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## Chairman's Message

This marks the 11th year that AmCham-China has published its annual *White Paper on the State of American Business in China (White Paper)*. We are pleased to publish it this year jointly with contributing chambers AmCham Shanghai and AmCham-Southwest China.

The on-the-ground perspective of these chambers and their member companies enables us to recommend specific goal-oriented policy adjustments that address the regulatory challenges facing businesses to foster a more conducive environment for prosperity and growth. We regularly meet with both the Chinese and US governments to discuss our recommendations, and we thank both for giving them serious consideration.

The 2009 edition of the *White Paper* reflects the unique challenges in today's economic and political environments. As we all grapple with the global economic downturn, AmCham-China and its member companies are refining visions and re-evaluating how to align short and long-term goals. With the new US administration contemplating many significant policy changes, the recommendations outlined in this *White Paper* support a long-term vision for strong economic growth and improving bilateral relations.

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

Achieving our Three One Trillions' objectives will require intensified collaboration between the Chinese and US governments, the private sector and government, and between China's central and local governments. An active, goal-oriented policy of economic engagement benefits the citizens of both countries and provides a strong base of trust to avoid misunderstandings and disputes. It is crucial that the US and China continue to pursue constructive discussions through senior-level engagement and working-level economic discussions.

It is also critical that the private sector contributes to these discussions and that this collaboration creates specific tangible benefits for all stakeholders involved. For example, the US Food and Drug Administration's recently opened offices in China and cooperation with local government bodies to improve food and product safety benefits both Chinese and American consumers and companies—and strengthens trust between the two country's governments. This successful collaboration establishes precedents that will hopefully facilitate increased cooperation on other important issues such as the environment and energy conservation.

In 2009, we see two critical and intertwined goals: overcoming protectionism and enhancing local implementation of China's regulatory environment. We appreciate the challenges central and local governments face in resisting calls for protectionism. Those who successfully embrace competition and open markets will be rewarded with increased efficiency, innovation and investment.

The implementation of stimulus packages both in the US and China provides an opportunity to demonstrate American and Chinese dedication to free, fair and open markets for trade and investment. Both countries have the opportunity to gain greatly. Transparent and open processes would reduce

## 主席致辞

中国美国商会已是第十一年发布《美国企业在中国》白皮书。我们很高兴上海美国商会和西南美国商会对今年的白皮书亦有所贡献。

商会及其会员在华的实践经验，使我们能够提出具体的政策调整建议，应对业务发展所面临的挑战，从而营造一个更加有利于企业繁荣发展的商务环境。同时，我们每年就白皮书中的有关建议，与中美两国政府的相关部门保持经常性沟通。中国美国商会非常感谢两国政府的相关领导能够认真考虑我们的建议。

2009年白皮书反映了我们今天在经济和政治领域所面临的前所未有的挑战。我们努力应对着全球经济的衰退，商会及其会员公司重新定义其发展愿景，进行重新评估以调整其长、短期目标。在新一届美国政府正酝酿多项重大政策变革之际，此白皮书的建议旨在支持经济长期的强劲增长，及改善双边关系。

中国美国商会确信在未来30年的中美关系中，可以实现“三个1万亿”的目标，即：美国对华商品和服务年出口额达到1万亿美元，美国企业在华产值实现1万亿美元，中国对美累计投资达到1万亿美元。成功实现这些目标将为中美两国经济带来长期强劲的增长，并创造更多的就业机会。

要实现“三个1万亿”目标，需要中美两国政府、企业与政府以及中国的中央和地方政府之间更紧密的合作。积极的、明确的经济合作政策将使两国人民受益，成为增强相互信任，减少误会和争端的坚实基础。为此，中美两国需要在高层和工作层面保持建设性的沟通与交流，这一点尤为重要。

同时，业界的参与对交流沟通也同样至关重要，可以切实的惠及所有利益相关者。比如，美国食品和药品管理局最近在中国开设了办事处，与中国地方政府机构合作共同促进食品和产品安全，不仅使中美两国的消费者和企业受益，而且有助于增强两国政府间的相互信任。这一成功的合作为双方今后在其他重要领域（如环保和节能方面）的合作创造了一个先例。

2009年，我们认为有两个关键且相互关联的目标：克服保护主义，改善中国地方政府的政策执行环境。我们理解中国中央和地方政府在抵制保护主义方面所面临的挑战，但一个成功推动市场开放和欢迎竞争的政府将能够带来增效、创新和投资等诸多方面的丰厚回报。

美中两国实行的经济刺激方案为例证其两国致力于自由、公平、开放的贸易和投资政策提供了机会，两国政府都将从中获益良多。透明公开的流程将提高政府效率，使公共开支产生最大效能。为此，中国加入《政府采购协议》是非常重要的第一步，旨在确保中国企业能够全面竞投美国政府合约，而美国在华企业也能够获得公平的机会参与在中国的竞标。此外，经济刺激方案的实施也给中国提供了一个很好的契机，证明中国将以透明、规范的方式加强政策监管和法规的执行。

government inefficiencies and maximize the benefits of public spending. Toward this end, China entering the Agreement of Government Procurement would be a significant step in ensuring full Chinese participation in American contracts and fair bidding opportunities for US firms in China. Short of that, the implementation of the Chinese stimulus package also presents the chance for China to demonstrate its commitment to enforcing regulations and laws in a vigorous, transparent and uniform manner.

The Chinese economy and regulatory system have matured considerably since AmCham-China issued its first *White Paper* more than a decade ago. Many of the laws and regulations which AmCham-China suggested have now been enacted, in various forms. However, local enforcement often remains a challenge. Transparent, fair and consistent implementation of regulations not only ensures that efficient, competitive and law-abiding firms succeed, but also boosts the confidence of foreign investors looking to decide where to allocate their increasingly scarce resources.

AmCham-China looks forward to continuing to work together with the Chinese and US governments to overcome the immediate challenges we face, enhancing the lives of citizens in both countries for the next three decades through growing mutual understanding, economic engagement and job creation.



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

自中国美国商会发布第一期白皮书至今,中国的经济和监管体系已日趋成熟,商会曾提交建议的各种法律法规,已经以不同的形式颁布实施。但是,地方政府政策法规的执行力依旧是挑战。透明、公平和统一的政策执行将不仅可以确保高效、有竞争力、守法的企业获得成功,而且还有助于增强外国投资者的信心,帮助其在有限的资源配置方面做出正确的抉择。

中国美国商会期望继续与中美两国政府携手合作,共同应对当前的挑战,并且在未来三十年内,通过增进相互了解、加强经济合作、创造更多就业机会,以改善和提高两国人民的生活水平。



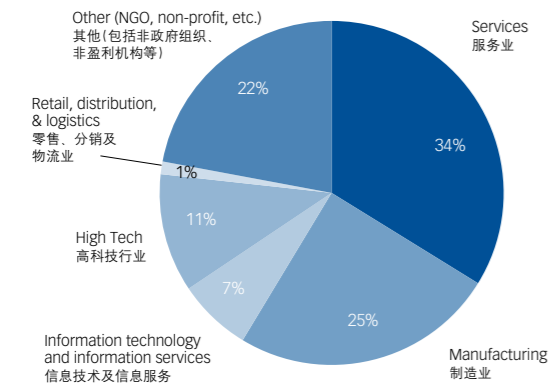
华金声  
主席  
中国美国商会

# Preamble and Survey Data

Every year since 1999, AmCham-China has asked its members to share their experiences about doing business in China. This provides extensive data about their views on the operating environment, their successes, their business challenges, their outlook for the future and their suggestions about how to improve the business climate. This year, more than 400 members participated in the survey, comprising a diverse collection of businesses with varying amounts of experience throughout China, from small and medium-sized enterprises to the world's largest multinational corporations. This survey represents the most current and thorough compilation of insights to date from companies on the front lines in China, and the trends gleaned from the data underpin our assessments, conclusions and recommendations in the *White Paper*. Our hope is that this *2009 Business Climate Survey* offers useful information to both policymakers and decision makers regarding the challenges facing American companies and what it takes to be successful in the competitive China marketplace.

## Industry Representation among Survey Respondents 问卷反馈企业所涉及的行业

Company sample size = 417  
公司样本规模

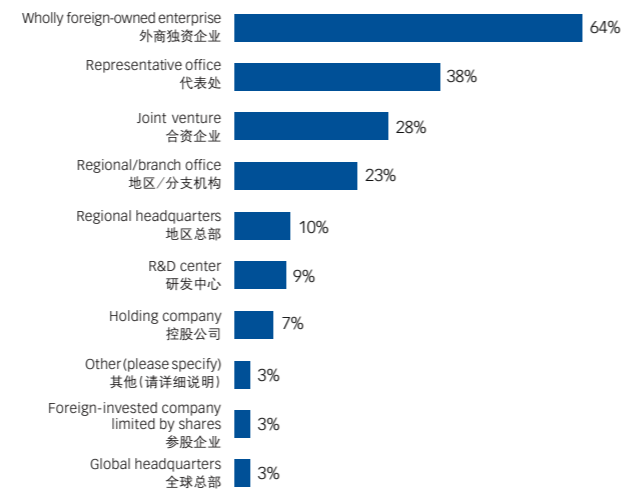


Source: 2009 AmCham-China Business Climate Survey  
资料来源: 2009年中国美国商会商务环境调查

1

## Which of the following legal entities does your company have in China? 企业在华经营的形式

Company sample size = 412  
公司样本规模

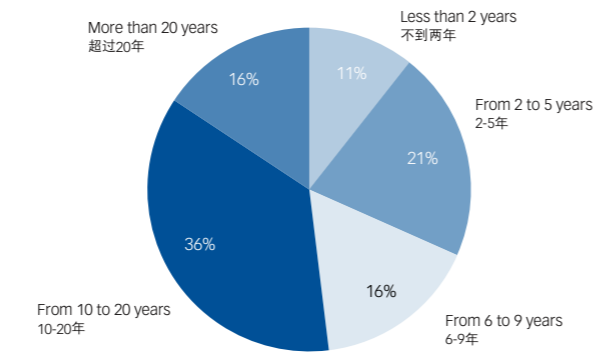


Source: 2009 AmCham-China Business Climate Survey  
资料来源: 2009年中国美国商会商务环境调查

2

## How long has your company had a physical presence in China? 公司在华建立实体时间

Company sample size = 414  
公司样本规模



Source: 2009 AmCham-China Business Climate Survey  
资料来源: 2009年中国美国商会商务环境调查

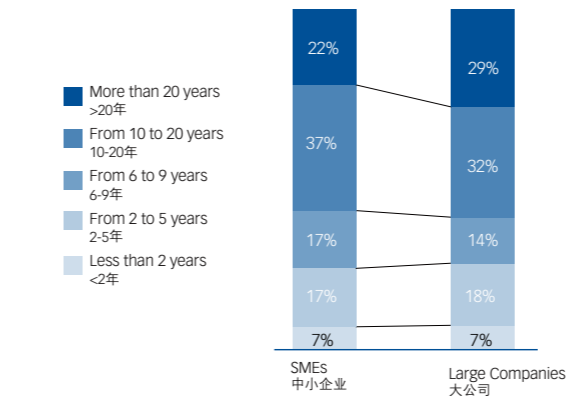
3

# 商务环境序言及调查结果

中国美国商会在此乐枕公布商会2009年度商务环境调查问卷结果。中国美国商会自1999年以来,每年都会向会员们征询其在华经商的一些经验。会员们应邀提供了反映其观点的大量相关信息,其中包括运营环境,成功经验,商业挑战,发展展望以及改善商务环境建议方面。今年,约400余名分布在全国各类行业的会员公司参与了调查,其中有中小型企业也不乏有国际性的跨国公司。该调查凝聚了活跃在中国前沿企业的最新见解;数据分析呈现出的趋势印证了我们在白皮书中的若干评估、结论与相关建议。我们期望,借助2009年商务环境调查问卷数据,政策制定者和决策者能了解到有关美国企业所面临的挑战,及其在充满竞争的中国市场中获胜所需的条件。

## Length of Time in China for Small and Medium-sized Enterprises Compared to Large Companies 中小企业与大公司在中国运营时间的比较

Company sample size = 410  
公司样本规模

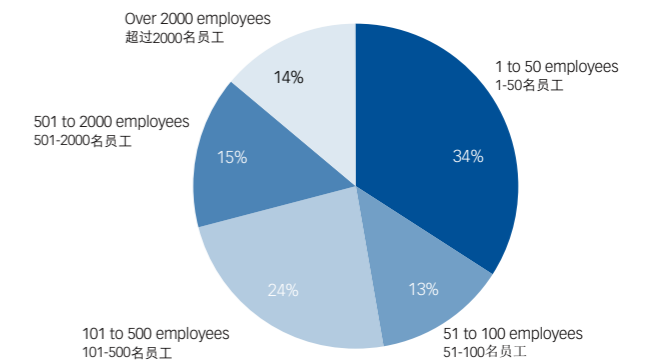


Source: 2009 AmCham-China Business Climate Survey  
资料来源: 2009年中国美国商会商务环境调查

4

## How many employees does your company have in China? 公司在华的雇员人数

Company sample size = 411  
公司样本规模

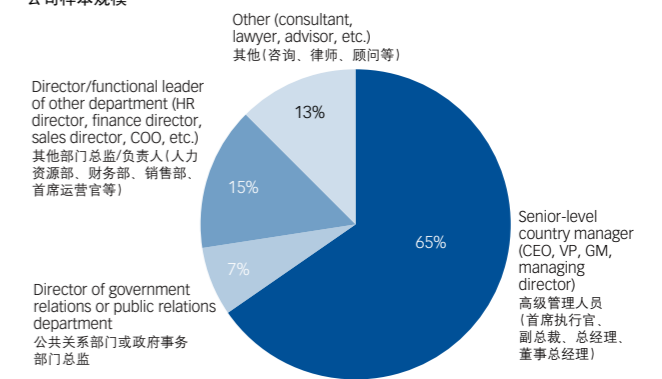


Source: 2009 AmCham-China Business Climate Survey  
资料来源: 2009年中国美国商会商务环境调查

5

## Survey Respondent's Position in his/her Company 问卷反馈人员的职务

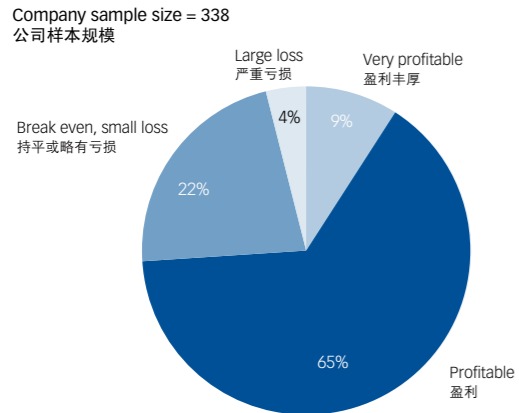
Company sample size = 417  
公司样本规模



Source: 2009 AmCham-China Business Climate Survey  
资料来源: 2009年中国美国商会商务环境调查

6

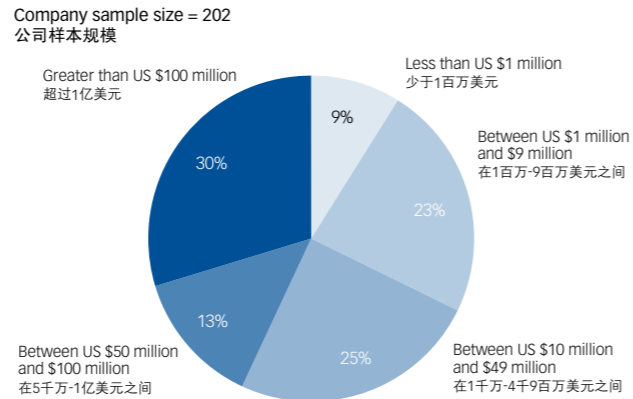
**How would you characterize your company's financial performance in China in 2008?**  
企业2008年在华财务业绩状况



Source: 2009 AmCham-China Business Climate Survey  
资料来源: 2009年中国美国商会商务环境调查

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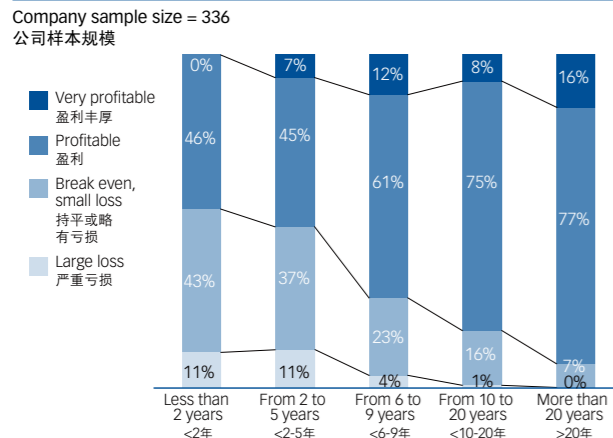
**What is your company's total China revenues for 2008?**  
企业2008年在华总收入



Source: 2009 AmCham-China Business Climate Survey  
资料来源: 2009年中国美国商会商务环境调查

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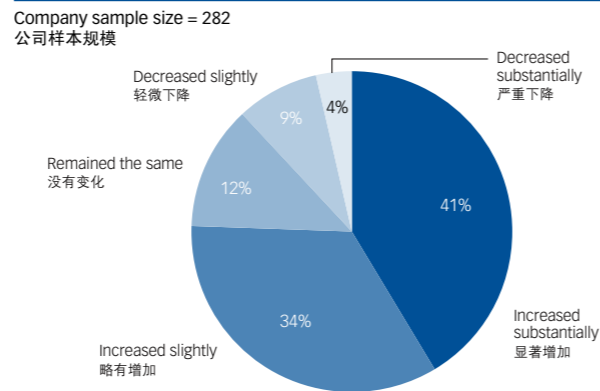
**Profitability by Length of Time in China**  
企业盈利情况随其在华时间长短的变化



Source: 2009 AmCham-China Business Climate Survey  
资料来源: 2009年中国美国商会商务环境调查

8

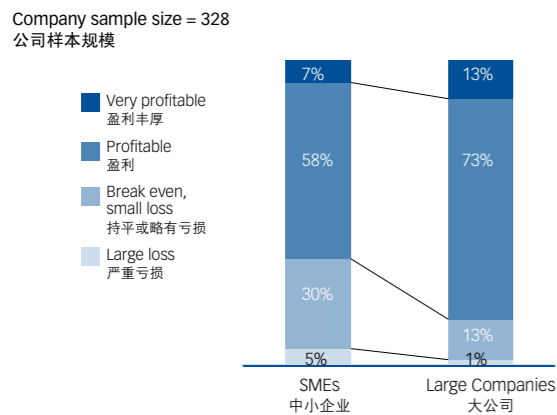
**How did revenue of your China operations in 2008 compare to 2007 results?**  
企业2008年较之2007年在华利润率比较



Source: 2009 AmCham-China Business Climate Survey  
资料来源: 2009年中国美国商会商务环境调查

11

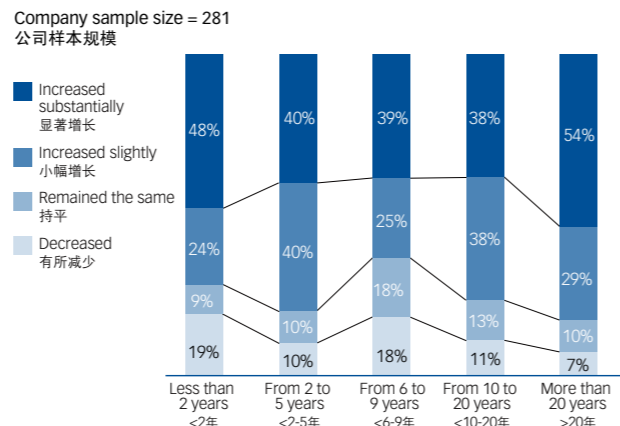
**Profitability of China Operations for Small and Medium-sized Enterprises Compared to Large Companies**  
中小企业与大型公司在华盈利比较



Source: 2009 AmCham-China Business Climate Survey  
资料来源: 2009年中国美国商会商务环境调查

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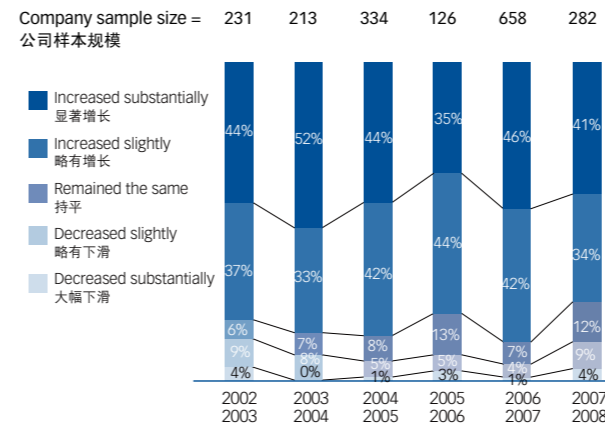
**Change in Revenue by Length of Time in China**  
企业营业收入随其在华时间的变化情况



Source: 2009 AmCham-China Business Climate Survey  
资料来源: 2009年中国美国商会商务环境调查

12

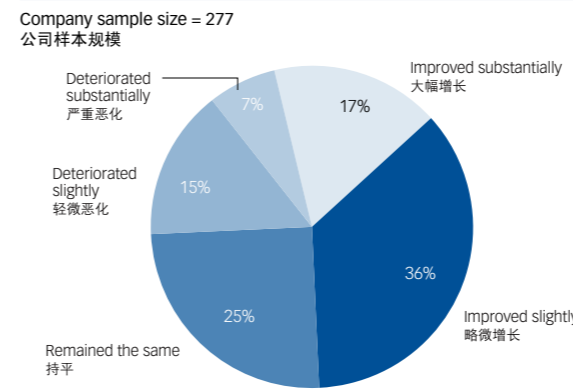
**Change in Revenue of China Operations (calendar years 2002-2008)**  
2002-2008年企业运营收入变化



Source: 2003-09 AmCham-China Business Climate Surveys  
资料来源: 2003-09年中国美国商会商务环境调查

13

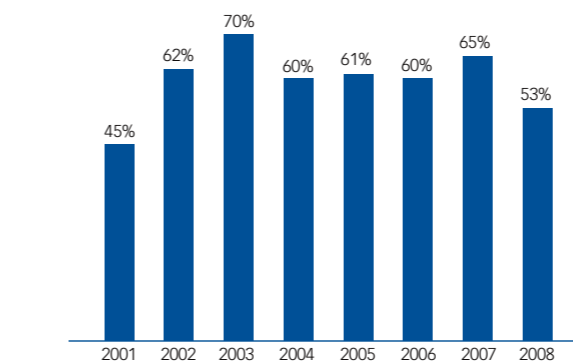
**How did operating margins of your China operations in 2008 compare to 2007 results?**  
企业2008年较之2007年在华利润率变化



Source: 2009 AmCham-China Business Climate Survey  
资料来源: 2009年中国美国商会商务环境调查

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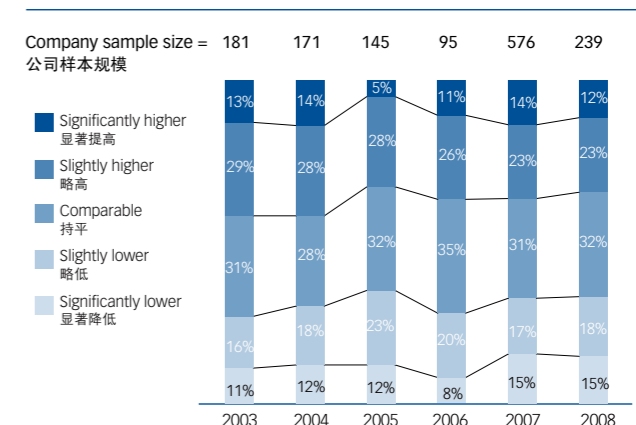
**Percentage of Companies with Increased Operating Margins (calendar years 2001-2008)**  
2001-2008年在华运营利润率增长企业的百分比



Source: 2002-09 AmCham-China Business Climate Surveys  
资料来源: 2002-09年中国美国商会商务环境调查

15

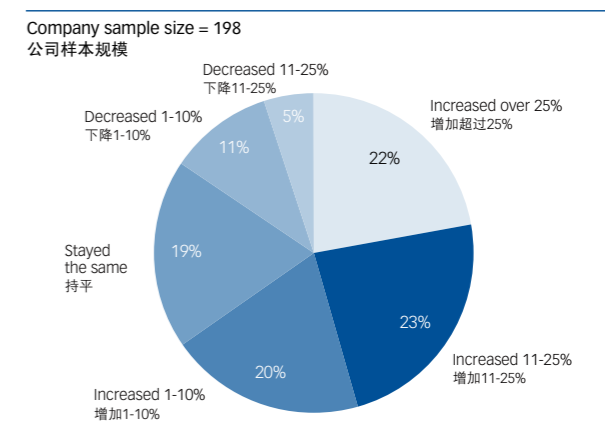
**China Margins Compared to Worldwide Margins (calendar years 2003-2008)**  
2003-2008年企业在华利润率与其在全球的利润率比较



Source: 2004-09 AmCham-China Business Climate Surveys  
资料来源: 2004-09年中国美国商会商务环境调查

16

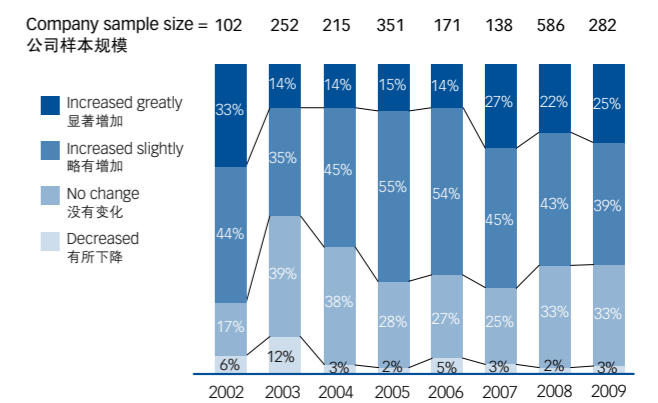
**How did your company's production in China change over the past year?**  
企业在华生产产品的产量与上一年的比较



Source: 2009 AmCham-China Business Climate Survey  
资料来源: 2009年中国美国商会商务环境调查

17

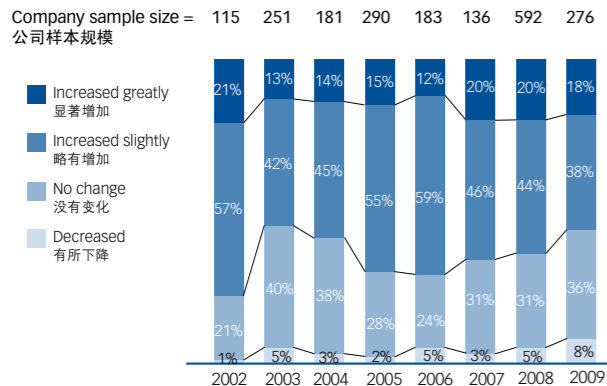
**Perceived Change in Competition from PRC Firms (2002-2009)**  
2002-2009年来自中国企业的竞争压力变化



Source: 2002-09 AmCham-China Business Climate Surveys  
资料来源: 2002-09年中国美国商会商务环境调查

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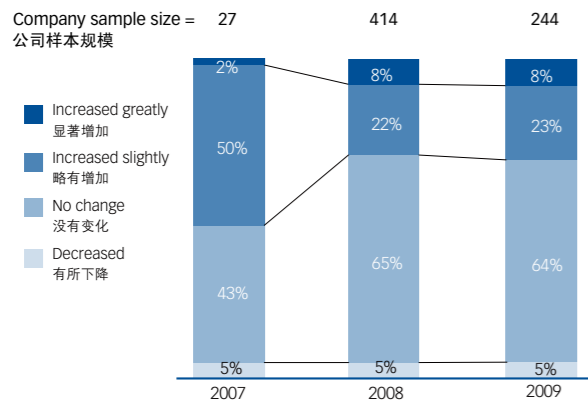
**Perceived Change in Competition from Foreign Firms (2002-2009)**  
来自非中国企业的竞争压力变化(自2002年至2009年间)



Source: 2002-09 AmCham-China Business Climate Surveys  
资料来源: 2002-09年中国美国商会商务环境调查

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**Perceived Change in Competition from Imports (2007-2009)**  
来自进口产品竞争方面的变化(自2007年至2009年间)

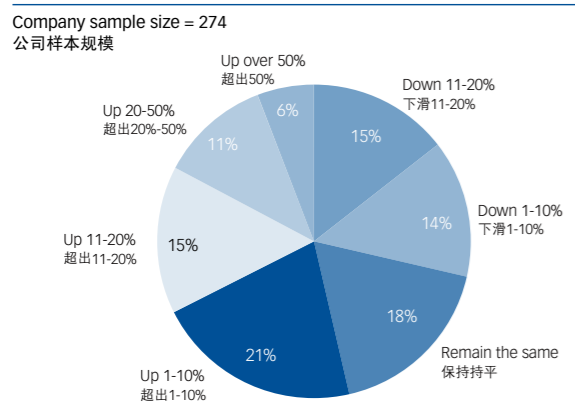


Source: 2007-09 AmCham-China Business Climate Surveys  
资料来源: 2007-09年中国美国商会商务环境调查

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**What is your company's forecast for 2009 China revenues compared to 2008 results?**  
企业2009年相比2008年对在华营业收入的预测

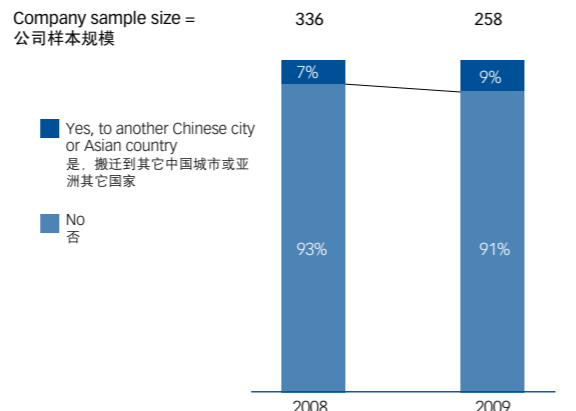
Company sample size = 274  
公司样本规模



Source: 2009 AmCham-China Business Climate Survey  
资料来源: 2009年中国美国商会商务环境调查

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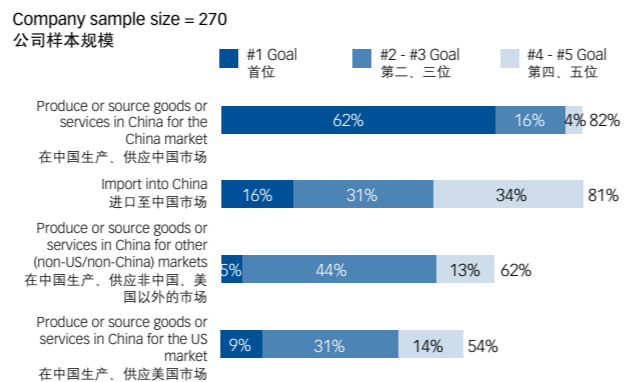
**If you are located in Beijing, have you/are you considering relocating out of Beijing due to increased costs?**  
企业是否因成本上涨而考虑将公司迁移出北京或上海?



Source: 2008-09 AmCham-China Business Climate Surveys  
资料来源: 2008-09年中国美国商会商务环境调查

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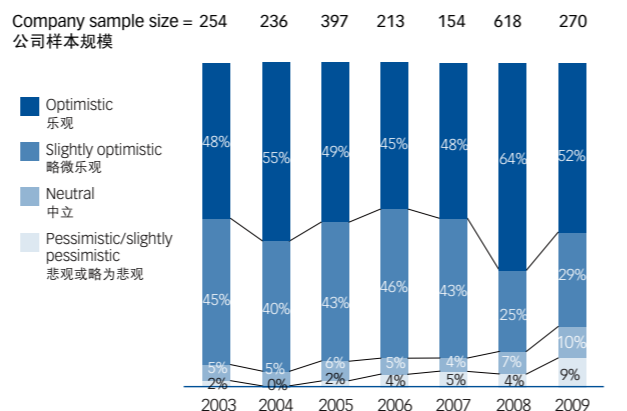
**Top-Five Goals and Strategies in China**  
美企在华五大主要战略目标



Source: 2009 AmCham-China Business Climate Survey  
资料来源: 2009年中国美国商会商务环境调查

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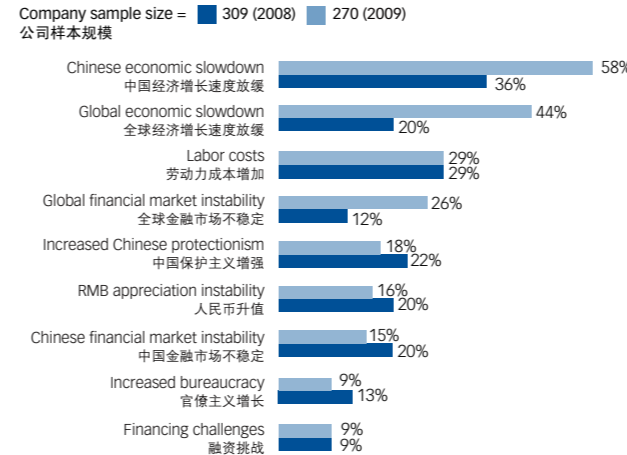
**How would you describe your five-year business outlook in China?**  
企业自2003年至2009年中对未来五年发展的展望



Source: 2003-09 AmCham-China Business Climate Surveys  
资料来源: 2003-09年中国美国商会商务环境调查

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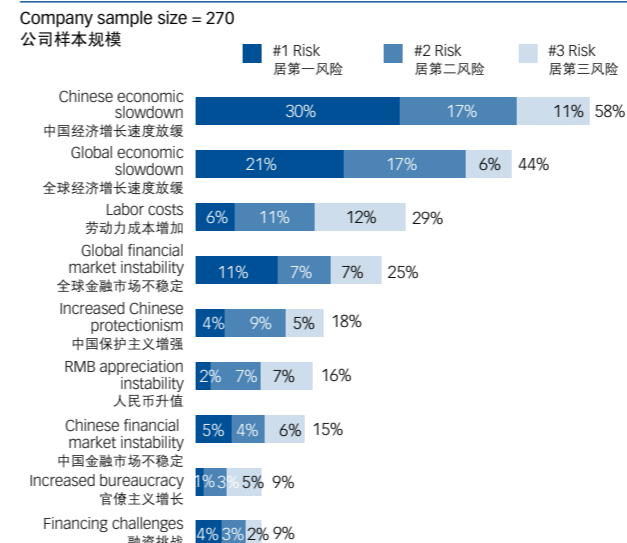
**Top Risks for the Coming Years (2008-2009)**  
2008年至2009年企业面临的主要风险



Source: 2008-09 AmCham-China Business Climate Surveys  
资料来源: 2008-09年中国美国商会商务环境调查

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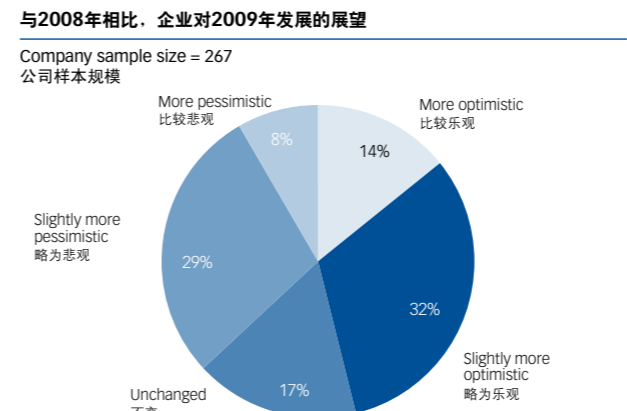
**Top Risks for the Coming Years**  
企业将面临的挑战



Source: 2009 AmCham-China Business Climate Survey  
资料来源: 2009年中国美国商会商务环境调查

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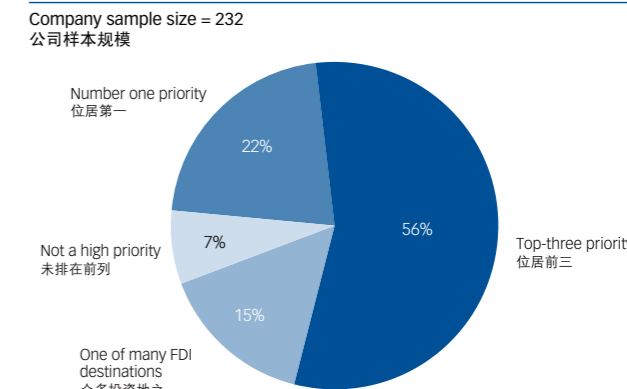
**How would you describe your company's 2009 business outlook compared to 2008?**  
与2008年相比,企业对2009年发展的展望



Source: 2009 AmCham-China Business Climate Survey  
资料来源: 2009年中国美国商会商务环境调查

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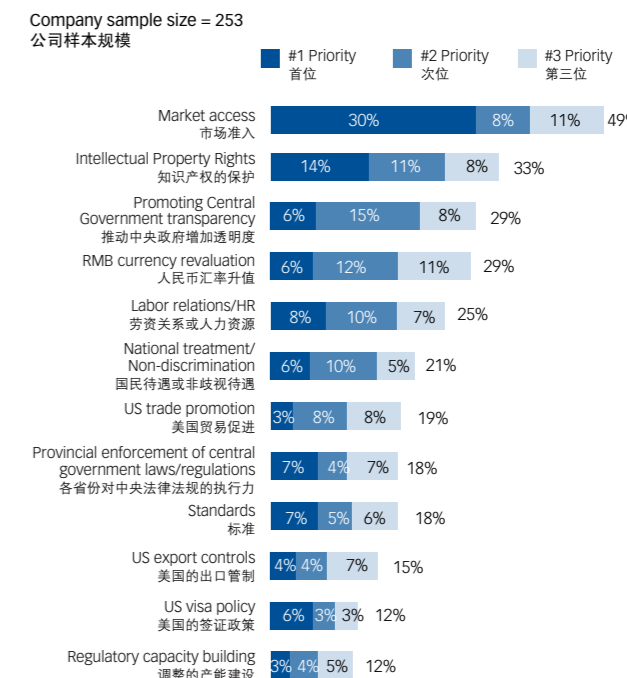
**How does China rank in your company's near-term global investment plans?**  
中国市场在企业近期全球投资计划中的排名



Source: 2009 AmCham-China Business Climate Survey  
资料来源: 2009年中国美国商会商务环境调查

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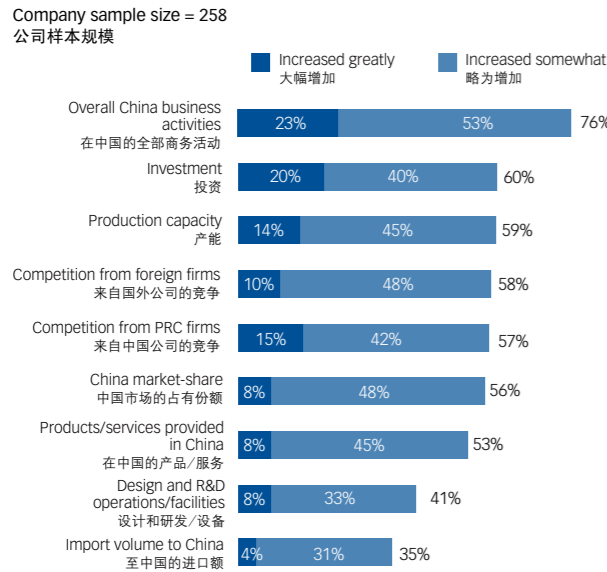
**What should AmCham-China's government advocacy priorities be in 2009?**  
2009年中国美国商会与美中两国政府沟通交流所涉及内容的排序



Source: 2009 AmCham-China Business Climate Survey  
资料来源: 2009年中国美国商会商务环境调查

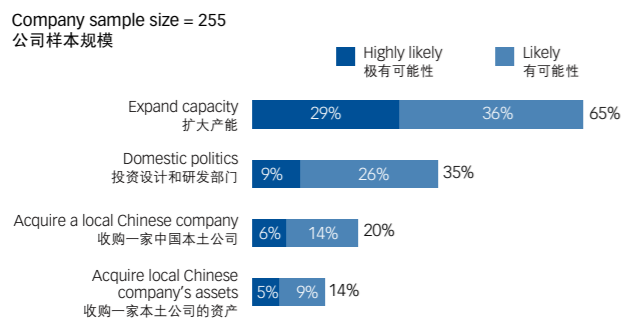
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**How have your company's operations changed in the past year?**  
企业在下列经营活动方面的变化



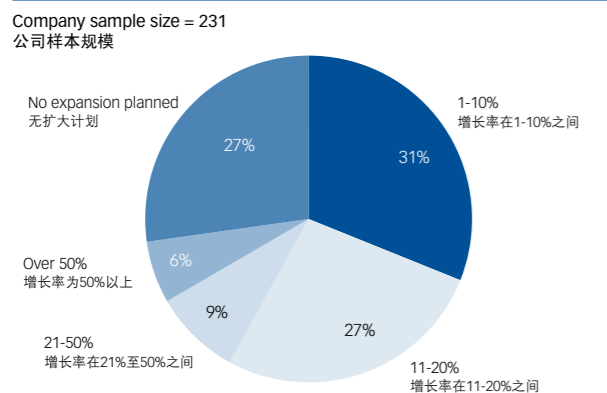
Source: 2009 AmCham-China Business Climate Survey  
资料来源: 2009年中国美国商会商务环境调查 30

**Expansion strategy - In 2009, does your company plan to...**  
2009年企业在华的扩展战略计划



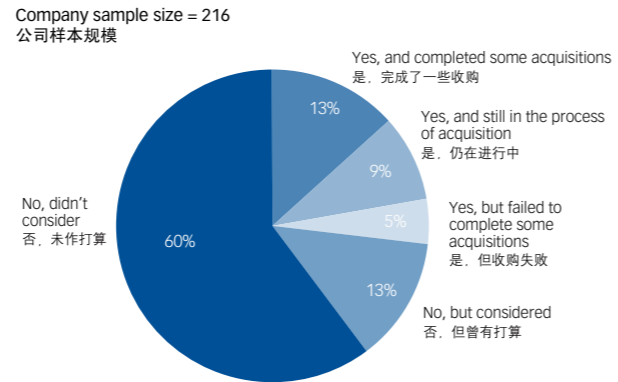
Source: 2009 AmCham-China Business Climate Survey  
资料来源: 2009年中国美国商会商务环境调查 31

**Estimated Increase in Investment in China Operations for 2009**  
企业对在华2009年投资增长的预测



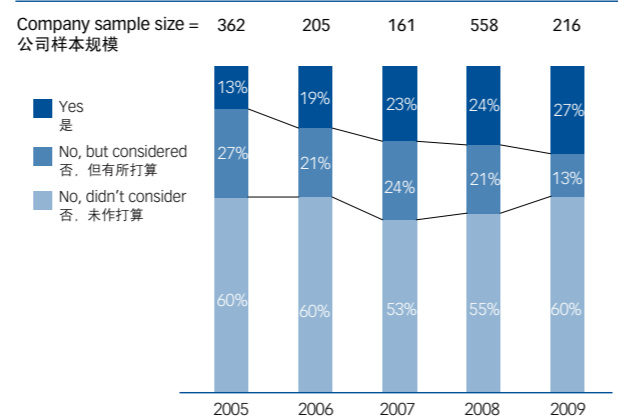
Source: 2009 AmCham-China Business Climate Survey  
资料来源: 2009年中国美国商会商务环境调查 32

**Did your company pursue an acquisition of a PRC company or a PRC company's assets in the last 24 months?**  
企业是否曾在过去的两年内试图收购一家中国本土企业或其资产?



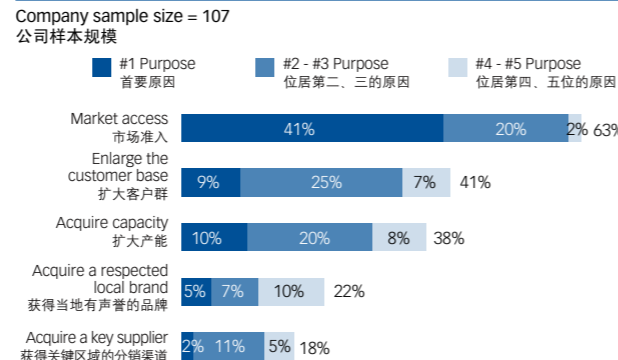
Source: 2009 AmCham-China Business Climate Survey  
资料来源: 2009年中国美国商会商务环境调查 33

**Did your company pursue an acquisition of a PRC company or a PRC company's assets in the last 24 months?**  
企业是否曾在过去两年中试图收购一家中国本土企业或其资产?



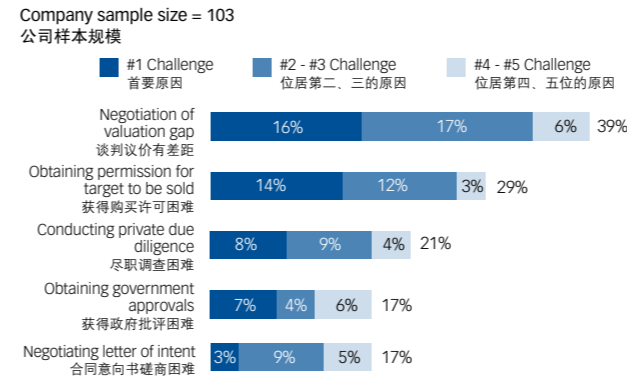
Source: 2005-09 AmCham-China Business Climate Surveys  
资料来源: 2005-09年中国美国商会商务环境调查 34

**Top-Five Reasons for Pursuing M&A in China**  
企业在华并购的五大主要原因



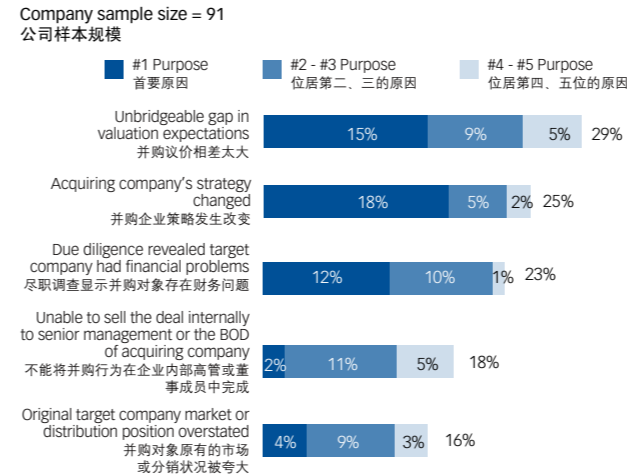
Source: 2009 AmCham-China Business Climate Survey  
资料来源: 2009年中国美国商会商务环境调查 35

**Top-Five Challenges in Pursuing M&A in China**  
企业在华收购的五大主要挑战



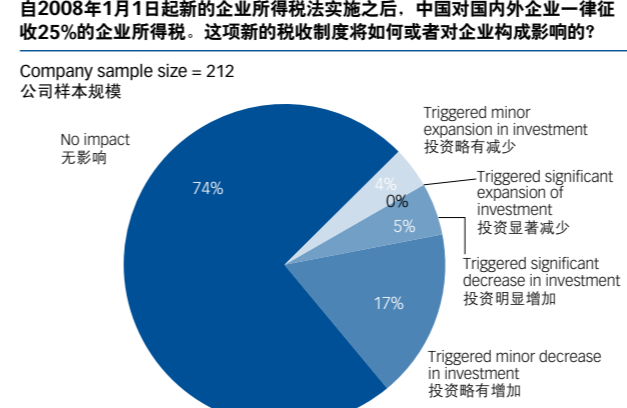
Source: 2009 AmCham-China Business Climate Survey  
资料来源: 2009年中国美国商会商务环境调查 36

**Top-Five Reasons for Failing to Complete M&A in China**  
企业在华收购失败的五大主要原因



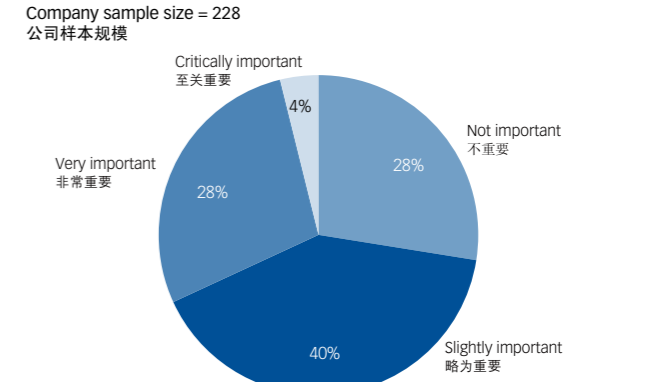
Source: 2009 AmCham-China Business Climate Survey  
资料来源: 2009年中国美国商会商务环境调查 37

**Starting from January 1, 2008 a 25% enterprise income tax was applied to both domestic and foreign firms. How has the new law impacted your business strategy?**  
自2008年1月1日起新的企业所得税法实施之后, 中国对国内外企业一律征收25%的企业所得税。这项新的税收制度将如何或者对企业构成影响的?



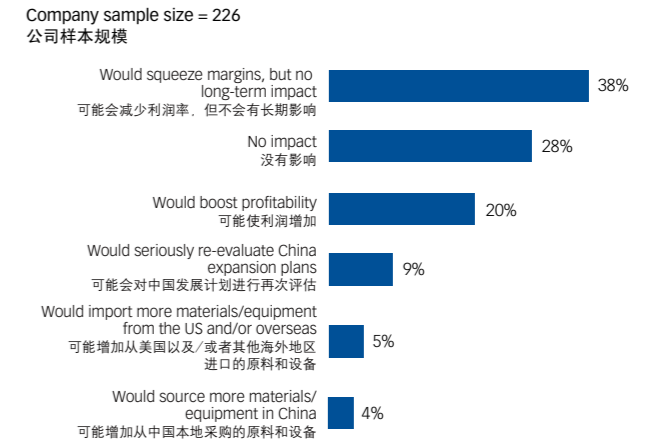
Source: 2009 AmCham-China Business Climate Survey  
资料来源: 2009年中国美国商会商务环境调查 38

**How important were favorable tax policies for your initial decision to invest in China?**  
优惠的税收政策对企业最初决策投资中国的作用



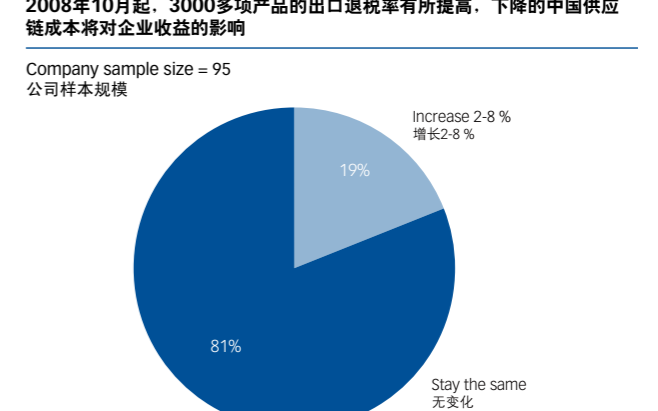
Source: 2009 AmCham-China Business Climate Survey  
资料来源: 2009年中国美国商会商务环境调查 39

**How would a 5 percent RMB revaluation/weaker US dollar in the next 12 months affect your business?**  
未来一年中, 人民币对美元5%的升值/贬值对企业的影响



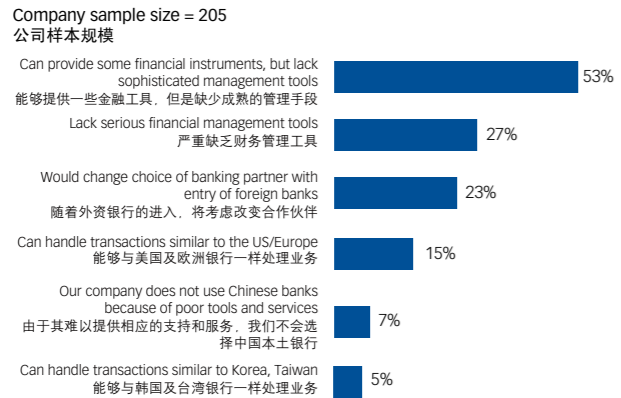
Source: 2009 AmCham-China Business Climate Survey  
资料来源: 2009年中国美国商会商务环境调查 40

**In October 2008, export-tax rebates were raised on more than 3,000 goods. What will the expected impact of decreased China-based supply-chain costs be on your profitability?**  
2008年10月起, 3000多项产品的出口退税有所提高, 下降的中国供应链成本将对企业收益的影响



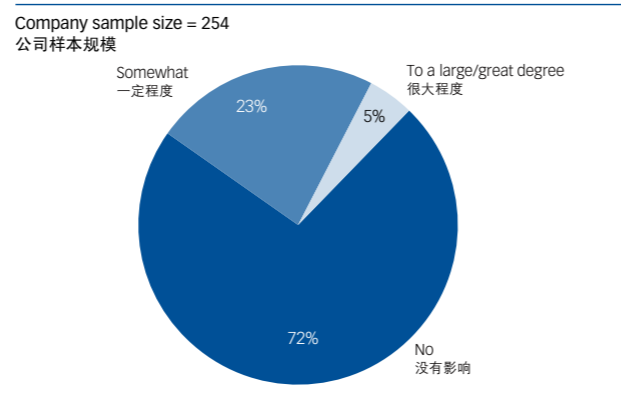
Source: 2009 AmCham-China Business Climate Survey  
资料来源: 2009年中国美国商会商务环境调查 41

**How would you rate Chinese domestic banks' ability to provide the banking services your company needs?**  
对中国本土银行提供服务能力的评价



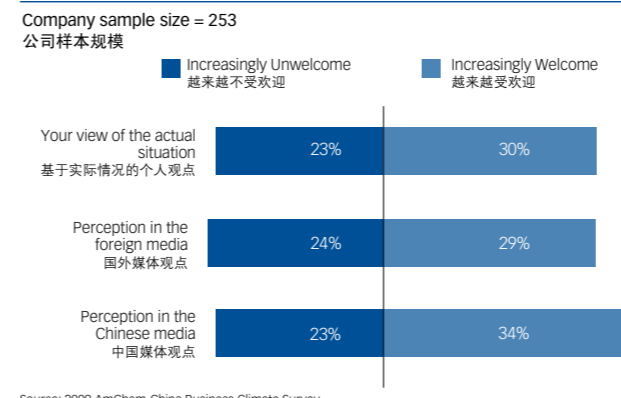
Source: 2009 AmCham-China Business Climate Survey  
资料来源: 2009年中国美国商会商务环境调查

**Has your company been affected by China's Reduction of Hazardous Substances regulations?**  
企业受中国《电子信息产品污染控制管理办法》的影响程度



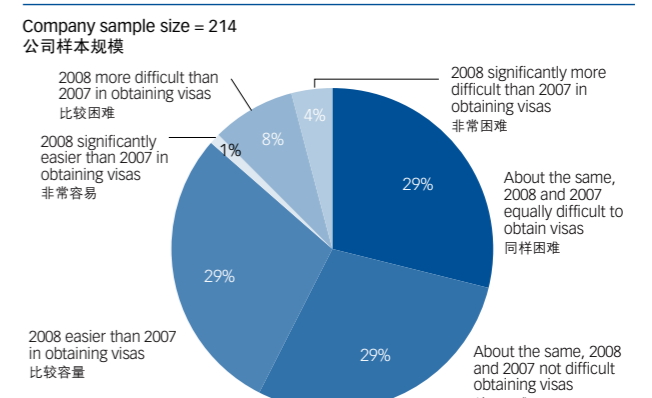
Source: 2009 AmCham-China Business Climate Survey  
资料来源: 2009年中国美国商会商务环境调查

**Compared to 2007, please rate the welcomeness of foreign companies to participate and compete in the Chinese market.**  
与2007年相比, 外资企业参与和竞争于中国市场所受欢迎程度



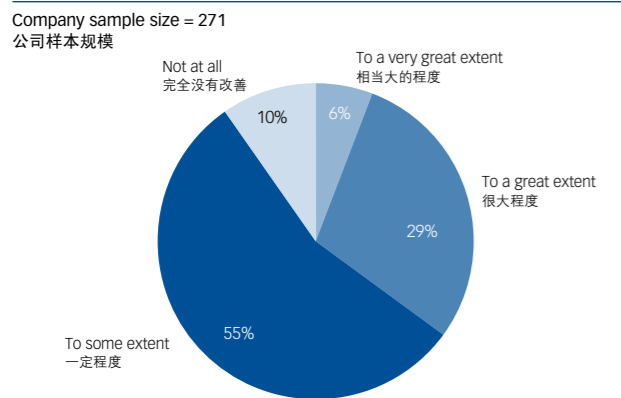
Source: 2009 AmCham-China Business Climate Survey  
资料来源: 2009年中国美国商会商务环境调查

**How does 2008 compare with 2007 in terms of ease of travel to the US for Chinese citizens?**  
与2007年相比, 2008年中国公民赴美签证的变化



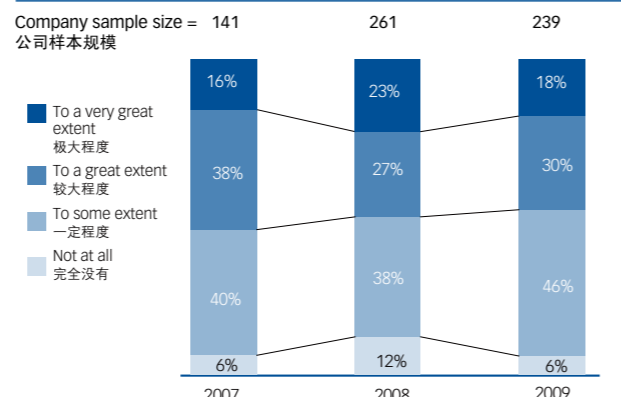
Source: 2009 AmCham-China Business Climate Survey  
资料来源: 2009年中国美国商会商务环境调查

**To what extent do you believe China's recent economic reforms (last 3 years (2006-2008)) have improved the climate for US business in China?**  
中国近期的经济改革(2006年-2008年)对美国企业在华商务环境的改善程度



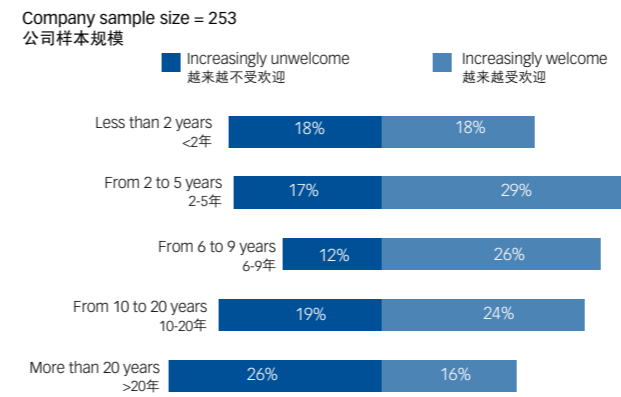
Source: 2009 AmCham-China Business Climate Survey  
资料来源: 2009年中国美国商会商务环境调查

**To what extent do you believe the quality of the US-China commercial relationship affects your business? (2007-2009)**  
美中贸易关系对企业运营的影响程度(2007年-2009年)



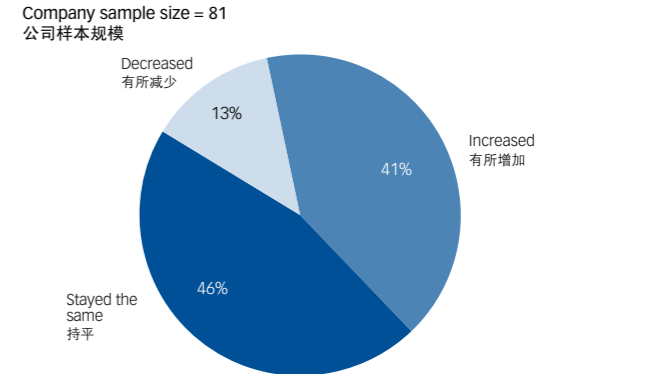
Source: 2007-09 AmCham-China Business Climate Surveys  
资料来源: 2007-09年中国美国商会商务环境调查

**Perceived Welcomeness of Foreign Companies to Participate/Compete in the Chinese Market by Length of Company's Time in China**  
企业在华时间长短与外资企业参与或竞争于中国市场所受欢迎程度



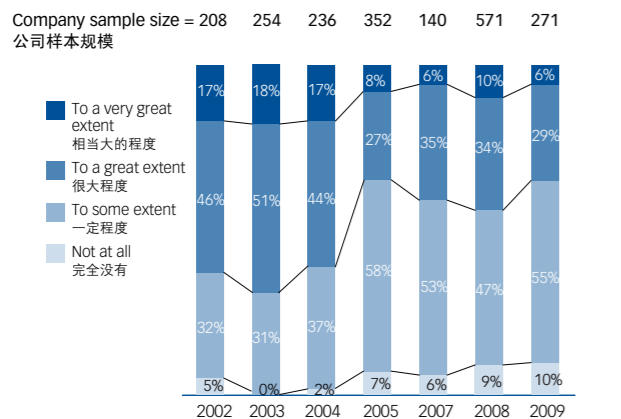
Source: 2009 AmCham-China Business Climate Survey  
资料来源: 2009年中国美国商会商务环境调查

**In the last year, the volume of counterfeits of my organization's products produced in China has...**  
过去一年企业产品被仿冒的数量.....



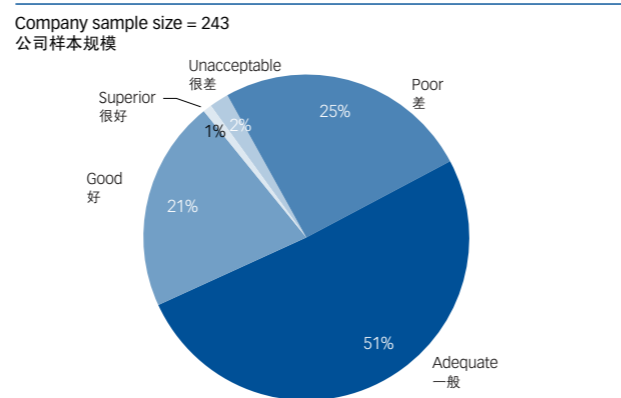
Source: 2009 AmCham-China Business Climate Survey  
资料来源: 2009年中国美国商会商务环境调查

**To what extent do you believe China's recent economic reforms (last three years (2006-2008)) have improved the climate for US business in China?**  
企业对于“过去三年(2006年-2008年)中国经济改革对美国企业投资环境影响程度”的反馈



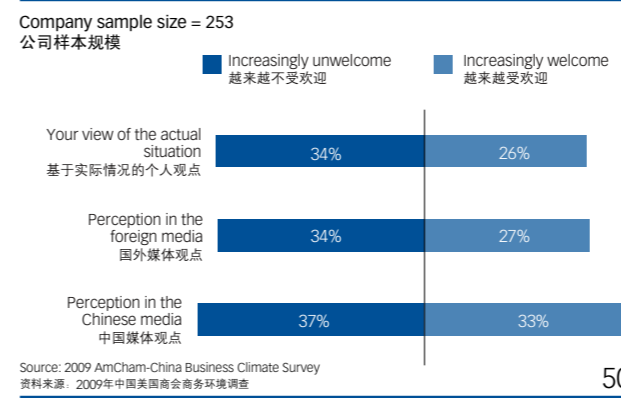
Source: 2002-09 AmCham-China Business Climate Surveys  
资料来源: 2002-09年中国美国商会商务环境调查

**How would you rate China's implementation to date of its WTO commitments?**  
企业对中国履行入世承诺情况的评价



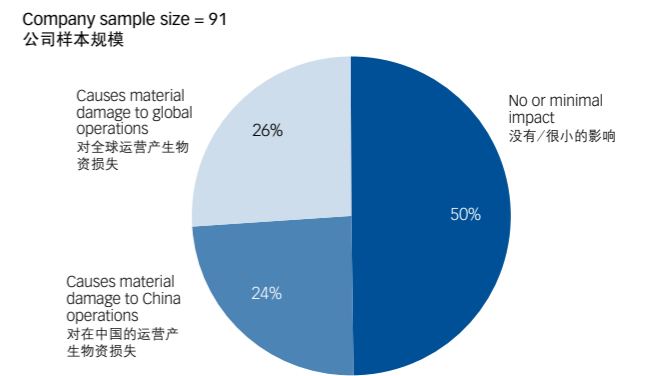
Source: 2009 AmCham-China Business Climate Survey  
资料来源: 2009年中国美国商会商务环境调查

**Compared to 2007, please rate the welcomeness of foreign companies to participate in and compete in the US market.**  
与2007年比较, 外资企业参与或竞争于美国市场的受欢迎程度



Source: 2009 AmCham-China Business Climate Survey  
资料来源: 2009年中国美国商会商务环境调查

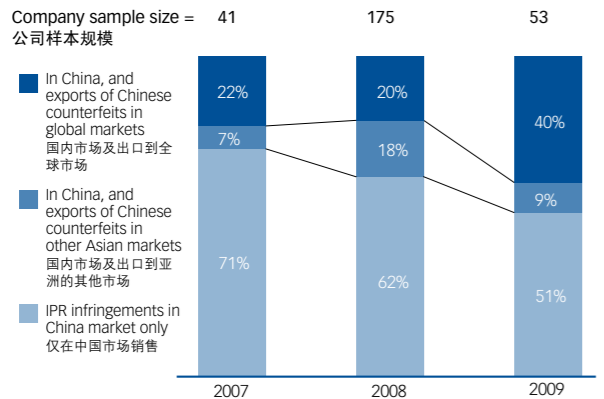
**What is the extent of damage caused by China-originating intellectual property rights infringements of your company's products?**  
源于中国的知识产权侵害对企业产品造成的损害程度



Source: 2009 AmCham-China Business Climate Survey  
资料来源: 2009年中国美国商会商务环境调查

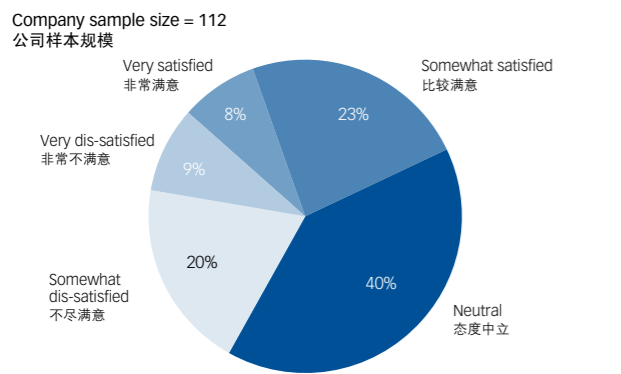


**In what markets are there products originating from China that infringe on your company's intellectual property rights?**  
源自中国的侵权产品所销往的区域范围



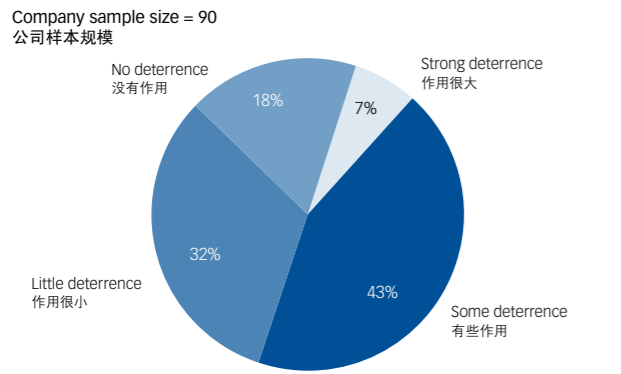
Source: 2007-09 AmCham-China Business Climate Surveys  
资料来源: 2007-09年中国美国商会营商环境调查 54

**If you have taken administrative action, how satisfied were you with the level of cooperation from the relevant PRC officials?**  
企业通过行政手段打击侵权行为时, 与相关政府部门合作情况满意度



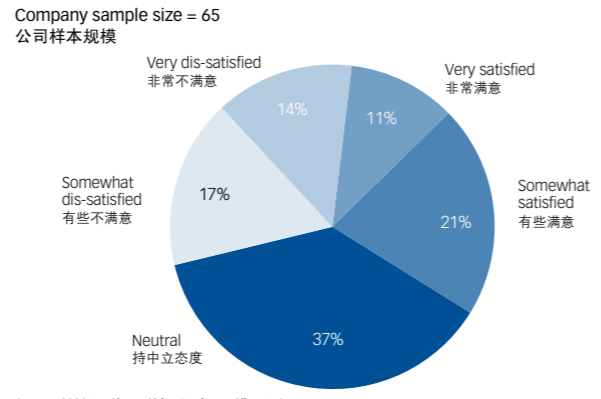
Source: 2009 AmCham-China Business Climate Survey  
资料来源: 2009年中国美国商会营商环境调查 55

**If you have taken administrative action on intellectual property rights cases, do you think the result will deter other infringers?**  
企业通过行政手段打击侵权行为会对其他侵权者类似行为产生的震慑作用



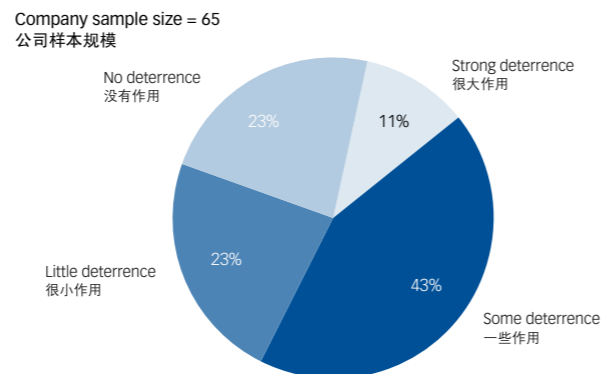
Source: 2009 AmCham-China Business Climate Survey  
资料来源: 2009年中国美国商会营商环境调查 56

**If you have brought any infringements to court, were you satisfied with the level of cooperation from the PRC courts?**  
企业将侵权行为诉诸法律时, 与中国司法机关合作情况的满意度



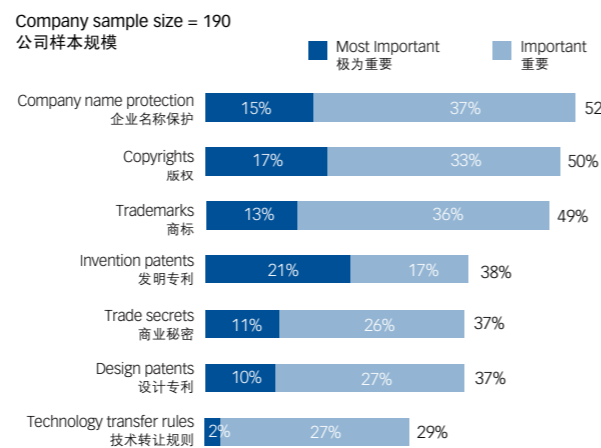
Source: 2009 AmCham-China Business Climate Survey  
资料来源: 2009年中国美国商会营商环境调查 57

**If you have brought any infringements to court, do you think the result will deter other infringers?**  
企业将侵权行为诉诸法律, 会对其他侵权者类似行为起到的阻止作用



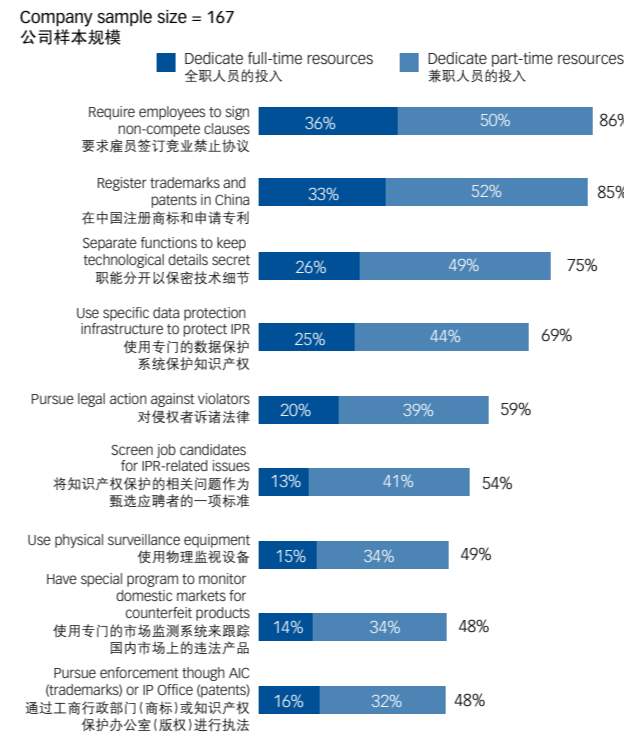
Source: 2009 AmCham-China Business Climate Survey  
资料来源: 2009年中国美国商会营商环境调查 58

**The most important intellectual property rights issues to your business are...**  
对企业运营最重要的知识产权问题为.....



Source: 2009 AmCham-China Business Climate Survey  
资料来源: 2009年中国美国商会营商环境调查 59

**Top-Nine Measures Used to Protect Intellectual Property in China**  
在中国保护知识产权的九项最重要措施



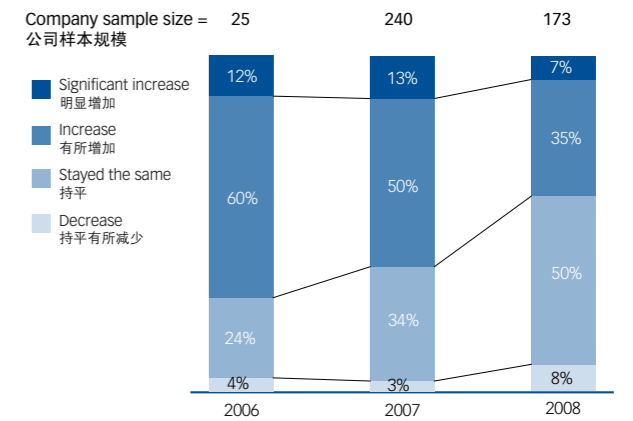
Source: 2009 AmCham-China Business Climate Survey  
资料来源: 2009年中国美国商会营商环境调查 60

**In what areas would you want to see the Chinese government strengthen its role in facilitating sourcing in China?**  
企业希望中国政府在哪些方面加强其影响力, 以推动在中国地区的采购?



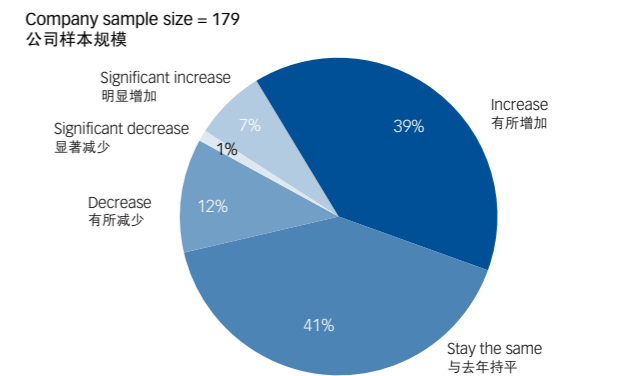
Source: 2009 AmCham-China Business Climate Survey  
资料来源: 2009年中国美国商会营商环境调查 61

**How has the value of products your company sources from China changed from last year? (2006-2008)**  
与上年相比, 企业从中国采购产品数量的变化(2006-2008)



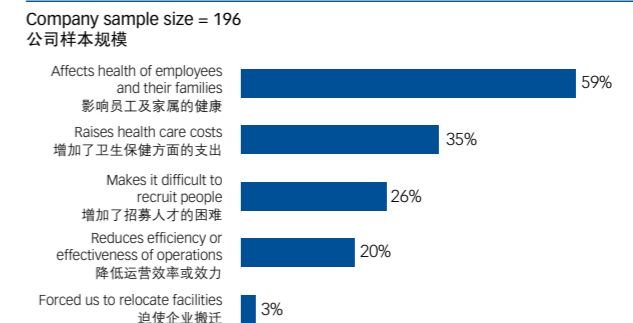
Source: 2007-09 AmCham-China Business Climate Surveys  
资料来源: 2007-09年中国美国商会营商环境调查 62

**What changes do you expect in volume of products sourced from China in 2009?**  
企业对2009年从中国采购产品数量的预期



Source: 2007-09 AmCham-China Business Climate Surveys  
资料来源: 2007-09年中国美国商会营商环境调查 63

**How has pollution affected your business in China?**  
环境污染对企业在中国运营的影响



Source: 2009 AmCham-China Business Climate Survey  
资料来源: 2009年中国美国商会营商环境调查 64

## **Part One:**

The Business Climate for  
American Firms in China

美国企业在华的商务环境



## The Business Overview: The US-China Commercial Relationship

### Facing Uncertainty Together

After 30 years of normalized relations between the US and China, the foundation for bilateral ties has never been stronger, and the relationship continues to mature. The current global economic crisis underscores how important this bilateral relationship is. Overcoming the downturn will take a coordinated effort that maintains openness and increases already-robust cooperation. The ties between the US and China remain strong, but both sides need to work hard to ensure that neither the strain of the global recession, nor other factors, erode the trust that years of economic integration have built. This is a key moment that will determine the future direction of Sino-US economic relations.

Just as companies are re-evaluating their business strategies, so too must government. The efficacy of some policies is seriously in question, while the importance of others is clearer than ever. In this atmosphere, the deepening of economic and cultural ties between the US and China in recent decades has become a demonstrable area of strength and focus that needs even more attention. Increased economic engagement and dialogue will prove a boon to both countries.

However, an uncoordinated response to the current global economic situation could undermine the economic relationship, as well as the overall well-being, of both the US and China. At a moment when China has met many—though not yet all—of its WTO commitments, protectionist policies and corresponding market distortions, in either Beijing or Washington, could prove extremely detrimental to the decades of bilateral progress that have contributed to growth and prosperity.

Furthermore, China has enacted many of the laws that will help it move toward a fully mature economy that respects intellectual property rights (IPR), workers' rights and other areas, allowing the country to move past the WTO accession stage. China now needs to ensure vigorous enforcement of the laws on the books, particularly through increased capacity at the provincial and local levels, where commitment to national laws is often weaker.

The economic challenges in China continue to change, and Washington and Beijing need to work together to tackle these new issues as they arise. Even before

the current crisis, both the US and China were already heading towards transition phases. The US Presidential election cycle and the Chinese leadership's goal to bring about a "structural transition" in the domestic economy towards a more consumption driven future ensure that both countries will see significant policy realignments.

Unfortunately, as these shifts have taken place, the worldwide economic crisis has increased signs of protectionism in both countries. In the context of a global recession, the cost of a significant retreat from the principles and mechanisms that have spurred shared growth and prosperity over the past two decades would be far more significant than any short-term economic or political gains. It is critical that we face the economic crisis together and avoid backsliding that would amount to the type of isolation that historically has exacerbated downturns. Leaders must continue to look at economic policy as the global, not regional, challenge that it is.

The US and China have each initiated massive stimulus packages. This spending will shape the direction that the countries take in the short and long-term future. It is critical that spending decisions related to the stimuli are made with economic and social, not political, rationales in mind. Chinese and US companies and workers have much to gain from strong engagement, and much to lose from protectionism. Furthermore, both countries have WTO commitments to keep in mind, which they made in the interest of open trade to promote robust growth.

Beyond US and Chinese legal obligations, measures which exclude each other's companies from competing for stimulus funds would slow both economies. American workers can benefit greatly from the Chinese stimulus package, just as Chinese workers can benefit from the US version. In an integrated world economy, workers from different countries can benefit from the success of a company, regardless of its ownership stake. Chinese companies in America hire US workers, just as American companies in China employ many Chinese. All workers and companies can benefit from transparent and open bidding in stimulus package projects.

Speeding up Chinese accession to the WTO Agreement on Government Procurement (GPA) would be a way for China to take a leadership role in promoting

## 商务环境概况：中美经贸关系

### 共同面对不确定的经济形势

中美建交已30年，双边关系的基础从未如此稳固，两国关系也日渐成熟。当前的全球经济危机凸显了双边关系的重要性。要战胜经济衰退，就必须通力合作，在保持开放的同时进一步加强合作。中美关系仍然稳固，但两国必须努力确保全球经济衰退及其它因素不会破坏多年来基于经济合作而建立起的信任。现在正值决定中美经贸关系未来走向的关键时期。

企业正在重新审视其商业战略，政府亦须如此。一些政策的实施效果受到质疑，而另一些政策的重要性变得愈加明显。在这种环境下，最近几十年来不断加深的中美两国间经济和文化关系以成为两国加强合作的重要基础，需要我们给予更大的关注。经济合作与对话的加强将裨益于中美两国。

但是，若不能共同应对当前全球经济形势，则两国间的经济关系有可能受到影响，不利于两国整体的健康发展。同时，目前中国已经基本，但尚未完全履行其入世承诺，北京或华盛顿若存在保护主义政策及随之产生的市场扭曲，都有可能损害数十年来为两国繁荣发展做出巨大贡献的双边合作。

此外，中国制定了一系列法律，以推动中国向一个尊重知识产权和劳动者权益的成熟经济体过渡。目前，中国必须着力于确保已经颁布的法律得到有力的执行，尤其是要对执行国家法律能力较弱的省市和地方，加大执法能力建设。

中国所面临的经济挑战不断变化，华盛顿和北京必须携手解决这些新问题。早在危机爆发之前，中美两国就已经在寻求各自转变。选举年的美国政府和期望推动国内经济实现“结构性转变”、向消费经济时代迈进的中国领导，都将着手进行重大的政策调整。

不幸的是，在政策转变过程中，由于爆发全球性经济危机，两国均出现了保护主义抬头的迹象。在全球经济

衰退的背景之下，背离过去二十年里促进两国繁荣发展的原则与机制所付出的代价，将远远大于任何短期的经济或政治利益。我们有必要共同面对经济危机，避免可能会导致经济进一步恶化的倒退，这是十分重要的。两国领导人必须继续从全球、而非地区的视角来关注全球经济政策。

中美两国均推出了大规模的经济刺激计划。这项投入将决定两国短期和长期的发展方向。重要的是，这些刺激经济的支出决策应出于经济，而非政治的原则。对于中美两国的企业和劳动者而言，两国的紧密合作会让他们受益，而保护主义则恰恰相反。此外，两国都必须牢记其做出的入世承诺，这些承诺的初衷是通过开放贸易推动经济的稳健增长。

暂不从美中两国法律义务角度考虑，将外国企业排除在经济刺激资金竞争之外的做法，将导致两国经济增长减速。中美两国的劳动者都可以大大受益于对方的经济刺激方案。随着世界经济的日益全球化，各国劳动者都能够从企业的成功中受益，而不论这家企业来自哪个国家。在美国的中资企业会雇用美国劳动者，而在华的美资企业也会雇用许多中国人。所有劳动者和企业都能从经济刺激计划透明、公开的竞投中获益。

加快中国加入 WTO 政府采购协定 (GPA) 的步伐，将有助于中国在推动面向在华美资企业、在美中资企业的竞投流程方面发挥主导作用。中国在入世时做出了“尽快”加入政府采购协定的承诺。目前正是兑现这一承诺，以及证明中国正在努力发展成为成熟的经济体的最佳时机。此外，由于美国政府承诺在使用经济刺激资金时履行国际义务，因此加入政府采购协定，将大大降低美国的民族主义倾向对中国企业构成威胁的可能性。

在中国，4万亿元人民币（合5840亿美元）的经济刺激计划将大大推进了公路、铁路、机场、环保和农村基础设施的建设进程。但是，在决定资金的去向时，各省市和地方的支出决定与中央政府所作的任何决定有着同样大

competitive bidding processes for American companies in China, as well as Chinese companies in the US. When it joined the WTO, China made a commitment to entering the GPA “as soon as possible.” This would be an ideal moment for China to demonstrate that it is committed to being a mature member of the international economy and live up to that pledge. Furthermore, given the US government’s pledge to upholding its international obligations in the use of stimulus funds, GPA accession would greatly reduce the potential for nationalist tendencies in America to work against Chinese firms.

On the Chinese side, the RMB four trillion (US \$584 billion) stimulus plan is heavily weighted towards roads, railways, airports, environmental conservation and rural infrastructure construction. However, sub-central spending decisions at provincial and local levels may prove to be as influential in determining where the money goes as anything the central government decides. Open and fair bidding processes should apply to all public and private projects, meaning transparency is critical at the local level. These are good policies that should be followed, regardless of when China joins the GPA.

In addition to the direct benefits from increased public expenditures on the economy, there are additional potential secondary gains from the stimulus plan. Among the government priorities for the stimulus are industrial transition and social welfare. The success of a well-instituted social safety net will be important in influencing consumer spending decisions, as Chinese citizens are relieved from the fear of being unable to pay their retirement and health expenses. While Americans have overspent in recent years, Chinese savings rates have been too high, limiting growth in certain sectors of the economy. The proposed expansion of social welfare is an extremely important step in the development of a more consumption-oriented economy.

### Nationalism and Protectionism

This is a pivotal moment for bilateral relations, as China begins to reach economic maturity just as the world goes into recession. Yet signs of protectionist policies surround the enactment and implementation of both the US and Chinese stimulus packages. While nationalist inclinations in times of crisis are understandable, they should also be resisted. Protectionism in times of downturn can produce disastrous results, as the world saw in the 1930s.

Overall, there has been significant progress in the US-China bilateral relationship as a result of active engagement. High-profile resolutions and enforcement of lawful commercial rights show that progress remains steady. Nonetheless, US businesses report that during the past year, the regulatory environment in many areas has become less transparent and predictable. This contradiction highlights the unevenness of progress and the challenges of moving from enactment to implementation of legislation. In the implementation stage, elements of protectionism

can creep into policies that are intended to have the opposite effect.

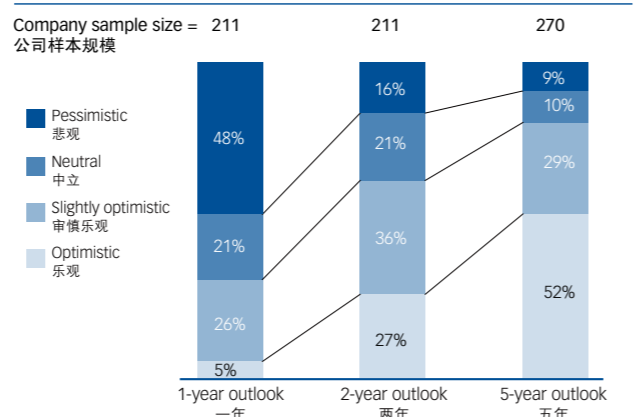
Some of these differences in implementation result in preferential treatment for local companies, in violation of the spirit, and possibly the letter, of WTO obligations. In any event, both China and the US should avoid policies that reward nationality over efficiency. This is essential both in the implementation of long-term laws, like the Anti-Monopoly Law (AML) and Labor Contract Law (LCL), as well as policies to counteract the economic downturn.

### The US Corporate Outlook

The AmCham-China 2009 *Business Climate Survey* reveals that American businesses in China remain committed to China and highly optimistic about the long-term outlook, although their near-term outlook is tempered by current economic realities. AmCham-China’s 2009 *Business Climate Follow-Up Survey*, conducted in February of this year, gauged changing business conditions. The results signal recognition of the serious challenges currently faced by American businesses, but also indicate confidence in a rebound. The percentage of respondents expressing optimism about their two-year outlook (63 percent) was double that of the more pessimistic one-year outlook (31 percent). The number was even higher for the five-year outlook. Long-term confidence in China’s business environment remains high, with 81 percent having an “optimistic” or “slightly optimistic” five-year outlook (Figure 1).

The 2009 outlook remains considerably less optimistic than responses in recent years. Nonetheless, American firms consistently report being profitable in China. For 2008, 74 percent of members report being “profitable” or “very profitable” (Figure 2). When profitability is correlated with length of time operating in China, it becomes clear that the longer a company has operated in China, the more likely it is to have been profitable in 2008. This indicates that US companies face a learning curve in the Chinese market.

How would you describe your business outlook in China?  
企业对在华业务发展前景的展望



Source: 2009 AmCham-China Business Climate Survey & 2009 AmCham-China Follow-Up Survey  
资料来源: 2009年中国美国商会商务环境调查和商务环境跟踪调查

的影响力。公开、公平的投标流程适用于所有的公共和私营项目, 这意味着地方政府的透明度非常重要。应该遵循这些良好的政策, 而无论中国何时加入政府采购协定。

除财政支出增加产生的直接收益之外, 经济刺激计划还有可能带来更多益处。政府的经济刺激计划主要关注产业转型和社会福利。完善的社会安全网络对于消费者的支出决定十分重要, 因为中国居民不必再担心无力承担退休和医疗费用。近几年来, 美国超额透支, 而中国储蓄率太高, 限制了某些行业的增长。中国拟加大对社会福利的投入, 这是中国向消费经济时代迈进过程中极其重要的一步。

### 民族主义和保护主义

现在对于双边关系而言是关键时期, 全球经济步入衰退期, 中国正向成熟的经济体过渡。但是, 中美两国推出的经济刺激方案的制定和实施被保护主义政策所笼罩。虽然在艰难时期出现民族主义倾向可以理解, 但也应该尽力避免。在经济衰退时期, 保护主义可能会造成惨重的后果, 这一点在20世纪30年代就已得到了验证。

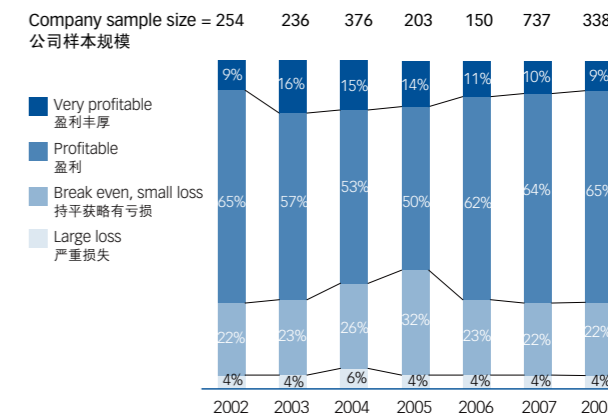
总体而言, 积极的合作促使中美双边关系已取得了巨大进展。一系列重要的决策以及保护合法的商业权利表明两国的关系进展稳定。但是, 据美国企业反映, 过去一年中, 许多地区的监管环境越发不透明且不可预知。这种矛盾凸显了发展的不均衡以及法律从制定到执行的过程中所面临的挑战。在执法阶段, 保护主义会不知不觉地对政策产生负面影响。

执法过程中的一些差异化使本地企业可以享受优惠待遇, 这有悖于 WTO 义务的精神或要义。在任何情况下, 中美两国都应避免制定带有民族主义倾向的政策。这对于执行《反垄断法》和《劳动合同法》等长期法律以及应对经济衰退的政策都十分重要。

### 美国企业展望

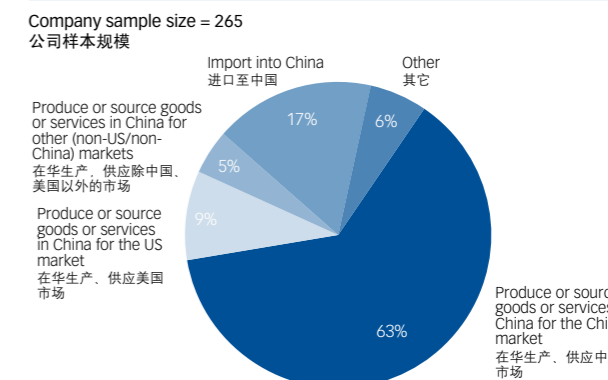
中国美国商会 (AmCham-China) 发布的2009商务环境调查结果显示, 尽管当前的经济形势令短期前景不容乐观, 但在华美国企业继续致力于开拓中国市场, 并对长期前景十分乐观。中国美国商会今年2月份所进行的“2009年商务环境跟踪调查”主要针对目前不断变化的商务环境, 调查结果表明美国企业普遍承认目前的严峻挑战, 但同时显示这些企业对经济复苏充满信心。对未来两年的发展表示乐观的受访企业所占比例 (63%), 两倍于对未来一年发展表示乐观的受访者 (31%)。对未来五年

Profitability of China Operations (calendar years 2002-2008)  
企业2002年至2008年在华盈利状况



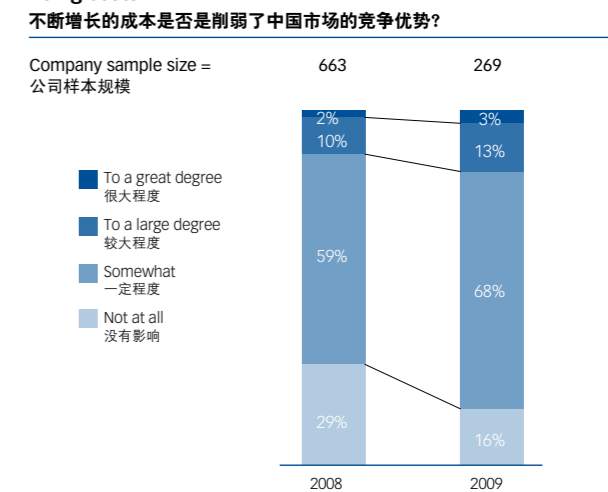
Source: 2003-09 AmCham-China Business Climate Surveys  
资料来源: 2003-09年中国美国商会商务环境调查

#1 Goal / Strategy in China  
企业在华首要目标/战略



Source: 2009 AmCham-China Business Climate Survey  
资料来源: 2009年中国美国商会商务环境调查

Do you feel that China is losing competitive advantages due to rising costs?  
不断增长的成本是否是削弱了中国市场的竞争优势?



Source: 2008-09 AmCham-China Business Climate Surveys  
资料来源: 2008-09年中国美国商会商务环境调查

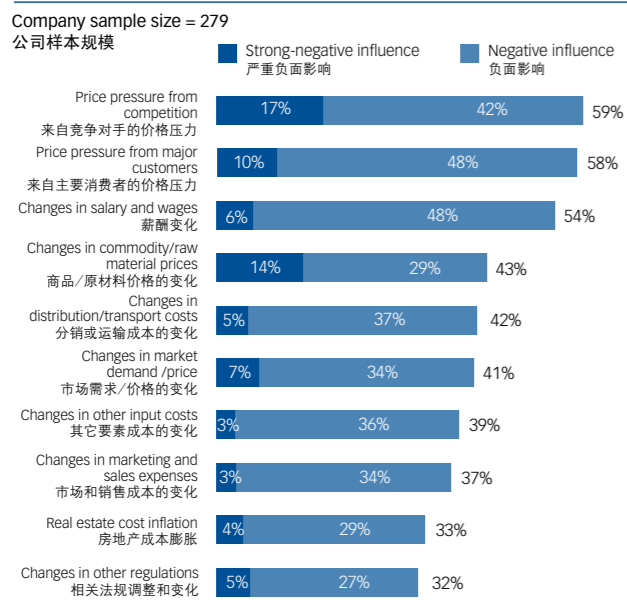
These profitability trends correspond with the fact that the vast majority of US firms in China are focused on market opportunities in China. Almost two-thirds of members indicate they are in China to produce or source goods and services domestically for the Chinese market, rather than for export (Figure 3). This number represents a significant increase from 51 percent in 2008, and paints a picture of a maturing domestic consumer market.

For all of its progress, a majority of respondents nonetheless view China as losing some competitive advantage due to rising costs and other concerns (Figure 4). For 2008, the factors with the biggest financial impact were price pressures from competition and major customers; salaries and wages; commodity/raw material prices; distribution/transport costs; and changes in market demand and prices (Figure 5). Regardless, an overwhelming percentage (91 percent) of members have no immediate plans to relocate (Figure 6). A significant number of members plan on, or are exploring, expanding into second and third-tier cities (Figure 7). Of those members who have already expanded, over 70 percent cite increasing market reach as the primary reason (Figure 8)

American firms have made serious financial commitments to China and are looking to build long-term strength. This investment has been positive for all involved, creating jobs both in the US and China, as well as profits. Furthermore, technology and expertise transfers have helped make domestic industry stronger. American investment in China is boosting the economies in both countries.

**In 2008, how did the following costs/factors influence your China margins?**

2008年下列因素对企业在华盈利造成的影响



Source: 2009 AmCham-China Business Climate Survey  
资料来源: 2009年中国美国商会商务环境调查

**Business Challenges**

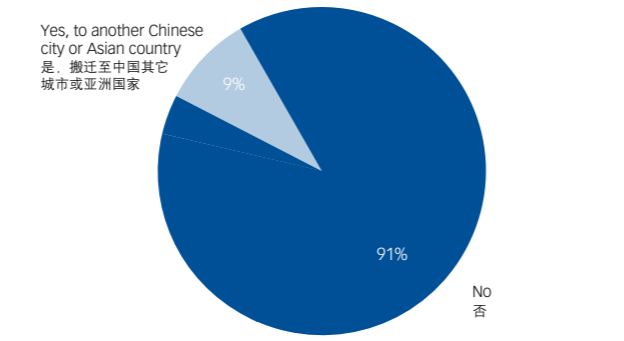
Despite overall long-term optimism, the outlook of US business in China is tempered by operating challenges and trends in the regulatory environment. In 2009, difficulty attracting, developing and retaining management-level staff remained the number one challenge for US companies (Figure 9). During China's impressive economic development, the demand for Chinese managers of international caliber has increased significantly. Demand for skilled, appropriately qualified staff still outstrips supply and this chief operational constraint shows no sign of easing in the near term. This long-term problem may ultimately dampen companies' prospects in China more than the immediate difficulties of the economic downturn.

In addition, China's regulatory regime continues to pose challenges, with the next four top challenges after human resource constraints (inconsistent regulatory interpretation, bureaucracy, unclear regulations and lack of transparency) all relating to the regulatory environment. These long-standing issues reflect the important role that the Chinese government plays in the economy. This year's survey found that a lack of consistent enforcement and a lack of full transparency in the development, enactment and implementation of laws and regulations, remain top concerns. Fully implementing new laws, particularly through capacity building at the provincial and local levels, would significantly improve the economic environment and increase the attractiveness of investing in China.

While there is still room to improve, some of these four areas have seen year-on-year progress. For example, the American business community acknowledges the progress made on transparency issues through increasing opportunities to provide comment on draft laws and regulations. At the same time, inconsistent regulatory interpretation remains the number two concern, reflecting the importance of promoting consistency between the principles underlying legislation and administrative policies. Uneven enforcement leaves open the possibility for abuse that

**Have you/are you considering relocating due to increased costs? 企业是否因成本上涨而考虑迁址?**

Company sample size = 258  
公司样本规模



Source: 2009 AmCham-China Business Climate Survey  
资料来源: 2009年中国美国商会商务环境调查

发展表示乐观的受访者则更多, 受访者对中国商务环境的长期发展仍然充满信心, 81%的受访者对未来五年的发展表示“乐观”或“略微乐观”(图1)。

2009年的发展前景远不及前几年乐观。但是, 美国企业仍然显示出在华实现盈利的能力。2008年, 74%的会员企业实现“盈利”或“盈利颇丰”(图2)。当盈利能力与在华经营时间的长短相联系时, 显然, 一家企业在中国经营的时间越长, 实现盈利的可能性也越高。这表明美国企业在中国市场需要不断地摸索与学习。

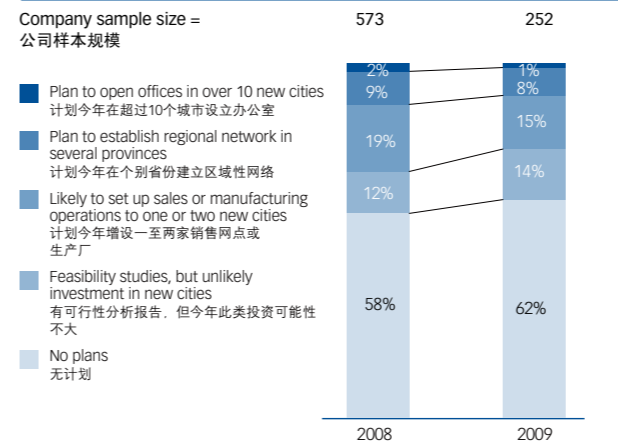
这些盈利趋势符合大多数在华美资企业对中国市场机会的关注。接近三分之二的会员企业表示, 进入中国是为了面向中国市场生产或采购产品与服务, 而非以出口为目的(图3)。这个数字较2008年的51%有显著提高, 表明国内消费市场正日渐成熟。

但大多数受访企业也表示, 鉴于成本上升等原因, 中国的一些优势正逐步丧失(图4)。2008年影响会员企业盈利的最主要因素是价格压力, 其主要来自于竞争对手和主要消费者、薪酬、商品/原材料价格、分销/运输成本、市场需求和价格(图5)。尽管如此, 绝大多数(91%)的会员企业表示暂时没有撤出中国市场的计划(图6)。许多会员企业计划进入二、三线城市或在这些城市拓展业务(图7)。在已经将业务拓展到这些城市的会员企业中, 超过70%的企业表示其首要目的是扩大市场范围(图8)。

美国企业对华做出了重大的投资承诺, 并期望在华建立长期牢固的根基。这些投资带来了积极影响, 为中美两国创造了更多就业机会和利润。此外, 通过技术和专门知

**This year, excluding the first-tier cities Beijing/Shanghai/Guangzhou, does your business plan to expand beyond current locations into second and third-tier (e.g. Dalian and Chengdu)?**

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



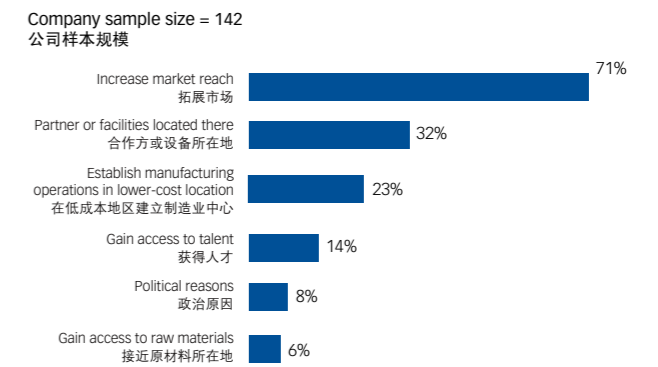
Source: 2008-09 AmCham-China Business Climate Surveys  
资料来源: 2008-09年中国美国商会商务环境调查

识的转让, 使国内各行业得以更好的发展。美资企业在中国投资正推动两国经济实现更大的发展。

**商业挑战**

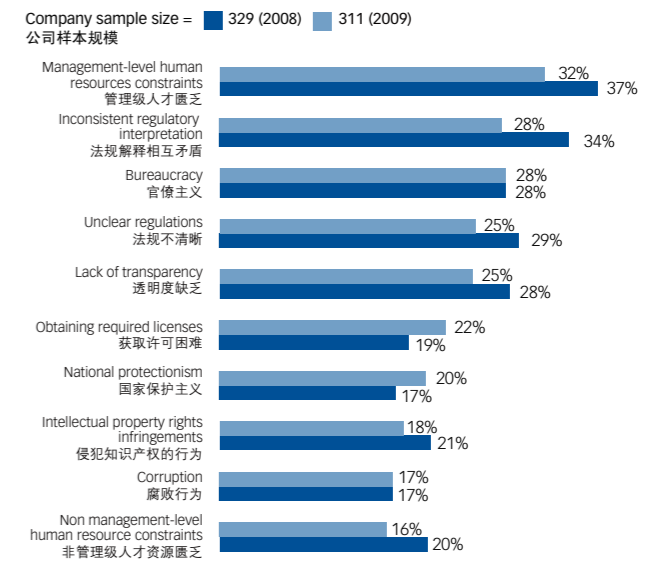
尽管总体而言长期发展前景十分乐观, 但监管环境带来的经营挑战和发展趋势令在华美资企业面临诸多不确定因素。2009年, 难以吸引、培养和留住管理人才依然是美国企业面临的首要挑战(图9)。随着中国经济迅猛发展, 对高素质管理人才的需求也与日俱增。对于有技能的合格人员的需求仍然大于供给, 而且这一首要对运营限制的因素尚无在短期内出现缓解的迹象。与当前因经济衰退造成的困难相比, 这一长期性问题可能对在华企业的

**Why did your company expand beyond Beijing, Tianjin, Shanghai (Yangtze River Delta) and Guangdong (Pearl River Delta)? 企业拓展到北京、天津、上海(长江三角洲)及广东(珠江三角洲)以外市场的原因。**



Source: 2009 AmCham-China Business Climate Survey  
资料来源: 2009年中国美国商会商务环境调查

**Top Business Challenges in China (2008-2009) 企业在华运营的主要挑战(2008-2009)**



Source: 2008-09 AmCham-China Business Climate Surveys  
资料来源: 2008-09年中国美国商会商务环境调查

could improperly favor local firms or those in good stead with local officials. This reduces efficiency, fosters corruption and hampers short and long-term development.

IPR also remains crucial to US businesses, with 65 percent of members regarding IPR protection as “critically” or “very” important to their business (Figure 10). Unfortunately, 72 percent of respondents believe IPR enforcement is ineffective in China, with 12 percent believing it to be “totally ineffective” (Figure 11). American firms noted that IPR is a major factor in determining the type of business activity companies will undertake in China (Figure 12). Failure to quicken the pace of IPR enforcement runs the risk of discouraging investment at the top of the supply chain, as well as domestic innovation, both of which China is eager to promote.

New issues have also emerged, with national protectionism as one of only two top issues companies indicated had increased in level of concern. While the issue only rose from ninth to seventh, this rise nonetheless signals increasing concern among US businesses about protectionist trends in China. Concern about obtaining required licenses also increased, with obtaining licenses rising from eighth to the sixth most cited challenge in 2008. Given that the survey results did not indicate backsliding in any other area, protectionism and ability to obtain required licenses are two issues to monitor this year.

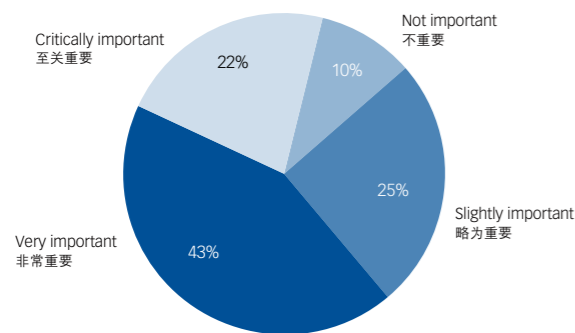
**Future Outlook**

China remains a top investment priority for American businesses, although it has slipped somewhat in the last several years. In 2009, 22 percent of members responding to the annual survey indicate that China is their number one global investment destination, falling from a high of 51 percent in 2007 (Figure 13). However, China’s ranking as a top-three global investment destination has remained steady, with 75 to 78 percent ranking China as a top-three destination

**How important is the protection of intellectual property rights to your business?**

**知识产权对企业发展的重要性**

Company sample size = 266  
公司样本规模



Source: 2009 AmCham-China Business Climate Survey  
资料来源: 2009年中国美国商会商务环境调查

every year since 2004. China’s slip as the top destination emphasizes the importance of the government continuing to improve the business environment as companies consider a wider range of investment destinations.

According to the AmCham-China 2009 *Business Climate Survey*, member companies, the great majority of whom have a presence in China, continue to express strong confidence in the country as a place to do business. However, operational and regulatory challenges continue to hamper the realization of China’s full economic potential. Particularly in times of economic uncertainty, the government can do much to increase stability through enacting and implementing policies that continue to welcome foreign investment and economic participation, enhance competitiveness, and reduce operating barriers.

**For the Chinese Government**

**Legal and Administrative Transparency**

AmCham-China supports the Chinese government’s efforts to address the challenges facing China during the current economic downturn, but urges that fundamental values of consistency and transparency in the development of rules, laws and regulations remain underlying guiding principles. The government should be careful not to compromise these fundamental beliefs for the sake of short-term domestic political objectives.

An encouraging development is that local governments in some parts of China are making serious efforts to introduce greater transparency to decision making. Many localities are experimenting with various forms of public hearings, and even webcasts, for legislative debate. These are positive developments, and hopefully steps in a longer march toward steadily improving transparency in the law-making process.

**Consistent Implementation and Enforcement**

China has developed a strong and impressive body of laws in the business realm over the past 30 years, with their enactment constituting progress. However, inconsistent and opaque implementation and enforcement of important measures persist at all levels of government, particularly locally. Only through more consistent implementation and stronger enforcement can these laws and regulations have their intended effect. Furthermore, increasing consistency between the principles underlying new legislation and administrative policies has a direct effect on business operations. Uncertainty in implementation creates an obstacle to good business decisions, and in some cases, creates an uneven playing field, discouraging investment.

Specifically with respect to IPR enforcement, AmCham-China members have indicated that ineffective enforcement has resulted, or may in the future result, in a decline in their IP transfers and overall investment levels, or the movement of research facilities. IPR is a “critical” or “very important” factor for over

发展前景造成更大的不利影响。

此外,中国的监管体制仍然构成了挑战,紧随管理人才匮乏之后的四大挑战(不一致的法规解释、官僚主义、法规的不明晰和缺乏透明度)均与监管环境有关。这些长期存在的问题反映了中国政府在经济发展中的重要作用。今年的调查显示,执法不一致以及法律法规的制定、颁布和实施缺乏透明度仍然是首要问题。全面实施新法规,尤其是通过加快省市和地方的执法能力建设,将大大改善经济环境,并加强对华投资的吸引力。

尽管仍需进一步改进,但这四个方中有一些已经逐年得以改善。比如美国企业反映,中国政府通过向各方征求有关新法律法规草案的意见,提高了透明度。不过与此同时,不一致的法规解释依然是第二大问题,凸显了法律的原则与行政政策之间协调一致的重要性。执法的不一致助长了滥用职权之风,使本地企业或与地方官员私交甚好的企业能从中不当受益。这将导致低效率,助长不正之风,阻碍短期和长期发展。

知识产权对美国企业依然至关重要,65%的会员企业认为知识产权保护对他们而言“很重要”或“十分重要”(图10)。不幸的是,65%的受访企业认为中国的知识产权执法效率太低,而12%的受访企业则认为“完全无效”(图11)。美国企业指出,知识产权是决定其在中国业务类型的重要因素(图12)。若不能加大知识产权保护力度,则有可能阻碍中国迫切希望推动的供应链高端投资以及国内创新。

一些新问题也随之产生,企业认为主要有两大问题愈加严重,其中包括保护主义。虽然这一问题的排位只是从第九跃至第七,但这表明美国企业对中国的保护主义倾向的担心有加重之势。对于获得必需许可的担忧也有所增加,其排位从去年第八上升到第六。由于调查结果并未指出有任何其他方面出现倒退,因此,保护主义和获得必需许可的能力成为今年重点关注的两大问题。

**前景展望**

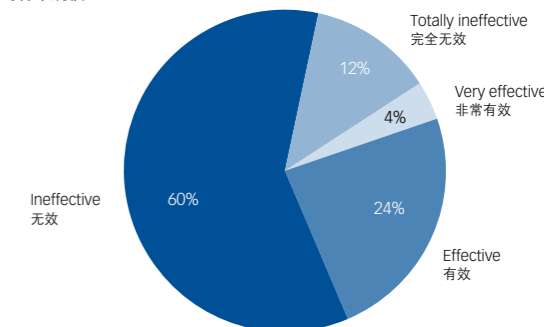
中国仍是美国企业首选的投资目的地,尽管较前几年投资热度呈现了一定的下滑态势。2009年,22%的受访企业表示中国是他们在全球的首选投资目的地,这一比例较2007年的51%的最高点有所下降(图13)。但是,将中国列为全球前三大投资目的地的企业所占比例基本保持稳定,自2004年以来一直维持在75%至78%。视中国为首选投资目的地的企业减少表明,随着企业开始将更多的投资目的地纳入考虑范围,政府有必要继续改善营商环境。

中国美国商会2009商务环境调查显示,会员公司(其中大多数都在中国开展业务)依然对中国的营商环境充满信心。但是,运营和监管方面的挑战仍在阻碍中国充分发挥其经济潜力。尤其是在经济形势尚不明朗的情况下,政

**How would you rate China's enforcement of intellectual property rights?**

**企业对中国政府保护知识产权执行力的评估**

Company sample size = 129  
公司样本规模

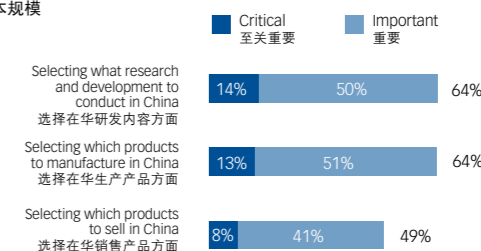


Source: 2009 AmCham-China Business Climate Survey  
资料来源: 2009年中国美国商会商务环境调查

**How important of a factor is IPR when...**

**知识产权在下列情形中的重要性**

Company sample size = 163  
公司样本规模

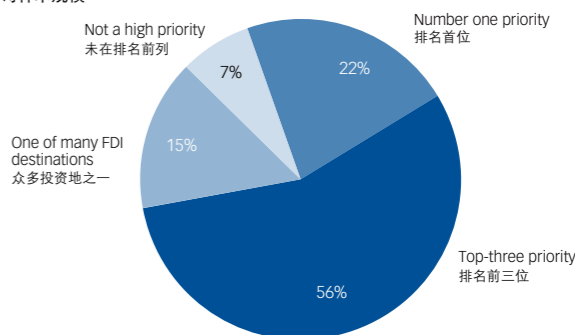


Source: 2009 AmCham-China Business Climate Survey  
资料来源: 2009年中国美国商会商务环境调查

**How does China rank in your company's near-term global investment plans?**

**中国市场在企业近期全球投资计划中的排名**

Company sample size = 232  
公司样本规模



Source: 2009 AmCham-China Business Climate Survey  
资料来源: 2009年中国美国商会商务环境调查

half of members when selecting what research and development (R&D) to conduct in China or selecting which products to manufacture in China. Inconsistent and ineffective implementation and enforcement not only hinder business operations, but also present real material damage to the Chinese domestic economy.

At the local level, there is increasing disparity among implementation practices. Some locales have experimented with transparent processes such as public hearings. In contrast, others create their own implementation guidelines without consulting stakeholders and communities affected by new laws. AmCham-China continues to welcome the opportunity to comment on proposed implementation plans and would be pleased to collaborate more deeply with the National People's Congress' Legislative Affairs Commission, State Council's Legislative Affairs Office and other entities directly involved in the drafting process.

A consistent legal framework is a stabilizing condition for investors, both foreign and domestic, by ensuring that businesses can expect predictable and fair conditions. This confidence, in turn, contributes to enhanced social and economic stability. The best way to promote this steadying influence is to make clear that laws will be consistently enforced. Two key pieces of legislation for which AmCham-China particularly urges transparent and uniform enforcement in 2009 are the AML and the LCL. As China moves from enactment to implementation on these—and all—laws, consistency and transparency should serve as the foundation

In 2008, China established a new National Bureau of Corruption Prevention under the Communist Party of China (CPC) Central Commission for Discipline Inspection to improve efforts to reduce resource losses and the anti-competitive effects of systemic corruption within local Party ranks. We believe that strengthening state institutions to combat corruption is essential and are hopeful that this will make an impact.

Ensuring reduced corruption will be crucial for consistent implementation and enforcement of the law. In an address to the CPC during 2008, President Hu Jintao identified the importance of anti-corruption measures and upholding integrity in the economic, political and cultural arenas. He also conceded that China's anti-corruption campaign would be "lasting, complicated and arduous." This analysis combines commendable goals with level-headed realism. Indeed, there has been notable progress, even as there is still much left to accomplish.

As President Hu noted in the speech, addressing and combating corruption will be a long, slow process. AmCham-China supports these efforts and urges that they be redoubled, particularly given the possibility of increased corruption in distributing funds from the national stimulus plan. Transparency in stimulus appropriations will help limit wasteful spending and increase the efficiency of these critical efforts to revive the Chinese and global economies.

### Market Access and National Treatment

The implementation of China's WTO accession protocol has helped to level the playing field for all companies, but US businesses in China face new problems on free and open competition. China has long made technology transfer a requirement of approvals for investments and sales in support of large-scale projects, particularly those that are publicly funded. Chinese manufacturers, particularly in infrastructure and transportation sectors, may eventually sell products that use technology from foreign firms initially transferred as a condition assigned to a domestic project in China. Chinese firms are thus able to capitalize on the technology that their competitors transferred to China. In turn, these Chinese-made goods also end up going to developing nations, and even the countries of the original technology providers. In the long-run, this practice may discourage foreign high-tech companies from sharing beneficial technical expertise.

An additional requirement that emerged in recent years has been that a majority of the equipment used for public projects must be domestically designed and built. This is particularly so in infrastructure projects and in the transportation sector. Anti-competitive requirements increase costs in the bidding process and reduce access to leading technologies. It is critical that China move more quickly on its long-standing pledge to work toward joining the WTO's GPA.

Such protectionist policies in government procurement reflect the continuing conflict between China's desire to create globally successful firms in many industrial sectors and its stated desire to move towards an open and competitive market. One of the most effective ways to achieve this goal is to provide national treatment for firms operating in its borders. In this vein, we encourage China and the US to renew discussions on establishing a high-quality bilateral investment treaty, which would provide investment guarantees for both sides, as well as send a global signal that China is a premier investment destination. The continued use of regulatory measures to give Chinese firms national or global advantages is counter to the principles of national treatment and non-discrimination, hindering competition and harming companies in a wide range of industries.

The NDRC has stated its goal of reducing the role of the Five-Year Plan in plotting the course of industrial development, and putting greater weight on market conditions. We applaud this goal, but it is at risk as competing objectives currently work against moves towards a more market-based economy. Specifically, the NDRC's concurrent objective of creating national champions is rooted in government interference in markets to determine which companies should succeed. AmCham-China strongly believes that the goal of moving towards a more market-oriented economy should take precedence over policies that choose "winners" competing in China.

府可以通过制定和实行鼓励外国投资及经济参与、促进竞争并降低经营门槛的政策来提高稳定性。

### 给中国政府的建议：

#### 法律和行政透明度

中国美国商会支持中国政府采取积极的措施应对当前经济衰退带来的挑战，但也促请中国政府在制定法律法规时保持一致性和透明度，并以此作为基本的指导原则。政府应当谨慎行事，不要出于短期国内政治目的的需要而牺牲这些基本原则。

令人欣慰的是，中国部分地区的地方政府正在努力提高决策过程的透明度。许多地方正在试行各种形式的公众听证会甚至是网播来开展立法方面的辩论。这些都是积极的举措，假以时日，定能稳步提升立法过程的透明度。

#### 法规的实施和执法

过去30年里，中国已经在商业领域逐渐建立起了一套强大、令人印象深刻的法律体系，这些法律的制定体现了社会的进步。但是，各级政府，尤其是地方政府在重要法规的实施和执法方面往往无法一致、透明。只有进一步提高实施的一致性、加大执法力度，这些法律法规才能发挥其应有的作用。此外，加强立法原则与行政政策之间的一致性将对企业的运营产生直接的影响。实施过程中的不确定性会给企业的良好商业决策制造障碍，有时还会导致不公平的竞争环境，因而挫伤投资积极性。

以知识产权保护执法为例，中国美国商会会员企业指出，由于执法效率低下，已经导致或可能将导致知识产权转让数量以及整体投资水平下降，或延缓研发机构向中国转移的速度。当选择决定在华从事什么研发工作或在华生产哪些产品时，知识产权是一半以上的会员企业考虑的关键或重要因素。执法的不一致和低效率不仅会阻碍企业的业务经营，还会对中国国内经济造成真正实质性的损害。

在地方层面上，执法实践的不一性呈现出加剧的趋势。一些地方已经开始试行公众听证会等透明的流程。相比之下，另外一些地方则在根本就没有征询与新法利益相关各方的意见的情况下，就自行制定实施办法。中国美国商会呼吁有关部门就拟定的实施计划征求公众意见，并期望与人大法工委、国务院法制办以及其他直接参与起草过程的相关部门开展更深入的合作。

稳定持续的法律框架是稳定国内外投资者信心的前提，能保证企业得到可预见的、公平的条件。而国内外投资者的信心反之有助于提高社会和经济的稳定性。为达到这一目标，确保法律执行的稳定持续是最好的办法。2009年，中国美国商会特别促请相关部门进一步加大《反垄断法》和《劳动合同法》透明、统一的执法力度。对于这两部法律乃至所有法律而言，中国应将一致性和透明度作为从立法到实施整个过程的基础。

2008年，中国新设立了国家预防腐败局，作为中国共产党中央纪律检查委员会下属的部门，藉此在地方党务系统中加大力度，减少体制腐败造成的资源浪费和反竞争影响。我们相信，加强国家反腐败部门的建设是一项意义重大的举措，并希望此举能发挥作用。

消除腐败对于确保法律的实施一致和统一执法至关重要。2008年，胡锦涛主席在中共中央会议报告中指出了反腐败举措和廉政建设在经济、政治和文化领域的重要性。他同时坦陈，中国的反腐败斗争是一项“长期、复杂、艰巨”的任务。这一观点体现了政府的长远目标，也反映了脚踏实地的现实主义精神。的确，尽管任重道远，但中国在这方面已经取得了巨大进步。

正如胡锦涛主席在报告中所指出的，反腐败将是一个长期而漫长的过程。中国美国商会对这些努力予以支持，也鼓励加大力度，尤其是考虑到国家经济刺激计划的推出可能会助长腐败之风。在财政拨款方面遵循透明的原则将有助于限制不必要的开支和浪费，加快中国乃至全球经济的复苏脚步。

### 市场准入和国民待遇

中国入世协议的实施，在为所有企业创造公平的市场环境方面发挥了重要的作用，但在华美资企业在自由、公开的竞争方面面临着新的问题。长期以来，中国将技术转让作为在华投资与销售的审批条件，以此来支持大型项目，尤其是政府资助的项目。中国的制造商，尤其是基础设施和运输行业的制造商，可能会在其最终销售的产品中使用原本由外国公司转让给该中国国内项目的技术。中国企业因此能够利用其竞争对手向中国转让的技术。而这些中国制造的产品反之又被出口至发展中国家，甚至是原技术提供方所在的国家。从长期来看，这可能会使外国高科技企业不愿意分享其技术专长。

近几年又新增了一个要求，即大多数用于公共项目的设备必须由国内厂商设计和制造，尤其是基础设施项目和运输行业。反竞争要求增加了招标过程的成本，限制

Relying on non-market factors to champion companies can produce a number of counter-productive outcomes. National champions, already prevalent in some sectors, could end up having absolute control over an increasing number of industries, harming competitiveness and consumers. There already exist monopolies, near-monopolies or heavy government control in the power generation and distribution, oil, petrochemicals, natural gas, telecommunications, coal, aviation and shipping industries. With a national champions policy, centrally controlled state-owned enterprises and other state-favored companies would remain, or become, dominant in the equipment manufacturing, automobile, IT, construction, iron and steel and non-ferrous metals industries. This would reduce the space for open cooperation and competition between US firms and their foreign counterparts, reducing quality, competition and depriving the Chinese market of important foreign expertise.

There is a clear tension between promoting open, competitive markets and encouraging domination by domestic companies. In a range of sectors, including wind power, off-shore drilling equipment and the high speed rail sector, among others, explicit administrative policy measures require a majority of the equipment used to be domestically produced, thus closing off the market to a fully competitive bidding process. This short-term goal of promoting domestic industry comes at the cost of competitive pricing, world-class technology and long-term market efficiencies, and may arouse retaliatory policies abroad.

AmCham-China remains concerned, but cautiously optimistic, that the implementation of economic stimulus measures, both in China and the US, will fully meet international best practices and promote competitive markets that will save money, increasing the positive impact of the expenditures. A failure to meet these goals could greatly hamper the global economic recovery by reducing the efficacy of stimulus measures, and potentially even lead to retaliatory trade measures.

## For the US Government

### US-China Economic Dialogue

AmCham-China strongly supports the continuation of regular economic dialogue between the US and China in the vein of the Strategic Economic Dialogue (SED) and US-China Joint Commission on Commerce and Trade (JCCT). We welcome public indications from both Chinese officials and the Obama Administration of their commitment to continue high-level bilateral dialogue on economic issues. These types of constructive frameworks allow the US business community to communicate concerns regarding upcoming legal proceedings and the most relevant on-the-ground operational challenges, including those related to WTO commitments. Continued bilateral dialogue also provides a unique opportunity for structural

continuity and confidence building among various agencies of government that have expanded against the backdrop of the SED and JCCT, while at the same time taking substantive steps towards joint goals. As the Obama Administration implements a new bilateral dialogue structure, we emphasize the importance of working-level dialogue involving industry-government collaboration to ensuring movement on issues of concern.

Continued dialogue produces tangible results and leads to significant progress. One major SED achievement was the Chinese government commitment to a 30-day comment period for all trade and economic-related regulations. This is an important step forward that brings a greater diversity of opinions to the legislative process. AmCham-China commends this step and looks forward to participating in this process, and cites this as just one example of positive results from dialogue. Other examples include energy, environment and product safety breakthroughs.

