



2008
WHITE
PAPER

American Business in China
美国企业在中国



中国美国商会
The American Chamber of Commerce
People's Republic of China



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The American Chamber of Commerce in the People's Republic of China, the American Chamber of Commerce in Shanghai and the American Chamber of Commerce in South China are committed to working with the Chinese and U.S. government authorities to help foster vibrant and constructive commercial relations between our two countries. To that end, our three chambers, collectively referred to in this paper as "AmCham," have compiled the observations, concerns and recommendations of our collective membership of more than 7,000 companies into this tenth White Paper.

We hope this report will serve as a platform for continued dialogue and cooperation between U.S. businesses and both Chinese and U.S. government authorities, and as a useful resource for anyone interested in better understanding China's business environment.

中国美国商会，上海美国商会和华南美国商会(以下简称为中美商会)致力于与中美两国政府合作，为发展生机勃勃的且具有建设性的中美商务关系助一臂之力。为此，我们共同编撰了这本白皮书。里面陈述了三家商会约七千多家会员在华经营发展的感受、及其所关心的问题和相关建议。这也是中美商会的第十本白皮书。

我们希望本书能促进美国企业与中、美国政府部门之间的继续对话与合作，同时为希望了解中国商务环境的人士提供参考。

Chairmen's Message

The American Chamber of Commerce in the People's Republic of China, the American Chamber of Commerce in Shanghai and the American Chamber of Commerce in South China are pleased to present the 2008 White Paper on American Business in China. This year's edition—AmCham's tenth—continues our annual tradition of presenting the views and insights of our collective membership on trade and commercial issues affecting the U.S. business community in China, as well as our views on the PRC's overall business environment and recommendations for enhancements.

This 2008 White Paper reflects the broadest-ever collaborative effort of our members, thanks to the cooperative efforts of our three organizations. Synthesizing a diverse range of industries and issues, this publication offers a cohesive and unified snapshot of the state of the American business community in China. Our goal is to promote cooperation and offer constructive solutions to the problems that remain in the overall excellent U.S.-China economic relationship.

This year also marks the 30th anniversary of China's Third Plenary Session of the 11th CPC Central Committee, which launched the start of a new era of reform, opening and unprecedented economic development. Of course, 2008 also brings the Summer Olympic Games to Beijing. China is home to many of our members and we warmly welcome athletes from around the globe who will arrive in the country to participate in this year's Games. For these reasons, this year's White Paper holds particular significance.

We at AmCham are pleased to offer this opportunity to address the important issues that are central to our economic relationship with China. Trade between the U.S. and China is growing in importance and complexity. AmCham recognizes that disputes will arise from time to time and encourages both governments to take all possible steps to resolve bilateral issues amicably. We note that instances of cooperation between China and the U.S. far exceed instances of dispute. Defending and preserving the openness of the trade relationship should remain a core commitment of both the U.S. and Chinese governments.

In this year's White Paper, there are three broad issues that we have made a particular effort to highlight. They reflect the current mood of the U.S. business community in China as the country moves past its WTO-entry phase and toward a new and exciting period of continued global economic integration. These issues include (1) the importance of continuing to open markets to trade and truly fair competition for foreign investment; (2) the significance of the rule of law and transparency in regulations and standards; and (3) specific trends we see taking shape here that may hamper China's potential as an affluent and far-reaching market economy. In the spirit of cooperation, this document outlines a number of recommendations about how to address these issues.

主席致辞

中国美国商会、上海美国商会和华南美国商会非常荣幸地推出《2008年度美国在华企业白皮书》，以秉承传统，继续陈述中国经济环境不断改善、影响美国在华企业经贸发展的因素以及潜在商业机会。中美商会已是第十年发布该年度报告。

基于三方的共同努力，2008年度白皮书凝聚了我们会员之间迄今为止最广泛的合作结晶。报告综述了不同行业的问题，浓缩了美国在华企业的发展状况。我们的目的是推动合作，并就发展良好的美中经济关系中依然存在的问题，提出建设性的建议。

2008年白皮书具有特别的意义。今年是中国改革开放三十周年，中国共产党十一届三中全会的胜利召开，标志性的开创了中国的改革、开放和空前的经济发展的新纪元。同时，2008年还将在北京举行夏季奥运会，我们热情欢迎世界各地的运动员来参加今年的奥运会，因为我们许多会员已经把中国作为自己的家。

对中美商会而言，我们很高兴在报告中阐述涉及美中两国经济发展关系的核心问题。美中贸易日趋重要，同时也日趋复杂。中美商会认识到，出现争议是难免的，但美中两国合作远远超过争端，因此鼓励双方政府采取一切可能，友好地解决双边问题。维护和保护开放的经贸关系应该继续成为美国和中国政府的核心承诺。

在今年的白皮书中，我们强调了三方面内容。这些内容反映了中国在从后WTO时代迈向令人振奋的全球经济一体化新时期的过渡阶段，美国在华企业的发展状况。包括：(1)继续开放贸易市场并给予外资真正公平竞争机会的重要性；(2)法治及制订法规和标准的透明度的重要性；及(3)业已存在或潜在的某些倾向，这些倾向可能会影响中国成为富裕的市场经济国家的发展进程。本着合作的精神，该报告就上述问题提呈了相关的建议。

我们的主张不仅符合中国的发展规划和愿望，同时对中国保持长期竞争优势，发展创新经济而言也至关重要。贸易保护主义倾向必须受到抵制，对外开放应予以加强。

What we urge is not only consistent with China's development plans and aspirations, but also vital for China's long-term success as a competitive, innovative economy. Protectionist tendencies must be resisted and openness reinforced.

AmCham's emphasis on open markets applies not only to China. With slowing growth in the U.S., the focus needs to be on enhancing America's overall competitiveness, rather than seeking defensive protectionist solutions. The future of the U.S. economy is linked to the competitiveness of American companies globally. The U.S. Executive Branch and Congress should ensure that American companies of all sizes have the support and resources necessary to compete effectively in China.

In short, we are very pleased to be both participants in and witnesses to the evolution of China's economic and legal systems. We are honored that over the years the leadership of both the Chinese and U.S. governments have been receptive to the messages and analyses offered through our many interactions, and particularly to our annual White Papers. On behalf of our more than 7,000 cumulative members in China, we are confident that the 2008 White Paper will be an important policy tool for U.S.-China trade and commercial relations, as past editions have been.

We thank our many members as well as their companies and organizations who contributed their resources, time and insights to the development and authorship of the 2008 White Paper. The publication of the 2008 White Paper, in itself, is a defining effort, and represents the spirit of cooperation and values of AmCham.



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中美商会强调市场开放，并不只针对中国。由于美国经济增长趋缓，美国应将重点转向提升美国的总体竞争力，而不是寻求防御性的贸易主义保护。美国经济的未来是与美国企业在全球的竞争力紧密相联。美国政府和国会应当确保所有美国公司都能获得在华开展有效竞争所必需的支持和资源。

总而言之，我们非常欣慰在中国经济和法律体系的变化发展中，我们既是亲身参与者，又是亲历的见证者。多年来，中国和美国政府的领导层都与我们保持了各种形式的交流，聆听和分享了我们年度白皮书中的建议和意见，我们为此感到十分荣幸。作为7,000多名商会会员的代表，我们相信，2008年白皮书将会像以前一样，成为推动美中经贸关系的重要政策工具。

感谢我们众多的会员及其公司和机构，他们为2008年白皮书的编著贡献了资源、时间和深刻的见解。2008年白皮书的出版本身就是一个最好的诠释，它代表了中美商会的合作精神和价值观。



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Part One

The Business Climate for American Firms in China
美国企业在华的商务环境

The U.S.-China Commercial Relationship

The State of Play in 2008...

Marking the 30th anniversary of normalized U.S.-China trading relations, 2008 is a milestone year for the two countries' strong and growing commercial relationship. The relationship stands on solid footing, with trade growing steadily to an all-time high of more than US\$350 billion and an unprecedented level of dialogue between the U.S. and Chinese governments. Yet a number of issues threaten to hamper the relationship. In the U.S., the persistent, large and growing bilateral trade deficit is fanning protectionism against the backdrop of an economic slowdown and a presidential election. In China, the urgent need to improve sustainability and economic efficiency, the view that too much was conceded to foreign interests in WTO accession negotiations and an uncomfortably high inflation rate are leading to similar policy strains. The U.S.-China commercial relationship now requires a post-WTO roadmap to navigate emerging aspects of long-standing issues, as well as to address new challenges.

In this year's White Paper, AmCham argues the case for greater market access, transparency and national treatment; the need for better intellectual property rights (IPR) protection and consistency and predictability of the legal framework to maintain the positive business climate; and the need to complete China's transition to a market economy. If China is to reach these goals, its government will have to deepen its commitments to WTO principles and to further market opening and integration into the global economy.

For the U.S., AmCham seeks forward-looking and active support from the U.S. executive and legislative branches in developing new policy foundations that address emerging needs of the trade relationship. With slowing growth in the U.S., the focus needs to be on enhancing America's overall competitiveness rather than seeking defensive protectionist solutions. The U.S. Government's priorities for China should include more resources supporting U.S. company efforts to capture Chinese market opportunities; more resources to meet the projected increase in Chinese demand for business and tourist visas; and the ongoing review of export controls and license requirements to ensure they reflect market realities and facilitate commercial trade.

AmCham's view is that defending and preserving the openness of the trade relationship should be a core commitment of both the U.S. and Chinese governments. To advance this goal, AmCham believes that policymakers should strive to strike the right balance between addressing the very real short-term concerns of the growing bilateral trade relationship, while at the same time recognizing that the long-term economic fate of both countries is inextricably linked through the global economy.

U.S. Company Experience in China

For American businesses in China, 2007 was another good year. The "2008 Business Climate Survey" revealed that U.S. companies continue to be bullish on China as an investment destination, with many planning to expand throughout the country. But despite the positive business outlook and improved operating margins, competitive forces and rising costs are increasingly affecting U.S. companies. While China's continued growth is playing an important role in investment decisions and expansion throughout the country, the rapid expansion of the domestic economy has also created a fiercely competitive business environment that is driving significant cost increases.

The vast majority of American firms are very optimistic about their business performance in China, with 89 percent (Figure 1) expressing their five-year outlook as "optimistic" or "cautiously optimistic." Accessing the China market continues to be the primary goal and strategy for U.S. companies operating in China (Figure 2, page 14). With most companies citing increased business activities, many U.S. companies are aggressively pioneering new areas of China and expanding capacity. More than half of respondents have already established a presence in a second- or third-tier city, primarily to increase market reach and establish manufacturing in lower-cost locations (Figures 3, 4, page 14). This phenomenon is likely to grow in the near future as competition and cost pressures along China's coastal regions drive companies inland and away from established centers.

Although AmCham's survey shows continuing optimism, the outlook of U.S. business in China is tempered by operating challenges, especially shortages of qualified staff and continuing regulatory challenges, such as difficulty achieving consistency of administration and enforcement. In 2007,

中美经贸关系

2008年的发展状况…

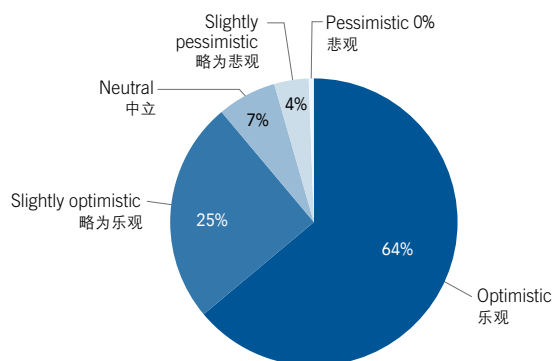
正值美中贸易关系正常化30周年之际的2008年，将会成为两国经贸关系强劲发展的重要一年。中美经贸关系有着牢固的基础，贸易额稳步增长达到3500亿美元，创造了空前纪录，美中两国政府之间的对话密切而深入。然而，可能影响这一关系持续发展的问题依然存在。在美国，持续、巨大且不断增长的双边贸易赤字在美国经济放缓以及总统大选的背景下，助长了美国国内贸易保护主义。在中国，提高经济可持续发展能力和效率的迫切要求，有关中国在加入世界贸易组织谈判中对国外利益做了太多让步的言论，令人感到不安的高通胀率，这些因素都在促使类似的紧缩性经济政策的出台。美中经贸关系现在需要一个后WTO路线图，以使两国能够面对老问题中出现的新情况，同时应对新的挑战。

今年的白皮书，中美商会持续关注市场准入、透明度和国民待遇的问题；继续强调中国需要对知识产权予以更好的保护，需要一致性和可预见性的法律框架对积极的商务环境的保护；同时需要中国全面向市场经济的过渡。要实现上述目标，中国政府就必须恪守WTO原则，进一步推动市场开放和融入全球经济一体化进程。

对于美国，中美商会着眼于得到美国行政与立法部门前瞻性的积极支持，以发展新的政策基础来应对

How would you describe your five-year business outlook in China? 企业对未来五年发展的展望

Percent, 100% = 618 Companies 百分比, 100% = 618家公司



Source: 2008 AmCham Business Climate Survey
资料来源: 2008年中美商会商务环境调查

1

双边贸易关系中出现的新需求。随着美国经济增长的放缓，政府应把重点放在提高美国的整体竞争力方面，而不是寻求防御性的贸易主义保护。美国政府在中国问题上首要的考量重点应是投入更多的资源支持美国公司取得更多的中国市场机会；投入更多的资源以应对中国对于商务和旅游签证需求的预期增长；并持续审议出口管制与许可证要求的政策，以确保其能够反映市场的现状，为商业往来提供便利。

中美商会认为，保持并保护经贸关系的开放应该是美中两国政府共同的核心承诺。为了推动这一目标，中美商会相信政策制定者应该力求一种正确的平衡，在面临不断发展的双边贸易关系中的一些非常现实的短期利益问题时，应该清楚地认识到两国经济的长期命运已经由于全球经济的发展无可避免地联结在一起。

美国公司在中国

对于在美国的企业而言，2007年又是一个好的年份。《2008商务环境调查》表明美国公司持续看好中国作为其投资目的国，许多扩展计划正在全国范围内进行。但尽管商业前景良好和营运利润率有所提高，不断加剧的竞争和日益上升的成本还是对美国公司产生了越来越大的影响。尽管中国经济的持续增长是投资决策和业务扩展的关键因素，但是中国国内经济的快速扩张业已催生出个竞争激烈的商业环境，使得成本明显上升。

大部分美国公司对其在中国的经营业绩表现非常乐观，89%的公司（图1）表示它们对五年的发展前景“乐观”或者“谨慎乐观”。进入中国市场仍然是在华经营的主要美国公司的主要目标与战略（图2转见14页）。大多数公司在华的商务活动有所增加，许多美国公司正在积极开发新的市场和扩大产能。50%以上的参与调查的会员公司已经参与了二、三线城市的发展，主要是延伸市场并建立低成本的制造业基地（图3，4转见14页）。这种现象有可能在近期增加，因为中国沿海地区的竞争与成本压力正驱使这些公司向内陆发展，转移出已建立的经济中心。

虽然中美商会的调查反映的情况依旧乐观，但是美

respondents ranked the top five business challenges as: human resources constraints, inconsistent regulatory interpretation, unclear regulations, lack of transparency and bureaucracy (Figures 5,6). It is noteworthy that the major perennial operational challenges have scarcely changed in the last three years. Indeed, they are persistent business challenges dating back to the 1999 AmCham business survey.

Member companies have reported that human resource challenges continue to worsen as companies expand and the need for management talent and professional skills grows. In parallel to China's impressive economic development and increasing foreign investment, the demand for Chinese managers of international caliber has also increased significantly. In 2007, difficulty attracting, developing and retaining managers and technical staff, along with increasing salary and wage expenses, remained top operating challenges for U.S. companies (Figure 7, page 16). Demand for skilled, qualified staff still outstrips supply and this leading operational constraint shows no sign of easing in the near term.

While companies continue to see China as a strategically important manufacturing base due to its domestic market potential, more than two-thirds of companies agreed that China was losing some of its competitive advantage in global markets due to rising costs (Figure 8, page 17). In 2007, the factors with the biggest financial impact were: price pressures from competition and major customers; salaries and wages; changes in commodity and raw material prices; distribution costs; tax expenses; and real estate cost inflation (Figure 9, page 17). For manufacturers, the seemingly endless supply of low-cost unskilled labor may be approaching its limits. The competitive labor market poses difficulties for export-oriented manufacturers, especially in low-margin sectors such as toys, garments and shoes.

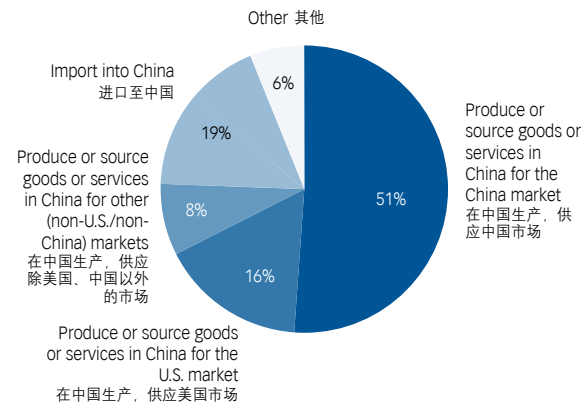
Although companies are profiting from China's market growth and improved business environment, China's regulatory regime continues to pose challenges. Lack of consistent implementation and inconsistent enforcement of policy remain major constraints on China's economic and regulatory development. This year's survey found that full transparency in the development, enactment and implementation of rules, standards and regulations remains a key concern. For companies in China less than two years, the issues most closely associated with the initial learning curve, such as unclear regulations, obtaining licenses and bureaucracy, rank as the highest challenges.

For business law, 2007 was an important year.

#1 Goal / Strategy in China

企业在华战略目标

Percent, 100% = 716 Companies 百分比, 100% = 716 家公司



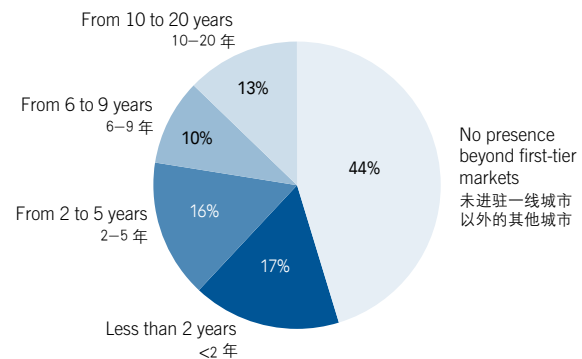
Source: 2008 AmCham Business Climate Survey
资料来源: 2008 年中美商会商务环境调查

2

How long has your company had a physical presence in China's 2nd/3rd-tier cities?

企业进驻中国二、三线城市的时间

Percent, 100% = 614 Companies 百分比, 100% = 614 家公司

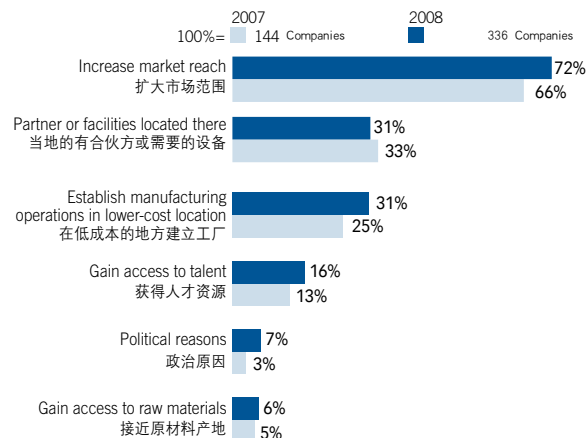


Source: 2008 AmCham Business Climate Survey
资料来源: 2008 年中美商会商务环境调查

3

Reasons for Expanding into 2nd/3rd-tier Markets (2007-2008)

企业向二、三线城市扩展的原因



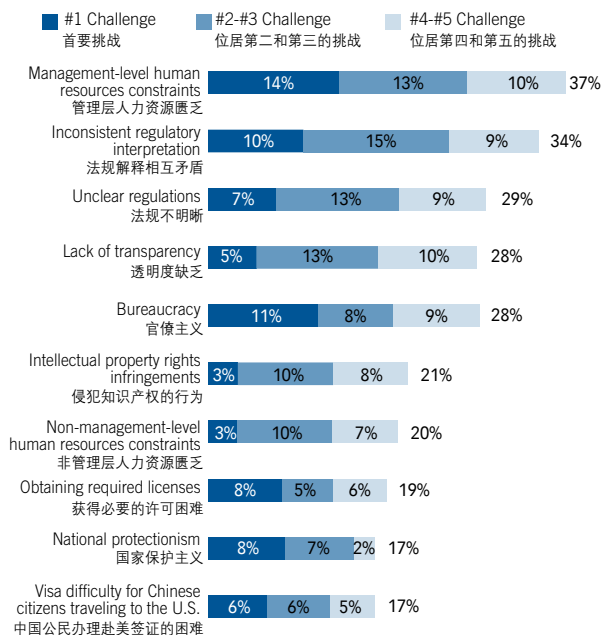
Source: 2007-08 AmCham Business Climate Surveys
资料来源: 2007-08 年中美商会商务环境调查

4

国公司在中国的发展也正面临着运营方面的挑战，尤其是合格人才资源的匮乏，同时如行政与执法难以协调一致等监管问题也是挑战之一。2007年，参

Top business challenges in China 企业在华运营的主要挑战的次序排列

Percent, 100%=324 Companies
百分比, 100%=324 家公司



Source: 2008 AmCham Business Climate Survey
资料来源: 2008 年中美商会商务环境调查

5

Top Business Challenges in China (2007-2008) 2007 年和 2008 年企业运营的主要挑战



Source: 2007-08 AmCham Business Climate Surveys
资料来源: 2007-08 年中美商会商务环境调查

6

与调查的会员列出的前五项商业挑战依此为：人力资源方面的困难、不一致的监管解释、法规的不明晰、缺乏透明度、和官僚主义（图5、6）。值得注意的是过去一直存在的几大运营上的挑战在过去三年几乎没有发生改变。从1999年中美商会开展商务调查至今，它们就一直一直是会员商务运营方面的挑战。

会员公司反映，随着公司的扩展，对管理和专业技能方面的人才需求不断增加，加大了公司在人力资源上的挑战。随着中国经济令人瞩目地发展以及外国投资的增加，对具有国际化能力的本地管理人员的需求也有了显著增加。2007年，难以吸引、培养和留住管理人员及技术人员，还有不断增加的工资，依然是美国公司所面临的最大的运营方面的挑战（图7转见16页）。对于有技能的合格人员的需求仍然大于供给，而且这一首要的运营挑战近期不会出现缓解。

由于中国国内市场的潜力，参与调查的会员企业继续把中国视作具有战略意义的重要制造业基地。但同时，超过三分之二以上的参与调查的会员企业认为由于成本的上升，中国正在失去其全球市场的竞争优势（图8转见17页）。2007年，对企业利润率影响最大的因素包括：来自竞争对手和消费者的价格压力、薪水和工资、商品及原料价格的变化、分销成本、税费，以及房地产成本的飞涨（图9转见17页）。对于制造商而言，以前似乎可以无限量供应的低成本非熟练劳动力资源可能正在接近极限。劳动力市场的激烈竞争给出口导向型的制造商带来了困难，特别是在低利润率的领域，如玩具、服装和鞋类。

尽管这些公司会因中国市场的不断增长和商业环境的日益改善而获益，但中国的监管制度仍然构成了挑战。政策法规在行政与执行上缺乏一致性始终是限制中国经济和监管制度发展的主要原因。今年的调查发现，在法律法规及标准的发展、制定和实施过程中的透明度的问题是这些公司所主要关注的。尤其对来华发展不到两年的公司，与其业务开展最紧密相关的问题，如法律规定的不明确、许可审批和官僚主义等，均被列为最大的挑战。

2007年是商业立法发展重要的一年。《反垄断法》、《劳动合同法》、《企业所得税法》、新的《外商投资产业指导目录》和新的《物权法》相继颁布。这些法律对于诸多部门具有重大意义。中美商会赞赏中国政府主动增加法律制定过程中的透明度。虽然中美商



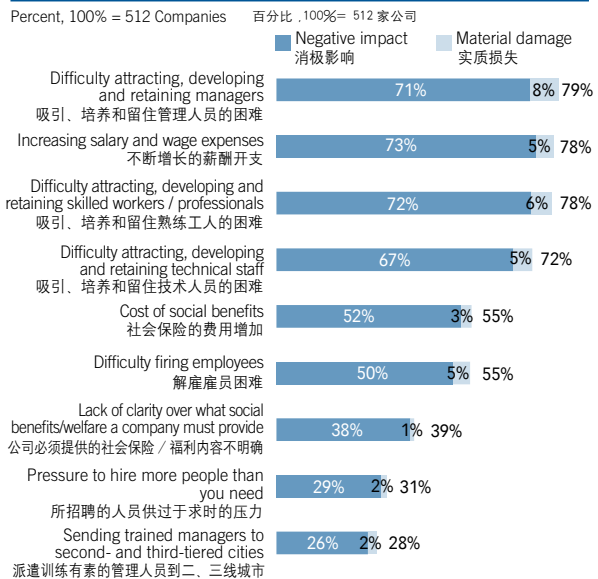
Developments included the promulgation of the Antimonopoly Law, the Labor Contract Law, the Enterprise Income Tax Law, the *Revised Catalogue Guiding Foreign Investment in Industry* and the new Property Law. These carried significant implications for a number of sectors. AmCham commends the Chinese Government for its initiative in building increased transparency into the development of a number of laws. Even though AmCham's views may not have been fully reflected in the final laws, we have seen positive results and value the opportunity to offer opinions during the drafting process. In particular, AmCham applauds the Labor Contract Law's public drafting process and the opportunity given to AmCham and the general public to participate in the discussion by commenting on two consecutive drafts.

IPR continues to be a top concern among members and remains a long-term challenge across many industries (Figure 10). Respondents noted that IPR is a major factor in determining the type of business activity companies will undertake in China, particularly affecting decisions concerning R&D activity and IP transfers (Figures 11, 12, page 17, 19). AmCham members feel that little progress has been made in reducing counterfeits from China, with the majority of respondents saying they thought the volume had not changed (Figure 13, page 19). On a positive note, slightly more than half of the respondents believed China's enforcement of IPR protection had improved in the last year, with the rest feeling it had remained the same (Figure 14, page 21). Underlining this optimism is a growing number of domestic patent applications and increasing IPR litigation, together with new laws in 2008 such as the Patent Law and the Trademark Law.

China's drive to promote "indigenous innovation" is underpinning government policies in standards, government procurement and other areas that threaten to exclude U.S. business from the Chinese market. The AmCham survey found that the drive for domestic innovation has affected U.S. companies somewhat negatively, in particular policies regarding the import of technical and industrial equipment, as well as M&A policies protecting key enterprises, technology and brands (Figure 15, page 23).

In sum, AmCham corporate members express strong confidence in China as a place to do business. In light of China's phenomenal economic growth and market reform process, together with the dynamic and challenging environment, companies must continue improving competitiveness and devote more resources to innovation as they execute their strategies and plans.

Impact of Human Resources constraints on China operations
人力资源匮乏的影响



Source: 2008 AmCham Business Climate Survey
 资料来源: 2008 年中美商会商务环境调查

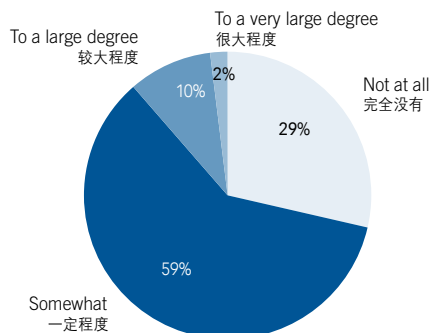
Economic and Political Overview

In 2007, China's policymakers continued to shift the focus of Chinese development and growth objectives to emphasize quality—"comprehensive, balanced and sustainable" growth—and greater investment in innovation and energy-efficient development. The need for this important "rebalancing" reflects the increasingly urgent need to address the domestic impact of rapid growth over the past 30 years and mounting concerns about environmental damage, income distribution, an aging population, poor capital allocation and inefficient use of scarce natural resources.

At the 17th Party Congress, China's leaders deepened their commitment to sustainable development by enacting policies and a landmark financial stimulus package that included funding for education and healthcare facilities. These measures, building on President Hu's "harmonious society" and scientific development platforms, aim to shape China's development and they provide opportunities for businesses with expertise and experience in areas that address China's development agenda. These include financial services, business process outsourcing and logistics, environmental technology, healthcare, education and technical training, and rural

**Do you feel that China is losing competitive advantages due to rising costs?
成本的增长是否削弱了中国的市场竞争优势**

Percent, 100% = 663 Companies 百分比, 100% = 663 家公司

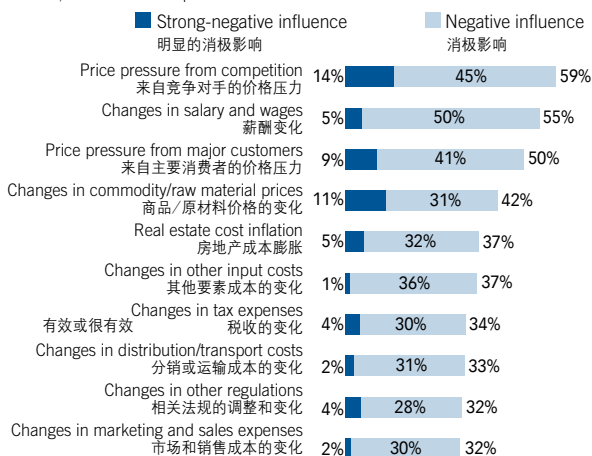


Source: 2008 AmCham Business Climate Survey
资料来源: 2008 年中美商会商务环境调查

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**In 2007, how did the following costs/factors have a negative influence on your China margins?
2007年影响企业利润率的因素**

Percent, 100% = 642 Companies 百分比, 100% = 642 家公司

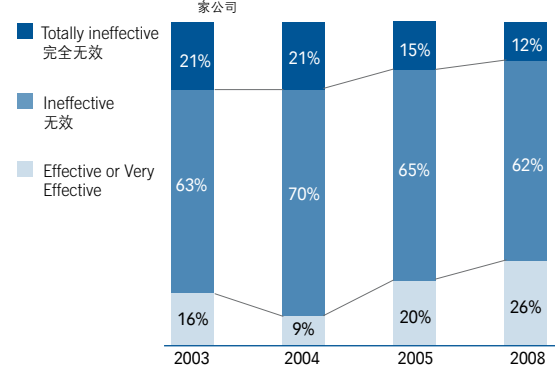


Source: 2008 AmCham Business Climate Survey
资料来源: 2008 年中美商会商务环境调查

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**How would you rate China's enforcement of intellectual property rights (IPR)?
企业对中国在知识产权保护执行力方面的评估**

100% = 219 Companies 家公司

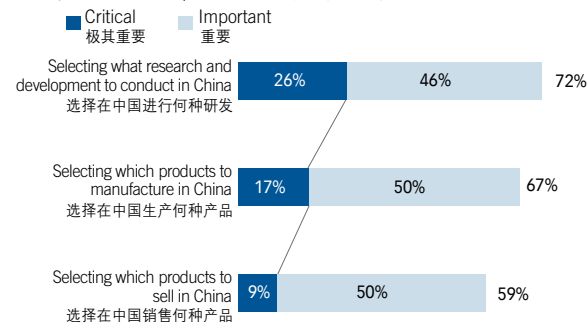


Source: 2003-05 & 2008 AmCham Business Climate Surveys
资料来源: 2003-05 与 2008 年中美商会商务环境调查

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**How important of a factor is IPR when....
在上述情况下, 知识产权保护的重要程度**

Percent, 100% = 362 Companies 百分比, 100% = 362 家公司



Source: 2008 AmCham Business Climate Survey
资料来源: 2008 年中美商会商务环境调查

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会的建议在最终的法律中未能得以全面体现,但我们看到了正面的结果,同时也非常珍惜在法律起草的过程中提供意见的机会。尤其是,商会高度赞赏劳动合同法的公开起草过程,并感谢给予中美商会和公众参与讨论草案发表意见的机会。

知识产权仍然是成员最关注的问题,并且始终是诸多行业面临的一项长期挑战(图10)。调查显示,知识产权是决策其在中国业务类型的重要因素,尤其对涉及研发活动与知识产权转让的公司影响较大(图11)(图12转见19页)。商会成员感到,中国在打击和减少假冒产品方面没有取得什么实质进展,大部分参与调查的会员企业觉得数量并没有变化(图13转见19页)。同时比较积极的反馈是,略过半数的参与调查的会员企业相信中国知识产权保护执法力度比去年有所加大,而其他人士则认为和去年一样(图14转见21页)。这种乐观情绪源于中国国内专利申请数量以及知识产权诉讼的增加,以及在2008年将新颁布的法律,如《专利法》和《商标法》。

中国着力推动“自主创新”,并将其作为政府在推动标准、政府采购和其它领域活动中的引导性政策,这可能将影响美国企业参与中国市场。中美商会的调查发现本土创新的推动措施已经对美国公司造成一定程度的负面影响,尤其在引进技术和工业设备,以及并购政策中对主要企业、技术和品牌的保护方面(图15转见23页)。

总体来看,中美商会的会员公司表示出在中国发展的强烈信心。出于对中国惊人的经济成长和市场改革进程,以及富有活力与挑战的环境的认识,这些公司在执行其战略规划的过程中,必须持续增强竞争力,投入更多的创新资源。

development. The services sector, with a target value of US\$400 billion by 2010, will be an increasingly important driver of GDP production.

The Chinese Government is discouraging the growth of low value-added manufacturing and environmentally unfriendly industries by increasing production costs and limiting foreign participation in certain sectors. Increasing domestic inflation, at its highest sustained level since the early 1990s, as well as currency appreciation and rising costs in human resources, land, raw materials and resources, are beginning to significantly impact China's cost structure, especially in the export manufacturing sector. This is shifting manufacturing to less developed areas and also encouraging industries to move up the value chain.

The sheer size and importance of China's market will continue to attract investment and drive expansion of foreign firms. Growing domestic consumption, strong FDI inflows and a stable business environment will power the economy and ensure growth prospects remain robust. Recent global economic reverberations, driven by the U.S. economic slowdown, may also affect China's net export growth, although China has a lower export dependency than other economies. The long-term outlook for China's economy, however, will be increasingly determined by how leaders address significant and pressing domestic imbalances while refocusing national development priorities.

Overview of the U.S.-China Trade Relationship

Following the completion of the WTO transitional period, China continues the transition towards market economy status and a role as a major stakeholder in the global trading system. Dialogue, mutual understanding and compliance with legal obligations will be crucial in furthering its relationship with the U.S. and other trading partners. Given the large increases in trade between the two countries and a trade relationship that is growing in importance and complexity, AmCham recognizes that trade disputes will occasionally arise and encourages both governments to take all possible steps to resolve bilateral issues amicably. AmCham notes that instances of cooperation between China and the U.S. far exceed instances of dispute. AmCham supports constructive U.S.-China dialogues, such as is taking

place through the Strategic Economic Dialogue (SED) and the Joint Commission on Commerce and Trade (JCCT).

China is now the world's fastest-growing economy and an integral component of the global economy. In addition, the country is the biggest capital exporter and has the world's largest foreign currency reserves. China is also characterized by increasing openness to the rest of the world as well as by high investment, strong industrialization and high savings. These strengths, together with its double-digit growth, mean China's influence on the rest of the world is on the rise. The most effective response to these developments is to maintain and nurture engagement, focus on areas of common interest and respect areas of difference. Both countries share a vital interest in the global economy and closer economic cooperation offers greater economic well-being for both countries.

In the spirit of constructive and open dialogue, AmCham would like to address the following issues of significance to the greater public.

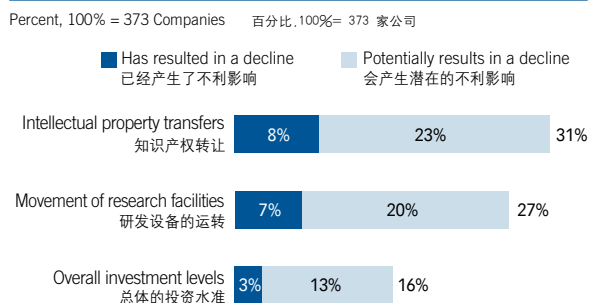
Trade Deficit

China's global trade surplus hit a record high in 2007 and the consensus is that it will persist, at least for the near term. The growing U.S. trade deficit with China (US\$260 billion in 2007) is fanning protectionist sentiments in the U.S. AmCham recognizes the disproportionate emphasis placed on the bilateral trade deficit in the U.S.-China trade relationship, but note trade is not a zero-sum game. Rapid economic growth in China and other nations benefits Americans by adding to the growth of the global economy and creating greater demand for U.S. products and more jobs for U.S. workers. Moreover, American consumers benefit from lower-priced imports.

The U.S.-China trade deficit will continue to grow as long as China remains the point of final assembly for many products imported from other countries. China has, in effect, acquired shares of the trade deficit formerly held by other Asian countries. Growing imports from China do not displace U.S. goods; instead, they largely displace imports from other Asian economies. The deficit will likely remain until U.S. export growth expands and U.S. companies take greater advantage of market opportunities in China, including service sector openings.

AmCham believes the best way to resolve the U.S. trade deficit with China is to help American companies capture more market share in China. AmCham supports pragmatic, constructive

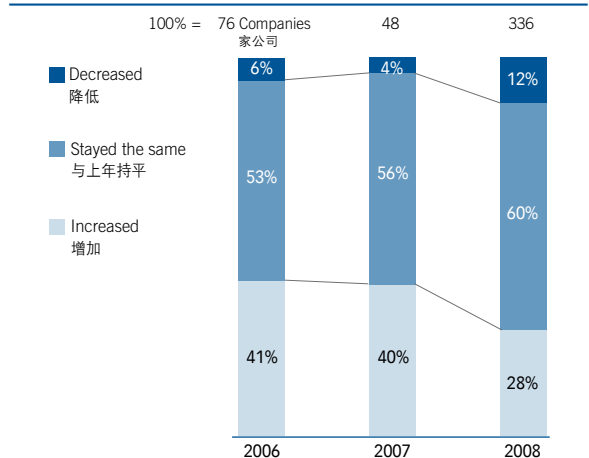
**What has been the impact of China's IPR protection and enforcement system on your decisions regarding the following?
中国的知识产权保护以及执法体系在下列方面对公司决策的影响程度**



Source: 2008 AmCham Business Climate Survey
资料来源: 2008 年中美商会商务环境调查

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**In the last year, the volume of counterfeits of my company's products produced in China has... (2006-2008)
企业产品被仿冒的数量变化**



Source: 2006-08 AmCham Business Climate Surveys
资料来源: 2006-08 年中美商会商务环境调查

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美中经贸关系

WTO过渡期结束之后,中国继续向市场经济过渡,同时在全球的贸易体系中开始充当主要利益相关者的角色。在进一步强化中国同美国及其他贸易伙伴的关系方面,对话、互相理解和遵从法律义务将发挥至关重要的作用。当前两国之间的贸易大幅增长,中美贸易关系的重要性与复杂性都在增加,商会认识到贸易争端会时有发生,鼓励两国政府采取一切可能的友好的措施解决双边问题,因为商会注意到美中两国合作远远超过争端。中美商会支持具有建设性的中美对话,如通过战略经济对话(SED)和中美商业贸易联合委员会(JCCT)开展对话。

经济与政治

2007年,中国的政策制定者继续将“质”的增长作为中国发展的重点目标,即“全面协调可持续”的发展。并在创新和节能发展上给予了更多的投入。这一重要的“再平衡”反映出着力解决过去30年经济快速增长对于中国所产生的各种问题的迫切性,以及对环境破坏、收入分配、人口老化、资本配置和稀缺自然资源低效使用的高度关切。

在党的十七大上,中国领导者们更加坚定了其致力于全面可持续发展的决心,制定了一系列政策,推出了具有里程碑意义的财政刺激计划,其中包括为教育和医疗设施提供资金。这些举措,建立在胡锦涛主席的“和谐社会”理念和科学发展观的基础之上,旨在调整中国的发展方向,为那些具有专业知识和经验能够帮助中国实现可持续发展的企业提供了机会。包括金融服务、商业流程外包和物流、环保技术、医疗、教育和技术培训以及农村发展。服务产业的产值目标是2010年达到4000亿美元,它将成为GDP增长越来越重要的驱动因素。

中国政府正在限制低附加值制造业和环境不友好的行业的生产,使一些行业的生产成本上升,并限制外资对这些行业的参与。国内通货膨胀持续加剧,达到了1990年代以来的最高值,人民币的升值以及人力资源、土地、原材料与资源的成本的上升开始对中国的成本结构产生明显影响,特别是在出口制造领域。从而推动中国制造业向欠发达的地区转移,鼓励各行业向价值链的上游转移。

中国市场自身的规模与其重要性将持续吸引投资并推动外资企业的扩展。快速增长的国内消费、外国直接投资的大量涌入以及稳定的商务环境,将为中国经济注入动力并保证了增长前景的乐观。最近由于美国经济放缓所导致的全球经济震荡可能会影响中国的出口净增长,尽管中国的出口依存度比其它经济体要低。但是中国经济的长期发展前景将日益取决于政府如何解决重要而紧迫的国内经济发展不平衡,以及国民经济发展重心的调整。

Congressional efforts to reduce America's trade deficit with China and the world, such as the "U.S.-China Competitiveness Agenda" proposed by Representatives Mark Kirk (R-IL) and Rick Larsen (D-WA). Congress should refrain from enacting legislation that attempts to change the terms of trade with China through currency re-alignment in the hope of redressing trade balance issues. China is focused on a major rebalancing of its own economy that, over time, will provide structural relief to its trade surplus. The focus of the U.S. needs to be on enhancing its own competitiveness and reducing the overall multilateral trade deficit.

Currency Regime

The Chinese currency has become a touchstone for broader anxieties about competition from China. Many of Congress' concerns center on China's currency regime, its policies to bolster exports and the possible impact on the large bilateral trade deficit. However, the value of the RMB is not the primary cause of the U.S. trade deficit with China, and the U.S. should not expect RMB appreciation to have a large impact on its trade difficulties with China. Because much of China's manufacturing consists of assembling parts made elsewhere, a stronger RMB would make these components cheaper to import, thus limiting the price impact on completed products for export. Broader depreciation of the U.S. dollar against the euro, yen and RMB will assist U.S. exports and help address its multilateral trade deficit, but the bilateral deficit will persist.

Since China abandoned the currency peg in July 2005, the RMB had appreciated 15 percent against the U.S. dollar by the end of 2007 and indications are this trend will continue. AmCham encourages China to allow the currency to move in response to market signals with the ultimate goal of a market-based currency. Moreover, AmCham supports current efforts under the SED to promote greater participation of U.S. financial sector firms in the Chinese market, which will lead to an overall stronger industry. The U.S. Administration should continue to use the SED process to foster a more market-driven valuation of the RMB, interest rate deregulation and strengthened monetary policy tools of the People's Bank of China.

Chinese Outbound Investment

In recent years, China has shifted from being primarily a recipient of foreign investment to being a global investor. In 2007, Chinese companies invested (non-financial) about US\$18.7 billion abroad. The level of outward FDI is expected to increase

significantly in the near future, with predictions of up to US\$37 billion in 2008, as Chinese companies go global, attract international talent, secure resources, acquire technology and leverage their huge domestic market and strengths in manufacturing.

AmCham regards the acquisition of American companies and assets by Chinese corporations as a natural element of China's integration into the global economy and as something that deepens the U.S.-China trade relationship. Chinese FDI brings economic benefits to the U.S. economy, including job creation, promotion of R&D and enhancement of U.S. exports to China, just as investment from other countries do. A U.S. policy that encourages investment by American companies in China while discouraging Chinese investment in the U.S. undercuts broader trade agendas relating to investment openness and reciprocity.

AmCham supports the inter-agency review procedure of the Committee on Foreign Investment in the United States to assess security issues, but is concerned that national security is increasingly used as the rationale for blocking Chinese investment, even in cases that may have little or nothing to do with national defense. Broad interpretations of national security that are used as proxies for protectionist measures should be avoided. AmCham also urges that political rhetoric be restrained until reviews are completed. Notwithstanding the need for review of sensitive cases, the chambers' members believe that the U.S. Executive and Congressional branches should make it clear to the broader public that Chinese investment in the U.S. is welcome and beneficial to Americans.

Recommendations for the U.S. Government

AmCham believes intensive, focused bilateral dialogue between the Chinese and U.S. governments (such as the JCCT and SED and their respective working groups and plenary meetings) is the most effective and necessary avenue to address significant market impediments, trade-distorting practices and Chinese and U.S. government policies and procedures. Full compliance with international trade commitments, including a focus standards, market access, transparency and IPR protection, is critically important to preserving U.S. domestic support for a constructive engagement policy, as well as to the commercial interests of companies operating in China.

In addition to these guidelines, AmCham puts forth the following specific recommendations to the U.S. Government.

中国现在是世界上发展最快的经济体，也是全球经济不可或缺的组成部分。同时，中国是最大的资本输出国，拥有全世界最大的外汇储备。此外，中国对世界其他国家开放度的提高，所吸引的巨额投资、及其强大的工业化和高储蓄率，加之两位数的增长率，都意味着中国对于世界其他地区的影响力与日俱增。面对这一现状，最有效的应对就是在保持和鼓励沟通中求同存异。两国在全球经济中都举足轻重，两国之间更紧密的经济合作将有利于双边的经济。

本着坦诚而富有建设性的对话精神，中美商会希望进一步阐述以下重要议题：

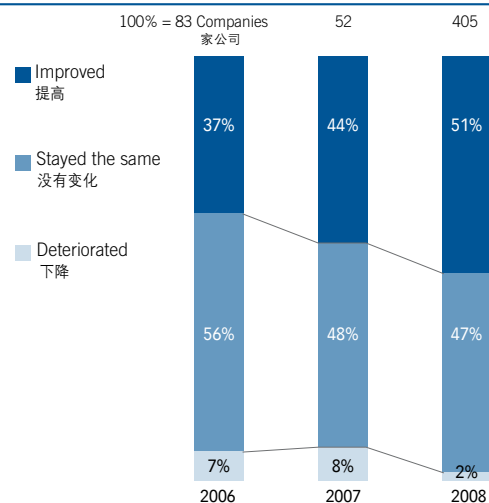
贸易赤字

中国的全球贸易顺差在2007年又创新高，并且一致的看法是，这一趋势至少在近期还会持续。美国对中国的贸易赤字的增加（2007年达到2600亿美元）正在激起美国保护主义情绪。商会注意到，目前过分强调美中贸易关系中的双边贸易赤字，但是贸易终究不是一个零和游戏。中国和其它国家的快速经济增长同样使美国人受益，因为这有助于全球经济增长，能够为美国产品带来更大的需求，为美国劳工带来更多的就业机会。此外，美国消费者也可受益于较为廉价的进口产品。

只要中国继续作为从许多其它国家进口的产品的最终组装地，美中贸易赤字就会继续增加。中国实际上只是获得了以前由其它亚洲国家持有的贸易赤字份额。来自中国的进口产品的增长不会取代美国货品；相反，他们大体上取代了来自其它亚洲经济体的进口。在美国加速出口增长以及美国公司能够充分地利用在中国的市场机会，包括服务业的开放之前，美中贸易赤字可能会一直保持。

商会相信帮助美国公司在中国获得更多的市场份额，是解决同中国的贸易赤字问题的最佳方式。中美商会支持国会通过实际可行的具有建设性的努力来减少美国同中国及世界其他国家的贸易赤字，如众议员柯克（R-IL）和拉森（D-WA）所提出的《美中市场接触与出口促进法案》。国会应该避免试图通过各种议案，以汇率的调整来改变与中国的贸易方式从而纠正贸易失衡的问题。目前中国把重点放在本国经济的再平衡上，随着时间的推移，会对其贸易顺差产生结构性的纾解。美国需要把重点放在增强其自身的竞争力并减少总体的多边贸易赤字方面。

In the last year, China's enforcement of IPR has ... (2006-2008)
中国在知识产权保护执行力方面的变化 (2006-2008)



Source: 2006-08 AmCham Business Climate Surveys
资料来源：2006-08 年中美商会商务环境调查

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货币制度

人民币已经成为来自中国的竞争问题因而引起广泛担忧。国会担心中国货币制度的核心是推动出口，并对较大的双边贸易赤字产生可能的影响。但是，人民币的汇率不是美国同中国贸易赤字的主要原因，美国不应该期待人民币的升值可以减少美国的对华贸易上的困难。因为中国大部分制成品都包含其它地方制造的零部件，人民币升值会使这些部件的进口变得更加便宜，从而无法对出口制成品的价格产生影响。更广义的美国对欧元、日元和人民币的贬值会有助于美国的出口，并帮助解决多边贸易赤字的问题，但是双边赤字将会继续存在。

自从中国在2005年7月取消同美元挂钩以来，到2007年底人民币兑美元就已经升值15%，有迹象表明这种趋势还会继续。商会鼓励中国允许汇率根据市场变化进行浮动，最终实现市场决定汇率。此外，中美商会支持双方在战略经济对话中的努力，以推动美国金融业公司更大程度地参与中国市场，增强金融业总体实力。美国政府应该继续通过战略经济对话促使人民币的估值更加市场化，取消利率管制并强化中国人民银行的货币政策工具。

中国的对外投资

近年来，中国已经从一个主要的外资接受国转变成为一个全球投资者。2007年，中国公司在海外投资

Develop a new policy foundation to address the emerging needs of a post-WTO U.S.-China trade relationship

An economically balanced China benefits everyone and advances U.S. interests. In the post-transitional phase of China's WTO membership, U.S. Government resources and priorities must be constructively readjusted towards helping China meet its development goals in a mutually beneficial way. The milestone WTO phase-in period has passed and while concerns remain about the full implementation of China's WTO commitments, a new roadmap and set of tools are now required to guide U.S. trade policy towards China.

The future sustainability and growth of the Chinese economy can be positively influenced through U.S. trade policy and assistance. The U.S. Government can support China's continued integration into the world trading system by assisting its institutional, policy and regulatory reform process to meet the spirit of China's WTO accession. U.S. trade policy should, for example, increase its focus on China's regulatory reform by initiating and deepening capacity-building programs, which would support China's rebalancing policies and improve the business climate for domestic and foreign companies.

Efforts to expand trade-related technical assistance, training programs, funding for rule-of-law initiatives and formal government-endorsed programs to help provide policy and technical advice are vitally important to ensure that China's reforms endure and long-term development is sustainable. The European Commission is already addressing these key issues through its EU-China Trade Project. In addition to government channels, there is also a role for trade and professional associations and technical bodies in helping to build China's culture of compliance with WTO requirements and to improve the operating business environment.

U.S. Treasury Secretary Paulson, through the SED, has already begun to articulate this vision by linking China's broader structural rebalancing reforms to faster liberalization of China's financial sector and increased market access for U.S. firms. These measures, if adopted by China, will improve capital allocation and raise the level of financial services in general. AmCham supports this strategy and agrees with Secretary Paulson's remarks at the October 2007 George Bush China-U.S. Relations Conference, where he said, "In addition to establishing new ways of working together, it is vitally important that our policies accelerate and deepen China's ongoing economic transition."

Enhance overall coordination and support for U.S. company efforts to capture more market opportunities in China

In a shrinking world, the future of the U.S. economy is linked to the competitiveness of American companies globally, especially in China, the world's largest emerging market. With a population of 1.3 billion, an emerging middle class of 150 million and one of the fastest growing economies in the world, the global competitiveness of U.S. firms will increasingly be defined by how they fare in China.

The U.S. Executive Branch and Congress should ensure that American companies of all sizes have the support and resources necessary to compete effectively in China. More than 200 cities in China have a population exceeding one million people, yet U.S. public diplomacy and diplomatic posts remain grossly underfunded. The U.S. needs to formulate and implement a comprehensive, proactive plan backed by significantly increased resources to increase exports, capture more market share and enhance the competitiveness of American companies.

It is imperative that the U.S. addresses those issues that stand in the way of U.S. companies' ability to compete effectively in China, including processing times and ease of procedures for visas, strategic and well-sourced export promotion, and informed export control regulations and policies. In addressing the issues that matter most to U.S. businesses, AmCham specifically requests:

- More resources and trade promotion programs for U.S. company efforts to capture market opportunities in China, especially export assistance for small- and medium-sized enterprises to further increase exports.
- More resources to meet the projected increase in Chinese demand for business and tourist visas and streamlining visa processes for U.S. companies that allow their suppliers, employees and potential customers to travel to the U.S.
- Ongoing review of export controls and license requirements with the goal of facilitating legitimate commercial trade, enhancing national security and ensuring export control levels reflect market realities.

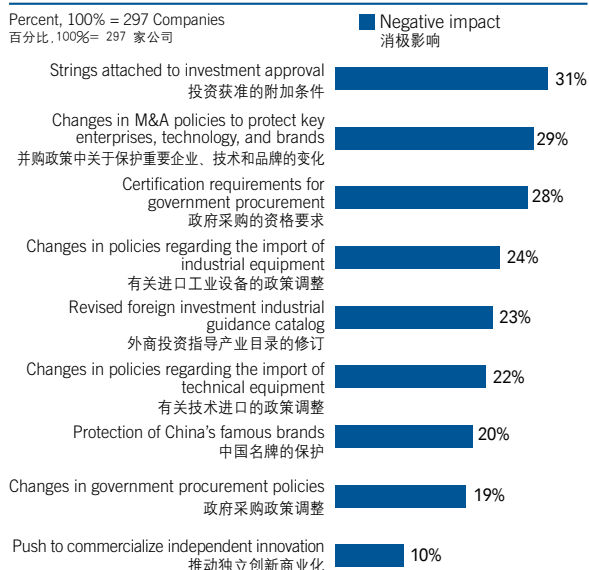
These issues receive individual focus and attention in subsequent sections of this White Paper.

Refrain from addressing trade concerns by enacting legislation with the intent of forcing currency revaluation

U.S. exports to China have grown 400 percent since

China's innovation policies' negative impact on companies

创新政策的消极影响



Source: 2008 AmCham Business Climate Survey
资料来源: 2008 年中美商会商务环境调查

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了大约187.亿美元(非金融领域), 将来对外直接投资的水平预计会有明显增长, 2008年预计达到370亿美元, 因为中国的公司正在走向全球化, 吸引国际人才, 寻求资源, 获得技术并运用他们巨大的国内市场和制造业优势。

商会将中国企业收购美国公司与资产视为中国融入全球经济的一个正常现象, 并且认为这会加深中美贸易关系。中国的对外直接投资给美国经济带来了经济利益, 包括创造了工作机会, 推动了研发, 增加了美国对中国的出口, 就像来自其它国家的投资所发挥的作用一样。美国政策在鼓励美国公司在华投资的同时却限制中国在美投资, 这会妨碍与投资开放和对等有关的更广泛的贸易议题。

中美商会支持美国的外国投资委员会在评估安全问题时采用机构间审议程序, 并且对国家安全正在被越来越多用作阻止中国投资的理由而感到担忧, 即使在与国防毫无关系的案例中亦是如此。应当避免对国家安全进行广义的解释, 将它作为保护主义措施的借口。商会也敦促在审查完成之前要少讲一些政治辞令。尽管确实有审查敏感案例的需求存在, 商会成员相信美国的行政和国会部门应该清楚地告诉更广大的公众, 美国欢迎来自中国的投资, 中国投资也有利于美国人。

给美国政府的建议

商会相信美中两国政府之间进行密切的、有重点的双边对话(比如中美商业贸易联合委员会和战略经济对话及其各自的工作组与全会)是应对重大的市场障碍、贸易扭曲的做法、以及美中两国政府的政策法规程序的最有效而必要的途径。完全遵守国际贸易承诺, 包括在标准、市场准入、透明度与知识产权保护领域的承诺, 对于保持美国国内支持建设性的接触政策以及在中国运营的公司的商业利益都至关重要的。

除了这些指导方针之外, 商会还向美国政府提出以下具体的建议:

发展一个新的政策基础来应对后WTO时代中美贸易关系的需求

一个经济上平衡的中国会使每个人都受益并推动美国的利益发展。在中国获得世贸组织成员资格并完成过渡期之后, 美国政府的资源和侧重点必须进行建设性的重新调整, 通过互利的方式帮助中国实现其发展目标。加入世贸组织的过渡期已过, 大家关心的问题仍然是中国能否充分履行其WTO承诺, 现在需要新的路线图和实施办法来指导美国对华贸易政策。

美国的贸易政策和其所提供的帮助可以对未来中国经济的可持续性发展产生积极的影响。美国政府通过参与中国制度、政策和监管改革的过程, 推动其符合中国加入世贸的精神, 从而支持中国继续与世界贸易体系融合。美国贸易政策应该更加注重中国的监管改革, 可以启动和深化能力建设的项目, 支持中国均衡发展的政策并改善国内外企业的商业环境。

努力扩大与贸易有关的技术援助、培训计划, 为依法治国策略提供资助, 正式推出政府赞助的计划, 向中国提供政策和技术建议等对保证中国改革能够可持续性发展至关重要。欧盟已经在通过其欧中贸易项目应对这些关键的问题。除了政府渠道之外, 贸易和专业协会及技术团体也有责任帮助中国建立遵从WTO要求的文化并改善经商环境。

美国财政部长保尔森已经通过战略经济对话清楚地表述这种远见, 希望将中国更广泛的结构性的均衡发展的改革与中国金融领域更快的自由化, 以及提高美国公司的市场准入程度相联系。中国对这些举措的采纳会改善其资本配置, 提高金融服务的整体水平。商会支

2000 and U.S. companies are well-placed to take advantage of service sector openings through China's WTO agreements. The Chamber appreciates that many in the U.S. continue to have concerns over the impact of globalization in general and in particular, the impact that trade with China has on jobs and economic security. Constructive efforts addressing these concerns and improving on the benefits of engagement with China need to be made. Adopting retaliatory actions based on currency or product safety rather than appropriate mechanisms and focused programs to eliminate trade barriers and improve competitiveness of the U.S. will run counter to overall U.S. economic interests.

Recommendations for the Chinese Government

China has made great strides towards a market economy as it continues to distance itself rapidly from its legacy as a planned economy. It is incorporating many market principles and policies to the benefit of its citizens, domestic and global enterprises, and its standing in the world. However, the process remains incomplete.

AmCham's position is that protectionist policies are incompatible with China's goals of integration with the global economy and run directly counter to policymakers' development aspirations. As China strives to become an innovative and technologically driven society, it will need to distance itself from policies promoting discriminatory local standards, government procurement preferences and protectionist laws that inhibit an environment of innovation, competition and openness.

Here we point out several steps the Chinese authorities can take to build upon their past successes and help the country take its place in the global economy.

Shape a competitive and transparent business environment that encourages broad participation and competition in the domestic Chinese economy

AmCham firmly believes that competitive markets are essential to a balanced, sustainable and high-quality economic growth path, as set forth by the 11th Five-Year Plan and the 17th Party Congress. U.S. companies can provide valuable expertise and bring international best practices to China's economy while directly assisting China with its ambitious goals and development needs. If foreign companies are to help advance China's development goals efficiently, they will need greater and more effective access to China's markets.

While China has taken important steps to meet particular WTO commitments, significant market-entry barriers remain. Foreign investment limitations, coupled with policies, laws and regulations that discriminate against foreign companies by limiting their activities and applying standards that differ from those governing domestic companies, hinder the development of certain industry sectors and prevent China's economy from reaping the full transformational benefits of competition. The removal of remaining barriers would not only stimulate the growth of China's markets but also benefit Chinese consumers.

For example, limitations on China's financial system and the slow pace of financial sector reforms inhibit the country from growing efficiently and sustainably. AmCham believes that Chinese authorities need to accelerate the opening of the financial sector and lower regulatory barriers to entry by foreign firms. The opening of China's domestic securities markets, including market-oriented reform of the listing process, and participation of wholly foreign-owned firms in securities and asset management markets, is an important part of the long-term integration of China's capital markets with global markets. Entry of foreign firms will nurture the experience, financial products, trading systems and talent base of domestic financial institutions, and will enable them to be truly competitive. Given the opportunity, foreign firms can play a vital role in promoting stability, governance and efficiency in China's capital markets and create conditions for a boom in equities investment in China.

AmCham's view is that China should create a business environment of innovation, competition and openness that encourages foreign participation in the domestic economy and participation by Chinese enterprises and investors in markets abroad. China has already spawned a host of successful companies and global brands, which have flourished in sectors open to foreign competition. Transforming China into an innovative and technology-driven society will necessarily include open and competitive markets, the free flow of capital, the protection of intellectual property and the adoption of standards based on sound economic principles and international norms.

Specific industry recommendations are laid out in the subsequent chapters of this White Paper.

Support the further development of transparent administrative and regulatory practices to strengthen the legal framework and promote balanced economic development

China has demonstrated increased commitment

持这种战略并同意保尔森部长于2007年10月举行的乔治·布什中美关系大会上的讲话，他说：“除了建立新的合作关系之外，极其重要的一点是我们的政策要加快和深化中国当前的经济转型。”

增强整体协调并支持美国公司努力在中国获得更多的市场机会

世界正在变得越来越小，美国经济的未来与美国公司在全球、特别是在中国这个世界上最大的新兴市场上的竞争力密切相关。中国有着13亿人口，有1.5亿新兴的中产阶级，是世界上增长最快的经济体之一，美国公司在全球的竞争力将越来越取决于它们在中国的成功。

美国的行政部门和国会应该保证美国公司无论其大小，都能获得必要的支持与资源以有效地在中国展开竞争。中国有200多个城市的人口超过一百万，然而美国的在公共外交与外交职位方面的经费仍然不足。为增加出口，获取更大的市场份额，并增强美国公司的竞争力，美国需要制定和实施全面、积极的计划，增加在这方面的资源投资。尤其需要的是，美国应该解决那些阻碍美国公司有效参与中国竞争的问题，包括缩短签证时间，简化签证手续，推动战略性出口，改善出口来源，在充分了解市场的情况下制定的出口管制的法规与政策。为了解决这些对于美国公司而言最重要的问题，商会特别希望：

- 为了协助美国公司在华争取市场机会的努力，投入更多的资源和启动更多的贸易促进项目，特别是要给中小型企业提供出口援助，以进一步增加出口；
- 投入更多的资源来满足中国可以预期的商务和旅游签证的需求增加，简化美国公司签证流程，允许他们的供应商、员工和潜在客户访问美国；
- 继续审查出口管制与许可要求，其目的是为合法的商务贸易提供便利，加强国家安全并保证出口管制水平能够反映市场的现实情况。

以上问题将会在本白皮书的其他章节中具体陈述。

不要试图通过提请议案强迫货币升值来解决贸易问题

自2000年以来，美国对华出口增长了400%，而且随着中国履行WTO协议逐步开放其服务业，美国公司处于非常有利的地位。商会知道许多美国人仍然忧心全球化所带来的影响，尤其是同中国开展贸易对

就业机会和经济安全性带来的影响。我们需要以建设性的方式来应对这些忧虑，不断推动因中国的参与而带来的诸多利益。基于货币或者产品安全采取报复性的行动，而不是采取适当的机制和有所侧重的计划来消除贸易障碍和提高美国的竞争力，会对美国经济的整体利益形成反作用。

给中国政府的建议

中国正在快速远离计划经济，大踏步地迈向市场经济。它正在整合许多的市场政策规定，这有益于其公民、国内与全球企业，以及巩固中国在世界上的地位。但是这一进程仍需时日。

商会的认为保护主义政策与中国同全球经济融合的目标格格不入，并且不符合政策制定者的宏伟目标。当中国努力建设一个具有创新精神的技术推动型社会时，它需要远离那些助长歧视行为的本地标准、政府采购偏向的政策和保护主义的法律，这些政策和法律会扼杀创新、竞争和开放的环境。

这里我们谨建议中国政府考虑以下内容，并借鉴之前的成功经验，进一步赢得在全球经济中的地位：

形成具有竞争力的透明的商业环境，并在中国国内的经济体系中鼓励广泛参与和竞争

商会坚定地相信：竞争的市场对于十一·五计划和十七大所确立的全面协调的、可持续的、高质量的增长道路至关重要。美国公司可以提供宝贵的专业知识并且将国际上成功的实践经验带给中国经济，同时直接协助中国实现其雄心勃勃的目标，满足其发展需求。外国公司若想有效地帮助中国实现其发展目标，它们就需要更全面、更有效地进入中国市场的途径。

尽管中国已经采取重要的步骤来履行特定的WTO承诺，但是市场准入障碍依然存在。对于外国投资的限制，加上歧视性的、旨在限制外国公司业务活动的政策和法律法规，针对外国公司采用不同于本地企业的标准等等，阻碍了某些行业领域的发展，使中国经济不能充分受益于转型带来的竞争效益。消除现存的障碍不仅会刺激中国市场的增长，同时也会使中国消费者受益。

例如，中国金融体系的限制和金融领域改革进展极其缓慢，这妨碍了中国以高效、可持续的方式增长。商会相信中国政府需要加快其金融领域的开放

to transparency in the development of rules, laws and regulations, particularly in the area of business law. However, achieving full transparency in the formulation, enactment and implementation of rules and regulations in China is widely regarded by the chambers as one area that remains unfulfilled.

The speed of China's economic development has been so fast that it has outstripped the Chinese Government's regulatory capacity. Consistency of administration and enforcement remains a problem, with great disparities among localities. Many of the shortfalls in China's implementation and WTO compliance efforts stem from systemic administrative and rule of law problems. The most recent cases of adulterated food and consumer product exports highlight the significance and severity of the strained regulatory system.

Implementation difficulties significantly affect the leadership's development goals and priorities relating to energy, the environment and rural development, while also hindering the strategic development of the national economy. Inconsistencies in enforcement and implementation create uncertainty in capital decision-making processes, discouraging businesses from investing and expanding operations to new regions. AmCham feels that an increase in the transparency, consistency and predictability of the legal framework will bring significant improvements to the business environment for both foreign and domestic businesses.

Efforts to solicit outside opinion on legislation under development and to foster more inter-agency cooperation have been a positive step forward. AmCham encourages enhanced dialogue and exchange between the Legislative Affairs Office, MOFCOM and other Chinese Government agencies and with U.S. Government agencies on regulatory topics that affect foreign business. AmCham would like China to publish all laws, regulations and measures affecting trade and investment in the China Foreign Trade and Economic Cooperation Gazette, and grant interested parties sufficient time to comment on draft legislation. We firmly believe greater transparency and increased opportunities for public comment will improve the quality of enacted measures and public support for the legislative and regulatory processes.

China's regulatory environment continues to create significant operating difficulties for foreign firms in certain sectors, while eroding market access gains achieved through other commitments. In these instances, there continues to be two sets of rules and two standards for execution and enforcement,

one for foreign companies and one for domestic companies. Many foreign-invested enterprises are simultaneously subject to approval and regulation by multiple government agencies at the central, provincial and local levels. Changes in one agency's policies may interact with other agencies' rules to create substantial market access barriers. The Chamber believes it is time to begin unifying the legal, regulatory and enforcement environment.

Deepen commitment to fundamental WTO principles and play a role commensurate with integration in the global economy

AmCham urges the Chinese Government to continue to embrace its regional and global stakeholder role and associated responsibilities. This will require China to deepen its commitment to WTO principles of transparency, national treatment, non-discrimination and market access as China progresses into the era of post-WTO implementation. China should use valuable forums such as the SED and JCCT to deliver genuine changes to the investment climate and to communicate and advance the strategic direction of its trade relationship with the U.S. and other partners.

China also needs to embrace its position as a global stakeholder and take on roles in areas of global concern. China is the world's fastest growing economy but also one of the top two biggest emitters of carbon dioxide. It is also the world's biggest energy consumer and the largest consumer of metals. China should aspire to take a leading role in global issues including energy security and efficiency, climate change, environment and water conservation.

China should also take on a role commensurate with its global economic power with regard to driving global trade liberalization. As a global stakeholder, China, like the U.S., should be committed to resolving disputes through negotiations, dialogue and the use of established international venues (such as the WTO) to address trade and policy issues. Both the U.S. and China should recognize the benefits of dialogue and cooperation rather than conflict and confrontation. Both should also recognize the advantages of strengthening multilateral institutions that diffuse conflict and give other global stakeholders an opportunity to participate. ■

步伐，降低美国公司进入的监管障碍。中国国内证券市场的开放，包括上市过程的市场化改革，外商独资企业在证券市场和资本管理市场上的参与，是中国资本市场与全球市场实现长期融合的一个重要部分。外国公司的进入有助于培养本地金融机构的经验、完善金融产品、交易系统和人才基础，使他们能够真正地具有竞争力。只要给予其机会，外国公司就能在推进中国资本市场的稳定、改善上市公司治理和市场效率上发挥至关重要的作用，为中国未来的股权投资的繁荣创造条件。

中美商会认为，中国应当创造一个鼓励创新、竞争和开放的商务环境，鼓励外国公司参与国内经济，并鼓励中国企业和投资者参与全球市场。中国已经催生出很多成功的企业和全球品牌，它们在已向外国竞争开放的领域发展得欣欣向荣。中国要成功实现向创新型、技术推动型社会的转型，需要建立开放、竞争的市场，实现资本的自由流动，落实知识产权的保护，并采纳基于完善的经济原则和国际规范的标准。

本白皮书的以下各章节给出了具体的行业建议。

支持透明的行政和监管实践的进一步发展，以增强法律框架和推动经济的均衡发展

中国已经表明它在制定法律和法规方面增强透明度的决心，尤其是在商业法律领域。但是法律法规的制定、颁布和施行仍有待实现完全透明化，这是中美商会成员普遍认为中国有待改进的方面。

中国经济发展的速度如此之快，超出了中国政府的监管能力。行政和执法的不一致性仍然是个问题，且各地存在着很大的差异。中国在实施和遵守WTO规则方面仍存在不足，主要源于制度性的行政管理问题。最近的掺假食品和消费类产品出口的案例反映了监管系统能力不足的突出性和严重性。

实施上的困难严重影响领导层在能源、环境和农村发展上的目标和侧重点，同时也妨碍国民经济的战略发展。行政和执法的不一致给资本的决策过程带来了不确定性，打击了企业向新的地区进行投资和扩张的积极性。中美商会认为增加法律框架的透明度、一致性和可预测性将明显改善商务环境，对国内外企业都是如此。

中国在立法过程中努力征询外部意见并推动更多政府机构间的合作，是向前迈出的积极的一步。中美

商会鼓励加强国务院法制办公室、商务部和其它的中国政府机构之间的对话和交流，并就影响外国企业监管的议题与美国政府机构开展交流。中美商会希望中国在《中国对外贸易和经济合作公报》中公布所有影响贸易和投资的法律、法规和措施，并给予利益相关方足够的时间对草案发表意见。我们坚定地相信，更大的透明度、给公众更多的机会来发表意见会提高所颁布的措施的质量，有利于公众支持立法和监管的过程。

在一些行业部门，中国的监管环境仍然给外国企业带来了不少的经营难题，同时侵消了他们通过其它途径所取得市场准入利益。在这些情况中，行政和执法方面依然存在针对外企、内企的两套规则和标准。许多外商投资企业同时要经过中央政府、省政府和各级当地政府的多个机构的审批和监管。一个机构的政策变化可能会与其它机构的规则相互作用形成很大的市场准入障碍。商会相信现在应该是统一法律、监管和执法环境的时间选择。

深入履行基本的WTO原则，发挥与融合进入全球经济相应的职责

中美商会敦促中国政府继续发挥其地区性和全球性利益相关者的作用，并承担相应的责任。这就要求中国深入履行WTO的原则，即透明度、国民待遇、非歧视和市场准入，因为中国已经进入后WTO的实施阶段。中国应利用战略经济对话和中美商业贸易联合委员会等宝贵论坛，推动投资环境发生真正的变化，阐明和推进中国与美国及其他伙伴之间的贸易关系的战略发展方向。

中国也需要赞同其作为全球利益相关者的地位，并在全球关注的领域担当起它应担当的角色。中国是世界上发展最快的经济体，是二氧化碳的最大排放国之一，也是世界上最大的能源和金属消费国。中国应雄心勃勃地在全球性问题上担当领导角色，包括能源安全和效率、气候变化、环境和水资源保护等。

中国也应该在推动全球贸易自由化方面担当起与其全球经济力相称的角色。作为一个跟美国一样的全球利益相关者，中国应该致力于通过谈判、对话和使用已经建立的国际性组织（如WTO）来解决争端和应对贸易和政策问题。美国和中国都应该认识到对话与合作的益处，而要避免冲突和对立。两国也应该抓住机会强化多边国际机构，减少冲突，并给与其它全球利益相关者以参与的机会。 ■

U.S. Visa Policy

U.S. consular posts in China are facing a growing number of visa applications, a trend likely to continue into the foreseeable future. This trend is driven by China’s increasing population, increasing wealth and increasing freedom to travel abroad. A Memorandum of Understanding (MOU) between the U.S. and China governments on group leisure travel to be implemented this year will further increase visa demand.

AmCham is delighted by the prospect of group travel by Chinese tourists to the United States. The U.S. will be a popular destination and tourism will be a significant factor in improving the balance of payments between the two countries. It is important to note, however, that Chinese tourism is growing explosively. The success we forecast with confidence will strain the resources of the Embassy and Consulates. Unless headcount is increased and facilities upgraded, it amounts to a major unfunded mandate. AmCham is concerned that the resulting strain will affect all other categories of visas.

The Security Advisory Opinion (SAO) process and the three to five week additional wait time for an added security check for persons working in or having past professional or academic experience across specific industry sectors continue to pose a competitive challenge for our members working with government officials, customers and partners. We believe the best solution is for Congress to either increase visa processing staff to reduce the wait times or to be more discriminating in designating those who must undergo the mandatory review requirements.

As explained below, U.S. consular posts have responded by issuing a growing number of visas to Chinese citizens. However, the posts’ limited resources—most importantly facilities and staff—already pose a challenge and contribute to long wait times for visa appointments (Figure 16).

The State Department and U.S. consular posts in China continue to take measures to deploy their limited resources more efficiently. For example, this year saw revisions to the visa re-issuance program, under which repeat travelers may no longer need to make appointments at the consulate for finger scans. Also, the corporate visa programs (CVPs) carried out cooperatively between AmCham and consular posts in Beijing, Shanghai, Guangzhou and Chengdu

continue to successfully economize on consular resources while expediting AmCham member companies’ visa applications.

AmCham’s “2008 Business Climate Survey” revealed significant improvements in the visa application process compared to previous years. Although 61 percent of members still believe that it is harder for Chinese to travel to the U.S. than other regions, the trend data indicates the situation is improving (Figures 17, 18, 19, page 31). Compared to 2007, 38 percent fewer companies lost sales to non-U.S. firms because of U.S. visa concerns. AmCham appreciates the increased attention that the Embassy and several of its consulates have given to the relevant policy issues and the wider recognition in the U.S. Congress that excessively restrictive visa policies damage our national interest. AmCham encourages continued progress in the areas identified in this White Paper.

The following recommendations focus on increased Congressional funding for consulates, pushing forward negotiations between the U.S. and Chinese governments to increase visa validity, customer service initiatives, lifting the statutory cap on H-1B visas for professionals employed by U.S. companies, and reducing delays associated with Visas Mantis SAOs.

Visa Demand Continues to Grow

Fiscal year 2007 witnessed a 15 percent increase in non-immigrant visas issued in China over the previous year.

*Non-immigrant Visa Issuances Fiscal Year 2007
(versus 2006)*

Place	Visa Type	Total Applicants	Refusal Rate
China	B1/B2	350,315 (321,145)	21.9% (25.4%)
China	All nonimmigrant visas	401,331 (347,832)	20.4% (22.4%)
Worldwide	B1/B2	4,523,044 (4,170,253)	21.4% (21.5%)
Worldwide	All nonimmigrant visas	6,444,246 (5,836,718)	19.2% (19.2%)

美国签证政策

美国驻华领事机构受理的签证申请日益增多,而且这一趋势在可预见的未来仍将继续下去。形成这一趋势的原因是中国人口的增长、财富水平和境外旅行自由程度不断提高。由于美中两国政府关于团体旅游谅解备忘录的签署,签证申请数量将会进一步增长。

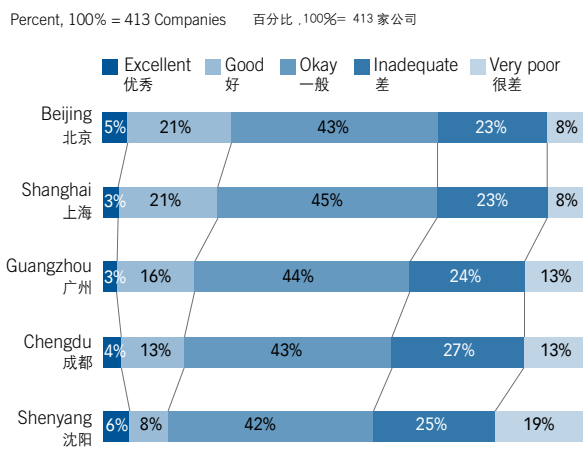
中美商会对中国旅游者赴美团体旅游的前景感到欣慰。美国将成为受欢迎的旅游目的地,旅游业也将成为改善两国贸易平衡状况的重要因素。中国旅游业呈爆炸式增长,赴美旅游业的发展将进一步加重使领馆现有有限资源的负担。除非增加领事机构人员、改善办公条件,否则赴美旅游业签证申请将面临资金严重不足的问题。中美商会对这一状况可能影响其它种类签证的签发感到关切。

“签证安全建议”(SAO)程序和3至5周的额外等候时间,以便对那些目前在某些特定行业领域工作或曾有相关领域的专业或学术经验的人士进行新增的安全审查,影响了与政府官员、客户和合作伙伴交往的会员的竞争力。我们相信,最好的解决办法就是国会增加签证办理人员的数量,以减少等候时间或区别对待那些必须通过强制性审查要求的签证申请者。

正如下文说明的那样,目前美国领事机构是通过向中

Quality of visa processing at the U.S. Embassy and Consulates in China

各地签证办理工作质量比较



Source: 2008 AmCham Business Climate Survey
资料来源: 2008 年中美商会商务环境调查

国公民发放更多签证来应对这一问题。但各领馆资源(最重要的是设施和人员)有限,已经构成挑战并延长了签证预约等候时间(图16)。

国务院和各驻华领馆继续采取措施,努力提高有限资源的效率。例如,今年修改了二次签证的规定,根据这一规定,再次赴美的旅行者不需前往领馆进行指纹扫描。中美商会与驻北京、上海、广州、成都总领馆合作进行的商务签证服务进一步节省了领事资源,加快了中美商会会员公司赴美人员签证申请的速度。

中美商会2008年商业环境调查报告显示,与往年相比,签证申请程序已有很大的改进。尽管仍有61%的会员认为,中国公民赴美还是比去其它地区更为困难,但趋势性数据显示这一局面正在得到改善(见图17、18、19转见31页)。与2007年相比,由于担心签证问题而转向与非美国公司进行销售业务的公司减少了38%。驻华使馆和几个总领馆对有关政策问题的重视以及美国国会对过于严格的签证政策有损国家利益的广泛认识,中美商会对此表示赞赏。希望在本白皮书所涉及的有关领域能继续取得进展。

下列建议主要集中在国会增加对领事机构的拨款、推进美中两国政府关于延长签证有效期的谈判、实施客户服务计划、取消美国公司所聘用专业人士H-1B签证的限额以及减少因适用“签证安全建议”(SAOs)造成的审批延误等方面。

签证申请数量继续增长

2007财政年度,在中国颁发的非移民签证比上年增加15%。

2007财年非移民签证发放量(与2006财年相比)

地点	签证种类	申请量	拒签率
中国	B1/B2	350,315	21.9%
		(321,145)	(25.4%)
中国	所有非移民签证	401,331	20.4%
		(347,832)	(22.4%)
全球	B1/B2	4,523,044	21.4%
		(4,170,253)	(21.5%)
全球	所有非移民签证	6,444,246	19.2%
		(5,836,718)	(19.2%)

According to a State Department study, visa applications in China are projected to 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), according to a Department of Homeland Security (DHS) study.

The rate of visa violations by Chinese also appears to be decreasing, relative to other countries, according to the DHS, justifying a higher visa approval rate.

The Tourism MOU Sets the Stage for Further Visa Demand

AmCham applauds the MOU on tourist travel signed during the third round of the SED, and it should facilitate group leisure travel from China to the United States. China has agreed to allow travel agencies designated by China National tourism Administration (CNTA) to advertise group leisure travel to the United States. They will be allowed to work with U.S. companies to organize and market such travel. In addition, U.S. travel destinations will be able to market themselves in China. The United States has agreed to make group visa appointments and to accept visa applications submitted directly by the designated travel agencies. AmCham expects a significant rise in the number of tourist visa applications after the MOU is implemented as Chinese travel agencies were previously prohibited from organizing and advertising such group leisure travel.

Outbound leisure and holiday travel by PRC nationals is a rapidly growing market, and one that the United States is well positioned to capture a sizeable share of. The competitiveness of the RMB makes the United States a more reasonably priced destination than many European countries. Chinese tourism is valuable to the U.S. because it offers an opportunity to reduce the growing U.S.-China trade deficit. Tourism also creates U.S. jobs. Indeed, one in eight American jobs is tourism-related.

Still, the U.S. cannot take full advantage of the MOU and the numerous benefits it affords until the unnecessary obstacles facing legitimate visa applicants are removed.

Consular Facilities and Staffing Update are Continuing Concerns

Consular facilities are having a tough time keeping up with demand.

Currently the Embassy's visa section has 13 customer windows, eight of which are used for interviews (others are used for data intake and fingerprinting). At the new Embassy expected to open just in time for the 2008 Olympics, there will be 14 customer windows, still not enough for the growing demand. A renovation allowing for nine additional customer windows is planned for completion in 2009.

Currently, the Embassy has 15 Entry Level Officer positions in the Nonimmigrant Visa Unit. Three more positions have been established and will be filled later this year.

In 2007, the Shanghai Consulate had 10 Entry Level Officer positions in the Nonimmigrant Visa Unit; two additional positions will be added in 2008. Nevertheless, even though the consular section was moved to an offsite location to process visa applications, the post has indicated that it already has reached visa-adjudicating capacity and that renovations to the facility are needed in order to add more interviewing windows in the current space.

Visa Appointment Wait Times May Continue to Increase

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. The long wait times for appointments remains a serious issue, particularly during peak periods. For example, on October 22, 2006, B1/B2 visa wait times were as follows: Beijing 30 days, Shanghai 38 days, Guangzhou 21 days. On January 30, 2007, B1/B2 visa wait times were: Beijing 38 days, Shanghai 36 days, Guangzhou 23 days. During peak periods, such as during the summer months, visa wait times can reach 45 days. At other times the wait time can be considerably less. For example, in early March 2008, wait times for interviews ranged from no wait in Guangzhou to one month in Shanghai. Beijing, Chengdu and Shenyang had approximately 10-day waits. Moreover, on occasion applicants who call the Visa Information Call Center have been told that there are no interview slots available at all and that they should call back at a later time.

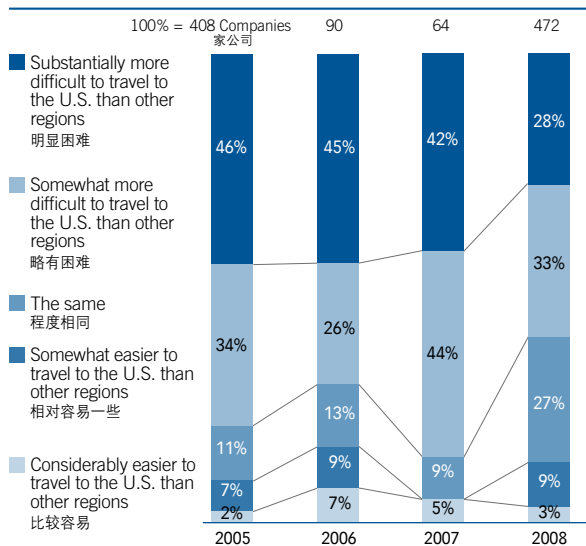
AmCham strongly advocates for increased Congressional funding and State Department initiatives to increase funding for consular facilities and staffing to reduce visa appointment wait times.

根据美国国务院的预测,2005年至2020年,中国赴美签证申请量预计将增长2.32倍。另外,根据美国国土安全部的一项研究,中国将是所有国家中赴美签证申请率增长最高的国家,也是申请总人数增长第二的国家(墨西哥第一)。

根据国土安全部的统计,与其他国家相比,中国公民违反签证规定的数量也在下降,这进一步表明,提高签证审批率的做法是正确的。

This year, how difficult was it for the Chinese citizens you work with (employees, customers, and suppliers) to travel to the United States, relative to other regions? (2005-2008)

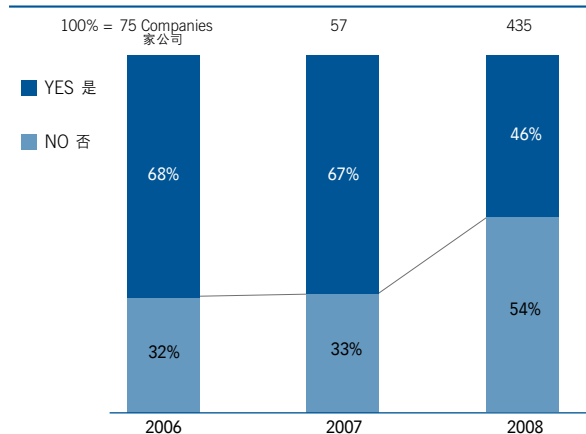
与您接触的中国公民(客户,消费者及供应商)在赴美国和其它地区旅行时的困难度比较



Source: 2005-08 AmCham Business Climate Surveys
资料来源: 2005-08 年中商会商务环境调查

Do you intentionally avoid arranging meetings in the U.S. for suppliers, customers, and employees because of concerns about obtaining visas? (2006-2008)

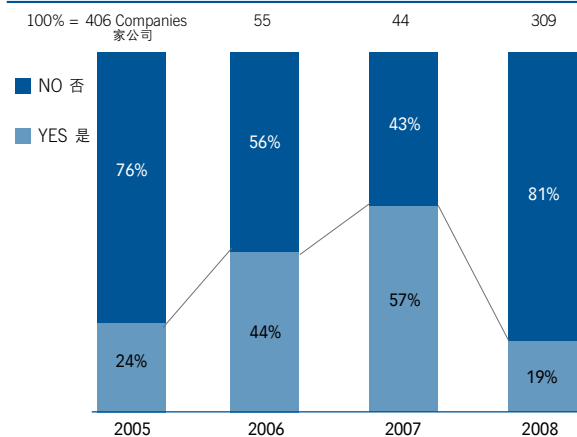
企业是否由于考虑签证问题而尽量避免在美国为与消费者,客户及雇员安排会议



Source: 2006-08 AmCham Business Climate Surveys
资料来源: 2006-08 年中商会商务环境调查

Have you lost significant sales or business relationships to non-U.S. competition because your customers either refuse to apply for visas to the U.S. or have been rejected for visas? (2005-2008)

是否由于顾客遭到拒签或拒绝申请美国签证而对企业销售造成损失,并使其所建立的商业关系转向非美国的竞争对手



Source: 2005-08 AmCham Business Climate Surveys
资料来源: 2005-08 年中商会商务环境调查

美中旅游谅解备忘录的执行将进一步增加签证量

中美商会对美中首次战略经济对话中签署旅游谅解备忘录表示欢迎,该谅解备忘录将便利中国公民赴美团体旅游。中国已同意允许中国旅游局指定的旅行社对赴美团体旅游提出建议,这些旅行社可以与美国公司合作组织、推销此类旅游业务。另外,美国旅行目的地也可以在华开展推介业务。美国同意受理团体签证业务并接受指定旅行社直接提交签证申请。由于过去中国旅行社被禁止从事组织和推销团体旅游业务,中美商会预计,随着谅解备忘录的实施,赴美签证申请量将大大增加。

中国公民赴境外旅游度假是一个快速增长的市场,美国完全有条件争取到一个相当可观的份额。人民币的强势地位使美国成为比许多欧洲国家价格更为合理的旅游目的地。中国旅游者对美国来说是宝贵的资源,因为这提供了一个减少不断增长的美中贸易逆差的机遇。旅游业也为美国人创造就业机会。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。

但是,如果不消除合法签证申请者所面临的不必要的障碍,美国就无法充分利用谅解备忘录以及该备忘录所带来的诸多机遇。

AmCham Corporate Visa Programs Remain Beneficial to the Consulates and U.S. Business

AmCham cooperates with the U.S. consular posts in Beijing, Shanghai, Guangzhou and Chengdu on CVPs for AmCham members. These programs continue to benefit our membership by reducing visa appointment wait times and time spent at the post 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 screens the application materials to be sure they are complete before they are passed to the consulate. AmCham appreciates the spirit of cooperation that posts have consistently displayed with respect to the CVPs.

Visas Mantis Security Advisory Opinions Continue to Delay Visas in Key Industries

AmCham is additionally concerned about delays in visa issuance caused by Visas Mantis SAOs. As background, under U.S. immigration law, a visa should be denied if the officer has reason to believe the applicant may violate U.S. laws prohibiting export of sensitive goods, technology or information. Consular officers apply secret criteria to determine when an SAO is necessary. An SAO involves review of the case by the State Department's Bureau of Nonproliferation and other government agencies.

Visas Mantis SAOs are very common for employees, customers, and partners of high-tech companies, such as aerospace and semiconductor companies. In FY2006 there were 33,388 Visas Mantis SAOs worldwide. Visa applicants from China account for more than half, according to the GAO. While fewer than five percent of visa applicants are subject to SAOs, in our experience, 50 percent or more of high-tech company applicants may be subject to SAOs.

A visa cannot be issued until the Visas Mantis SAO is completed three to four weeks after the consular appointment. This delay causes Chinese employees of U.S. companies to miss many meetings and training sessions. It also puts U.S. companies at a disadvantage since customers and partners may choose to do business in other countries instead.

While AmCham acknowledges the national security justification for Visas Mantis SAOs, AmCham is

in favor of finding ways to reduce the unnecessary delays they cause. First, AmCham advocates increasing the visa validity of people subject to SAOs. Under State Department policy, people who have been subject to Visas Mantis SAOs and received State Department "clearance" are only eligible for limited validity visas—B1/B2 visas are valid for just one entry over three months. This means that frequent travelers need to apply for a new visa every three months, squandering consular resources and applicants' time. We believe that applicants who have been investigated and found not to pose a threat should receive full validity visas. Second, in tandem with the paperless visa application, AmCham supports performing the SAO process before visa interview appointments take place.

AmCham also recommends that consular posts provide a written notice to applicants who need to wait three or four weeks after the visa appointment for SAO processing. Currently, Shanghai and Beijing provide such notices, but the written notice is inadequate and occasionally not provided. In our experience, many applicants in Beijing either do not receive or do not understand oral notifications received at the time of their interviews.

Ten-Finger Scan Now Required

A new requirement that all ten fingerprints of a non-immigrant visa applicant must be scanned came into effect on November 15, 2007. We are pleased by estimates that this procedure will only take "a few seconds longer" per applicant in Beijing. In contrast, we are concerned that in Shanghai, officers qualified to conduct interviews have been assigned fingerprint duties, raising the possibility that interview appointment waits and day-of-interview waits may rise.

Further Customer Service Initiatives Would Be Valuable

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 intending immigrants ineligible for visas until they prove otherwise. Other frustrations can be resolved at the consular level. For example, AmCham applauds the Embassy's steps to create videos on U.S. tourism to be shown in visa section waiting rooms.

AmCham recommends that the State Department fund further initiatives to study and improve

增加领馆设施和工作人员仍是需要关注的问题

要满足赴美签证申请,仅靠领馆现有设施是十分困难。

目前,驻华使馆签证处有13个办事窗口,其中8个为面谈窗口(其余负责受理签证申请和指纹扫描)。即将于2008年奥运会前开馆的新馆将有14个签证窗口,无法满足不断增长的需要。新增9个签证窗口的改造计划于2009年完成。

目前驻华使馆非移民签证组有15个初级领事官员的编制,已计划增加3个编制并于今年晚些时候到位。

2007年,驻上海总领馆非移民签证组有10个初级领事官员的编制,2008年将增加3个编制。尽管领事部已移至馆外办公,现有办公条件已达签证审批的极限,有必要更新设施,在现有空间内增加面谈窗口。

签证预约等候时间可能进一步延长

签证预约等候时间指申请者与领事官员联系,预约面谈时间到实际面谈之间的时间段。等候时间长(特别是高峰期)仍是一个严重问题。例如,2006年10月22日,B1/B2签证等候时间如下:北京30天,上海38天,广州21天。2007年1月30日,该类签证等候时间为:北京38天,上海36天,广州23天。在高峰期,如夏季,签证等候时间可能长达45天,其它时间则要短得多。如2008年3月初,广州不需等候,而上海为一个月,北京、成都、沈阳则约为10天。另外,有时候申请者致电签证信息中心时,会被告知无法安排面谈时间,只能再打电话预约。

中美商会强烈建议国会增加经费,国务院制定计划,增加用于领馆设施和人员的资金,以缩短签证预约等候时间。

中美商会商务签证服务使总领馆和美国商界受惠

中美商会与驻北京、上海、广州和成都的领事机构合作,对商会会员实行商务签证服务。这一安排减少了商会会员签证预约等候时间,节省了面谈之日花费的时间,使商会会员受惠。此安排同时也使领事机构受惠,因为商会负责核实会员从事的是合法业务,要求每个公司有专人负责核实申请者旅行的要求是否合理,商会还负责把关,确保申请者资料送总领馆前

完整无缺。中美商会对各领馆在落实该安排过程中所表现出的合作精神表示赞赏。

“签证安全建议”(SAOs)继续拖延了关键产业的签证发放

此外,中美商会还对由“签证安全建议”造成的签证拖延现象表示关注。这一规定的背景是,根据美国移民法规定,如果领事官员有理由相信申请者有可能会违反美国禁止出口敏感产品、技术或信息的法律规定,即应拒签。适用“签证安全建议”由领事官员按照秘密标准决定。“签证安全建议”规定由国务院防扩散局和其它政府机构对个案进行审核。

航空、半导体等高科技公司的雇员、客户和伙伴经常是“签证安全建议”审查程序适用群体。2006财政年度全球适用该审查程序的为33388例。其中,根据“签证安全建议”的统计,中国申请者所占比例过半。根据商会经验,通常需经“签证安全建议”审查的人员不到赴美签证申请总人数的5%,而对高科技公司人员,这个比例可能高达50%或者更高。

签证一般要在与领馆预约后用3至4周完成“签证安全建议”审批程序后下发。这种拖延造成美国公司的中国雇员失去了许多参加会议、接受培训的机会,也使美国公司处于不利地位,因为客户和合作伙伴可能将业务转往其他国家。

中美商会承认出于国家安全考虑适用“签证安全建议”的必要性,但认为应设法减少由此造成的不必要的延误。首先,中美商会建议延长适用“签证安全建议”规定的签证有效期。根据国务院的政策规定,属于“签证安全建议”适用范畴并通过国务院“审查”的人员只能获得三个月一次有效B1/B2签证。这意味着经常赴美人员必须每三个月申请一次签证,既消耗了领事资源,又浪费了申请人时间。商会认为,经审查不构成威胁的申请者应获得通常的12个月的多次有效B1/B2签证。第二,与无纸化签证申请一样,中美商会支持在预约签证面谈前进行“签证安全建议”审查程序。

中美商会同时建议,对预约签证后需等候3至4周时间完成“签证安全建议”审批程序的申请者,领馆应书面通知申请人。目前,驻北京和上海的领事机构提供书面通知,但不充分甚至有时也不提供。根据商会经验,在京的申请人面谈时通常没有收到通知或不了解口头通知的含义。

customer service at busy consular posts in China. For example, according to the Embassy, posts do not keep statistics on trends in visa appointment times or on day-of-interview waits at posts. These are key customer service indicators that should be tracked. Initiatives to improve customer service would go a long way towards improving customer experiences and perceptions of the difficulty of applying for U.S. visas.

