

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

2020 AMERICAN BUSINESS IN CHINA 美国企业在中国

**2020 American Business in China
White Paper**
2020 年度美国企业在中国白皮书

Unless otherwise indicated, all charts are from the 2020 AmCham China *Business Climate Survey*.
若无特别说明，文中所有图表皆来自于中国美国商会2020年度商务环境调查。

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

中国美国商会

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

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

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

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

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Chairman's Message

Trade disputes made 2019 a trying year in US-China relations. For much of the year the US and China engaged in a series of reciprocal and escalating tariffs that began in 2018 and were intended to motivate the Chinese government to address long-standing US concerns regarding China's state-led economic development model and barriers to market access faced by US businesses. The rhetoric emanating from both sides was unproductive and inflammatory, which did little to stem declining bilateral trust.

As we highlighted throughout 2019 through many meetings between our members and their China and US government counterparts, through our timely Flash Surveys, and our core publications including this *American Business in China White Paper (White Paper)*, many of our members have been negatively impacted by the use of tariffs as a tool in the current US-China trade negotiations. They are directly harmful to the US and Chinese economies.

Against the backdrop of escalating tariffs and tension, the National People's Congress (NPC) hurriedly approved a new *Foreign Investment Law (FIL)* in March 2019, which came into effect on January 1, 2020. This is a promising development for our members, as the FIL includes many references to "equality" for foreign-invested enterprises in China in key areas like licensing, standards-setting, and government procurement. It appears to constitute a serious effort to address long-standing challenges facing foreign-invested enterprises in China. Nevertheless, the impact of the FIL will depend significantly on the nature of its implementation. National treatment for all firms, whether foreign-invested or domestically-invested, will of course be extremely important.

In the final quarter of 2019, China took steps to remove some existing tariffs on certain products (though many billions of dollars of tariffs remain in place), and the US canceled plans to increase existing tariffs and impose fresh tariffs on consumer goods from China. In December, our members were pleased by an announcement of a "Phase One Deal" between the US and China, which was signed on January 15, 2020 by US President Donald Trump and Chinese Vice Premier Liu He. We believe it is important to emphasize the importance of the US and China coming together to reach a deal and agreeing to work on further improving the business environment.

We are aware, however, that much work remains to be done to resolve the structural issues discussed across these many pages that have long hindered importation of US goods and services and operations of US businesses in China. The FIL is an important first step in this direction, but much hinges on how it is implemented. Unfortunately, previous bilateral dialogues and other mechanisms have not generated the results that are needed to sustain healthy, balanced, and mutually beneficial economic relations between our two countries. We hope this agreement helps halt the downward spiral in bilateral relations and along with mutual cooperation to combat COVID-19 creates the momentum for a return to a more stable and predictable US-China relationship.

The business outlook for our members in China is immensely complicated by the COVID-19 pandemic. The outbreak of COVID-19 has had a widespread impact on the Chinese economy and indeed no part of the global economy will be spared many of the effects of which are still unfolding as this *White Paper* is published.

As the outbreak of COVID-19 situation improves across China and impetus shifts to getting the economy restarted, AmCham China is ready to continue working with our China and US coun-

主席致辞

2019年可谓是中美关系艰难的一年。大部分时间里，中美两国互相加征关税，导致贸易摩擦不断升级。中美贸易争端始于2018年，由美国政府挑起，旨在推动中国政府解决长期以来美国担心的问题：中国国家主导的经济发展模式和美国企业所面临的市场准入壁垒。但是双方的言辞交锋都徒劳无益，时而具有不同寻常的煽动性，两国之间的信任持续下降。

2019年商会通过会员企业与中美政府之间的会议、商会多次即时调查、及包括《美国企业在中国白皮书》（以下简称《白皮书》）在内的商会主要出版物强调，中美贸易谈判以关税为工具，严重影响了商会会员企业的利益，直接损害了中美两国经济的发展。

在中美互相加征关税、贸易摩擦不断升级的背景下，全国人民代表大会于2019年3月通过了《外商投资法》，该法自2020年1月1日起施行。这对会员企业来说是利好消息，《外商投资法》中多次明确在许可、标准制定、政府采购等关键领域平等对待在华外商投资企业。这表明中国致力于认真解决在华外资企业面临的长期挑战。然而，《外商投资法》的实际效力很大程度上取决于其执行情况，是否给予国内外企业一视同仁的国家待遇是重中之重。

2019年第四季度，中国采取措施取消了对一些产品加征的关税（数十亿美元的关税仍在征收），美国则取消了加征关税及对中国消费品征收新关税的计划。12月，中美宣布第一阶段经贸协议，商会会员欢欣鼓舞。2020年1月15日，中国国务院副总理刘鹤同美国总统特朗普正式签署中美第一阶段经贸协议。商会认为中美两国携手达成协议，进一步改善营商环境，意义重大。

然而，商会清楚要解决长期阻碍美国商品服务进口及美国企业在华经营的结构性问题仍然任重道远。出台《外商投资法》仅仅是至关重要的第一步，关键在于贯彻落实。不幸的是，此前的双边对话等机制不尽人意，未能取得积极成果来维护两国之间健康、平衡、互利的经济关系。我们期待该协议有助于叫停不断恶化的中美关系，并随着对抗新冠肺炎病毒共同努力推动中美关系重回到稳定的，可预测的正轨。

新冠肺炎疫情爆发使在华商会会员企业的商业前景更加错综复杂。新冠肺炎疫情广泛影响了中国的经济，并日益严重影响全球经济。截至本《白皮书》发布之时，许多影响尚未尘埃落定。

目前新冠肺炎疫情在中国逐渐有所好转，中国努力重启经济，商会愿意继续与中国和美国相关部门合作，为在华美国企业寻求切实有效的解决方案。解决这些挑战对会员企业和中国经济来说是两全其美的利好之事，有利于中国实现向高附加值、高质量、可持续增长模式的转型。2020到2021年，商会仍将聚焦在第一阶段的经贸协议上。中国美国商会将继续就在华美国企业对第一阶段协议条款的落实推动中美双方的沟通。

terparts to highlight and identify practical solutions to the issues facing US business in China. Addressing many of these challenges we believe will not only benefit our members, but also benefit China's economy as it seeks to transition to a high value-add, high-quality and more sustainable growth model. We remain focused on the Phase One Deal throughout 2020 and 2021, and the role that AmCham China can play for both sides in communicating how the situation on the ground for the US business community aligns with the provisions of the Phase One Deal.

Therefore, at this critical time, we are publishing our 22nd annual *White Paper* -- a comprehensive analysis of China's economic policies and practices impacting foreign trade and investment. We have been gratified by the close attention US and Chinese policy makers have paid to the White Paper in past years. In this edition, we have endeavored to offer a comprehensive set of recommendations for both sides as they work towards greater mutual understanding and successful resolution of our many outstanding concerns.

AmCham China members volunteer countless hours to share their experiences, build consensus within industry cohorts, draft the 39 chapters, and painstakingly wordsmith the final product – in English and Chinese. Much of this has happened while our members contend with the additional burdens—both personal and professional—imposed by COVID-19. To these volunteers I want to express my special appreciation. I am very proud to be affiliated with them, the lifeblood of the Chamber. Particular gratitude goes to Lester Ross, chair of our Policy Committee, who again this year worked tirelessly to ensure that we have the most substantive and well-written publication possible. Thanks must go to AmCham China's Government Affairs and Policy team for their work over many months to produce a *White Paper* that meets AmCham China's demanding standards.

So whether one studies this year's *White Paper* from A to W (or from "Agriculture" to "Work Safety and Emergency Management"), or to investigate specific topics, we hope that the 2020 AmCham China White Paper will once again be an important tool facilitating mutual understanding and advancing our bilateral economic relationship.



Greg Gilligan
Chairman, AmCham China
April 2020

因此，在这个关键时刻，我们发布第 22 期年度《美国企业在中国白皮书》一对中国经济政策和其执行对外贸和投资的影响进行综合分析。过去几年中，中美两国的政策制定者对《白皮书》给予了密切关注，商会倍感欣慰。中美双方努力增进相互理解，成功解决了许多悬而未决的问题。这一期《白皮书》为中美双方提出了一套综合全面的建议。

中国美国商会会员不遗余力地投入大量时间分享经验、在业内建立共识、起草了 39 章报告、煞费苦心地用中英文完成最终报告。许多工作都是在新冠肺炎疫情爆发期间完成，其间他们还要努力应对新冠肺炎疫情对其造成的个人和职业影响。因此，我要对所有志愿者表示诚挚的感谢，能够与他们合作我深感自豪，他们是商会的命脉。在此，我还要特别感谢政策委员会主席罗斯，他今年仍然不辞辛劳地工作，以确保《白皮书》内容详实、言之有物。此外，还要感谢中国美国商会的政府事务与政策团队在过去的几个月里努力工作，编制符合中国美国商会苛刻标准的《白皮书》。

最后，我们希望今年的《白皮书》的所有章节（从农业到工作安全和急救管理）和专题能够再次成为促进中美相互了解、推动双边经济关系的重要工具。



葛国瑞
中国美国商会主席
2020 年 4 月

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

Business Climate Overview: Tariffs, Turbulence, and a Truce

Introduction

2019 was a turbulent year in the US-China relationship, creating challenging conditions for the AmCham China business community. 2019 began with a 90-day pause through March 1, 2019 in the imposition of new tariffs first announced by President Trump and General Secretary Xi Jinping following a meeting at the G20 Summit in Argentina. Then, in May 2019, following reports that concerns were emerging over a possible deal, the US raised tariffs from 10 percent to 25 percent on US \$200 billion of Chinese made goods. China retaliated with its own tariff increases in June on US \$60 billion of imports from the US.

Meanwhile, economic and trade issues became more intertwined with issues of national security. In May, the US added Huawei and 68 of its subsidiaries to the Department of Commerce's *Entity List*, prohibiting US companies from doing business with them without approval. In response, China announced the creation of an "Unreliable Entity List." While this list has yet to be released, AmCham China continues to watch this development with concern. In 2018, AmCham China acknowledged that trust between the two nations had plummeted, even while they remained linked through trade and investment as well as other areas. Events in the first part of 2019 only seemed to further undermine that trust.

And yet, following a June 2019 meeting between President Trump and General Secretary Xi at the G20 in Japan, China began to exempt certain US-made goods from further tariffs in September 2019 and the US then delayed tariff increases initially planned for October 2019. The year ended with the positive announcement in December of the *Economic and Trade Agreement Between the US and China* (Phase One Deal), which was signed on January 15, 2020. With this announcement and the delays in imposition of new tariffs, 2019 ended and 2020 began on a more positive note for the bilateral relationship.

On top of the prolonged tensions and uncertainty in the bilateral relationship, the Chinese economy in 2019 grew 6.1 percent according to official figures – still impressive growth for an economy of its size, but the slowest growth rate since 1990. Throughout the *Reform and Opening* period, the economy averaged GDP growth of over nine percent

through 2017, although GDP growth rates have steadily decelerated since 2010. Slowing GDP growth is a natural outcome of China's economic development and its ongoing transition to a more sustainable economic growth trajectory, characterized by domestic consumption, high value-add manufacturing, and services. Nevertheless, a slowing economy creates additional uncertainty for many members, in addition to the tensions in the bilateral relationship.

China and the American business community have also been contending with the outbreak of the novel SARS-COV-2 virus and its associated COVID-19 disease. Its outbreak has had wide-ranging impacts on the Chinese economy, the effects of which are still playing out as this *White Paper* is published. China's Q1 GDP growth will undoubtedly slow significantly, and beyond the direct impact on individual health and human life, China's central role in the global trading system, coupled with the subsequent global spread of COVID-19, means that the global economy will be impacted.

Amidst these many challenges, AmCham China witnessed repeated commitments over the past year, both written and rhetorical, to equal treatment for foreign-invested enterprises (FIEs). Most notably, the National People's Congress (NPC) in March 2019 passed the new *Foreign Investment Law* (FIL) which came into effect on January 1, 2020. Both the FIL and its Implementing Regulations (published in November 2019) appear to constitute a serious attempt to address many longstanding challenges of the foreign business community. They include repeated emphasis on the concept of equality for FIEs in areas of funding, land supply, certifications and licensing, procurement, and intellectual property rights (IPR). These legislative efforts are recognized by the business community and are reflected in greater optimism about China's investment climate.

While AmCham China welcomes the commitment to equality for FIEs and the legislative effort to enshrine these principles in law through the FIL, we remain concerned that many of the provisions are general in nature and do not sufficiently address the persistent concerns of FIEs in China. The FIL Implementing Regulations are also high-level in nature and lack sufficient detail. AmCham China will be watching closely to see whether the commitments to level the playing field for US companies in China will in practice address many of the structural issues that have long been

商务环境综述： 关税、动荡和休战

引言

2019年又是中美关系动荡不安的一年，中国美国商会（商会）的会员也面临着重重挑战。2019年初，特朗普总统和习近平总书记在阿根廷20国集团（G20）峰会会晤后宣布，两国暂停加征新关税90天，至2019年3月1日。2019年5月，有媒体报道担忧两国可能无法达成协议，之后美国就将2000亿美元中国输美商品的关税从10%上调到25%，中国作为反击，在6月份提高了价值600亿美元的美国进口商品的关税。

与此同时，经贸问题与国家安全问题交织更为紧密。2019年5月，美国商务部将华为及其68家附属公司列入实体清单，禁止美国公司未经批准与其开展业务。作为回应，中国宣布建立“不可靠实体清单”制度，目前清单尚未公布，但商会将继续关注事态发展。商会在2018年提到，两国虽然在贸易投资和其他方面保持联系，但信任已经一落千丈，而2019年上半年发生的事情更是雪上加霜。

然而，2019年6月，特朗普总统与习近平总书记在日本20国集团峰会（G20）会晤后，中国在2019年9月开始对部分美国进口商品不再加征关税，美国也暂缓原定2019年10月的关税上调计划。12月，《美中经济贸易协议》（第一阶段协议）公布，并于2020年1月15日正式签署。第一阶段协议公布，两国延迟加征关税，2019年结束了，也为2020年双边关系开了积极的好头。

官方数据显示，2019年，中国经济在双边关系持续紧张，不确定性加大的情况下实现了6.1%的增长，这对于如此规模的经济体来说仍是不俗的成绩，但却是中国自1990年以来的最低增速。改革开放以来直至2017年，中国GDP的年均增速都超过9%，但GDP增速自2010年起就在逐步下降，这是中国经济发展的自然结果，同时也是因为中国经济在转向更可持续增长路径，鼓励

国内消费、高附加制造业和服务业的发展。尽管如此，双边关系紧张再加上经济增速放缓，商会很多会员面临更多的不确定性。

中美商界还在应对新型冠状病毒肺炎（COVID-19）的爆发。新冠肺炎疫情的爆发给中国经济造成了广泛的影响，在本《白皮书》发布之时，其影响仍在持续。中国第一季度的GDP增速无疑将显著放缓，这不仅会直接影响个人健康和生活，还会影响中国在全球贸易体系中的核心作用，再加上新冠肺炎在全球扩散，全球经济将会大受影响。

虽然挑战重重，但商会注意到，在过去一年中，中国反复以书面和口头的形式承诺对外商投资企业提供平等待遇。最值得一提的是，全国人大于2019年3月通过了新的《外商投资法》，该法于2020年1月1日生效。《外商投资法》及其《实施条例》（2019年11月发布）看来是要认真尝试解决外资企业长期面临的许多挑战，因为其中反复强调在资金、土地供应、认证和许可、采购及知识产权等方面为外商投资企业提供公平待遇。这些立法方面的努力得到了商界的认可，他们对于中国的投资环境也抱有更为乐观的态度。

商会对此表示欢迎，我们乐见中国承诺对外商投资企业一视同仁，同时通过《外商投资法》将相应原则写入法律，但是我们仍然担心很多条款是一般性的，没有充分解决外资企业在中国的长期担忧。《实施条例》本质上也是总体层面的规定，缺乏足够的细节。商会将会密切关注为在华美企创造公平竞争环境这一承诺是否能真正解决许多结构性问题，这也是《白皮书》一直关注的问题，包括广泛的市场准入壁垒、保护主义、不透明的监管体系和差别性执法。

本着这种精神，第22版《美国企业在中国白皮书》探讨了2019年和2020年初商会会员企业所面临的跨领

the focus of these pages: extensive market access barriers, protectionism, an opaque regulatory system, and discriminatory enforcement.

In that spirit, the 22nd edition of the *American Business in China White Paper* explores the cross-cutting, industry-specific, national, and regional issues faced by AmCham China's member companies in 2019 and early 2020. Each chapter offers practical recommendations for addressing these challenges that will, if implemented, benefit both FIEs and the Chinese economy as a whole. We hope that this year's *White Paper* will serve as a constructive tool for both the China and US governments as they work to build on the progress established by the Phase One Deal, prepare for Phase Two negotiations, and reorient the bilateral relationship towards a more sustainable and balanced economic footing.

Commitments to Economic Reform, Financial Sector Opening, and COVID-19

In 2019, as in 2018, AmCham China members witnessed multiple, high-level public commitments to continue opening China's economy to foreign investment. In September 2019, Premier Li Keqiang at the World Economic Forum in Dalian stated that China will "step up efforts to expand opening-up, uphold fair competition and safeguard foreign investors' rights and interests." In October 2019, General Secretary Xi wrote that "the door of China's opening up will only get wider and wider and the business environment will only get better and better" in a letter addressed to the first Qingdao Multinational Summit. The summit itself was organized by the Ministry of Commerce (MOFCOM) to give a platform for multinational corporations to articulate their "business visions."

These rhetorical statements were complemented by a number of high-level laws, regulations, and other documents in support of China's further economic opening. In addition to the FIL and its Implementing Regulations, the *Regulations on Optimizing the Business Environment* and the *Opinions of the State Council on Further Improving the Utilization of Foreign Capital*, both issued by the State Council, emphasize China's opening to foreign investment and commitment to equal treatment for FIEs as a key part of its efforts to improve the business environment. AmCham China is pleased by the support shown by Chinese leaders for continued economic opening, but as we have previously argued, true reform requires more than high-level commitments and general policy principles; we urge the government to ensure that the reality on the ground for the foreign business community reflects the spirit of equality and national treatment enshrined in the documents referenced above.

The financial services sector has been one area of promising reform. Most notably, the Phase One Deal includes several long-awaited reforms to open the financial sector in China. As of April 1, 2020, foreign equity caps for, insurance, fund

management, and futures companies are scheduled to be removed. On March 13, 2020 the China Securities Regulatory Commission (CSRC) confirmed that foreign equity caps for securities companies will be removed by April 1. US financial institutions will see expanded opportunities to provide securities investment fund custody services. China will remove barriers facing US credit ratings agencies, including a commitment to approve US wholly-owned suppliers of credit ratings. US electronic payment providers will see an improved license approval process, which AmCham China hopes will translate into timely license approvals given the longstanding challenges electronic payment providers have faced in gaining approval to operate in China's market. AmCham China is encouraged by the removal of these restrictions in China's financial services sector and looks forward to greater access for foreign financial institutions to China's US \$40 trillion financial sector. We urge China to comply with the provisions of the Phase One Deal and continue to remove any barriers that in practice impede the ability of foreign financial institutions to provide a full range of services within the China market.

China's efforts to improve the business environment were acknowledged by several international organizations. In the World Bank's 2020 *Ease of Doing Business* index, China's ranking improved to 31 (from 45), and it was ranked as one of the top ten most improved countries. This ranking is a reflection of China's ongoing efforts to improve its business environment. AmCham China notes, however, that the *Ease of Doing Business Report* is confined to a review of policies in Beijing and Shanghai only. And again, we must emphasize that policy is the starting point which must be matched by faithful implementation. As the second largest economy in the world, there remains significant work to be done.

In Q1 2020 China has had to contend with the outbreak of COVID-19, which has now become a global pandemic. The outbreak has presented many unprecedented challenges for China, the business community, and increasingly for the global public health community, and these challenges will persist past the publication of this *White Paper*. A Flash Survey conducted by AmCham China in February 2020 found that the COVID-19 situation was affecting members as nearly one-third of respondents reported increased costs and significantly reduced revenues. Nevertheless, one-half of respondents said it was "too soon to tell" what impact COVID-19 would have on their planned investments for 2020, while 25 percent reported that they did not plan to reduce their investment levels.

AmCham China has worked with the Chinese authorities to support efforts to contain the virus. By mid-February, our member companies had donated over RMB 500 million (US \$74 million) in cash and in-kind contributions (e.g., personal protective equipment, medical devices, pharmaceuticals, and disinfectants) to Wuhan, Hubei, and other affected areas through local partners. AmCham China continues to work closely with local governments and at the central level

域的、行业的、全国性和地区性问题。每一章都提出了应对这些挑战的实用建议，如果得以实施，将使外国公司和整个中国经济受益。我们希望今年的《白皮书》能够成为中美两国政府合作的一个建设性工具，并在第一阶段协议的基础上准备第二阶段谈判，推动双边关系朝着经济可持续和平衡发展的方向前进。

经济改革和金融业开放承诺以及新冠肺炎疫情

同 2018 年一样，2019 年，商会会员注意到多个高层官员公开承诺，继续向外国投资开放中国经济。2019 年 9 月，李克强总理在大连夏季达沃斯论坛称，中国将“进一步加大对外开放力度，坚持公平竞争，保护外商投资者的合法权益。”2019 年 10 月，习近平总书记在致首届跨国公司领导人青岛峰会的贺信中写道，“中国开放的大门只会越开越大，营商环境只会越来越好。”青岛峰会由商务部主办，旨在为跨国公司提供一个阐述“商业愿景”的平台。

除了此类口头表示之外，还有一系列高级别法律法规和文件来支持更大程度的经济开放。除了《外商投资法》，国务院还发布了《优化营商环境条例》和《关于进一步做好利用外资工作的意见》，强调中国将对外商投资开放，并承诺对外商投资企业一视同仁，这是中国改善营商环境工作的重要部分。商会乐见中国领导人继续支持经济开放，但如前所述，真正的改革只有高层承诺和一般性政策原则是不够的，我们促请政府确保外资企业能够真正享受平等和国民待遇，与上述法律法规所传达的精神保持一致。

金融服务领域改革前景广阔。值得注意的是，第一阶段协议中包括多项人们期待已久的改革，来进一步开放中国的金融领域。自 2020 年 4 月 1 日起，保险、基金管理和期货公司的外资股比限制将取消。2020 年 3 月 13 日，中国证券监督管理委员会（证监会）确认，证券公司的外资股比限制将于 4 月 1 日取消。美国金融机构将有更多机会在中国提供证券投资基金托管服务。中国将会取消对美国评级机构的限制，包括承诺批准美资全资的信用评级供应商。美国电子支付供应商获取许可证的审批流程将会改进，鉴于此类公司在申请中国市场运营许可时一直面临挑战，商会希望未来他们的许可证能够及时获得审批。中国金融服务领域这些限制的取消令

商会深受鼓舞，并期待外国金融机构能在中国 40 万亿美元规模的金融领域中发挥更大作用。我们促请中国遵守第一阶段协议规定，继续取消各类限制，确保外国金融机构能够在中国市场上提供全面服务。

中国改善营商环境的努力也得到了多个国际机构的肯定。在世界银行 2020 年《营商环境报告》中，中国的排名从 45 上升至 31 位，是改善最大的 10 个国家之一。这一排名体现了中国为改善营商环境在持续努力，但是，商会注意到，《营商环境报告》仅评估了北京和上海的政策。我们同时注意到，中国作为世界第二大经济体在营商环境中排名第 31，这意味着还有很多工作要做。

2020 年第一季度，中国一直在应对新冠肺炎的爆发，现在新冠肺炎已经变成全球流行病。此次病毒爆发给中国、商界和全球公共卫生领域带来了前所未有的挑战，在本书发布之后，这些挑战也将继续存在。商会在 2020 年 2 月开展的一项快速调查显示，新冠肺炎形势影响着我们的会员，三分之一的受访者表示他们的成本增加，收入显著下降，但是有一半的受访者称现在还不能确定新冠肺炎对他们 2020 年投资计划的影响，也有 25% 的人表示不打算降低投资水平。

商会一直与中国政府合作，帮助遏制病毒的传播。截止 2 月中，我们的会员企业已经捐出 5 亿元（7400 万美元）现金和物资（个人防护设备、医疗器械、药品和消毒剂）给武汉、湖北省以及其他疫区（与当地伙伴合作）。商会将继续与地方政府和中央政府密切合作，帮助政府了解会员正常运行的具体需求。

关税和紧张局势升级后的重大进展

2019 年是中美之间关税和紧张局势不断升级的一年，起因是美国贸易代表办公室于 2018 年 3 月发布 301 报告，之后两国贸易争端开始。2019 年 3 月 1 日两国宣布暂时“休战”，但是美国政府在 5 月将 2018 年 9 月确定的 2000 亿美元中国输美商品的关税从 10% 上调到 25%，中国作为反击，在 6 月份提高了价值 600 亿美元的美国进口商品的关税。8 月，美国政府称将分两批（九月和十二月）对 3000 亿美元中国输美商品加征 10% 的关税，这意味着几乎 99% 的中国输美商品都要被加征关税，作为反制，中国计划对 750 亿美元的美国进口商品加征关税。

to help the government understand our members specific needs to get their operations running normally.

Escalating Tariffs and Tension Followed by a Breakthrough

2019 was characterized by a period of escalating tariffs and tension between China and the US, stemming from the trade dispute which began in March 2018 following the publication of the USTR Section 301 Report. Although a temporary truce was announced through March 1, 2019, the US government in May raised tariffs on US \$200 billion of Chinese imports that had been in place since September 2018 from 10 percent to 25 percent. China responded by raising tariffs on US \$60 billion of imports to 25 percent in June. In August, the US government stated that it would impose a fresh 10 percent tariff on approximately US \$300 billion of imports from China in two phases (September and December). Imposition of these tariffs would mean that approximately 99 percent of goods from China to the US would have been covered by a tariff. China retaliated with a plan to impose tariffs on a further US \$75 billion in imports from the US.

Amidst this tariff escalation, President Trump and General Secretary Xi met at the G20 in Japan in June and agreed to restart negotiations towards a deal that had broken apart in May, when the US government accused the Chinese government of backtracking on a significant number of previously agreed commitments that were incorporated in the draft agreement text.

In September, China announced it would exclude 16 products (worth US \$2 billion in imports and including animal feeds, chemicals, and petroleum products) from tariffs, and the US announced that it would delay a planned tariff increase from 25 to 30 percent on US \$250 billion of imports from China. In October, President Trump acknowledged the Phase One Deal, and, in December, called off the planned tariff increase on imports from China scheduled to be imposed as of December 15. The Phase One Deal was signed in Washington, DC by President Trump and Vice Premier Liu He on January 15, 2020.

The Phase One Deal includes provisions covering ① intellectual property protections for trade secrets, pharmaceutical intellectual property, trademarks, and enforcement against counterfeit goods, ② an agreement from China to end the practice of pressuring companies to transfer technology as a condition of market access, ③ removal of non-tariff barriers to US agriculture products, ④ removal of restrictions on financial services including foreign equity restrictions, ⑤ commitments to transparency on issues around currency and exchange rates, ⑥ commitments from China to import US \$200 billion in US goods and services above annual 2017 levels within two years, and ⑦ a dispute resolution mechanism.

AmCham China congratulates both China and the US on concluding the Phase One Deal. We hope that this deal puts a floor under further deterioration of the bilateral relationship, ends the cycle of escalating tariffs, and creates positive momentum for continued negotiations to address remaining structural issues in the economic relationship. Throughout 2019, AmCham China consistently reaffirmed its opposition to tariffs as a method to resolve the trade dispute, not only because of the obvious and immediate harm caused by tariffs but also because member companies often face operational disruptions from non-tariff barriers. Over 75 percent of members report some impact from the tariffs on their business operations, primarily through decreased demand for products and increased manufacturing costs. We are now focused on monitoring and supporting implementation of the Phase One Deal by providing objective information to both governments and advocating for practical and workable solutions to the challenges facing the foreign business community. We nevertheless recognize that implementation has been complicated by COVID-19.

Significant work remains to be done to address longstanding structural issues in the economic relationship. AmCham China acknowledges that any “Phase Two” agreement between the US and China to create a level playing field will need to address structural issues like China’s discriminatory economic policies based on state support and domestic protectionism, its restrictive cybersecurity and data policy regulations which handicap many leading US high-tech companies in the China market, and tolerance of cybertheft activities that target American companies’ intellectual property. We will work hard to be a useful resource for both sides throughout the implementation of the Phase One Deal and lay the groundwork for a potential Phase Two agreement.

In the sections below we explore in more detail the current sentiment of the foreign business community towards the China market, its opportunities, and the persistent concerns of foreign businesses in China.

Some Optimism Despite an Uncertain Environment

US companies continue to face an uncertain operating environment in China due largely to unfairness in the US-China relationship and a slowing Chinese economy. COVID-19 is only adding to the short and long-term uncertainty. To unpack the business sentiment, AmCham China’s 2020 *China Business Climate Survey Report* (BCS), released in March 2019, captures the perspective of our diverse membership base. According to the BCS, financial earnings were down in 2019 as 21 percent of our members reported revenues were down compared to 12 percent in 2018. Profitability varied by sector and by type of operation. The Resources & Industrial sector saw the largest proportion of companies reporting revenues were down (28 percent) Fifty-five percent of respondents characterized their financial performance as “profitable”

在关税升级背景下，特朗普总统和习近平总书记6月份在日本二十国集团峰会会面，双方同意重启谈判以达成协议，之前5月谈判破裂是因为美国政府指责中国对之前协议草案中的多项承诺出尔反尔。

9月，中国宣布免除16种美国产品（价值20亿美元的进口产品，包括动物饲料、化学品和石油产品）的额外关税，美国宣布推迟加征中国2500亿美元商品的关税，这批商品的关税原定从25%提升至30%。10月，特朗普总统承认第一阶段协议，并在12月取消了原定12月15日开始实施的中国进口商品关税加征计划。第一阶段协议是特朗普总统和刘鹤副总理于2020年1月15日在华盛顿特区签署的。

协议内容包括：① 针对商业秘密、药品知识产权、商标和打击假冒盗版商品的知识产权保护；② 中国同意不再向外国公司施压要求用技术转让作为市场准入的条件；③ 消除对美国农产品的非关税壁垒；④ 取消对金融服务包括对外资股权的限制；⑤ 承诺确保货币和汇率相关问题的透明度；⑥ 中国承诺两年内在2017年基数之上，再额外从美国进口2000亿美元的货物和服务以及⑦ 建立争议解决机制。

商会祝贺中美两国达成第一阶段协议，我们希望该

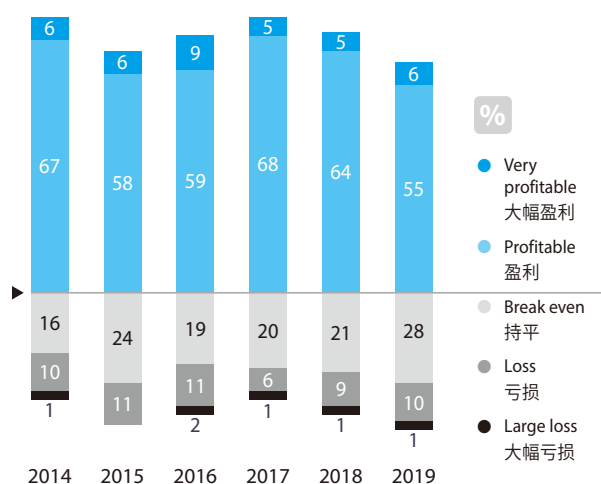
协议能够避免双边关系恶化，结束关税升级的循环，并为双方继续谈判解决经济关系中的其他结构性问题创造积极势头。在2019年，商会一直重申，反对使用关税作为解决贸易争端的方法，因为关税不仅会造成明显和直接的损害，还会导致会员公司因非关税壁垒无法正常运行。我们75%的会员公司都报告称业务运营受到了关税的影响，主要是产品需求下降，制造成本上升。我们现在重点监督和支持第一阶段协议的实施，向两国政府提供客观信息，并倡导切实可行的解决方案，来应对外国商界面临的诸多挑战。但是我们也认识到，新冠肺炎爆发使得协议实施更为复杂。

要解决经济关系中长期存在的结构性问题仍然是任重道远。商会认识到，美中之间如果要达成“第二阶段”协议，打造公平竞争环境，就必须解决结构性问题，例如中国国家支持和出于国内保护主义实施差别性经济政策，中国对网络安全和数据政策的限制性规定使得许多知名美国高科技公司无法进入中国市场，以及中国容忍针对美国公司知识产权的网络盗窃活动。第一阶段协议为未来第二阶段协议奠定了基础，我们也将努力工作，在第一阶段协议实施过程中为双方提供有益的帮助。

在后面章节中，我们将更详细介绍目前外国商界对中国市场、市场机遇的看法，以及在华外资企业的持续性担忧。

Figure 1. How would you characterize your company's financial performance in China in 2019?

图 1. 2019 年贵公司在华业务的盈利状况如何？



Source: AmCham China 2020 China Business Climate Survey Report
资料来源：中国美国商会 2020 年《中国商务环境调查报告》

不确定环境中的一些乐观情绪

美国企业在中国的运营环境仍是不确定的，很大程度上是因为中美关系不公平以及中国经济放缓，新冠肺炎只是加剧了短期和长期的不确定性。为了解读商界看法，商会在2019年3月发布了2020年《中国商务环境调查报告》（《报告》），其中收录了商会各领域会员企业的看法。该《报告》显示，在2019年有21%的会员企业报告称财务收益下降，相比之下，2018年有12%的企业报告下降。利润率因行业和运营类型而异。在报告收入下降（28%）（图1）的公司中，来自资源和工业领域的最多。55%的受访者称本公司的财务状况是“可盈利”，28%的受访者认为本公司“收支平衡”。相比之下，在2018年，64%的公司认为本公司“可盈利”，只有21%的公司“收支平衡”（见图1）。

值得关注的是，尽管2019年财务状况欠佳，但是会员企业对2019年的投资环境比对2018年更为乐观。

and 28 percent were “breakeven.” In 2018, by contrast, 64 percent reported their performance as “profitable” and only 21 percent were “breakeven” (Figure 1).

Interestingly, despite weaker financial performance in 2019, members displayed greater optimism about the investment climate in 2019 than in 2018. In 2019, 50 percent reported the investment environment was improving, compared with 19 percent who said it was deteriorating and 30 percent who said it remained unchanged. In 2018 by contrast, 38 percent reported it was improving and 41 percent said it was “staying the same” (Figure 2). Companies in the aerospace, retail and distribution, and investment service sectors are the most optimistic. US businesses also reported they felt more welcome in China in 2019 than in 2018. Twenty seven percent said they felt “more welcome,” compared to 38 percent who reported they felt “less welcome” (and 35 percent reported no change). This is an improvement from 2018 when only 20 percent said they felt “more welcome,” and a large improvement from 2016, when 81 percent said they felt “less welcome.” In line with the spirit of the FIL, 52 percent of companies said they were “treated equally” versus local companies, an increase from 48 percent in 2018.

As in years past, China remains an important global investment destination among member companies. Some 39 percent reported China as a “top-three” investment priority (down from 42 percent in 2018), while 20 percent ranked it as a “First Priority” (same as in 2018).

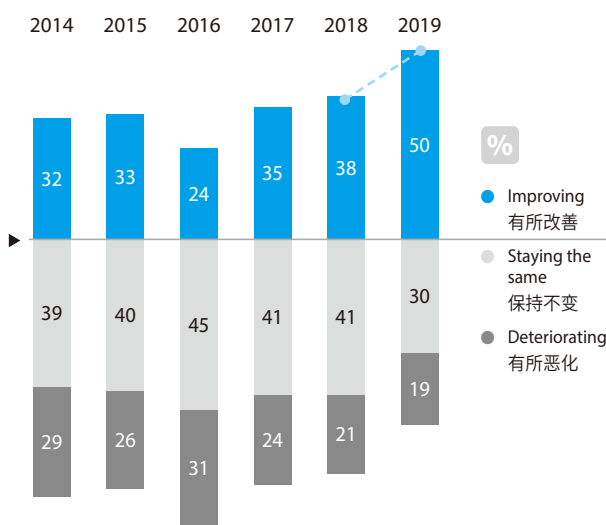
In 2018, the BCS reflected that the two-year business outlook for US companies in China gradually shifted from one of cautious optimism to cautious pessimism with respect to China’s domestic market growth, competitive pressure, cost competitiveness, potential profitability, and regulatory environment. In 2019 we saw this trend reverse in some respects, although significant pessimism remains in some areas. For instance, in 2019 our members displayed greater optimism in 2019 than 2018 about the China market in the following areas: cost competitiveness, profitability potential, the regulatory environment, and US-China relations. Even with the uptick in optimism with respect to US-China relations, 51 percent reported that they were pessimistic about the outlook for US-China bilateral relations.

Despite indications that members feel the investment climate is improving, 37 percent are not planning to expand investments or are planning to decrease investments in their China operations.

Opportunities in the China Market

In a growing market as large as China, there are always commercial opportunities. As in 2018, companies are again predominantly focused on “growing their core business” (72 percent), “launching new products and services” (58 percent), and “targeting new customer segments” (44 percent).

Figure 2. The quality of China’s investment environment is:
图 2. 中国投资环境的质量：



Source: AmCham China 2020 China Business Climate Survey Report
资料来源：中国美国商会 2020 年《中国商务环境调查报告》

Only 22 percent prioritized “entering new business” and 19 percent targeted “growth through acquisitions of joint ventures or other business partnerships.” Approximately five percent are planning to retreat from the China market. As with years past, the growth in “domestic consumption/rise of an increasingly sizeable and affluent middle class” remains the top opportunity for businesses in China. “Ongoing economic and market reforms” is the second most promising market opportunity. Notably, 50 percent of respondents from the services sector reported “globalization of Chinese companies and increased outbound investment” as their top market opportunity.

Capital Controls, Party Cells, and the Social Credit System

The 2020 BCS for the first time included questions about capital controls, the requirement for all companies (including FIEs) to establish Party cells, and the corporate Social Credit System (SCS). Our members overwhelmingly report (80 percent) that it is more difficult to remit funds out of China than in other major capital markets. Members find the process to be complex, opaque, and time-consuming. The regulations for remitting funds can differ significantly across banks, branches, and occasionally within the same bank branch.

With respect to Party cells, over 50 percent of respondents have been required to establish such cells, although only seven percent report a negative impact from having to do so, and five percent report they have benefitted from doing

2019年，50%的受访者报告称投资环境在改善，19%称环境在恶化，30%称未改变。相比之下，在2018年38%的受访者称环境在改善，保持不变（见图2）。航空、零售和分销以及投资服务领域的公司最为乐观。美国企业还报告称，他们感觉2019年在中国的受欢迎程度比2018年更高。27%的公司称感到“更受欢迎”，38%称感到“不太受欢迎”，（35%称没有改变），这相对于2018年有所提升，因为2018年只有20%的公司感到“更受欢迎”，相对于2016年更是显著提升，彼时81%的会员感到“不太受欢迎”。在遵照《外商投资法》精神的情况下，52%的公司称与本土公司“待遇同等”，相较于2018年的48%有所增加。

与过去几年一样，中国仍然是会员企业重要的全球投资目的地。39%的受访者称中国是其投资“三大目的地”之一（2018年42%，略高），20%称中国是其“首要投资目的地”（与2018年持平）。

2018年，《报告》显示在华美企对未来两年商业前景的态度由谨慎乐观逐渐转变为谨慎悲观，主要针对的是中国国内市场增长、竞争压力、成本竞争力、潜在盈利能力和监管环境。2019年，这种态度在某些方面有所逆转，但是一些领域的悲观情绪非常严重。例如，与2018年相比，在2019年，我们的会员在以下方面对中国市场更为乐观：成本竞争力、潜在盈利能力、监管环境和中美关系。即便对中美关系的乐观情绪有所上升，但仍有51%的会员称对中美双边关系前景较为悲观。

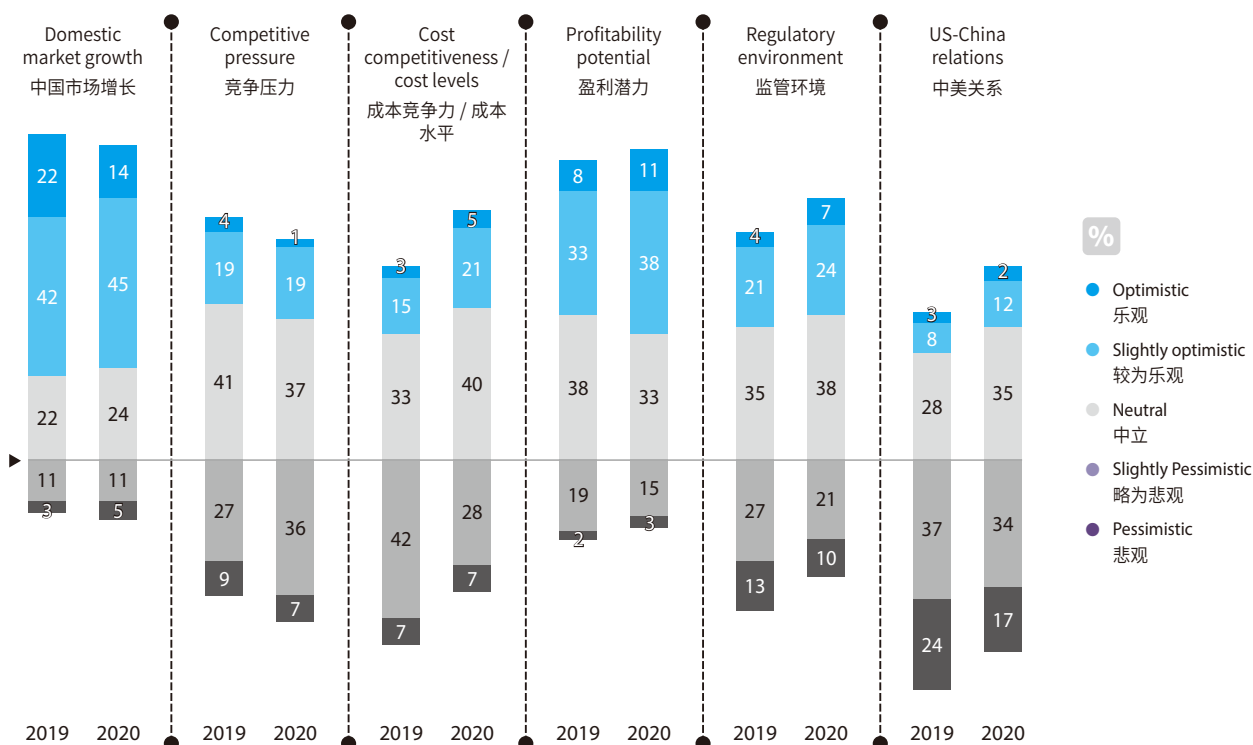
虽然种种迹象表明会员认为投资环境在改善，但仍有37%的公司不打算扩大投资，或者计划减少在中国运营的投资。

中国市场的机遇

在像中国这样不断增长的大市场中，总会有商机。在2018年，公司主要关注“发展核心业务”（72%）、“推

Figure 3. How would you describe your two-year business outlook in China on the following aspects?

图3. 贵公司对今后两年以下几方面对中国有何展望？



Source: AmCham China 2020 China Business Climate Survey Report
资料来源：中国美国商会2020年《中国商务环境调查报告》

so. The majority (60 percent) of those which have established Party cells report no impact from having done so. Among those reporting a negative impact, they note that the Party cell limits dialogue and hinders trust, and that the establishment of the Party cell imposes administrative burdens on the business (such as being required to attend various Party activities) that are outside the scope of their work.

With respect to the establishment of the corporate SCS, which is already being rolled out and planned for full implementation by the end of 2020, 39 percent of members see its establishment as a positive development because it could ① help to level the playing field between foreign-invested and domestically-invested firms, or ② limit market access of bad actors, thus improving the environment for compliant enterprises. It should be noted however, that a further 31 percent report there is “not enough data available to form an opinion.”

Persistent Challenges Remain

Longstanding, persistent challenges continue to hinder the ability of US firms to conduct business in the Chinese market. These challenges speak to the desire of the US government to reorient the US-China economic relationship as epitomized by the ongoing trade dispute and the cautious optimism that has greeted the signing of the Phase One Deal. Many challenges stem from market access restrictions which inhibit the business operations of over 80 percent of respondents; by contrast only 17 percent reported that market access restrictions do not have an impact. These challenges, which are particularly acute in the consumer sector and the “technology and other R&D sector,” with 91 percent and 83 percent respectively reporting at least a moderate impact on their operations. Some members report that while they do not face “formal market access barriers,” they are being challenged by market share targets for domestic enterprises driven by government industrial policy, which is prompting Chinese consumers to shift their purchasing patterns towards domestic-made brands and goods. More than 60 percent of respondents would increase investment in China if its markets were open to the same degree as markets in the US.

In 2019, “rising labor costs” (selected by 45 percent of respondents) returned as the number one challenge facing members, a position it last held in 2014. That may reflect concerted efforts by the government this year to improve the regulatory and business environment. Nevertheless, “inconsistent regulatory interpretation and unclear laws & enforcement” is the number two challenge facing the US business community (41 percent of respondents) after having been the top challenge each year from 2015 to 2018. “Regulatory compliance risks” returned in 2019 as a top-five challenge, last appearing among the top five in 2017. This may reflect concerns over US companies being targeted for enforcement action and the introduction of measures like the “Unreliable Entity List.” It dovetails alongside “rising

tensions in US-China relations” (41 percent), which remained among the top-five challenges in 2019, as it was in 2018 when it first appeared in the BCS. In fact, in the “Technology & other R&D-intensive industries” sector and the “Resources & Industrial” sector, “rising tensions in US-China relations” was the top reported challenge in 2019.

Table 1 displays an expanded list of the top 10 challenges facing member companies in China.

Table 1. Top 10 Challenges facing American Business in China, 2019

| 2019 Rank | 2019 Challenge | Percent of Respondents | 2018 Rank |
|-----------|--|------------------------|--------------------|
| 1 | Rising labor costs | 45% | 2 |
| 2 | Inconsistent/unclear laws and/or regulations and enforcement | 41% | 1 |
| 2 | Rising tensions in US-China relations | 41% | 3 |
| 4 | Regulatory compliance risks, including insufficient lead time to comply with new regulations | 22.9% | 6 |
| 5 | Shortage of qualified licenses | 22.6% | 5 |
| 6 | Difficulty obtaining required licenses | 20.4% | 10 |
| 7 | Industrial overcapacity | 20.4% | 9 |
| 8 | US tariffs on Chinese goods | 19.6% | Not in 2018 top 10 |
| 9 | RMB volatility | 19.6% | 8 |
| 10 | Increased competition from privately owned Chinese firms | 18% | 4 |

An Improving Environment for Intellectual Property Protection

IP and innovation protections also remain longstanding concerns for the US business community in China, despite the fact that many members believe the Chinese market is leading in emerging technology adoption, including artificial intelligence, 5G, and autonomous driving. Nevertheless, in 2019 AmCham China members reported the IPR environment

出新产品和服务”（58%）以及“瞄准新客户群”（44%）。只有 22% 的公司关注“拓展新业务”，19% 的公司关注“通过收购合资企业或其他商业伙伴关系实现增长”，约有 5% 的企业打算撤出中国市场。同过去一样，“国内消费 / 日益庞大和富裕的中产阶级崛起”带来的增长仍然是企业在中国的最大机遇，“持续性经济和市场改革”则是第二大机遇。值得注意的是，50% 服务领域的受访者称“中国企业全球化和对外投资增多”是其最大的市场机遇。

资本管制、党支部和社会信用体系

2020 年的《中国商务环境调查报告》首次收录了关于资本控制、企业（包括外商投资企业）建立党支部的要求以及企业社会信用体系（SCS）的相关问题。我们的多数会员（80%）都报告称相对于其他主要资本市场，将资金汇出中国要更困难，而且会员认为汇出的过程复杂、不透明且耗时，不同银行、分行，甚至同一银行分行的汇款规定都大相径庭。

就党支部而言，超过 50% 的受访者被要求成立党支部，不过只有 7% 的公司称此举有负面影响，5% 的公司称从中获益。多数（60%）成立党支部的公司称此

举没有影响。报告负面影响的公司称，党支部限制了对话，不利于建立信任，同时给企业带来了工作范围外的行政负担（例如要求参加各种党内活动。）

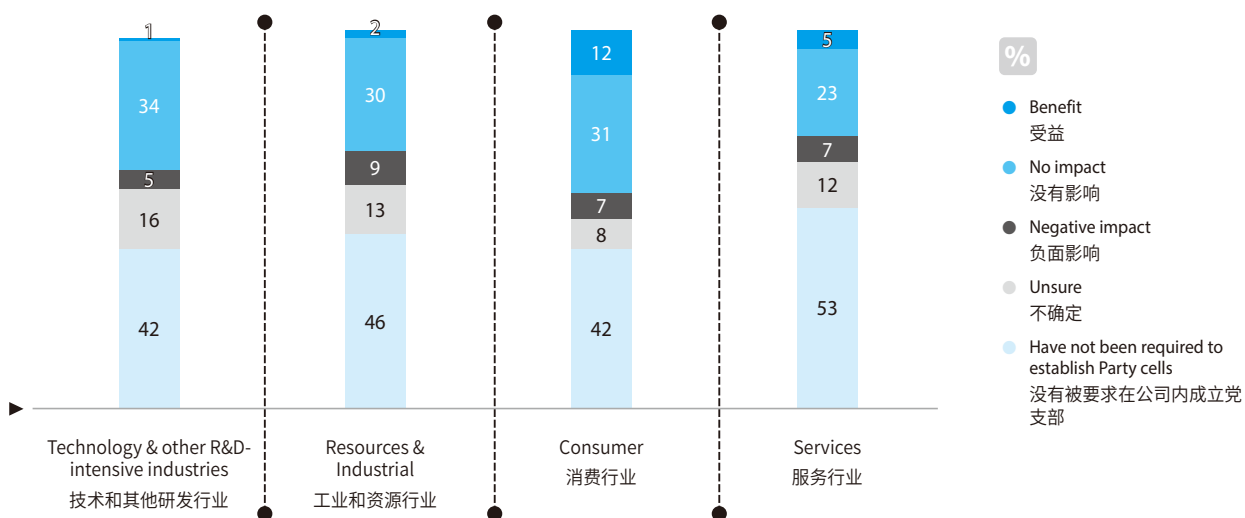
就企业社会信用体系而言，相应工作已经展开并计划到 2020 年底全面实施，在这一方面，39% 的会员认为此举是积极的，有助于 ① 为外商投资企业和本土投资企业打造公平竞争环境，② 限制不良行为者进入市场，从而改善合规企业的环境。但是要注意的是，还有 31% 的企业称“数据不足，无法形成观点。”

长期挑战仍然存在

长期和持续性的挑战还在阻碍美国公司在中国市场开展业务。这些挑战也表明美国政府希望调整美中经济关系，从双方贸易争端和第一阶段协议签署后的谨慎乐观就可见一斑。很多挑战都源于市场准入限制，导致 80% 的受访者企业运营受到抑制；相比之下，只有 17% 的公司称市场准入限制没有影响。在消费者领域和“技术及其他研发领域”，有些挑战尤其严峻，分别有 91% 和 83% 的公司称受到了中等程度或更严重的影响。有些会员表示虽然不受“正式市场准入壁垒”影响，但在政府产业政策的推动下，他们的挑战来自于国内企

Figure 4. To what extent do requirements to establish Party cells within your company impact the strategy and operations of your business?

图 4. 在公司内成立党支部的规定在多大程度上影响了贵公司的战略和运营？

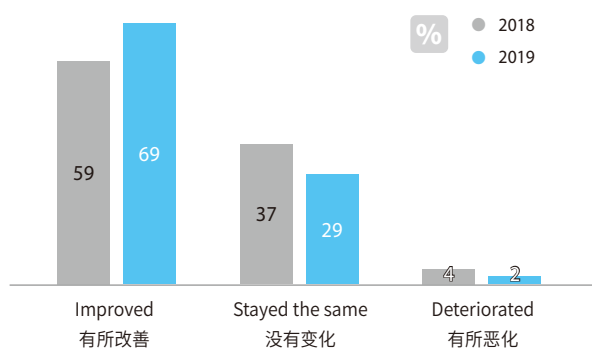


Source: AmCham China 2020 China Business Climate Survey Report
资料来源：中国美国商会 2020 年《中国商务环境调查报告》

was improving. Some 69 percent of respondents reported China's enforcement of IPR improved in 2019, compared to 58 percent in 2018. Moreover, in 2019, 29 percent of respondents said concerns of inadequate intellectual property protection limited their company's investment in China, compared with 34 percent in 2018 (Figure 5). These results are consistent with high-level statutory commitments by the Chinese government to continue improving the system for IPR made throughout 2019. The FIL Implementing Regulations include provisions for the creation of an IPR dispute mechanism and a punitive damages mechanism to improve enforcement of IPR.

Figure 5. In the last five years, China's enforcement of Intellectual Property Rights (IPR) has:

图 5. 在过去的五年里, 中国在知识产权法律法规的执行方面:



Source: AmCham China 2020 China Business Climate Survey Report
资料来源: 中国美国商会 2020 年《中国商务环境调查报告》

Despite the progress witnessed by AmCham China with respect to IP protection, it is important to acknowledge that IP remains a significant area of focus for our member companies. In the 2020 International IP Index from the US Chamber of Commerce, China's score improved as it was ranked 28 of 53 countries with respect to their IP framework. The 2020 Report acknowledged progress in the following areas: removal of some barriers and restrictions on technology transfer and licensing, trademark amendments to address the issue of bad faith filings, and amendments to the *Anti-Unfair Competition Law* that seek to strengthen the protection of trade secrets. At the same time, the Index acknowledged there had been no progress on a biopharmaceutical linkage mechanism since 2017, and despite improved enforcement efforts, levels of IP infringement remain high, and the interpretation of IP laws does not fully align with international standards.

In 2019, insufficient IP protection, restrictive cybersecurity-related policies, and insufficient talent remained the top barriers to innovation among member companies. While only 29 percent of respondents reported that inadequate IP protection limits their investment in China, 42 percent

in the "technology and other R&D-intensive sectors" said that inadequate IP protection limits their investments. With respect to top IP challenges, the number of companies reporting "difficulty prosecuting IP infringements in court or via administrative measures" as their top IP challenges fell from 39 percent to 26 percent. At the same time, the number reporting "IP theft by employees" and "licensing constraints" increased (from 13 to 20 percent and from four to 11 percent respectively).

The BCS paints a complex picture of opportunities laced with significant challenges in the world's second biggest economy. Member companies are clear that improvements in regulatory transparency and greater market access would have the greatest impact on their investment decisions. At the same time, they would like to see the US government advocate more strongly for a level playing field (41 percent), engage in results-oriented government dialogues (34 percent), and reduce tariffs on Chinese goods (32 percent).

AmCham China's 2020 Policy Priorities

The opportunities and challenges just discussed provide the platform for AmCham China's 2020 Policy Priorities. While the following chapters of the *White Paper* provide many specific and detailed recommendations, our policy priorities establish an overarching framework under which the more specific recommendations can be understood. We believe that any actions to address the imbalances in the US-China relationship or achieve a comprehensive negotiated outcome in the ongoing negotiations are best formulated by keeping these issues in mind.

Priority One: Rebuilding Trust through Concrete Actions Leading to Greater Transparency and Evenhandedness of Regulatory Processes

Restoring and rebuilding trust is essential to creating the positive environment necessary to resolve the structural issues at the heart of the trade dispute. Following many years of bilateral discussions when commitments were often made and not fully implemented, restoring trust will require concrete, measurable actions from both sides. Given the heightened political scrutiny facing the US-China relationship in both countries, the foreign business community has an important role to play in helping to call attention to and address underlying economic issues, and to do so in a manner that is neutral, objective, and fact-based. The business community is particularly well-positioned to monitor and provide input with respect to implementation of the Phase One Deal.

For China to act on its promises of greater economic opening, boost its economy, navigate the transition towards an economy of high value-add goods and services, and

业市场份额目标，在该目标驱动下，中国消费者都转向购买国产品牌和商品。超过 60% 的受访者称，如果中国市场开放程度与美国一样，他们将增加在中国的投资。

2019 年，“劳动力成本增加”（45%）继 2014 年之后再次成为会员面临的首要挑战，这可以表明政府今年为改善监管和营商环境在努力。但是，“法律法规解释执行不一致 / 不明确”是商界（41%）面临的第二大挑战，而在 2015-2018 年，该挑战位列第一。在 2019 年，“监管合规风险”继 2017 年后，再次成为五大挑战之一，这也表明美国公司担忧会成为执法行动目标以及“不可靠实体清单”等措施的实施，这一点也可以解释为什么“美中关系紧张加剧”（41%）仍是 2019 年首要挑战，这一点在 2018 年首次出现在《报告》中时就是首要挑战。实际上，对“技术和其他研发密集型”行业以及“资源和工业类”行业来说，“美中关系紧张加剧”是其 2019 年面临的首要挑战。

表 1 展示了在华会员公司面临的十大挑战

| 表1. 在华美国企业面临的十大挑战，2019年 | | | |
|-------------------------|---------------------|-------|-------------|
| 2019 排名 | 2019年 挑战 | 受访者比例 | 2018 排名 |
| 1 | 劳动力成本增加 | 45% | 2 |
| 2 | 法律法规解释执行不一致 / 不明确 | 41% | 1 |
| 2 | 美中关系紧张加剧 | 41% | 3 |
| 4 | 监管合规风险，包括遵守新规准备时间不足 | 22.9% | 6 |
| 5 | 合格职工紧缺 | 22.6% | 5 |
| 6 | 难以获得所需许可证 | 20.4% | 10 |
| 7 | 工业产能过剩 | 20.4% | 9 |
| 8 | 美国对中国商品关税 | 19.6% | 不是 2018 年前十 |
| 9 | 人民币波动 | 19.6% | 8 |
| 10 | 中国私企竞争增加 | 18% | 4 |

知识产权保护环境改善

很多会员认为中国市场在采用新兴技术方面处于领先地位，包括人工智能、5G 和自动驾驶，但是知识产权和创新保护仍是在华美企的长期担忧。然而在 2019 年，商会的会员称知识产权保护的环境正在改善。2019 年，69% 的受访者称中国知识产权实施有所改善，相比之下 2018 年该比例是 58%。此外，2019 年，29% 的受访者称对知识产权保护不足的担忧限制了自己公司在中国的投资，而 2018 年的比例是 34%（见图 5）。这些结果得益于中国政府在 2019 年通过高层立法改善知识产权体系。《外商投资法实施条例》中提出要设立知识产权争端解决机制和惩罚性赔偿机制，来改善知识产权的实施。

商会看到了中国在知识产权保护方面取得的进展，但重要的是，我们要看到知识产权仍然是会员企业关注的重点。在美国商务部发布的 2020 年《国际知识产权指数报告》中，中国的排名有所提升，就知识产权框架而言，在 53 个国家中排名 28。该报告认可了中国取得的一些进展，包括取消技术转让和授权的一些壁垒和限制，对商标法进行修订来解决恶意备案问题，以及修订《反不正当竞争法》来强化对商业秘密的保护。但是，该指数也表明自 2017 年以来中美生物医药专利链接制度的建立毫无进展，虽然专利实施方面有所改善，但知识产权侵权率居高不下，而且知识产权法律的解读跟国际标准并非完全一致。

2019 年，会员公司创新的主要障碍是知识产权保护不足、限制性网络安全政策和人才短缺。虽然只有 29% 的受访者称知识产权保护不足限制其在中国的投资，但是“技术和其他研发密集型领域”的公司中有 42% 称知识产权保护不足限制其在中国的投资。就知识产权领域的首要挑战而言，有 26% 的公司称“难以通过法律或行政途径起诉知识产权侵权”是其最大的挑战，这一比例之前是 39%。与此同时，报告称有“员工知识产权盗窃”和“许可限制”的公司比例均有所增长，（分别从 13%，4% 增加到 20%，11%）。

本《报告》表明在中国这个世界第二大经济体中，环境复杂，机遇与挑战并存。我们的会员公司明白监管透明度的提高和市场准入的扩大对其投资决策影响最大。他们同时也希望美国政府能够更积极地推动公平竞争（41%），参与结果导向型政府对话（34%），同时降

continue to improve the livelihood of ordinary Chinese citizens, addressing the structural economic issues facing the foreign business community will be important. The foreign business community also has a role to play in communicating the reality of operating in the Chinese market in an accurate, objective, and timely manner to counterparts in both governments. To that end, government access for AmCham China and our member companies is essential.

The stability and predictability provided by a transparent and evenhanded regulatory environment will be important for the continued growth of both foreign-invested and domestically-invested businesses in China, and we urge the Chinese government to take further steps to adopt a more fully inclusive and accountable process for the formulation and implementation of laws and regulations. The FIL Implementing Regulations provide for creation of a “complaint settlement mechanism” to address disputes or complex issues raised by FIEs. This is a positive development, and fair and transparent implementation of such mechanism would go some way to rebuilding trust in China’s commitment to a level-playing field for FIEs. At the same time, member companies will likely need on-the-ground evidence, beyond rhetorical commitments, that attempting to address disputes via the mechanism will not result in retaliation from the government or related entities.

Finally, greater transparency and accountability among regulators would not only aid the government’s fight against corruption, but also boost confidence in private companies, both domestic and overseas, that their investments will be fairly protected under law.

- Inconsistent/unclear regulations and enforcement is still one of the major challenges for AmCham China members and has been the leading or number two business challenge for members for over seven years. In 2020, “regulatory compliance risks” returned as a top five business challenge, last appearing in 2018. (2020 BCS)
- “Greater transparency, predictability, and fairness of the regulatory environment” was cited by 41 percent of members as a “very” or “extremely significant” potential driver of new investment. (2020 BCS)
- Despite progress, China still ranks only 67 among 128 countries for regulatory enforcement in the 2020 Rule of Law Index. (World Justice Project)
- China ranks 109 among 209 countries and territories for regulatory quality in the 2019 Worldwide Governance Indicators from the World Bank.

To rebuild trust in the bilateral relationship, we recommend that:

- The Chinese government prioritize greater access for AmCham China, other foreign chambers of commerce, and their members to address both general indus-

try-wide challenges and also technical issues relating to normal business operations.

- Commitments to meaningful reform include clear benchmarks, timelines, and intensive monitoring to ensure lasting changes to China’s legal and regulatory architectures and impartial implementation of laws and regulations. Similarly, coordinated and consistent policy development, implementation, and enforcement between Chinese government ministries must be prioritized.
- Transparency be improved by releasing formal findings and case histories of anti-monopoly and other compliance-related investigations.
- The use of “window guidance” be eliminated and public directives be released instead.
- Written explanations be provided whenever administrative agencies deny or provide conditional approvals for license and other applications.
- FIEs be given equal opportunity to participate in the drafting and review of relevant laws and regulations, including ensuring draft “comment periods” are provided with reasonable timelines and made public far enough in advance to ensure full participation by the domestic and foreign business communities.
- The “complaint settlement mechanism” referenced in the FIL be developed in close consultation with the business community and the Chinese government demonstrate in practice that entities which use the mechanism will not then be subject to retaliatory action.
- Both sides endeavor to create more opportunities for foreign-invested and domestically-invested businesses to collaborate on global issues of common interest, particularly public health. The COVID-19 pandemic will have wide-ranging impacts on the China, US, and global economy. Mitigating the impact of the COVID-19 pandemic will require close cooperation between China and the US and their respective business communities. When the immediate public health emergency created by the virus eventually recedes, both sides should work together to cultivate conditions to promote bilateral FDI and trade.
- Both governments prioritize bilateral communication at the working level and with strong business community engagement on both sides, as well as high-level dialogue, particularly with respect to implementation of the Phase One Deal.

Priority Two: Promoting Development through Policies of National Treatment and Competitive Neutrality

The Chinese government has committed to further market opening in 2020 across a number of sectors. In the financial services sector, foreign equity caps are scheduled to be phased out throughout 2020 in the investment banking,

低对中国商品的关税（32%）。

商会 2020 年政策重点

商会 2020 年政策重点正是基于以上的机遇和挑战确定的。《白皮书》的后面章节提供具体的细节和详细的建议，但是我们的政策重点是一个总体框架，在该框架下可以理解更具体的建议。我们认为，要解决中美关系失衡问题，或在当前的谈判中取得全面成果，就必须牢记前面提到的问题。

重点一：利用实际行动重建信任，提高监管流程透明度和公平性

要打造积极的环境，恢复和重建信任是关键，以解决贸易争端中的核心结构性问题。多年双边讨论的结果往往是做出承诺却并不充分执行，所以恢复信任将需要双方采取具体的、可衡量的行动。鉴于中美两国对双边关系的政治关注更为密切，外国商界可以发挥重要作用，以中立、客观和实事求是的方式帮助呼吁人们关注并解决潜在经济问题。商界还可以就第一阶段协议的实施提出建议和进行监督。

中国要履行自身相关承诺，包括扩大经济开放、提振经济、转向高附加值商品和服务型经济以及继续改善民生，就必须解决外国商界面临的结构性经济问题。外国商界还要准确、客观、及时地把在中国市场运营的情况告知美国政府相关部门，为此，商会和我们的会员必须要有跟政府沟通的渠道。

透明和公平的监管环境是稳定、可预测的，这对于在华外资企业和本国企业的持续增长至关重要，所以我们促请中国政府进一步强化法律法规制定过程的包容性和可问责性。《外商投资法实施条例》提出设立“投诉解决机制”来解决外商投资企业提出的争端或复杂问题。这是积极的进展，此类机制的公平和透明实施有助于重建人们对中国承诺对外商投资企业一视同仁的信任。同时，会员企业不仅需要口头承诺，还需要实际的行动证明：利用该机制解决争议的话，政府或相关实体不会进行报复。

最后，监管机构更大的透明度和更强的问责不仅有助于政府的反腐行动，还能增强本国和外国企业的信心，确保他们的投资受到法律的保护。

- 法律法规解释执行不一致 / 不明确仍是商会会员面临的主要挑战，而且连续 7 年是首要或第二大业务挑战。2020 年，“监管合规风险”在 2018 年后再次成为五大商业挑战之一。（2020 年《中国商务环境调查报告》）
- 41% 的会员称“监管环境更透明、更可预测、更公平”是可能增加新投资的一个“很重要”或“极其重要”的因素。（2020 年《中国商务环境调查报告》）
- 中国虽然已经取得相应进展，但在 2020 年的法治指数中，中国在 128 个国家中仅排名第 67。（世界正义工程）
- 在 2019 年世界银行的全球治理指标中，在监管质量方面，中国在 209 个国家和地区中排名第 109。

要重建对双边关系的信任，我们建议如下：

- 中国政府优先给予商会、其他外国商会及其会员权限，来应对一般性行业挑战和日常业务运营中的技术问题。
- 承诺进行有意义的改革，制定明确的基准、时间表和重点监测，以确保中国的法律和监管结构有长久性改变，法律法规得到公正的实施。同样地，中国政府部委之间就政策制定、实施和执行要保持协调一致，这一点也很重要。
- 对于反垄断和其他合规类调查，正式调查结果和案例记录要予以公开，以提高透明度。
- 不再使用“窗口指导”，并发布公共指令代替。
- 对于许可或其他申请，行政机构拒绝批准或有条件的批准时，应提供书面解释。
- 为外国公司提供平等参与起草和审核相关法律法规的机会，并确保草案的“征求意见期”时间表合理，并提前公布，以便国内外商界充分参与。
- 《外商投资法》中提到的“投诉解决机制”应与商界协商建立，中国政府还要证明，实际应用该机制的实体将不会受到报复。
- 双方应努力为两国企业创造机会，就共同关心的全球问题开展合作，尤其是在公共卫生领域。新冠肺炎大流行病的爆发将会对中国、美国和全球经济带来广泛的影响，减轻新冠肺炎的影响需要中美两国及企业之间密切合作。此次病毒引发的突发公共卫生事件结束后，双方应共同合作，创造条件，推动双边直接投资和贸易。
- 两国政府要重视工作层面的双边沟通，并确保双方

credit ratings, electronic payment services, financial asset management, insurance, securities, fund management, and futures sectors. In the automotive sector, foreign equity caps on the production of commercial vehicles are due to be removed this year (although joint venture requirements for other vehicles still exist).

AmCham China welcomes these reforms. At the same time, market access policies should not only open previously restricted industries to FIEs, but also ensure a level playing field for all foreign and domestic firms within those industries.

To that end, policies that emphasize national treatment benefit the entire economy – not just FIEs. We believe that government policy should place all parties in China – including both FIEs, state-owned, and domestically-invested private companies – on an even, competitive footing. Enacting a policy of “competitive neutrality” is especially important given the increasing scrutiny facing the US-China commercial relationship and the questions being raised internationally about the greater market access enjoyed by Chinese companies overseas compared to the access FIEs have in China.

- The economic and technological impact of FIEs, and the ripple effects through their supply chains and the spending of employees, averaged 33% of China’s GDP from 2009 to 2013. Despite a decline in global FDI flows in 2017 and 2018, China remained the second largest global recipient of FDI in 2018. (Developing China: The Remarkable Impact of Foreign Direct Investment; UNCTAD 2019 World Investment Report)
- In 2017 FIEs accounted for 44.8 percent of China’s total imports and exports, contributed to an estimated 9.7 percent of GDP, and did so while employing only about 3.2 percent of the total labor force. (Invest in China, World Bank, and China Statistical Yearbook 2018)
- Half of respondents say the investment environment is “deteriorating” (19 percent) or “staying the same” (30 percent), while the other half report the investment environment is improving (50 percent), an improvement as compared with 2019. (2020 BCS)

And yet:

- Market access (63 percent), government financial support (42 percent), and public procurement (39 percent) are the top three areas where unfair treatment occurs according to AmCham China members. (2020 BCS)
- According to the 2020 Index of Economic Freedom compiled by the Heritage Foundation, China ranked in the bottom third of all 187 countries with respect to “investment freedom,” with a score of 20 out of 100. The US scored 85 on the same index.

- China’s licensing and approval regimes forestall or deny market access even in nominally open sectors.
- Informal practices and other non-tariff barriers such as anti-trust and standard-setting processes, and lengthy customs licensing procedures, limit US companies’ ability to compete equally in the market.
- China has multiple Special Economic Zones (SEZs) that offer preferential investment policies and are often used to pilot market-oriented reforms. However, these pilot reforms often lack a clear roadmap for implementation nationwide, raising the concern that SEZs are being used to restrict the rollout of market-oriented policies to limited geographies, rather than serving as a staging ground for nationwide implementation.
- China has shown a distressing propensity to retaliate without legal justification against FIEs and imports from particular countries which are perceived to have displeased China.
- Nearly 82 percent of respondents’ report that market access restrictions inhibit their operations in China. (2020 BCS)
- Some 37 percent of respondents believe foreign companies are treated unfairly, and 38 percent feel less welcome than before, and another 35 percent report “no change.” (2020 BCS)

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

- Foreign investors be provided treatment no less favorable than the best treatment offered to any domestic Chinese company, whether private, state-owned or state-controlled.
- Laws and regulations, enforcement activities, approval processes, procurement preferences, and other requirements that treat foreign entities, products, and services less favorably than domestic firms be eliminated.
- Market opening be implemented in more sectors, particularly areas in which previous commitments have already been made, to achieve a more balanced investment relationship. If Chinese businesses can make an investment in the US, American companies should be able to make the same investment in China subject to the same terms and conditions.
- The Chinese government substantially narrow its foreign investment Negative List in close consultation with the business community, bringing it in line with those in other advanced economies.
- The Chinese government should open its markets to FIEs on equal terms in emerging sectors such as the cloud computing service business to both enhance competitiveness and ensure the sector develops in tandem with emerging globally accepted standards and practices. Such reform should be prioritized as part of any phase two negotiations between China and the US.

商界的积极参与，开展高层对话，尤其是关于第一阶段协议实施的对话。

重点二：以国民待遇和竞争中立政策推动发展

中国政府承诺在 2020 年进一步开放多个市场领域。在金融服务领域，投资银行、信用评级、电子支付服务、金融资产管理、保险、证券、基金管理和期货行业的外资股比限制将在 2020 年逐步取消。在汽车行业，商用车生产的外资股比限制将于今年取消（但是对其他车型的合资要求仍然存在）。

商会欢迎此类改革，同时，市场准入政策不仅要向外商投资企业开放之前限制的行业，还要确保在这些行业内对中外企业一视同仁。

这样的话，国民待遇相关的政策不仅对外企有利，还将惠及整体经济。我们相信，政府政策应确保中国境内各方，包括外商投资企业、国企和国内私企的公平竞争。制定“竞争中立”的政策尤其重要，因为美中商业关系受到的关注日益增加，同时与外商投资企业在中国的市场准入相比，中国企业在海外享受的市场准入更大，国际社会对此也质疑不断。

- 在 2009-2013 年，外商投资企业的经济和技术影响，以及其供应链和员工支出产生的连锁反应，平均占中国 GDP 的 33%。2017 年和 2018 年全球外国直接投资流量有所下滑，但中国在 2018 年仍是全球第二大外国直接投资接受国。（发展中的中国：外国直接投资的巨大影响；联合国贸易和发展会议，《2019 年世界投资报告》）
- 2017 年，外商直接投资企业贡献了中国总进出口的 44.8%，大概相当于 9.7% 的 GDP，而且只雇用了总劳动力的 3.2%（投资中国，世界银行，《2018 年中国统计年鉴》）。
- 半数的受访者称投资环境在“恶化”（19%）或“保持不变”（30%），另一半称投资环境在改善（50%），这与 2019 年相比有所提升（2020 年《中国商务环境调查报告》）。

但是：

- 商会成员称他们遭受不公平待遇的三大领域分别是

- 市场准入（63%）、政府财政支持（42%）和政府采购（39%）（2020 年《中国商务环境调查报告》）。
- 在美国传统基金会编写的《2020 年经济自由度指数》中，在“投资自由度”一项，中国在 187 个国家中排名倒数第三，100 分满分，中国得分 20，而美国该指数的分数是 85。
- 即便是在名义上开放的领域，中国的许可证和审批制度也会使得企业难以或无法获得市场准入。
- 非正式做法和其他非关税壁垒像反托拉斯、标准制定程序以及漫长的海关许可流程限制了美国企业在市场上公平竞争的能力。
- 中国在多个经济特区中提供优惠投资政策并将其作为试点进行市场化改革。但是此类试点改革往往缺乏清晰的全国实施路线图，令人担忧经济特区是用来将市场化政策限制在特定地区，而不是为全国实施进行试点。
- 中国倾向于在没有法律依据的情况下，对外商投资企业和令中国不满的某些国家的进口进行报复，这是令人担忧的。
- 将近 82% 的受访者称市场准入限制阻碍其在中国的运营。（2020 年《中国商务环境调查报告》）
- 约 37% 的受访者认为外企受到了不公正待遇，38% 感到没以前那么受欢迎，还有 35% 认为“没有改变”。（2020 年《中国商务环境调查报告》）

要打造真正公平的竞争环境，我们建议如下：

- 外国投资者的待遇不应低于任何中国私有、国有或国有控股企业的最优待遇。
- 对外国实体、产品和服务与中国企业区别对待的法律法规、执法活动、审批流程、采购偏好和其他要求都应取消。
- 更多领域实行市场开放，尤其是已经承诺开放的领域，来建立更平衡的投资关系。如果中国企业可以在美国投资，美国企业也应该可以依照同样的条款和条件在中国投资。
- 中国政府与商界密切磋商来大幅缩减其外国投资负面清单，并与其他发达经济体保持一致。
- 对于云计算等新兴领域，中国政府应当按照相同的条款对外商投资企业开放，来增强竞争能力，并确保该领域的发展符合新形成的全球公认的标准和做法。中美之间第二阶段的谈判应该优先考虑这类改革。
- 中国应当放弃使用暗示性、未公开或内部指导文件

Examples of a Lack of Reciprocity in the Bilateral Investment Relationship

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

| Industry | China | US |
|------------------------------------|---|--|
| <i>Agriculture</i> | Foreign investment in biotech crop breeding, seed production, and commercialization is prohibited. | Foreign investment in biotechnology is permitted without an equity cap. |
| <i>Automotive</i> | Foreign companies must form a joint venture with a Chinese partner, foreign equity in the production of passenger and commercial vehicles is capped at 50 percent, and the number of joint ventures per investor is capped. Foreign equity caps are not scheduled to be removed until 2022. | Foreign investment in the automobile industry is permitted without an equity cap. |
| <i>Banking and Capital Markets</i> | Foreign mutual fund, securities, and futures firms have long been subject to foreign equity caps. These are scheduled to be removed by April 1, 2020 under the Phase One Deal between the US and China. The equity cap on the securities industry has been lifted effective April 1. | Foreign mutual funds are not subject to an equity cap. |
| <i>Healthcare Services</i> | Foreign investment in medical institutions is capped at 70 percent. Foreign-invested hospitals are banned from opening new hospital branches. | Foreign investment in medical institutions is permitted without an equity cap. |
| <i>ICT</i> | Foreign firms are subject to 50 percent ownership caps in most value-added telecommunications services, including cloud computing. | Foreign investment in the provision of cloud services is permitted without an equity cap. |
| <i>Insurance</i> | Foreign investment in life insurance has long been subject to foreign equity caps, most recently a 51 percent equity cap as of 2018. These caps are scheduled to be removed by April 1, 2020 under the Phase One Deal between the US and China. | Foreign investment in the insurance industry is generally permitted without an equity cap. |
| <i>Legal Services</i> | Foreign law firms cannot hire Chinese lawyers and foreign citizens cannot be licensed to practice Chinese law. | Chinese law firms can hire US lawyers and foreign citizens can be licensed to practice US law. |
| <i>Media and Entertainment</i> | Foreign-invested companies cannot distribute films in China without restrictions. The Chinese government schedules film release dates and foreign films are subject to revenue-sharing agreements which mandate that 75 percent of revenues must remain with Chinese film production companies. | Chinese companies can distribute films in the US without restrictions and can determine their own release dates. |

双边投资关系缺乏对等的例子

由于投资限制、限制性规定、选择性执法和采购障碍，美国公司在中国受到了许多不公平待遇。下面列出的例子并不详尽，但是可以展示市场准入挑战和缺乏对等性所导致的竞争环境不公平。

| 行业 | 中国 | 美国 |
|----------|--|-----------------------------------|
| 农业 | 禁止外国投资生物技术作物育种，种子生产和商业化。 | 允许外国投资生物技术，没有股权上限。 |
| 汽车 | 外国公司必须与中国合作伙伴组建合资企业，客运和商用车生产的外资股权上限为50%，每个投资者的合资企业数量有限。外资股权上限计划到2022年取消。 | 允许外国投资汽车行业，没有股权上限。 |
| 银行业和资本市场 | 外国共有基金、证券和期货公司一直有外资股权上限，按照美中第一阶段协议将于2020年4月1日取消。证券行业的外资股权上限已取消，4月1日生效。 | 外国共有基金不受股权限制。 |
| 医疗服务 | 医疗机构的外国投资上限为70%。外资医院禁止开设新的医院分支机构。 | 允许外国投资医疗机构，没有股权上限。 |
| 信息和通信技术 | 外国公司在多数增值电信服务领域的所有权上限为50%，包括云计算。 | 允许外国投资提供云服务，没有股权上限。 |
| 保险业 | 截止到2018年，外国人寿保险投资股权上限为51%，这些限制根据美中第一阶段协议于2020年4月1日取消。 | 一般允许外国投资保险业，没有股权上限。 |
| 法律服务 | 外国律师事务所不能聘请中国律师，外国公民无法获得许可执业中国法律。 | 中国律师事务所可以聘请美国律师，外国公民可以获得许可执业美国法律。 |
| 娱乐和媒体业 | 外资企业不能无限制地在中国发行电影。中国政府安排电影发行日期，外国电影受制于收益分享协议，该协议规定75%的收入必须留在中国电影制作公司。 | 中国公司可以不受限制地在美国发行电影，并可以自行决定发行日期。 |

- China should abandon the use of implicit, unpublished, or internal guidance to replace US and foreign-made products/services with domestically-made equivalents. National security reviews and “secure and controllable” technology requirements should be narrowly applied and not used for economic protectionism or in support of industrial policy.
- The Chinese government use its SEZs to pilot market-oriented policies and reforms with a clear timetable for implementation nationwide. Ensure that successful pilot policies and reforms are then implemented nationwide in a transparent manner according to the agreed-upon timetable.
- The Chinese government reduce overcapacity, fully declare subsidies and eliminate those that are non-WTO compliant, and remove other policies that promote unfair competition.
- Lack of sufficient IP protection remains the No. 1 (26 percent) barrier to increasing innovation in China, though this is an improvement on last year where 35 percent of members reported it was the number one barrier (2020 BCS).
- In addition to IP protection, increased restrictiveness of cybersecurity-related policies constitutes a significant barrier (25%) to increasing innovation in China. (2020 BCS).

We recommend that:

Priority Three: Stimulating Innovation through Global Cooperation and Intellectual Property Protection

Innovation has ripple effects that bring broad benefits to the economies of both China and the US in areas like economic competitiveness, human capital development, ability to attract investment, and quality of jobs in knowledge-intensive sectors. R&D activities are a critical activity for both domestically-invested and foreign-invested companies operating in China. Sustained creativity, however, can only be realized on a level playing field with equal protection of rights under law – both on paper and in practice – for foreign and domestic companies alike. To realize its innovation goals, China needs to strengthen its infrastructure and open its institutions to allow information to flow more freely. Creativity is the product of diverse ideas combined in an environment where technology-neutral standards are set with broad participation and IP is protected from theft.

We believe the rapid pace of innovation exceeds the ability of any single government to manage, meaning that technology regulation requires public-private engagement across borders. Moreover, R&D will be most effective when it is subject to intellectual property protection and equitable standards for all innovators. To that end, the *Foreign Investment Law* includes provisions specifically to enhance IP protections for FIEs and to ensure their IP receives equal treatment in standards setting, a promising development.

- Although China’s IP protection regime improved significantly towards the end of the last decade, the level of IPR protection has since slowed. In 2019 China was ranked 28 of 53 countries with respect to IP protection. (The International Intellectual Property Rights Index, 2020)
- Innovation is a top-three priority for nearly half of our respondents (45 percent). (2020 BCS)
- The Internet be promoted as a platform for global interaction and restrictions on cross-border data flows such as those provided in the Cybersecurity Law be limited to encourage international collaboration and innovation.
- A comprehensive trade secrets law be developed.
- The successful development of IP courts be continued and the power of administrative bodies (e.g., NIPA) to investigate and punish infringement be balanced alongside the continued development of IP courts.
- A clear, unified system of penalties be established to deter IP theft including through cyber-enabled means.
- All standards development technical committees be open to FIEs so that they can participate on an equal basis with domestic companies. Where possible, standards development processes should seek to bring China’s domestic standards in line with internationally accepted standards and best practices.
- The Chinese government consult closely with the foreign business community during the development of IP protection mechanisms detailed in the FIL including a punitive compensation system, mechanisms for better coordination of IP protections, and a dispute settlement mechanism for IP.
- The US government seek participation from US and Chinese companies as it determines what will be covered as emerging and foundational technologies with respect to export controls and make determinations based on global availability as well as the critical nature of the technology.

要求用国产的同等产品 / 服务取代美国和外国制造的产品 / 服务。国家安全审查和“安全可控”的技术要求应在严格的情况下使用，不应当用于经济保护主义或支持产业政策。

- 中国政府应使用经济特区作为市场化政策的试点，并制定清晰的全国实施时间表，确保对成功的试点政策和改革进行全国推广，并按照定好的时间表透明开展。
- 中国政府减少过剩产能，全面申报补贴，取消不符合世贸规定的补贴，并废除导致不公平竞争的其他政策。

重点三：通过全球合作和知识产权保护激励创新

创新的连锁反应将会给中美两国经济带来广泛的益处，集中在经济竞争力、人力资本开发、吸引投资能力以及知识密集型行业工作质量等领域。研发活动对于在中国运营的国内外公司都至关重要。但是，持续性创新的实现有赖于国内外公司的公平竞争，且各方的权利在理论和实际上都受到法律的同等保护。中国要实现其创新目标，必须要加强基础设施建设，开放机构，让信息更加自由地流动。创造力是多元思想在特定环境下的产物，在这种环境中，技术中立标准是多方参与制定的，知识产权是受到保护免遭窃取的。

我们认为创新发展迅猛，任何一个政府都无法单独管理，所以管控技术需要各国公私领域的通力合作。此外，只有当知识产权受到保护，所有创新者享受同等标准，研发才最有效。为此，《外商投资法》中特别加入保护外商投资企业知识产权的条款，以确保其知识产权在标准制定中享有同等待遇，这是非常积极的进展。

- 中国的知识产权保护制度在近十年来取得了长足的进步，但是知识产权保护水平却有所下降。2019年，在知识产权保护方面，中国在53个国家中排名28。（《2020年国际知识产权指数报告》）
- 将近一半的受访者（45%）将创新视为三大重点之一。（2020年《中国商务环境调查报告》）
- 对很多企业来说（26%），知识产权保护不足仍是在中国持续创新的最大障碍，这一比例较上年的35%有所下降，表明情况略有改善。（2020年《中国商务环境调查报告》）

- 除知识产权保护外，网络安全相关政策的限制不断增加，成为很多企业（25%）在中国持续创新的一大障碍。（2020年《中国商务环境调查报告》）

我们建议：

- 利用互联网平台促进全球交往，放宽《网络安全法》里规定的跨境数据流动限制来鼓励国际合作与创新。
- 制定全面的商业秘密法。
- 知识产权法庭的成功可以推广，行政机构（例如国家知识产权局）查处侵权行为的权力要和知识产权法庭的发展保持平衡。
- 建立明确统一的惩罚制度，并通过网络手段阻止知识产权盗窃。
- 所有标准制定技术委员会要向外商投资企业开放，以便其与国内企业平等参与。可能的话，标准制定程序应当确保中国国内标准与国际公认标准和最佳做法一致。
- 中国政府按照《外商投资法》制定知识产权保护机制之时，应当与外国商界密切磋商，引入惩罚性赔偿制度，更好协调知识产权保护的机制以及知识产权纠纷解决机制。
- 在出口管制方面，美国政府与美国和中国公司一起合作，确定新兴技术和基础技术的覆盖范围，并依据全球可用性和技术的关键性质做决定。

2020 White Paper Recommendation Scorecard

The Recommendation Scorecard is an important tool that helps AmCham China track the progress made each year in its top areas of concern. The following table is an index of the priority recommendations from the 2019 AmCham China *White Paper*.

The progress rating indicates our members' perception of the level of progress – either high, moderate, or low – achieved by relevant government officials in addressing the priority challenge designated in each chapter of the 2019 *White Paper*. The final column indicates each chapter's priority recommendation for 2020.

| Chapter | 2019 Recommendation | Progress Score | 2020 Recommendation |
|---|---|-------------------|---|
| Agriculture | | | |
| <i>China Government</i> | Improve the competitiveness and sustainability of Chinese agriculture by further opening the industry up to foreign investment in agricultural biotechnology, modern agricultural processing, and bulk transportation. | Moderate Progress | Improve the competitiveness and sustainability of Chinese agriculture by further opening the industry up to foreign investment in agricultural biotechnology, modern agricultural processing, wheat, maize, soybean, and rice breeding, and seed production. |
| <i>US Government</i> | Strengthen communication with the Chinese government, explore space for cooperation, and resume the normalization of bilateral trade between the US and China. | Moderate Progress | Build on the momentum established by the Phase One Deal to strengthen communication with the Chinese government, explore space for cooperation, reduce tariffs on Chinese goods, and resume the normalization of bilateral trade between the US and China. |
| Automotive Industry | | | |
| <i>China Government</i> | Allow enterprises (both domestically-invested and foreign-invested) greater opportunity to participate in policy and regulatory development and submit comments during early stages of policy development to enable these policies to better address market need and facilitate sustainable energy development. | Low Progress | Allow enterprises (both domestically-invested and foreign-invested) greater opportunity to participate in policy and regulatory development and submit comments during the early stages of policy development to ensure that these policies better address market need and facilitate sustainable development. |
| Banking and Capital Markets | | | |
| <i>China Government</i> | | | |
| <ul style="list-style-type: none"> Commercial Banking | Remove all quotas in the banking sector, including on foreign debt. | Low Progress | Remove all quotas in the banking sector, including on foreign debt. |
| <ul style="list-style-type: none"> Asset Management | Release implementation rules for the asset management sector to clarify how to set up a foreign majority-owned joint venture. | Moderate Progress | Consistent with the removal of foreign equity caps for fund management as of April 1, 2020, remove the current seasoning requirements (two years) and recognize the offshore experience and track record of qualified applicants. |
| <ul style="list-style-type: none"> Custody Service | Allow foreign bank branches in China to offer full custody service to domestic securities investment funds. | Moderate Progress | Recognize global custodians in the mainland China market by removing the requirement for foreign investors to contract directly with local sub-custodians. |
| <ul style="list-style-type: none"> Securities | Remove market access barriers that, in practice, make it more difficult for US securities companies to benefit from market opening measures and to operate onshore in general. These barriers include licensing restrictions for securities JVs and financial eligibility requirements for majority owners of securities JVs. | Moderate Progress | Address the uncertainty around the capital repatriation process and timeline. Providing a clear, shorter timeline for the repatriation process would increase US investors' interest in deploying capital onshore by providing more confidence in their ability to repatriate funds when requested by investors' end clients. |
| <ul style="list-style-type: none"> Bonds and Derivatives | Further improve the Bond Connect scheme by allowing financial firms' foreign entities to serve as Bond Connect market makers. | Moderate Progress | Move towards a title transfer repo format as well as internationally-recognized GMRA documentation. Clarify default arrangements for tri-party repo transactions and expand the range of institutions eligible to act as third parties to include major financial institutions in addition to depository and settlement agents for interbank bonds. |

2020年《白皮书》建议评价一览表

建议评价一览表是中国美国商会追踪每年重点关切问题进展的重要工具。下列表格展示了2019年中国美国商会《白皮书》中讨论的重点建议及其2020年最新进展。

进展评级体现出商会会员对相关政府工作人员在解决2019年《白皮书》中每章重点问题所取得的、在进展程度上的评价——分为进展明显、有所进展、进展缓慢三个等级。表格思维最右一栏呈现了2020年白皮书每一章节的重点建议。

| 章节 | 2019年白皮书主要建议 | 进展评价 | 2020年白皮书主要建议 |
|----------------|---|------|---|
| 农业 | | | |
| 中国政府 | 进一步向外资开放农业生物技术、现代农业加工和粮食散货运输等领域，从而提高中国农业的竞争力和可持续性。 | 有所进展 | 进一步向外资开放农业生物技术、现代农业加工、小麦、玉米、大豆、水稻育种、种子生产等领域，从而提高中国农业的竞争力和可持续性。 |
| 美国政府 | 与中国政府之间加强沟通交流，进一步探索合作空间，推动中美双边贸易恢复正常化。 | 有所进展 | 在中美第一阶段经贸协议的基础上再接再厉，与中国政府加强沟通交流，进一步探索合作空间，下调对中国商品所征关税，恢复正常中美双边贸易往来。 |
| 汽车制造业 | | | |
| 中国政府 | 对内外资企业一视同仁，在政策制订和起草的早期阶段，给予企业更多参与政策、法规制定并反馈意见的机会，使这些政策更贴合市场痛点，促进能源可持续发展。 | 进展缓慢 | 对内外资企业一视同仁，在政策制订和起草的早期阶段，给予企业更多参与政策、法规制定并反馈意见的机会，确保相关政策更贴合市场痛点，从而推动可持续发展。 |
| 银行和资本市场 | | | |
| 中国政府 | | | |
| • 商业银行 | 取消银行业的所有配额，包括外债。 | 进展缓慢 | 取消银行业的所有配额，包括外债。 |
| • 资产管理 | 颁布资产管理业实施细则，对如何设立外资控股合资企业做出明确规定。 | 有所进展 | 遵循2020年4月1日起实施的“取消基金管理公司外资股比限制”的规定，取消现行两年境内经验要求，认可符合条件的申请人的境外经验和业绩。 |
| • 托管服务 | 允许在华运营的外资银行分行为国内证券投资基金提供全面托管服务。 | 有所进展 | 取消外国投资者需与地方托管行直接签订协议的规定，从而使全球托管行在中国大陆市场得到认可。 |
| • 证券 | 取消实际操作中阻碍美国证券公司从市场开放举措中获益、在中国境内运营的市场准入障碍，包括对证券合资企业的发牌限制以及证券合资企业控股的财务资格要求。 | 有所进展 | 解决资本抽回流程和各环节时间节点不明确的问题。明确规定资金抽回流程的时间节点、缩短流程周期将提高美国投资者在境内配置资本的动力；在投资者最终客户要求汇回资金时，美国投资者将更有信心。 |

| Chapter | 2019 Recommendation | Progress Score | 2020 Recommendation |
|---|--|-------------------|--|
| <ul style="list-style-type: none"> <i>Credit Rating</i> | Remove or ease foreign ownership restrictions on foreign-affiliated CRAs. | High Progress | Follow through on commitments to remove barriers to market entry and operation for foreign-invested credit ratings agencies. |
| <ul style="list-style-type: none"> <i>Automotive Financing</i> | Recommendation not provided in 2019. | N/A | Develop industry-specific regulatory requirements and standards through a transparent process with close consultation from the industry. |
| <ul style="list-style-type: none"> <i>Cybersecurity</i> | Recommendation not provided in 2019. | N/A | Explicitly allow companies and their subsidiaries to conduct intra-party cross-border data transfers and uphold the principles of free movement of data that China signed on to in the G20 Osaka Leaders Declaration. |
| Civil Aviation | | | |
| <i>China Government</i> | Increase efforts to adopt an integrated national ATFM framework that incorporates a SWIM system and CDM procedures for air traffic control, airline, and airport experts to enable growth and efficiency through enhanced system management that also alleviates delays. | N/A | Accelerate progress towards an integrated national ATFM framework and the national airspace capacity quantification system which will effectively support airport operators, airspace planners, and airline network development specialists through enhanced system management. |
| Civil Society | | | |
| <i>China Government</i> | Update and expand the list of PSUs and provide clear procedures and better incentives for government entities to act as PSUs. | Low Progress | Update and/or expand the list of PSUs and provide clear procedures and better incentives for government entities to act as PSUs. [MPS, State Council, NPC] |
| <i>US Government</i> | Continue to reiterate strong and abiding concerns regarding the <i>Overseas NGO Law</i> in exchanges with relevant government stakeholders in China. [US Department of State; Department of Labor; Environmental Protection Agency] | N/A | Recommendation not provided in 2020. |
| Competition Law | | | |
| <i>China Government</i> | Focus on genuine competition issues (and do not take into account trade and national security issues as part of SAMR's review process). Remain impartial between domestic companies and their foreign competitors. | Low Progress | Focus on genuine competition issues. Remain impartial between domestic companies and their foreign competitors and avoid allowing industrial policy interests to play a role in AML enforcement and abuse of dominance investigations. Consider the implications of the US Supreme Court decision in <i>Leegin Creative Leather Products, Inc. v. PSKS, Inc. (Kay's Closet)</i> with respect to RPM enforcement, the continuing tendency to reflect industrial policy considerations in merger reviews, and restrictions on the ability to take enforcement actions against SOEs, especially central SOEs. |
| Compliance | | | |
| <i>China Government</i> | Provide clear definitions and explanations of legal requirements that directly impact compliance. For example, clear definitions in the final version of the AUCL regarding commercial bribery and companies' liability for their employees' behavior will assist companies with developing and enforcing robust and practical programs for commercial bribery compliance. | Low Progress | Strive for additional clarity and consistency in regulatory enforcement and in the scope of responsibilities held by the central National Supervisory Commission and local supervision commissions. Greater transparency around anti-corruption enforcement action is paramount. Such efforts should include support for key components of the rule of law, including transparency, consistency in interpretation, and due process. |
| <i>US Government</i> | Engage in bilateral dialogues and in-depth exchanges to support the implementation of transparent and predictable regulatory systems, and a common understanding of compliance tools and objectives. | Moderate Progress | Engage in bilateral dialogues and in-depth exchanges to support the implementation of transparent and predictable regulatory systems, and a common understanding of compliance tools and objectives. |

| 章节 | 2019年白皮书主要建议 | 进展评价 | 2020年白皮书主要建议 |
|-------------|--|------|---|
| • 债券和衍生工具 | 进一步改善债券通计划，允许金融公司的外国实体以债券通造市商的身份提供服务。 | 有所进展 | 改为采用所有权转移回购格式以及国际公认的全局主回购协议。明确三方回购交易的违约处理安排，扩大第三方机构的资格范围，包括除银行间债券存管结算代理以外的大型金融机构。 |
| • 信用评级 | 取消或放宽对外资信用评级机构的外国所有权限制。 | 进展明显 | 履行承诺，消除外商投资信用评级机构的市场准入及运营壁垒。 |
| • 汽车行业融资 | 2019年未就汽车行业融资提出建议。 | N/A | 与业内密切协商，在制定行业具体监管要求和标准的过程中保持全程透明。 |
| • 网络安全 | 2019年未就网络安全提出建议。 | N/A | 明确允许公司及其子公司进行内部跨境数据传输，坚决遵守中国在二十国集团大阪领导人宣言中签署的数据自由流动原则。 |
| 民用航空 | | | |
| 中国政府 | 采用综合性的全国空中交通流量管理框架，包括关于空中交通控制、航空公司和机场专家的全系统信息管理体系和协同决策体系，通过加强系统管理来减少延误、促进增长和提高效率。 | N/A | 加快建设综合性的全国空中交通管理框架和全国空域容量量化系统。通过加强系统管理，该系统将有效支持机场运营商、空域飞机制造商和航空公司网络开发专家的工作。 |
| 民间团体 | | | |
| 中国政府 | 更新/扩大业务主管单位名单，同时为担任业务主管单位的相关政府机构制定明确程序、加大激励力度。[公安部、国务院、全国人民代表大会] | 进展缓慢 | 更新和/或拓展业务主管单位名单，同时为担任业务主管单位的相关政府机构制定明确程序、加大激励力度。[公安部、国务院、全国人民代表大会] |
| 美国政府 | 在中国政府相关方进行交流时，进一步重申对《境外非政府组织法》的持续关切。[美国国务院、劳工部、国家环境保护局等] | N/A | 在中国政府相关方进行交流时，进一步重申对《境外非政府组织法》的持续关切。[美国国务院、劳工部、国家环境保护局等] |
| 竞争法规 | | | |
| 中国政府 | 关注真正的竞争问题（在国家市场监督管理总局审查的过程中不考虑贸易和国家安全问题）。在国内企业与外国竞争对手之间保持公正。 | 进展缓慢 | 关注真正的竞争问题。在国内企业与外国竞争对手之间保持公正，避免让产业政策利益影响《反垄断法》执法和滥用支配权调查的结果。考虑美国最高法院对丽晶案（Leegin v. PSKS）PSKS 公意皮革公司控制转售价格之裁决的影响；考虑并购审查体现产业政策因素的持续倾向；以及对国有企业，尤其是中央国有企业采取执法行动能力的限制。 |
| 合规 | | | |
| 中国政府 | 明确定义对直接影响合规的法律要求。例如，在《反不正当竞争法》最终修订版本中明确定义商业贿赂，详细说明公司对员工行为承担的责任，将有助于公司制定和执行有力可行的商业贿赂合规计划。 | 进展缓慢 | 进一步明确国家监察委员会和地方监察委员会的职责范围，保持监管与执法的一致性；提高反腐执法工作的透明度是重中之重，应确保法治的关键构成要素落实到位，包括透明性、法律解释一致性和正当程序等。 |

| Chapter | 2019 Recommendation | Progress Score | 2020 Recommendation |
|-------------------------|--|-------------------|---|
| Customs | | | |
| <i>China Government</i> | Remove or improve the stated time limits for preliminary adjudication. | Moderate Progress | Utilize advanced and emerging technologies to improve the overall regulation of the customs system. Improve the reliability of customs clearance procedures by notifying companies in advance of planned system upgrades, avoid conducting a system upgrade during peak business hours, and provide improved support measures during system shutdowns or other similar emergencies. |
| Direct Sales | | | |
| <i>China Government</i> | Revise the Direct Sales Regulation as soon as possible, by relaxing restrictions on compensation for direct sales agents and allowing compensation to be based on the aggregate volume of the sales team under a direct sales agent, provided it is based on sales volume and not on the number of sales agents recruited. | Low Progress | Revise the Direct Sales Regulation as soon as possible, by relaxing restrictions on compensation for direct sales agents and allowing compensation to be based on the aggregate volume of the sales team under a direct sales agent, provided it is based on sales volume and not on the number of sales agents recruited. |
| Education | | | |
| <i>China Government</i> | Consistent with the past 40 years of <i>Reform and Opening</i> , continue to design, implement, and legislate policies to promote a more open, accessible, and sustainable education sector. | Low Progress | Consistent with the past 40 years of <i>Reform and Opening</i> , continue to design, implement, and legislate policies to promote a more open, accessible, and sustainable education sector. |
| <i>US Government</i> | Continue to implement US-China bilateral exchange programs in education, culture, and humanities among others, which benefit students and higher education institutions of both countries. | Low Progress | Continue to implement China-US bilateral exchange programs in education, culture, and humanities among others, which benefit students and higher education institutions of both countries. |
| Environment | | | |
| <i>China Government</i> | Establish clear national guidelines for environmental compliance and publish the rules online to make them accessible to both companies and regulators. Work to improve the technical capability of inspectors and regulators and provide at least 60 days advance notice before requiring production capacity reductions or shutdowns. Publish regulatory requirements and make regulatory material easily available to relevant companies. | Low Progress | Establish clear national guidelines for environmental compliance and publish the rules online to make them accessible to both companies and regulators. Improve the technical capability of inspectors and regulators and provide at least 60 days advance notice before requiring production capacity reductions or shutdowns. Provincial and local environmental authorities are encouraged to publish regulatory requirements and make regulatory material easily available to relevant companies. |
| <i>US Government</i> | Share environmental protection best practices and technologies where relevant with your Chinese counterparts. Encourage them to adopt international, scientifically-grounded emissions standards and adopt BACTs/BATs to reduce emissions. | Moderate Progress | Share environmental protection best practices and technologies where relevant with your Chinese counterparts. Encourage adoption of international, scientifically-grounded emissions standards. |
| Express Delivery | | | |
| <i>China Government</i> | Establish a uniform security regulation framework at the national level for the express delivery services industry. Clarify the responsibilities of the various regulatory bodies and standardize regulatory measures nationwide. | Moderate Progress | Establish a uniform regulatory framework at the national level for the express delivery industry. Clarify the responsibilities of the various regulatory bodies and standardize supervision nationally. Formulate unified technical standards including with respect to security inspection equipment that are jointly recognized by all relevant ministries and government bodies. |

| 章节 | 2019年白皮书主要建议 | 进展评价 | 2020年白皮书主要建议 |
|-------------|---|------|---|
| 美国政府 | 参与双边对话，深入开展交流，支持贯彻落实透明且可预测的监管制度，针对合规工具和目标达成共识。 | 有所进展 | 参与双边对话，深入开展交流，支持贯彻落实透明且可预测的监管制度，针对合规工具和目标达成共识。 |
| 海关 | | | |
| 中国政府 | 删除或变更预判的规定时限。 | 有所进展 | 充分利用高科技及新技术全面提升对海关系统的监管效果，提前通知公司系统升级计划，提高通关系统的稳定性，避免在高峰业务时段进行系统升级，并在系统关闭或其他类似紧急情况下改善支持措施。 |
| 直销 | | | |
| 中国政府 | 尽快修订《直销管理条例》，放宽直销员计酬限制，允许以直销员下属销售团队的销售总量为依据计酬，但不能以招募的人员数量为依据计酬。 | 进展缓慢 | 尽快修订《直销管理条例》，放宽直销员计酬限制，允许以直销员下属销售团队的销售总量为依据计酬，而非以招募的人员数量为依据计酬。 |
| 教育 | | | |
| 中国政府 | 在改革开放40年的基础上，继续制定实施政策，推动高等教育领域积极开放、促进可持续发展。 | 进展缓慢 | 与之前改革开放40年的步伐保持一致，继续制定、实施政策，推动教育领域变得更加开放、可负担，也更具可持续性。 |
| 美国政府 | 继续执行中美之间达成的一系列教育人文交流协议，以便两国的高等院校及学生皆从中受益。 | 进展缓慢 | 继续执行中美之间达成的一系列教育、人文交流项目，以便两国的高等院校及其学生皆从中受益。 |
| 环境 | | | |
| 中国政府 | 制定明确的环境合规国家指导方针，并在网上公示，供企业和监管机构查阅；提高检查员和监管人员的技术能力，并在要求减产或停产前至少提前60天发出通知；鼓励所有省级和地方环保部门公布监管要求，使相关公司得以更加便利地获得监管材料。 | 进展缓慢 | 制定明确的环境合规国家指导方针，并在网上公示，供企业和监管机构查阅；提高检查员和监管人员的技术能力，并在要求减产或停产前至少提前60天发出通知；鼓励所有省级和地方环保部门公布监管要求，使相关公司得以更加便利地获得监管材料。 |
| 美国政府 | 与中国同行分享环保执行的最佳实践经验和技 术，鼓励其采用以科学为基础的国际排放标准。并采用最佳可用控制技术和最佳可用技术来减少排放。 | 有所进展 | 与中国同行分享环保执行的最佳实践经验和技 术，鼓励其采用以科学为基础的国际排放标准。 |
| 快递服务 | | | |
| 中国政府 | 在国家层面加快建立快递行业安全监管统一领导框架，明确监管主体，统一全国监管措施。 | 有所进展 | 在国家层面加快建立快递行业安全监管统一领导框架，明确监管主体，统一全国监管措施。制定各部委共同认定的统一技术标准包括有关安检设备的技术标准。 |

| Chapter | 2019 Recommendation | Progress Score | 2020 Recommendation |
|---|---|-------------------|---|
| Food, Beverage, and Retail | | | |
| <i>China Government</i> | | | |
| <ul style="list-style-type: none"> • <i>Food and Beverage Industry</i> | Utilize existing platforms offered by organizations like AmCham China to develop Public-Private Partnerships or regular platforms for dialogue to encourage the sharing of international best practices and technology. | Moderate Progress | Put forth a unified framework and description of laws, regulations, and standards that govern the food and beverage industry. The relationship between food safety laws, rules, and standards and non-food safety standards that pertain to the food and beverage industry should be clarified, and the responsibilities of relevant government departments should also be clarified. |
| <ul style="list-style-type: none"> • <i>Retail Industry</i> | Regulate the retail industry, including both “brick and mortar” and online retailers, under a unified regulatory system that is marked by consistent enforcement of regulations nationally. | Moderate Progress | Develop a comprehensive legislative framework to oversee cross-border E-commerce import and export activities. Utilize the opportunity created by the amendment of the <i>Customs Law</i> to further enshrine these policies into law. |
| <i>US Government</i> | | | |
| <ul style="list-style-type: none"> • <i>Food and Beverage Industry</i> | Strengthen communication between relevant US government authorities, industry associations, and US enterprises in China. Increase opportunities to involve all parties in seminars, dialogues, and workshops related to international expertise and best practice urgently in demand across the Chinese government. | Moderate Progress | Strengthen communication between relevant US government authorities, industry associations, and US enterprises doing business in China. Increase opportunities to involve all parties in seminars, dialogues and workshops related to international expertise and best practice urgently in demand across the Chinese government. |
| Government Procurement | | | |
| <i>China Government</i> | Submit a new GPA offer that addresses the remaining gaps in its 2014 revised offer and accelerate negotiations in order to complete its accession to the GPA in 2019. | Moderate Progress | In the latest GPA offer, withdraw proposed one-year transitional thresholds, the reservation to require domestic content requirements, offsets, or transfer of technology and the claim to transitional measures as a developing country given the advanced state of its economy. |
| <i>US Government</i> | Work with the EU and the other GPA parties to encourage and facilitate China’s GPA accession in 2019. | Moderate Progress | Work with the EU and the other GPA parties to identify the improvements needed for their acceptance of China’s market access offer with the aim of facilitating China’s GPA accession in 2020 |
| Healthcare | | | |
| <i>China Government</i> | | | |
| <ul style="list-style-type: none"> • <i>Pharmaceuticals</i> | Establish data protection, patent link and patent period compensation systems as quickly as possible. Encourage innovation through effective protection of IP rights. Clarify both time limits and the process of protection for pharmaceutical products, in particular for innovative and therapeutic biological products. | Moderate Progress | Develop and solicit for public comment detailed implementing regulations in support of provisions laid out in the <i>Opinions on Strengthening Intellectual Property Rights Protection</i> and ensure that any such regulations are applied transparently and equally. |
| <ul style="list-style-type: none"> • <i>Medical Devices</i> | Promote industry innovation by allowing medical device standards to act as recommended guidelines rather than mandatory standards. The medical device industry is prepared to work with the NPC Legislative Council to resolve regulatory overlaps. | Moderate Progress | Promote industry innovation by allowing medical device standards to act as recommended guidelines rather than mandatory standards. The medical device industry is prepared to work with the Ministry of Just (MOJ) (the authority of the NPC Legislative Council has now been transferred to MOJ) to resolve regulatory overlaps. |

| 章节 | 2019年白皮书主要建议 | 进展评价 | 2020年白皮书主要建议 |
|------------------|--|------|--|
| 食品、饮料与零售业 | | | |
| 中国政府 | | | |
| • 食品饮料业 | 充分利用中国美国商会提供的现有平台，开展公私合作（PPP）项目或定期交流机制，鼓励分享国际先进经验及技术。 | 有所进展 | 建立整个食品饮料业法律、法规及标准体系的统一框架，并进行统一说明；明确食品安全法律法规、标准体系和非食品安全标准之间的关系；确定政府相关管理部门的职责划分。 |
| • 零售业 | 统一监管体系，监管包括实体企业和在线零售商在内的零售业，在全国范围内统一执行。 | 有所进展 | 制定全面法律框架，以监管跨境电子商务进出口活动。充分利用修订《海关法》的机会，将相关政策纳入法律。 |
| 美国政府 | | | |
| • 食品饮料业 | 加强美国政府相关部门、行业协会等与在华美企的交流；创造更多由各方参与的研讨、对话机会，交流针对中国政府亟需了解的各种国际性专业知识国际经验和、最佳实践经验等，增加由各方参与的研讨机会。 | 有所进展 | 加强美国政府相关部门、行业协会等与在华美企的交流；创造更多由各方参与的研讨、对话机会，交流中国政府亟需了解的各种国际性专业知识和最佳实践经验。 |
| 政府采购 | | | |
| 中国政府 | 提交一份新的《政府采购协定》（GPA）出价清单，弥补2014年修订后《政府采购协定》中存在的不足，并加快谈判进程，争取在2019年完成《政府采购协定》的加入。 | 有所进展 | 取消为期一年的过渡门槛，取消政府采购项目的本国比例、补偿或技术转让规定的保留。鉴于其经济的发达程度，不再宣称自己为发展中国家，并以此为由实施过渡性措施。 |
| 美国政府 | 商会敦促美国政府与欧盟和其他GPA参加方合作，鼓励和促进中国在2019年加入GPA。 | 有所进展 | 与欧盟和其他《政府采购协定》缔约方合作，确定中国市场准入需要做出的改进，推动中国在2020年加入《政府采购协定》。 |
| 医疗卫生 | | | |
| 中国政府 | | | |
| • 药品 | 尽快建立数据保护、专利链接和专利期补偿制度，切实保护知识产权，鼓励创新：明确保护时限和流程；明确包含创新治疗用生物制品。 | 有所进展 | 制定《关于强化知识产权保护的意见》有关规定的实施细则，并征求公众意见，保证实施的透明度和公平性。 |
| • 医疗设备 | 允许医疗设备标准作为推荐性指导方针而非强制性标准，促进行业创新。医疗器械行业准备与全国人大立法委员会合作解决监管重叠问题。 | 有所进展 | 允许医疗设备标准只作为推荐性指导方针而非强制性标准，促进行业创新。医疗器械行业准备与中国司法部（全国人大立法委员会的职责现已移交给司法部）合作解决监管重叠问题。 |

| Chapter | 2019 Recommendation | Progress Score | 2020 Recommendation |
|--|--|-------------------|--|
| <ul style="list-style-type: none"> Vaccines | Recommendation not provided in 2019. | N/A | Promulgate implementing measures as required under the Vaccine Administration Law as soon as possible. In particular, these regulations should include ❶ the scope, standard, and procedures for compensation provided to patients who undergo an abnormal reaction to a vaccine, ❷ specific measures to encourage commercial insurers to offer such coverage, and ❸ measures to establish a dynamic adjustment mechanism for selection of vaccines included in the National Immunization Program. Vaccine procurement for the National Immunization Program should be based on scientific principles and the quality of the vaccines themselves rather than the domicile of the manufacturer. |
| <ul style="list-style-type: none"> Gene Therapy Technologies | Recommendation not provided in 2019. | | Revise <i>Negative List</i> Article 28 to allow foreign investment in human stem cell, gene diagnosis, and therapeutic technology application and development as long as such investment does not alter the patient's genes, publicize, or transfer patient genetic information without appropriate authorization. If such revisions cannot be made, we recommend line ministries, agencies and departments be encouraged to promptly issue detailed implementing regulations, clarifications, and further guidance that clearly defines the scope of "human stem cell, gene diagnosis and therapeutic technology application and development," activities, and thus clarifies in which technologies and industries FIEs can invest. |
| <ul style="list-style-type: none"> Healthcare Services | Remove restrictions and limitations on foreign-invested hospitals under the "temporary regulation" including: a ban on new hospital branches, the requirement to report each branch separately for tax purposes, restrictions on the number of hospitals that foreign employees can work for, and the minimum bed number requirement for hospital accreditation. | Low Progress | Remove restrictions and limitations on foreign-invested hospitals including foreign equity limits, a ban on new hospital branches, the requirement to report each branch separately for tax purposes, and restrictions on the number of hospitals in which foreign employees and doctors can be permitted to work. |
| <ul style="list-style-type: none"> Occupational Health and Safety | Recommendation not provided in 2019. | N/A | Occupational health protection techniques and the health rights of medical personnel need to be clarified. This clarification should come as part of the proposed revision to laws and regulations in Healthy China 2030, such as the <i>Occupational Diseases Prevention and Control Law</i> . |
| High-Tech Trade Promotion and Export Controls | | | |
| China Government | Rescind policies designed to acquire intellectual property from foreign companies as a prerequisite for market entry and increase enforcement against companies that illegally procure technology from foreign companies. | Moderate Progress | Move forward in the expeditious implementation of the commitments made as part of the Phase One Deal to protect intellectual property and remove any prerequisites for technology transfers as a basis for market entry. |
| US Government | Formulate new controls on emerging and foundational technologies with a focus on those technologies that are not already widely available in China or being readily supplied from non-US sources and limit the list of covered emerging and foundational technologies to those technologies that can be realistically controlled. | Moderate Progress | Seek participation from US and Chinese companies as the US government determines what will be covered as emerging and foundational technologies and make determinations based on global availability as well as the critical nature of the technology. |
| Both Governments | Assist US and Chinese entities in strengthening their compliance efforts through education and training activities to ensure they do not run afoul of US national security and foreign policy interests. | Low Progress | Engage in greater efforts to assist US and Chinese entities in strengthening their compliance efforts through education and training activities to ensure they do not run afoul of US national security and foreign policy interests. |

| 章节 | 2019年白皮书主要建议 | 进展评价 | 2020年白皮书主要建议 |
|---------------------|--|------|--|
| • 疫苗 | 2019年《白皮书》未提出相关建议。 | N/A | 根据《疫苗管理法》的要求,尽快出台实施办法。尤其需要注意的是,实施法规应包括①明确规定向对疫苗有异常反应的患者提供补偿的范围、标准和流程;②鼓励商业保险公司提供此类赔偿的具体措施;③建立国家免疫规划疫苗动态调整机制的相关措施。国家免疫规划的疫苗采购应基于科学选择和疫苗本身的质量,而不是制造商的所在地。 |
| • 基因治疗技术 | 2019年《白皮书》未提出相关建议。 | N/A | 修改负面清单第28条,允许外商投资人类干细胞、基因诊断和治疗技术的应用和发展,当然这些投资不得未经授权改变患者的基因、公布或转移患者的基因信息。如果不能进行此类修订,商会建议职能部委、机构和部门迅速发布详细的实施条例、澄清及进一步指导,明确界定“人类干细胞、基因诊断和治疗技术应用与发展”活动的范围,从而明确外商投资企业可以投资哪些技术和产业。 |
| • 医疗服务 | 取消《暂行条例》对外商投资医院的限制,包括:禁止新建医院分支机构,要求各分支机构单独申报税务,限制外籍员工可以工作的医院数量,以及认证医院所需的床位数量。 | 进展缓慢 | 取消《暂行条例》对外商投资医院的限制和约束,包括:外资股比限制;对新建医院分支机构的禁令;要求各分支机构单独申报税务;允许外籍员工及外籍医生执业的医院数量限制。 |
| • 职业健康安全 | 2019年《白皮书》未编写此章节 | N/A | 明确职业健康防护技术和医务人员的健康权,在《健康中国2030》法律法规(如《职业病防治法》)修订建议中对此加以澄清。 |
| 高科技贸易促进和出口管制 | | | |
| 中国政府 | 废除以向外国公司收购知识产权为进入中国市场先决条件的政策,加大力度打击非法从外国公司购买技术的公司行为。 | 有所进展 | 尽快落实中美第一阶段经贸协议中的相关承诺,保护知识产权,取消将技术转让作为进入中国市场先决条件的规定。 |
| 美国政府 | 制定对新兴技术和基础技术的新管控措施,重点关注那些在中国尚未广泛获得或随时可从非美国供应商获得的技术,并将所涵盖的新兴技术和基础技术的清单限制为可以实际控制的技术。 | 有所进展 | 新兴、基础技术的涵盖范围由美国政府决定,并且以全球适用性和技术的关键性质为判定基础,因此应当寻求中、美两国企业共同参与。 |
| 对两国政府 | 通过教育和培训活动,协助两国实体加强合规,确保其不违反美国国家安全和外交政策利益。 | 进展缓慢 | 通过教育和培训活动,协助两国实体加强合规,确保其不会违背美国国家安全和外交政策利益。 |
| 人力资源 | | | |
| 中国政府 | 探索支持残疾人的创新途径,例如允许企业利用残疾人基金的资源支持慈善活动,改善劳动力培训和残疾人再教育,满足市场需求,建立将企业和残疾人求职相联系的机制。 | 有所进展 | 与劳动管理部门和行业协会合作,制定职业资格认证制度,规范灵活就业人员的聘用。 |

| Chapter | 2019 Recommendation | Progress Score | 2020 Recommendation |
|--|---|-------------------|---|
| Human Resources | | | |
| <i>China Government</i> | Explore more innovative approaches to support people with disabilities such as allowing enterprises to use resources from the Disability Fund to support charitable initiatives, improve workforce training and reeducation for people with disabilities that meets market needs, and establish mechanisms that connect businesses and people with disabilities looking for hire. | Moderate Progress | Partner with labor administrations and industry associations to develop a professional qualification certification system to regulate and standardize the hiring of flexible workers. |
| Information and Communications Technology and Cybersecurity | | | |
| <i>China Government</i> | The definition of CII should be clarified and made applicable only to a specific and relatively narrow category of information infrastructure, emphasizing but not going beyond its fundamental connection to national security. | Low Progress | Elements of the CSL need to be defined and clarified. We urge the government to maintain narrowly defined concepts and definitions that do not go beyond fundamental and reasonable definitions of national security. |
| <i>US Government</i> | Promote cooperation with Chinese agencies in international forums for the development of frameworks for ethical uses of AI, as well as for standard setting, and encourage the adoption in China of international standards and ethical frameworks. | Moderate Progress | Promote cooperation with Chinese agencies in international forums for the development of frameworks for ethical uses of AI, as well as for standard setting, and encourage the adoption in China of international standards and ethical frameworks. |
| Insurance | | | |
| <i>China Government</i> | | | |
| • <i>Ownership</i> | Issue detailed implementing measures describing how foreign equity caps can be raised to 51% for business operating in the insurance industry. | Moderate Progress | Issue detailed implementing measures describing how foreign equity caps can and will be lifted for businesses operating in the insurance industry. |
| • <i>Cyber Issues</i> | Clarify key definitions in China's <i>Cybersecurity Law</i> and review the effectiveness of the measures in the law as they are currently written. | Low Progress | Clarify key definitions in China's <i>Cybersecurity Law</i> including "critical Information Infrastructure," "personal information," "important data," and "applicable supervisors" and review the effectiveness of the measures in the law as they are currently written. |
| • <i>Licenses</i> | Increase competition in pension and health insurance by licensing foreign-invested applicants. | Low Progress | Increase competition in the pension and health insurance industry by approving more licenses for more foreign-invested applicants and ensuring equal treatment for foreign-invested and domestically invested insurance providers. Additionally, issue detailed implementing measures describing how foreign-invested brokerage licenses will be released and how foreign-invested brokerage companies will be able to apply. |
| • <i>Sales and Service Channels</i> | Further open the Internet insurance channel by allowing more types of insurance products, including critical illness products, to be sold online nationwide. | Low Progress | Further open the Internet insurance channel by allowing more types of insurance products, including critical illness products, to be sold online nationwide. |
| • <i>C-ROSS</i> | <i>Recommendation not provided in 2019.</i> | N/A | Develop an official procedure where companies can submit written inquiries to CBIRC concerning specific C-ROSS provisions for responses in written public statements in order to reduce inconsistency of implementation. |
| • <i>Tax Issues</i> | Correct the heavier tax burden on insurance companies as a result of VAT reform. | Low Progress | Restore the tax-exempt status for interest income from corporate bonds and debt programs, or at minimum adopt a "cut-off" approach to exempt bonds issued prior to the reform of VAT. |

| 章节 | 2019年白皮书主要建议 | 进展评价 | 2020年白皮书主要建议 |
|-------------------------|---|------|--|
| 信息和通讯技术以及网络安全 | | | |
| 中国政府 | 应明确定义关键信息基础设施，只适用于特定和相对狭义的信息基础设施类别，强调但不过分强调其与国家安全的基本联系。 | 进展缓慢 | 《网络安全法》的内容需要加以界定并加以明确。商会促请政府保留原先的狭义概念及定义，不要超越国家安全的基本合理定义。 |
| 美国政府 | 促进与中国机构在国际标准设定论坛上的合作，制定人工智能伦理框架，制定标准，鼓励中国采用国际标准和伦理框架。 | 有所进展 | 促进与中国机构在国际标准设定论坛上的合作，制定人工智能伦理框架，制定标准，鼓励中国采用国际标准和伦理框架。 |
| 保险 | | | |
| 中国政府 | | | |
| • 所有权 | 出台详细的实施措施，说明如何将经营保险业的企业的国外股权上限提高至51%。 | 有所进展 | 发布详细的实施措施，说明保险企业外资股比限制如何取消。 |
| • 网络问题 | 明确《网络安全法》中关键概念的定义，审查现行《网络安全法》措施的有效性。 | 进展缓慢 | 明确《网络安全法》中的关键定义，包括“关键信息基础设施”、“个人信息”、“重要数据”和“适用监督管理机构”，并审查法律中目前所述措施的有效性。 |
| • 牌照 | 向外商投资申请人颁发牌照，加强养老金和医疗保险业的竞争。 | 进展缓慢 | 增加外商投资申请人牌照发放，确保外商投资和内资保险公司享有平等待遇，促进养老金和医疗保险行业的良性竞争；此外，颁布详细的实施条例说明外国经纪牌照发放流程，以及外商投资经纪公司申请牌照流程。 |
| • 销售服务渠道 | 进一步开放互联网保险渠道，允许包括重大疾病保险在内的更多险种在全国范围内进行线上销售。 | 进展缓慢 | 进一步开放互联网保险渠道，允许包括重大疾病保险在内的更多险种在全国范围内进行线上销售。 |
| • 中国风险导向的偿付能力体系(C-ROSS) | 2019年《白皮书》未就此提出建议。 | N/A | 制定官方程序，使企业可以就中国风险导向的偿付能力体系的具体规定向中国银行保险监督管理委员会发出书面咨询，以便在书面公开声明中获取答复，减少执行上的不一致。 |
| 税务问题 | 修正因增值税改革而给保险公司带来的沉重税收负担。 | 进展缓慢 | 恢复企业债券和债务项目利息收入的免税状态，或者至少对改革前发行的债券免征增值税。 |
| 知识产权 | | | |
| 中国政府 | 将恶意抢注商标作为判定第三方申请商标无效的明确依据，无论被剽窃商标的知名度如何，都应以此为依据。 | 有所进展 | 针对对恶意抢注第三方商标的申请人，建立明确的投诉处理程序及威慑性行政处罚规定。 |
| 美国政府 | 分享美国联邦和各州有关商业秘密法律以及美国国家商业秘密战略方面的最佳实践。 | 有所进展 | 分享美国联邦和各州有关商业秘密法律以及美国国家商业秘密战略方面的最佳实践。 |

| Chapter | 2019 Recommendation | Progress Score | 2020 Recommendation |
|-------------------------------------|---|-------------------|--|
| Intellectual Property Rights | | | |
| <i>China Government</i> | Make the filing of a trademark in bad faith a clear basis for invalidating trademarks filed by third parties, regardless of how well known the pirated mark is. | Moderate Progress | Establish a clear process for the filing of complaints and the issuance of deterrent-scale administrative fines against trademark applicants that file third-party trademarks in bad faith. |
| <i>US Government</i> | Share best practices from US federal and state trade secrets laws and national trade secrets strategy. | Moderate Progress | Share best practices from US federal and state trade secrets laws and national trade secrets strategy. |
| Investment Policy | | | |
| <i>China Government</i> | Work to ensure minimal disruption to the operation of market forces when promoting industrial policy goals and eliminating all direct and indirect forms of discrimination against foreign investors in industrial policies and the tools used to implement them. | Moderate Progress | Ensure that provisions in the <i>Foreign Investment Law (FIL)</i> , the Implementing Regulations of the FIL, and the Phase One Deal that provide for equal treatment of FIEs with their domestically-invested counterparts are implemented in full according to the timelines proscribed. |
| Legal Services | | | |
| <i>China Government</i> | Any Draft Regulations on the administration of China offices of foreign law firms and any restrictions imposed therein must be transparent and be published for public comments before promulgation and implementation. Any restrictions on foreign law firms' advice on China law business matters should be reasonable and practical. | Low Progress | Any Draft Regulations on the administration of China offices of foreign law firms and any restrictions imposed therein should be transparent and be published for public comment before promulgation and implementation. Any restrictions on the ability of foreign law firms to provide advice on China law business matters should be reasonable and practical. |
| <i>US Government</i> | Negotiate with China to revise current regulations in order to allow international law firms in China to enjoy the same benefits as Chinese law firms operating overseas. This request has appeared in the <i>White Paper</i> for many years, however instead of progress foreign firms are facing greater restriction. | Low Progress | Negotiate with China to revise current regulations in order to allow international law firms in China to enjoy the same benefits as Chinese law firms operating overseas. This request has appeared in the <i>White Paper</i> for many years, however instead of progress foreign firms are facing greater restriction. |
| Machinery and Manufacturing | | | |
| <i>China Government</i> | Consider replacing the current subsidy system with a tax credit regime based on current global norms and ensure a level playing field for foreign-invested enterprises. | Low Progress | Consider replacing the current subsidy system with a tax credit regime based on current global norms and ensure a level playing field for foreign-invested enterprises. |
| <i>US Government</i> | Continue to urge Chinese counterparts to ensure that policies stemming from MIC 2025 do not favor domestic companies at the expense of foreign-invested enterprises. | N/A | Continue to urge Chinese counterparts to ensure that policies stemming from MIC 2025 do not favor domestic companies at the expense of foreign-invested enterprises. |
| Media and Entertainment | | | |
| <i>China Government</i> | Remove market access barriers to allow 100 percent foreign ownership of film and television production and distribution companies and online video services companies. | Low Progress | Remove market access barriers to allow 100 percent foreign ownership of film and television production and distribution companies and online video services companies. Complete negotiations as required for the update to the film MOU to bring revenue share in line with international norms, increase the number of imported films, and remove market access barriers. |
| <i>US Government</i> | Work with China to review the investment restrictions on US companies in the media and entertainment sector, with the goal of providing greater market access for US companies. | N/A | Work with China to review the investment restrictions on US companies in the media and entertainment sector, with the goal of providing greater market access for US companies. |

| 章节 | 2019年白皮书主要建议 | 进展评价 | 2020年白皮书主要建议 |
|---------------|---|------|--|
| 投资政策 | | | |
| 中国政府 | 努力确保在推动其产业政策目标实现的同时，尽量减少对市场运行的影响，并消除针对外国投资者在产业政策和实施手段上所有直接和间接形式的区别对待。 | 有所进展 | 确保《外商投资法》、《外商投资法实施条例》、中美第一阶段经贸协议于外商投资企业与内资企业享有同等待遇的规定能够按照既定时间安排贯彻落实。 |
| 法律服务 | | | |
| 中国政府 | 任何关于外国律师事务所中国办事处的管理规定草案及任何限制要求必须保证公开透明，并在颁布实施前公开征求意见。对外国律师事务所就中国法律事务提供咨询的限制政策应该合理切实。 | 进展缓慢 | 任何关于外国律师事务所中国办事处的管理规定草案及任何限制要求必须保证公开透明，并在颁布实施前公开征求意见。对外国律师事务所就中国法律事务提供咨询的限制政策应该合理切实。 |
| 美国政府 | 与中方就修改其现行法律法规进行谈判，给予在华外国律师事务所与中国律师事务所海外分支机构所享有的同等待遇。几年来白皮书多次提出此要求，但目前对外国公司的待遇不仅没有改善，反而更加严苛。 | 进展缓慢 | 与中方就其现行法律法规进行谈判修改，给予在华外国律师事务所与中国律师事务所海外分支机构所享有的同等待遇。几年来白皮书多次提出此要求，但目前外国公司的处境不仅没有改善，反而更加艰难。 |
| 机械制造业 | | | |
| 中国政府 | 考虑以基于当前全球规范的税收抵免制度取代目前的补贴体系，确保外资企业享有公平的竞争环境。 | 进展缓慢 | 考虑以基于当前全球规范的税收抵免制度取代目前的补贴体系，确保外资企业享有公平的竞争环境。 |
| 美国政府 | 继续敦促中国相关部门确保中国制造 2025 政策不以牺牲外商投资企业为代价扶持国内企业。 | N/A | 继续敦促中国相关部门，以确保中国制造 2025 政策不会以牺牲外商投资企业为代价来扶持本国企业。 |
| 媒体和娱乐业 | | | |
| 中国政府 | 取消市场准入壁垒，允许外商全资控股设立影视制作、发行公司和从事网络视听节目服务。 | 进展缓慢 | 取消市场准入壁垒，允许外商全资控股设立影视制作、发行公司和从事网络视听节目服务。依据协议谈判达成新的中美电影谅解备忘录，外国公司进口电影的分账份额提高至国际标准水平，增加进口电影的数量，消除市场壁垒。 |
| 美国政府 | 与中方政府合作，协商取消美国企业在中国媒体和娱乐领域的投资限制，确保开放的市场准入机制。 | N/A | 与中方政府合作，协商取消美国企业在中国媒体和娱乐领域受到的投资限制，争取更加开放的市场准入机制。 |

| Chapter | 2019 Recommendation | Progress Score | 2020 Recommendation |
|--|--|--------------------------|---|
| Northeast China | | | |
| <i>Liaoning Government</i> | Continue round-table events with foreign businesses regarding the regulatory and operational challenges they face and continue to identify practical solutions to address them. | Moderate Progress | Provide infrastructure and incentives to increase foreign investment in Liaoning. For those incentives already being provided or scheduled to be provided, AmCham China hopes that municipal governments will maintain their commitments in 2020. |
| <i>US Government</i> | The US Consulate in Shenyang should continue to reach out to local governments in more collaborative and creative ways to help US businesses find solutions to the challenges raised in the Northeast China <i>White Paper</i> Chapter. | Moderate Progress | The US Consulate in Shenyang should continue to reach out to local governments in more collaborative and creative ways to help US businesses find solutions to the challenges raised in the Northeast China <i>White Paper</i> Chapter. |
| Oil and Gas, Energy | | | |
| <i>China Government</i> | Continue to promote long-term cooperation between China and the US in the oil and gas sector. Exclude all energy commodities (crude oil, LNG and petroleum products) from any future tariff and non-tariff trade barriers. | Low Progress | Expand opportunities for onshore licensing for exploration. China should offer more and better acreage, adequate data availability and access, and generous financial terms to attract bids from non-NOC companies. |
| <i>US Government</i> | Identify and encourage opportunities to share US best practices with relevant Chinese government and business entities. For example, expand access for Chinese firms to upstream acreage, resources, and midstream infrastructure in the US, as well share best practices about how data transparency and information sharing are important for attracting investment and technological innovation and the development of unconventional energy resources. | Moderate Progress | As part of the continuing post-Phase One Deal trade negotiations, create sufficient opportunity for China to reduce its tariff on US-origin LNG, which will benefit US producers. |
| <i>Both Governments</i> | Promote and maintain platforms for open dialogue and knowledge sharing through existing industry platforms like ECP and OGIE, regardless of external tensions in the broader bilateral relationship. | Moderate Progress | <i>No joint recommendation provided for 2020.</i> |
| Real Estate | | | |
| <i>China Government</i> | Create a platform to closely monitor the status of decentralized retail markets to avoid oversupply in certain areas and cities. | Low Progress | Work closely with industry leaders to develop reasonable, flexible regulations for the PropTech sector that balances sector growth with an appropriate regulatory framework. |
| Shanghai | | | |
| <i>Shanghai Government</i> | Fully implement the reform and opening policies outlined in Shanghai's <i>100 Measures</i> , which will help improve the business environment for both local and foreign companies and make Shanghai more attractive as an international economic, financial, trade, shipping, and R&D center. | Moderate Progress | Accelerate efforts to roll out reforms across China that have been successfully introduced in the Shanghai free trade zone (FTZ). This will ensure that companies who can currently only operate in the FTZ can conduct business throughout China. |
| Standards and Conformity Assessment | | | |
| <i>China Government</i> | Adopt existing global technical standards in their complete form whenever available in order to ensure full harmonization and avoid creating domestic national standards or standards deviating from prevailing global standards. Moreover, when adopting international standards, Chinese regulatory agencies should work with relevant industries and subject experts to ensure that international standards adopted are properly interpreted and applied. | Low Progress | Open the China Standards 2035 research program to a wider range of opinions, experts, and institutions to ensure that the any future standardization systems in China are consistent with and meet the needs of existing practices in international trade and commerce. |
| Tax Policy | | | |
| <i>China Government</i> | Make the APA and MAP programs more easily accessible to multinational taxpayers operating in China at the level of both local and central tax authorities, including on issues such as processes and timing, communication with applicants, renewal requirements, refunds, and foreign exchange. | Low-to-Moderate Progress | Make the APA and MAP programs more easily accessible to multinational taxpayers operating in China from both local and central tax authorities, including on issues such as process and timing, communication with applicants, renewal requirements, refunds, and foreign exchange. |

| 章节 | 2019年白皮书主要建议 | 进展评价 | 2020年白皮书主要建议 |
|-----------------|--|------|--|
| 东北地区 | | | |
| 辽宁省政府 | 继续与外商投资企业举行圆桌会议，讨论其在规章制度和经营方面所面临的挑战，并制定出切实可行的方案来解决这些问题。 | 有所进展 | 提供基础设施、采取激励措施，增加位于辽宁省的外商投资；对于已经实施或计划实施的激励措施，商会希望市政府能在2020年继续履行承诺。 |
| 美国政府 | 美国驻沈阳领事馆应继续与当地政府进行更具合作性和创造性的沟通，帮助美国企业找到《白皮书》东北章节所提到的各种挑战的解决方案。 | 有所进展 | 美国驻沈阳领事馆应继续与当地政府进行更具合作价值及创造性的沟通，帮助美国企业找到《白皮书》东北章节所提到的各种挑战的解决方案。 |
| 油气、能源和电力 | | | |
| 中国政府 | 继续推动中美在油气领域的长期合作，将所有能源商品（原油、液化天然气和石油产品）排除在未来任何关税和非关税贸易壁垒之外。 | 进展缓慢 | 扩大在岸勘探许可范围。中国应增加勘探区域数量并提高其质量，保证勘探数据的可用性及开放性，提供优惠金融条件，以吸引非国有石油公司投标。 |
| 美国政府 | 寻找并鼓励创造机会与中国相关政府和企业分享美国政府的最佳实践经验。例如，扩大中国企业进入美国上游地区、资源和中游基础设施的机会，分享数据透明度和信息共享对吸引投资、技术创新和非常规能源开发的重要性的最佳实践。 | 有所进展 | 中美第一阶段经贸协议后的贸易谈判应讨论液化天然气问题，为中国创造足够机会，降低对美产液化天然气加征的关税，为美国生产商谋福利。 |
| 两国政府 | 不管外部双边关系外部紧张局势如何，双方政府要通过中美能源合作项目和中美油气产业论坛等现有行业平台，维护、促进开放对话和知识共享平台。 | 有所进展 | 2020年《白皮书》未就此提出建议。 |
| 房地产 | | | |
| 中国政府 | 创建平台，密切监控分散的零售市场状况，避免某些地区和城市的供应过剩。 | 进展缓慢 | 与行业领导者紧密合作，为房地产科技领域制定合理、灵活的规章制度，在适当的监管框架下平衡行业增长。 |
| 上海 | | | |
| 上海市政府 | 全面实施上海市政府的“扩大开放100条”行动方案中提出的改革开放政策，这将有利于改善本地和外国公司的营商环境，使上海成为国际上更具吸引力的经济、金融、贸易、航运和研发中心。 | 有所进展 | 加快在全国各地推进上海自贸区成功实施的各项改革，确保目前只能在自贸区运营的企业能够在中国各地开展业务。 |

| Chapter | 2019 Recommendation | Progress Score | 2020 Recommendation |
|---|---|-------------------|---|
| Tianjin | | | |
| <i>Tianjin Government</i> | Facing slower growth and declining business sentiment, the government should revitalize its efforts to attract and retain foreign investment in Tianjin. An appropriate mix of policies that attracts human capital and investment is needed for Tianjin to remain competitive with other locations in China. Policies that help attract human capital and investment should take priority. | Moderate Progress | Create mechanisms for closer collaboration with industry on policy development. More opportunities should be created for foreign-invested enterprises to provide continued and sustained input on policies that will affect foreign-invested enterprises or the commercial environment. |
| Visa Policy | | | |
| <i>China Government</i> | Standardize ABC Category worker requirements, especially for tax purposes. Provide clearer guidance and flexibility with respect to penalties related to enforcement of tax requirements for Category A foreign workers. | Moderate Progress | Formally clarify senior age-related requirements for foreign employees, and expand new policies for recent graduates and interns nationwide as opposed to restricting them to certain geographic localities. |
| Work Safety and Emergency Management | | | |
| <i>China Government</i> | Encourage industry associations, research institutes, and the business community to provide policy research and consultation, support development of draft regulations and standards in a more organized and disciplined manner and develop advanced emergency equipment and technologies. | Moderate Progress | Strengthen training opportunities for the operators of MEWPs on the basis of GB/T 27549-2011 <i>Mobile elevating work platform – Operator (driver) Training</i> . Ensure that this recommended standard is consistently applied and enforced. Alternatively, promote the promulgation of group standards similar to GB/T27549-2011 to continue to improve the safety of work at height. |
| Wuhan | | | |
| <i>Hubei and Wuhan Governments</i> | Expand current strategies to attract and retain senior management talent. This includes expanding platforms for universities and companies to work together on developing talent and allowing university professors to work in companies. | Moderate Progress | Adopt innovative and focused policies to attract, retain, and reward mid-and-high-level senior managers and team leaders in the technology sector. Partnering with global industry leaders registered in Wuhan on such policies would be an effective way to attract such talent and meet market demand. |
| <i>US Government</i> | Engage with the Chinese government, including the Wuhan municipal government, to explore opportunities for foreign investment in Central China and organize opportunities for US companies to explore investments through visits and local interaction. | Moderate Progress | Engage in bilateral dialogue and in-depth exchanges to share best practices and support the implementation of a more transparent and predictable regulatory system in Hubei and Wuhan. |

| 章节 | 2019年白皮书主要建议 | 进展评价 | 2020年白皮书主要建议 |
|------------------|---|-----------|--|
| 标准、合格评定 | | | |
| 中国政府 | 尽可能采用现行全球技术标准的完整形式，确保完全标准化，避免制定国内国家标准或偏离现行全球标准的标准。此外，在采用国际标准时，中国监管机构应与相关行业和学科专家合作，确保所采用的国际标准得到适当的解释和应用。 | 进展缓慢 | 中国标准 2035 研究计划应向广泛大众、专家、机构征求意见，确保中国未来的所有标准化体系符合并满足国际贸易和商业现行标准的需要。 |
| 税收政策 | | | |
| 中国政府 | 让地方和中央税务机关的跨国纳税人更容易参与预约定价安排和相互协商程序项目，包括程序和时间、与申请人的沟通、续签要求、退税和外汇等问题。 | 进展缓慢到有所进展 | 允许地方和中央税务机关的跨国纳税人更便利地参与到预约定价安排和相互协商程序项目中，包括参与讨论程序和时间、与申请人的沟通、续签要求、退税和外汇等问题。 |
| 天津 | | | |
| 天津市政府 | 面临经济增长放缓和企业信心下降的情况，政府应加大在天津投资的力度吸引留住外商，天津需要采取适当政策吸引人力资本及投资，保持与中国其他地区的竞争力。应优先采取有助于吸引人力资本和投资的政策。 | 有所进展 | 建立机制，在政策制定方面与行业进行更密切的合作。应为外商投资企业创造更多机会，为影响外商投资企业或商业环境的政策持续提出意见。 |
| 签证政策 | | | |
| 中国政府 | ABC 类人才要求标准化，特别是所得税要求。就 A 类外籍员工税收要求有关的处罚提供更明确的指导，给予灵活处理的空间。 | 有所进展 | 正式规范外籍员工年龄相关的要求，将针对应届毕业生和实习生的新政策扩展到全国，而不是局限在特定区域。 |
| 安全生产与应急管理 | | | |
| 中国政府 | 鼓励行业协会，研究机构和企业界在提供政策研究和咨询，起草法规和标准以及开发先进的应急设备和技术方面发挥积极作用。 | 有所进展 | 在 GB/T 27549-2011《移动式升降工作平台操作人员（驾驶员）培训》的基础上，加强对移动式升降工作平台操作人员的培训。确保本推荐性标准得到一致应用和实施。或者，推动颁布类似于 GB/T 27549-2011 的团体标准，继续提高高空作业的安全性。 |
| 武汉 | | | |
| 湖北省和武汉市政府 | 拓展现行战略，吸引、留住高级管理人才，包括拓展高校和企业合作的平台，共同培养人才，允许高校教授在企业工作。 | 有所进展 | 采取创新政策，侧重吸引、留住和激励科技行业的中高端管理人员和团队领导者；与在武汉注册的全球行业领导企业进行合作，将是吸引此类人才、满足市场需求的有效途径。 |
| 美国政府 | 与包括武汉市政府在内的中国政府进行合作，探讨在华中地区的外商投资机会，并通过访问和与当地地方加强互动为美国企业探索更多投资机会。 | 有所进展 | 开展双边对话，进行深入交流，分享成功经验，支持湖北及武汉采用更加透明、可预测的监管体系。 |

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

Civil Society

Introduction

A robust non-profit sector can contribute significantly to addressing China's broader sustainability challenges for the benefit of the Chinese people. Social, non-profit, inter-governmental, and non-governmental organizations (NGOs) play a crucial role in fostering sustainable business practices by ❶ providing an independent source of accountability and expertise for businesses and governments; and ❷ partnering with businesses and governments in local communities to provide support and services for implementing sustainability and community engagement initiatives.

Such organizations also provide a wide range of social benefits. These benefits include helping to provide an educated and healthy workforce; protecting the environment; promoting food and nutrition security and advocating for food safety; expanding access to services in areas like health and finance; developing productive employer-labor relations; fostering active community engagement through volunteerism; providing social services to marginalized populations; and supporting the government in monitoring corporate compliance.

The US and many other countries with long traditions of philanthropy have active civil society sectors that work effectively with both government and businesses to address local and national issues. As China's rapid growth has produced many economic, social, and environmental challenges, civil society can and does make positive contributions to China's continued sustainable development.

Status of Foreign NGOs in China

The *Law on the Management of Overseas NGO Activities Within Mainland China* (Overseas NGO Law) took effect on January 1, 2017. Its impact during its first three years has been profound. Only a small proportion of the nearly 10,000 foreign NGOs said by the National People's Congress to have been conducting activities in China on the eve of its passage have succeeded in obtaining public security permission to engage in projects or make donations in China. Those which have obtained permission to operate, either by registering a representative office or obtaining a permit for "temporary

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

As of December 31, 2019, 420 foreign NGOs had registered a total of 511 representative offices (some organizations have more than one representative office). These included 127 offices for US-based organizations, more than from any other country or region. The pace of new registrations slowed during 2019 (as it did in 2018), with 58 organizations and 72 additional offices registered, compared with 103 additional organizations and 134 additional offices registered in 2018. As a point of comparison, the US Department of State estimates 1.5 million NGOs are registered in the US.

Overseas chambers of commerce, trade promotion organizations and industry associations continued to dominate the roster of representative offices in 2019, accounting for roughly 50 percent of the total registered organizations. Among organizations which have succeeded in registering a representative office since the law took effect in 2017, 13 organizations have de-registered their Representative Offices as of the end of 2019.

In addition, during 2019, foreign NGOs obtained permits to begin or conduct 1,001 "temporary activities," up from 897 in 2018 and 509 in 2017. Trade and business-oriented groups

民间团体

引言

非 营利组织的蓬勃发展有助于解决中国面临的可持续发展的挑战，符合中国民众的利益。社会组织、非营利组织、政府间组织以及非政府组织（NGOs）在促进可持续商业发展方面发挥着至关重要的作用：① 为企业和政府提供独立的责任担当方和专业知识；② 与当地社区的企业和政府合作，为实施可持续发展和社区参与活动提供支持和服务。

非营利组织还为社会提供各方面的支持。具体的益处包括：提高劳动力的教育和健康水平、改善和保护环境、提高食品营养、倡导食品安全、扩大医疗和金融等服务行业的准入、发展有助于提高生产力的劳资关系、通过志愿服务推动社区积极参与、为边缘化群体提供社会服务、支持政府监督企业合规情况等。

美国与众多国家一样，有着悠久的慈善传统，民间团体活跃，积极与政府和企业开展高效合作，解决本地和全国性问题。在中国经济的快速发展产生了诸多经济、社会和环境挑战的背景下，民间团体能对中国的可持续发展做出积极贡献。

境外非政府组织在中国的情况

2017年1月1日，《中华人民共和国境外非政府组织境内活动管理法》（《境外非政府组织法》）正式生效。实施3年以来已经造成深刻影响。全国人民代表大会表示在新法通过前夕，近一万家在华开展活动的境外非政府组织当中只有小部分从公安部门获取了在中国参与项目或进行捐款的许可。通过登记设立代表机构获准在中国境内开展活动或获准开展“临时活动”的非政府组织，需持续耗费大量行政成本才能达到报告要求，一些情况下，公安部门频繁要求提供有关运营情况的详细口头报告。由于该法关键概念定义缺失，中国公安部也未制定

详细的实施条例，使得各省级公安厅局各行其是，对新法的解读不尽相同且不成条文。许多有登记意愿且符合《境外非政府组织法》规定的境外非政府组织依然无法登记，因为该法指定的政府主办单位（即“业务主管单位”）为数太少，而且指定主管单位不愿履行指导境外非政府组织的职责，一些情况下还拒绝与后者会谈。有些外国基金会认为《境外非政府组织法》的要求过于繁琐，令人费解，因此已停止资助中国境内的非政府组织；其他境外非政府组织出于相同原因也悄然停止了与中方合作单位的业务。境外民间团体与中国相关组织的合作规模已然萎缩，因为没有相关计算标准，因此萎缩规模无法估量。

截至2019年12月31日，420家境外非政府组织在华登记511个代表机构（有些组织不只一个代表机构）。其中127家境外非政府组织代表机构来自美国，位列第一。2019年（与2018年一样）代表机构登记数量增速放缓，共登记了58家组织，72个代表机构；2018年登记了103家组织，134个代表机构。相比之下，美国国务院预计美国共有150万家非政府组织登记在册。

2019年，境外商会、贸易促进组织和行业协会仍占据主导地位，约占登记机构总数的50%。自2017年《境外非政府组织法》生效以来，截至2019年底，已有13家境外非政府组织代表机构注销登记。

此外，2019年期间，外国非政府组织获准开展、举办1001场临时活动，高于2018年的897场和2017年的509场。而贸易和商业组织相关活动的活跃度大不如前：在2017至2018年期间开具的1406个活动许可当中，除29个之外，其他都发给了非贸易及非商业组织。2019年的1001份许可证中，只有20份发放给了贸易和企业集团或行业协会。

一些登记了代表处的非政府组织要么在完成登记之

| | Total Number of Organizations Registered | Total Number of Representative Offices | Number of Representative Offices of NGOs originating in the US |
|------|--|--|--|
| 2017 | 259 | 305 | 71 |
| 2018 | 362 | 439 | 106 |
| 2019 | 420 | 511 | 127 |

Source: ChinaFile NGO Project & MPS NGO Portal

have been much less active on this front: of the total 1,406 permits issued for activities during 2017-2018, all but 29 were issued to non-trade, non-business-oriented organizations. In 2019, of the 1,001 permits issued, only 20 went to trade and business groups or industry associations.

Some NGOs that registered representative offices also obtained “temporary activity” permits, either before completing registration or as a means of carrying out programs in places outside their approved annual plan or geographic scope of registration. After accounting for such overlaps, some 724 overseas NGOs either registered an office or were approved for temporary activities during the three-year period 2017-2019. Yet on April 28, 2016, Deputy Director of the NPC Standing Committee’s Legislative Affairs Commission Zhang Yong told a news conference that nearly 10,000 foreign NGOs were conducting activities in China. If so, then implementation of the Overseas NGO Law has cost China the contributions of more than 9,000 foreign NGOs.

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

Ongoing Regulatory Issues

During its first two years of implementation, the Overseas NGO Law has forced many in the foreign business community working with overseas NGOs to suspend their support of local community activities. At the end of 2019, only two US corporate foundations had registered a representative office under the Overseas NGO Law, while only a handful had obtained permission to conduct “temporary activities.”

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

Yet despite this short history of flexible implementation, which to our knowledge had not resulted in any problems relating to national security, by the end of 2019, many implementing regulations had yet to be issued, resulting in inconsistent interpretations and practices from one province to another. Moreover, none of the provincial public security bureaus have published written guidance setting out their interpretations. This has added to general confusion on the part of overseas NGOs without mainland offices that have tried to decide if and how they should try to conduct programs in mainland China. AmCham China encourages the MPS to collaborate with the overseas NGO community to better understand the obstacles such NGOs face operating in China and to release updated implementing regulations to clarify the Overseas NGO Law.

After the Overseas NGO Law had been in effect for a few months, the public security authorities began to modestly expand the list of approved Professional Supervisory Units (PSUs), or official sponsors that overseas NGOs must have in order to register operations on the mainland. The public security authorities also observed a *de facto* grace period with respect to overseas NGOs that already had offices in China: as long as such NGOs were in the process of registration. This grace period was extended into 2018 and 2019.

Some public security NGO administration offices provided training and information sessions for PSUs, universities, and foreign and domestic NGOs. As the majority of organizations affected by these developments are located overseas and do not have offices in mainland China, however, there is an urgent need for China’s overseas embassies and

| 年份 | 登记组织总数 | 代表机构总数 | 美国在华非政府组织代表机构数量 |
|------|--------|--------|-----------------|
| 2017 | 259 | 305 | 71 |
| 2018 | 362 | 439 | 106 |
| 2019 | 420 | 511 | 127 |

资料来源：中参馆非政府组织项目和中国公安部非政府组织门户网站的数据

前就取得了“临时活动”许可，要么就把临时活动许可作为其在年度活动计划核准地区以外或登记地点范围以外地方开展项目的手段。考虑到这些重叠情况，2017至2019三年期间，共有724个境外非政府组织登记了代表机构或获准进行临时活动。然而，2016年4月28日，全国人大常委会法制工作委员会副主任张勇在一次新闻发布会上表示，有近一万家境外非政府组织在中国开展活动。如果情况属实，那么《境外非政府组织法》的实施已导致中国损失了9000多个境外非政府组织。

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

现存监管问题

《境外非政府组织法》实施的头两年中，许多与境外非政府组织合作的外国企业都迫于该法无奈暂停了对当地社会活动的支持。截至2019年底，根据《境外非政府组织法》的规定，只有两家美国企业基金会登记设立了代表机构，少数机构仅获准开展“临时活动”。

这些问题可能归咎于《境外非政府组织法》本身的设计而非执法问题。中国公安部及省级人民政府有关部门和单位负责具体执法事宜。2017年的大部分时间里，境外非政府组织基本认为北京市公安局以及其他行政辖区公安部门新成立的境外非政府组织管理办公室非常专业，容易沟通、回复及时。境外非政府组织工作人员通过电话、社交媒体和面谈等方式与境外非政府组织管理

办公室沟通，及时获取了有关材料准备和备案程序的相关信息。

尽管该法执行灵活，实施时间较短，且未引发任何国家安全相关的问题，但截至2019年底，《境外非政府组织法》实施细则尚未出台，导致各省市对该法的解读及执法不尽相同。此外，各省级公安部门均未发表书面指导意见。书面实施细则的缺失会导致尚未在中国大陆设立办公室但有意向的境外非政府组织更加困惑，不知未来该如何在中国大陆开展项目。商会支持中国公安部与境外非政府组织界合作，进一步了解非政府组织在华开展业务面临的障碍，发布实施条例阐明《境外非政府组织法》。

《境外非政府组织法》生效几个月后，公安开始适度扩增业务主管单位名录或政府主办单位名单，境外非政府组织在中国大陆登记运营必须找到相应的业务主管单位。公安部门还给予尚未依法完成登记但事实上在中国境内已有办公室的境外非政府组织一段宽限期：登记手续办理完成前。这一宽限期在2018年和2019年仍在实施。

有些公安部门的境外非政府组织管理办公室为业务主管单位、高校和国内外非政府组织举办了培训和信息交流会议。然而，由于受该法影响的绝大多数组织都位于海外且在中国没有办事处，因此迫切需要中国驻外使领馆举办类似的培训、信息交流活动。

《境外非政府组织法》通过三年后，非政府组织遇到的大多阻碍仍然不在当地公安部门的管辖能力范围内，一些问题每况愈下。其中包括：

业务主管单位

2019年，公安部发布了业务主管单位最新名录，这

consulates to hold similar training and information activities or make officials knowledgeable about the Overseas NGO Law available.

Three years after the passage of the Overseas NGO Law, most significant obstacles encountered by NGOs unfortunately remain beyond the capacity of local public security bureaus to resolve and in some instances are becoming worse. These include the following:

Professional Supervisory Units

In 2019, MPS released an updated list of PSUs, the first update since the original list was published in 2016. The list includes 54 eligible PSUs and several new entities. Despite the expansion, obtaining PSU sponsorship remains the single biggest obstacle to registration for overseas NGOs. Many eligible PSUs are unfamiliar with the work of overseas NGOs, consider them a political risk, and/or lack any incentive to assume the burden of supervising them. PSUs are not offered any additional staff or budgets to handle the extra work, and some have said that they lack the capacity to take on more than a few overseas NGOs. Moreover, several suitable PSU candidates have not been included on the approved list. Organizations such as the Chinese Academy of Governance, Chinese Academy of Social Sciences, and the Development Research Center of the State Council, which work on a wide range of policy and program areas and have greater experience interacting with overseas NGOs, are barred from serving as PSUs.

Even after successfully registering, many NGOs have found that they must then spend weeks and even months each year negotiating a year-long “work plan” with the supervising PSU before they can implement programs. That work plan must be resubmitted annually. Work Plans should include how much money will be spent, and exactly where these activities will take place (down to the district) as well as which Chinese partners will be involved. Any activities conducted that are not included in the Work Plan are considered illegal and several NGOs have been reprimanded for slight variances from these workplans. It is nearly impossible for any NGO, overseas or domestic, to detail their activities in advance on an annual basis, thus these regulations are highly restrictive in practice. Changes to the work plan can only be made twice a year and require a lengthy application procedure. The new activity cannot be implemented until the change is approved.

For many NGOs it has become increasingly challenging to balance relationships with their PSU in order to conduct programs in China. Some PSUs have required overseas NGOs to make significant changes in their programs. Moreover, although PSUs are not legally allowed to charge fees in return for sponsorship, some NGOs have found after registration that the PSU expects to share in the NGO’s program funds.

Unclear and Time-Consuming Requirements for Temporary Activity Permits

Some overseas NGOs seeking approval for temporary activities have found the application preparation procedure to be almost as expensive and time consuming as preparing a representative office application. Both procedures require certifying and translating the overseas NGO’s past and current articles of incorporation and by-laws, which often takes several months. Applying for a temporary activity requires securing agreement of a Chinese partner organization, who then must formally apply for the permit. The sponsoring Chinese Cooperation Unit (CCU) has complete discretion to refuse the application without providing a reason. The final stage requires the Chinese partner to file the temporary activity permit application with the police, but overseas NGOs have found inconsistencies across provinces in this phase. Public security authorities in some provinces have accepted filings for projects that include activities in multiple provinces, as long as the Chinese partner is based in their jurisdiction; such authorities in other provinces have refused to accept multi-province filings, requiring overseas NGOs to either restrict their projects to a single province, or establish partnerships and undertake filings in multiple provinces. The maximum term of a temporary activity permit is one year and extensions require fresh applications.

Unclear or Ambiguous Language

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

The Status of Overseas NGO’s Revenue Sources in China

Article 21.3 of the *Overseas NGO Law* allows overseas NGOs to fund their activities in China from three sources: ❶ “funds from a lawful overseas source”; ❷ “interest on bank deposits within the territory of China;” and ❸ “other funds obtained by legal means within the territory of China.”

(1) Funds from a lawful overseas source

是自 2016 年名录公布以来的首次更新。最新版名录包括 54 家符合要求的业务主管单位和几个新单位。尽管规模扩大，但获取业务主管单位的同意仍然是境外非政府组织登记的最大障碍。许多符合要求的业务主管单位并不熟悉境外非政府组织的工作，认为存在政治风险，没有任何动力去履行监督境外非政府组织的职责。业务主管单位也没有任何额外的工作人员或预算来处理增加的工作量，有些单位表示它们只有能力担任几家境外非政府组织的业务主管。此外，一些适当的业务主管候选单位未被列入批准名录。国家行政学院、中国社会科学院、国务院发展研究中心等机构致力于广泛的政策和规划领域研究，与境外非政府组织合作经验丰富，但未获准担任业务主管单位。

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

对许多非政府组织而言，为了在华开展项目，平衡与业务主管单位的关系愈发充满挑战。一些业务主管单位要求其监管的境外非政府组织对其项目做出重大调整。更有甚者，尽管法律上不允许业务主管单位收取主管费用，但是一些非政府组织发现登记后，业务主管单位向其索取项目资金。

临时活动批准程序要求不明确且费时费力

一些境外非政府组织发现，临时活动申请几乎与登记设立代表处申请一样成本高昂且费时费力：都需要认证、翻译境外非政府组织章程细则（包括最新章程和历史章程），通常需要耗费几个月的时间。申请临时活动需要提交与中方合作单位的书面协议，中方合作单位随后须办理审批手续。业务主管单位有完全的自由裁量权，可无理由拒绝申请。办理审批手续的最后一步要求中方

合作单位向公安部门提交临时活动备案申请，但境外非政府组织发现，这一流程的处理因省而异。只要中方合作单位在其管辖范围内，一些省份的公安部门已批准在多个省份开展活动的项目备案；但其他省份的公安部门则拒绝接多省备案，要求境外非政府组织要么将项目限定在一个省份，要么与多个省份一一建立合作关系，并在相关省份均进行备案。临时活动许可期限不超过一年，需要延长期限的，要重新备案。

语言含糊其辞、模棱两可

《境外非政府组织法》中许多关键术语都没有定义。模糊不清的表述给境外非政府组织决定如何在华构建、实施项目带来了不确定性。在业务主管单位给与明确指导之前，境外非政府组织已经投入大量的人力、时间和资源与其进行沟通。尽管今年是《境外非政府组织法》实施的第四年，但尚不清楚该法要求境外非政府组织的哪些活动需要预先获取批准。公安部及其省级公安机关对该法的解读有完全的自由裁量权。比如，境外非政府组织举办小规模或私人活动、境外非政府组织以专家顾问的身份参与由另一实体组织和资助的项目等情况，该法目前尚未就上述情形的批准要求形成共识。以上仅是《境外非政府组织法》缺乏明确指导导致诸多问题中的两个例子。

境外非政府组织在华资金来源状态

根据《境外非政府组织法》第 21 条，境外非政府组织在中国境内的活动资金有以下三个来源：^①“境外合法来源的资金”；^②“中国境内的银行存款利息”；^③“在中国境内合法取得的其他资金”。

(1) 境外合法来源的资金

第一个来源为“境外合法来源的资金”，根据监管部门的解释，这是从境外非政府组织海外总部拨付到中国境内的资金。此资金来源是所有在华境外非政府组织的主要资金来源，据商会了解目前没有任何例外。

(2) 中国境内的银行存款利息

“中国境内的银行存款利息”的含义及监管较为简单，但其数额不大。

(3) 在中国境内合法取得的其他资金

The first source, “funds from a lawful overseas source,” has been interpreted by the regulators to cover money transferred into China from the NGO’s parent overseas entity. Funding source (1) is the primary source of funding for all overseas NGOs in China, and we are not aware of any exceptions.

(2) Interest on bank deposits within the territory of China

The interpretation and implementation of “interest on bank deposits within the territory of China” is straightforward but the amounts are unlikely to be substantial.

(3) Other funds obtained by legal means within the territory of China

Other funds obtained by legal means within the territory of China generally consist of three categories: ❶ cash or in-kind donations from individuals or companies, ❷ proceeds from joint marketing or fundraising activities conducted with for-profit companies, and ❸ fees for service activities. With respect to cash or in-kind donations, the *Overseas NGO Law* bars overseas NGOs from fundraising in China. This is interpreted as meaning overseas NGOs cannot passively receive donations from companies, including foreign-invested enterprises (FIEs), in China, whether from their Corporate Social Responsibility (CSR) programs or other corporate funding channels. As a result, an important source of funding for overseas NGO operations in China has been cut off. It is increasingly difficult for overseas NGOs to raise funds abroad for programs in China because the appetite for funding in China has declined as China has grown more prosperous. The fundraising prohibition has also been interpreted as prohibiting companies in China from providing in-kind donations to overseas NGOs. This creates legal uncertainty for companies that previously made generous donations of equipment, software and advertising space to overseas NGOs. With respect to joint marketing and fundraising activities (e.g., sales promotion activities where a portion of the proceeds received by a company from selling a product would go to an NGO), overseas NGOs have largely been restricted from conducting such activities because authorities have deemed them to be in violation of the *Overseas NGO Law* which prohibits overseas NGOs from engaging in profit making activities. A key concern from the regulators appears to be that such activities—which allow an NGO to receive a percentage of the sales revenue of a for-profit company as part of a particular sales promotion—would incentivize that NGO to promote the brands and/or products of that particular company.

With respect to fees for service, the key question concerns whether overseas NGOs can, in practice, offer services in exchange for fees. The experience of AmCham China members has been that the answer rests in large part on the

discretion of their PSU, and approval is granted on a case-by-case basis. Approvals are largely conditioned on whether ❶ the services to be performed lie within the scope of activities printed on the overseas NGO representative office’s registration certificate, and ❷ the type of client to receive such services. The scope of activities on the registration certificate is typically broad and has not prohibited overseas NGOs from engaging in fee-for-service arrangements. With respect to the second condition, members have in practice found approvals tend to be forthcoming if the client is from the public sector (e.g., local government health bureau, public university or research institute, domestic NGO, or SOE). Complications arise more frequently if the client is a private sector entity for two reasons. First, because the *Overseas NGO Law* prohibits overseas NGOs from engaging in “profit-making activities.” PSUs in some provinces have interpreted this to mean that overseas NGOs cannot offer services to for-profit companies or receive payment in exchange for services. Second, if a for-profit company were to purchase services from a foreign NGO but the services have nothing to do with the business of the company (for example, if a beverage manufacturer were to pay an overseas NGO to provide cataract surgeries in rural areas), the PSU may be likely to conclude that the “service revenue” to be paid to the overseas NGO is a disguised form of donation and therefore is not permitted under the *Overseas NGO Law*.

AmCham China acknowledges that the ability of some overseas NGOs to offer services for fees constitutes progress since passage of the *Overseas NGO Law*. To streamline this process, we recommend that the government put in writing the rights of registered overseas foreign NGOs to offer services for fees. At present it is largely left to the discretion of individual PSUs to issue informal approval, which creates a potential for misunderstanding and inconsistency. Moreover, we recommend that the government consider whether to formally allow overseas NGOs to provide services for fees for private companies, so long as the services are related to the companies’ scope of business. Many companies have genuine business needs that require assistance from overseas NGOs; for example, many manufacturing companies conscientious of CSR require the international know-how and scientific expertise of overseas environmental NGOs in designing and implementing plans to reduce or offset carbon emissions.

在中国境内合法取得的其他资金理论上讲有三类：**①** 境内个人或企业的现金或实物捐赠；**②** 与企业进行联合营销和筹款活动所得；**③** 服务费收入。关于第一类即现金或实物捐赠，《境外非政府组织法》禁止境外非政府组织在中国境内进行募捐。此条规定解读为禁止境外非政府组织被动接受境内企业（包括在华外商投资企业）的资金支持，无论是通过企业社会责任项目方式还是通过企业的其他筹资渠道。因此，这一禁止切断了境外非政府组织开展中国业务的重要资金来源。随着中国日益繁荣，境外捐赠者往往认为已不需要对中国的项目继续提供资助，因此，境外非政府组织为其中国境内的项目筹集境外资金越来越困难。另外，上述禁止募资的法律条文也被解读为禁止在华企业给境外非政府组织提供非现金捐赠。这对于此前给境外非政府组织慷慨捐赠过设备、软件、甚至广告位的企业来说，法律方面的不确定性在增加。关于第二类，与私营企业进行联合营销活动（例如企业把它在某促销活动中获得的收入的一定比例或数额提供给公益机构），监管部门似乎在担忧，一旦境外非政府组织与企业联合搞促销活动，能够从企业的销售收入中“提成”，境外非政府组织将会有替企业或产品做宣传的动力，因此监管部门认为《境外非政府组织法》对营利活动的禁止包括了禁止境外非政府组织与企业合作开展联合营销和筹款活动。

关于第三类，即境外非政府组织在境内提供服务并收取服务费，根据商会会员的经验，这个问题的答案很大程度上取决于境外非政府组织的业务主管单位是否同意，而且这样的同意往往是以“一事一议”的方式做出的。业务主管单位在斟酌是否同意时，主要看以下两个条件：**①** 所提供服务的是否在境外非政府组织代表机构登记证书所载的业务范围内，以及**②** 拟接受服务的客户类型。由于登记证书所载的活动范围一般表述广范，因此基本没有问题。至于第二个条件，会员们在实践中发现，如果客户是公共部门（例如，地方政府卫生局、公立大专院校研究所、境内慈善机构或国企），则往往容易得到批准。但如果客户是私营企业，情况可能会复杂些，这出于两个原因：其一，《境外非政府组织法》禁止境外非政府组织从事“营利性活动”。一些地方的业务主管单位将此解释为，境外非政府组织不能与私营企业开展合作。其二，假设境外非政府组织为私营企业提供收费服务，但服务的内容与该企业的业务无关（例如，饮料公司向境外非政府组织购买医疗服务，要求其在农

村地区开展白内障手术），业务主管单位很有可能断定该“服务费收入”为变相募资，因此违反《境外非政府组织法》。

商会承认，自《境外非政府组织法》通过以来，一些境外非政府组织获得了在境内提供服务并收取服务费的能力。为简化程序，商会建议政府明确依法登记的境外非政府组织有提供收费服务的权利。目前，主要由业务主管部门酌情给予非正式批准，可能会造成误解和不一致。此外，商会建议政府考虑，只要境外非政府组织拟提供的服务与私营企业自身的业务相关，就应该允许境外非政府组织为私营企业提供收费服务。许多私营企业的切实业务需求有赖于向境外非政府组织购买服务，例如，许多注重社会责任的制造业企业渴望聘请有专业科学技能的境外环保类非政府组织来设计并实施碳排放量的减销方案。

建议

对于中国政府：

- 更新 / 扩大业务主管单位名单，同时为担任业务主管单位的相关政府机构制定明确的程序及设立更好的激励措施。[公安部、国务院、全国人民代表大会]
- 简化临时活动许可备案所需的文件，并要求中方合作单位的业务主管单位在拒绝批准活动后的 30 天内提供书面说明。[公安部、国务院、全国人民代表大会]
- 阐明《境外非政府组织法》中含糊不清的措辞，并发布清晰一致的实施细则。起草实施细则的过程应该公开透明，允许境外非政府组织及其中方合作单位参与其中。[公安部、国务院、全国人民代表大会]
- 明确境外非政府组织“从事或资助营利性活动”或提供服务收费的相关规定。在服务收费方面，把境外非政府组织提供收费服务的权利纳入法律，减轻业务主管部门的负担，保证其无须在不确定的情况下做出决定。[国务院]

Recommendations

For the Chinese Government:

- **Update/expand the list of PSUs and provide clear procedures and better incentives for government entities to act as PSUs.** [MPS, State Council, NPC]
- Simplify the documentation required for a temporary activity permit application and require Chinese partner CCUs that withhold approval to provide a written explanation within 30 days. [MPS, State Council, NPC]
- Clarify ambiguous language in the Overseas NGO Law and publish clear and consistent implementing guidelines. The process of drafting implementing guidelines should be open and allow overseas NGOs and their Chinese partner organizations to participate. [MPS, State Council, NPC]
- Clarify the regulations regarding overseas NGOs “engaging in or financing profit-making activities” or providing fees for service. With respect to fees for service, clarify the right of overseas NGOs to offer services for fees into law, thereby easing the burden on PSUs to make decisions amidst uncertainty. [State Council, NPC, MPS].
- Conduct more outreach activities with overseas NGOs and their Chinese partners to provide updated information regarding interpretation of the *Overseas NGO Law* by public security authorities, including outreach activities overseas provided through China’s embassies and consulates overseas where foreign NGOs have offices. [MPS]

院、全国人大、全国人民代表大会]。

- 与境外非政府组织及其中方合作单位开展更多外联活动，公安部门应提供《境外非政府组织法》的最新解读信息，中国驻外使领馆也可在境外非政府组织在境外设有办事处的地方举办外联活动 [公安部]

Competition Law

Introduction

Following the 2018 consolidation of China’s anti-trust enforcement agencies into the Anti-Monopoly Bureau (AMB) under the State Administration for Market Regulation (SAMR), 2019 marked a relatively smooth transition year for antitrust enforcement as SAMR made steady progress in the formulation of legislation and the roll-out of diverse enforcement activities. Despite China’s trade tensions with the US and suspicion that anti-trust enforcement might be used as a political bargaining chip, SAMR’s 2019 enforcement activities largely did not reflect such trade-based intervention. SAMR has remained a professional antitrust regulator, focusing on areas where antitrust issues are the most prevalent and directly affect consumers.

Since the *Anti-Monopoly Law* (AML) was enacted in 2008, China’s antitrust authorities have investigated close to 200 cases involving anticompetitive agreements and more than 60 cases involving abuse of dominance, with fines totaling more than RMB 12 billion (US \$1.7 billion), though more than half of such amount was derived from one US-related enforcement action. The antitrust enforcement authorities have reviewed close to 3,000 transactions in merger filings with a combined value of more than RMB 50 trillion (US \$6.98 trillion), of which 43 cases have been approved with conditions and two were blocked. As part of its efforts to improve disclosure, the AMB launched a separate section on its website to disclose administrative penalty decisions and moved to publish unconditional merger approvals on a weekly basis since June 2019, which represents an increase in transparency as disclosures were previously made on a quarterly basis.

Regulatory Updates

Merger Review

AmCham China commends SAMR’s continued efforts to further improve the efficiency of its merger review process. The volume of cases reviewed in 2019 was on par with that of 2018: SAMR received 432 mergers notifications, of which only five (one percent) were approved with conditions; four of these five transactions were foreign-to-foreign mergers and acquisitions, although the fifth involved formation of a joint venture between a foreign company and a domestic concern. Despite the large number of cases reviewed, SAMR has continued to reduce the overall review time for simplified procedure cases while the review timeline remains uncertain for “ordinary” procedure cases, especially those entailing remedies.

Simplified Procedure Review

The simplified procedure review continues to be the principal mechanism to reduce the length of merger review. In the first three quarters of 2019, SAMR reviewed 253 cases in an average of 17.4 days. (Note: full data on simplified procedure review was not available for 2019 as of the time of publication. Data from 2016 to 2018 included for reference).

Nonetheless, SAMR’s discretion and lack of clarity in accepting cases for the simplified review procedure have led to exclusion of many cases that initially appeared to qualify for the simplified procedure. This lengthens the review

SAMR Simplified Review Cases from 2016 to 2018

| | Percent Cleared in Phase 1 | Percent Cleared in Phase 2 | Percent Cleared in Phase 3 | Refile | Average Review Days | Median Review Days | Longest Review | Shortest Review |
|------|----------------------------|----------------------------|----------------------------|--------|---------------------|--------------------|----------------|-----------------|
| 2016 | 94 | 6 | 0 | 0 | 24 | 24 | 85 | 11 |
| 2017 | 97 | 3 | 0 | 1 | 21 | 21 | 66 | 11 |
| 2018 | 99 | 1 | 0 | 0 | 16 | 15 | 75 | 10 |

竞争法规

引言

2018年，中国的反垄断执法部门合并到了国家市场监督管理总局下属的反垄断局。2019年国家市场监督管理总局在立法和多样化执法方面取得了稳步进展，是反垄断执法较为平稳的过渡年。尽管中美贸易关系紧张，有人怀疑反垄断执法可能会用做政治谈判的筹码，国家市场监督管理总局2019年的执法活动很大程度上并没有反映出基于贸易的干预。国家市场监督管理总局一直是专业的反垄断监管机构，那些反垄断问题最为严重且能直接影响消费者的领域。

自从2008年《反垄断法》颁布以来，中国的反垄断当局调查了将近200起涉及反竞争协议的案例，以及超60起滥用市场支配地位的案例，总罚款金额逾120亿元人民币（17亿美元），尽管近一半的罚款来自与美国相关的执法。反垄断执法部门审批了近3000笔合并交易，总金额超过50万亿元人民币（6.98万亿美元），其中43个案例被附条件批准，两个案例被禁止合并。作为改善披露工作的举措之一，2019年6月开始，反垄断局在其网站开设了一个单独的模块，用于披露行政处罚决定，并每周发布无条件批准审核结果。这表明透明度有所提高，之前的频率为每季度进行一次。

国家市场监督管理总局2016-2018年简易程序审核的案件

| | 第一阶段 结案率 | 第二阶段 结案率 | 第三阶段 结案率 | 重新申报 | 平均审核 | 中位审核 | 最长审核 | 最短审核 |
|------|-------------|-------------|-------------|------|------|------|------|------|
| 2016 | 94 | 6 | 0 | 0 | 24 | 24 | 85 | 11 |
| 2017 | 97 | 3 | 0 | 1 | 21 | 21 | 66 | 11 |
| 2018 | 99 | 1 | 0 | 0 | 16 | 15 | 75 | 10 |

监管最新进展

合并审核

商会赞赏国家市场监督管理总局对提高其合并审核程序效率所作出的持续努力。2019年的案件审核量与2018年持平：市场监督管理总局于当年共收到432份经营者集中申报，其中只有5份（1%）附有条件批准；尽管其中有4份为外国企业并购申报，但第5份涉及外国公司和国内公司成立合资企业。虽然审批量上升了，但国家市场监督管理总局针对简易程序的案件的审核时间持续有所精简。但“普通”程序案件的审核时间仍不确定，对于那些需要救济措施的申报案例来说，解决这一问题尤为迫切。

简易程序审核

简易程序审核继续对减少合并审核时间起着重要作用，2019年前三个季度，国家市场监督管理总局平均每17.4天能审核253起案件。（注：截至发表时，2019年还没有关于简易程序审查的完整数据，包括了2016年至2018年的数据供参考）

然而，国家市场监督管理总局在接受简化审核程序的案件时，过于谨慎，缺乏明确性，导致许多最初表面上符合简易程序的案件被排除在外。这延长了无争议交易的审查程序，并在商界造成不确定性，从而可能导致许多无争

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

Conditional Approvals

While the simplified procedure has reduced review time for qualifying cases, ordinary procedure cases continue to face lengthy reviews, especially when SAMR requires remedies as a condition of approval. The five conditionally approved cases in 2019 required an average of more than 365 days in review from initial filing to decision date. This was faster by 47 days (approximately 11.4 percent) than the average of 412 days in 2018, but nevertheless still leaves China as a significant outlier in terms of review times for high-profile merger cases. Notably, SAMR's review of three cases lasted over a year. Incredibly, review of *ZGBH/Royal DSM JV* lasted 554 days, setting a new record as the longest reviewed case ever for the AMB, whether under SAMR or the Ministry of Commerce (MOFCOM) where merger review was previously housed. In addition, reviews of both *Aleris/Novelis* (446 days) and *Cargotech/TTS* (385 days) required well over a year.

While these conditional decision cases have raised complex competition concerns, many have also been entangled with domestic industrial policy goals. In particular, response times for important industry stakeholders consulted by SAMR, including other ministries and concerned trade associations, now routinely extend beyond the timelines specified by SAMR, delaying review. Although we understand that these consultations involve multiple stakeholders, AmCham China recommends that the Chinese government implement effective mechanisms to minimize delays in consultation responses.

A summary of the five conditional approvals is provided below. All conditional approvals in 2019 involved behavioral remedies or hold-separate remedies; one also included a structural remedy requiring divestiture of assets in Europe, allegedly to remedy competition concerns in China. Remarkably, SAMR also seems to have thoroughly revived its internationally disfavored "hold-separate" remedy for three of the five cases. This remedy, almost unique to China, enjoyed brief popularity between 2011 and 2013 before falling into disuse. Such remedy generally requires merging parties to keep all or a portion of their business independent post-merger until the condition is removed with SAMR's express approval. It may have fallen into disuse because it is time-consuming to monitor and enforce, and also encountered criticism from experts and practitioners. The remedy has recently been reanimated, however, perhaps as a result of intervention by the Ministry of Industry and

Information Technology (MIIT). This has resulted in several decisions which effectively prevent firms from integrating (and therefore enjoying the benefits of the transaction and realizing efficiencies to the benefit of consumers) without permanently solving any of the alleged underlying competitive issues.

① KLA/Orbotech (relating to semiconductor manufacturing equipment): On February 13, 2019, SAMR approved KLA Corporation's proposed acquisition of Orbotech subject to conditions, which had previously been blocked over vertical relationships between the parties. Finding that KLA enjoyed a dominant position in process control equipment (an indispensable input for semiconductor deposition and etching equipment), SAMR believed that this position could be leveraged to tie or bundle the target's special application and advanced assembly deposition equipment. Therefore, SAMR imposed a number of behavioral remedies, including that the merged entity will: (1) ensure stable supplies of their semiconductor process control equipment and relevant services to Chinese deposition and/or etching equipment manufacturers; (2) refrain from engaging in tying sales or imposing other unfair deal terms with regard to the relevant products; and (3) put in place measures to protect deposition and etch equipment manufacturers' information from Orbotech. The remedies will automatically expire five years after the decision date. This transaction was unconditionally approved in other jurisdictions.

② TTS/Cargotec (relating to cargo loading equipment and services): On July 12, 2019, SAMR approved Cargotec's acquisition of certain businesses of the TTS Group. SAMR raised competition concerns in the markets for hatch covers, roll-on equipment for merchant ships, cargo lifters, as well as relevant after-sales services worldwide and/or in China, where the parties have overlapping businesses with combined market shares in the range of 50-60 percent. SAMR further found that the parties were the largest and the second largest supplier in the relevant markets, far ahead of the third supplier. As a result, SAMR required Cargotec and TTS Group to continue competing independently in the relevant markets for the next two years followed by automatic expiration. Furthermore, for the next five years, Cargotec was also forbidden from raising prices of the relevant products to Chinese customers, and barred from refusing to provide or restrict the provision of the relevant products to Chinese customers without justification. This transaction was unconditionally approved in other jurisdictions.

③ Finisar/II-VI (relating to optical transport equipment): On September 18, 2019, SAMR approved II-VI Incorporated's proposed acquisition of Finisar Corporation. SAMR raised concerns in the market for wavelength selective switches due to the market being highly concentrated and the parties having high combined market shares of 45-50 percent both globally and in China. SAMR approved the deal subject to implementation of a hold-separate remedy between their respective wavelength selective switches business for the

议的案件按照普通程序申报，以避免任何拖延的风险。商会鼓励国家市场监督管理总局采用明线规则来确定简易程序的标准，并就国家市场监督管理总局如何在受理此类程序的案件时行使自由裁量权发布详细指南。

附条件批准

虽然简易程序缩短了符合条件的案件的审核时间，但普通程序案件的审核时间却越来越长（尤其是国家市场监督管理总局要求提供救济措施的案件）。2019年申报的5起附有条件批准的案件中，从最初提交申请到决策之日，每个案件的审核时间都超过了365天。这比2018年412天/起的平均审核速度快了47天，但就备受瞩目的合并案件的审核时间看来，中国仍然是一个特例。尤其是在国家市场监督管理总局审核的案件中，有3起的审核时长超过了一年。难以置信的是，浙江花园生物高科技/皇家帝斯曼新设合资企业案反垄断审查持续了554天，这无论对于国家市场监督管理总局反垄断局，还是此前负责合并审核的商务部反垄断局来说，都创造了审核时长的最高纪录。此外，爱励铝业/诺贝尔斯（446天）和Cargotech/TTS（385天）两起案件的审核也都超过了1年。

这些条件决策案件导致企业们在竞争问题上产生了复杂的忧虑情绪，许多案件也与国内产业政策目标纠缠不清。目前，国家市场监督管理总局咨询的重要行业利益相关者，包括其他部委和有关行业协会的反馈时间，经常超过管理总局规定的时间节点，导致审核延迟。商会理解，这些审查涉及多方利益相关者，但商会依然建议中国政府能采取有效机制，将咨询反馈的延误时长最小化。

5个条件合并决策总结如下。2019年所有条件决策都涉及行为性救济措施，或保持独立救济措施；其中一起案件还包括要求剥离欧洲资产的结构性救济措施，据说是为了解决中国的竞争问题。值得注意的是，国家市场监督管理总局似乎对5起案件中的3起彻底恢复了“保持独立救济措施，而这种措施在国际上并不受欢迎。这种救济措施几乎为中国独有，在2011年到2013年期间短暂流行，之后停止施行。这种保持独立救济措施通常要求合并各方在合并后保持其全部或部分业务独立，直至国家市场监督管理总局明确批准取消限制条件。该措施被废弃可能是由于监督和执行的时间过长，而且也饱

受专家和执行者的批评。然而，这种救济措施最近被重新使用，可能是工信部干预的结果。这导致一些决策阻碍了公司整合（从而享受交易带来的利益，提高效率，造福消费者），也未能永久性解决任何潜在的竞争问题。

① KLA/奥宝科技（与半导体生产设备相关）：

2019年2月13日，国家市场监督管理总局附条件批准了KLA收购奥宝科技。因得知KLA在过程控制设备（半导体沉积和蚀刻设备不可或缺的投入）方面处于主导地位，国家市场监督管理总局认为，可以利用这种主导地位捆绑奥宝科技的特殊应用和先进的组装沉积设备。出于上述考量，国家市场监督管理总局实施了一系列行为性救济措施，其中有关合并实体的救济措施中，合并实体需要做的是：1）确保向中国沉积和/或蚀刻设备制造商稳定供应半导体过程控制设备和相关服务2）禁止参与捆绑销售或就相关产品实施其他不公平交易条款；以及3）采取措施保护沉积和蚀刻设备制造商从奥宝科技获取的信息。以上救济措施将在决策之日起5年后自动失效。

② TTS/Cargotec（与货物装载设备及服务相关）：

2019年7月12日，国家市场监督管理总局批准Cargotec收购TTS集团特定业务。国家市场监督管理总局对全球和/或中国的舱口盖、商船滚装船设备、货物升降机市场和相关售后服务的竞争问题表示担忧，双方业务有所重叠，合计市场份额高达50-60%。国家市场监督管理总局还发现，双方分别为相关市场第一、第二大供应商。因此，管理总局要求Cargotec和TTS集团在接下来两年里继续在相关市场独立竞争，直至自动失效。此外，接下来的5年里，Cargotec还被禁止针对中国消费者提高相关产品价格，不得无故拒绝或限制向中国消费者提供相关产品。该交易在其他司法管辖区获得无条件批准。

③ 菲尼萨/II-VI（光传输设备）：

2019年9月18日，国家市场监督管理总局批准了II-VI收购菲尼萨。管理总局对波长选择开关市场表示担忧，这是因为该市场高度集中，双方在全球和中国的市场份额合计高达45%-50%。国家市场监督管理总局批准该收购案的前提是，在接下来的三年里，双方需分别针对各自的波长开关选择业务实施保持独立救济措施，且双方承诺按照公平合理原则继续供应波长选择开关。保持独立救济措施不会自动失效，而是由管理总局特别批准。该交易在其他司

next three years, and the parties' undertaking to continue the supply of wavelength sector switches under fair and reasonable terms. The hold-separate remedies will not automatically expire; instead, they are subject to SAMR's specific approval. This transaction was unconditionally approved in other jurisdictions.

4 ZGBH/Royal DSM JV (relating to inputs for vitamin D3): On October 16, 2019, SAMR approved Zhejiang Garden Bio-chemical High-Tech (ZGBH)'s proposed joint venture with Royal DSM to manufacture 7-Dehydrocholesterol (DHC). DHC is a core raw material used for manufacturing vitamin D3 for human and animal use and the only use for DHC is to make vitamin D3. With combined market shares of between 40 and 50 percent, SAMR raised concerns about the global and Chinese markets for vitamin D3 for animal usage, vitamin D3 for human use and NF-grade lanolin cholesterol. SAMR eventually approved the deal subject to hold-separate remedies that apply to the proposed joint venture as well as between the parties with regard to the relevant business. The proposed joint venture also may not engage in any business other than the production of DHC. The restrictive conditions will expire five years after the decision date. Notification of this transaction was not sent to other jurisdictions.

5 Aleris/Novelis (relating to rolled aluminum sheet for automotive uses): On December 20, 2019, SAMR granted conditional approval to Novelis' proposed acquisition of Aleris. SAMR raised concerns in the Chinese markets for aluminum ABS inner plates and aluminum ABS outer plates as both markets are highly concentrated with significant barriers to entry and Novelis is the market leader with between 65 and 70 percent market share in both markets. SAMR approved the deal subject to the divestiture of Aleris' aluminum ABS inner and outer plates business in the European Economic Area and under the condition that the combined entity should not supply cold-rolled plates to any competitors operating in the aluminum ABS market in China for the next ten years. The US and the EU also required similar divestitures.

Ramping Up of Gun-Jumping Fines

In 2019, SAMR imposed gun-jumping fines in 17 cases, a 13.3 percent increase from 15 cases in 2018 and a record high. Of these 17 cases, more than half (9 cases) involved foreign companies, a decrease compared to 2018 where two-thirds of cases involved foreign companies, which is an indication that SAMR is also focusing on tackling non-compliance by domestic firms. Notably, 16 of the 17 cases involved fines of between RMB 300,000 and RMB 400,000 (US \$45,000 to US \$60,000), materially higher than for similar cases in the past. This shows SAMR's resolution to continue tackling gun-jumping non-compliance in merger reviews.

AmCham China applauds the consistent and more unified approach to enforcement of gun-jumping violations, as well

as the continued (and timelier) publication of gun-jumping decisions. Nonetheless, AmCham China continues to recommend that SAMR improve its practice of publishing written enforcement decisions in a fully reasoned manner. While published decisions must protect confidential business information of the undertakings concerned, they should be sufficiently detailed to provide guidance on SAMR's interpretation of the AML (and other relevant laws) and thereby improve legal certainty and educate companies about compliance. For example, further guidance to clarify SAMR's interpretation of "control" with respect to the establishment of joint ventures and minority stake acquisitions would bring increased clarity as to when such filings in fact require notification to SAMR.

Recent Conduct Enforcement Activities

During 2019, anticompetitive agreements and abuse of conduct continued to be the focus of SAMR's enforcement activities. In total, SAMR published 18 penalty decisions in 2019, including 11 on monopolistic agreements and 7 abuse of dominance cases.

Since SAMR officially authorized provincial-level administrations for market regulation (AMRs) to enforce the AML in their respective jurisdictions, there has been a marked increase in enforcement of the AML by AMRs. Among the 18 published conduct decisions, 16 cases were initiated by the local arms of SAMR. The conduct investigations in 2019 mainly focused on the pharmaceutical, automobile, construction, chemical, and restaurant industries. As part of its efforts to increase cooperation with international peers, SAMR established a joint AML enforcement mechanism with the European Commission (EC) and signed antitrust Memorandums of Understanding (MOUs) with the competition authorities of the European Union (EU), Japan, South Korea, and the Philippines.

Resale Price Maintenance (RPM)

On June 5, 2019, after more than two years of investigation SAMR fined *Changan Ford Automobile* RMB 162.8 million (approx. US \$24.3 million, four percent of sales of the relevant products) for RPM practices including restricting the minimum resale price for vehicles of downstream dealers in Chongqing since 2013 through means including price tables, price discipline agreements, and restrictions on dealers' minimum sales price displayed at automobile exhibitions as well as online sales. According to SAMR's decision, the company's conduct restricted downstream dealers' rights to set prices independently, excluded and restricted intra-brand competition, and effectively decreased inter-brand competition.

On December 6, 2019, the Jiangsu AMR imposed a fine of RMB 87.6 million (approx. US \$13 million, two percent of the company's annual sales in 2016) on *Toyota Motor (China)*

法管辖区获得无条件批准。

④ 浙江花园生物高科技 / 皇家帝斯曼 (与维生素 D3 摄入有关) : 2019 年 10 月 16 日, 国家市场监督管理总局批准了浙江花园生物高科技与皇家帝斯曼新设合资企业, 共同生产 7- 去氢胆固醇 (DHC)。DHC 是生产人类使用维生素 D3 和动物使用维生素 D3 的核心原材料, DHC 的唯一用途就是生产维生素 D3。由于双方市场份额合计高达 40%-50%, 管理总局对动物使用维生素 D3、人类使用维生素 D3、NF 级胆固醇的全球和中国市场表示担忧。管理总局最终批准了该案件, 前提是采取适用于新设合资企业及双方相关业务的保持独立救济措施。新设合资企业不得参与除 DHC 生产的任何业务。以上限制条件将于决策之日起 5 年后失效。该交易的通知没有发送到其他司法管辖区。

⑤ 爱励铝业 / 诺贝丽斯 (与汽车铝板相关) : 2019 年 12 月 20 日, 国家市场监督管理总局附条件批准了诺贝丽斯收购爱励铝业。管理总局对中国 ABS 内铝板和铝 ABS 外铝板市场表示担忧, 因为这两个市场都高度集中, 准入壁垒很高, 诺贝丽斯在两个市场中都占据了 65%-70% 的份额, 为该市场的领军企业。管理总局批准了该案件, 前提是爱励铝业将其 ABS 内铝板业务和铝 ABS 外铝板业务从欧洲经济区剥离出去。且在之后十年里, 合并后的实体不得向在中国 ABS 铝板市场经营的任何竞争对手供应冷轧板。美国和欧盟也要求进行类似的剥离。

加大偷步操作处罚力度

2019 年, 国家市场监督管理总局对 17 起偷步操作案件处以罚款, 受处罚的案件数量较 2018 年的 15 起增加了 13.3%, 创历史新高。在 157 起案件中, 超过一半 (9 起) 涉及外资企业, 该比例较 2018 年有所降低, 2018 年 2/3 的案件涉及外资企业, 表明国家市场监督管理总局重点处理国内企业的违规问题。值得注意的是, 17 起案件中有 16 起涉及的罚款金额为 30 万元~40 万元人民币之间 (约合 4.5 万~6 万美元), 罚款力度明显强于以往类似案件, 这显示出 SAMR 大力处置合并审查偷步操作案件的决心。

中国美国商会赞赏国家市场监督管理总局在处理偷步操作执法方面的一致性以及更高的统一性, 也赞赏管理总局能够持续更及时地发布偷步操作决策。但商会也建议总局在发布书面执行决策时采用更加充分合理的方

法。发布的决策必须保护相关方的商业机密, 决策需足够详细, 从而为总局对《反垄断法》(及其他法律) 的解释提供指导, 以提高法律确定性, 对企业进行合规教育。例如, 进一步明确国家市场监督管理总局对“控制”合资企业设立和少数股权收购的解释, 将更加清楚地说明此类申报应何时通知总局。

执法行动最新进展

2019 年, 反竞争协议和滥用执法权仍是国家市场监督管理总局的执法重点。2019 年, 总局共发布了 18 个处罚决定, 包括 11 起垄断协议案件和 7 起滥用支配权案件。

自国家市场监督管理总局授权省级行政机构 (监督管理局) 监管市场, 并在各自的管辖区域内执行《反垄断法》以来, 各地监督管理局的《反垄断法》执法频度显著改善。在 18 起公布的执法决策中, 16 起由国家市场监督管理总局当地机关提出。2019 年的执法调查主要集中在制药、汽车、建筑、化学和餐饮业。为加强与国际同行的合作, 国家市场监督管理总局与欧盟委员会建立了《反垄断法》联合执法机制, 并与欧盟、日本、韩国和菲律宾的竞争监管机构签署了反垄断《谅解备忘录》。

转售价格控制

2019 年 5 月, 在进行 2 年多的调查后, 国家市场监督管理总局对长安福特汽车有限公司处以人民币 1.628 亿元的罚款 (约合 2430 万美元, 占相关产品销售额的 4%), 后者实施了转售价格控制, 包括自 2013 年起, 通过价格表、价格约束协议、汽车展览会和网络销售限制经销商最低销售价格等手段, 限制重庆下游经销商汽车的最低转售价格。根据总局的决策, 该公司的做法限制了下游经销商独立定价的权利, 排除和限制了品牌内竞争, 严重损害了品牌间的公平竞争。

2019 年 12 月 6 日, 江苏市场监督管理局对丰田汽车 (中国) 投资有限公司处以人民币 8760 万元 (约 1300 万美元) 的罚款, 占该公司 2016 年总销售额的 2%, 原因是后者统一网上报价并限制最低转售价格。江苏市场监督管理局发现, 该公司通过汽车之家、易车网等平台, 或者通过与经销商签订协议, 限制网上报价和江苏境内的转售价格 (通过举行经销商会议, 检查经销商和微信发送通知), 目的是固定或限制对第三方的转售价格。

Investment for unifying online price quotes and restricting minimum resale prices. The Jiangsu AMR found that the company's actions to restrict online quotes and resale prices within Jiangsu (by means of holding dealer meetings, inspecting dealership stores, and sending WeChat notifications) on platforms such as autohome.com.cn and bitauto.com as well as via implementing agreements with dealers were intended to fix or restrict resale prices to third-parties.

At present, SAMR and the Chinese courts have divergent interpretations on enforcement for RPM whereby SAMR effectively carries on the *per se* illegal approach that was previously adopted by the National Development and Reform Commission (NDRC) while the courts use an effects-based rule-of-reason approach. In SAMR's Toyota decision, it appears that SAMR has made some efforts to try to substantiate its *per se* illegal standard approach with an effects-based analysis to justify the penalty. The decision held that the company's conduct restricted price competition among dealers, and deprived them of the freedom to set prices, which hindered the reasonable allocation of resources and infringed upon their lawful rights and interests; the conduct diminished competition between different automotive brands and ultimately harmed fair play in the automotive market and the conduct harmed consumer welfare by virtue of depriving them of benefits arising from full market competition, forcing them to accept prices formed in a non-competitive market, incurring higher costs on them and depriving them of the freedom to choose.

Abuse of Dominance

On April 29, 2019, the Shanghai Administration for Industry and Commerce (Shanghai AIC) published a penalty decision against *Eastman China* for abuse of dominance, levying a fine of RMB 24.4 million (approx. US \$3.5 million, five percent of its sales of the relevant product) in 2016. Eastman was found to have abused its market dominance in certain chemicals through a series of exclusive purchase requirements on customers in the form of minimum purchase requirements with remedies for failure to meet such commitments, Most Favored Nation clauses, and incremental rebates. This was the second fine that Eastman has received within two years from the Shanghai AIC, being fined RMB 2.4 million (US \$350,000) in early 2018 for RPM violations. Notably, during this investigation, the Shanghai AIC conducted an economic analysis to determine the relevant market and assess whether Eastman had market dominance. This shows a trend that economic analytical tools are and will play a bigger role in China's future enforcement activities in conduct cases, not only in merger reviews. AmCham China applauds the regulators' more sophisticated review abilities with the more common use of economic analysis.

SAMR also issued enforcement decisions against domestic companies, mostly in public welfare industries.