Furthermore, both the US and China should increase focus on multilateral talks, such as the G-20 and the WTO. The two countries are critically important components of the world economy, but meaningful progress often also requires engagement with other important global players.

### US-China Energy and Environment Cooperation

The fourth SED meeting produced the US-China 10-Year Energy and Environment Cooperation Framework (the Framework), providing a structure for joint efforts in the areas of environmental protection and energy efficiency.

In addition, the Framework provides a wealth of new opportunities for dialogue and exchanges between laboratories and research organizations in the US and China with the active support of corporate partners. President Obama has already reiterated his campaign pledge to environmental protection, a priority that will undoubtedly involve enhanced cooperation with China.

Even with a strong framework and commitment to environmental protection, upholding broader free trade and non-protectionist principles will be critical to long-term success. In the struggle to solve the energy and environment problems we all face, using the best technology, regardless of origin, is of the utmost importance.

The US and Chinese governments have pledged significant fiscal support for the development of new energy technologies, with the Obama Administration making a US \$15 billion (RMB 102.8 billion) commitment, and China making a smaller, but still significant, pledge. However, for these investments to have the greatest impact it is critical that governments avoid tying expenditures to anti-competitive measures. Such policies negatively impact innovation in two key ways. First, they reduce the competition of ideas, meaning technologies succeed based not on quality, but rather

了获得领先技术的途径。中国应遵守并加快兑现其加入WTO 政府采购协定的长期承诺,这一点至关重要。

这些在政府采购方面的保护主义政策,反映了中国一直以来所面临的一个矛盾:一方面中国期望在多个行业打造成功的全球性企业,另一方面中国希望向一个开放、自由竞争的市场迈进。为实现这一目标,一个最有效的方法是为在华经营的企业提供国民待遇。我们鼓励中美两国为达成一个高质量的双边投资协定重新进行谈判,这不仅能为两国提供投资保障,同时也向全世界表明中国是理想的投资目的地。如若不断利用政策手段为中国企业谋求国内或全球性优势,则有悖于国民待遇和非歧视原则,不仅会阻碍竞争,也会损害众多行业中企业的利益。

国家发展和改革委员会已经提出目标,力争减小五年规划在制定行业发展目标方面的作用,而让市场因素发挥更大作用。我们非常赞赏这一目标,但由于相互竞争的目标目前会进一步给市场化经济的发展带来不利影响,这一目标存在风险。具体而言,政府致力于打造全国性“巨头”企业的同步目标是建立在政府干预市场的前提之上,以此决定哪些公司应当成功。中国美国商会坚定认为,相比通过政策选择国内竞争中的“赢家”,向市场经济迈进的目标应当占据更加优先、更加重要的地位。

依靠非市场因素打造行业巨头会造成许多严重的不利后果。国家的支持已使越来越多的行业产生了巨头企业,在发电、输电、石油、石化、天然气和电信等领域占据绝对的支配地位,形成了垄断或接近于垄断,这种情形再加之政府的干预,将对竞争和消费者带来不利影响。此外,政府将继续控制煤炭、航空和海运行业。有了上述政策,中央下属国有企业和其他受到国家惠顾的公司得以继续或将在设备制造、汽车、IT、建筑、钢铁以及有色金属领域占据主导地位。这大大压缩了美国企业与其国外竞争对手开展公开合作和竞争的空间,降低了质量,削弱了竞争,还使中国市场无法获得重要的国外技术专长。

在促进开放、自由竞争的市场环境和鼓励国内公司占据主导地位之间,存在着明显的矛盾。在许多行业,例如风力发电、海上钻探设备和高速铁路等行业,制定有明确的行政措施和政策,要求大多数设备由国内厂商制造,这就排除了将充分的市场竞争机制纳入招投标过程的可能性。这种促进国内行业发展的短期目标是以牺牲竞争性定价、世界级技术和长期市场效益为代价的,有可能导致其他国家采取报复性政策。

中国美国商会期望,中美两国在实施经济刺激方案的过程中能够遵循国际最佳实践,促进竞争市场的形成,从

而在节约资金的同时扩大投资产生的积极影响,中国美国商会将对此予以关注,并保持谨慎乐观。倘若不能遵循这些原则,经济刺激方案就难以发挥其最大的效用,从而大大阻碍全球经济的复苏,甚至有可能导致国家之间采取报复性贸易措施。

## 给美国政府的建议

### 美中经济对话

中国美国商会强烈支持中美两国继续以战略经济对话、中美商贸联委会的形式定期开展经济对话。中国官员和奥巴马政府都曾公开表示,承诺继续就经济问题开展高层双边对话,我们对此表示欢迎。这一类型的建设性框架使得美国商界能够表达对即将到来的法律诉讼、切实存在的运营挑战(包括与入世承诺有关的挑战)的关切。持续开展双边对话也为在两国就共同目标采取实质性措施的同时,依托战略经济对话和中美商贸联委会的背景,不断扩大的各种政府相关机构,保持其组织的连续性和信心的建设提供了独特的机遇。随着奥巴马政府推行新的双边对话框架,我们认为应促进行业与政府合作对话,着力解决备受关注的问題。

持续开展对话可带来切实成果,实现巨大进步。战略经济对话取得的一项重要成果是中国政府承诺,对于所有与贸易和经济相关的法规,都留出30天的时间来征求公众意见。这是一大进步,为立法程序带来了更多元化的意见。中国美国商会对这一举措高度赞赏,并期待着参与这一过程,中国美国商会认为这是双边对话带来的成果之一。其它成果还包括能源、环境和产品安全方面的突破。

此外,中美双方都应当更加注重参与多边会谈,例如G20峰会和世界贸易组织。虽然中国和美国是世界经济的两个极其重要的构成部分,但若想取得真正有意义的进展,还需要其他主要经济体的积极参与。

### 美中能源和环境合作

在第四次战略经济对话会议上,中美两国签署了《美中能源环境十年合作框架》,为两国在环保和能源效率领域的合作奠定了基础。

此外,该框架为中美两国实验室和研发机构之间的对话与交流提供了众多新机会。美国总统奥巴马重申了其参选时做出的环保承诺,这一首要任务无疑将促进中美两国之间的合作。



on pre-determined government preferences. Second, policies that shrink the market of competitors limit private investment, inhibiting the scope of innovation.

#### Food and Product Safety

In 2008, the US Food and Drug Administration (FDA) opened offices in Beijing, Guangzhou and Shanghai to work with China on food and product safety issues. While this was partly in response to recent food safety issues in China, it reflects recognition of the connectedness of the modern global food supply. Additional offices have either been opened or are planned in India, Europe and Latin America.

The choice of China for the first overseas FDA offices is welcomed, and a positive reminder of the deepened ties that agencies have built through dialogue in recent years. The move is extremely encouraging, with provisions for the certification of third-party inspectors possibly creating new service business opportunities for American and Chinese firms alike. With this cooperation now established, AmCham-China hopes to see vigorous, non-discriminatory enforcement of food and product safety regulations, including China's new Food Safety law, improving the marketplace for all consumers.

#### Future Cooperation

In the context of a global financial and economic crisis, the value of these types of economic dialogue frameworks is even clearer, as discussions and negotiations can move forward more quickly. AmCham-China urges continued dialogue that targets specific tangible results. We will continue to monitor the situation for clear achievements.

#### US Trade/Export Promotion

In 2008, the US trade deficit with China reached US \$266 billion (RMB 1.8 trillion), marking a record high. AmCham-China recognizes the concern and disproportionate emphasis placed on the bilateral trade deficit in the US-China trade relationship. While China's currency regime has become a touchstone for broader anxieties about competition from China, the value of the RMB is not the primary cause of the US trade deficit with China, and the US should not expect RMB appreciation to have a large impact on its trade imbalance with China. Moreover, since China abandoned the currency peg in July 2005, the RMB has appreciated 17.2 percent against the US dollar by the end of 2008.

The imbalance reflects a larger, fundamental structural imbalance within each country's economy. China's large account surplus has provided global liquidity that has fueled US household borrowing and consumption. This in turn fueled demand for China's production, which its own domestic consumption has been too low to absorb.

Fundamentally addressing the trade imbalance means making structural adjustments in each country's

economy. China must focus on increasing domestic consumption to absorb its excess production and increase imports. The US, in contrast, needs to increase its domestic savings rate. Concurrently, the US must aggressively enhance its competitiveness in capturing more market share in China, encourage Chinese outbound investment to America, and enact policies and programs to promote US products and exports.

In 2008, China continued to grow as a global investor instead of merely as a recipient of foreign investment. Chinese outbound investment (non-financial) grew 63.6 percent year-on-year in 2008 to reach US \$40.6 billion (RMB 278.5 billion). Chinese foreign direct investment (FDI) can bring economic benefits to the US economy, including job creation, promotion of R&D and enhancement of US exports to China, just as investment from other countries does. It is important to make clear that Chinese investment in the US is welcome and beneficial, which would mirror a Chinese policy that hopefully would be equally welcoming of American FDI into China. This reciprocity would reinforce broader trade agendas that emphasize openness. Equally important to implementing non-discriminatory policies is fostering a perception of openness to communicate that Chinese FDI is welcome. We encourage the US government to take an official stand supporting and welcoming Chinese FDI. This policy will help grow the American economy and improve bilateral trade relations, better positioning the US to take advantage of China's increasing buying power.

Despite US-China export growth of almost 450 percent since the year 2000, EU exports grew even faster. According to the Ministry of Commerce, the EU accounted for over 11 percent of total Chinese imports, compared to seven percent for the US. Thus, while US exports are growing, American companies will require well-funded programs of support, strong US government and Congressional leadership, and a well-coordinated and sustained public-private partnership dedicated to greatly enhancing American firms' competitiveness in China.

Public-private partnerships increasingly play a supporting role to American companies of all sizes in China. One successful example is the US-China Aviation Cooperation Program (ACP), a public-private partnership between the USTDA, the FAA, the CAAC, and private stakeholders in the US aviation industry. The ACP has significantly contributed to a positive and mutually beneficial relationship between American aerospace companies and China's government authorities and aviation industry.

AmCham-China also encourages the US government to revisit its export control and visa policies. The US trails both the EU and Japan as an exporter of technology to China, hurting America's economic interests. China's technology imports in 2008 totaled US \$29.5 billion (RMB 202.1 billion), up 11.4 percent over 2007, and there is significant potential for growth.

除了构建有力框架和加大环保力度之外,坚持自由贸易和非保护主义原则也是取得长期成功的重要因素。为了解决我们目前所面临的能源和环境问题,最重要的一点是要采用最好的技术,而无论其源自何方。

中美两国政府已承诺为新能源技术开发提供巨大的财政支持。奥巴马政府承诺注资150亿美元(人民币1028亿元),而中国政府也承诺投入巨额资金。但是,为了让这些投资发挥最大作用,政府应避免将资金支出与反竞争措施相挂钩。这些政策主要从两方面对创新产生不利影响:第一,它们削弱了创意竞争,这意味着技术成功与否不是取决于质量,而是取决于预先确定的政府取向;第二,限制市场竞争的政策会阻碍私人投资,抑制创新。

#### 食品和产品安全

2008年,美国食品与药品管理局在北京、广州和上海开设办事处,以期与中国在食品和产品安全问题上进行合作。此举旨在解决中国近期的食品安全问题,反映了现代化全球食品供应的相互关联性。此外,美国食品与药品管理局还在印度、欧洲和拉丁美洲开设或正在筹设办事处。

我们欢迎美国食品与药品管理局在中国开始了首家海外办事处,它表明近几年来两国政府机构通过对话加深了合作关系。此举十分鼓舞人心,第三方认证规定有望为美国和中国企业创造新的服务业机遇。随着这种合作关系的确立,中国美国商会希望食品和产品安全法规(包括中国新出台的《食品安全法》)得到有力的执行,从而改善消费市场环境。

#### 未来合作

在金融和经济危机席卷全球背景之下,这些经济对话框架更有价值,因为它们有助于推进协商和谈判工作。中国美国商会促请中美双方继续开展对话,力争取得具体的实质性成果。我们将会继续关注两国在这一方面的最新进展。

#### 推进美国贸易/出口

2008年,美国对中国的贸易赤字创历史新高,达2660亿美元(1.8万亿人民币)。中国美国商会发现美国对中美贸易关系中双边贸易赤字问题的认识存在偏差。尽管在美国对来自中国竞争的广泛忧虑中,中国的货币体制已成为焦点,但人民币价值并不是造成美国对华贸易赤字的主要原因,美国也不应指望人民币升值对解决中美贸易

失衡问题产生实质影响。此外,自2005年7月中国宣布人民币与美元脱钩到2008年年底,人民币对美元已经升值17.2%。

这种失衡表明两国经济内部存在更大的、根本的结构性失衡。中国的巨额贸易顺差使得全球流动性有所提高,刺激了美国的家庭贷款和消费,并进而促进了对中国的生产需求,而中国的内需已不足以消化这一产能。

从根本上解决贸易失衡意味着两国经济需要进行结构性调整。中国必须努力扩大内需,以便消化过剩的产能并增加进口。相反,美国必须提高国内储蓄率。与此同时,美国还必须积极扩大在华市场份额,鼓励中国企业去美国投资,并实施旨在扩大产能和出口的政策和计划。

2008年,中国作为全球投资者的地位不断上升,而不再是纯粹的投资接受国。去年,中国对外投资规模同比增长63.6%,达406.5亿美元(人民币2785亿元)。与来自其他国家的投资一样,中国的对外直接投资可为美国经济带来利益,包括增加就业机会,促进研发,并推动美国对中国的出口。美国在鼓励其国内企业在中国投资的同时,应明确指出美国欢迎中国企业前来投资,希望中国可以继续平等欢迎美国在华投资的政策,这一互惠将加强以开放为基础的两国贸易关系。与实行非歧视政策同样重要的是,美国需要对来自中国的投资保持开放的态度,要公开表明欢迎中国的对美直接投资。我们鼓励美国政府正式表态,支持和欢迎中国对美直接投资,以此推动美国经济增长和加强双边贸易关系,使美国更好地利用中国日益强劲的购买力资源。

尽管美国对中国的出口自2000年以来增长了近450%,但欧盟出口增速更快。据中华人民共和国商务部统计,在中国的进口总额中,欧盟所占比例超过11%,而美国为7%。因此,尽管美国的出口不断增长,美国企业仍需要完善的资金支持计划、美国政府和国会的正确领导以及政府与企业的长期合作,以进一步增强美国企业在华竞争力。

政府与企业间的合作关系对于在华各种规模的美资企业日益重要。一个成功的例子是美中航空合作项目,这是美国贸易发展署、美国联邦航空管理局、中国民用航空局以及美国航空企业之间的合作项目。美中航空合作项目对美航空企业与中国政府机构及航空业之间的互惠互利关系做出了巨大贡献。

中国美国商会还鼓励美国政府重新审视其出口管制和签证政策。美国的对华技术出口落后于欧盟和日本,这

Relevant US agencies must craft export control policies to enhance economic security, while protecting its national security interests, by controlling only exports of truly critical and sensitive technologies. Controlling technologies that are widely available does not serve America's national security interests, while at the same time hurting its economic competitiveness.

Overly-restrictive and sometimes ambiguous export controls have caused material damages to US businesses. Furthermore, the perception that these regulations are actually protectionism can lead to retaliatory trade measures or potential trade disputes. In particular, the Chinese government has raised the issue of export controls as possible trade protectionism during recent bilateral discussions with the US at the SED and the JCCT. Furthermore, it has used this as justification for enacting veiled trade barriers, including tariffs, Chinese national standards and increased license requirements. Clear and coordinated policy reflecting market realities is crucial to protecting US national security while maintaining its global competitiveness.

Also crucial to facilitating trade and the success of the bilateral relationship is easing both business and tourist travel between the two countries. Most immediately, issuance of visas to qualified travelers between the two countries is essential to sustaining the flow of international trade necessary to overcome the global economic crisis. AmCham-China applauds China and the US for signing a memorandum of understanding to facilitate group leisure travel to the US in 2008. However, the inefficiency of the Security Advisory Opinion administrative processing in Washington continues to discourage potential customers and partners from attempting to conduct business activities in the US. We recommend further efforts to encourage travel between the two countries, including more resources to meet the projected increase in Chinese demand for business and tourist visas and streamlining administrative processes for US companies that allow their suppliers, employees and potential customers to travel to the US.

AmCham-China supports pragmatic and constructive efforts to rebalance America's trade relationship with China that avoids triggering retaliatory trade measures and instead focuses on enhancing America's own competitiveness and rebalancing its own economy.

### Key Recommendations

#### For the Chinese Government:

- Strengthen implementation and enforcement of existing laws through capacity-building, commitment of resources and realignment of local government incentives.
- Increase transparency in the implementation of enacted laws.

- Avoid protectionism, particularly in the context of implementation of the stimulus program. Accelerating movement toward entering the GPA would be a positive step both to ensure equal treatment in China, and also to enhance Chinese firms' ability to compete in the competitive bid process for US stimulus projects.

#### For the US Government:

- Renew the commitment to strategic dialogue, both at higher and working-levels.
- Increase trade/export promotion efforts, including revised export control policy, improving environment for Chinese outbound investment and increasing public-private partnerships like AmCham-China's ACP.
- Commit to open markets and anti-protectionism, including in the implementation of the stimulus package.

#### For Both Governments:

- Re-commit to continued bilateral economic cooperation, including government-to-government cooperation programs like the 2008 FDA-State Food and Drug Administration program.
- Avoid protectionist policies that would lead to trade wars and retaliation, hurting all economies. Renew discussions on establishing a bilateral investment treaty.
- Continue efforts to convene regular bilateral economic dialogues in the vein of the SED and JCCT.
- Strengthen commitment to anti-protectionism and market access. Avoid policies that overly emphasize short-term political and economic goals at the expense of medium and long-term economic growth.

有损于美国的经济利益。中国2008年的技术进口额共计295亿美元(人民币2021亿元),较2007年增长11.4%,并仍有巨大的增长潜力。美国相关部门必须出台有助于增强经济安全的出口管制政策,同时通过控制真正重要、敏感的技术的出口保护其国家安全利益。控制普遍存在的技术不利于美国的安全利益,同时会削弱其经济竞争力。

过分限制且不够明确的出口管制已经对美国企业造成了实质性的损害。此外,这些规定涉嫌掺杂保护主义,可能会导致贸易报复或潜在贸易纠纷。尤其值得一提的是,最近中国政府在通过战略经济对话和中美商贸联委会与美国进行的双边贸易谈判中将出口管制问题列为了贸易保护主义。此外,中国政府已经以此为理由设置了许多无形的贸易障碍,包括关税、中国国家标准以及更加严格的许可证要求。出台反应市场真实情况的明确政策,对于保护美国国家安全和保持其全球竞争力都十分重要。

对于促进贸易和双边关系而言,放宽两国间的商旅限制也很重要。直接地说,向符合条件的游客发放签证对于促进国际贸易、对抗全球经济危机十分重要。中国美国商会对中美两国在2008年就推动中国公民组团赴美旅游签署谅解备忘录一事表示支持。但是,华盛顿的安全咨询意见(SAO)行政管理程序效率低下,令许多潜在客户和合作伙伴对开展美国业务望而却步。我们建议加大力度鼓励两国间旅游,包括投入更多资源满足中国对商业和旅游签证的更大需求,并简化行政管理程序,让美国企业的供应商、员工和潜在客户能够前往美国。

中国美国商会对重新平衡美中两国贸易关系的建设性工作表示支持,在避免引发贸易报复的同时,应专注于提高美国自身的竞争力,使其经济重新实现平衡。

### 主要建议

#### 对中国政府

- 通过能力建设、资源投入和地方政府激励计划的重新调整来加大现有法律的执行力度。
- 提高执法过程的透明度,完善法律框架。
- 避免保护主义,尤其是在实施经济刺激计划方面。尽快加入政府采购协定不仅可以确保中国实现平等待遇,而且还能提高中国企业在美国经济刺激计划竞投过程中的竞争能力。

#### 对美国政府

- 继续积极开展战略对话。
- 加大力度推动贸易/出口,包括调整出口管制政策,改善中国对美国投资环境,并加强政府与企业之间的合作关系,如中国美国商会的航空合作项目。
- 致力于开放市场和反保护主义,尤其在经济刺激方案的实施过程中。

#### 对两国政府

- 持续开展双边经济合作,包括政府间合作项目,例如2008年美国食品与药品管理局与中国国家食品药品监督管理局合作项目。
- 避免保护主义政策,因为保护主义可能导致贸易战和报复行动,从而损害所有经济体的利益。重新就签署双边投资协定举行会谈。
- 继续以战略经济对话和中美商贸联委会的形式定期开展经济对话。
- 加强反保护主义和市场准入承诺。避免仅仅强调短期政治与经济目标而牺牲中长期经济增长的政策。

## Competition Law

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

With some exceptions, the AML's framework and substantive provisions are generally consistent with prevailing practices of anti-trust regulatory regimes worldwide. The AML addresses each of the three principal areas of antitrust regulation: anti-competitive "monopoly agreements" involving multiple firms, exclusionary and predatory unilateral conduct by firms with substantial market power ("abuse of dominance"), and mergers, acquisitions, and other transactions that may restrict or reduce competition. Beyond regulating private anti-competitive conduct, the AML also includes measures against "administrative monopoly," or the misuse of official authority to protect or promote favored firms. But while the final text of the AML clearly incorporates many well-established principles, key implementation questions remain unresolved.

If the AML is construed to promote consumer welfare and economic efficiency in accordance with established worldwide practices, and is enforced in a transparent and non-discriminatory manner, it has the potential to help markets better serve Chinese consumers while improving the overall efficiency of the Chinese economy.

### Enforcement Structure

The AML prescribes a two-tiered enforcement structure involving an interagency "Anti-Monopoly Commission" responsible for policymaking and coordination of one or more anti-monopoly enforcement authorities. The State Council has designated three primary enforcement authorities. The Anti-Monopoly Bureau of the Ministry of Commerce (MOFCOM) is responsible for merger review. Meanwhile, the National Development and Reform Commission (NDRC) and the Anti-Monopoly and Anti-Unfair Competition Enforcement Bureau of the State Administration for Industry & Commerce (SAIC) divide responsibility for "behavioral" rule enforcement. Specifically, the NDRC carries responsibility for

investigating and sanctioning pricing violations and the SAIC has jurisdiction over other anti-competitive conduct.

AmCham-China is concerned that this division may hinder coherent AML enforcement. First, it remains unclear how the NDRC and SAIC will address cases involving both price and non-price conduct. Second, MOFCOM, SAIC and NDRC may have different approaches to defining markets, gauging market power and balancing policy goals when applying the many "public interest" exceptions of the AML. Third, MOFCOM may review mergers on the basis of anticipated anti-competitive conduct even if such conduct falls within the preview of SAIC. Published measures explaining authority breakdowns and guidelines for implementation would facilitate companies' compliance with the AML.

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

### Transparent Rulemaking and Enforcement

Transparent and predictable enforcement allows companies to plan commercial strategies that comply with competition laws. Formal implementing regulations, interpretive guidelines from regulators and the published decisions of administrative agencies and courts are critical to these efforts.

### Public Comment

The AML provides only high-level guidance on substantive competition rules and enforcement procedures. AmCham-China urges the publication of clear, detailed explanations of implementing measures and enforcement decisions, in line with policies of other government agencies. We also request a period for public comment on these implementing measures. AmCham-China applauds the State Council's publication in March 2008 of the draft Rules of the State Council on Notification Thresholds for

## 竞争法

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

除了少数规定外,《反垄断法》的整体框架和大部分规定都与国际反垄断监管机构的通用做法相一致。对于反垄断规定的三大主要领域,《反垄断法》都有所涉及:多家企业间的反竞争“垄断协议”;占据巨大市场份额的企业实施的排外的、掠夺性的单边行动(“滥用市场支配地位”);以及可能限制或削弱竞争的并购和其他交易。除了对私有公司反竞争行动进行调控外,《反垄断法》还包含反“行政垄断”(滥用职权保护或促进受惠公司)的措施。然而,尽管最终颁布的《反垄断法》明确将诸多成熟的原则纳入其中,但在执行方面还是遗留了许多未解决的关键性问题。

如果《反垄断法》被解读为依照国际惯例造福消费者、提高经济运行效率,并得到透明、公正的实施,它有望帮助市场更好地服务于中国消费者,同时提高中国经济的整体运行效率。

### 执法框架

《反垄断法》规定采用双重执法框架,其中包括一个政府部门间“反垄断委员会”,负责制定政策和协调一个或多个反垄断执法机构的工作。国务院已经指定了三个主要的执法机构。商务部反垄断局负责并购审核。同时,由国家发展和改革委员会联手国家工商行政管理总局下属反垄断与反不正当竞争执法局共同负责“行为”规定的执法工作。具体而言,国家发改委负责调查和制裁非法定价行为,而国家工商行政管理总局则负责其他的反竞争行为。

中国美国商会担心这样的职能划分可能不利于在实施《反垄断法》的过程中保持一致。首先,国家发改委与国家工商行政管理总局将如何处理同时涉及价格和非价

格行为的案例仍不明确。其次,在执行《反垄断法》中许多涉及“公共利益”的特殊规定时,商务部、国家工商行政管理总局以及国家发改委界定市场、衡量市场支配力和协调政策目标的方法可能不尽相同。最后,商务部可能以预先的反竞争行为为由重新审查并购,即使这种行为应事先由国家工商总局审查。颁布实施办法,阐明执法过程中的职权划分和指导方针,将有助于各公司遵守反垄断法。

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

### 透明的规则制定和执法

透明、可预测的执法使得广大企业能够制定符合竞争法的商业战略。正式的执行规定、监管机构出台的具体指导方针以及行政管理部门和法院公布的裁定对此起着重要作用。

### 公共意见

《反垄断法》仅仅就实质性竞争规定和执法程序提供指导。中国美国商会呼吁参照其他政府部门的政策,对实施办法和执法决策作出详细明确的解释。我们还希望就这些实施办法征求公众意见。中国美国商会对国务院2008年3月出台的《国务院关于经营者集中申报标准的规定》(征求意见稿)非常赞赏。因此,最终颁布的《反垄断法》远比之前的草案更符合国际通用实践。

商务部近期的规则制定举措令中国美国商会深受鼓舞。2009年1月和2月,商务部出台了六套拟定的实施办法来征求公众意见。不过,在未征求公众意见的情况下,商务部公布了《关于经营者集中申报的指导原则》和《关于经营者集中申报文件资料的指导意见》。

Concentrations of Undertakings for public comment. As a result, the final AML was far more consistent with prevailing international practices than previous drafts.

AmCham-China is encouraged by MOFCOM's recent rulemaking initiatives. In January and February of 2009, MOFCOM released six proposed implementing measures for public comment. However, MOFCOM released without public comment the Guiding Opinions on the Notification of Concentrations of Business Operators, and the Guiding Opinions on Notification Materials of Concentrations of Business Operators.

### Transparent Enforcement

AmCham-China encourages the Chinese government to promote transparency in AML enforcement. Authorities should also clarify the requirements of the AML through routine publication of enforcement decisions or summaries. The AML only requires enforcement authorities to publish decisions where a concentration is prohibited or approved subject to conditions imposed by the authorities. However, it does not require enforcement authorities to publish their decisions finding and sanctioning monopoly agreements and abuses of dominant market positions.

Moreover, the AML does not prescribe standards for the explanation of factual findings or legal analysis of published decisions. AmCham-China is concerned that published decisions may not provide sufficiently detailed guidance on AML compliance. For example, the only reported enforcement decisions published as of April 2009 are MOFCOM's imposition of conditions on InBev's acquisition of Anheuser-Busch and prohibition of Coca-Cola's proposed acquisition of Huiyuan. These brief decisions described MOFCOM's investigative steps and conclusions, but even the Coca-Cola decision provided only a thin explanation of the actual methodology and factual findings used to support MOFCOM's conclusions. For published enforcement decisions to be useful, they must provide meaningfully detailed explanations of the authorities' factual findings and legal reasoning.

In other jurisdictions, published enforcement decisions provide crucial guidance and a valuable opportunity to educate companies about compliance. AmCham-China recommends that the enforcement authorities develop procedures for publishing all enforcement decisions in a timely and fully reasoned manner. While published decisions must protect confidential business information, they should include meaningful summaries of the relevant evidence, as well as analysis and conclusions.

### Behavioral Rules

The AML's "behavioral" rules target two types of anti-competitive conduct: restrictive agreements (called "monopoly agreements" in the AML) and abuses of dominant market positions (i.e., anti-competitive single-firm conduct). The AML's behavioral rules

are generally consistent with prevailing international practices. However, as implementing measures have yet to be published and no enforcement decisions have been issued, it is difficult to assess the extent to which actual enforcement converges with international practices. Due to this uncertainty, companies cannot anticipate whether their conduct is lawful.

### Prohibition of "Unfair" Pricing by Dominant Firms

The AML prohibits dominant firms from unfair pricing. Although an analogous provision remains in the European Commission Treaty, worldwide competition authorities rarely initiate enforcement actions against dominant firms for charging "unfairly high" prices unless there is other exclusionary or predatory conduct. Aggressive enforcement of this provision in China could lead to direct price regulation or deter rational pricing practices by dominant firms. The Price Law already provides a framework for explicit regulation of the pricing of certain commodities, leaving other prices to be determined by the market. The prohibition of "unfair" pricing by dominant firms as an instrument for second-guessing market prices would be an unfortunate step backwards for China's economic reforms.

### Exemptions for Monopoly Agreements

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

### "Rule of Reason" Standards

The AML prohibits dominant firms from engaging in tying, discriminatory treatment, refusal to deal, below-cost pricing and restrictive or exclusive dealing "without justification." Although this qualifier appears to invite the "rule of reason" approach to balancing the pro-competitive and anti-competitive aspects of specific practices by firms with market power, the enforcement authorities' approach to this issue is unclear.

### Mandatory Minimum Penalties

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

### 透明的执法

中国美国商会鼓励中国政府提高实施《反垄断法》的透明度。执法机构还应通过定期公布执法决策或纲要来明确说明《反垄断法》的要求。《反垄断法》只要求执法机构公布根据其设定的条件做出的有关“集中”被获准或被禁止的裁定。但是，它并不要求执法机构公布其认定垄断协议和滥用市场支配地位的裁定。

此外，《反垄断法》并没有规定一个标准，来说明已公布裁定的事实认定和法律分析。中国美国商会担心公布的裁定可能无法充分提供有关《反垄断法》的详细指导。举例而言，截至2009年4月，商务部公布的审查决定包括附加条件批准英博 (InBev) 收购安海斯-布希 (Anheuser-Busch) 交易和禁止可口可乐收购汇源公司。裁定书描述了商务部的调查步骤和结论，但对于用来支持其结论的实际方法和事实认定依据，却几乎未作任何说明，即使是对可口可乐公司的裁定也只有很少的说明。要让公布的执法裁定发挥作用，执法机构必须就其事实认定和法律论证提供足够详细的说明。

在其他司法行政区，公布的执法裁定可提供重要指导，帮助公司做到遵纪守法。中国美国商会建议执法机构制定相关程序，以便及时有效地公布所有执法裁定。公布的裁定必须保护机密的商业信息，但也应包括相关证据纲要以及分析和结论。

### 行为规定

《反垄断法》的“行为”规定主要针对两种反竞争行为：限制性协议（在《反垄断法》中称为“垄断协议”）以及滥用市场支配地位（即反竞争单一企业行为）。一般来说，《反垄断法》的行为规定与国际通用实践相一致。但是，由于尚未出台实施办法，也未曾公布过任何执法裁定，因此很难判定实际执法过程是否与国际实践相一致。鉴于这一不确定性，公司无法预计他们的行为是否合法。

### 禁止占据支配地位的公司提出“不合理”的定价

《反垄断法》严禁占据支配地位的公司提出不合理的定价。尽管欧盟委员会条约 (European Commission Treaty) 中也有类似的规定，但除非存在排外的、掠夺性的行为，否则全球竞争监管部门很少会以收取“过高的”价格为由对占据支配地位的公司提起执法诉讼。在中国大力执行这一规定可能会导致直接的价格管制或阻碍占据支配地位的公司进行合理的定价。《价格法》已经为某些商品定价的外部管制提供了框架，其它价格可以由市场决定。通

过禁止占据支配地位的公司提出“不合理”的定价来预测市场价格对于中国的经济改革而言将是一种倒退。

### 针对垄断协议的豁免

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

### “合理原则”标准

《反垄断法》禁止占据支配地位的公司“在没有正当理由”的情况下从事搭售、歧视性待遇、交易抵制、低于成本的定价、限制性或非排他性交易。尽管这一规定似乎借助“合理原则”来平衡那些具有市场支配力的企业在具体实践中的促进竞争和反竞争方面，但执法机构处理这一问题的方法仍不明确。

### 强制性最低罚款

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

中国美国商会促请，在实施细则中明确指出销售收入仅以在华相关产品市场的收入为准。这将使《反垄断法》与美国和欧盟反垄断法相一致。此外，我们担心以年销售额的1%作为强制性最低罚款与国际惯例不符，并将导致罚款与少数案件中造成的损害不成比例。

### 宽恕政策

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

### 并购审核

在中国现有的反垄断规定下，并购管制是美国公司所

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

### Leniency Policy

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

### Merger Review

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

US companies report that MOFCOM personnel involved in merger reviews are increasingly familiar with the principles and procedures of merger review systems in other jurisdictions. Nevertheless, there is a pressing need for additional implementing measures and official guidance adding “secondary level detail,” which is essential to clarity and predictability.

### Proposed Implementing Procedures

MOFCOM's release for public comment of six proposed implementing measures in January and February of 2009 addressed many questions concerning Chinese merger review procedures. In February 2009, AmCham-China submitted comments on several proposed implementing measures. While the proposed implementing measures converge with prevailing international practices in many respects, concerns remain.

### Clarification on Implementation Measures

AmCham-China urges guidance on whether sales into Chinese export processing zones for further

manufacturing and re-export should be considered sales into China for purposes of triggering notification requirements. Since they are not treated as imports into China for Customs purposes or as foreign exchange transactions, clarification is necessary.

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

AmCham-China is also concerned that the proposed implementing measures suggest that many joint ventures, not subject to merger review in other countries, would qualify as reportable concentrations.

Furthermore, proposed implementing measures follow international practice in aggregating revenues of transaction parties at the “ultimate parent entity” level. With respect to the reporting of acquisitions of subsidiaries or business lines, the draft implementing measures also appear to follow international practice in focusing on the turnover of the target rather than the selling entity. As this is a critical threshold question, the measures require clarification to confirm that only the turnover of the business being acquired (rather than the selling entity) should be considered.

### Submission Clarifications

Clarification on many ambiguous areas regarding submissions would greatly streamline the process.

The proposed measures may be interpreted to require authentication by a Chinese consulate of the certificate of incorporation for foreign filers, which would needlessly complicate and delay the submission of a notification. Moreover, the proposed measures do not specify if the proposed implementing measures require full translations of all submitted materials.

None of the proposed measures require MOFCOM to inform the notifying party that a submission has been deemed complete and that the initial review period has started. Nor do they establish a deadline for MOFCOM to evaluate a submission, identify any deficiencies, or notify the parties of additional information to be supplied. The measures also do not specify whether the deadline for the completion of MOFCOM's evaluation is calculated in calendar days or business days.

In the past, it has also been unclear whether notifying parties can submit transactions before the final signing of the transaction agreements. It would be helpful to confirm that notifying parties may submit a concentration for review before the concentration agreement becomes final and binding upon the parties.

The proposed implementing measures further require parties to submit a broad range of internal documents for review, such as due diligence reports. These burdensome requirements, which are more invasive

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

据美国企业反映，负责并购审核工作的商务部人员越来越熟悉其他司法管辖区并购审核体系的原则与程序。但这也就迫切需要更多实施办法和官方指导来提供更多细节，这对于透明度和可预知性而言十分重要。

### 拟定的实施程序

商务部于2009年1月和2日出台六套拟定实施办法的征求意见稿，这解决了许多有关中国并购审核程序的问题。2009年2月，中国美国商会就几项拟定的实施办法提出了建议。尽管拟定的实施办法与国际通用实践相一致，但仍存在诸多问题。

### 阐明实施办法

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

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

中国美国商会还担心拟定的实施办法表明许多不受其他国家并购审核影响的合资企业将成为应报告的“集中”。

此外，拟定的实施办法遵循国际实践，以“最终母公司”为准合计交易方的收入。至于子公司或业务部门的收购报告，实施办法草案似乎也遵循国际实践，关注收购目标而非出售实体的营业额。这是一个重要的门槛问题；这条规定要求只有被收购企业（而非出售实体）的营业额被考虑在内。

### 提交说明

针对有关提交申请的许多模棱两可的方面进行详细说明将有助于大大简化程序。

拟定的实施办法可以解释为要求中国领事对提交申请的外国公司的登记执照进行鉴定，这将使提交申报变得过于复杂并造成延误。此外，拟定的实施办法并未明确指出是否要求对所有提交材料进行全文翻译。

所有拟定的实施办法都没有要求商务部通知申报方提交已经完成，初步审核期开始。它们也没有对商务部评估提交内容、发现不足或通知对方提供更多资料设定限期。此外，它们也没有明确指出商务部完成评估的最终期限是按日历日计算，还是按营业日计算。

过去，申报方是否能够在最终签署交易协议之前提交交易也不明确。确认申报方可以在签署最终集中协议之前提交“集中”以供审核将大有帮助。

拟定的实施办法进一步要求各方提交大量内部文件以供审核，如尽职调查报告。这些繁冗的要求比美国和欧盟委员会类似的提交要求更具侵犯性，应予以撤销。

### 拟定的实施办法存在的其他问题

中国美国商会发现，在中国的法律体系下，律师与当事人之间的保密范围有别于其他司法管辖区。但是，这对依照相关法律评估和推进国际交易行为起着至关重要的作用。中国美国商会呼吁商务部采纳国际竞争网络（International Competition Network）的建议，在审核并购交易时“充分考虑”国外管辖区适用的“法律特权”。

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

一旦商务部确定“集中”不会导致反竞争问题，就没有理由再将交易推迟到审核期结束后。商务部在决定不再进行进一步审核或批准一项交易后应立即通知申报方。

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

### 补救措施

旨在应对“集中”的特定反竞争风险的结构性的补救措施（如剥离）最为可靠，并易于管理。相反，行为性的补救措施会对执法部门和交易方造成持续监督的成本和负担，并增加对消费者产生不利影响以及阻碍促进竞争行为的风

than comparable filing requirements in the US and European Commission, should be removed.

### Other Issues with the Proposed Implementation Measures

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

The proposed implementing measures recognize the notifying parties’ right to “make statements and bring a defense.” AmCham-China’s February 2009 comments (see shadow-box at the end of this chapter) recommended specific procedures to reinforce the notifying parties’ right of defense.

Once MOFCOM determines that a concentration does not raise anti-competitive concerns, there is no reason to delay the transaction until the expiration of the applicable review period. MOFCOM should immediately inform the notifying party upon its decision not to initiate a further review or block a transaction.

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

### Remedies

Structural remedies designed to address specific anti-competitive risks of a concentration (e.g., divestitures) are generally the most reliable and readily administered. Behavioral remedies, conversely, impose costs and burdens of continued supervision on both the agencies and transaction parties, and increase the risks of unintended harmful effects on consumers as well as deterring pro-competitive conduct. The proposed implementing measures, however, single out two behavioral remedies: compulsory licensing of IP and compulsory access to networks. This may be misinterpreted as encouraging these remedies, which are complex, controversial, and exceptional in other jurisdictions.

### “Reserve Power” and Notification Thresholds

The Rules of the State Council on Notification Thresholds for Concentrations of Undertakings preserve MOFCOM’s ability to require a notification of concentrations which do not satisfy the turnover thresholds. AmCham-China hopes that this reserve power will be used only sparingly, and that it does not operate as a “catch all,” reaching cases where jurisdictional issues may be difficult to

resolve. AmCham-China urges clarification of the circumstances under which this power will be used, together with an explanation of the procedural consequences.

### Protection of “Famous National Brands”

The AML preserved MOFCOM’s ability to intervene in transactions to protect national and economic security and preserve “famous national brands.” In practice, whether intervention will occur on these grounds creates a significant element of uncertainty, particularly where a US company wishes to take control of a Chinese company that holds one or more “famous” trademarks. Many commentators have expressed concern that MOFCOM’s review of the proposed Coca-Cola merger with Huiyuan was influenced by the prospective transfer of ownership of “famous” trademarks or brands to foreign ownership. AmCham-China encourages greater clarity on the circumstances in which foreign ownership of a Chinese trademark could be found to be unacceptable and assurance that competition review will be insulated from review on these other grounds.

### Requirement for Local Chinese Counsel

Lawyers employed by non-Chinese law firms are not allowed to appear before MOFCOM to represent US clients in merger control proceedings, even when the lawyers in question are Chinese nationals with local bar qualifications. Currently, there is little local experience in this field, and use of non-specialists might result in material inefficiency for filing parties. Therefore, allowing qualified Chinese lawyers employed by foreign firms to appear before MOFCOM would bring the antitrust experience of foreign firms from more mature jurisdictions to the merger control process.

### Industrial Policy and Protectionist Uses of the AML

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

Article 7 requires the state to “protect the lawful business activities” of state-owned enterprises (SOEs) in industries “that implicate national economic vitality and national security” or “in which there are legal monopolies,” although it also prohibits such SOEs from abusing their dominant positions to harm consumers. Although Article 7 is not technically drafted as an exemption from the AML for SOEs, both the scope of sectors covered and the precise nature of the special treatment outlined are ambiguous. AmCham-China is concerned that Article 7 may provide a basis for enforcing the AML as an instrument of industrial policy.

险。但是，拟定的实施办法采用了两种行为性补救措施：强制实施知识产权许可以及强制网络准入。这可能会被曲解为鼓励这些在其他司法管辖区被认为是极为复杂、矛盾而特殊的补救措施。

### “保留权力”和申报门槛

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

### 保护“国家驰名商标”

《反垄断法》使得商务部能够干预交易，以保护国家和经济安全以及“国家驰名商标”。在实践中，是否会进行干预是一个重大的不确定因素，尤其是当有美国公司希望控股一家拥有一个或多个“驰名”商标的中国公司的情况下。许多评论者都表示出了担忧，商务部对可口可乐收购汇源的审查是受到了“驰名商标”或品牌可能会转让的影响。中国美国商会呼吁进一步明确不能接受外资企业拥有中国商标的情况，并确保竞争审核独立于其他方面的审核。

### 对中国本土法律顾问的要求

外资律师事务所聘用的律师不得在并购管制诉讼中代理美国当事人，即便这些律师是拥有当地执业资格的中国公民。目前，国内在这方面的经验十分匮乏，起用非专业人士可能会导致提交方的材料无效。因此，允许外资企业中有资质的中国律师直接与商务部沟通将把来自更成熟的司法管辖区的外资企业的反垄断经验带到并购管制程序中。

### 行业政策和带有保护主义色彩的《反垄断法》使用

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

《反垄断法》第7条规定“国有经济占控制地位的关系国民经济命脉和国家安全的行业以及依法实行专营专卖的行业，国家对其经营者的合法经营活动予以保护”，虽然该法案也规定国有企业不得利用其控制地位或者专营专卖地位损害消费者利益。尽管从技术上而言，第7条

的规定并不旨在让国有企业免受《反垄断法》的约束，但该项特别待遇的行业覆盖范围以及确切的性质均不明确。中国美国商会担心，第7条规定可能会为有些人将《反垄断法》作为一种行业政策手段加以利用提供法律依据。

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

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

第27条允许反垄断监管机构考虑所提议的交易对“其他相关经营者”和“国民经济发展与公共利益”的潜在影响。这似乎为保护国内竞争者以及利用并购审核程序考虑国内的宏观经济问题留下了余地。不幸的是商务部禁止可口可乐收购汇源，更多是基于对中国经营者的保护而非对消费者利益的保护。

### 对知识产权拥有者的风险

竞争政策和知识产权的交叠存在争议，而且十分复杂。中国的知识产权保护问题令许多美国公司不禁担心《反垄断法》可能会以有损合法的知识产权的方式实施。

《反垄断法》第55条规定，“经营者依照有关知识产权的法律、行政法规规定行使知识产权的行为，不适用本法；但是，经营者滥用知识产权，排除、限制竞争的行为，适用本法”。然而，《反垄断法》并没有具体说明如何对合法的知识产权行使和滥用加以区分。美国公司尤其担心不合理的市场界定方法可能会导致知识产权拥有者被视为在市场中占据“支配地位”，而他们单方面拒绝向竞争者授予其知识产权的使用权或根据其知识产权的商业价值收取版权税可能会被认定为滥用市场支配地位。中国美国商会鼓励制定指导方针来确保《反垄断法》的执法工作不会破坏知识产权在中国的用途和价值。

Article 11 states that “trade associations shall strengthen self-discipline of the industries, provide guidance for enterprises in the industry to compete lawfully and protect the order of market competition.” AmCham-China is concerned that this may provide trade associations with the ability to take on regulatory or coordinating roles that are potentially inconsistent with full and fair application of the AML’s underlying anti-monopoly principles, particularly roles that may facilitate cartel behavior among domestic industries.

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

Article 27 permits anti-monopoly regulators to consider potential effects of the proposed transaction on “other relevant business operators” and “on the development of the national economy and public interest.” This appears to allow for the protection of domestic competitors and the use of the merger review process to consider domestic macroeconomic issues. MOFCOM’s rejection of Coca-Cola’s proposed merger with Huiyuan unfortunately was based in part on protection of Chinese business operators rather than consumer welfare.

### Risks to IP Rights Holders

The intersection of competition policy and IP rights is controversial and complex. IP protection issues in China are creating concern among many US companies that the AML may be enforced in a manner that undermines legitimate IP rights.

Article 55 states that the AML shall not apply to the “exercise of intellectual property rights pursuant to the stipulations in laws and administrative regulations relating to intellectual property” but “shall apply to actions taken . . . to eliminate or restrict competition by abusing intellectual property rights.” The AML does not, however, clarify the distinction between legitimate exercises of IP rights and abuses. US companies are particularly concerned that unsound approaches to market definition may lead to findings that IP holders are “dominant” in markets for their own technology, and that their unilateral refusal to license their IP to competitors or charging of royalties commensurate with the commercial value of their IP may be condemned as abusive. AmCham-China encourages the adoption of guidelines ensuring that AML enforcement does not undermine the purpose and value of IP rights in China.

### Overlap Issues

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

### Recommendations

- **Ensure that foreign companies and the international law firms representing them have direct access to anti-monopoly regulators (such as anti-monopoly enforcement authorities) and that companies have the right to counsel of their choice (including international counsel) in any proceedings or investigations.**
- Ensure that all implementing measures are publicized in draft form to allow meaningful comment by foreign and domestic interested parties.
- De-emphasize issues unrelated to competition law (such as national security review and protection of “famous” trademarks) when drafting implementing regulations and enforcing the AML.
- Apply and enforce the AML equally to SOEs, trade associations, and domestic and foreign companies.
- Protect the IP rights of both domestic and foreign rights holders and ensure that the AML is not used as a means to circumvent IP protection.
- Clarify and streamline relevant AML procedures, especially for merger review; institute an expedited clearance procedure; and exempt certain clearly defined categories of transactions, especially small acquisitions or those that have no connection to the Chinese domestic market.

### 重叠问题

除了《反垄断法》之外，中国的法律秩序目前还包含《反不正当竞争法》和《价格法》等多项法律法规中的众多其他竞争规定。迄今为止，这些竞争规定尚未得到正式的修正或废除。总的来说，《反垄断法》和其他这些法律都没有具体阐明，先前的竞争规定是否继续与《反垄断法》同时适用，以及将如何解决矛盾之处。虽然《立法法》和《行政处罚法》包含一些有关这一问题的规定，但中国美国商会建议对先前的竞争规定进行正式的修正，以便使《反垄断法》及其实施细则成为中国唯一适用的反垄断法案。

### 建议

- **确保外国公司和代表外国公司的国际律师事务所能够直接与反垄断监管部门接触（如反垄断执法部门），并在任何诉讼或调查中有权选择法律顾问（包括国际法律顾问）。**
- 确保所有实施办法以草案的形式对外公布，让国内外感兴趣的各方提供有意义的建议。
- 在起草实施办法和执行《反垄断法》时淡化与竞争法无关的问题（如国家安全审核和对国家驰名商标保护）。
- 对中小型企业、贸易协会以及国内外公司一视同仁，公平地贯彻、执行《反垄断法》。
- 保护国内外知识产权持有人的权益，并确保《反垄断法》不会成为回避知识产权保护的手段。
- 阐明并简化《反垄断法》有关程序，尤其是并购审核相关程序；加快筛选过程；豁免某些明确界定的交易范畴，尤其是小型收购交易或与中国国内市场无关的交易。

### 有关增强申报方抗辩权程序的建议（摘自中国美国商会2009年2月向商务部提交的对合并审查有关暂行办法的意见与建议）

- 中国美国商会建议，如果商务部认为“集中”会或可能会限制或削弱竞争，则应该发出书面异议声明，并允许申报方抗辩。
- 拟定的实施办法规定商务部能够召开听证会。中国美国商会建议对第7条规定进行修正，如果申报方在接到异议声明之后要求召开听证会，则商务部应满足申报方的这一要求。
- 申报方在听证会召开之前应会接到商务部发来的一份书面声明，其中会指出交易可能造成的反竞争影响。
- 申报方在接到正式的异议声明之后应有足够长的时间为抗辩做准备。
- 申报方应有权在听证会上提出书面证据和口头证词，其中包括经济分析师和其他专家的观点。
- 申报方应能够拿出第三方提供的证据和证词，但前提是要适当保护机密信息。
- 听证会的所有程序都应记录在案，并制成书面抄本，以确保调查机构能够以该方观点的准确记录为依据进行判决，并留待进一步审查时使用。
- 在审查过程中，申报方应有权自己选择法律顾问为其进行辩护。
- 要求反垄断监管机构定期公布其措施和决策，为在华经营者提供指导。

***AmCham-China's February 2009 Comments on Procedures to Reinforce the Notifying Parties' Right of Defense (in Comments on Provisional Measures for Review of Concentrations)***

- AmCham-China respectfully recommends that if MOFCOM concludes that a concentration has or is likely to have the effect of restricting or eliminating competition, MOFCOM shall issue a written Statement of Objections and permit the Notifying Party to bring a defense.
- The proposed measures suggest that MOFCOM has discretion to convene a hearing. AmCham-China respectfully recommends that Article 7 be revised to require MOFCOM to convene a formal hearing if the notifying party requests a hearing after receiving a Statement of Objections.
- Notifying parties should receive a written statement of MOFCOM's concerns regarding potential anti-competitive effects of a transaction before a hearing.
- Notifying parties should have reasonable time after receiving the formal statement of objections before the hearing in which to prepare their defense.
- Notifying parties should have the right to present evidence and arguments, including the views of economists and other experts, both in writing and through oral testimony at the hearing.
- Notifying parties should be able to address evidence and arguments submitted by third parties, subject to appropriate protections for confidential information.
- All hearing proceedings should be recorded and a written transcript should be prepared ensuring that the investigating authority can base its decision on an accurate record of the parties' views and to ensure an accurate record in the event of further review.
- Notifying parties should have the right to be represented by legal counsel of their choice throughout the review process.
- Require anti-monopoly authorities to systematically publish their actions and decisions to serve as a guide for business operators in China.





## Corporate Social Responsibility

Corporate social responsibility (CSR) is the management of business operations in an economically, environmentally, and socially sustainable manner that takes into account the diverse interests of stakeholders. It includes compliance with relevant laws and voluntary efforts to go beyond legal requirements. Business goals include business transparency, strong product safety, environmental protection and excellent labor conditions throughout the supply chain. Important non-business initiatives include programs like community investments and public-private partnerships.

Corporate CSR efforts are imperative to tackling key global challenges, such as climate change. Corporate initiatives can be magnified through cooperation and multi-party engagement. Effective CSR requires exchange and assistance across industry, government, and civil society, and is rooted in a supportive and consistently enforced legal environment. It is a critical challenge to remain committed to CSR principles in the current challenging economic climate, when there may be economic or financial pressures to focus resources elsewhere.

### Significant Developments

China made great strides in fostering CSR throughout 2008, and should be commended for explicit government support expressed in State-Owned Assets Supervision and Administration Commission's (SASAC) CSR Guidelines for State Owned Enterprises and the Ministry of Commerce's (MOFCOM) draft Guidelines on Corporate Social Responsibility Compliance by Foreign Invested Enterprises.

AmCham-China welcomes an environment that encourages CSR with common expectations for all companies—domestic and foreign. However, we also believe it is important to avoid overly-prescriptive CSR regulations that may restrict innovation. Instead, government would be most effective by focusing on encouraging companies to equally explore CSR programs and practices.

In the last year, significant political and social changes affected China's CSR landscape. The reorganization of several pertinent government ministries has the potential to reprioritize issues. Notably, the Ministry of Environmental Protection's (MEP) mandate is stronger

than was that of the former State Environmental Protection Administration, offering hope for greater attention to environment and climate. Moreover, growing government appreciation for the role of civil society, reflected in the establishment of a new Ministry of Civil Affairs (MCA) department for charity and social welfare, became more urgent following the May 12 Sichuan earthquake. The tragedy motivated companies and their employees, and the greater public, to provide support through donations and volunteering. This massive inflow underscored the need for transparent, efficient and engaged civil society organizations.

AmCham-China is proud that the organization and our member companies made contributions of more than the US \$100 million (RMB 685 million) in money, goods and services following the Sichuan earthquake, demonstrating our commitment to the Chinese community.

### Specific Issues

#### Emphasis on Responsible Operations

While CSR is understood differently by companies across China, at present, the discourse is often limited to philanthropy and community engagement. While allowing local flexibility in approaches to CSR is important, AmCham-China believes that all companies should particularly consider CSR implications in their business operations. A company's greatest potential for positive and negative impacts lies with the people and environment it reaches each day.

AmCham-China member companies maintain an ongoing commitment to responsible business practices. Employee health and safety, environmental initiatives, ethical supply chain management, and product quality and safety are key areas in which member companies focus their CSR initiatives.

In light of the aforementioned key issues, we urge the Chinese and US governments to continue encouraging action on:

- **Product quality and safety** – The 2008 melamine crisis again made this issue a top priority for stakeholders in China and overseas. There is a serious need for industry and government to work together to ensure positive outcomes, as neither

## 企业社会责任

企业社会责任,是指以经济、环境和社会可持续发展的方式来管理商业运作,同时在经营过程中兼顾所有利益相关者的诉求。其中包括遵守相关法律和自愿履行法律规定以外的义务。企业经营目标包括:确保供应链整体实现业务透明和产品的安全、符合环保标准及建立良好的劳动条件。重要的非商业性倡议包括建立社区投资项目和政企合作伙伴关系。

企业社会责任在应对例如气候变化等重大全球挑战时显得尤为重要。企业倡议活动的影响力可通过各方合作及多方参与进一步扩大。企业社会责任的有效履行需要业界、政府和公民社会之间的交流互助,同时它也应立足于支持企业社会责任发展的、具有一致性的法律环境。在当前颇具挑战性的经济环境下,企业可能迫于经济或资金压力将资源用于其它方面,因此在坚持其社会责任的原则时会遇到很大挑战。

### 重大进展

2008年,中国在推动企业社会责任方面取得重大进展。值得称赞的是,政府对此表示明确支持,这在国务院国有资产监督管理委员会出台的《关于中央企业履行社会责任的指导意见》和商务部起草的《外商投资企业履行企业社会责任指引(草案)》中都有体现。

中国美国商会欢迎一个对所有中外企业设定同样预期的、鼓励企业社会责任发展的环境。同时我们认为,在企业社会责任方面,也应避免出现任何可能限制企业创新发展的、过于详细的规定。政府将工作重点放在鼓励企业探索企业社会责任的活动和实践,将会极大提高效率。

在过去的一年,重大的政治和社会变化对中国企业社会责任的发展产生影响。政府机构重组将使政府所关注政策的重点顺序发生变化。值得一提的是,环境保护部的权限较原国家环保总局有所增强,这也引发了外界对政府将给予环境和气候问题更多关注的预期。此外,民政部新成立了社会福利和慈善事业促进司,这表明政府更加重

视公民社会的作用。而随着5·12四川地震的发生,这种重视程度也进一步加强。悲剧发生后,企业与其员工和公众纷纷捐款捐物并提供志愿服务,为灾区提供支持。大量的人力、物资第一时间涌向灾区,凸显了建立透明、高效和积极参与的公民社会组织的必要性。

中国美国商会及其会员企业为此次地震所捐款物和服务总值达1亿美元(6.85亿元人民币),这充分显示我们与中国人民之间的情谊。对此我们深感自豪。

### 具体问题

#### 强调尽责运作

虽然中国各地企业对企业社会责任的概念理解不一,但通常的理解是指慈善事业和社区服务。尽管允许各地方在履行企业社会责任时具有一定灵活性,但中国美国商会认为所有企业都应重点考虑企业社会责任在其业务运营中的含义。企业对社会产生正面或负面的影响,将很大程度上取决于其每天接触的人群和环境。

长期以来,中国美国商会会员公司始终坚持负责任的企业行为,并在企业社会责任活动中重点关注其员工健康和安、环境保护、符合职业道德的供应链管理和产品质量及安全等方面。

鉴于上述重点问题,我们促请中美两国政府在以下领域继续采取积极的行动:

- **产品质量和安全**—2008年爆发的三聚氰胺危机,使产品的质量和安全问题再度成为中国和海外各方利益相关者关注的重点。企业和政府亟需通力合作以确保产生积极的结果,因为一旦有重大问题发生,任何单方面的努力都不足以解决问题,并使双方均受到不利的影响。
- **劳动条件和工作场所问题**—美国商界已采取积极行动确保其行为符合《劳动合同法》的规定。商会也多

side's independent efforts are sufficient and both suffer when significant problems occur.

- **Labor conditions and workplace issues** – The American business community has undertaken significant effort to ensure compliance with the Labor Contract Law, and the Chamber has held frequent legal briefings to ensure member companies have been kept up to date. Some American companies have provided training to their workers and/or suppliers to increase understanding of the rights and responsibilities enshrined in the law. Nonetheless, labor challenges remain, and efforts by government and business to prevent and address issues such as unpaid and forced overtime, payment arrears, unsafe working conditions and discrimination should continue.
- **Environmental performance** – Industry has significant environmental impacts in areas such as energy efficiency and waste. American companies are at the core of China's push for innovative, green development and consistent vigorous application of existing environmental standards.

These issues exist not only in direct operations, but also throughout the value chain. Monitoring and engaging suppliers on operational CSR issues is increasingly common among leading companies. Long-term, cooperative efforts are needed to address recurring challenges across the supply chain. Additionally, companies should share responsibility for time and cost demands they place on suppliers, and consider how sourcing expectations may influence supplier behavior.

### Enforcement

Economic development has often occurred at the expense of social and environmental factors, and improvement in compliance is urgently needed. Thus, equal and effective enforcement of laws and regulations is essential to an environment that encourages CSR. Currently, uneven enforcement can give a competitive advantage to companies that do not invest in appropriate environmental systems or workplace conditions to the detriment of those that do.

Outside stakeholders can play a positive role in enforcement. In 2008, the US Department of Health and Human Services and the Food and Drug Administration opened offices in several Chinese cities and are working with domestic authorities on food and drug safety issues.

### Stakeholder Engagement

AmCham-China commends government efforts to encourage stakeholder engagement as a core practice of responsible companies. The Chinese government has demonstrated its commitment to this through positive public engagement during the drafting process of the Labor Contract Law and other more recent examples. For government, as for companies, engagement is important to foster stakeholder buy-in and identify

possible challenges and misunderstandings. AmCham-China encourages the government to consult business and other stakeholders about future regulatory and guidance changes relating to CSR issues.

AmCham-China also commends US-China inter-governmental cooperation. The prioritization of several CSR-related issues in the Strategic Economic Dialogue (SED), particularly environment and product safety, is a useful approach to clarifying expectations in these areas. For example, we hope that the signing of the US-China Ten-Year Energy and Environment Cooperation Framework through the SED and discussions between the US Trade and Development Agency and MEP to establish a US-China Environmental Cooperation Program will lead to improved environmental performance overall and effective use of industry innovation and resources to address climate change and other challenges. Efforts can also be made to reinvest in cooperation on labor, following the conclusion of a joint Labor Rule of Law program in 2007.

### Support for Civil Society

Civil society organizations are frequent partners or beneficiaries of CSR programs and provide valuable resources and expertise that help companies operate more responsibly. Transparency and accountability are fundamental expectations of these organizations. For many companies, legal registration of organizations is a prerequisite for cooperation. AmCham-China welcomes steps taken by government to strengthen and enhance transparency of the legal framework for civil society organizations. The establishment of a new MCA department to oversee and encourage charity and social welfare is a positive step. We recommend that this department apply diligence in considering the potentially significant implications of its decisions, including principles of the draft Charity Law, which may facilitate or limit positive interaction between business and civil society.

An outpouring of support nationwide followed the tragic Sichuan earthquake, with unprecedented donations to relief and reconstruction projects, including more than US \$100 million (RMB 685 million) in money, goods and services from AmCham-China member companies. Civil society played a key role in channeling corporate and public support into actionable work. AmCham-China is reassured through conversations with MCA that positive experiences in Sichuan have increased awareness of the beneficial roles of civil society. We recommend that MCA expand on this and elsewhere to foster development of civil society and enhance public, government and corporate understanding of its role.

Going forward, it will be important to maintain and develop this spirit of giving so that community investments address a variety of issues and geographical locations and are sustainable in the long-term. We encourage companies to support diverse initiatives across China so that the benefits of community development are enjoyed throughout the country.

次举办法律方面的通报会向会员公司通报最新法律信息。一些美国企业向其员工和/或供应商提供培训,以增强其对法律规定的权利及义务的理解。然而,劳动问题仍然存在,政府和企业也需努力预防并解决例如不付加班费和强迫加班、拖欠工资、工作环境存在安全隐患和歧视现象等问题。

- **环境绩效**—工业对于提高能源效率,减少能源浪费等方面具有重要影响。美国企业也是中国推动创新环保事业发展,积极推行现行环保标准的核心组成部分。

上述问题不仅存在于企业的直接运营中,也体现在价值链里。目前许多大公司都在围绕运营中存在的企业社会责任问题对供应商进行监督。但对于供应链上反复出现的,诸如劳工权益等问题则需要建立长期的合作机制。此外,企业在对供应商提出交货时间和成本要求的同时,也应分担相应责任,并考虑这些采购要求会对供应商的行为产生何种影响。

### 执法

经济发展的代价常常是破坏了社会和环境因素,因此迫切需要在合规方面取得进展。平等而有效的执法对促进企业社会责任的发展至关重要。目前,执法的不一致性使那些没有在适当的环保系统或工作条件下进行投资的企业有机可乘,从而损害守法企业的利益。

外界各利益相关方可在执法方面发挥积极作用。2008年,美国卫生及公共服务部和美国食品和药品监督管理局相继在中国几座城市设立办事处,并与中国有关当局就食品和药品安全问题展开合作。

### 利益相关方的参与

中国政府鼓励利益相关方积极履行企业社会责任,并以此作为衡量企业是否具有责任感的重要标准。中国美国商会对此表示赞赏。在《劳动合同法》以及近期其他法律法规的起草过程中,中国政府鼓励公众积极参与,这足以体现出其重视程度。对于企业和政府而言,各方参与有助于各方达成共识并发现可能存在的挑战和误解。中国美国商会鼓励中国政府就企业社会责任的法规政策及指导意见修订等方面,与企业及其它利益相关方沟通。

中国美国商会也赞赏中美政府间的合作。与企业社会责任相关的议题,特别是环境和产品安全问题已成为中美战略经济对话(SED)的重点,借此双方可更好地阐明各自在该问题上的期待。例如,我们希望美国贸易和发展署与中国环保部在中美战略经济对话上所签署的《能源

环境十年合作框架》及相关讨论,能够促进中美环境合作项目的发展,并改善整体环境绩效,通过有效利用企业创新成果和资源应对气候变化及其它挑战。两国也可根据2007年“中美劳动法合作项目”重新启动劳务合作。

### 支持公民社会

公民社会组织通常是企业社会责任项目的合作伙伴和受益方,提供有价值的资源和技能,以帮助企业以更加负责任的方式运作。组织上的透明度和工作中问责制的建立是社会对公民社会组织最基本的要求,另外它的合法性也被许多企业视为合作的前提。中国美国商会欢迎政府在加强和改善公民社会组织法律体制的透明度方面所做的努力。民政部新成立的职能部门对于政府监管并鼓励慈善和社会福利事业是一项积极的举措。我们建议该部门应审慎考虑其在各类问题上所做的决定,包括在起草慈善法时,要重点考虑相关原则能否积极推进企业与公民社会之间的沟通与交流。

四川地震发生后,全国上下大力援助,捐助大量物资用于救助灾民和灾后重建。中国美国商会会员公司为灾区捐赠了总价值为1亿美元(6.85亿人民币)的款物和服务。公民社会在将企业和公众援助转化为实际行动中发挥了关键性作用。民政部官员在与中国美国商会的交流中曾多次强调,四川地震的经验使公众提升了对公民社会作用的认识。我们建议在此基础上民政部继续推动公民社会的发展,并提高公众、政府和企业对公民社会作用的理解和认识。

今后须保持并发扬这种奉献精神,使社区投资能因地制宜地解决各种问题并实现可持续发展。我们鼓励企业对中国各地区的多种企业社会责任倡议予以支持,从而使社区发展带来的益处惠及全国。

### 结论

中国政府推行企业社会责任的决心令我们深受鼓舞。我们希望通过政府和企业的努力能够改善相关法律法规的执法力度。企业社会责任的参与者与相关利益者之间的多方对话机制对确保企业尽职尽责至关重要。

### 建议

#### 对中国政府

- 继续推动企业社会责任在所有企业中均等地执行,避免因缺少权限的灵活性而阻碍创新的现象发生,

## Conclusion

We are encouraged by the Chinese government's commitment to promoting CSR, and hope that efforts by the public and private sectors help to enhance enforcement of related laws. Multi-party dialogue among all stakeholders involved in and affected by various CSR issues is essential to ensuring the sustainability of responsibility efforts.

## Recommendations

### *For the Chinese Government:*

- **Continue to promote CSR equally for all companies, avoiding limiting innovation with inflexible mandates. Take steps to raise awareness of the operational elements of CSR, in particular.**
- Explore means to remove conflicts of interest and improve enforcement of labor and environmental laws by local-level officials. Solutions may range from positive incentives programs rewarding agencies that excel, to reorganization of reporting structures that may inhibit enforcement.
- Facilitate the development of civil society to monitor and provide solutions for CSR challenges, as well as to provide for important channels of corporate support for community investment projects.

### *For the US Government:*

- **Continue to engage in discussions and cooperation projects with Chinese counterparts to identify challenges and share best practices in operational areas such as environment and product safety.**
- Reinvest in cooperative efforts to address labor conditions and workplace issues, building on experience from the concluded Labor Rule of Law program and cooperation under Letters of Understanding signed between the Department of Labor and various Chinese agencies.

**特别要采取措施以提升对企业社会责任所包含的各项运营因素的认识。**

- 探讨如何解决利益冲突问题并加强地方政府对劳动和环境法律的执法力度。可选方案包括：提供激励机制以奖励表现突出的机构，对可能妨碍有效执法的政府组织结构进行改组。
- 推动公民社会的发展，发挥其监督作用并寻求解决企业社会责任问题的方案，同时为企业援助社区投资项目提供重要渠道。

### *对美国政府*

- **继续与中方开展对话和合作项目以充分认识当前挑战，并分享环境和产品安全等领域的最佳实践经验。**
- 利用美国劳动部与中国各有关机构签署的《谅解备忘录》，基于中美劳动法合作项目和相关合作中所取得的经验，重启旨在解决劳动条件和工作场所问题的相关合作。

## Customs

Despite turbulence in 2008 in the global financial markets and the world economy, China still posted continuing growth of international trade in goods, rising 17.8 percent. Total imports and exports reached US \$2.6 trillion (RMB 17.8 trillion), according to China's General Administration of Customs (GAC).

In 2008, the customs administration, as well as business and international organizations, showed increasing recognition of the importance of compliance programs and trade facilitation. A commitment to global customs modernization and trade facilitation was further reinforced by customs, trade and supply chain compliance requirements, such as free trade agreement (FTA) status eligibility, export controls, product safety, environmental protection and labor standards.

China's GAC, the leading cross-border enforcement agency, improved transparency, increased uniform enforcement of regulations and efficiency, and encouraged informed compliance with customs and trade laws despite limited human resources. The GAC also continued to work with other agencies, such as the Ministry of Commerce (MOFCOM); the General Administration for Quality Supervision, Inspection and Quarantine (AQSIQ); the State Administration of Tax (SAT); and the State Administration for Foreign Exchange (SAFE), to regulate international trade and capital flow, ensuring the security and safety of cross-border trade.

Trade facilitation, security and product safety for imports and exports are critical to the economic and social development of a nation. AmCham-China applauds the improvements in transparency, uniform enforcement of regulations and use of information technology, such as paperless customs clearance, to further facilitate cross-border trade and compliance. AmCham-China recognizes the challenges the customs authority faces in balancing competing objectives with limited resources, such as maintaining strict and fair enforcement of laws and ensuring the security of cross border trade and supply chains while facilitating the legitimate movement of goods across China's borders. Continued commitment to the rule of law, transparency, consistent enforcement, customs automation, informed compliance and partnership with business will help China's customs authority meet these challenges.

The volume of cross-border trade in and out of China in the past decade has increased substantially, particularly in the period following WTO accession. AmCham-China commends the customs authority for increasingly using information technology, modern risk management techniques, and customs and trade compliance programs to enforce customs and trade laws and regulations and facilitate the efficient flow of legitimate trade. In this environment, it is crucial both to sustain confidence in the global trading system and to avoid measures that will hinder trade, increase costs and create additional delays at the border.

### Significant Developments

A number of regulatory, policy and technical developments emerged in 2008. These include:

1. Implementation of the enterprise classification and Authorized Economic Operator (AEO) programs for customs and trade compliance, facilitation and security;
2. Implementation of special customs audits for bonded operations to ensure customs compliance for processing trade and other bonded operations and revenue protection;
3. Implementation of customs process for periodic entries to provide time and cost efficient customs and trade facilitation assistance to compliant companies;
4. Strengthening of customs enforcement of intellectual property rights to obstruct export of infringing commodities from China into destination countries;
5. Further enhancement of customs automation and trade facilitation through integration of more agencies such as MOFCOM, AQSIQ, SAT and SAFE into the E-Port customs and trade automation platform;
6. Implementation of more FTAs and upgrading of rules of origin for the FTA and other customs duty preferential programs;
7. Customs cooperation with the US for Customs-Trade Program Against Terrorism program (C-TPAT) validation;
8. Customs cooperation under the Strategic Economic Dialogue with the US on the Rule of Origin Comparison Study;

## 海关

尽管2008年全球金融市场和世界经济出现动荡，但在国际货物贸易方面中国仍然保持持续增长，涨幅达17.8%。根据中国海关部门的数据，进出口总额达到2.6万亿美元（17.8万亿元人民币）。

2008年，海关部门以及企业和国际组织，更加认识到守法计划和贸易便利化的重要性。通过海关、贸易和供应链守法要求，比如自由贸易协定（FTA）地位合格性、出口管制、产品安全、环境保护和劳工标准等，进一步履行了全球海关现代化和贸易便利化的承诺。

中国的海关部门作为首要的跨境执法机构，尽管人力资源有限，但在提高透明度、加强统一执法和提高效率、鼓励企业了解和遵守海关法和贸易法规等方面仍取得了有目共睹的进步。海关部门继续与商务部、质量监督检验检疫总局、国家税务总局和外汇管理局等其它部门开展合作，对国际贸易和资本流动进行管理，确保跨境贸易的安全性。

进出口贸易的便利化、安全性及产品的可靠性对于一个国家的经济和社会发展至关重要。中国美国商会鼓励透明化、统一执法以及信息技术使用（例如无纸化清关）方面的改进，以进一步促进跨境贸易和守法工作。中国美国商会了解到，海关部门由于资源不足，在就如何平衡互有冲突的目标方面面临不小挑战，比如在维护严格公正执法并保证跨境贸易与供应链安全的同时，确保出入境的合法货物运输享受高度的便利。继续致力于法治、透明度、统一执法、海关自动化、贸易守法以及推动与企业的合作，将有助于中国海关部门应对这些挑战。

中国的跨境贸易规模在过去十年间、尤其在中国加入WTO之后取得显著增长。海关部门通过越来越多地使用信息技术、现代风险管理技巧、海关和贸易守法计划，以进一步实施海关和贸易的法律法规，促进合法贸易的高效流动。对此，中国美国商会表示赞赏。在此环境下，保

持对国际贸易体系的信心，避免采取阻碍贸易、增加成本和导致额外过境延误的措施显得尤为重要。

### 重大进展

2008年，在监管、政策和技术方面取得了诸多进展。这包括：

1. 为了海关和贸易领域的守法、便利化和安全之目的，执行企业分类和授权经营者（AEO）计划；
2. 对保税业务执行特殊的海关稽查，确保加工贸易和其它保税经营以及收入保护等符合海关规定；
3. 实施特殊的集中报关海关手续，为守法企业提供节省时间和成本的报关服务以及贸易便利化帮助；
4. 加强知识产权的海关执法，阻止侵权产品从中国出口到目标国；
5. 通过将诸如商务部、质量监督检验检疫总局、国家税务总局和国家外汇管理局等更多部门整合到电子口岸海关贸易自动平台，来进一步促进海关自动化和贸易便利化的发展；
6. 执行更多的自由贸易协定，更新自由贸易协定原产地规则和其它关税优惠计划；
7. 与美国海关展开合作，推进“海关-贸易反恐贸易伙伴”（C-TPAT）计划的有效实施；
8. 在“战略经济对话”框架下，与美国海关展开原产地规则比较研究方面的合作；
9. 与欧盟海关开展合作，以建立安全便利的国际贸易通道及实现双方相互承认AEO地位；
10. 根据国务院的《信息公开条例》实施海关透明条例；
11. 执行海关和贸易便利化措施，通过支持政府的经济刺激计划和其他经济政策以稳定中国经济。

9. Customs cooperation with the EU in the Smart and Secure Trade Lane program and AEO mutual recognition;
10. Implementation of Customs Transparency Regulations based on the State Council's Regulations regarding Public Information;
11. And implementation of customs and trade facilitation measures to bolster the government's efforts to stabilize the Chinese economy.

## Specific Issues

### Implementation Uniformity, Consistency and Transparency

While there has been significant improvement in the level of transparency and consistency in implementation and enforcement of customs regulations, many customs districts still use differing processes and rules. This variance results in unfair treatment and compliance concerns for businesses operating in different districts. Issues that remain include:

1. The customs process for exchanging documents and information between the customs audit team and the importer of record during an audit;
2. The customs process for paying underpaid customs duties and taxes and refunding overpaid customs duties and taxes;
3. Lack of a process to notify the party in writing when an investigation is closed without a charge; insufficient transparency and the lack of formal customs and trade-related consultative bodies to allow for ample discussion of changes in impending rules and regulations;
4. Inconsistent clearance procedures and documentation requirements for various categories of shipments (e.g., de minimus) across customs stations;
5. And inconsistent and inadequate enforcement of laws at the local level, often as a result of unclear implementation regulations.

### Customs Valuation

Customs revenue in China is a critical portion of the central government's disposable revenue. Collection and revenue protection is therefore understandably a priority for customs authorities. Technical issues, such as customs valuation of transfer pricing in related party transactions and royalty and licensing fees, have increasingly become areas subject to misinterpretation in various districts and at various levels. The determination of the amount of customs duties and taxes payable by the importer to the customs authority is sometimes arbitrary, rather than set by the rules of customs valuation. To enable companies to manage their own process for customs clearance better, AmCham-China urges the customs authority to find a long-term solution for compliance at all levels.

### Processing Trade and Value-Added Tax (VAT) Rebate Policy

In recent years, the Chinese government has used the VAT refund as a policy tool to manage exports. Frequent changes to the VAT refund rates for industry and trade considerations have created uncertainties, limiting the ability of businesses to anticipate the feasibility of transactions and sometimes stalling business transactions.

### Processing Trade Drawback Program

Inward processing trade manufacturers use the customs bond program to import materials and components with deferred import customs duties and taxes and then re-export the processed commodities. Some of these manufacturers would prefer the Customs Law's alternative to the customs duty drawback program, allowing them to import materials and components with customs duties and taxes paid and then receive a refund when the processed goods are exported. AmCham-China encourages China to issue implementation regulations for the Customs Law, allowing local customs offices to offer the customs duty drawback program.

### Customs Audit Program

The GAC adopted the customs audit program as part of its modernization efforts and to encourage informed customs and trade compliance. The audit's primary purpose is to help enterprises identify weaknesses in compliance process and propose suggestions to facilitate efficient trade flow. Many customs offices, however, use the process as a proxy for a customs investigation, even insisting on collecting duties and taxes at audit conclusion. Only a few customs audits have been concluded without the collection of customs duties and taxes or assessment of civil penalties.

### Customs Duty Treatment for Research and Development (R&D) Samples

Both foreign and domestic R&D projects are crucial for China's technological innovation and sustained economic and social development. The Chinese government passed regulations allowing duty-free importation of R&D samples and articles for domestic technical R&D centers recognized by the relevant government agencies. However, foreign-invested technical R&D centers are still subject to customs duties and taxes when importing R&D samples and prototype products. This discrepancy not only raises the costs for multinational corporations conducting R&D in China, but also violates national treatment policies under China's WTO accession agreement.

### Customs Automation

The E-Port customs automation platform has significantly reduced customs clearance and other customs processing time. However, despite some

## 具体问题

### 执法的统一性、连贯性和透明度

尽管在海关法的落实和执法工作中,透明度和一致性水平有了明显改善,然而许多地方海关仍然使用不同的程序和规则。这种差别导致了在不同地区经营的企业面临不公平的对待和守法问题。仍然存在的具体问题包括:

1. 稽查过程中海关稽查小组与进口商(被稽查人)之间的文件和信息交换程序;
2. 支付未付关税和退回多付关税方面的程序;
3. 调查终结但没有发现问题时,缺乏书面通知当事人的程序;
4. 在规则和条例修订过程中,缺少正式的海关和贸易咨询机构,无法就相关修改进行充分透明的讨论;
5. 各海关的各类货物装运量(如最低豁免量等)的清关程序和文件要求不一致;
6. 通常由于实施细则不明确而导致的地方一级的法律实施不一致、不充分等。

### 海关估价

在中国,海关关税税收构成中央政府可支配收入的重要部分。因此,征税和确保税收收入自然是海关部门的首要工作目标。因此海关对于关联方转移定价和专利使用费及专利授权费的估价等技术性问题,日渐成为容易被各地区和各级海关误解的问题。在确定进口商应向海关部门缴纳的关税数额时,有时是凭主观臆断,而不是依据海关估价规则来确定。为了使得企业更好地管理各自的清关程序,中国美国商会敦请海关部门建立一个长效的解决方案,使各级海关能够依法办事。

### 加工贸易和增值税退税政策

最近几年,中国政府利用增值税退税作为管理出口的政策工具。出于对行业和贸易的考虑,频繁修改增值税退税带来了不确定性,使企业预测交易可行性的能力受到了影响,有时甚至延迟商业交易。

### 加工贸易退税计划

国内加工贸易制造企业通过海关保税计划,进口延缓关税的原料和部件,然后再出口已加工产品。相对于此,《海关法》中的关税先征后退退税方案更受欢迎,因该方案允许他们进口已付关税的材料和部件,然后在出口已加工产品时获得退税。中国美国商会鼓励中国发布《海关法》有关条

款的实施办法,允许地方实施关税先征后退计划。

### 海关稽查制度

作为推进现代化措施的一部分,中国海关采用海关稽查制度,鼓励企业了解和遵守海关和贸易法规。稽查的首要目的是帮助企业找出守法流程中存在的不足,提出促进有效贸易流动的建议。然而,很多海关部门使用这一程序来代替海关调查,甚至坚持在稽查终结时征收关税。仅有少数海关在稽查终结时未征收关税或者处以行政处罚。

### 研发样品的关税待遇

国外和国内企业的研发项目对于中国的技术创新以及经济和社会的可持续发展都起到至关重要的作用。中国政府通过了法规,允许经相关政府部门批准的国内研发中心免税进口研发样品和商品。然而,外商投资的技术研发部门在进口研发样品和原型产品时,仍然需要缴纳关税。这种差别不但增加了在华开展研发的跨国公司的成本,也违反了中国加入WTO协议中的国民待遇政策。

### 海关自动化

电子口岸海关自动化平台大大减少了清关和办理其它海关手续的时间。但是,尽管中国努力将清关工作提升到地区性水平,但该系统仍然是按照地区和行政性部门划分。而且虽然电子口岸网络连接了许多政府部门,但它仍然没有实现单个电子窗口清关的目标。中国国家质量监督检验检疫总局就设有自己的进出口申报系统。中国美国商会迫切希望中国政府考虑将清关整合到一个全国性的系统中,这不但有助于提高效率,而且可以使海关法律的执法统一化。

### 预报舱单立法

目前《中华人民共和国海关进出境运输工具舱单管理办法》中的部分规定可能对所有进出中国的贸易渠道产生不利影响。业界的担忧集中在以下几方面:预报舱单递交时间太短,对所提交的数据元素缺乏清晰说明以及多层级报告等。中国美国商会建议给予公司一定的宽限期以便其调整系统和流程,使之符合法规要求。

目前,只对某些特定行业会员采取口头通知的“软性”执行方式,使企业界无所适从,并且造成不确定性。这迫使许多公司需要密切关注当前形势,以保护供应链免受意外和突发事件的影响,而这将会导致企业成本的增加,并限制中国贸易的发展。中国美国商会建议,这一立法应当吸收更多的行业意见,使实施条例更加清晰。

efforts to bring customs clearance to the regional level, the system is still district-based. Although the E-Port network connects many government administrations and ministries, it has yet to have a single window clearance. The AQSIQ, for instance, has its own system for import and export declarations. AmCham-China urges the government to consider consolidating customs clearance into a nationwide centralized system, which would not only enhance efficiency but also make enforcement of customs regulations uniform.

### Advanced Manifest Legislation

Current provisions of the Management Measures on Advance Manifest of Conveyance by the GAC could adversely impact all trade channels in and out of China. Industry concerns center around the short timelines for submission of advanced manifests, lack of clarity on data elements required for the submissions and multiple levels of reporting. AmCham-China recommends a grace period for companies to align systems and processes with the regulations.

The “soft” implementation to date, through oral notification to only certain industry members, confuses the business community and creates uncertainty. Companies are forced to monitor the situation closely to protect supply chains from surprises and incidents, which could be expensive and restrictive to Chinese trade. AmCham-China recommends that this legislation receive more input from industry and clearer implementation regulations.

### Customs Compliance Program

The GAC further upgraded its customs and trade compliance program with the implementation of the new regulations regarding enterprise classification. However, the implementation of the self-assessment process and assessment criteria did not address enterprises' internal process control, a critical component of any customs and supply chain compliance program.

### Remanufacturing and Repair Service

The Chinese government maintains heavy market entry restrictions on repair and remanufacturing operations in China in light of environmental concerns and difficulties in customs regulation. Nevertheless, reasonable approaches and strict enforcement of effective regulations and rules would address these concerns. Increased market access to repair and remanufacturing services based on reasonable environmental and trade compliance regulations would enable China to meet its environmental goals and satisfy business demand more effectively.

### Coordination among Government Agencies

Coordination among government agencies has improved dramatically. Nonetheless, it remains one of the root causes of delays in the customs clearance process and uncertainty of compliance requirements. AmCham-China encourages further

cooperation between customs and tax authorities on transfer pricing and customs valuation issues, between the GAC and AQSIQ on technical standards and product safety issues, and between the GAC and SAFE on foreign exchange payment for trade in goods and customs valuation issues.

## Recommendations

### For the Chinese Government

- **Initiate and improve central programs, such as administrative ruling for classification and valuation, and provide detailed implementation rules for district/local customs authorities to facilitate consistency of implementation and enforcement of laws and regulations across different points of entry.**
- Pursue central customs automation and centralization of customs transaction processes.
- Establish detailed regulations and rules for a comprehensive compliance, facilitation and security program to ensure supply chain integrity with strong internal control process for businesses, while balancing trade and business facilitation.
- Establish a mechanism under which enterprises can easily report cases of non-uniform or inconsistent application of rules or regulations to national or central governments.
- Further enhance coordination between government agencies.
- Advance partnerships between customs authorities and industry to foster mutual information exchange, understanding and trust.
- Maintain a stable VAT rebate for export policy.
- Become a full partner in the ATA Carnet system for temporary imports by accepting carnets for commercial samples and professional equipment to streamline importation procedures.
- Further strengthen best-practice sharing, rule-making and capacity-building to create business and compliance-friendly regulations for complicated technical issues such as: customs valuation for related-party transaction, royalties and license fees; duty and import tax and customs process for R&D samples; implementation rules for processing trade drawback program; and development of remanufacturing and repair service process for customs and trade administration.

### For the US Government

- **Continue to work with Chinese authorities to promote rule of law in the customs and trade regulation area, to ensure collaboration on best practices, such as self-assessment, C-TPAT validation and AEO programs, and to increase efficiency and transparency.**

### 贸易守法方案

通过执行新的企业分级规定,中国海关部门进一步改进了其海关和贸易守法方案。然而,这种自我评估程序和判断标准的执行并没有解决企业的内部控制问题,而企业的内部控制是所有海关和供应链守法方案的关键组成部分。

### 再制造和维修服务

考虑到环保因素和海关监管的难度,中国政府对境内的维修和再制造业务实施严格的市场准入限制。然而,通过采取合理的方法和严格执行有效的法规,这些顾虑完全可以消除。在制定合理的环境合规和贸易合规条例的基础上,放宽维修和再制造服务的市场准入标准,将使中国能够在达到环保目标的同时更有效地满足商业需求。

### 政府机构之间的协调

政府部门之间的协调已经得到明显的改善。但是,它仍然是造成清关程序迟延和合规要求不明确的根本原因之一。中国美国商会建议,海关和税务部门就转移定价和海关估价问题开展进一步合作,同时海关与国家质量监督检验检疫总局和外汇管理局分别就技术标准和产品安全问题以及货物贸易的外汇支付和海关估价问题开展进一步合作。

## 建议

### 对中国政府

- **启动并改善全国性统一的各种方案,例如归类和估价的行政裁定,并为地方一级海关部门制定实施细则,以确保不同下属海关在实施法律法规和执法中的一致性。**
- 推进中央一级海关的自动化,实现海关处理程序的集中化。
- 制定详细的法规规定,全面推进守法、便利和安全计划,在实现贸易和商业便利化的同时,通过实施严格的企业内部控制程序确保供应链的完整性。
- 建立一套机制,使企业能够方便地向国家或中央海关总署反映各类法律法规执行不统一或不一致的案件。
- 进一步加强政府机构部门间的合作。

- 推动海关部门和业界的合作,鼓励信息互换、相互理解和信任。
- 维持稳定的增值税出口退税政策。
- 成为全面加入货品暂准通关证(ATA Carnet)系统的成员,承认商业样品和专业设备的通关证以简化进口流程。
- 进一步加强经验共享、规则制定和能力建设,针对各种复杂的技术问题制定有助于企业经营和合规的规定,比如:关联交易、专利许可费的海关估价;研发样品的进口税和海关程序;加工贸易退税方案规则的执行;制定再制造和维修服务的海关和贸易管理程序。

### 对美国政府

- **继续与中国主管部门合作,推动海关和贸易管理领域的法治,开展经验共享和相关领域的合作(例如自我评估、C-TPAT 确认、AEO计划),提高效率 and 透明度。**

## Environmental Protection, Climate Change and Energy Efficiency

### Environmental Protection

Environmental degradation is estimated to cost China between eight and 12 percent of GDP annually. Desertification and water scarcity in the north and west limit industrial and agricultural output, while global warming is expected to bring severe flooding to China's coastal regions. Absenteeism, stemming from pollution-related health problems, also reduces China's productivity levels. According to 2005 World Bank figures, air pollution alone cost the Chinese economy US \$25 billion (RMB 171.2 billion) in health care costs and lost productivity. Also according to the World Bank, China is home to seven of the world's 10 most polluted cities; moreover, only one percent of China's population lives in cities that meet the Ministry of Environmental Protection's (MEP) preferred particulate matter (PM10) standard.

In recent years, the Chinese government has made significant efforts to reduce environmental damage and promote sustainable development. The 11th Five-Year Plan, initiated in 2006, emphasizes the importance of sustainable development, resource conservation and environmental protection. Focus on a "circular economy" and other initiatives promoting environmental objectives are increasingly recognized by officials at all levels of government as a key aspect of their responsibilities.

The current economic downturn will reduce emissions temporarily as industrial production slows. However, this will reverse when the economy rebounds. It remains to be seen if the Chinese stimulus program and the policy momentum encouraging sustainable growth materially address the long-term challenge of changing China's economic growth model.

Furthermore, the evolving environmental policy leaves unresolved issues in related industries concerning market access, technology transfer, incentives, finance and cooperation between the public and private sectors, as well as between domestic and foreign entities. The American business community stands ready to work with the Chinese government on solving environmental challenges, contributing its extensive experience with and knowledge of innovative technologies, quality manufacturing, project management, training, best-practice sharing, policy development and public-private partnerships.

### Recent Developments

The Chinese government signaled its intention to ease China's environmental problems by identifying sustainable development as an important priority of China's 11th Five-Year Plan (2006-2010). The plan includes a series of goals on reducing greenhouse gas emissions and energy consumption by 2010, including reducing overall air pollution by 10 percent and energy consumption per unit of GDP by 20 percent; treating 70 percent of wastewater and 60 percent of residential garbage in cities; and providing access to drinking water for an additional 100 million rural residents. We commend the Chinese government for these ambitious goals and believe US companies' extensive experience in environmental technologies, renewable energy and sustainable design can help China meet these targets.

In March 2008, China elevated the State Environmental Protection Agency into a cabinet-level ministry with access to the State Council's decision-making process, more staff, and greater financial support. The new Ministry of Environmental Protection (MEP) is expected to have broad-ranging powers related to the environment over strategic policymaking, implementation and enforcement. The MEP will coordinate directly with the State Council, ensuring that environmental concerns will be considered during macro-economic planning and debate. It is uncertain if this will be sufficient to give a notoriously weak agency sufficient authority to carry out its mandate. Success will depend on interaction with other relevant ministries. However, this institutional change clearly indicates the direction of policy toward more effective administration of environmental protection policies.

A revised Water Pollution and Prevention Control Law came into effect in June 2008, toughening punishment of enterprises and company officials that cause serious water pollution incidents. The Circular Economy Promotion Law, adopted by the National People's Congress in August 2008, came into effect on January 1, 2009. The law promotes development of a "circular economy," or improved resource utilization efficiency through recycling, protecting and improving the environment, and realizing sustainable development. The State Council is expected to oversee coordination and supervision of the development of a "circular

## 环境保护、气候变化和能源效率

### 环境保护

环境退化估计每年给中国造成8%-12%的GDP损失。北部和西部地区的沙漠化和水荒限制了工农业产出，而全球变暖的预期也会给中国沿海地区带来严重水灾。跟污染有关的健康问题所造成的旷工频率增加也降低了中国的生产力水平。据2005年世界银行公布的统计数字，仅空气污染一项导致的医疗费用支出和生产率降低，就使中国经济每年遭受250亿美元的损失。同样来自世界银行的数字，世界10大污染城市中有7个位于中国；此外，只有1%的中国人口所居住的城市符合国家环境保护部制定的可吸入颗粒物标准（PM10）。

近年来，中国政府在减少环境危害和促进可持续发展方面作出了巨大的努力。2006年开始的“十一·五”计划中强调了加强能源资源节约和环境保护、增强可持续发展能力的重要性。重点发展“循环经济”的政策及其他宣传环境目标的计划，逐渐作为其职责的主要方面，被各级政府官员所接受。

当前的经济低迷会暂时性减少污染物排放，因为工业生产放缓了速度。然而，一旦经济复苏，局面将会发生逆转。中国的经济刺激计划和鼓励持续增长的政策契机，是否能够在实质上改变中国经济增长模式，对这一长期挑战还有待观察。

此外，虽然环境保护政策在逐步完善之中，相关行业中涉及市场准入、技术转让、激励措施、财务及公共和私营部门，以及国内和国外实体之间的合作等诸多问题仍有待解决。美国企业界已经做好充分准备与中国政府开展合作，携手应对环境领域面临的挑战，运用其在创新技术、高质量生产、项目管理、培训、最佳做法分享、政策制订和政企合作等方面的大量经验和知识，为中国环保事业做出贡献。

### 最新进展

中国政府表示，中国“十一·五”计划（2006年至2010年）将明确把可持续发展作为工作重点之一，藉此改善中国的环境问题。该五年计划制定出一系列到2010年以前减少温室气体排放和能源消耗的目标，包括把空气污染总水平降低10个百分点，每单位GDP的能源消耗降低20个百分点，处理城市70%的污水和60%的居民生活垃圾，并让另外1亿农村居民用上饮用水。我们赞赏中国政府的这些宏伟目标，并相信，美国公司在环境技术、再生能源和可持续设计方面拥有丰富的经验，能够帮助中国实现这些目标。

2008年3月，中国把国家环境保护局升级为部级单位，可以参与国务院的决策程序，聘用更多的职员，得到更多的财政支持。新设立的环境保护部（MEP）预期将在与环境有关的战略决策、实施和执法方面拥有广泛的权力。环境保护部将直接配合国务院，确保将环境问题纳入宏观经济规划和讨论范围。这是否足以使这一曾经缺乏实权的部门获得足够的权力来履行其部门职责，目前还不得而知。成功与否取决于它与其它相关部门的互动。但是，部门设置上的变化清楚地表明，政策在朝着有利于有效执行环境保护政策的方向发展。

修订后的《水污染控制法》于2008年6月生效，它加大了造成严重水污染事件的企业和公司高管的惩罚力度。全国人民代表大会于2008年8月表决通过的《循环经济促进法》于2009年1月1日正式生效。该法律通过资源重复利用、保护和改善环境及实现可持续发展来促进“循环经济”的发展或提高资源利用效率。国务院将负责监督“循环经济”发展的协调和管理，而环境保护部和其他相关部门负责相应的执法和行政管理工作。该法规定，各级政府有义务确保行业政策符合法律目标。

中央政府还出台了若干鼓舞人心的行业财务激励措施，以促进环境合规和可持续发展。2008年《企业所得税法》对投资于环境保护、能源和水节约的企业给予优惠

economy,” with the MEP and other relevant agencies overseeing the corresponding enforcement and administrative work. Among other provisions, government at all levels is charged with ensuring that industrial policies meet the Law’s objectives.

The central government also launched several encouraging financial incentives to promote environmental compliance and sustainable development by industry. The 2008 Enterprise Income Tax Law grants preferential tax policies for enterprises investing in environmental protection, energy and water conservation. More recently, the RMB four trillion (US \$584 billion) economic stimulus plan allocates RMB 350 billion (US \$51.1 billion) for environmental projects, such as waste-water treatment and renewable energy facilities.

Provincial and local governments have also demonstrated increased awareness of, and commitment to, enforcing environmental regulations. In late 2007, the central government designated progress in achieving environmental targets as one important criterion in assessing local government performance. Subsequently, local governments have started to increasingly enforce environmental regulations and crack down on non-complying enterprises.

## Specific Issues

### Strengthening Regulation Enforcement and Coordination

While China has issued many impressive environmental targets and laws, lack of effective enforcement and monitoring of these measures leads to an uneven level of environmental protection. Generally, the task of enforcing China’s environmental laws and goals falls upon provincial and local governments. However, local authorities are often constrained by the need to balance resource availability and environmental concerns against their economic growth priorities, resulting in a short-term focus on growth. Interpretation and enforcement inconsistencies of regulations at local and provincial levels often lead to confusion for businesses, hindering their ability to pursue specific projects and markets effectively.

AmCham-China commends the Chinese leadership for bolstering the MEP’s law enforcement and supervisory capacities. However, local Environmental Protection Bureaus (EPB) still report to local and provincial authorities rather than the MEP. The EPBs depend on local governments for funding and resources, presenting potential conflicts of interest in monitoring and enforcing environmental laws and regulations, and reducing the efficiency of local environmental protection efforts. Fundamentally, to create institutional incentive to enforce and monitor environmental laws and regulations, the consistent application of evaluation criteria emphasizing environmental goals for officials at all levels of government is essential.

### Uniform and Consistent Monitoring and Audits

Currently, environmental laws and regulations are enforced through random inspections by local EPBs. Understandably, it would be inefficient to monitor all facilities in the country, but “random” checks tend to occur more frequently with foreign companies. AmCham-China encourages consistent and uniform monitoring among all companies to ensure that all environmental polluters are held accountable and that no company is exempt.

### Remanufacturing

Remanufacturing, the process of returning a used product to a “same-as-new” condition through manufacturing, can significantly reduce industrial solid waste, energy and resource-usage, all central goals of a “circular economy.” While there has been some progress in allowing trial import of cores, the used products and equipment needed in remanufacturing services, many categories still face strict restrictions. Loosening restrictions on the importation of cores would help promote government objectives.

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

### China-US Cooperation on Energy and Environment

AmCham-China commends both China and the US for signaling their commitment to strengthen policy dialogue and bilateral cooperation on combating climate change. We applaud the signing of the US-China Ten-Year Energy and Environmental Protection Cooperation Framework to address the challenges of environmental sustainability, climate change, and energy security at the June 2008 Strategic Economic Dialogue. Toward these goals, the reduction of mercury emissions has been raised as a practical area of cooperation. China and the US have agreed to strengthen collaboration on reducing demand for mercury in products and processes, more effectively managing mercury-containing wastes, and promoting best practices and techniques for reducing mercury emissions. AmCham-China looks forward to working with agencies in both countries to strengthen this cooperation.

税收政策。最近, 4万亿人民币 (约合3850亿美元) 的经济刺激计划划拨3500亿元人民币 (约合511亿美元) 用于环境项目, 例如污水处理和再生能源设施。

省级和地方政府也显示出日益增强的环境保护意识和落实执行环保法规的决心。2007年下半年, 中央政府特别规定把完成环境目标与否作为考核地方政府绩效的一项重要指标。地方政府相继开始加大环境保护法规执法力度, 打击企业的违法违规行为。

## 具体问题

### 加强执法与协调

虽然中国公布了许多重要的环境保护目标和法律, 但缺乏对这些措施的有效执行和监控, 这导致各地的环境保护水平参差不齐。一般而言, 执行中国环境保护法律和完成环保目标是省级和地方政府的任务。然而, 地方政府部门通常需要根据其经济增长优先目标, 来平衡资源的可用性和环境问题, 因此环境工作经常受到制约, 而将重点更多地放在短期经济增长目标之上。地方和省级部门对法规的解释和执行中的不一致经常导致企业产生混淆, 影响他们有效地寻求具体项目和市场的的市场的能力。

中国美国商会赞赏中国领导层强化环境保护部的执法和监督职能。但是, 地方环境保护局 (EPB) 仍然对地方和省级政府负责, 而不是对国家环境保护部负责。地方环保局由于需要依赖地方政府提供资金和资源, 造成环保监控和执法方面出现潜在的利益冲突问题, 降低了地方环保部门的工作效率。根本而言, 为了形成对环保法律法规执法和监控工作的制度化激励, 有必要为各级政府官员制订和实施以环境目标为重点的考核标准。

### 统一、一致的监控和检查

目前, 环境保护的法律和法规执法都是通过地方环保局的随机检查来实现的。可以理解的是, 地方环保局难以监控检查国内所有的厂矿企业, 但在执行“随机”检查方面, 对外国企业似乎更频繁一些。中国美国商会鼓励对所有企业实施统一、一致的监控, 以确保所有的环境污染企业都被问责, 任何公司都不能幸免。

### 再制造

再制造是指通过加工将废旧产品翻新的过程, 它可以大大减少工业固体废物, 节约能源和避免资源浪费, 是“循环经济”的核心目标。尽管在试行核心组件进口方面

有了一些进展, 但再制造服务中所需要的二手产品和设备的许多种类仍然受到严格的限制。放宽对于核心组件进口的限制会有助于政府目标的实现。

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

### 中美能源和环境合作

中美两国均表示, 承诺加强政策对话和双边合作, 共同应对全球气候变化问题, 中国美国商会对此表示赞赏。在2008年6月举行的中美战略经济对话上, 中美两国签署了《能源环境十年合作框架》, 以应对环境可持续性、气候变化和能源安全等方面的挑战, 我们对此十分赞赏。为了实现这些目标, 双方共同提出将减少碳排放作为切实可行的合作领域。中美双方同意加强合作, 减少产品和工艺中对汞的需求, 更加有效地管理含汞垃圾, 并宣传减少汞排放的最佳做法和技术。中国美国商会期待着配合两国相关部门的工作, 加强这一领域的合作。

## 建议

- 在气候变化和环境保护方面开展美中两国政企合作项目。
- 放松对“核心组件”的进口限制。
- 把再制造产成品归类为新产品并允许进口到中国。
- 对所有企业实行统一、一致的检查, 以加强地方环境保护法律的实施和执行。
- 实行地方政府官员对执行环境政策和实现环境目标的负责制, 而不仅仅是经济增长目标。
- 继续加强中美在减少碳排放领域的合作。



## Recommendations

- **Launch US-China industry and government collaboration projects on climate change and environmental protection.**
- Relax restrictions on importation of “cores.”
- Categorize RFGs as new products and allow importation into China.
- Strengthen local implementation and enforcement of environmental laws through consistent and uniform audits among all companies.
- Continue to hold local government officials accountable for enforcement of environmental policies and goals, not only economic growth targets.
- Continue and strengthen China-US cooperation on reducing mercury emissions.

## Energy

Between 1978 and 1996, energy demand grew at an average annual rate of five percent. However, due to explosive economic growth and increased energy intensity, demand grew at an average annual rate of 11 percent between 2001 and 2007. In the last five years, China consumed more energy than the previous 20 years combined. According to International Energy Agency forecasts, China will account for 22 percent of global energy demand by 2030, easily surpassing the US as the world's largest energy consumer, and more than Europe, Russia and Japan combined.

While consumption-led energy demand increased, the main reason behind today's energy demand is the growth of energy-intensive industry. Industrial use accounts for over two-thirds of energy consumption in China. Residential, commercial and transportation sector consumption only account for 30 percent combined.

Although industrial energy efficiency has improved recently, one unit of economic output still requires five times more energy in China than in Japan. Industry accounts for 48 percent of GDP in China, much higher than other countries with more developed service sectors. Unless China's economic structure changes, it will continue to have an energy-intensive economy, as expected given its sobriquet, “the world's factory.”

Beginning in August 2008, China's pace of energy demand began to drop due in part to the falling demand for manufacturing goods, as exports weakened. However, such reductions are temporary and will likely disappear as the economy rebounds. The economic restructuring China is currently undergoing presents a unique opportunity to shift the economic growth model to rely less heavily on energy-intensive industries and reduce energy demand from

industrial sources.

To reduce energy demand and maintain energy security, China must confront the energy challenge from both demand and supply sides. Thus, in addition to energy supply development, energy efficiency and reduction policies aimed at limiting demand growth must be enacted and consistently implemented.

## Significant Developments

### National Energy Administration

In July 2008, China formed a National Energy Administration (NEA) within the National Development and Reform Commission (NDRC), which serves to centralize the government's control over the energy industry and set policies. The NEA will share authority over energy policy and developments in China with the Ministry of Land Resources and the State-Owned Assets Supervision and Administration Commission, which has a major role for state-owned energy enterprises. In matters relating to foreign trade and investment, the Ministry of Commerce also will continue to play a role.

To date, the NEA's role, including relative to the NDRC, has not been clearly defined. Energy prices may continue to be set by the NDRC despite the creation of the National Energy Commission and NEA. However, the NEA will be entitled to make recommendations on price adjustments and to consult with the NDRC's pricing authority. There is much speculation regarding ultimate authority in the energy sector, but details on authority sharing by the three agencies are still under discussion.

### Draft Energy Law

Currently, the proposed Energy Law, introduced in 2006, is still under consideration by the State Council Legislative Affairs Office. It was released for public comment in December 2007 and is not expected to be passed until late 2009 at the earliest. The law, as currently proposed, would shape China's comprehensive energy policy and regulatory scheme. Major issues in the draft include energy strategy and planning, conservation, energy safety, pricing and taxation, scientific and technological innovation, service, and international cooperation.

A major focus of the draft is energy security, which arises from the growing dependence on the importation of oil, gas and other key energy sources. China emerged as the world's third-largest net importer of oil in 2006, after being a net oil exporter as recently as the early 1990s. In 2007, oil constituted approximately 21 percent of China's energy demand.

The proposed legislation grants the NEA the power to regulate and manage the national energy industry and requires the State Council to formulate a comprehensive “guide” for foreign investment in the energy sector. As such, it not only provides a framework for Chinese enterprises seeking overseas energy-related

## 能源

自1978年至1996年，能源需求每年以平均5%的速度增长。然而，由于爆炸性的经济增长和不断上升的能源强度，自2001年至2007年，能源需求的年平均增长率达到11%。在过去五年中，中国的能源消耗量超过了之前20年的总和。根据国际能源机构预测，至2030年，中国的能源需求将占全球需求量的22%，超过欧洲、俄罗斯和日本的总和，很可能超越美国成为世界最大的能源消耗国。

虽然消费驱动的能源需求有所增长，当前能源需求的主要原因在于能源密集型工业的发展。工业用途占据中国能源消耗总量的三分之二。而住宅、商业及交通等领域的消耗总和仅占30%。

虽然工业能源效率近期得到了改善，但中国经济单位产出的能耗仍比日本高5倍。工业在中国GDP中的占比达48%，远远高于那些以发达的服务行业为主的国家。除非中国的经济结构发生改变，否则它难以摘掉“世界工厂”的帽子，并将继续维持其能源密集型经济。

自2008年8月以来，中国的能源需求增速逐渐放缓，部分原因是出口下滑导致制造业需求下降。然而，这种下降只是暂时性的，一旦经济回暖即会消失。中国目前正在进行的经济结构调整改变经济增长模式提供了一个千载难逢的机遇，降低经济增长对于能源密集型工业的依赖程度，从而削减工业领域的能源需求。

为了减少能源需求，维护能源安全，中国必须面对能源需求和供给的双重挑战。因此，除了发展能源供给，政府必须制定并始终如一地贯彻执行旨在限制能源需求增长的节能政策。

## 重大进展

### 国家能源局

2008年7月，中国国家发展和改革委员会（国家发改委）成立了国家能源局，对能源工业实行政府集中控制并负责制定相关政策。在中国的能源政策和发展方面，国家能源局将与国土资源部以及主要负责国有能源企业的国有资产监督管理委员会一起分担职权。在外贸和投资相关事务领域，商务部也将继续发挥作用。

时至今日，国家能源局与国家发改委之间的职权划分

还没有明确界定。虽然成立了国家能源委员会和国家能源局，能源价格可能继续由国家发改委制定。然而，国家能源局将有权就价格调整提供建议，并与国家发改委定价部门进行磋商。关于到底哪一个部门是能源行业的最高权力部门，外界存在众多猜测，但目前三个部门间的权力划分细节仍在商议之中。

### 能源法草案

当前，2006年提出的《能源法》草案仍在国务院法制办公室的审议之中。2007年12月，《能源法》征求意见稿向社会发布，预期最早将于2009年年底通过。拟定中的《能源法》将形成中国综合能源政策和监管机制。该征求意见稿涉及的重要问题包括能源战略和规划、节能、能源安全、定价和税收、科技创新、服务和国际合作。

该部新法的一个主要焦点是由于中国对进口石油、天然气和其他重要能源的依存度增加而引发的能源安全问题。在上世纪九十年代初期，中国还是一个石油净出口国，然而在2006年，中国已成为世界第三大石油净进口国。2007年，石油在中国能源需求中的占比达21%。

该部新法将授予国家能源局对国家能源工业进行规范和管理权力，同时要求国务院有关部门制定涉及能源发展的外商投资产业指导目录及相关政策。因此，它不仅为寻求境外能源相关投资的中国企业提供了监管框架，也为在中国寻找能源开发活动的外国实体提供了监管框架。

### 能源供给

外商参与发电行业受到限制，但国家鼓励外商投资于水电厂和新能源设施的建设和运营。然而，外国制造企业在供应水力发电和其他可再生发电设备方面遇到不少困难，难以获得平等的市场准入权。而且，国家禁止外资参与装机容量不超过30万千瓦的燃煤电厂和单机容量不超过10万千瓦的热电联产项目。此外，下游的电网建设和运营领域也限制外商投资。

在政策制定者设计可持续经济增长模式中，可再生能源已经成为一个越来越重要的因素。风能和太阳能的重要性凸显，因为它们有助于中国实现其可再生能源和碳减排目标。然而，电网输电能力和接入问题，以及缺乏可再生能源技术组件的全行业综合质量标准，可能会妨碍行业的发展。

根据入世承诺，中国需要消除或降低许多能源相关产品的关税，并完全开放石油产品的零售业务，取消外商投资股权比例限制。当前，外国企业在国内煤炭和发电行业

investments, it also provides a regulatory framework for foreign entities looking to conduct energy development exploitation activities in China.

### Energy Supply

Foreign participation in power generation is limited, with the construction and operation of hydro-electric plants and new energy source generation encouraged. However, foreign-owned manufacturing entities have experienced difficulty in obtaining equal market access for hydro-electric and other renewable power generation equipment. Additionally, participation in coal-fired plants with capacity up to 300,000 kW and cogeneration plants with a unit capacity of up to 100,000 kW is prohibited. Further downstream, foreign investment in the construction and operation of power grids is restricted.

Renewable energy has become an increasingly important element for policymakers in designing sustainable economic growth. Wind and solar energy stand out in their potential to contribute to China's renewable energy and carbon abatement goals. However, grid capacity and connectivity issues, as well as a lack of comprehensive industry-wide quality standards for component parts of renewable energy technologies, may impede industry development.

Pursuant to China's WTO commitment, it needs to lift or reduce tariffs on many energy-related capital goods and fully open retail sales of petroleum products to foreign companies without equity caps. The participation of foreign companies in the domestic coal and power generation sectors is currently estimated at less than one percent.

### Natural Gas

Natural gas accounted for only three percent of all energy consumed in 2007. However, demand is anticipated to grow, driven by the country's fast-growing chemicals industry and urbanization, increasing the need for clean heating and cooking fuel.

Foreign investment in the gas industry continues to be "encouraged" under the NDRC's Catalogue Guiding Foreign Investment in Industry (Investment Catalogue), provided the investment is made by way of an equity or cooperative joint venture, with foreign ownership capped at 49 percent.

In September 2007, the NDRC announced the Natural Gas Utilization Policy, aimed at relieving supply and demand tensions by categorizing and prioritizing the use of natural gas. This has created some inconsistencies between the industries prioritized by this policy and the encouraged industries as specified by the Investment Catalogue and High-Tech Enterprise categories. We recommend further harmonization of the Natural Gas Utilization Policy with other programs to ensure long-term investment and an adequate supply of natural gas.

### Coal-Bed Methane

Coal-bed methane (CBM), a form of natural gas extracted from coal beds, has production capacity targeted to reach five billion cubic meters by 2010 under the 11th Five-Year Plan. The burgeoning opportunity in China to harness CBM for commercial, industrial and residential energy use has seen the emergence of companies eager to take advantage of the new market. These have developed throughout the country, but are centered mainly in Shanxi, the core of China's coal industry. Raw CBM, once purified, is the same chemical constituent as natural gas and proves a fitting supplement to China's natural gas supply infrastructure. China already uses more compressed natural gas for vehicles than any other country and CBM could add to the supply for vehicles and domestic household consumption.

However, for power generation projects using CBM, it remains difficult to sign power purchase agreements, demonstrating a lack of coordination between local grid operators and government. A new policy announced by NDRC will give CBM power generation projects the same incentives per kWh as biogas projects, as well as the grid connection privileges.

### Coal

Coal provides 70 percent of primary energy and 80 percent of electricity for China. Given that coal is China's most abundant and consumed energy resource, it is also the most important fuel for energy security.

The NDRC promulgated its Coal Industry Policy to enhance the efficiency of the coal industry at the end of 2007, promoting restructuring of smaller mines and consolidation into larger mines. Foreign participation in the coal industry, like the gas industry, is technically "encouraged" under the Investment Catalogue, although there is limited actual foreign investment. Local governments do not actively provide supporting policies to facilitate foreign investment, and two sectors crucial to coal companies in China, railway transportation and electricity, remain state-controlled. As a result, most foreign investments concentrate in other coal-related areas, such as coal equipment manufacturing and coal chemicals.

Many of China's older coal-fired plants are inefficient and highly polluting, and although newer plants are often more efficient, many lack (or fail to operate) adequate pollution control equipment. AmCham-China recommends the Chinese government give more priority and incentives to develop clean coal projects, such as integrated gasification combined cycle (IGCC) plants. IGCC technology allows coal-fired power plants to generate electricity with far less pollution than conventional coal plants. We commend China's leadership in carbon-neutral coal power to date and believe further investment can reinforce China's position as a clean-coal technology leader.

的参与度估计不足1%。

### 天然气

天然气仅占2007年能源消耗总量的3%。然而,随着化工行业的高速发展和城市化进程加快,增加了清洁的供暖和家用燃料的需求,天然气的需求预期将会增长。

在外商投资产业指导目录下,继续“鼓励”外商以合资或合作企业的方式投资天然气行业,但外商所有权上限不得超过49%。

2007年9月,国家发改委出台了天然气利用政策,意在分类和优先利用天然气,缓解供求紧张。但该政策给予优先地位的行业和外商投资目录以及高新企业目录中鼓励发展的行业之间,存在一些不一致之处。我们建议进一步协调天然气利用政策与其他政策间的关系,以保证天然气领域的长期投资和天然气的充足供应。

### 煤层气

煤层气是从煤层中提炼的一种天然气,根据“十一·五”计划,到2010年煤层气产能目标将达到50亿立方米。随着中国把煤层气用作商业、工业及居民能源,一些企业急于开拓这一新的市场机会。这些企业遍布全国各地,但主要还是集中在中国的煤炭工业中心——山西省。煤层原气得到净化后具有与天然气和甲烷一样的化学成分,业已证明是中国天然气供应基础设施的适当补充。中国车用压缩天然气在使用量上已经超过了其它任何国家,煤层气可能会增加压缩天然气供给,用于车辆和国内家庭消费。

然而,对于使用煤层气的发电项目,目前很难订立购电协议,这表明地方电网运营商和政府之间缺乏协调机制。国家发改委发布的一项新政策规定,煤层气电厂上网电价将比照生物质发电的上网价格,在并网运行方面也将享受优惠待遇。

### 煤炭

煤炭占主要能源的70%,中国80%的电力供应来自煤炭发电。作为中国储量最丰富和消费量最大的能源,煤炭也是能源保障的最主要燃料。

2007年底,国家发改委公布《煤炭产业政策》,该政策旨在推进中小型煤炭企业的改革,通过兼并、重组,提高产业集中度和产业效率。虽然煤炭行业的实际外商投资数量有限,但是依据外商投资目录,煤炭行业和天然气行业一样,也属于“鼓励”外商参与的行业。地方政府没有积极提供支持性政策来推动外商投资,而且铁路运输和

电力这两个对于中国煤炭企业来说至关重要的行业仍然受国家控制。因此,大多数外商投资集中在其他煤炭相关领域,如煤碳设备制造和煤化工。

中国很多老旧燃煤工厂低效率高污染,虽然新建的工厂效率较高,许多工厂缺少(或者未能运行)足够的污染控制设备。中国美国商会建议中国政府为发展诸如整体煤气化联合循环电厂(IGCC)等清洁煤炭项目提供更多的优先和优惠。IGCC技术使燃煤电厂在发电时产生的污染远少于传统煤工厂。中国如今在碳中和煤电领域拥有领先地位,我们对此表示赞赏,同时相信通过加大投资力度,中国必能巩固其清洁煤炭技术的领先者地位。

### 热电联产

很长时间以来,中国就鼓励汽电联产。这个问题在2005年由国家发改委发布的《节能中长期专项规划》中得到了解决。然而,中国现在的联产程度仍未达到发达国家水平的一半。中小规模的工业联产技术全球都能获得。然而,中国的装机容量却很低,这是因为没有明确的监管框架来确保电厂的并网发电。此外,应在联产中承担义务的电力公司把热电联产视为竞争对手,因此,据报道称,它们以含糊的“电网稳定性”问题为由,不愿意将联产运营企业接入电网。未来监管的不确定性也使得经济规划变得困难。结果,那些最适合热电联产的主要工业基地未能利用现有技术,失去了补充电网的商业机会。

例如,焦炭炉气(含60%的氢和23%的甲烷)是炼焦过程中的副产品。根据《中国煤炭资源》的数据,2006年中国生产焦炭接近3亿吨,大约是全球产量的50%。中国近几年建造的炼焦厂大多都使用了煤气回收技术。不过,据估计,全部可回收的焦炭炉气中仍然有多达10%的炉气被燃烧排放,如果回收用于发电,可以产出10千兆瓦电量,大约占中国全部发电量的1.6%。另外,还可以进一步配置燃气涡轮CHP系统,以便获得部分的利用机会。

现在市场上有成熟的热电联产技术,中国美国商会鼓励中国建立一个支持电网接入及允许转让竞争性外国技术的监管环境。

### 可再生能源

最近几年,中国开始加快可再生能源发展的步伐。这是中国经济转型和中国实现能源安全之努力的一部分。中国主要的可再生优先领域为太阳能、风能、生物燃料、生物能和小型水电。

根据目前的官方政策,即中国相当一部分能源需求必

### Combined Heat and Power

China has long encouraged cogeneration of steam and electrical power. The issue was last addressed in the NDRC's 2005 China Medium and Long-Term Energy Conservation Plan. However, cogeneration in China today totals less than half of the levels of production in other developed countries. Small and medium-scale industrial cogeneration technology is available globally. Nevertheless, the installed capacity in China is very low, mainly because there is no clear regulatory framework for connecting to the power grid. Moreover, incumbent power companies tend to view cogeneration as competition and are reportedly reluctant to allow operators to connect to the grid, citing vague "grid stability" issues. Future regulatory uncertainty also makes economic planning difficult. Consequently, major industrial sites well-suited for cogeneration do not employ available technology and commercial opportunities to supplement the electrical power grid are lost.

For example, coke oven gas (approximately 60 percent hydrogen and 23 percent methane) is produced as a by-product from the coking processes. According to China Coal Resource, China produced nearly 320 million tons of coke in 2007, or about 50 percent of the global production. Most Chinese coking plants built in recent years use gas recovery technology. It is estimated, however, that up to 10 percent of total recoverable coke oven gas is still flared. If recovered for power generation, this could produce 10 gigawatts (GW) of electricity, or about 1.6 percent of total Chinese power capacity. Additional gas turbine combined heat and power systems could be further deployed to capture a portion of this opportunity.

Combined heat and power technologies are available and AmCham-China encourages a regulatory environment supportive of power grid connection and the transfer of competitive foreign technologies.

### Renewable Energy

In recent years, China has begun increasing the pace of development of renewable energy. It is a part of China's economic transformation as well as its effort to achieve energy security. The main renewal priority areas for China are in solar, wind, bio-fuel, bio-mass and small hydroelectric.

Consistent with its official policy that a significant proportion of China's energy requirements must be provided by renewable energy sources, China has set a renewable energy target of five percent of primary energy sources by 2010, and 10 percent of primary energy sources by 2020. Longer term, China has set an objective of supplying at least 30 percent of its total energy requirements from renewable sources by 2050.

The China Renewable Energy Law (the Law), effective January 1, 2006, provides an overarching framework for China's renewable energy policy. The Law promotes the development and use of renewable energy and

assigns the NDRC the authority to manage and oversee this at the national level through the setting of mid- and long-term targets for renewable energy use. However, the Law fails to provide clear regulations and division of responsibilities for either a political entity or grid companies on grid construction, maintenance, or connection costs. This has created some resistance on the ground to grid access for certain projects.

Moreover, to fully capitalize on renewable energy production, the current power grid will need to be extended to remoter areas with abundant wind and solar energy resources. It will require intensive capital investment and technical expertise to upgrade the current power grid with advanced technologies to improve renewable energy use and electricity transmission efficiency. US companies can help China implement these essential infrastructure upgrades through providing needed capital, talent, and technology transfers.

### Solar

In 2007, China produced nearly half of the world's solar panels, although most (92 percent) were exported. Local usage of solar panels for buildings and power generation stations is limited. Currently, three pilot projects are approved and subsidized by the NDRC and Ministry of Science and Technology (MOST). In addition, the Ministry of Finance (MOF) and Ministry of Housing and Urban Rural Development (MOHURD) initiated the "China Solar Roof Plan" in March 2009.

There are numerous obstacles to the development of the Chinese solar energy sector, including lack of transparency in the nationwide photovoltaic (PV) plan, outdated facilities, insufficient financial resources to support PV research, insufficient design and integration facilities and resources at PV product manufacturers, the inability of local companies to manufacture high quality, reliable and low cost PV products, and inadequate educational and training opportunities in China for PV science and technology. Many American companies have extensive experience with PV technologies, quality manufacturing and training, enabling them to serve as valuable partners in the development of China's solar industry.

The NDRC and NEA are currently working on policy support and subsidy measures for solar power generation in China. Foreign investment in the solar industry, including equipment manufacturing and solar power station, is encouraged by the Chinese government and, despite the current economic downturn, remains relatively active. The government is increasing financial investment in the development of renewable energy (including solar), as well as research and development (R&D) support and demonstration projects. AmCham-China hopes that with ongoing incremental efficiency gains, coupled with increasingly scaled production and government support, solar will become a mainstream technology.

须由可再生能源提供, 中国制定了中长期目标, 可再生能源到2010年占主要能源的5%、到2020年占主要能源的10%, 到2050年可再生能源在中国能源结构中的比例争取达到30%。

2006年1月1日生效的《中华人民共和国可再生能源法》为中国的可再生能源政策提供了大框架。该法旨在促进可再生能源的发展和利用, 授权国家发改委下面的国家能源局, 通过制定使用可再生能源的中长期目标在国家层面上进行管理和监督。然而, 对于电网建设、维护和并网成本等, 该法并没有提供明确的规定, 也没有明确划分政治实体和电网公司的职责。这从根本上阻碍了某些项目的并网运行。

此外, 为了充分利用可再生能源发电, 现有的电网需要扩建, 以延伸到具有丰富风能和太阳能的偏远地区。这就需要大量的资金投入和专门技术, 采用先进的技术来更新现有电网, 提高可再生能源的使用和电力传输效率。美国公司有能力强提供所需的资本、人才和技术转让, 帮助中国实施这些重要基础设施的升级。

### 太阳能

2007年, 尽管中国制造了世界近一半的太阳能电池板, 但绝大部分(92%)都供出口。国内建筑物和发电企业使用太阳能电池板的数量很有限。目前, 国家发改委和科学技术部已经批准和资助了三个试点项目。此外, 财政部和住房和城乡建设部于2009年3月还启动了《中国太阳能屋顶计划》。

中国太阳能领域的发展存在许多障碍, 其中包括: 全国范围的光电计划缺乏透明度, 设备过时和支持光电研究的财政资金不足, 设计和整合设施以及光电产品制造资源不足, 本地企业缺乏制造高质量、可靠而低成本光电产品的能力, 光电科技在中国的教育和培训机会不足。许多美国公司在光电技术、制造和培训质量上有着丰富的经验, 能够充当中国太阳能行业发展的重要合作伙伴。

国家发改委和国家能源局目前正在制定政策, 为中国的太阳能发电提供支持和资助。中国政府鼓励外商投资太阳能领域, 包括设备制造和太阳能发电站。尽管目前全球经济陷入衰退, 但太阳能领域的投资依然较为活跃。政府不断增加可再生能源(包括太阳能)的财政投入, 支持研发活动和开展示范项目。中国美国商会希望, 随着太阳能能效的不断提高, 加上逐步实现规模化生产和政府的大力支持, 太阳能必将成为主流技术。

### 风能

中国明确将风力发电作为中国能源经济的一个重要组成部分。自2005年以来, 在《可再生能源法》等支持性政策的推动下, 风力发电成为中国意义深远的能源来源。由于风力发电已经广泛实现商业化, 能够提供可持续的清洁能源, 建设速度相对较快, 而且需要的资源最少, 具有成本竞争力, 因此相比其他可再生能源有望在不久的将来成为更具商业可行性的能源来源。

目前, 中国的累计风能装机容量排名世界第四。2008年, 中国新增装机容量超出了政府最初设定的10千兆瓦目标。预计到2010年, 中国风力发电总装机容量将达到20千兆瓦, 并有望实现政府制定的到2020年实现30千兆瓦的目标。随着中国制造能力不断增强, 风力发电的成本将进一步降低, 风力发电设施的增长有望继续加快。

然而, 中国风能政策框架的诸多因素仍不明确, 并可能妨碍风力发电的发展。当前, 由于风力发电的上网电价由国家发改委的定价部门根据当地条件在不确定的成本附加费用的基础上制定, 定价政策仍然不清晰且不可预见。

为了实现中国风能的目标, 政府为国内设备制造商提供了一系列财政优惠和研发项目。2008年8月, 财政部制定了《风力发电设备产业化专项资金管理暂行办法》。财政部的专项资金仅提供给生产兆瓦级风力发电设备和重要部件(涡轮、轴承、发电机、变速箱和转换器)的中国国内企业和内资控股企业。该专项资金旨在明确鼓励国内生产商在高容量涡轮领域与国际公司形成技术接轨。

然而, 国内缺乏行业范围的质量标准将严重影响高质量配件的开发, 阻碍中国企业参与全球竞争。缺乏一整套质量标准不仅导致国内和国际部件供应商难以在一个公平的赛场上开展竞争, 也会妨碍中国发展其自身的高科技供应基地以及提高产品质量和绩效。

继2005年11月国家发改委的要求, 财政部的新法规进一步规定, 新建风力发电项目使用的所有涡轮的国产化率必须达到70% — 而2000年的规定为40%。

这些法规和其他规定的共同作用严重地影响了国外和外商投资的国内公司在中国的商业机会。这些做法不仅导致了反竞争的经营环境, 还限制了世界先进的节能增效技术和知识的快速引进, 不利于中国实现其节能和环境改善的宏伟目标。

## Wind

China has also identified wind power as an important component of the country's energy economy. Starting in 2005, and spurred by supportive policies such as the Renewable Energy Law, wind power became a meaningful source of energy in China. It may prove more commercially viable than other renewable energy sources in the near future given that it has already been commercialized on a large scale, can provide sustainable and clean energy, can be built relatively quickly, requires minimal resources to produce, and is cost-competitive.