Visa Re-Issuance Program Provides Relief to Some Frequent Travelers

Under the Visa Re-Issuance Program, effective January 2008, a person who is applying for a visa within 12 months of the expiration of a prior visa in the same category (e.g., B-1/B-2) and has already had a ten-finger scan need not return to the consular post for a new finger scan provided that the applicant is applying at the post with jurisdiction over his place of residence and that he has previously complied with U.S. immigration law. This is good news for frequent travelers to the United States, who previously were required to make an appointment at the post for a finger scan whenever applying for a visa. Now, eligible individuals can drop off and pick up their applications at CITIC Bank or AmCham offices.

Maximum Visa Validity Should Be Extended

AmCham strongly advocates having longer periods of visa validity, which are convenient for travelers and save consular resources. The U.S. Government seeks to have reciprocal visa fees and validity with foreign governments. Currently, for China nationals B-1/B-2 visas are valid for multiple entries over 12 months; H-1B visas are valid for two entries over three months; and L-1 visas are valid for multiple entries over 24 months upon payment of a reciprocity fee of US\$120 (on top of the visa application fee). In fact, the U.S. Government currently issues B-1/B-2 visas to nationals of most countries valid for 10 years. We urge the Department of State to engage in negotiations with the PRC to extend maximum visa validity. All concerned government agencies, including DHS, should support extension of reciprocity as in the interest of the United States.

Congress Should Lift the H-1B Visa Cap

AmCham advocates lifting the cap on H-1B visas. H-1B visas are available to individuals whose services are sought by an employer in a “specialty occupation.” The individual must have at least a

bachelor's degree or the equivalent in that specialty. The employer must attest to the Department of Labor that the individual will be paid at least the prevailing wage paid to U.S. workers in the same job category in the geographic area. The H-1B visa cap of 65,000 visas per year set by Congress is consistently reached on the first day visas are available for the year. The result is that applying is similar to playing the lottery. AmCham represents numerous companies that need to bring highly skilled workers into the U.S. each year, and they need to be able to count on having enough talent to remain competitive. Artificial caps on visas have the effect of driving skilled workers to other countries and to America's competitors, as well as requiring U.S. employers to consider taking projects and work to where the workers are. Lifting the cap is critical for employers to be able to attract and retain the skilled workforce they need to compete in today's market. ■

Recommendations

- Congress should fund, and the State Department should take, initiatives to upgrade consular facilities and increase staffing in order to meet growing visa demand and reduce visa appointment wait times.
- The U.S. Government, led by the Department of Homeland Security, should redouble efforts to negotiate with the Chinese government an agreement to extend visa validity, especially for B-1/B-2 visas.
- Congress should lift the statutory cap on H-1B visas for professionals.
- To reduce delays in visa issuance for applicants subject to Visas Mantis security advisory opinions (SAOs), the State Department should increase the validity of visas issued to persons who receive SAO clearance. Also, in conjunction with planned paperless visa application, SAOs should be carried out as soon as applications are filed rather than after visa appointments.
- The State Department should fund initiatives to study and improve customer service at posts in China. Posts should keep statistics on trends in visa appointment times and day-of-interview waits at posts, using these as benchmarks for improving customer service.

目前实行的指纹登记制度

要求非移民签证申请者扫描所有10个手指指纹的规定于2007年11月15日起开始实施。在北京这一程序对每个申请者来说只需“多花几秒钟”，我们对此表示满意。相反，我们对驻上海总领馆要求负责面谈的领事官员同时承担指纹扫描工作感到关切，这意味着预约面谈和面谈等候时间都可能延长。

继续实施客户服务计划是有益的

签证申请程序中不少常见的问题，包括面谈、指纹扫描的规定，以及申请者均有意移民因而无资格获得签证的假定(除非他们证明自己没有移民倾向)，均与国会授权有关。其它问题可以在领事层面解决。例如，驻华使馆在签证处等候厅内播放美国旅游录像片，中美商会对这一做法表示欢迎。商会建议国务院拨款，进一步采取措施，研究并改进业务繁忙的驻华总领馆的客户服务质量。例如，根据驻华使馆反映，现有人员未对签证预约时间或面谈等候时间的趋势进行统计。对这些关键性的客户服务指标应该进行跟踪研究。采取措施改进客户服务质量有助于改善签证申请者的感受，使申请者感受到赴美签证申请程序并非那么困难。

实施二次签证计划可减轻经常赴美人员的负担

根据2008年1月开始实施的二次签证计划的规定，在前次签证失效12个月内申请同类签证并已留下10指指纹扫描资料的申请者，如在负责其居住地所属领区的领馆申请签证且在过去未违反美国移民法规定，则不必前往总领馆再进行指纹扫描。这对经常赴美的人士来说是个好消息，此前，不管他们什么时候申请签证，都必须与领馆预约进行指纹扫描。现在，符合规定的人员可直接前往中信银行或中美商会办公室提出申请。

应延长签证最长有效期

中美商会强烈建议延长签证有效期，这不仅为旅行者提供了便利，也节约了领事资源。美国政府在签证费和签证有效期方面与外国政府实行对等政策。目前，针对中国公民的B-1/B-2签证为12个月多次有效；H-1B签证为三个月两次有效；L-1签证在支付120美元对等费(不含签证申请费)后为24个月多次有

效。事实上，目前美国政府对大多数国家公民颁发都是有有效期为十年的B-1/B-2签证。商会敦促国务院与中华人民共和国进行谈判，延长签证最长有效期。所有有关政府机构，包括国土安全部，均应支持实行互惠原则，此举符合美国利益。

国会应取消H-1B签证限额

中美商会建议取消H-1B签证的限额。H-1B签证系发放给从事雇主所招聘的“特殊职业”的人员。在此专业内，申请者必须至少具有学士学位或同等学历。雇主必须向劳工部证明支付给这类人员的薪金至少与特定地区内同类职业的美国人员的工资在同一水平。国会目前规定的每年6.5万个H-1B签证的限额在每年发放签证的第一天即告罄。其结果是申请签证形同抽奖。中美商会在此重申，美国公司每年需要外国高素质专业人士到美国工作，这些专业人士是公司保持竞争力所必需的。人为地为签证数额设限，其结果是将专业技术人才推到其它国家，推向了美国公司的竞争对手。同时迫使美国雇主考虑把工作转移到有专业人员的地方去完成。取消签证限额对雇主吸引和留住专业人才，保持在当今市场上的竞争力至关重要。

建议

- 国会应拨款，国务院应采取措施增加领事机构的设施建设，增加人员编制，以满足日益增长的签证需求，缩短签证预约等候时间。
- 美国政府应由国务院和国土安全部牵头，努力与中国政府就延长签证有效期、特别是B-1/B-2签证有效期进行谈判，达成协议。
- 国会应取消针对专业人士的H-1B签证限额。
- 为减少因适用“签证安全建议”(SAOs)规定而造成的签证延误，国务院应延长那些通过“签证安全建议”审查人员签证的有效期。同时，与计划中的无纸化签证申请一样，“签证安全建议”审查应在提出申请的同时启动而不应在预约签证面谈后开始。
- 国务院应提供资金，采取措施，研究和改进驻华领事机构客户服务质量。领事官员应对签证预约时间和面谈等候时间的趋势进行统计研究，并以此作为改进客户服务水平的标准。

U.S. Trade Promotion in China

AmCham urges the U.S. Government to ensure that American companies of all sizes have the support and resources necessary to compete effectively in China. It is a country that in the span of only a few decades has become one of America's most important and promising export and overall commercial markets.

The Chamber appreciates the efforts of the U.S. Government agencies directly involved in promoting U.S. exports and recognizes that China has a large contingency of U.S. Foreign Commercial Service (USFCS) officers, some 140 spread throughout the country at four consulates and the Embassy. These officers focus on export controls, imports, patents and trademarks, and market access and compliance. Their large number and variety of focus areas complement the equally varied and capable embassy officers who focus on trade policy, WTO implementation and broader economic and financial issues. The USFCS alone was responsible for facilitating transactions worth nearly US\$5 billion in U.S. exports to China in 2007.

Despite U.S.-China export growth of 400 percent since the year 2000, EU exports grew even faster. According to the Chinese Ministry of Commerce (MOFCOM), the EU accounted for almost 40 percent of total Chinese imports compared to seven percent for the U.S. The U.S. trailed both the EU and Japan as an exporter of technology to China. China's technology imports in 2006 totaled US\$22 billion, up 15.6 percent over 2005. The EU accounted for almost 40 percent of the total technology imports, with Japan and the U.S. placing second and third, respectively, with nearly 24 percent and 19 percent.

While U.S. exports are growing, American companies, particularly promising small- and medium-sized firms, will need help to build on their successes. Dealing with fast-growing international competition will require well-funded programs of support, strong U.S. Government and congressional leadership, and a well-coordinated and sustained public-private partnership dedicated to greatly enhancing American firms' competitiveness in China.

The Chamber's biggest concerns regarding U.S. Government export promotion efforts and congressionally mandated programs are first, whether the level of dedicated resources is adequate for the formidable size and scope of the China market; and second, whether these resources help American firms compete effectively for market share against their biggest competitors in China.

Regarding resources, AmCham was disappointed to learn that the fiscal year 2008 (FY08) budget for the USFCS in China is less than FY07, and that requests for much needed increases to upgrade the overall export promotion operations have been denied. USFCS would likely join the State Department in staffing America's fifth consulate in China—Wuhan, the gateway to China's six central provinces—if funding were available. This would be greatly beneficial to American businesses in China.

Regrettably, no funds have been appropriated in FY08 for the Commerce Department's Market Development Cooperator Program (MDCP), a matching-grant program that supports promising U.S. export-promotion-affiliated multipliers and has proved highly effective in China.

Two examples of successful MDCP initiatives in China include the United States Information Technology Office (USITO), a consortium of U.S. based high-tech companies and industry groups, and the U.S. Trade and Development Agency (USTDA). Both were started under MDCP sponsorship and USTDA has proved to be the most successful U.S. Government-sponsored multiplier program in China. USTDA has consistently provided extensive support and funding for aviation, one of the most promising sectors in China, through the U.S.-China Aviation Cooperation Program (see box, page 38). USTDA's FY08 budget is considerably smaller than those for similar programs in the EU and Japan. USTDA funds have generated billions of dollars in exports to China. Additional funding with a broader scope of sectors is mandated given the stakes U.S. companies face in China.

These are issues that the President's Export Council

促进美国对华贸易

中美商会希望美国政府给予必要的支持和资源,使美国公司能够有效地在中国市场上开展竞争。中国在短短的几十年间,就已经发展成为了美国出口商品及其它商品最重要、最有发展前景的市场。

中美商会赞赏美国政府部门直接参与推动美国出口方面的努力,同时也意识到在中国有为数众多的美国驻华大使馆商务处(USFCS)官员(约140人)在美国驻中国的五个使领馆中工作。他们负责的领域各不相同,包括出口管制、进口、专利及商标、市场准入及合规等事务。同时大使馆也拥有许多精明能干的官员,负责贸易政策、WTO执行以及更为广泛的经济和财政事务,两者形成有效互补。2007年,美国驻华大使馆商务处所促成的美国对华出口贸易额就接近50亿美元。

尽管美国对华出口自2000年以来已翻了两番,但欧盟的对华出口增长速度更快。根据中国商务部所公布的数据,欧盟在中国的进口总额中占将近40%,而美国则只占7%。美国在对华技术出口方面也位于欧盟和日本之后。2006年,中国技术进口总额为220亿美元,比2005年增长了15.6%,其中来自欧盟的技术进口的数额占40%,日本和美国分列第二和第三,比例分别为24%和19%。

随着美国出口的增长,美国公司,尤其是具有潜力的中小企业需要得到相关的帮助,从而取得更大的成功。要应对日益激烈的国际竞争,就需要有充足的资金支持计划、美国政府和国会的强大领导力、持续而协调良好的政府和企业之间的伙伴关系,以便大大提高美国公司在中国的市场竞争力。

在美国政府推动出口的努力及相关国会议案方面,中美商会最为关心的是:首先,投入的专项资源是否充足,是否能够与中国巨大规模的市场相适应;其次,这些资源是否能够有效地帮助美国公司在中国市场上与其最大的竞争对手开展市场份额的竞争。

关于资源,商会获悉2008财年对美国驻华大使馆商务

处的预算还不及2007财年,并且有关方面提出的关于急需增加资金,以提升总体出口水平的活动要求也被驳回,我们对此感到非常失望。如果资金到位,美国驻华大使馆商务处非常希望同政府部门共同组建美国驻华的第五个领事馆——武汉领事馆。武汉是进入中国中部六省的门户。如果这件事情能够取得成功,将会对美国公司在华业务大有裨益。

令人遗憾的是,2008财年美国商务部的市场开发合作项目(MDCP)尚未得到拨款。这个项目是一个配套资助项目,用来支持那些有发展前途的、与美国出口促进相关联的企业。事实证明这个项目在中国取得了非常好的效果。

市场开发合作项目(MDCP)在中国开展的活动中,其中的两个成功例子是:一个是美国信息产业联合机构(USITO),它是一个由总部设在美国的高科技企业和行业集团组成的财团;另一个是美国贸易和开发署(USTDA)。这两个机构都是在市场开发合作项目(MDCP)的资助下成立的。事实表明,美国贸易和开发署(USTDA)是在中国实施的美国政府资助项目中最成功的一个。该机构一直在通过美中航空合作计划(见附后备注)为航空业提供广泛的支持,而航空业是中国最具发展前途的行业之一。美国贸易和开发署(USTDA)2008财年的预算要比欧美和日本的类似项目减少很多。该机构的资金已经带来了数十亿美元的对华出口。考虑到美国公司在中国的利益,必须提供更多的资金来促进更多行业在中国的发展。

以上就是美国总统出口委员会(PEC)和美国贸易促进与协调委员会(TPCC,由美国商务部领导的、17个与贸易事务相关的美国政府机构所组成)应该更多、更积极地去关注和处理的事情。除此以外,我们还强烈建议美国总统出口委员会(PEC)和美国贸易促进与协调委员会(TPCC)以及其他相关的机构团体应当考虑在华盛顿主办一个以“未来十年美国在华竞争力”为主题的峰会,这将有助于评估美国政府和商会在支持美国在华商业利益及如何应对未来挑战方面所发挥的总体效力。中美商会认为其成员未来十

(PEC) and the Trade Promotion Coordinating Committee (TPCC, a Commerce-led group of 17 trade-focused USG agencies) should note and address in a more focused, aggressive fashion. Further, we strongly recommend that the PEC, TPCC and other relevant groups consider sponsoring a summit in Washington, D.C., with a theme covering America's competitiveness in China in the next ten years. This would serve to evaluate the U.S. Government's and the Chamber's overall effectiveness in supporting American commercial interests in China and suggest ways to address future challenges. The Chamber believes that the challenges our members will face in China over the next decade will be no less daunting than those encountered in the previous ten years. Many of these new challenges will differ in scope and character from those previously encountered, demanding new and innovative export and commercial promotion efforts.

Public-private partnerships increasingly play a supporting role to American companies of all sizes in China. This is especially true in China's second- and third-tier cities where the U.S. Government has little or no presence. Programs sponsored by individual U.S. states have grown tremendously in China and now number around 30, representing perhaps the largest contingency of such U.S. programs in any one country outside the U.S. Industry groups and associations, universities and other groups have also taken a more active role in representing their constituencies in China. The Chamber applauds and further encourages all of these efforts. These programs work best when all U.S. Government export-promotion activities in China, be they embassy, consular or a combination of public- and private-sector managed, are well-funded, adequately supported and coordinated. ■

Recommendations

- Fully fund the USFCS budget for FY08 and enable USFCS posts to expand to Wuhan and to the sites of any future new U.S. consulates in China.
- Increase funding and support for TDA, fund MDCP for FY08 and evaluate opportunities for expanding exports to China with public-private partnerships such as with associations, industry groups and states.

- Sponsor a summit in Washington, D.C. on America's competitiveness in China in the next ten years, with the aim of evaluating how well American commercial interests in China are supported and suggest ways to address future challenges.

U.S.-China Aviation Cooperation Program

U.S.-China Aviation Cooperation Program (ACP) is a public-private partnership between the USTDA, the U.S. Federal Aviation Administration (FAA), the General Administration of Civil Aviation of China (CAAC) and private stakeholders in the U.S. aviation industry. It was created to engage the CAAC through training on priority development projects.

USTDA has provided funding for Phases I, II and III of the ACP. A US\$500,000 USTDA grant helped launch ACP Phase I, carried out in 2004 and 2005, which included operational and management training, aircraft certification assessment and technical assistance on air traffic flow management and collaborative decision-making for CAAC officials. ACP Phase II, carried out in 2005 and 2006, focused on aircraft certification and managerial training and was funded by a US\$1.27 million USTDA grant and matching ACP member funds totaling US\$2.3 million. ACP Phase III will be carried out during 2007 and 2008. A US\$1.69 million USTDA grant was awarded in 2007 to support this phase of the technical cooperation initiative. The Phase III program includes technical and managerial training, technical assistance on aircraft continued airworthiness, maintainability and certification training, market assessment of the regional and general aviation in China and the preliminary study of an Air Traffic Flow Management System for China.

年在华所面临的挑战并不会比以前有所减少。在这些新的挑战中，无论规模或是性质都与以往有所不同，因此需要采取新的创新性措施促进出口并寻求商业发展。

对所有在华美国公司来说，政府和企业之间的伙伴关系越来越多地发挥着支持的作用，在中国的二、三线城市尤其如此。而在这些城市美国政府几乎没有或完全没有派驻任何机构。由美国某些州政府赞助的在中国实施的项目呈迅猛增加之势，目前大约有30个项目左右，可能是除美国本土以外项目实施数量最多的国家。另外，行业团体和协会、大学以及其他团体也一直在代表各自的支持者利益方发挥着越来越积极的作用。中美商会欢迎并且鼓励所有的这些努力。这些项目若要达到最好的效果，需要美国政府在中国实施的所有旨在促进出口的活动，无论是使领馆负责，还是由政府和企业共同管理的，都能够得到充足的资金和其它方面的支持，而且能够协作良好。

向美国政府提出的建议

- 为美国驻华大使馆商务处2008财年的预算提供足够的资金，使其各派出机构能够陆续进驻武汉和其它未来美国将设立的新领事馆所在的城市。
- 给美国贸易发展署以更多的资金和支持，为市场开发合作项目2008财年提供资金，依靠政府企业间伙伴关系，例如协会、行业团体、州政府等，来评估扩大对华出口的机会。
- 在华盛顿主办一次以未来十年美国在华竞争力为主题的峰会，目的是评估对于美国在华商业利益的支持力度如何，以及如何应对未来的挑战。

备注：莱特兄弟美中航空合作项目

莱特兄弟美中航空合作项目(ACP)是一个政府企业合作项目，由美国贸易发展署、美国联邦

航空局、中国民用航空总局及美国航空业的相关企业共同组建，目的是通过举办优先发展项目方面的培训来吸引中国民用航空总局积极参与。

美国贸易发展署已经为莱特兄弟美中航空合作项目前三期工作提供了资金支持。一期工作于2004~2005年间实施，其中启动阶段美国贸易发展署提供了50万美元的资助款，用于运作和管理培训、飞机认证评估和空中交通流量管理方面的技术指导，以及提高中国民用航空总局的官员决策管理水平等。二期工作于2005~2006年间实施，主要是针对飞机认证和管理培训，项目资金一部分来源于美国贸易发展署的拨款，金额为127万美元；另一部分是莱特兄弟美中航空合作项目的成员提供的，总金额为230万美元。三期工作将在2007~2008年间实施。2007年，美国贸易发展署拨款169万美元，用以支持这一阶段的技术合作活动。三期工作的主要内容是技术和管理培训、飞机持续适航、维修、认证培训方面的技术指导、中国各地区和总体航空行业的市场评估，以及中国空中交通流量管理系统的初步研究等等。

Export Controls

Policymakers face a great challenge in balancing trade and national security concerns when formulating effective export control policies. Continual review and updating of export control levels and licensing policies is essential for an effective export control system, especially in China, given its rapid economic and industrial development. Controls on American export items that are widely available in the Chinese marketplace from Chinese and non-U.S. companies undermine U.S. competitiveness by reducing the ability of U.S. industry to compete. Such controls unfairly alter the terms of trade in favor of other countries at the expense of U.S. companies, undermining economic growth and U.S. economic security. Export control regulations based on a clear and current understanding of the market and of China's technological realities requires ongoing market assessments and more on-the-ground U.S. government resources, which today are inadequate.

Significant Developments

In June 2007, the Bureau of Industry and Security (BIS) of the U.S. Department of Commerce released the final version of its China dual-use export regulations. Known as the new China Rule, it was intended to clarify U.S. export control policy toward China. The draft rule was first published in July 2006, followed by a public comment period and a U.S. Government inter-agency review process. AmCham commends BIS for its industry outreach and positive engagement with the chamber throughout the formulation of the rule. AmCham hopes that in the spirit of industry and governmental cooperation, the U.S. Government will continue its outreach and collaborative efforts.

Among other provisions, the new China Rule required licenses for 31 additional items if intended for a defined "military-end use." AmCham requests that the U.S. Government continues to review and update these license requirements with the goal of increasing legitimate commercial trade, enhancing national security and ensuring export control levels reflect market realities. An effective and complete U.S. export control regime should take into account the cost-benefit analysis of overly restrictive controls

on U.S. economic competitiveness, a key component for a robust defense-industrial base. Relative to our foreign competitors, U.S. export controls are tougher and severely limit our ability to compete in China. While we recognize the strategic importance of restricting exports of certain types of products to China, it is also important to ensure that the net is not being cast too widely so as to include goods that are not sensitive.

As part of the broader new China Rule, BIS also introduced an innovative new Validated End-User (VEU) Program to lift certain license requirements on exports to Chinese companies having a track record of responsible compliance with U.S. licensing requirements. Under this program, verified companies can receive shipments of certain items without individual export licenses. The VEU program brings positive benefits to the U.S.-China trade relationship by creating a more predictable business environment for manufacturers and suppliers, expediting the export process, rewarding VEU companies with good corporate governance and a demonstrated commitment to compliance and enhancing the global competitiveness of U.S. businesses. AmCham supports the VEU and believes it represents a positive step toward enhancing U.S.-China civilian trade in high technology.

Specific Issues

AmCham acknowledges that a large percentage of dual-use products are approved for export by the U.S. Department of Commerce. AmCham notes, however, that misperceptions about the breadth and depth of U.S. export controls in China further intensify the challenges facing U.S. industry. The material damage to U.S. exporters often results from Chinese purchasers' misperceptions about how licensed and unlicensed trade is defined. Many Chinese companies are reluctant to buy U.S. products because they don't understand the scope of U.S. export controls and are uncertain about licensing procedures that threaten to disrupt business operations and global supply chains.

AmCham can cite numerous examples in which U.S. companies were eliminated from bidding

出口管制

在制定有效的出口管制政策时，决策者们往往要面对如何平衡贸易与国家安全这一难题。要想建立有效的出口管制体制，对出口管制水平和许可证政策的反复审查和更新至关重要，而对中国这样一个经济和工业迅速发展的国家，这样做则尤为重要。对于业已广泛存在于中国市场上的美国出口物品(无论这些物品是由中国公司还是由非美国公司所提供)实施出口管制会降低美国产业的竞争能力而削弱美国的整体竞争力。这些管制措施会使贸易条件倾向于其他国家，而有损于美国公司的利益，从而抑制美国的经济发展与经济安全。要想根据对当前市场的深入了解以及对中国科技发展现状的明确认识制定出口管制规定，就需要持续不断地进行市场评估以及更多地利用美国政府在中国的各种资源，而这些工作如今还显欠缺。

重大进展

2007年6月，美国商务部产业安全局(BIS)发布了最终版本的中国双重用途产品出口规则，也被称为新规定。新规定旨在澄清美国对中国的出口管制政策。规则草案最初于2006年7月公布，随后进行了公众评议和美国政府机构间审核。中美商会对产业安全局在规则制定的整个过程中与各行各业开展广泛交流以及与商会进行积极沟通表示赞赏。中美商会希望美国政府本着产业和政府合作的精神继续广纳善言，通力合作。

除其他条款外，新规定要求对新增的31种物品，当其被试图用于定义的“最终军事用途”时，必须取得授权。中美商会希望美国政府继续对这些授权要求进行审核与修订，以便扩大合法商业贸易，巩固国家安全，同时使出口管制的内容要求能够真实反映市场技术发展水平。一个有效而健全的美国出口管制体系应当包括由于过分的限制性管制政策，给美国经济竞争力带来影响的成本效益分析，而经济竞争力是强大国防工业基础的重要组成部分。相对于我们的国外竞争对手，美国的出口管制相对更为严格，极大地影响了我们在中国的竞争力。我们理解对某些类型产品限制其向中国出口的重要战略意

义，但同样重要的是，不应将产品范围限定过宽，以至于把一些非敏感物品也涵盖其中。

作为新规定其中一部分，产业安全局还引入了新的合格最终用户制度(VEU)，以放宽那些能够严格遵守美国政府的授权要求，保有良好记录的中国公司的某些出口的授权要求。根据该计划，经授权的公司无需单独申请出口许可，就能够购买限制列表中的产品。合格最终用户计划不仅为制造商和供应商创造了更加可以预知的商务环境，加快了出口流程，也是给予拥有良好的公司治理，严格守信的企业政策鼓励，同时提升了美国企业的全球竞争力，从而积极推进了美中贸易关系。中美商会支持合格最终用户制度，相信它是向促进美中贸易向民用高科技商品迈出的积极一步。

具体问题

中美商会承认，双重用途产品中有很大一部分都获得了美国商务部的出口审批。但中美商会也注意到，中国对美国出口管制政策的广度与深度理解的偏差进一步加大了美国产业所面临的挑战。中国采购商对授权与未授权贸易定义的理解偏差往往会对美国出口商造成实质性损失。许多中国公司都不愿购买美国产品，因为他们不了解美国出口管制的范围，对授权程序心存疑虑，担心影响其业务经营，引发全球供应链的中断。

中美商会能够就以上问题列举很多实例。在这些实例中，中国采购商由于对美国的出口授权要求望而生畏，而直接将美国公司从竞标程序中排除。因为对采购商而言，与其和产品需要授权的供应商讨论如何应获得授权问题，不如和产品不需要授权的供应商直接合作。这种“寒蝉效应”会将中国客户推向其他非美国公司。中美商会认为，健全的出口管制体系不应只包括对敏感技术实施管制，还应通过为美国出口商及其国外客户提供融资、教育和培训的支持措施来鼓励非敏感技术的销售与出口。

中美商会仍然强调，对某些领域的出口管制规定，

procedures because Chinese purchasers were overwhelmed by U.S. export licensing requirements. In such cases it can be easier for buyers to go elsewhere than to navigate potential problems with licensing requirements. This “chilling effect” drives Chinese customers to non-U.S. companies in China and abroad. AmCham believes that a complete export controls system not only controls sensitive technologies, but also encourages the sale and export of less sensitive technologies by supporting funding, education and training for U.S. exporters and their foreign customers.

AmCham continues to emphasize that export control regulations in certain areas do not reflect the reality of what is available in the Chinese market. Neither U.S. economic interests nor U.S. national security are well-served by controls that do not consistently acknowledge current Chinese domestic capabilities and foreign availability in many sectors. A clear delineation between what is already indigenously available in China and what is new and significant technology is a fundamental and necessary component for the promotion of legitimate commercial end-use trade. ■

to address misperceptions relating to the scope of U.S. export controls.

For the Chinese Government

- Support and promote a better understanding of the VEU program to Chinese companies while building on its positive foundation.
- Facilitate the separation of commercial from military entities to support the transparency and competitiveness of Chinese commercial enterprises.

Recommendations

For the U.S. Government

- Base export controls on an improved and balanced assessment of benefits to national security against the damage done to U.S. companies, especially those essential to supporting the U.S. defense-industrial base and economic security.
- Continue consultation with private industry for input on the control-list based on dynamic market changes.
- 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.
- Continue to work in the context of the JCCT High-Technology and Strategic Trade Working Group to promote responsible civilian (non-controlled) trade in high-technology products.
- Support funding, education and training for U.S. exporters and their Chinese customers

并未反映出其在中国市场的实际现状。一个不能正确面对中国国内当前技术能力，以及了解国外可提供技术信息的管制政策，既不符合美国的经济利益，也不利于美国的国家安全。明确区分重要新技术与中国国内业已存在的技术，是促进合法商业终端贸易的基本和必要因素。 ■

建议

对美国政府

- 出口管制政策应基于一个改进的评估体系，对国家安全利益与美国公司所受的损害予以均衡考虑。尤其是对美国国防工业的支柱型企业 and 关系国家经济安全的公司。
- 基于市场的动态变化，继续与工商业界协商，征求对出口管制清单的意见。
- 在发货前后，更多利用美国政府在中国的各种资源来收集和评估中国国内实际技术能力和国外所提供技术的信息。
- 继续与中美商贸联委会（JCCT）高科技和战略性贸易工作组配合，推动负责任的民用（非管制）高科技产品贸易。
- 对美国出口商及其中国客户的融资、教育和培训予以支持，以改变对美国出口管制范围认识上的偏差。

对中国政府

- 在巩固基础的同时支持并促进中国企业更好地理解合格最终用户计划。
- 鼓励商业企业和军工企业分离，以提高中国商业企业的透明度和竞争力。

Human Resources

Human resource issues are consistently cited among the top challenges facing foreign companies doing business in China. They affect China's ability to continue its economic reforms and maintain a competitive advantage in the global economy. AmCham's concerns about human resources center on three fronts:

- A labor market in which it is increasingly difficult to attract, retain and motivate high quality talent to meet business needs.
- The promulgation of the new Labor Contract Law in January 2008 without sufficient guidelines for implementation. This has made it difficult for companies operating in China to appropriately adjust company policies in a way that is both fair to employees and serves the legitimate needs of companies for maintaining management control and business development policies.
- AmCham acknowledges and supports worker rights in China, including the right of employees to organize, join and participate in trade unions as recognized by both Chinese law and International Labor Organization conventions. To protect the lawful rights of employees, employers and trade unions, we further believe that the labor laws and regulations should be implemented and enforced in a consistent and uniform manner on a national basis.

We are pleased to have had the opportunity to work with the Chinese Government in addressing these issues and request the opportunity for a full review and discussion of the issues and our recommendations, as outlined below.

Significant Developments

The Chinese Government has made significant efforts to increase the quality of skilled labor in China. Over the next two decades, the skilled labor supply—those individuals with a bachelor's degree or above—is expected to increase by an average of 2.4 percent to a total of 45 million. This is due to investment in post-secondary education as well as an increased population of workers of that age. The total number of skilled laborers will exceed that of the U.S. by 2020 (See Figure 20).

In spite of these developments, serious challenges remain. Both foreign-invested enterprises (FIEs) and domestic companies are finding it difficult to fill and retain both technical and managerial positions. Information on voluntary turnover illustrates the challenges faced by companies operating in China today. According to Hewitt Associates, employee turnover averages 14.7 percent in China, with some functions, industries and geographies experiencing turnover in excess of 17 percent, representing a significant business challenge (See Figure 21, page 47).

In fact, staff turnover rates and average salary increase rates (nominally and as a proportion of total payroll) are higher in China than nearly any other place in Asia.

The dynamic talent environment in China is primarily due to three reasons:

- There is an increased demand for talent from both FIEs and domestic companies.
- There is a mismatch between what employers need and the skills that Chinese graduates possess.
- Talent mobility in China is significantly restricted by the hukou (household registration) system.

Demand for Talent

The rapid growth of the economy, the increase in FIEs in China and reform of state-owned enterprises all place high demand pressure on the labor market. An average 40,000 new FIEs have entered China in each of the last four years. In addition, many FIEs currently in China are expanding their operations. At the same time, Chinese domestic companies are globalizing and transforming their management practices, increasing the demand for qualified talent. There is no indication that the supply gap will close in the near future, and it is expected that fierce competition for talent will continue.

Supply of Qualified Talent

In addition to an increase in demand for quality talent, severe shortages of experienced talent and qualified university graduates place a burden on both private and public companies.

人力资源

人力资源问题一直被认为是在华经营的外资企业所面临的首要挑战之一，也对中国是否能够继续推行经济改革并在全全球经济中保持其竞争优势产生影响。中美商会尤其关注以下三方面的人力资源问题：

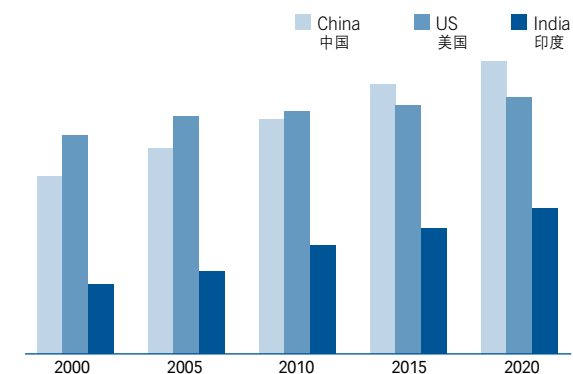
- 在目前劳动力市场中，吸引和保留优秀人才并调动其积极性以适应企业需要变得日益困难。
- 尽管新劳动合同法已在2008年1月颁布，但缺少执行细则。因此在华企业很难调整企业政策，使其既对员工体现公正又能满足企业保持管理、控制和业务发展政策的合理需求。
- 中美商会承认并支持保护工人的权利，包括雇员成立工会的权利，以及加入符合中国法律和被国际劳工组织所认可的工会组织的权利。我们也支持保护雇员、雇主和工会的权利。同时我们深信有关劳动的法律法规将会在全国范围内保持一致而统一的有效执行。

我们很高兴有此建言机会，也恳请中国政府对下文中所述问题和建议予以沟通和讨论。

具体发展

中国政府在提升熟练劳工质量方面做出重大努力。预计未来的二十年间，熟练劳工供给量，即本科或本科以上学历的个人，将平均每年增长2.4%，最终

Skilled Labor Supply age 25-59
25-59岁熟练劳工供给



Source: Watson Wyatt
资料来源: Watson Wyatt

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达到4500万。这要归功于国家在大学教育的投入以及这一年龄段的员工总数的增加。截至2020年，中国熟练劳工总量将超过美国。（见图20）

取得诸多进步的同时仍存在严峻挑战。聘用并保留技术和管理人才资源是中外资企业共同面临的挑战。目前员工主动辞职方面的有关信息足以说明在华企业面临的挑战。翰威特咨询公司指出，在华企业的平均离职率14.7%，而在某些部门、行业和地区甚至高达17%。这一结果显示出了企业所面临的严峻挑战。（见图21）

事实上，中国的员工离职率和平均上升幅度（名义值及在总工资中的比率）均高于亚洲其它地方。

中国人才环境的高度活跃主要基于以下三个原因：

- 外资和中资企业的人才需求都在增加。
- 雇主需要的技能和大学毕业生拥有的技能之间存在差距。
- 中国人才流动严重受限于户口制度（户籍登记）。

人才需求

经济的快速增长、外资企业在华数目的增多以及国有企业的改革对就业市场形成了较大压力。过去四年中平均每一年就有四万家外企入驻中国。很多已在华经营的外企也正在扩展业务。同时，随着中资企业希望成长为全球性企业而进行的管理改革，其对合格人才的需求也在增加。目前没有迹象表明人才供不应求的现象会在近期结束。而且预计人才激烈争夺战还会持续下去。

合格人才的供给

除了对优秀人才的需求增加外，有工作经验的人才和合格大学毕业生的极度短缺也成为私企和国企面临的问题。

- 劳动和社会保障部估计，在2006年的416万名毕业生中，124万名毕业生不具备当今就业市场所需要的具体条件。

- According to estimates from the Ministry of Labor and Social Security, of the 4.16 million graduates in 2006, 1.24 million lack the specific qualifications required for today's job market.
- McKinsey Global Institute suggests that Chinese domestic enterprises will need 75,000 qualified leaders in the coming years, while today there are only 5,000 that meet the requirements of a global business.
- For FIEs as a whole in China, the nature of business has trended from low-end manufacturing increasingly to research and development, more sophisticated manufacturing processes operating in global networks, financial analysis, high-tech industries and service-oriented work. As many foreign companies integrate their China business into their global operations, they are expecting their Chinese colleagues to work collaboratively across boundaries, speak fluent English and have an international mindset when approaching problems.

The characteristics of China's educational system contribute to the lack of qualified talent. In spite of efforts on the part of the Chinese Government to increase investment and raise standards in education, the country's schools still favor rote memorization versus practical application. This method of learning does not translate well to daily operational communication, especially in today's complex, global multi-cultural organizations.

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

Talent Mobility

Relatively low talent mobility in China affects the talent market significantly. Although the Chinese Government has significantly loosened the *hukou* policy in recent years, the current policy in large cities such as Beijing and Shanghai still hinders the ability to source top talent without regard to location across the PRC. FIEs operating in China tend to be focused in a few concentrated areas in coastal cities. However, the distribution of Chinese universities across China does not correspond to the talent needs

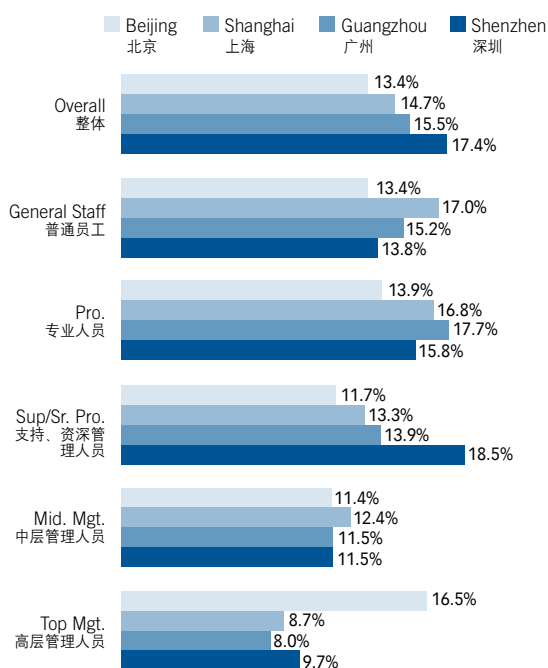
in specific provinces. As a result, *hukou* restrictions hinder qualified graduates from moving to companies in other provinces where their skills are needed. This is especially true for FIEs, which have few mechanisms available to enable *hukou* transfers. In addition, the lack of portability between cities creates an unnecessary burden for employees and employers and discourages employee mobility.

Recommendations

AmCham encourages the Chinese Government to consider the following steps, which will assist both FIEs and domestic companies in managing the specific challenges of the China labor market:

- Begin steps to reform the education system to encourage greater creative thinking, problem solving and teamwork. Courses should emphasize curricula that are more project-based and that encourage collaborative learning, which are vital skills in the workplace.
- Reduce emphasis on one standardized college entrance examination and focus more on assessing individuals based on various abilities and skills that are applicable to the workplace. This includes team problem-solving, practical innovation and public service.
- Re-evaluate the "985 Project" and "211 Project" aimed at strengthening the top universities and improving the curricula in order to propel the top universities to world class institutions in the next 10-20 years. Although we support the Chinese Government's efforts to increase investment and standards in post-secondary education, these projects should include more cooperation and input from the business community to help ensure that students are learning the skills required to succeed in the labor market.
- Relax *hukou* restrictions for qualified technical or managerial candidates and consider expanding the "Blue Stamp" system to other areas in China beyond Shanghai and Shenzhen.

Staff Voluntary Turnover Rate 2007 (by job level)
2007 年员工主动离职率 (按工作层次)



Source: Hewitt Associates
资料来源: Hewitt Associates

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- 麦肯锡全球研究院指出, 中资企业在未来几年将需要7.5万名合格领导者, 而今天只有五千名能够满足管理一家全球性企业的要求。
- 在华外企性质整体上发生转移, 从低端制造业更多转向研发、全球网络中的更先进的制造工艺、财务分析、高科技行业和服务型工作。很多外企将中国业务融入到全球业务中, 因此也期待中国同事能进行跨国合作、会说流利的英语且在应对问题时拥有全球视角。

中国特殊的教育体系是合格人才欠缺的原因之一。尽管中国政府已采取措施以增加投入并提高教育标准环境, 学校仍重书本轻应用。这种学习方式不能很好地培养出应用型人才, 尤其无法满足当前具有文化多样性和复杂性的全球机构的人才需求。

另外, 相对较少的企业与大学间的伙伴关系和比较缺乏的大学教程实习教育, 也形成了另一个挑战。因此毕业生尽管具备扎实的理论技能, 却不具备应用此技能的工作经验或能力。企业不得不投入大量资金进行人才培训和发展, 使其在华新招的员工能够保持与其它国家的员工相仿的水平。

人才流动性

中国相对较小的人才流动性给人才市场造成重大影响。尽管近年来中国政府已经大大松动户口政策, 北京和上海等大城市的现有政策仍然阻碍企业从全国各地招聘一流人才。在华经营的外企往往集中于沿海地区的几个城市。然而中国大学遍布全国, 因此某些省份的人才需求无法得到满足。所以, 户口限制阻碍合格毕业生前往其能学有所长外省的企业工作。由于外企没有解决户口迁移的能力, 所以这个问题对外企来说尤其严重。此外, 城市间交通不便也给员工和雇主造成不必要的负担, 并且影响员工的流动性。

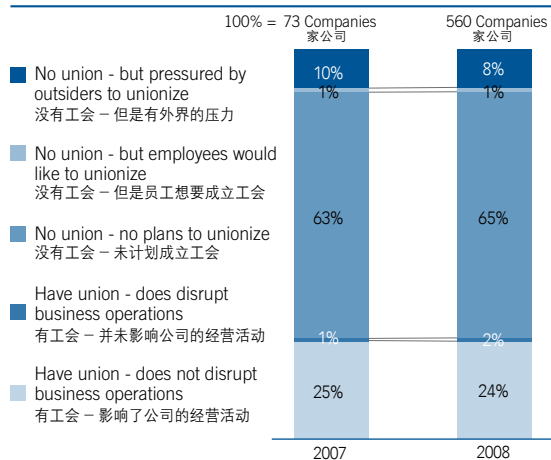
建议

中美商会建议中国政府考虑以下措施。我们认为这将有助于外资和中资企业应对中国就业市场上面临的具体问题。

- 启动教育体制改革的措施, 以鼓励创新思维、解决问题和团队精神。课程设置应该以项目为导向同时鼓励合作式学习, 这些都是工作上的关键技能。
- 不再过分强调单一标准的高考, 相反更侧重依据工作场合使用的各种技能和能力对学生个人进行评估。包括团队合作解决问题、实际创新和公共服务等。

Which statement best describes unionization (or establishment of an employee representative congress) in your organization? (2007-2008)

关于企业工会组织 (或雇员代表委员会建立) 的情况



Source: 2007-08 AmCham Business Climate Surveys
资料来源: 2007-08 年中美商会商务环境调查

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Labor Contract Law

On June 29, 2007, the Standing Committee of the National People's Congress passed the landmark Labor Contract Law, which went into effect on January 1, 2008. This law was the subject of a long and intense debate, and AmCham thanks the National People's Congress for the opportunity to comment on it in draft. The law will have a significant impact on employment relations when it comes into effect (See Figure 22, page 47).

AmCham supports the main emphasis of the law to protect employees' interests and standardize employer rules. However, as of this writing, there are many details regarding the implementation of the law which remain unclear. This has resulted in a high degree of confusion and sometimes inaction on the part of foreign companies in China in implementing the law.

Recommendations

AmCham encourages the Chinese Government to release implementation guidelines for the Labor Contract Law quickly and ensure that the guidelines are comprehensive enough to allow for quick implementation of the law. The key points in need of clarification are:

- Article 4 of the law requires companies to communicate work rules and procedures as part of a “democratic process” before new procedures can be implemented, but the law doesn't specify what type of communication meets the definition, nor what level of detail is required or which specific policies need to be communicated.
- Currently, the law only suggests that an employee representative group be “consulted” through a “democratic process” when implementing work rules. More explanation is necessary about the process to follow if an employee representative group disagrees with a certain policy.
- Currently, the law suggests that in order to enforce a non-compete clause in an employee's contract the company must compensate the employee during the terms of the non-compete clause. However, there needs to be guidance on the amount of

compensation required to enforce a non-compete clause in an employee's contract.

- There is an urgent need for each provincial government to review the current provincial rules of labor contracts and bring them in line with the new national Labor Contract Law.
- The law lacks clarity surrounding the future role of labor dispatch agencies and temporary, seasonal and part-time workers. These uncertainties, along with other rules under Section 2 of Chapter 5 that are specifically dedicated to labor dispatching, have the potential – depending upon the implementing rules definition – to significantly restrict flexibility and substantially increase costs for companies.

Rise of Union Activities in China

AmCham believes that all firms competing in China should protect workers' rights equally. The vast majority of American companies in China make great efforts to have positive work environments and maintain amiable relations with their employees. In addition, the workplace rules and practices for the majority of American companies provide significant protection of worker rights. (See Figure 23.)

We hope to develop positive and productive relationships with unions in China. We urge the Chinese Government to:

- Clarify the role of unions in consulting on policies related to employment.
- Clarify the role of unions compared with that of the Employee Representative Council.
- Consolidate unions for companies that have various offices and entities in China.
- Clarify the detailed implementation of the collective bargaining process, roles and responsibilities of various parties. ■

- 对旨在强化一流大学并改进课程设置的985工程和211工程进行再评估，以推动中国一流大学在未来10至20年内跻身世界一流大学之列。这些工程应该包括与商界加强合作并听取其意见，以确保学生所正在学习的技能适应就业市场的需要。
- 放松针对合格技术或管理员工应聘人员的户口限制，并考虑将“蓝印”制度推广到上海和深圳以外的地方。

劳动合同法

2007年6月29日，全国人大常委会通过了具有标志性意义的《劳动合同法》。该法于2008年1月1日生效。该法经历长时间激烈讨论才得以通过。中美商会感谢全国人大给我们参议草案的机会。该法自生效日起将对中国的劳工关系产生重要影响。

中美商会支持该法将保护员工利益和统一雇主规则作为重点。但直至本文完稿前，该法的诸多实施细节仍不明朗。因此在外企在实施该法时，面临很多困惑甚至有时陷入难以作为的境地。

建议

中美商会建议中国政府尽快公布《劳动合同法》的实施细则，并尽可能规定得更全面、更详细、以使该法尽快实施，尤其需要澄清以下几点：

- 第四条有关该法要求企业在启动新程序之前，按照“民主程序”将企业规章制度向职工告知。但法律本身中并未明确规定哪种告知符合上述要求，及告知的详细程度或哪些具体政策必须向职工告知。
- 目前，该法仅提出，企业制订规章制度时，需要通过民主程序与职工代表进行平等协商。但需要进一步解释，如果该职工代表对某一制度持异议，必须遵循何种程序予以解决。
- 目前，该法指出，要使劳动合同里规定的竞业限制条款具有法律效力，企业必须在其实施期间给员工一定经济补偿。但对于应给予多少赔偿才能使该条款具有法律效力，也应该提

供一定的指导。

- 希望各省市能够尽快修订现行地方劳动合同条例，使其与新颁布的《劳动合同法》接轨。
- 该法未明确规定劳动派遣机构及临时工、季节工和业余打工人员可在哪一范围内使用。如实施细则定义过窄，这些不确定性以及第五章第二款有关劳务派遣的其它规则，将极大限制企业的灵活性，并大量增加企业的成本。

中国工会的作用

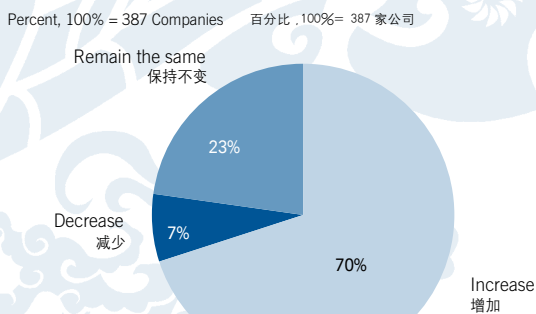
中美商会认为在华竞争的所有企业均应平等保护员工权利。绝大多数在华美企已采取大量措施，确保良好的工作环境并与员工之间保持和睦关系。此外，多数美国企业的工作场所的规则和实践的确有效的保护了员工权利。

我们希望与中国的工会组织建立起积极有效的关系，并敦请中国政府能够：

- 明确工会在提供就业政策建议时发挥的作用。
- 明确工会和员工代表大会的各自作用。
- 对已设立多家代表处和经营实体的在华企业实施工会整合。
- 明确如何具体执行集体协商程序及相关各方所应发挥的作用和承担的责任。

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

企业预计在未来几年劳动诉讼数量变化的情况



Source: 2008 AmCham Business Climate Survey
资料来源：2008年中美商会商务环境调查

Transparency

In its accession agreement to the WTO, China committed to improving nationwide transparency with respect to “all laws, regulations and other measures pertaining to or affecting trade in goods, services, Trade-Related Aspects of Intellectual Property Rights (TRIPS) or the control of foreign exchange.” These commitments were tailored to match the unique conditions and challenges of the Chinese markets. Yet despite some recent improvements, lack of transparency in China’s legislative, regulatory and judicial procedures remains a substantial concern for American companies operating in China.

Lack of transparency stems from a combination of issues related to both institutions and practices. Chinese laws and administrative regulations tend to be broadly drafted and confer substantial discretion on administrative authorities. Chinese administrative authorities are rarely required to detail reasons for their decisions in writing. Furthermore, few administrative rulings or judicial opinions are made public, and administrative authorities are often reluctant to give prospective guidance on the requirements of specific measures or the legality of proposed courses of action. Consequently, it is often very difficult for companies operating in China to determine how best to comply with applicable laws and regulations.

Transparency is not solely a concern of foreign companies; Chinese companies and consumers would likewise benefit from greater transparency in China’s legislative, administrative and judicial procedures. Lack of transparency costs China investment, jobs and innovation. Transparency strengthens confidence in the predictability and certainty of the regulatory and legal framework, thus enabling investors, firms and individuals to more efficiently determine the requirements of laws and regulations and meet the needs of the marketplace. Uncertainty and opacity raise the costs of doing business in China and needlessly deter companies from pursuing productive, beneficial activities.

Moreover, intensifying efforts to promote transparency would advance several of the central government’s other priorities. More transparent and predictable regulations will encourage greater

domestic investment in innovation in China. Requiring more transparent administrative processes will also help combat corruption and local protectionism. Similarly, greater transparency should encourage more uniform interpretations and applications of specific rules throughout the country.

AmCham recognizes and applauds steps that have been taken to promote transparency in recent years. Some major laws, such as the Labor Contract Law and the Antimonopoly Law, were subject to substantial and meaningful public comment, leading to better final texts, and the Ministry of Commerce has published a number of measures related to foreign investment in its official gazette. Nevertheless, several measures could substantially improve transparency for the benefit of Chinese and foreign companies alike.

Enforcement of Unpublished Measures

The WTO Accession Protocol provides that “only those laws, regulations and other measures pertaining to or affecting trade in goods, services, TRIPS or the control of foreign exchange that are published and readily available to other WTO members, individuals and enterprises, shall be enforced.” Although there has been substantial improvement in this area, some foreign firms still encounter policies disseminated and enforced on the strength of internal measures which are not published. Although such internal policies may play an important role in sensitive areas, such as law enforcement, they are generally counter-productive in the context of commercial regulations. Continued reliance on *neibu* (internal) measures is inconsistent with the spirit and, in some cases, the letter, of China’s WTO commitments.

Centralized Journal and Public Comment

The Accession Protocol provides that “China shall establish or designate an official journal dedicated to the publication of all laws, regulations and other measures” and that “China shall publish this journal on a regular basis and make copies of all issues of this journal readily available to individuals and enterprises.” AmCham believes that this is an excellent goal.

透明度

基于中国市场的独特环境和面临的挑战,在《加入世界贸易组织议定书》中,中国承诺在全国范围内改善“有关或影响货物贸易、服务贸易、与贸易有关的知识产权(TRIPS)或外汇管制的所有法律、法规及其他措施”的透明度。虽然最近有了些许改善,但中国的立法、监管和司法程序不甚透明仍然是在华美国企业所关注的一大问题。

各种制度和行为的交合问题是缺乏透明度的原因所在。中国的法律和行政规定往往过于宽泛,而行政主管部门拥有很大的裁量权。中国的行政主管部门几乎不需要对其决定做出详细的书面理由陈述。此外,很少有行政规定或司法意见被公之于众,而行政主管部门往往不愿就具体措施的要求或行动提议的合法性做出预期指示。因此,在华企业往往很难确定如何做才能最好地遵守中国的适用法律和法规。

透明度不仅仅是外国企业所深切关注的问题,中国立法、行政和司法程序越透明,国内公司和消费者同样也将受益匪浅。缺乏透明度会影响中国的投资、就业和创新。透明度能够加强人们对监管和法律框架可预知性和明确性的信心,从而使投资者、企业和个人能够更有效地确定法律法规的要求,进而满足市场需求。不确定性和透明度匮乏会增加在华经营的成本,并不必要地阻止企业开展有效的生产活动。

此外,努力提高透明度也有利于推动中央政府其他重要工作的开展。透明度提高以及法规的可预知性将会极大地推动中国国内的创新投资,加强行政工作的透明度也有助于更有力地打击贪污腐败和地方保护主义。同样,提高透明度还将推动法律法规在全国范围内保持一致的解释和执行。

对于近年来中国政府为提高透明度所做出的努力,中美商会表示认同和赞赏。一些主要法律,如《劳动合同法》和《反垄断法》,都征求了各方面的意见,这一点颇具意义,能够使最终出台的法律更加完善。同时,中国商务部已在其官方刊物上刊登了与外商投资相关的一系列措施。不过,应采纳更多的改进措施以

明显改善透明度,惠及中国的国内外企业。

未公布政策法规的执行

《加入世界贸易组织议定书》规定,“只可执行已公布的且其他WTO成员国、个人和企业容易获得的有关或影响货物贸易、服务贸易、与贸易有关的知识产权或外汇管制的法律、法规及其他措施”。尽管在这一方面已经有了长足的进步,但有些外国企业仍然遇到了一些以内部措施方式传达和实施的非公开性政策。虽然这些内部政策或许会在执法等敏感领域发挥重要的作用,但在商业规则中通常会产生适得其反的效果。长期对“内部”措施的依赖有悖于中国入世承诺的精神,在某些情况下甚至违背了入世承诺。

中央刊物和公众咨询

《加入世界贸易组织议定书》规定,“中国应设立或指定官方刊物,用于公布所有法律、法规及其他措施”,同时“中国应定期出版该刊物,使个人和企业能够轻易地获得各期刊物”。中美商会认为这是一个极好的目标。

其他司法管辖区的中央刊物,如欧盟的《官方期刊》(Official Journal)和美国的《联邦登记》(Federal Register),在增进企业和个人对可能影响其利益的政策法规措施的认识以及鼓励其遵守新公布的法规方面已经卓有成效。

而与欧盟、美国和其他类似市场相比,中国在这方面的进展有限。尽管中国商务部在《中国对外经济贸易文告》中公布了一些政策法规措施,其他中央政府部门,以及地区性和地方政府也在通过各自的渠道预先公布相关内容。但是中国政府仍有待设立一家中央刊物,用于定期公布所有影响货物贸易、服务贸易、外汇和知识产权的政策法规措施。

此外,中国政府仍有待实施全国统一的程序,预先公布拟实施的政策法规措施,并提供一段合理的时间以

Centralized journals in other jurisdictions, such as the European Union's Official Journal and the United States' Federal Register, have proven extremely successful in promoting among companies and individuals awareness of proposed measures that might affect their interests and allow them to comply with newly published regulations.

Progress in this area has been limited in China when compared with the EU, U.S. and similar markets. The Ministry of Commerce publishes some measures in the China Foreign Trade and Economic Cooperation Gazette and other central government ministries, as well as regional and local governments, have published measures in advance through separate outlets. However, the Chinese Government has yet to establish a centralized outlet through which all measures affecting trade in goods, services, foreign exchange and intellectual property rights can be routinely and frequently published.

Moreover, the Chinese Government has yet to implement uniform nationwide procedures for advance publication of proposed measures with a reasonable period allowed for public comment. Significantly, advance notice and public comment in rulemaking benefits governmental authorities as much as it benefits the individuals and companies subject to a new measure. Public comments often uncover latent ambiguities or unintended consequences of proposed regulations (including interactions with other measures implemented by other government authorities). Even if the administrative authorities do not adopt the recommendations of public commentators, the regulators benefit by better anticipating future challenges in the implementation of the new measures. Consequently, it is in the government's best interests to provide meaningful opportunities for the interested parties in the general public to comment on proposed measures.

Unfortunately, China continues to issue many laws and regulations without any advance public comment period. In some instances, the time allotted for public comment has been extremely brief, ranging from one week to ten days. Such brief periods are too short for companies to evaluate thoroughly proposed measures and provide the government with useful comments. Moreover, in some cases authorities have reportedly selected a few specific individuals or companies to comment on proposed measures privately rather than solicit comments from the public as a whole.

AmCham encourages the Chinese Government to work towards the establishment of a centralized, official journal, and to formulate consistent procedures for advance notice and public comment on proposed laws and regulations.

Transparent Administrative & Judicial Procedures

AmCham understands that the Administrative Procedure Law has been on the National People's Congress's legislative agenda for several years. The Administrative Procedure Law may provide the foundation for new rules for promoting transparency in the drafting, interpretation and enforcement of new measures by administrative agencies. The U.S. experience under the U.S. Administrative Procedure Act (APA) may prove useful in developing this law. Transparency could be improved through measures governing the maintenance of formal files on specific matters (such as applications or investigations), formal opportunities for interested parties to voice their views, requirements for written explanations of administrative decisions, publication of decisions, confidentiality of sensitive commercial information and meaningful opportunities to appeal administrative decisions. The Chamber hopes that new initiatives such as the Administrative Procedure Law will address these concerns.

Similarly, measures to encourage the publication of judicial opinions would also promote the transparency, predictability and credibility of the Chinese courts and thus encourage further investment and innovation within China. ■

Recommendations

- End the enforcement and implementation of unpublished measures.
- Establish a centralized official journal for the publication of proposed measures and final measures enacted by all ministries and other governmental organizations.
- Implement consistent procedures for the advance publication of proposed measures with sufficient comment periods to allow meaningful input from all interested parties.
- Accelerate the drafting and finalizing of the Administrative Procedure Law to promote transparency in administrative and judicial procedures.

征求公众意见。值得注意的是,在制定法律法规过程中,预先公布和征求公众意见不仅惠及需要遵守新规定的个人和企业,对政府部门也同样颇有意义。征求公众意见往往能够发现所提议的法规的潜在歧义或预期外结果(包括与其他政府部门实施的相关措施的相互影响作用)。即便行政主管部门没有采纳公众的意见,但监管机构能够更好地预测新的政策法规措施在实施中可能面临的挑战,从而更有效地开展工作。因此,向公众中的利益各方提供对政策法规措施提议发表意见的机会,政府将会从中受益匪浅。

遗憾的是,中国在出台很多法律法规之前仍然没有征求公众的意见。有时,征求公众意见的时间非常短促,只有一周至十天左右。由于时间过于仓促,企业无法全面彻底地对所提议的政策法规措施做出评价,并向政府提供有用的意见。此外,据称在某些情况下,政府部门会内部选定为数不多的个人或企业对采取的政策法规措施发表意见,而不是征求广大公众的意见。

中美商会促请中国政府能够设立一家官方中央刊物,并就所提议法律法规的预先公布和公众咨询制定统一的程序。

透明的行政与司法程序

中美商会了解到,《行政程序法》已被列入全国人大立法议程有几年之久。《行政程序法》将会为提高行政管理部门起草、解释和实施法律法规过程中的透明度的相关法规奠定基础。美国《联邦行政程序法》(APA)就极为有力地证实了制定此法的意义所在。就某些具体问题(如申请或调查)建立正式文件档案,向相关利益方提供正式的发言机会,要求就行政决定做出书面解释,公布各项决定的内容,对敏感的商业信息采取保密措施,以及对行政决定给予申诉机会,这些措施将有助于提高透明度。中美商会希望诸如《行政程序法》等新的法律法规能够有效地解决这些问题。

同样,鼓励公布司法意见的措施也将提高中国法院工作程序的透明度、可预知性和可信性,从而进一步推动中国国内的投资与创新。 ■

建议

- 不再实施未公布的措施。
- 设立一家官方中央刊物,用于公布所有各级政府部门拟实施的和最终审定的各种法律法规。
- 执行全国统一的程序,预先公布拟实施的法律法规,并提供充分的时间以征求所有利益方的意见。
- 加快《行政程序法》的起草和审定,以提高行政和司法程序的透明度。

Intellectual Property Rights (IPR) Protection

The Chinese Government continues to implement programs and policies that indicate it is increasingly serious about bringing IPR protection to the Chinese market. Over the past year, the Chinese government has intensified its IPR protection programs within China. Through a series of educational programs and initiatives, IPR concepts continue to gain familiarity in the marketplace and with the consumer.

Since December 2006, the Chinese government has expanded the “100-Day Campaign on Piracy” into a program called “Fight Piracy Every Day.” The goal of the program is to intensify the crackdown on the piracy of audio and video products as well as computer software. In the first four months of 2007, Chinese authorities confiscated 49 million illegal books, periodicals and audio-visual products. In July 2007, the Ministry of Public Security (MPS) and the local Public Security Bureau (PSB) conducted “Operation Summer Solstice” in collaboration with the FBI in Southern China. This resulted in a crackdown on an international counterfeiting network and the largest seizure of high-end counterfeit software in China’s history.

In August 2007, the National Copyright Administration (NCA), the MPS and the Ministry of the Information Industry (MII) launched a three-month nationwide campaign against online piracy. The campaign’s goals included closing down illegal websites and punishing violators that infringe upon IPR; investigating internet cafes to punish those who download and distribute illegal content; and establishing a long-term supervision mechanism for professional portals engaging in businesses related to film, music, software and books.

The Chinese court system also demonstrated noticeable growth and an expanded impact on IPR enforcement in 2007. Out of a total of 77,463 IPR cases that went to trial in 2007, 74,200 have been decided. Of the 16,439 IPR case appeals in 2007, 15,988 have already been ruled on. Resolution of IPR disputes through settlement has also become more efficient, increasing from 47.45 percent in 2001 to 55.48 percent in 2007.

The international community acknowledged the progress made by China in developing an effective IPR enforcement regime. In 2007, the World Customs Organization (WCO) praised China Customs and awarded it the “Anti-counterfeiting & Piracy Special Contribution Award” for its outstanding contributions in the field of IPR protection. The WCO also recognized 15 “Outstanding Customs Officials.” During the first three quarters of 2007, China Customs enforced 1,914 cases of IPR infringement in import and export, involving about RMB230 million in goods. In addition, in July 2007 the Global Anti-Counterfeiting Group (GACG), a UK-based anti-counterfeiting organization of professional IP associations, recognized the Economic Crime Investigation Department of the MPS for its efforts to strengthen criminal IP enforcement. The GACG had previously commended Chinese Customs for its border IP enforcement efforts in 2006.

A continued surge in patent application filings with China’s State Intellectual Property Office (SIPO) demonstrates that both Chinese and foreign companies are embracing these IPR developments. In 2005, SIPO became the third busiest office (after Japan and the United States) with 173,327 invention patent filings. The number of invention patent filings reached 217,929 in the first 11 months of 2007, exceeding the full-year total of 210,490 in 2006.

China’s IPR protection improvements did not go unnoticed by U.S. companies. More than half of respondents to the “2008 Business Climate Survey” indicated IPR enforcement had improved in China. Meanwhile, 47 percent indicated it had stayed the same, while only 2 percent indicated it had deteriorated (Figure 24). For those companies experienced with IPR public security enforcement, 32 percent indicated public security had improved, 66 percent indicated it had remained the same and two percent said it had deteriorated (Figure 25, page 57). Likewise, for those companies experienced with Chinese customs enforcement of IPR, 27 percent indicated customs IPR enforcement had improved, 71 percent indicated it had remained the same and two percent indicated it had deteriorated (Figure 26, page 57).

知识产权保护

中国政府日益重视中国知识产权的保护，不断推出相关的政策与措施，加强执法力度。2007年，中国政府制定并实施了中国保护知识产权行动计划。通过一系列的宣传教育活动，知识产权概念日益为市场和消费者所认同。

自2006年12月起，中国政府把“反盗版百日运动”扩大为“天天反盗版行动”计划。该计划的目标是加强对于盗版音像制品以及计算机软件的打击力度。在2007年前四个月，中国政府没收了4900万册非法书籍、期刊和音像制品。2007年7月，公安部（MPS）和地方公安局（PSB）联合联邦调查局，在华南地区进行了一次“夏至行动”。该行动极大打击了国际造假网络，是中国历史上规模最大的一次高端盗版软件搜捕行动。

2007年8月，国家版权局（NCA）、公安部和信息产业部（MII）发起了为期三个月的全国打击网络盗版专项行动。该行动的目标包括关闭非法网站和惩处侵犯知识产权的违法者、调查网吧以惩处下载和传播非法内容的个人，建立对从事电影、音乐、软件和书籍的专业门户网站的长效监督机制。

2007年，中国的司法体系也有显著的改善，并且扩大了对知识产权执法的影响。在2007年受理的总计77,463宗知识产权案件中，74,200宗已经判决。2007年上诉的16,439宗知识产权案件中，15,988宗已经做出裁决。通过和解解决的知识产权争议也变得更有效率，和解率从2001年的47.45%增加到2007年的55.48%。

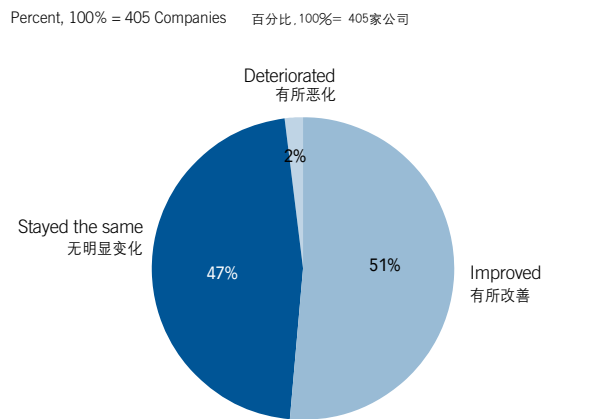
国际社会承认中国在制定有效的知识产权执法机制方面所取得的进步。2007年，世界海关组织（WCO）对中国海关在知识产权保护领域所做出的杰出贡献予以表扬，并授予其“打击假冒和盗版特别贡献奖”。世界海关组织同时还表扬了15个“杰出海关官员”。在2007年前三个季度中，中国海关查处了1,914宗进出口业务中涉及知识产权侵权的案件，涉案货物金额约2.3亿元人民币。此外，2007年7月，位于英国的专业知识产权协会下的反假冒组织

——全球反假冒集团（GACG），对公安部经济犯罪侦查局为加强知识产权刑事执法力度所做的工作予以表扬。全球反假冒集团之前还称赞了中国海关2006年所做的知识产权边境执法工作。

在中国国家知识产权局（SIPO）提出专利申请的数量不断激增，这是中外公司对知识产权保护领域所取得的进展的充分肯定。2005年，中国国家知识产权局以173,327件发明专利申请，成为世界上第三个最繁忙的知识产权局（仅次于日本和美国）。2007年前11个月的发明专利申请量已达到217,929件，超过2006年全年的总量210,490件。

中国在知识产权保护方面的进展已为诸多美国公司所注意。2008年中美商会的中国商务环境调查表明，超过半数的被调查者表示中国的知识产权执法已有所改善。同时，47%的被调查者表示没有变化，只有2%的被调查者表示环境恶化（图24）。对经历过知识产权公安执法的公司来说，32%的被调查者表示公安执法有所改善，66%的被调查者表示没有变化，2%的被调查者表示有所恶化（图25转见57页）。另外，对于经历过中国知识产权海关执法的公司来说，27%的被调查者表示海关知识产权执法有所改善，71%的被调查者表示其没有变化，只有2%的

In the last year, China's enforcement of IPR has ...
过去一年中国保护知识产权的执行力度的变化



Source: 2008 AmCham Business Climate Survey
资料来源：2008年中美商会商务环境调查

IPR Report/Complaint/Service Centers ("Complaint Centers")

From their establishment in 2006 through the end of July 2007, the 50 Complaint Centers set up in cities across China received 2,464 IPR complaints and provided more than 70,000 instances of consulting services to IPR owners or other members of the public. Of the complaints, enforcement departments handled and resolved 1,006.

To further expand and simplify the process, the Complaint Centers established a special hotline (12312). The hotline aims to strengthen communication with enterprises, coordinate enforcement and process monitoring, and further promote the link between administrative and criminal enforcement. In addition, Complaint Centers were established at large-scale exhibitions during the past year to strengthen IPR protection at these events. Lawyers have been assigned as legal counsel in the Complaint Centers to provide legal training and offer assistance with the consulting services. The Complaint Centers also serve as a cost-effective avenue for the general public to report stores and street vendors who sell counterfeit goods, pirated audio-visual products and software.

In 2007, the Complaint Centers served as an effective conduit for IPR owners to pass along complaints to various levels of the State Administration of Industry and Commerce (SAIC), the NCA, and Chinese Customs. The Complaint Centers also kept track of IPR complaint statistics and provided legal advice to the public. Nevertheless, there needs to be a strengthening of collaboration between the Complaint Centers and law enforcement agencies. AmCham urges the Complaint Centers to become more proactive about handling cases. Currently they only assign cases among the many different departments, but we believe it would be advantageous for them also to coordinate the cases in an oversight capacity.

In addition, in 2007 China's NCA set up an Anti-Piracy Impeachment Center for reporting piracy infringement using a hotline. Individuals and enterprises are encouraged to report or assist in the investigation and punishment of piracy infringement cases through this hotline and can receive monetary awards of up to RMB100,000.

Copyright

China has taken active steps to improve copyright

protection and enforcement over the past year but criminal enforcement is still not sufficient to change the overall IPR protection environment, including copyrights.

Traditional Chinese legal doctrine places IPR infringement in the category of "violations of the socialist market economic order" rather than "property" crimes. In effect, this allows infringers to steal from those who innovate while at the same time reducing inventors' incentives. For example, a counterfeiting case having illegal gains of less than RMB50,000 is not viewed as a serious enough violation of "the socialist market economic order."

On April 5, 2007, the Supreme People's Court and the Supreme People's Procuratorate jointly promulgated a judicial interpretation lowering the minimum threshold value for copyright criminal lawsuits and clarifying several definitions such as "duplication and/or distribution" of products infringing other's copyright. These acts may now be subject to criminal punishment. China fully adopted the World Intellectual Property Organization (WIPO) Copyright Treaty and the WIPO Performances and Phonograms Treaty formally on June 9, 2007. However, products especially vulnerable to piracy, such as foreign books, software, movies and music products are still readily available in China through wholesale markets, street stores and on internet websites. The status quo of rampant copyright piracy indicates that the Chinese government's measures or activities remain inadequate.

On April 2, 2007, the U.S. government filed two trade disputes against China through the WTO on copyright piracy and restrictions on the sale of American books, music and movies. By the end of 2007, the two governments had concluded two rounds of negotiations.

AmCham views it as regrettable that China has thus far refused to accede to a call by the U.S. to convene a WTO dispute panel. In October 2007, Australia's Trade Minister publicly expressed that, as a third party to the U.S.-China IPR WTO dispute, Australia will attend the investigation held by the WTO.

China is encouraging, and comprehensively carrying out, a policy of "self-reliant innovation" nationwide. Higher levels of IPR protection will clearly be helpful to establish a more open, fair and competitive market environment in China and ultimately support such "self-reliant innovation." Therefore, this is a critical

调查者表示其有所恶化。(图26)

保护知识产权举报/投诉/服务中心 (“投诉中心”)

自2006年成立至2007年7月底,在中国各城市建立的50个投诉中心收到了2,464 件知识产权投诉,并且向知识产权所有权人和其它公众提供了70,000多次咨询服务。在这些投诉中,执法部门已受理和解决的共计1,006件。

为了进一步发展和简化程序,投诉中心专门设立了投诉热线(12312)。该热线旨在加强与企业的交流、协调执法和程序监控,并进一步促进行政和刑事执法的联动。此外,去年的大型展会上也设立了投诉中心,以加强这些展会中的知识产权保护。在投诉中心,律师作为法律顾问提供法律培训并协助提供咨询服务。投诉中心还是普通大众举报出售假冒货物、盗版音像制品和软件的商店和街头商贩的一个经济有效的途径。

在2007年,投诉中心作为知识产权所有人的有效沟通渠道,可以把投诉送达至国家工商行政管理总局(SAIC)、国家版权局和中国海关的各级部门。投诉中心还保留投诉统计记录并向公众提供法律咨询。然而,投诉中心和执法机构之间的协作仍需加强。中美商会敦促投诉中心在处理案件方面应更具主动性。目前投诉中心发挥的作用仅仅是将各种案件移交不同部门,但我们相信,若它们同时以监督机构身份参与案件协调,则工作将更为有效。

另外,2007年,中国国家版权局成立了反盗版举报中心,设立了12390热线,用于举报盗版侵权行为。中心鼓励个人和企业通过热线举报或协助查处盗版侵权案件。举报者最多可以获得100,000元人民币的奖金。

版权

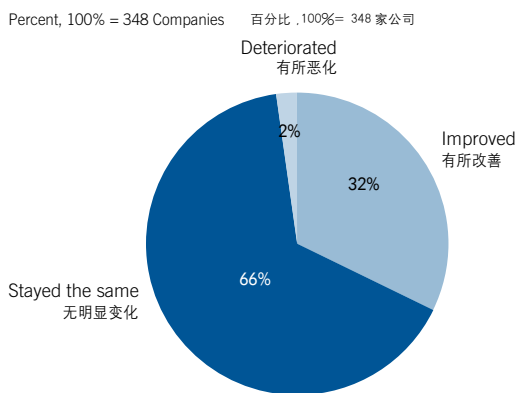
去年,中国采取了积极的措施来改善版权保护和执法,但是,要改变总体知识产权(包括版权)保护环境,其刑事执法力度仍然不足。

中国传统的法律原则把知识产权侵权行为放在“破

坏社会主义经济秩序的行为”类别,而不是“侵犯财产”罪。实际上,这无异于在打击发明人积极性的同时,允许侵权者盗取发明者的成果。例如,非法经营额低于50,000元人民币的假冒案件不视为足以构成“破坏社会主义经济秩序”的行为。

2007年4月5日,最高人民法院和最高人民检察院联合出台了关于降低版权刑事诉讼“门槛”并明确侵犯他人版权的“复制和/或发行”等若干定义的司法解释。目前,这些行为可能会受到刑事制裁。2007年6月9日《世界知识产权组织(WIPO)版权条约》在中国正式生效。但是,特别容易遭受盗版的产品,如外国书籍、软件、电影和音乐产品,在中国的批发市场、街头店铺和网站上仍然很容易得到。

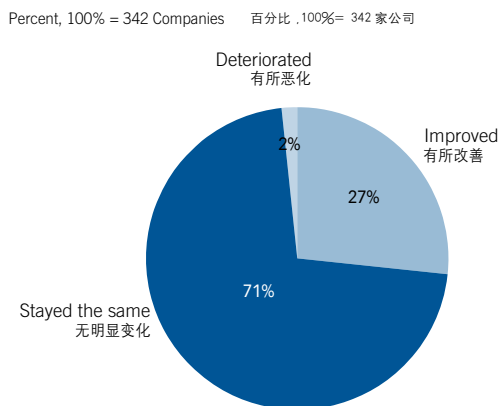
In the last year, China's PUBLIC SECURITY enforcement of IPR for my organization has...
过去的一年,中国保护知识产权的公安执法情况.....



Source: 2008 AmCham Business Climate Survey
资料来源: 2008 年中美商会商务环境调查

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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.....



Source: 2008 AmCham Business Climate Survey
资料来源: 2008 年中美商会商务环境调查

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time for China to work toward a mutually beneficial agreement with the U.S. through bilateral discussions.

Trademark

The year 2007 marks the 25th anniversary of the promulgation of the current Trademark Law in China. Over the past two and a half decades, the Chinese government has gone to great lengths to construct a trademark filing and protection mechanism, strengthen measures for enforcement, and establish the necessary procedures for legal relief available to resolve trademark disputes. Along with the rapid development of the Chinese market and economy, the number of trademark filings has increased at an accelerated rate. China's Trademark Office has been the busiest in the world for the last several years. In spite of that remarkable progress, there are still some outstanding issues worthy of attention and improvement.

The current pendency period for trademark applications is approximately two to three years, considerably longer than the worldwide average. The China Trademark Office (CTO) has made repeated attempts to decrease this, but it is crucial that the CTO continue to work to speed the process for trademark filings.

Trademark enforcement is another issue that deeply affects the rights of a trademark owner as well as the image of the Chinese government. China's Action Plan on IPR Protection 2007 demonstrates the Chinese Government's continuing efforts on, and attention to, trademark enforcement. Nominally dedicated campaigns and day-to-day enforcement alone are not enough to prevent trademark infringement because repeat offenders are becoming increasingly more sophisticated in evading enforcement raids by local AIC officials.

In 2007, the CTO further strengthened protection for well-known trademarks. As of the end of 2007, the CTO recognized 197 well-known trademarks in administrative enforcement, trademark opposition and trademark disputes. AmCham notes this and welcomes the Supreme People's Court's 2006 circulated notification requesting that local courts deliver relevant files and documents concerning well-known trademark status determination for recordation.

The Chinese Trademark Law was promulgated in August 1982 and revised in 1993 and 2001 to

meet TRIPS requirements. The current draft Third Amendment to the Trademark Law is far more comprehensive than the 2001 revised version, proposing 150 articles for the Trademark Law, a substantial increase from the 64 currently included in the Law.

The Third Amendment is primarily focused on helping to expedite the trademark registration process and strengthen trademark protection. While there are many positive changes in the draft Third Amendment, it also creates certain obstacles for trademark protection, some of which may be counterproductive to efforts to provide for effective trademark protection. For example, the draft Third Amendment:

- Creates unreasonable requirements for filing trademark infringement complaints by requiring them to be in written form and indicate the name of infringer.
- Gives the AIC the flexibility to decide whether or not to confiscate or destroy infringing goods. It only directs the AIC to remove the infringing trademark labels from the goods without confiscating them.
- Calculates the illegal operation amount based on either the price labeled on the infringing goods or the verified sale price of the infringing goods.

AmCham jointly submitted a position paper with the U.S. Chamber of Commerce last November and will continuously provide comments to the SAIC, the State Council Legislative Affairs Office and the National People's Congress throughout the amendment process.

Patent

A patent essentially is a time-limited right to exclude others from exploiting innovation without consent of the creator or owner. The right to intellectual property is an essential incentive to foster and reward innovation that allows the use and propagation of technology through licensing. Accordingly, a patent's value requires a degree of certainty that others will be excluded from using the design. This means it is critical to provide a legal basis for recovering infringement damages. Without an enforcement process securing the value of the exclusionary right, a patent has no real value.

One problem with the current enforcement of Chinese patents is that many patent infringement

盗版猖獗的现状表明，中国政府的措施或行动力度仍然不够。

2007年4月2日，美国政府通过世界贸易组织对中国提起了两起关于版权侵权和限制美国书籍、音乐和电影销售的贸易争端。到2007年底，双方政府已经结束了两轮谈判。

令人遗憾的是，中国迄今没有同意美国提出的召集世界贸易组织争端专家组的要求。2007年10月，澳大利亚商务部公开表示，作为中美知识产权世界贸易组织争端的第三方，澳大利亚将参加世界贸易组织主持的调查。

中国正在全国范围内鼓励并全面实施“自主创新”政策。较高层次的知识产权保护无疑会有助于中国创造一个更加开放、公平和有竞争力的市场环境，并最终支持“自主创新”。因此，这是中国努力通过双边讨论与美国达成互惠协议的关键时刻。

商标

2007年是中国现行《商标法》颁布第25周年。25年以来，中国政府竭尽全力建立商标申请和保护机制，加强执法措施并为解决商标争端制定必要的法律救济程序。随着中国市场和经济的快速发展，商标申请的数量在快速增长。在过去若干年中，中国商标局一直是世界上最忙碌的。尽管有了显著的进步，但仍然有些未解决的问题值得关注和改进。

现行的商标申请审查期大约是两到三年，远远长于全球平均水平。中国商标局（CTO）再三表示要缩短此时间，但关键是中国商标局要不断做出努力，加快商标申请进程。

商标执法是深刻影响商标所有人权利和中国政府形象的另一个问题。中国的2007年知识产权保护行动计划证明了中国政府在商标执法方面的持续努力和关注。形式上的专项行动和日常执法不足以防止商标侵权行为，因为屡犯者在逃避工商局官员的突袭查处过程中变得更加“久经世故”。

2007年，中国商标局进一步加强了对驰名商标的保护。截至2007年底，中国商标局在行政执法、商标

异议和商标争议中认定了197个驰名商标。中美商会注意到了这一点，并对最高人民法院2006年下发的关于建立驰名商标司法认定备案制度的通知，要求地方法院提交有关驰名商标认定备案的相关文件表示欢迎。

中国《商标法》于1982年8月颁布，并分别于1993年和2001年修订，以满足《与贸易有关的知识产权协议》（TRIPS）的要求。《商标法》现行的第三次修订草案比2001年修订版要全面得多，提议的新《商标法》共有150个条款，比现行法律的64个条款有了大幅增加。

第三次修订主要以帮助加速商标注册程序和加强商标保护为重点。虽然第三次修订草案中有许多积极的变化，但它也为商标保护设置了某些障碍，其中有一些可能会使提供有效商标保护的努力达不到预期目标。例如，在第三次修订草案中：

- 设置了一些不合理的要求，例如提出商标侵权投诉要采用书面形式，并指出侵权人名称。
- 给予了工商局决定是否没收或销毁侵权货物的自由。它只是指示工商局从货物上清除侵权商标，而不是没收货物。
- 按照侵权货物上的价格标签或核实的侵权货物价格计算非法经营数额。

去年11月，中国美国商会与全国美国商会联合提交了一份意见书，并希望陆续在整个修订过程中向国家工商行政管理总局、国务院法制办公室和全国人民代表大会等部门提交意见和建议。

专利

专利本质上是一种在有限的时间内禁止他人在未经创造者或所有者同意的情况下使用发明创造的权利。知识产权是为了促进和奖励发明创造而给予的必要激励，它允许通过许可而使用和传播技术。因此，专利的价值要求对于禁止他人使用此设计要有一定程度的确定性。这意味着提供挽回侵权损失的法律依据至关重要。如果没有保证独占权价值的执法程序，专利就没有实际价值。

judgments are based on the results of judicial appraisals, with little or no consistency. Appraisals differ greatly from one institution to the next. In addition, the requirements and practices for preliminary injunctions vary greatly from court to court. As a result, the already difficult analysis of predicting the likelihood of success when seeking an injunction is made even more difficult.

There also continue to be problems with the rules of evidence. In Chinese patent litigation, there is no discovery process equivalent to that in the U.S. Therefore, it is almost impossible for a plaintiff to request necessary and relevant evidence, such as the defendant's financial information. Without financial information regarding the defendant's gains from the infringement, the plaintiff cannot reasonably assess and prove the amount of actual damages and often receives a fixed amount for damages between RMB5,000 and RMB300,000.

In anticipation of further improvements in IPR enforcement, foreign and domestic enterprises have increased the number of patent application filings, thus increasing the workload of SIPO and placing renewed emphasis on clarifying ambiguous portions of the patent law. In that regard, there is the ongoing development of the Third Amendment to the Patent Law.

After the second draft of the Third Amendment to the Chinese Patent Law was submitted to the State Council's Legislative Affairs Office (SCLAO) in March 2007, AmCham and other foreign entities continued their active participation in providing comments on the draft. Last October, SCLAO held an international conference seeking further comments from foreign experts and industry on the China Patent Law revisions industry. The mere fact of so much ongoing participation by foreign entities in the legislative process demonstrates encouraging and significant progress towards greater legislative transparency.

In particular, it is encouraging that SCLAO is considering including a clause that will allow the patentee to appeal when an application for compulsory license is filed by another party. It would also provide that a decision granting compulsory license shall not be enforced when the patentee has filed an appeal that remains pending.

Additionally, AmCham notes that SIPO has made good progress in patent prosecution pendency. SIPO reduced the average prosecution pendency period

from 36 months in 2002 to 22 months in 2007, and the average period for patent re-examination and invalidation cases from 48 months to 14 months and 12 months, respectively. This progress substantially eliminates backlog and demonstrates improved examination efficiency.

Nevertheless, there are still concerns over the low quality of patents, particularly in the IT field. Current patent protection available for computers that execute software (apparatus claims) or methods for operating computers using software (process claims) cannot provide sufficient protection for software-related inventions. Amendment of the Patent Examination Guidelines to accept computer readable media claims or programs (program product claims) that cause a computer to implement an innovative process is needed and will help encourage local companies to create novel software. For example, the majority of semiconductor devices used in internet protocol applications contain such software. Creation of an indigenous innovative design and production capability mandates that protection of the software placed on such chips be addressed within the patent law.

Utility model and design patents are being filed at a very high rate resulting, in part, from attempts to measure innovation by counting the number of patents. Unlike invention patents, these are easy to get and can be granted quickly because there is no substantive examination. However, like invention patents (which are substantively examined), they are hard to invalidate even though they have not been tested against the patentability requirements by substantive examination. The lack of substantive examination has allowed these utility model and design patents to be misused by some individuals and entities that rely on the difficulty of invalidation to gain an unfair business advantage.

In some cases, utility models and/or design patents were actually copied entirely out of a competitor's foreign patent or publications. The current patent system provides no remedy in the case of such bad faith and fraudulent filings, thus an invention affidavit or inventorship declaration mechanism similar to that in the U.S. patent system should be established to penalize fraudulent acts against SIPO and the public interest. Such a mechanism is even more important in a first-to-file country like China.

AmCham jointly submitted a position paper with the U.S. Chamber of Commerce on the Third Amendment and will continue to provide comments to the State

目前中国专利执法的一个问题是，许多专利侵权判决是基于司法鉴定的结果做出的，几乎没有或根本没有一致性。机构之间的鉴定结果差别很大。此外，不同法院之间对于发布诉前禁令的要求和做法也有很大差异，因而使请求禁令时本来就困难的预测成功的可能性的分析变得更为艰难。

证据规则也仍然是问题。在中国的专利诉讼中，没有跟美国一样的发现程序。因此，原告申请获得必要相关的证据，如被告的财务资料等，几乎是不可能的。没有有关被告侵权收益的财务资料，原告就无法合理地评估并证明实际损失数额，通常获得的是5,000至300,000元人民币之间的一个固定数额的损失赔偿。

因预期知识产权执法会进一步改善，国内外企业提高了专利申请递交的数量，从而增加了中国国家知识产权局（SIPO）的工作量，从而也再次凸显阐明专利法中不明确部分的重要性。在此方面，专利法的第三次修订正在朝着这一方向努力。

中国《专利法》第三次修订中的第二份草案于2007年3月提交给国务院法制办公室之后，中美商会和其它外国实体继续积极参与对草案发表意见。去年10月，国务院法制办公室召开了国际会议，进一步征求外国专家和行业对于中国《专利法》修订专题的意见。外国实体能够如此多的参与立法程序，仅仅这个事实就证明中国在实现更高的立法透明度方面取得了鼓舞人心的重大进展。

尤其是，国务院法制办公室正在考虑增加一个条款，它将允许专利权人在另一方提交强制许可申请时上诉，这非常鼓舞人心。该条款还将会规定，当专利权人提起了未决的上诉时，授予强制许可的决定不得生效。

此外，中美商会注意到，中国国家知识产权局在专利申请期方面有很大的进步。国家知识产权局将平均申请等待期从2002年的36个月减少到2007年的22个月，专利复审和无效案件的平均期限从48个月分别减少到14个月和12个月。这种进步大大消化了积压的工作，表明其审查效率有了很大的提高。

然而，人们仍然为低质量的专利而担忧，尤其是在

信息技术领域。目前对执行软件的计算机（产品权利要求）或用软件操作计算机的方法（方法权利要求）采取的专利保护无法为软件相关的发明提供足够的保护。需要对《专利审查指南》加以修订，以接受使计算机执行创新方法的计算机可读介质权利要求或程序（程序产品权利要求），这将有助于鼓励本地公司创造新软件。例如，大多数因特网协议应用程序中使用的半导体设备中含有此等软件。本土创新设计和生产能力的创造要求在专利法范围内解决该等芯片中的软件的保护问题。

实用新型和外观设计专利申请的增长速度非常快，部分原因是由于人们试图用专利数量的统计来评估创新的发展。与发明专利不同，因为没有实质性审查，实用新型和外观设计这些很容易获得而且可以很快被授予专利权。然而，与发明专利（有实质性审查）一样，即使没有按照专利性要求通过实质性审查对它们进行测试，也很难使之无效。实质性审查的缺失使得这些实用新型和外观设计专利被某些个人和实体滥用来获取不公平的商业优势，因为他们知道很难使这些专利无效。

在某些情况下，实用新型和/或外观设计专利实际上完全是从竞争者的外国专利或公开信息中抄袭来的。现行的专利制度并没有针对该等不诚实和欺诈性的申请提供补救措施，因此应当建立类似于美国专利制度中的发明创造宣誓书或发明权声明机制，以处罚违反国家知识产权局的规定和公众利益的欺诈行为。这种机制在中国这种采用先申请制的国家中尤为重要。

中国美国商会与全国美国商会联合提交了一份关于第三次修订的意见书，并将随着修订的进展持续向国务院法制办公室和全国人民代表大会等有关部门提交意见和建议。

互联网

在中国，随着计算机网络互联的发展，网络侵权行为在快速增长。截至写本文时，从1999年第一起网络侵权案件起诉至法院以来，在北京市第一中级人民法院提起诉讼的网络侵权案件总数已达到298件。

中美商会对中国于2007年6月通过了《世界知识产权

Council Legislative Affairs Office and the National People's Congress as this Amendment makes its way through the legislative process.

The Internet

With the development of computer networking in China, online infringement is growing rapidly. As of this writing, the total number of online infringement cases filed in the Beijing First Intermediate Court totals 298 since the first online infringement case was brought to court in 1999.

AmCham welcomed China's adoption of the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty in June 2007. We believe, however, that it is necessary to address some problems in the current laws and related regulations. For example, there are many websites that provide download services to the public for large quantities of music, lyrics, movies and software. More than 50 percent of these downloads are illegal. Some Chinese search engine websites help the public access links to these sites.

In practice, the only liability of the Internet Information Providers (IMPs)—the individual websites—is a failure to delete the links when they receive a notification from the owner of the IP right and become fully aware that their site links to products that violate copyright infringement laws. Although the number of illegal downloads on these websites is huge and the IMPs continue to provide illegal downloads, the law remains unclear as to what meets the standard of the law as being “fully aware of or should know that any of the works, performance or audio-visual product it has linked to constitutes infringement.” This makes it difficult to subject such websites to infringement liability.

The same unclear definition quoted above also applies to e-commerce websites with illegal products. To address this problem, the Ministry of Commerce issued “Guiding Opinions of the Ministry of Commerce on Online Trading (for Interim Implementation)” on March 6, 2007. Even with the issuance of this notice, AmCham still does not know which Chinese administrative agency is responsible for handling illegal online sales. American companies have no recourse to deal with such matters other than turning to the Chinese courts, which is time-consuming and costly.

It is also not clear which administrative agency companies can turn to when an express courier

refuses to cooperate in the pursuit of illegal products. AmCham is very concerned about these loopholes, which not only dramatically increase infringement costs, but also make it difficult to investigate the original source. ■

Recommendations

- Continue campaigns against IPR infringement and reveal results to the public.
- Dramatically increase currently inadequate enforcement resources of the National Copyright Administration and local copyright administrations.
- Further strengthen deterrent penalties against IPR infringement and piracy, especially for repeat violators.
- Further strengthen measures of and cooperation by AIC agencies with different authorities (PSB and MPS) in order to work together in fighting against various and well-organized counterfeiting activities vigorously and effectively.
- Establish a transparent supervising mechanism to urge administrative enforcement authorities to transfer potential criminal cases in a timely fashion.
- Establish an effective enforcement collaboration mechanism between the IPR Complaint Centers/Anti-Piracy Impeachment Center and enforcement departments.
- Clarify China's criminal code to reflect international norms making clear that corporate end user piracy will be a crime; impose adequate compliance mechanisms to ensure that state-owned and listed enterprises, as well as companies bidding on government procurement, use legal software; and ensure that small computer makers pre-install legal operating system software building on good progress made with larger computer makers.
- Amend Patent Law-related regulations to strengthen protection for innovation in the pharmaceutical industry and software industry.
- Speed up the trademark examination procedure.
- Gradually open market access in the publication market and reinforce copyright authorities' manpower and enforcement capability.

