但是仍然面临一些影响行业发展壮大的问题。不平等的监管做法加重了外资零售企业的负担，导致市场缺乏充分的竞争环境，同时对消费者的影响也不容小觑，价格、产品安全、企业社会责任与行业标准都受到了影响。零售业的竞争性和开放度亟待增强，而且随着国内消费成为中国经济日益重要的组成部分，这种需要将变得更为迫切。

重大进展

2009 年，全年社会消费品零售总额为 12.5 万亿元人民币（合 1.8 万亿美元），比上年增长 16.9%。虽然全球经济衰退对零售业可能产生的后续影响尚待观察，但据政府估算，预计 2010 年中国经济年增长率将达到 8%，2020 年零售总额将达到 20 万亿人民币（合 2.9 万亿美元）。

根据对 WTO 的承诺，中国已经取消了对外商投资零售业的大多数限制，包括地域、所有权比例及外资店铺数量等。2008 年中国零售企业 100 强之中，有 19 家是外商投资企业。2008 年，外商投资零售企业拥有 4,613 家店铺，与 2007 年相比增长了 13.1%。

2008 年 9 月 12 日，商务部外国投资管理司发布了一项下放店铺开设审批权限的规定。2008 年 12 月，商务部发布了针对地方商业部门的指导方针，对开设店铺的审批流程做出了规定。

中国政府此项下放审批权限的规定自实施以来，有效地简化了外商投资零售企业新店审批程序，降低了经营成本，并且减少了审批程序造成的延迟。这些举措精简了审批程序，对零售企业在华的业务发展起到了积极作用，中国美国商会对此表示欢迎。

但是，尽管外资零售企业新开设店铺的审批程序得到简化，店铺的数量有了较大增长，但在政府对零售业管理的一些领

域仍存在着歧视性待遇以及透明度缺乏的问题。这些问题限制了外资零售企业在中国的发展，阻碍了外国投资者向中国提供其专业技术，而这原本有益于中国消费者以及整个市场环境的发展。

具体问题

所有权限制

根据国家发展和改革委员会（发改委）和商务部联合颁布的《外商投资产业指导目录》以及商务部的《外商投资商业领域管理办法》，在中国拥有店铺数量超过 30 家，销售药品、粮食、植物油、糖、棉花等，且产品来自多个供应商的不同种类和品牌的连锁企业，其外资比例不得超过 49%。但对香港和澳门投资者没有此项限制。中国美国商会建议放松这项对外国投资者的所有权限制，并取消所有权比例不得超过 49% 的限制。

烟草制品限制

2007 年 3 月 7 日，发改委发布有关烟草制品销售许可的新法规《烟草专卖许可证管理办法》，禁止外资商业企业从事烟草批发或零售业务。从 2009 年 1 月起，根据国家烟草专卖局规定，外商投资商业企业不得以租赁形式经营烟草。

这个限制性规定将外资商业零售企业置于与国内竞争对手相比明显不利的地位。中国美国商会呼吁取消这种限制。

对其它商品的限制

对于出版物和音像制品等领域，歧视性待遇仍然存在。只有在华设立独立法人公司，且其外资比例少于 49% 的外资零售企业才能销售图书。而只有外资比例不超过 49% 的中外合作企业才能销售音像制品。

Restrictions on Other Commodities

Discriminatory treatment also persists with regards to the sale of publications and audiovisual products. Publications can only be sold by foreign retailers with legal representatives in China and, along with audiovisual products, can only be sold by Sino-foreign cooperative enterprises that are not more than 49 percent foreign-owned.

Commercial Zoning

According to the Measures on the Administration of Foreign Investment in Commercial Sectors, when applying for a new site, foreign retailers must produce a commercial planning certificate from the local government certifying that the proposed site complies with city commercial zoning plans. When commercial zoning plans exist, a public hearing process is also oftentimes required, adding three months or more to the approval process. Furthermore, some locations have incomplete commercial zoning plans, making compliance confirmation impossible for foreign retailers. Without this certificate, the examination and approval authorities will dismiss the foreign retailers' new site application as failing to comply with local commercial zoning plans.

In some instances, the local government has arbitrarily used the commercial zoning plan to slow or restrict foreign retail plans to open new stores, placing yet another level of risk on the foreign investor. In contrast, domestic retailers are not required to submit new site applications to MOFCOM for examination or approval. This requirement is in conflict with China's WTO commitment to lift all geographic limits on foreign retailers.

Registered Capital

According to Article 7 of the Measures on the Administration of Foreign Investment in Commercial Sectors, the minimum registered capital for foreign retail investors must comply with the relevant provisions in the Company Law and other relevant regulations. According to the Company Law, the minimal capital required for a company registration is fairly low—between RMB 30,000 (US \$4,400) and RMB 500,000 (US \$73,000). However, local MOFCOMs usually require foreign retailers to increase their registered capital by approximately 10 times this amount for each new outlet application. In contrast, this provision does not exist for domestic retailers.

E-Commerce

Many foreign-invested retailers are looking to conduct

online retail operations while operating physical stores. Foreign-invested retailers have extensive experience and expertise in online retailing (e-commerce) to offer China as it develops and grows this sector. Participation in online retail operations by foreign-invested retailers will not only expand the community of online consumers in China and help educate consumers on this new mode of consumption, but will also help reduce the circulation costs of commodities, increase the efficiency of the retail sector and help promote domestic consumption. However, currently, there are no specific regulations in practice on the application and approval process for foreign-invested retailers interested in e-commerce, preventing them from developing e-commerce operations.

Recommendations

- **Revise the Measures on the Administration of Foreign Investment in Commercial Sectors and other related regulations in line with China's WTO commitments and common international practices.**
- Treat domestic and foreign retailers equally with regards to minimum registered capital requirements for the registration of additional outlets.
- Lift the ownership restrictions and restrictions on number of stores for foreign retailers as stated in Article 18 of the Measures on the Administration of Foreign Investment in Commercial Sectors.
- Lift restrictions on types of commodities, such as pharmaceuticals and tobacco, or at a minimum, ensure that regulations on the distribution restrictions are applied equally to Chinese and foreign retailers.
- Ensure that zoning review standards are the same for foreign and domestic retailers.
- Formulate and promulgate regulations on the application for online sales by foreign-invested retailers to encourage the development and improvement of e-commerce in China.

商业规划

根据《外商投资商业领域管理办法》，当申请新的店址时，外资零售企业必须出具当地政府的商业网点规划证明，证明拟开设店铺的店址符合城市商业规划。如果当地商业规划要求听证，则还需要进行公众听证流程，这使得审批流程所需时间长达三个月或更长。此外，一些地区和城市尚未完成商业规划，在这些地区和城市，外资零售企业几乎不可能获得符合商业规划的证明。如果没有该证明，审批部门将以不符合当地商业规划为由拒绝外资零售企业的新店申请。

在某些情况下，当地政府变相地使用商业规划来减缓或限制外资零售企业开设新店的计划，将为外国投资者带来更多的风险。相比较，本国零售企业则不需要向当地商务主管部门提交开设新店的商业规划证明。这一要求不符合中国加入世贸组织时所做的取消所有针对外资零售企业的地域限制这一承诺。

注册资本

根据《外商投资商业领域管理办法》第7条的规定，外商投资零售企业的注册资本必须符合《公司法》和其它相关法规的规定。根据《公司法》规定，注册一家零售公司所需要的最低资本相当低，在3万元人民币（4,400美元）到50万元人民币（73,000美元）之间。但是，地方商务主管部门通常要求外资零售企业每申请开设一家新店铺都必须将其注册资本增加大约10倍。与此同时，这项规定却不适用于本国零售企业。

电子商务

许多外资零售企业都期盼在经营实体店的同时，也能开展网上零售业务。外商投资零售企业希望把自己在网络购物（电子商务）方面的丰富经验和专业技术带到中国，在国内开展网上购物业务。外商投资零售企业开展网络购物经营，不仅可以扩大中国的网上消费群体，培育这一新型消费模式，而且还能降低商品流通成本，提高零售业的效率，有助于推动国内消费增长。但目前外资零售企业从事电子商务业务并无相关具体操作层面申请和审批的法规依据，影响了外资零售企业电子商务业务的开展。

建议

- 修订《外商投资商业领域管理办法》和其它相关法规，使之符合中国加入世贸组织时所做的承诺以及其它通用的国际惯例。
- 注册新增店铺时，在最低注册资本金方面应给予国内外零售企业同等待遇。
- 取消《外商投资商业领域管理办法》第18条中对于外资零售企业的所有权限制和店铺数量的限制。
- 取消对商品种类的限制，例如药品和烟草，或者最低要确保分销限制规定平等地适用于国内外零售企业。
- 确保针对外资零售企业和本国零售企业的商业规划审核标准完全相同。
- 尽快制定和颁布外资零售企业申请网上购物的相关规定，鼓励中国电子商务的发展和提高。

Transportation and Logistics

Significant Developments

2009 started on a positive note for the logistics industry, when in February, the State Council declared that logistics would be the 10th industry included in the government's revitalization plans. Including logistics as the only service industry appeared to be a strategic underpinning of broader policy objectives to stimulate the domestic economy, promote rural development through increased accessibility and create jobs. The move was broadly welcomed by AmCham-China members and international economists.

By spring of 2009, however, concerns were rising again over a growing range of market access issues. In April, the National People's Congress passed a new Postal Law, which prohibited foreign firms from offering domestic document delivery and limiting them to parcel-only business. When the new law came into effect on October 1, 2009, concerns remained regarding the clarity of its implementing regulations, including operating permits for express delivery firms, the definition of "foreign business" and the postal monopoly, and the mechanics of the universal postal service fund. Foreign firms were given opportunities to comment on some, but not all, versions of the law and its implementing regulations, again indicating the need for still greater regulatory transparency.

In addition, logistics firms operating in China continue to deal with issues of city access for delivery vehicles, a new four-hour advance manifest rule by China's General Administration of Customs (GAC), the need for review of *de minimus* threshold for expedited customs clearance, and general import/export documentation requirements. Concerns also remain surrounding data port requirements being considered by the State Postal Bureau (SPB), new air cargo policy measures announced by the General Administration of Civil Aviation of China in September and the continued need for the GAC to implement express customs clearance procedures through issuing regulations in line with World Customs Organization (WCO) standards.

In the US, policies to promote deregulation and competition helped reduce logistics expenses from 17 percent of GDP in 1980 to roughly 10 percent by 2005. Today, China is similarly poised to make huge efficiency gains, create many new job opportunities and stitch China's many regions and provinces into a truly national market. A more welcoming environment towards foreign investment and expertise will be key to rapid development of a world-class logistics sector, thus benefiting China's economic development overall.

Specific Issues

Implementation of Postal Law

The new Postal Law came into effect on October 1, 2009. Relevant government agencies also released a set of implementation rules, regulations and standards. AmCham-China is concerned that the interpretation of relevant laws and rules by the SPB sets unrealistic thresholds for agents of international companies to obtain express business operation permits. Although the Express Labor Standards issued by the SPB were technically "recommendations," there are indications that they are enforced as *de facto* compulsory standards. For example, the Management Measures on Express Delivery Services (EDS) Business Operation Permits stipulates that 50 percent of the employees of EDS companies that engage in international delivery must be certified according to the Labor Standards in order to obtain an operating permit. AmCham-China is also concerned about the SPB's efforts to upgrade the Express Service Standards (currently industry standards) into national standards.

Lastly, industry members have been notified that the SPB plans to launch a data port system to collect information on express delivery performance and turnaround times of EDS firms. This raises concerns regarding the protection of confidential business information, particularly as the regulator shares close ties with the main industry competitor.

运输和物流

重大进展

2009年初，物流业取得积极进展。2009年2月，国务院宣布将物流业纳入政府第十大产业振兴规划。物流业作为服务行业中唯一一个产业列入国家经济振兴规划，这似乎意味着该产业已成为政府政策目标的战略基础，表明中国政府希望通过大力发展运输物流业和创造就业机会来刺激国内经济发展和农村发展。中国美国商会会员以及国际经济学家对此举均普遍表示欢迎。

然随其后，该行业越来越多的市场准入问题又一次引起大家的关注。2009年4月，全国人大通过了新的《邮政法》，新《邮政法》规定外资企业不得提供国内信件的递送服务，只允许从事包裹递送业务。直至新《邮政法》于2009年10月1日开始生效时，外界仍然对其实施细则的清晰性非常关注，包括快递公司的经营许可、“外资企业”的界定和邮政专营，以及邮政普遍服务基金的运作机制。外资企业只能有机会对该法的部分、而非全部修订内容和实施细则提出意见和建议，这似乎表明增强监管透明度仍然必要。

此外，在华经营的物流公司仍然面临着一系列问题，包括物流用车的城市准入、中国海关总署四小时提前申报舱单的新规定、对重新审视快速通关“微量豁免”门槛的必要性，以及一般进出口文件要求。同时外界对中国国家邮政局正在考虑的数据港要求、中国民用航空局于9月份宣布的新的航空货运政策措施，以及中国海关仍然有必要通过出台与世界海关组织标准相一致的规定来执行快速通关程序等仍然十分关注。

在美国，在解除管制和促进竞争政策的帮助下，物流费用从1980年占GDP的17%降低至2005年的大约10%。如今，中国也同样赢得了效率带来的巨大收益，创造了大量的就业机会，并将国内许多地区及省市整合成为一个真正的

全国性市场。形成一个鼓励外商投资和引进外国技术的更好的环境，是一个世界级物流业快速发展的关键所在，进而将有益于中国的整体经济发展。

具体问题

《邮政法》的实施

新《邮政法》于2009年10月1日开始生效。有关政府部门还出台了一系列实施细则、规定和标准。商会担心国家邮政局对相关法规的解释为国际企业获取快递业务经营许可设置了不切实际的门槛。虽然从技术上而言国家邮政局出台的《快递业务员国家职业标准》仅仅是“建议”，但有迹象表明它们事实上是作为强制性标准执行。例如，《快递业务经营许可管理办法》规定，从事国际递送业务的快递服务公司中，必须有50%的快递业务员根据《快递业务员国家职业标准》通过资格认定，方可获得经营许可。此外，商会也对国家邮政局准备将现行行业标准《快递服务标准》上升为国家标准表示担忧。

最后，业界企业已经获悉，国家邮政局计划推出一个数据港系统，用以收集快递服务公司的快递业务绩效以及递送交付时间等信息。这引发了外界对如何保护机密商业信息的担忧——尤其是国家邮政局与主要行业竞争对手关系密切。

快递服务用车的城市准入

城市准入一直是在华快递服务公司长期关注的问题。大部分主要城市不允许货车在白天进入市区，因而影响了快递公司的正常业务运作。由于快递业本身的性质，快递服务公司需要在白天收递快件。因此，快递公司不得不使用客车在市区递送包裹，并经常会受到当地交管部门的严厉处罚。这些限制和严格的执法影响了递送效率，提高了经营成本，也给客户造成了不便。

City Access for EDS Vehicles

The problem of city access has been a long-term concern for EDS companies in China. Most major cities restrict access of cargo vehicles to downtown areas during the day, consequently impacting regular business operations. Due to the nature of the industry, EDS companies need to pick up and deliver shipments during daytime hours. As a result, express firms have been forced to use passenger vans for downtown deliveries, and from time to time suffer severe punishment by local traffic authorities. These restrictions and harsh law enforcement hamper delivery efficiency, raise operating costs, and cause inconvenience to customers.

AmCham-China appreciates the fact that in some provinces this problem has been addressed through issuing special permits for EDS vehicles. However, many related issues, especially restrictions on temporary parking in many areas, still pose major obstacles to the daily operations of EDS firms in Beijing and other major cities.

De Minimis Threshold

Following the development of the Guidelines for Immediate Release of Goods (IRG) by the WCO, the GAC established a *de minimis* regime to expedite customs clearance for low value non-dutiable shipments, creating a threshold under which such shipments would not have to undergo formal clearance procedures.