China currently ranks fourth in the world in cumulative installed capacity. In 2008, China's additional installed capacity exceeded the initial target set by the Chinese government of 10 GW. Estimates are that by 2010 the total installed capacity for wind power generation in China will reach 20 GW, potentially putting China on track to meet the government's goal of 30 GW by 2020. As Chinese manufacturing ability increases, the cost of wind power further declines, and the rate of growth of wind power installations should continue to accelerate.

However, numerous elements of China's wind policy framework remain unclear and could hinder the development of wind power. The pricing policy is currently vague and unpredictable, as the on-grid price of wind power is determined by the price department of the NDRC based on local conditions on an undefined cost-plus basis.

To meet China's wind energy targets, the government has instituted a series of financial incentives and R&D programs for local equipment manufacturers. In August 2008, MOF introduced the Temporary Measures on the Management of Special Funds for Industrialization of Wind Power Equipment. The special MOF fund will be available only to Chinese domestic and domestic majority-owned companies that produce MW-level wind power equipment and critical constituent parts (turbines, bearings, generators, gearboxes and converters). The fund is explicitly designed to encourage Chinese producers to bridge the technology gap with international players in the high-capacity turbine sector.

However, the lack of domestic industry-wide quality standards could substantially affect the development of high-quality components, hampering global competitiveness for Chinese companies. The lack of a comprehensive set of quality standards not only creates an uneven playing field for domestic and international component suppliers, it also hinders China from developing its own high-quality supplier base and increasing product quality and performance.

The new MOF regulations follow the November 2005 requirement by the NDRC stipulating that 70 percent locally-manufactured content be included in all turbines to be used in new wind power projects—up from the 40 percent requirement imposed in 2000.

The combined effect of these and other regulations significantly impacts foreign and foreign-invested domestic companies' opportunities in China. In addition to creating an anti-competitive operating environment, it also limits the rapid introduction of world-leading technologies and performance-enhancing skills and knowledge that can help China achieve its ambitious goals for increased energy efficiency and environmental improvements.

## Biomass and Biofuel

Biomass is defined in China as all residue from agriculture, forestry production and process, as well as municipal solid waste from residences. These have been estimated to provide nearly 10 percent of China's primary energy—the largest percentage of any major economy. Most biomass in China is consumed for local cooking fuels or the production of biogas (methane).

China has set a goal of attaining one percent of its renewable energy generation through bioenergy by 2020. The use of biomass and biofuels remains entwined in the global debate on competition with food consumption over agricultural products and concerns that this competition will continue to push crop prices up. AmCham-China encourages a more stable and transparent biomass investment regulatory environment.

## Energy Demand

China's demand for electricity has been growing at an average annual rate of 14 percent since 2000. Although the rate of growth is expected to slow over time (averaging 4.6 percent from 2015 to 2030) due to an anticipated shift in the economic structure from energy-intensive industry to lighter industries and services, China will soon overtake the US and EU as the largest electricity consumer in the world.

Demand reduction is critical for China to meet its goals of energy efficiency, which the Chinese government understands, as evidenced by the 11th Five-Year Plan. However, it also has a huge opportunity to exceed its own targets. According to a recent McKinsey Global Institute 2007 study, *Leapfrogging to Higher Energy Productivity in China*, China could realize energy demand 23 percent below projections under current policy for 2020. This would result in 15 percent lower oil imports and exceeding CO<sub>2</sub> reduction goals by up to 20 percent.

## Industrial Sector

Given China's high rate of energy intensity (energy used to generate one unit of GDP), due to its dependence on heavy, energy-intensive industries, it is essential that demand reduction policies target industrial sources as well as consumption-led demand. Significant efficiency can be created in this sector through heat recovery, such as combined heat and power systems, motor efficiency initiatives, and

## 生物能和生物燃料

生物能在中国被定义为农业、林业生产和加工的所有残余物以及城市居民固体废弃物。据估计，它们提供的能量占中国目前主要能源的近10%——这是主要经济体中最大的比例。中国的生物能大多用作当地的家用燃料或者用于生产沼气（甲烷）。

中国设定目标，到2020年通过生物能获得其可再生能源的1%。生物能和生物燃料的使用仍然存在全球争议，主要是其与农产品、粮食消费相竞争，以及该竞争将继续推动粮食价格上涨的忧虑。中国美国商会鼓励中国建立更加稳定和透明的生物能投资监管环境。

## 能源需求

自2000年开始，中国的电力需求以年平均14%的速率增长。虽然由于预期经济结构从能源密集型工业向轻工业和服务业转变，预期增长率也会随着时间而减缓（自2015年至2030年，预期年平均4.6%），中国将很快取代美国和欧盟成为世界最大的电力消耗国。

从“十一五”计划可以看出，中国政府理解削减需求对于中国实现节能目标的重要性。然而，中国也有很大机会超越其自身目标。根据近期的麦肯锡全球研究院2007年报告《中国向更高能源生产力迈进》，若目前制定的2020年目标政策得到落实，届时中国的能源需求可能比预期值要低23%。这将使得石油进口能够削减15%以及超越二氧化碳减排目标达20%。

## 工业部门

由于中国对重型、能源密集型工业的高依赖度导致高能源强度（单位GDP能耗），能源需求削减政策需要针对工业源头和消费拉动型需求来制定。通过热回收包括热电联合系统和电机节能计划，以及推动更加节能的发电计划，工业部门可以实现大幅度的能源节约。然而，尽管能源效率对于放慢中国的能源需求步伐至关重要，还需要通过重新平衡宏观经济来巩固这些成果。

## 建筑节能

在过去十年里，随着每年约1500万甚至更多的人口移入城市，中国大规模城市化进程继续快速推进。据住房和城乡建设部统计，中国每年建设完成约20亿平方米的房屋，约占世界新增建筑面积的近40%。这些趋势预期在未来十到十五年内将不会改变；到2015年，中国建筑市场将占据世界总量的50%。

然而，在能源消耗、建筑行业垃圾以及大力改善建筑节能方面，中国也面临严峻的挑战。每个建筑单位的能源消耗比发达国家要高得多。鉴于建筑和相关行业的迅速发展，即使建筑使用的平均能源强度达到发达国家的水平，由于能源供应商需要不断发展才能赶上快速增长需求的步伐，巨大的增量也给基础设施带来了极大的挑战。

中国政府承诺，在2010年结束的“十一五”计划期间，实现将单位GDP能耗降低20%的宏伟目标。由于建筑能耗至少占中国能源消耗总量的30%，政府重点致力于通过翻新改建“大多数”现有建筑，扭转能源强度不断上升和建筑行业垃圾不断增加的趋势。相比八十年代初期的水平，政府致力于在2010至2020年期间将新建建筑物的节能水平至少提高达65%。政府在推动建筑节能标识、实施绿色建筑标准、执行公用建筑节能法规、以及对增进节能和使用建筑可再生能源提供税收鼓励/补贴等措施，将为建筑相关技术、产品和整合方案开辟巨大的商机。中国美国商会赞赏并鼓励持续制定和实施这些措施，并加强现有的节能准则和标准的执行。

中国住房和城乡建设部和其他政府部门，包括国家发改委和科学技术部，在推动实施建筑节能的努力方面发挥了带头作用。连续四年，住房和城乡建设部都是“中国绿色建筑与建筑节能国际会议”的牵头部门，该大会是中国举行的最重要的绿色建筑活动。该大会与地方政府、设计研究院和相关行业一起提高绿色建筑理念、技术和方案。这种协作为行业和企业开拓潜力巨大的市场提供了机会。

## 建议

- 制定长期的国家政策以及地方实施条例，鼓励可再生能源的发展。为电网运营商升级电网基础设施和能力提供财政激励。
- 天然气利用政策须与有关“受鼓励行业”和“高科技企业”的其他政策相衔接。
- 通过监管改革鼓励工业热电联产，制定法律框架允许企业将电力销售给电网。
- 提供一个可预测的生物能监管环境和商业化进程，避免因突然的政策转向而影响技术转让和投资。
- 通过降低定价机制和供应连续性方面的风险，改善长期生物能供应合同的可执行性，保障投资人的利益。

promoting more efficient power generation plans. However, while energy efficiency initiatives are crucial to slowing China's energy demand trajectory, these efforts will need to be promoted concurrently with macroeconomic rebalancing.

### **Building Efficiency**

China's massive urbanization has continued at a rapid pace with an estimated 15 million or more people moving into towns and cities every year over the past decade. According to the MOHURD, roughly two billion square meters, or nearly 40 percent of the world's new constructed floor spaces, are completed in China on an annual basis. Both of these trends are expected to continue for the next 10 to 15 years; China's share in world construction is expected to rise to 50 percent by 2015.

However, China also faces serious challenges in energy consumption and waste in the construction sector and in greatly improving energy efficiency in buildings. Energy consumption for the construction of each unit floor space is estimated to be much higher than in developed countries. Given the rapid growth in buildings and industry, even if the average energy intensity in building use is comparable to that in the developed countries, the volume of growth presents extreme infrastructure challenges as energy supplies need to continue to grow at a pace to keep up with rapidly increasing demand.

The Chinese government has committed itself to an ambitious goal of reducing per unit GDP energy consumption by 20 percent over the five-year period ending 2010. As buildings consume at least 30 percent of China's total energy, the government made a strong commitment to reverse the trend of ever-increasing energy intensity and waste in the construction sector by retrofitting a "majority" of existing buildings. It has committed to energy efficiency improvements of at least 65 percent more compared to the levels in the early 1980s for newly completed buildings during 2010-2020. Government initiatives in pushing building energy efficiency labeling, promoting green building standards, implementing energy conservation regulation for public buildings and tax incentives/grants for energy efficiency enhancement, and use of renewable energy in buildings will open vast opportunities for technologies, products and integrated solutions related to buildings. AmCham-China commends and urges the continued development and implementation of these initiatives and strengthened enforcement of current energy efficiency codes and standards.

MOHURD and other agencies, including NDRC and MOST, have taken the lead in China's efforts for energy efficiency in buildings. For four consecutive years, MOHURD has been the lead agency in China's International Conference on Green and Energy Efficient Buildings, the country's most important green building event. It promotes green building thinking, technologies and solutions, working with

local governments, design institutes and the greater industry. This collaboration provides opportunities for the industry and businesses to explore the vast growing market potential.

### **Recommendations**

- **Create long-term national policies together with local implementing regulations that encourage the development of renewable energy. Provide financial incentives for grid operators to upgrade grid infrastructure and capacity.**
- Harmonize the Natural Gas Utilization Policy with other programs for "encouraged" industries and "high-tech" enterprises.
- Encourage industrial cogeneration through regulatory reform, creating a legal framework for companies to sell power back to the electricity grid.
- Provide a predictable biomass regulatory environment, commercialization schedule and avoid sudden policy shifts that discourage technology transfer and investment.
- Improve enforcement of long-term biomass supply contracts to justify capital investments by reducing risks in pricing mechanisms and supply continuities.
- Increase efforts that ensure current building standards for energy efficiency are fully and properly implemented and enforced.
- Increase efforts to encourage energy efficient building retrofits.
- Continue the development roll-out of a national "green" product and building labeling program.

- 加大工作力度, 确保当前的建筑节能标准得到全面的贯彻执行。
- 加大工作力度, 鼓励节能建筑翻新改进。
- 继续制定和出台全国性的“绿色”产品和建筑标识制度。

## Export Controls

In today's globally integrated world, US national security and economic prosperity are increasingly dependent on the ability of US companies to compete internationally and engage the world's science, technology, and research and development communities. Current US export control policies, however, do not adequately incorporate the realities of this global environment. On the contrary, as a January 2009 report by the National Academies points out, today's export control regulations "that were crafted to meet conditions the United States faced over five decades ago now quietly undermine our national security and our national economic well-being."

AmCham-China agrees with this report in the area of US-China trade where companies confront restrictions or prohibitions in China on commodities or technologies that are often widely available in China either from domestic sources or non-US companies. These limitations harm America by weakening relations with other countries and boosting foreign competitors at the expense of US economic growth and security.

### Significant Developments

AmCham-China applauds the US government's reviews of its export control policies and control lists over the past year and the US Department of Commerce's (DOC) public statement welcoming requests for foreign availability assessments from the public. The announcement in May 2008 from the DOC Bureau of Industry and Security (BIS) on the review of the high precision machine tool industry, its September 2008 announcement on examining the foreign availability for thermal imaging cameras in China and the October 2008 announcement that BIS would conduct a systematic review of the Commerce Control List to clarify controls and eliminate redundant or outdated controls are all excellent steps. AmCham-China hopes the US government will conduct additional reviews in other industry sectors in 2009.

AmCham-China commends BIS and the US Embassy for their industry outreach and positive engagement and hopes that the US government will continue such collaborative efforts. AmCham-China, through its Export Compliance Working Group (ECWG), has supported this effort by providing the US government with timely and detailed information about China's indigenously developed capabilities and imports of

foreign, non-US technology in strategic sectors.

AmCham-China has found that US export controls often target areas where the commodities and technology are already available in China from Chinese and non-US sources, rendering the measures meaningless. We hope the ECWG reports will lead to smarter controls on these readily available items, resulting in expanded US-China high-technology trade, which would be a positive development for both industry and government.

The US government has also shifted away from a country-based to an entity-based approach in formulating its export control policy. AmCham-China commends this shift, as an entity-based approach holds individual companies accountable rather than using country-based blanket regulations that may unfairly block trade with legitimate end users. AmCham-China hopes the US government will move in this direction with regard to China.

To this end, AmCham-China has supported and continues to support the Validated End-User (VEU) program. It represents a positive step toward enhancing US-China civilian trade in high technology and US national security through greater and more practical compliance schemes. The new framework for authorizing lower-risk trade without the need for individual licenses is a more broadly useful model.

AmCham-China congratulates the US government on recently signing an agreement with the Chinese government on the full implementation of the VEU program, which creates a more predictable business environment for manufacturers and suppliers. This agreement improves the business environment by expediting the export process and rewarding VEU companies for good corporate governance. It also extends the benefit of promoting compliance internationally, which enhances US regional and global security, while increasing economic security by making the US more competitive.

### Specific Issues

A large percentage of dual-use products are approved for export by the DOC and the number of controlled items is relatively small compared to overall trade. However, overly-restrictive and sometimes ambiguous export controls have led to misperceptions detrimental

## 出口管制

在今天全球一体化的世界里，美国的国家安全和经济繁荣日益取决于美国企业参与国际市场竞争和从事全球科学、技术和研发活动的的能力。然而，当前的美国出口管制政策却未能充分考虑到全球化的现实。相反，美国国家科学院在2009年1月发布的一份报告中指出，现行的出口管制法规“是五十年前为顺应当时美国所面临的形势而制定的，如今却正在无形中侵蚀着我们的国家安全和国家经济利益。”

中国美国商会同意该报告的看法。在中美贸易领域，美国企业在对华出口商品和技术方面面临诸多限制或禁令，而这些商品和技术多数在中国国内已有广泛供应，或者可由非美国的外国公司提供。这些限制以牺牲美国经济增长和经济安全为代价，削弱了美国与他国的关系，促进了外国竞争者的发展，对美国有害无益。

### 重大进展

在过去的一年，美国政府对其出口管制政策和管制清单进行了重新审议，美国商务部公开声明，欢迎公众提出针对外国供应状况的评估请求。对于政府的这些举措，中国美国商会表示赞赏。美国商务部产业安全局2008年5月宣布对高精机械工具行业进行重新审核，2008年9月宣布对外国热成像摄像机产品出口中国的情况展开调查，2008年10月宣布将对商业管制清单开展系统化评估以澄清管制项目和消除冗余或过时的管制项目，这些都是很好的举措。中国美国商会希望2009年美国政府将在其它产业部门展开进一步的审核工作。

中国美国商会对产业安全局和美国大使馆给予产业部门的鼎力支持和积极配合表示赞赏，希望美国政府能够继续推进这种协作。中国美国商会通过其出口合规工作组，努力支持这项工作，向美国政府提供关于中国战略产业部门的自主研发能力以及从境外非美国渠道进口技术的及时、详尽的信息。

中国美国商会发现，美国出口管制所针对的领域，通

常已有中国国产和来自美国以外的进口商品和技术供应中国市场，这令美国的出口管制变得毫无意义。我们希望出口合规工作组的报告将促成对这些市场上早有供应的产品实施更明智的管制政策，扩大美中高科技贸易，这对产业和政府而言，都意味着积极的进展。

在制定出口管制政策时，美国政府的考量因素已经从整个国家转为具体实体。中国美国商会欢迎这种转变，因为基于实体的考量乃是针对单个的公司，而不是针对整个国家的一刀切做法，后者可能会不公平地阻碍与合法最终用户的贸易。中国美国商会希望美国政府对对华贸易政策上也能实现这一转变。

为此，中国美国商会将一如既往地支持合格最终用户制度（VEU）。VEU计划是一项积极的举措，通过更大范围、更务实的合规安排，扩大美中民间高科技贸易，维护美国的国家安全。这一授权低风险贸易无需申请单个许可证的新框架，是一种广泛有益的模式。

中国美国商会祝贺美中两国政府近日签署了关于全面实施VEU计划的协定，这为制造商和供应商创造了更有预见性的经营环境。该协定通过加快出口程序，对治理良好的VEU企业给予奖励，改善了经营环境。该协定同时有益于促进国际合规工作，在提升美国企业竞争力的同时，增进美国的经济安全，从而增强了美国的区域和全球安全。

### 具体问题

大部分的双重用途产品都拥有美国商务部的出口许可，与整体贸易规模相比，受管制的商品数量很小。然而，过度限制和有时模棱两可的出口管制政策导致了很读现象，其对贸易的危害性大大超出了数字所反映的程度。在对华贸易领域，严格的许可程序和一长串受管制的技术清单，大大增加了美国企业的在华经营成本，同时还造成了一种印象，即中国充满太多的经营风险和不确定性，这使得一些美国企业不敢向中国合法的民间最终用户出口商品和技术。在如今各国商家对中国市场趋之若鹜

to trade beyond the numbers. Rigorous licensing procedures and the long list of controlled technologies concerning China has greatly increased the costs of doing business in China for US companies. It has also created the impression that China presents too many business risks and uncertainties, causing some US firms to shy away from exporting commercial items and technology to legitimate, civilian end users in China. This unnecessarily hurts the American economy at a time when companies should be aggressively targeting the Chinese market.

Conversely, Chinese companies often avoid buying high-tech items from the US, based on their perception (albeit, often mistaken) that these items require a prohibitively expensive US export license. At the same time, the Security Advisory Opinion (SAO) program for processing visas continues to discourage potential customers and partners from traveling to the United States. Many Chinese government officials, industry leaders, and business executives, after experiencing issues with the SAO program, are frustrated by doing business with US companies and have shifted their preference to non-US firms. (Please see the US Visa Policy chapter.) Furthermore, shifting regulatory policies leads some Chinese companies to believe that US firms' after-sales service and maintenance could be restricted in the future. Rather than deal with these real or perceived issues, Chinese companies turn to non-US vendors who operate with less onerous restrictions on exports and visas to China.

Other negative consequences of a perceived overzealous export control policy include potential trade disputes and/or retaliation. These policies often look like protectionism to China and other US trading partners. In particular, the Chinese government has raised the issue of export controls as trade protectionism during recent bilateral discussions with the US at the Strategic Economic Dialogue and the Joint Commission on Commerce and Trade, and has used this as justification for enacting veiled trade barriers, including tariffs, Chinese national standards and increased license requirements.

It is vitally important to US national and economic security to have an accurate, relevant and effective export control policy that is not detrimental to legitimate civilian trade. Clear and coordinated policy enables US companies to develop sensible compliance programs enhancing US national security while maintaining global competitiveness. Relevant agencies must craft export control policies to enhance both national and economic security by controlling only exports of truly critical and sensitive technologies. Controlling technologies that are widely available serves neither US economic nor national security interests.

AmCham-China appreciates the magnitude of the challenge facing policy-makers on export controls in a globalized economy and the implications for US national and economic security. We, therefore, urge both the US Executive and Legislative branches to

conduct a full review of current export control laws and regulations, taking into full consideration the reality of world trade and industrial and technological development. In the case of China, domestic capabilities and availability from foreign, non-US suppliers is critical to clear analysis. In the interim, AmCham-China suggests that the US government continue to expand its ongoing review programs on export control policies and licensing practices toward China, based on the realities of the China market.

## Recommendations

### For the US Government

- Carry out a full review and revision of antiquated export control regulations, in line with the recommendations of the January 2009 National Academies report.
- Base China export control policy on up-to-date information considering commercial realities like indigenous domestic capabilities and availability from foreign non-US sources.
- Continue consultation with industry for input on the control-list reviews and changes based on dynamic market developments
- Allocate more on-the-ground resources, beyond pre- and post-shipments, to gather and assess information for up-to-date Chinese domestic technological capability and foreign availability.
- Simplify controls by improving coordination between agencies on export controls to reduce redundancies in regulations, such as overlapping controls on exports/re-exports to embargoed countries, enabling better compliance.
- Eliminate uncertainties in relevant China regulations by further clarifying the meaning of material contribution to military development and specially designed for military end-use.
- Focus controls, restrictions and prohibitions on specific end-users, not China in general. Along these lines, publish lists of restricted and prohibited Chinese persons and entities in Chinese characters to minimize confusion that may arise from translation discrepancies.

### For the Chinese Government

- Continue to press Chinese companies to implement internal compliance programs, improving their ability to receive controlled US items and ensure compliance with China's own export control laws and regulations.
- Facilitate the separation of commercial from military entities to support the transparency and competitiveness of Chinese commercial enterprises.
- Become a member of the Wassenaar Arrangement and all multilateral export control regimes.

的时代, 这种状况将给美国经济造成不必要的伤害。

反过来, 中国企业也常常避免从美国购买高科技产品, 因为在他们看来(虽然常常是误解), 购买这些产品需要获得代价过于高昂的美国出口许可证。同时, 受理签证时的“签证安全建议”(SAO)程序要求使得那些希望前往美国的潜在客户和合作伙伴望而却步。许多中国的政府官员、产业领袖和公司高管, 在经历SAO程序问题之后, 都对与美国公司做生意感到心灰意冷, 转而青睐非美国企业。(请参阅《白皮书》“美国签证政策”一章。)而且, 多变的管制政策让一些中国公司认为, 美国企业的售后服务和产品维护在将来有可能受到限制。面对这些客观存在或误认为存在的问题, 中国公司于干脆转向非美国供应商, 因为其对华出口限制更少, 签证程序也更简单。

由于美国的出口管制政策给人们造成的过于严厉的印象, 还带来了其它一些负面后果, 如潜在的贸易纠纷和报复。美国的这些政策常常被误读为针对中国和其它贸易伙伴的保护主义措施。特别是, 在最近中美战略经济对话和中美商贸易联委会等双边会谈上, 中国政府将出口管制问题归为贸易保护主义, 并以此为理由设置隐形贸易壁垒, 包括关税、国家标准和更多的许可证要求。

推行一套不伤及合法民间贸易的准确、贴切而有效的出口管制政策, 对于美国国家安全和经济安全而言具有重大意义。清晰而协调的政策有助于美国公司制定明智的合规计划, 维护美国的国家安全, 同时保持美国的全球竞争力。相关机构必须精心构思有益于美国国家和经济安全的出口管制政策, 只对真正关键和敏感的技术实施出口管制。对已有广泛供应的技术实施控制, 于美国经济和国家安全都毫无裨益。

在经济全球化和顾全美国国家和经济安全的大背景下, 决策者在制定出口管制政策时面临巨大的挑战, 中国美国商会对此表示理解。因此, 我们敦促美国的行政和立法部门充分考虑世界贸易、产业和工业的发展现状, 对现行出口管制法规展开一次全面的审议。在对华贸易政策方面, 充分了解中国国内的技术能力和非美国的外国供应商的供应情况, 对于我们展开清晰的分析具有关键性意义。在此期间, 中国美国商会建议美国政府基于中国市场的现状, 继续拓宽其针对中国的出口管制政策和许可程序的持续审议工作。

## 建议

### 对美国政府

- 采纳国家科学院在2009年1月的报告中提出的建议, 对不合时宜的出口管制法规进行全面的审议和修订。
- 通盘考虑中国的本土技术能力和非美国的外国供应状况等商业现状, 基于最新信息来制定对华出口管制政策。
- 继续与工商界磋商, 基于市场发展动态, 征求对管制清单的审议和修订意见。
- 调集更多的可靠资源, 从发货前后的各个环节来收集和评估关于中国国内技术能力和外国供应之技术的信息。
- 协调管理机构之间在出口管制方面的政策, 简化管制程序, 减少冗余法规, 例如对禁运国的出口和再出口的重叠管制, 以促进合规工作。
- 进一步澄清“对军事发展有实质贡献”和“专为军事最终用户设计”的含义, 消除相关对华法规的不确定性。
- 将管制、限制和禁止指向特定的最终用户, 而非整个中国。根据以上政策, 公布受限制和禁止的中国个人和实体的中文名单, 以减少可能因译文出入而产生的混乱。

### 对中国政府

- 继续力促中国企业实施内部合规计划, 提高其获得受管制的美国商品的能力, 确保其遵守中国自身的出口管制法规。
- 推进商业实体与军事实体的分离工作, 提高中国商业企业的透明度和竞争力。
- 成为瓦森纳协定(Wassenaar Arrangement)和其它多边出口管制体系的成员国。

## Food and Product Quality and Safety

The quality and safety of food and products produced in China remain a high-profile issue throughout the world (Figure 14). Concerns about food and product safety continue to erode confidence in the “Made in China” label, both internationally and domestically within China. Although China is not alone in having safety and quality issues, it receives great scrutiny as the world’s largest exporter, and also as a result of several high-profile problems. A number of steps have improved the framework for ensuring safety and quality over the last year, but many challenges remain.

The level of food and product quality and safety are important benchmarks in economic development and standards of living. As the Chinese economy grows, it is vital for the country to safeguard its products. The US and Chinese governments, companies and consumers all have a large stake in the safety of Chinese foodstuffs and products. It is critically important for the two countries to continue to cooperate to improve the overall situation.

### Significant Developments

Both the Chinese and the US governments took significant steps in the past year to bolster food and product safety protection. The Chinese government continues to make progress in addressing food and product safety concerns, although many of the proposed measures have yet not yet been fully implemented. The State Council’s continued efforts to increase coordination among the numerous agencies and bureaus responsible for food and product quality and safety is a sign of China’s high level commitment to reform its enforcement and standards. In January 2009, the Ministry of Health (MOH) established a “pre-emptive” food safety monitoring system focused on early detection, warning and intervention.

The Central Government also signaled its plans to implement thousands of new standards for food and product safety, as outlined by Premier Wen Jiabao in March 2008. Although the standards have yet to be officially codified, they represent another positive step.

On February 28, 2009, the National People’s Congress passed a long-awaited Food Safety Law that imposes uniform nationwide standards, provides for greater inspection and supervision, and increases penalties

and fines for violations. The sweeping new law calls for a number of new measures ranging from product recall systems and nutritional labeling to allowable additives and record-keeping by farmers. A national food safety commission will be created to oversee and coordinate the workflow of the agencies responsible for developing and enforcing standards. In the case of violations, the law mandates significantly increased criminal and civil penalties for the producing company and management, especially in the case where the company knowingly sells sub-standard food products.

We commend the Chinese government for taking proactive measures to address food and product safety concerns. We encourage the relevant ministries to collaborate with industry on implementation and future revisions to the Food Safety Law to ensure effectiveness and compliance.

Cooperation between China and the US has also been on the increase. We applaud the opening of the first overseas US Food and Drug Administration (US FDA) offices in Beijing, Shanghai and Guangzhou in November 2008. These offices will implement two agreements signed between the US Department of Health and Human Services and the Chinese government at the December 2007 Joint Commission on Commerce and Trade (JCCT) talks on the safety of food, feed, drugs and medical devices.

The new offices will increase coordination and collaboration between US and Chinese authorities, accelerate efforts to protect consumers’ health in both countries and work with Chinese industries to better inform them of US FDA standards. The passage of the 2008 Consumer Product Safety Commission (CPSC) Reform Act will strengthen enforcement and testing in the US, allocate much-needed resources, and further strengthen the CPSC’s ability to ensure the safety of products imported into the US. The US and China should continue to host exchanges between regulators and better educate manufacturers and exporters about US market requirements.

In addition, the US and Chinese governments continue to engage on the product and food safety issue through both the Strategic Economic Dialogue and through the JCCT meetings. We also applaud the US-China-EU meetings on product safety, held in

## 食品及产品质量与安全

中国制造的食品及产品的质量与安全问题仍旧是全世界共同关注的热点话题(图14)。对食品及产品安全的担忧继续影响着国内外消费者对于“中国制造”的信心。虽然并非只有中国出现安全与质量问题,但由于中国是全球最大的出口国,同时由于一些重大安全与质量问题的出现,使其产品问题受到国际社会的密切关注。在过去一年中,中国政府采取的诸多措施已使产品安全与质量保障机制大为改观,但仍存在着许多挑战。

食品及产品质量与安全水平是体现经济发展与人民生活水平的重要标志。随着中国经济的发展,保证其产品安全性就显得愈发重要。中国食品及产品安全与中美两国政府、企业和广大消费者都息息相关。中美两国应继续紧密合作,共同改善食品及产品安全的总体状况,这项工作具有极其重大的意义。

### 重大进展

在过去一年中,中美两国政府均采取了积极有力的措施,加大对食品及产品安全的监管力度。在解决食品及产品安全问题方面,中国政府取得了重大进展——尽管有许多建议尚未得到全面落实。国务院为加强产品及食品质量各主管部、局之间的协调协作所付出的不懈努力,证明了中国推动实施体制与标准改革的坚定决心。2009年1月,卫生部建立了“先发制人”的食品安全监督体系,重点在于先期检查、警告与介入。

此外,根据温家宝总理于2008年3月的讲话,中央政府计划实施数千项旨在确保食品及产品安全的新标准。尽管这些标准尚未正式颁布,但这表明中国在这一问题上又向前迈出了一大步。

在2009年2月举行的全国人民代表大会上,中国通过了众所期盼的《食品安全法》,该法案提出了一系列全国统一的标准,加强了有关部门的检查与监管,并加大了对违法违规者的处罚力度。这部新法案内容十分全面,要求

采取各项新措施,涉及产品召回制度、营养标签、允许使用的添加剂以及可追溯源头监管等。此外还将成立国家食品安全委员会,对负责制定和执行新标准的各有关部门的工作进行监督和协调。《食品安全法》对有违法违规情况发生的生产企业及其管理层,明显加大了刑事与民事处罚力度,尤其是在生产企业明知故犯的情况下出售不合格食品。

对于中国政府在解决食品及产品安全问题方面所采取的积极措施,我们表示赞赏。我们鼓励有关部门与业界人士就将来《食品安全法》执行和修订方面开展合作,确保该法案能够得到有效的落实。

中美两国之间的合作也在不断深化。2008年11月,美国食品药品监督管理局(US FDA)在北京、上海和广州开设了其首家海外办事处。这些办事处将负责落实和执行美国卫生和福利部与中国政府在2007年12月美中商贸联合委员会上,就食品安全、饲料安全、药品安全以及医疗器械安全问题展开的对话中签订的两项协议。

新办事处将加强美中两国监管部门之间的协调合作,推动有关计划的实施,以保障两国消费者的健康。同时与中国各行业合作,更好地向它们宣传介绍美国食品药品监督管理局的标准。《2008 美国消费品安全委员会改革法》的通过,将加强美国的执法与检查力度,提供必要的资源,并进一步提高美国消费品安全委员会的能力,从而保证美国进口产品的安全。美中两国应当继续开展监管部门层面的交流活动,同时更好地向制造商和出口商介绍美国的市场要求。

此外,美中两国政府继续通过战略经济对话和中美商贸联合委员会会议解决产品及食品安全问题。2008年9月,中美欧关于产品安全问题的三方会谈在北京举行,我们对此颇为赞赏。各国政府之间颇具建设性的会谈,仍然不失为一种改善食品及产品安全的非常有效的方法。美国业界非常赞赏中国政府在积极参与有关这一重要问题的建设性会谈方面所持有的开明态度。我们促请新的奥巴



Beijing in September 2008. Constructive engagement between governments remains a very effective method of improving food and product safety, and the American business community applauds the Chinese government for its openness in engaging constructively on this important issue. We strongly urge the new Obama administration to continue high-level economic dialogues that promote issues like food and product safety.

## Specific Issues

### Regulatory Environment

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

The US, China and other foreign countries must continue working towards common standards for import-export goods inspections. China's implementation and enforcement of international standards and a science-based approach to the issue is key to resolving product and food safety issues over the long term. We urge the Chinese government to ensure that there are adequate resources available for the full implementation and enforcement of existing safety standards. This would benefit companies in China by improving confidence in the "Made in China" brand, and also consumers by ensuring product safety.

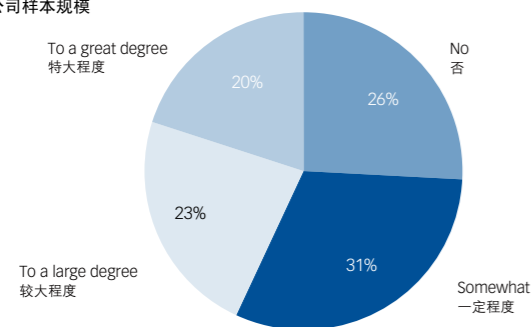
### Supply Chain Management

American companies can positively impact the long-term safety of Chinese food and products by bringing best practices and international standards to their Chinese operations. Tellingly, the AmCham-China 2009 *Business Climate Survey* indicates that among members paying more attention to China-made goods,

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

企业是否对中国制造的产品质量和安全问题更加关注?

Company sample size = 254  
公司样本规模



Source: 2009 AmCham-China Business Climate Survey  
资料来源: 2009年中国美国商会营商环境调查

the majority of them are increasing focus on supply chain management (Figure 15). Companies must ensure that they are fully engaged with their supply chain to ensure quality. US manufacturers should adopt risk management or mitigation approaches to reduce or eliminate risks in their supply chain.

The lack of a well-developed third party logistics system and cold chain logistics also creates unique challenges for food safety, particularly as production moves further away from the end user. A recent AT Kearney study estimated that an investment of over US \$100 billion (RMB 685 billion) from the private sector will be required over the next 10 years to ensure that food can be safely and efficiently transported from farms to processing facilities or consumers.

### Intellectual Property Rights Enforcement

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

## Recommendations

### For the Chinese Government

- **Improve the regulatory framework governing food and product safety, and increase enforcement and compliance with regulations through capacity-building and allocation of sufficient resources.**
- Continue efforts to inform and educate regulators, manufacturers and producers about international standards and market requirements in the US.
- Adopt international standards for food and product quality and safety, and implement verifiable testing processes.
- Ensure that a science-based approach is used to address food and product safety concerns.
- Promote the development of world class supply chain management practices and encourage investment in a logistics network to support food and product safety, including cold chain logistics.

### For the US Government

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

马政府继续开展高层经济对话, 推动食品及产品质量等问题的妥善解决。

## 具体问题

### 监管环境

食品及产品质量问题的监管涉及许多中央、省市和地方政府部门。尽管2007年中央组建了专门针对这一问题的领导小组以改善各部门、各省市之间的协调沟通, 但监管能力薄弱和资源不足仍然是一个主要问题。

美国、中国以及其他国家必须继续就进出口商品检查标准达成一致。从长远的角度而言, 中国对此采用国际标准和科学的方法将是解决产品及食品安全问题的关键所在。我们敦请中国政府确保充分的资源来保障现有安全标准的全面实施。这将提升人们对“中国制造”的信心, 大大裨益于中国企业, 同时也将保证产品的安全, 造福于广大消费者。

### 供应链管理

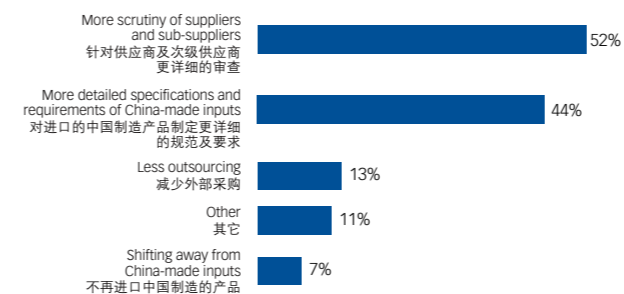
通过向其在华业务引入最佳方法和国际标准, 美国企业能够对中国食品及产品的长期安全发挥积极的作用。根据中国美国商会2009年营商环境调查显示, 大部分关注中国制造产品问题的会员, 越来越多地把重点关注于供应链管理方面(图15)。企业必须确保其全面掌握供应链的各个环节以保证质量。美国制造商应当采用风险管理或风险缓解方法来减少或消除其供应链中的风险。

缺乏完善的第三方物流体系和冷链物流也给食品安全问题带来了其独有的挑战, 尤其是当产地与终端用户之间的距离较远时。科尔尼(A.T.Kearney)最近的一项研究估计, 未来10年内, 企业需要投入超过1000亿美元(合

#### If your company is paying more attention to China-made goods, in what areas are you focusing?

企业对中国制造的产品所关注的问题

Company sample size = 198  
公司样本规模



Source: 2009 AmCham-China Business Climate Survey  
资料来源: 2009年中国美国商会营商环境调查

6850亿元人民币) 来确保将食品安全有效地从农场运输到加工点或消费者手中。

## 知识产权执法

假冒伪劣产品给中国产品安全机制的改善带来了挑战。无论是在中国还是其他国家, 假冒的药物和医疗器械对消费者构成了尤为严重的威胁。知识产权的执法工作必须成为中国产品质量保障机制的一个重要组成部分。

## 建议

### 对中国政府

- **改进和完善食品及产品质量安全监管体系, 通过能力建设和分配充足资源以加大执法力度, 提高合规水平。**
- 继续向监管部门、制造商和生产商推广介绍国际标准和美国的市场要求。
- 采用食品及产品质量安全国际标准, 并实施可验证的检验方法。
- 确保以科学的方法来解决食品及产品质量问题。
- 大力推行世界一流的供应链管理方法, 鼓励包括冷链物流在内的物流网络投资, 帮助保障食品及产品质量安全。

### 对美国政府

- **继续支持美国食品药品监督管理局在中国所肩负的使命, 并为此提供更广泛的资源。**
- 继续通过经济对话就产品安全问题与中国开展高层合作。
- 为政府和企业间的合作创造更多机会, 以促进其共享改善供应链质量的最佳实践经验。

## Government Procurement

China's large government procurement market hit record highs in 2007, with Ministry of Finance (MOF) figures indicating that China purchased at least US \$58.4 billion (RMB 400 billion) through public procurement, an 8.7 percent increase from 2006. The growth of the public procurement market is especially notable given that it stood at only US \$14.6 billion (RMB 100 billion) in 2002. The past few years have also seen an increasingly diversified portfolio of government consumption, expanding from solely commodities to services and engineering.

Going forward, China's government procurement market will undoubtedly continue to expand as a majority of China's RMB four trillion (US \$584 billion) economic stimulus program consists of infrastructure projects, including highways, railroads and rural welfare, all of which are government procurement. Many US businesses source and produce goods in China for the domestic market and can substantially contribute to the economic recovery through full engagement in the stimulus program.

In the modern, highly-integrated world economy, protectionist policies could unintentionally adversely affect a global economic recovery. Minister of Commerce Chen Deming addressed global trade and the economic crisis in a February 2009 editorial in *The Wall Street Journal* when he said: "Protectionist policies would make things even worse, and the consequences would be hard to predict. In the heat of the crisis, it's critical that all countries refrain from pointing fingers at each other or pursuing their own interests at the expense of others."

AmCham-China urges strengthened commitment to the fundamental principles of open markets, national treatment and non-discrimination by both the US and China as a cornerstone of economic policies. For government procurement, this would include China making an improved accession offer to the World Trade Organization's (WTO) Agreement on Government Procurement (GPA) as soon as possible, and both countries adhering to principles of national treatment and market access in their current procurement practices. Discriminatory procurement practices on the basis of nationality by either government would be highly counterproductive, and virtually impossible to implement given the globalized nature of the modern production chain.

### Significant Developments

China promulgated its new Government Procurement Law in January 2003 with the intention to improve transparency, lower government costs and decrease corruption. It was also the first step towards China joining the GPA. Following the law's promulgation, the MOF issued numerous implementation regulations, including those that established (1) detailed procedures regarding the solicitation, submission and evaluation of bids in procurement proceedings; (2) rules on how individual procurements are published; and (3) mechanisms for handling complaints and challenges by participants in government procurement proceedings.

Although this law generally provides for the procedural disciplines found in international procurement agreements, including the GPA and the United Nations Model Law on Procurement of Goods, the Chinese government maintains authority at both the central and sub-central levels to give priority to domestic goods and services in all procurement proceedings, with very limited exceptions. China is permitted to maintain such discriminatory policies in the area of government procurement as it is not yet a party to the GPA. However, it stated in its 2001 Protocol of Accession to the WTO that it would work towards entering the GPA "as soon as possible."

The GPA is a "pluri-lateral" agreement in the WTO, in which participation is voluntary. Currently, there are 41 parties to the GPA, with 18 "observers" (including China). The GPA sets forth the minimum rules required to ensure non-discrimination, fairness, best value and transparency in the procurement of goods and services by government agencies, and by select government-related entities as specified by each party.

China also committed in its Accession Protocol—while not yet a party to the GPA—to ensure that (1) all of its central and sub-central government entities conduct their procurements in a "transparent manner;" and (2) where it opens a procurement proceeding to foreign participants, it will provide all foreign entities "equal opportunity to participate" in the bidding process in a most-favored nation manner.

China also committed in its Accession Protocol to:

ensure that all state-owned and state-invested enterprises would make purchases and sales based

## 政府采购

中国规模巨大的政府采购市场在2007年创历史新高，财政部数据显示，中国政府2007年的采购规模至少达584亿美元（合4000亿元人民币），较2006年增长了8.7%。而2002年公共采购市场的规模仅有146亿美元（合1000亿元人民币），其增长速度的确令人瞩目。过去几年间，政府消费的构成也日益呈现出多元化趋势，已从单纯的商品需求延伸至对服务和工程的需求。

展望未来，中国的政府采购市场无疑将继续扩大，在中国政府推出的5840亿美元（4万亿元人民币）的经济刺激计划中，公路、铁路和与改善农村福利相关的基础设施项目占据很大比例，而这些项目均在政府采购范围内。许多美国企业在中国进行原料采购和生产活动以满足中国国内市场需求。他们若能全面参与经济刺激计划，将会为经济复苏作出很大的贡献。

在当今高度融合的世界经济中，贸易保护主义政策会对全球经济复苏无形中产生不利影响。中国商务部部长陈德铭在2009年2月的《华尔街日报》社论中撰文，发表其对全球贸易和经济危机的看法：“如果未来贸易保护主义泛滥，使严峻的形势雪上加霜，造成的后果很难预料。危机当头，重要的是各国携手共克时艰，而非互相指责，以邻为壑。”

中国美国商会敦促美国和中国双方都应加强对开放市场、国民待遇和非歧视等基本原则的承诺，使之成为经济政策的基石。从政府采购的角度而言，这种努力包括中国应尽快向世界贸易组织（WTO）的政府采购协定（GPA）提交一份改进的出价清单，同时中美两国应在当前政府采购操作中遵守国民待遇和市场准入的原则。若中美两国任何一方在政府采购中设定国籍歧视的立场，将会带来极大的负面效应。而实际上，现代产品链的全球化，已使这种做法不再可行。

### 重大进展

2003年1月，中国颁布了新的《政府采购法》，力图提高透明度，降低政府成本并减少腐败。这也是中国加入世界贸易组织政府采购协定（GPA）的第一步。在《政府采购法》颁布之后，财政部发布了许多实施法规，其内容包括：（1）关于政府采购活动中招标、投标及其评标的具体程序；（2）关于公布具体采购内容的规定；（3）对政府采购活动参与方投诉和争议的处理机制。

虽然《政府采购法》从总体上采纳了包括GPA和联合国《贸易法委员会货物、工程和服务采购示范法》等国际采购协定中普遍采用的程序性规定，但中国各级政府仍保留在所有采购活动中优先考虑国产商品和服务的权利，且鲜有例外。由于中国还不是GPA成员国，因此在政府采购中，允许保留这种歧视性政策。不过，中国早在2001年加入WTO的议定书中就曾声称将会努力“尽快”加入GPA。

GPA是世界贸易组织的一个“多边”协定，各国凭自愿原则选择是否加入该协定。目前GPA有41个成员国和18个“观察员国”（包括中国）。GPA设定了下限的要求，以确保每个成员国的政府机构及其选定的相关实体，以非歧视、公平、最佳价值和透明的原则采购商品和服务。

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

在《入世议定书》中，中国还承诺：

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

solely on commercial considerations, e.g., price, quality, marketability and availability, and that the enterprises of other WTO Members would have an adequate opportunity to compete for sales to and purchases from these enterprises on non-discriminatory terms and conditions.

and that:

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

In April 2006, almost five years after acceding to the WTO, China finally agreed to initiate GPA accession negotiations. China initiated negotiations in December 2007 with its initial market access (or GPA Appendix I) offer, setting forth the lists of government and government-related entities to be covered by the GPA. In 2008, the US government conducted three rounds of negotiations with China on the terms and conditions of China's GPA accession offer.

The US government expressed disappointment at China's initial offer, and submitted its request for improvements to China's offer in May 2008. At the September 2008 Joint Commission on Commerce and Trade (JCCT) meeting, China agreed to submit an improved offer, again “as soon as possible.” The two countries also agreed to a working mechanism for exchanging information relating to their respective procurement systems to help facilitate China's timely accession to the GPA. However, in the past year, there has been little improvement regarding procurement policies beyond China's maintaining of its commitment to make a GPA offer.

## Specific Issues

### Limited Scope of the Government Procurement Law

The MOF made clear the scope and coverage of the Government Procurement Law in subsequent legislation. The MOF clarified that the law does not cover procurements related to “public works projects.” This is troubling as such projects represent at least half of China's government procurement market. In other words, these projects are not subject to the rules of the Government Procurement Law, which generally provides for disciplines found in international procurement agreements, including those regarding transparency and challenge mechanisms.

Instead, in effect, more than half of all procurements in China are subject to a different regulatory regime from China's Tendering and Bidding Law, promulgated in January 2000. This regime raises more concerns because it lacks many of the disciplines under the Government Procurement Law. This appears to contradict China's promise in its 2001 WTO Accession Protocol to conduct all procurement proceedings “in a transparent manner” between its

entry into the WTO and its accession to the GPA.

AmCham-China strongly supports a merit-based, transparent, non-discriminatory, pro-competitive and technology-neutral procurement system for all goods and services, regardless of jurisdiction. China's attempts to increase transparency and competitive bidding under its Government Procurement Law regime are appreciated (although transparency issues remain). However, the non-transparent and discriminatory nature of China's Tendering and Bidding Law regime remains troubling, and we urge China to bring its governing rules in line with the Government Procurement Law regime. Indeed, we would urge that the two regimes be consolidated so that “public works projects” fall under “government procurement projects.”

### Domestic Preferences

In 2003, the US government raised concerns about policies China was developing regarding the government procurement of software, in which the MOF was drafting rules mandating all central and local government entities purchase only software developed in China. These would have adversely affected the access of US software manufacturers, potentially inhibited the flow of business information for many users, and could have set a precedent to establish similar barriers in other sectors. After much bilateral engagement, China agreed at the July 2005 JCCT meeting to suspend efforts to implement the problematic rules on government software procurement indefinitely.

In 2007, this issue returned when the US government again raised concerns about statements made by Chinese government officials indicating that state-owned enterprises should give priority to purchasing domestic software, violating China's WTO Accession Protocol commitment described above. At the JCCT meeting in September 2008, however, China clarified the policy and stated that software purchases by Chinese enterprises, whether state-owned or private, must be based solely on market terms and not on government direction.

A similar issue arose in December 2005, when China announced that computer and telecommunications products incorporating the Chinese-based WLAN (or WiFi) Authentication and Privacy Infrastructure standard be given priority in government procurement proceedings. Likewise, in August 2007, China issued rules that procurements for “e-government” projects give preference to domestic goods and services.

In December 2007, the MOF issued two new measures further restricting the possibility of Chinese government entities purchasing non-domestic goods and services, as part of the State Council's implementation plan for the “State Medium and Long Term Science and Technology Development Plan” (2006-2020). The first measure, the Administrative Measures for Government Procurement on Initial

以及:

中国政府将不直接或间接地影响国有企业或国家投资企业的商业决定,包括关于购买或销售的任何货物的数量、金额或原产国,除非与《WTO协定》相一致。”

2006年4月,在加入WTO将近五年之后,中国终于同意启动加入GPA的谈判。2007年12月中国正式启动谈判,并提交了初步出价清单(或称GPA附录一),详细列出了纳入GPA范围的政府机构和政府相关实体名单。2008年,美国政府就中国出价清单的条款和条件与中国进行了三轮谈判。

美国政府对中国的初步出价表示失望,并于2008年5月提出请求,要求中国改进出价内容。在2008年12月的中美商贸联合委员会(JCCT)会议上,中国同意“尽快”提交其改进的出价。两国还同意设立关于各自采购系统的信息交流机制,以帮助和推动中国及时加入GPA。然而,在过去的一年中,中国除了继续承诺提交GPA出价清单外,在采购政策上几无进展。

## 具体问题

### 《政府采购法》的有限范围

中国财政部在随后颁布的法规中阐明了《政府采购法》所覆盖的范围。财政部澄清说,采购法并不涵盖与“公共工程项目”相关的采购。这实在令人困惑,因为公共工程项目至少占据了中国政府采购市场的半壁江山。换言之,这些项目并不适用《政府采购法》,而《政府采购法》通常应该包括国际采购协定中的各项规定,包括关于透明度和质疑制度。

实际上,超过一半的中国采购项目受到另一法规的约束,即2000年1月颁布的《中国招标投标法》。这一法规引发了更多的疑虑,因为它缺少《政府采购法》所包含的许多基本原则。这似乎有悖于中国在2001年的入世议定书中做出的承诺,中国承诺其将在入世后及加入GPA前以“以透明的方式”实施所有采购活动。

中国美国商会非常支持建立一个基于价值、高透明度、非歧视、鼓励竞争和技术中性的采购体系,对所有商品和服务一视同仁,而无论其所属何地。我们对中国《政府采购法》框架下努力提高投标的透明度和竞争性表示赞赏(尽管透明度方面依然存在问题)。然而,中国的《招标投标法》制度由于存在非透明和歧视性等问题,使人备感困扰,我们促请中国按照《政府采购法》来规范《招标

投标法》中的相关法律规定。我们切实敦促中国将这两个法律协调统一,以便将“公共工程项目”列入“政府采购项目”范围。

## 国货优先

2003年,美国政府对正在制定的关于政府采购软件的政策表示关切,因为财政部在其草拟的规定中要求所有中央和地方政府机构只购买国内开发的软件。这一政策将影响美国软件制造商进入中国市场,而且软件的兼容性问题也可能使用户间的商务信息往来无法进行,并可能为其它部门设置相同的壁垒提供先例。经多次双边磋商,在2005年7月举行的JCCT会议上,中国同意无限期中止在政府软件采购中推行这一存有争议的规定。

2007年,这一问题再次出现,中国政府官员发表声明,表示国有企业应优先购买国产软件,这违反了上述的中国入世承诺。美国政府对此再次表示关切。在2008年9月举行的JCCT会议上,中国对此项政策作出澄清,指出不论是国有还是私营企业,所购软件只能由市场而非政府指令决定。

2005年12月也曾出现过类似的情况。当时中国宣布,政府采购应优先考虑采用中国制定的无限局域网(或WiFi)鉴别与保密基础架构标准的计算机以及电信产品。同样,2007年8月,中国发布了“电子政府”项目的采购规定,给予国产商品和服务优先待遇。

2007年12月,作为国务院《国家中长期科学和技术发展规划纲要(2006—2020年)》实施计划的一部分,财政部发布了两个规定,进一步限制了中国政府机构购买非国产商品和服务的可能性。一是《自主创新产品政府首购和订购管理办法》,要求政府优先采购中国“自主创新”产品。二是《政府采购进口产品管理办法》,规定政府机构采购进口产品和技术时须首先获得批准和审计。此外,这两项规定还提出,由财政部和科技部共同制订的《政府采购自主创新产品目录》,这又是美国公司一个难以逾越的障碍。

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

Procurement and Ordering of Indigenous Innovative Products, requires that Chinese “indigenous innovation champion” products be given priority in government procurement. The second, the Administrative Measures for Government Procurement of Imported Products, mandates additional approval and audit for government agencies when procuring imported products and technologies. Furthermore, these measures state that the MOF and the Ministry of Science and Technology are jointly working to publish a national “Indigenous GP Product Catalogue,” which would create another burdensome obstacle for US companies.

Domestic preferences in procurement practices extend beyond software and IT products. AmCham-China is also concerned with government procurement regulations per MOF notice No. 119, favoring purchase of domestic medical device products. For imports to be considered for inclusion in government procurement projects, they must obtain special approval by a board of experts assembled to explain the necessity of using specific imported goods. This is inconsistent with post-WTO accession commercial practices in China. It also leads to Chinese patients being deprived of much-needed high technology products for modern therapies. We urge the MOF and the Chinese government to reconsider and provide imported products with a level playing field, where competition is based on technology, quality and price.

Additionally, certain procurement policies explicitly favor domestic providers of energy-efficient or green technologies. For example, Chinese domestic producers of wind power equipment and critical parts are given credit and preference over foreign producers. However, many products sold by so-called “foreign” companies are produced in China, with research and development also conducted in China. These “foreign” companies in actuality are registered, operate and pay taxes in China as domestic legal entities. They employ large numbers of Chinese citizens, create and transfer technology to China and serve Chinese customers. Thus, in the current global marketplace, it is difficult to determine whether a product is “domestic” or “foreign,” as the design, development, production, distribution and servicing of a product may be performed in many different countries, including in China.

This untenable distinction between “domestic” and “foreign” in government procurement practices negatively impact the sustained growth and development of the domestic economy, while depriving China of much-needed high technology. With green and energy-efficient technologies, ensuring a fair and transparent procurement process will allow China to acquire the most advanced and effective environmental technologies needed to help it promote sustainable development and meet its ambitious energy reduction goals. Similarly, repealing the Administrative Measures for Government Procurement on Initial Procurement and Ordering of Indigenous Innovative Products and Administrative

Measures for Government Procurement of Imported Products, which explicitly discriminate between “indigenous” and “imported” products and restrict market access by non-Chinese companies, will help develop China’s own innovative capacity. It is in China’s interest to allow “foreign” producers across industries to participate on an equal footing with Chinese companies in government procurement.

While legally China is permitted to maintain domestically-oriented discriminatory government procurement measures prior to GPA accession, there is strong concern that China is implementing progressively more restrictive trade barriers in government procurement, in a non-transparent manner.

At the September 2008 JCCT, China and the US agreed to work towards “ensuring that US-invested firms in China and Chinese-invested firms in the US will be able to participate in their respective government procurement markets.” This commitment is wholly separate from China’s commitment to GPA accession, and indeed the expectation is that US companies will have access to China’s procurement markets even prior to GPA accession, and vice versa. This should be done within 2009.

Moreover, in light of its agreement to GPA accession, China should further reform its government procurement system and move towards full conformity with the GPA disciplines. This means China should strive to terminate its existing domestic preference rules. More importantly, in the meantime, China should not increase the number or severity of discriminatory measures, which would be counter to good faith efforts to GPA accession.

#### **Slow Accession to the GPA**

US companies have repeatedly stated that China’s timely accession to the GPA is a top priority, and commend China’s stated goal of internationalizing its government procurement regime. While China’s submission of its initial market access offer in December 2007 is welcome, accession will require China to submit an improved offer that is commercially meaningful to the existing GPA parties, and includes (1) contractual value thresholds in line with the commitments of the existing parties; (2) expansive coverage of most Chinese government and government-related entities (at both the central and lower levels); (3) coverage of most services, done in a “negative list” manner; (4) exceptions that are equitable with the exceptions taken by existing GPA parties; and (5) immediate implementation upon accession, without transition periods.

No other country that has acceded to the GPA has as large a sub-central government procurement market as China. The size of China’s sub-central government procurement market dwarfs those of other nations. China’s market access and thresholds need to reflect this reality in order for accession to be commercially meaningful to other WTO GPA members.

一政策,为进口产品提供一个基于技术、质量和价格的公平竞争平台。

另外,政府在节能及绿色技术领域的若干采购政策明显地向国内供应商倾斜。例如,中国国内风力发电设备和关键部件的厂商获得了外国厂商所无法享受的信贷和优惠政策支持。然而,许多所谓的“外国”公司销售的产品其实都是在中国境内生产的,其产品研发活动也都在中国进行。实际上,这些“外国”公司以国内法人注册、经营,纳税,并雇用了大量的中国公民,研发并转让技术给中国,同时为中国消费者服务。因此,在当今全球市场中,由于产品的设计、开发、生产、销售和维修可能在许多不同国家包括中国展开,因而很难判断某一产品是“国货”还是“外国产品”。

这种对“国货”和“外国产品”不经推敲的区分,以及政府优先采购国内产品的做法,对国内经济的可持续增长和发展产生了负面影响,同时使中国无法得到其所急需的高科技产品。确保让绿色和节能技术进入公平透明的政府采购程序,有助于中国获得最先进有效的环保技术,推动中国的可持续发展,实现其降低能耗的远大目标。同样,取消《自主创新产品政府首购和订购管理办法》和《政府采购进口产品管理办法》,改变对进口产品的歧视及对外资市场准入的限制,将有助于中国提高自身的创新能力。在政府采购中允许各个行业的“外国”厂商与中国公司平等竞争,这也符合中国自身的利益。

尽管在正式加入GPA之前,法律上允许中国实施合乎国内的有差别的政府采购政策,但人们担心的是,在政府采购方面,中国正以一种不透明的方式,更多地实施限制性的贸易壁垒。

在2008年9月的JCCT会议上,中国和美国都同意致力于“确保在美国的中国公司以及在美国的中国公司能够参与各自的政府采购市场”。这一承诺完全独立于中国加入GPA的承诺,我们切实地期待,在中国加入GPA之前,美国公司可进入中国的政府采购市场,反之亦然。这一承诺应在2009年内实现。

另外,考虑到中国已同意加入GPA,中国政府须进一步改革其政府采购体制,向全面遵守GPA原则的方向努力。这意味着,中国应当努力改变其现行的国货优先的做法。更重要的是,在这个过程中,中国不应当增加与其加入GPA的诚意背道而驰的歧视性措施的数量或强度。

#### **加入GPA进程缓慢**

美国公司已多次表示,中国尽快加入GPA是其当务之急,并对中国政府采购体制国际化改革的目标表示赞赏。尽管中国在2007年12月提交的初步开放政府采购市场清单受到欢迎,但要加入GPA,还需要中国提交一份对现有GPA成员国具有商业意义的改进出价,包括(1)与现有成员国的承诺一致的价值合同门槛;(2)扩大政府采购的覆盖面,囊括大部分中央及地方各级政府及与其相关实体;(3)涵盖大部分服务,并以否定式列表的方式表述;(4)对现有GPA成员国相对公平的采购例外;(5)立即启动加入进程,而无过渡期。

已加入GPA的国家中,没有任何一个国家像中国一样拥有如此庞大的地方政府采购市场。中国地方政府采购市场的规模让其它国家相形见绌。中国的市场开放程度和加入GPA的门槛必须反映这种现实,以使其加入GPA对其他成员国具有商业意义。

#### **总结**

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

#### **建议**

- 尽快提交一份改进的、具有商业意义的中华人民共和国加入GPA的出价清单。
- 协调统一《中国招标投标法》与《政府采购法》,使“公共工程项目”纳入政府采购项目范围。
- 在中国加入GPA之前,确保外资公司能够进入中国的采购市场,废除现行的国货优先的规定。
- 确保中国遵守其WTO义务,不对国有企业和国家投资企业的商业采购活动区别对待。
- 停止实施《自主创新产品政府首购和订购管理办法》、《政府采购进口产品管理办法》和关于优先购买国产医疗设备产品的财政部第119号通知,因为这些政策不公平地甄别了“自主创新产品”和“进口产品”。

## Summary

US companies will continue to engage both China and the United States, providing facilitation as needed to ensure China's fair and commercially meaningful accession to the GPA, and prompt access to the Chinese and US procurement markets for US companies. AmCham-China will continue working with the Chinese government to advocate for a fair, balanced and transparent Chinese government procurement system in order to provide the best value to its public sector customers.

## Recommendations

- **Submit an improved, commercially meaningful People's Republic of China WTO GPA accession offer as soon as possible.**
- Consolidate China's Tendering and Bidding Law regime with that of the Government Procurement Law so that "public works projects" are treated the same as other government procurement projects.
- Ensure access to China's procurement markets for foreign-invested firms prior to GPA accession and eliminate existing domestic preference rules.
- Ensure China abides by its WTO obligations not to discriminate in state-owned and state-invested enterprise procurement relating to their commercial activities.
- Repeal the Administrative Measures for Government Procurement on Initial Procurement and Ordering of Indigenous Innovative Products, the Administrative Measures for Government Procurement of Imported Products, and MOF notice No. 119 favoring purchase of domestic medical device products, as they unfairly discriminate between "indigenous products" and "imported products."



## Human Resources

Human resource (HR) issues remain a top concern for AmCham-China member companies. For the second consecutive year, management-level HR constraints were the number one challenge for member companies doing business in China. These issues may have a dampening effect on the ability of China to continue its economic reforms and maintain a competitive advantage in the global economy.

The implementation of China's Labor Contract Law and the intensification of unionization campaigns by the All-China Federation of Trade Unions (ACFTU) both occurred in 2008. AmCham-China fully respects increased support and protections for Chinese workers, including the right of employees to unionize, and believes that advancement of workers' rights can be balanced with maintaining a flexible labor market that allows for vibrant and socially responsible economic growth.

AmCham-China's concerns about human resources center on four key areas: 1) challenges in the quality and mobility of the skilled labor pool; 2) balancing workers' rights with a dynamic economic environment; 3) the implementation of the Labor Contract Law; and 4) overloaded arbitration panels and courts preventing swift resolution of labor disputes.

The first area of focus will center on long-term talent supply and demand issues. The second area of focus will be issues surrounding labor regulations and the implementation of the Labor Contract Law.

### Recent Developments

#### Increased Demand for Talent

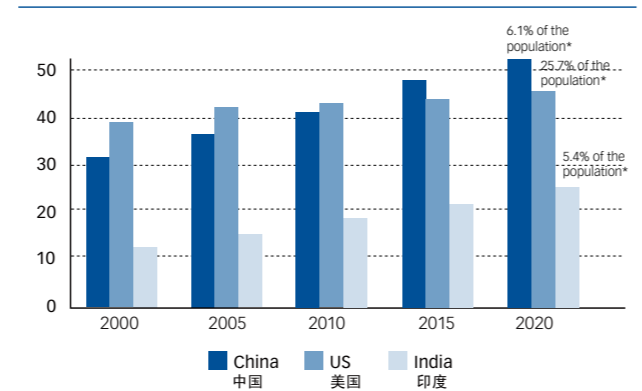
The Chinese government has made significant efforts to increase the quality of skilled labor in China and the qualified labor pool is expected to increase by an annual average of 2.4 percent to a total of 45 million within 20 years. The total number of skilled workers aged 25-29 will exceed that of the US by 2015 (Figure 16).

In spite of these developments, serious challenges remain. Both Foreign-Invested Enterprises (FIEs) and domestic enterprises have difficulties filling technical and managerial positions, despite offering

increasingly higher wages. An overwhelming majority of respondents to AmCham-China's 2009 *Business Climate Survey* indicate that these HR constraints negatively impact, and even materially damage, their China operations (Figure 17). There are three reasons for this trend. First, there is an increased demand for talent from both multinational companies (MNCs) and domestic companies. Second, there is a gap between what employers need and the skills that Chinese graduates possess. Third, despite recent relaxation of *hukou* (household registration) restrictions, mobility in China remains too restricted for the rising demand of skilled employees.

While the current economic downturn may temporarily mitigate labor supply constraints, the trend towards increasing demand amidst a scarcity of appropriately skilled workers will continue because of the underlying factors mentioned above. The influx of MNCs entering China and reform of state-owned enterprises (SOE) places high pressure on the labor market. An average of 40,000 new FIEs entered China in each of the last four years. At the same time, the increased rate of urbanization, globalization and movement up the value chain of Chinese domestic companies all increase demand for qualified, senior talent. Accompanying this change has been a commensurate increase in wages in SOEs and private Chinese-invested businesses. The difference in

Skilled Labor Supply aged 25-59  
25至29岁之间熟练劳动力人数



Source: Watson Wyatt calculations.  
\* Percentage notes refer to the percentage of the population in that same age cohort of the projections. 16

## 人力资源

人力资源 (HR) 问题一直是中国美国商会会员企业最为关注的问题。管理层人力资源匮乏连续两年被列为在华经营的外资企业所面临的主要挑战之一。这一问题将对中国经济改革的能力和在全球经济中保持其竞争优势产生影响。

2008年,中国实施《劳动合同法》,同时,中华全国总工会(ACFTU)也加强了工会建设。加大对中国职工的支持和保护力度,包括职工成立工会的权利,中国美国商会对此完全尊重,并相信:职工权利的进步将与一个保持灵活的劳动力市场相平衡,而这一市场能够带来充满活力、对社会负责的经济增长。

中国美国商会尤其关注以下四个方面的人力资源问题: 1) 技术劳动力贮备的素质和流动性所面临的挑战; 2) 职工权利与动态经济环境的平衡; 3) 劳动合同法的实施; 4) 仲裁庭和法院负担过重无法及时解决劳动纠纷。

第一个重点领域集中在人才的长期供给和需求问题,第二个重点领域为与劳动法规和劳动合同法实施有关的问题。

### 最新进展

#### 对人才的需求增大

中国政府在提升熟练劳动力素质方面做出了重大努力。预计未来的二十年间,熟练劳动力储备量将平均每年增长2.4%,最终达到4500万。25至29岁之间熟练工人的总人数将于2015年超过美国(图16)。

尽管取得诸多进步,但仍面临严峻挑战。外资企业(FIE)和中资企业提供了更高的工资,仍然较难招到技术和管理人才。在中国美国商会2009年商务环境调查中,绝大多数反馈企业认为此类人力资源的匮乏影响了企业的运营,甚至带来实质性的损失(图17)。造成这一趋势有三个原因。第一,跨国公司(MNC)和中资企业的人才需求都在增加。第二,雇主的需求与大学毕业生拥有的技

能之间存在差距。第三,尽管户口限制最近有所放松,但与对熟练雇员不断增长的需求相比,国内的人才流动仍然严重受限。

虽然目前的经济低迷可能暂时地缓解劳动力供给不足的情况,但鉴于上述根本因素,熟练工人一定程度上的短缺和不断增加的需求仍将持续。跨国企业的涌入以及国有企业的改革为劳动力市场带来了较大的压力。在过去的四年,每年平均有40,000家新外资企业进入中国。同时,城市化和全球化程度的提高、国内企业在产业价值链条上的攀升均加大了对合格人才的需求。伴随着这一变化,国有企业和私营中资企业的工资也相应提高。外资企业与中资企业的工资差距近年来显著缩小,给外资企业吸引并挽留高端人才也带来了压力。

中国日益紧张的熟练劳动力市场对吸引、挽留和激励管理层员工带来了巨大挑战。外资和中资企业都面临着如何吸引、挽留和激励关键人才的问题。这些问题已成为投资中国和企业在华扩张的障碍。根据中国美国商会“本地薪酬和福利研究”合作伙伴翰威特咨询公司的调查,尽管工资年增长超过8%,但许多行业的离职率仍超过15%(图18和图19)。

中国大陆的员工离职率和平均薪酬增长率均高于亚洲所有其他地区(图20),工资增长占工资总额的比例也属亚洲最高。按实际工资计算,中国的增长率仍居亚洲首位。

### 具体问题

#### 合格人才的供给

尽管经济低迷会带来中国劳动力供给的短期过剩,但雇主的需求与大学毕业生所拥有的技能之间的差距仍然是个问题。对合格人才需求的增长、中层经理人员的短缺、大量不具备合适技能的大学毕业生使私营、国有企业以及中国政府肩负重担。事实上,据劳动和社会保障部估

wages in FIEs compared with domestic companies has narrowed substantially in recent years, placing additional pressure on FIEs to attract and retain top talent.

China's tightening skilled labor market creates tremendous challenges in the areas of attraction, retention and motivation of management-level labor. Both foreign and domestic companies are struggling with the issue of how to attract, retain and motivate key talent. These issues have become obstacles for investment into China and the expansion of businesses that already operate here. According to Hewitt Associates, AmCham-China's partner in its *Local Compensation and Benefits Study*, turnover rates in many industries exceed 15 percent annually, with salaries often increasing by more than eight percent. (Figures 18 and 19).

Both staff turnover rates and average salary increase rates are higher in Mainland China than nearly any other place in Asia (Figure 20) and wage increases as a percentage of total payroll expenses are also among the highest in Asia. In terms of real wages, China's rate of increase is the highest in Asia.

Specific Issues

Supply of Qualified Talent

Although the economic downturn may be driving a short-term surplus in China's labor supply, the mismatch between employers' needs and the skills possessed by graduates remains a problem. Increased

demand for qualified talent, combined with severe shortages of middle managers and a large number of inappropriately skilled university graduates, places a burden on both private and public companies, as well as the Chinese government. In fact, the Ministry of Labor and Social Security estimates that 1.24 million of the 4.16 million university graduates in 2006 lacked the specific qualifications required in today's job market.

Companies need dramatic changes in Chinese talent, both in technical skills and management expertise, for fast-growing domestic and international teams. Internationalization of domestic companies requires highly-tuned communications and collaboration skills to assist companies in expanding successfully to global markets. McKinsey Global Institute estimates Chinese domestic enterprises will need 75,000 qualified middle managers in the coming years, but currently there are only 5,000.

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

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

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

Conclusion

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

计,在2006年毕业的416万名大学生中,有124万名毕业生不具备当今就业市场所要求的具体条件。

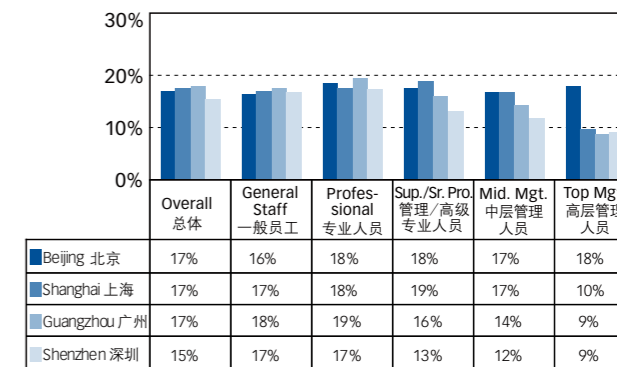
企业快速发展的国内和国际团队需要中国人才在技术能力、管理知识方面的显著提高。中资企业的国际化需要高度和谐的交流和协作能力,以推动企业成功走向全球市场。麦肯锡全球研究院估计,中资企业未来几年将需要7.5万名合格中层经理人员,而目前只有5千名。

对于在华的外资企业来说,其企业性质已从低端制造业更多转向研发、财务分析以及高科技和服务导向型产业。很多跨国公司将其在华企业融入到全球业务中,因此也期待中国员工能进行跨国合作、会说流利的英语且在应对问题时拥有全球视角。

中国传统教育体系的某些方面也使具备专业技能的合格人才短缺。中国学校仍重机械记忆而轻实际应用。这种学习方式无法很好地培养日常工作交流能力,而这恰恰在高度矩阵式管理或全球化的机构中尤为需要。

另外,校企合作相对较少,包括大学教学中缺乏强制性实习要求,也形成了另一个挑战。这使得毕业生尽管具备扎实的理论技能,却缺少实际工作经验或能力。企业不得不投入大量资金进行人才培训和发展,使其新员工能够保持与其它国家员工相当的水平。

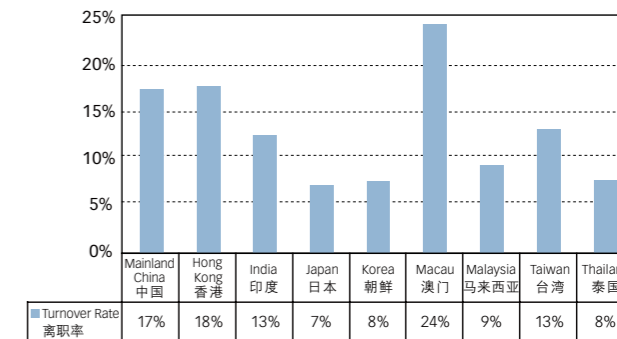
2008 China Voluntary Non-Manual Turnover  
2008年中国非蓝领职员主动离职率



Source: Hewitt Associates 2008 Total Compensation Measurement Study  
资料来源: 翰威特咨询公司 - Hewitt Associates 2008 Total Compensation Measurement Study

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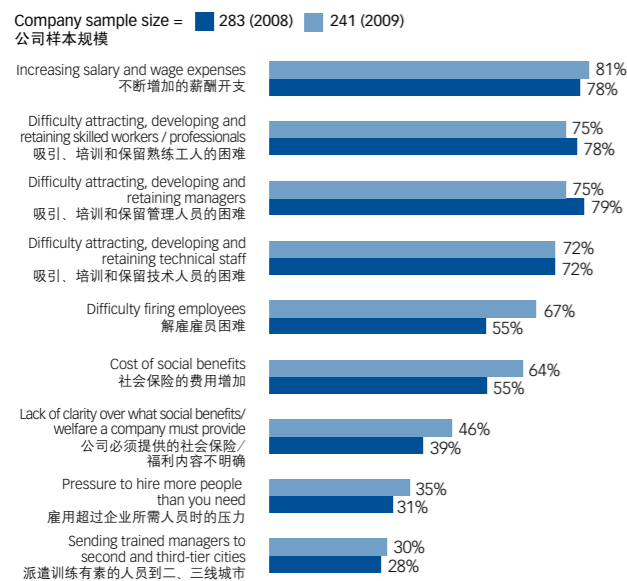
Asia Pacific Turnover Rates (2008)  
亚太地区离职率 (2008)



Source: Hewitt Asia-Pacific Salary Increase Survey 2007-08  
资料来源: 翰威特咨询公司2007-2008亚太地区工资增长调查

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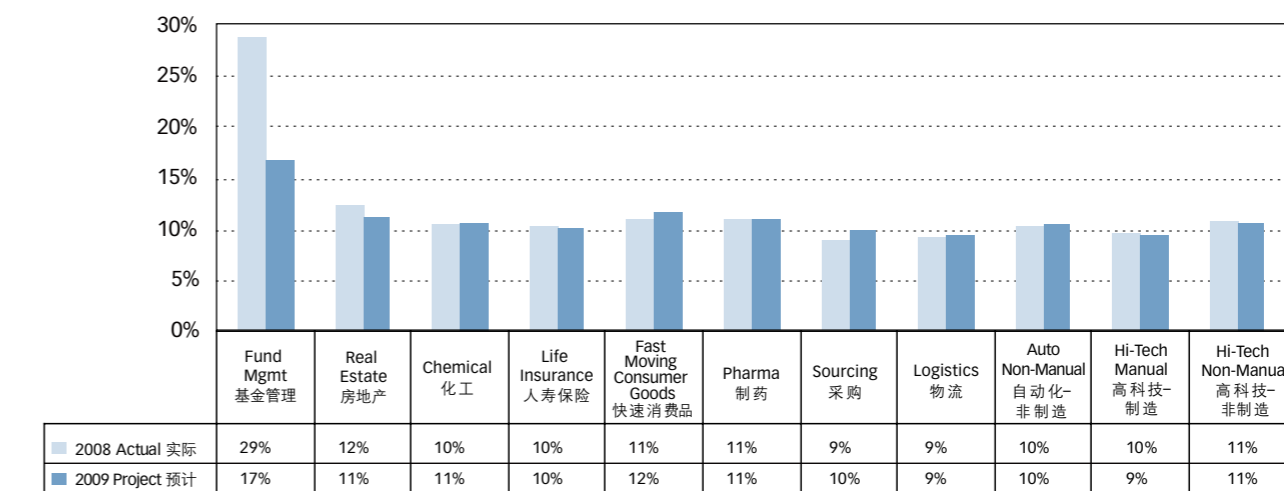
Impact of Human Resources Constraints on China Operations  
人力资源匮乏问题对企业在华运营的影响



Source: 2008-09 AmCham-China Business Climate Surveys  
资料来源: 2008-09年中国美国商会营商环境调查

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Salary Increase Rates by Industry (2008)  
行业薪资增长率 (2008)



Source: Hewitt Associates 2008 Total Compensation Measurement Study  
资料来源: 翰威特咨询公司 - Hewitt Associates 2008 Total Compensation Measurement Study

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## Recommendations

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

## Labor Regulations

### Recent Developments

The much anticipated Labor Contract Law went into effect on January 1, 2008. The Labor Contract Law sets standards for mandatory labor contracts, layoffs and severance payments. It also granted more power to labor unions.

On September 18, 2008, the State Council adopted and promulgated the Implementing Rules for the Law (Rules). The Rules clarified many ambiguities, helping companies to understand compliance obligations, but leaving some key concepts vague. For instance, it fails to clarify the ambiguous terms "temporary, auxiliary, or substitute positions" for permitted use of dispatch workers, leaving a lingering uncertainty for employers to determine what is legal and what is not.

### Unionization and Collective Bargaining Campaigns

Both Chinese domestic and foreign-invested companies without unions have been targeted in ACFTU campaigns to establish unions and avenues of collective bargaining. In October 2008, the Shenzhen Federation of Trade Unions launched a "Collective Bargaining Storm," demanding that over 100 major businesses in the city, including both domestic companies and MNCs, begin collective bargaining and enter into contracts with their employees. This initiative seeks to set up an annual collective bargaining mechanism, or negotiation process, on matters related to employees' vital interests, including labor compensation, work hours, rest and leave time, occupational health and safety, benefits, training,

labor discipline, and work quotas.

Similarly, the ACFTU announced a similar campaign targeting prominent companies operating in China. The objective of the campaign was to raise the rate of organized companies among the Global Fortune 500 from 60 to 80 percent (the ACFTU announced in the spring of 2009 that it will raise the ratio to 100% by the end of this year). AmCham-China fully respects employees' rights to organize. It is critical that the Chinese government ensures equal enforcement of unionization requirements and regulations among all domestic companies, including FIEs, to assure the full protection of the rights of employees, employers and labor unions. For instance, recent ACFTU rules on the election of union officials should be applied uniformly across all companies with labor unions.

### Government Involvement in Labor Relations

There was increased government involvement in various areas of labor relations in 2008, including local regulation. For instance, a draft national wage payment regulation under consideration by the State Council would disallow pre-tax treatment of wage expenses for companies that do not engage in collective bargaining over wages. A regulation on democratic management also under discussion by the State Council would require all companies to form employee representative councils or face penalties (a similar rule went into effect in 2008 in Jiangsu Province). Separately, the government of the Shenzhen Special Economic Zone adopted its Regulations on the Promotion of Harmonious Labor Relations, which contains a provision requiring employers to engage in collective bargaining with their employees over wage adjustments at least once a year.

### Specific Issues

#### Labor Contract Law Implementation

The Implementing Rules for the Labor Contract Law fail to clarify the Labor Contract Law's statutory terms for permitted uses of labor, such as the temporary, auxiliary, and substitute positions. This creates ambiguity that will have to be resolved by labor arbitrators or courts on a case-by-case basis. In addition, AmCham-China would like to understand better the extent of the application of "economic layoff" reporting requirements that may disproportionately affect certain small and medium-sized enterprises (SME).

As a result of this ambiguity, many companies operating in China struggle to interpret the new rules. Implementing company policies that are both fair to employees and serve the legitimate needs of companies for maintaining management control and business development policies has become needlessly difficult. This obstacle often results in unintended consequences that may actually decrease equity, stability and protections for employees.

## 结论

中国美国商会支持中国政府为中级、中专、职业教育/培训领域增加投资、提高其质量和标准方面所作的持续努力。我们相信这些努力将能够创造出灵活的、与职业化紧密联系的教育/培训环境,使中国学生具备所需的技能和专业水平,确保中国在世界经济中的竞争优势以及中国在二十一世纪的和谐和稳定发展。

## 建议

- 建立由国际商业界人士组成的顾问委员会,确定中国各个行业所需的雇员应具备的技术和能力。借助国际教育机构的资源,该委员会将对中国的中级和高级教学机构如何通过课程变化、校企合作、再培训计划以及工作实习,提高学生的技能水平,增加学生未来就业的机会等提出建议。
- 评估和修订已有的“985”和“211”工程,以兼融来自中国国内和国际企业界的合作并听取其意见,以确保高等教育和以研发为重点的培训能够提供中国现在和未来劳动力所需的技能。

## 劳动法规

### 最新进展

期待已久的《劳动合同法》于2008年1月1日正式生效。《劳动合同法》中规定企业必须与职工签订劳动合同,细化了解除劳动合同与裁员的法定理由,增加了合同到期终止也要支付经济补偿金的规定,并明确了经济补偿的标准。该法还为工会规定了更多的权利。

2008年9月18日,国务院发布了该法的实施条例(《条例》)。《条例》澄清了许多模糊问题,帮助企业了解如何遵守并履行义务,但仍然有一些重点概念不明朗。例如,条例未能澄清关于劳务派遣用工“临时性、辅助性或者替代性的工作岗位”的模糊表述,造成雇主始终不确定哪些方式合法、哪些不合法。

### 工会和集体谈判

中华全国总工会要求在未建立工会的国内中资和外资企业建立工会,并进行集体谈判。2008年10月,深圳市总工会掀起了一场“集体谈判风暴”,要求该市100多家

重点企业(包括中资企业和跨国公司)进行集体谈判并与员工签订合同。该举措希望建立一个涉及员工重要利益的年度集体谈判机制或谈判程序,包括劳动报酬、工作时间、休息和假期、职业健康和安全、福利、培训、劳动记录和工作定额等。

与此同时,中华全国总工会宣布将开展一项针对在华外资企业的类似运动。该运动旨在将世界500强企业中的建会比例由60%提高到80%(2009年春,中华全国总工会宣布将在年底之前达到100%的建会率)。中国美国商会完全尊重员工组织工会的权利。关键是中国政府应当确保同样的工会建设要求和规定适用于包括外资企业在内的所有企业,以保护员工、雇主和工会的所有权利。例如,中华全国总工会最近关于工会干部选举的规定应适用于所有已经建立工会的企业(包括国有企业)。

### 政府对劳资关系的介入

2008年政府更多地介入了劳资关系的各个方面,包括地方规定。例如,国务院尚在拟定的全国性工资支付条例草案可能将不允许未就工资进行集体谈判的企业将工资费用进行税前处理。国务院还在讨论一项企业民主管理法规,要求所有企业建立职工代表大会,否则将面临处罚(2008年江苏实施了一项类似规定)。深圳经济特区单独采纳了《构建和发展和谐劳动关系若干规定》,其中要求雇主每年至少与雇员进行一次集体工资谈判。

### 具体问题

#### 《劳动合同法》的实施

《劳动合同法实施条例》未能澄清允许劳动用工方式的法律术语,例如临时性、辅助性或者替代性的工作岗位。这造成劳动仲裁员或法庭需要针对具体案件做个案处理。此外,中国美国商会希望更好地了解“经济性裁员”报告要求的适用范围,该要求可能对某些中小企业的影 响面较大。

诸如此类的含糊不清使许多在华经营的企业努力对新条例进行解读。这给企业实施既对雇员公平又符合企业合理需要的、保持管理控制的企业政策以及业务开拓政策造成了不必要的困难。该障碍经常造成不必要的后果,实际上可能削弱了对员工的公平对待、稳定性和保护。

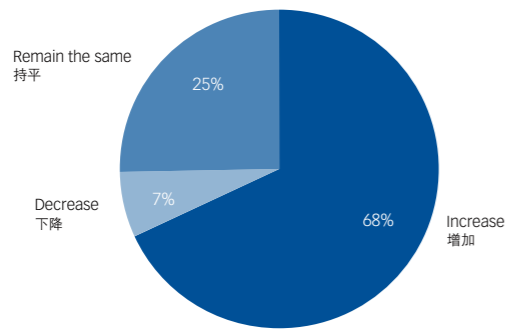
例如,外资企业现在更不愿意雇用临时雇员(非全日制或以完成一定项目为劳动合同期限的职工),因为法律



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

企业对未来几年劳动诉讼案件数量的预期

Company sample size = 176  
公司样本规模



Source: 2009 AmCham-China Business Climate Survey  
资料来源: 2009年中国美国商会营商环境调查

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

In addition, the Labor Contract Law requires employers to report “economic layoffs” to the local government 30 days in advance, after consultation with the labor union. “Economic layoffs” are defined as a reduction of more than 20 employees, or 10 percent of the workforce. AmCham-China would like to understand better if this regulation also applies to SMEs that may employ only 10 to 20 people, where a 10 percent reduction could be as few as one employee. Such application may disproportionately burden SMEs who inevitably have needs for workforce reductions of such small size due to market conditions and will reduce the flexibility needed by a vibrant economy.

In addition to greater clarity on these issues, AmCham-China also firmly supports consistent enforcement for all firms, foreign and domestic. AmCham-China believes that all firms competing in China should demonstrate the same commitment to protecting workers’ rights. While the enactment of the Labor Contract Law has improved enforcement, AmCham-China believes emphasis on consistent enforcement would further bring all enterprises into full compliance with the Law. To protect the lawful rights of employees, employers and trade unions, we believe that labor laws and regulations should be implemented in a fully uniform manner on a national basis.

#### Overburdened Arbitration and Judicial Panels

There has been a sharp increase of labor disputes (both arbitrations and litigation), particularly since the Labor Disputes Mediation and Arbitration Law took effect

in May 2008. Moreover, a majority of AmCham-China members expect to see an increase in the amount of labor litigation in the next few years (Figure 21). While this indicates that the employees now are better aware of their rights, it also burdens the arbitration panels and courts with an overload that slows the administration of justice. For instance, labor disputes in Shenzhen increased three fold in 2008, causing serious backlogs and delays in labor arbitrations. Similarly, in 2008, labor disputes increased by 106 percent in Beijing’s Chaoyang District People’s Court, 132 percent in Dongguang, 231 percent in Nanjing’s Qinhuai District People’s Court and 92 percent in Guangzhou.

AmCham-China believes that both government and labor unions can play a very positive role in solving labor disagreements in times of economic difficulty. We support the introduction of local mediation mechanisms to this effect. We urge dedication of greater resources to overburdened arbitration panels and courts to help government initiatives effectively and efficiently advance the rights of both employees and companies.

#### Recommendations

- Continue clarifying the ambiguities in the Labor Contract Law and its implementation rules, including statutory terms for permitted uses, at both the national and local levels to ensure consistency and ease of compliance.
- Clarify the extent of the application of “economic layoff” reporting requirements for SMEs.
- Emphasize fully uniform enforcement of labor laws and regulations to further bring all enterprises into full compliance with the Labor Contract Law.
- Increase budget and staffing for labor arbitration commissions and courts so they can competently and effectively handle the sharp increase in labor disputes.

对这些用工形式的定义和合同义务均缺乏明确的规定。如果政府在采纳影响劳资关系的法律或法规之前,包括企业在内的有关利害关系人能有更多机会提供建议,并获得对有关措施的澄清,则将非常有助于法律法规的遵守和执行。

此外,《劳动合同法》要求“经济性裁员”在通知工会后,应提前30天向当地政府报告。“经济性裁员”的定义为裁员超过20名或职工总数的10%。中国美国商会希望更好地了解,该规定是否同时适用于那些员工人数只有10-20名的中小型企业。如按10%的比例计算,这种企业可能仅裁员一人就必须向政府报告。该要求对中小企业造成的负担可能比例过大,中小企业不可避免地需要根据市场条件对其数量很少的职工进行削减,该要求将降低活跃经济中所需的灵活性。

中国美国商会坚定地主张,无论是外资或是中资企业都应统一、一致地执行该法。中国美国商会相信在国内进行竞争的所有企业都应同样地承诺保护职工的权利。《劳动合同法》的颁布推动了法律的执行,中国美国商会相信对执法一致性的重视将进一步促进该法得到所有企业的完全遵守。为了保护雇员、雇主和工会的合法权利,我们相信劳动法律和法规应在全国范围内得到完全统一的实施。

#### 仲裁庭和法庭负担过重

2008年5月《劳动争议调解仲裁法》出台之后,劳动争议(仲裁和诉讼)数量激增。而且中国美国商会大多数会员已预期未来几年劳动诉讼案件的数量能够增加(图21)。这既表明雇员对自身权利意识的增强,同时也增加了仲裁庭和法庭的负担,降低了司法效率。例如,2008年深圳的劳动争议数量增加了三倍,造成劳动仲裁案件的堆积和延误。相应地,北京市朝阳区人民法院2008年劳动纠纷增加了106%,东莞增加了132%,南京市秦淮区增加了231%,广州增加了92%。

中国美国商会相信政府和工会能够在目前经济困难时期积极地解决劳动争议问题。我们支持引入地方调解机制以达到这一目的。我们督促向负担过重的仲裁庭和法庭提供更多的资源,以使政府的措施能够有效、高效地提升雇员和企业双方的权利。

#### 建议

- 继续澄清《劳动合同法》及其实施条例中的模糊内容,包括关于合法劳动用工方式的法律术语,在全国和地方各级有关部门确保执法的一致性和对法律的遵守。
- 澄清“经济性裁员”报告要求对中小企业的适用范围。
- 重视劳动法律和法规的完全统一实施,以确保《劳动合同法》得到所有企业的完全遵守。
- 增加劳动仲裁委员会和法院的预算和工作人员,以便其能够有效地处理激增的劳动争议。

## Intellectual Property Rights Protection

The issue of intellectual property rights (IPR) protection gained greater prominence in 2008 due to the Olympic anti-infringement campaigns, China's National Intellectual Property Strategy release, the amendment and passage of new IPR legislation, and reinvigorated dialogue between the Chinese and US governments. AmCham-China appreciates that the business community has increasingly been encouraged to provide comments and input during the legislative revision process, particularly on the Patent Law. Continuing this renewed spirit of cooperation between the Chinese and US governments and industry can improve IPR protection, benefiting both countries by spurring innovation and investment.

### Significant Developments

Interest in intellectual property (IP) filings in China remains strong. In the first half of 2008, the State Intellectual Property Organization (SIPO) received 345,569 patent applications, and processed 405,000 trademark registrations and 14,540 software registrations, up 28.5, 29.3 and 27.4 percent, respectively, from the same period in 2007.

In June 2008, China's State Council issued the outline of the long-awaited National Intellectual Property Strategy (NIPS), creating a strategic work-plan for the next five years and setting goals and targets that stretch to 2020. NIPS calls for promoting IP and states the importance of strengthening IPR protection through the revision of laws and regulations to curb infringement more effectively and strengthening judicial punishment, among other strategic tasks.

AmCham-China remains strongly committed to IPR protection and working with China on this issue. However, NIPS also seeks to create "self-reliant" IP in a number of important core technological areas. There are concerns that these policies in NIPS, and similar ones in the 15-Year Science and Technology Plan, may result in programs that run counter to WTO national treatment obligations.

The Chinese government took aggressive early actions against IPR infringers before and during the Olympics. From 2004 to September 2007, the administrations for industry and commerce at various levels investigated 1,357 IPR infringement Olympics-

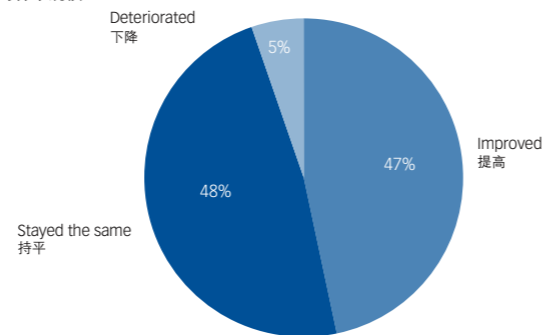
related cases, involving US \$2.4 million (RMB 16.4 million). The National Copyright Administration of China (NCA) established a control center to monitor illegal broadcasting of Olympic events and moved aggressively to prohibit such activities.

The Olympics demonstrated the ability of the Chinese government to significantly impact IPR infringement when they have a stake in the outcome and an industry partner. Developing a mechanism to continue this government-industry partnership in all areas of IPR is critical going forward.

Although it is clear more attention is being paid to IPR protection by the Chinese government, this activity has not materially curbed infringement in the marketplace and its long-term effect is uncertain. According to AmCham-China's 2009 *Business Climate Survey*, the American business community's outlook on IPR enforcement was basically unchanged, with approximately half of respondents believing incremental improvements continued over the past year, but the vast majority viewing overall enforcement as still ineffective. Overall, 47 percent of respondents indicated that IPR enforcement had improved in China in the last year, while 48 percent said it remained the same and five percent indicating it deteriorated (Figure 22). However, even with incremental improvements, 72 percent of respondents rate China's overall enforcement of IPR as ineffective,

In the last year, China's enforcement of IPR Rights has...  
过去一年中国保护知识产权的执行力的变化

Company sample size = 131  
公司样本规模



Source: 2009 AmCham-China Business Climate Survey  
资料来源: 2009年中国美国商会商务环境调查

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## 知识产权保护

2008年,知识产权保护取得巨大的进展:北京奥运反侵权专项行动、《国家知识产权战略纲要》的出台、新知识产权立法的修订与通过,以及中美政府之间知识产权对话的重新开启。同时,在立法修订、尤其是《专利法》的修订过程中,中国越来越多地鼓励工商界积极参与,建言献策,对此中国美国商会深为赞赏。中美政府与业界之间重新延续合作精神会改善知识产权的保护工作,通过推动创新与投资使两国受益。

### 重大进展

中国的知识产权申报持续增加。2008年上半年,中国国家知识产权局(SIPO)受理了345,569件专利申请,40.5万件商标注册申请和14,540件软件注册申请,较2007年同期分别增长了28.5%、29.3%和27.4%。

2008年6月,中国国务院发布了众所期待的《国家知识产权战略纲要》,制定了今后五年的工作战略计划和2020年的发展目标。《战略纲要》要求推动知识产权的发展,并强调了通过修订惩处侵权行为法律法规以及加大司法惩罚力度,加大对知识产权的保护力度等战略任务。

中国美国商会继续致力于知识产权保护工作的推进,并与中国政府开展合作。然而,《战略纲要》在多个重要的核心技术领域都寻求实现“自主的”知识产权。业界担心《战略纲要》中的这些政策以及《国家中长期科学和技术发展规划纲要》中的类似政策会导致出台一些与世贸组织(WTO)国民待遇原则相背离的计划。

在奥运会举办之前及举办期间,中国政府就及时采取了积极措施打击知识产权侵权行为。从2004年至2007年9月,各级工商行政部门对1357宗与奥运相关的知识产权侵权案件展开了调查,涉案金额达240万美元(1660万人民币)。中国国家版权局(NCAC)成立了一个管理中心来监控奥运赛事的非法转播,并采取严厉措施打击此类活动。

奥运行动表明,当政府与侵权事件的结果及行业伙伴具有利害关系时,中国对知识产权侵权活动的影响能力是巨大的。因此在知识产权各领域建立类似这种政府—行业合作的机制势在必行。

尽管中国政府对知识产权保护已经给予了很多的关注,不过这并未在实质上遏制市场中的侵权行为,其长期效果尚不明确。根据中国美国商会2009年度商务环境调查显示,美国工商界对中国知识产权执法的看法基本没有改变,约有半数的受访者认为过去一年中知识产权执法情况有了持续改善,但大多数人仍认为执法未能达到预期效果。总体而言,有47%的受访者表示中国的知识产权执法状况在过去一年中有所改善,48%的人认为执法状况没有变化,5%的人认为执法状况有所恶化(图22)。但是,即便有了明显改进,仍有72%的受访者认为中国的总体知识产权执法收效甚微,其中12%的人认为执法完全不起作用。只有28%的受访者认为其切实有效。

具体到各执法部门来看,受访者认为中国海关的执法略好于公安机关。约有三分之一的人表示这两个部门的执法状况在持续改善,而大多数受访者认为没有变化。对于那些曾经历过中国海关知识产权执法工作的企业,32%的受访企业指出海关的知识产权执法状况有所改善,2008年这一数字为27%(图23)。而在那些曾经历过公安机关知识产权执法工作的企业中,28%的企业称其执法工作较以往有所改进,2008年这一数字为32%,而且,感到其执法情况有所恶化的受访企业比例却从2008年的2%上升至9%(图24)。

在物质商品的知识产权保护问题尚未得到有效解决之时,互联网盗版问题却愈演愈烈,其中涉及体育赛事转播的法律漏洞。2008年,中国已超越美国成为世界上互联网用户数量最多的国家。不过,非法下载电影和歌曲在中国仍然非常盛行,这直接侵害了中国及国际著作权人的利益。在保护音乐和视频等数字产品方面存在的严重不足仍然是中国现代文化产业发展的主要障碍。中国美国商会

with 12 percent believing it is “totally ineffective.” Only 28 percent responded that enforcement is effective.

Breaking the data down by agency, there was a slightly more positive view of Customs than the Public Security Bureau, with about a third of respondents indicating each continued to improve and most seeing no change. For companies experienced with Chinese customs enforcement of IPR, 32 percent indicated customs IPR enforcement had improved, compared to 27 percent in 2008 (Figure 23). For those companies experienced with public security IPR enforcement, 28 percent indicated that enforcement had improved compared to 32 percent in 2008, while the percentage of respondents indicating it had deteriorated rose to nine percent from two percent (Figure 24).

At a time when protecting IPR for material goods remains an issue, Internet piracy continues to grow, including legal loopholes involving sports broadcasts. China now has the most Internet users in the world, surpassing the US in 2008. Downloading illegal copies of movies and songs, which directly robs Chinese and international copyright holders of revenue, continues to be extremely prevalent in China. Severe limitations in the protections of digital products, like music and videos, remain a major obstacle to the development of modern Chinese cultural products. AmCham-China would like to increase partnerships and cooperation between US and Chinese creative industries to protect online content more aggressively, benefiting the Chinese creative sector while also protecting the rights of other creators.

Restarting the bilateral dialogue between the US and China was an important step in enhancing IP enforcement. Similarly, recent memoranda of understanding have been signed, including those between the US Patent and Trademark Office (USPTO) and SIPO, USPTO and State Administration for Industry and Commerce (SAIC), and the Chinese and US food and drug administrations, among numerous others. AmCham-China fully supports such technical cooperation between agencies, but also believes it must not take the place of other overarching efforts, such as the Joint Commission on Commerce and Trade (JCCT) IPR Working Group. Cooperation should take place in an environment with a consistent strategic vision and close coordination across agencies and with industry.

AmCham-China continues to support the pioneering efforts by former US Ambassador Randt and USPTO to place IPR experts at the US Embassy and consulates and to improve inter-agency coordination in the Embassy, and by the USPTO, US Department of Commerce and others to train industry. We encourage continuation of annual IPR “roundtables” and active consultation with industry in the planning phase. We also support the continued dissemination of IPR-related information via IPR notes, webinars and road shows by the Commerce Department and USPTO.

## Patent

One strategic NIPS goal is for China to revise its IP laws. Four drafts of a revision to the Chinese Patent Law were released between July 2006 and October 2008. AmCham-China and the US Chamber of Commerce (US Chamber) jointly submitted comments to each. The latest draft demonstrates China's strong willingness to improve the current patent system, but some issues remain unresolved. The current draft:

- Lacks patentability from computer program/software;
- Left out an earlier draft provision allowing employers and inventors to define remuneration for employment invention through contracts;
- Requires the disclosure of genetic resource for patentability;
- Does not have criteria of inventiveness at the same levels for utility model patents and invention patents;
- Does not compensate for regulatory approval process delays in the duration of drug patents;
- Does not set forth conditions for granting compulsory license in sufficiently detailed language;
- And is unclear and possibly overly broad in defining what constitutes “patent abuse,” its relationship with the Anti-monopoly Law, and “working” requirements for patents.

## Trademark

Both infringement and anti-infringement activities continue in China. Even as both industry and the Chinese government increase anti-infringement efforts, the quantity of infringement still continues to increase. An effective way to deal with rampant piracy remains elusive, particularly regarding trademark issues.

However, a bright spot was China's implementation of an AmCham-China recommendation from the 2008 *White Paper*, which sped up the China Trademark Office's trademark examination procedure. As of 2008, there is new leadership in both the China Trademark Office and the Trademark Review and Adjudication Board. A massive recruiting and training effort is underway to obtain 400 new contract examiners (from less than 200) on three-year contracts.

From the beginning of 2008 to May 27, 2008, there were 190,000 trademark examinations, an increase of 76.1 percent over the same period a year earlier. In a meeting with AmCham-China on October 16, 2008, Vice Minister Fu Shuangjian stated the goal of increasing the number of examinations to 1.3 million in 2009, and 1.4 million in 2010. This should eliminate the backlog by 2011, at which time all registrations will be completed within one year of filing. AmCham-China applauds China's efforts on this priority.

希望增进中美两国创意产业之间的协作, 以此更积极有效地保护网络内容, 造福中国的创意产业, 同时也保护其他创作者的权益。

中美两国双边对话的重新开启是加强知识产权执法的重要一步。同样, 中美两国最近签署了一系列谅解备忘录, 包括美国专利商标局 (USPTO) 与中国国家知识产权局、中国国家工商行政管理总局, 以及中美两国食品药品监督管理局等部门之间签署的备忘录。中国美国商会全力支持两国有关部门之间的这种技术合作, 但同时也认为, 这种合作不可能代替其他重要工作的开展, 如美中商贸联合委员会 (JCCT) 知识产权工作小组的成立。中美两国之间的合作应当具有一致的战略目标, 并积极推动跨部门机构和产业之间的协作。

对于前美国驻华大使雷德 (Randt) 先生及美国专利商标局在派驻知识产权专家进驻美国大使馆和领事馆以改善大使馆内部跨部门合作的努力, 以及美国专利商标局、美国商务部等部门积极开展的行业培训等, 中国美国商会将继续予以大力的支持。我们鼓励继续举办一年一度的知识产权“圆桌会议”, 并在策划阶段积极向业界征求意见。此外, 我们还支持美国商务部以及美国专利商标局继续通过知识产权文件、网上研讨会和路演宣传知识产权相关信息。

## 专利

《国家知识产权战略纲要》的一大战略目标就是修订中国知识产权方面的法律。从2006年7月至2008年10月, 中国就《专利法》的修订公布了四份征求意见稿。中国美国商会及美国全国商会 (US Chamber of Commerce) 就各份征求意见稿联合提交了意见和建议。最新征求意见稿体现了中国希望改善当前专利制度的强烈愿望, 但仍有一些问题尚未解决。现行征求意见稿:

- 缺少计算机程序/软件的可专利性;
- 不再考虑之前征求意见稿的一项规定, 即允许企业和发明人通过合同对职务发明的报酬做出约定;
- 要求就可申请专利的遗传资源进行披露;
- 在实用新型专利和发明专利方面缺少同样等级的创造性判断标准;
- 并未就药品申请专利期间监管审批程序延期的补偿问题做出说明;
- 未详细说明批准强制许可的条件;
- 在界定“专利权滥用”定义、其与《反垄断法》之间的

关系以及专利“生效”要求方面显得含糊不清, 或许过于宽泛。

## 商标

在中国, 侵权和打击侵权的活动一直都未有间断。尽管企业和中国政府都加大了打击侵权行为的力度, 但侵权现象仍不断增加。目前仍然很难找到一种有效的方式来打击猖獗的盗版活动, 尤其是商标盗版问题。

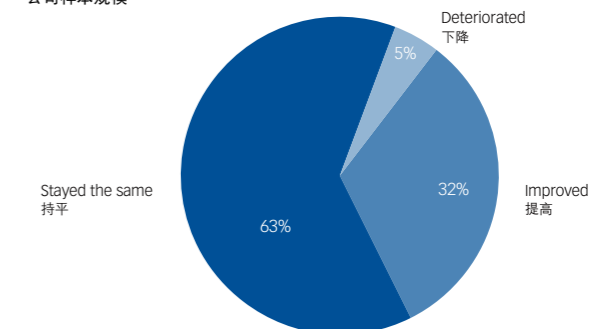
但可喜的是, 正如中国美国商会2008年度《白皮书》中所建议的, 中国加快了商标局的商标审查程序。从2008年起, 随着中国商标局和商标评审委员会领导层的更迭, 大规模的招募与培训工作也正在展开, 以吸收400名新的合同制评审人员 (原先不足200人), 合同期为三年。

从2008年年初到5月27日, 商标审查数量达190,000件, 同比增长76.1%。中国国家工商行政管理总局在2008年10月与中国美国商会举行的会晤中表示, 2009年要将

### In the last year, China's customs enforcement of IPR for my organization has...

过去的一年, 中国海关在保护知识产权中的执法情况

Company sample size = 83  
公司样本规模



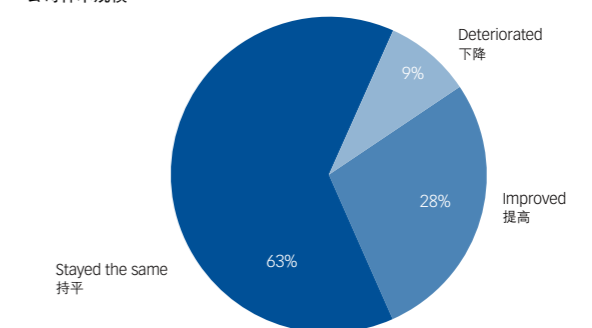
Source: 2009 AmCham-China Business Climate Survey  
资料来源: 2009年中国美国商会商务环境调查

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### In the last year, China's public security enforcement of IPR for my organization has...

过去的一年, 中国保护知识产权的公安执法情况

Company sample size = 90  
公司样本规模



Source: 2009 AmCham-China Business Climate Survey  
资料来源: 2009年中国美国商会商务环境调查

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Revision of the Trademark Law began in 2003, and the SAIC is currently preparing a new draft, expected to be released shortly. AmCham-China and the US Chamber jointly submitted a position paper for the October 2007 draft, the last draft publicly released. It contained a radical revision to China Trademark Office's (CTO) trademarks review process. Currently, the CTO will reject a trademark confusingly similar to an existing one, known as "rejection on relative grounds." Rejection on relative grounds is not in the 2007 draft. Instead, the existing trademark owner would be required to file an opposition to prevent a similar mark from being registered.

AmCham-China supports maintaining examination on relative grounds and believes certain proposed changes in the draft law could further increase the difficulty of enforcing trademarks in China. We hope the vigor with which China is working to remove the backlog from the trademark office signals that the provision to eliminate trademark examination on relative grounds has been rescinded.

## Copyright

Physical piracy remains rampant, but the lack of enforcement of copyright content in the online environment has become an increasingly serious concern. China has not only the world's most Internet users, but also the most top-level country domain name registrations.

The market for audiovisual products on the Internet, both digital transmission and physical products sell-through, has grown enormously, but so has demand for piratical contents. Many websites offer streams, downloads or links to infringing contents delivered through the latest technologies, making regulation and copyright enforcement extremely difficult. The major challenges for the audiovisual industry are "deep linking" through search engines (of which the largest is Baidu) and user-generated content (UGC) sites (the largest of these include Youku and Tudou).

While traditional physical piracy remains a huge issue, it is localized compared to Internet piracy. Piratical China websites and other services based on P2P technologies are negatively affecting the global market. First-run user-uploaded films are "shared" on numerous UGC platforms, which Internet users anywhere in the world can immediately watch. By allowing rampant piracy, many of those sites and services destroy legitimate business models of copyright owners and their local licenses, while making insignificant revenue through advertising.

The adoption of the Internet Regulations (Regulations) in 2006 has not reduced online piracy, failing to keep up with new technologies and market realities. The notice and take-down procedures stipulated by the Regulations place too much burden on right holders and the language is too ambiguous to enforce. For example, while the Regulations request that an Internet Service Provider (ISP) must comply with

a notice "promptly," relevant regulatory bodies have failed to provide a concrete interpretation of "prompt." Newly-released movie blockbusters, still in theaters worldwide, can attract millions of online viewings in a day, causing enormous financial losses to lawful right owners. Even websites or ISPs that have lost the protection of "safe harbor" under the Regulations face only civil damages or administrative fines inconsequential for many Internet companies supported by millions of dollars of investment.

Amendments to the Regulations and the Copyright Law itself are needed to bring Chinese laws up to international norms and into compliance with treaties such as the World Intellectual Property Organization Internet treaties (effective in China since June 2007). Meaningful deterrents are urgently needed to persuade websites and ISPs to act responsibly and cooperate with right holders by adopting preventive measures such as filtering and automated take-down, particularly so that UGC sites and search engines cannot act as conduits. Criminal law enforcement and prosecution against online piracy would be a strong deterrent. AmCham-China recommends that the outdated copyright crime clauses in the Criminal Code be revised to provide practical and easily measurable thresholds for the police to begin investigations.

The NCA should be obligated to transfer online cases involving criminal infringement to the Public Safety Bureau, in accordance with the Criminal Transfer Regulations. An inter-department enforcement platform is also necessary to regulate audiovisual websites and online services regulated and licensed by the State Administration of Radio, Film and Television, and the Ministry of Industry and Information Technology. Cooperation was extremely effective during the Olympics, and demonstrated that the Chinese government has the tools to control online piracy, where political will exists. A strong commitment is also needed to protect other audiovisual contents and create a lawful, orderly and healthy online environment both to grow China's own creative industries, and to protect all rights holders.

AmCham-China also believes the US and China should engage at the highest levels, on an inter-agency basis, in discussions on enforcement of IP over the Internet. We also support a more active interchange with businesses frustrated by copyright or Internet-enforcement issues, and believe government resources can facilitate more responsive law enforcement. A proactive and visible industry role in various inter-agency efforts would also be a productive outlet for addressing this problem.

## Exporting of Counterfeits

US and other foreign Customs data have identified China as the source of a growing majority of seizures of infringing products. In addition, US complainants against Chinese goods increasingly seek US Section 337 remedies, typically to address patent infringing

商标审查数量增加至130万件,到2010年增加至140万件。到2011年,积压的商标评审工作应当能够全部完成,届时所有商标注册工作都将在申报一年内完成。对于中国在这一方面所给予的关注,中国美国商会表示高度赞赏。

《商标法》的修订工作始于2003年,中国国家工商行政管理总局目前正在准备新的征求意见稿,并预计于近期公布。中国美国商会及美国全国商会就2007年10月公布的征求意见稿联合提交了一份意见书。意见书对商标审查工作程序提出了一项完全不同的建议:即保留商标审查的程序中的“以相对事由驳回”。目前对于与现有商标近似的、容易使人混淆的商标注册申请,商标局将“以相对事由驳回”。但2007年征求意见稿中取消了“以相对事由驳回”的规定,取而代之的是要求现有商标持有人提交异议以防止近似商标的注册。

中国美国商会认为征求意见稿中某些修订提议会进一步加大中国商标执法的难度。我们希望中国商标局积极加快处理积压工作,表明其已经取消了不再“以相对事由”进行商标审查的规定。

## 版权

实物盗版仍然非常猖獗,但对网络版权内容的执法力度的欠缺已经成为越来越严重的问题。中国不仅拥有世界上数量最多的互联网用户,同时也是域名注册数量居首位的国家。

网上的音像制品市场——无论是以数字形式传输还是实物的销售——规模已经相当庞大,而对盗版内容的需求也已激增。许多网站提供通过最新技术制作的包含侵权内容的流媒体、下载或链接,使监管和版权执法工作变得异常艰难。音像行业所面临的主要问题是搜索引擎(其中包括最大的中文搜索引擎百度)以及“用户创造内容”(UGC)网站(包括最大的优酷网和土豆网)产生的“深层链接”。

虽然传统的实物盗版仍然是一个巨大的问题,但与互联网盗版相比还是局部性问题。中国的盗版网站以及其他基于P2P技术的服务正对全球市场产生恶劣的影响。用户上传的电影通过各种UGC平台得以共享,可供世界各地的互联网用户立即观看。通过纵容猖獗的盗版行为,许多此类网站和服务供应商通过广告收入赚取“小钱”的同时,破坏了著作权人合法的业务模式及其本地授权。

2006年颁布的《信息网络传播权保护条例》由于未能适应新技术和市场的实际情况,因此并未有效遏制网

络盗版活动。《条例》中规定的通知和撤销程序使著作权人承担极大的负担,且语言过于含糊不清,无法得到有效的实施。例如,虽然《条例》要求互联网服务供应商(ISP)必须根据著作权人的通知“迅速”采取行动,但有关监管部门却并未对“迅速”一词做出具体的解释。新上映的大片,仍在全球影院上演,但一天就能够吸引数百万的在线浏览量,给合法的著作权人造成了巨大的损失。即便是失去《条例》“安全港”保护的网站或互联网服务供应商,也只是面临民事赔偿或行政处罚,对于许多有着数百万美元投入支持的互联网公司而言,这些处罚不足以产生任何影响。

中国需要对《条例》及《版权法》本身进行修订,使其法律能够与国际接轨,并符合世界知识产权组织“互联网”公约(2007年6月在中国生效)等条约的规定。同时亟需针对性的威慑措施以使网站和互联网服务供应商合法合理地开展业务,并采取过滤和自动撤销等预防性措施与著作权人合作,尤其是使UGC网站和搜索引擎无法充当盗版的传播途径。刑事诉讼和刑事处罚将对互联网盗版者形成强有力的威慑。中国美国商会建议对《刑法》中已经过时的版权犯罪条款进行修改,便于公安机关开展切实可行的调查。

中国国家版权局有义务依照《刑事案件移交条例》,将涉及刑事侵权的互联网案件移交公安机关处理。同时也有必要建立跨部门的执法平台,对由国家广播电影电视总局、工业和信息化部管理和授权的音像网站和网络服务进行监管。在奥运会期间,跨部门合作已卓有成效,这表明只要有政策支持,中国政府就能控制网络盗版行为。此外还需要积极保护其他音像内容,并构建一个合法、有序、健康的互联网环境,这不仅能够促进中国创意产业的发展,同时也保护了所有著作权人的权益。

中国美国商会还认为中美两国应当开展跨部门的高层对话,探讨互联网知识产权的执法问题。同时我们也希望与受困于版权或互联网执法问题的企业进行更积极的交流,并相信政府能促进执法的迅速反应。另外使企业能够在各种跨部门工作中发挥积极、重要的作用,也将是解决这一问题的有效方法。

## 假冒产品的出口

美国及其他国家海关部门数字显示,在收缴的侵权产品中,中国制造产品所占比重越来越大。此外,越来越多起诉中国商品的美国企业开始寻求美国“337条款”规定的补救措施,尤其是在解决侵犯专利权的进口商品方面。

imports. Chinese Customs, although not specifically required by the Trade Related Aspects of Intellectual Property Rights Agreement, can play an important role in reducing exports of infringing goods.

A multifaceted approach is necessary to address the problem of customs imports/exports. The Internet has emerged in the exporting of counterfeit products and copyright-infringing goods and should be a priority area to address bilaterally. To tackle the growing problem of exports better, it is important to expand the current cooperation between law enforcement authorities and Customs authorities in the US and China to address case-specific areas and exchange useful intelligence. An integrated, inter-agency dialogue would likewise be important. Agencies such as the US Department of Justice and Customs, as well as the Office of the United States Trade Representative, USPTO, US Commerce Department, US Food and Drug Administration and others should work together through the JCCT or other mechanisms to exchange best practices. US business should also be invited to sit in, as appropriate, in these meetings to provide support and on-the-ground resources.

### Recommendations

- **Continue the pioneering efforts of the US Embassy and government in recent years, with greater internal coordination and cooperation with industry.**
- Amend the Chinese Patent law to address AmCham-China concerns, as specified in this chapter.
- Fully support and follow through with the efforts of the trademark office in eliminating the examination backlog.
- Retain the Trademark Office examination of trademark applications on relative grounds.
- Establish new public-private partnerships to duplicate the effective IPR infringement prevention during the Olympics.
- Resist establishing IP policies in violation of WTO rules, which unduly favor Chinese domestic companies over foreign companies.
- Amend the 2006 Internet Regulations and Copyright Law to correspond with international norms and comply with WIPO treaties.
- Enable websites and ISPs to work with right holders and adopt preventive measures such as filtering and automated take-down.
- Establish a clear and transparent government structure for administrative enforcement, and adopt an inter-departmental enforcement platform.

虽然《与贸易有关的知识产权协议》并未做出明确的规定,但中国海关能够在控制侵权产品的出口方面发挥极为重要的作用。

解决海关进出口问题必须采取多管齐下的方法。互联网已经成为假冒盗版产品出口的温床,应当引起中美两国的首要关注。为了更好地解决这个日益严峻的出口问题,有必要进一步加强中美两国执法部门和海关之间的合作,从而有针对性地解决具体涉案领域的问题并交换有用的信息。综合的跨部门对话也同样具有重要意义。美国司法部和海关,以及美国贸易代表办公室、美国专利和商标局、美国商务部、美国食品药品监督管理局等部门应当通过美中商贸联合委员会或其他机制展开合作,交流探讨最佳做法。同时也应当在适当的条件下邀请美国企业参加此类会议,从而提供支持以及基本资源。

### 建议

- **继续落实美国大使馆及政府近年来的开创性举措,进一步加强与业界的内部协调协作。**
- 对中国《专利法》做出修订以体现中国美国商会的上述关切。
- 全力支持商标局加快审查程序、完成积压工作。
- 保留商标局“以相对事由”进行商标申请审查的模式。
- 建立新的政府 – 行业合作机制,使得奥运会期间有效打击知识产权侵权行为的做法得以延续。
- 抵制制定与 WTO 规定背道而驰的、过于偏袒中国国内企业的知识产权政策。
- 修订2006年的《信息网络传播权保护条例》和《版权法》,使其与国际接轨并符合世界知识产权组织的公约要求。
- 使网站和互联网服务供应商能够与著作权人合作,并采取过滤和自动撤销等预防性措施。
- 建立明确和透明的政府行政执法架构,并实行跨部门执法平台。

## Science, Technology and Industrial Policy

China has committed itself to strengthening domestic science, technology and innovation with the long-term goal of becoming a preeminent global technological powerhouse and creating an “Innovation Society” by 2020. China’s desire to move up the value chain is a critical shift, given its manufacturing and export-led growth model, environmental degradation, and uneven geographic development.

China plans to advance these goals, in part, through state funding of a broad range of programs from investment in basic sciences to the development of a world class space program. Specifically, this includes increasing government backed research and development (R&D) spending from 1.4 to 2.5 percent of GDP by 2020; further increasing state funding of universities and research institutes, already more than double 1998 levels; and further increasing the numbers of researchers, already 77 percent more than 1995 levels (now second only to the US). With this investment, China will surpass Japan as the second highest investor in R&D globally. Multinational companies have also established R&D centers throughout China. Both Chinese and foreign patent filings are growing significantly.

China’s focus on the development of innovation capabilities will help promote rapid, and more importantly, sustainable economic growth. AmCham-China encourages the government to maintain investment in technology even in the face of the current economic downturn to facilitate restructuring, improve productivity and competitiveness, and promote long-term development.

### Significant Developments

#### *Growing Protectionism Labeled as “Indigenous Innovation”*

The increasing number of policies to foster “indigenous innovation” are concerning to AmCham-China. The indigenous innovation policy uses the term “indigenous” to stress the importance of reinvigorating domestic innovation, historically the underpinning of Chinese achievement. There are a growing number of Chinese who feel China’s reliance

on foreign technology is a threat to China’s national security. AmCham-China is concerned that this indigenous innovation drive has manifested itself in policies favoring Chinese products and services over those of foreign-invested firms.

In today’s interconnected global economy, capital, labor and ideas flow unimpeded across national boundaries. Innovation embodied in a single product can come from research and development that takes place globally. Measures with a protectionist leaning designed to bolster domestic innovation at the expense of foreign participation, will likely not have the intended effect, instead redirecting resources to other more open and advantageous investment environments abroad.

### Specific Issues

Three years after the 11th Five-Year Plan was published in 2006, a number of new policy mandates under the name of “indigenous innovation” appear to favor Chinese entities through tax incentives, government procurement regulations, standards, and increased protection for key state controlled industries from competition policy.

#### *Foreign Firms Excluded from High-Tech Tax Breaks*

Significant tax benefits geared toward high technology research enterprises have been implemented, including lower corporate tax rates (15 versus 25 percent). However, nationality of intellectual property (IP) ownership produced by the enterprise is a key qualifier for these breaks. To date, thousands of Chinese enterprises have been licensed as high-tech firms and enjoy these tax benefits, creating unfair market conditions for foreign firms.

#### *“Indigenous Standards” Creates Governmental Favoritism*

Already, we see indigenous innovation arising in issues from the development of national standards and conformity assessment to competition policy and favoritism in government procurement. In addition, China is moving toward mandating the use of unique and non-transparent Chinese standards for national and information security purposes.

## 科学、技术与产业政策

中国决心加强本国的科学、技术和创新，确定了2020年成为世界科技强国以及建设“创新型社会”的长期目标。鉴于其制造业和出口型增长模式、环境恶化和地区发展不平衡，期望提升价值链是中国的一个重大转变。

中国准备通过国家对大批项目的投入来部分地推进这一目标，项目包括了基础科学研究到世界级的航天计划。特别明确的是：到2020年之前将政府对研发的支出从目前国民生产总值的1.4%提高到2.5%；进一步增加大学和科研机构国家经费支持，目前该经费已经在1998年的水平上翻了一番；进一步增加研究人员数量，目前该数量已经在1995年的水平上增加了77%（仅次于美国）。随着这些投入，中国将取代日本成为世界上第二大研发投资国。跨国公司也已在中国各地成立研发中心，中外专利申请的数量也在呈快速增长态势。

中国对发展创新能力的重视将有助于推动经济快速增长，并且更重要的是推动经济实现可持续增长。尽管目前处于经济低迷时期，中国美国商会仍鼓励政府保持对科技的投入，以促进结构调整、提高生产力和竞争力水平，并推动长期的发展。

### 重大进展

#### *贴上“自主创新”标签的保护主义势头在不断增长*

中国正在出台越来越多的政策鼓励“自主创新”，这引起了中国美国商会的担心。自主创新政策使用“自主”一词用来强调提升中国自身创新能力的重要性，而在历史上，中国曾经取得的辉煌成就正是基于这种创新能力。越来越多的中国人认为，中国对外国技术的依赖，将对中国的国家安全构成威胁。中国美国商会担心，对这种自主创新的推动将会在各政策上体现出来，与外国公司的产品和服务相比，国产产品将会得到更多的优惠。

在当今环环相扣的全球经济体系中，资本、劳动力和

观念在各国之间自由流通。一件单一产品中所包含的创新会来自于全球性的研发努力。而为支持国内创新而制定出带有保护主义倾向、排斥外国参与的政策措施，将很可能适得其反，因为它将导致这些资源转而投向其他更加开放和有利的地区。

### 具体问题

自2006年发布“十一五”规划以来的三年时间里，中国以“自主创新”为名出台了若干向中国实体倾斜的新的强制性政策，包括税收刺激、政府采购法规和标准，以及为国家重点控制行业提供越来越多的竞争保护政策。

#### *外国公司被排除在高科技税收减免优惠之外*

中国已经面向高科技研究企业实施了优厚的税收优惠政策，其中包括更低的企业所得税率（15%，相对于普通企业的25%）。然而，企业所研发的知识产权的所有人的国籍，却成为能否享受这些税收减免优惠的重要条件之一。到目前为止，数千家中国企业已经被认定为高科技公司，享受这些税收优惠政策，这对外国企业而言形成了不公平的市场环境。

#### *“自主标准”造成了政策性偏袒*

从国家标准的制定与符合性评估政策到竞争政策与政府采购中的优惠政策等，我们从这些问题中已经看到了自主创新的影响。另外，出于国家和信息安全方面的考虑，中国正在强制要求使用独有的、非透明的中国标准。

#### *政府补贴国内企业的研发*

中国已下拨经费支持由科学技术部、工业和信息化部、国家发展和改革委员会所领导的激励和补助计划，以推动对自主创新的投入，尤其是国有企业在这方面的投入。例如，在工业和信息化部“十一五”规划中，包括了进一步扩大省级和地方对基础和应用研究的研发投入，

### Government Subsidized R&D for Domestic Enterprises

China has sponsored incentive and benefits programs led by Ministry of Science and Technology (MoST), Ministry of Industry and Information Technology (MIIT), and National Development and Reform Commission (NDRC) to promote indigenous innovation investment, particularly by state owned enterprises (SOEs). An example is MIIT's 11th Five-Year Plan. This includes further expansion of provincial and local level R&D funding for basic and applied research in priority areas identified in the Medium to Long-Term Strategic Plan for the Development of Science and Technology. These programs almost exclusively favor Chinese enterprises. More importantly, experience has shown this type of top-down approach to fostering innovation is flawed, running counter to accepted best practices.