组织（WIPO）版权条约》和《世界知识产权组织表演和录音制品条约》表示欢迎。然而，我们认为，有必要在现行的法律和相关法规中解决一些问题。例如，有许多网站向公众提供大量音乐、歌词、电影和软件的下载服务。这些下载的内容中有50%以上是非法的。中国的某些搜索引擎网站帮助公众进入这些网址的链接。

在实践中，互联网媒体提供商（IMP）——具体网站——唯一所做的就是当它们收到知识产权所有人发来的通知，也完全知道他们网站所链接的产品违反了版权侵权法时，并没有删除该等链接。尽管这些网站上非法下载内容的数量巨大，而且互联网媒体提供商仍然在提供非法下载服务，法律对于什么符合“完全知道或应当知道它所链接的著作、表演或音像产品构成侵权”的法律标准仍然不明确。这使得很难让该等网站承担侵权责任。

上文提及的同一不明确定义也适用于有非法产品的电子商务网站。为了解决这个问题，中国商务部于2007年3月6日发布了《商务部关于网上交易的指导意见（暂行）》。即使发布了此通知，仍然无法明确中国处理非法网上销售的主管行政机构。除了采取向中国法院起诉这种费时费钱的手段，美国公司目前没有别的办法来处理该等事务。

当信息传递人员拒绝在追踪非法产品的过程中合作时，相关公司也不清楚可以求助于哪个行政机构。商会对这些漏洞深感担忧，因为它们不仅大大降低了侵权成本，也使追查侵权源头的工作变得更为艰难。

建议

- 继续开展打击知识产权侵权行为的行动并公布结果。
- 大力增加国家版权管理局和地方版权管理局目前薄弱的执法资源。
- 进一步加强对于知识产权侵权和盗版行为，尤其是对于屡犯者的威慑处罚。
- 进一步加强工商局采取的措施及其与其他主管机构（公安局和公安部）之间的合作，以

共同有力、有效地打击各种组织严密的造假活动。

- 建立透明的监督机制，以督促行政执法机构及时移交潜在的刑事案件。
- 在知识产权举报投诉中心/反盗版举报中心和执法部门之间建立有效的执法协作机制。
- 进一步明晰中国刑法的相关内容，参照国际通行做法，明确企业用户盗版行为是犯罪行为；强制实行适当的合规机制，以确保国有和上市企业以及参加政府采购项目投标的企业都使用合法的软件；在大型计算机生产商的软件合规工作取得良好进展的基础上，确保小型计算机生产商预安装合法操作系统软件。
- 修订专利法相关法规，以加强对于制药行业和软件行业创造发明的保护。
- 加快商标审查程序。
- 逐渐放开出版市场的市场准入，加强版权主管机构的人力资源 and 执法能力。

Science & Technology

In early 2006, China announced a 15-year plan to increase domestic science, technology and innovation with the long-term goal of becoming a preeminent global economic and technological powerhouse and creating an “Innovation Society” by 2020. China’s high-level focus on the development of innovation capabilities will help sustain rapid economic growth. These ambitious initiatives might allow for the adoption of elements of the educational, financial and legal systems that have enabled the U.S. and other advanced economies to adapt successfully to a changing global economic environment.

Although not all details of the plan have been made public, several of the goals are known. These include increasing R&D spending from current 1.4 percent to 2.5 percent of GDP by 2020; further increases in state funding of universities and research institutes, which has more than doubled from 1998 levels, reaching US\$10.4 billion in 2004; and a further increase in the number of researchers, which has increased 77 percent from 1995 levels, reaching 924,000 in 2004 (second only to the U.S.). With this investment, China will surpass Japan as the second-highest investor in research and development globally. In addition to these long-term goals, multinational companies have begun establishing research and development centers throughout China and the number of patent filings has seen significant growth, up 212 percent since 2000.

Economic Transformation via Innovation

Today there is a significant opportunity to enable an economic transformation via 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.

These prospects will not occur if a number of equally important challenges associated with the current reforms are not addressed. Innovative societies are grounded in the fundamentals of a sound legal framework, including intellectual property rights and integrated intellectual asset management, and the fundamentals of a mature and well-regulated

financial sector. Regarding innovation policy itself, efforts to encourage risk taking, avoiding top-down edicts on research and development priorities, an over-emphasis on government projects, and allocating funding with third party reviewed spending, are all key attributes to success in the international community.

“Indigenous Innovation”

The 15-year plan is not without contradiction or controversy, especially in regard to new mandates for “indigenous innovation.” There is concern that indigenous innovation could mean a policy of favoritism for products and services from Chinese companies over those of foreign invested companies. The writers of the indigenous innovation policy explain that the term “indigenous” is used to stress the importance of reinvigorating the capacity to innovate that historically underpinned Chinese achievement. In today’s interconnected global economy where capital, labor and ideas flow unimpeded across national boundaries, any protectionist measures enacted to bolster innovation within one country will most likely have the opposite effect by redirecting these resources to other more open and advantageous localities.

It is anticipated that these new mandates may favor Chinese entities, for example through tax incentives, while treatment of foreign companies remains unclear. Some significant tax benefits, including lower corporate tax rates (i.e., 15 percent versus 25 percent) based on qualification as a high technology research enterprise, may be based on nationality of ownership of the IP produced by the enterprise. Policies designed to encourage indigenous innovation could also be used to encourage discrimination against certain market participants.

Already, indigenous innovation has manifested itself in a number of areas ranging from the development of national standards and conformity assessment to competition policy and favoritism in government procurement. One example of this is the government’s efforts to promote its homegrown Third Generation (3G) cellular network technology called Time Division-Synchronous Code Division Multiple Access (TD-SCDMA). The government

科学与技术

为了实现在2020年成为世界经济和科技强国以及建设“创新型社会”的长期目标，中国于2006年初，颁布了旨在促进国内科学、技术和创新的15年计划。中国对于提高创新能力的高度重视将有助于其保持快速的经济增长。这些宏伟计划可能会允许吸收美国和其他发达经济地区在教育、金融和法律体系中的一些发展要素，这些要素曾促使这些国家和地区取得成功、且可以较好地适应全球经济环境变化。

尽管计划的全部细节尚未公布，其中的部分目标已经为人们所了解。这些目标包括：到2020年之前将研发支出从目前国民生产总值的1.4%提高到2.5%；进一步增加大学和研究机构的国家经费支持，目前该经费已经在1998年的水平上翻了一番，2004年达到了104亿美元；进一步增加研究人员数量，目前该数量已经在1995年的水平上翻了一番，2004年达到了92.4万（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。除了这些长期目标外，跨国公司开始在中国各地成立研发中心，专利申请的数量也呈快速增长态势，自2000年以来增加了212个百分点。

通过创新实现经济转型

目前中国面临通过创新实现经济转型的重大机遇。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、具有同等重要意义的诸多难题不能得到解决，这些前景就难以成为现实。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）和成熟且监管良好的金融部门作为根本性基础。就创新政策本身而言，鼓励承担风险，避免对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，这些都是国际社会业已证明取得成功的关键因素。

“自主创新”

这项15年计划并非没有矛盾或争议之处，尤其是有关“自主创新”方面的新要求。有人担心，自主创新可能意味着将推出对中国公司的产品和服务（相对于外商投资企业的产品和服务）更加优惠的政策。自主创新政策的制定者解释说，“自主”这一词语用来强调振兴中国本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。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，任何以支持创新为目的而采取的国家保护主义措施都很有可能产生相反的效果，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。

人们预期，这些新的要求可能通过税收激励等措施为中国企业提供优惠，而对外国公司方面仍然不明朗。某些重大税收优惠举措，包括允许取得“高科技研究型企业”资格的公司享受更低的公司税率（即15%相对于25%），可能会以企业知识产权所有权持有者的国籍为依据。旨在鼓励自主创新的政策还可能被用来助长对某些市场参与者的歧视。

目前自主创新已经在许多领域中体现出来，从国家标准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。其中一个例子是，政府在推广名为“时分同步码分多址接入”（TDSCMA）的国产第三代（3G）蜂窝网络而做的工作。政府似乎在等待此项本土技术得到充分开发后才向外国3G公司开放中国市场。另外，中国可能会出于国家和信息安全方面的考虑，强制要求使用独有的、非透明的中国标准。

尽管中国在加入世界贸易组织时曾明确承诺在国有企业商业采购中不采取歧视性做法，但是作为软件合法化工作的一部分，中国政府还是鼓励国有企业购买国产中国软件。2007年12月和2008年1月颁布的采购措施要求政府尽可能采购“自主创新目录”中的产品。想要购买进口产品的政府机构必须给出正当理由，并获得财政部批准。

appears to be waiting for this indigenous technology to be fully developed before opening the Chinese market to foreign 3G companies. Separately, China may be moving toward mandating the use of unique and non-transparent Chinese standards for national and information security purposes.

The Chinese Government has also encouraged that state-owned enterprises purchase domestic Chinese software as part of its software legalization effort; this comes in spite of an explicit WTO commitment not to discriminate in state-owned enterprise commercial purchasing. Procurement measures announced in December 2007 and January 2008 require the government to procure products from an “indigenous innovation catalogue” wherever possible. Government agencies wishing to purchase imported products must justify and seek approval from the Ministry of Finance.

AmCham 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, the Chamber firmly believes that pro-competitive and non-discriminatory policy approaches that respect IP and that recognize innovation as global are the best and fastest way to achieve an innovative society. AmCham companies play an integral role in China’s drive to foster indigenous innovation. ■

or ownership structure, to add value to and derive appropriate benefits from the new global innovation chains that are the prime creators of wealth. Together with China’s policy of encouraging indigenous innovation, this policy would further advance China’s progress towards building an innovative and globally integrated society.

- Relevant programs and measures to foster innovation should be made applicable and open to all individuals and entities resident in a jurisdiction of a government at whatever level, irrespective of nationality or equity composition, in order to ensure the best conditions for sustainable innovation.

Recommendations

- AmCham recommends promoting integrated Intellectual Asset (IA) Management as an effective means to ensure the proper understanding of the nature and role of IP in the economy and in the strategy of any business. AmCham also encourages exploration of ways to most effectively nurture an environment that helps individuals and organizations create, acquire, protect and utilize IA.
- AmCham recommends that Chinese policy-makers embrace a policy of building “global innovation capacity” as a central mechanism to promoting innovation. This involves promoting the capacity of individuals and organizations based in an economy, irrespective of their nationality

中美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,中美商会坚信,基于尊重知识产权并认可全球性创新,正面竞争和非歧视的政策,是实现创新型社会的最佳和最快途径。中美商会成员公司在中国促进自主创新的努力中发挥着重要的作用。 ■

建议

- 商会建议把促进综合智力资产(IA)管理作为确保正确理解知识产权的性质及其在经济和企业战略中作用的有效方式,并且探索能够有效培育便于个人和机构创造、获取、保护和利用知识资产的环境的方法。
- 商会建议中国的决策者们将增强“全球创新能力”作为促进创新的核心机制的政策。这包括增进经济体内的个人和机构的创新能力,而不论其国籍或所有权结构如何,以给作为主要财富创造者的新全球创新链增加价值,并从中受益。此政策与中国鼓励自主创新的政策一起,将有助于推动中国在建设创新型社会和全球一体化方面不断前进。
- 旨在促进创新的相关计划和措施应当向任何一级政府辖区内的常驻个人和实体开放,无论其国籍或股权结构如何,以确保为可持续创新提供最为优越的环境。

Standards

The development process and conformity-assessment procedures of China's standards continue to concern U.S. exporters to China. Adoption of unique standards related to home-grown technologies, mandatory application of standards and type testing, and bureaucratic processes for import approval are protectionist in nature. These measures limit foreign products' access to the Chinese market and serve to protect domestic industries from foreign or domestically invested foreign competition.

Standards, particularly in the technology sector, are increasingly used as a tool to help China achieve its industrial policy goals. With the emphasis on indigenous innovation, there appears to be a clear policy of developing, encouraging and in some cases, mandating development and implementation of home-grown standards to support China's technological development. This has come primarily in areas that some consider to be strategic technologies, such as nanotechnology, information technology, information security and biotechnology, especially in genomics and stem-cell research.

Lack of transparency and the inability of foreign companies to participate in the development of Chinese standards and technical regulations continue to be concerns and barriers to innovation. U.S.-China trade suffers when regulators fail to use the WTO-Technical Barriers to Trade mechanism to provide timely notification of measures and implementing regulations that rely on or refer to voluntary standards. This is particularly true when voluntary industry standards are referenced in rules for market access or product approval and therefore lose their voluntary nature. This problem can be seen in the recent debate over batteries and other electronic goods.

Foreign manufacturers should be able to participate in the standards development process in China, including the ability to review and comment on standards and technical regulations as part of an open, transparent and non-discriminatory standard setting process. In the past year there has been widespread reorganization of many national Technical Committees under the jurisdiction of the Standards Administration of China (SAC). The trend is to restrict further multinational company

participation by limiting access to Observer ("O") member status only, even if the multinational previously held full Participatory ("P") member status with full voting rights.

Certification and testing of imported products is conducted in an uneven manner compared to similar domestically produced products. For example, domestic manufacturers can evade or escape scrutiny in the certification and testing of special purpose products such as agricultural machinery and other vehicles. Domestic manufacturers have been known to produce a model for type testing, only to bring the unit to market without including all the safety or pollution-control equipment featured on the demonstration model. This allows companies to reduce costs by skirting safety and environmental rules.

China's standards development has not kept pace with changes in technology. According to the SAC, 12 years is the average age of Chinese national standards (*guobiao*, or GB). This compares with standards in the U.S. that are reviewed every three to five years. Having standards controlled by government rather than driven by industry results in delays and the use of older technologies and testing methods that can in turn lead to inefficient use of energy or raw materials.

Furthermore, Chinese manufacturers in some cases encourage the government to mandate the use of outdated technologies (via standards or test methods) in order to restrict or limit competition by foreign manufacturers trying to enter the Chinese market. This lag in adoption of new technologies by mandating the use of outdated standards or test methods is particularly noticeable in the building-materials industry, for example, where new insulation materials and application technologies are prohibited in China because of a lack of standards with which to evaluate them.

In the area of communications technology, China is developing security and encryption-related standards that could have an adverse impact on the ability of foreign IT companies to produce and sell their related products marketing China. The scope of such measures remains unclear.

标准

中国标准的制订过程和符合性评估程序仍然令面向中国的美国出口商感到担忧。采用独有的国产技术相关标准、强制性标准的型式认证、以及进口审批的官僚程序,其本质上都是贸易保护主义。这些措施限制了外国产品进入中国市场,并用来保护国内行业,使之不受来自外资或内资企业的竞争。

标准,尤其是在技术领域,被越来越多地作为中国实现其行业政策目标的手段。随着对本土创新的不断重视,适当的鼓励、要求、与发展执行本土的标准进而支持中国技术开发,成为比较清晰的政策。针对于某些战略技术的领域,这些领域包括纳米技术、信息技术、信息安全和生物技术,尤其是在基因体学和干细胞研究中。

透明度的缺乏以及外国公司无法参与中国标准和技术规程的制定仍然存在问题,也是创新工作的障碍。不能依据“WTO贸易技术壁垒机制”及时通告相关措施,以及依靠或参考自愿性标准而执行的相关法规,都会对中美之间的商品贸易产生不利影响。尤其是,自愿性行业标准被引用在制定市场准入或产品审批规定时,自愿性行业标准的性质已发生了变化。在当前关于电池和其他电子商品的争论中也可以发现这个问题。

作为开放的、透明的和非歧视性的标准制定过程的一部分,外国生产商应当能够参与中国标准的制定过程,包括能够对标准和技术规程进行审查和评价。去年,中国国家标准化委员会(SAC)下辖的许多国家技术委员会都普遍进行了调整。这一调整的趋势是只允许跨国公司担任观察员,进一步限制其参与权,即使跨国公司以前具有完全投票权的全权参与成员资格,也不例外。

相比国产产品,对进口产品的认证和测试方式有失公平。例如,国内生产商可以规避或逃避农机和其它车辆等特殊用途产品的认证和测试过程。据说,国内生产商生产的产品推向市场时,并没有包括该产品在型式认证中的安全和排放控制相关配置。公司能够借此绕开安全和环境法规要求,从而来降低成本。

中国标准的制定速度跟不上技术变化的步伐。国家标准化委员会的资料显示,中国国家标准(国标或GB)的使用年限是12年,而美国标准是每隔三至五年修订一次。由国家来控制标准而不是由行业推动的做法,导致标准更新速度缓慢,而且使用较老的技术和测试方法,反过来又导致能源或原材料的低效率使用。

此外,在某些情况下,中国的生产商鼓励政府出台强制性措施,要求使用过时的技术(借助于标准或测试方法),以便限制试图进入中国市场的外国生产商的竞争。这种通过强制要求使用过时的标准或测试方法导致新技术应用落后,这种现象在建筑材料行业尤其突出。例如,因为缺乏相关的评价标准,新绝缘材料和应用技术被禁止在中国使用。

在通信领域,中国正在制定安全和加密相关标准,这可能会对外国信息技术公司在中国市场生产和出售其相关产品的能力产生不利的影响。目前该标准的范围尚不清楚。

同样,中国正在密切关注在发放许可证条件、事先披露和其它问题等方面,如何对待对于中国技术而言至关重要的知识产权和专利。这些政策应反映知识产权和专利的重要性,以促进外国和国内公司进行创新,这很重要。商会希望中国标准中涉及的有关对知识产权的政策,是经过权衡,并考虑用户的权利和实施者利益的。中美商会成员认为,总体而言,标准应当是自愿性的,由行业主导,而且以大多数人的意见为依据,同时应当尊重开发者的知识产权。一般而言,政府应当尽量避免强制性标准,因为它限制了对竞争性技术的选择并阻碍了创新。

尽管对于标准和认证程序的综合发展和应用存在一些担忧,但近来还是取得了一些积极的进展。荷兰认证机构KEMA成为在中国成立的第一家获准从事产品测试和认证的外商独资企业。尽管KEMA的业务范围目前只限于出口产品测试,但其获准从事产品认证却标志着中国产品(内销和出口产品)的认证工作朝着独立的第三方认证制度迈出了重要一步。

中国标准和符合性评估机构继续发展与各国际标准制订机构之间的关系,包括那些总部位于美国、在

Likewise, China is looking closely at how intellectual property and patents deemed essential for Chinese technology should be treated in terms of licensing conditions, prior disclosure and other issues. It is important that policies developed in this regard reflect the importance of intellectual property and patents in order to foster innovation among both foreign and domestic companies. AmCham urges that the policies relating to treatment of IP contained within China's standards be balanced and take into consideration both the rights of developers and interests of users of new technologies or innovations. AmCham members believe that, in general, standards should be voluntary, industry-led and consensus-based, and should respect the intellectual property of the developer. Government mandated standards should generally be avoided, as this limits choice between competing technologies and stifles innovation.

While concern exists about the general development and application of standards and certification processes, there have been some recent positive developments. The Dutch certification body KEMA became the first foreign entity to establish in China a wholly foreign-owned enterprise (WFOE) authorized to conduct product testing and certification. Although the scope of KEMA's activities currently encompasses only export product testing, its authorization to certify products is an important step towards an independent, third-party testing system in China for domestic and export goods.

China's standards and conformity assessment bodies continue to develop relationships with international standards development bodies. These include those based in the U.S. that have a broad global reach and 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 adoption of some international and advanced foreign standards or portions thereof, particularly in the area of test methodologies and procedures.

SAC has also acknowledged that the review and update process for Chinese National Standards is insufficient for its manufacturers' needs and has committed significant funding for upgrading the capabilities and resources of the standards technical committees. ■

Recommendations

- China should update its technical standards and refrain from using outdated ones that can otherwise be used inappropriately to limit competition. Further, China should adopt or accept international or global standards that are already widely used in the marketplace. This would permit the use of more advanced technology domestically, while allowing for modifications recognizing the conditions unique to China.
- Special attention should be given in identified priority areas such as nanotechnology, information technology and biotechnology to ensure that the standards development process is open and fair, respects intellectual property and does not restrict competition or give advantages to domestic industries.
- Standard setting processes should be transparent, open and non-discriminatory. American companies should be able to fully participate as voting members within Chinese Technical Committees, just as Chinese companies are allowed to participate in U.S. standards-setting organizations.
- AmCham encourages China to be an active participant in international standard setting organizations.

全球具有广泛的影响并且遵循 WTO/TBT 协议中阐述关于国际公认标准的制定的六项原则(即:透明度、相关性、开放性、一致性、公平性和考虑发展中国家的利益)的机构。建立这些关系的成果之一就是中国采用了一些国际化和先进的外国标准(或其中的某部分),尤其是在测试方法和程序领域。

中国标准化委员会也承认中国国家标准的审查和更新程序不能满足生产商的需要,并承诺投入大量资金用以提升标准技术委员会的能力和资源水平。

建议

- 中国应当更新其技术标准,并避免使用在其它方面被不恰当地用来限制竞争的过时标准。此外,中国应采用或认可在市场上已经普遍使用的国际或全球标准。这样将使得中国国内能够采用更为先进的技术,同时能够根据中国特有国情做一些修改。
- 应当特别关注纳米技术、信息技术和生物技术等公认的重点领域,确保标准制定过程是公开公平的。尊重知识产权,不限制竞争或为国内企业提供更有利的条件。
- 标准制定过程应当是透明的、开放的和非歧视性的。美国公司应当能够作为中国技术委员会中有表决权的成员充分参与,就像允许中国公司加入美国标准制定机构一样。
- 中美商会鼓励中国积极加入各大国际标准制定机构。

Product Safety and Quality

Concerns about the safety and quality of goods, including food, drugs and toys, have transformed the label “Made in China” into a high-profile issue for the governments, consumers and companies of the U.S. and China in the last year (Figure 27). While China is not the only country with product safety problems, its growing prominence as a leading global exporter has put the issue of product safety and quality under intense international scrutiny. The issue has also flowed into the broader U.S.-China debate over the trade deficit, currency and labor standards.

The U.S. and Chinese governments, companies and consumers all have big stakes in the outcome of China’s export safety program. While the series of reports and recalls in 2007 has cast a shadow on any Chinese-made goods, the controversy also has been the impetus for several positive changes.

The Chinese government has taken significant and rapid steps to prove to the international community it is serious about food and product safety. The launch of a large-scale campaign by former Chinese Vice Premier Wu Yi addressing product and food quality in August 2007 clearly signaled that China had begun the long process to reform its quality standards. On the U.S. side, President Bush established the Interagency Working Group on Import Safety, which delivered the Import Safety Action Plan in November 2007. Oversight capacity in the U.S. through the American Consumer Product Safety Commission (CPSC) and the U.S. Food and Drug Administration (FDA) is now improving. Furthermore, the U.S. toy industry has developed and is in the midst of executing a conformity assessment program.

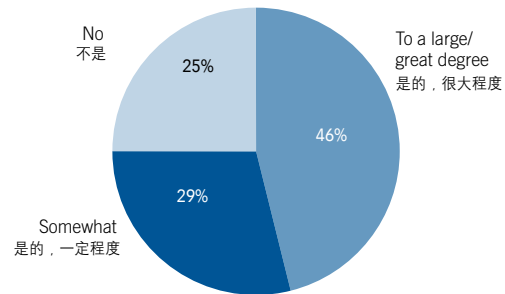
Recently there have been various technical exchanges and talks between former Vice Premier Wu and U.S. Treasury Secretary Henry Paulson. In addition, the two countries signed a cooperative agreement for food and drug safety at the Strategic Economic Dialogue (SED) in December 2007, which calls for a bilateral system to monitor Chinese exports.

AmCham advocates a fact-based approach to the food and product quality and safety issues and takes the position that it is vital for governments, manufacturers and stakeholders to move quickly and transparently to maintain public confidence in the product quality and safety system.

Is your company paying more attention 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给予更多的关注？

Percent, 100% = 558 Companies 百分比, 100% = 558 家公司



Source: 2008 AmCham Business Climate Survey
资料来源: 2008 年中美商会商务环境调查

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We expect that accountability disputes, exemplified by issues with some toy products in 2007, will continue to increase the tensions between manufacturers and government agencies in both the U.S. and China. There is an identified need to improve transparency and enforcement of IPR, and improve rule of law and governance practices. There are lessons for U.S. manufacturers in the areas of best practice quality assurance, supply chain and risk management. Similarly, Chinese domestic suppliers can learn from these shared best practices. They can also learn more about U.S. industry standards and market requirements as well as product design and brand maintenance.

The scope of the problem requires cooperation from a wide array of international players. In 2008 we will be able to evaluate how effective these measures and agreements will be and see the impact on the balance between cost and quality of goods made in China.

Specific Issues

Context

While toys constitute less than one percent of China’s total exports and food accounts for only three percent of exports, the overall effect product safety and quality have in these areas is disproportionately greater. Though most imports are safe and the aforementioned segments are not critical parts of the China’s export portfolio from a purely financial

产品安全和质量

前言

2007年,食品、药品和玩具等产品的安全和质量问题使“中国制造”成为美中两国政府、消费者和企业共同关注的热点话题(图27)。虽然并不只有中国出现产品安全问题,但由于中国作为全球主要出口国的重要性日益突出,所以其产品的安全和质量问题受到国际社会的密切关注。同时这一问题还引发了美中之间更为广泛的争论,比如,贸易逆差、货币和劳动标准。

中国出口商品安全问题的处理结果与美中两国政府、企业和消费者等多方面的利益密切相关。虽然2007年一系列的报告和召回给“中国制造”蒙上了阴影,但这些问题发生同时也推动了其他方面的积极转变。

中国政府采取了快速有力的措施,向国际社会证明中国对食品和产品安全问题是严肃认真的。2007年8月,中国副总理吴仪亲自参与推动了一场大规模质量和食品安全专项整治行动,明确表示中国已经开始了长期的质量标准方面的改革。在美国方面,总统设立了一个跨部门的进口商品安全工作组,于2007年11月发布了行动计划和食品安全计划。通过美国消费者产品安全委员会(CPSC)和美国食品和药品管理局(FDA)的工作,美国的监管能力正在得以加强。美国的玩具业界制定并实施了达标评价制度。

近来,中国副总理吴仪和美国财政部长亨利·保尔森已经开展了很多技术交流和对话,并于2007年11月战略经济对话会上签署了关于食品和药品安全问题的合作协议。该协议提出建立一个双边机制以监管中国的出口商品。

中美商会倡导解决食品和产品质量和安全问题时,应基于客观事实,并主张政府、制造商和利益相关方等各方应立即以公开透明行动,维持公众对产品质量和安全体系的信心。

我们认为有关争论,如在2007年对一些玩具产品的责任问题的争论,将会持续美中两国政府及其制造商之间的紧张关系。这就需要提高透明度和知识产权保

护的执法力度,改善法规和公司治理。美国的制造商应进一步健全质量保证、供应链和风险管理制度,中国国内的供应商也可以从中借鉴经验,同时更好的理解美国的行业标准和市场要求,更多参与产品设计和品牌维护。

这个问题涉及的范围广,需要国际有关各方广泛的合作。2008年,对这些举措和协议将产生的效果,及其对中国制造的产品的成本和质量的影响,我们将拭目以待。

问题

事件背景

虽然玩具产品在中国总出口商品中所占比重不到1%,食品在出口商品中只占3%,但是对其整体产品安全和质量的影响远大于这个比例。尽管大多数的进口商品是安全的,并且从单纯的财务角度而言,玩具和食品也不是中国出口业务中重要的组成部分,但是事件对“中国制造”品牌造成了损害,可能会减缓大陆制造商推进价值链的速度,阻碍他们进入质量和安全标准更严格的新产品领域。尽管出现了召回的风潮,中国产品的质量和安全问题成为了关注焦点,不过专家仍然认为中国的食品和玩具出口量会继续增长。

美国低价格,高数量的消费趋势,促使企业选择最廉价的制造方案,推动已经是低成本制造中心的中国进一步降低成本。实现价格和质量的适度平衡是制造商面临的重大挑战。而中国制造商选择“捷径”的做法主要是为了应对持续的低价格需求。劳动力成本和土地成本预计会持续升高,同时还要遵守环境法规,这些都增加了中国制造商目前面临的成本负担,尽管负担增加程度还有待评估。(图28,29,30)

监管环境

食品和产品安全问题的监管涉及许多中央、省市地方政府部门。但在具体执行层面,省市地方的部门可能发挥的作用更大。温家宝总理于2007年7月组建了新的产品质量和食品安全领导小组,由吴仪副总理具体领导,负责协调各主管机构的关系。监管能力也是

perspective, damage to the “Made in China” brand could restrict the ability of mainland manufacturers to move up the value-added chain into new products where quality and safety standards will be even more essential. Despite the wave of recalls and the spotlight on quality and safety of China’s products, the export boom continues with increases of both Chinese food and toys.

The trend towards low-price, high-volume consumption in America has pushed companies to seek the cheapest manufacturing options, thus driving down costs in China, already a low-cost hub. Manufacturers face an ongoing challenge managing the trade-off between price and quality. Much of the corner-cutting by Chinese manufacturers has been a response to constant demands for lower prices. The prospect of rising costs of labor, land and compliance with environmental rules will increase the cost burden that Chinese manufacturers currently face, although the full impact of this is still unknown (Figures 28, 29, 30).

Regulatory Environment

Food and product safety is regulated by a large number of national level ministries and, perhaps more significantly for the enforcement issues, by regulators at provincial and local levels. The new Product Quality and Food Safety Leading Group formed by Premier Wen Jiabao in July 2007 and led by former Vice Premier Wu Yi currently orchestrates the activities of an array of primary coordinating agencies. Oversight capacity has also been an issue in both China and the United States. Capacity in the 14 agencies in the U.S. that share responsibility for monitoring imports has been on the decline in recent years.

From a long-term perspective, China, the U.S. and other foreign countries, have to agree on standards of import-export goods inspection. Harmonization of standards, the adoption of international standards and regulations and verifiable testing processes will be the key to resolving the product quality and safety issues. China has the added current challenge of unifying domestic standards with international ones.

Supply Chain Management

It is imperative that U.S. companies investing in China bring global product quality and safety standards to their China facilities and seek out opportunities for shared best practices. Management of sub-contractors is a critical part of the supply chain management strategy in China. Companies need to

have detailed knowledge of their supply chains. Too often firms hold only the first-tier of subcontractors to compliance standards, and compliance usually does not reach lower levels. U.S. manufacturers need to adopt a risk analysis/risk management approach to eliminate or mitigate risks. Those that have not already adopted such an approach need to implement rigorous and effective compliance programs. Chinese suppliers need to become more involved and active in the process, building enhanced understanding of industry standards and market requirements for the U.S. and participate in product design and brand maintenance. ■

Recommendations

For the Chinese Government

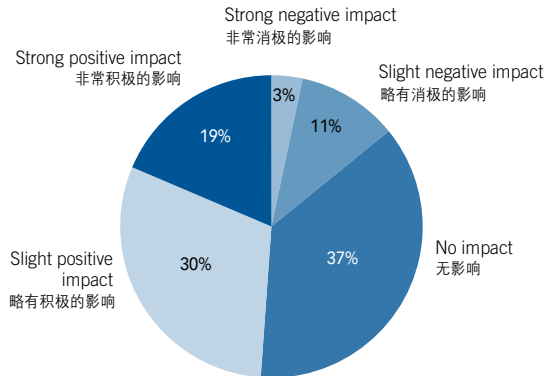
- Develop and implement a program to inform and educate regulatory authorities and producers about industry standards and market requirements in the U.S.
- Improve and streamline the regulatory framework governing food and product safety; enhance enforcement and compliance.
- Adopt international standards and regulations, and verifiable testing processes; harmonize domestic and international standards.
- Implement a sustainable, targeted program of corrective action including stronger criminal penalties to deter counterfeiting and increase damages limitations arising from unsafe or faulty products.

For the U.S. Government

- Give the U.S. government agencies involved in food and product safety adequate resources; raise oversight capacity in the U.S., including for the CPSC and FDA; integrate and consolidate activities among agencies responsible for food and product safety.
- Work with Chinese regulators and manufacturers to share U.S. Government experiences in inspection, regulation and enforcement and improve understanding of risk-based approach to prevention, standards and best practices.
- Increase opportunities for public-private collaboration to improve the quality of the supply chain.

How will the increased awareness of product quality and safety in China impact your business?
中国日益加强的产品质量和安全意识将对企业在华的运营产生的影响

Percent, 100% = 574 Companies 百分比, 100% = 574 家公司

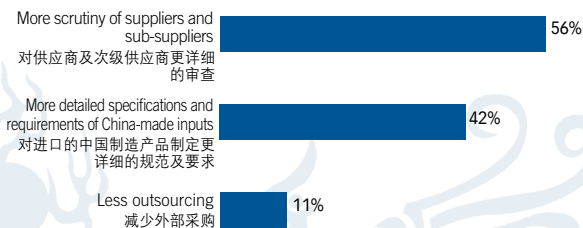


Source: 2008 AmCham Business Climate Survey
资料来源: 2008 年中美商会商务环境调查

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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

Percent, 100% = 484 Companies 百分比, 100% = 484 家公司

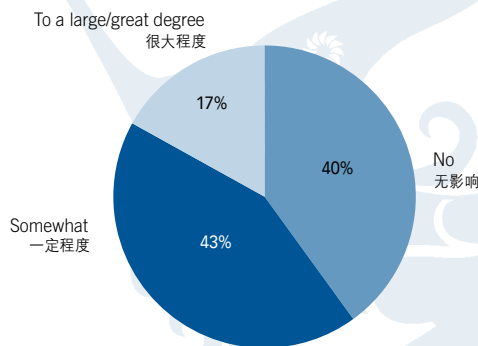


Source: 2008 AmCham Business Climate Survey
资料来源: 2008 年中美商会商务环境调查

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Do you foresee product quality and safety issues affecting your costs?
产品质量和安全问题对企业成本的影响

Percent, 100% = 561 Companies 百分比, 100% = 561 家公司



Source: 2008 AmCham Business Climate Survey
资料来源: 2008 年中美商会商务环境调查

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中国和美国双方都存在的一个问题。美国有14个机构共同负责监管进口商品,但近年来,这些机构的监管能力也在不断下降。

从长远的角度而言,中国、美国和其它国家必须就进出口商品检查标准达成一致。统一标准,采用国际标准及法规和可以验证的监测方法将是解决产品质量和安全问题的关键。在推动国内标准与国际标准接轨方面,中国目前面临很大的挑战。

供应链管理

在中国投资的美国企业必须尽快把国际产品质量和安全标准引入它们在中国的工厂,并寻找机会共享完善的制度。对分包商的管理是中国供应链管理策略中的重要组成部分。这些企业需要掌握它们的供应链的详细信息。现在通常只是要求一级分包商符合标准,而其它下游的分包商则难以落实达标问题。美国制造商需要采用风险分析/风险管理的方法消除或减少风险。目前没有采用这种方法的美国制造商需要实施严格和有效的达标计划。中国的供应商应该更加积极主动的参与这一进程,增进对美国行业标准和市场要求的理解,更多地参与产品设计和品牌维护。

建议

对中国政府

- 制定并实施计划,向监管当局和生产商介绍并解释美国的行业标准和市场要求。
- 改进和完善食品和产品安全问题的监管体系,加大执法力度,改善达标情况。
- 采用国际标准与法规和可验证的检验方法,使国内标准与国际标准统一。
- 实施可持续的有针对性的改进行动,包括加大违法惩罚力度以打击假冒伪劣,增加由不安全和缺陷产品引起的损害赔偿限额。

对美国政府

- 充分发挥与食品和产品安全问题有关的美国各政府机构(包括CPSC和FDA)的效能,提高美国的监管能力,协调和强化负责食品和产品安全问题的各相关机构的行动。
- 与中国的管理当局和制造商合作,分享美国政府在检查、管理和执法方面的经验,增进对风险预防、标准和完善制度的理解。
- 创造机会,扩大政府和企业的合作,提高供应链的质量。

Competition Law

The most significant development in Chinese competition policy during the last year was the promulgation of the Antimonopoly Law of the PRC (AML) on August 30, 2007. This was accomplished by the Standing Committee of the National People's Congress, after 13 years of drafting and discussion within the Chinese Government, as well as substantial dialogue with foreign competition authorities, scholars and antitrust lawyers. Although the process was not fully transparent, AmCham recognizes and commends the Chinese Government for welcoming and considering the perspectives of foreign antitrust experts. Partly as a result of this dialogue, the final text of the AML is far sounder and more compatible with international best practices than earlier drafts.

As China's first comprehensive competition law, the AML is a significant step in China's continuing transition from a centrally planned economy to a market economy. With some exceptions, the framework and substantive provisions are generally consistent with prevailing practices of antitrust authorities worldwide. The AML addresses each of the three principal areas of antitrust regulation: anticompetitive agreements between multiple firms; exclusionary and predatory unilateral conduct by firms with substantial market power and mergers; and acquisitions and other transactions that may restrict or reduce competition. Beyond regulating private anticompetitive conduct, the AML also includes measures against "administrative monopoly"—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 of antitrust regulation, it nevertheless leaves unresolved many key questions about the enforcement structure, procedures and substantive rules. As noted below, AmCham is concerned that discretionary or nontransparent enforcement of the AML—perhaps to serve protectionist or industrial policy goals rather than the interests of Chinese consumers—could undermine the generally positive aspects of the law.

The National Development and Reform Commission (NDRC) and the local price bureaus have been increasingly visible in enforcing the rules against collusion by competitors as set out in the Price Law.

On July 30, 2007, the NDRC issued special notices instructing local price authorities to initiate special investigations of prices for certain staple foods and prohibiting businesses and trade associations from colluding to increase prices through conferences, agreements or price alliances. On August 16, 2007, the NDRC released an investigation report concluding that members of the China branch of the International Ramen Manufacturers Association had agreed to fix prices for instant noodles, a violation of the Price Law. The NDRC ordered the branch to apologize publicly and repudiate the illegal pricing agreement and warned that it was considering additional punishments. Since then, local price bureaus around the country have reportedly stepped up efforts to address collusion.

Chinese authorities have grown increasingly active in reviewing certain mergers and acquisitions involving foreign parties. China's current merger review program is based on the antitrust provisions of the 2006 Regulations on the Mergers & Acquisitions of Domestic Enterprises by Foreign Investors (M&A Regulations), which were virtually unchanged from provisional rules first issued in 2003. These sparse provisions require foreign parties to notify both the Ministry of Commerce (MOFCOM) and the State Administration of Industry and Commerce (SAIC) of certain transactions for review on competition policy grounds, but they provide few details on the merger review procedures or the underlying substantive standards for reviewing transactions. To fill this gap (at least in part), MOFCOM issued new Guidelines on Antitrust Filings for Mergers & Acquisitions of Domestic Enterprises by Foreign Investors (Filing Guidelines) in March 2007. The Filing Guidelines have provided welcome guidance on several issues, although many questions remain. The volume of notifications has reportedly risen substantially in the past year, increasing the workload for MOFCOM and potentially the SAIC (which up to now has not been actively involved in merger reviews). Though the Filing Guidelines are China's most detailed merger review rules to date, several aspects of MOFCOM practice remain unclear or inconsistent with international best practices. AmCham hopes that the experience gained by reviewing mergers under the existing rules will enable the Chinese authorities to implement the merger review provisions of the

竞争法

过去一年来，中国竞争政策最大的进步在于2007年8月30日《中华人民共和国反垄断法》(以下简称《反垄断法》)的出台。经过13年的起草、中国政府内部审议以及与国外竞争监管机构、学者和反垄断律师的实质性对话，全国人大常委会终于通过了该法案。尽管其中的过程还不甚透明，但中美商会对中国政府能够广纳善言、考虑国外反垄断专家的建议表示认可与赞赏。最终出台的《反垄断法》远比初期草案合理，也更符合国际最佳实践，其中对话的作用功不可没。

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，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协议；占据巨大市场份额的企业和联合体实施的排外的、掠夺性的单边行动；以及可能限制或削弱竞争的收购和其他交易。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》明确将诸多成熟的反垄断规定原则纳入其中，但在执行架构、程序和实质性规定上还是遗留了许多未解决的关键性问题。如下所述，中国美国商会担心，《反垄断法》的随意或有欠透明的执法——或许是为了服务于贸易保护主义者或行业政策的目标，而并非保障中国消费者的利益——会破坏该法案的积极效力。

中国国家发展和改革委员会（国家发改委）以及地方价格监管部门已通过实施相关规定打击《价格法》所界定的竞争对手的“串谋”行为，这一点已越来越明显。2007年7月30日，国家发改委发布特别通知，要求地方价格监管部门对某些主粮的价格进行特别调查，并严禁经营者和行业组织以会议纪要、协调价格或价格联盟等形式串通定价、联合提价。2007年8月16日，国家发改委公布调查报告，认定世界方便面协会中国分会成员协议提高方便面价格的行为违反了《价格法》。国家发改委责令方

便面中国分会公开向社会道歉，就非法定价协议做出说明并纠正错误，国家发改委同时警告将深入调查，并依法做出进一步处理。从那以后，相关报道称中国各地的价格监管部门已经加强了其对“串谋”行为的打击力度。

中国有关部门对某些涉及外资的并购交易的审查也加大了力度。中国目前的并购交易审核程序乃基于2006年《关于外国投资者并购境内企业的规定》（并购规定）的反垄断规定，这与2003年初次公布的暂行规定没有实质性区别。这些不充分的规定要求外资就某些交易同时通报中国商务部和国家工商行政管理总局，进行竞争政策方面的审核，但商务部和国家工商总局所提供的有关并购审核程序或有关交易审核的根本、实质性标准方面的详细资料很少。为了弥补这一缺陷（至少是为了改善这一情况），商务部于2007年3月发布新的《外国投资者并购境内企业反垄断申报指南》（申报指南）。《申报指南》就某些问题提供了积极的指引，尽管仍然存在许多问题。据报道，过去一年中，申报量显著增长，加重了商务部的工作量，也潜在加大了国家工商总局的工作量（目前国家工商总局还未积极参与到并购审批中来）。尽管《申报指南》是中国至今最详尽的并购审核规定，但商务部在有些做法上还存在着不明确或与国际最佳实践不一致的地方。中美商会希望，通过根据现有规定对并购交易进行审核而积累的经验将使中国有关部门能够以更符合国际标准的方式执行《反垄断法》的并购审核规定。

现有并购审核程序

在中国现有的反垄断规定下，并购管制是美国公司所关注的主要合规问题。美国企业称，负责并购审查工作的中国有关部门越来越熟悉其他司法行政区并购审核体系的原则与程序。但遗憾的是，商务部只有少数工作人员专门负责并购审批工作，尽管目前的待批交易申请数量可能只是在技术上符合现有规定的交易中的一小部分。中美商会担心，在今后一段时间内，中国有关部门可能难以有充足的能够胜任相关工作的

AML in a manner increasingly consistent with international norms.

Existing Merger Review

Merger control is the principal compliance concern for U.S. companies under China's existing antitrust rules. U.S. companies report that Chinese authorities involved in merger review are increasingly familiar with the principles and procedures of merger review systems in other jurisdictions. Unfortunately, few MOFCOM personnel are assigned to merger review, even though the current caseload likely represents only a small fraction of transactions that technically might fall under the current rules. AmCham is concerned that the Chinese authorities may have difficulties recruiting enough qualified personnel, including industrial organization economists and trained legal personnel, to manage the expected merger review caseload in the near future. Moreover, several features of the current merger review rules are needlessly burdensome for both the reviewing authorities and the transaction parties.

Implementing the merger control provisions of the AML will likely remedy many of the shortcomings of the current merger review system, including the discriminatory exclusion of Chinese domestic entities from the merger review process. In the meantime, AmCham encourages the Chinese authorities to consider additional implementing measures to mitigate the burdens of the current rules and facilitate the transition to the AML merger control rules.

Scope of Reportable Transactions

Most antitrust merger review systems only require notification of transactions if there is a substantial likelihood that the transaction will affect competition by significantly changing the structure of a relevant market. Other transactions are often screened out through a combination of (1) the definitions of reportable transactions, and (2) the reporting thresholds (which are normally defined in terms of the parties' assets or sales or the value of the transaction itself). Unfortunately, the current M&A Regulations appear to require notification of many transactions that are unlikely to have any material effects on competition or consumers in China. This is especially apparent in two respects.

First, the scope of potentially reportable transactions is much broader under the current M&A Regulations

than under most foreign systems—and under the AML. The AML follows the European approach of only requiring notification of “concentrations,” which are transactions involving a significant change in control over an existing business that may lead to an increase in concentration within a relevant market. Other jurisdictions do not directly incorporate the concept of a “concentration” (like the U.S.) but still exclude transactions in which the buyer does not obtain substantial influence over the target.

However, the current M&A Regulations require the notification of many transactions that do not entail a substantial change in control over an existing business. Foreign investors are required to report certain “mergers/acquisitions of domestic enterprises by foreign investors” and “offshore mergers/acquisitions.” The definition of “mergers/acquisitions of domestic enterprises by foreign investors” focuses on the conversion of a domestic enterprise into a foreign-invested enterprise or formation, thus capturing many minority foreign investments which do not result in a change of control. Moreover, the term “offshore merger/acquisition” is not defined at all, and some foreign companies have been advised by MOFCOM to report offshore minority investments in foreign companies involving no appreciable change in control.

Second, the notification thresholds under the current M&A Regulations cast an extremely wide net. The current notification thresholds can be triggered based on the assets, sales or market share in China of just one party to the transaction (together with its parents and affiliates), whether or not it is the acquiring firm or the target. There are no requirements that more than one party have substantial contacts with China or that the value of the equity or assets being transferred exceed a minimum value, as under the U.S. “size of transaction” test. Moreover, the notification thresholds may be triggered based on the assets, sales or market share in China of the selling party and its affiliates as a whole, not just the assets or business actually being transferred.

In fact, the current M&A Regulations go so far as to require any multinational conglomerate with over RMB3 billion in assets in China or RMB1.5 billion in income from China to report the sale of a minority stake in a small non-Chinese subsidiary that has no contact whatsoever with China, regardless of the buyer's income, assets or contacts with China. Since there are no explicit penalty provisions for failing to notify of offshore transactions, many such deals

人员，包括行业组织经济师和训练有素的法律专业人士，来处理预期的并购审批工作。此外，无论是对审批部门还是对交易方而言，目前并购审批规定都存在着个别不必要的繁缛之处。

实施《反垄断法》的并购管制规定可能会弥补目前并购审批体制中的诸多不足之处，包括区别对待中国国内企业，使其无需经过并购审批程序。同时，中美商会鼓励中国有关部门考虑采取其他措施来减轻目前规定的负担，并加速向《反垄断法》并购管制规定转变。

可报告交易的范围

根据大多数反垄断审核体制，只有在交易极有可能明显改变有关市场结构，从而影响竞争的情况下，才需要申报。其他交易往往通过以下两种方式的结合进行筛选：(1) 可报告交易的定义，以及(2) 报告门槛（通常以交易方的资产或销售额或交易本身的价值来界定）。但遗憾的是，根据现行的《并购规定》，许多不会对中国的竞争或消费者造成任何实质性影响的交易也需要申报。这在以下两个方面体现得尤为突出。

首先，与大部分国外相关体制以及与《反垄断法》的规定相比，现行《并购规定》所要求的潜在可报告交易的范围要宽泛得多。《反垄断法》遵循了欧洲只要求“集中”（涉及现有企业控股权的明显变化，可能会导致相关市场集中度增加的交易）申报的方法。其他司法管辖区（如美国）不直接引入“集中”这一概念，但买方不会对收购目标造成实质性影响的交易仍然无需申报。

但是，根据现行《并购规定》的要求，许多不会对现有企业控股权产生实质性变化的交易也须申报。外国投资者必须申报某些“外国投资者并购境内企业的交易”以及“离岸并购交易”。“外国投资者并购境内企业的交易”的定义主要涉及境内企业转变为外商投资企业，或组建新公司，因此将许多不会导致控股权变更的少数股权外商投资纳入范围之内。此外，“离岸并购交易”根本没有定义，而一些国外企业已被中国商务部告知，就不会产生明显控股权变化的对外国公司的离岸少数股权投资做出申报。

其次，现行《并购规定》要求的通报门槛的覆盖面极广。目前申报门槛可由交易任一方（以及其母公司和附属公司）在中国的资产、销售额或市场份额而触发，而不管其是收购方还是被收购方。没有要求必须多于一方与中国有实质性接触，或正在转让的股权或资产价值必须超过某一最小价值，就像美国“交易规模”测试所要求的那样。此外，申报门槛也可能由出售方及其附属公司整体在中国的资产、销售额或市场份额而触发，而不是仅以实际被转让的资产或业务作为依据。

实际上，根据现行《并购规定》要求，任何中国国内资产超过30亿元人民币或中国业务收入超过15亿元人民币的跨国联合企业在出售与中国毫无任何关联的小型非中国国内子公司少数股权时都应进行报告，而不论买方的收入、资产或与中国的关联。由于对未就离岸交易进行申报的行为没有明确的惩处办法，许多此类交易大概都未经过申报。但对众多力求符合中国所有法律法规的美国公司以及其他外国企业而言，这些交易报告要求的含糊性和范围之广则带来了巨大的不确定性和成本。

中美商会促请中国有关部门考虑实施临时措施，将反垄断审核仅限于可能会对中国的竞争和消费者产生一定响应的交易。中美商会承认，阐明新《反垄断法》中“集中”的定义以及就新《反垄断法》制定并购申报门槛的相关实施办法目前仍未公布。然而，中国有关部门或许可以发布“集体豁免条例”（类似于欧洲惯例中的豁免规定），让那些不太可能对中国的市场竞争或消费者造成稍许影响的交易无需经过申报程序。例如，中国有关部门可豁免对其中仅一方与中国有实质性关联的交易的申报要求。这些豁免条例或许有助于推动向《反垄断法》的过渡。

实质性概念与标准

中美商会认为，新《反垄断法》的实施办法或许将解决许多与《并购规定》相关的并购管制的实质性原则问题，例如，对从属关系的定义、市场定义的方法、对竞争影响的衡量标准、风险资本基金的待遇以及类似技术问题。中美商会希望中国有关部门考虑出台能够阐明这些实质性问题的临时措施，以改进《并购规定》下的审批程序。

presumably go unreported. But for the many U.S. and other foreign companies that try to comply with all legal requirements in China, the ambiguity and breadth of these reporting requirements impose tremendous uncertainty and costs.

AmCham encourages the Chinese authorities to consider implementing interim measures limiting antitrust review to transactions that are likely to have appreciable effects on Chinese competition and consumers. AmCham acknowledges that implementing measures clarifying the definition of “concentrations” in, and setting the merger notification thresholds for, the new AML have not yet been published. Nevertheless, the Chinese authorities might issue “block exemptions” (similar to exemptions under European practice) to waive notification of transactions that are unlikely to appreciably affect competition or consumers in China. For example, Chinese authorities could waive notification of transactions in which only one party has substantial contacts with China. Such exemptions likely would help to ease the transition to the AML.

Substantive Concepts and Standards

AmCham recognizes that many substantive principles of merger control relevant to the M&A Rules will likely be addressed by the implementing measures for the new AML. The definition of affiliation, methods of market definition, standards for gauging effects on competition, treatment of venture capital funds and similar technical issues are examples. AmCham encourages the Chinese authorities to consider interim measures clarifying these substantive issues to improve the review process under the M&A Rules.

Notification Based on Signed Letters of Intent

Some foreign parties have been required to execute a final agreement before submitting a transaction for review. Most foreign jurisdictions allow notification on the basis of a signed letter of intent, allowing parties to notify transactions earlier. Because the preliminary review period of 30 business days under the M&A Rules is substantially longer than the preliminary review period in most other jurisdictions, allowing notification on the basis of a signed letter of intent would reduce the frequent lag between approval in the U.S., Europe and other jurisdictions and the expiration of the waiting period in China.

Calculation of Review Period

Some foreign parties have reported inconsistent practices in the calculation of review periods. In particular, some Chinese officials have suggested that requests for supplementary information suspend the review periods, meaning that the time needed to respond to questions is added to the review period. This is inconsistent with international practices and increases the uncertainty of the process.

Requirement for Local Chinese Counsel

Most foreign companies required to report a transaction for merger review prefer to use international law firms that are familiar with their business and capable of assisting them with the preparation of reports for multiple jurisdictions (which may include China). For reasons that are not clear, international law firms are no longer permitted to interact directly with MOFCOM in the merger review process and instead are required to use local Chinese law firms as intermediaries. As a result, the merger review process has become significantly more expensive and time-consuming for reporting companies that are forced to work through local Chinese firms, since they may be less familiar with the client’s businesses or its merger-filing positions in other jurisdictions. It would substantially improve the efficiency and transparency of the merger review process if reporting companies were permitted to choose their preferred counsel to interact with MOFCOM throughout the process, including the option for international law firms to interact directly with MOFCOM with or without involving local Chinese counsel.

New Antimonopoly Law (AML)

AmCham is concerned about a number of issues raised by the new AML, many of which parallel concerns already raised by the existing M&A Regulations:

Potential to Favor Domestic Industry

Several articles of the new AML appear to permit the possibility of application and enforcement favoring domestic Chinese industry and competitors over multinationals operating in China. The declared purposes of the AML include protecting the public interest and promoting the socialist market economy, which might be interpreted to mean domestic interests and the domestic economy.

以签订意向书为基础进行申报

中国有关部门要求一些外资方在交易报批之前签署最终协议。大部分外国司法管辖区允许在签订意向书的基础上进行申报，使得交易各方能够更早进行申报。由于根据《并购规定》要求，初步审核期为30个工作日，远远长于大多数其他司法管辖区所规定的初步审核期，因此，允许在签订意向书的基础上进行申报将减少美国、欧洲和其他司法管辖区批准与中国等候期结束之间的频繁滞后。

审核期计算

一些外资方已经对审核期计算方面不一致的行为提出了意见。尤其是一些中国官员表示，如需补充资料会延长审核期，这意味着回复问题所需的时间被纳入审核期中。这不符合国际实践，也增加了相关程序的不确定性。

对中国本土法律顾问的要求

大多数被要求就并购交易进行报批的外国公司更愿意聘用熟悉其业务且能够帮助其针对多个司法管辖区（可能包括中国）准备申报资料的国际律师事务所。出于一些不明朗的原因，中国不再允许国际律师事务所与商务部直接就并购审批程序进行交涉，而要求以中国本土律师事务所作为中间人。因此，对于那些不得通过中国本土律师事务所进行申报的公司而言，并购审核程序所耗费的时间和金钱大大增加，因为中国本土律师事务所对客户业务或其其他司法管辖区的并购申报立场不甚了解。如果中国有关部门允许申报公司聘用其首选的法律顾问在并购审核过程中与商务部进行交涉互动，包括选择国际律师事务所与商务部直接沟通（是否同时聘用中国本土法律顾问可自由决定），那么将极大地提高整个审核程序的效率和透明度。

新《反垄断法》

中美商会深切关注新《反垄断法》所引起的诸多问题，其中许多与现行《并购规定》业已存在的问题相同。

偏向国内产业的可能性

在中国国内产业与竞争者和在华经营的跨国公司之间，新《反垄断法》的个别条款似乎更加偏向于前者。《反垄断法》所宣称的目的在于保护社会公共利益，并推动社会主义市场经济的健康发展，这可能会被解释为国内利益和国内经济。

《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。鉴于大型国有企业在各领域所发挥的重要作用，中美商会担心这些条款会使人产生疑虑，担心《反垄断法》在对国内产业，尤其是在对诸如大型国有企业等国民经济命脉实施时的公平性。

同样，《反垄断法》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”。中美商会担心，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，尤其是有些活动会促使国内行业之间“卡特尔”行为的产生。

此外，虽然《反垄断法》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（如国内小型企业以及中国国内的进出口贸易）、推动或保护国民经济命脉和促进国内“卡特尔”行为的产生。

最后，在并购审核过程中，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查程序考虑国内宏观经济问题留下了余地。

Article 7 of the AML 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. Given the important role that large SOEs play in many sectors of Chinese industry, AmCham is concerned that these provisions leave doubt as to how fairly the AML will be enforced against domestic industry and particularly national champions such as large SOEs.

Similarly, Article 11 of the AML 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 is concerned that this may provide trade associations with the ability to take on regulatory or coordinating roles that potentially are consistent with full and fair application of the AML’s underlying antimonopoly principles, particularly activities that may facilitate cartel behavior among domestic industries.

Furthermore, anticompetitive agreements prohibited under Articles 13 and 14 of the AML may be exempted by Article 15 if they enhance the competitiveness of small and medium-sized enterprises (SMEs) or advance “legitimate interests of international trade and foreign economic cooperation.” These exemptions might be read or interpreted to favor domestic industry (i.e., domestic small enterprises and China’s domestic import and export trade) and promote or protect national champions and facilitate domestic cartels.

Finally, during merger review, Article 27 permits antimonopoly 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 leave room for the protection of domestic competitors and the use of the merger review process to consider domestic macroeconomic issues.

Risks to Intellectual Property Rights Holders

A second major area of concern with the AML is the apparent potential of certain provisions in the new AML to interfere with the rights of legitimate IPR holders. For example, Article 13 prohibits agreements restricting the acquisition

or development of new technology, which may restrict the ability of IPR holders to freely license their rights (as indeed appears to be the goal of the 2005 Judicial Interpretation on Adjudication of Technology Contracts). Article 27 requires that the merger review process consider effects on technological development and “market entry and technological progress.” While these provisions are not discriminatory on their face, AmCham believes that their lack of clarity might be used against foreign IPR holders, especially if exclusive or superior technologies owned by foreign companies are asserted to constitute technical barriers to entry. Moreover, Article 55 distinguishes between the exercise of “legitimate intellectual property rights” and “abusing intellectual property rights,” without specifying how to tell one from the other. Again, this broad language is not discriminatory on its face, but AmCham is concerned about the potential misuse of these concepts to restrain foreign IPR holders.

Discretionary Enforcement and Unclear Procedures

The AML frequently employs vague language that apparently will be supplemented by detailed implementing regulations. AmCham is concerned that the extent of the ambiguity provides too much room for discretionary enforcement (and thus potentially discriminatory or arbitrary enforcement) and reduces the predictability and transparency of the law.

For example, the exemptions to anticompetitive agreements in Article 15 are very broad, exempting agreements that have the purpose of improving techniques or research and development; upgrading quality, unifying product models and standards; improving the competitiveness of SMEs; mitigating severe decrease in sales volume during recession; and protecting legitimate interests of international trade and foreign economic cooperation, among other things. Similarly, Article 17 prohibits dominant firms from “selling at unfairly high prices or buying at unfairly low prices,” without defining “unfair.” Finally, the processes for handling exemptions for anti-competitive agreements under Article 15 and for obtaining reduced penalties or leniency for reporting violations or cooperating with authorities are not specified in the AML. AmCham is concerned that the protections of these provisions are not reliably or predictably available at present because of this lack of specificity.

Moreover, AmCham believes that in many cases

对知识产权拥有者的风险

《反垄断法》的第二个主要问题在于新法中某些规定明显妨害了合法知识产权拥有者的权益。例如，第13条禁止达成限制购买或开发新技术的协议，这会限制知识产权拥有者对其产权进行自由授权的能力（这却是2005年《关于审理技术合同纠纷案件适用法律若干问题的解释》的目的所在）。第27条要求并购审查程序考虑对技术发展以及“市场进入、技术进步”的影响。虽然这些规定表面上并无“区别待遇”的痕迹，但中国美国商会认为，这些规定不甚明确，可能会对外国知识产权持有人产生影响，尤其是在外国企业所拥有的唯一或尖端技术被认为构成了进入技术性贸易壁垒的情况下。此外，第55条对“合法知识产权”的行使以及“滥用知识产权”进行的区别对待，却没有具体说明如何对二者加以区分。同时，这种宽泛的措辞在表面上并无“区别待遇”的痕迹，但中美商会担心这些概念的滥用会妨碍外国知识产权持有人。

任意执行与含糊的程序

《反垄断法》经常使用含糊的措辞，无疑应以详细的实施办法加以补充。中美商会担心这些模棱两可的措辞会为任意执行（可能会造成区别执行或武断执行的后果）留下过大的余地，并降低该法案的可预见性和透明度。

例如，第15条中垄断协议的豁免情况范围极广，将具有如下目的的协议排除在外：改进技术、研究开发新产品；提高产品质量、统一产品规格和标准、增强中小企业竞争力；因经济不景气，缓解销售量严重下降；以及保障对外贸易和对外经济合作中的正当利益。同样，第17条禁止具有市场支配地位的经营者“以不公平的高价销售商品或者以不公平的低价购买商品”，却没有对“不公平”做出定义。最后，《反垄断法》并未详细阐述如何处理第15条所界定的垄断协议豁免情况，以及怎样通过举报违法行为或与有关部门合作而降低处罚或获得宽大处理。中美商会担心，由于缺乏特异性，目前这些规定并不具有可靠或可预知的保护作用。

此外，中美商会认为，对经营者而言，在许多情况下，《反垄断法》提出的程序仍然存在着不必要的

繁复之处。例如，根据《反垄断法》第四章的并购审查规定，涉及中国的交易的审查最多需要180个工作日，这意味着审查期可能延长6个月甚至更久，比许多其他司法管辖区的审查期要长得多。中美商会建议为大部分参与者进一步简化审查程序。 ■

建议

中美商会希望中国政府能够通过考虑以下建议，解决现行《并购规定》所带来的问题：

- 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（如国家安全审查）。
- 对国内企业与国外公司一视同仁，公平地贯彻、执行《反垄断法》。
- 保护国内以及国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，尤其是并购审查相关程序；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。
- 作为临时措施，阐明现行《并购规定》下的并购审查程序。
- 明确《反垄断法》对国有企业、行业协会以及所有国内和国外公司均一视同仁。
- 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）。
- 要求反垄断监管部门系统地公布其行动和决议，以便能够作为中国经营者的指导。

the procedures set forth in the AML remain unnecessarily burdensome for business operators. For example, merger review under Chapter IV of the AML may require up to 180 working days for China transactions, meaning possible delays of six months or more, substantially longer than in many other jurisdictions. AmCham recommends further streamlining of the review process for most participants. ■

Recommendations

AmCham hopes that the Chinese Government will address the issues raised by the existing M&A Regulations by considering the following recommendations:

- De-emphasize issues unrelated to competition law (such as national security review) when drafting implementing regulations and enforcing the AML provisions.
- Apply and enforce the AML equally to both domestic and foreign companies.
- Protect the IPR of both domestic and foreign rights holders and ensure that the AML is not used as a means to circumvent IPR protection.
- Clarify and streamline relevant AML procedures, especially for merger review; implement expedited clearances; and exempt certain clearly defined categories of transactions, especially small acquisitions or those that have no connection to the Chinese domestic market.
- As an interim measure, clarify the existing merger review process under the M&A Regulations.
- Clarify that the AML applies equally to SOEs, trade associations and all domestic and foreign companies.
- Ensure that foreign companies and the international law firms representing them have direct access to the antimonopoly regulators (such as Antimonopoly Enforcement Authorities) and the right to counsel of their choice (including international counsel) in any proceedings or investigations.
- Require antimonopoly regulators systematically to publish their actions and decisions so that they may serve as a guide for business operators in China.



Energy & Environment

China is currently the world's largest emitter of greenhouse gases and the second-largest energy producer. China's fundamental challenge is to maintain strong economic growth while minimizing long-term environmental damage. Many American companies and investors are well-positioned to help China achieve this type of sustainable development, especially with the implementation of a consistent and transparent investment environment.

Many American companies have extensive experience with and knowledge of innovative technologies, quality manufacturing, project management, training, best-practice sharing, management systems, policy development and cooperation between the public and private sectors. All of these areas must be developed if China is to succeed in solving its energy and environmental challenges. Environmental policy success will help stabilize the economy, sustain high growth rates and achieve China's desired "harmonious society."

Through improved access to China's markets and increased promotional and educational cooperation, American companies can become even more valuable partners to China.

Complexity and U.S. Cooperation

The U.S. consumes one and a half times as much energy as China with nearly three times the manufacturing output, four times the national GDP, and has its own complex set of energy challenges. On a per capita basis the U.S. economy is much more energy intensive than China's. AmCham hopes that by working together, China and the U.S. can address their respective energy challenges and shortcomings for the greater good and mutual economic benefit. When it comes to the environment, there are no individual winners or losers; the global community succeeds or fails together.

Energy Policy

China added an estimated 90 gigawatts (GW) of new electricity generating capacity in 2007, down from 102 GW in 2006, but still an amount equal to the size of the UK's entire electric grid. Despite

this phenomenal growth, China's energy policy remains a patchwork of planned and market forces; formal regulation and reactionary fixes; and central mandates and local priorities, all overseen by numerous regulatory players with few key metrics available to measure success. Nevertheless, China's efforts to come to grips with this chaotic situation are encouraging to AmCham, and progress has been made in specific areas.

11th Five-Year Plan

The 11th Five-Year Plan broadly emphasizes the importance of sustainable development, resource conservation and environmental protection. The plan set clear energy efficiency targets requiring a reduction of energy intensity by 20 percent as measured by energy consumption per RMB10,000 of GDP. China missed its annualized energy intensity reduction target for the first nine months of 2007, achieving only a 1.33 percent reduction versus the four percent target set in 2006. Continued resolve at the national level provides hope that the country will ultimately meet its energy intensity reduction goals.

Energy Conservation Law & Policies

China's amended Energy Conservation Law went into effect on April 1, 2008. A key feature of the amended law provides for state implementation of "a system of accountability for energy conservation targets and a system for energy conservation evaluation whereby the fulfillment of energy conservation targets is taken as one part of the evaluation of local people's governments and their responsible persons."

The clear allocation of responsibility should aid in the education and enforcement of existing elements of the Energy Conservation Law and its attendant policies, codes and standards, thereby guiding China to achieve its energy intensity reduction goals.

Utilities and their associated intermediaries can play key roles in driving efficiency. Today utilities are rewarded for expanding their supply bases and thus have little incentive to reduce demand. AmCham recommends that the government take efforts to institute energy efficiency resource standards that encourage better demand-side management.

能源与环境

目前中国是世界上最大的温室气体排放国和第二大能源生产国。中国的挑战是在保持强有力的经济增长的情况下，如何尽可能减少长期以来的对环境的破坏。许多美国公司和投资者都有能力和条件协助中国实现可持续发展，尤其在透明且执行一致的投资环境中更具优势。

许多美国公司在创新技术、高质量生产、项目管理、培训、最佳经验共享、管理系统、政策发展及公共部门与私人部门间合作方面有着丰富的知识和经验。中国要成功解决能源和环境问题，就应对以上所有方面都予以关注。环境政策的成功将有助于稳定经济，保持高增长率，实现中国提出的“和谐社会”目标。

通过提高中国的市场准入程度，加大推广和教育合作，美国公司能够成为中国更价值的合作伙伴。

复杂性及与美国的合作

美国能源消耗是中国的1.5倍，而制造业的产出接近中国的3倍，GDP是中国的4倍，美国也面临着复杂的能源领域中的挑战。从人均上看，美国经济比中国经济更应属于能源密集型。中美商会希望中美二国能够通过合作，着眼世界并为了共同的经济利益，携手解决其各自所面临的能源领域中的挑战。环境问题，已无关乎个体的失与败，却关乎于全球的兴与衰。

能源政策

2007年，中国新增发电能力约为900亿瓦（GW）的，比2006年的1020亿瓦略有下降，但仍然相当于全英国整个电网发电的规模。尽管有如此显著的增长，中国的能源政策仍存在问题：带有计划经济的痕迹；已颁布法规政策的不断修订与调整，中央的要求和地方发展缺乏相互协调，政出多门而且缺少衡量政策实施是否成功的关键指标。尽管如此，中国为应对这种无序状况所做的努力还是令中美商会感到鼓舞，并且在特定的领域已经取得了进展。

第11个五年计划

第11个五年计划广泛地强调可持续发展、节约资源和环境保护的重要性。该计划设定了明确的每万元GDP能耗降低20%的目标。2007年的前9个月，中国没有能够实现其降低能耗的目标，只实现了1.33%的降幅，而2007年设定目标是4%。国家为此继续下大决心并为我们带来了希望，即中国最终将会实现其降低高能耗的目标。

节约能源法和政策

中国修订后的节约能源法于2008年4月1日起生效。修订后的这部法律一个主要亮点就是规定国家实行“节能目标责任制和节能评估考核制度，将节能目标完成情况作为对地方人民政府及其负责人考核评估的内容。”

明确的责任划分将有助于节约能源法及附带政策、法规和标准的宣传教育及强制执行，由此引导中国实现其降低能耗的目标。

电力能源公司及其相关机构在提高能源使用效率的过程中发挥着关键作用。但目前，由于电力能源公司只需要通过扩大其产能就可以获利颇丰，因此几乎没有任何动力来通过需求管理以提高其效益产出。中美商会希望政府加大力度制定新的能源效率标准，从而促进有效的需求管理。

市场推动为先进和创新技术的应用提供了激励机制，包括智能电网技术，它使公用事业单位和消费者之间产生互动，从而改变目前的能源使用行为。例如，智能型电表使消费者能够了解其使用习惯，而且如果将其与不同的计价方法结合起来，就能通过对需求的有效管理而达到对能源需求的平衡。

我们应当系统地、透明地将各种鼓励或支持节能项目的政策落到实处。当节能的收益明显而且可以量化时，提供节能服务的能源服务公司（ESCO）的数量就会增加。

Market instruments create useful incentives for adopting and purchasing advanced and innovative technologies, including smart grids, where two-way communication between the utility and the consumer helps change the way energy is used. For example, advanced metering empowers consumers to understand their usage habits and, if combined with differential pricing, can create a situation where power use is balanced more effectively from the demand side.

Policies that encourage or fund energy efficiency projects should be implemented systematically and transparently. When the benefits of energy conservation are clear and quantifiable, the number of Energy Service Companies (ESCOs) who provide energy efficiency improvement services will expand.

AmCham also supports and recommends a policy that allows third-party agencies to certify (1) equipment compliance with energy conservation standards; and (2) the completion and operational status of energy conservation components in new construction. Such a policy would help relieve the burden on limited governmental compliance staff and greatly increase the overall compliance with standards—benefiting the consumer.

Policy on Climate Change

In June 2007, China unveiled its first National Plan on Climate Change, setting out broad policy goals for addressing global warming and cutting greenhouse gas emissions. The plan cites the likely positive effects of China's energy efficiency efforts and renewable energy policies on reducing climate change emissions. The plan also promotes clean coal technology and biofuels development, and calls for the removal of tariff and non-tariff barriers to attract clean technology.

Renewable Energy Law

China's Renewable Energy Law took effect January 1, 2006. The law envisions the issuance of a number of implementing regulations, including goals for minimum levels of non-coal use as a percentage of China's total energy use. The NDRC has pledged to set aside over US\$1 billion for clean technology development, including solar, wind and coal-bed methane technologies.

While renewable energy is currently only a small percentage of China's energy mix, investment in

cleaner technologies has been growing rapidly. For instance, venture capital investment in cleantech in China has grown from about US\$180 million in 2005, to US\$420 million in 2006. It is expected that final data will show 2007 investment to have reached US\$580 million, and this is projected to exceed US\$1 billion by 2009.

National Energy Law

China's draft update of its National Energy Law calls for the use of market forces to set energy prices and the establishment of strategic reserves of critical natural resources such as natural gas, uranium and coal. The draft law is expected to pass in 2008 and be enacted in 2009. AmCham is currently reviewing the contents of this draft. To date, we are encouraged by the transparency with which this law has been promulgated, including the release of the draft for public comments.

AmCham strongly supports the draft's statement that energy pricing should reflect "the scarcity of resources and their cost of damage to the environment" and the acknowledgement that "markets" should be the "leading factor" in China's energy pricing systems. AmCham acknowledges that an immediate transition to a market pricing system could cause social disruptions that China wishes to minimize. We support a transitional period for the move from a fixed, subsidized pricing system to a full market pricing system. To protect the interests of the more vulnerable members of society, AmCham recommends that the government provide subsidies to these groups rather than continue the inefficient and market-distorting practice of controlling prices.

Any move toward market-based pricing will be hindered by the lack of timely, accurate and comprehensive market data covering areas such as inventory levels, transaction prices, production volumes, capacities and demand. More transparently available fundamental data would enable the Chinese Government and investors to better evaluate market conditions and lead to improved decision-making and capital formation. Collecting and distributing this data is a necessary predecessor to full market-based pricing.

Enforcement

Enforcement of China's environmental and energy laws and goals generally falls to provincial and local governments. Local authorities often feel constrained

中美商会还支持并建议推行一项政策，即允许第三方代理机构对以下内容提供认证服务。（1）设备是否符合节能标准；（2）新的建筑工程中节能设施部分的完成和运行状况。该项政策会有助于减轻有限的政府监察人员的工作负担，并大大提高整体水平，最终使消费者受益。

有关气候变化的政策

2007年6月，中国公布了其第一个《应对气候变化国家方案》，就解决全球变暖和削减温室气体排放制定了广泛的政策目标。该方案例举了中国的节能工作和可再生能源政策对减少温室气体排放将会产生的积极作用。该方案还大力提倡使用清洁煤技术和生物燃料开发，并要求取消关税和非关税壁垒以吸引清洁技术的应用。

可再生能源法

中国的《可再生能源法》于2006年1月1日开始生效。并将推出若干与之配套的实施规定，其中包括非煤炭能源在中国能耗总量中的最低百分比目标。国家发展改革委员会已经承诺拨出10亿多美元用于包括太阳能、风能和煤层气清洁技术的开发。

虽然可再生能源目前在中国能源构成中只占很小的百分比，但清洁技术投资一直在快速增长。例如，在中国，投入清洁技术的风险资本投资从2005年的大约1.8亿美元增长到2006年的4.2亿美元。2007年的投资可能已经达到5.8亿美元，预计到2009年，这个数字会超过10亿美元。

国家能源法

中国《国家能源法》的更新草案要求利用各种市场力量来制定能源价格，并建立天然气、铀和煤炭等主要自然资源的战略储备。该法律草案预计将于2008年通过，并于2009年颁布。中美商会目前正在研究此草案的内容。目前，该法在制订过程中的透明度，包括公布草案征求公众意见，已经使我们深受鼓舞。

中美商会强烈支持该草案有关能源定价应当反映“资源的稀缺性及其环境破坏成本”的规定，以及对“市场”应当是中国能源定价体系中“主要因素”的确认。中美商会也认识到，立即过渡

到市场定价体系可能影响社会的稳定发展，这是中国政府所不希望看到的。另外，中美商会认为从固定并接受补贴的价格体系向完全市场定价体系的转变应该有个过渡期。为了保护社会弱势群体的利益，中美商会建议政府向这一群体提供补助，而不是继续使用低效，扭曲的市场价格管制。

向市场定价机制转变的任何努力会因为缺乏与存货水平、交易价格、产量、产能及需求等相关领域的及时、准确而全面的市场数据而受到影响。更加透明的，可以获取的基础数据会使中国政府和投资者能够更好地评价市场行情，从而调整决策水平和资本构成。收集和发布这些数据是实现完全市场定价机制的必要基础。

执法力度

中国环境、能源方面法律的实施及目标的实现，通常是由省级和地方政府具体执行，如何平衡资源利用的有效性和对环境问题的综合考虑，使地方政府经常感到无奈，在以发展经济为首要任务的前提下，通常的决策都是将重心放在了短期经济发展方面。地方政府对法规的解释和执法的不一致经常给企业造成困惑，因而影响了具体项目的市场开发能力。

建议

- 继续制定透明的国家能源政策。
- 制订从固定并补贴的能源定价向市场定价体系过渡的方案。
- 通过采用对需求方的管理技术和建立“智能电网”，使节约能源的收益一目了然且可量化，并以此来推动节能工作。
- 在建筑行业中，允许第三方对符合节能标准和节能要求的设备进行认证。
- 加强地方政府对各项环境能源方面的法律法规的执法力度。
- 建立信息准确，公众可获得信息的能源统计数据数据库，以帮助市场参与者更好对市场做出判断，为投资决策提供信息。

by the need to balance resource availability and environmental concerns against their economic growth priorities, often resulting in a near-term economic growth focus. Inconsistencies in the interpretation and enforcement of regulations at local levels often lead to confusion for businesses, hindering their ability to effectively pursue specific projects and markets. ■

Recommendations

- Continue to define a transparent national energy policy.
- Develop a proposal for transitioning from fixed and subsidized energy pricing to a market-priced system.
- Encourage energy conservation efforts by employing “demand-side” management techniques, instituting “smart grids,” and making the benefits of energy conservation plain and quantifiable.
- Permit third-party certification of compliance with energy-saving equipment standards and energy conservation requirements in the construction industry.
- Strengthen local implementation and enforcement of environmental and energy laws.
- Build up an accurate database of publicly available energy related statistics to help market participants better evaluate market conditions and to inform the capital investment decision-making processes.



Tax

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 protection of the environment, infrastructure projects and certain key industries that contribute to China’s goal of fostering innovation.

As the Chinese economy has grown and become more sophisticated, compliance by taxpayers and administration, as well as enforcement of tax law by officials, has become increasingly complex. AmCham believes that changes to existing rules on certain key taxation issues and practices will help China achieve its policy goals.

Adjustment of VAT Refund Rates

Significant adjustments have been made over the past year to VAT refund rates, export duties and the qualifying materials/products that can be manufactured for export under processing trade arrangements.

These changes have caused immediate increases in the tax burden on exports and to exporters. The most recent changes on July 1, 2007, were significant both in percentage and absolute terms. Cumulatively, the various adjustments have increased VAT costs to 13 percent or more of the Free on Board (FOB) sales value from the time when many manufacturers first established operations in China. This unprecedented increase seriously affects all manufacturers in China, both foreign and domestic, competing in world markets. As a result, the commercial viability of many manufacturers and exporters is damaged. Some are reassessing the economics of remaining in China and are considering moving their manufacturing operations to other Asian countries.

The recent VAT refund rate change announcements were also perceived as very abrupt. The July 2007 changes were made with less than two weeks’ notice, leaving exporters no time to plan a smooth transition during which they could renegotiate prices with customers. Exporters therefore had to honor contracts for shipments at lower prices. The resulting losses have meant that China’s EIT receipts also suffered. AmCham advocates longer notice periods of

no less than three, and preferably six, months.

AmCham acknowledges the government’s legitimate concern over providing a more generous notice period, which could allow firms to export additional quantities so as to “beat the deadline” and pay less tax on the accelerated exports. However, AmCham believes any detriment from such shipments will be small in comparison to the benefits of a more orderly transition.

China’s use of its VAT system as a mechanism to raise revenue from exports and control the use of environmentally significant raw materials is relatively unique in the world. Typically, most countries “zero rate” exports to give local manufacturers the best chance to secure international orders. AmCham 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.

Partnership Enterprise

Although the Partnership Enterprise Law (PEL) has been effective since June 1, 2007, guidance regarding the procedures for registering partnerships with foreign partners and taxation rules applicable to partnerships and partners has yet to be released. A draft of “Administration Measures of Foreign Enterprise or Individual Establishment Partnership Enterprise in China” is currently under consideration. AmCham submitted comments on this draft in 2007.

The PEL states that a partnership itself will not be subject to tax under either the Individual Income Tax Law or the EIT Law; rather, the partners will be taxable on their respective shares of partnership income or loss. With respect to the taxation of foreign partners, AmCham recommends that guidance be provided as soon as reasonably possible in accordance with the principles of *Guoshuifa* [2003] No. 61.

Related Party Transfer Pricing

The EIT Law and Rules state that all related party transactions must use arm’s length pricing at internationally accepted standards. For the 2008 tax year, companies with such transactions are required to prepare for the first time contemporaneous

税务

2007年出台的《企业所得税法》及其实施条例（简称“条例”）为内资企业和外资企业创建了“公平的赛场”。同时它们还被寄予了更多期待：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重点行业。

由于中国经济日益增长并变得更加成熟，纳税人和行政部门的合规性以及官员执法情况也日益复杂。中美商会认为，根据某些主要税务事项及其实践经验，对现有法规予以修改将有助于中国实现其政策目标。

调整增值税退税率

去年，中国对增值税退税率、出口关税和加工贸易目录做了重大调整。

这些变化导致出口业务和出口商的税负增加。2007年7月1日的最新一次调整，无论是按相对值还是绝对值计算，其调整幅度都相当大。自许多制造商首次在中国设立经营机构以来，综合累计，各种调整已使增值税成本上升到出口货物离岸价（FOB）销售额的13%或更高。这种空前的增长影响了中国的内外资制造商在世界市场上的竞争地位。结果导致许多制造商和出口商的商业生存能力遭到了破坏。一些企业正在对其在华业务重新进行经济评估，并考虑把它们的生产部分迁移到亚洲其它国家。

最近的增值税退税率调整公告也是来得非常突然。2007年7月税率调整的通知只在生效前不到两周才发布，使出口商没有时间规划一个平稳过渡期，以便与客户重新磋商价格。因此，出口商不得不履行价格较低的发货合同。其导致的结果是，中国企业蒙受了损失，而国家也因此蒙受了国内企业所得税收入损失。商会主张提前通知期限应不少于三个月，最好为六个月。

中美商会承认政府对于给予更长的通知期限存在顾虑是合理的，这可能会导致企业加大出口数量，以便“赶在最终期限前”出口，从而通过加速出口来减少税负。然而，商会认为，与更加有序的过渡所带来的好处相比，如此加速出口的行为所带来的损

害可谓微不足道。

中国将增值税制度作为一种机制，以期提高财政收入，同时控制一些对于环境保护相对重要的原材料的使用，这在世界上是相对独有的。一般而言，大多数国家实行“零税率”出口，以便为本地制造商提供良机获得国际订单。中美商会建议政府启动一项长期研究，以确定中国的增值税制度在与其它国家的普遍的增值税制度接轨时所产生的影响。

合伙企业

尽管《合伙企业法》自2007年6月1日起就已经生效，但是关于注册与外国合作伙伴成立的合伙企业的指导意见以及适用于合伙企业的税收法规尚未出台。“外商投资合伙企业管理办法”草案目前正在研究中。中美商会于2007年提交了对草案的意见。

《合伙企业法》规定合伙企业本身无须依照《个人所得税法》或《企业所得税法》纳税，但合伙人要就其各自在合伙企业收入或损失中的份额纳税。关于外国合伙人的纳税事宜，中美商会希望在合理可行时尽快依照国税发[2003]61号通知的原则出台指导意见。

关联方转移定价

《企业所得税法》及其实施条例规定一切关联方交易都必须按照国际公认的标准采用独立交易原则。对于2008纳税年度而言，发生此类交易的公司必须就此准备同期资料。但由于政府仍然在起草关于这些新要求的指导意见，因此所有相关企业尚不清楚如何具体操作以遵从该法规的要求。

及时出台此指导意见对于所有企业非常重要，尤其是对缺乏内部转移定价政策历史资料的中国内资公司。商会建议，如果短时间不能出台指导意见，则可将此要求推迟到2009年，或者规定某些最基本的证明文件提交标准，这将会使中国所有公司能够分阶段地平稳过渡，逐步符合转移定价税制的要求。

documentary support. The government is still drafting its guidance on these new requirements so all affected enterprises are still uncertain how to comply.

Timely issuance of this guidance is important to all enterprises, especially domestic Chinese companies that do not have a history of documenting internal transfer pricing policies. AmCham recommends that if guidance is not issued very soon, either the requirement be delayed until 2009 or some more minimum level of documentation be specified. This would allow a smooth and phased transition to transfer pricing compliance by all companies in China.

In defining relevant party and control for purposes of transfer pricing and other applicable rules (e.g., thin-capitalization rules), China differs from many countries in the minimum level of ownership or voting control that constitutes control. While other countries typically set “50 percent or more” as the minimum, Chinese rules only mandate a “25 percent or more” threshold. In light of the many joint ventures in China, this test will often be met despite the lack of any real control that a minority owner has. In addition, the joint venture company may be legally and practically unable to obtain required information from a minority owner or its related parties. AmCham recommends that the current “25 percent or more” threshold be raised to “over 50 percent” while also retaining the criteria indicating control where the threshold is not met. Such criteria include director/manager control and supplier relationships.

AmCham believes that cost sharing agreements and advanced pricing agreements (APAs) will be useful tools for the tax authorities and companies alike. As these are new concepts in China, AmCham recommends that simplified procedures be developed and issued as soon as reasonably possible. Taxpayer education programs should be initiated.

Article 114 of the Rules allows the tax authorities to secure private/confidential information from companies that are not under audit (merely because their business is similar to the companies that are under audit). Only publicly available data should be used by both the taxpayer and the tax authority in supporting their respective positions. In addition, the possibility that proprietary information will become known to competitors is a major concern.

AmCham recommends that (1) “secret comparables” not be used, and (2) Article 114 be amended to read:

“Other enterprises involved in the investigation as cited in Article 43 of the EIT Law refer to enterprises that have directly conducted business transactions with the enterprise being investigated.” Article 114 should also make clear that information to be obtained is strictly limited to confirmation/attestation of information provided by the taxpayer under investigation.

In many countries, the APA process is used not only for future pricing, but to agree in a friendly and efficient manner the prior open years. This can avoid lengthy audit and competent authority procedures that require significant resources of both the government and taxpayers. AmCham suggests amending the Rules to provide for the APA process to apply to prior open years when appropriate (i.e., rollback).

Fair Application of Incentives

The lower 15 percent tax rate under the EIT Law for “new and high-tech” (NHT) companies is intended to drive innovation and investment in line with China’s 2006-2020 Long-Term Innovation Plan. However, the Rules include an IPR ownership requirement that has the effect of preventing most non-Chinese multinational companies (MNCs) from realizing the benefits. This is counter-productive to China as it will result in significant innovation being conducted elsewhere.

Although non-Chinese MNCs add significantly to China’s technology base, these companies are often hesitant to register IPR within local subsidiaries due to security concerns and internal policies that maintain IPR ownership within the home country. The IPR ownership requirement therefore precludes many MNCs from qualifying for NHT status. This is inconsistent with the “level playing field” policy of the EIT Law and counter-productive to China’s long-term goals of increasing R&D activity and innovation.

China initiated this NHT status specifically to encourage R&D activity and to increase value-added production. This can occur no matter where IPR is owned. Allowing MNCs and other companies that are truly NHT to qualify will also employ more of China’s science and technical graduates, and encourage more relationships between MNC R&D centers and Chinese universities or scientific institutes.

AmCham recognizes the complexity of defining NHT activities and applying that definition to the many business arrangements that exist. The definition should be flexible enough so that companies that truly merit

在定义转移定价和其它适用法规（例如，资本弱化规定）中的关联方和控制权时，中国在构成控制的最低股权比例或表决控制权标准方面与许多国家都不同。其它国家一般把“50%或以上”作为最低标准，而中国的法规只要求“25%或以上”。基于中国许多合资公司的情况，尽管少数股东并不拥有实际控制权，但它们通常都会达到这个判定标准。此外，合资公司几乎不可能合法地从少数股东及其关联方那里获得所必需的信息。因此商会建议将当前的“25%或以上”的门槛提高到“50%以上”，同时在没有达到此最低限时，保留标准的指标控制。该标准包括董事/管理人员控制和供应商关系等。

中美商会认为，对于税务机关和纳税企业来说，成本分摊协议和预约定价协议（APA）都将会是有用的工具。由于这些在中国都是新兴的概念，商会建议在合理可行时尽快就此制定相关规定并出台简化的程序。中国政府也应当启动相应的纳税人教育计划。

实施条例第114条允许税务机关从未被调查的公司那里取得私密资料（仅仅因为他们的业务与被调查的公司类似），而纳税人和税务机关都只应利用公开资料来支持它们各自的观点。此外，专有信息可能会被竞争对手所知也是企业担心的主要问题。

商会建议（1）不使用“秘密可比公司资料”和（2）将第114条改成：“企业所得税法第四十三条所称与关联业务调查有关的其他企业，是指与被调查企业直接进行业务交易的企业。”第114条还应当明确：从其他企业取得的信息要严格限定在只用于确认、核实被调查的纳税人提供的信息。

在许多国家中，预约定价协议不仅适用于未来定价，而且能以容易并有效的方式适用于以前年度。从而避免冗长的审计和机构监管程序及其所需的政府和纳税人大量资源的投入。商会建议可就修改此实施条例，规定预约定价协议在适当的时候可适用于以前年度。

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%的较低税率，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，将使大多数非中国的跨国公司无法享受此优惠。这会对中国起反作用，因为它将导致重大创新活动向其他地区转移。

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，这些公司通常对于是否由中国当地的子公司注册知识产权感到犹豫。因此，知识产权的所有权要求将使许多跨国公司无法取得高新技术企业资格。这不符合企业所得税中的公平原则，亦有碍于中国实现增加研发活动和创新的长期目标。

中国设立高新技术企业资格的初衷是为了鼓励研发活动和提高生产附加值。无论知识产权的所有权位于何地，都不影响上述两点目标的实现。让真正属于高新技术企业的跨国公司和其它公司取得该项资格，会使它们雇用中国更多的相关专业的毕业生，并鼓励跨国公司研发中心和中国的大学或科研机构之间建立更密切的联系。

中美商会承认定义高新技术企业，并将该定义适用于业已存在的众多商业安排，这一工作非常复杂。因为该定义必须足够灵活，让真正应该受到鼓励的公司能够合理地取得这一资格。

商会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。此备选的高新技术企业资格判断标准可设定“核心要求”和“次要条件”，只有二者均得到满足，当地主管部门才能授予高新技术企业资格。

“核心要求”（以下两条都必须满足）：

- 产品或生产工艺或服务所用技术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、技术诀窍以及为研发知识产权所付出的善意劳动，即使没有研发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。

this incentive can reasonably obtain it.

AmCham recommends adding an alternative test for NHT status that will “level the playing field” between domestic companies and FIEs. This alternative test creates “Core Requirements” and “Secondary Conditions,” both of which must be satisfied in order for local authorities to grant NHT status.

“Core Requirements” (both must be met):

- Technology of products or 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 is either self-owned or licensed, or that is created through activities under a R&D services contract or other similar arrangements. Technology for this purpose includes, 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):

- Technology is involved in, or otherwise related to, an “encouraged” category in the Catalogue Guiding Foreign Investment (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 acknowledges that this alternative test is, by nature, very subjective. While AmCham more generally encourages a full “rule of law” with all taxpayers being treated objectively, we believe that the subjective nature of innovation and R&D activities requires the application of sound judgment by trained scientific personnel within the applicable local authorities. Such sound judgment should not be limited by percentage tests. For example, there

should be no “percentage of sales” requirement since the qualitative significance of the R&D conducted is not in any way related to current sales.

Dividend Withholding Tax

AmCham members are concerned about the 10 percent dividend withholding tax. When comparing the effective tax rates on distributed earnings across Asia, China is now near the highest. This significant change, along with the loss of other tax incentives, forces some existing FIEs to reconsider their investments in China.

Although AmCham members based in the U.S. have a foreign tax credit mechanism, often this mechanism does not work as it theoretically should. Under these conditions the 10 percent dividend withholding tax represents an additional unrecoverable tax cost. This is also true for many European-based AmCham members whose home countries exempt income from their foreign subsidiaries from any home country taxation.

AmCham 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. China is one of only a few developed countries that maintain turnover taxes today aside from comprehensive VAT systems.

The Business Tax economically affects each taxpayer differently depending on its overall situation and percentage profit margin. For example, if a taxpayer has a very small profit margin, the imposition of the Business Tax can actually contribute to an economic loss. Despite varying rates being set for different industries (e.g., construction and entertainment), the variations within industries (differing product mixes and margins) cause turnover taxes to result in uneven and unfair treatment.

The Business Tax has serious implications for the 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 uncertain and puzzling to financial services firms. Official guidance is through the issuance of circulars, the issuance of which requires considerable time and effort. This serves to delay development of financial products

“次要条件”（以下五条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）
- 针对性的研发活动或者是直接进行，亦或通过成本分摊协议进行；同时既可以在研发中心进行，也可以在实务作业中进行。
- 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。

中美商会承认，此选择性判断标准本质上是非常主观的。尽管中美商会鼓励完全“法治”以便更客观地对待所有纳税人，但我们认为，创新和研发在本质上是要基于当地有关主管部门训练有素的科技人员的合理判断。这种合理判断不应当受到数量百分比标准的限制。比如，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。

股息预提所得税

中美商会及其成员企业对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。

虽然总部设立于美国的商会成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成员企业来说，由于其母国对于境外子公司的所得采取免税处理，所以这笔10%的预提所得税同样也是一笔额外费用。

中美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。中国是少数除增值税制度外还保留流转税的发达国家之一。

由于总体情况和利润率百分比的不同，营业税在经济上对各个纳税人的影响都不一样。例如，如果纳税人的利润率很低，营业税的征收实际上可能会造成经济损失。尽管为不同的行业规定了不同的税率（例如建筑业和娱乐业），行业内（不同产品组合和利润）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。

营业税对于在中国建立一流的金融中心而言具有重要意义。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服务公司的某些具体业务尚不明确。官方指导意见基本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。由此延滞了有益于中国经济发展，有助于创建中国所期望的世界一流金融中心的相关金融产品的发展。

营业税还影响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，中国金融咨询服务等行业向境外销售其服务并在国际市场成长的能力产生不利的影响。尤其要注意到，其它国家一般对其增值税系统中的此类服务实行“零税率”。

中美商会建议政府将取消营业税作为长期的项目来研究，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。

扣除额

通过《企业所得税法》，中国采纳了国际上常用的方法，把企业内部控制措施所限制的企业管理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，阻碍了它们的发展。这对内资企业和外商投资企业都有影响。

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

that would be useful for the Chinese economy and help create the world-class financial centers that China desires.

The Business Tax also affects China's international competitive position, as it is an additional significant cost not incurred by competitors in other countries. This will adversely affect China's move "up the value chain" and the ability of Chinese service industries such as consulting and financial services to sell their services overseas and to grow internationally. It is important to note that other countries typically "zero-rate" such services within their VAT systems.

AmCham recommends that the government study as a long-term project 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

Through the EIT Law, China has adopted the internationally common approach of accepting the judgment of business management as limited by corporate internal controls as the basis for deductible expenses. However, there are limits on certain legitimate business expenses. This hinders some companies and industries by creating for them an artificially high level of EIT. This affects all companies, both Chinese enterprises and FIEs.

The current non-deductibility of commercial insurance generally discourages employers from providing such insurance to employees, despite the 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 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.

Similarly, deductions should be allowed for 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.

Business support of country-wide and community activities through sponsorships serves to enhance the cultural awareness and 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.

AmCham recommends a project to identify worthy sponsorship categories to be considered eligible for deductions. These could include community sports teams, local school activities and other cultural events.

The present 15 percent of sales revenue limitation on advertising and marketing expenses will adversely affect domestic companies and FIEs alike. Tax authorities may stipulate different percentage limitations for specific industries, but this will not eliminate the high effective tax rate that will apply to various companies. AmCham recommends that the percentage limitation should be removed.

AmCham notes that for advertising and marketing expenses, there is an unlimited carryover available for expenditures in excess of the limitation. This clearly implies that the government sees no social objection to industries that traditionally have high levels of advertising and marketing expenses.