Many changes have occurred in the marketplace since the threshold was established more than 10 years ago. AmCham-China recommends that China's GAC conduct a study on whether the current threshold is still effective. As the IRG suggests, "Customs administrations should carry out regular reviews of the value or the duty and/or tax payable below which no duties and taxes will be levied taking into consideration inflation and the need to simplify the processing of low value goods."

Obtaining a formal clearance imposes a direct cost on businesses or individuals as well as an inherent cost on GAC administration. Such costs should be compared to the benefits that this process provides. It would be useful to both GAC authorities and businesses for GAC to conduct a study comparing the costs for processing a formal clearance to the duty/tax benefits. The study will help in estimating a new *de minimis* threshold where the additional costs to GAC of formal clearance procedures outweigh the higher revenue collection that would accompany those procedures.

Advance Manifest Timeline

GAC Order 172 hampers the healthy growth and development of China's logistics industry by requiring companies to transmit manifest data to GAC four hours before loading the aircraft for export. This timeline is more stringent than those in the US and EU, as well as the guidelines in the WCO Framework of Standards to Secure and Facilitate Global Trade. The four-hour requirement inhibits the competitiveness of China's EDS industry, negatively impacting companies' ability to deliver large volumes in a timely manner and meet customers' needs. AmCham-China recommends that the four-hour requirement be reviewed and shortened, taking into consideration the current state of the world's economy and declining international trade.

Express Customs Clearance Requirements

AmCham-China encourages China's GAC to implement regulations to simplify express customs clearance procedures that recognize the unique feature of express shipments in line with the WCO's Immediate Release Guidelines, to which China is a contracting party. Such guidelines include measures such as pre-arrival clearance capabilities and simplified clearance for low value shipments. Any additional requirements for the clearance of express shipments, including unwarranted inspections of contents, additional data requirements and tightened time frames, would severely impact cost and the ability of the express industry to meet the requirements of Chinese importers and exporters.

EDI Transmission Fee

EDS companies are required to pay RMB 1 (US \$0.15) to China's GAC for every shipment declared through the Customs Electronic Data Interchange (EDI) system. AmCham-China appreciates the establishment of the EDI system as it greatly facilitates the clearance process for EDS companies. The implementation of the system has facilitated 30 percent annual growth in the volume of EDS shipments, reaching more than 60 million shipments in 2008. Given that the increasing trade volume will surely recover the investment for establishing and maintaining the EDI system, we recommend that the transmission fee for EDS companies be reduced to a more appropriate rate. The increased efficiency will ultimately promote and enhance China's international trade and economic development.

Import/Export Documentation Requirements

Unclear or non-existent import and export documentation requirements pose an ongoing challenge to logistics companies operating in China. AmCham-China

在一些省市，通过向快递服务用车发放特别许可证，这一问题已经得到了解决，中国美国商会对此表示赞赏。但还有许多相关问题，尤其是对许多区域临时停车的限制，仍然给北京以及其他一些主要城市快递服务公司的日常业务带来了巨大的影响。

“微量豁免”门槛

在世界海关组织制定《货物快速放行指南》之后，中国海关总署提出“微量豁免”机制来加速低值非应税货物的通关，低于这一门槛的货物无需通过正式的通关程序。

自从十多年前这一门槛设立以来，市场已经出现了诸多变化。商会建议中国海关总署能够就现行门槛是否仍然有效进行研究。《货物快速放行指南》提议：“海关部门应当定期对价值或应缴关税和 / 或税款门槛进行审查，低于这一门槛的货物将无需征税，在审查时应考虑通货膨胀以及是否需要简化低值货物处理程序等问题”。

按照正式的程序通关会给企业或个人造成直接成本，也会增加海关总署的固有成本。应当将这些成本与正式通关程序所带来的益处进行对比。如果海关总署能够进行研究，将正式通关程序的成本和关税 / 税款收益进行比较，那么对于海关主管部门和企业都将非常有用。通过研究，如果发现正式通关程序给海关总署造成的额外成本超过了实施这些程序所能够增加的收入，那么便可对新的“微量豁免”门槛进行评估。

提前申报舱单时限

海关总署第 172 号令要求企业在航空器装载出境货物前的四小时向海关传输舱单，这影响了中国物流业的健康发展。这一时限甚至比美国和欧盟的规定以及世界海关组织《全球贸易安全与便利化标准框架》的相关规定苛刻许多。四小时提前申报舱单的要求削弱了中国快递服务业的竞争力，对企业及时交付大量货物和满足客户需求的能力造成了不利影响。商会建议海关总署重新审查四小时提前申报舱单要求，考虑世界经济以及国际贸易正在衰退的现状，相应缩短这一时限。

快速通关要求

中国美国商会鼓励中国海关总署能够考虑快递货物的特点，实施相关规定简化快速通关程序，以便与世界海关组织

的《快速放行指南》相接轨，而中国本身也是《指南》的缔约国。《指南》中的规定包括抵达前通关能力和低值货物简化通关程序。如果对快递货物的通关设置任何其他要求，包括无担保内容物检查、额外数据要求和缩短时限等，都会对快递业成本以及满足中国进出口商要求的能力产生巨大的影响。

EDI 传输费

快递服务公司通过海关电子数据交换 (EDI) 系统进行报关时，每批货物必须向中国海关总署支付人民币 1 元 (0.15 美元)。中国美国商会对 EDI 系统的建立表示赞赏，因为它大大加快了快递服务公司的通关流程。这一系统的建立使得快递发货量实现了 30% 的年增长率，2008 年超过了 6000 万批次。由于贸易量的增加无疑会有助于 EDI 系统建立和维护成本的回收，我们建议将向快递服务公司征收的传输费降低至更适当的水平。效率的提高最终将促进中国国际贸易和经济的发展。

进出口文件要求

进出口文件的要求不清晰、甚至不存在一直是在华经营的物流公司面对的难题。中国美国商会会员认为这是供应链缺乏效率和物流成本增加的主要原因。由于不同的商品需要不同的通关文件，因此有必要建立更加强有力的标准化系统来确定美国供应商对华进口商品所需要提供的文件。

如果中国海关总署与美国海关与边境保护局之间的合作与交流更加紧密，物流业的总体递送交付时间就能得到改善。实现改善可采取的措施包括：选择一种语言（英语或中文）作为所有文件的标准格式，并且制订出简洁明了的出入境规定和要求，提供在监管部门的网站上。后者可通过中国海关总署与行业协会或跨国公司的公告、行业报告及通知文件，就相关要求互动交流而加以实现。由于当今全球经济环境充满了不确定因素，提高供应链效率仍然是维持中美两国跨国公司长期发展与盈利的关键性因素。

建议

- 缩短四小时提前申报舱单数据的要求，提高中国快递服务业的竞争力。
- 向具有资质的物流服务公司所拥有的车辆发放特

members identified this as a leading factor in supply chain inefficiency and increased logistics costs. As different commodities require different documentation for customs clearance, there needs to be a more robust, standardized system for identifying the required documentation needed by suppliers in the US for entry of goods into China.

An improvement in total logistics turnaround time could be achieved with greater collaboration and communication between China's GAC and the US Customs Border Protection. Opportunities for improvement include choosing one language (English or Chinese) as the standardized format on all documentation, and making clear, concise entry/exit regulations and requirements available on regulatory domains. The latter could be achieved through increased interaction and communication of requirements between China's GAC and industry associations or multinational companies (MNCs) in bulletins, industry reports and alerts. In today's uncertain global economic environment, the need to improve supply chain efficiency remains a key factor in sustaining long-term growth and profitability for US and Chinese MNCs.

Recommendations

- **Shorten the four-hour manifest data requirement to improve the competitiveness of the Chinese EDS industry.**
- Issue special permits for vehicles owned by qualified EDS companies and allow them full access to cities and temporary parking rights.
- Review and adjust the *de minimis* threshold, taking into consideration international benchmarks.
- Consult with EDS industry members on implementation of Order 172 to maximize trade facilitation and security.
- Ensure customs regulations reflect the needs of express shipments regarding customs clearance, and align current regulations with WCO's Immediate Release Guidelines so that requirements such as 100 percent inspection of contents are reduced to an appropriate level in line with GAC's risk management principles.
- Reduce the EDI transmission fee for EDS companies to a more appropriate rate.
- Continue implementation of standardized policies and regulations regarding import and export of cargo into China and timely communication of regulatory updates to industry stakeholders.

别许可证，使它们获得完全的城市准入及临时停车权。

- 考虑国际标准，审查并调整“微量豁免”门槛。
- 就第 172 号令的实施与快递服务业企业进行交流，最大程度促进贸易便利与安全。
- 确保海关的各项规定反映出快递货物在通关方面的需求，使现行规定与世界海关组织的《快速放行指南》相接轨，从而将内容物全部检查等要求按照海关总署的风险管理原则放宽至适当的水平。
- 把向物流服务公司征收的 EDI 传输费降低至更为适当的水平。
- 继续就对华货物进出口实施标准化的政策和规定，并就最新监管规定与行业利益相关方进行及时的交流与沟通。

Part Three

Provincial/City Issues

省 / 市具体问题



Provincial Investment Environment

Growth Beyond First-Tier Cities

Increasingly, foreign-direct investment (FDI) is moving from China's first-tier cities to locations further inland. The kind of FDI flowing into first-tier cities is also changing as second and so-called "x-tier" cities (third, fourth and fifth-tier) receive a greater amount of investment. First and larger second-tier cities are now turning their attention to developing tertiary industries, as populations become more affluent and officials look to promote service-sector development. Concurrently, secondary industries are moving to smaller, less wealthy cities.

Second-tier cities (defined as the 15 biggest urban economies after the three tier-one cities) have emerged in recent years as appealing destinations for companies in China looking beyond the maturing first-tier cities of Beijing, Shanghai and Guangzhou. Indeed, AmCham-China's 2010 *Business Climate Survey* indicates that 56 percent of members have a presence in second and third-tier cities (Figure 1), with almost 40 percent plan-

ning on or exploring the possibility of expansion into these areas. While rising costs in China's coastal and first-tier cities are certainly one factor driving multinational corporations inland, the majority of members (53 percent) cite increasing market reach as their primary reason for expansion (Figure 2).

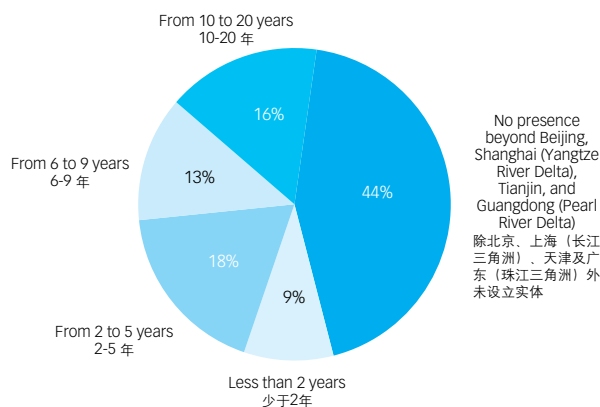
Statistics support companies' beliefs that second-tier cities hold enormous market growth potential. About 150 million people live in these 15 cities combined, and they represent some of China's most upwardly mobile citizens. Continuing growth in these major, developing cities could represent a significant new market at time when demand is down throughout the world.

In fact, these cities have already done much to spur global consumption. According to the 2008 World Trade Atlas, China's second-tier cities have less than 10 percent of the country's population but import more than half of all American China-bound exports. This strong demand shows no serious signs of decline and may in fact increase as disposable income in these cities grows.

How Long Has Your Company Had A Physical Presence in China's Second- and Third-Tier Cities?

企业在中国二、三线城市设立实体的时间

Company sample size = 270
公司样本规模



Source: 2010 AmCham-China Business Climate Survey
资料来源：2010年中国美国商会商务环境调查

1

The Challenges of Wealth Creation and Distribution to FDI

China's central and local governments should be applauded for the role they have played in lifting a sizable proportion of the population out of poverty over a few decades and helping develop a burgeoning middle class. However, the increasing wealth of the first-tier cities and the investment spill-over into adjacent areas in the Bohai Rim, the Yangtze River Delta and the Pearl River Delta have presented significant policy challenges for China's national and local governments. Environmental degradation and citizens' quality-of-life expectations in the first-tier cities require development of new policies and greater, more consistent enforcement of current regulations.

There have also been rapid changes in the economies of smaller and increasingly wealthy cities due to greater infrastructure development, the influx of workers

省市投资环境

一线城市以外地区的发展

外商直接投资 (FDI) 正越来越明显地从一线城市向内地转移。随着更多的投资开始流向二线城市和所谓的“X”线城市（即三线、四线、五线城市），流向一线城市的外商直接投资的性质也在发生着改变。目前，随着人们生活水平的改善以及政府有意促进服务业的发展，一线以及较大型的二线城市正将越来越多的注意力集中到发展第三产业之上。与此同时，第二产业正逐步向较小、富裕程度较低的城市转移。

近年来，二线城市（指除北京、上海和广州之外的 15 个最大城市经济体）已经逐步成为希望在北京、上海、广州这三个成熟的一线城市以外地区，寻求发展机会的在华企业极具吸引力的投资目的地。确实，中国美国商会 2010 年度营商环境调查表明，已有 56% 的会员公司进入了中国的二、三线城市（图 1），同时还有近 40% 的会员公司正计划进入

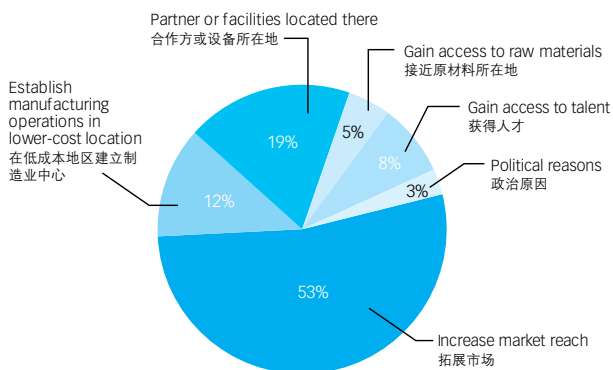
这些地区，或是正在研究进入这些城市的可行性。虽然中国沿海及一线城市不断攀升的成本无疑是促使跨国公司进入内地的一大因素，但大多数成员企业（53%）表示扩大市场份额是他们扩张业务的主要原因（图 2）。

而统计数字也证明了二线城市确实拥有巨大的发展潜力。这 15 个二线城市总共拥有约 1.5 亿人口，他们代表了中国上升速度最快的一些群体。在全球需求出现下滑之际，这些主要的、发展中的城市在实现持续增长的同时造就了一个巨大的新市场。

实际上，这些城市已经为刺激全球消费做出了积极的贡献。据 2008 年 World Trade Atlas 数据显示，中国二线城市的人口不足全国总人口的 10%，但其从美国进口商品与服务比例却占全国的一半以上。这一强劲的需求并没有明显的下滑迹象，而实际上随着这些城市居民可支配收入的增加，需求可能还会进一步增加。

Why Did Your Company Expand Beyond Beijing, Tianjin, Shanghai (Yangtze River Delta), and Guangdong (Pearl River Delta)? 企业拓展到北京、上海（长江三角洲）、天津以及广东（珠江三角洲）以外市场的原因

Company sample size = 143
公司样本规模



Source: 2010 AmCham-China Business Climate Survey
资料来源：2010年中国美国商会营商环境调查

财富创造及分配对外商直接投资的挑战

短短几十年时间里，相当数量的中国人民摆脱了贫困，出现了蓬勃发展的中产阶级，中国中央和地方政府在这个过程中发挥的作用是值得称道的。但随着一线城市财富增长，以及投资扩展到环渤海经济圈、长三角和珠三角的邻近地区，中央和地方政府开始面临重大的政策方面的挑战。一线城市环境状况恶化，但人们对生活质量的期望提高，要求制定新的政策，并使现行法规得到更有力、更规范的执行。

由于基础设施改善，农村和贫困城市工人的涌入，以及外国投资的进入，日渐富裕的中小城市经济也得到迅速发展。所有这些要求各地方和中央政府调整政策和法规，并提高政策法规执行的一致性。

from the countryside and poorer cities, as well as the requirements of foreign investors. These factors are all conspiring to require government, both at the regional and central levels, to update policies and regulations, as well as strengthen consistent implementation and enforcement.