### Government and SOE Procurement to Favor "Domestic Goods"

China's Medium to Long-Term Strategic Plan for the Development of Science and Technology has focused on public procurement's role in advancing innovation by accelerating the diffusion of innovative products. However, the implementation plans released in 2006 and further detailed in 2007 call for preferential procurement of indigenous innovation products. Chinese government agencies at the central and sub-central level are to develop criteria and lists for products qualifying as indigenous innovation. This long-rumored list has not yet been published, but there are indications it is in the final drafting stage with Chinese government agencies, including MoST.

Additionally, in late 2007, the Chinese government released separate regulations forcing all imported products for government procurement to go through a special approval process before purchase by the Ministry of Finance. The optical fiber industry exemplifies this problem. Government policies that give preference to Chinese sources have driven down the share of US fiber sold in the Chinese market by 50 percent. This example shows the potential of indigenous innovation criteria and lists to discriminate against foreign products, foreign owned intellectual property and firms currently serving the Chinese government procurement market.

Many of these policies clearly contradict the principles outlined in the WTO Agreement on Government Procurement (GPA) (Please see Government Procurement chapter).

The Chinese government has also encouraged state-owned enterprises (SOE) to purchase domestic Chinese software and other goods as part of its software legalization effort. This is despite an explicit WTO commitment and recent statement at the September 2008 Joint Commission on Commerce and Trade not to discriminate in SOE commercial purchasing. In addition, China's ICT industry

stimulus and revitalization program reportedly includes plans to substitute foreign software for domestic software through government procurement provisions; mandate compatibility with domestic software, making changes to government-required testing and certification standards; and provide government support to indigenous R&D and commercialization of indigenous products.

### New Ministry to Focus on Indigenous Innovation Development

In March 2008, China's State Council carried out wide-ranging central government reforms including the creation of a new ministry, MIIT, by merging the former Ministry of Information Technology; NDRC industry management departments; the Bureau for Science, Technology and Industry for National Defense; and China's macro IT thinkers at the State Council Informatization Office. MIIT has unwaveringly supported indigenous standards and technology such as TD-SCDMA, and has said it will seek to promote indigenous innovation through deep reforms to China's industrial organization structure, specifically for industrial equipment. While MIIT has yet to clarify how it will foster indigenous innovation and development, AmCham-China is concerned that further government intervention will only create an unbalanced marketplace.

### Economic Transformation via "Open Innovation"

Even in light of the current global economic downturn, there is an opportunity to promote economic transformation through innovation. Such a transformation could lead to accelerated high value-added growth, a stronger investment environment, continued high GDP growth rates, lower per-unit GDP consumption of scarce resources (e.g., energy and water) and the opportunity for further global integration.

China will not meet these goals, however, if it does not address challenges associated with the current reforms. Sound legal frameworks, including intellectual property rights and integrated intellectual asset management, and the fundamentals of a mature and well-regulated financial sector are foundations of innovative societies. For China's innovation policy, encouraging risk taking, avoiding top-down edicts on research and development priorities, not over-emphasizing government projects and allocating funding with third party reviewed spending are all key to success in the international community.

AmCham-China welcomes China's energetic drive to establish an innovation society, which, in concert with educational, financial and legal system reforms, will help ensure China's ongoing competitiveness and further smooth integration into the global economy. However, pro-competitive and non-discriminatory policy approaches that respect IP and recognize the

优先考虑科技发展中长期战略规划中所确定的领域。这些计划几乎全部都对中国企业倾斜。更为重要的是，经验已经证明这种自上而下鼓励创新的做法是有缺陷的，与公认的成功范例背道而驰。

### 政府和国有企业采购倾向“国货”

中国的中长期科技发展战略规划强调了公共采购通过加快创新产品的普及提高自主创新能力发挥的重要作用。然而，2006年发布的实施计划以及2007年出台的实施细则，则要求优先采购自主创新产品。中央和地方政府机构要为符合“自主创新”的产品制定标准和清单。这份风传许久的清单目前尚未公布，但有迹象显示，包括科学技术部在内的中国政府部门已进入清单编写的最后阶段。

另外，2007年底，中国政府另行发布规定，强制性地要求政府采购的所有进口产品，在购买前都需要通过财政部制定的一个特别批准程序。我们以光纤行业为例，说明这种做法所带来的问题。优先采购国产产品的政府政策已经使得在中国市场销售的美国光纤产品的市场份额下降了50%。这个例子表明，正在编制的自主创新标准和清单对目前为中国政府采购市场服务的外国产品、外国人拥有的知识产权和企业形成歧视。

许多这样的政策显然不符合WTO政府采购协议所包含的原则（请参考《白皮书》中的“政府采购”一章）。

尽管中国曾明确向WTO作出承诺，且近期在2008年9月的中美商贸联合委员会上声明，不会在国有企业的商业采购中有所歧视，但作为其推动软件合法化努力的一部分，中国政府还鼓励国有企业购买中国国产软件和其它货物。此外，据报道，中国的ICT行业的刺激和振兴计划包含了通过政府采购条款用国产软件替代外国软件的计划、与国产软件兼容的强制性要求、对政府要求的测试和认证标准进行修改、以及为自主研发和自主产品的商品化提供政府支持。

### 设立新部委，重点发展自主创新

2008年3月，中国国务院推行了大范围的中央政府改革，其中包括合并原信息产业部、发改委工业管理部门、国家国防科技工业局，并调入国务院信息化工作办公室的大批IT战略专家，组建了一个新的部委——工业和信息化部。工业和信息化部坚定地支持自主标准和技术，例如TD-SCDMA（“时分同步码分多址接入”），并称将通过深化改革中国工业组织结构（尤其是工业设备方面），努力推动自主创新。尽管工业和信息化部还需要阐释如何推

动自主创新和发展，但中国美国商会担心政府进一步的干预将只会带来市场失衡的后果。

### 通过“开放的创新”实现经济转型

即使当前面临着全球经济衰退，中国仍面临通过创新实现经济转型的机遇。而经济转型可促进高附加值经济的增长，优化投资环境，实现国民生产总值的持续快速增长，降低单位GDP的稀缺资源消耗量（例如，能源和水），并带来进一步融入全球一体化的机会。

但是，如果与当前改革息息相关的诸多难题不能得到解决，中国将难以实现这些目标。创新型社会需要以健全的法律体系（包括知识产权和综合智力资产管理）和成熟并监管良好的金融部门作为根本性基础。对于中国的创新政策而言，鼓励承担风险，避免就研发重点自上而下的指令式模式，避免过分强调政府项目，经费划拨接受第三方审查等，这些都是国际社会取得成功的关键因素。

中国美国商会欢迎中国为建设创新型社会而做出的积极努力，这方面的努力与教育、金融和法律体系等方面的改革相配合，将有助于确保中国持续的竞争力和进一步顺利融入全球经济。然而，尊重知识产权、承认创新的全球化特质、鼓励竞争和非歧视性的政策，是实现创新型社会的最佳和最快途径。中国美国商会期待着在中国促进自主创新的努力中发挥重要的作用。

### 建议

- 通过向所有个人和实体开放、不因国籍或股权结构而异的政策措施，确保可持续创新。中国应郑重地评估其当前的创新“政策工具箱”，在未来法规的制定过程中增加透明度和外国企业的参与度。
- 鼓励创新，并制定一个增进个人和机构的创新能力、建立“全球创新能力”的政策，而不论其国籍或所有权结构如何，从而建立一个融入全球的创新型社会。
- 促进综合智力资产管理作为确保正确理解知识产权的在经济和企业战略中的作用的有效方式。探索能够有效培育便于个人和机构创造、获取、保护和利用智力资产的环境的各种方法。
- 实施与GPA中概述的透明、非歧视、竞争机制、价值和绩优原则相符的采购政策，并且在中央和地方层级都应遵守GPA。（请参考《白皮书》中的“政府采购”一章。）

global nature of innovation are the best and fastest way to achieving an innovative society. AmCham-China looks forward to playing an integral role in China's drive to foster indigenous innovation.

### Recommendations

- **Ensure sustainable innovation through measures that are open to all individuals and entities irrespective of nationality or equity composition. China should seriously assess its current innovation “policy toolbox” and increase transparency and foreign enterprise participation in the formulation of future regulations.**
- Foster innovation and embrace a policy of building “global innovation capacity” that promotes individuals and organizational capacity, irrespective of nationality or ownership structure, thus building an innovative and globally integrated society.
- Promote integrated intellectual asset management, effectively ensuring the proper understanding of the role of IP in the economy and strategy of business. Explore ways to nurture an environment that helps individuals and organizations create, acquire, protect and utilize intellectual assets.
- Implement procurement policies consistent with principles of transparency, non-discrimination, competition, value and merit as outlined in the GPA, and conform to the GPA both at the central and sub-central level. (Please see the Government Procurement chapter.)





## Small and Medium-Sized Enterprises

Small and medium-sized enterprises (SMEs) have been instrumental to China's growth, as they drive employment and innovation and represent important customers, suppliers, and partners of both Chinese and foreign companies. They now comprise over 99.5 percent of China's total businesses and contribute over half of its GDP. They employ over 70 percent of the nation's workforce overall, and more than 75 percent in rural areas. As a source of innovation, one estimate suggests that SMEs develop more than 65 percent of patents and more than 80 percent of new products.

SMEs comprise an important part of AmCham-China's membership as well, with 56 percent of members self-identifying as a small or medium-sized enterprise (Figure 25). They are important to AmCham-China companies not only as an engine for continued economic growth in China, but also as important customers, suppliers and partners to larger company members.

Unfortunately, SMEs still receive a level of policy and financial support that is disproportionately lower than their contribution to the national economy. Also, uniformly applying regulations without consideration of their differential effects due to company size disproportionately affects both Chinese and foreign SMEs. Moreover, SMEs often face uneven regulation and their access to commercial credit remains far too low.

With these factors, the currently weakening global economy, and other issues including a more flexible RMB, lessening global demand, increasing labor costs and tighter controls on lending, SMEs face numerous challenges. AmCham-China encourages the Chinese government to continue to focus additional efforts on supporting SMEs in a way that reflects their economic contributions to the country. Policy changes regarding SMEs in the early part of 2008 were incremental, but recent Chinese government assistance to ailing SMEs signals growing recognition of the sector's importance.

AmCham-China supports the efforts by both the central and local governments in China to help SMEs source financing and other inputs to become better, more productive companies and employers, and to expand globally. We encourage such efforts to be market-oriented to avoid potential conflicts of interest between the government and affected SMEs. Developing SMEs and fostering a vibrant private sector is critical

to driving economic growth in China and is the foundation for creating an innovation-based society.

### Significant Developments

The China Association of Small and Medium Enterprises estimates that operational costs for SMEs increased approximately by an average of 30 percent year-on-year in 2008. In conjunction with the weakening global economy, the net result of such an increase is that in the first half of 2008, over 67,000 SMEs, each with revenues in excess of RMB five million (US \$729,927), were forced to close, laying off more than 20 million employees.

Responding to such concerns, China has taken several measures to promote SME access to financing, including establishing an SME subsidy program, removing the loan ceiling on commercial lenders, cutting interest rates, legislating a system for registering equity used as collateral for bank loans and encouraging SME incentive programs at the local level.

While many of these changes may be in response to liquidity issues in the market, measures aimed directly at assisting ailing SMEs are welcome. We hope these signify a general shift towards improving the overall environment for SMEs in China. Continued reforms in this direction as well as ensuring consistent implementation, enforcement and application of existing regulation are in China's best economic interests.

### Specific Issues

#### Application of Tax Laws

In 2007 and 2008, China made attempts to standardize the enterprise income tax regimes for foreign and domestic businesses. While the effective tax rates were made uniform, the tax laws and regulations did little to standardize supervision and enforcement between foreign and domestic companies. Furthermore, the flat rate tax of 25 percent was set for all businesses, with the lower tax rate of 20 percent only available to the smallest of companies (RMB 300,000 or US \$44,000 in taxable income or less).

Incentives based on industry and geography were largely removed and replaced with incentives for "new and high-tech" enterprises. Unfortunately, there was also clear favoritism towards larger enterprises

## 中小企业

中小企业的发展推动了中国经济的发展：带动就业，推进创新，是中外企业的重要客户、供货商、以及商业伙伴。目前中国中小企业的数量占企业总数的99.5%以上，创造了50%以上的GDP；解决了中国70%以上劳动力的就业，为农村劳动力提供了75%以上的就业机会。据估计，作为创新力量的中小企业获得了65%以上的专利权，创造出80%以上的新产品。

中小企业作为中国美国商会会员的重要组成部分，约占会员总数的56%（图25）。中小企业对于商会的会员公司来说至关重要，因为它们不仅是中国经济持续增长的源动力，而且是商会较大型会员公司的重要客户、供应商及合作伙伴。

然而，中小企业在政策和金融方面得到的支持与其对中国经济做出的贡献不成正比。同时，政府对法律法规的统一实施并未充分考虑由于企业规模不同而导致的实施效果的差别，这也不同程度地影响着国内外中小企业。此外，中小企业还面临着差异化的法规政策以及信贷难等问题。

除上述问题，中小企业还要应对当前全球经济衰退，以及其他不利因素的挑战，例如人民币汇率变动、国际市场需求减少、劳动力成本增长、信贷紧缩等。中国美国商会建议中国政府继续更多的支持中小企业，使之为中国经济做出更大贡献。政府仅在2008年初，对中小企业的相关政策的调整有所侧重，不过近期政府加大对境况不佳的中小企业的扶持力度，显示出了其对中小企业重要性认识的提升。

中国美国商会支持中央与地方政府帮助中小企业扩大融资渠道、增加其他更多的投入，以期中小企业更好地发展，走向世界。我们鼓励此种努力应以市场为导向，避免政府与涉及其中的中小企业之间潜在的利害冲突。发展中小企业、促进生机勃勃的私人企业是推动中国经济增长的关键，也是建立创新型社会的基石。

### 重大进展

中国中小企业协会估计，与上年同期相比，2008年中小企业的运营成本平均增长约30个百分点。2008年上半年，由于全球经济衰退，如此比例的成本增长使超过67,000家的中小企业（平均收益约为五百多万人民币）被迫关闭，两千多万名员工失业。

针对上述情况，中国政府采取了几项促进中小企业融资的措施，包括制定中小企业补贴计划，取消商业贷款限制、降低贷款利率、制定股权质押贷款的相关法律，以及鼓励地方政府制定中小企业刺激计划。

上述改革或许能够解决市场流动性问题，但直接帮助中小企业走出困境的办法更受欢迎。我们希望这些措施能使中小企业的整体环境得到改善。继续沿此方向进行改革，确保按照现有法规严格统一执法，这将非常符合中国的经济利益。

### 具体问题

#### 税法的实施

2007年与2008年中国政府尝试规范中外企业的企业所得税制度。虽然目前实行的税率是统一的，但是税法及相关法规在监管和执行时对外中企业的标准却没有统一。另外，25%的统一税率是针对所有企业制定，而较低的20%税率却仅适用于最小规模的企业（纳税收入小于等于30万人民币的企业）。

以产业和地缘优势为主导的鼓励政策已在很大程度上转向高新技术产业。然而，《企业所得税法》以及相关法规和配套办法等都明显倾向于大型企业。例如，规定要求在研发费用、人员配置与总收入之间须满足一定比例，这对中小企业而言明显是一个障碍。

此外，国外的中小企业与大的跨国公司一样，须替母公司代缴股利的预提所得税。虽然美国拥有海外税收抵

in the Enterprise Income Tax Law, regulations and other subsequent measures. For example, they require certain ratios to be met between research and development staffing and expenditures, and total revenues, which are an obstacle for SMEs.

Furthermore, as foreign SMEs are treated identically to multinational corporations (MNC), they are also subject to a withholding tax on dividends to parent companies. While the US has an overseas tax credit system, in practice, this often does not fully offset the effects of double-taxation.

Taking into account all factors—the higher tax rate than previous years, the removal and lack of access to incentive programs, and subjection to a withholding tax—the new tax regime still disproportionately impacts foreign SMEs.

### Uniform Application and Transparency of Laws

Though previously high registered-capital requirements have been lowered in many industries, China's treatment of foreign SMEs and MNCs is relatively uniform, whereas the differential treatment between domestic SMEs and MNCs is great. While smaller domestic businesses may operate through less complex business organizations, such as sole proprietorships and partnerships, their foreign counterparts must establish and operate through limited liability companies, which subjects them to significant costs and regulatory burdens.

Furthermore, despite the Company Law provision permitting non-single-shareholder companies to be established with as little as RMB 30,000 (US \$4,400) in registered capital, registration of a foreign company—regardless of size—with the same amount of registered capital is not possible. Often, the reality for foreign companies is a minimum requirement several times the amount specified by law.

### Lack of Access to Capital and Financing

Foreign SMEs continue to lack access to capital and financing options. SMEs receive less than 2.3 percent of all financial lending from state-owned banks. However, in September of last year, it was announced that RMB 3.5 billion (US \$511 million) would be granted as a subsidy package to ailing SMEs to assist them in easing current pressures.

While AmCham-China commends the establishment of special SME-lending programs within banks, we encourage banks to continue moving towards more market and cash flow-based lending practices. Chinese banks still frequently evaluate collaterally-based hard assets rather than projected cash flow, putting usually relatively asset-light SMEs at a disadvantage. This evaluation exists, despite history that indicates SMEs perform well in terms of return on assets and often also with regards to return on investment. AmCham-China encourages the continued movement towards using cash flow rather than collateral as a basis for lending.

### Effects of Size-Based Regulation Differential

In 2007 and 2008, China introduced a number of laws and regulations designed to focus on commerce and the economy as a whole. For example, the Labor Contract Law and its regulations established the same obligations for employers, regardless of size. However, some requirements, such as the maintenance of relatively complex human resource systems by all employers, disproportionately burden smaller businesses.

Since this problem is partly due to the legislative process, AmCham-China suggests establishing an agency within the government to assess the impact of proposed regulations on SMEs. This would allow the re-evaluation of laws and regulations that fail to address the specific needs and the disparity of resources and other practical economic realities of SMEs.

### Recommendations

- **Raise the threshold for qualifications to the 20 percent tax rate.**
- Provide special provisions for SME qualifications as “new and high-tech” enterprises.
- Recognize government objectives in supervising economic development, permit foreign businesses to operate in the form of sole proprietorships and partnerships in the “encouraged and permitted” sectors.
- Establish, publish and follow statutorily provided registered capital requirements.
- Establish a comprehensive system with rules and standards for the distribution of subsidies.
- Encourage bank lending to SMEs through the establishment of a government-supported loan-guarantee program.
- Establish at least one nationwide credit rating system.
- Act on existing legislation and establish a nationwide collateral registry.
- Encourage the banking system to continue moving towards basing lending criteria on cash flow rather than collateral.
- Establish an agency within the government, similar to the Office of Advocacy of the US Small Business Administration, to assess the potential impact of proposed regulations on SMEs and consider alternatives as appropriate.

免制度,但实际上并不能完全避免发生双重征税。

考虑到如下因素:税率较往年有所增长、鼓励措施被取消或难以实施、以及必须缴付预提所得税,新制定的税法对外国中小企业仍有不同程度的负面影响。

### 法律实施的一致性与透明性

尽管此前中国政府已对许多产业降低了过高注册资本的要求,对外国中小企业与大的跨国公司的要求也相对一致,但对于国内中小企业与跨国公司的要求却有很大差别。国内较小型企业可通过个人独资企业或合伙企业等较为简单的组织机构进行运作。然而国外的较小型企业必须以有限责任公司的形式成立和运营,由此带来了高额成本和政策负担。

此外,尽管《公司法》规定有限责任公司的最低注册资本为三万元人民币(4,400美元),但是对外国公司,无论规模大小,都不可以依照这个数额进行注册。实际上,其最低注册资本往往是法律规定数额的好几倍。

### 资金短缺与缺少融资渠道

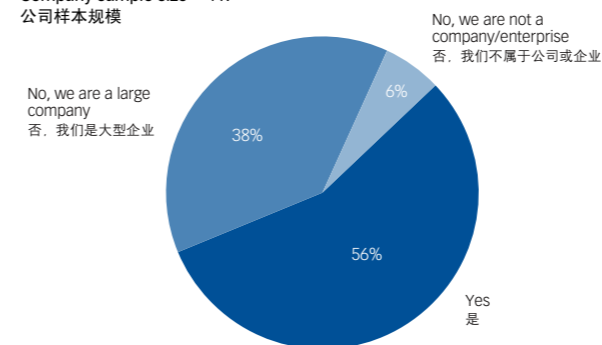
外国中小企业仍然缺少资金和融资渠道。国有银行向中小企业的发放贷款数额不足其贷款总额的2.3%。去年九月,中国政府宣布下拨35亿人民币(5.11亿美元)用于补贴境况不佳的中小企业,以缓解其目前的压力。

中国美国商会对中国在各大银行建立起的中小企业特殊贷款计划十分赞赏,但我们仍希望各大银行进一步开拓市场并实施流动资金贷款计划。中国的银行仍采取对企业硬资产,而不是通过预计现金流现值进行抵押评估,这对固定资产相对较少的中小企业来说十分不利。虽

### Would you identify your company as a small/medium-sized enterprise?

是否将本公司定义为中小企业?

Company sample size = 417  
公司样本规模



Source: 2009 AmCham-China Business Climate Survey  
资料来源: 2009年中国美国商会营商环境调查

然历史记录显示中小企业的资产回报率和投资回报率均较高,但这种评估形式仍然存在。中国美国商会鼓励采取进一步措施,将现金流而非固定资产作为信贷抵押主体。

### 区别不同规模企业执行规定时所产生的影响

中国于2007年与2008年颁布了若干项推动商业与经济的法律法规。例如,《劳动合同法》及其细则为不同规模的企业雇主规定了相同的义务。但一些要求,例如所有雇主须维持一个相对复杂的人力资源体系,这给小企业带来了一定的负担。

此类现象已成为立法程序中的问题,因此中国美国商会建议在政府内部建立一个评估机构,对有关法规政策在执行过程中对中小企业产生的影响进行评估。这将对无法满足中小企业具体需求的法律法规、资源分配不均现象、以及中小企业的实际经济状况作再次评估。

### 建议

- **提高获得征收20%税率的公司资质。**
- 制定中小企业获得“高新技术”企业资质的特殊规定。
- 赞赏政府对经济增长管理的目标,在“鼓励与允许”的范围内,允许外国企业以个人独资或合伙企业的形式开展经营活动。
- 根据法律条文建立、颁布、执行所制定的注册资金要求。
- 针对补贴发放建立一套由相关规定与标准构成的综合体系。
- 制定政府贷款担保计划,鼓励银行面向中小企业贷款。
- 应建立至少一个全国性的信用评级制度。
- 执行现有法规并建立全国性担保登记制度。
- 鼓励银行系统继续向以现金流而非担保的贷款标准的做法发展。
- 建立一个类似于美国小企业管理局促进办公室形式的政府内部机构,评估所提议法规对中小企业的潜在影响,并考虑适当的替代途径。

## Standards

AmCham-China remains committed to helping foster an open and transparent standardization system in China at the national and industry levels. We commend China's stated goals in the 11th Five-Year Plan (Plan) to accelerate standardization, actively promote the adoption of international standards and foreign advanced standards, expedite technical committee establishment, and expand participation in international standardization. We also support the Plan's mission to promote active industry participation in the development and revision of national standards, hasten scientific research and standardization integration, implement the project management model in the development and revision of standards, and bring Chinese innovation to the existing international standardization system.

AmCham-China is also committed to helping China meet its WTO commitments and reach its stated accession goals. In the WTO-Technical Barriers to Trade Agreement (TBT), there are six agreed-upon principles that define procedures to be used in the development and determination of international standards.

China has not been consistent with these principles, only recognizing the International Organization for Standardization (ISO), International Electrotechnical Commission (IEC), International Telecommunication Standardization Sector (ITU) and some other ISO-recognized organizations as international standards developers (SDOs), while denying similar recognition to other SDOs that satisfy the WTO principles. AmCham-China strongly urges China to broaden its recognition of SDOs beyond ISO, IEC and ITU and some related organizations to any organization that follows the WTO principles. Broader recognition would benefit stakeholders in standards development and help China realize the goals of promoting and actively developing international standards.

### Significant Developments

Standards Administration of China (SAC) has acknowledged that the review and updating process for Chinese National Standards is insufficient for manufacturers' needs and thus committed significant funding for upgrading the capabilities and resources of the standards technical committees.

As part of this effort, China has established national technical committees covering a wider range of industries. SAC directly guides and administers these new technical committees, which have developed an increasing number of Chinese national health and safety standards.

AmCham-China appreciates that China's standards and conformity assessment bodies continue to develop relationships with international standards development bodies. These include US-based, globally-reaching bodies that follow the six principles set forth in the WTO/TBT agreement on the development of internationally recognized standards (i.e., transparency, relevance, openness, coherency, impartiality and consensus, and consideration of the concerns of developing countries). These relationships have resulted in full or partial adoption of some international and advanced foreign standards, particularly in the area of test methodologies and procedures.

In addition, for some industries, there are more options for certification sites, making it more convenient to bring products to market. However, issues remain regarding expensive and time-consuming certification processes.

### Specific Issues

AmCham-China has sought to address duplicative certification requirements for imported medical equipment. The issue has been discussed at several meetings of the Joint Commission on Commerce and Trade (JCCT), once in September 2007 and again in September 2008. During the September 2008 JCCT meeting, Chinese authorities committed to eliminate the redundancies to which imported medical equipment was subject. The General Administration of Quality, Supervision, Inspection and Quarantine and the State Food and Drug Administration jointly announced they will only require one test, report, fee and factory inspection for each medical device.

China's standards development process and conformity-assessment procedures, in some cases, lead to the establishment of design-specific, rather than minimum performance-based, requirements (non-design specific). These design-specific standards inhibit the free flow of Chinese products to global markets and that of foreign products to China's market.

## 标准

中国美国商会致力于推动一个开放、透明的国家和产业标准化体系的建立。中国在“十一五”规划中公布了加快标准化进程、积极推动国际标准和国外先进标准在国内的应用、尽快建立技术委员会和加大参与国际标准化制定力度的目标。我们对此表示赞赏。我们也支持“十一五”规划所确立的目标，即推动企业积极参与国家标准的制定和修改、加快科研与标准化的统一、将项目管理模式应用于标准的制定和修改过程，以及使中国的创新水平符合现有国际标准化体系的要求。

中国美国商会也积极推动中国履行其入世承诺和实现其入世目标。在《世界贸易组织贸易技术壁垒协定》(TBT)中，规定了六条合格评定国际标准程序的公认原则。

不过中国尚未完全遵守这些原则。中国目前仅认可国际标准组织 (ISO)、国际电工委员会 (IEC)、国际电信联盟 (ITU) 和其它经ISO承认的组织为国际标准制定机构 (SDOs)，而并未给予其它同样符合世贸原则的标准制定机构类似的认可。中国美国商会强烈建议中国扩大认可范围，除ISO、IEC、ITU和一些相关机构外，对所有符合世贸原则的标准制定机构也予以认可。这样既可使标准制定领域的各相关方受益，也能帮助中国实现积极推动和制定国际标准的目标。

### 重大进展

中国国家标准化管理委员会 (SAC) 已经意识到中国国家标准的现行审核和更新程序无法满足制造企业的需求，因此承诺将投入大量资金用于标准技术委员会能力和资源的建设。

作为举措之一，中国已经建立了覆盖各行业领域的全国专业标准化技术委员会，由国家标准化管理委员会对其工作进行直接指导和管理。这些技术委员会已推出一系列国家级健康和安全的标准。

中国美国商会赞赏中国的标准和合格评定机构继续发展与国际标准制定机构的关系。这些国际机构包括遵循《世界贸易组织贸易技术壁垒协定》六项原则 (即透明度、相关性、开放性、一致性、等效和相互认可、考虑发展中国家的利益) 的全球性美国机构。合作已促使一些国际标准和国外先进标准在中国全部或部分适用，特别是有关检测方法和程序方面的标准。

此外，尽管一些行业颁发认证的场所有更多的可选性，更便于产品上市，但由于认证程序费用较贵，耗时较长，仍然存在某些问题。

### 具体问题

中国美国商会一直在寻找解决进口医疗设备重复性认证的方法。美中商贸联委会曾在2007年9月的会议和2008年9月的洛杉矶会议上多次对该问题进行讨论。洛杉矶会议上，中方承诺将停止对进口医疗设备重复性认证的要求。中国质量监督检验检疫总局和国家食品药品监督管理局也联合声明，将对所有进口的医疗设备只进行一次性的检测、出具报告、收费及工厂实地检查。

在某些情况下，中国的标准制定过程和合格评定程序有时带来的是特殊定制，而非最低执行性的要求 (非特殊定制)。这种特殊定制的标准限制了中国产品自由进入全球市场和外国产品自由进入中国市场。设定要求标准的最快捷和经济的方法是执行现行的国际标准，而非创立中国特有的标准。然而，为了使制造商能够运用与以往不同的或新兴的技术，就不能排除使用那些能够带来同等或更佳绩效的方法或技术。除了制定标准和合格评定外，统一执行各项标准也是促进贸易自由流动的的必要条件。

中国美国商会注意到国家标准化管理委员会已阐明其对跨国企业参与制定各项国内标准和技术规则方面的立场。过去一年中，许多国家级技术委员会进行了重新调整。这一趋势将跨国企业的参与度降低到“观察员”位置，限制了其参与度，即使是之前持有完全“参与权”

The quickest and most cost-efficient method of establishing requirements involves adopting existing international standards, rather than creating unique Chinese standards. However, to allow manufacturers to use different or new technology, requirements should not preclude methods or technologies that provide equal or better performance. In addition to the development process and conformity assessment, uniform enforcement is needed to promote free trade flow.

AmCham-China notes that the SAC has clarified its position on multinational corporations (MNC) participating fully in the development of all Chinese standards and technical regulations. In the past year, there has been widespread reorganization of many national technical committees. The trend was to restrict MNC participation by limiting access to “observer” member status only, even if the MNC previously held full “participatory” (P) status, with full voting rights.

The recent ruling by SAC leaving the decision on full P member status by MNC employees to the discretion of each technical committee is encouraging, but falls short of a full endorsement of the principles of transparent and non-discriminatory standards setting, present in China’s WTO accession agreement. AmCham-China maintains that every manufacturer should be able to participate in the standards development process in China, to review and comment on standards and technical regulations as part of an open, transparent and non-discriminatory process.

A large number of Chinese organizations reproduce and distribute international/foreign standards to customers without authorization from the copyright holders—international SDOs or foreign national standards bodies. These unauthorized Chinese service providers not only include numerous private consulting companies, but also local governmental institutions and libraries throughout China. International/foreign standards are also disseminated on the Internet without proper authorization from copyright owners. These copyright infringements cause serious injury to standards developers and inhibit the development of China’s standardization system. Safeguarding copyrights is indispensable to the development of an innovative standardization system and China’s leading role in setting world standards.

Finally, China is examining how patents and other intellectual property (IP) deemed essential for Chinese technology and products should be treated in terms of China’s Anti-Monopoly Law, particularly regarding market dominance and compulsory licensing, licensing conditions, prior disclosure, and other issues. It is important that these policies reflect the importance of IP and patents to foster innovation among both foreign and domestic companies. AmCham-China urges the policies relating to

treatment of IP contained within China’s standards be balanced and take into consideration both the rights of users and interests of implementers. The standards development process should respect the IP of the developer, be industry-led and consensus-based.

### Recommendations

- **Make standard setting processes transparent, open and non-discriminatory. All companies should be able to fully participate as voting members within Chinese technical committees, just as Chinese companies are allowed to participate in similar international standard setting organizations.**
- Adopt or accept international or global standards already widely used in the marketplace and replace national standards with similar international ones. Requirements should not preclude the use of methods or technologies that provide equal, or better, performance.
- Ensure uniform enforcement to promote free trade flow.
- Become an active participant in international standard setting organizations.
- Have an open discussion between the Chinese government, Chinese companies and MNCs on the treatment of IP under the Anti-Monopoly law, particularly in the determination of market dominance and compulsory licensing.

(P) 并享有完全意义上的投票权的企业也不例外。

国家标准化管理委员会最近决定，将由各相关技术委员会对跨国企业的员工是否拥有完全的参与权做出最终判定。尽管这一决定令人鼓舞，但仍未全面符合中国入世协定中透明和非歧视性的原则。中国美国商会认为每个制造企业均应能够参与到中国的标准制定过程中来，并在一个开放、透明和非歧视性的过程中对标准和技术规则加以审核和评议。

许多中国机构未经国际标准制定机构或外国国家标准制定机构等版权所有授权，便将国际或国外标准复制并分发至客户手中。这些未经许可的中国服务机构不仅包括大量私人咨询公司，而且包括地方政府机构和图书馆。此外，还出现了未经授权的国际或国外标准在互联网上传播的现象。此类侵权行为对标准制定机构造成严重损害，并限制了中国标准化体系的发展。版权保护对创新型标准化体系的建立至关重要，也关系到中国是否能在国际标准的制定方面发挥领导作用。

最后，中国正在探讨如何从反垄断法的角度处理被认为对中国技术和产品至关重要的专利及其它知识产权问题，特别是关于市场垄断、强制许可、获取许可证条件、预先披露等问题。政府的相关政策必须能够反映知识产权及专利在推动外国和本国企业创新方面的重要性。中国美国商会敦促中国政府在制定各项标准过程中保持知识产权相关政策的一致性，并充分考虑产权使用者的权利和执行者的利益。同时应尊重标准制定机构的知识产权保护，确保标准制定应以行业为导向并以获得业界共识为基础。

### 建议

- **确保标准制定过程的透明、公开和非歧视性。正如中国企业有权参与类似国际标准制定机构的工作，所有企业均应有权作为投票成员全权参与中国技术委员会的工作。**
- 采纳或接受市场上广泛应用的国际或全球标准，并以类似国际标准取代国家标准。相关要求不应排除使用可提供同等或更优绩效的方法或技术。
- 确保统一执行以推动自由贸易流动。
- 积极参与国际标准制定机构的工作。
- 中国政府、企业和跨国公司应就如何依据《反垄断法》处理知识产权问题，尤其是在市场垄断和强制许可的判定方面展开公开讨论。

## Tax

China's tax laws and their administration are becoming increasingly complex, reflecting the country's growing economy, dynamic business sectors and the continuing adoption by the government of international concepts and practices. These developments in the tax law coincide with other long-term objectives, including key industry growth, and can potentially be used as a tool to counteract the current economic downturn.

The Enterprise Income Tax Law (EIT Law) and Implementation Rules (Rules) were introduced in 2007 to level the playing field between domestic enterprises and foreign-invested enterprises (FIEs). They also serve to steer investment towards environmental protection, infrastructure projects and certain other industries that contribute to China's goal of fostering innovation. In light of these goals, AmCham-China proposes certain changes to existing rules on key taxation issues and practices that will help China promote its overall policy goals.

### Export Value-Added Tax (VAT) Refund Rate Increase

In an effort to support labor-intensive enterprises, China increased the export VAT refund rates four times in 2008. These moves have significantly helped many manufacturers and export businesses affected by a rising RMB and shrinking demand overseas.

In contrast to VAT systems adopted around the world that are generally "neutral" to most manufacturing businesses, the Chinese mechanism is not "neutral." Rather, through the export refund rate mechanism, there is often not a full refund of VAT paid by an exporting enterprise on its inputs. This creates an additional significant "cost" that is not borne at all by comparable manufacturers in other countries.

Because of the potentially high VAT cost, exporting enterprises in many cases adopt a business model that is most advantageous to VAT recovery rather than in line with other legal and operational needs. With each change in the VAT refund rate, businesses often re-evaluate their models and consider whether operations can be re-oriented to a new model that will minimize VAT costs.

This focus on business models that minimize VAT is disruptive to both businesses and Chinese tax

administrators. If the current VAT system were made to be consistent with others around the world on this point, there would be increased efficiency for businesses and tax administrators alike. Further, and more importantly, Chinese manufacturers would be placed on a level playing field with manufacturers from other countries.

AmCham-China suggests that the government institute a long-term study to determine the effects of aligning China's VAT system with those commonly used by other countries.

### Consumption-Based VAT Reform

China implemented a consumption-based VAT system starting January 1, 2009, under which VAT incurred on fixed asset purchases may now be credited. This is an important and positive change.

#### Elimination of VAT Exemption

AmCham-China welcomes the shift to a consumption-based VAT system. However, the recent reform will significantly impact Chinese public-sector purchases of imported products by removing a 17 percent VAT exemption. The VAT reforms also impact Export Credit Agencies (ECAs), a preferred financing source for large ticket sales. ECAs offer attractive financing for imported products, which were previously VAT exempted.

In attempting to level the playing field between foreign and domestic goods, the Chinese government has disincentivized domestic purchases of imported goods by reducing supply options and increasing the cost of financing. Most imported high-technology products are not currently manufactured in China and it will be some time before adequate resources can be brought online to meet domestic demand. For example, Chinese hospitals still require significant numbers of PET-CT, MR and CT devices that are only produced in the US and EU.

It is also clear that the government will require financing to support its capital equipment needs going forward. Under the current stimulus package, it is estimated that China will need to raise RMB 300 to 700 billion (US \$43.8 to 102.2 billion) to meet its needs. In today's market, bank and bond financing is tight and expensive both in China and abroad. In

## 税务

中国的税法和监管变得越来越复杂，反映出了国家不断增长的经济、活跃的商业领域以及政府陆续采纳的国际公认概念和标准。税务法律的这些进展与主要产业增长等其他长期目标吻合，并可作为应对当前经济低迷的工具。

《企业所得税法》及其实施条例（简称《条例》）于2007年实施，旨在为内资企业和外资企业创建“公平的赛场”。同时这一条例还被寄望能够将投资引向环境保护、基础设施项目和一些能够使中国得以实现创新目标的其他行业。考虑到这些目标，中国美国商会建议对涉及某些关键税务问题的现行条例做出一些修改，以有助于中国实现其总体政策目标。

### 出口增值税退税率提高

为了支持劳动密集型企业，中国在2008年内三次提高了出口增值税退税率。这一举措给受人民币升值和海外需求衰退影响的制造商、出口企业提供了很大帮助。

与通常世界其他地区对大多数制造企业所采用的“中立”的增值税体系不同，中国的机制并不“中立”。相反，根据出口退税率政策，出口企业通常难以获得所缴纳增值税的全额退税。这就导致了其他国家制造商并不承担的额外重大“成本”。

因为潜在的高额增值税成本，出口企业在很多情况下采用一种最符合增值税退税的商业模式，而不是为了满足其他法律或经营需求。每次增值税退税率发生变化，企业需对其模式进行重新评估，并考虑是否转变为新的经营模式以最大程度减少增值税成本。

将注意力集中在增值税最小化的商业模式上，对企业和中国税务管理者来说都无害无益。如果当前的增值税体系在此方面与世界其他国家保持一致，则企业和中国税务管理者的效率都会更高。更重要的是，中国的制造商将和世界其他国家的制造商站在公平的赛场上。

中国美国商会建议政府组织一项长期研究，以确定中国采用世界其他国家通常采用的增值税体系将会带来的影响。

### 消费型增值税改革

中国于2009年1月1日期起开始推行消费型增值税，允许企业抵扣固定资产采购所产生的增值税。这是一项重要而积极的变化。

#### 取消增值税 (VAT) 免税

中国美国商会对转为采用消费型增值税体系表示欢迎。但是，由于取消了17%的增值税免税，最近的改革将对中国公共部门购买进口产品产生重大影响。增值税改革还影响到出口信贷机构，它们是大宗销售的优先融资来源之一，出口信贷机构为进口产品提供有吸引力的融资，而之前这些产品是免增值税的。

为努力给国内外产品提供一个公平的竞争环境，中国政府通过减少供应选择和增加融资成本来抑制国内购买进口货物。由于目前中国并不生产大多数进口的高科技产品，因此需要一定时间之后才可能投入足够的资源满足国内需求。例如，中国的医院仍然需要大量的只有美国和欧盟才能生产的PET-CT、MR和CT设备。

显然政府也需要融资以满足其资本设备需求的增长。按照目前的刺激计划，估计中国需要筹措3,000-7,000亿人民币方能满足其需要。在目前的市场上，中国境内外的银行和债券融资均非常紧张而且费用高昂。相反，出口信贷机构可提供更长的还款期和较低的财务成本（以及之前的增值税免税），是中国政府买家优先选择的融资机构。

此外，尽管政府正在抑制采用出口信贷机构融资的意愿，但其对低成本融资的需求却非常高。根据中国近期公布的刺激计划，许多用于农村基础设施和交通项目的设备都需要进口。中央政府仅直接提供百分之三十的资金，其

contrast, ECA financing offers a longer repayment tenor, low financial cost and, previously, VAT/duty waiver, making it the preferred financing avenue for Chinese government-owned buyers.

Moreover, the government is disincentivizing the use of ECA financing when its need for low-cost financing is high. Under the recently announced Chinese stimulus plan, much of the equipment needed to support rural infrastructure and transportation projects shall be imported. Only approximately 30 percent of the funding will be provided directly by the central government, with the remaining 70 percent coming from a variety of yet-unidentified sources.

AmCham-China recommends a permanent VAT exemption for ECA-supported transactions, or at a minimum, an extension of the VAT exemption for ECA-financed deals financed in the VAT-exemption cancellation implementation rules currently under consideration.

### Large Enterprise Administration Department

AmCham-China applauds the creation of the Large Enterprise Administration Department (LEAD), a new department covering taxation of large enterprises. It opens new possibilities for improved interaction between taxpayers and tax authorities. Presently, there is a lack of detailed information on the roles and functions of the LEAD. AmCham-China believes that providing a centralized avenue for resolving controversies and reducing regional disparities in tax implementation would be very beneficial.

### Partnership Enterprises and Taxation of Foreign Partners

The Partnership Enterprise Law (PEL) was promulgated in 2006 and became effective June 2007. Although the PEL is effective now for partnerships with Chinese enterprise and FIE partners, foreign enterprise and individual partners will not be permitted until the issuance of forthcoming Administration Measures of Foreign Enterprise or Individual Establishment Partnership Enterprise in China which are still under consideration. AmCham-China submitted its comments on a draft of these measures in the fall of 2007. AmCham-China recommends that guidance allowing foreign partners in a Partnership Enterprise be issued as soon as possible.

The PEL states that partnership income or loss should only be taxed at the partner, not partnership, level. AmCham-China recommends that guidance on the taxation of foreign partners be provided as soon as possible, in accordance with the principles of Guoshuifa [2003] No. 61.

### Related Party Transfer Pricing and Other Special Tax Adjustment Matters

Chinese transfer pricing (TP) regulations have recently undergone a series of massive changes. Many are

welcomed, but some deviate from international standards and may cause difficulties for both Chinese and foreign-based enterprises. For example, extensive contemporaneous documentation must now be prepared by some companies by certain deadlines each year, and all businesses are required to submit detailed annual reporting forms. These documentation requirements tend to be more extensive than that of other countries in content, emphasis and complexity, adding considerable additional burden for all affected taxpayers.

AmCham-China has a number of concerns related to the manner of computing acceptable transfer prices that are inconsistent with the Organization for Economic Cooperation and Development (OECD) principles and international practice. These include:

- Adjustments in TP investigations by the tax authorities that would push transfer prices or profit margins that are below the median of the inter-quartile range established by comparable transactions, but still within that range, up to the median or above.
- A requirement that specifies certain contract manufacturing entities operating for related parties not bear risk or losses and make certain minimum profit.

Another major concern is that tax authorities have the authority to secure private/confidential information (i.e., "secret comparables") from companies not under audit, merely because a business is similar to others under audit. For a number of reasons, the OECD and many of its member countries have strongly rejected the use of "secret comparables." First, there must be a full sense of fairness between taxpayers and the tax authorities. This can only happen when both parties are using the same publicly available data to support their respective positions. In addition, from a policy standpoint, the actions of the tax authorities cannot put at risk the confidential information of any enterprise. The use of private/confidential information gained from companies not under audit will inevitably cause such information to be at serious risk of becoming known to their competitors that are under a TP audit.

Some other concerns include:

- The equity threshold for "related party," generally at 25 percent, seems remarkably low. While there are some other countries that also use a low threshold, there is no reason to believe there is material "control" at such a low threshold of ownership. By raising that threshold to, for example, 40 percent, Chinese tax authorities should be able to capture the information they need while reducing the burden on taxpayers.
- In several countries, taxpayers have 60 days to provide TP documentation after it is requested. The current rule in China allows only 20. If the period were extended, taxpayers could then avoid the need to translate documents in advance of a request, as

余百分之七十的资金来源尚未确定。

中国美国商会建议永久性免征通过出口信贷机构提供融资所进行的交易的增值税,或者至少在目前尚在酝酿中的取消增值税免税实施细则中,延长由出口信贷机构提供融资进行交易的增值税免税期限。

### 大企业管理司

中国美国商会欢迎大企业管理司的设立,这一新的部门将负责大企业的税务管理。该举措增加了纳税人与税务机关互动的机会。目前,还很少有关于大企业管理司的职责和功能方面的详细信息。中国美国商会相信,设置这样一个部门对于解决税务执行争议及减少地区不平衡来说大有裨益。

### 合伙企业和外国合伙人的税务问题

《合伙企业法》于2006年颁布,并与2007年6月正式生效。尽管《合伙企业法》现在适用于中资企业和外资企业合伙人建立的合伙企业,但外资企业和个人合伙人在《外商投资合伙企业管理办法》出台之前仍被禁止建立合伙企业。中国美国商会于2007年秋提交了一份对该办法草案的意见。中国美国商会建议尽快发布允许外资合伙人参与合伙企业的指导意见。

《合伙企业法》规定,合伙企业的损益仅对合伙人而非合伙企业本身征税。中国美国商会建议尽快依照国税发[2003]61号通知,就外国合伙人的纳税事宜出台指导意见。

### 关联方转让定价和其他特殊税务调整事宜

中国的转让定价法规近期经历了一系列重大变化。一些变化值得欢迎,一些则与国际标准不符,可能给中国和外国企业带来困难。例如,在每年的特定时限之前,一些企业必须编制大量同期的文件资料,而且所有企业须提交详细的年度报告表。相比其他国家,这些文件的要求在内容、重点和复杂性方面更广泛,为所有受影响的纳税人带来了极大的额外负担。

对于计算可接受转让价格的方式与经济合作与发展组织(简称“经合组织”)原则和国际实践不一致的地方,中国美国商会有多项关注的问题。包括:

- 税务机构作出的转让定价调查调整,会推高转让价格或利润率,使仍然在根据可比交易确定的四分位区间内,但又低于此四分位区间中位值的转让价格或利润率,在四分位值区间内达到中位值或稍高于中位值的

水平。

- 其中一项要求规定,为关联方运作的某些承包制造商,不应承担风险和损失且应获得最低利润。

另外重要的一点是,税务部门有权得到其它未经审计的公司的秘密信息(作为“秘密可比公司”),仅仅是因为其业务与(当前)所审计公司的业务相类似。出于一系列的原因,经合组织及其成员国强烈反对采用“秘密可比公司资料”。首先,纳税人和税务机关必须存在完全的公平感。这仅在双方均采用公开数据支持各自立场的情况下才可能实现。此外,从政策角度看,税务机关的行动不能将任何企业的保密信息置于风险之中。使用从未被调查的公司获得的私有/保密信息将不可避免地造成此类信息被转让价格调查下的竞争者获悉的风险。

其他关注的问题包括:

- “关联方”最低股权标准通常为25%,似乎非常低。尽管部分其他国家也采用较低的最低股权标准,但没有理由相信如此低的所有权能够形成实质“控制”。通过提高该标准,例如到40%,中国税务机关应该能够获得所需的信息,同时降低纳税人的负担。
- 在多个国家中,纳税人在提出申请后的60天内提供转让定价文件。中国目前的规定仅允许20天。如果该期限能够延长,则纳税人能够避免在提出申请前翻译文件,因为60天时间将足够他们完成相关文件的翻译工作。60天期限似乎更适合中国,因为随年度企业所得税申报表提交的九张转让定价信息披露表中,纳税人需要向税务机关提供大量的详细信息。
- 纳税人还关注中国税务机关管理“年度”资料的要求。我们建议中国像许多其他国家一样,如果文件在为期三年内且业务未发生变化,则接受其作为当前文件。在这种情况下,只需进行更新或“前滚”即可。
- 希望有关方面能够澄清转让定价功能分析和风险分析的划分使用。比如,能否通过一家从事制造、销售和售后服务的法人实体综合运用这些功能,以检验经济成果?如果答案是不可以,则该实体需要为转让定价进行三次独立的分析,但由于企业经营的综合性质,这种划分可能并不合适。

其他新的转让定价法规对成本分摊协议含义和预约定价协议的程序进行了标准化,允许纳税人与税务机关就商定年限内的转让政策达成一致。中国美国商会鼓励税务机关能够尽快全面执行成本分摊协议和预约定价协议程序。应推出一项纳税人培训计划。

the 60-day period would give them ample time to translate their work. The 60-day period seems particularly appropriate in China, where the nine TP information disclosure schedules filed with the annual corporate income tax return give tax authorities a significant amount of detailed information.

- Taxpayers are also concerned about how Chinese tax authorities will administer the requirement for “annual” documentation. We recommend for China, like many other countries, to accept documentation as current if it is for a period within three years and there has been no change in the business. In this case, an update, or “rollforward,” would be sufficient.
- It would be helpful to receive clarification on the use of a “segmentation” basis for TP functional and risk analyses. For instance, it is not clear if a legal entity engaged in manufacturing, distribution and after-sales services can combine those functions for testing of economic results. If not, is the entity required to conduct three separate analyses for the purposes of transfer pricing? Given the integrated nature of business operations, segmentation may not be appropriate.

Other new TP regulations standardize procedures for cost sharing arrangements (CSA) and advance pricing agreements (APA) that allow taxpayers to agree with the tax authorities on transfer pricing policies for agreed periods of years. AmCham-China encourages the authorities to fully implement these CSA and APA procedures as soon as possible. A taxpayer education program should be launched.

The transfer pricing regulations effectively prevent the use of most labor service CSAs by limiting their scope to group marketing and purchasing functions. This limitation of scope of labor service CSAs means that a legitimate management tool that increases worldwide efficiency and reduces costs cannot be used. Multinational companies (MNC), whether headquartered inside or outside China, seek a wide spectrum of support and assistance from both internal and external sources that extend far beyond only group marketing and purchasing. Most MNCs have pools of specialists within group members that provide necessary support benefiting the respective businesses of many group members internationally. As a result, MNCs often put in place CSAs to optimize the available resources so as to manage the overall business and its costs. The inclusion of an entire chapter on CSAs in the 2001 OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations reflects the important status of CSAs.

Within China, many domestic and foreign-based groups have centralized certain common functions within one or more of their Chinese group member companies. CSAs would be an important and useful management tool that should be allowed for these common functions, all of which are performed solely within China. Further, with the increasing numbers of MNC regional headquarters being located in China,

more important functions are being performed inside the country. The costs of these can be the subject of CSAs with other group members in the Asian region that would bear appropriate share of the expenses.

In addition to the limitation of scope imposed on labor service CSAs, the regulations also include a required minimum 20-year operational period from the date of signing of a CSA and submission of any CSA to the State Administration of Taxation (SAT). While the long minimum operational period and SAT-level submission may be appropriate for a CSA involving intellectual property, there is no need for such requirements for a labor service CSA.

AmCham-China recommends that appropriate regulatory changes be made to allow the broad use of labor service CSAs so as to achieve the economic and management efficiencies they allow. Such changes would include:

- Expansion of the use of service CSAs beyond the limited group procurement and marketing now specified in the rules.
- Liberalization of the use of CSAs where 100 percent of the costs of the defined functions are incurred within China.
- Elimination of the 20-year minimum operational period for labor service CSAs.
- Elimination of SAT-level submission of CSAs to be replaced by notification to applicable local tax office.

### Fair Application of Incentives

The EIT law taxes “new and high-tech” (NHT) companies at a concessionary 15 percent tax rate in order to encourage innovation in line with China’s 2006-2020 Long-Term Innovation Plan. However, the rules include an intellectual property (IP) ownership requirement that prevents most non-Chinese MNCs that might otherwise qualify based on their activities from realizing the benefits. Such MNCs, despite their adding significantly to China’s technology base, typically do not hold the legal title to their IP within their local Chinese subsidiaries due to a number of reasons that importantly include IP security concerns and internal policies under which all group IP ownership is centralized within the home country. The resulting inability to qualify for NHT status and the concessionary 15 percent tax rate is inconsistent with the level playing field policy of the EIT Law and is also counter-productive to China’s long-term innovation goals.

Allowing MNCs and other qualified companies to achieve NHT status will create jobs for more of China’s science and technical graduates, and encourage relationships between MNC research and development (R&D) centers and Chinese universities and scientific institutes.

The definition for an NHT company must be flexible enough so that qualified companies can reasonably

转让定价法规将其范围限制在集团销售和采购功能,有效地防止了多数劳务成本分摊协议。对劳务成本分摊协议范围的限制,意味着在世界范围内,用于提高效率降低成本的一项合法工具无法得到使用。跨国公司无论其总部位于中国国内或国外,往往需要来自超过集团营销和采购的各种内部和外部支持和协助。多数跨国公司在集团成员内部有许多专家,为许多从事国际经营的集团成员各自的业务提供支持。因此,跨国公司经常需要成本分摊协议,用于优化可用的资源,以管理整体业务和成本。经合组织2001年版《跨国企业与税务机关转让定价指南》包括一整章关于成本分摊协议的内容,反映出了成本分摊协议的重要地位。

在中国,许多国内和国外集团已经将部分公用功能内部集中于其中国的集团成员公司。成本分摊协议是一项重要而有用的管理工具,应被允许应用于这些完全在中国国内执行的公用功能方面。此外,随着越来越多的跨国公司地区总部设在中国,会有越来越多的重要功能在中国国内执行。就这些功能成本,亚洲区内各集团成员间达成成本分摊协议,各自承担适当的费用份额。

除了对劳动服务成本分摊协议范围的限制之外,法规还要求至少20年的经营期和向国家税务总局提交所有成本分摊协议。对于涉及知识产权的成本分摊协议来说,较长的经营期底限和向国家税务总局提交成本分摊协议可能是适当的,但对劳务成本分摊协议做出此项要求确无必要。

中国美国商会建议对法规进行适当的修改,以允许劳务成本分摊协议得到更广范围的采用,实现经济和管理效率。此类修改可包括:

- 突破目前法规规定的集团采购和销售限制,扩大服务成本分摊协议的范围。
- 如果限定功能的成本100%发生在中国国内,则允许采用成本分摊协议。
- 取消服务劳务成本分摊协议经营期最短20年的要求。
- 取消向国家税务总局提交成本分摊协议,改为通知有关地方税务局。

### 公平适用激励措施

《企业所得税法》规定“高新技术企业”适用15%优惠税率,旨在按照中国2006-2020年国家中长期科学和技术发展规划纲要促进创新和投资。然而,实施条例中“高新技术企业”需拥有知识产权的要求,将使大多数本

可享受这一待遇的非中国跨国公司无法享受此优惠。尽管非中国跨国公司对中国的科技发展做出了很大贡献,但由于安全问题和须将知识产权的所有权留在母国的内部政策要求,这些公司的中国当地子公司无法持有其知识产权。由此,这些跨国公司无法取得高新技术企业资格和享受15%的优惠税率,这不符合《企业所得税法》中“公平的赛场”政策,亦有碍于中国实现长期创新的目标。

允许跨国公司及其他合格的企业取得高新技术企业资格,将为中国理工科毕业生创造更多的就业机会,并鼓励跨国公司的研发中心和中国的大学和科研机构建立合作关系。

高新技术企业的定义必须足够灵活,让合格的公司能够合理地取得这一资格。建议增加一项备选的高新技术企业资格判断标准,为内资企业和外商投资企业提供一个公平竞争环境。中国美国商会提出以下备选的高新技术企业资格判断标准建议。该标准可设定需要全部满足的两项“核心要求”,以及至少满足五项中的两项“次要条件”。

#### 核心要求(以下两项都必须满足):

- 产品技术或生产工艺或服务必须比中国的行业平均水平更先进。
- 公司必须在其业务中使用或开发某项技术,该技术可以自行拥有,或可特许使用,亦或通过研发服务合同或其他类似协议规定的活动所获得。就此目的而言,技术包括但不限于专利、版权、工艺、研发知识产权的技术诀窍,即使并不成功或中国所承担的工作只是一个较大的研发项目的一部分。

#### 次要条件(以下五项中必须至少满足两项):

- 技术属于《外商投资产业指导目录》中的“鼓励类”,或与其有关。(如果经营范围与鼓励类别有关,则合同研发中心可属于该类别)。
- 直接进行针对性的研发活动,或者通过成本分摊协议进行;同时既可以在研发中心进行,也可以在工厂作业中进行。
- 针对性的研发是为他人提供服务的行为。
- 针对性的费用是发生在技术和/或相关研发活动上,包括特许权使用费、薪资、试验费、研发服务合同和其它类似协议下的分包商费等。
- 聘用一定数量的“大专”或以上学历的员工。

obtain NHT status. An alternative test for NHT status should be considered to level the playing field between domestic companies and FIEs. AmCham-China suggests the following alternative test which includes new requirements and conditions that must be met for NHT status. Under this test there would be two core requirements, both of which would have to be met, and secondary conditions, which would require companies to meet two of five.

#### Core Requirements (both must be met):

- Technology of products, production processes or services must be more advanced than the industry average in China.
- A company must use or develop technology in its business that it either owns, licenses, or has created under an R&D service contract or other similar arrangements. Technology for this purpose may include, without limitation, patents, copyrights, processes and know-how to develop IPR, even if unsuccessful or if the work in China is only a portion of a larger R&D project.

#### Secondary Conditions (two out of five must be met):

- Relevant technology is involved in, or otherwise related to, an “encouraged” category in NDRC’s Catalogue Guiding Foreign Investment in Industry (contract R&D center activity qualifies if the scope relates to an “encouraged” category).
- Meaningful R&D is conducted either directly or through a cost-sharing agreement and either in an R&D center or “on the shop floor.”
- Meaningful R&D is conducted as a service for others.
- “Meaningful amounts” of money are spent on technology and/or R&D, whether through license fees, salaries, laboratory fees, sub-contractor fees under contract R&D services and other similar arrangements.
- A meaningful level of personnel is employed who have an education level equal to or higher than “diploma.”

AmCham-China acknowledges that this alternative test would be somewhat subjective. However, we believe that the subjective nature of innovation and R&D activities requires the application of sound judgment by trained scientific personnel to ensure a fair review and qualification process. At the same time, there should be no “percentage of sales” requirement, since significance of the R&D would not be related to current sales.

In addition to the NHT status and its concessionary 15 percent tax rate, China, like many other developed countries, grants an R&D super-deduction incentive. Due to the difficulty of defining qualifying R&D expenditure for purposes of R&D incentives, many countries base the definition in their tax rules on the Frascati Manual. Originally published for purposes of statistical measurement in the 1960s, this has been periodically updated by the OECD to reflect technology changes.

The use of the Frascati Manual as a basis for defining qualifying R&D expenditure has several very practical advantages. First, it avoids a need to independently draft and agree on complex and detailed rules that would be included in new Chinese law and circulars. The time and effort required for drafting such detailed rules and reaching agreement within the government on the rules would be significant. Second, using standards that have been independently agreed on over many years by numerous countries will provide a solid basis both for making policy decisions and for applying the rules and criteria to specific taxpayer situations. Other ministries within the government that compile statistics on the Chinese economy already regularly use the concepts and definitions included in the Frascati Manual.

#### Dividend Withholding Tax

The 10 percent dividend withholding tax is a matter of great concern to AmCham-China. Comparing the effective tax rates on distributed earnings across Asia, China is now near the top. This significant change, along with the loss of most tax incentives, forces some existing FIEs to re-think their location in China and affects the decision of possible new entrants to consider more seriously other locations for their investments. The consequent dividend withholding tax on reinvestments made by foreign enterprises into China using the post-2008 retained earnings of their FIEs will also deter the cash recycle within China, which would otherwise benefit the Chinese economy.

Although AmCham-China members based in the US do have a foreign tax credit mechanism available to them, often it does not work as it theoretically should. As such, for these companies, the 10 percent dividend withholding tax represents an additional unrecoverable tax cost. This is also true for many European-based AmCham-China members, whose home countries exempt income from their foreign subsidiaries from any home country taxation.

AmCham-China recommends that the 10 percent dividend withholding tax on distributions by FIEs to their non-resident owners be eliminated.

#### Business Tax

The Business Tax is a flat turnover tax assessed, in most cases, on gross income. Most developed countries do not maintain turnover taxes aside from comprehensive VAT or goods and services tax systems.

The Business Tax affects each company differently depending on its overall situation and percentage profit margin. For example, if a taxpayer has a very small profit margin, the Business Tax can contribute to a loss. Despite varying rates for different industries, the variation for companies within the same industry (differing product mixes and margins) means that turnover taxes result in uneven and unfair treatment.

The Business Tax has serious implications for the

中国美国商会承认，此选择性判断标准本质上是非常主观的。但我们认为，由于创新和研发的主观性质，要求当地有关主管部门训练有素的科技人员做出合理判断，方能确保资格审核程序的公平性。同时，不应设置“销售额百分比”的要求，因为研发活动的重要性无论如何与当期的销售额无关。

除了高新技术企业资格和15%优惠税率之外，中国像许多发展中国家一样，为研发提供加计扣除激励措施。鉴于出于研发激励机制而确定研发开支所存在的困难，许多国家的税务规定采用《弗拉斯卡蒂手册》。该手册最初于二十世纪六十年代出版用于统计测量，经合组织定期对该手册进行更新，以反映出所发生的技术变化。

将《弗拉斯卡蒂手册》作为界定研发开支的依据有多个非常实际的优点。首先，避免了另行起草、商定复杂而详细的规定，并将该规定纳入中国的新法律和通知中。起草此类详细规定并在政府内部达成一致会需要大量的时间和工作。第二，采用多年来许多国家纷纷同意采用的标准将为政策决策提供坚实的依据，并有助于将相关规定和标准适用于具体纳税人。负责编写中国经济统计数据的其他政府部门已通常采用《弗拉斯卡蒂手册》中的这些概念和定义。

#### 股息预提所得税

中国美国商会及其会员企业对10%的股息预提所得税非常关注。商会在比较了亚洲各国对利润分配的实际税率后发现，中国的税率几近最高。由于这一重大变化及许多税收优惠政策的废止，使得一些中国的外商投资企业不得不重新考虑他们在华投资的地点选择，而那些潜在的新投资者则会更慎重地审视和比较其他地区的投资优势。进入中国的国外企业，使用外商投资企业2008年留存收益进行投资，被征收股息预提所得税，将妨碍中国国内的现金循环，而这原本会有利于中国经济发展。

虽然总部设立于美国的商会会员企业可以享受境外所得税抵免机制，但通常该机制的实际操作难度较高。因此，对于此类企业，10%的预提所得税常常意味着一笔无法弥补的额外税务成本。对于许多总部位于欧洲地区的商会会员企业来说，由于其母国对于境外子公司的所得采取免税处理，这同样也是一笔额外费用。

中国美国商会建议取消外商投资企业向非居民股东分配利润征收10%预提所得税的规定。

#### 营业税

营业税是在大多数情况下按总收入固定比例课征的流转税。大多数发达国家除增值税或货物和服务制度之外，不再保留流转税。

由于总体情况和利润率百分比的不同，营业税对各个企业的影响不尽相同。例如，如果纳税人的利润率很低，营业税的征收可能会造成亏损。尽管为不同的行业规定了不同的税率，行业内（不同产品组合和利润率）的变化也使得流转税给不同的企业带来不一致且不公平的税收待遇。

营业税对在中国建立一流的金融中心具有重要意义。虽然中国为开放金融市场做出了巨大的努力，但营业税是否及如何适用于金融企业的某些具体业务尚不明确。官方指导意见基本上通过各个公告来发布，而公告的发布需要投入大量的时间和工作。这将延滞对中国经济有利的金融产品的发展。

如今的世界正处于经济和信用危机当中，租赁机制可以为企业重要的补充信贷来源，而当前多数国家也正在这么做。但营业税和增值税制度的相互作用对租赁的采用带来了严重的税务成本，无论是经营租赁或是金融租赁。例如，一家设备租赁公司需要为其采购的租赁设备缴纳增值税，但它无法收回增值税，因为向承租人收取的租金还需要缴纳营业税。中国美国商会建议尽快对营业税和增值税制度进行修改，以鼓励租赁业务的发展。

营业税还影响到中国在国际上的竞争地位，因为它是一种其它国家的竞争者都无须负担的巨大额外成本。这将对提升其在全球价值链中的地位，中国咨询和金融等行业向非中国客户销售其服务，并在国际市场成长的能力造成伤害。尤其要注意到，其它国家一般在其增值税体系中对这类服务企业实行“零税率”。只有给予此类服务行业免营业税待遇，中国企业才能够具有国际竞争力。

2009年新生效的条例规定，中国境内提供或接受规定服务的实体和个人需要缴纳营业税。该项修改将营业税的征收原则从服务实施地改为提供或接受规定服务的实体和个人所在地。而之前仅对在华履行的服务征收营业税，这是一项重大变化和对营业税税基的扩展。在当前的经济气候下，这对所有在中国经营的企业来说都极为有害，无论是中资还是外资企业。

中国美国商会建议政府将取消营业税作为长期的研究项目，并扩大增值税系统，以涵盖目前营业税所包括的部分或全部征税对象。



development of world-class financial centers in China. As China makes significant efforts to open financial markets, whether and how the Business Tax applies to specific transactions is often unclear to financial services firms. Official guidance comes through circulars, the issuance of which requires considerable time and effort. This serves to delay development of financial products useful to the Chinese economy.

In this time of general economic and credit difficulty, the leasing mechanism could provide an important additional source of credit for companies, as it currently does in most countries. The inter-working of the Business Tax and VAT systems, however, creates a serious tax cost disincentive to the use of leasing, either for operational lease purposes or for financial lease purposes. For example, an equipment lessor will pay VAT on its purchase of the equipment to be leased, but will not be able to recover that VAT since the rental charges to the lessee are subject to Business Tax. AmCham-China recommends that the VAT and Business Tax systems be appropriately amended as soon as possible to encourage the use of leasing.

The Business Tax also affects China's international competitive position by adding a significant cost that is not incurred by competitors in other countries. This will hurt China's move up the value chain and the ability of Chinese service industries, such as consulting and financial services, to grow internationally and service non-Chinese customers and clients. It is important to note that other countries typically "zero-rate" such services within their VAT systems. Chinese companies will only be competitive internationally if a Business Tax exemption is created for such services.

New rules effective from 2009 provide that entities and individuals located within China that are providing, or receiving, defined services are subject to Business Tax. This changes the Business Tax levying principle from where a service is physically performed, to where the entity or individual providing or receiving the service is located. This is a significant change and expansion of the tax base for Business Tax as, previously, only services performed within the territory of China were subject to Business Tax. In the present economic climate, this is particularly detrimental to all Chinese companies, whether domestic or foreign-owned.

AmCham-China supports a long-term project to study the repeal of the Business Tax with an extension of the VAT system to cover some or all of the taxable objects now covered by the Business Tax.

## Deductions

The EIT Law bases its evaluation of deductible expenses on the judgment of business management as limited by corporate internal controls. However, the limits on certain legitimate business expenses hinder some companies and industries by creating an artificially high level of EIT. This affects both Chinese enterprises and FIEs.

## Certain Employer Costs

The current non-deductibility of commercial insurance generally discourages employers from providing such insurance to employees, despite a legitimate and recognized need. To the extent that such benefits are not provided, the public healthcare costs over the long-term and companies' ability to attract quality workers are impacted. AmCham-China recommends that commercial insurance provided for employees be allowed as a deduction, with reasonable limitations on benefits provided solely for company owners who also work as employees.

In the same regard, full deductions should be allowed for reasonable employment-related expenditures such as employee welfare expenses, labor union expenses and education expenses, all of which are socially desirable costs and should be encouraged.

## Cultural Activities

Business donations to national and local groups serve to enhance cultural awareness, support worthy initiatives and improve the quality of activities for schools, theaters, sports teams and other cultural events. The quality of life in many other countries has been significantly improved by such business support. Currently, business support for such programs is limited by a lack of clear rules regarding deductions. AmCham-China encourages the development of an approved list of sponsorship categories eligible for deductions.

## Marketing and Advertising Expenses

Currently, deductions are limited to 15 percent of sales revenue for domestic companies and FIEs alike, making for a relatively high tax levy. Tax authorities may stipulate different percentage limitations by industry, but this will not eliminate the high effective tax rate that applies to various companies.

Currently, there is an unlimited carryover available for marketing and advertising expenditures in excess of the limitation. This clearly implies that the government has no social objection to industries that traditionally have high levels of advertising and marketing expenses.

This advertising and marketing expense limit is particularly counterproductive for start-ups. They typically incur high promotional expenses in relation to their initial low levels of sales. The tax policy should encourage—or at least be neutral—to start-up companies. Promoting entrepreneurship can help drive the development of an economy.

## Management Fees from Parent Companies

The blanket denial of any deduction for management fees means that companies do not have the ability to support the legitimacy of incurred expenses. The labels that are placed on expenditures should not be important for determining deductibility; what actual services are performed should be the determining factor.

## 扣除额

《企业所得税法》把受企业内部控制措施限制的企业判断作为确定可扣除费用的依据。然而，它限制了某些合法的业务费用的列支，从而人为地为某些公司和行业设立了很高的企业所得税水平，阻碍了其发展。这对内资企业和外商投资企业都有影响。

## 某些雇主成本

目前商业保险费用不允许扣除，这通常会降低雇主为员工办理此类保险的积极性，尽管这种需要被公认是合法和合理的。如果不提供该项福利，社会长期的公共医疗卫生支出和公司吸引高素质工人的能力会受到影响。中国美国商会建议允许把为员工提供的商业保险费用作为扣除额，同时对专门为同样作为员工工作的企业主提供的福利进行合理的限制。

同样，员工福利费用、工会经费和教育经费等和员工雇用有关的支出应当允许扣除，因为这些都是合乎社会需求的费用，是应当鼓励的。

## 文化活动

企业在全国性和当地组织的捐赠有助于增强文化意识，支持有益的项目，提升学校、剧院、体育团队及其他文化活动的质量。在其它许多国家，居民生活质量因为此类企业支持而显著改善。目前，企业对此类活动的支持因缺乏明确的捐赠规定而受到限制。中国美国商会建议制定并批准可列入可扣除费用的赞助费用清单。

## 营销和广告费用

目前，内资企业和外商投资企业的扣除额均限制在销售收入的15%以内，造成相对较高的税赋。税务机关虽然可以对具体行业规定不同的百分比限制，但这不会消除各种不同企业的实际高税率。

目前，对于广告和业务宣传费用，超过限额的部分可以无限期地向以后年度结转。这显然表明，政府对于传统上某些行业发生相当高的广告和营销开支并不存有异议。

这一营销和广告费用限制特别对新创办的企业不利。相比较低的销售额，他们通常会发生较高的促销费用。税收政策应当鼓励新创办的企业，或至少对它们保持中立。鼓励创业将有助于推动经济的发展。

## 母公司的管理费用

不允许扣除任何管理费，意味着公司没有能力来证明所发生费用的合理性。划分的费用种类对于确定可扣除数额来说应当不是很重要；实际履行的服务才应该是决定因素。

管理费通常是母公司针对两类业务活动收取的费用。第一类“经营指导”活动是投资者为了监督和管理其投资而从事的活动。此类业务活动是公司治理和监管的一个必要部分，通常是投资人获益，对在华子公司的业务没有直接影响。第二种类型是服务，在中国的子公司没有或者无法自己完成这部分活动，而该服务会使该子公司的经营直接受益。“经营指导”类型的费用应当不可扣除，但服务费用应当允许扣除。中国美国商会建议发布一个通知，对此加以区别，并向地方税务机关和纳税人提供指导。

## 外购商誉的摊销

目前，在标的企业出售或关闭之前，不允许外购商誉的摊销。由于商誉是逐渐减值的资产，中国美国商会建议重新考虑商誉的这种处理方法。本着简化行政管理的原则，商誉可以在某个规定的年限内摊销，而具体年限可以在通知或其它政府指导意见中规定。

## 建议

### 营业税

- 启动一项长期性研究，目标在于取消营业税，同时扩大增值税系统，涵盖目前营业税所包括的部分或全部征税对象。
- 重新考虑2009年开始生效的一项规定，该规定将营业税征税范围扩展到实际在中国境外为中国客户履行的服务。
- 如果服务在中国境内或是在境外为非中国客户提供，则应免除营业税。
- 成立政府和行业工作组来研究制定原则和指导意见，以便金融服务业企业能够确切了解如何对新金融产品计税。
- 修改目前的营业税和增值税规定，以鼓励租赁业的发展。

Management fees are often charged by parent companies for two types of activities. The first type, “stewardship,” is conducted by investors to oversee and guide their investments. While a necessary component of corporate governance and oversight, such activities normally benefit the investor and do not directly impact the business of a Chinese subsidiary. The second type is services, which a Chinese subsidiary either does not, or cannot, perform itself, but which directly benefit the business of the subsidiary. Stewardship expenses should not be deductible, but service deductions should be allowed. AmCham-China recommends that a circular be issued that will make this distinction and will provide guidance to local tax offices and taxpayers alike.

#### **Amortization of Purchased Goodwill**

Currently, the amortization of purchased goodwill is disallowed until the underlying business is sold or closed. As goodwill is an asset of diminishing value, AmCham-China recommends that the treatment for goodwill be reconsidered. With simplicity of administration in mind, goodwill could be amortized over some set number of years that can be provided in a circular or other governmental guidance.

### **Recommendations**

#### **Business Tax**

- **Initiate a long-term study focused on repealing the Business Tax and extending the VAT system to cover some or all of the taxable objects now covered by the Business Tax.**
- Reconsider the change effective from 2009 that extends the Business Tax to services physically performed outside China for Chinese customers.
- Create for the Business Tax an exemption where services are performed within or without China for non-Chinese customers.
- Create a working group of government and industry to draft principles and guidance helping financial services sector companies understand how the Business Tax is assessed on new financial products.
- Amend current Business Tax and VAT rules to encourage the leasing industry.

#### **Adjustment of VAT Refund Rates**

- Provide longer notice periods of no less than three, and preferably six, months in the event of future VAT refund rate changes (especially downward adjustments). Concurrently, develop a long-term strategy with respect to VAT refund rate changes, giving companies sufficient notice to implement and comply with changes, thus maximizing tax collection and compliance, and minimizing detrimental economic effects to the Chinese economy and exporters who must have

time to renegotiate export contracts to account for changing VAT refund rates.

- Initiate a government project to study major changes to the VAT system with the goal of eliminating VAT cost for exports.

#### **Elimination of VAT Exemption**

- Allow permanent VAT exemption for ECA-supported transactions, or at a minimum, extend VAT exemption for deals financed via ECAs in the VAT-exemption cancellation implementation rules currently under consideration.

#### **Partnership Enterprise**

- Finalize the rules allowing foreign partners in partnership enterprises as soon as reasonably possible so this form of organization can be used to further innovation, investment and growth.
- Provide taxation guidance for foreign partners in accordance with the principles of Guoshuifa [2003] No. 61.

#### **Related Party TP**

- Initiate a project to determine whether the new extensive TP contemporaneous documentation and lengthy reporting requirements are sufficiently effective at discouraging tax avoidance and preventing loss of tax revenues to warrant the significant compliance costs to the business community.
- Broaden the coverage and role of the LEAD to help resolve TP and other controversies consistently across regions within China.
- During TP investigations, accept that losses can legitimately occur, especially in economic downturns.
- Base TP audits on publicly disclosed information and discontinue use of “secret comparables.” Do not require companies that are not the direct subject of a TP investigation to submit confidential information or encourage them to inform on their competitors.
- Increase the equity threshold to 40 percent for assessing related-party relationship.
- Extend the time period for TP contemporaneous documentation submission to 60 days upon request by tax authorities.
- Allow for a “rollforward” mechanism for the preparation of TP contemporaneous documentation.
- Allow for TP functional and risk analyses on an integrated business basis, rather than on a segmentation basis.
- Encourage the use of CSAs and APAs in accordance with the law. Expand the use of service CSAs beyond the limited group procurement and marketing now specified in the rules, eliminating the 20-year minimum

#### **调整增值税退税率**

- 如果将来增值税退税率发生变化（特别是下调），应当提前较长的时间发通知，至少应为三个月，最好是六个月。目前，应制定关于增值税退税率变化的长期策略，给公司足够时间的提前通知，以使其执行和遵守这些变化，从而最大程度减少征税和合规问题，并最大程度减小对中国经济和出口商的影响，使他们有时间根据增值税退税率的变化重新进行出口合同谈判。
- 启动政府项目，研究对增值税系统做出重大修改，以取消出口增值税。

#### **取消增值税 (VAT) 免税**

- 永久性免征出口信贷机构提供融资进行的交易的增值税，或者至少在目前正在酝酿当中的取消增值税免税实施细则中，延长对出口信贷机构提供融资进行的交易的增值税免税期限。

#### **合伙企业**

- 在合理的时间内尽快审定适用于合伙企业外国合伙人的管理办法，以使用这种组织形式来促进创新、投资和增长。
- 依据国税发[2003]61号通知的原则，出台外国企业合伙人税收指导意见。

#### **关联方转让定价 (TP)**

- 启动一个项目来确定：新的大量转让定价同期资料 and 长时间的报告要求，是否能够有效地打击避税并防止税收损失，以证明企业承受巨大合规成本的合理性。
- 扩大大企业管理司的范围和职责，以帮助解决中国境内各地区的转让定价和其他争议。
- 在转让定价调查期间，承认可能发生合法的损失，特别是在经济衰退时期更是如此。
- 根据公开可获得的转让定价进行审核，并停止使用“秘密可比公司资料”。避免要求非直接接受转让定价审核的公司提交保密信息或鼓励他们提供竞争者的信息。
- 将关联方的股权最低标准提高至40%。
- 将转让定价同期资料的提交期限延长至收到税务机关要求后的60天。

- 允许转让定价同期资料的编制采用“前滚”方式。
- 转让定价功能和风险分析以整体业务而非划分的方式进行。
- 鼓励依据法律采用成本分摊协议和预约定价协议。突破目前法规规定的集团采购和销售限制，扩大服务成本分摊协议的范围，取消最低20年的经营期要求以及向国家税务总局提交文件程序。如果劳动服务成本100%发生在中国国内，则允许采用成本分摊协议。

#### **公平适用激励措施**

- 鼓励非中国跨国公司启动或增加将对中国的长期创新计划做出贡献的研发预算支出。
- 采用备选的高新技术企业资格判断标准，确保所有符合条件的内资和外资公司都能享受到法律规定的激励措施。
- 关于研发费用的加计扣除，采用经合组织《弗拉斯卡蒂手册》中的原则作为依据来界定符合条件的研发活动。

#### **股息预提所得税**

- 取消外商投资企业对非居民股东分配利润征收10%预提所得税的规定。

#### **扣除额**

- 应当允许为员工办理的商业保险作为可扣除额。
- 应当允许将员工福利、工会经费和教育经费等合乎社会需求的费用作为可扣除额。
- 取消对于广告和营销费用税前列支的百分比限制。
- 母公司向中国子公司提供其没有或无法自己完成、且直接使其业务受益的服务时，允许扣除管理费。
- 重新考虑外购商誉的处理，允许全额摊销将会简化税务官员和纳税人的管理。

operational period requirement and the SAT-level submission procedure. Liberalize the use of CSAs where 100 percent of the costs of the labor services are incurred within China.

#### ***Fair Application of Incentives***

- Encourage non-Chinese MNCs to initiate or increase budgeted R&D expenditures that will contribute to China's long-term innovation plan.
- Employ an alternative test for NHT status ensuring that all qualified companies, domestic or FIE, can enjoy the incentives stipulated by law.
- Regarding the super-deduction for R&D expenses, use the principles within the OECD Frascati Manual as the basis for defining qualifying R&D activities.

#### ***Dividend Withholding Tax***

- Eliminate the 10 percent dividend withholding tax on distributions by FIEs to their non-resident owners.

#### ***Deductions***

- Allow commercial insurance provided for employees by the employer to be deducted.
- Allow a full deduction of socially desirable costs such as reasonable employee welfare, labor union and education expenses.
- Eliminate the percentage limitation for advertising and marketing expenses.
- Permit deductions of management fees for services benefiting Chinese subsidiaries that either do not or cannot perform these services themselves.
- Reconsider the treatment of purchased goodwill to allow for full amortization in order to simplify administration for officials and taxpayers alike.



# US Visa Policy

## Introduction

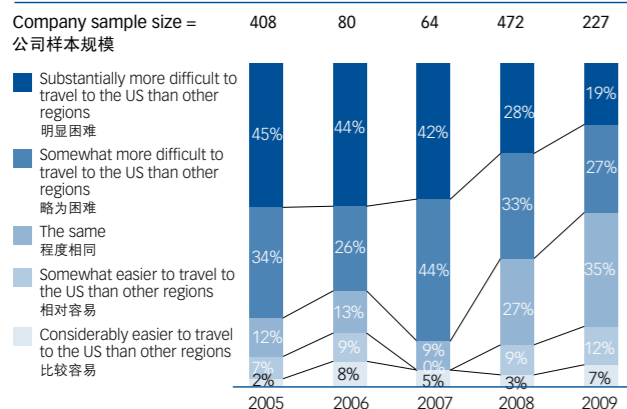
It is often said that the US-China relationship is the most important bilateral relationship of the 21st century. Facilitating travel between the two countries is crucial to the success of this relationship. Most immediately, issuance of visas to qualified travelers between the two countries is essential to sustaining the flow of international trade necessary to climb out of the global economic crisis.

The good news is that during 2008, the US Consular Mission in China received a record number of visa applications. This growth was driven by China's increasing population, wealth and freedom to travel abroad, as well as the continued desirability of the United States as a travel destination. A few of the additional factors that influenced last year's growth include:

- The US and China signed a memorandum of understanding to facilitate group leisure travel to the US. The US Consular Mission in China is implementing that agreement to encourage group travel.
- A new US Embassy opened in Beijing with an enlarged visa section.
- Corporate visa programs operated collaboratively between consular posts; AmCham-China continued to successfully economize on consular resources while expediting member companies' visa applications.

### How difficult was it for the Chinese citizens you work with (employees, customers, and suppliers) to travel to the United States, relative to other regions?

与您接触的中国公民(雇员、客户、供应商)在赴美国与赴其它地区旅行的难易程度比较



Source: 2005-09 AmCham-China Business Climate Surveys  
资料来源: 2005-09年中国美国商会商务环境调查

The AmCham-China 2009 *Business Climate Survey* revealed significant improvements in the visa application process compared to previous years. Compared to 2008, 15 percent fewer members believe that it is harder for Chinese to travel to the US than other regions (Figure 26). Moreover, fewer companies indicated having lost sales to non-US firms or intentionally avoided arranging meetings in the US for employees, customers, and suppliers because of US visa concerns (Figures 27 and 28).

To further encourage and facilitate travel between China and the US, AmCham-China's recommendations this year focus on reducing the extreme delays associated with Visas Mantis Security Advisory Opinions (SAO) that disproportionately harm the competitiveness of US high-tech industries; increasing Congressional funding and resources for consulates; pushing forward negotiations between the US and Chinese governments to increase visa validity; adding customer service initiatives; and encouraging diplomatic efforts to normalize travel between China and the US.

## Significant Developments

### Visa Demand Continues to Grow

Fiscal year 2008 witnessed an 11 percent increase in short-term tourist and business visas issued in China over the previous year and a slight reduction in the percentage of refusals.

### Non-immigrant Visa Issuances Fiscal Year 2008

Citizenship	Visa Type	Total Visas Issued	Issuance rate
PRC citizens	B1, B2, B1/B2	2008: 333,426	82.7 %
		2007: 299,889	81.3 %
		2006: 265,971	78.6 %
All non-immigrant visas		2008: 455,279	81.7 %
		2007: 401,331	79.7 %
		2006: 347,832	77.6 %
Worldwide	B1, B2, B1/B2	2008: 3,945,629	79.0 %
		2007: 3,736,487	78.1 %
		2006: 3,415,733	77.2 %
All non-immigrant visas		2008: 6,603,044	80.8 %
		2007: 6,444,285	79.6 %
		2006: 5,836,718	79.6 %

Source: US Embassy

# 美国签证政策

人们常说, 中美关系是21世纪最为重要的双边关系, 而促进两国之间人员往来交流对成功发展这一关系至关重要。当前, 在两国间向相关适宜人员颁发签证对推进国际贸易流通, 摆脱全球经济危机尤为必要。

令人欣喜的是, 2008年美国驻华领事机构受理的签证申请数量创历史新高。这一趋势得益于中国人口的增长、财富水平和境外旅行自由程度的不断提高, 及美国继续成为热门旅游地等原因。其它因素还包括:

- 中美两国政府签署了推动赴美团体旅游的谅解备忘录。美国驻华领事机构正在执行该协议以鼓励团体旅游。
- 美国在北京启用新的驻华使馆, 签证处规模得以扩大。
- 与领馆之间合作开展商务签证计划。中国美国商会在继续加快会员公司签证申请的同时, 有效地节省了领馆资源。

中国美国商会2009年商务环境调查显示, 签证申请程序较往年有了明显改善。与2008年相比, 仅有占15%的少数会员企业认为中国公民赴美相比去其它地区更难(图26)。此外, 有少数会员企业指出, 由于考虑赴美签证问题, 他们的销售机会旁落于非美国公司, 而且他们尽量避免在美国为雇员、消费者和客户安排会议(图27和28)。

为进一步鼓励和推动中美之间旅游, 中国美国商会今年的建议主要集中于以下几点: 减少因采用“签证安全建议”而造成的过长延误, 这将会一定程度地损害美国高科技产业的竞争力; 国会应加大对领事机构的资金及资源投入; 推进中美两国政府之间关于延长签证有效期的谈判; 增加客户服务举措; 鼓励中美之间旅游正常化的外交努力。

## 重大进展

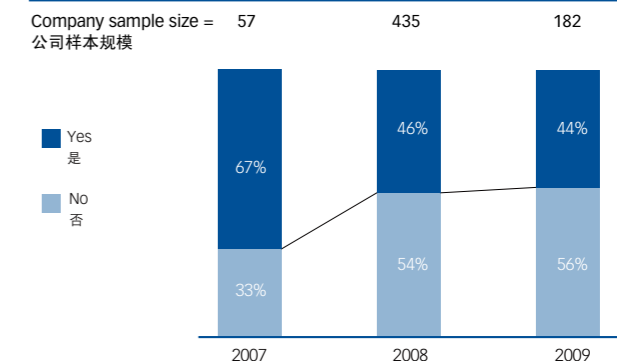
### 签证申请数量继续增长

2008财政年度, 在中国颁发的短期旅游和商务签证比上年增加11%, 拒签率略有下降。

2009财政年度, 由于受全球经济危机的影响, 在中国颁发的签证数量可能会与去年持平。尽管如此, 长期而言, 根据美国国务院的预测, 从2005年至2020年中国赴美签证申请量将增长2.32倍。中国将是所有国家中赴美签证申请数量增长率最高的国家, 也是申请总人数增长居第二位的国家(墨西哥第一)。

### Do you intentionally avoid arranging meetings in the US for suppliers, customers, employees because of concerns about obtaining visas?

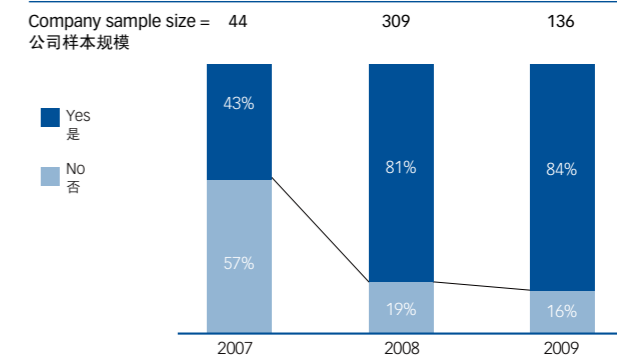
企业是否因签证问题而尽量避免将美国安排为与雇员、消费者及供应商的会面地?



Source: 2007-09 AmCham-China Business Climate Surveys  
资料来源: 2007-09年中国美国商会商务环境调查

### Have you lost significant sales or business relationships to non-US competition because your customers either refuse to apply for visas to the US or have been rejected for visas? Enterprise sales lost due to customer visa issues?

企业是否曾因客户遭到拒签或拒绝申请美国签证而导致巨大销售损失, 并使其所建立的商业关系转向非美国竞争对手?



Source: 2007-09 AmCham-China Business Climate Surveys  
资料来源: 2007-09年中国美国商会商务环境调查

During fiscal year 2009, due to the global economic crisis, visa issuance may be flat in China. Still, in the long run, the State Department projects that visa applications in China will grow 232 percent between 2005 and 2020. This represents the highest growth rate of any of the countries studied and the second-highest growth in the number of applications (behind Mexico).

### Group Leisure Travel Is Being Encouraged

A Memorandum of Understanding signed December 11, 2007, during the third round of the Strategic Economic Dialogue, facilitates group leisure travel from China to the US. China has agreed to allow travel agencies designated by China National Tourism Administration (CNTA) to advertise group leisure travel to the US. Such advertising was previously prohibited. In addition, China has authorized US travel destinations to market themselves in China. The US Consular Mission in China now makes group visa appointments and accepts visa applications submitted directly by designated travel agencies.

The group leisure travel program was implemented on June 1, 2008. Waits for most group appointments are under 10 days. The program covers applicants residing in Beijing and Tianjin municipalities and Hubei, Hebei, Hunan, Shanghai, Zhejiang, Jiangsu and Guangdong provinces.

The US government is awaiting CNTA's lists of designated travel agencies in other provinces, at which time the US government hopes to include residents of those provinces in the group leisure travel program.

Outbound leisure and holiday travel by Chinese nationals is a rapidly growing market, and the US is well positioned to capture a sizeable share of it. Chinese tourism to the US reduces the growing US-China trade deficit, and the tourism industry overall creates one in eight American jobs.

In 2007, China ranked as the 16th largest international market for the US, with 397,405 Chinese visitors to the US. Chinese visitors spent a record US \$2.6 billion (RMB 17.8 billion) in the US in 2007, with an average expenditure of over US \$6,000 (RMB 41,100) per person. With the implementation of the group leisure travel program, Chinese visitation to the US is forecasted to reach 579,000 Chinese travelers by 2011, not only increasing tourism expenditures in the US, but also tourism-related exports.

#### Tourist Visa Issuances to Chinese Citizens

Post	Number of Visas Issued through Group Leisure Travel Channel June 1 - Oct. 30, 2008
Beijing	1,097
Shanghai	1,035
Guangzhou	334

Source: US Embassy

### AmCham-China Corporate Visa Programs

AmCham-China cooperates with the US consular posts in Beijing, Shanghai, Guangzhou and Chengdu to facilitate visas for employees of AmCham-China member companies. These corporate visa programs (CVPs) continue to benefit our membership by reducing visa appointment wait times and time spent waiting at the visa section on the interview day. These programs also benefit the posts because the participating companies are screened to verify that they are legitimate businesses, a key individual at each company verifies the applicant's legitimate need to travel, and AmCham-China screens the application materials to ensure they are complete before they are passed to the consulate. AmCham-China appreciates the spirit of cooperation that posts have consistently displayed with respect to the CVPs.

#### AmCham-China CVP

Post	Number of Visa Issued through AmCham-China Channel in Fiscal Year 2008
Beijing	11,718
Shanghai	12,759
Guangzhou	2,676

### Specific Issues

#### Reduce Wait for Visas Mantis Security Advisory Opinions

Last year, AmCham-China reported three to four-week visa issuance delays due to Visas Mantis SAOs, now known as administrative processing, for employees of high-tech industries, harming American competitiveness. Unfortunately, this year, the problem has been compounded: as of March 2009, the process seems to have become more cumbersome and inflexible with processing taking as long as 16 to 17 weeks.

As background, the law requires that a visa be refused if the consular officer has reason to believe the applicant intends to violate US laws prohibiting export of sensitive technology. SAOs are a mandatory component of the process to make this determination. The criteria officers use to decide whether administrative processing is required are considered sensitive national security information and, therefore, are not released to the public.

In our experience, 50 percent or more of the employees, customers and partners of high-tech companies, such as aerospace and semiconductor companies, may be subject to an SAO. The SAO involves review of the case by the State Department's Bureau of International Security and Non-proliferation and other government agencies.

Delays of up to 17 weeks mean that customer meetings, project meetings and training sessions often need to be postponed or cancelled, putting US companies at a disadvantage since customers and partners may

地点	签证种类	签证数量	签证率
中国	B1, B2, B1/B2	2008: 333,426	82.7 %
		2007: 299,889	81.3 %
		2006: 265,971	78.6 %
中国	所有非移民签证	2008: 455,279	81.7 %
		2007: 401,331	79.7 %
		2006: 347,832	77.6 %
全球	B1, B2, B1/B2	2008: 3,945,629	79.0 %
		2007: 3,736,487	78.1 %
		2006: 3,415,733	77.2 %
全球	所有非移民签证	2008: 6,603,044	80.8 %
		2007: 6,444,285	79.6 %
		2006: 5,836,718	79.6 %

### 鼓励团体旅游

在2007年12月11日举行的第三轮战略经济对话中, 美中两国政府签署了促进中国公民赴美团体旅游的谅解备忘录。中国已同意允许中国旅游局指定的旅行社就赴美团体旅游进行推介宣传, 而这类活动此前是被禁止的。此外, 中国还授权美国旅行目的地在华开展推介业务。美国驻华领事机构现在受理团体签证预约, 并接受指定旅行社直接提交的签证申请。

团体旅游计划于2008年6月1日开始实施。大部分团体预约等候时间在10天以内。该计划适用于居住在北京、天津、湖北、河北、湖南、上海、浙江、江苏及广东的申请者。

美国政府希望中国旅游局尽早提供其它省份指定旅行社的名单, 届时这些省份的公民也可以参与团体旅游计划。

中国公民境外休闲和假日旅游的市场增长迅速, 美国有很好的优势获得较大的市场份额。同时中国居民赴美旅游有助于减少不断增长的美中贸易逆差。旅游业也为美国创造大量就业机会。实际上, 美国国内每八个工作岗位中就有一个与旅游业有关。

2007年, 有39.7405万中国游客赴美旅游, 中国成为了美国第16大国际市场。同年, 中国游客在美国创记录地消费了26亿美元(合178亿元人民币), 人均消费超过6000美元(合41,100元人民币)。随着团体旅游计划的实施, 预计到2011年, 中国赴美总人数将达57.9万。这不仅会增加在美旅游消费, 同时还可推动旅游相关出口。

#### 领事机构 2008年6月1日 - 10月30日通过团体旅游渠道颁发的签证数量

北京	1,097
上海	1,035
广州	334

### 中国美国商会商务签证服务

中国美国商会与驻北京、上海、广州和成都的领事机构合作, 为商会会员提供商务签证服务。该项服务帮助会员减少了签证预约及面谈当日的等候时间, 也使领事机构从中获益, 因为申请签证公司是已经被筛选审查过的合法公司, 公司的主要负责人也已核对了旅行的必要性, 同时由商会把关, 以保证申请资料在递交领事馆前已准备齐全。中国美国商会对各领馆在落实该项计划过程中所表现出的合作精神表示赞赏。

#### 领事机构 2008财政年度通过中国美国商会颁发的签证数量

北京	11,718
上海	12,759
广州	2,676

### 具体问题

#### 缩短“签证安全建议”等待时间

去年, 在中国美国商会的报告中提到, 由于“签证安全建议”(现已成为行政处理程序)造成高科技行业人员的签证迟发三到四个星期, 影响了美国的竞争力。而今年, 这一问题变得更加复杂: 截至2009年3月, “签证安全建议”审批程序已长达16至17周, 令该程序愈加繁杂僵化。

造成这一现象的背景是, 根据美国法律规定, 若领事馆官员有足够理由认为申请者可能会违反美国禁止出口敏感技术的法律规定, 则可以拒绝签证。“签证安全建议”是做出这一决定过程中所必须执行的一个环节。领事馆人员在决定是否有必要采取行政处理时所遵循的标准, 通常被视为涉及敏感的国家安全信息, 因此不便于公布。

依据我们的经验, 半数以上的航空、半导体高科技公司雇员、客户及合作伙伴需要通过“签证安全建议”审查。“签证安全建议”包括了美国国务院国际安全暨防核武扩散局和其它政府机构的案件审核。

长达17周的拖延意味着客户会议、项目会议及培训通常会被推迟或取消, 这将使美国公司处于不利的地位, 因为其客户或合作伙伴可能会因此而选择到其它国家开展业务或举行会议。由于签证的延误可能会严重影响到公司与中国政府机构及各省级政府的关系, 因此当美国采取措施以帮助其公司吸引国外合作伙伴到美国开展业务时, 这些拖延实际上妨碍了商务活动的展开。

中国美国商会承认出于国家安全考虑适用“签证安全建议”的必要性, 但同时也希望国务院能够设法减少不必

choose to do business and plan conferences in other countries. Furthermore, by severely jeopardizing corporate relations with Chinese government agencies and provincial governments, these delays hamper business activities at a time when the US should be taking steps to ease the way for American businesses to bring foreign partners to the US to conduct business.

AmCham-China acknowledges the national security justification for SAOs, but implores the State Department to find ways to reduce unnecessary delays. We appreciate that the US Embassy has brought some of these concerns to the State Department's attention. We have several specific recommendations.

First, we recommend that a review of the Visas Mantis SAO process be conducted to identify ways that the pool of applicants subject to SAOs can be narrowed. Investigative resources should be focused on those few individuals who may pose a legitimate threat, so that delays are reduced for legitimate business travelers who pose no threat. This should involve narrowing the list of fields on the Technology Alert List. This should also involve sharing with consular officers up-to-date profiles of applicants that may pose a threat while allowing officers to apply their discretion to waive SAOs for applicants who do not fit the profile.

Second, in tandem with the State Department's announced plan to allow submission of an electronic visa application prior to the interview beginning in 2010, AmCham-China recommends that the State Department collect all necessary data and begin the SAO before the interview.

Third, we recommend that the visa validity of persons subject to SAOs be increased. Currently, a Chinese national subject to an SAO is eligible for a B visa valid only for single entry over a period of three months. We see no reason that a person who has already received a clearance that covers two trips should not receive a single visa allowing for both trips.

Fourth, we recommend that the US Congress and federal agencies involved in the SAO process direct sufficient resources so as to reduce the extreme waiting times.

Fifth, we recommend that the US Embassy carefully review the facts of individual visa applications to determine whether an SAO is really necessary under the State Department's guidelines.

AmCham-China thanks the US Embassy for adopting the recommendation in last year's *White Paper* that the Embassy provide a written notice to applicants subject to SAOs. This notice, along with an oral explanation by the consular officer, alleviates the problem that some applicants previously did not understand the status of their visa applications.

### Meet Growing US Consular Resource Demands

A new US Embassy in Beijing opened in 2008. The visa section has 23 customer windows, up from 13

windows at the old Embassy. Visa section staffing increased significantly, but remains insufficient to meet demand during peak travel seasons.

Continued vigilance by the US Congress and State Department is necessary to ensure sufficient resources and staffing are allocated to the US Consular Mission in China so that it can deal with the increasing demand for visas. Although there was marginal improvement on the quality of visa processing at certain US consular posts, many of the posts' limited resources still pose a challenge and contribute to long wait times for visa appointments (Figure 29). Visa appointment wait time refers to the period from when an applicant first contacts a consular post to schedule an interview until the time an interview is held. Long wait times for appointments—which can exceed 45 days during peak summer and winter travel periods—remain a serious concern.

### Further Customer Service Initiatives

Initiatives to improve customer service can go a long way towards improving customer experiences and perceptions of the difficulty of applying for US visas.

Some common frustrations with the visa application process are due to Congressional mandates, including the personal interview requirement, the finger scan requirement and the statutory presumption that applicants are immigrants ineligible for visas until they prove otherwise. Other frustrations can be resolved at the Embassy level.

AmCham-China recognizes the Embassy for its successful customer service initiatives such as the larger waiting room in the new Embassy's visa section, outreach to students, the virtual presence posts program and the visa re-issuance program, effective January 2008, under which certain persons with prior visas that have expired within one year may reapply for a visa in the same category without the need to visit a consular post for a new interview or finger scan.

Two further areas where AmCham-China would encourage additional customer service initiatives are waiting times at the visa section and the appointment system. Last year, upon learning from the Embassy that waiting times at the visa section had not been tracked, AmCham-China suggested that this is a key customer service indicator worth measuring. The Embassy informed us that they conducted two in 2008, both showing that waits average under three hours. These studies are a step in the right direction, and we encourage the Embassy to take steps to reduce waits in the visa section.

Last year's *White Paper* mentioned that callers to the Visa Information Call Center occasionally have been told that there are no appointments available. This continues to happen sporadically. The Embassy reports that usually more appointments slots are allocated within a couple hours of learning from the call center that they are needed. However, there was at least one period this past year when some callers were

要的延误。我们十分赞赏美国大使馆将我们在此方面的关注提请至国务院。以下是我们几点具体建议。

第一，我们建议通过对“签证安全建议”的程序进行评估，设法缩小接受“签证安全建议”审查的申请者范围。应着重审查可能对美国安全构成威胁的个别人，从而减少对合法商务旅行者造成的延误。因此这就需要缩小敏感技术列表所列专业的范围；同时将那些可能造成潜在威胁的申请者最新情况与领事机构共享，以便于其工作人员能够自行判断，是否可对不构成威胁的申请者取消“签证安全建议”审查。

第二，国务院宣布，自2010年起允许在预约签证面谈前提交电子签证申请。根据该计划，中国美国商会建议国务院收集所有必要数据，并在预约签证面谈前开始“签证安全建议”审查。

第三，我们建议延长适用“签证安全建议”规定申请者的签证有效期。目前接受“签证安全建议”审查的中国公民只能获得三个月一次有效B类签证。若某个人已经得到两次赴美签证证明，则没有理由不向其签发一张允许其两次赴美的签证。

第四，我们建议美国国会及与“签证安全建议”审查程序相关的联邦机构应配备足够的资源，以减少过长的签证等待时间。

第五，我们建议美国大使馆仔细审核个人签证申请者提供的情况，确定是否有按国务院规定执行“签证安全建议”审查的必要。

在去年的《白皮书》中，我们建议应向接受“签证安全建议”审查的申请者提出书面通知。美国大使馆采纳了该建议，我们对此表示感谢。通过该书而通知和使馆官员作出的口头解释，缓解了部分申请者以前不了解其签证申请状况的问题。

### 满足不断增长的美国领事资源需求

在北京新建的美国大使馆于2008年正式启用。签证处从原来的13个办事窗口扩充至23个。尽管签证处工作人员明显增加，但仍无法满足旅游高峰时期的需要。

对此美国国会及国务院应继续保持关注，以确保为美国驻华领事机构配备足够的人力和资源，来满足不断增长的签证需求。

尽管某些美国领事馆签证受理质量有了很大提高，但许多领事馆仍然由于资源的限制而面临着挑战，并致使签

证预约等候时间过长(图29)。签证预约等候时间是指从申请者初次与领事官员联系预约面谈时间，到实际面谈之间的时间段。等候时间长仍是一个严重问题—— 冬夏旅游高峰期可能超过45天。

### 继续实施客户服务计划

改进客户服务的举措需要经过很长一段时间才能改善签证申请者的感受，使申请者感受到赴美签证申请并非那么困难。

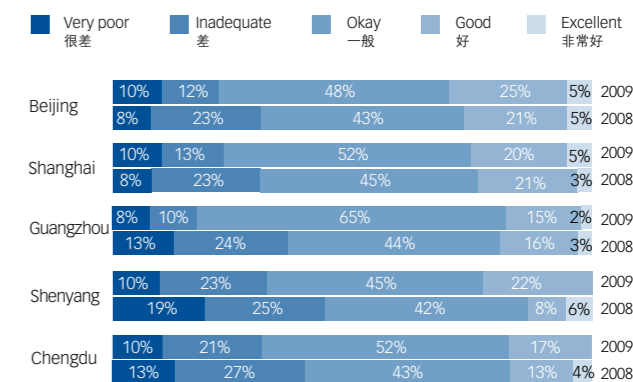
签证申请过程中，由于国会制定的某些强制性程序导致了一些令申请者头痛的常见问题，包括接受面谈、扫描指纹及对申请者作出有移民倾向的法定推定(除非他们能够证明自己没有移民倾向)。其它问题大多可以在大使馆层面解决。

中国美国商会赞赏大使馆成功实施了一系列客户服务计划，如在新建大使馆的签证处设立更宽敞的休息室、为学生提供便利服务、虚拟签证点计划及2008年1月启动的二次签证计划。根据此计划，持有签证过期时间不到一年的人员可以重新申请同一类别签证，而无需再次前往领事馆进行面谈或指纹扫描。

中国美国商会还鼓励在签证处等候时间、预约系统方面出台更多的客户服务计划。去年，当获悉驻华使馆未对签证处等待时间进行跟踪后，中国美国商会建议将其做为一项值得衡量的关键性客户服务指标。商会从使馆获知，2008年进行的两次跟踪调查均显示平均等待时间在

### Please rate the quality of the visa processing in the following locations 对下述地区签证办理工作质量的比较

Company sample size = 217 (2009) 413 (2008)  
公司样本规模



Source: 2008-09 AmCham-China Business Climate Surveys  
资料来源: 2008-09年中国美国商会商务环境调查

unable to book any appointments despite repeated calls. Applicants are particularly sensitive to this problem because they must pay for each call at a rate of RMB 54 (US \$7.90) for 12 minutes.

### Visa Validity Should Be Extended

AmCham-China strongly advocates that visas be issued for longer periods of validity. This is convenient for travelers and conserves consular resources. The US government sets visa validity on a reciprocal basis with foreign governments. Currently, for Chinese nationals B-1/B-2 visas are only valid for up to one year, as opposed to 10 years for many nationalities. H-1B visas are only valid for up to three months, as opposed to three years for many nationalities. We urge the US and Chinese governments to pursue negotiations with the goal of extending visa validity.

### Increase Passport Validity

AmCham-China encourages the US and Chinese governments to recognize each other's passports as automatically extended for six months beyond the expiration date shown on the identification page. The US has reached such agreements with over 100 countries, but we understand that China has rebuffed US offers to enter into such an agreement. Without this agreement, numerous Chinese travelers are inconvenienced because, under US law, an individual may only be admitted as a non-immigrant for a period ending six months before the passport's expiration date. As a result, individuals may have to procure a new passport to obtain their visas—or their trips may be cut short—because their passports do not have a sufficient period of validity.

### Benefits from Treaty Investor Visas

During the fourth meeting of the Strategic Economic Dialogue in 2008, the US and China agreed to launch negotiations of a bilateral investment treaty (BIT). The great majority of BITs entered into by the US have included provisions allowing investors from each country to qualify for visas to administer their investments in the other country. Under US law, these are known as E-2 treaty investor visas, and they are available to nationals of more than 70 countries. AmCham-China believes this should be a key provision of the US-China BIT.

Foreign direct investment (FDI) plays a major role in the US economy, both as a key driver of the economy and as an important source of innovation, exports, and jobs. The US Department of Commerce believes that availability of visas for investors is “one of the more important issues facing those interested in investing in the United States,” as well as a “key indicator of how easy it will be to make or administer an investment.”

A treaty investor visa provision in the BIT will encourage FDI in the US and guarantee Americans' ability to obtain visas to administer their investments in China.

### China Should Cooperate in the Return of Deportees

The US Department of Homeland Security (DHS) has expressed concern that the Chinese government fails to cooperate sufficiently in the removal of Chinese nationals ordered deported from the US. As of last year, there were about 50,000 Chinese nationals with final orders of deportation that DHS was unable to remove because the Chinese government had not issued the required travel documents. This lack of cooperation has been cited by the US government as a reason for various restrictions on Chinese travel to the US. For example, the US government cites this as a sticking point in negotiations over extending visa validity. For the same reason, DHS recently has refused to allow issuance to Chinese of H-2A temporary agricultural worker visas, H-2B temporary non-agricultural worker visas, and visa waivers for temporary visits for business or pleasure to Guam and the Commonwealth of Northern Marianas Islands. Cooperation in this area is crucial to ease travel between the two countries.

### Recommendations

- **Reduce current delays of up to 14 weeks for US visa issuance for certain applicants by: (a) conducting a review of the SAO process to identify ways to focus investigative resources on those few individuals who may pose a legitimate threat and to avoid delaying legitimate business travelers who pose no threat; (b) beginning processing SAOs prior to the interview as soon as the State Department is able to begin accepting electronic visa applications, (c) increasing the visa validity of persons subject to SAOs; (d) directing sufficient resources (from Congress and federal agencies involved in the SAO process) to the SAO process to reduce the waiting times; and (e) the Embassy carefully reviewing the facts of individual visa applications to determine whether under the State Department's guidelines on SAO is really necessary.**
- Congress and the State Department should allocate sufficient resources and staffing to the US Consular Mission in China to keep waits for visa appointments reasonable.
- The US Consular Mission in China should continue to emphasize customer service initiatives, including efforts to minimize day-of-interview waits in the visa section.
- Make the following diplomatic efforts to further ease travel between the two countries: (a) US and China should increase visa validity periods on a reciprocal basis; (b) Include investor visa provisions in the bilateral investment treaty under negotiation; (c) US and China should recognize each others' passports as valid for six months beyond the date shown; and (d) China should cooperate in the return of deportees.

三小时内。此举正是朝着积极的方向迈进，我们鼓励使馆采取进一步措施减少在签证处等待的时间。

去年的《白皮书》提到，申请者向签证信息话务中心拨打电话时，会被告知无法安排预约面谈时间。这种情况时有发生。从使馆获知的信息是，使馆通常会在得知所分配的预约时间已全部用完后的数小时内，为信息话务中心开放更多的预约时间。但至少在去年的某段时间里，部分申请者即使是反复致电也无法获得预约时间。对这一问题申请者尤为敏感，因为他们必须为每次致电支付54元人民币（7.90美元），才能获得12分钟通话时间。

### 应延长签证有效期

中国美国商会强烈建议延长签证有效期，这不仅方便旅行者，也能节约领事资源。美国政府在签证有效期方面与外国政府实行对等政策。当前，针对中国公民的B-1/B-2签证有效期只有一年，而对许多其它国家公民签证有效期可达十年之久。针对中国公民的H-1B签证有效期仅为三个月，而对许多其它国家公民则达三年。我们敦促美中两国政府就延长签证有效期进行谈判。

### 延长护照有效期

中国美国商会希望，美中两国政府能够互相承认，对方公民的护照到期后可自动延长六个月的有效期。美国与100多个国家达成了此类协议，但据我们了解，中国并未接受美国为达成此类协议的相关提议。在没有该协议的情况下，大批中国赴美旅行者就会遇到不便，因为根据美国法律，个人在持有六个月以上有效期的护照时才能以非移民身份进入美国。这样，因为护照没有足够长的有效期，他们要么必须申请新护照来获得签证，要么缩短旅行时间。

### 条约投资人签证的好处

在2008年举行的第四次战略经济对话期间，美中两国同意启动双边投资协定（BIT）的谈判。美方签署的绝大部分双边投资协议均有这样的条款，即允许各国投资人有资格获得签证，去管理他们在其它国家的投资。根据美国法律，这些签证为E-2条约投资人签证，70多个国家的公民可申请该签证。中国美国商会认为这应成为美中两国双边投资协议的重要条款。

外国直接投资在美国经济中扮演着重要角色，不仅是推动经济的关键力量，也是推动创新、出口及提供工作岗位的重要来源。美国商务部认为，获得投资人签证是“那些有兴趣在美国投资的人面临的重要问题之一”，也是帮助其判断“投资或管理投资难易程度的关键指标”。

双边投资协定中的条约投资人签证条款既能鼓励在美国的外国直接投资，也能保证美国人能够获得签证以管理其在华投资。

### 中国应就被驱逐出境者的处理问题与美方展开合作

美国国土安全部（DHS）对中国政府未能就处理被美国驱逐出境者方面充分合作而感到关切。截至去年，约有5万名中国公民收到美国国土安全部最终驱逐令，但由于中国政府未能颁发所需旅行证件，国土安全部无法遣返这些人员。而这种被美国政府看作是予以合作的做法，成为其对中国赴美公民实施限制的理由。例如，美国政府认为这是使有关延长签证有效期谈判停滞不前的症结所在。出于同样原因，国土安全部近来拒绝向中国公民颁发H-2A临时性农业工人签证、H-2B临时性非农业工人签证，停止对关岛及北马里亚纳群岛自由联邦临时商务或观光签证的免签。在该领域的合作对两国间的往来便利至关重要。

### 建议

- 可采取如下措施，以减少部分申请者目前长达14周的签证延误：(a) 评估“签证安全建议”程序，确定如何将审查资源集中于那些可能对美构成潜在威胁的个别人，避免延误那些并未构成威胁的合法商务旅行者的签证申请；(b) 一旦美国国务院开始接受电子签证申请，则应在预约签证面谈前启动“签证安全建议”审查；(c) 延长适用“签证安全建议”审查人员签证的有效期；(d) 美国国会及那些与“签证安全建议”程序相关的联邦机构应向“签证安全建议”程序投入更为充足的资源，以减少申请者等待时间；(e) 大使馆应仔细审核个人签证申请，确定是否确实需要根据国务院规定进行“签证安全建议”审查。
- 国会及国务院应为美国驻华领事机构分配足够的资源和工作人员，确保签证预约等候时间不至过长。
- 美国驻华领事机构应继续强调客户服务的重要性，包括努力减少签证处面谈等待时间。
- 应通过下列外交努力进一步促进两国之间旅游业的发展：(a) 美中两国应根据对等原则延长签证有效期；(b) 将投资人签证规定纳入正在谈判中的双边投资协议；(c) 美中两国应承认对方公民的护照在到期后的六个月内仍然有效；(d) 中国应就处理被美驱逐出境人员方面与美方合作。

## **Part Two:**

Industry Issues

具体行业问题





# Agriculture

**B**ilateral agricultural trade between the US and China continues the expansion it has seen in recent years. China is the fourth-largest export market for US agricultural products, and the US is China's largest supplier of agricultural products. While various trade and compliance issues remain significant, concerns over food safety became the predominant issue in 2008.

## Significant Developments

In 2007, the US exported US \$9.4 billion (RMB 64.4 billion) of agricultural, fish and forestry products to China. From January to November 2008, the US exported US \$9.8 billion (RMB 67.1 billion) in agricultural products and an additional US \$1 billion (RMB 6.85 billion) in fish and forestry products, the highest amounts since the countries re-opened trade.

In 2008, a major food safety crisis in China involved dairy products and animal feeds contaminated with melamine, an industrial chemical. In the wake of infant deaths, the nation's milk supply was halted and all raw milk was scrutinized for melamine. The US banned the import of Chinese dairy products unless they tested negative for melamine. These developments led both countries to re-evaluate the role of food safety in the regulation of imports and exports. Trade disruptions and delays occurred while new inspection regimes were implemented.

While the Chinese government continues to improve the control and efficiency of its food safety apparatus, problems persist. No central government entity yet exists to coordinate the multiple agencies responsible for surveillance, monitoring, response and enforcement of food safety standards or regulations. Supervision of food processing companies remains sparse. Technical barriers to trade impede imports of certain products into China and non-transparent trade rules limit opportunities, creating uncertainty for US exporters.

In 2007, China issued a new NDRC Catalogue Guiding Foreign Investment in Industry (Investment Catalogue), newly listing a number of agricultural processing businesses in the "restricted" category, and therefore limiting new investment in some of these businesses to minority shares. AmCham-China remains concerned that limiting foreign investment in China's agricultural sector and actively trying

to manage food prices will limit competition and efficiency, ultimately leading to underinvestment, a lack of innovation and higher consumer prices.

## Food Safety

In the wake of growing concerns over the quality of Chinese food exports, China has increased supervision of the food supply chain. A wide range of government actions include a special plan on national food safety, a working group for inter-ministry cooperation, and new food safety and quality regulations and benchmarks.

The National People's Congress passed a long-awaited Food Safety Law on February 28, 2009, that imposes uniform nationwide standards, provides for greater inspection and supervision, and increases penalties and fines for violations. The sweeping new law calls for a number of measures ranging from product recall systems and nutritional labeling to allowable additives and recordkeeping by farmers. A national food safety commission will be created to oversee and coordinate the workflow of the agencies responsible for developing and enforcing standards. In the case of violations, the law mandates significantly increased criminal and civil penalties for the production company and management, especially in the case where the company knowingly sells sub-standard food products. We commend the Chinese government for taking proactive measures to address food safety and quality concerns and appreciate the opportunities to comment throughout the drafting process.

In addition to domestic actions, China continues to cooperate with its trading partners on bilateral initiatives to improve food safety. The US Department of Health and Human Services (HHS) and US Department of Agriculture (USDA) continued meeting with China's State Food and Drug Administration (SFDA) and China's inspection authority, the General Administration for Quality Supervision, Inspection and Quarantine (AQSIQ), and other ministries on a host of food and product safety issues.

In 2008, HHS and the USDA intensified dialogue with the Chinese government, leading to memoranda of understanding (MoU) between the US and China on food import and inspection. A key agreement established US FDA offices in Beijing, Shanghai and Guangzhou. China has indicated an interest in increasing staff in the US to deal with product and

# 农业

**最**近几年,中美之间的双边农业贸易持续增长。中国是美国农产品的第四大出口市场,美国是中国最大的农产品供应国。虽然各种贸易和合规性问题依然重要,但在2008年,食品安全问题尤为突出。

## 重大进展

2007年,美国向中国出口了价值94亿美元(合人民币644亿元)的农业、渔业和林业产品。从2008年1月至11月,美国向中国出口的农产品价值98亿美元(合人民币671亿元),渔业和林业产品价值10亿美元(合人民币68.5亿元),出口总额达到中美两国重新开放贸易以来的最高点。

2008年,中国发生了重大的食品安全危机,其中涉及被三聚氰氨(一种工业化学品)污染的乳制品和动物饲料。随着婴儿死亡的出现,中国暂停了乳品供应,所有原料乳都被进行了严格的三聚氰氨检查。美国禁止了未经三聚氰氨检验的中国乳品的进口。上述情况的发生使中美两国开始重新评估食品安全对进出口的影响。在新的检验制度执行期间,贸易出现了中断和延期。

尽管中国政府不断加强食品安全机构的监管能力,提高其工作效率,但是问题仍然存在。负责食品安全标准和规章的监督、监控、执行的部门有多个,但是却没有一个中央政府的组织来协调这些部门,对食品加工企业监督仍然不到位。技术性贸易壁垒阻碍了中国进口某些产品,而规章制度的不透明又限制了美国出口企业的机会,给他们带来不确定性。

2007年,中国颁布了新的外商投资产业目录,在限制性目录中新增加了大量农业加工产业,而且新增了外资在部分产业中只能少量参股的内容。中国美国商会仍然担心:由于中国对农业领域的外国投资加以限制,以及试图对食品价格进行管控,这将阻碍竞争和效率,最终导致投资不足,缺乏创新,以及消费者物价上涨。

## 食品安全

随着对中国出口食品质量的忧虑不断,中国加强了对食品供应链的监管。中国政府采取了广泛的措施,其中包括制定专门的全国性食品安全计划,组建跨部委合作工作组,以及制定新的食品安全质量规章和基准。

2009年2月28日,全国人民代表大会通过了期盼已久的《食品安全法》。《食品安全法》规定了全国统一的食品安全标准,同时要求加大检查和监督力度,加重对违法行为的处罚。新法要求采取一系列新措施,包括食品召回制度、营养标签、允许的添加剂、农产品生产记录制度等。国务院将设立国家食品安全委员会,负责监督和协调相关部门的标准制定和执行工作。对于违法的生产企业和管理人员,该法制定了更为严厉的刑事和民事处罚措施,尤其是对于企业明知故犯地销售不合格食品的情况。对于中国政府积极采取措施解决食品安全和质量问题,以及在法律起草过程中公开向社会各方征求意见的做法,中国美国商会表示赞赏。

除了国内措施,中国还在改善食品安全的双边议案上,继续与其贸易伙伴保持合作。在大量食品和产品安全问题方面,美国卫生及公共服务部(HHS)和美国农业部继续与中国国家食品药品监督管理局和国家质量监督检验检疫总局(中国的检验机关)保持沟通。

2008年,美国卫生及公共服务部和美国农业部加强了与中国政府的对话,中美两国在食品进口和检验上签署了多个谅解备忘录。根据其中的一份关键协议,美国食品药品监督管理局(US FDA)在北京、上海和广州设立了办事处。中国也公开表示,将增加在美国处理产品和食品安全问题的职员人数。取得这一进展的基础是美国卫生及公共服务部与中国国家质量监督检验检疫总局为提高中国出口产品的安全性,早期签署的食品和饲料谅解备忘录。中国也与欧盟和南亚国家联盟的相关部门采取了类似措施。

food safety issues. This development builds upon earlier MoUs between HHS and AQSIQ on food and feed to increase safety in Chinese exports. China has taken similar steps with the relevant agencies in the EU and Association of Southeast Asian Nations.

### Restrictions on Chinese Poultry Exports

In an unfortunate development, the US Congress passed the 2009 Omnibus Appropriations Act with Section 727, a provision that prohibits the USDA from cooperating with the Chinese government on issues relating to China's poultry exports. This restriction (previously Section 733 of the 2008 Omnibus Appropriations Act), prevents discussions with the Chinese government on the export of fully-cooked poultry products to the US. This rule only affects a small commercial opportunity for Chinese producers, but could potentially have much larger trade repercussions. Already, the Chinese WTO mission has indicated their intention to file a WTO case against the US and possible adoption of related measures on US poultry exports to China. Section 727 undermines the US's promotion of trade based on scientific standards, closing off avenues of negotiation and potentially causing punitive reciprocal actions.

### Specific Issues

Specific agricultural issues that concern US exporters generally fall into the categories of measures that lack risk-based justification and those that appear to run counter to China's WTO commitment to national treatment for foreign investors.

### WTO Commitments

China's agricultural sector has experienced tremendous liberalization since accession to the WTO in both trade and production policy. Challenges remain, however, and while AmCham-China applauds the progress to date, there is concern that China is taking a step backwards in transparency and fair enforcement of rules. China's WTO commitments include implementation of a Tariff Rate Quota (TRQ) system and elimination of non-tariff barriers for agricultural commodities. However, TRQs for some commodities remain too small to be commercially viable.

In addition, China's rules on the collection of value-added tax (VAT) are opaque and are applied inconsistently and unpredictably. Domestic agricultural product is sometimes subject to a lower VAT rate than its imported equivalent, which runs counter to China's national treatment obligations under WTO.

China has imported pork, vegetable oil and soybeans and placed them in reserves. These products were imported VAT free and there is a concern that such products will eventually be released into the hands of domestic champions, also VAT free. This would depress margins for other industry players, domestic or foreign, and unfairly reward a select few companies. China's VAT policy should be more transparent, predictable and fairly enforced.

Quarantine regulations are also enforced inconsistently across China and used as technical barriers to trade. Specifically, it appears quarantine and food safety standards applied to imported products are not consistently or uniformly applied to domestic products. In 2007 and 2008, shipments of US products were either rejected or delayed at entry in apparent retaliation for Chinese products being detained for food safety violations in the US.