It should be added that this advertising and marketing expense limit is particularly counterproductive for start-ups that are incurring high expenses of this type in relation to their initial low level of sales. AmCham notes that tax policy should encourage, or at least be neutral, to start-up companies, and not be actively discouraging them.

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. Management fees are often charged by parent companies for two types of activities.

"Stewardship" activities are conducted by investors to oversee and guide their investments. Such activities do not directly benefit the business of a Chinese subsidiary. The second type is services, which a Chinese subsidiary either does not, or cannot, perform itself, and which directly benefit the business of the subsidiary. "Stewardship" type expenses should not be deductible; the second type should be deductible. AmCham recommends that a circular be issued that will make this distinction and will provide guidance to local tax offices and taxpayers alike.

The amortization of purchased goodwill is disallowed until the underlying business is sold or closed. As goodwill is an asset of diminishing value, AmCham recommends this treatment for goodwill be reconsidered. With simplicity of administration in mind, goodwill could be amortized over some set

认为是合理的。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。中美商会建议允许把为员工提供的商业保险费用作为扣除额，同时对只提供给同样作为雇员工作的企业主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。

通过赞助形式等对全国性和社区性活动提供企业支持，可用来提高文化意识，提升学校、剧院、体育团队及其他文化活动的质量。在其它许多国家中，生活质量因为此类企业支持而显著改善。中美商会建议，开展一个研究项目，旨在确定值得进行的企业赞助活动，并将这部分赞助费用列入可扣除的费用。这些活动可以包括社区体育团队、当地学校活动和其它文化活动等。

目前，广告和业务宣传费的扣除额限制在销售收入的15%以内，也将对内资企业和外商投资企业产生不利影响。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。中美商会建议取消该百分比限制。

中美商会注意到，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业务宣传费用并不存有异议。

应当补充的一点是，此广告和业务宣传费用限制对于新企业来说尤其会引起相反的效果，因为这些企业在开始阶段的费用往往很高，而初期销售额往往较低。商会认为，税收政策应当鼓励新创办的公司，或至少对它们保持中立，而不是阻碍它们。

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不应当是重要的。管理费通常是母公司针对两种业务活动收取的费用。

“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。该等业务活动没有使中国子公司的业务直接受益。第二种类型是服务，中国公司没有或者无法自己完成这部分活动，而该服务会使中国子公司的经营直接受益。“经营指导”类型的费用

应当是不可扣除的，而第二种类型的费用应当是可扣除的。中美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。

在标的企业出售或关闭之前，不允许扣除外购商誉的摊销费用。由于商誉是逐渐减值的资产，中美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

调整增值税退税率

- 如果将来增值税退税率发生变化，应当提前较长的时间发通知，要不少于三个月，最好是六个月。
- 对过去年度调整增值税退税率的实际效果进行准确评价，以确定是否实现了政府的目标；
- 启动政府项目，研究对增值税系统做出重大修改，以取消增值税退税机制并实行出口“零税率”；

合伙企业

- 在合理可行时尽快审定适用于外国合伙人的管理办法，以使用这种组织形式来促进中国的创新性发展和增长；
- 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。

关联方转移定价

- 如果不能短期内地出台有关同期资料准备的指导意见，供企业在2008年执行，可先规定基本的文件提交标准或者将此要求推迟到2009年；
- 将构成控制的最低所有权或表决控制权水平从“25%或以上”提高到“50%以上”；
- 不应当使用“秘密可比公司资料”。如果必须使用，所提供的信息都必须是自愿提供的，而且只能由公司单方面决定；

number of years that would be provided in a circular or other governmental guidance. ■

Recommendations

Adjustment of VAT Refund Rates

- In the event of future VAT refund rate changes, longer notice periods of no less than three months, and preferably six months, should be given.
- A rigorous assessment of the real effects of the past year's changes to determine if the government's goals are being met.
- Initiation of a government project studying major changes to the VAT system that would eliminate the VAT refund mechanism and adopt "zero-rating" for exports.

Partnership Enterprise

- Finalize the rules for foreign partners as soon as reasonably possible so that this form of organization can be used to further China's innovative development and growth.
- Provide taxation guidance for foreign enterprise partners in accordance with the principles of *Guoshuifa* [2003] No. 61.

Related Party Transfer Pricing

- If contemporaneous documentation guidance is not issued soon enough to allow proper compliance for 2008, a lower level of documentation should be issued, or the requirement delayed until 2009.
- Increase the minimum level of ownership or voting control that constitutes control from "25 percent or more" to "over 50 percent."
- "Secret comparables" should not be used. If they must be used, any information provided should be given voluntarily and solely at the discretion of the company.
- Clarify validity of previous circulars that determine the current transfer pricing regime. Circulars should be reissued or clarification given that current circulars apply under the EIT Law for both FIEs and domestic enterprises.

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 that will ensure all qualified companies, domestic or FIE, can enjoy the proper incentives;
- Regarding the super-deduction for R&D expenses, AmCham recommends using 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.

Business Tax

- The creation of a working group of government and industry to investigate developing principles and guidance in order for financial services sector participants to gain certainty regarding how the Business Tax is assessed on new financial products;
- A long-term study on 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

- Commercial insurance provided for employees be allowed as a deduction, thereby encouraging employers to provide such insurance for employees so as to reduce future governmental costs;
- Socially desirable costs such as employee welfare, labor union and education expenses be allowed as a deduction, and thus encouraged;
- Eliminate the percentage limitation for advertising and marketing expenses;
- Management fees for services that a Chinese subsidiary either does not or cannot perform itself and that directly benefit its business should be deductible;
- Reconsider the treatment of purchased goodwill allowing for full amortization will simplify administration for officials and taxpayers.

- 明确以前发布的转移定价相关制度的有效性。相关法规应当重新颁布通知，或者澄清依据《企业所得税法》，现行通知对外商投资企业和内资企业都可适用。

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批准，确保所有符合条件的内资和外资公司都能享受到适当的激励措施；
- 关于研发费用的超额扣除，商会建议用经济合作与发展组织《弗拉斯卡蒂手册》中的原则作为界定符合条件的研发活动的依据；

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。

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，以便金融服务行业从业者能够确切了解新金融产品的营业税政策制定情况；
- 对取消营业税，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的可行性进行长期研究。

扣除额

- 应当允许将为员工办理的商业保险作为可扣除额，以此鼓励雇主给员工办理此类保险，以便降低政府对公共卫生医疗的费用投入；
- 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扣除额，以此加以鼓励；
- 取消对于广告和业务宣传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，中国子公司向母公司支付的管理费应当可以税前扣除；

- 重新考虑外购商誉的处理，允许全额摊销将会减少税务官员和纳税人的管理。

Customs

According to official reports from the General Administration of Customs, the Ministry of Commerce and the State Administration of Taxation of the PRC, approximately 45 percent of all cross-border trade in China consists of processing trade (bonded manufacturing, with no customs duty paid at import/export), while 50 percent falls under general trade (customs duty-paid at import/export). The remaining five percent relates to other customs duty-exempt and/or duty-reduced imports/exports.

Last year China continued to see a rapid increase in the volume of cross-border trade—reportedly rising 30 percent. Sustained increases of this magnitude are unprecedented globally. Managing this additional workload puts a great strain on the resources of the customs authority, particularly at the over 200 ports of entry/exit throughout the country. Although the customs authority is the lead cross-border enforcement agency, coordination and interface with other agencies such as the State Administration for Quarantine, Inspection and Quality (AQSIQ) and the Ministry of Commerce play key roles in the movement of goods into and out of China.

Trade facilitation for both imports and exports is also important to industry and economic development. AmCham recognizes that advancements in information technology, including the implementation of paperless customs clearance, are being made to further enhance trade facilitation, and that the Customs authority is tasked with two competing objectives—strict and fair enforcement of customs laws and ensuring high standards for the facilitation of legitimate movement of goods across China's borders.

Significant Developments

Last year witnessed a number of regulatory, policy and technical developments, including:

- Implementation of the Harmonized System (HS) 2007.
- Implementation of a new rule for advance tariff classification rulings.
- Implementation of new and expanded bonded zone policies on a pilot basis regarding R&D, logistics, repair and others that can be undertaken in certain export processing zones and free trade zones.
- Ongoing use of IT capabilities to enhance customs supervision and efficiency (most notably, e-handbooks for processing trade and the continued development of paperless clearance procedures).
- The addition to the 2007 updated Foreign Investment Catalogue of remanufacturing as an area for foreign investment.
- Broad changes to processing trade classifications (both prohibited and restricted) and VAT refund policies, as well as rule updates for the supervision thereof.
- Finally, consumer product safety issues have had significant effects in both the United States and China; there have been many calls in the U.S. for increased government intervention and inspection of imported goods, but the efficacy or even practicality of such an endeavor remains to be established.

Specific Issues

Processing Trade and VAT Refund Changes

While many of the recent developments pertaining to customs are positive, the processing trade and VAT refund changes are notable for having significant adverse effects.

Announced on April 6, 2007, and effective April 26, "Announcement No. 17, 2007, of Ministry of Commerce, General Administration of Customs and State Environmental Protection Administration, Promulgating Commodity Catalogue Prohibited for Processing Trade":

- Increases the number of prohibited goods for processing trade from 341 to 1,140. The majority of these goods are from high-energy or environmentally intensive industries.
- Prohibits companies, set up on or after April 26, 2007, in customs special zones (such as bonded logistic parks and export processing zones), from having processing trade arrangements for goods on the prohibited list for processing trade. For example, companies can no longer import raw

海关

依据中国海关总署、商务部和国家税务总局的官方报告，中国跨境贸易总额中有大约45%由加工贸易（保税生产，进出口时不交关税）构成，同时有50%属于普通贸易（进出口时交关税）。剩余的5%与其它关税减免和/或减税进出口业务有关。

去年，中国的跨境贸易额继续快速增长——据报道提高了30%。这个幅度的持续增长在全球都是空前的。管理这个额外的工作量给海关的资源带来了巨大的压力，尤其是在全国200多个的出入境港口。海关是主要跨境执法部门，与国家质量监督检验检疫总局（AQSIQ）和商务部共同协调与合作，但其在货物进出口中国的过程中起到发挥着关键作用。

进出口贸易便利化对于行业 and 经济发展也很重要。中美商会承认，为了进一步促进贸易便利化，中国在信息技术方面正在取得进步，包括推行无纸化清关。海关的任务是完成两个竞争目标：严格且公平地执行海关法并确保穿越中国边境的合法货物运输享受高便利化标准。

重大进展

去年见证了许多监管、政策和技术进展，包括：

- 2007年《协调制度》的实施。
- 实施商品预归类裁定新规定。
- 试行有关可以在某些出口加工区和自由贸易区从事的研发、物流、修理和其它业务的新的扩展保税区政策。
- 不断利用IT能力来提高海关监督和效率（最显著的是加工贸易电子手册和无纸化清关的不断发展）。
- 在2007年修订后的《外商投资产业指导目录》中，将再制造业增加为允许外商投资的领域。
- 对加工贸易类别（包括禁止的和限制的类别）及增值税退税政策等进行了明显的修改，并修订相关监督规定。
- 最后，消费品安全问题在美国和中国都有重大影响，在美国要求政府更多干预和监督进口产品的

呼声很高，但是这种努力的效果或实用性仍然有待确定。

具体问题

加工贸易和增值税退税政策变更

虽然近期与关税有关的进展中有许多是积极的，还是更应注意加工贸易和增值税退税政策变更，因其有重大的不利影响。

“商务部、海关总署和国家环保总局2007年第17号公告：公布加工贸易禁止类商品目录”，该公告2007年4月6日公布，4月26日生效：

- 将加工贸易禁止类商品的数量从341增加到1,140。这些商品大部分来自高能耗或环保要求集中的行业。
- 禁止2007年4月26日或之后在海关特殊监管区域（如保税物流园和出口贸易区）成立的公司签订加工贸易禁止类商品的加工贸易协议。例如，凡涉及到被禁止的产品，公司就不能再进口保税原材料，这使其必需缴纳目录上原材料的进口增值税和关税。

“商务部和海关总署2007年第44号公告：公布加工贸易限制类商品目录”，2007年7月26日公布，8月23日生效：

- 将加工贸易限制类商品的数量从394种增加到2,247种，大部分是塑料、纺织、布料、家具和其他劳动力密集型行业的。
- 禁止2007年7月23日或之后在北京、天津和上海等城市以及辽宁、河北、山东、江苏、浙江、福建和广东等省份成立的公司开展“限制类”商品加工贸易业务。
- 要求A类和B类企业缴纳应缴进口关税和进口环节增值税之和50%的保证金，并要求C类企业缴纳100%的保证金。在上述城市和省份的企业必须以现金缴纳此保证金，而在这些区域以外的A类和B类企业在海关开立保证金台帐即可，无需支付现金。

material under bonded status, making it necessary to pay import VAT and customs duties on raw materials on the list.

Announced on July 26, 2007, and effective August 23, “Announcement No. 44, 2007, of Ministry of Commerce and General Administration of Customs, Promulgating List of Commodity Restricted for Processing Trade”:

- Increases the number of restricted goods for processing trade from 394 to 2,247, mostly in the plastics, textile, cloth, furniture and other labor-intensive industries.
- Disallows companies set up on or after July 23, 2007, in areas including the cities of Beijing, Tianjin and Shanghai and the provinces of Liaoning, Hebei, Shandong, Jiangsu, Zhejiang, Fujian and Guangdong, from conducting processing trade for products classified as “restricted.”
- Requires A & B grade companies to pay a deposit valued at 50 percent of the total duties and import VAT payable, and requires C grade companies to pay a 100 percent deposit. Companies in the aforementioned cities and provinces are required to pay this deposit in cash, while A & B grade companies outside these areas can comply by opening a deposit account with customs without paying cash.

Companies that import or export goods now classified as prohibited are required to pay import duties and VAT on raw materials that are both import-prohibited and also export-prohibited, and companies importing or exporting goods now listed as restricted must pay deposits.

Additionally, on June 19, 2007, the “Circular of the Ministry of Finance and the State Administration of Taxation concerning Lowering the Export Rebate Rates for Some Commodities (Cai Shui [2007] No. 90)” was issued, effective July 1, 2007. This notice removed VAT refunds for export of some products, reduced refund rates on others and adjusted the VAT exemption policy so that VAT is still not required on some exports, but the corresponding input VAT is not refundable or creditable.

Cai Shui [2007] No. 90, along with Announcements 17 and 44, has significantly increased the costs of doing business for many companies with little warning.

Customs Valuation and Transfer Pricing

There have been apparent discrepancies between the use of deductive valuation as opposed to using the transaction price, and it is sometimes unclear why one is chosen over the other. Furthermore, rules on when gross- and net-profit amounts will be used for valuation remain unclear. These reported inconsistencies make it difficult for companies to streamline or forecast their own process for customs clearance.

Requirements for Clearance

Requirements for original copies of certain clearance documents, including power of attorney (POA) documentation and commercial invoices, continue to slow the clearance process due to the high volume of paperwork traffic between the customs broker and exporter/importer; acceptance or use of photo or digital copies of these documents would likely improve speed and efficiency.

Side Effects of HS Codes

The use of tariff classification Harmonized System (HS) Codes can result in discrepancies in boundary conditions. For example, an auto parts manufacturing company may be sourcing steel to supply gas springs for the automotive industry. Steel is now discouraged, but the automotive sector is still encouraged. As a result, companies supplying encouraged industries can be adversely affected despite operating within suggested guidelines.

U.S. Legislation

On August 3, 2007, U.S. President Bush signed into law H.R. 1, the “9/11 Commission Recommendations,” after it passed both the House of Representatives and the Senate without floor debate or any noticeable opposition. Under the banner of national security, and as an attempt to more successfully meet the recommendations of the 9/11 Commission, the bill covers a wide range of topics. Most significant to the sourcing business is Section 1701, entitled “Container Scanning and Seals” under Title XVII (Maritime Cargo). Section 1701 stipulates that as of 2012, 100 percent of cargo containers destined for the U.S. must be “scanned” by non-intrusive imaging and radiation detectors at foreign ports of loading or be denied entry into the U.S. This requirement has serious repercussions for the global supply chain in several ways.

进口或出口产品目前归类为禁止类商品的公司，必须对其既禁止进口又禁止出口的原材料缴纳进口关税和增值税，进口或出口产品目前归类为限制类商品的公司必须缴纳保证金。

另外，2007年6月19日，“财政部和国家税务总局关于调低部分商品出口退税率的通知（财税发[2007]90号）”颁布，自2007年7月1日起生效。此通知取消部分产品的增值税出口退税，调低了其它产品的退税率，并调整了增值税免税政策，这样，部分出口商品仍然无须缴纳增值税，但相应的进项税是不能退或是不可抵扣的。

财税发[2007]90号通知和第17号和第44号公告在几乎没有通告预知的情况下大大增加了许多公司的经营成本。

海关估价和转移定价

与采用交易价格相比，使用推导价之间有明显的差异，而且有时候不清楚选择的原因。此外，关于何时将毛利和净利数额用于估价仍然不明确。这些公告内容的矛盾使公司很难简化或预测它们自己的清关程序。

清关要求

因报关经纪人和进出口商之间巨大的文书工作量，对于授权书（POA）文件和商业发票等某些清关文件原件的要求仍然使清关过程进展缓慢。接受或使用这些文件的照片或数字副本很可能会提高速度和效率。

协调制度编号的副作用

使用关税分类（协调制度编号）可能会导致限制条件的不清楚。例如，汽车配件制造公司可能在购买钢材以便为汽车行业供应气弹簧。钢材现在是不鼓励的，但汽车行业仍然是国家鼓励发展的。因此，尽管在建议的指导方针范围内经营，但鼓励类行业的供货商还是可能会受到不利影响。

美国立法

2007年8月3日，在H.R.1法案，即“9/11委员会建议法案”，被众议院和参议院在没有争论或任何

明显反对情况下通过后，美国总统布什签署了该法案。在国家安全的旗帜下，作为一种旨在更加成功地实现9/11委员会建议的尝试，法案涵盖了一系列主题。对采购业务影响最大的是标题XVII（海运货物）的第1701节，标题为“集装箱扫描和密封”。第1701节规定，到2012年，所有运往美国的集装箱都必须在外国装运港口用非插入式成像和放射探测器进行“扫描”，否则禁止进入美国。此要求在几个方面都对全球的供应链有严重的影响。

许多现有港口都没有满足这些要求的必要设备，而且要购买并操作这些设备所需要的投资是相当大的。为此，一些目前为美国服务的港口可能会决定完全放弃该负担，从而减少了货运的选择，增加合规港口的负担。此外，对于每一个运往美国的集装箱进行扫描无疑会造成严重的物流瓶颈，因为大量的船运货物像水流过漏斗一样需要经过有限数量的扫描站。这对于容易腐烂的货物和准时化供货来说是个潜在的交易破坏因素。 ■

建议

中美商会承认，在入世后六年的期间内，进出中国的跨境贸易量有显著增长，海关正在越来越多地使用信息技术和现代风险评估技术以执行海关法，同时促进合法贸易。同样，中美商会欣赏这期间的政治气候，它引发了如何解决产品安全和美国安全有关问题的立法探索。在此条件下，我们谨提出以下建议以供考虑：

对中国政府

- 允许更多/更长的法规草案征求公众意见的时间，延长过渡期时限，而且对法规变动适用不追溯原则。加工贸易和增值税变动公告的发布时间和生效时间之间的间隔期太短，企业通常没有足够的时间适应并有效地遵守它们。这不仅伤害公司本身，还损害了它们通过招工、纳税和投资支持的地方经济。
- 对再制造业作为允许外商投资的类别，继续制定并完善相关程序和法规。再制造业所发挥的环保和效率的重要作用，符合中国的科学发展目标，而且外国公司，包括中美商会

Many existing port facilities do not have the equipment necessary to meet these requirements, and the investment necessary to purchase and operate them is substantial. As such, some ports currently serving the U.S. may decide to forgo the burden entirely, decreasing options for freight transportation and increasing the burden of those ports that comply. Additionally, scanning of every container bound for the U.S. will no doubt lead to major logistics bottlenecks as the massive volume of shipped goods funnels through a limited number of scanning stations. This is a potential deal-breaker for perishable goods and just-in-time supply. ■

Recommendations

AmCham recognizes that the volume of cross-border trade in and out of China has increased significantly in the six-year period following WTO accession and that the customs authority is increasingly using information technology and modern risk profiling techniques to enforce customs laws and facilitate legitimate trade simultaneously. Similarly, AmCham appreciates the political climate that has led to legislative attempts at solving problems related to product safety and security in the U.S. In this context we respectfully raise the following recommendations for consideration:

For the Chinese Government

- Allow more/longer public comment periods on draft regulations, as well as implement longer transition timelines and grandfathering of regulatory changes. The short amount of time between announcement of the processing trade and VAT changes and the date on which they became effective was generally not enough for companies to accommodate and comply with them in an effective way. This not only hurts the companies themselves, but the local economies that they support via employment, taxes and investment.
- Continue to develop and refine processes and regulations for remanufacturing as a category for foreign investment. Not only does remanufacturing have significant environmental and efficiency benefits in line with the scientific development goals of

the PRC, but foreign companies, including AmCham members, can bring relevant, concrete experience to the table. A pilot program to accommodate this process through foreign participation would be warmly welcomed.

- Continue to develop and streamline “paperless” customs clearance procedures and define what conditions must be met for the use thereof. This will increase efficiency throughout the customs process and provide an incentive for companies to take advantage of a process that will, AmCham hopes, both increase customs throughput and reduce the overall workload for authorities.
- Continue to provide guidance and education so that companies can comply with regulations in a way that is most helpful to the relevant authorities. For example, advance written rulings on goods valuation, guidelines for upgrading the grade of companies from D to AA and suggested best practices, will all help to make sure that companies provide the most useful information to customs authorities in a format that will best streamline the entire process and reduce the workload across the board.

For the U.S. Government

- Continue to work with Chinese authorities to ensure collaboratively that standards and best practices are efficient, clear and effective.
- Acknowledge that China is making many of the positive changes and avoid legislative or regulatory solutions to problems best solved by cooperation, dialogue and the orderly operation of markets.

会员在内，都可以将有关的实际经验予以分享。旨在通过外商参与来适应此政策的试点性项目会受到热烈欢迎。

- 继续制定和简化“无纸化”清关程序，并规定使用“无纸化”清关程序必须符合的条件。这将提高整个清关程序的效率，同时正如中美商会所希望，促使公司利用既提高海关吞吐量又减少海关的总体工作量的程序。
- 继续提供指导意见和教育，这样企业就可以以相关主管机构最希望的方式遵守法规。例如，商品估计预先书面裁定、关于将企业级别从D升级到AA的指导意见和建议的最佳做法等，都将有助于确保企业以最简化的程序并减少全体工作人员工作量的方式向海关提供最有用的信息。

对美国政府

- 继续与中国主管部门合作，共同确保标准和最佳做法是有效率的、清楚的而且是有效果的。
- 承认中国正在做出许多积极的变革，避免用立法或管制方法来解决，最好通过合作、对话和有序的市场运行来解决的问题。



Small- and Medium-Sized Enterprises

Since the 2007 White Paper was published, the environment for small and medium enterprises (SMEs) in China has improved incrementally. Those improvements suggest further progress is possible for businesses in this segment, and AmCham believes it is in China's best economic interests to facilitate even more growth and progress for SMEs.

AmCham defines SMEs as having either less than US\$50 million in annual revenue, or fewer than 300 global employees. In both the U.S. and China, SMEs make up more than 99.5 percent of total businesses. SME contributions to their respective national economies equal more than 50 percent of GDP and they employ more than 70 percent of their nations' workforces. One estimate suggests that SMEs originally developed more than 65 percent of patents and more than 80 percent of new products. Further, SMEs today contribute significant portions of sales (more than 50 percent) and tax revenue (nearly 50 percent) in both the U.S. and China. For China, SMEs are a critical building block for creating an innovation-based, harmonious society.

Although SMEs account for the majority of both businesses and GDP, inequities in the regulatory environment disproportionately affect Chinese and foreign SMEs. This imbalance stems from resource constraints at the individual SME level. Policies that compensate for overly burdensome administrative and regulatory requirements are necessary for the creation and maintenance of a healthy and vibrant SME sector in China. AmCham supports the efforts the Chinese government has made to help Chinese SMEs source financing and other inputs to become better, more productive companies and employers, and to reach out globally. We would appreciate the opportunity to collaborate with the Chinese government at all levels to share the experiences and best practices of the American SME sector and to foster a better and more vibrant private sector in China.

While the progress made over the past few years at the policy level is commendable, issues remain in many areas, particularly with local implementation of specific national policies. Often these issues disproportionately affect SMEs. Simply as a function of size, SMEs do not have the resources to address

issues in the way that larger companies can.

Specific Issues

Transparency and Clarity of Information and Regulations

Lacking the resources of larger companies, SMEs often have difficulty obtaining accurate information about regulations and policies. Such information is often obtained through personal relationships rather than official channels or public disclosure, putting companies with fewer employees at a disadvantage. Lower-level government employees are said to release information to representatives of large or well-known companies that differs from that provided to smaller companies. In response to this disparity some municipalities, including Beijing, have established SME "information centers." Those municipalities are conducting further efforts to clarify information and publish regulations at the national, provincial and local levels to empower SMEs and protect their legal rights.

Uniform Application and Enforcement of Regulations Irrespective of Company Size

Unfortunately, it remains the case that even when regulations and policies are clearly presented, application and enforcement of those regulations and policies is often inconsistent and appears to favor larger companies. We have heard of at least one large company that was able to incorporate a subsidiary in three days through a streamlined process, while the time required for SMEs to incorporate is typically around three months. To cite another example, banking regulations permit companies to withdraw money from their own bank accounts, but in practice local banks often will not allow withdrawals unless concurrent deposits are made, adversely affecting start-up businesses that have not yet begun to take in revenue.

The prospect, real or imaginary, of bureaucratic retaliation intimidates smaller companies. As a result, some do not take advantage of opportunities to participate in the legislative development process by submitting comments for consideration. In contrast, larger companies often have institutionalized

中小企业

自 2007年白皮书发布至今，中国中小企业的发展环境有所改善。这一变化也意味着本文所涉及的有关中小企业发展环境的问题，通过努力也将会进一步得以改善。中美商会相信推动中小企业的进一步发展符合中国的经济利益所在。

对于年收入低于五千万美元的企业或全球员工总数少于三百人的企业，中美商会将其定义为中小企业。美中两国的中小企业数量均占各自企业总数的99.5%以上，创造了两国各自50%以上的GDP，员工人数占两国各自就业人数的70%以上。另外据估计，65%的专利和80%以上的新产品源于中小企业。而且，目前两国中小企业的销售额和税收在其各自总数中占相当大的比重，分别达到50%以上和近50%的水平。对于中国而言，中小企业更是建设创新型和谐社会的重要基石。

尽管中小企业的数量和创造的GDP在总数中超过50%，但不公平的监管环境给中外中小企业带来较大的负面影响。这种发展的不均衡源自中小企业个体资源的有限性。为确保中国中小企业实现健康快速发展，对行政和监管要求产生的过重负担应制定相应的补偿性政策。中国政府帮助中小企业扩大融资渠道，及增加其他投入等措施，以期促进中国中小企业更快更好的发展，走向世界。中美商会对此表示支持。我们也希望有机会与中国各级政府合作分享美国中小企业成功的实践经验，推动中国的民营经济更好更有活力的发展。

尽管在过去几年政策层面获得可喜进展，但在较多方面仍然存在诸多问题，尤其是在各地方政府在执行国家法律法规的过程中。这些问题往往会对中小企业造成更为严重的负面影响，而中小企业往往因为规模影响过小，无法像大企业一样获得解决上述问题所需的资源。

具体问题

信息法规的透明性与清晰性

由于缺乏大企业拥有的各种资源，中小企业常在获

取相关法规 and 政策的准确信息时面临困难。此类信息由于通常只能借助人际关系而非官方渠道或公开披露获得，这将一些规模较小的公司置于不利之地。据称，一些普通级别的政府官员透露给大企业或知名企业的信息与其提供给小企业的信息之间存在差异。为解决这种信息不平衡的问题，北京等城市已建立中小企业“信息中心”。这些城市也正在采取更多努力，以及时发布信息并公布国家、省级地区各级的相关法规，从而赋予和保护中小企业合法权利。

对所有规模的企业执法统一

即便法规政策本身表述清晰，其执行过程往往缺乏连续性且似乎向大企业倾斜，这种情形仍然存在。我们听说过至少一家大企业通过简化的程序，在短短三天内即可组建子公司的例子。而中小企业此类操作一般需要三个月左右的时间。再比如，根据银行规定，企业可以从其银行帐户里提取现金，但实际操作中，国内银行通常需要企业在提取现金前先存入下次存款。这种做法给新建立却尚未盈利的创业公司带来负面影响。

政治官僚式的报复不管其是否会成为现实，都足以让小企业担心。因此，有些小企业会放弃提交意见并参与立法评议的机会。相比之下，大企业通常具备较为系统的程序和明晰的途径以推动相关法规的公平实施。中美商会认为，应建立公正独立又行之有效的自我纠正体系，以确保所有大小规模的企业提出的申诉及政府官员滥用职权的问题得以满意解决。

行政费用、税费和政策负担过重

根据一份中国报纸的预测，由于中小企业面临高额行政税费负担，新增创业企业数量自1999年以来减少87万。另一篇预测指出，在某些城市中小企业必须向市政部门支付的各种税费高达375种。中美商会因此明确指出，仍有较大的空间，可以进一步改进中小企业的在华运营环境。

processes and clear avenues to encourage the fair application and enforcement of relevant regulations. At this time, AmCham is unaware of the existence of an effective self-correction mechanism that would impartially and independently ensure that complaints and abuses are effectively administered toward a satisfactory resolution, regardless of company size.

Overly Burdensome Administrative Fees, Taxes and Policies

According to one estimate published in a Chinese newspaper, every year since 1999 has seen 870,000 fewer entrepreneurial ventures due to high administrative taxes and fees imposed upon SMEs. According to another estimate, in some municipalities SMEs must pay up to 375 different kinds of fees and taxes to city authorities. It is clear to AmCham that there remains an opportunity to improve the operating environment for SMEs in China.

Lack of Access to Capital and Financing Options

SMEs continue to lack access to capital and financing options. Although they create up to 70 percent of the jobs in China each year, SMEs receive less than 2.3 percent of all financial lending from state-owned banks. At this time, the Chinese Banking Regulatory Commission (CBRC) is encouraging Chinese banks to lend to Chinese SMEs (not foreign SMEs), but this effort is still only a request and not policy.

Additionally, the State Administration of Foreign Exchange (SAFE) continues to require that all registered capital be equity capital, while relatively less expensive debt capital (crucial to the operation of most SMEs) is still not allowed. Since December 2006, some foreign banks have been allowed to issue retail loans in RMB but the lack of government-backed loan guarantees and a robust and uniform credit rating and reporting system has discouraged lending to SMEs. Many programs exist worldwide that could be used as models for a Chinese SME loan guarantee program. One such program is the loan guarantee program currently administered by the U.S. Small Business Administration. ■

Recommendations

Transparency and clarity of information and regulations

- Create and maintain a centralized platform for collecting and disseminating up-to-date information concerning national, provincial and municipal regulations and policies, and make it readily available to SMEs nationwide, perhaps using Internet-based technologies.

Uniform application and enforcement of regulations irrespective of company size.

- Establish an effective agency within an existing governmental department that is empowered to ensure consistent enforcement and application of existing regulations on behalf of SMEs and to act as a forum to air and consider complaints.

Overly burdensome administrative fees, taxes and policies

- Implement lower tax rates and service fees (including social services) for SMEs, based on company size and/or revenues.
- Mitigate the potential impact of the new labor law by introducing more flexible standards for SMEs.

Lack of financing structures to support SME growth

- Set a target for an amount of financing actually released to and employed by private SMEs through government-supported loan-guarantee programs.
- Establish one (or more) nationally recognized and approved credit rating and reporting systems to increase confidence in the SME lending environment.

资本短缺和融资渠道有限

中小企业一直面临资本短缺和融资渠道有限的问题。尽管中小企业每年新增就业人数占全国新增就业总数的70%之多，但其所获得的国有银行金融贷款不足总额的2.3%。中国银行业监管委员会目前正在鼓励中国的银行向中国中小企业贷款（不包括外资中小企业），但这只是一种希望，尚未制定成政策。

此外，国家外汇管理局要求所有注册资本必须作为股本金，而不允许作为相对较低的借入资本（尽管借入资本对多数中小企业而言很关键）作为股本金。自2006年12月以来，一些外资银行获准发行人民币面值的零售贷款，但由于缺少政府支持的贷款担保和健全的客户信贷报告系统，也影响了银行对中小企业的贷款。世界各地有很多现行项目均可作为中国中小企业贷款担保项目的参照模式，例如由美国小企业管理局管理的贷款担保项目。 ■

- 建立一个（或多个）国家认可并批准的客户信用报告体系，以增强银行对中小企业的贷款信心。

建议

信息和法规具备透明度和清晰性

- 建立一个综合性平台，收集并及时发布有关国家、省和市级最新法规和政策信息，可以借助互联网技术便于全国各地的中小企业使用。

对所有规模的企业执法统一

- 在现有政府部门内部建立一个行之有效的机构，授权其能够代表中小企业促进执法的一致性，并以此作为公开的、可以接受企业投诉的组织。

行政费用、税费和政策负担过重

- 根据中小企业的公司规模/或收入来执行较低的税率和服务费（包括社会福利费）。
- 引进更加灵活的标准，缓解中小企业实施劳动合同法可能会带来的影响。

支持中小企业增长的融资架构缺失

- 通过政府支持的贷款担保项目，设立一个实际发放给非国有的中小企业，并由其使用的资金目标。

Corporate Social Responsibility

Corporate social responsibility (CSR) refers to the management of business operations in an economically, environmentally and socially sustainable manner that takes into account the diverse interests of stakeholders. Responsible companies effectively address issues such as transparency, environmental impact and labor conditions for their own employees and those in their supply chain. In addition, they reach out to external stakeholders through community investments and public-private partnerships.

A supportive legal and enforcement environment, applied uniformly to all business operations in China, is essential for companies' ability to be responsible. There was good progress in the promotion of CSR practices in China in 2007. New legislation designed to protect workers' rights passed, and the country's first law was drafted on the "circular economy," China's term for the concept referred to elsewhere as environmental sustainability. Leading international organizations were approved to establish foundation representative offices. In addition, the 17th National Congress of the Chinese Communist Party emphasized the importance of environmental responsibility and sustainable development.

However, China also faced many challenges relating to CSR issues, including food and product safety, environment, labor and energy. AmCham acknowledges China's commitment to addressing these complicated issues and urges leaders to pursue progress through cooperation. Multi-party engagement, public consultation and joint efforts are the most effective means of harnessing international best practices and "lessons learned" in order to develop industry solutions appropriate for the Chinese context.

Enhancing the Environment for Responsible Operations

Labor Conditions and Workplace Issues

China is developing a growing body of labor-related legislation designed to protect workers' rights and clarify employers' responsibilities, including the 1994 Labor Law, Labor Contract Law and Employment Promotion Law, among others. These

laws and regulations—and their effective, uniform implementation—form the foundation for addressing workplace issues.

Although existing laws and regulations provide high standards for working conditions and workers' rights, implementation lags. As a result, poor labor conditions, including excessive overtime, unpaid wages, unsafe workplace conditions and lack of access to social security remain serious and contentious CSR challenges in China. Discrimination by employers or potential employers against Hepatitis B and HIV carriers, and women and migrants, among other groups, are among the issues of growing concern.

Many American companies already take proactive measures to ensure healthy work environments for their own employees. However, an immediate challenge lies in encouraging these same practices across the supply chain. Raising the awareness and capacity of suppliers to improve conditions for workers requires long-term, cooperative efforts. At the most basic level, buyers must recognize their responsibility for setting and managing deadlines, costs and production requirements in ways that do not contribute to irresponsible behavior among suppliers. Companies should also communicate expectations and monitor the performance of their suppliers, while helping to expand their capabilities in human resources, environment, health and safety, production and general management skills. This knowledge transfer can increase productivity for suppliers, which can contribute to their profitability in a responsible manner. Government can do more to support and encourage companies to address these issues with suppliers.

AmCham commends the Chinese Government for advances in labor-related legislation in 2007, including the following:

- The government's effort to highlight legal protection for workers, especially migrant workers, in the Labor Contract Law. We hail the government's willingness to engage in discussion with the business community and other stakeholders during the drafting process.
- The government's commitment to preventing discrimination, particularly against women,

企业社会责任

企业社会责任（CSR）是指以经济、环境和社会全面可持续发展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。承担企业社会责任的公司能有效地解决各类问题，比如，主动加强管理透明度、减少和尽量避免企业运营对环境产生的负面影响、以及改善本企业及其供应链企业员工的工作环境和劳动条件。此外，通过社区投资以及建立政府和企业的合作伙伴关系，从而帮助外部利益相关者解决其所面临的问题。

对所有在中国发展的企业而言，拥有一个公平高效的法制环境，是公司能否有效承担企业社会责任的关键。2007年中国在促进公司加强企业社会责任方面取得了良好的进展。旨在保护劳动者权益的新法获得通过；同时国内首部有关“循环经济”——环境的可持续发展的法案也已起草。国际知名组织也已获批在华成立基金会代表处。此外，中国共产党第十七次全国代表大会强调了政府对环境应负的重要责任，并且关注到环境对经济可持续发展的重要性。

然而，中国仍然面临众多与企业社会责任相关的问题和挑战。仅举几例，如产品质量及食品安全、环境、劳工和能源等复杂问题的困扰。中美商会认同中国政府就努力解决这些复杂问题所做出的承诺，同时也敦促中国政府领导人能够通过广泛合作，共同取得进步。多方参与协作、公开听证、共同努力，吸取、利用国际上的经验教训，建立适合中国国情的行业解决方案是解决上述诸多挑战问题的最有效的途径。

营造勇于承担社会责任企业的外部环境

劳动条件与工作场所问题

中国正在逐步形成与劳工相关的法律体系，其宗旨在于保护劳动者权益、明确雇主责任。其中有一九九四年的《劳动法》、《劳动合同法》、《促进就业法》等。这些法律法规，及其有效、一致的实施，奠定了解决工作场所相关问题的坚实基础。

尽管现行的法律法规对工作环境和劳动者权益提出了较高的标准，但在法律实施上却相对滞后，引发了一系列恶劣的劳动环境问题，这是企业社会责任在中国所面临的最为严重、纷争最多的挑战。其中包括工作超时、拖欠工资、工作场所环境危险恶劣、劳动者缺乏社会保障等等。另外，乙肝和艾滋病毒携带者、妇女、外来劳动者受雇主歧视，也越来越成为社会关注的问题。

许多美国公司已经预先采取积极措施，以确保自己的员工有健康、安全的工作环境。然而，随之而来的挑战则是要鼓励供应链上的其他公司采取相同措施。要提高供应商为其员工改善工作环境的意识和能力，这需要长期共同的努力。首先，企业必须清楚自己在设定和管理如供货时间、成本核算和产品要求等方面的责任，不能采取可能导致促使供应商做出不负责任行为的方式。企业还应与供应商进行沟通交流，并监督其运作表现，对供应商的企业社会责任提出期望和要求。与此同时，企业要协助供应商提高其在人力资源、环境保护、健康保护与生产安全、产量提高，以及全面管理技能等方面的能力。诸如此类的知识传送可以提高供应商的生产力，从而促使他们以一种负责任的方式进行营利。在这个方面政府可以做更多的工作，包括支持和鼓励企业，帮助供应商解决这些问题。

中美商会对中国政府在2007年的劳动相关立法上取得的进步表示赞赏，主要方面如下：

- 在《劳动合同法》中，中国政府做出努力，突出强调要对劳动者进行法律保护，尤其是对农村进城务工人员的法律保护。中国政府在该法起草过程中，与商界及其他各界进行了讨论，我们对此表示赞赏。
- 通过《就业促进法》，中华人民共和国政府承诺要制止尤其是针对妇女的就业歧视行为。商会希望在实施《劳动合同法》的过程中，法律措施在对劳工实行保护时不会削弱政府立法时的正面意图，比如对妇女可以参加的工作种类加以限制等情况。

through the Employment Promotion Law. AmCham hopes that implementing measures do not weaken the positive intentions of the government, for example by limiting the types of jobs available to women.

To realize the advances detailed in this legislation, AmCham recommends that the Chinese Government:

- Improve enforcement through consistent application across all jurisdictions. Although progress has been noted in some areas, inconsistent enforcement permits less scrupulous employers to undermine the efforts of socially responsible companies while pursuing profit from violation of workers' rights.
- Invest in training programs to better equip local officials and related institutions, such as the local offices of the All-China Federation of Trade Unions, to enforce existing legislation. In addition, encourage and invest in management training programs that focus on quality and efficiency, as well as health and safety, which have shown promise in improving the conditions for workers.
- Continue to explore mechanisms to increase the effectiveness of worker-management relations concerning working conditions, terms of employment, workplace grievances and discrimination, including worker-elected representatives and health and safety committees.

Furthermore, to promote dialogue and cooperation between the U.S. and Chinese Governments, AmCham recommends that the U.S. Government:

- Continue to seek opportunities to address labor-related issues, following the conclusion in 2007 of the Department of Labor's (DOL) Labor Rule of Law Program, which explored the use of labor management committees in cooperation with the Ministry of Labor and Social Security (MOLSS).
- Continue cooperative activities under the Letters of Understanding in place between U.S. and Chinese Government agencies, including the Letters on Wage and Hours Administration and Pension Programs renewed in June 2007 between DOL and MOLSS; the Letters on Workplace Safety and Health and Mine Safety renewed in June 2007 between DOL and the State Administration of Work Safety (SAWS); and the Letters of Cooperation extended in November 2007 between the U.S. Mediation and Conciliation Service, MOLSS and the Ministry of Personnel.

Environmental Performance

Improvement in environmental compliance and enforcement is urgently needed to safeguard the sustainable development of China's economy, the health of the business climate and most importantly, the well-being of Chinese citizens. Uneven enforcement of environmental regulations is a hidden subsidy for poorly performing companies that puts more conscientious businesses at a disadvantage.

AmCham commends the Chinese Government for emphasizing environmental issues, including the following advances in 2007:

- The strong emphasis it placed on sustainable development, energy efficiency, resource conservation and pollution reduction at the 17th National Congress of the Chinese Communist Party. This emphasis gives further weight to targets set for these areas in the 11th Five-Year Plan, and together these form a solid foundation for action.
- The establishment of five State Environmental Protection Administration (SEPA) regional environmental protection centers.
- The government's commitment to release the names of polluting enterprises and to place limits on their ability to do business by tying export licenses and bank loans to environmental performance.
- Drafting of the Circular Economy Law designed to boost sustainable development by reducing pollution and energy consumption.
- The emphasis placed on achieving a "Green Olympics" by both the Beijing and Central governments and efforts made to achieve this goal.

To build on last year's progress, AmCham recommends the Chinese Government:

- Continue to increase the influence of SEPA. The organization's visibility and enforcement capacity have risen dramatically, but it is not yet able to enforce regulations consistently nationwide.
- Strengthen the mandate of the five regional SEPA offices to empower them to respond to environmental issues and concerns in their regions with efficiency and authority.
- Continue to explore methods of incorporating environmental criteria into the performance evaluations of local officials.
- Place local-level environmental protection bureaus directly under the supervision of SEPA, rather than

为了体现该法规中的进步之处，商会建议中国政府：

- 《劳动合同法》能够在全国范围内统一执行，且执法一致，从而加大实施力度。尽管之前在某些地方已初见成效，但实施力度各地不一，结果不负责任的雇主总是可以通过侵犯劳动者的合法权益牟取利润，最终导致不负责任的雇主使负责任的企业所做的努力付诸东流。
- 投资培训项目，让地方官员受到更好的培训，以及让相关的社会机构具备更好的管理能力。比如提高中华全国总工会地方官员的管理素质，从而更好地实施现行法规。此外，鼓励开展和资助管理培训项目。培训项目内容可以强调产品质量与工作效率，同时也包括劳动健康与劳工安全。这些举措，将可以展示中国政府努力在改善劳动者环境方面所取得的成效。
- 继续探索有效管理机制，提高劳动者管理关系的效力。其中包括了成立由选举劳动者代表参与的健康安全委员会。劳动者管理关系包括工作环境、用工条款、工作场所的问题投诉、受歧视等各个方面。

此外，为加强中美两国政府的对话与合作，商会建议美国政府：

- 就2007年美国劳工部（DOL）的中美劳动法合作项目的后续工作，美国政府应继续寻找机会就解决与劳工相关的问题，展开进一步对话。中美劳动法合作项目与中国劳动和社会保障部（MOLSS）开展合作，对建立劳工管理委员会进行了初步尝试。
- 在中美两国政府签署的《谅解备忘录》基础上继续开展合作，其中包括2007年6月美国劳工部与中华人民共和国劳动保障部重新签署的《工资与工时管理及津贴项目备忘录》；2007年6月美国劳工部与中国国家安全生产监督管理总局（SAWS）重新签署的《工作场地安全与健康及煤矿安全备忘录》；2007年11月美国联邦仲裁调解局与中华人民共和国劳动保障部、中华人民共和国人事部延长合作期限的《合作备忘录》。

环境绩效

提高在环境方面的守法意识，加强环境法规执行力度势在必行，它是促进中国经济可持续发展、营造

健康商务氛围和保持正确发展走向，尤其是提供中国国民幸福安康的保障。如果环境法规在实施过程中存在执行力度的差别和不一致，对绩效较差的企业来说则相当于对其提供了一种隐性补贴。那么这将对那些勇于承担企业社会责任的公司造成不公正的待遇，而使这些企业处于相对劣势的地位。

中美商会对中国政府强调环境问题，并在2007年取得的以下进展表示赞赏：

- 中国共产党第十七次全国代表大会上着重提出工作重心要放到增强可持续发展能力、提高能源资源利用效率、节约资源、减少污染等方面。会上的内容进一步强调了十一五计划拟定的目标，同时也为随后采取相关措施奠定了坚实的政治基础。
- 设立了五个国家环境保护总局（简称“环保总局”）区域环境保护中心。
- 政府承诺将公布污染企业名单，通过限制其出口许可和银行贷款等处罚措施，从而限制其业务能力，直到这些污染企业提高环境绩效。
- 起草了《循环经济法》，通过减少污染和能源消耗促进可持续发展。
- 北京政府和中央政府将工作重心放在实现“绿色奥运”这一目标上，并为之努力。

以去年的进步为基础，商会建议中国政府：

- 继续提升国家环保总局的影响力。该机构的社会能见性及执行能力已有显著提升，不过仍无法在全国范围内使环境法规得到统一执行。
- 扩大五个环保总局区域办事处的权力，授权它们对所在区域的环境问题及其它有关问题做出迅速、高效和权威的反应。
- 继续探索对地方官员实行绩效评估时加入环境内容的有效做法。
- 将地方环保局纳入国家环保总局的垂直监管体系，改变由地方政府管辖的传统做法。该方法能减少潜在的利益冲突对地方环保局监管工作的不良影响。
- 以北京的工作作为最好的榜样。将开展“绿色奥运”活动的经验及成果推广到中国其他各个城市

美国政府很清楚地认识到支持中国的环境改善具有很重要的意义。原因有两点：一是支持中国的环境改善对美国国民的健康具有潜在的影响；二是为了中美两国长期贸易及双边经济的发展。我们欣赏美国政府早些时候做出的承诺，同时我们鼓励继续加

under the jurisdiction of local administrations, to minimize potential conflicts of interest.

- Take the experience and achievements from the “Green Olympics” campaign to other Chinese cities to build on best practices learned in Beijing.

The U.S. Government has clearly recognized the importance of supporting environmental progress in China due to the potential impact on the health of U.S. citizens, as well as on long-term trade and mutual economic development. We appreciate the commitments that the U.S. Government has already made, and we encourage continued investment in bilateral dialogues and technical cooperation programs, including partnerships to improve resource efficiency and regulatory enforcement.

AmCham also recommends U.S. companies improve environmental performance and resource efficiency, while building local capacity by sharing experience and skills with local officials, suppliers and other members of the business community.

Product and Quality Safety

Providing safe and quality products is a fundamental responsibility of any company. The past year saw several product recalls and allegations of product quality and safety problems throughout the supply chain for goods made in China.

Product quality and safety is an area that requires continuous attention by companies and regulators alike. Companies must play an active role in product development and in managing production carried out by suppliers. By being responsible in their own internal processes and fairly managing their demands on suppliers, companies can help minimize behavior that leads to compromises in quality and safety. Moreover, companies should also continue to enhance systems for monitoring suppliers.

AmCham commends:

- The extensive engagement and cooperation between the Chinese and U.S. governments in terms of bilateral dialogue on these issues. This includes agreements reached at the Strategic Economic Dialogue in December 2007 to register food and feed exporters and certify their products from China, and to regulate pharmaceutical ingredients and bulk chemical producers.

- The creation of a multi-ministry State Council Leading Group on Product Quality and Food Safety. AmCham applauds the intensified inspections and campaigns executed thus far. We hope that the Leading Group will not only engage the multiple government entities involved, but also connect with other key stakeholders, including companies.

To build on the momentum of the aforementioned efforts, AmCham recommends the Chinese Government:

- Continue to engage in positive discussions with U.S. counterparts.
- Continue to emphasize food and product safety as an important responsibility of companies, in addition to being a matter of compliance.
- Facilitate the development of civil society to act as a watchdog to protect the safety of consumers.

AmCham recommends the U.S. Government:

- Continue to engage in discussion and cooperation projects with Chinese counterparts to identify problems and share best practices for government campaigns and public-private partnerships.

Enhancing the Environment for Civil Society

Civil society consists of groups outside government that express the interests of the people, raise awareness of key issues and/or help meet the needs of society.

The development of a vibrant civil society is fundamental to the cultivation of a healthy CSR climate. Civil society organizations perform a variety of significant services and humanitarian functions related to CSR. These organizations are able to provide unique solutions based on domestic and international best practices and local needs, promoting new approaches to CSR challenges. They help companies understand their environmental and social impact, act as watchdogs for corporate behavior and serve as implementation partners and a channel for charitable giving. Furthermore, these organizations can meet urgent needs by providing services that neither government nor companies are equipped to handle, thereby enhancing the long-term social stability necessary for sustainable economic growth.

强双边对话和技术合作项目，包括提高资源利用效率和法规执行力度的合作关系。

中美商会同时建议美国企业改善环境绩效和资源利用效率，通过与地方官员、供应商及商界其他成员分享经验，提高当地政府和企业的在环保工作方面的总体能力。

产品的质量与安全

提供安全、高质量的产品是每个企业最基本的责任。过去的一年里在整个供应链上发生了多起中国制造的产品被召回，因产品质量安全问题而引起的诉讼等事件。

产品的质量和安全是一个需要被企业和管理者不断引起关注的领域。企业必须对产品的研发，供应商生产过程采取积极措施。通过对其内部流程管理承担相应的责任，对供应商提出适当要求，企业可将有损产品质量和安全的行为减至最低。此外，企业也应该继续加强对供应商的监管体系。

中美商会赞赏：

- 扩大中美两国政府的交流与合作，积极开展双边对话，对上述问题进行有益的探讨。其中包括2007年12月就战略经济对话达成的协议，要求食品和饲料出口商登记注册，确保其从中国出口产品的质量；同时也对药物原料和批量化学制品生产商的运营进行了规范要求。
- 成立多部委联合的国务院产品质量和食品安全领导小组。到目前为止，商会对中国政府加强监督检查等措施表示欢迎。我们希望领导小组不仅仅是由多个政府部门组成，而且也能与关键的利益相关者进行沟通，其中包括企业。

在上述几个备忘录基础上，商会建议中国政府：

- 继续与美国同行进行积极讨论。
- 在遵守法规的基础上，继续强调食品和产品的安全也是企业最重要的责任。
- 促进民间组织的发展，使其成为保护消费者安全的监督机构。

商会建议美国政府：

- 继续与中国政府开展讨论与合作项目，及时发现问题，同时就政府的宣传举措及政府和企业间合作模式提供最佳实践经验。

营造公民社会的环境氛围

公民社会由政府部门之外的民间团体组成，他们表达大众的利益，提高对重要问题的关注，同时帮助满足社会大众的需要。

发展具有活力的公民社会是形成推崇企业社会责任大环境的基础。公民社会中的民间组织在参与企业社会责任相关的活动中，提供了各类重要服务，发挥了人道主义职责。民间组织可以根据国内、国际最佳实践经验，并结合当地所需，从而为解决实施企业社会责任所面临的挑战提供独特的全新解决方法。他们帮助公司了解企业对环境和社会带来的影响，也对企业行为起到监督作用，他们同时还是企业社会责任项目的具体实施方及开展慈善活动的有效渠道。此外，民间组织可以通过提供政府及企业无法给予的服务，来满足紧急需求，从而促进社会长期稳定，为经济的可持续发展提供了保障。

公民社会民间组织的登记

对众多美国企业而言，与民间组织合作的先决条件是该组织已经进行了合法登记。尽管中国民间组织在数量和业务能力上有所增长，政府也加强了明确登记程序的工作，但仍有不少民间组织虽然为社会做出了宝贵贡献，却仍然无法在现行的法律框架内参与合作。这使得适合参与企业社会责任的组织在数量上形成短缺。由于没有合法认可的地位，这些组织为公众提供经验借鉴和独特见解等方面的能力发挥受到限制。

中美商会赞赏：

- 越来越多的政府部门，如国家环保总局，认可民间组织的价值和重要性。
- 民政部（MCA）通过起草《慈善法》、颁布《全国性民间组织评估实施办法》和《民间组织登记管理的通知》，努力让民间组织的登记和管理程序更加清楚、更加系统化。
- 2007年多个国际组织基金会代表处在中华人民共和国获得成立。其中包括世界经济论坛、盖茨基金会、克林顿基金会。我们希望看到民政部根据2004年颁布的《基金会管理条例》，同样批准其他国际和国内基金会申请登记成为合法实体。

Registration of Civil Society Organizations

For many U.S. companies, the legal registration of civil society organizations is a prerequisite for cooperation. While the number and capacity of these organizations in China is increasing, and the government is working to clarify registration procedures, many that provide valuable contributions to society remain unable to operate within the existing legal framework. This has created a shortage of suitable partners for CSR programs. In the absence of clear or legally recognized roles, these organizations are limited in their ability to lend their experience and unique perspective to public efforts.

AmCham commends:

- Government agencies such as SEPA that have become increasingly vocal in recognizing the value and importance of civil society.
- The efforts of the Ministry of Civil Affairs (MCA) to make the NGO registration and management process clearer and more systematic through the drafting of the Charity Law, as well as release of the Circular on National NGOs Evaluation Implementation Rules and Notice on NGOs Registration Management.
- The registration in 2007 of new foundation representative offices of international organizations, including the World Economic Forum, Gates Foundation and Clinton Foundation. We hope to see MCA approve additional applications for legal entities of international and Chinese foundations under the 2004 Regulations on the Administration of Foundations.

To build on growing interest in the role of civil society, AmCham recommends the Chinese Government:

- Through MCA, consider strengthening outreach to other government bodies to help deepen its understanding about the positive role of civil society organizations.
- Approach engagement with civil society through positive methods. AmCham respects the need for clear procedures to ensure that organizations are well-structured, operate responsibly and do not harm the public interest. However, we are concerned about intensified monitoring—and even closure—of NGOs if these steps serve to intimidate or limit the work of legitimate organizations.
- Engage with a variety of stakeholders, including corporations, as it prepares legislation on civil

society. AmCham hopes to engage MCA to develop mutual understanding of how corporations can work with civil society and how a legal framework can support these partnerships.

Incentives for Community Investment

Tax incentives can be a powerful tool for stimulating corporate contributions to social and environmental programs.

AmCham commends the March 2007 Enterprise Income Tax Law, which uniformly raised the permissible level of tax-deductible donations from 3 percent to 12 percent of annual profits. We encourage MCA and the State Administration of Taxation to build upon this positive step by encouraging efficient and transparent implementation of existing regulations.

Summary

AmCham looks forward to continued progress in promoting responsible practices in both operations and community engagement. As the world will be watching China in the lead-up to the Beijing 2008 Olympic Games, this year will present an opportunity to showcase best practices in CSR and stakeholder engagement. We recognize multi-party dialogue among all stakeholders involved in and affected by various CSR issues as essential to ensuring the sustainability of responsibility efforts, and we hope to see strengthened commitment to such dialogue over the coming year. ■

Recommendations

For the Chinese Government:

- Continue efforts to deepen the understanding of CSR as a fundamental aspect of business management among officials, journalists, managers and students.
- Continue to consult the business community and civil society in the development of regulations concerning labor, the environment, nonprofit registration, donations and other CSR issues.
- Enforce labor, nondiscrimination, environmental and product quality/safety regulations more consistently and vigorously.
- Invest in training programs to better equip

在民间组织的作用日益引起关注的基础上，商会建议中国政府：

- 通过民政部，考虑加强与其它部委的合作，帮助其深入了解民间组织所起到的积极作用。
- 采取积极措施与公民社会中的民间组织交流。中国需要有清晰的民间组织管理流程来确保民间组织结构完善、运作负责，不会损害公众利益，商会对此表示理解和尊重。然而，我们担心对民间组织的监管措施过分严厉，甚至采用关闭民间组织的做法，会对合法组织产生极大负面效应，对合法组织开展工作、发挥积极作用带来限制。
- 在有关民间组织法律法规的立法阶段与包括企业在内的各利益相关者进行交流。比如为了促进双方相互理解企业与民间组织开展合作的方式，如何构建支持双方合作的法律框架，中美商会希望与中华人民共和国民政部进行积极交流。

社区投资激励

税收激励是鼓励企业为社会及环境做出贡献的有力工具。

2007年3月通过的《企业所得税法》规定，所有企业当发生公益性捐赠支出时，其准予税前列支总额，由年度利润总额的百分之三提高到百分之十二。我们赞赏中华人民共和国民政部和国家税务总局在此积极举措基础上，继续推行此项鼓励性法规，并在实施过程中保持有效透明度。

总结

中美商会期待中国政府和各利益相关者进一步在全社会推动企业社会责任意识，并使其落实在具体的业务运作和社区参与实践中。在北京2008奥运会即将到来之际，全世界都在关注中国。因此今年是展现中国在企业社会责任及利益相关者参与程度方面所取得成就的最佳时机。我们认为针对各种企业社会责任议题，全部利益相关者中的多方参与的对话，对确保企业社会责任可持续性发展，是必不可少的。我们期待在新的一年里中国政府能够进一步开展此类对话。 ■

建议

对中国政府

- 继续努力促进政府官员、新闻媒体记者、企业经理人、研究学者对企业社会责任作为商业管理之基石的深入理解。
- 继续与商界及民间组织就制定有关劳工、环境、非营利组织登记注册、捐赠以及其他与企业社会责任相关方面的法规交换意见。
- 加大力度，普遍加强劳工、非歧视、环境与产品质量和安全等方面法规的实施。
- 对培训项目投资，使地方官员受到更好的培训，使相关的社会机构具备更好的管理能力。比如提高中华全国总工会地方官员的管理素质，从而更好地实施现行法规。
- 继续探索有效管理机制，从而提高劳动者与雇主间磋商的效率。其中包括直接选举劳动者代表，以及成立劳动健康和安全委员会。
- 继续提升国家环保总局的影响力；加大对五个环保总局区域办事处的授权和监管的独立性；将地方环保局纳入国家环保总局的垂直监管体系；继续探索在对地方官员实行绩效评估时加入环境内容的积极有效的做法。
- 继续为良好遵守环境法规的企业提供激励机制。
- 继续与美国同行、企业、民间组织就其在产品质量和安全问题中所应发挥的积极作用开展交流，进行有益的探讨。
- 建立合适的法律框架，可以让独立、透明的非营利机构更容易获得正式登记注册。与包括商界在内的各利益相关者开展交流，以便更好地了解非营利的民间组织对促进企业社会责任的重要性。

对美国政府

- 作为2007美国劳工部中美劳动法合作项目的后续工作，继续寻找机会就劳工相关问题展开进一步对话。
- 在中美两国政府签署的《谅解备忘录》基础上继续开展两国政府及其主管部门之间的合作，中方的主管部门包括劳动保障部、安全监管总局、人事部。
- 继续开展双边环境对话和技术合作项目，其

local officials and related institutions, such as local offices of the All-China Federation of Trade Unions, to enforce existing labor-related legislation.

- Continue to explore mechanisms to increase the effectiveness of discussions or negotiations between workers and employers, including directly elected workers' representatives and health and safety committees.
- Continue to increase the influence of the State Environmental Protection Administration; strengthen the mandate and independence of the five regional SEPA offices; consider placing local-level environmental protection bureaus directly under central-level supervision; and continue to explore methods of incorporating environmental criteria into the performance evaluations of local officials.
- Continue to provide positive incentives for environmental compliance.
- Continue to engage in positive discussions with U.S. counterparts, companies and civil society about the role of each in product quality and safety issues.
- Develop a regulatory framework that enables independent, transparent nonprofit organizations to obtain official registration more easily. Engage with a variety of stakeholders, including the business community, to better understand how the nonprofit community is important to each.

For the U.S. Government:

- Continue to seek opportunities to address labor-related issues, following the conclusion in 2007 of the Department of Labor's Labor Rule of Law Program.
- Continue cooperative activities under the Letters of Understanding in place between U.S. and Chinese Government agencies, including MOLSS, SAWS and the Ministry of Personnel.
- Continue investing in bilateral environmental dialogues and technical cooperation programs, including partnerships to improve resource efficiency and regulatory enforcement.
- Continue to address product quality and safety issues by engaging in discussion and cooperation projects with Chinese

counterparts to identify problems, including sharing best practices, government campaigns, public-private partnerships and incorporating these issues and initiatives into bilateral forums.

中包括建立旨在提高资源利用效率和监管法规实施力度的双边伙伴关系。

- 继续通过与中国同行开展的讨论和合作项目，持续关注产品质量和安全问题，共享最佳实践经验，为政府的参与及政府与企业合作伙伴关系的发展等问题提供最好的借鉴，同时希望将上述议题带入双边论坛进行讨论。



Preamble to the data section

Every year since 1999, AmCham has asked its members to share their experiences about doing business in China. They provide 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 800 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 2008 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.

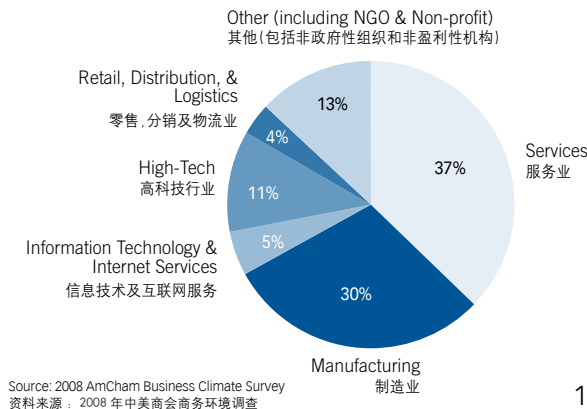
商务环境序言

中美商会在乐枕公布商会2008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等。今年，约800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2008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的所需条件。

Profile of Respondents

Respondent Industries 问卷反馈企业所涉及的行业

Percent, 100% = 912 Companies 百分比, 100% = 912 家公司



Source: 2008 AmCham Business Climate Survey
资料来源：2008 年中美商会商务环境调查

1

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

Percent, 100% = 768 Companies 百分比, 100% = 768 家公司

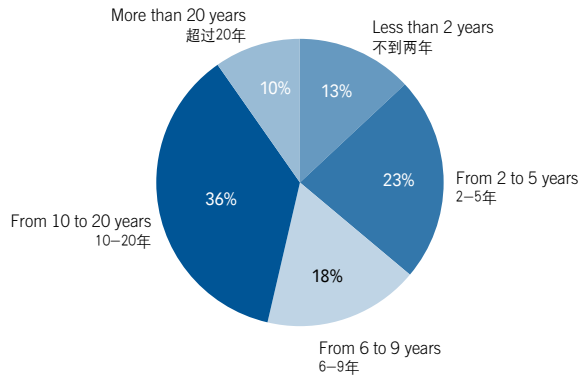


Source: 2008 AmCham Business Climate Survey
资料来源：2008 年中美商会商务环境调查

2

**How long has your company had a physical presence in China?
企业在华建立实体时间**

Percent, 100% = 805 Companies 百分比, 100% = 805 家公司

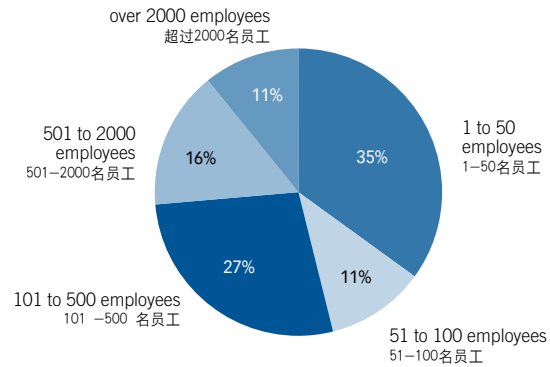


Source: 2008 AmCham Business Climate Survey
资料来源: 2008 年中美商会商务环境调查

3

**How many employees does your company have in China?
企业在华的雇员人数**

Percent, 100% = 802 Companies 百分比, 100% = 802 家公司



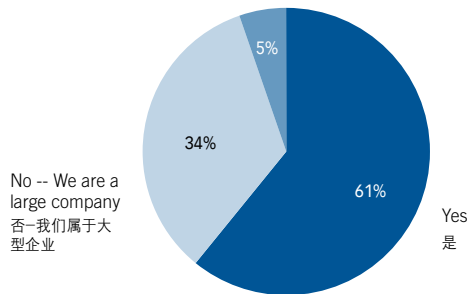
Source: 2008 AmCham Business Climate Survey
资料来源: 2008 年中美商会商务环境调查

6

**Would you identify your company as a Small/Medium-sized Enterprise?
是否将本公司定义为中小企业**

Percent, 100% = 800 Companies 百分比, 100% = 800 家公司

No -- We are not a company / enterprise
(e.g. trade association, non-profit, etc)
否-我们不属于公司或企业 (贸易协会, 非盈利机构等)

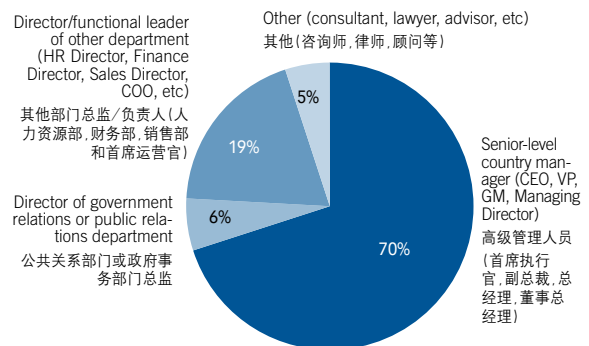


Source: 2008 AmCham Business Climate Survey
资料来源: 2008 年中美商会商务环境调查

4

**Survey respondent's position in his/her company
问卷反馈人员的职务**

Percent, 100% = 454 Companies 百分比, 100% = 454 家公司

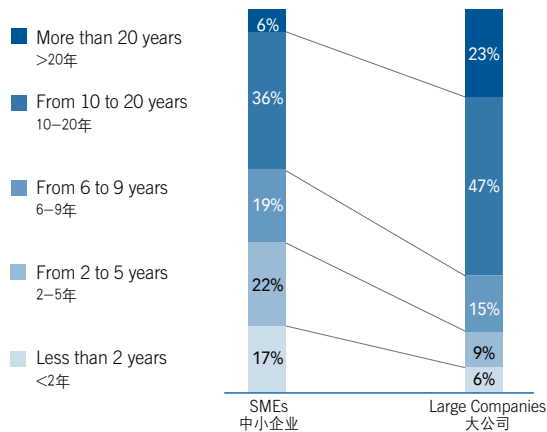


Source: 2008 AmCham Business Climate Survey
资料来源: 2008 年中美商会商务环境调查

7

**SMEs compared to Large companies - Length of Time in China
2007年中小企业与大公司在华运营时间的比较**

Percent, 100% = 800 Companies 百分比, 100% = 800 家公司



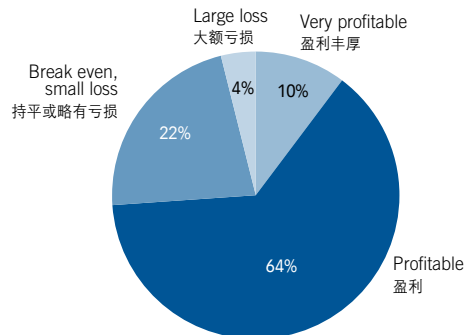
Source: 2008 AmCham Business Climate Survey
资料来源: 2008 年中美商会商务环境调查

5

Financial Performance

How would you characterize your company's financial performance in China in 2007? 企业2007年在华财务业绩状况

Percent, 100% = 737 Companies 百分比, 100% = 737 家公司

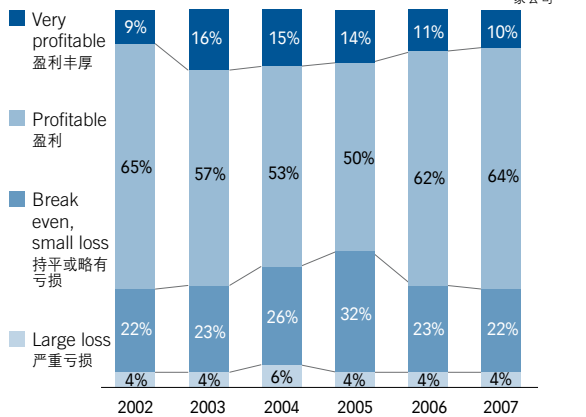


Source: 2008 AmCham Business Climate Survey
资料来源: 2008 年中商会商务环境调查

8

Profitability of China operations (calendar years 2002-2007) 企业2002-2007年运营状况

100% = 254, 236, 376, 203, 150, 737 Companies 家公司

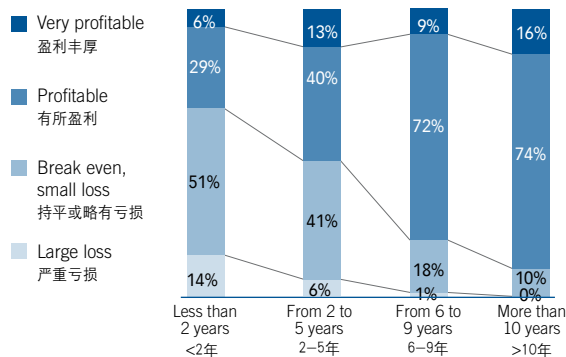


Source: 2003-08 AmCham Business Climate Surveys
资料来源: 2003-08 年中商会商务环境调查

9

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

Percent, 100% = 737 Companies 百分比, 100% = 737 家公司

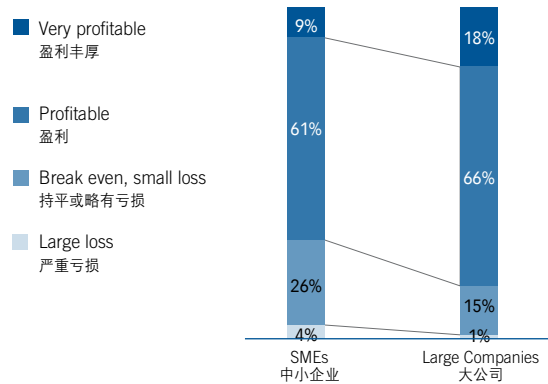


Source: 2008 AmCham Business Climate Survey
资料来源: 2008 年中商会商务环境调查

10

SMEs compared to Large companies - Profitability of China Operations 2007年中小企业与大型公司在华盈利比较

Percent, 100% = 737 Companies 百分比, 100% = 737 家公司

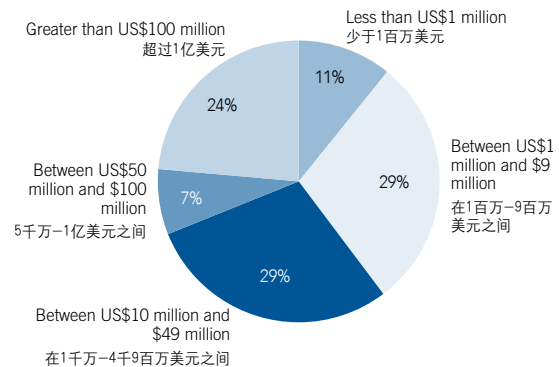


Source: 2008 AmCham Business Climate Survey
资料来源: 2008 年中商会商务环境调查

11

What is your company's total China revenue for 2007? 企业2007年在华总收入

Percent, 100% = 566 Companies 百分比, 100% = 566 家公司

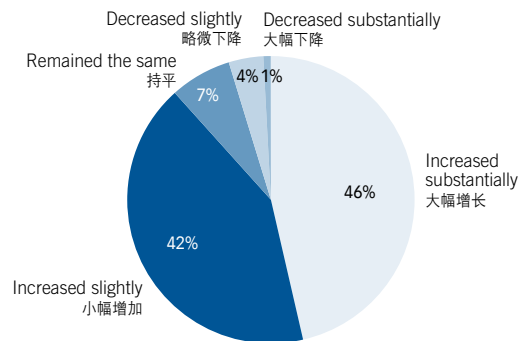


Source: 2008 AmCham Business Climate Survey
资料来源: 2008 年中商会商务环境调查

12

How did revenue of your China operations in 2007 compare to 2006 results? 企业2007年较之2006年在华运营收入比较

Percent, 100% = 658 Companies 百分比, 100% = 658 家公司

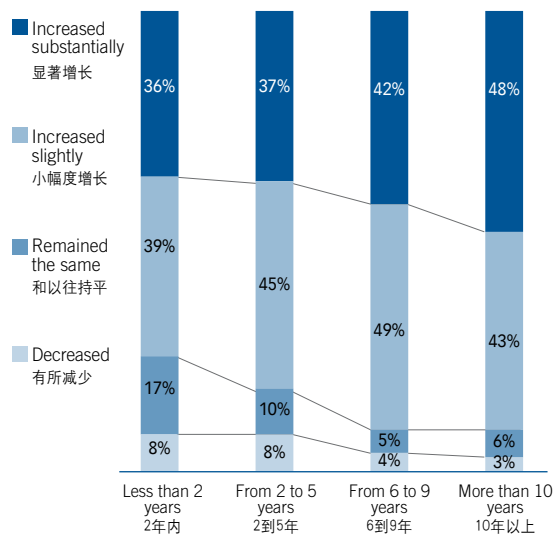


Source: 2008 AmCham Business Climate Survey
资料来源: 2008 年中商会商务环境调查

13

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

Percent, 100% = 658 Companies 百分比, 100% = 658 家公司

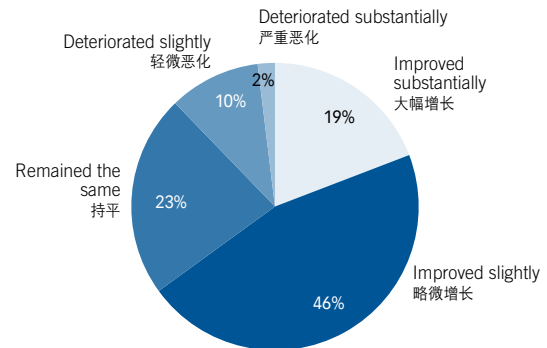


Source: 2008 AmCham Business Climate Survey
资料来源: 2008 年中美商会商务环境调查

14

How did operating margins of your China operations in 2007 compare to 2006 results? 企业2007年较之2006年在华利润率变化 (653)

Percent, 100% = 653 Companies 百分比, 100% = 653 家公司

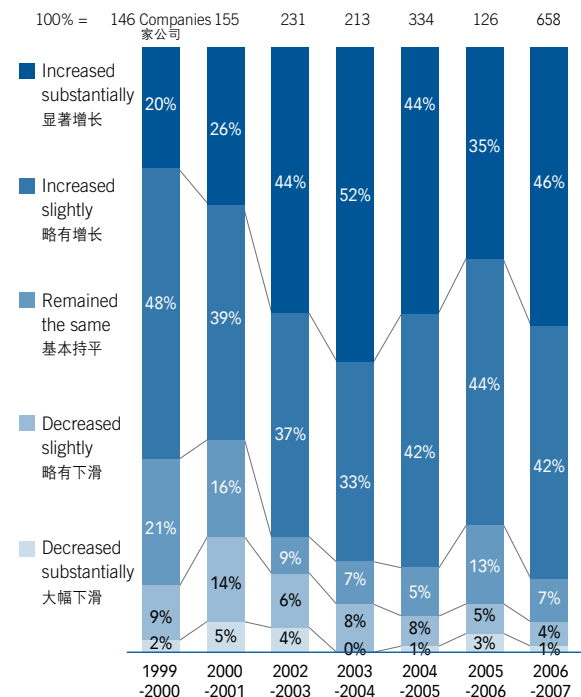


Source: 2008 AmCham Business Climate Survey
资料来源: 2008 年中美商会商务环境调查

16

Change in Revenue of China Operations (calendar years 1999-2007)

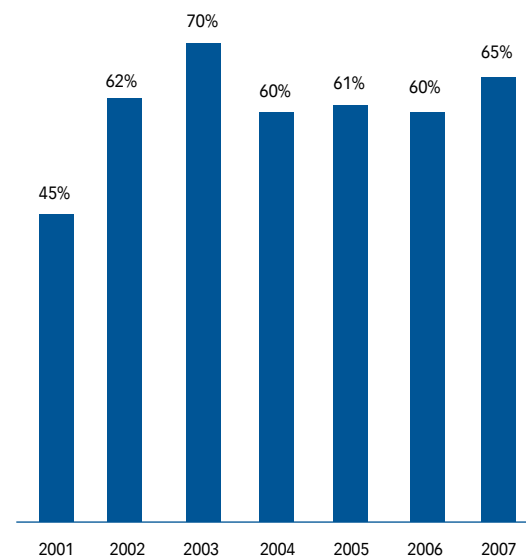
1999-2007年企业营业收入变化



Source: 2001, 2002, & 2004-08 AmCham Business Climate Surveys
资料来源: 2001, 2002, 与 2004-08 年中美商会商务环境调查

15

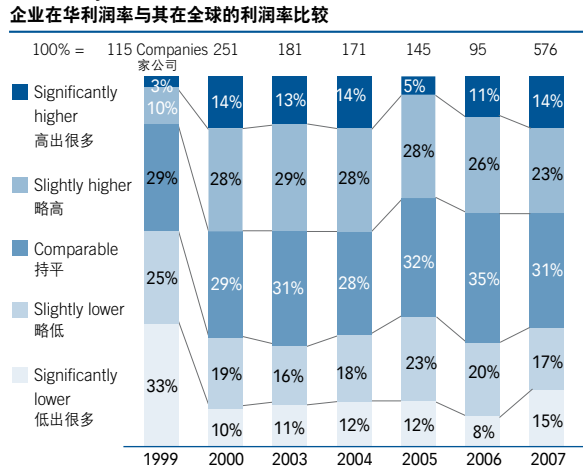
Percentage of companies with increased operating margins (calendar years 2001-2007) 2000-2007年在华营运利润率增长企业的百分比



Source: 2002-08 AmCham Business Climate Surveys
资料来源: 2002-08 年中美商会商务环境调查

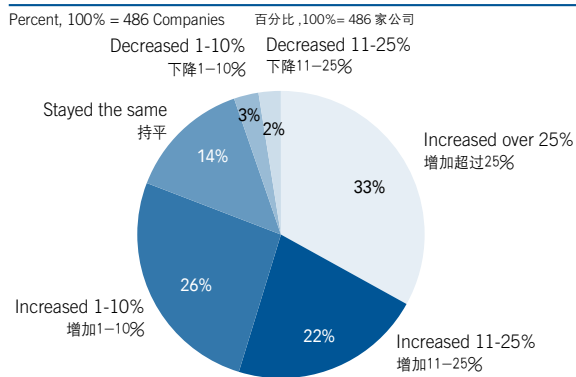
17

China margins compared to worldwide margins (calendar years 1999-2007)
企业在华利润率与其在全球的利润率比较



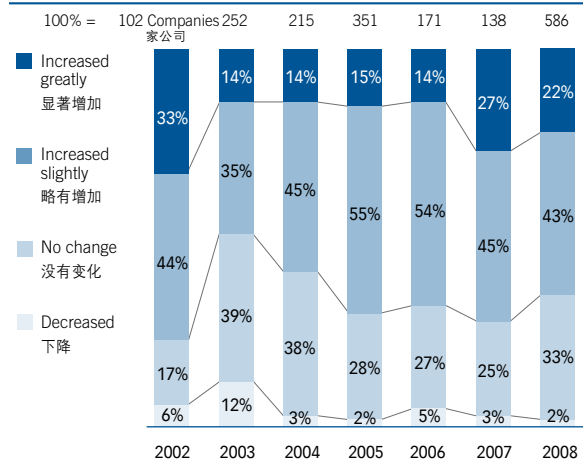
Source: 2000, 2001, & 2004-08 AmCham Business Climate Surveys
资料来源: 2000, 2001, 2004-08 年中商会商务环境调查 18

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



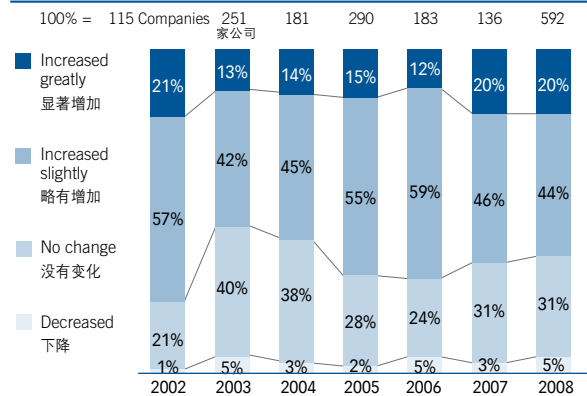
Source: 2008 AmCham Business Climate Survey
资料来源: 2008 年中商会商务环境调查 19

Perceived change in competition from PRC firms (2002-2008)
来自中国企业的竞争压力变化



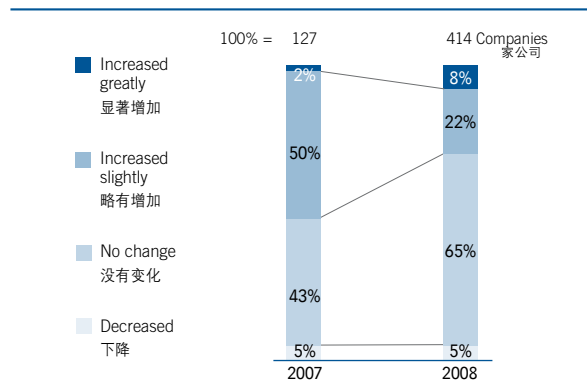
Source: 2002-08 AmCham Business Climate Surveys
资料来源: 2002-08 年中商会商务环境调查 20

Perceived change in competition from foreign firms (2002-2008)
来自非中国企业的竞争压力变化



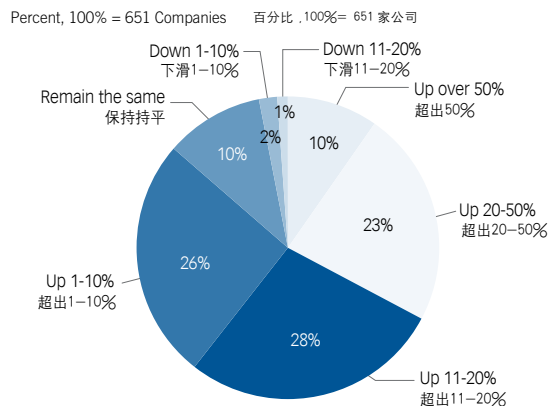
Source: 2002-08 AmCham Business Climate Surveys
资料来源: 2002-08 年中商会商务环境调查 21

Perceived change in competition from Imports (2007-2008)
来自进口产品竞争方面的变化



Source: 2007-08 AmCham Business Climate Surveys
资料来源: 2007-08 年中商会商务环境调查 22

What is your company's forecast for 2008 revenue compared to 2007 results?
企业2008年相比于2007年在华营业收入的预测

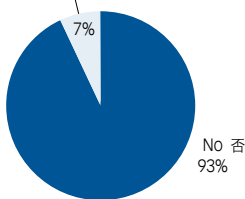


Source: 2008 AmCham Business Climate Survey
资料来源: 2008 年中商会商务环境调查 23

**Have you / are you considering relocating out of Beijing/Shanghai 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**

BEIJING RESPONDENTS
北京反馈企业
Percent, 100% = 336 Companies
百分比, 100% = 336 家公司

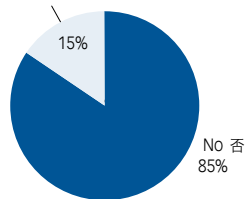
Yes -- To another Chinese city or Asian Country
是-- 搬迁到其它中国城市或亚洲其他国家



Source: 2008 AmCham Business Climate Survey
资料来源: 2008 年中美商会商务环境调查

SHANGHAI RESPONDENTS
上海反馈企业
Percent, 100% = 317 Companies
百分比, 100% = 317 家公司

Yes -- To another Chinese city or Asian Country
是-- 搬迁到其它中国城市或亚洲其他国家

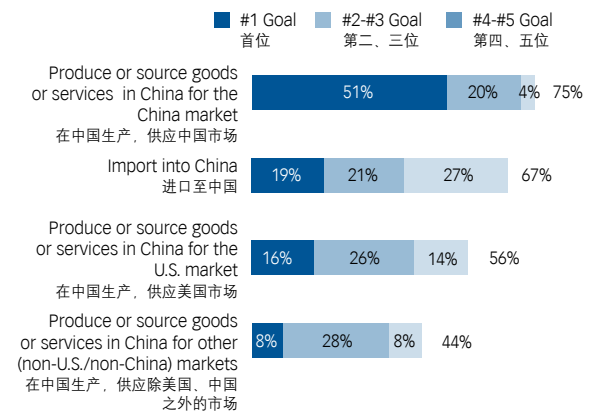


Business Strategies and Goals

Top 5 Goals & Strategies in China

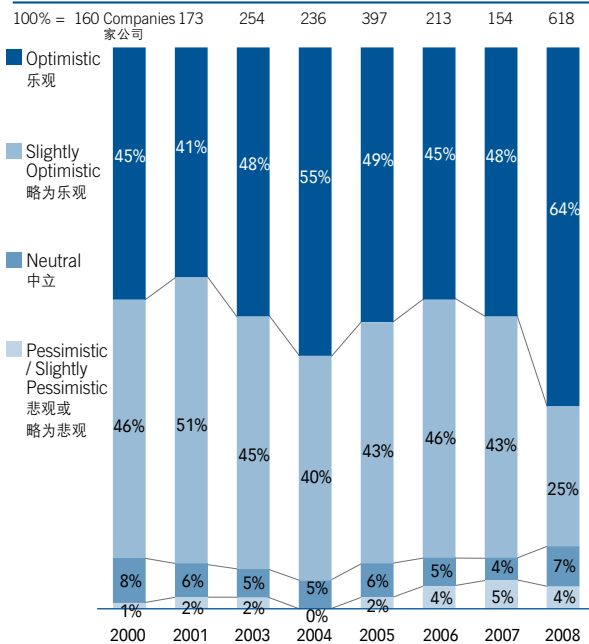
企业在华五大主要战略目标

Percent, 100% = 716 Companies 百分比, 100% = 716 家公司



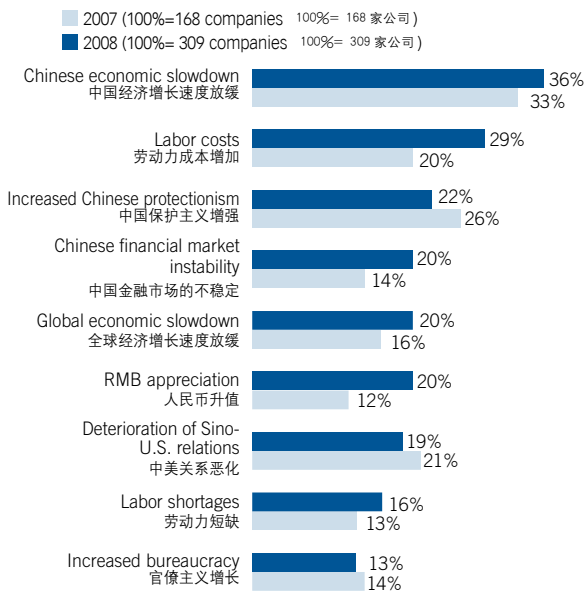
Source: 2008 AmCham Business Climate Survey
资料来源: 2008 年中美商会商务环境调查

**How would you describe your five-year business outlook in China?
企业自2000至2008年期间对其未来五年发展的展望**



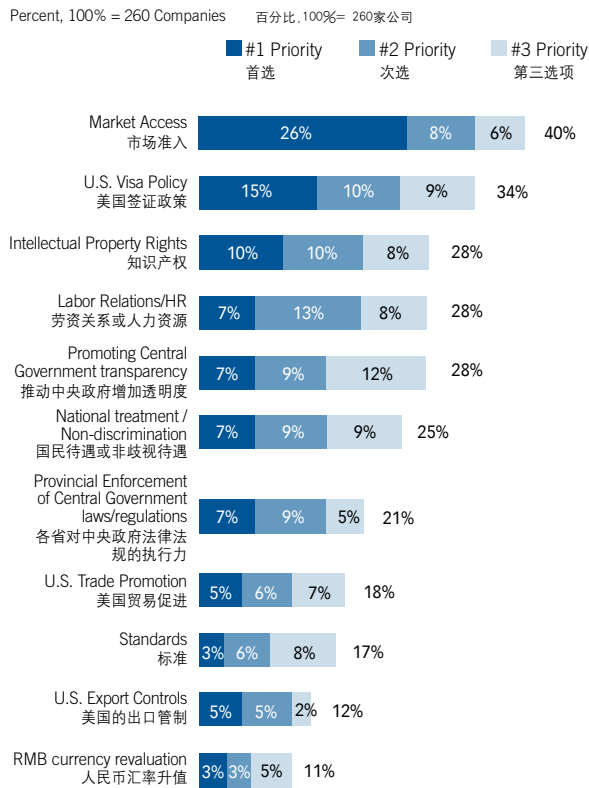
Source: 2000, 2001, & 2003-08 AmCham Business Climate Surveys
资料来源: 2000, 2001, 与 2003-08 年中美商会商务环境调查

Top Risks for the coming years (2007-2008)
2007年至2008年企业的主要风险



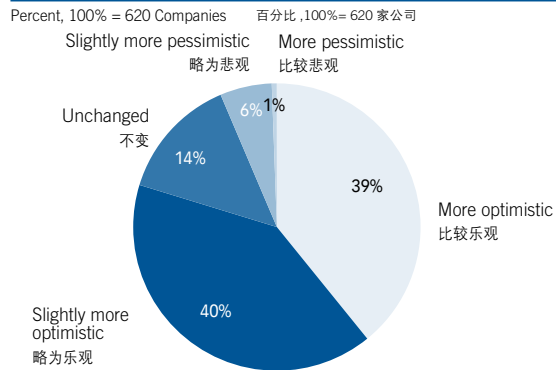
Source: 2007-08 AmCham Business Climate Surveys
资料来源: 2007-08 年中美商会商务环境调查 27

What should AmCham's government advocacy priorities be in 2008?
2008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



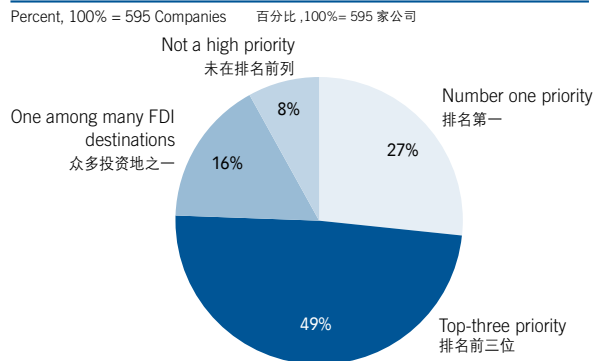
Source: 2008 AmCham Business Climate Survey
资料来源: 2008 年中美商会商务环境调查 28

How would you describe your company's 2008 business outlook compared to 2007?
相对2007年,企业对2008年发展的展望



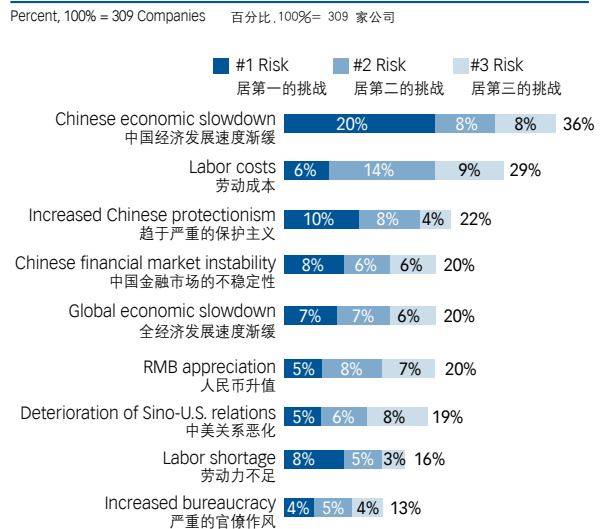
Source: 2008 AmCham Business Climate Survey
资料来源: 2008 年中美商会商务环境调查 29

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



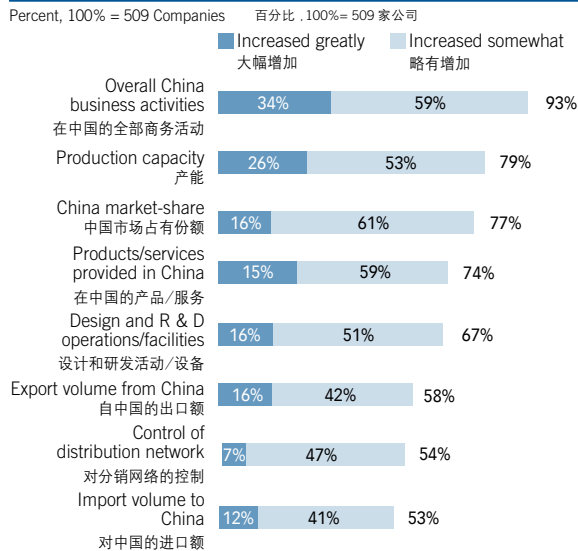
Source: 2008 AmCham Business Climate Survey
资料来源: 2008 年中美商会商务环境调查 30

Top risks for the coming years
未来几年中可能遇到的主要挑战



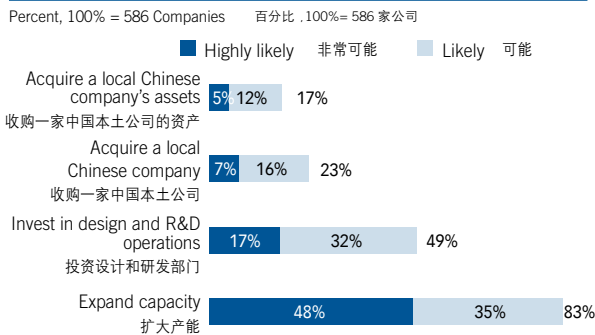
Source: 2008 AmCham Business Climate Survey
资料来源: 2008 年中美商会商务环境调查 31

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



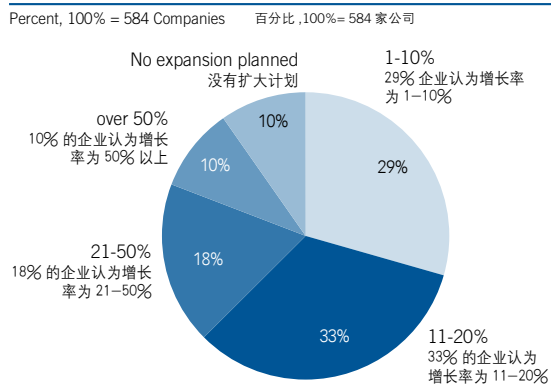
Source: 2008 AmCham Business Climate Survey 资料来源: 2008 年中美商会商务环境调查 32

Expansion strategy - In 2008, does your company plan to... 2008年企业中国市场的扩展计划



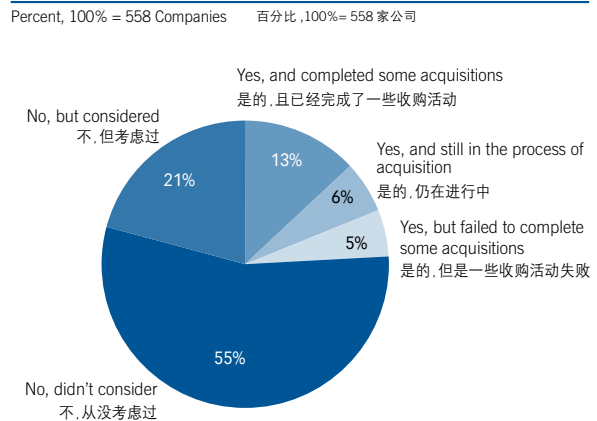
Source: 2008 AmCham Business Climate Survey 资料来源: 2008 年中美商会商务环境调查 33

Estimated increase in investment in China operations for 2008 企业对于2008年在华投资增长的估测



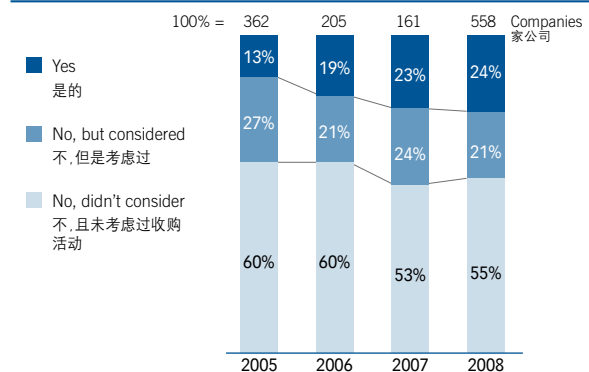
Source: 2008 AmCham Business Climate Survey 资料来源: 2008 年中美商会商务环境调查 34

Did your company pursue an acquisition of a PRC company or a PRC company's assets in the last 24 months? 是否曾在最近两年内试图收购过一家中国本土企业或其资产?