On October 12, 2019, Jiangsu AMR fined water supplier *Suqian Zhengyuan Tap Water (Suqian Zhengyuan)* RMB 877,640 (US \$131,000, four percent of the utility's annual sales in 2016) for abuse of dominance and confiscated RMB 1.2 million (US \$200,000) in illicit gains. The investigation began in May 2017 and found that *Suqian Zhengyuan* abused its dominant market position in the water supply market in Suyu District by requiring real estate companies to bundle water supply and facility installation services when they applied for water supply to newly built residential compounds. Following Jiangsu AMR's fine of *Suqian Zhengyuan*, in July 2019, the market regulator in Tianjin also imposed a fine of almost RMB 7.4 million (US \$1.06 million) (three percent of the utility's annual sales in 2016) on *Tianjin Water Supply Group* for abuse of dominance.

In August 2019, it was reported that SAMR's antitrust investigation into *Microsoft* has yet to be concluded with an additional probe into the company's cloud business. The investigation was initiated in 2014 due to alleged interoperability problems regarding *Microsoft's* Windows operating system and its Office software, as well as the company's sales of media players and web browsers. The opening of this additional probe into a different segment of *Microsoft's* business at such a late stage reflects a lack of transparency in antitrust investigation timelines as well as the scope of investigation. In December 2019, SAMR also received antitrust complaints against *Google* regarding potential abuse of dominance in the relevant market of licensable intelligent mobile operating systems, Android application stores, search engines, and web browsers affecting Chinese companies and consumers. Although *Google's* Mobile Services including *Google* maps, *Google* search, *Google* Play and *Gmail* are banned in China, the complainants have alleged that *Google's* anti-competitive conduct in overseas markets seriously restricted Chinese companies' competitiveness and Chinese regulators have extraterritorial enforcement power under the AML. It was also reported that SAMR initiated a preliminary inquiry into *Daimler*, *BMW* and *Porsche* with respect to suspected collusion on emission technology.

Legislative Progress

Following the consolidation of the antitrust enforcement agencies in 2018, SAMR published additional rules to address inconsistencies between the former enforcement agencies and to provide further guidance on the interpretation of the AML. In particular, SAMR issued three sets of important guidelines in July 2019, namely the ① *Interim Provisions on the Prohibition of Monopolistic Agreements*, ② *Interim Provisions on the Prohibition of Abuse of Dominant Market Position*, and ③ *Interim Provisions for Prohibiting the Abuse of Administrative Power to Eliminate or Restrict Competition*. All three sets of rules came into force on September 1, 2019. Important guidance provided in these rules include clarifying that RPM is *per se* illegal in SAMR's enforcement, unless qualifying for exemptions; setting out practical guidelines for companies'

目前，国家市场监督管理总局和中国法院对转售价格控制的解释存在分歧，总局采取发改委之前使用的“本身违法”规则，而法院采用基于效果的“理性分析”规则。在国家市场监督管理总局关于丰田汽车的决策中，总局似乎试图通过基于效果的分析来证实“本身违法”为标准方法，证明处罚的合理性。该决策认为，丰田汽车的行为限制了经销商的价格竞争，剥夺了其自由定价的权利，阻碍了资源的合理分配，侵犯了其合法权益；这种行为削弱了不同汽车品牌之间的竞争，并最终损害了汽车市场的公平竞争，损害了消费者的利益，剥夺了消费者从充分的市场竞争中获益的权利，迫使其接受非竞争市场的定价，进而付出更高的成本，剥夺了消费者自由选择的权利。

滥用市场支配地位

2019年4月29日，上海市工商行政管理局发布了针对伊士曼中国滥用支配权的处罚决定，处以罚款2440万元人民币（约合350万美元，占其2016年相关产品销售额的5%）。上海市工商行政管理局发现伊士曼中国滥用其在某些化学品方面的市场支配地位，以最低采购要求的形式，对客户提出一系列独家采购要求，并针对未能履行承诺的客户提供了救济措施，例如最惠国条款和增加退税。这是伊士曼在两年内从上海市工商行政管理局收到的第二张罚单，2018年年初，伊士曼因转售价格控制被处以240万元人民币（约合35万美元）的罚款。值得注意的是，在此次调查期间，上海市工商行政管理局进行了经济分析，以确定相关市场，并评估伊士曼是否具有市场支配地位。这显示出一种趋势，即经济分析工具正在且将会在中国未来的执法活动中发挥更大的作用，而不仅限于合并审查。监管机构通过更多使用经济分析方法，具备了更加成熟的审核能力，商会对此表示赞赏。

国家市场监督管理总局还针对内资企业发布了执法决策，大部分为公益性行业。

2019年10月12日，江苏市场监督管理局因自来水供应商宿迁正源自来水有限公司滥用支配地位，而对其处以人民币87万7640元的罚款（约合13.1万美元，占公司2016年销售额的4%），并没收了其120万元人民币（约合20万美元）的非法所得。该调查从2017年5月开始，发现宿迁正源自来水有限公司滥用宿迁地区

自来水供应市场的支配地位，要求房地产企业在申请新建住宅区自来水供应时，绑定供水和设备安装服务。江苏市场监督管理局对宿迁正源处罚以后，2019年7月，天津市场监管机构也因滥用支配权对天津自来水集团处以740万元人民币（约合106万美元，占该集团2016年销售额的3%）罚款。

2019年8月，据报道，国家市场监督管理总局针对微软的反垄断调查尚未结束，且对该公司云业务展开了另外一项调查。该调查于2014年启动，起因是微软的Windows操作系统及其Office软件存在互操作性问题，以及该公司的媒体播放器和网络浏览器的销售问题。在这么晚的阶段对微软的另一个业务部门开展额外调查，反映了反垄断调查的时间线及调查范围缺乏透明度。2019年12月，国家市场监督管理总局还收到了针对谷歌的反垄断投诉，声称谷歌可能滥用其市场支配地位，相关市场涉及可获得许可的智能移动操作系统、安卓应用商店、搜索引擎和网页浏览器，这些产品影响着中国的企业和消费者。尽管包括谷歌地图、谷歌搜索、谷歌市场和Gmail邮箱在内的谷歌移动服务在中国被禁用，投诉者声称，谷歌在海外市场的反竞争行为严重限制了中国公司的竞争力，根据《反垄断法》，中国监管机构拥有治外法权。据报道，国家市场监督管理总局对戴姆勒、宝马、保时捷涉嫌互通排放技术的问题展开了初步调查。

司法进展

随着2018年反垄断执法机构的合并，国家市场监督管理总局发布了额外的规则，以解决此前执法机构间的分歧，并就《反垄断法》的解释提供进一步的指导。特别是，管理总局在2019年7月发布了三套重要的指导方针，即①《禁止垄断协议暂行规定》；②《禁止滥用市场支配地位行为暂行规定》；③《制止滥用行政权力排除、限制竞争行为暂行规定》。三套规定于2019年9月1日生效，其中重要的指导方针包括：明确指出，控制转售价格本质上违反国家市场监督管理总局规定，符合豁免资格的除外；为公司申请反竞争协议豁免制定切实可行的指南；为滥用支配权的指控提供正当理由。

暂行规定还改进了《市场监督管理行政处罚程序暂行规定》中的执法程序，增加了对案件上报、立案、调查和处理等特定程序的规定。调查中止和免除的程序也

application of exemptions for anti-competitive agreements; and providing potential justifications for alleged abuse of dominance.

The interim rules have also refined the law enforcement procedures contained in the *Interim Provisions on the Procedure for Administrative Penalties for Market Supervision and Administration* by including specific procedural provisions for case reporting, filing, investigation, and treatment. Procedures for investigation suspension and exemption have also been further refined. They also clarified that the application regime for the suspension of investigations is not applicable to cartel activities, including price fixing, restriction of sales, and market allocation between competitors. In a move to increase transparency, relevant decisions will also be required to be made public in accordance with law and all business operators, whether domestic or international, are to be treated equally by the antitrust enforcement agency. While SOEs are not named specifically, our understanding is that they are to be covered equally under this provision. If so, we encourage SAMR to publish written guidance to that effect. AmCham China applauds this move to have greater procedural clarity, especially with regard to investigation procedures. This move to enhance transparency will allow business operators to have greater confidence in the procedural fairness and impartiality of the investigative process.

In addition, SAMR released a draft set of measures (*Interim Measures on Rewards for Complaints Against Significant Illegal Conduct in the Market Regulation Field (Draft Reward Measures)*) on its website for public comment in November 2019 aiming to reward whistleblowers for reporting violations of the AML. In December 2019, SAMR also published guidelines (*Anti-Monopoly Compliance Guidelines for Operators (draft)*) on how businesses should comply with the AML, encouraging businesses to set up antitrust compliance systems.

On January 2, 2020, SAMR published the amended *Anti-Monopoly Law (Draft for Public Comments)* (Draft AML Revisions), which is the first published amendment to China's centerpiece antitrust legislation since it came into force in 2008. The key proposed changes in the Draft AML Revisions include: exponentially increasing fines, especially for ❶ failures to notify mergers, acquisitions, and joint ventures, ❷ gun-jumping, and ❸ breach of merger conditions; trying to incorporate the definition of "control" in merger filings in the Draft AML Revisions; and introducing mechanisms to toll the review clock during merger reviews.

As AmCham China stated in our comments on the Draft AML Revisions submitted to SAMR, it contains a number of important efforts to address various practical issues which our members have identified over the decade since the enactment of the AML in 2008. In particular, we commend the introduction of provisions to revise the administrative monopoly and fair competition review mechanisms, which we expect will improve the transparent application of the AML and help guide the market.

Despite positive proposed changes, we also identified a number of concerns in our submission on the Draft AML Revisions, including:

- The Draft AML Revisions contain a number of critical terms and concepts that lack precise operational definitions, which may create uncertainty among businesses seeking to understand how the revised AML will be implemented,
- The potential expansion of investigations to concentrations below notification thresholds, such as when a concentration does not reach the threshold level as determined by the State Council, and in situations where said concentration "may lead to elimination or restriction of competition," anti-competitive regulatory authorities "shall conduct investigations in accordance with law." This provision reduces the certainty among members about when their intended concentrations will need to undergo further approval,
- The removal of the phrase "on equal terms" with respect to practices of differential prices and transaction terms to trading counterparts, which is not reflective of common competitive business practices and may undermine AML enforcement,
- The need to uphold the principle of proportionality given that the Draft AML Revisions gives regulators significant discretion to impose hefty penalties and fines, and
- Concern that violations of the Draft AML Revisions or monopolistic behavior could now constitute a criminal offense subject to criminal liability, which would undermine the business environment.

We applaud SAMR for making the Draft AML Revisions open to public comment and urge it to consider the recommendations in our submission to improve anti-competitive enforcement and improve the business environment.

Recommendations

For the Chinese Government

- **Focus on genuine competition issues. Remain impartial between domestic companies and their foreign competitors and avoid allowing industrial policy interests to play a role in AML enforcement and abuse of dominance investigations. Consider the implications of the US Supreme Court decision in *Leegin Creative Leather Products, Inc. v. PSKS, Inc. (Kay's Closet)* with respect to RPM enforcement, the continuing tendency to reflect industrial policy considerations in merger reviews, and restrictions on the ability to take enforcement actions against SOEs, especially central SOEs.**

得到了进一步完善。暂行规定还指出，调查中止的相关制度并不适用于定价、销售限制、竞争对手之间的市场分配等卡特尔行为。为了增加透明度，相关决定还将依法公开，所有国内外企业经营者都将享受到反垄断执法机构的平等对待。虽然没有具体提到国有企业的名字，但商会的理解是，一旦如此，国有企业将在这一条款下得到同等的对待。商会鼓励有关部门公布这方面的书面指导，也赞赏这一提高程序清晰度的举措，特别是在调查程序方面。该举措将使企业经营者对调查程序的公平性和公正性更有信心。

此外，国家市场监督管理总局于2019年11月在官网发布了一套办法草案（《市场监管领域重大违法行为举报奖励暂行办法（修订征求意见稿）》），征求公众意见，旨在奖励举报违反《反垄断法》的检举人。2019年12月，国家市场监督管理总局发布了《经营者反垄断合规指南（公开征求意见稿）》，指导企业遵守《反垄断法》，鼓励企业制定反垄断合规制度。

2020年1月2日，国家市场监督管理总局发布了《〈反垄断法〉修订草案（公开征求意见稿）》（《〈反垄断法〉修订草案》），这是2008年中国核心反垄断法案实施以来，首次公布反垄断法修正案。《〈反垄断法〉修订草案》的提出的主要变化包括：呈指数增加罚款，尤其针对①未通知合并、收购和设立合资企业；②偷步操作；③违反合并条款；将“控制权”的定义纳入《〈反垄断法〉修订草案》的合并申报中；引入相关机制，在合并审查期间，根据审查时间收费。

正如中国美国商会在提交给国家市场监督管理总局针对《〈反垄断法〉修订草案》的评论中所述，该草案包括了自2008年《反垄断法》颁布以来，处理各种实际问题的重要举措，这些问题由商会会员在过去十年里收集。商会尤其赞赏引入修订行政垄断和公平竞争审查机制的相关规定，并且希望这些规定能提高执法的透明度，从而引导市场。

除了积极的改变，商会在提交针对《〈反垄断法〉修订草案》的评论时，还发现了许多问题。包括：

- 《〈反垄断法〉修订草案》包含大量缺乏准确操作定义的重要术语和概念，这可能会对那些试图理解修订后的《反垄断法》如何实施的企业造成不确定性，
- 将调查范围扩展到低于申报门槛的合并案件，例如

国务院裁决某个案件未达到申报门槛，有些情况下案件“可能会消除或限制竞争”，反竞争监管当局“应依展开调查”。这一条款使会员企业无法确定其拟申报的案件何时需要进一步审批。

- 将交易对手不同价格和交易条款中的“在同等条件下”一词去掉，并没有反映出普遍的竞争性商业惯例，也会损害《反垄断法》。
- 鉴于《〈反垄断法〉修订草案》赋予监管机构很大的自由裁量权，可对企业处以高额罚款，有必要坚持比例原则。
- 违反《〈反垄断法〉修订草案》或出现垄断行为可能构成刑事犯罪，需承担刑事责任，从而损害商业环境。

商会赞赏国家市场监督管理总局发布《〈反垄断法〉修订草案》，征求公众意见，并敦促管理局考虑商会提交的关于改善反竞争执法和商业环境的建议。

建议

对中国政府：

- 关注真正的竞争问题。在内资企业与外资竞争对手之间保持公正，避免让产业政策利益影响《反垄断法》执法和滥用支配权调查。关注美国最高法院对Leegin/PSKS (Kay's Closet 店铺) 一案关于转售价格控制的判决，关注合并审查中反映行业政策因素的持续趋势，以及对国有企业执法能力的限制，尤其是中央国有企业。
- 针对合并审查发布明线规则，确定管辖权问题以及企业何时必须向国家市场监督管理总局申报交易，以便在交易结束前进行审查批准。包括提供合理的解释和案例，说明合资企业和少数股权收购中“控制”的含义，以及如何分配和归类申请门槛计算的收入。严格根据简易程序确定资格，并公布有关国家市场监督管理总局如何在受理案件中行使自由裁量权的详细指南。继续按照简易程序提供快速审核。

- For merger reviews, publish bright-line rules for determining jurisdictional issues and when companies must file transactions with SAMR for pre-closing review and approval. Such issues include providing meaningful explanations and examples of what constitutes “control” for joint ventures and minority share acquisitions, and how to allocate and attribute revenues for purposes of the filing threshold calculations. Strictly implement the existing eligibility criteria for simplified procedures and publish detailed guidelines regarding how SAMR exercises its discretion in accepting cases. Continue to provide speedy reviews under the simplified procedure for merger review.
- Improve transparency regarding competition complaints and investigations, including the release and implementation of clear guidelines on AML enforcement and a commitment to publish written enforcement decisions in a fully reasoned manner and ensure due process rights of companies under review or investigation. Allow foreign entities to provide comments in a timely fashion on all draft legislation relating to abuse of dominance, monopolistic agreements and administrative monopolies.
- Issue formal guidelines providing that foreign-qualified lawyers (i.e., PRC-qualified lawyers working in foreign law firms) and foreign counsel will be allowed to attend meetings and investigations of SAMR, alongside local counsel, in implementation of China’s express commitments under the US-China Joint Commission on Commerce and Trade (JCCT).
- Reconcile the divergence between administrative agencies and courts, and different courts, on the same issues, for example on the enforcement of RPM, by releasing additional guidance.

- 提高竞争投诉和调查的透明度，包括发布和执行有关《反垄断法》执法的明确指南，承诺以充分合理的方式发布书面执法决定，并保障被审查或调查公司的正当程序权利。允许国内外企业对滥用支配权、垄断协议和行政垄断的立法草案及时提供意见。
- 发布正式指南，明确符合外国资质的律师（即在外国律所工作，符合中国资质的律师）和外国顾问可以参加国家市场监督管理总局的会议和调查，并与本地顾问一起，履行中国对中美商贸联合委员会做出的承诺。
- 发布补充指导意见，协调行政机关与法院、不同法院在同一问题上的分歧，例如对转售价格控制的执法。

Compliance

Introduction

AmCham China member companies face challenging and complex compliance concerns in China because of the opaque nature of the Communist Party of China's (CPC) influence on government policy, historically weak regulatory transparency, and national industrial policy goals. Foreign companies face an increasing number of compliance-related issues, and according to the 2020 AmCham China *Business Climate Survey* (BCS), "regulatory compliance risks" are once again ranked as a top-five challenge facing members, having last appeared as a top-five challenge in 2017.

As has been well documented, US firms in recent years have been subjected to an increasingly broad array of investigatory actions under China's growing number of regulatory and enforcement measures. Such actions include, without limitation, regular investigations by authorities under the *Anti-Unfair Competition Law* (AUCL). From the viewpoint of US firms these actions often appear to be conducted for the purpose of benefiting China's domestic industrial policy goals or the particular interests of Chinese competitors.

In May 2019, China announced the creation of an "Unreliable Entity List" (UEL). Foreign entities or individuals can be placed on the UEL if they "boycott or cut off supplies to Chinese companies for non-commercial purposes and cause serious damage to Chinese companies." Few details have been forthcoming, including restrictions placed on listed companies. The potential exists, however, for the UEL to be used against foreign entities to advance state policy goals or in retribution for perceived (or actual) actions that displease the government without opportunity for such entities to challenge the action before an impartial tribunal.

The enactment of the *Cybersecurity Law* (CSL) in 2017 raised new data compliance, data localization, and data privacy compliance concerns which affect the cross-border operational needs of foreign companies and this has begun to have a serious impact on many US companies. Increasingly onerous, burdensome, and restrictive policies in China's digital economy could ultimately disincentivize foreign investment in these sectors.

China's rapid evolution has reached a stage where it asserts

that it is now on the verge of opening most of its markets to full and fair competition, with equal treatment for all businesses operating within its borders. These commitments have been enshrined in the new *Foreign Investment Law* (FIL), effective as of January 1, 2020. Consistent with the commitments of the FIL, in the 2020 BCS, 38 percent of members said that they felt "less welcome than before," a decline from 46 percent in the 2019 survey (35 percent reported "no change"). It is also a time when China is increasingly claiming global leadership, a role which depends on the exercise of fairness and transparency.

Ongoing Regulatory Issues

Anti-Corruption Compliance

Despite a declaration of "overwhelming victory" by President Xi Jinping by the end of 2018, China's anti-corruption campaign continued in 2019 in order to "strengthen and further" the progress to date. The National Supervision Commission (NSC), formed in 2018, began to operate in earnest. Laws and regulations were formulated to implement the *Supervision Law of the People's Republic of China* (Supervision Law). For example, the *Law of Administrative Sanctions on Public Functionaries of the People's Republic of China (Draft)* issued in October 2019 for public comment outlines the NSC's power to impose administrative sanctions on public functionaries who violate relevant laws, including engaging in corruption, bribery, and other activity that constitutes an abuse of power, as authorized by Articles 11 and 45 of the *Supervision Law*.

Anti-corruption enforcement in certain industries has also progressed. One of the most notable legislative updates was an amendment to the *Pharmaceutical Administration Law* (PAL) effective December 1, 2019. The amended *Pharmaceutical Administration Law* endeavors to deter bribery in the pharmaceutical industry by significantly raising the monetary penalty for pharmaceutical entities, including pharmaceutical marketing license holders, pharmaceutical producers, pharmaceutical distributors, and their agents who offer illicit benefits to healthcare professionals such as persons-in-charge of medical institutions, procurement personnel, physicians, or pharmacists. The lower limit of the monetary penalty if convicted of giving or taking bribes

合规

引言



由于中国共产党对政府政策的影响力不够明确，长期存在监管不够透明的问题，叠加国家产业政策目标的贯彻，中国美国商会（商会）会员在华经营面临着复杂、棘手的合规性问题。外商投资企业合规性问题日益突出，2020年商会《中国商务环境调查报告》显示：监管合规问题继2017年之后再次成为会员在华经营面临的五大挑战之一。

如前所述，近年来中国不断加大监管执法力度，对美资在华企业开展各种各样的调查，而且调查次数日益频繁。此类调查包括但不限于政府主管部门依据《反不正当竞争法》开展的常规调查。但对美国企业来说，这些调查行动似乎是为了实现中国国内产业政策目标或者是为中国竞争对手的特定利益考虑。

2019年5月，中国政府表示要建立不可靠实体清单制度。基于非商业目的对中国企业实施封锁断供，将把对中国企业造成实质损害的外国实体或个人列入其中。但后续具体实施细节如对清单内企业实施的具体限制措施等并未公布。不可靠实体清单制度有可能被用来打击外国实体，推进实现中国政策目标，或者用来借机报复那些令政府心生不满但又无法诉诸法庭的企业。

2017年颁布的《网络安全法》提出了新的数据合规、本地化和隐私保护合规要求，影响了外资企业跨境运营需求，并且已经对美国企业造成严重影响。中国数字经济政策要求日益繁琐、限制太多，可能会抑制外商对相关领域的投资。

经过多年的高速发展，中国现在表示要进一步全面开放市场，促进公平竞争，平等对待境内所有企业。新版《外商投资法》已就此做出明确规定，且已于2020年1月1日起施行。2020年营商环境调查报告显示，

38%的会员企业表示在中国不如之前受欢迎，比2019年的46%有所下降（35%的受访企业表示没有变化）。当前中国寻求发挥国际领导力，而要成为全球领导者就需要做到公平透明。

现存监管挑战

反腐败合规

尽管习近平总书记在2018年底指出“反腐败斗争取得压倒性胜利”，中国在2019年持续推进反腐工作，巩固发展胜利成果。国家监察委员会于2018年设立，已经开始依法履职，制定《中华人民共和国监察法》相关实施条例。例如，2019年10月《中华人民共和国公职人员政务处分法（草案）》面向社会征求意见，根据《中华人民共和国监察法》第十一条及第四十五条规定，本法规定公职人员有违反行为，如贪污贿赂及其他滥用职权的行为，国家监察委员会有权给予政务处分。

一些领域的反腐败工作也取得了进展。法律方面最为显著的进展是2019年12月1日起施行的《药品管理法》。修订版《药品管理法》致力于通过大幅提高罚款金额来严厉打击药品行业贪腐行为，药品上市许可持有人、药品生产企业、药品经营企业或者代理人给予使用其药品的医疗机构负责人、药品采购人员、医师、药师等有关人员不正当利益的，最低罚款额从一万元提高至三十万元；最高罚款额从二十万元提高至三百万元。向国家工作人员行贿的个人可能面临终身禁止从事药品行业的处罚。药品上市许可持有人、药品生产企业、药品经营企业在药品研制、生产、经营中向国家工作人员行贿的，对法定代表人、主要负责人、直接负责的主管人员和其他责任人员终身禁止从事药品生产经营活动。

医药领域历来是反腐败的重点战场，《药品管理法》提升罚款金额有利于医药领域反腐。但是，《药品管理

has been raised from RMB 10,000 to RMB 300,000. The upper limit has been raised from RMB 200,000 to RMB 3 million. A lifetime industry ban may also be imposed on certain individuals if convicted of bribing public officials. If pharmaceutical entities are found to have bribed public officials during R&D, production, or daily operations, then their legal representatives, principal persons-in-charge, and other responsible personnel can now receive a lifetime ban on engaging in the production and distribution of pharmaceuticals.

The pharmaceutical industry has historically been a focal point of anti-corruption enforcement; the amended monetary penalties should help to battle corruption and bribery in the industry. There remain shortcomings, however. The amended *PAL*, however does not clearly define “other illicit benefits,” and in practice corruption and bribery in the pharmaceutical industry can take various forms that legislation does not clearly address. In many cases, there is no clear distinction between activities that generate illicit and non-illicit benefits. AmCham China urges the National Medical Products Administration (NMPA) and other relevant government agencies to issue implementation measures for the *PAL*, regularly publish information on enforcement actions in a transparent manner, and issue compliance guidance specific to the pharmaceutical industry.

Corruption may result not only in civil and criminal liability, but may also tarnish a firm’s reputation, damaging its business both in China and internationally. It is essential that companies operating in China adhere to local laws and regulations, as well as overseas anti-bribery laws in their home jurisdictions, in order to avoid penalties and reputational damage. We fully recognize that US companies and citizens must comply with local Chinese laws and regulations, as well as the US Foreign Corrupt Practices Act (FCPA). Below are some of the key corruption-related concerns raised by AmCham China member companies operating in China. This outline is not exhaustive, however, and US companies operating in China need to be alert to a wide variety of corruption and related risks found in China’s rapidly evolving commercial and legal environment.

Anti-Bribery Law Enforcement

The NSC, as reported by state media, leads anti-bribery enforcement domestically and is in charge of international cooperation with foreign enforcement agencies. The *Supervision Law* grants the NSC broad powers in anti-corruption enforcement actions but the delegation of such powers to supervision commissions at the local level needs to be further clarified. To improve implementation of the *Supervision Law* and ensure that the NSC performs its duties as the nation’s supreme supervisory organ, in October 2019, the Standing Committee of the National People’s Congress (NPCSC) issued a decision to grant the NSC power to promulgate regulations, enabling it to perform its statutory supervisory functions and lead the work of all supervision

commissions at the local level. Empowered by this authorization, we encourage the NSC to promulgate regulations, as appropriate, that clarify and specify responsibilities of various agencies and administrative units with respect to their day-to-day work, and to accelerate the establishment of the complete regulatory framework for supervision.

The Chinese government continues to build an integrated and more independent supervisory system by consolidating powers under the NSC previously spread across various judicial authorities (the procuratorates) and administrative authorities (supervision departments and corruption prevention bureaus), as well as the disciplinary inspection divisions of the CPC. The Chinese government endeavors to ensure the full integration of the NSC into the political and legal system (public security, procuracy, judiciary) on a step-by-step basis. A notice relating to the punishment of public officials involved in gang-related crimes, jointly issued by various departments including the NSC, Supreme People’s Court (SPC) and Supreme People’s Procuratorate, specified how these agencies shall divide their responsibilities, ensure collaboration, and create an effective system of checks-and-balances. In October 2019, in a report delivered by the SPC on strengthening the trial process for criminal cases, the SPC stated that it has endeavored to work with the NSC to build a system of checks-and-balances to combat corruption and improve mechanisms for the trial of individuals accused of committing crimes while undertaking public functions. With the implementation of the *Supervision Law*, we anticipate that anti-corruption and anti-bribery law enforcement in China will be enhanced. It remains to be seen how US companies will be impacted by the enhanced anti-corruption government infrastructure and whether foreign-invested enterprises (FIEs) will be subject to additional disciplinary inspections.

Considering China’s continuing focus on anti-bribery law enforcement, AmCham China members continue to support additional clarity and consistency in regulatory enforcement and in the scope of responsibilities held by central and local supervision commissions. We also advocate greater transparency in anti-corruption enforcement actions. Such efforts should include support for key components of the rule of law, including transparency, consistency in interpretation, and due process. Comments from AmCham China members regarding any draft law or regulation related to anti-corruption and published for public comment should be solicited, collected, and communicated to relevant agencies. While foreign investors and FIEs rely on certainty and fairness when making investments, and a robust, balanced legal and regulatory environment will improve the overall effectiveness of compliance programs, it is unclear if the expanded role of the NSC and new legislation meet these requirements.

Amended Anti-Unfair Competition Law

The AUCL was further amended in April 2019, following the last major amendment in 2018. The 2019 amendment to

法》仍然存在短板,该法未明确定义“其他不正当利益”。在实际操作中,贪污贿赂在医药领域存在多种形式,法律均未明确对其规定。许多情况下,产生不正当利益和非不正当利益的活动之间没有明确界限。商会建议国家药品监督管理局与其他政府部门共同制定实施细则,进一步定义《药品管理法》中规定的“其他不正当利益”,定期公布执法信息以保证透明度,并发布医药行业合规指导。

腐败不仅使企业承担民事和刑事责任,也会损害企业声誉,影响企业在中国以及国际市场的运营。在华经营企业一定要遵纪守法,既要遵守中国法律法规,也要遵守本国的反海外腐败法,以免受到处分,损害企业声誉。商会充分认识到美国在华企业和公民必须要遵守中国的法律法规,也要遵守美国《反海外腐败法》。以下是商会会员企业提出的有关腐败的几点问题。本报告的相关内容并非面面俱到,在华经营的美国企业需要保持警惕,在中国快速变化的商业法律环境中密切关注腐败相关风险。

反贿赂法律执法

根据官方媒体报道,国家监察委员会主导国内反腐败执法工作,并负责与国际执法机构开展合作。《监察法》赋予国家监察委员会广泛的反腐败执法权,但地方监察委员会的权力需要进一步明确。为了贯彻实施《监察法》,保障国家监察委员会依法履行最高监察机关职责,全国人民代表大会常务委员会于2019年10月决定:国家监察委员会可以根据宪法和法律,制定监察法规,履行领导地方各级监察委员会工作的职责。商会鼓励国家监察委员会根据该授权制定法规,明确规定各部门及行政单位职责分工,确定具体工作职责,加快建立、完善监察法律框架。

中国政府持续整合监察力量,建立更独立的监察体系,将分散在司法机关(检察院)、政府监察机关(监察部、国家预防腐败局)、党委纪律监察组织的监察权力整合到国家监察委员会。中国政府逐步把国家监察委员会纳入政治、法律体系(公安、检察、司法)。此前,国家监察委员会、最高人民法院、最高人民检察院联合其他相关部门共同发布了关于严惩公职人员涉黑涉恶违法犯罪问题的通知,通知中明确规定各机构分工负责、互相配合、互相制约。2019年10月,最高人民法院在其关

于加强刑事案件审理工作情况的报告中指出,最高人民法院与国家监察委员会共同合作,完善办理职务犯罪案件互相配合、互相制约机制。随着《监察法》的贯彻执行,商会希望中国能进一步提高反腐执法水平。中国反腐机构整合将对美国在华企业有何影响以及是否会对外资企业开展其他纪律检查等仍然有待观察。

中国将持续重点推进反腐执法工作,因此商会会员建议进一步明确国家监察委员会和地方监察委员会的职责范围,保持监管执法的一致性。商会也呼吁保证反腐执法工作的透明性。应确保法治的关键构成要素包括透明性、法律解释一致性、正当程序等落实到位。商会应征求收集并反馈商会会员企业就反腐相关草案、法规、征求意见稿等提出的意见并反馈到相关政府机构。外国投资者和外商投资企业的投资决策取决于投资环境的确定性和公正性,完善平衡的法律监管环境有利于提高合规的整体效果,但是被赋予更多权力的国家监察委员会和新法规是否能满足以上要求仍然不得而知。

修订版《反不正当竞争法》

继2018年修订后,《反不正当竞争法》于2019年4月再次修订。此版重点通过以下手段保护商业秘密:

- ① 扩大商业秘密的定义范围,涵盖“其他商业信息”;
- ② 恶意实施侵犯商业秘密行为,可以判处惩罚性赔偿,按照被侵权人因侵权受到的实际损失或侵权人因侵权获得的利益数额的一倍以上五倍以下确定赔偿数额;侵权赔偿金额上限从三百万元调整到五百万元;
- ③ 将举证责任转移给侵权人。此次修法呼应了新版《外商投资法》,《外商投资法》规定要加强对知识产权和商业秘密的保护,建立知识产权侵权惩罚性赔偿制度。修订版《商标法》(2019年4月修订)以及2019年发布的《专利法(修正案草案)》征求意见稿都提到要实施侵权惩罚性赔偿机制,保护知识产权。

2019年,国家市场监督管理总局在多个领域开展反不正当竞争执法行动,涉及医药、医疗器械、电子商务、食品和教育行业。2019年1月8日,国家市场监督管理总局联合商务部、公安部等其他12个部门在全国范围内集中开展联合整治“保健”市场乱象百日行动。2019年8月,国家市场监督管理总局开展全国重点领域反不正当竞争执法行动,涉及电商、医药等领域。据国家市场监督管理总局统计,自2018年修订《反不正当竞争法》

the AUCL focuses on the protection of trade secrets by ❶ broadening the definition of trade secrets to include “other commercial information,” ❷ providing punitive damages (from one to five times the losses suffered or profits gained) for malicious infringement of trade secrets and increasing the upper limit of damages from RMB 3 million to RMB 5 million, and ❸ shifting the burden of proof to trade secrets infringers. The enhanced protection of trade secrets under the amended AUCL echoes the new *Foreign Investment Law*, which emphasizes improved protection of intellectual property rights (IPR) and trade secrets of FIEs and provides that China will establish a punitive compensation mechanism for counteracting infringement of IPR. The newly amended *Trademark Law* (April 2019) and the draft amendments to the *Patent Law* issued for comment in January 2019 also reflect a similar effort to implement a punitive compensation mechanism for IPR protection.

Throughout 2019, SAMR initiated campaigns against unfair competition in various industry sectors, including the pharmaceuticals, medical devices, e-commerce, food, and education sectors. On January 8, 2019, SAMR led a nationwide “hundred-day” investigation campaign against dietary supplements, together with 12 other government agencies including MOFCOM and the Ministry of Public Security (MPS). In August 2019, SAMR initiated a new campaign against unfair competition targeting “key industries,” including e-commerce and pharmaceuticals. According to SAMR, in the two years following the 2018 amended AUCL, SAMR and its local counterparts have handled 23,500 cases concerning unfair competition and confiscated RMB 1.33 billion. The enhanced regulatory protection of IPR and intensified enforcement activities against unfair competition are part of the government’s ongoing effort to improve China’s business environment. Additional measures to combat unfair competition and create a fair market are expected to be issued, especially after the *Regulations on Optimizing Business Environment* promulgated by the State Council went into effect on January 1, 2020.

During these campaigns, certain companies in these “key industries” have been investigated and subjected to administrative fines for violations of Article 7 of the amended AUCL. This Article states that “a business operator shall not resort to bribery for exchanging business opportunities or a competitive edge,” and prohibits any efforts to bribe the following individuals: ❶ employees of the transaction counterparty; ❷ entities or individuals entrusted by the transaction counterparty to handle relevant affairs; and ❸ entities or individuals that use that authority. There is no indication that US companies have been specifically targeted in those campaigns; however, foreign companies would do well to review the types of administrative decisions and penalties meted out by regulators during the campaign, which could signal future enforcement trends. SAMR, from time to time, publishes details about “typical cases” identified through its various campaigns. These publications, however, often include limited details and are not necessarily released in a

timely manner following the enforcement action. AmCham China urges SAMR to publish binding guidance and interpretations regarding AUCL enforcement, and to ensure that enforcement campaigns are transparent, made public, and characterized by due process.

US Foreign Corrupt Practices Act and Other Anti-Corruption Laws

AmCham China member companies have continued to prioritize compliance with the FCPA and other applicable anti-corruption laws. Companies strive to design compliance and training programs to address risks. In-house professionals working to ensure a foreign company’s global compliance face the difficult task of harmonizing different demands to address both global and local requirements. Meanwhile, the US Department of Justice (DOJ) announced a “China Initiative” in November 2018, which includes a component for identifying FCPA cases involving Chinese companies that compete with American businesses. In June 2019, US Attorney General William P. Barr declared that the US “needs to continue to pursue, and indeed step up, our China Initiative.” The new *Foreign Investment Law*, effective as of January 1, 2020, provides that China may take reciprocal measures against a country or region that adopts prohibitive or restrictive measures that discriminate against investment from China, thereby establishing the legislative basis for the Chinese government to counter the China Initiative. Without a defined scope or any explanation on what may constitute “prohibitive, restrictive or other similar measures against investments from China,” whether FCPA enforcement action targeting Chinese companies under the “China Initiative” may trigger tit-for-tat anti-corruption enforcement by the Chinese government remains unclear. If the DOJ increases FCPA enforcement actions against Chinese companies, this could result in the Chinese government bringing additional anti-corruption enforcement actions against US companies with operations in China. The UEL announced in May 2019 could be one such tool for this.

In 2019, several Chinese nationals were indicted or convicted for their roles and involvement in foreign bribery schemes. On March 25, 2019, Chi Ping Patrick Ho, aka “Patrick C.P. Ho” and “He Zhiping,” was convicted on charges of violation of the FCPA, money laundering and conspiracy to commit the same in association with his role in a multi-year, multimillion-dollar scheme to bribe top officials of Chad and Uganda in exchange for business advantages for his employer, CEFC China Energy Company Limited. Mr. Ho was sentenced to three years in prison and fined US \$400,000. On November 14, 2019, the SEC filed a civil complaint against Yanliang (Jerry) Li, the former managing director of Herbalife’s Chinese subsidiary, charging him with FCPA violations in connection with the bribery of Chinese government officials. The complaint alleged that Mr. Li, from 2006 to 2016, directed a scheme to bribe Chinese officials in order to obtain direct selling licenses and limit government investigations

以来的两年间，国家市场监督管理总局及地方市场监督管理局共处理了 23500 起涉及不正当竞争案件，没收违反所得人民币 13.3 亿元。中国政府持续努力改善营商环境，完善知识产权保护法规，加强反不正当竞争执法力度。然而，政府仍需制定措施进一步打击不正当竞争，创造公平的竞争环境，尤其是在《优化营商环境条例》自 2020 年 1 月 1 日起施行之后。

在反不正当竞争执法行动中，一些重点领域企业受到调查并因违反修订版《反不正当竞争法》第七条处以罚款。第七条规定：经营者不得采用财物或者其他手段贿赂下列单位或者个人，以谋取交易机会或者竞争优势：（一）交易相对方的工作人员；（二）受交易相对方委托办理相关事务的单位或者个人；（三）利用职权或者影响力影响交易的单位或者个人。虽然没有迹象表明此次执法行动特别针对美国企业，但是外资企业应认真研究执法行动依法给予的行政决定及处罚类型，因为这可能成为未来执法趋势。国家市场监督管理总局有时会公布执法行动典型案例，但是公布的内容通常不够具体，公布时间不够及时，滞后于执法行动。中美商会建议国家市场监督管理总局发布《反不正当竞争法》约束性指导意见及解释，确保执法行动透明、公开、程序正当。

美国《反海外腐败法》及其他反腐败法律

《反海外腐败法》及其他适用依然是商会会员在执行反腐败法律合规时的工作重点。企业努力设计合规培训项目应对危机。企业法律合规专业人员面临着协调不同需求，满足国际、本地要求的艰巨任务。2018 年 11 月，美国司法部宣布了“中国行动计划”，该计划的目标之一便是识别“涉及与美国企业竞争的中国公司”的《反海外腐败法》案件。”2019 年 6 月，美国司法部长威廉·巴尔表示美国需要实施并加强对“中国行动计划”的执行力度。新版《外商投资法》自 2020 年 1 月 1 日起施行，新法规定任何国家或者地区在投资方面对中华人民共和国采取歧视性的禁止、限制或者其他类似措施的，中华人民共和国可以根据实际情况对该国家或者该地区采取相应的措施，为中国政府针对“中国行动计划”采取反制行动奠定了法律基础。新法没有明确定义“禁止、限制或者其他类似措施”的范围，也未给予任何解释，目前仍不清楚美国依据“中国行动计划”开展针对中国公司的《反海外腐败法》执法行动是否会导致中国政府同样也对美国企业开展反腐败行动。如果美国司法部针对

中国公司加强《反海外腐败法》执法力度，可能会导致中国政府针对在华美国企业大力开展反腐败执法行动。此外，2019 年 5 月宣布建立的不可靠实体清单制度也可能是反制的工具之一。

2019 年，几位中国公民因参与海外贿赂被起诉或判决。2019 年 3 月 25 日，何志平被判违反《反海外腐败法》，洗钱及参与贿赂计划的罪名成立，何志平参与的贿赂计划持续多年，涉及数百万美元，通过贿赂乍得和乌干达高级官员为中国华信能源有限公司谋取商业竞争优势。何志平被判处有期徒刑 3 年、罚金 40 万美元。2019 年 11 月 14 日，美国证券交易委员会对康宝莱原中国区总裁李延亮提出民事起诉，指控他因贿赂中国政府官员违反了《反海外腐败法》。起诉状称，在 2006 年 -2016 年 10 年间，李延亮为帮助康宝莱获得直销牌照、减少政府对其中国业务的审查而不断贿赂中国政府官员。2019 年 10 月 22 日，美国司法部对康宝莱公司李延亮及康宝莱原中国区外部事务部前主管杨宏伟提起刑事指控，理由是向中国政府官员行贿，违反了美国的《反海外腐败法》。李延亮还被指控在美国司法部和美国证券交易委员会的一次联邦调查过程中作伪证并销毁记录。

要发展国际商务、吸引外国投资，中国应确保其反腐败法律法规与国际惯例接轨，执法透明、一视同仁，不区别对待。《联合国反腐败公约》于 2005 年正式生效，目前共有 187 个缔约国（包括中国）。公约内容主要涉及五个方面：预防措施、定罪和执法、国际合作、资产的追回，以及技术援助。公约的序言部分强调了腐败对经济发展的影响，还讨论了所有企业个人的公平竞争环境、有组织犯罪、法治等要素。

中国在 2011 年 5 月 1 日颁布的第八次修订版《刑法》中规定贿赂外国公职人员或者国际公共组织官员的行为为刑事犯罪。至今为止，尽管有几家中国企业因于经营所在国存在腐败行为而被国际发展机构制裁，但是却鲜少对被指控在海外贪污受贿的中国企业或个人提起公诉或将其公之于众。2019 年 10 月，国家监察委员会举办了为期 15 天的非洲国家官员反腐败机构官员研修班，期间中国政府表明其禁止在非洲经营的中资企业有贿赂行为。中国反腐败执法行动日益重视国际合作，因此商会建议中国政府提高反腐败执法行动以及评估不当行为严重性标准的透明度。同样，中国反腐败执法工作中关于减轻罪责的因素也要更加透明。

into Herbalife's Chinese subsidiary. In a related proceeding, on October 22, 2019, the DOJ filed an indictment against Mr. Li and Hongwei (Mary) Yang, the former head of Herbalife's external affairs department, charging them with conspiring to violate the FCPA by bribing Chinese government officials. Mr. Li was also charged with one count of perjury in connection with the SEC investigation, and one count of destruction of records in a federal investigation in connection with the SEC and DOJ investigations.

To foster international commerce and foreign investment, China should ensure that its bribery and corruption laws meet generally accepted international norms and that these laws are applied transparently and without discrimination. With respect to international norms, the UN Convention Against Corruption, enacted in 2005 and with 187 parties (including China), covers five main areas: prevention, criminalization, international cooperation, asset recovery, and technical assistance. The effect of corruption on economic development, a level playing field for all businesses and individuals, organized crime, and the rule of law among other elements are emphasized in the Preamble.

China criminalized the act of bribing foreign officials and officials of international organizations with the Eighth Amendment to the *Criminal Law*, enacted May 1, 2011. To date, few if any cases against Chinese companies or individuals charged with overseas corruption and bribery have been prosecuted or made public, even though several Chinese companies have been debarred by multinational development institutions for corruption in host countries. In October 2019, the NSC hosted a 15-day anti-corruption training program for African government officials, during which it was stated that the Chinese government requires Chinese companies operating in Africa to refrain from bribery. Given China's growing emphasis on international cooperation in anti-corruption enforcement, AmCham China urges more transparency in anti-corruption enforcement actions and standards used to evaluate the seriousness of misconduct. Greater transparency is also needed with respect to what is considered as a mitigating factor with respect to China's anti-corruption enforcement efforts.

Third-Party Compliance

Compliance with anti-bribery and anti-corruption (ABAC) laws by third parties is also a major concern for AmCham China member companies. These include the activities of sales channel distributors and resellers, vendors, agents, consultants, customs brokers and supply chain partners. It is essential that Chinese domestic business partners develop compliance programs that address the key risks highlighted by anti-corruption laws.

AmCham China acknowledges positive developments with respect to compliance regulations and policies in 2019. In December 2018, the National Development and Reform

Commission (NDRC) and six other government departments jointly issued the *Guidelines for Management of the Compliance of Enterprises' Overseas Operations* (Overseas Operations Guidelines). The Overseas Operations Guidelines provide that one of the key responsibilities for an entity's compliance management department is to actively identify and assess compliance risks involving third parties, which include suppliers, agents, distributors, consultants, and contractors. The *Overseas Operations Guidelines* also urge companies to conduct due diligence on third parties to understand their compliance level, communicate the company's compliance policies and requirements to third parties, and clearly specify relevant compliance requirements in contract with third parties.

The coverage in the Compliance Guidelines in connection with third party compliance is very general. Also, the Overseas Operations Guidelines apply only to Chinese companies going abroad and China has not issued any regulations expressly requiring that Chinese companies manage risks associated with third-party compliance when doing business in China. In fact, the risk level of third-party transactions in China remains high. In 2019, Chinese companies, especially technology companies, were reported to have intensified internal efforts to crackdown on commercial bribery. Many of the alleged violations committed by employees of technology companies involve seeking, taking from or paying bribes to third parties. Chinese technology companies, which are growing rapidly in domestic and international markets, still need to develop more robust internal compliance systems sufficiently sophisticated to manage the risks associated with their expansion. AmCham China urges the supervising government agencies to publish more detailed and practical guidelines regarding third party compliance management to assist Chinese companies in managing third-party compliance in their domestic and overseas operations, in part to avoid legal liability in other jurisdictions and minimize reputational risk.

Cybersecurity Law

China's CSL, which took effect on June 1, 2017, is an omnibus law that addresses all major aspects of cybersecurity, including network systems and facilities, network products and services, real-name registration, cyberattacks, encryption, data localization, data privacy and protection of critical information infrastructure (CII). The *Cybersecurity Law* subjects CIIs to stringent regulatory requirements. The all-important issue of which Chinese entities, including FIEs, will be deemed a CII operator is still to be resolved. Being classified as a CII operator imposes onerous restrictions on the procurement and use of certain network products and services, subjects cross-border data transfers to security reviews, and imposes strict data localization requirements. Further, the CSL and related implementing rules impose onerous compliance obligations on "network operators," namely all entities that operate via networks. Obligations

第三方合规

第三方反贿赂反腐败法律合规也是商会会员企业关注的重点问题。第三方活动主要包括销售渠道分销商、经销商、供应商、代理商、顾问、报关行、供应链伙伴等的活动。因此，中国国内合作伙伴有必要制定合规计划，化解反腐败法律中的重点风险。

商会赞赏 2019 年中国在合规法规及政策方面取得进展。2018 年 12 月，国家发展和改革委员会和其他 6 个部门联合发布了《企业境外经营合规管理指引》（以下简称《境外经营指引》）。《境外经营指引》规定企业合规管理部门的其中一个重要合规职责是要积极识别和评估与供应商、代理商、分销商、顾问和承包商等第三方相关的合规风险。《境外经营指引》也要求企业与第三方合作时，应做好项目尽职调查，深入了解第三方合规管理情况。企业应当向重要的第三方传达自身的合规要求和对方的合规要求，并在商务合同中明确约定。

合规指引中与第三方合规相关的内容相当宽泛。《境外经营指引》仅适用于开展“走出去”相关业务的中国企业，中国还未出台任何明确要求中国企业在中国境内经营业务时管控第三方合规风险的规定。实际上，在中国与第三方交易的风险仍然很高。2019 年，许多中国企业尤其是科技企业纷纷加大内部反腐败力度，严厉打击商业贿赂。多起科技企业员工违规案件涉及向第三方索要贿赂、收受第三方贿赂或向第三方行贿。中国科技企业在国内外市场上发展迅速，因此需要建立更加健全严密的内部合规体系，有效管控企业扩张过程中的相关风险。商会建议政府监管部门发布更详细和切实可行的有关第三方合规管理的指引，以协助中国企业在国内外业务经营中管理好第三方风险，一定程度上防止企业在其他司法辖区承担法律责任，并将声誉风险降到最低水平。

《网络安全法》

中国《网络安全法》自 2017 年 6 月 1 日起施行，是一部全面规范网络空间安全管理方面问题的综合性法律，包括网络系统、设备、网络产品服务、实名注册、网络攻击、加密、数据本地化、数据隐私及关键信息基础设施保护等内容。《网络安全法》中关于关键信息基础设施的监管要求十分严格。其中关于哪些中国实体包括外资企业将被认定为关键信息基础设施的运营者这一重要问题有待解决。关键信息基础设施的运营者在采购、

使用网络产品和服务方面受到诸多限制，跨境传输数据要接受安全审查，而且数据本地化也有严格要求。此外，《网络安全法》及相关实施条例对网络运营者，即所有通过网络运营的实体，施加了诸多合规义务。此外，鉴于执行条例和标准还尚待最终确定，数据本地化和跨境数据传输安全评估有关等义务仍不清楚。根据实施条例草案，网络运营商承担着繁重的合规义务。

《网络安全法》和其他强制性数据相关规定覆盖面广，对数据收集、存储、传输等方面的要求十分严苛。对于各个领域的中国企业和外商投资企业来说，这都会带来巨大的合规挑战与不确定性。例如：

- 《网络安全法》中的诸多概念如“网络运营者”、“关键信息基础设施”、“重要数据”、“个人信息”等措辞模糊，这意味着在执法过程中容易出现主观解读的情况。
- 有一种风险：执法机构权责不清可能导致重复检查，而不同执法机构的合规标准不一，增加了网络运营商的合规负担。
- 通过执行安全审查可能使中国政府获得许多公司的核心知识产权。商会会员企业担心在这种环境下，它们的知识产权、商业秘密和其他机密信息是否能继续得以保密。
- 商会会员担心《网络安全法》在商业领域赋予了中国政府过度的监管权力。
- 数据本地化的规定以及对跨境数据传输的限制可能导致外国公司离开中国市场。
- 商会会员也注意到对网络产品和服务的“安全可控”的要求也可能促使消费者选择购买国内的产品和服务而非同等的甚至更优质的外国产品。

数据政策合规

中国已经认识到数据的安全性、可控性与国家安全之间的关系。过去两年，中国建立起了全面的法律机制，确定了中国大陆数据安全与隐私制度。这一新机制包括网络安全法和其他相关法规、规则以及《网络安全法》存在前后的标准，为跨国公司和外国中小型企业带来了合规难题。除了合规方面的挑战，如果跨国公司在其所在国受到执法机构的调查，要求披露跨国公司在华业务的相关数据，并跨境传输相关数据，它们的处境可能会更加困难。

in connection with data localization and cross-border data transfer security assessment remain unclear, as implementing regulations and standards have yet to be finalized. Based on the draft implementing regulations that have been disseminated, network operators will themselves be subject to burdensome compliance obligations.

The CSL and other mandatory data-related rules have broad scope and stipulate rigorous requirements for data collection, storage and transfer. This has created significant compliance challenges and uncertainty for both domestic and foreign companies in various sectors. For instance:

- Many core concepts of the CSL, such as “network operators,” “CII,” “important data,” and “personal information,” are defined in vague terms, meaning they are prone to being interpreted subjectively in relation to law enforcement,
- There is a risk that the undefined authority of enforcement agencies will result in repeat inspections, while inconsistent compliance standards among different enforcement agencies will add to the compliance burden of network operators,
- The security review provisions give the Chinese government access to many companies’ core intellectual property. AmCham China member companies are concerned about the protection of their IP, trade secrets and other confidential information in this environment,
- AmCham China members are concerned that the CSL will give the Chinese government broader surveillance powers in the commercial field than necessary,
- Data localization provisions and restrictions on cross-border data transfers may lead FIEs to leave the China market altogether,
- AmCham China members are also concerned that the requirements for network products and services to be “secure and controllable” may be used to promote the purchase of domestic products and services over comparable and even superior foreign products (see the ICT chapter for additional discussion).

Data Policy Compliance

China recognizes the relationship between the security and controllability of data and national security. Over the past two years, China has been developing a comprehensive legal regime that sets parameters for data security and privacy within mainland China. This regime consists of both the CSL and other regulations, rules, and standards adopted before or after the CSL, which creates compliance challenges for multinational corporations and small and medium-sized FIEs alike. In addition to compliance challenges, FIEs will likely be in a much more difficult position if they are subject to investigations by law enforcement agencies in their home jurisdictions which require disclosure and cross-border transmission of relevant data with respect to their China operations.

To implement the requirements as outlined in the general legal regime, the Cyberspace Administration of China (CAC), industry regulators, local governments and standardization institutions have begun to issue more sector-specific and local draft regulations and standards. With respect to data policy compliance, in 2019 the CAC released the draft *Data Security Management Measures and draft Measures for the Security Assessment of Cross-Border Personal Information Transfers* (discussed below). The Draft Data Security Measures are very high-level, which makes it challenging for companies to assess and monitor their compliance. Moreover, while the Draft Measures attempt to provide additional clarity to the definition of “important data,” AmCham China members understand that commercial considerations of “important data” vary from sector to sector. Details regarding the collection and use of important data are limited. There is no legal consensus at present regarding how important data is generated or the potential outcomes resulting from its use or misuse. Additionally, details on the collection, processing, and use of information not classified as “personal information” or “important data” are largely missing. Generally speaking, if enacted in their current form, these draft regulations will create onerous data compliance obligations for both FIEs and domestically-invested enterprises in China.

Data Privacy

Chapter Four of the CSL addresses the protection of personal information. Compliance with data privacy laws is complicated by the fact that statutory requirements relating to data privacy protection are found in existing laws and regulations at both the national and provincial/municipal levels, as well as in judicial interpretations. The requirements contained in these laws and regulations are inconsistent in certain respects. For example, Article 76 of the CSL defines “personal information” as “information that can be used separately or in combination with other information to identify a natural person,” while interpretations issued by the SPC and the Supreme People’s Procuratorate define the scope of “personal information” to include information that “reflects the activities of a particular natural person.”

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

A personal information protection law is reportedly on China’s legislative agenda for 2020. In 2019, China’s government agencies also released three sets of draft amendments (in January, June, and October) to the *Information Security*

为贯彻执行法律机制规定的要求，国家互联网信息办公室、行业监管机构、地方政府和标准化机构已开始发布更多的行业规范和地方性法规草案。2019年，国家互联网信息办公室发布了《数据安全管理办法》和《个人信息出境安全评估办法（征求意见稿）》（下文讨论）等关于数据政策合规的规定。《数据安全管理办法》级别较高，致使企业评估监控合规情况充满挑战。虽然《个人信息出境安全评估办法（征求意见稿）》对“重要数据”进一步明确定义，但是商会会员认为商业领域重要数据的概念因行业而异。收集、使用重要数据的具体信息有限。目前，关于重要数据如何产生，使用、滥用重要数据会产生什么后果没有统一的法律规定。此外，在如何收集、处理和使用那些不属于个人信息/重要数据的信息方面，目前没有对具体内容提供明确规定。整体而言，如果仍以目前的形式实施，这些法规草案将为外商投资在华企业和中国企业造成繁重的数据合规义务。

数据隐私

《网络安全法》第四章阐述了个人信息安全保护。国家和省/市两级现行的法律法规以及司法解释都对数据隐私保护提出了法定要求，使隐私合规问题变的异常复杂。但是这些法律法规规定的相关要求在一些方面存在差异。例如，《网络安全法》第七十六条将“个人信息”定义为“能够单独或者与其他信息结合识别自然人个人身份的各种信息”，而最高人民法院和最高人民检察院增加了“反映特定自然人活动情况”作为个人信息类型之一。

《网络安全法》在现有要求的基础上增加了一些新的要求或特例。在发生个人信息泄露、毁损、丢失的情况时，网络运营者应当及时告知用户。为了防止政府机构在履行监督管理职责过程中滥用个人信息，依法负有网络安全监督管理职责的部门及其工作人员，必须对在履行职责中知悉的个人信息、隐私和商业秘密严格保密，不得泄露、出售或者非法向他人提供。

据报道，中国立法工作计划于2020年制定个人信息保护法。2019年期间，中国政府分别于1月、6月和9月先后3次修订了《信息安全技术 个人信息安全规范》此规范于2018年开始实施。虽然国家标准 GB/T 35273-2017 没有法律约束力，但它是企业制定合规机制的最佳实践参考标准。最新修订版更新了授权同意，

不得强迫接受多项业务功能等内容，新增了有关个人信息主体注销账户；委托第三方处理数据、共享、转让个人信息；向个人信息主体明确告知共同信息控制第三方身份个人信息以及在个人信息安全方面自身和第三方应分别承担的责任和义务等内容。2019年4月，公安部发布了《互联网个人信息安全保护指南》终稿。公安部负责保障网络数据安全、打击网络犯罪，因此保护指南制定了最佳实践，可能会成为公安部和地方公安局执法检查的重要参考依据。

数据本地化

中国从未出台综合性的数据本地化政策。然而，数据本地化要求却已经在一些行业存在了一段时间，例如：

- 2006年，中国银行业监督管理委员会出台了电子银行业务管理办法，要求企业把服务器设置在中国境内。
- 2011年，中国人民银行发布《关于银行业金融机构做好个人金融信息保护工作的通知》（银发17号），通知要求：在中国境内收集的个人信息不得在中国境外进行存储、处理和分析。
- 2014年，国家卫生和计划生育委员会印发了《人口健康信息管理办法（试行）》的通知，通知要求人口健康信息只能在中国境内存储。
- 2015年，中国银行保险监督管理委员会发布了《保险公司信息化工作管理规定》草案，对保险行业提出相关本地化要求。
- 2014年12月颁发的《反恐怖主义法》要求在中国境内运营的互联网电信公司、互联网服务业，应当将境内用户数据留存在中国境内，并向政府部门备案密码方案。但是2015年12月发布的终稿删除了上述内容，为此后实施严格的数据本地化要求奠定了基础。

《网络安全法》规定关键信息基础设施的运营者在中国境内运营中收集和产生的个人信息和重要数据应当在境内存储。如有出于业务原因，确实需要像境外提供信息和数据的情况，应当进行安全评估。为贯彻落实此条规定，2019年6月，国家互联网信息办公室发布了《个人信息出境安全评估办法（征求意见稿）》草案，此前发布的相关文件是2017年的《个人信息和重要数据出境安全评估办法（征求意见稿）》。但是2019年的草案

Technology – Personal Information Security Specification (GB/T 35273 – 2017), which has been in effect since 2018. Though not legally binding, GB/T 35273-2017 is intended to serve as a best practice reference for companies formulating their compliance mechanisms. Some of the changes in the latest amendment relate to consent, prohibition of actions that compel users to consent to multiple business functions, account cancellations, data processing by a third party, sharing and transferring of personal information, and requirements to inform subjects about joint controllers of their personal information and respective responsibilities regarding data protection. In April 2019, the Ministry of Public Security (MPS) released the final version of its *Guideline for Internet Personal Information Security Protection*. MPS is responsible for protecting cybersecurity and fighting cybercrime, thus this Guideline sets out best practices and is likely to serve as an important reference point for compliance with inspections carried out by MPS and local public security bureaus.

Data Localization

Historically, China has not had comprehensive policies regarding data localization. Data localization requirements have, however, existed in certain sectors for some time. For instance:

- In 2006, the then China Banking Regulatory Commission (CBRC) introduced the *Measures Governing Electronic Banking* that require companies to locate their servers in China,
- In 2011, the *Notice Requesting Financial Institutions to Properly Conduct Personal Financial Information* (Circular No. 17) issued by the PBOC prohibits offshore analysis, processing and storage of Chinese personal financial information,
- In 2014, the National Health and Family Planning Commission issued the *Management Measures for Population Health Information (for Trial Implementation)* that require “population health information” be stored exclusively in China,
- In 2015, the then China Insurance Regulatory Commission (CIRC) released the draft *Regulation on Adopting Information Technology by Insurance Companies* for the insurance industry that included localization requirements,
- A draft of China’s *Counter-Terrorism Law* first released in December 2014 required internet telecommunications companies and internet services sector to store user data on Chinese servers and provide encryption keys to government authorities. While these requirements were not kept in the final version adopted in December 2015, they laid the groundwork for future strict data localization requirements.

The CSL stipulates that personal information and important data generated and collected by the operators of CIIs in the

course of domestic operation be stored within mainland China. A security assessment must be conducted before transmitting such data outside China. To implement such requirement, the CAC in June 2019 published the draft *Measures for the Security Assessment of Cross-Border Personal Information Transfers*. This followed the previous draft *Measures for Security Assessment of Cross-border Transfer of Personal Information and Important Data*, last released in 2017. Notably, the 2019 draft deals only with “personal information.”

The 2019 Draft Measures aim to establish a cross-border data transfer mechanism to govern security assessments for the transfer of personal information overseas. The scope of the Draft Measures appears to extend their application to “network operators” rather than restricting its application to CII operators only, as the CSL does. The Draft Measures also establish provisions regulating when security assessments should be conducted, required materials and standard processing times, contractual requirements for network operators and the length of time network operators are required to maintain records of their overseas data transfer activities, and annual reporting requirements to the CAC.

Current data localization requirements in China, when combined with state security requirements, are indicative of a policy trend that goes beyond what is found in advanced industrialized countries. Such policies may hinder China’s efforts to be a global leader in innovation, which generally depends on the free flow of information. Key questions regarding cross-border transfers of personal information, like how “data processors” or “data controllers” will be treated under the Draft Measures, or whether there will be a carve-out for intra-company transfers of personal information that cross international borders, remain unanswered. Companies that transfer data across borders need to follow developments with regard to data localization closely to ensure that they are in compliance with relevant regulations.

Industrial Policy

On the surface, China has significantly deemphasized mention of its *Made in China 2025* (MIC 2025) industrial strategy first released in 2015. State media refrained from mentioning the strategy following instructions from the Publicity Department, and Premier Li Keqiang did not mention MIC 2025 in his 2019 Government Work Report. In actuality, however, China has continued to vigorously implement the policy objectives of MIC 2025. In November 2019, the NDRC and 14 other central government departments issued a policy document that included the same deadline of 2025 for China to form a group of “deeply-integrated” enterprises that will become “sector champions.” This document does not reference the same ten sectors originally spelled out in MIC 2025, but General Secretary Xi Jinping vowed in December 2019 that the Chinese government would do more in 2020 to support strategic economic sectors, ranging from

仅管理个人信息。

2019年办法草案旨在建立数据跨境流动管理机制，向境外提供个人信息应按照本办法进行安全评估。办法草案的适用对象范围扩展为网络运营者，跟《网络安全法》只限制为关键信息基础设施的运营者不同。方法草案也就以下内容作出了规定：何时需要开展安全评估、安全评估申报材料、标准评估时间、网络运营者的合同要求、网络运营者应当保留个人信息出境记录期限以及提交给网信部门的年度报告要求。

中国现行的数据本地化要求及国家安全要求似乎表明中国未来有可能会制定比世界发达工业化国家更加严格的数据本地化政策。但是此类政策可能阻碍中国成为创新领导者的步伐，因为创新往往取决于信息的自由流动。有关个人信息出境的关键问题仍未得到解答，如依据办法草案，将如何对待数据处理者和数据控制者，或者是否能特殊考虑公司内部个人信息出境的情况等。个人信息出境相关企业应密切关注数据本地化政策的进展，确保符合相关规定的要求。

产业政策

从表面上看，中国明显淡化了对《中国制造2025》产业战略的宣传，《中国制造2025》于2015年首次发布。官媒按照中宣部的指示不再宣传中国制造2025，李克强总理在2019年的政府工作报告中也对中国制造2025战略只字未提。然而，实际上中国政府仍在积极落实中国制造2025的政策目标。2019年11月，国家发改委和其他14个部委联合发布的一项政策文件，明确中国到2025年，要形成一批高度融合的企业，发展成为产业龙头企业，与中国制造2025战略截止时间相同。虽然这项政策提到的10个重点领域与中国制造2025战略中的重点领域不尽相同，但习近平总书记在2019年12月表示，2020年中国要加大支持机器人、生物医药等战略经济领域的发展。中国仍坚定不移，决心在关键先进制造业和服务业领域提升综合国力。

新版《外商投资法》自2020年1月1日起施行，旨在解决外商投资企业在华经营中长期面临的问题。《外商投资法》赋予外商投资企业与内资企业平等的权利，尤其是在知识产权、商业秘密、技术保护等外资企业长期面临挑战的领域。《外商投资法》也明确规定，行政机关及其工作人员不得强制外商投资企业转让技术，商

会备受鼓舞。但是，《外商投资法》及其实施条例言语模糊不清、具体落实多少条款等细节缺失，尚不清楚将如何贯彻落实该法律。这可能会导致国家、地方以及不同机关存在法律解读及执法不一致的情况。不一致性是外商投资企业长期面临的挑战。《外商投资法》也没有明确提出中国国有企业尤其是央企相比中国私营企业获得的优惠待遇，比如补贴和其他隐性政府担保。这些优惠待遇扭曲了市场，加剧了不公平竞争。

很显然，外商投资企业在华经营仍然面临日益严格的安全法规，这在《国家安全法》、《网络安全法》和相关数据合规措施中都可见一斑。其中，许多措施实际上起到了支持中国实现产业政策目标的作用。因此，外资企业担心如果要进入中国市场，它们仍将继续面临分享技术、与国内公司非自愿合作的压力。

建议

对中国政府：

- 进一步明确国家监察委员会和地方监察委员会的职责范围，保持监管执法的一致性。提高反腐执法工作的透明度是重中之重。应确保法治的关键构成要素包括透明性、法律解释一致性、正当程序等落实到位。
- 及时发布《反不正当竞争法》约束性指导意见及解释，确保执法行动透明、公开。
- 正视并解决这一问题：在华外资企业经常因监管和执法条款（包括《反不正当竞争法》中的相关条款）而感觉受到排挤，遭到无理责难。发布中央政府指令，强调依法提供公平待遇的将对这一局面大有裨益。许多外国企业非常重视合规，并投入了大量资源，然而并没有得到中国执法部门的普遍认可。
- 建立符合国际准则的透明、统一、法治体系，为在华投资者提供国民待遇，并在《外商投资法》及其实施条例中明确做出规定。
- 提高法律法规在起草、实施和执行方面的透明度，提高法律和监管环境的可预测性与确

robotics to biomedicine. China remains determined to build up its domestic capabilities in important advanced manufacturing and services sectors.

The new *Foreign Investment Law* (FIL) constitutes an effort to address longstanding issues facing FIEs. The FIL aims to provide foreign investors and FIEs rights equal to those of domestically-invested enterprises, including in the areas of IPR, trade secrets, and technology protection, longstanding challenges for the foreign business community. The FIL also expressly provides that government agencies and officials cannot compel the transfer of technology from foreign companies, which AmCham China finds encouraging. Nevertheless, it is unclear how the FIL and its Implementing Regulations will be implemented amidst vague language and a lack of detail on how many of the provisions are to be implemented. This creates the possibility for inconsistent interpretation and implementation at national and local levels and across agencies. Such inconsistency is a longstanding challenge for the foreign business community. The FIL also does not clearly address the preferential treatment granted to Chinese state-owned enterprises (SOEs), especially central government SOEs, over their private sector counterparts (both domestic and foreign), including access to subsidies and other implicit government guarantees that distort markets and promote unfair competition.

It is clear that foreign companies in China continue to face stricter security laws epitomized by the *National Security Law*, the CSL, and related data compliance measures, many of which have the de facto effect of supporting China's industrial policy objectives. Therefore, AmCham China is concerned that foreign companies will continue to experience pressure to share technology and to partner with domestic firms on an involuntary basis if they are to enjoy access to the Chinese market.

Recommendations

For the Chinese government

- **Strive for additional clarity and consistency in regulatory enforcement and in the scope of responsibilities held by the central National Supervisory Commission and local supervision commissions. Greater transparency around anti-corruption enforcement action is paramount. Such efforts should include support for key components of the rule of law, including transparency, consistency in interpretation, and due process.**
- Publish in a timely manner and with appropriate detail binding guidance and interpretations regarding enforcement of the AUCL, and to ensure that enforcement campaigns are transparent and made public.

- Acknowledge that FIEs in China often feel unwelcome and unjustifiably targeted under regulatory and enforcement provisions, including provisions in the AUCL. A central government directive reinforcing the mandate to provide equal treatment under the law may help to combat this. Many foreign businesses place a heavy focus on and devote significant resources to compliance, which is not generally recognized by local enforcement authorities.
- Provide national treatment to investors in China through a transparent, consistent, and rules-based system that is in line with international norms and enshrined in the *Foreign Investment Law* and its *Implementing Regulations*.
- Improve transparency in the drafting, implementation, and enforcement of laws and regulations, in order to strengthen confidence in the predictability and consistency of the legal and regulatory environment. Harmonize national and local regulations, as well as different sector-specific regulations on data privacy to increase regulatory consistency.

For the US Government

- **Engage in bilateral dialogue and in-depth exchanges to support the implementation of transparent and predictable regulatory systems, and a common understanding of compliance tools and objectives.**
- Continue to work proactively with China and the National Supervision Commission in international anti-bribery and corruption forums.

定性。统一国家、地方以及不同领域的数据隐私法规，提高监管一致性。

对美国政府：

- 参与双边对话，深入开展交流，支持贯彻落实透明且可预测的监管制度，针对合规政策和目标与中方达成共识。
- 继续在国际反贿赂和反腐败论坛上与中国展开积极合作。

Customs

Introduction

The General Administration of Customs of China (GACC) stepped up its efforts in 2019 to further promote cross-border trade facilitation and optimize customs clearance procedures. The GACC's *Announcement No. 127* [2019] issued July 31 laid out the pilot reform for the "Two-step declaration" of imported goods in select customs facilities, further streamlining the customs clearance procedure. The State Council's *Notice on the Overall Plan for Six New Pilot Free Trade Zones (PFTZs)* (Circular [2019] No. 16) approved FTZs in six new provinces: Shandong, Jiangsu, Guangxi, Hebei, Yunnan, and Heilongjiang. FTZs allow goods to be imported, handled, manufactured, and exported, typically without direct intervention from the customs authorities. They usually have a specific industry focus and offer financial incentives to attract investors. Nevertheless, measured against global standards, China still has further to go to improve its customs and trade procedures.

AmCham China encourages the GACC and other customs authorities to continue to reform and adopt international best practices. Member companies would benefit from additional guidance and clarity on the ongoing overhaul of the *Customs Law*, import and export activities in the cross-border e-commerce sector, voluntary disclosure processes, and preferential treatment for Authorized Economic Operators (AEOs). Although China's customs procedures are improving, there is still room to improve the efficiency, uniformity, and convenience of these procedures. Improving the efficiency of China's customs clearance procedures will both promote economic development and also enhance China's global competitiveness.

Customs Law Amendments

In 2019, GACC initiated an overhaul of the *Customs Law*, which was last amended in 2000. In the context of the current international and domestic situation with respect to customs reforms, amendment of the *Customs Law* is making steady progress. The amendment process and associated outcomes are of great significance and interest to AmCham China members and industry as a whole. We hope that this item will be incorporated into the annual agenda of the National

People's Congress as soon as possible.

Amending the *Customs Law* is an ongoing process. AmCham China recommends that the following items be addressed:

- Continue to evaluate and rectify inconsistencies between the *Customs Law*, its implementing regulations, and the associated regulations for customs inspection and quarantine to facilitate smoother overall implementation of customs procedures,
- Incorporate provisions for voluntary disclosure into the *Customs Law*,
- Develop a clear definition of the scope of the exception clause for "false declarations,"
- Ensure that the *Customs Law* remains consistent with related laws and regulations such as the *Foreign Investment Law* (effective January 1, 2020), *E-commerce Law* (effective January 1, 2019), *Encryption Law* (effective January 1, 2020), and *Export Control Law* (draft released December 28, 2019),
- Clarify legal issues related to the application of new technologies such as electronic documents, blockchain, and Big Data in customs procedures.

Cross-Border E-Commerce Import and Export Activities and the Customs Law

We recommend that regulations to govern cross-border e-commerce import and export activities be included in the scope of the *Customs Law*. Cross-border e-commerce is an important element of China's foreign trade and domestic consumption. At present, there is no overarching legislation that governs cross-border e-commerce import and export activities. Policies are currently adjusted according to documents that are issued on an irregular schedule by regulators. We encourage the authorities to use the opportunity created by the amendment of the *Customs Law* to further enshrine these policies into law. We expect that formally enshrining cross-border e-commerce import and export policies into law, following a transparent and open consultation with industry, will improve the overall regulatory framework for this sector and clarify compliance requirements for foreign-invested and domestically-invested enterprises.

海关

引言

2019年，中国海关总署加大力度进一步促进跨境贸易便利化，优化通关手续。中国海关总署于7月31日发布第127号[2019]公告，决定在部分海关开展进口货物“两步申报”改革试点，进一步简化通关流程。《国务院关于印发6个新设自由贸易试验区总体方案的通知》（国发〔2019〕16号）同意在山东、江苏、广西、河北、云南、黑龙江等六省设立自由贸易试验区。自贸区在没有海关“干预”的情况下允许货物进口、处理、制造、再出口。自贸区各有侧重，提供优惠政策吸引投资者。然而，以全球标准衡量，中国在改善海关和贸易流程方面仍任重道远。

中国美国商会鼓励海关总署和其他海关部门继续推动改革，吸取国际成功经验。关于正在修订的《海关法》、跨境电子商务领域的出口、主动披露流程、经认证经营者（AEO）等方面的工作，希望政府能进一步提供指导意见、明确说明，商会会员企业将从中受益良多。虽然中国的海关手续在不断完善，但在效率、统一性、便捷性等方面仍有很大的提升空间。提高中国通关效率，既有利于促进经济发展，也有利于增强中国的国际竞争力。

海关法的修订

2019年中国海关启动了海关法的修订工作，这次修订将是继2000年大修之后的又一次大修，在目前的国际国内局势、各项海关改革大力推动向前的背景下，此次海关法的修订具有重大的意义，商会和业界都非常关注。希望尽快纳入人大五年立法计划，扎实推进。

海关法的修订当中，建议考虑以下方面：

- 海关法检验检疫法在整合的过程中应着重对以往执行的法规中中存在的不一致的条款或者不顺畅的环节进行重新评估并整合；

- 将主动披露纳入新海关法；
- 明确申报不实的免责条款；
- 其他一些新的法律都会涉及《海关法》，例如《外商投资法》、《电子商务法》、《密码法》、《出口管制法》等，充分考虑与这些相关法律法规的兼容性；
- 明确新技术应用的法律问题：电子文档，区块链，大数据等等。

跨境电子商务进出口业务与《海关法》

商会建议将跨境电商进出口业务纳入《海关法》立法范畴。中国的跨境电商行业在中国政府的正确引导和支持下不断发展，作为外贸新动能，促进了经济增长，提高了国民消费质量。为促进行业长远发展，国家近年相继出台了一系列政策文件，标志着国内跨境电商政策环境日趋稳定。但目前还未有任何针对跨境电商的立法，仅仅是通过海关政策性文件加以调整。我们非常期待《海关法》将跨境电商进出口业务纳入《海关法》立法范畴。以《海关法》为母法，然后逐步建立健全相关规章制度，切实从立法的角度保护和发展这种新型贸易方式，促进稳定合规发展。

政策制定程序相关建议

鉴于《海关法》大修，商会想再次强调现行海关相关政策法规制定流程缺乏透明度、未统一征求行业意见、政策不明确、政策实施突然，未给企业提供足够的准备时间。

由于这些挑战的存在，中国美国商会多年来不断向中国政府海关政策制定者建言献策。商会建议在重大政策法规实施前能提前进行公示，广泛征求意见，充分听取各方意见及建议。重大政策发布后建议给予3至6个月的准备期，以便于企业在内部开发、客户沟通与服务操作流程调整、预算经费申请等方面做好充分准备。这

Customs Law Amendments and the Policy Development Process

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

Given these challenges, AmCham China, as we have done for many years, offers the following recommendations to support China's policymaking process for customs-related legislation. We recommend that public announcements be made prior to the implementation of major policy changes or new regulations that are likely to have an impact on industry in a manner that affords enterprises sufficient time to adapt. After the release of key laws, regulations, or policies, we recommend a grace period in implementation of three to six months for enterprises to prepare and respond to any necessary changes. Enterprises, both foreign-invested and domestically-invested, need adequate time to adjust their operating budgets, internal development processes, communicate with their customers, and streamline their services. Such delay will also improve cooperation with regulators, smooth the adjustment of regular business activities, and promote healthy, stable, and orderly industry development. The government should also be sure to solicit public feedback prior to the enactment of new laws and regulations and consider revising such legislation on the basis of the feedback received.

Customs Supervision and Inspection

Following the 2018 reform by GACC to integrate the formerly separate Customs Declaration Form and the Quarantine Declaration Form into one document, the vast majority of imported and exported goods are now inspected at Chinese ports. There are, however, several issues with the inspection and supervision process and we encourage the customs authorities to work to address these aspects.

The first is that a large proportion of inspections conducted at these ports require that packages be opened for inspection, that is, goods be removed from the transport vessel, the packaging be removed, and customs officials then inspect the physical condition of the goods in question. For certain products, such as those that are dustproof or dust resistant, anti-static, contain fresh or perishable goods, or additional exceptional circumstances, importers, exporters, their agents or cosigners can apply to have customs personnel inspect and approve goods at a specified time and place such as a factory, warehouse or construction site.

In practice, however, the capacity and resources of the customs authorities are limited. There is a lack of uniform

implementation of the provisions for inspection of special goods. Assigning customs officials to sites designated for inspection by importers, exporters or their agents takes considerable time and is challenging to execute. Products awaiting inspection at these sites have been subject to differential degrees of damage. The method of "non-intrusive inspection" advocated by GACC in recent years has not been widely adopted which is also problematic.

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

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

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

Greater coordination of the customs inspection process is needed to reduce delays. For destinations where the customs authorities lack sufficient manpower or resources to handle inspections in a timely manner, inspections should be arranged at the port of entry. We also recommend that when adjustments or alterations are made to operational procedures such as the inspection of imported goods and customs clearance procedures, the customs authorities should strive

有助于企业更好地配合相关部门的监管工作，也能够确保企业正常业务的平稳运行，保证相关行业的健康稳定有序发展。政府应在新的法律法规实施颁布之前征求公众意见，并考虑在反馈意见的基础上做出修改。

海关监管与查验

在海关通关一体化之后，绝大部分进出口货物在口岸进行查验作业，希望海关在以下几方面做进一步优化：

海关口岸大批货物需要打开包装，卸货来进行查验。我们注意到口岸海关在实施查验中，对于一些特殊产品，如防尘防静电或者鲜活品，在特殊情况下，经进出口收发货人或其代理人申请，海关审核同意，也可派员到规定的时间和场所以外的工厂、仓库或施工工地查验货物。

但是在实际操作过程中，各个口岸海关受人力等要素的限制，对于该要求实施的标准不统一，指派海关关员到企业指定场所进行查验耗时较长、不容易实现，因此对产品造成了不同程度的损害；海关近些年倡导的“非侵入式查验”并没有广泛地得到应用并发挥足够的作用。

商会建议海关考虑进出口商品的复杂性，结合企业信用等级，对于特殊产品出台具体的可操作的指导规范，结合企业提供的技术参数和信息，利用大数据进一步进行风险评估，既满足海关实施查验的目的，也保障企业的利益，提升整体通关时效。

在口岸海关实施查验时，经常需要出口企业人员到场对出口货物进行说明解释，这对于身处异地的内陆企业来说非常不便捷，增加了运营成本、出口通关效率大大下降。建议仍然保持企业所在城市海关查验的机制，方便企业就近向当地海关进行说明和解释。

自 2019 年底海关多个口岸将入境口岸查验改为目的地的查验。我们理解海关的举措或许为了分散查验集中度，提高效率，达到方便企业的目的。但在实际操作中，有些目的地海关由于人手配置等方面的原因，无法随时安排查验，货物在口岸放行运送到目的地后需要几天至几周的时间等待安排安排查验，造成进口货物积压，产品的供应链周期变长，运营成本增加。

商会建议统筹安排各地海关查验能力，对于目的地海关暂没有足够人手或资源及时处理查验的仍由入境口岸海关安排查验。同时建议海关在对入境查验，清关等

操作做调整时，能预先考虑可能存在的问题并提前落实必要的配套调整措施，这样能帮助商业运营正常运转不受明显影响。

海关依据《危险化学品安全管理条例》第一百条规定“化学品的危险特性尚未确定的，由主管部门分别负责组织对该化学品的物理危险性、环境危害性、毒理特性进行鉴定”的要求，通过取样鉴定的方式对危险特性尚未确定的进口化学品进行内容物检验。

而企业在研发初级阶段所须的化学耗材，由于单次进口数量小且价格昂贵，因此若按规定取样鉴定后企业则无货可用。

介于此情况一些地方关曾出台过便利化政策，对特定区域内的特定企业进口小剂量用于科学研究、工艺和产品研发的各种纯度等级的化合物或单质，及其他试验中使用的样品、耗材（单批次进口 / 出口量原则上不超过 5 千克），凭企业承诺函和企业出具的证明材料，可免于逐票进行非危险化学品检验。

进一步促进科技创新与研发实验，商会促请总署考虑将上述最佳实践，推广到全国所有口岸，形成一个全国统一的操作标准。

两步申报

2019 年中国海关在推动“两步申报”通关模式上取得了很大的进展，在一些地方城市成功试运行，并于 2020 年 1 月 1 日开始正式推广到了全国。“两步申报”模式有助于提高清关效率，但仍然存在一些在全国进一步推广亟待解决的问题：

- 第一步概要申报尚不够精简，建议进一步精简所需信息和单证。其中一种方法适合保税区的经认证经营者。建议第一步初步申报简化删除许可、检验检疫程序所需的部分信息，只将其作为第二步完整申报的要求。
- 允许企业在第二步完整申报时，对第一步概要申报不够准确的信息予以更正，例如数量等。
- 新的“两步申报”模式尚未覆盖所有类型的进口，例如，海关特殊监管区域。建议按取消入境报关和出境报关之间的核销比对，从而使“两步申报”可以在海关特殊监管区域得到应用。

to lay the groundwork well in advance to ensure that necessary adjustments do not seriously hamper business operations.

A fourth issue with existing customs inspection and supervision procedures pertains to the import of potentially hazardous chemical substances for scientific research purposes. According to Article 100 of the *Regulations on the Safe Management of Hazardous Chemicals*, chemicals whose hazardous properties have not yet been sufficiently determined shall be subject to an evaluation of their potential physical, environmental, and toxicological hazards. The evaluation is conducted by the competent regulator. In line with these regulations, the GACC requires samples of imported chemicals whose hazardous properties are not yet determined to be tested via sampling.

During the initial stages of chemical research and development, enterprises choose to import chemicals in very small quantities (and often at high cost) given the early stage of development. Thus, if enterprises must provide samples of these chemicals in the amount specified by the regulations, they will not be left with an amount sufficient to conduct research and development (R&D).

In view of this situation, some local governments have introduced policies to facilitate the import of small amounts of chemical compounds and other chemical elements at various grades of chemical purity. Certain policies apply to select enterprises in specific regions that use chemical substances for R&D, processing, or product development. As an example of these types of policies, in some locations if an enterprise submits a commitment letter and the required certification materials, some chemical consumables can be exempt from hazardous chemical inspection on a case-by-case basis (typically when the import/export volume of a single batch does not exceed 5 kg, essentially an excepted quantity (EQ) rule).

To further promote scientific and technological innovation and R&D activity, GACC should unify the procedures discussed above to exempt early stage chemicals from evaluation of their hazardous properties in order to allow the import of new or early-stage chemical and chemicals products at all ports nationwide.

Two-step Declaration

In 2019, GACC advanced the “two-step declaration” model for customs clearance. After a successful trial in several port cities, it was officially implemented nationwide on January 1, 2020. Although the “two-step declaration” procedure helps to improve customs clearance efficiency, we recommend that further improvements be made in the following areas:

- The first step summary declaration is burdensome. We recommend further streamlining the required documenta-

tion process for the first step summary declaration. One way to do so pertains to AEOs located in Bonded Zones. We recommend that some of the information required for licensing, or inspection and quarantine procedures be simplified or removed from the first step preliminary declaration and instead be required only as part of the full declaration in the second step,

- In instances where information is inaccurately reported in the first step of the declaration, such as an instance where the quantity of a particular good is incorrectly reported, we recommend that enterprises be allowed to make corrections during the second step of the declaration,
- The “two step declaration” model does not yet cover all imports, for instance, those that arrive in Special Customs Surveillance Areas. We recommend canceling the current entry/exit declaration so that the “two-step declaration” can be applied in Special Customs Supervision Areas,
- Authorities should enable more flexible and/or streamlined procedures for AEO-certified enterprises. AEO-certified companies are recognized by the GACC and qualify for simplified customs procedures making the clearance procedure more efficient.

Voluntary Disclosure

In 2019, GACC took an encouraging step forward in the construction of its voluntary disclosure system. *General Administration of Customs Announcement No. 161 [2019]* clarified matters related to handling voluntary disclosures of tax-related violations. Despite this progress, AmCham China members would like to see more comprehensive regulations regarding voluntary disclosures of customs violations. We recommend the following in order to achieve this goal:

- Clarify the conditions for enterprises which voluntarily disclose violations that are not tax-related to promote the application of voluntary disclosure measures in a more uniform and effective manner,
- Strengthen the legal authority of the voluntary disclosure process. We recommend that provisions governing voluntary disclosure be enshrined in the *Customs Law* or in specific voluntary disclosure regulations. Such regulations should be introduced as soon as possible,
- Clarify the scope of administrative penalties that can be levied for violations of voluntary disclosure provisions and ensure that information regarding those penalties is subject to public comment and the final version made public,
- Clarify whether “intentionality” is considered with respect to legal compliance with violations of voluntary disclosure,
- Combine reform of voluntary disclosure and reporting of customs declaration errors with reform of the “two-step declaration” model to provide enterprises

- 为 AEO 认证企业提供更多的灵活性或简化程序。

主动披露

2019 年，中国海关的主动披露制度建设又往前迈出了令人鼓舞的一步，海关总署公告 2019 年第 161 号对关于处理主动披露涉税违规行为有关事项进行了明确。

- 建议对涉税违规行为之外的其他业务的主动披露也进行相关的明确，使主动披露制度得到有效的推广和运用。
- 建议提升主动披露的司法层级，例如，在《海关法》里加入主动披露的相关条文，或者尽快出台单独的主动披露条例。
- 建议细化并明确处罚幅度和条件，并信息公开。
- 关于“守法容错”，建议海关界定是否“故意”在先。
- 关于申报错误的主动披露和改单，建议可以结合“两步申报”的改革进行完善，在改单的操作上给予企业一定的、合理的灵活度，真正解决“改单难”的问题。
- 建议海关利用大数据等新兴技术对企业的主动披露进行事后分析和监控，尽可能地排除“恶意”主动披露的行为。主动披露有其好处，在一些情况下可以减少甚至免除海关申报错误导致的罚款。因此对于一些故意从事违规行为的企业来说，这可能会适得其反，不当激励此类企业“恶意”主动披露其不合规行为，减少处罚。使用大数据相关技术可以帮助减少恶意主动披露的情况，继续鼓励合规企业诚信主动披露，从中受益。
- 建议海关给予高级认证企业更便捷的主动披露优惠政策和待遇。
- 对于企业主动披露的违规行为，不纳入企业信用考核（不论处罚金额多少）。建议延长进出口报关完成后主动披露的期限，目前仅为 3 个月，时间过短；企业自申报后至多需要 3 个月的时间判断是否有误。相比之下，新加坡规定 20 年，大多数国家 3-4 年。商会认为，3-4 年较为合理。

建立有效机制 合理解决产品归类争议

截至 2018 年，中国已与 25 个国家和地区签署了一共 17 个自贸协定，其中涵盖的零关税的进口产品就有 8000 余种。根据这些自贸协定，其框架下的产品在协议

国享受优惠关税税率，这极大的推进了中国贸易便利化以及对外开放水平，也是促进贸易发展和全球经济增长的重要工具。实践中商会发现，有些产品在进口时因为在不同国家的 HS Code 不一致，导致无法正常享受优惠关税。很多公司都遇到类似问题，而且由于大部分属于归类难题，企业与海关不能达成共识，所以经常是协调数年仍不能解决。

比如商会某会员企业，从新加坡进口某工业原件，此原件凭借新加坡原产地机构出具的原产地证明享受零关税。某地海关持续 3 年多对该产品的归类提出质疑并且先后给出多个不同的归类意见，最终推翻了原归类。按照新的归类决定，该原件依然属于中新自贸协定下零关税产品，但由于该产品不在原产地清单中，所以该海关以此为由要求该公司补交大额关税。

这其中，存在一定数量的产品在双方国家的 HS Code 不一致。商会建议海关首先能够有目的的收集这些在 FTA 框架下存在归类差异的产品，然后能够形成有效的机制，或者能够通过 WTO 等专业机构达成共识；或者建立合理的解决方案。

海关系统稳定性

清关流程采用了全国进出口贸易信息管理网络，并整合了 H2010 系统和电子口岸系统，实现了信息化。报关流程的稳定性直接影响着企业的进出口业务运营。

海关系统的运行总体而言较为顺畅，但临时升级维护或突发性故障仍时有发生。企业理解系统升级维护的必要性并支持海关开展相关工作，但频繁的系统维护对通关时效要求较高行业的日常业务运营确实产生了很大的负面影响。

为进一步优化报关清关流程，商会建议：

- 系统维护升级应提前通过官方网站 / 微信公众号等渠道告知企业，使企业可以尽可能提前做好应急安排；
- 系统升级时间应尽量避免跨境通关业务办理高峰期，当前信息技术维护通常发生在 18:00 至 22:00 之间这一高峰期，给企业造成一定的困扰；
- 系统更新或维护耗时较长的（如超过一小时）应及时启动应急预案和支持措施，确保货物正常进出口，

with reasonable flexibility when proactively addressing errors in reporting. Reasonable flexibility should aim to address the current challenges enterprises face in modifying their customs declaration forms when they discover an error has been made,

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

Product Classification Disputes

As of 2018, China has signed a total of 17 free trade agreements (FTAs) with 25 countries and regions, covering more than 8,000 tariff-free products and imports. As a general principle under an FTA, the products included within its framework enjoy preferential tariff rates when imported into countries that are parties to the FTA. Such FTAs have significantly facilitated China’s trade with the outside world, its economic development, and greater economic opening. Moreover, trade agreements remain an important tool of global economic growth. In practice, however, some products are not subject to preferential tariff treatment under existing FTAs due to the inconsistent application of HS Codes between countries. This is a commonplace problem but because it is a dispute stemming from the way products are classified, importing enterprises and customs authorities often cannot easily reach an agreement and such disputes can drag on for several years.

As an example, an AmCham China member company importing certain industrial products from Singapore is entitled to zero tariffs by virtue of the Certificate of Origin issued by the exporting entity in Singapore. Yet our member found that the GACC in some locations has contested the initial classification of the product for over three years and put forward a number of opinions regarding why the product should be listed under a separate classification code. They eventually amended the original HS code. According to the revised classification, the product is still classified as a zero-tariff product under the China-Singapore FTA. Still, because the product is no longer classified according to the same code as was on the original Certificate of Origin issued by the exporting entity in Singapore, the GACC has required the member company to pay expensive import tariffs.

Among thousands of products covered under China’s FTAs, the HS Code for a portion of these products is inconsistent with the GACC classification. We recommend that the GACC identify, collect, and process imported products in line with the framework provided in the corresponding FTA. Products for which there is a reasonable dispute over their classification should have these disputes resolved through the formulation of an effective and binding mechanism for dispute resolution, or through multilateral institutions like the World Trade Organization (WTO) and the existing multilateral trade framework.

Stability of the Customs System

China’s customs clearance procedures rely on a national import/export trade information management network integrated with the H2010 system (the latest generation of China’s electronic customs system) and an electronic system to manage its ports. The stability of the electronic customs declaration process directly affects import and export operations conducted by enterprises.

AmCham China members have found the customs clearance system to be generally stable but system upgrades, maintenance, or sudden failures of the electronic customs system occur periodically. During these periods, customs clearance procedures are delayed for varying lengths of time, adversely affecting the movement of goods. Enterprises understand the need for regular updates, system maintenance, and other related technical support. Yet, any delays are particularly troublesome for industries and enterprises that operate under time-sensitive conditions.

To further optimize the customs declaration and clearance process, AmCham China recommends:

- GACC notify companies in advance of upcoming system maintenance or upgrades. Announcements should be communicated through official channels (e.g., official GACC website, or WeChat account) so that enterprises can make arrangements as far in advance as

把海关系统不稳定问题对企业通关造成的影响降到最低；

- 商会建议对通过海关认证的高诚信度企业（例如，AEO 高级认证企业）在有紧急需求的情况下，可以提供紧急响应，比如现场海关人工干预等。

金关二期报保税系统

进一步优化海关通关系统。金关二期报保税系统经过半年多的使用，基本顺畅。但自从 7 月 1 日上线后，如果在申报完成后遇到海关抽到查验货物的情况，报关代理公司不能在单一窗口查看到查验回执信息。只有车辆到了保税区放行卡口被拦截后才知道是因为被海关抽到查验所以被截住。而在上线金关二期报保税系统之前，报关代理公司都是通过单一窗口能及时查看到查验回执信息，提前就可以联系海关做查验准备，而不是等车辆到了出去卡口被拦截后才被动知道。商会希望海关在系统上能有针对性的优化。

AEO 制度

近年来，中国海关在推进 AEO 制度过程中取得了喜人的成果，也很好地响应了国家大力建设信任体系的改革导向。2019 年，海关正研究制定进出境快件运营人和跨境电商企业的信用管理办法，并广泛征求了企业的意见和建议，商会对于海关总署在建立健全 AEO 制度上对来自企业声音的重视表示赞赏。

商会期待海关未来在完善 AEO 制度政策的过程中，根据所涉及的不同行业的具体特点，细化不同类型认证企业的通关便利化措施。例如，两步申报模式中可向海关申请免除担保的企业范围建议扩大至“一般认证企业”等。

建议将海关企业信用管理的体制纳入海关立法范畴，并在执行层面的法规条例里面进一步明确对具备 AEO 认证企业所能获得的优待，同时也出台针对跨境电商企业的相关认证标准。目前很多企业是 AEO 一般认证企业，但尚未申请 AEO 高级认证企业。很大程度上是因为申请高级认证企业的投入巨大，而所能获得的相应待遇并不清晰。另外，海关总署公告 2018 年第 177 号《海关企业信用管理办法》中还未将针对跨境电商的海关认证企业标准出台，也没有规定跨境电商在获得海关 AEO 认证企业所能享受什么样的制度红利和优惠措施。

快件运营企业

低值货物与个人物品监管

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

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

海关出入境个人物品管理是目前影响贸易便利化的另一个重要因素。根据《中华人民共和国海关对进出境快件监管办法》第二十一条规定：

“个人物品类进出境快件报关时，运营人应当向海关提交《中华人民共和国海关进出境快件个人物品申报单》、每一进出境快件的分运单、进境快件收件人或出境快件发件人身份证件影印件和海关需要的其他单证。”

这一要求使快件运营企业需要逐单对进口个人物品进行身份证验核。身份证验核应该是执法部门履行的职责，建议海关与其他政府部门之间通过信息互联实现个人身份证信息验证，以简化流程及减轻企业因委托第三方认证机构而产生的额外运营成本。

单一窗口的建立实现了绝大多数监管证件的联网核查，给企业带来了巨大的便利。身份核查也应该效法这一成功实践，通过不同政府部门间全面实现信息共享减轻企业负担。同时希望海关可以简化申报程序，允许自然人或其代理人以无纸化方式进行申报。

possible,

- Avoid performing system upgrades during “peak periods” to avoid clearance delays. Currently, IT maintenance typically occurs between 6:00 PM and 10:00 PM, which is a period of high activity for customs clearance. Maintenance during these periods is extremely inconvenient for the import and export operations of the business community,
- Implement emergency response and support measures to ensure normal operation of the import and export of goods when system updates or maintenance tasks require longer than one hour. This will minimize the impact on business operations and maintain the general stability of the electronic customs clearance system,
- During upgrades and/or system maintenance, authorities should prioritize emergency response measures for AEOs and other certified operators, including through provision of on-site, human-led inspection and clearance capabilities as needed.

Jinguan Phase II Bonded Reporting

With respect to customs procedures for bonded goods, the Jinguan Phase II bonded reporting system has been in operation since July 1, 2019 and our members have found its operation to be generally smooth. There are opportunities, however, to further increase its operational efficiency. Since it was implemented online, situations have arisen where the customs authorities inspect goods after they have been declared, and the customs brokerages cannot review the inspection receipt information in a single window. Only after a transport vehicle has been intercepted at the bonded area is it made known to the enterprise that it was intercepted and inspected by customs authorities. Prior to the launch of the Jinguan Phase II bonded system, customs brokerages were able to view the inspection receipt information via a single window, enabling them to contact the customs authorities in advance to prepare for an inspection, instead of having to wait until their vehicle has been stopped at the exit checkpoint. We encourage the GACC to make targeted reforms to the Jinguan Phase II bonded reporting system to correct challenges like these and further optimize associated customs procedures.

AEO System

In recent years, GACC has seen positive results with respect to its efforts to promote the AEO system and increase trust in China’s reform efforts. In 2019 GACC was developing measures to assess the credit histories/credit ratings of import and export express operators and cross-border e-commerce enterprises. GACC solicited wide-ranging input from the business community with respect to these developments. AmCham China attaches great importance to participation by enterprises in the establishment of a sound AEO system including a mechanism to monitor credit histories and we

are appreciative of the effort made to consult with industry.

We look forward to the GACC continuing to improve the AEO system by taking into account the specific characteristics of different industries involved and refining the various industry certifications available to facilitate more efficient customs clearance measures. For example, with respect to the “two-step declaration” we recommend that the range of enterprises permitted to apply for certain exemptions be expanded to include generally-certified enterprises.

We recommend that the enterprise credit management system for AEOs administered by customs authorities be referenced in the *Customs Law* and associated regulations. Subsequent implementing rules and regulations should strive to clarify the preferential treatment available to enterprises with AEO certification. Implementing regulations should also develop regulations and certification standards for enterprises engaged in cross-border e-commerce import and export. Currently there are many enterprises which have received an AEO general certification but have yet to apply for AEO advanced certification status. This is largely because obtaining an AEO advanced certification requires significant investment and the corresponding benefits are not clear. In addition, the 2018 *Customs Enterprise Credit Management Measures* (GACC [2018] Circular No. 177) do not include certification standards specific to cross-border e-commerce enterprises nor do they clarify the preferential treatment available to enterprises which meet these standards.

Express Delivery Shipments

Low-Value Goods and Personal Belongings

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

The GACC can improve its customs clearance efficiency and facilitate trade by aligning its customs clearance procedures for low-value goods with international best practices. For instance, with respect to low-value goods, simplified customs clearance procedures can be applied (as compared to

在 B 类个人物品申报的限值方面，现有的申报限值为 800 元人民币（港澳台地区）或 1,000 人民币（除港澳台外的国家或地区）。财政部、海关总署、税务总局的《关于完善跨境电子商务零售进口税收政策的通知》中规定，自 2019 年 1 月 1 日起，将跨境电子商务零售进口商品的单次交易限值由人民币 2000 元提高至 5000 元。商会建议海关在对 B 类个人物品申报的限值方面与跨境电商零售进口商品的单次交易限值保持政策上的一致性，将 B 类个人物品申报的限值提高至 5,000 元人民币。

国际转运中心管理

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

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

以国际转运中心处理进出境国际转运货物为例，现有的海关法律制度中对于进出境国际转运货物的监管规定非常少，少数涉及该问题的海关公告仅规范了海运进出境的监管规定，如《海关总署公告 2018 年第 120 号（关于海运进出境中转集拼货物海关监管事项）》，未涉及到空运进出境中转集拼货物的海关监管事项，建议海关制定一个较为完整全面的制度体系，全面覆盖通过不同运输工具（空运、海运及陆运）的过境、转运、通运货物。

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

商会会员企业期待海关将转运中心问题纳入改革进程。在中央政府大力推进自由贸易港建设的大背景下，

按照自贸港的建设规划，自贸港内将鼓励开展货物自由储存、展览、拆散、改装、重新包装、整理、加工和制造等业务活动，真正实现“一线放开、二线安全高效管住”的先进海关管理理念。国际转运中心位于各大航空枢纽的核心区域，其特点正契合自贸港的发展理念，可以利用改革契机摆脱过去对于转运中心的束缚，彻底发挥转运中心的优势和效能，让转运中心成长为海关改革和自贸港建设的示范先锋。

C 类进出境快件退运

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

商会欣喜地看到，2020 年 1 月 3 日跨境电商出口退货海关监管业务正式启动，随后广州跨境电商公共服务平台率先正式上线全国首个电商出口退货功能。随后苏州自贸区于 2 月启动跨境电商出口退货监管业务。商会非常赞赏海关在跨境电商领域率先试点出口退货功能，成功打通跨境电商出口退货通道。

未来商会期待海关可以将这一先进做法推广到整个 C 类快件的管理上，建立高效、安全、便捷的 C 类快件出口退货通道，解决快件出口商品退运进境渠道不畅的痛点，实现正向物流和逆向物流的完整闭环。期待海关对 C 类快件管理上增加新的退运相关政策，例如，在企业能够向海关提供相应货物的原始出口记录的情况下，支持实现退运进口免税免证。该问题的妥善解决，势必有助于减少中小企业负担，促进小微企业进一步拓展海外市场，提升中国企业的国际市场竞争力。

跨境电子商务

跨境电子商务日益成为进入全球市场的重要渠道。中国海关总署的数据显示，2019 年上半年进口跨境电商货值达 450 亿元。商会认为随着中国线上消费市场不断扩大，需要完善的法律体系监管跨境电商业务。然而，目前的法律法规不足以应对电子商务领域的变化趋势。

跨境电商的政策和配套规范性文件已陆续出台并在 2019 年正式生效，尤其是《电子商务法》于 2019 年 1

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

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

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

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

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

The current limit for declarations of inward/outward Category B (Personal Goods) is RMB 800 (Hong Kong, Macao and Taiwan) or RMB 1,000 (in countries or regions other than Hong Kong, Macao and Taiwan). The Ministry of Finance

(MOF), the GACC and the State Taxation Administration (STA) under the *Notice on Improving Tax Policies on Cross-border E-commerce Retail Imports* provided that as of January 1, 2019 the single transaction limit for retail goods imported through cross-border e-commerce channels increased from RMB 2,000 to RMB 5,000. We recommend that customs authorities maintain consistent policies regarding the single transaction limit for cross-border e-commerce retail imports and the limit for declaring imported Class B personal goods. We also support raising the limit for declaration of Class B goods to RMB 5,000.

International Transit Center Management

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

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

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

Furthermore, in order to improve the regulatory environment, we recommend that the customs authorities cooperate with central and local government departments including those responsible for transportation, commerce, market supervision, and other related agencies. International transshipment hubs play an essential role in supporting economic development and trade. We recommend that the GACC

月施行，对规范行业起到了积极和显著的作用。然而，当前的跨境电商零售进口的产品准入和质量安全管理缺乏标准，存在不同口岸对同一商品的准入判断截然相反的情况，造成在一些口岸可以通关，在另一口岸却遭遇退运，实际增加了很多申报、退运、换口岸重新申报的成本，也给消费者带来不必要的延迟。商会建议海关指定更加明确的规范性指南，使各口岸操作一致。

伴随跨境电商业务在中国发展，不乏一些人员冒用额度利用跨境电商渠道进行虚假交易、二次销售。作为跨境电商及电商平台企业，享受国家政策红利同时也有义务遵守海关及相关政府的政策防止虚假交易冒用额度的发生，积极建立内部风险防控机制。与此同时由于身份信息伪装的情况多变且复杂，给企业事先识别、追踪并拦截造成困难，商会希望海关能在这一风险防范上加强企企合作，并建议海关在法规和执行层面出台相关的标准以便企业参照执行。

最小存货单位 (SKU)

由于跨境商品销售渠道分散，同一 SKU 商品会由不同进口商在不同关区入区申报备案，同品名 SKU 不同税号的情形时有发生。当商品在不同关区保税仓库间结转时，系统要求相同 SKU 在两本账册上的税号必须一致才能结转。而在商品税则、注释没有明确列明，又没有归类裁定的情况下，说服任何一方企业和海关修改备案税号都会困难重重。而即使进入修改流程，其操作也是非常复杂，耗时费力。

考虑到跨境电商商品保税间结转时不涉税不涉证，商会建议在这一环节简化申报，默认转入地海关账册商品税号自动覆盖同一 SKU 在转出地海关账册的税号。在平台实际销售出区以及海关事后监管环节对商品税号进行统一管理，即简化了操作又有效防范了风险。

建议

对中国政府：

- 充分利用高科技提升监管水平，提前通知公司系统升级计划，提高通关系统的稳定性，避免在高峰业务时间进行系统升级，并在系统关闭或其他类似紧急情况下改善支持措施。
- 建立符合现行法律法规和中国自贸协定等多边承诺的有效机制，合理解决归类争议。
- 删除或改进预判决的规定时限。
- 在国际贸易“单一窗口”的基础上，确保统一标准和减少信息不对称。
- 优化快递行业通关流程。

solicit input from industry, seek to emulate successful strategies adopted in other global markets, and formulate clear and standardized policies, transfer procedures, and related measures for the management of international transshipment centers.

AmCham China members look forward to the promulgation of reform by the customs authorities pertaining to transshipment centers. China's central government is accelerating the construction of free trade ports (FTPs) which allow goods to be freely stored, exhibited, dismantled, refitted, repackaged, reorganized, processed, and manufactured. We recommend that the government prioritize reforms that develop a system for regulating customs under the maxim: "the first step is to prioritize deregulation; the next step is to ensure safe and efficient management." In addition, international transshipment centers are located in and around major aviation hubs and can flexibly adapt to the tenants of FTPs. We believe that the operational structure of the FTP offers a model to reform international transshipment centers in China, reduce current operational restrictions, maximize efficiency, and act as a centerpiece for reform of the customs system.

Class C Inbound and Outbound Express Shipments

China is a significant exporter of business-to-consumer (B2C) products. Through cross-border e-commerce and retail strategies that promote a "sell global" strategy, a greater number of Chinese-made products are entering the international market via B2C transactions. At the same time, with the increase in the overall volume of sales, a greater number of exported goods are being rejected by customs at the overseas port of entry, resulting in them being marked as "undeliverable" and returned back to China.

On January 3, 2020, the customs authorities established a cross-border e-commerce channel for processing export returns. Guangzhou's cross-border e-commerce public service platform was the first to launch a mechanism to handle e-commerce exports that are returned to China. The same mechanism was also launched in the Suzhou FTZ in February. We appreciate the initiative demonstrated by the GACC to pilot the export return function and successfully implement a system for returning exported goods.

In the future, we expect the customs authorities to extend this approach to all Category C shipments (taxable items valued at RMB 5,000 or less excluding those goods involving export licenses), thereby establishing an efficient, safe, and convenient channel for returning shipments of Class C goods. Existing "pain points" or obstructions in current channels used for the return of express delivery shipments that inhibit the normal flow of goods should be improved, thereby moving toward a completely "closed loop" that permits the efficient delivery and return of category C shipments. Along these lines, we hope that the customs author-

ities will introduce new policies related to the return of Class C shipments. We recommend that if an enterprise can provide to the customs authorities the original export record of the goods that are to be returned, then return shipments should be permitted to be imported tax-free. A definitive solution to this problem will reduce the burden on SMEs as they manage return shipments, encourage micro enterprises to expand into overseas markets, and enhance the overall competitiveness of Chinese businesses in the international market.

Cross-Border E-commerce

Cross-border e-commerce is becoming an increasingly important channel for accessing the global market. According to the GACC, cross-border e-commerce imports reached RMB 45 billion (US \$6.3 billion) in the first half of 2019. AmCham China recognizes that as the Chinese online consumer market expands, a strong legal framework is needed to regulate cross-border e-commerce activities. Current regulations, however, do not adequately address the shifting trends of the e-commerce landscape.

A variety of cross-border e-commerce policies and supporting normative documents which went into effect in 2019, in particular the *E-commerce Law* (effective January 1), have played a generally positive role in regulating the industry. Current regulations pertaining to cross-border e-commerce retail importers, however, lack general standards for product quality and safety. Our members have found this results in often inconsistent or opposing decisions with respect to which products are permitted to enter via China's ports, resulting in the same product clearing customs at one port and being rejected at another. These inconsistencies bring unnecessary delays to Chinese consumers and increase the costs for enterprises which then have to pay to transport their goods and then repeat the declaration process. We recommend that the GACC promulgate normative regulations and guidelines that enable all ports and customs areas to operate consistently with respect to retail imports.

As the cross-border e-commerce industry in China has grown, some individuals have used cross-border e-commerce channels to conduct fake transactions and secondary sales. Cross-border e-commerce enterprises and e-commerce platforms are subject to government regulations that require them to prevent fraudulent transactions and establish internal risk prevention systems. At the same time, due to the complex challenges associated with ascertaining and protecting against identity theft, particularly challenging in the digital economy, it is both challenging and costly for enterprises to identify, track and intercept these types of transactions in advance. Addressing these issues requires strengthening cooperation between the customs authorities and industry. AmCham China is willing to serve as a platform for such collaboration. Enterprises also require clear standards with which to monitor their compliance; such

standards are currently absent. We recommend that the GACC promulgate detailed standards and guidelines for enforcement which will help enterprises meet their compliance obligations.

Stock Keeping Units

The available channels for sales of products via cross-border e-commerce channels are highly decentralized. As a result, the same Stock Keeping Units (SKUs: scannable bar codes that allow companies to track the movement of their product inventory) are often filed by different importing entities in different customs areas. There are cases where SKUs with the same product name fall under different tax numbers. When the products move between bonded warehouses in different customs areas, the customs regulatory system requires that the SKU have an identical tax number reported in both warehouses in order to be moved. In instances where the corresponding tariff rates on certain products are not clearly listed and no classification has been issued by the customs authorities, it is difficult to persuade any party, either the enterprise or the customs authority, to modify the tax number used in the customs filing. Even if either party was willing to do so, the modification process is complicated and time-consuming.

Given that no tax or certificate is required to transfer products imported via cross-border e-commerce channels between bonded customs areas, we recommend simplifying the declaration process for such transfers. The default product tax number held by the customs authority at the recipient location should automatically be linked to the tax number of the same SKU on the books of the customs authority at the place of export. This recommendation would in effect result in a unified product tax number from the moment a sale is transacted on an e-commerce platform through the customs and post-customs supervision process, which should simplify operations of business entities and help to reduce the risk of a customs violation by either the business entity or the customs authority.

- Establish a mechanism for resolving HS classification disputes in a reasonable manner consistent with existing laws and regulations as well as multi-lateral commitments such as those made under China's FTAs.
- Remove or improve the stated time limits for preliminary adjudication.
- On the basis of implementing a "single window" to promote international trade, implement uniform standards and reduce information asymmetries across China's customs clearance procedures nationwide.
- Continue to optimize the customs clearance process for the express delivery industry.

Recommendations:

For the Chinese Government

- Utilize advanced and emerging technologies to improve the overall regulation of the customs system. Improve the reliability of customs clearance procedures by notifying companies in advance of planned system upgrades, avoid conducting a system upgrade during peak business hours, and provide improved support measures during system shutdowns or other similar emergencies.

Government Procurement

Introduction

Government procurement in China remains an area of great concern for AmCham China. While China has made some progress in recent years in improving its government procurement system with the introduction of regulations designed to bring greater transparency and accountability to government procurement, China has yet to fulfill its stated intent to accede to the World Trade Organization (WTO) Agreement on Government Procurement (GPA) made when it became a member of the WTO in 2001. China's submission of its 6th revised market access offer in 2019 represents a significant advancement of its accession. There are other encouraging signs, such as the promise of equal treatment for foreign-invested enterprises (FIEs) in the *Foreign Investment Law* and the relevant implementing regulations which took effect on January 1, 2020. On the other hand, the ongoing development of certain new laws and regulations, and the draft revision of the *Tendering and Bidding Law*, have introduced additional uncertainties with respect to government procurement.

AmCham China remains concerned over the slow and uneven pace of China's accession negotiations. Since applying for GPA accession and submitting its initial offer in December 2007, China has submitted a total of seven offers; the latest revised offer submitted in October 2019. AmCham China urges the Chinese government to work with GPA parties to resolve the issues necessary for their approval of its accession targeted for 2020.

Opening China's government procurement market to foreign competition is in China's own interest and consistent with its stated commitment to market competition. Doing so would provide Chinese government entities with access to the goods and services of the GPA parties, enabling them to acquire high quality, state-of-the-art goods and services at competitive prices. Joining the GPA would also provide China with tools to combat local protectionism and corruption and strengthen the rule of law in China. Chinese officials recognize this. For example, Minister of Commerce Zhong Shan recently stressed the benefits to China of opening markets to foreign investment through China's new Foreign Investment Law following the year-end meeting of the Ministry of Commerce (MOFCOM) (discussed in more detail below).

GPA accession would enable China to fulfill a major WTO commitment and enable it to participate in the continued development of international procurement standards and practices. It would also constitute an opportunity for China to advance its commitment to, and support of, the multilateral trading system. US businesses and trade associations widely recognize the importance of Chinese government procurement. China's accession to the GPA would allow US firms to participate in China's government procurement on a transparent, predictable and non-discriminatory basis, and provide China with leverage against barriers to participation by Chinese companies in overseas government procurement markets.

China's Government Procurement Market

The size of China's government procurement market has more than tripled over the past decade. In 2010, government procurement was estimated by the WTO to be roughly RMB 842 billion (37 percent for procurement of "goods," 53 percent for procurement of "construction and engineering-related services," and 8.4 percent for procurement of "other services"). In 2018, the WTO conducted its 7th biennial Trade Policy Review (TPR) of China. WTO reported the total value of China's government procurement at RMB 3.11 trillion (approximately US \$456 billion) in 2016 (23 percent for procurement of "goods," 44 percent for procurement of "construction and engineering-related services," and 33 percent for procurement of "other services"). Moreover, much of China's procurement market is handled at the sub-central level. The TPR report estimates 95 percent of China's procurement is handled by provincial and local governments.

In 2018, the Ministry of Finance (MOF) reported the total value of China's government procurement to be about RMB 3.59 trillion (approximately US \$510 billion) in 2018. China's procurement market accounted for four percent of GDP in 2018, much lower than the 10-15 percent seen in most countries. Government procurement in Organization of Economic Cooperation and Development (OECD) countries averages 12-13 percent of GDP, while the European Union has estimated that procurement accounts for 16 percent of GDP across its 28 member states.

政府采购

引言

中国美国商会（商会）仍然高度关注中国政府采购。尽管中国近年来通过引入规章制度改善了政府采购的透明度和职责划分，取得了一些进展，但中国尚未履行其 2001 年加入世界贸易组织（WTO，下称“世贸组织”）时就《政府采购协定》（GPA，下称“协定”）作出的承诺。中国在 2019 年提交了第六次改进的市场准入出价，这标志着中国加入世贸组织的重大进步。还有其他令人鼓舞的信号，例如已于 2020 年 1 月 1 日生效的《外商投资法》以及相关实施条例中承诺对外商投资企业给予平等待遇。另一方面，一些新法律法规的不断发展和《招标投标法》的修订草案给政府采购增添了更多不确定性。

中国入世谈判进展缓慢，且多有曲折，中国美国商会对此依然十分关切。自 2007 年 12 月申请加入《政府采购协定》并提交初次出价以来，中国已提交了七份出价；2019 年 10 月提交了最新改进的出价。商会促请中国政府同参与《政府采购协定》的各方一道解决关键问题，争取在 2020 年加入该协定。

中国对外开放政府采购市场，既符合其自身利益，也符合中国参与市场竞争的承诺。这有助于中国相关政府实体进入《政府采购协定》参加方的商品和服务市场，获取质高价优、最先进的商品和服务。加入《政府采购协定》还将助力中国打击地方保护主义和腐败劣行、加强法治。中国官员也肯定了这一点。例如，商务部部长钟山最近在商务部年终会议上强调了通过《外商投资法》向外资开放市场给中国带来的好处（详见下文）。

中国加入《政府采购协定》将有助于履行入世承诺，并能够参与到国际采购标准和实践持续发展的进程中。这也将是推动中国履行其多边贸易体制承诺和支持多边贸易体制的机会。美国企业和贸易协会普遍认同中国政

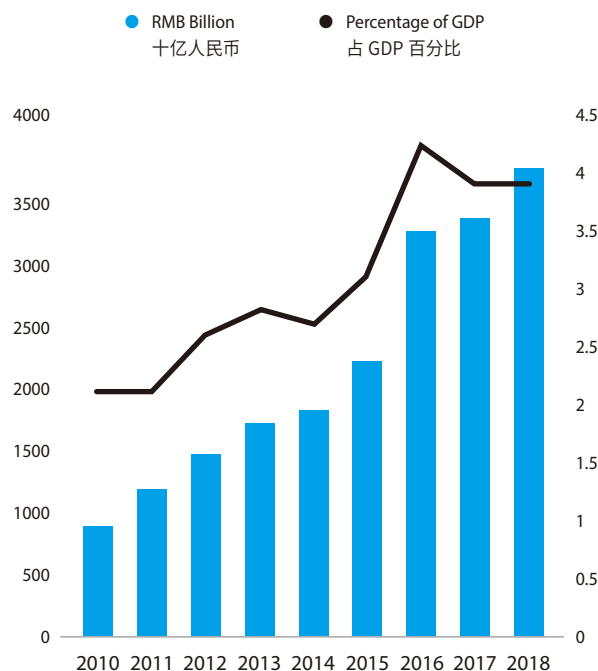
府采购的重要性。中国加入《政府采购协议》能让美国企业在透明、可预测、非歧视的基础上参与中国政府采购，也为中国企业参与海外政府采购抵制市场壁垒起到杠杆作用。

中国政府采购市场

在过去的 10 年中，中国政府采购市场的规模增长了两倍多。据世贸组织估计，2010 年政府采购金额约为 8420 亿元人民币，其中 37% 用于采购“货物”，53% 用于采购“建筑和工程相关服务”，8.4% 用于采购“其

Figure 1. China's Government Procurement Market, 2010-2018

图 1. 中国政府采购市场（2010-2018 年）



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

In the TPR Report the WTO Secretariat suggested that China's "relatively low ratio" may be due to the exclusion of important infrastructure projects undertaken by state-owned enterprises (SOEs) from its procurement data.

China's GPA Accession

When China became a WTO Member in December 2001, it declared its intention to become a party to the GPA and swiftly table a market access offer of the procurement it would cover under the Agreement. China did not table its first offer until 2007. 18 years after China's declaration of its intent to do so, China's GPA accession remains a contentious issue among its trading partners .

In October 2019, China took a major step forward with its submission of a new market access offer, its sixth revised offer of procurement that it will cover under the GPA. The new offer came nearly five years after its most recent offer in 2014, and 12 years after its first offer. The chair of the WTO GPA Committee labeled the new offer "a very significant development." The new offer moves China much closer to opening its government procurement market commensurate with that of GPA parties.

The GPA Committee noted in its 2019 Annual Report, as it had in prior reports, that it "remains of the view that China's GPA accession, on mutually agreeable and appropriate terms, would be significant for the Agreement, for the WTO, and for the world economy and would send a strong signal for other emerging economies." In expressing "appreciation of China's submission of the new revised offer that had been under preparation for several years," the Committee expressed the hope "that productive discussions based on this new offer can be carried out in 2020 to keep the positive momentum and move China's accession forward."

The new offer includes significant improvements, including covering all provinces, adding 16 state-owned enterprises (SOEs) and military entities, as well as opening all construction services, expanding its covered services and removing several restrictions included in earlier offers.

For the first time, China has offered defense entities, the Ministry of Defense and the Logistics Support Department of the Central Military Commission, despite its earlier contention that it could not cover its defense sector. It has not, however, offered all of its defense entities, in particular the People's Liberation Army. Consistent with the practice of other parties relating to their defense entities, China added a positive list of goods which those entities will procure under the GPA. China excludes procurement by its military forces "for the direct purpose of providing foreign assistance" and for "the provision of support overseas," the latter of which is comparable to an exception that the US maintains in its GPA commitments.

In its new offer, China added seven provinces (Gansu, Guizhou, Jilin, Qinghai, Shaanxi, Sichuan and Yunnan) to complete its coverage of the four provincial-level municipalities plus all 22 provinces. It has still not offered to include any of its 5 autonomous regions. China also removed a 2014 provision that would have delayed application of the GPA to 10 provinces for three years. It also omitted an earlier qualification that the GPA would not apply to the procurement of construction services by sub-central government entities using special funds from the central government.

China added 16 SOEs, beginning with China State Railway Group and its 18 sub-central groups. The other new SOEs are airport authorities (Beijing, Guangdong, Guizhou, Henan, Shanghai, Yunnan), highways, roads and bridges (Hunan, Jilin, Shanxi, Sichuan), subways (Beijing, Shanghai), waterworks (Beijing, Tianjin) and a port (the Ningbo Meishan-Island International Container Terminal in Zhejiang). China's new offer also includes 36 local colleges and universities, at least one for each of its 26 provinces and provincial-level municipalities.

China has aligned all of its permanent thresholds with those applied by most GPA parties. Of particular significance, it has cut the construction services threshold for sub-central entities and other entities from 15 million Special Drawing Rights (SDRs) to five million SDRs and reduced the goods and services thresholds of its sub-central entities from 355,000 SDRs, the US-applied threshold, to 200,000 SDRs, the threshold applied by most parties, including the European Union. China has, however, retained higher transitional thresholds but reduced their duration to one year (in contrast to two years in its 2014 offer).

China's service offer has grown more robust since its meager initial offer as it has added a few more services in each offer. The 2019 offer includes coverage of all construction services, except those excluded for specific entities. It removed its exclusion of dredging, which the United States maintains. China also expanded its coverage of service sector categories, adding such services as taxation, real estate, technical testing and analysis, and wholesale trade, retailing and franchising services.

China also removed the reservation in its 2014 offer of the right to deviate from the national treatment principle "when a specific procurement may impair important national policy objectives."

While China has removed several problematic elements in its earlier offer, several obstacles remain. China continues to assert a "right" to establish transitional measures and has proposed higher transitional thresholds for one year (reduced from two years in its 2014 offer). It also notes that it "may require" the incorporation of technology transfer, domestic content and offsets, which are prohibited by the Agreement, unless allowed as a transitional measure for a developing country. Given China's upper-middle-income

他服务”。2018年，世贸组织对中国进行了第七次两年一度的贸易政策审查（TPR）。世贸组织报告称，2016年中国政府采购总额为3.11万亿元人民币（约合4560亿美元）。其中23%用于采购“货物”，44%用于采购“建筑和工程相关服务”，33%用于采购“其他服务”。此外，中国大部分的采购市场都是在中央以下层级进行的。贸易政策审查报告估计，中国95%的采购由省级和地方政府处理。

据中国财政部2018年报告，中国政府2018年采购总额约为3.59万亿元人民币（约合5100亿美元）。中国采购市场总额占当年GDP的4%，远低于大多数国家10%至15%的比例。经济合作与发展组织（OECD）成员国的政府采购平均占GDP的12%至13%，而欧盟估计其28个成员国的政府采购占GDP的16%。

在贸易政策审查报告中，世贸组织秘书处表示，中国“比例相对较低”可能是由于其采购数据排除了国有企业承接的重要基础设施项目。

中国加入《政府采购协定》

中国于2001年12月入世时，宣布有意加入《政府采购协定》并将尽快提交一份市场准入出价，提供其在协定内拟涵盖的采购范围。中国直至2007年才首次出价。自中国宣布意向18年以来，中国加入《政府采购协定》在其贸易伙伴之间仍然是一个有争议的问题。

2019年10月，中国迈出了重要的一步，提交了新的市场准入出价，这是中国根据《政府采购协定》第六次改进采购出价。本次新出价距最近一次的2014年出价已近5年，而距离首次出价已12年。世贸组织《政府采购协定》委员会主席称新出价为“一个非常重大的进展”。新出价使中国中国政府采购市场的开放程度向着与其他《政府采购协定》成员一致的方向上更进一步。

2019年，《政府采购协定》委员会在其年度报告中提及到一处与往年报告中类似的观点，即委员会“仍然认为，在互相认可和合适的条件下，中国加入《政府采购协定》无论对协定本身、世贸组织还是世界经济而言，都将意义非凡；这也会对其他新兴经济体释放出一个重要信号”。委员会对“中国提交出这份经多年准备最新改进的出价表示赞赏”，并表示希望“2020年在新出价的基础上能进行富有成效的讨论，保持积极势头，提速

中国加入《政府采购协定》的步伐。

新出价有重大改进，市场准入范围涵盖全部省份，增加了16家国有企业和军事实体，以及开放了所有建筑服务，扩大了涵盖的服务业范围，取消了先前出价中包含的某些限制条件。

中国的出价首次涉及到国防实体、国防部和中央军委委员会的后勤保障部，尽管此前中国争辩无法将国防领域纳入其市场准入出价的范围。但是，中国的出价并不包括所有国防实体，特别是人民解放军。遵循其他参加方在各自国防实体方面的惯例，中国增加了一份货物正面清单，国防实体可在《政府采购协定》内据此进行采购。中国排除了“直接用于提供外国援助”和“提供海外支持”的军事采购，后者与美国在其《政府采购协定》承诺中坚持的例外情况异曲同工。

在新出价中，中国增加了七个省份（甘肃、贵州、吉林、青海、陕西、四川和云南），覆盖地区共计有四个直辖市和22个省份。本次出价仍未涵盖五个自治区中的任何一个。中国还删去了2014年出价中的一项规定，该规定可能会使得十个省份推迟三年才能适用《政府采购协定》。最新出价也未包含较早前的一项规定，即《政府采购协定》不适用于使用中央政府专项资金的次中央政府实体的建筑服务采购。

在新出价中，中国增加了16家国有企业，其中包括中国国家铁路集团及其18个下属央企。其他新增的国有企业有机场管理部门（北京、广东、贵州、河南、上海、云南）、公路、路桥（湖南、吉林、山西、四川）、地铁（北京、上海）、自来水厂（北京、天津）和港口（浙江省宁波市梅山岛国际集装箱码头）。中国的新出价还包括36所地方高校，上述的26个省份和直辖市各占至少一所。

中国的所有永久性门槛已对标大多数《政府采购协定》参加方所采用的门槛。值得一提的是，中国已将次中央实体和其他实体的建筑服务门槛从1500万特别提款权减至500万特别提款权，并将其次中央实体的商品和服务门槛从美国采用的355,000特别提款权降低为200,000特别提款权，而后者是包括欧盟在内的大多数参加方所采用的门槛。然而，中国保留了较高的过渡门槛，但将期限缩短为一年，而2014年出价的期限为两年。

economy status in the World Bank Group, such transitional measures would not be appropriate. A second obstacle is China's insistence that it delay its implementation of the GPA for two years after its accession (down from three years in its 2014 offer). A third potential issue is China's proposed exclusion of "procurement with the aim of supporting small and medium-sized enterprises," in particular as it relates to medium-sized enterprises; this exclusion would likely encompass most Chinese firms.

In its 2019 GPA offer, China has moved much closer to the level of coverage offered by existing GPA parties. Below is a brief summary of China's 2019 GPA proposal relative to that of existing parties:

- China's permanent thresholds are fully consistent with those used by most parties,
- Its central government entity coverage is generally in line with that of GPA parties, in particular with its inclusion of the Ministry of Defense and another military entity. Its coverage of defense entities is less robust than most parties, but better than Israel which does not cover its defense ministry,
- China's coverage of all provinces and provincial-level municipalities is comprehensive and better sub-central government coverage than that provided by several parties, including the United States which covers only 37 of its 50 states,
- China's services offer follows most parties in its use of a positive list, and it has gradually expanded its covered services, but the list is not as robust as it could be,
- China's full coverage of construction services is consistent with that of other GPA parties.

China's Domestic Procurement Regime

Foreign Investment Law

The *Foreign Investment Law* was approved on March 15, 2019 and went into effect on January 1, 2020. Article 16 of the FIL stipulates that the Chinese government shall guarantee FIEs fair participation in government procurement activities, and that products manufactured or services provided by FIEs within the territory of China shall receive equal treatment under the government procurement regime.

On December 31, 2019, China formally released the Implementing Regulations of the *Foreign Investment Law* (FIL Implementing Regulations) effective January 1, 2020. The FIL Implementing Regulations provide more detailed terms to ensure the fair participation of foreign-invested enterprises in government procurement activities. For example, Article 15 of the FIL Implementing Regulations provides that no government authorities may prevent or restrict FIEs from participating in the government procurement markets of any region or any industry in any manner. Likewise, no

governmental authorities or government purchasing agencies may discriminate against FIEs in government procurement activities, including the publication of government procurement information and determination of conditions for and examination of qualifications of suppliers. Under the new FIL Implementing Regulations, the authorities may not limit or exclude suppliers based on ownership form, organizational form, shareholding structure, or the nationality of the investor of such suppliers; or impose other unreasonable requirements on the suppliers. Also, under the FIL Implementing Regulations, the authorities may not provide differential treatment for the products or services of FIEs that are produced or generated in the territory of China. Additionally, the new Regulation requires investigation and rectification of any differential or discriminatory treatment, or other illegal actions against FIEs, in government procurement activities. Such actions may result in penalties.

Furthermore, commitments to the principle of non-discrimination in government procurement was reflected elsewhere in 2019, including in the MOF *Notice on Promoting Fair Competition in Public Procurement* (issued on July 26, 2019), the State Council's *Regulations on Optimizing the Business Environment* (issued on October 23, 2019) and the State Council's *Opinions on Further Improving the Use of Foreign Capital* (issued on October 30, 2019).

AmCham China welcomes these commitments and acknowledges that they appear to constitute an effort to address longstanding concerns about FIE participation in government procurement. As expressed in our comments this year on the FIL Implementing Regulations, the effectiveness of these regulations will be determined by the on-the-ground implementation. For instance, our members have found themselves excluded in the past from procurement opportunities due to non-compliance with domestic production standards and/or safety controls, which actively prevent their participation in the first place. Moreover, members in certain industries have reported that their local clients have received window guidance to "buy local," again rendering them unable to participate in procurement opportunities. In addition, severe transparency issues in Belt and Road Initiative tenders inhibit participation by foreign companies and FIEs. It is not clear at this juncture how the above regulations will address these issues in the absence of strict implementing and enforcement mechanisms, which are largely absent at present.

Revising the Government Procurement Law and the Tendering and Bidding Law (TBL)

The *Government Procurement Law* and the TBL, which are the main laws governing government procurement in China, are currently under revision.

MOF included amendment of the *Government Procurement Law* among its 2019 legislative research projects. To revise

与最初的微薄报价相比，中国的服务报价已经变得更加稳健，每项报价都增加了几项服务。2019年的报价涵盖了所有建筑服务，但特定实体不包括在内。中国不再将“疏浚”服务排除在外，而美国仍排除此项。中国还扩大了服务业类别的覆盖范围，增加了税收、房地产、技术检测与分析、批发贸易、零售和特许经营等服务。

2014年报价中保留了一项与国民待遇不符的权利，即“当某项具体采购可能损害重要的国家政策目标时”，现在中国取消了该项保留。

尽管相较之前的出价，中国在新出价中删除了部分有问题的内容，但仍然存在几处障碍。中国主张继续设立过渡措施的“权利”，并提议在一年过渡期内适用标准较高的门槛（该过渡期从2014年出价的两年减少到一年）。中国还指出，中国“可能要求”融入《政府采购协定》本身禁止的技术转让、国内比例和补偿交易，除非《协定》允许发展中国家以过渡措施的形式融合上述内容。鉴于中国在世界银行集团中处于中高收入经济体的地位，这种过渡措施并不合适。第二个障碍是中国坚持在加入《政府采购协定》后推迟两年再施行《协定》内容，而2014年出价则要求推迟三年。第三个潜在问题是提议排除“以支持中小企业为目标的采购”，特别是与中型企业有关的采购；如此一来可能会排除掉大多数中国公司。

在中国的2019年出价中，中国大大接近现有《政府采购协定》各参加方达到的覆盖范围。以下是与现有参加方相比较的中国2019年《政府采购协定》出价的简要总结：

- 中国清单的永久性门槛与大多数参加方完全一致。
- 中国的中央政府实体范围与《政府采购协定》参加方基本相当，特别是已涵盖国防部和另一军事实体。其国防实体范围不如大多数参加方有力，但比不涵盖国防部的以色列要好。
- 中国全面覆盖所有省份和直辖市，且次中央政府覆盖范围比某些参加方提供的覆盖范围更大，包括美国，美国50个州只覆盖了37个。
- 中国的服务采购项目出价与大多数参加方一样采用正面清单，并逐步扩大服务覆盖范围，但其清单仍未做到力所能及的健全。
- 中国的工程服务覆盖范围全面，与《政府采购协定》参加方一致。

中国国内采购制度

《外商投资法》

《外商投资法》于2019年3月15日通过，并于2020年1月1日生效。《外商投资法》第十六条规定，中国政府应保障外商投资企业公平参与政府采购活动，外商投资企业在中国境内生产的产品或提供的服务在政府采购制度下享受平等待遇。

2019年12月31日，中国正式发布了《外商投资法实施条例》（以下简称“实施条例”），自2020年1月1日起施行。实施条例为外商投资企业公平参与政府采购活动作出了更为详细的规定。例如，实施条例第十五条规定，政府及其有关部门不得阻挠和限制外商投资企业自由进入本地区和本行业的政府采购市场。同样，政府采购的采购人、采购代理机构不得在政府采购信息发布、供应商条件确定和资格审查等政府采购活动中，对外商投资企业实行歧视待遇。根据该条例，政府有关部门不得以所有制形式、组织形式、股权结构、投资者国别以及其他不合理条件对供应商加以限制。另外，根据该条例，政府有关部门不得对外商投资企业在中国境内生产的产品、提供的服务区别对待。此外，该条例要求纠正和查处在政府采购活动中对外商投资企业实行差别待遇或者歧视待遇等违法违规行为，违者将面临处罚。

再则，政府采购中遵循非歧视原则的承诺也体现于其他2019年公布的法规政策，包括财政部《关于促进政府采购公平竞争优化营商环境的通知》（2019年7月26日）、国务院《优化营商环境条例》（2019年10月23日）和国务院《关于进一步做好利用外资工作的意见》（2019年10月30日）等。

商会对这些承诺表示欢迎，也肯定这些承诺为了解决外商投资企业参与政府采购的长期担忧而作出的努力。正如本年度商会提交的实施条例所做评论中所述，条例的效力取决于实际执行情况。例如，商会会员之前曾发现自身因未遵守中国国内生产标准或安全控制要求而被排除在采购机会之外。仅此一条便足矣从一开始就阻碍其正常参与采购。而且某些行业的会员也报告称，他们的本地客户收到了“购买本地”的窗口指导，这又使他们无法获得采购机会。此外，“一带一路”倡议招标中严重的透明度问题也阻碍了外国公司和外商投资企业参与。在目前仍缺乏严格实施和执行机制的情况下，

the *Government Procurement Law*, MOF will consider how current application of the law conflicts with the TBL, recent reforms in its government procurement regime, and progress towards GPA accession.

On December 3, 2019, NDRC issued a series of draft revisions to the TBL for public comment. While these revisions to the 1999 TBL do not include any provisions directly applicable to FIEs, the revisions aim to address exclusionary practices that discriminate against potential bidders, which should improve access for FIEs in China's government procurement market. The draft also seeks to increase transparency by standardizing the bidding process and preventing collusion among bidders, or between bidders and procurers, and to strengthen supervision of contract performance following a tender or bid award.

AmCham China submitted comments to the draft revisions of the TBL. We are pleased by:

- The inclusion of language referencing the widespread practice of “low quality, lowest price” bids and taking steps to address these issues,
- The call for tenders to consider product life-cycle costs when evaluating bids, which would benefit many industries, including in particular the highly differentiated medical device industry,
- Commitments to the principles of transparency, innovation, market-based allocation of resources, and alignment with global best practices.

We also have a number of concerns. Multiple articles in the draft revisions contain key terms that lack precise definition, which will create opportunity for uneven interpretation and implementation. Several articles as written could allow certain practices, such as separate negotiations between tendering agency and outside bidders before the award of the final bid, that could undermine stated commitments to “equal treatment” and “fair competition.” AmCham China recommends that the final versions or accompanying Q&A include a list of sample scenarios or practices that the government deems would not impact equal treatment or fair competition were they to take place, and urges relevant implementing agencies to adopt and implement regulations and mechanisms that comply with these principles. Finally, certain articles appear to create the possibility for the publication of winning bids, which would necessarily reveal confidential information like the monetary value of the bid and specific contract execution details. We urge the government to ensure that reporting requirements for government procurement do not force the disclosure of confidential information.

Joint Disciplinary Actions in Government Procurement

On November 20, 2018, the National Development and

Reform Commission (NDRC), People's Bank of China (PBOC), MOF, MOFCOM, State Administration for Market Regulation (SAMR), State Taxation Administration (STA) and other administrative authorities jointly released the *Memorandum of Understanding on Taking Joint Disciplinary Actions Against Seriously Dishonest Entities and Persons in the Area of Government Procurement*. According to the Memorandum, any supplier found to be in breach of the *Government Procurement Law* or other relevant regulations will have its name listed in the National Credit Information Sharing Platform and its access to commercial activities will be restricted.

On July 9, 2019 the State Council released the *Guiding Opinions on Accelerating the Construction of Social Credit System and Constructing a New Credit-based Supervision Mechanism*, which encourages the use and recognition of credit information from public and third-party credit service agencies during the process of government procurement. In general, AmCham China welcomes the use of credit histories as a mechanism to assess and supervise qualified bidders. We urge, however, that evaluations of qualified participants in government procurement remain confined to considerations of creditworthiness, and do not extend to political or social considerations, as the draft revisions to the *Measures on the Management of the List of the Untrustworthy with Serious Violations*, released by SAMR in July 2019, would appear to do. These Measures govern the addition and removal of companies on corporate blacklists. Being blacklisted would render companies unable to participate in government procurement activities.

Centralized Drug and Vaccine Procurement Program

On September 25, 2019, China expanded its pilot centralized drug procurement program to the entire country in an attempt to negotiate lower prices from drug manufacturers. All manufacturers (drug marketing authorization holders and general national agents of imported drugs are regarded as manufacturers) of drugs within the scope of the centralized procurement market in mainland China may participate in the pilot program with the approval of the National Medical Products Administration. This pilot program was rolled out at the end of 2018 in 11 Chinese cities: Beijing, Tianjin, Shanghai, Chongqing, Shenyang, Dalian, Xiamen, Guangzhou, Shenzhen, Chengdu, and Xi'an, which together constitute the lion's share of the Chinese drug market. Compared with the lowest prices in the pilot cities in 2017, the average price reduction was 52 percent, while the highest price cut was 96 percent. This centralized procurement program provides equal treatment for FIEs, and several multinational pharmaceutical companies have won contracts under the pilot program. Furthermore, the *Vaccine Administration Law*, which took effect on December 1, 2019, provides that vaccines shall be centrally procured by governments through the locally integrated public resource trading

实施条例如何解决这些问题还是未知之数。

修订《政府采购法》和《招标投标法》

中国管理政府采购的两部主要法律《政府采购法》和《招标投标法》正在修订中。

财政部将修订《政府采购法》列入 2019 年立法研究项目。为修订《政府采购法》，财政部将充分考虑当前法律的适用与《招标投标法》、政府采购制度最新改革、中国加入《政府采购协定》进程的冲突之处。

2019 年 12 月 3 日，国家发改委公布了《招标投标法》的一系列修订草案，向社会公开征求意见。原《招标投标法》于 1999 年生效，尽管本次修订中并未包括任何直接适用于外商投资企业的规定，但旨在解决歧视潜在投标人的排他性做法，这将有助于外商投资企业进入中国政府采购市场。该草案还力求通过规范招标程序、防止投标人之间或投标人与采购人之间勾结串通，以提高透明度，并在招标或中标后加强监督合同履行情况。

商会对《招标投标法（修订草案）》提交了意见。商会对如下几点改动喜闻乐见：

- 措辞提及了使用“低质、异常低价”投标的普遍做法并将采取措施解决以上问题；
- 要求招标人在评估投标时考虑产品生命周期成本，这将使许多行业受益，特别是高度差异化的医疗设备行业；
- 承诺遵循透明、创新、资源市场化配置、对标全球最佳实践的原则。

商会依然存在顾虑。修订草案中的许多条款中缺乏对关键术语的准确定义，这可能会导致“解读不一致、执行不统一”的局面出现。草案的若干条款可能允许某些做法，例如招标机构与外部投标人在最终中标前进行单独谈判，这可能会破坏对“平等待遇”和公平“竞争”的既有承诺。商会建议在最终版本或随附的问答中提供示例场景和做法，即政府认为上述情况即使发生，也不会影响平等待遇或者公平竞争。同时，商会呼吁相关执行机构采纳并施行遵循上述原则的条例和机制。最后，某些条款似乎有可能公布中标信息，这必然会泄露诸如投标的货币价值和具体的合同执行细节等保密信息。商会敦请政府确保政府采购的报告要求不强制披露保密信息。

政府采购的联合惩戒

2018 年 11 月 20 日，国家发展改革委员会、中国人民银行、财政部、商务部、国家市场监督管理总局、国家税务总局和其他行政部门共同发布《关于对政府采购领域严重违法失信主体开展联合惩戒的合作备忘录》。根据《备忘录》，供应商违反《政府采购法》等相关法规的，将在全国信用信息共享平台中公布该供应商名称，并限制其从事商业活动。

2019 年 7 月 9 日，国务院发布了《关于加快推进社会信用体系建设构建以信用为基础的新型监管机制的指导意见》，鼓励在政府采购过程中采用和认可来自公共信用服务机构和第三方信用服务机构的信用报告。总体而言，商会欢迎使用信用记录作为评估和监督合格投标人的机制。但是商会敦请，对政府采购参与者资质的评估仍应限于信用度考量，而不应扩展到政治或社会考量，因为国家市场监督管理总局 2019 年 7 月发布的《严重违法失信名单管理办法（修订草案）》似乎已有此做法。这些措施支配着企业黑名单上公司的增删。被列入黑名单会使公司无法参与政府采购活动。

药品和疫苗集中采购计划

2019 年 9 月 25 日，中国将国家组织药品集中采购试点推广到全国适用，以试图从药企获得更低的药品价格。在中国内地集中采购市场范围内的所有药品生产企业，包括药品销售授权持有人和进口药品全国总代理，经国家药品监督管理局批准均可参加试点。2018 年底，中国在北京、天津、上海、重庆、沈阳、大连、厦门、广州、深圳、成都和西安等 11 个城市开展了试点，这些城市加起来在中国药品市场占有最大份额。与试点城市 2017 年的最低价格相比，平均降价幅度为 52%，最高降幅为 96%。这项集中采购计划为外商投资企业提供了平等待遇，几家跨国制药公司已在试点下赢得了合同。此外，2019 年 12 月 1 日生效的《疫苗管理法》规定，疫苗应由政府通过地方整合的公共资源交易平台集中采购。某些医疗耗材和设备也服从类似的采购要求。

政府采购贫困地区农副产品实施方案

根据 2019 年 8 月 20 日发布的《政府采购贫困地区农副产品实施方案》，将在 2019 年 10 月底前建立网络销售平台，该平台于当年 10 月 17 日上线运行。方案鼓

platform. Some medical consumables and devices will also be subject to a similar procurement program.

The Procurement Plan for Agricultural and Sideline Products from Poverty-Stricken Areas

According to the *Government Procurement Plan for Agricultural and Sideline Products from Poverty-Stricken Areas* issued on August 20, 2019, an online sales platform was to be established by the end of October 2019. It went into operation on October 17. All-level governmental authorities and SOEs are encouraged to purchase agricultural and sideline products from poverty-stricken areas via this online sales platform, and the procurement data will be regularly collected and reported by MOF and the State Council Leading Group Office of Poverty Alleviation and Development.

Establishing an Integrated Public Resource Trading Platform

According to the *Announcement of Deepening the Integration and Sharing of Public Resources Trading Platform* published by the NDRC in May 2019, China will establish a national public resources trading platform, which is expected to cover bidding on engineering construction projects, the transfer of land use rights and mining rights, government procurement and other public resources trading information. Transactions of public resources can be supervised or monitored online through this integrated public resource trading platform as of the start of 2020.

Performance Assessments for Government Procurement

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

Priority to Energy-Saving Products and Equipment

As required under the *Energy Conservation Law* (2018), the *Provisions for Energy-Conservation of Public Institutions* (2017) and the *Circular Economy Promotion Law* (2018), government procurement shall give priority to products and equipment that are energy-saving and environmentally-friendly, and may not purchase products and equipment being phased out for environmental reasons. Agencies that fail to comply with such requirements may be subject to administrative penalties or disciplinary action. The State Council also proposed the concept of a “Waste-Free City” in its Work Proposal of the Pilot Construction of “Waste-Free City” in December 2018. This work proposal encourages local governments to increase their procurement of recyclable products.

AmCham China is pleased to see greater priority being given to environmental considerations in government procurement decisions but urges the government to develop industry-specific environmental standards in line with international best practices (see the *White Paper Environmental Chapter* for further discussion).

Recommendations

It has been 18 years since China declared its intent to accede to the GPA. China should demonstrate its commitment to the WTO by completing its accession. AmCham China urges the Chinese government to take the necessary final steps to open its government procurement market on a reciprocal basis with the United States, as well as with the other 47 WTO members that are covered by the GPA, and to complete its accession in 2020. China should also take the opportunity to serve as a positive model to the 14 other WTO Members that made similar commitments in their protocols of accession to the WTO. China’s accession to the GPA would also incentivize other WTO Members to seek membership in this important plurilateral agreement.

For the Chinese Government:

We urge the Chinese government to address the outstanding issues and requests of the GPA parties in order to complete its accession to the GPA in 2020. AmCham China urges the Chinese government to work with the GPA parties to address these deficiencies and other improvements:

- China should withdraw its proposed one-year transitional thresholds, its reservation to require domestic content requirements, offsets, or transfer

励各级政府部门和国有企业通过该网络销售平台从贫困地区购买农副产品，并将由财政部和国务院扶贫办会定期收集和报告采购数据。

整合建立公共资源交易平台

根据国家发改委于2019年5月发布的《关于深化公共资源交易平台整合共享指导意见的通知》，中国将建立统一的公共资源交易平台，预计涵盖工程建设项目招标投标、土地使用权和矿业权出让、政府采购和其他公共资源交易信息。从2020年初开始，可以通过这个整合的公共资源交易平台线上监管公共资源的交易。

政府采购绩效评价

中共中央、国务院分别于2018年7月和9月联合发布《关于推进政府购买服务第三方绩效评价工作的指导意见》（《指导意见》）和《关于全面实施预算绩效管理的意见》（《意见》）。根据《意见》，各级政府的收支预算均属于该绩效考核范围。由一般公共预算支付的政府采购也将接受绩效管理评价。《指导意见》鼓励对所有政府服务采购进行第三方绩效评价，以确保购买服务行为的经济性、规范性、效率性、公平性。财政部宣布了2018-2019年在部分地区试点评价的计划。商会欢迎中方在使公共采购流程肩负更多责任的努力，并将继续密切关注这些试点计划。

优先发展节能产品和设备

根据《节约能源法》（2018年）、《公共机构节能条例》（2017年）和《循环经济促进法》（2018年）的要求，政府采购应当优先采购节能环保的产品和设备，不得采购因环境原因淘汰的产品和设备。不遵守上述要求的单位可能受到行政处罚或纪律处分。2018年12月，国务院在《“无废城市”建设试点工作方案》中也提出了“无废城市”的概念。该工作建议鼓励地方政府增加可回收商品的采购量。

商会很高兴看到在政府采购决策中更加优先考虑环境因素，但敦请政府制定符合国际通行管理、具有行业针对性的环境标准（详见有关环境的章节）。

建议

中国宣布加入《政府采购协定》已经18年了。中国应通过加入《政府采购协定》来履行对世贸组织的承诺。商会敦请中国政府采取必要的最后步骤，与美国及其他47个《政府采购协定》范围内的世贸组织成员一道，在互惠的基础上开放其政府采购市场，并于2020年加入《政府采购协定》。中国也应借此机会为其他14个在加入世贸组织议定书中作出类似承诺的世贸组织成员树立正面典范。此外，中国加入《政府采购协议》也将激励世贸组织其他成员加入这个重要的多边协议。

对中国政府：

商会敦请政府尽快处理《政府采购协议》中各方提出的问题和要求，以推动实现于2020年加入该协议的目标。中国美国商会希望中国政府与各政府采购协定成员一道克服困难，切实做出改善。

- 中国应撤回其提出的为期一年的过渡门槛，取消对国内比例要求、补偿交易、技术转让的保留，并鉴于其经济发展程度，应撤销其主张自身作为发展中国家而获得的过渡措施。
- 改进后的新版《政府采购协定》出价应包含出于行政目的而定期进行采购的大型国有企业（包括电力公司），即不以商业销售或转售为目的，或不用于生产或供应以商业销售或转售为目的的产品或服务的国企。并且，商会建议中国政府通过以下方式阐明自身对国有企业的立场。第一、发布明确的行政条例，明确国有企业采购仅基于商业考量，而不属于政府采购。这样的条例符合中国在《加入世界贸易组织工作组报告书》中，有关国有企业商业独立性的承诺。第二、中国可扩大其《政府采购协定》范围，将参与行政目的采购的大型国有企业也纳入其中。
- 商会促请中国通过我会与美国业界开展对话，从而设立合理的覆盖范围。如下是中国应考虑纳入协议覆盖范围，且在美国业界也有重

of technology and its claim to transitional measures as a developing country given the advanced state of its economy.

- A new revised GPA offer should include major SOEs that procure regularly for governmental purposes (i.e., not for commercial sale or resale purposes, or for use in the production or supply of goods or services for commercial sale or resale), including electrical utilities. Furthermore, AmCham China encourages the Chinese government to clarify its position on SOEs by first issuing a clear directive confirming that SOE purchases are non-government procurements that are based solely on commercial considerations. This would be in line with China's commitments regarding commercial independence of SOEs in the Working Party Report included in its Protocol on Accession to the WTO. Then, China could expand GPA coverage to include major SOEs that participate in procurement for governmental purposes.
- AmCham China urges China to engage in dialogue with US industries through AmCham China in order to ensure meaningful coverage. Services that China should consider covering that are of importance to US industries include the following:
 - All financial services, including insurance, banking and e-payment services,
 - Express delivery services,
 - Healthcare services,
 - All information and communications technology services,
 - Media and entertainment services,
 - E-commerce services, and
 - Accounting, auditing, and bookkeeping services and services related to management consulting.

AmCham China also encourages China to withdraw its request to delay its implementation of the GPA after accession, as the GPA provides no authority for an acceding country to delay its entire implementation of the GPA after accession.

For the US Government

- AmCham China urges the US government to work with the EU and the other GPA parties to identify the improvements needed for their acceptance of China's market access offer with the aim of facilitating China's GPA accession in 2020.

要地位的服务行业：

- 全部金融服务业，包括保险业、银行业及电子支付服务；
 - 快递服务业；
 - 医疗服务业；
 - 全部信息通信技术服务业；
 - 媒体及娱乐服务业；
 - 电子商贸服务业；
 - 会计、审计、统计服务业以及管理咨询相关服务业。
- 商会还建议中国撤回其加入后推迟执行《政府采购协定》的请求，因为协定本身无法授权加入国推迟执行协定。

对美国政府

- 商会敦请美国政府与欧盟和其他《政府采购协定》参加方共同确定中国市场准入出价中做出的改进措施是否达到各方接纳标准，从而助力中国完成于 2020 年加入《市场采购协定》的目标。

High-Tech Trade Promotion and Export Controls

Introduction

In 2019, the US trade deficit with China was a reported US \$346 billion (down from US \$419 billion in 2018), in part because the US and China continued their dispute over trade practices. The reciprocal rise in import duties in 2019 between the two countries stemmed from a US investigation under Section 301 of the *Trade Act of 1974* into whether China's policies related to technology transfer, intellectual property, and innovation discriminates against, burdens, or restricts US economic and commercial opportunities.

Despite the trade frictions, the US remains the largest market for Chinese exports while China is the third largest importer of US goods behind Canada and Mexico. Bilateral trade in goods between the US and China shrank in 2019 from almost US \$636 billion (over RMB 4 trillion) in 2018 to US \$558 billion (RMB 3.8 trillion) in 2019. Amidst the ongoing trade dispute, the US has continued to formulate export controls on cutting-edge technologies, added several high-profile Chinese entities to the US *Entity List* (*Entity List*), and is piloting changes to the scope of foreign investment transactions in the US subject to review by the Committee on Foreign Investment in the United States (CFIUS). China for its part released a second draft of its long-awaited *Export Control Law* (ECL) at the end of 2019.

On January 15, 2020, China and the US signed the *Economic and Trade Agreement Between the US and China* (Phase One Deal), an announcement welcomed by AmCham China members. The Phase One Deal includes provisions on intellectual property protections in areas of trade secrets, patents and pharmaceutical-related intellectual property, geographical indications, trademarks, and enforcement against pirated and counterfeit goods. Also included are provisions to address concerns around the forced transfer of technology from US companies in China. Moreover, China has committed to buy US \$200 billion (approximately RMB 1.39 trillion) of goods and services from the US above 2017 levels, which would further reduce the trade deficit between the two countries.

In light of the groundwork laid by the Phase One Deal on intellectual property and forced technology transfer, AmCham China encourages both China and the US to facili-

tate greater collaboration between industry and government experts to address ongoing issues on both sides with respect to export controls and high-tech transfers. We urge China and the US to minimize restrictions on technology-sharing and place restrictions only on those technologies that have a clear rationale and can realistically be controlled, that is, they have a clear link to US national security or proliferation concerns and for which there are no alternative sources of supply, increasing the likelihood of their being controlled. We urge any necessary restrictions on the basis of national security be clearly and narrowly defined. Technology sharing and mutual development have benefits for the economies of both countries while broad restrictions on such exchanges will impair global growth and development.

Recent Developments and Ongoing Regulatory Issues

US Export Controls

In 2018, the US enacted the *Export Control Reform Act* (ECRA) as part of the *National Defense Authorization Act* for Fiscal Year 2019. The ECRA tasked the US Department of Commerce with establishing appropriate controls on the export, re-export or transfer (in-country) of "emerging" and "foundational" technologies.

Pursuant to ECRA, the US Bureau of Industry and Security (BIS) in the Department of Commerce published its *Advanced Notice of Proposed Rulemaking* (ANPRM) for *Certain Emerging Technologies* in November 2018 seeking public comment on the criteria for identifying emerging technologies deemed essential to US national security, which is ultimately expected to lead to proposed rules for new *Export Control Classification Numbers* (ECCNs) on the Commerce Control List (CCL) under BIS. BIS officials indicated that proposed rules on emerging technologies and the ANPRM on foundational technology would be released in 2019. The process has been slower than anticipated and, instead of one final rule published for emerging and foundational technologies, the new rules have been and are likely to continue to be released individually or in small batches.

Two emerging technology-related rules of note were published in 2019 and early 2020:

高科技贸易促进和出口管制

引言

2019 年美国对华贸易逆差为 3460 亿美元（相较 2018 年的 4190 亿美元有所下降），部分原因是中美两国持续在贸易方面存在争端。美国基于 1974 年《贸易法》第 301 条开展了一项调查，该调查涉及中国技术转让、知识产权和创新政策方面是否存在歧视，加重了美国经济和社会发展负担，或者限制了商业机会，这导致了 2019 年两国进口关税的增加。

尽管两国存在贸易摩擦，美国仍然是中国最大的出口市场，而中国是美国商品的第三大进口国，仅次于加拿大和墨西哥。2019 年中美之间的双边商品贸易在从 2018 年的近 6360 亿美元（超过 4 万亿人民币）下降至 5580 亿美元（3.8 万亿人民币）。在持续的贸易争端中，美国继续对尖端技术的出口进行管制，在美国实体清单（Entity List）中添加了几个备受关注的中国实体，并且正在试图变更需要美国外国投资委员会（CFIUS）审查的美国以外投资交易范围。中国方面也于 2019 年底发布了《出口管制法》的第二稿。

2020 年 1 月 15 日，中美签署了《中美第一阶段经贸协议》（以下简称《协议》），中国美国商会（商会）会员很高兴看到这一消息。该《协议》内容包括有关商业机密、专利、与医药相关的知识产权、地理标志、商标以及对盗版和假冒商品的执法等领域的知识产权保护的规定。另外还包括一些其他规定，旨在解决在华美国企业对强制技术转让的担忧。此外，中国还承诺会从美国购买 2000 亿美元（约合 1.39 万亿元人民币）的商品和服务，这一数字超过了超过 2017 年的水平，并将进一步减少两国之间的贸易逆差。

鉴于《协议》在知识产权和强制性技术转让方面奠定了基础，商会鼓励中美双方促进行业和政府专家之间的合作，以解决双方在出口管制、高额关税和技术转让

方面持续存在的问题。我们敦促中美两国尽量减少对技术共享的限制，仅对那些具有明确理由并可以实际获得控制的技术施加限制，即与美国国家安全或核扩散问题有着明确关联，或没有其他获取手段的技术，需要增加对其的管控。我们建议因国家安全对相关技术进行的必要限制时对这些限制加以明确和细化的界定。技术共享和共同发展对两国经济都有益处，相反广泛的限制将不利于全球的经济增长和发展。

最新发展和现存监管问题

美国出口管制

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

根据《出口管制改革法案》（ECRA），美国商务部产业与安全局（BIS）于 2018 年 11 月发布了《特定新兴技术提案预告》（ANRPM），就对美国国家安全至关重要的新兴技术的衡量标准公开征求意见，并旨在帮助美国政府识别并分类相关新兴技术，从而对《商业管制清单》中新的《出口管制分类编码》（ECCNs）提出指导建议。产业与安全局官员表示，有关新兴技术的指导意见和有关基础技术的 ANPRM 将于 2019 年发布。该流程的进度比预期要慢，相对于针对新兴技术和基础技术发布一套最终规定，新规定已经并且可能会继续以单独或小批量的形式发布。

2019 年和 2020 年初发布了两项与新兴技术相关的新规定：

- ① 《新兴技术的特定管制执行方案——于 2018 瓦森纳协议全体会议达成》（发布于 2019 年 5 月 23 日）

- 1 *Implementation of Certain New Controls on Emerging Technologies Agreed at Wassenaar Arrangement 2018 Plenary* (published on May 23, 2019).

This rule adds to the Export Administration Regulations (EAR) CCL five recently developed or developing technologies that are essential to the national security of the US: (1) discrete microwave transistors (a major component of wideband semiconductors), (2) continuity of operation software, (3) post-quantum cryptography, (4) underwater transducers designed to operate as hydrophones, and (5) air-launch platforms.

- 2 *Implementation of a License Requirement for the Export and Re-export of Items to All Destinations, except Canada, for Software Specially Designed to Automate the Analysis of Geospatial Imagery under the ECCN 0Y521, specifically under ECCN 0D521* (published on January 6, 2020).

BIS solicited public comment on this license requirement. The ECCN 0Y521 series is a temporary holding classification that lasts for one year. BIS may extend the ECCN beyond the one-year period and work with the relevant multilateral regime(s) (e.g., the Wassenaar Arrangement) to obtain multilateral controls over these items.

AmCham China hopes that the US government, in formulating new controls on emerging and foundational technologies, will focus on those technologies that are not already widely available in China or readily available from non-US sources, and limit the list of emerging and foundational technologies to those technologies that can realistically be controlled. AmCham China is encouraged, however, by the fact that the US appears to be discussing these potential controls in a multilateral context.

Education and Training

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

AmCham China has previously facilitated educational seminars for US exporters, Chinese importers, and government

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

Entity List

BIS has increased the number of Chinese entities on the *Entity List* over the past few years. On May 16, 2019, BIS announced an amendment to the EAR by adding Huawei Technologies Co., Ltd. and 68 of its non-U.S. affiliates (collectively "Huawei") to the *Entity List*. The US government had determined that Huawei has been involved in activities contrary to the national security or foreign policy interests of the United States.

In order to assist US companies with the transition of Huawei to the *Entity List*, BIS has issued a series of Temporary General Licenses (TGL), which authorizes specific, limited engagements in transactions involving the export, reexport, and transfer of items – under the EAR – to Huawei and its non-US affiliates which are subject to the *Entity List*. BIS issued the first 90-day TGL on May 20, 2019 and issued an extension of the TGL on August 19, 2019, along with adding 46 additional non-US affiliates of Huawei to the *Entity List*. On March 12, 2020, BIS extended the TGL through May 15, 2020, to Huawei and 114 of its non-US affiliates on the *Entity List*. The US is currently evaluating whether the TGL should continue to be extended, whether any other changes may be warranted to the TGL, and whether any alternative authorization or other regulatory provisions may more effectively address the current authorizations under the TGL.

In addition to Huawei, BIS announced a number of Chinese entities that were also determined by the US government to pose a significant risk of becoming involved in activities contrary to the national security or foreign policy interests of the US. The entities added to the *Entity List* include, but are not limited to, Sugon, Higon, Wuxi Jiangnan Institute of Computing Technology (added June 24, 2019), China General Nuclear Power Corporation (CGNPC) (added August 14, 2019), and several of their aliases or related entities.

On October 9, 2019, BIS announced an amendment to the EAR by adding 28 entities, including eight high-tech Chinese companies and 20 local Public Security Bureaus (PSBs) to the *Entity List*. BIS indicated that these entities have been impli-

该规定为《出口管理条例》(EAR) 的商业管制清单增加了五种对美国的国家安全十分重要的已完成开发或开发中的技术:(1) 分立微波晶体管(宽带半导体的主要组成部分), (2) 操作软件连续性, (3) 后量子加密技术, (4) 用于水听器的水下传感器, 以及 (5) 空中发射平台。

- ② 《对除加拿大外所有出口目的地的物项以及 ECCN 0Y521 中, 特别是 0D521 中地理成像仪分析自动化软件的出口和再出口许可要求的执行办法》(发布于 2020 年 1 月 6 日)

美国产业与安全局就此许可要求向公众征求意见。ECCN 0Y521 系列是时效为一年的临时持有分类。产业与安全局可能将 ECCN 的期限延长至一年以上, 并与相关的多边机制(例如瓦森纳协议)合作, 以获得对这些项目的多边管控。

商会希望美国政府在为新兴技术和基础技术制定新的管制措施时, 将重点放在那些在中国尚未广泛使用或从美国以外容易获得的技术, 并将新兴技术和基础技术的范围限定为那些可以实际获得控制的技术。美国方面可能正在多边讨论这些潜在的管制措施, 商会很乐意看到这一点。

教育和培训

在中美出口管制法律法规即将修订之际, 包括美国的《出口管制改革法案》和《中华人民共和国出口管制法(征求意见稿)》(见下文), 学习和培训对于企业继续安全合法地从事中美高科技贸易越来越重要。针对合格的商贸进出口商, 统一进行出口管控和合规教育, 是增加中美高科技贸易的有效途径。许多中国本土企业都表示有兴趣学习更多内控流程知识来提高其自身合规水平。学习和培训也有助于两国政府关注并讨论重要问题, 例如美国许可证办理时长和标准, 美国管控清单即将做出的更改, 以及《中华人民共和国出口管制法(征求意见稿)》。

商会此前曾为美国出口商、中国进口商和政府官员举办有关合规的教育研讨会, 以期将合规风险最小化。然而, 由于受制于中美两国政府的预算限制而无法定期进行交流。商会敦促中美两国政府寻求机会, 建立一个平台, 使两国政府和行业代表能够公开合作, 解决出口管控问题, 确定提高中国企业收购美国控制的大宗商品

能力的基准, 以及促进中美两国企业携手努力, 共同引领技术进步, 造福两国人民。

实体清单

美国产业与安全局在过去几年大幅增加实体清单上中国实体的数量。2019 年 5 月 16 日, 产业与安全局宣布对《出口管理条例》进行修订, 将华为技术有限公司及其 68 个非美国分支机构(统称为“华为”)加入实体清单。美国政府已确定华为参与了违背美国国家安全或外交政策利益的活动。

为了协助美国企业度过将华为列入实体清单的过渡时期, 产业与安全局签发了一系列临时通用许可(TGL), 该许可允许企业基于《出口管理条例》与华为及其列入实体清单的非美国分支机构对涉及出口、再出口和项目转让的交易进行特定和有限的参与。产业与安全局于 2019 年 5 月 20 日签发了第一个为期 90 天的 TGL, 并于 2019 年 8 月 19 日宣布延长 TGL 的期限, 并在实体列表中增加了其他 46 个非美国的华为关联公司。2020 年 3 月 12 日, 产业与安全局将 TGL 延长至 2020 年 5 月 15 日, 适用于华为及其在实体名单上的 114 个非美国分支机构。美国目前正在评估是否应继续延长 TGL 期限、是否应对 TGL 进行修改、以及是否有任何其他许可或其他监管规定可以更有效地代替 TGL 当前的授权。

除华为外, 产业与安全局还公布了一些被美国政府确定为具有从事违背美国国家安全或外交政策利益活动的重大风险的中国实体。添加到实体清单中的实体单位包括但不限于 Sugon、Higon、无锡江南计算技术研究所(于 2019 年 6 月 24 日添加)、中国核电总公司(CGNPC)(于 2019 年 8 月 14 日添加)以及一些它们的别名或相关实体。

2019 年 10 月 9 日, 产业与安全局宣布对《出口管理条例》进行修订, 在实体列表中增加了 28 家实体, 其中包括 8 家中国高科技公司和 20 家当地公安局(PSB)。产业与安全局指出, 这些实体在实施针对新疆维吾尔自治区的维吾尔族、哈萨克族和其他穆斯林少数民族群体的镇压、大规模任意拘留和高科技监视的活动中涉嫌侵犯人权。

商会希望美国政府做出更大的努力, 加大教育力度, 以避免发生此类违法行为。此外, 商会敦促双方政府鼓

cated in human rights violations and abuses in the implementation of China's campaign of repression, mass arbitrary detention, and high-technology surveillance against Uighurs, Kazakhs, and other members of Muslim minority groups in the Xinjiang Uighur Autonomous Region.

AmCham China would like to see greater effort by the US government to promote education on practices to avoid such violations. In addition, AmCham China would urge both the US and Chinese governments to encourage companies to apply for removal from the *Entity List*. AmCham China would also like both the US and Chinese governments to provide detailed guidance and support for companies that wish to apply for removal from the *Entity List*. That would be helpful in terms of transparency and serve as a positive demonstration of how to strengthen export compliance efforts in order to engage in and gain strategic advantage from US-China high-tech trade.

The *Entity List* imposes significant restrictions on US goods and technology exports to all listed entities and requires a US company or organization to obtain an export license from the BIS in order to conduct business with a listed entity. These additions to the *Entity List* demonstrate how important it is for companies to understand the types of activities that can lead to inclusion on the *Entity List*. Therefore, AmCham China would like to see greater effort by both the US and Chinese governments to promote education and assist US and Chinese entities to strengthen their compliance efforts to ensure that they do not run afoul of US national security and foreign policy interests and suffer consequential reputational risk.

Foreign Availability and Non-US Suppliers

In some circumstances, US export controls require dual-use export licenses for items that are already available indigenously in China or that may be exported from non-US countries under easily obtainable export licenses. AmCham China has found that such restrictions provide little benefit to national security. AmCham China therefore requests that the US government continue to review US export control policies and controls in light of the availability of these technologies within China or to China from non-US sources, especially in formulating the new controls on emerging and foundational technologies.

This would also apply to products available in China from non-US firms. AmCham China continues to stress that restricting the export of US items to China when equivalent items can be freely or easily exported from another country does not benefit US national security. In addition, there is a secondary negative impact on US companies from the loss of potential sales to non-US companies due to dual-use export controls.

Each item that China acquires from a non-US business represents a lost US export opportunity and, in turn, harms US job creation, economic growth, and the stability of the US defense industrial base. AmCham China therefore urges

the US government to align as closely as possible with other multilateral export control regime members when making revisions to the emerging and foundational technologies Control Lists.

Chinese Export Controls

Chinese Regulatory Reform

The National People's Congress (NPC) released the second draft of the ECL on December 23, 2019, an update on the 2017 version released by the Ministry of Commerce (MOFCOM). The 2019 Draft was open for public comment until January 26, 2020. AmCham China, in collaboration with our partner organizations, provided detailed comments on the draft ECL. If enacted, the ECL will be China's first comprehensive and consolidated export control statute, aimed at upgrading the country's existing regime which currently consists of provisions in several broader laws and various regulations.

Key elements of the second draft of the ECL:

Unified Export Control System (Article 2)

Provides a definition of "controlled items" which include dual-use items, military goods, nuclear and other goods, technology, services, etc. related to national security. Additionally, "Export Control" means prohibitions and restrictive measures on the transfer of controlled items from the mainland territory of China or by Chinese citizens, legal persons or other Chinese organizations that provide controlled items to foreign persons, legal persons, and organizations.

Deemed Export (Article 2)

A control similar to the US principle of a "deemed export" may require non-Chinese personnel working in China to obtain a Chinese export license or approval for in-country transfer of controlled items.

Export and Classification Scheme Consultation (Articles 5 and 16)

The State Administration of Export Control will establish expert consultation mechanisms in conjunction with relevant departments to advise on export control. Export operators which cannot determine whether the goods, technologies, and services to be exported are considered a controlled item under the ECL, may submit a request to the State Administration of Export Control, which will reply in a timely manner.

Prohibition of Export (Article 10)

The State Administration of Export Control shall work with

励企业申请从实体名单中剔除。商会还希望双方政府为希望并申请从实体名单中剔除的企业提供详细的指导和支持。这将有助于提高透明度，并积极展示如何加强出口合规工作，以便参与中美高科技贸易并从中获得战略优势。

实体清单对所有列出实体的美国商品和技术出口施加了重大限制，并要求美国公司或组织从产业与安全局获得出口许可才能与所列实体进行业务往来。对实体清单的补充说明对帮助企业了解哪些活动类型被列入清单十分重要。因此，商会希望两国政府作出更大的努力来推动沟通交流，并协助中美实体加强合规工作，以确保它们不违反美国国家安全和外交政策利益，并避免因此而遭受损失以及随之而来的名誉风险。

外国产品的供给和非美国供应商

在某些情况下，美国出口管制政策对于中国已能自主生产或通过简单手续即可从美国之外的国家获得许可证并出口的产品，仍然要求两用产品出口许可证。商会发现，此类限制对国家安全几乎没有好处。因此，商会促请美国政府根据中国本土产品不断评估美国出口管制政策和管制措施，特别是在制定对新兴和基础技术的新管控措施方面。这也适用于非美国公司在中国销售的产品。

这也适用于非美国公司在中国提供的产品。中国美国商会继续强调，限制可以自由地或轻易地从另一国出口同等物品不会对美国的国家安全有利。此外，由于双重用途的出口管制，对非美国公司的潜在销售损失对美国公司造成了次要的负面影响。

中国每从美国以外的企业进口一种产品，就表明美国丧失了一次出口机会，进而对美国就业、经济增长和美国军事工业基础的稳定造成损害。因此，商会要求美国政府在修订新兴技术和基础技术管控清单时，与其他多边出口控制机制会员尽可能地保持一致。

中国出口管制

中国监管改革

全国人民代表大会于2019年12月23日发布了《出口管制法》的第二稿，这是对商务部2017年发布版本的修订。2019年草案已公开向公众征求意见，并截止到2020年1月26日。商会联合合作伙伴和组织，对该草

案提供了详细的反馈。如果该草案能获得通过，其将是中国第一部全面而综合的出口管制法规，旨在优化中国的现有制度，目前该制度包含若干更广泛的法律和各种法规。

《出口管制法》第二版草案要点：

统一出口管制系统（第2条）

明确“管制物项”的定义，其中包括与国家安全有关的两用物项、军用物项、核物项和其他物项、技术、服务等。此外，“出口管制”是指禁止和限制从中国大陆领土或由中国公民、法人或其他中国组织向外国人、法人和组织提供和转移管制物项。

视同出口（第2条）

与美国“视同出口”原则相似的管制措施可能要求在中国工作的非中方人员获得中国出口许可或批准才能在国内转移受控物项。

出口和分类方案咨询（第5和第16条）

国家出口管制局将与有关部门建立专家咨询机制，为出口管制提供建议。出口经营者无法确定是否将出口的商品、技术和服务将视为《管制法》的受控物项，可以向国家出口管制局提出请求，并及时获得答复。

禁止出口（第10条）

国家出口管理总局应当与有关部门合作，**①**禁止将有关管制物项出口到其他国家和地区，或者**②**禁止将管制物项出口给特定的自然人、法人和其他组织，并且**③**还可能对“管制清单”之外的商品、技术和服务施加临时管制，临时管制的有效期最长为两年。

内部合规项目（第14条）

鼓励出口经营者建立内部合规审查和审计系统。对拥有成熟内部合规审查系统和无重大违规记录的出口经营者，可以简化出口许可审批。

“全覆盖”规定（第15条）

“全覆盖”的规定涵盖了**①**当前法规中未列出的、可能危害国家安全的项目，**②**可用于设计、开发、生产或使用大规模杀伤性武器（WMD）的项目，以及**③**可

relevant departments to ❶ prohibit the relevant controlled items from being exported to other countries and regions, or ❷ prohibit the controlled items from being exported to specific natural persons, legal persons, and other organizations, and ❸ may also impose temporary controls on goods, technologies, and services outside the Control List. Temporary controls shall be valid for up to two years.

Internal Compliance Programs (Article 14)

Export operators will be encouraged to establish an internal compliance review and audit system. The possession of a mature internal compliance review system and a record with no major violations may ease the approval of export licenses to export operators.

“Catch-all” Provisions (Article 15)

The “catch-all” provisions cover items ❶ not listed in the current regulations which may endanger national security, ❷ that may be used in the design, development, production or use of a weapon of mass destruction (WMD) and their means of delivery, and ❸ that may be used for nuclear, biological, chemical, or terrorist purposes.

Control List (Article 20)

Export operators which have violated end-user or end-use commitments, endangered national security or used controlled items for purposes of terrorism, may be included on the Control List. If any export operator attempts to conduct transactions with a natural person, legal person, or other organization on the Control List, the State Administration of Export Control may act to prohibit or restrict the transaction and other similar transactions, suspend export of related controlled items, and terminate the facilitation of export licensing.

Supervision and Investigation (Article 30)

A series of actions can be taken by the State Administration for Export Control in relation to suspected violations of the ECL including entering business facilities or related premises of suspected violators to make inquiries to related parties, review records, confiscate relevant items, stop the export of illegal items, and check the bank accounts of entities under investigation.

Penalties for Violation (Articles 34 to 40)

Different categories of penalties are introduced based on the level of the corresponding offense(s). The penalties for export violations include monetary fines, suspension of business, revocation of export licenses, potential criminal charges, and revocation of export privileges.

Once the ECL is implemented, it will establish a consolidated system of control for China’s national security and enhance its nonproliferation efforts. China’s current export control framework is made up of a patchwork of various laws, administrative rules, and regulations, however, most were last amended more than a decade ago. The language of the second draft law is general and AmCham China hopes that more detailed and amended regulations will be released concurrent with or subsequent to the draft ECL.

Compared to the US and EU export control regimes, the draft ECL is significantly shorter and lacks detail regarding many terms and concepts. It remains to be seen how any draft ECL implementing rules and guidelines will supplement and unify the regime.

As written, the draft ECL fails to clearly specify:

- A definition for the term “foreign natural person,”
- Detailed information regarding how to apply for an export license for a “foreign natural person” working in China with a need to deal with controlled items,
- Details concerning prohibitions or restrictive measures on the transfer of controlled technology to foreign persons, legal persons, and organizations,
- Details on a classification scheme for technologies not designed by Chinese persons and/or not containing Chinese technology or know-how,
- Clarification on whether the ECL will apply extraterritorially,
- Detailed standards on the characteristics for an “effective” internal control program,
- Definitions, examples, or standards for the kinds of events or situations that would constitute the imposition of an administrative or criminal penalty.

Additionally, AmCham China hopes that the Chinese government will prioritize protecting proprietary and intellectual property data during the license application process. AmCham China encourages the Chinese government to include in the final law provisions that guarantee the confidentiality of sensitive and confidential information provided during the export licensing process in accordance with China’s commitments in the Phase One Deal.

We urge China to consider including a voluntary disclosure program to allow export operators to voluntarily disclose to the Chinese government unwilful violations that occur due to unintentional mistakes or human error. Serious punishment should be reserved for export entities which engage in repeated and willful violations of the ECL. Furthermore, regulators should release information regarding export control violations so that responsible exporters can be made aware of and take necessary steps to reduce the risk of their interacting with parties which repeatedly violate export control regulations.

用于核、生物、化学或恐怖目的的项目。

管制清单 (第 20 条)

违反最终用户或最终用途承诺、危害国家安全或出于恐怖主义目的使用管制物项的出口经营者，可列入管制清单。任何出口经营者试图与管制清单上的自然人、法人或其他组织进行交易，则国家出口管制局可采取行动禁止或限制该交易及其他类似交易，并暂停相关受控物品的出口，并终止出口许可的简化手续。

监督调查 (第 30 条)

国家出口管制总局对涉嫌违反《出口管制法》的行为可以采取一系列措施，包括进入涉嫌违法者的商业设施或相关场所，向有关方面进行查询、审查记录、没收有关物品、停止出口非法物品，并检查被调查实体的银行帐户。

违规处罚 (第 34 至 40 条)

根据违法的相应级别，引入不同类别的处罚措施。违反出口规定的处罚包括罚款、停业、吊销出口许可证、潜在刑事指控和吊销出口特权。

一旦《出口管制法》开始实施，它将建立一个统一的中国国家安全管控体系，并加强其防扩散的能力。中国目前的出口管制框架是由各种法律、行政法规和条例组成和拼凑而成的。但大多数法案和条例的最新修订都是在十多年前进行的。第二稿草案的措辞是通用的，商会希望在《出口管制法》草案发布同时或在其后发布更详细和修订过的条例。

与美国和欧盟的出口管制制度相比，《管制法》草案要简短得多，并且缺少许多术语和概念的详细信息，如何补充和统一相关实施条例和指导意见还有待商榷。

如下所示，《管制法》草案在以下方面没有详细说明：

- 术语“外国自然人”的定义；
- 有关在中国工作并需要处理受管制物品的“外国自然人”如何申请出口许可的详细信息；
- 有关禁止将控制技术转让给外国人、法人和组织的限制措施的详细信息；
- 非中国人设计和 / 或不包含中国技术或专有技术的技术分类方案的详细信息；

- 明确《管制法》是否会在境外适用；
- 有关“有效”内部控制计划特征的详细标准；
- 有关构成行政或刑事处罚的事件或情况的定义、案例和标准。

此外，商会希望中国政府在批准许可申请过程中优先保护专有知识产权数据。商会鼓励中国政府在最终法律中加入条款，以确保中国会遵守对第一阶段交易的承诺，对在审批出口许可过程中获得的敏感信息和机密信息进行保密。

我们敦促中国考虑出台一项自愿披露计划，以允许出口经营者向中国政府自愿披露由于无意或人为错误而发生的违法行为。对于屡次故意违反《管制法》的出口实体，应予以严厉的惩罚。此外，监管机构应发布有关违反出口管制法的信息，以便相关出口商可以了解并采取必要措施，以减少与多次违反出口管制法规的涉事方交易的风险。

在中国开展业务的外商投资企业（FIEs）应密切监控《出口管制法》的发展，并为这一初始阶段的不确定性做准备，商会建议外资企业审查其内部合规情况，并确保拥有有效的系统，以便为这些未知的合规义务做好准备。

尽管《出口管制法》还未明确完成时间，但如果商务部可以通过研讨会、会议或发布官方常见问题解答（FAQ）来阐明行业中的关键问题，将会大有帮助。对于商务部来说，为使行业能够及时获得反馈和指导，在中央和省市两级提供方便访问的出口管制查询渠道也十分重要。

两用物项的转移

中国出口管制法律和法规缺乏透明度，这将持续引发人们对物品将会转移至有害最终用户或最终用途（例如具有核扩散和恐怖主义历史的实体和国家）的担忧。商会建议中国政府与美国政府联系，以明确出口管制程序，尤其是与执法有关的程序。

此外，商会敦促中国政府明确区分国有实体中的民用项目和军用项目，以确保两用物项不会从民用转移到军用，从而对高科技商业贸易施加限制。商会还敦促中国考虑取消从外国公司获取知识产权，并以此作为进入中国市场的先决条件的相关政策，并加大对非法从外国

Foreign-invested enterprises (FIEs) doing business in China should closely monitor the development of the ECL. To prepare for the uncertainty around this initial phase, AmCham China recommends that FIEs review their internal compliance programs and ensure that they have an efficient and effective system in place, in order to be as prepared as possible for these as yet unknown compliance obligations.

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

Diversion of Dual-Use Items

The lack of transparency in China's export control laws and regulations continues to raise concern regarding the diversion of items to harmful end-users or end-uses (e.g., entities and countries with a history of proliferation and terrorism). AmCham China recommends that Chinese officials reach out to the US government, among others, to clarify export control procedures, especially as they relate to enforcement.

In addition, AmCham China urges China to clearly distinguish civilian and military programs in state-owned entities to ensure that dual-use items are not diverted from civil to military programs, thereby resulting in the imposition of constraints on high-tech commercial trade. AmCham China also urges China to look at rescinding policies designed to acquire intellectual property from FIEs as a prerequisite for market entry (e.g., opaque licensing procedures and localization or domestic content requirements), and increase enforcement against companies that illegally procure technology from foreign companies (via cyberintrusions or other means). In addition to China's obligations in the Phase One Deal, China's *Foreign Investment Law* effective January 1, 2020 explicitly prohibits administrative entities or their employees from "forcing" the transfer of technology through "administrative measures." AmCham China is closely monitoring enforcement of this provision.

Joining Multilateral Regimes

China's absence from influential multilateral regimes has a negative impact on high-tech trade between the US and China, as China's Control Lists are not aligned with the major multilateral lists, particularly the *Wassenaar List*. Full membership would put China on a par with its biggest trade partners and increase high-tech exports from the US to China. AmCham China recommends that the Chinese government actively pursue membership in these multilateral export control regimes, in particular the Australia Group and the Missile Technology Control Regime, while also taking an

active leadership role in the multilateral regimes of which it is already a member.

Recommendations

For the Chinese Government:

- **Move forward in the expeditious implementation of the commitments made as part of the Phase One Deal to protect intellectual property and remove any prerequisites for technology transfers as a basis for market entry.**
- Consider carefully industry comments on China's second draft ECL, released for comment in December 2019. When finalizing the ECL, align China's Control List with existing multilateral lists to the greatest extent possible and seek membership in all multilateral export control regimes.
- Engage with US and Chinese companies in developing criteria for compliance programs as proposed in the draft ECL.

For the US Government:

- **Seek participation from US and Chinese companies as the US government determines what will be covered as emerging and foundational technologies and make determinations based on global availability as well as the critical nature of the technology.**
- Engage with Chinese companies being considered for addition to the *Entity List* and give them the opportunity to address concerns that may prevent their addition to the list.

For Both Governments:

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

公司购买技术的公司的打击力度（例如，不透明的许可程序和本地化或国内内容要求），并加大对非法从外国公司购买技术的企业的执法力度（通过网络入侵或其他方式）。除了中国在第一阶段交易中的义务外，中国于2020年1月1日生效的《外国投资法》明确禁止行政实体或其雇员通过“行政措施”“强迫”进行技术转让。商会正在密切监控这项规定的执行情况。

加入多边体系

由于中国尚未加入具有影响力的多边体系，中国的管制清单与主要多边清单均不一致，尤其是瓦森纳清单，这对美中两国的高科技贸易造成了负面影响。成为其正式会员可使国际社会对中国及其最大的贸易伙伴一视同仁，从而增加美国向中国的高科技出口。商会建议中国政府能够积极加入这些多边出口管制体系，比如澳大利亚集团和飞弹技术管制协议，同时也在已成为会员的多边体系中发挥积极的领导作用。

对两国政府：

- 商会鼓励两国政府加大力度，通过教育和培训活动，协助两国实体加强合规，确保其不违反美国国家安全和外交政策利益。
- 建立一种媒介供两国政府和行业代表公开合作解决出口管制问题，并确定基准，以增强中国企业获得美国管制商品的能力，并允许中美企业共同开发技术以获取利益。商会中国出口管制工作组十分期待能有机会在此媒介的建立中发挥作用。

建议

对中国政府：

- 尽快履行第一阶段交易中作出的承诺，以保护知识产权并消除技术转让作为进入市场的基础的先决条件。
- 认真考虑业界对中国《出口管制法》草案第二稿的评论，该草案于2019年12月发布以征求意见。在《管制法》制定时，应尽可能使中国的管制清单与现有多边清单保持一致，并寻求成为所有多边出口管制体系会员的机会。
- 根据《出口管制法》草案中所述，与中美企业在制定合规项目标准上进行合作。

对美国政府：

- 在美国政府基于全球可用性和技术关键性对新兴技术和基础技术并做出界定时，寻求中美企业的参与。
- 与可能被加入实体清单的中国企业进行接触，并提供可能避免其被列入清单的机会。

Human Resources

Introduction

As China's economy evolves, workforce considerations for AmCham China member companies are also evolving. As in years past, this chapter acknowledges long-term human resource (HR) challenges for enterprises and employees like rising labor costs, social insurance payments, and taxes. At the same time, new trends are emerging. New technologies and the digital economy are enabling new workplace arrangements like flexible employment to play an increasingly important role in hiring decisions. Companies are also seeking to use technology to maximize productivity while at the same time contending with the need to ensure that they can find labor with the right skills for their business needs.

Against the backdrop of these emerging trends, finding and retaining talented personnel remains a critical component of any enterprise's long-term strategy. Today's global economy is highly integrated, fostered by the rapid transmission of information, resources, and the movement of people enabled by technology. Underscoring greater freedom of movement in today's globalized world, an estimated 272 million people (3.5 percent of the world's population) in 2019 lived and worked outside the country in which they were born according to the International Organization of Migration (IOM). With more and more people willing to look for work outside of their home countries, the pressure is growing for corporations to identify, attract, and retain such globalized talent. Corporate talent retention plans should consider best practices in the areas of recruitment, diversity and inclusion, training, compensation and benefits, and employee retention.

Flexible Employment

Consistent with the development of China's economy, a greater number of enterprises are looking to establish flexible employment or flexible working arrangements. Flexible employment differs from traditional, full-time, "nine-to-five" employment. Instead, flexible employment captures a spectrum of non-traditional working arrangements through which enterprises hire workers on a flexible basis, based on their company's production demands and employment needs, including part-time employment. Many younger workers are pursuing jobs in the "gig economy," character-

ized by multiple professional identities and active engagement in temporary, flexible work across different organizations at the same time.

From a business perspective, flexible employment enables enterprises to respond quickly to changing market conditions while reducing long-term operating and staffing costs. For those engaged in flexible work, such opportunities allow them to set flexible schedules and earn income while managing other personal or family responsibilities. The scope of occupations with flexible employment opportunities is large. Being active in a diverse landscape of jobs, projects, and opportunities is an important way for flexible workers to market their personal and professional value.

China's *Labor Contract Law* established the current regulatory framework for part-time employment and constitutes the legal basis for flexible employment in China. In practice, flexible employment can include dispatched labor (through a third-party agency), outsourcing, part-time labor, retirement and re-employment, or paid and unpaid interns. In principle, Chinese regulations allow for the development of flexible employment. Our members' experience with flexible employment, however, remains limited in the following respects discussed below.

The Current Social Security System does not Effectively Protect Workers or Enterprises who Utilize Flexible Employment

China's current social security system is effective in providing benefits for traditional full-time employment. After an employee signs a work contract, both employee and enterprise jointly contribute mandated social insurance payments (pension insurance, unemployment insurance, medical insurance, work-related injury insurance, maternity insurance, and a housing fund). The employer is obligated to withhold and/or collect social insurance payments to ensure that contributions are made. In the event that problems arise during the course of employment, such as a work injury or temporary unemployment, the enterprise and employee can be compensated via the existing social security system.

Under a flexible employment arrangement, social insurance

人力资源

引言

随着中国经济的发展，中国美国商会会员企业面临的人力问题也在不断变化。与往年一样，本章承认企业和员工面临的长期人力资源挑战，例如劳动力成本上升、社会保险和税收成本增加。同时，我们也看到了新的趋势。新技术和数字经济使公司能够更加灵活地协调安排工作场合的各种需要，比如更灵活的就职方式在雇用决策中发挥越来越重要的作用。公司还寻求使用技术来最大程度地提高生产率，同时还要确保他们能够找到具有适合其业务需求的劳动力。

寻找和留住人才、员工和管理层仍然是任何企业长期战略的关键组成部分。今天，借力于信息、资源的高速传播和人员的频繁流动，全球经济高度融合。国际移民组织认为，今天的全球化世界强调更大的劳工流动自由，据估计，2018年约有2.44亿人（占世界人口的3.3%）在他们出生国之外的地方生活和工作。企业人才保留计划应参考招聘领域的最佳实践，确保多样性和包容性、培训、薪酬和福利以及员工保留方面的最佳实践。

灵活用工机制

随着我国经济的发展，越来越多的用人企业及劳动者希望通过灵活用工的方式来形成彼此的雇佣关系。灵活用工区别于固定全职用工，是企业基于用人需求的波峰波谷，灵活地按需雇佣劳动者，与劳动者之间建立非全职劳动关系的一种用工模式。同时随着新生代批量进入职场，产生了大量“斜杠青年”，即选择拥有多重职业和身份的多元生活的人才，他们经常拥有多个职业身份，同时在不同的新经济组织中工作。

从企业角度讲，灵活用工使企业能快速应对不断变化的市场，同时也为企业节省了长期的运营及人力成本。从劳动者角度讲，这种用工模式可以帮助他们更灵活地

安排自己的工作时间，在获得收入的同时兼顾个人兴趣或家庭责任。具有灵活就业机会的职业范围很大。在各种各样的工作、项目和机会中活跃起来，是员工体现其个人和专业价值的重要方式。

我国《劳动合同法》对于非全日制劳动关系已经进行了规定，这是目前实行灵活用工的法律依据。在实际操作过程中，灵活用工通常是以劳务派遣、外包用工、非全日制用工、退休返聘或实习劳务等形式存在的。虽然我国在法规与形式上为灵活用工提供了操作的可能与发展的空间，但是结合具体的经验，我们发现灵活用工在以下方面仍具局限性，使这种方式处于灵而“不活”的尴尬境地。

社保机制不能为企业与劳动者的灵活用工模式提供有效保障

我们现行的社保机制为固定全职用工方式提供了有效保障。员工与用人企业签定劳动合同之后，由企业与企业共同缴纳社会保险。由于企业承担代扣代缴义务，可以使各项社会保险的缴纳落到实处，一旦在员工受雇期间出现任何问题（如工伤，或被动失业）企业与劳动者都可以从社保体系中得到有效的保障。

但是对于灵活用工模式而言，企业不承担社会保险的代扣代缴义务，社会保险的缴纳义务由劳动者个人承担。这种操作从积极的角度出发，为企业节省用工成本创造了可能，但同时也为企业采取灵活用工带来了潜在的困难和风险，为社会保障的长期筹资带来挑战。如有工伤情况发生时，企业不能从社会保险中列支相应的赔偿费用，而需要员工自行筹措资金。许多负责任的用人企业或是自己为员工购买商业意外伤害保险，或是通过劳务派遣及外包用工的形式来规避这个风险。但是，这可能需要购买额外的保险或通过其它方式来控制风险，从而增加人工成本。向此类雇员付款还有其他困难，包

payments are the responsibility of the employee. On the one hand, this reduces the staffing costs for enterprises. On the other hand, it creates certain risks for enterprises that want to adopt flexible employment and presents a long-term challenge to financing social security. For example, if a work-related injury occurs, the enterprise has to cover the costs on its own instead of compensating the employee from social insurance funds. Many responsible enterprises reduce these risks through the purchase of commercial accident insurance or through outsourcing and hiring of dispatched labor. These options may, however, entail the need to procure additional insurance policies or make other arrangements to control risk, raising labor costs. Challenges also arise with respect to making payments to such employees, including complicated procedures and reliance on labor dispatch agencies.

Because China's social security system at present does not function efficiently to benefit non-full-time employees, employees who make individual social security contributions may be unable to enjoy the full benefit of their labor. These challenges will only strengthen opposition to flexible employment and render it incapable of providing sufficient protection to those workers who need it. Therefore, employees who make individual social security contributions are unable to fully benefit as intended. Individual payments are not made or employers incur high fees from intermediaries who assist them in navigating the system. These challenges will only strengthen opposition to flexible employment and render it incapable of providing sufficient protection to those workers who need it.

The Qualifications of Flexible Employees are not Monitored Effectively

As China's industrial and economic structure has developed, flexible employment is increasingly common in the IT and service industries. Its application has expanded from simple, repetitive jobs to more technical, professional, and managerial positions. Consequently, the number and type of professional qualifications needed for flexible employment have expanded. Flexible employment arrangements need to be based on appropriate business and professional ethics. China has yet to establish a system for appropriately rating and assessing the professional qualifications of flexible workers, particularly those who assume management or other senior positions. An ability to assess the qualifications and professional reputation of flexible workers is still a challenge.

We recommend that the Chinese government begin by establishing a system to standardize the certification of professional qualifications, link those qualifications to social security, and learn from the experience of other developed countries in creating policies to govern flexible employment so as to promote the development of flexible employment arrangements in China. AmCham China's specific recommendations include:

- Leverage labor administrations and industry associations to develop a professional qualification certification system to regulate the hiring of flexible workers. Make use of government labor departments and industry associations to strengthen the certification of professional qualifications of flexible workers. Ensure that the certification process is considered the minimum "threshold" for flexible employment. Such approach will reduce the business risks stemming from hiring flexible labor, while ensuring qualified flexible workers have access to the right opportunities. It also creates a greater connection between flexible workers and the projects in which they are involved. This approach will help improve the professional standards of flexible workers and establish a healthy and dynamic flexible employment marketplace,
- Encourage enterprises to assume responsibility for withholding and collecting payments by reducing the social security contribution rate for flexible employment. Additionally, allow multiple enterprises to share contributions to social security for flexible workers. For flexible workers with certified qualifications and a professional reputation in good standing, we recommend that enterprises be responsible for withholding and collecting social insurance payments, and a lower social security contribution rate be applied. For individual enterprises, this will reduce operating and staffing costs. Because the enterprise now bears responsibility for social security payments, flexible workers should be motivated to obtain the needed professional qualification certifications or invest in their capabilities in order to do so. In addition, if flexible workers are employed by multiple enterprises at the same time, they may also have the opportunity to increase their individual social security benefits by collecting social insurance contributions from multiple employers,
- Establish exchange mechanisms with countries that are global leaders in developing policies to support and manage flexible employment. Create a stronger enabling environment for employees and enterprises employing flexible workers by improving laws and regulations. Europe, the US and Japan have established relatively complete systems with respect to flexible employment and have some specific practices from which China could benefit. We recommend that the Chinese government learn from the experiences of these countries by interacting with industry associations and relevant labor and employment regulatory agencies. Incorporating global best practices should improve the regulatory framework for flexible labor with respect to employment conditions, labor protection, vocational training, and unemployment protection in the context of China's particular needs.