Another trade constraint is the long test-and-hold quarantine inspection procedure required for import and clearance of meat and poultry. The inspection, which can take up to one month, inhibits development of trade in chilled meat, which is a significant commercial component of the US red meat trade with Korea and Japan.

### Investments in Agricultural Industries

As discussed in the 2008 *White Paper*, AmCham-China is concerned that restricting foreign investment in a number of agricultural industries will slow the reform and opening up of Chinese agriculture. Rulings concerning wholesale retailing and logistics of certain oils and foodstuffs and agricultural products appear to violate China's WTO commitments to allow wholly foreign-owned companies to engage in wholesale and agency sales of these products. AmCham-China views these developments as a negative step, detrimental to efficient agricultural markets.

### Beef Access

As discussed in the 2008 *White Paper*, China has maintained a complete ban on US beef since 2003. China has offered to open the market under certain conditions. However, both US industry and government concur that the conditions put forth by China are commercially unworkable and not in conformance with international guidelines on safely traded bovine products and effective risk mitigation measures. The US cattle population received a controlled risk status by the World Organization for Animal Health (OIE) in May 2007, which allows for the trade of all beef and beef products with effective removal of specified risk materials. China is the last country in Asia to maintain a complete ban on US beef and beef product imports.

### Ractopamine in Pork

China has de-listed 11 US pork plants from exporting to China due to the residual presence of Ractopamine, a FDA-approved Beta Agonist feed ingredient, widely used in the hog industry in the US. De-listing of these US plants appears not to have been on the basis of a risk assessment. Experts speculate that the problem of abuse of animal health products inside China, including the Beta Agonist Clenbuterol, is the reason for the ban.

Due to past food safety crises involving fatalities from the ingestion of tainted pork, China banned the use of all Beta Agonists in 2002. It has justified the de-listing

### 对中国禽产品出口的限制

不过,有一项不利的情况。美国众议院通过了《2009年综合拨款法案》,该法案第727款禁止美国农业部在有关中国禽产品出口的问题上与中国政府合作。由于这一限制(即原《2008年综合拨款法案》第733款),美国政府将不能在中国向美国出口禽类熟食产品的问题上与中国政府磋商。尽管对于中国的生产企业而言,这一条款仅涉及一小部分商业机会,但有可能引发性质更为严重的贸易摩擦。对此,中国驻世界贸易组织代表团已经表示,准备针对美国提起WTO诉讼,并有可能针对美国对中国禽类产品出口采取相应措施。第727款破坏了美方在科学标准的基础上推动贸易的努力,切断了磋商途径,并有可能导致报复性贸易措施。

### 具体问题

美国出口企业所关注的具体农业问题大体分为两类:由于缺乏风险依据而采取的措施,以及有悖中国所作出的让外国投资者享有国民待遇的入世承诺而制定的办法。

### 入世承诺

自加入世界贸易组织以来,中国在贸易和产品政策上大大放宽了对农业部门的限制。不过,挑战依然存在。虽然中国美国商会就目前取得的进展表示赞赏,但是仍然有所忧虑,在提高透明度和保证规章制度的公平实施上,中国开始走回头路。根据入世承诺,中国对农产品实行关税配额制度,消除非关税壁垒。不过目前对一些商品分配的关税配额依然过少,缺乏相对的商业价值。

此外,中国的增值税征收制度并不透明,而且执行过程中也缺乏统一性和可预测性。有时,国内农产品所缴纳的增值税要低于进口的同类产品,这一点与中国政府所承诺的国民待遇义务不相符。

中国进口猪肉、植物油和大豆并将其储备。这些产品在进口时,被免征增值税。不过我们担心,这些产品将最终被转移到那些国内的优势企业手中,并且由于免征增值税,压缩了其他国内外行业企业的利润空间,使那些被选中的少数企业不公平地获利。中国的增值税政策应当提高透明度和可预测性,并且保证执行公平。

检疫制度在全国范围内的执行也不统一,并被当作技术性贸易壁垒使用。具体而言,适用于进口产品的检疫标准和食品安全标准,似乎并不统一或一致地适用于国内产品。2007年和2008年,数批美国产品在中国入境时被拒绝或延期,这明显是对美国以违反食品安全法为由扣

留中国产品的反击。

另一种贸易限制的做法是:在肉类和禽类的进口和清关时,检验检疫程序中的检查和扣留时间过长。该检验程序可能持续一个月时间,阻碍了冷鲜肉贸易的发展,而冷鲜肉贸易是美国与韩国和日本红肉贸易中重要的商业组成部分。

### 农业投资

正如2008年《白皮书》所指出的,中国美国商会担心,由于大量农业产业限制外资进入,中国农业的改革和开放步伐将因此放缓。有关部分油、食品和农产品的批发、零售和物流的规定似乎违背了中国的入世承诺,即允许外商独资企业从事上述产品的批发和代理销售。中国美国商会认为,上述情况是一种倒退,有损农业市场的效率。

### 牛肉市场准入

正如2008年《白皮书》所指出的,2003年以来,中国一直完全禁止进口美国牛肉。中国曾提出在某些条件下开放相关市场。不过,美国业界和政府均认为,中国提出的条件缺乏商业上的可行性,并且在牛肉产品的安全贸易和有效的风险减缓措施上,不符合相关国际指导规则。2007年5月,世界动物卫生组织认定美国为疯牛病可控风险的国家,根据该认定,所有牛肉和牛肉制品在有效去除规定的危险物质之后,均可进行贸易。中国是目前最后一个完全禁止进口美国牛肉和牛肉制品的亚洲国家。

### 猪肉中的莱克多巴胺 (Ractopamine)

中国因在猪肉中发现莱克多巴胺残留,将11家美国猪肉生产企业从进口商名单中去除。莱克多巴胺属于美国食品药品监督管理局批准的乙型受体素(beta-agonist),在美国的养猪行业使用非常广泛。上述将美国猪肉生产企业除名的做法似乎并非建立在风险评估的基础上。专业人士猜测,中国国内存在滥用动物保健产品(包括乙型受体素克仑特罗(Clenbuterol))的情况,是导致中国颁发上述禁令的原因。

鉴于曾发生过因食用受污染的猪肉而导致死亡的食物安全问题,中国于2002年颁布了所有乙型受体素使用的禁令。中国禁止美国猪肉生产企业向中国出口产品,正是以现有的国内禁令为由。美国认为,鉴于克仑特罗与莱克多巴胺在性质上有很大差别,中国应当对莱克多巴胺的安全性进行彻底评估,并且为肉制品中残留的莱克多巴胺

of US pork plants based on its existing domestic ban. The US has argued that, given the significantly different properties of Clenbuterol and Ractopamine, China should complete a risk assessment of the safety of the latter, and establish a safe tolerance for the presence of Ractopamine in meat products.

A Ministry of Agriculture (MOA) experts team traveled to the US in December 2008 to observe how the US government and industry regulate feed additive usage, including Ractopamine. However, no time table has been offered by MOA on when this risk assessment may be completed.

### Zero Pathogens in Red Meat and Poultry

China continues to enforce pathogen standards on imported meat and poultry that are unscientific and that differ from those of the UN's global standard food code (Codex). China maintains a zero tolerance standard for common pathogens, such as salmonella and listeria, in uncooked red meat and poultry. The complete elimination of these naturally occurring bacteria is generally considered unachievable without first subjecting raw meat and poultry to irradiation.

Pathogen detections, plant de-listings and warnings issued against US plants increased substantially in 2008, resulting in a severe disruption of the US pork and poultry trade with China during a time of unprecedented demand. Evidence suggests that domestic enforcement of the zero tolerance pathogen standard is non-existent. China also maintains maximum residue levels (MRLs) for certain heavy metals, veterinary drugs and other residues that are inconsistent with Codex and other international standards.

### Quotas and Registrations

Importers of US poultry products must acquire an Auto Registration Form from the Ministry of Commerce (MOFCOM). This rarely-issued auto registration is, in effect, a hidden quota by which MOFCOM controls the total amount of imports. In addition, the process by which MOFCOM grants approvals is not transparent.

While China has generally implemented its TRQ system for agricultural products according to its WTO commitments, some aspects of the administration of these TRQs hinder rather than facilitate trade. The size of TRQ allocations for commodities such as sugar and corn is too small to be commercially viable. Allocation of TRQs for commodities such as cotton or poultry is not transparent and prevents broader participation and market information sharing. Additionally, the government does not publish a list of quota holders once the allocations have been made, which complicates marketing efforts for US suppliers.

## Recommendations

### For the US government:

- The US Congress should remove Section 727 in the 2009 Omnibus Appropriations Act (previously Section 733) to allow regulators to discuss agriculture trade issues with China in a scientific basis.
- Both China and the US should refrain from using technical barriers to trade as retaliatory measures to food and product safety disputes.

### For the Chinese government:

- The National Development and Reform Commission should reconsider restrictions on foreign investment in agricultural industries introduced in its November 2007 Investment Catalogue and eliminate equity caps for foreign investors in such industries.
- Ensure that domestic and import inspections and enforcement are uniform in practice and policy.
- Remove the ban on the importation of US beef and establish an import regime consistent with OIE standards.
- Establish MRLs for Ractopamine in imported pork in accordance with Codex draft standards.
- Both China and the US should refrain from using technical barriers to trade as retaliatory measures to food and product safety disputes.
- Develop and enforce phytosanitary measures that are science-based and practical, thereby eliminating these as non-tariff trade barriers for US agricultural products.
- Abolish non-transparent quotas and registration systems and ensure that TRQ allocations are large enough to be commercially viable.
- Cancel the auto registration system for poultry imports.
- Ensure equal treatment for imports and domestic products in terms of VAT enforcement.
- The MOA should consider simplifying animal feed registration requirements for imported feeds.
- Encourage government agencies responsible for food safety to recognize and leverage industry's expertise and resources and academia's research and teaching skills for collaboration in strengthening food safety in China.

制定一个安全耐受度标准。

2008年12月, 中国农业部专家组抵达美国, 考察美国政府和行业如何管理食品添加剂(包括莱克多巴胺)的使用。不过, 农业部并未提供上述风险评估的完成时间表。

### 牛羊肉和禽类的零病原体标准

中国目前对进口的肉类和禽类执行的病原体标准与联合国全球标准食品法典(Codex)要求的标准有较大不同。中国一直对生牛羊肉和禽类中含有的沙门氏菌和李斯特氏菌等常见病原体执行零耐受标准。一般认为, 如果不首先将生肉和禽类进行辐射处理, 就不可能彻底清除这些肠道致病细菌。

2008年, 病原体检测次数、被除名企业的数量以及针对美国企业的警告数量均大幅增加, 使得在中国国内需求空前高涨的关键时刻, 美国与中国的猪肉和禽类贸易却被严重干扰。有证据表明, 中国国内并未执行零耐受的病原体标准。此外, 中国对部分重金属、兽药和其他残留, 仍采用最大残留限量标准, 这些标准与全球标准食品法典及其他国际性标准都不相一致。

### 配额与登记

美国禽产品的进口企业必须从商务部获得自动登记表。自动登记表的发行量极少, 它实际上已经成为商务部控制进口总量的一种隐性配额。此外, 商务部的批准程序也并不透明。

尽管整体而言, 中国已根据入世承诺, 执行农产品关税配额制度, 但是在关税配额管理的某些方面却阻止、而不是推动了贸易的发展。糖和玉米等商品的关税配额过小, 相对缺少商业可行性。棉花和禽类等商品的关税配额分配不透明, 影响了外资企业更广泛地参与和分享市场信息。此外, 在配额分配完成后, 中国政府并不公布配额持有者名单, 这使得美国供应商更加无法应对复杂多变的市场。

## 建议

### 对美国政府

- 美国国会应当取消《2009年综合拨款法案》第727款(原第733款)的规定, 允许监管部门在科学的基础上, 与中国就农业贸易等问题进行磋商。
- 中国和美国都应当避免使用技术性贸易壁垒作为解决食品和产品安全争端的报复性措施。

### 对中国政府

- 对于2007年颁布的《外商投资产业指导目录》中限制外资进入的农业产业, 中国国家发改委可否重新考虑, 并取消对外国投资人在上述产业中的最高持股比例限制。
- 确保对国内产品和进口产品的检验在实践上和政策上的一致性。
- 取消对进口美国牛肉所实施的禁令, 建立与世界动物卫生组织标准一致的进口体制。
- 根据Codex的标准草案, 对进口猪肉制定莱克多巴胺的最大残留限量标准。
- 中国和美国都应当避免使用技术性贸易壁垒作为解决食品和产品安全争端的报复性措施。
- 制定和执行科学、实用的植物检疫措施, 不再把植物检疫措施作为针对美国农产品的非关税贸易壁垒。
- 撤销不透明的配额和登记制度, 提高关税配额。
- 取消针对进口禽类的自动登记制度。
- 确保在征收增值税时, 对进口产品和国内产品给予平等对待。
- 对于进口饲料, 农业部应当适当考虑简化动物饲料的注册要求。
- 鼓励负责食品安全的各政府部门发现和利用行业专业技术和资源, 以及学术界的研究和教学技能, 共同合作, 加强中国的食品安全。

## Civil Aviation

The global economic downturn is challenging the civil aviation industry, but China still represents a significant and rapidly growing market over the long-term for all industry sectors. It is the largest market outside of North America for civil aircraft, requiring more than 3,700 new jet transport airplanes worth US \$390 billion (RMB 2.7 trillion) over the next 20 years, or about 12 percent of the worldwide total according to industry projections. China also represents an increasingly important market for air carriers, infrastructure-related companies, service providers, and general aviation manufacturers. China is a growing part of the global supply chain for numerous aviation products and services, and plans to enter the large commercial airplane business. In the aeronautics sector alone (aircraft, engines, avionics and parts), China imported US \$5.4 billion (RMB 37 billion) worth of products from the US, and exported US \$255 million (RMB 1.7 billion) to the US in 2007. China places a priority on sustainable growth of civil aviation for both the air transportation system and the manufacturing sector.

Cooperation between the US and Chinese governments on aviation remains strong. As a result, US companies are engaged with China to develop this market on a mutually-beneficial basis. The long relationship between the US Federal Aviation Administration (FAA) and the Civil Aviation Administration of China (CAAC) has produced tangible benefits for both sides. AmCham-China's US-China Aviation Cooperation Program (ACP) is a public-private partnership with 35 US member companies that works closely with the FAA, US Trade & Development Agency (USTDA), and the US Department of Transportation (US DOT). It significantly contributes to a positive relationship between American aerospace companies and China's government regulators, ministries and its aviation industry.

Progress has been made towards reducing the constraints on the sustainable development of civil aviation in China. Consequently, opportunities have opened up to many US aviation companies for expansion. However, significant challenges remain that will require government attention. The need to open up and modernize China's airspace system to reduce inefficiencies, realize environmental benefits and accommodate growth remains a priority. This priority will require the attention of top Chinese

government leadership. Other issues include a human resource limitation at CAAC headquarters that hinders the ability to regulate the rapidly growing industry properly, the need to further open up the general aviation sector (including for disaster relief) and, on the US side, the ongoing challenges for US companies in China of US export controls and the visa process.

### Significant Developments

Progress is being made towards modernizing China's airspace for civil aviation use. Improvements were made to accommodate increased traffic during the Olympic Games, including new ingress/egress points for Chinese airspace, Beijing bypass routes, expanded corridors for the Beijing-Shanghai route, and improvements to Beijing Capital Airport operations. Originally billed as temporary, it is encouraging that these changes will now become permanent. Furthermore, several new US-China routes became operational in 2008 as a result of the US-China bilateral aviation agreement to the benefit of both Chinese and US air carriers. Much work remains, but the ongoing cooperation between the US DOT, FAA, US companies, ACP and relevant authorities in China is positive.

Future progress includes China's plans to make further investments in aviation infrastructure including a plan to spend US \$64 billion (RMB 438 billion) on 97 new regional airports by 2020. China also continues to take positive steps towards adopting state-of-the-art Performance-Based Navigation technologies such as Required Navigation Performance, which will enable significant improvements in efficiency, environmental impact, and safety. Moreover, the first general aviation operational test area has been approved and will soon become operational—a small, but positive step for general aviation.

The ACP public-private partnership has proved successful and continues to expand its engagement in China. Major accomplishments in the past year include:

- Graduation of the third round of Executive Management Development Training (EMDT) for up-and-coming CAAC leaders and initiation of the fourth round.
- Award of a renewed USTDA grant for US \$1 million (RMB 6.85 million), which included funding for the third EMDT class; the fourth USTDA grant awarded to ACP.

## 民用航空

全球经济低迷给民航业带来了挑战，但从长期来看，对于所有产业部门而言，中国都是重要的、快速发展的市场。中国是北美地区以外最大的民用飞机市场，据行业预测，未来20年，中国对新型喷气式运输机的需求量将超过 3700 架，价值高达 3,900 亿美元（2.7 万亿元人民币），约占全球需求总量的 12%。不仅如此，对航空公司、基础设施相关企业、服务供应商和通用航空制造商而言，中国市场的重要性也与日俱增。中国日益成为众多航空产品和服务全球供应链中的增长部分，而且计划进入大型商务机业务。仅在航空技术产业（飞机、引擎、航空控制系统和零部件等），2007年中国就从美国进口了价值 54 亿美元（370 亿元人民币）的产品，并且向美国出口价值 2.55 亿美元（17 亿元人民币）的产品。在空运系统和制造业两个方面，中国均将民用航空业的可持续发展列为重点。

美中两国政府在航空业上依然保持密切的合作。因此，美国公司与中国在互惠互利的基础上共同开发中国市场。美国联邦航空局（FAA）和中国民用航空局的长期合作，已为双方带来切实利益。中国美国商会的美中航空合作项目（ACP）属于政企合作项目，共有 35 家美国成员公司参与。该项目与美国联邦航空局、美国贸易和发展局以及美国交通部保持着密切合作。它为美国航空公司与中国政府监管机构、各部委及航空业建立积极关系作出了重要贡献。

目前，在减少中国民航业可持续发展的限制因素方面已经取得进展。因此，大量美国公司获得了扩展业务的机会。但是，巨大挑战依然存在，这需要引起政府部门的关注。目前的重点仍然是中国空域系统的开放和现代化，以减少低效能，实现环境效益并适应增长。这一点需要引起中国政府领导人的关注。此外，中国民航局总部人力资源有限，也影响其对快速发展的民航业的正常监管能力，以及进一步开放通用航空领域（包括救灾）的需求。对于美方，在中国运营的美国公司所面临的持续性挑战是美国出口控制和签证问题。

### 重大进展

中国民用航空领域的现代化已取得进展。奥运会期间，针对客流量的增加，中国民航进行适当调整和改进，包括新增中国空域的出入口，设置北京绕道航线，拓宽京沪快线走廊，以及改进北京首都机场的运营等。令人鼓舞的是，这些当初临时性的举措已变成长期性措施。另外，中美两国达成了双边航空协议，几条新的中美航线于 2008 年投入运营，这为两国航空公司带来益处。尽管日后仍需要做大量工作，但就目前看来，美国交通部、美国联邦航空局、美国公司和美中航空合作项目与中国相关部门的合作是积极的。

未来进展包括：中国计划加大对航空基础设施的投资，包括在 2020 年前，投入 640 亿美元（4,380 亿元人民币）用于 97 家新增机场的建设。中国还将继续采取积极行动，采用最新的基于性能导航技术，例如导航性能需求（RNP），这将极大地提高效率，减少环境影响和提高安全保证。再者，首个通用航空操作试点区已获得批准，不久将投入使用。这是中国在通用航空业上迈出的小小一步，但却是积极的一步。

美中航空合作项目已经获得成功，并将继续扩大在中国的业务。过去的一年间，该项目所取得的主要成绩如下：

- 面向中国民航局管理人员开设的高级管理培训班（EMDT），已顺利完成第三期，并开始第四期培训。
- 美国贸易和发展局 100 万美元（690 万元人民币）的新拨款计划已获准，其中包括对第三期高级管理培训课程的资助；美国贸易和发展局向美中航空合作项目第四次拨款。
- 完成了首个由美国贸易和发展局资助的通用/支线航空研究项目和路线图方案，并启动了以试点区为重点的第二期研究项目。

- Completion of the first USTDA-funded General/Regional Aviation study and roadmap proposal, and the launch of a second study which will concentrate on test areas.
- A joint CAAC-ACP delegation to Sichuan province that met with officials who led the relief efforts after the May 2008 earthquake and investigated how civil aviation (particularly helicopters) can further support future disaster relief efforts. ACP is now preparing a plan to assist China in this area.

## Specific Issues

### Modernization of Airspace System

Opening up and modernizing China's national airspace system is the most critical requirement to meeting aviation growth, enabling improved system efficiencies, and reducing environmental impact. To meet these goals, standardization and interaction of all system components must be addressed within an integrated plan to optimize overall performance through a partnership of regulators, governmental agencies, airspace service providers, aircraft manufacturers, airlines and other users. China's biggest challenge is not technical, but rather the management of the cultural and organizational change needed to implement growth and innovation, areas where US companies have much to offer.

The China National Airspace System is a large and complex air traffic system that is experiencing significant increases in demand. Although the system has a remarkable safety record and is performing at a moderate level of efficiency, it exhibits signs of stress. To accommodate projected growth in civil aviation, China must aggressively pursue plans that will not only enhance operations today, but also address future needs. Five critical elements are required for a safe and efficient air transportation system:

- Airplane capability
- Regulatory capability
- Air traffic control capability
- Airport infrastructure
- Airline capability

Partnership among parties responsible for these elements is the key to enhancing both safety and efficiency in the air transportation system. Government and industry must address the necessary changes.

#### Airplane Capability

Airplane manufacturers have a responsibility to meet industry's needs for safe and efficient operations, while maintaining compatibility with the constantly changing infrastructure.

#### Regulatory Capability

Rapid growth is a challenge to regulators. They must be able to adapt to effectively oversee the air transportation system and to administer services, maintain facilities and train personnel to ensure that

the system functions properly.

The relatively low and inflexible headcount limit on CAAC headquarters staff of 258 poses a potential risk to China's excellent safety record and a constraint on sustainable growth. Key safety oversight departments within CAAC are woefully understaffed compared to staffing levels at other aviation regulators around the world including the FAA. In its 2005 and 2006 *White Papers*, AmCham-China expressed concern over this and recommended establishment of a commission to "benchmark" the number of regulatory personnel needed in each safety regulatory department of CAAC, given growth requirements.

Over three years have passed since the issue was first brought up and the 258 headcount limit has remained steady for 10 years. There is concern that China could repeat one of the past mistakes made in the US—that of under-investing in the safety regulatory authority. The US saw several fatal accidents before taking strong action to reform, enlarge and strengthen its aviation safety authority.

#### Air Traffic Control Capability

Rapid growth can strain an air service provider's ability to run the system. The existence and integration of a roadmap for air traffic system planning and development is key to addressing this challenge. It must take into account current air traffic control demands, while positioning the country for the development of personnel and new technology needed to address the increased demand on the system. The plan must be integrated with the regulatory authority and industry to assure the successful introduction of technology.

#### Airport Infrastructure

Rapid growth will further strain existing infrastructure and make it more critical to address infrastructure needs. By 2020, China plans to increase its total airports to 244. While this investment is a significant step towards addressing demand, the US has nearly 20,000 airports (including more than 5,000 for public use), indicating that China is starting from a significantly smaller base. In particular, airports designated for general aviation (GA) use, common in the US, are nearly non-existent in China. Plans for new airports must be closely coordinated with the regulatory authority and the air traffic service provider to ensure that airports are well integrated into the system.

With the construction of so many airports, China has an opportunity to become a world leader in adopting the latest "green airport" technologies.

#### Airline Capability

Airlines must focus simultaneously on safety and profitability as a foundation for healthy business. Rapid growth in China creates additional challenges by further straining airline resources. The industry faces several critical global shortages such as pilots and maintenance technicians, as well as experienced management personnel.

- 2008年5月, 中国民航局和美中航空合作项目联合代表团赴四川灾区, 与现场指挥抗震救灾的官员交流, 并对民用航空(特别是直升机)如何在日后展开灾区救援工作进行详细研究。目前美中航空合作项目正在制定有关计划, 以帮助中国在该领域取得进展。

## 具体问题

### 空域系统的现代化

国家空域系统的开放和现代化是满足航空业发展、提高系统效率和减少环境影响的最根本需要。为实现上述目标, 须在综合规划之内, 通过监管机构、政府机构、航空服务提供商、飞机制造商、航空公司和其他使用者之间建立合作伙伴关系, 推动标准化和所有系统元件的交互作用, 以优化整体性能。中国面临的巨大挑战不是技术, 而是为了实现增长和创新所需要的管理文化和组织结构上的变革。在这一方面, 美国公司可提供大量的经验和帮助。

中国国家空域系统是一个庞大且复杂的航空运输系统, 目前正面临着需求的急剧增长。尽管该系统安全记录显著, 运营效率良好, 但已显现出巨大压力。为实现民航业的预期增长, 中国必须积极地制定计划, 既能增加当前运力, 又能满足未来需求。一个安全、高效的航空运输系统, 需要具备五个基本要素:

- 飞机性能
- 监管能力
- 空中交通管理能力
- 机场基础设施
- 航空公司运营能力

为提高航空运输系统的安全性和效率, 关键是在上述各要素的责任方之间建立伙伴关系。政府和企业必须有必要的变化。

#### 飞机性能

飞机制造商有责任满足业界对安全性和运营效率的需求, 同时兼容基础设施的经常性变化。

#### 监管能力

迅速发展对监管是项挑战。监管机构必须能够有效地监管航空运输系统, 实施各项服务, 维护基础设施和进行人员培训, 以此确保系统的正常运转。

中国民航局总部职员人数 258 人, 人员编制数量相对较少, 而且缺少灵活性。这一点可能成为中国优秀的安全记录潜在的隐患, 并且限制了可持续发展。与世界其他航空监管机构(包括美国联邦航空局)的编制水平相比, 中国民航局内部核心安全监管部门的人员配置严重不足。中国美国商会曾在 2005 年和 2006 年的《白皮书》中, 对此表示担忧, 并且建议成立一个委员会, 以根据增长要求, 来为中国民航局安全监管部门提供所需的人员配置标准。

上述问题在三年前就已被提出, 而民航局保持258 人的人员编制限制已有10年之久。有人担心中国可能重蹈美国的覆辙——对安全监管机构的投资水平过低。美国是在经历了几次重大事故之后, 才开始采取强制措施, 改革、扩大并强化航空监管部门。

### 空中交通管理能力

中国的快速发展对航空服务供应商的系统运营能力提出考验。制定和整合航空运输系统计划和发展路线图, 是应对这一挑战的关键所在。当将本国定位在以人员和新技术发展应对系统增长的需求上时, 路线图必须考虑当前空中交通管理的需求。这一计划必须与监管机构和行业进行整合, 确保技术的成功引进。

### 机场基础设施

中国的快速发展使现有的基础设施资源紧张, 如何应对这一需求变得更加紧迫。到 2020 年, 中国计划将机场总数增加至 224 个。虽然该投资是缓解需求的一项重要举措, 但与拥有近 2 万个机场(包括 5000 多个民用机场)的美国相比, 中国仅仅迈出了一小步。在美国, 指定用于通用航空的机场很普遍, 但在中国却并不多见。新机场的建设计划必须与监管机构和空中交通服务提供商密切协调, 以确保机场的基础设施能很好地融合于系统之中。

随着新机场的大量兴建, 中国有机会成为世界上采用最新“绿色机场”技术的国家之一。

### 航空公司的运营能力

为确保企业健康发展, 航空公司要同时兼顾飞行安全和商业利润。中国的快速发展导致航空公司资源更加紧张, 从而带来新的挑战。民航业面临着诸如飞行员、机务人员和有经验的管理人员等严重短缺的全球性问题。

## General and Regional Aviation (RA) Development

GA development continues to be severely constrained by airspace limitations and a lack of a constructive policy and regulatory environment. Developing the general and regional aviation sectors of civil aviation would provide major economic and social benefits to China, as shown in other countries with well-developed sectors. Benefits would appear in many ways, most significantly in improvements to China's transportation system, in supplementing infrequent airline service in smaller markets and providing air service to communities where there is no airline service.

A 2008 AmCham-China supported report, "Catalyzing Growth in China's Regional and General Aviation Sectors," (GARA Phase I Report) estimates that if China takes the necessary steps to establish new policies, regulations and provide the required infrastructure identified in the report, in the period from 2010 (the start of the current five-year plan for GA) to 2015, the GA sector will grow 10-20 percent annually, resulting in 33,000-60,000 high value jobs for pilots, mechanics and managers, and indirectly providing another 132,000-240,000 jobs in other businesses from improved transportation. These benefits should increase even faster after 2015, as the cumulative infrastructure improvements would support even higher GA growth rates.

The report also provides a "regulatory roadmap" showing how China could accomplish in 15 years what took the US 100 by adopting international best practices based on the successes and failures in the US and other countries with developed GA and RA sectors.

- Open airspace to GA and RA operations, and coordinate civilian and military use of airspace to optimize aviation capacity and national security.
- Greatly reduce fees for airspace and airport use, and duties and taxes on GA aircraft imports.
- Create many more GA airports with fuel and service facilities, lights and instrument approaches, and at lower cost than commercial airports.
- Train more pilots, flight instructors and mechanics.
- Improve maintenance, repair and overhaul facilities for GA and RA operators.

Finally, the report recommends the establishment of test areas to evaluate and begin implementation of the roadmap elements.

## Aviation and Disaster Relief

Natural disasters in China during 2008, including the Sichuan earthquake, highlighted the need for improved disaster relief capabilities. Helicopters and technologies for their safe operating in challenging environments are a key focus. However, US export controls for dual-use technologies limit the ability of US companies to offer "win-win" solutions. Export controls are often placed on technologies that are

already available in the Chinese marketplace, either indigenously or from non-US companies, undermining US competitiveness while not enhancing national security. (Please see Export Controls chapter).

China is vulnerable to natural disasters. But the underdeveloped air transportation system in China often makes it difficult for the relief teams to respond quickly to the numerous challenges posed by such disasters. In 2008, disaster relief efforts were frustrated by the lack of helicopters, (China has about 100 general aviation helicopters; the US more than 10,000) and small airplanes designed for moving persons and cargo (China has fewer than 100 suitable GA airplanes; the US over 100,000), and the lack of airports and heliports (China has fewer than 160 airports; the US has about 16,000 GA facilities).

Lack of both a systematic disaster relief plan and coordination between the local and central governments, as well as inadequate civilian airspace slowed disaster relief efforts. This included difficulty in the airspace coordination between civilian and military air traffic control offices and in controlling flight operations due to the lack of available civilian low-altitude airspace, which strained military and civilian airspace coordination.

AmCham-China encourages the US and Chinese governments to exchange information on aviation disaster relief preparations, in light of China's need for more general aviation aircraft, especially helicopters.

## Visas

China's economic growth will increase the demand for business visits to the US. Over the past two years, there have been some improvements in the implementation of the US visa policy resulting in 11 percent more business and tourist visas issued in 2008 over 2007.

However, the complexity and redundancy in the current process, such as the requirement for continuous security reviews, restricts and discourages potential customers and partners from traveling to the US, especially if they are government officials. The consequence has been a preference to do business with non-US firms. (Please see US Visa Policy chapter). Both American and Chinese aviation industries stand to gain from an improved US visa process, resulting in increased demand for airline and US tourism services at a time of slowing worldwide demand.

## Recommendations

### For the Chinese government:

- Implement the recommendations in the ACP's GARA Phase I Report.
- Continue to open up and modernize the China National Airspace System to accommodate

## 通用航空业和支线航空业的发展

由于空域限制和缺乏建设性的政策和监管环境，通用航空继续受到严重制约。通用航空和支线航空的发展将为中国带来重大的经济和社会效益，这已被该领域很多发展成熟的国家所证实。其效益体现在诸多方面，最重要的是改进中国的交通运输系统，补充支线市场，填补航空公司的空白市场。

根据2008年中国美国商会报告《刺激中国支线航空和通用航空领域的发展》，如果中国采取必要措施来制定新政策和规章，并提供报告中所提及的必要的基础设施建设，那么从2010年（当前通用航空五年计划的起始年份）到2015年间，通用航空领域将每年增长10-20%，为飞行员、技师和管理者提供33,000-60,000个高价值的职位，且交通的改善会为公司间接提供额外132,000-240,000份工作。2015年后，这些效益将会增长得更快，因为基础设施的不断改进将实现通用航空更高的增长率。

该报告也提供了一个“监管蓝图”，展示中国将如何通过借鉴美国及其他国家在通用航空和支线航空领域的成熟经验，以15年的时间完成美国用100年才能取得的成就。

- 向通用航空业和支线航空业开放空域，协调民用和军用空域，提高航空能力和保障国家安全。
- 大幅降低空域和机场的使用费，减少通用航空业飞机进口关税和其他税费。
- 建设更多通用航空机场，配备燃油和服务设施、照明和仪表设备，而且成本应低于商用机场。
- 培训更多的飞行员、飞行教练和机务人员。
- 改善通用航空和支线航空运营商的维护、修理和设备检修。

最后，该报告建议建立试点区，来评估并启动完成路线图所必需的要素。

## 航空和救灾

2008年，中国经受了包括四川地震在内的多起自然灾害，凸显了加强救灾能力的要求。直升飞机的使用，以及在艰难环境中的安全驾驶技术等都是关注的重点。然而，美国对军民两用技术的出口控制限制了美国公司提供双赢解决方案的能力。由于美国的出口管制导致中国航空领域的技术多来自国内和其他非美国公司，这严重影响了美

国的竞争力，同时对国家安全也没有任何帮助。（参考《白皮书》“出口管制”一章。）

中国是自然灾害多发国家，但由于中国的航空运输系统发展滞后，导致救灾队伍难以在短时间内对灾难现场的各种困难做出迅速反应。2008年，由于缺乏直升机（中国的通用航空直升机大约有100架；而美国有1万余架）和运送人员及货物的小型飞机（中国的通用航空飞机不到100架，而美国有超过10万架），以及缺少民航机场和直升飞机场（中国的机场不到160个；美国的通用航空机场大约有16000个），救灾工作因此受挫。

由于缺少系统的救灾计划，地方和中央政府之间缺乏协调，以及民用空域不足，减缓了救灾速度。比如民用和军用空域协调困难，缺乏民用低空空域而使航班运营管理困难，从而加剧了军用和民用空域协调的难度。

鉴于中国需要更多的通用航空飞机，尤其是直升机，中国美国商会鼓励中美两国政府在航空救灾准备方面加强信息交流。

## 签证

中国的经济增长使前往美国商务访问的需求增加。在过去两年中，美国签证政策的执行取得了一些进展，2008年签发的商业和旅游签证数量比2007年提高11个百分点。

但是，当前复杂漫长的签证流程，例如要求连续进行安全审查，大大影响了潜在客户和合作伙伴（尤其是政府官员）到美国旅行，导致其优先选择与非美国公司做生意（参考《白皮书》“美国签证政策”一章）。而美国签证流程的改进必将使美国和中国航空业从中获益，在目前全世界需求放缓的时期，增加对航空和美国旅游服务的需求。

## 建议

### 对中国政府

- 酌情考虑美中航空合作项目在第一阶段报告（《推动中国支线航空业和通用航空业的发展》）中提出的建议。
- 继续扩大国家空域系统，实现空域系统的现代化，以满足增长需求，提高整个系统的效率，以及实现环境效益。
- 为空域系统的现代化设立中央管理项目，制定全国

growth, improve overall system efficiency and realize environmental benefits.

- Create a centrally managed program for airspace system modernization that establishes a national vision and an integrated plan. Give program leaders the appropriate level of responsibility and authority for implementation across jurisdictions. Priority must be placed on standardization and metrics management.
- Conduct an urgent review of the existing headcount limitation on CAAC headquarters, using the ACP's report comparing the CAAC and FAA as a guideline.
- Coordinate air traffic system and airport infrastructure development with relevant regulatory authorities and air traffic service providers to ensure well-integrated and efficient system.
- Continue introducing efficient new aircraft with the latest technology and upgrade the existing fleet to improve safety and realize fuel efficiency improvements.
- Move towards a more flexible airspace and airway structure, away from today's rigid structure. Implement an expanded, nationally managed, common-use airspace system and grant greater influence to civilian authorities where possible.
- Adopt "green airport" technologies in new airport construction plans. Expand cooperation with US companies and with ACP to integrate the latest environmental technologies into China's aviation infrastructure plans.
- Coordinate plans for new airports with regulatory authorities and air traffic service providers to ensure integration.

#### **For the US government:**

- **Continue to support and fund active engagement between the FAA and the US DOT and their counterparts in China.**
- Expand USTDA funding for ACP programs, a strategic relationship that will pay benefits long into the future.
- Exchange information with China on the role of civil aviation in disaster relief and preparation, especially the role general aviation can play.
- Continue to share best practices on co-mingling civil and military air traffic to help China maximize safety and efficiency in its airspace system.
- Please see Export Controls chapter for specific recommendations.
- Please see US Visa Policy chapter for specific recommendations.

性规划和综合计划。在跨辖区执行上,让项目领导者承担适当责任,拥有适当权力。应将标准化和标准管理放在首位。

- 对中国民航局总部现有的人员编制尽快重新考量,可以参照美中航空合作项目提交的中国民航局和美国联邦航空局的比较报告作为指导原则。
- 在航空运输系统和机场基础设施的开发上,与相关监管部门和空运服务提供商协调,确保系统的统一和高效。
- 继续引进拥有最新技术的高效新型飞机,更新现有队伍,提高安全性及燃料效率。
- 建设更加灵活的空域和航线体系,脱离当前的僵化结构。实现一个延伸的、全国性管理的、通用的空域系统,尽可能扩大其影响力。
- 在新机场建设计划中,采用“绿色机场”技术。扩大与美国公司和美中航空合作项目的合作,将最新的环境技术应用到中国的航空基础设施建设计划之中。
- 在新机场建设计划上,与监管当局和空运服务提供商进行协商,以确保统一。

#### **对美国政府**

- **继续支持和资助美国联邦航空局和交通部与中国相关部门的成功合作。**
- 扩大美国贸易和发展局对美中航空合作项目的资助,这将是能带来长久效益的战略伙伴关系。
- 就民航业,尤其是通用航空业在救灾和救灾准备过程中发挥的作用,与中国有关部门交换信息。
- 在军民合用的空中交通方面,继续分享最佳实践经验,帮助中国实现空域系统安全性和效率的最大化。
- 有关具体建议,请参考《白皮书》“出口管制”一章。
- 有关具体建议,请参考《白皮书》“美国签证政策”一章。

# Construction, Engineering and Design

The construction industry's intimate connection with urbanization and industrialization makes it key to China's future development. With the recent slowdown in China's real property markets and the potential spillover effects on China's economy, the country's construction industry is critical to an understanding of the current global economic downturn. China's stimulus plan, which will invest heavily in the construction of large-scale infrastructure, only adds to the sector's importance. The overarching concern is how China can best streamline and improve its construction industry, take advantage of international expertise and ensure that it can efficiently build the high quality infrastructure necessary for China's continued development.

## Significant Developments

During the past year, there have been no significant regulatory developments regarding market entry for foreign-invested construction, engineering or design enterprises.

In 2008, the Ministry of Construction (MOC) was renamed the Ministry of Housing and Urban-Rural Development (MOHURD) and became one of the new "super" ministries set up by the National People's Congress and the State Council. This change reflects the Chinese government's heightened concern about the housing market and the balance of development between urban and rural areas.

To achieve the goal of sustainable development, the State Council promulgated the "Provisions on Energy Conservation in Civil Buildings" in July 2008, a regulation that set out the approval procedures regarding energy conservation requirements for new buildings and relevant obligations for various parties, including the owner, the contractor, the design and supervision company and the real estate developer. This regulation is now a critical guideline for foreign-invested enterprises engaging in relevant works in China.

A Chinese legal regimen on "Green Building," which includes the technical standards and methods of evaluation and certification, has also been developed over the last year. The following regulations have been issued to this end: "Regulations Governing the Management of Green Building Evaluation and Certification" (MOC [2007] Circular 206) and its

implementation rules (MOC [2008] Circular 61); "Work Procedure of Green Building Evaluation Experts Panel"; "Green Building Evaluation Standards" (MOC Communiqué 413); "Detailed Technical Rules for Green Building Evaluation" (MOC [2007] Circular 205) and its supplementary rules. These regulations equally apply to Chinese-invested enterprises and foreign-invested enterprises that wish to obtain green building certificates issued by the Chinese government.

## Specific Issues

### *Decree 113: Construction Works Sector Regulations on the Administration of Foreign Investment Construction Industry Enterprise Ministry of Construction*

Decree 113 lays down the threshold qualifications for foreign construction companies that wish to undertake construction activities in China. Specifically, a foreign construction company must establish a local presence by creating some form of Chinese legal entity, either a wholly foreign-owned enterprise (WFOE) or a Sino-foreign joint venture (JV). This Chinese legal entity must then apply for the appropriate construction grade qualification in order to become a Foreign-Invested Construction Enterprise (FICE).

To establish a FICE, both domestic and foreign construction companies must meet onerous capital and staffing requirements. Furthermore, Chinese law does not allow the use of financial instruments, such as bank guarantees, insurance bonds or a parent company's guarantee, to satisfy the requirements. This is not in line with international practice, and disproportionately harms smaller firms who have specialized expertise. Registered capital requirements as currently designed are unnecessarily high and restrict construction investments.

Although recognition of foreign qualifications has ameliorated some of the problems related to the staffing requirements of Decree 113 and MOC Decree 114 (Regulations on the Administration of Foreign Investment Construction Project Design Enterprises), there is still significant pressure on foreign construction companies, which need to manage their international workforce. The requirement that all foreign staff of foreign construction companies must reside in China for three (for engineering technology and finance management staff) to six months (for

# 建筑、工程和设计

建筑业与城市化、工业化的紧密联系使之成为中国未来发展的关键。随着目前中国房地产市场发展速度的减缓以及建筑业对中国经济潜在的影响，中国的建筑业有助于我们了解目前全球经济低迷的状况。在中国经济刺激计划中，大量资金被用于大规模基础设施建设领域，更强调了建筑行业的重要性。人们现在广泛关注中国将如何更有效率的发展建筑业；如何利用国际专业资源保证建筑业高效地建设高质量的基础设施，以适应中国的持续发展。

## 重大进展

过去的一年中，建筑、工程或设计领域的外资企业在市场准入方面，尚未取得重大进展。

2008年，建设部(MOC)更名为住房和城乡建设部(MOHURD)，成为经全国人民代表大会审议、国务院设立的新型大部委之一。这一变化体现了中国政府对住宅市场及城乡领域平衡发展的进一步关注。

为了实现可持续发展的伟大目标，2008年7月，国务院颁布了《民用建筑能源保护规定》。此规定公布了新型建筑物能源保护要求的审批流程以及各方的相关责任，各方包括房产所有人、承包商、设计及监理公司及房地产开发商。此规定现在成为外商投资公司在中国进行相关业务活动的重要指南。

去年，中国政府制定并完善了关于“绿色建筑”的技术标准和评估及认证办法，并颁布如下规定：《绿色建筑评价标识管理办法》（建设部2007年第206号通知）及实施细则（建设部2008年第61号通知）；《绿色建筑评价标识专家委员会工作规程（试行）》，《绿色建筑评估标准》（建设部第413号公报）；《绿色建筑评价技术细则》（建设部2007年第205号通知）及补充规定。上述规定同样适用于希望获得由中国政府颁发的绿色建筑证书的外商投资企业。

## 具体问题

### *工程建设领域——《外商投资建筑业企业管理规定》（建设部第113号令）*

第113号令规定了外国建筑企业在中国从事建筑活动所需具备的资格和必要条件。特别是，外国建筑企业必须在中国境内设立某种形式的中国法律实体（即外商独资企业(WFOE)或中外合资企业）。此法律实体成立后必须申请适当等级的建筑业企业资质，以成为一家外商投资建筑业企业(FICE)。

其次，建立外商投资建筑业企业时，无论国内还是国外建筑公司都必须满足有关资本与员工方面的多项要求。此外，中国法律不允许利用例如银行保函、保险债券、或母公司担保函等金融票据来满足相关要求。我们认为此规定不但违反了国际惯例，而且对拥有专门技术的较小公司产生了极大的负面影响。再者，目前此规定对注册资本的要求很高，这不仅没有必要，而且也限制了建筑资金的投入。

针对外国公司资质认可的规定，尽管建设部已修改了第113、114号令有关员工方面的某些要求（即《外商投资建设工程设计企业管理规定》），但是外国建筑公司仍对有关外国员工的公司管理规定倍感压力。虽然第114号令的补充规定“暂时”放宽了政策，但外国投资设计企业还是认为外国员工必须每年在中国居住三个或六个月的要求过于苛刻（工程技术与财务管理人员为三个月，在中国注册的注册建筑师、工程师及重要技术人员为六个月）。

除了繁琐的审批流程与诸多的要求之外，规定还限制了外商投资建筑业企业的项目承接。规定认为，目前外商独资公司只可承包外资投入项目或中国建筑企业无技术能力承包的工程。而且，后者还规定外国公司只可承包与中国建筑企业合作进行的工程。此举将外国建筑公司限制在中国建筑市场的有限区域中，使其市场总占有份额不到10%。



architects, engineers and key technical staff registered in China) every year is particularly burdensome, although this has been relaxed for Foreign-Invested Design Enterprises (FIDEs) under the Decree 114 Implementation Regulations on a “temporary” basis.

Beyond the cumbersome licensing procedures and requirements, FICEs are also limited in the projects they can undertake. Currently, WFOE construction companies are restricted to undertaking foreign funded projects or projects that cannot be independently undertaken by Chinese construction enterprises because of technical difficulties. In the latter case, foreign companies can only undertake such projects in cooperation with Chinese construction enterprises. This has the effect of restricting foreign construction companies to a limited area of the construction market, amounting to less than 10 percent of the whole Chinese construction market.

In addition, FICEs can only undertake projects valued at less than five times the company's registered capital, as specified in the Qualification Grading Standards for Construction Enterprise (Decree 82), except for projects undertaken by companies with special grade qualifications. This minimum registered capital limit means that foreign construction companies must invest significant registered capital in order to qualify for large-scale infrastructure projects, creating an unnecessary burden.

#### *Consortium Qualifications*

The Construction Law of the People's Republic of China (effective March 1, 1998) specifies that where two or more contractors join together to undertake construction work, the scope of the work undertaken must not exceed the qualifications of the lowest ranked member of the consortium. International practice is generally that a consortium will qualify based on the qualifications of the highest ranked member of the consortium. We recommend China amend this requirement to conform to international practice, enabling China to benefit from the best international practice, expertise and technology.

#### *Contractual Arrangements*

FICEs receive further unequal treatment in being prohibited from entering into contractual relationships with Chinese-invested construction enterprises. Whereas the Provisional Regulations on the Administration of Foreign Enterprises Engaging in Construction Engineering Design Related Activities in China (Decree 78) allow contractual relationships between foreign designers and Chinese design institutes, similar contractual relationships are not expressly permitted for construction operation. Thus, foreign investors must establish a Chinese entity before undertaking any construction work in China.

#### **Decree 114: Engineering and Design Works Sector**

Decree 114 covers the requirements foreign engineering and design companies need to meet in order to

undertake design activities in China. Like construction companies, a foreign engineering and design company must establish a local presence by setting up some form of Chinese legal entity, in the form of either a WFOE or a Sino-foreign JV. Once established, this Chinese legal entity must also apply for the appropriate design qualification so that it may become an FIDE. However, as with construction companies, strict personnel and capital requirements must be met according to the Implementation Rules to the Administrative Regulations on Foreign Invested Construction Engineering Design Enterprises (Circular 18) which are especially onerous for the small and medium-sized enterprises that comprise a large part of the highly specialized architectural and engineering firms.

#### *Upgrading of Qualifications*

Under Article 17 of the Regulations on the Administration of Qualifications for Construction Project Surveys and Designs (MOC Decree 160), Grade A and Special Class construction enterprises are allowed to apply for Grade A design qualifications in their initial applications using their previous track record as a contractor in China. However, the Opinions on Implementation of the above Regulations (MOC [2007] Circular 202) severely curtail the progress made by Decree 160 by prohibiting FIDEs from beginning at Grade A, unless they already had a Grade 1 construction qualification. Moreover, Circular 202 requires that only design work included in general contracting track records may be used for reference when applying for Grade A design qualifications. The majority of FIDEs—especially those new to China or those that focus solely on engineering and design activities—do not enjoy any benefit under the newly relaxed rules.

While AmCham-China applauds MOHURD for introducing Decree 160 in accordance with international practice, we urge MOHURD to allow all FIDEs to enjoy the relaxed rules and apply for Grade A qualification in their initial applications.

#### **Mergers and Acquisitions in the Construction Works and Engineering and Design Sectors**

MOHURD issued Circular 229 in 2007 (Circular Concerning Relevant Issues Associated with Verification of Qualification Construction Project Enterprises on System Reform Reorganization and Division) to clarify the re-qualification issues that may be involved in the restructuring or merger of prospecting, construction, design, supervision and tendering agency enterprises. According to Circular 229, when foreign investors acquire domestic enterprises, the qualifications and licenses possessed by the original enterprise(s) must be re-assessed and approved by the appropriate construction authorities. However, the criteria for re-assessment remain unclear and foreign investors remain uncertain about their ability to retain the original enterprise's licenses and qualifications. The level of license and qualifications is one of the main criteria considered when a construction and design company tenders for a project. Thus, uncertainty about

此外,《建筑业企业资质等级标准》(建设部2001年第82号令)明确规定仅允许外商投资建筑与工程设计公司承包低于公司注册资金五倍的工程(除非这些工程已由特级资质的公司承包)。规定注册资金最低限额意味着外国建筑公司必须投入大量的注册资金,背负不必要的负担,才可获得承包大型基础设施项目的资质。

#### *联合体资质*

目前,1998年3月1日颁布生效的《中华人民共和国建筑法》明确指出,如果两个或两个以上的承包人联合承包建筑项目,所有联合体都只限于联合体单个成员所持有的最低资质的等级范围内的工程。国际惯例一般认为,联合体的资质应由联合体中的最高等级成员决定。中国美国商会建议相关部门对这一要求进行修正,使其与国际惯例保持一致,同时也使中国从最合理的国际惯例、最佳的国际企业以及最先进的技术中获益。

#### *合约关系*

被禁止与中国建筑企业确立合同关系是外商投资建筑业企业在中国面临的另一不平等待遇。虽然《关于外国企业在中华人民共和国境内从事建设工程设计活动的管理暂行规定》(建设部第78号令)允许外国设计公司与中国设计公司合作设计,但是此规定在实际运营中并未能真正允许。因此,外国投资者必须在中国境内设立某种形式的实体才可开展相关经营活动。

#### *工程设计领域——第114号令*

第114号令规定了外国工程设计公司在中国从事设计活动所需条件和应有的资质。与对建筑公司的要求一样,外国工程设计公司必须以外商独资企业或中外合资企业的形式在当地建立中国法律实体。实体建立后,必须申请适当的设计资质,成为外商投资建筑工程设计企业。其次,与对建筑公司的要求一致,《外商投资建设工程设计企业管理规定实施细则》(建设部第18号通知)规定,外资设计公司必须满足员工与资金方面严格的规定要求,这尤其令大部分由高度专业化的建筑和工程公司组成的中、小型企业倍感压力。

#### *资质升级*

依据《建设工程勘察设计资质的管理规定》(建设部第160号令)第17条,已具备施工资质的企业首次申请同类或相近类别的工程勘察、工程设计资质的,可以将相应规模的工程总承包业绩作为工程业绩予以申报。然而,该规定的实施细则(建设部2007年第202号通知)在很大程度上削弱了第160号令所取得的进展,因为外商投资企

业不得从甲级资质起步,除非他们已具备一级建筑资质。此外,第202号通知进一步要求在申请甲级设计资质时,只可使用总承包业绩所含的设计工程。此举使得多数外商投资设计企业,尤其是初次进入中国的企业或只从事工程设计的企业,不能享受新放宽的规定。

中国美国商会会员对于住房与城乡建设部颁布第160号令,并使其与国际惯例保持一致的做法大为赞赏。但是,我们迫切希望住房与城乡建设部能够允许所有的外国投资设计企业享受到放宽的规定以及可在初期申请甲级资质。

#### *建筑、工程设计领域的并购*

2007年,住房和城乡建设部颁布了《关于建设工程企业发生改制、重组、分立等情况资质核定有关问题的通知》(第229号通知),旨在阐明中国的勘察、施工、设计、监理企业和招标代理机构在改制、合并过程中涉及的资格重新审核的问题。依据第229号通知,外国投资者收购了国内企业后,原企业拥有的资质和经营许可证必须由相应的建筑行政主管部门进行重新评估和认可。然而,第229号通知对重新评估的标准并未做出明确规定,外国投资者也无法确定是否能够继续获得原企业的经营许可证及资质。当建筑企业与设计公司投标时,经营许可证与资质级别是有关方面所考虑的主要标准之一。因而,许可证与资质方面的不确定因素使得建筑企业无法确定自己是否具有承包工程的法律能力。另外,中国公司在被外国公司收购后面临可能失去其原有资质的风险,而如何降低此风险,第229号通知也没有提及。

#### *项目管理领域*

近年来,外国建筑和工程设计企业为中外开发商提供了项目管理服务与专门技术。中国的承包商和开发商因项目管理技术和专门技术的大量转让而获益。然而,《建设工程项目管理试行办法》(建设部第200号通知)要求具有工程勘察、设计、施工、监理、造价咨询、招标代理等一项或多项资质的项目管理企业才能提供项目管理服务。

第200号通知实际上成为外国项目管理企业市场准入的阻碍,因为只有具备这六种资质中的一项或多项的外商投资建筑业企业、外商投资设计企业才可在中国提供项目管理服务。除了建立外商投资建筑业企业及外国投资设计企业,《外商投资建设工程服务企业管理规定》(建设部2007年第155号令)也许可以为外国投资公司提供除外商投资建筑业企业及外国投资设计企业之外的市

the license and qualifications leaves construction companies unable to determine if they have the legal ability to undertake projects. Circular 229 does little to decrease the risk of losing the qualification held by a Chinese company acquired by foreign investors, and its benefits are somewhat illusory.

### Project Management Sector

In the past, foreign construction, engineering and design companies provided project management services and expertise for foreign and Chinese developers. The extensive transfer of project management technology and expertise benefited Chinese contractors and developers greatly. However, MOC [2004] Circular 200 Trial Measures for the Administration of Construction Engineering Projects requires enterprises that wish to undertake project management services to establish a local entity and obtain qualifications in one or more of the prospecting, design, construction, supervision, tendering agency or cost control categories.

This, in effect, serves as a barrier to market entry for foreign project management companies because only FICEs and FIDEs with one or more of the six qualifications are eligible to undertake project management services in China. Decree 155 (Regulations on the Administration of Foreign Invested Construction Engineering Service Enterprise, 2007) may provide an alternative path for foreign-invested enterprises other than FICEs and FIDEs, as some local ministries of commerce (e.g., Beijing) are now accepting applications from foreign companies to establish Foreign-Invested Engineering Service Enterprises (FIESEs). However, until implementation rules for Decree 155 are issued, this path remains closed to foreign companies.

### EPC Projects

MOHURD qualification system does not specifically address the needs of Engineering-Procurement-Construction (EPC) projects. MOHURD issued guidance opinions in February 2003 (Guidance Opinions Concerning Nurturing and Development of Project General Contractor and Engineering Project Management Enterprises, MOC [2003] No. 30) and again in July 2003 (MOC Explanation Letter Concerning Market Entry for Project Ultimate Contracting MOC [2003] No. 161). Both appear to allow EPC contracting, provided the EPC contractor holds an appropriate design qualification and then sub-contracts the construction activities to appropriately qualified subcontractors. Their effectiveness is limited, however, as guidance opinions are not official regulations.

### Energy Conservation in Construction Industry

The State Council issued the “Provisions on Energy Conservation in Civil Buildings” in July 2008 as well as a number of relevant regulations. While these clearly set out China’s desire to improve its woeful energy conservation record, a number of uncertainties remain. A key example is the definition of the applicable Energy Conservation Standards, as well as local enforcement of that same set of regulations.

## Recommendations

### Engineering and Design Sector (Decree 114)

- **Allow initial establishment at Grade A for FIDEs that meet the qualification requirements.**
- Permanently relax the 25 percent requirement and the six-month residency requirement for foreign service providers, to further clarify Circular 18.
- Clarify the criteria as to how the qualifications of a local firm would be “re-assessed” upon acquisition.

### Construction Sector (Decree 113)

- Remove market barriers that restrict WFOE FICEs.
- Reduce registered capital requirements in line with international norms. Use the fiscal strength of the parent company, bonding or another guarantee arrangement as an alternative to, or partial or complete replacement of, overly-high registered capital requirements.
- Relax the requirement that the maximum value of work undertaken cannot exceed five times the registered capital.
- Abolish the three-month residency requirement for foreign service providers.
- Permit contractual collaborations in the construction sector between foreign and Chinese construction enterprises.
- Relax the requirement that consortia must default to the qualification level of the lowest qualified consortium member, bringing the Chinese environment in line with the international norm.

### Project Management Sector (Circular 200)

- Remove the requirement that only FICEs and FIDEs can engage in project management.
- Issue specific project management qualification standards.

### Engineering Services Sector (Decree 155)

- Issue the Decree 155 Implementation Rules as soon as possible to allow foreign companies to establish FIESEs and apply for relevant qualifications throughout China.

### EPC Contracting Sector (MOC [2003] Nos. 30 and 161)

- Formally issue regulations clarifying qualifications required to undertake EPC contracting.

### Energy Conservation Sector

- Issue a comprehensive set of applicable Energy Conservation Standards, as well as increase local enforcement of the relevant standards.

场进入选择,一些地方的商务部门(如北京)正在接受外国公司建立外商投资工程服务企业(FIESEs)的申请。但由于第155号令还没有颁布相关的具体实施规定,目前这一选择仍然无法使用。

### EPC项目

住房和城乡建设部的资质体系未明确指出允许EPC总承包模式(设计、采购和施工)。但该部委于2003年2月颁布了《关于培育发展工程总承包和工程项目管理企业的指导意见》(建设部2003年第30号令),7月又颁布了进一步的意见(《关于工程总承包市场准入问题说明的函》(建设部2003年第161号令))。这两个文件似乎允许EPC总承包模式,条件是EPC承包商必须持有适当的设计资质并将施工工程分包给持有适当资格的承包商。然而,指导意见还不是正式的立法,其法律性受到了限制。

### 建筑行业的能源保护

2008年7月,国务院颁布了《民用建筑节能条例》以及若干相关规定。虽然这些规定清楚地表明了希望改变其能源保护的现状,但是其中许多不确定因素仍然存在。比如政府如何定义适用性强的能源保护标准,以及各地方如何参照此标准进行有效执法。

## 建议

### 工程与设计领域——第114号令

- **允许外商投资设计企业首次申请即可获得甲级设计资质。**
- 更加明确第18号通知的规定,永久放宽对外国服务提供者25%的比例要求以及六个月居住期的要求。
- 明确制定当地公司在收购后被重新评估企业资质的相关标准。

### 工程建筑领域——第113号令

- **减少限制外商独资建筑企业进入中国市场的障碍。**
- 参照国际通行做法,降低注册资本的要求。可考虑允许利用母公司的财力、担保或其它保证协议作为替代方案,部分或全部取代过高的注册资本要求。
- **放宽所承包工程的最高限额不得超过注册资本五倍的要求。**
- **废除外国服务提供者必须居住三个月的要求。**

- **允许中外建筑公司建立合同关系。**
- **放宽联合体内资质由最低等级成员决定的要求,使中国国情与国际标准保持一致。**

### 工程管理领域——第200号通知

- **废除只允许外商投资建筑企业、外商投资设计企业才可从事项目管理服务的要求。**
- **住房和城乡建设部应颁布具体的项目管理资质标准。**

### 工程服务领域——第155号令

- **颁布第155号令的实施细则。此规定允许外国公司建立投资工程服务企业,并可申请全国性的通用资质。**

### EPC总承包领域——第30号及161号令

- **正式明确颁布拥有EPC总承包资质的规定。**

### 能源保护领域

- **住房和城乡建设部应颁布一系列全面、可适用的能源保护标准,并增加地方对相关标准的执行措施。**

## Cosmetics

The global cosmetics market has maintained a stable growth-rate in the past few years, with net growth of more than US \$40 billion (RMB 274 billion) in retail outlet sales from 2001 to 2006, averaging a compound annual growth rate of about 7.8 percent, according to Euromonitor. In 2006, gross global sales in the cosmetics market reached about US \$129 billion (RMB 884 billion).

Data from the China Association of Fragrance, Flavor and Cosmetic Industry (CAFFCI) shows that, in forthcoming years, the Chinese cosmetics market will maintain an annual growth rate of no less than 10 percent. With China's rapid economic growth, the cosmetics industry has become one of the fastest-growing traditional manufacturing sectors. Gross sales of the cosmetics manufacturing industry are estimated to have increased around 12 percent year-on-year in 2006, reaching RMB 107.5 billion (US \$15.7 billion), and topping RMB 120 billion (US \$17.52 billion) in 2007.

According to Customs statistics, China's total 2007 cosmetics imports totaled 23,400 tons, up 27 percent from 2006, with the value of imports, US \$425 million (RMB 2.91 billion), up 37.7 percent from 2006. Exports of cosmetics in the same year totaled 174,000 tons, up 12.1 percent, with a total value of US \$946 million (RMB 6.48 billion), up 16.5 percent. This data indicates that the Chinese cosmetics market and consumer demand have grown rapidly in the past few years and will continue to maintain strong momentum of development.

### Significant Developments

The relevant government departments have been working to make cosmetics industry regulations and policies more transparent and strengthen exchanges with industry to hear its suggestions and views.

After promulgating the August 2007 Regulations on the Administration of Cosmetic Labeling, the General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) issued the August 2008 Notice on Issues Related to Implementation of the Regulations on the Administration of Cosmetic Labeling to accommodate many cosmetics-producing companies that still have significant amounts of cosmetics inventory with older packaging. The notice allows continued use of original labeling on cosmetics produced and

processed before October 1, 2009. AmCham-China appreciates and welcomes the move.

Food safety incidents have led governmental regulatory authorities to consider a more effective product safety monitoring mechanism. AmCham-China appreciates the careful consideration by the relevant department of implementing an electronic monitoring code for the first batch products across nine categories, including cosmetics.

As part of the State Council's restructuring plan, the State Food and Drug Administration (SFDA) merged with the Ministry of Health (MOH) in 2008. On September 1, 2008, the SFDA officially took over the supervision and administration of cosmetics hygiene. Soon after, the SFDA established the Department of Food Licensing and issued notices canceling the required approval fee and extending the validity period of administrative hygiene licenses for cosmetics. AmCham-China appreciates the active and effective efforts the SFDA has made in respect to the declaration of cosmetic products and the smooth transition of the responsibilities for the supervision and administration of cosmetics hygiene.

Thanks to these efforts, the policy environment for the Chinese cosmetics industry has improved somewhat. However, we also note that some significant issues have not yet been resolved. These issues include the multi-departmental administration of the industry, excessive focus by regulatory authorities on precommercialization approval rather than post-commercialization supervision, and the excessive restrictiveness and lack of coordination between regulations and policies. AmCham-China encourages the government to simplify procedures, implement greater systematization and coordination, and streamline redundant processes. These problems, if unresolved, will affect and limit the healthy and sustainable development of the Chinese cosmetics industry.

### Specific Issues

#### International Standards and Product Safety

Production and sale of cosmetics is a global industry. Therefore, global integration or coordination of cosmetics-related laws, regulations and standards are of great importance for enhancing the competitiveness

## 化妆品

Euromonitor的调查报告显示,过去几年全球化妆品市场持续稳定增长,2001年至2006年,全球化妆品市场以零售终端销售额计算的净增长额超过400亿美元(合人民币2740亿元),年均复合增长率约为7.8%。2006年全年化妆品市场总销售额已达到约1290亿美元(合人民币8840亿元)。

中国香料香精化妆品工业协会(CAFFCI)的数据显示,中国化妆品市场在未来几年会保持不低于年10%的速度增长。同时随着中国经济的持续快速增长,化妆品行业已经成为传统制造业中发展最快的行业之一。据估算,2006年化妆品制造工业总销售额已达1075亿元人民币(合157亿美元),同比增长12%左右;2007年已逾1200亿元人民币(合175.2亿美元)。

据海关统计,2007年中国化妆品的进出口总量分别为2.34万吨、17.4万吨,较2006年增长27.04%和12.1%;进出口额分别为4.25亿美元(合人民币29.1亿元)、9.46亿美元(合人民币64.8亿元),较2006年增长37.72%和16.52%。这些数据表明,在全球化妆品市场稳定增长的大环境下,中国化妆品市场以及消费者的需求在过去几年间快速增长,并将继续保持强劲发展的态势。

### 重大进展

目前,中国化妆品行业的相关政府机构一直不断地提高法规政策透明度,加强与行业的交流并积极听取建议和意见。

国家质检总局继2007年8月发布《化妆品标识管理规定》之后,针对许多化妆品生产企业仍有一定数量的化妆品包装库存的实际情况,于2008年8月发布了《关于实施<化妆品标识管理规定>有关事项的通知》,允许在2009年10月1日前生产加工的化妆品可以继续使用原有包装标识。中国美国商会对此表示感谢和欢迎。

食品安全事件促使政府监管部门考虑更切实有效的

安全监管机制,有关部门正在慎重考虑对包含化妆品在内的首批九类入网产品实施电子监管码,中国美国商会对此表示欢迎。

根据2008年国务院机构改革方案,国家食品药品监督管理局并入卫生部。2008年9月1日,国家食品药品监督管理局正式接管化妆品卫生监督管理职责,并很快组建了食品许可司,还先后发布了关于取消化妆品审批费和关于化妆品卫生行政许可延续有关事项的公告。对此,中国美国商会对国家食品药品监督管理局为实现化妆品产品申报、以及化妆品卫生监督管理职责的平稳过渡所做的积极有效的努力表示诚挚的谢意!

在上述相关政府机构的努力下,中国的化妆品行业的政策环境得到了一定的改善。但我们同时也注意到一些对行业影响较大的问题仍未解决,比如:行业的多头管理问题;监管部门重上市前审批,轻上市监管;法规政策限制性过大、相互不协调。中国美国商会鼓励政府简化程序,加强产品标准化工作,消除冗余的程序。否则这些问题将影响和限制中国化妆品行业的健康和可持续性发展。

### 具体问题

#### 国际标准和产品安全

化妆品的生产和销售是一个全球化的产业,因此化妆品相关法律法规和标准的全球一体化或协调一致,对提高化妆品行业的竞争力和经济活力至关重要。尽管不同市场之间的法规框架和具体监管要求有所不同,但化妆品相关法律法规标准国际趋势一体化的讨论却日渐热烈。

目前,世界上主要的化妆品市场,如美国、欧盟、加拿大和日本等国家和地区都将参考ISO 22716《化妆品GMP》规范和指导本国的化妆品企业对原料、生产管理及设备设施等硬件的管理和要求。

原料的安全性和生产管理的规范化实施是保证产品质量和安全的关键。建立健全市场监管体系,加强针对生

and economic vigor of the cosmetics industry. There are differences in various markets regarding the framework of regulations and specific regulatory requirements, but there is increasing discussion of international integration of cosmetics-related regulations and standards.

At present, the leading cosmetics markets of the world, such as the US, EU, Canada and Japan, follow International Organization for Standardization (ISO) 22716 "Cosmetics GMP" in standardizing and guiding the management practices and requirements of their native cosmetics enterprises regarding raw materials and hardware, including production equipment and facilities.

The safety of raw materials and the standardized implementation of production management are key to ensuring cosmetics product quality and safety. Supervision should focus on the establishment and improvement of a market monitoring system to ensure production management compliance and the safety of the products on the market.

### Multiple Regulation and Administration

Currently, the production and sale of cosmetics are supervised and regulated by multiple government departments, which has resulted in a series of problems, such as redundancy in licensing, legislation and supervision, inconsistency of regulations and standards, and chaotic law enforcement.

#### 1. Double Licensing for Production Enterprises

At present, provincial-level food and drug administrations issue hygiene licenses and the SFDA issues production licenses for cosmetics production enterprises. The two licenses that target production enterprises are basically the same in content and requirements and the codes for both licenses must be marked on the product packaging. Enterprises are required to expend substantial resources when applying for these two licenses—which are basically duplications—in completing the annual examination, applying for their renewal every four years and coping with massive repeated routine site supervision and random inspection of samples.

China previously implemented double licensing for hygiene and production for food production enterprises. However, according to China's new plan, which was released by the State Council in 2008 and set the functions and organizational structure of the MOH, SFDA and AQSIQ, a single licensing will be implemented for food production. As cosmetics are simpler than food in complexity and safety, we hope that China will consider the adoption of the same policy for cosmetics and implement a single licensing system to reduce the administrative burden for government agencies and lower the operating costs of enterprises.

Meanwhile, we also hope to see that China's supervision of cosmetics will shift its focus from pre-commercialization approval and instead work to strengthen post-commercialization supervision.

#### 2. The Double Standard for Cosmetics Hygiene

Currently, the MOH and AQSIQ have implemented two different cosmetics standards. The MOH promulgated the Standards for Cosmetics Hygiene in January 2007, while AQSIQ uses the Standards for Cosmetics Hygiene, or GB7916-87. The latter was enacted in 1987, has not been updated in over 20 years and includes many provisions that do not fit with the status quo of the cosmetics industry. Furthermore, it contradicts the 2007 version of the Standards for Cosmetics Hygiene in certain places, making it difficult for cosmetics enterprises to follow the conflicting production requirements. Unification of cosmetics hygiene standards will not only enable enterprises to better understand government requirements, but will also give the government a unified standard by which to proceed in law enforcement.

AmCham-China understands that a number of government departments of China are drafting versions of GMP guidelines for cosmetics, including the AQSIQ, the MOH and some provincial-level food and drug administrations. To avoid wasting administrative resources on the formulation of redundant standards and the confusion caused by inconsistent standards, we hope that the relevant departments will actively communicate with each other to establish a unified cosmetics GMP.

### Product Registration

#### 1. Imported Non-Special Purpose Cosmetics Filing Process Simplification

The pre-commercialization approval procedure for imported non-special purpose cosmetics has long added substantial workload and costs to international cosmetics enterprises and delayed entry of new products into the Chinese consumer market by up to a year. The industry has appealed for resolution of the issue, without results. AmCham-China is looking forward to a breakthrough in simplifying the filing process under the leadership of the SFDA. Within the framework of existing regulations, AmCham-China suggests canceling the requirement that commercially-available packaging must be submitted for inspection and registration for imported cosmetics. Cosmetics, subsequently allow enterprises to use industrial-scale test or laboratory samples for inspection and submit product design packaging for examination and approval. In addition, we suggest canceling toxicology testing on animals for imported common cosmetics to allow random inspection of cosmetics in batches. AmCham-China strongly supports the tentative plan to cancel the examination of the filing information of imported non-special purpose cosmetics and impose the necessary responsibility on enterprises. We hope that the SFDA will introduce explicit regulations and set up a rational and systematic mechanism as soon as possible to enable the simplification of the filing process for imported non-special purpose cosmetics on a scientifically sound basis.

产管理的监管和上市产品安全性的监管应是中国政府部门的监管重点。

### 多部门管理

目前多个政府部门对化妆品的生产和销售进行监管,导致重复许可、重复立法、重复监管、法规标准不一致、执法混乱等一系列问题。

#### 1. 生产企业的双重许可证制度

目前省级食品药品监督管理局对化妆品生产企业实施卫生许可,国家质检总局对化妆品生产企业实施生产许可。这两种针对生产企业的许可,其内容和要求基本相同,两种许可证编号都必须标识在产品销售包装上。企业需要耗费大量的资源,申请取得这两种基本重复的许可,完成每年一次的年审、四年一次的许可延续申请、以及应对日常的大量重复现场监督和样品抽检。

以前,国家对食品生产企业也是实施卫生和生产双重许可。但是,根据2008年国务院公布的新的卫生部、国家食品药品监督管理局和国家质检总局的三定方案,食品的生产已实施单一许可。化妆品无论在复杂程度、还是在安全方面的影响均不及食品。我们期待国家考虑对化妆品采用同样的政策,实施单一许可制度,以节约政府的行政资源,同时降低企业的经营成本。

此外,期望国家对化妆品的监管能向淡化上市前审批、加强上市后监管的方向发展。

#### 2. 双重化妆品卫生标准

目前,卫生部和国家质检总局实施着两套不同的化妆品标准。卫生部于2007年1月发布了新版《化妆品卫生规范》,而国家质检总局使用1987年发布的《化妆品卫生标准》,即GB7916-87。由于GB7916-87已有二十多年未作更新,因此其中许多规定已不符合化妆品行业目前的发展状况。此外,该标准的许多规定与《化妆品卫生规范》2007版相矛盾,化妆品企业无法按照相互矛盾的要求进行生产。统一化妆品卫生标准不仅能使企业明确了解政府的要求,也使得政府相关部门在执法时有统一的标准。

据中国美国商会了解,中国多个政府部门都在着手起草《化妆品GMP》,包括进出口检验检疫系统、卫生部、及某些省级食品药品监督管理局。为避免浪费行政资源重复制订标准,以及标准不统一导致的混乱,希望相关部门之间能积极沟通,制订统一的《化妆品GMP》。

### 产品注册

#### 1. 进口非特殊用途化妆品备案简化

长期以来,针对进口非特殊用途化妆品的上市前审批程序使国际化妆品企业增加了巨大的工作量和财务成本,新产品进入中国消费市场的时间也因此被滞后四个月甚至一年。行业曾多次呼吁,未得到相应解决。中国美国商会期盼在国家食品药品监督管理局的领导下,在备案简化问题上取得突破性进展。中国美国商会建议,在现行法规框架下,取消进口化妆品必须提供市售包装进行检验和注册的要求,允许企业使用中试或实验室样品进行检验,并允许在审批时提交产品设计包装;取消对进口普通化妆品的毒理学动物试验,并允许彩妆产品按组抽检。中国美国商会非常支持化妆品卫生许可主管部门对进口非特殊用途化妆品备案资料放开不审、企业承担必要责任的设想,希望国家食品药品监督管理局能尽早出台明确的规定,并建立一套合理、系统的机制,从而使在科学的基础上简化进口非特殊用途化妆品备案程序成为可能。

#### 2. 国产特殊用途化妆品审批简化

依据现行法规,国产特殊用途化妆品的注册申报主要包括生产能力审核、产品检验和SFDA受理与审批等程序,注册时间通常需要8~9个月。其中生产能力审核是通过核对生产企业提交的技术资料,核实生产企业是否具有相应产品的生产能力。省级卫生行政部门在企业申请化妆品生产企业卫生许可证时,已对生产能力进行了资料和现场的审查及批准,企业卫生许可证列明了具体许可项目。同时,省级卫生行政部门通过年度审查、日常监督等手段确保企业生产能力符合许可事项。

经生产能力审核后,所有技术资料包括配方、工艺、标签和说明书等还需提交SFDA进行再次审核和批准。由此可见,生产能力审核是不必要的,既浪费宝贵的行政资源,又不利于国产特殊用途化妆品的发展和繁荣。下表列举了化妆品生产企业卫生许可、生产能力审核和SFDA审批所要求的资料,其中审核的重复性显而易见。

建议取消国产特殊用途化妆品注册中的生产能力审核环节,简化注册程序,促进国产化妆品产业的发展。

#### 3. 化妆品新原料的审批和管理

在化妆品新原料的审批和管理方面,中国美国商会希望化妆品卫生许可主管部门从实际出发,对不同的原料进行分类,对涉及防腐剂、色素、防晒剂、染发剂等

## 2. Examination and Approval of Domestic Special-Purpose Cosmetics

Under existing regulations, the application for registration of domestic special-purpose cosmetics involves procedures of production capacity verification, product inspection and SFDA acceptance and approval. The process of registration usually requires a period of eight to nine months. Production capacity verification is to determine whether a production enterprise has the capacity for relevant products by checking the technical information submitted by the enterprise. However, at this stage of the process, provincial-level health authorities have already examined and approved the production capacity of a site. This approval lists the specific items licensed and also ensures the production capacity of the enterprise is consistent with the items licensed through annual examination and daily supervision.

After production capacity verification, all technical information, including the formula, process descriptions, labels and instruction book, need to be delivered again to SFDA for further examination and approval. Clearly, production capacity verification is redundant and unnecessary, wasting precious administrative resources and hindering the development and prosperity of domestic special-purpose cosmetics. The table below lists the information required for hygiene licensing of cosmetics production enterprises, production capacity verification and SFDA approval, clearly demonstrating repetitiveness.

Required information for registration of domestic special-purpose cosmetics

Information to be Examined & Verified	Application for Issue or Renewal of Hygiene License	Examination and Verification of Hygiene Conditions of Production Enterprises by Provincial-Level Public Health Authorities	SFDA Examination and Approval
Application Form	√	√	√
Product Formula	N/A	√	√
Brief Description and Sketch Drawings of Production Process	√	√	√
List of Production Equipment	√	√	√
Product Labels & Instruction Book	√	√	√
Copy of Hygiene License	√	√	√

AmCham-China suggests that the stage of production capacity verification should be removed from the registration of domestic special-purpose cosmetics to simplify the registration procedure and boost the development of the domestic cosmetics industry.

## 3. Approval and Administration of New Raw Materials for Cosmetics

In the examination, approval and administration of new raw materials for cosmetics, AmCham-China hopes that the authority in charge of cosmetics hygiene will take into account the actual conditions, and classify different new raw materials accordingly. New materials that contain restricted substances (e.g., preservatives, pigments, sun-screening agents and hair colorants) should be subject to rigorous examination and approval, while only basic safety information should be required for general new raw materials. Such differentiation of the scope of the safety information that needs to be submitted for different types of new raw materials will facilitate the operation of both companies and regulatory agencies.

## 4. Procedure for Formula Re-registration

For products with minor changes in formula after registration, where changes do not affect the safety or main features of the product, AmCham-China hopes that the government will follow international practices by reconsidering the existing requirement that the product must be inspected and registered again as a new product. Such a requirement has created a heavy time and cost burden on companies and reduces incentives for enterprises to improve product formulas, preventing the industry from satisfying consumer demand for cosmetics using new technologies and raw materials.

For other after-registration changes that also do not affect product hygiene and safety, such as changes in the name of a product, the country (region) of origin, or the name and/or address of the production enterprise, we also hope that the government will simplify the process and shorten the duration of examination and approval.

## 5. Alternatives to Animal Testing

European and American countries have gradually begun to outlaw animal testing of cosmetics and raw materials. For example, the EU has prohibited animal testing for new raw materials of cosmetics for skin corrosiveness, acute photo toxicity and skin penetration absorption completely, starting from March 11, 2009. Meanwhile, the EU will prohibit the sale of cosmetics containing new materials for which the safety evaluation was done through animal testing. In China, however, animals are used in the toxicity testing of nearly all new products before going to market, even if a product sells well abroad and has proven to be safe for the overwhelming majority of healthy people. Repeated animal tests not only hinder domestic products from entering the world market, but also deviate from the philosophy of green

待审核资料清单	卫生许可证申请或换证	省级卫生监督机构的生产企业卫生条件审核	SFDA许可审批
申请表	√	√	√
产品配方	N/A	√	√
生产工艺简述与简图	√	√	√
生产设备清单	√	√	√
产品标签和说明书	√	√	√
卫生许可证复印件	√	√	√

限用物质的新原料可以进行较为严格的审批,对一般新原料则仅要求提供基本的安全性资料即可,明确不同类别的新原料所需要提供的安全性资料的范围或层次,使企业和执法部门容易把握和操作。

## 4. 配方重新注册程序

对注册后配方发生微小变化但不影响产品安全和主要功效的产品,我们希望化妆品卫生许可主管部门能参照国际惯例,重新考虑现行的、必须按照新产品全部重新检验和注册的要求,这种要求从费用和时间上都给企业带来很大的负担,不利于调动企业改进配方的积极性,也无法满足中国消费者对采用新技术、新原料化妆品的需求。

对于注册后产品名称、原产国(地区)、生产企业名称和地址的变更等同样不影响产品卫生安全的变更事项,我们也希望相关政府部门能简化审批流程,缩短审批时限。

## 5. 动物实验替代方法

目前,欧美国家开始逐步禁止化妆品及其原料的动物试验,如欧盟已将其列入法规,从2009年3月11日起,欧盟全面禁止化妆品新原料进行皮肤腐蚀性、急性光毒及透皮吸收方面的动物实验,同时欧盟将禁止销售含有使用动物试验进行安全性评估的新原料制成的化妆品。而中国目前新产品上市几乎都要进行利用动物开展的毒理试验,即使该产品已经在海外畅销并经使用证实对绝大多数健康人群是安全的。重复开展动物试验不仅阻碍了国内生产的产品迈向国际市场,同时也不符合绿色和环保的理念。

## 全成分标识

根据强制性国家标准GB5296.3-2008《消费品使用说明化妆品通用标签》的规定,企业必须自2010年6月17日起,在所生产或进口的产品上用中文标注所使用的全成分。

根据相关规定,化妆品全成分标识应使用卫生部2007年发布的《国际化妆品原料标准中文名称目录》(以下简称《目录》)中的成分名称。该《目录》是质检总局和原卫生部下属的两个化妆品标委会联合起草的,以美国个人护理品委员会PCPC(原CTFA)发布的INCI字典2004年版译文为基础。由于既往已经通过注册的一些化妆品中使用的部分原料没有被收录在该《目录》中,并且该《目录》自发布后没有进行更新(INCI字典2004年版收录了12072种成分,而最新的2008年版已经收录约15000种成分),将无法全成分标识的需要,亟需更新。如果该《目录》不能及时得到更新,企业将不得不自行命名《目录》中未收录的原料,势必造成市场上同一原料存在各种不同的名称,从而对消费者和监管部门造成困扰。

中国美国商会迫切希望相关政府主管部门与行业一同来推动这一工作,尽早完成《目录》的更新,并建立动态系统的更新机制,以满足未来中国化妆品行业发展的需要。

## 国家标准/卫生规范

化妆品国家标准制、修订工作关系到中国化妆品行业的健康、可持续发展,意义重大。但目前工作中存在着立项重复、体系混乱、检索和使用困难、各专业化标委会之间缺乏沟通协调等问题,亟待解决。中国美国商会呼吁国家标准化管理委员会加强对化妆品标准化工作的管理,考虑并采纳企业提出的合理意见和建议,对化妆品标准立项和标准制定进行严格的论证和审查,确保标准化工作的科学合理,从而对中国化妆品行业的发展起到积极的促进作用。为了实现这些目标,中国美国商会提出如下具体建议:

1. 制定禁用物质检测方法标准的同时,应考虑产品中禁用成分自然残留水平(即本底)以及设定安全剂量水平的研究;
2. 强制性标准应该只专注于产品的卫生和安全;
3. 加强标准体系的扁平化,多制定通用型标准,减少制定垂直型的、针对单独产品的标准;
4. 标准化不应盲目追求数量,应以规范、促进行业发展,

practices and environmental protection.

### Complete Ingredients Labeling

Pursuant to GB5296.3-2008 Instructions for Use of Products of Consumer Interest - General Labeling of Cosmetics, a mandatory national standard, all enterprises must use Chinese to list all the ingredients used in the products they produce or import starting from June 17, 2010.

According to related regulations, the complete ingredients labeling of cosmetics should use the names of the ingredients in the Catalogue of Standard Chinese Names of International Cosmetics Raw Materials released by the MOH in 2007. This catalogue was drafted jointly by the AQSIQ and two cosmetics standards committees originally under the MOH on the basis of the translation of the 2004 version of the International Nomenclature of Cosmetics Ingredients (INCI) dictionary published by the US Personal Care Product Committee. This catalogue does not include some raw materials used in some cosmetics already registered and has not been updated since its release (the 2004 version of the INCI dictionary includes 12,072 ingredients and the latest 2008 version includes about 15,000 ingredients). Thus, it will not be able to meet the requirements of complete ingredients labeling and is in urgent need of updating. If this catalogue cannot be updated in time, enterprises will themselves have to denominate the raw materials not included, which will inevitably cause the existence of different names for a given raw material on the market, confusing both consumers and the regulatory authority.

AmCham-China urges the relevant government department to join with industry in pushing to complete an updated catalogue as soon as possible and establish a dynamic updating mechanism to meet the needs of the future development of the Chinese cosmetics industry.

### National Standards/Hygiene Specifications

The formulation and amendment of the national standards for cosmetics are critical and affect the healthy and sustainable development of the Chinese cosmetics industry. However, there are related problems that demand the earliest possible solution, such as repeated project registration, difficulty in searches of, and access to, the standards and a lack of communication and coordination between the professional standardization committees. AmCham-China makes the following appeals to the State Commission for Administration of Standardization: strengthen the administration of cosmetics standardization, consider and accept the reasonable views and suggestions of enterprises, strictly examine and demonstrate the registration and formulation of cosmetics standards to ensure scientifically sound and rational standardization, and play a beneficial role in the development of the Chinese cosmetics industry. Toward these goals, AmCham-China has specific recommendations:

1. In developing the standards for the testing method of banned substances, consideration should be given to research on the level of natural residues (e.g., background residues) of banned ingredients in products and the setting of safe dose levels.
2. Mandatory standards should only focus on product hygiene and safety.
3. A flat standards system should be strengthened by developing more universal standards and vertical standards that target individual products reduced.
4. The standardization process should not just target the quantity of standards. Rather, relevant standards should be developed to standardize and promote the development of the industry and protect consumers' interests. We hope the existing arbitrary and repeated project approval methods can be improved soon.
5. Coordination between the professional standards committees under the State Commission for Administration of Standardization should be improved to make the relevant standards consistent.

Meanwhile, AmCham-China suggests that the authority in charge of cosmetics hygiene should conclude its amendment and updating of the 2007 Standards for Cosmetics Hygiene as soon as possible. As the primary fundamental technical standard for cosmetics safety, the existing 2007 Standards for Cosmetics Hygiene is not scientifically sound to the extent that it fails to clearly specify the unavoidable trace residues of banned substances in cosmetics products and contains some specifications for colorant raw materials that are too strict and inappropriate for cosmetics. AmCham-China would appreciate clarification on these issues.

At the same time, EU cosmetics directives, which are the reference basis of China's Standards for Cosmetics Hygiene, have continuously been improved and updated in recent years. Therefore, we suggest that the related departments update the 2007 Standards for Cosmetics Hygiene to ensure that cosmetics safety monitoring in China is scientific and effective.

### Administration of Cosmetics Advertising

At present, the administration of the advertising of the domestic cosmetics industry is mainly subject to the following four laws and regulations: the 1995 Advertising Law, the 1993 Measures on Administration of Cosmetics Advertising, the 2005 Measures on Administration of Advertisements on Printed Matters and the 1993 Law Against Unfair Competition. These laws and regulations overlap and vary in some provisions, including punitive provisions on a given advertising action, and are vague in the expression of some conceptual provisions, leaving a broad space for free interpretation in implementation.

Furthermore, the different law enforcement agencies of the central and local industry and commerce administrations often differ in their interpretations of the laws and regulations. Enterprises often face varying

保护消费者利益为目的制定相应标准。希望尽快解决目前的随意立项、重复立项等问题；

5. 解决目前国标委下属的各专业标委会之间的协调问题,使相关标准之间协调一致。

同时,中国美国商会建议化妆品卫生行政主管部门尽早积极开展对《化妆品卫生规范(2007)版》的修订和更新工作。作为化妆品安全监管的主要基础性技术规范,现行的《化妆品卫生规范(2007)版》存在着对禁用物质在化妆品成品中无法避免的微量残留未予以明确说明以及某些着色剂原料规格要求过于苛刻、不适合化妆品特点等不合理、不科学之处,中国美国商会希望尽早予以厘清。

同时,作为中国《化妆品卫生规范》重要参考依据的欧盟化妆品指令近几年来不断完善和更新,因此建议相关部门对《化妆品卫生规范(2007)版》适时予以更新,以保证中国化妆品安全监管的科学、合理和有效。

### 化妆品广告管理

目前国内化妆品行业广告的管理主要适用以下四部法规及办法,包括《广告法》(1995年)、《化妆品广告管理办法》(1993年)、《印刷品广告管理办法》(2005年)和《反不正当竞争法》(1993年)。这些法规中针对同一广告行为的某些条款特别是罚则有所重叠,而且/或者有出入,有一些概念性条款表述模糊,给实际操作留下了较大的自由解释的空间。

而且,国家和地方工商行政管理部门的不同执法部门对这些法规的解释常常不尽一致。由于执法者往往凭个人对法规的理解和选择适用对广告行为作出评判,企业面临的处罚也常常相差甚大。中国美国商会急切盼望国家工商行政管理总局能明确化妆品广告主要适用的法律法规,以及在不同法规之间产生法条竞合时的处理原则,以便于企业和监管机构严格遵守相应的政策规定。

### 税务相关问题

#### 1. 企业所得税法

我们非常支持企业所得税合并的改革,这体现了中国税法逐步向国际接轨,同时也体现了中国税法的统一性和明确性。但是,在新企业所得税法实施细则中规定广告费和业务宣传费税前扣除不超过年销售额15%的标准,而在之前的企业所得税法中,外资企业在广告费和业务宣传费税前列支比例是没有规定的。

按照国际惯例,都是由企业根据市场需求和盈利目标

来自行决定在广告和市场宣传费用方面的投入。而结合国内外行业发展情况来看,广告和业务宣传仍然是促进化妆品企业业绩增长的主要手段,各企业在这部分的投入一般维持在年销售收入的25%至30%之间。

因此我们恳请税务总局鉴于化妆品企业充分依赖广告和业务宣传的行业特性,给予化妆品企业高于15%的税前扣除比例。

### 2. 彩妆和香水类产品消费税

中国对化妆品实行的税收、关税制度使得中国市场的零售价格远远高于其它市场,差距达40%。随着更多的中国公民去境外旅游并在海外购买化妆品,相当一部分购买力从中国市场流失到了竞争市场,中国政府也相应损失了一大笔增值税的收入。业界特别关注对彩妆类和香水类产品征收的30%的消费税。考虑到化妆品已成为中国消费者的日用产品,我们认为将化妆品归类为奢侈品并继续征收消费税已不恰当。

中国正在快速发展的化妆品市场为该行业提供了巨大的发展和投资机会。但能否实现这样的发展,让业界和消费者同时获益,很大程度上取决于政府部门是否能建立一套统一、高效和透明的监管体系。对进口和国产化妆品实行不同标准,多重管理和多重法规并存,以及法规的限制性过大,严重地阻碍了中国化妆品市场按照世贸组织的规则自由运作,影响了中国化妆品行业的整体发展。

### 建议

- 改革现行化妆品行业多部门管理的体制,淡化上市前审批,加强上市后监管。
- 借鉴食品生产管理经验,将化妆品生产企业的生产许可证和卫生许可证合二为一,以节约政府的行政资源,同时降低企业的经营成本。
- 统一目前卫生部和国家质检总局采用的两套不同的强制性化妆品卫生标准,以利于企业遵守和执行。
- 简化进口非特殊用途化妆品的备案制度,或者将其与国产非特殊用途化妆品的备案制度完全统一,以加快先进、时尚的产品进入中国消费市场的速度。
- 取消对国产特殊用途化妆品的省级生产企业卫生条件审核,简化国产特殊用途化妆品审批流程。
- 对原料进行分类,明确不同类别的新原料所需要提

punitive measures as law enforcement officials are frequently left to interpret and enforce the regulations based only on their personal understanding. AmCham-China hopes that the State Administration for Industry and Commerce will clarify the primary laws and regulations that apply to cosmetics advertising and the principles for handling any overlap between different laws and regulations to help companies and regulators ensure compliance.

### Tax-Related Issues

#### 1. Enterprise Income Tax

We strongly support the reform for the consolidation of enterprise income tax, mirroring the gradual dovetailing of Chinese tax laws with international practices and increasing the uniformity and clarity of Chinese tax laws. However, the detailed rules for implementation of the new enterprise income tax provide that the pre-tax deduction of advertising fees and business publicity expenses shall not exceed 15 percent of annual sales. The foregoing enterprise income tax law contained no provision on this percentage for Chinese and foreign-funded enterprises.

According to international practices, enterprises decide for themselves their investment in advertising and market publicity expenses, taking into account market demand and their profit targets. As the development of the domestic and foreign cosmetics industries shows, advertising and business publicity are still primary growth drivers for cosmetics enterprises and the investment made by the enterprises in this regard generally stands at 25 to 30 percent of annual sales revenues.

Therefore, we urge the State Administration of Taxation to grant a pre-tax deduction ratio higher than 15 percent to cosmetics enterprises in light of the fact that they rely heavily on advertising and business publicity.

#### 2. Consumption Tax on Cosmetics and Perfume Products

Because of the Chinese tax and tariff system for cosmetics, retail prices are higher than in other markets by as much as 40 percent. Increasing numbers of Chinese citizens are going abroad for travel and often also purchase cosmetics overseas. A considerable part of the purchasing power has diverted from the Chinese market to competing markets, causing the Chinese government to lose a large sum of value-added tax income. The industry is particularly concerned about the 30 percent consumption tax levied on cosmetics and perfume products. Considering that cosmetics have become standard in the lives of many Chinese consumers, classifying cosmetics as luxuries and continuing to collect consumption taxes is no longer appropriate.

China's rapidly developing cosmetics market provides an enormous development and investment opportunity for the industry. However, whether such

development can materialize to benefit both the industry and consumers depends to a great extent on whether government agencies can establish a uniform, efficient and transparent monitoring system. The application of different standards on imported and domestic cosmetics, the existence of multiple administrators and regulations, excessive restrictiveness of laws and regulations, and other factors have seriously prevented the cosmetics market of China from operating freely according to WTO rules and have affected the overall development of the Chinese cosmetics industry.

### Recommendations

- **Streamline existing system of multi-departmental administration, phase out requirement for pre-commercialization approval and strengthen post-commercialization supervision.**
- The production license and hygiene license of cosmetics production enterprises should be integrated into one by drawing on the administration experience of food industry to save the administrative resources of the government and lower the operating costs of enterprises.
- The two different mandatory standards now used by the MOH and the AQSIQ for cosmetics hygiene should be unified to facilitate enterprises' observance and implementation thereof.
- The filing system for imported non-special purpose cosmetics should be simplified, or combined completely with the filing system for domestic non-special purpose cosmetics, to accelerate the entry of advanced products into the Chinese consumer market.
- The provincial-level verification of the hygiene conditions of production enterprises in domestic special-purpose cosmetics should be canceled to simplify the examination and approval process of such cosmetics.
- Raw materials should be classified, and the scope or level of safety information that needs to be submitted for the new raw materials of different categories should be clarified, to facilitate the operation of enterprises and law enforcement agencies.
- The process for re-inspection and registration of products for which minor changes in formula take place after registration, where these changes do not affect the safety and main features of the products, should be simplified to reduce the burden on enterprises and mobilize their enthusiasm for improving formulae. The process for examination and approval of other matters of change that do not affect product hygiene and safety should also be simplified.

供的安全性资料的范围或层次,使企业和执法部门容易把握和操作。

- 简化对注册后配方发生微小变化但不影响产品安全和主要功效的产品的重新检验和注册流程,以减轻企业负担,调动企业改进配方的积极性。对不影响产品卫生安全的其它变更事项的审批流程也予以简化。
- 尽早着手开展相关的动物实验替代性研究,同时对在国外已经进行过安全性试验的产品在申请进口注册时,在提供必要充足资料的前提下准予免除特定的动物实验。
- 尽快完成《国际化妆品原料标准中文名称目录》的更新,并建立动态系统的更新机制。
- 化妆品标准化工作应着眼于产品的卫生和安全,应对标准立项进行充分的论证和审查,严格标准制定的审查程序,并建立有效的沟通协调机制,确保化妆品标准化工作的体系化和科学性。
- 对现行《化妆品卫生规范(2007版)》中存在的合理、不科学之处尽早予以厘清,并适时进行更新。
- 提高企业广告费及业务宣传费的税前扣除比例,以符合化妆品行业特性;降低彩妆类和香水类产品的消费税率,以提高中国化妆品市场的价格竞争力。
- 明确《广告法》及《化妆品广告管理办法》为化妆品广告管理的执法依据,与国际化妆品行业的惯例相一致,以推动中国化妆品行业的发展。

- Research alternatives to animal testing as soon as possible. Concurrently, the government should forego animal testing when handling applications for import registration if those products have already received safety testing abroad and have submitted adequate information previously.
- The updating of the Catalogue of Standard Chinese Names of International Cosmetics Ingredients should take place as soon as possible and a system-updating mechanism should be established.
- The standardization of cosmetics should focus on product hygiene and safety. The proposed standards should be fully demonstrated and examined. It is necessary to implement strict examination procedures for the formulation of standards and to set up an effective communication and coordination mechanism to ensure that the standardization of cosmetics is systematic and scientifically sound.
- The irrational and non-scientifically sound elements of the existing 2007 Standards for Cosmetics Hygiene should be addressed as soon as possible, and updated.
- The pre-tax deduction percentage of the advertising and business publicity expenses of enterprises should be raised to address the reality of the cosmetics industry; the consumption tax rate of cosmetics and perfume products should be lowered to enhance the price competitiveness of the cosmetics market of China.
- It should be made clear that the Advertising Law and the Measures on Administration of Cosmetics Advertising are the basis of law enforcement. This will help the administration of cosmetics advertising meet international cosmetics industry practices and promote the development of the Chinese cosmetics industry.





# Dietary Supplements

China's dietary supplements (DS) industry is among the largest in the world. It helps promote health and wellness of consumers and promises significant potential for growth as the numbers of Chinese consumers expand. China is the largest global supplier of raw materials for the DS industry, while the US ranks first in manufacturing and marketing of finished goods. The industry is still developing and thus needs some adjustments as the market matures. The ambiguous nature of the current regulatory system and market environment has created a confusing experience for consumers, with mixed messages about the role of dietary supplements in a healthy lifestyle.

China's DS industry began about 20 years ago and currently ranks fourth in sales behind the US, Europe and Japan. Total sales for 2007 were approximately RMB 48 billion (US \$7 billion), although varying concepts about DS reduce the usefulness of that number. China defines, regulates and markets dietary supplements in categories such as over the counter drugs, traditional Chinese medicine, healthy functional foods and food. This variation not only makes it difficult to discern which products are included in market size estimates, but also makes importing from, and marketing dietary supplements, in China difficult for US and other global players.

China's lengthy registration system is costly and structured much like that of a pharmaceutical registration, which includes human and animal testing. The system also involves a variety of agencies with sometimes conflicting or overlapping authority, such as the State Food and Drug Administration (SFDA), Ministry of Health (MOH), General Administration for Quality Supervision Inspection and Quarantine (AQSIQ) and others.

Under the Dietary Supplement Health and Education Act, the US defines dietary supplements as a product (other than tobacco) intended to supplement the diet that contains one or more of the following dietary ingredients: a vitamin, a mineral, an herb, an amino acid or a dietary substance used to increase total daily intake. The US system is one of notification rather than registration, meaning that manufacturers must only notify the US Food and Drug Administration (FDA) of their facility's location, and give notice to the FDA of any new ingredients they plan to market. The FDA will then decide whether to allow the ingredient to be

marketed as a dietary supplement within 75 days. Both of the above notifications to FDA are free and much of it can be done on the FDA website.

Currently, the US dietary supplement market is estimated to be worth more than RMB 157.5 billion (US \$23 billion). The industry offers over 60,000 products to US and global consumers, with more than 200 million Americans who are daily consumers of dietary supplements. A number of factors, including a national law of notification, quality and effectiveness of products, consumer demand for healthier lifestyles, and increased healthcare costs contribute to the size and success of the US DS industry. The rational approach to the use of scientific knowledge for structure/function claims by recognizing a diverse pool of global scientific sources helps decrease health care costs and minimize product costs to the consumers.

US and Chinese manufacturers and suppliers would benefit equally from a shift in Chinese law toward notification and recognition of DS as a food-based industry, separate and distinct from pharmaceuticals. This shift would not only increase business opportunities for Chinese suppliers and distributors, but also benefit Chinese consumers through an expansion of affordable dietary supplements promoting health.

## Specific Issues

China is undertaking two separate regulatory initiatives likely to have a significant effect on the DS industry. First, in 2005, SFDA was separated from the MOH to give the agency more autonomy and authority. However, over the last three years, circumstances have led MOH to regain administrative oversight over SFDA. This reorganization will play a role in the industry's outlook.

Second is the recent passage of China's Food Safety Law, which will replace the Food Hygiene Law of 1995. AmCham-China appreciates that it had the opportunity to comment on the legislation during its drafting. The Law was passed by the National People's Congress on February 28, 2009 and raises safety standards, increases fines and punishments, and institutes a system of risk evaluation that includes monitoring 500,000 companies. Responsibility for

# 膳食补充剂

中国的膳食补充剂产业在世界膳食补充剂产业位居前列。该产业有助于提高消费者的健康水平，并随着中国消费者数量的增长，展现出广阔的市场前景。中国是世界膳食补充剂原材料的最大供应国，而美国是世界上最大的产品制造国和销售国。膳食补充剂产业仍在不断发展中，并随着市场的日渐成熟进行适当调整。当前监管制度和市场环境的不确定性使消费者对膳食补充剂在健康生活方式中所发挥的作用众说纷纭。

中国的膳食补充剂产业大约在二十年前开始起步，目前销售额位居美国、欧洲和日本之后，名列全球第四位。尽管由于对膳食补充剂的定义众多，使统计数据可能偏少，但2007年，中国膳食补充剂产业的总销售额已达约480亿元人民币（70亿美元）。中国通过将膳食补充剂分为非处方药、中药、保健食品和食品等几类来对其进行定义、监管和销售。这种分类变化不仅使市场规模评估应包括哪些产品的问题变得更加困难，而且也不利于美国及其他国家的企业从中国进口及在中国销售膳食补充剂产品。

中国膳食补充剂注册制度收费较高，而且与药品注册程序非常相似，需要包括人体试验和动物试验。注册制度涉及多个在职能上存在冲突或重叠的机构，如中国国家食品药品监督管理局、卫生部、国家质量监督检验检疫总局等。

根据美国1994年通过的《膳食补充剂健康与教育法》(DSHEA)，将膳食补充剂定义为：以补充膳食为目的，含有以下一种或多种膳食成份的产品（烟草除外）：维生素、矿物质、草药、氨基酸或者其他可以帮助增加每日进食量的补充剂。美国采用的是通报制度，而非注册制度，意味着生产企业仅须向美国食品药品监督管理局通报其生产厂址，以及其计划上市的新成份。此后，美国食品药品监督管理局将在75日内决定是否允许该成份作为膳食补充剂销售。上述两项通知均无须支付任何费用，而且大部分工作都可在美国食品药品监督管理局的网站上完成。

当前，美国膳食补充剂的市场价值估计超过1,575亿元人民币（23亿美元）。该产业向美国及全球消费者提供了超过60,000种产品，日常食用膳食补充剂的美国人数超过2亿。美国膳食补充剂产业之所以能够达到目前的规模并实现成功，得益于以下几个方面：全国性的通报制度、产品的质量和功效、消费者对更为健康的生活方式的需求，以及卫生保健费用的增加等。通过对全球多样化科学资源的认可，理性地运用产品功效声明的科学知识，将有助于减少消费者的卫生保健费用，降低产品成本。

如果中国的法律能够向通报制度转变，并且认可膳食补充剂产业属于食品产业，独立并明显区别于药品产业，那么中美两国的生产商和供应商都将从中获益。这一转变将增加中国供应商和经销商的商业机会，而且通过推广价格适中的膳食补充剂，有益于中国消费者的健康。

## 具体问题

目前，中国正在实施两项或对膳食补充剂产业产生重大影响的监管方案。首先，2005年，国家食品药品监督管理局从卫生部分立出来，以增加自主性和权力范围。然而鉴于过去三年的发展情形，国家食品药监局又重新回置于卫生部。这一重组对膳食补充剂产业的发展前景产生较大影响。

其次，中国近期公布了《食品安全法》，将取代1995年的《食品卫生法》。中国美国商会对有机会向该法草案提出意见和建议表示感谢。2009年2月28日，第十一届全国人大常委会第七次会议公布了《食品安全法》，提高了食品标准，加大了惩罚力度，制定了风险评估系统，包括对50万家企业的实时监测。食品安全将由国家质量监督检验检疫总局、国家药监局及卫生、农业、商业和工业相关部门共同负责。

中国美国商会了解到，中国监管机构建立当前制度是为了保护消费者权益，防止其受到欺诈性产品和不安全产品的侵害。然而，由于监管制度自相矛盾、难以统一协

food safety will be divided among the AQSIQ, the SFDA and the ministries of health, agriculture, commerce and industry.

AmCham-China understands that China's regulators have established the current system to protect consumers from fraudulent and unsafe products. However, regulatory contradictions, harmonization issues and a lack of transparency that stifles industry growth impede effectiveness. The re-organization of SFDA and the forthcoming implementation of the new Food Safety Law present the perfect opportunity to review the DS industry in China and make necessary regulatory adjustments to improve access for manufacturers and consumers.

Areas of concern are the SFDA's product registration process, permitted health claims and ingredient potency restrictions. Addressing these issues will enable China's DS sector to take full advantage of the progressive research and development, advancements in technology and best practices in business development that foreign companies offer. Amending current regulations will also benefit Chinese consumers by increasing the domestic availability of dietary supplements already available in international markets. Consumers will potentially also enjoy lower prices as manufacturers save money on high registration costs.

### SFDA Product Registration

Prior to market entry, manufacturers must register dietary supplements with the SFDA. The process requires enormous investments of time and money. A typical registration can take up to two years, costing upwards of US \$50,000 (RMB 342,500). However, if the ingredient or product is new to the market, it can take as long as five years and up to US \$500,000 (RMB 3.4 million). After market entry, the registration must be renewed every five years, adding unnecessary regulatory processing for products already safely in the market.

The global DS industry continuously evolves and improves through scientific and technological advancements. Because of the lengthy registration process, enterprises are unable to introduce new products rapidly or reposition product lines to meet consumer demands, resulting in far fewer of the most advanced products and higher retail prices due to registration costs.

### Health Claims

The SFDA lists 27 approved functional claims that marketers of DS can make. These claims can only be made after products go through a lengthy testing process including animal and human testing, similar to the approval process for pharmaceuticals. There are two main problems with the current list. First, the list does not fully cover all known health benefits from supplements. For example, years of research support the claim that the ingredients Glucosamine and Chondroitin benefit human joint health, but "joint

health" is not an approved function.

Second, even ingredients that have been tested and proven to have a specific function must go through all testing procedures for each application. This process is redundant, adding time and fees to product registration. Ingredients with established functions should not have to undergo testing anew each time a company wants to register it. A more practical solution would be to adopt a structure/function claim system based on a list of approved ingredients and their scientifically proven functions.

### Potency Levels

The SFDA has potency-level restrictions for nutritional supplements that do not always coincide with current DS research. For example, the latest research indicates pregnant women should supplement their daily diets to meet their increased nutritional needs with: calcium (Ca) 1300mg, iron (Fe) 25mg and folic acid (acidum folicum) 600mcg. The National Academy of Science's Institute of Medicine's Daily Reference Intakes reflects this research. This information comes from a US non-profit organization that advises policy-makers and industry leaders on public health matters. However, the SFDA's Regulations for Application and Evaluation of Nutritional Supplements subsection IV states that "supplements should be reduced by 1/3 to 2/3 of the recommended dosage for pregnant women."

Per SFDA regulations on daily intakes, calcium would be reduced by 50 percent, iron by 48 percent and folic acid by 44 percent. Limitations leave no room for the industry to adjust potencies to match current research. Also, these limitations become a trade barrier to foreign companies that have time-tested, scientifically-based products used for decades in the US and other countries if products exceed SFDA's current potency limitations.

### Summary

China's DS industry has great potential and a growing consumer base. Regulatory reform will allow China's DS market to expand, benefiting both US and domestic enterprises. Free and open access to dietary supplements benefits the government, the industry and, most importantly, the consumer. For example, an October 2007 report in the US peer-reviewed publication *Nutrition Journal* concluded that the health of people who used dietary supplements was generally better than that of non-users. Furthermore, the Lewin Group, a US healthcare and human services research group, concluded that DS were responsible for saving the US government billions of dollars in medical expenses partly because the DS industry promotes healthy products and lifestyles to consumers. However, the current regulatory system is evolving too slowly, reducing these benefits in China.

调且缺乏透明度,使产业发展受到抑制,效率难以提高。中国国家食品药品监督管理局的重组以及即将实施的新《食品安全法》,为重新审视中国膳食补充剂产业提供了绝佳的机会。同时,通过对监管制度进行的必要调整,使生产企业和消费者更好地利用膳食补充剂产业。

我们对国家食品药品监督管理局的产品注册程序、允许的保健声明以及成份含量的限制等问题十分关注。若妥善解决上述问题,中国的膳食补充剂产业将能够充分利用先进的研发成果、科学技术,以及外国企业提供的最佳实践经验。对当前监管制度的改善,可使国际市场上的膳食补充剂产品越来越多地进入到国内市场,从而使消费者获益。此外,由于生产企业节省了高昂的产品注册费,消费者的购买价格也将被降低。

### 国家食品药品监督管理局的产品注册程序

在产品进入市场之前,生产企业必须向国家食品药品监督管理局注册膳食补充剂。该程序需要投入大量的时间和金钱。一般注册程序耗时两年,费用高于5万美元(342,500元人民币)。然而如果是新上市的成份或产品,注册时间需五年之久,费用高达50万美元(340万人民币)。另外在产品进入市场之后,注册程序必须每五年更新一次,这对于已经在市场上销售的安全产品来说将增加不必要的监管成本。

随着科学技术的进步,全球膳食补充剂产业也需要不断地发展和改进。由于注册程序冗长,企业无法根据消费者的需求迅速推出新产品或重新配置生产线,从而导致先进的产品越来越少,而零售价格却又居高不下。

### 产品健康功效声明

中国国家食药监局列举了一份列有27项允许膳食补充剂经销商使用的产品功效声明清单。然而,在做出这些功效声明之前,产品必须经过冗长的试验程序,包括类似于药品审批程序中的动物试验和人体试验。当前所列举的功效声明清单主要有两个问题。首先,该清单并未完全涵盖所有已知的补充剂的保健功效。例如,多年研究证明,氨基葡萄糖和软骨素对人体关节的健康有益,但“关节保健”却没有被列入已批准的功效声明清单中。

其次,即使是已通过检测并证明具有某种特定功效的成分,也必须在每次应用之前通过所有的测试程序。这种不必要的重复性做法使注册过程增加了额外的时间和费用。对于其功能已经得到证明的成分,不需要每次在企业对其进行注册时都必须重新测试。根据已获批成分的

清单及其经过科学证实的已知功效,建立一种新的功效声明制度,将是一种更为实用的做法。

### 效力水平

中国国家食品药品监督管理局对膳食补充剂效力水平的约束有时并不符合当前膳食补充剂的研究结果。例如,最新研究表明,怀孕期间的妇女需要在日常膳食中补充以下成份,以满足日益增加的营养需求:钙1300毫克、铁25毫克、叶酸600微克。美国国家科学院医学研究院的“药物每日参考摄入量”证实了这一研究成果。该研究成果来源于美国的一家非营利性组织,该组织负责向决策者和行业领先企业提供公共卫生事务的建议。然而,中国国家食药监局制定的《营养素补充剂申报与审评规定》的第四条却规定:“孕妇服用的补充剂剂量应减至建议量的1/3至2/3。”

根据国家食品药品监督管理局对每日摄入量的规定,钙将减少50%,铁减少48%,叶酸减少44%。有了这样的效力约束,膳食补充剂产业将无法根据当前研究成果调整效力。而且,外国企业一旦超出国家药监局当前对效力水平的约束,上述约束将成为这些企业的贸易壁垒,即使他们的产品已经在美国使用数十年之久,并经过了时间检验和科学证明。

### 结论

中国的膳食补充剂产业潜力巨大,而且消费者基数不断增长。监管制度的改革可以扩大中国的膳食补充剂市场,并对美国和中国企业都有利。膳食补充剂的自由、公开使用不仅有利于中国政府、膳食补充剂产业,而且更重要的是可以让消费者获益。例如,美国同行评审刊物《营养期刊》2007年10月的一份报告称,使用膳食补充剂的人普遍比没服用的人健康。此外,美国的一家卫生保健和对人服务研究组织Lewin Group的结论认为,膳食补充剂为美国政府节省了数十亿美元的医疗开支,部分因为膳食补充剂产业为消费者带来了健康的产品和生活方式。然而,由于中国目前的监管制度发展速度过于缓慢,使中国尚未能够享受到所有这些益处。

### 建议

- 参照美国的通报制度,取代国家食品药品监督管理局的产品注册程序。市场准入应当以经批准的膳食补充剂成分清单为基础。通告体系将使企业不必重复注册程序,从而使国家食品药品监督管理局集中

### Recommendations

- **Replace SFDA's product registration process with a notification system like that in the US. Access should be based on a list of approved ingredients.** Notification would eliminate the need for re-registration and free up SFDA personnel and resources to enforce market surveillance, which would enhance consumer protection. Removing the added expense of registering products would also reduce costs to consumers.
- Adopt a function/structure claim system that allows for a broad range of claims to be made about dietary supplement ingredients based on scientific evidence.
- Overhaul dietary supplement ingredient potency restrictions, or, at a minimum, alter the strict restrictions so that they become recommendations that serve as guidelines. AmCham-China urges the recommendations be made more flexible to coincide with the latest in nutritional science recommendations.

更多的人力资源, 以更好地实施市场监督, 增强对消费者合法权益的保护。取消额外产品注册费用, 也可降低消费者所承担的费用。

- 采用新的功效声明体系, 允许企业在科学根据的基础上, 针对膳食补充剂成分的功效做出广泛的声明。
- 修改膳食补充剂成分效力约束条款, 或者至少调整目前较为严格的限制, 使其成为指导性的建议。中国美国商会希望这些建议能够更加灵活, 以符合当前最新的营养科学的要求。

## Direct Sales

The government first issued direct selling regulations in 2005 and began approving license applications the following year. Direct selling operations in China began in 2007. China's Ministry of Commerce (MOFCOM) and the State Administration of Industry and Commerce (SAIC) held meetings separately with AmCham-China to exchange views on the direct-selling issues raised in recent *White Papers* and discuss difficulties encountered during the license application process and in commencing company operations. AmCham-China appreciates the Chinese government's efforts to support development of the direct selling industry in China.

Despite many challenges, including a slow-moving application process and a high burden of service center requirements, AmCham-China member companies remain enthusiastic about market prospects in China. As a whole, the direct selling industry has invested hundreds of millions of dollars in the Chinese market and most industry executives remain hopeful that China will fully comply with its WTO obligations and bring direct selling regulations in line with international best practices.

### Specific Issues

#### Market Access

Since the Direct Selling Administration Regulations (Regulations) were promulgated in August 2005, MOFCOM has approved and issued 21 direct selling licenses. However, no application has been approved since July 2007. According to the information available within MOFCOM's direct selling industry administration management system, at least another 16 companies applied for direct selling licenses prior to 2008, but have not yet been approved. Although the Regulations indicate that the approval process takes 90 days, many companies have been waiting more than 18 months for approval with little clarity on timing or the issues slowing the process. AmCham-China encourages the Chinese government to provide market access and increase transparency by simplifying the approval process, providing timely updates during the review process and increasing the speed of approvals according to the 90-day process in the Regulations.

#### Service Center Establishment

Meeting service center requirements is the biggest challenge both for companies applying for direct selling approval and also for those starting operations. The legislation specifies that a direct selling company operating in a specific province must also operate a provincial branch office there. In addition, there must be a "service center" in each urban district in which a direct seller sells products. This would require 2,861 service centers to cover all urban districts in China.

AmCham-China believes that requiring a service center in each urban district is unnecessary and overly burdensome to companies. Many companies approved are currently permitted to sell in only one province or city in China, significantly restricting their ability to expand. More importantly, direct selling does not take place in one location, thus geographical restrictions make it nearly impossible for companies to ensure their direct sellers are in compliance. To comply with the geographical restrictions, companies must simultaneously adopt two different business models to meet the requirements of direct sales and non-direct sales.

AmCham-China urges the Chinese government to increase transparency and simplify the approval and establishment process for service centers. Decisions about when to expand service centers should be left to each company.

The Regulations specify that service centers merely process product returns and provide price and product information to consumers. Yet this requirement is still subject to inconsistent regional interpretation and implementation. For example, some districts have minimum size requirements that create undue burdens for companies. AmCham-China urges more transparency and consistency in implementation.

#### Compensation Restrictions

The compensation regulations drastically restrict the ways that direct selling companies can compensate their sales forces. Contrary to international industry norms, direct sellers are not allowed to develop networks of sellers in China. In addition, there is a cap that limits compensation based on personal sales

## 直销业

中国政府2005年首次出台了直销条例，并于第二年开始审批直销营业执照的申请，2007年直销行业正式在中国开始运营。中国美国商会直销论坛分别与商务部和国家工商总局就《白皮书》中所提到的有关直销方面的问题交换了意见，对企业在执照申请期间的困难以及公司运营过程中的问题进行了讨论。中国美国商会非常赞赏中国政府对支持直销业在中国的发展所作出的努力。

尽管面临直销执照申请审批程序缓慢、服务网点设立困难等诸多挑战，中国美国商会与直销行业相关的会员公司依然对中国的市场前景充满信心。目前，直销业在中国市场上的总体投资已达数亿美元，并且大多数业界高管都相信中国会完全遵守入世承诺，使直销条例符合国际最佳通行惯例。

### 具体问题

#### 市场准入

自2005年8月《直销管理条例》（以下简称“条例”）颁布以来，商务部已经批准21家直销企业的申请并颁发了营业执照。但自2007年7月至今就再无一家企业获得批准。商务部直销业行政管理系统的公开信息显示，截止到2008年，至少还有16家企业已提出直销申请，却尚未得到批准。尽管条例表明审批时限为90天，但其中一些公司已等待18个月以上，而且也不了解审批通过的时间表和导致审批程序缓慢的原因。中国美国商会敦请中国政府相关部门通过简化审批程序，及时提供更新信息，并依照直销条例中90天的期限规定，提高审批速度，推动市场准入，增加政府透明度。

#### 服务网点的设立

要达到服务网点的设立要求，不论是对正在申请直销许可、还是刚刚开始直销业务的公司来说，都是一项很大

的挑战。《条例》规定，直销公司除必须在开展业务的省份设立一个省级分支机构外，还必须在每个产品销售的城区内建立一个“服务网点”。这就意味着若要覆盖中国所有的城区，就需要建立2861个服务网点。

中国美国商会认为，没有必要要求在每个城区都设立服务网点，这会加重企业负担。同时目前许多获批的企业只允许在中国某一个省或城市中开展业务，严重制约了其业务扩展能力。更为重要的是，直销的经营活动不仅限于一个固定场所，因此要求企业确保其直销人员遵守这些地域限制几乎是不可能的。若要遵守这些地理上的限制，公司必须同时采用两种商业模式，以满足对于直销和非直销业务的不同规定。

中国美国商会敦促中国政府增加透明度，简化服务网点的审批和设置程序。何时扩展服务网点应由各公司根据自身发展要求来决定。

《条例》规定，服务网点只能提供处理产品退货、价格和产品信息等服务。然而，这一规定在不同地区仍有不同的解释和实施办法。例如，某些地区设定的最低规模限制就给企业带来了不必要的负担。中国美国商会鼓励中国政府提高条例实施方面的透明度和一致性。

#### 报酬限制

《条例》对企业给与其直销人员报酬的方式作了严格的限制。与现行国际行业规范相反的是，在中国直销人员不允许发展直销网络。此外，规定直销人员的报酬上限不得超过其个人销售额的百分之三十。这就使直销公司不能以传统的方法调动其销售代表的积极性。

另外，此上限还适用于所有的收入，包括佣金、奖金、奖励和其它经济所得。这就使得直销企业与采用其它分销渠道的公司相比处于极大劣势。例如，零售业和保险业没有类似的限制。根据一般的商业惯例，分销成本占零售价

to 30 percent of revenue. That inhibits direct selling companies from motivating their sales representatives through traditional means.

Furthermore, the cap applies to all income, including commissions, bonuses, rewards and other economic benefits. This puts direct selling companies in China at a great disadvantage relative to businesses using other distribution channels (i.e., retail sellers and the insurance industry have no such restrictions). Under general business practices, 50 percent of the retail price covers distribution costs, including commissions and overhead. Aside from South Korea (which has a commission cap based on company sales rather than personal sales, allowing for greater economic reward of sales personnel), no other country limits the income received by direct selling agents.

The Regulations restrict the basis for compensation to the price of the products, eliminating a company's ability to incentivize salespeople, a significant departure from norms like the United Nations' Consumer Product Code with its internationally accepted definition of direct selling, under which salespeople may earn compensation from the sales of both products and services.

#### Limited Product Categories

Presently, the Regulations limit direct selling companies to products from five categories (cosmetics, dietary supplements, cleaning products, health exercise equipment and small kitchenware). It is in the best interests of China's manufacturing and direct selling industries' development to increase product categories to meet international common practices.

#### National Treatment Issues

The Regulations require that foreign-invested companies have at least three years of direct selling experience in other markets before applying for a license in China. There is no similar restriction for domestic companies, thus unfairly discouraging foreign-invested enterprises from the direct selling channels in China. AmCham-China is concerned that this restriction runs counter to China's "national treatment" obligations under its WTO accession agreement and urges relevant authorities to remove the restriction.

China stands to benefit greatly from introducing direct selling as a distribution channel for consumers. Direct selling helps alleviate unemployment in developing regions and provides products that are otherwise unavailable. AmCham-China strongly urges regulatory authorities to work with industry to bring China's direct selling business in line with international practices and fulfill China's WTO commitments in the area.

### Recommendations

- **Provide market access and increase transparency by (1) simplifying the approval process, (2) duly informing companies regarding the approval progress and (3) speeding approvals according to the 90-day process in the Regulations.**
- Bring direct selling regulations in line with China's commitments and common international practices.
- Revise requirements for having a service center in each district, to one per city, and ensure local requirements are consistent with national regulations.
- Eliminate the need for approval of service centers at the district and county level, and require reporting only.
- Increase product categories in line with international common practices.
- Eliminate restrictions on compensation that unnecessarily undermine the ability of direct selling companies to motivate salespeople.
- Allow direct sellers to receive remuneration for sales support services.
- Remove the requirement that foreign-invested companies have three years direct selling experience outside of China and promote non-discriminatory, equal treatment for foreign and domestic companies in the industry.

格的50%，其中包括佣金和日常开支。除了韩国有报酬上限规定外（其报酬上限是根据公司销售总额而非个人销售额所设定，允许给予销售人员更多的经济回报），没有任何国家对直销代理在销售收入上设置限制。

《条例》还将报酬基础限定于产品价格本身，使公司无法有效地激励销售人员，这与诸如联合国消费产品规范等具有国际公认定义的规范相去甚远，在这些国际公认规则的框架下，销售人员的报酬不仅可以从产品的销售中获得，还可以从服务销售中获得。

#### 限制直销的产品类别

目前的《条例》将允许直销的产品限定于五个类别（化妆品、保健食品、清洁用品、保健器材和小型厨具）。如果按照国际通用惯例增加产品种类，将可以使中国的制造业和直销业获益更多。

#### 国民待遇问题

《条例》规定，外商投资企业需要具备在中国境外市场至少三年的直销经验，才能在中国申请直销营业执照。但对国内企业并无类似限制，这就不公平地影响了外资企业进入中国的直销渠道。中国美国商会所关注的是，该限制违背了中国入世协议所承诺的“国民待遇”义务，并敦请相关政府机构取消这项限制。

将直销作为一种分销渠道引进中国，可使消费者从中受益。在中国的发展中地区，直销不仅有助于缓解失业，而且还能提供其他分销渠道难以提供的产品。而中国美国商会强烈希望监管部门按照国际通用惯例来处理中国的直销业务，并履行中国在该领域的入世承诺。

#### 建议

- 通过 1) 简化审批程序、2) 适时通知公司有关审批进展情况及 3) 按照条例中规定的90天期限加快审批进程，来推动市场准入和增加透明度。
- 修改直销条例使其符合中国的入世承诺和国际通用惯例。
- 将每个城区设置一个服务网点的规定修改为每个城市一个服务网点，并确保地方规定和国家规定相一致。
- 取消建立服务网点需通过区、县级审批的规定，建议改为报备即可。

- 增加产品种类，以符合国际通用惯例。
- 取消对报酬额度的限制，以减轻其对直销公司激励机制的不必要的影响。
- 允许直销人员从销售支持服务中获取报酬。
- 取消对外资企业的三年境外直销经验的要求，平等对待该行业中的外国和本国公司。

## Financial Services

China's development of a more open and diversified financial services sector is essential for maintaining a healthy flow of capital during the current global economic downturn. Areas to focus on include commercial banking, non-bank financial institutions, securities underwriting, asset management, mergers and acquisitions (M&A), and direct investment (e.g., private equity, venture capital, hedge funds).