As the following regional and city reports discuss in greater detail, administrators at both central and local levels need to take into consideration critical policy issues that affect FDI inflows into China. AmCham-China stresses the need for attention on the following issues:

- Greater transparency and a streamlining of investment regulations;
- Development of human resources;
- Transportation logistics development and reduction of traffic congestion;
- Consistent enforcement of laws and regulations, such as intellectual property rights ;
- Reduction of pollution levels in cities;
- And tax and other policy incentives to promote service-sector growth.

Summary

The increased wealth of China's first and second-tier cities, as well as the increased sophistication of foreign business requirements as investments in China grow, have brought a host of new considerations to the attention of Chinese government officials at the national and local levels.

National and local governments in China have offered spectacular results in increasing the wealth of many of its citizens and have done a great deal to create business opportunities for American firms. However, consequences from rapid economic growth coupled with lack of policy development and consistent enforcement in the key areas mentioned in the following chapters have created barriers to American businesses' ability to benefit China's economy and citizenry.

正如以下关于各地区和城市章节更为详细地指出，中央和地方政府有必要考虑影响外商直接投资流入中国的关键性政策问题。中国美国商会主要强调下列问题：

- 提高投资法规透明度，简化相关条例；
- 人力资源开发；
- 发展交通物流，缓解交通拥堵；
- 法律法规（如知识产权）的有效执行；
- 减少城市污染；
- 通过税收和其他政策激励促进服务业发展。

总结

中国一、二线城市收入水平日益增长，同时，要求外资企业增加其在中国投资时所必需的条件也日趋复杂，从而带来一系列需要提请中国中央和地方政府注意的新问题。

中国中央政府和地方政府在增加国民财富方面成绩斐然，在为美国企业创造商机方面做了大量工作。但与此同时，经济快速增长带来的新挑战，加以下章节所列述的关键领域政策尚未完善，执行缺乏一致性，美国公司无法发挥其应有的作用，使中国经济和中国人民从中获益。

Beijing

Despite the global economic slowdown, Beijing has continued on its path of economic growth and increasing global influence over the last year. In 2009, Beijing's total GDP exceeded RMB 1.1 trillion (US \$174 billion), an increase of 10.1 percent from 2008. This growth is due in part to the city's increasing consumption, which has been China's highest per capita since 2008.

The Beijing government has also implemented a number of new investment promotion measures. In 2009, utilized foreign investment in Beijing totaled over RMB 41.7 billion (US \$6.1 billion), a 0.6 percent year-on-year increase despite the global financial crisis.

AmCham-China commends the Beijing municipal government on proactively developing a "headquarters economy" by offering incentives to multinational companies to establish regional headquarters in Beijing. The Provisions on Encouraging Multinational Corporations to Establish Regional Headquarters in Beijing were issued in May 2009, followed by implementation regulations in June 2009. These measures grant companies financial, tax and human resource (HR) incentives to establish regional headquarters in Beijing, which will promote Beijing's development into a service and knowledge-based economy.

AmCham-China is encouraged to note that Chaoyang District alone hosts the headquarters of 47 multinational corporations, 17 of which are Fortune 500 companies. Beijing also continues to be an attractive investment destination, with 112 Fortune 500 companies investing in a total of 231 projects in Chaoyang District alone. It is clear that many are already recognizing Beijing and Chaoyang District's importance and global influence.

In addition, AmCham-China hosted the city's first Asia-Pacific Council of American Chambers (APCAC) Spring Conference in April 2010. APCAC AmChams represent over 50,000 executives and over 10,000 businesses in 20 countries and economies of the Asia-Pacific region. The conference promoted an exchange of ideas and provided a platform for industry leaders to discuss

opportunities and challenges for US businesses in the Asia-Pacific region.

Also in line with its efforts to develop into a "global city," Beijing has continued to upgrade its city infrastructure, with planned improvements totaling RMB 290 billion (US \$42.5 billion) for southern city districts. These improvements are set not only to improve the living standards for residents in those areas but also to increase investment and tourism in these districts.

In support of China's overall commitment to sustainable development, the Beijing municipal government has committed to building a "green city" with a low-carbon economy. The goal is to establish low-carbon residential and commercial properties and continue to develop the public transportation infrastructure.

AmCham-China applauds these efforts and looks forward to working together with the Beijing government on promoting its development goals.

Finally, AmCham-China congratulates the Beijing Municipal Government on successfully hosting China's celebrations of the 60th anniversary of the founding of the People's Republic of China.

Issues

Human Resource Constraints

HR constraints continue to rank among the top business issues for US companies in China. While no longer the top operational challenge, the AmCham-China 2010 *Business Climate Survey* indicates that management-level HR constraints remain a critical concern for US companies, with inconsistent implementation edging it out by only a small margin. Moreover, an overwhelming majority of respondents indicate that these HR constraints negatively impact, and even materially damage, their China operations. Ranking near the top of the most frequently cited consequences companies face are increasing salaries and difficulty retaining employees. These issues have become obstacles for investment in

北京

尽管全球经济低迷，北京在过去一年仍实现经济持续增长，其全球影响力也持续上升。2009 年，北京全市地区生产总值突破 1.1 万亿元（合 1740 亿美元），较 2008 年增长 10.1%。这一增长在一定程度上归因于北京市消费的增长，自 2008 年以来北京人均消费比例一直为中国最高。

北京市政府还采取了多项新的投资促进措施。2009 年，尽管面临全球金融危机，北京实际利用外资总额依然超过 417 亿元（合 61 亿美元），同比增长 0.6%。

中国美国商会对北京市政府通过鼓励跨国公司在京设立地区总部，积极发展“总部经济”政策十分赞赏。《关于鼓励跨国公司在京设立地区总部的若干规定》于 2009 年 5 月公布，实施办法随即于 2009 年 6 月出台。这些措施为各公司在京设立地区总部提供金融、税收和人力资源方面的激励政策，将促进北京向服务型 and 知识型经济发展。

中国美国商会欣喜地注意到，仅朝阳区就有 47 家跨国公司的总部入驻，其中 17 家为财富 500 强公司。北京也依然是具有吸引力的投资目的地，仅在朝阳区就有 112 家财富 500 强公司投资了 231 个项目。无疑，许多公司已经意识到北京和朝阳区的重要性和全球影响力。

此外，中国美国商会于 2010 年 4 月首次在北京举行了美国商会亚太理事会春季会议。美国商会亚太理事会 (APCAC) 代表着亚太地区 20 个国家和经济体的 50,000 多名高管和 10,000 多家企业的共同利益。此次大会促进了意见交流，并为行业领导者探讨美国企业在亚太地区面临的机遇和挑战提供了平台。

为努力发展成为“世界城市”，北京不断完善城市基础设施，已经计划对南部地区投资 2900 亿元（合 425 亿美元），以加快该地区发展。此举不仅旨在提高该地区的居民生活水平，同时为了促进对南部各区县的投资及其旅游业的发展。

为了支持中国全面推进可持续发展，北京市政府致力于通过促进低碳经济创建“绿色城市”。其目标是开发低碳型住宅和商业用地，并继续发展公共交通基础设施。

中国美国商会对这些努力表示赞赏，并期待与北京市政府共同努力以实现其发展目标。

最后，中国美国商会祝贺北京市政府成功举办新中国成立 60 周年庆祝活动。

具体问题

人力资源匮乏

人力资源匮乏依然是美国公司在华面临的主要商业问题之一。虽然已不是首要的经营挑战，但中国美国商会 2010 年商务环境调查表明，管理层人力资源匮乏依然是美国公司面临的主要问题之一，仅次于执法不一致问题。此外，绝大多数受访者表示，这些人力资源匮乏问题对其在华业务造成负面影响，甚至带来物资损失。企业所面临的最常见问题包括薪资不断上涨和难以留住员工。这些已成为已在华运营企业在中国投资和扩张方面的障碍。

技能型人才紧缺表明中国有必要进行中等、高等和职业教育改革。跨国公司通常需要中国人才具备技术和管理才能，而这些技能通常在中国传统教育体系中不被重视。

鉴于北京有很多高水准的教育机构，我们希望市政府鼓励这些机构率先实施教育改革，以更好地培养出适应当今全球经济发展的学生。中国美国商会建议成立一个由商界和教育人士组成的咨询委员会，推荐一些方法推动中国的中等和高等教育，使其培养的学生能够具备提高中国在世界经济中的竞争力所需要的才能。

China and the expansion of businesses that already operate here.

The lack of appropriately-skilled talent reflects the need for change in China's secondary, post-secondary and vocationally-targeted education. Multinational companies often require skills from Chinese talent at both technical and management levels that are not always emphasized by China's traditional educational system.

Given the numerous high-quality educational institutions in Beijing, we urge the municipal government to encourage these institutions to spearhead educational reforms that will better prepare graduates for today's global economy. AmCham-China recommends establishing an advisory committee composed of business community members and educators to recommend ways that ensure China's secondary and tertiary-level education equips China's students with the skills and competencies needed to increase China's competitiveness in the world economy.

Intellectual Property Rights

Although Beijing strengthened its intellectual property rights (IPR) enforcement throughout the 2008 Olympics, counterfeiting and piracy still remain extremely problematic. Counterfeiting and piracy are common across a wide range of products, including DVDs, computer software, clothes and accessories.

Public opposition to some recent corporate anti-piracy measures indicates a lack of public awareness of the societal damages from IPR infringement. These activities are responsible not only for economic losses to property rights owners, but also for a large percentage of product safety problems. Improving IPR enforcement will additionally benefit innovation, which has been identified as a key objective of the national government as it will create greater economic incentives to inventors of intellectual property.

AmCham-China urges the Beijing government to continue the progress made during the 2008 Olympics, fully implement existing IPR laws and increase public awareness of the negative consequences of IPR infringement. We stand ready to provide industry input and cooperation when needed and would welcome continued government-industry collaboration and exchange on this issue.

Support for Art

It is impossible to imagine an innovative society that does not respect the role of art and artists. One of the

most positive developments in Beijing's development has been the creative output of countless artists, some world famous, others less well known. Beijing is now on the global art "map" and attracts art lovers from around the world.

Unfortunately, centers where artists live and work have been destroyed to make way for developers. The world famous "798" art district itself was nearly razed a few years ago. In a similar situation today is Caochangdi, home to many outstanding galleries, including China's top center for photography, Three Shadows.

AmCham-China urges the Beijing Municipal Government to explicitly recognize the enormous cultural and economic value of its artistic communities and establish legislation to protect them from destruction. If it did, Beijing would be taking a major step towards "world city" status.

Legal Framework for Civil Society Organizations

Non-profit and non-governmental organizations (NPO and NGO) play an important role in fostering a city's development by complementing and maximizing the government's resources and efforts. NPOs and NGOs actively promote a city's economic growth and become a core part in the city's economy. These civil society institutions are a source of employment and income for their city's residents, in addition to augmentation of public services that are made available to local residents.

Civil society organizations also work hand-in-hand with government to maximize a city's development by serving as a bridge between industry and government. As an independent third party, NPOs can provide the local government an on-the-ground perspective on economic, operational and social issues through various platforms.

It is important to provide an environment that is conducive to NGO and NPOs' establishment, existence and development. A common factor among all cities with a productive civil society is the presence of a legal and regulatory framework that allows and encourages organizations' establishment, space and scope to function in public life. We encourage the government to establish strong legal and institutional framework to foster the development of civil society and enhance the transparency of the legal framework for civil society organizations.

Zhongguancun Innovation Model Park

In March 2009, the State Council recognized Zhong-

知识产权

尽管北京在 2008 年奥运会期间对知识产权的保护力度有所加强，但假冒伪劣和盗版现象依然严重。大量盗版影碟、电脑软件、假冒的服装和饰品等依然随处可见。

大众对近期一些公司反盗版行动的抵触，体现出普通民众的知识产权保护意识还比较薄弱。这些行为不仅给知识产权所有者带来了经济损失，也隐藏了巨大的产品安全隐患。加强知识产权的保护有助于推动创新，这是中央政府一直以来的目标所在，因为它将对知识产权的发明者带来进一步的经济刺激。

中国美国商会希望北京政府继续巩固 2008 年奥运会期间取得的成绩，在加大执法力度的同时，加大宣传教育力度，以提高人们保护知识产权的意识。商会愿意随时提供行业经验，并欢迎政府与业界继续展开合作，并就相关议题充分交换意见。

支持艺术发展

一个创新型社会需要艺术和艺术家的积极作用。在北京发展过程中最积极的成就之一就是培养出无数世界知名或不知名但富有创意的艺术家。北京现已成为全球艺术殿堂的一部分，吸引了来自世界各地的艺术爱好者。

遗憾的是，为了给开发商让路，艺术家们生活和工作多个集中地区已受到严重影响。世界闻名的“798”艺术区在几年前险些被夷为平地。如今，草场地也面临着同样的处境，这里有许多著名的艺术馆，包括中国首屈一指的摄影中心“三影堂”。

中国美国商会希望北京市政府明确认识到北京的艺术社区所拥有的巨大文化和经济价值，并通过立法来防止其遭到破坏。若能实现这一点，北京将向“世界城市”又迈进一大步。

面向公民社会组织的法律框架

非营利及非政府组织通过对政府的资源和工作予以补充和最大化，在促进城市发展方面发挥着重要作用。这类组织积极推动城市经济增长，成为城市经济的一个核心组成部分。除了扩大面向当地居民的公共服务范围，这些公民社会组织还为城市居民提供就业机会和收入来源。

公民社会组织还与政府紧密合作，通过搭建企业与政府间沟通的桥梁，最大限度地促进城市发展。作为独立的第三方，非营利组织能够通过各种平台为当地政府提供关于经济、运营和社会问题的切实意见。

提供有益于非政府、非营利组织的建立、存在和发展的环境十分重要。所有拥有高效公民社会城市的共同点即拥有允许和鼓励成立公民社会组织的法律和监管框架。我们鼓励政府构建一个强有力的法律和制度框架，促进公民社会组织的发展并加强针对公民社会组织的法律框架的透明度。

中关村国家自主创新示范园区

2009 年 3 月，国务院将位于北京海淀区的中关村科技园区评为国家自主创新示范园区。它覆盖海淀科技园及海淀区以外的众多工业区和工业园。被誉为中国“硅谷”的中关村是一个技术创新中心，致力于促进全球企业、研究机构 and 大学之间的合作。另一个重要措施是建立技术导向型金融机构，为高科技公司的持续研发工作和成长提供所需资金。

鉴于创新的全球性特征，中国美国商会非常鼓励对中关村的国内外公司实行同等的优惠政策和金融激励措施。促进国内外创新型公司的发展将使中关村成为一个拥有全球影响力的技术中心。确保一视同仁地实行鼓励在中关村及国内竞争的政策是帮助中国发展成为领先创新型社会的关键。中国美国商会鼓励北京市政府开展与业界及其他利益相关者的对话，以探讨促进创新及持续科技进步的最佳实践经验。

监管环境

中国美国商会 2010 年商务环境调查显示，美国在华企业对获得必要的经营许可和国家保护主义的担忧日益加剧。此外，官僚主义和不明确的监管规定依然是首要挑战。此外，会员公司认为在华面临的八大挑战中有七项都与监管环境有关。而且值得一提的是，不一致的监管解释今年首次成为最严峻的商业挑战。

为了进一步提高北京作为投资目的地和公司总部基地的影响力，中国美国商会鼓励北京市政府利用资源帮助了解和解决企业面临的监管障碍。提高经贸和投资透明度，减少官僚障碍将有助于北京从其它城市中脱颖而出，成为具有全球影响力的经济中心。

guangcun Science Park in Beijing's Haidian District as a national innovation model park. It spans the Haidian Science Park and a number of industrial zones and parks outside of the Haidian District. Known as China's "Silicon Valley," Zhongguancun is a hub of technological innovation, fostering partnerships among the private sector, research institutions and universities around the world. Another important component is the establishment of technology-oriented financial institutions that provide the capital needed for continued research and development and the growth of high-tech companies.