括复杂的程序和对劳务派遣机构的依赖。

由于目前中国的社会保障体系无法有效地保障非全职员工的权益，因此，个人缴纳社会保险金的员工可能无法充分享受其劳动所带来的收益。这些挑战只会加剧对灵活就业的反对，使其无法保护有需求的员工。目前，中国的社会保障体系无法有效发挥用来保障非全日制雇员将从中受益，这导致个人不愿意付款，或者雇主支付中介机构高额费用来协助他们理解这套系统。这些挑战只会加剧对灵活就业的反对，使其无法为需要的工人提供足够的保护。

从业人员的资质在现行灵活用工模式下不能得到有效监管

随着我国产业结构的变化，IT及服务产业灵活用工现象越来越普遍。其所适用的岗位也从初期的简单、重复性高的工作岗位扩大到技术、专业、管理型岗位。因此，企业对于灵活用工从业人员的素质要求在不断提高，需求规模也在不断扩大。在灵活用工模式下，劳动者与企业间的雇佣更需要建立在良好商业和职业道德的基础上。目前我国在职业管理过程中仍未建立完善的职业资质及劳动者信用评级体系。劳动者资质与职业信誉调查至今仍是困扰许多企业用人决定的问题。

基于以上分析，我们建议中国政府可以从建立并完善职业资质认证系统入手，与社保体系进行有效联动，借鉴发达国家在灵活用工方面的优秀实践经验，从而为真正实现企业以多种形式地灵活用工创造条件。具体设想包括：

- 借力劳动部或行业协会力量推行职业资质认证体系，规范灵活用工人群行为借助劳动用工管理部门或行业协会的优势，推行并强化职业资质、职业信誉的认证与管理体的建立。将相应机构的认证资格及职业信用评级作为灵活用工的基本“门槛”。这种做法在降低了用人企业的用工风险的同时，可以保证高素质人才需要得以满足。另一方面可以使劳动者即便在灵活用工的形式下也有较高的归属感，这一举措可以推动我们劳动者职业素质的整体提高，建立健康和有活力的灵活用工市场。
- 企业可以根据业务需要灵活用工。在用工期间，对于已获得相应资质及职业信誉认证的员工，企业承担代扣代缴社保的责任，并可适用较低的社保费率。

就单一用人企业而言，这种方式可以实现其节省运营与人员聘用成本的目的，同时降低用人风险。对员工而言，由于企业承担社保代扣代缴责任，会促使其更愿意通过不断提升自身能力获取相关的资质认证。另外，如果员工有意愿同时为多家企业工作，其本人也有机会通过多家企业的代扣代缴社保来提升个人的社保待遇。

- 据资料显示，欧美及日本在灵活用工方面已经建立比较完善的体制且拥有一些具体的实践经验。我们可以通过行业协会或是劳动就业管理部门的资源来与这些国家取得联系，具体地学习一些在灵活用工方面的实践经验。通过这些实践经验的学习与分享，结合我国的具体用工需求在聘用条件、劳动保护、职业培训与发展、失业保障等方面完善灵活用工的法律法规。为劳动者与企业灵活用工方面提供更具体的依据。

延长女性员工退休年龄

我国现行女性员工的法定退休年龄分别为50岁（工人身份）和55岁（干部身份），该规定始于上世纪70年代。随着中国社会不断发展与进步，女性受教育人口总量及受教育程度得到显著提高，社会角色和分工的改变使得女性渴望在社会生活中发挥更大价值，而我国现行女性员工法定退休年龄的规定对于实现这种渴望产生一定的制约。主要体现为以下几个方面：

女性在职业成熟期退出职场，其成就和价值感降低

现行规定注明员工到达退休年龄之后，其与企业签订的劳动合同终止。对于员工来讲，这意味着在职业下半场刚开始就嘎然而止。尽管企业可通过劳务协议与部分女员工继续雇佣关系。但员工仍会感觉处于比较被动的地位进而产生不安全感，并最终影响其充分发挥工作能力。同时，企业内部的各项管理制度多是围绕《劳动合同法》进行设计的，对于灵活的劳务用工，在内部管理上存在不明确、不完善的地方。相比劳动合同条件下，员工体验必定产生明显变化从而获得感下降。

Female Retirement Age Policies

Since the 1970s, the legal retirement age for female employees in China has been 50 (workers) and 55 (Party Cadres). Since then, the general education level of females in China has improved significantly. Changing norms around the role of women in society and the division of labor between genders have encouraged more women to join the labor force. The World Bank estimates that 43.7 percent of China's labor force was female in 2019. The current legal retirement ages for female employees is artificial and undermines their professional status.

Requiring Women to Retire from the Workforce During the Senior Years of their Career Undermines their Achievements and Sense of Value

Current regulations require termination of employment contracts when the employee reaches the mandated retirement age. At age 50, many employees are entering the prime of their careers with respect to seniority and earning potential. Although enterprises can sometimes continue employing certain female employees through individual, short-term labor agreements akin to flexible employment, they are less secure than a full-time employment contract. At the same time, enterprises have HR management policies in place mostly designed to be compliant with the *Labor Contract Law*, which does not contain clear provisions for managing flexible employment, which affects the employee's overall employment experience.

Employee Training can be a Necessary, but Time-Consuming Exercise. If Female Employees Must Leave the Labor Force Earlier than they Otherwise Would Under Natural Circumstances, it Imposes Staffing and Training Costs on Enterprises

Foreign-invested enterprises (FIEs) commonly invest in developing essential technical and management skills among their employees. As part of these investments, many women have earned professional development opportunities. Mature women in the workplace are mentors, leaders, and role models for corporate performance and diversity. If female employees have to retire because of an artificially imposed age limit, enterprises will not see the full benefits of these investments in their employees. Even if an enterprise chooses to retain female employees beyond the age of 55 via a labor agreement, current regulations mandate that neither enterprises nor the employees themselves can pay into social insurance for employees after they reach the mandatory retirement age. If enterprises want to provide employees with medical insurance or special insurance to cover work-related injuries, such coverage must be purchased through commercial channels. Commercial insurance companies often have

restrictions in place on the sale of insurance products to senior employees, forcing enterprises to purchase expensive insurance or less palatable alternatives.

The Collection of Tax Revenues is Inhibited by Such Employment Restrictions

To enable employees who reach the mandatory retirement age to continue working, both parties commonly sign a labor agreement. Under these agreements, employees provide their services and are responsible for paying taxes, including individual income tax on their earnings and value-added tax (VAT). Individual income tax is typically withheld by the enterprise as the withholding agent. VAT is paid by the employee as a service provider to the tax authority and the VAT invoice should be submitted to the enterprise and included as part of its regular financial management and accounting procedures.

Under a standard, traditional labor contract, the amount of tax paid by an employee will decrease while social security payments increase. Individual income tax payments can be rebated to employees through income tax deductions and through contributions to social security, representing a source of future income.

Under a labor agreement, the amount of tax paid by employees is not influenced by the amount of their social security contribution or other income, so their willingness to pay taxes in a timely manner is likely to be lower under a labor agreement. If the willingness to pay taxes declines, enterprises do not or cannot obtain VAT invoices issued by the tax authorities in a timely manner. Thus, a full accounting of an enterprise's labor costs cannot be promptly recorded, impeding their overall financial supervision and tax management.

Therefore, we believe "win-win" outcomes for employees, enterprises, and tax authorities can be achieved by establishing a greater degree of flexibility in social security and taxation policies. We offer the following recommendations:

- Extend the retirement age of female employees. We recommend that the age be extended to 60 years (the same as male employees) to enable employees and enterprises to sign labor contracts, pay social insurance, and withhold and collect income taxes for employees in accordance with current regulations and policies,
- Revise social insurance policies to make senior employees hired on labor contracts eligible for benefits. If the mandatory age of retirement remains unchanged, enterprises should be allowed to continue social insurance payments, and withhold and collect individual income tax in accordance with current regulations and policies and under contract. The age at which employees can access full retirement benefits should also be delayed.

从企业角度看：人员培养是一个投入大、耗时长的过程。女性员工过早退出职场增加了公司的劳动成本和用工风险。

过去几十年间外资企业在技术和管理人才的培养上投入巨大。在大力倡导多样性文化的外资企业里，大批女性受到培养并得到发展机会。成熟的职场女性在工作中扮演辅导者、传承者和协调者的角色，对于企业绩效提升和多元化建设具有榜样作用。员工因为到达一定年龄而“被”退休，相当于企业的人力资产在最有价值的时候流失，即企业前期的投入在没有完全回收的情况下终止。即使企业以劳务协议保留了55岁以上的女性雇员，现行法规也要求企业和雇员本人在达到法定退休年龄后均不能为雇员支付社会保险。如果企业希望为这类员工提供工伤或医疗相关的保障，则必须通过商业渠道购买这种保险。事实上，商业保险公司对于高龄员工的保险产品的售卖通常会有许多限制，从而使企业陷入一种“高额买保险”或“没有保险可买的”尴尬境遇。

从国家角度看：用工形式限制国家税入的管理

面对“退休年龄”员工继续工作的需求，最普遍的做法是以劳务协议确定双方关系。员工提供劳务并承担纳税义务，其中包括劳务收入税及增值税。劳务收入税的部分通常由企业代扣代缴，增值税需要员工到税务机关缴纳之后，得到增值税发票交还企业记帐。

在劳动合同关系下，员工缴税额与个人社保缴存额呈此消彼涨的关系。员工个人的劳动付出可以通过“个税减免”及日后的社保收入的方式返还员工受益。

而劳务协议条件下，员工缴税额与其社保或其他收益无关，因此其缴税意愿与劳动合同关系相比会更低。而企业会因为员工缴税意愿下降，不能拿到或及时拿到税务机关出具的增值税发票，进而使支付的劳务费用不能顺理成章地记入运营成本，最终对日后财务监察与税费管理造成障碍。

基于以上分析，我们认为可以从社保、税入政策等方面入手，通过提高管理灵活度，以达到员工、企业及社会的“三赢”结果。具体的设想包括：

- 从政策法规上提供灵活度，允许企业根据业务需要延长女性员工退休年龄至60岁（与男性员工相同）。该条件下，企业可以以劳动合同的形式与员工确立

劳动关系并依现行法规政策为员工缴纳社会保险，代扣代缴收入税。

- 现行法定年龄不变的情况下，允许企业在与员工确立劳动关系后继续依现行法规政策要求缴纳社会保险，代扣代缴个人所得税。相应的，员工推迟享受养老待遇的时间。

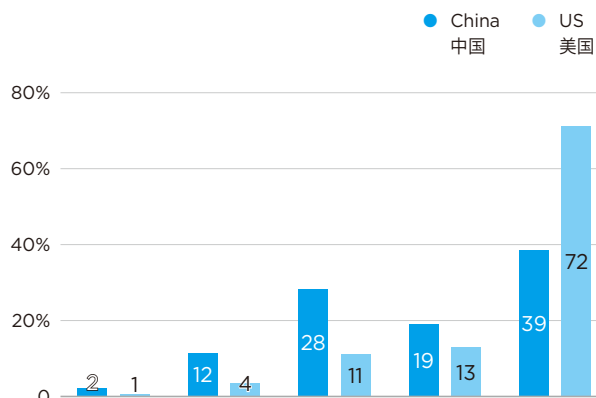
女性与男性在退休年龄上的差异，其实质是男女在就业过程中的机会不平等。过往几十年间，外资企业通过开发领导力课程以发现、发展女性领导者。这些课程为打破男女就业过程的不平等树立了榜样。同时，我们注意到近年来国家对于延长员工退休年龄的问题做出了许多积极的探讨，其中就包括了从整体上延长员工退休年龄以及去除男、女员工退休政策差异的内容。我们希望有关部门可以进一步推进并落实延长员工退休年龄的政策，在大的政策框架保障之下，在政策和操作流程多方面赋予企业更多的灵活性与自主权。

人工智能与实体经济深度融合

根据近日麦肯锡发布的一项全球调查显示，63%的受访企业表示人工智能的应用增加了企业的收入，而44%表示AI帮助企业降低了成本。在标准商业实践中，人工智能的整体使用率以逐年25%的速度在增加。（McKinsey Global AI Survey）。人工智能和自动化的广泛应用在中国也成为了产业升级的一大引擎。

Figure 1. Distribution of Work Experience of AI Industry Professionals

图 1. AI 领域从业年限分布



Source: LinkedIn, Global AI Human Capital Report, 2017
数据来源：LinkedIn 全球人才大数据

In summary, the difference in the mandatory retirement age of women and men creates a structural inequality between men and women in the labor force. FIEs have developed female leadership courses to identify and develop future corporate female leaders. These courses are an example of ongoing efforts to reduce gender inequality and ensure equal opportunity for men and women. AmCham China is aware of the government's ongoing discussions concerning mandatory retirement ages. We understand that raising the retirement age for both males and females and removing discrepancies between mandatory retirement ages is under discussion. We encourage the government to raise the mandatory retirement age and allow enterprises greater flexibility and autonomy with respect to employment policies under the current regulatory framework.

Artificial Intelligence and the Real Economy

In a 2019 Global AI survey conducted by McKinsey, 63 percent of the enterprises surveyed said that the adoption of AI has increased their revenues, while 44 percent reported that AI adoption has reduced costs. The survey also found a 25 percent increase year-on-year in the use of AI in business processes. The adoption of AI and automation technology is a key area of focus for industrial upgrading in China.

In March 2019, the Central Comprehensively Deepening Reforms Commission approved the *Guiding Opinions on Promoting the Deep Integration of Artificial Intelligence and the Real Economy*. The Opinions called for building a smart, data-driven economy characterized by “human-machine collaboration, cross-border integration, co-creation and sharing.” Achieving such goals will require the right mix of domestic and foreign talent in the market. China currently faces a shortage of talent in AI industries. In particular, as compared with the United States, China faces a shortage of senior AI practitioners with more than ten years' experience (Figure 1).

At the same time, AI and automation will also bring changes to the workforce. According to PwC, the adoption of AI technologies may generate unemployment in certain sectors of the Chinese economy, despite having the potential to boost overall job growth; estimates by PwC and McKinsey respectively have suggested that between 26 percent and 51 percent of jobs in China could be displaced by AI and related technologies over the next few decades.

Given the uncertainty around timing and extent of displacement from AI and related technologies, enterprises should prioritize long-term investments to retrain and upskill their employees to enable them to adapt to a changing and increasingly digital economy where technology and people work together. These can be coupled with policies designed to make the Chinese market more attractive for overseas skills and talent, while ensuring these policies are subject to compliance with the laws and practices of foreign countries.

Such policies will benefit both enterprise and employee and foster employee retention.

Ongoing Challenges

Social Insurance Contributions

In order to continue optimizing the business environment, the General Office of the State Council implemented the *Comprehensive Plan for Reducing Social Insurance Contribution Rates* in May 2019. The Plan reduces enterprise contributions to pension insurance, cuts the premiums on unemployment and work-related injury insurance, and adjusts the social insurance contribution base policy. The implementation of these measures should significantly reduce corporate social insurance payments. In December 2019, the government estimated social insurance contributions fell by more than RMB 380 billion in 2019.

At the same time, improved methods of collecting and monitoring these payments mean the burden on small- and-medium enterprises (SMEs) is still significant. To address these costs, enterprises may explore new technologies that could reduce or even replace labor costs, while increasing the number of flexible workers on their payroll. This will require an appropriate regulatory framework as discussed in the previous section that enables companies to employ flexible, contract, and temporary workers as appropriate for their business operations, while ensuring that these workers have access to social benefits. We also recommend that the government establish a segmented social security payment structure that is based on the size and revenues of an entity to ensure that social insurance payments do not overburden SMEs unnecessarily.

In a future of slower macroeconomic growth and rapid technological development, job security is seen by workers as increasingly important. In an annual payroll survey, one member company found “job security” had surpassed “salary and benefits” and “personal development” to become the primary consideration among employees when deciding to join or remain with the company. Therefore, an appropriately balanced social insurance scheme with benefits that protect employees while not overburdening employers and risking their viability is essential.

Revised Individual Income Tax Law

The revised Individual Income Tax Law (IIT Law) came into effect on January 1, 2019. The new Law:

- Raised the minimum threshold for individual income tax liability from RMB 3,500 to RMB 5,000 per month (RMB 60,000 per year),
- Added six special individual income deductions (for

2019年3月，中央全面深化改革委员会第七次会议中审核通过了《关于促进人工智能和实体经济深度融合的指导意见》构建数据驱动、人机协同、跨界融合、共创分享的智能经济形态。中国目前面临巨大的人工智能人才缺口，而且结构倾向年轻化，十年以上资深人工智能从业人员比起美国还是有很大的差距，因此除了加大人才培养之外，还应该提升中国市场对于海外AI人才的吸引力。

同时，人工智能和自动化也将为员工带来变化。普华永道（PwC）表示，尽管采用人工智能技术可能会促进整体就业增长，但可能会在一些领域造成失业。普华永道（PwC）和麦肯锡（McKinsey）估计在未来几十年中，人工智能和相关技术将取代中国26%至51%的工作岗位。

鉴于AI和相关技术将会在何时以及何种程度来替代相关工作尚不明确，企业应优先考虑长期投资以对员工进行再培训和提高技能，以使其能够适应不断变化的数字经济，善于运用技术。这些可以与旨在使中国市场对海外技能和人才更具吸引力的政策相结合，同时确保这些政策符合外国法律和惯例。此类政策将使企业和员工受益，并促进员工留存率。

现存监管问题

降低社保费率

为了进一步减轻企业负担，优化营商环境，国务院办公厅于2019年4月通过了《降低社会保险费率综合方案》并于2019年5月开始实行。该方案降低了企业对养老保险的缴费比例、削减了失业和工伤保险的保费，并调整了社会保险缴费基数政策。该政策明显降低了企业社保的缴费负担，对企业减负的作用明显。预计2019年全年可减轻社保缴费负担3800多亿元。

与此同时，随着社保合规征收的稳步推进，社保负担对一些中小型企业仍然负担很大。在缓冲期内，企业将会着重以新技术替代人工以降低成本，同时增加灵活用工方式以转嫁成本。这将需要上一部分中讨论的适当的监管框架，使公司能够根据业务运营情况灵活聘用合同工和临时工，同时确保这些工人能够获得社会福利。我们还建议政府根据公司的规模和收入建立阶梯式社保基数缴纳比例机制，以确保中小企业不会因为支付社会

保险而负担过大。

在宏观经济增长放缓，技术发展迅猛的时代，许多员工认为职业安全感（job security）越来越重要。在一项年度工资调查中，商会一家会员企业发现，在决定加入或留在公司时，“职业安全感”已超过“薪水和福利”和“个人发展”成为员工的首要考虑因素。因此，至关重要的是要有一个适当平衡的社会保险计划，该计划应能保护雇员，同时又不会给雇主造成负担，也不会为企业生存造成风险。

修改个人所得税法

2019年1月1日起修订后的《个人所得税法》正式实施。新的税法：

- 将个人所得税的起征点从人民币3500元提高到每月人民币5,000元（每年人民币60,000元），
- 增加了六项特殊的个人收入减免（用于儿童教育，继续教育，严重疾病的医疗，住房贷款，房租和老年护理）
- 调整了税率结构。收入仍按七级累进税制征税（从3%到45%不等），但扩大了较低级的工资范围（现在更多的纳税人有资格获得较低的税率）。

这些变化使得员工的净收入增加，提升员工积极性，对企业发展和人才保留起到促进作用。

对国家税法的如此广泛的修订对企业在日常的工资薪金代扣代缴环节带来了一定挑战。企业面临的第一个挑战是扣留工资和薪金。我国一直以来采用的分类所得税制以源泉扣缴为基本和主要扣缴方式，这意味着，在发放员工工资之前，人力资源和财务部门需要计算并预扣正确的税额，计征简单。

随着此次个税改革综合与分类相结合的新税制的初步建立，特别是综合所得按年合并计税以及新增专项附加扣除，个税扣缴制度也必然要进行变革。除了原有的源泉扣缴，出现了预扣预缴的新方式，扣缴制度更为多元化。新的预扣缴环节，企业作为扣缴义务人将面临区分居民个人与非居民个人，专项附加扣除的信息收集、保密以及应对员工和税务机关的问询与抽查等挑战。

对于纳税人与企业来说，如何保证税改红利之专项附加扣除落到实处，是一项重要课题：

children’s education, continuing education, medical treatment for serious diseases, housing loans, rent, and elder care),

- Adjusted the tax rate structure. Incomes are still taxed under a seven-band progressive system (ranging from 3 percent to 45 percent) but the salary ranges in the lower bands have been expanded (more taxpayers can now qualify for the lower rates).

These changes enable employees to enjoy a larger take-home salary, and enterprises should benefit from lower employee turnover and greater incentive to invest in their staff.

Such sweeping revisions to the country’s tax code inevitably create challenges. The first challenge for enterprises concerns the withholding of wages and salaries. China has traditionally adopted a banded, progressive classification system for income taxes that withholds the tax owed at source. This means that before releasing an employee’s salary, the HR and finance department need to calculate and withhold the correct amount of tax. This process is typically simple.

As revisions to the IIT are integrated and implemented and a revised tax code is created, the system for withholding IIT must also be reformed, especially the annual comprehensive income tax calculation and calculations of the six IIT deductions. In addition to the traditional method of withholding at source, a new withholding method has emerged. Under the new method, enterprises have to distinguish between resident and non-resident taxpayers and collect additional personal information to process the six deductions while maintaining confidentiality and managing regular inquiries by employees and the tax authorities.

For both taxpayers and enterprises, ensuring standard implementation of the new deductions is critical. To that end:

- How should enterprises help their employees to understand these new policies at the beginning of the year? For example, how should employees report their information to qualify for the new tax deductions and what are the new obligations (if any) of taxpayers?
- How can enterprises efficiently and correctly process the now large number of tax deductions for which their employees are now eligible?
- In order to continue claiming additional tax deductions in 2020, how should enterprises communicate these policies to their employees, ensure that both employees and enterprises understand the requirements and filing process, and plan their tax dividends for the new year?

Even though the promulgation of a three-year transition period (through 2021) has helped ensure a smoother transition between the old and revised tax laws, certain policies under the revised IIT law require further clarification through implementing regulations.

For instance, with respect to annual bonuses, prior to the IIT reform, annual bonuses were subject to a special tax rate, whereby the total annual bonus amount was divided by 12, and then the IIT tax rate that corresponded with the “monthly” amount of income equal to the total bonus divided by 12 was applied. Following the transition period, annual bonuses will no longer be divided by 12 before the tax rate is calculated and applied, instead the bonus will be included as part of the calculation of an individual’s total annual income, at which point the tax rate will then be applied (in most cases, the new tax rates will be higher). At the conclusion of the three-year transition period, however, the tax policy for equity incentives will need to be separately specified. To support government policies to encourage entrepreneurship, innovation, and attract talent, continuing policy support for equity incentive income is essential.

Following the three-year transition period, foreign individuals will only be eligible for tax deductions for housing, language training, and their children’s education. Guidance, however, is needed with respect to how other existing individual tax exemptions for foreign nationals, such as family visit fees, relocation fees, and food subsidies will continue to be implemented. It is important for enterprises to communicate closely with their foreign employees, and review and revise any current policies governing these items to ensure compliance with the revised IIT. The details of the first annual settlement under the new IIT law need to be clarified. Implementation of this settlement poses a challenge for both enterprises and employees. We encourage the government to allow more time for enterprises to communicate with employees and make necessary upgrades to their systems.

Labor Costs

Rising labor costs continue to rank among the most difficult challenges facing AmCham China members. In the 2020 AmCham China *Business Climate Survey* (BCS), 45 percent of respondents cited rising labor costs among the leading challenges to their business operations in China. According to the 2019 *Mercer Salary Survey*, the average wage growth rate across multiple industries in mainland China was around 5.5 percent. We anticipate that average wage growth in 2020 will increase at roughly the same rate, or 5.6 percent.

In this year’s salary survey, wages for those working in “Internet plus” industries are no longer increasing by double digits as in years past, but still saw the largest increases (up 7.3 percent year-on-year in 2019) followed by wages in other high-tech industries (up 6.3 percent year-on-year in 2019). Among the enterprises surveyed, the Internet plus, high-tech, and life sciences are forecast to see the largest rates of wage growth in 2020, at 7.1 percent, 6.5 percent, and 6.4 percent, respectively. In the high-tech sector, the gap in wages between local companies and multinational companies is rapidly narrowing. Salaries as well as equity incentives offered for management-level positions in industries

- 例如企业年初开展的政策沟通，协助员工理解政策（特别是专项附加扣除的报送与纳税人的新责任义务）
- 针对预扣缴环节处理大量员工专项附加扣除，企业如何寻求高效与安全的管理模式
- 对于 2020 年第一次专项附加扣除的重新选择，企业如何协助员工充分理解政策并规划新一年的税收红利

尽管颁布了三年过渡期（到 2021 年）政策，这有助于确保旧税法与修订后的税法之间的过渡更为顺畅，但修订后的个人所得税法中的某些政策仍需要通过实施法规进一步阐明。

例如，就年度奖金而言，在个人所得税改革之前，对年度奖金采用特殊税率，即将年度奖金总额除以 12，然后再与“每月”数额相对应的个人所得税税率等于总奖金除以 12 的收入的总和。在过渡期之后，在计算和应用税率之前，年度奖金将不再除以 12，而是将奖金包括在个人年收入的计算中，然后适用相应税率（大多数情况下，新税率会更高）。但是，在三年过渡期结束时，将需要单独规定股权激励的税收政策。为了支持政府鼓励双创、推动吸引人才的政策，未来如何对股权激励收入继续提供相应的政策支持，也值得期待。

三年过渡期后，外籍个人的免税福利与专项附加扣除中重复的项目，即住房补贴、语言培训费与子女教育费，只能依照规定享受专项附加扣除；同时，关于其他现行外籍个人的免税津补贴项目，如探亲费、搬迁费以及伙食补贴的延续执行值得关注。因此，企业与在职的外籍个人的充分沟通至关重要，同时结合新税法要求，首次年度结算的细节需要澄清。我们鼓励政府留出更多时间让企业与员工进行交流，并对其系统进行必要的更新。

劳动成本

商会会员企业所面临最艰难的挑战之一是劳动力成本上涨继续居高不下。2019 年商会《中国商务环境调查报告》显示，45% 的受访者认为劳动力成本上涨是他们在华业务面临的巨大挑战。根据 Mercer 2019 年薪酬调查，中国大陆全行业平均工资增长率为 5.5%，预计 2020 全行业平均薪酬涨幅将稳中有升，保持在 5.6% 左右。

在今年的薪酬调查中我们看到，高速增长的互联网

行业趋于理性，薪资已经不再两位数增长，但仍然占据薪资增长率首位（2019 年同比增长 7.3%）高科技行业以同比增长 6.3% 紧随其后。在受访企业当中，预测互联网、高科技，生命科学将领衔 2020 薪资涨幅前三，分别为 7.1%，6.5% 和 6.4%。高科技板块中，本土企业与跨国企业薪酬水平的差距正迅速缩小，在软件工程，集成电路设计的管理或专业岗位中甚至超过了跨国企业。

劳动力成本的上升是中国经济快速增长的必然结果。企业应优化自己的人才和招聘结构、提高组织效率、采用多元化的用工模式，以应对挑战。

职业教育：培养符合中国经济发展需求的人才与技能

根据国家统计局发布的中国 GDP 预测，中国 2019GDP 增幅在 6.1% 而 2020 预测为 5.8%（这个预测并没有计入新冠肺炎疫情对经济的影响）。中国经济已由高速增长转向高质量发展阶段，增长模式不再依赖固定投资和低附加值出口，而更多地依赖国内消费，服务和创新。这种过渡模式的特点是经济增长率放慢，并注重高质量，可持续的增长。

国务院发展研究中心与世界银行在 2019 年的一份联合报告中表示，中国需要制定为其教育领域制定一份战略，让其劳动力能够为未来的工作方式做好准备，并加强创新能力。中国的劳动力仍然面临着高素质与技术型人才供需不匹配的问题，以及人口挑战的困扰。例如，光辉国际(Korn Ferry)于 2018 年进行的一项研究估计，到 2030 年，中国的劳动力将减少 2000 万，中国将面临多个领域的技能短缺，即使是那些目前存在熟练劳动力过剩的地区，如制造业。

职业教育和培训是解决需求技能人才短缺的公认有效的办法。2019 年 2 月，国务院发布了《职业教育改革实施计划》，旨在通过建立国家职业教育标准，确保劳动力培训符合“科学技术发展趋势”，以完善国家职业教育体系。随后，随后教育部 5 月宣布全国高职院校扩招 100 万，并批准 15 所高等职业学校升级为本科院校，让更多高中毕业生、退役军人、下岗失业人员、农民工和新型职业农民等接受高等职业教育，有利于缓解结构性就业矛盾，促进高质量就业。

like software engineering and integrated circuit design even surpass those being offered by multinational companies.

Rising labor costs are a natural and welcome outcome of China's rapid economic growth. It presents a challenge for employers, but enterprises need to respond by optimizing their talent and recruitment structures, improving organizational efficiency, and adopting diverse employment models.

Vocational Education and Ensuring the Right Supply of Skills in the Chinese Economy

According to the National Bureau of Statistics, China's GDP rose by 6.1 percent in 2019 and is forecast to grow by 5.8 percent in 2020 (this forecast does not account for the impact of the SARS-COV-2 virus/COVID-19 epidemic). China's economy is transitioning to a new growth model that relies less on fixed investment and low value-added exports, and more on domestic consumption, services, and innovation. Such transition will be characterized by a slowing economic growth rate and a focus on high-quality, sustainable growth.

A 2019 joint report by the World Bank and Development Research Center of the State Council recognized the need for China to develop an education sector strategy that prepares workers for the future workplace and emphasizes innovation. China's workforce still suffers from a mismatch between the supply and demand of high-quality technical and skilled personnel as well as a demographic challenge. For example, a 2018 study by Korn Ferry estimated that by 2030, China's workforce will shrink by 20 million and China will face skills shortages across multiple sectors of its economy, even those areas which currently enjoy skilled labor surpluses, such as manufacturing.

One accepted option for helping address a shortage of workers with in-demand skills is through vocational education and training. In February 2019, the State Council issued a *Vocational Education Reform Implementation Plan* designed to improve the national vocational education system by establishing national vocational education standards, and ensuring workforce training matches "science and technology development trends." Subsequently, the Ministry of Education (MOE) announced plans to increase enrollment in vocational schools by one million students in 2019 and approved the upgrade of 15 vocational schools to the status of undergraduate colleges. These policies aim to allow more high school graduates, veterans, workers who have been laid off, and migrant workers to access vocational education.

AmCham China welcomes these initiatives to expand vocational training and would like to work with the MOE to ensure these training opportunities align with the needs of industry.

Recommendations

For the Chinese Government:

- **Partner with labor administrations and industry associations to develop a professional qualification certification system to regulate and standardize the hiring of flexible workers.**
- Extend the retirement age of female employees to 60 years old (the same as for male employees) to make employees and enterprises eligible to sign labor contracts, pay social insurance, withhold and collect income taxes for employees in accordance with current regulations and policies.
- Work with AmCham China's members on new initiatives to expand vocational training and ensure that these training opportunities align with the needs of industry. Support research and market analysis on China's current labor shortages and skill mismatches to identify key industries facing shortages of talent and support public-private retraining and reskilling programs, particularly those focused on the digital economy.
- Consult with industry stakeholders before issuing new laws and regulations and their interpretations, especially those that would increase labor costs.
- Provide clear instructions and mechanisms for dialogue to help the business community interpret and understand how to apply new tax deductions available under the revised IIT law. In particular, clarify how employees should report their information to qualify for the new tax deductions and the new obligations (if any) of taxpayers.

中国美国商会欢迎增加职业培训的举措，并希望与教育部合作，以确保这些培训机会符合行业需求。

建议

对中国政府：

- 与劳工管理部门和行业协会合作，建立专业资格认证体系，管理和规范灵活用工的招聘过程和雇佣条款。
- 将女职工的退休年龄延长至 60 岁（与男职工相同），使职工可以按照现行法规和政策签订劳动合同，缴纳社会保险，代扣代缴所得税。
- 与中国美国商会会员企业合作，扩大职业培训范围，并确保这些培训机会与行业需求保持一致。支持对当前中国劳动力短缺和技能不匹配的研究和市场分析，以发现面临人才短缺的关键行业，并支持公私再培训和再技能培训计划，尤其是那些针对数字经济的计划。
- 发布新的法律法规及其解释之前，请咨询行业利益相关者，尤其是那些会增加用人成本的法律法规。
- 提供清晰的说明和对话机制，以帮助企业理解修订后的个人所得税法，并阐明员工应如何报告其信息以符合新的税收减免和可能存在的纳税人的新义务。

Intellectual Property Rights

Introduction

The trade dispute between the US and China continued throughout 2019. This dispute began with the issuance of the *Presidential Memorandum on the Actions by the United States Related to the Section 301 Investigation* (Memorandum) that resulted in several rounds of tariff increases under Section 301 of the *Trade Act of 1974*. The Memorandum outlined policies of “economic aggression” aimed at US and other foreign-invested enterprises (FIEs), including policies and laws that have resulted in large-scale technology and intellectual property (IP) transfers in support of China’s industrial policy goals.

In March 2019, the State Council revoked certain provisions of the *Administration of Technology Import/Export Regulations* (TIER) (Administrative Order No. 709), namely Article 24(3), 27, and 29. Article 24(3) required foreign technology owners to compensate the corresponding Chinese party (licensee, assignee, or JV partner) against any infringements of third-party IP Rights. Article 27 stated that technology improvements belong to the party making the improvement, without any opportunity for the parties to allocate the rights by contract. Article 29 established the prohibited terms of technology import contracts. AmCham China welcomes the removal of these provisions as an opportunity to share technology according to terms agreed upon by both parties and to appropriately mitigate risk through contract.

After multiple rounds of negotiations, President Donald Trump and Vice Premier Liu He signed the *Economic and Trade Agreement Between the United States of America and the People’s Republic of China* on January 15, 2020 (Phase One Deal). The Phase One Deal marked a partial truce in the trade dispute between the US and China, in which the US agreed to relax some tariffs imposed on Chinese imports in exchange for certain commitments to purchase American goods and to address IP issues of longstanding concern. While a truce in the trade dispute between the US and China was long awaited and welcomed by AmCham China, our members have observed that most of the important changes established under the Phase One Deal with respect to IP protection had already been implemented by the Chinese authorities in recent legislative and judicial developments, or were earmarked for inclusion in forthcoming legislative,

judicial and/or administrative reform initiatives. AmCham China members are cautiously optimistic that these recent changes and commitments to change will enhance the predictability, transparency, and effectiveness of China’s IP legal regime over the next few years in a number of areas that have featured prominently as areas of concern in prior AmCham China *White Papers*.

As in previous years, AmCham China members have observed numerous improvements over the last year despite the somber tone that has tended to pervade coverage of IP and China since early 2018, many of which are discussed in the sections below.

In the 2020 AmCham China *Business Climate Survey* (BCS), 69 percent of AmCham China members surveyed believe that China’s IP enforcement has improved, up from 59 percent in the 2019 BCS, and from 47 percent in 2015. This chapter will outline some of those improvements, as well as some persistent and more recent concerns relating to IP that affect both foreign-invested and domestically-invested companies operating in China.

Recent Developments and Ongoing Regulatory Issues

Restructuring of the Government and Courts

AmCham China welcomes the efforts by the Chinese government and the Supreme People’s Court (SPC) to restructure the governmental agencies that oversee IP, as well as China’s court system. AmCham China members are hopeful that recent restructuring efforts will increase efficiency of implementation and enforcement of IP laws, regulations and administrative measures, and increase consistency and transparency in judgments issued by the IP courts and tribunals.

Although AmCham China members have unfortunately yet to see measurable improvements in patent administrative enforcement since the recent unification and concentration of patent and trademark resources under the National Intellectual Property Administration (NIPA) and under the State Administration for Market Regulation (SAMR) in 2018 as well as the consolidation of patent and trademark enforce-

知识产权

引言

美 中两国贸易争端贯穿 2019 全年，争端源起于《有关美国 301 条款调查行动的总统备忘录》（《备忘录》）的发布。随后，美国按照 1974 年《贸易法》301 条款开始多轮上调关税。《备忘录》概述了中国针对美国和其他外商投资企业所谓的“经济侵略”政策，包括各项用以支持达成中国产业政策目标的大规模技术和知识产权转让政策、法律。

2019 年 3 月，国务院撤销了《技术进出口管理条例》（第 709 号行政令）中第 24 条第 3 款、第 27 条和第 29 条的若干规定。第 24 条第 3 款要求外国技术所有者就侵犯第三方知识产权的行为向中方（被许可人、受让人或合资伙伴）作出赔偿。第 27 条规定技术改进成果属于作出改进的一方，双方不得通过合同来分配权利。第 29 条规定了技术进口合同的禁止条款。商会对此表示支持，因为这些措施为双方提供了一次根据商定条款共享技术，并通过合同适当降低风险的机会。

在经过多轮谈判之后，2020 年 1 月 15 日，美国总统特朗普和中国副总理刘鹤共同签署《美国和中国经济贸易协议》（第一阶段协议）。第一阶段协议的签署标志着美中两国贸易争端暂时“休战”，美国同意放宽对中国进口商品的部分关税；中国也相应承诺扩大对美国商品的进口量，并解决受到长期关注的知识产权问题。各方对美中贸易争端休战期待已久，商会也对此喜闻乐见。我们的会员注意到，第一阶段协议中确定的关于知识产权保护内容的重要变更，多数已在中国政府最近的立法和司法中得以实施，或已被指定包括在即将出台的立法、司法和 / 或行政改革计划中。商会会员对此表示乐观，但依然持谨慎态度。这些最新进展中的变革和承诺将会在未来几年内增强中国知识产权法律制度在多个领域的可预测性、透明度和有效性，包括商会之前《白皮书》中重点关注的一些领域。

自 2018 年以来，尽管在 2018 年早期关于知识产权和中国的报道语气都较为消极，但同往年一样，商会会员在过去一年中注意到许多方面都已有改善，下文也将进一步探讨。

在商会的《2020 年中国商务环境调查报告》中，69% 的受访会员认为中国的知识产权执法已经改善，比例高于 2019 年的 59% 和 2015 年的 47%。本章将概述其中一些改进，以及一些影响在华外商投资企业和本土投资企业的知识产权问题，其中有些属于长期存在的痼疾，有些则是最近才引起关注的。

最新进展和长期监管问题

政府和法院重组

中国政府和最高人民法院对主管知识产权的政府机构和法院系统进行了重组，商会对此表示欢迎。商会会员希望此次重组能够提高知识产权法律法规和行政措施的执行及维权效率，并加强知识产权法院和法庭对知识产权问题判决的一致性与透明度。

2018 年，国家市场监督管理总局（SAMR）下属的中国国家知识产权局（CNIPA）对专利和商标资源进行了统一和集中管理，地方市场监督管理局（MSA）对专利和商标的执行进行了整合。可惜的是，到目前为止，商会会员还未看到专利行政执法方面出现明显改进。商会希望有关方能在未来投入更多资源、实施更有力度及透明的执法行动，从而深化强制措施、加重对严重或重复侵权方的罚款。

2019 年 1 月 1 日，最高人民法院设立了新的知识产权部门，商会因此颇受鼓舞。该部门由四个机构组成，分别负责审理与发明专利、商业秘密、反垄断索赔、计算机软件、信息通信外观设计和植物新品种有关的上诉

ment under local Market Supervision Administrations (MSAs). AmCham China is hopeful that the investment of greater resources and more ambitious and transparent enforcement efforts will result in an increase in enforcement action and in fines for egregious and repeat infringers.

AmCham China is also encouraged by the recent establishment of a new IP division in the SPC on January 1, 2019. This new division consists of four departments and hears appeals related to invention patents, trade secrets, antitrust claims, computer software, information communication designs, and new plant varieties. In the *Opinions on Several Issues in Enhancing Reform and Innovation in Hearing Intellectual Property Cases* (Opinions), the Party Central Committee and the State Council in February 2018 sought to enhance the protection of IP rights and address demands from stakeholders to streamline and enhance judicial resources with a focus on IP. AmCham China welcomes a number of the proposals outlined in the Opinions, including the publication of IP guiding cases by the SPC, a commitment to raise the quality and consistency of judicial opinions, and a call for an increase in damages awarded for IP infringement to better reflect the value of IP rights, which is also reflected in the November 2019 *Guidelines on Strengthening the Protection of Intellectual Property Rights* (also issued by the Party Central Committee and State Council). In addition, AmCham China applauds commitments to better allocate the burden of proof in IP cases, increase the number of qualified IP judges to address current resource constraints, and establish five new IP tribunals in Shenzhen, Zhengzhou, Tianjin, Changsha, and Xian.

2019 and Early 2020 Legislative Updates

There were many noteworthy legislative, administrative, and judicial developments in 2019 and early 2020. We include a detailed list to signify the many developments in IP protection in 2019, which include the following:

- Enactment of the *E-Commerce Law* (August 2018), which came into effect on January 1, 2019,
- Issuance of the *Provisions on Several Issues concerning the Application of Law in Cases Involving the Review of Act Preservation in Intellectual Property Disputes* by the SPC (December 2018), effective January 1, 2019,
- Issuance of the *Provisions on Several Issues concerning the Intellectual Property Tribunal of the Supreme People's Court* (December 2019) by the SPC, effective January 1, 2020,
- Issuance of the *Regulation on Patent Agency* (2018 Amendment) by the State Council in November 2018, effective March 1, 2019,
- Issuance of the *Guidelines for Examination and Enforcement of Layout Designs of Integrated Circuits* (for Trial Implementation) on April 8, 2019,
- Promulgation of the revised *Anti-Unfair Competition Law* (2019 Amendment) by the Standing Committee of the National People's Congress, effective April 23, 2019,
- Issuance of the *Measures for the Administration of Geographical Indications of Agricultural Products* (2019 Amendment) by the Ministry of Agricultural and Rural Affairs (MARA), effective April 25, 2019,
- Publication of the 2019 "Iron Fist" Action Plan for Intellectual Property Enforcement by SAMR and the NIPA (April 25, 2019),
- Issuance of the *Several Provisions on the Participation of Technical Investigators in Legal Proceedings for Intellectual Property Cases* by the SPC (March 2019), effective May 1, 2019,
- Issuance of the 2019 *Key Working Points of Local Intellectual Property Strategy* by the Inter-Ministerial Meeting of the State Council on Implementation of IP Strategy (May 5, 2019),
- Issuance of the 2019 *Major Tasks for the Nationwide Crackdown on IPR Infringement and the Production and Sale of Counterfeit and Shoddy Commodities* by the National Leading Group on the Fight against Intellectual Property Rights (IPR) Infringement and Counterfeiting (June 11, 2019),
- Issuance of the *Measures for the Administration of the Centralized Examination of Patent Applications* (for Trial Implementation) by NIPA on August 30, 2019,
- Issuance of the *Several Opinions on Accelerating the Building of an Intellectual Property Information Public Service System under New Conditions* by NIPA (August 30, 2019),
- Issuance of the *Provisions on Electronic Trademark Applications* by NIPA (August 2019), effective September 1, 2019,
- Enactment of the amended *Trademark Law* (2019 Amendment) by the NPCSC, effective November 1, 2019,
- Issuance of the *Guidelines for Patent Examination* (2019 First Amendment) by NIPA, in September 2019, effective November 1, 2019,
- Issuance of the *Opinions on Strengthening the Protection of Intellectual Property Rights* by the Party Central Committee and the State Council (November 24, 2019),
- Issuance of the *Notice on Regulating Local Intellectual Property Related Exhibitions and Events* by NIPA (November 26, 2019),
- Issuance of the *Measures for the Protection of Foreign Geographical Marks* (2019 Amendment) by NIPA, effective November 27, 2019,
- Issuance of the *Several Provisions on Regulating the Application and Registration of Trademarks* by SAMR (October 2019), effective December 1, 2019,
- Issuance of the *Measures for the Administration of the List of Seriously Dishonest Parties Subject to Joint Punishment in the Patent Field* (for Trial Implementation) by NIPA (October 2019), effective December 1, 2019,

案件。在 2018 年 2 月发布的《关于加强知识产权案件改革创新若干问题的意见》（《意见》）中，中共中央委员会和国务院寻求加强知识产权保护和解决利益相关者的需求，以知识产权为重点，精简和加强司法资源。商会赞赏《意见》中提出的一系列建议，包括最高人民法院公布知识产权指导性案例，承诺提高司法意见的质量和一致性，并要求增加对于知识产权侵权的损害赔偿金，以更好地反映知识产权的价值，这一点在 2019 年 11 月发布的《关于加强知识产权保护和行政执法工作的指导意见》（同样是由中共中央委员会和国务院发布）中也有体现。此外，中方承诺将更合理地分配知识产权案件的举证责任，增加合格知识产权法官数量以解决目前的资源限制，并在深圳、郑州、天津、长沙和西安设立五个新的知识产权法庭，商会对此表示赞赏。

2019 年和 2020 年初立法进展

2019 年和 2020 年初有多项立法、行政和司法进展值得关注，在此详细列出以展示 2019 年知识产权保护领域取得的诸多进步，如下：

- 2018 年 8 月，《电子商务法》颁布，自 2019 年 1 月 1 日起施行；
- 2018 年 12 月，最高人民法院颁布《关于审查知识产权纠纷行为保全案件适用法律若干问题的规定》，自 2019 年 1 月 1 日起施行；
- 2019 年 12 月，《最高人民法院关于知识产权法庭若干问题的规定》颁布，自 2020 年 1 月 1 日起施行；
- 2018 年 11 月，国务院颁布《专利代理条例》（2018 年修订），自 2019 年 3 月 1 日起施行；
- 2019 年 4 月 8 日，《集成电路布图设计审查与执法指南（试行）》颁布；
- 全国人大常委会颁布修订后《反不正当竞争法》（2019 年修订版），自 2019 年 4 月 23 日生效；
- 农业农村部发布《农产品地理标志管理办法》（2019 年修订版），自 2019 年 4 月 25 日起施行；
- 2019 年 4 月 25 日，国家市场监督管理总局和中国国家知识产权局公布《2019 年知识产权执法“铁拳”行动方案》；
- 2019 年 3 月，最高人民法院发布《关于技术调查官参与知识产权案件诉讼活动的若干规定》，自 2019 年 5 月 1 日起施行；
- 2019 年 5 月 5 日，国务院知识产权战略实施工作

部际联席会议办公室发布《2019 年地方知识产权战略暨强国建设实施工作要点》；

- 2019 年 6 月 11 日，全国打击侵权假冒工作领导小组印发《2019 年全国打击侵犯知识产权和制售假冒伪劣商品工作要点》；
- 2019 年 8 月 30 日，国家知识产权局印发《专利申请集中审查管理办法（试行）》；
- 2019 年 8 月 30 日，国家知识产权局印发《关于新形势下加快建设知识产权信息公共服务体系的若干意见》；
- 2019 年 8 月，国家知识产权局印发《关于商标电子申请的规定》，自 2019 年 9 月 1 日起施行；
- 全国人大常委会颁布修订版《商标法》（2019 年修订版），自 2019 年 11 月 1 日起施行；
- 2019 年 9 月，国家知识产权局印发《专利审查指南》（2019 年第一次修订），自 2019 年 11 月 1 日起施行；
- 2019 年 11 月 24 日，党中央和国务院发布《关于强化知识产权保护的意见》；
- 2019 年 11 月 26 日，国家知识产权局印发《关于规范地方知识产权相关展会活动有关事项的通知》；
- 2019 年 11 月 27 日，国家知识产权局印发《国外地理标志产品保护办法》2019 年修订版，自 2019 年 11 月 27 日起施行；
- 2019 年 10 月，国家市场监督管理总局发布《关于规范商标申请注册行为的若干规定》，自 2019 年 12 月 1 日起施行；
- 2019 年 10 月，国家知识产权局印发《专利领域严重失信联合惩戒对象名单管理办法（试行）》，自 2019 年 12 月 1 日起施行；
- 2019 年 12 月 26 日，国家知识产权局印发《专利侵权纠纷行政裁决办案指南》，自 2019 年 12 月 31 日起施行；
- 2020 年 1 月 3 日，国家知识产权局印发《关于深化知识产权领域“放管服”改革 营造良好营商环境的实施意见》；
- 2019 年 12 月，国家知识产权局印发《专利审查指南》（2019 年第二次修订），自 2020 年 2 月 1 日起施行；
- 2020 年 2 月 18 日，国家知识产权局商标办公室印发《关于在网上公开商标异议决定文书的公告》。

- Issuance of the *Guidelines for Handling Patent Infringement Administrative Disputes* by NIPA on December 26, 2019, effective December 31, 2019,
- Issuance of the *Implementation Opinions on Deepening the Reform of Simplification of Administrative Procedures, Delegation of Powers, Combination of Decentralization and Appropriate Control and Optimization of Services in Intellectual Property Protection and Creating a Good Business Environment* by NIPA, (January 3, 2020),
- Issuance of the *Guidelines for Patent Examination (2019 Second Amendment)* by NIPA (December 2019), effective February 1, 2020, and
- Issuance of the *Announcement on Online Publication of Trademark Opposition Decision Documents* by the Trademark Office of NIPA (February 18, 2020).

Trademarks

Online Counterfeiting and Piracy

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

- Article 43 sets out the procedures that an operator of an e-commerce platform must take after receiving a statement of non-infringement from an online business operator, provides a 15-day period during which an IP holder can file a civil or administrative complaint against an online business infringer after receiving a statement of non-infringement, and provides that the e-commerce platform operator is permitted to terminate any take-down measures which it may have imposed on an online business if no such complaint is received within such 15-day period,
- Article 83 is an entirely new provision which penalizes e-commerce platform operators for failure to take action against online business operators that harm consumers' legitimate rights and interests, review qualifications of the online business operators or fulfill their obligation to ensure security,
- Articles 82 and 84 (as well as new Article 83) raise the penalties on e-commerce platform operators which fail to take action against infringing online business operators or that impose unreasonable policies or prices on online business operators. It introduces a penalty range of RMB 50,000 (US \$7,000) to RMB 500,000 (US \$70,500) (up from the prior maximum of RMB 200,000 or US \$28,000) and, if the violation is serious, RMB 500,000 to RMB 2 million (or US \$281,000) (up from RMB 200,000 to RMB 500,000).

As will be discussed below, Article 1.13 of the Phase One Deal extends the time period for rightsholders to file an admin-

istrative response to a counter notification to 20 days and introduces penalties for counter-notifications lodged in bad faith. It is thus apparent that some of these new provisions in the *E-commerce Law* are already outdated and will require further amendment. For now, AmCham China members are hopeful that any such amendments will be consistent with the e-commerce commitments memorialized in the Phase One Deal.

While this "new" law signifies progress in the Chinese government's approach to the application of trademark law in China's e-commerce markets, the law still leaves unaddressed some of the concerns raised in the 2018 and 2019 *White Papers*. AmCham China members remain concerned about ambiguity over the type and amount of evidence sufficient to be deemed "prima facie" evidence and thus trigger the take-down measures for IPR holders under Article 42 (and trigger the now 20-day limit for online business platforms under Article 43). Furthermore, it does not address piracy devices and circumvention devices used primarily to access pirated content, especially as China is a leading manufacturer of media hardware and accessories. These devices sold on e-commerce platforms can support the installation of third-party, pre-loaded, or post-purchase infringing applications, allowing consumers easy access to infringed content. In addition, the provisions may still allow e-commerce platform operators to avoid performing take-down procedures if online business operators provide weak or partial evidence to prove their lack of infringement, but the clarifications provided in the Phase One Deal suggest that the provision of false evidence would likely be cause for sanctions. AmCham China members look forward to further clarification of these issues in light of the commitments set out in the Phase One Deal in coming months.

As noted in the 2018 and 2019 *White Papers*, online counterfeiting is still a serious issue and numerous methods are available to infringers to circumvent the law. For example, a trademark infringer which seeks to register a large number of trademarks can avoid detection by filing under the name of an acquaintance or under their company name, a simple task that can be completed without leaving any hard evidence which can then be used to implicate them in any court proceedings. In addition, these recent improvements primarily benefit the owners of well-known brands who can invest significant resources in regularly monitoring e-commerce platforms and proactively petition those sites to take down links to infringing products.

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

- Continue to apply pressure on e-commerce platforms to implement strict, transparent, and user-friendly policies

商标

网络假冒和盗版

新版《电子商务法》(以下简称“新法”)于2019年1月1日生效。除一些微小补充外,新法与商会2017年《白皮书》中提到的草案没有做出明显改动。以下是新法中值得注意的几点内容:

- 第四十三条规定,电子商务平台运营商收到在线业务运营商的非侵权声明后,必须采取的程序有:知识产权权利人在收到非侵权声明后,需在15天内对网上侵权人提起民事诉讼或行政投诉,如果电子商务平台运营商在15天内未收到此类投诉,则可以终止其对在线业务可能采取的任何撤销措施。
- 第八十三条为一项全新规定,即任何电子商务平台运营商若未能对损害消费者合法权益的网络运营商采取行动、审查网络运营商资质、履行安全保障义务,均需接受惩罚。
- 第八十二条、第八十四条(以及新的第八十三条)规定,电子商务平台经营者若未采取措施打击侵犯网络经营行为,或者对网络经营企业强制施加不合理政策、价格,罚款金额会相应增加。处罚范围为5万元人民币(7,000美元)至50万元人民币(70,500美元)(原最高20万元人民币或28,000美元);情节严重的,处以50万元人民币至200万元人民币(或281,000美元)罚款(原最高20万元至50万元人民币)。

第一阶段协议的第1.13条规定,权利人收到反向通知后提交行政投诉的时限延长至20天,并对恶意提交反向通知的行为进行处罚。下文也将针对这一点进一步讨论。由此可见,《电子商务法》中的一些新规定已经过时,需要进一步修订。目前,商会会员希望一切此类修订都能与第一阶段协议中电子商务相关承诺保持一致。

尽管这部“新”法律标志着中国政府在中国电子商务市场对《商标法》的应用方面取得了进展,但2018年和2019年《白皮书》中提出的一些问题仍未解决。目前,关于何种数量和类型的证据足以被视为“初步证据”的界定存在歧义,商会会员依然在关注这一问题。根据第四十二条规定,此类初步证据会导致知识产权持有人采取撤销措施(按照第四十三条,导致针对网上商

务平台的20天时限)。此外,该法没有解决用于访问盗版内容的盗版设备及规避设备的问题。鉴于中国是网络硬件和配件主要生产国,解决这一问题尤为重要。这些在电商平台出售的设备可以支持第三方安装、预装或购买后安装侵权应用,消费者可以借此轻松访问侵权内容。此外,如果在线业务运营商提供不充分或部分证据来证明自己没有侵权,该规定仍可能允许电商平台运营商避免行使撤销程序。但是第一阶段协议表明,提供虚假证据可能会受到制裁。商会会员期待,中方在未来几个月里能够按照第一阶段协议里的承诺进一步澄清这些问题。

2018年和2019年发布的《白皮书》中提到,网络造假仍是一个严重的问题,侵权者有规避法律的手段。例如,寻求注册大量商标的商标侵权人可以假借熟人或其公司名义提交申请而不被发现。这项程序很简单,完成之后也不会留下任何会在法庭程序中指向侵权人的证据。此外,这些最新改动的主要受益方为知名品牌的所有者,他们可以投入大量资源定期监控电商平台,并主动请求这些网站删除侵权产品的链接。

网络造假的问题长期存在,如果不对此持续加以关注及业内利益相关者的介入,这种情况难以得到改善。为此,商会促请中国政府继续通过以下措施解决这一重要而紧迫的问题:

- 继续对电商平台施压,针对通知和撤销流程以及重复违规者实施严格、透明和用户友好型政策(最好是简单的两次或三次犯规即出局的规则);
- 鼓励电商平台采用最佳做法,以便日后更轻松地识别造假者、在没有初步授权证据的情况下删除卖家发布的链接,增加造假者掩盖在多个虚假身份下运作的难度;
- 鼓励电商平台打造保护知识产权的文化,采取积极措施,加大造假者在网站上上架其产品的难度(例如,建立高销量卖家随机知识产权授权审查制度)。

异议

依据现行的《商标法》,若被异议商标准予获准注册,则异议人无权在国家知识产权局商标局(TMO)提起复审。根据相关的异议程序,如果异议人在商标局异议程序中失败,被异议商标将被注册。异议人对裁定结果不满的,必须向商标评审部门(TRAD)提交无效申请,裁定该商标无效。

regarding notice-and-take down processes and repeat offenders (preferably through adoption of simple two or three-strike rules),

- Encourage e-commerce platforms to adopt best practices to make it easier to identify counterfeiters and to remove links posted by sellers without prima facie evidence of authorization, and to make it more difficult for counterfeiters to operate under multiple false identities, and
- Encourage e-commerce platforms to cultivate a culture of IP protection and take proactive measures to make it more difficult for counterfeiters to list products on their sites (e.g., by instituting a system of random IP authorization audits of high-volume vendors).

Oppositions

Under the current *Trademark Law*, there is no right of appeal within the Trademark Office (TMO) under NIPA if an opposed trademark is allowed to register. According to relevant opposition procedures, an opposed mark will become registered if an opponent loses before the TMO. If the losing party is dissatisfied with the ruling, it must file for review by the Trademark Review and Adjudication Division (TRAD) to invalidate the trademark.

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

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

- The collective review of cases involving the same offender accused of filing in bad faith,
- Expediting or prioritizing the review of cases involving bad faith,
- Efforts to align NIPA review standards with those of the TRAD and the People's Courts,
- The explicit addition of grounds for opposition for trademarks filed in bad faith with no intention to use (Article 4 of the *Trademark Law*),
- The possibility of levying fines against applicants who file trademarks in bad faith, as well as the extension of sanctions to trademark agencies that knowingly facilitate the filing of trademarks in bad faith.

AmCham China strongly recommends that SAMR continue these efforts to improve the procedures for handling oppo-

sitions before the NIPA. We recommend that SAMR and relevant agencies within the government further strengthen the tools available to small and medium-sized enterprises (SMEs) that are less well-known in the Chinese market to effectively challenge pirate filings of their trademarks by third parties and a deeper alignment of review standards between the NIPA, TRAD, and the court system.

Enterprise Name Infringements

It is not uncommon for Chinese companies to register and use enterprise names that incorporate famous foreign trademarks, but local administration authorities have generally been reluctant to handle cases involving conflicts between registered trademarks and enterprise names. The 2014 *Trademark Law* provides a cause of action for registrants of trademarks that are not well known when the use of that trademark as an enterprise name is liable to mislead the public and otherwise constitute unfair competition. AmCham China members are hopeful that the amendments to the *Anti-Unfair Competition Law* (AUCL) in April 2019 will simplify the process of handling these cases. Article 18 in particular gives local administrative authorities the power to change the infringing enterprise's name to a numerical code if the infringer fails to make appropriate non-infringing changes on its own accord.

Bad Faith Filings

Article 7 of the *Trademark Law* provides that applicants for the registration of trademarks must comply with the principles of honesty and good faith. AmCham China welcomed this addition of an obligation of good faith in the language of the *Trademark Law*. In the last six *White Papers*, AmCham China expressed concern, however, that Article 7 was not listed as independent grounds for opposition or invalidation, resulting in uncertainty as to the practical effect of this provision in opposition and invalidation proceedings before the NIPA and the TRAD.

The 2019 *Trademark Law* amendments, as well as SAMR's *Several Provisions on Regulating the Application and Registration of Trademarks*, introduced several welcome developments relating to bad faith trademark filing. These developments include the following:

- Expressly establishing a basis for opposing and invalidating marks that are filed in bad faith with no intention of being used under Article 4 of the *Trademark Law*,
- Providing recourse against trademark agencies that knowingly facilitate the filings of trademarks in bad faith, and
- Providing for the possibility of administrative fines against applicants for trademarks filed in bad faith.

AmCham China members are pleased with the aforementioned developments but are concerned that a number of

正如过去六年中所发布的《白皮书》中所述，由于目前的异议程序依然对第三方商标恶意申请人有利，而商标局的异议审查质量也没有改善，因此商会会员仍然对此感到担忧。会员仍然表示，商标局的决定质量没有明显改善，尤其是在恶意申请相同商标有关的问题上。

不过，自 2017 年以来，法院和知识产权法庭对恶意申请案件的处理方式出现了转变，商会对以下几项进展感到尤为欣慰：

- 对涉嫌恶意提交的同一违法者的案件进行集中审查；
- 加快或优先审查涉及恶意的案件；
- 努力使商标局审查标准与商标评审部门和人民法院的审查标准保持一致；
- 明确增加无使用意图恶意申请的异议理由（《商标法》第四条）；
- 恶意提交商标的申请人可能会被施以罚款，而故意协助恶意提交商标的商标代理机构也会被处罚。

商会强烈建议国家市场监管局继续努力改进商标局处理异议的程序，建议国家市场监管局和政府相关机构进一步强化中国市场非驰名商标中小企业可用的工具，从而有效应对第三方恶意抢先注册的申请行为，并且加强商标局、商标评审部门和法院系统审核标准的一致性。

企业名称侵权

中国企业注册和使用含有外国著名商标的企业名称的情况并不少见，但地方管理部门通常不愿处理注册商标与企业名称冲突的案件。2014 年《商标法》规定，当使用不知名商标作为企业名称，且可能会误导公众，并在其他方面构成不正当竞争时，商标注册人有理由提起诉讼。商会会员希望，2019 年 4 月的修订后《反不正当竞争法》能简化此类案件的处理程序，其中第十八条特别规定，如果侵权人未自行作出适当的非侵权变更，地方行政机关有权将侵权企业名称变更为数字代码。

恶意申请

《商标法》第七条规定，商标注册申请人必须遵循诚实信用原则，商会对该法中增加诚信义务条款表示欢迎。但是，第七条并未被列为异议或无效的独立理由，导致在商标局和商标评审部门的异议和无效程序中，该规定的实际效果存在不确定性，这一点在之前六版《白皮书》中均有提及。

2019 年修订版《商标法》和国家市场监管总局发布《关于规范商标申请注册行为的若干规定》中新增了几条关于恶意商标注册的规定。对此，商会表示支持，规定内容如下：

- 将《商标法》第四条恶意申请且无使用意图的商标，明确规定为异议和无效的基础；
- 对故意协助恶意商标申请的商标代理机构予以追索；
- 可以对恶意申请商标的申请人处以行政处罚。

上述进展令商会会员十分欣喜，但也担心还有许多长期性痼疾尚能通过新《商标法》得到妥善解决。其中包括，对于实际投入使用或授权第三方使用的恶意申请商标尚未得到解决，以及对于明显不涉及商标囤积的案件，《商标法》第四条是否适用，这一点也一直没有解释清楚。

各类法院和机构在审查商标案件中对因恶意引起的纠纷案件支持力度加大，商会会员对此备受鼓舞。国家知识产权局在处理恶意申请的商标时，这种支持更为强烈，而且越来越多的国家知识产权局案件（这一趋势在 2018 年和 2019 年在加速发展）开始援引《商标法》第七条，该条规定，“申请商标注册和使用时应当遵循诚实信用原则”将作为处理恶意案件的根据。第三十条还对第七条引起的案件进行了补充，该条规定，商标局要驳回“不符合本法有关规定”的商标。

版权

2019 年版权领域没有重大立法进展，商会对此表遗憾。2015-2019 年发布的《白皮书》中提到的问题目前仍然存在，其中包括对法定赔偿的限制、不合理的高证据标准及刑事入罪高标准、企业终端用户广泛使用盗版软件以及中国当局拒绝起诉预装盗版软件的行为。2019 年 10 月 8 日发布《优化营商环境条例》已于 2020 年 1 月 1 日正式生效，商会希望该条例能够建立针对知识产权侵权的惩罚性赔偿制度，强化知识产权保护。此外，2019 年 11 月发布的《关于加强知识产权保护和行政执法工作的指导意见》能够进一步激励各方，来加强版权、专利和商标执法，包括降低刑事入罪门槛、规定惩罚性赔偿、简化证据程序、建立重复侵权者黑名单，并规范网站“删除侵权内容、屏蔽或断开盗版网站链接、停止传播侵权信息。”正如 2019 年发布的《白皮书》中所述，商会促请中方修订《著作权法》和《刑法》，以有

longstanding issues have not been appropriately addressed under the new *Trademark Law* regime. These include a failure to address the filing of marks in bad faith that are actually intended for use or to be licensed to third parties, and longstanding ambiguity surrounding the appropriateness of applying Article 4 of the *Trademark Law* to cases that do not ostensibly involve trademark hoarding.

AmCham China members continue to be encouraged by the growing support among various courts and agencies adjudicating trademark cases with respect to bad faith causes of action. Such support is particularly apparent in how the NIPA deals with trademarks filed in bad faith. An increasing number of NIPA cases (a trend which accelerated in 2018 and 2019) have invoked Article 7 of the *Trademark Law*, which provides that “applications for registration and use of trademarks shall comply with the principles of honesty and good faith” as the basis for a bad faith cause of action. Such an Article 7 cause of action is supplemented by Article 30 that requires the NIPA to reject any trademark that “does not conform to the relevant provisions of this Law.”

Copyright

AmCham China was disappointed to see no significant legislative developments regarding copyright law in 2019. The issues raised in the 2015-2019 *White Papers* continue to be relevant. These issues consist of limitations on statutory damages, unreasonably high evidentiary and criminal thresholds, widespread enterprise end-user software piracy, and the refusal of Chinese authorities to prosecute pre-installed unlicensed software and violations. AmCham China hopes that the *Regulations on Optimizing the Business Environment*, issued on October 8, 2019 and effective January 1, 2020, will enhance IP protection by establishing a punitive damages system for intellectual property infringement. In addition, the *Guidelines on Strengthening the Protection of Intellectual Property Rights* issued in November 2019 should provide further impetus to strengthen copyright, patent, and trademark enforcement, including lowering criminal thresholds, providing for punitive damages, streamlining evidence processes, establishing a blacklist of repeat infringers, and regulating websites to “remove infringing content, block or disconnect pirated website links, [and] stop the dissemination of infringing information.” As we stated in the 2019 *White Paper*, we urge that both the *Copyright Law* and *Criminal Law* be revised to provide effective deterrence against piracy. In addition, we encourage the Chinese government to continue efforts to amend the *Copyright Law* and the *Criminal Law*, including lowering the thresholds for criminal liability and including end-user infringement of third-party IPR in the scope of criminal liability. We continue to recommend, as we have for many years, that such amendments consider the following:

- Preserve the previously proposed amendment provisions for higher statutory damages and reallocated

burden of proof,

- Revise the *Copyright Law* specifying that commercial use of unlicensed software is an infringement of reproduction rights. Such specification is critical for deterring unlicensed software use by enterprises as well as fostering the development of cloud computing. Inefficient protection for cloud computing can hamper development of the software industry in the cloud era, and
- Ensure that a remedy against mobile apps that facilitate infringement (including where infringing content is hosted remotely) is legally permitted.

Trade Secrets

Regulations that protect trade secrets still exist primarily in the AUCL and the *Criminal Law* although several provisions are also found in the *Contract Law*, the *Labor Law*, and the *Employment Contract Law*. The AUCL was revised in 2019 with a number of new provisions that seek to further improve trade secrets protection and deter infringement, including the following:

- An expansion of the definition of “trade secrets” to include “other business information,”
- An expansion of the acts of trade secret infringement to include “electronic intrusion” and acts that involve “solicitation, seduction, and assistance” to infringement,
- Shifting the burden of proof to the defendant when a plaintiff produces prima facie evidence of infringement,
- Introduction of punitive damages of up to five times the amount of statutory damages, and
- An increase in the ceiling on statutory damages from RMB 3 million (US \$423,000) to 5 million (US \$705,000).

As proposed in the 2018 and 2019 *White Papers*, AmCham China continues to recommend the creation of a stand-alone trade secrets law in correspondence with laws governing other IP rights, and that the courts establish written guidelines on the protection of trade secrets in civil and criminal litigation. Such specific guidelines are necessary to address the following:

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

效遏制盗版。此外，商会也鼓励中国政府继续努力修订《著作权法》和《刑法》，包括降低刑事责任入罪的门槛，以及增加终端用户侵权第三方知识产权的刑事责任。商会一如既往建议修正案能考虑以下几点：

- 保留先前提议的关于增加法定赔偿和重新分配举证责任的修正案条款；
- 修改《著作权法》，明确商业使用未经许可的软件是对复制权的侵犯，这种规定对于阻止企业使用未经许可的软件和促进云计算的发展至关重要，而对云计算的低效保护不利于云时代软件业的发展；
- 确保法律允许对助长侵权的移动应用程序（包括远程托管侵权内容）进行修正。

商业秘密

目前保护商业秘密的法律主要是《拍卖法》和《刑法》，但《合同法》、《劳动法》和《劳动合同法》中也有若干保护规定。《拍卖法》在 2019 年进行了修订，新增几条加强商业秘密保护和打击侵权的规定，包括：

- 扩展“商业秘密”的定义，其中将包括“其他商业信息”；
- 侵犯商业秘密的行为将包括“电子入侵”和“教唆、引诱和帮助”侵权的行为；
- 如果原告提供侵权的初步证据，举证的责任将转移到被告身上；
- 引入惩罚性赔偿机制，金额高达法定赔偿额 5 倍；
- 将法定赔偿额上限从 300 万人民币（423,000 美元）提高至 500 万人民币（705,000 美元）。

同 2018 年和 2019 年版《白皮书》中一致，商会建议制定独立的《商业秘密法》，同其他知识产权法一样；同时法院在民事和刑事诉讼中就商业秘密保护制定书面指导方针，此类具体指导方针对于解决以下问题必不可少：

- 法院在批准或否决针对被控侵权人住所的证据保全令时，需要考虑的具体因素；
- 投诉人证明商业秘密的“不为公众所知”所需的初步证据；
- 在投诉人拥有的商业秘密与被告使用的技术相似但不相同的情况下，判定侵权的法律标准。

专利

立法进展

2018 年 12 月，《专利法修正案（草案）》（以下简称草案）提交至全国人大常委会，该草案将：

- 大幅提高故意侵犯、假冒专利的赔偿和罚款额度；
- 规定原告的举证责任；
- 明确规定网络服务提供者需对网络专利侵权承担连带责任；
- 新设专利开放许可制度；
- 设立专利发明人或设计人合理分享发明收益的激励机制；
- 新设创新药品发明专利期补偿制度；
- 首次涉及局部外观设计专利权，并将外观设计专利权的保护期由现行的十年延长至十五年。

2019 年草案未发生其他变更，商会对于此前多处修改表示欢迎，但是还有很多问题尚未解决。关键在于，草案将会增加对于故意侵犯专利权行为的罚款，赔偿数额将是权利人损失、侵权人获利或专利许可费的一到五倍。

在难以计算具体的赔偿数额的情况下，法院可以酌情确定的赔偿额范围从现行的 1 万元人民币（1400 美元）到 100 万元人民币（141,000 美元）提高至 10 万元人民币（14,100 美元）到 500 万元人民币（705,000 美元）。虽然商会支持上调专利侵权的法定赔款，但草案中的规定合理性不足且缺乏可操作性。草案规定，专利侵权的赔偿只有在“故意专利侵权”和“情节严重的侵权”情况下才适用，但实际情况中很难界定和把握“严重侵权”的标准，这就限制了规定在实践中的效用。

草案将会给专利的管理和执法提供新的规定内容。在专利所有人或其他利害关系人的请求下，国家知识产权局将有权处理专利侵权纠纷。地方知识产权局可在其管辖范围内的专利所有人或其他利害关系人请求下，处理专利侵权纠纷，还可以合并审理涉及同一专利的案件。若同一专利在不同地区发生多起侵权案件，应由上级专利局一并处理。

商会认可中国在打击专利侵权方面的决心。但同时建议，行政部门（如国家知识产权局）在专利执法领域的作用应当逐步弱化。草案赋予行政部门，尤其是地方部门更大的专利实施权限，但商会担心这可能会导致滋

Patents

Legislative Developments

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

- Significantly increase damages and fines for willful patent infringement and counterfeit activity,
- Stipulate the burden of proof on accusers,
- Clarify that network service providers bear joint liability for network-based patent infringements,
- Establish a new patent open license system,
- Create an incentive mechanism for patent inventors and designers to reasonably share the profits stemming from the invention,
- Provide for the design of an innovative drug compensation system that lasts for the duration of the patent rights, and
- Address partial design patent rights for the first time, with the design patent term to be extended from 10 to 15 years.

We witnessed no further movement on the Draft Amendment in 2019. While AmCham China welcomed many of the proposed changes, other issues remain unaddressed. Importantly, the Draft Amendments would increase the financial penalties for willful infringement of patent rights. The amount of compensation owed is determined within a range of one to five times the calculated losses suffered by the patentee, the benefits obtained by the infringer, or a multiple of the patent license fee.

In situations where it is challenging to calculate the exact compensation owed, the range of discretionary compensation that can be imposed by the court system would be increased from a range of RMB 10,000 (US \$1,400) to RMB 1 million (US \$141,000) to a range of RMB 100,000 (US \$14,100) and RMB 5 million (US \$705,000). Although AmCham China welcomes the increase in statutory damages for patent infringement, the provisions in the Draft Amendment are neither reasonable nor practicable. According to the Draft Amendments, damages for patent infringement are applicable only for “willful patent infringement” and “infringement in serious circumstances.” It is challenging to define and operationalize “serious infringement,” limiting its effectiveness in practice.

The Draft Amendment would provide new provisions for patent administration and enforcement. NIPA would be authorized to handle patent infringement disputes upon request of the patent owner or other interested parties. The local IP offices may handle patent infringement disputes upon request of the patent owner or an interested party

within their jurisdiction and may jointly adjudicate cases relating to the same patent. Multiple cases of infringement on the same patent in different regions are to be handled together by higher level patent offices.

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

Draft Amendment Article 6 would include new provisions for inventors/designers to share property incentives by, for instance, adopting equity, options or dividends to encourage them to share profits and promote the use of new inventions and creations.

AmCham China believes that Article 6 will do more harm than good. Article 16 of the *Patent Law* already stipulates that the entity granted patent rights must reward the inventor/designer of service inventions or creations. Moreover, the use of the term “property incentive” could lead the inventor/designer to believe such incentives are mandatory, raising the likelihood of disputes. AmCham China therefore recommends that Article 6 be deleted.

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

The *Foreign Investment Law* was enacted by the NPC on March 15, 2019 and came into force on January 1, 2020. Article 22 of the *Foreign Investment Law* stipulates that the State shall protect the IP rights of foreign investors and FIEs in accordance with law, protect the legitimate rights and interests of IP rights holders and related parties, and encourage technical cooperation based on voluntary principles and commercial considerations. The specific conditions for such technical cooperation are to be determined by the parties involved. Article 22 explicitly prohibits Chinese administrative organs

生地方保护主义，不利于建立有效的知识产权保护制度。此外，商会认为专利侵权相关的判决（尤其是发明专利）往往涉及十分复杂的技术问题，而地方专利部门缺乏专业的人员和资源，可能会导致争端解决结果不佳或不合规。因此，由能够胜任的知识产权法院来处理专利纠纷和维护专利权是至关重要的。

草案第六条还增加了新规定，发明人或设计人可以采用股权、期权或分红作为产权激励，以此鼓励他们分享收益，促进新发明的使用。

商会认为第六条弊大于利，因为《专利法》的第十六条已经规定，被授予专利权的单位必须奖励职务发明创造的发明人、设计人，此外，“产权激励”一词可能会使发明人/设计人误以为此种激励是强制性的，从而增加发生纠纷的可能性。因此，商会建议删除第六条。

遗憾的是，本草案仍未解决现行专利制度中一直存在的重要问题，例如专利无效宣告程序、专利行政审查程序、和专利侵权民事诉讼特别程序均缺乏明确规定的问题仍未解决，而且由长期保护和维护专利权的高昂成本所引发的问题目前仍然悬而未决。商会认为这些问题需要通过立法解决，否则中国专利权保护制度的全面发展将会受阻。

2019年3月15日，全国人大颁布《外商投资法》，并已于2020年1月1日起正式生效。该法第二十二规定，国家应当依法保护外国投资者和外商投资企业的知识产权，保护知识产权权利人和相关权利人的合法权益，并鼓励基于自愿原则和商业规则开展技术合作。技术合作的具体条件由参与各方共同决定。第二十二条明确禁止中国行政机关及其工作人员利用行政手段强制转让技术。

2019年5月25日，国家知识产权局局长申长雨表示，中国正在同世界知识产权组织（WIPO）谈判，加入海牙国际外观设计保护体系。商会会员对此类进展喜闻乐见，因为这将会为来自海牙体系缔约国的外国申请人在中国保护其外观设计专利提供一个便利的选项。

司法进展

2018年10月26日，全国人大通过《全国人民代表大会常务委员会关于专利等知识产权案件诉讼程序若干问题的决定》（以下简称“决定”），该决定已于2019

年1月1日正式生效。

决定规定，当事人对专业技术性较强的知识产权民事案件（包括发明专利、实用新型专利、植物新品种、集成电路布图设计、计算机软件）的第一审判决、裁定不服、提起上诉的，由最高人民法院审理。2018年12月29日，第十三届全国人大常委会第七次会议任命了最高人民法院知识产权法庭庭长、副庭长和法官。

商会认可中国设立最高人民法院知识产权法庭，该法庭的设立将统一知识产权案件裁判标准、减少地方干预、加强知识产权司法保护。与此同时，商会又担心会有大量一审上诉案件涌入最高人民法院知识产权法庭，这可能会造成其审判人员案件压力巨大、上诉案件审理周期拉长及上诉案件的积压。因此呼吁最高人民法院采取更多切实可行的措施以解决这些问题。

2018年12月13日，最高人民法院发布了《最高人民法院关于审查知识产权纠纷行为保全案件适用法律若干问题的规定》（以下简称“行为保全规定”），该行为保全规定于2019年1月1日正式生效，共21条，内容包括了：

- 程序性规则，包括申请主体、管辖法院、申请书及载明事项、审查程序、复议流程等；
- 实体性规则，包括行为保全必要性的考量因素、行为保全措施的效力期限等；
- 行为保全申请有错误的认定及因申请有错误引发的赔偿，及行为保全措施的解除；
- 如何处理同时申请不同类型的行为保全，或与以前司法解释有关的案件，以及申请费等行政事项。

商会认可该行为保全规定可能会对法院系统层面知识产权保护起到支持作用。同时，商会也认同行为保全规定应该能够发挥一定作用，但是目前其落实不够到位。商会促请中国法院在其审理的案件中将行为保全规定落在实处，以免使其成为“花瓶”制度。

2019年3月18日，最高人民法院发布《关于技术调查官参与知识产权案件诉讼活动的若干规定》（以下简称“规定”），该规定已于2019年5月1日起正式生效。规定明确指出，技术调查官需要特定技术背景的专业人员，通过对技术事实进行调查和向法官提供建议来协助案件审理，而非具有司法权威的个人。规定扩大了

and their staff from using administrative means to force the transfer of technology.

On May 25, 2019, NIPA Director Shen Changyu stated that China is negotiating with the World Intellectual Property Organization (WIPO) to join the Hague System for the international protection of industrial designs. AmCham China members would welcome such development, as it would provide foreign applicants from country parties of the Hague System a convenient option to protect their design patents in China.

Judicial Developments

On October 26, 2018, the NPC adopted the *Decision of the Standing Committee of the NPC on Several Issues concerning Judicial Procedures for Patent and Other IP Cases* (the Decision), effective January 1, 2019.

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

AmCham China recognizes China's efforts in establishing an SPC IP court, unifying the criteria for adjudicating IP cases, reducing the propensity for interference by local officials, and strengthening IP protection within the court system. At the same time, AmCham China is deeply concerned that a flood of first-instance appeals to the SPC IP court could overwhelm its judges, consequently lengthening the appeal period and creating a backlog of appeals and cases. We urge the SPC to introduce more practical measures to address these concerns.

On December 13, 2018, the SPC issued the *Provisions on Several Issues Concerning the Application of Law in Examining Cases Involving Act Preservation in IP Disputes* (Act Preservation Provisions), which came into effect on January 1, 2019 and consist of 21 provisions covering:

- Procedural rules, including the subject of the application, the court of jurisdiction, specific matters in the application, review procedures, and the reconsideration process,
- Substantive rules detailing the factors to be considered in determining the necessity of act preservation, and the validity period of any related action preservation measures,
- The identification of lawsuits where action preservation was incorrectly filed and compensation applied, or where act preservation measures were discontinued,

and

- How to handle applications concurrently filed for preservation or where the case is connected to a previous interpretation, as well as administrative matters like application fees.

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

On March 18, 2019, the SPC issued the *Several Provisions on Technical Investigators' Participation in Legal Proceedings of Intellectual Property Cases*, effective May 1, 2019. The provisions make clear that technical investigators are professionals with specific technical backgrounds who are designed to support a trial in its investigation of technical facts and advise the judge, rather than individuals with judicial authority. The provisions enlarge the scope of cases permitted to include technical investigators (from the IP courts to all courts that hear IP-related cases including administrative, civil, and criminal cases). The provisions provide for the principle of non-disclosure with respect to technical investigation opinions and support provided, liability of technical investigators, and the system used to share these investigators among different courts. There are, however, some continuing challenges. The Provisions do not make clear how a particular technical investigator is to be matched with a specific field or how the use of technical specialists should be coordinated with other technical fact-finding methods such as judicial appraisal or the use of expert assistants. Overly broad application of the non-disclosure principle could undermine the right to a fair trial and may potentially cast a shadow over elements of the fact-finding process.

Administrative Developments

On March 1, 2019, the amended *Regulations on Patent Agencies* came into effect. The regulations relax patent agent/agency qualifications, simplify the examination and approval process to establish patent agencies, and offer legal services in patent law for SMEs and other low-income groups, and increase efforts to curb the activity of unauthorized patent agents. On April 4, 2019, the State Council rendered the *Measures for the Administration of Patent Agencies* (2019 Amendment) effective May 1, 2019. The Measures provide additional detail on how patent agency qualifications are to be relaxed and how the examination and approval process is to be simplified.

AmCham China is deeply concerned about the reforms that relax the restrictions on patent agencies and the licensing of patent agents. We fear such action will contribute to the proliferation of low-quality agents and agencies in the

允许技术调查官参与的案件范围（从知识产权法院到审理知识产权相关案件的所有法院，包括行政民事和刑事案件）。规定明确了技术调查意见不对外公开、规定了技术调查官的责任以及不同法院之间共享技术调查官的机制。然而，目前还存在某些长期性挑战。规定中并未明确说明如何将特定技术调查官与特定领域相匹配，以及如何将技术调查官与其他事实查明机制如司法鉴定或专家辅助人等相协调。保密原则应用范围过广可能会损害公平审判原则，并可能给事实调查过程的各方面蒙上阴影。

行政进展

2019年3月1日，修订后的《专利代理条例》开始施行，该条例降低了专利代理人/代理机构的执业准入门槛，简化了建立专利代理机构的审批流程，为中小企业及其他低收入群体提供专利法律服务，并进一步加强打击“黑代理”的打击。2019年4月4日，国务院发布《专利代理管理办法（2019年修订版）》，并已于2019年5月1日正式生效。该办法对如何放宽专利代理机构准入资格、简化审批程序等作了补充规定。

商会对放宽专利代理机构限制和专利代理人许可的改革深感不安。担心此类行动会导致行业内充斥低水平的代理人和代理机构。专利法是技术性极强要求极高的领域。商会建议国家知识产权局采用其他长期的措施以满足行业需求和保证市场专业合格的专利人才的供应。当前的改革只是一时之计，并未解决根本问题。

关于国家知识产权局在专利审查方面所做的工作，商会仍然担心审查人员在驳回发明专利申请时对“本领域公知常识”和通用技术术语的普遍使用。因此呼吁国家知识产权局减少、并最终清除被专利审查员所使用的、会导致申请在没有足够证据的情况下被驳回的、看上去主观及临时性专利审查方法。

2019年4月，国家知识产权局印发《集成电路布图设计审查与执法指南（试行）》（以下简称“指南”）。该指南明确规定了集成电路布图设计审查的准则和标准，并制定了认定相关侵权的标准以提高执法工作的水平。

2019年9月和12月，国家知识产权局两次修订《专利审查指南》，以满足行业要求和统一审查标准。2019年9月24日公布，并于2019年11月1日生效的指南

修改要点如下：

• 延期审查制度

修订版指南中引入新规，发明和外观设计专利的申请人可以申请将审查推迟一年、两年或三年，且申请延期的机会仅有一次。对于发明专利申请，延期申请应在实质审查申请时提出，对于外观设计专利申请，延期申请应在专利申请时一并提出。

• 创造性审查

修订案中强调，在确定发明是否真的能够解决某个技术问题，对于支持本发明功能的技术特征来说，审查人员必须整体考虑这些技术特征带来的技术效果及其技术特征之间的相互关系。此外，修订版指南规定，在一般情况下，如果审查员认为有助于解决技术问题的一项技术特征实际上属于该领域公知常识的话，该审查员应当提供相应的证据。

• 人类胚胎干细胞

修订前的指南规定，如果将人类胚胎用于工业或商业目的，人类胚胎干细胞的使用或制备不能申请专利，修订版指南允许利用了未经体内发育的受精14天内从人胚胎中提取的干细胞的发明/创造申请专利。制备人类胚胎干细胞的方法现在也可以申请专利。

2019年12月31日公布、并于2020年2月1日正式生效的修订版审查指南只包括了一个涉及新行业发明的审查的章节，包括人工智能、“互联网+”行业、大数据和区块链领域。该修订版审查指南通过新增一个章节以提供更详细的审查包含算法、算法特征或“商业规则，方法和其他脑力活动”的发明申请的指导。该修订版审查指南同时强调，专利审查应当关注权利要求中解决的技术问题，审查员不应当将一项权利要求中包含的技术特征、算法特征或商业规则及方法特征简单割裂。

2019年12月，国家知识产权局发布《专利侵权纠纷行政裁决办案指南》（简称“指南”），指南规定了确定专利侵权的标准，这些标准详细而且可操作性强，显示出国家知识产权局希望通过指南实现更高效的专利纠纷解决。

2020年3月5日，国家知识产权局公布2020年“工

industry. Patent law is a highly technical and demanding field; AmCham China recommends that NIPA pursue other, long-term methods to meet industry demand and ensure the supply of talented, qualified patent professionals. The current reform offers only temporary relief and does not address the underlying issues.

With respect to NIPA's patent examination efforts, AmCham China is still concerned about the widespread use of "common sense in the field" and common technical terms by examiners to reject patent applications for inventions. We urge NIPA to reduce and eventually eliminate the seemingly subjective and ad-hoc patent examination methods used by patent examiners that result in rejections without sufficient evidence for the rejection.

In April 2019, NIPA issued the *Interim Guidelines for Layout-Design of Integrated Circuits Examination and Enforcement*. The Guidelines specify the provisions on examination for criteria and standards for the layout-design of integrated circuits, as well as the criteria for determining the relevant infringements for enforcement protection purposes.

In 2019, NIPA amended the *Guidelines for Patent Examination* in September and again in December, attempting to meet industry requirements and unify the examination criteria. In the amendments announced on September 24 and effective November 1, the key revisions are:

- **Deferred Examination**
The amended Guidelines introduced a new procedure that allows applicants for invention and design patents to request deferred commencement of examination of their applications for a period of one, two, or three years. The applicants are given only one chance to request deferred examination. For invention patent applications, requests must be made at the time of filing the request for substantive examination. For design patent applications, requests must be made when the application is filed.
- **Examination of Inventive Step**
The amendment stresses that, when determining a technical problem is actually resolved by an invention, with respect to the technical features that support the functionality of the invention, the examiners must take into consideration the technical effect brought about by these technical features and their relationship as a whole. Moreover, the amended Guidelines stipulate that under normal circumstances, an examiner shall provide corresponding evidence if he/she deems that a technical feature that contributes to the resolution of a technical problem of a claimed invention is in fact common knowledge in the field.
- **Stem Cells from Human Embryos**
The previous version of the Guidelines provided that the use of human embryos for industrial or commercial purposes, and the use or preparation of human

embryonic stem cells cannot be patented. The revised Guidelines now permit inventions/creations using stem cells derived from a human embryo within 14 days of fertilization and grown in vitro to be patented. The methods used to prepare human embryonic stem cells can now also be patented.

The amendments announced on December 31 and effective February 1, 2020 contain only one section covering the examination of inventions related to new industries, such as artificial intelligence, "Internet plus" industries, Big Data, and blockchain. The amendments introduce a new section to provide more specific guidance regarding the examination of applications for inventions containing algorithms, algorithmic features, or "business rules and methods and other intellectual activities." The amendments emphasize that patent examination should focus on the claimed solution and the examiner shall not treat technical features, algorithmic features, or business rules and methods contained within one claim as separate from the claim.

In December 2019, NIPA issued the *Guidelines for Handling Patent Infringement Administrative Disputes*. The provisions of the Guideline stipulate the criteria for determining patent infringement. They are detailed and can be operationalized, underscoring NIPA's intention to use these Guidelines to address patent disputes efficiently.

On March 5, 2020, NIPA released its "key priorities in 2020," which include ❶ continuing to enhance the quality and efficiency of patent examinations, and aiming to limit the examination period to 16 months for invention patent applications and four months for trademark applications; and ❷ continuing to push to end the practice of providing government financial support for utility model patents, design patents, and trademarks.

Phase One Deal

After multiple rounds of negotiation, Vice Premier Liu He and President Trump signed the *Economic and Trade Agreement Between the United States of America and the People's Republic of China* on January 15, 2020 (Phase One Deal). The Phase One Deal marked a partial truce in the trade dispute between the US and China, in which the US agreed to relax some of the tariffs imposed on Chinese imports in exchange for certain commitments regarding purchases of American goods and services, removal of non-tariff barriers facing US agricultural goods, opening of financial services, and commitments to address IP issues of longstanding concern. The IP-related sections of the Phase One Deal are set out in Chapters 1 and 2, which cover certain "Intellectual Property" and "Technology Transfer" commitments. The principal commitments set out in these chapters consist of the following:

作重点”，包括 ① 继续提高专利审查质量和效率，力争将发明专利申请和商标申请的审查期限分别控制在 16 个月和 4 个月内；② 继续推动取消实用新型专利、外观设计专利和商标的政府资助。

第一阶段协议

2020 年 1 月 15 日，经过多轮谈判后，美国总统特朗普和中国副总理刘鹤共同签署《美国和中国经济贸易协议》（第一阶段协议）。第一阶段协议的签署标志着美中两国贸易争端的部分“休战”，美国同意放宽对中国进口商品的部分关税；相应地，中国也承诺扩大对美国商品的进口量，取消针对美国农产品的非关税壁垒，开放金融服务，并承诺解决长期存在的知识产权问题。第一阶段协议中与知识产权相关的内容集中在第一章和第二章，其中包括“知识产权”和“技术转移”相关的承诺，以下为这两章中承诺的主要内容：

第一章 知识产权

- 商业秘密：
 - 中国同意将“经营者”定义为包括所有自然人、组织和法人（第 1.3 条）；
 - 中国同意扩大“禁止行为”的范围，包括电子入侵、违反或诱导违反保密义务、以及在获取商业秘密后未经授权的披露或使用（第 1.4 条）；
 - 中国同意当有合理证据表明被告方侵犯商业秘密，将民事司法程序中的举证责任转移至被告方（第 1.5 条）；
 - 中国同意在出现事实认定的“紧急情况”时，采取临时措施来禁止使用商业秘密；
 - 中国同意取消任何将商业秘密权利人确定发生实际损失作为启动侵犯商业秘密刑事调查前提的要求（第 1.7 条）；
 - 中国同意采取措施来保护商业秘密免于政府机构的披露（第 1.9 条）。
- 药品相关的知识产权
 - 中国同意允许药品专利申请人依靠补充数据来满足可专利性的相关要求（第 1.10 条）；

- 中国同意为原研药企业建立行政或司法程序，例如专利链接制度，使其可以以自己的专利被仿制药公司侵犯为由，对仿制药公司的药品上市提出挑战（第 1.11 条）；
- 中国同意将专利链接制度延伸至生物药（第 1.11 条）。
- 专利：
 - 中国同意，对于审批原因造成的药品专利延迟，可以对专利期进行延长，包括药品生产方法权利和使用方法专利（第 1.12 条）。
- 电子商务平台上的盗版和假冒
 - 中国同意免除善意提交错误下架通知的责任，将权利人收到反通知后提出司法或行政投诉的期限延长至 20 个工作日，并对恶意提交反通知进行处罚（第 1.13 条）；
 - 中国同意打击主要电子商务平台上泛滥的假冒或盗版商品，并对屡次未能遏制假冒或盗版商品销售的电子商务平台进行吊销网络经营许可的处罚（第 1.14 条）。
- 地理标志：
 - 中国将与美国分享其与其他贸易伙伴交换的地理标志，以确保通用名称不受地理标志保护（第 1.15 条）；
 - 中国同意含有通用名称的复合名称不受地理标志保护（第 1.17 条）。
- 盗版和假冒产品的生产和出口：
 - 中国同意打击假冒药品和其他相关产品，包括活性药物成分和散装化学品（第 1.18 条）；
 - 中国同意打击存在健康和安全隐患的假冒商品（第 1.19 条）；
 - 中国同意在民事和刑事司法程序中采取措施以解决由海关部门销毁假冒产品的问题（第 1.20 条）；
 - 中国同意加强实体市场上针对盗版和假冒产品

Chapter 1 Intellectual Property

- Trade Secrets:
 - China agrees to expand the scope of definition of “operator” to include natural persons, groups of persons, and legal persons (Article 1.3),
 - China agrees to expand the scope of prohibited acts to include electronic intrusions, breach or inducement of a breach of a duty of confidentiality, and unauthorized disclosure or use after the acquisition of a trade secret (Article 1.4),
 - China agrees to shift the burden of proof in a civil dispute to the accused party when there is a reasonable indication of trade secret misappropriation (Article 1.5),
 - China agrees to provide provisional measures to prevent the use of trade secrets when the facts establish an “urgent situation,”
 - China agrees to eliminate any requirement that the holder of a trade secret establish actual losses as a prerequisite for initiation of a criminal investigation (Article 1.7), and
 - China agrees to adopt measures to protect trade secrets from disclosure by government authorities (Article 1.9).
- Pharmaceutical-Related IP:
 - China agrees to permit pharmaceutical patent applicants to rely on supplemental data to satisfy relevant requirements for patentability (Article 1.10),
 - China agrees to establish an administrative or judicial process, i.e., a patent linkage system, for an innovator to challenge a generic company’s market entry based on the generic company’s infringement of a patent held by the innovator (Article 1.11), and
 - China agrees to extend the patent linkage regime to biologics (Article 1.11).
- Patents:
 - China agrees to provide for patent term extensions due to regulatory delays for pharmaceutical patents, including patented methods of making and using pharmaceutical products (Article 1.12).
- Piracy and Counterfeiting on E-Commerce Platforms:
 - China agrees to eliminate liability for erroneous takedown notices submitted in good faith, extend the time period to 20 days for rightsholders to file an administrative or judicial response to a counter-notification, and penalize counter-notifications taken in bad faith (Article 1.13), and
 - China agrees to combat the prevalence of counterfeit or pirated goods on major e-commerce platforms and to revoke the operating licenses of e-commerce platforms that repeatedly fail to curb the sale of counterfeit and pirated goods (Article 1.14).
- Geographical Indications (GIs):
 - China will share with the US the lists of GIs it exchanges with other trading partners to help ensure that generic terms are not protected as GIs (Article 1.15), and
 - China agrees that multi-component terms that contain a generic term will not be protected as a GI (Article 1.17).
- Manufacture and Export of Pirated and Counterfeit Goods:
 - China agrees to act against counterfeit pharmaceuticals and related products, including active pharmaceutical ingredients and bulk chemicals (Article 1.18),
 - China agrees to act against counterfeit goods with health and safety risks (Article 1.19),
 - China agrees to adopt measures to address the destruction of counterfeit goods by customs authorities in civil judicial proceedings and in criminal proceedings (Article 1.20), and
 - China agrees to strengthen overall enforcement against pirated and counterfeit goods at its physical markets (Article 1.21 & 1.22).
- Bad-Faith Trademarks:
 - China agrees to strengthen trademark protection and ensure adequate and effective protection and enforcement of trademark rights (Article 1.24).
- Enforcement of Judgments:
 - China agrees to transfer cases from administrative authorities to criminal authorities when there is a reasonable suspicion based on articulable facts that a criminal violation has occurred (Article 1.26),
 - China agrees to establish civil remedies and criminal penalties to deter future intellectual property theft or infringements (Article 1.27),
 - China agrees to impose penalties at or near the

的整体执法力度（第 1.21 和 1.22 条）。

- 恶意商标：
 - 中国同意加强商标保护，确保商标权充分和有效的保护和执法（第 1.24 条）。
- 司法执行：
 - 中国同意在存在基于清晰事实的刑事违法行为的合理嫌疑时，要求行政部门将案件移交刑事执法（第 1.26 条）；
 - 中国同意规定民事救济和刑事处罚，来阻遏未来知识产权窃取或侵权（第 1.27 条）；
 - 中国同意在规定处罚范围内，将以接近或达到最高处罚的方式从重处罚，并随着时间推移提高处罚力度（第 1.27 条）；
 - 中国同意对判决进行迅速执行（第 1.28 条）；
 - 中国同意在著作权案例中采用推定所有权的方法，被诉侵权人需要证明其对受著作权保护的作品的使用是经过授权的（第 1.29 条）；
 - 中国同意引入当事人之间认可或以接受伪证处罚为前提的证人证言作为证据，并简化其他证据的公证程序（第 1.30 条）；
 - 中国同意使用专家证人的证言（第 1.31 条）。
- 双边知识产权保护合作：
 - 中国同意加大知识产权保护双边合作力度，推动在该领域的务实合作（第 1.33 条）；
 - 中国同意制定行动计划，履行协议知识产权章节的义务。
- 第二章 技术转让
 - 中国同意中美双方的自然人或法人能够有效进入对方管辖区，公开、自由地开展运营，而不会受到对方强迫或压力（第 2.1 条）；
 - 中国同意对于收购、合资或其他投资交易，不会要求或施压美国个人向中国个人转让技术（第 2.2 条）；

- 中国同意不将技术转让作为获取市场准入的条件，也不会采取或维持行政管理或行政许可要求来强迫技术转让，并对敏感技术信息保密（第 2.3 条）；
- 中国同意确保所有涉及美国个人的法律法规的执行是公正、公平、透明和非歧视性的（第 2.4 条）。

如本章所述，商会会员发现，第一阶段协议中确定的很多重要改变都已在中国政府最近的立法和司法中得以实施，或已被指定包括在即将出台的立法、司法和/或行政改革计划中。但是，在第一阶段协议的文本中，还有一些对未来的承诺确实是“前所未有”的，例如关于药品专利保护以及关于民事判决执行的一些新承诺。

尽管如此，商会会员仍然认为，提升司法执行水平和提高侵权的民事赔偿的机会已经错失，而第一阶段协议就像是在提醒这一遗憾。为此所付出的未来改革承诺也仅仅浮于表面，而且模棱两可。商会成员提出的担忧主要包括：

- 在临时禁令中引入“紧急情况”标准的做法用意不明，而且似乎与现有的“难以弥补的损害”标准相冲突。这样只会给侵犯商业秘密的案件中临时措施的可用性带来更大的不确定性；
- 第一阶段协议中除了上文提到了药品专利相关内容，并不包含专利相关的承诺；
- 协议几乎没有提到如何解决惩罚性赔偿的问题，也并没有提及法院在知识产权民事案件中长期判定低法定赔偿额的这一做法；
- 第一阶段协议并未要求中国采取何种具体措施，以解决恶意注册商标的问题；以及
- 鉴于中国不接受“以接受伪证处罚为前提”认证文件，第 1.30 条中证人证言的内容尚不明晰。

第 1.35 条要求中国制定“行动计划”来实施第一阶段协议中的知识产权规定。商会会员希望该“行动计划”能够解决本文提到的一些遗留问题和明确各个存疑的含混之处。商会会员很高兴第一阶段协议考虑到了重启与一些美国政府部门的合作项目，包括美国专利商标局。

- maximum when a range of penalties is provided and to increase penalties over time (Article 1.27),
 - China agrees to provide for expeditious enforcement of judgments (Article 1.28),
 - China agrees to provide for a presumption of ownership in copyright cases and require the accused infringer to demonstrate that its use of a work protected by copyright is authorized (Article 1.29),
 - China agrees to introduce evidence through stipulation or witness testimony under penalty of perjury, as well as requiring streamlined notarization procedures for other evidence (Article 1.30), and
 - China agrees to permit expert witness testimony (Article 1.31).
- **Bilateral Cooperation on Intellectual Property Protection:**
 - China agrees to strengthen bilateral cooperation on the protection of intellectual property rights and promote pragmatic cooperation in this area (Article 1.33), and
 - China agrees to adopt an action plan to implement the IP chapter of the Deal.

Chapter 2 Technology Transfer

- China agrees that natural or legal persons of both China and the US will have effective access to and be able to operate openly and freely in each other’s jurisdiction without any force or pressure (Article 2.1),
- China agrees that it will not require or pressure persons of the US to transfer technology to its persons in relation to acquisitions, joint ventures, or other investment transactions (Article 2.2),
- China agrees that it will not require technology transfer as a condition of market access, or adopt or maintain administrative or licensing requirements to compel technology transfer, and agrees to maintain the confidentiality of sensitive technical information (Article 2.3), and
- China agrees to ensure that any enforcement of laws and regulations with respect to persons of US is impartial, fair, transparent, and non-discriminatory (Article 2.4).

As discussed throughout this chapter, AmCham China members have observed that many of the important changes set forth in the Phase One Deal had already been implemented by the Chinese authorities in recent legislative and judicial developments, or were earmarked for inclusion

in forthcoming legislative, judicial and/or administrative reform initiatives. There are, however, a number of welcome prospective commitments in the text of the Phase One Deal that are indeed “new”, such as those related to the protection of pharmaceutical patents, as well as some novel commitments for the enforcement of civil judgments.

AmCham China members, however, view the Phase One Deal as the memorialization of a missed opportunity to upgrade judicial enforcement and enhance civil compensation for infringements at the expense of some fairly shallow and ambiguous commitments to future reform initiatives. Some concerns voiced by AmCham China members include the following:

- The introduction of an “urgent situation” standard for preliminary injunctions is ambiguous and seems to conflict with the current standard of “irreparable harm,” and thus only introduces further uncertainty around the availability of preliminary measures in cases involving the misappropriation of trade secrets,
- The Phase One Deal does not include any patent-related commitments other than those related to pharmaceutical patents discussed above,
- There is little or no treatment of the issue of punitive damages, and no acknowledgment of the longstanding practice of the courts to issue low statutory damages in IP civil cases,
- The Phase One Deal requires no specific action by China to address the issue of bad faith registration of trademarks, and
- As China does not accept the concept of authenticating a document “under penalty of perjury,” it is unclear what is contemplated for witness testimony under Article 1.30.

Article 1.35 requires that China adopt an “Action Plan” to implement the IP provisions of the Phase One Deal. AmCham China members are hopeful that this “Action Plan” will address some of the remaining issues and ambiguities discussed herein. AmCham China members are also pleased to see that the Phase One Deal contemplates a resumption of cooperative programs with US government agencies, such as the US Patent and Trademark Office.

Recommendations

For the Chinese Government:

- **Establish a clear process for the filing of complaints and the issuance of deterrent-scale administrative fines against trademark applicants which file third-party trademarks in bad faith.**

建议

对中国政府：

- 建议针对恶意申请第三方商标的商标申请人，建立清晰的申诉程序，并设定具有足够威慑性的行政罚款金额。
- 积极履行第一阶段协议中保护知识产权的承诺，取消以技术转让作为获取市场准入的条件，制定并发布行动计划以尽快履行承诺。
- 加快完成对《著作权法》的修订，对《刑法》进行修订，对企业终端用户盗版行为追究刑事责任，降低刑事犯罪入罪门槛；对盗版行为实施更有力的民事救济，包括现行法规和指南中承诺的惩罚性赔偿，并明确将盗版软件商用定为犯罪。
- 加强专利纠纷的司法处理，避免在修订《专利法》时扩大行政部门的专利执法权。鉴于专利问题对技术水平的要求不但高而且复杂，因此需确保专利纠纷由法院系统解决，包括专门处理知识产权问题的法院。确保对所有的判决及裁定的公开。
- 与现行的其他知识产权相关法律保持一致，制定专门的《商业秘密法》，并允许法院在民事和刑事诉讼中制定保护商业秘密的书面指导。

对美国政府：

- 共享美国联邦级别和州级别《商业秘密法》的实践经验以及国家商业秘密战略。
- 在第二阶段的谈判中继续优先处理知识产权保护方面的遗留挑战，包括加强司法执行、强化知识产权侵权的民事赔偿。

- Expediently implement the commitments made as part of the Phase One Deal to protect intellectual property and remove any prerequisites for technology transfers as a basis for market entry. Develop and promulgate an Action Plan to fulfill these commitments as soon as possible.
- Finalize the *Copyright Law* amendments in an expedited manner, reform the *Criminal Law* to provide criminal liability for enterprise end-user piracy, lower criminal thresholds, implement stronger civil remedies against piracy including promised punitive damages in current regulations and guidelines, and expressly criminalize the commercial use of pirated software.
- Strengthen the judicial process for patent disputes and avoid expanding administrative enforcement of patents in amendments to the *Patent Law*. Ensure that patent disputes are resolved by the court system including courts that specialize in IP issues given their highly technical and complex nature. Ensure that all decisions be made public.
- Create a stand-alone trade secrets law in correspondence with existing laws governing other IP rights, and permit the courts to establish written guidelines on the protection of trade secrets in civil and criminal litigation.

For the US Government:

- **Share best practices from US federal and state trade secrets laws and national trade secrets strategy.**
- Continue to prioritize remaining challenges with respect to IP protection including strengthening judicial enforcement and enhancing civil compensation for IP infringement as part of any phase two negotiations.

Investment Policy

American companies have long been a part of China's development story, and the members of AmCham China are proud of their contributions to China's economic development and rise on the world stage. Nevertheless, 2019, the centenary of AmCham China's founding, was again a complex year for American companies doing business in China. Our members have long advocated for strong economic relations between the United States and China and were gratified to see a partial resolution of outstanding issues both through bilateral negotiations and domestic reforms in China. Nevertheless, tensions remain between our two countries on the economic as well as other fronts. Our members hope that the *Economic and Trade Agreement between the United States and China* (Phase One Deal) as well as the enactment of the new *Foreign Investment Law* and other reforms will result in real progress in establishing a level playing field in which domestically-invested and foreign-invested enterprises (FIEs) compete on a level basis in all markets other than a limited number in which narrowly defined national security concerns limit participation by FIEs. AmCham China and its members remain ready to support the Chinese government in implementing its commitments and undertaking even deeper substantive and procedural reforms, including further narrowing China's foreign investment negative lists. Our commitment includes the continuing willingness to provide substantive input and assistance to China's legislative, administrative and regulatory authorities at various levels on the needs of foreign investors and international best practices.

While we are encouraged by the improvements that have already been made or are in progress, our members still have longstanding concerns. Many of these are reflected in AmCham China's *2020 Business Climate Survey* (BCS) including market access restrictions and uncertainty with respect to regulatory provisions and bias in enforcement. Our members continue to note challenges related to intellectual property rights – including gaps in regulatory protection and involuntary technology transfer as a condition of market access, and express concerns regarding the intrusiveness and adverse impact of China's unnecessarily restrictive cybersecurity policies and requirements as well as the need to comply with Chinese national standards that are often labeled as GB/T or recommended, but are in practice mandatory within China.

The use of a range of policy tools to implement the Chinese government's industrial policy imperatives creates an uneven playing field for foreign companies competing against domestic competitors and goes to the heart of concerns about the compatibility of China's economic system with international norms. AmCham China members play an important role in advancing China's economic goals, including the development of an innovation-led, consumption-driven economy with a growing service sector. We believe, however, that industrial policy which discriminates against foreign companies ultimately makes a country less innovative because it discourages foreign investment, thereby reducing competition and arousing hostility to entry by its own companies into foreign markets.

When it comes to such metrics as transparency, fair competition, market access, and IPR protection, foreign investors enjoy significantly better treatment in the US than foreign investors do in China. Such asymmetry has resulted in growing calls in the US and other major markets to restrict Chinese investment based on principles of reciprocity and national security.

AmCham China ultimately believes that a strong Chinese economy is beneficial to a strong global, including US, economy. As China seeks to transition to an innovation-led, consumption-driven economy with a growing service sector, global collaboration in R&D and cross-border manufacturing ecosystems and technological cooperation will become even more essential. Establishing and maintaining a level playing field for foreign investors alongside domestic investors is critical in this regard. We therefore encourage the Chinese government to make greater efforts in its own interest to expand dialogue with the foreign business community in China and take concrete steps to address the community's concerns.

Inbound and Domestic Investment

AmCham China members and other foreign investors make substantial contributions to the Chinese economy. The Ministry of Commerce (MOFCOM) reported that foreign investment in China grew by 2.4 percent in US dollar terms in 2019, with 41,000 new FIEs established despite trade friction (a decrease of 32 percent as compared to the 60,533 in 2018).

投资政策

长 期以来，美国企业一直是中国发展的一部分，中国美国商会会员企业为其对中国经济腾飞和中国在世界舞台上的崛起做出的贡献而感到自豪。2019 年是中国美国商会成立一百周年，不过，这一年对在华美国企业来说又是复杂的一年。商会会员企业长期以来一直主张中美保持稳健的经济关系，并高兴地看到两国通过双边谈判、中国通过在国内开展改革来解决部分悬而未决的问题，但是两国在经济等领域仍然局势紧张。商会会员希望中美第一阶段经贸协议的签署以及新版《外商投资法》的颁布能够取得实质性进展，建立一个公平竞争的环境，保证内资企业和外资企业能够在所有市场上都公平竞争，不受少数狭隘定义的国家安全相关市场影响限制外资企业参与。商会及其会员将继续支持中国政府履行承诺，开展更深层的实质性、程序性改革，如进一步缩减中国外商投资负面清单。商会承诺继续就外商投资者的需求和国际最佳实践，向中国各级立法、行政和监管机构提供建设性的意见和支持。

虽然中国的外商投资环境已经有了一定改善，并且未来会有更多的改革，商会备受鼓舞，但是长期的商业挑战仍继续存在。根据 2020 年商会《中国营商环境调查报告》，市场准入限制以及法律规定的不确定性和执法不一仍是重大挑战。商会会员再次提到与知识产权相关的挑战，包括法规保护的空白和强制技术转让作为市场准入的条件，并表示担心中国不必要的网络安全政策限制造成干扰和负面影响，此外中国要求或企业需要遵守 GB/T 或其他推荐性标准等国家标准，但实际上在中国却是强制性执行。

中国政府采用一系列政策工具来实施产业政策规定，为与中国公司竞争的外国企业创造了不公平的竞争环境，这正是会员担忧中国经济体系与国际规范是否兼容的关键。商会会员始终并将继续在中国创建创新型经济过程中发挥重要作用。然而，产业政策区别对待外国

企业最终会导致中国的创新力下降，因为这样会抑制外商投资，为本国企业进入外国市场竖立敌意。

就透明度、公平竞争、市场准入和知识产权等指标而言，外国投资者目前在美国享受的待遇比在中国的待遇要好很多。这种不对称导致美国和其他司法管辖区不断加强呼吁本着对等、国家安全的原则限制中国投资。

总而言之，商会认为强盛的中国经济对美国 and 全球经济保持强劲增长至关重要。随着中国向创新、消费型经济转型，推动服务业增长，全球在研发、跨境制造生态系统和技術合作方面的协作将变得更加重要。就此而言，建立并维护中外企业公平竞争的环境至关重要。商会鼓励中国政府扩大与中国外国商界的交流，采取具体措施来解决这些长期存在的问题。

外来投资和国内投资

商会会员和其他外商投资者继续为中国经济发展做出重大贡献。根据商务部通报的 2019 年商务工作及运行情况，2019 年，中国实际利用外资以美元计增长了 2.4%，全年新设外资企业数量新增 41,000（对比 2018 年新增的 60,533 降低了 32%）。

国家主席习近平近年来在多个重要场合表示中国会继续进一步推进对外开放。习主席在 2018 年 4 月博鳌亚洲论坛上表示“中国开放的大门不会关闭，只会越开越大”。2018 年，习主席在中国国际进口博览会上再次强调中国推动更高水平开放的脚步不会停滞。2019 年 4 月，习主席在第二届“一带一路”国际合作高峰论坛上宣布，下一步，中国将采取一系列重大改革开放举措，加强制度性、结构性安排，促进更高水平对外开放。2019 年 11 月，习主席宣布了持续推进中国更高水平对外开放的五方面措施：① 继续扩大市场开放；② 继续完善开放格局；③ 继续优化营商环境；④ 继续深化多

Party General Secretary Xi Jinping stated on several prominent occasions that China would continue its further open to outside in recent years. At the Boao Forum for Asia in April 2018, Xi Jinping indicated that “China’s door to openness will not be closed, it will on the contrary, open wider.” Xi Jinping further stressed at the first China International Import Expo held in November 2018 that China will not stagnate in promoting higher levels of openness. In April 2019 Xi Jinping announced at the Second “Belt and Road” International Cooperation Summit, that China will adopt a series of major reform and opening up measures, strengthen institutional and structural arrangements, to promote higher levels of opening-up. Xi Jinping further announced in November, 2019 five measures for China to continue to promote higher levels of opening up: ❶ continue to expand market opening; ❷ continue to improve the opening pattern; ❸ continue to optimize the business environment; ❹ continue to deepen multilateral and bilateral cooperation; and ❺ continue to promote joint construction of the “Belt and Road”.

Premier Li Keqiang stated in his Government Report at the Second Session of the 13th National People’s Congress in March 2019 that China will further narrow the foreign investment negative lists, add new areas to the Shanghai Pilot Free Trade Zone; and continue to promote China-US economic and trade negotiations.

Enactment of the Foreign Investment Law

The National People’s Congress (NPC) enacted the new Foreign Investment Law (FIL) on March 15, 2019 effective January 1, 2020. The FIL replaces the three older laws governing foreign (≥25 percent)-invested enterprises: the *Sino-Foreign Equity Joint Venture Law*, *Sino-Foreign Cooperative Joint Venture Law* and *Wholly Foreign-Owned Enterprise Law*, subjecting such enterprises to the *Company Law* which had previously applied only to domestically (>75 percent)-invested enterprises. Foreign investment in partnerships and foreign-invested companies limited by shares, i.e., without creating a formal joint venture, are also governed by the FIL. FIEs will henceforth be governed like domestic companies by the *Company Law*, although FIEs established prior to enactment by the FIL will be allowed up to five years to conform their structure to the requirements of the *Company Law*.

The FIL as a general principle promises equal treatment for foreign- and domestically-invested enterprises, although the distinction based upon the nationality of shareholders (foreign v. domestic) is retained. Future foreign investment is made subject to a pre-establishment national treatment regime in which foreign investments are to be treated the same as purely domestic investments and are no longer to be subject to a foreign investment approval requirement. They are instead to be subject only to a procedural recordation requirement.

The only exceptions apply to foreign investments in those industries in which foreign investment is subject to market entry review on national security grounds or prohibited under the *Market Access Negative Lists*. The Negative Lists replace the *Guidance Catalogue on Foreign Investment in Industry* which categorized industries as Encouraged, Restricted or Prohibited to foreign investment, with all other industries open to foreign investment without explicit eligibility for incentives. The scope of industries covered in the Negative Lists have narrowed since their initial 2016 version and in the 2019 edition are now limited to 16 industries in six sectors. A narrower Hong Kong Negative List or its Macau counterpart may be available to US and other foreign investors which qualify as Hong Kong investors under the *Closer Economic Partnership Arrangement Investment Agreement* (CEPA) between mainland China and Hong Kong or between the mainland and Macau. Premier Li Keqiang called for a further narrowing of the Negative Lists and increase incentives for foreign investment at the March 10, 2020 meeting of the Executive Meeting of the State Council, possibly spurred in part by efforts to accelerate economic growth in the wake of the COVID-19 epidemic.

More specifically, the FIL specifies four systems for administering foreign investment applications: ❶ market entry review system with respect to industries on the foreign investment negative list; ❷ a recordation system for information reporting purposes; ❸ a forthcoming system for registering and processing complaints by foreign investors regarding unfair treatment; and ❹ a national security review system which is to be more formal than the system established by regulation in 2011.

Equal treatment for FIEs is to apply expressly to funding arrangements, applications for land use, tax incentives, qualifications and permits, participation in mandatory standard setting, project announcements and human resources policies, but the expectation is that such treatment would also apply to other areas of government policy.

With respect to IP, the prohibition against compulsory technology transfers and the protection for commercial secrets shared with government authorities are enshrined in statutory form.

Enactment of the FIL may be responsible in part for the improvement in sentiment among AmCham China members with respect to foreign investment as reported in the BCS. Questions remain, however, about implementation of the FIL, including:

- Although the FIL promises equal treatment for FIEs, it is unclear how that will operate in practice, especially but not only in industries where state-owned enterprises (SOEs) are predominant.
- With the exception of IP disputes, especially administrative litigation, foreign investors for fear of retribution have generally been reluctant to seek formal redress

双边合作；**5** 继续推进共建“一带一路”。

2019年3月十三届全国人大二次会议，国务院总理李克强在政府工作报告中明确，中国将大幅压缩外资准入负面清单，增设上海自贸试验区新片区，继续推动中美经贸磋商。

《外商投资法》颁布

全国人大于2019年3月15日通过了新的《外商投资法》，自2020年1月1日起施行。《外商投资法》取代了原有的“外资（≥25%）三法”：《中华人民共和国中外合资经营企业法》（“《合资企业法》”）、《中华人民共和国中外合作经营企业法》（“《合作企业法》”）和《中华人民共和国外资企业法》（“《外资企业法》”），之后设立的此类企业均适用《公司法》，而在此之前，《公司法》仅适用于中国国内投资（>75%）的企业。外商投资合伙企业和股份有限公司，在没有建立正式合资企业的情况下，也受《外商投资法》的管辖。此后，外商投资企业将像国内公司一样受《公司法》管辖，不过，在《外商投资法》颁布之前设立的外商投资企业，将有最多五年的过渡期，按照《公司法》的要求调整组织结构。

《外商投资法》作为整体原则，承诺对外资和内资企业一视同仁，但仍保留了股东国籍的差别（外资与内资）。今后对外商投资实施准入前国民待遇制度，其中外国投资必须同纯国内投资待遇相同，而且不再受到外国投资核准规定的限制；相反，只受程序记录备案要求的约束。

外商投资的唯一例外情况是以国家安全为由受到市场准入审查或市场准入负面清单禁止的行业。《外商投资产业指导目录》将外商投资产业准入归类为鼓励类、限制类、禁止类产业，其他产业向外商投资开放，但没有明确的优惠条件，现在负面清单取代了《外商投资产业指导目录》。自2016年首次发布负面清单以来，列入负面清单的行业范围已经缩减，2019年的负面清单限制在6个领域的16个行业。根据《内地与香港关于建立更紧密经贸关系的安排》或《内地与澳门关于建立更紧密经贸关系的安排》（《安排》）的规定，符合香港投资者要求的美国及其他外国投资者，可适用范围较窄的香港负面清单或澳门负面清单。李克强总理在2020年3月10日的国务院常务会议上呼吁进一步缩减外商投资准入负面清单，增加对外商投资的优惠，一定程度上是

因为新冠肺炎疫情之后为刺激经济加快增长而采取的措施。

具体而言，新版《外商投资法》规定了管理外商投资的四个制度：**1** 外商投资负面清单行业市场准入审查制度；**2** 信息报告制度；**3** 即将建立的外商投资企业投诉工作机制，记录处理外商投资者反映的不公平待遇问题；**4** 以及国家外商投资安全审查制度，比2011年规定的制度更加正式。

外商投资企业的平等待遇明确适用于资金安排、土地使用申请、税收优惠、资格和许可证、参与强制性标准制定、项目宣布和人力资源政策，但预期平等待遇也适用于政府政策的其他方面。

关于知识产权，法规明确规定不得强制转让技术，政府行政机关履行职责过程中知悉的商业秘密应予以保护。

《外商投资法》的颁布一定程度上改善了商会会员企业在华投资感受，这在营商环境调查报告中有所体现。但是，关于《外商投资法》的实施仍存在问题，包括：

- 尽管《外商投资法》承诺平等对待外商投资企业，但目前尚不清楚在实践中如何操作，尤其是在国有企业占主导地位的行业。
- 除了知识产权纠纷（尤其是行政诉讼）外，外国投资者由于担心遭到报复，通常不愿在其认为受到不公平待遇时寻求正式赔偿。目前尚不清楚《外商投资法》要求建立的外商投资企业投诉机制是否能解决不愿申告的问题。但《外商投资法》尚未就投诉机制详细说明。
- 在知识产权方面，新法规定要保护政府机关在履行职责时知悉的商业秘密，虽然会员企业对此表示欢迎，但是这不一定能完全解决因政府认证要求提交大量技术信息而引发的担忧。中国对推荐性(GB/T)标准的日益依赖可能会对参与强制性标准制定的权利有所损害，事实上，这些推荐性标准在中国的商业活动中往往是强制性的。禁止强制技术转让不一定能减轻外国投资者广泛推广其技术的压力。
- 《外商投资法》还呼吁扩大特殊经济区域的作用，通过各种激励措施吸引外国投资者。2018年，特殊经济区域的数量从最初的4个直辖市增加到11个省，产业重点和激励措施各不相同。尽管特殊经济

when they believe they have been treated unfairly. It is unclear if the mechanism for the resolution of complaints by foreign investors provided in the FIL, which has yet to be detailed, will overcome such reluctance.

- With respect to IP, the assurance of protection for trade secrets submitted to government authorities is welcome but may not entirely overcome concern arising from the wide range of technological information required to be submitted for government certification. The benefit of the right to participate in mandatory standard setting may be compromised by China's increasing reliance on recommended (GB/T) standards which tend de facto to be mandatory for business in China. The prohibition of compulsory technology transfers may not necessarily reduce the pressure on foreign investors to make their technology more accessible.
- The FIL also calls for an expansion of the role of special economic zones (SEZs) in China with their varied incentives as an inducement to foreign investors. The number of SEZs was increased in 2018 from the original four municipalities to eleven entire provinces with varying industrial focuses and incentives. While the incentives and other benefits offered by SEZs are surely welcomed by foreign investors as well as roundtripping domestic investors, confinement of the availability of such incentives to SEZs is often accompanied by restrictions on the ability of companies to do business on a nationwide basis.
- The *Company Law* provides that all companies with the requisite minimum number of Communist Party members must allow the establishment of a Party cell or branch within the company. Many FIEs under previous legislation have been able to fend off the establishment or limit the role of a Party cell but that will no longer be possible under the FIL. Moreover, the Communist Party under Xi Jinping's leadership has expanded its role throughout society, including in the economy and private business. Therefore, although only a small percentage of AmCham China members in the BCS Report indicated concern about the role of Party cells in their business, that concern may rise once the establishment of such cells becomes mandatory, especially if the role of such cells or branches in governance expands.
- We note also that although the FIL moves toward a national investment approach in which investment by domestic and foreign investors is treated equally, the mere existence of a separate law governing foreign investment establishes a level of differential treatment in other respects.

In addition to the enactment of the FIL, Chinese government also promulgated the *Regulations on the Implementation of the Foreign Investment Law* and the *Regulations on Optimizing the Business Environment*, both taking effect on January 1, 2020. These two sets of regulations set out more detailed requirements with respect to lowering market entry barriers, establishment of a level playing field for all market participants,

reduced government interference in markets, improving the efficiency of government services to businesses, and protection and enforcement of intellectual property rights.

On competition, China's competition regulator, the State Administration for Market Regulation (SAMR), on January 2, 2020 published the *Draft Amendments to the Anti-Monopoly Law* (Draft AML Amendments) for public comments. The Draft AML Amendments would expand the AML from 57 articles to 64 articles across the same eight chapters. Most notably, the Draft Amendments would ❶ institute a "fair competition" review mechanism; ❷ prohibit participation in monopoly agreements; ❸ clarify the factors to be considered when determining market dominance by Internet operators; ❹ improve the merger review process; and ❺ enhance deterrence by raising penalties for violations.

To echo the principle of fair competition under the FIL, authorities under the Draft AML Amendments would be mandated when formulating regulations and policies regarding market operations to take into consideration the prevention of local protectionism, regional blockades, industry entry barriers, corporate monopolies, political favoritism and other measures that exclude or restrict market competition. The emphasis on fair competition review in the Draft Amendments reflects recognition of fair competition as one of the key principles of China's opening-up policies.

MOFCOM on March 23rd, 2020 issued the draft *Measures for Foreign Invested Companies to File Complaints* (Complaint Measures) for public comment. The draft Complaint Measures are intended to facilitate the implementation of the *Foreign Investment Law*, enhance the protection of legitimate rights of foreign investors, effectively solve complaints, and perfect the working mechanism for foreign invested companies to file complaints. The draft Complaint Measures provide, among other provisions, that MOFCOM will establish a nationwide foreign-invested company complaint center to receive and process complaints and will work with the State Council to establish a joint ministry-level meeting system to coordinate ministries and other agencies on matters relating to complaints. The Draft Complaint Measures also set out detailed timelines with respect to the review and processing of complaints. Under the draft Complaint Measures, foreign-invested companies can file complaints against government authorities when their legitimate rights are infringed and make suggestions and recommendations on issues or concerns in relation to the investment environment. While AmCham welcomes the promulgation of the draft Complaint Measures, one of the key issues is that the complaint handling authority under the Measures does not appear to have any enforcement authority, but rather serves only as a mediator to assist in resolving disputes. Moreover, the organizations against which a complaint can be filed are confined to government agencies which does not appear to include many quasi-government organizations that are technically not government agencies, but nevertheless function as regulators.

区域提供的激励措施和其他优惠政策受到外国投资者和迁回国内投资者的热烈欢迎，但仅为经济特区提供此类激励的同时，往往也会限制企业在全国范围内开展业务的能力。

- 《公司法》规定，凡是党员人数达到规定最低数量的公司，必须允许在公司内设立党组织或支部。根据之前的法律，许多外商投资企业可以避开建立党组织或限制党组织的作用，但根据《外商投资法》，这种做法将不再可能。此外，在习近平主席的领导下，共产党在整个社会中的影响力不断扩大，包括经济领域和私营企业。因此，虽然营商环境报告中只有小部分商会会员对党组织在其业务中的作用表示了担忧，但一旦强制要求建立党组织，尤其是当党组织或党支部在公司治理中的作用增强时，此类担忧将有增无减。
- 我们还注意到，尽管《外商投资法》中的国家投资办法是对国内和外国投资者的投资一视同仁，但一部单独的外商投资法律就在其他方面确立了一定程度的差别待遇。

除了《外商投资法》外，中国政府还颁布了《外商投资法实施条例》和《优化营商环境条例》，均自2020年1月1日起施行。上述两项法规对降低市场准入壁垒、为所有市场参与主体建立公平竞争环境、减少政府对市场的干扰、改善政府对企业的服务效率、保护知识产权等方面做出了详细要求。

关于竞争，中国的竞争监管机构国家市场监督管理总局于2020年1月2日发布了《反垄断法修订草案（草案）》，向社会公开征求意见。《反垄断法》修订草案将第八章的条款数从57条扩增至64条。最值得注意的是，草案将：① 建立“公平竞争”审查制度，② 禁止参与垄断协议，③ 明确认定互联网领域经营者具有市场支配地位应当考虑的因素，④ 完善合并审核流程，⑤ 提高违规处罚力度，增强威慑力。

为响应《外商投资法》中的公平竞争原则，《反垄断法》草案中政府部门在制定市场运行相关法律法规时必须考虑防止采取有关地方保护主义、地方封锁、行业进入壁垒、企业垄断、政治偏袒和其他排除或限制市场竞争的措施。修订草案强调公平竞争审查，反映了中国将公平竞争认定为中国对外开放的关键原则之一。

2020年3月23日，商务部发布《外商投资企业投诉工作办法（征求意见稿）》（以下简称“投诉工作办法”），公开征求意见。投诉工作办法旨在贯彻落实《外商投资法》相关要求，加大保护外商投资合法权益的力度，及时有效处理其反映的问题，完善外商投资企业投诉工作机制。投诉工作办法规定商务部将设立全国外商投资企业投诉中心，处理投诉事项；商务部将会同国务院有关部门建立外商投资企业投诉工作部际联席会议制度，协调、推动中央层面的外商投资企业投诉工作。投诉工作办法草案明确规定了投诉审查处理的时限。根据投诉工作办法规定，外商投资企业认为政府行政机关的行政行为侵犯其合法权益的，可以向投诉工作机构申请协调解决；外商投资企业可以向投诉工作机构反映在投资环境方面存在的问题、建议完善有关政策措施。虽然商会欢迎投诉工作办法得以颁布，但其中一个关键问题是规定中的投诉工作机构似乎没有任何执法权力，只是作为调解方，协助解决争端。此外，被投诉人仅限于政府行政机关，似乎不包括许多准政府机构。虽然这些准政府机构严格意义上来说不属于政府机构，但实际上发挥了监管职能。

第一阶段经贸协议

2019年外商投资的第二大主要进展为中美第一阶段经贸协议于2020年1月15日正式签署。第一阶段经贸协议历经长时间艰苦谈判，有效缓解了中美之间的投资贸易紧张关系，不过第二阶段经贸协议磋商何时开始尚不得而知。但是，一些更具挑战性的问题在第一阶段经贸协议中仍未得以解决，如建立完善执法监督机制、中国长期以来为国有企业提供支持和补贴、不同产业政策和自主创新项目给予内资企业优惠待遇、政府支持境外战略投资及收购、数字贸易、数据本地化、数据跨境传输及网络入侵等。中国一直以“国家主权”为依据拒绝解决其中一些问题。

第一阶段经贸协议在一些影响双边关系的问题上取得显著进展。尽管第一阶段经贸协议仅涉及美国，但中国其他主要贸易投资伙伴如欧盟和日本等与美国关注的许多问题相同，都会为各自企业争取利益，尤其是因为根据1947年《关税及贸易总协定》第一条规定及《与贸易有关的知识产权协议》第四条规定，中国作为世界贸易组织成员国享有最惠国待遇。

Phase One Deal

The second major development in 2019 regarding foreign investment was the *Economic and Trade Agreement between the United States and China* (Phase One Deal) executed on January 15, 2020. The Phase One Deal concluded after lengthy negotiations constituted a partial resolution to the trade and investment tensions between the United States and China, although there is as yet no timeline for the commencement of negotiations on a Phase Two. However, some more challenging issues such as establishment of an enhanced enforcement and monitoring mechanism, China's long-standing support and subsidies to its SOEs, preferential treatment for domestically-invested enterprises under various industrial policies and indigenous technology innovation programs, government-backed outbound strategic investments and acquisitions, digital trade, data localization, cross-border data transmission and cyber intrusions remain unaddressed in the Phase One Deal. China has been resisting on some of these issues on the basis of "State sovereignty".

The Phase One Deal included marked progress on a number of different issues that have plagued bilateral relations. While the Phase One Deal applies only to the United States, China's other major trading and investment partners like the European Union and Japan share many of the same concerns as the US and will be seeking the same benefits for their own companies, particularly as China is bound by the most-favored-nation obligation embodied in Article I of the *General Agreement on Tariffs and Trade* (GATT 1947), Article 2 of the *General Agreement on Trade in Services* (GATS) and Article 4 of the *Agreement on Trade-Related Aspects of Intellectual Property Rights* (TRIPS) by virtue of its membership in the World Trade Organization (WTO).

The Phase One Deal is marked by particular commitments by China with respect to providing fair, adequate, and effective protection to intellectual property rights (IPR) of United States investors, including:

- Liability for misappropriation of IPR,
 - a shift in the burden of proof and with respect to the production of evidence to the accused as appropriate upon the presentation of preliminary evidence by the accuser,
 - The availability of criminal prosecution for the misappropriation of IPR,
 - The protection of trade secrets against disclosure by government personnel and third party experts or advisors,
 - Stronger protection for IPR in the pharmaceutical industry,
 - Refraining from taking any geographic indication measures which may undermine market access for U.S. exports to China using trademarks and generic terms and oppositions against such geographical indications
- to be made available to trading partners,
 - The destruction of counterfeit goods rather than allowing such goods to return to the stream of commerce,
 - The obligation of all government agencies and all entities owned or controlled by the government, i.e., SOEs, to use licensed software,
 - Bad faith trademarks, and
 - The conduct of technology transfers only on a voluntary basis through mutual agreement on market term free of formal or informal government pressure.

China's commitments with respect to IPR in the Phase One Deal are predicated upon the mutual recognition that "that existing U.S. measures afford expeditious enforcement of judgments, including those pertaining to violations of IPR". In other words, China acknowledges that the United States is not demanding more from China with respect to IPR protection than the United States already provides to foreign investors, including Chinese investors, and therefore it is the obligation of China to provide enhanced and comparable protection to the IPR of United States investors.

China also made substantial commitments with respect to trade in food and agriculture products including commitments to:

- Reduce market access barriers to United States goods pertaining to agricultural biotechnology, dairy, infant formula, poultry, beef, cattle, pork, aquatic products, feed and feed additives, and pet foods,
- Accept in general inspection certificates issued with respect to United States facilities by the United States Department of Agriculture's Food Safety and Inspection Service (FSIS),
- Honor its tariff-rate quota (TRQ) obligations with respect to the purchase of agricultural commodities,
- Make improvements in its agricultural biotechnology safety evaluation system, and
- Make large purchase commitments of United States agricultural commodities.

AmCham China is pleased that negotiations on the fulfillment of China's commitments with respect to agriculture have gotten off to a good start in 2020.

China also made substantial commitments with respect to financial services including:

- Investment banking services,
- Credit rating services,
- Electronic payment services,
- Financial asset management (distressed debt) services,
- Insurance services, and
- Securities, fund management, and futures services.

在第一阶段经贸协议中，中国承诺为美国投资者提供公平、充分、有效的知识产权保护，包括：

- 侵犯知识产权责任；
- 在控方提出初步证据后，视情况将举证责任和提供证据的责任移交给被告；
- 可以对侵犯知识产权行为提起刑事诉讼；
- 保护商业秘密，政府工作人员、第三方专家或顾问不得泄露商业秘密；
- 加强药品相关的知识产权保护；
- 确保针对其他贸易伙伴提出的关于承认或保护地理标志的请求所采取的任何措施，不会减损使用商标和通用名称出口至中国的美国货物和服务的市场准入；
- 销毁假冒商品，不允许该商品重返商业渠道；
- 所有政府机构以及所有政府拥有或控制的实体，如国有企业，均只能使用经许可的软件；
- 恶意商标；
- 确保按照双方自愿和基于市场的条件开展技术转让，不得正式或非正式地要求或施压转让技术。

中国在第一阶段经贸协议中对知识产权的相关承诺基于双方认可“美国现行措施可保障对于判决的快速执行，包括针对侵犯知识产权的相关判决”。换句话说，中国承认，相比美国已经为外商投资者包括中国投资者提供的条件，美国并未向中国提出更高要求。因此，中国有义务为美国投资者提供相当的知识产权保护。

中国也在食品和农产品贸易方面做出实质性承诺，包括：

- 降低对美国农业生物技术、乳品、婴幼儿配方乳粉、禽肉、牛肉、活种牛、猪肉、水产品、饲料和饲料添加剂及宠物食品等产品的市场准入壁垒；
- 承认美国农业部食品安全检验局出具的有关美国工厂的证书；
- 履行购买农产品的关税配额义务；
- 改善中国农业生物技术产品安全性评价体系；
- 承诺大量增购美国农产品。

商会很高兴看到中国履行有关农业承诺的磋商在2020年取得了良好的开端。

中国在金融服务领域做出的承诺包括：

- 投资银行服务；
- 信用评级服务；
- 电子支付服务；
- 金融资产管理（不良债务）服务；
- 保险服务；
- 证券、基金管理和期货服务。

虽然中国美国商会很高兴看到中国已经开始履行一些相关承诺，比如加快评审拖延已久的电子支付服务进入市场申请，但其他方面承诺的落实仍然滞后。例如，虽然中国承诺不迟于2020年4月1日取消美国投资者在寿险领域的外资股比限制，但截至本文撰写之日，相关实施规定尚未出台。

中国也做出承诺：2020年和2021年自美国进口的商品和服务将大幅增加，减小双边贸易不平衡。但也要认识到，美国进口的多个行业商品和服务受到市场准入壁垒的人为限制，在一些情况下，这与中国加入世贸组织时的承诺背道而驰。

总结

2020年开年不利，先是中国，之后包括美国在内的世界其他国家都必须应对新冠肺炎疫情的爆发。中国2020年的GDP增速极有可能进一步放缓，一开始是因为中国自身的经济受到了病毒的严重影响，并采取了相应的措施，随后中国贸易伙伴的经济也受到冲击，导致需求随之减少。中国美国商会认识到，中国政府和人民在健康和经济方面付出了沉重代价，尽管商会会员企业也受到了冲击，但商会会员很高兴为中国的战“疫”工作慷慨解囊，献出一份力。商会承认新冠肺炎疫情之严重可能会导致中国延后履行减少市场准入壁垒、创造公平竞争环境的承诺，但商会坚信这将符合中国自身的利益。

建议

对中国政府：

- 确保《外商投资法》、《外商投资法实施条例》、中美第一阶段经贸协议中关于外商投资企业与内资企业享有同等待遇的规定按照规定的**时间切实落实**。

While AmCham China is pleased that that China has already begun to implement some of its commitments in this regard, including an acceleration of the long-delayed acceptance of applications for electronic payment services, implementation continues to lag in other dimensions. For example, although China committed to lift the equity cap on investments by US investors in the life insurance industry by no later than April 1, 2020, implementing regulations have yet to be issued as of the date of this writing.

China also made major commitments to increase its purchase of goods and services from the United States in 2020 and 2021 to reduce the bilateral trade imbalance, but also in recognition that imports of goods and services from the United States in multiple industries have been artificially constrained by market access barriers, in some cases in violation of China's own commitments when it joined the WTO.

Conclusion

The year 2020 has gotten off to a rocky start with first China and then other countries around the world, including the United States, having to cope with the COVID-19 pandemic. China's GDP will in all likelihood slow further in 2020, initially because its own economy was badly affected by the virus and measures taken in response thereto, and subsequently by the likely decrease in demand among China's trading partners as their own economies are affected as well. AmCham China recognizes that the Chinese government and people have borne a heavy price with respect to health and prosperity, and AmCham China's members have been pleased to contribute generously to the relief effort in China even as our own businesses have suffered as well. AmCham China acknowledges that the severity of the pandemic may delay China's ability to honor some of its commitments with respect to the reduction of market access barriers and the creation of a level playing field for foreign investors, but firmly believes that it is in China's own interest to do so.

contained in the Negative Lists and allow foreign investors the same degree of investment freedom that Chinese investors enjoy when investing in the US. Ensure that national security-related rules and restrictions are narrowly tailored and not used to promote industrial policy objectives.

- Promulgate further guidance on the mechanism for settling foreign investor complaints as described in the Implementing Regulations of the FIL and consult with industry during its formulation to ensure that such mechanism allows FIEs to seek redress of their complaints in an equal and impartial manner and without fear of retribution.
- Continue to improve the IP environment for foreign investors in China consistent with the commitments made under the Phase One Deal, the FIL, and its Implementing Regulations, in particular the prohibition against compulsory technology transfers and the protection for commercial secrets shared with the government. Ensure that other government policies of concern to foreign investors, including industrial policies and indigenous technology innovation programs, and digital trade, data localization, and cross-border data transmission restrictions do not hinder these commitments to IP protection.

Recommendations

For the Chinese Government

- **Ensure that provisions in the FIL, the Implementing Regulations of the FIL, and the Phase One Deal that provide for equal treatment of FIEs with their domestically-invested counterparts are implemented in full according to the timelines proscribed.**
- Work to ensure minimal disruption to the operation of market forces and eliminate all direct and indirect forms of discrimination against foreign investors in industrial policies and the tools to implement them.
- Further narrow the market access restrictions

- 努力确保将对市场力量运作的干扰降到最小，消除行业政策及实施工具对外国投资者的所有直接和间接歧视。
- 进一步缩减负面清单中的市场准入限制，允许外国投资者在投资中国时享有与中国投资者投资美国相同的投资自由度。确保国家安全相关规则和限制严格限缩，而非用来推进实现产业政策目标。
- 颁布条例进一步指导《外商投资法实施条例》中规定的处理外国投资者的投诉机制，制定相关机制时征求行业意见，确保外商投资企业能够通过该机制平等、公正地解决投诉问题，不必担心报复。
- 根据中美第一阶段经贸协议、《外商投资法》及其实施条例中中国对外国投资者做出的有关承诺，特别是禁止强制技术转让、保护政府知悉的商业秘密等相关承诺，继续改善外国投资者在中国的知识产权环境。确保外国投资者关注的其他政府政策，如产业政策和自主技术创新项目、数字贸易、数据本地化和数据跨境传输限制等不会阻碍对知识产权保护的承诺。

Standards, Certification, and Conformity Assessment

Introduction

China continued reform of its standards system in 2019, building on the enactment of the revised *Standardization Law* which came into effect on January 1, 2018. The revised version is the first since the law was originally enacted in 1988. Such reform included the issuance of several regulations including the *Administrative Measures for Mandatory National Standards* issued by the State Administration for Market Regulation (SAMR) to take effect on June 1, 2020, the *Administrative Measures for Social Organization Standards* issued by the Standardization Administration of China (SAC) and the Ministry of Civil Affairs (MCA, effective January 9, 2019), and the *Administrative Measures for Local Standards* (to take effect on March 1, 2020), all of which are intended to provide further guidance on standards setting at the national, social organization, and local levels. In addition to these efforts, the Ministry of Industry and Information Technology (MIIT) published for comment the draft *Administrative Measures for the Formulation of Industry Standards* in September 2019, although these have yet to be finalized. Moreover, the first phase of the research program for China Standards 2035, which focuses on the next generation of standards setting, was concluded.

AmCham China has also been following the formation of SAMR, which as a market super-regulator bears administrative responsibility for standardization, certification and accreditation, as well as for market supervision, anti-monopoly behavior, price supervision, food and drug safety, intellectual property rights, and business licenses since its creation in March 2018.

The revised *Standardization Law* has created a solid legal foundation for China to deepen the reform of the standardization system at all levels. It introduced market-driven reforms and social organization standards, unified mandatory standards, and reduced the number of recommended standards. AmCham China welcomes the foundation laid by the revisions and hopes the creation of SAMR will continue to improve China's regulatory oversight.

These reforms notwithstanding, AmCham China remains concerned about China's commitment to the acceptance of and alignment with international standards, which

enable global trade and investment. The *Standardization Law* requires further reform. This is reflected in several areas, including:

- The continuing preference for domestic standards in many industries,
- Its failure to follow international standard setting principles of the World Trade Organization Agreement on Technical Barriers to Trade (WTO/TBT),
- The fact that social organization standards can and are superseded by State-sponsored standards,
- A lack of due process during the formulation of standards setting led by social organizations,
- Distortions caused by domestic subsidies, and
- A lack of conventional copyright protection language in the *Standardization Law*.

In addition, our members remain concerned about equal access rights in standards setting, the unreasonable disclosure of enterprise standards, including requirements that enterprise standards must be disclosed in order to be considered as a standards "pioneer" or "front runner." AmCham China continues to urge that these issues be resolved, and that China prioritize the adoption of existing international standards absent solid justification for the use of local alternatives.

Moreover, in 2018 China also formally launched China Standards 2035, a broad-based initiative designed to leverage the Belt and Road Initiative (BRI) to promote China's influence through standards development and leadership. AmCham China urges that foreign-invested enterprises (FIEs) be allowed to participate equally and share their expertise in this initiative, and we strongly advocate the adoption of international standards throughout the BRI rather than the adoption of regional standards, as such practices will fragment the international standardization system.

On January 1, 2020 the *Foreign Investment Law* came into effect which provides for equal participation for foreign-invested and domestically-invested enterprises in standards-setting processes. AmCham China will be monitoring closely to ensure full implementation of the *Foreign Investment Law* as written with equal participation by FIEs in standards setting. Already in the Banking and Capital Markets chapter of this

标准

引言

2019年，中国继续推进标准化体制改革。《中华人民共和国标准化法》（标准化法）经过历时20个月对初版（1988年）修订草案进行了三次公开征求意见和三次修改讨论，最终于2017年11月4日第十二届全国人民代表大会常务委员会议上通过，修订版的《标准化法》已于2018年1月1日正式生效。这也是1988年初版标准化法问世后的首次改革。改革内容新出台的几项法律文件，分别为由国家市场监督管理总局（SAMR）发布、于2020年1月1日正式生效的《强制性国家标准管理办法》，由国家标准化委员会（SAC）和民政部（MCA）共同发布、于2019年1月9日正式生效的《社会组织标准管理办法》及2020年3月1日生效的《地方标准管理办法》。以上新规均旨在从国家、社会组织和地方的维度为标准化改革进一步提供指导。此外，工信部还于2019年9月发布了《行业标准制定管理办法征求意见稿》，但目前该流程还未完全结束。此外，“中国制造2035”项目的第一研究阶段已成功落幕，该项目的重点是中国发展下一阶段的标准化设定。

一直以来，中国美国商会追随国家市场监督管理总局（SAMR）前进的方向。2018年3月成立以来，SAMR作为中国高级市场监管机构，对标准化、各项资格资质的授予、市场监管、反垄断、价格监管、食品药品安全、知识产权、签发营业执照等方面负有重要行政责任。

修订版《标准化法》为中国从各个层面持续深化标准化改革的事业奠定了坚实的法律基础，开创了“以市场为导向”改革的先河，统一了各项强制性标准，还降低了建议性标准的数量。中国美国商会十分支持修订内容及其建立的法律基底，希望SAMR将会在未来不断完善中国的监管工作。

尽管已经取得了现有改革成果，中国美国商会仍对中国承诺与国际标准接轨一事感到担忧。国际标准是全球贸易和投资的关键驱动力，现有《标准化法》的改革不能就此止步。这一点反映在以下几方面：

- 国内标准依然对许多本国行业更加宽容；
- 未引入世界贸易组织《技术性贸易壁垒协定》（WTO/TBT）有关国际标准制定原则；
- 针对社会组织的团体标准可能会被国家标准所取代；
- 制定社会组织标准时缺乏科学的流程；
- 国内补贴政策造成市场行为异常
- 没有引入标准版权保护

此外，商会会员担心的问题还包括标准制定中的平等准入权，以及不合理的企业标准公开，要求企业必须公开其内部标准，才能算作是标准制定的“先驱”或“领跑者”。中国美国商会继续敦请政府解决上述问题，并且优先处理采用现行国际通用标准，因为目前以地方标准代替国际通则的做法不够合理。

再则，2018年，中国正式启动了“中国标准2035”。这是一个广泛的倡议，旨在利用“一带一路”倡议，通过制定标准和发挥领导作用，提升中国的影响力。中国美国商会敦促外国企业和会员公司平等参与，分享他们的专业知识。商会也强烈推荐在执行BRI时采用国际通行标准，而非区域标准。因为，这样的做法可能会破坏国际标准体系。

2020年1月1日，《外商投资法》正式生效。这使外资企业在参与标准制定过程中于内资企业拥有了平等了地位。中国美国商会将对之后的过程予以密切监督，确保《外商投资法》的执行充分符合其书面规定，让外资企业平等地参与到标准制定过程中来，并对“中国标准2035”项目加以反馈。在本年度白皮书的“银行业

White Paper, we noted that several financial industry standards, including the *Personal Financial Information Security Specification* released in February 2020, did not include participation by FIEs. We will also be monitoring opportunities for FIEs to participate in standards setting activities including the opportunity to participate in and provide feedback on China Standards 2035.

China Standards 2035

China Standards 2035 is a State-sponsored program to promote Chinese technical standards across a range of industries. Though first initiated in 2017 by the General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ, consolidated into SAMR in March 2018), implementation officially commenced in March 2018.

The China Standards 2035 research program is organized by the Chinese Academy of Engineering, one of the leading academic institutions and honorary consultancies directly affiliated with State Council, and a leading professional industry organization. The initial research program kicked off in March 2018 and concluded in January 2020 with the launch of a new “National Standardization Development Strategy” research program. Program participants include key standardization bodies like the China Electronic Standardization Institute, the China National Institute of Standardization, the China Academy of Information and Communication Technology, and other industry-specific standardization institutes.

While the research program is still under development, AmCham China understands from available public information that the final report will focus on four key points, which we discuss below:

1. *The Construction of a New Standardization System*

China’s standardization system is multilayered and overly complex. The system includes over 130,000 national standards, sector-specific standards, and local standards. There are another 10,000 standards created by social and industry organizations. These social organization standards are developed and promulgated in response to market needs and market demand. AmCham China agrees that a standards development model based on adoption of standards driven by the market is essential for innovation and sustained economic development.

The Standards 2035 research program proposes the creation of a two-layer standards system consisting of national standards and social organization standards. In effect, this proposal eliminates industry and sector-specific standards, local standards, and enterprise standards because no distinction will be made between national and social organization standards. This should simplify China’s standardization

system. Under the proposal, mandatory national standards can be enshrined as “regulations” or formal standards thus maintaining a degree of consistency across existing administrative frameworks, standards development processes, oversight, and feedback mechanisms. Social organization standards will then apply to non-mandatory standards developed at the sub-national level.

2. *Normalizing the Process for Developing Social Organization Standards*

As of October 2019, there are 2,759 social organizations registered on the National Social Organization Standards Information Platform. These organizations have contributed or developed 10,224 social organization standards. Many of these standards are of uneven quality, suffer from weak oversight, and limited understanding of their legal basis.

The research program proposes to address these challenges by: ❶ guiding the development of social organization standards by establishing an oversight mechanism that encourages collaboration between the government and social organizations, ❷ optimizing supporting standardization regulations, opinions and policies (such as the *Administrative Measures for Social Organization Standards*) to improve enterprises and social organizations leadership of standards setting processes, and ❸ learning from the experience of global markets and engaging a greater number of experts from FIEs.

3. *Supporting International Standards Development Efforts*

This priority will be met through: ❶ participation in strategy formulation, rules development, and policy setting processes for international standards and the promotion of a more equitable, reasonable, and efficient system of standards governance; ❷ encouraging participation in international standardization forums, organizations and conferences organized by the International Organization for Standardization/International Electrotechnical Commission/International Telecommunication Union (ISO/IEC/ITU) and working to align China’s standards strategy with the ISO ten-year strategy and existing IEC strategies. Efforts will be made to adopt, apply, study, and assess a greater number of international standards; and ❸ increasing China’s contribution to international standards setting.

4. *Deepening International Cooperation Around Standardization*

This will be done by ❶ enhancing international cooperation on standardization with countries participating in the BRI to increase interoperability, connectivity, infrastructure, and trade; ❷ establishing multilateral and bilateral mechanisms to cooperate on standardization issues around advanced

与资本市场”这一章节中，商会强调过，几项金融业标准的制定尚未允许外资企业参与，其中就包括2020年2月发布的《个人金融信息安全规范》。商户也将持续为外资企业关注参与标准制定活动的机会，包括参与“中国标准2035”项目和提供反馈的机会。

中国标准 2035

中国标准2035是一项国家资助项目，目的是在各行各业推广中国技术标准。尽管最初该项目由国家质检总局（2018年3月并入国家市场监督管理总局）于2017年启动，但直到2018年3月才正式付梓实施。

“中国标准2035”研究项目由中国工程院组织，该机构为国务院直属咨询性学术机构，在工程技术界享有最高盛誉，也是一家龙头专业产业组织。该研究项目于2018年3月开启，并且随着“国家标准发展战略”的发布，已于2020年1月落幕。项目参与方包括中国电子技术标准化研究院、中国国家标准研究院、中国信息通信研究院等重点标准化机构以及其他行业标准化研究院。

虽然本项目依然处于完善阶段，但根据已公布的信息，中国美国商会获悉，报告的内容最终将聚焦在4个重点方面，详细阐释如下：

1. 建立全新标准化体系

中国标准化体系层次繁多，而且构成十分复杂，涵盖超过13万项国家标准、行业标准和地方标准，还包括1万多项由社会团体和行业组织制定的标准，而社会团体标准的完善与倡导是对基于市场需求的回应。中国美国商会也认为，面向市场需求、依赖市场力量制定标准对于创新和经济持续发展至关重要。

中国标准2035项目提出要创建一个由国家标准和团体标准组成的双轨标准体系，这实际上意味着取消行业标准、地方标准和企业标准，因为这样一来国家标准与社会组织标准之间的差异将不复存在。这将精简中国的标准化体系。根据该提议，强制性国家标准可被视为“法规”或“标准”，保持管理框架、标准制定过程、监督和反馈机制上的一致性。社会团体标准将适用于国家级机构以下制定的其他非强制性标准。

2. 规范团体标准制定流程

截至2019年10月，已有2759个社会团体在国家团体标准信息平台注册。这些社会团体已呈交或制定了10224个团体标准。但是，这些标准中许多在质量上参差不齐，存在监管薄弱、对法律依据的了解有限的问题。

“中国标准2035”研究项目建议通过以下方式来解决上述问题：① 建立鼓励政府与社会团体协作的监督机制指导团体标准的制定；② 优化配套性标准化法律法规、意见和政策（如《社会组织标准管理办法》），使企业和社会团体更好地在标准制定过程中发挥领导作用；③ 吸取其他全球市场的经验，从外商投资企业引入更多专家。

3. 支持国际标准制定工作

这一需优先处理的要务可通过以下方式实现：① 参与国际标准的战略、规则和政策制定过程，推动标准化管理体系使之更加公平、合理和有效；② 鼓励参与国际标准化论坛、组织，参加ISO、IEC、ITU会议，努力使中国的标准化战略与ISO十年战略和现有的IEC战略接轨，并加强对更多国际标准的采用、应用、研究和评估力度；③ 增加中国对制定国际标准的贡献。

4. 深化国际标准化合作

这一点可通过以下方式实现：① 加强与“一带一路”沿线国家和地区在标准化方面的国际合作，以加强协同操作、连通性、基础设施和贸易往来，② 就先进技术的标准化问题建立多双边合作机制，③ 鼓励更多企业和院所为国际标准制定做出贡献。

中国美国商会将继续关注“中国标准2035”研究项目的进展，并寻找时机为其发展做出贡献。中国美国商会欢迎“将中国标准化体系从目前的五个层次（国家、行业、社会团体、地方和企业）标准简化为两个层次（国家和社会团体）标准”这一提议。五个层次的标准体系阻碍了市场创新。政府强制性标准、国家标准和行业标准通常难免发生重叠，有时会产生冲突。企业标准包含企业产品或服务技术规格相关的专有信息。监管机构鼓励企业披露其企业标准，这使得商会成员不得不泄露其专有或机密信息。因此，本次提议的双层次系统可有助于解决这些问题，商户希望政府在该系统的设计上与业界进行合作。

technologies; and ③ encouraging more Chinese enterprises and institutes to participate in international standards setting.

AmCham China will continue to monitor the progress of the China Standards 2035 research program and seek opportunities to contribute to its development. AmCham China welcomes the proposal to simplify China's standards system from the current five layers of standards (national, industry/sector, social organization, local, and enterprise), down to two layers (national and social organization). The five-layer standards system inhibits market innovation. Government-mandated standards, national standards, and sector standards often inevitably overlap and are sometimes in conflict. Enterprise standards contain proprietary information on the technical specifications of an enterprise's products or services. Regulators encourage enterprises to disclose their enterprise standards, which forces members to divulge proprietary or confidential information unnecessarily. Thus, the proposed two-layer system can help to resolve these challenges, and we encourage the government to engage with industry on its design.

A system of standards development led by social organizations is more conducive to the development of a market-driven economy, and AmCham China is pleased to see social organizations given a key role in standards development. We applaud the plan to engage more experts from FIEs and to study the international experience of other nations in developing standards through social organizations. We believe a balanced policy environment, characterized by minimal government interference is needed to allow social organizations to lead standards development. In this regard, we will be closely monitoring to ensure that social organizations standards, with equal participation from FIEs and domestically-invested enterprises, are able to develop and be applied in the market in a manner equally applicable to government-mandated standards and those adopted by state-owned enterprises.

As part of such balanced policy environment, AmCham China recommends a third-party accreditation scheme be established to certify social organizations which exemplify best practices during the standards development process as characterized by the principles of openness, fairness, and transparency. Such process will ensure the development of high-quality standards appropriate for the market.

AmCham China strongly welcomes those aspects of China Standards 2035 that promote adoption of and alignment with international standards, particularly as these standards will continue to be the basis of the international trade and economic system that fosters the unimpeded flow of commerce.

Meanwhile, we urge China to adhere to established principles of international standards development and apply due process in the implementation of the *Standardization*

Law. Our members urge China, like all major industrialized nations that are WTO signatories, to implement its WTO/TBT commitments as a basis for legal and policy standardization frameworks. The WTO/TBT requires that standards developed by a country adhere to provisions in cases where international standards exist, or their completion is imminent. International standards must be used in whole or in part as the basis for national or industry standards, except where doing so would be ineffective or inappropriate. In addition, before adopting a standard, standardization institutions must allow a period of at least 60 days for the submission of comments on draft standards by interested parties within the territory of a WTO member.

AmCham China rejects all efforts to adopt international standards only in part without reasonable justification. Previous attempts to do so have created unnecessary confusion, led to duplicative and inconsistent standards, and made implementation more cumbersome. Unique domestic standards not only restrict market access and erect artificial trade barriers on imported products and technologies. They also impede the entry of Chinese products and technologies into the international market. This inhibits the ability of Chinese firms to enter global markets. Requiring products to be designed and produced in line with China's unique standards only increases the time and expense of production for foreign, domestic, upstream, and downstream stakeholders in manufacturing, research and development (R&D), and design. In this regard, AmCham China is concerned about the impact of BRI on the application of standards in other markets, and urges China to preference the use of international standards in the BRI wherever possible, consistent with its own commitments in this regard, including as part of the research program of China Standards 2035.

AmCham China recommends that the government adopt international standards in lieu of creating domestic standards whenever possible, absent solid justification for the use of local alternatives. If, however, certain standards require modifications for the Chinese context, transparency during the standards formulation process is crucial. Explanations should be provided for any standards that are adjusted. When adapting these standards, the government should consult international experts and stakeholders. Chinese regulators should work with international experts to ensure consistency in the interpretation and application of those standards.

In line with China's stated commitment to encourage participation in ISO/IEC/ITU sponsored conferences under China Standards 2035, AmCham China recommends that representatives from FIEs in China be invited to join and participate alongside any Chinese delegations to such international conferences.

Finally, AmCham China understands China's plan to leverage the BRI in support of its global standardization efforts. We recommend, however, that any standards being

一套由各个社会团体牵头的标准化制定体系将更有利于以市场为导向的经济发展。社会团体在标准化制定中得以发挥关键作用，中国美国商会对此感到高兴。该项目将从外资企业引入更多专家并通过社会团体研究标准化制定的国际经验，商会对此表示赞赏。商会认为，为营造平衡的政策环境以支持社会团体在标准化制定过程中发挥领导能力，政府应尽可能少地介入到这个过程中来。商会将密切关注这方面工作的进展，确保在外资企业得以充分参与的前提下，社会团体标准的制定和其市场适用与政府出台的强制性标准及国有企业标准处于平等地位。

作为适应性政策环境的一部分，中国美国商会建议设立第三方认证计划，对在标准化制定过程中具有最佳实践（公开、公平和透明原则为）的社会团体予以认证。这样的标准化制定过程会确保根据市场情况制定出高质量的标准。

中国美国商会对“中国标准 2035”中推动采用国际标准和与之接轨的一些方面表示非常支持，尤其是在这些标准仍将适用于开展正常商业活动所必需的国际贸易和经济体系的基础的情况下。

同时，商会敦请中国遵守既定的国际标准化制定原则，并在实施《标准化法》时运用适当的程序。商会会员呼吁中国履行其 WTO / TBT 承诺，将此作为法律和政策标准化框架的基础，就像 WTO 缔约国中所有主要工业化国家一样。按照 WTO / TBT 规定，一国制定的标准，在存在国际标准或即将完成的情况下应遵守相关规定。国际标准必须全部或部分地作为国家或行业标准的基础，除非这样做无效或不适当。此外，在采用一项标准之前，标准化机构必须预留出至少 60 天时间，以便由 WTO 成员国的各相关方就标准草案提出意见。

中国美国商会拒绝在无任何合理理由，就只部分采用国际标准的做法。之前的尝试造成了不必要的混乱，导致标准重复和不一致现象，并使标准实施变得更加麻烦。独特的国内标准不仅限制了市场准入，在进口产品和技术上设立了人为的贸易壁垒，也阻碍了中国产品和技术进入国际市场。这抑制了中国公司进入全球市场的能力。要求按照中国独有的标准进行设计和生产的产品只会给国内外和上下游利益相关方在制造、研发和设计方面增加时间和生产成本。关于这个问题，中国美国

商会担心“一带一路倡议”对其他市场内的标准实用产生影响，因此呼吁中国在任何时候都在 BRI 中优先采用国际标准，与兑现此前做出的承诺，这也是“中国标准 2035”项目的部分内容。

中国美国商会建议中国政府采用国际标准，而非在无合理理由的情形下采用本地标准，制定国内标准。然而，如果某些标准需要根据中国环境进行修改，这样一来，标准化制定过程中的透明度就至关重要。应提供对任何已调整标准的解释。在采用这些标准时，中国政府应咨询国际专家和各个利益相关方。中国监管机构应与国际合作确保这些标准在解释和运用上的一致性。

最终，中国美国商会了解到中国计划利用“一带一路”倡议支持其全球标准化工作。但商会建议，在“一带一路”沿线国家和地区制定和推广的标准都应尽可能与国际标准保持一致，否则，这些努力可能会使当前的全球标准化体系流于分散化，并且会与中国自身进一步接受国际标准这一优先任务相冲突。

中国美国商会十分乐意与相关政府机构进行磋商，以便更好地了解中国标准 2035 的最新进展。一方面，中国标准 2035 反映了中国致力于继续推进更加开放的经济承诺，但中国美国商会敦促中国政府和相关标准制定机构允许商会的成员能公开和完全地参与到中国标准 2035 中来。中国美国商会担心，如果没有外国公司或外商投资企业的充分平等参与，中国标准 2035 的继续发展可能会导致推广国内技术而歧视外国技术的情形。中国美国商会一直在密切关注“中国标准 2035”计划的进展情况，该项目本身就指明了中国标准化事业的工作方向。就这一方面，《美中第一阶段经贸协定》的“农业”章节中，就包含了中国关于将依据国际标准，在农业生物技术、饲料进口和牛肉制品等领域解除对多种美国农产品市场准入壁垒的承诺。

社会团体标准部分

修订版《标准化法》旨在发挥标准的创新引领工作。该法第十八条明确规定：

“国家鼓励学会、协会、商会、联合会、产业技术联盟及其他社会团体协调相关市场主体共同制定满足市场和创新需要的团体标准，由本团体成员约定采用或者按照本团体的规定供社会自愿采用。”

developed and promoted in BRI countries and regions be aligned with international standards to the maximum extent possible, otherwise these efforts risk fragmenting the current system of global standards and also conflict with China's stated commitment to further embrace international standards.

AmCham China has a strong interest in consulting with relevant government agencies to better understand the progress to date around China Standards 2035. On the one hand, China Standards 2035 reflects China's commitment to continue moving toward a more open economy. AmCham China urges the government and relevant standards-setting bodies to allow full and open participation of AmCham China members. On the other hand, AmCham China is concerned that continued development of China Standards 2035 absent full and equal participation of FIEs will result in the promotion of domestic technology while encouraging discrimination against foreign alternatives. AmCham China is closely monitoring the progress of China Standards 2035, which will itself provide a clear indication of the direction China's standards efforts are moving. In this regard, the agriculture chapter of the *Economic and Trade Agreement between the US and China* includes commitments by China to remove market access barriers for multiple US agricultural products such as basing its decisions on international standards in areas like agricultural biotechnology, feed imports, and beef products, among others.

Social Organization Standards

The revised *Standardization Law* aims to create space for the creation of innovative standards. As stated in Article 18:

"The state encourages societies, associations, chambers of commerce, federations, industrial technology alliances, and other social organizations to jointly formulate social organization standards which meet market and innovation needs by collaborating with relevant market entities for the purpose of adoption by their own members upon agreement or the voluntary adoption by society in accordance with the provisions of the social organizations that have established the standards."

Article 18 establishes a legal basis for social organization standards, and in so doing, establishes a new standards formulation process which can establish a balance between government-mandated standards and standards adopted by the market. Article 18 encourages social organizations to formulate standards to increase the supply of effective standards responsive to market demands. This reflects a marked change in China's existing standards development process, which has been characterized by a government-led standards dissemination process.

Article 27 of the *Standardization Law* authorizes the state to implement a system to supervise the self-declaration of social

organization and enterprise standards. The *Standardization Law* has eliminated the filing system which catalogued enterprise standards and replaced it with a system of supervision based on self-declaration for social organization and enterprise standards.

In general, standards and the standards development process at each level should seek to achieve the following outcomes:

- Mandatory standards allow companies to conduct their business operations and meet their bottom line,
- Recommended standards should address the basic needs of a given industry and seek to establish the greatest degree of uniformity to improve product development,
- Industry-specific standards should compensate for other regulatory elements or standards that are not covered by ① or ②,
- Social organization standards should focus on innovation and disseminating standards that promote the creation of new products and services,
- Enterprise standards should strengthen the quality of the products and services being developed.

Social organization standards are developed and released based on self-imposed standards for the purpose of adoption by their own members or voluntary adoption by other groups or communities. The creation, establishment, and release of social organization standards is not required to be approved by or filed with administrative authorities. Social organization standards development is purely voluntary. It is an outcome of the ongoing reform of the standards development process overseen by the government that aims to streamline standards administration and delegate authority for standards development to other organizations who can align with international standards. The goals of social organization standards differ from those of national and industry-specific standards. No administrative permit is issued for social organization standards, meaning that if those standards are adopted by the market, it must reflect market demands. Social organization standards can often be mapped out in three to six months, which is more rapid than the timeline for development of government-led standards, which makes them ideal for satisfying the demands of an innovative and rapidly changing marketplace.

In recent years there have been important breakthroughs in both the legislative foundation and the practice of using social organization standards. Industry standards de-facto enforced or accepted as the market standard by the government, however, still have an enormous impact on industry. Therefore, it is still unclear how social organization standards will contend equally with other types of standards in the market.

The China National Institute of Standardization (CNIS)

该条规定赋予了团体标准法律地位，由此构建了政府标准与市场标准协调配套的新型标准体系。第十八条规定鼓励社会团体组织制定团体标准，可以增加标准有效供给，满足市场需求，这反映出我国现行标准制定过程中一大重要改进，特点为由政府领导的标准的普及过程。

新法第二十七条规定：国家实行团体标准、企业标准自我声明公开的监督制度。新法取消了企业标准备案制度，取而代之的是团体标准、企业标准自我声明公开的监督制度。

总而言之，标准及各个层级的标准制定过程都应当努力实现下列成果：

- 强制性标准守底线；
- 推荐性标准保基本；
- 行业标准补遗漏；
- 团体标准搞创新；
- 企业标准强质量。

团体标准的制定和发布是由团体按照自行规定的标准制定程序来进行的，是供团体成员或社会自愿采用的标准。团体标准的制定和发布无需向行政相关部门报批或是备案，是社会团体的自愿行为。团体标准是现阶段我国政府简政放权背景下标准化体制改革，与国际接轨的必然产物。团体标准与国家标准、行业标准的区别除了制定标准的主体不同外，在政府管理方面，对团体标准不设行政许可，通过市场竞争优胜劣汰；在制定周期方面，而团体标准通常可以在3-6个月的周期内规划完成，所用时间比政府主导制定的标准周期短，可以满足快速发展的创新时代市场需求。

近年来，团体标准从立法及实践中均取得的巨大积极突破。然而，由政府推动制定的行业标准对行业仍有巨大的影响力。因此，团体标准要想在市场上与其他标准展开竞争，目前还有很长一段路要走，前途也尚不明晰。

中国标准化研究院发布了《团体标准化 第一部分：良好行为指南》和《团体标准化 第二部分：良好行为评价》，这两份标准文件的制定主要参考借鉴了美国国家标准学会发布的《基本要求》和美国标准制定机构的认定规范。尽管这两份文件都是自愿性标准，但为中国

推进市场化标准制定程序奠定了基础。2019年初，国家标准委发布了正式版《团体标准管理规定》，要求社会团体制定明确的知识产权管理制度，及时披露必要专利相关信息。但无论这两份团体标准化文件还是管理规定都没有明确给出团体标准转化为国家标准和行业标准的实现机制和具体程序。

鉴于团体标准的制定旨在支持产品和服务创新这一特点，一些团体标准将转化为国家标准或行业标准。而有关部门也正在考虑建立快捷程序，以便团体标准向国家标准和行业标准转化。商会建议政府建立有助于团体标准向政府标准转化的流程，特别是从市场主导的团体标准向政府主导的国家标准或行业标准转化时，需要遵循严格标准化的精神，建立公开、公平和公正的转化流程，以保障不会因为标准的转化导致不合理的市场影响。

企业标准领跑者制度

2017年3月21日，国务院办公厅印发关于贯彻实施《深化标准化工作改革方案》重点任务分工（2017-2018年）的通知（国办发〔2017〕27号），通知中明确了建立实施企业标准领跑者制度。

2018年7月，市场监管总局、发展改革委、科技部、工业和信息化部、财政部、生态环境部、交通运输部、人民银行等八部门联合印发《关于实施企业标准“领跑者”制度的意见》（国市监标准〔2018〕84号）。

企业标准“领跑者”制度旨在通过标准引领，促进中国产品和服务的供给和质量的提升。该制度以企业产品和服务标准自我声明公开为基础，通过标准化技术机构、行业协会、产业联盟、平台型企业等第三方评估机构开展企业标准水平评估，确定企业标准“领跑者”的制度。所谓的企业“领跑者”，是指那些的能够提供具备高级核心标准指数商品及服务的企业。

该制度培育目标领域主要侧重于消费品、装备制造、生产性和生活性服务以及新兴产业领域，提出了全面实施企业产品和服务标准自我声明公开、确定实施企业标准“领跑者”的重点领域、建立领跑者评估机制、发布企业标准排行榜、形成企业标准“领跑者”名单、建立企业标准“领跑者”动态调整机制共6项任务。

2018年11月，市场监管总局办公厅印发关于《2018

has released the *Social Organization Standardization-Part 1: Guidelines on Good Practice* (2015) and the *Social Organization Standardization-Part 2: Evaluation of Good Practice* (2017), modelled after the American National Standards Institute's (ANSI) *Essential Requirements* document and the accreditation process for US-based standards development organizations. Although these two documents propose voluntary standards, they have laid the foundation for China to press ahead with a more market-oriented standards-setting process. In January 2019, the SAC (and the MCA) issued the final version of the *Administrative Regulations on Social Organization Standards*, which provide that social organizations need to formulate an intellectual property management system to disclose necessary patent-related information in a timely manner to justify their use of certain standards. Neither of the two social organization standards documents nor the Administrative Regulations, however, clearly provide a mechanism or procedure to convert social organization standards into national and industry-specific standards.

Given the nature of their development in support of innovative products and services, some social organization standards will be transformed into national or industry-specific standards. We recommend that the government establish procedures to facilitate the transformation of social organization standards into national and industry standards in an accelerated fashion. In particular, the conversion of market-led social organization standards to government-led national standards or industry standards is important. These conversion processes should be open, fair, and equitable. The conversion of standards into mandatory standards that is not open, fair or equitable creates unnecessary deleterious market impacts for the industry.

The Enterprise Standard “Pioneer” System

On March 21, 2017, the General Office of the State Council issued a notice on the implementation of the key tasks in the *Deepening Standardization Reform Plan* (2017-2018) (Circular [2017] No. 27), which permits the establishment and implementation of an enterprise standards “Pioneer” system.

In July 2018, SAMR, the National Development and Reform Commission (NDRC), the Ministry of Science and Technology (MOST), MIIT, the Ministry of Finance (MOF), the Ministry of Ecology and Environment (MEE), the Ministry of Transport (MOT), and the People’s Bank of China (PBOC) jointly issued the *Opinions on Implementing a Pioneer Enterprise Standards System* (National City Supervision Standard [2018] No. 84).

The enterprise standard “Pioneer” system aims to promote the supply and quality of Chinese products and services through standards leadership and the use of enterprise standards. The system is based on self-declaration of enterprise product and service standards. Evaluations of enterprise stan-

dards are to be conducted by technical institutions, industry associations, industry alliances, platform-based enterprises, and other third-party evaluation agencies to determine enterprise “Pioneers,” i.e., those enterprises whose products and services contain advanced levels of core standards indicators. The system targets pioneers in the consumer goods, equipment manufacturing, life services, and other emerging industries. The system proposes to implement the self-disclosure of enterprise product and service standards by ❶ determining the key features of “Pioneer” enterprises, ❷ establishing a “Pioneer” evaluation mechanism, ❸ issuing enterprise standards rankings, ❹ formulating a standards ranking list that comprises pioneering or leading enterprise standards, and ❺ and establishing a dynamic adjustment mechanism based on six tasks that must be fulfilled in order to be considered enterprise standards leaders.

In November 2018, SAMR’s General Office issued the *2018 Annual Implementation of Enterprise Standards “Pioneers” in Key Areas*. The agency charged with overseeing the enterprise standard “Pioneers” system is CNIS. It is responsible for ❶ establishing an enterprise “leaders” expert committee, ❷ disclosing in a unified manner the enterprise standard rankings and list of enterprise “pioneers” as created by an evaluation agency, ❸ construction and operation of the unified information platform known as the enterprise standard “Pioneer,” ❹ overseeing standards evaluation agencies, ❺ assisting government departments in studying incentive policies and supervision mechanisms; and ❻ promoting the evaluation of standards used by large retail store and e-commerce platform “Pioneers.”

Following this, CNIS released the *Plan for the Implementation of the Enterprise Standard “Pioneers”* in February 2019 to implement the tenets of the enterprise standard “Pioneer” system. The Plan establishes the basic framework for the enterprise standard “Pioneers” system, the responsibilities of interested parties, and lays out the procedures and ranking criteria for enterprise standards.

In June 2019, SAMR announced the *2019 Annual Implementation of Enterprise Standards “Pioneers” in Key Areas*, which determined enterprise standards “pioneers” in “key areas” consisting of 100 product and service categories. Enterprise standards are mainly confined to consumer goods, but also include equipment used for high-end manufacturing such as CNC die-cutting machines, CNC lathes, industrial robots and machinery, and 3D printing equipment, as well as for the raw materials and inputs used to support these products. Key areas in the services sector include automobile repair and rescue services, online banking services, and bank branch services.

In August 2019, the CNIS Resources and the Environment Branch established the Enterprise Standard “Pioneer” Alliance, together with relevant industry associations, third-party evaluation agencies, and leading enterprises. In November 2019, the Enterprise Standards “Pioneer”

年度实施企业标准“领跑者”重点领域》的通知。通知明确了企业标准“领跑者”制度的工作机构是中国标准化研究院，负责 ① 建立企业标准“领跑者”专家委员会；② 统一公示评估机构所形成的企业标准排行榜和“领跑者”名单；③ 负责企业标准领跑者统一信息平台（<http://www.cpbz360.org/>）的建设运营，④ 对评估机构进行动态管理；⑤ 协助政府部门研究激励政策与监督机制，⑥ 推动大型卖场和电商平台等采信企业标准“领跑者”评估结果。

为落实《意见》要求，规范开展企业标准“领跑者”评估工作，中国标准化研究院于 2019 年 2 月制定并发布《企业标准“领跑者”实施方案（试行）》。《实施方案》明确了企业标准“领跑者”制度基本思路。各相关方职责与责任，企业标准排行榜和“领跑者”实施程序及政策。

2019 年 06 月，市场监管总局印发《2019 年度实施企业标准“领跑者”重点领域的公告》，确定了 100 项产品及服务类别的企业标准重点领域。企业标准重点领域以消费品为主，也加入了涉及高端制造和新型技术领域如数控模切机、数控车床、工业机器人、机械、3D 打印（增材制造）设备及其原材料和制品，还将服务型领域加入重点领域的范畴，如：汽车维修和救援服务、网上银行服务、银行营业网点服务等。

2019 年 8 月，中国标准化研究院资源环境研究院联合相关行业协会、第三方评估机构、龙头企业等单位共同发起成立企业标准“领跑者”联盟。同年 11 月，企业标准“领跑者”联盟制定发布企业标准“领跑者”标识，并对企业标准“领跑者”标识的使用进行规范管理。

截止 2019 年年底，联盟已发布涵盖 245 家企业，315 项标准和 342 个产品型号的企业标准领跑者，已发布 2019 年年度企业标准排行榜 381 个，涉及 91 个产品、服务类别。

商会认为，目前识别“领跑者”的规则，包括公开企业标准的积极性等等，似乎并不能达到“促进中国产品和服务的供给和质量的提升”的目标。目前已经公开的“领跑者”名单与公众对于相关产品的质量认知之间存在相当的差距，这一事实便可以充分证明这一点。商会强烈建议重新评估领跑者计划的必要性和合理性，正确认识标准化的价值，改正缘木求鱼、南辕北辙的政策措施。

继续推动认证认可、检验检测一体化改革

2019 年 6 月 25 日，李克强总理在全国深化“放管服”改革、优化营商环境电视电话会议上发表重要讲话，部署深化“放管服”改革，加快打造市场化法治化国际化营商环境。

讲话中，政府鼓励采取新的认证认可措施，具体包括：

- 进一步调整工业产品生产许可证管理目录，将强制性产品认证（CCC）目录再压减 30 种以上；
- 继续扩大“自我声明”评价方式实施范围，
- 简化强制性产品认证管理程序，减少认证证书种类数量；
- 推动检验检测认证机构与政府部门彻底脱钩，
- 鼓励社会资本进入检验检测认证市场。

2019 年 10 月，为贯彻落实 6 月电视电话会议精神，《市场监管总局关于调整完善强制性产品认证目录和实施要求的公告》（2019 年第 44 号）对强制性产品认证目录和实施要求作出调整：对 18 种产品取消强制性产品认证管理；对 17 种产品转为实施自我声明管理；完善自我声明实施要求。

商会赞赏中国采取以上改革措施。这些措施不仅有助于减轻企业负担，而且可以充分发挥市场在资源配置中的决定性作用，强化市场主体责任，进一步降低制度性交易成本，彰显强制性产品认证“保安全”本质属性。商会认为，精简优化强制性、准入类制度，公开各项国家统一推行认证制度的目录和准入条件，还将有助于提高中国制造产品的质量，进一步推动中美贸易。

2019 年 11 月，《国务院关于进一步做好利用外资工作的意见》（国发【2019】23 号）中提出，对外开放是中国的基本国策，要深化对外开放，着力营造公平经营环境。该《意见》特别指出，要坚持按照内外资机构同等待遇原则，开展强制性产品认证机构的资质审批工作。

商会欢迎中国加快强制性产品认证的认证机构资质对外资开放的步伐，允许外资检测机构为所有产品类别提供强制性产品检测、认证服务，允许外资机构成为强制性产品认证机构。

Alliance issued the enterprise standard “pioneer” logo and promulgated regulations to manage the use of said logo.

At the end of 2019, the Enterprise Standard “Pioneer” Alliance has identified 245 enterprises classified as “enterprise standards” leaders, 315 standards covering 342 product models, and 381 enterprise standard rankings for 2019, involving 91 product and service categories.

AmCham China believes that the current rules for identifying enterprise standards “Pioneers,” including the enthusiasm for publicizing enterprise standards, does not achieve the goal of “promoting the supply and quality of Chinese products and services.” There is a considerable gap between the quality of the published “Pioneers” list and public perceptions of the quality of those products and services. Moreover, publication of enterprise standards can lead to the release of sensitive or proprietary corporate information and should be avoided. AmCham China strongly recommends that the government reassess the rationale of the enterprise standard “Pioneer” program with respect to the value of standardization efforts and revise policies that have created confusion or undermined standards-setting efforts.

Recognition of Certification, Accreditation, Inspection, and Testing Institutions

On June 25, 2019, Premier Li Keqiang delivered an important speech at a national teleconference on the topic of “decentralizing service delivery, strengthening regulation, and providing better services” and “optimizing the business environment.” In this speech, he called for deepening reforms to create a more market-oriented international business environment, underpinned by a strong legal framework.

The teleconference encouraged the government to undertake new certification and accreditation measures, such as:

- Adjusting the *Catalogue of Production Licenses for Industrial Products* and reducing the *Catalogue of Products Subject to China Compulsory Certification (CCC)* by over 30 products,
- Expanding the scope of evaluation methods used to assess “self-declared” standards,
- Simplifying procedures for compulsory product certification and narrowing the number and type of certifications required,
- Promoting the complete separation of inspection, testing, and certification institutions and government departments to ensure their independence, and
- Encouraging capital from non-government sources to enter the inspection, testing, and certification market.

In support of the pro-business spirit of the June national teleconference, SAMR in October released the *Announcement on*

Adjusting and Improving the Compulsory Certification Product Catalogue and its Implementation Requirements (Circular No. 44, [2019]) which made the following adjustments to the CCC product catalogue: canceling compulsory product certification for 18 product categories, establishing “self-declared” standards for a further 17 categories, and streamlining the requirements for self-declared standards.

AmCham China appreciates these reforms. In addition to lessening the administrative burden on enterprises, Circular No. 44 [2019] should promote the market’s role in the allocation of resources, reduce institutional transaction costs, improve compliance of market entities, and underscore the importance of product certification in ensuring consumer safety. AmCham China believes that streamlining the compulsory product certification system and publicizing the product catalogs and certifications required in order to be listed in those catalogs should promote a more unified implementation of China’s certification system, will improve the quality of Chinese-made products, and further spur trade between China and the US.

In the November *Several Opinions of the State Council on Further Doing a Good Job in the Utilization of Foreign Investment* (Circular No. 23 [2019]), further opening to the outside world was reaffirmed as China’s basic national policy. The Opinions pointed out the necessity of adherence to the principle of equal treatment for both FIEs and domestically-invested enterprises. Under this principle, efforts will continue to identify new institutions capable of conducting compulsory product certifications through the relevant qualification examinations.

AmCham China welcomes China’s commitment to open the compulsory product certification industry to FIEs, to allow foreign testing institutions to provide compulsory product testing and certification services for all product categories, and to allow foreign institutions to become compulsory product certification institutions.

In the spirit established by Circular No. 23 [2019], any interested entity regardless of national origin will be able to participate equally in the construction of China’s certification, accreditation, inspection, and testing industry. As part of this commitment, AmCham China urges the government to adopt international best practices in the certification, accreditation, inspection, and testing industry to the maximum extent possible. In particular, it is essential to clearly delineate and separate the roles and responsibilities of regulatory authorities and industry participants, to enable the market to play a leading role, all the while providing manufacturers and those in the service industry with greater choice to meet the relevant testing, inspection, and certification requirements of the Chinese market.

本着 23 号文件中的精神，所有利益相关方才能共同参与建设公平、健全的认证认可及检验检测制度。此外，商会促请中国采用认证认可、检验检测的最佳国际实践，将规则制定者、监管者和实践者的角色分开，让市场更多地发挥主导作用，为生产厂商提供更多选择，从而满足中国市场相关检测检验认证要求。

外资企业参与标准制定

《国务院关于进一步做好利用外资工作的意见》（国发〔2019〕23 号）中明确指出“全面落实内外资企业公平参与我国标准化工作……提高行业标准和技术规范制修订的科学性和透明度。”

早在 2017 年，国家标准委、发改委、商务部联合发布了《外商投资企业参与我国标准化工作的指导意见》（以下简称《指导意见》），《指导意见》第六条指出，外商投资企业代表可以作为委员或观察员参加全国专业标准化技术委员会（包括分技术委员会、工作组等），按照《全国专业标准化技术委员会管理办法》等要求享有相应权利，履行相应义务。以上文件积极鼓励外资企业参与中国的标准工作。

商会对此深表欢迎。但在实践中，商会发现，外商投资企业在申请加入某技术委员会时，仍然会遇到不小的阻力，有些技术委员会对外资企业还有不轻的戒备心理，有时会以各种借口阻碍外资企业的加入。商会希望能够出台有效的方案或者实施细则帮助这些积极的鼓励措施落地。

采用国际标准和正当程序

新《标准化法》和“中国标准 2035”研究项目表明，中国愿意参加国际标准化活动并继续融入国际标准。但是，二者即不符合国际标准制定的既定原则，也未充分利用现有国际标准来履行中国对 WTO/TBT 的承诺，还不曾明确承诺采用正当程序。

中国政府及国内各个行业对许多国际标准的接受度越来越高。约 75% 的中国国内标准（国标，也称“强制性国家标准”）都源自或从 ISO、IEC 或 ITU 标准发展而来。国际标准也广泛应用于许多行业标准的制定上。中国的监管机构越来越多地参与到 ISO、IEC、ITU、ASTM、ASME、UL、IEEE 及其他标准制定机构的活

动中。中国美国商会认可中国在这些组织中发挥着日益重要的作用，并欢迎中国继续参与到这些组织的活动中。

中国国内标准与国际通用标准接轨，有助于支持中国国内经济发展和包括“一带一路”倡议在内的国际倡议。在中国运营的内资企业应认识到，遵守国际标准需要中国政府适应中国国内市场状况和需求。

认可符合特定要求的标准制定机构为国际标准制定机构

《标准化法》和现行的法规、惯例在很大程度上认为国际标准较为浅显，通常仅遵循 ISO、IEC 和 ITU 发布的标准。但实际上，对国际标准的认可和接受不仅限于 ISO、IEC 和 ITU。实际上，没有哪个政府、个人或标准制定组织可以独自领导所有技术的标准制定及其在全球市场中的应用。

尽管《标准化法》和“中国标准 2035”项目鼓励社会团体在标准制定过程中发挥领导作用，但目前尚不清楚监管机构是否将所有全球公认的标准制定机构（大多是社会团体）视为全球标准制定机构。中国美国商会建议，监管机构在采用某一特定标准时应该以国际公认的标准制定原则和适当程序（包括公开参与、透明度、公正投票权和协商一致）为基础作出决策。某一给定标准的技术质量和市场相关性应尤为受到重视，上述两个因素由其在市场上的接受程度而定。商会会员认为，支持此类标准制定机构并遵循标准采用原则，将不仅有助于中国政府完善其标准化体系，而且有利于提升中国技术和产品在全球市场中的竞争力。

因此，考虑 WTO G/TBT/1/Rev 第九章第 8 节中详述的发展中国家利益，中国美国商会强烈呼吁中国政府将其对国际标准制定机构的官方认可范围扩大到 ISO、IEC 和 ITU 以外那些同样遵循 WTO/TBT 原则的组织。WTO/TBT 原则包括透明性、公开性、公正性、协商一致性、相关性和有效性，一致性和连贯性。这也与中国关于社会团体标准化的标准化战略高度契合。商会会员相信，即便是私人标准制定机构也都具备此类资格，并鼓励中国政府就像对待接受 ISO、IEC 和 ITU 那样，以的同等方式接纳这些标准制定机构，并与之合作。

推荐性标准

FIEs and Standards Setting

Circular No. 23 [2019] clearly provides a legal basis for FIEs to participate equally in standards setting. The State will “ensure equal participation in China’s standards-setting efforts by domestically-invested and foreign-invested enterprises,” and ensure “transparency and a sound scientific basis in the development and revision of industry standards and technical specifications.”

In 2017, the SAC, NDRC, and the Ministry of Commerce (MOFCOM) jointly issued the *Guiding Opinions on Foreign-Funded Enterprises Participating in the Standardization Work of China* (Guiding Opinions). Article 6 of the Guiding Opinions states that representatives of FIEs can join the China National Standardization Technical Committee (including technical sub-committees and working groups) as members or observers, and enjoy full rights to exercise their obligations in accordance with the *Measures for the Administration of the China National Standardization Technical Committee*.

We welcome the promulgation of written legislation that actively encourages FIEs to participate in China’s standards-setting work. In practice, however, our members find that FIEs continue to encounter considerable resistance when applying to join a standardization technical committee. Certain domestic enterprises on these technical committees are sensitive to participation by FIEs and work to hinder their participation. We strongly encourage the government disseminate clear, binding implementing regulations and enforcement mechanisms that ensure equal participation by FIEs on standards-setting technical committees in support of the provisions included in the FII and the Phase One Deal.

FIEs should also be permitted to participate in industry working groups that support standards development activities, particularly those related to standards development of “secure and controllable” technologies, given the potential for such standards to affect a wide range of industries and market entities.

Adoption of International Standards and Due Process

The revised *Standardization Law* and China Standards 2035 demonstrate China’s willingness to participate in international standardization activities and continue to align with international standards. Neither the revised law nor the program, however, clearly align with established principles of international standards development, nor have they made good use of existing international standards to fulfill China’s WTO/TBT commitments. They do not demonstrate a clear commitment to due process.

China’s government and its industries have increasingly embraced a number of international standards. Approximately 75 percent of China’s domestic standards

(GuoBiao or mandatory national standards) are derived from or developed by adopting standards from the ISO, IEC or ITU. International standards are also widely used in the development of a number of industry-specific standards. China’s regulators increasingly participate in the activities of the ISO, IEC, ITU, ASTM International, the American Society of Mechanical Engineers (ASME), UL LLC, Institute of Electrical and Electronics Engineers (IEEE), and other standards development-related institutions. AmCham China recognizes China’s growing role in these organizations and applauds its continued participation.

Aligning China’s domestic standards with common international standards will support China’s domestic economic development and international initiatives, including the BRI. Domestically-invested enterprises operating in China should be aware that conformance with international standards will require the government to adapt China’s domestic market conditions.

Recognition of Disciplined Standards Setting Bodies that Meet the Requirements to be Considered International Standards Development Organizations

The *Standardization Law* and current regulations and practices largely treat international standards as superficial, traditionally adhering only to standards issued by ISO, IEC, and ITU. In actuality, however, the recognition and acceptance of international standards extends well beyond the ISO, IEC, and ITU. Practically speaking, no government, individual or group of standards development organizations (SDOs) can lead standards development for all technologies and their multitude of applications in the global market alone.

While the *Standardization Law* and China Standards 2035 encourage social organizations to lead the standards development process, it is unclear whether regulators will consider all globally-recognized SDOs, which are mostly comprised of social organizations, on a par with international standards-setting bodies (e.g. the ISO, IEC, or ITU). AmCham China recommends that regulators base their decision about adoption of a particular standard using internationally-accepted principles of standards development including open participation, due process, transparency, impartial voting rights, and a consensus-oriented approach. Particular importance should be ascribed to the technical quality and market relevance of a given standard, defined by its acceptance in the marketplace. In accepting these SDOs as valid standards-setting bodies and following these principles in the standards adoption process, AmCham China believes that the government will not only improve the domestic standardization system but also promote the competitiveness of Chinese technologies and products in the global marketplace.

AmCham China therefore strongly urges the government to

根据标准化法，对保障人身健康和生命财产安全、国家安全、生态环境安全以及满足经济社会管理基本需要的技术要求，均应制定强制性国家标准。对满足基础通用、与强制性国家标准配套、对各有关行业起引领作用等需要的技术要求，可以制定推荐性国家标准。由此可见，制定推荐性标准的目的之一是引领行业技术的发展，而非有意设置行业合规和市场准入的障碍与门槛。然而，实践操作中出现了行业主管部门直接将推荐性标准作为产品市场准入的强制性要求。此举不但规避了强制性标准制定严格的立项和程序要求，而且为企业合规和产品准入制造了种种困难。

如果推荐性标准没有经历过强制性国家标准的立项、起草、征求意见和技术审查，却作为强制性标准采用，产品技术的可行性论证则有待进一步商榷。某些商品在技术层面上要比那些市面上能直接买到的商品要高级。由于这类产品不符合上述标准，欠缺适当的技术规格，因此可能受到限制。

同时，遵循推荐性标准会导致行业在产品后期开发调整合规成本过高。此外，由于推荐性标准没有经过WTO/TBT的通报流程，直接引入产品准入可能导致贸易技术壁垒的问题，不符合WTO原则。因此，商会建议不要将非强制性标准作为希望在中国获得市场准入的产品的强制性要求。如果一定要作为强制性标准引入，必须将其当作一项新的强制性标准看待，经过严格的立项、起草和技术审查。

会及其标准工作组的活动，确保外资企业能够与内资企业平等地全程参与标准制定活动。

- 明确团体标准制定的规则和要求，遵循公开、透明和协商一致的国际通行做法，防止特殊利益团体滥用规则。确保推荐性标准不会引入或成为境外商品在中国获得市场准入的要求。即使要将其作为强制性标准，也必须作为新标准处理，经过严格的立项、起草、公众意见征集和技术审查流程。
- 正式将对国际标准制定机构的认可范围扩大至其他遵循WTO/TBT关于国际标准制定原则的标准制定机构。尽可能完整地采用现行国际技术标准，避免制定重复或偏离已经广泛采用的国际规定的标准。
- 商会强烈建议重新评估“领跑者”计划的必要性和合理性，正确认识该计划对标准化活动的价值，以及预估该计划对企业内部标准的公众形象影响的潜力，因为里面会包含有关产权信息的内容。

建议

对中国政府：

- “中国标准2035”研究项目应当扩大开放度，更广泛地咨询专家和机构的意见，保证新的中国标准化体制能够适应未来国际贸易的新需求。
- 根据2018年修订版《标准化法》及随后出台的《指导意见》、2020年1月生效的《外商投资法》和《美中第一阶段贸易协定》，中国政府应更加密切地监督各技术委员会\技术分委

broaden its official recognition of international SDOs beyond the ISO, IEC, and ITU to any organization that follows the WTO/TBT principles of transparency, openness, fairness, consensus, relevance, and effectiveness, while taking into account the interests of developing-countries as detailed in WTO G/TBT/1/Rev. 8 Section IX. Such approach is consistent with China's strategy to promote social organization standards. Our members are confident that even private SDOs meet these qualifications and encourage the government to engage with and accept these SDOs on the same basis it does with the ISO, IEC, and ITU.

Recommended Standards

The *Standardization Law* requires mandatory national standards to be formulated to guarantee personal health and safety, protect property, ensure national security, ecological security, and meet the basic "needs of economic and social management." By contrast, recommended standards can be formulated to meet basic or universal needs, supplement mandatory national standards, and be used to lead industry development. One purpose of establishing recommended standards is to guide the development of industry technology, rather than to serve as standards or thresholds to measure industry compliance or restrict market access. In practice, however, our members find that regulatory authorities often adopt recommended standards as mandatory requirements for market access. This not only circumvents existing project and product approval procedures for mandatory standards, but it also creates corporate compliance and market access restrictions for FIEs whose products may not meet the recommended standards as they are not designed for the Chinese market. Such practices mean the quality and selection of products available to the Chinese consumer is reduced.

When recommended standards are adopted as mandatory standards without undergoing relevant project approvals, public comment periods, and technical reviews that are normally required for mandatory national standards, the technical quality of such standards is subject to question. Certain products which are technically superior compared to what is available on the market may be restricted because they do not meet these standards, which may not be grounded in the appropriate technical specifications. The government should limit the use of recommended standards that are based on domestic essential patents from being adopted as national/mandatory standards. Otherwise, such recommended standards will only serve to restrict market access for FIEs in the China market.

At the same time, compliance with recommended standards imposes excessive compliance costs on industry at the latter stages of product development. Recommended standards do not undergo the notification process as required by the WTO/TBT. Because the introduction of recommended standards may trigger technical barriers to trade, their use is

not in line with WTO principles. AmCham China therefore recommends that recommended standards not be introduced or required for products seeking market access in the Chinese market. If they are to be mandatory, it is imperative that they be treated as new, mandatory standards and made to undergo rigorous project approval procedures, a drafting, public comment, and technical review process.

Recommendations

For the Chinese Government:

- **Open the Chinese Standards 2035 research program to a wider range of opinions, experts, and institutions to ensure that the any future standardization systems in China are consistent with and meet the needs of existing practices in international trade and commerce.**
- As per the 2018 revised *Standardization Law*, subsequent Guiding Opinions, the FIL effective January 1, 2020, and the Phase One Deal, the government should closely monitor the activities of the Technical Committees (TC), its subcommittees, and standards working groups to ensure that FIEs are allowed to participate in all phases of standard-development activities on an equal basis with domestically-invested enterprises.
- Provide a clear set of rules and requirements for the development of social organization standards and follow an open, transparent, and consensus-based method in line with international practice to prevent abuse by special interests. Ensure that recommended standards not be introduced or required for products seeking market access in the Chinese market. If they are to be made mandatory, it is imperative that they be treated as new, mandatory standards and made to undergo rigorous project approval procedures, a drafting, public comment and technical review process.
- Officially broaden the recognition of international SDOs to include any organization that follows the WTO/TBT principles on international standards development. Adopt existing global technical standards in their complete form whenever available in order to ensure full harmonization and avoid creating domestic national standards or standards deviating from prevailing global standards.
- Reassess the rationale for and the necessity of the enterprise standard "Pioneer" program, with respect to its contribution to the overall value of standardization activities and the potential it creates for the publication of enterprise standards, which contain proprietary information.

Tax

Introduction

China's tax policies are influenced by changes in the macro-economic environment. Rather than simply increasing tax revenues, the State Taxation Administration (STA) continues to promulgate policies to encourage foreign investment and stimulate the domestic economy. China's tax incentive policies have greatly encouraged research and development, technology innovation, and entrepreneurship. China is also further developing its Advance Pricing Arrangement (APA) program and improving international tax cooperation. While AmCham China welcomes the recent tax policy trajectory, longstanding challenges remain for US and other foreign-invested enterprises (FIEs) and taxpayers operating in China. Ongoing issues include the lack of sufficient transparency around the bilateral advance pricing arrangement (BAPA) program, barriers to access for certain tax incentive programs, regulatory hurdles to avoid cross-border double-taxation, and generally restrictive or excessive tax rules.

Moreover, tax alleviation has been at the forefront of China's policymaking in the first quarter of 2020 as the government has moved to offset the impact of the outbreak of the Coronavirus Disease (COVID-19) on China's economy. COVID-19 has had a significant impact on our member companies and the Chinese economy as a whole. Measures to contain COVID-19 brought the economy to standstill for several weeks in January and February 2020. As COVID-19 continues to spread around the globe, additional impact on the Chinese and global economies is anticipated, though its extent is hard to forecast at present.

To address the ongoing impact of COVID-19, policies that reduce the tax burdens of our members are welcome. Some 49 percent, virtually half, of AmCham China member companies surveyed in our February 2020 *Flash Survey Report on the Impacts of COVID-19* hope the Chinese government will issue tax relief measures to help FIEs cope with the situation. In February 2020, the Ministry of Finance (MOF) and the STA issued the *Announcement on Tax Policies on Donations to Support the Prevention and Control of the COVID-19* (Announcement No. 9) and the *Announcement on Individual Income Tax Policy to Support the Prevention and Control of COVID-19* (Announcement No. 10), which clarify the tax treatment of payments from employers to employees/staff in light of the

conditions imposed by COVID-19, as well as for individual donations for COVID-19 prevention and relief.