Over the last year, China has made progress in reforming its financial services sector. China's establishment of Small Lending Companies (SLC), the promulgation of regulations governing financial leasing companies and the government's continuous effort to develop its national credit information system are all welcome developments. In addition, China made positive efforts to develop its investment services sector. Of note were the new regulations allowing domestic commercial banks to extend loans to finance M&A transactions, the trial introduction of derivatives trading on China's B-share market and the discussions surrounding the lifting of Qualified Foreign Institutional Investors investment quotas.

While we commend Beijing's efforts to implement healthy oversight of its investment services industry, more can be done. China may be hesitant to globalize its financial services sector and capital markets in light of the financial crisis. Nonetheless, given the country's relatively stable liquidity position and high savings rate, quicker global integration of its financial services sector would strengthen the industry. Establishing a more robust and liberalized financial sector would lead to greater access to capital for Chinese and foreign enterprises. This, in turn, would promote pan-industry job creation, encourage technology sharing, stimulate consumer spending, and strengthen economic and social stability.

We urge China to ease current capital and credit restrictions for foreign commercial banks, expedite the approval process for receiving RMB licenses, support foreign participation in domestic credit card issuance, streamline M&A transaction approval processes, cultivate more diverse investment products, lift restrictions on foreign participation in fund management services and forge a fair regulatory framework for foreign private equity/venture capital funds. These actions would create a more

equitable and global financial services market for all participants and a healthier and more competitive Chinese financial system.

### Financial Institutions

The 2008 credit crisis precipitated the global economic downturn. Economies did not decouple from the US and major trading nations, such as China, were significantly affected. However, due to its strong credit position, China, and its financial services industry, fared better than most. China's conservative regulatory regime partially eased the effects of the downturn. Nevertheless, just as the completion of China's accession to the WTO in 2006 was the beginning, not the end, of financial sector reform and liberalization, China's banking regulators should avoid seeing the financial crisis as a moment to slow or stop reform. The urgent problems of 2008 required a shift of priorities by financial regulators. We encourage China to continue to strengthen its banking system and streamline the creation of products and services. Furthermore, it is important to embrace the fact that prudent use of leverage has a place in both the financial sector and in corporate financial management and consumer behavior. This is essential to the goals of China's economic stimulus plan, namely creating higher levels of consumer demand to resume sustainable economic growth.

Continued financial liberalization would help innovative financial institutions create new and valuable products and services. Furthermore, regulatory guidance ensures equal access to financial markets for both domestic and foreign financial institutions with appropriate risk mitigation.

### Commercial Banking

#### *Funding of Foreign and Local Currency*

The State Administration of Foreign Exchange (SAFE) continued to lower allocations of foreign debt quota (FDQ) in 2008. This imposed US dollar and other foreign currency funding pressure on foreign banks. Increasing both short and long-term FDQ is important to foreign banks since they have limited onshore funding given their low market penetration among

## 金融服务

在目前全球经济衰退时期，中国大力发展更加开放而多元化的金融服务行业，对于保持良好的资本流动不可或缺。需要关注的领域包括商业银行、非银行金融机构、有价证券承销、资产管理、兼并收购 (M&A) 以及直接投资 (私募基金、风险投资、对冲基金)。

过去一年里，中国金融服务行业的改革取得了成效。成立小额贷款公司 (SLC)、颁布金融租赁公司的管理规定、以及政府在发展国内信贷信息系统方面的不懈努力，这些都是可喜的进展。此外，中国积极努力发展投资服务行业。比较重要的诸如，允许国内商业银行向金融并购业务提供贷款的新规定，中国B股市场尝试引入衍生产品交易，以及围绕提高合格境外机构投资者配额的讨论。

虽然我们赞赏北京在对投资服务行业实行健全的监管所作出的努力，但有更多的工作尚待完成。由于目前的金融危机，中国在金融服务行业和资本市场全球化问题上有些犹豫。然而，鉴于中国相对稳定的流动资金情况和高储蓄率，尽早实现金融服务行业的全球一体化将有助于该行业实力的增强。建立更加健全而自由的金融行业将给国内外企业带来更多的资金渠道。反过来，这也将促进整个行业的就业机会、鼓励技术共享、刺激消费者支出、并促进经济和社会稳定。

我们主张中国放宽目前对国外商业银行的资本和信贷限制，加快人民币业务许可的审批程序，支持外资银行参与国内信用卡发行，简化并购业务审批程序，培养更加多样化的投资产品，解除外资银行从事资金管理服务的限制，以及制定公平的国外私募股权/风险资本资金监管制度。这些举措将为所有参与者创造一个更加公正和全球化的金融服务市场，一个更加健康和更具竞争力的中国金融体系。

### 金融机构

2008年的信贷危机引发了全球经济衰退。由于很多经济体与美国保持联动性，包括中国在内的主要贸易国家都受到了严重影响。然而，由于其强大的信贷头寸，中国及其金融服务行业的表现远好于多数国家。中国保守的监管制度一定程度地削弱了经济衰退对中国的影响。尽管如此，正如2006年中国的入世是金融行业改革和自由化的起点而不是终点，中国银行业监管机构应避免由于金融危机而放慢或停止改革的步伐。2008年急迫的问题要求金融监管机构调整工作的重点。我们鼓励中国继续稳固银行业系统，简化产品和服务的创设。而且，无论金融行业、公司财务管理和消费者行为，都需要谨慎使用杠杆效应，认清这个事实很有必要。这一点对于中国实现其经济刺激计划的目标，即拉动消费需求以恢复可持续经济增长，具有至关重要的意义。

坚持金融自由化有利于金融创新机构开发有价值的产品和服务。此外，确保具备适当的风险缓解能力的国内外金融机构，在监管指导下能够平等地进入金融市场。

### 商业银行

#### *外币和本币融资*

2008年，国家外汇管理局 (SAFE) 继续削减外债配额 (FDQ)，给外资银行的美元和其他外币融资带来压力。增加短期和长期外债配额对外资银行来说至关重要，因为外资银行的存款人市场渗透度很低，其境内融资能力不足。同时，由于外资银行的业务重点更多地是向跨国公司提供贷款，外债配额就显得尤为重要。当境内外币借款来源有限或无法获得时，外债配额也是融资的重要支持，能够加强银行的资本充足率。因此，若监管机构能够保证给外资银行的外债配额在未来几年内保持稳定，将为外资银行的流动性管理提供极大的帮助。主管部门应考虑在境内外币货币市场充当临时做市商的角色，确保银行有充分的渠道进行竞争性资金定价。

depositors. FDQ is especially essential to funding given banks' larger focus on lending to multinational corporations. FDQ also serves as an important funding backstop when onshore foreign currency for borrowing is limited or unavailable and can enhance banks' capital adequacy. Consequently, regulatory assurances that available quota will remain stable in future years would greatly assist foreign banks in managing their liquidity. The authorities should consider adopting an interim role as market maker in a domestic foreign currency money market to ensure banks have adequate access to price competitive funds.

RMB funding remains fragmented and inefficient. Other than corporate and retail deposits, there are limited liquid sources of RMB funds for foreign banks. One source is through the China Foreign Exchange Trading System (CFETS). These funds are available at competitive rates. However, the amount banks can borrow is limited to a small multiple of their local capital, putting foreign banks with smaller capital bases at an obvious disadvantage.

A second source is onshore US dollar to RMB swaps. In this market, rates are unattractive because of the illiquidity of the domestic foreign currency money market, which prices foreign currency at a premium. Furthermore, foreign banks also face foreign currency shortages to fund their foreign currency books, exacerbating the problem.

The last source is bilateral arrangements with banks. Currently, rates are spotty and RMB is usually priced a premium over the Shanghai Interbank Offered Rate (SHIBOR) benchmark reference rate. While SHIBOR is a good benchmark, it is usually a symbolic indicator and not readily available when foreign banks attempt to borrow bilaterally from local banks.

To make inter-bank domestic currency borrowing consistent with international norms, SAFE authorities should consider several different options. They could ease or eliminate caps placed on the amount foreign banks can borrow through CFETS; increase or eliminate altogether the foreign debt quota, making US dollar to RMB swap transactions more market-driven; undertake measures to ensure SHIBOR becomes market-driven, rather than symbolic; and allow foreign banks to borrow bilaterally from other foreign banks. In addition, the People's Bank of China (PBoC) should consider becoming the market maker and lender of last resort to provide liquidity to the financial system, in addition to its central bank duties.

We also believe the new and retroactive 10 percent withholding tax imposed on offshore interest payments places a significant burden on foreign financial institutions. In addition to managing ever-decreasing FDQ, regulations now stipulate that funds taken from regional treasury offices in places like Hong Kong or Singapore withhold this 10 percent tax from interest payments. This increases the cost of funds for banks in an environment of ever-decreasing debt quota. No major global financial centers impose

such a tax on inter-bank borrowings, and China should move away from it too.

Similarly, a lack of clarity in the revised Provisional Business Tax (BT) Regulations and their detailed Implementation Rules, effective January 1, 2009, may also place a disproportionate burden on foreign banks. BT is a turnover tax applicable on income derived by financial institutions and insurance companies and generally applies at the rate of five percent on the gross amount of the taxable turnover. The new BT regulations are unclear as to whether offshore inter-bank funding would be subject to the five percent business tax, although clarification from the State Administration of Taxation (SAT) suggests that it would. This is different from on-shore inter-bank funding where no BT is charged, and would again significantly increase the cost of funds for banks.

Given the short operation record in China, many of the non-incorporated foreign banks have limited business scale, yet are subject to tight controls on financing their operations. Although these controls are the same throughout China's banking system, they disproportionately affect foreign banks, which do not have the deposit base of domestic banks. Moreover, foreign banks that do not hold an RMB license are restricted from taking small deposits from retail customers and face difficulty in entering the inter-bank market. They are thus unable to compete with domestic banks on a level playing field.

#### **Capital Requirements for Non-Locally Incorporated Banks**

Banks focused on providing wholesale commercial banking services with no strategic interest in incorporating locally should face capital requirements within the norms of other world-class international financial centers. The current minimum requirement of RMB 200 million (US \$29.2 million) for a first branch in China to conduct foreign exchange transactions presents a barrier that prohibits all but the largest US banks from entering the market.

When approving a foreign branch in China, the authorities should consider the financial strength and resources of the applicant's head office (including compliance with the Bank for International Settlements' capital guidelines), projected capital position, the historical performance and future prospects. Furthermore, the local regulators should consider the supervisory regime in the applicant's home country, its regulatory powers and the frequency of supervisory examinations.

This would require the China Banking Regulatory Commission (CBRC) and other regulatory agencies to evaluate the applicant's capital adequacy, asset quality and liability management. This methodology of assessing capital adequacy is in line with the practices of top financial centers such as New York, Tokyo, London and Hong Kong. It would require additional regulatory capacity and depth, but would

人民币资金仍然不成体系,效率低。除了企业和零售存款,外资银行只有有限的人民币流动资金来源可用。第一个来源是通过中国外汇交易中心(CFETS)获得。这些资金的利率有竞争力,但银行只能借得仅限于其本地资本的小倍数的金额,资本金较少的外资银行明显处于不利的地位。

第二个来源是国内美元和人民币掉期交易。在这个市场上,由于国内外货币市场流动性差,外币以溢价定价,利率没有吸引力。此外,外资银行所面临的外币账户缺乏充实资金的事实,更加剧了这种情形。

最后一个来源是与银行的双向协议。当前利率不稳定,人民币通常是在上海银行同业拆放利率(SHIBOR)基准利率基础上以溢价定价。虽然SHIBOR是个很好的基准,但它通常只是象征性指标,在外资银行试图从本地银行双向借款时,该指标并不能现成获得。

为了使银行间国内货币借款符合国际标准,国家外汇管理局应当考虑几种不同的选择。他们可考虑放宽或消除外资银行可通过中国外汇交易中心借款数额的上限;提高或完全取消外债配额,促成美元和人民币掉期交易更加市场导向化;采取措施确保上海银行同业拆放利率成为有效的市场驱动利率,而不只是象征性指标;允许外资银行从其它外资银行双向借款。此外,中国人民银行应当考虑在履行央行的职能之外,发挥做市商和最后贷款人的至关重要作用,提供金融系统更多的流动性。

我们还认为溯及过往的、有关对境外利息付款征收10%的代扣所得税的新规定,给国外金融机构带来了重大的负担。除了应对不断减少的外债配额,政策目前规定,对于从香港或新加坡等地区资金管理中心获得的资金,将从利息付款中扣除10%的税。在外债配额不断减少的背景下,这一税赋又增加了银行的资金成本。全球主要的金融中心都不对这类银行间借款征收上述税项,因此建议中国予以取消。

同样地,2009年1月1日生效的经修订的《营业税暂行条例》及其实施细则的内容不明确,也给外资银行施加了不同程度的负担。营业税是适用于金融机构和保险公司所得的周转税,通常按照总应税营业额的五个百分点征收。新的营业税规定并没有清楚地说明对于境外银行间融资是否也按照五个百分点执行,尽管国家税务总局(SAT)解释说应予以征收。这与境内银行间融资不征收营业税有区别,会在很大程度上增加银行资金成本。

鉴于在华经营时间较短,许多非本地法人的国外银行

经营规模较小,而其经营资金则需要接受严格的控制。虽然这些控制措施在整个中国银行业系统都一样,但对不具备国内银行存款基础的国外银行造成了更大的影响。而且,未取得人民币经营许可的外资银行在接受零售消费者小额存款方面受到限制,在进入银行间市场方面也面临困难。因此,他们不可能在一个公平的赛场上与国内银行开展竞争。

#### **对非本地法人银行的资本要求**

对以批发商业银行业务为主、无本地注册战略意图的银行,资本要求可采用其他世界一流跨国金融中心的标准。目前要求首个中国分行开办外汇业务之前最低资本为2亿元人民币(2920万美金),这构成了入市障碍,影响了所有其它非最大美国银行之外的银行进入中国市场。

在审批欲在中国成立的外国分行时,主管部门应当考虑申请人总部的财务实力和资源(包括遵守国际清算银行资本指导原则的情况)、预计的资本头寸、以往业绩和未来的前景。此外,当地监管机构还应当考虑申请人本国的监督制度、其监管力度和监督检查的频率。

这一策略要求中国银行业监督管理委员会(CBRC)和其它监管机构对申请人的资本充足率、资产质量和债务管理进行评价。这种评价资本充足率的方法符合纽约、东京、伦敦和香港等其它主要金融中心的做法。尽管还有对监管能力和监管深度的要求,但对于推动中国金融行业跻身世界一流行列具有重要的意义。

#### **银行许可证**

目前,外资银行在中国建立分支机构后必须等待三年,并且在证明过去两年内的收益率之后,才有资格申请人民币业务许可。若外资银行在被授予分支机构许可证之时即可获得人民币业务许可证,这将简化审批程序(人民币业务许可的审查和分支机构的审查类似),也使外资银行能够扩展服务和产品,有利于中国企业和消费者。另外,本地注册的外资银行开设分支机构的审批时也应享受国民待遇。

我们促请中国银监会的监管人员加快新设分支机构的审批程序。若监管机构能够更加紧密而透明地与被监管人沟通相关信息,将有助于加快申请程序,确保监管机构和被监管人都能收到准确必要的信息。

#### **外资所有权限制**

当前,单个外资实体在中国本地银行中的所有权比

be important in moving China's financial sector to an elite level.

### Bank Licensing

Currently, foreign-invested banks must wait three years after establishing a branch in China and demonstrate profitability in the last two years before becoming eligible to apply for an RMB license. Foreign-invested banks should receive an RMB license upon the granting of a branch license. This would streamline the approval process (RMB license reviews are similar to branch reviews) and also enable foreign banks to expand services and products, benefiting Chinese businesses and consumers. Additionally, national treatment should apply to branch opening approvals for foreign locally-incorporated banks.

We urge CBRC regulators to expedite the new branch approval process. More frequent and transparent communication from regulators would also enhance the application process and ensure both the regulator and regulated are receiving accurate and precise information.

### Foreign Ownership Restrictions

Currently, ownership of a local Chinese bank is limited to a 20 percent share by a single foreign entity and a 25 percent collective share by all foreign entities. Chinese authorities welcome foreign investment into domestic banks in order to work with local management to introduce new methods of risk management, technology and product development.

Foreign banks that have incorporated locally should be allowed to wholly acquire local banks in accordance with local laws allowing any domestic bank to acquire another. Further, non-locally incorporated banks should be able to acquire a higher ownership stake in local banks in accordance with norms established in world-class financial centers. The goals of improved management, technology and risk management are not fully realized by limiting foreign banks from obtaining higher stakes in local banks.

### Trust and Custodial Banking

Trust and custodial banking will become increasingly important as China's domestic capital markets grow and Chinese funds are invested overseas. We encourage the Chinese government to adopt global practices and international standards, and recognize the special role of global custodians in the investment process. However, there is a clear distinction between the role of custodians and trustees. Global custodians act in accordance with instructions from clients. It is therefore inappropriate to require custodians to take on trustee responsibilities, such as the supervision of investment managers.

Current regulation of foreign banks' participation in the securities industry is unclear regarding the extent that foreign firms will be able to partner with local firms or to otherwise play a role in this industry.

We encourage the authorities to allow foreign banks to provide domestic custody services for domestic mutual funds, asset management companies, among others, and allow these institutions to obtain clearing bank licenses for financial future contracts. Qualified foreign banks bring developed service models benefiting all participants.

### Credit and Bank Cards

Although new banking regulations allow locally registered commercial banks to issue bank cards, non-bank financial institutions (NBFI) are excluded. Furthermore, we are waiting for regulators to introduce two additional bank card regulations. These regulations will outline new procedures for credit and debit card issuance and clearing/settlement. Expediting the enactment of these new rules would allow NBFIs to participate in the Chinese credit card market, spurring domestic consumption and investment—two key economic growth drivers.

In addition, data associated with these credit and bank card—as well as other types—of transactions processed by financial services companies should be allowed to be held offshore, provided proper safeguards for data integrity are secured and customer service quality is maintained.

The government should also end the monopoly that currently exists for clearing and settlement of card transactions, as well as merchant acquisition. A competitive market-based system for transactions clearing would help Chinese consumers, small business owners and the overall economy. We urge the government to encourage widespread installation and development of card machines and other equipment from competing brands among small and medium-sized enterprises (SMEs) to boost consumer spending.

### Non-Bank Financial Institutions

NBFIs provide critical financial intermediation to the underserved portion of China's economy, but remain an underdeveloped sector of China's financial industry.

### Financial Leasing Companies

We welcome the new CBRC regulation governing financial leasing companies. In 2008, many of the leading commercial banks in China established bank-affiliated financial leasing companies. At the same time, critical legislation lagged as the Operational Leasing Law developed by the National People's Congress remained in the drafting process. In contrast to bank-affiliated financial leasing companies, operational leasing companies approved by the Ministry of Commerce (MOFCOM) face very high hurdles accessing the inter-bank funding market and in customer acquisition. Thus, SMEs are disadvantaged in obtaining funding from these leasing companies. We urge the authorities to apply universal treatment to all leasing companies incorporated in China.

例不能超过20%，全部外国实体的总体份额不能超过25%。与此同时，中国主管部门欢迎外国投资国内银行，以与本地管理层合作，引入新的风险管理、技术和产品开发方法。

主管部门应当允许当地注册的外资银行按照允许国内银行收购另一家银行的地方法律规定，整体收购当地银行。此外，非本地注册的银行应当能够按照世界一流金融中心制定的标准，收购当地银行的较高股权份额。限制外资银行取得当地银行的较高股权份额，会影响全面实现管理、技术和风险管理改善的目标。

### 信托和托管银行

随着中国资本市场的发展以及国内资金投资海外，信托和托管银行将变得越来越重要。我们鼓励中国政府采用全球惯例和国际标准，并认识全球托管在投资程序中的特殊作用。不过，托管人和信托人的作用有着明确的区分，全球托管人只是按照客户的指示行事。因此，要求托管人承担信托人的职责（例如监督投资经理）是不恰当的。

对于外资银行对证券行业的参与，现行法规并未明确外资公司能够与当地公司合作的范围，或者以其它方式在此行业中发挥作用。我们鼓励主管部门允许外资银行为国内互惠基金、资产管理公司提供国内托管服务，并允许这些机构取得金融期货合同清算银行许可证。符合资格的外资银行带来成熟的服务模式，使所有参与方获益。

### 信用卡及银行卡

尽管新的银行业法规允许本地注册的商业银行发行银行卡，但是不包括非银行金融机构（NBFI）。而且，有关银行卡的另外两个法规的出台尚在等待中。这些法规将阐明信用卡和借记卡发行及清算/结算的新程序。加快制定这些新法规将使非银行机构能够加入中国信用卡市场，刺激国内消费和投资，这两个经济发展的重要推动力。

另外，应允许金融服务企业在境外保存其与信用卡和银行卡交易相关的（或其他类型）业务数据，前提是企业要采取妥善的安全保护措施确保数据完整性和保证服务质量。

政府还应终止目前在卡业务的清算和结算以及商户收单方面存在的垄断局面。基于市场的业务清算竞争体系无论对于中国消费者、小企业主和整体经济都有益。我们促请政府鼓励广泛安装、发展中小型企业具有竞争性品牌的取款机和其他设备，刺激消费者支出。

### 非银行金融机构

非银行金融机构为中国经济中服务水平发展不足的领域提供重要的金融中介服务，该行业仍然是中国金融领域欠发达的部分。

### 金融租赁公司

我们欢迎中国银监会制定新的法规管理金融租赁公司。2008年，中国许多主要商业银行建立了银行关联金融租赁公司。不过，一些重要立法工作滞后，如全国人民代表大会提出的《经营租赁法》，目前仍处于起草阶段。与银行关联金融租赁公司相比，商务部（MOFCOM）审批的经营租赁公司在进入银行间融资市场和在顾客拓展方面面临很大障碍。由此，中小型企业（SME）无法从这些租赁公司获得融资优势。我们促请主管部门对所有在中国注册的租赁公司给予相同的待遇。

### 汽车金融公司

我们欢迎修正汽车金融公司的管理规定，扩大这些公司的经营范围。鉴于汽车行业变换的市场环境，我们请求相关部门授权这些公司从银行间信贷市场获得资金。

### 金融服务公司

金融服务公司是中国非银行金融机构中欠发展的领域，尤其是跨国公司下属的金融服务公司。目前，中国国内大型集团企业共拥有超过九十家金融服务公司，而跨国公司拥有的金融服务公司只有五家。随着跨国公司继续在中国投资和发展，对集团内的相关金融支持和增强向供应商和消费者融资能力的需求会增大。金融服务公司的目标客户与银行目标客户形成互补关系。通常，跨国公司的金融服务公司能够向其客户和供应商提供银行不愿意借予的信贷。

自金融危机爆发以来，中国银监会和诸多地方政府已发布政策，鼓励集团金融服务公司的建立。现行法规对于经营范围、投资人资格要求、金融服务公司所能服务的集团成员公司、以及进入银行间市场的条件等有着较为严格的限制。

### 小额贷款公司

我们欢迎小额贷款公司在中国的出现。他们不仅能够向需要流动资本和其他金融服务的中小型企业（SME）提供信贷，也有利于解决目前广泛存在的、未经授权的公司或个人从事灰市借贷活动的问题。我们鼓励外资全面参



### Automobile Finance Companies

We welcome the revised regulation governing automobile finance companies, which broadened the scope of activities for these companies. Given the changing market environment of the automobile industry, we request that the appropriate entities authorize these companies to access funds from the inter-bank lending market.

### Financial Companies

Financial companies are an underdeveloped sector among NBFIs in China, especially those of multinational corporations (MNC). Currently, there are over 90 financial companies owned by major Chinese corporations, whereas there are only five owned by MNCs. As MNCs continue investing and growing in China, there will be greater demand for related financial support within the group and increasing financing capability to suppliers and customers. Financial companies' target clientele complements that of banks. For example, MNC financial companies, in general, can provide access to credit to its customers and suppliers, to whom banks may not want to lend.

Since the financial crisis, CBRC and different local governments have issued policies encouraging the establishment of group financial companies. Current regulations are quite restrictive regarding the business scope, qualification criteria of the investor(s), the group member companies that the financial company can serve, and access to the inter-bank market. The relaxation of these restrictions will help create new lenders in the market place, easing access to credit.

### Small Lending Companies

We welcome the advent of SLCs in China. They will not only provide credit to SMEs in need of working capital and other financial services, but also begin to address the widespread problem of "gray-market" lending by unauthorized companies or persons. We encourage foreign participation in SLCs throughout China and urge local relevant regulators to approve applications meeting the regulatory criteria for SLCs quickly.

The continued advancement of a nationwide credit bureau is essential to adding stability and efficiency to SME lending as the nature of the sector limits the ability to perform in-depth credit analysis based on conventional measures for larger corporate clients.

We note that the Chinese government has adopted various measures and pilot programs in both SME and rural financing. The pilot program for SLCs was introduced in various provinces. However, we recognize that, in most provinces, the detailed rules of implementation encourage local manufacturing firms, which have no financial experience, to lead the development of this particular sector within the financial services industry. It remains difficult for foreign investors to break into the small-lending market. Approval rates are low despite clear support for foreign investors to participate in SLCs by regulatory bodies.

The regulations on ownership structure of rural financing institutions limit the ability to leverage a centralized management structure conducive to scale management and profitability. Setting up rural lending companies is welcomed by CBRC in order to assist rural areas to develop more rapidly. Expanded capital funding channels, as well as access to inter-bank markets, are essential for these rural finance entities as their business expands.

### Credit Information Services

We recognize the important role credit bureaus play in the financial system, and applaud government efforts to develop a national credit information system. We recommend for CBRC and PBoC to improve the quality of these credit bureaus further and allow more financial institutions access to the data. We note, and fully support, government plans to develop a legal framework to protect the data privacy of individuals and businesses. We eagerly await its completion.

### Recommendations

#### For SAFE

- Consider eliminating debt quotas, or at a minimum exempting from the quotas, all trade finance, and project lending. Enhance foreign bank participation in the domestic currency market.

#### For CBRC

- Streamline the regulatory process and limit the requirements for approvals only to major items that could possibly create systemic risks and disruptions to the financial system.
- Eliminate the discriminatory treatment of off-shore borrowings from head office and affiliates when calculating liquidity ratios.
- Eliminate capital requirements for non-locally incorporated banks. Apply global financial best practices to banks that operate principally in the wholesale market.
- Eliminate ownership caps for locally incorporated and non-locally incorporated banks. At a minimum, significantly increase caps for non-locally incorporated banks.
- Ensure that SLC regulation enforcement does not favor local companies that do not have expertise in lending money, evaluating risk, and managing financial related balance sheets. Allow financial institutions that participate in the small-lending market the ability to consolidate certain management functions to ensure economies of scale and scope, keeping prices reasonable and competitive.
- As trust and custodial banking services continue to develop in China, clearly separate the roles of custodian and trustee and recognize the different roles each offer.

与中国小额贷款公司, 并促请各地监管机构尽快审批符合法规标准的小额贷款公司申请。

继续推动一个全国性信贷管理局的设立, 这对提高小额贷款公司借贷业务的稳定性和效率而言非常必要, 因为其行业的特性决定了它没有能力像对大型企业客户一样, 采用传统方法开展深入的信用分析。

我们注意到, 中国政府对中小型企业 and 乡镇企业融资采取了各式各样的措施和试点工作。小型信贷公司试点工作已在各个省份展开。但我们发现, 大多数省份的实施细则都纷纷鼓励没有任何金融服务经验的本地制造企业, 牵头涉足金融服务行业。而国外投资人想要进入小型借贷市场依然困难重重。尽管监管机构明确支持外资参股小额贷款公司, 但获得批准的比率仍然很低。

有关农村金融机构的所有权结构的法规限制了集中管理结构的采用, 不利于实施规模管理和提升盈利能力。中国银监会欢迎建立农村贷款公司, 以帮助农村地区实现更快发展。随着这些公司的业务不断扩大, 拓宽资本融资渠道以及进入银行间市场显得至关重要。

### 信用信息服务

我们认可信贷局在金融系统中的重要作用, 并赞赏政府在发展全国信用信息系统方面所作出的努力。我们建议中国银监会和中国人民银行进一步改进信贷局的工作质量, 允许更多的金融机构获得数据。我们留意到, 政府计划制定法律体制来保护个人和企业数据隐私, 我们对此表示完全支持。我们急切盼望相关法律法规的出台。

### 建议

#### 国家外汇管理局

- 考虑取消外债配额, 或者至少将所有贸易融资和项目贷款从该配额中去除。

#### 中国银行业监督管理委员会

- 简化监管程序, 只限于审批那些可能会给金融体系造成系统性风险和破坏的主要项目。
- 在计算流动比率时, 取消对总部和关联公司境外借款的歧视性待遇。
- 取消对于非本地法人银行的资本要求。对主要从事批发业务的银行适用国际金融业最佳做法。

- 取消对于本地法人银行和非本地法人银行的所有权限制。至少应大幅增加非本地法人银行的所有权比例上限。
- 确保小额贷款公司法规在执行中不会偏向那些在出借资金、评估风险以及管理金融相关资产负债表方面均不具备专业技能的本地公司。允许参与小额信贷市场的金融机构能够合并若干管理职能, 以确保经营运作的规模效益, 以保持合理、具有竞争力的价格水平。
- 鉴于信托和托管银行业服务在中国的持续发展, 明确区分托管人和信托人的作用, 并认识到他们的职责分工不同。
- 放宽建立集团金融服务公司的限制, 拓宽获得商业信贷的渠道。

#### 中国银行业监督管理委员会, 中国人民银行, 商务部

- 允许非银行金融机构进入信用卡领域。
- 允许非银行金融机构进入银行间融资市场, 获得更加具有竞争价格的资金。

#### 中国银行业监督管理委员会, 商务部

- 允许汽车金融和非银行租赁公司扩大经营范围

#### 中国证券监督管理委员会, 中国人民银行

- 在认识到数据隐私之重要性的同时, 让更多的机构有资格参与扩展后的全国信用报告系统。

#### 国家税务总局, 商务部

- 取消境外利息支付10%的可追溯性代扣所得税。
- 明确境外银行间融资是否须缴纳5%的营业税。

- Relax restrictions on the establishment of group financial companies to increase access to commercial credit.

#### For CBRC, PBoC and MOFCOM

- Allow NBFIs to enter the credit card space.
- Allow NBFIs access to inter-bank funding markets to obtain more competitively priced funds.

#### For CBRC and MOFCOM

- Allow a broader scope of business for auto finance and non-bank leasing companies.

#### For CSRC and PBoC

- While recognizing the importance of data privacy, broaden the eligibility of institutions that can participate in an expanded national credit reporting structure.

#### For SAT and MOF

- Eliminate the 10 percent retroactive withholding tax on offshore interest payments.
- Clarify whether offshore inter-bank funding is subject to a five percent Business Tax.

## Investment Service

### Securities

The American business community realizes that current global financial circumstances affect the issuance of new securities, and understand that Chinese firms may not want to access the capital markets due to potentially low valuations, increased volatility or other considerations. Irrespective of current global turmoil, China stands to benefit from having a more efficient and transparent process through which firms can access capital markets.

In 2008, numerous reports described delays in getting approval to list on the Shanghai or Shenzhen stock markets. Many were attributed to China Securities Regulatory Commission's (CSRC) understandable desire to minimize investor losses, as more than one-third of the companies that listed in 2008 ended the year below their initial public offering (IPO) prices. However, reigniting the IPO pipeline will be essential to China's goals of reviving its domestic securities markets and stimulating consumer confidence. In addition, we welcome recent discussions on expediting the long-discussed growth enterprise board, which would provide an alternative capital source for smaller Chinese companies.

Efficiency in the IPO approval process improved slightly in 2008, including the July CSRC commitment to publish IPO prospectives no later than five working days after receiving a final draft. However, CSRC's

final approval for an IPO still has an "indefinite" time limit. Furthermore, the initial one-year review period before a company can begin the IPO approval process remains excessive and long lock-up provisions prevent investors from selling shares. While there are signs of progress, more measures are needed to improve both the efficiency and transparency of the approval process.

### Phased Introduction of Derivatives

We welcomed CSRC's announcement to allow a limited test of short-selling of B-shares. The subsequent October 2008 decision to postpone the introduction, based on fears of further declines in the stock markets, was disappointing. We fully appreciate regulators' concerns about derivative products, especially considering the role derivatives played in the current global financial crisis. However, permitting the use of standard derivative products, if well-regulated, could improve the efficiency and stability of the markets, reducing volatility. These products would also create jobs in the value-added financial services sector and strengthen the industry overall.

### Securities Firms

We commend the CSRC for approving the first Sino-foreign securities firm joint venture (JV) since the 2005 moratorium in 2008. However, maximum foreign equity participation in securities JVs remains limited to 33 percent. Similarly, foreign ownership is capped at 49 percent for fund management companies. Foreign fund management companies have consistently shown a strong interest in establishing JVs with Chinese firms, demonstrated by the more than 30 existing JVs. While fulfilling China's minimum WTO commitment, these caps do not encourage the scale of investment that will help China's securities and fund management industries achieve globally competitive capabilities. The investment management industry is a key driver in the growth of China's financial services industry and promoting competition in this sector, moderated by healthy oversight by the CSRC, is essential to China becoming a premier global financial center. We support loosening or removing restrictions on foreign control of securities and fund management JVs, and opening a path to foreign financial firms operating as Wholly Foreign-Owned Enterprises (WFOE).

We commend Beijing's December 2007 decision to increase maximum Qualified Foreign Institutional Investor (QFII) quotas from the previous US \$10 billion to US \$30 billion (RMB 68.5 to 206 billion). In addition, we remain encouraged by China's agreement to reduce the lock-up period on fund repatriation. Beyond these measures, the CSRC should consider implementing a schedule of planned QFII quota increases to allow for planning amongst existing QFII investors, with the ultimate goal to remove the quotas within a defined time period. We also support increasing the Qualified Domestic Institutional Investors (QDII) quotas, in a scaled and methodical manner, over a pre-defined time period.

## 投资服务

### 证券

美国企业界认识到目前全球金融状况影响了新证券的发行,也理解中国公司对潜在的价值低估、波动性的增加,或出于其它考虑可能无意进入资本市场。尽管面临全球性金融动荡,建立一个有效而透明的企业进入资本市场程序对中国是一件非常有益的事情。

2008年,有大量报道反映,企业申请在上海和深圳股票市场上市的审批工作被延后。多数报道将此归因于中国证券监督管理委员会希望减少投资者损失的良好愿望,因为在2008年上市的公司中有超过三分之一的公司年终股价首次跌破其公开发行(IPO)价格。然而,重启IPO对于中国复兴国内证券市场和提振消费者信心的目标来说至关重要。而且,我们欢迎近来关于推出久拖不决的创业板的讨论,创业板将为中国小型企业提供一个可供选择的融资渠道。

2008年IPO审批程序的效率略有提高,包括7月份中国证监会承诺在收到最终草案后的五个工作日内发布首次公开发行招股说明书。然而,中国证监会对首次公开发行的最终审批有一个“不确定”的时限。而且,在公司能够开始首次公开发行审批程序前的最初一年审查期仍然过长,而且过长的锁定期使投资人无法出售股票。虽然有改善的迹象,但仍需要采取更多的措施以提高审批程序的效率和透明度。

### 分阶段引入衍生产品

我们欢迎中国证监会的通告允许有限尝试B股卖空业务。但令人失望的是,其后由于担心股票市场进一步下滑,2008年10月中国证监会决定推迟实行这一举措。我们完全理解监管机构对于衍生产品的担忧,尤其是考虑到衍生品在当前全球金融危机中所起的负面作用。然而,在合理监管下允许采用标准衍生产品能改善市场的效率和稳定性,减少波动。这些产品还能在增值金融服务行业创造就业机会,增强整个行业的实力。

### 证券公司

中国证监会自2005年暂停审批以来,终于在2008年批准设立第一家中外合资证券公司,对此我们表示赞赏。然而,在合资证券公司中,外方的最大持股比例限制在33%以内。同样,对于基金管理公司,外方持股比例限制

在49%以内。国外基金管理公司一直以来对与中国公司建立合资企业表现出了强烈的兴趣,现有的三十多家合资企业即是明证。尽管中国兑现了最低入世承诺,但持股比例限制不利于扩大投资规模,从而不利于中国证券业和资金管理行业实现全球竞争能力。投资管理行业是中国金融服务行业发展和促进行业内竞争的重要推动力,在中国证监会的有力监管下,将在中国发展成为全球主要金融中心的道路上发挥至关重要的作用。我们支持放宽或取消对外方控股中外合资证券和资金管理公司的限制性规定,允许国外金融公司设立外商独资企业(WFOE)在华开展经营。

我们称道北京在2007年12月决定将合格境外机构投资者(QFII)配额,从之前的100亿美元增加到300亿美元(人民币685亿元到2060亿元)。此外,令我们感到鼓舞的是,中国同意缩短允许QFII将资金汇回本国的锁定期。除了这些措施外,中国证监会应考虑实行预期增加QFII配额的时间表,使现有合格境外机构投资者能够制定规划。中国证监会的最终目标应当是在预先确定的时限内取消配额。我们也支持在预先确定的时限内按比例逐步、系统地增加合格境内机构投资者(QDII)的配额。

### 并购(M&A)

中国最近制定了有关外资在华并购的法律,中国监管机构的主要关注点是控制经济过热,防止投机资本流入,因为这些投机资金极可能在资产价值达到高峰时撤出中国。然而,当前的金融气候是监管机构重新考虑措施推动新的外商直接投资(FDI)的最佳时机。新的外商直接投资将有利于中国实现技术升级、创造就业机会和促进社会稳定。

然而,新近颁布的法规限制了外国投资。例如国家外汇管理局发布的142号通知,在业已繁琐的审批程序基础上对外国公司在华开展并购业务增加了新的要求。

国家外汇管理局的142号通知对外国并购投资人设置了新障碍,具体如下:

- 在华外国公司的资本金账户结汇所得人民币资金不得用于境内股权投资。但是,源自国内销售的人民币收入似乎不在限制范围内。
- 将外方缴纳的外币资本金转换成人民币之前,必须提交繁琐的验资报告。
- 希望使用外币在华进行股权投资的外国公司,必须开立单独的外汇账户,经国家外汇管理局核准后用于股权投资。

## Mergers and Acquisitions (M&A)

Recent laws affecting foreign M&A in China were developed when the primary concerns of China's regulators included slowing down an overheated economy and curbing the influx of speculative capital inflows that would most likely be withdrawn from China once investment values peaked. However, the current financial climate represents an optimal time for regulators to reconsider measures to promote new foreign direct investment (FDI) in China. New FDI will help China enhance its technology, create additional employment, and promote social stability.

Recent regulations, however, restrict foreign investment. An example is Circular 142, released by the State Administration of Foreign Exchange (SAFE), adding to an already cumbersome approval process for foreign firms conducting M&A in China.

SAFE Circular 142 presents new obstacles to foreign M&A investors, specifically:

- Foreign companies in China may not use RMB converted from their capital accounts to make equity investments in China. However, RMB proceeds from domestic sales do not appear to be restricted in this way.
- A burdensome capital verification report must be submitted prior to converting foreign-denominated registered capital into RMB.
- Foreign companies wishing to make equity investments in China using foreign currency must use a separate foreign exchange account, which has been SAFE-approved for the purposes of equity investment.

Circular 142 and other foreign exchange-related regulations issued in 2008 are counter-productive to China's goal of sustaining economic growth in 2009 and beyond. Foreign firms are already required to secure approval from MOFCOM and the National Development and Reform Commission (NDRC), or their provincial counterparts, prior to completing M&A transactions. Additional approval requirements tied to foreign exchange conversion only deter foreign investors and prevent domestic Chinese firms from acquiring the capital they need to survive through the economic slowdown. Deterring foreign M&A investors will have a direct impact on employment and the transfer of foreign technology and capabilities to China.

We commend CBRC on promulgating the new M&A financing rules, Guidelines on Risk Management of Loans Extended by Commercial Banks for Mergers and Acquisitions (Guidelines), in December 2008. The ability to use leverage in M&A represents a positive step in the further development of China's financial system and will certainly facilitate M&A activity and consolidation. The rules are primarily directed towards Chinese commercial banks to provide them with a set of general guidelines to help prepare them for the eventual extension of loans for domestic M&A transactions. However, the guidelines indicate that Chinese commercial banks are to only extend

M&A loans to "PRC-incorporated companies," thus implicitly excluding foreign companies from directly borrowing from Chinese banks to finance a merger or an acquisition. Furthermore, the regulation directly acknowledges that Chinese banks are prohibited from extending loans to "financial buyers," both domestic and foreign. While we look forward to possible flexibility on these rules in the future, we believe that, overall, the guidelines are timely in the midst of the global financial crisis, striking a balance between encouraging M&A activity and promoting reasonable risk management.

China's M&A regulations made advances in clarity and transparency regarding foreign firms in recent years, but the actual approval process remains opaque and prone to substantial delays. In many cases, delays directly impact company operations, affecting both the foreign and domestic Chinese businesses. A streamlined process with clear timelines would improve the confidence of long-term strategic investors in China. Moreover, improved guidance from MOFCOM and the NDRC regarding typical grounds for denied approvals would improve the quality of applications submitted to these authorities, reducing their workload and improving the investment environment overall.

## Private Equity and Venture Capital

In spite of the recent downturn and its impact on financial services, many private equity investors remain optimistic about China. According to AmCham-China's 2009 *Business Climate Follow-up Survey*, the majority of respondents are continuing to invest in China, with 61 percent citing no change in investment plans, 32 percent reporting postponement, and only two percent cancelling projects (Figure 30). Moreover, the vast majority of respondents to AmCham-China's 2009 *Business Climate Survey* rank China as a global investment priority, with 22 percent ranking China as the number one priority and 56 percent as one of the top three.

Additionally, Chinese regulatory agencies continue to seek advice from foreign corporations and private equity investors to further develop the domestic private equity and venture capital markets. Beijing is even in the process of establishing an umbrella organization similar to the North American Venture Association and British Venture Capital Associate to further cultivate the sector and increase local understanding of private equity.

Although the spirit of these regulations is positive, the ambiguity and domestic investor focus have left many investors with limited investment options, deal structures and exit strategies, ultimately creating an unequal investment environment for foreign and domestic investors.

## Introduction of Foreign-Invested Partnership Enterprises

The Foreign Invested Venture Capital (FIVC) com-

第142号通知和2008年发布的其它外汇相关规定,与中国制定的2009年和今后的可持续经济增长目标背道而驰。外国公司在完成并购业务前,必须先取得商务部和国家发展和改革委员会(NDRC)或者其省级机关的批准。外汇兑换的额外审批要求,影响了外国投资人和中国国内公司获得其在经济衰退中赖以生存的资本金。阻止外国并购投资人将对就业形势、外国技能向中国的转让产生直接影响。

我们赞赏中国银行业监督管理委员会于2008年12月颁布了新的并购融资条例《商业银行并购贷款风险管理指引》。在并购中使用杠杆效应的能力,意味着中国金融系统又向前迈出了积极的一步,必将对并购业务和合并发挥促进作用。该《指引》主要针对中国商业银行提供了一系列指导规定,为他们最终向境内并购业务提供贷款做好准备。然而,该《指引》规定,国内商业银行仅向“境内并购方企业”提供并购贷款,隐晦地排除了外国公司向国内商业银行直接借款提供合并或收购资金的可能性。而且,该《指引》直接规定,禁止国内银行向国内外“金融买方”提供贷款。我们期待这些规定在将来能具备一定的灵活性,总体上我们认为,该《指引》在全球陷入金融危机之时,是一部非常及时的法规,在鼓励并购业务和促进合理风险管理之间达到了平衡。

最近几年里,中国的并购法规中涉及外国公司的内容变得更为明确和透明,但实际的审批程序仍然不透明且存在严重的拖延现象。在许多案例中,审批延误直接影响了公司经营,给国内外企业造成不利影响。简化程序和规定明确的时间表有助于提振长期战略投资人对中国的信心。此外,商务部和国家发展和改革委员会若能就审批被否决的典型原因提供更明晰的指导,将有助于改进所提交给主管部门申请的质量,减轻其工作负担,改善整体投资环境。

## 私募股权和创业投资

尽管近期的经济衰退给金融服务业造成了影响,许多私募股权投资投资人仍对中国保持乐观。根据《中国美国商会2009年商务环境调查》,大部分回应者表示他们将继续在华投资,其中61%表示投资计划没有变化,32%提及延期,只有2%取消投资项目(图30)。而且,该调查的绝大部分回应者将中国列入全球投资优先选择之一,其中22%将中国列为第一选择,56%将中国列入前三。

另外,中国监管机构继续寻求外国公司和私募股权投资人的建议,以进一步发展国内私募股权和创业投资市

场。北京甚至准备建立类似于北美创投协会和英国创业投资协会的保护伞机构,进一步培育该行业并提高本地对私募股权的认识。

虽然这些法规的精神值得肯定,但由于相关规定的不明确性和以国内投资人为重点,使得许多投资人面临有限的投资选择、交易结构和退出策略,最终导致对国外和国内投资人不平等的投资环境。

## 引入外商投资合伙企业

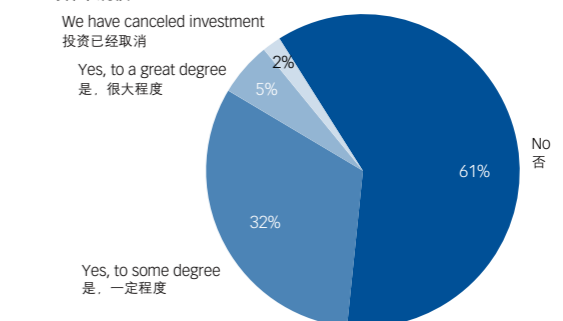
外商创业投资企业期待政府制定和实施进一步的法律法规,给外商创业投资企业提供与国内基金公平竞争的赛场。同时,《中华人民共和国合伙企业法》(2006年修订)的一个重大特点即引入有限合伙企业,这对于一直在寻找更有效的境内投资工具的外商创业投资企业而言意义重大。然而,关于外商投资合伙企业的修订内容一直拖而未决。

根据经修订的《合伙企业法》第108条,商务部于2007年1月向上级改革、监管和执法部门转发了《外商投资合伙企业管理办法》(送审稿)。其后,2008年3月,商务部颁布了《全国吸收外商投资工作的指导性意见》,其中直接涉及了外国私人投资服务机构所面临的一些挑战。具体提案包括:

- 作为外商直接投资的一部分,鼓励外商设立创业投资企业;
- 支持国内中小高新技术企业发展壮大;
- 完善创业投资退出机制;
- 鼓励外商通过并购等方式参与国有企业改组改造。

## Has your company postponed any planned investment into China? 企业是否推迟了对中国市场投资计划?

Company sample size = 205  
公司样本规模



Source: 2009 AmCham-China Follow-Up Survey  
资料来源: 2009年商务环境跟踪调查

munity awaits further formulation and implementation from the government to level the playing field with China's domestic funds. In the meantime, a significant feature of the amended Partnership Enterprise Law from 2006, namely the introduction of limited partnership enterprises, may have important ramifications for FIVCs that continue to seek more efficient onshore investment vehicles. However, the revisions as they pertain to foreign parties remain on hold.

In accordance with Article 108 of the revised Partnership Enterprise Law, in January 2007, MOFCOM widely circulated a draft of the Foreign-Invested Partnership Enterprise Regulations among high-level government reform, regulatory and enforcement agencies. Then, in March 2008, MOFCOM promulgated its Guiding Opinions on the Work of Absorbing Foreign Investment Nationwide, in which it directly addressed some of the challenges faced by foreign private investment services organizations. Specific proposals included:

- Promoting venture capital enterprises as part of foreign direct investment;
- Assisting in developing high tech small and medium-sized enterprises;
- Improving venture capital exit mechanisms;
- And promoting participation of foreign capital in the restructuring efforts of state-owned enterprises through M&A.

However, there is no date for when these changes become effective and the extent to which they address the concerns outlined above areas remains unclear.

#### **RMB-Denominated Private Equity (PE)/Venture Capital (VC) Funds**

Another important recurring development is the growth of RMB-denominated private equity/venture capital funds. The government has increasingly promoted RMB funds, and on the surface this should offer significant advantages to both foreign and domestic investors, including:

- Elimination of taxes at the fund level to avoid double taxation on the fund and investment;
- And speedier transaction cycles through simplification of the project approval process.

While these advantages should be shared by both foreign and domestic investors, in practice RMB funds do not offer an equal playing field. Currently, there is no clear legal framework allowing foreign investors to establish domestic RMB funds focusing on PE investments. At present, much of the RMB PE fund formation/raising activities involving foreign general partners (GPs) are conducted at the provincial level. Active locations include Tianjin, Shanghai and Beijing, which are approving foreign invested enterprises managing PE fund structure. The RMB funds established in these three locations typically rely on local regulations and involve no central government approval.

The foreign PE community is calling for greater transparency in the formation of foreign invested or managed RMB funds, including national regulations on how foreign invested/managed RMB funds may be established. We understand that national regulations have been drafted and are currently waiting for State Council approval. Until these regulations are issued, foreign GPs and limited partners may still have to invest in China through the traditional foreign investment channel, creating significant disadvantages for foreign funds in the areas of investment approvals, taxes, currency conversion and exits.

By promoting greater transparency and creating a level playing field for both foreign and domestic private equity and venture capital investors, China can promote a more open private equity sector. Additionally, greater participation by seasoned private equity funds would allow China to learn from long-standing funds. We recommend that China push for the final draft versions of these regulations to be structured in a way that creates equal regulatory and structuring options for both foreign and domestic financial investors.

#### **Recommendations:**

##### **For CSRC**

- **Further open the securities and fund management industries to foreign investment by allowing controlling stakes in fund management joint ventures and creating a path to entry for foreign fund management firms as WFOEs**
- Adopt clear timelines for IPO approvals and continue to increase transparency.
- Expedite the introduction of standard derivative products including short selling, equity futures (starting with the launch of planned CSI index futures) and options trading
- Increase QFII and QDII quotas over time.
- Launch the Shenzhen Growth Enterprise Board in the near-term to provide capital for SMEs.

##### **For MOFCOM**

- Simplify approval for foreign firms by streamlining the process and recognizing appropriate approvals granted in other countries.
- Clarify the M&A review process by publishing and adhering to specific timelines. Provide guidance regarding typical grounds for denied approvals.
- Promulgate rules on formation of limited partnership enterprises by foreign-invested VCs.
- Release the final regulations on establishment of foreign-invested/managed RMB-denominated PE/VC funds. Ensure that foreign and domestic funds are treated equally with regard to investment approvals, taxes, currency conversion and exits.

然而, 这些改变何时生效以及他们在多大程度上能够解决上述问题仍然不确定。

#### **人民币计价的私募股权/创业投资基金**

另一个被反复提及的重大问题是人民币计价的私募股权/创业投资基金的发展。政府不断增大力度促进人民币基金的发展, 这似乎将为国内外投资人提供重要的有利条件, 其中包括:

- 取消基金层面的税收, 避免对基金和投资的双重征税;
- 简化项目审批程序, 加快交易周期。

虽然国内外投资人都享有这些有利条件, 但在实践中, 人民币基金并没有提供公平的赛场。当前, 没有一个明确的法律体系允许国外投资人设立以私募股权(PE)投资为主的国内人民币基金。目前, 大部分涉及外国普通合伙人的人民币私募股权基金的设立/融资业务由省级机构受理。活跃的地区主要是天津、上海和北京, 这些地区准许外商投资企业私募股权基金的模式。在上述三个地区设立人民币基金基本上依据本地法规, 而不涉及中央政府的审批。

国外私募股权界呼吁, 增进设立外商投资或管理的人民币基金方面的透明度, 包括制定和颁布如何设立外商投资/管理的人民币基金的国家性法规。据我们了解, 中国业已起草国家性法规, 目前正在等待国务院批准。在这些法规颁布前, 外国普通合伙人和有限合伙人在中国投资时仍须通过传统的外商投资渠道, 在投资审批、税收、货币兑换及退出策略方面给外国基金设置了诸多不利条件。

通过增进透明度和为国内外私募股权和创业投资人提供一个公平的赛场, 中国可推动私募股权行业朝着更为开放的方向迈进。另外, 吸引更多经验丰富的私募股权基金的参与, 使中国能够从中学学习经验。我们建议, 中国应努力使该法规草案的最终版本能够为国内外金融投资人创造、提供平等的监管框架和结构选择。

#### **建议**

##### **中国证券监督管理委员会**

- **进一步向外商投资开放证券和基金管理行业, 允许外资拥有中外合资基金管理公司的控股权, 允许国外基金管理公司通过设立外商独资企业的方式进入中国。**
- 对首次公开发行的审批设置更明确的时间表, 不断增加透明度。
- 加快引入标准衍生产品包括卖空、股权期货(首先推出计划中的股指期货)和期权交易。
- 逐步提高合格境外机构投资者和合格境内机构投资人的配额。
- 在近期推出深圳创业板, 为中小型企业提供融资渠道。

##### **商务部**

- 通过简化程序和认可其他国家授予的适当批准, 简化外国公司的审批
- 澄清并购审查程序, 公布和遵循明确的审批时间表。提供有关审批被否的典型原因的指导。
- 颁布外商创业投资企业设立有限合伙企业的法规。
- 发布有关设立外商投资/管理的人民币私募股权/创业投资基金的最终规定。确保国内外基金在投资审批、税收、货币兑换和退出策略方面享受平等待遇。

# Information and Communications Technology

China's Information and Communications Technology (ICT) market is among the world's largest, with fast growth expected to continue. In 2008, China surpassed the US as the world's largest Internet market with more than 250 million users and will continue to grow in technology sectors including broadband, wireless value-added services, and semiconductors, among others.

The Chinese government has smartly linked innovation in the ICT industry with overall industrial advancement and high-quality economic growth. This viewpoint is clear in both the Indigenous Innovation and the Harmonious Society programs, and should, depending on how they are implemented, positively support continued growth of a dynamic, important, globally-integrated market. AmCham-China is concerned, however, that the encouragement of "indigenous innovation" has already led to the formulation of a number of protectionist policies that may discriminate against foreign companies (please see the Science and Technology chapter) and ultimately retard the pace of China's own innovation. Open, non-discriminatory policies that do not draw sharp lines between domestic and foreign companies in terms of market access, procurement, standards and administration of competition and intellectual property (IP) laws are absolutely vital and essential to the rapid, sustainable development of China's ICT industries as strong local and global players and innovators.

## Significant Developments

To keep pace with a fast-changing technological environment, China has restructured its related regulatory bodies, announcing in March 2008 the newly-created Ministry of Industry and Information Technology (MIIT). MIIT merges the former Ministry of Information Industry with the Commission of Science, Technology and Industry for National Defense (except for functions relating to nuclear power management), the State Council Informatization Office and two industry-related departments from National Development and Reform Commission (NDRC), as well as the State Tobacco Monopoly Administration (also overseen by NDRC regulators).

The State Council has given the new MIIT the responsibility to oversee and regulate industrial planning, industry development and China's

industrial and ICT sector priorities. For example, one of MIIT's State Council-stated strategic priorities is to lead the innovation and development of high-technology, including writing standards and other technical measures. While currently unclear how MIIT will interpret its mandate, AmCham-China is concerned that this top-down, government-driven approach to technological innovation and related regulation will create a more burdensome regulatory environment, and could lead to new trade barriers.

Another major change this year was the government's June 2008 announcement of the four large state-owned telecom operators' (China Mobile, China Unicom, China Telecom, and China Netcom) restructuring. In restructuring, China Unicom sold its mobile CDMA network to China Telecom, then merged with China Netcom to create a much larger "new China Unicom." China Telecom also acquired the small telecom operator China Satcom and China Mobile acquired the small fixed line operator China Railcom.

The restructuring was designed to create a more balanced competitive landscape. By creating a new China Unicom and giving China Telecom a CDMA network, the government strengthened these two players in the hopes of them mounting a credible challenge to China Mobile, the overwhelming leader with more than 70 percent mobile subscriber market share. It is too early to tell whether China Unicom and China Telecom will successfully work through the business merger challenges to compete effectively with China Mobile.

Establishing three relatively equal-sized large incumbents presumably was designed to be a precursor to wider market access for foreign and domestic non-state telecom service providers and investors. However, this has not been the case, and indeed, the three incumbents seem to have tightened their grip on the value-added services (VAS) market.

Following ministerial restructuring, China Mobile deployed its homegrown 3G mobile standard, the TD-SCDMA network. While the release was dubbed a "trial" because official 3G licenses had not yet been issued, it effectively marked the much-anticipated China debut of 3G mobile services. The issuance of official 3G licenses to China Unicom and China Telecom, in addition to China Mobile, is a welcome

# 信息与通信技术

中国已跻身于世界最大的信息通信技术 (ICT) 市场之列, 预计该市场仍将保持快速发展势头。

2008年, 中国的网络用户数量达2.5亿之多, 超越美国成为世界上最大的国际互联网市场, 而且包括宽带、无线增值服务和半导体技术在内的技术部门也将继续保持增长。

中国政府将信息与通信技术行业中的创新与产业整体进步和高质量的经济增长巧妙地联系起来, 这一点在“自主创新”和“和谐社会”规划中都有清楚的表述, 如果实施得当, 此举也必能支持这个活力十足、极其重要、全球一体化的市场保持持续增长。然而, 中国美国商会担心对“自主创新”的鼓励导致出台了一些可能会给外国公司带来歧视的保护主义政策(请参阅“科学技术与产业政策”章节), 并将最终减缓中国自主创新的步伐。实行开放的非歧视性政策, 在市场准入、采购、标准或竞争和知识产权法的管理方面, 不要严格区分国内或国外公司, 这对于中国的信息与通讯技术产业实现快速、可持续的发展绝对是必不可少并且至关重要的, 无论是其作为地区, 还是全球强有力的参与者和创新者。

## 重大进展

为了适应快速变化的技术环境, 中国对相关监管机构进行了重组, 新组建的工业和信息化部(MIIT)于2008年3月宣布成立。工业和信息化部合并了前信息产业部、国防科学技术工业委员会(与核能管理相关的职能除外)、国务院信息化工作办公室和国家发展和改革委员会(NDRC)下属的两个工业相关部门及国家烟草专卖管理局(过去也由发改委的监管机构负责管理)。

国务院赋予新成立的工业和信息化部的职责是: 监督并管理工业行业规划、工业发展及优化中国产业和信息与通信技术行业。举例来说, 按国务院规定, 工业和信息化部的战略优先重点之一是引领高新技术的创新与发展, 包括制定标准和其它技术措施。虽然目前还不清楚工业和信息化部将如何履行这一职责, 但中国美国商会担心,

这种自上而下由政府推动的技术创新和相关的法规将使监管环境更为繁杂, 并可能导致新的贸易壁垒。

另一个重大变化是中国政府于2008年6月宣布重组四大国有电信运营公司(中国移动、中国联通、中国电信和中国网通)。重组后, 中国联通将其移动CDMA网络出售给中国电信, 然后与中国网通合并组成一个规模大得多的“新中国联通”。此外, 中国电信还购买了一家小电信运营公司 - 中国星通, 而中国移动则购买了固定电话运营公司 - 中国铁通。

这一重组旨在创建一个更加均衡的竞争格局。通过建立一个新的中国联通, 增加中国电信CDMA网络, 以增强这两家公司的实力, 希望它们能够对中国移动形成实质性竞争。中国移动目前在中国市场上占据绝对优势, 拥有超过70%的移动用户市场份额。中国联通与中国电信能否成功解决业务融合过程中的各种挑战, 从而有效地与中国移动竞争, 现在下结论还为时尚早。

组建三家规模相对均等的大型电信集团, 原本可能应该预示着放宽对外国与国内非国有电信服务供应商与投资商的市场准入。然而, 实际情况并非如此, 恰恰相反, 这三家大型电信集团甚至好像已经加强了对增值服务(VAS)市场的掌控。

在部门重组之后, 中国移动开始部署其国有的第三代(3G)移动通信标准 — “时分同步码分多址接入”(TD-SCDMA)网络。虽然该标准的发布被称为仅仅是“试验性的”, 因为3G牌照还没有正式发放, 但实质上它标志着承载太多期待的3G移动服务在中国的首次亮相。除中国移动外, 向中国联通和中国电信发放3G正式牌照将是一种受人欢迎的发展。然而, 中国政府已经对TD-SCDMA进行了大量投资, 它是以标准的方式推动自主创新的突出例证之一; 并且为了有效地同中国移动竞争, 中国联通和中国电信必须按3G标准更新现有网络, 这需要大量的基本建设费用, 而它们能否承受如此庞大的支出还有待观察。即便是中国移动, 对于承担网络建设费用和这一未经

development. However, the Chinese government has made substantial investments in TD-SCDMA, which is one of several prominent examples of the standards-based push for indigenous innovation, and it remains to be seen whether China Unicom and China Telecom can overcome the steep capital expenditures to upgrade their networks to 3G to compete effectively with China Mobile. Even though China Mobile has, at times, seemed hesitant to bear the network building costs and the market risk of an unproven technology incompatible with other global technological standards, it has had little choice but to follow the State Council-mandated TD-SCDMA standard. This mandate is at odds with earlier government commitments to pursue a technology neutral approach to 3G.

Unfortunately, TD-SCDMA's initial release has been plagued by quality issues. Even China Mobile's chief executive Wang Jianzhou noted that, "compared with other 3G technologies, TD-SCDMA is still a few years behind." There is a lack of affordable handsets that can use the new network and users have reported spotty network coverage, poor call quality and inconsistent experiences with features such as video calling. The Chinese government championed TD-SCDMA over more established 3G technologies, which heightens concerns over protectionist technological standards and regulations.

AmCham-China has also closely followed China's domestic information assurance policy regime, including market access barriers for information security products, cryptographic regulations and demands placed on end-users to select specific security technology. Most of China's policymakers believe that China's "critical infrastructure," and even its consumers, rely too heavily on foreign technology, posing security risks. Many also believe that China should leverage its own market—the world's largest across a range of IT products—to foster development of indigenous companies and technologies as a step to becoming global players and brands. China is moving forward with a new IT security information assurance regulatory regime based upon unique Chinese information security and encryption standards and technologies as well as higher level security requirements across critical infrastructure spanning the energy, transportation, communications, power and financial sectors. This set of issues is likely to become one of the greatest market access challenges confronting China's major trading partners in the coming years.

For example, the Chinese government has proposed that 13 categories of information security products must undergo mandatory "CCC Mark" certification. A wide range of IT products are not allowed to be shipped, sold, imported or used in commercial activities in China as of May 1, 2009, unless they are certified as meeting these unique Chinese IT security standards. Products include firewalls, routers, intrusion detection systems and vulnerability scanners, among others.

The evolving information security product certification scheme raises a range of issues. These include encryption testing, compliance with unique Chinese national standards, ability of Chinese labs to carry out the testing, complicated post-market factory inspections and possible compulsory sharing of source code. The complexity of the process runs the risk of being extremely burdensome for companies.

In addition, China has introduced a second set of arguably more sweeping regulations imposing requirements on technology end-users based upon the importance of information handled by a computer or information network. This regime, called the Multi-Level Protection Scheme, would impose stringent cyber-security requirements for state-controlled critical infrastructure. This not only raises serious market access issues for foreign technology providers, but may also decrease the overall level of security.

US industry is working constructively with relevant Chinese government agencies to ensure China adopts internationally recognized approaches to information assurance product testing to facilitate a free flow of trade and increased security for end-users. At the Joint Commission on Commerce and Trade (JCCT) in September 2008, China highlighted its focus on this issue by agreeing to delay publication of final rules on information security certification pending "further mutual discussion" of these issues and continuing expert dialogue on the subject.

Specifically, at the time of writing, China National Administration for Certification and Accreditation (CNCA), the technical implementer of the 13 information security product certification regulations, has committed to delay mandatory implementation beyond the May 1, 2009 date. However, many questions still remain unanswered regarding what steps CNCA will take in the future to uphold its commitments made at the JCCT. This includes what level of foreign industry dialogue CNCA will engage in before any public announcement is made, such as both publication of the final rules or a strategy for future implementation. AmCham-China members will closely follow these developments in 2009.

## Specific Issues

### Market Access Barriers

China limits foreign direct investment in telecommunications to 49 percent for basic services and 50 percent for VAS. The requirement that foreign telecom service providers may enter into a joint venture only with existing state-owned telecom providers is also problematic. A third factor limiting market entry opportunities for US telecommunications providers in China is the overly narrow definition of VAS for value-added network service licensing, inconsistent with generally accepted international practices.

A robust VAS market is critical to long-term market development, including the success of China's

验证的、与其它全球性技术标准不兼容的技术所面临的市场风险也似乎有些踌躇不前。但是，除了遵守国务院制定的TD-SCDMA标准之外，它几乎别无选择。这一要求违背了中国政府之前做出的采取技术中立的方法制定3G标准的承诺。

不幸的是，TD-SCDMA刚一发布就受到质量问题的困扰。甚至中国移动的总裁王建宙都承认，“与其它3G技术相比，TD-SCDMA仍然落后一些年。”市场上缺乏消费者买得起的能够应用这种新网络的手机，用户抱怨网络覆盖范围存在盲点、通话质量不高，许多功能出现不稳定的现象，如视频通话。中国政府没有选择其它更为成熟的3G技术，极力推崇TD-SCDMA，加剧了人们对出台保护主义技术标准与法规的担心。

中国美国商会也一直密切关注中国国内的信息安全保障政策体系，包括针对信息安全产品的市场准入壁垒、密码法规以及要求终端用户选择特定安全技术的规定。大多数中国政策制定者，甚至其消费者，都认为中国的“关键性基础设施”过于依赖外国技术，这给国家安全带来风险。此外，许多人还认为，中国应充分利用本国市场——世界上最大的信息技术产品市场，来促进本国企业和技术的发展，这是参与全球市场和树立国际品牌的重要一步。现在，根据中国特有的信息安全与加密标准和技术，以及涵盖能源、运输、通信、电力、金融行业等关键性基础设施的更高级别的安全要求，中国正积极建立一个新的IT安全信息保障监管体系。此类问题很可能将成为中国主要贸易合作伙伴未来面临的最大的市场准入挑战。

举例来说，中国政府已经提出13类信息安全产品必须通过强制性的“中国强制认证(CCC)标志”认证。2009年5月1日之后，凡列入该强制性认证目录内的信息技术产品，未获得强制性产品认证证书和未施加中国强制性认证标志的，不得出厂、销售、进口或在其他经营活动中使用，除非他们达到了中国独特的信息技术安全标准。具体的产品包括防火墙、路由器、侵入探测系统和漏洞扫描器以及其它众多产品。

这个不断变化的信息安全产品认证体系带来了许多复杂具体的问题，包括加密技术测试、是否符合中国的国家标准、中国实验室进行此类测试的能力、繁琐复杂的后市场工厂检查以及可能的强制性源代码共享。程序的复杂程度带来了一大风险，即很可能成为各公司难以承受的繁重负担。

此外，中国提出了第二套富有争议、覆盖面更广的法规，依据计算机或信息网络所处理信息的重要性，对技

术终端用户制定了不同的要求。这套所谓的“多层保护制度”，将对国家控制的关键性基础设施实施极其严格的计算机安全规定。这不仅将给外国技术提供商带来严重的市场准入问题，而且还会降低整体安全水平。

美国工业界一直与中国相关政府机构开展建设性合作，以确保中国采取国际公认的方法测试信息安全保障产品，从而促进贸易的自由进行，提高终端用户的安全。在中美商贸联委会2008年9月召开的会议上，中国同意推迟发布信息安全认证的相关法规，承诺将就这些问题开展“进一步的双边磋商”并继续就这一主题与专家对话，突出表明了对此问题的关注。

需要特别指出的是，在本文件撰写期间，中国国家认证认可监督管理委员会(CNCA)，作为13类信息安全产品认证法规的技术执行机构，已经承诺将原定的强制实施日期2009年5月1日延迟。然而，在本文件撰写期间许多问题仍然悬而未决，特别是中国国家认证认可监督管理委员会采取什么措施来履行其在2008年中美商贸联委会会议上所做的承诺，包括任何公布发表之前，如最终规定或未来实施策略，中国国家认证认可监督管理委员会将展开什么级别的外国行业对话。中国美国商会会员将密切关注这些问题在2009年的发展。

## 具体问题

### 市场准入壁垒

中国限制电信业中的外国直接投资，规定基本服务中的外资比例不得超过49%，增值服务中的外资比例不得超过50%。此外，外国电信服务供应商只有通过有国有电信公司合资才能进入中国电信市场的规定也存在问题。增值网络服务执照审批过程中对增值服务的定义范围过于狭窄，与国际通行做法相矛盾，这是第三个限制在华开展业务的美国电信供应商获得市场准入机会的原因。

一个充满活力的增值服务市场对于市场的长期发展至关重要，这包括中国运营网络中心和离岸外包/业务外包项目的成功、服务创新、企业生产力及新传媒行业的健康发展。市场准入限制对中国经济带来威胁，很可能限制增值服务的增长，减缓中国实现这些目标的进程。

### 政府对许可协议的干预

中国美国商会仍然对中国政府干涉许可协议感到担心。中国政府公布了限制向外国公司支付专利技术使用费和促进本国核心知识产权(IP)技术发展的政策。中国的目

operations hub and off-shoring/outsourcing programs, service innovation, enterprise productivity and the healthy development of the new media industry. Restrictions on market access threaten to limit growth of value-added services and slow China's progress towards these goals.

### **Government Intervention in Licensing Agreements**

AmCham-China remains concerned about government interference in licensing agreements. The Chinese government publicly stated its policy to limit royalties for patented technologies paid to foreign companies and to promote the domestic development of essential intellectual property (IP). China aims to develop these domestic innovative technologies and IP in part through technology mandates and promotion of unique national standards. Chinese authorities also promote this policy through their licensing negotiations with Chinese and foreign technology companies.

Counter to global practices, MIIT has effectively precluded foreign companies that own essential intellectual property rights (IPR) for 3G wireless communications standards from negotiating technology licenses and royalty agreements directly with Chinese companies. Rather, foreign companies have been pressured through possible market exclusion to negotiate with a committee led by the China Academy of Telecommunications Research (a government institution subordinate to MIIT) over royalty rates and other licensing terms. This is problematic, as unreasonably low royalties that are not based on the underlying patented technology's economic value, and are significantly below international market rates, may severely impede technology development in China.

These practices are inconsistent with the fundamental rights conferred by patent to technology owners and constitute a possible nullification, or impairment, of the Trade-Related Aspects of Intellectual Property Rights (TRIPS) patent provisions. In addition, Chinese government-imposed limitations on 3G royalties operate as price controls that are prohibited under China's protocol of accession to the WTO. AmCham-China believes the Chinese government reaching its goals of being a global leader in technology and innovation necessitates a move towards international standard licensing and royalty practices.

### **Opacity, Delays and Bureaucratic Intervention**

Under the guidance of the Indigenous Innovation drive, many Chinese officials and agencies have called for promoting technological standards with "self-owned IPR" and the imposition of domestic standards. AmCham-China is concerned about the potential for compulsory licensing of IP deemed essential for a national standard. Moreover, the mandatory imposition of standards limits competition between those that embody differing capabilities, impeding innovation.

AmCham-China recognizes China's desire to foster domestic innovation. However, China's policies have led to mandating of regulations and standards developed outside of international standard setting processes with no transparency. Prime examples include the pending requirements on information security product certification, which incorporate by reference a multitude of domestic standards, and potential cell phone battery/headset/phone book standards. Mandatory adoption of national standards hampers innovation by restricting both the ability of Chinese companies to serve other markets and of foreign importers to serve China's markets.

### **Intellectual Property Rights**

Despite expanded commitments, IPR problems, piracy and counterfeiting on the wholesale/retail level and on the Internet remain at significant levels due to inadequate enforcement at all levels. The regulatory framework emerging around the development of technical standards and how China will regulate the IP in China's standards, patent and competition laws are deeply concerning. China's WTO/TRIPS commitments oblige China to protect private IPR without regard to national origin. Clear and vigorous IPR protection would promote China's goal of attracting more state-of-the-art research and development investment, as would the acceleration of lengthy patent application processes and the establishment of clear policies on damage calculations with no, or significantly higher, limits than currently exist.

China's 2008 National IP Strategy includes many commendable points as it recognizes the need to improve IP enforcement, strengthen the IP legal framework, and foster public awareness on IPR issues. However, the National IP Strategy also calls for more effective action against "IP abuse" and "the need to improve the compulsory licensing system to make use of exceptions." Using IP and competition laws to address what some in China believe to be an imbalance in IP power that favors foreign IP rights holders would be shortsighted. Innovation is global and multinationals are contributing heavily to China's indigenous innovation. China's own patent holdings are increasing and will be respected abroad without regard to national ownership.

### **Government Procurement**

China's Medium to Long-Term Strategic Plan for the Development of Science and Technology focuses on the role of public procurement in advancing innovation by giving preference to domestic products and limiting foreign procurement market access. This remains a flawed strategy that limits competition and innovation (please see Government Procurement chapter).

标是部分地通过技术强制措施和推广独特的国家标准来发展这些国内创新技术和知识产权。此外, 中国政府相关机构还通过与国内外技术公司进行专利使用许可谈判来促进这项政策的实施。

与全球惯例相反, 工业和信息化部事实上将在3G无线通信标准领域拥有核心知识产权的外国公司排除在外, 使其无法直接与中国公司就技术许可使用和专利使用费协议进行谈判。确切地说, 通过可能的市场禁入措施, 外国公司被迫与以中国电信研究院(一个隶属于工业和信息化部的政府机构)为主的委员会就专利使用费率和其它专利许可条件进行谈判。这种做法值得怀疑, 因为该委员会提出的专利使用价格低到不合理的程度, 这种价格不是基于相关专利技术的经济价值确定的, 并且远远低于国际市场价格, 这将严重阻碍中国的技术发展。

这些做法与专利赋予技术所有者的基本权利相悖, 可能会导致《与贸易有关的知识产权协定》(TRIPS)中专利法规的失效或受到损害。此外, 中国政府在3G专利使用费方面的限制已经构成事实上的价格控制, 这违背了中国加入世界贸易组织时签订的协议。中国美国商会相信, 中国政府要想实现其成为全球技术与创新领袖的目标, 就应当借鉴国际标准许可和特许权使用费的做法。

### **缺乏透明度, 过程延滞和官僚政治的干涉**

在“自主创新”理念的指导下, 许多中国官员和机构呼吁推行并强制实施“自主知识产权”的技术标准。中国美国商会担心, 强制实施知识产权使用许可, 可能是为了一个国家标准。此外, 强制实施标准会限制不同能力公司之间的竞争, 妨碍创新。

中国美国商会理解中国培育国内创新能力的意愿。然而, 中国政策所引发的强制执行的法规与标准, 其制定不符合国际标准设置流程并缺乏透明度。明显例证是尚未执行的信息安全产品认证要求, 这一要求援引合并了多种本国标准, 以及可能的蜂窝电话电池/耳机/电话簿标准。强制采用国家标准既限制了服务公司其它市场的能力, 也限制了外国进口商服务中国市场的力量, 其结果是束缚了创新。

### **知识产权**

尽管中国政府加大了知识产权保护承诺, 但由于各级政府执法力度不够, 知识产权侵权问题、盗版和假冒现象在批发/零售环节以及国际互联网上仍然大量存在。随着中国政府围绕技术标准的发展出台了监管框架, 知识产权

在中国标准和竞争政策中的运用成为一个核心问题。中国将如何按照自己的标准、专利和竞争法规来监管知识产权引发了深切的关注。根据中国对世界贸易组织/《与贸易有关的知识产权协定》作出的承诺, 中国应保护私人知识产权, 无论该知识产权来源于哪个国家。明确并有力地保护知识产权有助于中国实现吸引更多先进的研发投资这一目标, 加快漫长的专利申请流程, 同时针对损害估算额(无变化、明显增高、略有增高)制定清晰的政策。

中国《2008年国家知识产权战略》中包括许多值得肯定的内容, 它承认中国需要改进知识产权执法, 加强知识产权法律框架, 并提高公众对知识产权的认识。然而, 《国家知识产权战略》也呼吁采取更有效的行动来打击“知识产权滥用现象”和“需要改进强制许可制度以考虑例外情况。”利用知识产权法和竞争法来解决某些中国人所认为的、有利于外国知识产权持有人的知识产权权利失衡问题, 将是短视的。创新是全球性的, 跨国公司对中国的自主创新正在做出巨大贡献。中国自己持有的专利数量日益增多, 并且国外尊重这些专利, 无论其被哪国持有。

### **政府采购**

中国《科学与技术发展中长期战略规划》重点关注公共采购通过优先考虑国内产品和限制境外采购市场准入的方式带动创新中所发挥的作用。但这仍然是一项不完善的战略, 限制了竞争与创新(参阅《白皮书》“政府采购”章节)。

### **建议**

- 为鼓励中国的自主创新, 应采取透明、基于市场的政策, 在市场准入、采购、标准或竞争和知识产权法的执法方面, 不区分国内、国外公司、技术或知识产权。
- 扩大可经营的增值服务的范围, 使真正有意愿的外资和民营公司进入该行业。虚拟专用网络(VPN)的国际IP业务应当被纳入可经营的增值业务范围之内。应按照大多数国家采取的做法, 将电信企业增值服务中外资参股比例上限提高到百分之百, 区分敏感和非敏感增值服务并分别制定适当的控制程序。
- 建立所有新技术审批的透明体系, 确保审批过程公平合理, 公司和消费者能够参与提供意见和建议。

**Recommendations:**

- **To foster innovation in China, adopt transparent, market-based policies that do not discriminate between domestic and foreign companies, technologies or intellectual property in terms of market access, procurement, standards, or enforcement of competition and IP laws.**
- Expand the set of permissible VAS substantially to enable genuine foreign and private participation in the sector. Make international IP-VPN services available among the permissible VAS, and raise the foreign equity cap in telecom enterprise VAS foreign investment to 100 percent, as most countries have already done. Distinguish between sensitive and non-sensitive VAS and define appropriate control procedures for each.
- Establish a transparent system for licensing of all new technologies to ensure a fair process and the ability of companies and consumers to provide input.
- Make 3G spectrum allocation technology neutral to generate more competition and service innovation. Establish spectrum allocation and market access policies fair to all market players.
- Let markets decide the outcome on standards issues. China has a healthy innovation engine with many companies and institutions attempting to create standards across all types of ICT products.
- Adopt global standards whenever possible, and embrace openness in developing any new IT standards. Ensure that the standard setting process in China is transparent, allows for public consultation of all stakeholders, and is non-discriminatory, so that foreign and domestic players can participate.
- Clarify and enforce IP infringement penalties in all sectors.
- Strengthen copyright and trademark enforcement across all sectors.
- When defining terms, use clear definitions to avoid interpretational confusion.
- Remove the “indigenous innovation product” requirement for procurement and open government procurement to both foreign and domestic firms (see Government Procurement chapter).

- 在3G频段分配时要技术中性化，以产生更多的竞争和服务创新。制定公平对待所有市场参与者的频段分配政策和市场准入政策。
- 让市场来主导有关标准问题的结果。中国具有良好的创新动力，许多公司和机构都在为各种信息通信技术产品创建标准。
- 尽可能采用全球标准。赞同放开IT标准的制定工作。确保中国的标准设置制度透明化，准许各利益相关方进行无歧视性的公开磋商，使外国和国内的竞争者能够参与。
- 阐明并执行知识产权侵权惩罚措施。
- 在所有行业中加强有关版权和商标的执法力度。
- 当定义术语时，使用清楚的定义以避免解释上的混乱。
- 取消政府采购中对“自主创新产品”的要求，同时向国内外公司开放政府采购(参阅《白皮书》“政府采购”章节)。



# Insurance

China has called on the insurance industry to play a critical role in the nation's social and economic development during the 11th Five-Year Plan (2006-2010) and beyond by enabling people to insure their lives, health and property and by investing insurance funds in infrastructure and other projects. Given China's low insurance penetration (less than three percent of GDP), there is tremendous potential for growth in the industry.

AmCham-China supports the broad social and economic development goals of the 11th Five-Year Plan and US insurers are equipped and ready to play a larger role. The great majority of US insurance companies, including those with subsidiaries in China, have sound finances with ample capital to continue business growth. Although the global financial downturn impacts the industry, the China market remains important to it.

Although China has formally complied with its WTO accession commitments on market access and taken additional market opening actions, foreign insurance companies still face significant barriers to entry and expansion in China. This is harmful to China's economic development.

## Significant Developments

There have been several positive developments in the insurance regulatory environment in the past year. Relevant agencies have adopted new rules and advanced draft legislation. AmCham-China particularly welcomes the removal of the current requirements that reinsurance cessions be offered first to domestic reinsurance companies and that China Insurance Regulatory Commission (CIRC) approve overseas reinsurance cessions from the revised Insurance Law. These two requirements limited reinsurance capital by excluding foreign reinsurers from China's market, artificially enhancing growth of domestic reinsurers at the expense of consumers and the government. AmCham-China is hopeful that these changes will be preserved in the revised Insurance Law.

AmCham-China also welcomes the rise in regulatory transparency on the part of CIRC and other government departments. Regulations are generally now posted on the website of CIRC or other relevant departments, and often with an invitation for public

comments. While these developments are good, more can be done. In particular, all regulatory documents, other than enforcement orders, should be made available for public comment. The timing between the date of approval and the publication date should be reduced, with perhaps 30 days allowed for comments.

## Specific Issues

### National Treatment for Branch Approvals

Although Chinese regulations make no formal distinction between Chinese-invested and foreign-invested insurance companies with respect to in-country branching, AmCham-China members continue to report that they are told by local and national CIRC officials that multiple branch applications cannot be submitted simultaneously or, if so submitted, the applications will not be concurrently reviewed and approved. No AmCham-China members report being able to obtain branch approvals concurrently. Meanwhile, Chinese-invested insurance companies have obtained multiple concurrent branch approvals, enabling them to rapidly build their networks. Many of those licenses were granted in batches within a short period of time, some of them on the same day.

AmCham-China members believe branch and other license applications by foreign-invested insurance companies, even those that enjoy legal-person status in China, are subject to additional layers of review beyond those enjoyed by China insurance companies. Favoring Chinese-invested insurance companies ultimately results in the slower development of the insurance industry and disadvantages the interests of insureds.

In addition, CIRC appears to maintain separate procedures for applications by foreign-invested insurance companies because all their applications must be submitted by their head office and are subject to CIRC approval. By contrast, Chinese-invested insurance company applications can be submitted by branches, and branch applications need only be reviewed by local CIRC bureaus instead of CIRC headquarters. Chinese-invested insurance companies are also entitled to simpler and faster procedures for the registration of branches and sub-branches.

Foreign-invested insurance companies should be allowed to enjoy national treatment and AmCham-

# 保险

中国政府号召保险业在“十一五”期间(2006-2010)及之后在中国社会和经济发展中发挥重要作用,使人们能够拥有寿险、健康险和财产险保障,并允许保险资金投资到基础设施和其他项目中。中国目前的保险深度非常低(不足GDP的3%),保险业的发展潜力非常巨大。

中国美国商会支持“十一五”期间社会和经济长足发展计划,美国保险企业有能力、也有计划在此过程中发挥更大的作用。大多数美国保险公司,包括那些在中国设有机构的公司,拥有较强的资本实力,足以支持业务的持续增长。虽然全球范围的金融危机对保险业产生一定的影响,但是中国依然是一个非常重要的市场。

虽然中国原则上已经兑现了入世的各项承诺,并且也在不断地扩大保险业的开放范围,但外资保险公司在市场准入以及在华扩展业务方面还是面临很多障碍,这对中国的经济发展是不利的。

## 重大进展

2008年以来,中国在保险业监管方面有许多积极的改善,相关机构已经颁布了许多新的规定,立法进程也在不断推进。中国美国商会尤其欢迎中国取消了以下两项要求,即保险业务首先要分保给中资保险公司;根据修订后的《保险法》向海外市场分出业务首先要获得保监会批准。这两项规定限制了外资再保险公司对中国保险市场的参与,从而限制了中国再保险市场的资本规模,人为地推进了中资再保险公司的发展,但却损害了消费者和政府的利益。中国美国商会希望这些变化将会在新修订的《保险法》中被继续采纳。

中国美国商会也欢迎保监会及其他政府机构的监管透明度不断改善。保监会和其他相关部门在网站上公布监管措施,并经常广泛征求社会意见。这些都是可喜的变化,但需要改善的方面也还很多。其中最为重要的是,所有监管文件,除了执行令之外,都应该首先征求公众意

见;批准日期和公布日期之间的间隔应该缩小,预留约30天的时间供大家提出建议。

## 具体问题

### 分支机构审批中的国民待遇

虽然就境内设立分支机构而言,中国法规并未正式区分中资和外资的保险公司,但据中国美国商会会员的反映,他们被保监会或当地的保监局告知,不能一次提交多个分支机构设立申请,即便提交,也不会被同时审批。没有任何商会会员曾经同时获得多个分支机构设立的批文。与此不同的是,中资保险机构则可以一次申请设立多个分支机构,使得他们可以更快地扩展业务领域,这些许可证中有许多是在短期内成批获准的,其中有一些还是在同一日内完成。

商会会员认为他们所面临的这种不平等待遇还有其结构和程序上的原因,即使外商投资保险公司在华享有法人资格也不例外。这种对中资公司更加有利的监管最终会导致保险行业的发展速度放缓,并损害被保险人的利益。

此外,中国保监会似乎对外商投资保险公司提出的申请适用不同于中资保险公司的单独程序。外资保险公司提出的所有申请都必须由其总部提交,而且须经中国保监会审批。中资保险公司的申请可以由分支机构提交,而且分支机构申请只需要由地方保监会审查。中资公司的分支机构注册登记的程序也较为简单。

应当允许外国保险公司享受国民待遇。中国美国商会认为上面所谈及的以及往年白皮书中所提到的各种区别对待的情况缺乏合理的依据,与中国的WTO承诺不符。

## 销售和客服中心

中国美国商会会员公司在开设分支机构过程中被拖延的情况,由于保监会9月份发出的《保监会关于临时暂

China believes that the distinctions described here and in previous *White Papers* lack a reasonable basis and are incompatible with China's WTO national treatment obligations.

### **Sales and Service Centers**

The delays experienced by AmCham-China members in establishing branches are aggravated by CIRC's September Notice Concerning the Temporary Suspension of the Approval of Sales and Service Centers by Insurance Companies. Such sales and service centers are an effective means for an insurer to service customers within the geographic scope of an approved branch, but currently operations across the industry are curtailed.

While some sales and service centers operated by a number of insurance companies have experienced administrative problems, including with respect to cash management, CIRC appears to be punishing an entire industry and their customers for the mistakes of a few companies. We encourage that regulatory action be used against those companies or branches where problems have arisen. Foreign-invested insurance companies are disproportionately impacted because they tend to have thinner branch networks.

### **Life Insurance Corporate Structure**

As part of its WTO accession agreement in 2001, China committed to allow foreign life insurance companies to enter the market through joint ventures (JV) subject to a 50 percent equity cap. Although the Chinese government has met this commitment, the cap on foreign investment has outlived its usefulness. It forces foreign insurance companies to partner with enterprises that lack industry expertise and may have limited enthusiasm for investing the additional registered capital needed for growth. In effect, decisions require unanimous board of directors' consent, complicating governance. The requirement to establish JVs should be eliminated, or at least, the 50 percent ownership cap should be removed.

### **Investment Channels**

Insurance company funds are an important source of capital for the economy, particularly during an economic downturn. Although investment restrictions on insurance companies have partially relaxed in recent years (particularly on infrastructure and real estate), insurance companies still cannot invest in corporate bonds unless backed by a guarantee. Also, investment in such bonds is capped at 30 percent of total assets. These restrictions limit the ability of insurance companies to reduce investment risk by diversifying. They also increase liquidity risk by reducing a company's ability to match liabilities, particularly medium and long-term liabilities, with fixed-income assets. AmCham-China recommends removal of restrictions on investment in corporate bonds, starting with raising the cap on investments in corporate bonds from 30 to 45 percent.

AmCham-China urges insurance asset investment company licenses be made available to foreign applicants to increase access to experienced asset managers. Insurance companies should also be permitted to entrust management of their assets to managers in the securities and investment funds industries.

### **Training**

AmCham-China believes that CIRC has instituted unnecessary education and training requirements for the insurance industry. Requirements for senior personnel, and indeed for all personnel other than actuaries, are unnecessary and burdensome. Operations will suffer if management personnel and directors must leave their posts for long periods to review material, which is likely of limited relevance to their work. We recommend instead that CIRC adopt International Association of Insurance Supervisors (IAIS)-type qualifications for personnel and eliminate current mandatory training.

### **Healthcare Reform**

The State Council recently issued amended reform guidelines for China's healthcare system, reflecting the prevailing sense of urgency. The guidelines call for accelerated development of the health insurance network in both urban and rural areas. The development of a robust commercial health insurance industry is critical to improving individuals' ability to plan for their healthcare spending, as well as encouraging private investment in the industry. Employers and individuals should be encouraged to buy private health insurance to supplement the government's Basic Medical Insurance reimbursement. Enterprises should be allowed to expense employer-purchased insurance, which thus should not be subject to IIT. The government's reimbursement should allow people to meet a universally guaranteed basic level of service, but also allow private providers to offer supplemental service. This additional service should be financed in part by Basic Medical Insurance and supplemented by private commercial insurance or by out-of-pocket spending by individuals, should they seek private care providers. In addition, specific healthcare insurance laws should be introduced to prevent malpractice and protect consumers. AmCham-China looks forward to concrete policies and regulations, which would enable foreign-invested insurance companies to contribute their expertise and experience to the development of the China's health insurance industry.

### **Developing Third Party Administration (TPA)**

In the social security, insurance and healthcare systems, TPA firms provide complete or supporting administration and management services for the insurer, the insured and the healthcare service provider. The TPA does not assume responsibility for risk protection, nor provide medical services, but it does play a critical role in building stability

停批复保险公司销售和客服中心的通知》而进一步加剧。销售和客服中心是保险公司在其业务地域范围内服务保险客户的有效途径,但目前整个行业的业务运作因此而受到影响。

有几家保险公司的销售和客服中心在运营中出现了内部管理问题(包括现金管理),保监会却因为少数公司的问题而惩罚整个行业 and 所有客户。我们建议保监会仅针对出现问题的保险机构采取措施。外资公司因其机构网点较少,受此《通知》的影响格外大。

### **寿险公司的组织结构**

作为2001年加入WTO的承诺之一,中国承诺允许外资寿险公司通过设立合资公司的形式进入中国寿险市场,外资持股比例上限为50%。中国政府也一直遵循此承诺,但这种对外资机构持股比例上限的要求已经不合时宜。它迫使外资保险公司不得不与一些不具备行业经验的中资机构设立合资公司,而有些中资机构没有太高的热情向合资公司额外增加资本以图更大的发展。其结果是,需要董事会一致同意的重大决策难以通过,使公司治理变得复杂化。我们认为应该取消成立合资公司的限制要求,或者至少取消对外资公司50%持股上限限制。

### **投资渠道**

保险资金是经济发展的重要资金来源之一,在经济下行期间尤为如此。虽然近年来,对保险公司投资的限制有所放松(如基础设施和房地产),保险公司依然不能投资于无担保的企业债,而且将对企业债的投资限制在总资产的30%以内。这些限制使得保险公司不能很好地通过分散投资来降低投资风险,同时,因限制了保险公司使用固定收益类资产匹配负债尤其是中长期负债的能力,也增加了保险公司的流动性风险。中国美国商会建议取消对保险公司企业债投资的限制,第一步可以考虑将企业债投资比例上限从总资产的30%提高到45%。

中国美国商会还促请监管机构向外资申请人颁发保险资产管理许可,以增加有经验的资产管理者的数量。保险公司也应该被允许委托证券机构和基金公司参与管理其资产。

### **培训**

中国美国商会认为保监会对保险行业提出了超出必要范畴的教育和培训要求。对高级管理人员和其他所有非精算专业的人员的培训要求是没有必要的,也加重了管

理人员的负担。如果管理人员和董事们不得不长时间离开本职岗位去学习一些可能对他们的工作没有多少意义的内容,公司的业务将受到影响。我们建议保监会采纳类似IAIS(国际保险监督官协会)的管理人员资格要求,取消目前的强制培训要求。

### **医疗改革**

国务院近期发布了中国医疗改革方案,反映出此问题的紧迫性。方案要求加快城市和农村的健康保险网络的建设。一个活跃的商业医疗保险行业对消费者有效地规划自己的医疗开支预算至关重要,同时还会鼓励民营资本对医疗事业的投资。应该鼓励雇主和个人在政府提供的基本医疗保险额之上购买商业补充医疗保险,企业为员工购买保险的保费应该在税前列支,无须缴纳所得税。政府的报销额度应该能够保障全民享有基本医疗服务,同时给商业保险公司留有提供补充服务的空间。额外的医疗服务费用应部分由基本医疗保险提供,部分由商业补充医疗保险提供;或者,消费者也可自费获得自己需要的私人医疗服务。此外,中国应当制定专门的医疗保险法,以防止舞弊行为,保护消费者利益。中国美国商会希望看到中国出台具体的政策和规章,使得外资保险公司能够贡献他们的经验和专业知识,促进中国健康保险业的发展。

### **发展第三方管理机构**

在社保、保险和医疗系统领域,第三方管理机构(TPA)可以为保险公司、被保险人和医疗服务提供商提供全面的或辅助性的管理服务。第三方管理机构不承担风险保障的责任,也不提供医疗服务,但却在改善社保、商业保险和医疗服务的稳定性和效率方面发挥重要作用。

医疗服务环境对医疗保险和TPA服务的发展有很大影响,一个市场化程度较高的医疗环境将有利于第三方管理机构的更快发展。支持性的政策环境、优惠税收政策以及更宽泛的经营范围将会促进行业的发展,并有助于第三方管理机构发挥更大的作用。

中国美国商会促请中国在TPA行业的发展阶段采纳更加宽松的监管制度,以促进市场发展和建立行业规范。过多的监督会束缚发展,对中国健康保险业的发展不利,也与政府致力于扩大医疗服务覆盖范围的大环境不协调。

and efficiency into the social security, insurance and healthcare systems.

The healthcare service environment greatly impacts the development of health insurance and TPA service, and a more market-oriented healthcare environment will enable TPA to expand faster. A supportive governing environment, favorable tax policy and a broadened scope of business would promote industry development and an expanding role for TPA.

AmCham-China urges the adoption of a moderate regulatory system during TPA sector development to help the market grow and establish norms, while avoiding overly stringent regulations. Excessive oversight will inhibit development to the detriment of the health insurance industry in China at a time when the central government is focused on expanding availability of affordable healthcare.

### Recommendations

- **Allow foreign insurance companies to enjoy national treatment by granting new branch licenses on a concurrent basis.**
- Remove requirements for foreign insurance companies to establish JVs in order to enter the China market, or at the very least, remove the current 50 percent equity cap.
- Loosen or remove restrictions on investment in corporate bonds by foreign insurance companies.
- Allow foreign insurance asset investment companies to obtain insurance asset management company licenses.
- Allow foreign insurance companies to outsource invested assets to qualified fund management companies in the securities and investment funds industries.
- Adopt IAIS-type qualifications for personnel and eliminate continuous education and training programs.
- Adopt moderate regulatory oversight of TPA firms during their development and avoid overly stringent regulations.
- Through the tax code and other appropriate means, allow and encourage the provision of private healthcare insurance by both domestic and foreign insurers as a vital element of health care reform.

### 建议

- 在申请新的分支机构设立许可证过程中, 外国保险公司享受与中国公司同等的国民待遇。
- 取消对外资保险公司进入中国市场时必须设立合资公司的限制, 或者至少是取消外资公司持股比例50%的上限。
- 放松或取消对外资保险公司投资企业债的限制。
- 允许外资保险资产管理公司取得保险资产管理公司的资格。
- 允许外资保险公司将其投资业务外包给合格的证券业和基金业的基金管理公司。
- 采取IAIS形式的管理人员资格要求, 取消持续的教育和培训课程要求。
- 对于处于发展阶段的第三方管理机构采取适度的监督, 避免过度过严监管。
- 通过修改税法和其他有效途径, 允许并鼓励中资和外资保险公司提供商业医疗保险作为医疗改革的重要组成部分。

## Legal Services

Foreign law firms have substantially assisted China's economic growth during the past 30 years. They have done so through representing both foreign companies investing in China, and Chinese companies raising significant amounts of capital and seeking to invest and do business overseas. The Chinese government's policies to stimulate outbound investment, foster onshore research and development, and promote high-value financial services and manufacturing throughout the country all require increasingly sophisticated legal services. China should build on and accelerate these contributions by permitting all law firms, domestic and foreign, to employ qualified Chinese attorneys and to allow those qualified Chinese attorneys to practice Chinese law on similar terms regardless of the origin of the firm. Giving all legal services firms more operating room will strengthen the overall economy and the services sector.

### Significant Developments

As China's regulatory and legal system has grown more complex in tandem with China's economy, lawyers and law firms have taken important and diverse roles. The enactment of the Labor Contract Law, the Enterprise Income Tax Law, the Anti-Monopoly Law and other major legislation has brought significant changes in the regulation of commercial activities in China. Lawyers have been increasingly active in commenting on proposed measures before adoption and conferring with relevant enforcement agencies before implementation of laws. For example, the Shenzhen City People's Congress invited 30 local lawyers to represent interested parties in a public debate on proposed local regulations concerning the radio industry.

On June 1, 2008, the new Lawyer's Law took effect. In many respects, the new Lawyer's Law represents a step forward in enabling attorneys to safeguard their clients' interests in Chinese judicial proceedings. For example, Article 33 now provides that lawyers shall not be "monitored" while meeting with criminal suspects and defendants. However, this provision conflicts with Article 96 of the 1996 Criminal Procedure Law, authorizing investigative authorities to be present when lawyers meet with criminal suspects in detention.

Promoting the transparent and even-handed drafting, enactment, and implementation of laws and regulations remains an area of substantial progress and challenge for US companies in China. Lawyers and law firms—both domestic and foreign—play a valuable role in confronting these challenges.

### Specific Issues

#### Scope of Practice

Foreign law firms in China continue to face severe restrictions on their participation in the legal services market. Current law prohibits foreign firms from practicing Chinese law. Although foreign firms may "provide information on the impact of the Chinese legal environment" to their clients, many critical functions of modern law firms are prohibited. These include appearing as counsel before Chinese courts, opining on questions of Chinese law and representing clients before government bodies.

This policy directly constrains the professional opportunities of qualified Chinese lawyers. Foreign law firms are prohibited from hiring qualified Chinese lawyers to practice Chinese law as associates or partners, a *de facto* invalidation of the use of their Chinese bar accreditations. Various profit-sharing and joint venture arrangements with Chinese law firms are also prohibited.

#### Benefit to Individual Chinese Lawyers and Leading Chinese Companies

Enabling individual Chinese lawyers to practice Chinese law in foreign law firms would provide great opportunities for them to assume leadership roles in global law firms, both in China and worldwide.

China's law schools continue to graduate high numbers of talented and motivated lawyers. As of December 2007, there were 143,967 lawyers in China and 13,593 law offices. In the same year, total enrollment in law schools reached 78,892.

Foreign law firms in China have long been key employers of junior graduates of Chinese law schools. However, legal restrictions have greatly limited their opportunities for advancement within foreign law firms. Some Chinese legal consultants choose to study overseas and are admitted to practice in foreign

## 法律服务

过去30年里，通过代表在华投资的外国公司以及在境外开展大规模融资和寻求境外投资发展机会的中国公司，外资律师事务所为中国的经济增长发挥了重要的作用。为鼓励对外投资、在岸研发以及促进高附加值金融服务和制造业的发展，中国政府出台各种相应的政策，这些都需要日益成熟的法律服务。中国应对这些律师事务所做出的努力予以支持和促进，允许国内外所有律师事务所聘用中国执业律师，无论其来自于何种律师事务所，均可一视同仁地允许其办理中国法律事务。为所有的法律事务公司提供更大的经营空间将有助于推动总体经济和整个服务领域的发展。

### 重大进展

随着经济的发展，中国的监管和法律体系也日趋复杂，律师和律师事务所的作用因此变得十分重要和多样化。《劳动合同法》、《企业所得税法》、《反垄断法》以及其他主要法律的制定，为在华商业活动的监管工作带来了重大变化。律师越来越积极地对各项法规草案发表意见，并在法律付诸实施之前与相关执法机构进行交流。例如，深圳市人大曾邀请30位当地律师代表利益相关方，就拟议的当地无线电行业法规进行公开辩论。

2008年6月1日，新《律师法》正式生效。在许多方面，新《律师法》是一大进步，它保证了律师能够在中国司法诉讼中保护其当事人的利益。例如，第33条规定，律师会见犯罪嫌疑人、被告人，不被监听。但是根据1996年《刑事诉讼法》第96条规定，律师会见在押的犯罪嫌疑人，侦查机关可以派员在场。上述这两项规定相互矛盾。

法律法规起草、制定和实施工作的透明化、公正化仍有待改进，这也是在华美国公司所面临的一大挑战。在应对这些挑战方面，国内外律师和律师事务所发挥着重要的作用。

### 具体问题

#### 执业范围

在华外资律师事务所在法律服务市场的参与度方面仍受到很大限制。现有法律明令禁止外资律师事务所办理中国法律事务。尽管外资律师事务所可以为当事人“提供有关中国法律环境影响的信息”，但现在律师事务所的许多关键活动都被禁止，包括在中国法庭上担任辩护律师，就中国法律问题发表意见，以及代表当事人与政府机构接洽。

这项政策直接限制了中国执业律师的就业机会。禁止外资律师事务所聘用中国执业律师以律师或合伙人的身份办理中国法律事务，这事实上剥夺了他们使用国内律师执业资格的权利。中国同时禁止外资律师事务所与中国律师事务所建立各种利润共享关系和合资关系。

#### 使中国律师个人受益并引领中国公司发展

允许中国律师个人在外资律师事务所中处理中国法律事务，可以为提供在国际性律师事务所中担任高级管理人员的机会。

中国的法律院校不断培养大量才华出众和上进心强的律师。截至2007年12月，中国共有143967名律师和13593家律师事务所。同年，法律院校的在校生总数达到78892人。

长期以来，在华外资律师事务所为中国法律院校的毕业生提供了众多就业机会。但是，法律上的限制大大减少了他们在外资律师事务所晋升的机会。中国的一些律师选择到国外深造，获得国外司法管辖区的执业资格，使他们能够以外国执业律师的身份在外资律师事务所从事法律服务活动。然而，到国外深造需要付出高昂的人力和财力代价。此外，只要他们受聘于外资律师事务所，就无法以国内律师的身份为中国法律的发展献力。

jurisdictions, enabling them to practice as foreign-qualified lawyers with foreign law firms. The personal and financial costs of overseas study can, however, be substantial. Moreover, as long as they remain employed by foreign law firms, they are prevented from participating in China's legal development as domestic lawyers.

Removing the prohibition against Chinese lawyers practicing Chinese law in foreign law firms would immediately create new employment opportunities. Junior Chinese lawyers could join foreign law firms as associates and make full use of their Chinese legal education. Those individual lawyers joining foreign law firms to practice Chinese law would do so as Chinese lawyers. They would possess the legal education and bar qualifications of Chinese lawyers, and they would be subject to the same ethical duties and oversight by the Ministry of Justice as other Chinese lawyers.

Moreover, this reform would enable more Chinese lawyers to assume leadership roles in foreign law firms, both domestically and around the world. Japan recently eliminated its longstanding prohibitions against Japanese attorneys practicing Japanese law as members of foreign law firms. Already, many foreign law firm offices in Japan are overwhelmingly staffed and led by domestic lawyers.

Significantly, Chinese companies looking to assume greater roles in worldwide investment and commercial activities would benefit from the integration of their principal Chinese counsel with a worldwide team of specialists. Multinational companies often rely on full-service international law firms precisely because they seek integrated, seamless service across different areas of law and jurisdiction. Enabling Chinese companies to rely on a single integrated legal service provider for support in China and abroad will allow them to expand more efficiently and successfully.

### Benefits to China's High-Tech and Services Sectors

In 2007, the State Council issued its Opinions on Expediting the Development of the Services Sector (Opinions), which sets forth the goal of growing the service sector in China to RMB 2.7 trillion (US \$394 billion) by 2010 from approximately RMB one trillion (US \$146 billion) in 2005. This plan will increase the proportion of domestic businesses engaged in services by three percent and the total number of employees engaged in the sector by four percent. Extrapolating from the Opinions, more than nine million new jobs must be created in the service sector in a five-year period beginning January 1, 2005 to accomplish this goal. The Opinions state that the government is firmly committed to opening up the service sector further, encouraging foreign investment and improving the laws and regulations related to foreign investment. The report states that the ultimate goal, however, is to learn advanced foreign practices and management experience to cultivate internationally competitive domestic service companies.

Law firms, while a small portion of the total service sector, enable a broad range of service industries to grow more quickly by providing the necessary support to ensure compliance with local laws. Firms introduce foreign service-sector companies to the local markets, explain how to comply with local regulations and subsequently document transactions for such companies. With local participants, law firms transfer foreign expertise and help in the development of many new service sector products.

For China to grow its service sector effectively, it must attract high-value service industries like commercial and investment banks, and consulting and real estate companies. Such businesses depend on lawyers and law firms. Law firms impact companies' decision about where, when and how to invest in one country versus another. All major economies with service sectors totaling more than 60 percent of the basic economy allow foreign law firms to practice both international and local law.

### Restrictions on Cooperative Arrangements with "Domestic" Firms

China's domestic regulations governing legal services, like its WTO market access commitments for this sector, distinguish "domestic Chinese law firms" from "foreign law firms." As established firms in China continue expanding into foreign jurisdictions, this distinction is increasingly untenable.

Numerous Chinese law firms have established branches in the US and elsewhere overseas. Under current law, law firms established outside China are barred from acquiring Chinese legal practices or engaging in other profit-sharing arrangements with Chinese law firms. These restrictions prevent foreign firms from advising on Chinese and foreign law to their clients "under one roof." Relaxing the restrictions on mergers, joint ventures and profit-sharing arrangements between Chinese and foreign firms would be a credible and practical first step towards removing the distortions arising from discrimination between Chinese and foreign firms.

### Representative Office Registration

China maintains separate regulatory schemes for domestic law firms, foreign representative offices and Hong Kong/Macau firms. Representative offices of foreign law firms face tighter scrutiny and regulatory approval procedures than domestic counterparts. When applying to establish a representative office, a foreign law firm must demonstrate "a need to establish a representative office to start legal service operations." Authorities evaluate such needs based, in part, on the "social and economic development conditions" of the proposed location, the "development needs" for legal services in the proposed location, and similar considerations.

A foreign law firm must wait three years after the establishment of a representative office before

如果能够取消禁止中国律师在外资律师事务所从事中国法律服务和事务的规定,则可立即创造新的就业机会。初级中国律师将能够以普通律师身份加入外资律师事务所,从而充分运用他们所学到的中国法律知识。加入外资律师事务所从事中国法律服务和事务的个人律师,将可以以中国律师的身份开展执业活动。他们将拥有与中国律师同等的法律教育和执业资格,并像其他中国律师一样,同样恪守相同的道德准则,并接受司法部的监督。

此外,这项改革将使更多中国律师能够在国内外所有外资律师事务所中担任领导职位。最近,日本解除了长期以来禁止日本本土律师在外资律师事务所中处理日本法律事务的限制。目前,在日本的许多外国律师事务所已经开始大量聘用当地律师并由当地律师担任领导职务。

寻求在全球投资和商业活动中发挥更大作用的中国公司,将会从其中国法律顾问和一个全球性专家团队的融合中获益匪浅。跨国公司常常会选择提供全方位服务的国际律师事务所来为其提供有关法律各个层面的综合、完善的服务。让中国公司能够通过一家提供全方位法律服务的公司,为其在国内外的的发展提供支持,这将有助于他们更加高效、成功地拓展业务。

### 使中国高科技和服务行业受益

2007年,国务院出台了《关于加快发展服务业的若干意见》(简称《意见》),提出了2010年中国服务业规模从2005年的1万亿元(合1460亿美元)增至2.7万亿元(合3940亿美元)。服务业增加值占国内生产总值的比重比2005年提高3个百分点,服务业从业人员占全社会从业人员的比重比2005年提高4个百分点。要实现这一目标,自2005年1月1日起的5年内,必须新增900多万个工作岗位。

《意见》提出,政府将坚定不移地推动服务业进一步发展,鼓励外资,并完善与外资相关的法律法规。但报告指出,最终目标是学习先进的外国实践和管理经验,培养具有国际竞争力的国内服务型企业。

尽管只是整个服务领域的一小部分,但律师事务所通过提供必要的支持以保证符合当地法律,能够帮助众多的服务行业实现更加迅猛的发展。律师事务所将外国服务型企业引入本地市场,向其说明该如何遵守地方法规,并随后以文字形式将这些公司的各项交易记录下来。有了当地的参与者,律师事务所能够帮助它们引入国外的技术专长,并帮助它们开发出许多新型的服务业产品。

中国若要实现服务业的有效发展,就必须吸引高价值的服务行业,如商业银行、投资银行、咨询公司和房地

产公司等。这些公司非常依靠律师和律师事务所的支持。律师事务所对公司有关投资地点、时机和方式的决策有着重要的影响力。服务业在基础经济中比例超过60%的所有主要经济体,都允许外国律师事务所同时办理国际和国内法律事务。

### 有关与“国内”律师事务所合作的限制

中国国内涉及法律服务的法规,如入世承诺,对“中国国内律师事务所”和“外资律师事务所”进行了划分。随着中国的律师事务所不断拓展海外市场,这一界限已经越来越模糊。

中国有许多律师事务所已经在美国等海外市场设立了分支机构。根据现行法律的规定,在中国境外设立的律师事务所不得办理中国法律事务,也不得与中国律师事务所存在其它利润分享关系。这些限制阻碍了外资律师事务所为其当事人提供有关中外法律的建议。放宽对中外律师事务所之间并购、合资和共享利润安排的限制,将有助于消除因中外律师事务所之间的差别待遇而导致的失衡。

### 代表机构的注册

中国对国内律师事务所、外资代表机构以及香港/澳门的律师事务所仍实施不同的监管政策。与国内律师事务所相比,外资律师事务所的代表机构面临更严格的审查和监管审批程序。在申请设立代表处时,外资律师事务所必须证明其“有在华设立代表机构开展法律服务业务的实际需要”。监管机构会依据拟设代表处所在地的“社会经济发展状况”、当地的法律服务“发展需要”以及类似因素对此进行评估。

外资律师事务所在设立一家代表处后,如欲增设代表处,则必须等待三年,这就将外资律师事务所的发展速度限制在每三年新开一家代表处。审批程序耗时过长,而且极不透明。外资律师事务所普遍反映,在其申请设立在华代表机构和更换首席代表的过程中存在许多困难和拖延现象,这大大影响了他们对国内各省份客户的服务,以及为国内企业提供急需的全球服务的能力,而这些省份正是当前国家经济发展的重点区域。

### 税收方案

外资律师事务所的代表机构在税收待遇方面与其他外国公司的代表机构相类似,须按照国家政策纳税。首先向单位征收企业所得税,然后再向员工征收个人所得税,这就产生了双重课税的问题。相反,国内律师事务所可

establishing another, limiting the growth of foreign law firms to a rate of one office every three years. The approval procedure is unduly lengthy and opaque. Foreign firms have reported substantial difficulties and delays in processing of applications to open representative offices in China and changing chief representatives, impairing their ability to serve clients and provide much-needed global services to Chinese companies in interior provinces, key targets for economic development.

### Taxation Schemes

Representative offices of foreign law firms are taxed according to national policy much like those of foreign corporations. First, the entity is taxed on its enterprise income and then individual employees are taxed on personal income, resulting in double taxation on income. Domestic firms, in contrast, may be organized as partnerships and treated as pass-through entities for tax purposes. The partners and employees are taxed on their income, but the entities are not taxed. Moreover, the tax rates for domestic law firms are often set at a local level. Local law firms in some localities are believed to be taxed at negotiated single-digit, or low double-digit, rates while foreign firms are taxed at 25 percent (reduced from 33 percent as of January 1, 2008), plus five percent business tax.

### Recommendations

- **The Chinese and US governments should pursue a dialogue to establish a common understanding for allowing qualified domestic lawyers to practice Chinese law in China and to facilitate the qualification of domestic law firms and lawyers in the US.**
- Revise current law to permit Chinese lawyers to practice Chinese law as associates and partners in foreign law firms.
- The Chinese government should take steps to address the inequitable tax treatment of foreign legal firms offering foreign legal advice to Chinese companies, either by granting an exception to the business taxes normally imposed on their representative offices, or by allowing them a more appropriate form of legal presence in China.
- Make it easier for foreign law firms to expand into multiple cities in order to provide much-needed foreign legal advice to Chinese companies in the country's interior provinces.

注册为合伙企业,享受穿透性税收待遇,即合伙人和员工需缴纳个人所得税,但单位无需纳税。此外,国内律师事务所的税率由地方一级的部门负责制定。一些地方的律师事务所只需按照一位数或较低两位数的税率纳税,而外资律师事务所则需缴纳25% (2008年1月1日之前为33%) 的所得税外加5%的营业税。

### 建议

- **中美政府应当开展对话,达成允许获得执业资格的国内律师在在华外资事务所从事中国法律业务的共识。**
- 修订现行法律,允许中国律师以律师和合伙人的身份在外资律师事务所从事中国法律服务活动。
- 中国政府应采取措施,解决为中国公司提供外国法律咨询的外资律师事务所面临的不平等税收待遇,可以免除对其代表处征收的营业税,或者使他们在华执业的法律形式更适当。
- 放宽限制,让外资律师事务所能够更方便地进军更多城市,为内地省份的中国企业提供急需的外国法律咨询。

## Media and Entertainment

AmCham-China urges the Chinese government to continue its reform and opening of the media environment for all types of media. Specifically, we strongly recommend improved market liberalization, clearer regulations that keep pace with converging online technologies and effective implementation of new regulations by neutral regulators, rather than by industry competitors.

An open and vibrant media sector is crucial to China's sustained economic growth, innovation and vitality in the post-Olympic Chinese economy. The 2008 Beijing Olympic Games were regarded throughout the world as a great success. This image was made possible by international media transmitting impressions of China from an environment of generally unfettered access. During the Games, the Chinese government generally honored its commitment to an open environment for the world's media, and was rewarded with the benefits of increased international prestige and improved understanding, two key drivers of economic cooperation, investment and trade. Rather than being detrimental to the government, this open environment demonstrated the clear advantages that come with foreign entities' large-scale investment of money, technology and resources in China's growing media and communications industries.

In October 2008, China's leadership made the significant decision to extend for foreign journalists in China the freedoms they enjoyed during the Olympic period. It has also removed Xinhua, an industry competitor, from its traditional role of overseeing foreign media, replacing it with a soon-to-be organized governing body. AmCham-China commends this move.

However, even with these new policies, international and Chinese journalists are still restricted both in their travel to areas such as Tibet, and in their ability to interview subjects, and reports continue of journalist harassment in outlying areas. The Chinese government also has yet to fully realize reforms to the relatively outmoded regulatory environment for the online and publishing spheres.

For China to build on the gains from the Olympics, it is essential for the government to maintain its positive momentum in the media industry with the removal of legal barriers to investment and development of the sector. Indeed, the current global economic downturn

makes greater transparency and access to reliable information in a well-regulated but more open media sector critically important.

AmCham-China urges the Chinese government not only to sustain the spirit of the open media environment from the 2008 Olympics, but to go further in providing a stronger institutional framework to regulate all types of media, whose technology is rapidly outpacing current policies. Specifically, we continue to recommend that sustained market growth in the media and entertainment industry requires active involvement of a neutral regulator with clear lines of authority.

### Significant Developments

The recent decision to remove Xinhua as the government oversight organ for foreign financial information providers is a great sign of progress in China's media industry environment. The new, less restrictive regulations for international journalists are positive and encouraging. New regulations permitting semi-restricted travel of foreign journalists within China were enacted in October 2008, solidifying a break with the previous, more restrictive measures. However, full and proper implementation remains key, as incidents of physical abuse of international reporters by local authorities continue rising, according to independent watchdog agencies.

Unfortunately, while there has been progress in some areas, other aspects in the media industry are becoming less transparent, especially in emerging areas like online content delivery, digital television and mobile content distribution. China's media outlets continue to grow with evolving digital media and expanding broadcast media offerings, but market liberalization lags behind. Unlike in other industries, recent major Chinese government restructuring has not impacted media and entertainment. Entities like the State Administration for Radio, Film, and Television (SARFT) and the General Administration of Press and Publications (GAPP) remain basically unchanged.

Numerous issues for the media and entertainment industry in China, many of which were addressed in previous *White Papers*, still remain unaddressed and, in some cases, actually exacerbated in the post-Olympic period.

## 媒体和娱乐业

中国美国商会敦促中国政府实施改革,建立开放的媒体环境。具体而言,我们强烈建议中国政府提高市场自由度;跟随汇聚性在线技术的发展,提高政策的透明度;以及通过中立性监管机构(而非行业竞争对手)来有效实施新的规章制度。

后奥运时期,全面开放、富有活力的媒体行业对中国经济的持续增长、改革创新以及保持活力起到至关重要的作用。2008年北京奥运会获得了举世公认的巨大成功。各国媒体借助无障碍的访问平台,向世人传递了中国的良好形象。奥运会期间,中国政府整体上兑现了其向各国媒体提供开放环境的承诺,中国也因此提高了国际声誉,增强了世界对中国的了解,而这也是推动经济合作、投资和贸易发展的关键因素。这种开放的环境并未给中国政府造成任何伤害,反而促使外国企业向发展中的中国媒体和通信产业投入大量的资金、技术和资源。

2008年10月,中国政府做出了重要决定,让在华的外国记者继续享有其在奥运会期间享有的自由权利。此外,新华社作为业界的竞争者,也不再继续担任对外国媒体实施监管的角色,取而代之的是一个即将成立的管理机构。中国美国商会对此表示赞赏。

尽管中国实施了上述新政策,但国内外记者仍然受到采访区域的限制(如对到西藏采访的限制),及采访对象的限制。有关记者在边远地区受到侵扰的报道不断出现。中国政府尚未对在线和出版业相对过时的监管环境进行全面改革。

为扩大奥运期间的成果,中国有必要继续保持媒体行业积极发展的态势,为扩大在媒体产业的投资及其发展排除法律障碍。由于当前全球经济处于低迷状态,因此如何在一个监管良好、充分放开的媒体环境下提高信息的透明度,确保获得可靠的信息,则变得极其重要。

中国美国商会敦促中国政府不仅要继续秉承2008年奥运会以来对媒体环境的开放精神,还要进一步为各

类媒体提供更加强有力的监管制度框架(当前媒体技术的发展速度已超过政策的制定速度)。具体而言,媒体和娱乐业的持续发展离不开权限明确的中立性监管机构的积极参与。

### 重大进展

中国政府最近决定,新华社不再作为外国金融信息提供者的监管机构,此举表明中国媒体产业环境改善已取得重要进展。而减少对国际记者限制的新规定也令人鼓舞。该项于2008年10月颁布的规定允许外国记者在适度受限的条件下在中国境内进行采访,比起之前的限制措施有了很大改观。但根据独立监督机构的报告,地方政府机构与国际记者发生肢体冲突的事件不断出现,因此新法规的全面实施仍然是关键。

遗憾的是,尽管媒体行业在某些领域已取得进展,但在其他方面仍有透明度日渐降低的趋势,尤其是在在线内容分发、数字电视和移动内容分发等新兴领域。随着数字媒体的不断发展以及广播媒体产品的不断涌现,中国媒体得以持续发展,但市场自由度却仍然落后。与其他行业不同,中国政府近期的重大机构改革并未涉及到媒体和娱乐业。中国国家广播电影电视总局和新闻出版总署等在职能上几乎没有变化。

中国媒体和娱乐业依然面临诸多问题,其中许多已经在以往《白皮书》中提到,而有些尚未提及的问题实际上在后奥运会时期愈演愈烈。

### 具体问题

#### 国际性公司面对封闭的市场环境

在中国从事业务发展的国际传媒公司均受到了不同程度的限制。一方面,其收集和发布信息的业务受阻,另一方面,对其版权的侵权行为猖獗不止。例如,外国出版社在中国投资、独资和出版世界级杂志及其他出版物时,其能力受到极大限制。

## Specific Issues in China

### **Closed Market and Environment for International Players**

International media corporations in China remain restricted across the board. Their ability to grow businesses that gather and distribute information is limited and copyright infringement remains rampant. For example, foreign publishers are still extremely restricted in their ability to invest in, wholly own and produce world-leading magazines and other publications in China.

In addition, distribution of foreign films remains highly restricted, with some internationally top grossing movies unauthorized for domestic distribution. China stands to gain from greater film distribution in many ways, including better development of the indigenous film industry and reduction in demand for pirated movies as legitimate access to international titles is increased.

Meanwhile, GAPP continues to allow near blanket “republishing” of copyrighted material. There was visible enforcement of copyright infringement for print materials during the Olympics, but most of the pre-Olympic production and distribution systems for pirated goods, such as books, music and movies, have re-emerged at previous levels. This environment stunts China’s domestic service industry for information distribution and business services.

### **Insufficient Regulatory Clarity**

The State Council Information Office (SCIO) will replace the Xinhua News Agency’s Foreign Information Administration Center as the regulator of financial information services. As of this writing, the scope and enforcement capabilities of the SCIO remain unclear. AmCham-China welcomes a new neutral regulator, but it will be important to regulate fairly all aspects of the financial information industry and ensure equal access to China’s economic data for all parties.

In the print and publishing sectors, other clear conflicts of interest persist and licensing issues remain restrictive. The claim from Sino Publications Audit Center (SPAC) under China’s GAPP to be the only official auditor for publications under a licensing process where circulation numbers are verified by GAPP is just such a conflict. SPAC, a competitor to circulation monitors like BPA and Nielson, would be a required player in the licensing process. A fair process, by which an international auditing organization can offer its services in China, even if not state-owned or formally state-approved, is necessary to provide a fair range of choice to media in China.

### **Online and Digital Media Unsystematically Regulated, Blocked**

A surge in domestic online traffic and new technologies such as digital broadcast media are resulting

in greater attempts at online control. The Chinese government regularly blocks or closes sites without clear explanation. Foreign business investment in online media remains highly restricted. Foreign Internet content providers continue to be denied open access to the China market. The trend in the regulatory environment is increasingly towards less transparency, with the government providing less, rather than more, information about proper business practice and content in information industries. China’s censorship of the online sector serves as a de facto non-tariff barrier for international online enterprises to the advantage of local players. However, owing to a lack of international players, China’s Internet stands to close itself off from virtual links to future worldwide business opportunities as the Internet evolves.

### **Unclear and Non-uniform Online Copyright Regulations and Enforcement**

Website content owners face a growing amount of unauthorized content distributed through streaming video and user-generated content sites in China. Adequate intellectual property rights (IPR) protection continues to lag in this developing area. Web technology such as instant messaging, blogging, social media, online publishing, video sharing, online gaming and websites with user-generated content, collectively known as “Web 2.0,” has experienced dramatic expansion. AmCham-China urges the development of a clear policy framework promoting user-generated content and new media platforms, while including the protection of IPR and licensing for websites posting such information. It would also be highly beneficial to outline clearly what content is permissible so as to avoid the sudden website shutdowns for foreign-based or foreign-backed Chinese companies that currently occur.

The lack of official Chinese government enforcement to block, filter or take down the growing number of sites with copyright infringed content harms both international and Chinese domestic entertainment companies in China. The Olympic experience shows that enforcement is possible. SARFT and the National Copyright Administration of China implemented special regulations preventing unauthorized streaming of sports coverage. A number of sites were warned, fined or shut down. Yet a double standard remains for Chinese domestic websites who continue to infringe upon international copyright law by re-broadcasting content.