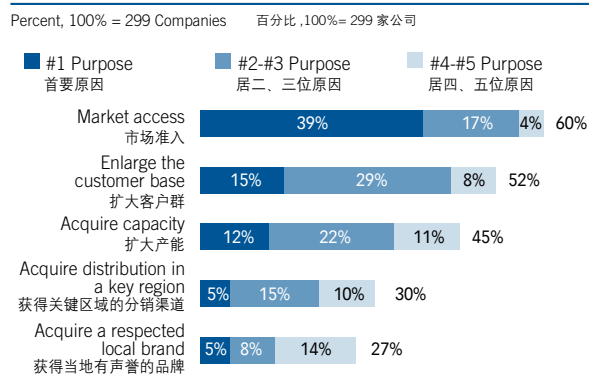
Source: 2008 AmCham Business Climate Survey 资料来源: 2008 年中美商会商务环境调查 35

Did your company pursue an acquisition of a PRC company or a PRC company's assets in the last 24 months? (2005-2008) 2005-2008年间是否曾收购过一家中国本土企业或其资产?



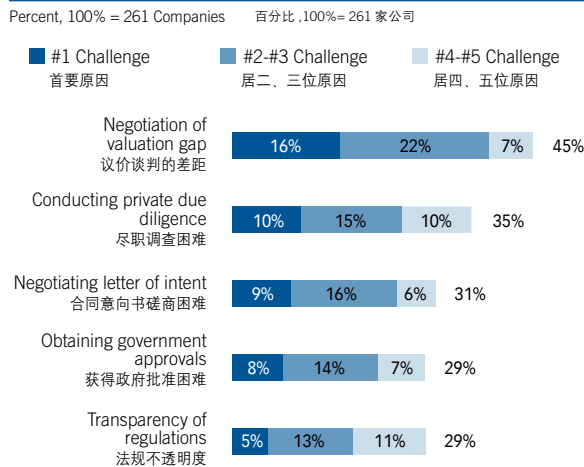
Source: 2005-08 AmCham Business Climate Surveys 资料来源: 2005-08 年中美商会商务环境调查 36

Top 5 Reasons for Pursuing M&A in China 企业并购的五大主要原因



Source: 2008 AmCham Business Climate Survey 资料来源: 2008 年中美商会商务环境调查 37

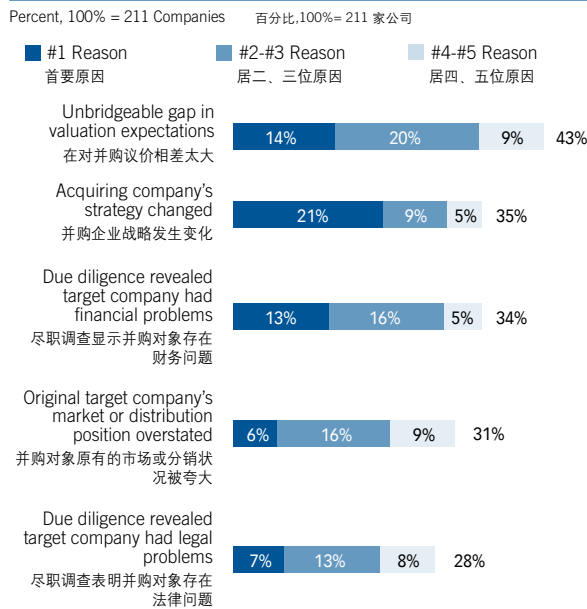
Top 5 Challenges in Pursuing M&A in China
并购活动的五大主要挑战



Source: 2008 AmCham Business Climate Survey
资料来源: 2008 年中商会商务环境调查

38

Top 5 Reasons for Failing to Complete M&A in China
并购活动失败的五大主要原因

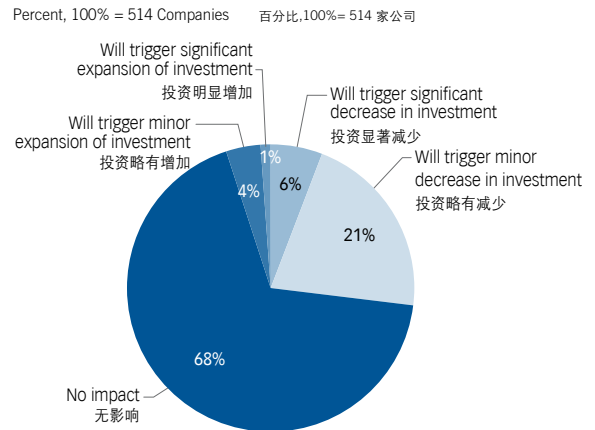


Source: 2008 AmCham Business Climate Survey
资料来源: 2008 年中商会商务环境调查

39

Economic and Regulatory Environment

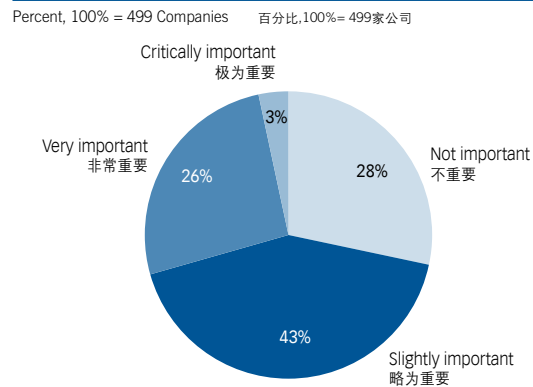
How will China's new Enterprise Income Tax law, which took effect on January 1, 2008 and applies a 25% income tax on both domestic and foreign firms, affect your business strategy?
2008年1月1日生效的新《企业所得税法》将内外资企业所得税税率统一为25%, 其对企业的运营战略的影响



Source: 2008 AmCham Business Climate Survey
资料来源: 2008 年中商会商务环境调查

40

How important were favorable PRC 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

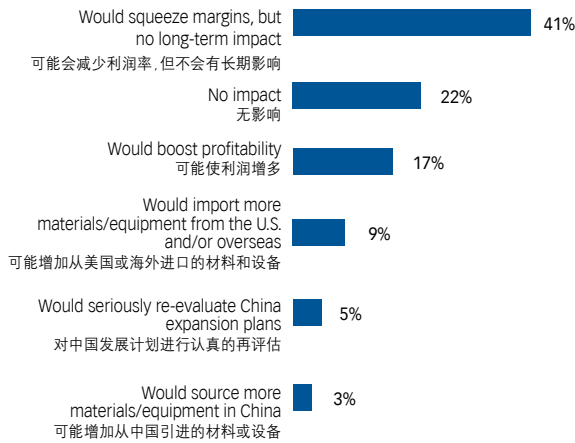


Source: 2008 AmCham Business Climate Survey
资料来源: 2008 年中商会商务环境调查

41

How would a 5% RMB appreciation/weaker U.S. dollar in the next 12 months affect your business?
未来一年中,人民币对美元5%的升值或贬值对企业的影响

Percent, 100% = 593 Companies 百分比,100%= 593家公司



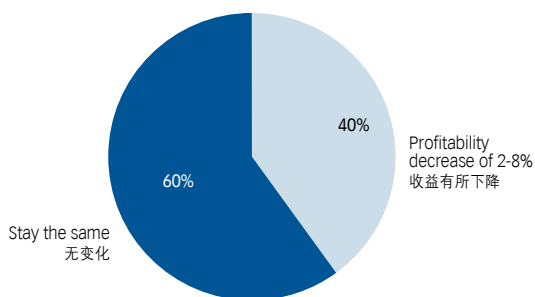
Source: 2008 AmCham Business Climate Survey
资料来源: 2008 年中美商会商务环境调查

42

Effective July 1, 2007, PRC export-tax rebates (VAT) were scrapped or reduced on more than 2,000 goods. What has been / will be the impact of increased China-based supply-chain costs on your profitability?

2007 年7月1日执行的出口退税率政策取消或降低了2000余项商品的退税率。上涨的中国供应链成本将对企业收益的影响

Percent, 100% = 260 Companies 百分比,100%= 260家公司

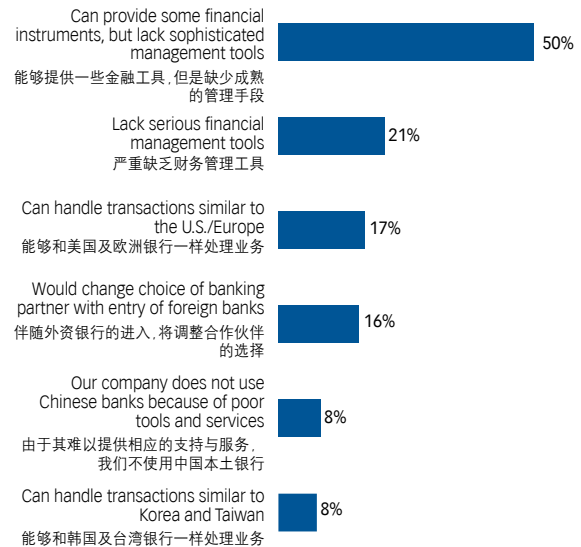


Source: 2008 AmCham Business Climate Survey
资料来源: 2008 年中美商会商务环境调查

43

How would you rate Chinese domestic banks' ability to provide the banking services your company needs?
中国本土银行提供服务的能力

Percent, 100% = 518 Companies 百分比,100%= 518家公司

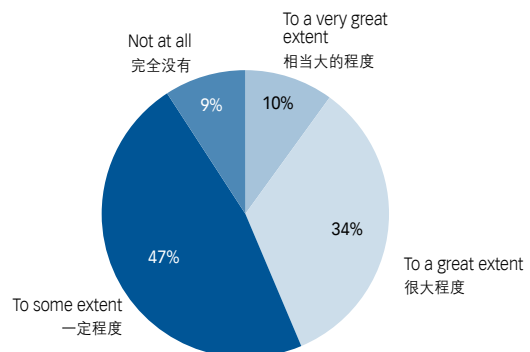


Source: 2008 AmCham Business Climate Survey
资料来源: 2008 年中美商会商务环境调查

44

To what extent do you believe China's recent economic reforms (last 3 years (2005-2007)) have improved the climate for U.S. business in China?
中国近期的经济改革(2005年-2007年)对美国企业在华商务环境的改善程度

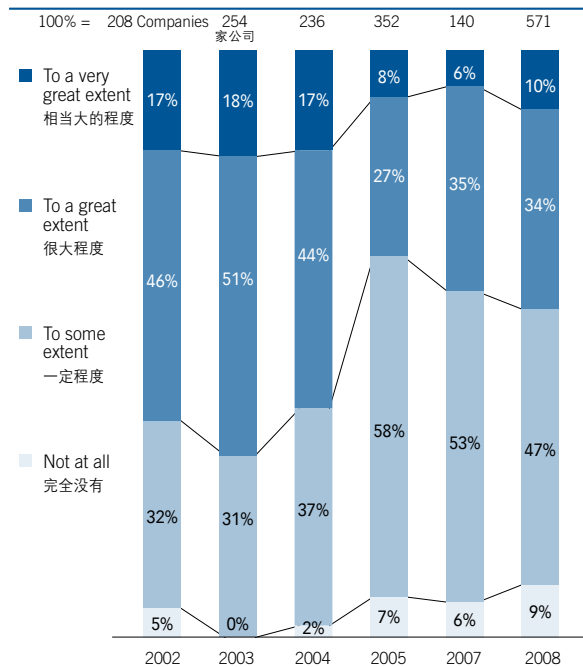
Percent, 100% = 571 Companies 百分比,100%= 571家公司



Source: 2008 AmCham Business Climate Survey
资料来源: 2008 年中美商会商务环境调查

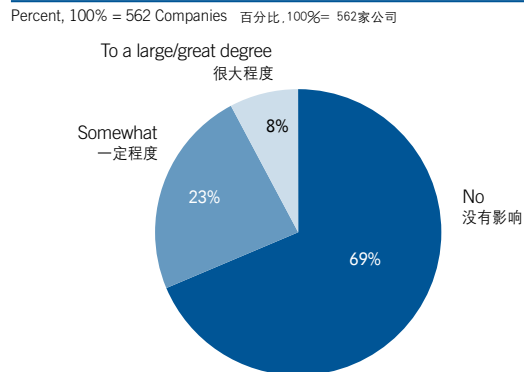
45

To what extent do you believe China's recent economic reforms (last 3 years) have improved the climate for U.S. business in China?
2002-2008年，企业对“过去三年中国经济改革对美国企业在华投资环境影响程度”的反馈



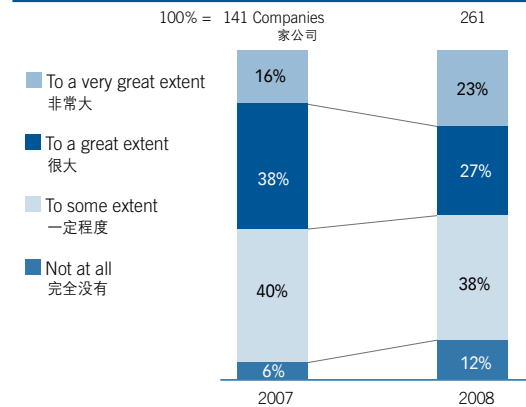
Source: 2002-05 & 2007-08 AmCham Business Climate Surveys
资料来源：2002-05与2007-08年中美商会商务环境调查 46

Has your company been affected by China's RoHS (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...



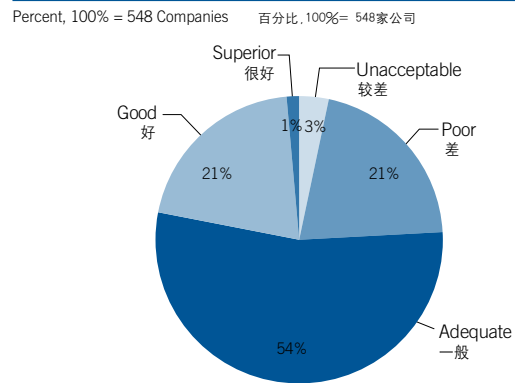
Source: 2008 AmCham Business Climate Survey
资料来源：2008年中美商会商务环境调查 47

To what extent do you believe the quality of the U.S.-China commercial relationship affects your business? (2007-2008)
中美贸易关系发展对企业运营的影响程度



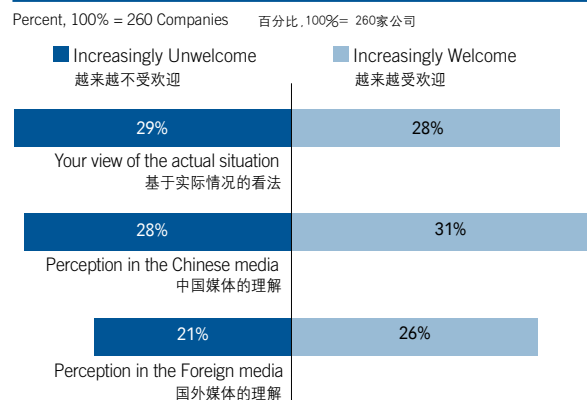
Source: 2007-08 AmCham Business Climate Surveys
资料来源：2007-08年中美商会商务环境调查 48

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估



Source: 2008 AmCham Business Climate Survey
资料来源：2008年中美商会商务环境调查 49

Compared to 2006, please rate the welcomeness of foreign companies to participate and compete in the CHINESE market
相较于2006年，外资企业参与或竞争于中国市场的受欢迎程度

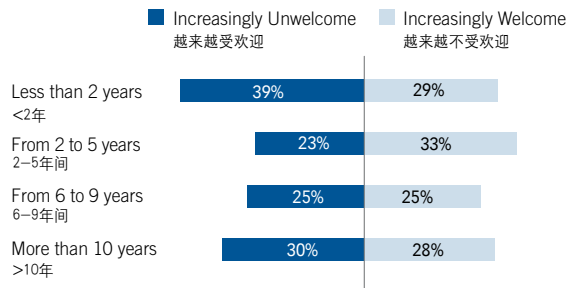


Source: 2008 AmCham Business Climate Survey
资料来源：2008年中美商会商务环境调查 50

Perceived Welcomeness of Foreign Companies to Participate / Compete in the Chinese Market *by* Length of Company's Time in China

企业在华时间的长短与外资企业参与或竞争于中国市场竞争的受欢迎程度

Percent, 100% = 229 Companies 百分比, 100% = 229 家公司



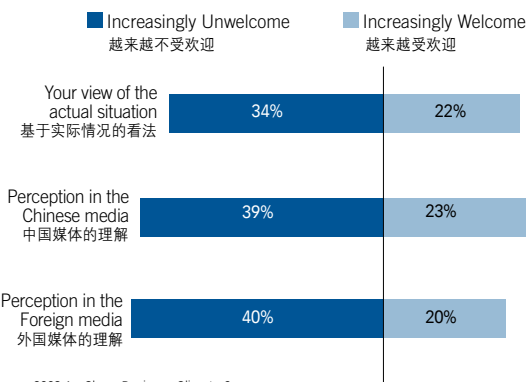
Source: 2008 AmCham Business Climate Survey
资料来源: 2008 年中商会商务环境调查

51

Compared to 2006, please rate the welcomeness of foreign companies to participate and compete in the U.S. market

相较于2006年, 外资企业参与或竞争于美国市场的受欢迎程度

Percent, 100% = 260 Companies 百分比, 100% = 260 家公司



Source: 2008 AmCham Business Climate Survey
资料来源: 2008 年中商会商务环境调查

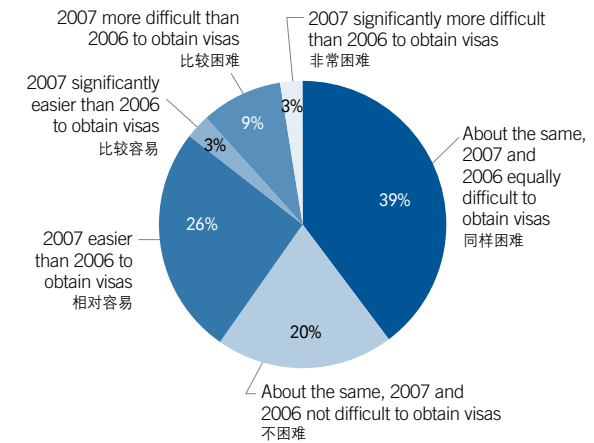
52

Key Issues and Challenges

How does 2007 compare with 2006 in terms of ease of travel to the U.S. for Chinese citizens?

和2006年相比, 2007年中国公民赴美签证方面的变化

Percent, 100% = 477 Companies 百分比, 100% = 477 家公司



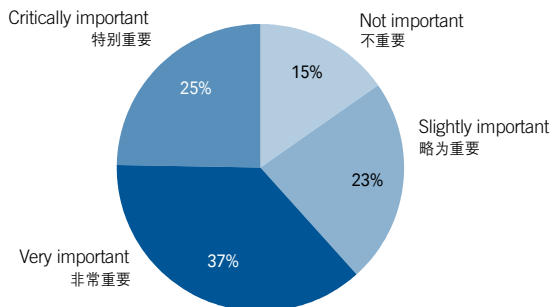
Source: 2008 AmCham Business Climate Survey
资料来源: 2008 年中商会商务环境调查

53

How important is the protection of intellectual property rights (IPR) to your business?

知识产权保护对公司运营的重要性

Percent, 100% = 554 Companies 百分比, 100% = 554 家公司

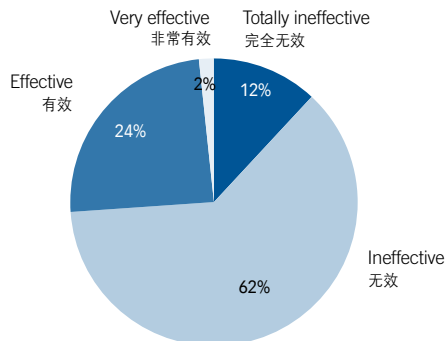


Source: 2008 AmCham Business Climate Survey
资料来源: 2008 年中商会商务环境调查

54

How would you rate China's enforcement of intellectual property rights (IPR)?
企业对中国政府在知识产权保护执行力方面的评价

Percent, 100% = 389 Companies 百分比, 100% = 389家公司

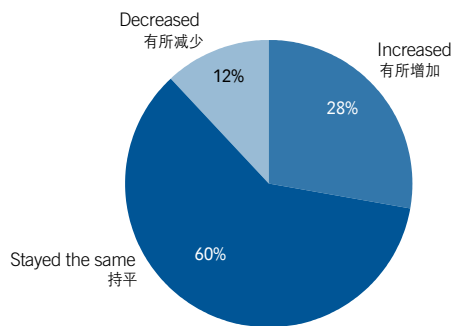


Source: 2008 AmCham Business Climate Survey
资料来源: 2008 年中美商会商务环境调查

55

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变化.....

Percent, 100% = 336 Companies 百分比, 100% = 336家公司

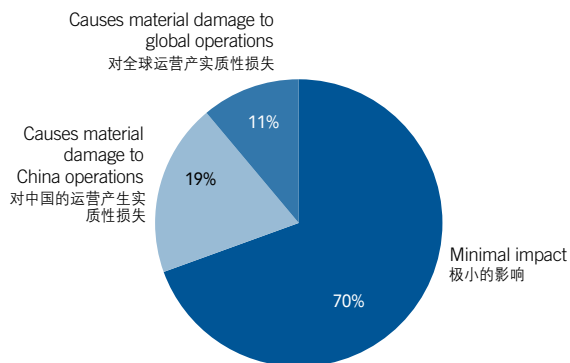


Source: 2008 AmCham Business Climate Survey
资料来源: 2008 年中美商会商务环境调查

56

What is the extent of damage caused by China-originating IPR infringements of your company's products?
源于中国知识产权侵害问题而对企业产品所造成的损害程度

Percent, 100% = 351 Companies 百分比, 100% = 351家公司

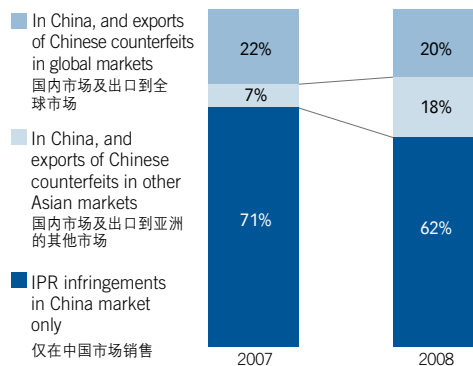


Source: 2008 AmCham Business Climate Survey
资料来源: 2008 年中美商会商务环境调查

57

What is the breadth of infringing products (of your company's products) originating from China?
2007-2008年源自中国的侵权产品所销往的区域范围

100% = 41 Companies 175 家公司

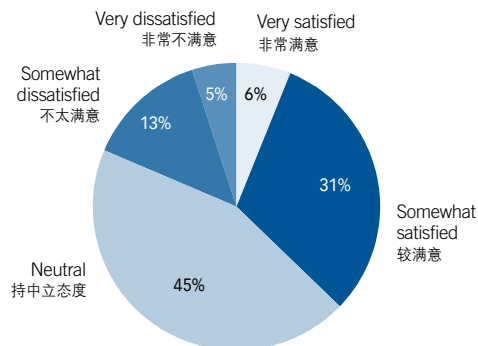


Source: 2007-08 AmCham Business Climate Surveys
资料来源: 2007-08 年中美商会商务环境调查

58

If you have taken ADMINISTRATIVE action on IPR cases, 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,对与相关政府部门官员合作情况的满意度

Percent, 100% = 230 Companies 百分比, 100% = 230家公司

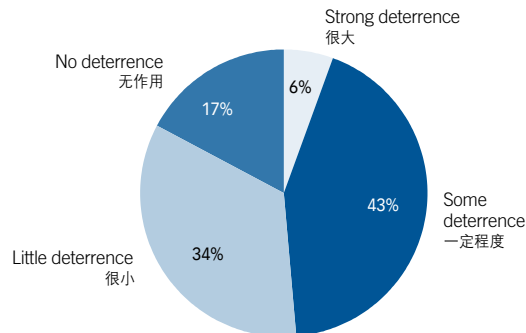


Source: 2008 AmCham Business Climate Survey
资料来源: 2008 年中美商会商务环境调查

59

If you have taken administrative action on IPR cases, do you think the results 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产生的震慑作用

Percent, 100% = 179 Companies 百分比, 100% = 179家公司

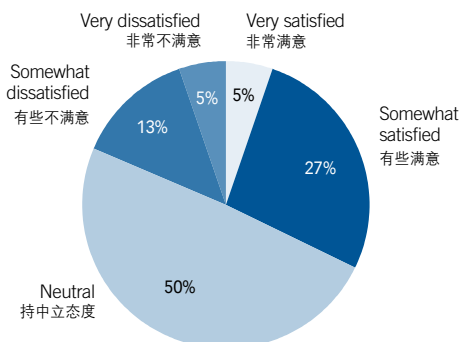


Source: 2008 AmCham Business Climate Survey
资料来源: 2008 年中美商会商务环境调查

60

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

Percent, 100% = 187 Companies 百分比, 100% = 187家公司

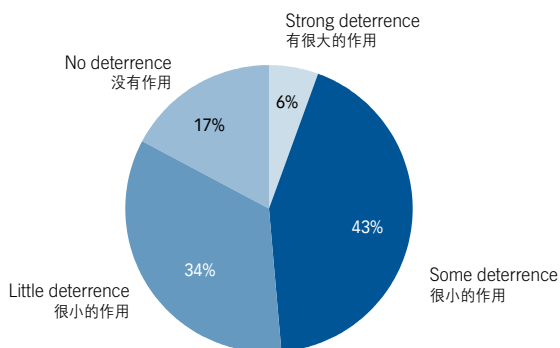


Source: 2008 AmCham Business Climate Survey
资料来源: 2008 年中商会商务环境调查

61

**If you have brought any infringements to court, do you think the results 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的阻止作用**

Percent, 100% = 179 Companies 百分比, 100% = 179家公司

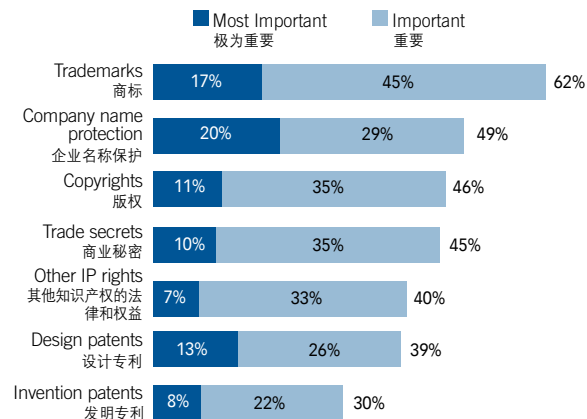


Source: 2008 AmCham Business Climate Survey
资料来源: 2008 年中商会商务环境调查

62

**The most important IPR issues to respondents' businesses are ...
对企业运营最重要的知识产权问题为.....**

Percent, 100% = 209 Companies 百分比, 100% = 209家公司

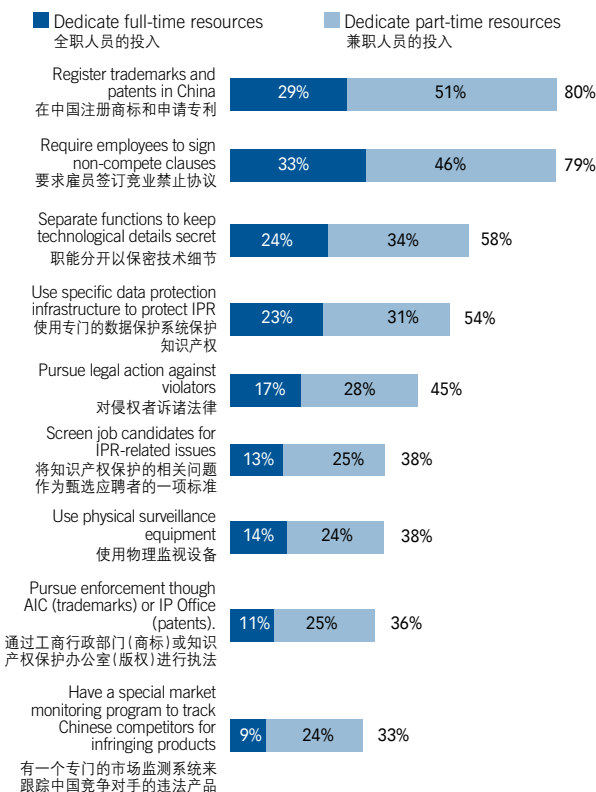


Source: 2008 AmCham Business Climate Survey
资料来源: 2008 年中商会商务环境调查

63

**Which of the following measures do you use to protect your intellectual property?
企业保护知识产权所采取的措施?**

Percent, 100% = 317 Companies 百分比, 100% = 317家公司

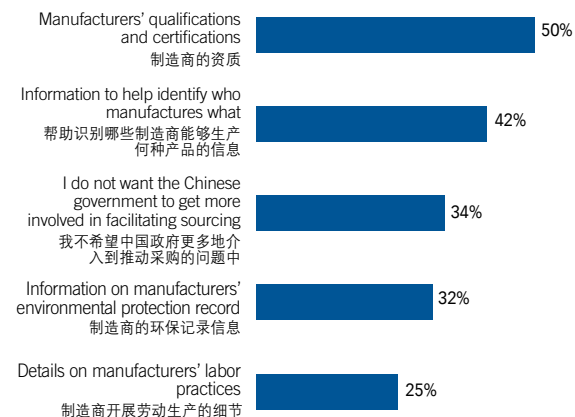


Source: 2008 AmCham Business Climate Survey
资料来源: 2008 年中商会商务环境调查

64

**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, 以推动从中国的采购?**

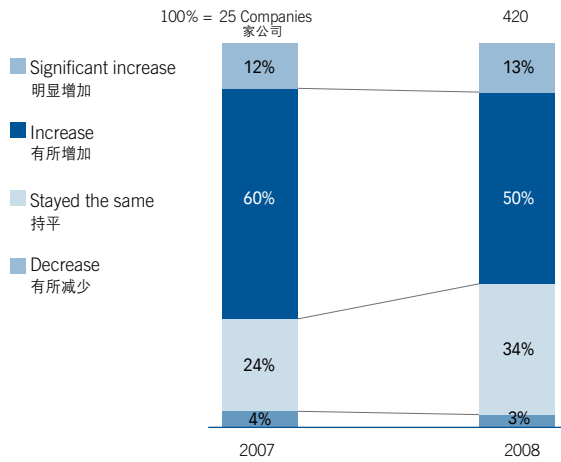
Percent, 100% = 504 Companies 百分比, 100% = 504家公司



Source: 2008 AmCham Business Climate Survey
资料来源: 2008 年中商会商务环境调查

65

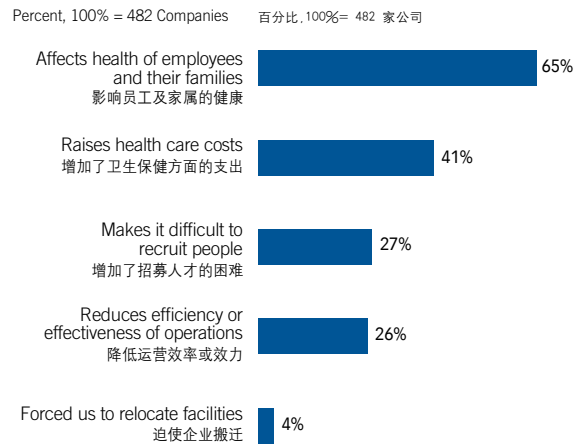
How has the volume of products your company sources from China changed from last year? (2007-2008) 和去年相比,企业源自中国的产品数量变化



Source: 2007-08 AmCham Business Climate Surveys
资料来源: 2007-08 年中美商会商务环境调查

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How has pollution affected your business in China? 环境污染对公司在华运营的影响

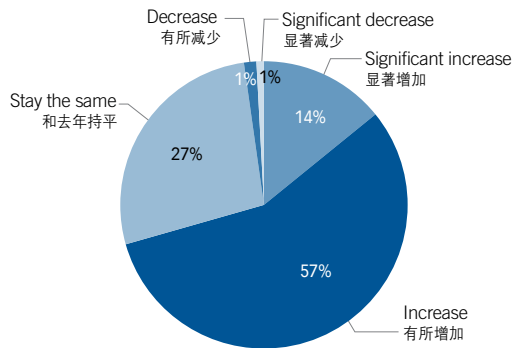


Source: 2008 AmCham Business Climate Survey
资料来源: 2008 年中美商会商务环境调查

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What changes do you expect in the volume of products sourced from China in 2008? 企业对2008年从中国采购产品数量的预期

Percent, 100% = 423 Companies
百分比, 100% = 423 家公司



Source: 2008 AmCham Business Climate Survey
资料来源: 2008 年中美商会商务环境调查

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Part Two

Industry Issues

具体行业问题

Agriculture and Food

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China is the fourth-largest export market for U.S. agricultural products. In 2007, the U.S. exported over US\$8.8 billion of agricultural and fish products to China, making the U.S. China's largest supplier of agriculture products. The U.S. provides China with raw materials such as soybeans, cotton and hides destined for processing. Simultaneously, China's exports of agricultural and fish products to the U.S. continue to grow with a total value that exceeded US\$4.9 billion in 2007. China's exports to the U.S. consist largely of fish, vegetables and various processed foods. The continued expansion of agricultural trade between the two countries is a testimony to the comparative advantages China and the U.S. have in the production and processing of various agricultural goods.

In 2007, food safety issues came to the attention of the general public and among bilateral trade issues between the United States and China. Contaminated and mislabeled products originating in China led both countries to re-evaluate the role of food safety in the regulation of imports and exports. As a result of heightened inspection on each side, trade disruptions and delays occurred as changes instituted to inspection regimes were implemented. In a number of cases, trade disruptions appeared to be based on politics and not upon sound science.

While the Chinese Government has made a number of efforts to improve the control and efficiency of its food safety apparatus, a number of problems persist. Technical barriers to trade continue to impede imports of certain products into China and non-transparent trade rules that limit opportunities create uncertainty for U.S. exporters.

In late 2007, China issued a new Foreign Investment Catalogue that moved a number of agricultural processing businesses to the "restricted" category and limited new investment in some of these businesses to minority-only shares. The Chinese Government has also asserted itself throughout the year in an effort to limit food price increases in ways that may affect the operations of foreign firms in China. AmCham members are concerned that limiting foreign investment in China's agricultural sector and actively trying to manage food prices through administrative measures will limit competition and efficiencies in the industries concerned, which will ultimately lead to higher prices for consumers.

Significant Developments

Food safety issues have taken center stage in the bilateral agricultural and food trade between the U.S. and China. In the wake of concerns over the quality of Chinese food exports to the U.S. and elsewhere in 2007, China moved swiftly to address supervision of its food supply chain. A wide range of government actions included development of a special plan on national food safety, establishment of a working group led by former Vice Premier Wu Yi to coordinate inter-ministry cooperation and the creation of new regulations, and benchmarks for food safety and quality.

The draft Food Safety Law was submitted and approved by the State Council on October 31, 2007. It then went to the National People's Congress Standing Committee on December 26, 2007, at its 31st Conference and, at the time of this writing, was still awaiting final approval. If the final version is approved, the law will establish a new framework for evaluating food safety issues, from the certification and licensing of food companies to procedures for carrying out food recalls. In November 2007, China announced a large revision to its food inspection protocol by agreeing to bring 600 food safety inspection standards in line with international guidelines by 2010.

In addition to domestic actions, China has cooperated with its trading partners on bilateral initiatives to improve food safety. The U.S. Department of Health and Human Services (HHS) has held technical seminars in addition to increased regular communications with both China's State Food and Drug Administration (SFDA) and China's inspection authority, the General Administration for Quality Supervision, Inspection and Quarantine (AQSIQ). AQSIQ and U.S. Department of Agriculture (USDA) have also consulted on the safety of meat and poultry products.

Importantly, HHS and AQSIQ signed a memorandum of understanding on food and feed that aims to increase the level of safety in traded products. China has also taken similar steps with the relevant agencies of its EU and ASEAN trading partners. The full impact of these actions will not be clear for some time, but they are all clearly steps in the right direction and will gradually improve the quality of both domestic and export foodstuffs.

农业与食品

中国是美国农产品的第四大出口市场。2007年，美国向中国出口了逾88亿美元的农产品和鱼制品，成为中国最大的农产品供应国。美国向中国提供多种原粮和原材料，如大豆、棉花和用于加工的皮革。同时，中国对美国的农产品和鱼制品出口额持续增长，2007年的出口总额超过49亿美元。中国向美国出口的产品主要包括鱼类、蔬菜和各种加工食品。中美两国农业贸易的不断扩大证明了双方在各种农产品生产和加工方面具有各自的相对优势。

2007年，食品安全问题成为大众关注的焦点，也成为了中美两国双边贸易问题之一。产自中国的受污染以及贴有误导性标签的产品使得两国重新评估了食品安全在进出口管理中所扮演的角色。由于双方均加强了监查力度，贸易中断和延迟现象随着监查机制的调整而出现。在很多情况下，贸易中断似乎都由政治因素引发，而并非出于合理的科学因素。

虽然中国政府已经做出巨大努力加强其食品安全部门的监管力度，并不断提高效率，但问题仍在不断出现。技术性贸易壁垒仍然使某些产品无法进口到中国，而非透明的贸易规则限制了贸易机遇的产生，为美国出口商带来了不确定性因素。

2007年末，中国发布了新的外商投资产业指导目录，将许多农产品加工行业纳入了“限制”范围，且在此类企业的新投资项目中，外资只能参股。此外，过去一年中，中国政府为控制食品价格的持续上涨，采用了一些可能影响外资企业正常营运发展的方式。中美商会的会员担心限制外商对中国农业的投资，以及过多通过行政手段对食品价格进行管制将会降低相关行业的竞争力和效率，最终将使消费者面临更高的物价水平。

重大进展

食品安全问题已经成为中美两国农业和食品双边贸易的焦点。2007年，由于中国出口到美国以及其他国家的食品质量问题引起广泛关注，中国立即着手加强了对食品供应链的监管力度。政府采取了全面

措施，包括针对国家食品安全制定了特别计划、建立了由国家副总理吴仪女士领导的工作小组，以对各部之间的合作进行协调，此外还出台了新的食品安全质量法规与标准。

2007年10月31日，交由国务院审议的《食品安全法（草案）》通过审批。2007年12月26日，全国人大常委会第三十一次会议对《食品安全法（草案）》进行审议，最终批复在撰写此文时仍在等待中。如果最终法案获得通过，将为全面评估食品安全（从食品企业的认证和授权到食品召回执行程序）建立新的框架。2007年11月，中国宣布将对其食品检测议定书做出重大修订，同意到2010年，力求使600项食品检测标准与国际接轨。

除了在国内采取的行动外，中国还与其贸易合作伙伴就双边计划展开合作，以进一步改善食品安全。除了加强与中国国家食品药品监督管理局、中国检测机构国家质量监督检验检疫总局的正常交流外，美国卫生和福利部（HHS）还举办了技术研讨会。中国国家质检总局与美国农业部还就肉类和禽类产品的安全进行了磋商。

重要的是，美国卫生和福利部和中国国家质检总局就食品与饲料签署了旨在提高贸易产品安全性谅解备忘录。中国与其欧盟和东盟贸易合作伙伴的相关机构也建立了类似合作。这些合作可能在短期内无法产生立竿见影的效果，但其已向着正确的方面迈进，将会逐步提高国内食品和出口食品的质量。

具体问题

美国出口商所关注的具体农业问题主要是，他们通常会因陷于政府所采取的各种政策和行政措施之中，有些措施不仅从风险角度无法证明其实施的合理性，而且有悖于与中国所做出的让外国投资者享有国民待遇的入世承诺。

牛肉市场准入

尽管中国在2006年4月中美商贸联委会会议期间，

Specific Issues

Specific agricultural issues that concern U.S. 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.

Beef Access

Since 2003, China has continued its complete ban on U.S. beef despite the offer during the April 2006 Joint Commission on Commerce and Trade (JCCT) meeting to re-establish U.S. beef import eligibility. When both sides failed to reach a bilateral agreement to re-establish the beef trade, China unilaterally published a list of requirements for the conditional resumption of U.S. beef shipments in July 2006.

U.S. industry and government agreed that the conditions put forth by China were commercially unviable and did not conform with international guidelines on safely traded bovine products and effective risk mitigation measures. In the meantime, the U.S. 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 improved on its offer of U.S. beef access in the summer of 2007 to include bone-in beef from U.S. cattle younger than 30 months old, but the conditions still fall short of OIE guidelines. China could eliminate the discrepancy in standards on beef by adopting the global OIE standards for trade in beef products.

Ractopamine in Pork

China has delisted eleven U.S. pork plants from exporting to China since early 2006 due to the residual presence of Ractopamine, an FDA-approved Beta Agonist feed ingredient widely used in the hog industry in the U.S. During the third Strategic Economic Dialogue (SED) in December 2007, six U.S. pork plants were returned to the list of eligible exporters. However, international experts working under the auspices of the CODEX Alimentarius Commission, an international food-standards organization, have endorsed the safety of the proper use of Ractopamine and the feed ingredient has reached Step 8 in the overall CODEX approval process.

Ractopamine is a swine feed ingredient that directs nutrients to increase the amount of lean meat in high value cuts and improves production efficiency. It is estimated that Ractopamine is used by approximately 70 percent of all U.S. pork producers and is accepted as safe by more than 24 countries including the U.S., Japan, South Korea, Australia and Canada.

The delisting of certain U.S. plants as a result of the use of Ractopamine appears to be based on questionable logic. China has experienced severe problems with the abuse of animal health products, including the Beta Agonist Clenbuterol. Due to past food safety crises involving human casualties resulting from the ingestion of tainted pork, China banned the use of all Beta Agonists in 2002. China has justified the delisting of U.S. pork plants based on its existing domestic ban. The U.S. has argued that given the significantly different properties of Clenbuterol from Ractopamine, China should complete a risk assessment of the safety of the latter and establish a safe tolerance for the presence of the feed ingredient in meat products.

It is ironic that in a year when China's pork prices have risen to record high levels, competitive imports from the United States have been limited due to China's position on Ractopamine. While respectful of China's domestic issues with the abuse of unapproved animal health products in the swine industry, AmCham contends that Ractopamine is safe and there needs to be a harmonizing of residual levels for Ractopamine in pork between both countries.

Zero Pathogens in Red Meat and Poultry

China continues to enforce pathogen standards on imported meat and poultry that are unscientific and differ from those of CODEX. Specifically, 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 enteropathogenic bacteria is generally considered unachievable without first subjecting raw meat and poultry to irradiation.

Global experts consider China's position to be both unscientific and commercially unviable. Furthermore, this policy constitutes a continued risk to U.S. exporters who are uncertain of when findings may result in product rejection. Pathogen detections, plant delistings and warnings issued against U.S. plants increased substantially during 2007, resulting in a severe disruption of the U.S. pork and poultry trade with the PRC during a time of unprecedented demand and need. Evidence suggests that domestic

同意恢复美国企业对中国的牛肉出口，但自2003年来，全面禁止进口美国牛肉的问题尚未得到完全解决。在双方未能达成有关重新建立牛肉贸易的双边协议后，中国于2006年7月单方面公布了有条件恢复美国牛肉进口的一系列要求。

美国业界和政府一致认为，中方提出的要求在商业操作上不具有可行性，同时也不符合牛肉产品安全交易和风险控制的国际准则。同时，世界动物卫生组织于2007年5月认定美国为疯牛病可控风险的国家，允许通过有效去除其特定的风险物质来实现所有牛肉的贸易。

2007年夏季，中国调整了其对美国牛肉准入的条件，允许进口美国育龄期不满30个月的小牛带骨牛肉，但条件仍然不符合世界动物卫生组织的指导原则。中国可采用世界动物卫生组织有关牛肉产品贸易的全球标准，以此消除牛肉贸易标准方面的差异。

猪肉中的莱克多巴胺

自2006年初以来，中国因在猪肉中发现莱克多巴胺残留而将11家美国猪肉生产企业从其进口商名单中删除。莱克多巴胺是美国食品和药品管理局(FDA)批准的乙型受体素饲料成分，在美国养猪业被广泛使用。在2007年12月的中美第三次战略经济对话中，中国恢复了其中被禁的6家美国猪肉生产企业的进口商资格。然而，国际食品法典委员会的国际专家已经认可了适量使用莱克多巴胺的安全性，这种饲料成分已经进行到食品法规委员会审批程序的第8步。

莱克多巴胺是一种猪饲料成分，能够令营养成分转化瘦肉，从而提高精肉的产出率。估计美国有约70%的猪肉生产商都使用莱克多巴胺，包括美国、日本、韩国、澳大利亚和加拿大在内的超过24个国家都认可了其安全性。

由于使用莱克多巴胺，美国猪肉生产企业被从进口名单中删除，这一作法的合理性似乎还有待商榷。中国就曾由于滥用动物保健产品（包括乙型受体素克伦特罗）而出现严重的问题。而且鉴于曾发生过因食用问题猪肉而导致人员病亡的食品安全问题，中国于2002年出台了包括所有乙型受体素使用的禁

令。根据目前的国内禁令，中国将美国猪肉生产企业从进口商名单中删除。但美国表示鉴于克伦特罗和莱克多巴胺在属性上有很大的差异，中国应对后者的安全性进行风险评估，并就肉制品中莱克多巴胺残留制定安全耐受度标准。

正当中国猪肉价格不断创下历史新高时，具有竞争力的美国猪肉却由于中国对莱克多巴胺的政策受到了限制。虽然我们对中国养猪业滥用未经批准的动物保健产品的国内问题表示一定的理解，但中美商会认为莱克多巴胺是安全的，中美两国有必要对猪肉中莱克多巴胺残留量进行协商。

牛羊肉和禽类产品中无病原体

中国目前对进口肉类和禽类产品执行的病原体标准与食品法典委员会要求的标准有较大不同。具体而言，中国一直对生牛羊肉和禽类产品中沙门氏菌和李斯特菌等常见病原体采用零耐受标准。但通常而言，如果不首先将生肉和禽类产品进行辐射处理，完全消除这些肠道致病菌是不可能的。

国际专家都认为中国对此标准的制定不够科学合理，在商业上无法实现。此外，这一政策对美国出口商也构成了持续的风险，他们不知道其产品何时会因发现这些病原体而被禁。在2007年，病原体检测、停止美国企业进口、向美国企业提出警告等事件明显增加，使得在中国国内需求空前高涨的关键时刻，美国对中国的猪肉和禽类产品贸易却出现了严重干扰。与此同时证据显示，国内实施病原体零耐受标准收效甚微。而中国对某些重金属、兽药和其他残留仍采用最大残留限量标准，这与食品法规委员会及其他国际标准不相一致。

“非同步”植物生物技术审批

中国要求用于进口的新生物技术产品必须先在中国获得全面的使用批准，方能递交申请。这种“非同步审查”程序与其他大多数国家都有着很大的差别，会使中国的进口审批过程滞后数年之久。

多性状（混合性状）生物技术产品

中国在多性状产品（两种或两种以上单一性状生物

enforcement of the zero tolerance pathogen standard is weak to 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.

Asynchronous Plant Biotechnology Approvals

China requires that new biotechnology products intended for import receive full approval for use in exporting countries before an application can be submitted. This “asynchronous review” process is significantly different from that used in most other countries and can create a lag of several years for the approval of imports.

Multiple Trait (Stacked Event) Products of Biotechnology

China lacks an official policy on the approval and regulation of multiple trait events, i.e., multi-trait biotech products that can be derived from the conventional crossing of two or more single-trait biotech varieties. China does not have a regulatory policy for stacked-event products that is science-based and takes into account existing reviews of single-trait products.

Quotas and Registrations

Importers of U.S. poultry products must acquire an Auto Registration Form from the Ministry of Commerce (MOFCOM). This auto registration has been issued to less than 150 companies in China and is extremely difficult to obtain. It 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.

China has implemented a tariff rate quota (TRQ) system for a number of agricultural products according to its WTO commitments. However, 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. Small TRQ allocations discourage imports of bulk commodities, which are only competitive when sourced in market-sized cargoes, not the smaller sizes issued to quota holders. Additionally, the government does not publish a list of quota holders once the allocations have been made, which complicates marketing efforts for U.S. suppliers.

Transparency in China's Agricultural Regulations and Administration

China's agricultural sector has experienced tremendous liberalization over the past several years in terms of both trade and production policy. Challenges remain, however, and while AmCham applauds the progress to date, there is concern that China is taking a step backwards in terms of transparency and fair enforcement of rules. For example, China's rules on the collection of value added tax (VAT) are opaque and 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.

China has recently imported large quantities of pork, vegetable oil and soybeans to be placed in government reserves. These products were imported VAT-free. There is a fear that such products will eventually be released, VAT-free, into the hands of domestic champions in their respective industries. This would depress margins for other industry players, whether domestic or foreign, and unfairly reward these select few companies. China's VAT policy should be more transparent and predictable, and fairly enforced.

Quarantine regulations are also enforced inconsistently across China and used as unscientific barriers to trade. In 2007, shipments of U.S. product were either rejected or delayed at entry as AQSIQ inspectors in a number of specific ports scrutinized U.S. shipments in what appeared to be a retaliatory manner directly related to problems of Chinese products being detained for food safety violations on entry into the U.S. Such delays can be extremely costly. For example, the detention of a single shipload of soybeans can cost a U.S. shipper up to US\$100,000 per day in vessel demurrage charges. Chinese quarantine authorities, armed with Decree 73, are empowered to reject shipments of agricultural goods simply because the goods do not comply with onerous Chinese food standards. These moves introduce a tremendous amount of risk for shippers of U.S. agricultural products.

Investments in Agricultural Industries

The National Development and Reform Commission (NDRC) and MOFCOM released China's revised Foreign Investment Catalogue in November 2007. Newly added to the restricted list of industries are the breeding and seed development of all crops. Only the breeding of grains, oilseeds and cottonseeds was

技术变种通过常规杂交而衍生出的多性状生物技术产品)的审批和监管方面缺少官方政策。中国对于混合性状产品没有制定以科学为基础的、将现有单一性状产品审查考虑在内的监管政策。

配额与登记

进口美国禽类产品的公司必须获得中国商务部的自动登记表。获得自动登记表是件非常困难的事情,商务部只向中国不足150家企业分发这种自动登记表。这实际上是商务部用来控制进口总量的一种隐性配额。此外,商务部的审批程序相对缺乏的透明性。

根据入世承诺,中国已对许多农产品采取了关税配额(TRQ)机制。然而,这些关税配额管理的一些方面不是推动,而是阻碍了贸易的发展。对糖、玉米等商品分配的关税配额过少,相对缺乏商业价值。因为分配的关税配额过少会遏制大宗商品的进口,这些商品只有在大规模采购时才具有竞争优势,可配额持有者只能获得的少量配额。此外,在完成配额分配后,政府并不公布配额持有者名单,这使得美国供应商更加无法应对复杂多变的市場。

中国农业监管的透明度

过去数年来,中国在农业包括贸易与生产领域的开放上取得了重大进展,但挑战仍然存在。虽然中美商会对目前的进展表示赞赏,但仍关注中国在透明度和公平执法方面的进展情况。例如,中国对于增值税的征收就缺乏透明度,且在执行中存在随意性。甚至有时,国内农产品的增值税率比同类进口产品还低,这有悖于中国的国民待遇承诺。

中国最近进口了大量猪肉、植物油和大豆,作为政府储备。这些产品在进口时免除了增值税。有人担心这些产品最终会以免增值税的方式转让给各自行业的国内龙头企业。这会压低其他行业竞争者(包括国内和国外企业)的利润率,使这些极少数公司获得不公平的竞争优势。中国的增值税政策应当更加透明、更具可预知性,同时应公平执法。

中国各地在执行检疫规定方面差异也很大,成为不合理的贸易壁垒。2007年,美国发运产品在入境时

不是被拒,就是被拖延,因为很多地方港口的国家质检总局检查人员对美国发货都要进行详加检查,似乎是对美国扣留因食品安全违规的中国产品的报复行为。这种滞延代价可能极高。例如,扣留一船大豆,美国发货商就需要支付每天10万美元的船舶滞期费。根据第73号法令,中国检疫机构有权拒绝农产品货物的入境,而拒绝入境的理由仅因为这些货物不符合中国繁杂的食品标准,这给美国农产品发货商带来了巨大的风险。

农业投资

中国国家发展和改革委员会和商务部于2007年11月发布了修订后的中国投资指导产业目录。所有农作物的选育和种子开发被划入限制类投资产业范围,而之前仅谷类、含油种子和棉籽的选育被列入限制类范围。豆粕和大豆油加工此次被列入限制类名单,任何该领域的新外商投资都只能参股。此外,植物油精炼仍在限制类范围内,目前外资也仅限于参股。玉米以及玉米制品的加工也被加入限制类名单中。

谷类、棉花、植物油、食用糖和化肥的批发零售和物流仍在限制范围内。但根据新目录,外商投资企业可以设立不超过30家的分店,否则必须由中方控股。这一新规定似乎违反了中国人世承诺——即2006年12月11日后,中国允许外商设立独资公司从事这些产品的批发和代理销售。

中美商会担心限制诸多农业产业的外商投资会减缓中国农业的改革开放进程。据商务部《国别贸易投资环境报告》统计,2006年中国农业产业的外商投资比2005年同比减少16.5%。如果中国希望缩小城乡收入差距,就有必要扩大国内企业和外商对农业产业的投资。此外,限制外商对农产品加工行业的投资会影响政府致力于降低食品价格的计划。

一方面,国家发改委要求所有植物油加工企业充分发挥其生产能力,以降低价格,但同时却在限制外商的投资行为。总而言之,中美商会认为投资指导产业目录中的关于农业部分的新增限制无益于中国改革开放的推进,也无益于中国农业市场高效运作的发展。 ■

restricted in the previous catalogue. The processing of soybeans into meal and oil was moved to the restricted list and any new investment by foreigners in this industry is limited to minority stakes. In addition, vegetable oil refining remains in the restricted category, but foreigners are now limited to minority shareholdings only. The processing of corn and corn-based products was also added to the restricted list.

Wholesale retailing and logistics of grain, cotton, vegetable oils, edible sugars and chemical fertilizer remained on the restricted list. However, a foreign company is limited to a presence of less than 30 stores unless it agrees to assume a minority shareholding. The new ruling appears to violate China's WTO commitments to allow foreigners to set up wholly owned companies to engage in wholesale and agency sales of these products after December 11, 2006.

AmCham is concerned that restricting foreign investment in a number of agricultural industries will serve to slow the reform and opening up of Chinese agriculture. Foreign investments in Chinese agricultural industries fell by 16.5 percent in 2006 year-on-year from 2005, according to MOFCOM's Foreign Market Access Report. More domestic and foreign agricultural investment is needed if China is to narrow the income gap between urban and rural areas. In addition, restricting foreign investments in agricultural processing will jeopardize the government's efforts to cool down food prices.

On one hand, the NDRC has asked all vegetable-oil processors to run at full capacity to lower prices, while at the same time it has restricted foreigners' freedom to invest. Overall, AmCham views the new restrictions included in the investment catalogue as a step backwards in China's opening up and detrimental to the working of efficient agricultural markets. ■

retaliatory measures to food and product safety disputes with the U.S.

- Develop and enforce phytosanitary measures that are science-based and practical, thereby eliminating these as non-tariff trade barriers for U.S. 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.
- Reconsider restrictions on foreign investment in agricultural industries introduced in the November 2007 Foreign Investment Catalogue and eliminate equity caps for foreign investors in such industries.

Recommendations

- Encourage China to ensure that domestic and import inspections and enforcement are uniform in practice and policy.
- Eliminate the ban on the importation of U.S. beef and establish an import regime consistent with OIE standards.
- Establish Maximum Residual Levels (MRLs) for Ractopamine in imported pork in accordance with CODEX draft standards.
- Do not use technical barriers to trade as

建议

- 敦请中国政府对国产与进口产品的检查，应遵从政策制定和执法实践中的一致性。
- 取消对美国牛肉的进口禁令，并建立符合世界动物卫生组织标准的进口制度。
- 针对进口猪肉中的莱克多巴胺，制定符合CODEX标准草案的最大残留限量标准；
- 不利用技术性贸易壁垒作为对中美食品和产品安全纠纷的报复性措施。
- 制定并采取科学、实际的植物检疫措施，从而消除对美国农产品的非关税贸易壁垒。
- 取消缺乏透明度的配额和登记机制，提高关税配额。
- 取消禽类进口的自动登记制度。
- 确保在征收增值税时，对进口与国产产品给予平等对待；
- 考虑调整2007年11月外商投资产业指导目录中对农业产业外商投资的限制，并取消对这些行业外国投资者的不公平待遇。



Civil Aviation

2

In recent years U.S. aerospace suppliers and airlines have been actively promoting trade and services and have been offering advanced technologies and training programs to Chinese aviation groups. These groups include regulatory agencies, airline/aircraft operators, maintenance and repair companies, and aircraft, engine and component manufacturers. In 2006, U.S. aviation companies collectively exported US\$5.6 billion to China and imported US\$133 million from China.

China's civil aviation sector is expected to grow at an annual rate of 10 percent over the next 20 years. This correlates to a total of 3,400 new aircraft worth US\$340 billion. The Chinese Government has been pushing for balanced geographical growth of the sector, suggesting that regional routes serving western and remote regions of China will need to increase at a higher rate if they are to keep pace with the faster-growing eastern routes. However, many challenges to healthy and sustainable growth remain.

First, approximately 70 percent of the country's airspace is controlled by the military. These restrictions cause serious air traffic congestion on trunk routes and preclude the development of an efficient general aviation sector. Second, foreign airlines flying into China pay higher landing fees and ground service charges than do domestic airlines and foreign business aircraft operators also pay extra "compensation fees." Third, foreign investors in the aviation industry are restricted to holding a minority share in joint venture companies. Finally, Chinese aviation industry and government officials continue to face difficulties in obtaining U.S. visas and access to certain technologies is limited due to U.S. export restrictions.

Many of these issues are being addressed by AmCham-China's Aviation Cooperation Program (ACP). Through this program, American aerospace companies have established a positive and mutually beneficial relationship with China's government regulators and ministries, including the General Civil Aviation Administration of China (CAAC). AmCham-China is committed to continuing this cooperative approach to addressing the challenges faced by both our member companies and the government as we work together to build a healthy and sustainable aviation market in China.

Significant Developments

The U.S. and China signed an expanded air service agreement in July 2007. The agreement will effectively increase revenue flights between the two countries beyond the current level of 140 flights per week, potentially reaching 320 weekly flights by 2012. Several U.S. airlines have already received new or additional routes as a result of this program.

Last year was the third year that the U.S. Trade Development Agency (TDA) funded the ACP. The total TDA funding for 2007 was US\$1.69 million. These funds supported ACP's efforts to:

1. Assist China in its "Preliminary Study of an Air Traffic Flow Management System;"
2. Conduct "CAAC Transport Aircraft Continued Airworthiness, Maintainability Analysis & Certification" training;
3. Conduct a study on catalyzing growth in China's regional and general aviation markets; and
4. Continue the CAAC/Airlines Executive Management Development Training Program (EMDT). The program is to be conducted both in China and in the United States. In June 2007, 35 CAAC and airline executives attended the program, focusing on managerial, leadership, technical and operational development issues. The program greatly enhances the aviation collaboration between the U.S. and China and improves China's aviation operations.

China has successfully demonstrated Required Navigation Performance (RNP) technology for airliners to fly in and out of terrain-challenging airports such as Jiuzhaigou, Lhasa and Linzhi. In addition, Reduced Vertical Separation Minimum (RVSM) has been successfully implemented in China's main air routes, resulting in improved air traffic capacity.

CAAC officials visited the U.S. Federal Aviation Administration (FAA) in October 2007 to exchange views on ensuring aviation safety while developing the overall aviation industry.

CAAC recently announced a plan to increase subsidies for regional airlines serving remote airports as well as for airports that are less traveled. The result will be greater air service availability for smaller cities

民用航空

近年来，美国航空业的供应商和航空公司一直都在积极地推动中美两国间贸易和服务的发展，并与中国航空监管机构、航线/飞机运营商、维护和修理公司以及飞机、发动机和元件制造商等合作，向其提供先进技术和培训项目。2006年，美国航空企业对中国的总出口额为56亿美元，从中国的总进口额是1.33亿美元。

预计未来20年，中国的民用航空业将会以每年10%的速度增长。这就意味着在此期间，新购飞机需求量将达到3,400架，价值3,400亿美元。同时，中国政府一直在力争中国航空业能够保持地域间均衡的增长，因此若服务于中国西部和偏远地区的地区性航线要与增长较快的东部航线的发展并驾齐驱，则必须保持更快的增长速度。然而，健康的可持续增长仍然面临着重重挑战。

首先，中国大约有70%的空域都被提供为军用，这就造成了主航线上严重的空中交通拥堵，限制了通用航空产业的发展。其次，飞往中国的外国航空公司要缴纳比国内航空公司更高的起降费和地面服务费，而且外国公务飞机运营商还要支付额外的“补偿费”。第三，航空业的外国投资者在合资公司中只限于持有少数股权。最后，中国航空业和政府官员在获得美国签证方面仍然面临着困难，而且由于美国的出口管制政策，对某些技术的使用权也是有限的。

中国美国商会开展的“航空合作项目”（ACP）正致力于解决以上的其中的一些问题。通过该项目，美国航空企业与中国的政府监管机构和部门（包括中国民航总局）建立了积极平等互利的关系。中国美国商会继续致力于这一合作机制，努力解决商会成员公司和政府部门在共同建立一个健康并可持续发展的中国航空市场过程中所面临的挑战。

重大成果

2007年7月，美国和中国签订了扩展航空服务协议。该协议将在当前两国之间每周140个航班的水平上，

有效地增加航班数量，到2012年可能会达到每周320个航班。由于此协议的执行，若干美国航空公司已经获得新的或额外的航线。

2007年是美国贸易发展署（TDA）资助中国美国商会开展ACP项目的第三年。美国贸易发展署提供总额为169万美金的资金用于支持ACP项目2007/2008年的活动：

1. 协助中国进行“空中交通流量管理系统的初步研究”；
2. 开展“CAAC运输飞机持续适航、可维护性分析和证明”培训；
3. 进行有关促进中国支线和通用航空市场增长的研究；
4. 继续开展中国民航总局/航空公司行政管理发展培训项目（EMDT）。项目将在中国和美国两地进行。2007年6月，35名中国民航总局和航空公司行政主管人员参加了该项目，培训重点在于如何解决管理、领导力建设、技术和经营发展等问题。该项目大大促进了中美两国之间的航空合作并提高了中国的航空运营水平。

中国成功地掌握了航空执飞九寨沟、拉萨和林芝等地地形复杂的机场所需的RNP精密导航技术。此外，缩小垂直间隔最低标准（RVSM）已在中国的主要航线成功实施，增加了航空交通容量。

2007年10月，中国民航总局官员参观了美国联邦航空管理局（FAA），并与其就如何在发展整个航空业的同时确保航空安全等问题交流了看法。

中国民航总局最近宣布了一项计划，对服务于偏远地区的支线航空公司以及客运量较少的机场提供补贴。这将增加小城市的航班，同时也给飞机和机场服务的相关供应商带来了更多的商业机会。此外，中国民航总局正在考虑修订《机场收费规定》，以使在特定中国机场开展运营的国际运营商和国内运营商支付相同的机场费用。

and more sales opportunities for suppliers of this class of aircraft and airport services. In addition, a revised version of the “Airport Charges Regulation” is being considered by CAAC to equalize airport charges paid by international carriers with domestic carriers operating in selected Chinese airports.

Specific Issues

Air Traffic Control Capacity

Currently major airports, including Beijing Capital International Airport, Shanghai Hongqiao International Airport and Guangzhou Baiyun International Airport are operating at or reaching maximum capacity for takeoff and landings due to limited civil airspace. Airlines have limited and narrow air corridor entry points. Further, en-route congestion is increasing, leading to lengthy departure delays and operational problems. The worsening flight delays in Beijing and Shanghai have a ripple effect, not only in China, but also on the worldwide airline transportation system.

Starting in August 2007, CAAC began to reduce the number of flights into and out of the Beijing Capital International Airport from 1,050 to 1,000 flights per day in order to ensure safety and on-time takeoffs and landings. However, slot coordination for takeoff and landing is not yet being handled according to international best practices. Although the operation of the third terminal and runway will alleviate airport ground and air traffic problems to a degree, limited civil airspace will continue causing air traffic congestion in and around Beijing and other airports.

Adapting to the International Civil Aviation Organization’s airspace classification methodology and applying state-of-the-art air traffic management (ATM) technologies such as GNSS (Global Navigation Satellite System), ADS-B (Automatic Dependent Surveillance – Broadcast), and GBAS (GPS Ground-based Augmentation System) would partially solve the problem of congestion. Nonetheless, expanding civil airspace relative to military control should remain the top priority and overall solution to this problem. Several ACP projects are helping the CAAC and other government units understand how a better balance and co-existence between civilian and military-controlled or managed airspace can be accomplished. These projects and programs are important and should continue while government-to-government cooperation needs to increase so as to accelerate the process.

High Operating Costs

Foreign carriers, including airlines, cargo operators and business charter operators, face high operating costs in China. This stems from several factors that collectively limit industry efficiency. Foreign carriers are mandated to hire local staff from Foreign Aviation Services Company (FASCO), a designated employment agency, which provides non-competitive services. Further, the method of calculating aviation fuel rates charged at major airports is not transparent and consists of a base differential which is not market-linked, while equipment rental fees are also not transparent at the Beijing airport.

The resulting high operating costs reduce the profitability of foreign airlines providing services to major Chinese airports. As a result, these airports, which are competing for recognized industry status as “global aviation hubs” with other international airports in the region, are at a strategic disadvantage. Thus both foreign air carriers serving China and China’s airports suffer from a competitiveness standpoint.

General Aviation Development

General Aviation (GA) is vital to the healthy development of the entire aviation market. Around the world, over 320,000 GA aircraft are in operation, flying in excess of 35 million hours per year. But in China, there are only about 500 GA aircraft, flying around 70,000 flight hours per year. AmCham believes the development of GA is critical to China’s development for the following reasons:

1. GA is an important foundation for the entire aviation system as it serves as a “feeder” of experienced aviation personnel including pilots, mechanics, etc.
2. The development of western, central and northeastern China requires massive infrastructure expenditure. GA is the most economical approach because the cost of building a GA airport is less than that of building a two-kilometer highway. On a cost-benefit basis the advantages are clear.
3. GA stimulates economic development and job creation. The total impact of GA exceeds US\$150 billion and 1.32 million jobs per year in the U.S. and given China’s geographical terrain and population dimensions, a very large market opportunity exists here as well.

There are, however, several factors hindering the development of GA in China, including airspace

具体问题

空中交通管理能力

由于目前有限的民用空域，包括北京首都国际机场、上海虹桥国际机场和广州白云国际机场在内的主要机场都已经达到或接近其最大的起降次数。航空公司的空中走廊出入点有限，同时由于航路的拥堵不断加剧，导致出发时间延误过长和相关的操作问题。北京和上海日益恶化的航班延误情况对国内和全球航空运输系统都具有波及效应。

自2007年8月开始，中国民航总局开始将出入北京首都国际机场的航班数从每日1,050航班减少到1,000航班，以确保安全和准时起降。然而，起降的机位协调工作仍未能采用国际最佳做法。尽管预期的第三航站楼和第三跑道投入运营将会在某种程度上缓解机场地面和空中交通问题，可有限的民用空域将继续导致北京和其它机场面临空中交通拥塞。

采用国际民航组织的空域分级方法并应用最新的空中交通管理（ATM）技术，如GNSS（全球导航卫星系统）、ADS-B（广播式自动相关监视）和GBAS（GPS陆基增强系统）等，会部分解决拥塞的问题。然而，增加民用空域相对于军用空域的比例仍然是当务之急，也是解决此问题的根本方案。ACP项下的多个研究项目正在协助中国民航总局和其它政府部门了解如何实现民用与军用空域之间的相对平衡和共存。这些项目和计划具有重要意义，应当持续下去，同时也应加强政府间的合作，进一步推动这一进程。

高运营成本

国外飞机外国运营商（航空公司、货运公司和商业包机运营企业）在华的运营成本很高。这归因于多个限制行业效率的因素。外国运营商被强制要求从外航服务公司（FASCO）雇用当地人员。这是指定的职业介绍机构，提供非竞争服务。此外，在主要机场，收取的航空燃油费的计算方法并不透明，而且是由非市场因素的基数构成。在北京机场，设备租赁费也缺乏透明度。

由此导致的居高不下的经营成本，削弱了在中国主

要机场提供服务的外国航空公司的盈利能力。因此，在其与该地区其它机场竞争“全球航空枢纽”机场地位时，处在不利的战略地位。因此，无论是在中国开展服务的外国航空运营商，还是中国境内的机场都将会因缺乏竞争力而蒙受损失。

通用航空业的发展

通用航空（GA）对于整个航空市场的健康发展具有至关重要的意义。在全球范围内，有超过32万架通用飞机投入运营，每年的飞行时间超过3,500万小时。但在中国，大约只有500架通用飞机，每年的飞行时间约为70,000小时。中美商会认为通用航空业务的发展对于中国的发展具有重大意义，原因如下：

1. 通用航空是整个航空系统的重要基础，因为它是飞行员和机械师等富有经验的航空人员的“供应站”。
2. 中国西部、中部和东北地区的发展需要大量的基础设施投入。通用航空是最经济的途径，因为建设一个通用航空机场的成本低于建设两公里高速公路的成本。从成本效益上看，具有明显优势。
3. 通用航空业能刺激经济发展，创造就业机会。在美国，通用航空每年所产生的效益超过1500亿美元，创造132万个工作岗位。鉴于中国的地形地貌和人口规模，通用航空在中国同样存在非常大的市场机会。

然而，有几个因素阻碍着通用航空业在中国的发展，其中包括空域限制和对飞机、配件和设备征收的高额进口税和增值税。当前的综合税率是21.68%，影响了通用航空业的发展。

对投资的限制

自2000年加入世界贸易组织（WTO）以来，中国一些主导的产业市场逐渐向外国投资者开放。然而，在航空产业，相关法规依然限制外国投资，外方只能在合资公司中持少数股权。此外，外国投资只能取得A级和B级空运销售代理许可证。这些限制规定阻碍了外国投资者对中国航空公司、飞机制造商和服务提供商的投资（资本和技术）。

restrictions and high import- and value-added taxes for aircraft and supporting spares and equipment. The current combined tax rate is 21.68 percent, providing an obstacle to development.

Restrictions on Investment

Since accession to the World Trade Organization (WTO) in 2000, China has gradually opened its key market sectors for foreign investment. Nevertheless, in the aviation sector, foreign investment is still restricted by regulations limiting joint venture companies to minority positions. In addition, foreign investment is limited to obtaining Class A and Class B Air Freight Sales Agency licenses. These restrictions discourage investment (capital and technology) in Chinese airlines, aviation manufacturers and service providers.

Visas and Export Controls

Overall, there has been some improvement in the implementation of the U.S. visa policy over the past two years. The number of business and tourist visas issued to Chinese nationals in 2006 was 18 percent higher than 2005; however, the wait time of 20 to 30 days for a visa interview is still too long and causes inefficiencies. While staffing has increased in recent years, the complicated visa process continues to discourage potential customers and partners from traveling to the United States. This continues to weigh on the competitiveness of U.S. companies, disrupting many planned delegation and customer visits, as other countries offer much easier visa procedures. The current visa policy is not selective enough in determining which category of applicants needs to go through the fingerprinting requirements and aviation-related travelers (business and government) seem to be disproportionately running into visa problems.

U.S. export controls continue to impact U.S. aerospace companies' competitiveness in China. This situation is made more acute because non-U.S. companies face stricter export control levels. (For more detail, see the chapter on Export Controls). ■

Recommendations

For the Chinese Government

- AmCham urges the State Commission of Air Traffic Management to adopt the International Civil Aviation Organization's

airspace classification methodology to make more airspace available for commercial use.

- AmCham urges the Air Traffic Management Board (ATMB) to accelerate deployment of state-of-the-art ATM technologies in near-term airport and airspace expansion and modernization projects.
- AmCham urges the Civil Aviation Administration of China (CAAC) to ensure transparent cost structures for fuel and equipment rental at major airports, and allow foreign carriers to employ staff from open talent markets.
- Reduce the import duty and value added tax for GA aircraft.
- Encourage foreign investment in capital and technologies in Chinese airlines, aviation manufacturers and service providers.

For the U.S. Government

- Please refer to Visa section for specific recommendations.
- Please refer to Export Controls section for specific recommendations.

签证和出口控制

总体上，最近两年美国签证政策在执行方面有了一定的改善。2006年向中国公民签发的商务和旅游签证的数量比2005年高18个百分点，但是，20至30天的签证面试等待时间仍然过长。虽然近年来，签证处的人员配备有所增加，但复杂的签证程序仍然阻碍了潜在的客户和合作伙伴到美国的旅行。这继续对美国公司的竞争力产生着不利影响，由于其它国家在不断简化签证程序，致使许多计划中的代表团和客户取消访美计划。在确定需要经过指纹识别检查的申人类别时，当前的签证政策缺乏充分的选择性，使航空业的相关旅行者（商务和政府人员）似乎总是遇到签证问题。

美国的出口管制政策仍然影响美国航空企业的在华的竞争力。由于非美国企业面临较严格的出口审查，使这种形势变得更加严峻。（更多详细内容，请参见出口管制章节）。 ■

建议

对中国政府

- 商会呼吁国家空中交通管制委员会采用国际民航组织的空域分类方法，以使更多的空域用于商业用途。
- 商会呼吁空中交通管制委员会在近期的机场和空域扩展、现代化项目中加快部署和使用最新的ATM技术。
- 商会呼吁中国民航总局确保主要机场的燃油和设备租赁成本结构透明，并允许外国运营商从开放的人才市场中招聘员工。
- 降低通用航空飞机的进口关税和增值税。
- 鼓励外国投资者以资本和技术的形式投资中国的航空公司、飞机制造商和服务提供商。

对美国政府

- 具体建议请参见签证部分。
- 具体建议请参见出口管制部分。

Construction, Engineering and Design

The construction industry, a mainstay of the Chinese economy, has undergone unprecedented growth in recent years. Ongoing infrastructure development, driven by the 2008 Olympics in Beijing and the 2010 World Expo in Shanghai, will continue to play a significant role in raising the quality level and expanding the use of innovative contractual and financial models to improve the standard and efficiency of construction activity in China.

Significant Developments

In the past year, the Ministry of Construction (MOC) has issued the following rules and regulations governing the operations of foreign construction, engineering and design companies: Regulations Governing the Management of Qualifications for Construction Supervision Enterprises (Decree 158) and its Implementation Rules (Circular 190); the Regulations Governing the Management of Qualifications for Construction Enterprises (Decree 159) and its Implementation Rules (Circular 241); and the Regulations Governing the Management of Qualifications for Construction Survey and Design Enterprises (Decree 160) and its Implementation Rules (Circular 202).

The much anticipated Regulation Governing the Management of Foreign-invested Engineering Services Enterprises (Decree 155), which was directed at foreign-invested construction, tendering, supervision and cost advisory enterprises, was issued in March 2007. The MOC and its local counterparts have not begun accepting applications submitted under Decree 155 and are not expected to do so until the Implementation Rules for Decree 155 are issued.

The MOC also issued the Qualification Standards for Engineering Design (Circular 86) in March 2007, which superseded Circular 22. Companies applying for design qualifications under Decrees 114 and 160 must be sure to comply with Circular 86 as well.

Unlike Decrees 113, 114 and 155, which apply only to foreign-invested enterprises (FIEs), Decrees 158, 159 and 160 and their corresponding Implementation Rules apply to both domestic and foreign-invested construction supervision enterprises, construction

enterprises, construction survey enterprises and design enterprises. Therefore, FIEs must comply with both sets of regulations (e.g., Foreign-Invested Design Enterprises (FIDEs) must comply with Decrees 114 and 160 and Circulars 86 and 202).

Specific Issues

Construction Works Sector – Decree 113

Decree 113 delineates the necessary qualifications and requirements that foreign construction companies must have before they can undertake construction activities in China. Specifically, a foreign construction company must establish a local presence by setting up some form of Chinese legal entity (either a wholly foreign-owned enterprise (WFOE) or a Sino-foreign joint venture). After its establishment, this Chinese legal entity must apply for the appropriate construction grade qualification so that it becomes a Foreign-Invested Construction Enterprise (FICEs).

Separate Qualification Standards

The grade qualification determines the maximum size and scale of projects that a construction enterprise may undertake. In March 2007, the MOC issued the Qualification Standards for Special Class Main Contractors (Circular 72), which updated the Qualification Standards for Special Class Main Contractors. Circular 72 divided the universal qualification standards for construction enterprises that were put forth in Circular 82 by the MOC in April 2001. This divided system, in which Circular 72 applies to Special Class Main Contractors and Circular 82 applies to all other grades of main contractors as well as all specialty contractors and labor sub-contractors, will remain in existence until the MOC updates the rest of Circular 82 to make it consistent with Circular 72. AmCham urges the MOC to integrate the system and clarify the situation before the transition period ends.

The concerns mentioned in previous White Papers regarding the upgrading of qualifications were eased somewhat by Circular 241, which provides that there is no time limit preventing construction enterprises from applying for an upgrade. While AmCham is pleased that design companies with several general

建筑、工程和设计

作为中国经济的支柱产业之一,建筑业近年来经历了前所未有的增长。在2008年北京奥运会和2010年上海世博会的推动下,基础设施建设持续发展,并继续在提高创新性合约与融资模式的质量水平、扩大应用等方面发挥重要的作用,进而提高中国建筑业行为的标准和效率。

重大成果

去年,建设部(MOC)颁布了旨在规范外国建筑、工程和设计公司业务经营的以下法规和规定:《工程监理企业资质管理规定》(第158号令)及其实施细则(第190号通知);《建筑业企业资质管理规定》(第159号令)及其实施细则(第241号通知);《建设工程勘察设计资质管理规定》(第160号令)及其实施细则(第202号通知)。

被寄予了很高期望的《外商投资建设工程服务企业管理规定》(第155号令),作为专门针对外商投资的建筑、招标代理、监理和造价咨询企业的一项规定,于2007年3月颁布。建设部及其地方部门尚未开始受理依据第155号令提交的申请,预期在第155号令实施细则颁布之后,方会开始受理申请。

建设部还于2007年3月颁布了《工程设计资质标准》(第86号通知),其取代了第22号通知。依据第114号令和第160号令申请设计资质的商会成员还必须遵守第86号通知。

与第113号令、第114号令和第155号令只适用于外商投资企业(FIE)不同,第158号令、第159号令和第160令及其相应的实施细则同时适用于内资和外商投资的工程监理企业、建筑企业、工程勘察设计企业。因此,外商投资企业必须遵守两套法规(例如,外商投资设计企业必须遵守第114号令和第160号令以及第86号通知和202号通知)。

具体问题

工程建筑领域——第113号令

第113号令规定了外国建筑企业要在中国从事建筑活动所必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(外商独资企业(WFOE)或中外合资企业)。成立后,此中国法律实体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)。

单独的资质标准

资质等级决定了建筑业企业可以承接的项目的最大规模。2007年3月,建设部颁布了《施工总承包企业特级资质标准》(第72号通知),修订了《施工总承包企业资质等级标准》。第72号通知把2001年4月建设部在第82号通知中提出的建筑企业通用资质等级标准进行了划分。在这个划分后的体系中,第72号通知适用于特级资质总承包企业,而第82号通知适用于所有等级的总承包商以及行业承包商和劳务分包商。同时这种政策不衔接的情况将会延续直至建设部对第82号通知其余配套政策的制定与完善。中美商会非常希望建设部有关部门能够保持此法规政策的连贯性,并在其颁布实施之前予以阐述说明。

第241号通知一定程度上缓解了往年白皮书中提到的有关资质升级问题的担忧。该通知规定,建筑企业申请资质升级是没有时间限定的。虽然商会很高兴在中国有若干总承包业绩的设计企业可以从一级或二级起步,但对在以前白皮书中提到的有关市场准入、注册资本要求过高、业绩要求、联合体的使用以及人员和经验要求的担忧仍然存在。

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取得的资质。为在中国承接设计工程,外国工程设计公司必须在中国境内设立某种形式的中国法律实体(外商独资企业或中外合资企业)。一旦设立后,此中国法律实体必须申请适当的设计资质,以成为外商投资建筑工程设计企业。与建筑服务不同,外国工程设计公司就有机会承接境外设计工程,根据第78号令,如果外国工程设计公司在境外服

contracting track records in China can start from Grade A or Grade B, the concerns mentioned in previous White Papers regarding market exclusions, excessive registered capital requirements, track record requirements, the use of consortia, personnel and experience requirements remain unresolved.

Engineering and Design Sector – Decree 114

Decree 114 sets out the steps to be taken and the qualifications to be obtained for foreign engineering and design companies to undertake design activities in China. In order to undertake design works in China, a foreign engineering and design company must establish a local presence by setting up some form of Chinese legal entity (either a WFOE or a Sino-foreign joint venture). Once established, this Chinese legal entity must apply for the appropriate design qualification so that it becomes a FIDE. Unlike construction services, the opportunity exists for foreign engineering and design companies to undertake design work offshore insofar as Decree 78 allows foreign engineering and design companies to work in cooperation with locally qualified engineering design institutes where the offshore services involve engineering design beyond the basic initial conceptual design stage.

Decree 114 Implementation Rules

AmCham members welcomed the issuance and subsequent acceptance of applications under the final Decree 114 Implementation Rules (Circular 18). Although Circular 18 is a marked improvement, pressing questions and uncertainties remain.

Personnel Requirements

Circular 18 allows FIDEs to “temporarily” meet the requirement that 25 percent of their foreign technical personnel be qualified as either registered architects or registered engineers in China by hiring Chinese nationals who are PRC-registered architects or engineers. Similarly, FIDEs may meet the minimum percentage requirement for PRC-registered key technical personnel by employing Chinese technicians. In addition, Circular 18 relaxes the six-month residency stipulation if it cannot be met “temporarily.”

AmCham welcomes these moves, but is concerned about the use of the word “temporarily,” which implies an element of discretion on the part of the MOC and leads to considerable uncertainty

for foreign engineering and design companies in planning their long-term operations in China. AmCham strongly urges the MOC to remove this word and make the change permanent.

Upgrading of Qualifications

Decree 160 removed the practice of making FIDEs first obtain a temporary qualification certificate and then wait two years before applying to upgrade to the next qualification grade that existed under Decree 114. Under 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 contracting track records in China. However, Circular 202 does much to mitigate the progress made by Decree 160 because FIDEs are prohibited from starting at Grade A or above. Moreover, Circular 202 requires that only design works included in general contracting track records be used 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 the newly relaxed rules. While AmCham applauds the MOC for introducing Decree 160 in accordance with international practices, it urges the MOC to allow all FIDEs to enjoy the relaxed rules and apply for Grade A qualifications in their initial applications.

Use of Consortia

A common approach to infrastructure procurement internationally is to award large infrastructure projects to a consortium of contractors. The PRC Construction Law permits two or more contractors to jointly undertake construction projects. However, contrary to international practice, all consortiums are limited to undertaking work within the lowest qualification grade held by any of the individual consortium members. AmCham is disappointed with this limitation because international best practice assesses the capability of the consortium on the combined experience and resources of the consortium members and is not restricted by the lack of experience or resources of the perceived weaker partner.

Although the PRC Construction Law is silent on the consortium issue relating to design activities, the MOC and its local counterparts will most likely limit the work of design and survey consortia in much the same way as it has done for contractors in practice. AmCham urges the MOC to release rules governing non-contractor consortia to clarify the situation.

务超出提供建设工程初步设计(基础设计)的情况下,外国工程设计公司应与国内符合资质的工程设计单位合作。

第114号令实施细则

中美商会成员欢迎第114号令实施细则(第18号通知)最终的颁布及实施。尽管第18号通知有了显著的进步,但亟待解决的问题和不确定性仍然存在。

人员要求

第18号通知允许外商投资设计企业暂不满足114号令第十五条要求时,可以通过聘用中国注册建筑师、注册工程师以满足114号令对取得中国注册建筑师、注册工程师资格的外国服务提供者人数达到注册执业人员总数25%的要求;对114号令中具有相关专业设计经历的外国服务提供者人数的要求,可以聘用具有中国国籍的专业技术人员代替。而且第18号通知还放宽了对外国服务提供者六个月居住期的要求规定。

中美商会欢迎这些变化,但也很担心“暂时”这个词的使用,它某种程度上暗示着建设部有自行裁量的可能性,这将给外国工程设计公司在中国的长期经营规划带来相当大的不确定性。商会强烈呼吁建设部取消此词的使用,允许永久性放宽这些限制。

资质升级

第160号令废除了第114号令所规定的外商投资设计企业申请升级到上一级资质等级,应在取得临时资质证书两年后的这一惯例。依据第160号令,一级和特级建筑企业可以在初次申请时,凭其在中国的承包业绩申请甲级设计资质。然而,第202号通知在很大程度上削弱了第160号令所取得的进展,因为外商投资设计企业是不得从甲级或以上资质起步。此外,第202号通知还要求,在申请甲级设计资质时,只能使用总承包业绩中所含的设计工程。多数外商投资设计企业,尤其是新到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。虽然商会赞成建设部按照国际惯例推行第160号令,并呼吁建设部让所有的外商投资设计企业享受放宽的规定,并在初次申请中就可申请甲级设计资质。

联合体的使用

国际上常见的基础设施承包模式是把大型基础设施项目承包给承包商联合体。《中国建筑法》允许两个或两个以上的承包商联合承接建筑项目。然而,与国际惯例不同的是,所有联合体都只限于承接联合体单个成员所持有的最低资质等级范围内的工程。中美商会对此限制感到失望,因为国际最佳做法是依据联合体成员的综合经验和资源来评价联合体的能力,并不会因某一实力较弱的成员缺乏经验或资源而受到限制。

尽管《中国建筑法》对有关设计项目的联合体问题没有做出任何规定,但建设部及其地方部门很有可能参照其在实践中对承包商的限定而对勘测设计联合体的工作加以限制。商会呼吁建设部出台有关非承包商联合体的规定,予以澄清。

非国民待遇

第160号令适用于国内设计企业和外商投资设计企业,其明确规定对新成立的设计企业不需有以往业绩要求。然而依据第114号令及其实施细则,外国投资者在首次申请设计资质时必须提供至少两项以往的海外设计工程业绩。这与建设部宣称的“公平竞争”不符,因此,商会呼吁建设部采取措施,以使外国和国内企业享受同等待遇。

建筑工程及工程设计领域的并购行为

资格重新核定

建设部建筑市场司于2007年9月发布了《关于建设工程企业改制、重组、分立等情况资质核定有关问题的通知》(第229号通知)。第229号通知旨在阐明在中国勘察设计、施工、监理企业和招标代理机构在改制、重组、分立和合并过程中涉及的资格重新核定问题。依据第229号通知,建设工程企业改制、重组、分立,申请办理企业资质,按照有关规定重新进行核定。同样,如果收购或股权转让(即国内企业转为外商投资企业或反之亦然)后,企业性质发生变化,相关的资质申请也将由相关建设行政主管部门审查。如果在收购或股权转让后,新成立的企业想申请原企业拥有的资质,可不提交代表工程业绩

Non-National Treatment

Decree 160, which applies to both domestic design enterprises and FIDEs, expressly stipulates that there is no track record requirement for newly established design enterprises. Yet under Decree 114 and its Implementation Rules, foreign investors are required to provide at least two overseas design track records on their initial applications for design qualifications. This is inconsistent with the MOC's avowed "level playing field" and, as such, AmCham urges the MOC to take steps to make the situation equal for both foreign and domestic parties.

Re-qualification Regarding M&A in the Construction Works and Engineering and Design Sectors

The Market Department of the MOC issued a Notice on Qualification Ratification Involving Restructuring, Reorganization and Split (Circular 229) in September 2007. Circular 229 sought to clarify re-qualification issues involved in the restructuring, reorganization, splitting and merging of survey, design, construction, supervision and tendering agency enterprises in China. According to Circular 229, when an enterprise is split up or split off and the surviving enterprise(s) and/or new enterprise(s) apply for the relevant qualifications, all such applications will be subject to review by the competent construction administrations. Similarly, if an acquisition or equity transfer (i.e., converting a domestic enterprise to a FIE or vice versa) changes the nature of an enterprise, the relevant application for qualifications will be reviewed by the appropriate construction administration. If after such an acquisition or equity transfer occurs a newly established enterprise wishes to apply for a qualification possessed by the original enterprise, it may not be required to provide materials to establish a track record. However, for any case in which foreign investors acquire domestic enterprises, Decree 113, Decree 114 and Decree 155 shall apply. Thus, the risk of losing the qualification held by a Chinese company acquired by foreign investors remains unchanged, and the benefits from Circular 229 are somewhat illusory.

Project Management Sector – Circular 200

For several years, foreign construction, engineering and design companies provided project management services and expertise for foreign and Chinese developers. This practice thereby benefited Chinese contractors and developers due to the extensive

transfer of project management technology and expertise. This situation changed with the adoption of Circular 200 on December 1, 2004, which required that project management services be provided by local entities holding specific construction-related qualifications such as design, tendering agency, construction, supervision or cost consultancy qualifications. Therefore, Circular 200 serves as a barrier to market entry for foreign project management companies because only FICEs, FIDEs and other foreign-invested construction services enterprises qualified under Decree 155 are allowed to provide project management services. By requiring project management companies to undergo the formal qualification process in a specific area to meet the registered capital, minimum personnel and track record requirements, foreign project management companies have been severely disadvantaged and the transfer of technology to Chinese contractors and consultants has been significantly hampered. While Decree 155 may provide an alternative path, implementation rules have yet to be issued, so this door remains closed.

EPC Project Management Model

As part of its approach to improve construction quality and efficiency and to develop engineering, procurement and construction (EPC) contracting in China, the MOC issued Order 30 in February 2003 and Order 161 in July 2003. These Guidance Opinions appear to permit EPC contracting provided the EPC contractor holds an appropriate design qualification and sub-contracts the construction activities to an appropriately qualified contractor. Since the MOC has not taken further action to encourage the adoption of the EPC and project management models of contracting in China, these Guidance Opinions are not official pieces of legislation. In this regard, it is somewhat ironic that many Chinese contractors are undertaking EPC contracts in Africa, India and the Middle East, yet are unable to obtain experience of this type of contracting in their own country. AmCham urges the MOC to codify the position of EPC contracting more clearly.