In recognition of the global nature of innovation, AmCham-China strongly encourages the equal application of preferential policies and financial incentives to both domestic and foreign-invested companies in Zhongguancun. Fostering the development of innovative companies, regardless of nationality, will enable Zhongguancun to become a technological center with global influence. Ensuring non-discriminatory application of policies that encourage competition in Zhongguancun and across the nation will be crucial in helping China develop into a leading, innovation-based society. AmCham-China also encourages the Beijing government to initiate a dialogue with industry and other stakeholders to explore best practices for fostering innovation and continued technological advancement.

Regulatory Environment

The AmCham-China 2010 *Business Climate Survey* revealed companies' concerns over obtaining required licenses and national protectionism grew over the past year. In addition, bureaucracy and unclear regulations remain as top challenges. Furthermore, seven of the top eight challenges in China identified by members relate to the regulatory environment. Pointedly, inconsistent regulatory interpretation became the most problematic business challenge this year for the first time.

To further increase Beijing's appeal as an investment destination and base for companies' headquarters, AmCham-China encourages the Beijing municipal government to direct resources and personnel to help monitor and resolve regulatory obstacles for businesses. Increasing transparency and reducing bureaucratic hurdles for business and investment will help Beijing stand out from other cities as an economic center with global influence.

Real Estate "Bubble"

Given the rapid rise in land and residential housing prices over the past year, adequate housing is increasingly becoming unaffordable for many working-class

residents. The American business community believes that, in the absence of a true market for land, the government has a responsibility to develop or sponsor affordable housing for all people in Beijing.

City Access for EDS Vehicles

The problem of city access has been a long-term concern for express delivery service (EDS) companies in China. Most major cities restrict access of cargo vehicles to downtown areas during the day, consequently impacting regular business operations. Due to the nature of the industry, EDS companies need to pick up and deliver shipments during daytime hours. As a result, express firms have been forced to use passenger vans for downtown deliveries and, from time to time, suffer severe punishment by local traffic authorities. These restrictions and harsh law enforcement hamper delivery efficiency, raise operating costs and cause inconvenience to customers.

AmCham-China appreciates the fact that in some provinces this problem has been addressed through issuing special permits for EDS vehicles. However, many related issues, especially restrictions on temporary parking in many areas, still pose major obstacles to the daily operations of EDS firms in Beijing and other major cities.

Recommendations

- **Ensure equal application of financial and policy incentives to companies in the Zhongguancun Innovation Model Park irrespective of nationality or equity composition to foster sustainable innovation. Initiate dialogue with industry to explore best practices for fostering innovation in China.**
- Establish an advisory committee composed of members of the international business community to identify the employee skills and competencies needed across various sectors and companies in China.
- Strengthen enforcement of existing IPR laws and regulations and increase public awareness of the importance of IPR protection.
- Recognize the enormous cultural and economic value of Beijing's artistic communities, and establish legislation to protect them from destruction.
- Develop a regulatory framework that enables independent, transparent NGOs and NPOs to obtain official registration more easily. Engage with a variety of stakeholders, including the business community, to better understand

房地产“泡沫”

由于过去一年里土地和住宅价格急速上涨，越来越多的工薪阶层买不起住房。美国商界认为，在缺乏真正土地市场的情况下，政府有责任为所有北京居民开发或资助经济适用房。

- 允许外国投资者参与廉价经济适用房的开发，以期将成熟的管理技能和更多资金引入北京房地产市场。
- 向具有资质的快递服务公司所拥有的车辆发放特别许可证，允许其进入城市并享有临时停车权。

快递服务用车的城市准入

城市准入一直是在华快递服务公司长期关注的问题。大部分主要城市不允许货车在白天进入市区，因而影响了快递公司的正常运作。由于行业自身性质所决定，快递服务公司需要在白天收递快件，使其不得不使用客车在市区递送包裹，并经常会受到当地交管部门的严厉处罚。这些限制和严格的执法影响了递送效率，提高了经营成本，也给客户造成了不便。

在一些省市，通过向快递服务用车发放特别许可证使这一问题已经得以解决，中国美国商会对此表示赞赏。但还有许多相关问题，尤其是对许多区域临时停车的限制，仍然给北京以及其他一些主要城市快递服务公司的日常业务带来了巨大的障碍。

建议

- 确保对中关村国家自主创新示范园区的国内外公司实行同等的金融和政策优惠，促进创新的可持续发展。开展与业界对话以探讨推进中国创新的最佳实践经验。
- 成立一个由国际商界成员组成的咨询委员会，以帮助了解中国各行业 / 公司所需员工的技能和才干。
- 加强现有知识产权法律法规的执行，提高公众对知识产权保护重要性的意识。
- 认识到北京所拥有的艺术社区所具有的巨大文化和经济价值，并通过立法来防止其遭到破坏。
- 制定一个监管框架，使独立、透明的非政府组织和非营利组织能更容易地获得正式注册。与各种利益相关者（包括商界）合作，更好地了解非政府组织 / 非营利组织的重要性。
- 利用相关资源以帮助了解和解决企业面临的监管障碍。

how the NGO/NPO community is important to each.

- Direct resources and personnel to help monitor and resolve regulatory obstacles for businesses.
- Allow foreign investors to participate in the development of low-cost and affordable housing units with the goal of bringing mature management skills and additional financing to this sector of Beijing's real estate market.
- Issue special permits for vehicles owned by qualified EDS companies and allow them full access to cities and temporary parking rights.



Central China

In an effort to decrease costs and maintain growth during the global economic downturn, an increasing number of companies from the coastal provinces and cities are recognizing the abundant and cost-efficient growth opportunities in China's central provinces of Anhui, Henan, Hubei, Hunan, Jiangxi and Shanxi. Encouraged by favorable government policies, more companies have aligned their development strategies with the central government's goal to direct more investment to Central China.

Accordingly, several Central China provinces are establishing strong track records for growth. In the last five years, Hubei attained more than 10 percent annual growth including during the global financial crisis when national average growth rates were about eight percent. GDP reached RMB 540 billion (US \$79.4 billion) in the first half of 2009. Per capita income has also increased throughout the region, with the disposable income of Wuhan's urban residents up 11.5 percent from 2008.

In order to overcome the challenges presented by the global economic downturn, Central China's provincial governments have put forward their own stimulus plan to supplement the RMB four trillion (US \$584 billion) national stimulus package. The Central China package includes special provisions to encourage economic growth, infrastructure development and environmental and energy saving projects. Even before the stimulus package was announced, Central China provinces had already committed a marked increase in resources for infrastructure and Hubei's pillar industries. AmCham-China looks forward to seeing more positive development as a result of these investments.

Significant Developments

Attracting Investment

All six Central China provinces have taken active measures to attract investment to the region, including organizing investment campaigns and events and enhancing promotional materials. AmCham-China

has noticed positive outcomes from these efforts over the past year and hopes that similarly successful and worthwhile programs continue in the future.

Central China Expo

In April 2009, the Central China Expo was held in Hefei, capital city of Anhui Province, and, as with past Expos, it positively impacted investment and trade by encouraging companies to invest in Central China's provinces. The 2010 Central China Expo will be held in Nanchang, Jiangxi in September and will have a similar pro-investment theme.

Hubei-Beijing Bohai Rim Regional Trade & Economic Cooperation

In line with the Chinese government's plan to evenly distribute growth from more developed regions in the east to less developed ones, Hubei Province successfully held its first investment and trade fair, the Hubei-Beijing Bohai Rim Regional Trade & Economic Cooperation, in Beijing in March 2009. Hubei Province, with abundant natural resources, established transportation infrastructure and a large labor pool, aims to attract both state owned enterprises and multinational companies from Beijing to the province as it continues to focus on developing modern service industries, as well as research and development capacity.

Central China Promotion

As mentioned in AmCham-China's 2009 *White Paper*, promotional materials and events are instrumental in attracting investors to the region. However, the quality of these materials is essential in delivering a persuasive message and developing the "brand name" of Central China. AmCham-China commends recent government efforts to enhance the image of Central China.

Recently, tourism promotion has been overlooked in the push to develop infrastructure and encourage investment in the region. The tourist industry creates interest in the region and helps promote its strengths.

华中地区

在全球经济衰退过程中，为在降低成本的同时保持经济增长，越来越多来自沿海地区的企业逐渐认识到，华中地区的安徽、河南、湖北、湖南、江西和山西省拥有大量且具有成本效益的发展机会。在政府优惠政策的鼓励下，很多企业结合中央政府吸引更多投资到华中地区的目标调整了各自的发展战略。

得益于此，华中地区一些省份正创造强劲的增长业绩。过去五年，湖北实现了超过 10% 的年增长率；而在全球金融危机影响下，国内平均增长率约为 8%，2009 年上半年国内生产总值为 5400 亿元（约合 794 亿美元）。整个华中地区的人均收入也得到提高，例如，武汉城市居民个人可支配收入较 2008 年增长了 11.5%。

为应对全球经济低迷带来的挑战，在中央 4 万亿元（约合 5860 亿美元）一揽子经济刺激计划的基础上，华中地区各省级政府又制定各自刺激计划作为补充。华中地区的经济刺激计划包括与鼓励经济增长、发展基础设施、环保和节能项目有关的特殊政策。在经济刺激计划宣布之前，华中地区各省已承诺在基础设施和湖北支柱产业方面加大资源投入。中国美国商会期待这些投资能够带来更积极的发展。

重大进展

吸引投资

华中六省都采取了积极措施以吸引投资，包括组织各种招商活动和提高招商宣传资料质量。中国美国商会注意到过去一年这些努力所带来的积极成果，也希望将来继续举办类似成功且有价值的活动。

中国中部地区投资贸易博览会

2009 年 4 月，中国中部地区投资贸易博览会（中博会）在安徽省省会合肥召开。同以往一样，本届中博会鼓励企

业到华中各省投资，对投资和贸易起到了积极的推动作用。2010 年中博会将于 9 月份在江西南昌举行，主题同样是促进投资。

鄂京环渤海地区经济贸易合作洽谈会

根据中央政府协调东部较发达地区和其他欠发达地区均衡发展的计划，2009 年 3 月，湖北省在北京成功举办了首届投资贸易博览会，即鄂京（环渤海地区）经济贸易合作洽谈会。湖北省拥有丰富的自然资源、成熟的交通基础设施和巨大的劳动力储备，旨在吸引在京国有企业和跨国公司到该省投资，同时湖北将继续着重于发展现代服务业和增强研发能力。

华中地区招商

如中国美国商会 2009 年《白皮书》中所言，华中地区的招商宣传材料和活动有助于吸引投资者，但这些宣传材料的质量对传达具有说服力的信息和发展华中地区的“品牌”而言尤为关键。中国美国商会赞赏当地政府新近为提升华中地区形象所做的努力。

近来，加大基础设施建设和招商引资力度在一定程度上削弱了该地区对旅游业的宣传。旅游业能够激发人们对该地区的兴趣，有助于宣传当地的优势。作为发展蓝图的重要组成部分，旅游业不应被忽视。除招商宣传外，中国美国商会还希望华中地区加大对旅游业的宣传。

境外投资

“湖北企业（美国）营销中心”在美国亚特兰大市设立了办事处，为计划在美投资的湖北企业提供支持。目前约有 100 家湖北企业与该中心建立了联系。中国美国商会全力支持在美国增加市场营销活动的努力，并希望此类活动可以得以持续和扩大。

It is an important part of the development picture and should not be ignored. In addition to investment promotion, AmCham-China hopes to see an increase in tourism promotion for the Central China region.

Outbound Investment

The Hubei Enterprises Marketing Center has reestablished an office in the US in the city of Atlanta to support Hubei companies that are planning to invest in the US. About 100 Hubei companies have engaged the center so far. AmCham-China fully supports these efforts to increase marketing activities within the US and hopes for a continuation and expansion of these types of programs.

Infrastructure Developments

Authorities in Hubei have announced ambitious plans to build new docks, railways and roads around the provincial capital of Wuhan—an initiative designed to support Wuhan's goal to be the biggest river port in Asia by 2030. The docks are part of the initiative to speed up the industrialization of the Yangtze Economic Zone. Plans include advanced logistics systems that will also help develop other local industries.

The Hefei-Wuhan Railway, the first high-speed line in Central China, was recently completed after three years of construction. It reduces travel time from eight and a half hours to two and constitutes the middle section of China's first east-west high-speed rail link, the Shanghai-Wuhan-Chengdu Railway. It is already creating new economic development throughout the region. Recent completion of the first ever traffic tunnel beneath the Yangtze River in Wuhan, along with an overhead light rail system that will link Wuhan's key districts, will greatly improve traffic problems and cut travel time between the city's key sectors. AmCham-China strongly supports the Wuhan city government's transportation infrastructure projects focused on increasing efficiency and alleviating congestion.

Hubei Province now has its own free trade zone with the recently-approved Wuhan Dongxihu bonded logistics center. As the nation's fourth such center, it will serve as a bonded warehouse and export supervision depot and enjoy a series of preferential policies in regards to international trade.

Ground was recently broken on China's first state-level rice trading center, the Wuhan National Rice Trading Center in the Yangluo Economic Development Zone in the Xinzhou District. Upon completion, it is expected to have an annual trade volume of 10 million tons of rice and a grain storage capacity of 350,000 tons, making it

China's largest rice trading center and transit depot for grain storage and logistics.

Specific Issues

Customs

Customs issues continue to present problems. Local Customs officials require businesses to hire specialized import companies to clear even simple items, such as library book barcode labels. Personal use items and student property are frequently treated like retail sale items and are often held by Customs for months while import companies and officials negotiate their release. The process of clearing items from Customs can be expensive and time consuming, particularly as laws and regulations are sometimes arbitrarily and inconsistently applied. For example, property is sometimes destroyed without explanation and courier services report discriminatory treatment at times.

AmCham-China urges Customs officials to clarify and discern between goods imported for wholesale versus retail business purposes and those brought in for personal and educational uses.

Intellectual Property Rights (IPR)

The Hubei Provincial Intellectual Property Bureau consistently promoted the practice of patent filing and allocated RMB 5.4 million (US \$790,000) in 2009 to encourage an increase in patent applications. Beginning in 2007, the bureau has allocated RMB 14 million (US \$1.7 million) for this purpose. Wuhan was honored as the "Example City of the State's Intellectual Property Protection" in 2009, making it only the second city to receive this recognition.

In another positive move, Wuhan's Intellectual Property Bureau recently began cooperating with the Municipal Procurator to improve information exchange and coordination of IPR enforcement. The Intellectual Property Protection Call Center, located in Wuhan East Lake High-tech Development Zone, was also established in 2009.

Strengthening IPR protection in Central China is a critical factor as the country progresses towards becoming an "innovation" society capable of attracting significant investment in high-tech sectors. With a strong university system and other assets, Central China has the potential to foster research and development activities and high-tech investment in the region. IPR infringement remains a pressing issue for many industries, and the region needs stronger investigation procedures, protection and enforcement at all levels of government.