In addition to these policies, the STA has also announced "lifestyle services," including medical services, catering/accommodation, and personal services (e.g. hairdressing, and laundry) will be exempt from value-added tax (VAT, that is normally six percent for VAT general payers), in order to support enterprises in these sectors. The policy came into force on January 1, 2020 (retrospectively) and will be monitored as the COVID-19 situation develops. Policies have also been promulgated at the local level. For instance, the Beijing Municipal Government issued policies (Circular No. 7 [2020]) to provide tax support via deferred tax payments for up to three months for small-and-medium enterprises experiencing financial difficulty as a result of COVID-19.

While AmCham China welcomes these measures, we urge the government to ensure that such preferential tax policies are equally available to FIEs. In the 2020 *Flash Survey Report on the Impacts of COVID-19*, one-third of our members are seeking "clear and consistent" policies and hope that transparency will be prioritized with respect to policies enacted by the government to offset the impact of COVID-19.

Given the fluid nature of the current situation in China and the present uncertainty created by the COVID-19 outbreak, this year's *White Paper Tax Chapter* focuses on longstanding challenges in taxation for FIEs and multinational companies operating in China. We recommend MOF, STA, and other relevant agencies take concrete steps to address the concerns and issues discussed in the following sections.

Ongoing Challenges

Individual Income Tax Reform

The *Individual Income Tax Law* (IIT Law) went into effect on January 1, 2019, although the increased standard deduction and new tax brackets for salaries and wages had already gone into effect in October 2018. In December 2018, the State Council released the final implementation regulations for the amended IIT Law, which also went into effect on January 1, 2019. The changes to the IIT system aim to reduce the tax burden, increase personal income, and boost consumption

税务

引言



国税收政策受到宏观经济环境变化的影响。国家税务总局制定税收政策并非仅以税收收入为主要目标，而是致力于这些税收政策起到鼓励外国投资、刺激国内经济的作用。中国税收优惠政策极大地鼓励了研发、科技创新及创业。中国也在进一步推动预约定价安排计划，提高国际税务合作。虽然近期出台的税收政策很受中国美国商会（以下简称“商会”）欢迎，但在华经营的美国及其他外商投资企业和纳税人仍面临长期挑战。其中一些挑战由来已久，如双边预约定价安排 (BAPA) 计划缺乏足够的透明度，一些税收优惠计划存在准入障碍，纳税人在为避免跨境双重征税过程中遇到的来自法规方面的困难，以及普遍存在的限制性或过度的税收规定。

此外，为减少新型冠状病毒感染的肺炎疫情（以下简称“新冠肺炎疫情”）对中国经济的冲击，税收减免成为 2020 年第一季度中国税收政策制定的重中之重。新冠肺炎疫情对商会会员企业和中国整体经济的影响不容小觑。2020 年 1 月到 2 月，中国采取措施遏制新冠肺炎疫情扩散，导致经济停滞了数周。新冠肺炎疫情仍在全球持续蔓延，虽然目前尚难准确预测新冠肺炎疫情对中国和全球经济带来影响的程度，但可以预见新冠肺炎疫情将会对经济造成较大冲击。

商会会员对中国政策为应对新冠肺炎疫情出台降低税负政策，表示热烈欢迎。商会 2020 年 2 月开展的《关于新型冠状病毒肺炎疫情影响的调查报告》显示，49%（近一半）的会员企业希望中国政府出台税收减免政策，帮助外商投资企业渡过难关。2020 年 2 月，中华人民共和国财政部和国家税务总局共同发布了《财政部 税务总局关于支持新型冠状病毒感染的肺炎疫情防控有关捐赠税收政策的公告》(2020 年第 9 号) 和《财政部税务总局关于支持新型冠状病毒感染的肺炎疫情防控有关个

人所得税政策的公告》(2020 年第 10 号)，明确了新冠肺炎疫情期间企业对员工支付工资以及个人捐赠支持新冠肺炎疫情防控的税收政策。

除了这些政策外，国家税务总局还出台了政策来支持相关行业企业的发展，例如提供医疗服务、餐饮住宿服务、居民日常服务（如美容美发、洗衣）等生活服务的纳税人取得的收入免征增值税（增值税，对于增值税一般纳税人通常为 6 个点），该增值税免税政策自 2020 年 1 月 1 日起生效（回溯的），具体截至时间视疫情发展情况而定。各地也纷纷颁布了地方性支持政策。例如，北京市政府发布政策（京政办发〔2020〕7 号）提供税收支持，规定受疫情影响纳税申报困难的中小微企业，可依法办理延期缴纳税款，最长不超过 3 个月。

商会对这些支持政策表示欢迎，但商会仍促请中国政府保证此类税收优惠政策能够平等适用于外商投资企业。《中国美国商会关于新型冠状病毒肺炎疫情影响的调查报告》显示，三分之一的受访企业期盼清晰、一致的政策，希望政府颁布的政策能进一步提高透明度，有助于减轻疫情对企业的影响。

考虑到中国形势不断变化，新冠肺炎疫情又带来巨大的不确定性，今年《白皮书》的税务章节重点关注在华经营的外商投资企业和跨国企业长期面临的税务挑战。商会建议财政部、国家税务总局和其他相关部门能采取具体措施解决下文讨论的问题。

现存挑战

个人所得税改革

《个人所得税法》于 2019 年 1 月 1 日起生效，但是新的个税起征点和工资薪金税率等级已于 2018 年 10 月 1 日起生效。2018 年 12 月，国务院发布修订后的《中

for the middle-and low-income segments of the populace. Unlike previous amendments that only adjusted standard deductions or modified the tax brackets for salaries and wages, the new tax reforms bring fundamental changes to China's IIT system:

- Introduced the internationally recognized “183-day” test for determining whether an individual is a Chinese tax resident, which will make it much easier for a non-China-domiciled individual to be considered a Chinese resident for tax purposes,
- Replaced the “five-year rule” with a “six-year rule” and adaptation of the rule to the new definition of a tax resident,
- Consolidated the previous four categories of income (i.e., salaries and wages, remuneration for independent services, author's remuneration, and income from royalties) into a single new category called “comprehensive income,”
- Broadened the lowest three tax brackets for salaries and wages,
- Increased the standard deduction, repealing the additional deduction (notably available for foreign individuals) for salaries and wages, and introduced additional itemized deductions (i.e., expenses for children's education, dependent parents and continuing education; medical expenses for critical illnesses; and mortgage interest or rent for housing),
- Introduced a new IIT assessment and filing regime, notably an annual assessment and filing requirement for the comprehensive income of resident individuals,
- Introduced a tax clearance requirement upon emigration,
- Prioritized enhanced information-sharing among government departments and the inclusion of IIT compliance records in the individual credit rating system, and
- Introduced anti-avoidance rules.

Foreign nationals working in China, regardless of their tax residency status, can enjoy eight tax-exempt allowances for housing, language training, children's education, meals, laundry, relocation costs, home leave, and onshore and offshore business travel. The tax-exempt allowances for housing, language training, and children's education will be available only through December 31, 2021. Beginning January 1, 2022, foreign workers will no longer be able to enjoy these three tax-exempt allowances. This will significantly increase the tax burden of foreign nationals and translate into higher operating costs for companies dispatching foreign workers to China. We recommend that the government consider extending the relief measures for foreign nationals working in China after the scheduled expiration of the current measures at the end of 2021, as the new measures will disincentivize companies from sending senior management to work in China.

Enhancing Research and Development and Innovation Tax Incentives

Recent years have seen continuous improvements in China's innovation tax policies, including the research and development (R&D) super deduction, High and New Technology Enterprise (HNTE), and Advance Technology Services Enterprise (ATSE) incentives. These incentives have been enhanced or expanded, along with:

- Corporate Income Tax (CIT) expensing for equipment and instrument investment (for items costing less than RMB 5 million (US \$706,000)),
- A higher ceiling for staff education expense deductions, special IIT treatment for ‘breakthrough bonuses’ to scientists, as well as enhanced venture capital (VC) tax incentives.

While these measures constitute significant progress and support the transition of enterprises to higher value-added activity, there are a range of additional improvements available to make the incentives more accessible, useful, and effective.

SAT Announcement [2017] No. 40 and Circular [2018] No. 64, regarding the R&D super deduction, have helped to clarify a broader scope of expenses eligible for the super deduction, encompassing costs of technical and support staff, share-based incentive schemes and staff benefits, costs of failed R&D projects (those where the main objectives may not have been achieved but the experience gained is worthwhile and may have led to development of other worthwhile results), and domestic and overseas outsourcing. Potential expenses are still unduly restrictive in multiple aspects, however, and AmCham China recommends the following:

- **Allow all industries to access the super deduction.** Those industries on the *Special Administrative Measures on Access to Foreign Investment (Negative List)*, are entirely excluded from accessing the super deduction. These include wholesale/retail, accommodation/catering, leasing and business services, and entertainment. Given the avowed policy intent to shift the economy towards services, AmCham China urges that such limitations be reconsidered.
- **Start-ups need R&D tax incentives to deliver cash refunds.** Innovative, early-stage start-ups generally run significant losses and are not in a position to monetize R&D super deductions. In contrast, other developed countries offer a cash refund mechanism to address cash flow constraints faced by these start-ups. We recommend that China consider similar mechanisms.
- **Progressive rates steer support to innovative start-ups.** Support for innovative small firms can be maximized through enhanced deductions for initial expenses (e.g. Hong Kong's 300 percent deduction for the first HKD 2 million (RMB 1.8 million; US \$258,000) in

华人民共和国个人所得税法实施条例》(以下简称“实施条例”),将自2019年1月1日起与新个人所得税法同步施行。此次个人所得税改革旨在降低税务负担、增加个人收入、促进中低收入阶层消费。不同于以往的数次税法修订,本轮改革不再单纯地关注工薪所得起征点(即基本减除费用标准)、薪金税率等级的调整,新的税制改革给中国的个人所得税制度带来了根本性的变化。

- 明确引入了对无住所个人采用国际通行的“183天”标准以判定其是否成为中国的税收居民的测试,降低了无住所个人构成中国税收居民的标准;
- 将无住所个人符合条件的境外所得免征个人所得税的“五年规则”升级为“六年规则”,并调整该规则使其适应新税法下的“居民”定义;
- 将之前4类所得:工资薪金所得、劳务报酬所得、稿酬所得、特许权使用费所得合并成“综合所得”项目进行征税;
- 扩大工资薪金所得的最低3档税率级距;
- 提高工资薪金所得的基本减除费用标准,取消附加减除费用(原适用于外籍个人),增加子女教育支出、赡养老人、继续教育支出、大病医疗支出、住房贷款利息或住房租金专项附加扣除;
- 确立新的个人所得税纳税申报制度,对居民个人的综合所得采取汇算清缴;
- 新增离境税款清算要求;
- 明确多部门信息共享,在个人信用信息系统中纳入个人所得税合规记录;
- 新增个人所得税反避税条款。

在中国工作的外籍人士,不论其税收居民身份如何,均可享受住房、语言培训、子女教育、伙食、洗衣、搬迁费、探亲、境内外出差等八项免税补贴。住房、语言培训和子女教育的免税补贴仅可在2021年12月31前可以享受。自2022年1月1日起,外籍个人不再享受此三项免税优惠政策。这将显著增加外籍个人的税收负担,转化成为派遣员工到中国的公司的更高运营成本。商会建议政府考虑在2021年底对在海外籍派遣员工的税收优惠政策到期后,能继续延长施行此政策,否则将会打击企业派遣高级管理人员到中国工作的积极性。

加强研发、创新税收优惠

近年来,中国创新税收政策不断完善,先后出台了

研发费用加计扣除,高新技术企业(HNTE)、技术先进型服务企业(ATSE)等优惠政策。国家对上述政策进行了进一步地加强和拓展。同时也出台了如下的优惠政策:

- 企业所得税角度,企业购进设备、器具不超过人民币500万的(500万元(706,000美元)),允许一次性费用化;
- 提高职工教育经费的扣除上限,给予科学家“突破性奖金”特殊个人所得税待遇,以及加强风险投资税收优惠。

上述措施有力地支持了中国企业向更高附加值转型,同时,其他一系列的配套政策的出台使得纳税人享受优惠更加切实、高效。

两个关于研发费用加计扣除的文件,国家税务总局公告[2017]40号和财税[2018]64号,进一步明确了研发费用税前加计扣除的归集范围,可以包括技术人员、辅助人员的费用,股份激励计划的支出、员工福利费,失败的研发项目支出(虽未实现主要项目目标,但获取了有价值的项目经验,这些经验可能还有助于得到其他有价值的成果),国内外的委托研发支出。尽管如此,研发费用加计扣除优惠在多方面还是存在一定的限制,商会建议:

- **允许所有行业适用加计扣除政策。**《外商投资准入特别管理措施(负面清单)》上的行业完全被排除在可享受加计扣除优惠政策的范围之外,包括批发/零售、住宿/餐饮、租赁和商业服务以及娱乐。鉴于中国政府公开表示要将经济向服务业转移,商会提请重新审议限制行业。
- **初创企业需要现金返还类的研发税收优惠。**初创阶段的创新型企业通常会处于巨额亏损的状态,无法实际通过研发加计扣除得到实际现金流的优惠。相比之下,部分发达国家则利用现金返还机制,解决初创企业面临的现金流不足的问题。商会建议中方考虑建立类似机制。
- **分阶段加计扣除比率支持创新型初创企业。**通过抬高初期开支的加计扣除额可最大化为创新小型企业提供支持(例如,香港规定首200万港币(即180万人民币,258,000美元)研发开支,可获得300%的加计扣除,其余可获得200%的加计扣除)。鉴于国务院计划将年利润低于300万元人民币的企

R&D expenses, and a 200 percent deduction for the remainder). Given the State Council's planned CIT rate reduction to 10 percent for firms with annual profits of less than RMB 3 million (US \$424,470), such incentives become increasingly important.

In 2019, the HNTE program was characterized by increasingly stringent supervision. For instance, Guangdong provincial officials cancelled the HNTE status of 54 companies, accounting for 44 percent of previously qualified entities. Increasingly strict supervision built on policy improvements AmCham China witnessed in 2018 for HNTE incentives, including the extension of loss carry-forwards from five years to ten years as laid out by Circular [2018] No.76. Formal clarification that the three-year rolling basis calculation will be used to evaluate whether the HNTE R&D expense to revenue qualification criterion has been met were also welcome. AmCham China recommends the following to reforms to further improve these policies:

- **Group-level HNTE applications.** The current application of HNTE rules apply on a separate legal entity basis which unnecessarily frustrates access to the incentive. While the group as a whole might meet HNTE qualifying criteria, no individual entity may meet all of the requirements in cases where R&D and other firm functions (including sales and manufacturing) are distributed across the group. As enterprises may therefore be confronted with the choice of structuring their operations in a commercially suboptimal manner or foregoing HNTE relief, a set of group-basis evaluation criteria should apply. AmCham China further recommends the government introduce general CIT group consolidation rules to facilitate business operations and efficient group structuring,
- **Expand the HNTE incentive to all industries.** Incentives are currently offered to only “encouraged” industries. This is unduly restrictive given the manner in which new digital technologies, artificial intelligence (AI), and automation are driving an economy-wide transformation. This limitation should be dropped.

Difficulties Qualifying for Cross-Border Intra-Group Restructuring Relief

Another contentious issue revolves around qualifying for group restructuring relief under Circular 59. Circular 59 permits only three types of cross-border reorganization to be earmarked for tax deferral treatment. These three occur when:

- A non-resident enterprise transfers its equity in a resident enterprise to a directly and wholly owned non-resident subsidiary (non-resident to non-resident). Relief will be granted on the condition that such transfer does not allow the non-resident subsidiary to access a more preferential China treaty withholding tax (WHT) rate on

capital gains on a (hypothetical) further transfer of the resident enterprise's shares. Furthermore, there must be no actual transfer by the non-resident subsidiary within the three year period following the reorganization transaction,

- A non-resident enterprise transfers its equity interest in a resident enterprise to a directly and wholly owned resident subsidiary (non-resident to resident),
- A resident enterprise contributes assets or equity interests to its directly and wholly owned non-resident subsidiary (resident to non-resident). In a resident to non-resident transaction, even if the resident enterprise meets the criteria for special tax treatment under Circular 59, it must still report the built-in gains of the assets or equities contributed to the offshore entity. These can, however, be reported over a period of ten years (partial deferral), as opposed to recognized immediately in the absence of special tax treatment.

AmCham China considers intra-group restructuring relief for cross-border transactions to be of crucial importance and strongly advocates that the qualifying conditions be further adjusted to allow for restructurings possessing clear commercial justification and which meet basic restructuring criteria of both continuity of ownership and continuity of business.

The STA has been aware for some time of a range of unnecessary limitations on tax relief granted to cross-border transactions. Progress on new guidance has been sporadic since 2010, with no resolution to-date. In the current domestic and global economic environment enterprise cross-border operations are more frequently restructuring and reorganizing, upgrading their business models, adjusting supply chains, and increasing organizational efficiency. AmCham China urges timely and significant relaxation of the conditions for cross-border intra-group restructuring relief. To provide for more flexibility under Circular 59 for cross-border restructuring, the following conditions should be loosened:

- Reduce the group holding test (i.e., the shareholding requirement between equity transferor and transferee) from 100 percent to a lower percentage. AmCham China recommends 80 percent,
- Allow for relief on “upstream” subsidiary-to-parent asset and share transfers, rather than only on transfers from parent to subsidiary,
- End the practice of holding cross-border corporate mergers amongst offshore holding companies (either upstream or laterally) to the group holding test percentage (currently 100 percent). This requirement cannot realistically be satisfied under normal business operations. Other qualifications, which are more commercially realistic, should be considered in place of this requirement.

业的企业所得税税率下调至 10%，这类优惠措施变得越来越重要。

2019 年，高新技术企业优惠政策的监管日益严格。例如，广东省取消了 54 家企业的高新技术企业资格，占此前高新企业总数的 44%。监管的趋严基于政策的不断完善。商会观察到，2018 年，财税〔2018〕76 号文件将高新技术企业的税收亏损结转年限从 5 年延长至 10 年。此外，企业也高兴地看到，企业研发费用占收入比例的计算口径得到了明确，即以 3 年整体数据作为计算标准。商会建议进行以下改革，来进一步完善相关的政策：

- **集团层面高新技术企业的适用。**目前高新技术企业资质以独立法人为基础进行申请，导致政策的惠及面受限。对于集团企业，研发和其他公司职能（包括销售、制造）通常分布于集团内部的各个实体之中。这就有可能出现集团整体指标均满足高新技术企业要求，但是任一单个实体都存在某些项目不达标的情况。因此，在评估高新技术企业资质时，应增加集团层面的指标，否则企业可能要被迫在放弃享受高新技术企业优惠和选择相对低效率（但是因而可以使得集团内某家或者某几家实体满足高新技术企业要求）的商业运作模式之间左右为难。此外，商会建议中国政府引入集团合并层面企业所得税的一般规则，以助力企业的业务运营及有效的集团重组。
- **将高新技术企业优惠扩展到所有行业。**目前只向“鼓励类”行业提供优惠。考虑到新数字技术、人工智能 (AI) 和自动化正在推动整个经济的转型，优惠范围过于严格，应取消可享受优惠的行业限制。

跨境集团内部重组适用特殊税务处理的困难

59 号文件中另一个有争议的问题是集团重组适用税务特殊处理的门槛。59 号文只允许三种类型的跨境重组选择适用特殊性税务处理规定。分别是：

- 非居民企业向其 100% 直接控股的另一非居民企业转让其拥有的居民企业股权（非居民转让给非居民），没有因此造成以后该项股权转让（如有）所得预提税发生变化，且转让方非居民企业在 3 年（含 3 年）内不转让其拥有受让方非居民企业的股权；
- 非居民企业向与其具有 100% 直接控股关系的居民

企业转让其拥有的另一居民企业股权（非居民转为居民）；

- 居民企业以其拥有的资产或股权向其 100% 直接控股的非居民企业进行投资（居民对非居民）。在这种情况下，即使居民企业符合 59 号文特殊税务处理的标准，也需要就其资产或股权转让收益申报企业所得税。但是，可以在十年内（部分递延）均匀计入各年度的应纳税所得额，而不是在一般税务处理下立即予以承认。

商会认为，特殊性税务处理政策对于集团跨境重组至关重要，因此强烈促请进一步调整适用的资格条件，使得那些存在合理商业目的并且满足长期持有、实质经营不变的重组安排也可以适用该政策。

国家税务总局已经意识到，跨境交易的税收政策适用存在一系列不必要的限制。自 2010 年以来，政策更新进程缓慢，截止目前还未有新规定出台。在当前国内外经济环境下，企业跨国经营常常涉及结构重组、业务模式升级、供应链优化及提升组织效率。商会促请适时大幅放宽集团内部跨境重组适用相关税收政策的条件。为使第 59 号文为跨境重组创造更大灵活性，应放宽以下条件：

- 降低当前集团控股 100% 的比例要求（即，股权出让方与受让方之间的持股比例要求）。商会建议放宽到 80%；
- 允许子公司向上将资产和股份转让母公司时获得减免，而不仅仅是母公司对子公司的转让可以获得特殊税务处理；
- 消除对境外控股公司（无论是向上还是横向）之间进行跨境企业并购持股比例的限制（目前为 100%）。正常的业务操作无法达到此要求。应考虑其他更切实的替代方案。

完善预约定价安排 (APA) 和相互协商程序 (MAP) 机制

2019 年 4 月，中国国家税务总局发布了《2018 年中国预约定价安排年度报告》，该报告指出，中国 APA 工作正持续稳步推进。国家税务总局投入了大量资源和精力以确保 APA 工作遵守经合组织有关的相互协商程序 (MAP) 的要求，APA 与 MAP 工作目前由中国国家税务总局同一团队负责。该报告从实践层面对 APA 及 MAP 的

Refining the APA and MAP Regimes

As noted in the STA's China Advance Pricing Arrangement (APA) Annual Report of 2018, released in April 2019, steady progress continues to be made under China's APA program. The STA has committed substantial new resources to the program alongside efforts to comply with OECD Mutual Agreement Procedure (MAP), handled by the same team at STA. This complements updates to the relevant tax guidance policies provided by STA Announcement [2016] No. 64 and Announcement [2017] No. 6 and underpins China's efforts to meet its base erosion and profit sharing (BEPS) Action 14 minimum standard commitments on improving access to and effectiveness of dispute resolution mechanisms. While this is encouraging progress, a number of practical steps can be taken to ensure that the APA and MAP regimes optimize the tax regime and reporting:

- **Better control of APA process and timing:** The BEPS Action 14 minimum standard includes a commitment that the review and negotiation processes for bilateral APAs will be completed within a 24-month period. We recommend the STA take useful steps to meet this goal by:
 - ① Improving coordination between lower-level tax authorities responsible for separate China entities within a corporate group, where the group is seeking a bilateral APA between its home country and China. Currently, issues exist around the ad-hoc nature of coordination between relevant authorities, which are at different stages of advancement with respect to APA matters,
 - ② Providing taxpayers with clearer information on the anticipated timing of each stage of the APA process, which consists of six stages: pre-filing meetings, intention, analysis and appraisal, formal application, negotiation and signing, and supervision of implementation. Due to resource limitations of the tax authority and internal coordination issues, taxpayers sometimes find themselves 'marooned' at a particular stage of the process, unsure of when the authorities will issue a formal notice allowing them to proceed to the next stage. We recommend that after receiving the taxpayer materials for a given stage, the authorities inform the taxpayer of the anticipated time frame for completion of that stage, allowing the taxpayer to plan accordingly.
- **APA renewals and profitability requirements.** Under existing rules, where a taxpayer's weighted average operating profit, (calculated over the three-year or five-year APA validity period), has fallen beneath the median of the interquartile range agreed in the APA, then the taxpayer will not be eligible for renewal of the APA. It is not clear whether this is an indefinite exclusion or simply a temporary suspension. AmCham China notes clarification on this would be helpful.

As a related matter, current APAs rules require that for any given year in which profit falls below the calculated interquartile range, it must be adjusted to the median of the agreed range. It would be more reasonable to allow for adjustment up to the top-end of the lower quartile and allow for adjustments to be made so that the requisite profitability target is met over the three to five-year validity period of the bilateral APA.

- **MAP refunds:** In practice, MAP refunds are extremely challenging to obtain from the Chinese tax authorities. Consequently, in negotiations where there is discussion on applying an APA to the MAP period, the inability to obtain MAP refunds makes negotiations with the competent authorities very challenging to conclude. We recommend that the STA address this refund issue,
- **Foreign exchange:** There are significant issues arising from the complications of processing foreign exchange transactions resultant on transfer pricing adjustments, whether consequent to an audit, MAP or APA. The workarounds available (e.g., service charges) give rise to unnecessary additional tax leakages (e.g., VAT). The STA and other governmental authorities should address this as part of their wider "whole of government" coordination efforts.

Consumption Tax

Application of the Consumption Tax on Imported Goods versus Domestically-Manufactured Goods

The Notice of the STA on Consumption Tax Related Rules (2012) No. 47 (Notice No. 47) and the Notice of the STA on Supplementary Rules for Consumption Tax (2013) No. 50 (Notice No. 50) state that some products manufactured in China are not subject to consumption tax (CT). When these products are imported, however, CT is levied as there is no appropriate way to categorize them under the current system of harmonized codes (HS codes) used in China.

According to *Notice of STA on Issuing the Interim Measures on Refund (Exemption) of Consumption Tax on Naphtha and Fuel Oil Used for the Production of Ethylene and Arene Chemical Products* (Notice [2012] No. 36), domestically-manufactured naphtha can be exempted from CT if certain conditions are satisfied under a "direct supply scheme." Imported naphtha, however, is precluded from qualifying for an exemption under the "direct supply scheme." In either case, if an exemption cannot be applied, according to *the Notice on Consumption Tax on Naphtha and Fuel Oil Used for the Production of Ethylene and Arene Chemical Products jointly issued by STA and GACC* (Notice [2013] No.29), it is still possible for qualified users to obtain a refund. Refunds for imported naphtha are, however, often processed with a delay, placing imported naphtha at a disadvantage relative to domestically-manufactured naphtha, which can be exempted from CT.

相关文件，即国家税务总局 2016 年 64 号公告和 2017 年 6 号公告中的税收指导政策进行了补充，也巩固了中国在满足防止税基侵蚀和利润转移（BEPS）行动计划 14 关于改善达成争端解决机制并提高其有效性的最低承诺方面的努力。虽然中国在这方面取得了可喜进展，但是中国政府仍然可以采取一些有效措施以确保预约定价安排和相互协商程序机制能够优化税收机制和报告：

- **更好地控制预约定价安排的工作流程和时间：**BEPS 行动计划 14 最低标准要求双边预约定价安排的审查和谈判流程需在 24 个月内完成。商会建议中国国家税务总局采取以下有效措施来实现此目标：

- ① 对于企业集团希望建立本国和中国的双边 APA 的情形，建议企业集团中各中国实体的主管税务机关之间应加强协调。目前，有关当局之间临时性的协调存在着一些问题，可能与预约定价安排工作处于不同的进展阶段。

- ② 为纳税人提供更加透明的信息，以便于纳税人了解预约定价安排程序每一阶段的预期时间。预约定价安排程序包括六个阶段，预备会谈、谈签意向、分析评估、正式申请、协商签署和监控执行。由于税务机关的资源限制和内部协调问题，纳税人有时会在流程的某个阶段“孤立无援”，不确定主管部门何时会正式通知他们进入下一个阶段。商会建议，主管部门在收到纳税人提交的某一阶段的资料后，应通知纳税人完成该阶段的大体预期时间，以便纳税人做出相应计划。

- **双边预约定价安排续签和盈利能力要求。**根据现行规定，如果纳税人在 APA 适用的 3 至 5 个年度的执行期间营业利润的加权平均值低于双边预约定价安排商定的四分位区间的中位值，那么纳税人将没有资格申请续签预约定价安排。目前尚不清楚是无限期拒绝受理续签还是暂时中止。商会建议中国政府机关对此作出明确的规定。

另外，现行预约定价安排规定，如果企业当年利润在四分位区间之外，税务机关必须将其调整到四分位区间中位值。如果能够允许将利润调整至下四分位数的最高水平，以便在双边预约定价安排的 3 至 5 年有效期内达到要求的盈利目标，我们认为是更加合理的。

- **相互协商程序退税：**在实践中，从中国税务机关获

得相互协商程序的退税是很难的。因此，在因预约定价安排启动的相互协商程序的讨论和谈判中，由于无法获得相互协商程序退税，该谈判很难达成结果。建议中国国家税务总局解决此问题。

- **外汇方面：**转让定价政策调整会通过审计、APA 或 MAP 等引发复杂的外汇交易，进而产生重大问题。现有的变通方案（如服务费）会导致不必要的额外税收流失（如增值税）。中国国家税务总局和其他政府机构应将此问题作为其更广泛的“政府整体”协调努力的目标之一加以解决。

消费税

进口产品和国产产品消费税的征收

根据《国家税务总局关于消费税有关政策问题的公告》（国家税务总局公告 [2012] 第 47 号）和《国家税务总局关于消费税有关政策问题补充规定的公告》（国家税务总局公告 [2013] 第 50 号）的相关规定，一些产品在国内生产环节不需要缴纳消费税，而在进口环节，由于中国现行的统一系统内没有适当子类别，则需要缴纳消费税。

根据国家税务总局关于发布《用于生产乙烯、芳烃类化工产品的石脑油、燃料油退（免）消费税暂行办法》的公告（国家税务总局公告 [2012] 第 36 号）的规定，“定点直供计划”下生产企业销售其自产石脑油（包括用于生产乙烯、芳烃类化工产品的石脑油）免征消费税。然而进口石脑油不包含在“定点直供计划”范围内而无法被免征消费税。如果应税消费品不适用免征消费税政策，根据《国家税务总局、海关总署关于关于石脑油燃料油生产乙烯芳烃类化工产品消费税退税问题的公告》（国家税务总局、海关总署公告 [2013] 第 29 号）的规定，符合条件的使用企业仍然可以申请消费税退税资格。然而，进口石脑油消费税退税时间往往是存在延迟的，这使得进口石脑油相对于享受免征消费税的国产石脑油处于劣势地位。

将进口石脑油纳入“定点直供计划”中，给予进口石脑油免征消费税待遇，此类政策的执行可能会为各市场主体提供更为公平的竞争环境，从而增强中国经济的竞争力和效率，以及促进中国整体税收收入的增长。

与委托加工相关的重复征收消费税的问题

Imported naphtha should be permitted to qualify for an exemption from CT under the “direct supply scheme” on the same basis as domestically-manufactured naphtha. Enactment of such policies will ensure a more level playing field for all parties, boost China’s level of economic activity, and potentially increase overall tax revenues at the national level.

Double Taxation Associated with Commissioned Processing Activities

There is no clear CT regulation governing imported, taxed raw materials used for commissioned processing. Consequently, the import CT cannot be deducted after the commissioned processing, which results in double CT on the imported raw materials. AmCham China urges STA to relax the CT deduction conditions to prevent double taxation.

CT applies on a volumetric basis to both imported and domestically-purchased petroleum feedstock (the tax is roughly equivalent to \$36 USD per barrel). CT is also applied to manufactured petroleum products or those products that have undergone commissioned processing. With respect to manufactured petroleum products, a credit system exists to ensure that the CT is not applied twice on the same volume of manufactured product. For products that have undergone commissioned processing, the credit system is ineffective because the consignor is required to withhold CT even though the consignee (e.g. the other party) has already paid the tax on the same volume of product. The resultant (and unintended) double taxation incentivizes companies to employ costly work-around procedures which do not benefit China’s economy and reduce China’s overall tax revenue.

We recommend the government resolve the practical challenges created and to allow consignors to credit the CT withheld by consignees on the same volume of petroleum feedstock.

Double Taxation at Separate Stages of the Value Chain

According to the prevailing CT deduction policy, when taxpayers purchase taxed raw materials to be used in the continuous production of taxable finished goods, only CT paid on prescribed raw materials can be deducted in the CT calculation for finished goods. The CT cannot be deducted if the raw material is not on the prescribed list, which means that the raw material is subject to double CT.

CT applies to refined oil on a volumetric basis. The taxpayers shall be entities and individuals that produce, process on a commissioned basis, or import refined oil in China. CT on refined oil is levied during the production stage, (including commission processing and import). Once this tax has been applied, it is recorded into a credit system and that system is then used to ensure CT is not then applied at a later stage

in the manufacturing process. Nevertheless, certain manufactured products (for instance kerosene distillates and solvent oil) cannot use credits generated earlier in the value chain to offset against taxes applied at later stages. This may constrain the development of certain manufactured and petroleum products, undercutting China’s economy.

We understand that CT is being reviewed by regulators and we note that solvent oil is still outside the scope of credit system according to the Public Comments on the Consumption Tax Law. [cansun1] We recommend that the government eliminate this double taxation issue by expanding the scope of the credit system such that it applies equally to all petroleum products, thereby further leveling the playing field in China, improving economic efficiency and growth.

Distribution of Tax Revenues from CT

In China, tax is generally collected at the local district government, remitted to the central government, and then a proportion of the tax remittance is shared with finance departments at the central, provincial, city, and district level. Generally speaking, corporate income tax is typically distributed to each level of government in the following manner: central (60 percent), provincial (20 percent), city (8 percent), and 12 percent (district). Tax revenue distributed to the district government incentivizes tax collection at the level. Unlike other taxes, revenues from consumption taxes collected by the district government and remitted to the central government are not redistributed; instead 100 percent of this tax remains with the central government.

Such an approach may disincentivize the district government to collect CT because the more CT that is collected by district governments, the less profitable the local companies in that district will be, which then reduces the amount of corporate income tax ultimately redistributed to the district government. Such practice has reportedly contributed to widespread non-compliance issues because of lax enforcement at the district level. Ultimately, this practice harms the incremental tax revenue accruing to the central government. At the same time, it creates an unfair playing field for companies that must incorporate the cost of CT into the price of their products. Customers may be less interested in these costlier products, preferring to purchase cheaper fuels from non-compliant companies.

We recommend the central government distribute at least ten percent of the CT revenues to the provincial, city, and district-level governments. Ten percent represents the breakeven point at which collection of CT would offset the decline in corporate income tax based on China’s twenty-five percent corporate income tax rate and a division of the remaining 40 percent of tax revenues between the provincial, city, and district governments. Distributing at least ten percent of CT revenues collected to subnational governments will help to

对于进口应税消费品后用于委托加工的消费税处理，没有明确法规规定。这导致进口应税消费品已纳消费税在委托加工环节无法抵扣，等同于被征收双重消费税。针对上述情况，商会建议国家税务总局能够放宽抵扣条件，避免产品被征收双重消费税。

我国对成品油从量定额征收消费税（每桶油消费税约 36 美元）。生产环节和委托加工环节均属于成品油纳税环节。对于生产应税消费品行为，生产企业在计算应纳税消费税时，外购的应税原材料中包含的已纳消费税金允许抵扣。然而，对于在委托加工环节行为，受托方在计算代收代缴消费税时，由委托方提供的应税原材料中包含的已纳消费税不予抵扣。该重复征收消费税问题变相使得企业向高成本生产模式倾斜，由此制约中国经济的长期发展及纳税总收入的增长。

允许受托方在计算代收代缴消费税时抵扣所耗应税原材料中已纳的消费税，以此消除重复征收消费税的问题。

扩大消费税抵扣范围，从而消除重复征收消费税的问题

按照现行消费税抵扣政策，纳税人以外购应税消费品用于连续生产应税消费品时，只有在规定范围内的应税消费品才允许抵扣外购应税消费品的消费税。如果其不在规定的清单上，则该应税消费品已缴纳的消费税不予抵扣，这意味着该应税消费品会被征收双重消费税。

成品油按照从量定额征收消费税。纳税人是在中国境内生产、委托加工、进口成品油的单位和个人。纳税环节在生产环节（包括委托加工和进口环节）。当外购的已税消费品用于连续生产应税消费品时，已纳的消费税准予按规定抵扣。然而，某些应税消费品（如煤油馏出物和溶剂油）目前不属于符合规定的准予抵扣消费税的应税消费品。这可能会限制某些石油产品的发展，并削弱中国经济。

目前，消费税正在立法过程中，我们注意到，在《中华人民共和国消费税法（征求意见稿）》中，外购溶剂油用于连续生产应税消费品时，其已纳消费税仍不予抵扣。商会建议将消费税抵扣机制扩展到所有成品油产品，消除重复征收消费税的问题，为各市场主体提供更为公平的竞争环境，从而促进中国经济的增长效率。

建议中央及地方政府分享消费税收入

根据现行中央和地方收入划分格局，地方政府将征收的税收收入上缴中央政府，再由中央政府按不同比例在中央、省级、市级及区政府之间进行分配。例如，按中央 60%、省级 20%、市级 8% 及区级 12% 的比例分享企业所得税收入。地方政府留成的税收收入可用于维持和激励税务机关的税收征收管理工作。但与其他税种不同的是，由区政府征收并上缴给中央政府的消费税收入不再被重新分配，而 100% 留存于中央政府。

该消费税收入分配机制不利于激励地方政府征收消费税，因为征收消费税将降低当地企业的盈利水平，从而间接降低了企业所得税收入。由于地方政府缺乏有效的监管和动力，税收不合规现象时有发生，由此损害了中国整体税收收入。同时，对于那些合规企业而言，已将消费税成本计入产品价格中，从而导致其生产的产品价格高于不合规企业的产品价格，对于消费者而言，他们更愿意购买价格便宜的产品，这形成了不公平的竞争环境。

商会建议中央政府将至少 10% 的消费税收入分配给省级、市级和区政府，从而弥补地方政府因加强消费税征管而损失的企业所得税收入。10% 代表盈亏平衡点，基于该平衡点，消费税的分配将与征收消费税而造成的企业所得税的减少相抵消，即企业所得税率 25% 与省、市、区政府留存的 40% 税收收入的乘积。将至少 10% 的消费税收入分配给地方政府，将有助于促进地方政府对消费税的税收征管。

建议

对于中国政府：

- 让地方和中央税务机关的跨国纳税人更容易参与预约定价安排和相互协商程序项目，包括程序和时间、与申请人的沟通、续签要求、退税和外汇等问题。（国家税务总局）
- 将研发加计扣除优惠范围扩大至所有行业，为初创企业提供税收返还优惠、增加初期研发开支的扣除额。

ensure subnational entities are appropriately incentivized to enhance their CT collection methods.

Recommendations

For the Chinese Government:

- **Make the APA and MAP programs more easily accessible to multinational taxpayers operating in China from both local and central tax authorities, including on issues such as process and timing, communication with applicants, renewal requirements, refunds, and foreign exchange. [STA]**
- Expand R&D super deduction incentives to all industries. Offer refundable tax credits and enhanced deductions for initial R&D expenditure to support start-up companies.
- Provide greater access to HNTE incentives, such as allowing groups to apply for HNTE status and expanding the list of industries that can benefit from HNTE relief. [STA]
- Remove barriers to qualify for cross-border intra-group restructuring relief including by reducing the group holding test, allowing for relief on “upstream” subsidiary-to-parent asset and share transfers, and ending the practice of holding cross-border corporate mergers amongst offshore holding companies (either upstream or laterally) to the group holding test percentage (currently 100 percent). [STA]
- Reform the application of the consumption tax to create a more level playing field for all businesses including by ensuring that it is applied equally to imported and domestically-manufactured products, ending situations that result in double taxation of some products, and improving enforcement and collection of consumption taxes by local governments.

- 为高新技术企业提供更多优惠政策，如允许组织申请高新技术企业资格，扩大可享受高新技术企业优惠的产业名单。(国家税务总局)
- 消除跨境集团内部重组特殊税务处理资格的障碍，包括降低当前集团控股比例要求;允许“上游”子公司将资产和股份转让母公司时获得减免;终止离岸控股公司(无论是上游还是横向)之间进行跨境企业并购以集团控股比例(目前为100%)为准的做法。(国家税务总局)

Visa

Introduction

Streamlined entry/exit and employment visa policies are essential for foreign and domestic companies in China who hire foreign nationals. Policies to attract foreign talent and streamline immigration subject to compliance with the laws of foreign countries are increasingly important against the backdrop of China's aging population and need to transition the economy to high-value products and services. Generally speaking, there have been positive improvements in the visa application system in the past few years. AmCham China wishes to commend the relevant authorities for making the system more transparent and easier to navigate, although we are pleased to recommend additional improvements to streamline the visa process and enhance the ability of companies to access a broader pool of foreign talent which will grow China's economy. Any effort to streamline the visa process should prioritize the removal of geographic restrictions on certain policies and the standardization of procedures nationwide to overcome geographic barriers to development.

Chinese Visas for Foreign Nationals

12 New Visa Policies for Foreign Nationals

Visa developments over the past year are viewed as part of a broader move to create a more efficient and streamlined business immigration environment in the country. In the past year, China has:

- Begun to allow employers to cancel the Work Permit Notification Letters (WPNL) of foreign nationals online. A WPNL is valid for 90 days and is required for Work Permit applications. In the past, when changes were required to the application file of a foreign national whose employer had applied for a WPNL, they would have to wait 90 days for the WPNL to expire before reapplying. Employers can now cancel the WPNL application online and reapply before the 90-day period is up. This change should simplify and potentially accelerate the processing time associated with Work Permit applications,
- Removed requirements for residents of Hong Kong SAR, Macao SAR and Taiwan to obtain foreign Work Permits in mainland China.

In addition, China's National Immigration Administration (NIA) promulgated 12 policies effective August 1, 2019 designed to attract skilled foreign nationals to China, ease requirements for foreign nationals to obtain Work Permits in China, and create a friendlier immigration environment by establishing more entry/exit and immigration service centers. Foreign nationals are expected to benefit from the following policy changes:

- **Expanded eligibility for Permanent Residence.** In particular, foreign nationals who have been working in the same locality for four consecutive years, whose annual income meets a certain threshold, who can demonstrate a stable work environment, and a clean tax record can apply for permanent residency,
- **Expanded eligibility for long-term visas and Residence Permits.** Skilled foreign nationals working in priority domestic industries or entrepreneurs and members of "innovative teams" may apply for a Residence Permit valid for up to five years,
- **Expanded eligibility for Recent Graduates and Student Interns.** Foreign students engaged in "entrepreneurship and innovation activities" who have obtained at least a bachelor's degree can apply for residency for two to five years. Foreign students from overseas universities can now obtain visas to come to China for internships.

Under these new policies, a greater number of foreign nationals, including foreign experts, senior management, and professional technical personnel are eligible for long-term visas and Residence Permits. Additionally, foreign nationals deemed to have made significant contributions to the state, as determined by a special government assessment, can apply for residency.

AmCham China welcomes the creation of a more flexible environment that should make it easier for foreigner nationals to live and work in mainland China. AmCham China encourages the government to continue to streamline and liberalize its immigration policies in order to attract skilled foreign nationals to work and invest in the country. At the same time, the recent policy changes do not come without restrictions. For instance, the changes to policies regarding recent graduates from overseas universities are restricted

签证

引言

简化出入境及工作签证政策对于在华聘用外国公民的外资企业、国内企业都至关重要。在中国人口老龄化、经济需要向高价值产品和服务转型的背景下，能够吸引外国人才及简化移民手续、且符合外国法律规定的政策日益重要。总体而言，过去几年签证申请制度有所改善。在有关部门的努力下，签证体系更加透明且易于操作，对此，中国美国商会非常赞赏。不过，商会也提出了一些改进建议，希望能简化签证流程，提高企业能力，聘用更多外籍人才，从而推动中国经济发展。简化签证流程应以取消某些政策的地域限制为工作重点，并在全国范围内实现流程标准化，解决制约发展的地域障碍。

外国人来华签证

12项外国人来华签证新政策

过去一年，中国采取了一系列举措，旨在创造一个更加精简高效的商业移民环境。签证政策也有一些新进展。过去的一年里，中国：

- 开始允许用人单位在网上申请注销外国人来华工作许可通知。外国人来华工作许可通知的有效期为90天，是申请外国人工作许可证所必需的材料。过去，用人单位需要更改提交的外国人来华工作许可通知申请时，须等待90天通知到期后方能重新申请。现在用人单位可以在线取消外国人来华工作许可通知的申请，并在90天期限到期前重新申请。此项政策变更应进一步简化并尽可能加快与工作许可证申请相关的处理时间；
- 取消香港特别行政区、澳门特别行政区和台湾居民在中国内地就业须申请许可证的规定。

此外，中国国家移民管理局于2019年8月1日颁布了12项政策，旨在吸引外籍人才来华工作，放宽外国人取得在华工作许可的要求，并通过建立更多的出入境/移民事务服务中心来创造更加友好的移民环境。外国公民可享受下列政策变化红利：

- **扩大外国人才申请永久居留对象范围。**特别是在中国境内同一地点连续工作满四年、年收入达到一定标准、有稳定的工作环境、且依法纳税的外国人可申请在华永久居留。
- **放宽签发长期签证和居留许可的对象范围。**在国内重点发展领域、行业引进的外籍人才和创新创业团队成员，可以申办有效期5年以内的居留许可。
- **拓宽应届毕业生及实习学生的对象范围。**在国内高等院校获得本科及以上学历的外国留学生，毕业后在中国从事创新创业活动的，可以申请有效期2至5年的居留许可。境外高校外国学生现在可以申办签证在中国进行实习活动。

根据这些新政策规定，更多外籍专家、外籍技术人才、高级管理人才将符合申请长期签证和居留许可的要求。此外，经政府评估，对国家有重大突出贡献的外国人可以在华申请居留。

商会欢迎中国努力创造更灵活的环境，便利外国人在中国大陆的生活和工作。商会鼓励政府继续简化、放宽移民政策，吸引外籍人才来华工作、投资。同时，近期政策变化并非没有限制。例如，境外高校毕业生相关政策仅限于当地政府认可的自由贸易区或科技园等范畴。商会建议在全国范围内推广这些政策。此外，为进一步简化移民程序，商会建议国家移民管理局网站提供英文版出入境、移民材料和资源。当前只有中文版，给外国人造成不便。

to areas like Free Trade Zones or Hi-Tech Parks recognized by the local government. AmCham China recommends that these policies be expanded nationwide. Moreover, in order to further streamline the immigration process, we recommend that the NIA website support English-language entry/exit and immigration materials and resources. Such content is currently available only in Chinese, which presents a challenge for foreign audiences.

Extending the 144-hour Visa Exempt Transit Program

The visa exempt transit program was initially launched in 2013 at which time foreign nationals from select countries were allowed to stay in mainland China in certain locations for up to 72 hours. Over the past seven years, the duration of the transit program has been extended to 144 hours, expanded to cover foreign nationals from more countries, and extended to additional locations in China. In November 2018, immigration authorities launched an expedited E-channel option for 144-hours visa-free transit in Shanghai. Eligible travelers can apply online and streamline the immigration clearance process via E-channel entry at Pudong and Hongqiao International Airports in Shanghai only.

Currently, the 144-hours visa exempt transit program is available to foreign nationals from 53 countries. In January, May, and December 2019, the government extended the number of “stay areas” and ports of entry covered by the 144-hours visa exempt transit. Following the expansion in December 2019, 20 cities and 27 ports of entry are now covered under the 144-hours visa exempt transit program. The cities are Beijing, Chengdu, Chongqing, Dalian, Guangzhou, Hangzhou, Jieyang, Kunming, Nanjing, Ningbo, Qingdao, Qinhuaodao, Shanghai, Shenzhen, Shenyang, Shijiazhuang, Tianjin, Wuhan, Xiamen, and Xi’an.

AmCham China welcomes this visa exemption policy and recommends extending the 144-hours visa-free transit exemption policy to all ports in China. We also recommend that China extend the use of the pre-arrival registration and E-Channel passage to all other locations across China to streamline entry procedures under the transit visa exemption.

New and Lengthy Visa Application Forms for European Nationals

As of April 2019, the Chinese Visa Application Service Centers in certain EU countries¹ have implemented a new Chinese visa application form. Compared to the application form previously used in these countries, AmCham China members have found the new version requires applicants to include substantially more personal information in their applications, including information about their annual income, education background, and detailed working experience and history. One AmCham China member reported that in order to apply for a short-term business visa to

come to China for work meetings, their European-based colleagues were required to include extensive information about their educational background, down to the level of where and when they attended primary school.

AmCham China believes that the level of personal information being requested of visa applicants using the updated forms in these countries is unnecessary, intrusive, and administratively burdensome given that the short-term purpose of most applicants who travel to China (tourism or business). AmCham China recommends that the government minimize the personal information demands of applicants for short-term visas to China. Under this principle, the government could create distinct visa forms corresponding to the different types of Chinese visas available and ensure that only the personal information necessary to evaluate an applicant fairly for each visa category needs to be submitted.

Tax Payments for Category A Foreigner Work Permit Applications

China’s Foreign National Work Authorization Program launched in April 2017 classifies foreign workers into three categories based on a scored assessment:

- Category A: “high-end talent,” including scientists, technical experts, and international entrepreneurs,
- Category B: Foreign nationals under the age of 60, who hold at least a bachelor’s degree and have at least two years of relevant experience,
- Category C: Foreign nationals who engage in temporary, seasonal, non-technical or service-related work.

Foreign nationals can qualify for a Category A Work Permit by meeting any of six criteria, one of which is that they must pay at least a specified minimum amount of total income tax annually. In the 2019 *White Paper*, we pointed out that there exist varying interpretations nationwide about the documentation required to prove that a foreign national’s income tax payments meet Category A requirements. We recommend that the government standardize this process to help officials determine eligibility.

In the past year we have seen the income tax requirements for Category A visas becoming increasingly standardized across Beijing, Shanghai, Guangzhou and other major cities in China. Requirements for Category A eligibility have been issued with respect to the foreign national’s monthly salary amount, monthly taxable income, and annual salary. In some locations across China (e.g. Shanghai, Guangzhou, and Wuxi), however, Category A visa applications still require a commitment letter. Commitment letters come from the employment-sponsoring entity and simply guarantee the amount of income tax to be paid on an individual basis rather than meeting a universal threshold. In these locations authorities have not demonstrated any flexibility if Category A visa applicants cannot meet the minimum income tax

过境免签停留时间延长至 144 小时

过境免签政策于 2013 年实施，来自特定国家的公民可以在中国某些地点停留长达 72 小时。经过七年的发展，过境免签停留时间已延长至 144 小时，享受政策国家范围不断扩大，可办理免签的中国地区也不断增加。2018 年 11 月，移民主管部门在上海推出了 144 小时免签电子快速通道。符合条件的旅客只需在上海浦东国际机场和虹桥国际机场通过电子通道在线申请入境，简化了通关手续。

目前，来自 53 个国家的公民可以享受 144 小时免签政策。2019 年 1 月、5 月和 12 月，政府增加了 144 小时过境免签的活动范围和入境口岸。继 2019 年 12 月增加适用范围后，20 个城市和 27 个入境口岸现已纳入 144 小时过境免签政策：分别是北京、成都、重庆、大连、广州、杭州、揭阳、昆明、南京、宁波、青岛、秦皇岛、上海、深圳、沈阳、石家庄、天津、武汉、厦门、西安。

商会对过境免签政策表示欢迎，并建议将 144 小时过境免签政策适用范围扩大到中国所有口岸。商会还建议将入境前提前申报入境信息及电子系统推广至中国所有其他地区，简化过境签证的入境手续。

欧洲新版中国签证申请表过于冗长

自 2019 年 4 月起，一些欧盟国家的中国签证申请服务中心开始启用新版中国签证申请表。商会会员发现，与此前的申请表相比，新版申请表要求申请人在申请表中提供更多的个人信息，包括年收入、教育背景、详细工作经历等。据其中一个商会会员报告，其欧洲同事在申请来中国参加工作会议的短期商务签证时，需要提供详细的教育背景信息，甚至包括就读小学的时间和地点。

商会认为，鉴于大多数申请人到中国的短期目的为旅游或商务，在这些国家启用的新版签证申请表要求提供如此详尽的个人信息，实属不必要，干涉过多且造成行政负担。商会建议政府尽量减少中国短期签证申请人需提交的个人信息要求。基于这一原则，政府可以根据不同类型的中国签证创建不同的签证申请表，并确保只须提交公平评估申请人每个签证类别所需的个人资料。

A 类外国人工作许可证申请纳税要求

《外国人来华工作许可服务指南》于 2017 年 4 月推出，根据评分将外籍员工分为三类：

- A 类：“高端人才”，包括科学家、技术专家、国际企业家。
- B 类：外国专业人士，年龄不满 60 周岁，具有学士及以上学位和两年及以上相关工作经验。
- C 类：从事临时、季节性、非技术性或服务性相关工作的外国人员。

外国人员须满足六个标准中的任何一个才能获得 A 类工作许可证，其中一个标准是必须每年至少缴纳一定数额的所得税总额。在 2019 年的《白皮书》中，商会指出，对于证明外国人缴纳所得税符合 A 类要求的文件，全国各地存在不同的解读。商会建议规范解读，帮助相关工作人员确定资格授予。

2019 年，中国主要城市如北京、上海、广州等地的 A 类签证所得税要求日益规范，就外国公民申请 A 类签证所需的月薪额、每月应纳税收入和年薪作出规定。然而，中国的一些地方（如上海、广州和无锡等），申请 A 类签证仍然需要一份承诺书。承诺书由就业单位提供，承诺事项主要基于申请人满足个月的个人所得税缴税额，而非整年纳税额度达到申请标准。在这些地方，当 A 类签证申请人在整个合同期内有一个月内不能满足最低所得税缴纳要求时，主管部门的处理墨守成规，不知变通。

外国企业未如数缴纳税款会受到严厉惩罚，包括被列入黑名单，禁止聘用外国人，以及在现有签证到期后禁止为相关员工申请新的工作许可。为了解决这些严厉处罚可能造成的误解，并改善税收合规，商会建议：

- 全国所有城市均采用北京目前使用的模式，明确规定 A 类工作许可证的最低所得税起征点。从而消除判断申请人是否达到许可证要求的疑惑。
- 如批准获得 A 类工作许可证的外籍员工的所得税未达到规定的最低起征点，商会建议将该员工自动从 A 类许可证中除名，并允许其申请 B 类工作许可证，而不对其进行处罚（公开欺诈的情况除外）。这将简化签证流程，避免因个人所得税未达到要求，而对公司或个人进行不必要的处罚。

payment requirements for a single month during the entire duration of their contract.

The failure of foreign companies to pay the correct tax required for a Category A visa can lead to severe penalties including firms being blacklisted from hiring foreigners and bans on applications for new Work Permits for the employees in question after expiration of the current Permits. To address potential misunderstandings stemming from these strict penalties and improve tax compliance, AmCham China recommends:

- All municipalities nationwide adopt the same model currently applied in Beijing, which clearly defines the minimum tax threshold required for Category A Work Permits. This will eliminate any indecision as to whether an individual qualifies,
- If a foreign worker's income tax does not reach the minimum required threshold after the issuance of a Category A Work Permit, rather than being subject to penalties, we recommend that the worker be automatically removed from Category A and be allowed to apply for a Category B Work Permit (except in cases of outright fraud). This would streamline the visa process without penalizing companies or individuals unnecessarily because their income tax payments did not meet the required threshold.

The tax thresholds for Category A visas have also become less clear because of China's revised Individual Income Tax (IIT) legislation that came into full effect in 2019. Due to a new calculation method, it appears that actual tax paid may be lower in the first half of the year than in the past but will be higher in the second half of the year. On that basis, we recommend that in the event an applicant's monthly tax amounts will differ significantly over a tax year, the tax calculation for Work Permit purposes be based on the total amount of tax paid annually divided by 12.

Online Registration of Temporary Residence in Shanghai

Foreign nationals staying in mainland China are required to register their accommodation within 24 hours of arriving at the local police station if they are not staying in a hotel or serviced apartment.

After nearly a year of research, the Exit-Entry Administration Bureau of the Shanghai Public Security Bureau officially launched the "Self-Help Declaration System for Overseas Personnel Accommodation Registration" across the entire city in October 2019. Foreign nationals residing in Shanghai are no longer required to visit their local police station in person to register. They can instead now complete the declaration form online. AmCham China welcomes the arrival of this self-declaration system and we recommend that similar systems be implemented nationally.

Ongoing Challenges with Chinese Visas

Policies for Foreign Nationals over 60 and Recent Graduates

As documented in previous editions of the *White Paper*, one frequent and longstanding area of concern among the foreign business community is the lack of clarity around potential age restrictions which prevent senior foreign employees from obtaining Work Permits in China. Most locations do not impose age limits for Category A Work Permit holders; however, some locations (e.g., Shanghai and Qingdao) request that employees over 60 be covered by medical and accident insurance, as they are not permitted to enroll in China's national statutory insurance schemes. Category B Work Permit holders over 60 still undergo a case-by-case review and approval by the local government.

In many developed countries, there is no mandatory retirement age, although full Social Security benefits in the US are realized at age 66. AmCham China recommends that as long as a foreign professional is legally employed and compliant with relevant tax and related regulations, there should be no age restriction or limit on their ability to obtain a Work Permit.

Recent graduates have traditionally had difficulty in obtaining work authorization as they often lack the required two years of relevant work experience. This requirement not only limits a local employer's ability to hire young foreign talent, it also creates disincentives for prospective foreign students to study in China because of artificial limits to their post-graduation employment prospects in the country. Similarly, businesses have long been hampered by their inability to hire interns on a short-term basis (typically 3-6 months), as is common global practice, due to visa requirements.

New NIA policies effective August 1, 2019 aim to make it easier for talented foreign nationals to work and intern in China. As we noted above, the new policies enable recent graduates with less than two years of experience but who are engaged in entrepreneurship or other "innovative activities" to apply for a two-year Residence Permit. Students from overseas universities can now apply for one-year internship visas. These reforms are welcome and should benefit both domestic and foreign companies by expanding their access to talented hires. AmCham China will monitor on-the-ground implementation of these reforms closely. We urge that they be implemented nationally, rather than restricted to certain geographic locations (i.e., high-tech parks and free trade zones) as currently required.

Processing Period for Residence Permits

Throughout 2019, the processing time for Residence Permits continued to vary by province. In the 2019 *White Paper*, we noted that the processing time ranged from five days in Tianjin to seven days in Shanghai, ten days in Beijing, and 15

中国修订版《个人所得税法》于 2019 年全面生效，A 类签证的所得税起征点也变得不那么明确。由于采用了一种新的计算方法，上半年实际缴纳的税款可能比以前低，但下半年缴纳的税款会比之前高。在此基础上，商会建议，如申请人在一个纳税年度内每月的税款有显著差异，则工作许可证的计算应以每年所缴税款总额除以 12 为基础。

上海市临时住宿在线登记

境外人员在中国停留期间如未入住酒店或服务式公寓，须于抵达后 24 小时内到当地公安派出所登记住宿。

经过近一年的研究，上海市公安局出入境管理局于 2019 年 10 月在全市范围内正式启用了“境外人员住宿登记自助申报系统”。居住在上海市各地区的境外人员不用前往居住地派出所申报临时住宿登记，足不出户即可在线完成自助申报。商会欢迎自助申报系统，建议在全国推广启用。

中国签证现存问题

60 岁以上外国人员和外国应届毕业生相关政策

如前几期白皮书所述，外国商界长期关注的一个问题是，可能存在的年龄限制不够明确，阻碍了外籍资深员工在中国获得工作许可证。大多数地方对 A 类工作许可证持有者没有年龄限制；然而，一些地方（如上海和青岛）要求 60 岁以上的外籍员工购买医疗保险和意外伤害保险，因为他们不允许购买中国强制社会保险。60 岁以上的 B 类工作许可持有者仍需接受当地政府的逐个审查和批准。

虽然美国人年满 66 周岁时可享受全额社会保障福利，但是其实许多发达国家没有规定法定退休年龄。商会建议，只要外籍专业人士合法就业，并符合相关税收及法规相关规定，其获得工作许可证的能力不应受到年龄限制。

应届毕业生历来难以获得工作许可，因为他们往往缺乏申请工作许可所要求的两年相关工作经验。这一要求不仅限制了当地单位聘用外国年轻人才的能力，而且由于人为地限制了外国毕业生在华就业前景，因此会阻碍外国学生到中国留学。同样，由于签证要求，企业长期以来一直无法按照全球惯例聘用短期境外实习生（通

常为 3 至 6 个月）。

国家移民管理局的新政策于 2019 年 8 月 1 日起生效，政策旨在便利外国人才在华工作与实习。如上所述，新政策规定，在境外高校毕业的外国学生，毕业后 2 年内来中国创新创业的，可以申办有效期两年以内的居留许可。境外高校外国学生现在可以申办有效期一年的签证进行实习活动。这些改革大受欢迎，可以引进更多的人才，惠及中外企业。商会将密切关注这些改革的落地情况。商会促请在全国范围内实施这些政策，而不应局限于某些地区（如科技园区和自由贸易区）。

居留许可证的办理时间

2019 年，居留许可证的办理时间仍然因省而异。在 2019 年《白皮书》中，商会发现天津需要 5 天，上海 7 天，北京 10 天，大连和长春需要 15 天。商会见证了过去一年的进步。北京办理时间已缩短至 7 个工作日。上海移民机关现在可以对在线居留许可申请当日审批。然而，当日审批只适用于续期申请。

尽管有所改善，但商会会员发现地方主管部门有时对申请开展“详尽检查”，或在检查过程中要求补充文件，延误了居留许可证办理。居留许可证的办理时间长短完全由地方主管部门自行决定。

居留许可证申请办理期间，申请人仍须向当地出入境管理部门交验护照。商会收到了来自会员公司的大量反馈，外国员工被迫交出护照长达三周。鉴于申请人已提交大量资格证明文件，这种做法给企业的正常经营造成了极大的不便。办理居留许可证续签时，这一问题更为严重。尽管所需资料较少，但续签手续耗时可能长达 15 天，并要求再次上交护照，导致申请人无法因公出差。

商会促请中国政府将全国居留许可证申请办理时间缩短至 7 个自然日。应考虑在全国范围内实施上海的居留许可证续期当日审批政策。中国政府可以考虑推进“一站式”移民服务，外国人可以在同一地点同时办理工作许可证和居留许可证，提高办事效率。

材料验证流程

外籍员工申请工作许可证须提供大量资格证明材料，包括申请人当前或前一雇主出具的任职证明信，申请人最高学历证书（文凭）和由申请人国籍国或长期居

days in Dalian and Changchun. We have witnessed improvements over the past year. In Beijing, the processing period has been shortened to seven working days. In Shanghai, local immigration authorities can now issue same-day approvals for online residence permit applications. Such same-day approval is only for renewal applications, however.

Despite these improvements, our members have found that the local authorities sometimes conduct “detailed inspections” of applications or request additional documents during the process, both of which serve to delay processing. The length of the processing period to final approval is solely at the discretion of the local authority.

The fact remains that Residence Permit applications require that applicants surrender their passports to the relevant local entry and exit authority for the duration of the processing period. AmCham China has received considerable feedback from member firms about the problems related to forcing foreign workers to surrender their passports for up to three weeks. It is highly inconvenient for normal business operations given the substantial documentation already required to verify the applicant’s qualifications. Even though less information is required when extending a Residence Permit, extensions still can take up to 15 days and require passports to be surrendered again, preventing applicants from traveling for normal business.

AmCham China urges the Chinese government to shorten the Residence Permit application processing time to seven calendar days nationwide. Same-day approval policies such as those implemented in Shanghai for Residence Permit renewals should be considered nationwide. The Chinese government may consider promoting a “one-stop shop” for immigration by permitting foreign nationals to concurrently apply for their Work and Residence Permits in the same location to improve efficiency.

Documentation Authentication Procedures

Foreign workers are required to provide substantial documentation to prove their qualifications when applying for a Work Permit. Documents include letters from the applicant’s most recent employer, the applicant’s highest academic degree certificate (diploma) and a criminal background record issued by the authority in the applicant’s home country. The criminal background record and the academic diploma must be authenticated by the Chinese Embassy or Consulate in the applicant’s home country.

As we have discussed in prior *White Papers*, AmCham China members have found that acceptance of notarized academic diplomas and other documentation by authorities is not consistent nationwide. For Category A Work Permits, notarized and authenticated supporting documents such as a criminal background check and diploma can be waived in most cities, though they are still required in Qingdao, Yantai, and across Shandong.

With respect to diplomas, it has been our experience that the Chinese government still requires applicants to present their original diploma alongside authenticated copies when applying for a Work Permit in person. For example, the Foreign Experts Bureau (FEB) in Beijing accepts notarized copies of original degree certificates. However, FEBs in other provinces have rejected notarized copies of academic diplomas, maintaining instead that they need to see the original diploma alongside the notarized copy in order to verify the authenticity of the copy. As foreign nationals are highly unlikely to bring their diplomas to China, and this imposes an additional administrative burden. Relevant authorities may or may not be aware that employees of foreign companies are normally subjected to background checks in their home country to verify personal information including education history. It is equally unlikely that a company would send personnel overseas if their education had not been verified in advance.

AmCham China urges all relevant authorities and departments to adopt a standardized procedure to accept notarized copies of academic diplomas regardless of where they have been notarized.

R-Talent Visa

The Chinese government launched the R-talent visa (R visa) in January 2018 in nine provinces and cities across China (including Beijing). The R visa offers fewer restrictions and a longer period of validity for “high-end foreign talent” which the government believes is needed to promote China’s social and economic development. Thus far, member companies have found the R visa to be less effective than proscribed by the regulations. Over the past year, AmCham China has received feedback from multiple member companies that they seldom apply for R visas for their employees because ❶ the advantages of the R visa compared to other visa options are not obvious and ❷ the assessment criteria for employees who qualify for an R visa are not unified across the locations where it is being piloted, resulting in uncertainty about approval criteria. In practice, final approval is still very much subject to the discretion of local authorities.

AmCham China urges the relevant authorities and departments to adopt a standardized procedure and a transparent set of assessment criteria for the R visa to ensure companies are able to utilize its benefits for qualified employees as intended.

Visa Conversion Process

AmCham China recognizes that the Foreign National Work Authorization program implemented in April 2017 introduced new regulations to allow foreign nationals in mainland China to convert their visas after obtaining legal employment. Under these measures, entry and exit authorities in Beijing, Shanghai, Guangzhou, and Shenzhen now

住国有关部门出具的无犯罪记录证明。无犯罪记录证明和学历证书须经中国驻申请人所在国使、领馆认证。

如商会此前《白皮书》所述，商会会员发现，中国各地接受公证学历及其他材料的情况并不一致。对于 A 类工作许可证，大多数城市无须提供经公证和认证的证明文件，如无犯罪记录证明和文凭，但青岛、烟台和山东各地仍须提供。

在文凭方面，商会的经验是，中国政府仍然要求申请人在本人申请工作许可证时，须出示其文凭原件及经认证的复印件。例如，北京市外国专家局接受经公证的学位证书（即学位证书原件的公证件）。然而，其他省份的外国专家局拒绝接受学历证书公证件，坚持公证件和文凭原件都须提供，以核实公证件的真实性。然而外国人不太可能把他们的文凭带到中国，这将会增加额外的管理负担。有关部门可能知道（或不知道），外国企业的员工在其所属国通常要接受背景调查，核实包括教育背景在内的个人信息。如果没有事先核实员工的学历，企业也不可能将他们派往海外。

商会促请各有关机构和部门采用标准化流程，接受学历证书的公证件，无论其在何处公证。

人才签证

2018 年 1 月，中国政府在全国 9 个省市（包括北京）推出 R- 人才签证。R（人才）签证对“外籍高端人才”限制较少，有效期较长，政府认为这可以促进中国社会经济发展。到目前为止，商会会员企业发现 R（人才）签证的效果不尽人意。过去一年，商会收到了多家会员企业的反馈，他们很少为其员工申请 R 签证，因为 ❶ R 签证与其他类型签证相比优势并不明显；❷ 符合 R 签证资格员工的评估标准在各试点地区不统一，导致审批标准的不确定性。在实践中，最终批准在很大程度上仍取决于地方主管机构的自由裁量权。

商会促请相关机构和部门对 R- 签证实施标准化程序，采取一套透明的评估标准，确保企业能够按照预期惠及其符合条件的员工。

签证转换流程

商会表示，2017 年 4 月实施的《外国人来华工作许可服务指南》出台了新规定，允许外籍员工在中国大陆

合法就业后转换签证。基于这些措施，北京、上海、广州和深圳的出入境管理部门现在为外籍员工提供签证转换服务。在取得《工作许可证通知书》后，符合条件的外籍员工可以持该通知书和有效的商务 / 旅游签证在中国大陆申请临时居留许可证（必须在 10 日内发起申请）。而在此之前，在中国获得《工作许可证通知书》的外国人须回到其原籍国申请 Z 签证。新规大大缩短了外籍员工入职所需的时间，商会对此表示赞赏。

上述四个主要城市的市政府制定了更简化的流程。已经在中国大陆获得 A 类工作许可证的外国公民（以及居住在上海符合 A 类或 B 类工作许可证的外国公民）现在可持有效签证直接申请工作许可证和居留许可，无须申请工作许可通知书。如上所述，该措施会缩短外籍员工的入职时间，商会鼓励在全国范围内实施上述签证转换流程。相关签证政策应该鼓励更多企业雇佣外国人才，引进外籍人才到中国。

落地签证规定

《外国人来华工作许可服务指南》为外国人在中国大陆获取工作许可证提供了便利。在上海、北京、广州、深圳和大连工作的外国人，如符合条件，免于从出发地中国使领馆申请入境签证。获得工作许可通知书后，符合条件的外国人可前往中国，在其入境口岸获取 Z 签证（工作签证）或有效入境签证。在抵达中国之前由港务局签发的相关批准仍然需要完成落地签证手续。因此，符合条件的外国人在前往中国之前，不必再到中国驻该国使领馆交验护照，并等待 4-6 个工作日来获得有效的入境签证。

如 2019 年《白皮书》中所述，因为不同的入境口岸仍然实施不同的入境手续，所以商会继续促请中国政府在符合条件的地区规范、统一落地签证程序，商会建议越来越多的口岸获取落地签证流程处理的资格。实际上，用人单位须亲自提交预批准申请函，然后落地签证申请人可以在抵达预先批准的入境口岸持预批准申请函申请 Z（工作签证）。商会促请政府简化程序。一种方法是允许雇主在线提交落地签证预批准书，足不出户即可申请。

provide visa conversions for foreign employees. After obtaining a Notification of Work Permit (NWP), qualified foreign employees can apply for a temporary residence permit while in mainland China with an NWP and a valid business or tourist visa (they must initiate the application within 10 days). Previously, foreigners in China who received an NWP were required to leave and apply for a Z visa from their home country. These changes have greatly shortened the time required to onboard foreign employees, which we appreciate.

The municipal governments in these same four cities have gradually introduced a more straightforward procedure. Foreign nationals who are eligible for a Category A Work Permit (and in Shanghai foreign nationals eligible for a Category A or Category B Work Permit) who are already in mainland China can now apply for a Work and Residence Permit with a valid visa directly without first obtaining an NWP. As above, these steps should shorten the time required to onboard foreign employees and we encourage the government to implement these visa conversion procedures nationwide. Such policy should encourage more companies to hire talented foreign employees and bring them to China.

Visa on Arrival Regulations

The Foreign National Work Authorization Program has made it easier for foreign nationals to obtain work authorizations in mainland China. Eligible foreign nationals working in Shanghai, Beijing, Guangzhou, Shenzhen, and Dalian are exempt from entry visa requirements prior to arrival. After obtaining a work authorization letter, eligible foreigners can travel to China and obtain a Z visa or valid entry visa at their port of entry. Relevant approvals, issued by the Port Office prior to arrival in China, are still required to complete the Visa on Arrival (VOA) process. Therefore, eligible foreigners no longer need to surrender their passport for 4-6 business days at the Chinese embassy/consulate in their home country before traveling to China and may receive a valid entry visa upon arrival.

As we stated in the 2019 *White Paper*, AmCham China continues to urge the Chinese government to standardize and unify the VOA process in eligible locations as different ports of entry still implement distinct entry procedures, and we recommend that more Chinese ports of entry be made eligible to process VOAs. In practice, employers must file the pre-approval application letter in person and then VOA applicants can apply to obtain their Z visa with that letter at pre-approved ports of entry upon arrival. We urge the government to simplify the process. One way to do so would be to permit the employer to submit the pre-approval letter online for the VOA, thus removing the need for it to be filed in person.

Recommendations

For the Chinese Government:

- **Formally clarify senior age-related requirements for foreign employees, expand new policies for recent graduates and interns nationwide as opposed to restricting them to certain geographic localities;**
- Extend the NIA website to support English-language materials and resources;
- Continue reducing the restrictions on domestic visa conversion procedures nationwide to simplify the process of hiring qualified foreigners from within mainland China;
- Standardize ABC Category worker requirements, especially with respect to income tax requirements. Provide clearer guidance and flexibility with respect to penalties related to enforcement of tax requirements for Category A foreign workers;
- Adopt a standardized procedure and a transparent set of assessment criteria for the R-talent visa to enable more companies to utilize its benefits for qualified employees as intended.

建议

对中国政府：

- 正式规范外籍员工年龄相关的要求，将应届毕业生和实习生的新政策扩展到全国，而不是局限在特定区域；
- 国家移民管理局网站提供英文版材料及资源；
- 持续在全国范围内降低对国内签证转换流程的限制，简化从中国内地聘用外国人才的流程；
- ABC 类人才要求标准化，特别是所得税要求。就 A 类外籍员工税收要求有关的处罚提供更明确的指导，给予灵活处理的空间；
- 对 R- 签证实施标准化程序，采取一套透明的评估标准，确保企业能够按照预期惠及其符合条件的员工。

Part Three:
Industry-Specific Issues
第三部分：具体行业问题

Agriculture

Introduction

AmCham China would like to congratulate the government of China for the progress in the agriculture sector in 2019. Over the last year, China continued to prioritize rural development and poverty alleviation, and those priorities will continue in 2020 as emphasized in the Ministry of Agriculture and Rural Affairs' (MARA) 2020 No. 1 Document. China's overarching agricultural policy continues to emphasize modernizing the agricultural industry and encouraging innovation, while simultaneously increasing food security and safety.

In 2019 and early 2020, AmCham China members witnessed several important events, primarily centered around the signing of the *Economic and Trade Agreement Between the US and China* (Phase One Deal). The deal includes commitments by China to:

- Import at least US \$40 billion per annum in total of agricultural and seafood products over the next two years,
- Implement a transparent and scientifically-based procedure for evaluating and licensing agricultural biotechnology products,
- Improve its sanitary and phytosanitary measures (SPS) that affect a significant number of US agricultural products and ensure that their SPS measures are science-based and non-discriminatory,
- Improve the feed registration lead time in both MARA and the General Administration of Customs of China (GACC).

In addition to terms under the Phase One Deal, we also witnessed:

- China lift a five-year ban on the import of US poultry and poultry products in November 2019. In return, the US agreed to permit imports of Chinese cooked chicken and catfish products,
- China beginning to announce tariff exclusions for imports of US agricultural products, and announcing a reduction in tariff rates on certain US agricultural goods,
- The USDA Food Safety and Inspection Service (FSIS) added China to the Public Health Information System

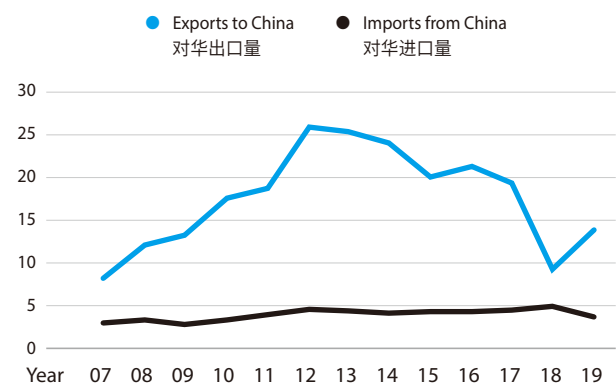
(PHIS) in January 2020. The PHIS is an electronic system that manages export certification and application documents. Access to the PHIS allows the Chinese government to view export certificates for products intended for entry into China. We anticipate that China's utilization of this system will reduce the workload for exporters and regulators,

- MARA's Livestock and Veterinary Bureau issue a new regulation (Circular No. 227) to institute a system to provide consulting on feed material and feed additive registrations. We expect Circular No. 227 to bring greater regulatory clarity to the feed and feed additive industry.

These positive developments took place against the backdrop of a slowing Chinese economy and trade tensions, which have an outsized impact on agriculture trade between the two countries. In 2019, the agricultural industries in both the US and China continued to bear the brunt of deteriorating trade relations, although trade picked up in the second half of the year. Total exports of US agricultural goods to China were estimated to be around US \$13.8 billion, up from US \$9.1 billion in 2018. This is still lower than levels prior to the imposition of tariffs; in 2017 the US exported around

Figure 1. US Agricultural Trade (Imports and Exports) to China

美国对华农业贸易（进出口）



Source: US Census Bureau Trade Data
来源：美国人口普查局贸易数据

农业

前言



美国商会（商会）祝贺中国政府 2019 年在农业领域取得的进展。在过去的一年，按照农业农村部 2020 年 1 号文件所强调的那样，中国政府继续将农村发展和扶贫列为 2020 年工作重点。中国整体的农业政策将继续围绕农业现代化和鼓励创新，同时确保粮食保障和与安全。

在 2019 年和 2020 年初，商会会员主要围绕中美两国签署《经济贸易协议》（第一阶段协议），见证了几项重要事件。该协议包括中国对以下方面的承诺：

- 在未来两年，每年至少进口总计 400 亿美元的农产品和海产品；
- 在评估和批准农业生物技术产品上，确保程序透明科学；
- 确保美国大量农产品的卫生和植物检疫措施具备科学依据并一视同仁；
- 农业农村部和中国海关总署给予饲料注册登记的充足时间。

除了第一阶段协议的条款外，商会还见证了：

- 2019 年 11 月，中国解除了进口美国禽肉和禽肉产品的五年禁令。同时，美国同意允许进口中国自产熟制禽肉和鲑鱼产品。
- 中国宣布对进口美国农产品给予关税豁免，并降低部分美国农产品的关税。
- 2020 年 1 月，美国农业部食品安全检验局将中国纳入公共卫生信息系统。公共卫生信息系统是一个管理出口证明和申请文件的电子系统。中国政府可以通过公共卫生信息系统，查看拟进入中国的产品的出口证书。商会预计，中国使用这一系统将减少出口商和监管机构的工作量。

- 农业农村部畜牧兽医局发布了一项新规定（第 227 号文），将建立饲料原料和饲料添加剂审批咨询服务工作机制。商会希望第 227 号文能够为饲料原料和饲料添加剂行业带来更大的监管透明度。

取得这些积极进展的背景是中国经济放缓和贸易紧张局势，而这种局势对两国之间的农业贸易产生了巨大影响。尽管贸易在 2019 年下半年回升，但去年中美两国的农业仍然受到贸易关系恶化的冲击。美国对华农产品出口总额估计为约 138 亿美元，高于 2018 年的 91 亿美元，这仍低于征收关税之前的水平。2017 年，美国对华出口了约 195 亿美元的农产品。尽管对华出口下降和经济放缓，但中国民众对优质、安全和有营养的食品依然表现出强烈需求。

2019 年下半年，随着中国恢复购买美国大豆、猪肉和其他农产品，美国企业的情况有所缓解。根据第一阶段协议的条款，在 2017 年基数之上，中国 2020 年将自美进口不少于 125 亿美元农产品（油籽、肉类、谷物、棉花、其他农产品和海产品），2021 年自美进口农产品规模不少于 195 亿美元。商会对此类承诺表示欢迎，但意识到中国在 2020 年的承诺进口规模可能会受到今年爆发的新冠肺炎（COVID-19）的影响。

尽管商会会员企业对与中国农企的长期合作关系充满信心，商会仍然对中美之间的紧张局势深感关切。在签署第一阶段协议后，商会希望两国之间的贸易紧张局势能在短期内得以缓解，并且找到长期而有效的贸易争端解决方案。商会会员企业将与中美农业业界协作，确保商业伙伴关系保持紧密。商会还希望继续支持中国向实现农业现代化的目标而迈进，为中国消费者提供更实惠、更健康、更可持续的食品。

US \$19.5 billion of agricultural goods to China. Despite declining exports to China and a slowing economy, Chinese citizens continue to demonstrate strong demand for high-quality, safe, and nutritious food.

In the latter half of 2019, US companies experienced some relief as China resumed some purchases of US soybeans, pork, and other farm goods. Under the terms of the Phase One Deal, China will import an additional US \$12.5 billion above the corresponding 2017 baseline amount of a series of agricultural goods from the US in 2020 (oilseeds, meat, cereals, cotton, other agricultural commodities, and seafood), and a further US \$19.5 billion above the corresponding 2017 baseline amount for those commodities from the US in 2021. AmCham China welcomes these commitments but is aware that China's import commitments in 2020 could be impacted by the outbreak of the Coronavirus Disease (COVID-19).

Though AmCham China member companies are confident about their longstanding partnerships with Chinese agriculture businesses, we remain deeply concerned about tensions between China and the US. AmCham China hopes to see a continuing de-escalation in trade tensions between both countries in the short-term building upon the signing of the Phase One Deal, followed by a long-term resolution of trade disputes. AmCham China members intend to work together with the Chinese and US agricultural industries to ensure that business partnerships remain strong. AmCham China also hopes to continue to support efforts to achieve China's goals of agricultural modernization and make food more affordable, healthier, and sustainable for Chinese consumers.

Seed Industry

Market Access Challenges

AmCham China is disappointed that the *Special Administrative Measures on Access to Foreign Investment* (Negative List) and the *Free Trade Zone Special Administrative Measures on Access to Foreign Investment* (FTZ Negative List) (2019 edition) did not alter restrictions on the agriculture industry with respect to crop breeding and seed production. Whereas the 2018 FTZ Negative List increased foreign equity caps on wheat and maize breeding and seed production from 49 percent to 66 percent, the 2019 lists did not reflect further openings. AmCham China continues to recommend that the policies implemented in FTZs be extended nationwide and the government further relax restrictions on foreign investment in the selection, breeding, and production of new crop varieties of wheat, maize, soybean, and rice such that foreign investors are permitted to own 100 percent of their investment.

The 2019 Negative List and the FTZ Negative List still prohibit foreign investment in "genetically-modified (GM) varieties breeding and GM seed production." Prohibiting foreign investment in these areas will not only limit competition and efficiency but is detrimental to China's goals for

innovation and modernization of the agricultural sector. We urge the Chinese government scale back this provision from "prohibited" to no more than "restricted" to allow joint ventures to engage more widely in seed technology innovation and crop production.

Import and Export of Seed and Breeding Material

AmCham China saw continuous improvement in China's crop variety registration following amendment of the *Seed Law* in 2016. Our member companies are delighted that the government is revising the regulations governing the import and export of plants, such as the implementing regulations with respect to phytosanitary ordinance (e.g., the *Implementing Rules for the Plant Quarantine Regulations (Agricultural Part)*). Our member companies believe significant changes to regulations governing the import and export of seed and breeding materials are necessary to streamline lengthy and complex approval processes. This will reduce the delays AmCham China members face from redundant approvals, slowly processed phytosanitary certifications and permits, and unclear policy guidance and directives.

Exporting seeds for research purposes is overly complicated for multinational corporations and foreign-invested enterprises. For instance, germplasm exports from China are prohibited if domestic germplasm is used. Even when domestic germplasm is not used, the application and approval procedure is unclear, lengthy and protracted, and is characterized by very low approval rates.

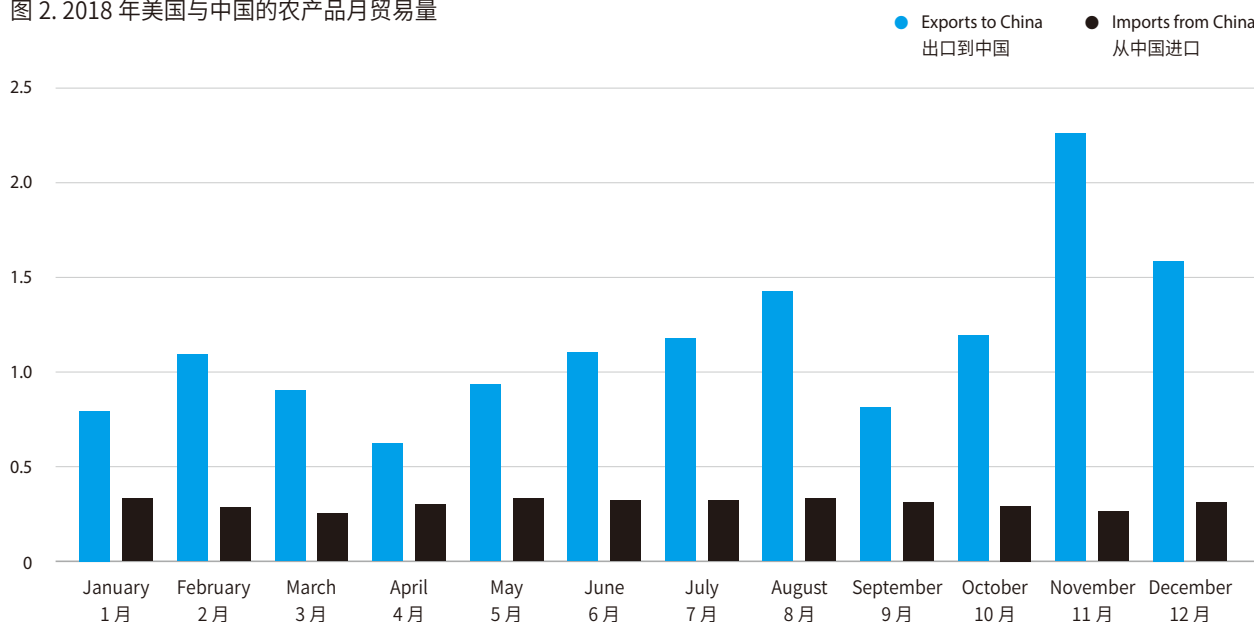
We hope the final version of the *Implementing Rules for the Plant Quarantine Regulations (Agricultural Part)*, published by MARA for comment in October 2019, reflects the comments provided to date by the industry. Requiring approvals from multiple seed administration agencies and MARA in China and in the country of origin delays research cooperation and inhibits technological exchange and information sharing between multinational corporations and the local seed industry, hampering new variety development.

Counterfeit Seeds and Intellectual Property Protections

The seed industry is technology and research intensive, making effective intellectual property rights (IPR) protection critical to its success. Weak IPR protection has been a major barrier to the development of China's seed industry. Variety violations and counterfeit seeds are common problems for both imported and domestic seeds. We recognize that the Chinese government, including MARA, the Ministry of Public Security (MPS), and the State Administration for Market Regulation (SAMR), are working to create a favorable environment for innovation in the seed sector by strengthening IPR legal protections, including the decision to revise the *Regulations for the Protection of New Plant Varieties*, the draft of which was published for comment in February 2019.

Figure 2. Monthly US Agricultural Trade with China in 2018 (Billions USD)

图 2. 2018 年美国与中国的农产品月贸易量



Source: US Census Bureau Trade Data
来源：美国人口普查局贸易数据

种子产业

市场准入挑战

商会感到失望的是，《外商投资准入特别管理措施（负面清单）》和《自由贸易试验区外商投资准入特别管理措施（自贸区负面清单）（2019年版）》并未改变农业方面对作物育种和种子生产的限制。尽管《自贸区负面清单（2018年版）》将小麦和玉米育种及种子生产的外资持股上限从49%提高到66%，但2019年的清单并未反映出进一步开放。商会继续建议将自贸区实施的政策扩大到全国，建议政府进一步放宽对小麦、玉米、大豆和大米新作物品种的选择、育种和生产方面的外商投资限制，允许外国投资者持有100%的投资。

《2019年负面清单》和《自贸区负面清单》仍然禁止外商投资“转基因品种选育及其转基因种子（苗）生产”。禁止外资进入这些领域不仅会限制竞争和效率，而且也不利于中国农业领域实现创新和现代化的目标。商会促请中国政府将这项规定从“禁止”缩减至“限制”，允许合资企业更广泛地参与种子技术创新和农作物生产。

种子和育种原料的进出口

商会注意到，自2016年《种子法》修订以来，中国的农作物品种登记工作不断改进。商会会员企业欣闻政府正在修订植物进出口方面的法规，例如《植物检疫条例实施细则（农业部分）》。商会会员企业认为，有必要对种子和育种原料进出口法规进行重要修改，以简化冗长而复杂的审批流程。这将减少商会会员因过多审批、植物检疫证书和许可证处理缓慢以及不明确的政策指导和指令而面临的延误。

对于跨国公司和外商投资企业而言，出口用于研究目的的种子过于复杂。例如，如果使用国内种质，则禁止从中国出口种质。即使不使用国内种质，申请和批准程序也模糊不清、冗长拖沓，而且批准率非常低。

商会希望农业农村部2019年10月发布的《植物检疫条例实施细则（农业部分）（修订草案征求意见稿）》能够反映业界迄今为止所提供的意见。要求在中国以及原产国经过多个种子管理机构和农业农村部审批的做法，会延误研究合作，并阻碍跨国公司与当地种子行业之间的技术交流和信息共享，从而阻碍了新品种的研发。

AmCham China members would like to continue to work closely with relevant Chinese government agencies. We urge Chinese authorities to impose more severe penalties on Plant Variety Protection (PVP) infringements as an effective way to protect breeders' PVP rights. AmCham China also recommends the provision of additional IP tools to provide comprehensive innovation protection. We recommend that the government:

- Incorporate Essentially Derived Varieties (EDV) into the final version of the *Regulations on the Protection of New Varieties of Plants*. We urge MARA to establish technical specifications for the determination of Essentially Derived Varieties as soon as possible, especially for maize,
- Ensure trade secret protections are applied to germplasm products to protect breeding innovation rights,
- Grant proper patent rights to innovative biotech products which are not individual plant varieties,
- Introduce molecular detection methods to help protect crops from pests and disease,
- Establish an IP credit system for seed companies to better manage IPR over seed development and enhance PVP enforcement.

Agrochemical Industry

Mutual Acceptance of Data (MAD) Program for Pesticide Registrations

China revised its domestic pesticide regulations in 2017. According to MARA's interpretation of the new regulations, to register an internationally-produced pesticide in China, the foreign-invested Enterprise (FIE) must appoint a MARA-approved entity to conduct all registration tests in China. As of November 1, 2017, MARA has stopped accepting OECD-Good Laboratory Practice (GLP) reports issued by overseas laboratories in the registration procedure. These reports support the OECD's Mutual Acceptance of Data (MAD) program, which provides that after a pesticide has been tested and approved by one MAD signatory, it is deemed accepted by all. Therefore, pesticide registration authorities can waive domestic registration requirements for relevant, good quality data generated in other countries. China is in discussions but has yet to join the MAD program.

Consequently, foreign-invested enterprises (FIEs) must now conduct registration tests with a China-based entity, at a cost of RMB 20-30 million per registration, and face an additional registration procedure that can stretch out an additional three to four years. In our members' experience, China is now one of only a limited number of countries that will not accept data for pesticide registration under the MAD program and requires all registration tests to be conducted within its territory.

AmCham China urges MARA to work with industry stakeholders and relevant international organizations to join the MAD program and stop requiring duplicative registrations of foreign pesticides. MARA should at the same time jointly seek an interim solution to accept the test reports from overseas GLP laboratories.

Addition of Illegal Pesticide Analogues

An ongoing crackdown on the production and use of fake pesticides by the authorities (including officials from MARA, SAMR, MPS and their subnational departments) has helped to reduce the presence of fake pesticides on the market and improve the overall quality of China's pesticide market. Agriculture industry stakeholders and farmers continue to suffer, however, from a growing problem whereby illegal ingredients, such as pesticide analogues, are "hidden" in pesticides available on the market. While these analogues have similar properties to the active ingredients identified on the pesticide label, according to national Chinese regulations on pesticide management, the presence of chemical analogues should enable authorities to classify these pesticides as "fake."

The proliferation of these analogues is increasing and constitutes a major challenge facing leading enterprises in the pesticide industry. As the analogues being used have not been registered with the regulators, however, the agriculture and public security departments cannot consistently identify the "fake" pesticides which contain these analogues, an essential step to remove them from circulation and punish the offending producers.

Such pesticide analogues have not undergone the requisite testing and registration to guarantee their safety in accordance with China's pesticide management regulations. The illegal production and sale of pesticide analogues is a risk to China's environmental and food safety. Therefore, AmCham China encourages MARA to issue further regulations and guidance on what is being done to identify and dispose of products containing illegal pesticide analogues. Tests for the presence of pesticide analogues should be included as part of both annual and random inspections conducted by the authorities.

First Global Registration

Article 11 of the *Measures for the Administration of Pesticide Registration*, published in June 2017, provides that "companies exporting pesticides to China shall submit a pesticide registration application to the State Council agricultural authority together with the information stipulated in paragraph one of this Article, a standard pesticide sample, along with proof of registration and use in other relevant countries (or regions)."

In practice, when MARA reviews a registration application,

假冒伪劣种子与知识产权保护

种子行业是技术和研究密集型行业，因此有效的知识产权保护事关成败。知识产权保护薄弱一直是制约中国种子产业发展的主要障碍。侵犯品种和假冒伪劣种子是进口种子和国产种子面临的普遍问题。商会认识到，涵盖农业农村部、公安部和国家市场监督管理总局等部门在内的中国政府正在通过加强知识产权法律保护，为种子行业创新创造有利的环境，包括决定修订《植物新品种保护条例》，修订草案征求意见稿发布于2019年2月。

商会会员希望继续与中国有关政府部门密切合作。商会敦促中国政府对植物新品种保护的侵权行为实施更严厉的处罚，维护植物新品种保护中育种者的权益。商会还建议提供更多知识产权工具以全面保护创新。商会建议政府：

- 将实质性派生品种纳入《植物新品种保护条例》终稿。商会促请农业农村部尽快制定技术规范，确定实质性派生品种，特别是玉米品种；
- 确保商业秘密保护应用于种质产品，保护育种创新权；
- 对应用于非单个植物品种的创新生物技术产品授予适当的专利权；
- 引入分子检测方法以助农作物免受病虫害；
- 为种子企业建立知识产权信用体系，更好地管理种子研发过程中的知识产权，加强植物新品种保护执法；

农药行业

农药登记数据互认体系

2017年中国修订了国内农药法规。根据农业农村部对新规定的解释，要在中国登记国际生产的农药，外商投资企业必须委托一个农业农村部认定的法人实体在中国进行所有登记测试。自2017年11月1日起，农业农村部已停止受理由境外实验室在登记程序中出具的经济合作与发展组织（经合组织）药物非临床研究质量管理规范报告。这些报告支持经合组织的数据互认体系，该体系规定，农药经一个数据互认体系成员测试和批准的，视为被所有成员认可。因此，农药登记机构可根据在其他国家或地区产生的有关优质数据，免除国内登记要求。对于数据互认体系，中国正在讨论中但尚未加入。

因此，外商投资企业现在必须通过设在中国的实体进行登记测试，每次登记的费用为2000至3000万元人民币，并且还需要额外的登记程序，该程序可能历时3至4年。根据商会会员，中国现在是世界上没有通过数据互认体系受理农药登记数据的少数国家之一，并要求所有等级测试都在中国境内执行。

商会促请农业农村部与行业利益相关者和有关国际组织合作，加入数据互认体系，并促请中方停止要求外国农药重复登记。农业农村部同时应寻找临时解决方案，以接受来自国外药物非临床研究质量管理规范实验室的测试报告。

非法添加农药类似物

农业农村部、国家市场监督管理总局、公安部等国家有关部门正在开展的打击假冒伪劣农药生产和使用的行动，有助于减少市场上的假冒农药，提高了中国农药市场的整体质量。然而，农业的行业利益相关者和农民们仍然遭受着一个日益严重的问题所困扰，因为农药类似物等非法成分“隐藏”在市场上出售的农药中。尽管这些类似物与农药标签上标识的活性成分具有类似性质，但根据中国国家农药管理法规，存在化学类似物可认定这些农药为“假冒农药”。

农药类似物持续扩散，成为领头农药企业所面临的主要挑战。但是由于所使用的类似物尚未在监管机构登记，农业和公安部门无法一致地识别出包含这些类似物的假冒农药，然而这是从流通中消除农药类似物、惩罚违规生产者的重要一步。

这些农药类似物未按照中国农药管理规定进行过必要的测试和登记，无法保证安全性。非法生产和销售农药类似物对中国的环境和食品安全都构成威胁。因此，商会鼓励农业农村部就如何识别和处置含有非法农药类似物的产品，进一步颁布法规和指南。主管部门开展的年度审查和随机抽查均应包含对农药类似物的检测。

首次全球登记

2017年6月颁布的《农药登记管理办法》第十一条规定，向中国出口农药的企业“应当向农业部提出申请，并按照本办法和《农药登记资料要求》的规定提交相关资料，以及在有关国家（地区）登记、使用的证明材料。申请新农药登记的，应当提供农药标准品和样品。”

it requires applicants to provide the registration licenses used in other countries as proof of “the registration and use in other relevant countries (or regions).” Such practice prevents AmCham China member companies from introducing the most advanced pesticide technologies and products into the Chinese market and runs counter to the overall orientation of the Chinese government to promote a more open and innovative business environment.

AmCham China encourages MARA to consider scaling back this requirement to provide registrations from other countries to accelerate introduction of new products into the Chinese market. We note in this regard that the Chinese government authorities are accelerating the registration of innovative drugs as the first country to approve their usage for the benefit of patients and the national health system. AmCham China, therefore, also urges MARA to study the experience of the National Medical Products Administration (NMPA) and institute similar approvals in the agrochemical industry in order for the Chinese agriculture market to have timely access to newer and safer products.

Biotechnology

Regulatory and Permit Issues Facing Commodities with Biotech Traits

A draft of the Biosecurity Law was reviewed by the Standing Committee of the National People’s Congress (NPC) in October 2019. AmCham China welcomes this legislative initiative and believes that both domestic and foreign biotechnology enterprises would benefit from a balanced law with regulations that include sufficient precision as to make them consistently enforceable and implementable. Even with a draft *Biosecurity Law* under review, we encourage MARA to review existing regulations and encourage amendments or changes that promote innovation in the biotechnology sector.

The regulatory approval procedure for crop commodities with biotech traits made progress in 2019, with seven products approved by MARA. Furthermore, the 2019 GMO Safety Certificate Approval List was issued in January 2020, which AmCham China commends as a positive development. Nevertheless, slow moving approvals for biotech commodities are the result of excessive regulation and strict data requirements that severely inhibit global agricultural innovation. We are pleased that under the terms of the Phase One Deal between the US and China signed in January 2020 that China has committed to implementing a transparent and science-based procedure for evaluating and licensing agricultural biotechnology products. In light of this commitment, we offer our concerns and suggestions below.

AmCham China is concerned by the increasing number of repetitive data localization requirements imposed by regulatory authorities with respect to safety approvals for

imported biotech products. AmCham China encourages MARA to adopt more flexible data localization requirements that take into consideration the product’s intended use in China, rather than imposing restrictive, “one-size-fits-all” data requirements. We encourage MARA to conduct a deep dive with industry stakeholders to develop more reasonable data requirements, including clarifying how data can be generated and shared to meet safety regulations. We recommend MARA adopt administrative procedures and data requirements that differentiate genetically modified organism (GMO) products from Contained Use products (such as differentiating feed enzymes from genetically modified microorganisms) and consider the application of cutting-edge technologies such as gene-editing.

In 2017, several new amendments to existing biotech regulations were issued. These amendments removed in-country studies as a precondition for applying for import safety certificates, and also removed application and trial fee requirements for biotech product import approvals. While our members welcome the Chinese government’s intention to reduce the administrative and financial burden on companies, we also believe the amendments provide opportunities to further reduce the requirements for in-country studies which are unique to China and are considered redundant to import safety certificates. When such amendments like these are adopted without a clear transition period or detailed implementing regulations, they add significant operational uncertainty for AmCham China member companies. AmCham China continues to recommend that MARA clarify the changes to the regulatory procedure resulting from these new amendments and establish implementing rules after a transparent, open consultation process with all stakeholders.

AmCham China also notes that export approvals from the country of origin are still a required precondition to apply for import safety certificates for biotech products. This leads to significant time lags between approval by the country of origin and approval in China. AmCham China encourages MARA to allow companies to apply for China import safety approval while the export approval is under consideration to expedite the entry of these products into the China market.

GMO Low-Level Presence

China’s zero-tolerance policies for any commodities with biotech traits are not practical given the challenges facing commercial grain traders in avoiding the unintentional co-mingling of grains with and without biotech traits, even among operators who apply best practices and adhere to the highest standards of agricultural and manufacturing practice. These policies are also impractical given the statistical odds of some co-mingling occurring for operators who manipulate thousands of metric tons of grain. Under these zero-tolerance policies, if just one kernel, bean, or grain grown from the seed of an unapproved genetically-engineered (GE) event is found in a shipment that can be as

实际上，农业农村部在审查登记申请时，要求申请者提供在其他国家（地区）使用的登记许可，以作为“在有关国家（地区）登记、使用”的证明材料。这种做法使商会会员企业无法将最先进的农药技术和产品引入中国市场，也和中国政府营造更加开放创新的营商环境的总体方向背道而驰。

商会支持农业农村部考虑降低要求，仅提供在有关国家（地区）的登记材料，加快新产品进入中国市场。在这方面商会注意到，中国政府有关部门正在加快创新药物登记，成为第一个为造福患者和国家卫生系统而批准使用创新药物的国家。因此，商会还促请农业农村部学习国家药品监督管理局的经验，并在农药行业设立类似批准程序，以便中国农业市场能够及时获得更新、更安全的产品。

生物技术

具有生物技术特征的商品面临监管和许可问题

2019年10月，全国人大常委会审议了生物安全法草案。商会对此立法举措表示欢迎，并相信国内外生物技术企业都将受益于平衡的法律，这样的法律规定应当在执行和实施上始终具备精确度。尽管生物安全法草案业经审议，商会仍鼓励农业农村部审查现行法规，支持该部门为促进生物技术领域创新而作出相应修订或变革。

2019年，具有生物技术特征的农作物商品的监管许可程序取得了进展，其中七种产品得到了农业农村部的批准。此外，2020年1月，农业农村部发布了2019年农业转基因生物安全证书批准清单，商会认为这也是一个积极的进展。然而，过度监管和严格的数据要求导致生物技术商品审批缓慢，严重阻碍了全球农业创新。商会很高兴看到，根据中美两国于2020年1月签署的第一阶段协议的条款，中国承诺实施透明科学的程序来评估和批准农业生物技术产品。对于这一承诺，以下为商会的关切事项和建议。

商会对于监管机构在进口生物技术产品安全审批上越来越多的重复数据本地化要求表示担忧。商会鼓励农业农村部采用更加灵活的数据本地化要求，要考虑到产品在中国的预期用途，而不是施加严格“一刀切”的数据要求。商会鼓励农业农村部与行业利益相关者进行深入探讨，以制定更合理的数据要求，包括阐明如何生成

和共享符合安全法规的数据。商会建议农业农村部采用能够区分转基因生物产品与封闭使用产品的行政程序和数据要求，例如转基因微生物生产的饲料酶；并考虑对基因编辑等尖端技术进行适度要求。

2017年发布了对现行生物技术法规的若干修订。这些修订不再要求国内研究作为申请进口安全证书的前提条件，也取消了生物技术产品进口审批的申请和试验用费要求。商会会员欢迎中国政府进一步减轻企业行政和财务负担，同时也认为这些修订为进一步降低在进口安全证书方面的中国特色要求创造了条件。如果在没有明确过渡期或详细实施条例的情况下采用这些修订案，将给商会会员企业的经营带来巨大的不确定性。商会仍然建议农业农村部明确这些修订产生的监管程序变化，并在与所有利益相关者进行透明公开的协商后制定实施细则。

商会还注意到，从原产国获得出口审批仍然是申请生物技术产品进口安全证书的必要前提。这导致原产国审批与中国审批之间存在明显的时间滞后。商会鼓励农业农村部允许公司在出口审批待批的情况下申请中国进口安全审批，加快这些产品进入中国市场。

转基因生物低水平混杂

中国对任何具有生物技术特征的商品采取零容忍政策是不现实的，因为避免无意混杂具有和不具有生物技术特征的粮食对于绝大多数商品粮食商而言挑战十足，即使是采用最佳做法并遵守农业和制造业实践最高标准的经营者也亦如此。考虑到操作数千公吨粮食的操作员可能混杂两种粮食的统计几率，也就知道这些政策是不切实际的。在这些零容忍政策下，如果在一次多达66000公吨的货运量中发现一颗从未经审批的基因工程事件中的种子所生长出来的籽粒、豆子、谷物，那么所有货物都可能被有关部门拒绝。

转基因生物低水平混杂是大宗商品交易中普遍采用的一种国际标准。2008年，国际食品法典委员会通过了《食物中重组DNA植物原料含量较低时的食物安全评估附加规范》(LLP附件)。业界最佳做法是，允许谷物装运中，含有最多5%的基因工程新产品，这些产品已经在原产国获得批准并获得相关食品安全认证。如果中国采取这种做法，将能够在不危害公共卫生的情况下提高贸易水平。商会建议中国政府采用低水平混杂标准。这

large as 66,000 metric tons, then the entire shipment can be rejected by the authorities.

GMO Low-Level Presence (LLP) is an international standard commonly applied in commodity trading. In 2008, the Codex Alimentarius Commission approved the *Annex on Food Safety Assessment in Situations of Low-Level Presence of Recombinant-DNA Plant Material in Food*. Industry best practice is that grain shipments be allowed to contain up to five percent of new genetically-engineered products that have been approved in the originating country and have obtained the relevant food safety certifications. If China were to adopt this practice, it would increase levels of trade without posing risks to public health. AmCham China recommends that the Chinese government apply the LLP standard. Doing so would mitigate the consequences of disruptions to grain supplies that can result when trace amounts of a biotech trait that has been approved in one market are then detected in a grain shipment to another market where the trait has not yet been approved. The number of authorizations for new and combined events is increasing, and more novel genetically engineered (GE) events are being developed. Some amount of delay between the approval of a GE product in the exporting country and importing country is inevitable. Adoption and application of the LLP standard is consistent with international best practice and scientifically-based standards, can help mitigate the impacts of any delays, and is a useful technique to control risk and reduce costs.

Agricultural Processing and Trade

Restrictions on Soybean Crushing

AmCham China is pleased that China has updated the *Guiding Catalogue for the Industrial Structure Adjustment* (2019 Revision) and *Market Access National Negative List* (2019 edition) and reduced the number of sectors classified as “restricted” to foreign investment. AmCham China noticed, however, that the 2019 version of these documents categorizes soybean crushing as a “restricted” activity (except in the provinces of Heilongjiang, Jilin and Inner Mongolia), which in practice means that no FIEs are allowed to invest in new soybean crushing capacity. AmCham China urges the government to remove soybean crushing from the “restricted” list and enable investment nationwide.

Following the 19th National Congress of the Communist Party of China in October 2017, the central government committed to allowing the market to play a “decisive” role in the allocation of resources. In the spirit of this commitment, AmCham China urges that the market be allowed to play a decisive role in the soybean crushing industry. The soybean crushing industry is closer to one of perfect competition than, for instance, the steel and coal industries where production capacity does not achieve a natural balance on its own without interference or intervention by the local government. The extensive capacity of foreign-invested soybean

crushing operators should help to modernize current levels of soybean crushing capacity in China’s market. AmCham China believes that allowing businesses to base their investment decisions on market-oriented factors and to be solely responsible for their profits and losses will help make the industry more efficient and productive. AmCham China member companies urge the government to allow FIEs to invest in the soybean industry on the basis of rational profit-making decisions and in so doing help to make the industry more efficient.

Import Tariff-Rate Quotas

AmCham China has witnessed a positive response from the Chinese authorities since the WTO dispute settlement panel released its report on China’s administration of import tariff-rate quotas (TRQs) in April 2019. The panel found that China has administered its import TRQs for wheat, corn, and rice in a manner inconsistent with its WTO commitments. The report urged China to allocate its import TRQs on a transparent, predictable, and fair basis and in accordance with its WTO commitments, as the failure to do so denies US farmers access to China’s grain market. During the import TRQ allocation process in 2019, eligible applicants were permitted to apply to state trading and/or private trading quotas, and thus fulfill the TRQ.

In order to increase the level of transparency and fairness associated with the TRQ filling process, AmCham China encourages the National Development and Reform Commission (NDRC) and the Ministry of Commerce (MOFCOM) to include FIEs in the final allocation of TRQs based on a clear, objective, and transparent set of criteria, and to publish the final allocation results with a written explanation.

Feed Industry

Feed Import Approvals

In order for feed additives and some feed ingredients to be imported into China, they are required to undergo a government approval process that involves first registering these products with MARA followed by additional product risk assessments and facility registration procedures with the GACC. These approvals need to be in place before the products can be imported. The registration process with MARA needs to be renewed every five years.

Although the registration procedures for non-new feed and feed additives with MARA are predictable, the GACC registration procedures have traditionally been lengthy and less transparent. A lack of coordination between ministries is hampering the industry. AmCham China urges reform of the approval procedure requirements, and that the timeframe be shortened by allowing companies to submit the same documents simultaneously to both MARA and GACC. We also

样做可以减轻粮食供应中断的后果，造成这种后果的可能情况是，当一批货物里的极少量存在某种已经在市场上通过审批的生物技术特征，并在运往另一个尚未审批该生物技术特征的市场中被检测出来。越多新发事件和合并事件得到认可，就会出现更多的基因工程事件。在出口国和进口国之间审批基因工程产品不可避免地存在一定延迟。采用低水平混杂标准符合国际最佳实践和科学标准，可有助于减轻任何延误的影响，是控制风险和降低成本的有用技术。

农业加工与贸易

大豆压榨限制

商会欣闻中国更新了《产业结构调整指导目录（2019 年本）》和《市场准入国家负面清单（2019 年版）》，并减少了“限制”外商投资的行业数量。但是商会注意到，这些文件的 2019 年版本将大豆压榨列为“限制”项目（黑龙江、吉林和内蒙古大豆主产区除外），这实际上意味着不允许外商投资企业投资提升大豆压榨能力。商会敦促政府将大豆压榨从限制类清单中删除，并允许外商在全国范围内投资。

在 2017 年 10 月召开的中国共产党第十九次全国代表大会之后，中央政府承诺让市场在资源配置中起决定性作用。本着这一承诺，商会促请允许市场在大豆压榨行业中发挥决定性作用。与钢铁、煤炭等行业相比，大豆压榨行业更接近于完全竞争；而在钢铁和煤炭行业，如果没有地方政府的干预，生产能力就无法实现自然平衡。由外商投资的大豆压榨运营者的粗放产能将助力中国市场当前的大豆压榨能力实现现代化。商会认为，允许企业根据市场导向因素作出投资决策并自负盈亏，将有助于提高行业效率和生产力。商会会员企业促请政府允许外商投资企业在合理的获利决策基础上投资大豆行业，以提高大豆行业的效率。

进口关税配额

自世界贸易组织争端解决小组于 2019 年 4 月发布关于中国进口关税配额管理的报告以来，商会看到了中国有关部门的积极回应。该小组发现，中国对小麦、玉米和大米的进口关税配额管理方式与其世贸组织承诺不一致。该报告促请中国在透明、可预测和公平的基础上，根据其对外贸组织的承诺分配进口关税配额，而假如中

方未能履行承诺，美国农民将无法进入中国粮食市场。在 2019 年的进口关税配额分配过程中，已经允许符合资质条件的申请者申请国营贸易和私营贸易配额，从而履行中方的关税配额。

为了提高关税配额申请过程的透明度和公平性，商会鼓励发改委和商务部基于清晰、客观、透明的标准，将外商投资企业纳入关税配额的最终分配过程，公布最终分配结果并作书面说明。

饲料行业

饲料进口审批

将饲料添加剂和部分饲料原料进口到中国，必须经过政府审批，当中包括首先在农业农村部登记有关产品，然后在海关总署进行产品风险评估和生产设施登记。必须在产品进口之前完成上述审批程序。农业部要求每五年登记一次。

尽管饲料和饲料添加剂在农业农村部的登记程序明晰，但海关总署的登记程序仍然冗长、透明度较低。政府各部门之间缺乏协调，阻碍了该行业发展。商会促请改革审批程序要求，允许企业同时向农业农村部和海关总署提交相同文件，缩短办事期限。商会还建议农业农村部和海关总署设计解决方案，以便饲料样品进口到中国市场进行验证和测试。

根据第一阶段协议，中国承诺加快进口饲料登记，商会对该协议部分的落实表示期待。总体而言，商会预期第一阶段协议的全面实施将有助于中方获取美国产品和技术，促使中国食品生产更为健康、更可持续。协议的实施还提供了替代抗生素解决方案，这对于中国正着力控制非洲猪瘟的工作尤其重要。

牛肉和猪肉贸易

中国对多样化、安全、营养丰富的蛋白质的需求日益增长，这使得中国成为世界上最大的牛肉和猪肉进口市场。预计中期进口量将同比增长近 50%。由于从 2018 年 8 月开始爆发非洲猪瘟，中国对进口猪肉的需求迅速增加，预计 2020 年对进口猪肉的需求依然强劲。

虽然中国市场的需求不断增长，而且中国牛肉行业分散，但美国牛肉的市场份额历来仅占约 1%。中国对

recommend that MARA and GACC devise a solution so that feed samples can be imported to undergo verification and testing in the China market.

Under the Phase One Deal, China has committed to accelerating registration of imported feed and we look forward to implementation. In general, AmCham China anticipates that full implementation of the Phase One Deal will help to secure US-based products and technologies in support of healthier and more sustainable food production in China. This also includes allowing for the provision of alternative antibiotic solutions, particularly important for China's ongoing efforts to control African Swine Fever (ASF).

Beef and Pork Trade

China's growing demand for varied, safe and nutritious protein has resulted in China becoming the world's largest import market for beef and pork. Imports are expected to grow nearly 50 percent year-on-year over the medium term. China's demand for imported pork has increased rapidly due to the outbreak of ASF beginning in August 2018 and the demand for imported pork is expected to be strong again in 2020.

Despite rising demand in the China market and the fragmented nature of its own beef industry, US beef's market share has historically been only about one percent. US beef has had access to the Chinese market since 2017, though it has been restricted by zero-tolerance policies on the use of hormone growth promotants (HGP), traceability requirements, and cattle age restrictions.

Importantly, the Phase One Deal has removed a number of longstanding restrictions on the beef and pork trade that offer welcome opportunities for US producers. In the Phase One Deal, China has committed to removing cattle age restrictions (currently 30 months and under) for US beef and beef products and expanded the allowable product scope for US beef and processed beef products to more closely align with those products that the US allows for domestic consumption and export.

The Phase One Deal will also recognize US industry traceability systems, undertake a risk assessment for Maximum Residue Levels (MRLs) for ractopamine, an additive used widely by the US beef industry. China also committed to adopting MRLs for zeranol, trenbolone acetate, and melangesterol acetate for beef within one month of the deal going into effect. MARA released for comment national food safety standard MRLs for three drugs (zeranol, trenbolone acetate, and melangesterol acetate) in beef on March 4, 2020. This is in line with China's commitments, and this, along with the commitments discussed above, should ultimately offer more opportunities for US beef to be imported into the China market.

The pork and beef producers of the US continue to be committed to working with the Chinese government to understand each other's positions and to enable Chinese consumers to have access to affordable pork and beef that is produced safely and sustainably. Over the past 24 months both sides have made significant progress in developing mutual understanding and we look forward to deepening this understanding further.

Agricultural Machinery

Agricultural Machinery Subsidies

Since 2004, subsidies and other favorable policies have powered sales of agricultural mechanization equipment in China, reducing the overall costs of food production in China. We particularly appreciate the new subsidy policy released in 2018, which added imported agricultural machinery to the subsidy list. Provincial agricultural authorities have substantial autonomy regarding subsidy implementation, however, policies differ from province to province. As a result, agricultural machinery manufacturers must work with all provincial authorities responsible for the implementation of subsidies. AmCham China recommends that authorities encourage consistent subsidy policies at the provincial level to foster a healthy business environment and improve farming efficiency. We encourage MARA to gradually shift subsidies to new technologies used for smart agriculture.

Emission Standards

AmCham China welcomes the release of the long-awaited *Non-road Mobile Machinery and Diesel Engine Stage IV Emission Regulation (NR4)* and supports stringent and consistent enforcement of its provisions to ensure a level playing field for the whole industry. As the NR4 emission certification test is much more complicated than the previous NR3 test and the lead time needed to achieve each rating is much longer, we ask that the Ministry of Environment and Ecology (MEE) release the NR4 regulation as soon as possible. NR4 implementation should be postponed to at least December 2021 and should be implemented no earlier than 18 months after the final regulations are released. Considering the timing of the agricultural harvest and the timing of subsidies for agricultural machinery, the implementation of NR4 should only begin in December of the year it is launched.

Meanwhile, manufacturers have been devoting significant resources to prepare their technology and product development procedures to comply with NR4. We request that MEE not alter requirements for existing technologies as it will impose economic losses for engine and machinery companies. We also urge MARA to simplify the homologation process so manufacturers can deliver clean and efficient products to customers on time. To ensure a level playing field for all enterprises operating in the industry, AmCham

使用激素生长促进剂采取零容忍政策，而且有可追溯性要求和牛龄限制，但美国牛肉自 2017 年起已进入中国市场。重要的是，第一阶段协议取消了对牛肉和猪肉贸易的一些长期限制，为美国生产者提供了可喜的机遇。在第一阶段协议中，中国承诺取消对美国牛肉和牛肉产品的牛龄限制（目前要求牛龄不超过 30 个月），并扩大了美国牛肉和加工牛肉产品的许可产品范围，这与美国国内消费和允许出口的产品保持一致。

第一阶段协议还将认可美国行业的可追溯体系，并对莱克多巴胺（美国牛肉行业广泛使用的一种添加剂）的最大残留限量进行风险评估。中国还承诺在协议生效之日起 1 个月内对进口牛肉中的玉米赤霉醇、群勃龙醋酸酯和醋酸美伦孕酮采用最大残留限量。2020 年 3 月 4 日，农业农村部发布了关于牛肉中玉米赤霉醇等 3 种药物的最大残留限量食品国家安全标准的征求意见稿。这个做法与中国的承诺相符，并且连同上述承诺，最终将为美国牛肉进口到中国市场提供更多机会。

美国的猪肉和牛肉生产商将继续致力于与中国政府合作，了解彼此立场，使中国消费者能够买到安全、可持续生产、负担得起的猪肉和牛肉。在过去的 24 个月里，双方在增进相互了解方面取得了重大进展，商会期待进一步加深认识。

农业机械

农机补贴

自 2004 年以来，补贴和其他优惠政策推动了中国农业机械化设备的销售，降低了中国粮食生产的总体成本。商会特别赞赏 2018 年公布的新补贴政策，该补贴政策将进口农业机械列入补贴清单。省级农业部门在落实补贴方面拥有充分的自主权，各省的补贴政策也不尽相同。因此，农业机械制造商必须与负责落实补贴政策的各个省级机构对接。商会建议各省级机构执行统一的补贴政策，营造健康的营商环境，提高农业效率。商会支持农业农村部逐步调整补贴方向，转向补贴新技术，如智能农业。

排放标准

商会欢迎并期待《非道路移动机械及其装用的柴油机污染物排放控制技术要求》（国四）尽快发布。商会支持法规执行的严格性和一致性，以确保整个行业的公

平竞争环境。鉴于非道路国四排放认证测试与国三相比更为复杂，准备时间更长，商会恳请生态环境部尽快发布国四法规，实施时间推迟至 2021 年 12 月以后，且不应早于法规发布后 18 个月。考虑到农业收获季及农机补贴实施周期等因素，实施月份应始于当年 12 月。

同时，由于各生产企业已经投入巨大成本开发国四技术及产品，商会希望生态环境部不要变更对现有技术路线的要求，以避免发动机和整车企业蒙受经济损失。商会还提请农业农村部简化国四产品的鉴定流程，如排放测试等，以确保制造企业能够按时交付清洁高效的产品。如遇到法规中表述不明确的内容，商会促请生态环境部及时提供指导方针，以最大限度地减少不同监管机构可能做出解释不一致的情况。此外，商会希望国四法规中应规范不得篡改排放设计要求，以防止私自篡改排放控制的情况发生。

建议

对中国政府：

- 进一步允许外资投资农业生物技术、现代农业加工，小麦、玉米、大豆和水稻育种及种子生产，从而提高中国农业的竞争力和可持续性。
- 简化整个农业供应链的审批程序，包括：① 简化种子和育种原料进出口，促进中国种子品种的发展；② 简化饲料和饲料添加剂进口，目前农业农村部及海关总署的审批流程冗长；③ 简化农药行业的审批程序。根据国际公认的做法采用数据互认体系。允许申请者同时提交在世界其他地方进行的申请，并取消冗余的进口安全审批手续。
- 与第一阶段协议一致，简化农业生物技术监管流程以及相关的审核时间表。相关认证程序应按照规定计划期限定期进行。
- 继续在整个农业供应链中采用科学的评估标准，例如牛肉和猪肉进口的评估标准，并通过简化审批程序，让中国农民获得更多的抗

China urges MEE to promptly provide guidelines to clarify regulatory standards and address specifications not expressly provided in the NR4 Regulation to minimize the potential for inconsistent interpretation by different regulatory bodies. We also urge that the NR4 include a manufacturing anti-tamper design requirement to prevent alteration of emission controls.

Recommendations

For the Chinese Government:

- **Improve the competitiveness and sustainability of Chinese agriculture by further opening the industry up to foreign investment in agricultural biotechnology, modern agricultural processing, wheat, maize, soybean, and rice breeding, and seed production.**
- Simplify the approval procedures across the agricultural supply chain, including: ① for the import and export of seed and breeding materials to advance the development of seed varieties in China, ② for imported feed and feed additives which currently require lengthy approval by both MARA and GACC, and ③ in the agrochemical industry. Adopt the MAD Program in line with internationally-recognized practices. Allow applicants to make submissions at the same time as applications elsewhere in the world and eliminate redundant import safety approvals.
- Consistent with the Phase One Deal, streamline the agricultural biotech regulatory process and associated review time frames. Relevant certification proceedings should be conducted periodically and in accordance with a defined, scheduled timeline.
- Continue to adopt scientific evaluation standards across the agricultural supply chain, such as in the evaluation of beef and pork imports, and allow Chinese farmers greater access to antibiotic alternatives by streamlining approval procedures.
- Encourage the consistent implementation of agricultural machinery subsidies across provinces to raise efficiency and simplify agricultural machinery homologation processes to enable manufacturers to meet NR4 emission standards with limited preparation time.

For the US Government:

- **Build on the momentum established by the Phase One Deal to strengthen communication with the Chinese government, explore space for coopera-**

tion, reduce tariffs on Chinese goods, and resume the normalization of bilateral trade between the US and China.

- Work with Chinese officials through official and unofficial bilateral dialogues to monitor implementation of the Phase One Deal and continue to work to address trade and investment restrictions faced by US agricultural producers.

生素替代品。

- 鼓励各省执行统一的农业机械补贴，提高效率，简化农业机械鉴定流程，以便制造商在有限的准备时间内满足国四排放标准。

对美国政府：

- 巩固第一阶段协议的势头，加强与中国政府的沟通，探索合作空间，降低对中国商品的关税，恢复美中双边贸易正常化。
- 通过官方和非官方双边对话与中国官员合作，以监督第一阶段协议的执行情况，并继续致力于解决美国农业生产商面临的贸易和投资限制。

Automotive

Introduction

2019 was another discouraging year for China's automotive industry. According to the China Association of Automobile Manufacturers (CAAM), production and sales of automobiles in 2019 totaled 25.72 million and 25.77 million vehicles respectively; down a further 7.5 percent and 8.2 percent year-on-year. This constituted a decline of an additional 4.2 and 5.4 percentage points respectively, year-on-year. Even in the new energy vehicles (NEVs) sector, where sales had increased by 61 percent year-on-year in 2018, 2019 sales decreased for the first time in ten years. In 2019 1.206 million NEVs were sold, constituting a year-on-year decrease of 4 percent. The declining sales and production of automobiles in 2019 continued trends seen in 2018, when production and sales of automobiles fell for the first time in 28 years.

In the context of China's slowing economy, the sustained downturn of the automotive market in 2019 is attributable to a combination of weak domestic demand, stricter emission regulations, a reduction in subsidies for NEVs, and China-US trade tensions. The government introduced new policies to promote domestic consumption in 2019, including tax reductions, credit expansions, and targeted policies designed to optimize supply-side reform and stimulate domestic demand (including *the Notice on the Implementation Plan for Further Optimizing Supply to Promote Steady Growth of Consumption and Promote the Foundation of a Strong Domestic Market (2019)*, *Implementation Plan for Promoting the Update and Upgrade of Key Consumer Products and Smooth Resource Recycling (2019-2020)*, and the State Council's *Opinions on Accelerating the Circulation Development and Promoting Commercial Consumption*). These measures did not have a measurable impact on the automotive market, however.

2020 began with the outbreak of COVID-19, which took a toll on production and sales in the automotive industry as well as the economy as a whole. According to CAAM, China's automobile production and sales declined by 33.5 percent and 27.0 percent compared to the previous month, and 24.6 percent and 18 percent year-on-year in January compared to the same month in 2019. NEVs suffered the biggest impact, with sales declining by 54.4 percent. In response to policies enacted to contain the COVID-19 outbreak, automakers and distributors suspended operations and experienced

delays in restarting production, and consumers delayed purchases of new cars. According to the China Passenger Cars Association (CPCA), fewer than 40,000 passenger cars were sold nationwide in the first two weeks of February 2020, while sales for the entire month of February were not expected to exceed 100,000. The rapid decline is all the more apparent when we consider that 1.699 million automobiles were sold in January 2020. The disruption to the automotive industry is not purely a domestic concern; for instance, South Korea, Japan, and Germany's automotive industries have all suffered from reduced or suspended operations due in part to disruptions on the supply chain of components from China.

2020 will be another challenging year for the automotive industry. Not only does the decline in production and sales remain a concern, but compliance with exacting technical requirements also presents an ongoing challenge for industry automakers. Continuity, stability, predictability, and coordination with policies and standards in the automotive industries in other global markets will be critical for the automotive sector including AmCham China members.

Ongoing Challenges and Recent Developments

Policy Transparency, Continuity, and Stability

In 2019, several policy documents were released that garnered high levels of attention across the industry. The Ministry of Industry and Information Technology (MIIT) issued the *Implementing Regulations for Administrative Measures Road Motor Vehicle Manufacturers and Product Access* (including provisions on corporate management, market access for new technologies, new manufacturing processes, new materials, and vehicle classifications and approvals) in September for public comment, as well as the draft *New Energy Vehicle Industry Development Plan (2021-2035)* in December.

Following consultation with industry, the government identified four modernizing trends that will shape the future of China's automotive development: electrification, greater application of networks and connectivity, intelligent technologies, and sharing (e.g., the sharing economy and automobiles). The government is establishing targets that correspond with

汽车制造业

引言

中国汽车行业的寒冬仍在继续。中国汽车工业协会（CAAM）的发布的信息显示，2019年汽车生产和销售分别达到2572.1万辆和2576.9万辆；同比下降了7.5%和8.2%。2019年汽车产、销量降幅比上年分别扩大4.2和5.4个百分点。即使在新能源汽车（NEV）领域，2018年销售额同比增长61%，2019年的销售额也在十年来首次出现下滑。2019年，新能源汽车售出120.60万辆，同比下降4%。2019年汽车销量和产量的下降延续了2018年的趋势，而2018年是28年以后汽车产量和销量首次下降。

在整体经济下行的情况下，内需不足、排放加严、新能源补贴退坡、中美贸易战等因素导致2019年整体车市持续低迷。2019年国家继续制定如减税、信贷扩张、供给侧结构性改革、提振内需等新政策来促进汽车消费（如《进一步优化供给推动消费平稳增长促进形成强大国内市场的实施方案（2019年）》、《推动重点消费品更新升级畅通资源循环利用实施方案（2019-2020年）》、《关于加快发展流通促进商业消费的意见》）。但是这些政策对于汽车市场效果并不明显。

2020年开年新冠肺炎疫情爆发，给汽车行业的生产和销售带来巨大影响。据中国汽车工业协会数据，2020年1月，全国汽车产销量环比下降33.5%和27.0%，同比下降24.6%和18%，新能源汽车受到影响最大，销量大降54.4%。为遏制疫情，汽车制造商和分销商暂停营业、延迟复工，消费者购车消费明显下降。据全国乘联会（CPCA）数据，今年2月的前两周，全国销售乘用车不足4万辆，全月销量预计不超过10万辆。鉴于今年1月份的销量只有169.9万辆，下跌幅度之大非常明显。汽车行业的低迷并不仅仅发生在国内；韩国、日本以及德国汽车行业均遭受生产销售下降甚至暂停的问题，部分原因是因为中国供应链受到打击。

可以预见，2020年将是汽车行业更为艰巨的一年。汽车行业面临的挑战不仅包括汽车的产销，还有满足相关技术法规标准的合规要求。2020年，政策法规和技术标准的可预见性、稳定性和国际统一协调对汽车行业而言至关重要。

现存监管问题和最新进展

透明、可预见、稳健的政策

2019年，中国政府陆续发布了一系列引人关注的政策。工信部《道路机动车辆生产企业及产品准入管理办法》的实施细则（包括集团化管理、新技术新工艺新材料准入、系族化管理）在去年九月出台并征求意见，《新能源汽车产业发展规划（2021-2035年）》也在去年12月出台。

通过对行业征求意见，政府认定了“新四化”（电动化、网联化、智能化、共享化）为产业发展的方向和趋势，同时也设定了相应的目标和愿景。在2020年，工信部启动修订《新能源汽车生产企业及产品准入管理规定》，降低企业参与系能源汽车研发的门槛。这将促进更多企业参与到研发中。2020年3月，发改委等11部委也联合出台了历时两年多的《智能汽车创新发展战略》。

鉴于上述政策和战略文件的颁布，商会的会员也面临着政策协调和稳定方面的长期挑战。在全国范围，多个政府部门负责对汽车行业进行监管，此外还有其他地方政策要求，这些要求也分散了监管结构。在应对这些挑战的同时，汽车制造商将不得不加大对研发的投入，以符合新的法规和战略发展要求，促进电动、互联、智能和“共享”车辆的发展，以符合政府的愿景。商会预计这些发展将在短期内导致汽车行业格局的重大变化。

在这一背景下，中国美国商会（商会）会员企业期

this vision and these trends. In 2020, MIIT issued amended provisions on the *Regulations on Management of Access to New Energy Vehicle Manufacturers and Products* which reduced the restrictions on enterprises who want to engage in research in development (R&D) activities. Ostensibly, this would allow a greater number of enterprises to engage in R&D. Finally, the product of a more than two-year effort, the NDRC and ten other ministries issued the *Strategy for Innovation and Development of Intelligent Vehicles* in February 2020.

In light of the promulgation of the policy and strategy documents above, it is important to highlight that our members face longstanding challenges with respect to policy coordination and stability. Multiple government departments are responsible for regulating the automotive industry nationally, alongside additional local policy requirements, which fragments the regulatory structure. In parallel with having to contend with these challenges, automakers will have to ramp up investment in R&D in order to comply with the new regulatory and strategic developments to promote the development of electrical, connected, intelligent, and “shared” vehicles, consistent with the government’s vision. We expect these developments to lead to significant change in the automotive industry landscape over the near term.

In this context, AmCham China members continue to hope, as we have done in the past, that the government will increase inter-departmental coordination and introduce policies which support consumption and investment and provide tax relief. Oversight of the automotive sector should be further improved by promulgating reforms that streamline administration, promote deregulation of service delivery, and enhance the transparency, continuity, and predictability of policy formulation and implementation, thereby creating a more friendly business climate. In addition, the government should strive to better coordinate and even unify China’s national automotive market, which is currently characterized by regional fragmentation which hampers the ability of automotive companies to serve the market on a nationwide basis.

Transparency

AmCham China has long advocated for the government to ensure industry feedback and participation in the early development stages of new laws and regulations, including prioritizing feedback from foreign-invested enterprises (FIEs). When new laws and regulations have been promulgated for and received public comment, we strongly recommend that the government provide additional, public feedback on the comments received. Any changes that are incorporated into later drafts should be clearly communicated by government and the final draft laws and regulations should be opened once again for public comment.

The new *Foreign Investment Law* (FIL) and its Implementing Regulations came into effect on January 1, 2020. Article 10

of the Implementing Regulations provides that before the formulation of laws, regulations and rules related to foreign investment, appropriate measures shall be taken to solicit opinions and suggestions from foreign-invested enterprises.

The FIL itself further provides in Article 15 that the state ensures that foreign-invested enterprises have equal access to standards-setting work in accordance with the law and strengthens information disclosure and social supervision with regard to standards-setting.

Although AmCham China is pleased that FIE participation in standard-setting is now enshrined in law, FIEs have yet to be allowed to participate in the National Technical Committee of Auto Standardization (NTCAS).

In addition, policy interpretation and enforcement activities are still characterized by a lack of transparency. Our members find when they seek clarification on certain policies, they do not always receive clear and timely answers in a manner that addresses their concerns. Their applications are often rejected without explanation. AmCham China continues to urge greater transparency on behalf of the regulatory authorities with respect to regulatory enforcement to ensure that FIEs receive appropriate and prompt guidance and clarification to comply with relevant standards to the same extent as domestically-invested enterprises.

Continuity and Predictability

Automotive development and production activities require long-term planning and investment. AmCham China urges the government to account for the long-term nature of the industry and to formulate and disseminate policies and planning documents for the automotive industry at least three years in advance. Any new laws, regulations, or policies should take into account the current stage of development of the automotive industry, the current business climate, and the realistic production capacity of FIEs in order to ensure a sufficient transition period for FIEs to adapt their supply chains and production processes, and make the necessary adjustments in order to comply with new regulations and policies.

For instance, current NEV subsidy policies are adjusted annually and immediately implemented upon release. This is not helpful with respect to planning activities and undermines operations industry-wide by unnecessarily increasing R&D and production costs. Frequently changing technical standards that then impact NEV subsidy policies are also unhelpful. For example, over the past few years the technical specifications for the energy density of NEV batteries have increased, and this has contributed to an increase in the accident rate for NEVs. AmCham China recommends that the government refrain from annually revising technical standards for NEV subsidies and take into account the impact of frequent changes to complex technical standards in order to improve policy continuity and predictability.

待中国各主管部门统筹协调，出台鼓励消费、促进投资、减免税费的政策。同时继续优化行业管理，推进“放管服”改革，增强政策的连续性、透明度和可预见性，进一步改善对汽车行业的监督，为行业发展创造更宽松的环境。此外，政府应更好地协调、统一全国汽车市场。目前，中国对汽车市场进行区域划分，这阻碍了汽车公司渗透整个市场的能力。

透明度

商会一直在呼吁，政策、标准草案起草前期阶段应广泛征求企业的意见，包括外资企业；在草案征求公众意见阶段，也应该对企业和公众提出的意见进行公开反馈，政策最终版本如有重要新增内容，也应提前告知公众并再次征求公众意见。

《外商投资法》及其《实施条例》已于2020年1月1日生效。《实施条例》第10条规定，在制定与外国投资有关的法律、法规和规则之前，应以适当形式向外商投资企业征求意见和建议。

《外商投资法》第15条中进一步规定，国家保障外商投资企业依法平等参与标准制定工作，强化标准制定的信息公开和社会监督。

尽管商会对立法规定外商投资企业参与标准制定感到高兴，但仍未允许外商投资企业仍未被允许参加国家汽车标准化技术委员会（NTCAS）。

另外，政策的解读和实施过程还是缺乏透明度。根据商会的会员反馈，企业对政策的疑惑有时不能得到及时明确的解答。政策执行过程中，企业的申请有时被驳回，但没有被告知具体原因等。商会继续敦促监管机构提高监管透明度，确保外商投资企业与内资企业待遇一直，并能及时得到指导和说明，以遵守相关标准。

连续性和可预见性

考虑到汽车产品研发、生产的长周期性，商会希望政府至少提前三年制定并公布和产品相关的政策和规划要求。在制定政策过程中，商会促请政府充分考虑行业发展水平和市场总体环境，结合企业实际生产能力，给予足够的过渡期，让企业有充分的时间做出调整。

比如，新能源汽车的补贴政策每年都要调整，而且政策发布后马上就实施。这给整个行业运营带来不稳定

性，增加研发和生产成本。频繁变化的技术标准随后会影响新能源汽车的补贴政策。例如，在过去几年中，有关新能源汽车电池能量密度的技术标准不断增加，使新能源车安全事故增加。商会建议政府避免每年修订新能源汽车补贴的技术标准，并考虑频繁更改复杂技术标准的影响，以提高政策的连续性和可预测性。

目前，汽车行业关注的是停止新能源补贴的时间表和一些补贴后的政策，比如免购置税和车船税是否延期。除此以外，《新能源汽车产业发展规划（2021-2035）》并没有直接回答这些关键的问题，且该规划对汽车行业影响深远。

商会希望政府能尽早出台相关政策以回应、解决上述问题，并给汽车企业必要的准备期。商会还希望新政策和旧政策衔接适度，和缓退坡，不要对汽车销售和消费者信心产生剧烈影响。

建立协调一致的政策要求

中国有多个政府部门对汽车行业进行监管，同时也存在一些地方性的政策要求。这种政出多门、地方执行不一致的情况不利于行业发展。商会呼吁中国加强跨部门、跨地区的协调，建立一致性的政策环境。

商会建议协调、整合相似的政策法规。比如在新能源汽车方面，有国家补贴政策、免购置税政策、免车船税政策、双积分管理规定等，这些政策里的技术要求又不尽相同，因此就有了新能源车型推荐目录（国家补贴目录）、免购税目录、免车船税目录等，企业也需要分别应对每一个政策。商会高兴地看到，免购置税和免车船税可以合并申请了，但目录还没有合并。商会希望尽快进行并完善整合类似政策法规。

商会还建议统一中央和地方的政策、法规要求，取消地方性要求。比如，地方新能源目录和免费牌照政策、新能源汽车远程监控要求、各地智能网联汽车路试要求等等。汽车是规模效应非常强的产品，建设全国统一市场，制定全国通行的政策要求非常重要。特别是对处在启动阶段的新能源汽车和智能网联汽车来讲，这一点尤为重要。

加快制定与“新四化”相关的政策法规

汽车行业正在面临技术变革，新能源、智能网联、

At present, the timetable for the withdrawal of subsidies for NEVs and certain post-subsidy policies is of particular concern to the automotive sector. For example, it is unclear whether removal of exemptions on purchase taxes, vehicle, and vessel taxes will be extended. Beyond that, the *New Energy Vehicle Industry Development Plan (2021-2035)* does not address these concerns directly and that document is likely to have far-reaching impacts on the industry.

AmCham China urges the government to promulgate policies to address the issues discussed above as soon as possible to allow FIEs to adapt and adjust accordingly. We also hope the government can facilitate a smooth transition between policies in order to maintain automaker and consumer confidence.

Coordinated and Consistent Policy Requirements

In China, several government departments are responsible for regulating the automotive industry nationally (including NDRC, MIIT, and the Ministry of Ecology and Environment (MEE)), alongside additional local policy requirements. Such fragmented regulation is not conducive to the industry's development. AmCham China calls on the government to strengthen coordination and establish a consistent policy environment.

We recommend coordinating and integrating similar policies and regulations. For example, with respect to NEVs, there exists a national subsidy policy, a purchase tax exemption policy, a vehicle and vessel tax exemption policy, and administrative provisions to regulate dual credit policies (these aim to encourage automotive manufacturers to improve energy-saving technologies and expand production of NEVs). The technical requirements for each of these policies differ, and thus there are three different active catalogues in support of these policies: the recommended catalogue of NEVs (the national subsidy catalogue), the purchase tax exemption catalogue, and the vehicle and vessel tax exemption catalogue. Industry enterprises are required to deal with each policy separately. While we are pleased that applications for the purchase tax exemption and the vehicle and vessel tax exemption can be submitted together, we note that the respective catalogues have yet to be merged. We urge continued, rapid integration of these catalogues in the near future.

In addition, we recommend that the government unify policies and regulations at the central and local levels while eliminating unnecessary local requirements. For example, local catalogues governing the licensing of NEVs, NEV remote monitoring requirements, and local road test requirements for intelligent and connected vehicles (ICVs) should be removed. Automotive production benefits from economies of scale; accordingly, it is essential to establish a consistent nationwide policy. This is especially important for a country like China during the early stages of NEV and ICV development.

Accelerate the Formulation of Policies and Regulations in Support of the Four Modernizing Trends

The rapid development of new and alternative energy sources, intelligent networks, and new forms of travel epitomized by the sharing economy (e.g., Didi) are having a significant effect on the automotive industry. Regulators are having to balance the need to formulate new regulations to govern these technologies while attempting to resolve inconsistencies between existing policies and the pace of technological development.

AmCham China recommends that the government introduce the so-called dual credit management policies in preparation for 2025. We also recommend that the government amend the *Road Traffic Law*, the *Highway Law*, and the *Surveying and Mapping Law* and open more highways to testing for self-driving (autonomous) vehicles as soon as possible. At the same time, we recommend that any new regulations promulgated by the government contain a degree of flexibility to ease corporate compliance burdens and create a transparent, technology-neutral regulatory environment. To promote emerging technologies and avoid stifling innovation, we recommend that the government exempt ICV, self-driving, and other new technologies, processes, and materials from licensing requirements to encourage their development.

In the future, the automotive industry and the Internet/digital sector will be increasingly integrated. New methods will be required to manage cross-border cooperation between countries and industry stakeholders. Strengthened communication and coordination between the competent authorities overseeing the automotive industry and those responsible for information technology, mapping, traffic management, and road safety will be necessary to jointly promote technological innovation.

Emission Standards

In June 2018, the MEE and the State Administration for Market Regulation (SAMR) jointly issued the *Limits and Measurement Methods for Pollutants from Heavy-Duty Diesel Vehicles (China VI)* (Tier VI Standard). The Tier VI Standard specified that beginning July 1, 2020 all vehicles produced, imported, sold or registered in urban areas must meet the requirements defined by the Tier VI Standard. Beginning July 1, 2021, all heavy-duty diesel vehicles produced, imported, sold or registered are to comply with the requirements of the Tier VI Standard. Furthermore, according to the *Notice of the State Council on Issuing the Three-Year Action Plan for Winning the Blue-Sky Defense War*, as of July 1, 2019, areas such as the Pearl River Delta region and the Chengdu-Chongqing region were required to implement the Tier VI Standard in advance of national implementation.

Beijing implemented the Tier VI Standard beginning July 1,

共享出行等新技术、新业态快速发展。监管机构也面临着如何加快制定新技术相关的政策法规，解决现有政策和技术发展不一致的问题。

商会建议政府尽快出台面向 2025 年的双积分管理政策，适时修改《道路交通安全法》、《公路法》、《测绘法》等，开放自动驾驶车辆高速公路测试；同时，本着技术中立的原则，给企业合规提供一定的灵活性，创造一个宽松的法规环境。为进一步解决法律法规的更新落后于技术创新的矛盾，建议尽快落实智能网联、自动驾驶等新技术、新工艺、新材料的许可豁免机制，鼓励其应用。

未来，随着数字技术的不断发展，汽车产业和信息技术等产业将高度融合，跨界合作需要新的管理方式。各传统汽车行业主管部门之间，以及信息产业、地图测绘、交通管理等其他行业主管部门之间，需要在政策制定和执行过程中加强沟通和协调，共同推动行业技术创新。

排放标准

2018 年 6 月，国家生态环境部与市场监督管理总局联合下发了《重型柴油车污染物排放限值及测量方法（中国第六阶段）》（国六标准）公告，此标准规定 2020 年 7 月 1 日起，所有生产、进口、销售和登记注册的城市车辆应符合国六标准要求，2021 年 7 月 1 日起，所有生产、进口、销售和登记注册的重型柴油车应符合国六标准要求。根据后续发布的《国务院关于印发打赢蓝天保卫战三年行动计划的通知》，2019 年 7 月 1 日起，重点区域、珠三角地区、成渝地区将提前实施国六排放标准。

2019 年 7 月 1 日，北京市率先在公交和环卫行业实施国六排放标准，其他车辆将在 2020 年 1 月 1 日起开始实施。其他城市还没有明确具体的实施方案。商会建议其他重点区域的城市和北京的实施方案一致，这样可以减少行业在产品准备方面的复杂性并且有效提高政府法规实施的有效性。

现行轻型汽车国六排放标准（国标 GB 18352.6-2016《轻型汽车污染物排放限值及测量方法（中国第六阶段）》，以下简称国六）要求所有销售和登记注册的轻型汽车自 2020 年 7 月 1 日起符合国六 a 限值要求、2023 年 7 月 1 日起符合国六 b 限值要求。在国六标准中，国六 a 和国六 b 的 PN（颗粒物数量）的限值都是 $6.0 \times 10^{11}/\text{km}$ 。

为满足该限值要求，车辆原则上需要装配颗粒捕集器。为了保障相关产品的研发和生产，国六标准对 PN 的限值设定了单的过渡期，即 2020 年 7 月 1 日前 PN 的过渡限值为 $6.0 \times 10^{12}/\text{km}$ 。过渡期后，所有车辆都要满足国六 PM $6.0 \times 10^{11}/\text{km}$ 的限值要求。

为了持续保证市场稳定，最大限度降低疫情对汽车生产和销售的影响，商会建议对国六标准中 PN $6.0 \times 10^{11}/\text{km}$ 限值要求的实施过渡期进行适当调整。商会建议在 2020 年 7 月 1 日前生产的满足 PN 过渡期限值的国六车辆的可注册时间延长至 2020 年 12 月 31 日。此举将大大缓解由于新型冠状病毒疫情对汽车车辆销售和库存清理带来的不利后果。

另外，对于已发布和计划发布的在用车辆（机）排放标准，商会建议相关部门进行充分的技术论证，避免已经发布的部分在用车辆标准要求超过在用车辆当年所需满足的新车标准要求。

为确保国六标准的有效实施，全国从 2019 年 1 月 1 日起供应第六阶段的燃油。但是，商会注意到全国各地燃油供应的质量仍然不一，有些地区柴油供应质量甚至远远低于国家规定的标准，尤其是偏远地区，这将造成发动机故障率提高，给国六排放标准的实施带来巨大挑战。商会会员企业建议国家持续加强燃油质量的监管，除确保国有炼油企业的燃油质量，大力促进民营企业的升级改造和淘汰落后，坚决取缔不正规的地炼厂和“黑加油站”，这样才能确保排放标准得到有效实施。

智能网联汽车

当前，汽车行业面临智能化、网联化、电动化和共享化的深刻变革。其中，智能网联及自动驾驶作为未来汽车行业的重要战略方向之一，已受到主要汽车市场的高度重视。智能网联汽车涉及到了多个行业的协同发展，同时更需要从相关政策与法规方面给予适度考虑，消除技术发展和应用的障碍。为加速发展中国的智能网联技术及市场，商会建议采取以下措施：

智能网联汽车的发展亟需公共道路的测试

目前，在中国《道路交通安全法》及《道路交通安全法实施条例》等相关政策法规框架条件下，自动驾驶在高速公路和城市快速路进行测试是被禁止的。在自动驾驶的开发过程中，实际路况和道路、驾驶场景的多样

2019 for heavy duty vehicles (e.g., buses and sanitation vehicles) and implemented the Tier VI Standard for all other vehicles as of January 1, 2020. Other cities, however, have yet to release implementation plans. We recommend that other major cities implement a plan that is consistent with Beijing's model, which will reduce the complexity associated with adapting products to comply with the Tier VI Standard nationwide and improve the effectiveness of these regulations.

In addition, the current national emission standard for light-duty vehicles (National Standard *GB 18352.6-2016 Light Vehicle Pollutant Emission Limits and Measurement Methods (Tier VI)*) requires all light-duty vehicles sold or registered on July 1, 2020 or after to comply with standard Tier VI(A) and to comply with standard Tier VI(B) by July 1, 2023. Under the Tier VI standard, the limit on particulate matter (PN) emissions is 6.0×10^{11} PN/kilometer. In order to meet this limit, vehicles will need to be fitted with specialized parts to limit emissions that contain particulate matter. The Tier VI standard states that vehicles produced before July 1, 2020 can meet emission limits of 6.0×10^{12} PN/kilometer. After July 1, 2020, they must meet the new limit of 6.0×10^{11} PN/kilometer.

In order so as not to disrupt the operations and inventory of automotive manufacturers, particularly given the complications stemming from the COVID-19 pandemic, we recommend the implementation schedule for Tier VI be adjusted. In particular, we recommend that the date for newly produced or registered automobiles be delayed from July 1, 2020 to December 31, 2020. This will help to alleviate the pressure on the automotive industry.

In addition, with respect to any vehicle (engine) emission standards already released or scheduled to be released, AmCham China recommends that the regulators conduct sufficient testing and coordination to avoid situations where existing emission requirements are actually stricter than the proposed requirements for new and existing vehicles under development.

In order to ensure effective implementation of the Tier VI Standard, fuel that meets the Tier VI Standard has been supplied nationwide beginning January 1, 2019. AmCham China notes, however, that the quality of fuel supplied across the country still varies. The quality of diesel fuel supplied, especially in remote areas, is often still below national requirements. Continued use of substandard fuel will increase engine failure rates and hinder the national implementation of the Tier VI Standard. AmCham China recommends that in addition to ensuring fuel quality at state-owned refineries, China continue to strengthen supervision over fuel quality, enable competitive private enterprises to upgrade their fuel standards while allowing less competitive enterprises to be eliminated by the market, and enforce a comprehensive ban on informal refineries and "black" (illegal) gas stations so that emission standards are effectively implemented nationwide.

Intelligent and Connected Vehicles (ICVs)

The automotive industry is impacted by the four modernizing trends discussed earlier in the chapter, (i.e., electrification, networks and connectivity, intelligent technologies, and sharing). In particular, the development of intelligent, connected and self-driving (autonomous) vehicles is of critical focus. The development of ICVs requires multi-sectoral coordination to remove policy and regulatory barriers that impede technology development and application. In order to accelerate the development of China's ICV market, AmCham China encourages consideration of the following measures.

Intelligent and Connected Vehicles and Testing on Public Roads

Under the existing *Road Traffic Safety Law* and its Implementing Regulations, testing autonomous cars on expressways and other roads in urban areas is prohibited. During development, it is vital that autonomous vehicles be tested across a multitude of road conditions and real-life driving scenarios, many of which can only be replicated using existing public roads. As China is a vast country with the world's longest roadway network, we urge that the testing of autonomous vehicles be permitted on public roadways to ensure that these vehicles are commercially safe and capable of handling a variety of road and traffic conditions.

Current regulations, however, impede the development of autonomous driving technology. Automotive manufacturers and ICV developers understand the safety concerns with respect to testing of autonomous vehicles on public roads. Therefore, we recommend that the government permit developers of autonomous vehicles and their suppliers to test autonomous vehicles on public roads when they meet the following requirements:

- Documents demonstrating vehicle safety have been submitted by the manufacturer and approved by the competent authorities,
- Vehicle safety has been verified by a third party,
- The manufacturer's insurance and relevant liability clauses hold the manufacturer accountable for road test safety,
- Human drivers accompanying the autonomous vehicle can intervene and override the autonomous features at any time during the test.

At the same time, AmCham China encourages more regular and sustained communication among industry, administrative authorities, and legislative bodies. We also encourage additional progress be made via new legislation or amendments to existing laws and regulations to improve the regulatory framework, as well as joint progress in advancing new legislation on autonomous driving to promote the development and application of autonomous driving in China.

性至关重要，而这些只能在真实的公开道路上得到采集和分析。中国幅员辽阔，道路和交通场景多种多样，更需要充分的实际道路测试来确保自动驾驶的安全性和功能性。

现行法规对实际路测的限制，为自动驾驶的研发带来了障碍。厂商充分理解相关主管部门对自动驾驶实际路测安全性的担忧。商会建议主管机构、相关决策者考虑在满足下列条件下，准许自动驾驶车辆或其负责自动驾驶开发的供应商在高速公路和城市快速路的测试：

- 厂商提交确保相关安全的材料，并经过有关部门审核和批准；
- 车辆的安全方案经由第三方机构验证等。
- 厂商声明承担自动驾驶路测的安全责任；
- 测试过程中，驾驶员可以随时干预自动驾驶功能；

同时，商会希望能够与相关决策者及立法机构的进行有效的沟通交流，探讨相关法规框架的进一步制修订，共同推进自动驾驶相关的立法，促进自动驾驶在中国的发展和运用。

明确针对汽车行业数据和信息安全的具体要求

《网络安全法》及相关配套法规如《个人信息和重要数据出境安全评估办法》（征求意见稿）中，限制了跨国的数据交流，但并未给出明确的受限制数据传输的定义。出于研发和将来智能汽车自主学习的目的，内资、合资和外资汽车企业在智能网联汽车方面都必然存在与境外的数据交换，如基于交通信息数据的自动驾驶算法迭代与升级等。商会会员建议放开不涉及国家安全信息、个人信息需脱敏处理的基于智能网联汽车研发的数据传输，尽快推动相关标准草案的进程并发布终稿，在制定相关车联网信息安全标准时，响应产业发展需要的政策意见。另外，为促进汽车网联化的发展，在目前阶段，不要将车联网划为关键信息基础设施。

高精度地图使用与地理信息收集

目前国内没有专门针对自动驾驶车辆地图使用的具体法规要求。若参照现行对电子导航地图的要求，导航电子地图安全处理技术基本要求中规定“导航电子地图在公开出版、销售、传播、展示和使用前，必须进行空间位置技术处理”（即“偏转加密”）。用于自动驾驶的地图偏转和偏转插件以及禁止高程表达等信息会对自动

驾驶定位准确度以及可靠性造成负面影响，从而严重影响其安全性。因此，商会建议，在保证国家安全前提下，允许自动驾驶车辆使用未经偏转的自动驾驶地图。

按《测绘法》规定，收集地理信息的测绘活动仅限于有合法测绘资质的公司，自动驾驶的算法迭代升级需要基于道路测试积累的数据进行机器学习与驾驶策略的研发，于现行的法规，车厂在进行道路测试中收集的数据，将有违法风险。商会建议调整测绘法的相关要求，允许企业基于自动驾驶研发需求的（未偏转）合理偏转的高精度地图使用与基于动态地图生态建设目的的地理信息收集、上传活动。

建立与国际标准相互协调的标准体系

我国于2018年发布了关于智能网联汽车标准体系建设方案的草案，指出到2025年中国要制定超过400项智能网联汽车的相关标准。行业面临的挑战及担忧是相关强制性标准和推荐性标准之间没有明显界限，而且有些标准部分限制了新技术的发展。商会建议我国标准化相关主管部门在标准制定过程中，积极地与国际标准化活动沟通协调，同时以更加开放的态度吸纳外商投资企业实质参与标准化工作，最终实现全球统一的智能网联汽车标准法规体系。

建议只采用GB标准（国标）作为底线要求用于强制性认证，以确保智能网联汽车产品的技术合规性。其他标准只是作为自愿性采用，不应在其他认证或者市场准入规则中变相强制性使用。

针对智能网联汽车领域的新技术（例如尚未制定标准或与现行技术法规冲突的技术），可以建立技术评估委员会和相应评估流程，给予相应的认证豁免等，以便鼓励并促进技术创新。

燃油消耗量法规

工信部正在主导制定第五阶段乘用车企业平均燃油消耗量与新能源积分分配额管理的相关政策。用于支持该政策的一系列燃油消耗量试验方法标准也处于制修订的关键阶段。由于油耗测试方法所采用的工况测试循环将发生变化，可能导致在原有测试工况循环下确定的新能源车补贴政策技术条件（例如纯电动车和插电式混合动力车的纯状态下续航里程），以及汽车企业车型认证试验次数发生变化，从而给企业带来负担。

Clarify Requirements for Data and Information Security in the Automotive Industry

China's *Cybersecurity Law (CSL)* and supporting regulations such as the *Draft Measures on Security Assessment of Cross-border Transfer of Personal Information and Important Data* and the *Draft Measures on Security Assessment of Cross-border Transfer of Personal Information*, promulgated for comment in 2017 and 2019 respectively, seek to regulate cross-border data transfers as mandated by the CSL. Neither of the draft measures clearly specify what data are subject to a security assessment. To support R&D and ICV development, domestically-invested enterprises, joint ventures, and other FIEs in the automotive industry must conduct regular cross-border data exchanges, including regular exchanges about upgrades to self-driving algorithms based on the latest data on traffic patterns. AmCham China recommends that the authorities create a carve out for cross-border data exchanges related to ICV R&D where any personal information has been anonymized and in circumstances where the data involved could not reasonably be deemed relevant to national security. We urge the authorities to draft relevant data standards to this effect and publish the draft regulations for comment as soon as possible. Further, we urge the authorities to consider the needs of the automotive sector when developing information security standards that could affect the development of the "Internet of Vehicles (IoVs)," i.e., the networks necessary to power and monitor autonomous vehicles. We recommend that the authorities not classify the IoV and associated technologies as critical information infrastructure (CII), which under the CSL would subject them to much greater regulation and scrutiny and hinder its development.

Use of High-Precision Maps and Geographic Information Collection

China lacks specific legal standards for the maps used in autonomous vehicles. The current references, which come from basic technical requirements for digital navigation maps, in particular national mandatory standard *Basic Requirements for the Safe Handling of Electronic Navigation Maps (GB 20263-2006)*, stipulate that "before the publication, sale, dissemination, display and use of a digital navigation map, the map must have been subjected to spatial security processing." Current restrictions on some information displays necessary for map navigation, including on plugins for measuring vertical deflections and restrictions on displaying elevated terrain, also create challenges for autonomous vehicles to accurately and reliably pinpoint their location, which is a safety risk. AmCham China recommends allowing ICV developers to use high-precision maps in autonomous driving vehicles.

According to China's *Surveying and Mapping Law*, survey and mapping activities to collect geographic information are limited to a number of government-certified companies.

Technology upgrades to self-driving algorithms require accumulating large amounts of data on road conditions and road tests in order to improve the algorithmic technology powering self-driving vehicles. Currently, data collected by companies in the course of testing their self-driving vehicles is at risk of violating existing laws and regulations because current provisions are unclear. AmCham China recommends revising the *Surveying and Mapping Law* to allow enterprises to use high-precision maps that meets the needs of autonomous driving R&D and to allow them to collect and upload geographic information needed for updating and constructing new maps.

Establish a Standards System Aligned with International Standards

A draft plan for the construction of a standards system for ICVs was released in 2018. It aims to develop over 400 ICV standards by 2025. The automotive sector is concerned about the lack of clarity regarding mandatory and recommended standards, specifically regarding any standards that limit the development of new technologies. AmCham China strongly encourages the authorities to liaise with their international counterparts and more openly and transparently engage with FIEs in the standards development process. Such practice is also provided for mandatory GB (e.g. national standards) in the FIL. Such practice would also enable China to develop domestic ICV standards that are aligned with emerging international standards.

We recommend that mandatory (GB) national standards be used as the baseline requirement for compulsory certification or to ensure ICVs and their parts meet core technical specifications.

With regard to new ICV technologies (i.e., technologies without existing standards or those whose development is in conflict with existing technical regulations), we encourage the authorities to establish technical evaluation committees and an evaluation process to exempt certain technologies from compliance with out-of-date standards where needed. Such exemptions are needed for continued technological innovation.

Fuel Consumption Regulations

The fifth stage (Tier V) of regulations governing average fuel consumption standards and NEV credits for passenger cars are under development by MIIT. Development of a series of standards to assess fuel consumption testing methods in support of these policies is also underway. Because the testing methods that will be used to determine the fuel consumption standards are under development, any changes in the final standards may affect the technical requirements for NEV subsidy policies, such as associated mileage ranges for electric vehicles and plug-in hybrid energy vehicles (PHEVs), which have been developed using existing fuel consumption

商会建议尽快明确包括第五阶段企业平均燃油消耗量与新能源积分政策，未来新能源车补贴政策以及新能源车车型核准试验等相关政策标准所采用的工况测试循环类型。

建议尽快完成并发布第五阶段企业平均燃油消耗量与新能源积分政策，保持该政策的延续性以及合理性。基于目前针对第五阶段全国新能源车产能的估算，制定政策中的单车积分，建议延续第四阶段的单车积分核算方法。应允许企业自由结转以及借贷积分，并允许所有企业间自由交易。

促进汽车消费

2019年，中美贸易摩擦加剧、全球贸易大环境不确定性持续。同时受国内供给侧结构改革、内需乏力等内部因素影响，国内经济下行压力持续增大。叠加汽车行业政策调整等，2019年汽车产销持续负增长。为了应对汽车行业的下行压力，中央和地方各级政府陆续推出促进消费的政策且不断加码。

2019年1月29日，发改委等十部委联合发布《进一步优化供给推动消费平稳增长促进形成强大国内市场的实施方案（2019年）》。

方案部署了24项政策措施，其中涉及汽车行业的有6条：

- 支持老旧汽车报废更新，适当给予中央财政倾斜支持。
- 优化新能源汽车补贴结构，坚持扶优扶强导向。
- 促进农村汽车更新换代，有条件地方可适当给予补贴，带动农村汽车消费。
- 在评估6省区放开皮卡进城试点效果基础尚，稳步推进放开皮卡进城限制。
- 加快繁荣二手车市场，全面取消二手车限迁和落实增值税减免。
- 放开机动车限购。

2019年6月6日，发改委等三部委联合发布《推动重点消费品更新升级畅通资源循环利用实施方案（2019-2020年）》。其中与汽车相关的重点消费促进措施如下：

- 坚决破除乘用车消费障碍，严禁各地出台新的汽车限购规定。

- 大力推动新能源汽车消费使用，鼓励有条件地区支持新能源汽车使用并探索设立零排放试点
- 进一步研究制定促进老旧车淘汰更新政策
- 加快更新城市公共领域用车升级为新能源汽车
- 积极推进农村车辆消费升级，促进“汽车下乡”
- 全面完善二手车流通管理和交易便利性

国务院办公厅于2019年8月27日发布《关于加快发展流通促进商业消费的意见》。进一步加大促消费的力度，落实各部委主体责任，统筹推进协同落实。关于加快发展流通促进商业消费的“意见”指出释放汽车消费潜力，实施汽车限购的地区要结合实际，探索推行逐步放宽或取消限购的具体措施，有条件的地方对购置新能源汽车给予积极支持。促进二手车流通，进一步落实全面取消二手车限迁政策等。在2020年财政补贴退出，新能源汽车后市场后续政策衔接尚不完善，很多消费者观望形势下，该“意见”出台为促进新能源汽车消费意义重大。

在全国实施汽车限购政策的8城1省中，广东省率先积极响应应部委号召，发布了《广东省完善促进消费体制机制实施方案》，要求逐步放宽广州、深圳汽车摇号和竞拍指标，扩大准购规模。

广州率先出台政策松绑“限购”，自2019年6月至2020年12月，增加共10万个中小客车指标。深圳则规定，2019和2020年每年增加普通小汽车指标4万个。海南省也出台了适量增加小客车指标的措施。贵阳最彻底，于2019年9月发布政府公告，废止了《贵阳市小客车号牌管理暂行规定》，成为8市一省中第一个放弃限购政策的城市。北京、上海、天津三大直辖市尚未采取任何行动。

商会虽然欣喜地看到在2019年促消费政策陆续出台，然而遗憾的是一系列促消费措施并未完全得到有效执行落实，并且受客观因素和结构性限制，消费领域仍面临瓶颈和短板，下行趋势未能得到减缓。在此，商会呼吁政府：

- 全面落实促消费政策。
- 进一步研究皮卡进城限制的本质问题并持续放开进城限制，为客户提供多样化的选择空间。皮卡将成为最有增长空间的细分市场，这对于进入微增长时代的中国汽车市场来说，称得上新的发力点。全面

testing methods. Ultimately, this could increase the number of certification tests automotive manufacturers are required to conduct. Such uncertainty will only increase the administrative burden facing the industry.

AmCham China recommends that the regulatory authorities clarify as soon as possible which fuel consumption testing methods will be used to determine average fuel consumption standards and NEV credits (under Tier V), new and future policies with respect to NEV subsidies, and NEV model certification tests.

We recommend issuing the policy on average fuel consumption and NEV credits as soon as possible to maintain policy continuity. It is also necessary to formulate a policy for individual credits based on current estimates of NEV production capacity under Tier V. We recommend that the authorities carry over the calculation of individual credits under Tier IV regulations. Enterprises should be allowed to carry-over, lend or trade credits freely among one another.

Policies to Support Consumption in the Automotive Market

In 2019 AmCham China witnessed intensifying China-US trade tensions and growing uncertainty in global trade. In China, supply-side reforms, weakening domestic demand, and mounting downward pressure on the economy contributed to a decline in vehicle production and sales in 2019. In response to the downward pressure, the central government and its local counterparts stepped up their efforts to boost domestic demand and private consumption through the release of several policies to enhance the environment for domestic consumption.

On January 29, 2019, the NDRC and ten other ministries jointly issued the *Notice on the Implementation Plan for Further Optimizing Supply to Promote Steady Growth of Consumption and Promote the Foundation of a Strong Domestic Market (2019)* (the Plan).

Six of the 24 policies outlined in the Plan relevant to the automotive sector plan to:

- Encourage old and used cars to be scrapped by establishing a preferential policy that provides central government financial support for scrapping,
- Optimize the structure of NEV subsidies to target more advanced vehicles,
- Encourage rural residents to buy new automobiles and boost rural consumption with subsidies as appropriate,
- Steadily remove restrictions on pickup trucks in cities based a review of a pilot program that permitted pickup trucks to be sold in six provinces,
- Accelerate the growth of the used car market by rescinding all local policies that restrict sales of

non-local second-hand vehicles and apply value-added tax (VAT) exemptions,

- Lift restrictions on motor vehicle purchases.

On June 6, 2019, the NDRC and three other ministries jointly issued the *Implementation Plan for Promoting the Update and Upgrade of Key Consumer Products and Smooth Resource Recycling (2019-2020)*. The key measures to promote demand in the automotive industry are to:

- Remove barriers impeding the purchase of new passenger vehicles and prohibit new restrictions on the purchase of automobiles,
- Encourage key regions to support the use of NEVs and explore zero emissions pilot programs,
- Develop policies to promote the scrapping or replacing of old or used cars,
- Accelerate the adoption of NEVs by urban public sector vehicle fleets,
- Work towards upgrading vehicles and increasing vehicle purchases in rural areas,
- Improve the management of the used vehicle market and facilitate greater circulation of used vehicles.

On August 27, 2019, the General Office of the State Council released the *Opinions on Accelerating the Circulation Development and Promoting Commercial Consumption (the Opinions)*. The Opinions are intended to boost consumption, clarify the primary responsibilities of various ministries, and promote coordinated implementation. The Opinions encourage local governments that have automobile purchase restrictions in place to gradually relax or end these restrictions on the basis of local conditions. Localities are also expected to support the purchase of NEVs. Furthermore, all policies that restrict the sales of non-local, second-hand vehicles should be removed to stimulate growth of the used vehicle market and transactions. With the withdrawal of NEV subsidies coming in 2020, there is greater uncertainty in the market. China's consumers have been watching the situation to see what will come next, and the Opinions help to clarify consumption policies for NEVs.

Notably, among the eight cities and one province with restrictions on vehicle purchases, Guangdong was the first to lift restrictions by rolling out the *Implementation Plan to Improve Consumption Institutions and Mechanisms in Guangdong Province* which will gradually make a greater number of license plates available in Guangzhou and Shenzhen. Guangzhou will allow 100,000 additional small-and-medium-sized passenger cars to enter the road between June 2019 and December 2020. Shenzhen followed suit by increasing its annual vehicle license plate quota by 40,000 in 2019 and 2020, and Hainan implemented similar measures to increase the number of passenger cars on the road. Guiyang, the capital of Guizhou Province, adopted a more radical approach to boost automobile sales. The city was the first of

放开皮卡车进城限制作为供给侧改革的一部分，将会增强市场的有效供给，对于提升民生幸福指数，推进城乡创新运输管理和现代物流建设，推动城乡融合发展的意义重大。下一步，商会希望政府继续释放积极信号，扩大皮卡进城的试点范围，尽快全面放开皮卡进城限制。

- 在非污染防治重点区域，继续全面落实取消二手车限迁政策。
- 以稳市场预期和企业信心为导向，坚持扶优扶强的方针，出台相对稳定而长期的新能源汽车鼓励政策。
- 研究建立新能源汽车二手车交易权威评估机制，解决新能源汽车二手车交易痛点，带动新能源汽车新车消费。

新能源汽车

中国汽车产业正在经历一场前所未有的挑战，包括新能源车在内的汽车产销在 2019 年都呈现了负增长。2020 年初的“新冠肺炎”疫情再次重创了整个中国汽车产业。目前中国新能源汽车产业还处于发展期，新能源汽车的消费在一定程度上依旧依赖于包括补贴在内的激励措施。因此延续原有的补贴体系，尽快出台更多有利于提升消费者选择新能源车意愿的刺激政策将会有助于中国新能源汽车产业的持续发展。

制定中的《新能源汽车产业发展规划（2021-2035 年）》为实现中国新能源汽车产业的高质量发展，构建新型产业生态以及推动融合发展提供了明确的方向。但《规划》中的销量目标，乘用车油耗以及电耗目标不应作为强制性要求体现在后续有关政策和标准中，应保证企业可以依据市场化需求来决定自身的战略方向、技术路线、销售策略、产品性能。

因此，商会建议政府继续加强营造从新能源汽车的设计研发至报废回收全生命周期内的公平竞争环境。破除不利于新能源汽车发展的相关限制政策及地方保护措施，真正做到新能源汽车的“不限购”。

建议

对中国政府：

- 政策制订和起草的早期阶段，给与企业更多参与讨论、反馈意见的机会，让政策、标准更符合市场需求，更有利于市场和行业的健康发展。
- 建立有效、透明、公开的协调机制，各个政府主管机构应当加强合作，明确主要概念、要求和职责。在新的领域加大部门间的合作，特别是智能网联汽车的发展。不仅要求政府对基础设施建设的支持，并且要求创新的政策法规来推进，在保障产品安全可控的同时，推动技术创新。
- 鉴于汽车生产、技术升级周期较长（通常为数年），政策制定和调整的周期应至少长于三年，以使行业适应新法规。希望在下一阶段排放标准实施前，给乘 / 商用车 4-5 年准备期。
- 鉴于中国汽车业面临着生产和销售下降的困境，因此商会建议有关部门继续优先考虑促进消费者对汽车需求的政策，包括取消对皮卡车销售的限制，由于空气污染问题减少禁止二手车运输或销售的限制，向一些地区发布政策以支持新能源汽车行业的长期、可持续发展，并建立一个委员会来评估新能源汽车的二手市场。

eight other cities (and one province) to cancel car purchase restrictions by repealing the *Interim Provisions on Passenger Car License Plate Management* on September 10, 2019. Other major cities like Beijing, Shanghai, and Tianjin have yet to take similar action, however.

AmCham China is delighted to see various policies and plans introduced with the goal of boosting demand for and sales in the automotive industry in 2019. Unfortunately, some of these policies have not been fully implemented. The continuing fall in production and sales in the automotive sector is the result of structural shortcomings and bottlenecks in the market. To address the downward pressure on the industry, AmCham China urges the government to:

- Implement the policies designed to stimulate domestic demand for and consumption of automobiles without compromise or restriction,
- Continue to remove restrictions on sales of pickup trucks in cities nationwide thereby increasing choices for Chinese consumers. Pickup trucks are a promising segment of the Chinese automotive market with growth opportunities. Under the umbrella of supply-side structural reform, lifting restrictions on pickup trucks in urban areas will improve supply, improve transportation, and logistics management, and promote more integrated urban and rural development. Going forward, we also recommend that the government continue to support pilot programs that allow pickup trucks to operate in a greater number of cities and fully remove restrictions on pickup trucks as soon as possible,
- End restrictions that prohibit the movement or sale of used vehicles to key regions that have been targeted for air pollution control,
- Introduce new policies to encourage steady and long-term NEV development in line with the government's preference for advanced vehicle technologies and the four modernizing trends of the NEV industry. Doing so will stabilize market expectations and restore confidence in the automotive industry,
- Establish a committee to research and review transactions of second-hand NEVs to identify consumer preferences and current bottlenecks in the second-hand NEV market and improve sales.

NEVs

The production and sale of NEVs declined in 2019 and the outbreak of COVID-19 has impacted the entire automotive industry. China's NEV industry is still early in its development. To some extent, demand for and sale of NEVs is still dependent on the provision of incentives, including subsidies. Therefore, continuation of the original system of subsidies for consumers and policies to stimulate consumer preferences in NEVs will encourage the sustainable development of the industry.

The *New Energy Vehicle Industry Development Plan (2021-2035)* provides clear direction to promote the integrated development of China's NEV industry. The NEV sales targets, fuel consumption standards for passenger cars, and energy consumption targets outlined in the Development Plan should not be made mandatory or explicit in accompanying laws, regulations, and policies. Instead, given the NEV industry's early stage of development and the high level of technological sophistication required, NEV manufacturers need flexibility to pursue their own development strategies, technical specifications, sales strategies, and product performance considerations in accordance with the demands of the market.

Therefore, we recommend the government continue to prioritize the creation of a level playing field throughout the entire production cycle from design to development, manufacture, and recycling of used vehicles and NEVs. Ensure local protectionist measures that undermine the industry's development are removed to achieve an environment characterized by no restrictions on the purchase or production of NEVs.

Recommendations

For the Chinese government

- **Allow enterprises (both domestically-invested and FIEs) greater opportunity to participate in policy and regulatory development and submit comments during the early stages of policy development to ensure that these policies better address market need and facilitate sustainable development.**
- Establish effective, transparent, and open mechanisms for inter-departmental coordination. The competent government authorities should strengthen cooperation and clarify their scope of authority, requirements, and duties. Interdepartmental collaboration should be enhanced, particularly with respect to the development of ICVs and investment in related infrastructure. Additionally, the development of this sector requires policies and regulations that move innovation forward while ensuring product safety.
- Considering the long timeframe required for automotive manufacturers to upgrade production and technology cycles (often several years), regulatory authorities should devise a reasonable adjustment period of at least three years to allow industry to adapt to new regulations. We recommend providing passenger/commercial vehicles with four to five years of preparation time before implementing the next phase of China's emission standards.

- Given the headwinds facing the automotive industry in China epitomized by declining production and sales, continue to prioritize policies that promote consumer demand for automobiles, including removing existing restrictions on the sale of pickup trucks, reducing restrictions that prohibit the movement or sale of used vehicles to certain regions because of air pollution considerations, promulgate policies that will support the long-term, sustainable development of the NEV sector, and establish a committee to evaluate the second-hand market for NEVs.

Banking and Capital Markets

Introduction

In 2019 AmCham China witnessed an acceleration of the pace of reform of China's financial sector. Most notably, the Phase One deal between the US and China, negotiated throughout 2019 and signed in January 2020, includes a number of long-awaited reforms to open the financial sector in China. As of April 1, 2020, foreign equity caps for securities, insurance, fund management, and futures companies are to be removed. This follows an announcement in 2018 that foreign equity caps had been raised to 51 percent for securities companies. Under the Phase One deal, US financial institutions will see expanded opportunities to provide securities investment fund custody services. China will remove barriers affecting US credit ratings agencies, including committing to approving US wholly-owned suppliers of credit ratings. US electronic payment providers will see an improved licensing approvals process.

The provisions in the Phase One Deal built upon reforms announced in 2018 and 2019 to further open China's financial sector. In July 2019, the Financial Stability and Development Committee of the State Council announced the *Relevant Measures for Further Opening Up the Financial Sector*, a series of 11 Measures which touched on almost all sub-sectors of the financial industry. In the bond market, our members have noted that a wide range of overseas investors now participate in bond market activities, including primary market subscription and secondary market trading.

AmCham China appreciates the steps taken this year to open China's financial sector. We urge the government to follow through on the important reforms that have been announced over the past year and remove all market access barriers, that in practice, disadvantage foreign financial institutions. Foreign financial institutions have historically held less than two percent of all banking assets in mainland China and our members continue to experience implementation challenges. Certain business license application procedures, such as those for foreign-invested fund management companies (FMCs), still impose onshore seasoning requirements on applicants regardless of international experience, which disadvantage foreign financial institutions and foreign investors. AmCham China strongly urges the establishment of a truly level playing field for foreign investors operating in China.

Recent Developments and Ongoing Regulatory Challenges

Commercial Banking

Fixed Income Business

AmCham China members are still unable to act independently as lead underwriters for corporate bonds. Several AmCham China members applied in October 2018 for the relevant licenses from the National Association of Financial Market Institutional Investors (NAFMII), but no applications from US-based financial institutions have been approved as of the time of writing, even as two European financial institutions secured lead underwriting licenses in 2019. Notably, however, the ability of US financial institutions to become lead underwriters for corporate bonds is included in the Phase One Deal. We will be monitoring the situation closely to see whether US financial institutions are granted licenses to become lead underwriters of corporate bonds this year. AmCham China believes greater inclusion of foreign financial institutions in the onshore fixed income market will help to attract more global investors to China, offering financial expertise and growing the market.

Cross-Border Credit Management

Due to their global geographic focus and scale of their operations, foreign banks have traditionally employed different operating strategies in China. Compared to domestic competitors, foreign banks have relatively smaller onshore balance sheets, are more active in financial trading than in lending activities, and are more dependent on offshore funding and liquidity.

Cross-border credit facilities enable the foreign parent financial institution and its onshore subsidiaries to conduct bank operations in China. AmCham China members anticipate that continued growth of the Chinese market will require increasingly larger lines of credit to facilitate operations between the parent financial institution and its subsidiaries in mainland China.

The China Banking and Insurance Regulatory Commission

银行和资本市场

引言

2019年，中国美国商会（以下简称商会）见证了中国加快推进金融业改革的步伐。最值得称道的是，中美第一阶段经贸协议历经2019年一整年的谈判，终于在2020年1月份签署。协议涵盖多条有关金融领域改革、开放金融业的规定，令人期待已久。中国将最晚于2020年4月1日，取消外资股比限制并允许美资机构进入证券、基金管理和期货服务领域。在此之前，中国曾于2018年宣布证券公司外资持股比例提升至51%。根据中美第一阶段经贸协议，美国企业将有更多机会提供证券投资基金托管服务。中国将解除影响信用评级服务的各种障碍，如不再限制美国全资信用评级服务提供者进行评级。美国电子支付服务商申请许可审批流程也即将有所改善。

中美第一阶段经贸协议中金融服务相关章节以2018、2019年开展的改革为基础，进一步对外开放中国金融业。2019年7月，国务院金融稳定发展委员会办公室发布关于进一步扩大金融业对外开放的有关举措，推出11条金融业对外开放措施，几乎涵盖到金融业的各个方面。会员企业注意到，许多境外投资者现在广泛参与一级市场认购和二级市场交易等债券市场活动。

商会赞赏今年中国为对外开放本国金融业所做出的努力。商会促请政府贯彻落实去年宣布的一系列重要改革，消除所有不利于外国金融机构的市场准入障碍。外资金融机构历来在中国银行业总资产中占比不超过2%，商会会员企业仍面临挑战。一些营业执照申请流程，如外资基金管理公司的申请流程不考虑国际经验，对申请人实施境内经验时限要求，则对外国金融机构和外国投资者不利。商会强烈要求在华经营的外国投资者建立真正公平的竞争环境。

最新进展及现存监管挑战

商业银行

固定收益型业务

商会会员企业仍无法独立作为公司债券的主承销商。2018年10月，一些商会会员企业向中国银行间市场交易商协会申请相关许可证，但截至本章节编制时，美国金融机构的申请均未获批，但2019年两家欧洲金融机构获得了主承销商许可证。但是中美第一阶段经贸协议规定美国金融机构可以申请成为公司债券主承销商。商会将密切关注今年中国是否会授予美国金融机构公司债券主承销商许可证。商会认为，将外国金融机构进一步纳入中国境内固定收益市场将有助于吸引更多外国投资者进入中国，为中国提供金融专业知识并促进市场的发展。

跨境信用管理

由于外资银行的全球地域重心和业务规模不同，在中国采用的经营策略也不尽相同。与国内竞争对手相比，外资银行的境内资产负债表相对较小，在金融交易方面比在贷款活动方面更为活跃，并且更加依赖离岸融资和流动性。

跨境信用措施使外国金融机构母公司及其境内子公司能够在中国开展银行业务。商会会员预计，中国市场持续增长，将需要提高信贷额度才能与之匹配，以促进母公司与其在中国大陆子公司之间的运营。

为降低银行风险暴露，中国银保监会实施严格的法规，旨在遏制内资银行的风险预测。境内跨境信贷额度不得超过资本净额的25%。鉴于外资银行境内子公司持有的净资本额受到限制，实施此规定阻碍业务运营，限制了增长机会。为此，商会促请监管部门对症下药，根

(CBIRC) currently imposes strict regulations to reduce bank exposure to risk which are largely designed to contain domestic banks' risk profile. Consequently, onshore cross-border credit facilities are capped at 25 percent of net capital. Given limitations on the amount of net capital held by onshore subsidiaries of foreign banks, the implementation of this rule with respect to foreign banks hampers business operations and restricts growth opportunities. AmCham China urges regulatory authorities to recognize the distinctive characteristics of foreign bank operations and apply differential regulatory procedures accordingly.

Asset Management

Fund Management Companies

We are greatly encouraged by the State Council's decision to allow FMCs to set up wholly foreign-owned enterprises (WFOEs) beginning April 1, 2020. A reform originally targeted for 2021, this accelerated timetable accompanied by the removal of foreign equity caps on FMCs will allow and encourage greater participation in China's asset market by foreign asset managers.

While the foreign equity caps have been lifted in principle, our members hope to see these changes rapidly implemented and WFOE FMC's allowed to offer a full range of investment services. There are still barriers to entry in this regard. Current restrictions on the issuance of business licenses under existing FMC regulations limit foreign investor participation. For example, these regulations contain seasoning requirements, i.e., the requirement that newly-established FMCs have two years of experience in fund management to establish a track record of assets under management (AUM) onshore before being eligible to apply to manage institutional insurance and pension assets. Most large foreign-invested asset managers have years of international experience and AUM offshore which is not recognized.

With decades of experience managing client assets for institutional investors, pension funds, and other offshore investors, global asset managers have expertise and are knowledgeable about best practices to manage volatility in both developed and emerging financial markets. Global asset managers can deliver high quality services and enhance China's connections to other global financial markets. Many foreign-invested asset managers can readily qualify to offer the full range of FMC services in China. We urge the China Securities Regulatory Commission (CSRC) to take the lead in coordinating with other regulatory authorities to remove such seasoning requirements and recognize the offshore experience and track record of qualified applicants. In particular, we recommend that CSRC allow foreign-invested asset managers to apply to offer a full range of services including providing services for institutional insurance and pension investors.

Wealth Management Companies

We welcome the announcement in July 2019 by the State Council to allow foreign asset managers to establish majority owned wealth management joint ventures with subsidiaries of Chinese banks or insurance companies. Five months after the State Council announcement, on December 20, 2019 the CBIRC approved the first foreign majority-owned wealth management company (WMC) in Shanghai. The joint venture is 55 percent owned by European asset manager Amundi and 45 percent owned by BOC Wealth Management, a subsidiary of the Bank of China. Our members consider this to be an important step forward in further opening China's financial sector.

Nevertheless, concerns among member companies persist. The top concerns are related to the scope of services that foreign WMCs can provide. Again, global asset managers would like to implement international best practices to service Chinese clients like institutional insurance providers, pension funds, and investors under China's qualified domestic institutional investors (QDIIs) program, which permits qualified domestic entities to market foreign fund products to domestic institutional and individual investors. While we understand that CBIRC is currently working with the central government to facilitate participation by WMCs in these areas, there is still much uncertainty around which activities WMCs can or cannot engage in, and to what extent they are allowed to conduct certain businesses or provide certain services. AmCham China believes it is in the best interest of Chinese financial markets to open their markets to advanced international asset managers to improve corporate governance, operations, portfolio management, and risk management for Chinese clients. An important first step is for CBIRC to accelerate opening to foreign investors by clarifying the scope of business services that can be provided and instituting a clear, convenient, and transparent application process.

Custody Service

Role of a Global Custodian

Global custodians operate through integrated global networks that enable them to offer their clients access to the global financial system. Leading custodians operate in more than 100 securities markets worldwide. In certain markets, including the US market, global custodians provide direct custody service. In numerous other markets, global custodians typically access a market through an appointed local "sub-custodian." It is common practice across global financial markets for investors to contract with global custodians and for such global custodians to contract with local sub-custodians in different markets to ensure efficient management of investor assets.

In the mainland China market however, foreign investors are required to contract with local sub-custodians directly. In

据外资银行业务的具体特征相应地制定监管程序。

资产管理

基金管理公司

国务院决定从2020年4月1日起允许基金管理公司在华设立外商独资企业，商会对此深表支持。此项改革原定于2021年推行，但是中国加快了改革步伐，提前在全国范围内取消了基金管理公司外资股比限制，允许并鼓励外国资产管理公司积极参与中国资产市场。

目前虽然原则上取消了外资股比限制，但会员企业希望中国能迅速贯彻落实政策，允许外资基金管理人在华提供全方位的基金管理服务。基金管理人仍存在准入障碍。现行基金管理公司管理规定对颁发营业执照的限制不利于外资管理人参与提供服务。举例来说，相关规定含有一定要求，如要求新设立基金管理公司在有资格申请管理机构保险和养老资产之前应在中国境内积累管理资产业绩，在基金管理方面有2年经验。大部分大型外资资产管理公司在海外拥有多年境外管理资产相关经验，但均不受认可。

全球资产管理公司在为机构投资者、养老金和其他海外投资者管理客户资产方面拥有几十年的经验，专业知识丰富，并熟知发达和新兴资本市场的最佳实践经验，可以很好的控制市场风险。全球资产管理公司可以提供高质量的服务，增强中国与其他全球金融市场的联系。许多外资资产管理公司都有能力在中国提供全面的基金管理服务。商会促请中国证监会牵头与其他监管机构沟通协调，取消上述2年的要求，并认可申请公司在境外的相关经验和业绩。商会特别建议中国证监会允许外资资产管理公司申请提供机构保险和养老金投资等相关的全方位服务。

理财管理公司

国务院于2019年7月宣布允许境外资产管理机构与中资银行或保险公司的子公司合资设立由外方控股的理财公司，商会对此表示欢迎。国务院宣布此项措施5个月，中国银保监会于2019年12月20日批准在上海设立首家外资控股理财子公司。这家合资理财公司东方汇理资管出资比例为55%，中银理财出资比例为45%。商会会员认为这是深入对外开放中国金融业的重要一步。

然而，会员企业的担忧一直存在。他们首要关注的问题是外资产管理公司的服务范围。全球资产管理公司愿意以国际标准服务中国客户，如保险机构、养老金和合格境内机构投资者等。合格境内投资者项目允许政府认可的境内金融投资机构向国内投资机构和个人投资者销售境外基金产品。商会知道中国银保监会目前在和中央政府共同推动理财管理公司参与这些领域，但是对于财富管理公司准许或禁止从事哪些活动，允许开展一些业务或提供某些服务到何种程度，仍然存在很大的不确定性。商会认为，向先进的国际资产管理公司开放中国金融市场，可以改善中国客户的企业治理、运营、投资组合管理及风险管理，符合中国的最佳利益。中国银保监会首先要做的是明确营业服务范围，构建清晰便捷透明的营业申请流程，加快向外国投资者开放市场的步伐。

托管服务

全球托管行的角色

全球托管行通过覆盖全球的网络运营使客户得以进入全球金融体系。世界一流的托管行的业务覆盖全球100多个证券市场。全球托管行为包括美国在内的一些市场提供直接本地托管服务；也会通过指定的本地次托管行进入许多其他市场。投资者与全球托管行签订合同，全球托管行与不同市场的本地次托管行签订合同，确保有效管理投资者的资产，这是全球金融市场的普遍做法。

然而中国大陆市场要求境外投资者必须直接与本地次托管行签订合同。许多情况下，境外投资者对直接签订合同的要求感到不适应，要么因为不符合国际惯例；要么因为为了让双方都满意导致合同审查流程十分冗长。商会鼓励政府取消境外投资者与本地次托管行直接签订合同的要求，在中国大陆市场认可国际托管行。这样不仅有利于改进投资者资产管理，也会简化中国证监会允许合格境外投资者指定至多3个本地托管行的改革。为控制风险，参与者可在交易层面维持投资者身份要求，以便对市场进行监控。

债券结算代理

令人鼓舞的是，中国债券市场基础设施建设取得进展。中国人民银行一直主导管理中国债券市场。中国人民银行于2020年2月发布了一份30项意见文件，包括逐步推动将境内结算代理行向托管行转型，为境外投资

many circumstances, foreign investors are not comfortable with the direct contract requirement either because it runs contrary to global practices, or because the contract review process can be lengthy in order to ensure that both sides are satisfied. We encourage the government to recognize global custodians in the mainland China market by removing the requirement for foreign investors to contract directly with local sub-custodians. This would not only facilitate better management of investor assets, it would also streamline implementation of the planned CSRC regulatory change to allow Qualified Foreign Institutional Investors (QFIIs) to appoint up to three local custodians. To control risk, participants can maintain an investor ID requirement at the trading level for market surveillance purposes.

Bond Settlement Agents

It is encouraging to see progress in building up the infrastructure of China's bond market, which has been guided by the People's Bank of China (PBOC). The PBOC released a 30-item Opinion document in February 2020 to gradually transfer the onshore Settlement Agents Model to a Custody Bank Model in order to serve foreign investors via the China interbank bond market (CIBM). This progress paves the way for our members' participation in the CIBM. To continue attracting and even accelerating high quality foreign investment in the CIBM, we recommend that the PBOC introduce international best practices in implementation. For instance, bond settlement agents (BSAs) in mainland China are currently responsible for both trading and settlement in the CIBM. By contrast, in global financial markets trading and settlement functions are typically separated across different financial institutions. This means that within the mainland China market, global custodians must instruct their local sub-custodians that their trading departments must not settle CIBM transactions. Failure to properly separate trading and settlement actions means that global custodians do not consider CIBM assets to be under their custody, with the consequence that foreign investor assets are not properly protected. Therefore, we recommend that China adopt international best practices with respect to BSAs and require that trading and settlement functions be separated.

Settling A Share Securities Transactions (China A-Share only)

Delivery versus payment (DVP) is a common practice in developed international markets for securities settlement. DVP guarantees that the transfer of securities only happens after payment has been made. The buyer's cash payment for securities must be made prior to or transferred at the same time as the delivery of the security. DVP reduces the settlement risks for both parties and increases the overall protection of assets. In China's A-share market, however, securities are settled at time "T," and cash is settled at time "T+1." This lagged settlement process increases the settlement risks for both parties. The Stock Connect scheme, which links the

markets of Hong Kong and the mainland, used this lagged settlement process from its inception in 2014 and it raised significant concern among foreign investors. In response to these concerns, Stock Connect regulators introduced real-time DVP in 2017. AmCham China encourages the Chinese government to adopt DVP for A-Share securities settlement.

With respect to the length of the process for settlement (i.e., the number of days between the transaction date and the transfer of funds or settlement), international financial markets have been moving toward a T+2 settlement model. Europe adopted this model in 2014, Japan in 2015, and the US in 2017. At the time of adoption, the US Depository Trust and Clearing Corporation (DTCC), a post-trade financial services company, said that T+2 offers reduced market and counterparty risk, increased financial stability, and improved safety and efficiency.

Agency Securities Lending

According to Rules 14A16(5) to (7) and Rules 14B16(5) to (7) of the Securities and Futures Commission (SFC) of the Hong Kong Exchange, only Exchange Participants and Qualified Institutions may trade securities via China Connect, a program that allows offshore investors to trade Shanghai and Shenzhen-listed stocks via the Hong Kong market. We urge the CSRC to permit "Approved Lending Agents" to trade on China Connect. Approved Lending Agents include agents and custodians acting on behalf of offshore funds investing in China Connect securities.

Broadening participation in the program will improve liquidity. Greater liquidity will improve pricing, reduce market volatility, and ensure long-term price stability. China Connect is currently hamstrung without the participation of Approved Lending Agents, as evidenced by the lack of short sale activity registered by the SFC for China Connect Securities. We strongly believe that introducing Approved Lending Agents into the current investor ecosystem will spur liberalization of China's capital and A-share markets (those denominated in RMB).

Fund Accounting and Transfer Agency Services

In March 2017 the Asset Management of Association of China (AMAC) released the *Administrative Measures on the Private Investment Fund Service Business (Trial)*, which clarified the legal relationship between a private fund service institution (PFSI) and a Private Fund Manager (PFM), established requirements for three types of private fund services businesses: fund interests unit registration, valuation and verification services, and provision of information technology system services. The Administrative Measures (Trial) require fund administrators which expect to provide Fund Accounting (FA) and Transfer Accounting (TA) services in China to apply to join AMAC and become a member.

者进入银行间债券市场提供服务便利。这为商会会员企业进入银行间债券市场铺平了道路。为继续吸引甚至加速高质量境外投资者进入银行间债券市场，商会建议中国人民银行采用国际最佳实践执行政策要求。例如，中国大陆的债券结算代理行既负责银行间债券市场的交易，也负责其结算。相比之下，国际金融市场的交易和结算一般是由不同的金融机构分别负责。这意味着在中国大陆市场内，全球托管行必须指示本地托管行其交易部门不得结算银行间债券市场交易。交易与结算不分离意味着全球托管行认为银行间债券市场资产无法被其托管，因导致境外投资者的资产无法得到有效保护。因此，商会建议中国债券结算代理能采用国际最佳做法，实现交易与结算分离。

结算 A 股证券交易（仅限中国 A 股）

券款对付是国际发达证券市场证券结算普遍采用的常规做法。券款对付可确保只有在付款之后才能交付证券。买方需要在交付证券之前或者同时支付有关款项。券款对付降低了双方的结算风险，加强了对资产的全面保护。但是，中国的 A 股市场买卖股票交易日为 T，交易所得现金要到第二天，即 T+1 日之后才能完成结算。结算过程滞后增加了买卖双方的结算风险。沪深港通将香港股票市场与中国大陆股票市场连接起来，自 2014 年成立之时起就采用滞后性结算过程，引发了境外投资者的极大担忧。为解决此问题，监管机构于 2017 年开始实施实时券款对付结算。商会鼓励中国政府在 A 股证券结算也实施券款对付结算方式。

至于结算过程持续时间（即交易日期与资金划拨或结算之间的天数），国际金融市场正朝着 T+2 结算模式发展。2014 年欧洲开始采用 T+2 模式，2015 年日本紧随其后，2017 年美国也加入其中。交易后金融服务公司美国存托及结算机构 (DTCC) 在采用 T+2 模式时表示，T+2 模式降低了市场和交易对手的风险，增强了财务稳定性，提高了安全性和效率。

代理证券借贷

根据香港交易所证券及期货事务监察委员会（香港证监会）第 14A16 (5) 至 (7) 条及 14B16 (5) 至 (7) 条规定，只有交易所参与者及合格机构可通过沪深港通交易证券，沪深港通系统允许国际投资者通过香港交易所沪市和深市股票。商会促请中国证监会允许“核准借出

代理人”在沪深港通上交易。核准借出代理人包括代表境外基金投资沪深港通证券的代理人 and 托管人。

扩大沪深港通参与人的范围将提高流动性，进而改善定价，降低市场波动，确保价格长期稳定。目前，由于没有核准借出代理人的参与，导致沪深港通系统陷入困境，香港证监会登记的沪深港通证券没有卖空就证明了这一点。商会坚信将核准借出代理人引入当前的投资者生态系统中将促进中国资本和 A 股市场（即以人民币计价的）的自由化。

估值核算和份额登记服务

2017 年 3 月，中国证券投资基金业协会发布《私募投资基金服务业务管理办法（试行）》，明确了私募基金服务机构与私募基金管理人的法律关系，对私募基金份额登记服务、基金估值核算服务、信息技术系统服务三类私募基金服务业务确立了要求。《管理办法（试行）》要求在中国提供估值核算和份额登记的基金管理人在中国证券投资基金业协会登记成为协会会员。

据了解，中国证券投资基金业协会目前在更新《管理办法（试行）》。但是，商会会员担心更新后的《管理办法》是否会允许外资基金服务机构提供上述服务存在极大的不确定性。目前，约有 45 家中资基金服务机构注册成为中国证券投资基金业协会会员，获准独立提供估值核算和份额登记服务。迄今为止，还没有一家外资基金服务机构获得批准。

优质的估值核算和份额登记服务，例如评估投资基金的资产净值，一般是由全球托管银行提供的重要辅助服务，通常与妥善保管和其他托管服务“捆绑”在一起。但是估值核算和份额登记服务也可以与其他服务分割，单独提供。如此一来，公司便可以利用专家的专业知识和可靠性提供管理大额资产的基金服务。美国托管行专业知识深厚，业务娴熟，在国际市场上拥有丰富的经验，完全有能力有资格在中国大陆市场提供此类服务，但却被拒之门外。商会促请中国政府和证券投资基金业协会合理设定入会资质要求，明确允许外资基金服务机构登记入会，鼓励中国政府批准合格境外服务提供者，允许其提供独立的估值核算和份额登记服务。这对中国投资市场和国内投资基金及投资者来说是两全其美的利好之事。

We understand that AMAC is currently updating the Administrative Measures (Trial), however, there is a large amount of uncertainty among our membership regarding whether or not the updated Administrative Measures will allow foreign-invested fund service providers to offer these services. Currently, there are around 45 domestically-invested fund service providers registered with AMAC that are therefore permitted to provide stand-alone FA and TA services. To date, no foreign-invested fund service provider has been approved.