The construction, engineering and design sectors in China will continue to have high growth for several years to come. Many international construction, engineering and design companies have come to China to take part in this development and provide technical and managerial support for Chinese enterprises. Unfortunately, the restrictions contained within Decree 113, Decree 114 and Circular

资料。然而，对于任何外国投资者收购国内企业的情况，第113号令、第114号令和第155号令都适用。因此，中国公司在被外国公司收购后仍然面临可能失去其原有资质的风险，这使得第229号通知带来的益处化为乌有。

项目管理领域——第200号通知

近年来，外国建筑和工程设计企业为外国和中国开发商提供了项目管理服务和专门技术。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从中获益。随着2004年12月1日第200号通知的颁布，这种形势发生了变化。该通知要求项目管理服务由持有设计、招标代理、建筑、监理或造价咨询资质等相关特定工程资质的当地实体提供。第200号通知成为外国项目管理公司进入市场的障碍，因为只有符合第155号令规定资格的外商投资建筑企业、外商投资设计企业和其他外商投资建筑服务企业才可提供项目管理服务。由于按照规定，项目管理公司须办理特定业务领域的资质正式审批手续，以满足注册资本、最低人员和以往业绩要求，这使得外国项目管理公司处于严重不利的地位，大大阻碍了其向中国承包商与顾问公司进行的技术转让。虽然第155号令可提供替代途径，但实施细则尚未颁布，因此大门仍然是关闭的。

EPC项目管理模式

EPC总承包(设计、采购和施工)是提高建筑质量与效率的重要模式，建设部于颁布了第30号令(2003年2月)和第161号令(2003年7月)。这些指导意见似乎允许EPC总承包，条件是EPC承包商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。由于建设部没有采取进一步措施以鼓励在中国采用EPC和项目管理承包模式，这些指导意见还不是正式的立法。在这方面，颇有意味的是，许多中国公司在非洲、印度和中东承接EPC合同，然而却无法在本国获得此类承包经验。商会呼吁建设部更加清晰地将来EPC承包的地位法律化。

中国建筑与工程设计行业在未来若干年中仍将继续保持高速增长。许多国际建筑与工程设计公司来到中国参与此发展，并为中国企业提供技术和管理支持。然而，第113号令和第114号令及第200号通知中

的限制性规定剥夺了中国承包商、设计企业和项目管理企业获得世界级竞争优势所需要的全套专门技术和人才的机会。此外，这些限制性规定阻碍了建设部有关中国建筑与工程设计企业达到国际标准的目标的实现。

2007年，建设部开始受理设计施工一体化资质申请，进一步促进总承包业务在中国的开展。建设部分别于2006年3月和2006年9月颁布了设计与建筑企业的相关资质标准和相关的实施细则。目前，满足资本和人员要求的企业可以申请设计资质、施工资质或设计施工一体化资质。具有该等设计施工一体化资质的企业可以承揽建筑智能化工程、消防工程、建筑装饰装修工程和建筑幕墙工程的设计、施工、咨询、项目管理和总承包服务。商会呼吁建设部通过颁布中国其它工程类型的设计施工一体化资质标准来推广这种做法。 ■

建议

工程建筑领域——第113号令

- 参照国际通行做法，可考虑允许利用母公司的财力、担保或其它保证协议作为一种替代方案，部分或全部取代过高的注册资本要求。
- 允许联合体内的建筑公司在单个成员公司的最高资质等级范围内承接工程。

工程设计领域——第114号令

- 通过删除“暂时”一词阐明第18号通知，并因此使放宽的规定成为永久性规定。
- 允许外商投资设计企业在首次申请中即可申请甲级设计资质。
- 在确定资质等级时，允许考虑外商投资设计企业母公司和关联公司的以往业绩。
- 参照国际通行做法，允许联合体内的设计企业以联合体成员持有的最高资质等级承接工程。

外商投资建筑服务领域——第155号通知

- 尽快颁布第155号令实施细则，并开始受理依

200 deprive Chinese contractors, designers and project managers of the full range of expertise and exposure to the talent needed to become world class competitors. Moreover, these restrictions hinder the MOC's desired goal of achieving international standards for Chinese construction, engineering and design enterprises.

The MOC took further steps towards promoting general contracting in China when it began accepting applications for integrated design and construction qualifications in 2007. The MOC issued the relevant qualification standards for integrated design and construction enterprises as well as the associated implementation rules in March 2006 and September 2006, respectively. At present, enterprises with the required capital and personnel may apply for design qualifications, construction qualifications, or integrated design and construction qualifications. Enterprises with such integrated design and construction qualifications are permitted to provide design, construction, consultancy, project management and general contracting services for the design and construction of construction intelligence works, fire prevention works, construction decoration works, and construction facade works. AmCham urges the MOC to extend this practice by issuing qualification standards for integrated design and construction qualifications for other types of works in China. ■

qualification in their initial applications.

- Include the track record of the parent and affiliated companies of FIDEs when determining qualification grades.
- Allow design companies working in a consortium to undertake works at the highest qualification grade held by a consortium member as is the international norm.

Foreign-Invested Construction Services Sector - Circular 155

- Issue Decree 155 Implementation Rules as soon as possible and start accepting applications to establish foreign-invested supervision, cost consultant and tendering agency enterprises under Decree 155.
- Remove the requirement that only FICEs, FIDEs or other foreign-invested construction services enterprises qualified under Decree 155 be allowed to provide project management services and engage in project management activities.

Recommendations

Construction Works Sector – Decree 113

- 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 as is the international norm.
- Allow construction companies working in a consortium to undertake work within the highest of the individual companies' qualification grades.

Engineering and Design Sector – Decree 114

- Clarify Circular 18 by removing the reference to “temporarily,” thereby allowing the relaxations to become permanent.
- Allow FIDEs to apply for Grade A design

据第155号令提出的成立外商投资监理企业、造价咨询和招标代理机构的申请。

- 废除只有符合第155号令规定资格的外商投资建筑企业、外商投资设计企业和其他外商投资建筑服务企业才可以提供项目管理服务并从事项目管理活动的要求。



Cosmetics

2

After more than ten years of rapid development, China has become Asia's second-largest cosmetics market after Japan, and the eighth-largest in the world. According to the 2006 China Light Industry Year Book issued by the China Light Industry Federation, the nation's cosmetics market reached RMB107.5 billion (US\$14.5 billion) in 2006. This booming cosmetics industry has promoted development of other industries including research and development, packaging materials production, publications, advertising and retail and distribution services. It has also brought investment from an increasing number of foreign cosmetics companies who recognize the potential of China's burgeoning cosmetics market. Despite some progress on policy transparency and process, the industry still faces restrictive and complicated regulations that hinder its continued growth in China.

Significant Developments

AmCham acknowledges the ongoing efforts made by government authorities to address some of the industry's challenges. The General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) and the Ministry of Health (MOH) jointly announced in August 2007 that they would modify the management procedure for cosmetics imported from areas affected by the presence of Bovine Spongiform Encephalopathy (BSE). Starting from August 31, 2007, importers are no longer required to provide the "Cosmetics Certificate of BSE" issued by health departments and other authorized agencies in BSE countries when applying for a hygiene permit from MOH or requesting an inspection and quarantine with local China Inspection and Quarantine (CIQ) offices.

AmCham also applauds MOH and AQSIQ for providing industry the opportunity to contribute their expertise to new draft regulations. After seeking public comments, MOH issued the updated Hygienic Standard for Cosmetics in January 2007, which went into effect July 1, 2007. Both MOH and AQSIQ published a draft Cosmetic Labeling Supervision Regulation on their official websites and solicited public comments. AQSIQ has since published the final Cosmetic Labeling Supervision Regulation.

Specific Issues

The cosmetics industry's main concerns are restrictive and complicated regulations, and the unequal treatment in regulatory procedures between domestic and imported cosmetics. The authorities have drafted more and more restrictive regulations that do not address lingering inconsistencies between the treatment of local-owned versus international companies. Furthermore, the regulatory situation for both domestic and imported cosmetics is becoming increasingly complicated, making it difficult for companies to track the rules and ensure they remain in compliance.

New Product Registration

The pre-market registration procedure for imported non-special-use cosmetics increases the workload and financial responsibility for international cosmetics companies, potentially delaying new product introductions to the Chinese market anywhere from four months to a year. Recently MOH issued several regulations and rules about new product registration but did not provide an adequate transition period for their implementation. This kind of incomplete regulatory process disproportionately affects the imported cosmetics industry and further delays the entrance of time-sensitive products into China's market. The industry urges government authorities to follow China's WTO and Technical Barriers to Trade rules regarding National Treatment.

AmCham feels that MOH's requirement for new ingredient registration and formula re-registration upon any slight change is unnecessarily burdensome and unreasonable. Without clear guidelines specifying exactly which ingredients are considered "new" and what documentation is sufficient to support the safety of a new ingredient, companies cannot prepare and collect information in advance, adding significant delays to the product registration process. Having to re-register a formula that has undergone only small changes is costly and time consuming and will delay the improvement of formulas. This situation affects both domestic and international cosmetic companies.

化妆品

经 过十多年的快速发展，中国已经成为亚洲第二大的化妆品市场，仅次于日本，在全球位列第八。根据中国轻工业协会发布的《2006年中国轻工业年鉴》，2006年中国化妆品市场规模已经达到1075亿人民币（约合145亿美元）。高速发展的化妆品业也促进了其他行业的发展，包括研发、包装材料生产、出版、广告以及零售和分销服务业。这也促使越来越多的外国化妆品公司到中国投资，他们认识到中国这个新兴的化妆品市场具有巨大潜力。就行业所处的政策环境而言，总体而言，在政策透明度和政策执行方面取得了一些进步，但法律法规中存在的交叉重叠和过多的限制将会影响中国化妆品市场的持续性发展。

重大进展

中美商会感谢中国政府一直以来为解决化妆品行业面临的挑战所做出的努力。国家质检总局和卫生部的相关部门于2007年8月发表联合声明，宣布他们将调整对从“疯牛病”（BSE）疫区进口的化妆品的管理措施。从2007年8月31日开始，进口商在向卫生部申请卫生许可批件或向地方检验检疫局（CIQ）申请进口化妆品检验检疫证明时，无需再提供由发生“疯牛病”国家或地区卫生部门和其他授权机构提供的无“疯牛病”证书。

中美商会感谢卫生部和国家质检总局在起草制定新法规时，对公众及行业进行公示，使行业有机会提出专业意见和建议。在征集公众意见后，卫生部于2007年1月出台了新版的《化妆品卫生规范》，该规范已于2007年7月1日生效。卫生部和国家质检总局都在他们的官方网站上发布了化妆品标签标识管理方法的草案并征求公众意见。国家质检总局随后发布了最终的《化妆品标识管理规定》。

行业面临的具体问题

目前化妆品行业关注的主要问题包括：各项法规的交叉重叠和限制过多；国产和进口化妆品在监管程序上的不平等待遇。最近各监管部门起草了许多新

的限制性的法规，不仅未能解决国产和进口化妆品在监管程序上的不平等待遇问题，而且使化妆品行业的法规环境变得更为复杂，使化妆品企业完全遵从执行法规的难度不断加大。

新产品注册

针对进口非特殊用途化妆品的上市前审批程序，巨大的增加了国际化妆品企业的工作量和财务成本，致使新产品进入中国消费市场的时间也因此拖滞四个月至一年。最近卫生部在进口非特殊用途化妆品的注册方面又颁布了一些新的规定，但这些新的规定在实施前并没有给予企业适当的过渡期。这种不完善的法规程序给进口化妆品带来了负面的影响，使季节性很强的产品更加难以适时进入中国消费市场。业界敦请相关政府部门履行中国入世以及《技术性贸易壁垒(TBT)》关于“国民待遇”的承诺。

根据卫生部有关规定，“新原料”审批和产品配方发生任何微小变化就必须重新注册，中美商会认为这一要求过于严格，不尽合理，给国产化妆品企业和进口化妆品企业都带来了不利的影晌。由于“新原料”的定义和标准不清晰，以及对如何证明“新原料”的安全性缺乏统一的标准，企业无法事先收集和准备有效的资料，这使产品审批的程序变得更加冗长。此外重新注册有微小变化的配方从费用和时间上都加大了企业的负担，影响了企业不断改进配方的积极性。

双重标准以及《化妆品卫生规范》2007版的色素问题

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》，而国家质检总局仍使用1987年发布的《化妆品卫生标准》，即国标7916-87。由于国标7916-87已有二十年未作更新，因此其中许多规定都已过时，不符合化妆品行业目前的发展水平。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。

Dual Standards Adopted and Colorant Issue of the New Hygienic Standard for Cosmetics

Currently MOH and AQSIQ are mandating two different cosmetic standards. MOH issued the new Hygienic Standard for Cosmetics in January 2007, while AQSIQ is still using the Hygienic Standard for Cosmetics issued in 1987 (specifically GB7916-87). Since GB7916-87 has not been updated for 20 years, most provisions are outdated and incongruent with the current level of development in the industry. Moreover, many requirements of GB7916-87 conflict with those of the 2007 Hygienic Standard for Cosmetics. Cosmetics manufacturers simply cannot produce products that comply with conflicting requirements.

Based on the EU Cosmetics Directive, MOH updated the Hygienic Standard for Cosmetics Edition 2002, issued the new version in January 2007 and implemented it on July 1, 2007. However, the new Hygienic Standard for Cosmetics cites both EU and U.S. regulations for cosmetic colorants and for some colorants, even the purity requirements for food colorants are cited. Although the colorant requirements of the new Hygienic Standard for Cosmetics now exceed U.S. and EU requirements, no safety benefits for Chinese consumers have been realized. Instead, the requirements have become a barrier to registering imported cosmetics. The industry urges MOH to reconsider and modify the purity criteria for colorants on a strictly scientific basis as early as possible.

SPF Labeling – The Upper Limit of SPF

Protecting their skin from the sun has always been important to Chinese consumers and fundamental to how they choose skin products. The SPF (sun protection factor) on sunscreen products imported from many countries in Europe and Japan exceeds SPF50+ and the U.S. FDA recently issued a proposed monograph on sunscreens also allowing this. Yet Chinese labels can show a maximum of only SPF30+ according to current labeling regulations.

Cosmetics companies are eager to find ways to guarantee public safety. According to studies conducted by experts in the EU and elsewhere, SPF30+ is insufficient to protect skin from overexposure to the sun. Consumers with very sensitive skin and children are advised to use products with high SPF index. Labeling SPF50+ is accepted by the international marketplace and

complies with international industry practice. It also allows consumers to identify the correct SPF and buy the right product.

Multiple Regulation and Administration on Cosmetics Labeling

Current regulations for cosmetics labeling are overly restrictive and complicated. While the revised National Standard of Cosmetic Labeling (GB5296) is awaiting final approval and expected to be issued in the near future, AQSIQ recently issued the Cosmetics Labeling Supervision Regulation. AQSIQ is also working to establish industry and national standards for cosmetics claims testing protocols. At the same time, MOH drafted another version of the Cosmetics Labeling Supervision Regulation and is planning to publish it soon.

AQSIQ's Cosmetics Labeling Supervision Regulation requires products to have Chinese labels showing a complete ingredients list and production place, along with information related to "repackaging." However, the definitions of some terms such as production place and "repackaging" are unclear and the implementation details are not yet available.

Under MOH's draft Cosmetics Labeling Supervision Regulation, additional information about contract manufacturers is now required, ingredient claims are much stricter and a positive list and a negative list for product claims are stipulated.

The cosmetics industry thinks Chinese regulations should allow claims that are based on sound scientific evidence and in accordance with the regulatory definition of a cosmetic. In this way, companies are free to innovate and to provide products that can be distinguished on the basis of ongoing technological advances.

The industry believes the multiple regulations by separate government bodies are not in line with the Chinese government's ongoing efforts to simplify and create a consistent regulatory environment. We anticipate major compliance difficulties that will increase costs for both international and domestic companies and ultimately reduce the benefits these products could bring to Chinese consumers.

Electronic Supervision System

Under the terms of a joint AQSIQ, State Administration of Industry and Commerce

《化妆品卫生规范》2007版是卫生部借鉴欧盟《化妆品规程》，对《化妆品卫生规范》2002版所做作的更新，于2007年1月发布，2007年7月1日起开始施行。新版《化妆品卫生规范》在限用着色剂方面引用了欧盟和美国两方面的要求，对某些限用着色剂甚至引用了欧盟和美国对食品用着色剂的要求。尽管新版《化妆品卫生规范》对限用着色剂的要求超越了美国和欧盟，但并不能给中国消费者带来更多的使用安全，相反，这种苛刻的要求变成了进口化妆品审批的一个壁垒。业界希望卫生部在科学的基础上尽早重新考虑并修改对限用着色剂的纯度要求。

化妆品防晒指数（SPF）的标识——SPF值上限

保护皮肤免受阳光侵害一直是中国消费者十分关注的问题，也决定着他们对化妆品的选择。目前从许多欧盟国家和日本进口的防晒产品SPF值标识的上限为SPF50+，美国FDA最近发表的防晒专著也提议标注SPF50+。然而依照中国现行的防晒产品SPF标识规定，防晒指数SPF标识的上限最高只能是SPF30+。

遵照消费者安全第一的宗旨，化妆品公司积极寻找方法以保证消费者的安全性。欧盟和其他国家专家所进行的相关研究表明，防晒指数标识为SPF30+的防晒产品不能为敏感性肌肤消费者和儿童提供足够保护，因此建议他们使用高SPF值的防晒产品。SPF50+上限的标识已被多数国家广为采纳，同时也符合国际化妆品行业的发展趋势。此外，SPF50+上限的标识也有助于消费者正确判断SPF指数，从而购买合适的产品。

化妆品标签标识的多重管理和多重法规

目前化妆品标签标识方面的法规限制过多，非常复杂。修订后的国标GB5296.3《消费品使用说明—化妆品通用标签》即将颁布，而在此之前，国家质检总局颁布了《化妆品标识管理规定》。目前国家质检总局正致力于建立化妆品功效检测方面的行业标准和国家标准。与此同时，卫生部也起草了《化妆品标签标识管理规范》，计划很快就颁布实施。

在质检总局颁布的《化妆品标识管理规定》中要求

化妆品必须标注中文成分表和实际产地以及与分装化妆品相关的信息，但是实际产地和分装化妆品的定义并不明确，并且该法规的实施细则还未出台。

在卫生部的《化妆品标签标识管理规范》草案中，新增加了标注与委托生产相关的信息的要求，对成分的宣称也将进一步受到限制，此外还列出了可以使用的化妆品宣称用语清单和禁止使用的化妆品宣称用语清单。

业界认为企业应被允许使用有科学依据和符合化妆品定义的宣称用语，以便企业能够自由创新，并持续不断地生产出更先进的产品。

业界认为在化妆品标签标识方面的多重管理和多重法规与中国政府简化与统一法规的一贯努力相违背。多重法规的存在必将给国外和国内的化妆品企业带来执行法规的巨大困难，并导致产品成本提高，最终将损害中国消费者的利益。

化妆品电子监管系统

根据2007年11月国家质检总局（AQSIQ）、国家工商行政管理总局（SAIC）和商务部（MOFCOM）联合发布的通知，一些国产化妆品被纳入了产品质量电子监管系统，其中包括护肤品、洗发水、护发素、洗手液和沐浴剂。生产厂家被要求在2008年12月31日前，在上述产品的销售包装上加贴或打印电子监管码，没有电子监管码的产品不能上市销售。为了申请电子监管码，生产厂家需按照要求向政府部门指定的一家第三方公司提供有关产品的商业信息。据介绍，这一新的产品质量电子监管系统的目的是打击假冒产品。

化妆品行业认为在目前的市场环境下，打击假冒的确是非常重要的工作。但是，我们呼吁政府有关部门重新慎重考虑对化妆品采用电子监管赋码的方式来打击假冒的做法。主要的原因是在化妆品的单个销售包装上打印电子监管码不具有技术可行性。根据目前的技术评估，许多化妆品包装都因为包装材料 and 打印不匹配或者包装形式的多样性而无法打印电子监管码。而且，一品一码的赋码方式会极大地增加生产成本，一个中等规模的化妆品企业会因此

(SAIC) and Ministry of Commerce (MOFCOM) announcement in November 2007, some locally made personal-care products, such as skin care, hair care and body and hand wash products, are now regulated by the Electronic Supervision System. By December 31, 2008, manufacturers are required to print or stick additional electronic identification barcodes on each sales unit. Products without barcodes will not be allowed on store shelves. Manufacturers must submit business information to a government-designated, third-party company to apply for a barcode for each sales unit. This new system is intended to fight counterfeit products.

The cosmetics industry agrees that anti-counterfeiting measures are very important in China's current business environment. However, we urge the authorities to reconsider adopting the requirement for the cosmetic sector in this manner. Technically speaking, printing the barcode on each sales unit or package is not feasible. Based on current technical assessments, the barcode cannot be printed on many cosmetic product packages due to incompatible packaging materials or various package design styles. Moreover, the product-by-product coding will increase production costs significantly, amounting to total cost increases in millions of RMB for medium-sized manufacturers. The increased costs will be shifted to consumers and will lead to a higher Consumer Price Index (CPI).

Apart from the technical difficulties and cost implications, the industry believes that the barcoding system needs to be reviewed to verify its effectiveness. We think manufacturers acting illegally could easily counterfeit the barcode, thereby negating the program's intention.

Since the cosmetics industry considers the newly launched Electronic Supervision System to be a typical administrative permission, under the Administrative Permission Law we ask the authorities to confirm that the current procedure is in line with the relevant requirements. In particular, we are concerned about the involvement of a third-party company in the permission process and believe that is not appropriate.

Dual Plant Licensing System

MOH and AQSIQ have two different systems to register and audit cosmetic manufacturing sites in China and license codes from both must be included on retail package labels to indicate that a plant has

official government approval. As a result, applicants must undertake lengthy and duplicate efforts through two different government authorities step-by-step, from the provincial to the central level, to comply with the licensing requirements.

The cosmetics industry believes that production capability and hygiene control are two aspects of the quality assurance system that cannot be separated and that a single management system should be established in China. Such a system would allow the industry to greatly reduce unnecessary costs that it now dedicates to managing two artificially divided systems. It would also lower the government's costs for regulatory control and would make the regulatory requirements more transparent and easier to follow.

Consumption Tax

China's tax and duty structure on cosmetics make retail prices as much as 40 percent higher than other markets. With more PRC citizens traveling outside China, the industry is losing sales to competitor markets as travelers increasingly purchase cosmetic products overseas. The Chinese government similarly loses a large amount of VAT tax revenue. The industry is particularly concerned about the 30 percent consumption tax levied on make-up and fragrances. Given that cosmetics have become daily-use products for many Chinese consumers, we believe it is not appropriate to categorize cosmetics as luxury goods subject to consumption tax.

Advertising Regulations

Several regulations governing advertising practices in China's cosmetics industry are overlapping, inconsistent and ambiguous. Regulations on Administration of Print Ads (2005), the Advertising Law (1995), Regulations and Administration on Cosmetic Advertisements (1993) and the Anti-Unfair Competition Law (1993) all regulate advertising in the cosmetics industry. Some items concerning the same issues in these laws and regulations duplicate and/or are inconsistent with one another, while others are ambiguous and leave room for subjective interpretation. Inconsistent interpretations on the national and local levels by Administrations of Industry and Commerce have cost foreign and domestic firms high levels of resources and investment. As a result of increased costs, consumers see unnecessarily higher prices.

China's growing cosmetics market provides the sector

每年增加成本数百万元人民币。可以预见，增加的成本会转嫁给消费者，从而会成为推动消费价格指数（CPI）上涨的因素。

除了技术困难和生产成本问题，化妆品行业认为电子监管体系对于打假的有效性值得重新审视。我们认为造假的不法企业可以轻易伪造电子监管码，使这项工作根本无法实现打假的目的。

化妆品行业认为新的产品质量电子监管体系是一种典型的行政许可行为，我们请求政府部门根据《行政许可法》确认现有做法是符合相关要求的，特别需要关注的是，我们对于一个第三方公司介入行政许可的过程中感到担心，我们认为这是不合适的。

工厂的双重注册审查制度

卫生部和国家质检总局采用两种不同的体系来注册和定期审查在华的化妆品生产工厂。两种许可证编号都必须标识在产品销售包装上面，表明该工厂已经获得中国相关政府部门的正式批准。企业不得不花费大量的时间和精力，经过省级和国家两级政府机构审批，逐一通过两种不同的许可认证体系。

业界认为，生产能力和卫生控制是质量保证体系中不可分割的两个方面，应该建立一个单一的管理体系来整合这些规定。通过这种整合，中国化妆品行业可以极大地减少为应对双重注册审查而投入的不必要的成本，政府部门也可以相应地降低注册审查的成本。这也将使注册审查的要求更加透明和易于遵守。

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。

化妆品广告管理法规

有关中国化妆品广告管理的几部法规内容有所重叠，且存在不一致性和模糊性。《印刷品广告管理办法》（2005年）、《广告法》（1995年）、《化妆品广告管理办法》（1993年）和《反不正当竞争法》（1993年）都是管理化妆品广告的法规。但是，这些法规中针对同一事项的某些条款有所重叠，而且/或者有出入，有一些条款表述模糊，给实际操作留下了较大的随意解释的余地。而且，国家和地方工商管理部門对这些法规的解释常常不一致，致使国外和国内的化妆品企业为此投入了巨大的资源和费用。由于成本上升，导致消费者购买产品的价格也无谓地提高了。

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

- 促进化妆品法规的简化和统一，使法规环境更有利于中国化妆品市场的蓬勃发展，使中国化妆品行业更具国际竞争力。
- 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。
- 在科学的基础上重新考虑对限用着色剂的纯度要求，以及对“新原料”审批和对仅有微小变化的配方重新进行注册的要求，以促进国际化妆品法规的和谐统一。
- 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标准，为企业营造一个更有效的运营环境。
- 将化妆品防晒指数标识上限提高到SPF50+，以更好地保护消费者，并与国际化妆品行业的发展趋势相一致。

with great development and investment potential. However, neither industry nor the consumer will be able to benefit from these gains unless China can develop a consistent, efficient and transparent regulatory system. The separate standards for imported and domestic cosmetic products, inconsistent and subjective regulations, and excessive procedures and costs directed at foreign companies seriously hinder the liberalization of the cosmetics market in accordance with WTO guidelines and the general development of China's cosmetics industry. ■

Recommendations

- Promote a more simplified and consistent regulatory environment to nurture a vibrant Chinese cosmetic market, which will in turn be more competitive in the international market.
- Simplify the notification system for imported non-special-use cosmetics or unify it with that for domestic non-special-use cosmetics to speed up the entrance of advanced, fashionable products into the Chinese market.
- Re-consider the criteria for colorants' purity and for "new ingredients" as well as the requirement for re-registering a formula with any slight change. The criteria should be based on scientific research to promote global regulatory harmonization.
- Unify the two different compulsory cosmetics standards that are currently adopted by MOH and AQSIQ to create a more efficient operation environment for the companies.
- Increase the upper limit of the SPF index to SPF50+ to better protect consumers and be in line with international industry practice.
- Unify the regulations and standards on cosmetics labeling to facilitate the companies' compliance. Allow claims that are based upon sound scientific research and are in accordance with the regulatory definition of a cosmetic to encourage product innovation and technology advancement.
- Reconsider implementing the electronic supervision system on cosmetic products and postpone enforcement until the practice is proven to be effective, feasible and appropriate.
- Unify the dual plant licensing system to streamline the requirements and

help establish a sound and robust plant management system in China.

- Reduce the consumption tax rate for makeup and fragrance to improve the pricing competitiveness of China's cosmetic market.
- Revise outstanding laws and regulations on advertising in the cosmetics industry to comply with the 1995 Advertising Law as well as international industry-norms to boost the development of China's cosmetics industry.

- 统一化妆品标签标识管理的法规和标准，以利于企业遵守和执行。允许企业使用有科学依据和符合化妆品定义的宣称用语，以鼓励产品创新和技术进步。
- 慎重考虑并暂缓对化妆品实施电子监管，认真评估该项新规的有效性、可行性和合理性。
- 统一对工厂的双重注册审查，建立一个更加健全、有效的工厂管理体系。
- 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。
- 修订相关化妆品广告管理法规，使其与1995年的《广告法》以及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。



Dietary Supplements

The term “dietary supplement” refers here to products classified as health foods in China, food supplements in the EU, vitamin and mineral supplements under the global food code (CODEX) and similar types of products as applicable. Dietary supplements are recognized as a category of food product that includes vitamins, minerals, amino acids, protein powders, herbs/botanicals and other dietary ingredients. They are generally consumed daily and have proven to be safe and effective. Supplements can be taken as tablets, capsules, soft-gel liquid capsules, effervescent tablets, powders, liquids and in a variety of other forms.

The U.S. dietary supplement industry is currently the largest and most developed in the world, with a 2006 value of more than US\$23 billion. The size and success of the industry is due to a number of factors including the quality and effectiveness of the products, consumer demand for healthier lifestyles, increased healthcare costs and national law that recognizes the benefits of supplementation to help reduce healthcare costs. More than 60,000 products are available to U.S. consumers. It is estimated that more than 68 percent of the U.S. population (more than 200 million people) consume dietary supplements regularly.

The U.S. system of notification, as opposed to registration, balances consumer access with appropriate safeguards and delivers healthcare benefits at a reduced cost. Consumers are able to benefit from new ingredients because U.S. law imposes a maximum 75-day review period.

U.S. consumers are better informed because of a national law that allows structure/function claims based on the dietary ingredients presence in a dietary supplement product. This structure/function claim is based on current scientific knowledge of the ingredients and does not require a registration. The law maintains a rational approach to the use of scientific knowledge for structure/function claims by recognizing a diverse pool of global scientific sources (e.g., NIH Studies and Commission E monographs). This approach helps to minimize costs to the consumer while still providing the appropriate safeguards.

China’s dietary supplement industry began approximately 20 years ago and is now estimated to be worth approximately US\$6 billion in annual sales. Thus the industry is young compared with the U.S. and about one-fourth its size. Although China’s dietary supplement industry is still developing, the potential for sizeable growth is significant due to China’s rapid economic growth and increasing consumer demand for natural products that promote health and overall wellness. The U.S. and China have a dynamic relationship in regard to the dietary supplement industry. China ranks first in supplying low-cost raw materials for the industry while the U.S. ranks first in manufacturing and marketing finished products. China currently exports upwards of 70 percent of the raw materials used by U.S. dietary supplement manufacturers.

U.S. and Chinese manufacturers and suppliers would benefit equally from a change in regulations that would not only increase business opportunities for Chinese suppliers and distributors, but also benefit Chinese consumers by providing access to an expanding range of dietary supplements that promote health and wellness.

Specific Issues

AmCham understands that China’s regulators have set up the current system in order to protect consumers from fraudulent and unsafe products. However, it is our opinion that the current system suffers from a lack of transparency and regulatory contradictions that stifle industry growth. Furthermore, this system has established unequal terms with regard to market access between the U.S. and China. As the United States’ number one trading partner, China and its dietary supplement industries and suppliers are able to export to the U.S. market with minimal interference. The U.S. Food and Drug Administration (FDA) notification system requires Chinese manufactures and suppliers to register with FDA and to give notice at least eight hours prior to shipments arriving at the intended U.S. port. Both of these requirements are free of charge and are available online. However, U.S. dietary supplement manufacturers and suppliers attempting to access the China market are faced with more restrictive and costly regulations.

膳食补充剂

本文中所述“膳食补充剂”指分类如下的产品：中华人民共和国的保健食品，欧盟国家的食品补充剂，国际食品法典目录（codex）中提到的维生素和矿物质补充剂，及其他适用的类似产品。膳食补充剂被认为是包括维生素、矿物质、氨基酸、蛋白粉、香草/药草及其它膳食成份在内的一种食品种类。膳食补充剂通常是口服，并被证明是安全和有效的。膳食补充剂可通过多种形式服用，包括片剂、胶囊、软胶囊、泡腾片、粉剂、液剂及其它多种形式。

美国的膳食补充剂产业是目前世界上最大和发展最好的。2006年美国膳食补充剂产业总产值超过230亿美元。美国此产业的大规模成功发展主要归结为几个因素，如产品质量、产品功效、对健康生活方式的消费需求、日益增长的健康护理费用及国家法律对膳食补充剂有益于帮助降低医疗保健费用的认可。美国消费者可供选择的膳食补充剂产品达六万多种。据估计，美国有68%以上的人口（两亿多人）定期服用膳食补充剂。

美国的通告体系与注册体系相辅相成，使消费者使用膳食补充剂产品的安全方面得到适当保护，同时提供低费用的保健服务。消费者可以从膳食补充剂产品的新配方中获益，因为美国法律规定，对膳食补充剂新产品的审批期限最多不能超过75天。

美国消费者能更好地了解膳食补充剂产品的功效，因为美国国家法律允许膳食补充剂产品根据其成分做相关功效声明。这些关于成分功效的说明基于现有的相关营养成分的科学知识因而不需要登记注册。法律通过援引诸如美国国立卫生研究院和德国草药专论等全球多家权威科学机构的科研成果，合理的引用科学知识对补充剂产品成分功效予以说明。这种做法不仅有利于消费者将花费降到最低，同样适当地保障了消费者的安全。

中国的膳食补充剂产业大约于二十年前开始起步，估计目前年销售额约为60亿美元。因此，中国的膳食补充剂产业与美国相比仍然不够成熟，生产和市

场规模也仅有美国产业的四分之一左右。尽管中国的膳食补充剂产业仍然处于发展阶段，但由于中国经济的飞速发展以及对有益于身体全面健康的天然产品的消费需求日益增长，膳食补充剂产业发展的潜力巨大。在膳食补充剂产业方面，中美两国的关系一直非常活跃。中国在提供此产业所需低成本原材料方面具有天然优势，而美国则在生产和营销膳食补充剂制成品方面占据绝对领先的地位。目前美国膳食补充剂生产商所使用的原材料，从中国进口的已高达70%以上。

如果对现有的法规条例进行适当调整和完善，会使中美双方的生产商和供应商共同获益。因为这不仅能为中国的供应商及经销商带来更多的商机，同时也可以通过扩大和促进健康膳食补充剂的选择范围，使中国的消费者获益。

具体问题

中国美国商会理解，中国的立法机构建立现行法规体系的目的是为了保护消费者不受假冒伪劣和 unsafe 产品的危害。然而，我们的观点是目前的体系缺乏透明度，且政策法规相互矛盾，严重阻碍了膳食补充剂产业的发展。此外，该体系在中美市场准入方面设立了不平等条款。例如，作为美国的第一大贸易伙伴，中国、其膳食补充剂产业及供应商能够在市场干预最小的情况下将其产品出口到美国市场。美国食品与药品监督管理局（FDA）的通告体系要求中国的生产商和供应商在FDA进行注册，然后在货物抵达预定美国港口前至少八小时发出通知即可。注册和通知这两项要求均可通过互联网在线操作完成，且美方不向中方收取任何费用。然而，美国膳食补充剂的生产商和供应商若要进入中国市场，则要面临很多限制和过高的政策性费用。

会员关注的焦点集中在中华人民共和国国家食品药品监督管理局（“国家药监局”）的产品注册程序，许可健康声明及成分功效限制等方面。此外，对直销行业的限制也阻碍了营养保健品产业的发展。从国际范围来看，直销业是营养保健品产业及

Areas of concern are the State Food and Drug Administration PRC (SFDA) product registration process, allowable health claims and ingredient potency restrictions. Furthermore, restraints on the direct sales industry also impede natural industry growth. Internationally, direct selling is a vital and integral part of the industry and its overall development. Addressing the above issues will enable China's dietary supplement sector to take full advantage of the progressive research and development, advancements in manufacturing techniques and merchandising and business development best practices that foreign companies offer.

SFDA Product Registration

Prior to market entry, manufacturers must register dietary supplements with the SFDA. The process requires enormous investments of both time and money. A typical registration can take up to two years to complete and cost upwards of US\$50,000. 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. After market entry, the registration is valid only for five years and then must be renewed, which adds unnecessary regulatory processing to a product that has already been in the market without alteration. Since the SFDA began issuing registrations in 2003, 2008 will be the first time companies will be renewing expiring registrations. According to the SFDA, it should take only 20 days to re-register a product.

The global dietary supplement industry is continuously evolving and improving due to scientific and technological advancements. Because of the lengthy registration process, enterprises are unable to introduce new products rapidly or reposition product lines to best suit consumer demands. This results in a significant reduction in the variety of products that offer the latest developments in nutritional science and manufacturing technology.

Health Claims

The SFDA has a list of 27 approved functional claims that marketers of dietary supplements are allowed to make. Dietary supplements can only apply these claims to their products after going through a lengthy testing process including animal and human testing, which is very similar to the approval process for pharmaceuticals. There are two main issues with this current list. The first issue is that the list of 27

functions is non-comprehensive with regard to what dietary supplements are known to support. For example, Glucosamine and Chondroitin ingredients have years of solid scientific research from a variety of international sources to support human joint health, but "joint health" is not an approved function. Second, regardless of whether or not an ingredient has been tested and known to have a specific function, it nevertheless has to go through all testing procedures every time an application is submitted. This is redundant and adds time and fees to the registration process. If an ingredient has already been established to have a certain function, it should not have to undergo new testing 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 known functions according to scientific evidence.

Potency Levels

SFDA has potency-level restrictions for nutritional supplements that do not always coincide with current dietary supplement research. For example, the latest research indicates that pregnant women should supplement their daily diets with the following substances to meet their increased nutritional needs: calcium (Ca) 1300mg, iron (Fe) 25mg and folic acid (acidum folicum) 800mcg. SFDA's Regulations for Application and Evaluation of Nutritional Supplements subsection IV states, "Supplements should be reduced by 1/3 to 2/3 of the recommended dosage for pregnant women." Per SFDA regulations on daily intakes, calcium would be reduced by 50 percent, iron by 48 percent and folic acid by 67 percent. With potency limitations in place, there is 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 that have been used for decades in the U.S. and other countries if their products exceed SFDA's current potency limitations.

Summary

China's dietary supplement industry has great potential and a growing number of consumers are interested in purchasing products that will enhance their overall health. China would benefit greatly from a more open and transparent regulatory system. Free and open access to dietary supplements benefits the government, the industry and, most importantly, the consumer. For example, an October 2007 report

其全面发展过程中至关重要且不可分割的一部分。上述问题的解决，将有助于中国膳食补充剂产业能充分利用不断进步的研究开发成果，先进的生产技术、合理的商业机制以及外资公司提供的最佳的实践经验等。

国家食品药品监督管理局产品注册

进入市场之前，生产商必须就膳食补充剂产品向国家食品药品监督管理局申报注册。此过程需要投入大量的财力。一个典型的注册程序通常需要两年时间，费用达五万美元以上。同时，如果该原料或产品是初次上市，注册时间要需五年，费用更达五十万美元。经过批准的产品进入市场后，由于注册的有效期只有五年，五年之后必须重新进行注册，这实际上会给已经注册上市且并无任何变化的产品增加了不必要的行政规范过程。国家食品药品监督管理局于2003年开始受理和批准注册申请，2008年相关企业将会在注册认证期满后开始首次重新注册。根据国家食品药品监督管理局的规定，产品的重新注册应该仅需二十天的时间。

随着科学技术的不断发展，世界膳食补充剂产业也在持续地发展。然而，由于在中国注册过程过于冗长，膳食补充剂生产企业无法通过快速推出新产品或调整产品生产线来最大程度地满足消费者的需求。这将会导致应用了营养科学及生产技术方面最新发展成果的此类膳食补充剂产品在市场上的大幅度地减少。

产品健康功效声明

国家食品药品监督管理局列出了一份列有27种膳食补充剂营销商被许可使用的产品功效声明的清单。只有在通过了包括动物测试和人体测试在内的冗长的检测过程后，膳食补充剂才可使用上述27项产品功效说明。整个测试过程与药品获批过程类似。现行的这份功能清单存在两个主要问题。第一，就膳食补充剂已知所应具有的功能来说，上述27项产品功效的声明很不全面。例如，氨基葡萄糖和软骨素成分多年来已被各类国际科学研究证明有利于人体关节健康，但“关节健康”却未包括在所列功效清单。第二，一种成分不管是否通过检测已得知其具有某种功效，但该产品在每次提交注册申请时仍然

需要通过所有的检测程序。这种不必要的重复性做法为注册过程增加了额外的时间和费用。如果某种膳食补充剂成分已经被证实具有某种功效，届时公司每次对其进行注册时就不必再通过测试。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体系，这将是一种更为实际的解决方法。

效力水平

国家食品药品监督管理局对营养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，孕妇应当在日常饮食外补充以下物质以满足其日益增长的营养需求：钙1300毫克，铁25毫克及叶酸800微克。国家食品药品监督管理局《关于营养补充剂的申请评估规则》第四小节规定：“孕妇服用的补充剂剂量应减至建议剂量的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，钙将被减半，铁减少48%，叶酸减少67%。有了这样的效力约束，膳食补充剂产业将无法根据最新的研究成果调整效力。而且，如果外资公司的产品超出了国家药监局目前对效力水平的约束，上述约束将会对其构成贸易壁垒，即使这些外资公司的产品都经过了时间检验和科学证实并在美国及其他国家已被使用几十年。

结论

中国膳食补充剂产业有着巨大的潜力，越来越多的消费者有意购买膳食补充剂产品以增进全面健康。中国也将会从一个更加开放和透明的规范体系中获益。对膳食补充剂市场实行更加自由和开放的政策不仅有利于政府及相关产业，更重要的是可以让消费者获益。比如，美国同行评审刊物《营养期刊》2007年10月的一篇报告得出结论：服用膳食补充剂的人普遍比没服用的更加健康。此外，美国保健服务研究集团Lewin Group得出结论说，膳食补充剂为美国政府节省了数十亿美元的医疗开支，部分原因是由于膳食补充剂产业在消费者中推广了健康产品和健康的生活方式。然而，由于目前中国的制度体系发展过于缓慢，中国尚未能享受到所有这些益处。 ■

in the U.S. peer-reviewed publication *Nutrition Journal* concluded that the health of people who used dietary supplements was generally better than non-supplement users. Furthermore, the Lewin Group, a U.S. healthcare and human services research group, concluded that dietary supplements were responsible for saving the U.S. government billions of dollars in medical expenses partly because the dietary supplement industry had helped to promote healthy products and lifestyles to consumers. However, the current regulatory system is evolving too slowly to allow China to enjoy all of these benefits. ■

Recommendations

- Replace SFDA's product registration process with a notification system like that in the U.S. 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.
- 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. We urge that the recommendations be made more flexible to coincide with the latest in nutritional science recommendations.

建议

- 参照美国的通告体系，取代国家食品药品监督管理局的产品注册程序。市场准入应基于获得批准的膳食补充剂成分清单。通告体系将使企业不必重复注册程序，同时使国家食品药品监督管理局的集中更多的人力资源以加强市场监管，进一步增强对消费者合法权益的保护。
- 采用新的功效声明体系，允许经科学证明的膳食补充剂成分使用范围更广的功效声明。
- 修改膳食补充剂成分效力约束条款，或至少调整较为严格的条款，使其成为指导性建议。我们强烈希望这些建议能更加灵活，以期符合最新的营养科学的建议。



Direct Sales

The government first issued direct-selling regulations in 2005 and began to approve license applications the following year. Direct-selling operations in China began in 2007. Also that year, China's Ministry of Commerce (MOFCOM) and the State Administration of Industry and Commerce (SAIC) held meetings separately with AmCham to exchange views on the direct-selling issues raised in the 2007 White Paper and to discuss the problems and difficulties encountered in the course of the license application process and in commencing company operations. AmCham appreciates and respects the Chinese Government's efforts to support the development of the direct-selling industry in China.

Despite facing many challenges, including a slow-moving application process and a high burden of service center requirements, AmCham member companies in the direct-selling industry remain enthusiastic about market prospects in China. As a whole the 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 World Trade Organization (WTO) obligations and bring direct selling regulations in line with international best practices.

Significant Developments

Since the Direct Selling Administration Regulations were promulgated in August 2005, MOFCOM has approved and issued 21 direct-selling licenses. Of these, 19 companies have completed the review and filing process for their service centers. However, in 2007 only six companies obtained direct-selling licenses and no application has been approved since May 2007. According to the information available within MOFCOM's direct-selling industry administration management system, 15 companies have made public statements for direct-selling applications but have not yet been approved. In addition to those companies, at the time of this writing the number of companies that have not made public statements but are still awaiting MOFCOM's approval is unknown.

Although the Regulations indicate that the approval process takes 90 days, the 21 companies that have

received licenses waited between four and 12 months for MOFCOM approval. Most applicants spent over a year completing the approval process from submitting their application until they were formally permitted to begin direct sales. Other companies are still waiting for approval with little clarity on timing or what needs to be done to complete the process.

Specific Issues

Service Center Establishment

Meeting service center requirements is the biggest challenge for companies submitting their direct selling application and these requirements are also difficult for companies to fulfill once their business is up and operating.

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, which would require 2,861 service centers to cover all of China's urban districts. AmCham believes that requiring a service center in each urban district is unnecessary and overly burdensome to companies. At present, most companies approved are permitted to sell in only one province or city in China, significantly restricting their ability to expand. More importantly, since direct selling takes place away from fixed locations, these geographical restrictions make it nearly impossible for companies to ensure that their direct sellers are in compliance. To comply with the direct-selling license geographical restrictions, companies must simultaneously adopt two different business models to meet the requirements of direct sales and non-direct sales in different districts.

AmCham believes that the Chinese Government should increase the transparency and simplify the approval and establishment process for service centers. Decisions about when to expand service centers should be left to each company, based on its stage of development.

AmCham asks the government to consider four suggestions regarding the service center approval process, as summarized below:

直销业

如果说2005年是直销的立法年，2006年是直销申请的第一年，那么，2007年才是中国直销行业真正开始运营的一年。2007年商务部及国家工商总局的相关部门分别和中国美国商会就2007白皮书中提到的有关直销的问题交换了意见，对企业在直销申请和经营过程中所遇到的问题进行了讨论。中国美国商会赞赏并感谢中国政府为此所做的努力。

尽管存在着直销审批的过程缓慢、直销网点的设立困难等许多挑战，但从事直销的中国美国商会成员企业对中国市场的前景仍充满信心，许多企业在中国市场已投资了数亿美元，而且大多数业界高管都认为中国会全面履行世贸承诺，使直销规定最大程度地符合国际惯例。

最新进展

自从2005年8月《直销管理条例》（以下简称“条例”）颁布以来，商务部已经批准并颁发了直销经营许可证的企业共21家，其中19家企业完成了服务网点的核查报备工作。其中在2007年，只有6家企业的申请获得批准，并且自2007年5月以来，再没有一家企业获得批准。商务部直销行业管理系统的公开信息显示，还有15家已经发表了直销申请声明的企业尚未获得批准。到目前为止，除以上提及的公司，尚未公布申请声明，仍然在等待商务部审批的企业数量也无从知晓。

《条例》规定了90天的审批时限，目前获批的21家企业用了4—12月获得商务部的批准，加上服务网点核查报备的时间，从提交申请到可以正式从事直销活动，多数企业花费在审批流程中的时间长达一年以上。尚未获得批准的企业仍在等待，而且没有得到任何明示何时可以获批，或还需做哪些工作才能结束这一审批过程。

行业面临的主要问题

“服务网点”设立

达到服务网点的设立要求是企业申请直销时遇到的最

大困难，也是网点实际运营中遇到的困难。

《条例》规定直销公司必须在每个从事直销活动的省设立省级分支机构，此外，必须在直销员销售产品的每个城区设立一个“服务网点”，这就意味着如果想覆盖中国所有的城区，需要建立2861个服务网点。中国美国商会认为要求在每个城区设立服务网点的规定是不必要的，也会加重审批和企业运营的负担。目前获批的企业中，绝大多数企业获批的地区仅为一个省或一个城市，这严重地制约了企业有效地扩大业务的能力。更为重要的是，由于直销是在固定营业场所之外进行，因而要求企业保证其直销员遵守这些地域限制几乎是不可能的。为了遵守直销牌照所规定的地理限制，企业就必须采取两种经营模式以分别符合直销地区和非直销地区的要求。

中国美国商会认为服务网点的审批和设立流程应加大透明度、简化审批流程，关于何时拓展服务网点应当留给企业根据自身的发展情况自行决定。

对服务网点的审批，中国美国商会敦请中国政府重新考虑如下建议：

1. 在一个省/市设立多少个服务网点，应视企业的业务发展而定。不必规定在每一个城区必须设立一个网点才可以获得直销许可；
2. 为了加快审批速度，建议服务网点的拟建方案由省级商务部门审批，或者由市级部门审批，而无需区/县商务部门审批；
3. 根据《条例》，服务网点的审批应看其是否设在符合规定的地区，是否能方便消费者了解价格和退换货，然而这个要求在各地有着不同的理解和执行，例如有些地区甚至对服务网点面积也设置了最低要求，这给企业增加了巨大的负担。商会认为各地的执行应加大透明度并统一标准；
4. 简化已经获得直销许可证的企业进入新的省/市的审批流程，建议只需由拟进入的省/市审批服务网点设立方案，商务部即可批准在该省/市设立省级分支机构，同时在服务网点经该省/市核查并在商

1. AmCham believes that the number of service centers required in any one city or province should depend on a company's stage of development and expansion. Therefore, regulations should not require companies to set up one service center in each district as a condition to obtaining a direct selling license in that city.
2. To speed the approval process, AmCham urges limiting the service center plan approval process to the provincial or city level and eliminating the need for approvals at the district or county.
3. Regulations specify that the service center role is merely to 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 urges more transparency and consistency of implementation.
4. In order to simplify the process for direct-selling companies that have licenses but wish to expand into other areas, AmCham urges the government to limit the service center plan approval to the new province or new city level only. We suggest that MOFCOM permit companies to set up a provincial branch, which can operate direct sales immediately upon confirmation of their service centers by the province or city and filed with MOFCOM.

Compensation Restrictions

The compensation regulations drastically restrict the ways that direct selling companies can compensate their sales force. Contrary to general industry practice, direct sellers are not allowed to develop networks of sellers. In addition, there is a cap that limits compensation based on personal sales to 30 percent of revenue. That requirement inhibits direct selling companies from motivating their sales representatives through traditional means. Furthermore, the cap applies to all types of 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; for example, retail sellers and the insurance industry are not saddled with such restrictions. Under general business practices, 50 percent of the retail price covers distribution costs, including commissions and

overhead. Aside from Korea, which has a commission cap, no other country limits the income received by direct selling agents. Korea's cap, based on company sales rather than personal sales, also is more narrowly defined than China's and allows for greater economic reward of salespeople.

The regulations restrict the basis for compensation to the price of the products, eliminating a company's ability to give incentives to salespeople to conduct marketing campaigns and sell services. The move is also a significant departure from international practice. The United Nations' Consumer Product Code (CPC) has an internationally accepted definition of direct selling under which salespeople may earn compensation from the sales of both products and services. In essence, providing services is essential to the direct selling business worldwide.

Limited Product Categories Permitted for Direct Selling

Presently the Regulations limit direct-selling companies to products from five categories including 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 in line with international common practice.

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 direct selling license in China. Because there is no similar restriction for domestic companies, this regulation unfairly discourages foreign-invested enterprises from participating in the direct selling channel in China. AmCham is concerned that this regulation runs counter to China's "national treatment" obligations under its WTO accession agreement and urges relevant authorities to remove the restriction.

In summary, China stands to benefit greatly from introducing direct selling as a distribution channel for consumers. Direct selling helps to alleviate unemployment in developing regions and provides products that are unavailable through other channels. AmCham strongly urges regulatory authorities to work with industry participants to bring China's direct selling business more in line with international

务部备案后，企业即可开展直销业务。

报酬限制

《条例》对企业给付其直销员报酬的方式做了严格的限制，与大多数业界的作法相反，规定直销员不得发展推销网络，另外还规定直销员获得报酬的上限不得超过其个人销售额的30%，使得直销企业不能采用其传统的方式充分地调动其销售代表的积极性。而且，该报酬上限适用于各类收入，包括佣金、奖金、奖励及其它所有经济所得，这使中国的直销企业与利用其它分销渠道的公司相比处于极大劣势地位。例如，零售业或保险业就不受此种约束。分销成本，包括佣金和销售管理费用占零售价格的50%，这是相当普遍的商业惯例。除了韩国有报酬上限规定外，没有任何一个国家对于直销代理的收入做限制。与中国相比，韩国的上限是根据公司的销售总额，而非个人的销售额而定，并且所适用的范围较小，允许销售人员获得更多的经济利益。

《条例》还把报酬的基础仅限于产品本身，这使企业基本无法激励销售人员提供营销宣传或推销的服务，也与国际通行作法相去甚远。联合国的《消费品代码》对直销有一个国际普遍接受的定义。根据这一定义，推销员可以从推销产品和服务两方面获得报酬。本质上说，全球的直销业都以提供服务为根本。

准许直销的产品类别有限

目前的《条例》将产品限定为5个类别，包括化妆品、保健食品、保洁用品、保健器材、小型厨具。按照国际惯例增加产品种类将使中国制造业和直销业的发展获益。

国民待遇问题

《条例》要求外资企业在中国申请直销营业许可之前必须具有在中国境外市场从事三年以上直销业务的经验。因为对国内企业没有类似要求，所以该规定构成了对外资企业进入中国直销渠道的不公平歧视。中国美国商会的关注是，这一规定不符合中国入世协议中“国民待遇”的义务，并敦促相关政府机构取消这一限制。

总之，中国引入直销这种方便消费者的分销方式，

并从中受益。直销有助于缓解中国发展中地区的失业问题，并提供其它分销渠道所不能提供的产品。中国美国商会强烈希望政府有关部门与业界合作，使中国直销业的发展更加符合国际惯例，并履行中国在此领域的世贸承诺。

建议

- 修改直销条例使其与中国的入世承诺和国际惯例相一致。
- 增加审批程序的透明度，简化审批流程，及时告知企业审批进度，加快审批速度。
- 取消报酬限制，减少直销企业对其销售人员的激励力度受到的不必要限制。
- 允许直销员从销售支持服务中获取报酬。
- 将要求在每个城区建立一个服务网点的规定修改为在每个城市建立一个，并确保各地的要求与国家的规定相一致。
- 取消服务网点需要获得区和县级的审批，改为报备。
- 按照国际惯例增加产品类别。
- 取消对外资企业的三年境外直销经验要求，使直销业中国内外资企业获得同等的国民待遇。

practices and to fulfill China's WTO commitments in the area. ■

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Recommendations

- Revise direct-selling regulations to bring them in line with China's commitments and common international practices.
- Increase transparency, simplify the approval process, duly inform companies regarding the approval progress and increase the speed of approvals.
- 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.
- 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 practice.
- 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 direct selling business.



Environmental Sustainability, Climate Change and the Environment

From 1978 to 2000, the Chinese economy grew an average of nine percent annually while energy demand grew at four percent. Today, economic growth continues at about the same pace but energy demand growth has surged to 13 percent. Based on these consumption figures and China's limited natural energy reserves, China must now rely on international markets for more of the fossil fuels it consumes. China imports 40 percent of its oil (approximately three million barrels per day) and in 2003 replaced Japan as the world's second largest petroleum consumer.

According to some reports, China's carbon dioxide emissions now exceed those of the U.S. by approximately eight percent, putting China at the top of the list of CO₂-emitting countries. Furthermore, even the most conservative estimates show similar results. Following the U.S. and China, the EU is in third place, with a volume of emissions about half that of China. After these three are Russia, India and Japan.

Water pollution is also cause for serious concern; water security and conservation are increasingly critical issues that cannot be ignored. In dry Northern China, the water table is dropping one meter per year due to over-pumping and authorities continue to divert water from agriculture to service local industry. In the 11th Five-Year plan, along with energy reduction goals, China has declared a water consumption per unit industrial added value decrease of 30 percent. The coefficient for water use efficiency in irrigation is to be raised to 0.5 and the comprehensive utilization rate of solid wastes to 60 percent.

The assessment at the end of the 10th Five-Year Plan (2001–05) concluded that China's emissions of SO₂ and soot were respectively 42 percent and 11 percent higher than the targets set at the beginning of the plan. China is now the largest source of SO₂ emissions in the world. Recent trends in energy consumption, particularly increased coal use, provide a plausible explanation for the increase in SO₂ emissions.

As prosperity continues and China grows, so does urbanization. Urban residential energy consumption has grown dramatically and now accounts for almost 30 percent of China's total energy demand. This will continue to grow with increasing urbanization rates in the coming years.

Energy Supply

China has added electrical power generation capacity at unparalleled rates. China intends to rely on its plentiful supply of coal for expanding industrial and electric power generation needs. According to the Energy Information Administration (EIA), China, together with India, will account for 85 percent of the projected rise in coal use in the developing world and nearly 70 percent of the total world demand for coal over the next 20 years.

Coal as a share of China's overall energy consumption will decline but the absolute demand for coal is expected to exceed 20 million tons annually over the next five years.

Although many of China's older coal-fired plants are inefficient, the newer ones often have higher efficiencies and, it is reported, compete well, if not better than, U.S. plants on a grams-coal-consumed to kilowatt-hour (kWh) produced basis. However, many coal fired power plants lack (or fail to operate) adequate pollution control equipment. Industries that burn coal directly (such as steel and cement) are subject to sulfur taxes, but these are generally not significant enough to serve as disincentives. Nitrogen dioxide (NO₂) is regulated, while mercury was not as of this writing.

Renewable energy currently accounts for less than one percent of China's total energy capacity, but the government plans to raise this figure to 12 percent by 2020 under the Renewable Energy Utility Promotion Law.

With its entry into the World Trade Organization (WTO) in November 2001, the Chinese Government made a number of specific commitments to trade

环境可持续性、气候变化及环境

自 1978年至2000年，中国经济年平均增长率为9%，而能耗需求增长为4%。今天，经济继续以大致相同的速度增长，但对能源的需求却急速增长至13%。根据上述消费数据及中国有限的自然能源储量，中国现在必须依赖国际市场获得其消费所需的化石燃料。中国40%的石油依赖进口（大约每天进口300万桶），并于2003年取代日本成为世界第二大石油消费国。

根据一些报道，中国现在的二氧化碳排放量超过美国大约8个百分点，使中国位居二氧化碳排放量排名之首。而且，即使是最保守的估计也显示了类似的结果。紧随美国和中国，排在第三位的是欧盟，其排放量大约是中国的一半。排在它们之后的分别是俄罗斯、印度和日本。

水污染也是受到高度关注的问题；水安全和节水问题日益成为不可忽视的关键问题。在干旱的中国北方地区，由于抽水过度，地下水位以每年一米的速度在下降，有关部门继续把农业用水源转为工业用水源。在“十一·五”计划期间，随着节能目标的确定，中国宣布单位工业增加值水耗量将减少30%。灌溉水利用系数将提高0.5%；固体废物综合利用率将提高至60%。

“十·五”计划（2001年至2005年）未开展的评估最近得出结论，中国的二氧化硫和煤烟排放量分别比计划开始时制定的目标高出42%和11%。中国现在是世界上最大的二氧化硫排放源。对此中国给出了似乎是合理的解释，称这是由于能源消费的最新趋势，特别是煤炭使用量的增加而导致二氧化硫排放量的上升。

由于经济持续繁荣，中国在不断发展，城市化进程也在继续。城市居民的能源消费有了极大增长，现在占中国全部能源需求的30%。随着未来几年城市化率的不断提高，能源消费还将继续增长。

能源供给

中国的发电容量以空前的速度增加。中国想依靠其

丰富的煤炭供给来满足不断扩大的工业需求和发电需求。根据美国能源信息管理局（EIA）的数据，今后20年间，中国和印度使用的煤炭将占发展中国家预测增长量的85%，占世界全部煤炭需求量的近70%。

煤炭占中国全部能源消费的份额将会下降，但在今后五年对煤炭的绝对需求量预计每年超过2,000万吨。

虽然中国很多老旧燃煤工厂效率低，但新建的工厂则效率较高。平均而言，据报道称，按煤炭消费克数与千瓦时的发电量之比计算，中国的燃煤工厂即使比不上美国工厂，也至少可以相提并论。然而，许多燃煤电厂缺少（或者未能运行）足够的污染控制设备。直接燃煤的各个行业（比如钢铁和水泥行业）要缴纳硫税，但这些税赋对制止污染收效甚微。二氧化氮受到管制，但汞却不在管制之列。

目前，可再生能源占中国能源总量的比重不到1%，但根据《可再生能源利用促进法》，政府计划在2020年前把这一比例提高至12%。

中国于2001年11月加入世界贸易组织（WTO），中国对贸易和投资自由化做出了许多具体的承诺，中美商会强烈要求中国全面履行这些承诺。这些承诺将实质性地向外国开放经济。在能源领域，这将意味着取消或者大力降低许多资本货物的关税并最终向外国竞争者开放石油产品的零售业务。目前，外国公司在国内煤炭和发电行业的参与度估计还不到1%。

天然气

2007年9月，中国国家发展与改革委员会（国家发改委）发布了一项新的政策，意在优先利用天然气，加强定价控制，更有效地管理需求。总的意图是平衡供求，同时大力促进节能。这就在某些行业之间造成了不一致的情况，因为这些行业既受该项政策的影响，又受外商投资目录中鼓励发展行业的标准

and investment liberalization, which AmCham strongly urges China to implement fully. These commitments will substantially open the economy to foreign involvement. In the energy sector, this will mean lifting or sharply reducing tariffs on many capital goods and eventually opening retail sales of petroleum products to foreign competition. The participation of foreign companies in the domestic coal and power generation sectors is currently estimated at less than one percent.

Natural Gas

In September 2007, The National Development and Reform Commission (NDRC) announced a new policy intended to prioritize natural gas usage, tighten pricing controls and manage demand more efficiently. The general intent is to balance supply and demand while promoting greater energy efficiency. This has created inconsistencies between the industries affected both by this policy and by the criteria set forth in the Encouraged Industry category of the *Foreign Investment Catalogue* and Hi-tech Enterprise status.

Implementation and interpretation are largely left to an undefined mix of provincial and municipal authorities and commercial enterprises. The NDRC project approval itself will likely not ensure an adequate supply of natural gas. Commercial enterprises, such as local gas distribution companies, in turn are reluctant to enter into long-term guaranteed supply agreements due to the uncertainty surrounding long-term government policy. This long-term supply uncertainty may result in decreased levels of capital investment. Improved specificity around policy and allocation mechanisms would benefit long-term investors.

Coal-Bed Methane (CBM)

Coal-bed methane production capacity is 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 (CNG) for vehicles than any other country and CBM could add to the CNG supply for vehicles and domestic household consumption.

Combined Heat and Power

China has long encouraged cogeneration of steam and electrical power; the issue was last addressed in the NDRC's "China Medium and Long-Term Energy Conservation Plan" published in 2005. However, cogeneration in China today totals less than half of the levels of production in 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. Furthermore, incumbent power companies tend to view cogeneration as competition and are thus reportedly reluctant to allow cogeneration operators to connect to the grid citing vague "grid stability" issues. Future regulatory uncertainty also makes economic planning difficult. Consequently, major industrial sites generally well-suited for cogeneration do not employ the available technology and commercial opportunities to supplement the electrical power grid are lost.

For example, coke oven gas (~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 300 million tons of coke in 2006, about 50 percent of the global production. Most Chinese coking plants built in recent years use gas recovery technology. It is estimated, however, that as much as 10 percent of total recoverable coke oven gas is still flared, and if recovered for power generation, could produce 10 gigawatts (GW) of electricity, or about 1.6 percent of total Chinese power capacity. Additional gas turbine CHP systems could be further deployed to capture a portion of this opportunity.

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

Renewable Energy

In 2006, China's reported total renewable energy totaled approximately eight percent of non-

及高新企业标准的影响。

政策的执行和解释在很大程度上交给了没有明确界定的省市部门和商业企业。国家发改委的项目批文并不代表可以确保足够的天然气供应。而商业企业，比如地方的天然气销售公司，由于国家长期政策的不确定性，并不愿意签订长期保证供应协议。这种长期供应的不确定性可能会导致资本投资水平的下降。提高有关政策和配给机制的明确性将有益于长期投资者。

煤层气 (CMB)

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、企业及居民能源，一些企业急于利用这一新的市场机会。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，业已被证明是中国天然气供应基础设施的适当补充。中国用于车辆的压缩天然气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。

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“中国中长期节能计划”中得到了解决。然而，中国现在的联产程度不到发达国家产量的一半。中小型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接入电网。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，不愿意将联产运营商接入电网。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%的炉气被排放，如果回收用于回收发电，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，中美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

据报道，2006年中国的可再生能源总量大约占不可再生能源产量的8%，大致相当于9亿吨煤。到2010年，中国计划使可再生能源占到其能源总量的10%。到2020年，中国计划开发120千兆瓦可再生能源，这可能占中国全部能源供给的12-16%。中国要实现2020年可再生能源方面的宏伟目标，可能需要的投资规模估计超过2000亿美元。

生物能

尽管生物能没有出现在多数统计资料中（因为没有进行交易而只是在当地得到利用），但据估计，它提供的能源量占中国目前主要能源的近10%——这是其他主要经济体国家中最大的比例。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）。2006年，中国农村的沼气产量估计为1.7亿立方米。

2007年9月，中国把生物能特别是液体生物燃料确定为其可再生能源计划的重要组成部分，包括研发和商业化计划。这方面进展的主要事例就是2007年在广西投入试生产的、产能为20万公吨的大规模非粮食基燃料乙醇生产厂。木薯被确认为该厂的主要原料，因为木薯可以生长在边际性荒地，不会与粮食作物争地。2006年，中国乙醇产量为350万吨，其中燃料乙醇产量为130万吨，位列全球第三。

中国的“国家燃料乙醇开发计划”为2010年确定的燃料乙醇目标是300万吨，到2020年这一目标提高到1500万吨。

从监管的角度来说，中美商会认为，以下建议将有助于为更加稳定和透明的生物能投资环境奠定基础。

renewable energy generation, roughly the equivalent of 900 million tons of coal. By 2010, China plans for renewable energy to account for 10 percent of its energy. And by 2020, China plans to develop 120GWs of renewable energy, which could account for 12 to 16 percent of China's total energy supply. China's ambitious goals for renewable energy may require an estimated investment exceeding US\$200 billion by 2020.

Biomass

Although it does not appear in most statistics (because it is not traded but utilized at local levels), biomass is estimated to provide nearly 10 percent of China's present primary energy—the largest percentage of any major economy. Most of the biomass in China is consumed for local cooking fuels or for the production of biogas (methane). In 2006, estimated biogas production in villages was 170 million cubic meters.

In September 2007, China established bio-energy and liquid biofuels in particular, as an important component of their renewable energy plans, increasing R&D and commercialization programs. A leading example of the progress being made is a commercial scale, non-grain ethanol plant that was commissioned in 2007 in Guangxi Province with 200,000 MT of capacity. Cassava was identified as a favorable feedstock for the plant since it grows in otherwise marginal farming regions and does not compete for land with food crops. In 2006, China's ethanol production was 3.5 million tons, of which fuel ethanol output was 1.3 million tons, the third largest such output globally.

China's "National Fuel Ethanol Development Plan" sets a 2010 target for fuel ethanol at three million tons, increasing to 15 million tons by 2020.

From a regulatory perspective, AmCham endorses the following recommendations to help lay the groundwork for a more stable and transparent biomass investment environment.

- Provide a steady and predictable biomass regulatory environment and avoid sudden policy shifts that discourage technology transfer and investment. For example, the suddenness of the 2007 grain-based ethanol moratorium and ownership restrictions has had a dampening effect

on both domestic and foreign investment in the industry.

- Improve enforcement of long-term biomass supply contracts to justify capital investments by reducing risks in pricing mechanisms and supply continuities.
- Clarify and/or enforce existing regulations, for example licensing of fuel ethanol producers.

Wind

Wind power presents a significant clean energy opportunity for China. With global sales of wind power totalling approximately US\$11 billion in 2005, it is expected that China will play an increasingly important role, both as a manufacturing base for related generation equipment and in the installation of new generating capacity. China's original goal in the 11th Five-Year Plan was for 5GW installed capacity by 2010. This was met ahead of schedule in 2007 and the goal was revised to 20GW. An obstacle to achieving this goal is the challenge of land availability for wind farms with consistently high wind speed, which tend to be far from population centers.

Solar

Currently, several technologies have been used to harvest solar energy. Solar-generated energy is relatively expensive, but that has not stopped the industry from growing rapidly in China. Recently, several Chinese solar companies, including Suntech, the world's largest solar module manufacturer, have listed on public stock markets. These companies will continue to have an increasingly significant impact on the global solar market, as well as American solar companies in and outside of China. It is expected that ongoing incremental efficiency gains coupled with increasingly scaled production and government support will continue to make solar a mainstream technology.

Energy Demand

China's energy demand has surged since the beginning of the new millennium. In 2003, China's energy demand was 60 quadrillion British thermal units, or about 14 percent of the global total, making it the world's second largest energy consumer behind the United States. From a pure consumption projection perspective, demand for electricity is expected to grow by an average annual rate of 4.3

- 提供一个稳定而且可预测的生物能监管环境，避免突然的政策改变而影响技术转让和投资。例如，2007年突然发生的暂停生产粮食基燃料乙醇项目以及对其所有权的限制，对该行业的国内外投资产生了不利影响。
- 通过减少定价机制和供应连续性方面的风险，提高长期生物能供应合同的执行力度，以证明资本投资的正确性。
- 澄清和/或执行现有的法规，例如燃料乙醇生产者许可制度。

风能

风能为中国提供了重要的清洁能源机会。2005年全球销售额大约为110亿美元，无论作为有关风能设备的生产基地还是在新装机容量方面，中国有望在整体上发挥日益重要的作用。中国“十一·五”计划的最初目标是到2010年装机容量达到5千兆瓦，这一目标已于2007年提前达到，并修改为20千兆瓦。实现这一目标的主要难题是提供足够的风电场场地，因为风电场既要有持续的高风速又要远离人口中心区域。

太阳能

目前，已经有几种技术可用来生产太阳能。太阳能源比较昂贵，但是这并没有阻止这一行业在中国的快速发展。最近，中国的几家太阳能公司在股票市场上市，其中包括世界最大的太阳能电池制造商——尚德太阳能电力有限公司（Suntech）。这些公司以及中国境内外的美国太阳能企业将会继续对全球太阳能市场产生日益重大的影响。据预期，随着太阳能效率的不断提高，加上日益扩大的生产规模及政府支持，有望继续使太阳能技术成为一种主流技术。

能源需求

自新千年开始，中国的能源需求急速上升。2003年，中国的能源需求为60千兆英热单位，约占全球总量的14%，使中国成为美国之后的世界第二大能源消费国。从纯粹的消费预测角度来说，从现在到2025年间，电力需求有望以年均4.3%的增长率增长。此外，根据美国能源部的数据，到2010年，每

年电力消费量将达到近2万亿千瓦时；到2020年将达到近3万亿千瓦时。

很明显，中国要实现目标，集中精力降低能源需求至关重要，而节能显然是最洁净也是最廉价的燃料形式。中国显然是着眼于长期的目标和效率，这一点可从“十一·五”计划中反映出来，但是，中国实际上有很大的机会超过其自己制定的目标。根据麦肯锡（McKinsey）全球学院最近的一份研究报告（《中国能源生产力跳跃发展》2007年7月），按照目前政策，中国到2020年可能实现能源需求低于预测的23%，这反过来又将减少石油进口达15%，并将以高达20%的比例超额完成二氧化碳减排目标。

工业部门

相对于发达地区，中国的整体能源强度（生产单位GDP所用的能源）较高，反映出服务行业与重工业的比率相对较低。据估计，中国产出了全球5%的GDP，却消耗了全球能源总量的大约14%。从现在到2020年，工业部门的能源需求有望以每年3.8%的速度增长，占全球总需求的23%。通过热回收包括热电联合系统，以及电机节能计划，工业部门可以实现大副度的能源节约。

建筑部门

从现在到2020年，住宅建筑行业能源需求估计将以每年4.1%的速度增长；商业建筑行业能源需求估计以每年7.1%的速度增长，到2020年将增长三倍。因此，建筑行业具有巨大潜力发生积极改变，通过减少资源使用量，在节能的同时提高盈利能力。

在中国，无论是在专业层面还是在消费者层面，有关建筑节能的知识都很少。建筑物的能源利用与建筑类型以及所属的地理气候地带密切相关。建筑设计和用途的多样性，更长的生命周期，都给节能措施的制定提出了挑战。

谈及购买节能产品和服务，设计师、开发商、建筑师、承包商和消费者都要面对大量信息，名目繁多的产品和严格的执行期限。虽然政府规定了对主要产品和系统的要求，但是实际的产品性能与生产厂

percent through 2025. Furthermore, according to the U.S. Department of Energy, annual electricity consumption will reach nearly two trillion kWh by 2010 and nearly three trillion kWh by 2020.

It is obvious that a focused effort of demand reduction is critical for China to meet its goals given that energy efficiency is clearly the cleanest—and cheapest—form of fuel. China is clearly focused on longer-range goals and efficiency, as reflected in the 11th Five Year Plan, but, realistically, it also has a huge opportunity to exceed its own targets. According to a recent McKinsey Global Institute study (*Leapfrogging to Higher Energy Productivity in China*, July 2007), China could realize energy demand 23 percent below projections under current policy for 2020. This in turn would result in 15 percent lower oil imports and exceeding CO₂ reduction goals by up to 20 percent.

Industrial sector

China's overall energy intensity (the energy used to generate one unit of GDP) is high relative to developed regions, reflecting the relatively low ratio of service industries to heavy industry. It is estimated that China generates five percent of global GDP while consuming about 14 percent of total global energy. Demand in the industrial sector is expected to grow by 3.8 percent per year through 2020, representing 23 percent of the global total. Significant efficiency can be created in this sector through heat recovery, including combined heat and power systems, and motor efficiency initiatives.

Building sector

Residential building sector energy demand is growing at an estimated rate of 4.1 percent per year through 2020, and the commercial building sector energy demand is growing at an estimated rate of 7.1 percent annually, essentially tripling by 2020. The building sector therefore has a considerable potential for positive change. It can become more efficient - through reduced resource usage - while also becoming more profitable.

In China, knowledge regarding building energy efficiency is low, both professionally and at the consumer level. Energy use in buildings is strongly related to the building type and the geographical climate zone. The diversity of building design and use, in addition to extended life cycles, poses a

challenge for the prescription of energy conservation measures.

Designers, developers, architects, contractors and consumers face an overwhelming amount of information, multiple products and tight timelines when it comes to purchasing energy efficient products and services. Though the government has regulated requirements for the main products and systems, there are great differences between actual product performance and manufacturer claims. No comprehensive guides exist to support the choices for selecting materials. In addition, the lack of third-party laboratory and certification organizations hinders the whole decision making process. Without effective supervision and certification, products that do not meet national standards easily pass the approval process. Products are also retested for different customers, projects and locations, which raises the cost for the both manufacturers and customers.

Specific solutions are needed for each situation including the construction of new buildings, renovation of existing buildings, small family houses and large commercial complexes. In addition, the local availability of materials, products, services and the local level of technological development are all key variables. This creates a real challenge in China, where the interpretation of current codes alone varies greatly among technical professionals.

Energy consumption can be reduced via a number of measures like thermal insulation, high performance windows, building automation, HVAC designs, lighting designs, solar shading, airtight structural details, ventilation and heat/cold recovery systems supported with the integration of renewable energy production in the building. These strategies apply to buildings in both warm and cold climates.

Energy-conservation codes for residential buildings in China (the new "Design Standard for Energy Efficiency of Residential Buildings in Severe Cold and Cold Zones" and the new "Design Standard for Energy Efficiency of Residential Buildings in Hot Summer and Cold Winter Zones") are now under revision, since 2006 energy efficiency levels have risen significantly by about five to 15 percent. The "Energy Conservation Codes for Industrial Building" were launched at the end of 2007. Also, the Ministry of Commerce and other government agencies have issued several regulations and laws to improve the

商所声称的还有很大的差距。目前也没有综合的指南为材料选择提供支持。另外，由于缺乏第三方实验室和认证组织，也影响了整个决策过程。因为没有有效的监督和认证，不符合国家标准的产品也能轻易通过审批。另外，产品还要针对不同的客户、项目和地点进行重新检测，这就增加了生产厂商和客户双方的成本。

对新建筑工程、现有建筑翻修、小型家庭住宅和大型商业联合体等各种情况，都需要有具体的解决方案。另外，当地获得材料、产品和服务的能力、以及当地的技术发展水平也都是关键的变量。这对于中国是一个真正的挑战，因为在中国仅对现有法规的解释在专业技术人士之间就存在很大不同。

能够降低能源消耗的措施有很多，包括热绝缘、高性能窗户、建筑自动控制、采暖通风与空调设计、照明设计、遮阳、密封的结构元件、通风以及受到建筑内可再生能源集成系统支持的热/冷回收系统。这些策略既适用于温暖气候区的建筑也适用于寒冷气候区的建筑。

中国的住宅建筑节能条例（新的《寒冷和极寒冷地区住宅建筑节能设计标准》和新的《夏热冬冷地区住宅建筑节能设计标准》）现正在修订中；自2006年以来，中国的节能水平提高了大约5%–15%。2007年底，中国出台了《工业建筑节能条例》。另外，商务部和其它政府部门也出台了多部法律法规，旨在改进对现有法规和标准的执行情况。

制定有关可持续建筑和法规执行的国家标准（比如中国绿色建筑认证、LEED、Earth Advantage等）具有至关重要的意义，以引导该行业采取正确的行为，鼓励节能建筑。在这方面，影响市场机制和鼓励研发项目以及开展政府企业合作都极为重要。 ■

建议

- 提高能源政策、供给、可用性及定价机制的透明度。
- 有效地衔接天然气利用政策和其它政策，如“受鼓励行业”、“高科技企业”范畴

等；逐步淘汰中央控制的配给机制并逐步引入市场定价。

- 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。
- 提供一个稳定而且可预测的生物能监管环境，避免突然的政策改变而影响技术转让和投资。例如，2007年突然暂停粮食基燃料乙醇的生产项目以及施加的所有权限制，对该行业内的国内外投资产生了不利影响。
- 在清洁技术项目的投资和研发方面加大透明度和指导。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。
- 加大工作力度，确保当前的建筑节能标准得到正确地贯彻执行。制定可持续建筑的国家标准以鼓励节能建筑。进一步影响市场机制，鼓励研发项目和行业内的政府企业合作。
- 加大力度鼓励利用现有技术，如照明设计、窗户替换、绝缘、控制系统和HVAC升级等，更新建筑物的节能设施。
- 继续制定和出台全国性的“绿色”产品和建筑标志计划。
- 增加对环保节能型产品的需求。

enforcement of the current energy efficiency codes and standards.

Developing national benchmarks on sustainable buildings and code enforcement (e.g., China Green Building Certification, LEED and Earth Advantage) are essential requirements to encourage energy efficient buildings. Influencing market mechanisms and encouraging research and development projects, as well as public-private partnerships, are of paramount importance in this endeavor. ■

Recommendations

- Improve the clarity and transparency of energy policy, supply, availability and pricing mechanisms.
- Harmonize the Natural Gas Utilization Policy with other programs such as “Encouraged Industry” and “Hi-tech Enterprise” categories and gradually phase-out centrally controlled allocations consistent with the phase-in of market-based pricing.
- Encourage industrial cogeneration through regulatory reform, creating a legal framework for companies to sell power back to the electricity grid.
- Provide a steady and predictable biomass regulatory environment and avoid sudden policy shifts that discourage technology transfer and investment. For example, the suddenness of the 2007 grain-based ethanol moratorium and ownership restrictions has had a negative effect on both domestic and foreign investment in the industry.
- Provide greater transparency and guidance in investment and development of clean technology projects. Create long-term national policies together with local implementing regulations that encourage the development of renewable energy.
- Increase efforts that ensure current building standards for energy efficiency are implemented correctly and enforced. Develop national benchmarks on sustainable buildings in order to encourage energy efficient buildings. Further influence market mechanisms and encourage research and development projects, as well as public-private partnerships in the sector.

- Increase efforts to encourage energy efficient building retrofits using available technologies such as lighting design, window replacement, insulation, control systems and HVAC upgrades.
- Continue the development and roll-out of a national “green” product and building labeling program.
- Increase the demand for products that meet energy efficient and environmentally friendly performance levels.



Financial Services

This year for the first time, the AmCham White Paper includes a separate subsection on the financial services sector, including policy papers on banking, insurance and investment services. This new focus reflects the importance of China's financial sector to the future development of a large-scale, modern domestic economy. The United States and China have established a new high-level exchange on economic, investment and trade issues within the framework of the Strategic Economic Dialogue (SED) that participants hope will move China beyond the commitments of its World Trade Organization (WTO) accession. The continued opening of China's financial services sector is a key element of the SED.

During the past five years, China's State Council has paid significant attention to the reform and restructuring of China's financial services sector. Large state-owned banks and insurance companies have moved away from direct ownership and control by the Ministry of Finance (MOF) and other state agencies through jumbo IPOs on domestic and foreign stock exchanges. Foreign banks and insurance companies have been allowed for the first time to take minority stakes in Chinese financial institutions and to form strategic marketing partnerships for services such as consumer credit cards. By some estimates, market ownership of China's key financial institutions has risen from zero in 2003 to some 30 percent today. At the same time, balance sheets have improved, non-performing loan portfolios reduced, governance strengthened and customer services expanded.

Despite these reforms, China's financial services sector remains one of the most tightly controlled parts of the economy. Licenses and market access for American banks, insurance companies and investment companies remain difficult and costly to attain. Direct controls have been replaced by a growing body of laws and administrative regulations, some of which contain provisions that severely limit access to the domestic financial services market by foreign competitors. Foreign exchange controls, while loosened somewhat under the pressure of mounting foreign exchange reserves, have actually been expanded in some areas.

The effect of maintaining controls on the operations of foreign financial institutions and foreign exchange

flows has been the continuing isolation of China's capital markets from the global financial system. Discriminatory regulatory measures, such as high capital requirements for branching or foreign equity limits, are designed to protect inefficient domestic institutions from foreign competition, thereby slowing the reform and restructuring of the entire financial sector and its successful integration with the global economy.

The three sections presented below offer a detailed review of China's post-WTO financial sector and additional steps that are needed to further open and reform the sector.

Commercial Banking

December 2006 saw the culmination of China meeting its final WTO membership obligations in the banking sector. China's State Council has issued new rules that govern China's banking sector and foreign banks that participate within this sector. These changes were welcomed for both the spirit in which they were promulgated and for the practical changes they brought forth. However, meeting WTO commitments does not signal the end of change, but rather the beginning of the creation of an excellent financial system inside China. Concurrent with the number of positive steps taken in 2007, banking sector liberalization should proceed towards realizing China's aspiration to have a competitive and strong banking system that rivals any in the world.

Significant Developments

Chinese authorities understand that a sound and well-developed financial system is essential to the overall reform of its economy. To this end, the authorities are to be congratulated for the most recent reforms implemented in December 2006, such as allowing foreign banks to incorporate their operations as local Chinese entities. In addition, there were new regulations put forth for foreign banks that chose not to locally incorporate that will have a significant impact even for those banks that chose local incorporation. Several new benefits under the change in rules are product development, branch expansion and the removal of geographic restrictions.

Nonetheless, several other changes were not positive

金融服务

中美商会白皮书今年首次专门增加了一个章节，以阐述金融服务行业相关内容，包括银行业、保险和投资服务的相关政策文件。这一新的调整侧面地反映了中国金融业对于未来国内现代、规模性经济发展的重要性。中美两国在战略经济对话（SED）框架内就经济、投资和贸易的相关问题建立了高层交流磋商机制，双方都希望藉此推动中国全面实现其入世承诺。中国金融服务业的持续开放是战略经济对话的关键内容。

过去五年中，中国国务院非常重视中国金融服务行业的改革和重组。大型的国有银行和保险公司不再由财政部直接管控，其他国有的机构也在国内外证券市场进行了大规模的首次公开募集。中国首次允许外国银行和保险公司在中国的金融机构中持有少数股权，允许与中国金融机构成为金融服务方面的市场战略合作伙伴，比如在消费信贷卡领域。据估计，中国主要金融机构的市场所有权比例已经从2003年的0%上升到目前的30%。同时，资产负债表也得以改善，不良贷款下降，公司治理加强，客户服务得以提升。

尽管实施了这些改革措施，中国的金融业仍然是控制最紧的经济发展领域之一。外国银行、保险公司和投资公司在获得许可证和市场准入方面依然困难，且其代价很高。日益发展的相关法律和行政法规代替了政府对该行业的直接管控，其中就包括关于严格限制外国竞争者进入国内金融服务市场的规定。虽然在外汇储备日益增多的压力下，外汇管制有所放宽，但实际上在某些方面却在紧缩。

对外资金融机构市场运营及外汇流动的持续监管，将不断地使中国的资本市场与全球的金融体系相隔离。对于设立分支机构的高额注册资本要求，外资股权限制等不公平的监管措施旨在保护低效率的国内机构免受来自外国的竞争，因而延缓了整个金融行业的改革和重组，影响了其成功地融入全球经济的速度。

以下三个部分对中国入世后的金融业进行了回顾，

并提出了该行业进一步开放和改革所需要采取的一些措施。

商业银行

2006年12月，中国履行了其在金融行业的最后一项入世义务。中国国务院颁布了关于管理中国的银行业和参与此行业的外资银行的新规定。无论是颁布这些规定所秉承的精神还是它们所带来的实际改变，都受到了欢迎。然而，实现入世承诺并不表示变革的结束，而是中国创建完善的金融体系的开始。2007年，在采取了许多积极措施的同时，银行业领域自由化应当朝着实现中国拥有可以与世界上任何银行业体系相媲美的具有竞争力的强大银行业体系的愿望而继续进行。

重大进展

中国政府非常清楚健全成熟的金融体系对于其总体经济改革来说是不可或缺的。为此，相关部门于2006年12月实施了新的条例，如允许外资银行以中国法人实体的形式设立本地经营机构等，我们对此表示祝贺。此外，中国还颁布了有关非法人外资银行的相应法规。这些法规，甚至对于选择在本地设立法人经营机构的外资银行都产生了重大影响。法规变化所带来新的若干好处包括产品开发、分行扩张和取消地区限制。

然而，对于在中国从事经营的外资银行来说，也有其一些不利的变化。国家外汇管理局（SAFE）将短期外债余额指标削减了40%，使得外资银行单独申请外债配额进行离岸融资的难度加大。此外，许多非法人注册的外资银行必须增加注册资本，其中有许多银行可能要增加到其目前注册资本的两倍，同时随着中国银行业法规出现这些变化，政府主管部门要面对许多依法提出的新申请，因此银行业监管机构目前已经是超负荷工作，不仅延迟了各种类型的申请审批，而且由于工作负荷大，甚至监管机构有时会劝退对于某些业务项目审批的申请。最后，外国银行获得人民币流动资金来源的能力有限。

for foreign banks operating in China. The State Administration of Foreign Exchange (SAFE) cut back offshore debt quota by as much as 40 percent, a decision that adversely affected the ability of foreign banks to fund their balance sheets profitably. Further, a number of foreign banks that did not locally incorporate were required to increase their capital, with many having to double their capital base. With these changes to banking regulations in China, the authorities are faced with numerous new applications for various approvals that are otherwise mandated. Consequently, banking regulators are now overburdened to the extent that approval for any type of request takes an extraordinary amount of time, and requests for approvals of certain business items are at times discouraged by regulators because of their workloads. Finally, the ability to source local currency Renminbi (RMB) funding remains problematic.

Specific Issues

Regulatory Capacity and Depth

Rapid but positive change in the banking sector because of new regulations significantly increased the workload for regulators. The new ability to incorporate locally, requirements for additional capital, newly introduced internet banking requirements and the plethora of submissions required by regulators in areas such as personnel changes, product offerings and new branch requests create an administrative burden for both the regulators and the regulated. AmCham believes that regulator attention to the following areas would enhance the commercial banking climate:

- Separate approvals for individual branches of the same foreign bank for business lines (such as derivative licenses) that were previously approved.
- Unequal treatment by regulators in locations where a foreign bank may not have a branch. Authorities such as SAFE sometimes disallow certain transactions in foreign currency because of the lack of a branch office. This runs counter to the current regulations.
- Approvals are often required from numerous regulatory agencies that have different approaches to the approval process and different interpretations of rules and regulations.

Funding of Foreign and Local Currency

SAFE significantly cut offshore debt quota limits for banks in 2007. This has had a significant impact on the ability of foreign banks to fund

balance sheets profitably. Most foreign banks borrow funds through their regional treasury center, often located in Hong Kong or Singapore. However, borrowing outside China is subject to limits imposed by SAFE and the inability of foreign banks to obtain adequate funds at a profitable rate in lieu of domestic foreign deposits places them at a significant disadvantage. AmCham understands the initial rationale behind SAFE's decision to limit offshore funds coming into China, which was to inhibit money coming in from abroad directed towards speculative investments such as in real estate or shares. However, legitimate transactions such as trade finance and project and infrastructure lending should be excluded when assigning offshore debt quota. China does have legitimate concerns over the percentage of short-term overseas debt to total foreign obligations, but the arbitrary nature of assigning quotas to foreign financial institutions lacks transparency and is applied without regard to transaction types.

Even if allocation of offshore debt quota presented no obstacles to obtaining cost effective funds from abroad, the method by which the China Banking Regulatory Commission (CBRC) calculates borrowings from head office, offshore branches and affiliates impacts foreign banks' ability to manage within the required prudential liquidity ratio. These types of borrowings are required to be calculated as maturities within one month regardless of tenure. Therefore, a six-month loan matched with a six-month borrowing of funds from a head office by default creates an illiquid position on the balance sheet even though no mismatch of assets and liabilities actually occurs.

As an alternative to borrowing from sources outside China, the authorities are attempting to foster the creation of a domestic foreign currency money market. Thus far, this market has proved to be thin and illiquid, and the demands for money to fund both foreign currency assets and to swap foreign currency for RMB (see below) aggravate the orderly flow of funds within the market at competitive rates. In order to assist in the creation of this money market, the authorities should ensure a degree of liquidity that makes borrowing competitive with offshore money. This action, coupled with adjustments to the offshore debt quota scheme, will result in a more orderly and competitive foreign currency market.

RMB funding is fragmented and inefficient. Other than corporate and retail deposits, there are limited liquid sources of RMB funds available to foreign banks. The first is through the China Foreign

具体问题

监管能力和监管深度

由于新法规的实施大大增加了监管机构的工作量，从而使银行业的相关部门发生了快速而积极的变化。申请注册法人银行资格、资本追加的要求、新推行的网上银行，以及监管机构在人事变动、产品出售和新分行成立申请等方面要求提供过多的文件等，给监管机构和被监管机构都带来了行政负担。中美商会认为，监管机构关注以下问题，将有助于改善商业银行的运营环境：

- 对同一外资银行的个别下属分行从事以前已审批的业务（例如衍生产品执照）要求另行审批。
- 监管机构在外资银行没有设立分行的地方给予其不平等待遇。因为没有分行存在，国家外汇管理局等主管部门有时会不允许某些外币交易。这与现行法规相悖。
- 经常要求得到众多监管机构的审批，而这些监管机构采用的审批程序各不相同，对法规规定的解释也存在差异。

融资—外币和本币

2007年，国家外汇管理局大大削减了银行的外债配额，这对于外资银行低成本融资的能力具有重大影响。许多外资银行通过其地区资金管理中心借入资金，这些中心一般都位于香港或新加坡。然而，从中国境外借款要在国家外汇管理局规定的限额内，而且外资银行无法以优惠的利率取得充足的资金以替代国内外币存款，这使它们处在严重不利的地位。中美商会明白国家外汇管理局做出限制境外资本进入中国之决定的根本原因，即为了阻止境外用来进行房地产或股票等投机性投资的资金进入中国。然而，在分配外债配额时，贸易融资及项目和基础设施贷款等合法交易应当排除在外。中国确实对短期外债占总外债的比例存在合理的担忧，但是向外国金融机构分配配额的任意性质缺乏透明度，而且也不考虑交易类型。

即使外债配额的分配不对从境外取得低成本的资金构成障碍，中国银行业监督管理委员会（CBRC）计算外国银行从其总部、境外分行和关联机构借

款的方法也影响其将借款控制在必要的稳健流动比率范围内的能力。无论其使用期限多长，这些类型的借款都必须作为在一个月到期的借款核算。因此，即使并未发生资产和负债不匹配的情况，在默认的情况下，与从总部借入的为期六个月的资金相对应的六个月期贷款都会在资产负债表上造成流动性不足的状况。

作为从中国境外借款的替代方案，主管部门正尝试鼓励建立国内外币货币市场。事实证明，此市场迄今都很薄弱，流动性差，投资外币资产和美元与人民币掉期交易（见下文），所需要的货币恶化了资金以有竞争力的利率在市场内的有序流动。为了帮助创建此货币市场，主管部门应当确保使借款可与境外资金竞争的流动性程度。这一措施，结合对外债配额计划的调整，将会使外币市场更加有序和有竞争力。

人民币（RMB）资金不成体系，效率低。除了企业和零售存款，外国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数额。资本金较少的外国银行明显处在不利的地位。第二个来源是国内美元和人民币掉期交易。在这个市场上，由于国内外币货币市场流动性差，外币以溢价定价，利率没有吸引力。由于外国银行还面临着缺乏资金来充实其外币账户的事实，更加剧了这种情况。最后是关于与银行的双向协议：当前利率不稳定，人民币通常是在上海银行间同业拆放利率（SHIBOR）基准利率基础上以溢价定价。虽然SHIBOR是个很好的基准，但在外资银行试图从本地银行双向借款时，它通常是个象征性指标。

为了使银行间国内货币借款符合国际标准，主管部门应当考虑放宽或消除对于外国银行可以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，这样国内美元和人民币掉期交易就会成为更加以市场为导向的替代方案；主管部门应采取措施，确保上海银行间同业拆放利率成为有效的市场驱动利率，而不是象征性指标，并允许外国银行从其它人民币头寸可能有盈余的外国银行双向借款。此外，中国人民银行应当考虑在履行央行的职能之

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. Foreign banks with smaller capital bases are at an obvious disadvantage. A second source is onshore U.S. dollar to RMB swaps. In this market, rates are not attractive because of the illiquidity of the domestic foreign currency money market that prices foreign currency at a premium. This is exacerbated by the fact that foreign banks also face foreign currency shortages to fund their foreign currency books. Lastly are bilateral arrangements with banks: currently rates are spotty and the 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, the authorities should consider easing or eliminating caps placed on the amount foreign banks can borrow through CFETS; increase or eliminate altogether the foreign debt quota so that onshore U.S. dollar to RMB swap transactions become a more market-driven alternative; undertake measures to ensure SHIBOR becomes an effective market-driven rate rather than a symbolic indicator; and allow foreign banks to borrow bilaterally from other foreign banks that may be in an RMB surplus position. In addition, the People's Bank of China (PBOC) should consider playing the vital role of market maker and lender of last resort to provide liquidity to the financial system, in addition to performing its central bank functions.