基础设施发展

湖北省权威部门宣布了将在省会城市武汉周围修建新的码头、铁路和公路的计划。该举措旨在支持武汉实现 2030 年前建成亚洲最大内河港口的目标。码头建设是为加速长江经济区工业化计划的一部分。该计划还包括可带动当地其它产业发展的先进物流系统。

经过三年的建设，华中地区第一条高速铁路合肥 - 武汉线最近竣工。该线将全程时间从八个半小时缩短至两个小时，构成首条贯穿华中东西、联线上海 - 武汉 - 成都的高速铁路，已为整个地区带来了新的经济发展。新近在武汉竣工的第一条长江海底交通隧道，以及连接武汉各主要区域的空中轻轨系统，将极大改善交通状况，缩短城市各主要区域之间的出行时间。中国美国商会对武汉市政府旨在提高效率、缓解交通堵塞的交通基础设施项目建设表示极大支持。

随着武汉东西湖保税物流中心最近获得批准，湖北省拥有了自己的自由贸易区。该中心作为全国第四个保税物流中心，具有保税仓储和出口监管站点作用，享有一系列国际贸易方面的优惠政策。

“武汉全国大米交易中心”，作为中国首家全国性大米交易中心，最近在新洲区的阳逻经济开发区破土动工。竣工后，该中心大米年交易量预计达 1000 万吨，谷物储存容量为 35 万吨，将成为中国最大的大米交易中心和谷物存储及物流中转站。

具体问题

海关

海关方面仍然存在不少问题。当地海关部门要求企业聘用专门的进口公司办理清关手续，甚至连最简单的货品，如图书馆书籍的条形码标签也不例外。海关经常将用于个人用途的货品和学生用品视为零售商品而将之扣压数月，期间进口公司和海关部门需就货物的放行进行交涉。清关手续既昂贵又耗时，特别是在法律法规的应用随意性大、且缺乏一致性的情况下。例如，有时不加解释就销毁进口货物，而快递服务公司有时也反映其遭到歧视性待遇。

中国美国商会敦促海关部门将进口货物按照批发或零售的商业用途和个人或教育用途加以区分。

知识产权

湖北省知识产权局一直在推广专利备案管理办法，并在 2009 年拨款 540 万元人民币（约合 79 万美元）用于鼓励专利申请。自 2007 年起，该局为此已累计拨款 1400 万元人民币（约合 170 万美元）。2009 年武汉被评为“国家知识产权保护示范城市”，成为国内第二个获此荣誉的城市。

另一个积极举措是，武汉市知识产权局最近开始与市检察院合作，加强知识产权执法方面的信息交流和协调。今年，还在武汉东湖高新技术开发区设立了知识产权保护呼叫中心。

在国家建设“创新型”社会以吸引大量高新技术产业投资的进程中，加强华中地区知识产权保护是其中的一个关键因素。华中地区拥有丰富的高等教育资源及其它优势，具有吸引研发和高新产业投资的潜力。由于知识产权侵权在很多产业中依然是紧迫问题，华中地区各级政府需实施更有力的调查程序，加强知识产权的保护和执法力度。

环境和能源

近期的节能和环保运动推动了省市各级政府开展绿色活动并采取相应措施。例如，武汉环保局于 6 月 3 日发起了首个“环保开放日”。

为监测环境污染，湖北省政府在其辖下 12 个城市的 43 个县安装了 43 个监测器，提供每日空气质量报告。中国美国商会对该地区环保意识的增强表示赞赏，并建议采取更多的监测行动。

过去五年间，虽然湖北省整体环境状况已改善，但城市和工业发展使空气和水质量令人堪忧。在武汉，水土方面面临五个威胁：即化学肥料、杀虫剂、有机肥料、城市污水处理和水土流失。

为了继续提高公民的环保意识，湖北省环保局发起了“绿色湖北”项目及湖北省“第十个五年计划”中至 2010 年的环境保护规划。中国美国商会对这种环保意识的加强表示赞赏，同时敦促政府部门在进行发展项目时全面考虑环境成本。

湖北省创建了湖北环境资源交易所，增加了节能建筑的建设，并建造了一座并网光伏电站，对此中国美国商会表示赞赏。我们鼓励华中地区其他城市也开展类似行动。

Environment and Energy

Recent energy and environment saving campaigns have spurred the implementation of green activities and measures by provincial and municipal governments. The Wuhan Environmental Protection Bureau, for example, initiated the first Environmental Protection Day on June 3, 2009.

To monitor environmental pollution, the Hubei provincial government installed 43 monitors across 12 cities and 43 affiliate counties to provide daily air quality reports. AmCham-China commends this increased environmental awareness and recommends that more monitoring actions be carried out.

Although Hubei has improved its overall environment over the past five years, urban and industrial growth have ensured that air and water quality remain as areas of concern. Wuhan, an especially critical area, is facing five threats to its water and soil: chemical fertilizer, insecticide, organic fertilizer, urban sewage disposal and water and soil loss.

As part of the government's continued effort to encourage environmental awareness, the Hubei Provincial Environmental Protection Bureau initiated the "Green Projects of Hubei Province" and the "Programs of Hubei Province for Environmental Protection in the Tenth Five Year Plan Period Through to 2010." AmCham-China applauds this increased environmental awareness and urges full consideration of environmental costs when undertaking any development project.

AmCham-China also commends Hubei on its creation of the Hubei Provincial Environmental Resource Exchange, increased construction of energy efficient buildings and a grid-connected photovoltaic power plant. We encourage similar initiatives in other Central China cities.

Air Quality

Air pollution is an important consideration when companies evaluate whether to invest in one location versus another. Unfortunately, air quality in Central China has increasingly worsened since 2008 due to the growing number of vehicles and infrastructure projects. In addition, the practice of burning toxic chemicals is uncontrolled and widespread, causing further negative impact to the quality of life for the general population. It is crucial that the appropriate government departments set clear regulations for vehicles and industry and that these are enforced consistently and uniformly. It is recommended that environmental impact studies of existing and proposed industrial projects be conducted.

Transportation

Improving the transport of passengers and cargo in and out of Central China is another factor critical to regional growth. Although Wuhan's new Tianhe International Airport is already the busiest in Central China, AmCham-China encourages the establishment of direct international flights between the US and Wuhan so travelers and goods can be directly dispatched from Central China, eliminating the unnecessary process of routing through Shanghai or Guangzhou.

Recommendations

- **Help facilitate the development of international-quality services critical to attracting foreign investment and developing a vibrant business community. Prioritize the establishment of international schools and hospitals and increase the transparency and consistent implementation of business registration processes.**
- Create a uniform and predictable business climate in which laws and regulations are consistently enforced in customs and other areas.
- Continue public awareness campaigns for environmental protection and encourage use of public or low-emissions transportation. Impose stricter regulations on high-emission vehicles, overloaded trucks and traffic regulation violators to reduce wear on local infrastructure and reduce accidents. Implement strict regulations and measures to ensure that fresh water resources are well preserved amid rapid economic growth to mitigate the threat of irreversible damage and prevent more costly measures in the future.
- Support and enforce national IPR legislation and implementation of IPR laws in accordance with international practice.
- Establish and ensure uniform enforcement of clear emissions standards and regulations for vehicles, especially public buses, diesel-burning vehicles and energy-intensive industries.

空气质量

企业在评估其投资地点时，投资地的空气质量是其重要的考虑因素之一。遗憾的是，因日渐增多的机动车辆和基础设施项目，自 2008 年起，华中地区的空气质量不断恶化。此外，焚烧有毒化学品的行为十分普遍，没有得到有效控制，这进一步影响了民众的生活质量。有关政府部门的当务之急是应就机动车辆及产业制订清晰的法规，并确保执法的一致性和连贯性。建议对现有和提议开展的工业项目进行环境影响研究。

运输

改善进出华中地区的客货运能力是促进该地区发展的另一关键因素。尽管新近建成的武汉天河国际机场已成为华中地区最繁忙的机场，中国美国商会仍鼓励在美国和武汉之间开通国际直达航线，使旅客和货物可直接从华中出发，而不必绕道上海或广州。

建议

- 帮助促进具有国际水准的服务业的发展，以吸引外资及打造生机勃勃的商业氛围。优先设立国际学校和医院，提高企业注册程序的透明度和执行的一致性。
- 创造一个统一并可预测的商业环境，确保海关及其他部门统一执法。
- 不断提升公众的环保意识，鼓励使用公共或低排放交通方式。对高排放机动车辆、超载卡车和违反交通规则者适用更严格的法规，以减少当地基础设施负担并降低事故发生率。在经济快速增长的过程中，实行严格的法规和措施以保证淡水资源得到良好的保护，从而减缓不可逆转损害的威胁，避免将来采取代价更高的措施。
- 支持并执行国家知识产权方面的立法，根据国际惯例实施知识产权法律。
- 针对机动车，特别是公共汽车、以柴油为燃料的车辆及能源密集型产业，制定清晰的排放标准和法规，并确保其执行的一致性。

Southwest China

The Southwest region of China covers a vast territory that, with its large population and rich natural resources, promises great development potential. The official launch of the government-initiated Western Development Program 10 years ago has led to substantial economic, social and cultural development in the region, laying the foundation for the Southwest to enter a period of unparalleled growth. As part of the positive development trend, the key cities in the region, Chongqing and Chengdu, have taken a leading role in enhancing and deepening ties between cities and the countryside with the launch of the Urban-Rural Integration Planning Program. It aims to identify areas with potential for greater cooperation for rural and urban development.

Although the impact of the financial crisis still persists, both Chongqing and Chengdu are quickly recovering and serve as the primary engines driving a range of development in the region. Between January and October 2009, Chongqing's GDP increased 12.4 percent, reaching RMB 531.2 billion (US \$77.8 billion). In Chengdu, GDP grew 14.2 percent over the same period to reach RMB 316.5 billion (US \$46.3 billion). Both figures point to a strong rebound in market confidence.

The Chengdu municipal government responded rapidly and effectively to the 2008 earthquake, and the city's economy has rebounded strongly from the crisis. Since the earthquake, disposable income of urban residents has increased by 10 percent, net income of rural residents increased by eight percent and the registered urban unemployment rate is under four percent. It is estimated that 85 percent of the reconstruction work will be completed by September 2010.

In the meantime, Chengdu's export industry continues to maintain steady annual growth. Between January and October 2009, imports and exports in Chengdu increased 8.9 percent, to US \$13.8 billion (RMB 93.8 billion). With a fast-growing economy and significant development in recent years, Chengdu has become a top investment destination in China. The West China Expo in October 2009 attracted investments totaling US \$16

billion (RMB 110 billion), including several high-tech projects in key industries.

On the other hand, Chongqing was more negatively affected by the financial crisis, and its import-export industry now faces large-scale challenges. Between January and October 2009, Chongqing's import and export market contracted by 24.9 percent, compared with the same period in 2008, falling to US \$6.1 billion (RMB 41.7 billion). In light of the global recession, Chongqing's government has issued a series of policies and measures to aid local businesses and the majority of companies remain optimistic that a strong recovery lies ahead.

Reasons for optimism include the fact that Chongqing is among the oldest industrial bases in China and is one of the country's top-10 domestic equipment manufacturers. It occupies a position of special importance to the national economy, especially as the rapid growth in production volume is at its highest levels in recent years.

Significant Developments

Hospitality Industry

The hospitality industry in Chongqing is growing very rapidly. The city boasts 11 five-star hotels and has plans to add five more in 2010 with 10 more under construction. By 2020, Chongqing is expected to have 88 five-star hotels. In addition to the five-star properties, Chongqing hosts a total of 243 other hotels that employ 44,000 workers directly and 220,000 workers indirectly.

The hospitality industry in Southwest China overall is also expected to continue growing rapidly due to the region's economic expansion and growing tourism industry. The addition of direct flights to Jiuzhaigou National Park, the explosive growth of tourism to Yunnan and the continued attraction of Guangxi, have all fueled the expanding local hospitality industry.

西南地区

中国西南地区幅员辽阔、人口众多、自然资源丰富，拥有巨大发展潜力。中央政府十年前启动的西部大开发战略促使西南地区在经济、社会和文化方面取得重大发展，为该地区进入空前发展时期奠定基础。重庆和成都这一良好发展趋势的部分体现，也是西南地区的重点城市。同时随着城乡一体化的推动，重庆和成都日益在加强、深化城乡关系方面发挥着主导作用，旨在农村与城市潜在良好的合作发展开拓更为广泛的领域。

尽管金融危机影响依然存在，重庆与成都的经济正在迅速恢复，并成为推动该区域发展的主要动力。2009年1至10月，重庆地区生产总值增长12.4%，达5312亿人民币（约合778亿美元）。同期，成都地区生产总值增长14.2%，达3165亿人民币（约合463亿美元）。这些数值显示了对市场强劲反弹的信心。

成都市政府对2008年地震做出了迅速有效应对，其经济也从危机中强劲反弹。地震发生以来，城镇居民人均可支配收入增加10%，农村居民人均纯收入增长8%，城镇失业人口登记率低于4%。据估计，85%的重建工作将于2010年9月完成。

与此同时，成都市出口行业继续保持稳定年增长率。2009年1至10月，成都市进出口业务增长8.9%，达138亿美元（约合人民币938亿元）。随着近年经济快速增长及一些重大的进展，成都已成为外商在华投资的首选城市。2009年10月举行的中国西部国际博览会共吸引投资160亿美元（约合人民币1100亿元），其中包括一些重点产业的高科技项目。

与成都不同，重庆市深受金融危机的不利影响，进出口行业面临严峻挑战。2009年1至10月，重庆市进出口市场收缩24.9%，较2008年同期减少了61亿美元（约合人民币417亿元）。重庆市政府为应对全球经济衰退已出台一系列政策措施，旨在使当地企业对经济复苏前景保持乐观。

重庆继续保持乐观主要基于以下事实：重庆市是全国老工业基地之一，也是国内十大设备制造基地之一。重庆市近几年工业生产以最高水平保持快速增长，在国民经济发展中占有相当重要地位。

重大进展

旅游服务业

重庆市酒店业发展迅速，已有11家五星级酒店。还有10多家正在建设当中，其中5家计划于2010年开业。预计2020年，五星级酒店数量将达到88家。目前，非五星级酒店有243家，直接雇员44,000人，间接雇员22万人。

由于西南地区经济与旅游业的不断发展，该地区酒店业预计将整体呈现持续快速增长态势。新增设的九寨沟国家公园直飞航班，云南旅游业的爆炸性增长，以及具有持续吸引力的广西旅游业均带动了当地酒店业的发展。

制造业

作为中国老工业基地之一，重庆现已成为全国最大汽车制造基地及重点国防工业研发生产基地。摩托车产业及机械装备制造业将进一步促进该地区作为制造业基地的发展。

成都拥有领先的、多元化、先进的模具加工生产企业，约有9000名员工。成都市模具制造企业采用最先进信息技术及高精度数控加工检测设备，并持续加大其作为领先地位的模具生产基地的发展。

法律服务业

重庆每百万人中有律师167名，为西部地区律师人数比例最高的城市，法律专业队伍队伍完备。律师协会通过与西南政法大学合作，提高法律教育质量，建立一支包括法律

Manufacturing

One of the oldest industrial bases in China, Chongqing has become the country's largest automobile manufacturing base, as well as a research and production hot spot for the national defense industry. The growing motorcycle industry and machine equipment manufacturing further contribute to the manufacturing base.

Not to be outdone, Chengdu has a diversified and sophisticated mould production industry with approximately 9,000 employees. Mould manufacturing enterprises in Chengdu employ the latest information technology and high-precision CNC machining and inspection equipment. Chengdu plans to continue its development as a leading mould production base.

Legal Services

With 167 lawyers for every one million people, the highest of any city in Western China, the legal profession is well established in Chongqing. The Institute of Legal Profession supports the legal profession by collaborating with the Southwest University of Political Science and Law to improve the quality of legal education and build the ranks of legal professors and high-quality legal professionals.

Real Estate

Following a brief downturn in the real estate market due to the global financial crisis, market confidence has now risen. Development in residential property increased during the fourth quarter of 2009 as prices for new homes began climbing. In addition to the residential housing market, demand for prime office space has remained strong, with slight increases in the rental rates throughout 2009. The vacancy rate for commercial space is between five and 35 percent, depending on the district.

Information Technology (IT)

The IT industry continues to play a leading role in Chengdu's industrial output. Several key electronics manufacturing and IT development companies have established a base in the city's export processing zone. This has encouraged several large domestic and multinational corporations to base their operations and service centers in the city.