Premier FA and TA services, such as valuing an investment fund's net asset value (NAV), are important ancillary services often provided by global custody banks. These services are often "bundled" together with safekeeping and other custody services. However, FA and TA services can also be offered as stand-alone services, which allows firms to leverage the expertise and reliability of specialists in providing fund services who manage vast assets. US custody banks have substantial expertise and deep experience in international markets. They are highly qualified to provide these services in the mainland China market but are currently precluded from doing so. We urge the Chinese government and AMAC to establish reasonable registration qualifications that explicitly permit access for foreign-invested fund service providers and encourage the Chinese government to approve qualified foreign-invested providers, thereby allowing them to provide stand-alone FA and TA, which should benefit the Chinese investment market and domestic investment funds and investors.

Securities

Capital Repatriation

We recommend that regulators consider addressing the uncertainty around the capital repatriation process and timeline. For example, repatriating profits under the QFII scheme requires submitting a profits audit and a clearance certificate from the local tax bureau, which takes one to three months with an unpredictable timeline. Providing a clear, shorter timeline for the repatriation process would increase US investors' interest in deploying capital onshore by providing more confidence in their ability to repatriate funds when requested by investors' end clients. This would also enable Chinese authorities to reduce the administrative burden involved in the repatriation approval process while retaining adequate oversight over the process.

Stock Connect

US investors welcome plans from the Hong Kong Exchanges and Clearing (HKEX) to include more products in Stock Connect such as IPOs and exchange-traded funds (ETFs), as well as additional modifications to existing southbound stock borrowing and lending (SBL) and northbound short-selling activities. These products, features, and modifica-

tions will improve pricing and liquidity in onshore capital markets by allowing offshore investors to better hedge trades, manage trading costs, and execute more complex trading strategies. In particular, as China experiences significant and high-profile equities index inclusions, these tools will be key to attracting inflows from US institutional investors looking to increase and hedge their exposures to onshore capital markets. Our members look forward to these changes being implemented as quickly as possible.

A-shares Trading Enhancements

US investors remain eager for greater participation in China's onshore A-share capital markets. To this end, our members are pleased to see that MSCI has completed the final phase of the 20 percent partial inclusion of China A-shares in the MSCI indexes. As China looks to move towards further inclusion of China A-shares in MSCI indexes, we concur with MSCI's recommendations for further enhancements in A-share markets in order to attract more capital inflows to onshore markets. Specifically, we agree with the recommendation that Chinese authorities consider expanding access to hedging and derivatives tools for onshore A-share markets, which are important risk management tools. China may also look to lengthen the settlement cycle for China A-shares, as onshore markets currently operate on a T+0/T+1 non-DVP settlement cycle. These measures would make it easier for foreign investors to commit capital onshore while bringing global best practices in trading and risk management to A-share markets, and ultimately help develop more mature markets.

STAR Market

US investors welcomed the launch of the Shanghai Science and Technology Innovation Board (STAR Market) in July 2019 as a "Chinese Nasdaq" in the making and a testing ground for a series of long-hoped-for equity market reforms. As regulators continue to develop the STAR Market, one factor that can help ensure its long-term success in supporting innovative Chinese companies is further opening the STAR Market to foreign investors, which would improve pricing and liquidity on the exchange and bring best-in-class risk management practices. To this end, US investors look forward to seeing the STAR Market's trading eligibility expanded to include additional market access channels, such as Stock Connect, to supplement existing access arrangements. Introducing additional products to hedge market risks, such as ones linked to the upcoming STAR Market 50 Component Index, would also attract more international institutional investors who want to better manage market volatility. Chinese authorities may also consider other measures to make the STAR Market more accessible for US and other foreign investors, such as by mandating English-language disclosures in addition to Chinese-language ones.

证券

资本撤回

商会建议监管机构考虑解决资本撤回流程和所需时间的不确定性问题。举例来说，合格境外机构投资者将利润汇回国内要提交一份利润审计报告和当地税务局出具的完税证明，这一过程需要耗时一到三个月，而且无法预测具体时间节点。明确规定资金撤回流程的时间节点、缩短流程所需时间将提高美国投资者在境内配置资本的兴趣；在投资者最终客户要求汇回资金时，美国投资者将更加自信有能力处理。这也将有助于中国当局在确保充分监督资金撤回审批流程的同时降低行政负担。

互联互通

香港交易结算所计划进一步扩大互联互通市场，纳入如首次公开募股和交易所买卖基金等更多产品，继续修订现行南向股票借贷和北向交易卖空活动等。这些产品、特性和修订将改善在岸资本市场的定价和流动性，使离岸投资者能够更好地对冲交易、管理交易成本、实施更为复杂的交易策略。尤其是中国引入大量备受关注的股票指数对吸引美国机构投资者流入来说至关重要，因为美国机构投资者希望增加和对冲境内资本市场的风险敞口。商会会员期待能尽快落实执行这些政策。

A 股交易扩容

美国投资者依然渴望进一步参与中国在岸 A 股资本市场。为此，商会会员很高兴看到明晟 (MSCI) 已完成纳入 A 股扩容的最后一步：将中国 A 股以 20% 的纳入因子纳入 MSCI 指数。中国想要进一步将中国 A 股纳入 MSCI 指数，商会赞同 MSCI 建议进一步扩容 A 股市场，吸引更多资本流入国内市场。具体来说，商会同意中国当局考虑放宽对在岸 A 股市场的套期保值和衍生品等重要风险管理工具的获取。中国也希望延长中国 A 股的结算周期，因为目前中国内地市场采用的是 T+0/T+1 等非货银对付结算周期。采取这些措施将便利外国投资者在境内投入资本，同时利于 A 股市场交易和风险管理与国际市场接轨，从而最终提高市场成熟度。

星星市场

2019 年 7 月首批科创板 (明星市场) 在上海鸣锣开市，科创板作为未来中国版的纳斯达克，成为一系列

期待已久的股市改革试验田，美国投资者对此喜闻乐见。监管机构要继续发展星星市场，其中一个能够确保长期成功、支持中国创新企业发展的因素就是向外国投资者进一步开放星星市场，将改善交易定价和流动性，引进一流的风险管理实践。为此，美国投资者希望放宽星星市场交易资格范围，增加市场准入渠道，如互联互通系统，作为现行准入渠道的补充。增加产品对冲市场风险，如与即将发布的上证科创板 50 成份指数挂钩的相关产品，将吸引更多希望妥善管理市场波动的国际机构投资者。中国政府机构也要考虑采取其他措施放宽星星市场对美国和其他外国投资者的准入，如强制要求中英文披露信息。

债券和衍生工具

债券回购市场

债券回购市场是中国固定收益市场的重要组成部分，因为债券投资者依赖回购进行融资、证券借贷、套期保值和短期投资。向美国投资者开放债券回购市场，将进一步改善中国固定收益市场的流动性和风险管理，有利于中国政府通过推动市场化融资降低金融风险。为此，商会建议中国政府考虑采取以举措优化市场准入条件。首先，采用所有权转移回购格式以及国际认可的全球主回购协议。第二，明确三方回购交易的违约处理安排，扩大第三方的机构的资格范围，包括除银行间债券存管结算代理以外的大型金融机构。

商品期货

美国公司期待中国商品期货市场保持深入国际化的势头，这有助于将资本效率收益传递给中国实体经济和商品的最终用户。为此，中国当局可以考虑向外国投资开放更多类型的商品期货，市场参与者可以交易每种产品大类的一两种关键国际化期货产品，从而全面获得一篮子商品。监管机构可能还希望鼓励开发结构性离岸产品，参考国际化国内商品期货，让外国公司在在岸交易所发挥更大的所有权作用。这将有助于监管机构通过引进全球最佳实践和与国际市场密切相关的境外机构，建立运转良好、国际化的商品市场。

终止净额结算

终止净额结算使交易两方或多方抵消各方之间多笔

Bonds and Derivatives

Bond Repo Markets

The bond repo market is a critical component of China's fixed income markets as bond investors rely on repo for financing, securities lending, hedging and short-term investment. Opening this market to US investors would improve liquidity and risk management in onshore fixed income markets more broadly, supporting the Chinese government's efforts to reduce financial risk by promoting market-based financing. To this end, we recommend that the Chinese authorities consider the following steps to optimize conditions for market access. First, move towards a title transfer repo format as well as internationally-recognized Global Master Repurchase Agreement (GMRA) documentation. Second, clarify default arrangements for tri-party repo transactions and expand the range of institutions eligible to act as third parties to include major financial institutions besides depository and settlement agents for interbank bonds.

Commodities Futures

US firms look forward to seeing China maintain momentum in further internationalizing its commodities futures markets, which help transmit capital efficiency gains through to China's real economy and the end-users of commodities. To this end, Chinese authorities may consider opening more types of commodities futures to foreign investment so that market participants can trade one or two key internationalized future products in each product category, in order to have full access to a basket of commodities. Regulators may also look to encourage the development of structured offshore products with reference to internationalized onshore commodity futures as well as a greater ownership role for foreign firms in onshore exchanges. This would support the efforts of regulators to build well-functioning, internationalized commodities markets by introducing global best practices and offshore players with deep ties to international markets.

Close-out Netting

Close-out netting allows two or more parties to offset the value of multiple payments due to be exchanged between the parties and saves time and cost by reducing the number of transactions that must be conducted. Close-out netting allows counterparties to manage credit risks on a net, rather than gross basis. This reduces pre-settlement risk between trading parties. China is a "non-netting" jurisdiction and does not allow these kinds of transactions. In the event of insolvency, China's Bankruptcy Law gives the administrator of the insolvent firm the right to "cherry-pick" certain favorable assets to settle accounts, raising the cost of posting collateral.

This situation creates legal uncertainty with respect to

derivatives trading. Derivative assets are difficult to value appropriately because they are assessed on the price of other assets. Banks trading derivatives in China currently use a non-netting-based methodology to calculate capital adequacy and liquidity ratios for prudential risk management. Because China is a non-netting jurisdiction, banks trading in China must set aside capital against offsetting trades on a gross basis, rather than on a trade-by-trade basis. These requirements significantly increase the capital cost of derivatives trading. We recommend that the Chinese government clarifies the legal interpretation of classifying derivatives as assets, which would significantly reduce their cost and increase liquidity in the market.

US investors look forward to seeing China enact formal, comprehensive netting legislation that applies to all types of financial institutions and companies in China and is also recognized by other national regulators which supervise global financial firms. Ensuring that this practice is enforceable within China and in other major jurisdictions would complement the efforts of regulators to reduce financial risks by enabling firms to more effectively address credit risk. We recommend that the PBOC and CSRC, among other regulatory agencies, take a concerted approach to the legislative process involving all relevant regulators. China could also benefit from working with national regulators in other countries experienced in netting-related laws and regulations.

Bond Connect

AmCham China members would like financial firms' foreign entities to serve as Bond Connect market makers. AmCham China welcomes the government's efforts this year to improve the Bond Connect scheme by introducing block trade allocations and three-year tax exemption for investors and implementing real-time DVP. These moves reflect China's continued commitment to bond market opening. In recognition of China's progress, in January 2019 Bloomberg Barclays announced that China would be included in its Global Aggregate Bond Index as of April 2019 phased in over a 20-month period.

Currently no foreign institution, however, has received approval to serve as a Market Maker for the Hong Kong-China Bond Connect. This parallels foreign investors' minor presence in China's bond market overall, with foreign investors holding only around three percent of all outstanding bonds as of April 2019. While our members understand existing challenges regarding regulatory coordination and technological infrastructure readiness, allowing foreign participation in Bond Connect will help unleash new potential for China's capital markets. It will bring to China high-quality foreign investors and enhance China's connection to the global financial market. Appointing foreign market makers can also supplement the already-significant capital inflows expected from China's inclusion in global bond indices. Allowing foreign market makers in Bond Connect

交易支付的价值，通过减少必须进行的交易数量节省时间和成本。终止净额结算允许交易对手以净额而非毛额为基础管理信贷风险，降低了交易各方之间的结算前风险。中国是“非净额”管辖区，不允许此类交易。在破产的情况下，中国《企业破产法》赋予破产公司管理人“挑选”一些有利资产进行结算的权利，从而提高了提供担保的成本。

这种情况对衍生品交易造成了法律上的不确定性。衍生品资产价值难以准确评估，因为评估需以其他资产价格为基础。目前，中国交易衍生品以非净额为基础来计算资本充足率和流动性比率。因为中国是非净额管辖区，在中国交易的银行必须拨出资本，以毛额抵消交易，而不是分笔抵消交易。这些要求大大加重了衍生品交易的资本成本负担。上海建议中国政府在法律上明确将衍生品归类为资产，从而显著降低成本，增加市场的流动性。

美国投资者期待中国正式颁布综合立法，规定净额结算适用于中国各类金融机构和企业；净额结算广受监管全球金融公司的其他国家监管机构认可。要确保净额结算在中国和其他主要司法管辖区内得以执行，监管机构需要使企业能够更有效地应对信贷风险，努力降低金融风险。商会建议中国人民银行和证监会以及其他监管机构协调一致，让所有相关监管机构参与立法程序。其他国家的国家监管机构在净额结算相关法律法规制定方面经验丰富，中国与其合作一定能受益匪浅。

债券通

商会会员希望金融公司的外国实体可以在债券通做市商。政府今年为投资者实施大宗交易配额、三年免税政策以及实时货银对付，改善债券通，商会对此表示欢迎。这些举措反映了中国继续开放债券市场的承诺。为了表彰中国的进步，2019年1月彭博巴克莱宣布，于2019年4月起将中国债券纳入彭博巴克莱全球综合指数，在20个月内分阶段完成。

然而，目前还没有一家外国机构获批成为香港 - 中国内地债券通做市商。与此同时，外国投资者在中国债券市场总体上的参与程度较低。截至2019年4月，外国投资者仅持有中国所有未清偿债券的3%左右。虽然商会了解监管协调和技术基础设施准备方面目前面临着挑战，但允许外国参与债券通将有助于释放中国资本市场的潜力：将为中国带来高质量的外国投资者，并提高

中国与全球金融市场的接轨程度。中国纳入全球债券指数引来大量资本流入，指定外国做市商可以锦上添花，进一步吸引资本流入。允许外国做市商进入债券通市场也与人民币国际化和继续推动资本市场开放的目标一致。

信用评级

2019年11月，中国人民银行、国家发改委、财政部、中国证监会联合发布了《信用评级业暂行办法》，并已于2019年12月26日起施行。《暂行办法》是中国信用评级业的里程碑，建立了统一的监管框架，明确了行业的政策方向，有利于中国信用评级业的健康发展。

2019年9月，中国银行间市场交易商协会发布了《银行间债券市场非金融企业债务融资工具信用评级业务利益冲突规则》和《银行间债券市场非金融企业债务融资工具信用评级业务信息披露规则》。这些规则旨在加强信用评级业务自律管理，保障信用评级的独立性、客观性、公正性以及透明性。

2019年，中国政府出台了一系列开放中国金融业的政策。值得注意的是，中国已允许一家外商独资信用评级机构进入中国市场。商会赞赏中国政府承诺继续推动向外国金融机构开放中国信用评级业务。中美第一阶段经贸协议涉及信用评级机构的条款，例如中国承诺继续允许美国服务提供者（包括美国独资信用评级服务提供者）对向国内外投资者出售的所有种类的国内债券进行评级。商会相信允许国际信用评级机构在中国开展业务将为中国带来国际最佳实践经验，提高市场透明度和风险区分，降低企业融资成本，同时吸引全球投资进入中国境内债券市场。

信用评级下限

目前，中国国内的信用评级集中在AA和AAA之间，一定程度上是由于现行法规规定强制性设置信用评级“下限”。这些规例的目的是保护金融机构和投资者免受投资低评级债券的信用风险。但在实践中导致评级机构为了遵守规定和吸引客户而抬高评级，使得信用评级虚高。因此，中国信贷市场的风险和发行人的信誉未得到真实反映。

过去两年，AA级债券和AAA级债券的发行人在违约之前信用等级大幅下调。违约风险未合理定价、金融

is also in line with China's goals of RMB internationalization and further capital market opening.

Credit Ratings

In November 2019 the PBOC, the National Development and Reform Commission (NDRC), the Ministry of Finance (MOF), and the CSRC jointly released the *Interim Regulation for the Credit Rating Industry*, which became effective on December 26, 2019. This regulation represents a milestone for the credit rating industry in China as it establishes a harmonized regulatory framework and clarifies the industry's policy direction, which should support healthy development of the credit rating industry in China.

In September 2019 NAFMII released the *Rules on Conflicts of Interest in the Credit Rating Services for Debt Financing Instruments of Non-Financial Enterprises in the Interbank Bond Market* and the *Rules on Information Disclosure on the Credit Rating Services for Debt Financing Instruments of Non-financial Enterprises in the Inter-bank Bond Market*. These rules should strengthen the discipline of China's credit rating industry and improve the independence, objectivity, impartiality, and transparency of credit rating services.

Throughout 2019 the Chinese government has instituted a number of policies to open China's financial sector. Notably, a wholly-foreign-owned credit rating agency has been licensed to enter China's market. We also acknowledge the commitment from the Chinese government to continue to open the credit rating business to foreign financial institutions. The Phase One Deal includes provisions for credit ratings agencies (CRAs) such that China commits to continue to allow US service providers (including US wholly-owned credit rating service providers) to provide ratings on domestic bonds to domestic and international investors. AmCham China believes that licensing of international credit rating agencies to operate in China will bring international best practices into the China market, increase market transparency and risk differentiation, and reduce corporate financing costs in addition to attracting global investment into China's onshore bond market.

Credit Rating Floors

Currently, China's domestic ratings are concentrated between AA and AAA. This is partly due to mandatory credit rating "floors" established in existing regulations. The intention of these regulations is to protect financial institutions and investors from the credit risk of investing in a low-rating bond. But in practice, it has led to CRAs inflating their ratings in order to comply with regulations and to attract customers. Consequently, the risks in China's credit market and the creditworthiness of issuers is not appropriately reflected.

Over the past two years, issuers of AA and AAA-rated bonds

have defaulted and their credit rating dropped dramatically right before the default itself, an event which happens when the risk of default has not been appropriately priced and the interests of financial institutions and investors have not been adequately protected. These defaults undermine confidence in the market.

The regulatory requirements which provide for a "floor" on credit ratings do not allow the market to appropriately price risk. These requirements overconcentrate market ratings between AA and AAA, which will ultimately undermine the development of the bond market and the credit rating industry.

We recommend, as per international best practice, that the regulations that have established credit rating "floors" for bond issuance or investment be abolished. Such reform will ultimately enable the market to more appropriately price risk, reduce the number of risky or non-performing loans or bonds, and support healthy development of China's credit rating industry and its attempts to internationalize its bond market over the long term.

Automotive Sector Financing

Lack of Industry-specific Regulations and Compliance Challenges

CBIRC defines automotive finance companies as non-bank financial entities and established their business scope, legal funding resources, risk-management practices, and financial asset requirements in the *Administrative Measures for Automotive Finance Companies*, released in 2008. A counterpart piece of legislation, the *Measures for the Management of Auto Loans* released by the PBOC and CBIRC (then CBRC) released in 2017, includes provisions for conducting credit checks and standardizing loan underwriting practices. The two measures represent the key pieces of the regulatory framework for automotive financing entities operating in the China market.

There are, however, no detailed implementing regulations in place that oversee the internal governance or risk control practices of automotive finance companies, two key elements of their operation and management. In practice, Chinese regulators often ask automotive financiers to comply to the best of their ability with commercial bank regulations, which are not designed for automotive finance companies. AmCham China urges regulatory authorities to recognize the unique characteristics of the automotive financing industry by developing industry-specific regulatory requirements and standards through a transparent process and in close consultation with industry.

Throughout 2019 CBIRC tightened its supervision over the automotive financing industry, often through the use of internal circulars that are sent directly to automotive

机构和投资者的利益未得到充分保护的情况下导致这种情况的发生。违约情况削弱了市场信心。

为信用评级设置“下限”的监管要求导致市场无法合理定价风险。此类要求将市场评级过度集中在 AA 和 AAA 之间,最终会破坏债券市场和信用评级行业的发展。

商会建议与国际最佳实践惯例接轨,取消为债券发行或投资设置信用评级“下限”的规定。实施这一改革最终将使市场能够更合理地定价风险,减少风险债券或不良贷款或债券的数量,有利于中国信用评级行业的健康发展,推动实现债券市场国际化。

汽车行业融资

缺乏行业具体法规及合规挑战

中国银保监会将汽车金融公司定义为非银行金融机构,并在其 2008 年发布的《汽车金融公司管理办法》中确立了汽车金融公司的业务范围、合法融资资源、风险管理做法和金融资产要求。此外,中国人民银行和中国银保监会(后为中国银监会)于 2017 年发布了《汽车贷款管理办法》,其中包括进行信用审查和规范贷款承销行为的规定。这两项政策是中国市场运营的汽车金融机构监管框架的关键。

然而,目前汽车金融公司运营管理的两大关键要素:监管内部治理的具体实施条例和风险控制规范并未到位。在实践中,中国监管机构经常要求汽车金融机构尽其所能地遵守商业银行相关规定,但这些规定并不适用于汽车金融公司。商会促请监管部门了解汽车金融行业的独特特点,与行业密切协商,全程透明地制定行业具体监管要求和标准。

2019 年,中国银保监会不断加强对汽车金融业的监管,经常直接给汽车金融公司发布内部通知,并未对外公开。许多规定都不明确,会员企业难以与中国银保监会联系获取澄清和进一步指导。为提高汽车金融机构合规能力,商会强烈要求中国银保监会明确相关规定的措辞、定义及适用范围。

金融租赁公司

在市场实体数量激增,非法集资、风险性投资、甚至彻头彻尾的欺诈行为加剧的情况下,中国银保监会于

2020 年 1 月发布《融资租赁公司监督管理暂行办法(征求意见稿)》(以下简称“办法”)。《办法》对金融租赁公司的风险管理、投资活动和风险集中提出了严格要求。《办法》将融资租赁业务杠杆由 10 倍降至 8 倍。中国银保监会向商会征求关于《办法》的意见,商会对此表示欢迎,期待《办法》终稿能为租赁监管环境提供更加清楚透彻的说明。

网络安全

数据本地化和网络安全相关政策给在华外国金融机构带来诸多挑战,也是金融业市场进入主要障碍之一。现行金融领域要求,2017 年颁布的《网络安全法》及相关的网络安全要求包括数据本地化和数据传输限制、侵入性检查和测试相关要求,以及其他规范网络安全的要求。此类规定重要术语缺乏明确定义、后续法规草案与实施细则不一致、安全评估要求繁杂以及操作上的限制等雪上加霜,导致挑战更加严峻。在本节中,我们将讨论对金融领域的主要意见和建议。

数据本地化和数据流限制

跨境自由传输数据对于国际金融服务公司来说至关重要。数据本地化和对跨境数据流限制将会严重影响金融服务公司向客户提供核心产品和服务、管理风险以及遵守各司法管辖区金融监管要求的能力。

在《网络安全法》颁布之前,金融领域就已有严格的数据本地化要求。2009 年,中国银保监会发布的《商业银行信息科技风险管理指引》要求确保核心系统在中国境内独立运行;2011 年中国人民银行发布的《关于银行业做好个人金融信息保护工作的通知》中规定中国公民个人金融信息的储存、处理和分析不得在中国境外服务器进行。2019 年初,中国银保监会发布《银行业金融机构反洗钱和反恐怖融资管理办法》(2019 年第 1 号)规定,对依法履行反洗钱和反恐怖融资义务获得的客户身份资料和交易信息,非依法律、行政法规规定,银行业金融机构不得向境外提供。这在实践中导致在华金融机构“必须本地化”反洗钱和反恐怖融资相关的客户身份资料和交易信息;国际金融机构的全球运营模式在中国毫无用武之地,无法实施,增加了现有金融机构的运营挑战,大幅提高了金融机构进入中国市场的门槛。

中国人民银行即将加大对个人金融信息的保护力

financing companies and not necessarily made public. Many of the regulations were unclear and it was difficult for member companies to connect with CBIRC to seek clarification and further guidance. To improve automotive financiers' ability to manage their own compliance, AmCham China strongly urges that the wording, definitions, and scope of these regulations be made clearer by CBIRC.

Financial Leasing Companies

In January 2020 CBIRC published for public comment the draft *Interim Measures for the Supervision and Administration of Financial Leasing Companies*, amid concerns over a spike in the number of market entities engaged in illegal fundraising, risky investments, and even outright fraud. The draft Interim Measures propose strict requirements for risk management, investment activities, and the concentration of risk for financial leasing companies. The Interim Measures lower the leverage ratio for leasing companies from 10:1 to 8:1. AmCham China welcomes the CBIRC's invitation to comment on the draft Interim Measures and look forward to their finalization to provide greater clarity around China's financial leasing regulatory environment.

Cybersecurity

Data localization and cybersecurity policies present numerous challenges for foreign financial institutions in China and are among the main barriers for market-entry in the financial sector. Existing financial sector requirements, the 2017 *Cybersecurity Law* (CSL) and associated cybersecurity requirements include data localization and data transfer restrictions, intrusive inspection and testing requirements, and other prescriptive cybersecurity requirements. Challenges on this front are also exacerbated by a lack of clear definitions of important terms, inconsistencies between subsequent draft regulations and implementing measures, burdensome security assessment requirements, and operational limitations established by the CSL. In this section we discuss our key observations and recommendations for the financial sector.

Data Localization and Data Flow Restrictions

The ability to transfer data freely across borders is essential for financial services firms operating in the global economy. Data localization and limitations on the free flow of data seriously limit the ability of financial service firms to deliver core products and services to customers, manage risk, and comply with financial regulatory requirements in various jurisdictions.

In the financial sector, there are already stringent data localization requirements which predate the CSL. A 2009 CBIRC regulation (*Commercial Bank IT Risk Management Guideline*) requires banks to onshore their important systems, while a 2011 regulation of PBOC (*Notice Requiring Financial*

Institutions to Properly Conduct Personal Financial Information) prohibits financial institutions from analyzing, processing or storing personal financial information (PFI) of Chinese citizens in offshore servers. Early in 2019, a CBIRC decree (*Banking Financial Institutions Anti-money Laundering and Counter Terrorist Financing Management Measures* (Decree No. 1)) was issued which prohibits the cross-border transfer of all customer identification information and transaction information obtained in the course of performing anti-money laundering (AML) and counter-terrorism financing (CTF) obligations unless permitted by laws and regulations. In practice, this creates a hard localization of AML and CTF related to customer identification information and transaction information for financial institutions operating in China and makes it impossible for international financial institutions to employ their global operational model, resulting in increased operational challenges for existing financial institutions and dramatically raising the threshold for new financial institutions entering the Chinese market.

On the horizon, PBOC is doubling down on PFI protection and listed a Personal Financial Information Protection Trial Measure in its 2019 legislative plan. It then published a *Personal Financial Information Security Specification* standard for the financial industry in February 2020.

AmCham urges PBOC to review and remove data localization requirements in the new PFI Protection Trial Measures. PBOC has reportedly consulted domestic industry but has yet to consult foreign financial institutions. While AmCham China endorses PBOC's collaboration with industry during policy formulation, we encourage PBOC to include foreign industry in the consultation process.

The sweeping data localization requirements in the financial sector are counter-productive to China's efforts to open its financial sector. AmCham China welcomes China's commitment to further open the financial sector and urges China to eliminate data localization requirements and ensure the free cross-border movement of data, a pre-condition of truly and successfully opening financial sector.

Key Challenges for Network Operators

A security assessment is required for the cross-border transfer of personal information and important data, as outlined in the Cyberspace Administration of China (CAC)'s *Draft Measures for the Security Assessment of Cross-Border Personal Information Transfers* (2019) and the *Draft Measures on the Security Assessment of the Export of Personal Information and Important Data* (2017), (CAC Draft Measures), and the China National Information Security Standardizations Technical Committee's *Draft Guidelines for Data Cross-Border Transfer Security Assessment* (Draft Guidelines). AmCham China believes these draft documents would benefit from the following:

- The scope of "important data" is unclear. Under the

度，并在 2019 年规章制定工作计划中表示要制定《个人金融信息保护试行办法》。随后，中国人民银行于 2020 年 2 月发布了金融行业标准《个人金融信息保护技术规范》。

商会促请中国人民银行审查并取消《个人金融信息保护试行办法》中关于数据本地化的要求。据报道，中国人民银行曾向行业内中资机构征求意见，但并未向外资金融机构咨询意见。虽然商会支持中国人民银行与国内业界合作共同制定政策，但商会希望将业界外资机构纳入征求意见的对象。

金融业全面的数据本地化要求与中国推动开放金融业的努力背道而驰。商会欢迎中国承诺进一步开放金融业，并促请中国取消数据本地化要求，确保数据自由跨境流动，这是真正成功开放金融业的先决条件。

网络运营商面临的主要挑战

根据中共中央网络安全和信息化委员会办公室（“网信办”）发布的《个人信息出境安全评估办法（征求意见稿）》（2019）、《个人信息和重要数据出境安全评估办法（征求意见稿）》（2017）和中国国家信息安全标准技术委员会发布的《信息安全技术数据出境安全评估指南（草案）》（“指南草案”），个人信息和重要数据的出境需要进行安全评估。商会认为以下意见和建议将有助于理清和执行这些文件草案：

- “重要数据”的范围不明确。根据 2017 年发布的《个人信息和重要数据出境安全评估办法》规定，网信办明确指出，“重要”主要是从国家的角度，而非特定利益集团的角度来衡量的。《指南草案》明确了银行业“重要数据”的范围。当前的范围几乎包括了所有银行数据，意味着几乎每次银行跨境数据转移都将受到这一要求的约束。出于获取规模经济效益的考量，国际企业通常使用“枢纽集中地”基础设施运营，因此如根据《指南草案》中“重要数据”的范围执行，外资银行合规成本将难以预估，很可能极高。商会促请网信办、中国人民银行重新考虑跨境转移安全评估方法，并且按照《网络安全法》规定，将范围限制为狭义上的关键信息基础设施。
- 根据上述文件草案，任何网络运营者的个人信息的跨境转移都需要对发送方和接收方进行安全评估。《指南草案》规定发送方和接收方都需要建立相应

的跨境数据传输政策和评估机制。此外，发送方还需要根据接收方的业务资质、与发送方之间的持续性关系、信息安全管理机制、技术支持能力以及所在国家或地区的政治法律环境来评估数据接收方的安全保护能力。如果这些要求成为强制性规定，为遵循这些要求所需投入的合规成本将会让一些外国银行望而却步。商会促请网信办、中国人民银行及其他金融监管机构能对国际行业证书和评估结果予以承认，降低外资银行的国内安全评估负担。

关键信息基础设施

商会会员企业主张关键信息基础设施的监管方式应该以风险程度为依据、缩小适用范围、与国际经验接轨，而且不要强制特定产品和服务适用相关监管方式。此外，《网络安全法》第 35 条规定关键信息基础设施的运营者采购网络产品和服务，可能影响国家安全的，应当通过国家安全审查。商会在关键信息基础设施标准草案中规定的要求中关心的问题如下所示：

- 根据 2018 年 5 月发布的《信息安全技术 关键信息基础设施安全控制措施》征求意见稿第 6.5.2 条，关键信息基础设施运营者应确保灾难备份中心位于中国境内。这给商会会员企业带来了新挑战，增加了成本，因为国际企业灾难备份中心普遍都设在境外。
- 根据同一文件第 6.6.2 节规定，关键信息基础设施运营者应对安全管理负责人和关键岗位人员实施安全背景审查（包括提供有关公民身份、政治审查、宗教信仰、从业经历、教育背景、犯罪记录、个人信用、家庭情况以及海外关系等信息）。许多外资银行的 IT 运营由离岸 IT 中心提供支持；获取有关离岸员工的此类详细个人信息将具有挑战性，并可能违反其他国家的隐私政策。

其他网络安全挑战

金融监管机构正在积极探索，确保金融机构保持网络弹性，已经确定了采用渗透测试和扫描等方式为识别漏洞的首选方式。证监会《证券投资基金管理信息技术管理办法》（令第 152 号）中也就此做出规定，该办法于 2019 年 6 月 1 日起施行，允许证监会及其派出机构对公司进行渗透测试。商会非常担心公共部门主体可能会参与渗透测试，因为这会无意中增加或加剧风险。商

2017 CAC Draft Measures, CAC has clarified that “important” is likely to be measured with reference to the State, rather than from the standpoint of individual interest groups. AmCham China understands that the Draft Guidelines specify the scope of “important data” for the banking industry. The current scope includes almost all bank data, which means almost each cross-border transfer of data by banks is subject to this requirement. As it is a common practice for international businesses to use a “hub” infrastructure system to benefit from economies of scale, under the Draft Guidelines the compliance costs for foreign banks will be difficult to estimate and are likely to be extremely high. AmCham China urges CAC, the PBOC, and other related financial regulators to reconsider the approach to security assessments for cross-border transfers of both personal information and important data and limit the scope to a narrowly-defined set of critical information infrastructure (CII), as stipulated in the CSL.

- According to the draft documents, any cross-border data transfer of personal information by Network Operators (NOs) will require a security assessment to cover both sending and receiving parties. Under the Draft Guidelines, both sending and receiving parties are required to establish a corresponding cross-border data transfer policy and assessment mechanism. Furthermore, the sending party needs to assess the receiving party’s information protection capacity on the basis of its business qualifications, ongoing relationship with the sender, its information security management mechanism, technical support capabilities and the political and legal environment in its respective country or region. If such requirements become mandatory, the cost of compliance with these requirements will become prohibitive for many foreign banks. AmCham China urges the CAC, the PBOC, and other financial regulators to recognize international industry certificates and assessments to reduce the domestic security assessment burden on foreign banks.

Critical Information Infrastructure (CII)

AmCham China member companies advocate a regulatory approach for CII that is risk-based, narrow in scope, aligned with global best practices, and avoids mandating the adoption of certain products or services. In addition, the Draft CII regulation requires cybersecurity reviews for network products and services which may affect national security (Article 35 of the CSL). AmCham China has the following specific concerns in relation to requirements laid out in the Draft CII standards:

- According to Section 6.5.2 of “*Information security technology - Security Controls of Critical Information Infrastructure (Draft)*” issued in May 2018 for public comment, CII operators are required to locate their Disaster Recovery Center in mainland China. This

presents new challenges and costs to AmCham China members, as it is common practice for international businesses to use an offshore Disaster Recovery Center.

- According to Section 6.6.2 of the same document, a comprehensive background check (including providing information on citizenship, political views, religious beliefs, professional experience, education, criminal record, personal credit, family status, and overseas relations) is required to be conducted for staff of key management and security positions. As the IT operations of many foreign financial institutions are supported in offshore IT centers, obtaining such detailed personal information on offshore employees will be challenging and likely violate other countries’ privacy policies.

Other Cybersecurity Challenges

Financial regulators are exploring ways to guarantee the cyber resilience of financial institutions. They have identified pen tests (penetrative tests) and scanning as preferred methods to identify vulnerabilities. This is reflected in CSRC’s *Administrative Measures on Information Technology of Securities Fund Management Institutions* (Order No. 152), effective June 1, 2019, which allows the CSRC and its agencies to conduct pen testing on firms. We are extremely concerned about the possibility of involvement in pen testing by public sector actors as it may unintentionally increase or exacerbate risks. We recommend that financial regulators adopt industry best practices outlined in the Global Financial Market Association’s (GFMA) *Framework for the Regulatory Use of Penetration Testing in the Financial Services Industry*. These include recognition of certified firm-led pen testing and adoption of mutual-recognition policies that recognize certified pen testing across jurisdictions. This will allow firms to undergo only limited pen testing and have that certification recognized around the world. We strongly recommend that CSRC and other regulators remove pen testing and system scanning requirements in cyber risk management related articles (among them CSRC Order No. 152) and initiate an open dialogue with industry stakeholders on this topic.

In addition, AmCham China has noticed that the PBOC issued several financial industry standards, including the *Personal Financial Information Security Specification*, and the *Financial Distributed Ledger Security Specification*, drafted through the China Financial Standards Technical Committee (TC180). Unfortunately, to our knowledge, the drafting process was not open to participation by foreign-invested financial institutions or other public consultation. AmCham China welcomes the commitment for foreign investors to enjoy equal participation and treatment in standards drafting as stipulated in the *Implementing Regulations of the Foreign Investment Law* and *China’s Standardization Law*. We urge PBOC and TC180 to provide equal opportunity for foreign financial institutions to participate. In addition, if

会建议金融监管机构采用全球金融市场协会 (GFMA) 《金融服务业使用渗透测试的监管架构》中的行业最佳实践惯例。包括认可由认证公司主导的渗透测试, 以及通过相互认可政策来认可跨司法管辖区的渗透测试。如此一来, 企业无需多次开展渗透测试, 仅需数次测试即可获得全球认证。商会强烈建议中国证监会和其他监管机构取消网络风险管理相关条款规定 (其中包括中国证监会第 152 号令) 中的渗透测试和系统扫描漏洞等要求, 并就此与行业利益相关方协商讨论。

此外, 商会注意到, 中国人民银行通过全国金融标准技术委员会 (TC180) 起草了《个人金融信息保护技术规范》和《金融分布式账本技术安全规范》等多个金融行业标准。不幸的是, 据商会所知, 标准起草过程中并未向外资金融机构或其他社会团体征求意见。《外商投资法实施条例》和《中国标准化法》规定有关外商投资企业平等参与标准的制定、修订工作, 商会对此表示欢迎。商会促请中国人民银行和全国金融标准技术委员会向外国金融机构提供平等参与的机会。此外, 如果金融监管机构在没有外国金融机构参与的情况下, 强制执行由中国业内起草的推荐性标准, 那么此类标准向外资机构征求一轮意见, 确保外资机构平等参与。

除了无法参与标准制定的问题外, 商会还促请中国人民银行和全国金融标准技术委员会应基于风险采取网络安全保护措施, 取消不必要的规范性要求, 包括行业标准中对国内加密算法和数据本地化的要求。2019 年 10 月, 中国人民银行还和市场监管总局共同发布了 (金融科技产品认证目录 (第一批) 和金融科技产品认证规则), 对使用云计算平台的金融机构提出认证要求。这些规定对金融机构使用云计算平台又施加了一层限制。

建议

对于中国政府:

商业银行

- 取消银行业的所有配额, 包括外债配额。
- 允许外国金融机构担任公司债券的主承销商。

资产管理

- 配合 2020 年 4 月 1 日起取消基金管理公司外资股比限制的要求, 取消目前境内连续业绩时限要求 (两年), 并认可合格申请人的境外从业经验和业绩。
- 明确界定外资理财管理子公司的全业务服务范围, 并制定明确、便捷、透明的申请流程。

托管服务

- 取消境外投资者直接与本地次托管行签订合同的要求, 允许全球托管行与本地次托管行签订合同, 从而在中国大陆市场开展业务。
- 允许“核准借出代理人”在沪深港通交易, 提高流动性、推动中国 A 股市场自由化。

证券

- 解决资本抽回流程和所需时间的不确定性问题。明确规定资金抽回流程的时间节点, 缩短流程所需时间将提高美国投资者在境内配置资本的兴趣; 在投资者最终客户要求汇回资金时, 美国投资者将更加自信。
- 加快推进拓展互联互通市场, 纳入首次公开募股和交易所买卖基金等更多产品, 继续修订现行南向股票借贷和北向交易卖空活动。

债券和衍生工具

- 采用所有权转移回购格式以及国际公认的全局主回购协议。明确三方回购交易的违约处

financial regulators make mandatory a recommended standard drafted by domestic industry without participation by foreign financial institutions, that standard should be opened to an additional round of consultation with foreign institutions, in support of more equal treatment.

Aside from the issue of a lack of participation in standards setting, AmCham China urges the PBOC and TC180 to adopt a risk-based approach to cybersecurity and remove unnecessary prescriptive requirements, including requirements for domestic encryption algorithms and data localization requirements from its industry standards. The PBOC also published a certification requirement for financial institutions using a Cloud Computing Platform with the State Administration for Market Regulation (SAMR) in October 2019 (the *Fintech Product Certification Catalog (First Batch)* and the *Fintech Product Certification Rules*) which together have added another layer of restriction on the use of cloud computing services for financial institutions.

Recommendations

For the Chinese government:

Commercial Banking

- **Remove all quotas in the banking sector, including on foreign debt.**
- Allow foreign financial institutions to act as lead underwriters for corporate bonds.

Asset Management

- **Consistent with the removal of foreign equity caps for fund management as of April 1, 2020, remove the current seasoning requirements (two years) and recognize the offshore experience and track record of qualified applicants.**
- Clarify the scope of business services that can be provided by foreign-owned WMCs and institute a clear, convenient, and transparent application process.

Custody Service

- **Recognize global custodians in the mainland China market by removing the requirement for foreign investors to contract directly with local sub-custodians.**
- Permit Approved Lending Agents to trade on China Connect, in order to improve liquidity and spur liberalization of China A-share markets.

Securities

- **Address the uncertainty around the capital repatriation process and timeline. Providing a clear, shorter timeline for the repatriation process would increase US investors' interest in deploying capital onshore by providing more confidence in their ability to repatriate funds when requested by investors' end clients.**
- Accelerate plans to include a greater number of products in Stock Connect such as IPOs and exchange-traded funds (ETFs), as well as improvements and modifications to existing features like SBL and northbound short-selling.

Bonds and Derivatives

- **Move towards a title transfer repo format as well as internationally-recognized GMRA documentation. Clarify default arrangements for tri-party repo transactions and expand the range of institutions eligible to act as third parties to include major financial institutions in addition to depository and settlement agents for interbank bonds.**
- Open a greater number of commodities futures to foreign investment so that market participants can trade one or two key internationalized future products in each product category, in order to have full access to a basket of commodities.

Credit Ratings

- **Follow through on commitments to remove barriers to market entry and operation for foreign-invested credit ratings agencies.**
- Abolish the requirement on credit rating floors for bond issuance or investment. Such reform will ultimately enable the market to more appropriately price risk and reduce the number of risky or non-performing loans or bonds.

Automotive Financing

- **Develop industry-specific regulatory requirements and standards through a transparent process with close consultation from the industry.**
- Issue clearer instructions for foreign-invested financing companies to more appropriately manage their compliance.

Cybersecurity

- **Explicitly allow companies and their subsidiaries**

理安排；扩大第三方的机构的资格范围，包括除银行间债券存管结算代理以外的大型金融机构。

- 向外国投资开放更多类型的商品期货，市场参与者可以交易每种产品大类的一两种关键国际化期货产品，从而全面获得一篮子商品。

信用评级

- **履行承诺，消除外商投资信用评级机构进入市场和运营的障碍。**
- 取消为债券发行或投资设置信用评级“下限”的规定。实施这一改革最终将使市场能够更合理地定价风险，减少风险债券或不良贷款或债券的数量。

汽车行业融资

- **与行业密切协商，全程透明地制定行业具体监管要求和标准。**
- 发布更加明确的指示，便于外商投资融资公司更妥善地管理合规情况。

网络安全

- **明确允许公司及其子公司进行内部跨境数据传输，坚持中国在二十国集团大阪领导人宣言中签署的数据自由流动原则。**
- 允许外商投资企业加入中国金融标准技术委员会（TC180），本着技术中立和基于风险的原则，采取网络安全保护措施，并采用全球金融市场协会《金融服务业使用渗透测试的规管架构》中的行业最佳实践惯例，包括认可由认证公司主导的渗透测试。

to conduct intra-party cross-border data transfers and uphold the principles of free movement of data that China signed on to in the G20 Osaka Leaders Declaration

- Open up the China Financial Standards Technical Committee (TC180) to participation by foreign companies, adopt a technology-neutral and risk-based approach to cybersecurity, and adopt industry best practices for pen testing as outlined in the GFMA Framework for the Regulatory Use of Penetration Testing in the Financial Services Industry, including recognition of firm-led pen testing.

Civil Aviation

Introduction

China's aviation market is large and the outlook for continued growth remains bright. US companies are major suppliers to the Chinese aviation industry and have benefited from this growth. While China's 2020 economic performance will be adversely impacted by the Coronavirus disease (COVID-19) outbreak, it is too early to determine any medium and long-term impact on the aviation sector.

In 2019, air traffic increased by 7.1 percent over the previous year. The Civil Aviation Administration of China (CAAC) forecasts an increase of 7.5 percent, 7.6 percent and 1.3 percent for total air transportation, passenger, and cargo turnover in 2020. Overall, China's aviation growth between 2018 and 2038 is forecast to grow 5.3 percent per year, significantly higher than the 3.8 percent per year estimated for average global aviation growth. Prior to the outbreak of COVID-19, China's airports were expected to handle 1.47 billion passengers in 2020; that represents growth of over 60 percent since 2015. Even with the expected slow-down, according to the International Air Transport Association (IATA), within three years China will be the world's biggest market, carrying some 1.3 billion passengers annually. Today, China represents 18 percent of total global aviation traffic, compared to the three percent it accounted for 15 years ago. The growth during this period has been exceptional and historic.

The country's rising middle class and gradual transition to a consumption-based economy has increased demand for aviation services. Boeing estimates that China will need 8,090 new airplanes worth US \$1.3 trillion over the next 20 years. In this same period, it is estimated that China will spend US \$1.6 trillion for services to support the aircraft industry, according to Boeing's most recent Commercial Market Outlook Report.

While there are signs that the pace of growth is slowing, the country is continuing to invest heavily in its aviation infrastructure with plans to build an additional 216 airports by 2035. The CAAC's 2020 budget is estimated to be more than US \$14 billion for fixed asset aviation. Today China has 238 civil aviation airports and five new airports are expected to be in operation by the end of this year. By the end of 2019, there are 39 airports in China with annual passenger traffic

of over 10 million. Beijing Daxing International Airport commenced operations in 2019 and is designed to accommodate 100 million passengers annually. It has been estimated that by 2025, its passenger volume could reach 72 million annually. Beijing Capital Airport and Daxing Airport could together accommodate an estimated 250 million passengers per year in the future.

While this growth has benefitted both China and the US, there are natural growing pains. Systemic change at the local, provincial, and national levels continues to be a challenge as China realizes its full aviation potential. Operational capabilities in China continue to adapt to changing needs of a growing and increasingly complex aviation system; factors that would assist in this process include expanding access to airspace for commercial operations, adjusting procedural and institutional methodologies to better utilize the results of innovation, and incorporating multi-disciplinary considerations that support and further maintain China's outstanding safety record.

US companies are important suppliers of aviation technology, equipment, and services. They have committed significant resources to work with China in reducing capacity constraints through continued improvements to capabilities and in meeting a wide variety of training needs. AmCham China's US-China Aviation Cooperation Program (ACP), with 36 US members, was established in 2004 with a mission to support the growth of China's aviation system and undertake joint activities for mutual benefit that further aviation safety, capacity, and efficiency.

We recognize that the US aviation sector benefits from China's growth. The adoption of procedures and standards that align with US best practice further align our two aviation systems and reduce burdens on aviation interests. The ACP annually arranges millions of dollars of technical assistance and training for activities that are important to US industry and acknowledged by China's aviation sector as contributing to the sustained growth of China's aviation system. This work produces win-win benefits for both countries. Aviation products and services constitute one of the largest categories of US exports to China, and aircraft is the largest category of manufactured goods exports.

In this chapter, AmCham China selected topics related to

民用航空

引言



国民用航空市场空间广阔，有持续增长的前景。作为中国航空业的主要供应商，美国企业从中国市场增长中受益。尽管中国 2020 年的经济会受到新冠肺炎疫情冲击，但现在评估其对航空业造成的影响还为时过早。

2019 年，航空总运输量增长 7.1%。中国民用航空局预期 2020 年中国民航运输总周转量、旅客运输量、货邮运输量同比分别增长 7.5%、7.6%、1.3%。总体而言，从 2018-2038 这 20 年中，中国的航空业增长预计将以每年 5.3% 的速度增长，大大高于全球平均水平的 3.8%。新冠疫情爆发前，预计 2020 年运输旅客达 14.7 亿人次，自 2015 年来增长超 60%。即使考虑到航空领域增长下滑，根据国际航空运输协会的数据，在三年之内，中国将成为世界上最大的市场，每年运送约 13 亿旅客。目前，中国运输总量占全球 18%，相比之下，15 年前这一比例仅为 3%，实现了历史性跨越发展。

中国中产阶级的崛起以及逐步向消费型经济的过渡刺激了航空出行服务需求的增长。波音公司预测未来 20 年中国将需要 8090 架新飞机，价值 1.3 万亿美元。波音公司最新发布的《中国民用航空市场展望》报告预测中国将投资 1.6 万亿美元支持航空业的发展。

尽管有增速放缓的迹象，但中国持续大力度投资民航基础设施建设的态势未变。预计到 2035 年，中国将增加 216 个新机场。根据中国民用航空局 2020 年预算目标，航空业固定资产投资预计将达到 140 多亿美元。截至 2019 年底，中国现有民用机场 238 个，预计 2020 年中国将新增 5 个机场。截至 2019 年底，中国年旅客吞吐量超千万级的机场已达到 39 个。北京大兴国际机场已于 2019 年正式启动运行，其设计年旅客吞吐量为 一亿人次。预计到 2025 年，北京大兴国际机场旅客吞

吐量将达到每年 7200 万人次。从长远来讲，未来北京首都机场和北京大兴机场两场服务的年旅客吞吐量之和将可达到 2.5 亿人次。

尽管中国和美国都能从中国航空业的发展中受益，但航空业也面临成长的阵痛。中国继续需要在地方、省级和国家层面进行系统性改革，充分释放航空潜力。中国要进一步提高航空运营能力，必须采取关键措施，放宽民用航空准入标准，改进机制及程序方法，鼓励创新；也要鼓励跨学科合作，保持中国在安全方面的良好表现。

美国公司是航空技术、服务和专业知识的重要供应商。美国企业投入大量资源帮助中国航空市场不断扩容，并提供了各种丰富的专业培训课程。商会中美航空合作项目（ACP）（共有 36 家美国会员企业），成立于 2004 年，使命是支持中国航空领域的发展，并组织合作交流，提高航空安全、容量和效率。

中国航空业迅速发展，运行程序及标准与美国航空业接轨，美国将从中受益。中美航空合作项目每年耗资数百万美元开展技术援助、专业培训等活动，促进美国航空业的发展，推动中国航空领域的持续增长。这项工作对两国来说互利共赢。航空产品和服务是美国向中国出口的大类之一，飞机是制成品中的大类。

在本章节中，商会筛选了一些中国航空业发展中需要广泛关注的问题，同时也对有利于行业发展的一些进展表示了肯定。主要内容涉及完善制度能力以适应当前及未来的增长、现存监管挑战、可持续发展、航空公司运营、标准和认证以及通用航空和商用航空运营。

现存航空体系挑战

稳进增强中国空域管理体系，提高运营效率

稳妥地增强中国的国家空域管理体系对满足中国日

China's aviation development that would benefit from our mutual attention, while recognizing the progress being made in several areas that are important to the growth of the aviation sector. These include important subjects related to institutional capabilities being adapted to current and future growth needs, ongoing regulatory challenges, sustainability, airline operations, standards and certification, and general and business aviation operations.

Ongoing Aviation System Challenges

Safely Enhancing China's Airspace System and Improving Operational Efficiency

Safely enhancing China's national airspace management system is a critical aspect in sustaining China's aviation growth. China has much to gain from its current aviation system capabilities, including adapting US best practices in system-wide management to more efficiently use airspace, while also offering benefits in reductions in fuel burn, air pollution, flying time, and delays without compromising safety. Such measures will simultaneously offer new tools to manage the introduction of new entrants, including unmanned aircraft, increasing aircraft operations (including general and business aviation) and lead to increased movement of people and goods.

The surge in air traffic has significantly increased pressure on China's large and complex airspace system, a challenge experienced globally. Although China's aviation system has a world-class safety record and growing passenger and cargo aircraft operations, signs of stress are evident. These include acknowledged persistent delays at airports throughout the country, en-route bottlenecks, and a continuing shortage of slots. US and Chinese aviation interests have worked together to identify and implement new or improved capabilities that better utilize China's national airspace for civil aviation purposes. However, reducing limits on current airspace accessibility, further expanding capacity management techniques, and further incorporating national system-wide procedural efficiencies would alleviate currently congested airspace and offer airlines greater operational certainty while maintaining safety.

Measures recently taken by the CAAC have led to 'penalty boxes' being imposed on select airports with poor on-time performance. The 'penalty box' provisions do not permit charters, extra sections, or newly scheduled operations until air traffic control, airports, and air carriers improve on-time performance. Bringing to fruition programs and activities designed to expand and enhance China's airspace management capabilities will minimize, even eliminate, the need for a 'penalty box' solution that penalizes the operator and the traveling public.

AmCham China applauds the progress the CAAC has made toward implementing a national Air Traffic Flow

Management (ATFM) and System Wide Information Management (SWIM) system that incorporates China's unique collaborative decision-making model (CDM). We support further integration of the national airspace and continued work to achieve safe and efficient airspace system management and adapting international best practices to address China's unique needs and structure. In turn, this will allow for new opportunities in "delay prevention" rather than "delay response," effectively fostering the anticipated growth in the aviation system. AmCham China also recommends that CAAC continue efforts to adopt key recommendations contained in ACP's Shanghai Area Airspace and Ground Optimization technical assistance project throughout the airspace system.

Climate Change Obligations: Advance Energy Conservation, Emissions Reduction and Sustainability

Climate change is a critical global issue. Since 2011, CAAC has issued guidance to accelerate energy conservation and emissions reduction (ECER) across the aviation industry. This guidance includes goals to reduce energy consumption and carbon dioxide emissions through technological and management innovations. We are pleased that CAAC is adopting regulations to promote the use of more energy efficient vehicles, reduce use of auxiliary power units (APUs), and increase the use of Ground Power Units (GPUs).

Our members recognize China's continued efforts to use state-of-the-art building materials and implement green airport building standards. We recommend that China increase awareness of the impact of construction processes on energy use and the environment. Adopting national standards for clean construction equipment and processes will generate significant improvements in local air quality.

Progress and continued efforts to create effective and efficient national airspace system management will also have direct benefits on capacity, energy savings, and emissions reduction, while maximizing the benefits of ECER-related programs. Well-planned airfield taxiway and gate layout design can substantially reduce aircraft taxi times. By continuing to adopt procedures and airline operations that utilize the capabilities of aircraft equipped with the latest navigation technologies, the CAAC's Air Traffic Management Bureau (ATMB) will fulfill expectations to achieve greater benefits for aviation sustainability.

AmCham China recommends that the CAAC and ATMB continue to adapt NextGen (US) and Single European Sky ATM Research (SESAR) (EU) technologies and utilize them in China's national aviation system management model, including best practices in procedures, measurements, and communication methods, offering new capabilities to all participants in China's aviation system, including air traffic centers, airlines, and airports, to reduce stress on the avia-

益增长的航空发展需求至关重要。通过加强中国现有航空体系的能力（包括高效使用管理整个系统的空域，降低燃料消耗和空气污染，缩短飞行时间，减少航班延误）对中国大有裨益。这些措施也同样有助于无人机等新技术的发展、新航空公司数量增长、促进飞行业务（包括通用航空与商用航空）以及人员和货物的流通。

航空运输量的激增对中国复杂的大型空域体系带来了巨大压力。尽管中国空域体系的安全性世界一流，而且中国仍在扩大其客货运输量，但其面临的压力十分突出：全国范围内大量航班延误，航路瓶颈和航班起降时段长期不足。美中两国航空界共同努力，确定并实施了新的或改进的能力，以更好地利用中国的国家空域用于民用航空。减少对当前空域可及性的限制，进一步扩展容量管理技术以及进一步纳入全国性的体系程序效率，将缓解目前拥挤的空域，并在保持安全性的同时为航空公司提供更大的运营确定性。

近期中国民用航空局采取措施，对某些航班延误严重的机场进行处罚。处罚条例要求在空管、机场和航空公司未能有效提升航班准点率的情况下，不允许包机运营，也不允许增加新的航班运营。尽管实施这些措施的出发点是好的，实施旨在扩大和增强中国空域管理能力的计划和活动，能够减轻甚至解决“处罚式”解决方案会对运营商和公众出行造成不利影响。

商会对中国民用航空局通过协同决策系统（CDM）实施全国航空流量管理和全系统信息管理方面取得的进展表示欢迎。商会同时也认为，中国仍需推行更全面的全国性空域改革，着重于灵活、安全和高效的系统管理，吸取国际经验，使之适用于中国独特的架构、满足自身发展需求。同时，中国还应着力防患于未然而不是航班延误后的应急响应，这样才能更好地满足航空领域的预期增长需求。商会还建议民航总局采纳中美航空合作项目上海空域和地面优化技术支持项目中的一些关键建议。

气候变化责任：推动节能减排和可持续发展

气候变化是一个重要的全球性问题。中国民用航空局于2011年发布《关于加快推进进行节能减排工作的指导意见》，致力于推动航空业节能减排工作。指导意见要求通过技术和管理创新来实现减少能源消耗和二氧化碳排放的目标。商会很高兴看到民航总局制定法规推动使用更节能的飞机，减少辅助动力装置（APU）的使用，

取而代之加大使用地面动力装置（GPU）。

商会会员企业赞扬中国不断努力使用最为先进的建筑材料，实施绿色机场建设标准。然而，中国能够也应该充分认识到施工建设过程对能源和环境的影响。建设施工设备和流程采用国家绿色标准将大大改善地方空气质量。

重视提高中国空域系统管理效率将为扩容、节能和减排带来直接效益，同时也能有效实现节能减排相关项目效益的最大化。合理的机场滑行道和登机口布局可以大大减少飞机的滑行时间。空中交通管理局（空管局）着力于采用最新导航技术程序及航线运营，有助于民航空管局进一步推动航空的可持续发展。

商会建议中国民航空管局继续在国家航空系统中有效利用新一代（美国）和欧洲天空一体化航空流量管理研究技术，包括流程、评估方式和奖励机制，鼓励包括空管中心、航空公司和机场在内的各方积极参与到中国的航空系统中来，推动流程优化，提高运营效率。

航空公司的运营和问题

航线运营灵活性

商会促请中国给予航线运营更大的灵活性，比如允许运营商通过所有的进出境点进行规划和运营，而非将其限制在当前的城市。或许在新型冠状病毒肺炎疫情结束后，中国可以提供相关的政策变化，使国际运营商能够在当前和将来可能开放的港口进港和离港，并且取消当前基于城市的出入港限制。需特别强调的是，全球航空业将试图从新型冠状病毒肺炎疫情中复苏，而中国的灵活性政策可以成为一个重大进步和鼓励举措。国际运营商目前不准许基于航行条件（如天气或航路因素）改变航线，也无力在涉及军事管制拒绝时处理复杂流程。有策略地及时重新规划航线可以减少机场拥堵和延误，并为客户提供更好的服务。这些措施需要航空运营商、空管局以及协同决策体系流程中的军队部门的密切合作。中国如今拥有最先进的飞行计划处理中心（FPFC），能够协调所有的国际航线请求。这对运营商来说是一个长期性的问题，也是往返中国的航班运营中最优先考虑的问题之一。此外，中国必须考虑改善往返上海的航线的空域和航线系统，因为运营商认为其效率非常低下，且很容易导致重大延误。

tion system by safely incorporating efficiency.

Air Carrier Operations and Issues

Route Operational Flexibility

AmCham China urges China to allow more operational route flexibility, such as permitting operators to plan and operate via all entry/exit points, instead of limiting them to the current city/pair restrictions. Perhaps in the aftermath of the COVID-19 pandemic, China can deliver a much desired policy change that would enable operators to enter and exit China via all entry/exit points. Current entry/exit restrictions that are based on city/pairs could be eliminated. This is especially relevant as the global airline industry will be recovering from the significant disruption caused by the COVID-19 pandemic, and such flexibility by China would signal a significant improvement. International operators are currently not permitted to make changes to a flight route based on changing conditions (e.g., weather or other en-route factors) without undertaking a complex process involving military approvals that are subject to denial. Tactical and timely re-routing ability reduces airport congestion and delays while delivering better customer service. Such measures would require close coordination between airline operators, ATMB, and the military in a CDM process. China now has a state-of-the-art Flight Plan Processing Center (FPPC) capable of coordinating all international route requests. This has been a long-term issue with operators and is one of the highest priority issues with respect to flight operations to and from China. In addition, it is imperative that China consider improvements in the airspace and route system for routes to and from Shanghai which is, in the opinion of operators, very inefficient and prone to significant delays.

We are pleased to see that China completed its most significant air traffic control adjustment in October 2019, featuring the implementation of the new national flight procedure and adjustment of the nation-wide airspace and flight routings. Nearly ten thousand kilometers of route mileage was added, and an upgraded flight data system was incorporated into the Air Traffic Control (ATC) system throughout China. Along with the operation of the new Beijing Daxing Airport, flight procedures at 18 major Chinese airports were adjusted. The outbound and inbound routes between Beijing and Guangzhou were, for the first time, separated from each other to improve airspace efficiency.

CAAC's annual 2020 work plan demonstrates its further intention to upgrade the east China coastal routing system and to further optimize RECAT standards to increase air traffic flow. In 2019, with 5.6 percent more flights year-on-year, the average flight on-time rate reached 81.7 percent. This is an increase of 1.5 percent and marks the second year in a row that flight on-time performance surpassed 80 percent.

Improved Weather Forecasting

Improved weather forecasting and the timely use of forecasts is essential for solving issues related to flight delays and safety. As most departures are committed more than two hours in advance, it is impossible to delay or cancel flights before takeoff, even if severe weather at the destination makes it impossible to land. These flights then enter holding patterns or are diverted to alternate airports, resulting in unnecessary fuel usage, pollution, and increased flight controller and pilot workloads which decrease safety margins. AmCham China encourages China to adopt the key recommendations contained in ACP's 2019 *Quantifying Weather Impacts Aviation Study*, including incorporating these into the continued development of a roadmap for a nationwide air traffic flow system. Continuous improvement in ATM-specific aviation weather capabilities requires sustained support, such as investing in weather observation, numerical weather prediction, computing, and weather product interpretation, sharing, and application capabilities.

The design of civil aviation infrastructure is evolving in response to climate change; this will affect operational planning and efficiency. Improved aerial weather forecasting will help to mitigate the impact of climate change-induced extreme weather such as prolonged heat waves, changes in the timing of seasonal weather patterns, and help compensate for unprecedented weather patterns that arise in a particular region or even an isolated airport geography.

Optimize Flight Slot Utilization

Slot constraints at China's major airports, including Beijing, Shanghai, and Guangzhou, increasingly hinder growth. Optimizing slot allocation procedures and utilization is necessary to meet the growth and efficiency targets set by the State Council. AmCham China recommends the following steps to further improve air services:

- Continue to improve and optimize slot allocation procedures for both domestic and foreign air carriers, and ensure slot allocation is in line with IATA's Worldwide Slot Guidelines,
- Establish a fair and transparent process including measures to ensure the timely re-allocation of unused or under-utilized slots,
- Encourage CAAC to replicate the slot allocation reform from Shanghai Pudong and Guangzhou Baiyun Airports to additional airports, and allow "slot swaps" between air carriers, instead of the current "auction" and "lottery plus paid fee" structure,
- Extend airport operating hours at key airports to increase capacity without the need for additional facilities,
- Ease or eliminate arbitrary limitations on daily operations which do not account for actual usage and

商会很高兴看到中国于 2019 年 10 月完成最最大范围的空中交通管制调整，此次调整执行新的飞行程序，并调整了全国的空域及航路路线。新增里程近万公里，全国空中交通管制系统实现飞行数据系统升级。随着北京大兴机场的运营，中国 18 个主要机场的飞行程序发生了变动。京广航路的进场和离场航线首次隔离运行，提高了空域运行效率。

中国民用航空局 2020 年工作计划显示其有意进一步升级华东沿海地区航路，优化尾流重新分类 (RECAT) 标准，增加空中交通流量。2019 年，航班同比增长 5.6%，平均航班正点率达到 81.7%，标志着航班准点率连续第二年超过 80%。

天气预报准确度提高

高质量的天气预报以及及时使用天气预报对解决航班准时问题至关重要。由于大部分航班都是提前两个小时出发，即便目的地天气恶劣到无法着陆，也不大可能在起飞前延误或取消。这些航班因此将进入等待状态或者被转移到备选机场，从而导致不必要的燃料使用、污染，并且增加调控员和飞行员的工作量，降低安全系数。商会建议中国采纳中美航空合作项目量化天气对航空影响研究报告中的重点建议，开发全国空中交通流量体系的路线图。持续改进空中交通管理航空气象能力需要得到大力支持，如持续在天气观测、数值天气预报、计算和天气预报产品解读、共享和应用能力等方面投资。

民航基础设施设计的标准正在根据气候变化而发展，这也将影响运行计划和效率。航空天气预报的改进有助于影响关键决策，从而减缓气候变化。这些气候变化包括更频繁的极端天气、更长的高温酷暑、非正常换季以及在区域或机场发生的当地前所未有的天气模式。

提高航班起降时段利用效率

中国北京、上海和广州等主要机场的航班起降时段申请限制日益严重地影响经济增长。优化航班起降时段分配使用流程有助于实现国务院设定的经济增长和能效目标。商会建议通过以下措施进一步改善航空服务：

- 继续改善优化国内外航空公司的起降时段分配程序，确保起降时段使用符合国际航空运输协会的《全球起降时段指南》；
- 建立公平透明的程序，包括采取措施确保及时重新

分配未使用或未充分使用的起降时段；

- 鼓励中国民用航空局将上海浦东机场和广州白云机场实施的起降时段分配改革推广到其他机场，允许航空公司“交换起降时段”，而非仅仅的“拍卖”和“摇号加付费”模式；
- 增加主要机场的机场运营时间，无需增加设施即可提高运营能力；
- 减少或消除日常运营中未考虑到实际使用情况的随意限制，鼓励充分利用非高峰时间；
- 消除所有货运作业不得在白天运行的时段限制，以及对双联合终端运营的限制；
- 继续着力于减少大型机场的地面延误。这种延误对下行线路连接、成本造成重要影响，并给客户带来不便。长时间延误也会增加废气排放，加重空气污染。

提高枢纽效率

中国应继续努力改善中国国际门户机场运营，努力将他们打造成为国际和国内交通枢纽。北京、上海和广州的枢纽机场发展对中国和美国航空公司都至关重要。中美都有市场份额流失到第三方国家的情况，这些国家绕过中国的主要国际枢纽吸引中美旅客和货运。据估计，中国超过 40% 的二线城市由来自国外枢纽的第三国航空公司提供服务。

应制定政策推动货运和客运及时换乘，简化行李处理流程，有助于中国从其他地区枢纽中抢占更多环太平洋空中交通流量市场份额。提高运营效率还可以改善客户体验，打开中美新的二级市场。

商会建议允许北京和上海浦东机场的中转旅客托运行李，提高枢纽效率，将为机场创造更多就业机会和收入，同时也能吸引更多中转至或来自某些东北亚城市的乘客。提高枢纽运营效率和代码共享合作对中美两国航空公司来说两全其美，都大有益处。

货运行业的问题

国家物流业依赖于准时的航空运输。随着中国提高全球出口价值链，国际物流业发挥了越来越重要的作用。禁止在“起降时段协调”机场向全货机提供日间起降时段，以及禁止机场之间串飞的政策对快递服务造成了负面影响。快递服务是中国对外贸易的核心，以上政策也影响着中国在全球供应链中的竞争力。有迹象表明，中

- encourage greater use of off-peak hours,
- Eliminate limitations on day-time slots for all-cargo operations, as well as restrictions on co-terminal operations,
- Continue to reduce or eliminate ground delays at major airports. Such delays have a significant impact on down-line connections, costs, and inconvenience to customers. Lengthy delays also generate more emissions, aggravating air pollution.

Increase Hub Efficiency

There needs to be a continued emphasis on improving the operation of China's international gateway airports to make them more efficient as international and domestic hubs. Development of Beijing, Shanghai, and Guangzhou as recognized hub airports is a high priority for US and Chinese airlines alike. China and the US are both losing market share to third-party countries whose airlines attract US-China passengers and cargo, bypassing China's primary international hubs. By one estimate, more than 40 percent of China's second-tier cities are served by third-country carriers from hubs outside of China.

Policies should be developed to facilitate timely transfers of cargo and passengers, as well as streamlined baggage handling. This would help China capture a larger share of Pacific Rim air traffic from other regional hubs. More efficient operations would also improve customer experience and open new, secondary markets between the US and China.

AmCham China recommends increasing hub efficiency by allowing baggage checks for transfer passengers in Beijing Capital and Shanghai Pudong airports. This will generate more jobs and revenue for the airports, while also helping to attract more passengers transferring to or from other cities in Northeast Asia. An increase in efficient hub operations and code-share cooperation could result in carrier gains for both China and the US.

Cargo Industry Issues

The international logistics industry, which depends on well-timed air transportation, will be increasingly important to China as its economy moves up the global export value chain. Express delivery services have been negatively affected by a nationwide policy against giving new day-time landing and take-off slots to all-cargo operators at "slot coordinated" airports, as well as policies preventing co-terminalization operations between these airports. Express delivery services are central to China's foreign trade and these policies affect the country's competitiveness in global supply chains. There have been suggestions that CAAC may be considering a further relaxation of the "freighter window," in which slots for all-cargo operations are limited to night-time hours at principal Chinese airports. Progress on this issue would provide welcome market relief.

Co-terminalization allows a carrier to service two or more locations in a foreign country with the same aircraft as part of a continuous journey. The airline is not allowed to carry domestic traffic between these two points (i.e., to engage in cabotage), but is otherwise free to provide air service between each of the co-terminalized points and points outside the foreign country. Co-terminalization allows airlines, especially all-cargo carriers, to develop services to smaller, interior destinations by combining their services with larger, more established destinations, thereby maximizing efficiency and reducing cost, while also mitigating market risks for shippers and manufacturers.

Customs

As discussed in the 2018 and 2019 White Papers, overly complex customs regulations continue to hamper the evolution and growth of the logistics industry in China. China currently lacks practical and nationally consistent customs procedures to allow in-bound goods to flow through China's gateway airports within a realistic aviation timeframe. This deficiency discourages the movement of international air cargo to China's central and western regions. Affected carriers are increasingly moving hub operations to airports outside of China or not serving these internal regions at all. As the need for air cargo services grows and networks become more complex, the need for greater scheduling flexibility also increases. Demand for cargo services is not static, but fluctuates widely in response to holidays, seasons, and consumer demand. More flexible and timely procedures are needed to allow air cargo carriers to adapt their schedules to changes in demand and to recover from schedule disruptions elsewhere in their networks.

Coordinating Efforts for Service Efficiency and Cost-Effectiveness

The already high costs at major Chinese airports continue to rise, further impeding aviation operations. Aviation fees in China are already among the highest in the region, while local monopolies in the provision of necessary supplies and services, such as fuel, cargo handling, and government filings, are an expensive drag on efficiency. CAAC, airports, border agencies, and airlines must work together to lower costs at China's international airports.

Aviation Security

Aviation security remains an integral part of the transportation sector, for both passenger and cargo operations. The CAAC is responsible for regulation and implementation of security procedures at airports throughout mainland China. Efforts to strengthen aviation security should continue, as any security breaches can cause immediate and lasting damage or harm. Information exchanges, assessments, and

国民用航空局可能正在考虑放宽“货机窗口”：中国主要机场的所有货运运营起降时段只能在夜间。改善货运时段限制问题将进一步促进市场发展。

串飞允许航空公司用一架航机在国外两处或多个地点提供联程服务。航空公司不得在两点之间承运国内交通（即沿海航行权），但是可以在串飞站点与境外站点之间提供航空服务。串飞使航空公司尤其是全货机能够将地域广阔、更为成熟的目的地服务输送给地域较小、较为封闭的目的地，从而帮助航空公司最大化飞机使用的效率，降低成本，同时降低货主和厂商的市场风险。

海关

商会 2018 年、2019 年白皮书均提到海关管理规定过于繁杂，持续阻碍中国物流业的发展。中国目前缺乏实用且全国各地统一的海关流程，无法保证入境货物在现实可行的航空时间范围内通过中国的门户机场，不利于国际航空货运流入中国中西部地区。受影响的航空公司逐渐将中心业务转移到中国境外的机场，或者根本不为内部地区提供服务。随着航空货运服务需求增长，航运网络日益复杂，调度排程也需要随之更加灵活。货运服务需求不是静态的，根据节假日、季节、消费者需求不断变化。流程需要提高灵活度和及时性，让航空货运承运人根据需求调整其计划安排，从容应对网络中所有的计划冲突。

协调服务效率和成本效益

中国主要机场本已高昂的成本持续呈现上升，进一步阻碍了航空业务的发展。中国的航空费用在地区内无出其右，而本地对燃料、货物装卸和政府文件等必需物资和服务的垄断更是极大地影响了效率。中国民用航空局、机场、边境机构和航空公司必须携手合作，降低中国国际机场成本。

航空安保

航空安保仍然是交通运输活动的核心组成部分，包括航空客运和航空货运。中国民用航空局在全国机场范围内规范了操作流程和实施步骤。必须继续把工作重点放在这一重要方面，任何违反安全规定的行为都可能产生直接和持久的影响。作为维持和提高航空安全基线的有效方法，应继续强有力地通过评估和培训等形式，开展与其他国家在安全方面的交流与合作。

危险品管理规定的执行

商会建议中国政府加强对危险品（比如锂电池）的生产商和承运人的监管。商会会员尽力遵守《中国民用航空危险品运输管理规定》（CCAR 276-R1）的规定，但是仍然担心其他方可能不会严格执行本规定。加强对生产商和承运人等其他方遵守中国危险品管理条例的执法力度有利于创造公平竞争的环境。

通用和商业航空业发展

商会会员赞赏中国承诺持续发展通用航空与商用航空。通用航空去年飞行量达到 1.25 亿小时，同比增长 13.8%。市场前景依然光明，但通用、商用航空业仍处于早期发展阶段，需要政府出台加大优惠和激励力度，推动行业扩展。商会很高兴看到已经取得一些进展，但是比预期要慢，因为政府重点关注的商用航空领域迅速发展，但面临诸多挑战如空域拥挤有限，机场拥堵不堪等。

商会欣闻中国重视持续完善通用商用航空安全政策规定，尤其是关于促进低空飞行服务系统的发展，推动通用航空验证，加快无人机标准的建立等问题有诸多讨论。

民用直升机行业也经历了实质性增长和发展，但具体的运营挑战依然存在。直升机机队在过去五年间增长了 200% 以上，目前已增加到约 1200 架，预计 2022 年将增至 1500 架。

在直升机行业的其他细分领域中，航空医疗服务和公共安全（包括执法，搜索和救援以及消防）需要给予重视和支持。

会员企业希望中国持续重视将通用航空融入中国全国空域体系的挑战。通用航空的增长在很大程度上取决于中国政府采取措施改善设施和政策基础，将提高中国的运输效率和流动性，创造就业计划，并帮助满足人道主义需求。

商会建议继续推动以下几个方面的工作：

- 继续支持开放所有高度空域。增加直接航线，使通用航空与商用航空飞行器可以在最佳飞行高度，提高燃油利用效率并减少对环境的影响；
- 进一步建设通用商用航空机场，完善整合商用机场准入，支持地面固定基地运营商（FBO）之间以燃料补给、设施维护及其他功能为标准进行竞争；

trainings conducted in partnership with other countries around the world is an important element of aviation security and such activities should be continued.

Enforcement of Dangerous Goods Regulations

AmCham China recommends that the Chinese government impose stricter supervision on manufacturers and/or shippers of dangerous goods (e.g., lithium batteries). Our members strive to comply with the requirements of the *China Civil Aviation Dangerous Goods Transportation Administration Regulations* (CCAR 276-R1) but remain concerned that other parties may not be doing so. Stronger enforcement of China's dangerous goods regulations on other parties such as manufacturers and shippers would help to ensure a level playing field for all operators.

General and Business Aviation Industry Development

AmCham China members applaud China's commitments to the continued development of general aviation and business aviation (GABA). General aviation hours reached 125 million last year, showing an annual increase of 13.8 percent. The market outlook remains bright, but the GABA sector remains in an early stage of development and will require adoption of more favorable government policies and incentives to continue expanding. We are pleased that while some progress is being made, it is certainly slower than anticipated due to the government's primary attention to its fast-growing commercial aviation sector that faces crowded, limited airspace and airport congestion challenges.

Our members were pleased to see that attention has been given to continuous improvement of safety policies and regulations in the realm of GABA. Specifically, there has been discussion about promoting development of a low-altitude flight service system, promoting the validation of general aviation, and speeding up the establishment of unmanned aerial vehicle (UAV) standards.

The civil helicopter industry has also experienced substantial growth and development, although specific operational challenges persist. The helicopter fleet has grown by more than 20 percent each year during the last five years to over 1,200 aircraft today. It is estimated that by 2022 the number will increase to 1,500.

Among other beneficial segments of the helicopter industry, the Air Medical Services and Public Safety fleets (including for law enforcement, search and rescue, and firefighting) require attention and support.

Our members hope that the challenge of incorporating GA into China's national airspace system will remain a priority. GA growth depends heavily on Chinese government actions to improve the physical and policy infrastructure. Such

actions will provide China with greater transportation efficiency, mobility and development through the creation of more jobs, and the ability to address humanitarian needs.

AmCham China recommends facilitating:

- Continued support for initiatives that would liberalize airspace at all altitudes. Increased direct routings enable GABA aircraft to operate at optimum altitudes for greater fuel efficiency and reduced environmental impacts,
- Further development of GABA airports, improvement of and integrate access to commercial airports, and support for competition amongst Fixed Base Operators with standards for fueling and maintenance facilities, and all other functions,
- Differentiation of safety regulations based on types of GABA aircraft to accurately match risk mitigation to the cost of regulation,
- Improvement of the Flight Service Station system to provide online weather and other flight planning information and filing services,
- Providing air carriers with access to domestic aeronautical information so that it can be utilized to create the charts and maps required to support safe flight throughout China,
- Creating helicopter routes through urban areas and a low altitude air-space infrastructure that combines helicopter and fixed-wing traffic simultaneously,
- Integrating helicopters and helipads into the development of a tiered hospital system, with a standardized emergency response dispatch system,
- Providing government funding, subsidies, and support for air medical services and the advanced training and equipment required for operators and associated companies, and
- Improving access for foreign flight training companies to conduct pilot training in China.

Aligning Validation Processes with International Standards

AmCham China congratulates the CAAC on their third year of validation activity under the new Federal Aviation Administration FAA-CAAC Implementation Procedures for Airworthiness (IPA) and the US-China Bilateral Aviation Safety Agreement (BASA) signed in October 2017. The FAA-CAAC IPA clearly indicates that the FAA and the CAAC are increasing collaboration, that the Chinese and US governments are making an effort to reduce burdens on both regulators and industry, and that the sector is growing increasingly aligned through international validation principles.

Our member companies celebrate the IPA as an agreement

- 根据通用商用航空机型实施不同的安全条例，精准采取安全风险调控措施；
- 完善飞行服务站系统，提供在线天气预报和其他飞行计划信息及报文服务；
- 允许航空承运商访问国内航空情报，便于产出所需图表和地图，支持中国的飞行安全工作；
- 创建通过城市地区的直升机航线，建设将直升机和固定翼机相结合的低空空域基础设施；
- 将直升机和直升机停机坪整合到分层医院系统的研发中，并配备标准化的应急响应调度系统；
- 提供政府资金、补贴，支持航空医疗服务，提供运营商和联营公司所需的高级培训和设备；
- 增加外国飞行培训公司进入中国进行飞行员培训的机会。

认证程序与国际标准接轨

商会祝贺中国民用航空局根据美国联邦航空管理局和中国民用航空局于2017年10月签署的新《适航实施程序》(IPA)和《中美双边航空安全协议》开展认证第三年。《适航实施程序》表明美国联邦航空管理局和中国民用航空局不断加强合作，中国政府在努力减轻监管机构 and 行业的负担，而且行业日益与国际认证原则接轨。

商会会员企业认为《适航实施程序》协议将为航空产品和服务创建一个常规、可预测的监管环境。相关关键指标认证周期及认证技术范围均会常规化，在预测范围内。2019年，美国相关产业已经看到了《适航实施程序》在小范围项目上的初步效益，期待《适航实施程序》未来在其他方面的认证也能发挥积极影响，尤其是涉及安全要素、CCAR34、CCAR36相关的认证。

中国民用航空局和美国联邦航空管理局在通力合作共同制定《适航实施程序》贯彻落实五年路线图。美国企业以分享经验、建言献策为己任，确保把《适航实施程序》给两国带来的利好落到实处，实现其原定价值。因此商会建议中国民用航空局加强与美国联邦航空管理局的合作，向制造商宣贯《适航实施程序》，并在整个行业内分享成功经验。

中国民用航空局计划将适航认证程序系统化，并于2020年建立适航审定和管理制度，商会会员对此表示赞赏。商会对中国民航总局采取一些标准流程时间协助规划表示肯定，同时也理解这些流程有时也难以实现。会

员企业发现使用这套管理模式与其他机构如美国联邦航空管理局和欧洲航空安全局合作时，达到了互利互惠的效果，因为这些机构的流程时间已经比较成熟。

商会会员支持中国民用航空局和美国联邦航空管理局的愿景，即《适航实施程序》将提高项目的可预测性和效率。我们鼓励美国联邦航空管理局和中国民用航空局继续合作，明确并简化特别重点项目(SEI)、显著标准差异(SSD)以及进一步建立技术信心的领域(AFTCB)清单。此次合作是美国和中国航空业共同确保《适航实施程序》成功实施的关键。同时，需要从每个项目中收集行业反馈的流程，进一步改进《适航实施程序》或中国民用航空局和美国联邦航空管理局的实施程序。

为支持实现项目可预测性，商会建议中国民用航空局为每个项目类型建立标准流程时间(包括简化验证(SV)、有限技术验证(LTV)和完整技术验证(FTV))。可以为每个安全要素制定程序，特别是SEI和AFTCB，便于申请人和中国民用航空局在认证项目期间相互理解，进一步理解中国民用航空局的期望，可以降低中国民用航空局、美国联邦航空管理局和申请人所需的总流程时间和需要耗费的资源。

商会会员对具体项目的程序和流程时间等细节将纳入项目工作计划表示认可，认为工作团队在整个项目中可以轻而易举地更新工作计划，这是大有裨益的。为支持此类弹性项目协议，商会建议中国民用航空局考虑将工作计划内容制定和更新委派给认证中心的工作团队，可以避免增加与工作计划更新相关的流程时间，并使美国联邦航空管理局、原始设备制造商和中国民用航空局集中精力关注最高安全风险的领域。

考虑到认证中心在刚刚起步时面临繁重工作，中国民用航空局重组航空器适航司卓有成效，商会对此感到钦佩。商会鼓励中国民用航空局继续提高效率，减少标准流程，有利于在未来几年提高认证验证量。尽管航空业的快速增长增加了监管挑战，但中国美国商会认为，《适航实施程序》是缓解中国民航巨大工作量的长效工具。商会也建议要同等重视飞机维修训练。

近期民航局提出的关于双发延程运行空停率的规则过于严格。鉴于目前在已建立的行业空停率标准下，双发延程运行已然表现出众。技术运行限制不应仅基于对空停率数值限制的规定性比较，过于严格的空停率恐与

that will bring a more predictable regulatory environment for aviation products and services. Key metrics of interest are predictable project length and predictable project technical scope. US industries have seen initial benefits from IPA implementation on small-scope projects in 2019 and look forward to positive IPA impacts on larger validations in the future – of particular interest are validations that involve Safety Elements, CCAR 34, and CCAR 36 aspects.

CAAC and the FAA are collaboratively working on a Five-Year Roadmap for the Implementation of the IPA. US companies are committed to sharing their experience and advice to ensure that the intended value of the IPA is realized and beneficial to both countries. AmCham China therefore recommends that CAAC expands its efforts with FAA to educate manufacturers on IPA and share best practices across the industry.

Our members applaud CAAC's plan to systematize the airworthiness certification procedure, and to establish an airworthiness approval and management system in 2020. AmCham China commends CAAC for introducing some standard flow times to help with planning, while also acknowledging that these flows will not be met from time to time. Companies have found such measures to be mutually beneficial in projects with other agencies, such as the FAA and European Aviation Safety Agency (EASA), which have established flow times.

AmCham China members support CAAC and FAA's vision that the IPA increase project predictability and efficiency. We encourage FAA and CAAC's continued collaboration to clarify and simplify the special emphasis items (SEI), significant standards differences (SSD), and areas for further technical confidence building (AFTCB) lists. This collaboration is key to making the IPA a joint success for the US and China aviation industries. A process is needed to collect industry feedback from each individual project to further improve either the IPA or CAAC and FAA's implementing procedures.

In support of project predictability, AmCham China recommends that the CAAC establish standard flow times for each project type (including Streamlined Validation (SV), Limited Technical Validation (LTV) and Full Technical Validation (FTV)). Procedures can be developed for each of the safety elements, especially SEI and AFTCB, so that both applicants and CAAC have a mutual understanding of CAAC's expectations during a validation project. This should reduce the overall flow times and resources required from the CAAC, FAA, and the applicant.

AmCham China members recognize that project-specific procedures and flow time details will be built into the project workplan. We see benefits in a workplan being easily updated throughout the project by working-level teams. To support such flexible project-specific agreements, AmCham China recommends that CAAC consider delegating work-

plan content and updates to the certification center working-level teams. This may avoid increased flowtime associated with workplan updates, and allow FAA, OEM, and CAAC to focus on the areas of highest safety risk.

Given the difficulties that certification centers face in starting operations and responding to heavy initial workloads, CAAC's recent gains from its aircraft airworthiness department re-organization are commendable. AmCham China encourages CAAC to continue to pursue efficiencies that decrease standard flows in anticipation of more certification and validation volume in the coming years. AmCham China recognizes the IPA as a long-term enabler supporting CAAC's substantial workload even as rapid growth in the aviation industry creates more regulatory challenges. Aircraft maintenance training is suggested to be of equal importance.

CAAC's proposed ETOPS operation rules on IFSD rates are overly restrictive and do not take into account the excellent performance record of ETOPS operations under the established industry IFSD rate standards. Technical operating restrictions should not be based solely on a prescriptive comparison to numerical IFSD rate limits, and such overly restrictive rates will only serve to invalidate the fundamental objective of ETOPS propulsion system monitoring. In addition, introducing further regulatory requirements on ETOPS IFSD rate limits would have no appreciable positive effect on safety. We also have concerns regarding the increased restriction being placed on engine operations and maintenance requirements at high altitude airports in southwest China. We hope that more thought will be given to the need to balance overly restrictive safety regulations with the maturity and safety record achieved by the industry under the current standards.

The US aviation industry has benefited from the close FAA-CAAC working relationship to align certification, validation, inspection and manufacturing approval procedures and processes. AmCham China applauds the progress made to date while respecting the differences in our two systems and the benefits of China's development to the global aviation community. Further progress will require a close working relationship with all stakeholders, including CAAC, FAA, EASA, Transport Canada, the National Civil Aviation Agency of Brazil, and other aviation agencies.

双发延程运行推进系统监控的基本目标相左。此外，进一步提高双发延程运行空停率的监管要求对安全不会产生明显的积极影响。我们同时也对提高中国西南地区高原机场发动机运行限制和维护的要求表示担忧。我们期望中国民航局考虑在发动机成熟技术和良好可靠性记录的基础上平衡过于严格的规范标准与行业发展之间的关系。

美国联邦航空管理局和中国民用航空局的紧密合作，统一审定、验证、检查和制造验收的程序与流程。美国航空业进而从中受益。商会赞赏迄今取得的进展，同时尊重两国体系的差异以及中国民航发展对全球航空界的益处。我们希望下一步，所有利益相关者能密切合作，包括中国民用航空局与美国联邦航空管理局、欧洲航空安全局、加拿大交通部、巴西国家民航局等其他航空机构。

建议

对中国政府：

- 加快建设综合性的全国空中交通管理框架和全国空域容量量化系统，通过加强系统管理有效支持机场运营商、空域飞机制造商和航空公司网络开发专家的工作。
- 持续改进国家航空天气预报系统，提高枢纽机场运营效率、降低航班延误率；
- 继续认证流程与国际标准接轨；
- 继续加强基础设施建设、推进政策基础框架，推动中国空域体系的通用航空增长。
- 通过制定方案在整个体系内推行应用，继续推动高效和安全地的新一代和单一欧洲天空空中交通管理研究技术在空中交通管理程序中的有效应用。
- 继续与国际民航组织，其他国际组织和标准机构合作，以在全球范围内协调和协调无人机监管框架和无人机交通管理能力发展的全球标准。

Recommendations

For the Chinese Government:

- Accelerate progress towards an integrated national ATFM framework and the national airspace capacity quantification system which will effectively support airport operators, airspace planners, and airline network development specialists through enhanced system management.
- Continue to improve the national aviation weather forecasting system to increase hub airport operational efficiency and alleviate delays.
- Continue to align certification processes with international standards.
- Continue to strengthen physical and policy infrastructure to enable GA growth within China's national airspace system.
- Continue the effective utilization of efficiency-boosting NextGen and SESAR technologies and adaptation of air traffic management procedures to realize the safety and efficiency benefits by implementing plans to encourage and facilitate their system-wide use.
- Continue to work with ICAO, other international organizations and standards bodies to globally harmonize and align on global standards for UAS/UAM regulatory frameworks and UAS Traffic Management capability development.

Direct Sales

Introduction

Direct sales was introduced to the Chinese market in the early 1990s and has expanded rapidly since then. Direct sales refer to the practice of marketing and selling products directly to the consumer outside a fixed retail location. Sales can happen at the home, workplace, or other non-store locations. According to statistics from the State Administration for Industry and Commerce (now reconstituted under the State Administration for Market Regulation following a reorganization in 2018), there were 163 direct sales companies in China by 1995, reflecting the industry’s rapid early growth. The growth of direct sales operators was unfortunately accompanied by a rise in “pyramid” schemes, a term for business models that prioritize often unsustainable recruitment strategies rather than the sale of tangible goods or services to generate revenue. Pyramid schemes are considered scams and are illegal in many countries. Despite the Chinese government’s commitment to eradicating such schemes, pyramid schemes often disguise themselves as legitimate direct sales businesses making it difficult for regulatory authorities to distinguish between legitimate and illegitimate operators.

To tackle pyramid schemes, the government has generally responded with strict industry-wide regulations that adversely affect legitimate industry stakeholders. An industry-wide ban instituted in 1998 was not lifted until passage of the *Regulation on Direct Sales Administration* (Direct Sales Regulation) in 2005. According to the Ministry of Commerce (MOFCOM), as of December 2019, 91 direct sales enterprises had been approved for operation in China. The World Federation of Direct Selling Associations reported in 2019 that China had become the largest global market for direct sales (US \$35.7 billion or RMB 252.8 billion), tied with the US (US \$ 35.3 billion or RMB 249.9 billion). As China transforms its economy towards a high-value, consumption-based economy, the direct sales industry can play an important role.

AmCham China appreciates the steps taken by China over the past twenty years to legitimate the direct sales industry. The provisions mandated by the 2005 Direct Sales Regulation (and related regulations) are no longer consistent, however, with the demands of the current market or

China’s changing consumer needs. Consequently, direct sales companies are handicapped in their struggle to compete with other actors in the sales industry in comparison with the United States as shown below in Table 1.

Table 1. Summary table Comparing Regulations on Direct Sales Industry in China and the US

| China | US |
|--|--|
| Direct sales companies (domestically-invested and foreign-invested) can only sell products from one of six categories. These products must be manufactured by the company itself, or its parent or subsidiary company. | No restriction on the type or origin of products sold by direct sales firms. |
| Team commission compensation structures are not permitted. | No restrictions on the structure of company compensation model(s). |
| Direct sales companies must establish a local service center in every locality (county) where it operates. | No requirements on the number or location of company service centers. |

Ongoing Regulatory Issues

Excessive Regulation of the Direct Sales Industry Limits its Competitiveness

Online sales sectors, WeChat online stores, and platforms in the sharing economy (e.g., Didi Chuxing, Airbnb) have all benefitted from eased regulation over the past several decades. The Direct Sales Regulation however imposes strict restrictions on sales, employee compensation, recruitment

直销

引言

直销模式于上个世纪 90 年代初期引进中国并迅速发展，该销售模式意味着“产品的营销和销售不需要通过固定的零售商而直接到达消费者端。在家里，上班时或者其他非购物场所都可以发生购买行为”。据国家工商行政管理总局（已于 2018 年划归为国家市场监督管理总局）统计，截止到 1995 年，中国已有 163 家直销公司，这显示了该模式早期在中国的快速发展。然而，直销的发展也伴随着“传销”模式的扩张，“传销”是一种靠以“拉人入伙”方式而不是销售有形商品或提供实际服务来进行牟利的商业模式，这种模式在许多国家都认为是诈骗或违法行为。尽管中国政府一直致力于打击非法传销，但是他们经常谎称自己为合法直销，试图混淆市场和监管机构的视听。

政府采取严格监管的方式来遏制传销的蔓延，也影响了直销行业的发展。从 1998 年开始，中国经历了为期 7 年的全面禁止直销的阶段，直到 2005 年颁布了《直销管理条例》，直销行业才进入了稳健发展的新时期。截止到 2019 年 12 月，商务部网站公示全国共有 91 家企业通过审批获得直销经营许可。世界直销协会联盟于 2019 年在报告中指出，中国已经成为世界第一大直销市场（357 亿美元）。随着中国逐步将经济转型为高价值，消费驱动的模式，直销也会扮演更重要的角色。

中国美国商会十分赞赏中国政府在过去二十年推动直销行业合法化所做出的努力，然而 2005 年出台的《直销管理条例》以及其他相关规定已经无法满足中国现今市场和消费者不断变化的需求。因此，相比于美国同行，中国直销公司在与其他销售行业竞争对手的竞争中处于劣势地位，详情请见表 1：

表 1：中美直销法规的对比

| 中国 | 美国 |
|---|-------------------------|
| （国内外）直销公司只能销售六类特定产品，产品必须经有公司本身，母公司或子公司生产。 | 没有对直销公司产品类型和来源的限制。 |
| 不允许“团队计酬”模式。 | 没有对计酬模式的限制。 |
| 直销公司必须在经销的每个区（县）都建立一个地方服务中心。 | 没有对直销公司设立地方服务中心及其数量的要求。 |

现存监管挑战

直销行业的过度监管限制了其竞争力

线上购物平台、微商以及共享经济平台（比如滴滴出行、爱彼迎）在过去十几年都享受到了监管放松带来的好处。然而《直销管理条例》对直销行业在销售、职工薪酬、人才招聘和培训以及日常经营方面的限制很大程度影响了直销行业的发展。如此严格的管控无法为直销行业提供一个与传统销售和电商平台竞争的公平环境。

销售佣金的限制

目前的法规对直销从业人员的合理销售佣金和报酬的种类及数额进行了限制。《条例》规定直销人员报酬总额不得超过其所售产品收入的 30%。此外，《禁止传销条例》规定严禁实行基于新招募直销人员销售业绩（常称为“团队计酬”）的计酬方式。以上两种限制违背了行业惯例，也是对直销人员获取合理佣金的不公平对待。以市场为导向的灵活计酬模式和比例普遍被其他销售行业所采取，因此商会建议废除上述限制。

and training, as well as daily operations. Facing a plethora of restrictions, it is difficult for the direct sales industry to compete on a level playing field with conventional retailers and e-commerce platforms.

Restrictions on Sales Compensation

Current regulations restrict the type and amount of compensation for which direct sales employees are eligible. The Direct Sales Regulation limits sales commissions to a maximum of 30 percent of personal sales. In addition, the *Regulation on the Prohibition of Pyramid Selling* stipulates that compensation based on the total volume of sales by an entire team (team commission) is prohibited. These two restrictions run counter to standard industry practices and place unfair compensation restrictions on direct sales staff. More flexible compensation rates determined by market forces are common across competing sales industries. AmCham China recommends that these restrictions on direct sales be lifted.

In November 2013, the Supreme People's Court, the Supreme People's Procuratorate and the Ministry of Public Security jointly issued the *Opinions on Issues Relating to the Application of Laws in the Handling of the Crime of Organizing and Leading Pyramid Schemes*. This interpretation stated, for the first time, that "pyramid selling activities based on the sale of goods and for which sales performance is the basis for 'team commissions' will not be treated as criminal." The document also provided a judicial distinction between "multi-level selling and marketing" and "pyramid schemes." Multi-level marketing strategies are a common practice across the direct sales industry, thus AmCham China views this interpretation as a positive development. Current regulations, however, need to be updated to reflect the Court's November 2013 interpretation.

Restrictions on the Scope of Direct Sales Products and Original Equipment Manufacturer Products

Aside from a few special categories expressly prohibited by law, conventional stores and e-commerce platforms have the freedom to choose what products to sell based on the needs of the market. They can choose to sell their own products, products manufactured by other entities on their behalf, or products manufactured by third party entities. The direct sales industry, however, is restricted to selling only products from the following six categories: cosmetics, cleaning supplies, select food items, healthcare devices, small kitchenware products, and household appliances. Direct sales enterprises are limited to selling company products (including those of its parent or holding company). In a rapidly evolving marketplace, such restrictions directly disadvantage the direct sales industry. Moreover, these restrictions prevent the direct sales industry from taking advantage of globally integrated supply chains and original equipment manufacturers (OEMs) in China to support Chinese government efforts to reduce industrial overcapacity and enhance efficiency.

Existing Regulations are Inconsistent with China's Evolving Economy

In 2005, the Direct Sales Regulation was needed to address deficiencies in market regulation. The sector benefited, and sales volumes, business regulation, and public knowledge with respect to direct selling all improved as a result.

Since the Direct Sales Regulation was issued in 2005, both the direct sales industry and the Chinese consumer market has fundamentally changed. As China's economy has developed over the years, it has also become increasingly complex. The rise of e-commerce platforms, online stores, and sharing platforms have changed how Chinese consumers interact with retailers, producers, and the marketplace. Today's consumers are both familiar with and comfortable operating across a variety of online and brick and mortar retailers and platforms. Consumer protection and commercial distribution regulations have developed rapidly. Consequently, the framework established by the 2005 Direct Sales Regulation is no longer adequate to govern the industry and places direct sales enterprises at a distinct disadvantage vis-a-vis competitor firms in other industries.

Direct sales enterprises are still required to establish a customer service center in every city where they do business or where their products are marketed. The original intention of this requirement was to ensure the availability of after-sales consumer services at a time when online sales and service were not common. The rapid rise in global telecommunications, social media platforms and electronic communication has rendered this costly requirement superfluous. Indeed, this requirement forces firms to invest scarce resources to provide services that are unnecessary. AmCham China urges the relevant authorities to consider updating industry regulations on such business operations as recruitment, compensation, training, and management in close consultation with industry stakeholders.

Recommendations

For MOFCOM, SAMR, and the State Council:

- **Revise the Direct Sales Regulation as soon as possible, by relaxing restrictions on compensation for direct sales agents and allowing compensation to be based on the aggregate volume of the sales team under a direct sales agent, provided it is based on sales volume and not on the number of sales agents recruited.**
- **Revise regulations related to the Direct Sales Regulation as soon as possible to lift restrictions on the direct sales industry, including the following:**

2013年11月，最高人民法院、最高人民检察院、公安部联合印发《关于办理组织领导传销活动刑事案件适用法律若干问题的意见》，该司法解释首次明确规定“以销售商品为目的、以销售业绩为计酬依据的单纯的‘团队计酬’式传销活动，不作为犯罪处理”，更是在司法领域将“多层次销售”和“传销”进行了区分。多层次销售战略是直销行业所普遍采用的，因此商会认为该司法解释显示了直销法规的良性发展，然而现行法规应当与该司法解释协调一致。

直销产品范围和委托加工产品限制

无论是传统店铺销售，还是线上销售渠道，除了极少数法律明文禁止的特殊品类外，完全可以根据市场需求自主决定其经营的产品品类，既可以销售自己生产的产品，也可以销售委托加工或者其他主体生产的产品。而直销行业，却将可以销售的产品局限于化妆品、保洁用品、保健，食品、保健器材、小型厨具、家用电器六个品类的产品。同时，进一步限制直销企业只能销售企业自己生产的产品（包括母公司或控股公司）。在当前市场热点快速切换，竞争激烈的时代背景下，这样的规定大大束缚了直销企业的手脚，使直销行业在以市场为基础的竞争中处于非常不利的局面。然而，在供应链高度整合、委托加工普遍开展和中国制造业产能过剩的背景下，不允许直销企业充分利用社会现有产能，也与中国政府大力去产能、提升效能的做法背道而驰。

直销现有法规与现实行业、社会的发展脱节

2005年颁布的《直销管理条例》符合了当时的社会以及监管单位的有效执法的需求，条例实施以来产生了非常积极的影响，直销行业销售总额不断提升、直销企业运作越来越规范、公众对直销的认知和认同度明显提升。

但是，自2005年《直销管理条例》颁布以来，当今的中国直销行业发展现状、消费者和中国整体市场经济的成熟程度已经发生了根本性的变化。如今，各种电商、微商、共享经济的崛起已然改变了中国消费者与零售商，生产商以及市场方的关系。如今消费者喜欢并享受各种线上和实体经销商及平台，相关的消费者和经营法规也发展迅速。在所有这些条件下，2005年由《条例》所构建的直销法规体系已然与行业、社会的发展严重脱节，成为束缚直销行业正常发展的制度性因素。

目前，直销法规仍然要求直销企业在开展经营的城市中的每一个城区设立固定的服务网点，承担消费者咨询和服务的职能，这在立法初期“线上销售”业态还不常见的情况下，有着保障消费者获得售后服务的现实意义。但是如今全球电子通讯，社交媒体和线上交流的发展已经让这样的规定失去意义，并且这不仅大大加重了企业负担，也造成了社会资源的严重浪费。因此，商会建议当局考虑对直销行业，如人员招募，计酬，培训和管理等方面的相关法律法规进行重新规划和制定。

建议

对商务部、国家市场监督管理总局、国务院：

- 尽快修订《直销管理条例》，放宽直销人员计酬限制，允许以直销人员下属销售团队的销售总量为依据计酬，但不能以招募的人员数量为依据计酬。
- 尽快修订《直销管理条例》配套规定，给直销行业松绑，如：
 - 放宽产品范围，允许委托加工产品作为直销产品；
 - 取消或放松服务网点方面的要求。
 - 放宽直销员培训管制，减少对直销人员培训及会议等企业日常经营行为的限制。

- Ease product category restrictions and allow the sale of OEM products by direct sales firms,
- Remove or relax local service center requirements,
- Reduce restrictions on direct sales agent training and other daily operations by enterprises.

Education

Introduction

International education exchange became a leading element in China’s economic reform after the Cultural Revolution. In the winter of 1978, the college entrance examination was reinstated, and China initiated a parallel series of programs to encourage international education exchange. Foreign experts and scholars were invited to give lectures in China, and Chinese students began to go abroad for their education. AmCham China hopes education continues to play a leading role in China’s *Reform and Opening*.

AmCham China acknowledges China’s remarkable achievements in the field of education. Both primary (ages 6-11) and lower-secondary (ages 12-14) enrollment rates now approach 100 percent. According to the Ministry of Education (MOE), spending on education has exceeded four percent of GDP for seven consecutive years. In terms of international student exchange, the MOE reported there were just over 492,000 foreign students in total studying in China in 2018. There were a reported 662,000 Chinese students studying abroad

in tertiary institutions in 2018, and the US has long been a favored destination.

The size of China’s domestic private education market is significant and growing rapidly. Estimates of the size of the market range from RMB 1.6 trillion (US \$238 billion) to RMB 2.6 trillion (US \$382 billion). Foreign-invested education institutions want to participate in this growing market and provide high-quality education services and opportunities. Unfortunately, in recent years AmCham China members have encountered multiple challenges in the education sector, particularly in private education. As we discuss throughout this chapter, issues have arisen in the form of a more challenging investment environment, licensing and operational challenges, difficulties in hiring foreign teachers and students, and tax reforms that increase the cost of private education for schools and students. AmCham China urges the Chinese government to address the issues identified here in consultation with stakeholders.

Private Education

Private Education Investment

After four decades of *Reform and Opening*, China’s per capita income has grown significantly, and China’s middle class is the largest in the world. Improving education is an important element in China’s future growth prospects, and demand for education services is growing. Spending on education in China is significant. Education industry market analysts estimate global private consumer spending on education to be nearly US \$1 trillion in 2017. North America accounts for around US \$320 billion, with China accounting for around \$300 billion. In 2018, nine of the 30 largest listed global education companies were Chinese, compared with just two in 2013. Therefore, education providers will need to ensure their products can meet an increasingly high set of expectations. As long as demand remains strong, the education sector will remain an attractive destination for foreign investors, whose investments are an important part of the education products and services available in China.

Foreign investment in the education sector is traditionally channeled through two main areas: international schools and private education training. Foreign-invested international

| | Chinese Students Studying in the United States | US Students Studying in China |
|---------|--|-------------------------------|
| 2014/15 | 304,040 | 24,203 |
| 2015/16 | 328,547 | 21,973 |
| 2016/17 | 350,755 | 23,838 |
| 2017/18 | 363,341 | --- |
| 2018/19 | 369,548 | 20,996 |

Source: Open Doors 2019 Report, Institute of International Education China Power Project, Centre for Strategic and International Studies, Ministry of Education, PRC

Note: 2017/18 data could not be confirmed

教育

引言



国文化大革命后，国际教育交流成为中国经济改革的重要领域。1978年冬季恢复高考，之后不久开始了双向的国际教育交流，邀请国外的专家学者来华讲学，并开始向发达国家派遣留学生。中国美国商会（商会）希望教育在中国的改革开放中继续扮演重要角色。

商会赞赏中国在教育领域取得的显著成就。基础教育方面，九年义务教育稳步扎实发展，小学（6-11岁）和初中（12-14岁）入学率接近100%。国家财政拨款对教育的投入连续7年超过GDP的4%。在国际学生交流方面，教育部报告称，2018年在华留学生总数略高于49.2万。据报道，2018年有66.2万名中国学生高中毕业后到国外高等院校留学，长期以来，美国一直是备受中国学生青睐的留学国家。

| | 中国赴美国留学生人数 | 在华美国留学生人数 |
|---------|------------|-----------|
| 2014/15 | 304,040 | 24,203 |
| 2015/16 | 328,547 | 21,973 |
| 2016/17 | 350,755 | 23,838 |
| 2017/18 | 363,341 | --- |
| 2018/19 | 369,548 | 20,996 |

资料来源：中华人民共和国教育部战略与国际问题研究中心国际教育研究所《2019年门户开放报告》

中国民办教育发展迅猛，市场规模庞大，预计在1.6万亿元（2,380亿美元）到2.6万亿元（3,820亿美元）之间。外资教育机构期待参与民办教育市场，提供高质量

的教育服务和机会。不幸的是，近年来，商会会员在教育领域，尤其是民办教育领域遭遇了多重挑战：下文会详述出现的问题，包括投资环境更具挑战性、许可证和运营方面的挑战、聘用外籍教师难和招聘外籍生源难，以及税收改革增加了民办教育成本。商会促请中国政府与利益相关方协商解决上述问题。

民办教育

民办教育投资

改革开放40年来，中国人均可支配收入显著提高，中等收入群体规模全球最大，人民群众对教育的需求日益增长，是人民对美好生活需求的重要部分，这对教育提出了更高的要求。中国在教育方面大力投入。教育行业市场分析师预计，2017年全球私人教育支出将接近10,000亿美元，北美地区约3200亿美元，中国约3000亿美元。2018年，全球最大的30家上市教育公司中有9家是中国企业，而2013年只有2家。因此，教育企业需要确保其提供的产品能够满足人民越来越高的期望。只要需求持续强劲，教育仍将是外国投资的热门行业，而外商投资是中国教育产品和服务的重要组成部分。

外商在教育领域的投资包括国际学校和教育培训两个方面。投资国际学校不仅对外国外交官和外籍人士子女的教育很重要，而且对有出国念高中和大学愿望的中国儿童也很重要。它们是中国教育生态系统的重要组成部分，商会希望政府给予持续的政策支持。

近期一些监管变化已经影响或可能影响基础教育企业的商业模式，如：

- 2017年9月《中华人民共和国民办教育促进法》（以下简称《民办教育法》）规定，中国的九年义务教育（1-9年级）只能是非营利性教育。

schools serve not only the children of foreign diplomats and expats, but also provide opportunities for Chinese children to engage with their foreign peers and gain exposure to international education opportunities. They are an important element in China's education ecosystem. AmCham China hopes that the Chinese government's policies will continue to support international schools.

Recent regulatory changes have impacted or have the potential to impact the business models of K-12 education companies, including:

- The September 2017 *Law of the People's Republic of China on the Promotion of Private Education* (Law on Private Education) provides that China's nine-year compulsory education (Grades 1-9) can only be not-for-profit in nature,
- The August 2018 draft *Implementing Regulations for the Law of the People's Republic of China on the Promotion of Private Education* (Revised Draft) bars private companies from engaging in mergers and acquisitions, franchise arrangements or contractual agreements to control not-for-profit private schools,
- The November 2018 *Several Opinions of the Central Committee of the Communist Party of China on Deepening the Reform and Standardization of Preschool Education* provides that kindergartens may not be publicly listed and that all kindergartens on land reserved for educational use must be converted to low-cost kindergartens.

AmCham China urges a steady, phased approach to education reform, contrary to the more immediate and far-reaching impact these regulations could have if enacted. For example, the November 2018 Opinions will force many private kindergartens to relocate their operations. The Opinions would be more effective if implemented with a simultaneous revision of the requirements for obtaining a kindergarten operating license. Currently, an extremely limited number of properties have been able to meet the stringent requirements to obtain a license. Requirements include having dedicated outdoor playground space of at least four square meters per student, daily sunshine requirements, and certification of earthquake-resistant structures capable of withstanding an 8.0 magnitude earthquake. Education-use properties are also subject to tuition restrictions equal to those of government kindergartens, driving private operators to expensive commercial properties. This will result in kindergartens having to pay significantly higher rent, resulting in a sudden jump in kindergarten tuition rates for families.

Despite regulatory challenges, there are robust investment opportunities in grades 10-12. International education and bilingualism continue to be popular themes among Chinese students and their parents. The United Kingdom has developed a strong brand name for British education in China, with schools such as Wellington College, Dulwich College, and Harrow School opening campuses across major cities

in China. These schools have traditionally catered to the children of foreign diplomats and foreign passport holders, but all have opened bilingual dual-curriculum programs to accept local students. US-branded K-12 schools, however, have not been active in entering the Chinese market despite a strong interest in American curriculums. AmCham China recommends the US government work closely with AmCham China education members to explore opportunities to promote entry of American education into China and to leverage interest in American curriculums.

Regulatory Environment for Foreign-Invested Private Education Centers

Private education training has been among China's fastest growing sector in recent years. Rapid growth has been accompanied by a number of troubling developments in educational practices, as well as complications stemming from issues yet to be clarified in law. AmCham China recognizes the importance placed on this sector by the Chinese government and has maintained a cooperative stance in the face of government-led inspections of private education facilities, including foreign-invested education institutions. We hope that after two years of frequent inspections, the operations of private education training institutions will be allowed to resume their regular pace. AmCham China continues to ask for respect for teachers and the classroom environment and that these inspections be conducted in line with relevant laws and regulations. AmCham China therefore recommends that regulatory authorities avoid excessive and repeated inspections, in particular those conducted by such departments as education, market supervision, fire, and work safety. We also recommend that inspection authorities recognize education training institutions for adults and those for children operate differently and should be treated differently with respect to inspections.

Prior to 2016, foreign investment in private training and education facilities was a relatively smooth process. There were no specific restrictions on foreign investment in educational institutions and they were not included in the *National Negative List*. Unfortunately, the second amendment to the *Law on the Promotion of Private Education* was adopted in 2016 and went into effect in September 2017. The Law drew a distinction between for-profit and non-profit education institutions. For the first time, the Law legally recognized for-profit private education institutions, giving them legal status. Article 19 of the Law stipulated that "For-profit private schools may legally generate revenue and school profits must be managed in accordance with the relevant laws." AmCham China welcomed this positive development in its 2019 *White Paper*.

Responding to the problems faced by AmCham China members and reflected in the 2019 *White Paper*, the MOE, the Ministry of Commerce (MOFCOM), and the State Administration for Market Regulation (SAMR) in July 2019 issued a joint Circular after prolonged consultation entitled

- 2018年8月,《中华人民共和国民办教育促进法实施条例(修订草案)》禁止私营企业通过兼并收购、加盟连锁、协议控制等方式控制非营利性民办学校。
- 2018年11月《中共中央国务院关于学前教育深化改革规范发展的若干意见》规定,幼儿园不准公开上市,所有保留教育用途的幼儿园必须转为普惠性幼儿园。

商会促请政府采取稳步、分阶段的方式进行教育改革,否则直接贯彻以上规定可能会产生更直接、更深远的影响。例如,2018年11月发布的《意见》将迫使许多民办幼儿园搬迁经营。《意见》如果能同时修订幼儿园经营许可证的要求,将更加有效。目前,仅有极少数幼儿园建筑能够满足获得许可证的严格要求,包括户外活动、场地生均面积不少于4平方米,每日日照要求,以及能够抵御8.0级的地震的抗震结构认证。教育使用物业也受到学费限制,要求与公立幼儿园收费同等,迫使民办经营者转而使用昂贵的商业房产。这将导致幼儿园租金增高,家庭的幼儿园学费支出也随之突然上涨。

尽管面临监管挑战,但10至12年级教育仍有大量投资机会。国际教育和双语教育仍然是中国学生及其家长的热门话题。英国的教育品牌在中国取得稳健发展,惠灵顿公学、德威公学和哈罗公学等学校在中国各大城市开设了分校。这些学校传统上为外国外交官和外国护照持有者的子女提供服务,但都开设了双语课程,接收当地学生。然而,尽管中国市场对美国课程兴趣浓厚,但美国品牌的基础教育却一直没有积极进入中国市场。商会建议美国政府与商会教育会员密切合作,探索促进美国基础教育进入中国的机会,充分利用中国市场对美国课程的浓厚兴趣。

外商投资民办教育中心监管环境

近年来,发展最为迅猛的是民办教育培训领域。在迅速发展的过程中难免会出现一些发展中的、法律尚未规范的问题。商会认同政府对民办教育培训这一快速发展行业的规范和治理,乐于见到政府对教育领域的重视,并积极配合政府对民办教育(含外资教育机构)行业的检查行动。但希望在过去两年密集的大检查后,能尽快回归常态,依法依规,尊重教育环境与教师。商会提出以下几点建议供参考:主管机关应避免过度、多次重复的检查,特别是教育、市场监管、消防和安检等多个部

门的分别检查;建议检查主管部门认识到成人培训机构和青少年培训机构运营模式不同,要区别对待成人与青少年培训机构。

2016年之前,涉及民办培训和教育设施的外商投资比较顺利。外资教育机构投资并无特别限制,也不在“国家负面清单”之列。直到《中华人民共和国民办教育促进法》第二次修订案于2016年通过,于2017年9月1日起实施。该法首次在法律上承认了营利性民办教育机构,赋予合法地位。该法第十九条明确规定:“营利性民办学校的举办者可以取得办学收益,学校的办学结余依照公司法等有关法律、行政法规的规定处理。”商会在其2019年的《白皮书》中对此表示高度赞赏!

根据外商投资企业在教育领域面临的问题及2019年《白皮书》中反映的问题,2019年商务部、市场监管总局、教育部给与关注、协商、并于2019年7月专门出台了三部委联合文件:《关于做好外商投资营利性非学历语言类培训机构审批登记有关工作的通知》教发厅函【2019】75号(即75号文)。

该文第四条:“外资语言类培训机构开展培训的,执行国家关于校外培训机构的有关规定,按照标准申请办学许可,由教育行政部门办法民办学校办学许可证后,在市场监督管理部门进行法人登记,并符合国家关于外商投资的有关规定。”商会对上述三部委给与的支持、对优化外商投资环境所做出的努力给与高度评价。

然而,75号文的发布并未能解决外资教育培训机构的“准入”问题,外资培训机构注册办证仍然未能实现。我们的会员普遍感到75号文并未得到有效执行,有许多城市,特别是北京和成都,对该文不够理解。症结在于地方教育部门(办学许可证由县级教育行政部门负责审批、颁发,而他们还不能确切解读75号文的含义),与市场监管部门对“非学历语言类培训机构”、对青少年与成人培训机构的理解不一致。由这样一来,外商投资者仍然夹在政策理解差异之中,无法办证。商会呼吁上述三部委能够继续推进一步,解决最后的临门一脚,让外资教育培训机构注册办证得以落实。另外一个重要的问题:民办教育整体翘首以盼的《民促法实施条例》至今尚未出台。有的地方停滞审批新的机构、停止颁发“办学许可证”;有的地方自己出台“暂行办法”等地方政策法规的现象仍在继续。原因仍然是:等候《实施条例》

“Notice on Effective Work in the Examination and Registration of Foreign-Invested, For Profit, Non-Academic Language Training Institutions” (Circular 75).

Article 4 of Circular 75 states that “with respect to foreign language training institutions, training shall be carried out in accordance with relevant national regulations regarding off-campus training institutions. School Operating Permits (SOP) shall be applied for in accordance with relevant standards and administered by the local education department after a private school license has been issued by the market supervision and administration department to the legal representative and in accordance with relevant national regulations on foreign investment.” AmCham China values the efforts of the three government departments to optimize the foreign investment environment.

Circular 75 has, however, failed to fully resolve market entrance, registration, and certification issues facing foreign-invested education and training institutions. Our members have found that Circular 75 has not been implemented effectively, and many cities, particularly at the working level in Beijing and Chengdu, lack a clear understanding of the Circular. The core of the problem lies in inconsistencies between the local education department and the local market supervision and administration department’s understanding of what constitutes a “non-educational language training institution,” or “youth and adult training institution.” The review and issuance of SOPs is the responsibility of county-level education departments, which lack a clear understanding of how to interpret Circular 75. The result of this conflicting interpretation between departments is that foreign investors face barriers in acquiring required operating licenses. AmCham China continues to urge the MOE, MOFCOM, and SAMR to resolve these discrepancies in interpretation so that foreign-invested education and training centers can legally register and conduct their operations. These challenges are compounded by the fact that the final Implementing Regulations for the *Law on the Promotion of Private Education* have yet to be introduced. The response to the lack of final Implementing Regulations has been varied: some localities have halted or delayed issuance of SOPs while other localities have issued their own interim measures, policies and regulations. Each of these localities awaits the publication of the final Implementing Regulations, draft versions of which have undergone two rounds of public comment in April (MOE) and August 2018 (MOJ). Until the final Implementing Regulations are issued, local regulatory authorities have to take matters into their own hand in order to meet local demand for private education services. The result is that private education centers operating nationwide face inconsistent regulatory requirements and often contradictory policies, which complicates and places at risk their business strategies.

In summary, the main regulatory challenges facing foreign education and training institutions are:

- A lack of uniform laws and regulations that leads

to difficulty in obtaining necessary registration and approval for operation;

- Contradictions and inconsistencies between various published regulations, laws, and opinions which creates challenges for both enforcement agencies and foreign training institutions;
- Inconsistent interpretation of regulations between national, provincial, and local governments;
- The lack of a temporary transition period (or grace period) to facilitate understanding of and compliance with new regulations,
- The list of documents required to obtain an SOP is extensive and application processing times are lengthy.

AmCham China urges finalization of the Implementing Regulations for the *Law on Promotion of Private Education* in a manner that facilitates private investment as soon as possible to enable effective implementation, enforcement, and compliance, as well as management of foreign-invested education centers.

Impact of Individual Income Tax Reform on PreK-12 Education

As detailed in the 2019 *White Paper Tax Chapter*, foreign nationals tax-exempt allowances for housing, language training, and children’s education expire on December 31, 2021, following reform of the Individual Income Tax system in 2018 and 2019. The elimination of these tax-exempt allowances for foreign nationals will drastically increase the costs of Pre K-12 international education for these foreign families due to the need to accommodate the cost of the foreign national’s individual income taxes.

Most of the foreign nationals currently receiving housing and children’s education allowances from their employers will experience a substantial increase in their income taxes as a result of this reform. Housing and children’s education are often the largest expenses facing a foreign national living abroad. With limited and costly educational options for their foreign children and housing options that are generally more expensive than average housing options in the region, income taxes on foreign nationals will significantly increase. The tax burden on the family’s housing and children’s education of a foreign national with two children enrolled in international schools is expected to increase by RMB 400,000 to RMB 600,000 or more annually. This tax increase will almost certainly impact the employer’s and/or foreign national’s decision to live and work in China.

The costs of a quality international school education for the children of foreign nationals living in China are currently among the highest in the world. These international schools are predominately led and staffed by foreign educators, who will also be impacted by the elimination of these tax-exempt allowances for foreign nationals. In order to continue to

的出台。2018年4月，教育部就《实施条例》公开征求社会意见。2018年8月10日，司法部对送审稿进行另一轮征求意见。时至今日，未见主管部门发布最终的《民办教育促进法实施条例》。《实施条例》未出台，各地又面临民办教育发展的需求，只能“各自为政”以应对需求。对在全国范围内运营的教育机构，需要面对各种不同的法律解读与政策，困难可想而知。

外资教育培训机构面临的问题可以归纳为：

- 缺乏清晰的统一法律法规，审批注册困难；
- 法律与政府文件之间有矛盾，对执行机构和外资培训机构都造成困难；
- 中央与地方、以及各地政府部门对法律的理解不一致，对运营造成困难
- 新的政策出台缺少过渡期，整改期。

商会促请《民办教育促进法实施条例》尽快出台，推动私营投资，以使政府主管部门暨执法者、及教育培训举办者皆明确如何执法和守法，也利于外商投资教育中心的管理。

个人所得税改革对基础教育的影响

如2019年《白皮书》税务章节所述，2018年和2019年个人所得税制度改革之后，外籍员工享受的住房补贴、语言培训费和子女教育费等津贴免税优惠将于2021年12月31日到期。由于支出个人所得税费用而取消对外籍员工的免税津贴将大大增加外籍家庭的国际基础教育费用。

由于个人所得税改革，目前可从雇主获得住房补贴及子女教育津贴的大多数外籍员工将大幅度增加需缴纳的个人所得税。而住房和子女教育费用往往是外籍人士身居国外面临的最大开支。由于外籍人士子女的教育选择有限，费用高昂，而且可选的住房也通常比当地的平均住房选择更昂贵，外籍员工的所得税将大大增加。假设外籍员工有两个孩子在国际学校就读，家庭住房及子女教育的税收负担预计每年增加40万至60万元人民币以上。此类增税肯定会影响雇主和/或外籍员工赴中国生活工作的意愿。

目前，外籍员工子女在中国接受优质国际学校教育的费用位居世界前列。而且，他们就读的国际学校的领

导及工作人员也主要是外籍人士，同样会受到取消外籍员工免税津贴政策的影响。国际学校要想继续提供有竞争力的工资和福利，就需要在不大幅增加学费的情况下为员工提供同等待遇。预计学校开支将至少增加10%至15%才能保证外籍员工在取消免税津贴后能获得同等水平的补偿。学费的上涨只会进一步加剧外籍员工在中国缴纳更多税款的影响。

企业所得税免税优惠对于公办学校和民办学校的差异化适用

根据《中华人民共和国民办教育促进法》的规定，民办学校享受国家规定的税收优惠政策；其中，非营利性民办学校享受与公办学校同等的税收优惠政策。

- 根据财税〔2004〕39号《财政部、国家税务总局关于教具税收政策的通知》，对学校经批准收取并纳入财政预算管理的或财政预算外资金专户管理的收费不征收企业所得税；
- 接受其他单位或者个人捐赠的收入；
- 按照省级以上民政、财政部门规定收取的会费；
- 不征税收入和免税收入孳生的银行存款利息收入；
- 财政部、国家税务总局规定的其他收入。

但是，目前的企业所得税法并未明确上述税务处理的合法性，而仅对于符合条件的非营利组织的特定收入给予了企业所得税免税优惠。在实践中，各地税务机关对于民办学校的企业所得税处理存在差异。《重庆市人民政府关于进一步促进民办教育健康发展的实施意见》（渝府发〔2018〕19号）规定“对符合西部大开发政策规定的营利性民办学校，”可减按15%税率缴纳企业所得税。商会会员在北京也多次证实，根据《民办教育促进法》，北京的非营利性民办学校能够成功享受企业所得税减免。

在非营利性民办学校与公办学校接受教育部、相关教育委员会以及民政部等机构的监管时，商会建议《民办教育促进法》规定非营利性民办学校适用的税收优惠政策也进一步推动落实。

聘用外籍教师面临的困难

外商投资的国际学校及培训机构均大量聘用外籍教师，外教的外语技能使得中国的学生可以直接与母语教

provide these foreign employees with a competitive salary and benefits, international schools will be challenged to provide similar employee packages without significantly increasing school fees. It is anticipated that school expenses will increase by at least 10 to 15 percent to keep the foreign employees at a similar level of compensation after these tax-exempt benefits are removed. The anticipated increase in school fees will only further compound the impact of the increased taxes paid by foreign nationals in China.

Corporate Income Tax Exemptions for Non-Profit Private Schools and Public Schools

According to the *Law on the Promotion of Private Education*, private schools are eligible for preferential tax policies established by the state and non-profit private schools should be eligible for the same preferential tax policies as public schools. Preferential policies available to public schools include:

- School fees approved for collection and included in the school's budget or other extra-budgetary funds (Caishi [2004] No. 39 *Notice of the Ministry of Finance and State Taxation Administration on Tax Policy for Teaching Aids*),
- Donations from "other units" or "individuals,"
- Contributions collected in accordance with the regulations of civil and financial departments above the provincial level,
- Interest income from bank deposits derived from non-taxable income and tax-exempt income,
- Other income as stipulated by the Ministry of Finance (MOF) and the State Taxation Administration (STA).

China's current corporate income tax regime does not recognize this preferential tax treatment, however, and only grants corporate income tax exemptions for specific income earned by qualified not-for-profit organizations. In practice, there are differences in the treatment of corporate income tax for not-for-profit schools in various jurisdictions by local authorities. The Chongqing municipal government *Implementing Opinions on Further Promoting the Healthy Development of Private Education* (Yufufa [2018] No. 19) stipulates that for-profit private schools that meet the requirements are eligible for a reduced corporate income tax rate of 15 percent. Our members have also experienced several instances in Beijing where not-for-profit private schools have successfully reduced their corporate income tax burden under the *Law on the Promotion of Private Education*.

Because regulatory responsibility for public schools and not-for-profit private schools is spread across several agencies including the MOE and associated sub-national education commissions as well as the Ministry of Civil Affairs, AmCham China recommends that the preferential tax policies described in the *Law on the Promotion of Private Education* be applicable to not-for-profit private schools.

Difficulties Facing Foreign Teachers

Foreign-invested international schools and education institutions employ many foreign teachers. Foreign teachers bring a unique skillset and enable Chinese students to benefit by learning foreign languages and subject material directly from native speakers. AmCham China appreciates the Chinese government's efforts to standardize and streamline the visa application and Work Permit process. The Foreign National Work Permit program launched in April 2017 helps schools initiate Work Permit applications and classifies foreign nationals in three categories: A, high-end talent; B, industry professionals (including foreign teachers); and C, seasonal/temporary laborers. The assessment standards for A, B, and C categories remain unclear. Demand for original and authenticated application materials combined with the requirement that applicants be 25 years or older with more than two years of work experience are onerous and dissuade young foreign talent from coming to China.

In light of these challenges, we propose the following recommendations to make it easier for private education training institutions to hire foreign teachers:

- Expand the scope of foreign nationals qualified to teach English in China. In countries like Sweden and the Netherlands, the use of English is widespread. In the sixth annual English Proficiency Index compiled by international education company Education First (EF), which measures English language proficiency globally, the Netherlands and Sweden scored first and second overall in 2019. Expanding the pool of qualified teachers will give Chinese students and schools access to more foreign talent,
- Reduce the barriers for foreign teachers to change jobs or employers before their current contract expires. Currently, when foreign teachers want to change jobs, their existing Work Permit cannot be transferred. Teachers must apply for a new permit from their home country. Often the hiring party must pay a fee to the teacher's current employer to compensate for the unfinished contract. We recommend that the process be streamlined, and foreign teachers be permitted to change jobs and obtain new Work Permits while resident in mainland China,
- Simplify the time-consuming document notarization and authentication process required for Work Permits in ways that ensure the authenticity of these documents without imposing unnecessary administrative burdens. We suggest that applicants be allowed to submit original documents in lieu of authenticated copies of the same documents. (For further discussion of ongoing visa issues for foreigners in China please refer to the White Paper Visa Chapter).

师学习外语及相关学科内容。商会赞赏中国政府为规范简化签证申请及工作许可流程所作的努力。2017年4月开始实施的《外国人来华工作许可制度》对外国工作外国人分为A、B、C三类，即外国高端人才，外国专业人才（含外国教师），以及从事临时性、季节性工作的外国人。但目前对外籍人才的A、B、C类别的评定标准仍不是很清楚。同时，对申请者原户籍的若干证明材料的要求、对申请者的年龄需为25岁及以上、工作两年以上经验等规定过于死板，都会影响优秀外国人来华工作。

鉴于这些问题，商会建议采取以下措施简化民办培训机构聘用外籍教师的流程：

- 扩大在中国执教的外国公民资质范围。英语在瑞典和荷兰等国家使用很普遍。由国际教育公司英孚（EF）编制的第六版英语熟练度指标报告显示，荷兰和瑞典在2019年分列第一和第二名。扩大合格教师队伍将为中国学生和学校输送更多外国人才。
- 降低外籍教师在当前合同到期前换工作或雇主的障碍。目前，当外籍教师想换工作时，他们现有的工作许可证不能转移，必须从本国申请新的许可证。招聘方通常必须向教师的当前雇主支付费用，补偿未完成的合同损失。商会建议简化程序，允许外籍教师在中国大陆居住期间换工作并获取新的工作许可证。
- 简化繁重的文件公证和工作许可证的认证流程，确保证明文件的真实性，不会造成耽搁和行政负担。建议工作许可证申请人应获准提交原件代替同一文件的公证副本。（有关在华外国人签证问题的更多细节，请参阅签证章节）

外籍学生面临的困难

中国越来越受外国学生的青睐。中国教育部估计，2018年约有49.2万外国学生在中国大陆的高等教育机构学习，高于2011年的29万人。外国学生总数中，近4.2%（20,996人）来自美国。尽管中国越来越受欢迎，但签证问题仍然制约着外国学生在中国工作学习的能力。

目前，外籍在华留学生转换签证种类时必须离境办理申请。留学生毕业后在中国找到工作，将其学生签证转为工作许可证时，必须到中国以外的国家申请。这个过程无论对学生（经济方面）还是雇主（延迟招聘）来说，

都代价高昂。商会建议中国政府修改法规，允许外国学生在中国境内直接转换签证。

然而，2015年和2017年在北京和上海推出的试点计划允许学生毕业后参与实习，或在学习期间在某些特区创业，或者允许某些学生毕业后获得工作许可并不再要求两年的工作经验。商会备受鼓舞，鼓励政府实施其他政策，持续更便捷地为符合要求的学生和专业人士提供所需的签证和其他文件。

在线教育

在线教育极大地促进了教育的普及发展。中国政府正努力配合各种新兴的在线教育工具和方法，尤其是在线培训。为配合网络教育的发展，教育部于2019年5月发布了（《关于规范校外线上培训实施意见》教基函【2019】8号）。《意见》规定的在线平台外籍教师资格与课堂教学教师资格相似（所需资格参见2017年《外国人来华工作许可制度》）。《意见》还要求，要在培训平台和课程界面的显著位置公示培训人员姓名、照片、和教师资格等信息，公示外籍培训人员的学习、工作和教学经历。

商会会员认识到，管理迅速发展的在线教育工具是一项挑战，课堂教学外籍教师和在平台教学外籍教师要求不一致等问题已经出现。商会希望政府继续改进对课堂和在线外籍教师的监管，确保两类外籍教师都符合外国专家局规定的资格要求。

建议

对中国政府：

- 在改革开放40年的基础上，继续在教育领域制定、实行积极开放、便利、可持续的政策。
- 尽快完成并发布《中华人民共和国民办教育促进法实施条例》，依法规范治理民办教育领域，保证“促进”和“鼓励”落到实处。
- 政府采取稳步、分阶段的方式进行教育改革，尤其是涉及外商投资企业在教育领域相关投资的改革，否则直接实施近期颁布的规定可

Difficulties Facing Foreign Students

China is becoming an increasingly attractive destination for foreign students. China's MOE estimates roughly 492,000 foreign students were studying in higher education institutions in mainland China in 2018, up from 290,000 in 2011. Close to 4.2 percent (20,996) of the total foreign student population is from the US. Despite its increasing popularity, foreign students still face visa challenges that inhibit their ability to work and study in China.

Currently, foreign students must leave China to convert their visas. International students hired in China after graduation must apply from outside China to convert their student visa to a Work Permit, a costly process for students (financially) and employers (delays hiring). AmCham China urges the Chinese government to amend regulations to allow students to convert their visas within China.

AmCham China is, however, encouraged by pilot programs rolled out in Beijing and Shanghai between 2015 and 2017 that allows students to accept internships after graduation, or start businesses in certain special zones during their studies, or policies that allow certain students to obtain work permits after graduation and waive the requirement of two years' work experience. AmCham China encourages additional policies that continue to make it easier for qualified students and professionals to obtain required visas and other documentation.

Online Education

Online education has expanded access to education more widely across the population. The Chinese government is working to keep pace with a variety of emerging online education tools and methodologies, in particular online training. Consistent with the growth of online education, in May 2019 the MOE issued the *Opinions on Regulating the Implementation of Online Training Courses Outside School* (2019 No. 8). The Opinions specify a set of required qualifications for foreign teachers who teach via online platforms very similar to those who teach in the classroom (required qualifications are defined by the 2017 Foreign National Work Permit program, see above). The Opinions also require that a teacher's basic information and qualifications be displayed and easily accessible via the training platform, including the teacher's name, photo, associated teaching certificates, evidence of academic history, and work/teaching experience.

Our members appreciate that regulating a rapidly expanding plethora of online education tools is a challenge and they have experienced inconsistencies in the application of requirements for foreign teachers in the classroom and those teaching via online platforms. AmCham China hopes the government will continue to improve the regulation of foreign teachers in the classroom and online and ensure both

types of foreign teachers meet the qualification requirements defined by the Foreign Experts Bureau (FEB).

Recommendations

For the Chinese Government:

- **Consistent with the past 40 years of *Reform and Opening*, continue to design, implement, and legislate policies to promote a more open, accessible, and sustainable education sector.**
- Clarify and disseminate implementing regulations for the *Law on the Promotion of Private Education* as soon as possible. Govern private education institutions according to standards defined by the Law.
- Pursue a steady, phased approach to reforms in education regulation, particularly with respect to reforms that will impact investment in the education sector by foreign-invested enterprises, contrary to the more immediate impacts recent draft regulations would have if enacted.
- Consider extending the tax-exempt allowances for children's education currently in place through 2021. Removal of these allowances will significantly increase the cost of educating children of foreign nationals through the combined impact of an increased tax burden for families and higher costs at international schools.
- Simplify visa and work permit application procedures for foreign teachers under the Foreign National Work Authorization Program to enable China to attract the highest quality teachers. Introduce policies that enable foreign students studying in China to transfer to a Work Permit if they have accepted a job.

For the US Government:

- Continue to implement China-US bilateral exchange programs in education, culture, and humanities among others, which benefit students and higher education institutions of both countries.
- Continue to admit Chinese students on appropriate visas to study at US institutions, which benefits the US higher education system and helps it maintain its global competitiveness.
- Encourage the exchange of educational services, a field in which the US is a global leader.
- Collaborate with AmCham China members to promote the entry of American education, schools, and curriculum into China.

能会产生更直接的影响。

- 考虑将目前实行的子女教育免税津贴延长至2021年。取消这些津贴会导致家庭税负和国际学校费用增加，外籍员工子女的教育费用则会大幅增长。
- 简化《外国人来华工作许可制度》中的外籍教师的签证和工作许可申请程序，能够为中国能够吸引最优秀的教师。出台政策，允许在华学习的外国学生找到工作后将学生签证转为工作许可证。

对美国政府：

- **继续执行美中之间达成的一系列教育人文交流的协议，造福两国的高等院校及年青学生。**
- 保持和尊重赴美中国学生的签证政策，美国高等教育体系将会受益，也有利于美国保持全球竞争力。
- 支持和鼓励教育服务行业的双向交流，这是美国顺差的领域。
- 与商会会员合作推进美国教育学校和课程进入中国。

Environment

Introduction

Environmental issues are increasingly important for AmCham China member companies both in terms of business opportunities and compliance challenges. After decades of rapid industrialization, urban waste has emerged as a key challenge in China. As we detailed in the 2019 *White Paper* Environment Chapter, the regulatory landscape has shifted dramatically in recent years, with promulgation of the National Action Plans to combat air (2013), water (2015), and soil pollution (2016), and amendments to the *Environmental Protection Law*. This has fostered a trend towards increasingly stringent environmental standards and greater emphasis on enforcement.

In 2019 AmCham China witnessed several important policy developments:

- In January, the State Council unveiled the “zero-waste city” pilot plan to curb urban waste generation, maximize recycling, and reduce solid waste going to landfills. It pledged to establish an index to assess and manage “zero-waste cities” by 2020. China officially launched the program in May across 11 cities and five “areas,” with a focus on policy implementation, technology development, and funding. Funding for infrastructure to dispose of domestic waste and hazardous solid waste will be prioritized,
- In June, the Ministry of Housing and Urban-Rural Development (MOHURD), together with other 8 other ministries, released a nationwide circular on sorting household waste. This marked the start of a nationwide campaign. Several of China’s major urban areas (including Beijing and Shanghai) have already rolled out municipal level regulations and it is unclear how differences among the various sets of regulations will be resolved,
- In November, the NDRC launched an eco-compensation pilot program in 50 counties which will explore new policy directions for environmental management, systematically taking into account environmental costs and benefits of different economic activities and increasing stakeholder awareness of ecological protection,
- In December The Draft *Solid Waste Contamination*

Environment Prevention Law was released by the National People’s Congress (NPC). The Draft explicitly defines the roles and responsibilities of organizations, enterprises, and individuals in handling solid waste, which AmCham welcomes.

AmCham China strongly welcomes the Chinese government’s renewed focus on environmental protection and sustainable development, and our members share many of the same goals and values. As with any expansive policy implementation, however, there are challenges. The strict focus on curbing pollution has raised challenges for member companies with respect to compliance, uneven enforcement, and supply chain disruptions. Other issues like waste management and disposal remain longstanding challenges for many members. Many AmCham China member environmental concerns are captured in the 2020 *Business Climate Survey* (BCS), where inconsistent regulatory interpretation and unclear laws and enforcement has been a leading business challenge for many years. On the other hand, AmCham China believes that with respect to environmental protection there is strong interest in improving conditions and is committed to working together with the Chinese government.

Environmental Compliance and Enforcement

Stringent Standards and Regulations

In 2018, total administrative fines for environmental offenses amounted to RMB 15.3 billion (US \$2.28 billion), which is five times the amount accrued in 2014 before the enactment of the *Environmental Protection Law*. This figure also represents an increase of 32 percent year-on-year. Chinese authorities also launched a second nationwide environmental protection inspection campaign that should take three years to complete by their own estimation.

AmCham China welcomes these developments and believes establishing clear standards for emissions and environmental protection is of central importance. There remain challenges, however, with respect to the existing standards framework. Several of the issues we raised last year remain relevant and we wish to highlight them again here:

环境

引言

无论是在商业机会还是合规挑战方面，环境问题对中国美国商会（商会）会员企业来说都是一个日益重要的领域。经过几十年的快速工业化发展，城市垃圾已经成为中国面临的主要挑战。正如商会在 2019 年《白皮书》环境章节中所述，随着《国家大气污染防治行动计划》（2013 年）、《国家水污染防治行动计划》（2015 年）和《国家土壤污染防治行动计划》（2016 年）的颁布以及《环境保护法》的修订，近年来监管形势发生了巨大变化，导致环境标准日益严格、执法力度进一步加强。

2019 年，商会见证了以下几个重要的政策进展：

- 2019 年 1 月，国务院公布了“无废城市”建设试点工作方案，遏制城市垃圾源头产生量，最大限度地循环利用，减少固体废物填埋量。该工作方案承诺到 2020 年系统构建评估、管理“无废城市”建设指标体系。2019 年 5 月，中国在 11 个城市和 5 个“地区”正式启动了试点建设计划，以政策实施、技术开发和资金支持为工作重点。为处置生活垃圾和有害固体废物的基础设施提供资金则为重中之重。
- 6 月，住房和城乡建设部与其他 8 个部委联合发布了在全国全面开展生活垃圾分类工作的通知，标志着全国性垃圾分类运动的开始。中国的几个主要城市（包括北京和上海）已经出台了市级法规，目前尚不清楚如何处理不同层级法规之间的差异。
- 11 月，国家发改委在 50 个县启动了生态综合补偿试点工作，探索新的环境管理政策方向，系统地考虑不同经济活动的环境成本和效益，提高利益相关者的生态保护意识。
- 12 月，全国人大公布了固体废物污染环境防治法草案。草案明确规定了单位、企业和个人在处理固体废物中的作用和责任，商会对此表示欢迎。

商会热烈欢迎中国政府加强重视环境保护和可持续发展，商会会员有许多相同的目标和价值观。然而，与任何扩张性的政策实施一样，挑战也随之而来。对治理污染的重点关注给会员企业带来了各种挑战，如合规、执法不均、供应链中断等问题。废物管理和处置等其他问题对许多会员来说仍然是长期要面临的挑战。2020 年商会《中国商务环境调查报告》（BCS）中，许多商会会员都对环境问题表示担忧，多年来，监管解释不一致、法律法规及执法不明确一直是会员面临的重大商务挑战。另一方面，商会认为，商会会员和中国政府都对改善环境状况有着浓厚的兴趣，愿意共同努力、携手合作。

环境合规与执法

严格的标准和法规

2018 年，环境违法行为行政处罚款总额达 153 亿元人民币（合 22.8 亿美元），是《环境保护法》颁布前 2014 年累积罚款额的 5 倍，同比增长 32%。中国有关部门还启动了第二次全国污染源普查，据估计，预计耗时三年时间完成检查工作。

商会欢迎中国政府取得的进展，并认为制定明确的排放和环境保护标准至关重要。然而，现行标准框架仍然面临挑战。商会去年提出的若干问题仍然突出，我们希望在此再次重点强调这些问题：

- **粗暴执法。**粗暴的执法给合规企业带来了过重的行政负担，与污染环境的其他企业相比，这些企业处于不利地位。在某些省份，在严重污染期间，某些行业的所有工厂都必须限制生产或停产，无论他们的合规水平是否符合现有标准。全面禁止生产扰乱了企业运营，损害了下游客户的利益，并使企业自身付出了巨大代价。

- **Crude Enforcement of Regulations.** Crude enforcement places excessive administrative burdens on compliant companies, disadvantaging them compared to their polluting counterparts. In some provinces, during periods of heavy pollution, all factories in certain industries must limit or halt production, regardless of their level of compliance with existing standards. Blanket bans on production disrupt business operations to the detriment of downstream customers and at great and unfair cost to the compliant businesses themselves,
- **Uneven Enforcement between National and Provincial Levels.** Across China, national environmental laws rely on provincial and local governments for enforcement. AmCham China members have found environmental regulators in China's Tier I cities and industrial zones to be knowledgeable and professional. Outside of major cities and urban areas, however, there is a lack of uniform implementation and understanding of existing environmental regulations and technical standards. AmCham China members have found that local environmental protection officials are frequently unfamiliar with the latest versions of environmental regulations when monitoring compliance,
- **Redundant or Unreasonable Standards for Specific industries.** Many monitoring, testing, and sampling requirements to ensure compliance are in practice overly onerous and inefficient. Currently, enterprises are required to install online volatile organic compound (VOC) monitors based on their facility's ventilation capacity or the concentration levels of any VOC instantaneous emissions, regardless of the total number of factory operating hours and/or its total VOC emission levels. For members, the installation of online monitoring systems is costly and requires vast amounts of energy to maintain stable temperatures in order to take VOC emission samples. In addition, because the available monitoring technology is fairly basic, in cities like Ningbo, companies are frequently required to collect VOC samples manually in addition to samples collected by government regulators in order to meet compliance regulations. This is a costly exercise in terms of both RMB and resources and undercuts the competitiveness of China-based manufacturers. Such policies are inconsistent with the State Council's efforts to streamline the business environment,
- **Inappropriate Data Collection Methods for Environmental Compliance.** WeChat, the popular Chinese messaging and social media app, is used widely by the environmental authorities to collect data and monitor environmental compliance. Our members have been asked on multiple occasions to submit enterprise-specific information and data to meet environmental compliance regulations via WeChat groups, which conflicts with the government's obligation to maintain confidentiality and exposes their data to other companies, including competitors, in the WeChat group.

In response to these challenges, AmCham China recommends that the Chinese authorities:

- **Provide a Schedule of Planned Regulations and their Effective Dates.** Promulgate a clear schedule and timetable that details at the national and provincial level when planned, forthcoming environment protection relations will go into effect, such that foreign-invested enterprises, manufacturers, and industrial operators can allocate their resources to comply with regulatory expectations,
- **Promulgate National Standards.** Publish clear environmental standards and regulations online in one location to make them accessible to all businesses and regulators. We also encourage the government to implement a negative list system to make clear that companies are not liable for violating regulations that have not been published. A lack of clear national environmental regulations creates opportunities for unequal enforcement of environmental compliance regulations between domestically- and foreign-invested companies, often to the detriment of AmCham China members' supply chain management and business operations.
- **Implement Industry Standard Best Practices and Reduce Onerous Administrative Activities.** Here we list several examples:
 - **Install VOC Monitoring Systems on the Basis of Total Emissions.** We recommend VOC monitoring systems be installed that are capable of monitoring total VOC emission volumes rather than monitoring the ventilation capacity of factories. The need to monitor VOC emissions should be balanced alongside the energy-intensive nature of VOC monitoring tools, which are costly for factories to maintain. We further recommend that regulatory authorities make use of emissions data that enterprises generate, track and use to monitor emissions rather than requiring installation of expensive monitoring systems,
 - **Reduce the Number of Environmental Samples Authorities are Required to Collect.** Authorities can use data produced by enterprises to monitor compliance and reduce the number of times samples are required to be collected,
 - **Collect Official Enterprise Data Through Official Channels and End the Use of WeChat to Collect Official Data.** WeChat is a useful channel for local environmental protection bureaus to disseminate regulatory information to enterprises. Collecting official enterprise data should not be done via WeChat; enterprise data should instead be submitted via email or hard copy to protect confidential and sensitive information.
- **Institute Grace Periods.** Implementation of new envi-

- **国家和省级层面执法不平衡。**在中国各地，国家环境法的执行依赖于省级和地方政府。商会会员发现，中国一线城市和工业园区的环境监管机构知识丰富、专业度很高。然而，在主要城市和城市地区以外，对现有的环境法规和技术标准缺乏统一的执行和理解。商会会员发现，地方环境保护官员在监督合规时，经常不熟悉最新的环境法规。
- **特定行业标准冗余或不合理。**许多确保合规的监控、测试和采样要求实际上过于繁重和低效。目前，无论工厂的总营业时间和 / 或总挥发性有机化合物 (VOC) 排放水平如何，企业都必须根据其设施的通风能力或任何挥发性有机化合物瞬时排放的浓度水平，安装在线挥发性有机化合物监测仪。对于会员企业来说，安装在线监测系统的成本很高，而且需要大量的能源保持温度稳定以便采集挥发性有机化合物的排放样本。此外，由于现有的监测技术相当基础，在宁波等城市，为符合法规要求，除了政府监管部门采集的样本外，企业还经常被要求手动采集挥发性有机化合物样本。无论是人民币还是资源方面，这项要求都代价高昂，削弱了中国制造商的竞争力。这些政策与国务院优化营商环境的努力是不一致的。
- **环境合规的数据收集方法不当。**微信是在中国广受欢迎的社交媒体应用程序。环保部门广泛使用微信来收集数据、监测环境合规性。商会会员多次被要求通过微信群提交企业特定信息和数据，来满足环境合规要求，这与政府的保密义务相冲突，且将会员企业的数据暴露给微信群中的其他企业（包括竞争对手）。

为应对这些挑战，商会建议中国政府应：
 - 发布拟议法规计划表及其生效日期的时间表。国家和省级层面规划拟议法规时，要发布明确的计划表和时间表预计环保法规何时生效，便于外商投资企业、制造商和工业运营商可以分配资源来符合监管预期。
 - 颁布国家标准。在网上发布明确的环境标准和法规，公示所有企业和监管机构。我们还鼓励政府实行负面清单制度，明确企业对未公布的违规行为不承担责任。缺乏明确的国家环境法规可能会造成国内和外资企业环境合规执行不平等，损害商会会员的供应链管理和企业经营。
- 执行行业标准最佳实践，减少繁琐的行政工作。在此我们列举几个例子：
 - 在总排放量的基础上安装挥发性有机化合物 (VOC) 监控系统。商会建议安装 VOC 监控系统，能够监控总 VOC 排放量，而不是监控工厂的通风容量。监测 VOC 排放的需求应与 VOC 监测工具的能源密集型特性相平衡，因为工厂维护成本高昂。商会还建议监管机构利用企业生成、追踪和使用的排放数据来监测排放情况，而不是要求企业安装昂贵的监测系统。
 - 减少要求收集的环境样本数量。政府可以使用企业生成的数据来监控合规性，减少要求收集样本的次数。
 - 通过官方渠道收集官方企业数据，停止使用微信收集官方数据。微信是地方环保局向企业传播监管信息的有效渠道。不应通过微信收集企业官方数据；企业数据应通过电子邮件或复印文本提交，保护机密和敏感信息。
- 设置宽限期。实施新的环境政策应提供适当的过渡期，维持稳定的监管环境。商会促请中国政府在实施和执行新的环境法规时设置更长、更一致的宽限期。同样，商会建议对合规表现良好的企业至少要给予临时宽限期（例如 3-6 个月），在此期间，企业不会被要求停止运营或受到其他侵入性监管检查。商会还建议政府优先对未达到某些目标或标准的设施进行现场检查，同时豁免符合现有环境保护标准的设施。
- 阐明如何利用企业社会信用体系来执行环保法例。有关“企业社会信用体系”的公众报告已提及，遵守环保法例将是“企业社会信用体系”规管架构的重要一环。违反环境保护法的企业将被生态环境部列入黑名单，其经营活动将受到严重限制。至于社会信用体系将如何纳入现行规管架构，以及将如何扩展现行的执行机制，则尚未公布清晰的推行计划。商会鼓励政府提供对话机会，以便更好地了解如何将环境合规纳入企业的“企业社会信用体系”，确保必要的合规，并能够利用这些监管要求带来的新商机。

ronment policies should provide appropriate transition periods to maintain a stable regulatory environment. AmCham China urges the Chinese government to adopt longer, more consistent grace periods between implementation and enforcement of new environmental regulations. Similarly, we recommend that companies with a track record of meeting regulations be given at least a temporary credit (e.g., three to six months) during which time they will not be subject to operating shutdowns or other intrusive regulatory inspections. We further recommend that authorities prioritize on-site inspections of facilities that have failed to meet certain targets or standards while exempting those operations that have complied with existing environmental protection standards,

- **Clarify how the Corporate Social Credit System (SCS) will be used to Enforce Environmental Compliance.** Public reports on the SCS have mentioned that compliance with environmental laws will be a key element of the SCS regulatory framework. Companies which violate environmental protection laws can be blacklisted by the Ministry of Ecology and Environment (MEE) and have their business operations severely restricted. A clear implementation plan describing how the SCS will be integrated into existing compliance frameworks and where it will extend current enforcement mechanisms has yet to be promulgated. AmCham China encourages the government to provide opportunities for dialogue to better understand how environmental compliance will be factored into the corporate SCS to ensure compliance where necessary, and to be able to take advantage of new commercial opportunities created by these regulatory requirements.

Waste Management

Solid Waste

Several decades of rapid urbanization and industrialization have put pressure on solid waste management in China. According to the National Bureau of Statistics, China produced around 215 million tonnes of municipal solid waste (MSW) in 2017, second globally only to the amount produced in the US. The Chinese government has issued a number of plans to address the challenges posed by MSW. In the 2017 Government Work Report, Premier Li Keqiang reported that the government would introduce a system for MSW sorting and classification (discussed below). In early 2019, the Chinese government released plans for a pilot program to create 10 pilot “no-waste” cities. The program, set to run through 2021, aims to minimize the generation of new solid waste, while maximizing waste treatment rates and safe disposal activities.

At present, only a handful of state-owned waste processing enterprises are licensed to handle the full spectrum of

solid waste products, while the majority are limited to a narrow scope of permitted categories. The resulting artificial monopoly in the waste processing industry has led to a lack of sufficient processing capacity. Consequently, foreign-invested manufacturing businesses in China now face an increasing number of challenges stemming from a lack of qualified waste service suppliers, inconsistent enforcement of solid waste regulations, and a lack of clear policy guidance. These challenges have resulted in compliance challenges and higher operational costs for businesses. Business operations of some of our member companies have been disrupted and even forced to suspend operations when they are unable to dispose of hazardous waste within the regulated time period and quantitative storage limits.

In addition to an existing plethora of environmental inspections, many companies are subject to both scheduled and random waste treatment inspections that can significantly raise business costs associated with waste treatment in heavily affected areas. AmCham China urges the government to extend, support, and increase municipal industrial waste collection capability and offers the following recommendations:

- Open hazardous waste disposal to a broader range of companies may help to increase waste disposal capacity. We support MEE’s plans to establish procedures to provide qualified facilities with the technology and capital to develop professional industrial waste management capacity and reduce the burden on existing industrial waste facilities,
- Release detailed implementing plans and allow current pilot programs to develop solid waste disposal best practices that can be implemented nationwide,
- Solid waste disposal is a public service with broad environmental and health benefits for society including a reduced intensity of greenhouse gas emissions from the buildup of waste. We recommend the government encourage development of the solid waste disposal industry by promoting solid waste disposal as an element of corporate social responsibility and encouraging companies to use it to broaden their CSR portfolios.

2020 Waste Sorting Initiative

A March 2017 State Council directive now requires 46 directly administered municipalities and provincial capital cities to separate all waste into four categories: ordinary, recyclable, organic, and hazardous (as of 2020). This policy begun to be rolled out nationwide, though the extent of implementation varies by province. This policy may have significant impacts on operations across many heavy waste-generating industries, including hotels and tourism, retail, industrial and commercial office parks, and residential housing complexes. These industries have few formally established systems for sorting waste consistent with these regulations, potentially exposing them to new liability.

废物管理

固体废物

几十年的快速城市化和工业化给中国的固体废物管理带来了压力。国家统计局数据显示，2017年中国产生了约2.15亿吨城市固体废物，仅次于美国。中国政府已经出台一系列计划应对城市固体废物带来的挑战。李克强总理在《2017年政府工作报告》中表示，政府将推行城市生活垃圾分类分级体系（下文讨论）。2019年初，中国政府公布了建设10个“无废”试点城市工作方案。该计划将持续到2021年，旨在最大限度地减少源头固体废物量的产生，同时最大限度地提高废物处理率和安全处置。

目前，只有少数几家国有废物处理公司获得了处理所有固体废物产品的许可证，而大多数企业许可范围十分受限。由此产生的废物处理业的人为垄断导致处理能力的不足。因此，由于缺乏合格的废物服务供应商、固体废物法规执行不一致以及缺乏明确的政策指导，在华外国制造企业现在面临着越来越多的挑战，导致合规面临挑战，企业运营成本也越来越高。如果不能在规定的期限和数量存储限制内处理有害废物，会员企业将中断经营活动，甚至被迫停业。

除了现行过多的环境检查外，许多企业还须接受定期和随机的废物处理检查，大大增加了受影响严重地区的废物处理相关业务成本。商会促请政府加强、支持、提高城市工业废物收集能力，并提出以下建议：

- 在更广泛的企业范围内开放危险废物处理资格，可能有助于提高废物处理能力。我们支持生态环境部制定流程，为合格的设施提供技术和资本，发展专业工业废物管理能力，减轻现有工业废物设施的负担。
- 发布详细的实施计划，并允许当前的试点项目制定可在全国范围内实施的固体废物处理最佳方案。
- 固体废物处理是一项对社会具有广泛环境和健康效益的公共服务，可以降低废物堆积造成的温室气体排放强度。商会建议政府鼓励固体废物处理行业的发展，推动固体废物处理作为企业社会责任的一项要素，并鼓励企业利用固废处理扩展企业社会责任的范畴。

2020年垃圾分类计划

2017年3月，国务院发布指令现在要求46个直辖市和省会城市将所有垃圾分为四类：普通、可回收、有机和有害（截至2020年）。此项政策已开始在全国推广，但执行程度因省而异。这项政策可能对许多重废物产生行业的运营产生重大影响，包括酒店和旅游业、零售、工业和商业办公园区以及住宅区。这些行业几乎没有建立起符合法规的正式垃圾分类体系，从而可能要承担新的责任。

市级住房和城乡建设委员会将负责监督实施垃圾分类倡议，但迄今几乎未公布明确的指导方针。尚不明确企业应如何推动实施倡议并从中受益。一些主要城市（如上海和北京）已经实施了多项政策，如视频宣传讲解垃圾分类、投放垃圾分类的新垃圾箱、设置公共标牌解释如何分类垃圾。然而，当前仍然缺乏必要的基础设施和专业知识来建立有效的分类系统。垃圾的分类、储存和运输所需的基础设施是一项庞大的工程。所需的废物处理能力，特别是有机废物的处理能力，在市政和轻工业废物流中占很大比例，而这些能力目前尚不存在。如果没有处理能力，最初分类的大部分垃圾最终将返回垃圾填埋场和焚化炉。

原则上，垃圾分类倡议应改善环境保护和垃圾处理，并为私营业创造广泛的商业机会来落实这些目标。商会建议制定明确的路线图，向企业解释（包括国外和国内企业）应该如何参与，让企业清楚地了解成本结构，便于会员企业制定业务计划。我们期待有机会与政府合作创建一个既经济上可行，又符合中央政府目标的垃圾分类和处理产业。

禁止回收进口

中国于2017年首次发布，2018年1月执行的24种固体废物进口禁令，影响了全球回收链，对中国和美国的企业产生了下游效应。对未明令禁止的废物（污染水平被设定为0.5%或更低）所实施的更严格的污染标准，有效禁止了许多废物进入中国。因此，许多废物管理企业，特别是纸张和塑料垃圾管理企业，都遭遇了供应中断和价格大幅波动。由于失去了中国市场，美国一些州取消了对塑料垃圾填埋的禁令。长期以来，中国造纸企业一直依赖进口可回收材料生产纸张、包装和纸巾，如今被迫另寻出路或支付更高的价格。2018年和2019

City-level Housing and Urban-Rural Development Municipal Commissions will oversee implementation of the Waste Sorting Initiative, but few have publicized definitive guidelines to date. There is still a lack of clarity as to how enterprises can both contribute to and benefit from this initiative. There have been several cosmetic policies implemented in major municipalities (e.g., Shanghai and Beijing), including video campaigns explaining the initiative, the installation of new public waste disposal bins for separating waste, and public signage explaining how the waste should be sorted. And yet, the necessary infrastructure and expertise to build an effective sorting system is lacking. The infrastructure needed for the sorting, storage, and transportation of collected materials is a massive undertaking. The waste processing capacity that will be required, particularly for organic waste, which accounts for a significant proportion of the municipal and light industry waste stream, does not yet exist. Without the processing capacity, much of the waste that is initially sorted will ultimately return to landfills and incinerators.

In principle, the Waste Sorting Initiative should improve environmental protection and waste disposal and create extensive business opportunities for private industry to implement these goals. AmCham China recommends establishment of a clear roadmap that explains how enterprises (both foreign and domestic) can take part in this initiative, and a clear understanding of the cost structure so that member companies can develop business plans. We look forward to opportunities to work with the government to build a waste sorting and processing industry that is both financially viable and meets the goals of the central government's initiative.

Ban on Recycled Imports

China's ban on 24 types of imported solid waste, first announced in 2017 and enacted on January 1, 2018, has affected global recycling chains, with downstream effects on companies in China and the US. Further strict contamination standards imposed on waste materials not explicitly banned (contamination levels were set to 0.5 percent or lower) has effectively prevented many materials from going to China anyway. Consequently, many waste management companies, particularly those focused on paper and plastics, have experienced supply disruptions and significant price volatility. In the US, the loss of the China market has led some states to end bans on plastics going to landfill. Chinese paper producers, long dependent on imported recycled materials for the production of paper, packaging, and tissue, have been forced to look elsewhere or pay higher prices. For the most part, tariffs imposed in 2018 and 2019 from the US-China trade dispute have largely rendered unviable several grades of solid waste that would otherwise still be financially viable in the absence of tariffs. It appears the ban will be maintained indefinitely, and this has led to a permanent restructuring of recycling supply chains.

AmCham China hopes that business opportunities stemming from the Waste Sorting Initiative may offset some of the impact of the ban. We continue to urge the Chinese government to engage in dialogue with industry to understand how they can support this initiative. This is particularly salient as many Chinese companies, primarily plastics processors, have been able to establish viable processing operations in the US. Greater support for participation by FIEs in the domestic recycling market would be welcomed and reciprocated.

Extended Producer Responsibility

The Extended Producer Responsibility Plan (EPR) announced by the State Council in December 2016 is currently slated to go into effect in 2020. Moreover, in 2018 the MEE issued a number of amendments to the country's *Solid Waste Law*, which included creating EPR programs for electronic and electrical products. As written, the EPR Plan mandates that manufacturers must integrate the environmental costs associated with the entire product life-cycle into the price of their products. This includes product design, consumption, recycling, and waste disposal. To date, few implementing details have been released publicly beyond initial reduction and recycling targets. AmCham China urges the Chinese government to provide details on the proposed EPR framework as soon as possible. A unified, comprehensive EPR regulation system governing all manufactured products could create significant new opportunities for investment and a level playing field for producer compliance. EPR is a viable, transparent system to provide funding for waste management infrastructure. We support an EPR system that meets the following criteria:

- Clearly defines which parties are responsible for the costs involved in solid waste treatment,
- Allocates appropriate funding for the construction of solid waste collection networks, processing units, and management and maintenance of waste management infrastructure. The fees associated with waste processing should be sufficient to cover the full costs of the program. Recycling targets should be set using the best available science while taking local circumstances into consideration,
- Enables industry to innovate flexibly and find the most efficient way to comply with legal obligations while adhering to harmonized reporting requirements and industry standards,
- Ensures accountability and equal enforcement across all products to discourage free riders.

Emissions Trading Scheme Progress

In 2013, China first launched its Emissions Trade Scheme (ETS) pilot programs in Beijing, Tianjin, Shanghai, Chongqing, Hubei, Guangdong, and Shenzhen. Progress

年中美贸易争端征收的关税，基本上使几种等级的固体废物无法在没有关税的情况下在经济上仍然可行。禁令似乎将持续下去，导致了回收供应链的永久性重组。

商会希望，垃圾分类带来的商业机会可以抵消禁令的部分影响。商会仍将促请中国政府与业界进行对话，了解他们可以为垃圾分类做哪些工作。这一点尤为突出，因为许多中国企业（主要是塑料加工商）已经能够在美国开展可行的加工业务。支持外商企业参与国内回收市场必将大受欢迎、互利互惠。

生产者责任延伸制

《生产者责任延伸制度推行方案》(EPR) 由国务院于 2016 年 12 月发布，目前计划于 2020 年生效。此外，2018 年，生态环境部发布了国家固体废物污染环境防治法修订版，要求在电子和电器产品领域实行生产者责任延伸制。该制度要求生产者必须将整个产品生命周期相关的环境成本集成到产品价格中，包括产品设计、流通消费、回收利用和废物处置。迄今为止，除了最初的减排和回收目标，很少公开发布具体的实施细节。中国美国商会促请中国政府尽快提供拟议生产者延伸责任制框架的细节。一套统一、全面、监管所有制成品的生产者延伸责任制监管体系，可以创造新的投资机会，并为生产者合规创造一个公平的竞争环境。在为废物管理基础设施提供资金方面，生产者延伸责任制是可行的、透明的。我们支持生产者延伸责任制度应符合以下标准：

- 明确规定哪一方负责处理固体废物的费用。
- 拨款建设固体废物收集网络、处理单位、废物管理基础设施的管理和维护。与废物处理相关的费用应足以支付该计划的全部费用。制定回收目标应充分利用现有的科学知识，同时考虑当地情况。
- 使行业能够灵活创新，找到最有效的方式遵守法律义务，同时遵守统一的报告要求和行业标准。
- 确保所有产品的问责和平等执法，打击“无本获利”行为。

碳排放交易计划进展

2013 年，中国首次在北京、天津、上海、重庆、湖北、广东和深圳启动了碳排放交易计划 (ETS) 试点项目。但是全国范围的碳排放交易计划制定却基本上停滞不前。2017 年 12 月，中国发布了《全国碳排放权交易市场建

设方案 (发电行业)》。这标志着碳排放交易体系的启动，该方案最初仅覆盖燃煤发电，最终将扩大到其他七个行业：石油化工、化工、建材、钢铁、有色金属、造纸和航空。

2018 年年中，碳排放交易计划的责任部门从发改委移交给了生态环境部。2019 年 4 月，《碳排放权交易管理暂行条例 (征求意见稿)》发布。《暂行条例》草案全面涵盖了碳排放报告要求、核查程序以及建立和分配碳排放配额的技术准则。商会指出，《暂行条例》草案中关于碳排放配额的分配规定仍然相当笼统，因此，会员们很难理解该法规将如何与现行的本地市场监督管理条例相结合。

中国美国商会主张为企业适当的过渡期来实施该计划，且碳排放信用评分应基于行业基准，而不是当前的排放水平，否则排放量最高的企业将会获得更高的信用分。这种做法使企业在短期内不愿进行技术升级来减少排放，而且采用先进环保技术的外国企业将处于不利地位。

建议

对中国政府：

- 商会敦促中国政府制定明确的环境合规国家指导方针，并在网上公示，供企业和监管机构查阅。我们敦促政府努力提高检查员和监管人员的技术能力，并在要求减产或停产前至少提前 60 天发出通知。我们还鼓励所有省级和地方环保部门公布监管要求，并让相关公司更加便利地获得监管材料。
- 发布详细的实施计划，并允许当前的试点项目制定可在全国范围内实施的固体废物回收和处置最佳实践。向更广泛的合格企业（中外企业）范围内开放危险废物处理资格，提高废物处理能力。
- 鼓励企业在产品设计和加工两个阶段整合废物降低策略，促进资源回收。尽快提供拟议生产者延伸责任制框架的细节。一套统一、全面、

on the formulation of a nationwide ETS has largely stalled. In December 2017, China published the *Work Plan for Construction of the National Emissions Trading System (Power Sector)*. This marked the launch of a national ETS system, which will initially cover coal-fired power and will eventually be expanded to cover seven other sectors: petrochemicals, chemicals, building materials, iron and steel, non-ferrous metals, paper, and aviation.

In mid-2018, responsibility for the ETS was transferred from NDRC to the MEE. In April 2019, MEE released the *Interim Regulations on the Management of Carbon Emissions Trading (Draft for Comment)*. These draft Interim Regulations are seen as comprehensive, and include provisions for carbon emission reporting requirements, verification procedures, and technical guidelines for establishing and allocating carbon emission quotas. AmCham China notes that in the draft Interim Regulations, the regulations for allocating carbon emission quotas are still quite general in nature, making it challenging for members to understand how they will be integrated with existing local market supervision and management regulations.

AmCham China advocates for an appropriate transition period for companies to comply with implementation, and for ETS credits to be based on industry benchmarks rather than current emissions rates, which would result in the highest emitters receiving more credits. This approach disincentivizes companies from making technological upgrades to reduce emissions in the short-term and disadvantages foreign companies that already employ advanced environmental technology.

Recommendations

For the Chinese Government:

- Establish clear national guidelines for environmental compliance and publish the rules online to make them accessible to both companies and regulators. We urge the government to work to improve the technical capability of inspectors and regulators and provide at least 60 days advance notice before requiring production capacity reductions or shutdowns. We also encourage all provincial and local environmental authorities to publish regulatory requirements and make regulatory material easily available to relevant companies.
- Release detailed implementing plans and allow current pilot programs to develop recycling and solid waste disposal best practices that can be implemented nationwide. Open recycling and solid waste processing and disposal to a broader range of

qualified companies (both foreign and domestic) to increase capacity.

- Encourage companies to integrate waste reduction strategies at both the product design and processing stages to encourage greater resource recycling. Provide details on the proposed EPR framework as soon as possible. A unified, comprehensive EPR regulation system governing all manufactured products could create significant new opportunities for investment and a level playing field for producer compliance.
- Ensure an appropriate transition period for companies to comply with implementation of the ETS and ensure that ETS credits are issued based on industry benchmarks rather than current emissions rates, which would result in the highest emitters receiving more credits.
- Provide opportunities for dialogue with industry to communicate how compliance with environmental regulations is being factored into the corporate SCS to ensure compliance, and to discuss new commercial opportunities created by these regulatory requirements, and the funding streams available to waste management companies via the eco-compensation pilot program.

For the US Government

- Share environmental protection best practices and technologies where relevant with your Chinese counterparts. Encourage adoption of international, science-based emissions standards.
- Continue to work with Chinese government counterparts to find reasonable solutions to the recycling supply chain disruptions caused by China's decision to ban imports of 24 types of solid waste in 2018.

监管所有制成品的生产者延申责任制监管体系，可以创造新的投资机会，并为生产者合规创造一个公平的竞争环境。

- 确保为企业适当的过渡期来实施碳排放交易计划，且碳排放信用评分应基于行业基准，而不是当前的排放水平，否则排放量最高的企业将会获得更高的信用分。
- 提供与行业对话的机会，保证行业了解如何将环境合规纳入企业社会责任来确保合规，并讨论这些监管要求将会创造哪些新商机，并探讨通过生态综合补偿试点计划可以向废物管理企业提供哪些资金流。

对美国政府：

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

Express Delivery

Introduction

China's express delivery industry maintained its rapid growth in 2019. According to the State Post Bureau (SPB), 63.25 billion units were delivered and total revenue in the express delivery industry amounted to RMB 749.8 billion (US \$106.3 billion), year-on-year increases of 25 percent and 24 percent respectively. The express delivery industry supports e-commerce retail sales of more than RMB 8 trillion (US \$1.1 trillion), accounting for more than one-fifth of total retail sales of consumer goods. In 2020, the express delivery industry is expected to complete delivery of 74 billion units, an increase of about 17 percent year-on-year. Total industry business revenue is forecast to reach RMB 866 billion (US \$122.8 billion), an increase of about 16 percent year-on-year.

While we understand the original intent of the industry authorities to regulate China's express delivery industry, recently issued regulations (including the *Notice on Strengthening the Approval of the Geographical Scope of Express Delivery Business Operating Licenses*, released in April 2019) for international and foreign-invested express delivery enterprises to obtain business licenses do not provide equal and objective treatment for all express delivery enterprises, whether foreign or domestic. The regulations were issued without consulting industry stakeholders, and clarifying opinions, regulations, or other explanatory documents have not been forthcoming, creating confusion within the industry.

AmCham China fully recognizes that enterprises have an obligation to cooperate with regulators in order to strengthen industry security and promote the overall development of the industry. We also believe, however, that industry regulations and policies should be science-based, avoid excessive interference with normal business operations, and refrain from increasing the cost of compliance where possible. In essential business areas like data collection and management, the lack of unified coordination at the national level has led to inconsistent regulatory interpretations at sub-national level by various agencies. The lack of a unified implementation plan across China's provincial and municipal regulatory departments is a major operational burden for our members. Our members also face frequent inspections and must contend with various security measures, which only increases operating costs and reduces efficiency.

The release of the *Cybersecurity Law* in 2017 and the more recent release of associated implementing regulations on outbound data transfers, such as the Draft *Measures for the Security Assessment of Cross-Border Personal Information Transfers* (June 2019), impose additional challenges with respect to data supervision and management. The international express delivery business is crucial to global trade. We urge the authorities to ensure they take into account the operating characteristics of the express delivery industry when making policy decisions that affect data management and sharing, which in turn may affect an enterprise's daily operations.

We expect the regulatory authorities to solicit industry opinions during the policy formulation and oversight process and improve the predictability and transparency of the policymaking process. AmCham China's express delivery members look forward to enhancing communication and cooperation with the regulatory authorities in order to promote the sustainable and healthy development of the express delivery industry.

Recent Developments and Ongoing Challenges

Express Business Licenses for International Express Delivery Companies

Geographic Scope of International Express Delivery Business Licenses

Without communicating with express delivery industry members, the SPB issued an internal notice entitled the *Notice on Strengthening the Approval of the Geographical Scope of Express Delivery Business Operating Licenses* in April 2019. According to the Notice, verification of the geographic scope of a business license for express delivery entities shall be based on verification done at the city level. The administrative authorities at the local and provincial level are then responsible for verifying the geographic scope of a license as required by this Notice. The SPB confirmed this change in the form of an internal notice, without officially notifying express delivery enterprises.

快递服务

引言

2019年中国快递行业保持稳步快速增长，根据国家邮政局公布的初步统计数据，2019年全年快递业务量和业务收入分别完成630亿件和7450亿元人民币，同比分别增长24%和23%，快递全年支撑电商网上零售额超过8万亿元，占社会消费品零售总额比重超五分之一。2020年预计全年快递业务量完成740亿件，同比增长18%左右；业务收入完成8660亿元人民币，同比增长16%左右。

中国美国商会理解行业主管部门希望规范行业准入管理的初衷。近期发布的政策使得国内外快递企业得不到平等和客观的对待（包括2019年4月发布的《关于加强快递业务经营许可地域范围核定工作的通知》）。

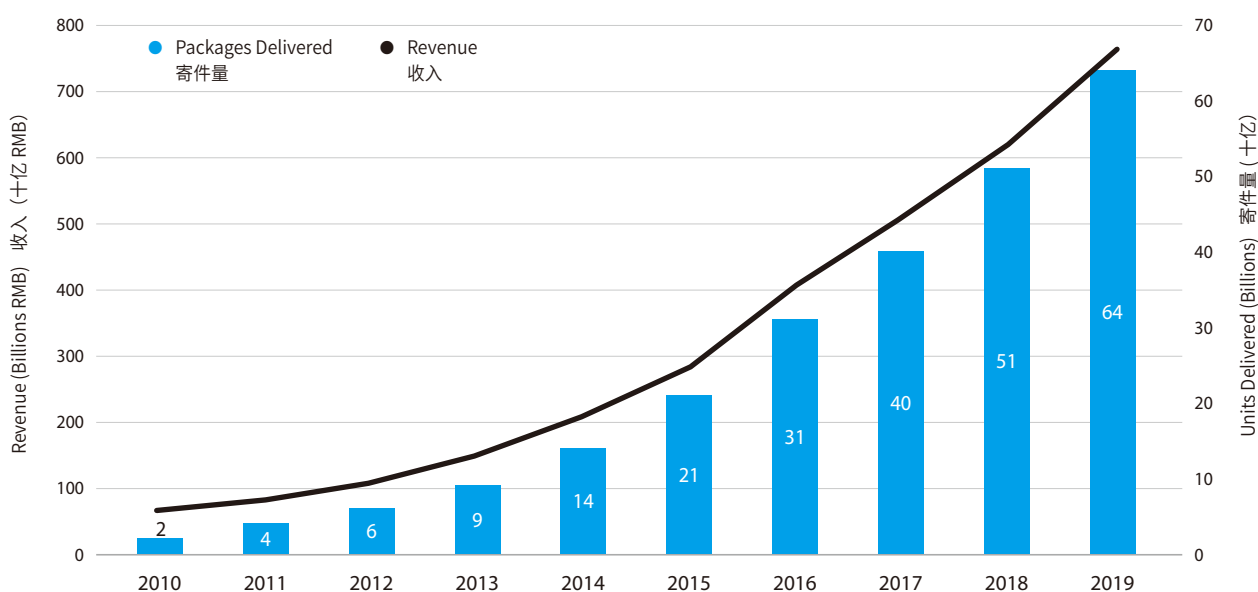
这些法规出台前缺乏与行业的沟通，规定出台后缺少必要的解释与说明，给行业带来了一定的困扰。

商会充分认识到企业有责任和义务配合监管部门加强行业安全，但同时也认为相关政策应本着科学性合理性的原则，避免一些过度监管措施严重妨碍企业正常业务，额外增加企业负担和运营成本。在数据收集管理等领域，目前国家层面缺乏统一协调机制，造成各方对于政策出现不同解读，不同省市不同部门在政策的具体执行上缺乏统一协调，企业不得不频繁应付各种检查和安全要求。这既增加了企业成本，又严重降低了运营效率，与国务院简政放权、为企业减负的政策要求相违背。

鉴于2017年的《网络安全法》以及配套的数据出境安全评估等一系列新规范标准陆续出台，如，2019年

Figure 1. Revenue and Packages Delivered in the Express Delivery Sector, China, 2010-2019.

图 1. 2010-2019 年中国包裹快递行业收入



Source: State Postal Bureau

None of the *Postal Law, the Interim Regulations on Express Delivery, and the Administrative Measures for the Management of Express Delivery Business License* clearly define the geographic scope of international express delivery business permits.

Through 2009, the regulatory agencies required international express delivery companies to apply to the Ministry of Commerce (MOFCOM) for an “International Freight Forwarder Record-filing Certificate,” which has no restriction on geographic scope; enterprises that obtained the certificate were permitted to conduct business nationwide. In 2010, the revised *Postal Law* imposed new requirements on international express delivery enterprises. They were required to obtain an “International Express Delivery Business License,” issued by the industry regulatory authority. In effect since 2010, the geographical scope of international express delivery business licenses has been restricted to the provincial level (including autonomous regions and province-level municipalities).

These restrictions on business licenses for international express delivery companies are inconsistent with China’s repeated commitments to open up its economy in 2019. For instance, *The Opinions on Further Utilizing Foreign Capital* (Circular No. 23) issued by the State Council in October 2019 state that governments at all levels and in all regions will:

“Protect the legitimate rights and interests of foreign-invested enterprises ... strictly abide by foreign investment laws, administrative licensing laws and other laws and regulations in support of foreign investment, and shall not change the scope, procedures, and standards of administrative licenses without authorization.”

The adjustment of the geographic scope of licenses for express delivery from the provincial level to the municipal or district level only increases market access barriers facing the express industry for foreign-invested express delivery carriers. It is inconsistent with the State Council’s repeated commitment to improving the business environment for foreign-invested enterprises (FIEs), and it is also incompatible with China’s WTO commitments for market opening and access.

We recommend that the industry authorities, including the SPB, process approvals for international express delivery licenses by following the provisions laid out in Circular No. 23 to “improve the utilization of foreign capital,” improve the business environment, and comply with China’s WTO commitments with regard to market opening and access. Moreover, we urge the authorities to ensure that planned changes to regulations that will impact the operations of international express delivery enterprises be approved only after transparent and open consultation with industry. These changes should also be formally published rather than promulgated via internal circulars.

The Agency Model Used by International Express Delivery Enterprises

As part of the ongoing regulation of the international express delivery industry, regulatory authorities treat the “agency model” adopted by international express delivery enterprises in certain regions in the same way as the “franchise model,” which is used by domestic express delivery enterprises. Both the agency model and franchise model are considered in the scope of an express delivery business license.

In practice, there is a clear operational difference between the agency model and the franchise model. Under the franchise model, an authorized international express delivery company can authorize (franchise) others to use its brand, management structure, and transportation network to operate in a certain area. The franchised entity fully represents the interests of the authorizing company in that area.

Under the agency model, a cooperative relationship between an “agent” and an express delivery enterprise is established by contractual agreement. Based on the terms of the contract, the agent is responsible for collecting and receiving packages for delivery and forwarding them onto the express delivery enterprise, which acts as a courier. The express delivery enterprise then transports and delivers the packages. The agent and express delivery enterprise operate independently. The collection of packages for delivery is entirely the responsibility of the agent. Once they have been transferred, the express delivery enterprise becomes responsible for delivery.

Given their operational differences, the agency model and the franchise model should not be incorporated under the scope of the same express delivery business license and governed under the same regulatory management framework. We recommend that the regulatory authorities take into account the characteristics of the agency model used within the international express delivery industry, be clear about the differences between the agency model and the franchise model, and implement differentiated regulatory management practices suitable for each. AmCham China would be pleased to work with the regulatory authorities to clarify the distinctions in these operating models and devise practical solutions to existing regulatory challenges.

Industry Safety and Supervision

Local public security bureaus (PSBs) require express delivery enterprises to be equipped with security inspection equipment that meets local safety standards. The equipment is required to interface with the data and image monitoring centers maintained by local PSBs. In 2015, the nationwide express delivery security tracking system was deployed. In order to comply with this new system, express delivery companies, including foreign-invested express delivery

6月发布的《个人信息出境安全评估办法（征求意见稿）》今后快递行业在数据监管和出境安全评估方面将面临更多的挑战。国际快递业务对于全球贸易至关重要，商会促请相关部门在做出任何影响数据管理和评估体系以及可能影响企业日常业务的决定时，能够充分考虑快递行业的特点。

商会期待相关监管部门在政策的制定和具体的监管中，能够充分听取行业意见，考虑快递行业特点，提高政策的可预见性和透明度。快递企业期待借助同监管部门的沟通，更好地配合行业主管部门的工作，推动行业持续健康发展。

现存监管问题

国际快递业务经营许可管理

国际快递经营许可的地域范围核定问题

在未与企业沟通的情况下，行业主管部门2019年4月以内部通知的形式发布《关于加强快递业务经营许可地域范围核定工作的通知》，要求“快递业务经营许可地域范围核定，以设区的市一级为核定基础，地、州、盟等同级行政区划单位参照这一规则开展核定。”国家邮政局以内部通知的方式肯定这一变化，但是并未正式通知快递企业。

《邮政法》《快递暂行条例》及《快递业务经营许可管理办法》中均未对国际快递业务经营许可的地域范围做出明确规定。

2009年前，监管机构要求国际快递企业在商务部备案并取得“国际货运代理企业备案证书”，该备案证书无地域范围限制，取得该备案证书的企业可以在全国范围内开展相关业务。2010年，随着修订版《邮政法》生效，国际快递业务许可管理进行了调整，从事国际快递业务的企业须取得行业主管部门颁发的“国际快递业务经营许可”。自2010年以来，企业已取得的国际快递业务经营许可证的地域范围限定在省（自治区、直辖市）一级。

这些对国际快递寒夜的经营许可限制与中国政府2019年反复做出的放开市场的承诺背道而驰。例如，《国务院关于进一步做好利用外资工作的意见》（国务院23号令）中规定：

“（十四）保护外商投资企业合法权益……各地区、各部门应严格遵照外商投资法、行政许可法等法律法规对外商投资实施行政许可，不得擅自改变行政许可范围、程序及标准等。”

将国际快递业务经营许可地域范围的核定，由目前的省（自治区、直辖市）一级缩小至设区的市（地、州、盟）一级，将在客观上提高外资企业在国际快递行业的市场准入条件，与国务院反复强调的扩大对外开放、积极利用外资、改善营商环境的要求存在差距，也违背了与中国加入世界贸易组织时做出的水平承诺。

商会建议行业主管部门包括国家邮政局在内国际快递业务经营许可的管理上充分考虑国务院在积极利用外资、改善营商环境上的统一部署以及中国加入世界贸易组织的水平承诺。另外，商会促请主管部门确保更改影响国际快递企业运营的规定之前，应当与行业公开透明的征求意见。并且，这些条例应该正式公开对外而不是以内部通知的方式颁布。

国际快递的代理模式问题

在对国际快递行业的监管中，偶见行业主管部门将国际快递在部分地区采用的代理模式等同于国内快递较多采用的加盟模式对待，将代理模式和加盟模式一同纳入快递业务经营许可地域范围核定的管理框架下。

从快递行业的客观实际来看，代理模式和加盟模式存在着明确的区别。加盟模式是某企业获得另一快递企业的授权，在某一区域内使用受权快递企业的品牌、管理模式、运输网络等来运营快递业务，加盟企业是受权企业在该授权区域内的全权代表。

而在代理模式中，代理商和被代理的快递企业之间是基于合作协议而达成的合作关系，代理商负责揽收客户的快件，并基于合作协议将揽收到的快件转交给被代理快递企业，使用被代理企业的国际快递服务实现快件的运输及投递，代理商和被代理快递企业双方在运营上各自独立，代理商在当地的揽收业务完全是其自主经营行为，揽收后快件被转交至被代理的快递企业后，被代理企业的服务流程才正式开始。

因此，商会建议行业主管部门充分理解国际快递行业代理模式的特点，对代理模式与加盟模式进行差异化管理，不要将代理模式等同于加盟模式一并纳入现行

enterprises, have had to purchase and configure X-ray machine security equipment at their stations and sorting centers.

In some provincial-level jurisdiction, local PSBs require international express delivery enterprises to deploy and operate integrated “intelligent delivery and security inspection” machines that comply with the technical standards of the local PSB in international transfer centers (hubs) operated by express delivery companies. These hubs are supervised by the customs authorities. In many of these hubs, international express delivery enterprises have already purchased and configured the security equipment required by airport and customs authorities. If international express delivery enterprises are required to purchase additional equipment to comply with local PSB requirements, it will only increase costs and reduce efficiency.

In 2014, the State Council issued the *Several Opinions on Promoting Fair Competition in the Market and Maintaining Normal Order in the Market* (Circular No. 20), which directed the government to:

“standardize and improve coordination between supervising agencies and law enforcement and improve coordination mechanisms between local market supervision departments such that each department has clearly defined responsibilities, cooperates with other market supervision departments, and promotes collaborative work.”

Circular No. 20 also calls for regulatory authorities to “promote inter-departmental information sharing, break up ‘information islands’ and achieve openness, and engage in sharing to exchange information resources.”

Circular No. 20 clearly emphasizes the need for coordinated regulation through greater information sharing and transparency. With respect to the express delivery industry, our members urge regulatory authorities at the central and local level to formulate and implement unified national security inspection standards and technical requirements and increase coordination regarding enforcement. Otherwise, local authorities will continue to impose their own, often contradictory standards and regulations, creating unnecessary compliance costs for businesses.

Cybersecurity Challenges

The *Cybersecurity Law* came into effect in June 2017. Since then, implementing regulations and policies have rapidly been promulgated. Among them, regulations concerning security assessments for cross-border transfers of “personal information” and “important data” have been drafted. Public comment on draft versions of these regulations has been sought twice, in 2017 (draft *Measures on Security Assessment of Cross-border Transfer of Personal Information and Important*

Data) and most recently in 2019 (Draft *Measures on Security Assessments of the Cross-border Transfer of Personal Information*). Both drafts released for comment have included the express delivery industry in the scope of industries subject to cross-border transfers of personal information or important data.

The courier industry by its nature involves a large amount of customer information (e.g., name, address, specific package information), much of which must then be traded or transported across borders. Therefore, there are specific data security requirements to which express delivery entities must adhere.

According to current national regulations, express delivery companies must transmit data to the General Administration of Customs of China (GACC) and the Ministry of State Security (MSS) on a daily basis. The cross-border data transfers regulated under the CSL require clarification on exactly how security assessments will be implemented, which organizations and regulatory agencies will be responsible for implementation, and what their responsibilities will be. If the security assessment process materially affects the rate at which packages can clear customs, this will have a large negative impact on the entire industry and its customers. AmCham China urges the government to consider the practical needs of the express delivery industry and the reality of its operations when formulating implementing regulations for cross-border data security assessments, balancing the need to ensure network security with the need to ensure that the express delivery industry can clear customs regularly and efficiently without unnecessary burden.

Requirements for use of New Energy Vehicles

Recently, in order to improve road congestion in urban areas and address pollution challenges, central and local governments have issued a series of policy “opinions” that promote the replacement of traditional fossil fuel-powered vehicles with new energy vehicles (NEVs, i.e., vehicles powered by alternative fuel sources). As part of this effort, they have promulgated special requirements for transportation and distribution vehicles used in the express delivery industry. A proportion of the vehicle fleet used by the express delivery industry must be NEVs.

The express delivery industry supports government efforts to promote green transportation options and is willing to expand their use of NEVs. Our members have noticed, however, that certain provinces and municipalities have introduced requirements and metrics for use of NEVs in urban areas. Some of these requirements and metrics hold the express delivery industry to a higher standard than other industries.

The nature of the express delivery industry means that transport vehicles not only have to contend with the challenges

快递业务经营许可地域范围核定的管理框架下。中国美国商会将乐于与主管机构一道澄清他们运营模式的差别，并且制定针对当前监管造成挑战的实际的解决办法。

安全监管

地方公安机关要求企业配备符合地方安全标准的安检设备，并要求设备与公安的监控中心实现数据图像对接。2015年，全国已经部署了快递安全追踪系统。包括外资企业在内的快递企业均在各自站点和分拣中心购买和配置了X光机安检设备。

在部分省、自治区、直辖市，当地公安机关要求国际快递企业在快递企业运营的国际转运中心（Hub）作业场地内部署符合当地公安机关技术标准的“智能寄递安检一体机”，对进出口国际快件加强管理。而该场地属于海关监管场所，目前已经配置了机场和海关要求的安全管理设备，如果还要求配置新的设备，会增加企业运营成本，降低效率。

2014年国务院发布的《关于促进市场公平竞争维护市场正常秩序的若干意见》国发〔2014〕20号中已明确提出：

“规范和完善监管执法协作配合机制，完善市场监管部门间各司其职、各负其责、相互配合、齐抓共管的工作机制。”

该意见明确要求各监管机构通过信息共享、打破‘信息孤岛’，实现信息资源开放共享、互联互通。还要求提高透明度等方式加强协调。

对于快递行业，希望中央和地方监管机构能够制定、执行统一的国家安全检查标准和技术要求，希望不同监管机构能够加强监管执法协作配合机制，避免给企业带来不必要的合规负担。否则，当地主管部门将继续强加他们自己制定的，往往相互矛盾的标准和规定，给企业平添了合规成本。

网络安全

《网络安全法》自2017年6月1日施行，其各项配套政策陆续落地，其中《个人信息和重要数据出境安全评估办法》正在制定中，并于2017年、2019年两次征求意见。根据最新的征求意见稿文本来看，《个人信息

和重要数据出境安全评估办法》中已将快递行业列入了数据出境安全评估范围。

快递行业涉及大量客户信息，如姓名、地址、包裹信息等，以进行跨境贸易和运输，因此在数据安全方面要遵守特定的要求。

按照国家监管机构现行要求，快递企业目前每天都向海关总署、国家安全局传送数据。对于《网络安全法》提出的数据跨境传输管理规定，尚需要出台清晰的指导意见以明确如何实施安全评估及如何确定实施主体及明确责任。如果相关评估影响企业通关速度，必将对整个行业造成重大负面影响。商会促请相关监管机构在制定、完善数据安全评估实施规定能够充分考虑行业实际，平衡网络安全监管的要求和快递行业对于通关效率的客观要求。

快递行业新能源汽车使用要求

近年来，为改善城市道路拥堵、环境污染严重等问题的，中央和各级政府陆续出台政策意见推动新能源汽车替换传统燃油汽车，并对快递行业使用的运输配送车辆提出特别要求，部分地区规定了快递行业新增或更新车辆采用新能源汽车在快递物流车中的占比。

快递行业支持相关部门大力推广绿色运输的努力，愿意积极配合各级监管机构的要求，在未来扩大新能源汽车的使用。但是，商会也注意到部分省市陆续出台针对城市内快递配送车辆使用新能源汽车的指标和要求，其中部分指标和要求对快递行业的要求高于其他行业。

由于快递行业的特殊性，快递行业使用的运输车辆涉及干线长途运输和市区收寄配送。因此，快递车辆的使用既要考虑到节能环保，还需要满足包括“最后一公里”配送等特殊需求。

商会建议交通运输、城市管理等相关监管机构在制定针对快递行业的新能源汽车使用要求时，充分考虑快递行业的特点，平稳推进。同时建议出台支持快递行业新能源货车通行路权配套政策，如减少新能源快递车辆在城市内的通行限制，加快新能源快递车辆的基础设施建设，如充电桩、供开展寄递服务时使用的停车位等。如果这些措施能够更多的出台，将增加快递行业加大新能源汽车使用的动力。

of transporting packages over long distances, but must also be able to make deliveries within a city. They must consider not only issues of energy conservation and environmental protection but also be able to adapt their transportation fleet to address a range of issues, including “last mile” delivery.

We recommend that local transportation agencies and municipal governments consider the needs of the express delivery industry when formulating policies on NEVs. One way to do so is to issue policies that enable greater adoption of NEVs in the express delivery industry by reducing restrictions on NEVs used for express delivery in cities and accelerating construction of infrastructure to support NEVs (e.g., charging stations and parking lots for delivery vehicles). These policies will help to encourage adoption of NEVs by the express delivery industry without imposing undue burdens.

Recommendations

For the Chinese Government:

- **Establish a uniform regulatory framework at the national level for the express delivery industry. Clarify the responsibilities of the various regulatory bodies and standardize supervision nationally. Formulate unified technical standards including with respect to security inspection equipment that are jointly recognized by all relevant ministries and government bodies.**
- Establish a data platform that is compatible with the existing MPS information system to promote data sharing between regulatory bodies and reduce the need for duplicative data requests.
- Cybersecurity and express delivery authorities should jointly formulate a reasonable data assessment system for the express delivery industry that balances local security requirements with the needs of express delivery enterprises to collect and transfer data across borders frequently. Enterprises should be given sufficient preparation time and information to comply with new regulations.
- Introduce policies to promote the use of NEVs in the express delivery industry, especially policies that promote the construction of NEV-support infrastructure.

建议

向中国政府：

- 期待在国家层面加快建立快递行业安全监管统一领导框架，明确监管主体，统一全国监管措施，并制定包括安检设备在内的、各部委共同认定的统一技术标准。
- 建立与公安部现行信息系统兼容监管的数据平台，促进监管部门之间的数据共享，减少重复向企业索取数据的行为。
- 网络安全主管部门和快递监管部门应共同研究制定合理的快递行业数据安全评估体系，平衡本地安全需求与快递服务业频繁跨境采集和传输数据的需求，在执行相关要求时建议给予企业充分的准备时间。
- 平稳推进新能源汽车在快递行业的使用，健全通行路权配套政策，完善基础设施。

Food & Beverage, Retail and E-commerce

Introduction

AmCham China is pleased that over the past two years the responsibilities of regulatory departments have become more defined, and the equipment and technical support needed to regulate and monitor food safety have been put into place. The establishment of the State Administration for Market Regulation (SAMR) has strengthened food safety governance and regulation. AmCham China hopes for long-term stability in SAMR's structure, function, and division of labor.

Successful regulation requires balancing the need for stringent regulatory requirements with the desire for high-quality food. AmCham China urges the Chinese government to continue developing a scientifically rigorous and forward-looking regulatory system for food safety management. The government's strict management objectives can be realized through quality standards, stringent regulations, and strengthened enforcement. Because food production and management companies are legally defined as the "first responsible person" (or entity), risk assessments and hazard analysis are critical to preventing and controlling food safety hazards. We believe that companies should be permitted autonomy to implement internal risk management processes. We encourage large enterprises to share best practices and company culture with small and medium-sized enterprises (SMEs) to advance the entire industry towards a system characterized by effective food safety measures.

Uniform Regulation and Enforcement in the Food and Beverage Industry

Inconsistency in Local Food Safety Enforcement

Due to China's decentralized food safety system, local agencies can and do interpret the central government's food safety policies differently. The result is inconsistency in enforcement among localities across the country. AmCham China would like to see the widespread variation in local policies and implementing practices shift towards a more service-oriented, open, and scientific approach that bridges the divide between the central and local regulatory systems. This can be achieved by streamlining administrative work,

effectively delegating authority for food safety supervision to the local level and improving uniform enforcement and supervision.

Professional Food Safety Supervision

Food safety supervision is a highly specialized and technically demanding field. AmCham China encourages all localities to ensure that local food safety supervisors have the proper professional qualifications and have completed proper training courses with input from expert consulting services. We also suggest establishing science-based mechanisms for assessing food safety management systems by evaluating their regulatory effectiveness, societal benefits, and other indicators of safety, and that food safety supervisors implement this system. It is important that the opinions and concerns of food production and management companies are taken into consideration regarding the food safety supervision process. We look forward to enhancing communication with regulators to continue enhancing the professional capacity of food safety supervisions and we welcome the opportunity to conduct interviews, host forums, and engage in any other official modes of discussion. This will accelerate capacity building and ensure that food supervision processes and food safety standards are more authoritative, effective, and of a high quality.

Credit History Supervision

China is accelerating construction of a new credit-based regulatory mechanism through the establishment of a unified and searchable platform to search for a market participant's credit history. They are simultaneously establishing a credit "black list" to be combined with random inspections, random assignment of inspectors, and transparent disclosure of results (the "double random, one open" initiative), and a system of "Internet + Monitoring" (i.e., via the social credit system to collect and monitor information from foreign-invested and domestically-invested enterprises). Through this corporate monitoring system, the Chinese government has raised the stakes for corporate dishonesty through "composite scoring", that is, information sharing, disclosure and joint punishment, in order to monitor business behavior and integrity.