Capital Requirements for Non-Locally Incorporated Banks

For banks that have no strategic interest in incorporating locally but are focused on providing wholesale commercial banking services, capital requirements should fall within the norms of other world-class international financial centers. The current requirement of a minimum RMB200 million before a first branch in China can conduct foreign exchange transactions presents a barrier to entry that prohibits all but the largest U.S. banks from entering the Chinese 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 BIS capital guidelines), projected capital position, the historical performance and future prospects. Further, the local regulators should

take into account the supervisory regime in the applicant's home country, its regulatory powers and the frequency of supervisory examinations.

This move would require CBRC and other regulatory agencies to evaluate the applicant's capital adequacy, asset quality and liability management. Additional regulatory capacity and depth are required to move in this direction of analysis. This methodology of assessing capital adequacy is in line with the practices of other major financial centers such as New York, Tokyo, London and Hong Kong. Although several other markets within Asia require a minimum amount of capital, as China aspires to world-class status, the best practices of the current major financial centers should be considered.

Ownership Restrictions of Local Banks by Foreign Locally Incorporated Banks and Branches of Foreign Banks

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.

Debit and Credit Card regulations

Current CBRC and PBOC regulations are inconsistent and unclear regarding the requirement for banks to migrate debit/credit card systems onshore. In addition, no specific time frame has been given for this requirement.

Regulatory Clarity on Foreign Bank Participation in the Securities Industry

Foreign banks, particularly those with extensive experience in countries with developed financial markets, can make significant contributions to the development of China's securities industry. Current

外，发挥做市商和最后贷款人的至关重要作用，以为金融系统提供流动性。

对非本地法人银行的资本要求

对于在本地注册无战略发展要求，但以批发商业银行业务为主的银行，资本要求应当适用其他世界一流跨国金融中心的标准。当前的要求是在首个中国分行可以办理外汇业务之前最低为2亿元人民币，这构成了入市障碍，影响了除最大的那些美国银行外的所有其它银行进入中国市场。

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。

这种策略会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。为了进行分析，还需要有更大的监管力度和深度。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。尽管亚洲有若干个其它市场要求最低资本数额，由于中国渴望取得世界一流地位，应当考虑采纳当前主要金融中心的最佳做法。

对于外资法人银行及外资银行分行在本地银行中的所有权比例的限制

当前，单个外资实体在中国本地银行中的所有权不能超过20%，全部外资实体的总体份额不能超过25%。中国政府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。

主管部门应当允许在当地注册的外国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完全实现改善管理、技术和风险管理的目标。

借记卡和贷记卡规定

目前，中国银行业监督管理委员会和中国人民银行有关银行向境内迁移借记/贷记卡系统的要求是不一致的，也是不明确的。此外，对于此要求也没有给出具体的实施时限。

关于外资银行参与证券行业的监管透明度

外资银行，尤其是在发达的金融市场的国家有丰富经验的那些银行，可以对中国证券行业的发展做出巨大的贡献。有关外资公司能够在多大范围内与当地公司合作或者以其它方式在此行业中发挥作用，现行法规中并未明确。

总结

中国政府和银行业监管机构在过去的一年内有了极显著的进步。在对银行业法规的修订过程中表现了他们对解决与金融商业银行服务内容有关的重组问题的决心，对中国银行业进行改革方面的远见，以及制定市场参与者相关法规时的清醒认识。要建立世界一流的金融中心和有竞争力的先进金融体系，中国加入世界贸易组织及其履行入世承诺的最终步调都是值得称赞的。要使中国成为国内利益相关者和参与者受益的金融市场，主管部门应当确保外国金融机构能够平等自由地进入中国市场，以便其更好地服务于当地银行的零售和企业客户。

建议

- 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。
- 重新考虑外债配额。以取消或至少免除贸易融资和项目贷款的外债配额限制。在计算流动比率时，消除对于总部和关联公司借款的歧视性待遇。或者，努力使国内外币市场更具有流动性，使其具有更大的深度和更高的效率。通过解决这个问题，主管部门可以同时启动将会确保人民币资金稳定、经济有效供给的改革。

regulations are unclear as to the extent to which foreign firms will be able to partner with local firms or otherwise play a role in this industry.

Summary

China's government and banking regulators made bold progress this past year. Changes to banking regulations have shown determination to address restructuring issues related to the commercial banking segment of the financial sector, vision in the direction China intends to take on banking reform and clarity in outlining the new rules and regulations for market participants. To develop an advanced and competitive financial system with world-class financial centers, China's entry into the WTO and its final steps to satisfy its WTO commitments are laudable. To make China a financial market that benefits all domestic stakeholders and participants, the authorities should ensure that foreign financial intuitions have equal and unfettered access to the Chinese market in order to better serve local retail and corporate purchasers of banking services.

Recommendations

- Streamline the regulatory process and limit the requirements for approvals only to those major items that could possibly create systemic risks and disruptions to the financial system.
- Reconsider offshore debt quotas with a view towards eliminating or, at a minimum, exempting from the quotas all trade finance and project lending. Eliminate the discriminatory treatment of offshore borrowings from head office and affiliates when calculating liquidity ratios. Otherwise, work to make the domestic foreign currency market more liquid with more depth and efficiency. By addressing this issue, the authorities can concurrently institute reforms that will ensure a stable and cost effective supply of RMB funding.
- Eliminate capital requirements for non-locally incorporated banks. Apply global financial best practices to banks that operate principally in the wholesale market. This will ensure equal treatment in the various markets, including CFETS, where RMB funding is available at more competitive rates.
- Eliminate ownership caps for locally incorporated banks. These caps should likewise be eliminated for non-locally

incorporated banks. At a minimum, for the latter class of foreign banks, caps should be significantly increased.

- Clarify regulatory requirements and a timetable for card systems to be migrated onshore.
- Enable foreign firms to play a role in the securities industry, thus leveraging foreign firms' experiences worldwide to create world-class financial centers in China.
- Lift restrictions that prohibit foreign banks and subsidiary banks from trading corporate bonds, to help further develop the domestic bond market.

Insurance

The insurance industry in China has grown at a compound annual growth rate of over 20 percent in the past 10 years. Featured prominently during China's 11th Five-Year Plan (2006-2010), insurance is recognized by the Chinese government as an important industry for supporting the national goals of sustainable growth and a harmonious society. Given China's double-digit GDP growth but relatively low insurance penetration of 2.8 percent (insurance premiums as a percentage of GDP), the potential for further growth in the insurance industry is tremendous.

The end of the five-year transition period for China's accession to the WTO in December 2006 provided an opportunity to usher in a new beginning for foreign companies to participate in China's insurance markets. The Chinese Government has taken a number of positive steps to comply with its WTO commitments. There remain, however, market access barriers to foreign participation, which raise questions as to their WTO consistency as well as compatibility with China's goals of integration with the global economy and development of global financial markets. These barriers deny Chinese businesses and individuals access to the products and services that American insurance companies can provide.

Significant Developments

There have been a number of positive developments in the insurance regulatory environment in the past year. Many new rules have been promulgated in an ongoing effort to improve the regulatory framework. Noteworthy regulations included guidelines on the development of insurance intermediaries, measures

- 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最佳做法。这将确保在能够以更有竞争力的利率获得人民币资金的各个市场（包括中国外汇交易中心）享有同等的待遇。
- 取消对于本地法人银行的所有权限制。对于非本地法人银行的这些上限同样也应当取消。至少应当大大增加后一类外国银行的上限。
- 阐明要迁移到境内的卡系统的监管要求和时间表。
- 使外国公司能够在证券行业中发挥作用，从而利用外国公司在全球范围内的经验在中国创建世界一流的金融中心。
- 取消禁止外资银行及其附属银行买卖公司债券的限制规定，以帮助进一步发展国内债券市场。

保险

过去10年间，中国的保险行业以超过20%的复合增长率增长。在中国第11个五年计划期间（2006-2010），其地位更加突出，保险业被中国政府确认为支撑可持续增长和和谐社会的国家目标的重要行业。鉴于中国的国内生产总值以两位数的速度增长，而保险深度却只有较低的2.8%（保险费占国内生产总值的百分比），因此保险行业进一步增长的潜力巨大。

2006年12月，中国入世的五年过渡期结束，开创了外国公司进入中国保险市场的新机遇。中国政府采取了许多积极的措施以遵守其入世承诺。然而，外国公司要进入市场，仍然面临着许多障碍，这似乎与世界贸易组织的要求以及中国全球经济一体化和发展全球金融市场的目标不一致，使得中国企业和个人无法获得美国保险企业提供的产品和服务。

重大进展

去年，保险监管环境中有许多积极的改善。为了持续改善监管框架，中国颁布了许多新规定。值得关注的法规包括关于发展保险中介代理机构的指导方

针，养老保险业务管理方法（即个人、团体和企业年金）和保险资金海外投资规定。有关外国公司市场准入方面的重大进展描述如下：

一般保险

2007年5月，中美战略经济对话之后，中国主管部门允许包括美国公司在内的若干外国一般保险商将其在中国的分支机构转化为本地注册的子公司。同时，中国主管部门允许若干外国一般保险商在中国成立各种不同法律形式的新经营机构，如分公司、子公司或合资公司等。

分保

按照中国的入世承诺，中国保险监督管理委员会（中国保监会）逐步取消了给中国再保险公司仅存的5%法定分保比例。

保险中介代理机构

中国保监会按照中国的入世承诺允许设立外商独资保险经纪公司。

合格境内机构投资者

至少有两家外商投资保险公司和将近20家中国保险公司经批准获得以外汇资金投资香港股票市场的合格境内机构投资者资格。

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，但据中美商会成员的反映，他们被告知，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。没有任何商会成员曾经同时获得多个分支机构设立的批文。同时，中资保险公司，即使是新成立的，也能同时取得了多个分支机构设立批文，使他们能够快速地建立跨省或全国分支机构网络。例如，一个新保险商自其成立不到三年的时间以来，已经获得了将近30个分支机构许可证。这些许可证中有许多是在短

for managing pension insurance business (i.e., individual, group and enterprise annuities) and rules for investing insurance funds overseas. Significant developments with respect to market access for foreign companies are described below.

General Insurance

Following the U.S.-China Strategic Economic Dialogue in May 2007, Chinese authorities allowed several foreign general insurers, including U.S. companies, to convert their branches in China into locally incorporated subsidiaries. Meanwhile, several foreign general insurance companies were allowed to establish new operations in China in various legal forms such as branch, subsidiary or joint venture.

Reinsurance

Consistent with China's WTO commitments, the China Insurance Regulatory Commission (CIRC) phased out the remaining five percent mandatory reinsurance cession to China Re.

Insurance intermediaries

CIRC, in compliance with China's WTO commitments, allowed wholly foreign-owned insurance brokerages.

QDII

At least two foreign-invested life insurance companies, along with nearly 20 Chinese insurers, were approved for the Qualified Domestic Institutional Investor (QDII) status to invest foreign exchange funds in the Hong Kong stock market.

Specific Issues

Allowing 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 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 members have been able to obtain branch approvals concurrently. Meanwhile, Chinese-invested insurance companies, even newly established ones, have obtained multiple concurrent branch approvals, enabling them to rapidly build

multi-provincial or national branch networks. For instance, one new domestic insurer has received nearly 30 branch licenses since its establishment less than three years ago. Many of those licenses were granted in batches within a short period of time; some of them on the same day.

AmCham members believe that there are structural and procedural explanations for the disparate treatment that they face. Specifically, branch and other license applications by foreign-invested insurance companies, even those that enjoy legal-person status in China, are subject to supervision by CIRC's International Department, a layer of scrutiny that does not apply to Chinese-invested insurance companies. CIRC's Development and Reform Department appears to have extensive responsibilities, both for centralizing market entry-exit of Chinese legal-person insurance companies and for promoting the development of China's insurance industry. AmCham members are concerned that the Development and Reform Department tends to favor expanded market-entry for Chinese-invested insurance companies over foreign-invested insurance companies, even if this ultimately results in the slower development of the insurance industry and disadvantages the interest of insured.

In addition, CIRC appears to maintain separate procedures for applications by foreign-invested insurance companies compared to Chinese-invested insurance companies. All applications by foreign-invested insurance companies 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 to be reviewed by CIRC local bureaus instead of CIRC headquarters. Chinese-invested insurance companies are also entitled to simpler and faster procedures for the establishment of sales offices and for registration of branches and sub-branches.

AmCham believes that these distinctions lack a reasonable basis and are incompatible with China's WTO national treatment obligations. Foreign insurance companies should be allowed to enjoy national treatment by receiving new branch licenses on a concurrent basis.

Relaxing Restrictions on Reinsurance Arrangements

As it phased out the remaining five percent mandatory reinsurance cession to China Re, CIRC instituted a new set of rules on reinsurance arrangements, some of which are inconsistent

期内成批授予的，其中有一些还是在同一日内授予的。

商会成员认为它们所面临的这种不平等待遇还有其结构上和程序上的原因。尤其是，即使外商投资保险公司在中国享有法人资格，它们所提出的分支机构和其它许可证申请也要受中国保监会相关部门的监督，而这一审查是不适用于中资保险公司的。中国保监会有些部门职责过于广泛，既集中管理中国法人保险公司的入市与退市，还要负责推动中国保险行业的发展。商会成员担心，这不仅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，而且这些部门仍倾向于给中资保险公司比外商投资保险公司多的市场准入机会。

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。对于销售办事处的设立和分支机构及分理处的注册登记，中资保险公司还有权适用更简单更快捷的程序。

中美商会认为这些不同程序的适用缺乏合理的依据，与中国入世的国民待遇义务相矛盾。应当允许外国保险公司以同时获得新分支机构许可证的方式享受国民待遇。

放宽对于分保协议的限制

由于逐步取消了给中国再保险公司的仅存的5%的再保险法定分保比例，中国保监会制定了一套新的有关分保协议的法规，其中有一些与国民待遇原则相矛盾而且/或者实施起来很繁缛。

对于涉及外国保险商的分保业务的更多严格要求

为了加强对分保业务的监管，中国保监会颁布了若干有关分保协议的法规。但是，适用外资公司的标准似乎更为严厉。例如，在进行合约分保或临时分保过程中，保险公司必须首先向中国至少两家专业再保险商发出要约，而且要约分保的数额必须至少是全部分出业务的50%。此外，外资保险商要与关联

公司承接分保业务，就必须经过中国保监会的严格审批。它们必须提供大量的证明文件，包括过去三年的年度报表、相关监管机构签发的偿债能力证明和标准普尔、穆迪或贝斯特公司对其做出的评级。国内公司则不受此要求约束。

此外，2008年1月1日起生效的有关再保险业务安全性的新规定要求，包括外资公司在内的非国有保险商要成为首席再保险接受人或合约再保险业务的最大份额接受人，就必须具有相当于标准普尔A级以上的评级。除非是国有公司，否则其它再保险接受人必须具有相当于标准普尔BBB级以上的评级。当然，中国国有保险公司不适用该等评级要求。按照世贸组织的国民待遇原则，中国保监会应当统一国内和国外公司之间对再保险商的要求标准。从长远的观点来看，对再保险商实行统一标准将有助于中国公司变得更加有竞争力。

关于向单个再保险商分出业务的80%硬性规定

现行的再保险法规规定，每一危险单位分给同一家再保险分入公司的业务，不得超过直接保险业务保险金额或者责任限额的80%。虽然此要求可能有助于分散风险，但增加了成本，并且给再保险业务造成了困难。例如，当分出数额超过风险单位的80%时，如果不能找到至少两个再保险接受人，分出公司就无法承接该业务。商会认为，要支持中国保险业务的增长，中国保监会就应放宽对于分给每个再保险商的80%业务金额的规定。

放宽保险商的投资渠道

去年，中国主管部门逐渐放宽了保险公司的投资渠道，使得保险资金能够为了社会和被保险人的利益而得以更加有成效地分配。2007年颁布的《保险资金境外投资管理暂行办法》取消了以前过高的总资产要求。截至2007年底，至少有两家外商投资人寿保险公司、一家美国公司和将近20家国内公司取得了合格境内机构投资者资格。然而，美国保险公司在申请合格境内机构投资者资格和保险资金境外投资许可过程中仍然面临延误情况和困难。

同时，在建立资产管理企业方面，由于要求有在中国的经营经验和很高的总资产水平，美国公司同样

with the principle of national treatment and/or cumbersome to implement.

More stringent requirements for reinsurance business involving foreign insurers

CIRC has issued several regulations on reinsurance arrangements in an effort to strengthen supervision of the reinsurance business. Foreign companies, however, appear to be subject to more stringent standards. For instance, in conducting treaty or facultative reinsurance, direct insurers are required to make first offers to at least two professional re-insurers in China and the amount offered must be at least 50 percent of the total ceding business. In addition, a foreign-invested insurer has to undergo a rigorous CIRC approval process to undertake reinsurance business with an affiliated company. They are required to provide extensive supporting documents such as annual reports for the past three years, a solvency certificate issued by the relevant regulators and ratings by S&P, Moody's or AM Best. Domestic companies are not subject to such requirements.

Furthermore, the new rules on the security of reinsurance businesses, effective January 1, 2008, require that non-state-owned insurers, including foreign companies, must have ratings above the equivalent of S&P A- to be qualified as the principal re-insurer or re-insurer with the largest share for treaty reinsurance. And other receiving re-insurers must have ratings above the equivalent of S&P BBB unless they are state-owned companies. Chinese state-owned insurance companies, by definition, are not subject to such rating requirements. Consistent with the WTO principle of national treatment, AmCham believes that CIRC should standardize requirements for re-insurers between domestic and foreign companies. In the long run, unified standards for re-insurers will help Chinese companies become more competitive.

Rigid 80 percent rule on business ceded to a single re-insurer

Current reinsurance rules require that each risk-unit ceded to a single re-insurer may not exceed 80 percent of the sum insured or the liability limit of the direct insurance business. While this requirement may help spread risks, it increases costs and creates difficulty for the reinsurance business. For instance, when the ceding amount exceeds 80 percent of a risk unit, the ceding company would have to decline the business if it is unable to find at least two receiving re-insurers. AmCham believes that to support the

growth of the insurance business in China, CIRC should relax the 80 percent rule on business ceded to a single re-insurer.

Broadening Investment Channels for Insurers

In the past year, Chinese authorities have gradually broadened investment channels for insurance companies, enabling insurance funds to be more productively allocated to the benefit of society and the insured. "The Provisional Measures for Managing Investment of Insurance Funds Overseas," issued in July 2007, eliminated previous requirements for excessively high total assets. As of the end of 2007, at least two foreign-invested life insurers, one U.S. company and nearly 20 domestic companies had received QDII status. U.S. insurance companies, however, continue to encounter delays and difficulties applying for QDII quotas and permission to invest insurance funds overseas.

Meanwhile, with respect to establishing asset management businesses, U.S. companies are also at a disadvantage because of requirements for operational experience in China and high total assets levels. The "Provisional Regulations on the Administration of Insurance Assets Management Companies" (2004) require that at least one shareholder or founder be an insurance company or insurance holding company with at least eight years of experience in the insurance business. In addition, they must have net assets of at least RMB1 billion and total assets of at least RMB5 billion or RMB10 billion if the shareholder or founder is an insurance holding company or life insurance company. The insurance business requirements refer only to operations in China with no recognition of the experience of an overseas parent company. The requirements for net assets and total assets are also excessively high and have no direct bearing on the capacity to engage in the insurance asset management business. Those requirements put smaller and/or newer companies to the China market at a disadvantage, even if their parent companies have long and extensive records of successfully investing insurance funds.

AmCham urges the regulators to optimize the requirements for asset management companies by eliminating the China-specific experience and high assets requirements and to simplify and make more transparent the procedures for applying for QDII quotas and permission to invest insurance funds overseas.

处在不利的地位。《保险资产管理公司管理暂行规定》（2004年）要求应当至少有一家股东或者发起人为保险公司或者保险控股公司，而且其经营保险业务8年以上，净资产不低于10亿元人民币；总资产不低于50亿元人民币，而且如果该股东或者发起人是保险控股公司人寿保险公司，其总资产应不低于100亿元人民币。保险业务要求仅涉及在中国的经营机构，不承认境外母公司的经验。对于净资产和总资产的要求同样过高，而且对于从事保险资产管理业务的能力没有直接影响。这些要求对新进入中国市场的和/或规模较小的公司不利，即使其母公司拥有大量长期成功投资保险资金的记录亦如此。

中美商会呼吁监管机构取消中国经营经验和高额资产要求，优化对资产管理公司的要求，并且简化合格境内机构投资者配额和保险资金境外投资许可的申请手续，并使之更加透明。

通过允许人寿和非人寿公司之间的交叉销售来扩展分销渠道

过去，依据严格区分人寿和非人寿保险业务的监管原则，不允许人寿和非人寿保险公司从事交叉销售，即使与关联公司也不行。然而，作为鼓励金融集团公司发展工作的一部分，中国保监会批准了若干国内保险公司在其人寿和一般保险业务子公司之间进行交叉销售。中美商会认为，人寿和非人寿保险公司之间的交叉销售是经济有效的分销渠道。它可以提高人寿和非人寿保险销售人员的生产力，通过提供更多的产品和服务来改善客户服务，因为交叉销售可以销售更多的产品，有可能获得更高的收入，从而提高了销售人员的士气，出售更多险种保单，提高了客户保留率。简而言之，交叉销售对于保险公司、其客户和销售人员来说是个双赢的解决方案。

目前，中国保监会似乎将集团公司结构作为审批人寿和非人寿公司之间交叉销售的标准。由于监管限制，外国保险公司尚不能将其在中国的经营机构组建为集团公司。因此，外国保险公司不能从事交叉销售。中美商会认为，监管机构应当放宽集团公司资格条件，至少允许外商投资保险公司与其在中国的关联公司之间进行交叉销售。

开放法定汽车保险业务

虽然机动车第三者责任强制保险（MTPL）并非中国人世承诺的一部分，近年来汽车保险需求的快速增长要求外商投资保险公司加入到第三者责任强制保险业务中来，以支持汽车保险市场的发展。允许外国一般保险公司进入第三者责任强制保险市场会对中国的消费者和保险行业产生积极的影响，原因有很多：

首先，外国一般保险公司可带来丰富的经验，它们在许多发达和发展中国家开展有类似汽车保险业务。外国公司可以利用其在全球范围内控制汽车风险和定价方面的大量经验，给中国新兴的第三者责任强制保险行业带来效率和可持续性。其次，外国一般保险公司可以把它们在销售、客户服务和理赔方面的最佳做法带给中国新兴的第三者责任强制保险行业。外国保险公司可以对该行业做出巨大贡献，因为它们寻找以公平快速的方式处理汽车事故和索赔的最佳方法。最后，通过允许外国公司参与，可以将竞争引入第三者责任强制保险行业中从而降低成本、改善服务和增强该行业实力。

因为有在汽车保险方面的大量实践经验，外商投资保险公司可以给中国汽车保险市场的可持续增长做出很大贡献。商会认为，中国保监会应当考虑允许外商投资保险公司提供机动车第三者责任强制保险。

总结

虽然中国为实现其入世承诺而采取了很多重要措施，但在某些情况下，由于措施的落实未完全与入世义务的目标或精神相一致，许多的市场准入障碍依然存在。减少市场准入障碍不仅会刺激中国保险市场的发展，还会使中国消费者受益。

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。

Expanding Distribution Channels by Allowing Cross-selling Between Life and Non-life Insurers

In the past, under the regulatory principle of strict separation of life and non-life insurance operations, life and non-life insurance companies were not allowed to engage in cross-selling, even with an affiliated company. However, as part of an effort to encourage the development of financial group companies, the CIRC has approved cross-selling in several domestic insurance group companies between their life and general insurance subsidiaries. AmCham believes that cross-selling between life and non-life insurers is a cost-effective distribution channel that can increase productivity of both life and non-life sales forces, improve customer services by making a wider range of products and services available, increase customer retention and renewal ratios because multi-line policies are sold, and improve sales force morale and retention because they have a wider range of products to market and a higher income potential. In short, cross-selling is a win-win solution for insurance companies, their customers and their sales forces.

Currently a group-company structure appears to be the criterion used by the CIRC for approving cross-selling between life and non-life companies. Because of regulatory constraints foreign insurance companies are not yet able to structure their operations in China as group companies. As a result, foreign insurers are excluded from cross-selling. AmCham believes that regulators should ease the group-company qualification, at least to the extent of allowing foreign-invested insurance companies to engage in cross-selling with their affiliates in China.

Opening Mandatory Automobile Insurance Business

While mandatory third-party liability (MTPL) automobile insurance was not part of China's WTO accession commitments, the rapid growth in demand for automobile insurance in recent years calls for the inclusion of foreign-invested insurers in the MTPL business to support the development of the automobile insurance market. Allowing foreign general insurance companies to enter the MTPL market would positively affect both consumers and the insurance industry in China for many reasons.

First, foreign general insurance companies bring experience with similar automobile insurance schemes in many developed and developing countries. By leveraging their significant

knowledge in managing automobile risks and pricing worldwide, foreign companies could bring efficiency and sustainability to the young MTPL industry in China. Second, foreign general insurance companies can bring their best practices in sales, customer service and claims processing to China's nascent MTPL industry. Foreign insurers can contribute greatly to the industry as it searches for the best ways to handle automobile accidents and claims in a fair and expedited manner. Finally, introducing competition in the MTPL business by allowing foreign participation would help lower costs, improve services and strengthen the industry.

With significant experience and best practices in automobile insurance, foreign-invested insurers have much to offer to the sustainable growth of the automobile insurance market in China. AmCham believes that the CIRC should consider allowing foreign-invested insurers to provide MTPL automobile insurance.

Summary

While China has taken important steps to meet its WTO commitments, significant market-entry barriers remain, in some cases due to implementation that is not fully consistent with the intent or spirit of WTO obligations. The removal of remaining barriers would not only stimulate the growth of China's insurance market but also benefit Chinese consumers.

Recommendations

- Allow foreign insurance companies to enjoy national treatment by granting new branch licenses on a concurrent basis.
- Standardize requirements for reinsurance businesses between domestic and foreign companies and relax the 80 percent rule on the amount ceded to a single re-insurer.
- Simplify the procedures for applying for permission to invest insurance funds overseas and optimize the standards for asset management companies by eliminating requirements for long China-specific operational history and high assets.
- Allow foreign-invested insurance companies to cross-sell between their affiliated life and non-life insurance companies.
- Allow foreign-invested insurers to provide mandatory third-party liability automobile insurance.

- 使对国内和外国公司之间的再保险业务的要求标准化，放宽对分保给每个再保险公司80%的数额限制。
- 简化保险资金境外投资许可的申请手续，优化有关资产管理公司的标准，取消对于长期在华经营经验和高额资产的要求。
- 允许外商投资保险公司在其人寿和非人寿保险关联公司之间进行交叉销售。
- 允许外商投资保险公司提供机动车第三者责任强制保险。

投资服务

中美商会认为，中国经济的持续增长将要求中国的投资服务领域不断地扩大和细化，以实现股权、债务和资本流动在国内、区域和全球范围内的流动，发挥其最有效的作用。投资服务在本文中被定义为包含非银行业务或非保险业务的金融服务，如并购咨询业务、有价证券承销业务、资产管理（共同基金）、交易（证券、货币、期货）和另类投资（私募股权、风险资本和对冲基金）。

中国的入世协议中有关于向外国投资部分开放银行业和保险领域的具体规定。然而，该协议没有涉及更大范围的投资服务。美国财政部长保尔森把进一步开放金融服务领域作为中美战略经济对话的主要目标。因此，目前是重新评价影响投资服务的监管、政策和市场准入问题的一个重要阶段。

中国的投资服务领域要遵从许多日趋完善也日益复杂的投资法律和法规，其中有许多专门针对从事该行业的外资公司。此外，涉及公司范畴更广的商业法律最近做出的一些变更对投资服务领域也有着重大影响，特别是《反垄断法》、《税法》和最新修订的《外商投资产业指导目录》，这些都是在2007年颁布的。

本文对于投资服务领域近期发展趋势的回顾，主要集中在以下三个领域的监管环境和外商市场准入方面：即证券、并购和私募股权/风险资本。

证券

2007年，尽管上海和深圳A股市场大涨，还是有若干重大问题决定性的影响着对证券市场前景。首先是中国公司在中国境外进行首次公开发行的能力（目前，海外首次公开发行受中国政府政策和许多新法律的限制）。第二，外国公司和投资者尚未有权进入国内证券市场。最后，美国投资银行、证券经纪、共同基金、资产管理公司、融资租赁公司和其它投资服务公司在中国的经营范围和市场准入方面面临着严格限制。

对境外上市的限制

2007年，中国企业的境外首次公开发行的数量明显减少。各种不同的法规，加之高度复杂和模棱两可的登记和申请程序，都使中国私营企业的海外上市之路变得日益艰难。政府明确鼓励大型的国有集团和小型私营企业在国内而不是在海外证券市场上市。

2007年，虽然有接近20家公司在纽约证券交易所和纳斯达克上市，比起同期在中国大陆交易所上市的200多家公司，这个数字是极低的。其原因包括美国对于上市的较高要求，中国本地股票市场给予上市公司的高估值，以及限制中国公司境外首次公开发行的政府政策和法规。

从历史上看，国外资金来源（例如风险投资公司、对冲基金、私人投资者等）并不是直接投资于中国公司，而是投资于在中国拥有资产的特殊目的公司（SPV）。这些境外特殊目的公司位于开曼群岛或英属维尔京群岛等免税的司法辖区。这样做的主要理由是它绕过了中国复杂的法律制度，还使外国投资者容易退出（即，境外特殊目的公司在纳斯达克或纽约证券交易所上市是相对容易的）。

2006年9月8日生效的新《关于外国投资者并购境内企业的规定》（简称“外商并购规定”）对于上市交易结构作了限制。依据新的法律规定，现在设立特殊目的公司和/或境外首次公开发行都需要由商务部和中国证券监督管理委员会（中国证监会）审批。总体而言，人们仍然不清楚该法规涵盖何种类型的交易，以及何时需要商务部和中国证监会审批。因此，大大拖

Investment Services

AmCham believes that the continued growth of China's economy will require continued expansion and differentiation of China's investment services sector in order to facilitate the flow of equity, debt and capital to their most efficient applications, both internally within the domestic economy and on a regional and global scale. "Investment services" is defined here to include non-banking or non-insurance financial services such as mergers and acquisitions advisory, securities underwriting, asset management (mutual funds), trading (securities, currency, futures) and alternative investments (private equity, venture capital, hedge funds).

China's WTO Accession Agreement had specific provisions that partially opened the banking and insurance sectors to foreign investment. The agreement, however, did not address a broad spectrum of investment services. U.S. Treasury Secretary Henry Paulson has made further opening of the financial services sector a major objective of the SED between the United States and China. This is therefore an important time to reassess the regulatory, policy and market access issues that impact investment services.

China's investment services sector is subject to a growing and increasingly complex body of specialized investment laws and regulations, many of which are specific to foreign companies operating in the sector. In addition, several recent changes in the broader body of corporate and commercial law have significant implications for the investment services sector, notably the Antimonopoly Law, the Tax Law and the most recent revisions of the *Foreign Investment Catalogue*, all issued in 2007.

This review of recent trends in the investment services sector focuses on the regulatory environment and foreign market access in three sub-sectors: securities, mergers and acquisitions, and private equity/venture capital.

Securities

In 2007, despite surges in both the Shanghai and Shenzhen A-share stock markets, several major issues dominated the securities landscape. First is the ability of Chinese companies to conduct an IPO outside of China (currently overseas IPOs are constrained by Chinese government policies and a number of recent laws). Second, foreign companies and investors do not yet have access to the domestic securities markets. Finally, U.S. investment banks, securities

brokerages, mutual funds, asset management firms, financial leasing firms and other investment services companies face severe restrictions on the scope of their business and market access in China.

Restrictions to Offshore Listings

Chinese companies' offshore IPOs were significantly curtailed in 2007. Various regulations, compounded by a highly complex and ambiguous registration and filing process, have made it increasingly difficult for privately owned Chinese companies to list overseas. Both large state-owned conglomerates and small privately owned companies are explicitly encouraged to place their listings on domestic stock markets, rather than overseas.

While close to 20 companies listed on the NYSE and on Nasdaq in 2007, these figures are extremely low compared to the 200+ listings in the mainland China bourses during the same period. Reasons for this include the higher listing requirements in the U.S., high valuations given to companies in the local Chinese stock markets and government policies and regulations that restrict international IPOs for Chinese companies.

Historically, foreign sources of capital (e.g., venture capital firms, hedge funds and private investors) did not invest directly in PRC firms. Instead, they made investments in offshore special-purpose vehicles (SPVs) that owned assets in the PRC. These offshore SPVs were located in tax-free jurisdictions such as the Cayman Islands or the British Virgin Islands. The primary rationale behind this structure was that it bypassed the complex legal regime in China and also facilitated easy exit by the foreign investors (i.e., it was relatively easy for the offshore SPV to list on Nasdaq or the NYSE).

The new "Regulations on Acquisitions of Domestic Enterprises by Foreign Investors" ("Foreign M&A Regulations") that went into effect on September 8, 2006, put limitations on the transaction structure described above. According to the new laws, setting up an SPV and/or an overseas IPO now requires approvals by the Ministry of Commerce (MOFCOM) and the China Securities Regulatory Commission (CSRC). Overall, confusion remains about what types of transactions are covered by the regulations, and when MOFCOM or CSRC approvals are required. As a result, there are major delays in deal execution and exit uncertainty. Other Chinese regulations, including Circular 75 and Notice #106 have added further complexity to offshore listings.

延了交易的执行，使退出不明确。其它中国法规，包括中国保监会的第75号和第106号通知在内，都进一步增加了境外上市的复杂性。

限制规定的影响

尽管我们可以把推出更严格规定的举措理解为是对有关中国资产过快流出中国的批评的回应，是出于阻止避税或鼓励大型国有公司在国内上市的愿望，但该限制规定还是引起了担忧。限制规定非常严厉，而且程序相对不透明、复杂而且有时是模棱两可的。

商务部及其省级和地方政府部门是所有对外业务审批的主要监管部门。从集中管理外资并购和首次公开发行审批程序、减少因以前的制度导致的矛盾的角度来看，这是积极的措施。然而，目前商务部需要审批为数更多的全国性交易，这种集中给商务部在北京的资源带来了压力，导致交易在审批过程中出现进一步延误。此外，如前面所提到的，人们不清楚哪些交易必须送交商务部审批，哪些是属于中国证监会的审批范围。

所有这些因素结合在一起，实际上为寻求在中国境外首次公开发行的中国公司“关闭了水龙头”。纽约证券交易所和纳斯达克等美国证券交易所将会因为这些法规丧失很多机会，外国投资者也蒙受了损失，因为除了通过配额很小的合格境外机构投资者（QFII）之外，它们无法投资于中国国内企业。中国公司也会受影响，因为国外证券交易所在公司治理、流通性、流动性和稳定性方面具有更大的优势，但由于限制规定，中国本地公司越来越难以企及。中国和国外的律师们目前正在寻找创造性的方法，以创造能够使中国公司在境外上市的交易结构（主要是通过反向并入公开上市的空壳公司）。然而，这并不利于中国公司，因为它们导致境外上市的成本（尤其是律师费）大大增高。

境内上市

在阻止境外上市的同时，中国法规使国内公司在国内上市相对容易，但是对于外商投资企业来说，情况并非如此。自从2006年7月上海证券交易所重新允许首次公开发行股票后，市场有了极大的增长。中

国鼓励计划在境外上市的国内公司在国内A股市场上市，对于大型国有企业，则鼓励它们同时在上海A股市场和香港H股市场两地上市。因此，对于中国投资者和股东来说，通往公开市场的退出途径相对畅通。

遗憾的是，外商投资企业和外国投资者目前无权进入国内首次公开发行市场。五年前中国曾进行早期的外商投资企业上市试验，但在2004年停止一切首次公开发行后，中国证监会实际上已不再批准更多外商投资企业上市。2006年7月，首次公开发行市场重新开放，但并没有允许新的外商投资企业上市。2007年12月，在战略经济对话的背景下，中国政府表达了允许某些大型外国公司及其在华子公司进入国内股票和债券市场的意愿。中国证监会最近表示，它将重新受理外商投资企业在国内A股市场上市的申请。中美商会支持向外国投资者开放国内证券市场，并希望中国证监会加速外商投资企业上市的审批过程。中国国内证券市场的开放是中国资本市场和全球市场长期融合过程的重要一步。

投资服务公司的市场准入

中国在经历最初的向外国证券交易公司的“开放”期后，中国证监会于2005年暂停批准设立新的证券相关业务合资公司。2007年5月，美国财政部长保尔森得到中国证监会关于取消暂停规定的承诺，截至2007年年底，北京正在审批两家新证券合资公司的设立申请。尽管有来自美国和欧盟的压力，向外国公司重新开放证券交易行业的过程仍然极其缓慢。

商务部于2007年10月31日颁布了修订后的《外商投资产业指导目录》，将对于外商投资服务公司的限制条件法律化和扩大化。从目录中得出的与证券业相关的结论如下：

1. 外商投资证券公司仅限于承销A股股票和承销并交易B股股票、H股股票以及政府和企业证券。合资证券公司中外商的最大持股比例限制在33%以内；
2. 股票投资基金（共同基金公司）仍然在限制名单上，外商持股比例限制在49%以内；
3. 期货交易公司在限制名单上，仅限于持有少数股权；

Impact of Restrictions

While one could interpret the introduction of stricter rules as a response to criticism that Chinese assets are flowing out of the country too quickly, a desire to stem tax avoidance or to promote domestic listings for large state-owned firms, the rules raise some major concerns. The restrictions are very stringent, and the process is relatively opaque, complex and, at times, ambiguous.

MOFCOM and its provincial and local branches are the main regulatory umbrella for approval of all foreign transactions. This is positive step from the point of view of centralizing the foreign M&A and IPO approval process, and reducing the inconsistencies that resulted from the previous system. However, MOFCOM is now reviewing more deals at the national level and this centralization has put a strain on MOFCOM's resources in Beijing, causing additional delays in moving transactions through the approval process. In addition, as mentioned earlier, there is confusion as to which deals must be approved in Beijing and what falls under the CSRC's ambit.

The combination of all of these factors has effectively "turned off the tap" for Chinese companies seeking an IPO outside of China. American stock exchanges such as the NYSE and Nasdaq have a lot to lose from these regulations. Foreign investors lose because they cannot invest in domestic Chinese companies other than through the relatively small QFII quotas. Chinese firms also lose because foreign stock exchanges have the benefit of higher corporate governance, marketability, liquidity and stability – factors that will now be increasingly inaccessible to local Chinese companies due to the restrictions. Foreign and PRC lawyers are currently finding creative ways to create transaction structures that will allow Chinese companies to list overseas (mainly through reverse mergers into publicly traded shells). However, this does not benefit Chinese companies, as their cost of listing overseas (particularly legal expenses) has risen substantially.

Onshore Listings

While discouraging overseas listings, Chinese regulations make it comparatively easy for domestic companies to list domestically, but this is not the case for foreign-invested enterprises (FIEs). Since the Shanghai stock exchange reopened for IPOs in July 2006, the market has witnessed tremendous growth. Domestic companies planning overseas listings have been encouraged to list on the domestic A-share market or in the case of large state-owned companies

to do a dual listing on the A-share market in Shanghai and on the H-share market in Hong Kong. Thus, for Chinese investors and equity owners, the exit path to the public market is relatively clear.

Unfortunately, FIEs and foreign investors currently have no access to the domestic IPO market. Following early experiments with FIE listings five years ago, the CSRC effectively closed the market to further FIE listings in 2004 when all IPOs were closed down. The re-opening of the IPO market in July 2006 did not allow new FIE listings. In December 2007, in the context of the SED, the Chinese government signaled a willingness to give certain large foreign corporations and their China-based subsidiaries access to the domestic stock and bond markets. The CSRC has recently indicated that it would reopen applications for FIE listings on the domestic A-share market. AmCham supports the opening of domestic securities markets to foreign investors and urges the CSRC to move expeditiously with the review and approval of new FIE listings. The opening of China's domestic securities markets is an important step in the long-term integration of China's capital markets with global markets.

Market Access by Investment Services Firms

After an initial period of "openness" to foreign securities trading firms, in 2005 the China Securities Regulatory Commission (CSRC) placed a moratorium on the formation of additional joint ventures in securities-related businesses. In May 2007, U.S. Treasury Secretary Paulson secured a pledge from CSRC to lift the moratorium and by the end of the year, two applications for new securities joint ventures were being reviewed by Beijing. Despite pressure from the U.S. and EU the process of re-opening the securities trading industry to foreign firms has been extremely slow.

A revised *Foreign Investment Catalogue* promulgated by MOFCOM on October 31, 2007, codified and extended restrictions on foreign investment services companies. The relevant, securities-related conclusions from the catalogue include the following:

1. Foreign invested securities companies are limited to underwriting A-shares and underwriting and transacting B-shares, H-shares, and government and corporate securities. Maximum foreign equity participation in securities joint ventures continues to be limited to 33 percent;
2. Stock investment funds (mutual fund companies), remain on the restricted list with foreign equity participation limited to 49 percent;

4. 融资租赁公司、财务公司、投资信托公司与货币经纪公司和银行及保险公司一起，仍然在限制名单上。

中国需要跨出其入世协议的投资服务部分规定的“最低市场准入框架”，这是很重要的。中美商会拥护美国财政部长保尔森通过战略经济对话，为促进这个重要的领域向美国公司开放而不懈努力。近期股票市场的波动和中国国内市场的高估值说明了限制资本流动和将中国证券市场隔离于全球证券市场和国际资本流动之外的问题。我们认为，美国公司可能可以在促进中国资本市场的稳定性、质量和市场效率方面发挥至关重要的作用。

总结

中美商会鼓励中国中央政府修订对于境外机构及上市的限制。此外，需要让审批程序更简单、更快捷。修订这些限制条件会使外国投资者受益，同时也会使本地合作伙伴和行业——尤其是刚起步的公司受益。我们支持重新允许外商投资企业在国内A股市场上市以及允许更多的外国投资者和企业进入国内证券市场的举措。中美商会大力支持本地股票市场透明、高效的发展，并且认为，美国金融服务公司承销首次公开发行股票、创建共同基金和自由投资能力的增强将促进稳定和良好的公司治理，并有助于减少股市周期性。

并购

自2006年9月8日《关于外国投资者并购境内企业的规定》（简称“外商并购规定”）生效以来，直接适用于外资在中国的并购业务的行政法规几乎没有发生变化。中美商会在2007年的白皮书中对该法规做了相关评价。从那时起，再没有颁布有关外资并购的实施细则。中国法制改革方面德高望众的领导人、全国人民代表大会常务委员会副委员长成思危在2007年11月指出，20个有关外资并购业务的新实施细则将在2008年8月1日之前《反垄断法》生效时颁布。据成思危副委员长说，这些实施细则将会阐释“国家经济安全”，制定“交易定价公平”指导方针，并在总体上“确保外资并购交易在不威胁中国经济安全的条件下促进其经济增长。”

虽然中美商会欢迎并购监管制度的统一和解释，但企业和金融投资者担心新的实施细则会以过度宽泛和含糊的方式解释“国家安全”，会增设新的中央政府机构来审批中国行业协会和竞争者反对的交易。根据2006年的法规，实质上商务部和国家发展和改革委员会（国家发改委）已被授权审查和拒绝几乎所有的外国收购行为。

制定更多的交易定价指导方针也可能被证明是有问题的。外资收购国有公司已经受国务院国有资产监督管理委员会（国资委）的法规约束，即股权收购价格不得低于净资产价值的90%。此外，根据财政部强制实行的规定，从资产管理公司收购的股权必须满足注册资本60%的最低定价要求。这些规定已经限制了外资收购和重组拥有大量资产但亏损的廉价出售的国有企业。将定价指导方针的适用范围扩大至中国的私营公司或制定“公允市价”指导方针的人为监管规则，会取代留给资本市场来做出并且由相关各方磋商的最好决定。

此外，去年颁布了若干重要的国家法律和法规以及重新修订《外商投资产业指导目录》，其中涉及有关外资收购，间接对监管环境产生影响的最重要的法律是新的《反垄断法》。

影响外资并购业务的《反垄断法》规定

2007年8月30日，全国人民代表大会常务委员会表决通过了《中华人民共和国反垄断法》。该法将于2008年8月1日生效。《反垄断法》禁止“具有或者可能具有排除、限制竞争效果的经营者集中”。此外，该法规定设立反垄断委员会负责制定具体的反垄断指导方针，并设立反垄断执法机构（AMEA）来执行本法及其它实施细则。这两个机构都受国务院的直接监督。

“经营者集中”包括企业经营者之间的并购或一个经营者有效地控制另一个经营者。《反垄断法》本身并没有规定什么构成垄断性或反竞争的经营者集中，但在生效日期之前颁布的实施细则有可能会做出相关规定。

中美商会欢迎制定专门统一的反垄断法律法规以管理国内和国外公司。实际上，2007年美国商会白

3. Futures trading companies are on the restricted list and limited to a minority equity position; and
4. Financial leasing companies, finance companies, investment trust companies, and currency brokerages remain on the restricted list, along with banks and insurance companies.

It is important for China to move beyond the “minimum market access frameworks” laid out in the investment services section of its WTO Accession Agreement. AmCham supports the continued efforts of U.S. Treasury Secretary Paulson, working through the SED, to open up this important sector to U.S. firms. Recent stock market volatility and the high valuation of China’s domestic markets illustrate the problems of restricting the flow of capital and cordoning off China’s securities market from global securities markets and international capital flows. We believe that U.S. firms could therefore play a vital role in promoting stability, governance and market efficiency in China’s capital markets.

Summary

AmCham encourages China’s Central Government to revise its restrictions on offshore structures and listings. In addition, the approval process needs to be made simpler and quicker. Revising these restrictions would benefit both foreign investors and, concurrently, local partners and industry – particularly early stage companies. We support the re-opening of FIE listings on the domestic A-share market and increased access to domestic securities markets by foreign investors and corporations. AmCham strongly supports the transparent and efficient development of local stock markets, and feels that the increased ability of U.S. financial services firms to underwrite IPOs, create mutual funds and freely invest will promote stability, good governance and help mitigate stock market cyclicalities.

Mergers and Acquisitions

There has been little change in administrative regulations directly applying to foreign mergers and acquisitions in China since the Foreign M&A Regulations came into effect on September 8, 2006. AmCham commented extensively on those Regulations in its 2007 White Paper. Since that time, no further implementing regulations on foreign acquisitions have appeared. Cheng Siwei, vice chairman of the Standing Committee of the National People’s Congress and a senior and respected leader of regulatory reform, indicated in November 2007 that a series of 20 new implementing regulations on foreign M&A activity will be issued prior to August 1,

2008, when the Antimonopoly Law comes into effect. According to Cheng, these implementing regulations will define “national economic security,” establish guidelines for the “fairness of deal pricing” and generally “ensure that foreign M&A deals promote China’s economic growth without threatening its economic security.”

While AmCham welcomes the unification and clarification of the M&A regulatory regime, there are concerns among both corporate and financial investors that the new implementing regulations may interpret “national security” in an overly broad and vague manner, erecting additional layers of central government review and approval of any deal opposed by Chinese industry associations and competitors. MOFCOM and the NDRC are already empowered to review and reject virtually any foreign acquisition under the 2006 regulations.

The establishment of further deal pricing guidelines could also prove problematic. Foreign acquisitions of state-owned companies are already subject to a SASAC rule that the equity acquisition price may not be less than 90 percent of net asset value. In addition, under rules imposed by the Ministry of Finance, equity purchased from asset management companies must meet a minimum pricing requirement at 60 percent of registered capital. These rules already restrict foreign acquisition and restructuring of distressed state-owned companies that are asset-heavy but losing money. Extension of pricing guidelines to foreign acquisitions of privately owned Chinese companies or artificial regulatory formulas establishing guidelines for “fair market value” would pre-empt decisions that are best left to the capital market and to negotiation by the parties concerned.

In addition, the past year has seen the promulgation of several national laws and regulations and a revised *Foreign Investment Catalogue* that contain important changes to the indirect regulatory environment for foreign acquisitions, foremost among which is the new Antimonopoly Law.

Provisions of the Antimonopoly Law Impacting Foreign M&A Activity

On August 30, 2007, the NPC Standing Committee adopted the “Antimonopoly Law of the People’s Republic of China,” which comes into effect on August 1, 2008. The Antimonopoly Law prohibits “concentrations which result in or could result in the elimination or restriction of competition.” The law further establishes an Antimonopoly Commission

皮书倡导制定统一的反托拉斯监管制度，以取代2006年法规中只适用于外国投资者的反垄断规定。

《反垄断法》的实施细则应当包括2006年外资并购法规第五章的修订内容，以将外资并购的反垄断审查标准与中国内资公司并购审查标准及即将颁布的《反垄断法》的实施细则中有关反竞争经营者集中的定义统一起来。也就是说，适用于国内和国外公司的统一的单一反垄断制度应当取代2006年外资并购法规中反垄断规定，而不仅仅是在该类规定之上建立一个新的层次。

外国投资者担心的另一个领域是即将依据《反垄断法》规定建立的反垄断执法机构未来的组织和权限范围。目前尚不清楚此机构是否为独立机构，并且单独受国务院领导，或者其办公室是否将设置在商务部、国家发改委、国家工商行政管理总局（SAIC）及其它国家和地方机构的现有项目审批机构内。第10条规定反垄断执法机构“可以授权省、自治区、直辖市人民政府相应的机构，依照本法规定负责有关反垄断执法工作。”

关于反垄断执法机构的权力是否将扩大到对外资收购行为是否符合“国家经济安全”的认定，《反垄断法》也没有明确。中美商会认为，“国家安全”的范围应当进行狭义界定，只适用于对国防和国家安全有直接影响的行业和业务，而把其它单纯的民用行业排除在外。此外，商会主张通过实施细则这种透明的方式来解决这些不确定性，并应努力将“国家安全”的认定工作与反垄断执法程序和本地行业协会和公司的贸易保护主义利益分开。

私募股权和风险资本

从2006年9月修订后的并购法规的颁布，到引入以人民币计价的投资基金，中国监管机构一直在不断地督促制定相关法律，为私募股权和风险资本创造更加规范和透明的投资前景。虽然这些法规的精神似乎具有积极意义，但它们留给许多投资者的只是有限的选择权、交易结构和退出策略，最终为国内外的投资者创造了不平等的投资环境。

重大进展

首先是引入《公司法》修订版的第20条，该条为少

数股东起诉控股股东提供了明确的依据。第20条有助于为全体股东建立公平待遇——尤其考虑到私募股权/风险投资者的许多在华投资项目都属于此投资类别。更进一步而言，私募股权/风险资本基金能够创造在某些情况下给其普通股股权优惠待遇的契约安排。

其二是放宽了有限责任公司（LLC）转化为股份有限公司（JSC）或外商投资股份有限公司（FIJSC）的管理规定。在为首次公开发行退出做准备的过程中通常需要这个步骤。在2007年之前，在内资有限责任公司转化为股份有限公司或外商投资股份有限公司后，在上市前三年还必须要有盈利，即使该有限责任公司在重组之前已经有三年的盈利记录。然而，目前投资要求已经重新设定，前三年都盈利的有限责任公司可以在转化为股份有限公司（JSC）或外商投资股份有限公司（FIJSC）之后一年内上市，条件是它们在首次公开发行前最后一年仍然是盈利的。这实际上使许多公司的首次公开发行退出的时间提前了两年。

其三是出现了在中国境内注册的以人民币计价的私募股权/风险投资基金。中国政府一直在推广人民币基金，而且从表面看应当给国内外投资者带来相当大的好处，包括：

- 取消基金税，以避免对基金和投资双重征税；
- 通过简化项目审批过程来缩短交易周期。

虽然这些好处应当由国内外投资者分享，但实际上，人民币基金并没有给这两类投资人提供公平的赛场。

例如，仅限于中国投资者购买的人民币基金是允许享受税收优惠和监管要求转嫁的。然而，人民币基金中存在外资则会造有关外商投资风险资本（FIVC）要缴纳多少层次的税赋的不确定性。外商投资风险资本可能在投资和基金层面上都要纳税，然后汇出利润还要缴纳额外的扣缴税。税收待遇的不确定性延缓了新的以人民币计价的外商投资风险资本的设立，所以大部分外国风险资本资金仍然在境外，而且宁愿通过境外机构退出其证券投资。

人民币基金的另一个优势应当是快速的审批程序。

to formulate specific antimonopoly guidelines and an Antimonopoly Enforcement Agency (AMEA) to enforce the law and additional implementing regulations. Both agencies operate under the direct supervision of the State Council.

The term “concentration” includes mergers and acquisitions among business operators or effective control of one business operator by another. The Antimonopoly Law itself does not define what constitutes a monopolistic or anti-competitive concentration, but it is likely that implementing regulations to be published prior to the effective date of the law will do so.

AmCham welcomes the establishment of a single, unified set of antimonopoly laws and regulations governing both domestic and foreign companies. Indeed, the 2007 White Paper advocated the establishment of a unified anti-trust regulatory regime in place of the antimonopoly provisions of the 2006 regulations, which apply only to foreign investors. Implementing regulations for the Antimonopoly Law should include revision of Chapter Five of the 2006 Foreign M&A Regulations to unify the criteria for antimonopoly review of foreign acquisitions with the review criteria for acquisitions by domestic Chinese companies and with the definitions of anti-competitive concentration in the forthcoming implementing regulations for the Antimonopoly Law. That is, a single, unified antimonopoly regime that applies to both foreign and domestic investors should replace or supercede the discriminatory antimonopoly provisions of the 2006 Foreign M&A Regulations and not simply be layered on top of those provisions.

Another area of concern for foreign investors is the future structure and scope of authority of the AMEA that is to be established under the Antimonopoly Law. It is still not clear whether this agency will be independent and report separately to the State Council or whether its offices will be embedded in the existing project approval structures of MOFCOM, NDRC, SAIC and other agencies at the national and local levels. The language of Article 10 states that the AMEA “may authorize the corresponding agencies of the People’s Government of each province, autonomous region, and municipality... to be responsible for the relevant anti-monopoly enforcement tasks as specified herein.”

The Antimonopoly Law is also not clear regarding whether the powers of the AMEA will extend to determination of whether or not foreign-invested acquisitions are consistent with “national economic security.” AmCham believes that the scope of “national

security” should be defined narrowly to apply only to those industries and transactions which have a direct bearing on national defense and state security, while excluding other purely civilian industries. AmCham furthermore advocates that these uncertainties should be addressed in a transparent manner by the implementing regulations and that efforts should be made to separate the determination of “national security” from the antimonopoly enforcement process and from the protectionist interests of local industry associations and companies.

Private Equity and Venture Capital

From the revised M&A regulations promulgated in September 2006, to the introduction of RMB-denominated investment funds, China’s regulatory agencies continue to push for laws creating a more regulated and transparent investment landscape for private equity and venture capital. Though the spirit of these regulations appears to be of a positive nature, they leave many investors with limited investment options, deal structures and exit strategies ultimately creating an unequal investment environment for foreign and domestic investors.

Significant Developments

One improvement was the introduction of Article 20 of the revised Company Law, which provides a clear basis for minority action against controlling shareholders. Article 20 has been helpful in establishing fair treatment for all shareholders – especially given that PE/VC investors fall into this investment class for many of their investments in China. Taking this one step further, PE/VC funds have been able to create contractual arrangements that give their common stock holdings preferential treatment in some cases.

Another welcome change was the relaxation of rules governing the conversion of Limited Liability Corporations (LLC) to Joint Stock Corporations (JSC) or Foreign Invested Joint Stock Companies (FIJSC). This is a step often required in preparation for an IPO exit. Prior to 2007, companies were required to have three years of pre-listing profitability after the conversion of a domestic LLC to a JSC or FIJSC, even if the LLC had three years profitability prior to the restructuring. However, now the investment clock has been reset and those LLC companies with three years prior profitability are allowed to list within one year after the conversion to a JSC or FIJSC, but only if they remain profitable in the final year prior to IPO. This has in effect put many companies two years closer to their IPO exits.

国内人民币基金无须通过国家外汇管理局和商务部等的审批即可完成境内交易。然而，只有当人民币基金是纯国内基金而且只有中国投资者的时候，才有这个优势。依据现行法规，一旦外国投资者进入，就需要接受以前的全部监管审批。外商投资的私募股权/风险资本基金面临着不合理的政府审批障碍，而其国内竞争对手则无此约束。

国内人民币基金这个表面上看来具有吸引力的投资工具也有许多不确定性。国内投资者可以在很少或没有监督的情况下设立基金。假使说外商投资基金被过度监管和限制，对于国内基金的监管则是过于宽松。中国对于国内的本地基金投资者的监管保护仍然很弱，而且强制执行最多也是断断续续的。

通过为外国和国内私募股权和风险资本投资者提供一个公正、平等的赛场，中国将获得更多的资本来为新技术开发及行业重组与合并提供资金。此外，国内私募股权/风险资本领域也会因更多地采用全球投资标准和惯例而受益。 ■

建议

- 中美商会鼓励放宽和修订对于境外特殊目的公司组织和上市的限制。此外，需要使境外上市审批程序更简单、更快捷。
- 中美商会支持重新允许外商投资企业在A股市场首次公开发行上市及跨国公司和外国公司更多地进入国内证券市场。
- 支持通过与美国的战略经济对话进一步开放金融服务领域。
- 对于用“国家安全”作为外资并购的审批标准，应当尽可能以狭义的方式明确界定和应用，以避免助长贸易保护主义。
- 国务院应当避免规定严格或最低的股权和资产定价标准，而且不应当将旨在保护国有资产的现有定价指导方针的适用范围扩大至涉及私营公司的交易。未来的实施细则应当把“公允市价”留给市场和双方间的直接谈判来确定。
- 外资并购法规中规定的反垄断审查标准应当

被即将颁布的《反垄断法》实施细则中规定的经营者集中定义和审查标准所取代。一套统一的法律定义和审查标准应同等适用于国内和国外投资者。

- 中美商会建议，中国为希望筹集人民币私募股权和风险资本基金的国外和国内投资者创造公平的赛场。相关规定应当清楚阐明，而且应当对所有投资者适用统一的税收优惠、基金结构和监管审批要求。
- 应当考虑修订私募股权和风险资本基金税收制度，消除关于双重征税的不确定性。

Another important development in the last year has been the emergence of RMB-denominated PE/VC funds registered onshore in China. RMB funds have been increasingly promoted by the Chinese government and on the surface 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 for both investor classes.

For example, RMB funds that are limited to Chinese investors are allowed tax advantages and regulatory pass-throughs. However, the presence of any foreign investment in the RMB fund creates uncertainty regarding how many layers of taxes the Foreign Invested Venture Capital (FIVC) fund are subject to. FIVC may be taxed at both the investment level and the fund level, and are then subject to an additional withholding tax on repatriated profits. The uncertainty over tax treatment has slowed the establishment of new RMB-denominated FIVC so that most foreign venture capital funds remain offshore and prefer to exit their portfolio investments through offshore vehicles.

The other advantage of RMB funds should be the speedy approval process. Domestic RMB funds do not have to seek approval through agencies such as SAFE and MOFCOM in order to complete their onshore deals. However, this advantage only applies if the RMB fund is purely domestic and includes only Chinese investors. According to the current rules, once a foreign investor enters, all the previous regulatory approvals apply. Foreign-invested PE/VC funds face steep government approval hurdles that do not apply to their domestic competitors.

There are also many uncertainties with domestic RMB funds, which on the surface appear to be an attractive investment vehicle. Domestic investors are permitted to set up funds with little or no supervision. If foreign-invested funds are over-regulated and restricted, regulations on domestic funds are entirely too lax. China's regulatory protection for domestic investors in local funds remains weak and enforcement intermittent at best.

By allowing a fair and equal playing field for both

foreign and domestic private equity and venture capital investors, China would bring in more capital to help finance the development of new technology and the restructuring and consolidation of industry. Further, the domestic PE/VC sector would also benefit from greater exposure to global investment standards and practices. ■

Recommendations

- AmCham encourages the relaxation and revision of restrictions on offshore SPV structures and listings. In addition, the approval process for offshore listings needs to be made simpler and quicker.
- AmCham supports the re-opening of the A-share market to IPO listings by Foreign-Invested Enterprises and increased access to domestic securities markets by international companies and foreign investors.
- Support the further opening of the financial services sector through the SED with the United States.
- The use of “national security” as a standard for the approval of foreign acquisitions should be defined and applied as narrowly and clearly as possible to avoid encouraging protectionism.
- The State Council should avoid setting rigid standards or minimums for equity and asset pricing and should not extend existing pricing guidelines designed to protect State assets to transactions involving privately owned companies. Future implementing regulations should leave determination of “fair market value” to the market and to direct negotiations between parties.
- The criteria for antimonopoly review specified in the Foreign M&A Regulations should be superseded by the definition of “concentration” and review criteria in the forthcoming implementing regulations of the Antimonopoly Law. A unified set of legal definitions and review criteria should apply equally to both domestic and foreign investors.
- AmCham recommends that China create a level playing field for both foreign and domestic investors that want to raise RMB private equity and venture capital funds. Rules should be spelled out clearly and tax incentives, fund structures and regulatory approvals should be unified for all investors
- A revised tax regime should be considered for private equity and venture capital funds that removes uncertainties regarding double taxation.



Forestry and Forest Products

Forestry and forest products have the potential to significantly affect the U.S.-China trade imbalance, yet numerous barriers to greater trade flows remain. The American forestry and forest products sector has voiced a wide range of concerns and issues about China's use of an array of industrial and trade policies that promote the rapid expansion of its paper and wood processing industries. The result has been a substantial growth of China's production and exports in a short time and a corresponding drop in market opportunities for U.S. manufacturers.

This development is somewhat counterintuitive since China does not have the fiber resources necessary for a competitive forest products industry and is largely dependent on imported fiber. China's support for domestic product exporters in higher-value areas has effectively restricted opportunities for U.S. producers and exporters.

Even with its limited forest resources, China has developed the fastest growing forest products industry in the world. It has achieved this position by instituting policies that promote the expansion and construction of new production capacity. In addition, it has imported a considerable amount of raw material in the form of logs, chips, wood pulp and recovered paper to make up for the inadequate domestic supply.

China's imports from the U.S. increasingly consist of raw materials such as wood pulp and recovered paper to supply the domestic paper industry; and of logs and lumber for manufacturing solid wood products including veneer, furniture and similar products. In 2006, China's imports of these raw materials from the U.S. amounted to US\$2.2 billion, or 78 percent of total U.S. forest product shipments to China, yet imports of higher value-added products have stagnated.

Significant Developments

In 2007, the United States requested the establishment of a dispute settlement panel at the World Trade Organization (WTO), challenging a number of subsidy practices maintained by China. This move led to an agreement between China and

the U.S. for China to eliminate certain subsidies prohibited under WTO regulations.

AmCham is encouraged by China's adoption of U.S. design values and grading rules for common species of U.S. softwood dimension lumber into its revised GB50005-2003 Design Code and the GB50206 Inspection Code. We are also pleased to see the inclusion of fire safety design requirements for three-story wood-frame construction in the China Timber Structure Design Code and China Building Fire Safety Design Code (GB16).

While China's engagement with U.S. officials in the Strategic Economic Dialogue (SED) talks aimed at developing a bilateral agreement on illegal logging and associated trade, China is still encouraged to take greater responsibility for the actions of Chinese firms that trade in logs sourced from regions that do not practice sustainable forestry. AmCham welcomes the groundbreaking December 2007 Memorandum of Understanding between the U.S. and China to combat illegal logging and associated trade and to promote sustainable forest management.

Specific Issues

Subsidies

The Chinese government employs direct and indirect subsidies such as grants, interest loan subsidies, debt forgiveness and tax concessions to prop up state-owned enterprises, introduce new technology and expand or build new capacity. Should these practices persist, American firms will remain at a distinct competitive disadvantage against Chinese enterprises when competing in the Chinese, U.S. and other international markets.

Quality Conformity

The China design code for materials quality conformance has no requirements for dimension lumber, wood-based structural panels and preservative-treated wood. This absence creates quality problems for wood products and compromises safety for structures built with such non-conforming structural products. Additionally, the absence of formal recognition of U.S. certification

林业及林产品

林业及林业产品极具影响美中贸易平衡的潜力，但加强双方贸易往来仍存在诸多障碍。就中方通过各种行业和贸易政策，鼓励中国的造纸和木材加工行业的快速发展，美国林业及林产品行业表达了关注并列举出广泛存在的问题。目前中国造纸和木材加工行业短时间内得到显著增长，而同一时期美国相关产业在市场上的机遇却在减少。

这一发展略有异常，因为中国并不具备有竞争性的林产品行业应有的纤维资源，而是主要依靠进口。中国对国内出口商在高附加值产品方面的支持一定程度的限制了美国生产商和出口商的机会。

尽管森林资源有限，中国林产品行业的发展速度却是世界上最快的。究其原因，是因为中国出台了提高和增加生产能力和建设的政策。另外，中方还大量进口原木、木屑、纸浆等原料以及回收纸，以弥补国内供应的不足。

在中国从美国进口的产品中，用以供应国内造纸行业的纸浆及回收纸等原材料越来越多，另外还包括用于生产实木产品，例如单板，家具及类似产品的原木和锯材。2006年中国从美国进口的这类原材料达22亿美元，占当年美国对华出口林产品总量的78%。与此同时，中国从美国进口的高附加值产品则停滞不前。

重大的进展

2007年，美国就中国实行的许多补贴做法，向世界贸易组织成立的争端解决小组提出磋商请求。之后，中美双方就中国取消世贸组织规则禁止的某些补贴问题达成协议。

中美商会对中国在修订的《木结构设计规范》（GB50005-2003）及《木结构工程施工质量验收规范》（GB50206）中，纳入美国常用针叶材树种规格材的设计强度指标以及分等标准感到鼓舞。我们同时也高兴地看到中国的《木结构设计规范》和《建筑设计防火规范》规定包括了针对三层以及三层以下轻型木结构建筑的防火设计要求。

尽管中国与美国政府举行的战略经济对话旨在就非法采伐及相关贸易问题达成双边协定，我们仍希望对中国原木贸易商与未实施可持续森林发展政策的地区所进行的贸易行为承担更大的责任。中美商会欢迎美中双方2007年12月达成的具有开拓意义的打击非法采伐及相关贸易、促进森林管理可持续发展的谅解备忘录。

具体问题

补贴

中国政府为扶持国有企业发展，引进新技术，扩大或新建生产能力，实行拨款、信贷补贴、免债、减税等直接和间接补贴。如果这一做法得以持续，美国公司将在中国、美国及其他国际市场中的竞争明显处于不利地位。

质量标准

中国的相关标准，缺乏对结构用林产品，包括对格材，木基结构板材以及防腐木材等第三方质量认证以及认证标识的强制性规定，由此对产品的质量带来了隐患，影响了建筑物的安全性能。此外，缺乏对对美国质量认证机构及其颁布的产品认证标识正式认可，导致假冒建筑材料逐渐增多，以及标识混乱的问题。

防火安全设计要求

此前得到认可的木结构防火设计没有正确地纳入《住宅设计规范》中。因此，根据这一标准，木结构住宅的使用仍然受到限制。这种在不同标准中，对防火设计要求的不统一，不公正地影响了设计和建筑设计人员对于木结构住宅的接受度。此外，中国的建筑标准限制了多层（三层以上）木结构住宅以及重型木结构建筑的应用，而这两种建筑方式多年来在很多国家都得到了成功运用。

非法采伐

许多地区非法采伐的大量廉价木材造成全球软木

agencies and their grading marks has led to increased counterfeiting of building materials and misleading labeling.

Fire Safety Design Requirements

Previously recognized fire safety design requirements have not been properly incorporated in the existing China Residential Building Code. As such, the application of wood-frame construction, based on current residential building codes, is restricted. This inconsistency in fire design requirements unfairly impedes the general acceptance of wood-frame construction among design and construction professionals. In addition, Chinese building codes restrict the construction of multistory (above three-story) residential buildings and heavy timber construction, two methods that have been used successfully for many years in numerous countries.

Illegal Logging

An abundance of low-cost, illegally harvested timber from a number of regional sources has placed downward price pressures on softwood lumber globally and has severely restricted U.S. trade opportunities in China. As the world's second-largest importer of wood, China serves as a conduit for vast quantities of illegal softwood timber from several of these regional sources.

For example, a significant percentage of Russian logs entering China are of suspicious origin, possibly from areas where there is excess cutting and unauthorized harvesting, or are undocumented/unreported exports. China's hardwood log imports also come from countries with significant illegal logging problems, including Indonesia and Burma. Activities such as illegal logging, associated prohibited types of border trade and the use of illegally obtained timber in manufacturing distorts international trade and reduces the market opportunities for U.S. suppliers.

Miscellaneous Non-Market Practices

Other non-market practices, such as fraudulent labeling and stamping of Chinese hardwood plywood attempt to avoid tariffs by misclassifying hardwood plywood products destined for the U.S. market and lower the price of Chinese hardwood plywood, making it more difficult for U.S. companies to compete. ■

Recommendations

- Phase out subsidies provided by the Chinese government to the domestic forest products industry, particularly those that distort, or have the potential to distort, international trade and investment.
- Adopt internationally recognized materials quality conformance standards, such as grade-stamp requirements for dimension lumber, wood-based structural panels and preservative-treated wood to ensure consumer safety.
- Incorporate residential fire safety design requirements for multi-story buildings and heavy timber construction into the China Fire Code and the China Residential Building Code.
- Continue the ongoing cooperative efforts between the U.S. and China to combat illegal logging and associated trade through the SED forum.

材价格下降，极大限制了美国在华贸易机会。作为全世界第二大木材进口国，中国成为来自上述地区的大量非法软木木材的流通渠道。

例如，相当一部分进入中国的俄罗斯原木其来源是可疑的，这些木材可能来自过量采伐或非法采伐的地区，或是未列入统计范围或上报的出口产品。中国的硬木原木进口也来自非法采伐问题相当严重的国家，如印尼、缅甸。非法采伐、相关的受到禁止的边境贸易以及在制造业使用非法获得的木材等活动扭曲了国际贸易关系，减少了美国供应商的市场机会。

其它非市场行为

其它非市场行为，如中国硬木复合木板贴假标签、盖假章，通过混淆出口美国市场的硬木复合板分类以逃税，以及降低中国硬木复合板价格，这些都使美国公司参与竞争变得更加困难。 ■

建议

- 取消中国对国内林产品行业的补贴，特别是那些扭曲或可能扭曲国际贸易和投资关系的补贴。
- 采用国际认可的材料质量通行标准，例如，实施对规格材、木基结构板材及防腐处理木材的质量认证标识要求，以确保消费者安全。
- 将多层建筑及大型木建筑住宅防火安全标准纳入中国防火安全标准和中国住宅建筑标准中。
- 通过美中战略经济对话平台，继续进行打击非法采伐及相关贸易的合作。

Healthcare, Medical Equipment and Devices

The year 2007 marked an increased and welcomed focus on healthcare by the Chinese Government. The government has made an unprecedented commitment to improve and expand the quality and breadth of healthcare through a reform scheme anchored by a new national basic healthcare service system covering every citizen in China by 2020. This effort, driven by the State Council Inter-Ministerial Healthcare Reform Group, has come in response to reports the group solicited from international and domestic consultants and think tanks. The aggressive 2020 goal sits atop the four major pillars of the draft scheme, which include:

1. Improving public health;
2. Enhancing the medical insurance and welfare system;
3. Improving hospital quality and efficiency through enhanced management and oversight; and
4. Improving basic medical services.

The above proposal has been issued as a draft for comment. Key stakeholders and contributors to the reform process include AmCham member companies that service and support medical services in China, such as pharmaceutical companies, device providers and investors in healthcare services. For this reason, AmCham enthusiastically supports these goals and would like to raise the following issues that directly relate to the industry, as they may become barriers to achieving the stated goals.

Specific Issues

Technology and Innovation

Achieving the goals of the proposed reform agenda will require more government investment and training of personnel, particularly in the areas of primary care and management. It will also require innovative technology, products and processes. We believe that the government should take full advantage of available innovations in technology.

Efficient Product Registration Processes

The primary responsibility of the State Food and Drug Administration (SFDA) is to control market entry for medical products. There is currently a

backlog of thousands of new product registration applications and renewal applications, some of which have been delayed for more than a year. In the worst cases, the registration approval process takes three times as long as the SFDA sets forth in its own registration-review schedule.

We understand that recent worldwide focus on product quality has consumed the attention of this agency, further delaying the product registration process. The U.S. Food and Drug Administration (FDA) recently signed a Memorandum of Understanding with the SFDA, which includes the deployment of FDA inspectors to help ensure the safety of Chinese food, drug and device exports. It would be productive to consider using FDA experts to help expedite U.S. product registration applications at the SFDA.

In late 2007, the SFDA published draft regulations for the Management and Supervision of Medical Devices. AmCham appreciates the open manner in which the SFDA solicited comments on the draft from all constituencies and looks forward to further discussions with the SFDA after the revised draft has been circulated. We hope it will include ways to improve the efficiency of the registration and supervision process.

The SFDA should also work with other government agencies under the umbrella of the State Council to eliminate redundant multiple licensing of the same medical products. One competent authority should administer one license that would encompass all requirements for importation and sales of medical products in China.

We urge:

1. Better efficiency in the registration process. Authorities should develop a clearly mandated timeframe for the testing, document review and approval process, supported with a sufficient number of review personnel who are adequately trained for their jobs.
2. More simplicity in the re-registration and change-of-registration processes. The government should consider adopting a simple notification process for re-registration and a change in the application

医疗设备、器械与健康保险

2007年，中国中央政府对医疗卫生体制给予了加大的关注，这是一件可喜的事情。中国政府做出了前所未有的承诺，致力于2020年前建立一个覆盖所有中国公民的全新国民基本医疗卫生服务体制，并通过以此为重心的改革计划改善医疗卫生服务的质量，拓展医疗卫生服务的广度。此计划由国务院深化医药卫生体制改革部际协调工作小组牵头，是对该工作小组根据委托国际和国内顾问和智囊团设计医改方案的报道的回应。关于这一远大的2020目标，初步方案包含四大方面，分别为：

1. 改善公共卫生体系；
2. 健全医疗保险和福利体系；
3. 通过加强监督和管理机制提高医院服务质量与效率；
4. 改善基本医疗服务。

以上提议草案已发布，以征求各界意见。与这一改革过程的利益相关者、及对此作出贡献的组织包括给与中国医疗服务支持及服务的中美商会会员公司，如制药企业、设备及器械供应商和医疗卫生服务投资者。正因为如此，中美商会积极支持这些目标，并希望提出以下与该行业直接相关的问题，因为这些问题可能会成为实现相关目标的障碍。

具体问题

科技与创新

若要实现医改提议议程的目标，政府需要投入更多资源和加强人员培训，尤其是在基础护理和管理方面。同时还需要创新的科技、产品与程序。我们认为，如果政府希望能够充分利用有效的创新科技，应解决以下问题：

高效的产品注册程序

国家食品药品监督管理局的首要任务是控制医疗产品进入市场的制度。目前有数千份新产品注册申请和续期注册申请等候审批，其中一些已经拖延了一年多。甚至有些注册审批程序所花费的时间超过了

国家药监局在其注册审核程序中明确规定期限的三、甚至四倍之多。

我们明白最近全球对产品质量的关注已经分散了国家药监局的注意力，引致进一步延误了产品注册程序。美国食品和药品管理局(FDA)最近与中国国家药监局签署了一份谅解备忘录，其中包括将派遣FDA监督员来帮助确保中国出口食品、药品和器械的安全。如果能够考虑利用FDA的专家来帮助加速对在美国已注册的产品在中国国家药监局注册申请的审批程序，将是极具建设性的举措。

在2007年底，国家药监局发布了《医疗器械监督管理条例（修订草案）》。对于国家药监局就草案公开向所有有关单位征求意见的态度，中美商会甚为赞赏，我们也提供了建议，并期待着在再修订的草案发布后与国家药监局开展进一步探讨。我们希望修订草案将把如何提高注册与监督程序效率的方法纳入其中。

此外，国家药监局还应在国务院的统筹下与其他政府部门进行合作，以消除对同一种医疗产品的多个重复的注册要求。一个主管部门应负责一张统一许可证，该许可证应包含在华进口和销售医疗产品所需的全部要求。

我们呼吁：

1. 提高注册程序效率。当局应明确规定检测和文件审批程序的期限，配以充足的、有足够培训和能够胜任其工作的审核人员。
2. 简化重新注册和变更注册程序。对于重新注册以及所供应产品调整相对较小的变更注册申请，政府应考虑采用一种简单的备案流程机制。
3. 考虑采用质量管理体系以替代产品型式测试。型式测试会延长这一过程所需的时间，而在保证产品安全和质量方面也不及质量管理体系方式可靠。
4. 取消对进口产品施加差异性限制要求。应当取消的限制包括：对能够接收进口医疗器械的港口的限制；额外检测与审查；以及在抵达港口时需要出示注册原件的规定。

for relatively small adjustments in product offerings.

3. The consideration of the use of quality management systems as opposed to type testing for products. Type testing slows the process and is not as reliable in ensuring product safety and quality as using the quality management systems approach.
4. Removing differentially restrictive requirements for imported products. Restrictions that should be removed include the limitation of ports eligible to receive imported medical devices; extra testing and inspections; and the need to show original registration documentation at the port of arrival.
5. Ensuring the confidentiality of documentation and other product design criteria.
6. Considering the use of U.S. FDA personnel at the SFDA to help explain and expedite registration applications for U.S. products that already have FDA approval.

Other detailed comments on the proposed draft regulation have been submitted to the SFDA and are available upon request.

Reducing the High Cost of Healthcare

The quest to reduce the high cost of healthcare is a global concern. It is especially acute in China, where healthcare costs have been increasing at record rates. The National Development and Reform Commission (NDRC), as well as certain municipal governments, have been exploring ways to reduce the high price of healthcare. However, when reviewing approaches to cost-reduction, it is important to take a long-term view, looking not only at the cost of single services or individual devices, but also at the efficiency of the overall approach.

There are times when technologies that may be more expensive in the short-term can lead to longer term efficiencies and a reduction in overall healthcare costs. Therefore, we strongly urge against a simplistic approach of product price controls. The goals of cost control could be better achieved by focusing instead on reimbursement levels.

A well thought-out system that encourages healthcare supplier efficiencies through managing government or third-party payer reimbursements would have significant advantages. It would encourage overall system efficiencies, while leaving flexibility for consumers who want to supplement reimbursement levels so they can access extra services. This would

make for a more efficient overall system with tailored service options that can meet the needs of various segments of society.

Recently, the NDRC issued a draft regulation on markups of medical devices, with the objective of lowering the cost of healthcare and reducing the level of corruption in the supply chain. These are worthy objectives that AmCham supports. However, as drafted, these regulations require manufacturers to provide the NDRC with a large volume of detailed pricing information, some of which is typically confidential business information.

AmCham recognizes that public transparency is necessary to achieve the above goals, but such transparency should not include normally confidential information. In addition, we urge the NDRC to make sure the regulations allow for a level playing field between domestic industry and foreign companies (importers). AmCham maintains that markups of imported goods should be measured starting from an importer's first sale price in China (no matter whether the importer is a distribution subsidiary of an offshore manufacturer or its appointed national distributor). This first on-sale-in-China price would be most analogous to the domestic manufacturer's ex-factory price. We also urge the NDRC to consider longer term solutions to reducing healthcare costs.

Fair and Transparent Tendering Process

Tendering is widely used as an approach to assure good purchase practices for medical equipment, devices and pharmaceuticals. To be effective, however, it is essential that the tendering process be fair and transparent. Each tender should be specific to a defined purchase and should represent an assured purchase quantity. Open-ended tenders with no guarantee of purchase quantity make it difficult for manufacturers to offer the most aggressive pricing and, under current practices, there are no assurances that actual purchasers will make timely payments. In addition, there are minimal consequences to selection committees should they not choose the optimum technology for the user. We firmly believe that tendering based only on lowest price will never yield optimum results for the system.

Encouraging Private Investment to Supplement the Government's Investment in Healthcare Delivery

Currently, investment in Medical Service

5. 确保文件资料和其他产品设计标准的机密性。
6. 考虑在国家药监局使用美国FDA派遣的人员，帮助说明和加快已经获得FDA批准的美国产品的注册申请程序。

其他关于监督管理条例的详细意见已提交至国家药监局，如有要求，可提供文本。

降低医疗卫生服务的高昂费用

如何降低医疗卫生服务的高昂费用是一个全球都关注的问题。而这在中国尤为突出，中国医疗卫生服务费用的增长速度不断创下历史新高。中国国家发展和改革委员会以及一些市级政府已经开始探索如何才能降低医疗卫生服务居高的价格。但在研究降低费用的方法时，重要的是要有长远的眼光，不仅要目光放在降低单个服务或器械的费用上，还要关注总体方法的效率。

有时，一些科技在短期内或许会价格偏高，但长远而言却能够有效降低总体医疗卫生服务的费用。因此，我们强烈呼吁不要单纯地进行产品价格管制。通过重点改善报销水平能够更好地实现控制费用的目标。

通过对政府或第三方的报销政策进行管理来鼓励医疗卫生服务供应商提高效率，这种经深思熟虑后成形的机制会带来巨大的优势。这有助于提升系统的整体效率，同时为希望对报销金额进行补充的消费者带来了灵活性，使他们能够享有其他的个人化服务。这样，一个更有效的整体体系就会应运而生，其量身定制的服务选择能够满足社会各个阶层的需求。

最近，国家发改委发布了医疗器械加价规定草案，旨在降低医疗卫生服务的费用并打击供应链中存在的贪污腐败行为。这些都是中美商会所支持的有价值的目标。然而，依照草案规定，要求生产商向国家发改委提供大量详细的定价资料，其中包括一些典型的机密商业信息。

商会深知要实现以上目标，需要公众透明度，但这种透明度不应包括通常是机密的商业信息。此外，我们希望国家发改委能够通过该法规为国内企业与国外企业（进口商）建立一个公平竞争的平台。商会认为，进口商品的加价应当以进口商在中国境内

的第一个售价为出发点进行衡量（不管该进口商是离岸生产商的分销附属机构抑或是其指定的全国分销商）。这种在中国的第一个售价与国内生产商的出厂价最具可比性。我们还建议国家发改委能够考虑更为长远的解决方案来降低医疗卫生服务费用。

公平、透明的招标程序

为了确保良好的医疗设备、器械和药品采购行为，招标是一种普遍采用的方式。但是为了发挥有效作用，就有必要保证招标程序的公平与透明。每次招标都应具体针对一个详细说明了的采购计划，同时应确定采购量。没有采购量担保的公开招标使得生产商难以提供最具竞争力的价格。目前的实际做法，是完全没有实际采购量和及时付款的保证。此外，如果评标委员不为广大用者选择最优的科技，他们也无须承担任何后果。我们坚信，只基于最低价的招标决不会为该体系带来最佳的效果。

鼓励私人投资医疗卫生服务领域，以补充政府的投资

目前，根据国家发改委的投资目录，对医疗服务设施的投资属于限制性范畴。这意味着，尽管其投资能造福于社会，在医疗卫生服务领域进行投资的投资者无法享受到制造业和高科技等鼓励投资领域所提供的一系列优惠政策。这些优惠政策包括所得税和营业税的减低，进口设备免关税，国内生产的大型设备可免增值税，外商独资的权利（目前外资股份比例限制为70%），以及无需中央再次批准即可根据市场需求扩大业务。

医疗卫生领域的私人投资具有如下优点：

1. 使政府能够把重点集中在解决更广大人数的基本医疗保健问题，同时鼓励私人投资提供公共体系所不具备的补充性服务；
2. 能够较早地在试点和示范项目中采用创新的医疗卫生服务提供模式，在此基础上，政府可考虑未来在进行一定规模的试点后加以采纳；以及
3. 促进具有社会责任感的私人投资者能够对公共卫生、教育与应急以及慈善护理做出贡献。

商业健康保险的必要性

对鼓励私人投资医疗卫生领域而言，最重要的就是

Establishments is considered a restricted category according to the *Foreign Investment Catalogue*. This means private investors in healthcare services receive none of the incentives available to investors in other encouraged areas of high technologies, despite the fact that they may bring benefits to society. These incentives include income and business tax reductions, duty exemptions on imported equipment, the right to a wholly foreign-owned investment (now limited to 70 percent foreign ownership) and the right to expand in response to market demand without needing re-approval at central levels.

Some of the benefits that private investment in healthcare would bring include:

1. Allowing the government to focus on basic care to the broadest number of people, while encouraging private investment to provide supplementary services not available in the public system;
2. Allowing for early adoption of innovative healthcare delivery models in pilot and demonstration programs that the government could consider for future adoption after limited trials; and
3. Facilitating contributions from socially responsible private investors to public health, education and emergency response, as well as charity care.

The Need for Commercial Health Insurance

Most important to the encouragement of private investment in healthcare would be 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. The government's 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. The portion of prices exceeding the government reimbursement rate would be payable by private insurers or by individuals out of pocket, should they choose to seek private providers. ■

Recommendations

- Encourage the introduction and use of innovative products and processes to reduce the cost of healthcare and improve results.

- Improve product safety and reliability by relying on quality management systems rather than type testing for product registration.
- Eliminate redundant licensing requirements by different government agencies.
- Simplify the product re-registration and registration change processes. Require "filing" rather than complete registration process.
- Do not require differential registration processes for foreign companies.
- Consider collaboration with U.S. FDA to expedite product registration applications.
- Do not limit the ports available for importation of medical equipment and devices.
- NDRC price reporting should equate first on-sale prices in China by importers to the ex-factory price of domestic manufacturers and should not require the submission of confidential business information.
- Private healthcare enterprises should be included in the "Encouraged Investment" list of the NDRC's Investment Catalogue and be given preferential tax incentives.
- Commercial health insurance should be encouraged and allowed to supplement reimbursement by social health insurance. This type of supplemental insurance should be portable for patients to use at institutions of their choice.

要发展一个健全的商业健康保险行业。应当允许雇主与个人购买私人健康保险，作为补充政府基本医疗保险的报销机制。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等级的服务。如果选择私人服务供应商，超过政府报销范围的那部分费用可由私营保险公司支付，或由个人自负。 ■

建议

- 鼓励引入和采用创新的产品和流程来降低医疗卫生服务的费用并提升效果。
- 在产品注册程序中以质量管理体系取代型式测试来提高产品安全性和可靠性。
- 消除不同政府部门的重复管理的注册要求。
- 简化产品重新注册和产品变更注册程序，以“备案”方式来代替整套的注册程序。
- 取消对国外企业采取不同的注册程序。
- 考虑与美国FDA合作，以加快产品注册申请程序。
- 不要限制接收进口医疗器械和设备的港口。
- 国家发改委的价格汇报机制应当将进口商在中国的第一个售价与国内制造商的出厂价相对应；同时，也不应该需要提交保密的商业讯息。
- 私人医疗卫生企业应纳入国家发改委投资目录的“鼓励投资”名单，并享有优惠的税收鼓励政策。
- 商业健康保险应受到鼓励，允许其作为社会健康保险报销机制的补充。这种补充性保险应可以有移动性，以便于患者在其选定的机构中使用。

Information and Communications Technology

China's Information and Communications Technology (ICT) market is now among the world's largest, with its fast growth expected to continue in the near term. The industry has become a significant and essential contributor to China's economic development.

Now that China's basic telecom networks and IT infrastructure are largely in place, the next stage of the industry's development is to focus on promoting value-added ICT services and an environment that fosters and protects the innovations involved in creating those products. Value-added ICT services (including Protocol–Virtual Private Network and Voice over Internet Protocol) enable enterprise productivity and the creation of high value-added service industries. The innovation of ICT is essential to the continued development of these industries.

To achieve these goals, China's ICT industry must overcome the following four challenges:

Highly Restricted ICT Value-added Services (VAS) Market Monopolized by Incumbent Carriers

As international markets have shown, incumbent basic network operators, because of their sheer size, are generally not VAS innovation drivers. Rather, the incumbent operators best play the role of “enablers” who provide basic network and platform infrastructure upon which smaller, more nimble players—including vendors, independent software vendors, systems integrators and internet content providers—then develop and deploy innovative VAS. As a result, ensuring market access so that these smaller players can offer VAS on an incumbent carrier's network is essential to future market development, service innovation and for consumers to realize the full benefits of the substantial infrastructure network investments China has made.

Opaque Process for Setting Technology Standards that is Non-market Driven and Impedes Efficient Investment

Experience in China and other markets demonstrates the benefits of allowing standards to be driven by the market and adopted under global norms. Ultimately, this process creates an environment

that fosters high-tech companies and innovation, and drives economies of scale in the ICT industry. Leading Chinese technology firms already export products built to global standards, contribute substantially in global standard-setting bodies and innovate in the development of new technologies. The success these companies have achieved shows how China can benefit from an open and transparent standard setting process at home and participation in global standard-setting initiatives abroad. Chinese consumers of technology, including end-users, enterprises and the government, also benefit from lower costs and access to the most advanced products when China adopts global standards.

Continuing Substantial Infringement of Intellectual Assets Destroys Innovation Value

Protecting intellectual property is a fundamental prerequisite to the healthy development of the ICT industry. For foreign firms to place research and development (R&D) functions in China and for Chinese firms to invest in innovation, they must be assured that the intellectual property they develop will be protected. The opportunity cost of failing to protect intellectual property is lost R&D jobs, reduced investment in high-tech industries by both foreign and Chinese players, and lost innovation opportunities.

Government Protected Market Distorts Competition and Impedes Informatization of the State Sector

Innovation thrives on competition. Barriers to market access or restrictions on purchasing by government, state-owned companies, or industry and consumers at large, reduces the incentive to innovate, raises costs for both foreign and Chinese producers, and limits access to and effective utilization of the most advanced high-tech products by China's key institutions, agencies and companies.

Unresolved, these four challenges will undermine China's innovation and “informatization” aspirations.

AmCham commends China's leadership for correctly identifying the importance of innovation in the information industry to overall

信息与通信技术

目前，中国已跻身于世界最大的信息通信技术（ICT）市场之列，预计近期该市场仍将保持快速发展势头。信息通信技术产业已经成为推动中国经济发展的重要因素。

目前，中国的基础电信网络和IT基础设施已基本建成，未来产业的发展将主要集中在信息通信技术服务的增值业务，并在产品开发中为培育和保护技术创新营造良好的环境。信息通信技术服务的增值业务（包括协议—虚拟专用网络和IP电话等）可以帮助企业提高生产率，推动高附加值服务业的发展，信息与通信技术的创新对服务业持续发展及其重要。

为了实现上述目标，中国的信息通信技术产业必须应对以下四项挑战：

对信息通信技术服务增值业务市场限制过多，而且被主导电信运营商所垄断。

国际市场的情况表明：基础网络的主导运营商由于其绝对的规模水平，一般不能成为创新通信增值业务的推动者。主导运营商主要起到“赋予者”的作用，他们提供基础网络和平台的基础设施，供灵活的小企业，即厂商和独立软件开发商（包括独立软件开发商、战略信息系统开发商和互联网内容提供商）开发和应用电信增值创新业务。因此，保证市场开放，使小企业在主导运营商提供的网络上开展电信增值业务，对市场未来的发展和服务业的创新、以及吸引客户都至关重要，可以使中国在网络基础设施方面的巨大投资产生最大的效益。

无论是无线通讯，移动电视还是家用电器，其技术标准设立过程都缺乏透明度，不按市场规律运作，影响了投资效益。

中国和世界其他市场经验表明，遵从市场规律和国际规范所设立的标准会产生诸多益处。而且最终可以营造出一个有利于培育高科技公司和促进创新活动的环境，推动信息通信技术领域规模经济的发展。中国主要的技术公司已经在出口按照国际标准生产的产品，它们对国际标准设置机构作出了重要贡献，也在研发新技术方面不断的创新。这些公司

取得的成功表明：建立开放和透明的标准设立程序以及参与国际标准的设立活动有益于中国。而且中国采用国际标准，将使中国的电信技术消费者，包括终端用户、企业和政府从低成本、高技术的产品中获益。

知识财产不断受到严重侵犯，破坏了创新的价值

信息通信技术产业的健康发展首先基于对知识产权的保护。外国公司将研发业务转向中国市场以及中国公司在投资创新产业时，他们必须确信所开发的知识产权将受到保护。如果未能保护好知识产权，其所带来的机会成本将包括研发工作机会的减少，中外企业对高科技产业的投资减少，创新机会的丧失。

政府保护下的市场扰乱了竞争，影响了政府部门的信息化进程

竞争推动创新。给市场进入设置障碍，限制政府和国有公司的采购行为，限制一般行业和消费者的购买行为，不仅使创新丧失动力，增加中外生产商的成本，而且影响中国重要机构、部门和公司获得最先进的高科技产品并加以有效利用。

若以上挑战得不到解决，中国的技术创新和“信息化”努力将遭受挫折。

中美商会赞赏中国对创新在信息产业、整体工业发展及经济增长方面重要性的正确认识。“信息化”被视为高效政府的重要内容和中国企业及社会可持续发展的关键动力。这一主题对自主创新和和谐社会的规划至关重要。我们欢迎中国积极鼓励进一步投资研发和促进其他高附加值的经济活动，进而增强全球的创新能力。中国将在2020年建成创新型社会的目标，引起了对“自主创新”的内在涵义和适用范围的关注。某些政策措施的努力，因其限制了市场竞争，有可能给创新带来负面影响。

中美商会关注的是，自主创新与和谐社会的规划实际上并没有得到国有主导电信运营商和负责信息通信技术产业的管理部门的高度赞同。人们越来越多

industrial advancement and economic growth. “Informatization” is seen as a key driver of sustainable development for Chinese enterprises and society, as well as a key component of efficient government. These themes are essential to both the Indigenous Innovation and the Harmonious Society programs. We welcome China’s drive to further encourage investments in R&D and other high value-added economic activities, thereby enhancing global innovation capacity. China’s goal of establishing an innovative society by 2020 has raised concerns around the meaning and application of “indigenous innovation.” Certain policy and regulatory efforts have the potential to impact innovation adversely by inhibiting market competition.

AmCham is concerned that the Indigenous Innovation and Harmonious Society programs are not being embraced in practice by the state-owned, incumbent telecom operators and regulatory bodies responsible for the ICT industry. There is growing concern that the campaign to promote “indigenous innovation” is being applied to industrial policies and measures that systematically favor products and services of Chinese companies over those of foreign invested companies. This preference can be seen in a number of areas ranging from the development of national standards and conformity assessment to competition policy and local favoritism in government procurement.

Telecom value-added services provide a case in point. Now, over six years after WTO accession, the telecom and information VAS markets are technically open but in practice remain tightly closed. As evidenced by the long-awaited Telecom Law, supporting regulations that would enable and encourage telecom and IT investment, competition and innovation at the service-level have not been forthcoming. Legacy policies and regulations are opaque and fragmented, and remain oriented toward limiting services competition and protecting the monopoly positions and revenues of state-owned basic network owners. For all intents and purposes, to date reform has been slow and foreign investment (with the exception of pure financial investments via small portfolio shareholdings in listed companies) has been minimal.