Logistics

The government is working together with airlines to improve the capacity and efficiency of the aviation logistics infrastructure in Chengdu. The city has become

an international aviation hub with the Chengdu Shuangliu International Airport currently operating non-stop flights to all major destinations in mainland China and East Asia, as well as to Amsterdam, Pakistan and India. The airport is already China's fifth largest based on cargo and passenger volume, and an additional planned runway will more than double cargo capacity.

In addition to improvements in the infrastructure of the Shuangliu International Airport, the municipal government has also announced plans for the construction of a new airport at Jianyang, located 55 kilometers (34 miles) to the east of Chengdu's city center. The new facility will feature six runways and expects to handle more than five times the annual passengers and cargo traffic of the Shuangliu Airport.

Pharmaceuticals

The pharmaceutical industry is a thriving sector of Chengdu's economy. Chengdu was recently designated as one of the first national pharmaceutical export bases, marking the first time a city in Southwest China has held the title. Overall revenue for China's pharmaceutical industry increased by eight percent between January and July of 2009 and Chengdu's value-added growth rate ranked third nationally. Chengdu's municipal government recently finalized a three-year development plan which aims for economic output in the bio-pharmaceutical industry to rise from RMB 38 billion (US \$5.6 billion) in 2009 to RMB 90 billion (US \$13.2 billion) in 2012.

Specific Issues

Traffic Congestion

Having failed to keep pace with the rapid growth in tourism and other industries, the transportation infrastructure in Chongqing continues to face a number of challenges. The lack of sufficient taxis and rail lines to service the local population remains a serious problem as does the frequent traffic jams in the Central Business District.

Energy Shortages

Shortages of electricity and gas during peak seasons are highly problematic and hinder business operations in Chongqing. The problem represents a significant impediment to growth. Energy allocation should be adjusted with special consideration paid to the needs of each industry in order to maximize the efficiency of energy distribution and avoid future shortages.

教授及高素质法律专家的队伍来支持推动法律行业的发展。

房地产业

由于受全球金融危机影响，房地产市场在经历短暂低迷后，市场信心已开始恢复。由于受到新建住宅价格攀升的影响，2009年第4季度住宅物业也随之快速发展。除住宅市场，高档写字楼需求依然强劲，2009年全年出租率略有增加。由于地理位置的不同，商用房地产空置率介于5%~35%之间。

信息技术产业

IT产业在成都市工业生产中继续发挥主导作用。几大主要电子产品制造与信息技术企业已在成都市出口加工区设立基地，带动了一些大型国内及跨国公司在成都市设立其经营及服务中心。

物流业

成都市政府与航空公司开展合作，以提高成都航空物流基础设施能力与效率。成都双流国际机场已成为国际航空枢纽，目前开设至中国大陆各主要目的地及至东亚、阿姆斯特丹、巴基斯坦和印度的直飞航班。就货运和客运量而言，双流机场已成为中国第五大机场，并计划增设一条跑道，建成后，其运载能力将提高一倍以上。

除了改善双流国际机场基础设施，成都市政府还宣布计划在位于成都市中心以东55公里（约34英里）的简阳市兴建新机场。新机场将设六条跑道，年客货运载量将超过双流机场五倍以上。

制药业

制药业在成都经济发展中蒸蒸日上。近日成都市被指定为国家首批医药出口基地，成为西南首次获此殊荣的城市。2009年1至7月，中国制药业整体收入增长8%，成都市增加值增长率位居全国第三。成都市人民政府最近制定一项三年发展计划，旨在将生物制药产业经济产出目标从2009年的380亿元（约合56亿美元）增至2012年的900亿元（约合132亿美元）。

具体问题

交通拥堵

由于未能与旅游业及其他快速增长产业保持同步发展，重庆市交通基础设施建设仍面临众多挑战。出租行业运力不足，铁路线匮乏以及中央商务区经常出现的交通拥堵现象，严重影响当地人民生活。

能源短缺

在需求旺季，电力及天然气供应短缺问题严重，阻碍了当地商业经营活动，也严重影响了重庆市经济增长。应根据各行业的需求对能源分配进行调整，以最大限度提高能源分配效率，避免将来发生能源短缺问题。

房地产业

重庆房地产业为推动相关产业发展发挥了重要作用。然而该市仍面临一系列与建筑质量有关的问题。此外，大多数物业管理公司由于未采纳国际标准也致使重庆住宅及商业地产市场问题不断。

地价高速攀升也是一个重要问题，因为居民收入增长严重滞后于房地产价格的增长。经历2008年地震及全球金融危机对房地产市场造成的严重创伤后，2009年4月，成都市土地买卖交易开始迅速升温，但由此而引发的房地产价格大幅上涨也导致了众多居民买房难的问题。

教育

建立高品质国际学校是成都市政府发展目标之一。然而，市政府面临的一个新问题是国际学校供过于求，国际学生与学校的数量不平衡，从而使教学计划减少。学生数量不足也对教育质量造成负面影响：学校无法吸引并保留合格教师，无法制定促进互动交流的多元化教学活动及计划。

为缓解此类失衡现象，市政府应在海外市场积极宣传成都教育机会，加大推广力度以吸引外国学生到成都求学。鉴于国际学校具有其独特性，尤其是每年员工离职率及学生流失率较高，因此在做聘用决定时需有更多灵活性。

Real Estate

The real estate sector in Chongqing is an important employer that helps accelerate development of related support industries. However, Chongqing continues to face a number of issues relating to the quality of construction. In addition, problems in both the residential and commercial property markets have emerged since a majority of management firms in the city have not yet adopted international standards of property management.

The rapidly increasing price of land is also problematic as income growth lags behind real estate pricing. Following the severe disruption of the property market by the 2008 earthquake and financial crisis, land sales in Chengdu began a rapid recovery in April 2009. The resulting jump in prices created affordability issues for most residents.

Education

One of the Chengdu municipal government's development goals is establishing high-quality international schools. However, a new issue facing the municipal government is an over-supply of international schools, creating a problematic imbalance between the number of international students and the number of international schools, resulting in the elimination of programs. The small number of students at each school negatively impacts the educational quality as schools are less able to attract and retain qualified teachers and offer a diverse range of activities and programs to promote student interactions.

To mitigate this imbalance, it would be helpful for the municipal government to actively promote educational opportunities in Chengdu in overseas markets and increase promotional efforts targeted at foreign students to attract them to Chengdu. The unique characteristics of international schools—especially the high yearly turn-over of employees and students—require additional flexibility in hiring decisions.

Manufacturing

Manufacturing is a key employer, essential to the region's economic growth. However, some foreign-invested manufacturers are facing challenges, specifically relating to rising production and labor costs, as well as power shortages and transportation challenges.

Commercial Banking

The banking sector in southwest China is developing but still lags behind more developed regions. For

example, although foreign banks attain the same legal status as Chinese banks after local incorporation, they may not receive equal treatment. Frequently, that means a restricted flow of capital and pension funds into foreign banks and limitations on the products and services foreign banks can offer.

Human Resources

Private industry makes up 90 percent of large-sized industrial enterprises in Chengdu and is responsible for 72 percent of overall growth value in the sector. The employment of talented managers and executives is crucial for these enterprises to maintain their market dominance and rapid growth. Talent shortages, however, significantly hinder development in the Southwest region. One of the biggest contributors to the lack of appropriately-skilled talent is the "brain drain" affecting Sichuan, where motivated and talented young people relocate to coastal cities.

The lack of adequate human resources is especially acute for Chengdu's IT industry. Growth has become severely constrained due to a lack of experienced personnel, a weakness that has raised concerns within many multinational companies establishing R&D centers or headquarters in Chengdu.

Recommendations

- **Accelerate talent development through internal training initiatives and expanded efforts to attract new talent. For example, adopt talent development projects to attract and retain highly talented managers. Municipal governments are encouraged to expand on current incentive policies to further attract coastal and overseas talents.**
- **Conduct research on methods to alleviate traffic congestion in the Central Business District in Chongqing and implement measures to reconstruct roads and intersections to further reduce congestion. Regularly evaluate infrastructure needs and adopt improvements commensurate with changes resulting from rapid economic growth.**
- **Reevaluate systems for energy distribution, paying special consideration to the needs of key industries in Chongqing.**
- **Increase regulatory oversight and enforcement of construction standards to monitor and increase the quality of real estate developments. In addition, adopt measures to control speculative real estate purchasing and as-**

制造业

制造业作为当地龙头产业对于地区经济增长至关重要。然而，一些外资制造企业正面临着诸如产品及劳动力成本增加、电力短缺及交通运输等问题的挑战。

商业银行

中国西南地区银行业正在发展，但仍落后于发达地区。如尽管在本地注册的外资银行与中资银行拥有同等法律地位，但可能无法享受同等待遇。常用的方法是限制资本金和养老金存入外资银行，限制其所能提供的产品及服务。

人力资源

成都市 90% 大型工业企业为私营企业，占成都地区工业增加值的 72%。聘用优秀的经理人及管理者对于私营企业维持其市场主导地位及快速增长至关重要。然而，人才匮乏严重阻碍西南地区的发展。人才外流是四川缺乏合格技术人员的主要原因之一，许多青年人才涌向沿海地区以寻求发展。

成都 IT 行业人力资源尤其匮乏。由于缺乏熟练员工，其发展已受严重制约，这也成为在成都设立研发中心或总部的跨国公司所关注的问题。

生，以改善成都市现有国际教育体系。

- 针对成都与重庆外资及当地银行经营活动，实施统一、一致的规定。撤销阻碍有效平稳经营活动中不必要的规章制度，放宽财政存款及养老金进入外资银行的限制。

建议

- 通过内部培训计划及努力吸引新人才以加快人才开发，如通过开展人才开发项目以吸引和保留高级管理人才。鼓励当地政府继续实施当前激励政策，以进一步吸引沿海地区及海外人才。
- 研究缓解重庆市中央商务区交通拥堵状况的方法，如重建道路和十字路口以进一步减少拥堵。定期评估基础设施需求，采取改善性措施以适应经济快速发展所带来的变化。
- 重新评估能源分配系统，重点关注重庆市龙头产业的发展需要。
- 加强对建筑标准的监督及执行，以监测并提高房地产开发质量。此外，采取措施控制成都房地产投机采购及资产泡沫，以确保经济适用房的建设。
- 通过向外国学生积极推介成都教育机会并扩大招

set bubbles in Chengdu to ensure affordable housing.

- Strengthen the existing international educational system in Chengdu by actively promoting educational opportunities in Chengdu to and recruiting foreign students.
- Apply regulations uniformly and consistently among foreign-invested and local domestic banks operating in Chongqing and Chengdu. Lift excessive regulations impeding efficient and smooth operations and ease restrictions on deposit of fiscal and pension funds into foreign banks.



Tianjin

As of one China's largest municipalities with roughly 12 million residents, Tianjin continues to rank among the top cities in China in terms of GDP, personal income growth and property price increases. The city is also on the top of many companies' expansion lists. Despite this, the city was affected by the global economic crisis, with particular impact on shipping and manufacturing firms centered in the vicinity of the Tianjin Port. This reflects the economy's heavy reliance on the manufacturing sector and export focused industries.

Development has continued at a rapid pace within the city center and in numerous other key hubs where residential and commercial projects are being built and in many cases will be served by the future subway and light rail network. Key developments include the new Yujiapu area within the Tangu district and new developments near the airport.

Tianjin is a manufacturing powerhouse with an expanding service sector. Numerous new hotels and retail centers have recently opened or are under construction, introducing a more modern lifestyle to the city. Car ownership has been rising rapidly and Tianjin is beginning to confront the infrastructure challenges faced by major cities around the world, including pollution, congestion, inadequate parking, high housing prices and increasing wages.

An "Eco-City" development is also underway in Tianjin. It is designed to create an environmentally friendly community using energy saving technology and modern urban planning and construction techniques. The 10-year development project deemphasizes cars in favor of light rail and other transportation solutions. AmCham-China recognizes and appreciates the support and ongoing involvement of the local government which helped make this development possible.

Tianjin has increased its appeal to domestic tourists, but this is still not a significant contributor to the local economy.

Significant Developments

In late 2009, the central government clarified that the Binhai New Area would expand outside the geographic districts of Tangu, Hangu and Dagang, giving this important development area a single clear governing body and a coordinated approach to growth. This positive step will eliminate waste from duplicate or competing projects in neighboring areas and further enhance the linkage between commercial and infrastructure projects.

Within the city center, the government is emphasizing the development of numerous commercial and residential projects. As a result, several new international five-star hotels have opened and the expansion of commercial development along the Hai River and north into the Hedong and Hebei districts is well underway. The government has also pushed for the development of new entertainment districts giving residents and visitors expanded options for dining and leisure. New developments include a revived Italian Concession area and the Jinwan retail project facing Tianjin's main train station.

Specific Issues

City Branding

Tianjin should retain the services of a professional branding consultant to promote the city's advantages and highlight the achievements it has made. The target audience includes foreign and domestic firms, as well as the central government and media outlets. The city has made great progress recently, but needs a more effective approach to articulating these accomplishments to the outside world. This branding effort will continue to create new opportunities for the city and firms located there.

Train Station

While we applaud the completion of the high-speed train linking Tianjin and Beijing, there remain a num-

天津

天津是中国最大的城市之一，人口约为 1200 万。在国内生产总值、个人收入增长和房价上涨等方面，天津继续稳居中国城市前列。许多公司也将天津视为其发展的首选地。尽管如此，全球金融危机显然也波及到了天津，尤其是对集中在天津港附近的船运和制造业公司。这表明该市经济对制造业及出口型企业的依赖度较高。

市中心和许多其它关键枢纽区继续快速发展，那里正在建设住宅和商业项目，未来将有地铁和轻轨贯通其中。关键枢纽区包括塘沽区的于家堡新区和机场附近区域。

天津是制造业强市，服务业也在不断扩展。近来市内不断有酒店和商业中心开张或投入施工，它们为这座城市带来更为现代化的生活方式。汽车保有量持续迅猛增长，天津也开始感受到大城市普遍面临的基础设施方面的挑战，包括污染、交通堵塞、停车位不足、高房价和工资上涨。

天津正在开展“生态城市”建设，旨在运用节能技术、现代化城市规划和施工技术来打造一个环境友好型城市。天津的十年发展规划倾向于运用轻轨和其它交通解决方案，而非汽车。中国美国商会对天津市政府所给予城市建设的支持和持续的参与表示赞赏。没有这种支持和参与，就不会有今天的发展。

天津市还增强了其对国内游客的吸引力，但旅游还未成为该市经济的主要支撑点。

重大进展

2009 年末，中央政府明确批示，天津市滨海新区取代塘沽区、汉沽区、大港区，赋予这一重要发展区域统一的行政架构，使之实现协调发展。这一积极举措将避免邻近区域内重复建设或竞争项目所引起的浪费，从而进一步增强商业和基础设施项目之间联动。

在市中心区域，政府强调大量开发商业和住宅项目。一些国际五星级酒店应运而生，沿海河的商业开发也向北拓展到河东区和河北区。此外，市政府还不断发展新的娱乐区域，丰富本市居民和游客的就餐选择和休闲生活。这包括修整后的意大利租界区和天津火车站对面的津湾广场。

具体问题

城市品牌

天津市应聘请一家专业品牌咨询公司，指导如何提升城市优势，凸显所取得的成就。目标人群包括国内外公司，中央政府和媒体。近年来，天津市成绩斐然，但是需要更为有效的方法来向外界展示这些成绩。这种品牌建设行动必将继续为天津和在此开展业务的公司带来新的机遇。

火车站

当我们为京（北京）- 津（天津）高铁的建成开通拍手称赞时，还应看到天津火车站尚存在一系列问题。比如对到达厅的控制欠佳，乘客还没出站就会碰到黄牛出租车。火车站经常打不到车，而排队候车则更是需要 1 小时以上，尤其是遇到坏天气。火车站的地下落客区尤为拥堵。此外，所有乘客，包括那些在地下下车的乘客，均需离开落客区，在拥挤的人群中穿过火车站前的广场返回到一层。火车站周围停满了向别无它选的乘客们漫天要价的出租车。所有这些负面因素让游客对天津产生了较差的第一印象。

医疗保健

天津市中心地区目前没有外资医院，市内整体医疗水平也落后于国内其它主要城市。近来一家医院宣布了其落户天津的计划，有望改善天津未来的医疗情况。天津市相对较低的医疗服务水平让它很难吸引外籍员工及其家属到天津工

ber of issues with the Tianjin station. The arrival area is not well controlled and taxi touts often approach arriving passengers before they have even exited the gates. Within the station, there are frequently no taxis available and waiting lines have been known to exceed an hour, particularly during bad weather. The drop-off area under the station is particularly congested. Additionally, all passengers, even those exiting cars under the station, must exit the drop off zone and return to ground level by crossing the courtyard in front of the station while being exposed to the elements and large crowds. The station is surrounded by taxis looking to solicit exorbitantly high fares from customers stuck with no other transportation options. All of these negative factors combine to give visitors a poor first impression of Tianjin.