The type of enforcement during the Olympics for Chinese-owned copyrighted material should be the consistent standard for domestic and foreign rights owners. Unauthorized real-time transmission of copyrighted programming online violates the WIPO Copyright Treaty (WCT), to which China has acceded. It is also worth emphasizing that IPR abuses in news media (print and electronic) lower standards, reduce accountability and often result in dissemination of

此外, 外国影片在中国的发行也受到较多限制, 部分在国际上取得高票房的影片无法取得国内发行权。中国可以借助多种方法从更广泛的电影发行中获益, 如更好地推动本土电影产业的发展, 并随着合法获得国际影片版权数量的增加, 减少对盗版影片的需求等。

与此同时, 新闻出版总署仍然允许对版权作品进行直接“再版”。奥运会期间, 对于印刷品侵权行为的执法措施明显有效, 但奥运会后, 盗版图书、音像和影片等产品的生产和销售又恢复原状。这严重阻碍了中国国内信息发布和商业服务业的发展。

### **监管制度缺乏透明度**

截至发稿, 关于取代新华社涉外信息管理中心的新的媒体产业监管机构, 其职责范围和执行能力尚不明确。国务院新闻办公室将取代新华社涉外信息管理中心, 负责监管金融信息业务。不过, 国新办的这一新职能尚未正式公布。中国美国商会对新的中立性监管机构表示欢迎, 但希望其今后工作重点仍在于对金融信息产业各个方面的公平监管, 并确保各方均可公平获取中国的经济数据。

在印刷和出版业, 仍然存在明显的利益冲突, 获得许可证依然受到种种限制。中国新闻出版总署下属的国新出版物发行数据调查中心曾声称, 该中心是根据许可证程序进行出版物发行审查的唯一官方认证机构, 而发行量则由新闻出版总署负责核实, 这正是利益冲突的表现之一。国新出版物发行数据调查中心是 BPA 和尼尔森等发行量认证机构的竞争对手, 也是必须参与许可证审批程序的机构。国际认证组织(即使为非国有性质或未经国家正式批准)需借助一个公平的机制在中国提供服务, 这也为中国的媒体业提供公平的选择范围。

### **对在线媒体和数字媒体缺乏系统性的监管**

国内在线流量的大幅增加以及数字广播媒体等新技术的出现, 导致对在线监管难度的增加。中国政府时常在不提供明确解释的情况下屏蔽或关闭一些网站。外商对在线媒体的投资受到高度限制。外国互联网内容提供商仍然不能进入中国市场。监管环境越来越缺乏透明度, 中国政府只是零星地提供通用的商业惯例和信息产业的内容。中国的在线产业审查制度实际上成为针对国际在线企业的非关税壁垒, 而中国的本地企业才是最大获益者。然而, 由于缺少国际参与者, 中国的互联网将随着互联网业的发展而逐渐走向封闭, 从而失去未来商机。

### **在线版权的监管和执行不够明确, 缺乏统一**

网站内容提供商面临越来越多的未授权内容经由中国的流式视频网站或者用户创造内容网站传播。在这一发展领域中的知识产权保护问题仍然滞后。即时通信、博客、社交媒体、在线发行、视频共享、在线游戏和用户创造内容等网页技术(统称“Web 2.0”)发展迅猛。中国美国商会敦促中国制定明确的政策框架, 推广用户创造内容和新媒体平台, 同时为张贴该类信息的网站提供知识产权保护和颁发许可证。另一有益的举措是明确规定哪些内容允许上传, 从而可以避免对国外或有国外背景的中国企业网站突然被关闭的现象发生。

在阻止、过滤或撤销含有侵权内容的网站时, 缺少政府的有力执法, 这对于国内及在华的外国娱乐公司都十分不利。奥运期间的经验表明类似执法是可行的。其间, 中国国家广电总局和国家版权局实施专项制度, 以防止媒体未经授权而使用流式媒体技术进行体育报道。大量网站受到警告、处罚或直接被关闭。然而, 对于中国国内的网站却在执行双重标准, 允许其对内容进行重播, 这已严重违犯了国际版权法。

在奥运会期间, 针对中方拥有版权的材料实施的执法, 应成为国内外版权所有者统一的执法标准。对拥有版权的在线节目实施未经授权的实时传播违反了《世界知识产权组织版权条约》(中国已加入该条约)。另外, 在新闻媒体产业(印刷品和电子产品), 知识产权的滥用使标准降低, 责任减轻, 导致信息传播不完整以及/或者被歪曲。

### **媒体和娱乐业的开放将使中国获益**

中国奥运会的经验已经表明有许多因素都在积极推动媒体产业的进一步开放。中国着手为金融信息产业建立新的监管机构, 这是一个非常令人鼓舞的开始。为竞争型商业氛围清除法律障碍, 将有助于新媒体产业的发展, 促进改革创新, 并以较低成本吸引大量国际投资。三鹿奶粉受污染事件涉及到危害社会的企业腐败行为, 类似的丑闻证明, 在中立性机构监管下强劲发展的媒体产业将会提供更高质量的媒体实践。

中国在在线商务、付费视频下载、移动娱乐等基于新技术的服务领域仍落后于其他国家。而相关的政策法规也出现了监管限制增多, 透明度降低的现象。中国美国商会敦促中国政府通过中立性的、与其监管行业无商业利害的监管机构, 加强执法, 有效实施各项法律; 设立更完善的预警机制, 使以发行实时信息为主的企业预知可能采取的阻止措施。



incomplete and/or distorted information.

## Media and Entertainment Industry Opening Benefits China

China's Olympic experience demonstrates there are many positives to greater media industry freedom. Efforts to establish a new regulatory body for the financial information sector are a very encouraging start. Removing legal barriers to a competitive business atmosphere will foster new media industries, create innovation and attract significant international investment with few costs. Scandals, like the San Lu tainted milk incident involving corrupt corporate practices harmful to society, demonstrate that a neutrally-regulated robust media industry will provide higher quality media practices.

As a result of its media practices, China is falling behind other countries in basic technologies like online commerce, pay-per-view downloaded video, mobile entertainment and others. Chinese regulation increases restrictions and reduces clarity in its policies toward these technologies. AmCham-China urges effective implementation and enforcement of laws through neutral regulatory bodies without interests in the industries they regulate, and development of better warning mechanisms about potential measures to block companies whose businesses depend on publishing up-to-the-minute information.

## Recommendations

### Industry Oversight

- Fully implement new policies covering news and financial publishing to ensure separation of regulation from market participation and avoid having regulators and licensees of foreign news organizations participating in the industry.
- Ensure the new regulator of financial news services has an understanding of both the services foreign companies provide and the needs of their customers. The regulator's goals should be to ensure consumers in China have access to same real-time global financial and business information available elsewhere in the world, ensure a level playing field, and improve market transparency.
- The regulator overseeing the new measures covering foreign news organizations in China should ensure the new measures are implemented clearly, effectively and in the true spirit of the agreement, particularly with foreign financial information providers setting up a commercial presence in China.
- Fully implement new rules allowing international journalists in China to travel throughout the country and interview all subjects without prior notification, and eliminate harassment by local authorities.

- Permit foreign news companies to hire Chinese credentialed reporters, developing an internationally competitive domestic Chinese media.
- Clarify which agencies have oversight over emerging technologies such as Web 2.0 and online news content. Establish a system of written and legal redress for content publishers to promote discussion, allow time for corrections and generally regularize content rules before blocking or shutting down websites or publishing operations.
- Consider creating a neutral auditing body to improve transparency of web usage and promote metrics-based advertising models to benefit the growth of the Chinese online industry.
- Accelerate the administrative process for approving foreign investment in retail sales and distribution of books and periodicals. Clarify how foreign and Chinese publishers may cooperate to protect their rights and licenses.

### Copyright

- Clarify copyright laws covering online streaming transmission of television or sports programming and enforce Article 15 of SARFT's rules on content. Further clarify GAPP's Copyright Center role, and the legality of linking, framing, pasting text and other uses of copyrighted content.
- Improve market access for producers of international films to reduce IPR infringement.
- Standardize regulations and practices for copyright royalty reporting at state-owned publishers

### Licensing

- Ensure non-discriminatory application of censorship procedures and discontinue arbitrary online censorship and site blockage to ensure that censorship is not a non-tariff barrier to international entities providing online information in China. Effectively enforce laws against IPR infringement in the online sector through relatively inexpensive re-publishing of copyrighted licensed content by penalizing those websites displaying copyrighted information without formal licensing agreements.
- Eliminate classifications of "general" and "wholesale" distribution licenses for foreign online and print distribution in favor of clearer licensing structures.
- Consider allowing foreign publishers to establish representative offices, or wholly foreign-owned entities, in China as in most other industries.
- Improve the government oversight framework for event-based promotions such as trade shows, plays and major concerts, and develop better content guidelines and framework for monitoring attendance numbers.

## 建议

### 行业监督

- 全面执行涉及新闻和出版业的新政策，确保监督管理与市场参与的分离，避免监管机构和获批的外国新闻机构同时参与该产业。
- 确保负责监管金融新闻业务的新监管机构既懂得外国公司提供的服务业务，同时也明了外国公司客户的需求。该监管机构的目标应是：确保中国的消费者可实时获得全球各地的金融和商业信息，确保平等的竞争舞台，以及提高市场的透明度。
- 对于涉及外国新闻组织的新措施，负责监督该新措施实施的监管机构应当确保新措施的实施透明有效，并且符合真正的契约精神，尤其对于在中国建立商业运营的外国金融信息提供商，应当遵守与其签署的契约。
- 充分实施新规则，允许在中国的国际记者在不经事先通知的情况下，在中国各地进行采访，而且受访者不受限制，消除地方当局对记者的侵扰。
- 允许外国新闻公司雇用持有中国证书的通信员，建立有责任心的、负责任的、有国际竞争性的中国媒体产业。
- 明确哪些机构有权监督新兴技术（例如 Web 2.0）和在线新闻内容。针对内容出版商建立书面法律纠正体系，在阻止或关停网站或出版业务之前，推动协商，给予改正时间，并在整体上理顺内容规则。
- 考虑设立中立性认证机构，提高网络使用的透明度，推动标准公告模式，促进中国在线产业的发展。
- 加快图书、期刊零售业和发行业的外国投资审批程序。明确中外出版商的合作模式，以保护其权利和许可证。

### 版权

- 明确版权法关于电视或体育节目在线流媒体传播的相关规定，执行国家广电总局内容规则的第 15 条规定。进一步明确新闻出版署版权中心的职责，以及明确对版权内容的连接、框架、张贴文本或者其他使用行为是否合法。

- 扩大国际影片制片商的市场准入范围，减少知识产权侵权。
- 推动国有出版商版税报税规章和实践的标准化。

### 许可证

- 确保审查程序的应用不存在歧视性，不再采取任何随意在线审查和屏蔽网站的行为，对于在中国国内提供在线信息的国际实体，确保审查制度不再成为非关税壁垒。在线产业方面，有效执法，保护知识产权，防止通过相对低廉的价格对版权许可内容二次发行的行为；对那些未签署正式许可协议而发布版权信息的网站予以处罚。
- 对于国外在线发行和印刷发行，取消“总发行”许可证和“批发”许可证的分类方法，建立更加明确的许可证体系。
- 像其他产业一样，考虑允许外国出版商在中国设立代表处或全外资实体。
- 对于促销事件，例如贸易展会、表演和大型音乐会等，改善政府监督框架，制定更好的内容指导原则和参与人数监控框架。

# Medical Equipment, Devices and Healthcare

Last year saw substantial progress and increased focus on healthcare and medical devices by the Chinese government. The Ministry of Health (MOH) launched the “Healthy China 2020” campaign, signaling an unprecedented commitment to improving the quality and breadth of healthcare coverage. The State Council also released the long-awaited healthcare reform plan in September 2008 to create a more equitable healthcare system covering both urban and rural areas by 2020. Public response to the published reform proposal and a further revised proposal was substantial.

Five supporting schemes will also be released, including the construction of a medical insurance system, the establishment of a basic national medications system, the improvement of grass-roots medical services, equalization of access to public services for rural and urban residents, and state-run hospital reform.

Already the government has increased its investment in healthcare and issued new regulations relating to drug pricing in support of the reform proposals. However, many regulations and policies still are not in line with the spirit of the reform. Some of these are enumerated below.

The year 2008 also marked a turning point in the relationship between the US and Chinese government regulatory agencies. The State Food and Drug Administration (SFDA) and US Food and Drug Administration (FDA) opened liaison offices in each other's countries to facilitate quality control and consultation. This level of communication is a welcome development and AmCham-China urges further collaboration on medical devices, in addition to food and drugs.

## Specific Issues

### Technology, Innovation and Intellectual Property (IP) Protection

The effective use of new medical technology and pharmaceuticals will increase the efficiency of healthcare. Concerns about the cost of healthcare must include sophisticated considerations of the efficiencies from new technologies rather than simple comparisons of unit prices and one-time investment costs.

To encourage continued development of technologies

and products, the IP of investing companies must be protected.

### Efficient Product Registration and Testing

#### Eliminating Testing Redundancy

In 2008, several developments improved the testing and inspections processes for medical devices. The Joint Commission on Commerce and Trade (JCCT) negotiation in the summer of 2008 resulted in the planned merging of the testing and factory inspection of certain medical devices and equipment under SFDA registration regulation, and the General Administration for Quality Supervision, Inspection and Quarantine (AQSIQ) China Compulsory Certificate mark registration. This is a significant improvement over the original testing redundancies; speedy publication of implementing regulations will accelerate this development.

#### Efficiency of Registration

SFDA made significant efforts to clear much of the 6000-plus backlog of medical devices registration applications. This shows progress on this long-term issue, but delays of nine to 12 months for the approval of applications still exist. AmCham-China encourages SFDA to continue collaboration with industry and the FDA to further streamline and expedite this process. SFDA could consider accepting accreditation of laboratories already accredited by the FDA to take advantage of the enhanced cooperation between the two agencies. Today, products already approved by foreign laboratories face redundant SFDA testing, significantly slowing their market availability. The SFDA accrediting select foreign laboratories and allowing test reports certified by these accredited organizations to be admitted for evaluation by the Technical Evaluation Centre and the test-labs would alleviate current redundancies.

#### IVD Product Registration

AmCham-China applauds the June 2007 in vitro devices (IVD) regulation's re-classification of IVDs as medical devices. However, we are concerned by the classification of a large number of devices as high risk, requiring special clinical trials inside China. Many of these devices do not actually represent a high risk to patients and the public.

IVD products are diagnostic tests conducted in the

# 医疗设备、器械和卫生保健

在 过去的一年里，中国对卫生保健和医疗器械的重视加强，并取得了实质性进展。卫生部启动了“健康中国2020”战略规划，对提高医疗卫生服务质量和扩大覆盖范围作出了重要承诺。国务院也于2008年9月发布了人们期待已久的医改方案，方案提出：到2020年要建立一个更加公平合理的、覆盖城乡居民的基本医疗卫生制度。政府发布的这一改革方案及其修订方案引起了公众的巨大反响。

同时将要公布的还有五个配套方案，涉及医疗保障系统、基本药物制度、基层医疗服务体系、城乡居民公共服务均等化和公立医院改革。

为支持医改方案，政府已增加对医疗卫生系统的投入，并发布了关于药品定价的新规定。然而，许多法规和政策仍然与医改精神不一致。下文将会提到其中存在的一些问题。

2008年也是中美两国政府相关监管机构关系发生重大转变的一年。中国国家食品药品监督管理局（SFDA）和美国食品和药物管理局（FDA）在中美两国互设联络办公室，使磋商和质量控制便利化。双方在这一层面上的沟通对话取得了可喜的进展。除了食品和药品之外，中国美国商会敦促双方进一步加强在医疗器械方面的合作。

## 具体问题

### 技术、创新和知识产权保护

有效利用新的医疗技术和药物有助于提高医疗保健服务的效率。对医疗保健成本的关注必须全面考虑新技术所带来的效率提升，而不是将单价和一次性投入成本进行单纯的比较。

为鼓励技术和产品的持续性开发，必须做好对投资公司知识产权的保护工作。

### 高效的产品注册和检测

#### 取消重复检测

2008年，经过几次政策调整，医疗器械的检测程序有所改善。2008年夏天举行的中美商贸联委会上，中美双方经磋商达成共识，计划将依据中国国家食品药品监督管理局的注册条例，以及国家质量监督检验检疫总局的中国强制性产品认证标志的注册程序，将部分医疗器械、设备的测试和工厂检查合二为一。与以往重复性测试相比，这是一次重大改进，实施细则的尽快出台将会加速这一进程。

#### 注册的效率

中国国家食品药品监督管理局为处理积压的6000多份医疗器械注册申请，付出了很大的努力。这体现了为解决这一长期存在的问题所取得的进步。不过，注册申请的审批程序被拖延三至四个季度的情况依然存在。中国美国商会鼓励国家药监局继续与产业界和美国FDA合作，进一步精简并加快审批流程。药监局可考虑通过接受FDA认可实验室的鉴定合格证书，进一步加强两组织之间的合作。目前，国外实验室所认证的产品还需通过国家药监局进行重复测试，这大大延缓了产品上市的时间。若国家药监局选定并授权几家外国实验室，同时使其所签发的测试报告得到技术评价中心和测试实验室的承认，这将会极大缓解当前重复测试的问题。

### IVD产品注册

2007年6月发布的体外诊断试剂（IVD）注册管理办法，将IVD重新归类为医疗器械，中国美国商会对此表示欢迎。然而，大量的体外诊断试剂（IVD）被归入高风险类别，需要在中国进行特别的临床试验，对此我们表示关切。实际上，许多IVD产品对病人和公众并不具有高风险。

IVD产品在实验室进行诊断测试，并不接触病人。当制造商在其他辖区通过IVD产品测试并完成注册，同时

laboratory, with no patient contact. The classification of IVD products as high-risk should be eliminated when documented evidence of their safety and efficacy is already available from the manufacturers from testing for registration in other jurisdictions.

AmCham-China suggests the SFDA review the current regulations applying to IVD products based on actual risk to patients and consider internationally recognized practices, such as the Global Harmonization Task Force (GHTF) recommendations, and allow industry to present evidence of safety and efficacy for revision considerations.

### **Sustainable Regulatory Framework and Market Supervision**

#### *Draft Regulation on Supervision and Administration of Medical Devices*

SFDA has drafted a revised version of China's medical devices law, SFDA No. 188, 2007 Draft Regulation on Supervision and Administration of Medical Devices (Official Draft of Revision of State Council Decree 276). AmCham-China appreciates solicitation of public comments throughout the revision process by SFDA and the State Council.

AmCham-China would again welcome an opportunity to review any new revisions and put forward suggestions before regulations are finalized. We strongly suggest that internationally accepted practices, such as the GHTF recommendations, be considered and adopted to the greatest extent possible to improve the efficiency of the registration process for both the Chinese government and industry members. As the revised regulation proposes the use of quality management systems (QMS) as opposed to type testing for products, we urge the government to establish a clear plan and time-table to implement the QMS for medical device manufacturers across the country. Furthermore, we strongly urge training of a sufficient number of inspectors to supervise local manufacturers to ensure consistent and widespread oversight.

#### *Post-Market Supervision and Adverse Event Reporting*

AmCham-China urges SFDA to implement regulations on post-market supervision and to provide sufficiently trained staff to promote conformity. Furthermore, we encourage SFDA to issue guidelines on regulation interpretation. Since actual supervision work is conducted at the provincial and city levels, significant variations exist in the interpretation of SFDA market supervision regulations. These discrepancies have sometimes led to what could be seen as abuse, negatively impacting businesses.

At the end of December 2008, SFDA issued the long-awaited regulation on Medical Devices Adverse Event Reporting (in a trial format), after spending nearly four years drafting together with various stakeholders. We would like to reiterate our recommendation that SFDA adopt internationally recognized procedures, such as the GHTF recommendations. AmCham-China is prepared to work with SFDA to streamline and align

this regulation with global practices. We also urge SFDA to ensure sufficient training of supervisory staff to properly implement and interpret the regulation.

#### *Standards*

Some standards in China regarding medical devices are either outdated or inconsistent with international trends. International manufacturers following the newest standards risk failing to conform to Chinese requirements and thereby prevent Chinese patients and consumers from using the most advanced healthcare technology. AmCham-China recommends the adoption of international standards such as that of the International Organization for Standardization, International Electrotechnical Commission and ASTM International (formerly American Society for Testing & Materials) and subsequent consistent updates.

AmCham-China is ready to cooperate with relevant authorities in drafting and revision of standards. We recommend that industry be given adequate time to offer comments after drafting. After adopting new regulations, we further recommend that industry be consulted on an implementation timetable to allow for an orderly transition to new standards.

#### *MOH Technology Review*

AmCham-China understands MOH plans to play a greater role in the technical review of new and high-value products through expert committee review of new technology entering the market, as well as semi-annual reviews of applications for purchases of certain technologies. We suggest that reviews of new technology be made together with SFDA market entry registration. We understand that intensive work and planning goes into the assembling of appropriate expert committees, but convening these committees only semi-annually may be insufficient to bring needed technologies to patients in a timely manner.

### **Procurement and Tendering**

#### *Fair and Transparent Tendering Process*

AmCham-China applauds MOH's efforts in the Centralized Purchasing Bidding Scheme for medical devices. This helped reduce operation costs for both the various levels of governments and companies by eliminating provincial and city-level tenders. We also greatly appreciate MOH's elimination of tender service fees and commissions to the tender agents. We are pleased that MOH consulted extensively with industry before finalization of the tender clauses, including the product specifications. We encourage MOH to continue industry consultations for any future procurement plans.

To be effective in practice, it is essential that the tendering process be fair and transparent. Each tender should be specific to a defined purchase and represent an assured purchase quantity. Open-ended tenders with no guarantee of actual purchase quantity make it difficult for suppliers to offer the most aggressive pricing. Under some current practices there are no assurances that purchasers will make timely payment

可提供产品安全和功效的书面证明时,应当将其IVD产品从高风险类别中删除。

中国美国商会建议国家药监局应基于产品对病人的实际风险,重新审视当前IVD产品的管理办法;同时考虑国际通行的做法,如参照全球医疗器械法规协调工作组(GHTF)的建议,并允许业界出示安全和功效的证据,以供法规修订时参考。

### **可持续的法规框架和市场监管**

#### *医疗器械监督管理条例(修订草案)*

国家药监局起草了中国医疗器械管理法规的修订案,即《医疗器械监督管理条例》的修订草案(食药监办[2007]188号,国务院第276号令)。中国美国商会对国家药监局和国务院在修订过程中向公众征求意见的做法表示赞赏。

中国美国商会希望在该法规最终颁布前还能有机会参与内容修订并提出建议。我们强烈建议尽可能最大限度地考虑并采纳国际通行的做法,如GHTF的建议,以提高中国政府和业界成员注册审批程序的效率。鉴于修订草案计划采用质量管理体系(QMS)代替产品型式测试,我们敦促政府为全国的医疗器械制造商制定实施QMS的明确计划和时间表。另外,我们建议培训足够多的检查员,对地方制造商进行监督,确保监管广泛且尺度一致。

#### *上市后的监管和不良事件报告*

中国美国商会敦请国家药监局制定并实施医疗器械进入市场后的相关监管法规,并派遣培训后的工作人员以加强执法的一致性。另外,我们鼓励国家药监局发布相关指导意见以对法规的实施作出详细解释。由于实际的监管工作由省市各级分管,因此在对国家药监局市场监管法规的解释方面存在不小差异。这些差异有时甚至会被视为滥用职权,对企业运营造成负面影响。

2008年12月底,经过近四年与各利益相关方的协商,国家药监局发布了期待已久的《医疗器械不良事件监测和再评价管理办法(试行)》。在此我们想再次重申,希望国家药监局采用GHTF建议等国际通行程序。中国美国商会随时准备与国家药监局合作,以提高监管法规的实施效率,使之与国际惯例接轨。我们同时敦促国家药监局确保对监管人员进行全面的培训,以便正确地执法和释法。

#### *标准*

中国的一些医疗器械标准或已过时,或已与国际趋势不符。采用最新标准生产的国际制造企业可能面临不符合

中国标准要求的风险,从而使得中国的病人和消费者无法使用最先进的医疗技术。中国美国商会建议中国政府采用国际标准化组织、国际电工委员会和ASTM国际组织(前身为美国试验与材料协会)等所制定的国际标准,并随时更新,与其保持一致。

中国美国商会期待与相关部门合作,开展标准的制定和修订工作。我们建议在标准起草后,应给予充足的时间供业界提出意见。我们进一步建议,在新法规被采用之后,应与产业界协商制定实施的时间表,以保证有序过渡。

#### *卫生部技术评估*

卫生部将通过对进入市场的新技术实施专家委员会评估,以及对申请购买特定技术实施半年度的审查,来提高其在高新价值产品技术评估方面的作用。对此中国美国商会表示理解。同时我们建议,新技术的评估应与国家药监局的市场准入注册同步进行。我们理解,组建专家委员会涉及到大量的工作和规划,但每半年一次的专家委员会评估,也许并不具备引进病人所需技术的及时性。

### **采购与招标**

#### *公平与透明的招标程序*

中国美国商会赞赏卫生部为推动医疗器械的集中采购所作出的努力。通过取消并规范省市级的招标,帮助各级政府和企业降低运营成本。同时我们对卫生部取消招标服务费和招标代理佣金的决定十分欢迎,也高兴地看到卫生部能够在招标条款包括产品规格等定稿前向业界广泛征求意见。我们希望卫生部在未来制定采购计划时继续与业界协商。

为使招标工作卓有成效,关键是保持招标程序的公正和透明。每次招标都应有针对该次采购计划的详细说明,并确定采购量。没有承诺采购数量的公开招标使生产商难以提供最具竞争力的价格。而且在目前实际的执行中,采购方是否能在货到后及时付款无法保证。另外,如果评标委员会没有为用户选择其最适合的技术,他们也不必承担任何后果。我们的经验表明,只基于价格的招标并不能给该医疗体系带来最佳效果。

#### *政府采购*

我们也非常关注政府采购的法规政策,财政部第119号通知明确了国货优先于进口产品的采购政策。进口产品若想进入政府采购项目,则需由专家组特批,并对其使用的必要性出具意见。这与中国加入WTO以后通行的商业

after shipment of goods. In addition, consequences to selection committees, should they not choose the optimum technology for the user, are minimal. It is our experience that tendering based solely on price does not yield optimum results for the system.

#### Government Procurement

We are also very concerned with government procurement regulations, per the Ministry of Finance (MOF) notice No. 119, that favor domestic products over imports. For imports to be considered for inclusion in government procurement projects, they must obtain special approval by a board of experts specifically assembled to explain the necessity of using imported goods in a given project. This is inconsistent with the prevailing commercial practices in China after its accession to WTO.

In addition, Chinese patients become deprived of much-needed high technology products for up-to-date therapies. We urge MOF and other government ministries to reconsider and implement a level playing field for imported products to compete with domestic products based on technology, quality and value.

#### Pricing

AmCham-China is concerned by the government's numerous efforts to impose price controls on medical devices and equipment. We urge the government to avoid price control measures such as those proposed by the National Development and Reform Commission (NDRC) and the MOH Centralized Purchasing Scheme that restrict the free bidding process in tenders. Price ceilings discourage research and development investments for new technologies and the purchase of newer, more effective and efficient products with possibly higher unit prices, but that provide lower overall costs of healthcare for the patient.

#### Value-Added Tax (VAT) Reform

AmCham-China is concerned about the cancellation of VAT exemption treatment on imported medical devices and equipment. This development could negatively affect the ability of local hospitals to obtain needed healthcare technology to the detriment of patients. Before January 1, 2009, hospitals involved in certain foreign government-funded projects could import medical equipment without having to pay the import VAT. Unless the exemption treatment is reinstated, as is currently being considered, local hospitals will have to pay the tax for goods delivered after June 2010, while not being able to deduct the input VAT paid on the imported equipment from the output VAT. In other industries besides healthcare, VAT on capital equipment can be deducted from output VAT.

As a result of this proposed regulation requiring the addition of import VAT on these transactions, local hospitals will now have less benefit from participating in these government-funded projects and thus, may no longer be able to obtain the favorable financing arrangements that are available under them, such as those from the US Export-Import Bank.

### Private Investment in Healthcare Services

#### Encouraging Private Investment in Healthcare Delivery

According to the draft health care reform plan, private healthcare investment would be encouraged to supplement services available from the public system. Specifically, the proposal calls for the "active promotion of the development of non-public medical and healthcare institutions, and formation of a healthcare operation system of diversified investment entities and diversified ways of investment...to make it more convenient for the public to seek healthcare...including the improvement of...management policies and preferential taxation policies for medical institutions."

Despite this encouragement, healthcare investment continues to be listed as "restricted" in the NDRC's Catalogue Guiding Foreign Investment in Industry (Investment Catalogue). This includes regulations restricting foreign ownership to no more than 70 percent, a minimum investment of RMB 20 million (US \$2.9 million) and restrictions on the expansion and development of existing investments, including a prohibition on the formation of branch organizations. Furthermore, there is administrative pressure on those enterprises previously approved at higher joint venture participation rates to reduce foreign investment below 70 percent.

Recently, and subsequent to the issuance of the proposed healthcare reform plan, there have been several new regulations issued by MOF offering preferential policies for eliminating or reducing business tax and offering value-added tax (VAT) rebates for certain types of institutions. Healthcare is categorically left out of each of these new policies, and some policies harm healthcare institutions.

For example, beneficiaries of the new VAT regulations (State Council Order No. 538, Temporary Regulation on VAT) are mainly "general taxpayers," with VAT paid on purchases of capital equipment for the use of production and operations being deductible from sales taxes. However, for-profit hospitals, which are not considered "general taxpayers," but nonetheless make significant purchases of capital equipment, do not benefit from this policy. This runs counter to the policy of encouraging private investment in healthcare institutions.

Moreover, although the recent business tax reforms, as published in the State Council Order Number 540 on the Ordinances Relating to Business Tax, eliminate or reduce business tax for many types of enterprises (including hospitals), tax authorities continue to apply the older supplementary implementation regulations, excluding for-profit hospitals from this benefit (except for the first three years of operation). Healthcare institutions thus pay a five percent business tax, one of the highest rates across industries. This again discourages the stated goal of investment in healthcare enterprises.

操作并不相符。

另外,中国患者还无法使用最新治疗所急需的高科技产品。我们敦促财政部和中国其他政府部门重新考虑其政策,为进口产品提供一个公平的环境,使其能够在技术、质量和价值基础上与国内产品开展竞争。

#### 定价

中国美国商会对政府旨在实施医疗器械和设备价格控制的诸多举措表示关切。我们建议政府尽量避免实施诸如国家发改委提出的价格管制措施,以及卫生部集中采购体制对自由投标程序的限制。最高限价将不利于对新技术研发的投资,同时减少对效果更佳、效率更高的新型产品的购买,这些产品也许单价较高,但却能降低病人整体的医疗费用。

#### 进口增值税改革

中国美国商会对取消进口医疗器械和设备的增值税豁免待遇表示关切。这一变化将不利于地方医院获取所需的医疗技术,对患者有害无益。2009年1月1日以前,参加某些外国政府贷款项目的医院能够进口医疗设备而无需缴纳进口增值税。而取消豁免待遇之后,地方医院需在2010年6月以后对其进口货物纳税,且不能将进口设备的进项增值税从销项增值税中抵扣。除医疗保健以外,其他行业资本设备的进项增值税可从销项增值税中扣除。

这项提案导致在交易中需额外缴纳进口增值税,使得地方医院在利用这些政府贷款项目时获益较少,也将不能据此获得本来可享有的优惠融资,例如美国进出口银行贷款等。

#### 私人投资医疗卫生服务

##### 鼓励私人投资医疗卫生服务领域

医改草案鼓励私人投资医疗卫生领域,以补充公共系统所提供的服务。特别是,医改方案要求“积极促进非公医疗卫生机构发展,形成投资主体多元化、投资方式多样化的办医体制……以方便群众就医……包括完善……医疗机构的管理政策和税收优惠政策”。

尽管存在鼓励政策,然而在发改委的外商投资产业目录中,医疗卫生被列为“限制类”领域。这些法规包括限制外资股份比例不得超过70%,最低投资不应低于2000万元人民币(290万美元),限制已投资项目的扩大和发展,包括禁止设立分支机构。另外,对于原先已经获准成立的外资享有超出规定上限参股比例的合资企业,通过

行政手段要求将外资比例降至70%以内。

最近,就在医改方案公布后不久,财政部公布了一些对特定类型机构减免营业税和增值税的优惠政策。而医疗卫生领域则被排除在这些新政策之外,有些政策还对医疗卫生机构造成了损害。

例如,从新增增值税法规(国务院令第538号《增值税暂行条例》)中受益的主要是“一般纳税人”,购买用于生产经营的资本设备所发生的增值税可从营业税中扣除。然而,营利性医院不属于“一般纳税人”,同样需要购买大批资本设备,却无法从这项政策中受益。这与鼓励私人投资医疗机构的政策背道而驰。

另外,最近在国务院第540号令关于营业税暂行条例中,营业税改革减免了许多类型企业(包括医院)的营业税,但税务部门继续执行原来的补充实施办法,使营利性医院无法享受这一优惠(除了开业前三年以外)。医疗机构因此需要缴纳5%的营业税,这是各行业中最高的一个税率。这也影响了业已提出的促进医疗卫生企业投资的目标。

最后,在财政部协议的支持下,许多中国公立医院都依靠从外国政府或国际金融组织获得优惠贷款或类似优惠贷款,进行设备和技术升级。通过这种融资方式购买进口资本设备均可享受增值税和进口税的全额豁免,购买国内产品则可享受增值税抵扣。根据新的第538号国务院令,上述减免将在2009年6月30日之后全部取消。而且,在2008年11月之前已签订合同和贷款协议、但尚未通过发改委最后审批的项目,都将毫无例外的不得不缴纳增值税——即使进口可在2009年6月30日前完成。这一纳税负担将会对贫困地区的医院造成极大的影响,因为它们缺少其它融资渠道,一般都要依靠这些优惠贷款。

中国美国商会积极建议国务院、发改委和财政部落实切实可行的财政政策,支持医改方案和贯彻中央领导多次表态鼓励私人资本进入医疗卫生系统的精神。

#### 商业医疗保险的必要性

发展一个健全的商业医疗保险行业,对鼓励私人投资医疗卫生领域、提高个人医疗保健支出规划能力至关重要。应当允许雇主与个人购买个人健康保险,作为对政府基本医疗保险报销机制的补充。政府的报销机制反映了公共体系所提供的、保证全民享有的基本服务水平,但也应允许私人服务供应商提供其他层面的服务。医疗开支由基本医疗保险承担一部分,辅以私人商业保险或个人自费

Finally, many Chinese public hospitals rely on soft, or quasi-soft, loans from foreign governments or international finance organizations under the auspices of MOF agreements to upgrade equipment and technology. Imported capital equipment purchases financed this way have been eligible for complete exemption of VAT and import duties, and domestic purchases for VAT credits. Under the new Regulation 538, these exemptions will be totally eliminated by June 30, 2009. Even more troublesome, projects that are already in process with signed contracts and loan agreements that did not have final project approval by the local NDRC by November 2008 will unexpectedly have to pay VAT—even if importation is completed before June 30, 2009. This extra duty will disproportionately affect hospitals in poor regions that lack access to extra capital, which tend to receive these loans.

AmCham-China strongly encourages the State Council, NDRC and MOF to put practical financial policies in place to support the spirit of the healthcare reform plan and the repeated pronouncements by central government leadership encouraging private capital to enter the health care system.

#### *The Need for Commercial Health Insurance*

Critical to the encouragement of private investment in healthcare, and improvement of individuals' ability to plan for their healthcare spending needs, is the development of a robust commercial health insurance industry. Employers and individuals should be allowed to buy private health insurance to supplement the government's Basic Medical Insurance reimbursement. Government reimbursement should reflect a universally guaranteed basic level of service available in the public system, but also allow for additional levels of service from private providers, financed in part by Basic Medical Insurance and supplemented by private commercial insurance, or by out-of-pocket spending by individuals who seek private care providers. Finally, specific additional laws governing the practices of healthcare insurance would also prevent malpractice and protect consumers.

#### Recommendations

- **Improve the renewal process for product registration by creating an exemption of type-testing when there are no substantial changes to the product affecting safety or efficacy during the previous four years and no significant adverse events that could be attributable to the performance of the product.**
- Recruit sufficient numbers of proficient assessors for technical evaluation and allow more direct contact with a company's registration staff to review questions arising from the documentation.

- Increase coordination between the MOH, AQSIQ and SFDA in order to eliminate redundant testing, starting with the implementation of the resolution of the JCCT. Continue towards the goal of combining the various licenses and approval processes into one, managed by a single government agency and therefore eliminating wasted resources of both the Chinese government and industry.
- We urge the government to subscribe to internationally accepted procedures as outlined by the GHTF, including accepting testing by third party international test labs accredited by SFDA, eliminate type testing in favor of quality management systems, harmonize standards with internationally accepted standards systems and streamline adverse event reporting procedures.
- Combine technical review of new products by MOH with SFDA market-entry registration.
- Improve the transparency and efficiency of tendering and bidding procedures and make tenders specific to a defined purchase with assurance of defined quantities. Allow participation of and consultation with industry at the tender formulation stages.
- Allow imported products to be considered equally with domestic products for public procurement projects.
- Avoid price control measures, including price ceilings.
- Allow import VAT exemption for imported medical devices and equipment.
- Include private healthcare enterprises in the "encouraged" list of the NDRC's Investment Catalogue and allow them preferential tax incentives.
- Allow and encourage commercial health insurance to supplement reimbursement by social health insurance. Introduce specific laws governing the practices of private healthcare insurance.

(针对选择私人服务供应商的个人)。最后, 需要制定具体的进一步的法律, 以规范健康保险行业的运作, 防止不法行为, 保护消费者权益。

#### 建议

- 当产品没有发生重大改变以致影响其安全性并溯其前四年的功效、而且不存在因产品性能导致的重大不良事件时, 可豁免进行型式测试, 从而改进和加快产品注册的续期程序。
- 为技术评估招募足够的评估专才, 允许他们与公司负责注册的工作人员建立更多的直接联系, 以检查文件中出现的问题。
- 从执行中美商贸联委会上达成的解决方案开始, 加强卫生部、国家质量监督检验检疫总局和国家食品药品监督管理局之间的协调, 减少重复测试。继续推进各种许可证和审批程序合而为一的目标, 由单一的政府机构管理, 从而减少中国政府和产业界的资源浪费。
- 我们敦促政府采用由GHTF建议的国际通行程序, 包括接受由国家药监局授权的第三方国际测试实验室的测试结果, 用质量管理体系取代型式测试, 使标准与国际通行标准体系并轨, 简化不良事件报告程序。
- 合并卫生部的新产品技术评估与国家药监局的市场准入注册程序。
- 提高招标投标程序的透明度和效率, 使每一招标都有具体针对性的详细说明, 并确定采购量。在招标设计阶段, 允许产业界参与并发表意见。
- 在公共采购项目中, 允许进口产品与国内产品公平竞争。
- 避免价格管制措施, 包括最高限价的设定。
- 允许进口的医疗器械和设备增值税豁免。
- 将私人医疗卫生企业包括在国家发改委投资目录的鼓励类名单中, 并使之享受税收优惠政策。
- 允许和鼓励商业健康保险作为社会健康保险报销制度的补充。制定规范私人健康保险经营的具体法规。

## Pharmaceuticals

In 2006, President Hu Jintao announced an ambitious and well-received plan for developing China into an innovative economy by 2020. It outlined China's commitment to implementing policies and regulations that cultivate and grow innovation-based industries while eliminating obstacles to innovation.

At the forefront, already contributing to China's innovation, is the US biotechnology and research-based pharmaceutical industry. In particular, US biopharmaceutical companies are investing in China, developing and bringing innovative world-class medicines to patients, and aiding in technology transfer by introducing global standards for drug development and safety, all the while creating a new generation of high-technology jobs in China and the US. The US biopharmaceutical industry has also institutionalized world-class standards in the ethical promotion of medicines, ensuring doctors have the latest accurate and scientific information to aid in patient treatment.

While there has been recent growth in the biopharmaceutical industry in China, particularly in Shanghai's Zhangjiang High Tech Park, there has been little substantive change in government policies needed to propel the development and long-term viability of an innovative, research-based biopharmaceutical industry. Government policies that recognize and reward innovation and quality manufacturing, meaningful and enforceable intellectual property protection, and regulatory policies that conform to international best practices are needed.

### Specific Issues

#### Innovation Access and Reward

Key to pharmaceutical innovation is research and development (R&D). Advances in new medicines have occurred even as the length, complexity, risk and costs involved in the R&D process rapidly increase. At the same time, R&D-based pharmaceutical companies seeking to address patient needs also face more complex, often redundant and highly variable regulatory requirements than ever. All of these factors have significantly contributed to the soaring cost of developing medicine. Since 1975, drug development

costs in the US have increased to more than US \$800 million from US \$138 million (more than RMB 5.48 billion from RMB 945 million).

Additionally, patients only benefit from innovation if medicines are safe, effective and accessible. US biopharmaceutical companies expend substantial resources to comply with current Good Clinical Trial Practices and Good Manufacturing Practices. Once on the market, drug companies continue to monitor product safety through a variety of mechanisms, including sophisticated adverse event reporting procedures. These safeguards add to development costs of medicines.

Given the enormous upfront R&D costs and ongoing safety compliance regimes, a viable biopharmaceutical sector requires a system of government pricing that recognizes and rewards innovation. China should avoid a system that benchmarks pricing of innovative treatments against generics, which does little to foster a globally competitive biopharmaceutical sector. Rather, it should develop supportive pricing policies that reward innovation predictably through the full life-cycle of patented products to provide proper returns for the high investment and high risk associated with the development of new medicines, ensuring innovation can continue.

#### Regulatory Data Protection

Developing clinical safety and efficacy data is a major part of the medicine development and regulatory approval process. Satisfying requirements to prove that a medicine is safe and effective for humans takes, on average, 10-15 years of R&D and can cost in excess of US \$800 million (RMB 5.48 billion). Regulatory data protection (RDP), or data exclusivity, is an important incentive for these clinical studies. RDP also provides an inducement for additional clinical research on a molecule with scientific and medical potential even after the compound patent has expired.

China's State Food and Drug Administration's (SFDA) Drug Registration Regulation (DRR) provides for a six-year period of "data protection against unfair commercial use." However, lack of clear definitions of the terms "new chemical entity" and "unfair commercial use" leads to ambiguous implementation of data exclusivity protections and creates a regulatory and safety loophole in the DRR.

## 制药业

2006年,胡锦涛主席宣布了一项深远并备受欢迎的计划,即在2020年将中国建设成为一个创新型国家。该计划提出了中国通过实施政策和法规,以培育、促进创新型产业并消除创新障碍的承诺。

美国生物科技和研发型制药企业作为行业前沿,为中国创新产业的发展做出了贡献。特别是美国生物制药企业正在中国进行的投资,为患者开发并引进创新型的、世界一流的药品,以及通过引入药品开发和全球标准以协助技术的转让等,这些为中美两国带来了新的高科技工作机会。美国生物制药业还为符合道德标准的药品推广建立了世界级标准,以确保医生能够获得患者治疗所需的最先进、准确、科学的信息。

尽管中国生物制药业(特别是上海张江高科技园区)取得了发展,但是关于推动创新的长期发展、促进研发型生物制药企业所需的政策仍未有显著改变。政府需要出台认可并奖励创新和高水平制造业,制定有效、可执行的知识产权保护政策,同时调整政策以符合国际惯例。

### 具体问题

#### 创新产品路径和奖励

制药业创新的关键是研发。尽管新药品还是会被推出,可是研发过程耗时、复杂,风险及成本也在快速增加。同时,为满足患者需求,研发型制药企业还要面对从未有过的复杂、冗赘、经常变化的监管要求。所有这些因素造成了药品开发成本的剧增。自1975年以来,美国的药品开发成本从1.38亿美元(9.45亿人民币)增加至超过8亿美元(54.8亿人民币)。

此外,只有当药品是安全、有效且可以获得时,患者方能从创新中受益。美国生物制药企业为符合当前的“良好临床试验规范”和“良好生产规范”投入大量资源。产品一旦上市,药品企业还要通过多种机制继续监控产品的安

全,包括极复杂的不良事件报告程序。这些预防措施增加了药品开发的成本。

鉴于巨大的前端研发成本和持续的安全合规制度,生物制药业的发展需要一个对创新的认可和奖励的政府定价体系。中国应当避免形成以仿制药为基准的创新治疗价格体系,因为这样无益于培育一个具备全球竞争力的制药业。反而中国应当制定支持性的价格政策,在专利产品的整个生命周期给予创新可预见的奖励,以使新药开发的高投入和高风险获得合理回报,以确保创新得以持续。

#### 监管数据保护

临床安全和疗效数据的编制是药品开发和审批程序的一个重要部分。证明药品安全且对人类有效平均需要10-15年开发时间,成本可能超过8亿美元(54.8亿人民币)。监管数据保护(RDP),即数据专有权,是对临床研究的重要激励。监管数据保护还鼓励即使在药品专利期满后,对具备科学和医学价值的子专利进行进一步的临床研究。

中国国家食品和药品监督管理局(药监局)颁布的《药品注册管理办法》规定了“防止不公平的商业用途数据保护期”为六年。但是,对“新化学实体”和“不公平的商业用途”的定义不明确,造成数据专有权保护实施的不清楚,并形成《药品注册管理办法》中的监管和安全漏洞。

因此理论上《药品注册管理办法》是在促进监管数据保护,但在实践中,创新者的临床数据无法得到保护。对研发型制药业的一个小规模调查发现,1993至2006年期间中国上市的六种全球性新药,在药监局批准原始发明人的产品之前或之后的短时间内,市场上有32家国内生产商推出了52种仿制品。《药品注册管理办法》的某些漏洞以及不明确的定义允许了这一现象的发生。比如,一些药品的审批程序就可以允许药监局使用其他药品机构所批

Thus, in theory, the DRR facilitates RDP, but in practice the innovators' clinical data is not being protected. A small research-based pharmaceutical industry survey found that for six global new products launched in China from 1993 to 2006, 52 copies from 32 different domestic manufacturers were on the market before, or shortly after, the SFDA approved the originators' product. Certain loopholes, in addition to unclear definitions, in the DRR allow this. For example, the regulatory approval procedures for some drugs permit the SFDA to rely on marketing approvals granted by other government drug authorities. Such approvals are based on the same data developed by the innovator company, meaning that non-originator enterprises can unfairly capitalize on the R&D expenditures of originator companies. Reliance on summary data or approvals by other government authorities conveys an unfair commercial advantage to non-originator companies because they benefit from data that they did not generate themselves.

Moreover, by approving copy versions without the manufacturer's clinical data package, the SFDA cannot be sure that the product in the data package and the product in the marketing application are the same, or equivalent. Through the absence of this data, widespread availability of unsafe drugs in the marketplace could occur, unnecessarily putting patients at risk.

A lack of clear definitions and other regulatory loopholes in the DRR contribute to the commercially inequitable reliance on the regulatory data generated by the innovator company and create an unsafe situation for drug consumers, without quality or authenticity guarantees. AmCham-China urges the SFDA to develop new practices in line with internationally accepted regulatory data protection procedures in order to prevent unfair commercial use of originators' data.

### Patent Linkage

Patent linkage ensures that the regulatory authority does not grant final marketing approval of a generic copy of a drug until the patent has expired or is judged to be invalid or not infringed by a competent court or administrative body. While Articles 18 and 19 of China's updated DRR refer to publication of patents associated with "new drugs" ostensibly to achieve patent linkage, it does not explicitly address how such linkage would work as a regulatory mechanism, nor explain how patent disputes should be resolved.

The updated regulation states that an infringement dispute during the application period "should be resolved according to patent laws and regulations." However patent laws require drugs to be on the market before an infringement suit can be filed. Thus, originator companies have not been able to enjoin the marketing approval of an infringing product.

To avoid costly patent litigation and to increase market predictability, China should enable companies

to file patent infringement suits before marketing authorization is granted and the infringing product reaches the market. In addition, the SFDA should implement an automatic stay period of drug registration approval pending resolution of the patent dispute.

### Clinical Trial Application Approval

Despite recent improvements, China's clinical trial application (CTA) submission requirements remain more burdensome than those of other countries. For example, China maintains comparatively extensive chemistry, pre-clinical, clinical, and Chemistry, Manufacturing and Control requirements. Moreover, applicants cannot supplement applications as new information is discovered or made available, and must repeat the same procedures in full for every change to an approved clinical protocol.

China's SFDA should look to eliminate unnecessary delays and develop internal procedures consistent with international best practices, including allowing applicants to supplement applications as new information is discovered or made available. This will increase China's involvement in regional and global clinical trials, enabling local clinicians to participate in the development of innovative treatments and facilitate patients' early access to innovative medicines.

### Ensuring Patient Access to Safe Innovation

Moving toward becoming an innovative society is important and commendable, but it should be accomplished in a manner that enables Chinese to benefit from the innovation themselves. With biopharmaceutical innovation, Chinese patients should have timely access to safe, effective and innovative medicines.

### Reimbursement Drug Lists

There are indications that the Chinese government is considering establishing a new "essential drug list," purported to include western and traditional Chinese medicines. China should ensure that the current reimbursement drug list (RDL) is updated as soon as possible, or that an "essential drug list" is developed with mechanisms providing patients with choices and early access to innovative medicines. Furthermore, for an RDL to function efficiently and effectively for patients, this list should be updated on a frequent timetable to ensure patients can obtain newly developed treatments as early as possible.

### Counterfeit Medicines

Pharmaceutical counterfeiting is first and foremost a threat to patient safety. Reducing the prevalence of counterfeit medicines successfully requires broad commitment from government health officials, industry and professional associations, law enforcement, the medical community, and patients. Like any government, China's commitment to

准的药品上市许可。此类许可是基于原药品开发商所拥有的同样的数据,这就意味着非原药品开发商不公平地利用了原药品开发商的研发投入。对摘要性数据和其他机构批准的药品上市许可的依赖,使非原药品开发商占据了不公平的商业优势,因为他们从并非自己取得的数据中获得了利益。

此外,在没有生产商临床数据包的情况下批准仿制品,药监局无法确定数据包中的产品和用于销售的产品是否相同和等同。此类数据的缺乏会造成市场上不安全药品的扩散,为患者带来不必要的风险。

《药品注册管理办法》中不明确的定义以及其他监管漏洞,造成了对原药品开发商所创建数据的不公平商业利用,给药品使用者带来了不安全因素,令他们无法得到质量或真实性的保证。中国美国商会敦促药监局根据国际公认的监管数据保护程序,制定新规范,以避免对原药品开发商数据的不公平使用。

### 专利连结机制

专利连结机制确保在专利到期之前、或者有关法庭或行政机构裁决专利无效、不构成专利侵权之前,监管机构不会对仿制药给予最终的上市销售批准。《药品注册管理办法》第18条和第19条规定“新药”有关的专利发布表面上实现了专利连结,但其未明确规定该连结机制作为一项监管机制如何运作,也没有说明专利争议如何得以解决。

按照修订后的办法规定,申请期间的侵权争议应依照专利法律和法规解决。但专利法要求只有在药品上市销售后方能提出专利诉讼。由此,原药品开发商无法阻止对侵权产品的上市销售批准。

为了避免高昂的专利诉讼费并提高市场可预见性,中国应当允许企业在取得上市许可和侵权产品上市之前提出专利侵权诉讼。此外,药监局应当执行待解决专利争议的药品申请自动暂停期。

### 临床试验申报

虽然最近情况有所好转,但相比其他国家,中国的临床试验申报(CTA)要求仍然相当繁复。例如,中国仍然提出大量的化学、临床前、临床以及化学、生产和控制(CMC)要求。此外,药监局不允许申请者就发现的或取得的新资料进行补充申报,对临床试验方案的每一项变更都必须重复同样的审批程序。

中国药监局应当努力消除不必要的延误,并制定与国际良好规范相一致的国内程序,包括允许申请者就发现的或取得的新资料进行补充申报。这样将提高中国在地区和全球临床试验中的参与度,使国内临床医师能够参加创新治疗方法的开发,并使患者获得创新的药品。

### 患者获得安全创新药品的权利

向创新型社会迈进是一件既重要又值得赞扬的事情,但其实现的方式应当保证中国人能够从创新中获益。伴随着生物制药的创新,中国患者应当能够及时获得安全、有效、创新的药品。

### 报销药品清单

有迹象表明中国政府正考虑制定一份“基本药品清单”,预计包括某些中药和西药。中国应当尽快对当前的报销药品清单(RDL)进行更新,“基本药品清单”的编制机制可使患者能够选择并尽早获得创新药品。此外,为使报销药品清单对患者更有效用,该清单应经常予以更新,以确保患者能够尽早获得最新开发的治疗方法。

### 假药

药物制假是患者安全的最大威胁。成功控制假药的泛滥需要政府卫生官员、行业和职业协会、执法、医疗界和患者的共同承诺。与其他政府一样,中国政府对控制药物制假的承诺必须基于法律和法规的框架,以保证整个药品供应链的完整性。相应的,中国应针对国内涉及假药贸易的所有方面进行立法,包括管制有意或无意生产和销售假药成分的企业。

为了有助于解决这些问题,如去年白皮书所提及,中国应当制定和/或修订法律,禁止任何故意错标来源或名称的药品(符合世界卫生组织对假药的定义)的生产、配送和进出口,将这些行为归为刑事犯罪,并取消需要证明其伤害作用或有质量问题的要求。

此外,中国应当成立由执法部门、监管机构和海关共同组成的跨部门药品特别行动小组,以确保各有关机构之间能够实现充分的协调。每一位成员都应当有权对假药链的各个环节(包括假药和相关包装和原材料的制造商、批发和零售商,以及出口商)进行调查和起诉。

中国化学品厂商未受管制地大批量生产制假所需的原料药(API),是假药泛滥的一大原因。药监局着重通过管理成品药所用化学品的生产商,保证患者健康和安。但是,许多化工企业不向药监局注册,并将其生产的

confronting pharmaceutical counterfeiting must be based on the framework of laws and regulations to ensure the integrity of the entire medicinal supply chain is safeguarded. Accordingly, China should enact laws that address all aspects of activities occurring domestically that contribute to the counterfeit drug trade, including the policing of operations that, by omission or commission, manufacture and sell ingredients to be used in counterfeit drugs.

To help resolve these issues, and as mentioned in last year's *White Paper*, China should enforce and/or amend its laws as appropriate to prohibit and criminalize the manufacture, distribution, import or export of any pharmaceutical that is deliberately mislabeled as to source or identity (consistent with the World Health Organization's definition of a counterfeit medicine). This should not require proof of harmful effects or deficient quality.

In addition, China should create an interagency pharmaceutical task force of law enforcers, regulatory authorities and customs agents to ensure adequate coordination among the various relevant authorities. Each of these should be given the investigative powers and mandate necessary to prosecute all links in the counterfeit drug chain, including manufacturers, wholesale and retail distributors, and exporters of counterfeit medicines and related packaging and raw materials.

The domestic chemical manufacturers' unregulated production of bulk active pharmaceutical ingredients (API), which are used in the manufacture of counterfeit drugs, contributes to the pervasiveness of counterfeiting in China. The SFDA focuses on patient health and safety by regulating registered manufacturers of chemicals for finished pharmaceutical goods. However, there are chemical companies that are electing not to register with the SFDA and advertise their chemicals as API products under the "(for) medicinal use" category. Unchecked and unregulated, these companies are knowingly or unknowingly contributing to the counterfeit drug trade and compromising the integrity of the global medicinal supply chain. China could play a significant role in securing the global supply chain by closing the loophole that enables chemical companies to manufacture API without SFDA regulation.

### Recommendations

- **Fully implement RDP to protect innovators' intellectual property. Establish an effective patent linkage system that prevents copies of patent protected medicines from receiving government marketing approval.**
- Ensure a reimbursement and pricing system that provides earliest possible access to innovative medicines and recognizes and rewards innovation and quality. In line with China's

commitment to access, update the RDL at least every two years to ensure greater access of the latest advances in medicinal treatments.

- Review the current CTA approval process and develop internal procedures that are consistent with international best practices.
- Eliminate the existing loophole that enables chemical companies to usurp the authority of the SFDA when manufacturing APIs. Impose criminal penalties for companies manufacturing drug substances that promote them as APIs without a required SFDA registration.

原料药作为“医用”类进行大肆宣传。在未得到管制和管理的情况下, 这些企业有意或无意地助长了假药贸易, 并损害了全球药品供应链的完整性。中国可以通过防堵允许化工企业不受药监局监管而生产原料药的漏洞, 在保证全球供应链安全方面扮演重要的角色。

### 建议

- **完全实施监管数据保护, 保护发明人的知识产权。建立有效的专利连结机制, 防止专利药品的仿制品获得政府向合法受保护产品颁发的上市销售许可。**
- 确保报销和定价体系能够使患者尽早获得创新药品, 并表彰和奖励创新和品质。根据中国做出的让患者获得药品的承诺, 至少每两年修订一次报销药品清单, 以确保更多的患者能够受益于最新药品的治疗。
- 审核目前的临床试验申报程序, 编制与国际良好规范相一致的国内规范。
- 填补化工企业绕开药监局监管而生产原料药的漏洞, 对未在药监局注册但以原料药名义销售药品物质的生产企业执行刑事处罚。



## Real Estate

Real estate has played a central role in China's recent boom, accounting for more than five percent of China's GDP. Real estate-related credit and financing make up about 20 percent of the total assets of financial institutions. As a sector, real estate contributes to a large portion of the country's total investment in fixed assets, second only to infrastructure. Furthermore, more than 80 million people are employed directly by the construction industry. A severe decline in the real estate industry could lead to high unemployment and social unrest. Therefore, a healthy real estate market is a key component to maintaining stable national growth. Currently, participation in this market by foreign real estate development companies is heavily restricted, denying the Chinese government development that could boost the sector in both the short- and long-term.

In addition, both foreign and domestic real estate firms would benefit from greater consistency and transparency in the implementation of regulations and in the registration of property rights at the provincial and local levels, which would bolster investor confidence and stimulate consumer demand.

AmCham-China recognizes the Chinese government's effort to fight the global economic crisis by focusing on expanding domestic demand. To reinforce and support this goal, it would be helpful to address other longstanding issues in the real estate sector that have hurt sustained growth, including restrictions on foreign participation, a lack of transparency and consistency in implementing property rights registration, and credit restrictions.

### Significant Developments

If left unresolved, difficulties faced by the real estate industry will limit investment in the market, slowing GDP growth and negatively impacting related industries. Already, stagnant conditions in the residential sales market have deterred investors; a slowdown in construction led to a 12 percent decrease in China's steel production in the fourth quarter of 2008, compared to a year earlier; and sales and production of home appliances have suffered.

Although the global downturn affects China like other countries, the Chinese real estate market

was stagnating even before the crisis because of macroeconomic policies. In 2008, many cities witnessed sluggish sales and falling prices in the housing market, with southern cities such as Shenzhen and Guangzhou hit the hardest. Transaction volumes dropped to a fairly low level compared with 2007, and some cities dropped to 2002 levels. Slow sales, coupled with tight credit and vulnerable capital markets, presented local developers with increasingly critical cash flow shortages, especially those which had amassed significant land reserves over the past two years.

Thus, one year after the publication of the 2007 Notice on Strengthening Credit Management Concerning Commercial Real Estate (Circular 359), designed to cool a robust but highly speculative market by raising the lending threshold for commercial real estate projects, there has been a turnaround in the direction of macroeconomic policies. The focus is now on stimulating growth, not preventing overheating. The People's Bank of China has reduced the interest rate and reserve ratio multiple times since September 2008. In the residential market, the central government, and also many provincial and municipal governments (such as Shanghai, Hangzhou and Chengdu), have issued measures to cushion the decline and stimulate market demand. These measures were notably adopted in areas hit by the Wenchuan earthquake.

In October 2008, the Executive Meeting of the State Council announced initiatives to expand coverage of social security housing, reduce taxes on home sales and stimulate the housing demand of citizens. A series of new measures favoring personal-use buyers, including lowering the lending rates of both commercial loans and Housing Provident Fund loans, decreasing the minimum down payment ratio (from 30 percent to 20 percent) and reducing or even exempting several taxes on home sales to stimulate market demand followed this initiative. Measures taken by many local governments reflect these goals and have already increased the sales volume in Shanghai and other locales.

Faced with the global economic downturn, the State Council announced a RMB four trillion (USD \$584 billion) stimulus package in November 2008 to spur domestic demand and boost the slowing economy, including RMB 900 billion (USD \$131 billion) to

## 房地产

房地产业对中国近年的迅猛发展做出了重要贡献,在中国国内生产总值(GDP)中所占比例超过5%。与房地产相关的信贷融资约占金融机构总资产的20%。房地产业在全国固定资产投资中所占比重非常大,仅次于基础设施投资。此外,建筑业解决了8000多万人的就业问题。房地产业急剧下滑可能会导致失业率上升和社会动荡,因此,房地产市场健康发展是保持国内经济稳定增长的关键要素。目前,外商投资房地产市场受到了严格限制,不利于中国政府促进房地产业短期和长期的发展。

此外,各个省市和地方的法规实施和产权登记日趋一致、透明,这将惠及国内外房地产公司,从而提升投资者信心并刺激消费者需求。

中国美国商会赞同中国政府通过扩大内需来应对全球经济危机的做法。开始着手解决影响房地产业持续发展长期存在的问题将有助于这一目标的实现。这些问题包括对外商投资的限制、落实产权登记方面缺少透明度和一致性以及信贷限制等。

### 重大进展

房地产业所面临的困难若不加以解决,将限制房地产市场的投资,降低GDP的增长速度,并对相关行业产生不利影响。住宅销售市场低迷的现状已经降低了投资者信心,开工项目的减少,使中国2008年第四季度的钢铁产量相比上年同期下降了12%,此外,家用电器的产销量也出现下滑。

虽然中国和其他国家一样未能免遭全球经济衰退的影响,但由于宏观经济政策因素,中国的房地产市场早在危机爆发之前就已经开始下滑。2008年,许多城市的住房市场都出现销售惨淡、房价下跌的情况,其中深圳和广州等南方城市遭受的打击最大。交易量较2007年大幅下跌,一些城市甚至跌至2002年的水平。由于销量欠佳、信贷紧缩,加之资本市场的脆弱,本土开发商面临越发严峻

的资金短缺问题,尤其是那些在过去两年里积聚了大量土地储备的开发商更是如此。

2007年出台了《关于加强商业性房地产信贷管理的通知》(359号),目的是通过提高商业房地产项目的借贷门槛,为迅猛增长但投机盛行的楼市降温。现在,在宏观经济政策的引导下,情况出现好转。目前,首要任务是刺激增长,而非预防市场过热。自2008年9月以来,中国人民银行已多次下调利率和准备金率。中央政府以及上海、杭州和成都等多个省、市政府已经出台相关办法来抑制住宅市场的下滑趋势,并刺激市场需求。这些措施在汶川地震影响的地区尤其得到了积极的响应。

2008年10月,国务院常务会议宣布扩大社会保障性住房的覆盖范围,降低住房交易税费并以刺激居民的购房需求。此后又相继出台了一系列有利于个人购房者的新办法,包括降低商业贷款和住房准备金贷款的贷款利率,将最低首付比例从30%下调至20%,以及降低或免除几项住房交易税费以刺激市场需求。许多当地政府据此采取的措施,已经推动了上海等地的销量增长。

在全球经济衰退的背景之下,国务院于2008年11月提出一项4万亿元人民币(5840亿美元)的经济刺激计划,以期扩大内需并加快经济增长。其中9000亿元人民币(1310亿美元)将用于2009年至2011年间200多万套廉价住房,以及400多万套经济适用房的建造。这些项目将为全国1000万户低收入家庭提供住房,并有助于促进众多相关产业的发展。

2009年1月,随着全球经济危机进一步恶化,北京市建设委员会联合另外八家北京市政府机构出台了《促进本市房地产市场健康发展的实施意见》(京建办[2009]43号)。根据该意见,《关于规范境外机构和境外个人购买商品房的通知》(京建交[2007]103号)将于2009年12月31日暂停实施。暂停实施意味着境外机构和境外个人不再受到居住满一年方可购房的限制,并且可以购买不止一套住房,所购房屋不再局限于个人自用。但是,对境

build more than two million low-cost housing units and over four million affordable housing units between 2009 and 2011. These construction projects will provide housing for 10 million low-income households nationwide and stimulate growth in many related industries.

In January 2009, following the deepening of the global economic downturn, the Beijing Construction Committee, with eight other Beijing Municipal government agencies, issued the Implementation Opinions on the Promotion of the Healthy Development of the Beijing Real Estate Market (Jing Jian Ban [2009] No. 43), which suspended the enforcement of the Circular on Regulating the Purchase of Real Estate by Entities and Individuals (Jing Jian Jiao [2007] No. 103) through December 31, 2009. The suspension indicates that foreign individuals no longer need to satisfy a one-year residency period in Beijing to purchase real estate and may also purchase more than one real estate unit. The purchased premises are no longer restricted to personal use. However, the restrictions on foreign entities have not been lifted.

### Specific Issues

#### **Restrictions on Foreign Investment in the Real Estate Industry**

A year after the May 2007 joint issuance of the Notice on Further Strengthening and Regulating the Examination, Approval and Supervision of Foreign Direct Investment in the Real Estate Industry (Circular 50) by the Ministry of Commerce (MOFCOM) and the State Administration of Foreign Exchange (SAFE) requiring the establishment of real estate foreign-invested enterprises (FIE) to be filed with MOFCOM, MOFCOM published the Notice of the Ministry of Commerce on the Registration of Foreign Investment in the Real Estate Industry (Circular 23). Circular 23 entrusts the provincial-level commerce departments with the examination of filing materials to simplify the registration process by eliminating the need for filing with the central government. AmCham-China supports this effort by the Chinese government to streamline the approval process for foreign investment in real estate projects.

Regulatory and practical restrictions continue to create hurdles for foreign investors ready to participate and compete effectively in the Chinese real estate market. For example, the Opinions on Regulating the Entry into and the Administration of Foreign Investment in the Real Estate Market (Circular 171) is still in effect, which continues to impose extensive restrictions on market entry by foreign investors. PRC branches and representative offices of foreign entities, as well as foreign individuals, may purchase properties only for their own use. Direct offshore ownership of PRC properties is otherwise not permitted. A foreign investor buying into a real estate FIE or a domestically-funded real estate project will be subject

to greater scrutiny. In addition, the registered capital of a real estate FIE is required to be no less than 50 percent of the total investment for projects over US \$10 million (RMB 68.5 million), while the minimum ratio ranges from 33.3 percent to 40 percent for normal FIEs. These restrictions keep the bar significantly higher for market entry by foreign participants.

#### **Lack of Capital Among Real Estate Developers**

On July 10, 2007, SAFE promulgated the Notice of the General Office of the State Administration of Foreign Exchange on Issuing the List of the First Batch of Foreign-Funded Real Estate Projects Having Passed the Procedures for Filing with the Ministry of Commerce (SAFE Circular 130), which suspended the registration of foreign debt, as well as the conversion of corresponding loan proceeds into RMB, by real estate FIEs established after June 1, 2007. AmCham-China urges the Chinese government to take steps to loosen the limitation imposed by SAFE Circular 130 with respect to the registration of foreign debt by real estate FIEs.

Borrowing by domestic developers is also not easy. Due in part to the tightened credit policy in the first three quarters of 2008 and by banks' reluctance to lend following the global economic downturn, many local and FIE developers had difficulty securing debt financing and suffered a severe lack of capital. To some extent, credit policy has been liberalized since the beginning of 2009 as part of government efforts to increase domestic demand and stimulate the economy. AmCham-China supports further efforts by the Chinese government to provide both domestic real estate companies and real estate FIEs with financing sources.

#### **Restrictions on Purchases of Real Estate by Foreign Buyers**

While Circular 171 is still in effect, AmCham-China applauds the Beijing municipal government for flexibly responding to changing market conditions and suspending as a matter of local policy the restrictions imposed on the purchase of real estate by foreign individuals in Beijing. AmCham-China urges expansion of the liberalization of policy in Beijing to include foreign entities and also recommends the formal rescission of Circular 171 restrictions nationally.

#### **Transparency, Information and Enforcement**

The lack of transparency in the administration and enforcement of property rights has consistently been cited as detrimental to investment, but little progress has been made to improve this situation.

Currently, the rules and regulations for the registration of property rights and interests are issued and administered on a local basis, producing a complex multiplicity of regulations that are confusing and not always observed by local authorities. Moreover, when enforcing such registered interests, the local courts

外机构购房的限制仍然没有取消。

### 具体问题

#### **有关外商投资房地产业的限制**

2007年5月, 商务部与国家外汇管理局联合颁布了《关于进一步加强、规范外商直接投资房地产业审批和监管的通知》(商资函50号)。该通知规定设立外商投资房地产企业必须向商务部备案。一年后, 商务部又下发了《关于做好外商投资房地产业备案工作的通知》(23号)。23号文件委托省级商务主管部门对备案材料进行审核, 目的是通过减少向中央政府备案这一环节, 简化登记过程。中国美国商会对中国政府简化外商投资房地产业审批流程的做法予以支持。

政策和实际执行方面的限制继续成为外国投资者进入中国房地产市场, 并参与有效竞争的障碍。例如, 《关于规范房地产市场外资准入和管理的意见》(171号文) 仍然有效, 对外商投资者进入市场仍然有严格的限制。境外机构在境内设立的分支、代表机构和在境外个人只可以购买自用、自住的商品房。在境外直接拥有境内住房是不允许的。外商投资房地产企业的股份和项目转让, 以及境外投资者并购境内房地产企业将受到更严格的审查。此外, 外商投资设立房地产企业, 投资总额超过1000万美元(合6850万人民币)的, 注册资本不得低于投资总额的50%, 而普通外商投资企业的最低比例仅从33%到40%。这些限制条件大大提高了外商投资房地产业的准入门槛。

#### **房地产开发商缺乏资金**

2007年7月10日, 国家外汇管理局下发《国家外汇管理局综合司关于下发第一批通过商务部备案的外商投资房地产项目名单的通知》(外管局130号文), 明文规定停止办理2007年6月1日以后的所有外商投资房地产项目外债登记以及外债结汇手续。中国美国商会吁请中国政府采取措施放宽外管局130号文对外商投资房地产项目外债登记所规定的限制。

国内房地产开发商贷款也非易事。这在一定程度上是源于2008年前三个季度紧缩的信贷政策以及全球经济衰退导致的银行惜贷, 因此许多国内和外商投资房地产开发商很难获得债务融资, 面临着严重的资金短缺。自2009年以来, 作为政府拉动内需和刺激经济措施的一部分, 信贷政策已经有了一定程度的放宽。中国美国商会支持中国政府向国内外房地产企业提供融资渠道的更多措施。

### 对境外购房者的限制

尽管171号文仍然有效, 中国美国商会赞赏北京市政府灵活应对市场形势变化, 作为一项地方政策暂时解除境外个人在京购房限制的做法。中国美国商会吁请进一步在北京扩大这一宽松政策的范围, 将境外机构也列入放宽的范围内, 并建议在全国范围内正式废除171号文。

### 透明度、信息和执法

物权的管理和执行缺乏透明度, 其他法规的执行缺乏一致性, 一直被认为无益于投资, 但这一情况至今仍未见改善。

目前, 有关物权权益登记的法规和规章是由地方政府部门发布和实施的, 结果导致各地的规章复杂多样, 模糊混乱, 甚至地方相关部门也未能完全遵守。因而, 在执行产权登记的权益时, 地方法院并不能完全按照法律执行。中国媒体多次报道, 一些拥有房地产开发项目审批决定权的地方官员腐败成风, 滥用职权。

现有的物权权益(如土地使用权、出租权、抵押权和有关所有权的其他房产权益)的登记制度以及有关担保权优先顺序的规定等很模糊, 在全国范围内的实施不一致。而且, 提供的信息准确性有限。结果导致很多物权所有人或质权人在行使其权利时遇到困难, 或发现其权利面临由利益冲突的第三方所造成的潜在风险。

### 建议

- 简化并加快设立外商投资房地产企业的审批流程, 取消尤其是适用于境外投资者进入房地产行业市场准入的各种限制, 包括171号文首先规定的那些限制。
- 取消外管局130号文和其他政策对外商投资房地产企业借外债的限制, 继续放宽国内信贷政策, 为房地产开发商提供充足的资金。
- 允许境外机构直接拥有房产, 包括用于投资目的和个人自用。
- 采取有效措施加强有关房地产领域各项法规 and 政策的透明度, 以及法规和政策的执行力度。此外, 采取其它措施整顿房地产开发和审批过程中的腐败。
- 采用一项全国性的房地产权以及相关的抵押权利的登记与备案制度, 并出台相关实施办法, 确保它

do not always apply laws consistently. The Chinese media has reported rampant corruption and abuse of power by local officials who hold enormous sway in decisions about the approval or rejection of real estate development projects.

The existing system of registration of property rights and interests, such as land use rights, leases, mortgages and other rights and interests in real estate property, as well as rules governing the priority of security rights, are vague and not consistently enforced nationally. Moreover, availability of accurate information is limited. As a result, bona fide holders of property rights or liens may have difficulty in enforcing their rights or find their rights undermined by competing interests of third parties.

### Recommendations

- **Streamline and speed up the approval process for the establishment of real estate FIEs. Eliminate restrictions specifically applicable to foreign investors regarding market entry into the real estate sector, including those first put in place by Circular 171.**
- Lift restrictions on the borrowing of foreign debt by real estate FIEs put in place by SAFE Circular 130 and other policies and continue to liberalize domestic credit policy to provide sufficient capital for real estate developers.
- Allow direct ownership of real property by foreign entities, including for investment purposes as well as personal use.
- Adopt effective measures to enhance transparency of regulations and policies governing the real estate sector and the enforcement of those regulations and policies. In addition, take further steps to combat corruption in the real estate development approval process.
- Implement a national scheme for the registration and recording of real property interests as well as related security interests together with guidelines for consistent application across all jurisdictions. This would increase the reliability, accuracy and accessibility of information in relation to all segments of the real estate sector including residential, industrial, retail and office.
- Enact guidelines to expressly allow foreign investors to participate in the development of low-cost housing units and affordable housing units as part of the State Council's stimulus package, with the goal of bringing mature management skills and additional financing to this priority area of the PRC real estate market.

们在各地得到一致的贯彻落实。这将有助于提高包括民用、工业、商业和写字楼在内的所有房地产领域有关的信息来源的可靠性、准确性和可获得性。

- 出台指导方针, 明确允许外国投资者开发低价位住宅和经济适用房, 作为国务院刺激经济一揽子计划的一部分, 目标是为中国房地产市场中这一优先发展领域带来成熟的管理技能和额外资金。

## Retail

China's retail sector has seen significant developments in recent years, but it still faces several problems that prevent it from becoming a fully mature industry. Unequal regulatory practices unduly burden foreign-invested retailers, resulting in a marketplace that lacks full competition. The effect on consumers is significant, affecting prices, product safety, corporate social responsibility and industry standards. Improving the competitiveness and openness of the retail sector is critical, and will only become more so as the Chinese economy continues to mature, with consumer spending an increasingly important component.

### Significant Developments

In 2007, total consumption of retail commodities reached RMB 8.9 trillion (US \$1.3 trillion). According to data by the National Bureau of Statistics (NBS), retail sales expanded at a rate of 21.4 percent in the first half of 2008 over the same period the previous year. Even with the onset of the global economic downturn, retail sales continued to expand 21.9 percent in the second half of 2008 compared to the same period in 2007, with overall 2008 growth totaling 21.6 percent. (NBS retail sales figures include some non-retail type items.) The tragic snow storms and devastating Sichuan earthquake, which caused a subsequent cancellation of the May Day Golden Week, had significant negative impacts on the retail industry, making the strong growth especially notable. It remains to be seen what continued impact the global recession will have on the retail sector, but government estimates predict eight percent annual growth between 2008 and 2010, and total retail sales of RMB 20 trillion (US \$2.9 trillion) by 2020.

In accordance with its WTO commitments, China fully opened its retail market to foreign investors on December 11, 2004. Since then, most restrictions on location, proportion of ownership and the number of foreign-funded outlets have been lifted. Of the top 100 retailers in 2007, 15 were foreign invested. In 2007, foreign-invested retailers opened 3,956 new stores, accounting for 17 percent of the new store openings in China.

Despite the numbers of store openings, discriminatory treatment and a lack of transparency still exist in certain areas of government administration over the retail industry. These issues restrict the expansion of foreign retailers and discourage foreign investors from

contributing their expertise, which would benefit the Chinese consumer and overall marketplace.

### Specific Issues

#### National Treatment in Approval Process

According to the Ministry of Commerce's (MOFCOM) 2004 Measures for the Administration of Foreign Investment in the Commercial Sector (Measures for Commercial Sectors), foreign retailers operating more than 30 stores with a business area greater than 300 square meters who plan to open additional stores must receive application approval from three levels of government: municipal, provincial and central. Only after MOFCOM approval can companies obtain a business license from the registration authority (the local administration of industry and commerce). Domestic retailers, by comparison, are allowed to apply for a new store business licenses directly from the local registration authority without the lengthy three-level commerce department approval process.

On September 12, 2008, the Foreign Investment Administration Department (FIA) of MOFCOM issued a regulation decentralizing store opening approvals. Provincial commercial bureaus now have authority to approve foreign-invested store opening applications and submit the documents to MOFCOM upon approval.

AmCham-China is encouraged by the store approval decentralization regulation, which indicates a more simplified process may soon follow. However, the full impact on foreign-invested retailers remains unclear. Furthermore, it will also be critical to see if these entities will enjoy the same national treatment as domestic retailers.

In December 2008, MOFCOM issued guidelines for local commerce ministries regarding, among other areas, the store approval process. AmCham-China will closely follow how these guidelines will be implemented over the next few months. If helpful, AmCham-China stands ready to serve as a resource on implementation issues.

Despite this progress, discriminatory treatment persists with pharmaceuticals, pesticides, mulching film, chemical fertilizers, processed oils, grain, vegetable oil, sugar, cotton and publications. To sell these products, foreign retailers must either restrict the number of stores or obtain special permits and

## 零售业

虽然中国的零售业近年来取得了显著的发展,但是仍然面临一些影响行业发展壮大的问题。不平等的监管做法加重了外资零售企业的负担,导致市场缺乏充分的竞争环境,同时对消费者的影响也不容小觑,价格、产品安全、企业社会责任与行业标准都受到了影响。现在,改革零售业以增强其竞争性和开放度的需要越来越强烈,而且随着中国经济的成熟,消费性支出将成为其中日益重要的组成部分,使这种需要变得更为迫切。

### 重大进展

2007年,零售日用品消费总额达到8.9万亿人民币(合1.3万亿美元)。根据国家统计局公布的数据,2008年上半年零售额与去年同期相比增长了21.4%。甚至在全球经济陷入低迷的影响下,2008年下半年的零售额与2007年同期相比增长了21.9%,2008年全年零售额增幅为21.6%。(国家统计局的零售数据中包括一些非零售性商品。)灾难性的冰雪灾害和破坏性的四川大地震不仅成为后来五一黄金周长假取消的考虑之一,而且对零售业产生了巨大的负面影响,在这种情况下零售业的快速增长尤其引人关注。虽然全球经济衰退将对零售业产生的后续影响尚待观察,但据政府估算,预计2009年到2010年中国经济年增长速度将达到8%,2020年零售总额将达到20万亿人民币(合2.9万亿美元)。

根据对WTO的承诺,中国于2004年12月11日向外国投资者完全开放了零售市场。此后,取消了对地点、所有权比例及外资店铺数量方面的大多数限制。2007年中国零售企业100强之中,有15家是外资企业。2007年,外资零售企业新开设了3,956家店铺,占中国新开店总数的17%。

尽管外资零售企业新开设店铺的数量有了较大增长,但在政府对零售业管理的一些领域仍存在着歧视性待遇以及缺乏透明度的问题。这些问题限制了外资零售企业在中国的扩张,阻碍了外国投资者向中国提供其专业技术,而这些原本有益于中国消费者以及整个市场环境的发展。

### 具体问题

#### 审批流程中的国民待遇

根据商务部2004年《外商投资商业领域管理办法》(以下简称为《商业领域管理办法》)规定,外资零售企业,如果其单一店铺营业面积超过300平方米的店铺数量超过30家,那么当它计划开设更多的店铺时,必须向总共三级政府申请许可:市级、省级和中央政府。只有在商务部批准之后,外国公司才能够获得注册机构(工商局)发放的营业执照。与之相比,本国零售企业则可以直接向工商局申领新开设店铺的营业执照,而不需要经历三级商务部门审批的繁琐费时的手续。

2008年9月12日,商务部外国投资管理局(FIA)发布了一项下放店铺开设审批权限的规定。省级商务部门现在有权审批外资店铺的开设申请,但需在批准之后将文件提交给商务部备案。

中国美国商会受到此项下放审批权限规定的鼓舞,认为这预示着将很快出台更为简化的审批程序。然而,项规定对于外资零售企业的总体影响仍不清楚。此外,仍然非常有必要关注这些企业是否能够享有与本国零售企业相同的国民待遇。

2008年12月,商务部发布了针对地方商业部门的指导方针,其中涉及到开设店铺的审批流程。中国美国商会将密切关注这些指导方针在接下来几个月中的执行情况。如果能有所帮助,中国美国商会随时愿意为执行方面的问题提供必要资源。

尽管有了一定的进步,但在药品、农药、农膜、化肥、加工油、粮食、植物油、糖、棉花和出版物等领域,歧视性待遇仍然普遍存在。若要销售这些商品,外资零售企业只能限制店铺数量,或者得到中央政府部门的特别许可与执照。除了可能遭到拒绝外,这个程序要耗用外资零售企业更多的时间,因为他们必须获得中央政府的许可。与此相对,本国零售企业仅需获得地方政府部门的许可。禁止

licenses from central government agencies. In addition to possible denial, this process takes longer for foreign retailers because permits come from the central government. In contrast, domestic retailers only need permits from local government agencies. Other areas prohibited for foreign retailers include sales of tobacco, CDs and DVDs.

### Restrictions on Ownership

According to the National Development and Reform Commission's (NDRC) Catalogue Guiding Foreign Investment in Industry and the Measures for Commercial Sectors, retailers operating more than 30 stores in China and selling pharmaceuticals, pesticides, agricultural films, fertilizers, refined oils, food, vegetable oil, sugar, cotton, or other commodities of varying brands from different suppliers, cannot be more than 49 percent foreign-owned. Hong Kong and Macao investors can own this type of retail chain outright.

AmCham-China recommends easing this ownership restriction for foreign investors and lifting the 49 percent ownership limit.

### Restrictions on Tobacco

On March 7, 2007, the NDRC issued rules on tobacco licensing, which prohibited foreign commercial enterprises from conducting wholesale or retail business in tobacco. Subsequently, the Administrative Measures for Tobacco Monopoly License prohibited any foreign-invested company or individual from entering the Chinese tobacco market either directly or through subleasing as of January 2009.

These restrictions put foreign retailers at a disadvantage to their domestic competitors. AmCham-China urges the elimination of the restriction.

### Commercial Zoning

According to the Measures for Commercial Sectors, when applying for a new site, foreign retailers must produce written confirmation from the local government that the proposed site complies with city commercial zoning plans. When commercial zoning plans exist, a public hearing process is also required, adding up to three months to the approval process. Furthermore, some locations have incomplete commercial zoning plans, making compliance confirmation impossible. Without this confirmation, MOFCOM will dismiss the foreign retailer's new site application as failing to comply with local commercial zoning plans.

In some instances, the local government has arbitrarily used the commercial zoning plan to slow down or restrict foreign retail plans to open new stores, posing yet another level of risk on the foreign investor. In contrast, domestic retailers are not required to submit new site applications to MOFCOM for examination or approval.

This requirement is in conflict with China's WTO commitment to lift all geographic limits on foreign retailers.

### Registered Capital

According to Article 7 of the Measures for Commercial

Sectors, the minimum registered capital for foreign retail investors must comply with the relevant provisions in the Company Law and other relevant regulations. According to the Company Law, the minimal capital required for a company registration is fairly low—between RMB 30,000 (US \$4,400) and RMB 500,000 (US \$73,000). MOFCOM usually asks foreign retailers to increase their registered capital by approximately 10 times this amount for each new outlet application. In contrast, this provision does not exist for domestic retailers, regardless of the number of outlets.

### Big Box Law Concerns

Related Chinese government agencies have worked together and completed a draft law for a zoning regulation on large scale commercial facilities ("Big Box Law"). In April 2008, the Legislative Office of the State Council solicited public comments on the draft and is preparing a revision. Foreign-invested retailers recommended removing language requiring supermarkets with construction areas above 10,000 square meters to be approved by MOFCOM and pushed for the approval process to take place at the local level for both foreign invested and local retailers. Most stores opened by local retailers are small and may never reach the scale that would trigger this approval process. Foreign retailers often open large-scale stores and as a result have to go through the lengthy approval process.

AmCham-China urges that domestic and foreign invested retailers be treated equally during the zoning approval process in the new regulation.

### Recommendations

- Revise the Measures for Commercial Sectors and other related regulations in line with China's WTO commitments and common international practices:
  - **Treat domestic and foreign retailers equally for registered capital requirements assessed on additional outlets.**
  - Lift the ownership restrictions on foreign retailers operating more than 30 stores in China and selling certain commodities provided in Article 18 of the Measures for Commercial Sectors.
  - Ensure that zoning review standards are the same for foreign and domestic retailers.
  - Lift restrictions on types of merchandise, such as pharmaceuticals and tobacco, or at a minimum ensure that regulations on the distribution restrictions are applied equally to Chinese and foreign retailers.
  - Formulate and promulgate the Big Box Law to ensure that foreign and domestic retailers are treated equally concerning compliance with urban development.
- MOFCOM and its local counterparts should increase transparency and simplify the current approval process.

外资零售企业涉足的其它领域包括烟草、CD和DVD的销售。

### 所有权限制

根据国家发展和改革委员会(发改委)的《外商投资产业目录》和《商业领域管理办法》，在中国拥有店铺数量超过30家，销售药品、农药、农用农膜、化肥、精炼油、食品、植物油、糖、棉花或其它来自不同供应商的多种品牌日用品的零售企业，其外资比例不得超过49%。但香港和澳门投资者可以完全拥有这种类型的零售连锁。

中国美国商会建议放松这项对外国投资者的所有权限制，并取消所有权比例不得超过49%的限制。

### 烟草制品限制

2007年3月7日，发改委发布有关烟草制品销售许可的新法规《烟草专卖许可证管理办法》，禁止外资商业企业从事烟草批发或零售业务。因此从2009年1月起，根据该办法，外商投资商业企业或个体工商户不得直接或通过转租柜台间接进入烟草市场。

这个限制性规定将外资商业企业置于与国内竞争对手相比不利的地位。中国美国商会呼吁取消这种限制。

### 商业分区

根据《商业领域管理办法》，当申请新的店址时，外资零售企业必须出具当地政府的书面证明，证明拟开设店铺的店址符合城市商业发展分区计划。如果确有商业发展分区计划的话，还需要进行公众听证流程，这使得审批流程所需时间长达三个月。此外，一些地区的商业发展分区计划并不完整，这样几乎不可能获得符合规定的证明。如果没有该证明，商务部将以不符合当地商业发展分区计划为由拒绝外资零售企业的新店址申请。

在某些情况下，当地政府武断地使用商业发展分区计划来减缓或限制外资零售企业开设新店的计划，为外国投资者带来更多的风险。与此相对，本国零售企业则不需要向商务部提交新店址申请供其审查与批准。

这一要求不符合中国加入世贸组织时所做的取消所有针对外资零售企业的地理限制这一承诺。

### 注册资本

根据《商业领域管理办法》第7条的规定，外商投资零售企业的注册资本必须符合《公司法》和其它相关法

规的相关规定。根据《公司法》规定，注册一家公司所需要的最低资本相当低- 3万元人民币(4,400美元)到50万元人民币(73,000美元)之间。商务部通常要求外资零售企业每申请开设一家新店铺都必须将其注册资本增加大约10倍。与此相对，这项规定不适用于本国零售企业，无论他们拥有的店铺有多少数量。

### 关注“大箱法”

中国相关政府机构共同起草并制定完成了一项关于大型商业设施分区规定的法规草案(“大箱法”)。4月，国务院法制办就这项草案公开征求公众意见，现在正准备对之进行修订。外资零售企业建议删除要求建筑面积超过一万平方米的超市必须经过商务部审批的文字内容，并努力推动对外资和本国零售企业的审批权限都设置在地方级政府部门。本国零售企业开设的店铺大多规模比较小，可能永远不会达到需要启动这一审批程序的规模。外资零售企业常常开设大规模的商铺，因此将不得不经历这一漫长的审批程序。

中国美国商会强烈要求新法规在分区审批程序方面给予国内外零售企业同等待遇。

### 建议

- 修订《商业领域管理办法》和其它相关法规，使之符合中国加入世贸组织时所做的承诺以及其它通用的国际惯例：
  - **在检查审批新增店铺申请时，在最低注册资本方面给予国内外零售企业同等待遇。**
  - 取消《商业领域管理办法》第18条中对于在中国经营店铺数量超过30家的外资零售企业的所有权限制和销售某些日用品的限制。
  - 确保针对外资零售企业和本国零售企业的分区审核标准完全相同。
  - 取消对商品种类的限制，例如药品和烟草，或者最低要确保分销限制规定平等地适用于国内外零售企业。
  - 制定和发布“大箱法”时确保国内外零售企业在符合城区发展规划方面享受同等待遇。
- 商务部及其相应地方机构应提高透明度并简化当前的审批程序。

## Transportation and Logistics

The 11th Five-Year Plan (2006-2010) for National Economic and Social Development identifies logistics as one of China's strategic industries, given the importance of related infrastructure to sustaining China's economic growth. The Chinese government has made great efforts to enhance industry service levels, continue the development of logistics infrastructure, encourage wider use of information technology and introduce more adequate industry standards. A large portion of China's RMB four trillion stimulus (US \$584 billion) will be used to build new infrastructure capacity, including roads, airports, railways and ports. Logistics will also be key to the services industry, which will create needed employment opportunities during the economic downturn. In 2007, the value added of the logistics sector increased 20.3 percent from 2006, reaching RMB 1.7 trillion (US \$248 billion) and accounting for 6.9 percent of China's total GDP.

China's logistics industry has been growing rapidly, with gross business volume amounting to RMB 75.2 trillion (US \$1.1 trillion) in 2007, up 26.2 percent from the previous year. However, high costs and inefficiency have long persisted, creating bottlenecks and limiting the industry's full potential. Estimates indicate the average unit cost of China's logistics industry is two to three times that of the US. The Chinese government and industry players recognize the problems and are seeking solutions. In the upgrading process, foreign logistics service providers, with technology, experience and investment to offer, can play a constructive role.

Various central government departments are coordinating efforts to deal with the long-existing problems of logistics overregulation and local protectionism. AmCham-China commends these efforts and believes further deregulation would improve efficiency and decrease costs. Fundamental reform of the legal and regulatory structures governing the transportation and logistics industry would benefit the sector and encourage its development into a world-class service industry.

### Significant Developments

As an important part of its restructuring, the Chinese government created a new Ministry of Communication and Transport (MOCT) which includes the former Ministry of Communication, General Administration of Civil Aviation of China

(CAAC) and State Postal Bureau (SPB). AmCham-China applauds the establishment of this new super-ministry, which will consolidate regulatory oversight for the industry. However, the MOCT can take further steps to streamline the regulation and implementation processes.

As further indication of the Chinese government's commitment to developing the logistics industry, the State Council announced a logistics industry revitalization plan in February 2009. The plan focuses on the modernization of logistics companies, enhancing standardization and IT platforms across the industry, and development of logistics for the energy, mining, automotive, pharmaceutical, and agricultural industries.

To promote domestic industry members, the Chinese government authorized the China Federation of Logistics and Purchase (CFLP) to establish a Logistics Industry Damage Warning System, which monitors possible damage by foreign logistics service providers to industry security. In October 2008, the Standing Committee of the National People's Congress (NPC) reviewed the latest draft of the amended Postal Law, which excludes foreign enterprises from the domestic document delivery business. After receiving numerous comments from domestic and foreign firms on the draft, the NPC has scheduled a second reading, most likely in mid-2009.

The SPB and local PBs have pushed Express Delivery Services (EDS) firms to implement Express Industry Service Standards (ESS). In several provinces, more than a dozen firms received accreditation from local postal bureaus.

### Specific Issues

#### Market Access

In October 2008, the Standing Committee of the NPC reviewed the latest draft of the Postal Law, which excludes foreign enterprises from the domestic document delivery business. This discriminatory regulation against foreign-invested enterprises does not follow China's commitment under the WTO Schedule of Specific Commitments on Services and conflicts with the Chinese "National Treatment" promise in both the Schedule and the General Agreement on Trade in Services. In addition, the restriction on foreign capital and participation reduces beneficial competition, discouraging

## 运输和物流

鉴 于物流相关基础设施对于中国经济的持续增长具有重要意义, 国民经济和社会发展第十一个五年规划(2006-2010)将物流业确定为中国的战略性产业。中国政府已经下大力气提高物流业服务水平, 持续推进物流业基础设施建设, 鼓励信息技术更为广泛的应用, 并引进更多合适的行业标准。在中国政府总额达4万亿人民币(5840亿美元)的经济刺激投资中, 有很大一部分用于包括公路、机场、铁路和港口在内的新基础设施建设。物流也将成为服务业的关键, 在经济低迷时期创造就业机会。2007年, 物流业创造的附加值与2006年同比增长了20.3%, 达到1.7万亿人民币, 占中国国民生产总值的6.9%。

中国物流业一直保持快速发展, 2007年总营业额达到75.2万亿元人民币, 较上年增长26.2%。然而, 高成本、低效率的问题长期存在, 不仅造成了瓶颈, 还限制了行业全面发展的潜力。据估计, 中国物流业的平均单位成本是美国的2至3倍。中国政府和业界人士已经认识到这些问题并在寻求解决方案。在这一过程中, 拥有技术、经验和资金的外国物流服务供应商将会发挥建设性作用。

中央政府部门正协调各方, 努力解决长期存在的物流管制过度 and 地方保护主义问题。中国美国商会对这些努力表示赞赏, 相信进一步放松管制将提高效率并降低成本。针对运输与物流业的法律和监管结构进行的基本改革将使该行业受益良多, 有助于促进其向具有世界先进水平的服务行业迈进。

### 重大进展

作为机构调整的重要组成部分, 中国政府将前交通部、中国民用航空总局和国家邮政总局合并, 成立了新的交通运输部(MOCT)。中国美国商会赞赏这一举措, 该新组建的大部委将对物流业进行统一的监管。总之无论怎样变化, 交通运输部仍能采取措施来进一步简化各种法规和流程的实施。

国务院于2009年2月宣布了一项物流业振兴计划, 这表明了中国政府决心大力发展物流业的信心。该计划着重于物流公司的现代化建设, 促进整个物流业的标准化和信息技术平台建设, 发展面向能源、采矿、汽车、制药和农业的物流业。

为推动国内物流公司发展, 中国政府授权中国物流与采购联合会(CFLP)建立物流行业产业损害预警机制, 用于监测外国物流服务供应商可能对国内物流业安全带来的损害。2008年10月, 全国人大常委会审议了最新的《邮政法》修订草案, 该草案禁止外国企业涉及国内文件递送业务。鉴于国内外公司对该草案有诸多争议, 全国人大已计划对其进行二次审议, 具体时间预计在2009年中期。

国家邮政局(SPB)和各地方邮局一直在推动快递服务(EDS)公司执行快递服务标准(ESS)。在一些省份, 已有十几家公司获得了当地邮局的资质认证。

### 具体问题

#### 市场准入

2008年10月, 全国人大常委会审议了最新的《邮政法》修订草案, 该草案禁止外国企业涉足国内的文件递送业务。这项针对外资企业的歧视性法规违背了中国根据世贸组织《服务贸易具体承诺减让表》所作的承诺, 也不符合该表及《服务贸易总协定》中有关“国民待遇”的承诺。此外, 对于外国资本和参与度的限制不仅减少了有益竞争, 影响了国内企业改进发展, 还减少了中国国内的就业机会。

《邮政法》最新修订草案没有明确指出哪些服务项目由中国邮政部门专营。国务院法制办公室就该草案所作的声明显示, 国务院尚未决定是仅根据重量还是按国际惯例同时根据重量和价格来确定垄断。授予中国邮政对低于某一重量的所有货运进行专营将大大损害数以百计快递公司的运营, 这些公司能够为商务客户提供更优质服务。

domestic enterprises from improving and decreasing employment opportunities in China.

The latest draft of the Postal Law does not identify which services should be monopolized by China Post. Statements by the Legislative Affairs Office on the draft demonstrate that the State Council has not decided whether to define the monopoly by weight or both by weight and price according to international practice. Granting China Post a monopoly on all shipments below a certain weight will greatly damage the operations of hundreds of express firms who provide premium services to business customers. Taking price into account, as do international standards, would clarify these differences and allow most EDS firms to maintain their business, while protecting the monopoly of China Post.

### Balancing Security with Efficiency

From March to October 2008, security of the 2008 Olympics and Paralympics resulted in numerous, extremely strict measures. In the post-Olympic era, some measures have remained in place, negatively impacting the logistics industry. For example, the SPB's EDS Market Management Measures required visual inspection of express shipments. This requirement is also in the latest draft of the Postal Law and under consideration by China's General Administration of Customs (GAC). Visual inspection does not comply with internationally accepted practices and is unfeasible. Not only does this decrease the efficiency of express delivery services, it also fails to provide added security benefits. Instead, adopting the risk assessment system used by most international companies would enhance security while increasing efficiency.

### Standards

In August 2008, the Ministry of Human Resources and Social Security and SPB announced that the Express Industry Labor Standards were finalized and would be released. In addition, the ESS (YZ/T 0128—2007) went into effect on January 1, 2008. Subsequently, the SPB and local postal bureaus have taken extensive steps to turn these recommended standards into de facto compulsory standards. The ESS is based on the national standards of one or two state-owned enterprises and is out of step with common international practice. International express companies with unified service standards based on accepted international practice cannot readjust to comply with ESS. Moreover, the ESS fails to meet the needs of established logistics service providers or their Chinese workers.

AmCham-China is concerned about the lack of transparency throughout the drafting process, which has excluded international logistics companies' input. The current SPB drafting of additional standards on the EDS industry, involving envelopes, boxes and packaging, makes this all the more worrisome.

### Customs Clearance

According to the latest GAC statistics, the export and import volumes in 2008 amount to RMB 9.8 trillion (US \$1.43 trillion) and RMB 7.74 trillion (US \$1.13

trillion), an increase of 17.2 percent and 18.5 percent, respectively. Given the volume and rate of increase, the GAC has issued various regulations and acts to improve the customs clearance environment in 2008. However, some draft regulations currently under consideration may actually impede the facilitation of legitimate trade.

In March 2008, the GAC published a new regulation on advanced manifest reporting, the Management Measures on Advance Manifest of Conveyance into and out of China of the Customs of People's Republic of China, which came into effect January 2009. AmCham-China is concerned about the short submission timelines for the advanced manifests, the lack of clarity on the data elements required for the submissions and the cumbersome levels of reporting. As currently drafted, the regulation would severely hinder the delivery of time-sensitive shipments in and out of China, affecting Chinese manufacturers' ability to import or export quickly.

The regulation also deviates from World Customs Organization's (WCO) Framework of Standards to Secure and Facilitate Global Trade; the timelines for the outbound manifest in the regulation are more stringent than those of the WCO Framework, US or EU.

It is possible to achieve a balance between security and efficiency in trade, and AmCham-China recommends establishing mutually acceptable processes for the new Advanced Manifest reporting system. We encourage Chinese officials to continue a dialogue with industry on procedure implementation and grant industry members a three-month grace period to conduct preparatory work. AmCham-China also urges relevant agencies to take into account unique industry needs for express clearance.

### Registration of Service Points

Due to the special features of the express industry, some firms need to set up service points close to customers. However, according to existing rules, any service point, no matter how small, must go through the same procedure for a new branch of international freight forwarding enterprises conducting express delivery. This procedure creates heavy administrative burdens on the retail service and therefore limits the service network of foreign express companies.

### VAT Invoices for Transportation Services Issued by Third Party Logistics (3PLs) and Fourth Party Logistics

Current policies require foreign-invested companies to own vehicles if they wish to issue Value-Added Tax (VAT) invoices for transportation. This restriction limits the growth of 3PL business in China, which in turn hampers the ability of 3PL to improve the cost efficiency of China's importers and exporters by providing a total cargo supply chain service with trucking and distribution as part of the core services.

而按照国际标准若将价格因素考虑在内,将使这些异议得以澄清并允许大多数快递服务公司保有其业务,同时还可以保护中国邮政的专营地位。

### 平衡安全与效率

从2008年3月到10月,为确保2008年奥运会和残奥会的安全举办,采取了众多严格的安保措施。直至后奥运时期,某些措施仍未被取消,这对物流业产生了负面影响。举例而言,国家邮政总局制定的《快递服务市场管理办法》要求对所有快递物品进行目检。这一规定也纳入了《邮政法》最新修订草案和中国海关的考虑范围。但是,目检不符合国际公认惯例,并且很难执行。因此,这一规定不仅降低快递服务的效率,在安保方面也没有增加更多的益处。相反,采用大多数国际公司使用的风险评估系统将在提高效率的同时增强安全性。

### 标准

2008年8月,人力资源与社会保障部和国家邮政局联合颁布《快递业务员国家职业标准》。此外,《快递服务》邮政行业标准(YZ/T 0128—2007)也于2008年1月1日生效。随后,国家邮政总局和各地方邮局采取广泛措施将这些标准转化为实际执行的法规。《快递服务》邮政行业标准是基于一家国有企业的国家标准而制定的,与国际通用惯例并不一致。根据国际公认做法采取统一服务标准的国际快递公司无法重新调整其标准来适应该标准。此外,此标准也无法满足现有物流服务供应商或其中国员工的需求。

中国美国商会对这些标准在起草过程中缺乏透明度表示担忧,因为在此过程中并未听取国际物流公司的意见。目前国家邮政局对包括信封、邮箱和包裹等快递服务行业起草更多的标准,这或将引发更多的担忧。

### 通关

根据中国海关的最新统计,2008年中国的出口总额和进口总额分别达到了1.43万亿美元(合9.8万亿人民币)和1.13万亿美元(合7.74万亿人民币),分别增长了17.2%和18.5%。鉴于进出口总额的增量与增幅,中国海关总署在2008年发布了多法规和法律,旨在改善海关的通关环境。然而,目前正在审议的一些法规草案可能实际上限制了合法贸易的便利性。

2008年3月,中国海关总署发布了一项新的提前申报单规定—《中华人民共和国海关进出境运输工具舱单

管理办法》,该办法于2009年1月生效。中国美国商会对该办法规定的提前申报舱单提交时限较短、要求必须提供的数据元素缺乏清晰性,以及申报程序繁琐而表示忧虑。从当前起草的条款来看,该规定严重减缓了对时间要求敏感的货物在出入境时的交付速度,进而影响中国制造商快速进出口的能力。

此外,该规定还违背了世界海关组织(WCO)制定的《全球贸易安全与便利化标准框架》相关规定,其规定的出口舱单申报时间表要比世界海关组织《全球贸易安全与便利化标准框架》、美国或欧盟的规定苛刻许多。

实现贸易安全与效率之间的平衡是有可能的,中国美国商会建议为新的提前申报舱单系统建立双方都能接受的程序。我们鼓励中国政府官员继续与业内人士就执行程序进行对话,给予业内公司三个月的宽限期进行准备。此外,中国美国商会也鼓励相关机构考虑特定行业对于快速通关的需求。

### 服务点的注册

由于快递行业具有特殊性,一些公司需要在靠近消费者的地方设立服务点。然而,按照现行法律,设立任何服务点,即使是规模很小的服务点,都必须履行与从事快递服务的国际货运代理企业成立新分支机构相同的程序。这套程序给零售服务业带来了大量的管理负担,并因此限制了外国快递公司组建自己的服务网络。

### 第三方物流企业和第四方物流企业开具的运输服务增值税发票

当前政策规定,外商投资企业如果要开具运输增值税发票,必须拥有自己的车辆。这项规定不仅限制了第三方物流企业在华拓展业务,而且反之又阻碍了第三方物流企业通过提供以货运配送为部分核心服务的整体货物供应链,以提高中国进出口商成本效益的能力。

### 建议

- 在实施《舱单管理办法》前给予物流服务供应商宽限期,以便他们进行相应的准备工作,包括考虑物流业快速通关的需求。
- 坚持国民待遇的原则,给予国际快递公司平等涉足国内文件递送业务的机会。
- 使用风险评估系统取代目检,在安全与效率之间达到平衡。

### Recommendations

- **Allow logistics service providers a grace period for the preparatory work before implementing the Management Measures for Advance Manifest, including separate implementation considerations for express clearance needs of industry.**
- Adhere to principles of national treatment and allow international express companies equal opportunity in the domestic express document business.
- Replace the visual inspection requirement with a risk assessment system to balance security concerns with efficiency.
- Improve the transparency of the draft process of standards and engage relevant companies throughout.
- Differentiate service points from branches when issuing regulations regarding registration procedures.

- 提高标准起草流程的透明度并全面听取相关公司的建议。
- 当发布有关注册程序的规定时, 应将服务点与分公司区分对待。



## Part Three:

Provincial / City Issues

省/市具体问题



# Provincial Investment Environment

The results of the 2009 National People's Congress indicated a growing role for provincial governments in policy decisions. This was especially clear in the implementation plan for the stimulus package and the increases in investment review thresholds. Provincial governments are largely responsible for releasing the local plans for industry revitalization as the stimulus plan rolls out. In light of the increase in thresholds for investment review by the Ministry of Commerce and National Development and Reform Commission (NDRC), provincial governments could be responsible for approval of 80 to 90 percent of foreign-invested projects. Combined with plans to allow bond issuances at the local level, this indicates a more pronounced role for regional governments. This shifting emphasis towards local authorities to sustain growth could produce changes in central-local government dynamics.

The Chinese government's RMB four trillion (US \$584 billion) economic stimulus plan will concentrate on 10 key priority areas designed to reinforce the overall direction of China's economic reforms, with the vast majority of additional funding going toward infrastructure investment. Although the NDRC and other central-level ministries allocate funding to provinces based on applications, provincial governments are ultimately responsible for awarding procurement contracts and direct distribution of funds to contractors. There has been considerable variation in policy implementation, funding allocation and procurement management at the provincial level. Some provincial entities are writing procurement guidelines that explicitly favor local companies over foreign-invested enterprises through limits on contributions by majority foreign-invested companies, or implicitly through specifications that only a provincial company can meet.

## Growth Beyond First-Tier Cities

Increasingly, foreign-direct investment (FDI) is moving from the first-tier cities to locations further inland. The kind of FDI flowing into first-tier cities is also changing as second and so-called "x-tier" cities (third, fourth and fifth-tier) receive a greater amount of investment. First and larger second-tier cities are now turning their attention to developing tertiary industries as populations become more affluent and

officials look to promote service-sector development. Concurrently, secondary industries are moving to smaller, less wealthy cities.

Second-tier cities (defined as the 15 biggest urban economies after the three tier-one cities) have emerged in recent years as appealing destinations for companies in China looking beyond the maturing first-tier cities of Beijing, Shanghai and Guangzhou. Indeed, AmCham-China's 2009 *Business Climate Survey* indicates that almost 60 percent of members have a presence in second and third-tier cities, with a significant percentage planning on or exploring the possibility of expansion into these areas. While rising costs in China's coastal and first-tier cities are certainly one factor driving multinational corporations inland, the vast majority of members cite increasing market reach as their primary reason for expansion.

Statistics support the belief that second-tier cities hold enormous market growth potential. More than 150 million people live in these 15 cities combined, and they represent some of China's most upwardly mobile. Continuing growth in these major, developing cities could represent a significant new market at a time when demand is down throughout the world.

In fact, these cities have already done much to spur global consumption. According to the 2008 World Trade Atlas, China's second-tier cities have less than 10 percent of the country's population, but import more than half of all American imports. This strong demand shows no serious signs of decline, and may in fact increase as disposable income in these cities grows.

## The Challenges of Wealth Creation and Distribution to FDI

China's central and local governments should be applauded for the role they have played in lifting a sizable proportion of the population out of poverty over a few decades and helping develop a burgeoning middle class. However, the increasing wealth of the first-tier cities and the investment spill-over into adjacent areas in the Bohai Rim, the Yangtze River Delta and the Pearl River Delta have presented significant policy challenges for China's national and local governments. Environmental degradation and citizens' quality-of-life expectations in the first-

# 省市投资环境

从2009年的全国人民代表大会可以发现，省、市、地方政府在决策中的地位日益凸显。这一点在经济刺激方案的实施计划以及提高投资审批门槛方面显得尤为突出。在未来几个月里，省、市、地方政府将主要负责制定并开展当地产业振兴计划。随着商务部和国家发展和改革委员会提高其投资审批门槛，未来80-90%的外商投资项目将由省、市、地方政府负责审批。同时随着地方政府债券发行开闸在即，表明地方政府将具有更大的发言权。随着中国可持续发展的重心逐渐向地方政府转移，中央和地方政府之间的关系可能会发生改变。

中国政府的4万亿经济刺激方案将重点放在十大优先领域，以强化中国经济改革的总体方向，其中绝大多数资金将投向基础设施项目。虽然国家发改委和其他中央部委根据各地的申请，将资金分配至各省市，但省、市、地方政府最终负责签署采购合同，将资金直接划拨给承包商。各省市拥有很大的余地来灵活掌握政策执行、资金分配和采购管理等。一些省市实体部门正在制定明显倾向于当地企业的采购指导办法，对外资控股企业施加限制，抑或是“含蓄地”制定一些只有本省的企业才能满足的资格标准。

## 一线城市以外地区的发展

外商直接投资 (FDI) 正越来越明显地从一线城市向内地转移。随着更多的投资开始流向二线城市和所谓的“X”线城市（即三线、四线、五线城市），流向一线城市的外商直接投资的性质也在发生着改变。目前，随着人们生活水平的改善以及政府官员有意促进服务业的发展，一线以及较大型的二线城市正将越来越多的注意力集中到发展第三产业之上。与此同时，第二产业正逐步向较小、富裕程度较低的城市转移。

近年来，二线城市（指除北京、上海和广州之外的15个最大城市经济体）已经逐步成为希望在北京、上海、广州这三个成熟的一线城市以外地区，寻求发展机会的在华企业极具吸引力的投资目的地。确实，中国美国商会2009

年度“商务环境调查” (Business Climate Survey) 表明，已有近60%的会员公司进入了中国的二、三线城市，同时还有许多会员公司正计划进入这些地区，或是正在研究进入这些城市的可行性。虽然中国沿海及一线城市不断攀升的成本无疑是促使跨国公司进入内地的一大因素，但绝大多数会员企业表示扩大市场份额是他们扩张业务的主要原因。

而统计数字也证明了二线城市确实拥有巨大的发展潜力。这15个二线城市总共拥有约1.5亿人口，他们代表了在中国上升速度最快的一些群体。在全球需求出现下滑之际，这些主要的、发展中的城市在实现持续增长的同时造就了一个巨大的新市场。

实际上，这些城市已经为刺激全球消费做出了积极的贡献。据2008年 World Trade Atlas 数据显示，中国二线城市的人口不足全国总人口的10%，但其从美国进口商品与服务比例却占全国的一半以上。这一强劲的需求并没有明显的下滑迹象，而实际上随着这些城市居民可支配收入的增加，需求可能还会进一步增加。

## 财富创造及分配对外商直接投资的挑战

在短短几十年时间里，相当数量的中国人民摆脱了贫困，出现了蓬勃发展的中产阶级，中国中央和地方政府在这个过程中发挥的作用是值得称道的。但随着一线城市财富增长，以及投资扩散到环渤海经济圈、长三角和珠三角邻近地区，中央和地方政府开始面临重大的政策方面的挑战。一线城市环境状况恶化，但人们对生活质量的期望提高，要求制定新的政策，并使现行法规得到更有力、更规范的执行。由于基础设施改善，农村和贫困城市劳动力的涌入，以及外国投资的进入，日渐富裕的中小城市经济也得到迅速发展。所有这些都要求各地方和中央政府调整政策和法规，并确保政策、法规得到更好的落实和执行。

正如以下关于各地区和城市章节更为详细地指出，中央和地方政府有必要考虑影响外商直接投资流入中国的

tier cities require development of new policies and greater, more consistent enforcement of current regulations. There have also been rapid changes in the economies of smaller and increasingly wealthy cities due to greater infrastructure development, the influx of workers from the countryside and poorer cities, as well as the requirements of foreign investors. These factors are all conspiring to require government, both at the regional and central levels, to update policies and regulations, as well as implementation and enforcement.

As the following regional and city reports discuss in greater detail, administrators at both central and local levels need to take into consideration critical policy issues that affect FDI inflows into China. AmCham-China stresses the need for attention on the following issues:

- Greater transparency and a streamlining of investment regulations;
- Development of human resources;
- Transportation logistics development and reduction of traffic congestion;
- Consistent enforcement of laws and regulations, such as intellectual property rights;
- Reduction in pollution levels in cities;
- And tax and other policy incentives to promote service sector growth.

### Summary

The increased wealth of China's first and second-tier cities, as well as the sophistication of foreign business requirements as investments in China increase in value, have brought a host of new considerations to the attention of Chinese government officials at national and local levels.

National and local governments in China have offered spectacular results in increasing the wealth of many of its citizens and have done a great deal to create business opportunities for American firms. However, consequences from rapid economic growth coupled with a lack of policy development and enforcement in the key areas mentioned in the following chapters have created barriers to American businesses' ability to benefit China's economy and its citizen.

关键性政策问题。中国美国商会主要强调下列问题:

- 提高投资法规透明度, 简化相关条例;
- 开发人力资源;
- 发展运输物流, 缓解交通拥堵;
- 法律法规(如知识产权)的有效执行;
- 减少城市污染;
- 通过税收和其他政策激励促进服务业发展。

### 总结

中国一、二线城市收入水平日益增长, 同时, 要求外资企业增加其在华投资时所必备的条件也日趋复杂, 从而带来一系列需要提请中国中央和地方政府官员注意的新问题。

中国中央政府和地方政府在增加国民财富方面成绩斐然, 在为美国企业创造商机方面做了大量工作。但与此同时, 经济快速增长带来的新挑战, 加以下章节所述的关键领域政策尚未完善, 执行力不足, 使得美国公司无法发挥其应有的作用, 使中国经济和中国人民从中获益。

## Beijing

For Beijing, 2008 was a momentous year in the life of the historic city. In August, the city successfully hosted the Olympic Games. AmCham-China congratulates the Beijing Municipal Government and residents of Beijing on their efforts and success. We are also proud that so many of our member companies played an important role in the Games.

Beijing's GDP exceeded RMB one trillion (US \$146 billion) in 2008, an increase of nine percent over the prior year. Per capita GDP was RMB 63,029 (US \$9,201), an increase of 5.2 percent over 2007.

The fastest growing sectors of Beijing's service industry were culture, sports and entertainment (up 29.4 percent collectively); water resources, environment and public facility management (up 28.3 percent collectively); and leasing and commercial services (up 23.9 percent). The financial industry increased by 9.2 percent, while the real estate industry decreased by 11.4 percent.

As Beijing increasingly grows to become an international city with global influence, Beijing's exports to foreign markets and incoming foreign investment will increase significantly. Already, in 2008, exports increased 17.4 percent, while imports increased 48.8 percent compared with 2007. In 2008, Beijing increased the amount of foreign investment used by 20.1 percent, to RMB 41.8 billion (US \$6.1 billion).

Beijing maintained growth in 2008 due the economy's reliance on both investment and consumption. According to the data released by Beijing Municipal Statistic Bureau, the investment and consumption respectively totaled more than RMB 390 billion (US \$57 billion) and RMB 450 billion (US \$66 billion). Consumption increased 20.8 percent compared with the previous year. As the economy continues to mature, consumption will play an increasingly important role in sustaining economic development.

Beijing's continuing economic growth and rising tax revenue provided a strong foundation for the Beijing Municipal Government's initiatives in developing its public affairs and improving its infrastructure. Beijing's fiscal revenues totaled RMB 184 billion (US \$26.9 billion), up 23.1 percent from 2007, while its expenditures totaled RMB 195.6 billion (US \$28.6

billion), up 18.6 percent.

As the nation's political and cultural center, Beijing is continuing to attract visitors and accommodate new migrants from other places. The mounting population (17 million) poses great challenges for Beijing's resources, environment and social development. While Beijing's population continued to swell, the number of international visitors actually dropped 13 percent year-on-year (y-o-y) due to strict visa restrictions during the Olympics.

As part of the preparations for the 2008 Olympics, the Beijing Municipal Government developed and improved the spokesperson system to better information disclosure. The government also upgraded its information disclosure website, significantly improving transparency. AmCham-China welcomes these changes and is encouraged by the Beijing government's efforts.

Overall, Beijing has made extraordinary progress in economic, social and political development. Though the global economic downturn has brought new challenges to Beijing, such as a decrease in jobs and trade, AmCham-China is confident Beijing will emerge even stronger and more resilient. We stand ready to cooperate with all levels of government in Beijing to ensure a positive and mutually beneficial business and social environment. Most of the issues mentioned here have been discussed in previous *White Papers* and, in many cases, the progress made has been significant and laudatory. More work remains, and implementing the recommendations from AmCham-China found in this chapter will allow Beijing to realize its growth potential and demonstrate to the world a prosperous, international, modern, and livable Beijing that also showcases its "indigenous character and historical roots."

### Specific Issues

#### Transportation

Beijing continues to invest heavily in public transportation to alleviate the mounting congestion. According to the Beijing Municipal Transportation Commission, Beijing has already constructed eight major subway lines, with 123 stations and 200 kilometers of rail. During the Olympics, Beijing's

## 北京

2008年对于北京来说是不平凡的一年，北京八月份成功举办了奥运会。中国美国商会对北京市政府和北京市民为成功举办这场盛会所做出的巨大努力表示赞赏，我们自豪地看到很多商会的会员公司为奥运会的举办发挥了重要的作用。

北京2008年的GDP首次突破万亿元大关(1,460亿美元)，比上年增长9%，人均GDP达到63,029元(9,201美元)，比上年增长5.2%。

北京的第三产业中增速最快的行业包括文化体育与娱乐业，水利、环境和公共设施管理业，租赁和商务服务业等，分别增长29.4%、28.3%和23.9%。金融业增长9.2%，房地产业下降11.4%。

随着北京日渐发展成为具有全球影响力的国际大都市，其对外贸易额和吸收外资数额也有较大幅度的增加。同2007年相比，北京出口额上涨17.4%，进口额上涨48.8%。全年实际利用外资418亿元人民币(60.8亿美元)，同比增长20.1%。

北京经济的增长动力来自于投资与消费两个方面。根据北京市统计局的数据，2008年北京地区的投资与消费金额分别达到3,900亿元(570亿美元)和4,500亿元(660亿美元)以上，其中消费金额比上年增长20.8%。随着经济发展日渐成熟，消费也在扮演着愈来愈重要的角色。

北京经济和财政收入的持续稳步增长为推动北京公共事业发展及改善其基础设施提供了坚实的基础。2008年北京地方财政收入近1,840亿元(269亿美元)，比上年增长23.1%。地方财政支出为1,956亿元(286亿美元)，增长18.6%。

作为中国的政治和文化中心，北京继续吸引着大量外来人员。人口的不断增加(现有常住人口1,695万)给北

京的资源、环境、社会等多个方面带来压力和挑战。但是受到奥运会期间签证发放数量减少等因素的影响，北京2008年接待的境外游客数较2007年同比下降13%。

借助奥运会的契机，北京市政府及其下属各部门改进了新闻发布制度，便于更好地发布信息。同时，政府对其官方网站进行升级，这也进一步提升了政府的透明度。中国美国商会对这些努力表示欢迎和赞赏。

总体来说，北京市在经济、社会、政治等多个方面取得了令人瞩目的进展。尽管当前国际经济形势的持续低迷为北京带来新的挑战，例如就业机会减少、贸易额下降等，但我们相信北京能够很快从危机中恢复并日益壮大。商会愿与北京市政府展开充分合作，以建立一个积极互利的商业与社会环境。下文所述的许多问题在以往《白皮书》中都有所提及，一些方面的显著改善也令人称赞。尽管北京仍然面临种种挑战，但中国美国商会希望以下建议能够帮助北京发挥其成长的潜力，向全世界呈现一座繁荣、开放、现代且有着深厚文化底蕴、适合人类居住的北京。

### 具体问题

#### 交通

北京市近年来一直在加大轨道交通的建设力度，以缓解交通压力。根据北京市交通委的数据，北京市轨道交通现已建成8条线路、123座车站、200公里运营里程。在奥运会期间，北京轨道交通在运送游客、各国运动员及市民方面起到了至关重要的作用。

根据北京市的规划，未来两年内将累计投资900亿元(131亿美元)用于地铁建设，预计2012年将达到420多公里，长度是目前的两倍；而到2015年时，轨道交通比重将占到整个公共交通运输总量的50%以上。

北京至天津的城际高速铁路正式开通运营，开创了增进两城市之间协同发展的新纪元。从此京津两地直达时间缩短至30分钟，这也大大推动了两地旅游业的繁荣、经

subway system played a critical role in transporting visitors, athletes and residents.

According to government plans, RMB 90 billion (US \$13.1 billion) will be invested in construction of additional subway lines, with total rail to double by 2012. By 2015, it is estimated that subway travel will represent more than 50 percent of overall transportation.

The commencement of operations of the Beijing-Tianjin high-speed rail symbolizes a new era for synergic development between the cities, connecting them in less than 30 minutes, promoting tourism, business and exchanges. Beijing Capital Airport's new Terminal 3 also opened, increasing Capital Airport's flight capacity to 600,000 per year, from 200,000, and yearly passenger capacity from 36 million to 82 million passengers.

In 2008, the Beijing government enacted traffic control measures to improve traffic flow during the Olympics and implemented the Euro IV fuel standard to reduce emissions. AmCham-Cham commends these efforts.

However, in spite of this progress, Beijing continues to experience severe road congestion. In 2008, the number of registered vehicles in Beijing reached 3.5 million, representing a severe challenge for efforts to alleviate road congestion. Although traffic control measures have been implemented, the longer term trend towards private vehicle ownership and increased vehicular travel to Beijing from other provinces highlights the importance of greater public transportation options.

### Air Quality

AmCham-China recognizes and commends Beijing's efforts to improve its air quality. According to the Beijing Finance Bureau, the city invested RMB 1.4 billion (US \$204 million) in an air pollution control fund to expedite the elimination of high-emission vehicles and old buses. Meanwhile, Beijing implemented a number of major projects including: switching 50,000 residents' heating from coal-fired ovens to clean energy sources, completing flue gas denitrification projects at four major coal-fired power plants, eliminating thousands of old buses and taxis while promoting natural gas buses, and completing gas recovery treatment projects at thousands of Beijing's gas stations.

AmCham-China urges that these efforts, many of which had the Olympics in mind, be continued and expanded.

### Water Resources

Insufficient water resources continue to be one of the biggest problems afflicting Beijing. Beijing adopted several water conservation measures and technology upgrades leading to a 6.9 percent decrease in water consumption per unit of GDP output. In addition, according to the Beijing Statistics Bureau, the total volume of water resources in Beijing in 2008 increased by 30.8 percent y-o-y, while total consumption increased by 1.4 percent.

AmCham-China urges further water conservation efforts and initiatives from the Beijing Municipal Government, such as enhancing water conservation education among the public, implementing initiatives to address water waste among the industrial and commercial sectors, and ensuring 100 percent wastewater treatment. AmCham-China especially looks forward to future cooperation with the government in these areas.

### Intellectual Property Rights (IPR)

Although Beijing strengthened its IPR enforcement in 2008, counterfeiting and piracy still remain extremely problematic. Counterfeiting and piracy are common across a wide range of products, including DVDs, computer software, clothes and accessories.

Public opposition to some recent corporate anti-piracy measures indicates a lack of public awareness of the damages from IPR infringement. These activities are responsible not only for economic losses to property rights owners, but also for a large percentage of product safety problems. Improving IPR enforcement will additionally benefit innovation, which has been identified as a key objective by the national government. It will give greater economic incentives to innovate, spurring development.

AmCham-China urges the Beijing government to fully implement existing IPR laws, and increase public awareness of the negative consequences of IP infringement. We stand ready to provide industry input and cooperation when needed, and would welcome continued government-industry collaboration and exchange on this issue.

### Historical Preservation and Architecture

AmCham-China commends the Beijing government for devoting additional resources to the preservation of the Old City of Beijing, including not only major public historical structures, but also historical *hutong* neighborhoods. In 2008, the Beijing government spent RMB 3.1 billion (US \$453 million) in these efforts and renovated 44 traditional *hutongs*.

Impressive new buildings and architectural accomplishments, such as the National Stadium (Bird's Nest) and National Aquatics Center (Water Cube) also opened, showcasing Beijing's modernity to the world.

### Business Environment

In light of the global economic recession, the Beijing Municipal Government issued a series of policies and measures to help existing industries, such as real estate, and continue to attract potential investors. The Beijing Municipal Government has indicated it will increase investment in infrastructure, social development, ecological recovery and improvement of rural areas. The Beijing government also aims to improve further the industrial structure by promoting a service and knowledge-based economy, implementing a "circular economy," and developing a "headquarters economy."