食品、饮料与零售

引言

中国美国商会（商会）高兴地看到“三局合一”，两年来，各相关部门的职责逐渐清晰落地，配置、设备设施和技术支撑等均陆续到位。市场监督管理总局的成立加强了食品安全治理和监管。商会希望市场监督管理总局架构、职能和分工能长期保持稳定。

良好的监管要求平衡“最严格的监管要求”和“管优管活”。商会希望中国政府能够打造科学、严谨、面向未来的食品安全监管体系。政府可以通过实施质量标准、严格监管，加强执法来实现其严格管理目标。因为在法律上食品生产经营企业是第一责任人，因此风险评估、危害分析对食品安全危害防控至关重要。商会认为企业应赋予一定的自主权，落实内部风险管理流程。商会鼓励大型企业与中小企业分享相关经验和企业文化，推动食品行业有效实施食品安全管理措施。

食品饮料行业的统一监管与执行

食品安全地方执法不一致

在食品安全体系分散的大背景下，各地对中央政策解读不一，导致中国各地执法出现分化。商会希望各地能够朝着服务型、开放型、讲科学的方向发展，保障中央和地方监管体系系统一致。地方政府应全面深化“放管服”改革，推动食品安全统一监管和执行。

食品安全监管的专业性

食品安全监管工作专业性强，技术要求高。商会期待各地继续加快提升基层食品安全监管人员的专业能力，合理配备人员、实施系统培训计划，强化专家咨询机制。商会建议通过评估各地监管有效性、社会效益和其他安全指标，建立科学的食品安全管理评估机

制，食品安全监管机构负责实施此机制。在监管工作中注重听取企业意见和诉求。商会期望通过采访、座谈及其他等各类官方讨论形式加强与监管机构的交流，提高食品安全监管的专业能力。这将加速专业能力培养，确保食品监管工作能够以更权威、更有效果、更高水平地向前推进。

中国加强信用监管

商会看到中国正在加快构建以信用为基础的新型监管机制的创新，建立统一可查询的市场主体信用记录，互通共享，同时设立市场主体信用“黑名单”，结合“双随机、一公开”，以及“互联网+监管”，逐步推进信用分级分类监管。政府通过信息共享及公开，联合惩戒等“组合拳”让企业失信成本大幅增加，以期起到监督和督促诚信经营的目的。

这样的监管举措让信用良好的企业权益可以得到更好的保护。但同时商会也注意到，监管信用评级体系需要收集大量的企业数据，其中大部分是政府部门要求企业必须提供的，在这种情况下，各级政府及相关部门如何才能有效地保护企业的信息需要格外关注，尤其是涉及企业技术及员工信息等的敏感数据。因此商会建议尽快加强立法，规范监管行为，明确监管手段，不断提升监管人员的专业能力，并确保公职人员尽职。

值得信赖的食品安全信息宣贯

商会大力支持提升沟通质量，为消费者提供准确透明的食品安全信息。各类沟通渠道和行业协会拥有大量平台和丰富的资源，可以借助发布真实可靠的信息。但是，媒体也应避免发布耸人听闻的新闻标题，要选择有关食品安全科学有用的最新报道。食品饮料行会、政府机构和公众之间的可靠沟通将提高消费者对食品安全管理的认知和信任。

Such regulatory measures can protect the rights and interests of companies with good credit. At the same time, the emerging credit rating system requires vast amounts of corporate data, which are often demanded by government regulators. There is uncertainty as to how different levels of government and the relevant departments effectively safeguard corporate data. Sensitive information involving corporate technology and personal information data of employees is of particular concern. Therefore, we recommend that the legislation governing credit supervision be strengthened to ensure data protection, clarify mechanisms of supervision, improve the professional capacity of those in a supervisory role, and establish accountability mechanisms to ensure that public officials perform their duties faithfully.

Communication of Reliable Information on Food Safety

AmCham China supports efforts to improve communication to provide consumers with accurate and transparent food safety information. Various communication channels and industry associations have large platforms and abundant resources that can help disseminate trustworthy, reliable information. Media outlets, however, should avoid sensational headlines and opt for science-based, informative reporting on food safety updates. Reliable communication between the food and beverage industry, government agencies, and the public will improve consumer perceptions of and trust in China's food safety management.

Ongoing Challenges Regarding Supervision of the Food and Beverage Industry

Professional Faultfinders

Professional faultfinders (PFFs) and professional claimants have abused the law for personal gain in the name of food safety, at significant cost to business operations and administrative and commercial resources. AmCham China members recognize that supervisory bodies and judicial organs are becoming increasingly cautious in their approach to cases involving professional claimants. In 2018, Shenzhen, Chengdu, and Shanghai introduced policies to curb and punish professional claimants whose actions are driven solely by personal gain.

In December 2019 SAMR published the *Interim Measures for Market Supervision, Management and Reporting of Complaints*. Article 15(3) states that the following complaints will not be accepted by the market supervision and management department: when the complaint is not

“necessary to purchase, use goods or receive services for living or consumption, or to prove that there is a dispute over consumer rights with the respondent.”

The definition and interpretation of “living or consumption” and related terms or clauses is still under debate in the judiciary and market supervision departments. In November 2019, in an effort to clarify such terms, the Supreme People's Court published the *Interpretation of Several Issues Concerning the Application of Law in the Appeals of Civil Disputes in Food Safety* (Draft), which interprets several articles in the *Food Safety Law* for legislating civil disputes.

Nevertheless, PFFs can still abuse the law and make meritless claims under the pretext of “protecting consumer rights.” The current “system of punitive damages” fails to distinguish authentic consumer complaints from ill-intentioned or fraudulent lawsuits. These professional claimants often target enterprises in the food and beverage industry and take advantage of their supply chains, enabling them to submit similar complaints in multiple locations and regional jurisdictions.

Furthermore, PFFs waste administrative and judicial resources. According to *The People's Court Daily* and the China Consumers Association, spending on trials and appeals concerning PFFs absorb four or five times more resources than other legal procedures. In addition to the financial cost and waste of resources, PFFs undermine normal business operations, harming consumers and the business environment.

With these challenges from PFFs in mind, AmCham China recommends that:

- The Chinese government amend the *Implementing Regulations of the Consumer Rights Protection Law* or publish a clear set of interpretations and/or definitions for terms like “reasonable consumption” and other ambiguous language. The same should be done for other relevant laws and regulations to provide a clear baseline for local governments and regulators to investigate and address claims in a consistent manner,
- Cases involving food safety should be classified according to their level of severity. Material food safety violations such as the presence of illegal food additives or excessive heavy metals content should carry more weight than minor food safety cases, such as label and packaging defects. The judiciary should err on the side of caution when awarding compensation for complaint resolution. A threshold of harm should be set for compensation demands together with a ceiling on the award of punitive damages and the number of purchases of the same product for which consumers can pursue a claim. Promote the application of public interest litigation or class action lawsuits to enable groups with related claims to defend their rights through an organization or group with more transparent management and which operates on a not-for-profit basis,
- Thoroughly implement the State Council's *Guiding Opinions on Strengthening and Regulating Event and*

食品饮料行业的现存监管挑战

进一步完善惩罚性赔偿制度，缓解职业索赔人对行业带来的负面影响

职业索赔人滥用法律，以食品安全为名谋取私利，给企业经营和行政、商业资源造成了巨大损失。商会认识到各地监管和司法机构在处理职业索赔人案件的问题日益审慎。2018年，北京、深圳、上海等地陆续出台政策遏制职业索赔人负面影响，惩治牟取私利的职业索赔不法行为。

2019年12月，国家市场监督管理总局发布《市场监督管理投诉举报处理暂行办法》，其中第十五条第三款明确指出“不是为生活消费需要购买、使用商品或者接受服务，或者不能证明与被投诉人之间存在消费者权益争议的”而发起的投诉，市场监督管理部门不予受理。但商会也看到，对于如何正确解读和界定“生活消费为目的”等相关法律法规，司法机构和市场监管部门也存在争议。2019年11月最高人民法院就出台了《关于审理食品安全民事纠纷案件适用法律若干问题的解释》（征求意见稿），其中关于《食品安全法》有关民事纠纷案件适用法律进行了解释。

然而，职业索赔人仍能滥用法律，以“保护消费者权益”为借口恶意索赔。现行“惩罚性赔偿制度”未能够将真正的消费者投诉与恶意或欺诈性诉讼区分开来。职业索赔人群体经常针对食品饮料行业相关企业，故意利用企业供应链，在多地司法管辖权提出类似诉讼。

这造成了基层市场监管和司法资源的极大占用与浪费，据《人民法院报》及中国消费者协会等机构透露，职业索赔所耗费资源是一般正常投诉的4倍至5倍。除了经济成本和资源浪费之外，职业索赔人还严重影响了企业的正常生产经营秩序，损害消费者的利益，破坏营商环境。

考虑到这些挑战，商会建议：

- 修改《消费者权益保护法实施条例》或在有关司法解释中予以明确“合理消费”等相关定义及其他模棱两可的表述。其他相关法律法规也应如此，为地方政府和监管机构调查处理索赔案件提供统一清晰的衡量尺度。
- 涉及食品安全的案件应根据其严重程度进行区分。

像比轻微问题如标签包装瑕疵，重大食品安全违法行为如非法食品添加剂或重金属含量超标等行为应受到更多重视。司法机构在对解决投诉给予赔偿时应谨慎处理，对于惩罚性赔偿设置最高限额，设置购买数量受消费者保护的上限；推广应用公益诉讼/集体诉讼，使有相关诉求的群体可以通过一个管理更透明、不以营利为目的的组织或群体进行维权。

- 建议贯彻执行国务院《关于加强和规范事中事后监管的指导意见》，“对恶意举报非法牟利的行为，要依法严厉打击”。切实保护实体企业和平台经济参与者合法权益，打击以“打假”为名的敲诈勒索行为。通过更透明、不以营利为目的的渠道保护消费者权益，使职业索赔回到社会共治的应有轨道。
- 监管机构应寻求打击食品安全违规行为和维护行业可持续健康发展的平衡点，审慎处理不合理赔偿要求。将重点放在重大风险食品安全问题上。

《农产品质量安全法》的修订及食用农产品合格证制度完善及相关建议

2018年10月，《农产品质量安全法》启动修订。为了更好地贯彻实施《农产品质量安全法》，农业部还制定实施了一系列的配套规章，管理控制农产品的质量和标准。商会赞赏立法机构听取了行业协会的建议，加强了中国农业的监管与治理。

农产品管理也要遵守《食品安全法》及其修订版中有关农产品销售和农业投入的规定。《农产品质量安全法》和《食品安全法》的双轨制使得食用农产品的初级生产监管和入市流通监管隶属于不同的主管部门，安全保障的制度建设方面存在差异。商会建议，强化食用农产品的产地准出和市场准入之间的无缝衔接。

《食品安全法》第136条适用情况的建议

“条例”关于主动召回减轻处罚的规定，体现了国家市场监督管理总局对于经营企业“尽职尽责”诉求的回应，商会对此表示赞赏。

《食品安全法》第136条“尽职尽责”条款规定如果食品不符合食品安全标准，但食品经营者履行了进货查验等义务，可免于处罚。第136条规定认识到食品饮料行业供应链的多样化及责任的分区，企业可以有机会就一些案件自证清白。但在实践过程中，由于因相关规

Post-event Supervision which encourage crackdowns on counterfeit, malicious, and/or illegal profit-making. Protect the legal rights of brick-and-mortar and online business entities by distinguishing legitimate claims from profit-seeking allegations. Establish transparent and not-for-profit channels dedicated to safeguarding consumer rights. Ensure professional claims are dealt with appropriately as part of a model of social co-governance,

- Regulators should strive to balance the need for strong action against food safety violations with a desire to stimulate sustainable growth and development of the food and beverage industry. Unreasonable compensation claims should be handled prudently. The focus should be on food safety issues with significant risk.

Revising the Law on Quality and Safety of Agricultural Products and a Certification System for Edible Agricultural Products

In October 2018, the process for revising the *Law on Quality and Safety of Agricultural Products* was initiated. The Ministry of Agriculture and Rural Affairs (MARA) formulated a series of supporting regulations to manage and control the quality of agricultural products and standards in order to guide the implementation of the Law. AmCham China appreciates that MARA and other regulatory authorities appear to have absorbed the recommendations of industry associations and strengthened the supervision and governance of China's agricultural sector.

Management of agricultural products is also subject to provisions established in the *Food Safety Law* and subsequent revisions which cover the marketing of agricultural food products and agricultural inputs. The dual-track system created by the fact that industry stakeholders are subject to both the *Law on Quality and Safety of Agricultural Products* and the *Food Safety Law* means that the departments responsible for verifying the origin of imported agricultural goods and for governing the import of edible agricultural products are different. The systems used to verify and guarantee the safety of these products are different. AmCham China recommends unifying the regulations that govern the origin and market access of edible agricultural products.

Article 136 of the Food Safety Law

Companies which undertake voluntary product recalls may be eligible for reduced penalties for any defects. AmCham China is appreciative of this practice. This reflects SAMR's acknowledgement of companies which undertake reasonable and appropriate due diligence to ensure food safety.

The "Duty Relief" clause of Article 136 of the *Food Safety Law* exempts food safety operators from punishment if their food does not meet safety standards but they can prove that

they have undertaken satisfactory due diligence. Article 136, recognizing the food and beverage industry's diverse supply chains and disparate division of responsibility, affords companies an opportunity to contest their legal liability in certain cases. In practice, however, disputes have arisen because the regulations are lacking in specificity, as well as a lack of applicable standards, which leads to overly broad enforcement discretion and substandard implementation.

At present, there exists a level of ambiguity between manufacturers and distributors as to who is responsible if food products do not meet safety standards. Distributors are often held responsible for activities that take place during manufacturing. To be specific, manufacturers should be held accountable for incorrect labeling, use of unapproved or excessive food additives, and any violation of limits on the presence of heavy metals in food products. In practice, penalties for breaches of these regulations are usually imposed on distributors before the manufacturers/producers are held liable. As a result, distributors are subject to unfair reputational and financial costs. Severe penalties can include revocation of licenses, limits on access to credit, and requirements to make substantial compensation payments. Furthermore, the execution of food safety penalties by regulators varies across different regions in China which exacerbates the problem. AmCham China recommends that the roles and responsibilities of manufacturers (including breeders and processing companies) and distributors be clearly and fairly distinguished. Unfortunately, China's *Food Safety Law* and its *Implementing Regulations* integrate the responsibilities of distributors and manufacturers and subject them to the same punishments. Although food safety is a shared responsibility among different industry stakeholders, their responsibilities should be appropriately apportioned.

With respect to Article 136, AmCham China recommends that the government:

- Divide and clarify in law the responsibilities of food manufacturers and distributors to protect both groups of stakeholders from being subject to unwarranted penalties. Ensure that those responsible for food safety violations are punished and that any due diligence conducted is weighed in the balance,
- When designing systems to impose and administer serious penalties on specific individuals within an enterprise or the enterprise itself, which could result in an enterprise losing its license, affect access to credit, or incur payment of significant compensation, ensure that they distinguish between the responsibilities of producers and distributors, take into account whether due diligence has been conducted, and strive to create a fair market environment,
- National guidelines should be published that delineate responsibilities or formulate a list of responsibilities for producers, (e.g., labeling and instructions, use of food additives, unlawful use of drugs or heavy metals).

定的笼统性和不确定性，以及可操作性适用标准的缺失，使执法裁量权过宽，导致因适用争议而无法真正得到很好的实施。

目前食品生产者和经营者的责任尚未细化区分，造成食品经营者承担了原本应由生产者承担的责任，如生产者的标签标识 & 说明书、食品添加剂、超范围超限量用药、重金属等虽是生产者的责任，但实际操作中往往经营者直接接受处罚，再追索生产商或供应商，致使经营者无端承受声誉和财务损失，重则吊销营业许可、限制信贷、要求支付大量赔偿金。此外，中国各地政策和处罚标准十分不同，使得上述挑战更为严重。商会建议对食品生产者（包括种养殖和加工）与经营者的角色和责任明确区分。但是《食安法》及其实施条例很多情况下将食品生产者和经营者的责任 & 义务、以及处罚合并规制，虽然生产者和经营者都承担食品安全责任和义务，但由于食品生产者和经营者的角色不同，各自食品安全责任也应有所不同。

商会建议：

- 区分生产者和经营者责任，保护相关利益方免受无端处罚，对于责任主体直接进行处罚，落实“尽职免责”
- 对于重大制度和举措的设计，如“处罚到人”、“三振出局”、“信用联合惩戒”、“巨额赔偿”等，严格区分生产和经营的责任主体，落实尽职免责，营造公平的市场环境
- 细化食品生产者和经营者的具体责任，由国家层面出台指导意见，制定生产者责任清单，如标签标识 & 说明书、食品添加剂、超范围超限量用药、重金属等，并就尽职免责适用范围给予各地明确指引。

关于食品安全法实施条例“处罚到人”条款

新修订的《中华人民共和国食品安全法实施条例》在条例第六十八条、第七十三条等新设法律责任中也明确要求依照第七十五条的规定对有责任的个人进行处罚。

判断企业法人、负责人是否存在违法行为，应充分考虑其“主观故意/恶意”等情况。现实中大型连锁零售企业的高管可能担任多家门店的法定代表人或负责人，不参与具体门店日常管理；商会尊重司法机关对于食品安全直接责任人的相关处罚，但对于法定代表人的

处罚责任的认定、罚款幅度的界定应更加科学合理。

此外，对于什么是“造成严重后果”的违法行为，条例未作出明确的规定，考虑到主观归责给行政执法带来的挑战，需要进一步明确如何认定明知这样的违法行为。建议根据具体情形，商会期待食品安全主管部门能够出台有关违法行为和造成严重后果的行为的细化条款，便于企业加强合规管理。

社会共治，建设“健康中国 2030”

2019年，国务院发布了《健康中国行动（2019—2030年）》（以下简称《健康中国行动》），为进一步推进“健康中国”建设制订了更为具体的指标和行动方案。近年来，为了配合“健康中国”国家战略，食品饮料行业不断转型升级，在保证食品安全的基础上，将“营养健康”理念纳入到企业长期发展战略中，为消费者提供既美味又健康的产品。

以实际行动积极落实“健康中国”战略

商会会员企业一致认为，助力“健康中国”，积极参与推进《健康中国行动》（2019-2030）、《国民营养计划》的实施，是食品饮料行业义不容辞的义务，商会的参与促进了食品饮料业的高质量发展。自“健康中国 2030”战略推出以来，食品饮料行业已经在产品多元化和提升产品营养健康价值方面进行了许多有益的探索和实践，并在推动“三减三健”方面采取了切实行动。

- 产品创新和多元化：持续创新，积极研发适合消费者口味和健康需求的减盐、减油、减糖产品，提供更多营养均衡的产品选择。
- 清晰易懂的产品信息：在包装和销售渠道提供完善、清晰易懂并基于事实的产品营养信息，帮助消费者科学选择。
- 推动健康生活方式：积极与社会各界合作，通过开展健康教育、倡导均衡膳食和积极运动，提升公众的营养和健康素养。
- 负责任营销：不对12岁以下儿童开展市场营销活动。

构建政府、企业、社会共治格局，建设“健康中国”

商会希望2020年能进一步贯彻落实“健康中国2030”。共建共享是建设“健康中国”的基本路径。政府出台的一系列纲领性文件都强调了政府主导，统筹社

Provide a clear interpretation on the applicability of practices that constitute due diligence for local governments.

“Punishments for Responsible Individuals” under the Implementing Regulations of the Food Safety Law

Articles 68 and 73 of the *Implementing Regulations of the Food Safety Law* clarify the legal responsibility and the corresponding penalties for legal representatives of companies which violate the *Food Safety Law* (in accordance with Article 75).

When establishing whether a company’s legal representative or other responsible individual has committed a violation or illegal act, full consideration should be given as to whether there has been any intentional violation. In practice, the legal representatives or executives of large food and beverage enterprises with many retail outlets oversee multiple outlets and do not have a role in the day-to-day management of any specific outlet. We respect the right of enforcement agencies to impose punishment on those persons directly responsible for food safety violations, but the scope of fines and penalties that can be levied on an enterprise’s legal representative(s) should be more reasonable, measurable, and appropriate.

In addition, the regulations do not make clear what constitutes those illegal acts which “cause serious consequences.” Considering the potential for subjective administrative enforcement, greater clarity is needed. AmCham China recommends that the regulatory authorities introduce detailed provisions about the referenced illegal acts and “serious consequences” to enable industry to manage compliance expectations.

Healthy China 2030

Implementing “Healthy China 2030” through Social Co-governance

“Healthy China 2030,” a national strategy first announced in 2016, reflects the Chinese government’s determination to promote public health as a key aspect of social and economic development nationwide. In 2019, the State Council issued the *Healthy China Action Plan (2019-2030)* that outlines the implementation strategy for Healthy China 2030. As part of its ongoing development, the food and beverage industry has increasingly prioritized food safety. Businesses have incorporated concepts of “nutrition” and “health” into their long-term development strategies to provide consumers with appetizing and healthy products.

Implementing “Healthy China 2030” through Practical Action

AmCham China members accept their obligation to support the *Healthy China Action Plan (2019-2030)* and the *National Nutrition Plan*. We believe that our participation fosters high-quality development of the food and beverage industry. Since the roll-out of Healthy China 2030, the food and beverage industry has both diversified and improved the nutritional value of its product offerings. The focus has been on reducing sodium, oil, and sugar content in food, as well as promoting healthy mouths, healthy weight, and healthy bones (a program known as the *Three Reductions and Three Kinds of Health*). Some examples include:

- A focus on developing products with reduced salt, oil, and sugar content. These products are appealing to consumers but provide a more nutritionally balanced set of dietary choices,
- Providing clear, factual and easy-to-understand product nutrition information on packaging materials and through marketing strategies to help consumers make more informed choices,
- Promoting healthy lifestyles by partnering across industries to enhance literacy and education about health and to encourage exercise and balanced diets,
- Instituting responsible marketing techniques to prevent inappropriate marketing materials from reaching children under the age of 12.

Building a Model of Co-Governance Across the Government and Industry for a “Healthy China”

AmCham China expects to see further implementation of Healthy China 2030 throughout 2020. The key to the success of Healthy China 2030 lies in an environment of strong social co-governance. A series of documents introduced by the Chinese government emphasizes the government’s leading role in coordinating social organizations, industry stakeholders, and individuals to work together to promote healthy outcomes.

To this end, we expect decision-makers in government to fully engage with the scientific community and food and beverage industry when developing nutrition and health policies. They should do so in a manner which is open, practical, fair, derived from scientific principles and evidence-based results, and utilizes industry’s practical expertise. For example, the *Three Reductions and Three Kinds of Health* policy requires cooperation from various elements of society. The strategy must consider differing needs of consumers, foster innovative and diversified product offerings, and strengthen service delivery to allow consumers access to low-salt, low-oil, and low-sugar foods. The key to building a healthier China lies in an environment of strong social co-governance under the guidance of regulators.

会、行业和个人三个层面，形成健康促进的强大合力。

为此，商会期待决策部门在制定营养健康政策的过程中，依据科学事实和调研数据，参考产业实操经验，制订实事求是、公正合理的政策法规。同时，能耐心听取企业的问题和经验，适当采纳企业建议。正在推进的“三减三健”行动就需要社会多方共同协作。例如，“三减”的推广及实施需要考虑消费者的不同需求，要引导企业通过创新开发兼顾消费者口味和健康需求的多元化产品；并加强服务创新，为消费者获取低盐、低油、低糖食品提供更加便利的服务。因此，在监管机构的引导下，共创良好的社会共治氛围是建设“健康中国”的关键所在。

2020年将是《健康中国行动》深入实施的一年，会员企业期待有机会参与相关行动计划的制定工作，与决策部门分享企业的相关数据、科研成果和管理经验。同时商会也呼吁政府监管部门和科研机构加大科普宣传力度，积极向消费者传播有关食品饮料以及重要营养素和添加剂的科学知识、预包装食品标签解读，消除大家由于信息不正确或不完整产生的误解，帮助消费者理性选择，实现合理膳食。同时，加强对食品安全谣言的打击，才能有效避免食品谣言引起的恐慌，增强中国公众对食品安全的信心。商会愿意积极参与并支持相关的营养健康科普宣教活动。

改善食品饮料行业的营商环境

为营造有利行业长远发展的商业环境，商会会员对完善法规标准、市场监管和执法提出以下建议：

继续优化食品安全体系建设，激发行业在营养健康领域的创新活力

新《食品安全法》及其实施条例的出台对提升食品行业安全起到了一定的保障作用，增强了消费者对食品安全的信心，但同时商会也看到，监管食品安全的有关标签、营养、检测方法等有关规定更加严格，监管机构在操作上带来了挑战。将营养标签等不会影响食品安全的内容纳入食品安全范畴进行管理的做法越来越不利于行业发展，尤其是不利于推进《“健康中国2030”规划纲要》及《健康中国行动（2019-2030）》的开展落实，因此建议将不涉及食品安全问题的内容移除食品安全标准体系，减少对企业的束缚和压力，同时避免不必要的

监管资源浪费，更大力度地引导、促进食品企业在营养健康方面的研发，使得企业能够更积极地参与国家营养健康相关工作，顺应国家对食品行业发展的新规划。

中国在推进食品行业供给侧改革的过程中，也在加快推进健康中国战略的落实，随着消费者对食品的健康程度有了越来越多的关注和重视，商会建议相关部门进一步减少对企业根据健康效益营销产品的限制。例如，已知DHA（二十二碳六烯酸，一种omega-3脂肪酸）可以促进大脑和眼睛的健康发育。然而，中国宣传DHA有益健康的广告目前仅限于婴儿配方奶粉。取消此类限制将有利于为消费者提供食物含量及其健康效应的相关信息，这对消费者进行产品选择将有更好的参考价值。

正如2019年《白皮书》中提出，进一步完善食品安全与卫生规范和食品安全产品标准，逐步推进良好卫生规范管理制度（GMP）与关键危害控制计划（HACCP）相结合的过程管理标准，简化终产品指标要求。商会特别建议食品安全检测应逐渐从终产品检测过渡到过程监测，减少终产品中不必要的菌落总数和食品添加剂的检测，减少企业和监管部门处理相关问题资源的浪费。

建议监管机构同时发布过敏原标识和进口食品贴标及标签管理办法，出台具体的企业管理及政府监管的技术指导文件。这些文件往往发布时间不同，导致标准发布会企业面临挑战。商会建议给予企业一定的切换过渡期（如2-3年），减少企业因适应调整而带来的压力，同时也可避免办法发布后的各种挑战。

建议开展可回收包装材料再生利用的科学法规研究，适时启动回收再生包装材料合法利用的法规建设，使企业能够参与，共同探索可实践的应用。

建议对于研发创新用途的原材料和样品进口能够开通绿色通道。公司在尝试研发和创新时，有时需要从国外进口原料和样品进行相关的研究。但是目前的进口备案所需材料繁杂、耗时较长，一定程度上阻碍了产品创新。虽然食品安全是新产品研发的首要考虑因素，鉴于用于研发的进口材料只用于概念和实验阶段，不会对最终消费品带来食品安全隐患，商会建议国家监管机构考虑对这类非生产销售用途的食料和样品进口给予一定的灵活度，如通过进口备案（名称、数量、用途等）/核销备案（销毁记录）的模式简化进口监管

2020 will be a year of implementation for Healthy China 2030. AmCham China members look forward to taking part in formulating action plans and sharing relative data, scientific research and results, and management experience with policymakers. AmCham China members also appeal to government regulators and research institutions to increase public awareness and understanding by educating consumers about how to decipher pre-packaged food labels and popularizing knowledge about key nutrients and additives. A broader and deeper public understanding of these issues can eliminate misunderstandings and assist consumers in making rational choices in favor of healthier diets. At the same time, preventing the spread of food safety rumors and factual inaccuracies will enhance public confidence in China's food safety. AmCham China stands ready to support these nutritional and health science education activities.

Improving the Business Environment for the Food and Beverage Industry

In order to create a sustainable business environment for the industry, AmCham China members suggest the following improvements to laws and standards, market supervision, and enforcement:

Continue to Optimize Industry Regulation to Promote Innovation

The new version of the *Food Safety Law* and its Implementing Regulations (released October 2019) have improved food safety standards industry-wide and raised consumer and business confidence. We must also recognize, however, that by introducing more stringent labeling, nutrition and testing to regulate food safety, the regulators have created operational challenges. The practice of including nutrition labels and other such elements that do not enhance the safety of food products themselves is detrimental and may slow implementation of Healthy China 2030 and the *Healthy China Action Plan* (2019-2030). AmCham China recommends that irrelevant content and requirements be removed from food safety standards and regulations. Such reform will ease industry's compliance burden while reducing unnecessary regulatory oversight. It will also enable enterprises to participate more actively in national nutrition and health priorities and R&D that are aligned with China's strategy for the development of the food and beverage industry.

In order to advance supply-side reform of the food and beverage industry, China is accelerating the implementation of strategies under Healthy China 2030. As Chinese consumers increasingly opt for healthier food choices, AmCham China recommends that relevant authorities further reduce restrictions on the ability of companies to market foods on the basis of their health benefits. For example, DHA (Docosahexaenoic acid, a type of omega-3 fat) is known to promote healthy development of the brain and eyes. In China, however,

advertising the health benefits of DHA is currently restricted to infant formula milk powder. Eliminating such restrictions will provide consumers with more information about food content and the associated nutritional benefits. Ultimately, such policies will enable consumers to make healthier dietary choices when selecting food products.

As we did in the 2019 *White Paper*, we recommend improving food safety, hygiene and product standards through the gradual promotion of Good Manufacturing Practice (GMP) and Hazard Analysis and Critical Control Point (HACCP) techniques to streamline final product standards and requirements. These techniques control product quality and adherence to food safety standards. In particular, we recommend that detection of microbes and other organisms gradually shift from the final product testing stage (as at present) to monitoring throughout the entire production cycle to reduce the number of unwanted microorganism and bacteria colonies currently discovered in the final product testing stage. Adopting such preventive measures will also reduce the waste of administrative resources by both enterprises and regulators.

We recommend that regulators simultaneously release allergen labels, import food labels, and label management documents that offer specific technical guidelines for corporate management and regulatory oversight. These documents have not always been issued at the same time, creating compliance challenges after the standards are released. We suggest a reasonable transition period (e.g., 2-3 years) to allow companies to comply with the regulatory changes.

We recommend that research be undertaken on proper methods for recycling packaging materials and subsequent laws and regulations be developed to guide the legal use of recycled packaging materials. Enterprises should be encouraged to explore practical and viable solutions with regulators.

We recommend establishing a "Green Channel" for food and beverage companies to import raw materials and samples that are needed for R&D and innovation. The current import filings consist of a complicated and time-consuming procedure involving multiple documents that, to a certain degree, hinders product innovation. Although food safety should be a primary consideration during new product development, the imported materials used for R&D are only being used during the conceptual and experimental stages, so the health and safety of consumers is not threatened. We urge industry regulators to adopt a flexible approach to the import of raw materials by streamlining the import regulation process for products that will not be sold to consumers by requiring only that those imports be filed (listing the product name, quantity, and intended use) and a record of their disposal be filed after use. This will both enhance regulatory flexibility and facilitate innovation in the food and beverage industry.

流程，这样不仅可以实现有效监管目的，也能够帮助促进企业不断创新。

持续加强不同地区执行部门对国家法规标准的深刻理解，建立科学合理的统一执行尺度

中国高度重视食品安全这一民生工程，今年5月国务院发布了《关于深化改革加强食品安全工作的意见》，要求切实抓好落实食品安全“四个最严”，继续保证食品安全形势稳定向好的趋势。提出食品安全工作“四个最严”的工作要求，要求各级党委和政府坚持源头严防、过程严管、风险严控，完善食品药品安全监管体制，加强统一性、权威性。新修订的《食品安全法》及其实施条例进一步强调了落实企业主体责任，食品安全责任要落实到企业负责人。这个规定虽然有所帮助，但也有其复杂性。

虽然商会赞赏中国在改善食品安全监管方面取得的稳步进展，但商会敦促要统一监管执法。不同地区对于如何界定食品安全事故的性质及其后果程度、如何区分企业制度不足、主要负责人/直接负责人管理是否不力及需要承担的责任等问题的认识难以达成统一。

建议国家对整个食品饮料业法律法规标准体系进行统一说明，食品安全标准体系和非食品安全标准之间的关系以及相关管理部门的职责划分尤其需要尽快明确。各监管部门和行业对非食品安全国家标准、行业标准、企业标准、团体标准的地位就存在不同理解，造成执法困扰，阻碍了非食品安全标准的执行。

建议全国各级监管部门落实标准化执法，避免出现相同问题，但因发生地点和企业不同导致执法力度不同的现象，对于模糊性问题的处理，及时适当地听取行业协会的意见和建议。在确保食品领域“四个最严”方针、落实政策法规的同时，能够进一步出台更加细化、科学合理的配套措施或指引文件，加强基层执法机构对于法律法规的理解和把握，在落实“四个最严”的同时，保障和优化营商环境，商会愿意组织会员企业分享国外及国内市场最佳实践，助力顶层设计、监管改革推进和市场监管人员能力建设，为中国食品安全社会共治贡献力量。

强烈建议进一步推进实施过程管理检查监管制度以及完善按照风险等级划分管理措施的制度，打造国家级食品安全飞行检查队伍，将资源集中分配到过程检查中，

引导企业采取从源头到终产品的全过程管理理念，从根本上提升食品行业的食品安全质量水平。同时各省市政府和相关部门间应建立协同机制，增强执行协同效力。

加强食品安全源头把控，在源头上提高食品检测方法准确度及检测效率

目前，中国食品企业在食品安全控制手段上多数依赖于终产品检测，并遵循国家强制性标准。政府应促进企业加强过程环境监控尤其环境致病菌过程监控的实施，从源头过程上或早期把控风险增加食品安全的可控性。

现行食品检测方法要符合国家强制性标准。例如传统的微生物检测过程繁琐枯燥，必须采用强制性标准。微生物检测不易复检。与传统检测方法相比，快检方法（物理或化学手段）的结果更加准确、可复检。因此商会建议应与国际接轨采用或建立先进检验方法体系提高准确度及检测效率，如与AOAC, FDA, USDA及欧洲AFNOR等方法体系的互认与接轨。另外建议目前的食品安全指标检测方法改为非强制性的推荐标准，企业可根据食品安全标准和企业内部合规程序灵活选择检测方法，满足其食品安全限量标准。

另外由于部分食品审查细则中已经增加快速检测方法选用的条款，但目前由于缺乏快速方法与国标方法比对细则，所以无法落地执行。建议加快建立快速方法与国标方法比对细则。另外为加快快速方法与国际接轨，建议加快建立快速方法选用评价体系。

食品饮料产品的海关监管

商会看到中国政府在加强进口食品安全监管的同时，积极探索可以提高通关效率、缩短检验检疫时间的有效实践。商会希望能够看到政府深入推进进出口监管模式的改革，进一步促进食品国际贸易的便利化。

进口食品随附证书

在过去两年中，国家质检总局就进口随附证书与出口国政府及行业进行了积极沟通，进口随附证书由出口国的监管当局颁发，有助于中国政府控制进入中国的食品质量。中国提议实行给予进口商两年过渡期。商会赞赏中国政府在此过程中表现出的开放态度。2019年9月30日，两年的过渡期已经结束。商会非常关注此事的后续进展，商会与行业期待与中国政府继续沟通，从兼顾

Enhance Understanding of Laws and Regulations Among Regulatory Agencies to Allow for More Consistent Implementation

Addressing food safety concerns is a critical component of China's strategy to improve the livelihood of Chinese citizens. In May 2019, the State Council and the Central Committee of the CPC issued the *Opinions on Deepening Reform and Strengthening Food Safety*. The Opinions put forth the "Four Strictest" measures for standards, supervision, punishment, and accountability. Party committees and governments at all levels are tasked with adhering to prevention-oriented management, supervision, and risk control, as well as improving food safety regulatory systems and enhancing standardization and uniformity. In addition, the revised *Food Safety Law* and its *Implementing Regulations* further clarify responsibility for food safety management by placing the responsibility for food safety with the senior executive(s) in charge of the food and beverage enterprise. While this clarification is helpful, placing responsibility on the senior representative has its own complications, as we have discussed above.

Although AmCham China appreciates China's steady progress on improving the regulation of food safety, we urge greater uniformity in law enforcement and supervision. Due to regional differences and the discretionary power of local authorities, it is difficult to achieve a national consensus on food safety standards with respect to issues such as clearly defining the scope of "food safety accidents" and their consequences, differentiating between corporate risk management systems, establishing whether individual errors have occurred, and deciding who should bear responsibility for such incidents or violations.

AmCham China recommends the government put forth a unified framework and description of laws, regulations and standards that govern the food and beverage industry. The relationship between food safety laws, rules and standards alongside other standards that pertain to the food and beverage industry but that are not related to food safety (non-food safety standards) needs to be clarified, and the responsibilities of relevant government departments should also be clarified. At present, across regulatory agencies and industry stakeholders there exists a mosaic of understandings about the status of non-food safety national standards, industry standards, enterprise standards, and group standards, which leads to inconsistent enforcement and hampers execution of these non-food safety standards.

We recommend that the enforcement of laws and regulations be made uniform to ensure consistency across provinces and regions. With respect to addressing issues with a degree of ambiguity, we suggest consulting with industry associations in a timely manner. While implementing the "Four Strictest Principles," we expect the government to publish detailed, science-based, and reasonable measures or policy papers to help local governments understand current laws and

regulations. In order to optimize the business environment, AmCham China is more than willing to share best practices at home and abroad so as to support China's national policy-making, reform, and training of monitoring and supervision systems and personnel, and participate in China's emerging social co-governance around food safety.

We strongly urge the government to improve inspections and supervision around food safety and build a system that is able to manage food safety on the basis of identified risks. A national food safety random inspection team should be established to ensure that sufficient resources are allocated to inspections which can be carried out during the entire food management process from source to end product. This type of process management should fundamentally improve food safety and quality across the industry. Provincial and local governments should enhance management and supervision of food safety and associated risks through multi-sectoral and multi-level coordination.

Strengthen Food Safety by Enacting More Effective Food Safety Detection Methods at Source

Currently, most food and beverage companies in China rely on end-product testing for food safety control and follow national mandatory standards. Early stage risk assessment measures like environmental process monitoring (for pathogenic bacteria) should be encouraged. Controlling risks at the source and/or early in the food production process is an important element of food safety.

Current food safety testing and inspection methods comply with mandatory national standards. For example, traditional microbiological (microbial) testing is a laborious and tedious process that is required in order to comply with mandatory standards. Microbial testing is also not easily reproducible. The development of rapid detection methods (through physical or chemical means) provides a more sensitive, precise, and reproducible result as compared with traditional techniques. Therefore, we recommend adopting or establishing a rapid and advanced detection method in line with international standards promulgated by AOAC International, the Food and Drug Administration (FDA), US Department of Agriculture (USDA) and Association Française de Normalisation (AFNOR). In addition, we propose shifting the existing mandatory national standards for detection to non-mandatory recommended standards. Food and beverage enterprises should have the flexibility to select detection methods according to their food safety criteria and internal compliance procedures.

Furthermore, some inspection regulations permit the use of newer, rapid detection methods but lack guidelines to integrate and compare the results of these rapid test methods with mandatory national standards. Therefore, in practice they often cannot be implemented. We recommend that the

食品安全监管和贸易便利化的角度出发，探讨进口食品监管更加高效的方案。

进口宠物食品和美国家禽产品

得益于海关部门系统性的监管，宠物食品的进口越来越规范化，但是在进口中还是面临较多的检验检疫流程以及较为繁琐的手续，这使得宠物食品需要耗费较长周期才能真正投入国内市场。宠物食品作为新兴行业，需要多元化的产品以满足中国宠物食品日益增长的市场规模和中国消费者的需求。

为了满足国内宠物食品行业的可持续发展，商会建议相关主管部门对于小批量、主要用于了解国内消费者对新产品反馈的宠物食品给予一定的便利化，如采取备案制度（记录名称、数量、用途等），在保证产品检验检疫要求的基础上，尽量简化进口监管流程，使得宠物新产品能够更快地进入中国市场，以便生产企业能尽快了解国内消费喜好及需求，以更好地促进行业发展。

中美肉类的贸易存在巨大的提升空间，包括直接消费和用于饲料行业。在中国的生产成本（如饲料、人力、环境保护）不断攀升，对高质量肉制品或宠物食品的供应缺口不断扩大的背景下，商会高兴地看到中国刚刚解除了美国禽肉对华出口禁令；但是对于含鸡肉成分的宠物食品，即禽类产品/制品，仍然无法开展贸易。商会希望中美两国政府部门能够继续深化在此问题上的谈判和交流，尽快开放禽类相关产品的进口准入，推进双边贸易的拓展。商会相信更加开放的贸易合作，能够更好地为中国消费者或行业提供安全可靠且可持续生产的产品/宠物食品及原材料供应源。

婴配乳品部分

加快对境外企业婴幼儿配方乳粉配方注册的现场核查工作进度

自中国实施婴幼儿配方乳粉产品配方注册管理制度以来，中国婴幼儿配方乳粉行业得到了进一步规范，也对重建消费者信心与促进市场健康发展起到了很大作用。商会赞成中国政府对婴幼儿配方乳粉行业实行严格管理，也感谢国家市场监督管理总局为推动此项工作开展付出的努力。

但应当引起关注的是，自2018年2月起，国家市

场监管总局对境外企业婴幼儿配方乳粉配方注册申请的审批工作大大放缓，至今此种情况依然未见明显改善。据不完全了解，截至2019年11月，国家市场监督管理总局仅派出4个工作组到境外进行现场核查，这样的安排显然无法与众多的境外企业申请不匹配，不仅导致一批符合要求的境外申请企业迟迟无法获得注册许可以开展生产经营，使得企业的生产和经营遭受严重损失，也使得中国消费者失去了更多的产品选择。

商会很高兴看到，中美对婴幼儿配方乳粉生产企业（工厂）与配方注册申请审批流程时限达成了新的一致。商会希望国家市场监督管理总局能够履行中美第一阶段经贸协议的相关条款要求，加快对境外企业婴幼儿配方乳粉配方注册的现场核查工作进度，突出体现对中外企业平等对待的原则，加快企业正常经营。优先解决那些提交资料符合要求但等待时间较长的境外企业的申请，以保障企业正常经营。

另外商会建议国家市场监督管理总局应就目前执行的境外企业现场核查工作要求进行优化，除了在确定要开展检查或核查时提前通知境外相关监管部门和境外企业（工厂）以外，还应提前公开对境外企业（工厂）婴幼儿配方乳粉配方注册现场进行检查或核查的年度计划，以便企业提前进行原材料和生产准备等。

加强在跨境电商零售进口备案的执法统一性

自2018年机构改革以后，中国海关总署坚决落实高效登记进口食品、现场审计核查、“四个最严”要求，保护食品安全。商会感谢海关总署为中国引入更多优质进口商品、不断满足中国消费者的需求做出的积极贡献。

根据2018年11月财政部等十三部门公布的调整后的《跨境电子商务零售进口商品清单》，增加了可能通过跨境电商平台进口货物的数量。此外，2018年12月商务部等六部委公布的第486号《六部委关于完善跨境电商零售进口监管有关工作的通知》的明确规定，对通过跨境电商零售进口的婴幼儿配方乳粉应按个人自用进境物品监管，不执行有关商品首次进口许可批件、注册或备案要求。然而在实际操作过程中，通过跨境电商零售进口婴幼儿配方乳粉，进口商在办理进口通关手续时，依然会遇到个别口岸海关要求提供进口婴幼儿配方乳品境外生产企业注册等资料。这违背了当前的指导条例，影响产品的正常进口。

Chinese government establish a mechanism for coordinating and comparing results of rapid detection methods and traditional evaluations based on national standards, as well as a system of evaluation for selecting appropriate rapid detection methods in order to align China's food contamination detection procedures to international standards.

Customs and Import Process for Food and Beverage Products

AmCham China recognizes that the Chinese government, is actively exploring how to improve China's customs clearance process by reducing the time associated with inspections and quarantines. We anticipate that the government will continue to deepen reform of the import and export supervision process to facilitate international food trade.

Food Import Certificates

In the past two years, the General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ, now merged under the General Administration of Customs of China (GACC) and SAMR) has communicated frequently with exporting countries regarding regulations that require official certificates to be attached to imported foods. The certificate should come from the competent regulatory authority in the exporting country and is an effort to help Chinese authorities control the quality of food coming into China. China proposed to implement a two-year transition period to allow importers to comply. AmCham China appreciates the openness, communication, and professionalism demonstrated by the Chinese government during this process. On September 30, 2019, the two-year transition period for the official certificate expired. AmCham China members are very concerned about the end of the transition period and expect further engagement with the Chinese government to ensure operational continuity following the end of the transition period. Any solutions should focus on both imported food safety regulations and trade facilitation opportunities.

Imported Pet Food and US Animal Products

GACC has gradually standardized regulations and procedures for importing pet food. Pet food is, however, still subject to statutory inspection and quarantine processes that delay the entrance of imported pet food into the domestic market. With the increase in pet ownership, China's booming pet food industry requires diversified products to meet the growing demand of Chinese consumers.

To achieve sustainable growth of the pet food sector, we recommend that GACC facilitate the import of pet food in small quantities that are mainly used to collect consumer feedback on new products. For example, GACC can streamline the import supervision process through a filing system

(used to collect relevant details including product name, quantity and intended use). Not only will this bring pet food products into China's market more quickly, it will make it easier for animal food manufacturers to evaluate and respond to domestic consumption patterns and Chinese consumer preferences.

There are also opportunities for increasing the volume of the US-China meat trade, whether to be used for human consumption or animal feed. Against the backdrop of rising production costs in China (from feed, labor, and environmental compliance costs) and African Swine Flu, a supply gap for high-quality meat and meat-based products is developing. AmCham China is glad to see that China has lifted the ban on US poultry imports, certain US beef imports, and US pet food imports that contain poultry or ruminant ingredients. We believe that giving AmCham China members more access to China's pet market can help provide safe, reliable, and sustainable sources of pet food for Chinese consumers.

Infant Formula

Infant Formula Recipes from Foreign-Invested Enterprises

Following implementation of the Infant Formula Recipe Registration system in China, the standards for infant formula have improved and the industry has seen renewed consumer confidence. AmCham China supports strict management of the infant formula industry by the Chinese government and appreciates the efforts of SAMR to implement these regulations.

Since February 2018, however, SAMR's examination and approval of infant formula recipes of FIEs has stagnated. On-site audits of infant formula facilities of overseas manufacturers have seen little progress. By one member's account, only four inspection teams had been sent abroad to conduct inspections as of November 2019. This audit and inspection rate is insufficient to process the large number of qualified overseas applicants seeking to obtain registration approval. The lengthy process not only impedes business operations and means foreign-invested makers of infant formula cannot obtain relevant licenses to produce for the China market, it deprives Chinese consumers of access to a greater variety of products.

AmCham China is pleased that the US and China have reached a new agreement on the timeframe for approving the registrations of infant formula milk powder manufacturing companies (factories). We urge SAMR to fulfill relevant provisions of the Phase One Deal between the US and China and accelerate on-site verification and registration of infant formula milk powder formulas for FIEs, in order to highlight the principle of equal treatment for domestic and foreign enterprises to expedite their normal operations. SAMR should prioritize those FIEs that have already

商会建议海关总署参照 2018 年六部委第 486 号通知以及最新版《跨境电子商务零售进口商品清单》等跨境电商零售进口政策文件。海关总署对现行电子商务法规较为熟悉，可以确保执法一致性。商会希望海关总署进一步促进跨境电商零售海关系统的快速发展。加强海关系统在跨境电商零售进口领域的执法统一性可以进一步促进行业的健康发展，使消费者可以有更多优质的商品选择。

零售与电子商务

过去几年，内外部环境发生了一系列变化，从政府机构改革到全面深化改革进入关键阶段，再到中美间贸易摩擦的加剧，中国经济和零售业在过去的一年中即面临着机遇也遭受了巨大的挑战。为积极应对挑战，零售和电子商务行业进一步推动自身创新和转型升级。商会注意到中国政府也通过进一步放宽市场准入、减少税收负担、改革商事制度、减少税负、促进贸易便利化等一系列手段以期维护和创造良好的营商环境。

为使企业尽可能地从这些措施中受益，在各个层面上严格贯彻实施相关政策和法律至关重要。商会会员相信，随着未来中国改革开放的步伐进一步加大，外资在华企业将能够更好地利用国际经验和资源服务于中国消费者日益增长的美好生活需要。

跨境电商

中国的跨境电商行业在中国政府的正确引导和支持下不断发展，作为外贸新动能，促进了经济增长，提高了国民消费质量。为促进行业长远发展，国家近年相继出台了一系列政策文件，标志着国内跨境电商政策环境日趋稳定。基于此，商会有如下进一步促进行业健康发展的建议。

- 建议将跨境电商进出口业务纳入立法范畴。目前还未有任何针对跨境电商的立法，仅仅是通过相关部委政策性文件加以调整。商会非常期待国家考虑将跨境电商进出口业务纳入立法范畴。比如以《海关法》为母法，然后逐步建立健全相关规章制度，切实从立法的角度保护和发展这种新型贸易方式，促进稳定合规发展。
- 继续扩大、调整、优化跨境电商零售进口正面清单，健康有序促进消费升级。同时逐步调整优化正面清

单的要求，针对检疫风险较低的品类比如说零售包装的宠物食品、已经加工成为保健食品人参和鱼油，建议适时取消“禁限网购保税”的限制。网购保税是指中国消费者通过政府批准的网站进行跨境网购，能够以较低的税率从海外购买产品。取消这一禁令将为中国消费者提供种类更加丰富的产品，鼓励外国公司瞄准这些行业的中国市场。

虚假宣传和虚假广告

《消费者权益保护法》和《广告法》中分别对虚假宣传和虚假广告进行了定义和规范，但是没有对产品宣传中的人为失误或技术性失误与主观故意的欺诈性广告加以区分，以致在产品宣传中极小的错误都有可能被认定为构成虚假宣传。因此，这不但滋生了职业举报打假人以获取赔偿为目的恶意举报这些无关紧要的错误的行为，也造成了执法繁重，诉讼过多等问题。

令人鼓舞的是，市场监管总局在 2019 年 5 月对外公布的《明码标价和禁止价格欺诈的规定》的征求意见稿中，对价格欺诈的判定中，明确地将主观故意和无心之过区分开来，并对及时改正的无心之过排除在价格欺诈行为之外。

商会建议广告监管部门应采取相关措施，包括下文讨论的措施，识别欺诈定价及欺诈广告，为企业建立适量的容错机制，让犯了无心之过的企业能及时纠正错误。

对“虚假宣传和虚假广告”的认定中，要考虑广告是否实质性地损害了消费者的权益，或者广告中的产品或者服务是否对消费者的人身安全、财产安全或权益带来潜在风险或损害，要考虑到发现问题后企业是否采取了积极的补救措施，是否主动公告并修改错误信息等。还应设法确定是否是无意中散布了虚假信息。

执法部门不应将无心之过与恶意欺诈一概而论，同等视之、同等处罚。这样处理不仅合理，还会有助于减少或避免职业索赔人滥用体系浪费有限的行政资源和企业资源，从而使政府和企业可以更专注的为消费者提供更优质的产品和服务。

可以采取进一步的监管行动来改善食品饮料业的条件，减少职业索赔人要求赔偿的影响。商会敦促有关部门在《互联网广告管理暂行办法》（暂行办法）中能够对主观故意的欺诈和细小的失误做出明确区分。虽然网络

submitted their registration documents in full compliance with the requirements but have yet to be approved.

AmCham China also recommends that SAMR optimize the inspection process to which FIEs are currently subject. In addition to providing advance notice to both overseas regulatory authorities and the FIE's overseas factories that they are under consideration for inspection, SAMR should also make public an annual schedule or timetable for inspections related to the registration of foreign-invested formula milk powder formulas or inspections of their overseas factories so that companies can obtain the raw materials and make other preparations in advance as necessary.

Cross-border E-commerce Retail Imports of Infant Formula

Since China's 2018 institutional reform, the GACC has demonstrated commitment to food safety through efficient registration of imports, on-site audits and assessments, and implementing the "Four Strictest" supervisory measures. We applaud the efforts of regulators to introduce more high-quality imported goods to China to continue to meet the demands of Chinese consumers.

In November 2018 the Ministry of Finance (MOF) and several other departments jointly issued the *Announcement on Adjusting the List of Cross-Border E-commerce Retail Imports*. The revised list expanded the number of goods that may be imported via cross-border e-commerce platforms. In addition, Circular No. 486, issued in December 2018, on *Improving the Supervision of Cross-Border E-Commerce Retail Imports* waives pre-import registration and licensing requirements for specific products when imported for sale via cross-border e-commerce platforms. These regulations clearly state that infant milk formula powder shall be considered an "imported article for personal use" and not required to obtain an import license or register. In practice, however, importers of infant formula via cross-border e-commerce platforms still find that they must contend with the customs requirements at individual ports that require them to provide their registration for overseas manufacturers of imported infant formula milk products during import. This is inconsistent with current guidelines and affects the regular import process.

AmCham China recommends that the GACC refer to Circular No. 486 on *Improving the Supervision of Cross-Border E-Commerce Retail Imports* and other related policies regarding cross-border e-commerce imports. GACC officials should be familiar with all current e-commerce regulations so as to ensure enforcement is consistent. We expect the GACC to continue to promote the rapid development of cross-border e-commerce customs systems. Uniform law enforcement of cross-border e-commerce will promote development of the industry and provide Chinese consumers with high-quality goods.

Retail & E-commerce Industry

In the past few years the retail and e-commerce industry have been undergoing several major transformations, brought on by changes in technology and the restructuring of China's government ministries and ongoing economic reform policies. These domestic developments occurred against the backdrop of intensifying trade tensions between China and the US. Because of these changes, China's retail & e-commerce industry face both opportunities and challenges. Industry stakeholders are meeting many of these challenges by committing to a path of innovation, transformation, and technology upgrading. AmCham China also acknowledges steps taken by the Chinese government to maintain a stable business environment by further improving market access and commercial reform, reducing the tax burden, and promoting trade.

In order to maximize the commercial benefits from these developments for business, consistent implementation of relevant laws and policies at all levels is critical. In light of China's statements and actions in support of continued economic reform and opening, FIEs hope to be able to leverage their international experience, resources, and expertise to meet the changing demands of Chinese consumers.

Cross-border E-commerce

China's cross-border e-commerce industry is continuing to develop with the guidance and support of the Chinese government. As an increasingly important element of China's foreign trade, cross-border e-commerce has helped to promote economic growth and improve the access of Chinese citizens to consumer goods. AmCham China offers the following suggestions to further promote the healthy development of the industry:

- We recommend that development of cross-border e-commerce import and export business and activities be included in the scope of legislation regulating the industry. At present, there is no overarching legislation that governs cross-border e-commerce import and export activities. Policies are currently adjusted according to documents that are issued from time to time by relevant ministries. The ongoing revision of the Customs Law presents an opportunity to further enshrine these policies in law. We expect that formally enshrining cross-border e-commerce policies into law, following a transparent, and open consultation with industry, should improve the overall regulatory framework for this sector and clarify compliance requirements for foreign-invested and domestically-invested entities,
- We recommend that the government continue to expand, adjust, and optimize the scope of items on the *Cross-Border E-commerce Retail Imports Positive List* to encourage growth of a healthy consumer base. For

上充斥着各种不准确的信息，但是根据现行规定，在线购物网站必须允许消费者在下单后 7 天内，无理由退货。这些规定旨在保护消费者，但适用范围过于宽泛，可能会被消费者滥用。因此商会建议有关部门在管理办法中给予适量灵活性，并为法律补救开辟渠道，防止职业打假人滥用这一制度。

建议

对中国政府：

- **对整个食品饮料业法律法规标准体系建立统一框架，进行统一说明，食品安全法律法规、标准体系和非食品安全标准之间的关系需要澄清，政府相关管理部门的职责划分需要尽快明确。**
- 在政策及标准制定及执行过程中充分利用商协会等平台，开展政府和社会资本合作（PPP）项目或定期交流机制，鼓励分享国际先进经验及技术。
- 在落实国务院机构改革任务的同时，尽快推进各部门监管职责和沟通渠道的信息公开，以便食品生产和经营企业准确、及时了解信息，更好地进行与政府之间的沟通。
- 期待决策部门在制定营养健康政策的过程中，能充分听取科研界和产业界的意见和建议，制定实事求是、公正合理的政策法规。需要采纳微生物快检方法，中国目前的传统方法与国际通用方法尚有差距。
- 不断加强市场监管和执法队伍建设，提高执法人员专业水平，持续推进标准化执法，加强各地法规的统一、准确解读与执行，并继续呼吁建立企业与立法部门沟通的公开渠道和机制，对于企业遇到的法规解读和执行层面的问题给予及时回应。

对美国政府：

- 加强美国政府相关主管部门、行业协会等与

在华美企的交流，针对中国政府亟需了解的国际经验、最佳实践等，增加由各方参与的研讨机会。

零售业

对中国政府：

- 制定监管跨境电子商务进出口活动的全面法律框架。《海关法》可以作为后续实施条例和工作指南的基础，从而促进行业的稳定发展。
- 修订《互联网广告管理暂行办法》，明确区分产品广告不准确的意外之过或无心之失。此类产品广告中的不准确不影响产品的完整性，有可能被认定为构成故意虚假宣传零售产品。明确区分此类行为有利于抑制职业索赔人向零售商索取不必要的高额赔偿等行为。

product categories with a low risk of being quarantined such as pet food or processed ginseng and fish oil used for health supplements, we recommend that the ban on “bonded” online shopping be lifted. Bonded online shopping refers to the cross-border element of online shopping via government-approved websites that enable Chinese consumers to buy products from overseas at lower tax rates. Removing this ban will provide Chinese consumers access to a wider variety of products and encourage foreign companies to target the China market in these industries.

False Advertising and False Publicity

China’s *Consumer Protection Law* and *Advertising Law* contain provisions to prevent “false publicity” and “false advertising,” but fail to clearly distinguish between human or technical error and intentionally fraudulent activity. The result is that even minor errors in public advertisements can be considered “false advertising.” This regulatory shortcoming has not only given rise to PFFs who seek compensation by disclaiming insignificant publishing errors as “false advertisements,” but has also created an operating environment characterized by burdensome enforcement and excessive litigation.

Encouragingly, the Draft *Regulations on Clearly Marking Prices and Prohibiting Price Fraud* released by SAMR in May 2019 clearly distinguish between human or technical error and intentionally fraudulent activity. Article 2 of the Draft Regulations would provide that pricing mistakes which are promptly corrected will not be considered fraudulent.

AmCham China recommends that advertising regulatory departments adopt practices to identify instances of fraudulent pricing and advertising and allow enterprises who have made honest mistakes in their pricing to correct them in a reasonable amount of time without penalty.

Fraudulent advertisement identification should take into account whether the advertisement in question has substantially damaged a consumer’s rights, whether the product or service being advertised could incur risk or damage to a consumer’s personal safety, property or rights, and consider whether the entity responsible for the offending advertisement took steps to resolve the situation in a reasonable amount of time, including correcting the information. Attempts to establish whether the false information was unintentionally distributed should also be made.

The government should not treat unintentional false advertising and intentional misrepresentations as the same, or similar, violations subject to punishment. Such a reasonable approach would help to reduce and even prevent PFFs from abusing the system, imposing unnecessary and burdensome administrative burdens on government and enterprises, thereby allowing them to focus on providing consumers

with improved and innovative products and services.

Further regulatory action can be taken to improve conditions in the industry and reduce the influence of PFFs in requesting damages. AmCham China urges the authorities to draw a clear distinction between unintentional false advertising and intentional misrepresentations in the *Interim Measures for the Administration of Internet Advertising* (Interim Measures). Although the internet is rife with inaccurate information, online shopping sites under current regulations are required to permit consumers to return products largely without justification within seven days of ordering. These important regulations are designed to protect consumer rights but are overly broad in their application and create the potential for abuse by consumers. AmCham China urges the authorities to show flexibility and create channels for legal redress in the Interim Measures to prevent PFFs from abusing the system.

Recommendations

Food & Beverage Industry

For the Chinese Government

- **Put forth a unified framework and description of laws, regulations, and standards that govern the food and beverage industry. The relationship between food safety laws, rules, and standards and non-food safety standards that pertain to the food and beverage industry needs to be clarified, and the responsibilities of relevant government departments should also be clarified.**
- Utilize existing platforms offered by organizations like AmCham China to develop Public-Private Partnerships or regular platforms for dialogue to encourage the sharing of international best practices and technology in the food and beverage industry.
- Promote transparency and information sharing about the supervisory responsibilities and available official communication channels of China’s government departments as soon as possible, to improve understanding and communication between industry and government.
- Require that the departments responsible for developing standards and policies consult with researchers and industry when developing nutrition and health policies. Use the consultation process to ensure that proposed policies are fair, reasonable, and realistic. One area where this is needed is in detection of microbes and other organisms. Current practices in China are not aligned with international best practices.

- Continue to strengthen the professional capacity of market regulators, inspectors, and law enforcement. Encourage standardized enforcement through consistent regulations, uniform interpretation and implementation of laws across provinces and regions, open new channels for communication between the private sector and regulators and respond in a timely manner to the legitimate problems encountered by companies during the process of compliance with regulations.

For the US Government:

- **Strengthen communication between relevant US government authorities, industry associations, and American enterprises doing business in China. Increase opportunities to involve all parties in seminars, dialogues, and workshops related to international expertise and best practice urgently in demand across the Chinese government.**

Retail and E-commerce Industry

For the Chinese Government

- **Develop a comprehensive legislative framework to oversee cross-border E-commerce import and export activities. The *Customs Law* could serve as the foundation from which subsequent implementing regulations and guidelines are then issued to promote stable development of this industry.**
- *Revise the *Interim Measures for the Administration of Internet Advertising* to clearly distinguish between accidental or unintentional inaccuracies in product advertising that do not affect the integrity of the product and deliberate claims used to falsely promote retail products and to disincentivize PFFs from seeking extravagant or unwarranted damages from retailers.*

Healthcare

Pharmaceuticals

Pharmaceutical industry reforms implemented by the National Medical Products Administration (NMPA) over the past few years have focused on improving the effectiveness, efficiency, and capacity of the regulatory system. Their impact has been wide-ranging and generally positive. Most recently, the *Vaccine Administration Law* (effective December 1, 2019) and the *Pharmaceutical Administration Law* (amended August 2019) together should help to reform pharmaceutical drug (drug) review and approval procedures and promote innovation, thereby allowing China to develop in tandem with major markets in the US/EU and significantly accelerating the access of Chinese patients to innovative drugs. In addition, the NMPA has taken a number of steps to accelerate the review and approval of new drugs, including:

- Step-by-step implementation of the guiding principles of the International Council for the Harmonisation of Technical Requirements for Pharmaceuticals for Human Use (ICH) to advance the alignment of Chinese R&D standards with international standards for drug development,
- The implementation of a 60-day licensing period for clinical trial applications, a significant improvement over previous periods which used to last one to two years,
- Establishment of a Marketing Authorization Holder (MAH) system in the amended *Pharmaceutical Administration Law*. Several supporting regulations and guidelines have been released for public comment,
- The creation of a system to expedite drug reviews and approvals, including channels for priority review and approval, conditional approval, and the establishment of a list of drugs deemed “urgently needed” for clinical treatment that have been marketed overseas (two batches). In an encouraging development, in 2019 53 new molecular entity drugs were approved, building on approvals for 48 new molecular entity drugs issued in 2018.

We noted above the establishment of the MAH system under the amended *Pharmaceutical Administration Law* and that supporting regulations and guidelines have been issued

for public comment. It remains unclear, however, how full MAH is to be implemented in practice. For instance, there is no clear regulatory pathway in place for the holder of an overseas MAH to apply to establish multiple production sites for the same drug in China. We recommend issuing additional guidance to support implementation and accelerating MAH implementation for all product types (chemical, biological, and vaccine), and ensuring that the regulations apply equally to the MAH holder regardless of whether they are based in China or overseas.

In 2018, the NMPA solicited public comment on the *Implementing Measures for the Protection of Drug Test Data (Interim)*. The Interim Measures state that “new drugs” are drugs or therapeutic biological products for which an application to market in China has been filed or for which an application to market in China has been filed simultaneously with an application(s) to market in other countries/regions. We recommend that the definition of a “new drug” and any corresponding classification schemes for drug registration adopt a principle of “new in China;” that is a “new drug” should be defined as a “chemical or biological drug which has not been previously marketed in China.” This appears likely to protect and promote innovation in the Chinese pharmaceutical market in closer alignment with international practice.

With respect to international practice, it is also important for foreign-invested pharmaceutical companies that domestic pharmacopoeia standards are consistent with the standards for international pharmacopoeia. To the greatest extent possible, domestic standards should be aligned with their internationally accepted equivalents. Any domestic standards that differ should be promulgated and established in a transparent manner including with respect to the release of supporting data.

Intellectual Property Protection, Innovation, and Research and Development Cooperation

Pharmaceutical companies, both foreign-invested and domestically-invested, require an open and transparent system that provides real and effective protection for intellectual property; such protections will have a positive feedback effect and generate more confidence in the ability of the

医疗

制药企业

近年来，国家药监局（NMPA）推动多项制药业改革，重点提升监管体系的有效性，效率及产能。实践证明，改革影响是巨大的。前不久，《疫苗管理法》（2019年1月生效）和《药品管理法》（2019年8月修订）（以下简称“两法”）将双管齐下，共同推动药品审评审批制度改革、促进创新，使中国能够与美国/欧盟等一众主力市场齐头并进，显著提升中国患者获取创新药物的时效性。此外，NMPA还采取了一系列措施，加速新药品审评审批流程，其中包括：

- NMPA 在中国分步实施国际人用药品注册技术要求国际协调会（ICH）下达的指导原则，推动中国药品研发标准与国际标准保持一致；
- 最新临床试验申请默示许可制的落地，将审评周期精简至 60 天，而过去这一周期可长达 1-2 年的，有了显著的进步；
- 上市许可持有人制度（MAH）已经在新修订的《药品管理法》中初步确立，与之相关的配套法规文件征求意见稿也已发布；
- 首创了一套审评审批流程加速制度，包括开通优先审评审批通道、有条件审批，并梳理出一份境外已上市临床急需新药名单（2 批）。在 2018 年，共计 48 项新分子实体药物获得审批；在 2019 年，新分子实体药物成功获批的数量达到了 53 项，令人鼓舞。

商会注意到，上文提到的 MAH 制度及相关配套法规文件已经发布，并向公众征集意见。然而，目前尚不明确的是，MAH 全面实施缺乏细则。例如，“某位境外上市许可持有人要在中国为同一项药品申请设立多处生产产地”这种情况，现行文件中就没有对其监管途径做出明确规定。因此，商会建议另行发布 MAH 实施相关的配套文件，推动 MAH 制度全面落地，提供适用于一切产品类型的法规和技术指南，包括化学药品、生物制

品和疫苗；确保上市许可持有人所在地无论是境内还是境外，都同样平等适用。

2018 年，国家药品监督管理局办公室曾公开征求关于《药品试验数据保护实施办法（暂行）》的意见。《暂行办法》中指出，“新药”是指中国境内申请上市或在中国与其他国家/地区同步申请上市的药品或治疗用生物制品。商会建议“新药”的定义以及相应的药品注册分类方法应采用“在华为新”的界定标准，即将“新药”定义为“此前不曾进入过中国市场的药品或生物药品”，以促进和保护中国市场的医药创新，进一步提高与国际通则的一致性。

在遵循国际通用做法方面，《药典》标准与国际药典的协调一致，这一点对外资药企来说，同等重要。国内标准应当从最大程度上，与国际平行标准相适应。任何与国际通则相悖的国内标准，需加宣传并在信息透明的原则上建立，包括公开各项支持性数据。

建立鼓励创新药、研发合作的知识产权保护体系

制药企业，不分内、外资，均要求采用公开、透明的制度，为知识产权提供切实、有效的保护；如此一来，制药企业的创新成果能够得到正面反馈，从而对法律体制对其的保护产生更加充分的信心。而我国患者成为药品知识产权得到充分保护的最终受益者。

2019 年 11 月底，中共中央办公厅、国务院办公厅最新发布的《关于强化知识产权保护的意见》（以下简称《意见》）是目前最新发布知识产权保护文件。《意见》中表示，中国在努力践行其他承诺的同时，将在强化制度、确定确立知识产权严保护政策导向方面，“探索加强对商业秘密、保密商务信息及其源代码等的有效保护；以及探索建立药品专利链接制度、药品专利期限

legal system to continue protecting them. Chinese patients will be the ultimate winners as protection of pharmaceutical intellectual property strengthens.

The *Opinions on Strengthening Intellectual Property Rights Protection* (the Opinions), the most recent high-level document on intellectual property issued by the Party Central Committee and State Council in late November 2019, provide that China will, among other commitments, “Explore strengthening effective protections for trade secrets, confidential business information, and source code, explore the establishment of a pharmaceutical patent linkage system, and a compensation system for pharmaceutical patent periods, and a drug patent restoration mechanism.” Sufficient levels of data exclusivity (protection of drug clinical data submitted to regulators for approval), a robust drug patent linkage system, and meaningful patent term restoration provisions (to ensure that drug developers maximize the benefit of the full term of their patents) are key components of a robust intellectual property protection regime for the pharmaceutical industry that stimulates innovation. AmCham China welcomes these commitments laid out in the Opinions. We are aware however, that such commitments must be translated into action to be meaningful. Therefore, we urge the government to develop and solicit for public comment detailed implementing regulations in support of the Opinions, to ensure they are applied as transparently and equally as possible.

Rare Diseases

Drug development to combat rare diseases is expressly encouraged in the amended *Pharmaceutical Administration Law* and draft *Measures for the Administration of Drug Registration* (released in October 2019 for public comment). An expedited review and approval pathway for drugs to treat rare diseases has been established. Nevertheless, the definition of and criteria for a “rare disease” and an orphan drug (a drug made to treat or prevent a rare disease or condition) lack clarity. More incentives for pharmaceutical companies to develop drugs for the treatment of rare diseases are needed. For instance, the Implementing Regulations of the *Pharmaceutical Administration Law* provide a legal basis for extended data protection or exclusive market access guarantees. In that spirit, we recommend the introduction of a national strategy to treat rare diseases, accompanied by implementing regulations that would establish a system for the corresponding drug development. Regulatory and patent authorities should be convened to establish a specific and enforceable exclusive market access period for products developed to treat rare diseases. Moreover, we recommend that a menu of tax credits and/or fee waivers be provided for clinical trial activities to encourage the development of rare diseases and orphan drugs.

Dynamic Adjustment to the National Reimbursement Drugs List

In 2019 the National Reimbursement Drug List (NRDL) completed its latest round of updates and a greater number of innovative drugs were included on the NRDL following negotiations between industry and regulators. This should give patients access to a wider range of affordable treatment options.

Recent government health policy documents, notably the *Deepening Medical and Health System Reform in 2019* (State Council 2019) and the *Notice on Several Policies on Leveraging Centralized Drug Procurement and Usage as Breakthroughs to Further Deepen the Reform of the Medical and Healthcare System* (State Council 2019), again referenced plans to establish a dynamic adjustment mechanism for the NRDL and to include a greater number of imported, innovative drugs that meet relevant criteria and standards in negotiations around access to the NRDL.

To date, no further details have been forthcoming on how the aforementioned dynamic adjustment will be established and operated. AmCham China expects the government, in the process of establishing such a dynamic adjustment mechanism, to leverage its previous experience in NRDL access negotiations to enhance communication with industry stakeholders including pharmaceutical companies and healthcare professionals. As part of this enhanced communication, we hope for a greater exchange of information on the status of NRDL reform. In particular, more information on what specific procedures are under consideration for implementation, how these procedures will be standardized, what selection criteria are being considered, and how the adjustment mechanism will be supervised is critical. Any selection criteria for drugs that may be added to the NRDL should be grounded in evidence and science-based standards to ensure that the NRDL contains a wider range of innovative drugs to benefit a greater number of patients.

Medical Devices, In-Vitro Reagents, and Consumable Supplies

Medical Device Pre-Market Management

Throughout 2019 the NMPA continued reform of medical device review and approval procedures in line with directives of the State Council and the revised *Regulations on the Supervision and Management of Medical Devices*. It has been a year of widespread reform and innovation. In particular, we welcome the following developments:

- Promotion of best practices to implement the MAH mechanism through the application of science-based regulations and data,
- The launch of an electronic registration system for

补偿制度。”对医药产业而言，充分的数据保护（针对于提交给监管者审查的药品临床数据的保护）、有效的专利链接制度和切实的专利期限补偿（用于确保药品开发者能够从其所获专利的期限全期中最大程度地保证利益）等，对于形成一个健康、鼓励创新的知识产权保护制度都至关重要。商会对上述承诺深表欢迎的同时，也明白只有将一切落实到行动上，才能真正创造意义。因此，商会呼吁政府开展向公众征集意见的活动，就《意见》中的具体规定提出建议，以保证这些规定尽可能公开、无差别地实施。

促进罕见病药物研发

在修订版的《药品管理法》和《药品注册管理办法征求意见稿》中，已经明确鼓励研发用于治疗罕见病的药物，也建立了罕见病用药的加速审评流程。尽管如此，目前罕见病与孤儿药仍然缺乏清晰的定义，尚需进一步出台激励性政策，鼓励药企研发罕见病用药。例如，可以在《药品管理法实施条例》中为延长数据保护期或者市场独占期提供法律基础。本着上述精神，商会建议针对罕见病治疗出台一项国家级战略，落实各项规定，从而建立罕见病药物研发的法律法规顶层设计和配套政策；建议监管及专利部门协同合作，为用于治疗罕见病而研发的药物产品设定清晰且具有强制力的市场独占期。此外，商会还建议出台一系列激励政策，给予相关企业在临床试验相关费用方面减免或扣除税费的优待，从而促进罕见病及孤儿病用药在中国的研发。

医保目录动态调整

2019年，《国家基本医疗保险用药目录》（NRDL）完成新一轮调整更新，并通过谈判促成了更多创新药品得以纳入目录，进一步满足患者的治疗需求，使消费拥有更多可负担的药物选项。

中国政府近期在涉及深化医改等相关政策文件，尤其是国务院办公厅2019年《关于印发深化医药卫生体制改革2019年重点工作任务的通知》，及国务院深化医改领导小组《关于以药品集中采购和使用为突破口进一步深化医药卫生体制改革若干政策措施的通知》中也再次提出要建立和完善医保药品目录动态调整机制，此外也提出将对符合条件的进口药、创新药开展医保目录准入谈判。

迄今为止，关于如何建立和实施上述动态调整的细节尚待政府有关部门进一步明确。商会希望相关政府部门在形成医保目录制度动态调整机制的过程中，充分总结医保目录准入谈判的相关经验，从而与包括制药行业、医疗卫生专业人士等在内的各利益相关方进行广泛的交流和沟通。商会希望政府相关各部在加强沟通的过程中，进一步就NRDL改革的状态提高信息交换水平，特别是在具体流程和遴选标准的规范化、标准化，以及动态调整结果落实执行的监督管理等方面。任何可能新加入医保目录药品的筛选标准都应具备切实依据和科学的标准，以确保更广泛的创新药品能够纳入医保报销的范围，更好地造福广大患者。

医疗器械、体外试剂及医疗耗材

医疗器械上市前管理

2019年，国家药品监督管理局依据国务院指导要求和修订后的《医疗器械监督管理条例》，再接再厉，改革医疗器械审评审批流程，不但涉及范围广泛，而且富于创新。商会对下列几方面取得的进展感到尤为欣喜：

- 通过应用科学的监管手段和数据，完成了上市持有人制度创新成功经验的完善推广；
- 医疗器械申报系统的电子化成功落实；
- 《医疗器械经营监督管理办法》正式发布，其他一众试点项目成功落地，其中的唯一标识系统（UDI）保证了医疗设备的全生命周期管理；
- 建立了为已通过临床试验审批医疗器械的许可授权模式；
- 可豁免临床试验的医疗器械目录进一步扩充；

上述举措在商会会员中好评如潮，大大提高了医疗器械通过市场注册的效率。

临床领域进展

2018年3月，国际医疗器械监管机构论坛（IMDRF）第16次管理委员会会议一致通过了一项由中国牵头的重大项目。项目命名为“医疗器械临床评价”，其项目工作小组已于2019年10月发布了3份指导文件。这3份文件分别为《临床证据 - 关键定义和概念》、《临床评价》及《临床研究》。商会赞赏国家药监局为支持业内持股人参与上述3份文件制定所作出的努力，也进一步巩固

medical device approval,

- The issuance of the *Regulations for the Supervision and Management of Medical Devices*, which among other pilot programs include the creation of a unique identification system (UDI) for medical devices such that they can be identified during their entire lifecycle,
- A model for licensing medical devices that have received clinical trial approvals,
- Expansion in the number of medical devices that are exempt from clinical trial requirements.

These changes are welcomed by our members and should help to expedite the market registration of medical devices.

Clinical Developments

Following a unanimous decision in March 2018 by the International Medical Device Regulators Forum (IMDRF) to support a new project entitled the *Clinical Evaluation of Medical Devices* proposed by China, the project working group issued three guiding documents in October 2019 entitled ❶ *Clinical Evidence-Key Definitions and Concepts*, ❷ *Clinical Evaluation*, and ❸ *Clinical Investigations*. We appreciate the support shown by the NMPA to industry by allowing industry stakeholders, including members of AmCham China, to participate in the development of these three documents and in doing so strengthened mechanisms of cooperation.

Device Registration and Renewal

Recent trends in the regulatory framework for medical devices have aimed to simplify administrative procedures, decentralize regulatory authority, and ensure that regulatory practices and standards are grounded in science. Yet there remain challenges. At the moment, enterprises must still apply to extend the registration of their products even if there has been no change to the information contained within the registration itself. Along these lines, we recommend the NMPA review materials submitted at the time of registration, rather than requiring companies to undergo a registration extension review process when no registration information has changed. If the extension review process is to be maintained, we recommend that it be shortened to ten working days. This will conserve administrative resources and help to ensure that authorities who review medical devices can undertake a complete technical review of the safety and effectiveness of medical device products registering for the first time and/or products that have substantial changes to report. This will ensure that advanced medical devices can be marketed as soon as possible to serve Chinese patients.

In Vitro Diagnostic Reagents

In Vitro Diagnostic Instruction Manual and Product Labeling

Unlike medical devices, under current procedures there is no way to modify the instruction manual (IFU) for in vitro diagnostic reagents. Any minor change to an IFU, even if such change does not materially affect product safety and is completed in a manner consistent with the regulations outside of China in the country where the change is being made, requires a new registration application to catalogue these changes.

AmCham China recommends that, consistent with the regulatory procedures for medical devices, a notification or filing process be established for the revision of technical product specifications of in vitro diagnostic reagents, in place of the current requirement for enterprises to reapply for registration.

Changing in vitro diagnostic reagent registrations

With respect to imported products, current regulations mandate that changes to the location of overseas reagent production sites (e.g., in the producer's home country) require that the corresponding reagent product permits issued in China be updated. The update process is more complicated, and the timeframe to complete the update much lengthier, than the equivalent process required to reflect changes in reagent production sites for domestic products and manufacturers. Modifying the registration permit of an imported in vitro diagnostic reagent requires three consecutive batches of testing. Changes to the production address of a domestic reagent only require notification or filing. The entire approval process to reflect a change of the production address of an imported in vitro diagnostic reagent product can take as long as one year, much longer than the timeframe associated with changes to production sites for domestic products. This discrepancy places foreign-produced reagents at a competitive disadvantage in the market and reduces the market supply of in vitro diagnostic reagents.

AmCham China therefore recommends that the government establish unified registration requirements and procedures for domestic and imported in vitro diagnostic reagents, bring those requirements in line with the procedures used in other developed markets, and simplify the registration requirements when an entity changes the production site of its in vitro diagnostic reagents in a way that places the onus for quality control on the internal quality assurance systems of the enterprise itself, rather than requiring each change to be registered with regulators.

了双方的合作机制。

简化延续注册、简化 IVD 产品标签和说明书在中国的变更管理

医疗设备监管框架的最新趋势聚焦简化行政流程，下放监管权，确保监管惯例和标准都已科学作为依托。但上述工作目前依然存在多种挑战。当下，企业仍需申请延长产品的注册期限，即使注册信息本身没有发生过任何变更。根据这样的要求，商会建议国家药监局可考虑直接对医疗器械产品初次注册时的材料审查，避免迫使企业在其产品这侧信息未发生变更的前提下重复经历审查流程。若延续注册审查流程继续保留，商会建议将次过程压缩至 10 个工作日以内，从而保证医疗器械审评中心可以集中技术资源，用于评估首次注册以及注册信息发生实质性变更的医疗器械产品的安全性和有效性，确保先进的医疗器械能够尽早上市，服务中国病患。

体外诊断试剂

体外诊断指导手册及产品标示

体外诊断试剂与医疗器械不同，现行流程下，无法通过备案对说明书 (IFU) 进行修改。说明书的任何微小变化和更新，即便不会对产品安全性造成实质性影响，而且是严格按照变动发生地点国家的法规所完成的，依然需要再次提交注册申请，对所做变更加以归类。

因此，商会建议：在与对医疗器械的监管保持一致的前提下，为体外诊断试剂类产品说明书的修改建立通知或备案流程，代替现行二次重复申请注册的规定。

缩短体外诊断试剂注册变更时间

依照现行法规，进口产品如要变更境外生产地点，需在中国更新其许可证明。相较于变更境内产品的生产地址，变更境外生产地址所需的注册过程复杂得多，耗时也长得多 - 修改进口体外诊断试剂的注册需要连续三个批次的检测，但是改变国内产品的生产地址却只需要通知或备案即可。上述差异，造成变更进口体外诊断试剂产品生产地址的整个审批流程比国内产品要多花一年左右的时间，这使境外生产的试剂在市场处于不利的竞争地位，直接影响到体外诊断试剂的有效供应。

综上所述，商会建议政府出台国内生产和进口的体

外诊断试剂遵循统一的注册要求和程序，使上述要求与在其他已开发的市场相一致；由企业内部质控体系负责，以备案的形式简化境内、外体外诊断试剂产品生产地点的变更流程和要求。

体外诊断试剂国内分类方案

与其他 IMDRF 国家相比，中国将更多的诊断试剂划分至“高风险”级别，这样的分类方式导致产品开发需要负担额外成本和高昂的临床试验费用。政府和业内均为保证监管合规投入了巨大的资源，但这种投入与产品的风险等级并不匹配。如果政府已经开始对部分体外诊断试剂产品重新分类，并在某些品类上开始试水，商会对此表示喜闻乐见，并呼吁当局在不久的将来重新分类更多的体外诊断试剂产品到与其风险等级相匹配的类别。

医疗设备产品全生命周期管理

MAH

2017 年，国务院发布了《关于深化审评审批制度改革鼓励药品医疗器械创新的意见》(42 号文件)。2018-2019 年，国家药监局响应国发 42 号文件精神，积极推进医疗器械领域上市许可持有人制度的落地。42 号文件呼吁让医疗器械领域上市许可持有人法律责任肩负法律责任，建立起一个允许持证人汇报不良事例的制度，改善医疗设备再评估体系。但是商会发现，与药品领域不同的是，已经在华上市的进口医疗器械，生产线原样搬迁至境内生产的，没有一条适用的注册申报途径 - 既不属于进口注册，也不属于国产注册。基于此，商会建议赋予进口医疗器械上市许可持有人在遇到将其生产环节转移到中国国内的情况时，与国内生产的产品受到国内场地搬迁受到同等法律对待，简化注册流程，助力体系升级，加速进口医疗器械的国产化。

Domestic Classification Scheme for In Vitro Reagents

Compared to other IMDRF countries, China classifies a greater proportion of in vitro diagnostic reagents as “high” risk. Such classification imposes additional product development costs and expensive clinical trials. Both government and industry are investing significant resources to ensure regulatory compliance, however, the level of investment is not commensurate with the current classification of product risk levels. AmCham China is pleased to see that the process of reclassifying certain in vitro diagnostic reagent products in ways more commensurate with their science-based level of risk is underway and we urge the authorities to begin testing a greater number of products for reclassification soon. We urge the government to continue and expand this reclassification process to enable reclassification for a larger number of in vitro diagnostic reagent products into categories commensurate with their risk as soon as possible.

Medical Device Product Lifecycle Management

MAH

In 2017 the State Council released the *Opinions on Deepening the Reform of Review and Approval System for Drugs and Medical Devices* (Circular No. 42). Throughout 2018 and 2019 NMPA worked to realize the spirit of Circular No. 42 by promoting the implementation of a MAH system for medical devices. Circular No. 42 called for the establishment of the legal responsibilities of holders of MAHs, the creation of a system for holders to report adverse incidents, and improvements in the re-evaluation system for medical devices. AmCham China has found, however, that no registration pathway is available for the relocation of the manufacture of imported medical devices to China. Unlike regulations in the pharmaceutical industry, these devices do not clearly fall under existing imported or domestic registration procedures. AmCham China recommends that holders of licensed imported medical devices wishing to transfer their manufacturing to China be treated equally with domestically-manufactured devices and subject to local regulations regarding domestic production relocation to simplify the registration process and accelerate the localization of imported medical devices.

Medical Device Standards

For many years the medical device industry has been hindered by the fact that many mandatory industry standards are not aligned with accepted international standards, thereby restricting product development. Following the efforts of the Center for Medical Device Standards Management under NMPA, AmCham China is pleased to see that the absolute number of mandatory national and industry standards for medical devices is gradually declining.

The consistent application of international standards will improve the regulatory environment. Most industry standards in China are adapted from standards defined under the International Organization for Standardization (ISO). Imported medical devices often conform to the latest international standards, but do not necessarily meet standards applicable in China (which are often older). Therefore, AmCham China recommends that following an update to any relevant industry standards, a reasonable transition period be specified for companies to update their products. Based on our members’ understanding based on consultation with the Legislative Committee of the National People’s Congress (NPC, whose authority has since been transferred to the Ministry of Justice), a transition period should be permitted between the release of new standards and their effective implementation. In addition, any medical devices listed on the market that comply with the previous standards should be exempted from the obligation to comply with the revised standards during device inspections.

Medical Services Pricing Reform

In recent years following implementation of the *Opinions on Promoting the Reform of Medical Service Prices* (NDRC Circular [2016] No. 1431) and the *Opinions on Comprehensively Deepening the Reform of the Price Mechanism* (NDRC Circular [2017] No. 1941), as well as other guidelines, provincial authorities have improved the local management of medical service pricing by giving greater consideration to local conditions, accelerated pricing reviews for new medical services, and are beginning to adjust the price of medical services. Following the government-wide institutional reorganization in March 2018, the responsibility for pricing medical services was transferred from the National Development and Reform Commission (NDRC) to the National Healthcare Security Administration (NHSA). The association between the price, type, and quality of certain medical treatments, associated medical insurance costs, pharmaceuticals, and other medical services has been regulated in a more consistent fashion. A price formulation mechanism is gradually being formed through strict management, dynamic adjustment, and multi-stakeholder participation. In addition, the government is developing the *National Medical Service Price Item Specification* (2020 ed.), which is expected to further standardize current procedures for pricing and gradually incorporate a greater array of medical service items and advanced technologies into clinical practice.

Based on the experience of AmCham China members in the industry, we continue to urge the government to account for the impact of advances in technology on industry and allow for the formation of a dynamic adjustment mechanism that would permit a greater number of medical services to be made available to patients in line with market and industry needs, encourage the use of evidence-based standards to calculate the price of medical service items, clearly distinguish between production processes used to develop

医疗器械标准

长期以来，医疗器械行业一直面临着以下困境：该领域大量的强制性的行业标准滞后于产品技术发展，制约了产品发展。商会很欣慰地看到，在国家药监局医疗器械标准管理中心的不断努力和推动下，本领域强制性国家标准和强制性行业标准的绝对数量一直在逐步下降。

商会在此谨提出标准的规范性使用问题供进一步改进和落实：由于我国医疗器械领域大部分行业标准是由境外的国际标准化组织（ISO）标准转化过来的，对于进口产品而言，符合了境外的升级版标准，往往就无法符合旧版标准。因此商会建议在标准更新后，需要给予企业一段合理明确的过渡期以完成产品的更新换代。从全国人大立法委员会的解释看，新标准发布到实施有一段过渡期，在过渡期新老标准都是有效标准。符合哪一版的产品都是合规产品。且在旧版标准有效期内上市的产品，在遇到上市后检查时，也应该依从旧版标准及其相关参数要求；不能用新版标准来衡量旧版标准下上市的产品，并作为处罚依据。

医疗服务定价改革

近年来，为贯彻落实《推进医疗服务价格改革意见》（发改价格〔2016〕1431号）、《关于全面深化价格机制改革的意见》（发改价格〔2017〕1941号）等政策，各省结合实际，改进医疗服务价格管理方式，加快了新增医疗服务价格项目受理审核、调整医疗服务价格的步伐。2018年机构改革后，医疗服务定价职能从发改委转移到医保局，价格与医疗、医保、医药等相关政策衔接联动得以进一步强化，分类管理、动态调整、多方参与的价格形成机制正在逐步形成。此外，国家正在研究制定2020年版本的《全国医疗服务价格项目规范》，有望进一步规范现行的操作流程，并将更多新的医疗服务项目和先进技术纳入临床应用。

结合过往经验，商会希望在改革的进程中进一步考虑技术进步对本领域造成的影响，形成动态准入机制；提倡用科学的方法核算医疗服务项目的价格，在检验项目上明确区分项目审查过程中用于开发医疗设备额生产方法，以充分反映医疗技术人员服务的价值。

医疗服务项目的定价应基于其能够提供的技术价值。从医疗实践的角度而言，临床医疗工作者应当为患者选

择最适宜的技术、设备和形成一套最优治疗方案。若医疗服务项目定价过低或一些针对特定病患或特定疾病所必需使用的器械没有被纳入单独收费名录，可能导致技术创新型医疗器械无法充分发挥其价值，或造成医疗机构放弃使用先进高效的技术和产品，一些医疗机构可能会因为经济原因或出于成本的控制，仅使用廉价或者基础的耗材/技术，难以保障服务质量和医疗质量安全。

例如，有关检验项目，《全国医疗服务价格项目规范（2012年版）》规定，“检验类项目价格不得区分试剂或方法，要充分考虑当地医疗机构主流检验方法和社会的成本承受能力等因素，以鼓励适宜技术的使用”。然而，从医学角度分析，不同检验方法或试剂的灵敏度和特异度可能存在一定程度差异，成本亦然。在疾病的不同阶段，临床医生需要使用不同的检验方法来判断病人的状况，如筛查、早期诊断、疾病治疗和康复进展的监测。先进的检测手段具有更高的特异性和敏感性，或能缩短检验所需时间，帮助医生更早更准确地诊断疾病，为调整或停止治疗提供依据。而且，针对同一指标的不同方法的检验项目有不同的适用范围、使用环境或适应人群，它们之间不一定能构成单纯的替代关系。因此，诊断服务的定价也应该根据检测手段的不同有所区分。

商会建议，在制定医疗服务价格时，以服务患者为第一要务，强调“疗效优先、价格合理”原则，基于技术价值，将具有安全性、效用和效果显著的产品单独收费，保障病患的自主选择权；在调整医疗服务定价时，应考虑到原材料、人力资源成本的增加，建立科学的成本测算方法，合理地调整医疗服务价格，使得调整做到“有升有降”；在检测项目上，建议考虑将更多先进、灵敏度/特异度更高的检测方法纳入新版规范，特殊情况下允许差别计费。

医疗服务项目的动态调整

自发改委发布《关于加快新增医疗服务价格项目受理审核工作有关问题的通知》（发改价格〔2015〕3095号）以来，各地逐步开放了申请新增医疗服务价格项目的窗口，但各地对接《全国医疗服务价格项目规范（2012年版）》的进程稍显缓慢。2019年国家医保局开展医疗服务项目编码制定时，仍然会参考《全国医疗服务价格项目规范（2001年/2007版）》的编码格式和项目名称。从这一点看来，2001年/2007版仍是目前最主流、最基

medical devices during project inspections, and appropriately reflect the value of specialized medical services.

The price of medical services should be based on the quality of the technical services being provided. Medical practitioners should be permitted to select the most appropriate technologies and devices and define the optimal treatment plan for a patient. If some services are underpriced or some devices necessary for specific treatment courses are not specified under a separate fee category, they may not be used because of cost considerations, delaying treatment. It may also result in medical institutions abandoning the use of more innovative, efficient, and advanced technologies. Some medical institutions may opt to use inexpensive or technologically-inferior medical supplies as a cost control measure. This makes it impossible to guarantee the quality and safety of the corresponding medical services.

According to the *Price Item Specification* (2012 edition), “the prices of test items shall not distinguish between reagents or methods of production and shall give full consideration to mainstream local testing methods, society’s capacity to bear their costs, and other factors, thereby encouraging the use of appropriate technologies.” From a medical perspective, however, the sensitivity and specificity of different diagnostic methods or reagents varies, and costs also differ. Depending on a given patient’s disease stage, clinicians use different tests to determine the patients’ condition, through screening, early diagnosis or monitoring, and testing and rehabilitation. Advanced testing methods provide a high degree of specificity and confidence to allow medical professionals to diagnose diseases more accurately and adjust treatments as needed. Inspections of different services may be based on indicators applied under different environments, and used for different test populations, thereby making them largely unable to be substituted. Therefore, the costs associated with a certain diagnosis must differ based on the methodologies applied.

AmCham China recommends that medical service pricing activities prioritize the quality of patient care, effectiveness of treatment, and maintenance of reasonable prices. Medical services should be priced based on the quality of the technology, devices or products. Higher-quality medical services that are more expensive based on their safety, utility, or treatment effects should be charged separately to give patients access to a wider variety of choice. Evidence-based practices should be applied to establish the cost to patients of medical services. When adjusting medical service and device prices, inputs like the cost of raw materials and labor need to be considered. Service prices need to be adjusted up or down as needed in line with market demands. Medical service inspections should encourage the introduction of more advanced, sensitive, and specific test methods into inspection standards while permitting differential billing schemes under special circumstances.

Dynamic Adjustment of Medical Service Items

Since the NDRC issued the *Notice on Accelerating the Acceptance and Review of Newly Added Medical Service Price Items* (Order [2015] No. 3095), different regions have gradually established timeframes when applications can be submitted for new medical service price items. Progress on reforming the *National Medical Service Price Item Specification (2012 Edition)* (the most recent edition), however, has been slow. The NHTSA’s medical service project coding efforts in 2019 still use the coding format and project names of the *National Medical Service Price Project Specification (2001/2007 Edition)*. Despite the release of the 2012 edition, the 2001/2007 edition remains in widest use. Even the 2012 edition is now nearly eight years old so many newer and more advanced technical methods and service items have yet to be included. Consequently, these medical service items do not incorporate the latest medical technologies for clinical use.

In addition, many local governments have yet to formulate a standard mechanism to manage additions or revisions to the medical service *Price Item Specifications*. The application period to add new medical service price items in various provinces is not standardized, and some provinces have short application windows, leaving many service providers like hospitals without sufficient time to prepare their applications. While our members have found that procedures to update the *Price Item Specification* by submitting revised medical services have relied on expert input, they ultimately lack objective indicators, criteria, and basis for selection. In some provinces, the short application window is then compounded by the fact that applications are not reviewed after submission, resulting in a backlog. It is also worth noting that the previous period to submit revised services under the *Price Item Specification (2001/2007)* was too short, which meant that the services submitted contained outdated technology. This has only served to further restrict the level of technology available to Chinese patients and does not reflect innovative new technologies increasingly coming onto the market.

Therefore, we recommend that all regions and provinces implement standardized procedures with regular timeframes during which new medical service price items can be submitted for review, expedite review procedures for new medical service price items, and accept applications to revise existing items to ensure that the latest technologies for medical services are made available. We also recommend the implementation of updated procedures for clinical applications that ensure sufficient advance notice for enterprises to prepare their applications, or the implementation of a model where applications can be accepted throughout the year without fixed application windows. Finally, technology assessments conducted on healthcare and medical service products should be conducted and included with the applications as a reference for decisionmakers.

础的版本，由于该版本版目录发布时间过早，很多已经成熟的技术方法、服务项目都尚未纳入现有目录，无法充分满足医疗新技术进入临床使用的需求。

此外，各地在新增 / 修订医疗服务价格项目的管理流程上，尚未形成规范机制，例如：各地开放新增医疗服务价格项目申请窗口的周期不固定，部分省份新增窗口期开放时间较短，医院缺乏充足时间准备相关资料，评选过程主要依靠专家经验，缺少客观的指标和依据。有些地区长期不开放窗口或对收集到的项目不做审核，造成新增申请不断积压。还有一点值得注意的是，旧项目修订窗口期开放过少，造成旧项目中所包含的基本技术、产品经过了改进和创新后，无法在项目中得到更新，制约了医学技术的进步和医疗质量的提升，无法体现创新价值。

综上所述，商会建议，各地区定期对新增医疗服务项目开放接受和审查窗口，加快审核新增医疗服务价格项目，同时开放受理原有项目的修订申请，以适当促进新技术、新服务的市场准入、更新和及时的临床应用；通知提前时间，或采用“长期开放、定期处理”的模式，给予充分时间准备材料；将卫生技术评估的结果纳入作为准入的决策参考。

耗材带量采购

2019年7月31日国务院办公厅印发了《治理高值医用耗材改革方案》的通知，要求理顺高值医用耗材价格体系，完善高值医用耗材全流程监督管理，净化高值医用耗材市场环境和医疗服务执业环境，推动形成高值医用耗材质量可靠、流通快捷、价格合理、使用规范的治理格局。《方案》提出“按类别探索高值医用耗材集中采购，鼓励医疗机构联合开展带量谈判采购，积极探索跨省联盟采购。”随着安徽、江苏两省开展了医用耗材带量采购，采购品种的大幅降价。目前，山东、辽宁、山西、重庆、湖南、广东、陕西为牵头的跨省联盟和京津冀等地区医用耗材带量采购工作也在推进。

通过比较药品“4+7”带量采购以及各地医用耗材带量采购的实施方案和实践工作，可以发现两者存在以下若干不同：

首先，药品带量采购的前提是，产品需通过“质量一致性评价”，在质量一致、可相互替代的基础上进行“以

价换量”的谈判。与药品相比，医用耗材的复杂程度更高，耗材种类繁多且产品更新迅速，统一名称及分类编码难度已经很大；国内外都尚未建立系统的分类和质量评价体系；再加上耗材专利涉及设计、材料、生产等多个方面，复杂度高，很难确保同一组产品质量的一致性。目前，医用耗材尚无质量一致性评价，仅以价格为评判依据，可能会出现“劣币驱逐良币”的现象。

其次，药品处方及使用标准化程度高，基本不涉及产品使用操作培训；而且药品生命周期长，成熟产品临床教育及售后服务需求简单；耗材的定价不仅包括产品成本，还包括产品研发、快速更新迭代、临床教育和后续技术服务方支持。与市场竞争不协调的大幅降价措施可能会打击创新动力，导致优质产品大面积退出市场。此外，由于绝大部分医用耗材只能通过医护人员使用，其操作水平的高低会直接影响医疗效果，临床教育及技术服务不足，甚至可能引起不必要的医疗风险。

再次，药品按照试点地区所有公立医疗机构年度药品总用量的50%-70%估算采购总量，“招采合一，保证使用”确保1年内完成合同用量，通过集中配送保障供应并且所在地区医疗保险及时结算为支撑，实现真正的带量采购。然而相较之下，耗材的品种、规格存在较大个体差异，难以准确预测临床用量，加之耗材的配送渠道及配送成熟度、集中度较低，最终落实到医疗机构的签约采购数量也可能和最初公布采购量有所差异。同时，采购地区医疗保险结算也没有相应的及时回款的承诺，进一步加重了医疗器械生产企业的负担。

综上所述，商会建议相关部门针对医用耗材特殊性，要在借鉴前期药品集中带量采购经验的基础上，探索符合医用耗材特点的集中采购方式，特别应该重视以下几点：

- 医生需要经过培训、积累足够经验后，才能熟练使用医用耗材开展手术；若贸然更换医生已操作娴熟产品，可能会影响手术效果，危及患者的医疗安全。
- 鉴于高风险植入类耗材的复杂性，应以循证医学证据来评价产品的安全性和有效性，在评估对患者的疗效和预后的基础上，进行综合评审。
- 各省市应在广泛听取行业意见的基础上，全国各省、市应从选择部分产品试点开始，集中采购耗材。

Procurement of Consumable Supplies

On July 31, 2019, the General Office of the State Council issued the notice of the *Reform Plan for Governing High-Value Medical Consumable Supplies* (Reform Plan), requiring that the system for pricing high-value medical consumable supplies be streamlined, associated management of high-value medical consumable supplies be refined, and the market environment for high-value medical consumable supplies be reformed. The medical profession is called upon to promote the development of high-value medical consumable supplies in reliable qualities that are consistent with supply-side reform, available at reasonable prices, and under a standardized system of regulation. The Reform Plan proposes to explore the centralized procurement of high-value medical consumable supplies by category, encourage medical institutions to jointly carry out procurement in negotiated quantities, and actively explore formation of alliances across provinces for procurement activities. Following release of the Reform Plan, officials in Anhui and Jiangsu launched a process to pool procurement of medical consumable supplies. This has resulted in a substantial price reduction for procured items. Currently, Shandong, Liaoning, Shanxi, Chongqing, Hunan, Guangdong, and Shaanxi are participating in pooled procurement schemes, as is the Beijing-Tianjin-Hebei integrated region.

The Reform Plan shares similarities to China's "4+7" Plan introduced in 2018. The "4+7" Plan seeks to reduce prices and improve the quality of pharmaceuticals by centralizing procurement of generic drugs. There are, however, important differences between procurement of pharmaceutical drugs and of consumable supplies.

First, procurement of drugs in large quantities is done with products that have undergone consistent testing to confirm their quality. The procurement price reflects that the drugs are tested to be of consistent quality. Compared to the procurement of drugs, however, the procurement of consumable supplies is more complex as there are a wide variety of such consumable supplies which are subject to frequent product updates. Given the variety of consumable supplies on the market, it is challenging to systematically classify these supplies and there is no international or domestic system in use that uniformly classifies or evaluates such consumable supplies or tracks related patents. Production of these supplies involves complex design, materials, and inputs, and production processes, which makes it challenging to ensure consistent quality. At present, price is the only basis for evaluating procurement decisions, resulting in inferior but cheaper products squeezing higher-quality, costlier products out of the market.

Second, because of a highly regulated and standardized process for access to and use of prescription drugs, once a drug has been prescribed, the costs for developers are relatively modest. There is no operational training that the patient has to undergo, only limited clinical knowledge is

required to be imparted (e.g., the drug dosage and intake schedule), and there are few after-service sales needs. In contrast, pricing for medical consumable supplies must not only consider the cost of production, but costs associated with educating patients on their use alongside follow-up technical and support services to ensure consumable supplies are maintained appropriately. There are also product development costs associated with developing frequent product upgrades. Therefore, significant reductions in the price of consumable supplies not driven by market competition or market forces will reduce incentives for innovation and contribute to the large-scale withdrawal of high-quality products from the market. In addition, since most medical consumable supplies can only be administered or implanted by medical staff, their technical capability affects the effectiveness of a given consumable. Consequently, medical institutions and makers of consumable supplies need to invest in sufficient clinical education and training as failure to do so will create unnecessary medical risks.

Third, pharmaceuticals account for 50 to 70 percent of the total procurement activities of all medical institutions in the pilot areas covered by the Reform Plan. Prompt settlement of insurance payments between hospitals and insurers enables them to make large, upfront purchases of pharmaceutical drugs. By contrast, there exist large differences in the type and specification of consumable supplies and it is challenging to forecast their clinical usage. The maturity of distribution channels for medical consumable supplies is also low. For these reasons, the number of actual purchases made by medical institutions can be less than the amount for which they may have earlier committed. At the same time, regional medical insurance schemes lack corresponding commitments to promptly reimburse hospitals for the use of consumable supplies, which further increases the financial burden on producers of these supplies.

AmCham China urges relevant departments to take into account the characteristics of consumable supplies described above when implementing reforms. Based on the government's previous experience centralizing pharmaceutical drug procurement, a similar plan should be explored to centralize the procurement of medical consumable supplies. More specifically, to better administer high-value medical consumables, we recommend the following:

- Doctors must be trained and have experience using medical consumable supplies in order to use them to perform surgery. Abrupt and frequent changes to the consumable supplies that doctors work with and have already become familiar may affect surgical results and threaten patient safety,
- Because of the high level of risk associated with some consumable supplies like implantable consumables, science-based evaluations should be used to assess product safety and effectiveness. A comprehensive review should also be conducted to evaluate the efficacy of using certain consumable supplies based on the prog-

取消耗材加成

2019年国务院办公厅印发的《治理高值医用耗材改革方案》(国办发〔2019〕37号)中明确规定全部公立医疗机构在2019年底取消耗材加成,因取消医用耗材加成而减少的合理收入主要通过调整医疗服务价格等方式解决。这一政策加速了医疗服务价格调整和优化。例如,北京在2019年6月取消耗材加成后,同步调整了6621种医疗服务项目价格,通过压缩检验、影像等检查费用价格腾出政策空间,提高了手术操作类等医疗服务的价格总体水平。在维持医疗总费用水平基本不变的前提下,实现了服务价格由之前过低,回归向合理水平,社会反应平稳,取得了较好的成效。

同时,部分地区在调整医疗服务价格的过程中,由于缺少足够的成本核算能力,调价方式尚不能依据科学的成本核算结果,采取“一刀切”的方式调整某些服务类别的价格,可能会出现价格不能正确反映实际成本的局面,甚至“亏本”运行,进而造成医疗机构对某些必需的服务项目的停用、少用,影响当地的医疗服务质量和水平。过分压低价格,还可能会造成医院向经营机构“二次议价”的现象,造成新的寻租空间。

因此,商会呼吁,价格调整机制应综合考虑服务包含的成本、市场竞争品种和供应保障等情况,科学制定价格。对临床必需、重点扶持学科、公共卫生、罕见病、抢救和急重症等社会关注领域适当予以放宽。

疫苗

随着此次新型冠状病毒肺炎疫情的爆发,国家公共卫生体系及疾病预防体系的建设和完善得到国家的高度重视和民众的广泛关注。习近平主席指出,“疫苗作为用于健康人的特殊产品,对疫情防控至关重要,对安全性的要求也是第一位的。”主席表示,要加快建立以企业为主体、产学研相结合的疫苗研发和产业化体系,还要建立国家疫苗储备制度。

2019年中国颁布的《疫苗管理法》于2019年12月1日开始正式实施,该法针对疫苗的研制、生产、流通和预防接种及其监督管理等各个环节都作出了严格规定。疫苗的安全接种涉及维护和提高全民健康水平,也是实施“健康中国”战略的重要组成步骤。建设、完善相关法律法规体系,持续强化疫苗相关各领域的有效监

管,不仅有利于保障和维护中国民众的健康,还能促进包括跨国企业在内的所有疫苗生产企业,在中国市场实现可持续发展。

《疫苗管理法》中对现行制度和相关生产企业做出诸多要求,但其中很多都属于原则性规定,目前尚缺乏相关部门所发布的具体执行措施,包含疫苗流通、供应、免疫策略等方面。因此,为促进相关领域监管能更快、更好地发挥作用,支持实现法规目标,商会建议国家卫生健康委和药品监督管理部门等有关部门尽快根据自身职责范围,发布相关具体规定或执行措施细则。在此过程中,也希望有关部门能允许相关行业组织和企业参与政策制订过程,提出意见和建议。

目前应尽快就法律中提出的预防接种异常反应补偿范围、标准、程序,及鼓励通过商业保险补偿异常反应等多项涉及疫苗生产企业支持参与的规定,研讨相关细则的制定。

商会会员认为有必要继续结合国家健康战略目标,对国家免疫规划制度,特别是相关疫苗品种建立动态调整等内容给予后续跟进。也希望免疫规划疫苗的采购充分尊重医学原理,从保障公众健康的出发点,综合产品特性后,统筹判断是否予以准入,确保所有合格疫苗均有机会通过公平竞争,纳入采购范围。

推动中国疫苗市场创新

鼓励创新是国家健康战略中经过多次强调的一项原则,包括《健康中国2030》、《健康中国行动2019-2030》和《疫苗管理办法》。然而,疫苗的注册和审批过程依然十分漫长,相较其他重点市场,可多出6-8年时间,因此仍然是中国市场疫苗创新准入的主要障碍。很多等待进入中国市场的疫苗至今排除在国际多中心临床试验(IMCT)之外,也始终未能获得海外销售授权(OMA)。允许疫苗进行IMCT或在中国市场得到OMA均能加快创新疫苗造福中国百姓的过程。因此商会建议使《中国药典》标准与国际药典的协调一致,提高获得市场准入的机会。这将减少对高价产品的需求、修改疫苗的次數,和检测进口疫苗、等出口国产疫苗所需的额外成本。

nosis of the patient,

- Following consultation with the healthcare industry, provinces and cities nationwide should select certain medical consumables for trial in a centralized procurement scheme.

Price Mark-ups for Consumable Supplies

As part of the Reform Plan issued on July 31, 2019, the price mark-up that medical institutions and hospitals were permitted to charge patients for consumable supplies (somewhere between five and ten percent above the base cost of the consumable) has ended. These policies had allowed hospitals to charge a margin. This lost income will now be compensated for through adjustments to the price of medical services, and these will be carried out in manner that further optimizes medical service pricing. For example, in June 2019 after marking up the price of certain consumable supplies, authorities in Beijing adjusted the price of 6,621 medical service items. As part of the adjustment strategy, the price of medical inspections and imaging services were reduced while the cost of other medical services, including some surgical operations, was increased. Despite these increases, the cumulative price of medical services has been reduced. Overall, the public response has been positive, and these reforms have delivered positive results.

At the same time, the process used to adjust the prices of certain medical services has not always produced optimal outcomes. Some regions do not possess sufficient cost accounting capabilities; therefore, price adjustments are not always based on an accurate accounting of true costs. Adopting a “one size fits all” approach to price medical service items can result in prices that inaccurately reflect true costs, causing some medical institutions to lose money, forcing them to stop offering patients certain medical services or consumable supplies which affects the quality of local healthcare options. Excessive adjustments to pricing may also create opportunities for “rent-seeking” behavior, by allowing regulators to renegotiate pricing arrangements or enter into “secondary bargains” with service providers, with the result that the price of their services varies from what is required in that province or region.

Therefore, we urge that any price adjustments to the cost of medical services be reliably determined by proper cost accounting, market dynamics, the available supply of these services, and evidence-based research. Prices should be set at a reasonable level particularly for medical necessities, emergency services, and public health disease prevention efforts.

Vaccines

Following the emergence of the COVID-19 epidemic, improving national public health and disease prevention systems has received significant attention. General Secretary

Xi Jinping stated that “vaccines are of vital importance for epidemic prevention and control. Vaccine safety is also of utmost priority.” He stated that China must accelerate the establishment of a system for vaccine research and development and a national reserve system for vaccines that combines enterprises, industries, and universities.

China’s first comprehensive *Vaccine Administration Law* was enacted on December 1, 2019. The Law regulates the entire life cycle of the vaccine process, including research and development, production, distribution, patient vaccination protocols, and government oversight. Vaccine safety is extremely important both for individual patients and broader public health and forms a key component of Healthy China 2030. Efforts to strengthen vaccine-related laws and regulations combined with the government’s ongoing efforts to improve supervision over the use of vaccines will not only protect the health of the Chinese people, but should also create opportunities for vaccine manufacturers, including foreign-invested manufacturers, to enter the Chinese market.

The *Vaccine Administration Law* establishes multiple requirements for existing vaccine manufacturers, although many of these remain high-level statutory guidance and lack detailed implementation measures promulgated by relevant government agencies. Therefore, bearing in mind the goal of achieving more effective regulatory supervision, we recommend that the National Health Commission (NHC) and the NMPA promulgate implementing measures as per their responsibilities under the *Vaccine Administration Law* as soon as possible. We also recommend that industry stakeholders, companies, and industry associations be permitted to participate actively in the policy formulation process.

The new Law establishes a compensation system for individuals who suffer a significant disability, organ or tissue damage, or die from a vaccination obtained through the National Immunization Program. Most immediately, AmCham China believes that it is necessary to formulate detailed regulations regarding the scope, standards, and procedures to treat patients who have an abnormal reaction to a vaccine, including with commercial insurance.

Our members also believe there is a need to continue the establishment of a price dynamic adjustment mechanism to oversee the inclusion of vaccines under the National Immunization Program and that this should be done in accordance with existing national health strategies. Procurement of vaccines for immunization should be done in accordance with science-based, medical principles. Only after a comprehensive assessment of a vaccine’s safety, characteristics, and relevant testing has been completed should a decision be rendered about whether that vaccine shall be made available for procurement in line with the principles of fair competition.

基因治疗技术

基因治疗及与之相关的各种配套技术是近年来全球生物医药产业发展的重点方向。这些技术有潜力在疾病治疗手段和产出方面带来突破性进展，从而使更多的患者从中获益。中国政府也高度关注相关产业的发展，并在推动研究开发、鼓励产业发展和促进相关市场准入方面，出台了诸多相关政策、规定。目前，世界范围内已有 20 种基因与细胞疗法获批，并且有超过 2,000 项临床试验在进行之中，主要用于癌症与单基因异常疾病。多种基因和细胞治疗领域的技术已经投入使用。

2017 年发布的《“十三五”生物产业发展规划》(2016-2020) 1 提出，要“把握精准医学模式推动药物研发革命的趋势性变化，立足基因技术和细胞工程等先进技术带来的革命性转变，加快新药研发速度，提升药物品质，更好满足临床用药和产业向中高端发展的需求。”同时，要“完善投资环境，加强配套体系建设，加大“引进来”力度，推动跨国公司在华建设高水平的研发中心、生产中心和采购中心，…提高国际合作水平。”2019 年 10 月 30 日，国家发展改革委修订发布的《产业结构调整指导目录（2019 年本）》2 中，在“十三、医药”部分，也增列了“基因治疗药物、细胞治疗药物”等。但在 2019 年 6 月发布的《外商投资准入特别管理措施（负面清单）（2019 年版）》3 中，在“十、科学研究和技术服务业”中提出，“28 禁止投资人体干细胞、基因诊断与治疗技术开发和应用。”

制药领域基因与细胞治疗技术应用范围既不涉及人体基因遗传讯息改变（如 CAR-T、TCR-T、mRNA、RNAi 等治疗），也不涉及基因编辑等技术（CRISPR 等）。由于相关政策，特别是《负面清单》中仅提出了原则性的限定，缺乏对有关领域的详尽定义，因此有可能造成对相关政策不正确的理解或解读，包括可能影响到已获得批准的相关诊疗手段、技术和产品在中国市场的引入和使用。

鉴于基因治疗技术是一项新兴产业技术，商会充分理解、认可并赞同有关政府部门在其相关安全性和信息保护等方面的审慎考虑。建议有关部门能够对现行负面清单中的相关限制条款进一步给出更为详细的技术性指导说明，尽量避免出现对有关政策内容的曲解和误读，推动最新的基因治疗技术研发成果能够更早地服务于广

大中国民众的健康。

使用基于 NGS 基因组合的伴随诊断来指导治疗，可鉴定出最有可能影响特定疗法的患者群体，改善治疗效果。这些检测不仅能证明分子靶点的存在，还能提示治疗的脱靶效应，预测与药物相关的毒性和副作用。NGS 在临床应用中的仪器设备复杂，对操作流程，技术人员的水平及报告的解读要求非常高。因此，这类检测项目需要检验部门自建检测方法（Laboratory Developed Tests, 简称“LDT”）。在美国，FDA 负责 LDT 上市前审批，我国目前还没有关于 LDT 明确的定义范围。随着基因检测技术的不断发展和临床需求的不断扩大，建议完善我国对基因检测的监管，在安全有效的前提下，逐步放开并鼓励有条件的医学检验部门发展 LDT。

医疗服务

公共卫生应急系统

商会建议中国政府在设计和 / 或更新中国未来的公共卫生应急管理系统时，能充分地、明智地利用私立医疗力量。在新冠肺炎爆发之际，中国各地方政府派出 4 万多名医护人员支援湖北（疫情爆发中心），对抗新冠肺炎，其中 4000 多名医护人员均来自私立医院的，与公立医院的医护人员共克时艰。但这些私立医院的医护人员并未纳入由国家卫生健康委员会监管的全国卫生应急总体规划中，所以他们以志愿者身份前往湖北支援。将私立医院纳入全国卫生应急总体规划有利于政府充分利用私立医院的医疗专家提供的专业知识、专业技能和资源，促进技术支持和物资流动，使其安全抵达抗疫前线。

在新冠肺炎爆发之初，商会注意到，国家在采取救援措施时，会优先动用公立医院资源，一些私立医院和诊所由于缺少防护设备而被迫关闭，因为防护设备都调往了公立医院。其他私立医院出于当地政府政策被迫部分或完全停业，给这些私立医院和诊所造成了巨大的经济损失。而且，由于疫情控制期间治疗公立医院新冠肺炎病人的医疗能力有限，其他病人获得治疗和护理的机会也受到了限制。

为了打造一个高效的公共卫生应急系统，商会建议中国政府以更公平的方式对待私立和公立医疗服务提供者，使私立医院在现行分级诊疗制度下，最大限度地发

Promoting Innovation in China's Vaccine Market

Encouraging “innovation” is a principle emphasized frequently in Healthy China 2030, the *Healthy China Action Plan 2019-2030* and China's *Vaccine Administration Law*. Nevertheless, the lengthy vaccine registration and approval process, which can last six to eight years longer than in other major markets, remains the key barrier for access to innovative vaccines for the Chinese market. Vaccines seeking to enter the China market are still excluded from International Multi-center Clinical Trials (IMCT) (trials conducted at more than one medical center or clinic), and still cannot obtain Overseas Marketing Authorization (OMA). Permitting vaccines to undergo IMCT or be accepted in the Chinese market with OMA would expedite the accessibility of innovative vaccines to Chinese citizens. AmCham China also recommends that the Chinese government align with globally accepted pharmacopeia standards and monographs and accept international standards in the Chinese market to enhance market accessibility. Such steps would reduce the need for expensive product or vaccine modifications and also the costs of additional testing for imported vaccines and for domestically-produced vaccines seeking export.

Gene Therapy Technologies

Gene therapy and the development of related technologies constitute an important sector in today's global bio-pharmaceutical industry. These technologies have great potential to improve treatment and patient health outcomes. Already twenty gene and cell therapies have been approved worldwide, and more than 2,000 clinical trials have taken place, primarily for cancer and monogenic disorders. A wide range of technologies are already in use in the gene and cell therapy sector.

Several government documents appear to promote development of gene-therapy technologies in China. *The 13th Five-Year Plan on Bio-Industry Development (2016-2020)* urges the government to “leverage opportunities being generated by new gene therapy technologies, accelerate drug research and enhance drug quality to meet clinical and industry drug demand.” It also calls on the government to improve the investment environment and develop incentives to attract FIEs to build R&D, manufacturing, and procurement centers in China. On October 30, 2019 the NDRC released the *Catalogue for Guiding Industry Restructuring (2019 ed.)*, which aims to upgrade China's industrial structure and shift China's economy from high-speed growth to high-quality development. Under the “encouraged” industries within the Catalogue, Section 13, “Medicine and Pharmaceuticals,” gene and cell treatment drugs are included. And yet, the *Special Administrative Measures for the Access of Foreign Investment (2019 Negative List)* prohibits foreign investment in “human stem cell, gene diagnosis and therapeutic technology application and development” (Section 10, Scientific

Research and Technology Services, Article 28).

Many current applications of gene therapy technologies across the pharmaceutical industry, for instance, do not require altering human genetic information (e.g., CAR-T, TCR-T, mRNA, RNAi), nor do they require use of gene editing technologies (e.g., CRISPR). The *2019 Negative List* provides only high-level restrictions on investment and lacks detailed definitions of exactly what activities are prohibited for foreign investors, which may lead to inconsistent interpretation of relevant policies, affect activities which have been previously approved, and delay the introduction of new diagnostic methods, technologies and products in the Chinese market.

AmCham China understands and appreciates the cautious approach taken by the government with respect to gene therapy safety and personal information security and protection, which is essential. At the same time, additional technical detail on the requirements, regulations, and laws governing the industry is necessary to avoid unnecessary and costly misunderstanding and uneven implementation.

One area of interest for our membership is Next Generation Sequencing (NGS) diagnostics. Employing NGS panel-based companion diagnostics to guide treatment can help to identify the treatment groups most likely to respond to specific therapies and to improve treatment outcomes. These tests indicate the presence of molecular targets and suggest off-target treatment effects, also predicting drug-related toxicity and side effects. The instruments and equipment used in the clinical application of NGS are complex. The requirements for operating procedures, technical personnel, and the interpretation of reports also are not simple. Therefore, this type of testing project requires the laboratory's self-built testing methods (Laboratory Developed Tests, or LDT). In the US, the Food and Drug Administration is responsible for pre-market approval of LDTs; in China a clear definition of LDT is lacking. With the ongoing development of genetic testing technologies coupled with growing clinical need, LDTs are necessary to improve the supervision of genetic testing in China. Under the principle of safe and effective testing, we suggest gradually encouraging development of LDTs by qualified medical testing institutions.

Healthcare Services

Public Health Emergency Management Systems

We suggest that the Chinese government fully and wisely make use of private medical providers when designing and/or upgrading China's future public health emergency management systems. During the SARS-COV-2 virus and COVID-19 epidemic in China, local governments sent over 40,000 doctors, nurses, and medical professionals to support Hubei (the epicenter of the outbreak) in the fight against COVID-19, including over 4,000 physicians and nurses

挥其作用。

对外商投资医院和诊所的限制

2019年6月30日，国家发改委和商务部联合发布了《外商投资准入特别管理措施（负面清单）（2019年版）》（2019年负面清单），包括了131个项目，2018年负面清单包含了151个项目。商会很高兴2019年负面清单再次缩减，这是市场进一步开放的信号，也是鼓励外商投资的信号。

然而，遗憾的是，2019年负面清单将医疗服务列为“限制”项。将外国股权比例限制在70%极大地阻碍了许多外商投资医疗机构的发展。除了投资限制，其他限制也阻碍了外商投资医疗机构的日常经营，包括禁止外商投资医院开立医院和诊所分支机构，这限制了其他外商投资，阻碍了外商投资医疗机构为病人提供全面的服务，包括门诊服务和更集中的医院护理。此外，合格的医疗人员不予许在同一个投资人控股的不同医疗机构和场所自由工作，只能在一所医院或诊所注册。这些限制也对外商投资医疗机构造成了沉重的税务负担，因为外国投资者不能将多个控股机构或投资的税务申报整合到一起。

商会建议中国政府鼓励外商投资医疗服务领域，将医疗服务从负面清单中去除，允许外国投资者投资医疗分支机构和诊所，合并税务申报。这一举措有助于合格的外商投资医疗机构更好地助力中国医疗体系的发展。

针对外资医院的税收政策

合资医疗机构不允许开立医院分支机构，且每个医疗分支机构或诊所必须单独注册，无论是这些机构否由同一品牌经营。限制医院开设分支机构的阻碍了医院成长为具有规模的医疗保健系统的潜能，削弱了共享管理经济带来的好处，打压了“连锁医疗院线”作为单一纳税实体的能力。

目前，医院（或连锁诊所）税率高达25%，医院必须单独报告每个设施，因此已具备成熟的盈利能力的设施收入不能抵消新建设施的损失，导致发展中的医疗品牌所得税税率极高。实际上，发展中的医疗机构承担的有效税率可能超过100%，尤其在新医院建立后开头的3到4年。

中国许多行业能享受15%的优惠税率。医院需要大量的前期投资，而且往往需要很多年才能真正盈利。向中国的医院提供优惠的税率，有助吸引更多投资进入私立医疗机构和医疗保健业，为投资和发展创造更有利的环境，投资者更少会为换取财务回报而牺牲质量和安全。

中国政府积极为许多行业提供财务支持，以抵消新冠肺炎带来的影响，包括航空和文化旅游业。采取的措施包括，增加信用额度、降低融资成本、降低租金和减少强制性社保费用。私立医疗行业受新冠肺炎疫情打击，主要由于医院强制性关闭、特殊防护装备费用，及更严格的筛查机制产生的额外费用。医疗行业未被纳入接受政府优惠待遇的行业，除非在极少情况下，其经营可被归为“其他行业”，而这些行业往往只针对小型企业。因此，尽管遭受损失，许多私立医院并不能使用这些优惠政策，不利于其从疫情中恢复。

降低外商投资医疗机构的企业所得税率，允许合并税务申报，将有助于缓解当前情况，使行业得以实现可持续发展，使相关医疗机构为中国医疗能力做出更大贡献。

医保报销应涵盖私立医院和网络医院

尽管一些私立医院的药品和相关服务定价机制与政府指导一致，但大多数私立医院仍在现有的医疗保险计划之外运作，这限制了病人的选择，并抑制了私立医院癌症专科治疗单位的发展。每月按时缴纳社保的个人如果去私立医院寻求高质量的医疗服务，将无法享受医保报销。

2019年，商会很高兴社保范围开始涵盖某些由互联网提供的医疗服务，例如针对一些常见疾病的诊断服务，也注意到国家医疗保障局针对此类服务发布了定价机制。商会也感激政府加强了互联网服务在控制疫情方面的作用。

尽管取得了以上进步，商会仍建议中国的基本医疗保险扩展到私立医院和互联网服务领域，并允许病人在公立医院得到最大限度的报销额度，剩余费用自行支付或通过补充医疗保险支付。私立医院的任务是提供不同水平的护理，以满足社会的不同需求。为了提供最高水平的服务，私立医院的医疗服务价格往往不同，且高于

from private hospitals. These private physicians and nurses were not included in the national health emergency plan overseen by the NHC, but instead went to Hubei as volunteers. Inclusion in the overall national health emergency plan would have allowed the government to optimize the expertise, technical skills, and resources offered by these medical professionals from the private sector and would have allowed them to contribute more effectively from the front lines of the epidemic.

At the outset of the COVID-19 epidemic, AmCham China saw that national rescue policies and actions prioritized public hospitals, causing some private hospitals and clinics to shut down because of a shortage of personal protective equipment (PPE) that was being directed to the public sector. Other private facilities were asked to partially or fully suspend operations because of local government policy. The suspensions were financially costly for these private hospitals and clinics, and also limited patient access to treatment and care because of limited capacity to treat non-COVID-19 patients at public hospitals at a time when epidemic control was being prioritized.

In order to build an efficient public health emergency system, we encourage the Chinese government to treat private and public healthcare service providers in a more equitable manner, and allow private hospitals to make maximal use of their capabilities under China's current tiered system for the provision of medical services.

Foreign Investment Restrictions

On June 30, 2019 the NDRC together with the Ministry of Commerce (MOFCOM) issued the *Special Administrative Measures (Negative List) for Foreign Investment Access* (2019 ed; Negative List) in an effort to boost foreign investment.

AmCham China is disappointed, however, that healthcare services remain classified as “restricted” on the 2019 *Negative List*. Foreign equity holdings cannot exceed 70 percent, which greatly handicaps the development of many foreign-invested medical institutions and hospitals. In addition, additional restrictions inhibit day-to-day operations of foreign-invested medical institutions. These include prohibitions on foreign-invested hospitals opening hospital and clinic branches which limits their attractiveness to foreign investors and prevents foreign-invested hospitals from offering a full range of services to their patients, from those available in outpatient clinics to more intensive hospital care. In addition, qualified foreign medical personnel are not permitted to work freely across different branches or hospital locations held by a single investor and can only be licensed to work in one hospital or clinic location. Restrictions on the establishment of branches also create a burdensome tax situation for foreign-invested hospitals because foreign investors cannot consolidate their tax filing across multiple holdings or investments.

We recommend that the government encourage foreign investment in healthcare by removing healthcare services from the *Negative List*, allowing foreign investors and foreign-invested hospitals to establish branches and clinics, and permitting any hospital with multiple locations to make consolidated tax filings. Removal of such restrictions will allow high-quality, foreign-invested medical institutions and hospitals to better contribute to the development of China's healthcare system.

Tax Policies on Foreign-Invested Hospitals

Joint-venture hospitals are not permitted to open hospital branches and must register each branch or clinic separately, regardless of whether they operate under the same brand or investor. Prohibiting branches limits the ability of hospitals to grow into healthcare facilities of scale. It also restricts benefits stemming from economies of shared management and eliminates the ability for “hospital chains” to be taxed as a single entity.

Currently taxed at a corporate income tax rate of 25 percent, a hospital (or clinic chain) must report each facility separately so losses from newly established facilities cannot be offset against more mature profitable facilities, resulting in extremely high income tax rates for a growing healthcare brand. In practice, the effective tax rate borne by an expanding medical institution can exceed 100 percent, especially in the first three to four years following establishment of a new hospital.

Many industries in China are able to enjoy preferential tax rates of 15 percent. Hospitals require large up-front investments and can then take many years to achieve a financial return. Offering a preferential tax rate for hospitals in China would help to attract greater investment into private medical institutions and healthcare, create a more enabling environment for investment and development, and reduce any temptation for investors to sacrifice quality and safety in search of financial return.

The Chinese government has proactively made financial support available across a number of industries to help offset the impact of COVID-19, including the airline and culture and tourism industries. Efforts include increasing the supply of credit and reducing financing costs, rent rebates, and reduced mandatory social insurance payments. Private healthcare has suffered from the COVID-19 epidemic due to mandatory hospital upgrades, extra expenses incurred because of more intensive screening practices, and the costs associated with procuring special protective gear. The healthcare sector has not been included in the list of industries receiving preferential treatment from the government except in rare cases where their operations can be categorized as “other industries,” which typically is reserved for small enterprises. Therefore, despite suffering losses, most private hospitals are not eligible for these preferential poli-

非私立医院的价格。如果消费者愿意为更高水平的护理支付更高的价格，他们不应放弃享受公共保险的权利，而是应该被允许补充保险范围，以便在其选择的医疗机构寻求治疗。此外，商会建议提高医疗保险费用的个人所得税减免上限。这些政策可增加病人获得所需药品的机会，让病人和消费者拥有更多、更优质的选择。

外籍医疗人才

医疗人才是一种稀缺资源。为了吸引世界各地的人才和出众头脑，服务国际社会，一些外商投资医疗企业从国外招聘了高级人才，引入了先进的知识和技能。根据《外国医师来华短期行医管理暂行办法》，这些高级人才可以获得行医许可，国家卫生健康委员会认可这些医生在一个或多个医疗机构行医所带来的好处。然而在实践中，外国人的工作许可只能发给一家企业/机构，即使同一个投资者拥有多个医疗机构，外国医生也只能在一家机构工作。2020年1月，国家卫生健康委员会颁布了《外国医师来华行医管理办法》（征求意见稿），这可能会进一步限制国际人才引入，因为该办法可能会要求外国医生通过国家卫生健康委员会以中文作答的考试。由于英语是国际医疗和科学界使用的主要语言，商会建议政府在此规定中表现出一定的灵活性。为了充分利用国际人才，商会建议向外国医生签发许可，允许他们在多个地点行医，建议国家卫生健康委员会的考试以英语进行，因为这些医生面对的病人很可能就是说英语的人。

职业健康安全

积极预防职业病

在中国，因工作场所接触到各类健康隐患，引发职业健康问题的局面十分严峻，职业疾病防治形势复杂、艰巨。中国劳动人口数量居世界首位。2018年，我国就业人口高达7.76亿，占总人口的55.8%，大量劳动力的职业生涯超过其生命周期的二分之一。中国各行各业约有1200万家企业的职员工作在职业病隐患之中，超两亿劳动者工作在接触职业病隐患的风险中。尘肺病是一种因长期吸入烟尘因而引发的肺部疾病，也是最常见的一类主流职业病。此外，各个重工业领域在噪声环境中工作的职员超过3000万，有越来越多的噪声性听力损失案例出现。职业眼部伤害也十分多发，尤其是紫外

线辐射导致的眼伤害，相关职业例如焊接工人。近年来，根据《中国卫生健康事业发展统计公报》统计，因物理因素所致职业疾病和伤损数量呈下降趋势，而区域统计的职业疾病和伤损数据明显高于公报数据，且呈现逐年上升趋势，统计数据存在不一致的矛盾。

职业病是可防、可控的，而且防控成本远低于职业病危害导致的综合成本。

为改善提高职业疾病及伤损的防控现状，商会建议加速建设职业卫生监督执法队伍，同时，保证其执法一视同仁、平等透明。建议积极借鉴国外的监督管理模式和经验，督促企业加强职业健康教育，促进企业职业病危害防护措施建设，并规范企业个体防护装备的使用及可得性。

有效的个体防护装备（PPE）对职业病的预防至关重要。商会建议研究机构、高校参考国外预防、降低工作场所损伤发生率的经验，开展职业病预防措施和管理措施的研究，以及如何对PPE加以优化，推进职业病预防体系建设，改善全社会对职业病预防的重视程度，提升职业人群的安全与健康水平。

医务人员健康与安全

中国劳动人口中，医疗卫生人员总数超过1000万，医疗行业的培训具有周期长、强度大的特点，而且从业风险高、技术资质办法严格特点，医疗卫生人员在从事职业活动过程中面临多方面的职业危害隐患，尤其是血源性病原体对广大医疗卫生人员构成的职业健康威胁十分严峻，医疗卫生人员的职业健康损害和职业病已成为全社会共同关注的热点问题。

在中国政府各部进行的结构性改革中，卫健委组建成立了职业健康司，改善中国百姓的职业健康与安全。这为职业健康防护工作带来了新的发展契机。2019年国务院推出的健康中国行动（2019—2030年）中，也明确提出了相关行动目标，计划到2030年：

- 实现工伤保险法定人群参保全覆盖；
- 工作场所职业病危害因素检测率达到85%及以上，接触职业病危害的劳动者在岗期间职业健康检查率达到90%及以上；
- 鼓励用人单位优先采用有利于防治职业病和保护员工健康的新技术、新工艺、新设备、新材料

cies which will hinder their recovery.

A reduction in the corporate income tax rate for foreign-invested hospitals, and reforms that permit consolidated tax filing and reporting would offer welcome relief, permit more sustainable growth in the industry, and allow these institutions to make a more significant contribution to China's capacity to provide healthcare.

Health Insurance

Despite the fact that some private hospitals have aligned the pricing schemes for drugs and related medical services with government-directed prices, most private hospitals still operate outside existing medical insurance programs, which limits patient choice and inhibits the development of specialized cancer treatment units in private hospitals. Individuals who pay into their social insurance funds on time each month are effectively shut out from medical reimbursement through social insurance if they turn to private hospitals for high-quality medical services.

In 2019, AmCham China was pleased that social insurance was extended to cover certain medical services provided over the internet, such as diagnostic services for some common conditions and diseases, and that the NHSA released pricing schemes for these services. We were also pleased to see that the government has enhanced the role of internet-based services to aid in epidemic control strategies.

Despite these developments, we continue to recommend that China's basic medical insurance be extended to cover private hospitals and internet-based services, and allow patients to be reimbursed up to the maximum allowable amount in public hospitals and then allowed to pay the remaining balance out-of-pocket or with supplemental commercial health insurance. Private hospitals are tasked with providing different levels of care in order to meet the needs of different segments of society. In order to provide the highest levels of service, medical service prices at private hospitals can differ and are often higher than in non-private facilities. If consumers exhibit a willingness to pay higher prices for a higher level of care, they should not have to sacrifice their entitlement to social insurance which their taxes support, but instead should be allowed to draw upon that coverage in order to be able to seek care at the provider of their choice. Moreover, we recommend raising the ceiling on individual income tax deductions for health insurance premiums. Together, these policies will enhance patient access to needed medicines and improve patient and consumer choice.

Foreign Medical Talent

Medical talent is a scarce commodity. To absorb talent and ideas from around the world and to service the international community, some foreign-invested healthcare companies

recruit senior talent from abroad to bring in advanced knowledge and technology. According to the *Interim Measures for the Administration of Short-term Medical Practice of Foreign Physicians in China*, it is possible to acquire licenses for these senior employees and the NHC recognizes the benefits of allowing them to work at one or more healthcare facilities. In practice, however, Work Permits for foreign nationals are issued for work at only one company/facility, restricting foreign doctors to working in only one facility, even if the same investor owns more than one facility. The draft *Administrative Measures for the Practice of Foreign Doctors in China* released in January 2020 by the NHC may further restrict access to international talent, as it requires foreign doctors to pass the NHC exam in Chinese. Given that English is the prevailing language of the international medical and scientific community, we urge the government to exhibit flexibility in this regulation. In order to take full advantage of available international talent, we recommend that foreign doctors be issued licenses that permit them to work at multiple site and that the NHC exam be optionally administered in English, because their patient base is likely to be English-speaking.

Occupational Health and Safety

Preventing Occupational Diseases

Occupational health problems caused by workplace exposure to a variety of hazards in China are serious, and occupational disease prevention efforts are complex and challenging. China has the largest working population in the world. In 2018, an estimated 776 million people were employed in China, accounting for 55.8 percent of the total population. Many of those in the labor force are or will be employed for more than half of their life. Occupational disease hazards exist in industries that are home to over 12 million enterprises in China, with over 200 million workers at risk of exposure. Pneumoconiosis (a lung disease caused by the inhalation of dust) is the most common occupational disease. In addition, more than 30 million people are at work in noise-polluting environments across a variety of heavy machinery industries, resulting in a great number of cases of noise-induced hearing loss. Eye injuries are also frequent, especially those caused by exposure to UV radiation which occurs in occupations such as welding. In recent years, the number of cases of occupational diseases and injuries causing physical impairment has decreased according to the *Statistical Report on China's Healthcare Development* (published by the NHC), yet data on occupational diseases/ injuries from regional sources is significantly higher than that reported by the NHC and has been increasing; the two sets of statistics are inconsistent.

Occupational diseases are preventable and controllable; the cost of prevention is often far less than the costs associated with these injuries.

- 政府完善职业病防治技术支撑体系；建立完善工作场所职业病危害因素监测和职业病报告网络

针对工作人群，尤其是医疗卫生人员的职业安全与职业风险缓释，商会提出如下几点建议：

- 健康中国行动提出应研究修订《中华人民共和国职业病防治法》等法律法规，亟待能进一步明确并细化医疗卫生人员相关的职业卫生防护及职业健康权益；
- 在局部试点调研的基础上，总结经验，并上升到法律制度，积极推动医护人员职业卫生防护地方法规出台；
- 政府建立对各类医疗职业暴露的监测体系：完善职业暴露上报制度，建立职业暴露的监测及反馈体系；
- 开展医护人员职业健康联合执法，检查医院是否将国家相关职业卫生安全标准是否落实到位，并将医护人员职业危害预防控制纳入到院长职业化培训项目之中。
- 完善医护人员职业伤害预防和救助赔偿机制。将预防职业危害相关的技术及暴露后的救治成本计入医疗投入，或纳入医疗保险，以形成长期稳定的投入机制。

关注消防员及其他应急人员职业健康

众所周知，消防员是高危职业，他们面临着复杂多样的职业危害，包括但不限于化学、物理、心理、甚至生物学及核能层面的等各类威胁，而且这些隐患是不可预测的。美国职业健康安全研究院（NIOSH）牵头发起的第一阶段大规模调查研究（2010年开始为期5年，针对1950-2009年间在职的约3万名消防员）表明，由于长期吸入和暴露于有毒有害气体和颗粒物中，美国消防员罹患癌症的概率明显高于普通人，从1.14倍到2.02倍不等。国际消防员协会（IFAA）的相关数据也表明这一严酷现实的确存在。因此，消防员的职业安全和长期健康理当得到重视。

在中国，随着经济社会的快速发展，工业化和城市化导致消防环境越来越复杂，各类危害隐患与日俱增。此外，为适应大规模应急和自然灾害抢险救灾工作的需要，作为应急救援“国家队、主力军”的中央和地方各级消防救援队职能范围不断拓展，应急救援任务也位列其中。

为尽力确保中国消防员在每次消防行动中的安全和长期健康，要强调“以人为本、关爱生命”的理念，而且提高消防员的职业安全与健康意识。中国作为发展中国家，目前已有基础的强制标准《GB/Z 221-2009 消防员职业健康标准》，但标准有待更新、配套措施有待完善。建议中国卫生健康部门，借鉴国际上成熟的做法，牵头开展中国消防员职业病的基础研究，监测其发病率，定期公布相关结果及改善措施。确保消防员有渠道获得合格的PPE产品并能够正确佩戴使用，是避免职业性危害的最终防线。

因此，商会建议中国相关部委统筹规划，更新并整合应急准备工作相关的标准，通过加强市场抽检、加重不合格品的惩处力度、改进招投标管理等措施，确保消防员个人防护装备的产品质量，努力让全体消防员的职业健康得到应有的保障。

建议

制药企业

- 建议制定并征求详细的实施条例，以征询公众意见，以支持《加强知识产权保护意见》中规定的规定，并确保任何此类条例均透明，平等地适用；
- 我们建议发布支持MAH实施的指导文件，促使MAH制度能全面落地实施，无论是上市许可持有人所在地是境内还是境外，无论产品隶属化学药品、生物制品或疫苗，都适用同样的法规和技术指南；
- 明确说明引入NRDL动态调整机制的意图。使NRDL动态调整机制的任何定期修订都是公开，透明的，并征询公众意见；
- 我们建议中国各政府部门协同合作，建立关于罕见病的法律法规顶层设计和配套政策。对于罕见病治疗药物给予明确的市场独占期，以及对临床试验相关费用给予税费减免或扣除等一系列鼓励政策，从而促进罕见病用药在中国的研发，解决罕见病患者急迫的临床需求；

To improve the prevention and control of occupational disease and injury, we recommend accelerating the construction of occupational health supervision and enforcement teams and ensuring their capacity for consistent, equal, and transparent enforcement. In this regard, foreign occupational health and safety management models can provide a wealth of knowledge and experience. At the same time, the government should incentivize enterprises to strengthen education around occupational safety and health, promote the establishment of standard measures to protect against and prevent occupational hazards and diseases, and standardize the use and availability of PPE.

PPE is essential for the prevention of occupational diseases. We recommend that research institutions and universities refer to the experiences of other countries in preventing and reducing the incidence of workplace injuries, conduct research on occupational disease prevention and management and how to optimize PPE, promote the construction of occupational disease prevention systems, increase public awareness of occupational disease prevention strategies, and ultimately improve safety and health in the workplace.

Safety and Health of Medical Personnel

China's labor force includes over 10 million medical and health personnel. The medical profession is characterized by lengthy, rigorous training cycles, high levels of occupational risk, and demanding technical qualifications. These professionals encounter many occupational hazards in their day-to-day work, especially blood-borne pathogens that can pose a serious threat to the health of medical personnel. During public health emergencies, health workers and medical professionals on the frontlines are often at an elevated risk of harm, as epitomized by the response to the COVID-19 epidemic. Harm resulting from workplace hazards and occupational diseases facing medical personnel are increasingly issues of common concern in society.

During the process of restructuring China's government ministries in 2018, the NHC established the Occupational Health Division with a mandate to improve occupational safety and health. The *Healthy China Action Plan (2019-2030)* launched by the State Council in 2019 includes the following goals:

- Achieve full insurance coverage for work-related injuries,
- Improve the detection rate of occupational disease hazards in the workplace, setting a target of at least 85 percent. Ensure that 90 percent of workers exposed to occupational disease hazards during their employment receive regular health checks,
- Encourage employers to adopt new technologies, processes, equipment, and new materials to improve the prevention and treatment of occupational diseases,
- The government will improve technical support for

occupational disease prevention and control, establish a network and system to monitor occupational disease hazards and employee health in the workplace.

AmCham China offers the following recommendations to improve occupational health and safety, and risk mitigation, particularly of health and medical personnel:

- Healthy China 2030 proposes that laws and regulations such as the *Occupational Diseases Prevention and Control Law* be revised. As part of this effort, occupational health protection techniques and the occupational health rights of medical and healthcare personnel need to be clarified,
- Conduct local surveys and use those results alongside input from legal experts on the current legal framework to promote the introduction of local regulations on occupational health protection techniques for medical personnel,
- Establish a monitoring system for exposure to occupational hazards in the medical profession, develop and streamline a reporting system for exposure to occupational hazards, and establish a feedback mechanism to improve protections in the workplace,
- Conduct enforcement campaigns to monitor the occupational health of medical personnel. These should include inspections to assess whether hospitals have implemented relevant national occupational safety and health standards and incorporation of occupational hazard prevention and control best practices in the professional training programs for hospital directors,
- Improve the occupational injury compensation mechanism for medical personnel. Ensure that the costs of technology needed to prevent occupational hazards and the costs of treatment to contain exposure to these hazards are priced into medical insurance options in order to build a stable, long-term investment mechanism.

Health and Safety of Firefighters and other Emergency Management Personnel

Firefighting is a high-risk occupation. Firefighters face a diverse series of occupational hazards, including from chemical, physical, psychological, biological and nuclear hazards. Such hazards are unpredictable. The first phase of a large-scale study led by the US National Institute of Occupational Health and Safety (NIOSH) (over a five-year period beginning in 2010, targeting about 30,000 firefighters from 1950-2009) found that due to inhalation and recontamination of toxic and harmful gases and particulate matter, the probability of firefighters in the US suffering from cancer is 1.14 to 2.02 times higher than the probability of non-firefighting civilians suffering from cancer. Therefore, the safety and long-term health of firefighters must be taken seriously.

China's rapid economic development, industrialization, and

- “新药”的定义和相应的药品注册分类方案，应修改为“以前未在中国销售的化学或生物药品”；
- 国内药典应尽可能与国际药典保持一致，任何国内标准都应透明地建立，并附有支持性数据。

医疗设备、体外诊断及耗材

- 建议放宽限制，允许医疗器械标准只充当推荐性指南，而非强制性标准，进而推动行业创新。医疗设备业计划与司法部(MOJ)合作，解决监管重叠的问题；
- 通过循证实践，确定医疗设备成本。在调整医疗服务和医疗设备定价时，需考虑原材料和人工成本。允许医疗服务价格根据市场需求上下浮动调整；
- 所有省和地方级行政单位都设立定期窗口以便审查，将医疗服务加入《国家医疗服务价格项目规范》中，使患者能够以最经济的方式获取到最新设备；
- 撤销不利于外国试剂生产商发展的现实障碍，包括缩短变更体外诊断试剂注册信息所需的时间；
- 使用有科学依据的机制来评估产品安全性和医用耗材有效性。医生应接受额外培训，学习如何使用高风险耗材（如植入式耗材）。

疫苗

- 建议有关部门尽快颁布《疫苗管理法》相关配套法规和执行措施，当前应尽快落实的规定包括：① 接种疫苗后产生异常反应的病人的补偿范围、标准、程序；② 鼓励通过商业保险补偿异常反应的具体措施；③ 采取措施，建立国家免疫规划疫苗种类动态调整机制，预防接种规范等。采购疫苗时，国家免疫计划能从医学原理和产品特性加以考量，而非单纯的进口或国产；

- 为鼓励疫苗创新营造良好的监管环境，包括将疫苗审评流程纳入国际多中心临床试验，并取消注册申请先需获得境外上市许可的限制，加速创新疫苗进入中国，保障公众健康，维护国家公共卫生安全；促进《中国药典》标准与国际药典标准的统一制定策略并更新和整合应急准备标准，加强市场监管和执法，以识别和消除不符合相关标准的个人防护装备。

基因技术

- 建议将外商投资负面清单第 28 条修改为“允许在（若无授权）不改变患者本身遗传基因、泄露患者基因信息的前提下投资人体干细胞、基因诊断与治疗技术开发和应用”。如若无法修改清单，我们鼓励主管部委、机构和部门及时发布详细的实施条例、说明和指导方针，以明确定义“人体干细胞，基因诊断和治疗技术的应用和开发”的范围，从而阐明外商投资企业可以投资的技术和行业；
- 完善我国对基因检测的监管。在安全有效的前提下，逐步放开和鼓励有条件的医学检验部门发展自建检测方法(LDT)，并在国内探索开通 LDT 产品注册路径；
- 以国际公认标准为基准，并建立与之协调的技术标准和行业准则，以确保国内工业保持高水平发展，推动先进技术进入中国市场，造福本国患者。

医疗服务

- 取消针对外资医院的各种限制和掣肘，包括对外资股本的限制，禁止医院新设分支机构，要求医院每家分支机构分别单独报税，限制允许外籍员工和医生从业的医院数量；
- 将社会医疗保险覆盖范围扩展到私立医院领域，赋予患者与公立医院等等的最高报销限额。进一步放宽限制，允许患者执行支付生育费用或参与独立的商业健康保险增加获得药物的渠道；

urbanization has resulted in an increasingly complex environment for fire protection and prevention, and the number of hazards in the industry is increasing. In addition, in order to be prepared to address largescale emergencies and natural disasters, the scope of activities carried out by fire rescue teams at the central and local level has been expanded to include emergency rescue activities.

In order to make every effort to ensure the safety and long-term health of Chinese firefighters, the awareness of occupational safety and health must be raised among the firefighters themselves. China currently has in place mandatory standard *GB/Z 221-2009 Occupational Health Standard for Firemen*. Following the establishment of the Ministry of Emergency Management (MEM) in March 2018 and the transfer of the People's Armed Police firefighting brigade to the MEM, *GB/Z 221-2009* needs to be revised because some basic descriptions used to define the standard no longer apply after the reorganization. Greater consideration should be given to standards for sterilizing PPE in the wake of the COVID-19 outbreak under *GB/Z 221-2009*. We recommend that the government review international best practices and take the lead researching occupational disease rates among Chinese firefighters, monitor their incidence, and regularly publish data and recommendations to reduce the incidence of these diseases. Having access to and wearing PPE correctly is the last line of defense to avoid occupational injury and disease.

Therefore, we recommend that the relevant Chinese regulators develop strategies, update and integrate standards for emergency preparedness, strengthen market testing measures, and improve enforcement to identify and eradicate PPE sold on the market that does not meet relevant standards. Steps to improve procurement of PPE can help to ensure the quality of the PPE worn by firefighters and improve their overall occupational health.

Recommendations

Pharmaceuticals

- **Develop and solicit for public comment detailed implementing regulations in support of provisions laid out in the *Opinions on Strengthening Intellectual Property Rights Protection* and ensure that any such regulations are applied transparently and equally.**
- Issue guidance to support MAH implementation for all product types (chemical, biological, and vaccine), and ensure that the regulations apply equally to the MAH holder regardless of whether they are based in China or overseas.

- Clarify intent around the introduction of an NRDL dynamic adjustment mechanism. Make any periodic revision of the NRDL dynamic adjustment mechanism open, transparent, and subject to public comment.
- Introduce legislation or a national plan for the treatment of rare diseases. Convene regulatory and patent authorities to determine a specific and enforceable market exclusivity period for products treating rare diseases. Promulgate policies such as tax credits or fee waivers for clinical trial activities related to rare diseases and orphan product development.
- The definition of a “new drug” and any corresponding classification schemes for drug registration should be revised as a “chemical or biological drug which has not been previously marketed in China.”
- Domestic pharmacopoeia should be aligned with the International Pharmacopoeia to the maximum extent possible, and any domestic standards should be established transparently with supporting data.

Medical Devices, In Vitro Diagnostics, and Consumable Supplies

- **Promote industry innovation by allowing medical device standards to act as recommended guidelines rather than mandatory standards. The medical device industry is prepared to work with the Ministry of Justice (MOJ, to which the authority formerly under the NPC Legislative Council has been transferred) to resolve regulatory overlaps.**
- Evidence-based practices should be used to establish the cost of medical devices. When adjusting medical service and device prices, inputs like the cost of raw materials and labor need to be considered. Permit service prices to be adjusted up or down as needed in line with market demands.
- All provinces and localities should have periodic windows to review, accept, and add medical services to the *National Medical Service Price Item Specification* to allow patients to access the latest devices in a cost-effective manner.
- Remove barriers that, in practice, disadvantage foreign-invested makers of in-vitro reagents, including by shortening the time required to change an in vitro diagnostic reagent registration.
- Science-based evaluations should be used to assess the product safety and effectiveness of medical

- 确保私营和公共医疗服务提供者享受更加平等的待遇，并将私立医院纳入国家公共卫生应急计划和响应机制。鉴于本次新冠病毒肺炎疫情爆发期间，私立医院及其员工的发挥了不可忽视的作用，采纳这一建议尤为必要。

职业健康和安全

- 职业健康保护技术和医务人员的健康权需要加以明确。该项澄清应纳入《健康中国2030》法律法规拟议修订的一部分，例如《职业病防治法》；
- 开展联合执法运动，监控医务人员的职业健康。措施应包括：检查医院是否按要求落实了相关的国家职业健康安全标准，或将职业健康隐患防控的最佳做法纳入医院管理人员的内部培训计划之中；
- 制定策略，更新并整合应急预备标准，加强市场监督和执法，从而识别和筛查不符合标准的个人防护装备。

consumable supplies. Doctors should receive additional training on how to use high-risk consumables, like implantable consumables.

Vaccines

- **Promulgate implementing measures as required under the *Vaccine Administration Law* as soon as possible. In particular, these regulations should include ① the scope, standard, and procedures for compensation provided to patients who undergo an abnormal reaction to a vaccine, ② specific measures to encourage commercial insurers to offer such coverage, and ③ measures to establish a dynamic adjustment mechanism for selection of vaccines included in the National Immunization Program. Vaccine procurement for the National Immunization Program should be based on scientific principles and the quality of the vaccines themselves rather than the domicile of the manufacturer.**
- Build a regulatory environment to promote vaccine innovation, including but not limited to permitting IMCT and OMA in order to accelerate the process of bringing innovative vaccines to China to meet current public health demand. Promote the harmonization of Chinese Pharmacopeia with international Pharmacopeia standards.

Gene Therapy Technologies

- **Revise the *Negative List* Article 28 to allow foreign investment in human stem cell, gene diagnosis, and therapeutic technology application and development as long as such investment does not alter the patient's genes, publicize, or transfer patient genetic information without appropriate authorization. If such revisions cannot be made, we recommend line ministries, agencies and departments be encouraged to promptly issue detailed implementing regulations, clarifications, and further guidance that clearly defines the scope of "human stem cell, gene diagnosis and therapeutic technology application and development," activities, and thus clarifies in which technologies and industries FIEs can invest.**
- Improve the supervision of genetic testing in China by gradually encouraging development of LDTs by qualified medical testing institutions in compliance with appropriate safety regulations and establish a pathway for LDT products to be registered in China.
- Establish technical standards and industry guide-

lines that align with and are benchmarked against internationally accepted standards to ensure the high-level development of domestic industry and the entry of advanced technologies that will benefit Chinese patients.

Healthcare Services

- **Remove restrictions and limitations on foreign-invested hospitals including foreign equity limits, a ban on new hospital branches, the requirement to report each branch separately for tax purposes, and restrictions on the number of hospitals that foreign employees and doctors can be permitted to work.**
- Extend social medical insurance to cover visits to private hospitals and allow patients to be reimbursed up to the maximum allowable amount in public hospitals. Further allow patients to pay the remaining balance out-of-pocket or with separate commercial health insurance to increase access to medication.
- Ensure greater equality in treatment for private and public healthcare service providers and allow private hospitals to become part of the government's national public health emergency planning and response. This is particularly salient given the role of private hospitals and their staff during the COVID-19 outbreak.

Occupational Health and Safety

- **Occupational health protection techniques and the health rights of medical personnel need to be clarified. This clarification should come as part of the proposed revision to laws and regulations in *Healthy China 2030*, such as the *Occupational Diseases Prevention and Control Law*.**
- Conduct joint law enforcement campaigns to monitor the occupational health of medical personnel. These should include inspections as to whether hospitals have implemented relevant national occupational health and safety standards or incorporated occupational hazard prevention and control best practices into their in-house training programs for hospital directors.
- Develop strategies and update and integrate standards for emergency preparedness, strengthen market oversight and enforcement to identify and eradicate from the market PPE that does not comply with relevant standards.

Information and Communications Technology

Introduction

AmCham China continues to urge a return to openness, stability and clarity in China's policy environment for the Information and Communications Technology (ICT) sector. For decades, China's growing prosperity has been built on policies of opening up to the outside world. Recent trends toward restricting access in the ICT sector appear to indicate a reluctance by China to maintain its commitment to such openness, harming its global investment reputation. Renewed commitments and concrete actions to open the sector would advance continuing prosperity for both China and the US.

From the perspective of US business, the ICT sector in China presents a dilemma. On the one hand, it is now one of the most dynamic sectors of China's economy. On the other hand, it has arguably become the most difficult sector for foreign-invested enterprises (FIEs) to navigate, especially as the policy environment has become more restricted and uncertain in recent years. It not only foretells a future drop in foreign investment but also less interaction with the outside world for China.

Market Access Barriers

Cloud Computing

The Telecom Service Catalog classifies cloud computing as a type of Value-Added Telecommunication Service (VATS) (specifically listed under "Internet Resource Collaboration Service (IRCS)"), which means vendors must obtain a license to operate. FIEs are not allowed, however, to obtain an IRCS license for cloud computing. Additionally, VATS remain largely off-limits to foreign ICT companies due to equity caps, investment restrictions, connectivity requirements, and restrictions on the ability to engage in cross-border data transfer and requirements to localize computing infrastructure.

The Ministry of Industry and Information Technology (MIIT)'s draft *Notice on Regulating Business Behaviors in the Cloud Service Market* released at the end of 2016 introduced heavy-handed government regulation into the operations

of cloud service operator partnerships. The draft Notice includes provisions that, among other things, require Cloud Service Providers (CSPs) to construct and maintain physical infrastructure in China, subject cross-border data transfers to a range of restrictions, limit the ability of FIEs to market their services in China under their own brand, and create duplicate copies of all key equipment, business systems, and data. The content of these regulations has created a technical barrier for foreign operators within the China market and restricted their ability to partner on reasonable terms with Chinese companies. AmCham China urges deletion of these requirements in the final Notice, which has yet to be released as of the end of 2019. In a favorable development, however, China and the US signed the Phase One Deal on January 15, 2020, which includes provisions for China to import cloud computing parts and related services, compliance with which AmCham China will be monitoring closely.

AmCham China continues to urge the Chinese government to reduce the restrictions on the cloud computing industry that in practice inhibit the ability of foreign-invested CSPs to operate in the market. CSPs are able to operate largely without the same level of restriction in the US market. Allowing foreign-invested CSPs to operate in China on a level basis with domestically-invested companies will improve China's domestic market by enhancing competition and expanding the options available to Chinese consumers and businesses.

Value-Added Telecommunications Services

FIEs are still subject to the *Provisions on Administration of Foreign-Invested Telecommunications Enterprises*, last amended in 2008. Article 6 of the Provisions imposes a 49 percent foreign equity cap if the FIE provides "basic telecoms services" and a 50 percent foreign equity cap if the FIE provides "value-added telecoms services." The *Classified Catalogue of Telecommunications Businesses* constitutes the basis for licensing telecommunications businesses in China. The current edition of the Catalogue, released in 2016, represented an effort to modernize China's telecommunications regulatory regime and includes a number of new businesses that had emerged since the Catalogue was first issued in 2003 (including 4G wireless, cloud-based solutions, and internet domain name registration services). Although the

信息技术

引言



美国商会（商会）继续敦促中国在信息技术行业重构开放、稳定、清晰的政策环境。

几十年来，中国的繁荣和崛起都是建立在开放的政策基础上。而近期对信息技术领域的准入限制趋势表明中国不愿维持对此类开放的承诺，这将损害其全球投资信誉。重新承诺并采取具体行动，开放上述行业将推动中美两国持续繁荣。

从美国业界的观点来看，中国的信息技术行业面临两难困境。一方面，这是中国经济目前最具活力的领域之一；另一方面，该行业可以说是外企在中国最难驾驭的领域，尤其是近年政策环境变得越发受限，充满不确定。这不仅意味着外资在中国将会缩减，还意味着中国与外界的互动减少。

市场准入壁垒

云计算

《电信业务分类目录》将云计算归为增值电信业务，具体列在“互联网资源协作服务业务”之下，这意味着供应商必须获得运营许可。但是，外资企业却被禁止获得云计算的互联网资源协作服务业务许可。另外，由于股权上限、投资限制、连接性要求、跨境数据传输能力的限制以及本地化计算机基础设施的要求，增值电信业务在很大程度上仍然禁止外国信息技术企业进入。

工业和信息化部（工信部）2016年底发布的《关于规范云服务市场经营行为的通知（征求意见稿）》，给云服务运营者合作伙伴的经营行为引入了严厉政府监管。该通知草案包括以下条款：要求云服务提供者在中国建设和维护物理基础设施、跨境数据传输遵守一系列限制、限制外国公司在华营销其旗下品牌的服务、要求

外国公司为所有关键设备、业务系统和数据创建副本。这些规定的内容为外国经营者在中国市场设置了技术壁垒并限制了他们与中国企业以合理条件进行合作的能力。此法规截至2019年底为止还未正式发布，商会敦促在最终《通知》中删去以上要求。但利好的进展是，中美两国在2020年1月15日签署了第一阶段经贸协议，其中包括中国进口云计算零部件及相关服务的条款，对此，商会将密切关注中方执行情况。

商会继续敦促中国政府减少对云计算行业的限制，这些限制实际上抑制了外资云服务提供者在中国市场的运营能力。中国的云服务提供者在美国市场运营则几乎没有受到同等水平的限制。允许外资云服务提供者与内资企业在中国开展同等水平的运营，能够扩大中国消费者和企业的选择范围，从而改善中国国内市场。

增值电信业务

外商投资企业仍遵循2008年修订的《外商投资电信企业管理规定》。该规定第六条要求，经营基础电信业务的外商投资电信企业的外方投资者在企业中的出资比例不得超过49%，经营增值电信业务的外商投资电信企业的外方投资者在企业中的出资比例不得超过50%。《电信业务分类目录》构成中国电信业务经营许可的基础。2016年发布的新版目录体现了中国电信监管制度现代化的努力，当中包括自2003年首次发布目录以来出现的一些新业务，如4G无线、基于云的解决方案、互联网域名注册服务等等。尽管该目录旨在刺激民间投资，但外国投资者可参与度仍不明确。商会继续敦促中国政府取消电信行业对外商投资的限制，鼓励投资，提高面向中国消费者和中国市场的电信产品和服务的质量。

“安全可控”的技术与采购

纵观2019年，商会会员高兴地见证了中国多项法

Catalogue was designed to spur private investment, the extent to which foreign investors may participate is at best unclear. AmCham China continues to urge the Chinese government to remove restrictions on foreign investment in the telecoms sector to encourage investment and improve the quality of telecoms products and services available to Chinese consumers and in the Chinese market.

“Secure and Controllable” Technologies and Procurement

Throughout 2019 AmCham China members were pleased to witness the passage of multiple regulations expressing support for equal treatment of foreign- and domestically-invested enterprises operating in China, as well as several public commitments to equal treatment by senior Chinese leadership. Importantly, the *Foreign Investment Law* and its Implementing Regulations, which came into effect on January 1, 2020, include in particular multiple commitments to equal treatment for foreign-invested and domestically-invested enterprises in the areas of licensing, government procurement, standards development, and intellectual property rights. Article 42 of the Implementing Regulations would also provide that “No organization’s procurement personnel or procurement agency may set unreasonable conditions to impose differential treatment or discrimination against foreign-invested enterprises.” Similar commitments can be found in the *Notice by the Ministry of Finance of Promoting Fair Competition in Public Procurement and Optimizing Business Environment* (July 2019), and the *Regulations on Optimizing the Business Environment* (National Development and Reform Commission, August 2019).

Despite these positive statements and regulations in support of equal treatment and competitive neutrality for FIEs in the economy and with respect to government procurement, the latter of which is particularly relevant to ICT, the ICT industry still witnesses barriers to equal treatment, particularly in areas of government procurement. The major concerns are:

- Clear, transparent, and measurable definitions of what constitutes “secure and controllable” products and services are missing. “Secure and controllable” appears frequently throughout China’s national development plans, including the 13th Five-Year National Science and Technology Innovation Plan issued by the State Council, as well as other sector-specific plans. Our members remain concerned that such vague terminology is used to preference domestic technology over foreign-made equivalents,
- The apparent expansion of “secure and controllable” products and services requirements beyond public procurement and into areas like procurement by state-owned-enterprises (SOEs) and into Critical Information Infrastructure (CII) sectors and industries,
- Vendors and Chinese-based clients are only willing or able to procure “secure and controllable” technologies, which in practice is interpreted to mean domestic technologies, which are deemed more secure simply because they are produced and sourced locally. While we recognize that frictions in the US-China trade relationship have reinforced this sentiment which has a negative impact on the ability of foreign-invested technology companies to do business in China, its origin predates such friction and its roots lie to a substantial extent in industrial policy,
- The potential for ICTy products and services to be subject to government reviews on the basis of potential supply chain disruption risks for factors lie beyond the technical quality of the products and services themselves. In the Draft *Cybersecurity Review Measures* released by CAC in May 2019, cyber products and services may be subject to a government review if their supply chains could be disrupted due to “non-technical factors like politics, diplomacy, or trade,” or if product or service providers are “funded, controlled etc. by foreign governments.”

In light of this reality, and to ensure that the stated goals of recent legislation on public procurement matches the reality of member companies operating in the market, we recommend that the Chinese government:

- Clarify in writing that “secure and controllable” criteria and other product safety and reliability standards do not promote domestic products at the expense of foreign-invested products on the basis of the nationality of the shareholder. Instead, “secure and controllable” criteria should apply only to a set of transparent and narrowly defined criteria for state secrets and national security. Procurement purchasing standards should instead focus on criteria like product performance and reliability, life cycle costs, environmental sustainability, and energy conservation,
- Ensure consistency in the application and interpretation of public procurement laws. There is a fundamental contradiction in having parallel economic policies that on the one hand emphasize equal treatment and competitive neutrality for all enterprises, while other policies at the same time stress domestic innovation and provide subsidies to domestically-invested and state-owned competitors,
- Develop procurement standards and criteria in an open and transparent manner. FIEs and rating and standards agencies should be permitted to participate in the development of procurement standards,
- Encourage government regulatory agencies at national and local levels to promptly issue their own regulations, implementation measures, and judicial interpretations with respect to government procurement to enable smooth implementation for FIEs following the enactment of the FIL and the Implementing Regulations. We

规的通过，这些法规体现了对在中国经济中经营的外资企业和内资企业给予平等待遇的支持，也体现了中国高层领导人对平等待遇的若干次公开承诺。重要的是，于2020年1月1日生效的《外商投资法》及其《实施条例》特别涵盖了多个承诺，在许可、政府采购、标准制定和知识产权领域对国内外企业实行平等待遇。《外商投资法实施条例》第四十二条规定，“政府采购的采购人、采购代理机构”不得“以不合理的条件对外商投资企业实行差别待遇或者歧视待遇”。类似承诺可见于2019年7月发布的《财政部关于促进政府采购公平竞争优化营商环境的通知》和国家发展改革委员会牵头、2019年8月发布的《优化营商环境条例》等文件。

尽管有这些积极的表述和法规支持外商投资企业在经济领域和政府采购方面取得平等待遇、确保各方遵守对信息通信技术领域格外重要的竞争中立规则，但是该行业距实现平等待遇仍有不少障碍，特别是在政府采购方面。商会的主要关切问题是：

- 缺少对构成“安全可控”的产品和服务的清晰、透明、可衡量的定义。“安全”、“可控”在中国的国家发展规划中经常出现，包括国务院发布的《“十三五”国家社会发展规划》以及其他针对具体领域的规划。商会会员仍然担忧，使用这种模糊术语会偏向选择本国技术，而不是外国制造的同类产品。
- “安全可控”的产品和服务需求明显扩展到公共采购之外，并扩展到国有企业采购等领域以及关键信息基础设施部门和行业。
- 供应商和中国客户只愿意或只能够购买“安全可控”的技术，实际就是指国内技术，仅仅是因为本地生产和取自本地，就被认为更安全。尽管商会认识到中美贸易关系中的摩擦加重了这种情绪，这对外国技术公司在中国开展业务的能力产生了负面影响，但这种情绪的根源要早于贸易摩擦，而根源很大程度上在于产业政策。
- 基于供应链中断风险等因素，对网络产品和服务进行政府审查甚至超过对产品和服务本身技术质量的考量。国家互联网信息办公室（网信办）2019年5月发布的《网络安全审查办法（征求意见稿）》中提到，若因“政治、外交、贸易等非技术因素”导致产品和服务供应中断，或者产品和服务提供者“受外国政府资助、控制等情况”，该网络产品和服务可能会受到政府审查。

鉴于这一现实，为确保最新公共采购立法的既定目标与市场上运营的会员公司遇到的现实情况相一致，商会建议中国政府：

- 书面说明“安全可控”的标准以及其他产品安全性和可靠性标准不会以股东的国籍为基础，以损害外商投资产品的利益来推广国内产品。相反，“安全可控”的标准仅应适用于一套透明且狭义的国家机密和国家安全标准。采购标准应侧重于产品性能和可靠性、生命周期成本、环境可持续性和节能等标准。
- 确保公共采购法适用和解读的一致性。与采购政策相关的经济政策与采购法中强调的平等待遇和竞争中立有根本矛盾。即，一方面强调所有企业的平等待遇和竞争中立性，另一方面其他政策同时强调国内创新并向内资和国有竞争对手提供补贴。
- 以公开透明的方式制定采购标准和准则。应当允许外国评级和标准机构参与采购标准的制定。
- 鼓励国家和地方各级政府有关监管机构针对政府采购及时发布各级法规、实施条例和司法解释，以便外资企业在《外商投资法》及其实施条例颁布后能够顺利执行，商会敦促政府设立过渡期，让外商投资企业调整其结构以符合新法规。
- 及时阐明《外商投资法实施条例》中有关“投诉工作机制”的规定。特别是需要详细说明外商投资企业如何上报和解决在公共采购方面所认为或实际存在的不公平待遇。如何上报这些事例？在什么时间段内向谁上报？哪个部门或机构会协调投诉、沟通各方回复以改进相关政策？

网络安全法

中国的《网络安全法》于2017年6月1日施行，对信息通信技术行业 and 用户均实行严格的网络安全限制。这给歧视国际供应商留下了很大余地，并对外国商界施加了严格的条件。除了法规本身，《网络安全法》的执法也在不断演进。执行上的不平衡、定义范围松散、关键术语定义不充分，如关键信息基础设施运营商的定义，都给外国商界带来了不确定。据商会所知，全球其他经济体都没有类似的侵入性和不透明的网络安全审查机制。

商会继续敦促修订《网络安全法》中不必要的繁琐

urge the government to allow for a transition period to allow FIEs to adapt their structures to comply with new regulations,

- Promptly clarify the provisions in the *Foreign Investment Law Implementing Regulations* related to the “complaint settlement mechanism.” In particular, details on how FIEs can report and address instances of perceived or real unfair treatment with respect to public procurement are needed. How can those instances be reported? To whom and in what time period(s)? Which agency or institution will coordinate the complaints and also coordinate any responses to improve the relevant policies?

Cybersecurity Law

China’s *Cybersecurity Law* (CSL) was released on June 1, 2017 and imposes strict cybersecurity restrictions on both ICT industries and ICT users. It leaves considerable latitude for discrimination against international vendors and imposes stringent conditions on the foreign business community. Alongside the regulations themselves, the enforcement of China’s CSL is continually evolving. Uneven implementation, a loosely defined scope, and inadequate definition of key terminology, including the definition of a CII Operator, have created uncertainty in the foreign business community. To our knowledge, no other major global economy has a similarly intrusive and non-transparent cybersecurity review mechanism in place.

We continue to urge revision of the unnecessarily burdensome provisions of the CSL, which are discussed below in detail, and any associated implementing regulations. Importantly, AmCham China urges that current and future regulations refrain from discriminating against foreign business, observe China’s *World Trade Organization Agreement on Technical Barriers to Trade* (WTO/TBT) obligations, conform to international best practices, and establish regular mechanisms to enhance dialogue and accountability around implementation of the CSL.

Cybersecurity Protection Regime: Critical Information Infrastructure

The official definition of CII as outlined in the CSL (see CSL Section 2: Operations Security for CII) has not been formally promulgated and it remains unclear how any special rules for CII operators will interact with existing frameworks like the Multi-Level Protection Scheme (MLPS). Clear and consistent formal definitions are needed in order for FIEs to assess whether they are deemed a CII operator with respect to their compliance obligations under the CSL and take the necessary steps as detailed by regulators.

We have not seen progress on the draft *Regulations on Protection of Critical Information Infrastructure Security*, last issued in July 2017. TC260 announced a pilot program for national standards related to “information security tech-

nology – Critical information infrastructure cybersecurity protection” in December 2019. This program outlined basic procedures for TC260 to “verify the rationality and operability of relevant standards, solicit input and collect insight with respect to promoting the adoption of certain standards, and provide technical support to CII protection.” Nevertheless, our members have not witnessed comprehensive regulatory progress with respect to the protection of CII.

We recommend that China use a narrowly defined, flexible regulatory approach regarding the operation of CII. The approach should adopt recognized voluntary global standards and internationally accepted risk-management methods. The distinction between CII operators and network operators should be clarified and remain consistent across the regulatory environment, particularly because the CSL provides different regulations for both sets of operators. CII operators should only be subject to cybersecurity requirements and protection schemes designed for CII, instead of subject to different regulations for both CII and network operators. Similarly, regulations developed for CII operators should not be extended to network operators.

Cybersecurity Protection Regime: The Multi-Level Protection Scheme

The Multi-Level Protection Scheme (MLPS) represents a decade-long effort to develop a comprehensive IT system security protection scheme. The scheme grades the importance of IT systems on a five-point scale according to their importance with respect to China’s national security, social order, public interest, and the legitimate interests of individuals and organizations, with specific security requirements. Three national standards that constitute the basis of the MLPS, namely ❶ *GB/T 22239-2019 Information Security Technology – Baseline for the Multi-level Protection Scheme*, ❷ *GB/T 25070 – 2019 Information Security Technology – Technical Requirements of Security Design for the Multi-level Protection Scheme*, and ❸ *GB/T 28448 – 2019 Information Security Technology – Evaluation Requirements for the Multi-level Protection Scheme* came into effect in December 2019. With these standards in place, the MLPS has evolved to version 2.0 and now includes more detailed requirements for specific IT industries including cloud computing, mobile networks, the Internet of Things (IoT) and industrial internet systems.

AmCham China remains concerned about the fact that the MLPS applies to all network operators, instead of applying only to CII operators. The draft *Regulations on the Cybersecurity Multiple-Level Protection Scheme* (Draft MLPS Regulations) released in June 2018 appear to expand these regulations to cover “all network operators,” which would include a large swath of the commercial sector. MLPS 1.0 was implemented only to cover “important systems.” The June 2018 Draft Regulations outline several significant requirements with respect to the structure and maintenance of networks operating within China. Systems graded at level

规定（下文将详细讨论）以及有关实施条例。重要的是，商会敦促中方当前和将来的法规均避免歧视外国企业，遵守中国在《世界贸易组织贸易技术壁垒协定》中的义务，遵循国际最佳做法，并建立常规机制，围绕《网络安全法》的施行，加强对话和问责。

网络安全保护制度：关键信息基础设施

《网络安全法》中第三章第二节对关键信息基础设施的定义是：关键信息基础设施的运行安全（的官方定义尚未正式发布，并且尚不清楚针对关键信息基础设施运营者的任何具体规则如何与等级保护制度等现有框架相联系。外国企业对此需要一个清晰、一致的正式定义，以便其根据自身对《网络安全法》义务的履行情况，评估企业是否被视为关键信息基础设施运营者，并据此采取监管机构详细规定的必要步骤。

2017年7月发布的《关键信息基础设施安全保护条例（征求意见稿）》尚未看到进展。全国信息安全标准化技术委员会于2019年12月公布了一项有关“信息安全技术--关键信息基础设施网络安全保护”国家标准的试点工作。该工作概述了委员会的基本程序，以“验证相关标准的合理性和可操作性，就加快采纳某些标准而征求意见，并为关键信息基础设施保护提供技术支持”。但是，商会的会员在保护关键信息基础设施方面尚未看到全面的监管进展。

商会建议缩小关键信息基础设施的范围，并采用灵活的监管方法。该方法应采用自愿性的全球公认标准和国际上接受的风险管理方法。应加以区分关键信息基础设施的运营者和网络运营者，并在整个监管环境中保持一致，尤其是因为《网络安全法》对两类运营者有不同的监管。关键信息基础设施的运营者仅遵守为关键信息基础设施设计的网络安全要求和保护方案，而不受针对关键信息基础设施和网络运营者二者共同而设的不同法规约束。同样，为关键信息基础设施的运营者制定的法规也不应当适用于网络运营者。

网络安全保护制度：等级保护制度

等级保护制度作为一套综合的安全保护信息技术系统已经存在十余年。按照特定的安全要求，该制度根据信息技术系统对中国国家安全、社会秩序、公共利益、个人和组织的合法利益等的重要性，分五个等级进

行重要性评级。构成等级保护制度基础的三个国家标准于2019年12月生效：① GB / T 22239-2019 信息安全技术 - 网络安全等级保护基本要求、② GB / T 25070 - 2019 信息安全技术 - 网络安全等级保护安全技术要求、③ GB / T 28448 - 2019 信息安全技术 - 网络安全等级保护测评要求。有了这些标准，等级保护制度已发展到2.0版本，现在包括针对特定信息技术行业的更详细的要求，比如云计算、移动网络、物联网和工业互联网系统等。

商会仍然关切如下情况，即等级保护制度适用于所有网络运营者而非仅适用于关键信息基础设施的运营者。2018年6月发布的《网络安全等级保护条例（征求意见稿）》似乎将这些条例扩展到涵盖“所有网络运营者”，其中包括大量商业领域。实施等级保护1.0只涵盖了“重要系统”。2018年6月的条例草案概括了在中国境内运营网络的结构和维护方面的几个重要要求。第三级及以上级别的系统必须对接中国当地公安系统，在这些网络上进行的所有技术维护都必须本地化。这些不必要的侵入性要求以及其他一些要求，有可能使外国技术无法进入等级保护第三级及以上级别的系统，这是整个行业关注的重要问题。

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

网络安全审查制度

2017年5月，网信办正式公布了《网络产品和服务安全审查办法（试行）》。网信办在2019年5月起草了《网络安全审查办法（征求意见稿）》，该办法一经定稿将取代《网络产品和服务安全审查办法（试行）》。商会会员的主要关注点是，这两个法规，特别是2019年的《网络安全审查办法（征求意见稿）》，似乎都将网络产品或服务供应链安全作为一个关键的购买标准。例如：

- 第十九条规定，“网络安全审查工作机制会员单位认为影响或可能影响国家安全的网络产品和服务采购活动、信息技术服务活动”的，网络安全审查办

three and above must be connected with China's public security system at the bureau level and all technical maintenance performed on those networks must be localized. These unnecessarily intrusive requirements, among others, threaten to shut foreign technology out of systems ranked at MLPS level three and above, constituting a significant point of concern for the industry at large.

AmCham China believes if they are to remain, the Draft MLPS Regulations be confined to the scope established in the CSL and avoid expanding the scope of the MLPS to all network operators. If MLPS is expanded to cover all network operators, FIEs will face great expense and administrative burdens to meet these requirements in the context of their global IT systems which will discriminate in fact against FIEs and disincentivize foreign investment in China.

Cybersecurity Review Regime

In May 2017, the CAC officially released the *Security Review Measures for Cyber Products and Services* (Interim Measures). In May 2019 the CAC released an updated draft *Cybersecurity Review Measures*, which, when finalized, will replace the Interim Measures. The key concern for our members is that both regulations, in particular the 2019 Draft Measures, appear to incorporate the security of a cyber product or service supply chain as a key purchasing criterion. For example:

- In Article 19, the Office of Cybersecurity Reviews can initiate the review process when "cybersecurity inspection work units" find that "network product and service purchasing activities, or information technology service activities influence or may influence national security." Products or services which fail to pass cybersecurity review will be barred from procurement by CII operators,
- Article 10 provides that cybersecurity reviews need to consider "the controllability, transparency, and supply chain security of a product or service...including the possibility of disruption due to non-technical factors like politics, diplomacy, and trade." Additionally, situations in which "product or service providers are funded, controlled, etc., by foreign governments" may warrant a review.

AmCham China remains concerned that the cybersecurity review regime, particularly one without clear standards and transparent criteria will be used to discriminate against foreign technology providers. This appears to unreasonably obfuscate the distinction between legitimate security concerns and unreasonable discrimination against certain technologies on the basis of point of origin. Instead, we recommend that any cybersecurity review regime be based on agreed upon technical standards for security rather than considerations of product or service origin. AmCham China urges that the Cybersecurity Review Regime comply with

China's WTO commitment to an open market, ban discrimination against foreign technology, and remove unnecessary market access barriers.

Cybersecurity Inspections

AmCham China has concerns with respect to the ability of public security organs to conduct "cybersecurity inspections." The final *Internet Security Supervision and Inspection Provisions by Public Security Organs* (the Provisions), went into effect November 1, 2018 and are overseen by the Ministry of Public Security (MPS). The Provisions derive authority from the CSL, the *Counter-Terrorism Law* (CTL), and the *People's Police Law*. Together, these laws give Public Security Organs (PSOs) broad authority to conduct on-site inspections or remote testing of Internet service providers and other network operators to evaluate compliance with the CSL, CTL and other cybersecurity-related laws and regulations.

The authority to conduct remote testing effectively enables a PSO to connect into a company's private network to evaluate the potential for unspecified "cybersecurity vulnerabilities." AmCham China is extremely concerned about the broad and intrusive inspection mandate held by PSOs and other third-party services that could enable them to access or disclose personal information, proprietary information, or other sensitive corporate information. Simply giving third parties like PSOs the ability to scan/penetrate secure industry systems creates a number of ancillary or unintended security risks with respect to overall network health.

While we understand MPS's desire to ensure compliance with cybersecurity regulations, we strongly recommend that MPS recognize firm-led testing and adopt "mutual recognition" of cyber testing principles, and limit scanning requirements by third parties which will impose additional security risks on company networks.

Cybersecurity Vulnerabilities: Publishing Cybersecurity Threat Information Administrative Measures and Cybersecurity Vulnerabilities Administrative Regulations

The *Cybersecurity Threat Information Publication Management Measures* (Draft Management Measures) were released in November 2019 by CAC to support the CSL by aiming to prevent the irresponsible disclosure of cybersecurity threat information which could be harmful to national security or the public interest, or compromise cybersecurity. The Draft Management Measures seek to regulate what information shall not be included in any threat information that is published. It requires that any disclosure of associated threat information shall seek prior consent from the relevant network operator unless the vulnerability(s) of concern have been eliminated/ repaired, or when the information has been reported a minimum of 30 days earlier to the relevant cyber-

公室可进行审查。未通过网络安全审查的产品或服务禁止被关键信息基础设施的运营者采购。

- 第十条规定，网络安全审查必须考虑“产品和服务的可控性、透明性以及供应链安全，包括因为政治、外交、贸易等非技术因素导致产品和服务供应中断的可能性”。此外，在“产品和服务提供者受外国政府资助、控制等情况下”，可能需要进行审查。

商会仍然担心网络安全审查制度，特别是一个没有明确标准和透明标准的网络安全审查制度，会被用来歧视外国技术提供者。这似乎不合理地混淆了合法安全关切与因原产地或来源对某些技术的不合理歧视。相反，商会建议任何网络安全审查制度都应基于商定的安全技术标准，而不是基于对产品和服务来源的考虑。商会敦促网络安全审查制度遵守中国加入世贸组织时对开放市场的承诺，禁止歧视外国技术，并消除不必要的市场准入壁垒。

网络安全监督检查

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

开展远程检测的权限使公安机关能够有效连接到公司的专用网络，以测评潜在的、不特定的“网络安全漏洞”。商会非常关注公安机关和其他第三方服务机构广泛且具侵入性的监督检查授权，该权限可能使他们能够访问或披露个人信息、专有信息或其他敏感的公司信息。简单地赋予第三方机构如公安机关扫描或渗透安全行业系统的能力，对整体网络健康会制造许多连带或意外的安全风险。

尽管商会理解公安部希望确保各方遵守网络安全法规，但商会强烈建议公安部认可由公司主导检测并采用“相互认可”的网络检测原则，限制第三方机构的扫描要求，因为这些要求会给公司网络带来额外的安全风险。

网络安全漏洞：发布网络安全威胁信息管理办法和网络安全漏洞管理条例

网信办于2019年11月发布了《网络安全威胁信息发布管理办法（征求意见稿）》，通过防止不负责任地泄露可能危害国家安全或公共利益，或损害网络安全的网络安全威胁信息，支持《网络安全法》的施行。该办法草案试图规范好哪些信息不应包含在已发布的威胁信息中。它要求任何相关威胁信息的披露都应事先征求有关网络运营者的同意，除非关切的风险、脆弱性已被消除或修复，或者至少提前30日向网信、电信、公安或相关行业主管部门举报了该信息。发布涉及公共通信和信息服务、能源、交通、水利、金融、公共服务、电子政务、国防科技工业等重要行业和领域的网络安全攻击、事件、风险、脆弱性综合分析报告时，或发布全国性或跨地区、跨行业领域的综合分析报告时，应事先向有关政府部门报告。

工信部于2019年6月发布的《公共互联网网络安全威胁监测和处置办法（征求意见稿）》要求，在发现漏洞90日内，立即解决漏洞，并发布相关产品的补丁或预防办法。有关网络服务或系统的补丁或预防办法须于10日内发布。征求意见稿指出，如果已发现漏洞的产品和服务的用户或技术合作伙伴也需要采用补丁或预防办法，则需要5日内通知他们，并且应将信息上报至工信部建立的网络安全威胁信息共享平台。征求意见稿还鼓励第三方组织或个人通过诸如中国国家漏洞库和国家信息安全漏洞库的收集平台报告漏洞。

商会强烈敦促中国政府设立一个能统合监管环境的漏洞识别和修复机构。我们鼓励中国将拟议法规与已建立并广泛采用的最佳实践和行业标准相结合。这些实践和标准是由漏洞协同披露（CVD）和漏洞处理领域的专家精心开发的。鉴于技术和相关漏洞管理流程的全球相互关联性，商会支持遵循ISO国际标准（如ISO/IEC 29147（2018））中阐明的这些做法。

修复已识别的产品和服务漏洞是一个技术问题，由于许多此类产品和服务的全球供应链的存在，这个问题变得更加复杂。商会认为，要求固定期限内安装补丁或修复漏洞在技术上既不可行也不合理。在安装补丁之前向其他利害关系方披露漏洞存在的强制性要求不会减轻损害，只会带来额外的风险。

security or other government agency. Any efforts to publish a comprehensive analytic report on cybersecurity attacks, incidents, risks, and vulnerabilities in key industries (public telecommunications and information services, energy, transportation, water supply, finance, public services, e-government, national defense science, technology) or at the “national, cross-regional, or cross-sectoral” level needs to be approved in advance by the government.

The *Public Internet Cybersecurity Threat Monitoring and Mitigation Measures* (Draft for Comment) released in June 2019 by MIIT require that vulnerabilities be addressed immediately and patching or preventive measures for relevant products be released within 90 days after the vulnerability is identified. With respect to relevant network services or systems, patches or preventive measures need to be issued within 10 days. The Draft for Comment states that if users or technical partners of a product or service with an identified vulnerability also need to adopt patches or preventive measures, they need to be notified within five days and that information shall be reported to the Cybersecurity Threat Information Sharing Platform under MIIT. The Draft for Comment also encourages third party organizations or individuals reporting vulnerabilities via collection platforms like the China National Vulnerability Database (CNNVD) and China National Vulnerability Database of Information Security to do so in a timely manner.

AmCham China strongly urges the Chinese government to pursue a unified regulatory environment with effective coordination among the different government authorities with respect to vulnerability identification and remediation. We encourage China to align the proposed regulations with well-established and broadly adopted best practices and industry standards. These practices and standards have been carefully developed by experts in the field of Coordinated Vulnerability Disclosure (CVD) and vulnerability handling. We support alignment with these practices, as articulated in ISO international standards such as ISO/IEC 29147 (2018), given the globally intertwined nature of technology and associated vulnerability management processes.

Repairing identified product/service vulnerabilities is a technical issue that is made more complex by the presence of global supply chains for many of these products and services. AmCham China believes a fixed time requirement to install a patch or repair a vulnerability is neither technically feasible nor reasonable. Mandatory requirements to disclose vulnerabilities to other parties before installing a patch will not mitigate the damage but only create additional risk.

Cryptography Law

China’s *Cryptography Law* was enacted in October 2019 and came into effect on January 1, 2020. The law defines encryption as “technologies, products, or services applying

specific transformations to encrypt and protect this information or perform other security authentications.” Encryption is classified into three categories: “core,” “common,” and “commercial” encryption. “Core” and “common” encryption categories are used to protect information considered to be “state secrets,” while commercial encryption is used to protect information that is not a state secret.

The Law outlines the regulations and procedures governing cryptography product and service vendors, cryptography certification bodies, and users of cryptography products. In particular:

- Enterprises are encouraged to apply to qualified certification agencies to certify their cryptography products and services,
- Operators of CII that adopt commercial cryptography for security purposes (as required by relevant laws and regulations) are required to undergo security assessments conducted by certified testing agencies regarding their use of commercial cryptography. Moreover, CII operators that purchase cryptography products and services that may impair “national security” are required to undergo a “national security review,”
- Commercial cryptography products and services that involve “national security,” “social or public interests” or have “cryptography protection as a core function” will be subject to import licenses and export controls.

Furthermore, AmCham China notes that any network operators that choose to certify their commercial encryption products via security assessment will also have to consider their own MLPS grade and associated regulations for encryption security if they are a CII operator. Notably, under the *Cryptography Law*, CII operators are now permitted to conduct a security self-assessment or authorize a commercial cryptography testing body to conduct the assessment.

AmCham China welcomes these certain provisions in the *Cryptography Law*, including the commitment to ❶ “equal treatment for foreign-invested enterprises” handling commercial cryptographic technology, ❷ an exemption from the import licensing and export control framework for commercial cryptographic technology used in “mass consumer products,” ❸ the commitment that “government bodies and their employees” will not employ “administrative measures to force a transfer of commercial cryptography technology,” ❹ not disclose intellectual property during the certification process, and ❺ avoid burdensome and duplicative testing and certification requirements.

Nevertheless, concerns remain. The Law is unclear with respect to any changes in the current encryption regulatory framework regarding encryption as a “core function.” State Council Directive No. 273, the *Regulations on the Administration of Commercial Encryption*, issued in October 1999, imposed strict regulations on encryption including

密码法

中国的密码法于 2019 年 10 月通过并于 2020 年 1 月 1 日生效。该法所称密码，是指“采用特定转换的方法对信息等进行加密保护、安全认证的技术、产品和服务”。密码分核心密码、普通密码和商用密码三类。核心密码、普通密码用于保护被认为是国家机密的信息，而商业密码用于保护不属于国家机密的信息。

该法概括了管理密码产品和服务供应商、密码认证机构以及密码产品用户的法规和程序。尤其是：

- 鼓励企业向有资质的认证机构对其密码产品和服务进行检测认证；
- 法律、行政法规和国家有关规定要求使用商用密码的关键信息基础设施，其运营者应当使用商用密码进行保护，自行或者委托商用密码检测机构开展商用密码应用安全性评估。此外，关键信息基础设施的运营者采购可能损害“国家安全”的产品和服务的，必须接受“国家安全审查”；
- 涉及“国家安全、社会公共利益且具有加密保护功能的”商用密码实施进口许可和出口管制。

商会认识到，网络运营者选择安全评估来认证商用密码产品的，若同时作为关键信息基础设施的运营者，则必须同时考虑其网络安全等级保护级别和相关密码安全法规。值得注意的是，《密码法》允许关键信息基础设施的运营者自行或者委托商用密码检测机构开展商用密码应用安全性评估。

商会接纳《密码法》中的某些规定对包括以下方面的承诺：**①** 处理密码技术应依法平等对待外商投资企业；**②** 豁免“大众消费品”中使用的商业密码技术的进口许可和出口控制框架；**③** 行政机关及其工作人员不得利用行政手段强制转让商用密码技术；**④** 在认证过程中不得披露知识产权；**⑤** 避免重复检测认证。

然而，对此法的担忧仍然存在。该法并未明确现行密码管理框架中将密码作为“核心功能”方面的变化。1999 年 10 月发布的国务院第 273 号令《商用密码管理条例》对密码进行了严格的规定，包括禁止境外密码，将所有商用密码列为国家秘密，并且要求只有政府认证单位可以销售商用密码产品和服务。2000 年 3 月，国家商用密码管理办公室作出了解释，但不包括第 273 号

令的范围，即不包括将密码作为其“核心功能”的产品。美国业界严重依赖这个限制以及政府随后的说明，即核心功能限制仍然有效。对于商用密码产品，《密码法》似乎删去了不具备密码核心功能的产品这一特例。相反，该法显然涵盖了所有涉及“国家安全、国计民生、社会公共利益”的商用密码产品和服务。这些产品和服务将列入由管理机构认证的“网络关键设备和网络安全专用产品目录”。

该法律仍然有众多定义不清晰的术语，例如“大众消费产品”，且存在某些产品可能被排除在定义之外的可能性。“商用密码”这一叫法不同于用作国家安全的密码（称为“核心”及“普通”密码），在整个法律中并未定义或统一对待。尽管大众市场消费产品不受进口许可和出口管制制度的约束，但与“国家安全”和“社会和公共利益”有关的商业密码产品和技术不受豁免。这两个类别仍未有清晰定义且可以用作忽略豁免的托词。此外，除了许可和出口控制要求外，后续的实施法规仍有可能对大众消费品施加其他要求。

商会继续强烈要求，允许符合国际标准、经验证安全、在其他全球市场普遍使用的密码产品和服务进入中国市场使用。而持续鼓励商用密码从业单位采用不同于现有国际标准和规范的国家加密标准，将给行业带来开发相应技术的巨大成本。而且，由于这些新标准不一定如其他国际标准般符合严格的安全标准，在此新标准下生产的产品和服务在市场上不会得到广泛使用，因此也会引起安全问题。

数据本地化

数据本地化通常是指以限制数据流解决国家安全问题并保护公民个人数据的法规。数据本地化也在执法或经济保护主义中应用。近年来，一些国家，如俄罗斯、印度尼西亚、越南、印度试图限制对外数据流，这是一个显著趋势，国际政策界已将其列为数据本地化。在中国，国家法律法规和行业法律法规一道对本地存储和数据传输施加了限制。这些因素加在一起，给国内外企业和监管机构运营带来了巨大的不确定性，监管机构必须根据具体情况对这些企业的类似和重复要求做出回应。

商会已经讨论了过去几年来数据本地化带来的挑战。数据本地化要求在多个国家的本地服务器和数据中心上进行冗余支出，因而损害了经济增长；通过降低数

banning foreign encryption, classifying all commercial encryption as a state secret, and requiring commercial encryption products and services be sold only by government certified entities. In March 2000, the Office of State Commercial Cryptography Administration (OSCCA) issued a clarification, which excluded from the scope of Directive No. 273, products which do not have encryption as their “core function.” US industry has relied heavily on this limitation and on subsequent statements by the government that the “core function” limitation will remain in place. With respect to commercial encryption products, the *Cryptography Law* appears to remove the exception for products which do not have encryption as their “core function.” Instead, the Law would apparently cover all commercial encryption products and services related to “national security, national economy and people’s life, and social and public interests.” These will be listed in “key network equipment and special network security product catalogs” established by regulators.

The Law is still plagued by terms that lack clarity, like “mass consumer products” and the potential for certain products to be excluded from the definition. The term “commercial cryptography,” which is distinct from cryptography used for national security (termed “core” and “common” cryptography), is not defined or uniformly treated throughout the Law. While mass market consumer products are exempted from a system of import licensing and export controls, commercial cryptographic products and technologies related to “national security” and “social and public interests” are not exempt. Those two categories remain undefined and could be used as a pretext to ignore the exemption. Moreover, there remains the chance that subsequent implementing regulations will impose additional requirements on mass consumer products aside from the licensing and export control requirements.

AmCham China continues to strongly urge that cryptography products and services that meet international standards, have been proven secure and are commonly used in other global markets should be permitted to enter and be used in the China market. Ongoing efforts to encourage adoption of domestic national encryption standards that differ from established international standards and norms will impose huge costs on industry to develop these technologies. Moreover, it creates security concerns as these new standards will not have necessarily met the same rigorous criteria for security as other international standards and the products and services deployed under these standards will not be as widely used in the market.

Data Localization

“Data localization” is generally taken to mean “regulations that seek to restrict data flows in order to address national security concerns and to protect the personal data of citizens.” It has also been invoked on law enforcement or economic protectionism grounds. In recent years several

countries (e.g., Russia, Indonesia, Vietnam, and India) have sought to restrict outbound data flows, a potentially significant trend that the international policy community has taken to categorizing as “data localization.” In China, there is a patchwork of national and sectoral laws and regulations imposing restrictions on local storage and data transfers. Taken together, these introduce significant operational uncertainty to both enterprises (foreign and domestic) and regulators, who must respond to similar and repetitive requests from these enterprises on a case-by-case basis.

We have discussed the challenges posed by data localization in previous editions of the *White Paper*. Data localization impairs economic growth by requiring redundant expenditures on local servers and data centers in multiple countries, and impedes trade, investment, and innovation by making data less available outside its country of origin. The cumulative effect of many nations each adopting data localization regulations will be to fracture the world into separate data processing spheres, each exclusively generating and exclusively manipulating its own data, with resulting impacts on economic growth and productivity.

Article 37 of the CSL strongly restricts the ability of operators of CII to transmit personal information and important data overseas. The July 2019 Draft *Measures for the Security Assessment of Cross-Border Personal Information Transfers* proposed to extend this restriction to all network operators, by requiring them to conduct and pass a “security assessment” before transferring personal information to offshore destinations. Additionally, several other sectors are fraught with data localization requirements. Take for example, the financial sector. In addition to requirements imposed by the CSL, a 2019 CBIRC order prohibits the cross-border transfer of all customer identification information and transaction information obtained in the course of performing anti-money laundering (AML) and counter-terrorism financing (CTF) obligations unless permitted by law or regulation. In practice, these regulations create a hard localization of AML-and-CTF-related customer identification information and transaction information for financial institutions (FIs) operating in China, make it impossible for multinational FIs to use their global operational model, result in increased operational challenges for existing FIs, and dramatically raise the threshold for new FIs entering the Chinese market.