Healthcare

Central Tianjin currently has no Western hospitals and the overall level of healthcare lags that of other major Chinese cities. One hospital group recently announced plans for Tianjin, which will hopefully lead to future improvement. Still, the relatively low level of medical service makes it harder to attract expatriate staff and their families to the city, thus hampering development and putting other cities higher on the target list for firms investing in China. Furthermore, waiting times at local hospitals are longer and reservation services for medical appointments less dependable at Chinese hospitals in Tianjin compared to other Chinese cities. The result is longer time spent in line when waiting to see a doctor.

Traffic and Parking

Positive attempts have been made to address long-standing parking issues. However, the new public facilities have not kept up with the rate of car ownership and a lack of parking continues to hamper the movement of people and goods throughout the city.

Environment

Residents and visitors continue to comment on the poor quality of water and air and a lack of green space. These environmental conditions reduce Tianjin's quality of life and need to be addressed in order for the city to improve its profile as a destination to live and visit.

Recommendations

- **Improve the service quality and organization of the Tianjin train station.**
- Retain a professional branding consultant to improve and coordinate the city's advertising and branding efforts.
- Establish more international standard medical facilities in Tianjin. Implement or improve reservation systems for medical facilities in the city.
- Build more parking garages and continue improvements to the road system. Encourage and enhance bicycle and bus routes throughout the city.
- Develop a plan to reduce air pollution from cars, industry and power production in the city's urban core with specific goals and metrics and explain it publicly.

作，这阻碍了天津的发展并在引进企业投资方面无法与其他城市竞争。此外，相比其它城市而言，在天津当地医院排队看病的时间更长，预约挂号的服务也较难信赖。结果是看病需要花更长时间排队。

交通和停车

天津市政府已经做出积极努力，来解决长期存在的停车难问题。然而，新增的停车场所跟不上车辆的增长速度，停车位缺乏仍将继续影响市民出行和货物运输。

环境

仍有天津市民和游客反映天津水质差，空气质量差及缺少绿地。这些环境因素降低了天津市民的生活质量，市政府应着手依次解决，以改善城市形象，将天津打造成一处宜居宜访之地。

建 议

- 提高天津火车站的服务质量和组织能力。
- 聘请一家专业品牌咨询公司，帮助改善和协调天津市的宣传和品牌树立工作。
- 成立更多具有国际标准的医疗机构，执行并改善医疗机构的预约系统。
- 修建更多停车库，继续改善道路系统。鼓励骑自行车和乘坐公交车出行，改善相关路线。
- 制定带有具体目标和指标的计划，减少汽车尾气、工业生产和发电对市中心空气的污染，并将计划公布于众。

Yangtze River Delta

In 2009, Shanghai's economy was significantly impacted by the global economic downturn. First quarter growth was half what it was a year earlier as foreign direct investment (FDI) and demand from Western economies dramatically fell. However, as the year progressed, Shanghai quickly gained momentum, driven not only by the national government's stimulus plan but also by Shanghai's ongoing focus on transitioning to a service-based economy. By the fourth quarter of 2009, Shanghai once again experienced double-digit growth and FDI picked up, particularly in the service sector.

All signs point to sustained growth in 2010 as Shanghai continues to serve as a leading center for commerce, finance and industry. In March 2009, the national government mandated that Shanghai become an "International Trading Hub" by 2020 through raising standards in city's financial service sector-oriented Lujiazui District to international levels, while also continuing development of the city's shipping and port industry, already one of the world's largest. Already, the growing number of multinational companies that have based their regional headquarters in Shanghai reflects the international business community's increasing recognition of the city as a leading Asia-Pacific business hub. At the end of 2009, more than 260 multinational companies had designated Shanghai as their headquarters in the region.

In 2010, Shanghai plays host to the World Expo, projected to be the largest world exposition in history, with more than 70 million visitors. The Expo theme, "Better City, Better Life," will focus the world's attention on China's culture and social development, as well as Shanghai's efforts to develop sustainable urban living. The Expo will also highlight the environmental challenges facing many cities in China and around the world today.

While Shanghai's future is bright, there are challenges that must be met to ensure continued progress towards developing the city's business climate and to meet its 2020 objectives. As has been the case in recent history,

AmCham Shanghai's 2009 *China Business Report* ranked human resources constraints—specifically the ability to attract and retain talented management, professional and technical staff—as the most difficult to overcome.

The remaining top-five challenges identified by American companies include inconsistent regulatory interpretation, bureaucracy, unclear regulations and lack of transparency. We applaud the Shanghai government for already taking numerous concrete steps to address these challenges, as resolving them will be critical to achieving the city's ambitious objectives. AmCham looks forward to working together further with the Shanghai government on addressing these challenges.

Significant Developments

Business Climate

Shanghai's gross domestic product reached US \$218 billion (RMB 1.5 trillion) in 2009, posting a year-on-year growth of 8.2 percent. Although 2009 continued a downward trend in growth (from 13.3 percent in 2007 and 9.7 percent in 2008), it followed 16 years of double-digit expansion. Shanghai's economy already began showing signs of recovery in early 2010. Growth in 2009 grew each quarter. Growth rates were 3.1, 7.9, 9.8 and 11.2 percent in the first, second, third and fourth quarters, respectively.

Shanghai's total trade volume was US \$277.7 billion (RMB 1.9 trillion) in 2009, down 13.7 percent. Of this, exports accounted for US \$135.8 billion (RMB 927.9 billion), down 11.1 percent, while imports totaled US \$141.9 billion (969.6 billion), down 16.2 percent. Both export and import volumes started to rebound by the end of 2009, with exports growing 23.5 percent to US \$15.2 billion (RMB 103.9 billion) in November, and imports up 49.5 percent to reach US \$15.5 billion (RMB 105.9 Billion). Shanghai's imports from the US grew 58.6 percent to reach US \$2 billion (RMB 13.6 billion) in November, the highest growth rate among all major trading countries and regions.

长江三角洲

2009年，全球经济衰退对上海经济带来了严重影响。随着外商直接投资（FDI）和来自西方经济体需求的大幅下滑，上海第一季度的经济增长仅为一年前的一半。然而随着时间推移，上海经济增长势头迅速好转，这不仅得益于中央政府的经济刺激计划，更得益于其不断向服务导向型经济的转变。到2009年第四季度，上海再次取得两位数的增长，外商直接投资亦出现增长态势，尤其是在服务业领域。

2010年，上海继续领航于商业、金融和工业领域，所有迹象均显示出持续发展的势头。2009年3月，中央政府指示上海要于2020年基本建成“国际贸易中心”。为此目的，在以金融服务业为主导的陆家嘴区，服务水平将提升至国际水平；同时继续推进航运和港口业的发展，而上海的两个行业规模居世界之首。同时，越来越多的跨国公司已将其地区总部设在上海，显示出国际商界对上海作为亚太领先商业中心地位的认可。截至2009年底，有260多家跨国公司选择将地区总部设在上海。

2010年上海将主办世博会，预计将吸引7000万参观者，成为有史以来规模最大的世界博览会。本届世博会以“城市，让生活变得更美好”为主题，将世界目光聚焦于中国的文化和社会发展，以及上海为城市可持续发展所做出的努力。世博会还将重点强调目前中国及全球诸多城市正面临的环境挑战。

尽管发展前景光明，然而还需要克服很多挑战，以保证上海的商务环境不断得到改善，如期实现2020目标。与前几年的情形相同，在上海美国商会的2009中国商务报告中，将人力资源限制——尤其是吸引并留住优秀的管理人才、职业人士和技术人才，被列为最大的挑战。

美国公司列举的前五大挑战还包括：法规解释缺乏一致性、官僚作风、法规不明晰和缺乏透明度。我们对上海市政府为解决此类问题所采取的大量具体措施表示赞赏，因为解

决上述问题对实现其雄伟目标至关重要。商会期望进一步与上海政府合作，以应对这些挑战。

重大进展

商务环境

上海国内生产总值在2009年达到2180亿美元（1.5万亿人民币），比去年同期增长8.2%。虽然在继16年的两位数增长后，2009年的增长率一如前两年继续下滑（2007年为13.3%，2008年为9.7%），但上海经济在2010年初就已显示出了复苏迹象。2009年增长率逐季上升，四个季度的增长率分别为3.1%，7.9%，9.8%和11.2%。

2009年，上海贸易总额为2777亿美元（1.9万亿人民币），下降了13.7%。其中，出口额为1358亿美元（9279亿人民币），下降11.1%，而进口额为1419亿美元（9690亿人民币），下降16.2%。2009年底进出口量均开始出现反弹。11月份，出口量增长23.5%，达152亿美元（1039亿人民币），进口量增长49.5%，达155亿美元（1059亿人民币）。11月份，上海从美国的进口量增长58.6%，达20亿美元（136亿人民币），增长率在所有主要贸易国家和地区居首位。

2009年，上海利用外商直接投资总额为105亿美元（720亿人民币），较上年同期增长4.5%。但受全球信贷紧缩影响，2009年新增外商投资总额为133亿美元（909亿人民币），下降22.3%。最受外资青睐的服务业占2009年上海外商投资总额的72.3%；制造业占26.9%；第一产业，如农业和采矿业，占0.8%。

2010年上海世博会

自2002年获得2010年世博会主办权以来，上海就在加紧筹备这一历史性的盛会。2010年世博会将从2010年

Shanghai's utilized FDI totaled US \$10.5 billion (RMB 72 billion) in 2009, an increase of 4.5 percent year-on-year. However, with the tightening of credit around the world, newly contracted FDI in 2009 totaled US \$13.3 billion (RMB 90.9 billion), a drop of 22.3 percent. Investment in the services sector was most popular, accounting for 72.3 percent of Shanghai's FDI in 2009, while manufacturing received 26.9 percent and primary industries, such as agriculture and mining, totaled 0.8 percent.

2010 Shanghai World Expo

Since being named as the host city for the 2010 World Expo in 2002, Shanghai has been gearing up for an historic event, set to begin on May 1 and end on October 31. Like the 1893 Chicago World's Fair that proclaimed America's global industrial rise, the 2010 Expo is a milestone marking China's emergence as an economic power. Nearly 200 countries and 50 international organizations will participate with pavilions and attendance is estimated to be 70 million. On one hand, the Expo represents Shanghai's turn on the world stage and another opportunity for China to showcase its rapid economic and social development. On the other hand, 60 million of the expected visitors are projected to be Chinese, presenting participating countries, as well as sponsoring companies, an opportunity to make an impression on Chinese citizens.

Shanghai has invested US \$73 billion (RMB 500 billion) in citywide infrastructure improvements, expanding and improving the city's roads, railways and highways, as well as bolstering water supply and furthering waste management efforts. A new terminal at the city's Hongqiao Airport opening ahead of the Expo will boost the airport's annual capacity to 40 million passengers, complementing the Pudong Airport's current 60-million passenger capacity. Extensions of Shanghai's subway system are ongoing, with the total track length expected to exceed 500 kilometers (310 miles) by year's end and 877 kilometers (545 miles) by 2020. Shanghai expects the influx of visitors during the Expo to boost the hospitality, retail and tourism sectors, and as a result, contribute to the city's ongoing transformation into a service-based economy.

In addition to presenting visitors with the best of American culture, entertainment, technology and innovation, the Shanghai Expo provides American companies with a chance to connect with new consumers. They have the opportunity to increase reach and visibility among an audience they typically may not have easy access to, laying a foundation for future business opportunities in China. Many US multinationals have demonstrated their commitment to

Shanghai, China and the US-China relationship by supporting the Expo, including as USA National Pavilion sponsors.

AmCham has worked closely with both the US and Chinese governments to drive interest and participation in the Expo and has served as a platform for companies and organizations to learn about supporting the USA Pavilion. AmCham Shanghai, in particular, is an official sponsor of the USA Pavilion and has been designated the Pavilion's Official Business Chamber Partner. The American business community will help drive business-related events and programming during the Expo by hosting a series of programs to facilitate business between American business leaders, visiting businesspeople and government officials.

Specific Issues

As Shanghai moves towards becoming an international economic and shipping hub by 2020, the continued development of the city's financial markets is critical. Shanghai plans to construct a multi-layered and multi-functional market system, including equities and derivatives markets and an insurance and re-insurance industry. It will also seek to reform its regulatory and judicial system. In this capacity, Shanghai serves as a testing site for many nationwide reforms and policies.

As part of Shanghai's plan to become a major shipping hub, the central government has called for the further integration of port resources and intermodal transportation infrastructure in the Yangtze River Delta (YRD). The central government will also provide tax incentives to boost the growth of the Yangshan Deep Water Port and aid the overall development of the domestic shipping industry.

The State Council's endorsement of Shanghai's plan demonstrates the central government's commitment to financial and regulatory reform as well as the development of a strong services economy. It is also an important step in ensuring that Shanghai, and by extension the rest of the country, remains internationally competitive in the years to come. We applaud the 2020 Plan and have several recommendations on how to achieve these ambitious goals.