济的发展以及交往的频繁。随着首都机场第三航站楼的投入使用,北京首都国际机场的运载量从每年20万架次增长到60万架次,旅客运输量由每年3,600万人次增加到8,200万人次。

2008年,北京市推出交通管制办法,有效地保证了奥运期间交通通畅,同时推行欧IV标准以减少机动车尾气排放。中国美国商会非常赞赏这些举措。

尽管取得了这样的进步,北京仍然面临着比较严重的道路拥堵问题。据统计,北京2008年车辆总数达到了350万辆,这给彻底改善道路拥堵问题带来巨大挑战。尽管北京采取了道路交通管控措施,但是从长期来看,北京私家车数量仍会居高不下,进京外地车辆也将持续增加,因此采取更加行之有效的公共交通措施势在必行。

### 空气质量

北京为改善空气质量所作的努力大家有目共睹。根据北京市财政局的数据显示,2008年北京市投入14.1亿元(2.04亿美元)作为大气污染治理专项资金,用以加速淘汰黄标车和老旧公交车。同时,北京实施并完成了一大批重点项目,其中包括:为5万户居民进行由煤炉向清洁能源的采暖设备改造,完成四大燃煤电厂烟气脱硝工程,淘汰大量老式公交车及出租车,推广天然气公交车以及完成北京多家加油站的油气回收治理工程。

中国美国商会期待这些在奥运期间实施的措施能够得以延续和扩展。

### 水资源

水资源紧张一直是困扰北京的一大难题。北京市采取了多项节水措施和技术升级改造,使2008年单位GDP耗水比上年下降了6.9%。根据北京市统计局的数据,北京2008年全年水资源总量比上年增长30.8%,全市总用水量比上年增长1.4%。

中国美国商会希望北京市在未来的几年内能够进一步加大节水力度,例如加强对公众的节水宣传教育,鼓励工商业领域节约用水以及实现100%污水处理。商会十分期待在未来能与北京市政府开展相关方面的合作。

### 知识产权

尽管北京市在2008年对知识产权的保护力度有所增强,但假冒伪劣和盗版现象依然严重。大量盗版影碟、电脑软件,假冒的服装和饰品等依然随处可见。大众对近期

一些公司反盗版行动的抵触,体现出普通民众的知识产权保护意识还比较薄弱。这些行为不仅给知识产权所有者带来了经济损失,也隐藏了巨大的产品安全隐患。加强知识产权的保护有助于推动创新,这是中央政府一直以来的目标所在,同时也将进一步刺激经济的发展。

中国美国商会希望北京市政府在加大执法力度的同时,加大宣传教育力度,以提高人们保护知识产权的意识。商会愿意随时提供我们的行业经验,并欢迎政府与业界继续展开合作,并就相关议题充分交换意见。

### 古迹维护和建筑

北京市政府在保护老城区方面做了大量的努力,其中包括保护公共历史建筑和保留胡同的历史风貌等。中国美国商会对此表示赞赏。2008年北京市财政共投入资金31亿元(6.53亿美元)用于此项计划,并修缮了44条胡同。

与此同时,鸟巢、水立方等一批具有强烈现代气息的地标性建筑投入使用,在北京奥运会期间,向人们展示了一个现代化的北京。

### 商业环境

面对全球经济的低迷,北京市政府采取了一系列措施推动行业发展,其中包括振兴房地产行业,吸引外商投资等等。此外,今后两年北京将加大投资力度,用于基础设施建设、社会发展、生态恢复、改善农村环境等方面。北京市还决定加快推进产业结构升级,大力发展服务经济、知识经济、“循环经济”和“总部经济”。

上海市积极发展“总部经济”,于2008年7月出台了《上海市鼓励跨国公司设立地区总部的规定》,在人才引进、简化就业许可、资金管理、通关等方面,给予跨国公司地区总部相应优惠待遇。这些措施不仅给上海经济发展带来更多机遇,也同样使许多投资者受益。

中国美国商会建议北京市尽快研究出台类似优惠政策,尤其是进一步减少企业税费负担,以进一步促进来京投资。

### 建议

- 研究并实施激励机制,以吸引外商投资企业在北京设立总部。
- 继续大力发展公共交通,尤其是轨道交通。

The Shanghai Municipal Government is also proactively developing its “headquarters economy” through policies to encourage the establishment of foreign-invested enterprises’ headquarters in Shanghai. In July 2008, Shanghai government issued Regulations of Shanghai Municipality on Encouraging the Establishment of Regional Headquarters by Foreign Multinational Corporations, which provided help to foreign multinational companies in acquiring talent, streamlining labor-related approvals, fund management, customs clearance and many other areas. These incentives benefited not only the economy of Shanghai, but also investors.

AmCham-China recommends that the Beijing Municipal Government research and issue similar measures, with additional consideration for reducing tax-related costs for enterprises, to further boost investment in Beijing.

### Recommendations

- **Research and implement incentives to attract the establishment of foreign-invested enterprises’ headquarters in Beijing.**
- Continue the active expansion of public transportation, especially rail transportation.
- Undertake tougher measures such as reconstructing roads and intersections to alleviate traffic congestion.
- Implement water conservation efforts, such as enhancing water conservation education among the public and initiatives to address water waste among the industrial and commercial sectors.
- Ensure 100 percent waste water treatment goal.
- Continue improving bureaucratic efficiency and streamline business application and registration processes.
- Strengthen enforcement of existing IPR laws and regulations and increase public awareness of the importance of IPR protection.
- Work with the Tianjin government to find new synergies and business opportunities for the two cities.
- Implement and enforce the Conservation Plan for the 25 Historic Areas in Beijing Old City.

- 采取如对部分路段和十字路口进行改造等更有力的措施,以缓解交通拥堵。
- 大力实施水资源保护措施,例如对民众加大水资源保护的宣传力度,采取使工商业部门减少对水资源浪费的办法。
- 实现百分之百污水处理的目标。
- 提高政府工作效率,简化企业申请及注册程序。
- 加大知识产权法律法规的执法力度,提高普通市民的知识产权保护意识。
- 与天津市政府展开合作,寻找有利于双方发展的协同优势和商机。
- 执行并强制遵守《北京旧城25片历史文化保护区保护规划》。

## Central China

As labor and production costs in China's coastal regions rise, many businesses have turned their attention to the Central China provinces of Anhui, Henan, Hubei, Hunan, Jiangxi and Shanxi. Policy makers in Beijing are also focused on the region due to disparities in income and standard of living between these areas and the coastal centers. Central China has historically lagged in development. Today, new industry, good location and a renewed focus on transportation infrastructure development in the central government's "Rise of Central China" initiative have investors paying added attention to the region, particularly Wuhan. Future reforms will include the creation of city-clusters centered on provincial capitals in Hubei (Wuhan), Hunan (Changsha) and Henan (Zhengzhou), a shift in developmental strategy that may bring economies of scale.

Easy access to shipping channels, a well-developed rail network, an extensive highway system and Wuhan's new Tianhe International Airport highlight Central China's importance to the country. For example, its rail network hosts 36 percent of the nation's passenger flow and 30 percent of goods traffic.

Wuhan is the fifth most populous city in China with a population of about 10 million people. It has been designated as a "Gold Key" city, one of 14 second-tier cities selected for special development, with key industries in steel, automobile manufacturing, textiles, high-tech, pharmaceuticals, glass, electronics, coal, hydro-power and alternative energy.

### Significant Developments

#### Per Capita Income Increases

Disposable income for urban residents in the six central provinces reached an average of RMB 11,586 annually (US \$1,691) in 2008, representing an increase of 16.9 percent year-on-year according to government statistics. The rising income levels demonstrate Central China's growing market potential.

#### Central China Expo

The 2008 Central China Expo, held in Wuhan from April 26-28, 2008, attracted investors from around the world, particularly from China's coastal regions, a key target. The Expo, to which AmCham-China sent a delegation, had a variety of seminars on investment

regulations and preferred investment industries, and specific seminars on the automobile, high-tech, and logistics industries. The Expo will continue annually, with the 2009 edition to be held in Hefei.

#### Establishment of Development Zones

There are two large development zones in Wuhan, as designated by the central Chinese government: the Wuhan Economic and Technological Development Zone (WEDZ) and the Wuhan East Lake High-Tech Development Zone (WEHDZ).

In December 2007, the NDRC officially approved the Wuhan, Changsha and Zhengzhou city-clusters as experimental zones for energy efficiency, environmental protection and a range of other new trials. As part of a pilot program, Wuhan and its surrounding cities will implement new initiatives to promote balanced economic growth.

#### New US Consulate

In 2008, a US Consulate opened in Wuhan to provide resources to four of the Central China provinces initially, including Jiangxi, Henan, Hubei and Hunan. AmCham-China applauds the outreach efforts of the US Consulate and the US Foreign Commercial Service to promote regional American commercial expansion.

### Key Issues

#### Environment

The greatest infrastructure project of Central China, the Three Gorges Dam, has had several positive effects. Since 2003, the dam has supplied more than 290 billion kilowatts hours of much-needed energy to 15 provinces in central, eastern and southern China, helping alleviate power shortages. It also has improved navigation and flood control of the Yangtze River. The dam creates the energy equivalent of burning 40-50 tons of coal from its 26 hydro-powered turbines. Yet the project also creates major environmental concerns.

Landslides, sediment redistribution, earthquakes and other environmental issues have plagued the project from its inception. Scientists are still unclear about the short- and long-term impacts of the dam on the ecosystem.

Hubei has improved its environmental conditions, but

## 华中地区

由于中国沿海地区劳动力与生产成本增长,许多企业将投资转向华中地区的安徽、河南、湖北、湖南、江西、山西等省份。华中地区的经济发展相对落后,该地区在居民收入及生活标准等方面与沿海地区存在差异,中央政府给予华中地区极大的关注。如今,随着中央“中部崛起”战略的提出,华中地区新兴的工业、理想的区位和对交通基础设施的重视,吸引了大批投资者对这一地区、尤其是对武汉市的关注。未来的改革包括建立以湖北武汉、湖南长沙、河南郑州三座省会城市为中心的城市群,实现向规模经济发展战略的转变。

便利的航运、完善的铁路运输网络、四通八达的高速公路网、以及新近竣工的武汉天河国际机场突出了华中地区在中国经济发展中的重要性。例如,华中地区的铁路运力占全国客运的36%,货运的30%。

武汉市人口约1,000万,在中国城市中排名第五。武汉曾是14个被中央政府指定并对其发展给予特殊关注的二级城市之一。武汉的主要产业包括钢铁、汽车制造、纺织、高技术、制药、玻璃制造、电子、煤炭、水力发电以及可替代能源产业。

### 重大进展

#### 人均收入增长

据政府统计,2008年,在上述6个省份中武汉城市居民人均可支配收入达到年均11,586元人民币(约合1,691美元),同比增长16.9%。城市居民收入的增长凸显了华中地区日益增大的市场潜力。

#### 中国中部地区投资贸易博览会

2008年4月26至28日,第三届中国中部地区投资贸易博览会在武汉市召开,吸引了大批来自世界各地、尤其是中国沿海地区的投资者。中国美国商会也率代表团参加此次博览会。本届中博会就相关投资规定及热门投资产

业广泛开展各类研讨会,并针对汽车制造业、高技术产业及物流业等举办专题推介研讨会。2009年,一年一度的中博会将在合肥举行。

#### 建立开发区

目前,武汉市有两个获中央政府批准的大型开发区——经济技术开发区及东湖新技术开发区。

2007年12月,国家发改委正式同意将“武汉-长沙-郑州城市群”定为发展能源高效利用,环境保护以及其他新型项目研究的经济实验区。作为试点计划的一部分,武汉及其周边地区将率先试行以促进经济平衡发展为目的的有关政策。

#### 新设美国领事馆

2008年,美国驻武汉总领事馆的正式开馆促进了美国与江西、河南、湖北以及湖南四省的交流与合作。中国美国商会对美国总领事馆及美国驻华大使馆商务处旨在扩大美国在华贸易范围所付出的努力表示赞赏。

### 具体问题

#### 环境

华中地区规模最大的建设项目——三峡水电站对于华中地区的经济发展带来了多方面的积极影响。自2003年以来,三峡水电站向中国中部、东部、以及南部15个省份提供了超过2,900亿千瓦时的急需用电,极大缓解了用电短缺问题。除发电之外,三峡水电站还具有巨大的航运及防洪等综合效能。三峡水电站的26台水轮发电机组的发电总量相当于燃烧40~50吨煤所产生的热能。然而,此项目所造成的环境问题也引起了广泛关注。

自三峡水电站开工之日起,山体滑坡、泥沙沉积、地震以及其他环境问题一直难以解决。此外,三峡水电站对生态系统将有何种短期或长期的影响,科学家也尚无定论。

air and water quality are still major environmental concerns with increasing numbers of automobiles and factories polluting the province. The Hubei government encourages environmental awareness in the region through offices like the Hubei Provincial Environmental Protection Bureau, which has championed two programs: the “Green Projects of Hubei Province,” and the “Programs of Hubei Province for Environmental Protection in the Eleventh Five-Year Plan Period Through 2010.” AmCham-China commends this increased environmental awareness and urges the full consideration of environmental costs for development projects.

### Logistics Infrastructure

The need for convenient access to Central China has made the development of transportation infrastructure an important piece of its growth. Although Wuhan’s new Tianhe International Airport is the busiest in Central China, an increase in the number of allowed international passenger and cargo flights would greatly improve access to the region.

Highways and river transportation are also vital to Central China’s transportation sector. Anhui, Jiangxi, Hubei and Hunan provinces all have access to the Yangtze River, which leads to the port of Shanghai – one of the world’s busiest cargo ports.

### Transparency

While Central China looks to increase investment from multinational companies, the registration procedures for small and medium-sized enterprises, wholly foreign-owned companies, and joint ventures are complex and inconsistent. Acquiring visas and work permits for non-local employees is difficult, deterring investors and limiting companies. Streamlining these processes would help create jobs, adding to regional economic growth. It would be helpful to publish and make readily available clear and consistent guidelines both in print and online.

### Intellectual Property Rights (IPR)

Central China’s emphasis on high-tech investment makes IPR protection a pivotal issue for companies in the region. IPR infringement is rampant and full implementation and enforcement of existing laws by all levels of government in the Central China region is critical to its continued development. US firms have continually emphasized the importance of IPR to their business operations and decisions. The level of IPR enforcement is an important factor for firms in selecting what research and development to conduct in China, which products to manufacture in China, and which products to sell in China. Thus, strengthening IPR enforcement is critical to the ability of Central China to attract high-tech investment.

### Central China Promotion

The quality of promotional materials is essential to the development of the Central China “brand.” AmCham-

China commends the efforts of the Central China government to enhance this image and encourages further development of materials targeting both local and international audiences.

The push to develop infrastructure and promote investment in this region has detracted from tourism promotion. This industry is vital to the economic health of the region; it showcases and promotes the region as a business and tourist destination.

### Customs

Customs officials need to clarify policies and distinguish between goods that are being imported for wholesale or retail business purposes and those brought in for personal or educational reasons. For example, international schools import textbooks and other supplies deemed appropriate to their curricula, yet they are being charged customs tariffs as though they are re-selling them on the market. These institutional supplies should be exempt from import tariffs.

### Recommendations

- **Help facilitate the development of international-quality services, which are critical to developing a vibrant foreign business community, by prioritizing investment for and establishment of international schools and hospitals.**
- Streamline the visa and work permit process for non-local residents.
- Publish and make readily available clear and consistent guidelines for business registration, visa, and work permit application processes both in print and online.
- Strengthen enforcement of national IPR laws to promote high-tech investment.
- Strengthen Central China investment and tourism promotion by encouraging officials to develop professional promotional materials targeted to local and international communities.
- Clarify the distinction between goods imported for wholesale and retail business purposes and those for personal and educational use when applying tariffs.

虽然湖北省已改善了其环境状况，然而在环境方面存在的主要问题仍然是日渐增多的机动车辆与工厂对空气和水造成的污染。为提高公民的环保意识，湖北省环境保护局推出了“绿色湖北”计划以及湖北省“十五”和2010年环境保护规划。中国美国商会对该地区环保意识的提升表示赞赏，同时鼓励其对发展建设所带来的环境成本加以充分考虑。

### 物流基础设施

对通往华中地区便利交通条件的迫切需求，使得交通基础设施建设成为该地区经济发展的重要组成部分。尽管武汉的新天河国际机场是华中地区最繁忙的航空港，但如果能够增加国际客货航班班次将会极大增强华中地区的运力。

高速公路与内河航运是华中地区另外两种重要的交通运输方式。流经湖北、湖南、江西、安徽等省的长江将该地区与世界上最大的货运港口——上海港连接起来。

### 透明度

虽然华中地区各省份都希望跨国公司加大投资力度，但针对中小企业、外商独资企业、以及中外合资企业的注册程序仍略显繁琐和缺乏一致性。例如外国公司雇员难以申请并获得签证及工作许可，从而阻碍了投资者对该地区的投资进程。因此，简化有关申请程序将有利于创造就业机会，促进区域经济发展。此外，如果地方政府能够出台一系列明晰、统一的指导原则将对其发展有更大的帮助。

### 知识产权

华中地区重视高新技术产业投资，因此知识产权保护也就成为该地区企业关注的焦点。由于侵犯知识产权现象依然严重，因此，各级政府依法严厉打击侵权行为将是本地区发展的关键。许多美国公司一直强调，知识产权保护在其业务经营和决策制定方面起到了至关重要的作用。中国政府对于知识产权的保护力度是美国公司在中国选择研发、生产、销售相关产品所考虑的重要因素，也是华中地区吸引高科技产业投资的重要条件。

### 华中地区招商

华中地区招商宣传材料的质量对发展其“品牌”十分关键。中国美国商会赞赏当地政府为提升地区形象、鼓励海内外投资者所作出的努力。

加大基础设施建设和招商引资力度在一定程度上削

弱了该地区对旅游业的宣传。而旅游业作为地区经济健康发展的保证，能够向他人展示和宣传当地良好的商业及旅游资源。

### 海关

海关部门应对相关政策加以澄清，并将进口货物按照批发或零售的商业用途和个人或教育用途加以区分。例如，一些国际学校需进口课本及与教学大纲相关的教学用品，然而海关因将其视为可在市场上出售的商品而对其征收关税。对此类教学用品应免征进口关税。

### 建议

- **通过加大对国际化学校和医院的投资建设，以推进国际化水平的服务质量，这将有利于发展充满活力的外资商业环境。**
- 简化外国雇员的签证及工作许可证申请程序。
- 就商业注册、签证、工作许可等申请程序，出台明晰的、具有一致性的指导原则，并印发或在网上发布。
- 加强《国家知识产权法》的执法力度以促进高科技领域投资。
- 当地政府应为促进华中地区投资与旅游，专门印制针对国内外投资者的高质量的宣传材料。
- 海关在征收关税时应对批发零售商业进口货物与以个人所有或教育为目的进口货物加以区分。



## Pearl River Delta

The Pearl River Delta (PRD) region of southern China faced a very challenging year for businesses in 2008. Following a trend that began as far back as 2007, the region experienced a downturn in its traditionally powerful export and manufacturing sector, and a slowdown in overall economic growth. The year began with the double squeeze of increases in both commodity prices and the value of the Renminbi (RMB), and ended with the deepening of the global financial crisis. By the end of 2008, there were reports of tens of thousands of bankruptcies and hundreds of thousands of job losses.

Businesses have been affected to varying degrees by the changing economic situation. Some foreign-invested enterprises (FIE) focusing largely on product assembly and the export market are facing challenging times, much like their Chinese counterparts. AmCham South China's 2009 *State of Business Survey* shows that the one and three-year investment projections by their members are down to 60 percent and 69 percent, respectively, of last year's budget projections for those same time horizons. Despite the difficult business climate in the region for some, manufacturing and service-oriented firms primarily targeting the Chinese domestic market remain largely optimistic and committed to maintaining and expanding their operations.

There are a number of policy adjustments that would help both domestic and foreign firms navigate through these challenging times. Given the difficulties all governments now face, there may be a temptation to establish protectionist rules and regulations. However, it is in the best interests of global economic health to maintain open and free trade. At the same time, clarification of the key elements and implementation rules of China's new labor and tax laws would be a major step toward facilitating the continued success of firms based in the PRD. Finally, AmCham-China would like to contribute to, and engage in, dialogue throughout the legislative process for areas including advertising and food, drug and cosmetics quality and safety. In all of these areas, AmCham-China encourages the consideration of international best practices, and uniform implementation and enforcement of all regulations to promote investor confidence and a strong business environment that rewards efficiency, innovation and legal compliance.

### Regional Characteristics and Developments

#### PRD Regional Economy

Over the last 20 years the PRD has become China's manufacturing and export hub. Encompassing such key manufacturing and export processing centers as Shenzhen, Guangzhou, Dongguan and Zhuhai, the PRD and its 50 million residents have come to represent the dynamism of the Chinese economy. Driven in large part by the overall growth of the PRD, Guangdong Province itself registered a growth rate of 13.8 percent from 1979 to 2007. The aggregate Guangdong economy is not only the largest of any provincial unit in China, but has also surpassed those of Singapore, Hong Kong and Taiwan. Foreign investment plays a key role in the manufacturing and exports that have driven the Guangdong and larger PRD economy, with the PRD at times accounting for a full quarter of China's foreign direct investment (FDI).

Despite its history of success, the PRD now confronts a number of large-scale challenges. Since 2005, when the Chinese central government allowed for some flexibility in the value of the RMB, the steady appreciation of the currency made Chinese exports relatively more expensive to foreign buyers. At the same time, worldwide commodity prices, from oil to steel, rose steadily from late 2007 to mid-2008, raising production costs for manufacturers. China additionally faced a number of domestic inflationary pressures, from the cost of electricity to basic foodstuffs, which further put pressure on PRD-based firms. Finally, in part to fight the threat of inflation, the central government sought to restrict bank lending through the first half of 2008, making access to credit extremely tight. While this trend has been reversed, there are still some lingering effects.

The PRD attracted headlines both within China and abroad as the heart of its economy, based on trade processing and export-oriented industries, faced these various challenges. Within Guangdong itself, export growth is reported to have fallen from over 22 percent in 2007 to just over five percent in 2008. According to Guangdong Provincial Statistics Bureau, Guangdong's exports fell by 23.5 percent and 16.9 percent in January and February 2009, respectively, compared to those same months in 2007. Exports constitute a key component of the Guangdong economy and

## 珠江三角洲

2008年是华南珠江三角洲地区的企业面临严峻挑战的一年。该地区传统强势领域——出口和制造业出现衰退，总体经济发展势头趋缓，而这一趋势早在2007年已经初现端倪。2008年初受到资源类商品价格上涨和人民币升值两面夹击后，年底又逢全球金融危机恶化。截止2008年年底，有报道称已有数以万计的企业宣告破产，几十万人下岗失业。

随着经济形势不断变化，企业受到了不同程度的影响。一些主要侧重于产品组装和出口市场的外商投资企业，也与其中国同行一样面临极大挑战。根据华南美国商会《2009年华南地区经济情况特别报告》，其会员一年期和三年期的投资预测分别下降至去年同期数据的60%和69%。尽管部分企业面临着严峻的商业环境，但那些以制造业和服务业为导向的、主要面向中国国内市场的公司，基本上持有乐观态度，并正致力于维持和拓展其业务。

政府对多项政策进行调整将有助于国内外企业度过当前充满挑战的时期。鉴于各国政府目前面临的困境，采取保护性措施对他们来说也许是一种诱惑。然而，全球经济的健康发展离不开开放自由的贸易环境。同时，对《劳动合同法》和《企业所得税法》中的关键内容和执行规定作出进一步的澄清将有助于珠江三角洲地区的企业获得长久成功。最后，中国美国商会希望能参与有关广告宣传及食品、药品和化妆品质量和安全领域立法过程并做出其应有贡献。商会还鼓励中国政府能够参考这些领域的国际最佳做法，通过统一有效的执法，来增强投资者的信心。同时还应建立一个鼓励高效、创新和遵纪守法的商业环境。

### 地区特点和发展

#### 珠江三角洲地区的经济形势

在过去的20年中，珠江三角洲已经成为中国制造业和出口的枢纽。涵盖深圳、广州、东莞和珠海等重要制造

和出口加工中心的珠江三角洲及其5000万居民，已经成为中国经济蓬勃发展的代表。在珠江三角洲总体发展的大力推动下，广东省经济在1979年至2007年间的年平均增长率达到了13.8%。广东省的经济总量不仅居全国各省份之首，而且已经超过了新加坡、香港和台湾。外资在制造业和出口领域发挥了关键作用，推动了广东省及更大范围的珠江三角洲地区的经济发展。大珠江三角洲地区的外商投资总额占据了全国外商直接投资总量的四分之一。

尽管珠江三角洲有着成功发展的历史，但目前也正面临许多巨大的挑战。自2005年起中央政府允许人民币汇率在一定范围内浮动，人民币逐步升值使中国的出口产品对于外国买家而言变得相对昂贵。同时，从2007年至2008年年中，从石油到钢铁，全球资源类商品价格都在上涨，这也增加了制造厂商的生产成本。另外中国还面临从电力成本到基本食品成本等诸多国内通胀压力，这让在珠江三角洲的企业面临更大压力。此外，直到2008年上半年，部分是出于应对通胀压力的原因，中国政府一直在加大对银行贷款限制，而这使得企业贷款变得难上加难。虽然这种趋势已有所改变，但所造成的某些影响依然余威犹存。

以加工贸易和出口导向型企业为核心的珠江三角洲，曾吸引了国内外的广泛关注，而今也面临各种挑战。据报道，广东省的出口增长率已经从2007年的22%跌至2008年的5%左右。根据广东省统计局公布的数据，2009年1月和2月，全省出口额分别比去年同期下降了23.5%和16.9%。出口贸易是广东省的重要经济支柱，而开始于2008年11月份的出口额下降是该省自2002年3月以来出现的首个月度负增长。

与此同时，全省经济增长率从2007年的近15%下滑至2008年的10.1%。在总体增长率、尤其是出口增长率下降的同时，也出现了大规模的企业倒闭和/或企业将其业务运营转移至其他地区的报道。例如2008年6月有台湾媒体报道称，仅台资企业就有一万家已撤离了珠江三角洲，迁至东南亚其他地区。另有报道称大量曾作为珠江三

this downward trend, starting in November 2008, represents the first monthly drop in the province's exports since March 2002.

At the same time, overall provincial growth rates are also reported to have fallen from close to 15 percent in 2007 to 10.1 percent in 2008. These drops in overall growth, and exports in particular, have been accompanied by reports of large-scale business closings and/or relocation of business operations to other production sites. For instance, in June 2008, reports from Taiwan indicated that 10,000 Taiwanese-invested factories alone left the PRD for other locations in Southeast Asia. This has accompanied news of large dislocations of labor, in particular migrant workers who previously provided much of the work force for the PRD's manufacturing and export economy. By the end of 2008, there were reports of over half a million migrant workers who had left the region and did not plan to return. This was coupled with many more workers who have remained in the region to seek employment despite having lost their previous jobs.

### Key Policy and Regulatory Developments

Against the backdrop of economic challenges, Chinese authorities instituted a number of new and reformed policies in 2008. While some had been long in development, others were a more immediate response to the region's economic difficulties. All have the potential to affect American businesses operating in the region significantly. Key among these reforms were the Labor Contract Law (LCL) and Enterprise Income Tax Law (EIT) that had been passed in prior years, but only took effect in 2008, creating varying impacts on Chinese and foreign businesses in the PRD. The LCL was designed to enhance job security and safeguard interests of Chinese workers by setting standards for mandatory labor contracts, lay-offs and severance payments. It also granted more power to labor unions. The EIT was designed to both simplify and unify various business tax codes for domestic and foreign enterprises.

In particular, given the recent number of high-profile domestic and international cases regarding Chinese food and product safety, we applaud the recent passage of the long-awaited Food Safety Law at the 2009 National People's Congress, which imposes uniform nationwide standards, provides for greater inspection and supervision, and increases penalties and fines for violations. The new law goes into effect on June 1, 2009. AmCham-China welcomes and commends the Chinese government for its responsiveness, enacting stricter standards and market requirements. We emphasize the importance of consistent and strong enforcement to ensure the realization of the law's principles.

There is also ongoing planning for new or revised rules regarding the scope and content of advertising. AmCham-China urges that the content and eventual enforcement of these new regulations conform to

international best practices.

## Regional Issues

### Economic Restructuring

In response to the difficulties business and labor in the PRD face, the central and local governments have proposed and begun to implement policies designed to revive and strengthen the local economy. Provincial leaders have argued that the changes taking place in the region are part of a necessary transformation, echoing the central government. The PRD, they contend, is at the heart of China's transition from focusing on process industries and exports to relying on production of higher value-added goods and services. Officials envision that such higher value-added production will eventually be concentrated in the hands of fewer, more highly consolidated firms, rather than the small and medium-sized enterprises (SMEs) that have dominated the region's processing industry and export-oriented economy.

These officials also emphasize that such a transition in the PRD economy would support longer-term plans to focus less on production for export and more on enhancing the strengths of domestic consumption. However, some of these longer-term, structural changes to the region's economic development model may be taking a back seat to immediate economic challenges. During a November 2008 visit to Guangdong, Premier Wen asserted that SMEs were important generators of employment and instruments of economic growth and that credit from state banks should flow more freely to such firms.

Thus, even if Chinese official long-term plans call for a transformation of the region's economy to become more oriented toward higher value-added manufacturing and service industries, the short-term realities seem to favor maintaining a large role for labor-intensive manufacturing and exports. AmCham-China supports the PRD's goals of developing more service and high-tech industries to balance the existing labor-intensive, lower-value sectors. We commend the government on promoting a "headquarters economy" in the PRD to facilitate the growth of the service sector and higher value-added industries. AmCham-China supports this drive and policies to encourage MNCs to establish their headquarters in the PRD.

Concurrently, we urge officials to continue evaluating the role for environmentally-friendly labor-intensive industries in the region, as they could have significant developmental value. A comprehensive development strategy that continues to build on traditional PRD strengths in labor-intensive sectors, and at the same time moves toward a more high-technology and service-oriented economy, may be in the region's best interest.

### Labor Developments

Labor cost is a key constraint facing businesses in the PRD. In contrast to previous years, 2008 saw

角洲制造业和出口经济生力军的外来务工人员也离开这一地区。截止2008年年底,据报道已有超过50万名外来务工人员离开,且没有作回来的打算。而更多失去原工作的人仍然留在当地以寻找就业机会。

### 重大政策和法律法规的制定

在面临经济挑战的背景下,中国政府在2008年制定并修订了多项政策。其中一些政策已经酝酿已久,而另一些则是针对该地区经济困境所做出的短期政策调整。这些政策均有可能在该地区运营的美国企业产生巨大影响。其中最受关注的是已通过立法程序但直到2008年才生效的《劳动合同法》和《中国企业所得税法》,这两项法律的实施给珠江三角洲地区的中外企业均带来不同程度的影响。《劳动合同法》旨在通过为强制性劳动合同、下岗和遣散费设立标准,以加强就业保障,保护中国工人权益。该法还赋予了工会更多的权力。《中国企业所得税法》旨在简化和统一国内和外资企业使用的不同企业所得税法。

值得一提的是,考虑到近年来在国内和国际上出现了有关中国食品和产品安全的重大案件,全国人大于2009年通过了人们期待已久的《食品安全法》,对此我们表示欢迎。该法设立了全国统一标准,加强了监管力度和对违法行为的处罚力度。这部新法将于2009年6月1日起生效。中国美国商会对中国政府迅速采取措施,制定更加严格的标准和市场规范表示欢迎和赞赏。我们强调,规范地、强有力地执行这部法规,确保该法各项原则得到落实是至关重要的。

中国还计划针对广告范围和内容制定新法或修订现有规定。中国美国商会敦促这些新法律法规的内容及最终执行应符合国际最佳惯例。

### 地区性问题

#### 经济结构调整

针对珠江三角洲地区企业和劳动力所面临的困境,中央及地方政府已经提出并开始着手执行旨在恢复和加强本地经济的各项政策。省级领导指出,该地区的这些改革是经济转型的必要组成部分。他们指出,珠江三角洲位于中国经济转型的中心,从侧重于加工和出口产业向有高附加值的产品和服务过渡。政府官员预计,这些附加值更高的生产活动将最终集中到为数不多、高度整合的企业手中,从而改变大量中小企业在当地加工工业和出口导向型经济中占统治地位的现状。

这些官员还强调,珠江三角洲的经济转型应着眼于长期的发展规划,减少针对出口的生产,而更加专注于增强国内消费实力。不过,对于该地区经济发展模式的一些更长期的、结构性变革恐怕要为解决更加紧迫的经济挑战让路。2008年11月在广东省访问期间,温家宝总理指出,中小型企业是创造就业机会、刺激经济增长的重要来源,国有银行的贷款也应更加通畅地流向这些企业。

因此,即使中国的长远目标是推动该地区经济向附加值更高的制造业和服务业转型,但现实情况似乎更倾向于扶持能够带动就业的劳动密集型制造业和出口产业。中国美国商会对该地区推进服务行业和高科技行业,以平衡当前附加值较低的劳动密集型产业的发展目标表示支持。同时我们对政府为促进服务业和高附加值产业的发展,在珠江三角洲地区推广“总部经济”的做法表示赞赏。中国美国商会支持这些旨在鼓励跨国企业在珠江三角洲建立总部的措施和政策。

目前,我们促请各级官员继续对该地区环保型、劳动密集型企业所发挥的作用进行评估,因为这些行业可能仍然具有很大的发展价值。继续发挥珠江三角洲在劳动密集型产业上的传统优势,同时向科技含量高、以服务为导向的经济形式转变,这种全面发展战略符合该地区最佳利益。

### 劳动力发展

劳动力成本上涨是珠江三角洲企业发展面临的主要限制。与前一年相比,2008年珠江三角洲对于体力劳动者和管理者的需求都出现了下降。其中部分原因是整个地区受到经济困难的影响,许多工人和管理者都失去了工作。尽管有数千家工厂倒闭,但劳动力市场依然趋紧,这使得工人可以拿到相对较高的工资——有时甚至是最低工资的两倍。例如,几年前,广东省制鞋厂家的劳动力成本占企业总运营支出的25%至30%,但现在这一比例已增加到40%至45%。尽管当前经济危机使劳动力趋紧现象有所缓解,但这一现象自2003年以来就一直存在。计划生育政策的实行、其他地区厂商竞争的日渐激烈以及农业收入增长都是导致这一现象的原因。

近期实施的《劳动合同法》为工人提供了诉苦和投诉的途径,提升了工人的影响力。2008年,广州市劳资纠纷增加了92%,而深圳的劳资纠纷几乎是原来的两倍。由于该地区面临的经济挑战,我们注意到有人提出了应放宽《劳动合同法》的执法力度,但清晰、全面且统一的执法符合所有珠江三角洲地区企业的利益。中国美国商会坚决

a decrease in demand for both manual labor and management jobs in the PRD. This was tied in part to the economic difficulties affecting the entire region, as many workers and managers lost their jobs. However, even with thousands of factories closing, the labor market still remains tight enough to allow workers to command relatively high wages—in some cases almost twice that of the minimum wage. For example, several years ago, labor costs accounted for 25 to 30 percent of the overhead for Guangdong's shoe factories, but now account for 40 to 45 percent of operating expenses. Labor supply constraints, while perhaps somewhat mitigated by the current economic downturn, reflect a longer-term trend since 2003 caused in part by the one-child policy, growth of competing factories in other regions and higher agricultural incomes.

The recently implemented LCL also strengthens workers' leverage by providing avenues to voice grievances and file complaints. In 2008, labor disputes increased by 92 percent in Guangzhou and almost doubled in Shenzhen. In light of the region's economic challenges, we recognize there may be pressure to relax enforcement, but clear, full and uniform enforcement of the law is in the interest of all firms operating in the PRD. AmCham-China firmly supports the continued enforcement of employee and unionization rights in line with Chinese law and urges the Chinese government to emphasize fully uniform enforcement of unionization requirements and regulations for both domestic and foreign companies to fully assure the protection of the rights of employees, employers and labor unions.

In addition to protecting those under employment, enhancing social support for those facing unemployment may be even more important to maintaining economic stability. AmCham-China supports national and local policies to maintain and enhance the social safety net for migrant workers whose employment and residency status are often the most precarious. In particular, AmCham-China advocates creation of a portable pension scheme that would support laid-off and temporarily unemployed migrant workers as they seek reemployment. Such support for mobile workers will create more efficient labor markets and help promote domestic consumption in line with central and local government policies.

#### Tax Regulations

The new EIT law levels the playing field for domestic and foreign companies and reflects the Chinese government's objective to promote high-tech, environmental protection and energy-saving industries. There have also been significant changes in value-added tax policy, in part, to support labor-intensive industries and export businesses. AmCham-China proposes certain changes to existing rules on key taxation issues and practices that will help China promote its overall policy goals. (Please see the Tax chapter.)

#### China's Credit and Stimulus Policies

In response to national and regional economic challenges, central and local PRD government officials have reversed course on credit policy to allow for greater access to credit. Many American firms operating in the PRD have not been significantly affected by the drying up of global credit. However, the greater access to credit provided by Chinese banks to Chinese firms in the PRD helps boost confidence among local and international companies for whom China remains committed to offering a positive business environment. AmCham-China hopes that other elements of the Chinese stimulus package will promote a competitive bidding and procurement process and allow the PRD to maintain its status as one of the premier destinations worldwide for foreign business and investment.

#### Recommendations

- **Maintain openness to trade and investment and resist pressures to enact protectionist measures. Encourage an open and competitive business environment.**
- Enact and implement policies supportive of the objectives of a "headquarters economy."
- Assess the future role for labor-intensive, yet environmentally friendly, industries in the region as the PRD undergoes economic restructuring.

#### Taxes

- Please see Tax chapter.

#### Advertising Regulations

- Ensure clear and consistent definitions and rules regarding advertising in any newly proposed advertising regulation.

#### Food, Drugs and Cosmetics Safety

- Continue industry-government collaboration in the drafting of new laws and regulations regarding food, drug and cosmetic safety.
- Continue clarifying definitions and consistently enforcing regulations in accordance with international best practices.

#### Labor Regulations

- Emphasize fully uniform enforcement of labor laws to ensure full compliance with the LCL by all enterprises.
- Increase budget and staffing for labor arbitration commissions and courts so they competently and effectively handle the sharp increase in labor disputes.

支持依据中国法律保障雇员和工会权力的做法,并敦促中国政府加强对国内外企业组织工会的相关法律的全面、统一的执行,从而全面保障雇员、雇主和工会的权利。

除了加强对从业者的权益保护外,增强对面临失业人员的社会支持或许对保持经济稳定更为重要。中国美国商会支持中央和地方政府出台有关政策,以维护和加强针对那些不具有稳定工作和居所的外来务工人员所建立的社会保障体系。商会还主张建立可转移式社保基金制度,为下岗和暂时失业的外来务工人员在职期间提供支持。这类支持将有助于建立更加高效的劳动力市场,同时有助于促进国内消费。

#### 税收制度

新版《企业所得税法》为国内外企业提供了公平的竞争环境,并反映出中国政府推动高科技、环保节能型行业发展的目标。另外在增值税政策方面也作出重大调整,一定程度上支持了劳动密集型产业和出口企业的发展。中国美国商会建议对有关关键税收问题和做法的现行规定做出适当修改,这将有助于中国加快实现总体政策目标。(请参阅《白皮书》“税收”一章)

#### 中国的贷款和经济刺激政策

为了应对全国性和区域性的经济挑战,中央政府及珠江三角洲地区的政府已改变其信贷政策,使更多企业能够获得贷款。许多在珠江三角洲运营的美国企业并未受到全球信贷危机的严重影响。而中国的银行为该地区的中国企业提供更多贷款,这不仅有助于增强本地企业和国际企业的信心,而且体现出中国正在为建立一个良好的商业环境而努力。中国美国商会希望中国经济刺激计划的其他内容能够帮助建立一个更有竞争力的招标和采购程序,同时,使珠江三角洲巩固其作为全球投资者首选目的地之一的地位。

#### 建议

- **保持对贸易和投资的开放,抵制制定保护主义措施的举措。鼓励建立一个开放性的、充满竞争力的商业环境。**
- 制定并落实有助于实现“总部经济”为目标的各项政策。
- 在珠江三角洲地区进行经济结构调整的过程中,评估该地区劳动密集型环保产业将在未来发挥的作用。

#### 税收制度

- 请参阅《白皮书》“税收”一章。

#### 有关广告宣传的法律法规

- 在新提出的广告法中确保各项定义和规定的明确、统一。

#### 食品、药品和化妆品安全

- 在起草有关食品、药品和化妆品安全的法律法规时,继续开展行业与政府间的合作。
- 继续澄清各项定义,根据国际最佳惯例统一执法。

#### 有关劳动力的法律法规

- 强调全面统一地执行各项劳动法,确保所有企业全面落实《劳动合同法》。
- 增加劳动仲裁委员会及仲裁法庭预算,加派人手,确保其有能力高效处理与日俱增的劳资纠纷。

## Shanghai/Yangtze River Delta

In 2008, Shanghai and the Yangtze River Delta (YRD) region, comprised of the Shanghai Municipality, Zhejiang Province and Jiangsu Province, continued to be one of China's most attractive markets for American businesses and a magnet for foreign investment. Contributing factors include a steadily expanding, world-class infrastructure; continued improvements in the business climate, including a developing legal structure; a rapidly growing service sector; and a tradition of openness to foreign investment.

However, 2008 was a challenging year. The global economic downturn and corresponding decline in export growth, as well as increasingly difficult economic conditions in China in the second half of 2008, has had a significant impact on the business climate in Shanghai and the in the greater YRD.

The economic strength of the YRD lies in its ability to work as a single integrated region, capitalizing on the sum of its strengths rather than attempting to compete as individual cities and provinces. Establishing a regional economy with a unified, cohesive vision and set of objectives will enable the YRD to develop its economy more effectively and take advantage of the opportunity to establish the greater the YRD region as a global center for research and development (R&D).

Shanghai is at the hub of this economic engine which stimulates growth across the entire region. Because of intellectual and investment capital advantages, together with favorable policies and infrastructure, Shanghai enjoys high per capita GDP and relative efficient use of resources like land, energy and water. The opportunity to further expand, replicate and leverage these advantages across the entire YRD region is enormous.

The Shanghai Municipal Government has been a strong partner of the American business community and we look forward to extending our relationships with other governments in the YRD region. We are confident that we can work together to assist the Shanghai government to achieve its objectives, develop its economy, establish Shanghai as an innovation-driven city and improve the business climate for US companies in the region.

### Significant Developments

#### Business Climate

After growing 13 percent in 2007, Shanghai's gross domestic product dropped to 9.7 percent in 2008, the first year of single-digit annual growth since 1991. In 2008, Shanghai had fiscal revenues of US \$35 billion (RMB 238.2 billion), a 13.3 percent increase over 2007, but down sharply from the 31.4 percent growth in 2007.

The GDP of the greater YRD region exceeded US \$680 billion (RMB 4.7 trillion) in 2007, up 15.2 percent year on year. While the region continued to grow in 2008, economic growth slowed on a month to month basis in the second half of the year, especially the last quarter.

From January to November 2008, total Shanghai foreign trade volume increased 13.8 percent to US \$322.1 billion (RMB 2.2 trillion). This is an increase from the US \$283 billion (RMB 1.9 trillion) in 2007, but the rate of growth slowed substantially. In 2008, Shanghai-US two-way trade was US \$53.4 billion (RMB 365.8 billion), 16.6 percent of Shanghai's total foreign trade and an eight percent increase over 2007.

Shanghai's foreign direct investment (FDI) continued its growth in 2008, rising to more than US \$10 billion (RMB 68.5 billion) for the first time, an increase of 27.3 percent over 2007. Of Shanghai's 2008 FDI, 68 percent went to the expanding service sector. The entire YRD region saw US \$44.5 billion (RMB 305.2 billion) in FDI in 2008 making up 48.2 percent of China's total, securing the YRD's position as China's largest recipient.

#### Infrastructure Improvements

As Shanghai prepares for the 2010 World Expo, the local infrastructure is undergoing extensive development. In total, Shanghai plans to invest US\$73 billion (RMB 500 billion) into urban infrastructure construction through 2010. Expansion of railways, roads and highways in the greater YRD has served to further integrate Shanghai with the region.

Shanghai is the world's second-busiest container port after Singapore, handling 28 million twenty-foot equivalent units (TEU) in 2008, up seven percent from 2007. Shanghai completed the third phase of its deep-water port in 2008 and will spend roughly US \$2.9 billion (RMB 19.9 billion) on further expansion of its

## 上海/长江三角洲

2008年,上海和长江三角洲地区(包括上海市、浙江省和江苏省)继续成为对美国企业最具吸引力的中国市场之一,吸引了大量外商投资。这主要得益于正稳步发展的世界级水平的基础设施建设;日益完善的商业环境——包括逐步健全的法律体系;快速增长的服务业及对外资开放的传统。

然而,2008年也是充满挑战的一年。全球经济衰退和随之而来的出口增长下滑,以及2008年下半年中国经济发展困难的日益显现,对上海以及整个大长江三角洲地区的商业环境产生重大影响。

长江三角洲地区的经济实力得益于其作为一个整体区域优势的发挥,而不是各省市之间的竞争。以统一、富有凝聚力的愿景和目标建立一个区域经济格局,将有助于长江三角洲地区更有效地发展,并充分利用机遇使大长江三角洲地区建设成为全球研发中心。

上海作为这一经济引擎的中心,带动了整个长三角地区的经济增长。凭借人才和资金方面的优势,优惠的政策和完善的基础设施,上海市保持较高的人均GDP水平,以及对土地、能源与水等各种资源的有效利用。在整个长江三角洲地区进一步发展、复制和利用这些优势的机会巨大。

上海市政府一直是美国业界有力的合作伙伴,同时我们也希望增进与长江三角洲地区其它政府的往来与交流。我们相信,通过与上海市政府的通力合作,能够帮助其实现各项目标,促进当地经济发展,将上海建设成为一个创新型城市,并改善在该地区发展的美国公司的商务环境。

### 重大进展

#### 商务环境

2007年,上海的国内生产总值增长了13%,而2008年的增幅降至9.7%,这是自1991年以来首次出现一位数的增长。2008年,上海的财政收入为350亿美元(2382亿人民币),比2007年增长13.3%,但与2007年31.4%的增长速度相比,降幅很大。

2007年,大长江三角洲地区的GDP超过6800亿美元(4.7万亿人民币),比去年增加了15.2%。虽然2008年该地区仍然保持增长势头,但2008年下半年经济增长速度逐月放缓,以第四季度最为明显。

2008年1月到11月,上海的外贸总额增加了13.8%,达3221亿美元(2.2万亿人民币)。虽然与2007年的2830亿美元(1.9万亿人民币)相比有所增加,但是增长率出现大幅下滑。2008年,上海与美国之间的贸易额为534亿美元,占上海外贸总额的16.6%,与2007年相比增长了8个百分点。

2008年,上海的外商直接投资继续增加,首次超过100亿美元(685亿人民币),与2007年相比增加了27.3%。2008年上海的外商直接投资中,68%流向了日益发展的服务业。2008年,整个长江三角洲地区获得的外商直接投资总计445亿美元(3052亿人民币),占中国外商直接投资总额的48.2%,确保了其作为中国最大外商直接投资目的地的地位。

#### 基础设施得到改善

着眼于2010年世博会,上海市正在全面改善其基础设施。总体而言,在2010年前上海计划投资730亿美元进行城市基础设施建设。大长江三角洲地区的铁路、公路和交通干线得以延伸,使上海与该地区进一步融合。

ports. In 2008, imports and exports through the port of Shanghai increased 16 percent over 2007.

Pudong International Airport's Terminal 2 opened in March 2008, adding an additional 4.2 million tons of cargo capacity and 60 million passengers annually, doubling the airport's capacity. The new terminal is part of a US \$2.8 billion (RMB 19.2 billion) long-term investment intended to make Shanghai a leading global aviation hub.

Already the longest subway network in China, Shanghai began construction of two new lines in December 2008 and will build another four lines by 2010. By the start of the Expo 2010, Shanghai is expected to have 400 kilometers of metro lines crisscrossing the city, with a total of 116 new stations being built.

### Regulatory Streamlining

The Shanghai Municipal Government underwent restructuring in 2008 intended to streamline the local government and align with the newly adjusted central government structure. Stated objectives include increased administrative efficiency and a shift in government to a more service-oriented administration.

The greatest impact on Shanghai's business climate is likely to be the creation of the new Shanghai Municipal Commission of Commerce (SCOFCOM), which replaces a number of smaller commissions and bureaus, including the Shanghai Foreign Economic Relations and Trade Commission (SMERT). This consolidates management of foreign investment, foreign trade, and overseas business management and domestic trade management under SCOFCOM's authority. For the first time, domestic and international trade has been placed under a single municipal agency.

Shanghai is the first city to restructure according to this model and likely paves the way for restructuring municipal governments throughout China. We support changes that result in a more transparent and efficient decision-making process that provides clearer regulations and guidelines for foreign businesses operating in Shanghai and throughout China.

Also in 2008, the US Food and Drug Administration (FDA) opened an office in Shanghai to improve export product safety as part of a China strategy that includes offices in Beijing and Guangzhou. At this early stage, it is unclear what specific impact FDA offices in China will have on US businesses. Nonetheless, we support continued efforts to improve engagement between US and Chinese government agencies to address important trade issues, such as food and product safety.

### Service Sector Development

We acknowledge Shanghai's continued efforts to develop the service sector, which contributed to about 53 percent of Shanghai's municipal GDP in 2008. According to a September 2008 State Council opinion,

Accelerating the Development of the Service Sector, the national government plans to make the service sector, estimated to grow to US \$440 billion (RMB three trillion) by 2010, a leading part of the YRD area by 2020.

We applaud SCOFCOM's efforts to transition Shanghai to a modern service-based economy with an emphasis on encouraging multinational corporations (MNC) to set up regional headquarters and attracting top service providers to Shanghai.

Measures have been announced to further enhance the financial services sector by easing the registration process for financial entities opening offices in Shanghai and further developing the legal and regulatory framework necessary to a healthy financial sector. We support efforts by SCOFCOM to expand avenues for investment and to engage foreign mergers and acquisitions to help reform state-owned enterprises, upgrade local industrial structure and encourage foreign investment in Shanghai's infrastructure development. Additionally, we urge the Shanghai municipal government to encourage the development of new financial services products and allow for a diversity of financial institutions. Given its strength in the financial services sector, Shanghai is better positioned than any other city in China to take the lead in financial innovation.

To develop a "headquarters economy," the municipal government continues to take steps to make Shanghai a regional and national hub for MNCs and into Asia's financial center. At the end of 2008, there were 224 regional headquarters in Shanghai. In December 2008, the Shanghai government issued new implementing rules to encourage MNCs to establish regional headquarters in the city. US \$730 million (RMB five billion) in financing has been made available to foreign-invested companies that establish regional headquarters in Shanghai.

In an effort to further promote the service sector, the Shanghai government has also stated that it will focus on information services, logistics, R&D, design, sourcing, marketing, leasing, tourism, retail and trade as well as "intermediary" and professional services such as accounting, auditing, legal and consulting. Priorities have been given to modern service cluster development, including service outsourcing. In March 2008, the Shanghai Municipal Committee of the Communist Party of China accredited five service outsourcing parks. We believe that although the economic crisis presents challenges, it also serves as an opportunity to accelerate the balancing of the economy with increased service sector development. Furthermore, we support revision of the current tax policy to provide incentives to service enterprises. Revising the tax policy to give more support to the services sector will enable Shanghai to achieve its target of having this sector comprise 75 percent of its GDP.

To attract and retain talent in Shanghai, plans were

上海港是世界上繁忙程度排名第二的货运港口,仅次于新加坡。2008年完成集装箱吞吐量2800万个标准集装箱(TEU),比2007年增加了7个百分点。2008年,上海完成了洋山深水港三期工程,将投入大约29亿美元(199亿人民币)进一步扩建其它港口。2008年,通过上海港实现的进出口比2007年增加了16%。

浦东国际机场2号航站楼于2008年3月启用,每年新增420万吨货物运输能力和6000万旅客运送能力,使得该机场的运力翻了一番。这个新的航站楼是一项28亿美元(192亿人民币)长期投资的一部分,该投资旨在将上海建设成为世界领先的全球航空运输中心。

上海原本就拥有中国最长的地铁网络,2008年12月开工新建两条新的地铁线路,并计划于2010年前再建成另外四条地铁线路。2010年世博会开幕前,预计上海将拥有总长400公里交织于整个城市的地铁线路,届时将建成总共116个新的地铁站点。

### 简化监管

2008年,上海市政府进行了旨在简化地方政府机构的改革,以与重新调整后的中央政府组织结构接轨。其既定目标包括提高行政效率、推进其向服务型政府的转变。

新的上海市商业委员会(SCOFCOM)的成立可能给上海商务环境带来了重大的影响。该委员会取代了包括上海市对外经济贸易委员会在内的一些规模较小的委员会和管理机构,将外商投资、对外贸易、海外商业和国内贸易统一划入其管辖范围。这是首次将国内和国际贸易归口为一家市级机构。

上海是中国首个根据这一模式重组政府机构的城市,很可能为中国所有市级政府的机构改革奠定基础。我们支持这些变革,这将提高决策过程的透明度和效率,从而为在上海和全中国开展业务的外国企业提供更为清楚的法规和政策引导。

同样是在2008年,美国食品及药品管理局在上海设立了办事处,以提高出口产品的安全性,是其包括北京和广州办事处在内的中国战略的一部分。目前正处于早期阶段,美国食品及药品管理局在中国设立的办事处将对美国商业产生哪些具体影响尚不清楚。然而,我们支持旨在改善美中两国政府机构之间关系的持续努力,这有助于解决食品和产品安全等重要贸易问题。

### 服务业发展迅速

我们对上海不断努力发展服务业的做法表示赞赏。该行业大约占到了上海市2008年GDP的53%。根据2008年9月国务院发布的一份名为《加速服务业的发展》的报告,中国政府计划推动服务业在2020年前成为长江三角洲地区的主导行业。预计2010年前该行业将增长到4440亿美元(3万亿人民币)。

我们欢迎上海市商业委员会努力促进上海转型为一个基于服务的现代化经济体,重点鼓励跨国公司在上海设立区域总部,吸引顶级服务供应商进驻上海。

上海市宣布了进一步促进金融服务业发展的各种措施,主要是简化金融机构在上海设立办事处的注册程序,及进一步制定金融业健康发展所必需的法律和监管框架。我们支持上海市商业委员会扩大投资渠道、吸引外资进行并购的努力—这有助于国有企业改革、提升当地产业结构,以及鼓励外商投资上海的基础设施建设。此外,我们极力敦促上海市政府鼓励开发新的金融服务产品,允许金融机构的多样化。鉴于上海市金融服务业的强大实力,上海比中国其它任何一座城市都更有能力来引领金融创新。

为了发展“总部经济”,上海市政府继续采取各种措施将上海打造成为跨国公司的地区和全国网络中心及亚洲的金融中心。2008年年底,跨国公司在上海设立的区域总部数量达224个。2008年12月,上海市政府出台新的实施规定,鼓励跨国公司在该市设立区域总部。截至到目前,为在上海设立区域总部的外资公司融资7.3亿美元(50亿人民币)。

为进一步推动服务业发展,上海市政府宣布其将着重于信息服务、物流、研发、设计、外包、营销、租赁、旅游、零售和贸易及“中介服务”和诸如会计、审计、法律和咨询等各类专业服务,并优先发展包括服务外包在内的现代服务集群。2008年3月,中共上海市委审批通过了五个服务外包园区。我们相信,虽然现在经济危机带来了一些挑战,但同时也带来了机遇,可以通过服务业的迅速发展加快经济均衡增长。此外,我们支持对现行税收政策进行修正,激励服务型企业。通过修正税收政策为服务业提供更多支持,将推动上海实现其服务业增至GDP比重75%的目标。

为了吸引和保留上海的人才,上海市政府推出2009年户籍改革,允许符合一定条件居住证转办户籍。我们支持这些吸引、保留来自世界各地的关键人才的努力,吸引和

announced to allow Shanghai Residence Card holders to convert temporary permits to permanent Shanghai residency. We support these efforts to attract and retain critical talent from all over the world, a challenge facing many businesses in Shanghai.

## Specific Issues

### Integration of the YRD Region

Despite having only one percent of the country's land area and approximately six percent of the total population, the greater YRD made up 18.9 percent of China's GDP in 2008, and generated a large portion of fiscal revenues and two-way foreign trade.

The YRD is unique in China due to the large number of foreign-invested enterprises (FIEs) led by MNCs from the US, Japan, Korea and the EU. There are 224 Asia regional headquarters, a growing community of research and development centers, significant port and transportation infrastructure, an extensive and increasingly sophisticated manufacturing base, leading universities and Shanghai's steadily developing banking and investment infrastructure.

We continue to urge further integration of the YRD region and support the goal of the August 6, 2008 State Council guideline on development calling for cooperation and interaction between YRD cities to enhance regional economic development. China's central government has rightly called on local governments to curb local rivalries and to further integrate to ensure coordinated and "harmonious" regional development.

In AmCham Shanghai's 2008 *China Business Report*, 50 percent of respondents reported that Shanghai remains a hub for headquarters of US companies. However, more than half plan to expand into second and third-tier cities, with YRD cities figuring prominently in their overall strategy. Nanjing, Hangzhou, Suzhou and Wuxi were among the top-10 expansion locations.

We welcome the government's emphasis on the development of the YRD area, and its efforts to create consistent regulations and laws to develop synergies in areas such as customs, education and training, intellectual property rights (IPR) protection, taxation, transportation, and logistics. This harmonization would improve the business climate and help meet national government objectives to develop the YRD into a "well-off society" by 2012, eight years ahead of other regions. We look forward to reviewing the upcoming YRD area development roadmap and working with the government, where possible, to achieve its goals.

We applaud steps taken to accelerate cross-district capital flow within the YRD such as a strategic cooperation agreement that was signed at the forum between 14 city commercial banks in April of 2008, including Bank of Shanghai, Bank of Jiangsu, Hangzhou City Commercial Bank and Bank of Ningbo, from

Shanghai, Jiangsu Province and Zhejiang Province.

We also recognize that the Shanghai government is taking a pro-active role in coordinating relocation of some of the heavy industries or labor intensive industries to the outskirts of the YRD (Greater YRD), like Anhui province. Such planning, coordination and assistance will serve to make the region more competitive.

Infrastructure improvements to connect the region more closely are also critical. In 2008, 18 high-speed railroad projects covering Shanghai, Ningbo, Nanjing, Hangzhou and Taizhou commenced operations, further upgrading the YRD railway connection. An expansion of the expressway network in the YRD has been announced and will focus on the Airport Expressway, Chongming-Gidont Expressway, Shanghai-Suzhou Expressway and reconstruction of the Shanghai-Hangzhou Expressway. These projects will support commercial expansion in the YRD.

Perhaps most critical to US company operations in the region, a fully integrated YRD would streamline complex human resource issues. The current economic slowdown has resulted in challenging work force conditions. Employers are eager to comply with the 2008 Labor Contract Law (LCL), but interpretation and implementation of the LCL is inconsistent within the region. The ability to transfer skilled workers and managers within the YRD is critical, yet this process is hampered by lack of portability in social benefit accounts when compared to other locations (i.e., Hong Kong and Singapore). To enable more liberal movement and allocation of human resources and services in the YRD, we support the enactment of a common social security policy among provinces, such as Shanghai, Zhejiang and Jiangsu.

Threats to employment stability and contracting trade have caused foreign investors to question assumptions of growth and business expansion. Making reductions in force (RIF) regulations clear and uniform within the region, and possibly adjusting regulations to fit the YRD labor environment, will positively impact the YRD's employment situation. A uniform, transparent hiring environment that provides for portability of social benefits to facilitate movement of labor within the YRD would build employer confidence.

We look forward to working together with the municipal, provincial and national governments to better integrate the YRD region. Further urbanization of the greater YRD, with Shanghai as the hub, could create an economic engine driving growth across the entire region and serve as a growth model for other urbanization clusters in China.

### Research & Development/Innovation

The YRD offers a logical platform for expanding China's research and development base, and has the potential to lead China's innovation society and become a global innovation capital.

保留人才是上海许多企业都面临的一个挑战。

## 具体问题

### 长江三角洲地区的一体化

尽管面积仅为全国国土面积的1%，人口约为全国人口总数的6%，但大长江三角洲地区却占到中国GDP的18.9%，创造的财政收入和外贸进出口总额都占到全国的很大比例。

凭借数量众多、来自美国、日本、韩国和欧盟的跨国公司为主导的外资企业，长江三角洲地区在中国占据着独一无二的地位。该地区共有224个亚洲区域总部、日益增多的大批研发中心、举足轻重的港口与交通设施、范围广泛且日趋成熟的制造业基地、领先的高校和上海市发展稳定的银行业与对基础设施的投资。

我们继续敦促长江三角洲地区的进一步融合，支持国务院2008年8月6日制定的发展方针中列出的目标，即呼吁长江三角洲地区各城市之间开展合作与交流，推动区域经济发展。中国中央政府正确地要求地方政府对当地竞争加以限制，促进进一步融合，确保区域发展协调和“和谐”。

根据上海美国商会发布的《2008年中国商业报告》，50%的受访者认为上海仍然是美国公司设立区域总部的中心地区。然而，超过一半的受访者计划向二线和三线城市拓展，其中长江三角洲地区城市在他们的总体战略中占据特别重要的位置。南京、杭州、苏州和无锡入围十大拓展首选城市之列。

我们欢迎中国政府重点发展长江三角洲地区，并赞赏其努力在诸如海关、教育与培训、知识产权保护、税收、交通和物流等方面制定统一的法律规定以发挥协同效应。这种和谐性将改善商业环境，有助于中国政府实现2012年前长江三角洲地区先于其它地区八年进入“小康社会”的目标。我们期待与相关方共同探讨即将发布的长江三角洲地区发展路线图，并在可能的情况下与政府携手实现其目标。

我们赞赏政府采取措施加速长江三角洲地区的资本跨区流动，如2008年4月来自上海、江苏省和浙江省的14个城市商业银行（包括上海银行、江苏银行、杭州市商业银行和宁波银行）在首届长三角金融论坛上签署了战略合作协议。

我们还注意到上海市政府做出的积极努力，协调一些

重工业或劳动密集型行业迁址到长江三角洲地区的边缘地带(大长江三角洲地区)，如安徽省。此类计划、协调和帮助将有助于增强该地区的竞争力。

此外，改善基础设施以促进该区域更紧密地融合也至关重要。2008年，涉及上海、宁波、南京、杭州和台州的18个高速铁路项目开始启动，进一步提升了长江三角洲地区的铁路运输能力。该地区的高速公路网络扩建计划已经公布，重点为机场高速公路、崇明-启东高速公路、上海-苏州高速公路和上海-杭州高速公路重建项目。这些项目加强了城市间的商业联系，并有助于长江三角洲地区的商业扩张。

对在该地区开展业务的美国公司来说，或许最重要的是实现了完全一体化后的长江三角洲地区，可能会简化复杂的人力资源问题。当前的经济衰退已经导致劳动力状况正面临挑战。雇主们都希望遵守2008年实施的《劳动合同法》，但是该地区对《劳动合同法》的解释和执行却并不统一。高技术工人和管理人员在长江三角洲地区内的自由流动能力至关重要，然而这一过程却受碍于社会保障帐户无法转移，特别是与其它地区(如香港和新加坡)相比这个问题更为突出。为了促使人力资源与服务能够在长江三角洲地区更加自由地流动和分配，我们支持在各个省市，如上海、浙江和江苏，制定统一的社会保障政策。

就业稳定和合同贸易面临的威胁，已经引起外国投资者质疑其对经济增长和企业扩张的预期。明确并统一该地区的裁员(RIF)法规，并在可能的情况下调整这些法规以适应长江三角洲地区的劳动力环境，将对该地区的就业环境带来积极影响。如果劳动力雇佣环境统一、透明，并能提供促进长江三角洲地区内劳动力自由流动所需的社会保障转移，那么将有助于雇主树立信心。

我们希望与市级、省级和中央政府合作，更好地促进长江三角洲地区的一体化。以上海为中心的大长江三角洲地区城市化的进一步发展，将创造一个经济发展引擎，推动整个地区的经济增长，并为中国其它城市群发展树立一个增长模式。

### 研发创新

长江三角洲地区不但为中国研发基地的扩展提供了一个合理平台，还具有引领中国发展创新型社会和成为全球创新之都的潜力。

中国政府和长江三角洲地区的省、市级政府是这一努力过程中的关键利益相关方，应在推动创新以收获商业

The Chinese government and YRD municipal and provincial governments are key stakeholders in this effort and have a special role to play in catalyzing innovation to reap commercial and societal rewards and to develop incentives for this to occur. We encourage YRD leadership to work together to maintain and build upon its competitive advantages, which are multiplied when the YRD acts as a single entity rather than a disparate group of cities and provinces.

Working together, the cities and provinces of the YRD could more effectively compete for future R&D investment opportunities and build upon the regions' unique advantages, including a strong foundation of FDI, steadily growing infrastructure, a promising capital investment community and a growing number of small to medium-sized enterprises, both foreign and domestic.

We applaud the Shanghai government's efforts to establish Shanghai as an "innovation-city" and recognition that innovation in science and technology is vital to sustained economic development. The Chairman of the Shanghai Municipal Commission of Commerce has made increased high-tech exports a priority for 2009, and we believe the most critical pieces are in place to achieve critical mass in R&D. Shanghai can leverage significant FIE assets including 224 MNC headquarters, 247 research and development facilities, capital markets and a financial infrastructure that cannot be found anywhere else in China.

The YRD has a modernized manufacturing base, a growing infrastructure including ports, roads, and rail, a huge and highly demanding consumer base, large and growing technical talent pool, an enterprising spirit and strong work ethic. The YRD has the potential to develop a cohesive economic unit that will be needed to drive innovation and has a unique experience with the integration of adjoining governments.

Shanghai is developing a growing venture capital (VC) investment infrastructure that could help establish the region as an innovation leader. Shanghai received US \$569 million (RMB 3.9 billion) in VC investment in 2008, 13.5 percent of China's total. Although this was a drop from 2007, Shanghai remains a key destination for venture funding in China. The government is taking steps to ensure sources of capital for small private businesses, vital to developing an innovation core in the YRD. In November 2008, China's Association of Small and Medium-Sized Enterprises launched an US \$441 million (RMB three billion) venture-investment fund to help the country's SMEs raise capital. Loan quotas for commercial banks, part of the government's 10-step plan to enhance domestic consumption and growth, were also removed.

We are confident in the potential for the region's success and we offer the foreign business community's technical, operational and financial expertise as government leaders continue to develop its innovation

vision and objectives. We look forward to working together to establish the YRD region as a global research and development capital.

### IPR Protection

As noted in AmCham Shanghai's 2008 *China Business Report*, policies to protect and enforce IPR in China have had mixed results with 60 percent of respondents reporting that conditions have stayed the same and a small percentage claim deteriorating enforcement.

However, Shanghai has taken the lead in formulating local IPR strategies and made real progress in improving protection and enforcement. These are critical steps to encourage, protect and support foreign-invested and domestic R&D.

IP courts were first set up at the city's higher court and two intermediate courts in 1994. Now, the Huangpu, Yangpu and Luwan districts, and the Pudong New Area, have also established IP courts or tribunals. In a sign of increasing transparency, local courts have been holding public hearings on IP cases unless commercial secrets are involved.

In October 2008, the Shanghai IP Office and Arbitration Committee co-established the first Shanghai IPR Arbitration Court. All arbitration awards granted by the IPR Arbitration Court are final and binding on both parties, helping reduce the time for cases to be decided and potentially leading to effective IPR maintenance.

In September of 2008, nine defendants were found guilty by the Shanghai No. 1 Intermediate People's Court in a trial of global trading in pirated Symantec software. On December 31, 2008, Shenzhen Futian District Peoples' Court China sentenced 11 defendants in China's largest ever copyright counterfeiting case involving Microsoft software. The cases are notable because it involved a joint anti-piracy effort by the US Federal Bureau of Investigation and the Chinese Ministry of Public Security. The crackdowns focused on two large criminal organizations responsible for manufacturing and distributing counterfeit software from centers in Shanghai and Shenzhen. The Shenzhen case is the largest piracy operation tried and convicted in China's history.

We applaud the increasing number of IP cases in Shanghai courts and throughout China and the cooperation with US law enforcement agencies. However, we emphasize the need for an increasingly proactive approach to protecting IPR.

### Recommendations

- Continue efforts to integrate the YRD region with a focus on creating a seamless regulatory environment and a common social security policy among provinces in the region.

和社会成果,并开发激励措施以实现这一目标方面发挥特殊作用。我们鼓励长江三角洲地区的各级领导携手合作,保持并发扬该地区的竞争优势。如果长江三角洲地区作为一个实体而不是由多个城市和省份组成的松散集团,那么这种竞争优势将会翻倍提高。

如果长江三角洲地区的各省市携手合作,那么它们将能够更有效地争取未来的研发投资机会,充分发挥该地区的独特优势,包括庞大的外商直接投资基金、稳步增加的基础设施、充满希望的资本投资环境及数量持续增加的国内外中小企业。

我们赞赏上海市政府将上海建设成为“创新型城市”的努力,并赞同科技创新对于经济可持续性发展至关重要。上海市商业委员会主席已经决定,2009年的优先重点是提高高科技出口额。我们相信,上海已具备研发领域取得重大突破所必需的最关键条件。上海可以利用其外资企业资产,包括224家跨国公司总部、247个研发机构、资本市场和中国其它任何地区都没有的金融基础设施。

长江三角洲地区拥有一个现代化的制造业基地、包括港口、公路和铁路在内的不断完善的基础设施、大量具有高要求的消费群体、数量巨大并不断增长的技术人才储备、企业家精神和必要的职业道德。长江三角洲地区不但有潜力发展成为推动创新必不可少的聚合式经济体,而且在整合职能相近的政府机构方面拥有独特经验。

上海正在建设日益增长的风险投资所需要的基础设施,这有助于将该地区打造为一个创新的引领者。2008年,上海获得了5.69亿美元的风险投资,占中国获得风险投资总额的13.5%。虽然与2007年相比有所下降,但上海仍然是风投资金在中国的一个重要流向目标。政府部门正采取措施确保小型私人企业能够获得资金来源,这对于长江三角洲地区建设自己的核心创新能力至关重要。2008年11月,中国中小企业协会启动了30亿元人民币(4.41亿美元)的风险投资基金,帮助本国中小企业筹集资金。同时取消了商业银行的贷款额度,这是中国政府拉动国内消费、促进经济增长的十步走计划的组成部分。

我们相信,该地区有潜力获得成功。随着政府领导继续设定创新愿景和目标,我们将提供外国商业界拥有的技术、运营和金融方面的专业技术。我们希望与中国政府携手合作,将长江三角洲地区建设成为全球研发中心。

### 知识产权保护

上海美国商会的《2008年中国商业报告》指出,中国

保护和执行知识产权的政策混淆,60%的受访者认为知识产权保护状况没有改观,一小部分人认为执法情况出现恶化。

然而,上海已率先制订了本地的知识产权保护策略,并在加强知识产权保护与执法方面取得了真正的进步。这些都是鼓励、保护和支持外资和本国研发的关键措施。

1994年,上海市高等法院和两家中级法院首次设立了知识产权庭。现在,黄浦区、杨浦区、芦湾区及浦东新区都已经设立了知识产权法院或法庭。地方法院也已经开始在审理不涉及商业秘密的知识产权案件时举行公开听证会,这标志着透明度得以提高。

2008年10月,上海知识产权办公室和仲裁委员会联合成立了第一家上海知识产权仲裁院。知识产权仲裁院作出的所有仲裁裁决为最终裁决,对双方均具有约束力,这有助于缩短案件审理时间并可能有效地保护知识产权。

2008年9月,在审理一宗全球贩卖盗版Symantec软件的案件中,九名被告被上海第一中级人民法院宣判有罪。2008年12月31日,中国深圳福田区人民法院在审理中国有史以来规模最大的、涉嫌侵犯微软公司软件著作权的案件中,判处11名被告有罪。这些案件之所以引人关注是因为它们涉及到美国联邦调查局和中国公安部的一项联合反盗版行动。打击对象主要是在位于上海和深圳的中心窝点制造并经销盗版软件的两大犯罪组织。深圳的这一案件是中国有史以来审理并宣判的规模最大的一宗盗版案件。

我们赞赏上海法院和中国其它地方的法院受理数量日益增多的知识产权案件,并欢迎它们与美国执法机构开展合作。然而,我们强调中国仍需以更加积极的方式保护知识产权。

### 建议

- 继续努力推进长江三角洲地区的一体化,应着重于在该地区各省份之间创造无缝隙的监管环境和统一的社会保障政策。
- 提高政策制定和实施过程的透明度,以促进均衡地实现经济增长和创造就业岗位。提高透明度将有助于为长江三角洲地区不断增长的内部市场,创造一个公平的竞争环境。
- 调整税收政策,激励服务业公司。

- Improve transparency in the policymaking and implementation processes to promote balanced economic growth and job creation. Transparency will help create a level playing field in the YRD's growing domestic market.
- Revise the tax policy to provide incentives to service sector enterprises.
- Begin a dialogue between MNCs and the Shanghai government to develop an innovation strategy and long term plan to achieve Shanghai's goal of becoming an "innovation-city."
- Continue to improve IPR protection laws and enforcement thresholds to encourage, protect and support foreign-invested—and domestic—R&D and commercialized independent innovation.
- Establish a regular international advisory forum for senior government leaders in the region to provide practical advice and feedback from international experts, as well as long-term foreign residents of the YRD.
- Continue efforts to develop a financial services sector, in particular a venture-capital market, to fund Shanghai's growing field of SMEs and entrepreneurs, both foreign and domestic. Encourage the development of new financial services products and institutions.

- 在跨国公司与上海市政府之间开启对话，开发创新战略和长期规划，帮助上海实现成为“创新型城市”这一目标。
- 继续完善知识产权保护法，加大执行力度并鼓励、保护和支持外资公司和本国研发及商业化自主创新。
- 为该地区的政府领导建立一个定期举行的国际咨询论坛，以便于国际专家及长江三角洲地区的外国长期居民为其提供实用的建议和信息反馈。
- 继续努力发展金融服务业，特别是风险资本市场，为上海日益增长的国内外中小企业和企业家提供资金。鼓励开发新的金融服务产品并发展新的金融服务机构。



## Southwest China/Chengdu

The Sichuan earthquake in May and the global economic downturn acutely impacted business and development in Chengdu and Southwest China in 2008. The Chinese government responded quickly to both crises, enacting business recovery and development programs, including significant spending in the RMB four trillion (US \$584 billion) stimulus plan. Combined with existing initiatives and inherent natural advantages for business development in the region, they are helping Chengdu and Southwest China continue to enhance their competitiveness and attract investment. AmCham-China and its member companies also responded to the devastating earthquake, donating more than US \$100 million (RMB 685 million) in the aftermath of the disaster.

Even before the redoubled government commitment to the city, Chengdu had already established itself as a top investment destination. In 2007, Chengdu was chosen as a top-10 city for investment, out of a total of 280 urban centers. The area surrounding Chengdu is fast becoming the top choice for foreign investors in Western China. The Min and Tuo Rivers, two branches of the Yangtze River connected to forty other rivers, supply an irrigation area of more than 700 square kilometers (270.27 square miles) with 150-180 million kilowatts of water. The soil is also enriched by abundant mineral resources, making it extremely fertile.

Chengdu is the capital of Sichuan province and also one of the most important economic, transportation and communication hubs in Southwestern China. As China's fourth largest city, Chengdu features a population of more than 12 million, rising incomes and a fast-growing economy. Chengdu's GDP tripled from RMB 100 billion (US \$14.6 billion) in 1998 to over RMB 320 billion (US \$46.7 billion) in 2007, rising at a rate of 14 percent from 1998 to 2004.

Since the launch of China's Western Development Program, Chengdu's economy has experienced rapid development, leading to significant increases in average income and consumption patterns. The Urban-Rural Integration Planning Program, launched by the State Council in June 2007, ushered in a new era for the economic development of both Chengdu and throughout Sichuan. The purpose was to dismiss the urban-rural binary division system, solve the persistent "three agricultural problems," and integrate the urban and rural areas as a whole. The planning will bring not only

significant investment and preferential financial, tax and land policies, but also relevant complementary social and cultural policies to enhance the whole business environment of the region.

### Significant developments

#### Information Technology (IT)

The electronic information industry continues to play a leading role in Chengdu's industrial output, producing mainly software and equipment for meteorological radar, telecommunications, radio broadcasting and television, and calculators. Several key electronics manufacturing and IT development companies have established a base in the city's export processing zone with a total investment of over US \$1 billion (RMB 6.85 billion).

#### Administrative Efficiency

In recent years, the Chengdu government has worked to improve the efficiency of the foreign investment process. For example, quarterly meetings between the mayor and multinational corporations (MNC) began in Chengdu, facilitating communication between government and enterprises. Additionally, the government streamlined the administrative licensing process to improve efficiency.

#### Logistics Infrastructure

The government is working together with airlines to improve the capacity and efficiency of the logistics infrastructure, especially after the 2008 earthquake highlighted significant gaps. Recently, a freighter began service between Chengdu and Hong Kong four times a week. This development has helped businesses in and around Chengdu reach external markets.

#### Bonded Logistics Park (BLP)

The BLP has been created in West Park of the Chengdu High-tech Zone to enhance commerce. It will have three functions after obtaining approval from the central government: custom park logistics, bonded warehousing and value-added processing.

Despite these positive trends, several issues could negatively impact Chengdu's development and need to be addressed.

### Specific Issues

While participation in the Urban-Rural Integration

## 西南地区/成都

2008年,四川汶川大地震与世界经济低迷对成都及中国西南地区的经济发展产生重大影响。

面对危机,中国政府迅速采取积极应对,实施了包括4万亿元人民币(约合5,840亿美元)在内的经济刺激计划及一系列旨在促进经济恢复和发展的项目。积极主动的应对策略和该地区经济发展的区位优势,使成都及西南地区的竞争力和吸引外商投资实力不断增强。地震发生后,中国美国商会及其会员及时做出反应,踊跃捐献超过1亿美元(6.85亿元人民币)的款项及物资。

早在政府加大对成都市的扶持力度之前,该市就已经成为外商投资的热点城市。2007年,在全国280个中心城市中,成都被选为前十大投资城市之一,其周边地区也成为外国投资者在中国西部地区的首选投资地。长江两大支流——岷江与沱江,以及与之相连的40多条河流水量达到15,000~18,000万千瓦,灌溉面积超过700平方公里(约合270.27平方英里)。除此之外,该地区还蕴藏着极为丰富的矿产资源。

四川省省会成都,是中国西南地区最重要的经济中心和交通枢纽。作为中国第四大城市的成都拥有1,200多万人口,其居民收入增长迅速,经济飞速发展。1998年至2007年,成都GDP增长了2倍,经济总量从1,000亿元人民币(约合146亿美元)增长至3,200多亿元人民币(约合467亿美元);其中从1998年至2004年年增长率为14%。

中国政府实施“西部大开发”战略以来,成都经济飞速发展,居民平均收入快速增长,消费结构也发生了巨大变化。2007年6月,国务院提出的全国统筹城乡综合改革开创了成都及四川地区经济发展的新纪元。这项旨在废除城乡二元结构体制,解决“三农问题”及真正实现城乡一体化的改革不仅吸引了大量投资,引入了中央政府关于金融、税收与土地方面的优惠政策,还包含与社会和文化相关的补充性政策,以加强西南地区整体经济环境发展能力。

### 重大进展

#### 信息技术产业

以生产计算机软件、气象雷达、通讯、无线电广播、电视及计算机相关设备的电子信息产业占据成都工业产出的很大比重。几家重要的电子产品制造及信息技术研发公司已在成都出口工业加工区建立生产基地,总投资额超过10亿美元(约合68.5亿元人民币)。

#### 行政工作效率

近年来,成都市政府致力于提高外商投资审核工作的效率。例如,成都市首先开启了市长与跨国公司召开季度会议的先例。此举促进了政府与企业之间的交流。此外,成都市政府还通过简化经营许可证的审批程序,提高政府工作效率。

#### 物流基础设施

目前,政府与航空公司协同合作以提高成都市物流基础设施的运力和效率。2008年四川汶川地震凸显了成都市物流运营能力的薄弱。最近成都双流机场开通了每周四架次往返成都与香港的货运业务,这有利于成都及其周边地区与外部市场进行贸易往来。

#### 保税物流园区

成都高新开发区西部园区设立保税物流园区以促进商贸发展。此园区将具有以下三项获中央政府批准的主要运营功能:海关物流、保税仓储及高附加值产品加工。

尽管成都的经济发展呈现出以上积极态势,但仍有一些具体问题限制了该地区的发展。

### 具体问题

虽然“城乡一体化”建设为成都与四川地区带来了前所未有的经济增长机遇,但该地区仍需应对巨大挑战,这

Planning Program brings great opportunities to Chengdu and Sichuan for economic growth, the region still faces significant challenges, especially after the earthquake. Chengdu has been a very competitive location in Western China in terms of land, rental and labor costs; however, several factors could impact the cost of doing business and hamper Chengdu's growth potential.

### Chengdu Price Adjustment Fund

The Management Measures of the Levy and Spending of the Chengdu Price Adjustment Fund came into effect in March 2008. Enterprises paying business taxes are required to contribute one percent of turnover to this fund, although the rate was lowered following the earthquake. The fund is meant to enhance the government's ability to influence the market to deal with abnormal market price fluctuations and inhibit market price increases in times of high inflation.

Unfortunately, the lack of transparency regarding the fund's use may impair the competitiveness of Chengdu in attracting new direct investments. Nearby provinces have no such tax. Moreover, given the current economic downturn and low inflation, the fund and its corresponding tax on businesses are unnecessary.

### The Labor Union Levy

Another tax of concern comes from the Chengdu Labor Union and the Chengdu Local Tax Bureau. "Chengongfa No. 2007-2" requires companies to pay two percent of their total payroll as a Labor Union Levy, regardless of company unionization. While other cities also have labor union funds, their collection methods are more flexible. For example, in Beijing and Shanghai, only enterprises with labor unions are obligated to contribute labor union funds. In addition, while regulations exist regarding the union funds, greater transparency in the utilization of the funds, with a concentration of spending on the local union level to strengthen the development of company unions, is critically important.

### Logistics Capacity Challenge

Logistics remains a significant challenge for Chengdu/Sichuan's development and competitiveness. Accompanying the region's fast-paced economic growth is increased movement of goods in and out of the region, greatly challenging the current logistics capacity. Furthermore, underdeveloped transportation infrastructure, logistics policies and management hinder logistics capacity growth.

The local government is now seeking approval from the central government for new bonded logistics parks to help increase local logistics capacity. These parks are an upgrade from the bonded area, offering enhanced preferential policies and functional advantages and facilitating more convenient access to goods.

### Talent Crunch

Foreign companies frequently establish regional headquarters in Chengdu to oversee operations in central and western China. However, Chengdu continues to

have high demand for senior and middle management talent, particularly those with MNC experience. In addition, a rise in labor costs along China's east coast is driving the relocation of many manufacturing plants to the central and western regions, further increasing demand for management talent in Chengdu.

Two factors are driving the shortage. First, as a top-10 national service outsourcing base, there has been a significant flow of foreign direct investment into Chengdu in the past two years, leading to the establishment of research and development centers, industrial plants, and IT and business process outsourcing-related businesses. This development has greatly increased demand for people with work experience in multinationals, foreign language skills and management skills. Second, with unprecedented pressure on the labor pool, many potential workers have moved to other cities in search of better career opportunities and salaries, significantly decreasing the labor supply. The current talent pool is unable to satisfy the demand for qualified labor, especially in the financial services, logistics, IT and manufacturing sectors.

### The Economic Slowdown and the Property Market

The global economic slowdown in the real estate industry has affected Chengdu's economic growth. The residential market has experienced a conspicuous slowdown, while the retail and commercial market has begun to see smaller demand from MNCs.

Chengdu's residential market, the city's most affected property market, has undergone a striking downturn. While supply remains normal, demand has decreased significantly, particularly since the beginning of 2009.

Chengdu's commercial and retail market is experiencing reduced demand from MNCs. Chengdu's total leasing transacted Grade A office market in Quarter 3 of 2008 was 17,077 square meters (sqm), down 23.5 percent year-on-year. The transacted area of MNCs was 5,344 sqm, down 45 percent year-on-year.

### Recommendations

- Reduce local levies, such as the Price Adjustment Fund Levy, to lower the cost of doing business in Chengdu and increase its attractiveness to foreign investors.
- Increase transparency in utilization of labor union funds. Increase distribution of labor union funds on a local level to foster company union development.
- Adopt talent development initiatives, such as candidate relocation campaigns to attract talent from developed cities, management trainees and successor development programs, and internship programs based on university-company cooperation.
- Accelerate infrastructure construction to enlarge logistics capacity.
- Increase joint efforts by the government and developers to rejuvenate the real estate market and foster sustainable development.

种情况在汶川大地震发生后尤为突出。成都在土地、房租以及劳动力成本方面具有优势,使之在西部地区有极强的竞争力。然而下列因素将对企业在成都的运营成本及成都的经济增长潜力都产生了很大影响。

### 成都价格调节基金

2008年3月,成都市价格调节办公室颁布了《价格调节基金征收使用管理办法》。此管理办法规定从事生产、经营商品或者提供有偿服务的法人和其他组织(缴纳单位)均应缴纳销售收入或营业收入的1%。汶川大地震后,此上交比例略有降低。该基金的征收旨在增强政府调控市场能力,在高通胀时期应对市场价格异常波动,平抑市场价格。

然而,由于周边省份未设此类征收项目,而且成都市在此项基金的使用管理上又缺乏透明度,因此,这样做可能会削弱成都吸引新一轮直接投资的竞争力。此外,在目前全球经济出现衰退及低通胀的情况下,成都市不宜征收此类费用。

### 工会经费及筹备金的征收

由成都市总工会及成都市地方税务局共同制定的另一项税收政策也备受关注。“成工发[2007]2号”文件规定在成都区域内无论企业是否成立工会,都必须缴纳其全部职工工资总额的2%作为工会经费及筹备金。相比之下,其他城市工会经费与筹备金的征收方式却更为灵活。例如,北京与上海市规定只有建立工会的企业才需上缴员工工会经费。此外,尽管在工会经费使用方面存在相应的法律法规,但就如何加大经费使用的透明度,以及如何将地方一级经费集中用于加强企业工会的发展等问题,则显得更为重要。

### 物流运营能力面临挑战

物流业对于成都、四川地区的发展和竞争力的提升至关重要。随着四川地区经济的快速发展,货物运输量也呈现了增长态势,这对于目前该地区物流业的运营能力提出挑战。此外,滞后的交通基础设施、物流政策以及管理方式都极大阻碍其物流运营能力的提高。

最近,四川省政府正在积极向中央政府申请,以期获准建立新保税物流园区来提高当地的物流运营能力。此类物流园区是对原保税区的改进和升级,可提供更多优惠政策并具备功能优势,使货物运输也更加方便快捷。

### 人才危机

外国公司通常选择成都作为地区总部以拓展其在

国中西部的业务。然而,目前成都仍缺少大量中高级管理人才,尤其是具有跨国公司经验的人才。此外,中国东部沿海地区劳动力成本的增长也促使众多制造行业在中西部地区择址建厂,这也加大了成都对管理人才的需求。

下述两个原因导致了成都人才紧缺。第一,2007和2008年,作为国内前十大服务外包生产基地之一,成都不断吸引外商直接投资,许多研发中心、工厂、电子信息产业及相关外包加工企业由此建立。此种发展形势极大促进了成都对于拥有跨国公司工作经验、高级外语能力及管理技能人才的需求。第二,面对全球经济危机下前所未有的就业压力,许多潜在劳动力已选择其他城市以寻求更多的工作机会和劳动报酬。目前的人才储备已经不能满足在诸如金融服务、物流、信息技术以及生产制造等领域对合格人才的需求。

### 经济衰退与房地产市场

全球房地产经济的衰退已经影响了成都经济的发展。住宅市场发展在已明显放缓的时候,零售和商业市场面对跨国公司需求减少的影响才刚刚开始。

成都房地产市场中最受影响的住宅市场已遭受严重打击。自2009年初以来,虽然房源供应正常,但市场需求却大大减少。

跨国公司面向成都商业零售市场的订单正在减少。2008年第三季度,成都甲级写字楼的租赁总面积为17,077平方米,同比降低23.5%;跨国公司写字楼的租赁面积为5,344平方米,同比降低45%。

### 建议

- 减少诸如价格调控基金等地方性费用征收项目,以降低成都市商业经营成本,吸引外国投资者。
- 增加工会经费使用管理的透明度。提高地方工会经费的使用比例,以促进企业工会的发展。
- 制定人才发展计划,例如吸引发达省市人才到成都就业;制定管理培训生计划及后续人才发展计划;推行高校—企业联合培养的大学生实习计划。
- 加速物流基础设施建设,扩大运营能力。
- 加强政府与开发商合作,以振兴房地产市场,促进可持续发展。

## Tianjin

The rapid development of Tianjin has been the result of large infrastructure investment and a replication of some of the successes of the government-backed Pudong development in Shanghai during the 1990s. It has been an attempt to make Tianjin a “locomotive of growth” for northern China.

The success of this strategy needs to be weighed against questions of its sustainability given the medium-term outlook for the current world economic crisis. In particular, it is important to examine how the downturn will affect Tianjin’s export and financial sectors.

Tianjin has also been designated to experiment with policies, including allowing mainland Chinese investors to buy Hong Kong shares directly, dubbed the Hong Kong “through train” program, and RMB convertibility. These “experiments” have moved ahead in fits and starts, highlighting the uncertainties and inconsistencies in the domestic policy environment that could erode the growth and development momentum in the city.

The economy in Tianjin, like those in surrounding areas, has relied heavily on the development of its port infrastructure and outwardly-focused manufacturing industries in recent years. In line with municipal goals, manufacturing in Tianjin has become focused on high-tech industries. Automotive, pharmaceutical,

microprocessor and chemical manufacturing have become important economic drivers, with recent growth in aerospace and alternative energy as well. Furthermore, as incomes have increased, the retail and service sectors have become increasingly important. Large logistics firm investments are visible in air and sea ports, and business and science park developments are increasing. Finally, foreign and local property developers have announced numerous key projects to house the increasing business activity. These developments continue to attract companies to Tianjin, ensuring that it will be an important location as the economy evolves.

### Recent Developments

#### Tianjin City

Continuing State Council support in 2008 led to fiscal spending on infrastructure projects, many of which finished before the Olympic torch relay and the Olympic events in Tianjin. These included the completion of the Beijing-Tianjin high speed rail link, the re-opening of the expanded and refurbished main train station and the completion of a new passenger terminal at the airport. The new train link is expected to bring Tianjin and Beijing closer together by significantly reducing the travel times.

#### AmCham-China, Tianjin Chapter

In 2008, AmCham Tianjin merged with AmCham-China to create the AmCham-China, Tianjin Chapter. This merger indicates US companies’ increasing desire to gain exposure and support in important economic centers throughout China

While AmCham-Tianjin was always an important support for the business community, as an AmCham-China chapter, it can now offer greater services, including an expanded government relations reach that is effective at both the central and local government levels. The AmCham-China, Tianjin Chapter plays a critical role in crafting the Tianjin City section of the *White Paper* and in subsequent advocacy efforts.

Since the establishment of the AmCham-China, Tianjin Chapter, leaders have met with top municipal officials including Tianjin Party Secretary Zhang Gaoli, Mayor Huang Xingguo and Vice Mayor Ren Xuefeng to discuss ways to improve the investment and business environment and promote economic development.

The Tianjin Chapter will continue to carry out local activities that focus on the needs of members in the city. However, the AmCham-China platform gives members a greater voice in government advocacy to promote the interests of member companies, as well as a greater scope of events and services. As China’s provincial governments continue to improve the local investment environment, the scale and scope of US businesses in China should also grow.

## 天津

天津的飞速发展，得益于其对基础设施的大规模投入，以及对上世纪90年代政府支持上海浦东新区发展成功经验的借鉴。这些努力已使天津成为带动中国北方发展的“火车头”。

天津这一成功的发展战略由于目前全球性的经济危机，需要对其中期的发展展望予以重新考量，尤其是对经济衰退如何影响天津出口和金融部门的调研尤为重要。

天津成为国家综合配套改革试验区后，颁布了一些配套政策，其中包括允许大陆投资者直接购买香港股票，即“港股直通车”计划，以及人民币兑换等。这些“试行”政策或急或缓，反映出了国内政策环境的不确定性和不一致性，这将影响城市的发展势头。

和周边地区一样，近年来天津的经济较大地依赖于港口基础设施的建设以及外向型制造产业的发展。按照城市发展的目标，天津的制造业已逐渐向高科技产业集中，汽车制造业、制药业、电脑微处理器制造、化工产业、以及近年来发展的航空航天产业和可替代能源产业等都已经成为带动天津经济发展的重要产业。此外，随着收入

的提高，零售业以及服务业的增长也日趋重要。大型物流企业在空运、海运领域的投资明显增加，贸易与科技园区越来越多。另外，国外与地方的地产开发商公布了许多重大工程项目，为日益增多的经济活动提供场所。这些发展正持续不断地吸引更多的公司到天津投资，并且随着经济的发展，天津必然成为非常重要的一个地区。

### 最新进展

#### 天津城区

2008年，在国务院的持续支持下，国家财政对基础设施建设进行了投入。许多项目在奥运火炬传递、天津承办的奥运项目开始之前就已竣工。其中包括京津高速铁路项目、火车站主站扩建及修缮工程、飞机场新航站楼等。高速铁路大大缩短火车运行时间，拉近了京津两地的距离。

2008年，许多国际性银行及金融机构在天津落户或拓展业务，为那些由国内企业控股、长期处于较封闭状态的行业带来了专业知识和竞争力。同时，制造业与服务业

#### 中国美国商会天津办公室

2008年，天津美国商会正式加入中国美国商会，作为中国美国商会天津办公室。这一合并意味着在中国重要的经济中心，美国企业对获得发展机会和支持的愿望日益增长。

天津美国商会曾是商界重要的资源，成为中国美国商会天津办公室后，能够为会员公司提供更多更优良的服务，其中包括更广泛的政府沟通与交流方面的支持，包括中央和地方政府。中国美国商会天津办公室在编写《白皮书》天津章节的工作中、以及就此而开展的交流与沟通中发挥了重要的作用。

自中国美国商会天津办公室成立以来，商会领导拜会了天津市委书记张高丽，市长黄兴国，副市长任学锋等主要领导，就如何改善当地投资和商业环境以及如何促进经济发展等议题进行了商讨。

中国美国商会天津办公室将继续开展各种活动，以满足当地会员的不同需求，同时中国美国商会这一平台又能推动广大会员公司在与政府部门交往过程中，得以享有更大的发言权来促进自身的利益，参与更多的活动，享受更广泛的服务。随着中国各省政府继续改善投资环境，美国在华企业的经营规模和范围也应日益扩大。

In 2008, a number of international banks and financial institutions opened or expanded their presences in Tianjin, injecting expertise and competition into what has long been a relatively closed sector dominated by domestic firms. Manufacturing and service sector firms also expanded, illustrating the long-term prospects of the city and the growing strength of the service sector.

### **Binhai New Area (BNA)**

The Binhai New Area (BNA), which combines five districts in eastern Tianjin municipality, has numerous developments underway. Within the BNA, development has progressed in the Xianglouwan area, a new business district being planned along the Haihe River, near the port in the Tangu district. Facing this area, additional plans are underway in what will be the Yujiapu business district, slated for completion in approximately five years. Infill continues on the Dongjiang Port expansion, which will create areas for additional warehousing, docking and commercial development along this new peninsula. Finally, plans have begun for the Sino-Singapore Eco-City, a pedestrian and environmentally friendly community.

The Tianjin Economic Technological Development Area (TEDA) government has begun construction of the Modern Services District to create a district of high rises in the heart of the TEDA administrative area and eventually house offices and shopping outlets around several internationally designed skyscrapers.

The BNA also continues to host important events. The Asia Society and the World Economic Forum both chose Tianjin to host key conferences in 2008. AmCham-China was a supporting partner for the former.

### **Key Issues**

#### **Binhai New Area**

Despite great efforts to promote the area, there continues to be confusion regarding specific benefits for companies in the BNA. Some of this centers on financial firms, but extends to a whole host of companies looking at Tianjin as a possible destination for investment. Land reform and experimentation was also supposed to be important to the BNA, but little has been published regarding opportunities in this field since its inception.

As discussed in the 2008 *White Paper*, we urge that a comprehensive set of achievable two, five, 10 and 20-year milestones for the district be published. These milestones will give the local government achievable goals and create broader awareness of the efforts underway and the opportunities that exist.

#### **Business Environment**

We encourage the local government to prepare for the host of consumer-related skills that retail and tourist oriented firms will need as the city develops. With the

manufacturing sector growing and evolving, technical schools will need to continue producing top graduates to fuel the growth of these sectors.

### **Infrastructure**

There were significant achievements in 2008 in creating new infrastructure within Tianjin and linking it to adjoining areas. That said, additional investment can help Tianjin reach its goal of being an easily accessible city. Work continues on the subway network, but additional and supplementary work would be welcomed.

### **Urban Planning**

AmCham-China commends Tianjin on the construction of an urban planning museum, which explains plans for new infrastructure, buildings, and districts. This museum increases the transparency of the government's urban development plans and allows businesses to better understand the benefits of the Tianjin region.

However, concern remains that a large number of mixed-use projects in the urban core will lead to additional traffic congestion, particularly because few of these projects have adequate parking on-site. AmCham-China encourages a review of the development density and timing of major projects in the city center to ensure that additional population is not directed towards already congested areas.

### **Preservation**

We encourage the preservation and promotion of historically significant buildings. The city has a number of former concession areas featuring valuable period architecture, some of which has been marked for preservation. However, there is little published information about the rules for protection and preservation, or education regarding these buildings.

We urge the creation of an open register for these buildings accessible to residents and tourists through which they can learn about the city's architectural heritage.

### **Environment**

Riverside improvement projects and additional green space have been added over the past year emphasizing Tianjin's natural beauty and green corridors along the major canals. However, air pollution from industry and traffic continue to be problematic. Non-motorized vehicle traffic should be encouraged and manufacturing and power generation and other pollution sources should move away from key urban areas.

公司的发展, 凸显了天津的长期发展前景以及服务行业的强劲增长势头。

### **滨海新区**

滨海新区联合了天津东部的五个区域, 目前有大量的项目在进行。新区内的响螺湾中央商务区已经取得较大发展。该区是一个沿海河规划的新经济区, 邻近塘沽区港口。在这个区域对面, 是拥有更多规划的于家堡商务区, 该区计划约在五年内完工。同时, 东疆港口将沿这个新生的半岛建造更多的仓库、船坞以及商业开发区。另外天津市已经开始规划建设(中国)-新(新加坡)天津生态城, 期望其发展成为一个环境友好型的休闲社区。

天津经济技术开发区(TEDA)已开始启动现代社区服务的建设, 期望在其中中心行政区建造一个高楼矗立区, 并在这些国际化的摩天大楼周边建立配套的写字楼和商业中心。

滨海新区还将继续主办重要活动及赛事。“亚洲协会”以及“世界经济论坛”都选择天津作为2008年会议的主办城市。中国美国商会也是前者的主要支持伙伴之一。

### **重要问题**

#### **滨海新区**

在滨海新区建设方面天津市政府做出的努力有目共睹, 但对于新区内的许多公司而言, 一些具体的优惠政策仍尚待明确。部分问题集中在金融领域, 但现已扩展到了许多将天津视为其潜在投资目的地的其他公司。新区的土地制度改革及试行也至关重要, 但自新区建设之初, 关于该领域的投资机会鲜有披露。

正如2008年的《白皮书》所提及的, 我们促请天津市政府能够公布滨海新区切实可行的两年、五年、十年以及二十年的全面规划。这些阶段式的规划将为地方政府设立可实现的目标, 并使人们更清晰地了解目前的努力方向和存在的商机。

#### **商业环境**

随着城市的日益发展壮大, 许多与零售和旅游业相关的企业需要具备为消费者提供服务的能力, 因此我们鼓励当地政府做好相应准备。同时随着制造业的不断发展, 职业技术学校将需要源源不断地输送大量优秀人才以满足企业发展的需要。

### **基础设施**

2008年, 天津市内及其连接周边地区的基础设施建设取得了瞩目的成就。这表明额外的投资能够使天津成为更为快捷抵达的城市。地铁网络建设正在进行当中, 但其他相关的辅助性工作将会受到欢迎。

### **城市规划**

中国美国商会对于天津城市规划博物馆的建设表示赞赏。博物馆对于城市的新增公共基础设施建设、建筑物, 以及地区规划都进行了详细的说明。天津市政府增加了对城市发展计划的透明度, 也使企业更好地了解他们在天津地区可获得的益处。

然而, 我们仍然担心中心市区大量的多功能办公与住宅项目将会使交通更加拥堵, 尤其是仅有少数项目能够提供充足的场内停车设施。中国美国商会建议有关部门对市中心的开发密度, 以及大型项目的施工时间进行重新审核, 以确保不会使本已拥挤不堪的地区更加拥堵。

### **历史遗留建筑的保护**

我们建议对具有历史意义的建筑物进行保护。这里有大量殖民时期遗留的具有历史价值的建筑, 其中一些已经受到保护。但是关于保护和保存这些建筑物的条款, 相关的教育信息却很少见到。

我们建议对这些建筑物实行公开登记制度, 使市民与游客可以参观, 以了解城市的建筑遗产。

### **环境**

过去一年所增加的河沿形象改造工程以及新增的绿化带为天津城区的自然景观增色加分, 并且沿主要运河两侧建立起一道道绿色长廊。然而, 工业和交通方面的空气污染问题仍然存在。我们应该鼓励增加非机动车数量, 并将制造业与发电站以及其他污染源从城市主要区域迁走。

### **建议**

- 连接滨海轻轨与主火车站的环线工程应优先完工。这有助于两个地区的连通, 使沿线的地区获益, 并减轻中山门火车站的交通压力。
- 公布滨海新区的短期与长期发展规划。
- 强调教育体系中服务技能的培养。

## Recommendations

- **Prioritize the completion of the link between the Binhai light rail and the main train station. This will help integrate the two areas and bring benefits to the communities along this line, eliminating a challenging traffic environment at Zhongshanmen Station.**
- Publish short and long-term development milestones for the BNA.
- Emphasize service sector skills throughout the education system.
- Review development density, building parking requirement codes, and timing of major projects.
- Implement policy that preserves buildings of historical significance.
- Create a resource for residents and visitors through which they can access information about the city's architecture.
- Produce and publish a plan to improve the pedestrian and bicycle networks creating paths through the city's greenways ensure the safety and enjoyment of a commute via bike or on foot.
- Publish statistics on the amount of green space within the city and highlight an annual benchmarking on the increasing size of the city's green space.
- Put in place an achievable plan to reduce air pollution from cars, industry and power production in the city's urban core.

- 重新评估城市的发展密度、建筑物周边停车规定，以及重点工程项目的施工时间等。
- 制定和实施保护有历史意义建筑物的相关政策
- 为市民和游客提供支持，使得他们可以了解城市建筑的信息。
- 制定并出台在城市绿色通道中改善行人与自行车交通网的规划，以保证市民骑自行车或步行的安全。
- 公布城市中绿地总面积的统计数字，突出强调每年城市绿地增长面积的基准点。
- 实施有效的规划以减少城市核心地带车辆、工业、与发电站所带来的空气污染。

## 2009 White Paper Priority Recommendations Table

The table below is an index of all priority recommendations in the 2009 AmCham-China *White Paper*. The progress of each issue will be tracked and rated in subsequent *White Papers*.

Industry/Issue/Region	2009 White Paper Priority Recommendation
<b>Agriculture</b>	
<i>US Government</i>	Remove Section 727 in the 2009 US Omnibus Appropriations Act (previously Section 733).
<i>Chinese Government</i>	Reconsider restrictions on foreign investment in agricultural industries introduced in NDRC's November 2007 Foreign Investment Catalogue and eliminate equity caps for foreign investors in such industries.
<b>Beijing</b>	Research and implement incentives to attract the establishment of FIE headquarters in Beijing.
<b>Central China</b>	Help facilitate the development of international-quality services by prioritizing investment for and establishment of international schools and hospitals.
<b>Civil Aviation</b>	
<i>US Government</i>	Continue to support and fund active engagement between the FAA and the Department of Transportation and their counterparts in China.
<i>Chinese Government</i>	Implement the recommendations in the ACP's GARA Phase I Report Catalyzing Growth in China's Regional and General Aviation Sectors.
<b>Competition Law</b>	Ensure that foreign companies and the international law firms representing them have direct access to anti-monopoly regulators (such as anti-monopoly enforcement authorities) and that companies have the right to counsel of their choice (including international counsel) in any proceedings or investigations.
<b>Construction, Engineering and Design</b>	Allow initial establishment at Grade A for FIDEs that meet the qualification requirements.
<b>Corporate Social Responsibility</b>	
<i>US Government</i>	Continue to engage in discussion and cooperation projects with Chinese counterparts to identify challenges and share best practices in operational areas such as environment and product safety.
<i>Chinese Government</i>	Continue to promote CSR equally for all companies, avoiding limiting innovation with inflexible mandates. Take steps to raise awareness of the operational elements of CSR, in particular.
<b>Cosmetics</b>	Streamline existing system of multi-departmental administration, phase out requirement for pre-commercialization approval and strengthen post-commercialization supervision.
<b>Customs</b>	
<i>US Government</i>	Continue to work with Chinese authorities to promote rule of law in the customs and trade regulation area; to ensure collaboration on best practices such as self-assessment, C-TPAT validation and AEO programs; and to increase efficiency and transparency.
<i>Chinese Government</i>	Initiate and improve central programs, such as administrative ruling for classification and valuation, and provide detailed implementation rules for district/local customs authorities to facilitate consistency of implementation and enforcement across different points of entry.
<b>Dietary Supplements</b>	Replace SFDA's product registration process with a notification system like that in the US. Access should be based on a list of approved ingredients.
<b>Direct Sales</b>	Provide market access and increase transparency by (1) simplifying the approval process, (2) duly informing companies regarding the approval progress and (3) speeding approvals according to the 90-day process in the Direct Selling Administration Regulations.
<b>Environmental Protection, Climate Change and Energy Efficiency</b>	
<i>Environmental Protection</i>	Launch US-China industry and government collaboration projects on climate change and environmental protection.
<i>Energy</i>	Create long-term national policies together with local implementing regulations that encourage the development of renewable energy. Provide financial incentives for grid operators to upgrade grid infrastructure and capacity.

For acronym definitions, please see Abbreviations on page 305.

## 2009年白皮书重点关注问题一览表

下表列出了中国美国商会2009年白皮书中主要的建议。每项建议的进展将在今后的白皮书中进行追踪和评述。

专题/行业/地区	建议
<b>农业</b>	
<i>对美国政府</i>	应取消《2009年综合拨款法案》第727款(原第733款)的规定。
<i>对中国政府</i>	对于2007年颁布的《外商投资产业指导目录》中限制外资进入的农业产业,中国国家发改委可否重新考虑,并取消对外国投资人在上述产业中的最高持股比例限制。
<b>北京</b>	研究并实施激励机制,以吸引外商投资企业在北京设立总部。
<b>华中地区</b>	通过加大对国际化学学校和医院的投资建设,以推进国际化水平的服务质量。
<b>民用航空</b>	
<i>对美国政府</i>	继续支持和资助美国联邦航空局和交通部与中国相关部门的成功合作。
<i>对中国政府</i>	酌情考虑美中航空合作项目在第一阶段报告(《推动中国支线航空业和通用航空业的发展》)中提出的建议。
<b>竞争法</b>	确保外国公司和代表外国公司的国际律师事务所能够直接与反垄断监管部门接触(如反垄断执法部门),并在任何诉讼或调查中有权选择法律顾问(包括国际法律顾问)。
<b>建筑、工程和设计</b>	允许外商投资设计企业首次申请即可获得甲级设计资质。
<b>企业社会责任</b>	
<i>对美国政府</i>	继续与中方开展对话和合作项目以充分认识当前挑战,并分享环境和产品安全等领域的最佳实践经验。
<i>对中国政府</i>	继续推动企业社会责任在所有企业中均等地执行,避免因缺少权限的灵活性而阻碍创新的现象发生,特别要采取措施以提升对企业社会责任所包含的各项运营因素的认识。
<b>化妆品</b>	改革现行化妆品行业多部门管理的体制,淡化上市前审批,加强上市后监管。
<b>海关</b>	
<i>对美国政府</i>	继续与中国主管部门合作,推动海关和贸易管理领域的法治,开展经验共享和相关领域的合作(例如自我评估、C-TPAT确认、AEO计划),提高效率和透明度。
<i>对中国政府</i>	启动并改善全国性统一的各种方案,例如归类和估价的行政裁定,并为地方一级海关部门制定实施细则,以确保不同下属海关在实施法律法规和执法中的一致性。
<b>膳食补充剂</b>	参照美国的通报制度,取代国家食品药品监督管理局的产品注册程序。市场准入应当以经批准的膳食补充剂成分清单为基础。
<b>直销业</b>	通过1)简化审批程序、2)适时通知公司有关审批进展情况及3)按照条例中规定的90天期限加快审批进程,来推动市场准入和增加透明度。
<b>环境保护、气候变化和能源效率</b>	
<i>环境保护</i>	在气候变化和环境保护方面开展美中两国政企合作项目。
<i>能源</i>	制定长期的国家政策以及地方实施条例,鼓励可再生能源的发展。为电网运营商升级电网基础设施和能力提供财政激励。
<b>出口管制</b>	
<i>对美国政府</i>	采纳国家科学院在2009年1月的报告中提出的建议,对不合时宜的出口管制法规进行全面的审议和修订。
<i>对中国政府</i>	继续力促中国企业实施内部合规计划,提高其获得受管制的美国商品的能力,确保其遵守中国自身的出口管制法规。
<b>金融服务</b>	
<i>金融机构</i>	考虑取消外债配额,或者至少将所有贸易融资和项目贷款从该配额中去除。提高外资银行在国内货币市场上的参与度。
<i>投资服务</i>	进一步向外商投资开放证券和基金管理行业,允许外资拥有中外合资基金管理公司的控股权,允许国外基金管理公司通过设立外商独资企业的方式进入中国。

<b>Export Controls</b>	
<i>US Government</i>	Carry out a full review and revision of antiquated export control regulations, in line with the recommendations of the January 2009 National Academies report.
<i>Chinese Government</i>	Continue to press Chinese companies to implement internal compliance programs, improving their ability to receive controlled US items and ensure compliance with China's own export control laws and regulations.
<b>Financial Services</b>	
<i>Financial Institutions</i>	Consider eliminate foreign debt quotas, or at a minimum, exempt from the quotas, all trade finance and project lending. Enhance foreign bank participation in domestic currency market.
<i>Investment Services</i>	Further open the securities and fund management industries to foreign investment by allowing controlling stakes in fund management JVs and creating a path to entry for foreign fund management firms as WFOEs.
<b>Food and Product Quality and Safety</b>	
<i>US Government</i>	Continue to support the US FDA's mission in China and provide expanded resources to it.
<i>Chinese Government</i>	Improve the regulatory framework governing food and product safety, and increase enforcement and compliance with regulations.
<b>Government Procurement</b>	Submit an improved, commercially meaningful China WTO GPA accession offer as soon as possible.
<b>Human Resources</b>	Continue clarifying the ambiguities in the Labor Contract Law and its implementation rules, including statutory terms for permitted uses, at both the national and local levels to ensure consistency and ease of compliance.
<b>Information and Communications Technology</b>	Adopt transparent, market-based policies that do not discriminate between domestic and foreign companies, technologies or IP in terms of market access, procurement, standards, or enforcement of competition and IP laws.
<b>Insurance</b>	Allow foreign insurance companies to enjoy national treatment by granting new branch licenses on a concurrent basis.
<b>IPR Protection</b>	Continue the pioneering efforts of the US Embassy and government in recent years, with greater internal coordination and cooperation with industry.
<b>Legal Services</b>	The Chinese and US governments should pursue a dialogue to establish a common understanding for allowing qualified domestic lawyers to practice Chinese law in foreign law firms in China.
<b>Media &amp; Entertainment</b>	Fully implement new policies covering news and financial publishing to ensure separation of regulation from market participation and avoid having regulators and licensees of foreign news organizations participating in the industry.
<b>Medical Equipment, Devices and Healthcare</b>	Improve the renewal process for product registration by creating an exemption of type-testing when there are no substantial changes to the product affecting safety or efficacy during the previous four years and no significant adverse events that could be attributable to the performance of the product.
<b>Pharmaceuticals</b>	Fully implement RDP to protect innovators' IP. Establish an effective patent linkage system that prevents copies of patent protected medicines from receiving government marketing approval.
<b>Pearl River Delta</b>	Maintain openness to trade and investment and resist pressures to enact protectionist measures. Encourage an open and competitive business environment.
<b>Real Estate</b>	Streamline and speed up the approval process for the establishment of real estate FIEs. Eliminate restrictions specifically applicable to foreign investors regarding market entry into the real estate sector, including those first put in place by Circular 171.
<b>Retail</b>	Treat domestic and foreign retailers equally for registered capital requirements assessed on additional outlets.
<b>Science, Technology and Industrial Policy</b>	Ensure sustainable innovation through measures that are open to all individuals and entities, irrespective of nationality or equity composition.
<b>Shanghai/Yangtze River Delta</b>	Continue efforts to integrate the Yangtze River Delta region with a focus on creating a seamless regulatory environment and a common social security policy among provinces in the region.

For acronym definitions, please see Abbreviations on page 305.

<b>食品及产品质量与安全</b>	
<i>对美国政府</i>	继续支持美国食品药品监督管理局在中国所肩负的使命, 并为此提供更广泛的资源。改进和完善食品及产品安全监管体系, 加大执法力度, 提高合规水平。
<i>对中国政府</i>	
<b>政府采购</b>	尽快提交一份改进的、具有商业意义的中华人民共和国加入GPA的出价清单。
<b>人力资源</b>	继续澄清《劳动合同法》及其实施条例中的模糊内容, 包括关于合法劳动用工方式的法律术语, 在全国和地方各级确保执法的一致性和法律的遵守。
<b>信息与通信技术</b>	为鼓励中国的自主创新, 应采取透明、基于市场的政策, 在市场准入、采购、标准或竞争和知识产权法的执法方面, 不区分国内、国外公司、技术或知识产权。
<b>保险</b>	在申请新的分支机构设立许可证过程中, 外国保险公司享受与中国公司同等的国民待遇。
<b>知识产权保护</b>	继续落实美国大使馆及政府近年来的开创性举措, 进一步加强与业界的内部协调协作。
<b>法律服务</b>	中美政府应当开展对话, 达成允许获得执业资格的国内律师在国内办理中国法律事务的共识。
<b>媒体和娱乐业</b>	全面执行涉及新闻和出版业的新政策, 确保监督管理与市场参与的分离, 避免监管机构 and 获批的外国新闻机构同时参与该产业。
<b>医疗设备、器械和卫生保健</b>	当产品没有发生重大改变以致影响其安全性并溯其前四年的功效、而且不存在因产品性能导致的重大不良事件时, 可豁免进行型式测试, 从而改进和加快产品注册的续期程序。
<b>制药业</b>	完全实施监管数据保护, 保护发明人的知识产权。建立有效的专利连结机制, 防止专利药品的仿制品获得政府向合法受保护产品颁发的上市销售许可。
<b>珠江三角洲</b>	保持对贸易和投资的开放, 抵制制定保护主义措施的举措。鼓励建立一个开放性的、充满竞争力的商业环境。
<b>房地产</b>	简化并加快设立外商投资房地产企业的审批流程, 取消尤其是适用于境外投资者进入房地产行业市场准入的各种限制, 包括171号文首先规定的那些限制。
<b>零售业</b>	在检查审批新增店铺申请时, 在最低注册资本方面给予国内外零售企业同等待遇。
<b>科学与技术</b>	通过向所有个人和实体开放、不因国籍或股权构成而异的政策措施, 确保可持续创新。
<b>上海/长江三角洲</b>	继续努力推进长江三角洲地区的一体化, 应着重于在该地区各省份之间创造无缝隙的监管环境和统一的社会保障政策。
<b>中小企业</b>	提高获得征收20%税率的公司资质。
<b>西南地区/成都</b>	减少诸如价格调控基金等地方性费用征收项目, 以降低成都市商业经营成本, 吸引外国投资者。
<b>标准</b>	确保标准制定过程的透明、公开和非歧视性。所有企业均应有权作为投票成员全权参与中国技术委员会的工作。
<b>税收</b>	启动一项长期性研究, 目标在于取消营业税, 同时扩大增值税系统, 涵盖目前营业税所包括的部分或全部征税对象。
<b>天津</b>	连接滨海轻轨与主火车站的环线工程应优先完工。
<b>运输和物流</b>	在实施《舱单管理办法》前给予物流服务供应商宽限期, 以便他们进行相应的准备工作, 包括考虑物流业快速通关的需求。
<b>美国签证政策</b>	评估“签证安全建议”程序以减少当前的延误现象, 将审查资源集中于那些可能对美构成潜在威胁的个别人。

<b>Small and Medium-Sized Enterprises</b>	Raise the threshold for qualifications to the 20 percent tax rate.
<b>Southwest China/Chengdu</b>	Reduce local levies, such as the Price Adjustment Fund Levy, to lower the cost of doing business in Chengdu and increase its attractiveness to foreign investors.
<b>Standards</b>	Make standard setting processes transparent, open and non-discriminatory. Allow all companies to fully participate as voting members within Chinese technical committees.
<b>Tax</b>	Initiate a long-term study focused on repealing the Business Tax and extending the VAT system to cover some or all of the taxable objects now covered by the Business Tax.
<b>Tianjin</b>	Prioritize the completion of the link between the Binhai light rail and the main train station.
<b>Transportation &amp; Logistics</b>	Allow logistics service providers a grace period for the preparatory work before implementing the Management Measures for Advance Manifest, including separate implementation considerations for express clearance needs of industry.
<b>US Visa Policy</b>	Review SAO process to reduce current delays and only focus investigative resources on those who may pose a legitimate threat.

For acronym definitions, please see Abbreviations on page 305.

## Abbreviations 缩写表

3G	Third-Generation	EU	European Union
3PL	Third Party Logistics	EMDT	Executive Management Development Training Program
ACFTU	All-China Federation of Trade Unions	FAA	US Federal Aviation Administration
ACP	US-China Aviation Cooperation Program	FDI	Foreign Direct Investment
AEO	Authorized Economic Operator	FDQ	Foreign Debt Quota
AML	Anti-Monopoly Law	FIA	Foreign Investment Administration
APA	Advanced Pricing Agreement	FIAC	Foreign Information Administration Center of Xinhua News Agency
API	Active Pharmaceutical Ingredients	FICE	Foreign-Invested Construction Enterprise
AQSIQ	General Administration of Quality Supervision, Inspection and Quarantine	FIDE	Foreign-Invested Design Enterprises
BIS	Department of Commerce Bureau of Industry and Security	FIE	Foreign Invested Enterprise
BIT	Bilateral Investment Treaty	FIESE	Foreign-Invested Engineering Service Enterprises
BLP	Bonded Logistics Park	FIVC	Foreign-Invested Venture Capital / Foreign Invested Venture Capital
BNA	Binhai New Area	Framework	US-China Ten-Year Energy and Environment Cooperation Framework
BT	Business Tax	FTA	Free Trade Agreement
CAAC	General Administration of Civil Aviation of China	GA	General Aviation
CMB	Coal-Bed Methane	GAC	General Administration of Customs of China
CBRC	China Banking Regulatory Commission	GAPP	General Administration of Press and Publications
CCC	China Compulsory Certificate	GDP	Gross Domestic Product
CFETS	China Foreign Exchange Trading System	GHTF	Global Harmonization Task Force
CFLP	China Federation of Logistics and Purchase	GP	General Partners
CIRC	China Insurance Regulatory Commission	GPA	Agreement on Government Procurement
CMC	Chemistry, Manufacturing and Control	GW	Gigawatts
CNCA	China National Administration for Certification and Accreditation	HHS	US Department of Health and Human Services
CNTA	China National Tourism Administration	HR	Human Resources
CODEX	Codex Alimentarius	Hukou	Household Registration
C-TPAT	Customs-Trade Program Against Terrorism	IAIS	International Association of Insurance Supervisors
CPC	Communist Party of China	IAMC	Insurance Asset Management Company
CPSC	Consumer Product Safety Commission	ICT	Information and Communications Technology
CSA	Cost Sharing Arrangement	IEC	International Electrotechnical Commission
CSR	Corporate Social Responsibility	IIT	Individual Income Tax
CSRC	China Securities Regulatory Commission	IP	Intellectual Property
CTA	Clinical Trial Application	IPO	Initial Public Offering
CTO	China Trademark Office	IPR	Intellectual Property Rights
CVP	Corporate Visa Program	ISO	International Organization for Standardization
DHS	Department of Homeland Security	ISP	Internet Service Provider
DRR	Drug Registration Regulation	IT	Information Technology
DS	Dietary Supplements	ITS	International Telecommunications Standardization Sector
DSHEA	Dietary Supplement Health and Education Act	ITU	International Telecommunication Standardization Sector
ECA	Export Credit Agency	IVD	In-Vitro Devices
ECWG	Export Compliance Working Group		
EDS	Express Delivery Service		
EIT	Enterprise Income Tax		
EPB	Environmental Protection Bureau		
EPC	Engineering Procurement and Construction		
ESS	Express Industry Service Standards		



JCCT	US-China Joint Commission on Commerce and Trade
JV	Joint Venture
LCL	Labor Contract Law
LEAD	Large Enterprise Administration Department
M&A	Mergers and Acquisitions
MCA	Ministry of Civil Affairs
MEP	Ministry of Environmental Protection
MII	Ministry of Information Industry
MIIT	Ministry of Industry and Information Technology
MNC	Multinational Corporation/Company
MOA	Ministry of Agriculture
MOC	Ministry of Construction
MOCT	Ministry of Communication and Transport
MOF	Ministry of Finance
MOFCOM	Ministry of Commerce
MOH	Ministry of Health
MOHURD	Ministry of Housing and Urban-Rural Development
MOST	Ministry of Science and Technology
MOU	Memorandum of Understanding
MRL	Maximum Residue Levels
NBFI	Non-Bank Financial Institution
NCA	National Copyright Administration
NDRC	National Development and Reform Commission
NEA	National Energy Administration
NHT	New and High-Tech
NIPS	National Intellectual Property Strategy
NPC	National People's Congress
O	Observer
OECD	Organization for the Economic Cooperation and Development
OIE	World Organization for Animal Health
P2P	Peer-to-Peer
P	Participatory
PBoC	People's Bank of China
PE	Private Equity
PEL	Partnership Enterprise Law
PRC	People's Republic of China
PRD	Pearl River Delta
PV	Photovoltaic
QDII	Qualified Domestic Institutional Investors
QFII	Qualified Foreign Institutional Investors
QMS	Quality Management Systems
R&D	Research and Development
RA	Regional Aviation
RDL	Reimbursement Drug List
RDP	Regulatory Data Protection
RFG	Remanufactured Finished Goods
RMB	Renminbi

SAC	Standards Administration of China
SAFE	State Administration of Foreign Exchange
SAIC	State Administration of Industry and Commerce
SAO	Security Advisory Opinion
SARFT	State Administration of Radio, Film, and Television
SASAC	State-Owned Assets Supervision and Administration Commission
SAT	State Administration of Taxation
SCIO	State Council Information Office
SDO	Organizations as International Standards Developers
SED	Strategic Economic Dialogue
SFDA	State Food and Drug Administration (China)
SHIBOR	Shanghai Interbank Offered Rate
SIPO	State Intellectual Property Organization
SLC	Small Lending Companies
SME	Small and Medium-Sized Enterprise
SOE	State-Owned Enterprise
SPAC	Sino Publications Audit Center
SPB	State Postal Bureau
SZHFTU	Shenzhen Federation of Trade Unions
TBT	Technical Barriers to Trade
TD-SCMA	Time Division Synchronous Code Division Multiple Access
TEDA	Tianjin Economic Technological Development Area
TP	Transfer Pricing
TPA	Third Party Administration
TRIPS	Trade-Related aspects of Intellectual Property Rights
TRQ	Tariff Rate Quota
UGC	User Generated Content
UN	United Nations
US	United States
US FDA	US Food and Drug Administration
USDA	US Department of Agriculture
USPTO	US Patent and Trademark Office
USTDA	US Trade and Development Agency
VAS	Value-Added Services
VAT	Value-Added Tax
VC	Venture Capital
VEU	Validated End-User Program
VPN	Virtual Private Network
WCO	World Customs Organization
WCT	WIPO Copyright Treaty
WEDZ	Wuhan Economic and Technological Development Zone
WEHDZ	Wuhan East Lake High-Tech Development Zone
WFOE	Wholly Foreign-Owned Enterprises
WIPO	World Intellectual Property Organization

WLAN	Wireless Local Area Network
WTO	World Trade Organization
Y-O-Y	Year-On-Year