These requirements present unprecedented challenges for foreign FIs interested in expanding their businesses to benefit from the liberalization of China’s financial sector. They are also barriers to a truly open financial sector. The financial sector is highly globalized and international FIs hope that China’s policies recognize their globally oriented operating models, remove data localization requirements, and enable international FIs to bring their best-in-class operating models to the Chinese market. We urge that China, acting through the People’s Bank of China and any other agency to which it may delegate authority, reflect its recognition of these matters in the announced draft *Personal Financial Information*

据在来源国以外地区的可用度而阻碍了贸易、投资和创新。若许多国家或地区都采用各自的数据本地化法规，其累计效应将把世界分割成单独的数据处理域，每个国家或地区都专门生成和专门处理各自的数据，继而经济增长和生产力发展产生影响。

《网络安全法》第三十七条严重限制了关键信息基础设施的运营者在境外传输个人信息和重要数据的能力。2019年7月发布的《个人信息出境安全评估办法(征求意见稿)》提议将该限制扩展到所有网络运营者，要求网络运营在个人信息出境前进行并通过安全评估。此外，其他几个行业也有诸多数据本地化要求。以金融行业为例。除《网络安全法》规定的要求以外，2019年中国银行保险监督管理委员会（中国银保监会）的一项命令规定，对依法履行反洗钱和反恐怖融资义务获得的客户身份资料和交易信息，非依法律、行政法规规定，银行业金融机构不得向境外提供。在实践中，这些规定使得在华运营的金融机构在反洗钱和反恐怖融资中获取的客户身份资料和交易信息不得不本地化，使跨国金融机构无法运用其全球运营模式，加大运营挑战，并大大提高了新金融机构进入中国市场的门槛。

这些要求给有意扩展业务、从中国金融业自由化中获益的外国金融机构提出了前所未有的挑战，也是构建真正开放的金融业的障碍。金融业高度全球化，国际金融机构希望中国的政策承认机构面向全球的运营模式，取消数据本地化要求，让国际金融机构能够将其一流的运营模式引入中国市场。商会敦促中国通过中国人民银行以及行业相关监管部门采取行动，在《个人金融信息（数据）保护试行办法》草案以及其他相关法规中体现中方对上述事项的认可，并将全球金融机构纳入其政策制定磋商过程。

商会建议中国避免数据本地化政策，而应保持其对“G20大阪宣言”的总体支持，这既在信任的基础上提倡了自由数据流的理念，同时针对国家安全相关信息等特定情况的信息类别作出跨境传输限制。为此商会建议中国详细定义此类数据，并对商用行业进行明确划分，以避免因混淆或不确定给外国投资带来不必要障碍。此外，商会建议中国积极参与现有的多边框架，例如《亚太经合组织跨境隐私规则体系》和《亚太经合组织隐私框架》，并为致力于发展更强大的国际或多边数据交换和保护框架的区域论坛和全球论坛做出贡献。这样的框

架将惠及中国和在华外国企业。

总而言之，目前中国可能会采取数据本地化政策，通过《网络安全法》及其实施框架限制个人数据和重要信息流出中国。但是鉴于中国对世界经济的突出重要性，中国的可能举措或许会使数据本地化逐渐被接纳为国际数据保护的一个正常特征。其他国家可能会采用自己的数据本地化法律。中国在国内鼓励数据本地化的做法，将会促使并巩固境外形成同样趋势，最终可能导致中国自身无法访问其他国家的数据。无法访问外国数据不仅会让金融行业失去机遇，也会让中国技术行业失去机遇，这可能导致负面的经济和技术后果，包括限制中国技术只能在中国发挥作用而在其他国际市场上受阻。

个人信息保护

据报道，《个人信息保护法》和《数据安全法》已列入中国当前的立法议程。这与中国公众对数据隐私意识和数据安全意识的增强相一致。2019年《信息通信技术白皮书》章节为这两项法律提供了建议，商会欢迎读者们审阅相关建议。

回顾过去一年的发展，商会希望就这些议题向中国政府提出补充意见和考虑事项：

- **合并监管机构。**鉴于中国监管框架的复杂性以及在众多立法和监管权力机关，中国可能无法将权力整合到一个数据保护机构中，但是将数据隐私法的权力合并到尽可能少的关键部门中，将有助于增强国际企业和境外人士对中国国内数据处理的信任。
- **确保隐私法的灵活性和适应性。**目前很难看到如何能够把中国的多部法律法规和多个意见整合成一部法律。一部有效的隐私法最好是由一系列相对高水平的原则构成，而不是汇编成一套综合的详细规则，来解释每一种可能出现的情况。前一个做法能让法律时移世易，适应技术发展和环境变化。这也会让法律保持相对技术中立。附表1《香港个人资料（隐私）条例》就是一个有效例子。尽管随着时间的推移香港对《条例》进行了修订，但其对附表1基本原则的陈述仍相对稳定。《条例》虽然一节一地阐述了详细规则，但是附表1所列出的原则显然是最权威的规则。
- **有效平衡隐私需求和合规成本。**2019年4月发布的最新草案《个人信息安全规范》为个人信息主体

Protection Pilot Measures and related regulations, and include global FIs in its consultation process.

We recommend that China eschew data localization policies, and instead maintain its general support of the Osaka Track, which promotes the concept of free data flows on the basis of trust, while at the same time in particular cases involving categories of information which may deserve restrictions on cross-border transfer (such as national security related information), we recommend that China narrowly define such data and have clear carve-outs for the commercial sector to avoid the confusion or uncertainty that could impose unnecessary barriers to foreign investment. Furthermore, we recommend that China proactively participate in existing multilateral frameworks, such as the APEC Cross-Border Privacy Rules System and the APEC Privacy Framework, as well as contribute to regional and global forums for the development of more robust international or multilateral data exchange and protection frameworks that will benefit China as well as FIEs in China.

In sum, it may be tempting at present for China to adopt data localization policies that restrict flows of personal data and important information from China through the CSL and its implementation framework. But given its prominence and importance to the world economy, if China were to do so, data localization may come to be accepted as a normal feature of international data protection. Other countries may adopt data localization laws of their own. By encouraging data localization at home, China would be contributing to and solidifying a trend abroad that could ultimately result in the loss of China's own access to data from other countries. The loss of access to foreign data will close off opportunities not only for the financial sector, but for China's technology sector, likely leading to negative technological and economic outcomes, including limiting Chinese technology which will function well only in China but be handicapped in other international markets.

Personal Information Protection

A Personal Information Protection Law and Data Security Law are reportedly now on China's current legislative agenda. This is consistent with a rising public awareness in China about the need for data privacy and security. The 2019 *White Paper* ICT Chapter provided recommendations for both of these laws, and we invite readers to review those recommendations.

Given developments over the past year, we wish to document some additional observations and considerations on these topics for the Chinese government:

- **Consolidation of Regulatory Authority.** It may be impossible for China to consolidate authority under a single data protection authority given the complexity of its regulatory framework and the wide number of

agencies that wield legislative and regulatory authority, but a consolidation of authority over data privacy laws into only as small a number of key authorities as possible would help to foster trust in China's domestic data processing among international businesses, and persons abroad.

- **Ensure any Privacy Laws are Flexible and Adaptable.** At present, it is difficult to see how China's many laws, regulations, and opinions can be consolidated into one law. An effective privacy law would best be structured as a series of relatively high-level principles, rather than as a comprehensive compilation of detailed rules to account for every conceivable situation. This will make the law adaptable over time and responsive to variations in technology and changes in circumstances. It will make the law relatively technology neutral. A useful example is Schedule 1 of the Hong Kong Privacy Ordinance. Although Hong Kong has revised its Privacy Ordinance over time, its statement of fundamental principles in Schedule 1 has remained relatively stable. Detailed rules are provided in the section-by-section text of the Privacy Ordinance itself, but it is clear that the principles listed in Schedule 1 are the definitive rules.
- **Effectively Balance the Need for Privacy with the Cost of Compliance.** The most recent draft of the *Personal Information Security Specifications* (released in April 2019) establishes some rights for personal information subjects that can reasonably be incorporated into a privacy law. We recommend that the rights of access, correction, deletion, withdrawal of consent, and obtaining a copy of one's own personal information be adopted in a new law. The rights of personal information subjects established under the EU GDPR, however, should not be adopted in China without careful consideration. For instance, the EU's right of portability has its advantages but has created issues of its own, both in terms of increasing the costs of compliance (data controllers have to put all data into prescribed formats which incurs material expense) and discouraging innovation (the cost of ensuring that all data is in a prescribed format may be too much for startups to be able to bear, and startups should have the freedom to structure data as they find most efficient). The EU's "right to be forgotten" should not be adopted. The "right to be forgotten" has proved to be controversial and divisive in the EU. Were China to adopt these provisions, the resources required to administer them would prove very difficult to master for the relevant agencies. Separately, China should strive to insert a carve-out for transfers of personal information that takes place within one company's network but may cross international boundaries. Failure to do so will significantly inhibit the business operations of multinational firms and would prove very difficult for regulatory agencies, such as provincial CAC offices, who will be in charge of issuing approvals, to muster

确立了一些可以合理地纳入隐私法的权利。商会建议在新法律中纳入访问、更正、删除、撤回同意、获取个人信息副本的权利。然而，未经认真考虑，在中国不应采纳根据欧盟《通用数据保护条例》确立的个人信息主体权利。例如，欧盟的数据可携权有其优势，但是却产生了一些问题，携带权既增加了合规成本——数据控制者必须将所有数据转为规定格式，这会产生实质性支出——又阻碍了创新，因为确保所有数据都采用规定格式的成本对初创企业来说可能是在难以承担，初创企业应该自由地以他们认为效率最高的方式组织数据。欧盟的“被遗忘权”也不应采纳。在欧盟，“被遗忘权”已经引起争议和分歧。如果中国采纳这些规定，那么执行这些规定所需的资源对于相关机构来说是很难掌握的。另外，对属于一家公司内网但可能跨越国际边界的个人信息转移，中国的立法应努力单独界定这种情况。否则，这将极大阻碍跨国公司的业务运营，并且对于负责审批的省级网信办等监管机构来说，开具许可证明时也很难收集所有转移的个人信息。

- **任何个人用户都应享有个人隐私权。**与上文讨论的权利一样，个体应始终享有隐私权。不应要求个人支付激活隐私权的费用，行使个人隐私权与个人隐私条件复杂情况无关。个人享有直接行使私人诉权的隐私权。应当限制政府访问个人信息。

人工智能与大数据

在2019年《白皮书》的信息通信技术章节，商会首度探讨了人工智能。去年，商会认同许多新兴的人工智能技术都需要大量数据来“教”机器如何执行特定任务，因此大数据的增长促进了人工智能技术的最新发展。去年，商会建议中国的人工智能开发工作不应单独进行。商会鼓励私企、公共部门与海外同行进行合作，也鼓励中国参与目前和未来为指导人工智能开发而设立的全球论坛、会议、工作组，以及参与目前多个论坛正在酝酿中的标准制定工作。商会现在仍秉持以上建议。

目前有证据表明，中国正遗憾地孤军作战中。以今天的人脸识别技术的应用为例。人脸识别技术在过去十年发展迅速。该技术带来了重要的、令人振奋的社会效益，但也存在滥用的隐忧。现在，人脸识别技术在中国应用广泛，功能多样，用于学校、机场和其他交通场所、金融机构以及警察和安全系统等。相比之下，西方国家

的发展方向则截然不同。某些西方国家对于接受人脸识别技术出现根本不同的看法。在其他西方国家，一些原来已经接受使用人脸识别技术的国家，但由于人们仍有所忧虑，所以情况能趋于平稳。例如在美国，经过执法机构的初步使用之后，有三个城市已经拒绝让警察部队使用人脸识别。

然而，在这个议题上仍然有值得乐观的地方。中国科技部成立的智囊团——国家新一代人工智能治理专业委员会于2019年6月17日发布了《新一代人工智能治理原则——发展负责任的人工智能》，概括了八项基本原则，与国际社会考虑的原则总体一致，后者所秉持的原则为中国国内建立原则框架提供了有益参考。2019年6月举行的G20贸易部长和数字经济部长会议在会议结束时发布了一份非约束性承诺，即在人工智能发展方面采取以人为本的方式。该承诺宣讲了关于人工智能发展的以下原则：包容性增长、可持续发展与福祉、以人为本的价值观、公平、透明和可解释性、稳健性、安全与保障、问责制。有关内容还承诺促进跨境数据流，但坦承做到这点需要制定适当的法律框架，让消费者信任他们的数据被恰当使用。

总之，多个国家和国际论坛以及多边组织都在制定引导人工智能技术伦理发展和应用的原则。在国际上达成一项一定程度、可执行、应执行的协议，需要全球努力来整合各方都在考虑的多个原则、指导方针和框架，而这些原则、方针、框架都是围绕着为支撑未来人工智能发展应用的共识而进行的。中国作为世界第二大经济体，其企业处于人工智能全球创新的最前沿，商会敦促中国保证参与到这一全球整合工作中，以构建全球人工智能发展原则和标准，并确保中国国内对人工智能的认识与国际发展的认识相符合。

政府政策和参与国际论坛可以帮助建立一个更加协作的环境，在这个环境中，数据流动相对自由，数据共享技术得到广泛应用，并且可以更大量地使用由政府控制和资助的数据集。关于依赖数据的人工智能技术的发展，政府可以在共享个人数据得到良好保护的前提下，为共享公共数据培训和测试集做出贡献，促进数据的自由流通。

这些伦理治理体系需要什么条件？商会来探讨几个可能答案。任何类似体系都需要一个责任底线，既支持

the resources needed to issue approvals for all transfers of personal information.

- **Individual Privacy Rights should be Available to any Individual User.** Privacy rights similar to those discussed above should always be available to individuals. Individuals should not be required to pay to activate them. Nor should their availability be made contingent on burdensome conditions by the individuals themselves. Individuals should have a private right of action that enables them to directly enforce their rights. Government access to personal information should be limited.

Artificial Intelligence and Big Data

In the 2019 *White Paper* ICT Chapter we discussed artificial intelligence (AI) for the first time. Last year, we acknowledged that many emerging AI technologies require vast amounts of data to “teach” machines how to perform specific tasks, and that the growth of Big Data has therefore fed into recent improvements in AI technologies. Last year, we recommended that China not isolate its AI development efforts. We encouraged both private and public sector entities to collaborate with their overseas counterparts, and that China participate in global forums, conferences, and working groups established now and in the future to guide AI development and participate in the development of standards currently under consideration in multiple forums. We stand by those recommendations.

There is now evidence that China may unfortunately be going its own direction. Take for example the use and application of facial recognition technology (FRT) today. FRT has advanced rapidly over the past decade and the technology brings important and exciting societal benefits, but also has much potential for abuse. FRT is now in the process of being widely adopted in China. It is being used for a variety of functions in schools, airports, and other transportation venues, financial institutions, and by police and security systems. By contrast, Western countries are headed in a very different direction. Fundamentally different concepts about the acceptability of FRT are appearing in some Western countries. In other Western countries, instances where the use of FRT was accepted have been balanced against cases where it has been viewed with concern. For instance, in the US, after some initial adoption among law enforcement agencies, three municipalities have rejected the use of FRT by their police forces.

However, there may still be cause for optimism in this regard. On June 17, 2019, China’s Expert Committee on New Generation AI Governance, a think tank initiated by the Ministry of Science and Technology, released its *Governance Principles for New Generation AI - Developing Responsible AI*, which outlines eight principles that are generally consistent with ideas under consideration internationally, where principles are being adopted that provide a useful framework for

China to consider adopting domestically. The G20 meeting of Trade Ministers and Digital Economy Ministers in June 2019 released a non-binding commitment to a human-centered approach to AI development at the conclusion of the meeting. The public readout enshrined a commitment to the following principles with respect to AI development: inclusive growth, sustainable development and well-being, human-centered values, fairness, transparency and explainability, robustness, safety and security, and accountability. The readout also included a commitment to promoting the cross-border flow of data but acknowledged that doing so requires the development of appropriate legal frameworks which ensure that consumers can trust that their data is being used appropriately.

In sum, multiple countries and international forums, and multilateral organizations are in the process of developing principles to govern the ethical development and application of AI technologies. Achieving a degree of agreement internationally on which principles can and should be implemented requires a global effort to consolidate the many principles, guidelines, and frameworks under consideration around a common understanding that will underpin future AI development and application. We urge China, as the second largest economy in the world and whose companies are at the forefront of AI global innovation, to ensure that it participates in this global consolidation effort to shape the development of global AI governance principles, standards, and values, and ensure that its own domestic understanding aligns with that being developed internationally. One such opportunity is the International Standardization Organization’s ISO/IEC JTC1 SC42, which addresses standardization in the area of AI.

Government policies and participation in international forums can help to advance a more collaborative environment in which data flows relatively freely, data sharing technologies are made widespread, and a greater number of datasets controlled and funded by governments are available. With respect to the development of AI technologies, which depend on data, governments can contribute to shared public data training and testing sets and promote open data sharing and use under the premise that personal data is well protected.

What might these ethical and governance systems require? Any such systems will require a “floor of responsibility” that supports market competition in a healthy manner, but also imposes an ethical and governance framework that establishes minimum ethical standards that must be observed no matter what practices are allowed. Below are some initial recommendations on possible ethical requirements that may even find eventual expression in future legislation or regulation:

- **Requiring transparency.** The ethical and governance framework should require technology companies that offer services driven by AI technologies to provide documentation that explains the capabilities and

市场健康竞争，同时也要建立一个伦理治理框架，保障人们无论采取任何做法都必须遵守最低伦理标准。以下是关于可能存在的伦理要求的一些初步建议，这些建议在未来的法律法规中最终可能得以体现：

- **需要透明度。**在伦理治理框架之下，应当要求受人工智能技术驱动服务的技术公司提供文件，以用户和消费者能够理解的方式解释该技术的功能和局限性。
- **确保有意义的人工审查。**虽然人类不免出错或有偏见，但商会认为在某些高风险场景中，重要的是应当由有资质的人员审查人工智能驱动的结果，由这些人员做出关键决策，而不是简单地把结果完全移交给计算机。因此，伦理治理框架以及最终的新法规应当要求使用人工智能驱动技术的单位进行有意义的人工审查，然后再对法律认为影响个人的“间接使用案例”做出最终决定。
- **确保告知。**伦理治理框架应当要求使用人工智能驱动技术的单位识别其消费者，并放置明显的告示，让用户知悉正使用人工智能驱动的技术。
- **明确同意。**伦理治理框架应当要求，个人进入有明显告示的场所或者继续使用有明显告示的线上服务时，使用人脸识别技术等能识别用户的人工智能驱动的技术须取得个人同意。

建议

对中国政府：

- **需要对《网络安全法》的内容加以说明。**商会敦促政府使用概念和定义的狭义，内容不要超出国家安全的基本和合理定义。特别是：
 - 《网络安全法》的任何实施条例都不应超出法律原文范围。商会敦促监管机构在网络安全等级保护框架下考虑放宽当前的强制性要求，因为这是世界上对私营领域网络安全干扰程度最高的框架之一。
 - 应当阐明关键信息基础设施的定义，这一概念应仅适用于特定且类别相对狭窄的信息基础设施。应当区分信息基础设施的运营者和网络运营者，并在整个监管环境中保持一致，尤其是因为《网络安全法》对两类运营者有不同的适用条例。
 - 网络产品和服务的网络安全审查不应模糊合法的安全顾虑和因来源国或股东国籍而对某些技术做出不合理歧视之间的区别。企业需要清晰透明的标准来衡量自身的守法能力。
 - 国际标准的密码算法应当和中国国家密码算法一样都是合法的使用，不应当以任何方式强制或鼓励使用国产密码算法。
 - 在网络安全监督检查中删除侵入性系统扫描和渗透性检测，并认可公司主导的检测结果。
- 中国应向外商投资企业开放云计算服务业务，增强竞争力，确保云计算服务行业与全球公认的新兴标准和实践协同发展。
- 确保公共采购法的适用和解读的一致性。特别是在信息通信技术领域，商会建议政府以书面形式明确“安全可控”的标准，或解释其他产品的安全性和可靠性标准并不是要以牺牲外国产品和服务为代价来推广本国产品

limitations of the technology in terms that users and consumers can understand,

- **Ensuring meaningful human review.** While human beings of course are not immune to errors or biases, we believe that in certain high-stakes scenarios, it is critical for qualified people to review AI-driven results and make key decisions rather than simply turn them over entirely to computers. The ethical and governance framework, and eventually new legislation, should therefore require that entities that deploy AI-driven technologies undertake meaningful human review of their results prior to making final decisions for what the law deems to be “consequential use cases” that affect individuals,
- **Ensuring notice.** The ethical and governance framework should require entities that use an AI-driven technology to identify consumers place a conspicuous notice that clearly informs readers that the technology is being used,
- **Clarifying consent.** The ethical and governance framework should require that individuals consent to the use of AI-driven technologies that can identify them (such as FRT) when they enter premises or proceed to use online services that have this type of clear notice.

Recommendations

For the Chinese Government

- **Elements of the CSL need to be defined and clarified. We urge the government to maintain narrowly defined concepts and definitions that do not go beyond fundamental and reasonable definitions of national security. In particular:**
 - None of the implementing regulations for the CSL should go beyond the scope of the CSL as stated within its original text. AmCham China urges regulators to consider relaxing current mandatory requirements under the MLPS framework as they are among the most intrusive in the world for private sector cybersecurity frameworks.
 - The definition of CII should be clarified and made applicable only to a specific and relatively narrow category of information infrastructure. The distinction between CII and network operators should be clarified and remain consistent across the regulatory environment, particularly because the CSL provides different regulations for both sets of operators.
 - The cybersecurity review for network products and services should not blur the distinction

between legitimate security concerns and unreasonable discrimination against certain technologies on the basis of their country of origin or nationality of their shareholders. Clear standards and transparent criteria are needed for companies to measure their ability to comply with regulatory requirements.

- International standard cryptographic algorithms should be permitted to be used in the same fashion as China’s national cryptographic algorithms. Use of domestic cryptographic algorithms should not be forced or encouraged on FIEs in any way.
- Intrusive system scanning and pen-testing in cybersecurity inspection should be removed and company-led testing results should be recognized.
- China should open its cloud computing service business to FIEs to both enhance competitiveness and ensure the sector develops in tandem with emerging globally accepted standards and practices.
- Ensure consistency in the application and interpretation of public procurement laws. In particular, with respect to the ICT sector, we recommend that the government clarify in writing that “secure and controllable” criteria, or other product safety and reliability standards are not an attempt to promote domestic products and services at the expense of foreign ones. Instead, “secure and controllable” criteria should only apply to a set of transparent and narrowly defined state secrets and national security. Procurement purchasing standards should instead focus on criteria like product performance and reliability, life cycle costs, environmental sustainability, and energy conservation.
- To the maximum extent feasible, China should eschew “data localization” policies, or implement them only within a narrow scope of application and subject to transparent and objective procedures. At the same time, China should proactively participate in existing multilateral frameworks, such as the Osaka Track, the APEC Cross-Border Privacy Rules System and the APEC Privacy Framework.
- China should avoid isolating its AI technological development. Commensurate with its economic status, we urge China to be a leader in the development of AI through multilateral participation in the development of global AI governance, ethics, standards, and best practices to establish a floor of responsibility for the development and use of AI that supports market competition in a healthy manner.

和服务。相反，“安全可控”的标准仅适用于透明、狭义的国家机密和国家安全。采购标准应侧重于产品性能和可靠性、生命周期成本、环境可持续性和节能等标准。

- 中国应当尽可能避免“数据本地化”政策，或仅在狭窄的适用范围内，遵循透明客观的程序来实施这些政策。同时，中国应积极参与现有的多边框架，例如“大阪轨道”、《亚太经合组织跨境隐私规则体系》和《亚太经合组织隐私框架》。
- 中国应避免孤立自身的人工智能技术发展。鉴于中国的经济地位，商会敦促中国通过多参与制定全球人工智能伦理体系、标准和最佳实践，成为与其经济状况相称的人工智能发展的领导者，为支持市场健康竞争而发展应用人工智能树立责任底线。

对美国政府：

- **在国际论坛上促进与中国机构的合作，制定人工智能伦理应用框架和标准，鼓励中国采用国际标准和国际伦理框架。**
- 继续推广《亚太经合组织跨境隐私规则体系》和《亚太经合组织隐私框架》，在应用中将二者设为整个亚太经合组织地区的共识标准。
- 继续对接中国政府相关部门，探讨由于《网络安全法》当前提出的跨境数据传输框架对网络运营者带来的负面影响，及其对中国数字经济发展的负面影响

For the US Government

- **Promote cooperation with Chinese agencies in international forums for the development of frameworks for ethical uses of AI, as well as for standard setting, and encourage the adoption in China of international standards and ethical frameworks.**
- Continue to promote the APEC Cross-Border Privacy Rules system, the APEC Privacy Framework, and the adoption of these as a consensus standard across the APEC region.
- Continue to engage with counterparts in the Chinese government about the negative effects on network operators that result from the cross-border data transfer framework currently proposed under the CSL as well as the negative implications for the development of China's digital economy.

Insurance

Introduction

AmCham China welcomed several important and long-awaited reforms announced by the Chinese government in 2019 with respect to the insurance industry. Most importantly, AmCham China welcomed several announcements by relevant government authorities including the China Banking and Insurance Regulatory Commission (CBIRC) and the governments of China and the United States in the Phase One Agreement to ease market access for foreign-invested insurance companies in the interest of creating a level playing field and instituting competitive neutrality between Chinese-invested and foreign-invested insurance companies. These include in particular removal of the 30-year continuous operation seasoning requirement and the two-year seasoning requirement after the establishment of a representative office for foreign insurance companies newly entering the Chinese market; the lifting of the equity cap on foreign investment in personal (life and health) and pension insurance companies, initially from 50 percent to 51 percent and to 100 percent by no later than April 1, 2020; removal of any business scope limitations, discriminatory regulatory processes and requirements, and overly burdensome licensing and operating requirements for all insurance sectors (including insurance intermediation), and commitment to review and approve expeditiously any application by US financial services suppliers for licenses to supply insurance services; and clarification of the right of foreign-invested insurance companies to own their own insurance asset management company subsidiaries.

However, some reforms apparently promulgated for prudential purposes unfortunately appear likely to have an adverse impact. The *Draft Implementation Rules for the Administrative Regulations of the People's Republic of China on Foreign-Invested Insurance Companies* would impose a 5-year lockup requirement on principal shareholders and require that they replenish the insurance company's capital if they wish to reduce their shareholding or leave the China market. These requirements do not reflect common regulatory standards in other major insurance markets, would impose a discriminatory burden on foreign shareholders and foreign-invested insurance companies, and unduly burden capital transactions in the insurance industry by impeding transfers to better capitalized investors who are better

equipped to enhance the insurance company's capital base.

AmCham China also urges the Chinese government to reinforce its commitment to lifting the equity cap on foreign ownership in insurance companies by clarifying that the 1/3 per shareholder equity cap under the *Measures on the Administration of Equity in Insurance Companies* does not rigidly apply to foreign-invested insurance companies. While the commitment to lift the equity cap on foreign investment in personal insurance companies matches the rule on foreign investment in property insurance and reinsurance companies, this rule if rigidly implemented will hamper efforts to gradually convert Chinese-foreign joint venture insurance companies to less concentrated ownership structures.

AmCham China also urges CBIRC to clearly declare that foreign-invested insurance companies may submit any application directly to the substantive department (Personal Insurance, Property Insurance, or Reinsurance) rather than first through the International Cooperation and Foreign-Invested Organizations Supervision Department to avoid unnecessary and discriminatory processing delay.

If China honors its commitments to lift the foreign equity cap in personal insurance and provide equal treatment to foreign-invested and domestically-invested insurers, reinsurers, insurance intermediaries, and insurance asset management companies, AmCham China members are confident that they will be able to bring even more high quality products and services to Chinese customers and deploy their expertise to grow the insurance industry in China.

Ongoing Regulatory Issues

Barriers to Market Entry and Expansion

Regulatory and Compliance Costs

Our members, who have extensive international experience, find that the information technology (IT) and compliance costs of operating in China are very high compared to most other markets. Administrative and compliance burdens are particularly onerous, including IT requirements and rules

保险

引言

中 国美国商会（商会）对 2019 年中国政府针对保险业颁布的几项重要且令人期待已久的改革表示欢迎。最重要的是，商会欢迎中国银行保险监督管理委员会（银保监会）等有关部门以及中美两国政府在中美第一阶段经贸协议中发布的关于放宽外资保险公司的市场准入的若干公告。这些公告旨在建立公平的竞争环境，确保中资与外资保险公司公平竞争。例如，对新进入中国市场的外资保险公司，取消其 30 年经营年限的准入条件和外资保险公司设立前须开设 2 年代表处的要求；取消寿险、养老保险、健康保险领域的保险公司外资股比上限，从最初的 50% 提高到 51%，再到 2020 年 4 月 1 日之前提高至 100%；消除对所有保险领域（包括保险中介）的经营范围限制、歧视性监管程序和要求，以及过于繁重的许可和运营要求，并及时审批美国金融服务商提交的保险服务牌照申请；明确外资保险公司单独设立保险资产管理子公司的权利。

然而，一些因过于审慎而颁布的改革可能产生不利影响。《中华人民共和国外资保险公司管理条例实施细则》（草案）将对主要股东设定 5 年锁定期要求，并规定主要股东拟减持股份或者退出中国市场的，应当补充保险公司的资本。这些要求与国际上其他主要保险市场的监管标准出入较大，会对外国股东和外资保险公司带来歧视性负担，并阻碍其同资本化程度较高的投资者（能力较强能够提升保险公司的资本基础）进行交易。这都将对保险业的资本交易造成极大的负担。

商会还促请中国政府证实关于取消保险公司外资持股比例上限的承诺，明确《保险公司股权管理办法》中单一股东不得超过 1/3 持股比例的规定不适用于外资保险公司。虽然承诺取消人身保险公司外资持股比例上限与财产保险公司和再保险公司中对外资的规定相符，但如果这一规定的执行过于死板，则会阻碍中外合资保险

公司逐步转变为股权集中程度较低的结构。

商会还促请银保监会明确声明，外资保险公司可以直接向涉及人身保险、财产保险或再保险的有关部门提交申请，而无须先通过国际合作与外商投资组织的监督部门，以避免不必要的或歧视性的延迟处理。

如果中国履行其承诺，取消人身保险的外资股比上限，并为外资和内资保险公司、再保险公司、保险中介人和保险资产管理公司提供同等待遇，商会会员将有信心他们能够为中国客户提供更多高质量的产品和服务，并利用其专业知识推动中国保险业发展。

现存监管挑战

市场准入及扩张限制

监管及合规成本

商会会员拥有丰富的国际经验，他们发现与其他大多数市场相比，在中国运营的信息技术成本和合规成本非常高。管理和合规负担尤为繁重，包括有关新分支机构索赔、财务、合规人员资格的信息技术要求和规则。商会敦促银保监会尽可能简化成本高昂的负担，并在制定合规要求时充分考虑这些负担。

网络安全挑战

尽管商会会员理解中国监管机构在管理新技术和解决网络安全问题方面所面临的挑战，但商会认为，为合规所负担成本之高实际上已经构成了贸易壁垒。《网络安全法》及随后的《网络安全审查办法（征求意见稿）》对跨境数据流的限制过于宽泛，这对需要跨境数据共享的中外公司都造成了影响。该草案似乎将要求经过“安全审查”的“个人信息”和“重要数据”的范围从“关键信息基础设施”运营者扩展到了几乎所有网络运营者。

regarding the qualification of claims, finance, and compliance personnel for new branches. AmCham China urges CBIRC to simplify costly burdens wherever possible and take these burdens fully into account when considering compliance requirements.

Cybersecurity Challenges

Although AmCham China members understand the challenges that Chinese regulators face in managing new technologies and addressing cybersecurity concerns, AmCham China believes that regulations impose excessive costs which constitute de facto trade barriers. The *Cybersecurity Law* and subsequent Draft Measures set overly broad restrictions on cross-border data flows, which create barriers for both Chinese and foreign companies operating in industries where data needs to be shared internationally. The Draft Measures appear to extend the requirements for “personal information” and “important data” subject to “security assessments” from “Critical Information Infrastructure” Operators to virtually all Network Operators. In addition, “Critical Information Infrastructure,” “personal information,” “important data,” and “applicable supervisors” as identified or imprecisely defined in the Draft Measures and related standards encompass a vast range of data, industries and sectors which extend far beyond international norms. This imposes a tremendous impact on insurers, disproportionately affecting the operations of foreign insurers that involve personal data and cross-border data transfers. The consequence is the imposition of higher capital and operating costs outweighing any benefit to consumers. We recommend that the government reconsider the balance between privacy and data security protection against the development needs of the insurance industry when finalizing such regulations and standards to ensure data security and promote technological innovation without unduly restricting cross-border data transfers. In particular, we urge CBIRC to advocate for reasonableness with respect to the imposition of such requirements on the insurance industry.

CBIRC’s Draft Administrative Regulations on the Informatization of Insurance Institutions

CBIRC is contemplating a new rule governing the information systems of insurance institutions after issuing the *Draft Administrative Regulations on the Informatization of Insurance Institutions* (the *Draft Informatization Regulations*) in October 2015 and notifying the WTO of a revised version in April 2016. The *Draft Informatization Regulations* require insurers to give priority to “secure and controllable” products during procurement of IT hardware and software.

The *Draft Informatization Regulations* and the *Security Review Measures for Cyber Products and Services (Interim)* threaten to adversely impact foreign-invested insurers in particular by narrowing their procurement options for China operations. This will increase their costs and create interoperability

problems with their non-China operations, ultimately reducing security and raising the cost of insurance products and services for Chinese customers. Data localization requirements specified in the *Draft Informatization Regulations* would also have substantial anti-competitive effects on foreign-invested insurers. AmCham China urges that the definition of “secure and controllable” be clarified to ensure that insurers retain individual discretion to decide among different vendors and technology providers on the basis of security and reliability of IT systems, not on national origin. For more information, please refer to the *White Paper ICT Chapter*.

C-ROSS

In 2016, CIRC (now CBIRC) began formal implementation of the China Risk-Oriented Solvency System (C-ROSS), China’s second-generation solvency regime, and its regional bureaus have been inspecting insurance companies for compliance with C-ROSS. On September 18, 2017, CIRC issued the *Planning for C-ROSS Phase II*, officially launching Phase II of the project. CIRC plans to complete implementation within three years. However detailed regulations and guidelines have yet to be released. Because C-ROSS is a far-reaching and complex set of new rules, CIRC needs to ensure that all bureaus and officials interpret its provisions consistently, which has not always been the case according to member experiences. Consistency and transparency are important to companies’ ability to promptly and properly comply with C-ROSS.

Nevertheless, enforcement needs to be principles-based and aligned with the Insurance Core Principles of the International Association of Insurance Supervisors and not be “one size fits all.” As insurance companies differ widely in size, complexity, nature of businesses, and products offered, C-ROSS should take into account the specific nature of a company’s business. In order to facilitate smooth and uniform enforcement, we hope to see an official procedure where companies can submit written inquiries to CBIRC concerning specific C-ROSS provisions for responses in written public statements. Publicly available written CBIRC interpretations would mitigate the risk of inconsistency in policy implementation.

Life Insurance

Digital (Internet) Insurance and Regulatory Reform

AmCham China’s life insurance members applaud China’s commitment to lift the foreign equity cap entirely by no later than April 1, 2020.

The development of internet insurance presents a tremendous opportunity for China to effectively promote inno-

此外,在该办法和相关标准中的如“关键信息基础架构”、“个人信息”、“重要数据”和“适用的监督管理”等概念,涵盖了广泛的数据、行业和部门,这些都远远超出国际规范的范围。这对保险行业造成了巨大影响,尤其是对涉及个人数据和跨境数据传输相关业务的外国保险公司。该政策强加了极高的资本成本和运营成本。合规的成本超过了法规本身给消费者带来的收益。商会建议政府在最终敲定此类法规和标准的时候根据保险业的发展需求重新考虑隐私和数据安全保护之间的平衡,以确保数据安全并促进技术创新,不过度限制跨境数据传输。特别是,商会敦促银保监会申明对保险业施加此类要求的合理性。

银保监会的《保险机构信息化监管规定(征求意见稿)》

银保监会在2015年10月发布《保险机构信息化管理条例(征求意见稿)》(条例草案)并于2016年4月将修订版通报世贸组织之后,目前正在构思保险机构信息系统的新规则。条例草案要求保险公司在采购信息技术硬件和软件时优先考虑“安全可控”的产品。

条例草案和《网络产品和服务安全审查办法(试行)》会缩减外资保险公司中国业务的采购选择范围,从而可能对其造成不利影响。这将增加外资保险公司的成本,并与公司的非中国业务产生协同问题,最终降低安全性,并增加中国客户的保险产品和服务成本。条例草案中规定的数据本地化要求也将对外资保险公司产生实质上不利于竞争的影响。商会敦促中方明确“安全可控”的定义,以确保保险公司保留自由裁量权,根据信息技术系统的安全性和可靠性而非来源国家,在不同的供应商和技术提供者之间做出决定。详细信息请参阅《白皮书》“信息通信技术”章节。

偿二代

2016年,中国保监会(现合并为银保监会)开始正式实施中国风险导向偿付的能力体系——中国第二代偿付能力监管制度(下称“偿二代”),并通过各地保监部门对保险公司偿二代合规情况进行检查。2017年9月18日,中国保监会发布《偿二代二期工程建设方案》,正式启动二期工程。保监会计划在三年内完成实施。然而,详细法规和指导尚未公布。鉴于偿二代的长远性和复杂性,保监会需要确保各地保监部门及行政人员对规

则做出一致解读。然而,据会员公司体验反馈,解读不一的情况也曾出现。透明、一致的规则解读对于保险公司迅速、恰当遵守偿二代十分重要。

尽管如此,规则的执行需要坚持原则导向,符合国际保险监督官协会制定的保险监管核心原则,且不应一刀切。因各家保险公司在规模、复杂程度、业务性质和所提供产品等方面存在很大差别,偿二代的实施应当考虑公司业务特性。为推进偿二代顺利统一实施,商会希望能有一个正式程序,即保险公司可以就具体的偿二代规定向银保监会提交书面咨询,后者以书面公开说明作为答复。银保监会公开发布的书面解释能降低政策实施不一致的风险。

人寿保险

数字(互联网)保险和监管改革

商会的人寿保险公司会员对中国承诺不迟于2020年4月1日完全取消外资股权上限的做法表示赞赏。

互联网保险的发展为中国有效推动创新和金融改革提供了巨大的机遇,也为外资保险公司以高成本效益获得新客户提供了独特的机会。商会对2015年公布的《互联网保险业务监管暂行办法》表示欢迎,该办法允许保险公司通过互联网在特定条件下出售某些类型的保险产品,即使是在公司没有设立分支机构的省份。商会也对中国按照2018年《在全国推开“证照分离”改革的通知》第53项,在全国范围内改革某些监管程序的做法表示赞赏。《互联网保险业务监管暂行办法》已于2018年作废,银监会正在起草新规定,并已发布了若干草案供公众征求意见。中国美国商会欢迎在近期草案中扩大允许通过互联网销售的保险单的范围,其中包括健康保险产品(医疗产品和重大疾病产品)等。

然而,允许通过互联网销售的保单范围仍然十分有限。例如,虽然现在对医疗保险产品(包括医疗产品和重大疾病产品)的需求量巨大,且需求量只会随着中国人口老龄化而增加,但这些产品仍然不被允许进行更有效的全国线上销售。商会建议扩大允许线上销售的产品范围,包括人寿保险产品以及重大疾病产品等,从而进一步开放这一渠道,这将更好地满足客户需求,更能助力中国实现改革金融行业的宏伟目标,提升金融包容性,补充公共医疗保险。

vation and financial reform, and a unique opportunity for foreign-invested insurers to acquire new customers cost-effectively. AmCham China welcomed the 2015 *Interim Measures on the Administration of Internet Insurance Business*, allowing insurers to sell certain types of insurance products under certain conditions through the Internet, even in provinces where they do not maintain a branch. AmCham China also appreciates the streamlining of certain regulatory procedures under Item 53 of the 2018 *Notice Concerning Promotion of the Reform of "Separation of Licenses and Certificates"* across China. The Interim Measures expired in 2018 and CBIRC is drafting new regulations and several drafts have been made available for public comment. AmCham China welcomes the expansion of the range of insurance policies that are permitted to be sold over the Internet in the recent draft, in which health insurance products (including medical products and critical illness products) are included.

The range of insurance policies permitted to be sold over the Internet is, however, still unreasonably narrow. For example, while there is a huge need now for health insurance products (including medical products and critical illness products), which will only increase as China's population ages, such products are still not allowed to be sold more efficiently online nationwide. AmCham China recommends that this channel be further opened by expanding the range of products permitted to be sold online to include a wider range of life insurance products as well as critical illness products, to better satisfy customer needs and further contribute to China's ambitious goals of reforming the financial sector, enhancing financial inclusion and supplementing public health insurance.

Malicious complaints

A "malicious complaint" refers to the practice whereby certain people or organizations guide customers to obtain "full surrender" of their life insurance policies by registering complaints in exchange for a commission or purchase of insurance policies through designated agents. Since 2019, several CBIRC bureaus have issued public warnings about the risk of "full surrender through complaints by a proxy", which can result in the life insurance policy-holder losing the original benefits protected under that policy, an increase in premium rates, a recalculation of the waiting period, or having their application rejected when the holder seeks to repurchase. Insurance companies have also received requests to report cases and any data on malicious complaints to CBIRC. AmCham China appreciates CBIRC's effort to investigate these extortive practices. We recommend:

- the establishment of procedures to standardize and regulate the handling of such complaints,
- the establishment of procedures to manage the relationship with the complainant during the investigation,
- addressing the identity of the complainant or its proxy, and

- implementation of punitive measures to guard against such practices.

Such steps should help to ensure an environment of fairness within which China's insurance industry can continue to develop.

Foreign currency denominated policies (FCDPs)

Foreign currency denominated policies (FCDPs) offer customers the protection and wealth management benefits of traditional life insurance coupled with additional foreign exchange risk management. These features serve to offer alternative foreign exchange investment products to residents. FCDPs are an important category of insurance policies on the international market. However, FCDPs with a term of more than one year are not permitted to be sold on the Chinese market. Such restrictions have as disproportionately adverse impact on foreign-invested insurers who have accumulated significant experience with FCDPs on the international market and prevent their providing professional services to Chinese consumers. These restrictions may also induce some people to evade foreign exchange controls to purchase some products in Hong Kong or elsewhere, a practice which can be better controlled if FCDPs are offered on China's domestic market. AmCham urges the Chinese government to permit the sale of long-term FCDPs to better meet the financial needs of Chinese households as a complementary product on the Chinese insurance market.

Administration of Capital Guarantee Funds of Insurance Companies

AmCham China urges CBIRC to clarify the qualifications for banks holding capital guarantee funds, including the scope of violations subject to major penalties. The *Measures for the Administration of Capital Guarantee Funds of Insurance Funds* require that the depositary bank not have incurred a major penalty in the past three years but lack a clear definition of "major penalty." Supervision of banks has become tighter in recent years with a number of banks penalized for regulatory violations which makes it difficult to determine whether a bank meets the requirements to serve as a depositary bank. At the same time, we recommend expanding the number of banks qualified to accept deposits of capital guarantee funds to include foreign-invested banks that meet the same requirements. Capital guarantee funds at present can only be deposited in domestically-invested banks which is inconsistent with China's commitment to treat foreign-invested and domestically-invested financial institutions on a level playing-field.

Pension Insurance and Retirement Savings

AmCham China compliments the Chinese government's efforts to reform pensions and raise public awareness

恶意投诉

“恶意投诉”指某些人或者组织引导客户通过登记投诉获取人寿保单“全额退保”，以换取客户佣金或者使客户通过指定代理购买保单的做法。自2019年以来，银保监会的多个地方部门已发布防范“恶意投诉全额退保代理”骗局风险提示，该骗局可能导致人寿保单持有人失去该保单所保护的原始利益、保费率上升、重新计算等待期，或者在持有人试图回购时被拒绝申请。保险公司也收到了向银保监会举报恶意投诉案件和数据的要求。商会会对银保监会调查这些勒索行为的努力表示感谢。商会建议：

- 制定程序以规范处理此类投诉；
- 制定程序在调查期间处理与投诉人的关系；
- 找出投诉人及其代理的身份；
- 采取惩罚措施以防范此类骗局。

这些措施应有助于建立一个公平环境，促进中国的保险业持续发展。

外币保单

外币保单为客户提供传统人寿保险的财产保护和财富管理优势，以及外汇风险管理的附加优势。这些功能为消费者提供了替代性的外汇投资产品。外币保单是国际市场上的一类重要保单。但是，期限超过一年的外币保单不允许在中国市场上出售。这些限制对在国际市场上积累了丰富的外币保单经验的外资保险公司产生了严重的不利影响，也阻碍其向中国消费者提供专业服务。这些限制还可能诱导部分消费者逃避外汇管制，在香港或其他地方购买某些产品，而假如中国内地市场提供外币保单，则可以更好地管制这种做法。商会敦促中国政府允许出售长期外币保单，作为中国保险市场上的一种补充产品，以更好地满足中国家庭的金融需求。

保险公司资本保证金管理

商会敦促银保监会明确银行持有资本保证金的资格，包括重大违法违规范围。《保险公司资本保证金管理办法》规定存放银行在过去三年内无重大违法违规记录，但并未明确定义何为“重大违法违规”。近年来，许多银行因违反监管规定而受到处罚，对银行的监管随之越发严格，这使得保险公司很难确定一家银行是否符合成为存托银行的要求。同时，商会建议将符合相同条

件的外资银行纳入资本保证金存托银行的范围，扩大合乎资格的银行数量。目前，资本保证金只能存入内资银行，这与中国在公平的竞争环境下对待外资和内资金融机构的承诺相悖。

养老保险和退休储蓄

商会对中国政府改革养老金制度、提高公众设法保障退休后财务安全的意识等努力表示赞赏。应对人口老龄化带来的挑战是中国和许多其他发达市场面临的全球性问题。商会很高兴这些问题已纳入中国的国家发展战略。

中国的养老金制度有三大支柱，即基本养老保险、雇主发起的年金制度（包括政府、国企员工及私营单位员工）、个人商业养老保险。2019年，公职人员的职业年金取得了实质性进展。33个省市的职业年金项目中的大部分都选择了管理人来监督管理年金计划和基金。加上面向企业和私营企业员工的企业年金，中国现在已经建立了基于雇主的养老金体系，这是中国养老安全网的第二支柱。职业年金的强制性保障了高覆盖率，并可能反过来促进企业年金的增长。商会建议监管机构继续借鉴全球其他市场的经验教训和最佳做法，以提高第二支柱养老金储蓄的增长。可借鉴的政策包括自动加入雇主发起的养老金计划、以生命周期基金作为默认投资选择以及允许进行海外投资以分散组合风险等。

2018年5月，个税递延型养老金试点项目在上海、福建省和苏州工业园区启动，为养老保险产品提供了税收激励。该试点项目于2019年结束，但令保险行业失望的是，项目并未扩展到中国其他地区。此外，2019年并没有出台允许该项目涵盖公募基金等其它金融产品的政策。商会建议尽快颁布和实施此类政策。商会认为，对个人而言，为个人自愿型、税收激励型退休储蓄账户提供多种保险产品和投资产品选择是至关重要的。更多种类的产品将鼓励个人为退休而多储蓄。

与2019年做出的进一步向外资开放中国金融业的承诺一致，由英国保险公司标准人寿安本集团与天津市泰达国际控股（集团）有限公司共同合资的恒安标准人寿，于2019年3月获准筹建首家中外合资养老保险公司。商会非常受欢迎这样的进展。然而商会注意到，对企业年金和职业年金的资格管理仍然受到非常严格的限制。商会继续呼吁建立一套清晰透明且平等对待外资公司与国内公司的资格申请审批程序。商会建议政府根据

about methods to ensure financial security in retirement. Addressing the challenge posed by aging populations is a global issue in China and many other markets. We are pleased that addressing these issues has been integrated into China's national development strategy.

China's national pension system has three pillars: ❶ a public pension, ❷ an employer-based pension system (including government and SOE employees and private sector employees), and ❸ supplementary private sector retirement savings. Occupation annuities (OA) for public employees enjoyed substantial progress in 2019. The majority of China's 33 provinces selected managers to oversee OA plans and funds. With the introduction of enterprise annuities (EAs) for employees of enterprises and private sector companies, China now has an employer-based pension system in place, Pillar II of China's retirement safety net. The mandatory nature of OA ensures high coverage and may in turn boost growth in EA. AmCham China recommends that regulators continue to incorporate lessons learned and best practices from other global markets to increase growth of Pillar II pension savings. These include such policies as auto-enrollment in employer-based pension funds, the use of lifecycle funds as default investment options, and permitting overseas investment in order to diversify risk portfolios.

The tax-deferred individual pension pilot program launched in May 2018 in Shanghai, Fujian Province, and Suzhou Industrial Park offered pension insurance products with tax incentives. The pilot program ended in 2019 yet, to the disappointment of the insurance industry, the pilot program was not extended to other regions in China. Moreover, policies allowing the program to cover additional financial products like mutual funds were not enacted in 2019. We recommend that such policies be promulgated and implemented as soon as possible. AmCham China believes that it is critical for individuals to have access to a wide choice of insurance and investment products for voluntary, tax-incentivized retirement saving accounts. A greater variety of products will encourage individuals to save more for their own retirement.

Consistent with commitments made in 2019 to further open China's financial sector to foreign investment, the license application for the first foreign-Chinese pension JV, Heng An Standard Life, a JV between UK insurance provider Standard Life and Tianjin TEDA international, was approved in March 2019. Such a development is very welcome. AmCham China notes, however, that management licenses for EAs and OAs are still tightly restricted. We continue to advocate for a clear and transparent licensing process that treats foreign-invested firms equally alongside domestic firms. We recommend that the government, consistent with its commitments and the Phase One Agreement with the United States, continue the momentum established by the license awarded to Heng An Standard Life and permit more foreign-invested firms to offer retirement and pension products to the same extent as domestically-invested financial services companies.

Foreign-invested firms have many years of experience and expertise in global insurance and pension markets to benefit China's market.

Property Insurance

China's insurance industry has diverse market players. Domestically-invested and foreign-invested insurers vary widely in shareholding structure, scale, products and distribution channels. The current regulatory structure does not differentiate among insurers but applies the same regulatory requirements to all of them. This not only raises unnecessary compliance burdens on foreign-invested general insurers which in aggregate account for less than a two percent market share, but also handicaps their development against domestically-invested insurers. AmCham China therefore recommends that CBIRC issue regulatory rules and guidelines that distinguish more precisely among property and casualty insurers based on their global size and experience to foster competition and market growth.

Ambiguity in insurance regulations, particularly in how the regulations are applied to foreign-invested insurers, creates challenges in implementation. For example, both the *Regulations on Independent Directors of Insurance Institutions* and the *Administrative Measures on Equity in Insurance Companies* provide that they apply by reference to foreign-invested insurers, but do not provide implementing details. Foreign-invested insurers must consult with CBIRC from time to time to obtain guidance on implementation, but such guidance offered by CBIRC officials is not always consistent. AmCham China recommends that CBIRC provide written explanations and clarifications to reduce ambiguity and uncertainty.

Foreign-invested insurers are able to use their international footprint, networks and extensive experience to help Chinese enterprises to expand internationally, including along the routes of the "Belt and Road Initiative." Tax regulations discriminate against the insurance industry, however. Under VAT regulations, Chinese enterprises which engage in construction projects, fairs and exhibitions and other businesses abroad may enjoy VAT exemptions on their revenue earned overseas. Selected businesses operating travel services also enjoy the benefit of a VAT exemption on their income from accommodation, catering and transportation services. However, Overseas Personal Accident and Travel insurance premiums (especially insurance covering overseas contract workers and expatriates) are not exempt from VAT. Moreover, in those countries and regions like the Cayman Islands, Singapore, and Hong Kong where non-admitted insurance is permitted, insurers from China usually provide direct insurance coverage for risks domiciled in such jurisdictions. Unfortunately, unlike reinsurance premiums, premiums stemming from such direct insurance cover are neither VAT exempt nor deductible from VAT taxable income. AmCham China recommends that CBIRC

承诺以及与美国达成的第一阶段协议，延续恒安标准养老保险公司获准筹建的势头，允许更多的外资公司与内资金融服务公司在同等程度上提供退休金产品和养老金产品。外资公司在全球保险和养老金市场拥有多年经验和专业知识，可惠及中国市场。

财产保险

中国保险业市场主体呈多元化。内资保险公司与外资保险公司的股权结构、规模、产品和分销渠道差异很大。当前的监管结构并未在保险公司之间进行区分，所有保险公司都适用相同的监管要求。这不仅给那些市场份额合计不到2%的普通外资保险公司增加不必要的合规负担，而且相对国内保险公司还阻碍了前者的发展。因此，商会建议银保监会发布监管规则和指南，根据财产险公司和意外险公司的全球规模和经验对保险公司进行更精确区分，以促进竞争和市场增长。

保险法规的含糊不清，尤其是该法规如何适用于外资保险公司，给实施带来了挑战。例如，《保险机构独立董事管理办法》和《保险公司股权管理办法》均规定，这些规则参考适用于外资保险公司，但未规定实施细则。外资保险公司必须不时咨询银保监会以获取实施指导，但银保监会官员们提供的指导未能时刻保持一致。商会建议银保监会提供书面解释和说明，以减少歧义和不确定性。

外资保险公司能够利用其国际资源和丰富经验帮助中国企业向包括“一带一路”倡议的沿线国家在内的国际市场扩张。但是，税收法却歧视保险业。根据增值税规定，从事建筑工程项目、交易会和展览会以及其他海外业务的中国企业可免征境外收入增值税。某些经营旅游服务的企业还享有免征住宿、餐饮和运输服务收入增值税的优惠。但是境外旅游人身意外险，特别是涉及境外合同工人和外籍人员的保险，不免征增值税。此外，在开曼群岛、新加坡和香港等允许非认可保险的地区，中国的保险公司通常会为此类司法管辖区所定风险提供直接保险。不幸的是，与再保险保费不同，此类直接保险产生的保费既不免征增值税，也不能从增值税应纳税所得中扣除。商会建议银保监会与财政部和国家税务总局协调，通过对此类存在于海外的风险相关的直接保险承保范围内的保费免征增值税，为保险业提供平等待遇。

此外，保险公司通常在不同的省份设有多个分支机构，如果要求每个分支机构独立完成申报增值税，合规工作的运营成本将会高得不合理。考虑到企业所得税申报可以合并，增值税法律咨询服务草案也提到了“合并申报”原则，商会建议财政部和国家税务总局加快颁布有关增值税合并申报的实施细则。

健康保险

2017年11月发布的修订版《健康保险管理办法》中，专门列出一章讲述了健康管理服务与社会健康保险之间的合作。该办法强调，健康保险公司可以将健康保险产品与健康管理服务相结合，从而提供健康风险评估及风险防范产品。这鼓励了健康保险公司加强与医疗机构、健康管理机构和康复机构的合作，为被保险人提供方便优质的服务。该办法还鼓励健康保险公司与充分保护隐私和数据安全的医疗机构及社会保险组织实现数据共享和信息互通。

商会对《健康保险管理办法》中公布的政策表示欢迎。美国专业健康保险公司在健康管理和数据共享方面拥有数十年的经验和专业知识，并期待有机会将其专业知识和经验带入中国市场，从而实现“健康中国2030”计划。因此，商会敦促银保监会和其他政府部门，按照中国关于取消人身保险中的外资股比上限的承诺，消除外国健康保险公司参与中国健康保险业时所面临的所有非审慎性障碍。美国健康保险公司的参与将为中国引入先进的概念、专门技能、技术和产品，在减轻政府医疗费用负担的同时，提升中国公民的福祉和安全。

再保险

2016年，保监会开始正式实施中国风险导向的偿付能力体系——中国第二代偿付能力监管制度，并且正在通过各地保监局对保险公司偿二代合规情况进行检查。尽管对保险业的偿付能力实施更系统的监管是合理的，但商会认为，偿二代对中国再保险公司与信誉好且在中国司法管辖范围内具有良好财务评级的离岸再保险公司之间的跨境交易施加了不合理的资本支出和抵押要求。商会认为，这种资本支出和抵押要求是不合理的，因为银保监会还有其他成本更低的手段来确定此类离岸再保险公司的稳健性，包括既有的与离岸再保险公司的本国监管机构进行咨询的方式。此外，跨境再保险交易的不利权重会阻碍跨境再保险交易，使风险集中在中国而不

coordinate with the Ministry of Finance (MOF) and the State Taxation Administration (STA) to provide equal treatment to the insurance industry by applying VAT exemptions to premiums derived from direct insurance cover for such overseas domiciled risks.

Moreover, insurance companies typically have several branches located in different provinces and if each branch is required to complete its VAT filing independently, the operational costs for such compliance work will be unreasonably high. Considering that corporate income tax filings can be consolidated and the draft consultation paper for the VAT law references the principle of “consolidated filing,” AmCham China recommends that MOF and STA accelerate the promulgation of detailed implementing regulations on “VAT consolidated filings.”

Health Insurance

The revised Measures for the *Administration of Health Insurance* released in November 2017 devoted an entire chapter to collaboration between the health management service and social health insurance. It emphasizes that health insurers can combine health insurance products with health management services, thereby providing both health risk assessments and prevention products. This has encouraged health insurers to strengthen their collaboration with healthcare institutions, health management institutions and rehabilitation institutions to provide convenient and high-quality service to insureds. Health insurers were also encouraged to realize data sharing and information connectivity with medical institutions and social insurance organizations subject to full privacy and data security protection.

AmCham China welcomes the policies announced in the *Measures for the Administration of Health Insurance*. US-specialist health insurers have decades of experience and great expertise in health management and data sharing and welcome the opportunity to bring their expertise and experience to the China market to make the “Healthy China 2030” initiative a reality. AmCham China therefore urges CBIRC and other government authorities, consistent with China’s commitment to remove the foreign equity cap in personal insurance, to remove all non-prudential barriers to participation by foreign health insurers in China’s health insurance industry. Participation by US health insurers will introduce advanced concepts, know-how, technology, and products to China, advancing the wellbeing and security of Chinese citizens while reducing the government’s healthcare expense burden.

Reinsurance

In 2016, CIRC began formal implementation of C-ROSS, China’s second-generation solvency regime, and its regional bureaus have been inspecting insurance companies for compliance with C-ROSS. While more systematic regula-

tion of solvency in the insurance industry is appropriate, AmCham China believes that C-ROSS imposes unreasonable capital charges and collateral requirements on cross-border transactions between Chinese-ceding insurers and reputable offshore reinsurers with financially sound ratings in their home jurisdictions. AmCham China believes that such capital charges and collateral requirements are unreasonable because CBIRC has other, less costly means to ascertain the soundness of such offshore reinsurers, including by established means of consultation with the offshore reinsurers’ home country supervisors. Moreover, the adverse weighting of cross-border reinsurance transactions discourages cross-border reinsurance transactions with the perverse consequence of concentrating risk in China rather than dispersing risk more widely. AmCham China therefore urges CBIRC to reconsider C-ROSS *Chapter 8 Credit Risk Minimum Capital* to prevent such unfortunate concentration of risk while CBIRC determines the basis for insurance industry compliance with new International Financial Reporting Standards (IFRS) rules.

AmCham China is also concerned that by concentrating risk onshore, the C-ROSS framework will adversely affect international reinsurers by overweighting credit risk and imposing collateral requirements even for those international reinsurers subject to compliance supervision in their home jurisdictions which satisfies the requirements for mutual recognition in accordance with the recommendations of the International Association of Insurance Supervisors (IAIS).

Brokerages

In 2015 the *Catalogue of Industries for Guiding Foreign Investment* (2015 rev.) removed foreign insurance brokerages from the “restricted” investment category. The January 2017 *Notice of the State Council on Several Measures for Expansion of China’s Opening up to the Outside World and Active Use of Foreign Capital* discusses relaxing restrictions on access of foreign capital to insurance intermediaries and further strengthening China’s economic opening to the outside world. Furthermore, Premier Li Keqiang in his 2018 *Government Work Report* clearly stated that the government planned to “lift restrictions on the scope of business of foreign-invested insurance brokerages.”

Our members were encouraged when CBIRC issued the *Notice Concerning the Expansion of the Authorized Scope of Business for Foreign-Invested Insurance Brokers* on April 27, 2018. The Notice set forth five areas where foreign-invested brokers are permitted to expand their scope of business within China, in principle leveling the playing field with domestic insurance brokers. In October 2019 the State Council removed limitations on the scope of business for financial institutions including foreign banks, securities companies, and fund management companies. Despite the plethora of positive signals from the government, our members have found that CBIRC has yet to accept any appli-

是更广泛地分散风险的不良后果。因此，商会敦促银保监会重新考虑偿付能力监管规则第8号“信用风险最低资本”，以防这种不幸的风险集中，同时确定保险业遵守新《国际财务报告准则》规则的基础。

与此同时，商会担心偿二代框架将风险集中在中国境内，会对国际再保险公司产生不利影响，因为偿二代甚至对那些已经在本国辖区范围内接受合规监管、根据国际保险监督官协会的建议满足了相互认可要求的国际再保险公司，施加过多的信用风险和担保要求。

保险经纪

2015年修订的《外商投资产业指导目录》将外国保险经纪从“限制”投资类别中删除。2017年1月发布的《国务院关于扩大中国对外开放积极利用外资若干措施的通知》中讨论了放宽保险中介机构外资准入限制，并进一步加强中国经济对外开放。此外，国务院总理李克强在《2018年政府工作报告》中明确指出，政府拟“放开保险经纪公司经营范围限制”。

银保监会于2018年4月27日发布了《关于放开外资保险经纪公司经营范围的通知》，令商会会员受到鼓舞。该通知列出了允许外资经纪公司在华放开经营的五个业务范围，原则上与国内保险经纪公司公平竞争。2019年10月，国务院取消了对外资银行、证券公司和基金管理公司等金融机构业务范围的限制。尽管政府释放了积极信号，但商会会员发现，银保监会仍未受理任何一家在美国设立的外资保险经纪公司关于在华扩张业务的许可申请。商会强烈敦促银保监会尽快履行政府关于开放保险业的公开承诺，以确保这些政策的执行符合公开声明的精神和与美国签署的第一阶段协议的精神。银保监会的任何非审慎性拖延，都会破坏公平对待国内外所有市场参与者的原则，妨碍竞争，使中国消费者无法接触到更多能够为小规模商业风险、汽车保险和人寿及意外险提供经纪服务的保险经纪公司。

保险资产管理公司

商会对中国政府宣布取消境内保险公司合计持有中国保险资产管理公司的股份不低于75%的规定表示赞赏。这种限制曾经意味着保险资产管理公司的外资持股比例不得超过25%。商会敦促银保监会尽快修订2004年《保险资产管理公司监管暂行规定》，以进一步明确

取消对保险资产管理公司外资持股比例的所有限制。自中国银行业监督管理委员会与中国保险监督管理委员会于2018年合并以来，多家合资保险公司获准成立，商会对这些备受鼓舞。然而，外资保险公司申请建立保险资产管理公司的流程可能持续数年。商会敦促银保监会放宽保险资产管理公司牌照申请的一般等待期，以加快处理速度。

销售和服务渠道

设立分支机构

2019年12月，银保监会发布了《关于推动银行业和保险业高质量发展的指导方针》。根据这些指导方针，银保监会原则上支持外资保险公司“合理”布设分支机构，拓宽业务范围。该指导方针还鼓励外资保险公司丰富中国市场的金融和保险产品供给，提升市场活力和竞争力。商会欢迎中方进一步开放保险业的承诺。

商会还对2019年10月修订的《外资保险公司管理条例实施细则》删除关于外资保险公司分支机构管理规定表示欢迎，删去该规定为内资保险公司与外资保险公司在分支机构申请方面创造了公平竞争的环境。

然而由于多种原因，外资保险公司在分支机构的绝对数量和地理覆盖范围方面实际上远远落后于中国同行。原因之一是，相比内资保险公司，外资保险公司在申请设立分支机构时往往需要经历更为严格和漫长的审批流程，每次申请都限制外资保险公司设立分支机构的数量，监管机构拒绝其同时在几个省份申请设立分支机构等。

如果这些限制仍然存在，外资保险公司将需要花费大量的时间和精力才能实现与内资保险公司相当的市场覆盖率。中国各大保险公司已经在全国各省实现或接近实现全覆盖。这些限制严重掣肘了外国企业在中国市场的竞争力，外国企业无法与国内企业实现同等规模经济，也无法有效地丰富市场上金融产品和保险产品的供给。

借鉴修订后的《外资保险公司管理条例实施细则》，商会继续敦促银保监会迅速审核外资保险公司的分支机构申请，包括审查合乎资格的外资保险公司为设立数个分支机构而同时提出的几项申请。此外，只要外资保险公司继续遵守相关法律法规，应允许其根据业务需要，自由申请新牌照并在不同省份设立分支机构。尽管法律

cations for licenses to expand their business in China from any US-based foreign-invested insurance brokers. AmCham China strongly urges CBIRC to promptly follow through on the government's public commitment to opening the insurance industry in order to ensure that implementation of these policies is consistent with the spirit of such public statements and the Phase One Agreement with the United States. Any non-prudential delay by CBIRC undermines the principles of equal treatment between all market players foreign and domestic and impairs competition by denying Chinese consumers access to a greater number of brokerages capable of brokering insurance for small-scale commercial risks, automobile insurance, and individual life and accident insurance.

Insurance Asset Management Companies

AmCham China applauds the announcement by the Chinese government that the current requirement that domestic insurance companies should collectively hold no less than 75 percent of the equity in a China-based insurance asset management company (IAMC) will be removed. This restriction has in practice meant that foreign ownership of IAMCs cannot surpass 25 percent. AmCham China urges CBIRC to promptly revise the 2004 *Interim Provisions on the Regulation of IAMCs* to further clarify the removal of any restrictions on foreign ownership of IAMCs. AmCham China is pleased that several JV insurance companies have been permitted to establish IAMCs since the merger of the China Banking Regulatory Commission (CBRC) and the China Insurance Regulatory Commission (CIRC) in 2018. The application process for foreign-invested insurers to apply for an IAMC license, however, can last several years. AmCham China urges CBIRC to relax the general waiting period for an IAMC license application to expedite processing.

Sales and Service Channels

Branching

In December 2019 CBIRC released the *Guidelines of Promoting High-Quality Development in the Banking and Insurance Sectors*. Under these Guidelines, CBIRC in principle supports the establishment of branches by foreign-invested insurers in a "reasonable fashion" to expand their scope of business. It also encourages foreign-invested insurers to enrich the supply of financial and insurance products available in the Chinese market to enhance the market's vitality and competitiveness. AmCham China welcomes this commitment to further opening of the insurance industry.

AmCham China also welcomed the October 2019 removal of a provision on the management of branches of foreign-invested insurance companies in the revised *Implementation Rules of the Regulations on the Administration of Foreign-funded Insurance Companies*, which formally leveled the playing

field between foreign-invested and domestically-invested insurers with respect to branch applications.

For a number of reasons, however, foreign-invested insurers in practice lag far behind their Chinese counterparts with respect to the absolute number and geographical coverage of their branches. One reason for this is that in comparison to domestically invested insurers, foreign-invested insurers have experienced more rigorous and lengthier branch approval procedures, limits on the number of branches permitted in each application, and a refusal by regulators to consider concurrent applications for branching in different provinces.

If these restrictions remain in place, foreign-invested insurers will require substantial time and effort to achieve market coverage rates comparable to those achieved by domestic insurers. All major Chinese insurers have already achieved full or near full coverage in all Chinese provinces. These constraints have significantly limited the competitiveness of foreign players in the Chinese market, who are unable to achieve economies-of-scale on an equal footing with domestic entities and effectively enrich the availability of financial and insurance products on the market.

In consideration of the revised *Implementation Rules*, AmCham China continues to urge CBIRC to promptly review branch applications by foreign-invested insurers, including reviewing concurrent branch applications from qualified foreign-invested insurers. Furthermore, foreign-invested insurers should be permitted to apply freely for new licenses to establish branches in multiple provinces consistent with their business needs, provided that they continue to comply with relevant laws and regulations. Although laws and regulations specify the procedures and timelines for administrative approval of branch licenses, in practice, these procedures often move more slowly than the stated timelines permit, delaying license approvals for foreign-invested insurers. AmCham China recommends that CBIRC work to standardize procedures for branch license application, including allowing foreign-invested insurers to apply directly to the relevant substantive department rather than through the Foreign-Invested Organizations Supervision Department. During reviews of administrative license applications, CBIRC and other relevant regulators should comply with the *Administrative License Law of the PRC* by allowing foreign-invested insurers to correct any errors in their application materials on the spot whenever possible. In cases where application materials are incomplete, regulators should inform the applicant on the spot and provide a list of the items that need to be added or corrected within five days after submission of the application.

Investment of Insurance Funds

AmCham China applauds the continued loosening of restrictions on investment vehicles that has opened new invest-

法规规定了分支机构许可行政审批的程序和时限，但在实践中这些程序的执行通常比规定的时限慢得多，从而耽误了外资保险公司的牌照审批。商会建议银保监会努力规范分支机构牌照申请程序，包括允许外商投资保险公司直接向相关部门提出申请，而不是通过外商投资机构的监督部门申请。在审查行政许可申请过程中，银保监会及其他有关监管机构应遵守《中华人民共和国行政许可法》，允许外资保险公司现场更正申请材料中可能存在的错误。申请材料不齐全的，监管机构应当场告知申请人，并在申请人提交申请后的5日内提供需要申请人补充或更正的事项清单。

保险基金投资

商会对中国持续放宽对投资工具的限制表示赞赏，这一举措有助于开拓新的投资渠道和市场。商会呼吁，在资本市场中确定投资保险基金的资格时，应考虑保险公司的母公司的规模和投资经验。考虑这些因素大大有助于将知识从成熟市场转移到中国，也能缓解本地缺乏具备足够经验和技能来投资新兴资产类别的人才短缺问题。商会还希望，中国近期能出台相关监管政策，为上述新兴资产类别以及保险基金提供必要的风险对冲工具。

税务问题

增值税改革加重了保险公司的税负负担

国务院实施增值税改革的初衷是减轻企业特别是服务行业企业的税负，但是2016年“营业税改增值税（营改增）”改革全面实施后，中国保险公司的税负却显著增加。税负增加的主要原因是，改革将增值税的适用范围扩大到了公司债券等固定收益类投资产品的利息收入，而在营业税制度下这类收入是免税的。此外，改革将应税保费相关产品的税率从5%提高到6%。进项税额虽然可以抵扣，但可抵扣的比例不足，因此实际上保费收入的税率基本保持不变。对保险公司增加征费会在短期内降低其盈利能力，深刻影响其定价和精算行为，最终损害中国投保人的利益。商会建议国家税务总局与相关部门协调，恢复公司债券和债务项目利息收入的免税资格，或者至少采用“新老划断”方式对增值税改革之前发行的债券实行免税。商会还建议国家税务总局为保险业提供更为明确一致的规则，在全国统一增值税的适用范围，并扩大进项增值税的抵扣范围。同时，商会很高兴外国保险公司的代表处能再次免征增值税。

建议

对中国政府：

所有权

- 出台详细的实施措施，说明取消保险业经营中的外资股比上限的具体做法和计划。
- 及时修订2004年的《保险资产管理公司监管暂行规定》，进一步明确取消对保险资产管理公司外资持股比例的所有限制。
- 消除外国医疗保险公司参与中国医疗保险行业的非审慎性壁垒，与中国承诺取消人身保险的外资股比上限保持一致。

网络问题

- 明确《中国网络安全法》中的重要定义，包括“关键信息基础设施”、“个人信息”、“重要数据”和“适用的监督管理”，并审查法律中现行措施的有效性。
- 在中国保监会《保险机构信息化监管规定（征求意见稿）》中明确“安全可控”的定义，赋予保险公司自由裁量权，根据信息技术系统的安全性和可靠性而非来源国家，在不同的供应商之间做出决定。

牌照

- 通过向更多外资保险公司发放经营牌照，确保外资保险提供者和内资保险提供者享有平等待遇，增强养老保险行业和健康保险行业的竞争。

销售和服务渠道

- 进一步开放互联网保险销售渠道，允许包括重大疾病保险产品在内的更多类型的保险产品在全国进行线上销售。
- 外资保险公司申请设立分支机构在审批手续和审批进度上应当与内资保险公司享有同等待遇。

ment channels and markets. AmCham China urges that the size and investment experience of the corporate parents of insurance companies be considered when determining qualifications to invest insurance funds in the capital market. Taking these factors into account would greatly assist in transferring knowledge from mature markets to China. It would also help mitigate the shortage of local talent with adequate experience and sophistication for investing in new asset classes. We also hope that related regulatory policies will be issued in the near term to provide the necessary risk-hedging tools for these new asset classes and for insurance capital in general.

Tax Issues

Heavier Tax Burden for Insurers Due to VAT Reform

In direct contrast to the State Council's VAT reform objective of reducing the tax burden on enterprises, especially in the services sector, the tax burden of insurers in China increased significantly after full implementation of the *Business Tax to VAT* reform in 2016. The tax burden has increased mainly because the reform extended application of the VAT to interest income from fixed-income investment products like corporate bonds, which had been tax-exempt under the business tax system. In addition, the reform raised the tax rate for taxable premium-related products from five percent to six percent. Although input VAT is deductible, the deductible ratio is insufficient so the tax rate on premium income is largely unchanged in practice. The increased levies on insurers reduce their profitability in the near term, profoundly impacting their pricing and actuarial practices, and impairing the interests of Chinese policyholders. AmCham China recommends that STA, in coordination with related agencies, restore the tax-exempt status for interest income from corporate bonds and debt programs, or at minimum adopt a "cut-off" approach to exempt bonds issued prior to the reform from VAT. We also recommend that STA provide more clarity and consistency in its rules for the insurance industry, unify the scope of VAT application across the country, and expand the deductibility range for input VAT. Meanwhile, we are pleased that representative offices of foreign insurance companies have again been determined to be VAT-exempt.

Recommendations

For the Chinese Government:

Ownership

- **Issue detailed implementing measures describing how foreign equity caps can and will be lifted for businesses operating in the insurance industry.**
- Promptly revise the 2004 *Interim Provisions on the Regulation of IAMCs* to further clarify the removal of any restrictions on foreign ownership of IAMCs.
- Remove all non-prudential barriers to participation by foreign health insurers in China's health insurance industry, consistent with China's commitment to remove foreign equity caps on personal insurance.

Cyber issues

- **Clarify key definitions in China's *Cybersecurity Law* including "critical information infrastructure," "personal information," "important data," and "applicable supervisors" and review the effectiveness of the measures in the law as they are currently written.**
- Clarify the definition of "secure and controllable" in CIRC's *Draft Informatization Regulations* and give insurers the discretion to decide among different vendors on the basis of security and reliability of IT systems, not national origin.

Licenses

- **Increase competition in the pension and health insurance industry by approving more licenses for foreign-invested applicants and ensuring equal treatment for foreign-invested and domestically invested insurance providers. Additionally, issue detailed implementing measures specifying how foreign-invested brokerage licenses will be released and how foreign-invested brokerage companies will be able to apply.**

Sales and Service Channels

- **Further open the Internet insurance channel by allowing more types of insurance products, including critical illness products, to be sold online nationwide.**
- Put into practice the review and approval of branch

偿二代

- 制定一个正式程序，让保险公司可以就具体的偿二代规定向银保监会提交书面咨询，后者以书面公开说明作为答复，减少政策实施不一的情况。
- 免除跨境再保险交易的不必要资本支出和的抵押要求。跨境再保险交易的不利权重会阻碍跨境再保险交易，使风险集中在中国而不是更广泛地分散风险的不良后果。

税务问题

- 恢复公司债券和债务项目利息收入的免税资格，或者至少采用“新老划断”方式对增值税改革之前发行的债券实行免税。
- 扩大个税递延型养老保险的税收激励。
- 加强银保监会、财政部和国家税务总局之间的协调，通过对此类存在于海外的风险相关的直接保险承保范围内的保费免征增值税，为保险业提供平等待遇。

applications by foreign-invested insurers in the same manner and at the same pace as applications by domestically invested insurers.

C-Ross

- **Develop an official procedure where companies can submit written inquiries to CBIRC concerning specific C-ROSS provisions for responses in written public statements in order to reduce inconsistency of implementation.**
- Remove unnecessary capital charges and collateral requirements on cross-border reinsurance transactions. The adverse weighting of cross-border reinsurance transactions discourages cross-border reinsurance transactions with the perverse consequence of concentrating risk in China rather than dispersing risk more widely.

Tax Issues

- **Restore the tax-exempt status for interest income from corporate bonds and debt programs, or at minimum adopt a “cut-off” approach to exempt bonds issued prior to the reform from VAT.**
- Expand tax incentives for tax-deferred annuities.
- Increase coordination between the MOF, CBIRC, and the STA to provide equal treatment to the insurance industry by applying VAT exemptions to premiums derived from direct insurance cover for such overseas domiciled risks.

Legal Services

Introduction

Foreign law firms face a wide range of longstanding market access constraints in mainland China, especially:

- Restriction of their organizational form to that of a representative office, albeit an income-earning and corporate tax-paying representative office,
- Inability for People’s Republic of China (PRC)-qualified lawyers to maintain their licenses, preventing firms from providing legal advice on Chinese law and from representing clients in PRC courts and certain regulatory proceedings,
- Prohibitions against participation in certain kinds of meetings in government departments involving their clients,
- Discriminatory taxation,
- Unnecessarily slow, complicated, and unpredictable registration procedures for the establishment and renewal of representative offices, and
- Increasing nationwide centralization of the regulation of foreign law firms.

The Chinese government’s continued restrictions in this sector significantly limit the options available to mainland Chinese and foreign companies seeking legal advice and counsel and deprive PRC-qualified lawyers of the opportunity to work for, receive training in, and become principals of foreign law firms. Moreover, the current restrictions are inconsistent with international best practices, which allow lawyers qualified in different jurisdictions to serve together in the same firm. This also results in many foreign investors and parties to commercial and financial transactions being unwilling to accept PRC law as the governing law of contracts, or to submit themselves to the jurisdiction of Chinese courts or arbitration tribunals for dispute resolution. These restrictions also conflict with the general principle of reciprocity, given that most of China’s major trading partners allow PRC law firms to establish full-service offices in their jurisdictions and hire locally licensed attorneys in those jurisdictions.

Ongoing Challenges

Burdensome Representative Office Registration and Renewal Procedures

Foreign law firms face burdensome regulatory approval procedures that do not apply to domestic law firms. When applying to establish a representative office, a foreign law firm must demonstrate “a need to establish a representative office to start legal service operations.” PRC authorities evaluate such need based in part on the “social and economic development conditions” of the proposed location and the “development needs” for legal services in the location, tests that do not apply to domestic law firms. These and other similarly vague, burdensome and discretionary considerations are inconsistent with China’s WTO commitment to eliminate geographic and quantitative limitations on the number of representative offices that foreign law firms can establish in mainland China. The requirement to demonstrate this development need unnecessarily and unreasonably lengthens the approval process for a representative office by up to nine months. Moreover, the length of the approval process is unpredictable and often subject to protracted delays. The application process for establishing an office can and should be substantially streamlined.

Furthermore, a foreign law firm must wait three years after establishing its initial representative office in the PRC before being allowed to seek approval for a second office. Foreign law firms have reported substantial difficulty and delay in the processing of these applications as well. This restriction impairs the ability of foreign law firms to serve clients in interior provinces, which are a key priority of the central government in its efforts to boost economic development. No domestic law firm faces similar restrictions in opening offices overseas (or in the PRC).

The bureaucratic registration and renewal practice often prevents talented and licensed foreign lawyers from registering as representatives of the China office of a foreign firm. Moreover, licensed foreign lawyers cannot provide legal services to clients if they have not physically worked outside mainland China for at least two years.

Beginning in 2018, PRC authorities indicated that all foreign

法律服务

引言

长期以来，外国律师事务所在中大陆面临着诸多市场准入限制。以下几方面尤为突出：

- 尽管代表处有企业收益并缴纳企业所得税，但其组织形式仅限于代表处；
- 中国执业律师无法保留其执照，导致律所无法提供中国法律相关的咨询，也不能在中国法院及特定监管程序中代表客户；
- 不被允许出席客户与政府部门之间的某些会议或者手续申报；
- 差别性的税收政策；
- 办理代表机构设立、延期等注册手续过于繁杂，过程漫长且结果难以预料；
- 政府对全国范围内的外国律师事务所的监管日益集中化。

中国政府持续在该领域施加的种种限制严重限制了企业和外国企业获取高度专业化的法律意见和咨询服务，更剥夺了中国职业律师在外国律师事务所工作、培训及升迁的机会。此外，现行政策不符合国际惯例，按照国际惯例，不同司法管辖区的执业律师可以在同一家律师事务所共同工作。因此，许多外国投资者和商业与金融交易相关方不愿接受中国法律作为合同的适用法律，也不愿选择通过中国法庭或仲裁庭来解决矛盾。这些限制措施有违互惠原则，因为中国的多数主要贸易伙伴都允许中国律师事务所在其境内设立代表处提供全面服务，并允许其在管辖范围内聘用当地执业律师。

现存挑战

代表处注册及续期程序繁琐

相对于中国律师事务所，外国律师事务所的监管审

批程序繁琐复杂，外国律师事务所在申请设立代表处时，必须证明其“设立代表机构从事法律服务业务的实际需要”。中国政府部门评估该需要的一个标准是拟设代表处住所地的“社会经济发展状况”和对法律服务的“发展需要”，而中国律师事务所则不需要此类评估。上述及其他类似的规定不但模糊、繁琐，而且有违中国对世贸组织有关取消外国律师事务所在中国大陆设立代表处的地域和数量限制的承诺。证明发展需要的要求将会延长审批流程达9个月之久，既不必要也不合理。此外，审批时长难以预料，通常久拖不决，设立代表处的申请程序可以而且应该大大精简。

此外，外国律师事务所在中国设立首个代表处后，必须等待三年才能再增设新的代表处。外国律师事务所均表示该类申请过程困难重重且进展缓慢。此类限制措施削弱了外国律师事务所为内陆省份客户服务的能力，而内陆省份正是中国政府大力发展的重点经济区域。然而国内律师事务所在海外（或中国）设立办事处时从未面临类似限制。

注册和续期流程的繁冗、官僚化，导致才华横溢的外国执业律师无法注册成为外国律师事务所中国办事处的代表。此外，现有政策规定外国执业律师未在中国大陆以外实际工作满2年的，无法为客户提供法律服务。

自2018年起，中国政府规定，所有担任代表或首席代表的外国律师每年在中国境内居留的时间不得少于183天，但是在海外运营的中国律师事务所并不受此类限制，这将使外国律师事务所为中国办事处派驻代表变得愈发困难。再加上2020年新型冠状病毒肺炎爆发，隔离措施和全球旅行限制会让外国律师事务所更加举步维艰。所以商会建议至少在2020年取消该限制要求。

lawyers serving as a representative or Chief Representative must spend at least 183 days a year in China. Such requirement is not imposed on PRC law firms operating overseas, and it will greatly impair the ability of foreign law firms to staff their offices in China. It is likely to impose a particular hardship in 2020 because of quarantines and worldwide travel restrictions imposed in response to COVID-19, so we urge that at a minimum such requirement be waived for 2020.

Registration Renewal for Foreign Law Firms

In early 2020, the Ministry of Justice (MOJ) established an online system to renew the registration of the China offices of foreign law firms. Through this online system, all China offices of foreign law firms must submit their annual applications online directly to the MOJ. After the online application is reviewed and approved by the MOJ, each China office of a foreign law firm must then submit hard copy originals of the application documents to the local justice bureau in the jurisdiction where the China office is located.

Previously, annual renewal applications for the China offices of foreign law firms were first reviewed by the local justice bureau. After completing the review, the local bureaus in each province or municipality would then file the annual renewal applications with the central-level MOJ. This prior practice provided local bureaus with a degree of administrative discretion which they often displayed in implementation.

In our members' experience for instance, justice bureaus of some localities tended to display greater flexibility in implementation than their counterparts in other localities. For example, when the MOJ began in 2018 to enforce requirements that all foreign law firms in China must have one Chief Representative and at least one additional representative for each office (which had been required by law since 1996 but not widely enforced), some provincial and municipal-level bureaus immediately began enforcing the requirement, while the Shanghai bureau did not enforce these requirements until early 2020. Following the establishment of the online system in 2020, all foreign law firms are now required to submit their application documents online through the MOJ system, including a letter of commitment by the firm to add a new representative by June 2020 if the office does not already have at least one representative in addition to a Chief Representative.

This new online system for annual renewals is reflective of the MOJ's determination to centralize the administration of the China offices of foreign law firms and standardize the implementation of renewal procedures. While the annual renewal of registration is not itself a new requirement for foreign law firms, applying for renewal online is a new practice that was not circulated for public comment prior to its implementation. Nor did the MOJ provide an opportunity for input from the legal community before tightening

enforcement of the requirement that all foreign law offices have at least two representatives.

As we have done for many years, we continue to urge the Chinese government to publish any new regulations or policies with respect to the administration of foreign law firms for public comment before promulgation. We hope that any new policies or regulations will provide transparent and practical guidance on foreign law firm operations in China and include measures to level the playing field between domestic and foreign law firms in China. We note again in this regard that foreign law firms are generally allowed to establish fully-fledged law offices and to have locally licensed attorneys in much of the US.

Limited Scope of Practice for PRC-Qualified Lawyers in Foreign Firms

PRC law currently requires that PRC-licensed attorneys must give up their PRC license if they join a representative office of an international law firm in the PRC. AmCham China continues to urge the Chinese government to revise current regulations to allow international law firms to hire and admit to their partnerships qualified PRC lawyers with active PRC licenses, in order to offer comprehensive legal services to their clients. Removing this restriction would:

- Create additional training and employment opportunities for mainland Chinese law students and lawyers, which would in turn expand the pool of trained and experienced PRC-qualified lawyers available to PRC law firms and companies to hire as counsel or in other positions requiring specialized legal backgrounds,
- Enable Chinese companies to expand more efficiently and successfully by enabling integration of their counsel in China into a worldwide team of legal specialists,
- Increase the capacity of foreign law firms to represent clients doing business in mainland China, as well as Chinese companies looking to expand their global commercial and investment activities.

Restrictions on Appearance Before Government Agencies

AmCham China urges the Chinese government to implement its commitment made in 2014 at the 25th Joint Commission on Commerce and Trade (JCCT) to allow representatives of foreign law firms' representative offices established in China to attend and participate in meetings with the anti-monopoly enforcement agency upon request from the party involved. To date, and as a matter of practice, in many cases foreign law firm representatives are allowed to attend such conferences only as observers and not as active participants. AmCham China urges the Chinese government to implement this commitment and expand the practice across government enforcement agencies in all other areas of law.

外国律师事务所续期注册

2020年初，司法部建立了外国律师事务所中国办事处续期注册的网上系统，所有外国律师事务所的中国办事处必须要在该平台上将年度申请直接提交至司法部。司法部审核和批准后，每个外国律师事务所的中国办事处必须要将申请文件原件报送其所在地的司法部门。

在此之前，外国律师事务所中国办事处的年度续期申请首先是由地方司法局审核的，审核完成后，各省、直辖市司法局将续期申请上报中央司法部。这种做法给了地方部门一定的行政自由裁量权，往往体现在执行过程中。

根据商会会员经验，某些地区的司法局比其他地区的司法局在执行方面表现出更大的灵活性。例如，自2018年起，司法部开始要求外国律师事务所在中国的每个办事处都必须有一名首席代表和至少一名其他代表（1996年已是法定要求，但并未广泛执行），一些省市级司法局立即开始执行这一规定，而上海司法局直到2020年初才开始执行。2020年网上系统建立之后，所有外国律师事务所都必须通过司法部网上平台提交申请文件，如果该事务所的中国办事处除首席代表外没有其他代表，文件中还要附带承诺书，保证在2020年6月前再派驻一名代表。

新的年度续期线上系统显示出司法部集中管理外国律师事务所中国办事处和标准化续期程序执行的决心。外国律师事务所年度续期注册并非新规定，在线申请却是新做法，开始执行前并未征求公众意见，司法部强化执行外国律所办事处至少有两名代表的要求前也未征求法律界的意见。

商会一如既往的促请中国政府在发布任何外国律师事务所管理方面的新规或政策前征求公众意见，并希望新规或新政策会给在中国执业经营的外国律师事务所提供透明和切实的指导，为中国和外国的律所打造公平的竞争环境。就此而言，商会再次强调，在美国大部分地区，外国律师事务所一般都可以设立全面服务的法律办事处并雇佣当地的执业律师。

中国律师在外国律师事务所的执业范围受限

根据现行中国法律规定，中国执业律师要加入国际律师事务所在中国的代表处，就必须放弃中国执照。商

会继续促请中国政府修订现行法规，允许外国律师事务所雇用持有有效中国律师执业证的中国律师，也可成为合伙人，以便为客户提供全面的法律服务。

取消各项限制将产生如下积极作用：

- 为中国大陆的法律专业学生和律师提供更多培训和就业机会，壮大中国合格律师队伍，他们训练有素、经验丰富，可以进入中国律所和企业担任法律顾问或其他需要专业法律背景的职务。
- 中国公司的法律顾问可以跟国际法律专家团队合作，推动中国公司更高效、更成功的扩张。
- 提高外国律师事务所能力，以便更好代理在中国大陆做生意的客户以及想要在全球扩展商业和投资活动的中国公司。

参与政府会议受限

商会促请中国政府履行其在2014年第25届中美商贸联委会上做出的承诺，允许外国律师事务所驻华代表处的代表应相关方的要求参与反垄断执法机构的会议。目前的惯常做法是，很多外国律所的代表仅能以观察员的身份参加此类会议，而无法积极参与其中。商会促请中国政府履行承诺，并确保所有执法部门在其他法律领域也履行此承诺。

目前，外国律师出席或参与其客户与中国大陆政府部门的很多会议往往都被禁止或受到限制，即便获准也是基于非透明原则和具体情况而定。明确和执行一致的法规缺位将会导致：

- 外国和中国客户在涉及非中国法律的会议中没有充分代表权；
- 客户无法在会见中国政府官员时决定自己法律团队的人员构成；
- 客户受个人经历和背景限制无法很好地理解与中国政府的会议程序；
- 客户很难向中国大陆政府官员提供其在中国境内外的活动和职责信息；
- 人们会以为中国政府在跟外国公司打交道时，后者会受到任意和歧视性的待遇，竞争环境不公平；
- 妨碍国际律师事务所就中国法律环境向外国和中国客户提供咨询的权利，这违反了加入世界贸易组织议定书和国务院的规定。

Presently, appearance and participation by foreign lawyers in many types of meetings involving their clients and mainland Chinese government agencies is often prohibited, restricted, or permitted only conditionally on a non-transparent and case-by-case basis. This lack of clear and consistently enforced regulations:

- Deprives foreign and Chinese clients of adequate representation in meetings relating to areas of non-Chinese law,
- Prevents clients from determining the composition of their own legal teams in meetings with Chinese government officials,
- Reduces clients' ability to understand government proceedings in their international context,
- Hampers the ability of clients to provide information to mainland Chinese government officials relating to the clients' activities and obligations in China and abroad,
- Creates the impression that the Chinese government may engage in arbitrary and discriminatory treatment in dealings with foreign companies, creating an uneven playing field, and
- Frustrates the right of international law firms to advise foreign and Chinese clients on the Chinese legal environment contrary to clearly established provisions in China's *Protocol of Accession to the World Trade Organization (WTO)* as well as in State Council regulations.

To the best of our knowledge, no other leading economy so inconsistently and non-transparently limits, restricts, or prohibits access for foreign lawyers to domestic government officials.

Discriminatory Taxation

Representative offices of foreign law firms are subject to higher PRC income taxation than PRC law firms carrying out the same activities because foreign law firms are denied the status of partnership enterprises for PRC tax purposes (for more details please see the 2015 *White Paper*). In addition, foreign firms are denied the preferential tax calculation method granted to PRC law firms that significantly decreases domestic firms' effective income tax rate.

Essentially, US and other foreign law firms in China are taxed at the representative office level while individual attorneys are simultaneously taxed at the individual level. Domestic law firms are only taxed at the individual level.

To address this inequity and comport with the principle of non-discrimination in the US-China bilateral tax treaty, AmCham China urges the Chinese government to provide international law firms with treatment equivalent to that of PRC law firms for PRC income tax purposes.

Other Market Access Problems

Foreign law firms also face other restrictions that impair their ability to operate in China. These include:

- An unnecessarily cumbersome process to replace the Chief Representative of a representative office and for foreign lawyers to transfer between firms,
- Difficulty and even inability to hire foreign non-legal professionals,
- One-year limit on the duration of work visas for foreign lawyers (including Chief Representatives), and
- Protracted work permit application procedures (sometimes lasting up to a year and a half).

We encourage the Chinese government to address these issues in order to improve foreign law firms' ability to serve their clients efficiently in China.

Foreign Investment Catalogue Restrictions

In the latest *Catalog of Industries for Guiding Foreign Investment (Negative List for Foreign Investment)* effective as of July 30, 2019, "investment in Chinese legal matters" continues to be classified as "prohibited." It was originally classified as "restricted" in the 2011 Catalog. The provision of information regarding the impact of Chinese laws is nevertheless permitted, in accordance with China's commitments in the 2001 *Protocol on the Accession of the PRC to the WTO*. It does not, however, address the need for further liberalization of access for foreign law firms and their Chinese national lawyers, as discussed in this chapter.

Limitation on Foreign Licensed Lawyers from Providing Legal Services

The relevant administrative regulations on foreign law firms in China (e.g., the *Regulations on the Administration of Foreign Law Firms' Representative Offices*) require that each representative office of a foreign law firm must have at least two representatives, although as we discussed above this provision has only been uniformly enforced since 2018. The administrative regulations also require that the Chief Representative shall have been engaged in the practice of law outside China for at least three years and that each of the other representatives shall have been in the practice of law outside China for at least two years.

The 2002 *Provisions of the Ministry of Justice regarding the Implementation of the Administration of Foreign Law Firms' Representative Organizations in China* expressly provides that the term "time of engaging in practice of law outside China" shall mean the duration of registration for engaging in law practice as a lawyer with the statutory registration authority for lawyers of such country in which a law practitioner obtains his/her law practice qualification. In other

据商会所知，其他的主要经济体都未以如此不一致和不透明的方式限制、阻碍或禁止外国律师接触本国政府官员。

差别性税收

与从事相同业务活动的中国律师事务所相比，外国律师事务所代表处在中国缴纳的所得税更高，这是因为中国目前不承认外国律师事务所在税法上的合伙企业地位（详情见 2015 年《白皮书》）。另外，外国律师事务所也不能使用中国律师事务所享受的优惠税收计算方法，这一方法能够大幅降低中国律师事务所的实际所得税率。

从根本上讲，美国和其他在华外国律师事务所要以代表处身份纳税，个人律师同时还要按个人纳税。而国内律师事务所只在个人层面纳税。

为解决这种不公平现象并与《中美税收协定》中的非歧视性原则保持一致，商会建议中国政府在中国所得税征收方面给予外国律师事务所与中国律师事务所同等的待遇。

其他市场准入问题

外国律师事务所还面临其他影响他们在中国执业能力的限制，包括：

- 律所代表处首席代表变更、外国律师更换任职律所的程序过于繁杂；
- 不能或难以聘用外籍非法律专业人士；
- 外国律师（包括首席代表）工作签证的有效期只有一年；
- 工作许可申请程序冗长（持续时间有时可长达 1 年半）。

商会支持中国政府解决上述问题，以便外国律师事务所更高效地在中国服务其客户。

《外国投资目录》的限制

最新的《外商投资产业指导目录》（《外商投资负面清单》）于 2019 年 7 月 30 日开始生效，其中“中国法律事务投资”仍然被列为“禁止”，而在 2011 版本中则是“限制”。但是根据中国在 2001 年《中华人民共和国加入世贸组织议定书》中的承诺，关于中国法律影响的信息

是可以提供的。然而，这并不能满足本章谈到的相关需求，即进一步放开外国律所及其中国国籍律师的准入。

限制外国执业律师提供法律服务

中国关于外国律师事务所的有关行政法规（例如《外国律师事务所驻华代表机构管理条例》）规定，外国律师事务所的代表机构必须至少要有两名代表，上面也提到过，这一规定从 2018 年才开始正式执行。行政法规还规定，首席代表在中国境外职业年限不得少于 3 年，其他代表在中国境外职业不得少于 2 年。

2002 年司法部关于执行《外国律师事务所驻华代表机构管理条例》的规定中明确指出，“境外执业时间”是指在执业资格取得国获得律师执业许可后，在该国法定律师注册登记机构进行律师执业注册登记的时间。也就是说，律师执业注册的时间也算在中国境外的执业时间。然而，在实际执行过程中，司法部和地方司法部门要求外国律所的代表处在注册和续期之时提交文件，分别证明首席代表已在中国大陆以外实际工作了 3 年，其他代表已在中国大陆以外实际工作了 2 年。由于这一做法缺乏明确的法律依据，所以许多外国或中国国籍的优秀律师在法学院毕业或获得律师资格后两年内来中国工作，不能注册成为外国律师事务所中国办事处的代表。未能注册为代表的話，这些律师就不能为客户提供法律服务。这些要求严重限制了外国律师事务所在中国提供法律服务的能力。

自由贸易试验区的法律服务

上海自由贸易试验区（PFTZ）内出现了一些微小但积极的改变，比如 2014 年 11 月发布的《上海自由贸易试验区中外律师事务所互派律师担任法律顾问的实施办法》和《上海自由贸易试验区中外律师事务所联营的实施办法》（详见 2015 年白皮书）。商会再次强调这一点是因为这些进展证明了逐步改善的可能性，并支持在全国范围内推广此类积极的进展。

自 2015 年 4 月以来，上海市司法局已批准多家中外合资律师事务所在上海自贸试验区开展业务。然而即便是在该区域里，合资律所在日常运营中仍然遇到了各种困难。至少有一家合资律所在等待了一年之久后才获准开设银行账户。

另外，商会的多家成员律师事务所在其他国家成立

words, the duration of registration as a lawyer counts for the duration of engaging in the practice of law outside China. In practice, however, MOJ and its local counterparts require, during the registration and renewal of a representative office of a foreign firm, that each Chief Representative or representative demonstrate that he or she has physically worked outside mainland China for three or two years, respectively. This practice, lacking any express published legal basis, has prevented many talented and experienced lawyers of foreign or Chinese nationality from being registered as a representative of the foreign firm's China office if such lawyers come to China for work within two years of law school graduation and bar admission. Without registration as representatives, these lawyers are prohibited from providing legal services to clients. These requirements significantly restrict the ability of foreign law firms to provide legal services in China.

Legal Services in the Pilot Free Trade Zones

Some small but positive developments have occurred within Shanghai's Pilot Free Trade Zone (PFTZ). This includes the November 2014 *Implementing Measures of the Shanghai PFTZ for the Mutual Assignment of Lawyers as Legal Consultants by Chinese and Foreign Law Firms* and the *Implementing Measures of the Shanghai PFTZ for Joint Venture Operations Between Chinese and Foreign Law Firms* (See the 2015 *White Paper* for more detail on these Implementing Measures). We continue to highlight these developments as having displayed the potential for incremental improvement and urge that such positive developments be extended nationwide.

Since April 2015, several Sino-foreign joint-venture law firm offices have been approved to operate in the Shanghai PFTZ by the Shanghai Bureau of Justice. Even there, however, the daily operations of joint-venture offices continue to encounter various difficulties. In at least one case, the joint venture had to wait one year before receiving approval to open its bank account.

We also note that the joint-venture model has been found by several AmCham China member law firms to be unsuccessful in other countries where it has been employed. Like any business, law firms operate best when they can operate independently and share profits and losses as a single operational unit.

Recommendations

Most of the issues addressed in this chapter have been raised by AmCham China for several years, but the barriers largely persist. We continue to hope that increased attention to these issues by both governments will lead to a reduction or elimination of these barriers. We believe that continued opening

of the legal market will promote the development of an advanced services industry in China and thus remains in China's economic interest.

For the Chinese Government:

- **Any Draft Regulations on the administration of China offices of foreign law firms and any restrictions imposed therein should be transparent and be published for public comment before promulgation and implementation. Any restrictions on the ability of foreign law firms to provide advice on China law business matters should be reasonable and practical.**
- Revise current regulations to allow foreign law firms to hire and admit to their employment and partnerships PRC-qualified lawyers without requiring them to suspend their PRC lawyer's license when they join a foreign law firm.
- Allow foreign law firms to hire foreign non-legal professionals, improve the procedures for registering and transferring representatives, extend the duration of visas for representatives, and decrease work permit approval times.
- Clearly provide in regulations that foreign lawyers are permitted to participate in all meetings between their clients and Chinese government departments, and licensed PRC attorneys can handle litigation matters in PRC courts, just as PRC law firms are allowed to do in the US if they employ US-licensed attorneys in their US offices.
- Simplify the requirements, eliminate the unpredictability, and shorten the review period for the establishment of foreign law firms' representative offices, as well as the opening of additional offices.
- Provide foreign law firms with treatment equivalent to that of domestic law firms for PRC income tax purposes.

For the US Government:

- **Negotiate with China to revise current regulations in order to allow US law firms in China to enjoy the same benefits as Chinese law firms operating overseas. This request has appeared in successive *White Papers* for many years, but foreign firms now face the prospect of even tighter restrictions than before.**

的合资模式并不成功。律师事务所和其他企业一样，只有当其能够独立经营并作为单一的经营单位分担盈亏，才能实现最好的经营结果。

建议

商会于几年前已经提出本章所讨论的大部分问题，但多数障碍仍然存在。商会仍然希望两国政府能够持续关注这些问题，最终减少乃至消除障碍。商会相信进一步开放法律服务市场将会推动中国服务业更高水平的发展，也符合中国的经济利益。

对中国政府：

- 任何关于外国律师事务所中国办事处的管理条例草案及相应限制要求必须公开透明，并在颁布实施前征求公众意见。对外国律师事务所就中国法律事务提供咨询的限制政策应该合理切实。
- 修订现行法规，允许外国律师事务所雇用中国执业律师并允许其担任合伙人，不再要求中国执业律师在加入外国律师事务所时放弃其中国律师执业证。
- 允许外国律师事务所聘请外籍非法律专业人士，改善代表的注册和调动程序，延长代表的签证有效期，缩短工作许可的审批时间。
- 在相关法规中明确允许外国律师参与其客户与中国政府部门的所有会议，中国执业律师可以在中国法院处理诉讼事务，而在美国的中国律所在当地办公室雇佣美国执业律师的话，也可以享受同等待遇。
- 对于外国律师事务所设立代表处和开设其他办事处，简化要求，消除不可预测因素以及缩短审核时间。
- 在征收中国所得税方面，为外国律师事务所提供与中国律师事务所同等的待遇。

对美国政府：

- 与中方就修订现行规定一事进行谈判，给予在华外国律师事务所与中国律师事务所海外分支机构所享有的同等待遇。商会已经连续几年在白皮书中提出此要求，但现在外国律所可能会面临更加严格的限制措施。

Machinery & Manufacturing

Introduction

China's manufacturing sector accounts for 30 percent of total GDP (Figure 1) and employs a significant portion of China's labor force. It has been negatively impacted by the imposition of tariffs by the US and China in 2018 and 2019. According to the 2020 AmCham China *Business Climate Survey*, only 34 percent of members in the Resources & Industrial sector (which incorporates machinery and manufacturing companies) reported an increase in revenue in 2019 compared to 2018. Nearly 40 percent do not expect their markets to grow in 2020. (Note: the BCS was conducted in the fall of 2019 and does not reflect the impact of COVID-19). Policy responses to contain COVID-19 resulted in a complete or partial shutdown of many manufacturing facilities across China in Q1 2020, aggravating the challenges facing this sector in 2020.

Under the *Made in China 2025* (MIC 2025) program initiated in May 2015, the government has promoted the upgrade of key manufacturing industries to enable domestic high-end manufacturers to compete at the global level. Stated goals included an increase in the domestic content of core components and materials to 40 percent by 2020 and 70 percent by 2025. Even though the government in the face of foreign criticism is no longer overtly promoting MIC 2025, it appears that the core policies have not changed. For instance, in November 2019, the National Development and Reform Commission (NDRC) and 14 other central government departments issued a policy document that included the same deadline of 2025 for China to form a group of "deeply-integrated" enterprises that will become "sector champions." Therefore, certain aspects of the current policy framework continue to be challenging for foreign-invested enterprises (FIEs).

Many of these domestic content goals can be interpreted as protectionist and run counter to the principle of national treatment for FIEs as established under China's *Foreign Investment Law* (FIL), enacted January 1, 2020. Furthermore, it is unclear to what extent foreign-invested manufacturing firms are or will be considered "domestic", even though FIEs operating in China are Chinese legal entities, or the degree to which they could be pressured to transfer operations and intellectual property to China.

To that end, the *Economic and Trade Agreement between the US and China* (Phase One Deal) includes a number of provisions with respect to forced technology transfer. Importantly, China committed to ending practices that require FIEs to transfer technology or intellectual property to domestic companies in return for market access, administrative approval, or other preferential outcomes. This builds on Article 22 of the FIL which bans forced technology transfer through "administrative" means. AmCham China will be monitoring these provisions closely.

There has been relatively slow progress in resolving issues affecting the manufacturing sector, as noted in previous editions of the AmCham China *White Paper*. These include the timing of implementation of specific regulations, variant tax structures and restrictions on the scope of FIEs operating in the financial leasing industry. As is often the case, part of the problem is inconsistent policy implementation, which is due in part to coordination shortcomings between ministries and between central and local governments. We urge the relevant authorities to consider the issues discussed in this chapter, consult with industry stakeholders, and devise reasonable solutions predicated on a level playing field for all companies, whether foreign-invested, domestically-invested, or state-owned.

Ongoing Regulatory Challenges

Off-Road Emissions Regulation

AmCham China is awaiting the publication of the *Non-road Mobile Machinery and Diesel Engine Stage IV Emission Regulation* (NR4) and will welcome its arrival. As the NR4 emission certification test is much more complicated than NR3 and the lead time for each rating is much longer, we urge the Ministry of Environment and Ecology (MEE) to issue the NR4 as early as possible. NR4 implementation should be postponed to no earlier than December 2021 and should not be enacted any earlier than 18 months from the date that the final NR4 is released in order to give manufacturers time to comply. Considering the timing of the agricultural harvest and the timing of subsidies for agricultural machinery, the implementation of NR4 should only begin in December of the year it is launched. Moreover, as manufacturers have been devoting significant resources to

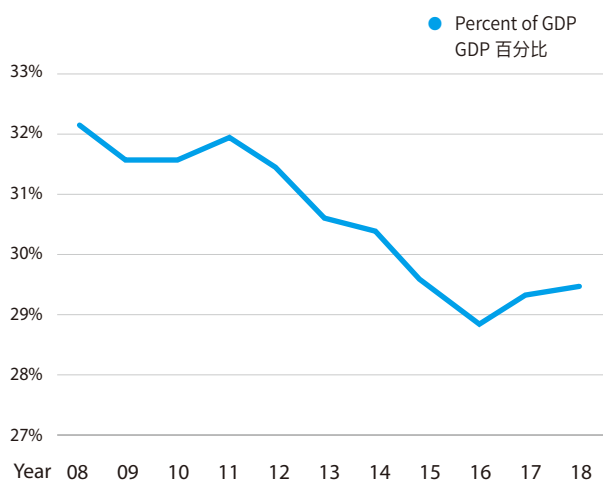
机械制造业

引言

中 国制造业是国民经济的重要组成部分，约占 GDP 的 30%(图 1)，是中国劳动力就业的关键领域之一。2018 年和 2019 年，中美两国互相加征关税，使制造业笼罩在阴霾之下。2020 年中国美国商会（以下简称“商会”）《中国商务环境调查报告》显示，资源和工业产业领域（包括机械和制造公司）的会员企业中，仅有 34% 表示其 2019 年的收入相比 2018 年有所增长。近 40% 的会员企业对其 2020 年的市场增长不抱期待。（注：中国商务环境调查发起于 2019 年秋季，是时新型冠状病毒肺炎疫情尚未爆发，因此相关数据不能反映新冠肺炎疫情的影响）。为遏制新冠肺炎疫情扩散，政府采取了一系列措施，导致中国诸多制造厂商纷纷在 2020 年第一季度陷入完全或部分停摆状态，导致 2020 年中国制造业面临更加严峻的挑战。

Figure 1. Manufacturing as a Percent of GDP, China.

图 1：中国制造业占 GDP 的比重



Source: Work Bank, 2019.
资料来源：《工作银行》，2019

2015 年 5 月，政府首次牵头“中国制造 2025 计划”，支持对制造领域的重要产业进行升级，推动国内高端制造商达到国际竞争水平。“中国制造 2025”计划目标包括，将国产核心部件和材料的自主保障率在 2020 年提高到 40%，到 2025 年提高到 70%。尽管政府因面临他国指责而不再继续公开支持“中国制造 2025”政策，但核心政策似乎并未改变。例如，2019 年 11 月，国家发改委和其他 14 个中央部委联合发布一项政策文件，明确中国到 2025 年，要形成一批高度融合、有潜力成长为产业龙头的企业，与“中国制造 2025”规划同时完成。因此当前政策框架某些方面的内容对于外商投资企业来说仍然构成挑战。

根据 2020 年 1 月生效的《中华人民共和国外商投资法》（以下简称《外商投资法》），自主保障目标可以解读为保护主义，与中国在世贸组织承诺的对外资企业予以国民待遇的原则背道而驰。此外，即使在华经营的外企是中国法人实体，或者迫于压力将业务和知识产权转移到中国，目前依然尚不明确外商制造企业是否能与“国内”企业享受同等待遇。

为此，中美第一阶段经贸协议涵盖多项有关强制技术转让的条款。关键在于，中国已承诺不再要求外商投资企业向国内企业转让技术或知识产权以换取市场准入、行政审批或其他优惠待遇。《外商投资法》第二十二条规定，禁止通过“行政”手段对外商投资企业施加强制性技术转让。这正是此项承诺的基础。商会将密切对这些条款保持关注。

商会往年发布的《白皮书》多次指出，机械制造业相关问题解决进程相对缓慢：包括具体法规的按时执行，融资租赁行业外资企业税收结构的差异、对融资租赁行业外商投资企业经营范围的限制等。问题的部分原因是中央和地方政府部门间的协调不足，导致政策执行不一致。商会呼吁有关部门考虑本章的建议，征求行业利益

technology and product development in support of NR4, we request that MEE not alter requirements for existing technologies lest engine and machinery manufacturers be forced to shoulder losses on existing products. We also urge MEE to simplify the homologation process so manufacturers can deliver clean and efficient products to customers on time.

NR4 is derived from standards implemented in Europe (Stages 3b to 5), and the US (Tier 4f). In general, AmCham China supports international regulatory harmonization to ensure consistent standards treatment of machine engines and engine products that reflect the global supply chains characterizing the engine manufacturing industry. Adherence to globally-accepted international standards promotes a level playing field in the global marketplace, avoids unnecessary costs, and minimizes the potential for artificial limitations on product offerings based on local regulations. AmCham China cautions the government that the adopting of China-specific standards can complicate the compliance process and create unnecessary export barriers for companies.

AmCham China supports stringent and consistent enforcement of emissions regulations for non-road machinery to ensure a level playing field for the whole industry. For details, situations, and technical specifications not clearly provided in the NR4 regulation, AmCham China recommends that the MEE provide clear guidelines in a timely manner to minimize the potential for inconsistent or subjective interpretations. We also urge that the NR4 include a manufacturing anti-tamper design requirement to prevent alteration of emission controls.

The government announced that beginning January 1, 2019 non-road machinery will be required to use petroleum/diesel products (with lower sulfur content) that meet China's NR4 emission standards nationwide. Diesel supplies in many regions, however, particularly in China's more remote central and western regions, are high in sulfur and do not meet the standards established under NR4. High sulfur-content diesel increases engine failure rates and complicates emission control. We urge the government to support the supply of low sulfur-content diesel nationwide and implement appropriate measures to ensure its quality.

Marine Engine Emissions

GB 15097-2016 *Limits and measurement methods for exhaust pollutants from marine engines (China Stage I and II)* issued by the MEE went into effect on July 1, 2018. Per the regulation, all marine engines are required to undergo a 2,500-hour durability test (DF Test) to guarantee that engines will meet the revised emission standards for their lifetime.

The DF Test is a common industry practice to certify both small engines and industrial machinery engines and gener-

ators. Most marine engines are, however, above 1,000 kw and the cost of the test fuel is prohibitive for many manufacturers. Moreover, the DF Test has not been adopted by the International Maritime Organization (IMO) as practice for certifying marine engines. Since *China Stage I and II* went into effect on July 1, 2018, only a handful of manufacturers have obtained the relevant certifications, typically by carrying over their existing non-road engine test results. For manufacturers focused on the production of marine engines, the DF Test has imposed costly administrative burdens.

AmCham China recommends that MEE reconsider the certification process for marine engines and replace the required DF Test with another approach, such as in-use marine engine checks, which use portable exhaust measurement systems to measure emissions and are much less costly than DF testing.

Since the enactment of GB 15097-2016, many domestically-invested and foreign-invested manufacturers have completed the certification tests to comply with GB 15097-2016. And yet, our members continue to experience confusion around exactly which certification tests need to be passed in order to meet GB 15097-2016. This is in part due to overlap in monitoring and enforcement responsibilities between MEE and the China Classification Society (CCS). Our members also find that marine engine parts and products that have not been certified under this standard continue to be sold illegally on the market. AmCham China recommends that the MEE and CCS clarify and where possible simplify the certification process for GB 15097-2016 and work to ensure that only certified marine engine parts and products have access to the market, and improve enforcement to end the illegal sale and use of products that have not been certified under GB 15097-2016.

Remanufacturing

China's remanufacturing industry has enjoyed substantial government support in recent years. To promote its healthy development, AmCham China urges the government to strictly regulate standards for remanufactured finished goods (RFG), particularly RFGs which are not produced by the original manufacturer. At the same time, we also encourage publication of RFG standards for product end-users and consumers to help them understand and clearly distinguish between original remanufactured parts, non-original remanufactured parts, refurbished parts, and overhauled parts.

Since 2017, China's remanufacturing industry has mandated that RFGs for construction machinery and automotive parts can only be used for maintenance when the serviced product is no longer under warranty. It remains difficult to induce customers to accept RFGs when their original product is still under warranty.

相关方的意见，制定合理的解决方案，为所有企业包括外商投资企业、内资企业、国有企业提供公平竞争环境。

现存监管挑战

非道路排放法规

商会欢迎并期待《非道路移动机械及其装用的柴油机第四阶段排放法规》(国四)尽快发布。鉴于非道路国四排放测试比国三要求更加严格，而且所需准备时间更长，商会呼吁生态环境部尽快发布国四法规，生效时间推迟至2021年12月以后，且不应早于法规发布后18个月。考虑到农业收获季及农机补贴实施周期等因素，实施月份应始于当年12月。此外，由于各生产企业已经在技术和产品开发方面投入大量资源，商会建议生态环境部保持对现有技术路线的要求，以免发动机和机械制造商被迫蒙受经济损失。商业还建议简化国四产品的鉴定流程，如排放测试等，以确保制造企业能够按时交付清洁高效的产品。

国四标准的制定参考了欧洲(3b到5阶段)和美国(第四阶段)的标准。总体来说，商会支持国际标准一致化，以确保机械发动机及发动机产品的标准处理与国际供应链发动机制造行业保持协调一致。坚持全球通用的国际标准可以促进全球市场中的公平竞争，避免不必要的成本损耗，并最大限度地减少产品供应方因当地法规差异导致的人为局限性。商会建议中国政府谨慎编制中国独特的标准，因为可能会导致合规程序复杂化，并给企业造成不必要的出口壁垒。

商会希望中国政府能够严格贯彻执行非道路机械排放法规，以保证公平的行业环境。如遇到法规中表述不明确的内容，期望相关部门能够提供清晰的指导方针，以避免主观解读。此外，商会建议国四法规中加设禁止篡改排放设计的规定，防止私自篡改排放控制的情况发生。

从2019年1月1日起，政府宣布要求非道路机械使用符合国四排放标准的石油/柴油产品(含硫量较低)。然而，许多地区尤其是中国西部和内陆的偏远地区所供应的柴油含硫量高于国四规定的标准。含硫量高的柴油会增加发动机故障率，加剧排放控制的困难。商会呼吁中国政府摆明立场，支持全国供应含硫量低的柴油，并采取相应措施确保柴油油品质量。

船舶发动机排放

环境保护部(2018年3月改制为生态环境部)发布的GB 15097-2016《船舶发动机排气污染物排放限值及测量方法(中国第一、二阶段)》已于2018年7月1日起实施。根据规定，任何船用发动机均须进行2,500小时耐久性试验(DF测试)，确定船机在使用寿命期内符合修订版废气排放标准。

耐久性试验是检验小型发动机、工业机械发动机和发电机的常见行业做法。然而，大多数船用发动机功率都在1000千瓦以上，许多制造商难以负担试验所需的燃油成本。此外，国际海事组织(海事组织)并未采用耐久性试验来检验船用发动机。自2018年7月1日“中国一、二阶段”实施以来，只有少数制造商通过沿用现行非公路发动机试验结果获得了相关认证。耐久性试验给生产船机的制造商们带来了巨大的经济负担。

商会建议，生态环境部应重新考虑船机的认证程序，用其他方法取代规定的耐久性试验。例如现行的船用发动机检测，它使用便携式排气测量系统来测量排放量，成本比耐久性试验低得多。

自GB 15097-2016生效以来，很多内、外资厂商已经按标准要求完成了相应的认证试验。然而，商会会员对于究竟需要通过哪些认证测试才能达到GB 15097-2016的标准仍然感到困惑。部分原因在于生态环境部和中国船级社的监督和执行职责有所重叠。商会会员还发现，未通过此标准认证的船舶发动机部件和产品仍在市场上非法销售。因此，商会建议生态环境部和中国船级社在上述标准的基础上，简化GB 15097-2016认证流程，确保只有经过认证的船用发动机零部件和产品才能进入市场，严厉打击违法销售和使用未按要求取得认证产品的行为。

再制造

近年，中国的再制造产业得到了政府的大力支持。为促进其健康发展，商会呼吁政府严格把控再制造终成品的认定标准，对非原厂商生产的再制造终成品更要格外留心。同时建议向产品终端用户和消费者加强宣传再制造终成品的认定标准，以助其了解并明确区分原厂再制造件、非原厂再制造件、翻新件，以及大修件。

2017年起，中国再制造业规定，工程机械和汽车零

Remanufacturing itself has many benefits for consumers and businesses, including lowering product costs, reducing downtime when replacing broken or defective products, and encouraging purchasing flexibility, as well as environmental benefits. A better understanding of the remanufacturing industry among consumers is the most important way to grow market demand for RFGs. Incentivizing the use of remanufactured products during the warranty period will grow the market for remanufactured goods. AmCham China recommends that the relevant departments issue pilot projects or incentives to encourage remanufactured products be used for maintenance during the warranty period provided that the quality meets or exceeds the new product standards.

Several policies issued over the past few years are a welcome attempt to promote the remanufacturing industry. In 2017 NDRC issued Decree No. 12 [2017], which removed the prohibition on remanufactured automotive products being used to assemble new machines, for automotive repairs, or when a customer's warranty period has ended or is exchanged. In 2018 the Ministry of Commerce (MOFCOM) revised the *Administrative Measures for the Import of Mechanical and Electrical Products* to allow used mechanical and electrical products (including remanufactured cores) to be imported for repair and exported afterwards under MOFCOM supervision. We look forward to further progress towards the unimpeded cross-border flow of RFGs and cores. We encourage the government to implement a value-added tax (VAT) exemption for recycled remanufacturing cores, which would benefit the development of the Chinese remanufacturing industry.

Financial Leasing for Machinery and Equipment

Financial leasing services are an effective method for businesses to invest in advanced machinery and equipment and raise productivity. Equipment leases as a share of total manufacturing equipment purchases generally range from 15 to 30 percent in other developed countries, while China's leasing rate is below five percent. Improving the consistency of leasing regulations across government departments and provinces should help expand access to financing.

As of April 20, 2018 MOFCOM transferred its regulatory responsibility for financial leasing companies to the China Banking and Insurance Regulatory Commission (CBIRC). On January 8, 2020, a draft of the *Interim Measures on Supervision and Management of Financial Leasing Companies* (Draft Interim Measures) was published by CBIRC for comment. In the Draft Interim Measures, the scope of business for commercial leasing companies does not list "factoring" as a permitted activity (i.e., a type of debt financing in which a business sells its accounts receivable (its invoices) to a third party at a discount in order to raise capital. Factoring is common practice in many industries, including capital-intensive industries like machinery and manufacturing). Factoring activities

are also not listed in the *Special Administrative Measures on Access to Foreign Investment (2019 edition)* (Negative List) as a restricted or prohibited activity. Its exclusion in the Draft Interim Measures is also not in line with the spirit of the *Guidelines for Accelerating the Development of Financial Leasing Industry* published by the State Council in 2015 (Circular No. 68) which permitted financial leasing companies to engage in factoring transactions.

Factoring transactions of equipment leasing firms primarily involve accounts receivable from manufacturing companies that are generated through the sale of machinery to retailers and dealers. Most of the machinery equipment sold will then be financed to end users via the financial leasing company. The financial risk to the manufacturer and financial leasing company is limited and factoring transactions play a vital role in accelerating cashflows, enhancing access to capital and improving the production and sales capacity of machinery firms and manufacturers. The additional revenue produced by factoring transactions conducted by FIEs is often reinvested into the China market. It is an effective business model that has been used by foreign-invested manufacturers and leasing companies for many years.

AmCham China recommends that regulators prioritize consistency of regulations and only promulgate new policies or regulations after thorough research and with a view to maintaining policy continuity, to reduce the uncertainty facing all companies, including FIEs, operating in China.

With respect to factoring, AmCham China recommends that FIEs approved to conduct factoring transactions be permitted to continue, as they form a useful supplement to the activities of financial leasing companies, provided that they comply with the *Administrative Measures For Financial Leasing Companies* such that "the proportion of leased assets (via factoring) shall be not less than 60 percent of the total assets" of a given entity.

Furthermore, the Draft Interim Measures stipulate that the total risk assets of a financial leasing company may not exceed eight times its net assets. Financial leasing companies have long been subject to ratios such that risk assets are no more than ten times their total net assets, and such leverage has been manageable. Some financial leasing companies operating similar businesses have ratios closer to 12.5 times total net assets. We recommend that the government maintain the provision that risk assets be not more than ten times total net assets, consistent with domestic financial institutions like commercial factoring companies. AmCham China recommends that the government consult with industry with respect to these proposed changes, adopt recommendations proposed by the industry, and provide enterprises sufficient preparation time and a transition period to meet these new regulations so as not to hinder the regular operations of the financial leasing industry.

部件再制造产品只能用于质保期外的维修服务。当原厂产品在保修期内时，消费者很难接受再制造产品。

再制造本身对消费者和企业都益处甚多，可以降低产品成本、减少更换破损或有缺陷产品时的停机时间、加强采购灵活性并提升环境效益。扩大再制造产品市场需求最重要的途径是让消费者更好地了解再制造行业。鼓励在保修期内使用再制造产品，将扩大制成品市场。商会建议，如果产品质量达到或超过新产品标准，相关部门应发布试点项目或出台奖励措施，鼓励厂商在质保期内对再制造产品进行维修。

过去几年出台的几项政策是促进再制造产业发展的可喜尝试。2017年，国家发改委发布了第12号[2017]令，取消了“不得将再制造汽车产品用于原型整机新品生产、汽车维修、或客户质量担保期以外的修理、更换”的规定。2018年，商务部颁布修订版《机电产品进口管理办法》，允许列入《禁止进口货物目录》的旧机电产品（其中包括再制造生产核心产品），在符合环境保护、安全生产的条件下，经商务部同意，可以进境维修（含再制造）并复出境。商会期待中国政府进一步推动再制造成品自由跨境流通，呼吁政府对可回收、再制造核心产品免征增值税，推动中国再制造产业的发展。

机械设备的融资租赁

融资租赁服务是企业投资先进机械设备、提高生产效率的有效手段。在其他发达国家，设备租赁占制造业设备采购总额的15%到30%之间，而中国的租赁比例低于5%。进一步统一政府各部门和各省租赁法规，有助于扩大融资渠道。

截止到2018年4月20日，商务部已将制定融资租赁公司业务经营和监管规则职责划给银保监会。2020年1月8日，银保监会发布《融资租赁公司监督管理暂行办法（征求意见稿）》。在征求意见稿中，融资租赁公司的业务范围未提及商业保理业务（如企业将应收账款（发票）折价出售给第三方以筹集资金的一种债务融资方式）。保理业务在许多行业都很常见，包括资本密集型行业，如机械制造业。《外商投资准入特别管理措施（2019年版）》（负面清单）中的限制性或禁止类经营活动亦未包括此类业务。保理业务也不在《外商投资准入特别管理措施（2019年版）》（负面清单）中列为限制或禁止经营活动。这有违《国务院办公厅关于加快融资租赁业发

展的指导意见》（国办发〔2015〕68号）允许融资租赁公司兼营与主营业务有关的保理业务的精神。

设备租赁公司的保理业务主要是购买制造企业销售设备产生的应收账款，且这些设备大部分将会通过设备租赁公司以融资租赁的形式提供给最终用户。因此，在制造企业和设备租赁公司总体风险有限的基础上，保理业务在加速制造企业资金周转、扩大生产销售方面发挥了重要作用。外商投资企业开展保理业务所产生的额外收入，往往再投资于中国市场，这是国际制造企业及其设备租赁公司通行多年的成功经验。

商会建议监管部门优先保证监管政策的一致性，在充分调研的基础上谨慎制定新政策、新规则规则，减少包括外商投资企业在内的所有在华经营企业面临的政策不确定性风险。

考虑到融资租赁公司正常业务的延续性，商会建议允许已获批兼营商业保理业务的融资租赁公司继续兼营商业保理业务，作为融资租赁业务的有益补充。但前提是需符合《融资租赁企业监督管理暂行办法》中“融资租赁和其他租赁资产比重不得低于总资产的60%”的规定。

此外，征求意见稿规定融资租赁公司的风险资产总额不得超过净资产的8倍。考虑到融资租赁公司长期以来适用杠杆率不会超过10倍，一直风险可控。经营同类业务的金融租赁公司的杠杆率为12.5倍，因此，商会建议将融资租赁公司的杠杆率保持最高值10倍不变，与商业保理公司等其他地方金融机构保持一致。商会建议中国政府发布有关管理办法时应充分听取租赁公司的意见，并给予行业足够的准备期及过渡期，确保租赁公司的正常业务运营不受影响。

原“中国制造2025”

“中国制造2025”计划于2015年首次推出，旨在通过降低劳动密集型生产，扶持高科技机械和产品，重塑中国制造业。到2025年实现基本工业化，到2035年制造业整体达到世界制造强国阵营中等水平，到2049年综合实力进入世界制造强国前列。

2018年，“中国制造2025”计划作为中美贸易争端及谈判内容的一部分，情况变得不够明朗。不确定性笼罩着业界：“中国制造2025”在很大程度上仍然是官方政策，即使正式停止执行，该计划的关键政策在很高程

The Former Made in China 2025

The MIC 2025 program, first announced in 2015, was designed to reshape Chinese manufacturing by reducing labor-intensive production in favor of high-tech machinery and goods. It aimed to increase innovation and manufacturing efficiency in order for China to achieve basic industrialization by 2025, become an intermediate manufacturing powerhouse with full industrialization by 2035, and then a global leader in manufacturing by 2049.

In 2018 as part of the trade dispute between the US and China, the status of the MIC 2025 program became less clear. That lack of clarity continued into 2019. There is uncertainty in the business community around the extent to which MIC 2025 still constitutes official policy and, even if it is officially discontinued, to what extent key policies of the program remain de facto policy. It remains unclear how FIEs, particularly those that are developing and producing goods and products in China for the Chinese market, are and were able to participate.

Under the former MIC 2025, the Chinese government mandated numerous indigenous innovation policies and announced high domestic content goals which appear to be tantamount to import substitution. Even if the former MIC 2025 program has ended in name, core elements of the program do not appear to have been terminated, as evidenced by the November 2019 announcement by NDRC to promote the integration of advanced manufacturing with modern service sectors, and to support sector champions.

AmCham China members remain concerned that MIC 2025 policies will continue to be used to support domestically-invested companies at the expense of FIEs by effectively excluding FIEs from commercial opportunities given the implicit and explicit favoritism toward local firms created by the stated industrial policy. End users should have the freedom to purchase capital equipment and services from any vendor they choose, including local FIEs. Reducing the choices available in the marketplace through government mandate will limit opportunities for innovation, disincentivize foreign investment and negatively impact the overall development of industry.

Subsidies are another area of concern for manufacturing FIEs under MIC 2025. Many incentive programs that include subsidies are unclear due to inconsistencies in implementation methods among regions. AmCham China urges the government to treat all industrial entities equally and provide a level playing field. Even though MIC 2025 may have formally ended, baseline support for the policy appears to be ongoing with less transparency which is no less problematic. More importantly, AmCham China is increasingly concerned that the continued use of subsidies is inconsistent with China's WTO commitments and plays a role in the ongoing trade tensions between the US and Chinese governments.

We therefore recommend the use of tax credits as an alternative in line with global and US practice, rather than subsidies which are viewed negatively by the international business community. Some key points and recommendations in this area are as follows:

- MIC 2025 subsidies were, and current apparent practices are, distorting competitive opportunities for both domestic and foreign companies,
- The business plans of many domestic firms are based on subsidies and are generally not viable in the long term. Subsidies waste government resources while placing foreign firms at a financial disadvantage,
- Moving to a tax credit regime will incentivize good companies to risk their own capital to become eligible for credits later,
- A tax credit regime is also conducive to anti-corruption measures, enhances tax compliance, and allows for greater control over businesses.

Recommendations

For the Chinese Government:

- **Consider replacing the current subsidy system with a tax credit regime based on current global norms and ensure a level playing field for FIEs.**
- MEE should issue the NR4 as early as possible. NR4 implementation should be postponed to no earlier than December 2021 and should not be enacted any earlier than 18 months from the date that the final NR4 is released in order to give manufacturers time to comply. Considering the timing of the agricultural harvest and the timing of subsidies for agricultural machinery, the implementation of NR4 should only begin in December of the year it is launched. Finally, we recommend the machinery homologation procedure be simplified to enable manufacturers to deliver clean and efficient products to customers on time and ensure stringent and consistent enforcement of emission regulations.
- Simplify the certification requirements for marine engines related to GB 15097-2016 and adopt a test approach such as in-use marine check rather than the current DF test. Ensure that marine engine parts and products available on the market have all met the standards set by GB 15097-2016.
- Continue to promote the unimpeded flow of RFG across borders and make recycled, remanufactured cores exempt from VAT. Consider allowing RFG to be used for warranty replacements.

度上仍然有效。目前尚不清楚外商投资企业，特别是在中国为中国市场开发、生产商品和产品的企业，如何能够参与其中。

在原“中国制造 2025”计划的指导下，中国中央政府颁布了多项自主创新政策，公开表明计划提高自主保障比例，似乎有意实现进口替代。即使原“中国制造 2025”计划名义上已经停止，但其关键内容并未泯灭，即要形成一批高度融合的企业，发展成为产业龙头企业，与最新“中国制造 2025”战略截止时间相同。例如，2019 年 11 月，国家发改委宣布形成一批高度融合的企业，发展成为产业龙头企业。

商会会员企业仍然担心，原“中国制造 2025”会牺牲外资企业来扶持内资企业。鉴于政策对本土企业有明里暗里地优待，外资企业将无法避免与商业机会隔绝的命运。最终用户应当有权自行选择供货商，购买资本设备和服务，包括外商投资的本地生产企业。借政府之手压缩市场选择范围将打击市场创新潜力，不利于行业的总体发展。

补贴是“中国制造 2025”计划中外资制造商担心的另一个问题。由于在不同地区补贴执行不一致，许多包括补贴在内的优惠方案尚不明确。商会呼吁中国政府一视同仁，营造公平的竞争环境。更重要的是，商会越来越担心，持续补贴可能会加剧中美两国政府之间的贸易冲突。

因此，商会建议将税收抵免作为替代方案，与美国和国际接轨，不再采用国际商界均不看好的补贴方式。要点和建议如下：

- “中国制造 2025”的补贴曾经、并且依然在破坏国内外企业的公平竞争；
- 许多国内公司的商业计划都有补贴作为依托，从长远来看是不可取的；这样做既补贴浪费了政府资源，又使外国公司陷入财务劣势；
- 采用税收抵免制度将激励优秀企业投资资金，并在未来获得抵免；
- 税收抵免制度还有利于反腐败，提高税收合规，并可以更好地管理企业。

建议

对中国政府：

- 建议考虑将现行的补贴制度替换为基于当前全球规范的税收抵免制度，确保外资企业享有公平的竞争环境。
- 建议简化国四产品的鉴定流程，确保制造企业按时交付清洁高效的产品，并确保排放法规执行的严格和一致性。
- 简化船用发动机 GB 15097-2016 的认证要求，采用现行的船用发动机检测，不再实行目前的耐久性试验。确保市场上的船用发动机零部件和产品均符合 GB 15097-2016 标准。
- 继续推动再制造成品自由跨境流通。对可回收、再制造的核心产品免征增值税，考虑允许再制造成品用于保修更换。
- 优先保证监管政策的延续性，在充分调研并适当考虑到在华经营外商投资企业面临政策发展不一致、缺乏延续性等相关风险的基础上谨慎制定或修订监管规定。在重型机械融资租赁领域，继续允许外商投资企业将保理业务作为常规业务。

对美国政府：

- 建议继续敦促中国相关部门确保中国制造 2025 政策不以牺牲外商投资企业为代价扶持国内企业，不对内资企业予以补贴优待，违反中国的“入世”承诺。

- Prioritize regulatory consistency and only promulgate new or amended regulations after thorough research and with appropriate consideration of the risks created by inconsistency and a lack of continuity which particularly hamper FIEs. In the financial leasing sector for heavy machinery, continue to permit FIEs to engage in factoring as a regular element of their business operations.

For the US Government

- Continue to urge China to ensure that policies stemming from MIC 2025 do not favor domestically-invested enterprises at the expense of FIEs and are not dependent on subsidies in violation of China's WTO commitments.

Media and Entertainment

Introduction

The media and entertainment industry in China plays an important role in creating creative and enriching content for the domestic market and driving economic growth. China is the second largest movie market globally after the US. In 2019, its total box office revenue grew 5.4 percent to RMB 64.3 billion (US \$9.2 billion), though this was slower than a growth rate of nine percent in 2018. China already has the greatest number of movie theatre screens of any country globally, with 69,787 screens at the end of 2019. The professional quality of China's domestic films has also been on the rise.

In recent years, supported by the largest Internet user base in the world, China's online audiovisual business has also been expanding dramatically. According to China Netcasting Services Association, China's online video users have grown from 461 million in 2015 to 725 million in 2018, a 57 percent growth. It provides consumers with access to an array of movies, television programming, music, and multimedia content.

The Chinese government has actively promoted the development of the media and entertainment industry to bring China's rich entertainment and cultural traditions to the global market and taken some action to combat piracy, including renewed commitments in the *Economic and Trade Agreement Between the US and China* (Phase One Deal). And yet, the media and entertainment industry in China remains largely prohibited to foreign investment. The *Special Administrative Measures (Negative List) for Foreign Investment Access (2019 Edition)* (2019 Negative List), that went into effect on July 30, 2019 did not remove the prohibition on foreign investment in the cultural and media entertainment sectors.

Beyond foreign investment restrictions, foreign companies are handicapped in their ability to deliver content to users in China and must license their content to domestic providers. Foreign media content can even be subject to restriction even in the absence of official public regulatory action. For instance, in response to a tweet dated October 4, 2019 from the account of a General Manager of an NBA team regarding events in Hong Kong, CCTV announced on October 8, 2019 that it would suspend broadcasts of NBA

games. Tencent Sports, a live streaming platform with rights to stream NBA games and other league content in China, followed suit. To our knowledge, this blackout occurred even in the absence of official public regulatory action. The CCTV blackout has continued as of the time of this writing, though Tencent Sports resumed streaming some NBA games and other video platforms have continued offering NBA content.

There is much to be done to tackle long-standing market access challenges and regulatory barriers in order to provide a level playing field for all media and entertainment companies, foreign or domestic, and for companies to realize the full potential of their investments. AmCham China is encouraged by the Phase One Deal and urges China to fully implement its commitments and promote reciprocity in market access, remove discriminatory regulations, and continue to prioritize and protect intellectual property (IP) rights.

Ongoing Challenges

Film

Foreign investment restrictions

For the last decade, foreign companies have been prohibited from establishing or operating film production companies, distribution companies and film import businesses, as mandated by the *Foreign Investment Catalog and the Special Administrative Measures (Negative List) for Foreign Investment Access* (Negative List). Foreign entertainment companies are only permitted to work with domestic partners to co-produce films on a project-by-project basis under strict regulation.

At the October 2017 19th National Congress of the Communist Party of China (CPC), President Xi Jinping stated "China will not close its door to the world and will only become more and more open." AmCham China members hope that the film production and distribution market will be opened to US film and TV producers, which will not only promote China's domestic film industry, but give China's rich cultural traditions greater exposure to the world.

媒体与娱乐业

引言

媒体与娱乐业在中国发挥着重要作用，它为国内市场提供新颖丰富的内容，并推动经济增长。中国是仅次于美国的全球第二大电影市场。2019年，中国电影总票房收入达643亿元人民币（约合92亿美元），比上年增长5.4%，低于2018年9%的增长率。同时中国拥有全球最多的电影银幕数量，全国范围内共计69,787块。中国国产电影的质量也在不断提高。

近年来，得益于位居全球第一的互联网用户规模，中国的网络视听产业迅猛发展。根据中国网络视听节目服务协会数据，中国在线视频用户数量从2015年的4.61亿增加到2018年的7.25亿，增长率达57%。该产业的发展为消费者提供了丰富的电影、电视节目、音乐和多媒体内容。

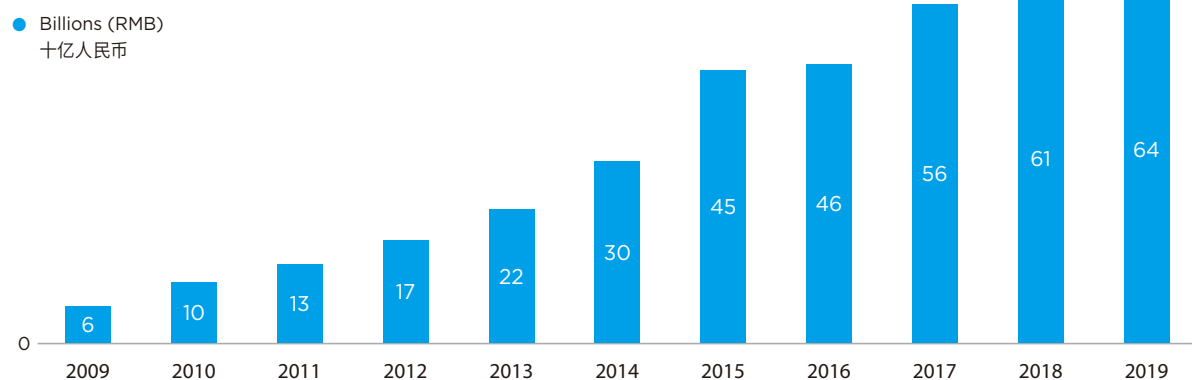
中国政府一直以来积极推动媒体和娱乐业的发展，致力于将中国丰富的传统娱乐文化推向全球市场，并同

时采取有力措施打击盗版，包括在《中美第一阶段经贸协议》中重申其承诺。在此大环境下，其媒体和娱乐业却又在很大程度上仍然禁止外商投资。于2019年7月30日生效的《外商投资准入特别管理措施（2019年版）》（2019年负面清单）并未去掉对外商投资在文化和媒体娱乐领域的限制。

除外商投资限制外，外商投资企业在向中国用户提供内容时不堪造就，而且必须将内容授权给国内内容服务平台。在没有明确官方法规文件的指导监管下，外国媒体的内容也会受到限制。例如，2019年10月4日NBA一支球队总经理在推特上发表涉港不当言论，随后2019年10月8日中央广播电视总台央视体育频道立即暂停NBA季前赛（中国赛）目前的转播安排。负责NBA和其他联赛在中国网络转播的腾讯体育也紧随其后，宣布暂停NBA季前赛的转播安排。据中国美国商会（商会）了解，此类情况在缺乏明确的监管法规文件下，时有发生。截止目前，虽然腾讯体育恢复转播部分NBA赛事，其他视频平台也恢复播放有关NBA赛事内

Figure 1. China Box Office Revenue

图 1. 中国票房收入



Source: Compiled from Multiple Sources: Reuters, ChinaFile, Market estimates.
来源：包含多个来源，路透社，ChinaFile，市场估计

Theatrical Film – Revenue Share and Quota

The *US-China Film Memorandum of Understanding* (MOU) was signed in 2012 to settle a WTO dispute in lieu of China complying with its obligations. Under the terms of the MOU, China allowed a total of 34 foreign films into the country annually, of which 14 films must be in “enhanced format” (e.g., 3D or IMAX). These 34 films are subject to revenue-sharing agreements, pursuant to which US film production companies receive only 25 percent of the gross box office revenue for each film. Under its terms the MOU it was required to be updated in 2017, including a commitment by China to enhance the benefits to the US under the MOU. To date, however, a new MOU has yet to be concluded. AmCham China recommends that any new MOU allow foreign film producers to receive a share of the gross box office revenue which their films generate in line with international norms and increase the number of enhanced format films to be imported each year.

Release Date and Restrictions During Peak Seasons

While some imported films are permitted day-and-date releases in China, many are delayed for weeks. Moreover, release dates are often given only four to six weeks in advance, hindering planning and effectively limiting marketing opportunities. In addition, the Chinese government implements “blackout periods,” during which no new foreign films may be released. These blackout periods are designed to discriminate in favor of domestic films and limit competition. They typically occur during the summer and Lunar New Year holidays or coincide with political events.

Delayed day-and-date releases, short notice release dates, and restrictions on the release of new foreign film titles during peak seasons not only discriminates against foreign films but also reduces total Chinese box office revenues while encouraging Chinese citizens and entertainment consumers to turn to illegal sources for unauthorized film and TV content.

Online Audiovisual Services

As noted above, China has seen rapid growth in its online audiovisual industry. At the end of 2018 China’s online video market was worth an estimated RMB 187 billion (US \$26.4 billion), representing 52.8 percent growth year-on-year. Ongoing market access restrictions prevent foreign companies from competing—entirely in some respects, or equally in other respects—in this fast-growing market.

Foreign Investment Restrictions

For over a decade China has prohibited foreign investment in online audiovisual services. Instead, foreign companies have to license their content to domestic companies which

distribute it to the Chinese market.

Governance of Internet Information

In December 2019 the Cybersecurity Administration of China (CAC) issued the *Regulations on Ecological Governance of Network Information Content* (Regulations), effective March 1, 2020. These Regulations aim to create a “clear” cyberspace and “good” cyber ecology, promote “positive energy” and deal with “handling of illegal and bad information.” AmCham China is concerned about the Regulations as they appear to constitute a wide-ranging effort to further police China’s digital and internet ecosystem. Furthermore, rather than an effort to simply ban or censor illegal and inappropriate information from the Internet, the Regulations are an attempt to explicitly promote the creation, production, and dissemination of certain information and content deemed “encouraged” by the government (this includes content related to Party’s ideology and theory). It remains unclear how the Regulations will be implemented in practice, nevertheless, they provide a legal framework to further restrict the content and media activities of both domestic and foreign companies and are likely to have a significant impact on the media and entertainment sector, particularly for those who offer audiovisual content over the Internet.

Quota Restrictions and Content Review

The State Administration of Press, Publication, Radio, Film and Television (SAPPRFT’s) September 2014 *Notice on Further Implementation of Provisions Concerning the Administration of Online Foreign Films and TV Dramas* caps the online distribution of foreign content at 30 percent and requires online distributors to submit content for censorship review. The content review process includes only two windows each year for online distributors to submit content for registration and review. Moreover, the authorities require foreign TV series to be submitted as complete seasons, whereas previously they could be submitted on a per-episode basis; this rule effectively delays access to foreign TV series at the time when they are most valuable. Since the 30 percent foreign content cap is limited by country, in actuality, US content is restricted to less than 10 percent in real market terms.

These rules have substantially reduced the number of US films and TV dramas distributed in China. These restrictions have also contributed to an increase in use by Chinese citizens of unauthorized piracy sources for these programs online.

In September 2018 the new National Radio and TV Administration (NRTA) (which replaced SAPPRFT in March 2018) issued new Draft *Administrative Rules on the Introduction and Dissemination of Foreign Audio-Visual Programs*. These rules further tighten controls on foreign content and propose not only a generic 30 percent cap on foreign content, but mandate that the 30 percent quota be applied on a genre-

容，但中央广播电视总台央视体育频道仍禁止转播 NBA 比赛。

解决长期存在的市场准入问题和监管障碍，为国内外所有媒体和娱乐公司提供一个公平的竞争环境，使这些公司充分释放其投资的巨大潜力，这一任务仍然任重道远。受《中美第一阶段经贸协议》鼓舞，商会敦促中国政府全面履行其承诺，在市场准入方面采用对等原则，消除歧视性规定，并继续加强知识产权保护。

现存监管挑战

电影

外商投资限制

近十年来，根据《外商投资产业指导目录》和《外商投资准入特别管理措施（负面清单）》的规定，中国政府禁止外商投资设立或经营电影制作公司、发行公司及电影引进业务。外国娱乐公司只能与国内公司合作，在严格监管下以项目制为基础，联合制作电影。

习近平主席在 2017 年 10 月中国共产党第十九次全国代表大会上表示：“中国开放的大门不会关闭，只会越开越大。”商会会员希望中国能够向美国电影电视制作方开放电影制作市场，这不仅有利于中国国内电影产业的发展，也有利于向世界展示中国丰富的传统文化。

院线电影 – 票房分账和配额

《中美双方就解决 WTO 电影相关问题的谅解备忘录》（谅解备忘录）于 2012 年签署，作为双方在中国履行 WTO 义务问题上存在分歧的解决方案。根据谅解备忘录的规定，中国每年允许 34 部外国分账电影进入中国，其中 14 部电影必须是“高技术格式”电影（如 3D 或 IMAX 格式）。这 34 部电影按照有关票房分账协议条款执行，美国电影制作公司只能获得每部电影总票房的 25% 作为分成收入。此谅解备忘录根据约定须在 2017 年磋商更新，其中包括中方在备忘录承诺届时将强化美方利益。然而，时至今日，新的协议尚未达成。商会敦促，任何新的谅解备忘录都应保证外国电影制片方获得符合国际惯例的影片总票房分账比例以及增加每年进口的高技术格式电影数量。

影片上映日期和旺季期间限制

少数进口影片获准在中国与国外同步上映，但多数影片会推迟数周才能上映。此外，进口影片在中国的上映日期通常只在上映前四到六周才能最终确定，极大地限制了策划和市场营销的机会。并且，中国政府还设置了“国产电影保护期”，在此期间，不允许新的外国电影上映。这一措施旨在保护中国本土电影的发展，违背了公平竞争原则。“国产电影保护期”通常在暑期和农历新年假期，或政府认为的特殊时期。

推迟同步上映日期、短暂的定档发布期及旺季期间对新上映外国影片的限制，不仅是对国外影片的歧视，还会减少中国电影票房的总收入，使得消费者转移到非法渠道去获取未经授权的影视内容。

网络视听服务

如上所述，中国网络视听产业迅猛发展。截止 2018 年底，预计网络视频内容行业市场规模为 1870 亿元，同比增长 52.8%。然而，长久以来的市场准入限制在不同程度上阻碍了外国公司在这一快速增长的领域进行平等竞争。

外商投资限制

十多年来，中国一直禁止外商投资网络视听节目服务业务。外国公司只能将其影视节目内容授权给国内公司，由后者向观众提供服务。

网络信息治理

2019 年 12 月，国家互联网信息办公室公布《网络信息内容生态治理规定》（以下简称“治理规定”），自 2020 年 3 月 1 日起施行。此规定以营造清朗的网络空间为目标，开展弘扬正能量、处置违法和不良信息等相关活动。商会对此规定表示关注，该规定为了进一步加强对网络生态系统的监管与审查，治理规定并不单是简单地禁止、审查网络违法不良信息，更倾向推动创作、传播政府所倡导的信息（宣传共产党的理论路线放在和中央重大决策部署的）。如何贯彻落实治理规定尚不得而知，但是治理规定提供了一个法律框架，进一步限制内外资企业的内容生产和媒体活动，有可能对媒体娱乐业特别是对网络信息内容服务平台，产生重大影响。配额限制和内容审查

by-genre basis to film, TV, animation, documentaries, and “other” programs, including education, science and technology, culture, variety, and sports programs.

While these rules on broadcast of overseas programming were issued in draft form and have not been officially promulgated, AmCham members are deeply concerned that US film and TV companies continue to face an extremely uncertain and uneven playing field. Without official announcements or issuance of regulations, industry-wide application of the 30 percent foreign content cap on cartoons may have started as of the beginning of 2020. Further unannounced restrictions were also made in expanding quota application by genre to other categories as well, such as documentaries and other overseas TV programs. China should adopt the spirit of the Phase One Deal on reciprocity and Premier Li’s policy of pre-established national treatment, and remove these restrictions that have adversely impacted US film, and TV programs licensed in China for online distribution. This has resulted in delays, effectively curtailing day-and-date releases and in practice further restricting the amount of foreign content licensed online.

Furthermore, in the second quarter of 2019, without official announcement, Chinese government agencies have significantly slowed the processing of US content review intended for Chinese online streaming platforms, in what is being called a “soft ban” by industry.

The above policy changes, including the lack of transparency of quota and content review process, are not consistent with President Xi’s announcement of “rule by law,” nor do they comply with Article 7 of the newly effective *Foreign Investment Law Implementing Regulations*, which states “unpublished rules shall not be taken as the basis for exercising regulation over foreign investment.”

AmCham China recommends the Chinese government to take the following actions:

- Remove restrictions on foreign investment in the online audiovisual market and allow foreign companies to operate online streaming services,
- Streamline online publishing rules allowing previously General Administration of Press and Publication (GAPP)-approved home entertainment DVD licenses to be distributed on online video platforms without resubmission for another round of censorship approval,
- Allow films with an approved theatrical release permit to be released on online video platforms without having to undergo another round of content review,
- Revoke all other measures and remove all quota restrictions (including the 2014 *Notice on Further Implementation of Provisions Concerning the Administration of Online Foreign Films and TV Dramas*),
- Remove and cease implementation of all laws, regulations, decrees, and notices that are not officially and

publicly announced and published.

Television

Despite the growth in online audiovisual services, television still reaches the largest domestic audience nationwide. China prohibits foreign investment in television, including in television production companies. Chinese local cable networks are prohibited from carrying foreign satellite channels without government approval or landing permits. Foreign satellite-based channels beaming into China are required to downlink from a government-owned encrypted satellite platform, and these channels may be available only in high-end hotels (three star and above) and foreign expatriate compounds. The annual fee for each channel remains prohibitively high, at US \$100,000. In addition, strict, long-standing regulations limit the total airtime of foreign content broadcast on domestic television, including complete bans on foreign programming during prime time. These restrictions should be relaxed.

Intellectual Property Protection

Internet Piracy

The National Copyright Administration of China (NCAC) has initiated Special Enforcement Campaigns on copyright infringement every year since 2005. These campaigns have resulted in positive and lasting changes to the video-hosting landscape and created an environment that is enabling the growth of a legal digital media economy.

Nevertheless, illegal downloading and streaming of foreign films remains very problematic in China. Many illegal websites utilize Peer-to-Peer (P2P) networks and applications to provide instant streaming access to unauthorized and illegal copies of movies and television shows. These links are rapidly disseminated via social media platforms. There are also many mobile apps and devices that aggregate pirated content, constituting a threat to the legitimate US and China motion picture industries. China must continue working to regulate these P2P networks, websites, and mobile content aggregators, which together have become a significant threat to the continued growth of a legitimate online media and entertainment industry.

On November 24, 2019, the Central Committee of the Communist Party and the State Council jointly issued the *Guidelines on Strengthening the Protection of Intellectual Property Rights*. AmCham China hopes concrete steps will be taken to strengthen IPR protection (including copyright, patent, and trademark).

To address the challenge of internet piracy, AmCham China recommends the adoption of adequate protection for digital media through the following actions:

2014年9月，国家新闻出版广电总局发布《关于进一步落实网上境外影视剧管理有关规定的通知》，规定单个网站年度引进播出境外影视剧的总量，不得超过该网站上一年度购买播出国产影视剧总量的30%，并要求各网站将所引进的境外影视剧内容递交审查。每年只有两个时间窗口可以让网络平台递交登记和审查申请。此外，境外电视剧必须以整季的形式提交，而此前则允许以单集形式提交。这一规定实际上拖延了外国电视节目内容在最具价值的时间进入市场。此项“30%”的境外影视剧内容配额限制，在实践中，鉴于还按照国别进行了进一步细分，使得美国的影视剧内容实际上仅占国产影视剧内容的10%以下。

这些规定大大减少了美国影视剧的引进数量，也促使了中国消费者通过网络上未经授权的盗版渠道去获取内容。

2018年9月，国家广播电视总局（于2018年3月取代原国家新闻出版广电总局）发布《境外视听节目引进、传播管理规定（征求意见稿）》。这一征求意见稿进一步加强对境外视听节目的管理，不仅强调了境外视听节目总量不得超过30%的限制，同时规定网络视听节目服务单位可供播出的境外电影、电视剧、动画片、纪录片和其他境外电视节目（包括教育、科技、文化、综艺和体育节目等），不得超过该类别可供播出节目总量的30%。

虽然这部关于境外视听节目管理的规定目前只是征求意见稿，官方文件尚未正式发布，但是商会会员企业十分担心美国影视公司将面对极度不确定、不公平的竞争环境。尽管并未正式公告或出台法规，动画片类别的30%配额限制，可能已于2020年年初可开始执行。另有迹象表明，纪录片和其他海外电视节目等类别也即将受到这一配额限制影响。中国政府应遵循《中美第一阶段经贸协议》的对等原则和李克强总理提出的准入前国民待遇，取消对美国电影电视节目在中国网络发行的限制性措施。这些针对于境外视听节目配额和内容审查的限制，极大地延长了境外视听节目在中国流媒体平台上线发行的时间，并且进一步减少了境外视听节目在中国市场的份额。

2019年第二季度，在没有官方声明的前提下，中国政府机构明显放缓了美国视听节目内容登陆中国流媒体平

台的审查流程进度，这一现象在行业内被称为“软禁令”。

以上政策变化，包括配额和内容审查流程缺乏公开透明性，既与习近平主席提出的“依法治国”不符，也不符合新生效的《外商投资法实施条例》第7条规定（该条款规定“与外商投资有关的规范性文件应当依法及时公布，未经公布的不得作为行政管理依据”）。

商会敦促中国政府：

- 取消对外商投资网络视听节目服务的限制，允许外资企业经营在线流媒体服务；
- 简化网络视听节目服务审查规则，允许国家新闻出版总署批准的家庭娱乐DVD在网络视听节目服务平台发布，而无需进行新一轮的内容审查；
- 允许持有公映许可证的电影在网络视听节目服务平台发布，而无需进行新一轮的内容审查；
- 撤销所有其他措施并取消所有配额限制（包括2014年发布的《关于进一步落实网上境外影视剧管理有关规定的通知》）；
- 取消并终止执行所有未经正式公开和发布的法律、法规、法令和通知。

电视

尽管网络视听服务规模增长很快，电视依然在中国拥有最广泛的受众群体。中国禁止外商投资该领域，包括投资电视节目制作公司。未经政府批准或落地许可，中国本地有线电视网络不得传送境外卫星频道。境外卫星频道落地中国，需要通过政府卫星平台加密定向传送，且这些频道仅能在涉外高端酒店（三星及以上）和外籍人士居住区播放。同时，每个频道的高达10万美金的年费令人望而却步。此外，长久以来，中国一直严格限制境外节目内容在电视频道的总播出时间，包括完全禁止外国节目在黄金时段的播出。这些限制都应予放宽。

知识产权保护

网络盗版

国家版权局自2005年起，每年开展打击网络侵权盗版专项治理的“剑网行动”。这为网络视听行业带来积极良好的变化，为合法数字媒体经济的增长创造了良好的政策法规环境。

- Promulgate new rules that effectively address the huge volume of internet piracy caused by video aggregation websites and mobile apps,
- Enumerate the exclusive rights under the copyright,
- Criminalize violations of the Anti-Circumvention Provisions for Technological Protection Measures (TPMs) and information rights management (IRM),
- Criminalize internet offenses that may lack a demonstrable profit motive but that impact rights holders on a commercial scale. Revise the “500 copies” criminal threshold,
- Eliminate legal distinctions between crimes of “entities” and “individuals,”
- Provide deterrent-level civil and criminal penalties for infringement,
- Establish an adequate liability regime for e-commerce platform operators as well as satisfactory measures for notice and takedown of websites central to the piracy ecosystem.

Camcorder Piracy

China continues to have a significant number of instances of camcorder piracy across the film industry. Industry analysis has identified as many as 53 illegal camcorder-based recordings coming from cinemas in China between 2018 and 2019. While China has been cooperative in efforts to prevent camcorder recordings, more effective deterrent measures need to be put in place. AmCham China urges the government to strengthen civil, administrative, and criminal penalties to deter illegal use of camcorders in cinemas.

Piracy Devices and Apps

China is a leading manufacturer of blank media boxes which permit installation of third-party, pre-loaded, or post-purchase applications that allow consumers access to pirated content. AmCham China members would like to work with the Chinese government to develop solutions to deal with the challenges posed by these blank media boxes.

Legislative Inaction on the Copyright Law

China’s Amendment of the *Copyright Law* has been under review since the Legislative Affairs Office (now under the Ministry of Justice (MoJ)) solicited public comments in June 2014. China should prioritize the amendment process and enact a revised *Copyright Law* to help address issues discussed above. As part of the review, China should increase the level of compensation given to copyright owners who have their rights infringed, ease the copyright owner’s burden of proof, and establish stronger deterrent-level penalties.

Theme Park Industry

The culture and tourism industry has become a pillar of the Chinese economy. In 2018, revenue from tourism accounted for roughly 12 percent of China’s GDP. The country is on track to becoming the world’s largest amusement, attraction, and leisure market in 2020. With domestic sales exceeding RMB 40 billion (US \$6 billion) in 2018, China’s amusement, attraction, and leisure theme park industry is booming. International brands and operators are now entering or has already entered the market including Shanghai Disney Resort, Universal Beijing Resort, Merlin Entertainments (Legoland and Madame Tussauds) and Village Roadshow. With a growing middle-class population (now estimated to include some 400 million people) and a domestic transportation system that is continuously under development, domestic demand for theme parks in China is anticipated to grow rapidly. Market analysis had estimated that the Chinese amusement, attraction, and leisure market would grow 8 percent annually from 2019 to 2024, however it is likely these estimates will need to be reviewed, at least for 2019 and 2020, because of the outbreak of SARS-COV-2/ COVID-19.

Nevertheless, despite promising growth prospects in the industry, foreign operators face a number of industry-wide challenges. We discuss the main challenges and our recommendations to address these challenges below. We believe addressing these challenges will be beneficial for the amusement, attraction, and leisure industry in China, for both foreign and domestic operators, and stimulate the Chinese economy given this industry’s contribution to GDP.

- **Intellectual property protection.** IPR is one of the key areas of concern for the industry. Central and local governments need to increase their coordination and enforcement of IPR, including by developing a system for conducting regular inspections to identify and dispose of counterfeit and/or infringing products, particularly in shopping malls, key transportation ports, and retail and wholesale markets.
- **Friction in the China-US bilateral relationship.** In particular tension in the trading relationship has affected both the development of and operational performance of theme park projects in China. Chinese tariffs of more than 25 percent imposed on American-made amusement and theme park ride equipment is already daunting and will continue to impose additional, capital and operating expense on both foreign and domestic operators. The Chinese government should consider reducing the tariff on or exempting from tariffs American-made theme park ride equipment, which is creating a drag on business.
- **Lagging Industry Standards and Regulations.** Current industry standards and regulations in the Chinese market are not compatible with the development of world-class large-scale theme park projects. The Chinese government, at both the central and local levels, should codify aspects of the multitude of

然而，非法下载和通过流媒体播放盗版外国电影在中国仍然是个突出问题。许多非法网站利用点对点(P2P)网络和应用程序，提供未经授权的、非法的盗版电影和电视节目。这些链接通过社交媒体平台迅速传播。此外，目前市场上还存在大量聚合盗版内容的移动应用程序和设备，这对两国正版电影产业的发展构成了严重威胁。中国必须继续加强对 P2P 网络、网站和移动视频聚合设备 / 应用程序的监管，这些平台网络已经对线上媒体和娱乐行业的持续增长产生了实质性的负面影响。

2019 年 11 月 24 日，中共中央委员会和国务院联合发布了《关于强化知识产权保护的意见》。商会希望政府可以采取具体措施加强知识产权保护（包括版权、专利和商标）。

为应对网络盗版的挑战，商会敦促通过以下强有力措施，对数字媒体予以充分保护：

- 发布新规，有效解决视频聚合网站和移动应用程序带来的海量互联网盗版问题；
- 列举版权的专有权；
- 对违反规避技术措施条款和信息版权管理的行为定罪；
- 对可能缺乏明显的营利动机，但在商业规模上对版权所有人造成影响的网络犯罪进行定罪。对“复制品数量合计在五百张（份）以上”的犯罪门槛进行修订；
- 取消单位犯罪和个人犯罪之间的法律界限；
- 对侵权行为进行威慑级别的民事和刑事处罚；
- 对电子商务平台经营者建立责任制度，并采取有效措施，对网络盗版的核心删除通知问题进行监管。

摄像盗录

中国电影市场仍然存在大量的盗录问题。有关行业分析报告提出，从 2018 年到 2019 年，自中国影院非法摄像盗录的影片多达 53 部。虽然中国在防止摄像盗录方面一直很配合，但政府需采取更有效的威慑措施。商会敦促中国政府加强民事、行政和刑事处罚，以杜绝在影院的非法盗录行为。

盗版硬件产品和应用程序

中国是全球领先的机顶盒生产制造商，机顶盒允许预装或后装第三方应用程序，使得消费者可以轻易获取

盗版内容。商会会员愿与中国政府共同努力，通过制定解决方案来应对空白机顶盒设备带来的挑战。

《著作权法》修法进程缓慢

自 2014 年 6 月国务院法制办公室（现隶属于司法部）报请国务院审议《中华人民共和国著作权法（修订草案送审稿）》，征求公众意见以来，《著作权法》一直处于审核状态。中国应加速《著作权法》修法进程，以帮助解决相关问题。作为修订的一部分，中国应加大对著作权被侵犯的权利人的赔偿力度，减轻著作权人的举证责任，加强威慑性处罚。

主题公园产业

文化旅游业已经成为中国经济的支柱产业。2018 年，旅游业产生的收入大概占了中国 GDP 的 12%。到 2020 年，中国有望成为世界上最大的娱乐、旅游和休闲市场。2018 年，中国的娱乐、旅游和休闲主题公园国内销售额超过了 400 亿元人民币（60 亿美元），呈现出蓬勃发展的态势。国际品牌和运营商诸如上海迪士尼度假区、北京环球影城、默林娱乐集团（乐高主题公园和杜莎夫人蜡像馆）、威秀集团正在或已进入当地市场。随着中国中产阶级群体不断增长（目前估计有 4 亿人），国内交通系统持续发展，对本国主题公园的需求预计会快速增长。市场分析曾预测中国娱乐、旅游和休闲市场在 2019 年至 2024 年期间年均增速将高达 8%。不过，考虑到新冠肺炎的爆发，很有可能需要重新评估 2019 年的预测。

然而尽管该行业增长前景看好，外商投资企业和外国经营者仍面临着行业内的许多挑战。商会在下文将讨论主要的挑战以及为应对挑战建议采取的措施。商会相信，若能解决下述问题将有益于中国的娱乐、旅游和休闲市场，对于该行业的中外企业都是利好消息。鉴于该行业对中国 GDP 贡献很大，这也有助于中国的经济发展。

- **知识产权保护。**知识产权是该行业关注的重点领域之一。中央和地方政府需要加强知识产权执法协作，包括建立商场、重点运输港口、零售批发市场假冒伪劣商品定期巡查查处制度等。
- **中美关系摩擦。**中美贸易的紧张关系影响了中国主题公园项目的发展和经营效益。中国对美国制造的娱乐和主题公园游乐设备征收高于 25% 的关税已经让人望而生畏，且将继续对国内外经营者征收附

existing government permitting processes, such as theme park-related fire design reviews, indoor thematic fire-effects, the use of action props in shows, and any additional special requirements that must be satisfied in order for foreign performers to receive a Work Permit to be employed in China.

- **Lack of available qualified staffing and talent.** The development of large-scale theme parks will create significant job opportunities and economic benefits for the surrounding communities. The cumulative effect of these benefits is estimated to range from 10 to 15 times the annual park revenue. Local governments should consider providing more support through tax relief, and providing government funding and subsidies that can be used for recruiting, training, housing, and retaining the number of talented professionals prepared to build a career in the industry.

ment facing US companies in China’s media and entertainment sector, with the goal of providing greater market access for US companies.

- Complete negotiations required for the update of the film MOU, which should address several of the issues discussed throughout this chapter.
- Continue to encourage the Chinese government to work together with US businesses to find solutions to the challenges raised in this chapter.
- Identify and encourage opportunities to share US best practices on copyright protection with relevant Chinese government entities.

Recommendations

For the Chinese Government

- **Remove market access barriers to allow 100 percent foreign ownership of film and television production and distribution companies and online video services companies. Complete negotiations as required for the update to the film MOU to bring revenue share in line with international norms, increases the number of imported films, and remove market barriers.**
- Remove restrictions during peak periods for imported films and allow US film producers flexibility to decide release dates.
- Remove restrictions that in practice impede activities of foreign investors in the audiovisual services industry by removing quota restrictions on foreign content for online video services, allowing content review of foreign television series on a per-episode basis, and facilitating a more transparent, streamlined, and quicker process for content review.
- Ensure compliance with the *Foreign Investment Law* such that any regulations that are not published lack legal basis and should not be implemented.
- Strengthen IPR protections to improve the operating environment for the film, entertainment, and theme park industry. As part of these efforts, implement the necessary regulations outlined in the *Guideline on Strengthening IPR Protection*.

For the US Government

- **Work with China to review restrictions on invest-**

加资本和经营费用。中国政府应考虑减少或免除对美国制造的主题公园游乐设备征收的关税，因为这些关税正在拖垮该行业。

- **行业标准和法规滞后。**中国市场目前的行业标准和法规与世界级大型主题公园项目的发展不相适应。中国政府，包括中央和地方政府，都应将有政府批准流程的各个方面编纂成文，例如与主题公园有关的消防设计审查，室内主题火焰效果，表演中使用动作道具，以及使国外表演者获得在中国工作的工作许可而必须满足的任何其他特殊要求。
- **缺乏合格的员工和人才。**大型主题公园的发展将为周边社区创造大量的工作机会，带来巨大的经济效益。这些经济效益的累积效应预计是公园年收入的10到15倍。当地政府应考虑通过减税加大支持力度，并向园区提供政府资金和补助以招聘、培训、安置、储备希望在该行业有所发展的专业人才。

建议

对中国政府：

- **取消市场准入壁垒，允许外商全资控股设立影视制作、发行公司和从事网络视听节目服务。依据协议谈判达成新的中美电影谅解备忘录，增加外国公司进口电影的分账份额至国际标准水平，增加进口电影的数量，消除市场壁垒。**
- 取消进口电影的旺季发行期限制，允许美国电影制片方自主决定上映日期。
- 取消阻碍境外投资者提供网络视听节目服务的内容配额限制，允许外国电视剧按集进行内容审查，促进更透明、更简洁、更快速的内容审查流程。
- 贯彻执行《外商投资法》及《外商投资法实施条例》的规定，对于任何未公开发布的、缺乏法律依据的规定，不予执行。
- 加强知识产权保护，改善电影业、娱乐业、和主题公园行业的经营环境。同时，实施《关于强化知识产权保护的意见》的有关配套法规。

对美国政府：

- **与中方政府合作，消除美国企业在中国媒体和娱乐领域的投资限制，以确保开放的市场准入机制。**
- 完成协议谈判，按照中美电影谅解备忘录所规定的要求修改协定，处理本文讨论的问题。
- 继续鼓励中国政府与美国企业共同努力合作，针对文本中涉及的挑战寻找解决方案。
- 寻找并鼓励有机会与中国相关政府机构分享美国在版权保护方面的最佳做法。

Oil & Gas, Energy

Introduction

China's energy sector continued its steady reform in 2019 through continued adherence to the policies outlined in the 13th Five-Year Plan, which emphasize the transition to a low carbon-based energy infrastructure, increasing the share of clean energy (natural gas and renewables) in China's consumption and market-based reform of the oil and gas markets. Notably, the 2019 *Special Administrative Measures on Access for Foreign Investment* (Negative List) allows foreign-invested enterprises (FIEs) for the first time to invest in upstream projects independently, without partnering or forming a joint venture with national oil companies (NOCs).

Domestic energy developments have occurred against the backdrop of a continuing trade dispute between China and the US, which has injected uncertainty into industry operations. In late 2018, however, China resumed importing liquified natural gas (LNG) and crude oil from the US. Then in June 2019, in response to tariffs imposed by the US government, China raised the tariff on US-origin LNG from 10 percent to 25 percent, drastically reducing the volume of US LNG delivered to Chinese terminals that year. In the meantime, despite prioritizing cleaner energy sources, China produced an estimated 3.75 billion tons of raw coal in 2019, an increase of 4.8 percent year-on-year.

The US, the world's number one oil and gas producer, and China, the world's top oil and gas importer, remain natural energy partners and have enjoyed a longstanding energy partnership. AmCham China recommends finding a solution-oriented approach based on fairness and reciprocal treatment to resolve trade and economic disagreements and believes that trade and cooperation in the energy sector is an important building block to sustain a balanced and prosperous trade relationship.

Upstream Oil and Gas

China is the largest oil and gas producer in the Asia-Pacific region. China's oil and gas industry continues to be dominated by three NOCs: China National Petroleum Corporation (CNPC), China Petrochemical Corporation (Sinopec), and China National Offshore Oil Corporation (CNOOC). Foreign

companies to date have gained only a small foothold in the market, often only after partnering with the NOCs.

China has significant potential for further oil and gas exploration and development. In 2019, China added about 8 billion barrels (bbls) of oil and 50 trillion cubic feet (Tcf) of gas in place to its reserves. Onshore areas in the western provinces and deep-water areas off the coast remain under-explored, however, and China's current oil-producing fields are becoming increasingly mature. To meet growing demand, China must import a significant proportion of its oil and gas needs. In 2019, China remained dependent on imported oil and gas, which accounted for 72 percent of its total oil needs and 45 percent of its natural gas needs.

Energy security has become a top priority for the Chinese government – a concern compounded by growing trade tensions between the US and China. These conditions led General Secretary Xi Jinping in July 2018 to call for a concerted push to increase domestic production and reserves.

Following this, in early 2019, each of the NOCs released their respective seven-year action plans to intensify domestic exploration and production, while also announcing increases to their exploration and production budgets, bringing them to their highest levels in five years.

To date, China's NOCs are making progress in maintaining their level of oil production and increasing that for natural gas production. During 2019, China's crude oil output was 191 million tons, an increase of 1.1 percent over 2018. Meanwhile, the country's natural gas production in 2019 was 173 billion cubic meters (bcm), up 9.6 percent from 2018.

In addition, the NOCs have announced plans to partner with international oil companies (IOCs) in the area of exploration and production, with the latter providing assistance in the form of external funding and advanced technologies to accelerate the development of China's upstream sector.

For example, in December 2018, CNOOC announced it had signed Strategic Cooperation Agreements with nine IOCs. During the 2019 China offshore oil and gas licensing process, CNOOC offered 8 offshore exploration blocks and 6 development blocks to foreign companies, covering an area of 10,272 km². To attract more offshore exploration, CNOOC

石油、天然气、能源

引言

2019年，中国继续实施“十三五”规划，持续推进能源领域稳步改革。“十三五”规划重点推进低碳能源基础设施转型，提高清洁能源（天然气、可再生能源）在中国能源消耗中的比重，推进油气市场市场化改革。2019年发布的《外商投资准入特别管理措施（负面清单）》首次允许外商投资企业独立投资上游项目，无须与中国国有石油公司合作或共同设立合伙企业。

在中美贸易争端持续加剧的背景下，中国国产能源业扩大开发力度，这给行业运营带来了不确定性。然而2018年底，中国恢复进口美国液化天然气及原油。2019年6月，为反制美国政府对美国输美商品加征关税，中国对美产液化天然气加征关税税率从10%提升至25%，大大减少了当年输入中国的美产液化天然气总量。与此同时，虽然中国优先发展清洁能源，但中国2019年的原煤产量预计为37.5亿吨，同比增长4.8%。

美国是全球最大的油气生产国，中国是全球最大的油气进口国，两国仍是自然能源合作伙伴，并保持长期的能源合作关系。中国美国商会（商会）建议两国在公平互惠的基础上寻求能够切实解决贸易和经济分歧的方案，商会认为能源领域的贸易与合作是维持平衡、繁荣贸易关系的重要基石。

上游油气

中国是亚太地区最大的油气生产国。中国油气产业继续由三家国家石油公司主导：中国石油天然气集团有限公司（中石油）、中国石油化工集团有限公司（中石化）和中国海洋石油集团有限公司（中海油）。迄今为止，外国企业仅在通过与中国国家石油公司合作后在油气市场获得了一小块立足之地。

中国油气未来的勘探开发潜力巨大。2019年，中

国增加了约80亿桶石油和50万亿立方英尺天然气原始地质储量。然而，陆上地区的西部省份和沿海深水区仍未得到充分的勘探开发，中国当前的在产油田愈发成熟。为满足日益增长的需求，中国必须进口大量的石油和天然气。2019年，中国石油、天然气仍大量依赖进口，占石油总需求的72%，占天然气总需求的45%。

随着中美贸易摩擦的加剧，能源安全已成为中国政府工作的重中之重。2018年7月，习近平总书记提出要努力推动扩大国内能源产量、增加国内能源储量。

2019年年初，各国有石油公司纷纷发布7年行动计划，大力提升国内油气勘探开发生产力度，并宣布增加油气勘探开发生产预算至5年内最高水平。

时至今日，中国大型国有石油企业不断取得进展，维持了石油产量、提升了天然气产量。2019年，中国原油产量为1.91亿吨，比2018年增长1.1%。与此同时，中国2019年的天然气产量为1730亿立方米，比2018年增长9.6%。

此外，大型国有石油企业宣布了勘探生产领域与国际石油公司合作的计划，国际石油公司通过提供资金、先进技术等方式协助中国石油企业加快推动中国上游领域的发展。

例如，2018年12月，中国海洋石油集团与九家国际石油公司签署了战略合作协议。2019年中国海洋石油集团对外勘探开发区块招商推出8个海上勘探区块、6个开发区块，总面积约10,272平方公里。为吸引海上勘探合作，中海油颁布规定，为投资者提供财务优惠条件，鼓励投资者竞标技术上具有挑战性、经济性差的油藏区块。外国金融机构也可提供资金参与开发。

issued regulations promoting favorable financial terms to provide investors with an incentive to bid for technically challenging reservoir blocks that would otherwise not be financially viable. Foreign financial institutions were also allowed to provide financing for these investments.

Upstream Reform

Throughout 2019, the Chinese government has made visible progress in reforming China's upstream sector. Some examples include:

- Optimizing subsidy and tax-reduction programs for unconventional oil and gas,
- Piloting new acreage awards and exit mechanisms to diversify the pool of participants,
- Simplifying approval requirements, and
- Improving wellhead price and pipeline access with citygate gas price and pipeline reforms.

Last year saw a slew of measures intended to further open up the sector. On June 2019, the National Development and Reform Commission (NDRC) and the Ministry of Commerce (MOFCOM) announced the 2019 version of the *Negative List*, allowing foreign investors to invest in upstream projects independently, without partnering or forming a joint venture with an NOC.

Most recently, in January 2020 the Ministry of Natural Resources (MNR) released the *Several Opinions on Accelerating Mineral Resources Management Reform*, effective May 1, 2020. Critically, the policy will open China's oil and gas exploration and production sector to non-NOCs, including foreign investors, private Chinese companies, and other SOEs.

According to the new guidelines, companies registered in China with net assets of at least US \$43 million (RMB 303 million) will be allowed to engage in oil and gas exploration and production (E&P) and own E&P licenses, as long as they meet safety and environmental requirements and regulations and have the requisite technical capabilities.

Additionally, the policy will allow companies to merge E&P licenses for oil and gas, which previously involved separate procedures. The new regulations also allow companies to extend the term of validity for their exploration licenses from three years to five years, with the caveat that when firms apply for extensions, the government will require a mandatory reduction of the mining/exploration zones by 25 percent from the originally registered level.

We expect these additional incentives and reforms to further open the market, as China aims to better secure its energy supply by producing more of its oil and gas demand domestically.

AmCham China recognizes the strong efforts made by the

State Council and urges the Chinese government and the NOCs to offer more attractive upstream opportunities to motivate IOCs to increase capital and technology investment in China, developments which would be beneficial for China's economic growth and energy security. Additionally, there are several areas for improvement:

- **Expanding opportunities for onshore licensing for exploration.** While opportunities between foreign companies and NOCs are increasing, there has been more limited progress with respect to onshore licensing acreage and data availability for exploration blocks. AmCham China believes that to develop its domestic resources quickly to meet its rising energy demand, China needs to offer more and better acreage, ensure the availability of and access to complete exploration data, and provide generous financial terms to attract bids from non-NOC companies,
- **Providing incentives and policy support to expand foreign cooperation in the shale gas sector.** The Chinese government has designated shale gas as a strategic resource. Given the deep shale gas formations in China (particularly the Sichuan, Tarim, and Yangtze Platform basins), higher, long-term subsidies are needed to incentivize investments of resources and technology. AmCham China recommends that the Chinese government continue its existing shale gas subsidy program to at least 2025. The government should also consider policies to foster partnership opportunities between IOCs and NOCs in developing China's underexplored marine and lacustrine shales, where 80 percent of its oil is sourced. Such partnerships will not only increase well productivity and Estimated Ultimate Recovery (EURs) to make shale oil projects economically feasible, but also accelerate the advancement of shale gas technology in China. In addition, adopting contract structures appropriate for shale gas should increase domestic and foreign investment in the sector. Current production sharing contracts contemplate conventional resource development, which typically involves longer well production periods and fundamentally different work programs than for shale gas,
- **Implementing a liberalized gas pricing scheme.** A liberalized gas pricing scheme that reflects the true costs of gas supply, competitive supply chains, and provision of third-party access (TPA) to shale gas infrastructure is essential to unlocking China's shale gas potential. Again, this will allow China to develop its resources more quickly to meet rising demand and spur economic growth in the process.

Pipeline Infrastructure and a new National Pipeline Company

Through the end of 2019, the upstream sector and the midstream national pipeline network have been dominated

上游改革

2019 年全年，中国政府在上游产业改革方面取得显著进展。示例如下：

- 优化非常规油气补贴及减税政策；
- 试点新区块奖励及退出机制，推动参与者多元化；
- 简化批准要求；
- 通过天然气门站价格、管道改革，提高井口价格和管道接入。

去年政府采取了一系列措施，旨在进一步开放油气行业。2019 年 6 月，国家发改委和商务部联合公布了 2019 年版《负面清单》，允许外国投资者独立投资上游项目，无需与国家石油公司合作或组建合资企业。

最近，2020 年 1 月，自然资源部发布了《关于推进矿产资源管理改革的若干意见》，自 2020 年 5 月 1 日起实施。此政策规定开放中国油气勘察开采市场，符合要求的非国有石油公司，包括外国投资者、中国民营企业和其他国有企业均有资格按规定取得油气矿业权。

根据此政策规定，在中华人民共和国境内注册，净资产不低于 4300 万美元的内外资公司，均有资格按规定取得油气矿业权。从事油气勘查开采应符合安全、环保等资质要求和规定，并具有相应的油气勘查开采技术能力。

此外，该政策实行油气探采合一制度，勘探和开采将不再需要单独办理登记手续。探矿权期限将从 3 年延长至 5 年，探矿权申请延续登记时应扣减首设勘查许可证载明面积的 25%。

中国期望通过提高国内油气产量来保障能源供应，因此商会认为上述激励措施及改革将进一步开放市场。

商会认可国务院做出的巨大努力，同时促请中国政府和国有石油公司通力合作，提供更多有吸引力的上游行业机会，激励国际石油企业增加在华资本技术投资，推动中国经济增长、保障国家能源安全。此外，以下方面仍需改进：

- **扩大陆上勘探许可范围。**尽管外资企业和中国国家石油企业之间合作机会日益增多，但陆上区块的许可及勘探区块数据的获取等方面仍进展缓慢。商会认为，要迅速开发国内资源满足不断增长的能源需

求，中国需要开放更多好的勘探区块，保证完整的勘探数据的可获取性和开放性，提供优惠金融条件吸引非国有石油公司投标。

- **制定激励政策，提供政策支持，扩大页岩气领域的对外合作。**中国政府确定页岩气为战略资源。中国（特别是四川盆地、塔里木盆地和扬子地台）页岩气埋藏较深，因此亟需提高补贴标准、延长补贴期限来刺激资源与技术投资。商会建议中国页岩气补贴政策至少要延期到 2025 年。政府应考虑制定政策，推进国际石油公司和中国国家石油公司合作开发中国未充分勘探的海相页岩和湖相页岩，因为 80% 的石油来源于此。对外合作不仅会提高井的产能和最终采收率，从而使页岩油项目经济上可行，还能加速推进中国页岩气技术的发展。此外，采用适合页岩气特点的合同结构可增加国内外对页岩气领域的投资。当前采用的产品分成合同主要针对传统资源的开发，其生产周期更短，与页岩气工作模式截然不同。
- **实施自由化天然气定价方案。**自由化天然气定价方案可以反映天然气供应的真实成本，具有竞争力的供应链，为页岩气基础设施提供第三方接入，对于释放中国页岩气潜力至关重要；有利于中国加快开发资源满足不断增长的需求，刺激经济增长。

管道基础设施及国家管网公司

直到 2019 年底，上游勘探开发开采和中游国家管道网络一直由国有石油公司主导，掌握了中国大部分关键进口基础设施，导致市场进入壁垒，国内天然气生产无法满足日益增长的需求。2019 年 12 月，国家管网公司正式成立，将国有石油公司的油气管网资产剥离纳入到国家管网公司，实现管输和生产销售分离，促进行业市场化。

成立国家管网公司，实行运销分离，国有油气公司不再需要规划、投资中国管网建设，一改此前各自决策的低效，能够集中精力资本用于上游油气勘探开采。之前国有油气公司对管网投资不足，未能全面看待管道基础设施对全国的必要性。同时，随着投资限制的解除，非国有油气企业有望增加投资，提升中国天然气整体生产供应能力。

作为独立实体，国家管网公司能够独立做出商务决

by NOCs that own most of this critical import infrastructure in China, resulting in significant barriers to entry and contributing to the current situation where domestic natural gas production falls far short of rising demand. In December 2019, a new national pipeline company (NPC) was officially established. By ringfencing pipeline assets of the NOCs and placing them in the NPC, the government seeks to separate gas transportation from production and marketing, a move it sees as driving a more market-oriented approach to the sector.

By relieving NOCs of the collective burden of planning and funding China's pipeline network, which had been plagued by inefficiencies due to isolated decision-making, NOCs can now focus their attention and capital on upstream E&P activities. Previously, NOCs had under-invested in pipeline networks and lacked a holistic perspective on the infrastructure necessary to supply the entire country. Non-NOCs are meanwhile expected to increase investments as China lifts restrictions, which will boost the overall natural gas supply for China.

As a standalone entity, the NPC will be able to make independent business decisions without being encumbered by other competing business needs that existed in an integrated model. This will likely translate into an improvement in the scale and speed of construction, the geographical coverage of network integration, and operational efficiency. Independent decision-making would also apply to financing. In addition to reinvestment decisions for revenue from pipeline tariffs, the NPC is able to make its own financing decisions and have greater latitude to raise capital from multiple sources - debt and equity markets, asset securitization and sales, and private equity. This will likely provide the NPC with cheaper funding and smooth out cashflow shortages that could arise from capital expenditure to fund new pipeline projects and its revenue stream of pipeline tariffs. Through the NPC, the broader market should have more business opportunities to invest in the construction of China's pipeline infrastructure, consistent with the government's call for mixed ownership in state-owned assets.

AmCham China believes that establishment of the NPC will promote transparent development of the natural gas market by encouraging greater participation by new enterprises and accelerating pricing reforms to create a fair and transparent market. The government has also contemplated increased market efficiencies through the restructuring of transactions of natural gas from a volume-based to a heating value-based structure. The NPC has the potential to enhance energy security and further diversify its LNG and gas supplies to lift overall natural gas consumption in China.

Challenges remain, however. The NPC will absorb pipeline assets and employees transferred from PetroChina, Sinopec and CNOOC. These pipeline assets, however, are not openly traded. Without a reliable system for asset valuations, assessment and divestiture of existing assets to the NPC will

be a complex, protracted exercise. Some pipeline network assets are funded by a combination of public-private capital in a mixed ownership structure, increasing the difficulty of asset divestitures. In addition, the NOCs are publicly listed companies and decisions to divest pipeline assets from the companies are subject to approval by shareholders who may challenge their merits.

Furthermore, the NPC must quickly build up its in-house technical capability to handle pipeline maintenance and infrastructure developments. Apart from revenue from pipeline tariffs, the NPC will not have alternative organic sources of funds (e.g., upstream and downstream revenue) that were previously available; instead, they may have to rely on external funding to mitigate cashflow shortages. The tariff rates would have to be published and set judiciously to meet the NPC's financing requirements and yet be low enough to incentivize pipeline usage. The NPC must balance competing demands. On the one hand, demand for and available pipeline capacity may be better coordinated within each NOC. On the other hand, in a system with multiple users, there will inevitably be mismatches between supply and demand of pipeline capacity.

Another challenge will be to ensure that the NPC does not have a negative impact on market liberalization. The NPC will need flexibility to make business decisions in pursuit of economic efficiency. Yet because it will function as a monopoly, government regulation of the NPC is essential to avoid market abuse. There is, however, very little public information at present on how the government plans to regulate and enforce the new rules.

AmCham China believes that the industry would benefit from the integration of China's 21 provincial gas pipeline network companies into the NPC to form a single national network. Yet, given complex dynamics between central and local governments, state-owned enterprises and NOCs in complex equity structures, AmCham China is concerned that securing shareholder consent to integrate these various provincial network companies into the NPC will be a challenging and drawn-out process.

With the establishment of the NPC, China has nevertheless taken a key step towards natural gas market reform that will likely bring increased pipeline connectivity, operational efficiency, pricing reforms, greater supply options for downstream players, and increased imports and upstream E&P output.

Market-based Approach

Over the years, we have seen the Chinese government take a more market-based approach to liberalization and development of the gas industry. Some of these market-oriented changes to China's gas market centered around pricing reforms, with adjustments such as those from "cost plus"

策，无需受制于集成模式下其他冲突业务需求。此举将扩大管网建设规模、加快建设步伐速度，扩大覆盖区域，提高运营效率。独立决策模式也适用于融资。除了对管道运输收入的再投资决策外，国家管网公司还能自行决定融资，拥有更大的自主权来拓宽管网建设的资金来源——通过债券和股票市场、资产证券化和销售以及私募股权等方式引入资金。国家管网公司能以较低成本获得筹资，缓解因新管网建设项目资本支出而导致的现金流短缺问题，并改善管道运输收入流的单一性。国家管网公司的成立开放了市场，各市场主体将获得更多商机投资中国管道基础设施建设，与政府国有资产发展混合所有制经济的要求不谋而合。

商会认为，国家管网公司的成立鼓励新企业参与，加快价格改革，创造公平、透明的市场环境，将推动天然气市场的透明化发展。政府还开展天然气交易结构改革，推广以热值计价体系替换以体积计价，提高市场效率。国家管网公司有望加强中国能源安全，使液化天然气和天然气供应来源多元化，提升中国天然气整体消费水平。

然而挑战仍然存在。中石油、中石化、中海油三大石油公司旗下管道资产及雇员将剥离转移至国家管网公司。但是管道资产并非公开交易。如果没有可靠的估值体系，评估、转移现有资产将是一项错综复杂且旷日持久的工作。一些管网资产以混合所有制的形式由公私资本共同持有，增加了资产剥离的难度。此外，国有石油公司是上市公司，剥离管道资产须经股东批准，股东可能会质疑其益处。

另外，国家管网公司必须迅速建立自身内部技术能力，维护管道、建设基础设施。除管道运输收入外，国家管网公司不再拥有此前的其他有机资金来源（如上游和下游收入）；相反，公司必须依靠外部资金缓解现金流短缺。管输费价目必须对外公开，并审慎定价，既要满足国家管网公司的资金要求，又须保持低位，刺激管道使用率。国家管网公司必须平衡冲突性需求。一方面，各国石油公司内部对管道容量的需求和现有管道容量可能更好统筹。另一方面，多家用户的体系必然意味着管道容量供应不平衡的问题。

另一项挑战是如何确保国家管网公司不对市场自由化造成负面影响。国家管网公司需要灵活决策，追求经

济效益。但是国家管网公司功能上的垄断性意味着政府必须要注意监管，避免滥用市场行为。然而，当前关于政府如何监管、执行新规定的公开信息知之甚少。

商会认为，中国 21 家省级天然气管网公司整合到国家管网公司，形成“全国一张网”，有利于行业的发展。然而，鉴于中央与地方政府、国有企业和国有大型石油公司股权的复杂性，商会担心，如何让股东同意将省级管网公司纳入国家管网公司将是一项充满挑战性且旷日持久的工作。

组建国家管网公司是中国天然气市场化改革的关键一步，将推进管道互联互通、提高运营效率、推动价格改革，为下游企业增加供应选择，有利于提高进口量及上游油气产量。

市场化方式

多年来，中国政府采用更加市场化的手段推动天然气行业的自由化和发展。中国天然气市场化改革的核心是价格改革，从“成本加”调整到“市场净价”，从“固定价格”调整到“定价区间”。也可以从同一角度看待上海和重庆天然气交易中心的启动，即利用市场实现定价和交易效率。

中国政府采取稳健的市场化手段推进改革，商会备受鼓舞，但是加大市场激励力度可以更行之有效地推动天然气市场的发展。相比传统法规，市场化政策成本效益更高，可以有效地减少温室气体排放，保护环境。例如，市场化方式体现在，可通过碳排放定价替代要求减少煤炭使用的法规来从商业角度激励使用清洁能源如天然气等，用最低的成本降低排放。其他国家多年来一直采用市场化方式逐步淘汰含铅汽油，改善酸雨、雾霾等天气状况。

市场化方式更行之有效的另一个例子体现在中国天然气储备能力建设。中国储气设施不足，难以满足日益增长的需求，此外天然气季节性需求特点突出，尤其是华北地区。认识到上述问题的紧迫性后，国家发展改革委和国家能源局于 2018 年联合出台《关于加快储气设施建设和完善储气调峰辅助服务市场机制的意见》。意见要求供气企业建立天然气储备，到 2020 年拥有不低于其年合同销售量 10% 的储气能力。对城市供气企业而言，此项硬性规定是每家企业年用气量的 5%。另一

to “market netback”, and from “fixed price” to “pricing bands.” The startup of the Shanghai and Chongqing natural gas exchanges can also be viewed in the same light, utilizing the market to achieve pricing and transactional efficiency.

While it is encouraging to see the Chinese government already taking a steady market-based approach to advance reform, a greater use of market incentives could be more effective to facilitate the development of the gas market. Compared to traditional regulations, market-based policies can more cost-effectively reduce greenhouse gas (GHG) emissions for environmental protection. So, instead of regulations to reduce coal usage, a market-based approach could, for example, take the form of a price on carbon emissions to provide strong commercial incentives to switch to cleaner fuel sources such as natural gas and help reduce emissions at the lowest possible cost. Another alternative would be to consider the development and implementation of a revenue-neutral carbon tax. Other countries have had years of experience using market-based approaches to phase out leaded gasoline and to reduce acid rain and smog.

Another example where a market-based approach could provide a more effective solution is in the area of gas storage capacity building in China. Recognizing the need for adequate gas storage facilities to meet growing demand which is also characterized by pronounced seasonality, especially in northern China, the NDRC together with the National Energy Administration (NEA) promulgated a new regulation (namely, the *Accelerating the construction of gas storage facilities and improving market mechanism for storage and peak-shaving services*) in 2018. The policy requires gas marketers to maintain storage capacity equivalent to at least ten percent of the total volume of gas sold domestically from year 2020 onwards. For city gas companies, the mandatory target is five percent of each company’s annual gas consumption. Local provincial governments, on the other hand, have been set a gas storage target equivalent to three times average daily local gas demand. Qualified storage capacity that may count towards the government requirement includes underground gas storage, storage tanks at coastal LNG terminals as well as large scale onshore LNG and CNG tanks for local peak shaving purposes. Purchased or leased storage capacities would suffice for companies which choose not to build the required gas storage themselves.

The policy intent of such regulation is well understood, which is to increase the overall gas storage capacity of the country. The policy, however, imposes a cost on companies which are looking to develop gas resources and sell their produced gas domestically, or to bring new LNG supplies into China. At the same time, it may not be as effective as market-based mechanisms such as putting in place seasonal pricing for gas or a system of subsidized government loan disbursements, to create the financial incentives for investors and gas suppliers to build sufficient infrastructure for gas storage. In contrast to regulations that set mandatory targets, a shift towards a market-based paradigm, exemplified in this

case by a combination of fiscal support and market-based gas pricing, would represent a more sustainable and efficient pathway for developing gas storage facilities in China

Natural Gas and Liquefied Natural Gas

China has seen significant growth in demand for natural gas as the government executes its long-term strategy for a cleaner energy mix and higher quality living standards. US-China trade tensions, however, have heightened the Chinese government’s concern over energy import dependency. In the summer of 2018, General Secretary Xi Jinping began emphasizing self-reliance to enhance national energy security. This policy shift intends to focus on developing domestic resources while reducing reliance on gas and oil imports.

In tandem with an emphasis on energy security, China several years ago adopted a policy of replacing coal with natural gas as a fuel source, although efforts to adopt more widespread use of natural gas appears to have recently lost momentum. This may be due in part to a reaction to natural gas shortages in the winter of 2017/18 that resulted from an unseasonably cold winter. The implementation of policies to reduce air pollution and coal-switching at an unsustainable pace temporarily caused new demand for natural gas to outstrip available supply. AmCham China encourages the government to continue its effort to adopt widespread use of natural gas.

Despite efforts to increase domestic production of natural gas, it is unlikely that China’s domestic output will be able to meet its energy demands. China briefly surpassed Japan to become the world’s largest importer of LNG in late 2019. China’s apparent gas demand increased by 9.4 percent year-on-year to 306.7 billion cubic meter annum (BCMA) in 2019, according to the NDRC. The growth was driven by urban gas and industrial sectors, new infrastructure, and the country’s long-term pursuit of a cleaner energy mix.

China’s total gas and LNG imports expanded in 2019. Imports of both pipeline gas and LNG grew 6.5 percent year-on-year. At the same time, robust domestic production growth and a decline in piped gas imports of around one percent year-on-year kept China’s gas import dependency on par with 2018 at around 43 percent. China’s LNG imports exceeded 62 MT in 2019, a 14 percent year-on-year increase. The majority of China’s LNG comes from Australia, Qatar and Malaysia, which combined to supply more than 70 percent of China’s imports of LNG in 2019. Approximately 60 percent of China’s imports of LNG in 2019 came from Australia, China’s largest LNG trading partner. China has limited exposure to large, alternative LNG suppliers like the US. LNG imported from the US accounted for only four percent of China’s total LNG imports in 2017 and 2018.