Reforms Needed to Make Shanghai an International Financial Hub

To achieve its goal of becoming an international finance hub, Shanghai should further level the playing field for domestic and international financial institutions and strengthen its financial markets. Among the steps that

5月1日开始，持续至10月31日。正如1893年芝加哥世界博览会宣告了美国的全球工业崛起一样，2010年上海世博会则是中国崛起成为经济大国的里程碑。届时将有近200个国家和50个国际组织参展，约有7000万人次的参观者。一方面，此次世博会是上海亮相国际舞台的绝佳时机，同时也为中国提供了展示其经济和社会快速发展的机会；另一方面，预计其中6000万参观者为中国人，为参展国家和赞助企业提供了一个中国公民了解他们的机会。

上海已投资730亿美元（5000亿人民币）用于改善全市基础设施、发展并完善城市道路、铁路和高速公路、城市供水以及推进废物管理进程。世博会开幕前，虹桥机场将建成一座全新的航站楼，机场的年旅客吞吐量将预计达到4千万人次，补充了当前浦东机场6千万人次的旅客吞吐量。上海的地铁运输系统正在不断的发展和扩建之中，预计今年年底地铁轨道全长将超过500公里（约310英里），到2020年将达到877公里（约545英里）。世博会期间，参观者的大量涌入将推动当地的酒店业、零售及旅游业的大力发展，从而促使上海不断向一个以服务为基础的经济社会转型。

除了向参观者展示最好的美国文化、娱乐、技术和创新外，上海世博会还为美国企业提供了接触新客户的机会。世博会为参展企业提供了比较难得的、让观众得以进一步接触和了解它们的机会。这为其今后在中国拓展业务打下基础。许多美国跨国公司，包括美国国家馆赞助商，都以支持世博会的方式表示其致力于发展上海、中国和中美关系的决心。

美国商会始终与美中两国政府紧密合作，以提升人们对世博会的兴趣与参与度，并为企业和组织了解如何支持美国国家馆提供平台。尤其是上海美国商会，成为了美国国家馆官方赞助商，并被指定为美国馆官方商会合作伙伴。世博会期间，美国商界将举办一系列活动以推进相关商务活动和规划，促进美国商界领导、前来参观的商务人士及政府官员间的商务往来。

具体问题

随着上海不断朝着2020年成为国际经济中心和航运枢纽的目标前行，持续发展城市金融市场至关重要。上海计划建立一个多层次、多功能的市场系统，包括股票和衍生品市场，保险和再保险业。同时上海还将对其监管和司法系统进行改革。凭借于此，上海成为多项国家改革和政策的试点城市。

为将上海发展成为主要航运枢纽，中央政府号召在长

江三角洲地区进一步整合港口资源和多式联运的交通基础设施。中央政府将提出税收优惠政策以促进洋山深水港的发展，以及帮助国内航运业获得整体发展。

国务院支持上海的计划，显示出中央政府进行金融和监管改革，并发展强大服务业经济的决心。而这也是保证上海及中国其它省市在未来数年里保持国际竞争力的重要一步。我们赞赏2020计划，并就如何实现这些雄伟的目标提出几点建议。

将上海建设成为国际金融中心所需进行的改革

为实现成为国际金融中心的目标，上海应进一步为国内外金融机构提供公平竞争的机会，并增强其金融市场实力。中央政府应在以下方面给予上海支持：

- 放松对外资商业银行的资本要求，以允许中小规模银行进入市场；
- 消除新华社对金融数据和信息的垄断，允许国际金融信息提供商，如彭博资讯和道琼斯等参与竞争；
- 加速国内信贷发放和并购的审批流程；
- 培育丰富且成熟的投资产品和其它期货；
- 建立一个管理框架，允许外国私人股本和风险投资基金更为有效地运作；
- 允许更多国际机构发放贷款；
- 拓展公司债券市场；
- 放开利率管制；
- 扩展以人民币结算的国际贸易，最终允许货币浮动。稳定且可兑换的本地货币是成为金融中心的前提条件。

解决不断发展的人力资源限制问题

在上海美国商会2009年中国商务报告中，人力资源限制仍然是各大公司最担心的问题。长江三角洲的大学是全国最好的，因此我们鼓励相关高校进行改革，让毕业生更好地适应那些当上海成为国际金融和航运中心后所需的工作。这些改革包括更多的产学合作，鼓励更多的中国学生去国外学习，设立知名院校的卫星校园，以及吸引更多的海外学子。

个人所得税政策

全球对高端人才的竞争异常激烈，而与新加坡和香港这些金融中心相比，上海的高税率风险削弱了其对于高端人才的

China should take to support Shanghai are:

- Ease capital requirements for foreign commercial banks to a level that will allow small and medium-sized banks to enter the market;
- Remove Xinhua's *de facto* monopoly on financial data and information and allow competition from international financial information providers such as Bloomberg and Dow Jones;
- Expedite approval processes for domestic credit issuance and mergers and acquisitions;
- Cultivate more diverse and sophisticated investment products and additional futures;
- Forge a regulatory framework permitting more effective operation of foreign private equity and venture capital funds;
- Allow more international institutions to issue debt;
- Expand the corporate bond market;
- Deregulate interest rates;
- And expand RMB-based international trade and eventually allow the currency to float. A stable and convertible local currency is a prerequisite for a financial center.

Addressing Ongoing Human Resources Constraints

In AmCham Shanghai's 2009 *China Business Report*, human resources constraints remain the biggest operational concern among companies. Universities in the YRD are among the best in the nation, so we encourage these institutions to initiate reforms to prepare graduates better for the jobs that will be needed when Shanghai is an international finance and shipping hub. These changes include more industry-academia partnerships, encouraging Chinese students to study abroad, creating satellite campuses of leading universities and attracting more students from overseas.

Personal Income Tax Policies

The global competition for top professionals is fierce, and high local tax rates risk reducing Shanghai's attractiveness as a place to work when compared to business hubs like Singapore and Hong Kong. We suggest the Ministry of Finance consider the following taxation changes to make the YRD more competitive:

- Revise individual tax rates to be closer to other Asian business hubs and international norms;
- Simplify the existing tax structure to make compliance with local tax laws less burdensome on companies;
- And consider short-term financial and tax incentives to assist in recruitment and retention of skilled talent.

Improving Quality of Life

In AmCham Shanghai's 2009 *China Business Report*, 46 percent of respondents said quality of life had a negative impact on attracting top expatriate managers and executives, a 10 percent jump from 2008. Pollution and the environment are key quality of life metrics and addressing pollution within the city should be emphasized. Among survey respondents, 20 percent reported that pollution makes it difficult to recruit talent. In addition, the health implications and impact on healthcare costs of pollution for everyone living in Shanghai are obvious and merit continued government intervention.

Further Development of the Service Sector

We recommend a continued focus on the development of the service sector that welcomes foreign participation in Shanghai and throughout the YRD region. Liberalizing and opening up service-based industries will further contribute to economic development and are critical to supporting the finance and logistics industries.

Further Integration of the YRD

The economic strength of the YRD lies in its ability to work as a single integrated region, with Shanghai as the hub. This allows capitalizing on the sum of its strengths, rather than attempting to compete as individual cities and provinces. The growth of Shanghai over the past 30 years has helped fuel YRD growth, which in 2007 accounted for approximately one fifth of China's overall GDP and nearly half of total foreign investment. A more integrated YRD with a consistent set of regulations and laws would lead to synergies in areas such as customs, education and training, labor, intellectual property rights protection and enforcement, taxation, and transportation and logistics. Further harmonization in these areas would make the region more attractive for investment and increase regional competitiveness.

Continued Reforms to Shanghai Customs

The effectiveness of Shanghai Customs is an integral part of making the city a leading trade and shipping hub. Over the past several years, Shanghai Customs has made a number of improvements in efficiency and transparency, including clear communication of new regulations, more flexibility by customs officials and a greater willingness to listen to the business community's concerns.

However, the recent economic downturn has increased pressure to collect revenue and there has been less consistent enforcement of existing regulations, resulting

吸引力。我们建议财政部考虑如下改革，使长江三角洲更具竞争力：

- 修订个人所得税率，使其更接近于其他亚洲金融中心和国际标准；
- 简化现有的税收结构使得企业能够更简便地依照当地税法运作；
- 考虑实行短期金融和税收优惠政策，以招聘和保留有技能的人才。

提高生活质量

在上海美国商会 2009 年中国商务报告中，46% 的受访者认为生活质量对吸引高级国外经理人和企业高管产生负面影响，该数据较 2008 年增长了 10%。污染和环境问题是影响生活质量的关键因素，因此需要强调解决城市污染问题的重要性。在受访者中，20% 认为污染问题不利于招揽人才。此外，上海居民健康问题及由于污染可能导致的医疗费用等问题，需要政府的持续努力。

进一步发展服务业

我们建议继续重点发展服务业，欢迎外资企业对上海及长三角地区服务业进行投资。开放服务型行业将增进经济发展，并对支持金融和物流产业至关重要。

进一步整合长三角地区

长三角地区的经济实力在于其能够形成一个以上海为中心、统一运作的整体。该模式使得利用该区域的整体实力成为可能，而非单一的省市独立发展竞争。上海过去 30 年的发展促进了长三角地区的发展，2007 年上海 GDP 约占全国的五分之一，外商投资占全国的一半。进一步整合长三角地区，并施以一致的法律法规将促进海关、教育和培训、劳动力、知识产权保护及实施、税收、运输和物流等领域的协同合作。这些领域的协调发展将使得长三角地区更具投资吸引力和区域竞争力。

继续对上海海关进行改革

有力的海关保障是上海成为领先的贸易和货运中心必不可少的一部分。在过后的几年，上海海关已经在工作效率和透明度方面有了很大改进，包括更清晰地传达新法规，增加海关官员的办事灵活性，以及更愿意倾听业界的关注。

然而，最近的经济衰退增加了收取税收的难度，执行现行规定也受到影响，导致文字工作增加，办事效率降低及海关人员缺乏。为使上海海关更具效率，成为全国海关的榜样，我们鼓励进一步做好发布监管变化的通知，以便企业能及时调整机构；同时应在上海海关增派人手，更好依靠信息技术解决方案，以提高办事效率。

建议

- 通过支持金融行业改革，以继续推进上海成为国际贸易中心的进程。金融改革将改善国内外企业的运营环境，鼓励发展新金融服务机构和产品。
- 确保劳动力充足，解决不断发展的人力资源问题。通过产学合作，发展海外学习项目和卫星校园，提高长三角地区高校的水平。
- 修订税收政策，为服务业企业提供优惠。同时确保同其它区域的贸易中心相比，上海的个人所得税颇具竞争力。
- 着重创造有助于提升区域竞争力的、有序一致的监管环境，以推进长三角地区的整合。
- 在 2010 世博会后继续保持发展势头，通过提高环境标准和降低污染，继续提高居民生活质量。

in increased paperwork, reduced processing efficiency and a shortage of resources in the customs office. To make Shanghai Customs more efficient and to help it be a nationwide model, we encourage further notification of regulatory changes so that companies can adjust their systems in a timely manner through additional staffing, and further reliance on information technology solutions, to increase processing efficiency.

Recommendations

- **Continue efforts to develop Shanghai into an international trading hub by supporting financial sector reforms that enhance the operating environment for both foreign and domestic firms and encourage the development of new financial services institutions and products.**
- Address ongoing human resources concerns by ensuring that the workforce is properly prepared for employment. Enhance current YRD university offerings through industry-academia partnerships, expanded study abroad programs and more satellite campuses.
- Revise tax policies to provide incentives to service sector enterprises, while also ensuring that personal income tax policies are competitive with other regional trading hubs to attract top executives.
- Increase efforts to integrate the YRD region by focusing on creating a seamless regulatory environment that will increase regional competitiveness.
- Maintain the momentum created by the World Expo beyond 2010 and continue raising the quality of life in Shanghai by strengthening environmental standards and reducing pollution.



Abbreviations 缩写表

ACP	US-China Aviation Cooperation Program
AEO	Authorized Economic Operator
AHWP	Asian Harmonization Working Party
AIC	Administration of Industry and Commerce
AML	Anti-Monopoly Law
APCAC	Asia-Pacific Council of American Chambers
API	Active Pharmaceutical Ingredients
AQSIQ	China General Administration of Quality Supervision, Inspection and Quarantine
ARF	Automatic Registration Form
BIT	Bilateral Investment Treaty
BSE	Bovine Spongiform Encephalopathy
BT	Business Tax
CAAC	General Administration of Civil Aviation of China
CAFFCI	China Association of Fragrance, Flavor and Cosmetic Industry
CBRC	China Banking Regulatory Commission
CCC	China Compulsory Certificate
CCS	Carbon Capture and Sequestration
CE	Circular Economy
CHP	Combined Heat and Power
CIRC	China Insurance Regulatory Commission
CNAF	China National Aviation Fuel Group Corporation
CNCA	China National Administration for Certification and Accreditation
CODEX	Codex Alimentarius
CPI	Consumer Price Index
CPSC	Consumer Product Safety Commission
CSR	Corporate Social Responsibility
CSRC	China Securities Regulatory Commission
CT	Computed Tomography
CTA	Clinical Trial Application
C-TPAT	Customs-Trade Program against Terrorism
DECHP	Distributed Energy Combined Heat and Power
ECP	Energy Cooperation Program
ECWG	Export Compliance Working Group
EDI	Customs Electronic Data Interchange
EDS	Express Delivery Service
EIT	Enterprise Income Tax

EPC	Engineering Procurement and Construction
FAA	US Federal Aviation Administration
FAO	Food and Agriculture Organization of the United Nations
FASCO	Foreign Aviation Service Corporation
FDA	US Food and Drug Administration
FDI	Foreign Direct Investment
FFIP	Foreign Financial Information Providers
FIA	Foreign Investment Administration
FICE	Foreign-Invested Construction Enterprise
FIDE	Foreign-Invested Design Enterprise
FIE	Foreign-Invested Enterprise
FIESE	Foreign-Invested Engineering Service Enterprise
FSL	Food Safety Law
FY	Fiscal Year
GA	General Aviation
GAC	General Administration of Customs of China
GAPP	General Administration of Press and Publications
GARA	General Aviation and Regional Aviation
GDP	Gross Domestic Product
GDS	Global Distribution Systems
GHTF	Global Harmonization Task Force
GMP	Good Manufacturing Process
GP	Government Procurement
GPA	WTO Agreement on Government Procurement
GW	Gigawatts
HR	Human Resources
ICAO	International Civil Aviation Organization
ICT	Information and Communications Technology
IDC	International Data Corporation
IICT	Innovation, Information and Communications Technology
IIT	Individual Income Tax
IP	Intellectual Property
IPR	Intellectual Property Rights
IRG	Guidelines for Immediate Release of Goods
IRS	Interest Rate Swaps
ISO	International Organization for Standardization

IT	Information Technology
JCCT	US-China Joint Commission on Commerce and Trade
JV	Joint Venture
M&A	Mergers and Acquisitions
MEP	Ministry of Environmental Protection
MIIT	Ministry of Industry and Information Technology
MLPS	Multi-Level Protection Scheme
MNC	Multinational Corporation/Company
MOA	Ministry of Agriculture
MOC	Ministry of Construction (Renamed Ministry of Housing and Urban-Rural Development)
MOC	Ministry of Culture
MOCA	Ministry of Civil Affairs
MOF	Ministry of Finance
MOFCOM	Ministry of Commerce
MOH	Ministry of Health
MOHRSS	Ministry of Human Resources and Social Security
MOHURD	Ministry of Housing and Urban-Rural Development
MOR	Ministry of Rail
MOST	Ministry of Science and Technology
MQIP	Meat Quarantine Import Permit
MR	Magnetic Resonance
MRL	Maximum Residue Levels
MTPL	Mandatory Third Party Liability
MW	Megawatts
NBFI	Non-Bank Financial Institution
NCA	National Copyright Administration
NDRC	National Development and Reform Commission
NEC	National Energy Commission
NGO	Non-Governmental Organization
NO _x	Nitrogen Oxide
NPC	National People's Congress
NPL	Non-Performing Loans
NPO	Non-Profit Organization
OIE	World Organization for Animal Health
P2P	Peer-to-Peer
P&C	Property and Casualty
PBN	Performance-Based Navigation
PBOC	People's Bank of China
PE	Private Equity
PET-CT	Positron Emission Tomography - Computed Tomography

PRI	Political Risk Insurance
QDII	Qualified Domestic Institutional Investor
QFII	Qualified Foreign Institutional Investor
QIP	Quarantine Inspection Permit
QMS	Quality Management Systems
R&D	Research and Development
RA	Regional Aviation
RDP	Regulatory Data Protection
RFG	Remanufactured Finished Goods
RMB	Renminbi
S&ED	Strategic and Economic Dialogue
SAFE	State Administration of Foreign Exchange
SAIC	State Administration of Industry and Commerce
SAO	Security Advisory Opinion
SASAC	State-Owned Assets Supervision and Administration Commission
SAT	State Administration of Taxation
SCEP	Service Center Establishment Plan
SCIO	State Council Information Office
SCLAO	State Council Legislative Affairs Office
SEMB	State Encryption Management Bureau
SFDA	State Food and Drug Administration
SIPO	State Intellectual Property Organization
SLC	Small Lending Companies
SME	Small and Medium-Sized Enterprises
SOE	State-Owned Enterprises
SPB	State Postal Bureau
SPV	Special Purpose Vehicle
TAL	Technology Alert List
TP	Transfer Pricing
TRQ	Tariff Rate Quota
UGC	User Generated Contents
UHV	Ultra-High Voltage
US DOC	US Department of Commerce
USPTO	US Patent and Trademark Office
USTDA	US Trade and Development Agency
VAS	Value-Added Services
VAT	Value-Added Tax
WCO	World Customs Organization
WFOE	Wholly Foreign-Owned Enterprises
WHO	World Health Organization
WTO	World Trade Organization
YRD	Yangtze River Delta