Amidst the US-China trade dispute, China and the US

方面，省级政府也设定了目标，要求供气企业储气量应为本地日均天然气需求量的三倍。政府规定储气指标的核定范围包括地下储气库，沿海 LNG（液化天然气）接收站，陆上具备一定规模，可为下游调峰的 LNG（液化天然气）、CNG（压缩天然气）储罐罐容等。不再自行建设储气能力的企业可通过租赁购买储气设施或储气服务等方式履行储气责任。

此项政策的目十分清晰，即提高中国整体储气能力。然而，如果企业正在开发且在国内销售天然气，或计划从国外引进液化天然气资源，此政策将加重其负担。此外，市场化机制如实施天然气季节性定价，或政府补贴型贷款支付等机制可以从经济角度激励投资者和供气商建设储气基础设施。相比而言，本项政策可能不如市场化机制有效。与设定强制性目标的法规相比，市场化模式（以本例中财政支持和市场化天然气定价相结合为例证）将是中国建设天然气储存设施更可持续、更高效的途径。

天然气和液化天然气

在中国政府贯彻长期战略，推行使用清洁能源，提高人民生活水平的进程中，天然气需求随之大幅增长。然而中美贸易摩擦的不断升级加剧了中国政府对能源进口依赖的担忧。2018 年夏季，习近平总书记强调要自力更生加强保障国家能源安全，旨在重点发展国内资源，减少对油气进口的依赖。

与强调能源安全不谋而合，中国几年前就制定了政策要求使用天然气替代煤炭，但是近期天然气的推广使用似乎后劲不足。部分原因是由于 2017、2018 年冬季天气异常寒冷，导致天然气供应短缺。减少大气污染、禁止使用煤炭等政策执行无法持续，致使天然气出现短期供不应求的局面。商会鼓励中国政府继续努力，推广使用天然气。

虽然中国努力提高国内天然气产量，但仍可能无法满足能源需求。2019 年末，中国一度超过日本，成为全球最大的液化天然气进口国。国家发展改革委表示，中国 2019 年天然气表观消费量 3067 亿立方米，同比增长 9.4%，主要是由城市天然气和工业领域、新基础设施建设以及长期使用清洁能源等因素推动。

2019 年，中国天然气和液化天然气进口总量有所增

长。管道天然气和液化天然气的进口量同比增长 6.5%。与此同时，中国国内产量强劲增长，管道天然气进口量同比下降约 1%，导致中国天然气进口依存度与 2018 年持平，保持在 43% 左右。2019 年，中国液化天然气进口量超 62 万吨，同比增长 14%。中国液化天然气进口国主要为澳大利亚、卡塔尔和马来西亚，占中国进口液化天然气总量的 70% 以上。2019 年，中国液化天然气进口约 60% 来自中国最主要的液化天然气贸易伙伴澳大利亚。中国与美国等其他供应国交易不多，2017 年和 2018 年，美国进口量仅占中国液化天然气进口总量的 4%。

中美贸易战期间，两国相互加征关税。2019 年 6 月，中国对美产液化天然气（LNG）加征关税税率从 10% 提升至 25%，大幅降低了去年液化天然气美国进口量。加征关税造成贸易壁垒，严重阻碍了中国液化天然气进口的发展。2019 年中国进口美国液化天然气仅占进口总量的 0.4%。2019 年，只有四批液化天然气从美国运往中国，全部来自路易斯安那州切尼尔能源公司（Cheniere Energy）萨宾山口液化天然气工厂。相比之下，美国约占同期全球液化天然气出口增长的 37%。

2019 年 12 月，习近平总书记和俄罗斯总统普京共同见证西伯利亚力量输气管道投产通气。西伯利亚力量管道连接了中国东北部和俄罗斯西伯利亚气田，于 2014 年开工建设，2020 年将对华供应 50 亿立方米天然气，随后供应量将更高，有助于中国实现 2020 年将天然气使用量提高到总能耗 10% 的目标。

中国使用天然气和液化天然气的益处

天然气的益处众所周知，是一种相对环保的清洁能源。虽然天然气燃烧时也会产生碳排放，但最先进的联合循环燃气发电涡轮机产生的二氧化碳比燃煤涡轮机少近 50%。天然气价格合理，燃气发电厂的资本成本不到燃煤电厂成本的一半、不到陆上风电的五分之一。天然气是一种可靠的燃料，现有技术均已得到验证并广泛应用。天然气效率高，燃气发电厂的效率比燃煤电厂高 40%，施工时间也短得多。天然气资源也十分丰富，全球产量不断增加，尤其是美国通过水力压裂革命开采了大量页岩气。

天然气也可弥补可再生能源的固有缺点：特别是太阳能和风能的间歇性，导致很难依赖可再生能源发电。因为具有能够迅速起火（特别是与燃煤电厂相比）的优

imposed tariffs on one another's imports. In June 2019, China raised the tariff on US-origin LNG from 10 percent to 25 percent, drastically reducing the volume of US LNG delivered to Chinese terminals that year. Such tariffs are trade barriers that present an obstacle to the development of China's LNG imports. As a reflection of these challenges, China's imports of US LNG as a share of total imports dropped to 0.4 percent in 2019. There were only four LNG cargos delivered from the US into China in 2019, all of which came from Cheniere Energy's Sabine Pass LNG facility in Louisiana. By contrast, the US accounted for roughly 37 percent of global LNG export growth during the same period.

In December 2019, General Secretary Xi Jinping and Russian President Vladimir Putin oversaw the launch of the Power of Siberia pipeline, connecting Russia's Siberian gas fields to China's Northeast. The pipeline, which began construction in 2014, will provide five BCM of gas in 2020 and greater amounts after that, as part of China's goal to increase its natural gas use to 10 percent of total energy consumption by 2020.

Broad Benefits of Using Natural Gas and LNG for China

The benefits of natural gas are well-known. It is a relatively clean burning fuel. While burning natural gas still emits carbon, the most advanced combined-cycle gas-fired electricity generating turbines emit almost 50 percent less carbon dioxide than coal-fired turbines. Natural gas is affordable, with gas-fired power plants involving capital costs that are less than half of the cost of coal-fired plants and one-fifth of onshore wind. Natural gas is reliable, with existing technologies already proven and widely deployed. Natural gas is efficient, with gas-fired power plants offering 40 percent more efficiency than coal-fired power plants and a much shorter construction period. Natural gas is also abundant, with production increasing globally, especially in the US by way of the fracking revolution.

Natural gas can also play a role in addressing the weaknesses inherent in renewable energy sources. The primary drawback of these sources, particularly solar and wind power, is their intermittency. This makes reliance on renewable energy sources for power generation problematic. Gas-fired power plants have always had a role in satisfying peak electricity demand, owing to their ability to fire up quickly (particularly in comparison to coal-fired power plants). This ability to meet peak demand can be utilized to meet energy demand when the supply from renewables is not available, thereby enhancing the viability of renewable energy sources.

One of the benefits of China's strategy to adopt natural gas as a cleaner energy source has been reflected in air pollution levels in Beijing, which have fallen noticeably in the past few years. A survey by one air-quality monitoring firm found

that Beijing was on track to exit the list of the world's top 200 most polluted cities this year. AmCham China believes that one important element of this trend was Beijing's policy of replacing China's old coal-fired turbines and furnaces with new gas-fired ones. We commend China for adopting and implementing this and similar policies as the results thus far have been clear and successful. And yet, there remain issues still to be addressed. The same survey also noted that Beijing's air quality in 2019 is still more than four times higher than the WHO annual mean PM2.5 concentration guideline of 10 micrograms per cubic meter. Over the past years some momentum may have been lost regarding policies to promote natural gas, and this risks becoming a sustained trend if action is not taken. There is an opportunity to further promote natural gas in the new 14th Five Year Plan, which is being drafted by the NDRC, and set ambitious goals for gas consumption.

AmCham China recommends that China continue to implement its policy of replacing coal with natural gas. In particular, we recommend that China increase its use of natural gas that is imported in the form of LNG, and lower barriers to its import of US-origin LNG. China currently imposes a 25 percent tariff on US-origin LNG. That tariff should be reduced and removed. China's current tariff on US-origin LNG was adopted as a tactical measure in response to tariffs imposed by the US on products imported from China. The *Economic and Trade Agreement Between the US and China* (Phase One Deal) signed in January 2020, along with China's need for imported natural gas, means that maintaining these tariffs does not make sense. The tariff deprives Chinese households, factories and power plants of a necessary, cleaner energy resource that can be obtained in abundant quantities and at fair prices from US sources. The US has an abundant supply of natural gas extractable at competitive prices.

On February 18, 2020, the Ministry of Finance (MOF) announced a tariff exemption on US-origin LNG. AmCham China commends this positive announcement. Yet we note with concern that the exemption is only in place for one year from the date it was enacted, thus such action may provide only limited relief to the short-term LNG market. Meanwhile, the exemption is unlikely to lead to significant flows of US-origin LNG to China given China's depressed demand for LNG as a result of the broader economic slowdown and prolonged closure of many factories resulting from the outbreak of novel SARS-COV-2 virus and the associated COVID-19 disease. The magnitude and length of China's depressed demand for LNG will depend on how long it takes to contain COVID-19 and resume regular business activity. Hence, it remains unlikely that such temporary tariff exemption will encourage Chinese buyers to sign new long-term LNG contracts. The long-term solution is to remove the tariff completely thereby placing US-origin LNG in an equal position to compete with other LNG sources.

We further recommend that China increase its utilization of

势，燃气发电厂一直发挥着满足电力高峰需求的作用。当可再生能源供应不足时，满足高峰需求的能力可以用来满足能源需求，从而增强可再生能源的可用性。

中国实施使用天然气等清洁能源的战略已经开始显现效果，过去几年，北京的空气污染水平明显下降。一家空气质量监测公司的一项调查发现，北京今年正在逐渐走出全球 200 个污染最严重城市之列。商会认为，中国政府实施政策，要求使用燃气锅炉取代燃煤锅炉是这一进步的重要原因之一。商会赞扬中国实施明确政策并取得了成果。然而，仍有问题有待解决。同一调查还指出，2019 年北京的空气质量仍比世界卫生组织年平均 PM2.5 浓度标准值每立方米 10 微克高出 4 倍。过去几年，推广使用天然气政策后劲不足，如果不采取行动，疲软将继续。国家发改委正在起草“十四五”规划，要进一步推广天然气，并设定天然气消费的宏伟目标。

商会建议中国继续实施推广使用天然气替代煤炭的政策，尤其建议中国增加进口液化天然气的使用，并撤除进口美产液化天然气的壁垒。中国目前对美产液化天然气征收 25% 的关税，应该降低税率或取消，因为对液化天然气加征关税是对美国加征中国产品关税所采取的反制措施。中美第一阶段经贸协议已于 2020 年 1 月签署，考虑到中国对进口天然气的需求，因此维持当前的关税税率毫无意义。加征关税导致中国家庭、工厂、发电厂等无法从美国获得大批量价格合理的必需品——清洁能源。美国天然气资源丰富且价格具有竞争力。

2020 年 2 月 18 日，财政部宣布免除为反制美国对美产液化天然气所加征的关税。商会对进展表示赞赏。然而，商会注意到，政策自颁布之日起仅实施一年，因此，这项措施可能只能为液化天然气市场提供短期帮助。鉴于中国液化天然气需求持续低迷，经济增速放缓，以及 2020 年初新型冠状病毒肺炎疫情爆发导致许多工厂长期停工，此次关税排除并不会利于中国大量进口美产液化天然气。中国液化天然气需求低迷持续的时间及规模取决于遏制新型冠状病毒肺炎疫情的时间以及恢复正常商业运营的时间。因此临时减免关税无法发挥鼓励中国客户签署长期液化天然气合同的作用。完全取消关税才是长久之道，可以确保平等对待美产液化天然气和其他国家产液化天然气。

商会还建议中国提高液化天然气在船用燃料油中的

利用率。这项工作已经顺利开展，但如果中国能高瞻远瞩，为此举可能带来的长期后果做好准备，将大有裨益。现在中国的造船厂在建造液化天然气动力船舶并交付给外国运营商。中国可以将这些船厂与沿海新兴液化天然气接收站相结合，在海口大连沿海地区以及长江上下游国内共同发展一个国产液化天然气动力轮渡网络。商会建议中国开展政策规划，抓住机遇，推动基础设施建设，如船用燃料补给设施和储存设施、内河或沿海加油船、小型液化天然气运输船；提高体制能力，如必要的培训、许可和认证能力等。

中国还应提高天然气和液化天然气供应主体的多元化，解决当前能源供应短缺问题。例如，近期投产通气中俄东线天然气管道预示着未来俄罗斯将成为中国主要的天然气供应国，但是仍有其局限性。中俄东线天然气管道仅能有效供应中国东北地区，而中国目前的管道基础设施很难将其输送到华南地区和沿海等大面积需求地区。虽然商会建议中国继续努力扩建天然气管道和储气基础设施，但这是一项长期投资，将历时多年且需要大量资金投入。液化天然气进口接收站可以缩短输送距离，距离需求地区更近，耗时更短，成本更低。扩建天然气管道还将解决中国过度依赖单一供应来源如俄罗斯产天然气的问题，否则会对中国的能源安全造成不利影响。

中国液化天然气来源多元化也可以使政府灵活管理、满足能源需求。例如，2018 年冬季中国天然气短缺期间，美国液化天然气价格便宜。美国液化天然气供应商采用的无目的地合同允许中国买家将货物用于本国目的，或将剩余液化天然气转售给其他市场。美国液化天然气供应商的灵活合同给与中国买家一定的控制权，并为其他司法管辖区的液化天然气提供了新的商业机会。中国买家能够在日新月异的全球市场中优化投资组合。美国液化天然气价格稳定、供应灵活、产品多样，是中国满足日益增长能源需求的理想供应来源之一。

国家排放交易制度和海上环境法

2017 年 12 月，中国发改委发布了《全国碳排放交易市场建设方案（发电行业）》；生态环境部积极推动全国碳排放交易市场建设。这些行动已初见成效，发电行业碳排放权配额分配技术方案不断改善。地方一级碳交易的责任现在已与当地环境保护系统整合。2019 年 3 月，

LNG as a bunkering fuel. This is already under way, but it would be beneficial for China to adopt a forward-looking stance that prepares for the potential long-term outcomes of such move. Shipyards in China are already building and delivering LNG-powered ships to foreign operators. These shipyards could be combined with newly emerging LNG receiving terminals along China's coasts to develop a domestically-operated LNG-powered ferry network along the coast from Haikou to Dalian, as well as up and down the Yangtze River. We recommend that China undertake policy planning to help realize this opportunity, perhaps by promoting the construction of infrastructure like bunkering and storage facilities, river-borne or coastal bunkering vessels, small-scale LNG transport vessels; and the development of institutional capacity for the necessary training, licensing and accreditation. Additionally, we encourage China to consider permitting ship-to-ship (STS) LNG transfers, which are not currently allowed in China. The absence of STS is a significant drawback for bunkering in China. STS has proven global safety track record globally so it would benefit China to accept these practices as well.

China should also increase its natural gas and LNG purchases from a diversity of suppliers to address the shortfall in its current energy sources. For example, the recent commencement of deliveries of Russian-origin piped natural gas through the Power of Siberia pipeline heralds the emergence of Russia as a major provider of natural gas, but this energy source has limitations. This pipeline can efficiently deliver natural gas only to China's Northeast, and limitations in China's current pipeline infrastructure make it difficult to transport this gas to large areas of demand in the south and on the coast. While we recommend that China continue its effort to build and extend its gas pipeline and storage infrastructure, these are long-term investments that will take many years to develop and require significant financing. LNG import terminals will enable delivery of natural gas into a pipeline delivery system located much closer to one of the demand areas, on a shorter timeline, and at less cost. Extending such infrastructure will also prevent China from becoming overly dependent on LNG from a single source, such as Russian-origin natural gas, which could adversely affect China's energy security.

Diversifying China's LNG sources also gives the government flexibility in managing and meeting energy demand. For example, US LNG suppliers offered LNG at competitive prices during China's gas shortage in the winter of 2018. The destination-free contracts utilized by US LNG suppliers allow Chinese buyers to utilize the cargos for their own domestic purposes or resell surplus LNG to other markets. These flexible contracts offered by US LNG suppliers give Chinese buyers a degree of control over supply and new business opportunities for LNG in other jurisdictions. They allow Chinese buyers the ability to optimize their portfolios in an increasingly liquid, global marketplace. The price stability, flexibility, and diversification offered by US LNG make it an ideal complement to China's growing energy needs.

National Emissions Trading and Offshore Environmental Law

Since the NDRC released the *National Carbon Emissions Trading Market Construction Plan (Power Industry)* in December 2017, the Ministry of Ecology and Environment (MEE) has actively and steadily promoted the construction of a national carbon emission trading market. This can be seen for example, through improvement of the technical scheme allocating carbon emission rights among members of the power generation industry. Responsibility for carbon trading at the local level is now integrated with the local environmental protection system. In March 2019, the MEE issued the *Interim Regulations on the Management of Carbon Emissions Trading (Draft for Comments)*, which would establish a legal foundation for carbon trading. A final version has, however, yet to be issued. As matters are still at an early stage, AmCham China encourages policymakers in China to examine best practices in other countries where a similar system has been implemented.

As amendments made in March 2018 to certain offshore environmental protection regulations remain in effect, AmCham China continues to urge the Chinese government to ensure that these amendments do not unnecessarily impede the normal environmental impact assessment (EIA) approval process or counterproductively affect legitimate business activities, and that evaluation of oil spill accidents are conducted fairly and conclusively.

Recommendations

For the Chinese Government:

- **Expand opportunities for onshore licensing for exploration. China should offer more and better acreage, adequate data availability and access, and generous financial terms to attract bids from non-NOC companies.**
- Continue its existing shale gas subsidy program to at least 2025. The government should also consider policies to foster partnership opportunities between IOCs and NOCs to develop China's underexplored marine lacustrine shales, where 80 percent of oil is sourced. Such partnerships will not only increase well productivity and Estimated Ultimate Recovery (EURs) to make shale oil projects economically feasible, but also accelerate the advancement of shale gas development in China.
- Implement a liberalized gas pricing scheme that reflects the true costs of gas supply, competitive supply chains, and provision of third-party access (TPA) to shale gas infrastructure. This will be

生态环境部发布《碳排放权交易管理暂行条例（征求意见稿）》，为碳交易奠定了法律基础。但该条例最终版仍未颁布。碳排放交易仍处于初级阶段，商会建议中国政策制定者借鉴学习其他国家的优秀经验。

2018年3月中国政府修订的海上环境保护法规仍在实施，因此商会继续促请中国政府确保修订法规不会妨碍正常的环评审批流程或对合法的商业活动产生消极影响，确保公平全面地对石油泄漏事故进行评价。

建议

中国政府：

- **扩大陆上勘探许可范围。中国应增加勘探区域数量并提高其质量，保证勘探数据的公开性及可获取性，提供优惠金融条件吸引非国有石油公司投标。**
- 中国页岩气补贴政策至少要延期到2025年。政府应考虑制定政策，推进国际石油公司和中国国有石油公司合作开发中国待勘探的海相页岩和湖相页岩，因为80%的石油来自于此。对外合作不仅会提高页岩油井的产量和预估最终采收率，进而增加页岩油项目的经济效益，还能加速推进中国页岩气技术的发展。
- 实施自由化天然气定价方案，可以反映天然气供应的真实成本，具有竞争力的供应链，为页岩气基础设施提供第三方接入，这对于释放中国页岩气潜力至关重要。此外，采用适合页岩气特点的合同结构可增加国外对页岩气领域的投资。
- 继续推动天然气能源在中国的使用。为此，应取消对美产液化天然气的25%的关税税率，增加液化天然气的进口，支持建设液化天然气进口接收站，促进液化天然气燃料的使用，并考虑将天然气与可再生能源结合使用，解决可再生能源间歇性问题。
- 确保海上环境保护法规的修订不会妨碍正常的环评审批流程或对合法的商业活动产生消

极影响，确保公平全面地对石油泄漏事故进行评价。

美国政府：

- **中美第一阶段经贸协议后的贸易谈判应讨论液化天然气问题，为中国创造足够机会，降低对美产液化天然气加征的关税，使美国生产商获益。**
- 寻找并鼓励创造机会与中国相关政府和企业分享美国最佳实践。例如，扩大进入美国上游开采、资源和中游基础设施的机会，分享数据信息共享等措施吸引了大量投资、促进了技术创新并且使美国在世界其他地区成功开发非常规能源。

essential to unlocking China's shale gas potential. Adopting contract structures suited to shale gas will also assist in stimulating foreign investment in the sector.

- Continue to promote the use of natural gas as an energy source in China. This should be done by eliminating the existing 25 percent tariff on US-origin LNG, increasing imports of natural gas in the form of LNG, supporting the construction of LNG import terminals, promoting the use of LNG as a bunkering fuel, and consider using natural gas in conjunction with renewable energy sources, particularly as a way of addressing intermittency problems.
- Ensure that offshore environmental protection regulations do not unnecessarily impede the normal environmental impact assessment (EIA) approval process or counterproductively affect legitimate business activities, and that the evaluation of oil spill accidents is conducted fairly and conclusively.

For the US Government:

- **As part of the continuing post-Phase One trade negotiations, create sufficient opportunity for China to reduce its tariff on US-origin LNG, which will benefit US producers.**
- Identify and encourage opportunities to share industry best practices with relevant Chinese government entities. For example, in the US, open access to upstream acreage and resources and midstream infrastructure, as well as the public availability of data, have attracted high levels of investment and led to technological innovation, resulting in the most successful development of unconventional resources anywhere in the world.

Real Estate

Introduction

After decades of rapid growth, China's real estate market has entered a cooling period following the implementation of stricter policies to restrain price growth and steer the market towards greater stability.

The tight monetary environment, commercial loan restrictions, and restrictions on land use are pushing developers to become more competitive. At the same time, new real estate sectors are emerging, bringing with them additional risks and opportunities. Co-working is revolutionizing the traditional office environment. Rental housing, a proposed solution to exorbitant housing prices in China, offers promising options, both for young professionals looking for affordable housing in China's cities and for developers to renovate and revitalize existing properties. New retail platforms are reinventing how consumers connect with products, while PropTech, an industry term for new technologies being applied to real estate, represents the future of the industry. As the real estate market evolves, stakeholders will be increasingly forced to adapt and innovate.

Foreign Investment in China's Real Estate Market

Despite a slowdown in the economy and general softening in the office market, mainland China's commercial real estate (CRE) investment market (excluding land) remained active in 2019, and the investment volume of deals over RMB 100 million totaled RMB 278.06 billion (US \$39.5 billion), down just 4.6 percent year-on-year (Figure 1). Acquisitions of properties in which previous owners had been experiencing challenges with financing represented a notable share of the investment. Total foreign investment dropped significantly in 2019, however, totaling around RMB 69.6 billion (US \$9.8 billion), down 20 percent from 2018. Contributing factors included global economic headwinds, uncertainty caused by tension in the US-China bilateral relationship, a weakening RMB, and supply-side pressure.

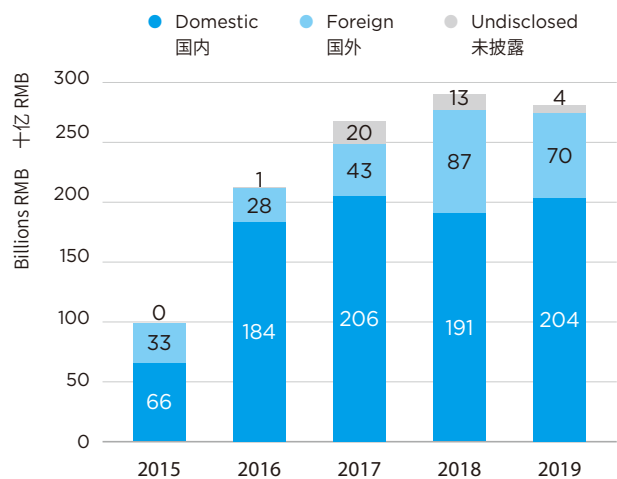
According to research data from global CRE firm Cushman & Wakefield, domestic buyers accounted for 75 percent of deals valued at over RMB 100 million in mainland China in

2019. Many local participants took advantage of the softer market conditions to acquire properties at auction, purchase pre-distressed or distressed assets, or buy office space for their own use. This flurry of domestic activity occurred despite a cooling of foreign investment transaction volumes. Nevertheless, AmCham China continues to observe strong interest in the mainland China real estate market from experienced global investors, particularly from Hong Kong and Singapore (Figure 2), where investors have raised large pools of capital to deploy in mainland China.

During 2019, Hong Kong-based investors deployed RMB 26.5 billion (US \$3.78 billion) into mainland China's CRE market, while investors from Singapore contributed RMB 17.5 billion (US \$2.49 billion). Notable deals include Hong Kong-based Link REIT's acquisition of Shenzhen's Central Walk for RMB 6.6 billion (US \$959 million). Singapore-based Keppel also completed multiple purchases, including the Yi Fang Tower in Shanghai for RMB 4.6 billion (US \$669 million), Zhongguancun Neo in Beijing for RMB 178.6 million (US \$25.9 million), and a joint investment with

Figure 1. Investment in mainland China's CRE Market by foreign and domestic investors.

图 1. 国内外投资者投资中国商业地产市场



Source: Cushman & Wakefield
来源：库什曼 & 韦克菲尔德

房地产

引言

在 经历了几十年的高速发展后，中国房地产行业逐步进入了降温期。政府为了限制楼市价格增长，并引导市场转向更稳定的发展模式，显著收紧了全国房地产相关政策。

随着金融环境收紧，开发商融资渠道受到限制，房地产市场中适者生存。与此同时，新的行业和领域不断兴起，也带来了全新的机遇与挑战。联合办公将新的工作方式和理念引入办公楼市场；长租公寓方兴未艾，为房价高昂的楼市提供了解决方案，既为年轻人才提供了负担得起的安居之所，也为开发商创造了新商机，借此机会升级改造、振兴当前的房产；新零售重塑了我们购物的习惯；而房地产科技（PropTech）这一流行词汇，

预计将引领行业未来。行业正面临变革，各利益相关方必须与时俱进、不断创新。

中国房地产市场的外资

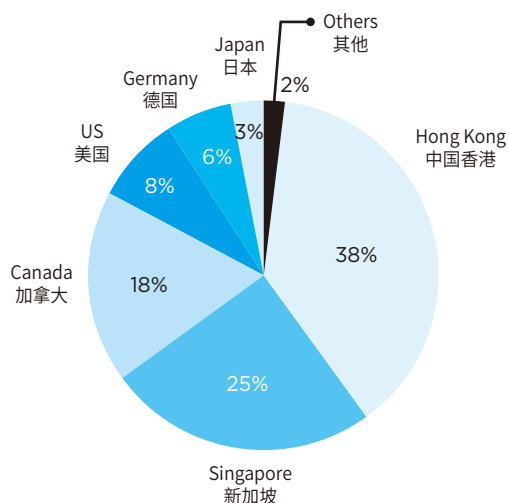
尽管经济放缓，写字楼市场整体疲软，但2019年中国大陆商业地产投资市场（不包括土地）依然表现突出，总投资额超过1亿元人民币的交易总额为2780.6亿元（合395亿美元），同比仅下降4.6%（图1）。其中值得关注的是，因资金困难而出售的地产交易在总投资额中分量吃重。2019年外商投资总额大幅下降，总计约696亿元人民币（合98亿美元），较2018年下降20%，主要受全球经济逆风、中美关系紧张导致的不确定性、人民币疲软以及供给侧压力等因素的影响。

全球商业地产企业库什曼 & 韦克菲尔德的研究数据显示，2019年75%的中国商业地产交易由中国大陆买家完成，交易总额超1亿元。许多本地买家紧抓市场疲软时机，购买拍卖房产、买入不良资产或不良资产、置办办公空间为己所用。虽然外国投资交易量有所降温，但国内仍然如火如荼。尽管如此，中国美国商会（简称“商会”）发现，身经百战的国际投资者尤其是来自中国香港和新加坡的投资者仍然对中国内地房地产市场兴趣浓厚（图2）。投资者已筹集大量资金，布局中国内地市场。

2019年，香港投资者向中国内地商业地产市场投资265亿元人民币（合37.8亿美元），新加坡投资者投资175亿元人民币（合24.9亿美元）。香港公司领展房产基金（Link REIT）斥资66亿元人民币（合9.59亿美元）收购深圳中环大道为代表性交易。新加坡吉宝置业公司也完成了多项收购，包括以46亿元人民币（约合6.69亿美元）收购上海易方大厦、以1.786亿元人民币（合2590万美元）成交收购北京中关村新城，以及与中国房地产开发商同创集团有限公司在广州西门口广场共同投资约1.238亿元人民币（合1730万美元）。此外，

Figure 2. Overseas Investment in the mainland China CRE Market by Origin, 2019

图2. 中国大陆商业地产市场投资来源，2019



Source: Cushman & Wakefield
来源：库什曼 & 韦克菲尔德

Chinese real estate developer Topchain Group Co. Limited in the Westmin Plaza in Guangzhou for approximately RMB 123.8 million (US \$17.3 million). In addition, Keppel and Allianz Real Estate jointly purchased an 85 percent stake in the Ronsin Technology Center in Beijing via Alpha Investment Partners, valued at an estimated US \$1.1 billion (RMB 7.6 billion).

Investors from North America were less active in 2019. The largest investment was made by Brookfield Asset Management, headquartered in Canada, which acquired Greenland Huangpu Center in Shanghai for RMB 10.57 billion (US \$1.5 billion). Deals involving US investors were noticeably lower in value. Barings LLC, based in North Carolina, purchased the Hongqiao Innovation Center for RMB 660 million (US \$92.4 million) in Q1 and an office tower in Beijing Zhongguancun (via its Asia fund BPEA) for RMB 750 million (US \$105 million) in Q4.

Looking ahead, China's *Foreign Investment Law* (FIL), which came into effect on January 1, 2020, will likely benefit the Chinese CRE market for both investors and tenants. The new FIL includes important commitments that should better protect the rights of investors. It explicitly bans forced technology transfers through administrative means and makes multiple commitments to equal treatment for foreign firms in areas like government procurement and standards setting. Alongside the FIL, China has also committed to further opening of its financial sector and enshrined those commitments in the *Economic and Trade Agreement Between the US and China* (Phase One Deal), which commits China to eliminating foreign equity caps in the securities, fund management, and futures sectors by April 1, 2020. This should help further open up China's capital market to foreign investors, especially US institutional investors. Responding to these developments, US investment bank Goldman Sachs has announced that it intends to double its China headcount over five years, and J.P. Morgan recently expanded its Shanghai office space by 50 percent.

As the largest economy in the Asia-Pacific region, China's market presents a diverse array of investment opportunities and is an important destination for many international investors. For international real estate investment funds based in Asia, mainland China is likely to remain a healthy component of their Asia-Pacific portfolio allocation. As the RMB exchange rate stabilizes and opportunities for investment from the Phase One Deal begin to materialize, we anticipate that transaction volumes will remain active.

Urban Renewal

Urban renewal refers to programs aimed at revitalizing aging or decaying cities, often with public funding. Designed to drive the creation of smart, efficient, and sustainable urban centers of excellence, the process of urban renewal promises to power the next stage of China's urbanization and ensure

urban property assets retain their value for years to come amid rapid urbanization and significant change.

Property conversion schemes are the primary mechanism by which urban renewal is being realized in Chinese cities. Property conversion schemes aim to maximize the efficient allocation of existing properties, sites, and land in support of a city's economic development plans. Across China, property conversion schemes have revitalized underperforming or underutilized assets. One area driving this trend is demand for rental housing. By one estimate, only 20 percent of the housing stock in Beijing, Shanghai, or Shenzhen is used for rental properties, compared with 50 percent in Tokyo and 60 percent in New York. Underperforming, underutilized, or simply old buildings can be converted into low-cost rental housing options, which presents an opportunity for residential property developers in some of China's cities to meet housing demand for affordable housing among young professionals in China's workforce.

Municipal governments across China are increasingly exploring opportunities to tackle challenges posed by urbanization such as air and water pollution, income inequality, and inadequate public service delivery, while at the same spurring economic growth. The process of urban renewal can help cities become more sustainable, improve overall living conditions for residents who live, work, and visit, and increase competitiveness. These trends are already happening in cities like Beijing, where local authorities have moved heavy industry and factories outside the city to allow existing properties, which often sit on valuable plots of CRE, to be upgraded.

Current constraints on land use is another of the factors driving China's focus on urban renewal (see next section for discussion on industrial land use). Forty years of rapid urbanization and economic development in the *Reform and Opening* period means the land available for new development is increasingly scarce. This situation is especially evident in China's Tier I cities. In Beijing, a total of 22.9 million square meters of land was made available for development in 2010; this figure had dropped to 5.2 million square meters by 2018. Land available for commercial development is even more scarce. The amount of land allocated for commercial construction and development across six districts of Beijing decreased from 5.6 million square meters in 2010 to 730,000 square meters in 2018. As the amount of land available for new urban development shrinks, particularly in China's largest cities, urban development strategies are increasingly focused on renewal and revitalization of existing properties.

Over the past few years, the Beijing office market has witnessed a surge of building transformations, with more than 30 existing retail and hotel properties converted to office use. A limited supply, low office availability, and high rent prices are the main reasons for these transformations. For example, the Jade Palace hotel in Beijing was originally owned by Beijing Capital Group. Following several years of

吉宝和安联地产通过首峰资金管理共同收购了北京融新科技中心 85% 的股权，价值约 11 亿美元（约合人民币 76 亿元）。

2019 年，北美的投资者不如以往活跃。其中，加拿大布鲁克菲尔德资产管理公司投资总额拔得头筹，以 105.7 亿元（合 15 亿美元）收购了位于上海的绿地黄浦滨江。美国投资交易额显著下跌。总部位于北卡罗来纳州的霸菱公司（Barings LLC）在第一季度以 6.6 亿元人民币（合 9240 万美元）买入虹桥创新中心，在第四季度以 7.5 亿元人民币（1.05 亿美元）买入北京中关村的一座办公大楼（通过旗下霸菱亚洲投资基金购入）。

展望未来，于 2020 年 1 月 1 日生效的《外商投资法》将惠及投资者和租户，利好中国商业地产市场的发展。新版《外商投资法》规定应加强保护投资者的权益，明确规定不得利用行政手段强制转让技术，并在政府采购和标准制定等领域对外商投资企业做出多项承诺，平等对待。除《外商投资法》外，中国采取措施继续推进金融开放，并在中美第一阶段经贸协议中做出相关规定，承诺中国不迟于 2020 年 4 月 1 日，取消证券、基金管理和期货领域的外资股比限制。这些政策将进一步对外国投资者，尤其是美国机构投资者，开放中国资本市场。中国政策环境将迎来利好。美国投资银行高盛宣布，计划未来 5 年内将其中国员工数量增加一倍，摩根大通于近期将其在上海的办公面积扩大 50%。

中国作为亚太地区最大的经济体，各个领域都蕴含大量投资机会，是全球投资热土。对于亚洲的国际房地产投资基金而言，中国大陆可能仍将是其亚太投资组合配置中一个健康的组成部分。随着人民币汇率企稳，中美第一阶段经贸协议开始释放投资机会，预计中国商业地产成交量仍将趋热。

城市更新

城市更新是指利用来自公共财源的资金对旧城进行改造，使之重新振兴。城市更新进程旨在推动创建智能、高效及可持续的卓越城市中心，助力推动中国城市化进程进入新阶段，并确保在未来的快速城市化和重大变革进程中仍保持城市资产价值。

产权流转制度是中国城市实现城市更新的主要机制。产权流转制旨在最大限度地有效分配现有物业、场

地和土地，支持城市的经济发展。产权流转制已盘活中国各地的不良资产或未充分利用的资产。租赁住房需求为其中一个领域。据估计，北京、上海或深圳只有 20% 的住房用于出租，而东京和纽约则为 50%。不良资产、未充分利用资产或老旧建筑可以改造为低成本租赁住房，中国一些城市的住宅房地产开发商可以借此机会开发经济适用房，满足年轻人才的住房需求。

中国各地市政府都在探索机会，既要应对城市化进程中面临的诸如大气污染、水污染、收入不平等及公共服务不足等各种挑战，也要刺激经济增长。城市更新进程可以推进城市的可持续发展，改善居民生活、工作、旅游等整体生活条件，并提高城市自身的竞争力。北京等城市已经显现效果，当地政府迁出重工业和工厂，升级现有房屋（通常位于价值不菲的商业地产中心）。

目前对土地使用的限制是驱动中国重视城市更新（参见下节工业土地使用）的一大因素。中国改革开放 40 年来城市化进程快速推进，经济高速发展，用于进一步发展的土地资源愈发短缺，该现象在一线城市尤为突出。北京 2010 年共规划 2290 万平方英里发展用地；2018 年减少为 520 万平方英里。用于商业开发的土地更为稀缺。北京六区各地可用于商业建设和发展的土地由 2010 年的 560 万平方米减少到 2018 年的 73 万平方米。随着新城市建设用地不断萎缩，中国城市发展尤其是北京愈发重视更新振兴现有城市地产。

过去几年，北京写字楼市场经历了建筑改造的热潮，30 多个零售和酒店物业改造为写字楼。供应不足、办公室可用性低、租金价格高等是建筑改造的主要原因。例如，北京翠宫酒店最初为北京首都集团所有。因为管理不善和运营问题，酒店开始亏损。几年之后，安祖高顿和京东集团（京东网的母公司）于 2019 年 2 月斥资 27 亿元（3.97 亿美元）将其收购。京东集团计划将翠宫酒店改造为办公楼，用于研发业务办公。翠宫酒店位于北京高新区中关村，聚集了北京大学、清华大学等一流大学。京东期望通过收购为集团吸纳技术资源和人才。未来该项目还将成为京东在北京市海淀区产业发展的载体空间。

工业用地政策

2014 年，国土资源部（2018 年重组为自然资源部）发布了《节约集约利用土地规定》，旨在解决中国长期

mismanagement and operational challenges during which time the hotel began to lose money, Angelo Gordon and the JD group (parent group of JD.com) purchased the hotel for RMB 2.7 billion (US \$397 million) in February 2019. The new owners plan to convert the existing property into office space to house JD's research and development (R&D) operations. Located in Zhongguancun, a high-tech area park in Beijing, the acquisition is expected to provide the JD group with access to technology resources and talent given its proximity to China's leading universities (Peking University, Tsinghua University). The project will also function as a hub for JD's industrial development in the Haidian District of Beijing.

Industrial Land Use Policies

In 2014, the Ministry of Land and Resources (reconstituted as the Ministry of Natural Resources in 2018) issued the *Measures on the Thrift and Efficient Use of Land*, which was designed to address longstanding land allocation challenges in China like excessive granting of land use rights, scarcity issues, low use efficiency, low output, and soil and groundwater pollution. Local governments in Shanghai, Beijing, Hangzhou, and Zhuhai subsequently issued circulars focusing on changes in industrial land supply and tenure rules. Of note, these regulations served to shorten land use terms for industrial projects from 50 years to 20 years.

Land tenure rights for industrial projects nationwide in China have traditionally been 50 years, which was consistent with the demands and business cycles of foreign-invested manufacturers. Consider the following scenario: It takes a foreign manufacturing company five years to reach financial breakeven point after the establishment of a new factory/R&D center. Profits might not begin to arrive until year seven, or even later. It could be ten years before production reaches a point where the foreign-invested manufacturer is prepared to expand operations or invest in a new generation of product, and another ten to twenty years to establish sustainable market share in the China market. In total, this scenario reflects a 30-year evolution and life cycle for the foreign manufacturer and fits within the scope of the traditional 50-year land tenure on industrial land.

Policies that shorten land use tenures to 20 years are particularly challenging for foreign-invested manufacturers if invested in Tier II or III cities (particularly in East and Southwest China) because industrial land is sufficiently available in those areas as compared to other Tier I locations, and there is interest at the municipal level in Tier II and Tier III cities to attract foreign investment.

Foreign-invested manufacturers will find it challenging to sustain their business operations without land tenure limits that sufficiently reflect the full life cycle of their investments. As China's economy develops and moves up the value chain, there will be opportunities for further investment by foreign manufacturers to support China's economic

growth. Industrial land tenure policies of 20-years may cause foreign-invested manufacturers and the developers which serve them to rethink or reduce their investments (particularly greenfield investments or business expansion activities) because the length is inconsistent with business needs. AmCham China would welcome the opportunity to discuss these policies with the Ministry of Natural Resources and relevant authorities at the local level. We recommend that the government consider maintaining a 50-year land tenure for industrial projects at the national level.

Logistics and Warehouse Space

China remains the second largest retail sales market globally, buoyed by robust domestic consumption. The rapid growth of online sales in China has stimulated demand for e-commerce and third-party logistics (3PL) services. According to the National Bureau of Statistics (NBS), total online retail sales in China in first 10 months of 2019 increased by 19.8 percent year-on-year, 2.4 times higher than the growth in traditional retail sales.

With respect to vacancy rates for logistics properties (e.g., properties used for the storage and distribution of goods), the most recent *China Logistics Rental Map* produced by Colliers International demonstrates that vacancy rates in Chinese markets in the first half of 2019 remained low, well below 10 percent in 18 of 34 cities surveyed. Cities like Beijing, Kunshan, Suzhou, Shenzhen, Dongguan and Foshan all recorded "full" or "nearly full" occupancy. The cost of renting a logistics unit increased modestly (less than 5 percent) in major cities like Shanghai, Chengdu, and Tianjin, and 28 out of 34 cities recorded positive growth. Rental prices in cities like Beijing, Langfang, Suzhou and Dongguan saw growth over 10 percent year-on-year. In Dongguan, driven by spillover demand from Shenzhen and Guangzhou, average rent increased by 16.5 percent year-on-year in the first half of 2019, which was the highest increase among all the cities surveyed.

The closure of illegal, low-end warehouses and restrictions on land for warehouse construction will increase demands for high-end warehouses in Shanghai, while cost-sensitive clients will move to cities like Kunshan and Jiaying around Shanghai. This will create new opportunities for foreign and domestic institutional investors. We urge investors to follow developments closely in this sector and look for investment opportunities in compliance with local regulations.

In May 2019, Allianz Real Estate committed US \$600 million (RMB 3.9 billion) to funds in China and Japan managed by GLP, a global asset management company. Over the last decade, Allianz has built up a portfolio of logistics assets worth 9 percent of its EUR 63.5 billion (US \$71.2 billion) total assets under management, identifying warehouse projects as a key element of its investment portfolio. Moreover, in December 2019 GLP launched a RMB 15 billion (US \$2.1

以来的土地分配问题，如土地使用权的过度出让、土地稀缺、利用效率低、产量低、土壤和地下水污染等问题。上海、北京、杭州和珠海等地方政府随后发出通知，变更关于工业用地供应和土地使用年限的规定。值得注意的是，这些规例将工业项目的土地出让年限由50年缩短至20年。

此前，中国工业用地全国统一执行的土地使用年限均为50年，与外商投资厂商的需求和商业周期一致。一家外资制造公司在建立新工厂/研发中心后，需要五年时间才能达到财务盈亏平衡点；到第七年甚至要更久才能盈利；十年后才有条件扩大业务或投资新一代产品，再过十到二十年才能在中国市场获取可持续的市场份额。上述情景反映了外资制造商30年的发展和生命周期，在此前规定的工业用地50年使用年限之内。

如果外商制造商要在二线、三线城市（尤其是华东和西南地区）投资，工业用地出让年限缩减至20年的政策反而会成为阻碍，因为相比其他一线城市，二三线城市工业用地资源充足，且市政府愿意支持引进外资。

新的工业用地出让年限过短，无法充分反映投资业务生命周期，外资制造商很难维持业务运营。随着中国经济的不断发展，产业不断升级迈向中高端，外资制造商将有机会扩大投资，促进中国的经济增长。此时实施政策将工业用地出让年限缩短至20年会导致外资制造商及其土地开发供应商重新考虑甚至减少在华投资（尤其是绿地投资或业务扩张相关投资），因为20年的期限与其业务需求不相匹配。商会希望有机会与自然资源局和当地主管部门共商此事，建议政府保留全国各地统一执行工业土地使用年限50年的政策。

物流与仓库空间

国内消费强劲，中国依然是世界第二大零售市场。中国线上销售的迅猛增长也带动了电子商务和第三方物流服务的需求。国家统计局数据显示，2019年前10个月，中国线上销售总额同比增长19.8%，是传统零售额增速的2.4倍。

房地产公司高力国际（Colliers International）最新版《中国物流租金地图》显示，2019年中国物流业（如用于货物存储及分发的物业）市场空置率仍然保持低水平：34座城市中18座城市空置率低于10%。例

如北京、昆山、苏州、甚至、东莞及佛山等城市物流业均为满租或接近满租。在上海、成都和天津等地，物流仓库的租金略有上涨（涨幅低于5%），而34座城市中有28座租金见涨。在北京、廊坊、苏州和东莞的租金涨幅年年超过10%。广东东莞受深圳及广州需求外溢影响，2019年上半年物业租用比同比增长16.5%，在所有调查城市中增幅位列第一。

随着非法低端仓库的关闭以及对新建仓储用地的限制，对位于上海的高端仓库需求不断增长，然而对租金更为敏感的客户则转向上海周边城市例如昆山和嘉兴。这为国内外机构投资者创造了新的机遇。商会建议投资者密切关注行业进展，积极依法寻求投资机会。

2019年5月，安联地产承诺向普洛斯（GLP，一家全球投资管理公司）旗下中国及日本基金投资6亿美元（合人民币39亿元）。过去十年中，安联已建立了一套物流资产组合，规模占其管理资产（价值635亿欧元，即712亿美元）总额的9%，确定仓库项目为其投资组合的关键要素。此外，2019年12月，普洛斯在中国启动设立收益型物流基金，规模为150亿元人民币（合21亿美元），用于投资具有区位优势收益型现代物流资产。拉塞尔投资管理公司（LaSalle）是商业地产公司仲量联行测量师事务所（JLL）的独立子公司，2019年已有5个新的物流开发项目破土动工，到2020年7月将向中国交付359,000平方米的仓库空间。

强劲的消费需求和蓬勃发展的线上到线下（O2O）零售行业，加上数据驱动的技术都在重塑中国物流业的格局。中国电子商务和第三方物流（3PL）行业快速持续发展，因此中国美国商会预测，物流市场将在未来三到五年内继续高速增长。同时我们承认，中国一些地区的地方政府通过就业、税收和土地限制等手段阻止物流业的进一步发展。商会建议中国地方政府根据当地消费和工业需求，采取合理政策规范当地的物流业。

新冠病毒肺炎疫情在2020年第一季度爆发后，网上零售交易预计会撑起一整年交易总额的一大部分。地方政府应该避免采取死板的一刀切政策抑止线上零售业的发展，尤其是那些会限制新兴物流和仓库空间未来规划和发展的那些为倡导拆除低端仓库的政策。

billion) China logistics fund, targeting modern, income-generating facilities in prominent locations. LaSalle Investment Management, an independent subsidiary of CRE firm Jones Lang LaSalle (JLL) has broken ground on five new logistics developments in 2019 that will deliver 359,000 square meters of new warehouse space to China by July 2020.

Robust consumer demand and a flourishing online-to-offline (O2O) retail industry, together with data-driven technologies are reshaping the landscape of China's logistics industry. Given the rapid but sustained development of both China's e-commerce and third-party logistics (3PL) industries, AmCham China forecasts the logistics market to continue its high-speed growth over the next three to five years. At the same time, we acknowledge that local governments in several areas of China have moved to block further development of the logistics industry through employment, tax, and land restrictions. AmCham China recommends that local governments in China adopt reasonable policies to regulate the local logistics industry in accordance with local consumption and industrial demands.

With the outbreak of the Coronavirus disease (COVID-19) at the end of 2019 and into 2020, online retail activity is forecasted to account for a larger proportion of the total retail market in 2020. Local governments should avoid enacting rigid, one-size-fits-all policies that constrain the development of the online sector, such as those that restrict planning and development for new logistics and warehousing spaces combined with policies that promote demolition of low-end warehouses.

Property and Technology

The real estate industry is continuing to grapple with the changes being brought about by the rise of property technology, or PropTech, especially in China. While there are multiple definitions of PropTech, one useful way to think about PropTech is as an umbrella term for the application of new IT technologies to real estate. It is an element of a broader digital transformation happening in the property industry. Although Chinese start-up companies account for only 13 percent of PropTech companies in the Asia-Pacific region, they have received more than 60 percent of total funding for PropTech across the region since 2012. As a result of these changes, real estate firms are increasingly placing technology at the core of their business strategies.

How is PropTech being deployed in China?

Internet-of-Things sensors are being deployed in office buildings to help property managers understand the building environment and measure metrics like occupancy ratios and energy consumption rates.

Surveillance cameras and data tracking are being used to help property managers ensure security and address intrusion of non-residents onto residential properties.

Blockchain technology is being experimented with to register land titles and simplify real estate transactions.

As a greater number of investors, developers, and landlords adopt PropTech features and services, those entities that fail to adopt even the most basic technologies will find the competitiveness of their assets erode over time as tenants move in search of better offerings and greater flexibility. PropTech is no longer a "trend of the future;" in fact, it constitutes both a current opportunity and challenge. Late adopters run the risk of being left behind.

While the real estate industry is still very much reliant on location as the defining criterion of the quality of its assets, advances in PropTech are changing this reality. Elements like "connectivity" and "accessibility" are now emerging as important market considerations. For example, security and climate control sensors are being adopted in office buildings to optimize the level of comfort of their tenants. The advent of smartphones, near ubiquitous Wi-Fi accessibility, and Bluetooth sensors are enabling malls and other large shopping centers, particularly in mature, developed markets, to utilize Big Data in order to optimize the distribution and location of their retail tenants, improve efficiency of product allocation, and maximize foot traffic.

Major industry companies are leveraging Big Data and artificial intelligence (AI) technologies to integrate their customers' online and offline experiences. For example, Alibaba (Hema storefronts) and JD.com have created cashier-free convenience stores in China. Behind the scenes, logistics companies are also utilizing Big Data to plan, automate, and optimize their distribution processes to more effectively meet the demands of the retail sector.

PropTech is developing rapidly with the power to transform the market. To ensure companies do not miss the benefits offered by these new technologies, they are encouraged to explore new technologies and collaborate with innovative new companies. AmCham China also encourages the Chinese government to work closely with industry to develop reasonable and flexible policies for the PropTech sector to balance its growth with an appropriate regulatory framework.

Technology Companies are Reshaping China's Office Property Landscape

The rapid proliferation of technology companies is fueling

房地产与技术

随着房地产科技（ProTech）尤其是在中国市场的兴起，房地产业努力调整适应随之而来的变化。房地产科技的定义不一而同，其中一种较为有效的定义为：房地产科技是所有重塑房地产行业的数字技术的统称。

尽管亚太地区仅有 13% 的房地产科技新创企业来自中国，但是约 60% 的房地产科技资金都流向了美国。房地产科技带来的一些列变化不容小觑，房地产企业愈发重视房地产科技，将其置于经营战略的中心。

房地产科技如何在中国部署？

在办公楼中部署了物联网传感器，帮助物业经理了解建筑环境，并衡量入住率和能耗率等指标。

监控摄像头和数据跟踪，帮助物业经理确保安全，并解决非居民侵入住宅的问题。

正在试验区区块链技术登记土地所有权，简化房地产交易。

大量的投资者、开发商和房东都在使用房地产科技功能和服务，如此一来，不使用这些技术甚至最基本技术都未采用的实体将逐渐失去竞争力，进而被租户抛弃，转而寻求更好的服务，享受更大的灵活性。房地产科技不仅是大势所趋，也是机遇和挑战。晚人一步即可能意味着落于人后。

虽然房地产行业仍然以位置为衡量资产质量的黄金法则，但是房地产科技的发展正在重塑标准。连通性及可访问性一跃成为重要的考虑因素。例如，当前写字楼安装安全和气候控制传感器，大力提升租户的舒适度。智能手机的普及、无处不在的无线网络以及蓝牙传感器的使用赋能大型购物中心尤其是成熟发达市场的购物中心，利用大数据优化零售租户的分配及位置，提高产品分配效率，并最大化行人流量。

各大行业公司纷纷利用大数据和人工智能技术整合客户的线上线下体验。例如，阿里巴巴（盒马店面）和京东已经在中国推出了无人便利店。作为后方服务业，物流企业也在利用大数据规划、自动化、优化收发流程，高效满足零售业的需求。

房地产科技发展迅速，能够重塑市场。我们鼓励企

业探索新技术，主动与创新型新兴公司合作，不错过新技术的利好机会。商会还鼓励中国政府与产业界密切合作，为房地产科技领域制定合理、灵活的监管规定，建立监管框架，平衡增长。

科技公司正在重塑中国办公地产格局

科技公司的迅速扩张拉动了中国的写字楼需求，刺激各地高标准总部写字楼开发。各地政府着力打造对标世界科技圣地 - 硅谷的科技公司聚集区，充分利用其网络优势及溢出效应。

房地产公司世邦魏理仕（CBRE）对亚太地区领先的科技城市进行了研究，并根据 ① 营商环境、② 创新环境以及 ③ 成本优势及办公空间可得性等维度对城市进行综合评估及排名。北京和上海牢固确立了其中国领先科技中心的地位，三个维度表现均名列前茅。北京的“创新环境”表现尤为突出。北京拥有亚太地区最多的独角兽公司，自 2012 年以来，北京的初创公司已获得约 1,200 亿美元融资。北京也拥有多所顶尖大学和中关村科技中心。杭州和深圳的科技行业和企业蓬勃发展，各项评分指标中均有稳健的表现。世邦魏理仕研究将杭州和深圳列为“胜任型”城市。

由于中国致力建设成为技术强国，许多二线城市正在进行价值链的升级。成都、南京、武汉、西安等城市在研发方面大力投入。这些新兴科技城市各有优势和擅长的领域，因此不应视为竞争对手。二线城市应发挥自身营商低成本优势，提供价格实惠的办公楼及房屋，吸引领先企业不断向此聚集，迈向科技一线城市的行列。

丰富的人力资本、强大的研发生态系统、支持增长和创新的营商环境对科技公司来说都是重要投资。中国是人才大国，每年有 160-470 万科学、技术、工程、数学类专业毕业生。联合国教科文组织数据显示，中国研发投入约占 GDP 的 2%（按购买力平价计算为 3700 亿美元），支出总额全球第二，仅次于美国（4760 亿美元）。上述新兴科技城市为了吸引高科技人才落地扎根，创造更加创新的环境，出台政策提高劳动力流动性，在户口方面给予人才政策优惠，并为初创企业及迁入企业提供经济扶持。

成本仍是科技企业选址决策的重要考量因素。中国正在打造具有成本效益的办公物业方案，通过大量高科

office demand in China and also spurring the development of state-of-the-art headquarters buildings across the region. Local authorities are encouraging the clustering of technology companies in concentrated geographic locations to benefit from network and spillover effects and to support their efforts to establish their city as the next Silicon Valley, which remains the world's leading tech hub.

Real estate firm CBRE conducted a study of Asia Pacific's leading technology cities and ranked them according to their ① business conditions, ② environment for innovation, and ③ the cost and availability of office building space and high-tech parks. Beijing and Shanghai are firmly established as the leading tech hubs in China as they score highly in all three aspects. Beijing is particularly outstanding with respect to its "environment for innovation." The city has the highest number of tech unicorns among cities in the Asia-Pacific and has received around US \$120 billion in funding for startups since 2012. It is also home to a number of leading universities and the Zhongguancun technology hub. Hangzhou and Shenzhen play host to thriving technology sectors and firms and continue to demonstrate solid performance across the categories evaluated. They were categorized as "competent" cities in the CBRE study.

In order to support China's technological development, many Tier II cities are upgrading their value chains, and CBRE has found that significant investment in R&D has taken place in tech cities like Chengdu, Nanjing, Wuhan, and Xi'an. Those emerging tech cities each possess their own unique strengths and areas of expertise and should therefore not be viewed as competitors. In order to become as attractive a destination as the leading Tier I tech cities, policies in Tier II cities should aim to take advantage of their lower cost of doing business by providing easy access to affordable real estate.

Access to human capital, a strong R&D ecosystem, and a business environment capable of nurturing growth and innovation are important inputs for technology companies. China possesses a pool of talent and graduates between 1.6 and 4.7 million STEM students annually. According to UNESCO, China spends roughly two percent of its GDP on R&D (US \$370 billion in purchasing power parity terms), the second largest global R&D expenditure behind the US (US \$476 billion). In the emerging Tier II cities discussed above, local authorities have sought to attract talent and create a more innovative environment through policies that promote greater labor mobility, reduce restrictive household registration (*hukou*) policies, and offer financial incentives for entrepreneurs and companies to relocate.

Cost remains a key criterion for tech companies when deciding where to establish their base of operations. China is assembling a cost-effective real estate portfolio with a wide range of high-tech parks that can serve as cost-effective accommodation for technology companies. The Chinese authorities are also taking steps to ease the cost of doing

business. In the World Bank's annual *Ease of Doing Business Index* for 2019, China was ranked 31st globally and named as one of the top ten most improved economies. Moreover, local authorities in Shenzhen Qianhai District, the Ningbo Southern Business District, and Tianjin Heping District have begun to provide incentives like subsidies and tax incentives to reduce the cost of doing business and alleviate the lingering effects from an over-supply of commercial properties in early 2019. Tech companies are also increasingly seeking locations where they can plug into existing tech ecosystems that accommodate best-in-class tech giants as well as startups and tech unicorns specializing in innovative new products.

In summary, China's technology sector is shaping new trends in the real estate and property market in major cities across China like Beijing, Shanghai, and Shenzhen and also in emerging tech cities like Hangzhou, Chengdu, Wuhan, Nanjing, and Guangzhou. A mix of government incentives, access to human capital, and lower costs of doing business are encouraging companies to establish a second headquarters in some of these locations.

Recommendations

For the Chinese Government:

- **Work closely with industry leaders to develop reasonable, flexible regulations for the Proptech sector that balances sector growth with an appropriate regulatory framework.**
- Avoid cross-the-board restrictions on new logistics and warehousing spaces, and instead develop and implement reasonable and adaptable locally-designed regulations.
- Maintain 50-year land tenure rights for industrial projects at the national level.
- Promote policies favorable to property conversion schemes to support revitalization of underperforming or underutilized property assets given constraints on the availability of land in China's leading cities.
- Reduce living costs associated with real estate to attract talent and investment. Promote policies that attract and support the expansion of high-tech companies.

技园区为科技公司提供较低成本的办公地点。中国相关部门也在采取措施降低营商成本。世界银行发布的 2019 年全球营商环境报告显示，中国营商环境全球排名位列第 31 名，晋选全球优化营商环境改善幅度最大的十大经济体。此外，深圳前海区、宁波南部商务区、天津和平区等区政府已开始通过提供补贴及税收优惠等政策降低营商成本，缓解 2019 年初商业地产过剩的影响。科技公司更加青睐于已有科技生态系统的区域，集聚一流科技巨头、新创企业以及专攻创新性新产品的科技独角兽企业。

总之，中国科技界正在引领中国主要城市（如北京、上海、深圳）和杭州、成都、武汉、南京和广州等新兴科技城市房地产及物业市场的新趋势。政府的扶持政策、丰富的人力资本和较低的经营成本都在驱动科技企业在上述城市中建设第二个总部。

建议

对中国政府：

- 与行业领导者紧密合作，为房地产科技领域制定合理、灵活的规章制度，在适当的监管框架下平衡部门增长。
- 不再全面限制新物流和仓储空间，制定实施因地制宜的规定。
- 保留全国各地统一执行工业土地使用年限 50 年的政策。
- 在中国主要城市土地受限的情况下，推动制定有利于产权流转制度的政策，盘活不良资产或未充分利用资产。
- 降低房地产相关的生活成本，吸引人才和投资。推动制定吸引支持高科技企业扩张的政策。

Work Safety and Emergency Management

Introduction

In China work safety has become an increased area of attention for government authorities, industry associations, research institutes, the business community, and the public. Following a period of advocacy, the *Work Safety Law* (WSL) was amended in 2014 for the first time since its enactment in 2002, a step toward improving the regulatory environment.

On October 31, 2016, President Xi Jinping ordered workplace safety supervisory authorities at all levels to maintain a “red line” against sacrificing safety for development, focus on preventing and curbing serious accidents, and promote work safety reform and development in a thorough, comprehensive, systematic, and coordinated manner. Authorities are also required to identify and eliminate potential risks, ensure accountability and improve institutional supervision, and strengthen safety equipment technology, emergency administration, and other basic tasks. They are also required to accelerate the establishment of systems to prevent and control safety risks.

2019 marked the first full year of the operation of the Ministry of Emergency Management (MEM) following its creation during the reorganization of the Chinese government in March 2018. MEM integrates 13 departments and units including the formerly independent State Administration of Work Safety and the Ministry of Public Security’s Fire Department. MEM is tasked with defusing major security risks, improving public safety management, and establishing a unified command structure with so-called Chinese characteristics to be responsible for flexible and responsive emergency management.

Civil Engineering and Work at Height

The Ministry of Housing and Urban-Rural Development (MOHURD) publishes an annual report on safety-related accidents in the housing and municipal sector. In 2018, there were 734 production accidents and 840 fatalities from construction engineering projects. The total number of accidents increased by 42 between 2017 and 2018. These were the highest figures seen over the past ten years. The spike in accidents is due in part to continued demand for construc-

tion and infrastructure investments and in part to changes in how accidents are classified and reported.

Among the 734 accidents, “fall from height” accidents accounted for 383 cases or 52 percent of the total. In the past ten years, “fall from height” accidents, the most common type of accident in the construction industry, have consistently accounted for about 50 percent of total reported safety-related accidents. Policies announced at the end of 2019 that permit local governments to front load the issuance of special purpose bonds for infrastructure are expected to ensure funding of infrastructure projects in 2020 as part of the government’s effort to stimulate the economy. These policies should generate additional business for the construction sector. We urge the Chinese government to continue its focus on safety in the construction sector, especially work at height, amidst the increase in construction funding.

According to JGJ 80-2016 *Technical code for safety of working at height of building construction*, when working at a height of two meters or more, a protective rail should be put in place to prevent falls. In practice, this provision is difficult to enforce because of limitations imposed by using traditional work at height tools like scaffolding. Because setting scaffolding up correctly can be labor-intensive, some short-term construction sites working under deadlines do not always employ or use scaffolding as required. The use of mechanized elevation work platforms (MEWPs) can help address this. We recommend that the government ensure enforcement of this requirement and promote the use of MEWPs, which are safer than traditional scaffolding and have protective rails in place, improving worker safety.

Although the penetration rate of MEWPs in the China market is relatively low compared to other global markets like the US, we are encouraged by the increase in their usage. The volume of mechanized elevation platforms in the market has grown from less than 10,000 units five years ago to nearly 150,000 units in 2019. The increased usage of MEWPs should enhance the safety of those working at height.

A lack of standard operator training, however, has resulted in accidents caused by misuse of MEWPs. The volume of MEWPs is expected to increase to at least 600,000 units in place over the next five years. In light of the anticipated growth, we recommend that the government mandate

安全生产与应急管理

引言

在 中国，安全生产工作已经成为政府机关、行业协会、科研机构、企业界和社会公众共同关注的良心事业。通过所有利益相关方的共同努力，《安全生产法》自2002年颁布以来于2014年首次得以修订，进一步强化依法治安。

2016年10月31日，习近平主席强调，各级安全监管监察部门要牢固树立发展决不能以牺牲安全为代价的红线意识，以防范和遏制重特大事故为重点，坚持标本兼治、综合治理、系统建设，统筹推进安全生产领域改革发展。健全制度和完善监管，强化安全科技、应急管理基础工作，加快建立安全风险防控体系，更加细致扎实地做好安全生产各项工作。

2019年全国应急管理部门组建到位后全面履职的第一年，各项工作稳步推进。应急管理部将包括国家安全生产监督管理局及公安部消防部门13个部门和单位的职责进行了整合和统一。这次整合的目的在于：防范化解重特大安全风险，健全公共安全体系，整合优化应急力量和资源，推动形成统一指挥、专常兼备、反应灵敏、上下联动、平战结合的中国特色应急管理体制。

土木工程

住建部每年都会发布的房屋市政工程生产安全事故。2018年事故总数为734起，死亡840人；事故总数与死亡人数均为近十年最高。施工安全事故的增长部分由于随着基础建设投资的进一步增加，以及事故的分类和报告的方面的变化。

在734起事故里，高处坠落事故占383起，占了事故总数的52.2%。高处坠落是在工地上最高发的事故类型。在过去近十年中，高处坠落在十多种施工事故类型里始终占比在50%左右。作为政府刺激经济的举措之一，

2019年底国家发布政策允许地方政府发行专项债，为基建提供资金支持。我们希望中国政府在增加建筑资金的情况下，继续重视建筑安全，尤其是高处作业。

根据JGJ 80-2016《建筑施工高处作业安全技术规范》规定，坠落高度基准面2m及以上进行临边作业时，应在临空一侧设置安全防护栏杆，采取围挡保护措施。然而此条规定在实际操作中，由于某些操作场景的限制，在使用传统的脚手架以及其他缺乏保护的高空作业方式时较难实施。正确搭建脚手架工作量密集，有些短期受截止日期限制的工程并不常使用这一方法使用机械化的高空作业平台设备能有效解决这一问题。我们建议加快普及使用机械化的高空作业平台设备来进一步保障施工人员的高空施工安全性并且帮助执行此规范。

虽然比起美国和其他发达国家，中国高空作业平台的使用率较低，但是中国高空作业平台数量增长仍十分迅速，保有量已经从5年前的不足万台迅速增长到2019年近15万台，并且仍在急速增长中。使用高空作业平台加强了高处施工的安全。

尽管高空作业平台加强了高处施工的安全，但由于操作使用的安全培训往往被忽视，导致由于误操作引起的高空作业平台的使用事故也逐渐上升。中国高空作业平台预计将会在五年内达到至少60万台的保有量。在行业发展快速增长阶段，在此建议政府通过执行GB/T 27549-2011《移动式升降工作平台操作人员培训》或者与其类似的团体标准，加强对高空作业平台的终端用户的培训，从而为未来高处作业的安全打下良好的安全基础。

促进职业安全健康文化

据国际劳工组织报告，全球范围，每天有7500名劳工在他们的工作中丧生，其中约1,000名死于职业事故，约6,500名死于职业相关疾病。每年因为工作场所

intensified training of MEWPs operators through consistent enforcement and application of GB/T 27549-2011 *Mobile elevating work platform – Operator (driver) Training* or through the promulgation of similar group standards to further improve the safety of work at height.

Promoting a Culture of Occupational Safety and Health

According to the International Labour Organization (ILO), globally, an estimated 7,500 workers lose their lives because of unsafe or unhealthy working conditions every day. Of these, approximately 1,000 die from occupational accidents and about 6,500 die from occupation-related diseases. Occupational accidents and disease account for a loss of about four percent of the global GDP; of which the toll in Asia and other developing regions accounts for a substantial proportion.

In recognition of the costs of a disregard of workplace health and safety, the UN 2030 Sustainable Development Goals (SDGs) include the following goal: “protect labor rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment (SDG target 8.8).

Advancing occupational safety and health (OSH) requires implementation of strategies focused on prevention. OSH is a multi-dimensional term. At the national level, it encompasses the formulation and improvement of relevant laws, regulations, and standards, improvements in law enforcement and supervision, and research and development (R&D) on the benefits of OSH practices to increase awareness of their value across society.

At the societal level, training of OSH personnel is needed to implement R&D, promote concepts and best practices for OSH, and correct any lingering misperceptions that investments in OSH are an unnecessarily costly burden.

At the enterprise level, it requires a joint commitment by management and employees to ensure and promote OSH. Companies need to establish and implement standards grounded in science, stimulate investment, provide reasonable and appropriate facilities, equipment, and protective instruments, and provide training and education to increase awareness of OSH.

At the employee level, it is important to establish a culture of OSH, advocate for the application of a safe and healthy work environment, strengthen labor protections, monitor compliance with operating procedures, ensure that employees wear personal protective equipment, and improve emergency response capabilities to address acute occupational diseases and accidents.

Build Consensus Around the Value of OSH Through Unified Data Collection and Publication

A significant constraint facing the development of effective OSH systems is the lack of society-wide consensus and understanding of its value. Some companies regard investments in OSH as a financial burden and do not consider the potential economic and social benefits. There is no uniform public system or database for classifying and publishing statistics on occupational or work-related accidents like falls from height, accidents from exposure to toxic substances, or other personal injuries that can arise in the workplace.

Improving understanding of OSH laws and best practices and building a consensus around OSH’s social and economic value requires transparent collection and publication of statistics on the number of workplace accidents and injuries and objective assessments of their economic cost.

We recommend greater emphasis be placed on improving coordination between China’s national-level ministries and commissions to ensure data on workplace accidents are published regularly through a unified and authoritative channel to serve as a public and professional reference. Promulgating authoritative statistics will encourage greater awareness of the value of OSH and provide a basis for further research and policymaking.

Data on the impact of work-related accidents and diseases is an important starting point in helping the public to understand the value of OSH, its social and economic benefits and its positive impact on economic productivity will lead both government and the business community to invest in prevention. The ILO and the International Finance Corporation (World Bank) currently co-sponsor a program called “Better Work” which aims to improve labor standards and competitiveness of supply chains and is active in five countries covering Latin America, Asia and the Middle East. An impact assessment of the Better Work Program based on over 17,000 surveys indicates that poor OSH practices reduced a factory’s competitiveness. Workers in factories with better working conditions reached daily production targets 40 minutes faster relative to factories with worse conditions. Improving OSH conditions is also linked to increased productivity. For instance, a 2013 study of 19 countries found that every euro invested in OSH in Europe generated a return of 2.2 euros, highlighting the positive return on investment.

Promote Training and Education Activities to Raise Public Awareness of OSH

Training and education play an important role in building a culture of OSH. The establishment of a uniform training and education system will improve public understanding of OSH and increase the ability of enterprises to address OSH issues effectively. Doing so will promote progress in building a

死亡事故造成的损失，占到全球年均 GDP 的 4% 左右，亚洲和其他发展中地区占比更大。

“保护劳工权利，推动为所有工人，包括流动工人，特别是女性工人和没有稳定工作的人创造安全和有保障的工作环境。”作为正式条文，写入到了联合国《2030 年可持续发展议程》可持续发展目标 8.8 之中。

职业安全健康形势的改善，需要以预防为主职业安全健康文化的持续提升。职业安全健康文化的内涵很广，在国家顶层设计层面，包括相关安全生产及职业健康法律法规、标准的制定和完善，职业安全健康政策的科学制定，职业安全健康的投入以及国家执法监管力度的提升，推动职业安全健康价值的研究并在全社会达成共识。

在社会层面，需要加大职业安全健康相关人才的培养及研究项目的开展，积极宣传以预防为主职业安全健康理念，扭转职业安全健康投入是社会负担的错误认识。

在企业层面，需要管理层和员工对确保安全生产和职业健康工作的共同承诺，建立统一的职业安全健康价值观，需要企业建立并执行科学的职业安全健康体系并保证持续投入，需要企业提供有效的职业安全健康设施设备以及合适的劳动防护用品，企业需要持续提供培训教育以提高员工的职业安全健康意识和相关能力知识。

在员工层面，需要树立“我要职业安全健康”的意识，倡导安全健康的工作方式。加强劳动过程防护，严格按照操作规程进行作业，自觉、正确地佩戴个人防护用品，提升急性职业病危害及安全事故的应急处置能力。

推动形成职业安全健康价值共识

在推进职业安全健康管理体系和能力现代化进程中，其中一个主要的制约因素是：全社会还没有形成职业安全健康价值的共识，多数企业将职业安全健康投入看作是企业的负担，没有认识到其中潜在的巨大可持续发展经济和社会效益。这其中重要的原因是缺乏国家层面统一公开的，职业安全健康相关的事故及人员财产损失分类统计和公开发布，例如：工伤事故信息、高处坠落、中毒事故、眼部伤害、手部伤害等各类职业安全健康事故信息。

从过往事故中学习安全生产及职业健康的规律和教训，推动全社会形成职业安全健康价值的共识，这些都首先要求有科学客观的职业安全健康相关事故调查和损失统计信息。

建议国家层面协调各部委通过统一权威的渠道统计和公开发布职业安全健康相关事故调查和损失信息，供公众和专业人员查询和参考，鼓励并推动职业安全健康相关信息的研究，为国家制定职业安全健康政策提供依据。

以此为出发点，破除职业安全健康价值共识形成的制约，推动和引导全社会从思想上深刻认识职业安全健康的社会和经济效益，认识职业安全健康工作和有效提高生产力之间不是对立的，促进国家和社会对职业安全健康工作的真正重视和投入。

例如，国际劳工组织和世界银行集团的国际金融公司合作，在包括拉丁美洲、亚洲和中东地区的 5 个国家的服装厂开展了一项名为“改善工作”的项目。该项基于 17000 份调查的结果表明，不良的职业安全健康可能威胁到工厂竞争力的可持续性。此外，在拥有较好安全条件的工厂，工人的产出比那些安全条件不够的工厂的工人要快 40 分钟，职业安全健康与提高生产力息息相关。据估计，一项 2013 年覆盖 19 个国的研究表明：在欧洲，每投资 1 欧元在职业健康和安全方面，就会增加 2.2 欧元的社会产出。这是一个非常高的投资回报。

推动各层级培训教育，提升公众职业安全健康意识

培训教育对职业安全健康文化促进以及公众意识提升有着举足轻重的作用，通过建立职业安全健康培训教育体系可有效提高职业人群安全健康素养，提升公众的安全意识、安全知识、安全技能等，从而促进国家职业安全健康文化建设不断进步。放眼世界，欧美主要工业化国家高度重视职业安全健康教育培训，

总体来看，应急与安全管理领域存在专业人才少，结构不合理，人才供给不足等问题。发展情况：根据 2019 年 12 月《中国青年报》相关报道，到 2020 年，全国范围内安全监管、安全服务、安全技术应用人才缺口达 43 万人。从企业和社会来看，应急安全更需要既懂专业又有实际操作能力的人才，必须加强应急安全人才培养和职业教育。

national culture of OSH. Developed economies in Europe and the US attach great importance to OSH education and training.

Generally speaking, there is a shortage of professional talent in the field of emergency management in China. According to a December 2019 article in *China Youth Daily*, by 2020 industry professions in the areas of safety supervision, security services, and security technology applications face a shortage of over 430,000 positions. From a business perspective, the field of emergency management needs a greater number of professionals who possess both the relevant theoretical and practical skills. Training and education programs must be strengthened.

In addition to a shortage of professional talent, public awareness of OSH is weaker in China compared to developed nations. The reasons include:

- Enterprises are not making the necessary investments in OSH, hindering awareness among their employees,
- There is a lack of OSH content in schools and in professional development as well as on-the-job education opportunities,
- The uneven development of different regions in China has contributed to a lack of OSH personnel and facilities and relatively weak on-site enforcement of regulations in certain areas, limited the uniform provision of technical services, and generated few public awareness campaigns.

With respect to OSH education and training, the main duties of the US Occupational Safety and Health Administration (OSHA) include the development and implementation of national industrial standards for OSH, encouraging and supporting states to develop local OSH plans, the provision of information, and providing funding and organization for professional training, education, publicity, and promotion activities. The OSHA training program is organized around three areas: ❶ providing outreach training, ❷ supporting internal training, and ❸ providing funding for training and materials. These three programs cover the various actors in the OSH ecosystem including companies, employers, employees, and government officials. Outreach training courses are targeted toward employers and employees, internal training courses are for federal and local government officials, and funding is commonly directed toward non-profit organizations to support development of materials and training courses about OSH.

OSH management in the US emphasizes public participation. Through a variety of cooperation projects, government agencies, associations, schools, research institutions, and other non-profit organizations jointly participate in supervising and promoting the development of OSH.

In light of the current situation, we offer the following recommendations for consideration by the Chinese government:

- Incentivize social and other non-profit organizations to participate in OSH training and education. The government should encourage OSH education, training, funding, and other support. This should be done in a way so as to incentivize participation from such entities as universities, scientific research institutions, and industry associations,
- Encourage industry associations to develop professional training courses complete with up-to-date content and industrial best practices. One way to do so is for industry associations to collaborate with professional OSH institutions or individuals in the development of these courses,
- Strengthen public dissemination of information and reporting on OSH data related to accidents and risks, as well as the benefits of investing in OSH prevention. Formulate and promote policies that reward enterprises who invest in such policies,
- Encourage property insurers to develop and offer safety and health loss reduction expertise to their clients.

Management of Confined Space Operations

Operating in a confined space is hazardous. The risks, including suffocation, falls from height, exposure to toxic substances, fire, and explosions, can be significant if appropriate mitigating measures are not taken. Confined space operations pose a risk to the lives of workers and the safety of corporate property.

Workers are generally unfamiliar with the concept of a “confined space” and cannot recognize the hazards. This is part of the reason for a high incidence of confined space accidents across China. This, combined with a lack of qualified monitoring and rescue personnel, is a leading cause of the high death rate when accidents do occur. Secondary accidents can then occur when a worker is trapped in a confined space and a rescuer is killed or injured during the rescue attempt. A shortage of suitable rescue equipment also contributes to high mortality rates among workers in confined spaces.

With respect to managing safety in confined spaces, common shortcomings often include:

- A lack of signage clearly displayed in confined spaces indicating the potential hazards,
- Unauthorized or unapproved operations taking place in confined spaces,
- The absence of emergency plans, equipment, and devices ready to assist in the event of emergency. Moreover, site leaders, supervisors, operators, and emergency rescuers often have little familiarity with emergency preparations and do not put in place preventive measures.

除了专业人才供给不足，公众职业安全健康意识相比欧美发达国家仍然薄弱，主要原因有：

- 相对于经济效益，企业在职业安全健康领域上缺少必要的投入，导致员工的整体职业安全健康意识相对薄弱；
- 学校教育及在职教育中缺少对于职业安全健康相关内容；
- 不同地区政府及企业发展不均衡，职业安全健康人才和设施比较缺乏，现场执法、技术服务和宣传力度相对较弱。

在职业安全教育培训方面，美国联邦职业安全与健康管理局（OSHA）的主要职责包括制定和实施行业职业安全健康标准，推动各州制定地方职业安全健康计划，提供教育培训和信息咨询，组织实施职业安全与健康技术培训、教育、宣传、推广活动等。OSHA 培训课程计划分为外展培训、内部培训、培训资助计划三类，三种培训计划覆盖了从社区到企业，从雇主、雇员到政府官员，从潜在就业者到危险环境工作人员，完全覆盖了职业安全健康可能涉及到的人群。外展培训课程主要面向雇主和员工，内部培训课程主要面向联邦和各级政府官员，培训资助计划则主要资助非盈利组织用以发展职业安全健康相关材料和培训课程。

美国的职业安全与健康强调公众参与。通过不同的合作项目，除企业自身外，允许相关政府机构、协会、学校、研究机构以及其它非政府组织（NGO）都参与进来共同监督和促进职业安全与健康的发展。

基于目前状况，我们建议中国政府：

- 调动社会组织参与培训的积极性：政府不仅直接组织职业安全健康培训，还需充分利用高校、科研机构、行业协会等社会力量，以合作办学、拨款资助、技术支持等形式开展职业安全健康培训工作。
- 鼓励行业协会向专业化发展协助协会开发体系完善、内容专业性强、重视工业实践的培训课程。如吸引专业单位或个人加入。
- 引导主流媒体加强对职业安全健康的宣传和报道，制定相应优惠或奖励政策，鼓励自媒体、社区工作者和企业关注并推动职业安全健康事业。
- 建议保险公司向客户制定及提供安全与健康减损方面的专业知识。

加强有限空间管理

有限空间由于环境的复杂性，可能存在多种危害，包括窒息，坠落，中毒，火灾，爆炸等，对作业人员生命安全及企业财产安全构成较大的威胁。

作业人员对有限空间的概念不熟悉，无法认清相应的危害性，这是有限空间事故高发生率的重要原因；作业、监护、救援人员相关知识的匮乏是导致相应事故的高死亡人数的主要原因，经常发生一人在有限空间内作业发生意外，多名救援人员的进行营救时的死亡事故；适用救援设备的缺失也是导致相应作业人员高死亡率的原因之一。

从有限空间的安全管理角度，较为常见的问题包括：

- 未对有限空间作业场所进行辨识，并设置明显的安全警示标志；
- 未落实作业审批制度，擅自进入有限空间作业；
- 未制定应急预案，并配备相关的应急装备和器材。有限空间作业的现场负责人、监护人员、作业人员和应急救援人员未掌握相关应急预案内容，未定期进行演练，提高应急处置能力。

针对以上问题，对有限空间安全管理的建议：

- 政府加强有限空间作业监管，制定安全管理措施，要求企业严格执行操作规程，落实安全措施，规范现场安全管理。
- 强化教育培训，提高有限空间作业认知水平。多措并举加强企业安全生产培训，将有限空间作业作为主要危险作业活动之一，纳入企业培训内容。有限空间作业的企业主要负责人和安全管理人員都要接受有限空间专题培训，并督促这些企业全部开展内部员工安全培训。
- 树立典型示范推动工作，以点带面，引领带动其他企业提高防范有限空间事故水平。

道路交通安全

2009年，中国取代美国成为世界上最大的汽车市场，所以道路安全仍然是普遍关心的问题。截至2018年底，我国公路总里程达484.65万公里，公路密度为50.48公里/百平方公里，公里技术等级进一步提高，交通基础设施网络日益完善，其中高速公路总里程已达

In view of the issues described above, we offer the following recommendations for consideration by the Chinese government with respect to the management of confined spaces:

- Strengthen supervision of confined space operations, develop safety management measures, require enterprises to follow and implement operating procedures, and standardize safety management protocols for confined spaces sites,
- Increase education and training around dangers associated with confined spaces. Incentivize enterprises to carry out confined space safety training. The principal site managers and safety personnel of companies with confined space operations should receive special training and be required to render this training internally to all staff members,
- Catalogue companies and organizations which exhibit best practices and have clean records with respect to the management of confined space operations. Encourage such companies to share their best practices and guide industry to reduce the risk of accidents or damage occurring during confined space operations.

Road Traffic Safety

China's road infrastructure is extensive. By the end of 2018, China's highway mileage totaled 4.48 million kilometers. Highway density was around 50.5 kilometers per 100 square kilometers of land. The length of China's total expressway network reached 142,600 kilometers, the largest in the world. This includes 104,400 kilometers of modern highways.

On September 14, 2019, the Party Central Committee and the State Council formally issued the *Outline for Building Better Transportation* (the Outline), which outlined goals to build a developed expressway network and an extensive basic road network to ensure China has a modern transportation system. In October 9, 2019, the Ministry of Transport (MOT) began to implement the initial 13 transportation pilot projects under the Outline. Initial results of these pilot projects are expected in one or two years and the full results are anticipated to emerge in three to five years.

The government has prioritized equitable access to transportation as a top political task and an important element of its efforts to eliminate poverty. The *Thirteenth Five-Year Plan for Poverty Alleviation* issued by the MOT (2016) and the *Opinions on Reform of Rural Highway Management and Maintenance* issued by the State Council (2019) both identify rural infrastructure as a key component of poverty elimination efforts. The government is working to ensure that by 2020 the less affluent regions of China will be fully connected to the national highway network.

Given China's extensive road network and prioritization of rural infrastructure, there is a need to ensure that available road services and facilities keep pace with the planned

construction. The management capacity of China's current road facilities, however, has struggled to keep pace with China's rapid urbanization and development, which has itself created challenges with respect to road traffic safety. AmCham China members' experience is that rural roads generally suffer from inadequate pre-construction research and insufficient feasibility assessments. The construction standards adopted for these roads are generally low.

In view of the issues described above, we offer the following recommendations for consideration by the Chinese government with respect to improving management of road traffic safety:

- Authorities work to ensure that relevant road signage is available throughout China's road network and visible during even severe weather conditions. This will require improvements in the quality of current highway road signage and efforts to increase the capacity of road safety operators,
- Improve public awareness of traffic rules and regulations. The government should focus on the needs of vulnerable groups who share the road with automobiles such as children, pedestrians, and cyclists. Efforts should be made to strengthen safety management on roads around schools to ensure student safety,
- Further consolidate the standards of road safety facilities and maintenance practices. Construction standards for rural roads should be strengthened, including ensuring that rural roads are required to undergo an environmental impact assessment and that the results of such assessment are included in the determination of where and at what pace road construction takes place.

Recommendations

For the Chinese Government:

- **Strengthen training opportunities for the operators of MEWPs on the basis of GB/T 27549-2011 *Mobile elevating work platform – Operator (driver) Training*. Ensure that this recommended standard is consistently applied and enforced. Alternatively, promote the promulgation of group standards similar to GB/T27549-2011 to continue to improve the safety of work at height.**
- Improve coordination between China's national-level ministries and commissions to ensure that data on workplace accidents is published regularly through a unified and authoritative channel to serve as a public and professional reference. This should help to build awareness of the importance of OSH.

14.26 万公里，位居世界第一位。

2019 年 9 月 14 日，党中央、国务院正式印发《交通强国建设纲要》，明确打造发达的快速网，完善的干线网及广泛的基础网，建成人民满意、保障有力、世界前列的交通强国。10 月 9 日，交通运输部启动第一批 13 个交通强国建设试点工作，力争用 1-2 年时间取得试点任务的阶段性成果，用 3-5 年时间取得相对完善的系统性成果。

此外，政府始终把打赢交通扶贫脱贫攻坚战作为首要政治任务和第一民生工程，加大力度扎实推进《“十三五”交通扶贫规划》确定的目标任务，推动出台《国务院办公厅关于深化农村公路管理养护体制改革的意见》，加大对贫困地区支持力度。预计到 2020 年，贫困地区将实现国家高速公路主线基本贯通。

源于中国大力推进路网建设及农村基础设施的优化，需要提高相应的道路服务水平和设备。

随着城镇规模的迅速扩大和功能的不断完善，道路相关交通设施和管理跟不上城镇化的发展速度，带来了很多的交通安全问题。商会会员感到农村公路普遍存在建设前期研究和总体设计深度不足，采用的设计标准普遍偏低的问题。

同时应重点关注儿童、行人、骑车人等弱势群体的需求，进一步强化学校安全和周边环境安全水平，深化学校周边道路安全风险防控体系建设，营造良好的教育和社会环境，为学生健康成长、全面发展提供保障。

鉴于上述情况，我们建议中国政府考虑一下建议改善道路交通安全：

- 主管部门应确保全国路网设置即使在极端天气下也可见的道路标识。这将改善现有高速公路标识，提高行车安全度。
- 向公众普及交通规章教育。应重点关注儿童、行人、骑车人等弱势群体的需求，进一步强化学校安全和周边环境安全水平，深化学校周边道路安全风险防控体系建设，营造良好的教育和社会环境，为学生健康成长、全面发展提供保障。
- 建议进一步完善农村公路相关配套交通安全设施和养护。提高农村公路的建设标准，包括确保安排农村公路建设的环境评估，其评估结果应当纳入农村

公路建设的选址和建设速度考量中。

建议

对中国政府：

- 在 GB / T 27549-2011 移动式升降工作平台 - 操作员（驾驶员）培训的基础上，增加 MEWP 操作员的培训机会。确保此推荐标准得到一致应用和执行。或促进颁布类似于 GB / T27549-2011 的团体标准，以继续提高高空作业的安全性。
- 改善中国国家级部委之间的协调，以确保通过统一，权威的渠道定期发布有关工作场所事故的数据，以作为公共和专业参考。这应该有助于提高对职业安全与健康重要性的认识。
- 推广有关职业安全与健康最佳实践的培训。可通过下列方式做到：① 鼓励社会组织参加职业安全与健康的培训和教育；② 鼓励行业协会开发具有专业的和行业最佳实践的专业培训课程；③ 加强信息的公共传播并与事故，风险和职业安全与健康预防投资相关的职业安全与卫生数据报告。
- 加强对密闭空间运营和安全管理措施的监督管理，要求企业遵守书面操作规程，并规范在密闭空间运营的公司的安全管理。
- 改善现有道路安全和养护设施的能力，并改善农村公路建设中使用的标准，包括要求对农村公路进行环境影响评估。

- Promote training on best practices of OSH. This can be done by **1** incentivizing social organizations to participate in OSH training and education, **2** encouraging industry associations to develop professional training courses complete with professionally-approved content and industrial best practices, and **3** strengthening public dissemination of information and reporting on OSH data related to accidents, risks, and the benefits of investing in OSH prevention.
- Strengthen the supervision and management of confined space operations and safety management measures, require enterprises to comply with written operating procedures, and standardize safety management protocols for companies that operate in confined spaces.
- Improve the capacity of existing road safety and maintenance facilities, and improve the standards used in the construction of rural roads including requiring that rural roads to undergo an environmental impact assessment.

Part Four: Regional Issues

第四部分：区域性问题

Northeast China

Introduction

In 2019, the economy of Liaoning Province grew by 5.8 percent, reaching an estimated US \$364 billion (RMB 2.53 trillion). While the province's GDP growth had been slowing since 2014, the magnitude of decline is unclear. Reported growth rates of between eight and twelve percent from 2011 to 2014 are in question because provincial officials have since admitted to inflating GDP figures during those years.

Overall, the economy of Liaoning is still very driven by traditional industries like steel, coal, heavy manufacturing, and shipping which are dominated by state-owned enterprises (SOEs). Provincial economic growth is being generated in these industries, although much of that is attributable to private foreign investment. For instance, a new automobile factory in Shenyang and new petrochemical investment in Panjin (October 2019) are both partnerships between SOEs and foreign firms. Beyond these traditional industries, high-tech manufacturing, software, and aviation are potentially high growth industries in the region.

Foreign direct investment declined in 2019 due mainly to the completion of a major semiconductor investment project. Despite the decline, member companies in Liaoning remain optimistic about future improvements in the investment environment. In the 2020 AmCham China *Business Climate Survey* (BCS), 54 percent of Northeast members reported the investment climate was improving, compared to only 21 percent who reported it was deteriorating (25 percent reported no change). This reflects a slightly more optimistic outlook than across all AmCham China members, 50 percent of whom reported an improving investment climate in 2019.

The impact of the 2020 Coronavirus Disease (COVID-19) on the national economy is a wild card event creating significant uncertainty throughout China, including the Northeast. Its impact is still playing out as this *White Paper* is published. Foreign-invested enterprises (FIEs) have already seen short-term impacts on travel to and from China and a change in perceptions toward China's business risk. While it is difficult to know the extent of the economic impact at this point, a significant slowdown would pose a large challenge to domestically-invested and FIEs. An AmCham China flash survey on the impact of COVID-19 conducted in February

2020 across all members found very few reporting no impact. Nearly half of respondents expect 2020 China revenues to decrease if business cannot return to usual before April 30, 2020.

AmCham China Northeast Chapter Business Climate

This chapter summarizes responses from AmCham China Northeast Chapter members to the 2020 BCS, input collected through various AmCham China Northeast Chapter Forums, and direct member feedback (the BCS was conducted before the outbreak of COVID-19 and does not capture its impact). Northeast Chapter members expressed broad agreement with the findings of the BCS, although some notable differences are highlighted in this chapter. Responses discussed in this chapter represent the industrial, high-technology manufacturing, financial services, healthcare and pharmaceuticals, consulting, hospitality, and software industries.

Investment Climate

First, a smaller proportion of AmCham Northeast Chapter members reported their financial performance in 2019 as profitable as compared with the responses by all AmCham China members. Fourteen percent of members in the Northeast Chapter reported a loss, compared to ten percent across all members. A greater portion of Northeast Chapter members were only able to break even in 2019 (36 percent compared to 28 percent in 2018). The remainder of the chapter will aim to unpack the opportunities and challenges of doing business for Northeast Chapter members.

Opportunities for Business in Liaoning

AmCham China Northeast Chapter members cited several business opportunities in Liaoning. Consistent with the results for all AmCham China members, rising "domestic consumption and the rise of an increasingly affluent middle class" ranked as the top opportunity by 43 percent of Northeast Chapter members. This has been the top business opportunity among Northeast Chapter members since 2017.

Other leading business opportunities according to Northeast

中国东北

引言

2019年辽宁省经济实现了5.8%的增长，达到约3640亿美元(2.53万亿元)。然而GDP增长自2014年便放缓，步伐的放缓颇让人心生疑惑。据称，2011年至2014年8%到12%的经济增长率曾受到质疑，因为省级官员谈到这几年存在夸大GDP数据的事实。

整体来讲，辽宁省的经济依然主要依靠由国有企业主导的传统产业，比如钢铁、煤炭、重工业和运输业。尽管其中存在外国私人投资，但整个省的经济增长仍主要依靠于这些产业。举例来讲，沈阳一家新的汽车制造厂和盘锦一处新的石化投资都是国企和外资合作的产物。除了这些传统产业，高科技制造业、软件业以及航空业也都是这个地区具有发展潜力的产业。

2019年外国直接投资的下降主要是由于一个大型半导体投资项目的完成。尽管存在下降趋势，但会员企业对辽宁省未来投资环境的改善仍持有乐观态度。在2020年中国美国商会(商会)《中国商务环境调查报告》中，有54%的东北地区会员表示投资环境正在改善，相比之下，只有21%的会员认为投资环境正在恶化(25%的会员认为没有变化)。与商会全体会员的调查数据，即50%的全体会员表示2019年投资环境有所改善相比，这反映出了该地区更为乐观的前景。

2020年新冠肺炎(COVID-19)疫情对国民经济造成了无法预料的影响，也为整个中国带来了巨大的不确定性，东北地区也深受影响。疫情的影响在本《白皮书》发布之际仍在蔓延，外资企业已经看到中国出入境受到短期影响，以及对中国营商风险的看法发生变化。然而目前也难以估计其对经济造成的影响，明显的降速会对国内外企业带来重大挑战。2020年2月商会对所有会员关于新冠肺炎疫情影响的调查显示，只有少数企业没有受到波及。近半数受访企业认为如果4月底经济无法

恢复正常，那么2020年中国经济将会遭遇重创。

商会东北分支办公室营商环境

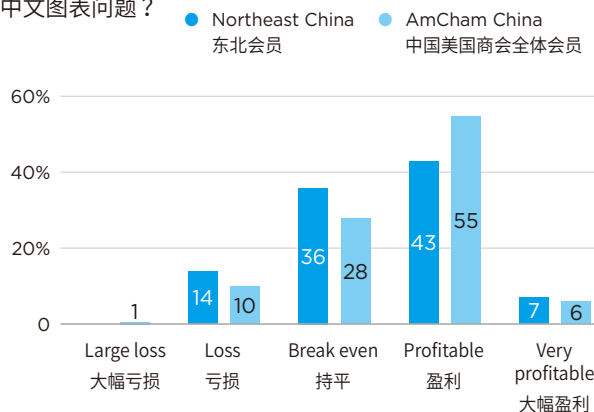
本章为商会东北分支办公室会员对2020年“中国商务环境调查”反馈的概述，相关信息主要来自东北分支办公室各工作组以及会员的直接反馈(“中国商务环境调查”在新冠肺炎疫情暴发前开展，所以没有涉及疫情的影响)。分支办公室会员对调查的结果普遍认同，但仍有值得注意的不同，本章会陆续谈到。本章讨论的反馈主要涉及工业、高科技制造业、金融服务业、医药业、咨询业、服务业以及软件业。

营商环境

首先，和商会全体会员相比，东北分支办公室会员中认为2019年财务方面实现赢利的比例更小。14%的东北分支办公室会员表示在2019年经历亏损，高于全体会员的10%。更多东北分支办公室会员(36%相较于2018年的

Figure 1. How would you characterize your company's financial performance in China in 2019

中文图表问题，中文图表问题，中文图表问题，中文图表问题，中文图表问题？



Chapter members included “increasing customer demand for foreign brands/quality” (39 percent), “China’s continuous R&D investments in emerging strategic industries” (29 percent), and “expanding business to cover more of China’s domestic market” (29 percent). China’s continuing R&D investments in emerging strategic industries constitute an effort to upgrade manufacturing value chains in northeast China and offer FIEs a business opportunity provided they are able to access and participate in these investments on a level playing field with their domestically-invested counterparts.

Although not a “top-three” business opportunity, some Northeast Chapter members reported opportunities to address environmental challenges and support environmental protection efforts. The continuing challenge posed by poor air and water quality in Northeast China coupled with the central government’s focus on addressing those conditions is creating opportunities for foreign enterprises with expertise in environmental protection and remediation.

Challenges of Doing Business in Liaoning Province

In the 2020 BCS, the top five business challenges facing Northeast Chapter members were: ❶ Rising tensions in US-China relations (54 percent), ❷ Inconsistent/unclear laws and regulations and/or their enforcement (43 percent), ❸ Rising labor costs (43 percent), ❹ Internet access quality and/or censorship (32 percent), and ❺ Increasing Chinese protectionism (28 percent).

There are clear consistencies between the challenges reported by Northeast Chapter members and those facing all AmCham China members. Notably, “rising tensions in US-China relations” is the top reported challenge for Northeast Chapter members, and it is a comparably important challenge across all AmCham China membership, with 41 percent reporting it as one of their top five challenges. Additionally, “inconsistent/unclear laws and regulations and/or their enforcement,” and “rising labor costs” were also reported as top challenges across AmCham China’s membership as a whole.

While “increasing customer demand for foreign brands/quality” is reflected as a leading business opportunity among Northeast Chapter members, particularly in the context of China’s growing and increasingly affluent middle class, it is important to point out that “rising tensions in US-China relations” has the potential to undercut some of these opportunities. Some respondents to the BCS noted that while local governments have been more welcoming of foreign investment, “[because of the] constant anti-American news, American and other foreign brands may suffer and thus [feel] not as welcome.” Others also noted that “rising nationalist sentiment” has put US companies on alert.

Notably, the remainder of the top five challenges for

Northeast Chapter members, “Internet access quality and/or censorship” and “increasing Chinese protectionism” were unique to Northeast China and did not make the top five list of challenges among all AmCham China members. Among all members in the “technology and R&D-intensive industries” however, 34 percent reported “increasing Chinese protectionism as a key challenge.”

Human Resource Challenges

Northeast Chapter members reported that the top human resource (HR)-related challenges to conducting business in China were rising labor costs and shortages of qualified management. This is consistent with responses from AmCham China’s membership throughout China 2019 and is an ongoing concern over the years.

Northeast Chapter members also emphasized both in the BCS and in AmCham China Forum discussions throughout the year difficulty in attracting management and other talent to Liaoning province. Because this issue is particularly relevant to northeast China, this chapter will focus on this topic.

Finding and attracting the right talent has been a consistent challenge for Northeast Chapter members over many years. In the 2019 *White Paper* AmCham China discussed how Dalian and Shenyang struggle to attract and retain employees with the right mix of skills relative to Tier I cities (e.g., Beijing, Shanghai, Guangzhou and Shenzhen). Such challenges stem from broader issues with education, healthcare, visas and rising labor costs.

Many AmCham China Northeast Chapter members reported that the local education system hinders retention of top local talent and can even hinder the ability of companies to hire foreign management. Many employees perceive the local public education system as inferior to that of Tier I cities. Consequently, when their children approach school age, they seek to relocate. Most member companies believe retaining local talent will continue to be difficult. Although the university system in Liaoning is regarded favorably, many students opt to leave Liaoning after graduation. FIEs expressed difficulty in convincing top foreign talent to relocate to Liaoning Province because the selection of international schools is limited. While there is some optimism that new private primary education schools in Jinshitan on the outskirts of Dalian will help to address this challenge, concerns remain: the capacity of these new options is limited, their location on the outskirts may make it challenging for employees based in downtown Dalian to access, and the costs may be prohibitive for many employees.

A relatively undeveloped healthcare industry in Liaoning also dissuades top foreign talent from coming to the province. AmCham China Northeast Chapter members have consistently pointed out that healthcare services lag behind international standards and other areas in China with respect

28%) 在 2019 年仅仅能达到收支平衡。本章的余下部分将探讨东北分支办公室会员开展业务的机遇和挑战。

辽宁的商机

商会东北分支办公室会员列举了辽宁的一些商机。与来商会所有会员的结果一致，不断发展的“国内消费和日益富裕的中产阶级”被 43% 东北分支办公室会员认为是最大商机。自 2017 年以来，这一直是东北分支办公室会员表示的最大商机。

东北分支办公室会员调查结果显示，其他排名靠前的商机包括“消费者对外国品牌 / 质量的需求不断增加” (39%)，“中国对新兴战略产业研发的持续投资” (29%) 以及“扩大国内市场业务覆盖” (29%)。中国对新兴战略产业研发的持续投资促使东北地区制造业价值链升级，并为外资企业提供了机会，但这要在能够与国内投资同行公平竞争和参与的前提下。

尽管算不上“三大”商机，但东北分支办公室的一些会员表示在应对环境挑战并支持环境保护工作方面存在机遇。东北地区空气和水源污染所带来的持续挑战，再加上中央政府对这些问题的重视，都为擅长环境保护和治理的外资企业创造了机会。

辽宁省现存经营挑战

在 2020 年“中国商务环境调查”中，东北分支办公室会员所面临的五大挑战为：① 不断紧张的中美关系 (54%)；② 不一致和不清晰的法律法规及执法 (43%)；③ 不断上涨的人力成本 (43%)；④ 互联网接入质量和审查 (32%)；⑤ 中国不断升温的贸易保护主义 (28%)。

东北分支办公室会员所面临的挑战与所有商会会员所面临的挑战明显保持一致。值得注意的是，“不断紧张的中美关系”是东北分支办公室会员面临的头号挑战，也是商会所有会员所面临的重要的挑战，有 41% 的会员将其视为前五大挑战之一。此外，据统计，全体会员所面临的其他主要挑战是“不一致和不清晰的法律法规及执法”以及“不断上涨的人力成本”。

尽管“消费者对外国品牌 / 质量的需求不断增加”为东北分支办公室会员的主要商机，尤其是在中国中产阶级不断发展和日益富裕的情况下，但必须指出的是，“不断紧张的中美关系”有可能影响其中一些机会。“中

国商务环境调查”的一些受访企业指出，尽管地方政府更加欢迎外国投资，但“(由于) 频繁的反美新闻，美国和其他外国品牌可能遭受损失，因此而(感到) 不受欢迎”。其他会员还表示，“民族主义情绪上升”致使美国企业保持警惕。

值得注意的是，东北分支办公室会员面临的前五大挑战中的剩余两项，“互联网接入质量和审查”以及“中国不断抬头的贸易保护主义”是东北地区所独有的，并不在列商会所有会员面临的前五大挑战其中。但是，在“技术和研发密集型产业”的所有会员中，有 34% 的企业表示“中国不断增强的贸易保护主义是一项关键挑战”。

人才挑战

东北分支办公室会员表示，在中国开展业务所面临的与人力资源有关的主要挑战是劳动力成本上升和缺乏合格管理人员。这与 2019 年商会全体会员的反馈基本一致，并且是多年来一直备受关注的焦点。

东北分支办公室会员全年都在“中国商务环境调查”和商会论坛的讨论中强调了在吸引管理人员和其他人才进入辽宁省存在的困难。由于该问题在中国东北地区十分突出，因此本章将重点讨论此这个问题。

多年来，寻找和吸引合适的人才一直是东北分支办公室会员面临的挑战。商会在 2019 年白皮书中讨论了大连和沈阳相对于一线城市(例如北京，上海，广州和深圳) 如何努力吸引和留住具有合适人才。这些挑战源于教育、医疗、签证和人力成本上升等更广泛的因素。

许多商会会员提到，教育体系给留住当地顶尖人才和吸引外国管理人员造成障碍。许多员工认为当地公共教育系统不如一线城市，所以当他们的孩子到了学龄时，他们就会寻求机会离开。大多数外国公司认为留住本地人才将继续是个难题。虽然辽宁的大学制度很好，但很多学生毕业时都选择离开辽宁。此外，由于国际学校有限，外资企业难以说服外国顶尖人才迁往辽宁。这种情况或许会因为金石滩会设立私立小学而得到好转，但容量有限，大连市中心企业员工可能不会选择该校，并且高昂的费用令很多人望而生却。

留住人才的第二个常见困难是辽宁省相对不发达的医疗行业。商会会员表示，这里医疗服务的质量落后于中国或国际其他地区，这也是吸引高层管理人员的一个

to both quality and availability. This hinders the ability of companies to attract top foreign management talent. In the absence of appropriate medical care options, employees travel to Tier I cities for advanced medical care, costing time and resources.

Many AmCham China Northeast Chapter member companies also mentioned difficulty in obtaining visas as a barrier to attracting and retaining talent. As noted in the *White Paper Visa Chapter*, the processing time for Residence Permits was around 15 days in Shenyang, among the longest in the country.

Inconsistent Regulations and Enforcement

The second major category of challenges relates to a general lack of efficiency and clarity with respect to government services and regulations. The provincial government has passed some reforms recently to reduce bureaucratic red tape and a greater proportion of members report the investment climate is improving than in past years. Northeast Chapter members nevertheless still report that the business environment can be unfriendly in practice, particularly for foreign business. Indeed, 21 percent of Northeast Chapter members reported the investment climate was deteriorating in 2019, compared to just 13 percent in 2018.

In common with the results of the BCS, Northeast Chapter members expressed frustration at a lack of clarity and consistency in the interpretation and application of laws and regulations. Member enterprises indicated a desire for government officials to remove vague language and end opaque decision-making practices with respect to regulatory development and enforcement. Northeast Chapter members also expressed frustration that a lack of clarity in regulatory implementation has forced them to slow or delay their business operations and further investment.

According to the 2020 BCS, 15 percent of Northeast Chapter members report no plans to expand investment in 2020, and another 15 percent are planning to decrease investment in 2020. Among the 70 percent who have planned investment increases, 31 percent will increase their investments by between one and ten percent compared to 2019 levels. Among those who are planning to decrease investment, the most commonly cited reasons for this decrease are “uncertainties in the US-China economic relationship and bilateral tariffs,” “concerns about an uncertain Chinese policy environment,” and “difficulties competing against local competitors.”

Infrastructure and Internet Services

Multiple Northeast Chapter members discussed key infrastructure challenges, both through the BCS and through AmCham China’s Northeast Chapter Forums. Of Liaoning’s two largest cities, Shenyang has historically been

a challenging place to invest because of its very different bureaucratic culture than other parts of China. Dalian has been considered more progressive since the 1990s, but its former reputation as a leading investment destination has diminished considerably in the past few years. Few companies would consider Dalian a Tier I investment destination anymore. One reason for this is that it is a commonly understood that if a company “invests in Dalian,” it is not going to be located close to Dalian city, but rather at least one hour from the Central Business District. Consequently, employees experience greater difficulty in access to infrastructure, including education, medical, and personal services, as discussed above.

As expressed through the AmCham China IT Managers Forum, a key continuing concern is the speed of Internet services. For instance, several companies that provide internet-based services have suffered service quality issues because Internet speeds are very slow and there are no obvious channels to address these issues. Many enterprises are frustrated with the lack of access to consistent business virtual private networks (VPNs) because of frequent government blockages. This concern also undermines talent attraction and retention capabilities because top international talent and employees of FIEs require the use of VPNs to access internet tools and software commonly used outside China. They are very frustrated by frequent interruptions that restrict access to the outside world, as well as the inability of their children to complete schoolwork requiring these tools.

Northeast Chapter members also cite a lack of prime office space for large companies. For instance, one member company which outgrew its existing office space in the Dalian Software Park could not find office space closer than the Dalian Development Area (Kaifuq), which was regarded as too far away for their employees. The perception among members is that Dalian is effectively several separate cities (e.g., the Software Park, Downtown, Kaifuq), each with its own infrastructure and development plan. Several companies were reportedly given incentives to move to new locations which still lacked basic services.

Investment Incentives and the Business Ecosystem

Only 18 percent of members reported “preferential foreign direct investment policies” as an opportunity in Liaoning. In fact, several member companies mentioned that local governments in Liaoning offer fewer investment incentives for FIEs compared to other provinces in China, causing them to prioritize their operations in other locations. While some such incentives are related to insufficient health and education systems discussed earlier in the chapter, other incentives that are less available to FIEs in Liaoning relative to other locations in China include capital rebates, tax incentives, and IT infrastructure incentives.

障碍。此外，由于员工缺乏合适的医疗选择往往需要前往一线城市接受高级医疗服务，这也造成时间和资源的浪费。

许多东北分支办公室会员强调签证的问题对吸引和留住人才造成阻碍。如白皮书签证章节里所述，沈阳的居住许可批准的处理时间要大约 15 天，算得上是中国耗时最久了。

不一致的法规和执法

第二大主要挑战是政府服务和法规普遍缺乏效率和清晰度。省政府最近通过了一些改革措施，以减少官僚主义繁文缛节。尽管有不少会员表示投资环境比过去几年有所改善，但实际的商业环境仍可能并不友好，尤其是对外资企业。确实，有 21% 的东北分支办公室会员表示，2019 年的投资环境正在恶化，而 2018 年这一数据仅为 13%。

与商会《中国商务环境调查报告》的结果一致，东北分支办公室会员对法律法规的解释和适用性不清晰及不一致表示失望。会员企业希望政府能够消除法规制定和执行方面措辞的不清晰，并公开决策制定。东北分支办公室会员失望地表示，由于监管法规缺乏明确性，这迫使他们放慢或推迟其业务运营和进一步的投资。

根据 2020 年商会《中国商务环境调查》，15% 的东北分支办公室会员表示 2020 年没有增资计划，另有 15% 的会员计划在 2020 年减少投资。在计划增资的 70% 中，有 31% 的会员表示 2020 年增资比例将为 2019 年投资的 1% 至 10%。在那些计划减少投资的会员中，最常见的原因包括“中美经济关系的不确定性和双边关税”，“对中国政策环境不确定性的担忧”和“与当地竞争对手竞争存在困难”。

基础设施和互联网服务

东北分支办公室多数会员都通过“中国商务环境调查”以及中美商会东北分支办公室论坛讨论了关键基础设施方面存在的挑战。在辽宁两个最大城市中，沈阳历来是一个充满挑战的投资地，因为这里的官僚文化与中国其他地区截然不同。自 1990 年代以来，大连的城市发展进程明显，但过去几年来将其作为主要投资目的地的意愿已大大降低。很少有公司将大连视为一级投资目的地。原因之一便是，如果一家企业“在大连投资”，

那么它就不会位于靠近大连市市内，而是离中央商务区至少一小时的路程。因此，综上所述，员工在享受基础设施（包括教育、医疗和个人服务）时会遇到更大的困难。

正如商会 IT 经理人论坛所指出互联网服务的速度是持续受到关注的主要问题。例如，一些提供基于互联网服务的公司遇到了服务质量问题，因为网络速度非常慢，并且没有显明的渠道来解决这些问题。由于频繁政府控制，许多企业对无法使用业务虚拟专用网络（VPN）表示十分失望。这种担忧也影响了吸引和留住人才，因为国际顶尖人才和外资企业的员工需要使用 VPN 来访问中国境外常用的互联网工具和软件。频繁的断网限制了他们与外界交流的机会，并且他们的孩子也无法完成需要这些工具的学业，这些都使他们感到非常沮丧。

东北分支办公室的会员还指出，大型企业缺乏优质的办公空间。例如，一家会员企业需要比其在大连软件园现有办公空间更大面积的办公区域，但找不到比大连开发区更近的办公地点了，而员工认为大连开发区距离太远。会员的普遍看法是，大连像是几个独立的城区（例如软件园、市区、开发区）构成，每个城区都有自己的基础设施和发展规划。据称，有几家企业被鼓励搬到仍然缺乏基本服务的新办公地点。

投资激励和商业生态

仅有 18% 的会员认为“外商直接投资优惠政策”是辽宁的商机。实际上，有数家会员数家会员数家会员企业提到，与中国其他省份相比，辽宁地方政府对外商投资企业的投资激励较少，这导致他们会优先考虑其他地区。虽然某些激励措施与本章前面讨论的医疗和教育体系不完善有关，但相对于中国其他地区，辽宁外资企业较少获得的其他激励性措施包括资本返利、税收优惠以及 IT 基础设施激励。

强大的业务生态系统是健康、竞争激烈的市场中的基本要素。数家会员公司表示，由于这些不同类型组织之间的合作有限，企业、大学、政府和大连其他实体之间的生态系统联系仍未得到充分利用。酒店业的数家会员指出，近年来，政府、大学和商务活动的数量一直在减少，从而导致其酒店的住宿利用率降低，雇用的大学生人数减少，税收减少以及政府用于举行发展活动的配置资金减少。其他会员督促政府与中美商会东北分支办

A strong business ecosystem is an essential element in a healthy, competitive marketplace. Several member companies reported that ecosystem linking businesses, universities, governments, and other entities in Dalian remain underutilized because cooperation among these different types of organizations is limited. Several member companies in the hospitality industry reported that the number of government, university, and business events has steadily decreased in recent years, resulting in lower capacity utilization in their hotels, fewer university students being hired, lower tax revenue, and less government funding to hold development events. Other members urged the government to improve university recruitment in conjunction with AmCham China Northeast Chapter members to attract more students to stay and work in the province.

For the US Government

- **The US Consulate in Shenyang should continue to reach out to local governments in more collaborative and creative ways to help US businesses find solutions to the challenges raised in this chapter.**
- Improve the ability of member companies to obtain visas for Chinese nationals on work assignments in the US.

Recommendations

For the Liaoning government and municipal governments of Shenyang and Dalian

- **Provide infrastructure and incentives to increase foreign investment in Liaoning. For those incentives already being provided or scheduled to be provided, AmCham China hopes that municipal governments will maintain their commitments in 2020.**
- Create sustained mechanisms to meet with the AmCham China Northeast Chapter regularly to resolve issues facing foreign businesses. Provide a channel to the provincial government so members can resolve issues stemming from inconsistent policies and enforcement without fear of retribution. For instance, the *Implementing Regulations of the Foreign Investment Law* provide for the creation of a “complaint-submission mechanism,” for FIEs to resolve disputes and we are eager to learn how this will be implemented in Liaoning.
- As new policies and laws are promulgated, provide foreign businesses with appropriate and timely guidance on implementation in Liaoning. As China’s laws and regulations often contain high-level principles and guidance, frequent, transparent communication between industry and government is needed to ensure equal treatment and consistent implementation.
- Support events that bring together AmCham China Northeast Chapter members, educational institutions, and government officials. These events include AmCham China Northeast events, job fairs, and training.

公室会员一起改善校园招聘，从而吸引更多学生留在该省工作。

建议

对辽宁省政府和沈阳和大连市政府：

- 提供基础设施和激励措施，吸引外商投资辽宁。对于已经提供或计划提供的激励措施，商会希望市政府在 2020 年继续履行承诺。
- 建立持续机制以定期与商会东北分支办公室进行会面，以解决外资企业面临的问题。为省政府提供一个渠道，使会员可以反应因政策和执法不一致而造成的问题，而不必担心受到惩罚。例如，《外商投资法实施条例》规定建立一个“投诉提交机制”，供外资企业解决纠纷，我们期待了解辽宁将如何实施该机制。
- 为辽宁外资企业提供新政策法规执行的适当及时的指导。由于中国的法律法规通常都包含高层原则和指导，因此，行业和政府之间需要经常、充分的沟通，以确保平等和执行的一致。
- 支持开展将商会东北分支办公室会员、教育组织和政府方面人员会面的活动。这些活动包括商会东北分支办公室的活动、招聘会以及培训。

对美国政府：

- 美国驻沈阳领事馆应继续以更具协作性和创造性的方式与地方政府联系，以帮助美国企业找到方案解决本章提出的挑战。
- 进一步便利会员企业因公赴美的中国公民签证申请。

Shanghai

This chapter was contributed by The American Chamber of Commerce in Shanghai (AmCham Shanghai)

Introduction

Shanghai is mainland China's most international city and traditional financial hub. Capitalizing on these comparative advantages has been at the core of the city's development strategy during the *Reform and Opening* period. In recent years, Shanghai has enacted a series of policy incentives for multinational companies to establish their regional headquarters in the city. Municipal authorities have continued to expand the Shanghai Free Trade Zone (SHFTZ) to increase its appeal to foreign investors. Recent policies at the national level aiming to liberalize the financial sector will have a significant impact on Shanghai's business environment.

Positioned at the mouth of the Yangtze River, Shanghai's geographical location has made it the centerpiece of development plans around the Yangtze River Delta (YRD) economic belt, China's richest per capita region. Integrating the YRD region, which comprises the provinces of Jiangsu, Zhejiang, and more recently, Anhui, is part of a national strategy that aims to create 19 economic clusters across the country. This strategy was outlined in the country's 13th Five-Year Plan (2016-2020),

Yangtze River Delta Integration

Integrating the YRD region is one of Shanghai's chief development goals. The YRD has historically formed a geographic belt of economic activity and acted as a primary driver of growth in the *Reform and Opening* period. The region was home to 220 million residents in 2018 with a combined GDP of RMB 21.2 trillion (US \$3.05 trillion). General Secretary Xi Jinping elevated the integration plan to a national strategy at the inaugural China International Import Expo in November 2018.

In January 2018 Shanghai, Zhejiang, Jiangsu, and Anhui jointly established the YRD Regional Cooperation Office to manage integration policy, which in June 2018 issued a *Three-Year YRD Integration Development Action Plan* (2018-2020). The plan draws on an RMB 100 billion fund (US \$16 billion) to support and enhance infrastructure projects regionally, including the Yangtze River deep-water channel extension and the Hangzhou-Taizhou expressway. It also

supports the development of priority industries, including ICT (cloud computing, Big Data, Internet-of-Things, and artificial intelligence), aviation and aerospace, marine and high-tech shipbuilding, new energy vehicles, power equipment, advanced rail, and medical technology. The Action Plan also emphasizes environmentalism. The two FTZ's in the region and multiple industrial parks offer avenues for foreign investment in these types of projects. An MOU was signed in January 2019 by Shanghai, Jiangsu, Zhejiang, and Anhui to reaffirm cooperation between the governments in the YRD region.

At the same time, the process of integrating the YRD faces challenges. The China Economic Review highlights two in particular: ❶ wealth disparities between provinces (see Table 1) and ❷ a "fortress economy" mentality pervasive among local government administrations. First, although Shanghai has served for centuries as an international trade hub and is today the country's richest metropolis, other areas in the YRD region, such as landlocked Anhui, are economically underdeveloped (see Table 1). Resource allocation that promotes sustainable and inclusive development across the YRD region is necessary but will be challenging. Second, China's incentive system has for decades pitted local governments against each other as they strive to attract investment or dominate certain industries. Provincial cooperation in support of the development of a broader regional

Table 1. Provincial GDP per capita (RMB and USD) for select provinces in YRD, 2018

| Province | Gross Domestic Product Per Capita | |
|----------|-----------------------------------|--------|
| | RMB | USD |
| Shanghai | 134,982 | 19,266 |
| Jiangsu | 115,168 | 16,438 |
| Zhejiang | 98,643 | 14,079 |
| Anhui | 47,712 | 6,809 |

Source: National Bureau of Statistics, 2018. Exchange rate is based on a value of USD 1.00 = 0.14RMB

上海

本章由上海美国商会撰写。

引言

上海是中国大陆最国际化的城市，也是传统的金融中心。在改革开放时期，利用上海的相对优势一直是城市发展战略的核心。近年来，上海实施了一系列针对跨国企业的政策激励，鼓励企业在上海建立地区总部。上海市政府持续放开自贸区投资，吸引着海外投资者。近期，旨在开放金融行业的国家政策将对上海的商业环境产生重大影响。

上海位于长江口，优越的地理位置使其成为长三角经济带发展规划的中心。融合发展长三角地区——包括江苏省、浙江省，以及最新纳入的安徽省——是打造全国 19 个经济群落国家战略的重要部分。该战略在国家“十三五”规划（2016-2020）中提出。

长三角一体化

推动长三角一体化发展是上海主要的发展目标之一。长三角地区在历史上就是经济活动地理带，是改革开放时期经济增长的主要动力。该地区在 2018 年拥有 2.2 亿居民，国内生产总值（GDP）达 21.2 万亿元人民币（3.05 万亿美元）。在 2018 年 11 月举行的首届中国国际进口博览会上，习近平总书记将长三角一体化发展提升至国家战略层面。

2018 年 1 月，上海、浙江、江苏、安徽共同成立了长三角区域合作办公室，管理一体化发展政策，并于 2018 年 6 月发布了《长三角一体化发展三年行动计划》（2018-2020）。该计划拨出 1000 亿人民币（160 亿美元）用于基础设施项目，以加强区域发展，其中包括长三角深水航道拓展和杭绍台高速公路建设。该计划也支持优势产业发展，包括 ICT（云计算、大数据、物联网和人工智能）、航空航天、海运、高科技造船业、新能源汽车、发电设备、先进铁路系统和医疗技术。该计划同时聚焦

于环境保护。该地区内的两个自贸区及多个工业园区为外商投资此类项目提供了载体。2019 年 1 月，上海、江苏、浙江、安徽签署了《合作备忘录》，重申了长三角地区各地政府间的合作。

在发展的同时，长三角一体化发展进程也面临着诸多挑战。《中国经济评论》着重提出了两点：① 不同省份的贫富差距（见表 1）；② “堡垒经济”的概念在地方政府机构中普遍存在。首先，尽管上海几个世纪以来一直是国际贸易中心，现在也是中国最富有的都市，长三角地区的其他地方，例如地处内陆的安徽，相比却是经济欠发达地区（见表 1）。促进长三角地区持续和包容发展的资源配置是必要的，但也极具挑战性。其次，几十年来，中国的激励机制一直使地方政府在吸引投资和主导某些行业方面相互竞争。支持更广泛区域经济发展的省际合作一直未被优先考虑。为了更好地促进长三角地区的融合发展，当地政府的心态必须从“竞争”转变为“合作”。

在上海设立地区总部

上海作为中国最国际化的城市，一直是外企和国内市场的桥梁。早在 2002 年，上海就利用这一相对优势，

表1. 长三角各省2018年人均GDP

| 省份 | 人均GDP | |
|----|---------|--------|
| | 人民币 | 美元 |
| 上海 | 134,982 | 19,266 |
| 江苏 | 115,168 | 16,438 |
| 浙江 | 98,643 | 14,079 |
| 安徽 | 47,712 | 6,809 |

来源：国家统计局，2018年。汇率按 1 人民币 = 0.14 美元标准计算。

economic bloc has not traditionally been a priority. To best promote integration of the YRD region, local governments must transition from a mentality of “competition” to one of “cooperation.”

Establishing Regional Headquarters in Shanghai

As China’s most international city, Shanghai has long served as a bridge between foreign companies and the domestic market. Shanghai has sought to leverage this competitive advantage, and as early as 2002, put forward a series of policy incentives to induce multinational corporations to establish regional headquarters in the city. By the end of July 2019, Shanghai was home to 696 multinational company headquarters, the most of any city in China.

The Shanghai Municipal People’s Government (SMPG) has released several opinions aimed at easing the entry conditions for companies to establish regional headquarters in Shanghai. In July 2019 SMPG issued the *Several Opinions of the Shanghai Municipal People’s Government on the City Promoting the Development of Regional Headquarters of Multinational Companies*, as well as the *Notice on Issuing the Revised Provisions on Encouraging Multinational Companies to Establish Regional Headquarters in Shanghai Municipality*, which came into effect on September 1, 2019. These documents remove the requirement that regional headquarters must be a wholly foreign-invested enterprise, allowing for more flexibility in ownership structure. Moreover, the amount of total assets that must be held by the parent company has been lowered from US \$400 million (RMB 2.8 billion) to US \$200 million (RMB 1.4 billion), and the parent company is no longer required to have at least US \$10 million (RMB 70.9 million) invested in China. Parent companies are also no longer required to manage at least three enterprises inside or outside China.

According to the *China Internet Information Center*, Shanghai nevertheless faces several challenges in increasing its attractiveness as a regional headquarters location:

- Shanghai’s regional headquarters certification standards are not always compatible with the varied and changing operational models adopted by multinational companies,
- National-level policy restrictions, such as restrictions on capital flows, investment, and procurement and sales, among others, continue to impede the operations of multinational companies,
- The favorable policy environments and government incentives offered in other developed Asian cities or in different parts of Greater China make them more attractive as a regional headquarters destination when compared with Shanghai. For example, an AmCham Shanghai member in the healthcare industry

stressed that the Pearl River Delta in December 2017 and March 2018 implemented favorable visa and tax policies designed to attract talent from Hong Kong and Macao. Such policies may compete with and threaten Shanghai’s ability to attract top talent from across China.

Interviews with AmCham Shanghai members are also instructive with respect to the criteria under consideration for multinational corporations when choosing among Singapore, Shanghai, or Hong Kong as location for their APAC regional headquarters. One member from the financial services sector stated: “If your market sales are evenly distributed throughout Asia, then Singapore certainly offers attractive tax benefits and treasury management advantages. But if China is your primary market, and your company has adopted an “in China for China” model with respect to procuring or manufacturing for the China market, you could consider either Hong Kong or Shanghai. Shanghai is attractive because it brings you closer to your China clients and importantly, your supply chain.” Some AmCham Shanghai members suggest that the ongoing protests in Hong Kong have helped to portray the comparatively stable Shanghai as an attractive location for multinational companies to establish their APAC regional headquarters in the near term.

Shanghai as an International Financial Center

Over the past two years, Chinese leaders have made rhetorical commitments to opening the country’s financial sector. This has been supported by a number of concrete policy reforms. Although many of the reforms are to be implemented nationally, they will have a major effect on Shanghai as it is the financial hub of mainland China. For example, the 2018 *National Negative List* entirely removed foreign shareholding/equity caps in the banking sector and raised them to 51 percent (from 49 percent) for FIEs in the securities, fund management, futures, and life insurance sectors. Furthermore, the List made clear that foreign ownership restrictions in these sectors would be entirely removed by 2021. In July 2019, moreover, Premier Li Keqiang moved this deadline forward by one year to 2020 in a speech at the World Economic Forum. In October 2019, the China Securities Regulatory Commission (CSRC) announced a timetable in 2020 for the removal of equity caps: foreign equity caps in futures companies will be removed as of January 1; mutual fund companies as of April 1; and securities firms as of December 1. The Economic and Trade agreement between the US and China (Phase One Deal) signed on January 15, 2020 accelerated this timeline. Equity caps on securities, fund management, and futures firms will now be removed by April 1.

Other policy reforms in the financial sector have focused on Shanghai. The Shanghai Stock Exchange Science and Technology Innovation Board (STAR Market), first outlined

出台了一系列激励政策，引导跨国企业在当地设立地区总部。截至 2019 年 7 月底，已有 696 家跨国企业在上海成立了总部。上海成为中国跨国公司总部数量最多的城市。

上海市人民政府日前出台了若干意见，旨在放宽企业在上海设立地区总部的准入条件。2019 年 7 月，上海市人民政府发布了《关于促进跨国企业总部发展的若干意见》，以及新修订的《上海市关于鼓励跨国企业在上海设立地区总部的规定》，该规定于 2019 年 9 月 1 日生效。以上文件取消了地区总部必须是外商独资企业的要求，允许股权结构具有更多灵活性。此外，母公司必须持有的总资产数额从 4 亿美元（28 亿人民币）降至 2 亿美元（14 亿人民币），且不再要求母公司在中国至少投资 1000 万美元。母公司也不再需要在中国境内外管理至少三家企业。

中国互联网信息中心称，上海在提升其作为地区总部所在地的吸引力方面，仍然面临着一些挑战：

- 上海地区总部认证标准并非总是与跨国企业不断变化的运营模式相匹配；
- 国家政策限制，例如对资金流、投资、采购和销售的限制等，继续制约着跨国企业的运营；
- 与上海相比，亚洲其他发达城市或大中华区其他区域提供的有利政策环境和政府激励措施使其更具吸引力成为地区总部所在地。例如，一家上海美国商会的医疗行业会员企业提到，珠三角于 2017 年 12 月和 2018 年 3 月实施了有利的签证及税收政策，旨在吸引来自香港、澳门地区的人才。此类政策可能阻碍并对上海吸引全国顶尖人才构成威胁。

通过采访上海美国商会会员企业，我们进一步了解了跨国企业选择新加坡、上海或香港作为亚太区总部的标准。一位金融服务行业的会员提到：“如果你的市场销售遍布亚洲，那么新加坡一定能提供最具吸引力的税收优惠和财资管理优势。但如果中国是你的主要市场，贵公司在针对中国市场的采购或生产中采用了‘在中国，为中国’模式，则可以考虑香港或上海。上海之所以具有吸引力，是因为它能拉近你与中国客户的距离，更重要的是，缩短你与供应链的距离。”一些上海美国商会的会员企业认为，香港持续进行的抗议活动凸显了上海稳定性，吸引跨国企业近期内在上海设立亚太地区总部。

将上海打造为国际金融中心

在过去两年里，中国领导人口头承诺开放中国的金融行业，这在一系列具体政策改革中得到体现。尽管许多改革将在国家层面实施，上海作为中国大陆的金融中心，也会受到重大影响。例如，2018 年“全国版负面清单”完全取消了银行业的外商投资企业持股/股权上限，并将外商投资企业在证券、基金管理、期货和人寿保险等领域的持股比例从 49% 提升至 51%。此外，负面清单明确指出这些行业的外国股权限制将在 2021 年完全取消。2019 年 7 月，李克强总理在“世界经济论坛”的讲话中，将这一截止日期提前一年至 2020 年。2019 年 10 月，中国证券监督管理委员会发布了 2020 年取消股权上限的时间表：期货公司外资股权限制将于 1 月 1 日取消；共同基金公司 4 月 1 日取消；证券公司 12 月 1 日取消。中美双方于 2020 年 1 月 15 日签订的《第一阶段经贸协议》加速了该时间表进度。证券、基金管理和期货公司的股权限制将在 4 月 1 日取消。

金融行业的其他政策改革也聚焦于上海。2018 年 11 月，习近平总书记在讲话中首次概述了上海证券交易所科技创新板块（STAR 市场），该板块于 2019 年 7 月开始与 25 家上市公司交易。这种纳斯达克式的科技板块主要面向国内投资者，旨在支持中国的资本市场，并为有前景的科技公司提供直接融资。然而，最初成果并不尽如人意，近几个月交易量骤减。STAR 市场的第一家上市公司——华兴源创 7 月上市当天的总成交量为 2,900 万股。截止 10 月份，该公司仅成交量不足 200 万股，交易量减少了 90% 以上。

上海打造为国际金融中心的愿景仍然面临着诸多挑战。以下内容来自对上海美国商会会员企业的采访，并收录在上海美国商会 2019 年度中国商业报告《上海 2020: 未实现的财务愿景》。尽管中国承诺金融行业改革，中国金融市场的严格监管仍然继续制约着上海成为国际金融中心。以首次公开募股（IPO）为例。除了 STAR 市场，监管者在批准公司上市的过程中发挥的作用有限，而在上海进行首次公开募股仍然依赖监管审批，而不是像美国采用正式注册和企业信息披露。监管审批流程由于决策环节缺乏透明度、IPO 时间点不明确，以及可能存在的寻租行为而受阻。据上海美国商会会员企业反映，寻租行为过去一直困扰着评审委员会。最后，IPO 批准流程可能由于政治因素或其他政府监管优先事项而受到影

in a November 2018 speech by General Secretary Xi Jinping, began trading in July 2019 with 25 listed companies. This Nasdaq-style technology board targets domestic investors and is an attempt to shore up China's capital markets and direct funding to promising technology firms. Initial results have been disappointing, however. Trading volumes have sharply declined in recent months. The STAR Market's first publicly listed firm, Suzhou HYC Technology Co., traded 29 million shares on its launch day in July. By October, less than two million of its shares were trading, a decline of more than 90 percent.

Multiple challenges remain. Those discussed below have been gleaned from interviews with AmCham Shanghai members and documented in AmCham Shanghai's 2019 report: *Shanghai 2020: A Financial Vision Unfulfilled*. Despite the promise of financial sector reform, tight regulation of China's financial markets continues to inhibit Shanghai's quest to become an international financial center. Take the example of an Initial Public Offering (IPO). Excluding the STAR Market, where regulators play only a limited role in approving companies that want to list, the process for conducting an IPO in Shanghai continues to rely on a model characterized by regulatory approval rather than formal registration and corporate disclosure, as is the case in the US. The regulatory approval process is hampered by a lack of transparency around the decision-making process, a lack of clarity on the timelines associated with an IPO, and the possibility of rent-seeking behavior, which according to AmCham Shanghai members has plagued the approval committee in the past. Finally, the IPO approval process can be supervised by political considerations or other government regulatory priorities. Due to delays created by these issues, a backlog of companies wanting to list in Shanghai but unable to do so has built up. Many companies then decide to list overseas instead, despite their appeal to domestic investors.

The prospects of Shanghai becoming an international financial center are further hampered by restrictive policies at both the central government and municipal government level. At the central level, continuing limits on cross-border capital flows and policies that restrict the convertibility of the Renminbi, both of which are essential components of a truly global financial center, continue to dilute Shanghai's prospects. At the municipal level, arbitrary government intervention in the city's stock markets, most recently during the summer of 2015, when the government intervened to stem a rapid decline in market value, have raised questions about whether the country's stock markets will be allowed to function in response to market forces as other global markets do. The continuing practice of "window guidance," in the shape of informal, last minute notifications of policy changes, frequently places foreign-invested banks at a disadvantage. For instance, foreign-invested banks report that they often receive last minute notifications of important issues like foreign exchange controls. The informality and suddenness of these notifications disadvantages US and other foreign-invested banks relative to their domestical-

ly-invested peers, which may receive earlier notification of policy changes through informal channels like domestic industry associations. Finally, members report that Shanghai continues to suffer from a shortage of experienced, high-quality professionals in the finance industry. Establishing an international financial center requires the ability to attract, retain, and nurture global financial talent and Shanghai has work to do to reach the levels seen in other global financial centers.

Shanghai Free Trade Zone

China's first Free Trade Zone was established in Shanghai in September 2013 (SHFTZ). As of April 2019, more than 62,000 enterprises were registered in the SHFTZ, of which about 20 percent are FIEs. The SHFTZ accounts for 25 percent of Shanghai's GDP and 40 percent of the city's total import and export volume. It has also served as a testing ground for trade and economic reforms, many of which have been gradually extended to the country's 17 other FTZs but not generally to the country as a whole.

Reforms introduced in the FTZ in the last several years by the General Administration of Customs in China (GACC) and the Shanghai Customs Bureau include the single-window system, nationwide customs clearance integration, a streamlined clearance processes, comprehensive bonded zones, and a voluntary disclosure regime. According to AmCham Shanghai's *2019 Trade Environment Satisfaction Survey*, the most helpful reform has been the creation of comprehensive bonded zones in 2019, which offer a series of favorable policies regarding foreign exchange, import and export duties, and taxation. Manufacturers in these FTZs are now able to enjoy the "inside the territory while outside the customs" treatment, a Chinese government policy that allows companies to import certain goods on a duty-free basis and supply domestic companies based outside the FTZs.

In August 2019, the SMPG nearly doubled the size of the SHFTZ by incorporating the Lingang Area, an area of 315 square kilometers and the site of Tesla's Gigafactory. Shortly thereafter, the SMPG announced 50 new measures that provide a cocktail of tax incentives and subsidies to support the incomes of qualifying companies and foreign workers. The measures also pledged a US \$100 billion fund to support startups, R&D, infrastructure, and attract high-skilled workers. An additional 56 measures were released in October 2019 to boost innovation, integrate various industries, build industrial capacity, and facilitate growth in the integrated circuit, artificial intelligence, biomedicine, and aviation and aerospace industries in pursuit of Chinese industrial policy goals. At the national level, in October, the Standing Committee of the National People's Congress (NPCSC) also authorized a pilot program that will reduce the number of administrative licenses required to operate in the country's FTZs.

响。由于上述问题造成工作延迟，积压了许多希望在上海上市却无法实现的企业。许多企业因此决定在海外上市，尽管他们对国内投资者感兴趣。

上海成为国际金融中心的进程进一步受到中央政府和上海市人民政府的限制性政策的制约。在中央政府层面，对跨境资金流动和人民币兑换政策的限制仍然阻碍着这一进程，而两者均是成为真正的全球金融中心必要的组成因素。在上海市人民政府层面，政府干扰当地股市。最近一次是在2015年夏天，政府出手干预，阻止股市迅速下跌，这使人们质疑中国股市是否能像其他全球市场一样，在市场力量的作用下正常运行。一直实施的“窗口指导”，即非正式的，最后一刻通知的政策变化，往往使外资银行处于不利地位。例如，外资银行表示经常受到诸如外汇管制等重要信息的最后一刻通知。这种通知的不正规性和突发性使美国和其他外资银行与国内同行相比处于劣势，国内同行可能从国内行业协会等非正式渠道更早地得到关于政策变化的通知。最后，会员企业表示上海在金融领域仍然缺乏有经验的、优质的专业人才。建立国际化的金融中心需要具备吸引、留住和培养国际金融人才的能力，而上海在成为全球金融中心之前仍有很多工作要做。

上海自贸区

2013年9月，全国首个自贸试验区于上海成立。截至2019年4月，区内累计注册逾62,000家企业，其中20%为外商投资企业。上海自贸区创造了上海25%的生产总值、40%的外贸进出口总额。作为国家经贸改革的试验田，上海自贸区的许多先行改革举措也已逐步推广到全国其他17个自贸区（而非统一推广至全国）。

过去几年，海关总署和上海海关实施了包括：单一窗口系统、全国通关一体化、简化清关流程、综合保税区和主动披露制度等一系列改革举措。《上海美国商会2019年贸易环境满意度调查》显示，对综合保税区的进一步开放和发展成为了给企业运营带来最大便利的政策之一，比如：为企业提供了一系列针对外汇、进出口关税和税收的优惠政策。综保区内的制造商现在能够享受“境内关外”待遇——中国政府的此项政策将许企业免税进口特定商品，并向区以外的本土企业供货。

2019年8月，上海自贸区成立了临港新片区，面积扩容了将近一倍。临港新区占地315平方公里，也是特

斯拉超级工厂所在地。此后，上海市人民政府出台了50项新措施，提供一系列税收激励措施和补贴，为符合条件的企业和外籍雇员提供支持。该措施还承诺提供1000亿美元资金，支持初创企业、研发、基础设施建设以及吸引高端人才。2019年10月，政府相继出台56项措施，以促进创新、整合不同行业、建设工业能力，并推动集成电路、人工智能、生物医学、航空航天领域的发展，以实现中国产业政策目标。在国家层面，全国人民代表大会常务委员会在10月份批准了一项试点计划，旨在减少在自贸区经营所需的行政许可数量。

但尽管实施了上述改革，近年来上海自贸区对外资企业的吸引力似乎有所下滑。根据美国芝加哥保尔森基金会所属马可波罗智库数据分析，2017年至2018年期间，外商投资项目数量从2015年的3000多个降至1000-1500之间。此外，2018上海自贸区外商直接投资存量也出现五年来首降。同一时期，国内企业总量和注册资本也有所下降。上海美国商会的许多会员企业也表示上海自贸区较其预期仍有所差距。上海自贸区成立初期，人们曾预期自贸区将被用来试点诸如更加灵活的资本账户等重要改革。据报道，一位政府人士曾向《南华早报》透露，在上海自贸区网络将不受审查。然而，许多预期都未能实现，上海自贸区主要作为国内治理和行政改革的试验地，旨在使中国的经济体制更具有国际竞争力，但缺乏评估此类改革在全国推广的清晰流程。此外，一些会员企业发现，他们不仅无法在上海自贸区展业，在自贸区外的中国其他地区也被禁止展业。这阻碍了会员企业将上海自贸区作为投资目的地。

尽管上海自贸区在资本控制改革等领域让人失望，其部分改革措施在中国其他地区得到采纳，这或许会在其他重要领域产生效果。上海美国商会的一家会员企业表达了其对知识产权保护的看法：“随着时间推移，上海自贸区的改革会推动更广泛的知识产权保护工作，以更好地确定专利的价值和效力。随着专利成为更好的资产，可以用于银行抵押，从而刺激经常需要融资的中小企业科技公司的创新循环。”

另一个上海自贸区可推进的试点方向是帮助中国法律体系与全球商业争端解决标准更紧密地接轨。例如，与国内诉讼相比，国际仲裁往往更快速、更易执行。上海自贸区采用的争端解决机制在国内其他任何地方都不施行，但在某种程度上更符合世界其他地区更成熟的仲

Despite these reforms, the attractiveness of the SHFTZ to foreign companies has diminished in recent years. According to MacroPolo, a think tank based at the Paulson Institute in the US, the number of foreign-invested projects in 2017 and 2018 fell to between 1,000 and 1,500, down from a high of over 3,000 in 2015. Moreover, the stock of FDI in the SHFTZ declined in 2018 for the first time in five years. The total volume of domestic enterprises and registered capital has also declined during the same period. Anecdotally, many AmCham Shanghai members have also expressed disappointment with the SHFTZ. Expectations were raised in the early days of the SHFTZ that it would be used to pilot important reforms like a more flexible capital account. A government source reportedly even told the South China Morning Post that the internet would be uncensored in the SHFTZ. Many expectations have gone unfulfilled, however; instead the SHFTZ has served mainly as a testing ground for domestic governance and administrative reforms designed to make China's domestic economic system more globally competitive yet without clear procedures for evaluating such reforms for nationwide application. Moreover, some members have found that although they are able to establish operations in the SHFTZ they are precluded from operating outside of the zone elsewhere in China. This limits the utility of the SHFTZ as an investment destination to member companies.

While the SHFTZ has generated disappointment in areas like capital control reform, the fact that some of its reforms are being adopted elsewhere in China may yet yield dividends in other important areas. One AmCham Shanghai member stated with respect to IPR protection: "A potential scenario over time is that the reforms in SHFTZ will reinforce broader IPR protection efforts with the goal of better ascertaining the value and validity of patents. As patents become better quality assets, they could be used as collateral with banks, thus stimulating the innovation loop for SME technology companies that are often starved of financing."

Another underappreciated aspect of the SHFTZ is how the piloting of legal reforms is helping China's legal system to align more closely with global commercial dispute resolution standards. For example, with respect to international arbitration, which is often a speedier and more readily enforceable procedure than domestic litigation, the SHFTZ features a mechanism for dispute resolution not present elsewhere in China that somewhat more closely corresponds to rules in more established arbitration institutions elsewhere in the world. Arbitration in the SHFTZ is governed by a separate set of Arbitration Rules issued by the Shanghai International Arbitration Center (SHIAC). These introduce several reforms favorable to foreign investment including emergency arbitration, hybrid mediation/arbitration, and removal of obstacles to accessing summary procedures. Additionally, arbitrators may be chosen from outside the official roster maintained by SHIAC, subject to the approval of the chairman of SHIAC.

Recommendations

For the Shanghai Municipal Government:

- **Accelerate efforts to roll out reforms across China that have been successfully introduced in the SHFTZ. This will ensure that companies who can currently only operate in the SHFTZ can conduct business throughout China.**
- Fully adhere to and implement the policies outlined in the *Foreign Investment Law Implementing Regulations*, which provide for the creation of important mechanisms to facilitate, protect, and ensure equal treatment of foreign investment.
- Maintain access to a large pool of talent by offering tax and visa incentives to foreign and domestic workers. Areas like the Pearl River Delta in December 2017 and March 2018 have in recent years implemented such policies to attract talent from Hong Kong and Macao.

裁机构的规则。上海自贸区的仲裁由上海国际仲裁中心颁布的一套单独规则管辖。这些法规引入了几项有利于外商投资的改革措施，包括紧急仲裁、混合调解 / 仲裁，以及免除简易程序办理障碍。此外，仲裁员可以从上海国际经济贸易仲裁委员会正式名册以外的人员中选择，但须经上海国际经济贸易仲裁委员会主席批准。

建议

向上海市人民政府：

- 加速上海自贸试验区的可复制改革试点经验在全国范围内推广，以拓展当前仅能在自贸区运营的企业展业范围至全国。
- 全面贯彻实施《外商投资法律实施条例》规定的相关政策，该条例制定了促进、保护和确保平等对待外国投资的重要机制。
- 通过向外籍和本地雇员提供税收和签证激励措施，扩大总体人才储备。比如，珠三角等地区已于2017年12月和2018年3月施行了此类政策，吸引来自香港、澳门地区的人才。

Tianjin

Introduction

In 2019, Tianjin's GDP grew by a reported rate of 4.6 percent, an improvement from 3.6 percent growth in 2018 but below China's national average of 6.1 percent. The service sector now accounts for more than 50 percent of Tianjin's economy, but advanced manufacturing industries continue to be crucial to the city's economy and employment base. Foreign investment from various countries gives Tianjin's economy a strong platform for additional economic growth and innovation.

The city's challenges include competition from nearby Beijing, rising wages, a lack of available and qualified staff, and an oversupply of commercial real estate. Companies backed by the local government in many industries compete directly with private companies, both foreign and domestic. Additionally, while Foreign-Invested Enterprises (FIEs) previously were eagerly recruited by the Tianjin government, in recent years there appeared to be a growing level of indifference to the needs of the foreign business community and FIEs, which has coincided with the efforts of neighboring countries in the region to attract foreign investment. This trend has recently begun to change and more outreach has been directed towards FIEs, but it will take a sustained effort from the local government to make Tianjin one of the premier destinations in Asia for foreign investment.

As the city's economy shifts from primarily manufacturing-led to a services-oriented model, economic expansion will require greater investment in activities that promote Tianjin's culture, lifestyle, and appeal. In 2019, AmCham China noted that the government has helped to create a number of night markets around the city to drive retail spending and increase entertainment options for residents and visitors. We applaud this initiative. As many other cities in China now host a range of cultural and entertainment events such as music, food, beer, film and other festivals, we recommend that the local government adopt policies to incentivize private companies, including FIEs, to organize and lead such events. Trendy events led by firms based in Tianjin will not only increase long-term employment but allow for a far broader range of activities to take place than the government can attractively plan, finance, and execute on its own.

Coronavirus Disease

At the time of this writing, China was in the midst of containing the outbreak of the novel Coronavirus Disease (COVID-19) which led to the virtual shutdown of business operations following the annual spring festival holiday (the holiday itself was extended for one week in an attempt to contain COVID-19). While AmCham China appreciates the challenges of dealing with such an epidemic and we appreciate the efforts of the Tianjin government to reach out to AmCham China and many member companies during the early weeks of the outbreak to collect feedback and information, many of the early responses to the situation, including blanket shutdowns of restaurants and shopping malls, do not appear to have taken into consideration the needs, challenges, and responsibilities of the business community. We understand that some cities impacted by COVID-19 to a greater extent than Tianjin received local approval to restart their business operations more quickly than in Tianjin. The direct and indirect economic losses to firms in Tianjin as a result of the COVID-19 situation are still unfolding and will be significant. In February 2020 in order to track potential viral outbreaks, the Chinese government, including in Tianjin, implemented a new system requiring all individuals to scan barcodes in order to enter public buildings, transportation facilities, and commercial enterprises. AmCham China believes there are wide ranging privacy concerns associated with such programs. Once the COVID-19 situation has been brought under control and the immediate threat has passed, these systems need to be dismantled and removed. Maintenance of such individual tracking systems will place Tianjin and China in a very disadvantageous position relative to nearly every other major country in the world. Foreign employees and their families will not want to come to China if their activities are being tracked to this extent. No other major nation has such a system in place.

US-China Trade Dispute and Imposition of Tariffs

AmCham China Tianjin Chapter members were subject to many challenges resulting from the imposition of tariffs by China and the US and the slowing economy in 2019. There is some evidence that companies are considering moving their operations to lower cost locations. For instance, the

天津

引言

2019年,天津的GDP增长了4.6%,较2018的3.6%有所提高,但仍低于全国平均6.1%的增长率。目前,服务业在天津经济总量的占比超过50%,但先进制造业对当地的经济和就业基础仍至关重要。各国的外商投资为天津经济的进一步增长和创新提供了强有力的平台。

天津所面临的挑战包括来自附近北京的竞争、薪资上涨、合格人才不足,以及商业地产供应过度。受当地政府支持的多个行业企业与国内外的私营企业直接竞争。此外,天津政府此前迫切引入外商投资企业,但近年来,政府似乎越来越忽视外国商界和外商投资企业的需求,而该地区的邻国却在努力吸引外商投资。不过,这一趋势最近有所改变,政府开始对外商投资企业主动伸出援手,但当地政府需要持续不断地努力,才能使天津成为外商在亚洲的主要投资目的地之一。

随着天津的经济模式从制造业为主转向服务业为主,经济扩张需要加大投资促进天津文化、生活方式和吸引力的活动。中国美国商会(商会)注意到,2019年政府协助在该市周围设立了大量夜市,以推动零售消费,增加居民和游客的娱乐选择,对此我们表示赞赏。随着中国许多其他城市举办诸如音乐节、美食节、啤酒节、电影节等丰富的文娱活动,商会建议当地政府采取相关政策,鼓励私营企业(包括外资企业)组织举办此类活动。天津当地企业举办的流行活动不仅会增加长期就业,而且可能提供的活动比政府策划、投资和执行的活动范围更广泛。

新型冠状病毒肺炎疫情

就在撰写本文这一时期,中国正竭尽全力控制新型冠状病毒肺炎疫情的扩散,春节假期后,企业经营几乎停滞(为了控制疫情,春节延长了一周)。商会了解

对此类疫情所面临的挑战,也赞赏天津政府所付出的努力。在疫情爆发最初几周内,天津政府联系商会和许多会员企业,收集反馈信息。早期针对疫情所做出许多回应,包括关闭餐厅和商场,但似乎并没考虑到商界的需求,面临的挑战和需承担的责任。据我们了解,一些比天津受新冠肺炎疫情影响更大的城市恢复营业比天津更快。受新冠肺炎疫情影响,天津企业的直接和间接损失仍在增加,且将十分巨大。2020年2月,为了追踪潜在的病毒爆发情况,中国政府(包括天津)出台了一套新系统,要求所有市民扫描二维码进入公共建筑、交通设施和企业。商会认为,此类系统存在广泛的隐私安全问题。一旦疫情得到控制,直接威胁消失,就需要解除这些系统。维持此类个人追踪系统将使天津和中国与世界几乎所有其他主要国家相比处于不利地位。如果个人活动被追踪到这种程度,外国雇员及其家人将不愿意来中国。据我们了解,其他主要国家并没有采用这种系统。

中美贸易争端和关税征收

商会天津会员企业面临来自中美互征关税和2019年经济放缓带来的诸多挑战。有证据表明,一些企业正在考虑将经营转移到成本更低的地区。例如,商会2020年度《中国商务环境调查报告》显示,过去三年里,近20%的会员企业已经或正在考虑将产能转移到中国大陆境外。亚洲发展中国家,尤其东南亚是很受欢迎的目的地。中美关系紧张及经济增长放缓可能会使一些企业加快转移计划,更新整体供应链战略。天津一直是重要港口和制造业中心,而这些发展正在且将继续给天津带来负面影响。

外商投资减少

天津是一个国际都市。天津任何一个外商投资企业受到以上影响,最终往往会影响到更多的外资企业、内

AmCham China annual *Business Climate Survey* (BCS) has found that nearly 20 percent of members “have moved or are considering moving” capacity outside of mainland China over the past three years. Developing Asia, particularly Southeast Asia, is a popular destination. The tense bilateral relationship and slowing economic environment will likely lead some firms to expedite these plans and update their overall supply chain strategies. Such developments are and will continue to negatively impact Tianjin, which has traditionally been a major port and manufacturing hub.

Decline in Foreign Investment

Tianjin is an international city. Developments that impact even any one FIE in Tianjin often end up having an impact on a broad range of FIEs and domestically-invested firms and the city’s economy at large. Foreign investment in Tianjin has been declining over the past few years. Foreign investment into Tianjin fell to US \$4.85 billion in 2018, down from US \$10.61 billion in 2017 and US \$10.1 billion in 2016. In the past several years, we have seen a wave of FIEs leaving Tianjin, especially those in the electronics manufacturing sector. Some companies have also exited from the general manufacturing and retail sectors. Besides harming those sectors, the exit of these companies has had negative implications for office, retail and residential landlords, hotels, international schools, restaurants and many other entities in the service economy. The strength of the local economy is not reliant on any single industry or international group, but developments that encourage any firm to depart for reasons other than normal market competition can and do have ripple effects on the local economy.

AmCham China Tianjin Chapter Business Climate Survey

The data in this chapter, unless otherwise specified, is based on responses by AmCham China Tianjin Chapter members to the 2020 AmCham China BCS conducted in late 2019. The BCS was conducted prior to the outbreak of COVID-19 and does not capture the impacts of the virus. It reflects the business climate in 2019.

Financial Performance

AmCham China member companies generally reported positive financial performance, with 71 percent of companies reporting they were “profitable” or “very profitable” in 2019. This constitutes a modest decrease from 2017, when 76 percent of firms reported they were “profitable or “very profitable.” (We do not have Tianjin-specific data for 2018). Additionally, seven percent of respondents reported a “loss,” an increase of five percentage points from 2017 when only two percent reported a loss.

Business Challenges in the China Market

With respect to the main business challenges facing members of the Tianjin Chapter, 43 percent noted their top concern was “inconsistent regulatory interpretation and unclear laws & enforcement.” An additional 21 percent reported “industry overcapacity” was their top challenge. The third most commonly reported challenges, with seven percent of respondents selecting each of “corruption,” “rising labor costs,” and “requirements to comply with Chinese standards or not being allowed to participate in standard setting.”

There are some important differences in these Tianjin Chapter results compared to the responses to the BCS from all AmCham China member companies. With respect to top business challenges, across all AmCham China respondents, 41 percent reported “inconsistent regulatory interpretation and unclear laws & enforcement,” similar to the response rate among Tianjin Chapter members. Notably, the top challenge among all members was “rising labor costs” (45 percent), but among Tianjin Chapter members, only seven percent reported this among their top challenges. Other top challenges across all AmCham China members included “rising tensions in US-China relations,” “regulatory compliance risks,” and “shortages of qualified employees,” which were not top challenges among Tianjin Chapter members.

Business Opportunities in the China Market

Many Tianjin Chapter members indicated that they are “in China for China,” i.e., they are sourcing and/or manufacturing locally and producing for the Chinese market. Close to 44 percent of survey respondents reported the “growth of domestic consumption/rise of an increasingly sizeable and affluent middle class” as their top business opportunity in China. Another 19 percent selected “urbanization and continued infrastructure investment” as a top opportunity, while 15 percent ranked “globalization of Chinese companies and increased outbound investment.” This is largely consistent with responses to the BCS by all AmCham China members. The “growth of domestic consumption/rise of an increasingly sizeable and affluent middle class” was also the top business opportunity across all AmCham China survey respondents (47 percent). Notably, the second most commonly reported opportunity across all survey respondents was “ongoing economic and market reforms” (37 percent).

Tianjin Chapter members were generally optimistic about the investment environment in China, with 36 percent reporting the climate is “improving,” compared with 18 percent who reported it to be “deteriorating.” Nearly half of respondents (46 percent) reported that it was unchanged. In 2020, a majority of companies are reportedly planning to increase investment (64 percent), a slight decline from 67 percent in the 2018 BCS. Close to eight percent of firms said they planned to “substantially increase” investment (by

资企业和当地整体经济。过去几年，天津的外商投资有所下降。2018年，天津外商投资下降到48.5亿美元，2017年为106.1亿美元，2016年为101亿美元。过去几年，商会看到一批外商投资企业离开天津，尤其是电子制造业企业。一些企业退出了一般制造业和零售业。这些企业的离开不仅使相关行业蒙受损失，也对办公、零售、房屋租赁、酒店、国际学校、餐厅和许多其他服务经济实体造成了负面影响。当地经济实力并不依靠任何单一行业或国际团体，但导致任何企业由于正常市场竞争以外的原因离开的发展可能会，且确实将对当地经济带来涟漪效应。

商会天津营商环境调查

2019年末，中国美国商开展了2020年“中国营商环境调查”。除非另有说明，本章中的数据均来自对天津会员企业的调查结果。调查发生在新冠肺炎疫情爆发之前，因此不涉及疫情带来的影响，仅反映了2019年的营商环境。

财务表现

商会会员企业的财务业绩基本良好，71%的会员企业表示2019年企业“盈利”或“盈利丰厚”，这一数字较2017年的76%略有下降。（商会对天津2018年的数据未作统计）。此外，7%的受访者表示企业“亏损”，较2017年的2%增加了5个百分点。

中国市场面临的商业挑战

关于天津会员企业面临的主要商业挑战，43%的企业表示最担心的是“法律法规解释执行不一致/不明确”。21%的企业表示“行业产能过剩”是其面临的主要挑战。7%的受访者提出的第三个普遍存在的挑战为“腐败”、“劳动力成本增加”及，“要求符合中国标准或不允许参与标准制定”中的任一项。

天津的调查结果与商会所有会员企业的调查反馈存在一些重要差异。关于企业面临的商业挑战，在所有商会的受访者中，41%的企业选择“法律法规解释执行不一致/不明确”，与天津会员企业的反馈一致。值得注意的是，所有会员企业面临的商业挑战是“劳动力成本增加”（45%），但天津会员企业中只有7%的企业认为该选项是最大的挑战。商会所有会员企业面临的其他主要

挑战包括“中美关系日益紧张”，“监管合规风险”，“缺少合格员工”，而这些并不是天津会员企业面临的商业挑战。

中国市场的商业机会

许多天津的会员企业表示，他们“在中国，为中国”，也就是说，他们在当地采购和/或制造，为中国市场生产。近44%的受访者表示，“国内消费增加/日益庞大的中产阶级规模”是其在中国的首要商业机遇。另有19%的受访者认为“城市化和持续的基础设施投资”是其最大机遇，15%的受访者选择了“中国公司的国际化和对外投资增加”。这与商会所有会员企业参与的“中国营商环境调查”的反馈基本一致。“国内消费增加/日益庞大的中产阶级规模”也是商会所有会员企业认为的最大商业机遇（47%）。值得注意的是，所有受访者普遍选择的第二大商业机遇是“进一步的经济和市场改革”（37%）。

天津会员企业对中国的投资环境普遍持乐观态度，36%的企业表示营商环境正在“改善”，18%的企业表示营商环境正在“恶化”。近一半的受访者（46%）表示营商环境未发生变化。2020年，大部分企业表示计划增加投资（64%），较2018年的67%略有下降。近8%的企业表示计划“大幅追加（50%以上）”投资，28%的企业表示不打算增加投资，8%的企业表示计划减少投资。

2020年投资计划低于2019年的会员企业给出了以下原因：1）预计中国经济增速放缓（18%）2）中美经济关系和互加关税的不确定性（18%）3）对不确定的中国政策环境的担忧（11%）

建议

对天津市政府：

- 设立与产业界在政策上更紧密的合作机制。“中国营商环境调查”和本年度其他会员调查表明一个趋势：企业要求提高规则制定和监管执行的透明度。许多会员企业强烈希望更多地参与标准制定。许多会员企业具有多个

over 50 percent) while 28 percent reported they planned no further investment and eight percent said they planned to reduce their investment.

Members who reported that their 2020 investment levels would be lower than in 2019 gave the following reasons: ❶ expectations of slower growth in China (18 percent), ❷ uncertainties in the US-China economic relationship and bilateral tariffs (18 percent), and ❸ concerns about an uncertain Chinese policy environment (11 percent).

Recommendations

For the Tianjin Municipal Government:

- **Create mechanisms for closer collaboration with industry on policy.** A trend that emerged from the BCS and other membership surveys throughout the year was the need for greater transparency with respect to rulemaking and regulatory enforcement. Many members expressed a strong desire for greater participation in standard setting and development. Many of our members have international experience, networks across multiple countries and markets, and the ability to tap into international best practices in their industry and would be willing to share this experience with government. We recommend creating more opportunities for FIEs to provide continued and sustained input on policies that will affect FIEs or the commercial environment.
- **Develop a range of new investment incentives.** As a major port city for Northeast China, and home to special development zones like TEDA (Tianjin Economic-Technological Development Area) and XEDA (Xiqing Economic-Technological Development Area), Tianjin has historically been one of the more attractive investment environments in China for FIEs. In the face of rising labor costs, the US-China trade dispute, and the market exit of a number of important industries from Tianjin to lower-cost locations, we recommend that the Tianjin municipal government reset the investment environment with a new and bold strategy offering a cocktail of investment incentives to attract foreign investment.
- **Healthcare, Prevention, and Privacy.** Once the COVID-19 outbreak is contained we recommend that the tracking systems put in place during the outbreak to control the movement of people be dismantled. Moreover, in the wake of the outbreak, the Tianjin municipal government should use the opportunity to prioritize investment in healthcare.

Part of this strategy should also include refreshing the city's emergency preparedness planning with input from key industries and stakeholders. AmCham China's Tianjin Chapter would welcome the opportunity to help coordinate a dialogue on this topic between government and industry.

- **Encourage greater investment in activities that promote the culture, lifestyle, and appeal of Tianjin.** The leading cities around the world have a robust cultural scene, an array of recreational activities, and access to entertainment and the arts. Because developing such an environment cannot be a purely top-down exercise, local artists and entrepreneurs must be allowed to provide input for it to grow organically. We recommend that the government adopt policies to encourage domestically-invested enterprises and FIEs to organize and lead such events.

国家和市场的国际经验及网络关系，具备利用其所在行业最佳国际实践的能力，也愿意与当地政府分享其经验。商会建议为外商投资企业提供更多机会，使其针对影响外商投资企业或商务环境的相关政策持续提供反馈。

- **制定一系列新的投资激励措施。**作为中国东北部的重要港口城市，以及诸如天津经济技术开发区和西青经济技术开发区等特殊开发区的所在地，天津在历史上一直是外商投资企业在天津最具有吸引力的投资目的地之一。面对劳动力成本增加、中美贸易争端，以及大量重要产业从天津转移到成本更低的地区，商会建议天津市政府制定新的、大胆的战略，重塑当地投资环境，提供多样化的投资激励措施，吸引外商投资。
- **医疗、预防和隐私。**一旦新冠肺炎疫情得到控制，商会建议立即解除疫情爆发期间推出的用于控制市民行动的追踪系统。此外，在疫情爆发后，天津市政府应利用这一机会优先投资医疗行业。该战略还应包括采纳重要行业和利益相关者的信息，更新当地的应急准备计划。商会欢迎协助政府与相关行业就此话题进行对话的一切机会。
- **鼓励加大投资促进天津文化、生活方式和吸引力的活动。**世界主要城市往往具有浓厚的文化氛围，丰富的娱乐活动和艺术。打造这样的环境不能单纯依靠自上而下的执行，必须允许当地艺术家和创业家为这种环境的有机发展提供有益建议。商会建议政府采取相关政策，鼓励国内外投资企业组织举办此类活动。

Wuhan / Central China

Introduction

Wuhan remains the commercial, financial, and transportation center of Central China. In the first nine months of 2019, foreign direct investment (FDI) increased 13.4 percent in Wuhan and 8.5 percent in Hubei Province as a whole compared to the previous year. With more than one hundred colleges and universities and 1.2 million university students, Wuhan is a key source of talent for AmCham China businesses. The Milken Institute ranked Wuhan 9th in its 2019 list of China's best performing cities. According to the AmCham China *Business Climate Survey* (BCS), two-thirds of Central China Chapter member companies are planning to increase investment in 2020. The BCS, however, was conducted before the outbreak of SARS-CoV-2 and its associated disease, COVID-19, and therefore does not capture its impact.

Member companies applaud ongoing efforts to improve air quality and traffic, upgrade support for businesses, transform Wuhan into a more global city, and attract top talent. Nevertheless, challenges remain. In the 2020 BCS AmCham China's Central China Chapter member companies identified "Inconsistent/unclear laws and regulations and/or their enforcement" as their top business challenge in China, which is consistent with business sentiment across the entire AmCham China membership base. Member companies in Wuhan and Hubei also continue to struggle to retain high-level talent and with healthcare and real estate policies.

In Q1 2020 Wuhan, Hubei, and all of China have had to contend with the outbreak of COVID-19, which has now become a global pandemic. The outbreak has presented an unprecedented challenge for Wuhan, where the outbreak originated, and Hubei province as a whole. Hubei has been under a virtual lockdown enacted to contain COVID-19 since January, although that lockdown has already been partially lifted and is set to end in early April. The lockdown resulted in a shutdown of almost all business activity across the province, presenting a multitude of challenges for both foreign-invested enterprises (FIEs) and domestically-invested enterprises as well as their employees and residents of the province. The Wuhan municipal government in February 2020 instituted policies to support small and medium-sized enterprises (SMEs) in Wuhan. These policies aim to reduce administrative burdens, increase financial support,

protect employees, and optimize service delivery, although AmCham China notes that many of these policies have in practice excluded FIEs. As the immediate public health threat posed by COVID-19 recedes in Wuhan and Hubei, we encourage the municipal and provincial governments to take the opportunity to extend their engagement with AmCham Central Chapter members to review the issues discussed in this chapter, identify how best to address them, and explore avenues to rebuild confidence for investing in Wuhan/Hubei and get business in the province back to work.

Recent Developments and Ongoing Regulatory Issues

Attracting & Retaining Mid- to High-Level Talent (Wuhan Municipal Government)

AmCham China applauds the efforts of local and provincial governments to attract talented personnel to Hubei. The recent policies on residency permits (*hukou*) have encouraged a greater number of talented young professionals to stay in Wuhan. Current policies focused on attracting global, top-level technical experts and leaders, including those able to provide capital for new, qualified private startup ventures, have also helped to improve the quality of Wuhan's workforce.

Nevertheless, recruiting high-and-mid-level (especially executive or senior level) talent remains a significant challenge for companies in Wuhan. If Wuhan wishes to enhance, or even maintain, its position as one of the top tier "high-tech" cities in China, it must attract and retain talented foreign and Chinese senior managers and team leaders. Currently, many potential recruits fitting this profile are already settled with their families in cities such as Beijing, Shanghai or Shenzhen. These professionals are unlikely to transfer their *hukou* to Wuhan and, without the local *hukou*, they face housing, healthcare, children's education, and lifestyle challenges, which makes it difficult to live and work comfortably in Wuhan.

AmCham China recommends that the Hubei and Wuhan governments adopt innovative and focused policies to attract, retain, and reward mid-and-high-level senior managers and team leaders in the technology sector. Partnering with global

武汉

引言

武汉仍是华中地区的商业、金融和交通中心。2019年1-9月，武汉外商直接投资同比增长13.4%，湖北省外商直接投资同比增长8.5%。武汉拥有百余所高等院校和120万名大学生，是中国美国商会（商会）会员企业的重要人才来源。米尔肯研究院发布的2019中国最佳表现城市排行榜中，武汉位列第九名。2020年商会的《中国商务环境调查报告》显示，华中地区三分之二的会员企业计划在2020年加大投资。由于该调查于新冠肺炎疫情爆发之前开展，因此数据未能反映疫情所带来影响。

各会员企业赞赏政府在改善空气质量及交通状况所做出的努力，也看到政府对企业的支持不断加强，武汉得以与此正发展成为一个更加国际化的城市，持续吸引顶尖人才。然而，挑战仍然存在。2020年商会的《中国商务环境调查报告》华中地区会员企业将“法律法规和执法不一致/不明确”列为其在中国面临的最大挑战，与商会各地分会的整体商业情绪不谋而合。武汉和湖北的会员企业也继续努力留住高层次人才，并制定相关医疗和房地产政策。

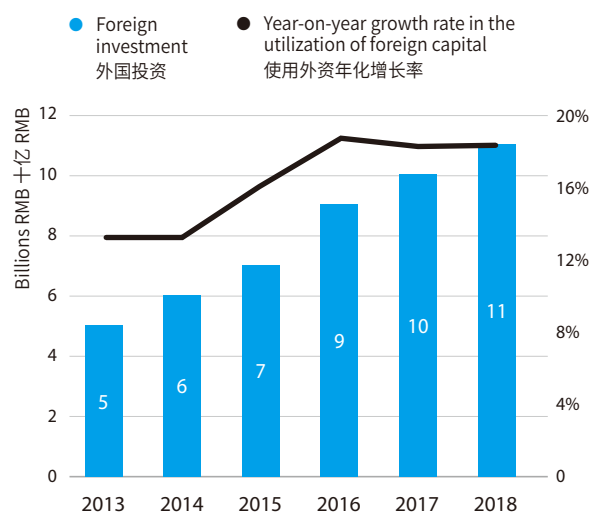
2020年第一季度，湖北省、武汉市以及全中国都在全力应对新型冠状病毒肺炎（简称“新冠肺炎”）疫情，然而疫情已肆虐全球，升级为全球性大流行病。自新冠肺炎疫情在武汉大面积爆发以来，武汉市及湖北省经受到前所未有的挑战。湖北省为遏制新冠肺炎疫情的蔓延，自1月开始就处于封闭状态，直到4月初，才有部分城市宣布解封。封城之时，湖北省商业活动几乎全部暂停，给外商投资企业、内资企业以及其员工和湖北省居民带来了许多不便。2020年2月，武汉市政府出台政策支持中小企业经营发展，减轻企业负担、强化金融支持、保障企业用工、优化提升服务。但是商会发现许多相关政策都将外商投资企业排除在外。随着新冠肺炎疫情

对湖北省、武汉市的公共健康威胁逐渐减弱，商会促请省政府及市政府抓住机会，与商会华中分会会员共同探讨本章节讨论的问题，并确定解决这些问题的最佳方案，帮助外商投资企业在武汉/湖北重建投资信心，恢复生产和经营。

最新进展及现存监管问题

Figure 1. Foreign Investment in Wuhan and Annual Growth Rate in “Utilization Rate of Foreign Capital”

图 1. 武汉市外商投资与“外资利用率”的同比增长率



Source: Wuhan municipal government.
信息来源：武汉市政府

Note: “Actual utilization of foreign capital” from the Wuhan municipal government refers to the amount of foreign capital that entered into China after contracts or agreements were signed by foreign investors with their Chinese counterparts. Figure 1 shows the government’s reported year-on-year change in the rate of the “actual utilization of foreign capital” Complete 2019 data was not available as of the time of writing and is not included in Figure 1.

注：武汉市政府提到的“实际利用外资”，是指外国投资者与中国相关方签订合同或协议后进入中国境内的外资金额。图1显示了截至本文时，政府报告“实际利用外资”比例的同比变化情况。无法获取2019年完整数据，因此图1中未体现。

industry leaders registered in Wuhan on such policies would be an effective way to attract such talent and meet market demand. An ever-growing pool of talented senior managers and team leaders in key growth areas will reinforce Central China's current and future economic growth.

Greater Legal and Regulatory Transparency (Hubei & Wuhan Governments)

AmCham China recognizes the continuing efforts made by the central government, Hubei, and Wuhan governments to improve support for local enterprises, such as designating government officials to serve as contact points for key enterprises and establishing a mechanism for an annual dialogue with the business community.

Nevertheless, AmCham China members in Central China have insufficient official access to information about new policies and regulations in a timely manner. FIEs are able to track public statements and news reports to stay current on the latest regulatory developments but have few channels to obtain formal policy documents in English. Consequently, legal regulations and guidelines often remain unclear. Within Central China, AmCham China has found the Henan and Jiangxi official government websites do not have English-language content. On the Hubei and Hunan government websites, our members can read broad regulatory guidelines in English but often cannot find important details on how to complete various approval and licensing procedures or meet tax and human resources requirements applicable to foreign investors and FIEs. The Shanghai and Sichuan provincial governments offer more complete regulatory information in English than many governments in Central China.

AmCham China recommends that the Hubei and Wuhan governments prioritize prompt publication of new policies, regulations, and implementation procedures (including the names of the implementing departments) in English and make them clearly available through their official websites. The Shanghai and Sichuan provincial government websites are a useful reference point. AmCham China recommends that the Hubei and Wuhan governments expand online services in English to allow foreign companies to complete a greater number of regulatory procedures online. We also recommend that FIEs and domestically-invested enterprises be invited to provide feedback on draft laws and regulations in a transparent manner.

Healthcare Sector (Wuhan Municipal Health Commission)

Currently, the medical and healthcare needs of foreign nationals in Central China are met by small international clinics that cooperate with various Chinese hospitals and hospital networks. AmCham Central China recognizes this as a positive step towards making this region more welcoming for foreign employees and their families. The

availability of suitable healthcare for foreign employees (and their families) is an important consideration of FIEs when evaluating where to invest.

Gaps and inefficiencies remain, however, with respect to the current structure and AmCham China Central Chapter member companies recommend that they be addressed for the region in the aftermath of COVID-19. These include the following:

- International health care clinics would like to be able to provide long-term prescriptions (beyond the current one-month limit) for patients who have chronic illnesses or mental conditions. Currently, the one month prescription limitation imposes a great burden on foreign nationals who do not live near an international clinic which requires that they travel for up to several hours each month just to complete a check-up and refill for medications to treat a long-term illness or condition,
- International health care clinics should have the authority to administer immunizations to foreign nationals directly. Language and communication barriers and other logistical issues currently render obtaining immunizations difficult for foreign nationals. These challenges represent a public health risk as some foreign nationals may decide to forego recommended immunizations because of the inconvenience,
- International health care clinics would like the authority to perform PPD Tests (Tuberculosis scratch tests) in their offices and to be able to read and officially report the results from their office. Currently, foreign nationals frequently have to undergo X-ray examinations for tuberculosis, which present a health risk because X-ray tests for tuberculosis alone are often insufficient to determine if a patient has the disease and repeated X-ray testing increases exposure to radiation,
- International health care clinics and the local hospitals with which they cooperate need the ability to accept payment from foreign (international) medical insurance providers. Currently, foreign patients must pay up front for appointments and procedures – this is inconvenient and sometimes prohibitive due to high costs. The current limitations discourage foreign nationals from seeking healthcare when needed, thus presenting a health risk to the general public,
- The licensing procedure for international doctors permitting them to practice in Central China needs to be simplified, streamlined, and communicated clearly. Current procedures are unpredictable. This presents huge challenges in recruiting and retaining qualified medical professionals to work in Central China. Without an adequate and stable number of qualified international doctors in Central China, FIEs are likely to redirect their investments and/or staff to other locations in China,
- The recent, unfortunate emergence of the novel coronavirus known as SARS-CoV-2 and its associated disease,

吸引并留住中高端人才（武汉市政府）

商会赞赏地方和省级政府为大力吸引人才到湖北省工作所付出的努力。近期出台的落户（户口）政策成功吸引了更多年轻的专业人才留在武汉。目前的政策侧重于吸引全球顶级技术专家和领导者，比如为符合要求的新设立私营初创企业提供资金，这也有助于提高武汉劳动力的质量。

然而，对于武汉的企业来说，招聘中高端（执行层或高级管理层，层级略低于顶级）人才仍然是一项重大挑战。如果武汉希望巩固或保持其中国一线高科技城市的地位，则必须要设法引进并留住中外高管和团队领导人才。目前，许多符合这一条件的人才已经与家人在北京、上海或深圳等城市定居。这些专业人士不太可能把户口迁到武汉，而没有本地户口，他们将在住房、医疗、子女教育和生活方式等方面面临诸多不便，很难坚持长期稳定在武汉工作生活。

商会建议湖北省和武汉市政府采取创新政策，侧重吸引、留住、奖励科技行业的中高端管理人员和团队领导者。与在武汉注册的全球行业领导企业合作，将是吸引此类人才、满足市场需求的有效途径。在经济增长的关键领域，不断增加优秀高级管理人员和团队领导者将巩固华中地区当下及未来的经济发展。

提高法律和监管透明度（湖北省和武汉市政府）

商会赞赏中央政府、湖北省政府和武汉市政府持续努力加大对当地企业的支持，例如指定政府官员作为重点企业的联络人，建立与商界的年度对话机制。

然而，华中地区的商会会员缺乏充分的官方渠道，无法及时获得有关新政策法规的信息。外国公司能够通过关注公开声明和新闻报道来了解最新的监管动态，但几乎没有渠道可以获取官方的英文版政策文件，导致外国企业往往对法律法规和指导意见有所疑惑。在华中地区，商会发现河南省和江西省的官方政府网站没有英文内容；湖北省和湖南省的政府网站只有一些宽泛的英文版监管指南，而且往往缺失某些关键细节，比如如何完成各种审批和许可流程，外国投资者和外商投资企业怎样才算符合税务和人力资源要求。相比华中地区，上海和四川省政府提供的英文监管信息更加完整。

商会建议，湖北省和武汉市政府应优先将最新政策、

法规和实施流程（包括实施部门的名称）尽快用英文公布，并通过其官方网站明确发布。上海市和四川省政府网站可作为有效参考。商会建议湖北省和武汉市政府扩大英语线上服务，保障外国企业可以通过线上完成更多监管流程。商会建议采用透明机制，邀请外国企业和中资企业对法律法规草案提出反馈意见。

医疗行业（武汉市卫生健康委员会）

目前，在华中地区的外国人主要通过与中国医院系统合作的小型国际门诊满足其医疗保健需求。商会华中分会认为，这是华中地区对外籍员工及其家属更加友善的积极表示。为外籍员工（及其家属）提供适当的医疗保健是外商投资企业在评估投资地点时的一个重要考虑因素。

然而，当前的医疗保健政策上仍存在区别对待，且效率低下。商会华中分会的会员企业建议解决这些问题，减轻外界认为外籍人士因疫情原因而受到区别对待的刻板印象，其中包括：

- 国际医疗门诊能够为患有慢性疾病或精神疾病的患者开具长期处方（超出一个月的限期）。目前，一个月的处方给药期对距离国际医疗门诊较远的外国人造成了巨大负担，每月必须花费数小时去国际门诊进行检查，并补充药物治疗长期疾病或精神状况。
- 国际医疗诊所应有权直接为外国人免疫接种。目前，外国人因语言交流障碍及其他后勤问题难以获得免疫接种。一些外国人可能因为此类不便放弃推荐性免疫接种，构成公共卫生风险。
- 国际医疗诊所希望能够在办公室进行结核 PPD 检查，并能够在其办公室公示检查结果。目前，外国人频繁通过 X 光检查检测结核病，构成健康威胁。仅通过 X 光检查不足以确定病人是否患有结核病，反复进行 X 光检查又会增加对辐射的暴露。
- 国际医疗门诊及其合作的当地医院需要认可外国（国际）医保支付。目前，外国患者必须提前支付预约及手术费用，极其不便，且有时会由于费用高昂而令人望而却步，当前的限制性规定使外国人在需要医疗时不愿意去治疗，引发大众健康风险。
- 国际医生在华中地区的执业许可流程需要简化精简并清晰宣贯。目前的政策无法预测，给华中地区招募留住符合要求的医务人员带来了巨大的挑战。华

COVID-19, highlight the need for international clinics and their foreign doctors and staff to be included in the communications protocols for public health issues and emergencies in China. Many international clinics were not reopened after the Chinese New Year, ostensibly as resources and staff were reallocated to combat COVID-19. International clinics should be permitted to remain open during public health emergencies to assist in assessing the health of foreign nationals, prescribing treatments, and directing the administration of those treatments. Foreign investors that send foreign experts and their families to Central China need to know after this current COVID-19 pandemic that employees and their families will have uninterrupted access to international healthcare services during any future crisis.

Real Estate

During the first half of 2019 the real estate sector in Wuhan experienced an overheated property market. AmCham China's Central China Chapter recognizes the effective measures taken by the government to cool the market and stabilize it over the second half of the year. Office and retail real estate properties are facing an oversupply, however, because there are strict policies on the development of residential properties, but these policies do not extend to office and retail developments. Current policies impose price controls on the sale prices that real estate developers can charge, but there are no corresponding price controls on land prices. The result is that as land prices rise in line with the market, sale prices cannot correspondingly rise, which squeezes developers' profits.

testing. Integrate international healthcare clinics into existing communication protocols for public health emergencies and permit international healthcare clinics to continue to operate during future public health emergencies.

- Enact policies that would allow the real estate market to adjust more freely in line with market demands.

For the US Consulate in Wuhan

- **Engage in bilateral dialogue and in-depth exchanges with your Chinese government counterparts to share best practices and support the implementation of a more transparent and predictable regulatory system in Hubei and Wuhan.**
- When the immediate global public health threat posed by COVID-19 eventually recedes, work with Chinese government counterparts to facilitate bilateral foreign direct investment (FDI) in Wuhan and Hubei.

Recommendations

For the Hubei and Wuhan Governments:

- Adopt innovative and focused policies to attract, retain, and reward mid-and-high-level senior managers and team leaders in the technology sector. Partnering with global industry leaders registered in Wuhan on such policies would be an effective way to attract such talent and meet market demand.
- Provide greater transparency around new laws and regulations by promptly updating the municipal and provincial government websites and providing English-language services. Allow FIEs to openly and transparently participate in the draft review process for new laws and regulations.
- Improve healthcare for foreign nationals by allowing foreign clinics to expand services including prescriptions, immunizations, and

中地区国际医生不足、流动性大会可能导致外商投资企业把投资及员工转移到中国其他地区。

- 新冠病毒疫情的突然爆发，进一步凸显了将国际门诊及外国医生纳入中国公共卫生和突发事件通信协议的必要性。春节后多家国际门诊并未恢复营业，因为诊所的资源 and 员工都被调配支援应对新冠肺炎。应允许国际门诊在突发公共卫生事件期间继续营业，协助评估外国人的健康状况、开具治疗处方并指导开展治疗。外国投资者向华中地区派遣外国专家及家属时需要确定，新冠肺炎疫情结束后，其员工及家属未来无论面对任何危机都能够持续获取医疗服务，始终不会有中断。

房地产

2019年上半年，武汉房地产市场过热。商会华中分会赞赏政府在下半年采取有效措施为房地产市场降温，稳定市场。然而，写字楼和零售地产面临供应过剩的局面，政府采取严格措施管理住宅地产的开发，但这些政策并不适用于写字楼和零售地产。现行政策对房地产开发商的出售价格实施限价，但是土地价格却没有相应的价格管制。土地价格与市场价格同步上涨，但是销售价格却不能相应上涨，挤压了开发商的利润。

- 出台政策允许房地产市场更自由地根据市场需求进行调整。

对美国驻武汉领事馆：

- 开展双边对话及深入交流，分享成功经验，支持湖北及武汉实施更加透明、可预测的监管体系。
- 新冠肺炎疫情引发的全球公共卫生危机最终消退时，及时与中国政府负责部门合作，推动在湖北及武汉的双边外商直接投资。

建议

对湖北省政府、武汉市政府：

- 政府采取创新政策，侧重吸引、留住和奖励科技行业的中高端管理人员和团队领导者。与在武汉注册的全球行业领导企业合作，将是吸引此类人才、满足市场需求的有效途径。
- 通过及时更新政府网站、提供英语服务，提高法律法规的透明度。允许外国公司公开、自由地参与新法规的草案审议流程。
- 允许外国诊所扩大服务范围，包括处方、免疫接种和检测，改善针对外国人的医疗服务。将国际医疗诊所纳入现行突发公共卫生事件通信协议，允许国际医疗诊所在未来突发公共卫生事件期间继续开展业务。

Acronyms 缩写表

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| 3PL | Third-Party Logistics |
| AAL | Approved Agent Lender |
| ABAC | Anti-Bribery and Anti-Corruption |
| ACP | US-China Aviation Cooperation Program |
| AEO | Authorized Economic Operator |
| AFTCB | Areas for Further Technical Confidence Building |
| AI | Artificial Intelligence |
| AIC | Administration for Industry and Commerce |
| AMAC | Asset Management Association of China |
| AMB | Anti-Monopoly Bureau |
| AMC | Anti-Monopoly Commission |
| AMEA | Anti-Monopoly Enforcement Agency |
| AML | Anti-Money Laundering |
| AML | Anti-Monopoly Law |
| AMR | Administration for Market Regulation |
| ANAC | "National Civil Aviation Agency of Brazil" |
| ANPRM | Advance Notice of Proposed Rulemaking |
| ANSI | American National Standards Institute |
| APA | Advance Pricing Arrangements |
| APEC | Asia-Pacific Economic Cooperation |
| APU | Auxiliary Power Unit |
| AQSIQ | General Administration of Quality Supervision, Inspection, and Quarantine |
| ASF | African Swine Flu |
| ASME | American Society of Mechanical Engineers |
| ASTM | American Society for Testing and Materials |
| ATC | Air Traffic Control |
| ATFM | Air Traffic Flow Management |
| ATMB | Air Traffic Management Bureau |
| ATSE | Advance Technology Services Enterprise |
| AUCL | Anti-Unfair Competition Law |
| AUM | Assets Under Management |
| B2C | Business to Consumer |
| BAPA | Bilateral Advance Pricing Arrangement |

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| BASA | US-China Bilateral Aviation Safety Agreement |
| BCM | Billion Cubic Metres |
| BCS | AmCham China Business Climate Survey |
| BEPS | Base Erosion and Profit Sharing |
| BIS | Bank of International Settlements |
| BIS | US Bureau of Industry And Security (Department of Commerce) |
| BRF | Belt and Road Forum |
| BRI | Belt and Road Initiative |
| BSA | Bond Settlement Agent |
| CAAC | Civil Aviation Administration of China |
| CAAM | China Association of Automobile Manufacturers |
| CAC | Cyberspace Administration of China |
| CBD | Central Business District |
| CBIRC | China Banking and Insurance Regulatory Commission |
| CBP | Customs and Border Protection (of the US) |
| CBRC | China Banking Regulatory Commission |
| CCAR | China Civil Aviation Regulations |
| CCC | China Compulsory Certification |
| CCDI | Central Committee for Discipline Inspection |
| CCID | China Center For Information Industry Development |
| CCL | US Commerce Control List |
| CCPS | Cybersecurity Classified Protection Scheme |
| CCS | China Classification Society |
| CCU | Chinese Cooperation Unit |
| CDE | Center For Drug Evaluation |
| CDM | Collaborative Decision-Making Model |
| CDS | Credit Default Swap |
| CEN | European Committee for Standardization |
| CENELEC | European Committee for Electrotechnical Standardization |
| CEPA | Closer Economic Partnership Arrangement |
| CFA | Chinese Football Association |

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| CFIUS | The Committee on Foreign Investment in the US |
| CFTC | US Commodity Futures Trading Commission |
| CGNPC | China General Nuclear Power Corporation |
| CIBM | China Interbank Bond Market |
| CII | Critical Information Infrastructure |
| CIIE | China International Import Expo |
| CIIO | Critical Information Infrastructure Operator |
| CIPS | Cross-border Inter-bank Payment System |
| CIRC | China Insurance Regulatory Commission |
| CISMD | Certification, Inspection, and Supervision Management Department |
| CIT | Corporate Income Tax |
| CMBS | Commercial Mortgage Backed Securities |
| CMDE | Center for Medical Device Evaluation |
| CNCA | National Certification and Accreditation Administration (of China) |
| CNIS | China National Institute of Standardization |
| CNOOC | China National Offshore Oil Corporation |
| CNPC | China National Petroleum Corporation |
| CNVD | China National Vulnerability Database |
| CPC | Communist Party of China |
| CPE | US-China Consultation On People-To-People Exchange |
| CRA | Credit Rating Agency |
| CRE | Commercial Real Estate |
| CRM | Credit Risk Mitigation |
| C-ROSS | China Risk-Oriented Solvency System |
| CSL | Cybersecurity Law |
| CSPs | Cloud Service Providers |
| CSR | Corporate Social Responsibility |
| CSRC | China Securities Regulatory Commission |
| CT | Consumption Tax |
| CTF | Counter-Terrorism Financing |
| CTL | Counter-Terrorism Law |
| CVD | Coordinated Vulnerability Disclosure |
| DF Test | Durability Test |
| DOC | US Department of Commerce |

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|----------------|---|
| DOE | US Department of Energy |
| DOJ | Department of Justice |
| DTCC | US Depository and Trust Clearing Corporation |
| DVP | Delivery Versus Payment |
| E&P | Exploration and Production |
| EAR | US Export Administration Regulations |
| EASA | European Aviation Safety Agency |
| ECCN | Export Control Classification Numbers |
| ECER | Energy Conservation and Emissions Reduction |
| ECL | China draft Export Control Law |
| ECP | US-China Energy Cooperation Program |
| ECRA | US Export Control Reform Act |
| ECWG | Export Compliance Working Group |
| EDV | Essentially Derived Varieties |
| EIA | Environmental Impact Assessments |
| EIA | Energy Information Administration (of the US) |
| EPA | US Environmental Protection Agency |
| EPR | Extended Producer Responsibility |
| EQ | Exempted Quantity |
| ETS | Emissions Trading System |
| EU | European Union |
| EUR | Estimated Ultimate Recovery |
| FA | Fund Accounting |
| FAA | Federal Aviation Administration |
| FAQ | Frequently Asked Question |
| FCDP | Foreign Currency Denominated Policies |
| FCPA | Foreign Corrupt Practices Act |
| FDA | US Food and Drug Administration |
| FDI | Foreign Direct Investment |
| FEB | Foreign Experts Bureau |
| FI | Financial Institution |
| FIE | Foreign-Invested Enterprise |
| FIL | Foreign Investment Law |
| FMC | Fund Management Company |
| FPPC | Flight Plan Processing Center |
| FRT | Facial Recognition Technology |

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| FSIS | USDA Food Safety Inspection Service |
| FTA | Free Trade Agreement |
| FTP | Free Trade Port |
| FTZ | Free Trade Zone |
| GA | General Aviation |
| GAAP | Generally Accepted Accounting Principles |
| GABA | General and Business Aviation |
| GACC | General Administration of Customs of China |
| GAPP | General Administration of Press and Publication |
| GATS | General Agreement on Trade in Services |
| GB | Guobiao (National Standard) |
| GDP | Gross Domestic Product |
| GDPR | EU General Data Protection Regulation |
| GE | Genetically Engineered |
| GFMA | Global Financial Market Association |
| GHG | Greenhouse Gas |
| GLP | Global Logistic Properties |
| GLP | Good Laboratory Practice |
| GMO | Genetically Modified Organism |
| GMP | Good Manufacturing Practice |
| GMRA | Global Master Repurchase Agreement |
| GPA | Agreement on Government Procurement |
| GPU | Ground Power Units |
| HACCP | Hazard Analysis and Critical Control Points |
| HGP | Hormone Growth Promotants |
| HKEX | Hong Kong Exchanges and Clearing |
| HNTE | High And New Technology Enterprise |
| HR | Human Resources |
| IAIS | International Association of Insurance Supervisors |
| IAMC | Insurance Asset Management Company |
| IATA | International Air Transport Association |
| ICT | Information and Communications Technology |
| ICV | Intelligent and Connected Vehicle |
| IEC | International Electrotechnical Commission |

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| IEEE | Institute of Electrical and Electronics Engineers |
| IFRS | International Financial Reporting Standards |
| IIT | Individual Income Tax |
| ILO | International Labour Organization |
| IMDRF | International Medical Device Regulators Forum |
| IMO | International Maritime Organization |
| IOC | International Oil Company |
| IOM | International Organization of Migration |
| IoT | Internet of Things |
| IoV | Internet of Vehicles |
| IP | Intellectual Property |
| IPA | "Implementation Procedures for Airworthiness" |
| IPO | Initial Public Offering |
| IPR | Intellectual Property Rights |
| IRM | Information Rights Management |
| ISO | International Organization for Standardization |
| ISRI | Institute For Scrap Recycling Industries (of the US) |
| ITU | International Telecommunication Union |
| IVD | In Vitro Diagnostics |
| JCCT | US-China Joint Commission on Commerce and Trade |
| JV | Joint Venture |
| LLP | GMO Low Level Presence |
| LNG | Liquefied Natural Gas |
| M&A | Mergers and Acquisitions |
| MAD | Mutual Acceptance of Data (OECD) |
| MAP | Mutual Agreement Procedure (OECD) |
| MARA | Ministry of Agriculture and Rural Affairs |
| MCA | Ministry of Civil Affairs |
| MDCI | Medical Devices Clinical Research |
| MEE | Ministry of Ecology and Environment |
| MEM | Ministry of Emergency Management |
| MEWP | Mechanized Elevation Work Platforms |
| MIC 2025 | Made in China 2025 |

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| MIIT | Ministry of Industry and Information Technology |
| MLPS | Multi-Level Protection Scheme |
| MLR | Ministry of Land and Resources |
| MNC | Multinational Corporation |
| MNR | Ministry of Natural Resources |
| MOE | Ministry of Education |
| MOF | Ministry of Finance |
| MOFA | Ministry of Foreign Affairs |
| MOFCOM | Ministry of Commerce |
| MOHRSS | Ministry of Human Resources and Social Security |
| MOHURD | Ministry of Housing and Urban-Rural Development |
| MOJ | Ministry of Justice |
| MOST | Ministry of Science and Technology |
| MOT | Ministry of Transportation |
| MoU | Memorandum of Understanding |
| MPS | Ministry of Public Security |
| MRL | Maximum Residue Level |
| MSA | Market Supervision Administration |
| MSW | Municipal Solid Waste |
| NAFMII | National Association of Financial Market Institutional Investors |
| NAV | Net Asset Value |
| NBA | US National Basketball Association |
| NBS | National Bureau of Statistics |
| NCAC | National Copyright Administration of China |
| NDRC | National Development and Reform Commission |
| NEV | New Energy Vehicle |
| NGO | Non-Governmental Organization |
| NHC | National Health Commission |
| NHSA | National Healthcare Security Administration |
| NIA | National Immigration Administration |
| NIOSH | National Institute For Occupational Health And Safety (of the US) |
| NIPA | National Intellectual Property Administration |
| NMPA | National Medical Products Administration |

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| NO | Network Operator |
| NOC | National Oil Company |
| NPC | National People's Congress |
| NPC | National Pipeline Company |
| NPCSC | Standing Committee of The National People's Congress |
| NPO | Non-Profit Organization |
| NR4 | Non-road Mobile Machinery and Diesel Engine Stage IV emission regulation |
| NRDL | National Reimbursement Drug List |
| NRTA | National Radio And TV Administration |
| NSC | National Supervision Commission |
| NTCAS | National Technical Committee of Auto Standardization |
| NWP | Notification of Work Permit |
| O2O | Online-To-Offline |
| OECD | Organisation for Economic Cooperation and Development |
| OEM | Original Equipment Manufacturer |
| OGIF | US-China Oil and Gas Industry Forum |
| OSCCA | Office of State Commercial Cryptography Administration |
| OSH | Occupational Safety and Health |
| OSHA | US Occupational Safety and Health Administration |
| P2P | Peer-To-Peer |
| PAL | Pharmaceutical Administration Law |
| PBOC | People's Bank of China |
| PCS | Punitive Compensation System |
| PFF | Professional faultfinder |
| PFM | Private Fund Management |
| PFTZ | Pilot Free Trade Zone |
| PHEV | Plug-in Hybrid Energy Vehicle |
| PHIS | Public Health Information System (of the USDA) |
| PII | Personally Identifiable Information/ Personal Information |
| PMA | Parts Manufacturing Authorization |
| PRC | People's Republic of China |
| PSB | Public Security Bureau |
| PSO | Public Security Organ |

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| PSU | Professional Supervisory Unit |
| PVP | Plant Variety Protection |
| QDII | Qualified Domestic Individual Investor |
| QDLP | Qualified Domestic Limited Partners |
| QFII | Qualified Foreign Institutional Investor |
| R&D | Research and Development |
| RDP | Regulatory Data Protection |
| REIT | Real Estate Investment Trusts |
| RFG | Remanufactured Finished Goods |
| RHQ | Regional Headquarters |
| RMB | Renminbi (Chinese Yuan) |
| RPM | Resale Price Maintenance |
| SAC | Standardization Administration of China |
| SAFE | State Administration of Foreign Exchange |
| SAFEA | State Administration for Foreign Experts Affairs |
| SAIC | State Administration for Industry and Commerce |
| SAMR | State Administration for Market Regulation |
| SAPPRFT | State Administration of Press, Publication, Radio, Film, and Television |
| SAR | Special Administrative Region |
| SASAC | State-Owned Assets Supervision and Administration Commission |
| SBL | Stock Borrowing and Lending |
| SCA | State Cryptography Administration |
| SDGs | Sustainable Development Goals |
| SDO | Standards Development Organization |
| SDR | Special Drawing Right |
| SEI | Special Emphasis Items |
| SEP | Standard-Essential Patent |
| SESAR | Single European Sky ATM Research |
| SFC | Securities and Futures Commission (of Hong Kong) |
| SHFTZ | Shanghai Free Trade Zone |
| SHIAC | Shanghai International Arbitration Center |
| SKU | Stock Keeping Unit |
| SMEs | Small and Medium-Sized Enterprises |
| SMPG | Shanghai Municipal People's Government |
| SOE | State-Owned Enterprise |

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| SOP | School Operating Permit |
| SPB | State Post Bureau |
| SPC | Supreme People's Court |
| SPS | Sanitary and Phytosanitary Measures |
| SSD | Significant Standards Difference |
| STA | State Taxation Administration |
| SV | Streamlined Validation |
| SWIM | System Wide Information Management |
| TA | Transfer Accounting |
| TBL | Tendering and Bidding Law |
| TC | Technical Committee |
| TC260 | China National Information Security Standards Technical Committee |
| TEDA | Tianjin Economic-Technological Development Area |
| TGL | Temporary General Licenses |
| TIER | Technology Import/Export Regulations |
| TMO | Trademark Office |
| TPA | Third-Party Access |
| TPM | Technological Protection Measures |
| TPR | Trade Policy Review (Conducted By WTO) |
| TRAD | Trademark Review and Adjudication Division |
| TRIPS | Agreement on Trade-Related Aspects of Intellectual Property Rights |
| TRQ | Tariff Rate Quota |
| TSA | "US Transportation Security Administration" |
| UAV | Unmanned Aerial Vehicles |
| UEL | Unreliable Entity List |
| UK | United Kingdom |
| VAT | Value-Added Tax |
| VATS | Value-Added Telecommunications Services |
| VC | Venture Capital |
| VFR | Visual Flight Rules |
| VOA | Visa on Arrival |
| VOC | Volatile Organic Compound |
| VPN | Virtual Private Network |
| WFOE | Wholly Foreign-Owned Enterprise |
| WHT | Withholding Tax |

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| WMC | Wealth Management Company |
| WMD | Weapon of Mass Destruction |
| WPNL | Work Permit Notification Letters |
| WSL | Work Safety Law |
| WTO | World Trade Organization |
| WTO/TBT | World Trade Organization Agreement on Technological Barriers to Trade |
| XEDA | Xiqing Economic-Technological Development Area |
| YRD | Yangze River Delta |



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AmCham China
中国美国商会



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

Floor 3, Gate 4, Pacific Century Place,
2A Workers' Stadium North Road, Chaoyang District,
Beijing, 100027, the People's Republic of China

Tel: (8610) 8519-0800

Fax: (8610) 8519-0899

Website: www.amchamchina.org

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

北京市朝阳区工体北路甲 2 号,

盈科中心 4 号门 3 层

邮政编码: 100027

电话: (8610) 8519-0800

传真: (8610) 8519-0899

网址: www.amchamchina.org

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