The inability of both foreign and private Chinese companies to access the market stifles service innovation and has resulted in an unhealthy level of price competition as price is the only mechanism businesses have to try to win market share. Despite

the fact that the number of operators is few (two mobile and two fixed) and basic penetration rates still have much room to grow, the price wars among the players are among the most intense anywhere. Although price reductions are generally good for consumers, rampant price wars are not. The ongoing price wars and the growing competitive and profitability imbalance of the incumbent players, are evidence that the industry is failing to innovate and define competitive advantages along dimensions of innovation rather than price.

This legacy of inertia in the ICT industry has caused a number of negative results including:

- Constrained availability of critical enterprise information services and consumer value-added services;
- Investment delays and fragmented implementation of next-generation networks and systems;
- Lost entrepreneurial activity and R&D investment in technology-based products and information services; and
- Unhealthy price competition and declining industry profitability that encourages protectionist behaviors, disrespect for innovation and IP assets, and copy-cat behavior in product development.

These negative impacts are hurting both foreign and private domestic players in China’s information industry. More importantly, they are hurting Chinese businesses and consumers who would benefit from vibrant and robust ICT products and services to improve their competitiveness and personal livelihoods.

Bold liberalization of the ICT value-added service markets is one key measure that government authorities should undertake in order to overcome the established inertia of the industry and stimulate service- and product-level innovation by both incumbent players and new entrants.

Specific Recommendations for the IT Sector

Market Access Carriers in ICT Value-Added Services

- Substantially expand the set of permissible value-added services in order to enable genuine and spirited foreign and private participation in the telecom and information value-added services sectors. International IP of Virtual Private Network

地担忧，在推进“自主创新”活动中所实施的工业政策和相关措施，正在有计划地帮助中国产品和服务超越于外国公司的产品和服务。这种倾斜在一些领域可以看到，比如设立国家标准，竞争政策的一致性评估方面和政府采购中的地方性照顾等。

电信增值业务就是一个典型的例子。中国已加入WTO 6年多，从技术上说，其电信和电信增值业务市场已经开放，但在实务层面上仍处于关闭状态。比如期待已久的电信法，有关推动和鼓励对电信和IT服务业投资、竞争和创新的配套法规一直迟迟未能出台。现存的政策和法规又缺乏透明度和完整性，限制了服务业竞争，依然保护了国有基础网络公司的垄断地位和收入。由于种种原因，改革进度至今仍然缓慢，外国投资（除了对上市公司小份额股权进行的单纯财务投资外）仍处于最低水平。

外国公司和中国民营公司无法进入市场使服务业的创新受到了抑制，同时使价格竞争发展到了不健康的程度，因为价格成为了企业赢得市场份额的唯一途径。尽管运营商为数不多（只有2个移动通讯运营商和2个固定通讯运营商），而且渗透率还有很大的增长空间，企业之间的价格战还是愈演愈烈。虽然降价对消费者总体而言是件好事，但价格战过于频繁却并非好事。持续的价格战，不断加剧的竞争和收益间的不平衡，说明行业已经无法通过创新而只能选择价格来确立其竞争优势。

信息通信技术产业发展的这种传统惯性，带来的相关的负面结果：

- 重要的企业信息服务业务和客户增值业务的提供受到限制；
- 投资被延迟，下一代网络和系统的应用不配套；
- 创业者的创造动力消失，不再投资于技术产品和信息服务的研发；
- 不健康的价格竞争和行业效益下降鼓励了保护主义行为，不重视创新和知识产权资产，在产品开发中出现盲目照搬的行为。

这些负面影响损害了中国信息行业中的国外和国内的民营企业，更重要的是伤害了中国的企业和消费者。因为健康富有活力的信息通信技术产品和服务本应使他们获益，增强其竞争力，提高他们的个人生活水平。

要大胆开放信息通信技术增值业务市场，这是一项

政府当局应当采取的根本性措施，以此来改变行业不良惯性的发展状态，刺激主导企业和新加入的企业在服务和产品方面的创新。

关于IT行业面临问题的相关建议：

信息通信技术增值业务的市场准入壁垒

- 大力扩大可经营的增值业务的范围，使真正富有活力的外资和民营公司进入电信和信息增值业务领域。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。
- 界定许可的服务业务时，应使用否定语句结构使定义一目了然，明白无误。比如，“除了基本网络准入和传输服务业务之外，其他任何服务业务都被视为‘增值业务’”。
- 提高《外商投资电信企业管理规定》（FITE）中增值业务的外资参股上限，允许其控股，减少体制上和运作中的复杂性，最好是按全球的惯例提高到100%。
- 减少或取消针对外商投资电信企业的资本要求。
- 制定一套明确的定价和供给的综合制度，与国际惯例接轨，确保获得许可的外商投资电信企业可以及时、公平、规模性地进入关键的电信接入和传输网络设施，使他们开展增值业务成为可能。
- 区分敏感和非敏感增值业务，对敏感增值业务的控制程序进行规定；允许扩大非敏感业务的运作范围。

基本理念—健全的信息通信技术增值业务市场，对长期市场发展，对中国成为业务运营中心和发展服务外包产业的规划，对服务业的创新，对企业提高生产力和新兴的媒体产业的健康发展，都至关重要。

透明度缺乏，新的信息通信技术业务批准滞缓

- 建立审批所有新技术的透明的体系，确保审批过程公平合理，公司和消费者能够提供意见和建议。
- 克服官僚作风，精简审批新技术的机构，防止官僚作风和部门权益之争阻碍技术创新。
- 不应拖延发放多技术和多运营商的第三代（3G）移动通信的经营许可证，制定政策时在频段分配和市场准入方面要对所有的市场竞争企业一视同仁。
- 在3G频段分配时要技术中性化，以产生更多的竞

(VPN) services should be among the permissible VAS.

- Use negative syntax to define the permissible services so that definitions are explicitly clear and understandable to all. For example, “Any service other than basic network access and transmission services is considered a “Value-Added Service.””
- Raise the foreign equity cap in VAS Foreign Investment in Telecommunications Enterprises (FITE) sufficiently so as to permit control and reduce organizational and operational complexity—ideally to 100 percent, as is the norm globally.
- Reduce or eliminate the capitalization requirements for FITEs.
- Enact a clear and comprehensive set of pricing and provisioning rules that are in line with international norms for assuring timely and equitable wholesale access by licensed FITEs to critical telecom access and transmission network facilities they need to enable their value-added services.
- Distinguish between sensitive and non-sensitive value-added services and define control procedures for sensitive value-added services; permit wider operations scope for non-sensitive services.

Rationale – *A robust ICT value-added services market is critical to long-term market development, the success of China’s operations hub and off-shoring/outsourcing programs, service innovation, enterprise productivity and the healthy development of the new media industry.*

Lack of Transparency and Delays in Licensing New ICT Services

- Establish a transparent system applicable to the licensing of all new technologies to ensure the fairness of the process and the ability of companies and consumers to provide input.
- Streamline the bureaucracy and reduce the number of agencies involved in licensing new technologies in order to ensure that innovation is not hampered by bureaucratic inertia or infighting between agencies.
- Release third generation (3G) licenses for multiple technologies and multiple carriers without delay and establish policies that are fair to all market players in terms of spectrum allocation and market access.
- Make 3G spectrum allocation technology-neutral to generate more competition and service innovation, and to allow the market to drive technology evolution.

- Provide carriers with full service licenses for fixed and mobile services in line with global trends and service integration.

Rationale – *Transparent and systematic licensing processes are essential for smooth market operations and efficient investment decisions by market players. Lack of clarity and confusion over the future of standards creates increased risk of planning mistakes and irrational and/or misguided investments.*

Lack of Transparency, Delays and Unhealthy Bureaucratic Intervention in Processes for Technical Standards Development

- 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. Left to themselves, domestic standards bearers are sure to emerge as the sector evolves. Bureaucratic involvement in the standards environment is preventing both domestic and international players from creating optimal standards for the Chinese market.
- Participate actively in international standards-setting bodies.
- Adopt international standards to the greatest extent possible.
- Embrace openness in developing IT standards. Openness allows any interested party to contribute to proposals and thereby make it possible to base decisions on a near consensus.
- Ensure that the standards-setting process in China is transparent, allowing for non-discriminatory public consultation of all stakeholders so that foreign and domestic players can participate.

Rationale – *Nationally mandated standards rarely succeed in the market. China boasts a large number of institutions and companies capable of generating viable standards as long as market forces and industry associations are allowed to work properly (free of bureaucratic involvement) and international standards bodies are used appropriately.*

Ineffective Enforcement of IPR

- Improve intellectual property protection enforcement.
- Support local authorities in enforcing intellectual property protections to the full extent of the law.

争和业务创新，让市场来推动技术革新。

- 按照全球发展趋势和业务整合的需要，向运营商发放固定和移动业务的全业务牌照。

基本理念—透明的、制度化的许可审批程序对市场的顺利运行和市场竞争者有效的投资决策都至关重要。如果对于未来标准不能加以明确和出现认识上的混淆，则大大增加规划失误和不合理和/或受误导的投资的风险。

技术标准制定中的透明度缺乏，过程延滞和部门官僚政治的干预

- 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讯技术产品创立标准。如果顺其自然的发展，国内的主导性标准一定会随着该行业的发展而出现。如果官僚政治介入制定标准的领域，将阻碍国内国际的行业企业创立适合中国市场的最佳标准。
- 积极参与国际标准设置组织。
- 尽可能地采用国际标准。
- 赞同放开IT标准的制定工作。只有放开，感兴趣的各方才会进言献策，才能根据大多数人的一致意见进行决策。
- 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咨商，使外国和国内的竞争者能够参与。

基本理念—由国家颁布实施的标准在市场上很少获得成功。中国拥有为数众多的机构和公司，如果允许市场和行业协会真正发挥作用（不受官僚部门的阻挠），加上适当利用国际标准组织资源，这些机构和公司能够提出合适可行的标准来。

知识产权保护工作执法不力

- 加强知识产权保护的执法力度。
- 支持地方政府部门最大限度的执行法律。
- 对侵犯其他公司设计的产品，政府一律不予审批。
- 着手解决民营企业和国有企业中未经许可使用软件的问题。

基本理念—中国信息通讯技术产业的持续健康发展取决于知识产权保护的加强和落实。不断地严格实

施知识产权保护对国内外从事技术创新的公司来说都是件好事。

违反竞争原则，政府不公开地采购IT产品并对外国厂商造成不公平

- 中国政府应当把外商投资企业（FIE）的贡献视为中国经济不可或缺的一部分，对外商投资企业在当地市场销售的产品和服务给予国民待遇。
- 中国自主创新的政策应当透明化，不应将其作为市场准入政策，限制外国公司参与政府采购。
- 在政府采购招标中，应基于市场和业绩，技术的中立性，和总体的价格条件确定中标者，而不应考虑其他因素。
- 不应该有全国性比例要求。

基本理念—政府只有通过公平合理的采购活动才能够以最低的价格获得最好的技术，促进竞争，激励所有市场参与者积极创新。 ■

- Ensure products that infringe on designs of other companies are not issued official-type approvals.
- Address the under-licensing of software by private and state-owned enterprises.

Rationale – Continued, healthy development of the ICT industry in China depends on improved enforcement of IPR protections. Consistent and rigorous enforcement of IPR protection is good for both innovative Chinese and foreign companies.

Implicit Government Procurement Practices for IT Products that are Anti-competitive and Unfair to Foreign Vendors

- The Chinese government should recognize Foreign Invested Enterprise (FIE) contributions as an integral part of the Chinese economy including the national treatment of FIE products and services sold on the local market.
- China's self-reliant innovation policy should be transparent and should not be used to restrict market access or keep foreign companies out of government procurement.
- Winners of procurement bids should be market- and merit-based, on technologically neutral and overall best value terms, rather than based on other considerations.
- There should be no national content requirements.

Rationale – Fair government procurement practices ensure that the government receives the best possible technology at the lowest possible price and increases competition and the incentive for all market players to innovate. ■



Legal Services

Three of the top five business challenges cited by AmCham member companies in China are related to the Chinese legal system. The issues outlined in AmCham's annual China business climate survey include unclear regulations, inconsistent regulatory interpretations and a lack of transparency. The systemic changes required to tackle these broad-reaching issues can only come about with the dedicated involvement of a vibrant, professional and experienced community of legislators, regulators, judges, public and private legal practitioners and academics. Foreign lawyers have long participated in this community and continue to seek opportunities for greater cooperation. Their involvement can provide international expertise that can only serve to add voices to the discussion of experts.

Specific Issues

Role in Regulatory Development

The year 2007 was an important one for the legal community in China, punctuated by the issuance of several long-awaited pieces of legislation, including the Labor Contract Law and the Antimonopoly Law. Members of the foreign legal community were pleased to be included in working groups and comment teams for both of these laws, and continue to welcome the opportunity to participate in the drafting of implementing rules and measures. Timely publication of draft legislation, as well as sufficient notice regarding comment periods, would facilitate such efforts.

Scope of Participation

Chinese companies are increasingly feeling the impact of foreign regulatory standards and intellectual property regimes on their businesses. This trend will only deepen as more Chinese companies look outside of the country for growth and expanded opportunities. With regard to cross-border dealings, foreign lawyers in China have proven to be an invaluable resource for Chinese companies and local lawyers alike. Foreign lawyers in China provide strong support for Chinese companies looking to expand and raise financing outside China. They do this by tapping into global legal networks, leveraging

experience in other jurisdictions and providing comparative analysis.

However, the true potential benefit of this resource pool and cooperation between local lawyers and the foreign legal community is hindered by limitations faced by foreign firms on hiring and defining the scope of their practice in China. Current regulations permit foreign law firms to employ Chinese staff, however, they require that such employment take the form of a secondment from one of the permitted employment agencies. In addition, regulations require that Chinese nationals holding licenses to practice law must suspend such licenses for the duration of employment with the foreign firm.

These restrictions discourage Chinese lawyers from joining foreign firms, effectively closing off an important source of training and professional development that would be beneficial to the growing legal profession in the PRC. The inability to form partnerships or other types of dedicated cooperative relationships also limits the growth of domestic firms and their ability to develop wider skill sets, particularly those suited to cross-border dealings.

In terms of scope of practice, foreign firms may provide "information on the impact of the Chinese legal environment," as per China's WTO commitments, but are prohibited from issuing "specific opinions or assessments on the application of Chinese law" when furnishing information on the Chinese legal environment. These practice restrictions create ambiguity as to what foreign lawyers can and cannot do, and unnecessarily bifurcate the foreign and local legal community in a way that is often fractious and detrimental to client requirements.

AmCham would welcome a renewed dialogue with Chinese authorities, including the Ministry of Justice, on the further liberalization of the market so that lawyers, both foreign and Chinese, can serve the full complement of client needs both within and outside of China. Such liberalization would be in line with the growing trend toward internationalization of the legal profession.

法律服务

中美商会年度商务环境调查显示：在华经营的商会成员公司所面对的前五大商业挑战中，有三点与中国的法律体系有关。其中包括：法规不明晰、解释不一致、缺乏透明度。为了解决这些涉及广泛的问题，需要引入系统性的变革。而要实现这些变革，则必须要有立法者、监管者、法官、公共和私人律师事务所律师、以及专家学者等充满活力的、专业的、经验丰富的群体的积极参与。长期以来，外国律师一直是这一群体中的成员，并不断寻求更多合作的机会。他们能够利用其国际专业知识，在专家讨论中提出建设性的意见。

具体问题

在法规制定中的作用

对于中国的法律界而言，2007年是极为重要的一年。在这一年中，中国颁布了许多众盼已久的法律，其中包括《劳动合同法》和《反垄断法》。国外法律界人士非常高兴能够参与这两部法律的相关工作，并为之提出意见建议，同时也期待能够进一步有机会参与其实施细则的制定。及时公布法律草案以及相对充足的意见征求时间，将有助于推动这项工作的开展。

参与范围

中国企业正越来越明显的感受到国外监管标准和知识产权体制对其业务的影响，而且随着越来越多的中国企业不断寻求国际发展与扩展机会，这种趋势会日益加深。在跨境交易方面，对中国国内企业和本土律师而言，在华的外国律师都是不可或缺的资源。在华外国律师为希望进入国际市场和寻求国际融资的中国企业提供了巨大的支持。他们通过利用其全球法律网络、凭借其在其他司法管辖区的经验、以及提供比较分析服务，帮助中国企业实现其目标。

然而，由于外国律师事务所在聘用人员以及界定其在中国执业范围中所面临的种种限制，使这一不可或缺的资源无法给本土律师与国外法律界之间的合作

带来现实的潜在意义。现行法律法规允许外国律师事务所聘请中国员工，但却规定只能所批准的职业中介以借调方式聘用中国员工。此外，相关法规还要求持有法律执业许可的中国公民在受聘外国律师事务所期间暂停其执业许可。

这些限制规定妨碍了中国律师加入外资律师事务所，中国的法律行业也因此无法获得重要的培训资源，能够促使其向专业化发展。同时，由于无法建立合伙关系或其他类型的专门的合作关系，从而也限制了内资律师事务所的发展，影响了其提高更全面的专业能力，尤其是那些善于处理跨境交易的人才的能力。

在执业范围方面，按照中国的人世承诺，外资律师事务所还可“提供有关中国法律环境影响的信息”，但在就中国法律环境提供信息时却不得发表“与中国法律应用相关的具体意见或评价”。这些执业限制使外国律师无法清楚地界定何谓“可做”与“不可做”，并往往人为的将外国法律群体和本土法律群体进行了不必要地划分，常常令客户难以接受。

就市场的进一步开放的问题，中美商会由衷地欢迎能够与司法部在内的中国有关主管部门开展新一轮的对话，以使国外律师和中国律师能够形成优势互补，更好地满足国内外客户的各种需求。这种市场开放适应了法律业不断国际化的发展趋势。

争议解决

根据适用的法律法规，外国律师不得在仲裁活动中就中国法律的应用发表意见。这一规定有悖于国际仲裁程序的基本原则。在几乎所有的主要司法管辖区，仲裁各方都能够自行选择律师，而不受其执业的地理限制约束。

此外，试图限制美国以及国际律师事务所在仲裁程序中代表委托人出庭，会使得大多数跨国公司坚持在中国境外进行仲裁。这会给中国国际经济贸易仲裁委员会的声誉以及中国作为国际仲裁中心的发展带来负面影响。

Dispute Resolution

Under applicable regulations, foreign lawyers are not permitted to present opinions on the application of Chinese laws in arbitration activities. This provision is inconsistent with the basic principles of international arbitration procedures. In nearly all major jurisdictions, the parties to arbitrations are free to select their advocates without regard to geographical limitation about where they can practice law.

Moreover, attempted restrictions on access to representation by U.S. and international law firms in arbitration proceedings encourages most multinational firms to insist on arbitration outside of China. This negatively affects the China International Economic and Trade Arbitration Commission's reputation and China's development as a world-class international arbitration center.

At the end of 2007, the Shanghai Arbitration Commission launched a Financial Arbitration Centre to handle banking and finance-related commercial disputes, as part of Shanghai's larger goal of being a world-class financial capital. The commission named 14 foreign citizens resident in Shanghai as arbitrators. This actually contradicted the aforementioned rules, so these foreigners would not be allowed to represent clients in such an arbitration proceeding. The aim of developing Shanghai into a financial dispute resolution center is undercut by these post-WTO restrictions and also sends a message to overseas companies that the playing field is not level in China.

Foreign law firms are also banned from completing "registration, amendment, application, filing, and other procedures with Chinese government agencies." In almost no other jurisdiction would these activities be regulated as the practice of law. Indeed, even in China, any Chinese or foreign citizen may handle these matters when authorized by a party. Moreover, the term "and other procedures" is so open-ended that it could bar foreign lawyers from any contact with a Chinese government agency, depriving companies of the right to have such contacts handled by their preferred advisors.

Personnel

China continues to limit foreign legal firms from selecting their representatives and office staff. Law firms are complex enterprises that employ a variety of skilled professionals whose jobs do not always

require admission to the bar. Indeed, foreign law firms in China often need to employ professional translators and interpreters, experienced paralegals, information technology managers and even law firm management specialists. These skills, especially in the specialized form required by law firms, are not always readily available in China.

The ability of foreign law firms to hire non-legal foreign staff is currently very restricted. Registered foreign firms should be free to employ foreign nationals according to their needs and judgment regardless of the seniority of the employee. Further provisions must be made to permit skilled personnel, in addition to members of the bar, to obtain the visas and work permits necessary to be employed as permanent resident employees of the representative offices of registered foreign law firms.

Heads of Offices

Regulations require foreign law firms that establish representative offices in multiple cities to assign a different partner to head each office. This rule imposes an unreasonable burden on foreign law firms and, contrary to the WTO's General Agreement on Trade in Services, creates a barrier to trade in providing legal services. Allowing a single partner to assume responsibility for multiple offices would satisfy the legitimate concerns of Chinese authorities regarding competence and quality of service.

This has a longer-term detrimental effect on the market in that it increases the cost of operating in China and is likely to decrease the diversity of foreign law firms that incorporate domestically. Specifically, increased operating costs deter new firms from entering the market and force existing firms with small- or medium-sized practices to either invest significantly in China or close down operations in the country. Further, where it is an objective to encourage foreign law firms to expand into secondary cities to facilitate foreign investment, the cost of redundant office heads is likely to discourage such expansion since the benefits of building a practice in new cities may only be realized in the long-term.

Summary

As confirmed by AmCham member companies in the most recent China business climate survey, the most critical issues facing companies today in China relate heavily to the arena of the law; namely unclear regulations, inconsistent regulatory

2007年末，上海仲裁委员会成立了金融仲裁院，专门处理银行业和金融业相关商事争议。此举旨在推动上海成为世界一流的金融中心。上海仲裁委员会任命14位在沪居住的外籍人士担任仲裁员。由于与上述规定相抵触，实际上这些外籍仲裁员将不得代表其客户在此类仲裁程序中出庭。这些后WTO时期的限制影响了将上海打造为金融争议解决中心的目标，同时也向外国公司表明中外公司仍无法在同一个舞台上竞技。

此外，外国律师事务所还不得代表委托人“向中国政府机关办理登记、变更、申请、备案手续以及其他手续”。几乎没有其他司法管辖区将这些活动作为法律活动进行监管。实际上，即便是在中国，只要获得一方的认可，任何中国公民或外籍人士都可以处理这些事务。同时，“以及其他手续”这一表述过于宽泛，限制了外国律师与中国政府机关任何形式的接触，从而使其丧失了作为企业首选顾问与中国政府部门进行接触的权利。

人事

中国仍然限制外国律师事务所自行聘用其代表和工作人员。律师事务所人员的构成相对复杂，需要聘请各种不同技能的专业人才，他们并非全部需要律师执业许可。实际上，在华外国律师事务所往往需要聘请专业翻译和口译经验丰富的律师助理、信息技术管理员，甚至是律师事务所管理的专才。而在中国往往很难找到这些人才，尤其是律师事务所需要的专门人才。

目前，外资律师事务所聘请非法律专业外籍工作人员也受到一定限制。已登记的外资律师事务所应当可以根据其需要自行决定和聘请外籍工作人员，而不应受员工资历的限制。除了执业律师外，中国还须制定进一步的规定允许优秀外籍人才能够获得必要的签证和工作许可，使其可以接受聘用，作为已登记注册的外资律师事务所代表处的常驻雇员。

代表处负责人

根据相关规定，在多个城市设立代表处的外资律师事务所必须指定不同的合伙人负责各个代表处的运营。这一规定给外资律师事务所带来了不合理的负担，同时也有悖于世界贸易组织的《服务贸易总协定》，给法律服务贸易设置了障碍。允许一名合

人负责多个代表处的工作，在一定程度上将能够消除中国有关主管部门对于律所业务能力和服务质量的顾虑。

这一规定还会对市场造成更持久的不利影响，增加外资律师事务所在华经营的成本，却减少了在华成立外资律师事务所的人员选择范围。具体地说，运营成本增加会阻碍新的律师事务所进军中国市场，而对现有的中小律师事务所而言，他们或者必须加大在华投入，或者不得不终止在华业务。此外，尽管中国鼓励外资法律业务拓展至二级市场以推动外商投资，但是由于需要另行聘请办事处负责人，其增加的成本影响了这些扩张计划，因为新城市设立的代表处在短期内很难获利。

结论

正如中美商会成员公司在今年中国商业环境会员调查中所证实的一样，如今在华企业所面临的最迫在眉睫的问题很大程度上涉及法律行业，即法规不明晰、监管解释不一致以及透明度缺乏。要解决这些系统性问题，一个充满活力的多元化法律团体必不可少。长期以来，外国律师已经积极参与其中，也希望中国政府能够放宽对执业范围和人员聘用方面的限制，从而使这个多元化的法律群体能够为中国的发展做出更大、更积极的贡献。 ■

建议

- 继续听取包括外国律师在内的法律群体就立法草案提出意见及建议，并进行比较分析。
- 在外国律师和包括司法部在内的中国有关部门之间就法律市场的开放问题开展新一轮对话。
- 允许外国和本地律师之间采取新的合作模式。
- 放宽对受聘于已登记注册的外资律师事务所的律师的执业限制。

interpretations and lack of transparency. Tackling these systemic problems necessarily requires a vibrant and diverse legal community. Foreign lawyers have long been active in this regard and are hopeful that certain restrictions on practice scope and hiring will be loosened so as to permit an integrated legal community the means of making an even more significant and positive impact on China's development. ■

Recommendations

- Continue to invite the legal community, including foreign lawyers, to provide comments and comparative analysis on draft legislation.
- Renew the dialogue amongst foreign lawyers and the Chinese authorities, including the Ministry of Justice, regarding liberalization of the legal market.
- Permit new cooperative structures among foreign and local lawyers.
- Loosen practice restrictions on lawyers working for foreign registered law firms.



Media and Entertainment

In the spirit of cooperation that characterizes the Olympic Games, AmCham recommends that the Chinese Government increase its efforts to adhere to a set of principles for ensuring open Olympic media access. We respectfully offer a framework for these principles below, building on the publicly stated positions of Chinese officials as we understand them. Moreover, we hope that the same spirit will continue to govern the future course of regulation of the media sector in China.

Proposed Principles of Open Olympic Media Access

- In the spirit of international friendship, peace and harmony, the Beijing Organizing Committee for the Games of the XXIX Olympiad (BOCOG) and related departments of government at both the central and municipal level should pledge to create and maintain an open environment for media activities during the 2008 Games.
- The true meaning of a “high-tech Olympics” is one in which the potential of advanced technologies is maximized to create an objective and balanced presentation of all of the activities taking place surrounding the Games, unburdened by onerous controls and restrictions.
- In the words of Premier Wen Jiabao, the “complete freedom to report” is consistent with the positive message of the international Olympic movement and the widely shared goal of providing an objective and balanced understanding to the world of what is happening in China.
- The positive message of “One World, One Dream” requires that athletes, officials, spectators and the media all have full participation and enjoyment of the Games so that the Beijing Olympics can be a true spectacle for the global audience.

Both BOCOG and the Ministry of Foreign Affairs have been helpful and constructive in living up to the Olympic spirit. Unfortunately, in some cases other departments have not fully respected China’s commitments during the Olympic period. In Beijing and elsewhere, reporters have been harassed while trying to work and authorities have closed some areas citing vague security concerns. In other areas, our members believe that media regulations have become tighter and less transparent. We note that

imported films and entertainment performances have been significantly curtailed in this Olympic year. New regulations restricting online video creation and distribution also represent a backward step for media in China. Regulations from the State Administration of Foreign Exchange limiting the use of offshore Special Purpose Companies, though not aimed only at the media sector, have had an important chill effect on innovation by making it more risky for international funds to invest.

Generally, the last few years have seen a proliferation of China’s media outlets but no significant market liberalization, limiting the potential of what numerous government officials have called a vital pillar of the economy. In the absence of clear regulatory frameworks, rapid growth has also brought corruption, unfair competitive practices and a lethal over-capacity that makes it very hard for new market entrants to survive. In many instances, these distortions persist because regulators themselves remain deeply involved in the conduct of business in an apparent conflict of interest.

AmCham suggests that the critical missing ingredient for a healthy 2008 Olympics, as well as sustained market growth, is the active involvement of a neutral regulator. We believe that some simple measures would greatly strengthen the industry:

- Improve the transparency of the regulatory process and take measures to ensure that regulations are consistent with China’s World Trade Organization (WTO) commitments. The government should allow foreign companies to comment on draft regulations and they should remove ambiguity, wherever possible, about the rights and responsibilities of overseas investors.
- Promptly issue laws and regulations that have been pending, in some cases for decades, and clarify regulatory authority over the media sector, especially by sharpening lines now blurred between the Ministry of Information Industry (MII) and the State Administration of Radio, Film and Television (SARFT), as well as the other agencies.
- Ensure that regulatory agencies do not also compete in the industries they regulate. Xinhua is a prime example of this in the current market.

媒体与娱乐业

本着奥运的合作精神，中美商会建议中国政府加大力度，坚持贯彻确保奥运媒体采访自由的原则。按照我们所理解的中国官员公开表示的立场，我们谨此提供这些原则的框架。此外，我们希望，中国在未来对媒体行业的监管过程中亦能继续秉承这一精神。

奥运媒体采访自由原则的建议

- 本着国际友谊、和平与和谐的精神，北京第二十九届奥运会组织委员会（北京奥组委）以及中央和北京市的相关政府部门在2008年奥运会期间应保证创造并保持一个开放的媒体活动环境。
- “科技奥运”的真正含义是指：最大限度地挖掘先进技术的潜力来客观和公正地反映与奥运会相关的一切活动，没有繁缛的控制和限制条件。
- 如温家宝总理所讲，“完全报导自由”是与国际奥林匹克运动传递的积极精神和让世界对中国的一切有客观公正的了解的共同目标是一致的。
- “同一个世界，同一个梦想”的奥运主题希望运动员、政府官员、观众和媒体的全面参与并充分享受奥运会的乐趣，进而使北京奥运会真正成为全球所关注的盛会。

北京奥组委和外交部在弘扬奥林匹克精神方面一直都发挥着有益的、具有建设性的作用。然而在某些情况下，一些部门并没有充分重视中国就奥运所作出的相关承诺。在北京和其他一些地方，记者们在努力工作时受到干扰，而有关部门以含糊的安全问题为借口关闭了某些区域。在其它方面，会员认为媒体监管比以往更加严紧，透明度也不如以前了。我们注意到，在本奥运年度，进口电影和娱乐表演减少很多。限制网上视频创作和传播的新法规对于中国媒体而言也意味着退步。国家外汇管理局颁布的关于限制使用境外特殊目的公司的规定尽管不是针对媒体行业，但对创新产生了寒蝉效应，因为它加大了国际资本投资所面临的风险。

总而言之，尽管近几年中国的媒体行业发展迅速，但没有出现比较重大的市场开放举措，因而限制了媒体产业，这一被众多政府官员称之为重要经济支柱

产业的发展潜力。由于缺乏明确的监管框架，快速增长的同时也产生了腐败、不公平竞争和使新进入市场者很难生存的致命的产能过剩等问题。在许多情况下，这些被扭曲的市场现象之所以持续存在，是因为监管机构深陷于有明显利益冲突商业行为之中。

中美商会认为，健康的2008年奥运会以及持续发展的市场所缺少的关键因素是中立的监管机构的积极参与。我们认为，通过采取一些简单举措就会大大增强该行业的发展。

- 提高监管过程的透明度，并采取措施确保各项规定与中国的人世承诺相一致。政府应当允许外国公司对相关法规草案发表意见，而且若可能，应当删除有关境外投资者权利和责任的有歧义的规定。
- 尽快颁布一直在酝酿但仍未通过的法律和法规，并明确媒体行业的监管机构，尤其是界定信息产业部（信产部）和国家广播电影电视总局（广电总局）及其它机构之间目前模糊不清的权限范围。
- 确保监管机构不参与其监管的行业的商业竞争活动。新华社就是目前市场中的主要实例。
- 放宽外商投资公司的市场准入条件，以此作为减少知识产权侵权行为的方法。这在正版DVD和CD的分销中尤为重要，守法的大型零售商没有资格取得零售合法产品的许可证，而非法的销售渠道却在迅速增加。

去年以来，媒体和娱乐业取得了显著的发展。例如：

- 新的试行法规极大的提高了外国新闻记者的独立性。
- 国家和地方政府投资新建世界一流的体育、文化和娱乐场馆，用以不久将要举办的各种演出和赛事。
- 出现了数千个由用户生成内容的网站，并且经营都很成功。
- LCD广告等新的媒体格式发展兴盛。

- Improve market access for foreign-invested firms as a way of reducing intellectual property infringement. This is especially important in the distribution of legitimate DVDs and CDs; large, law-abiding retailers are ineligible for licenses to retail legitimate products, while the illegal channels proliferate.

Since last year, notable developments in media and entertainment have taken place, including:

- New trial regulations greatly expanded the independence of foreign news reporters.
- National and local governments invested in new, world-class sports, cultural and entertainment venues, which soon will need to be filled with performances and competitions.
- Thousands of websites with user-generated content emerged and are operating successfully.
- New media formats, like liquid crystal display (LCD) advertising, are thriving.

However:

- Xinhua remains both an industry regulator and monopolist distributor in news and financial information, and at the same time has attempted to use its position as regulator to extract proprietary commercial information from domestic competitors in developing its own new products and services.
- AmCham's recommendation from last year's White Paper that the General Administration of Press and Publications (GAPP) abolish its rule allowing almost blanket "republishing" of copyrighted material still has not been implemented. This remains a serious impediment to the growth of online media in particular.
- Foreign equity caps in telecom value-added services, new media and live entertainment remain in place and are not healthy for the industry.
- Distribution of American films has all but stopped and more censorship and tightening of content on TV have impeded market access in content production.
- The Chinese Government has not taken full advantage of extensive efforts by the U.S. government to use dialogue and negotiated settlements to issues of contention pertaining to various industries, leaving formal legal measures, such as WTO cases as the only avenue for resolution. We look forward to continuation of the Strategic Economic Dialogue process, which had a promising start in 2007.

Overall, the media and entertainment industry would benefit from significant efforts by the State Council to "clean up" existing regulations and regulatory structures in order to make them consistent with the current situation of domestic industries, generally accepted international practices and China's WTO commitments. Such efforts could include:

- Accelerating open discussion of the Telecom Law and its implementation regulations, and promptly moving the draft through to the National People's Congress.
- Broadening the scope of "value-added services" in telecommunications and distribution and retailing services in publications that are open to foreign investment and issuing clear guidelines for the approval of such ventures.
- Establishing clearer lines of authority among the MII, SARFT, Ministry of Culture, GAPP, State Council Office of Information, as well as other agencies involved with the regulation of media and entertainment, and clarifying a regulatory drafting and promulgation process that is transparent and allows for public comment.
- Improving intellectual property protection through a stronger copyright regime, better regulation of online content and, above all, improved market access for legitimate products.
- Supporting the issuance of technical standards directly by industry associations through a collaborative process with industry and making standards mandatory only when they have important public health and safety implications.

News and Financial Services

Issues

1. New Xinhua regulations on news and financial services information providers are inconsistent with China's WTO commitments and Xinhua continues to use its dual status as competitor and regulator to control important segments of domestic markets and to strengthen its own new product offerings.
2. Violations of intellectual property are rampant, and enforcement is weak or nonexistent.

Recommendations

- Engage in a consultative process of drafting new regulations that would create a level playing field for foreign companies.

然而：

- 新华社仍然既是行业监管部门，又是具有垄断地位的新闻和金融信息的分销机构，并且同时试图利用其作为监管部门的地位，从国内竞争者那里获取专有的商业信息以开发其新产品和服务。
- 中美商会在去年的白皮书中曾建议新闻出版总署（GAPP）废止其允许直接“再版”有版权的资料的规定，但建议尚未得到采纳。这同时也对网络媒体的发展的带来严重影响。
- 对外商投资在电信增值服务、新媒体和演出娱乐业中的上限规定仍然存在，不利于行业发展。
- 美国电影的发行几乎停止，针对电视节目内容的更多审查制度和控制措施阻碍了内容生产的市场准入。
- 中国政府没有充分利用美国政府所作出的广泛努力，利用对话和协商解决办法等方式来解决各种行业相关问题，使正式的法律手段（如WTO投诉）成为唯一的解决方法。我们期待着战略经济对话的继续进行，该机制在2007年已经有了良好的开端。

总之，国务院旨在“清理”现有法规和监管部门结构的重大举措将使媒体娱乐业受益，使其符合国内行业的当前形势、通行的国际惯例和中国的入世承诺。诸如此类的工作可能会包括：

- 加速对电信法及其实施细则的公开讨论，并尽快将草案提交给全国人民代表大会审议。
- 扩大允许外商投资的电信“增值服务”和出版物分销和零售服务的范围，并就有关此类企业的审批颁布明确的指导方针。
- 在信产部、广电总局、文化部、新闻出版总署、国务院新闻办公室以及其它参与媒体和娱乐业监管的机构之间界定比较明确的职责范围，并明确规定一个透明的、允许公众参与意见的法规起草和颁布的程序。
- 通过加强版权制度、改进在线内容监管，以及放宽合法产品市场准入条件等措施来加强知识产权保护。
- 鼓励由行业协会在开展行业咨询的基础上直接颁布技术标准，只有当相关标准涉及重大的公共健康和安全问题时，再制定强制性标准。

新闻和财经服务

问题

- 1、新华社关于新闻和财经服务信息提供商的新规定，与中国的入世承诺不相符，而且新华社继续利用其作为竞争者和监管部门的双重地位控制国内市场的重要领域并加强其新产品的发行。
- 2、知识产权侵权行为猖獗，执法力度弱或甚至得不到执行。

建议

- 参与可能会给外国公司创造公平竞争环境的新法规的草拟咨询过程。
- 取消“廉价再版规定”。
- 允许外国新闻公司雇用中国资深记者。
- 在新闻服务行业的监管和竞争行为之间划出明确的界限，制止新华社的垄断行为。

平面媒体

问题

- 1、平面媒体公司建立了利润中心（广告和发行），并合法地从内容生产实体中分离出来。然而，没有相应的法规来批准行业中的这种新兴的业务模式。
- 2、书籍和期刊的零售和分销远远落后于国际标准。目前，WTO规定允许外国资本进入零售和分销环节，但审批的行政程序拖沓，规定依然不明确。迄今，在数百家申请外商投资零售和分销许可证的公司中，只有少数得到了批准。
- 3、外国媒体公司可以通过版权合作的方式与中国杂志合作，但有关此类版权合作的规定和条例尚不明确，申请和审批过程也不清楚。而且，目前没有任何申请被受理。明晰上述问题会有助于政府规划行业的发展。

建议

- 取消“普通”和“批发”分销许可证分类，因为实际上这对外商投资构成了壁垒。

- Eliminate the “cheap republishing rule.”
- Allow foreign news companies to hire Chinese credentialed reporters.
- Draw clear lines between regulation and competition in the news services segment, ending the Xinhua monopoly.

Print Media

Issues

1. Print media companies have created profit centers (advertising and distribution) and legally disassociated them from content producing entities. However, no regulations have emerged to ratify such emergent business models in the industry.
2. The retail and distribution of books and periodicals is far behind international standards. WTO provisions now allow foreign investment in retail and distribution, yet the administrative process is too slow in approval and the regulations remain unclear. To date only a handful of the hundreds of companies that have applied to establish foreign-invested retail and distribution licenses have received approval.
3. Foreign media companies may cooperate with Chinese magazines through copyright cooperation, but the rules and regulations for this copyright cooperation are not clear, and the process for application and approval is unclear. It also appears that no applications are currently being accepted. Clarity around these issues would help government authorities shape industry development.

Recommendations

- Eliminate classifications of “general” and “wholesale” distribution licenses, as they appear to present a *de facto* barrier for foreign investment.
- Allow foreign publishers to establish representative offices in China directly rather than under their non-publishing subsidiaries.
- Standardize regulations and practices for copyright royalty reporting at state-owned publishers.
- Accelerate the administrative process for approving foreign investment in the retail and distribution of books and periodicals.
- Clarify how foreign publishers may cooperate with Chinese publishers.

Online Media

Issues

1. Traffic statistics for China’s internet sites have been so manipulated and misrepresented that advertisers no longer believe anyone’s numbers and therefore many will not purchase ads on smaller niche sites. This is strangling industry innovation.
2. Copyright theft is rampant and creates a significant disincentive for new investment.
3. MII has adopted the narrowest possible interpretation of WTO commitments on value-added services and, by extension, internet content providers (ICPs). Applications to establish foreign-invested ICPs have not been accepted, and MII has issued confusing notices about the rights of foreign-invested companies to engage in contractual relationships with Chinese ICPs.
4. Heavy investment is being made in video services and online content, but regulation in this area is confusing.

Recommendations

- Support online auditing through government neutrality in auditor selection and statements of support for transparency and metrics-based advertising models.
- Support the development of third-party companies that serve advertising and compile user statistics.
- Clarify GAPP’s Copyright Center role, and the legality of linking, framing, pasting text and other uses of copyrighted content.
- Commit to approve at least 20 new ICP joint ventures in 2008. Expand the scope of permissible services in the *Catalogue of Classification of Telecommunications Services, Value Added Telecom and ICP Services*. Increase the foreign equity cap to 100 percent and accept applications.
- Provide swift and comprehensive government clarification of the new regulations limiting online video to government-controlled entities.

- 允许外国出版商在中国直接设立代表处，而不是在其非出版业子公司下设立。
- 规范国有出版商的版税报告行为，并健全相关法规。
- 加速外商投资书籍、期刊零售和分销环节中的行政审批程序。
- 明确规定外国出版商可以与中国出版商合作的模式。

网络媒体

问题

- 1、中国的因特网网址的访问流量统计数字被操纵和歪曲，以至于广告商们不再相信任何方面的统计数字，因此许多广告商不会在利基网站上购买广告位。这种现象正在扼杀行业创新。
- 2、盗版猖獗，打击了新投资者的积极性。
- 3、关于增值服务和因特网内容提供商（ICPs）（从引申意义上）的入世承诺，信产部给予了最狭义的解释。要求成立外商投资因特网内容提供商的申请还不予受理，而且信产部就外商投资公司与中国ICP建立合同关系的权利颁布的若干通知令人费解。
- 4、视频服务和在线网络内容正在吸收大量投资，但相关法规却模糊不清。

建议

- 政府通过选择中立性的审计人员，及对透明规范广告模式的提倡来支持联网审计。
- 支持提供广告和用户统计服务的第三方公司的发展。
- 明确新闻出版总署版权中心的职能，并对版权内容使用中链接、拷贝、引用原文及其它方面的合法性加以明确。
- 承诺在2008年至少审批20个新的ICP合资公司。扩大电信服务、增值电信和ICP服务分类目录中可允许服务的范围。将外商所占股权上限提高到100%并受理申请。
- 对于仅限国有控股实体播放网络视频的新法规，政府应及时和全面地予以解析。

广播和数字媒体

问题

- 1、《电信法》的出台再一次被推迟，而且增值服务、交互式网络电视和因特网等方面的法规不完善、不透明。
- 2、电影和电视市场准入所受到的阻碍包括任意的配额、对于电视上外国电视节目播放的内容、时间的限制及其它行政法规。
- 3、2006年底台湾地震后海底光纤电缆断裂，说明中国需要更多地与国际互联网连接，包括北海岸的电缆接岸。

建议

- 尽早颁布《电信法》，承诺尽快明确实施细则，并采用对所有利益相关方公开的咨询程序。执行网络互连和接入的国际标准。
- 在采用技术中性政策的同时，统一制订明确的3G和无线宽带（WLAN）许可证发放时限和方法。
- 对于数字媒体经营（数字电缆、PPV、IPTV、DMB等）规定参与范围，并阐明监管职责。包括允许外商参与经营、减少对外国节目内容的限制并统一制订内容管理的指导方针。
- 增加电影配额，重述允许成立合作制片合资公司的规定，增加日常和黄金时段节目播出最大时限，以此减少对于外国节目内容的限制。

演出娱乐业

问题

- 1、中国法规禁止外国娱乐场所管理公司或外国演出公司在中国相关行业中拥有超过49%的股权份额。
- 2、虽然全球大部分国家和城市都采取激励措施，以吸引大型娱乐场所和竞赛项目活动公司数十亿美元的投资，但是中国不允许这些公司拥有对管理层的控制权或开展本地化经营，因此它们很难在中国成功的发展相关的业务。

Broadcast and Digital Media

Issues

1. The Telecom Law has again been delayed, and regulation in value-added services, IPTV and the internet is woefully incomplete and opaque.
2. Market access for film and television has been hampered by arbitrary quotas, restrictions on foreign content on television, time restrictions and other administrative regulations.
3. The rupture of the undersea fiber cable after the earthquake in Taiwan near the end of 2006 illustrates the need for more international internet connectivity in China, including north coast cable landings.

Recommendations

- Issue the Telecom Law without further delay. Commit to an accelerated timeline for articulation of detailed regulations and adopt a consultative process that is open to all stakeholders. Adopt international norms for interconnection and access.
- Articulate a clear licensing timeline and process for 3G and wireless broadband (WLAN) licensing while adopting a policy of technology neutrality.
- Specify scopes for participants and clarify regulatory roles over digital media operations (including digital cable, PPV, IPTV and DMB). This includes permitting foreign participation in operations, reducing restrictions on foreign content on these channels and articulating content control guidelines.
- Reduce restrictions on foreign programming content by increasing cinematic quotas, reinstating rules permitting the establishment of co-production joint venture companies and increasing time limits on maximum daily and primetime programming.

2. While most countries and cities around the globe are providing incentives to attract the billions of dollars in investments by the large venue and event companies, China makes it difficult for these companies to build viable businesses in China by denying them control over the management or the local operations. ■

Recommendations

- Remove equity caps on foreign participation in sports and entertainment venues and performance groups.
- Support the operation and/or privatization of professional sports leagues to promote the commercialization and competitiveness of teams and athletes.

Live Entertainment

Issues

1. PRC regulations prohibit a foreign venue management company or foreign performance company from owning more than 49 percent in related industries in China.

建议

- 取消对外资在体育和娱乐表演场所管理公司和演出公司中所持有的股权上限的限制。
- 支持专业体育团体的运营和/或私有化，以提高团队和运动员的商业化程度和竞争能力。



Pharmaceuticals

AmCham recognizes and appreciates the efforts of the Chinese Government to improve the business and investment environment for innovative industries. However, certain systemic issues related to insufficient healthcare funding, drug prescription and dispensing practices, hospital bidding procedures, government pricing and reimbursement policies, inadequate protection of clinical data and pharmaceutical counterfeiting continue to hamper growth in this sector and do not serve Chinese patients best interests.

Specific Issues

Healthcare Funding

China contributes a relatively small percentage of its GDP to healthcare as compared to other countries of comparable economic development. The majority of Chinese patients pay a significant percentage of their healthcare expenses out-of-pocket. AmCham supports the Chinese Government's effort to expand public health insurance and encourages a greater uptake of private health insurance. Comprehensive reform of the healthcare sector will improve the quality and accessibility of medical care in China.

Government Pricing and Reimbursement Policies

Pharmaceutical products have special commodity status in China and thus many are subject to price controls. In 1997, pharmaceutical price jurisdiction was vested in the National Development and Reform Commission (NDRC). The NDRC maintains tiered pricing for patented, innovative and generic products. AmCham encourages the Chinese Government to closely collaborate with America's pharmaceutical companies to evaluate and implement a different pricing policy for innovative products.

The Ministry of Labor and Social Security maintains the national drug reimbursement list. According to Chinese law, the list should be updated every two years, however, the current list has not been updated since 2004. As a result, many new, innovative products that have received marketing approval in China are not yet widely available to patients.

Prescribing and Dispensing Practice

Unlike most large economies, China permits hospitals and physicians to both prescribe and dispense medicine. Approximately 80 percent of total pharmaceutical products are sold through hospital pharmacies. This practice allows doctors and hospitals to profit from the medicines they prescribe. As a result, doctors have a financial motivation to prescribe products that yield the greatest return as opposed to prescribing products solely on the basis of medical need. Inadequate funding for hospital and physician services serves only to exacerbate the problem. Since patient fees for medical services are low, doctors and hospitals supplement their income by charging large mark-ups on medicines.

The revenue available to hospitals and medical professionals through the linking of prescription and dispensing practices significantly distorts the sale of Chinese pharmaceutical products through the promotion of sales in high-profit yielding pharmaceuticals. It also leads to over-prescribing and patients often receive multiple prescriptions per hospital visit. Over-prescribing can have adverse health consequences such as drug resistance and dangerous drug interactions, and is clearly in the interest of neither patients nor the country.

Hospital Administration

Hospital bidding began in China with pilot projects in 1999 and has expanded to include more than 80 percent of all hospitals today. Under this structure, hospitals purchase between 75 percent and 100 percent of their pharmaceutical portfolio through competitive bidding. At the same time it began hospital bidding, the NDRC also removed controls on each separate profit margin within the distribution chain on pharmaceuticals, thereby allowing hospitals to increase their proportion of the total profit margin. While this process gives hospitals greater discounts on medicines, the cost savings are not passed on to patients.

Consumer criticism of the high cost of medicine has driven the government to cut prices, but, until recently, very little was done to address the disparity between ex-factory and retail prices. In June 2006,

制药业

中美商会对中国政府在改善创新产业的商业和投资环境方面所做出的努力表示赞赏。然而，一些与医保资金匮乏、开方与配药模式、医院招标程序、政府定价和补偿政策、临床数据保护不当以及药物制假相关的系统性问题仍然妨碍着制药领域的发展，同时也不利于保护中国广大患者的利益。

具体问题

医保资金

与其他经济发展水平相当的国家相比，中国的医疗卫生服务投入占GDP的比例相对较小。中国大多数患者仍需承担大部分医疗费用。对于中国政府大力发展公共医疗保险，中美商会表示欢迎，同时也鼓励中国政府能够积极促进私人医疗保险的发展。医疗卫生领域的全面改革将改善中国的医疗服务质量并提高医疗保险的覆盖率。

政府定价与补偿政策

在中国，药品被视为特殊商品，相当一部分受到价格管制。1997年，中国国家发展和改革委员会（国家发改委）接管药品定价职责。国家发改委一直对专利药、新药和仿制药采取分级定价的方式。中美商会促请中国政府能够与美国制药公司密切合作，评估新药并对其实施不同的定价政策。

中国劳动和社会保障部继续执行全国基本医疗保险药品目录。根据中国法律，该目录应每两年调整一次，但自2004年以来，现行目录一直没有调整。因此，许多已经获准在中国销售的新药仍未被纳入目录，使患者得以广泛使用。

处方和配药

与多数大的国家不同，中国允许医院和医生开方和配药。约80%的药品在医院药房中出售。这种模式使医生和医院从其开方的药品中获利，医生往往不是基于病人需要开方，而是出于经济利益的驱动，开方时较多选择可给自己创造最大回报的药品。另

外，医院和诊所资金匮乏又使得这一问题雪上加霜，较低的诊疗费使医生和医院转向通过赚取药品大幅差价作为补充收入的来源。

在这种开方配药相结合的模式下，中国的医院和医生更愿意开配高利润额的药品，从而提高收入，这使得中国药品的销售额严重失实。同时，这种体系也会诱发处方过量的现象，患者每次看病医生往往都会开具过量的处方。处方过量会带来抗药性和危险的药物相互作用等副作用，无疑，这既无法造福于广大患者，也不符合中国的国家利益。

医院管理

医院集中招标采购于1999年开始在中国试行，目前80%以上的医院已采用这种模式。在这种体制下，医院75%以上的药品均通过招标采购。在开始实行医院集中招标采购的同时，国家发改委还取消了对药品配送链中各种产品单独利润率的管制，从而提高医院总利润率的比例。虽然此举使医院享受更大的药品折扣，但医院成本降低并没有使广大患者受益。

消费者对药品价格过高的抱怨使中国政府不断采取降价措施，但直到最近，也未能缩小药品出厂价和零售价之间的价差。2006年6月，国家发改委规定医疗机构的药品加价率不得超过15%。尽管国家发改委对数家医疗机构进行了审计，并开通了热线使消费者参与举报违规加价行为，但中国政府对如何保证医疗机构能够长期遵守相关规定所采取的有关措施尚不甚明确。遗憾的是，现行政策还没有考虑加价限制给医院带来的收入下降问题；为了弥补利润亏损，医院通过提高开方数量和填补药量差异来保证“符合”加价限制政策的规定。

医疗代表

医疗代表是使医疗专业人士了解新药的最佳途径，几乎被世界所有市场使用和认可。医疗代表发挥着许多重要的作用，其中包括：

- 确保开方的医生全面了解药物的正确用法；
- 在药品上市后提供关于药品使用和发生不良反应

the NDRC imposed a cap of 15 percent on hospital pharmaceutical mark-ups. Although the NDRC has conducted a few hospital audits and established a hotline to report excessive mark-ups, it is unclear how the government intends to ensure compliance over the long term. Unfortunately, the current policy does not account for hospitals' lost revenue as a result of the cap. To compensate for lost profits, hospitals have an incentive to "comply" with the policy by increasing the total number of prescriptions and making up the difference in terms of volume.

Medical Representatives

The medical representative is used internationally in almost all markets and recognized as the best way to educate healthcare professionals about new medicines. The medical representative fulfills many important functions, including:

- Ensuring that prescribing physicians are fully informed on the proper use of medications;
- Providing key information on the use and adverse events of medicines post-launch; and,
- Keeping the physician informed on the latest advances and developments in key therapeutic fields.

Chinese officials have increasingly accepted the important role of medical representatives over the past decade. However, as part of the on-going anti-commercial bribery effort, some local government agencies and hospitals have introduced measures to curb corruption by banning medical representatives from certain hospitals. Although this problem is less severe today than it was 18 months ago, some hospitals still maintain "anti-representative" policies. AmCham supports the government's desire to improve the operating environment in China, but is concerned that this policy does not sufficiently consider the long-term interest of physicians or patients in China and may actually decrease transparency by making it more difficult to detect abusive practices in the system.

To ensure responsible behavior among multinational companies, the pharmaceutical industry in China adopted a code of conduct to guide the sales and marketing practices of international pharmaceutical companies in China, to which all companies sign and adhere. By the end of 2007, over 7,000 medical representatives had been trained and certified on the code, with a further 10,000 to be trained and certified in 2008.

Clinical Trial Application Approval

Although recently improved, China's Clinical Trial Application (CTA) submission requirements remain unduly burdensome. The CTA requirements include comparatively extensive pre-clinical, clinical and Chemistry, Manufacturing and Control (CMC) requirements. The State Food and Drug Administration (SFDA) does not permit applicants to supplement filings as new information is discovered or made available. In addition, the regulatory agency repeatedly mandates the same procedures for every clinical protocol with no abbreviated process. In fact, the average time required to obtain a clinical trial approval in China remains about one year, with some approvals taking 18 months, versus a range of 11-25 weeks for other countries in the region. Taken together, these requirements make it extremely difficult to integrate Chinese patients into regional or global trials intended to expedite the availability of meaningful new therapies in China.

Regulatory Data Protection

Following its accession to the WTO in 2001, China revised its laws to incorporate concepts from Article 39.3 of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Article 39.3 provides that a country must protect data submitted in the context of a drug registration application from unfair commercial use. Loopholes in China's current regulatory environment allow for unfair commercial use of safety and efficacy data generated by AmCham member companies.

The Implementation Regulation of the Drug Administration Law and the Drug Registration Regulation established a six-year protection period for test data of products containing a new chemical ingredient against unfair commercial use; the SFDA is responsible for upholding this law. Unfortunately, the current law is ambiguous as to how data exclusivity is implemented, for example certain key concepts such as "new chemical ingredient" and "unfair commercial use" remain undefined.

China's regulatory procedures permit the SFDA to grant marketing approval to products that previously have been approved outside of China. Applicants can submit published material and reference regulatory decisions by foreign regulatory agencies as justification for approval. Limited local clinical trials are required for marketing these products.

事件的重要信息；

- 以及使医生了解重要治疗领域的最新进展。

过去十年来，中国政府已经逐渐认识到医疗代表的重要作用。但是，在目前反商业贿赂行动下，一些地方政府部门和医疗机构采取措施，禁止医疗代表与医疗结构接触，以此来遏制贪污腐败。虽然现在这一问题已不如18个月前那么严重，但一些医疗机构仍然继续采取“反对医疗代表”的政策。中美商会支持中国政府力求改善中国经营环境的决心，但认为这一政策并未充分考虑中国医生或患者的长远利益，实际可能会加大对系统内滥用政策行为的鉴别难度，从而使透明度降低。

为了确保跨国公司履行其社会责任，中国的制药业推出了“行为守则”，所有公司均签署并严格遵守，“行为守则”还用于指导在华经营的国际制药公司的销售与市场行为。到2007年末，7000多名医疗代表接受了与该守则相关的培训并获得认证，2008年还将有1万名医疗代表加入这一行列。

临床试验申请审批

虽然最近情况有所好转，但中国的临床试验申报要求仍然相当繁复。临床试验申报包括大量的临床前、临床以及化学、生产和控制（CMC）要求。中国国家食品药品监督管理局（药监局）不允许申请者就发现的或公布的新资料进行补充申报。此外，药监局规定，每一份临床试验送审资料都必须反复经过同样的审批程序，不得简化。在中国获得临床试验许可的平均时间实际约为一年，有些甚至需要18个月，而其他国家约为11至25周。总体而言，这些要求使得制药公司很难将中国患者纳入其地区性或全球性临床试验中，以加快具有深远意义的新疗法在中国的推出。

监管数据保护

2001年入世后，中国修订了其相关法律，纳入了《WTO与贸易相关知识产权协议》（TRIPS）第39.3条中的概念；第39.3条规定，成员国必须对药品登记申请时提交的数据进行保护，确保其免受不公平的商业使用。中国目前监管环境中的漏洞使商会成员公司的安全性和效用数据可能用于不公平的商业用途。

《药品管理法实施条例》和《药品注册管理办法》规定，为避免不公平商业用途，包含一种新化学成分的产品测试数据享有六年保护期。遗憾的是，现行法律并未对如何执行数据专有权做出明确规定，例如，“新化学成分”和“不公平商业用途”等一些关键性概念仍然没有明确的定义。

根据中国的监管程序，药监局有权向已在中国境外已经获得批准的产品发放销售许可。申请者可提交公开发表的资料和外国监管机构做出的参考性监管决策以求获得许可。只有为数不多的产品才需要在当地进行临床试验。

中美商会认为，中国对已公开发表的资料以及境外监管机构的批准意见的尊重表明了其对原药品开发商临床数据的信任。但这种程序的全面性有待考证，因为仅凭已发表的数据往往不足以证实产品的安全性和功效，通常只是对最初呈交数据的概括。为了证明产品的安全性和效用，原始数据是十分必要的。对概括性数据或境外监管部门批准意见的信赖反倒让非原药品开发商受益，有失公正，因为这些厂商无需投入大量的人力物力就可以拥有自己的临床试验数据。

实际上，在一种复方药在美国或欧洲获批后，药监局就会收到大量关于该药的销售申请。原药品开发商可能是第一家向药监局提交申请的厂商，但也有可能被其他药厂抢先一步。根据现行规定，非原药品开发商具有巨大的优势，这有悖于国际准则。药监局已经做出解释，《药品注册管理办法》的数据保护规定在中国获得销售许可后开始生效，由此可能最长需要花费四年时间。在此期间，中国国内的制药公司也可向药监局呈交申请。任何在此期间获批开展临床试验的公司都能够通过监管程序，即便是在原药品开发商获得销售许可之前。这会造成数家公司推出同样的产品——原药品开发商的数据专有权没有得到有效的保护。这种体制对原药品开发商而言有失公正，也有悖于旨在鼓励创新和投资的国际制药标准。

假药

虽然中国政府已采取一系列打击药物制假的行动，但国内市场假药充斥，甚至被售往国际市场，情形仍十分堪忧。

AmCham views China's deference to published material and regulatory decisions by agencies outside of China as reliance on clinical data developed by originator companies. This process is problematic because the published data alone is usually insufficient to prove the safety and efficacy of a product and often merely summarizes the original filing. Original data is necessary to demonstrate product safety and efficacy. Reliance on summary data or approvals in countries outside of China conveys an unfair commercial advantage to non-originator companies because non-originator companies do not incur the cost of generating their own clinical data.

In practice, the SFDA receives numerous applications for marketing approval of a compound once it is approved in the United States or Europe. The originator's application may or may not be the first application SFDA receives. Current regulations make this a significant advantage for non-originator companies, and are inconsistent with international norms. SFDA has interpreted the data protection provision of the Drug Registration Regulation to apply after marketing authorization is granted in China, which can take up to four years. During this period additional applications from Chinese companies can be submitted to the SFDA. Any company that receives authorization to begin clinical trials during this period—even before marketing approval is granted to the originating company—is permitted to complete the regulatory process. This can result in multiple companies entering the market with the same product—with no effective data exclusivity rights for the originator. This practice is unfair to originator companies and inconsistent with international pharmaceutical norms designed to encourage innovation and investment.

Counterfeit Pharmaceuticals

While the Chinese Government has undertaken a series of actions to combat drug counterfeiting, the prevalence of counterfeit drugs within, and originating from, China nevertheless remains a substantial concern.

Pharmaceutical counterfeiting is first and foremost a drug safety issue. Thus, the adequacy of China's response to pharmaceutical counterfeiting must be measured against the framework of laws that regulate the various links in the drug manufacturing and supply chain. In that regard, China has yet to enact laws that address all aspects of drug counterfeiting

activity or to provide the kind of enforcement resources and commitment necessary to combat this growing problem. For example, although China's drug laws prohibit "fake" medicines, criminal liability is conditioned upon proof of harm, a statutory requirement that requires evidence of a serious defect in quality. This burdensome and excessive evidentiary requirement all but precludes criminal prosecution against counterfeiters under China's drug laws.

To help resolve these issues, China should amend its drug laws 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 WHO definition of a counterfeit medicine), without the need to prove harmful effects or deficient quality. In addition, China could create an interagency pharmaceutical task force of law enforcers, regulatory authorities and customs agents to ensure adequate coordination among the various authorities with relevant oversight and enforcement responsibilities. Each of these officials must be given the investigative powers and mandate 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.

Another important factor contributing to the pervasiveness of drug counterfeiting is how Chinese chemical manufacturers are producing bulk active pharmaceutical ingredients (API) that are subsequently used in the manufacture of counterfeit drugs. The SFDA clearly recognizes the importance of patient health and safety, since it regulates chemicals that will be used in finished pharmaceuticals goods, but chemical companies ignore SFDA requirements by advertising their API products on commercial websites in bulk form under the "medicinal use" category instead of adhering to SFDA Good Manufacturing Practice (GMP) regulations. Chemical manufacturers are selling and shipping API products to locations within China and abroad either without regard for their intended use or in flagrant violation of existing Chinese regulations that place them under SFDA oversight. These unregulated and unethical practices by chemical companies contribute significantly to, and in some cases aid and abet, the counterfeit drug trade. More troubling is that the unregulated distribution of API exposes patients to serious and significant health risks and degrades consumer confidence in the global pharmaceutical supply chain. ■

在药品安全问题中，药物制假首当其冲。因此，必须以监管药品生产和供应链各个环节的法律框架来衡量中国对药物制假问题采取的应对措施的充分性。就这点而言，中国仍未就药物制假活动的各个出台法律，也未提供此类必要的执法资源和做出必要的承诺来打击这一日益猖獗的问题。例如，尽管中国的药品法律法规严禁“假”药，但必须根据伤害证据确定刑事责任，法律要求有证据证明药品质量存在严重问题。这种繁复、过于严格的取证要求几乎使制假者逃脱中国药品法律法规的制裁，免遭刑事起诉。

为了解决这一问题，中国应当修订其药品法律法规，禁止任何故意错标来源或名称的药品（符合WHO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，中国可成立由执法部门、监管机构和海关共同组成的部门间药品特别行动小组，以确保各有关监管和执法机构之间能够实现充分的协调。其中每一位小组成员都必须有权对药物制假的各个环节（包括假药和相关包装和原材料制造商、批发和零售商，以及出口商）进行调查和起诉。

假药泛滥的另一大成因就在于中国化学品厂商正在大批量生产制假所需的原料药。药监局已经制定有关成品药中化学品使用的规定，这表明其已明确意识到患者健康和安全性的重要性。然而，一些化学品厂商并未遵循药监局有关药品生产质量规范证书的规定，反而将其生产的原料药作为“医用”类在商业网站上大肆宣传，漠视药监局的有关要求。这些化学品生产商或对原料药的预期用途不闻不问，或悍然选择不去履行可能会迫使其接受药监局监管的中国现行法规，肆无忌惮地向国内外销售和运输原料药。化学品生产商这种违规的不道德行为极力推动着假药贸易的发展，有时甚至助长和纵容了假药贸易的气焰。更令人担忧的是，原料药的分销规管不力既打击了消费者对全球药品供应链的信心，又给患者带来了严重的健康风险。 ■

建议

- 中美商会呼吁中国政府与重要的行业利益相关者合作，共同为建立资金保障可持续的医疗体制制定长期解决方案。
- 中美商会呼吁劳动和社会保障部定期更新全国基本医疗保险药品目录，以确保中国患者能够及时享受最新治疗。
- 中美商会呼吁中国政府逐步实现开方与配药职能的分离。
- 促进新药的合理使用，纠正由目前集中招标采购和医疗机构管理行为所造成的低效率模式。
- 认可创新产业的行为守则，并将之（或类似模式）延伸至中国整个制药行业。商会希望与中国卫生部通力合作，促进这一模式的发展，也愿意在成功实施这一模式所必需的培训工作中提供帮助。
- 为了减少一些繁复的要求，中美商会建议药监局制定与国际公认标准接轨的新规定。
- 为了避免原药品开发商数据遭到不公平的商业使用，商会建议药监局制定新规定，与国际公认的数据保护监管程序保持一致。
- 中美商会建议中国商务部和全国整规办与业界联手，找出遏制中国假冒伪劣原料药生产与分销的方法。

Recommendations

- AmCham urges the Chinese Government to collaborate with key industry stakeholders to develop long-term solutions for a financially sustainable healthcare system.
- AmCham urges the Ministry of Labor and Social Services to update the national drug reimbursement list to ensure Chinese patients have access to the latest, most advanced treatment options.
- AmCham urges China to consider gradually separating prescription and dispensing functions.
- Promote the rational use of innovative medicines and correct inefficiencies that occur as a result of current bidding and hospital administration practices.
- Endorse the innovative industry's code of conduct and extend it, or a similar effort, to the entire pharmaceutical industry in China. We would like to work with the Ministry of Health to promote such an effort and are willing to assist in the requisite training that would be required for successful implementation.
- In order to mitigate some of these arduous requirements, AmCham recommends that SFDA develop new practices in line with internationally accepted requirements.
- In order to prevent unfair commercial use of the originator's data, AmCham recommends that SFDA develop new practices in line with internationally accepted regulatory data protection procedures.
- AmCham recommends that China's Ministry of Commerce and the Market Order Rectification Office work collaboratively with industry to identify ways to reduce the manufacture and distribution of counterfeit API in China.



Real Estate

The relationship between real estate and China's economic growth is a vital one. The real estate sector contributes a large portion to the country's total investment in fixed assets, second only to infrastructure. After modest slowing in 2006, real estate investment—and prices—in China increased dramatically during 2007. According to national statistics, as of the end of the third quarter of 2007, real estate development contributed more than 10 percent to China's GDP.

Market insiders believe that the slowdown in 2006 was a result of the immediate influence of a series of curbing policies issued by the Chinese Central Government. While governmental policies certainly affected the market, actual supply and demand forces are a more important factor. Despite government attempts to throttle back, speeding market forces helped to fuel the real estate market's 2007 bounce-back in both investment and prices. These exuberant conditions led in part to further government attempts to restrict foreign investment in real estate at intervals throughout 2007 and a partial easing of price increases in several markets in early 2008.

Investment in real estate development in the first nine months of 2007 amounted to approximately US\$216 billion, representing a 30 percent increase over the same period last year. Foreign direct investment (FDI) in real estate in the first half of 2007 was US\$3.6 billion, an increase of 68.7 percent year-on-year (y-o-y), but still only 1.8 percent of the total investment in real estate. This statistic highlights how much the Chinese real estate market remains dominated by local investors and developers, with foreign investment and development unlikely to exert tremendous influence.

Rapid urbanization is projected to continue unabated and will continue to drive development demand. It is projected that by 2020 up to 75 percent of a population of 1.45 billion people will live in urban centers. Experts generally agree that in the coming 12 months, China's real estate market will continue to grow at its unrelenting pace.

Developments in 2007 highlight three key issues for the real estate sector in China:

- The continuing climate of restrictive regulations and tax policies designed to cool a robust market and the disproportionate focus on controlling foreign investment have combined to create a very restricted operating environment. In addition, the bar to market entry has been raised with the new requirements for significantly higher upfront capital investment. Conducting business in real estate in China is now much more difficult than it was in the past.
- The continuing lack of transparency and inconsistent application of policy and regulations at many levels remains a business impediment.
- Sustainability is emerging as an increasingly important issue in the development sector for domestic and foreign companies alike and will be a factor in the future.

Significant Developments

In 2007, there was a rapid escalation of investment activity in all real estate sectors, including residential, office, retail and industrial, which helped to set the stage for the ensuing tightening of the market. For example, in the first half of the year national housing prices rose approximately 16.3 percent, while in some individual markets prices were up as much as 42 percent y-o-y. Transaction volumes were also up significantly. The average Grade A office rental rate was also up 14 to 15 percent on a y-o-y basis in major cities like Shanghai and Beijing.

Average land prices in China's 70 largest cities rose by 12.8 percent in the first three-quarters of 2007 and record-breaking land prices remained an undercurrent throughout many of China's major cities through the end of the year. The tight supply of available land in China's major cities continued to fuel a steady land price escalation.

Escalating land and real estate prices are increasingly creating a catalyst for the movement of foreign manufacturers from China's major cities to hot second-tier cities. The prime second-tier destinations for foreign real estate investments remain Chengdu, Dalian, Hangzhou, Suzhou and Nanjing. Even some second-tier cities such as Suzhou, are already showing signs of their own land-availability challenges. Evidence also suggests the current trend of a limited

房地产

房 地产发展和中国经济增长紧密相关。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。在继2006年小幅减缓之后，中国的房地产投资及房地产价格在2007年迅猛增长。国家统计局结果显示，截至2007年第三季度末，房地产发展对中国国内生产总值的贡献率为10.13%。

行业人士认为，2006年的发展减缓是由于中国政府出台了一系列限制性政策。政府政策当然会影响市场，然而实际的供求关系才是最重要的因素。尽管政府试图控制房地产行业的发展速度，但是，快速增长的市场需求却使房地产市场在2007年大幅反弹，房地产投资和房地产价格都增长迅猛。这些相对过热的发展在某种程度上促使中国政府进一步加大了调控力度，2007年政府相继推出限制外商投资房地产业的政策，2008年初期一些房地产市场的价格开始出现松动。

在2007年前九个月中，房地产开发的投资总额攀升至2160亿美元左右，与去年同期相比增长30%。2007年上半年中国房地产业的外商直接投资为36亿美元，虽然与上年同期相比增长68.7%，但仍然仅占行业总投资额的1.8%。这些统计数字充分显示，中国房地产市场基本由中国本地投资商和开发商主导，海外投资商和开发商很难在其中发挥较大的影响。

持续快速的城市化进程，将继续带动房地产开发需求的增长。按计划，到2020年全国14.5亿人口中会有高达75%的人在城市中生活。专家们基本认为，在接下来的十二个月中，中国的房地产市场将继续快速增长。

2007年的发展突出了中国房地产业所面临的三个关键问题：

- 旨在为过热市场降温的限制性规定和税收政策的不断出台，以及不适当地加大外商投资调控力度等一系列做法，给运营环境带来了极大的限制性。另外，现在对前期资本投入的要求也大大提高。随着这些新要求的出台，市场准入的门槛已经被进一步抬高。

- “透明度”的一贯缺乏以及政策法规在各层面适用时出现的不一致性，将继续阻碍着产业的发展。
- 可持续性发展问题对国内外开发企业变得越来越重要，而且是影响未来其发展的重要因素。

重大进展

2007年，包括民用、商用、房地产零售业和建筑业在内的所有房地产相关行业的投资都在快速增长，这将使政府对房地产市场调控的进一步加强。例如，上半年，全国房价上涨了约16.3%，而某些房地产市场的市场价格与去年同期相比竟增长了42%，上海和北京等主要城市中的平均甲级写字楼租金与去年同期相比也上升了14%到15%。

2007年前三个季度，中国70个最大城市的平均土地价格增长了12.8%，到2007年年底中国许多大城市的土地价格持续创出新高。中国主要城市可用土地的有限供应，也继续推动着土地价格的稳步攀升。

在不断攀升的土地和房地产价格的进一步驱动下，外国开发商开始把投资重点从中国主要城市转向房价热涨的二级城市。外国房地产投资的主要城市为成都、大连、杭州和南京。但目前像苏州等一些二级城市也已经开始出现土地供应不足的迹象。事实还证明，当前的发展趋势，如土地供应的受限、可用土地的缩减、劳动力成本的增加和劳动力的短缺、以及物流和交通成本的增加等，不断迫使中国的一些开发商考虑转向那些成本较低的国家，比如越南和印度。

各种规定和限制持续增多，进一步影响市场发展

如果要了解2008年影响国内外房地产投资商的相关问题，只需要关注一系列新的房地产政策和法规的发展，这些政策和法规大多数旨在在进一步加强对房地产业的管理。

首先，在调整产品结构和控制发展速度方面，2006年出台和实施的一些政策在2007年已经开始显现作用。比较显著的方面包括：

land supply, less available space, labor cost increases and labor shortages, along with increasing logistic and transportation costs, continue to pressure certain manufacturers in China to consider lower-cost countries like Vietnam and India.

Regulations Continue to Accumulate and Influence the Market

To understand the issues affecting both foreign and domestic real estate investors in 2008, one need only look at the lengthy list of new policies and regulations for the sector, most of which escalate and intensify restrictions.

First, implementation of some of the measures imposed in 2006 has begun to have a greater effect in moderating the product mix and the rapid pace of development in 2007. Notable examples included:

- For new residential construction, at least 70 percent of new units must be smaller than 90 square meters in order to promote availability of affordable housing;
- For project borrowing, debt can be raised only when a Foreign Invested Enterprise's (FIE) registered capital is paid up; and
- For residential purchasers, down payments increased to 30 percent or more for a first home. For a second home, down payments increased to 40 percent and interest rates for these mortgages were set at 110 percent of the regular rate. The definition of a "second home" was also tightened.

Second, on a more positive note, after years of discussion and debate, the Real Property Law was signed and went into effect in mid-2007. While the Constitution had previously recognized private property rights (Article 14 provides "Citizens' lawful private property is inviolable"), there was no statute addressing property rights issues in an integrated manner. The real impact of this new law is modest today and the legislation does not have a major impact on foreign interests in real estate. A remaining issue that has been lurking for some time is how renewals of land use rights will be handled at the expiration of the current terms. The new law notes that the terms for land used for residences will be automatically renewed at expiration (Article 149), but does not address whether a renewal fee will be due and, if so, how it will be calculated. Thus, an issue of keen interest to owners of land use rights remains unresolved as of the date of this writing.

Third, beginning in early 2007, regulators imposed additional land-use fees on land earmarked for new construction, which exacerbated already rising land costs. Some of the most significant regulatory actions included:

- Tripling the Land-Use Tax with the addition of a provision that now allows the tax to apply to FIEs in addition to domestic companies;
- Re-imposition and strengthening the Land Value-Added Tax;
- Increasing the Business Tax to five percent on the total price for residences owned less than five years, and on the gain (price sold minus price paid) for "non-ordinary" residences owned longer than five years (in 2005, the time period specified was two years);
- Increasing applicable rates of Farmland Occupation Tax with the addition of a provision that now allows the tax to apply to FIEs as well as domestic companies; and
- Implementation of previously announced measures to discourage leaving land "idle" longer than the specified development period. The new rules—announced in early 2008—include a levy equal to 20 percent of the land transfer fee if land is left idle more than one year but less than two years, as well as taking back the land if it is left untouched for two years or more.

Fourth, the State Council continues to emphasize the need to use land efficiently and to demand that local government authorities re-examine development projects to ensure they strictly comply with the land use terms and building requirements.

The general intent of all these measures was to cool the red-hot market by discouraging speculative investment and encouraging the maintenance of an adequate land supply to meet ordinary housing needs.

Government Approvals of Foreign Investment Becoming Increasingly Difficult

The Central Government's response to the robust market include continued tightening of domestic and foreign opportunities for real estate investment and development in a new round of regulations in 2007.

In May 2007, the State Administration on Foreign Exchange (SAFE) and the Ministry of Commerce (MOFCOM) issued the "Notice on Further Strengthening and Regulating the Examination,

- 对于新建住宅楼，必须保证70%的住宅单元面积小于90平方米，目的在于提供更多消费者经济能力可以承受的楼房的数量；
- 对于项目借款，只有当外商投资企业全部缴付注册资本金之后才可以申请；
- 对于住宅楼购买者，如果是购买第一套住房，首付款需要达到购房全款的30%或者更高，如果是购买第二套住房，首付款则至少达到40%以上，并且抵押贷款的利率为正常贷款利率的110%。而且，“第二套住房”的定义更加严格。

其次，从积极的角度而言，经过多年的讨论和争论，《物权法》终于在2007年颁布实施。在这之前，虽然《宪法》已经认可了私有财产权（第14条规定“公民的合法的私有财产不受侵犯”），但却没有一部法律完整地阐述财产权问题。这部新法律的真实影响尚未全面体现，房地产业的外国人利益也并未因此产生大的影响。但一个长期潜在的问题是，如何在现有土地使用权期限届满之后解决土地使用权的续期问题。虽然新法律规定，住宅建设用地使用权期限届满时，自动续期（149条），但对于是否应当缴纳续期费的问题以及如何计算续期费的问题，新法律却没规定。因此，截至本文完稿之时，这一涉及所有土地使用权人切身利益的问题仍然未得到解决。

第三，自2007年初，主管部门开始对用于新建项目的土地征收额外的土地使用费，这又进一步增加了已经高起的土地成本。一些最主要的限制性规定包括：

- 土地使用税增长三倍，并且该税项将同时适用于国内企业和外商投资企业。
- 强化并重新征收并土地增值税。
- 对居住时间不足五年的房屋所有人，按照房屋总价的百分之五征收营业税；对居住时间超过五年的“非普通”性住宅所有人的收益征收营业税，税率为其收益额（卖出价减去买入价格）的百分之五。（在2005年，规定的时间期为两年。）
- 增加耕地占用税的征收额度，并且该税项同时适用于国内企业和外商投资企业。
- 实施之前颁布的规定，以防止土地时间闲置超过规定的开发期限。2008年初新颁布的规定进一步明确：如果土地闲置时间超过一年但不足两年，则应对该闲置的土地征收土地闲置税，征收额度为土地转让费的百分之二十；如果土地闲置达两年或两年以上，则要收回该土地。

第四，国务院继续强调必须有效利用土地，要求各地政府部门重新审查土地开发项目，以确保土地开发项目符合土地使用规定和建设要求。

所有这些措施的主要目的在于通过抑制投机性投资行为，以及鼓励维持适当土地供应以满足普通住房的要求等方法，给过热的房地产市场降温。

外国投资获得中国政府批准的难度加大

作为中央政府对发展过猛的房地产市场的回应措施，2007年中国通过了一系列政策法规，来减少国内外房地产商开发和投资的机会。

2007年5月，国家外汇管理局和商务部联合颁布了《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）。该商资函规定，地方审批部门批准设立外商投资房地产企业，应即时依法向商务部备案。未完成商务部备案手续的公司没有资格进行外汇结算。

商资函50号文强化了第171号文件的规定，并且进一步作出规定，外国投资商在申请设立外资房地产公司之前，必须获得土地使用权或建筑物所有权，又或者已经签署了获得土地使用权或建筑物所有权的协议。

国家外汇管理局颁布了《汇综发130号文》，其中规定，在2007年6月1日之后在商务部登记的外商投资房地产公司不再允许使用外债来投资项目或进行其他运作。因此，项目融资只能考虑股权和人民币来源。（在以前，一家外商投资企业能够从国内外两个渠道借款，而且借款数额可基本等同于注册资本额和总投资额之间的差额。然而，现在这种情况不再适用于在国家外汇管理局备案的外资房地产企业。）

最后，2007年11月公布的新的《外商投资产业指导目录》包含了几项影响房地产业的变化。指导目录中不再有鼓励外商投资房地产的内容（之前还鼓励外商投资普通居民住房）。大规模土地开发、高档宾馆、别墅、写字楼以及展馆等领域内的投资继续受到限制，高尔夫球场投资项目现在已被禁止。限制性目录中新增的一项规定是针对房地产二级市场交易投资的。有关房地产二级市场交易，在法律上没有一个准确定义，但是业内人士将该术语解释

Approval, and Supervision of Foreign Direct Investment in Real Estate Industry” (Circular 50). The circular provided that the approval for foreign investment of real estate projects obtained from local MOFCOM counterparts must be filed and reported to MOFCOM. Companies failing to complete such filing processes become ineligible to apply for foreign exchange settlement.

Circular 50 reinforced Circular 171 and, among other provisions, also provided that a foreign investor must obtain land use rights or building ownership, or have entered into a sale and purchase agreement to obtain such rights or ownership, before it may apply to establish a foreign-invested real estate company.

SAFE issued Circular 130, stipulating that a foreign-invested real estate company registering with MOFCOM after June 1, 2007 is no longer allowed to use foreign debt to fund its projects or operations. Thus, funding for such projects will need to come from equity and RMB sources. (Previously, an FIE could borrow an amount equal to the difference between its registered capital amount and total investment level from either foreign or domestic sources. However, this is no longer the case for real estate FIEs registering with SAFE.)

Finally, the new *Foreign Investment Catalogue*, published in November 2007, contained several changes affecting real estate. There is no longer any category of foreign investment in real estate that is “encouraged” (as affordable housing had been previously). Investment in golf course development is now banned, while investment in large-scale land development, high-end hotels, villas, office towers and exhibition malls continues to be restricted. A new addition to the restricted category is investment in transactions involving “secondary” real estate transactions. There is no legal definition of the term, but practitioners interpret it to refer to transactions in real estate involving sale and lease of buildings following completion of construction. However, investment in development projects is not identified as restricted and therefore by inference, it is permitted.

The net result of these new regulatory hurdles is an even further restricted climate for foreign companies who desire to participate in the Chinese real estate market. In addition, the bar to market entry has been raised with the new requirements for significantly higher upfront capital investment. Both have made real estate business much more difficult to do in China.

Specific Issues

Growing Restrictions on Foreign Investors/Developers in China’s Real Estate Market

The accumulation of regulatory restrictions—some targeted at both domestic and foreign companies and others specifically targeted to foreign companies—make it increasingly difficult to participate and effectively compete in the China real estate market. For example, the PRC’s reluctance to allow wholly foreign-owned enterprises (WFOEs) to acquire existing properties, especially those priced more than US\$100 million, as well as the approval of other real estate FIEs, makes it nearly impossible to conduct business transactions in a timely manner.

One first-tier city government dragged its feet for one year on a 90,000-square-meter building acquisition in the CBD. The seller could not wait for six to 12 months and instead sold to a domestic buyer who did not need to set up a WFOE requiring the Ministry of Finance’s approval. Such lengthy delays make it impossible to successfully transact business. There needs to be a way to form WFOEs/FIEs in a reasonable (two to three month) timeframe. Furthermore, the inconsistency in enforcing the rules of the game—especially in the new regulatory environment—needs to be eliminated and replaced by a set of reliable and common practices. AmCham urges the government not to focus real estate regulations disproportionately on foreign developers and investors when trying to cool the market.

Continuing Lack of Transparency and Reliable Real Property Information, Market Data and Enforcement of Rights

This issue was highlighted in the 2007 White Paper, yet scant progress was made on the recommendations to the Chinese Government. Therefore, it is noted again this year. The existing system for the registration and prioritization of interests in real property (i.e., land use rights, leases, mortgages and other rights and interests relating to the ownership and establishment of third party liens in real property) is currently vague and not consistently enforced on a national basis. Moreover, availability of accurate information is limited. As a result, many instances arise where holders of real property interests or liens suffer hardships and potential damages.

为：建设完工之后的楼房销售和租赁业务。然而，该目录并没有明确将开发项目投资纳入限制范围，因此可以解释为允许开发项目投资。

这些新调控举措所产生的最终结果，将希望参与中国房地产市场发展的外资企业置于一个更受限制的环境。同时，对前期资本投资的要求也大大提高，使得市场进入的门槛也被进一步抬高。上述两方面使得中国房地产业务更加举步为艰。

具体问题

对投资中国房地产市场的外国投资商/开发商的限制越来越多

限制性规定不断增多——一些规定是同时针对国内企业和外国公司的，而有些规定则是专门针对外国公司的——这使得外国公司不仅更加难以参与中国房地产市场，而且更加难以在中国房地产市场中开展有效竞争。例如，中国政府不愿让外商独资企业收购现有房产项目，尤其是那些价格超过1亿美元的项目，中国政府也不愿批准其他外商投资的房地产公司，因此及时进行房地产交易几乎没有可能。

某个一线城市的政府，拖滞了一年的时间，用于一个位于中心商务区的9万平方米楼盘收购项目的审批。卖方无法忍受六到十二个月的等待期，就直接将其卖给了一家国内买家，因为国内买家无需设立一个需要财政部批准的外商独资企业。如此长时间的拖延使得交易根本无法完成。所以，需要找到一种在合理时间内（两至三个月）设立外商独资企业/外商投资企业的解决办法。另外，在新监管环境下，游戏规则在执行中存在不一致问题，需要采取一系列可靠、通用的做法来解决问题和取代现行做法。中美商会促请中国政府在给房地产市场降温的过程中，不要过分地把外国开发商和投资者当作调控的重点。

持续缺乏透明度，缺乏可靠的地产信息、市场数据，权利的落实不到位

这个问题在2007年白皮书中被强调过，但是，提供给中国政府的相关建议并不多。所以，今年又一次涉及这个问题。现有的房地产权益登记和优先顺序制度（如土地使用权、出租权、抵押权和有关所有权的其他权利和利益以及物权中的第三方质权的

设定等）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，使很多房地产权益所有人或质权人遭遇困难和面临潜在风险。

在当前实践中，有关房地产权益登记的法规和规章往往是由地方政府部门发布和管理的，结果导致各地的规章复杂多样，存在混乱，地方相关部门往往也不总是予以遵守。而且，在执行登记的权益时，地方法院并不能完全按照法律执行。

中国强调可持续性/绿色建筑，对房地产行业有重大影响

根据世界银行的统计，到2015年，全世界在建楼房有百分之五十会在中国，而且中国所有居民住房和商业楼房的百分之五十都将在2000年之后建成的。面对如此巨大的变化，可持续性建筑为中国带来了难得的特殊机遇，中国可以通过具体措施来改善自己的环境。公众对这一问题的不断关注和政府的反复强调，使得可持续性建筑成为去年政府和公众首要考虑的问题。

例如，由建设部发起，其他国家部门以及相关的外国政府、国际组织和协会共同举办的“第三届国际智能、绿色建筑与建筑节能大会暨新技术与产品博览会”举办之后，中国出台了《中国国家绿色建筑评估标准和绿色建筑评估的初步实施》。随着2008年3月31日至4月2日即将在北京举办的第四届国际大会，这一良好的趋势还将得以持续发展。

但是快速而失控的发展所带来的负面作用非常严重并在不断恶化，因此，至关重要的是，要持续不断地采取实际行动，在从节约能源到制定和实施建筑标准等各个领域取得实际效果。 ■

建议

- 中美商会呼吁中国政府在调控房地产市场时使用更加公平的方法，而不应过度地对外国开发和投资公司，尤其在成立外商投资企业、外商独资企业、合资企业以及类似的投资企业方面设置障碍。
- 我们呼吁改善咨询机制，以便中国政府在制定新政策时能够听取来自国外房地产业的

Under present practices, the rules and regulations for the registration of real property interests are issued and administered on a local basis, producing a complex multiplicity of local regulations that are confusing and not always observed by the local authorities. Moreover, when enforcing such registered interests, local courts do not always apply the laws consistently.

The Emergence of a Chinese Sustainability/Green-building Emphasis Looms Large over the Industry

According to the World Bank, by 2015, 50 percent of the buildings under construction in the world will be in China and 50 percent of all residential and commercial buildings in China will have been built post-2000. In the face of this dramatic transformation, sustainable building presents China with a unique and enormous opportunity to make concrete progress in the effort to improve its environment. Increased public attention and government rhetoric propelled the issue to the forefront of government and public awareness in the past year.

For example, the Third International Conference on Intelligent, Green and Energy-efficient Building & New Technologies and Products Expo, initiated by the Ministry of Construction and co-hosted by other state-level bodies, together with related international governments, organizations and associations, resulted in the publication of the “China National Evaluation Standard for Green Building and initial implementation of the Green Building Assessment.” This trend continued with the Fourth International Conference held in March-April 2008 in Beijing.

But the negative effects of rapid and uncontrolled development are severe and worsening, and it is critical that real action continues so that results can be achieved in disparate areas from energy consumption to establishment and enforcement of building standards. ■

Recommendations

- AmCham urges the Chinese Government to seek more equitable ways to moderate the real estate market that do not disproportionately penalize foreign development and investment companies, especially in the formation of FIEs, WFOEs, JVs and similar investment structures.

- We urge improvement in the consultative mechanism for the Chinese Government to seek expert input and advice from the leading foreign real estate industry resources when developing new policies—whether restrictive or incentives—using AmCham as one key resource.
- Standardizing government processing for common approval processes across all governmental jurisdictions would improve the investment climate.
- AmCham urges increased reliability, accuracy and accessibility of real property information sources for all real estate sectors including residential, industrial, retail and office. A national scheme for the registration of real property interests together with guidelines for the enforcement thereof that should be applied consistently across all jurisdictions.
- We urge acceleration of the development and enforcement of sustainable building standards to reduce energy demands and environmental degradation.
- Use incentives in addition to regulatory changes.
- Include changes that provide incentives for building owners and property management companies to reduce operating costs through application of green building technologies.

看法和建议，不论其是限制性的还是鼓励性的。中美商会可以成为主要资源平台。

- 政府办事程序应标准化，保持所有政府部门的批准程序一致，以此来改善投资环境。
- 中美商会呼吁提高包括民用、工业用房、商业和写字楼在内的所有房地产相关部门信息来源的可靠性、准确性和可获得性。对房地产收益进行登记的国家规划以及实施该项规划的指导方针，应当在所有地区得到一致的贯彻落实。
- 我们呼吁加速建立和实施可持续性建筑标准，以降低能源需求和遏制环境退化。
- 在法规调整之外，使用更多的激励机制。
- 做出相关修改，激励业主和物业管理公司运用绿色建筑技术来降低运营成本。



Retail

2

Chinese consumers will be crucial to the transformation of China's economic structure from a manufacturing to a service-based economy. The 11th Five-Year Plan, which calls for structural transformation and growth of the service sector, highlights this point. Additionally, improvements to the retail environment and related services will stimulate greater domestic demand, reducing China's dependence on foreign trade.

In 2006, the total consumption of retail commodities reached RMB7.6 trillion, an increase of 13.6 percent from 2005. It is estimated that from 2007 to 2010, the growth rate will remain steady at eight to 10 percent per year, and total retail sales will reach RMB20 trillion in 2020. The total sales revenue of the top 100 retailers reached RMB855.2 billion, an increase of 25 percent from 2005.

China fully opened its retail market to foreign investors on December 11, 2004, in accordance with its World Trade Organization (WTO) commitments. Since then, restrictions on location, proportion of ownership and the number of foreign-funded outlets have been lifted. Among the top 100 retailers of 2006, 11 of them are foreign invested. In 2006, foreign invested retailers opened more than 100 new stores in total.

However, discriminatory treatment of foreign retailers and lack of transparency remain in certain areas of governmental administration and this has restricted the expansion of foreign retailers and limited foreign investors from contributing their full expertise to the advancement of China's retail industry.

China benefits greatly from foreign retailers' business operations in China. They help to enhance the level of retail service, create a safe and clean shopping environment, contribute to developing the supply chain and stimulate domestic consumption. In the process they help to maintain sustainable and healthy development of the national economy. AmCham strongly urges regulatory authorities to work closely with the retail industry to create a fair and open environment for both domestic and foreign retailers.

Specific Issues

National Treatment in the Approval Process

The Measures for the Administration on Foreign Investment in the Commercial Sector ("Measures for Commercial Sectors") regulation issued by the Ministry of Commerce (MOFCOM) in 2004 reveal some unequal treatment for foreign and domestic retailers. For example, if a foreign retailer opens more than 30 stores with the business area of each store exceeding 300 square meters and would like to open another new store, the new store application must be examined and approved by three levels of government – city, provincial and central. Only after securing MOFCOM approval can a business obtain a license from the registration authority (AIC). In contrast, domestic retailers are allowed to apply directly to AIC for a new store business license without having to undergo the lengthy three-level commerce department approval process.

Similar discriminatory treatment also applies to sellers of certain merchandise including pharmaceuticals, pesticides, mulching film, chemical fertilizers, processed oils, grain, vegetable oil, sugar, cotton, tobacco, CDs and DVDs. In order to sell these products, foreign retailers must obtain special permits and licenses from central government agencies, meaning the process takes them far longer than it does domestic retailers, who need only deal with local government agencies.

The disparity in the approval process for foreign retailers and domestic retailers is incompatible with the principle of national treatment and therefore should be lifted.

Restrictions on Ownership

Ownership limitations in the Foreign Investment Catalogue recently issued by NDRC and the Measures for Commercial Sectors are also overly restrictive. For example, a foreign retailer that opens more than 30 stores in China selling certain commodities of different brands and from different suppliers cannot be more than 49 percent foreign owned. The limit is somewhat higher for Hong Kong and Macao investors at 65 percent, but still too low. The commodities

零售业

在中国从以制造业为主向服务业为主的经济结构转型进程中，中国消费者将发挥至关重要的作用。同时在十一五规划涉及经济结构转型和发展服务型经济的相关内容中也强调了这一点。此外，零售环境及相关服务的改善将促进国内需求的增长，并减少中国对外贸的依存度。

2006年中国商品零售总额达到了人民币7.6万亿元，比2005年增加了13.6%。预计从2007年到2010年间，年增长率将保持在8-10%，2020年，零售业销售总额将达到20万亿元。2006年排名前100位的零售商总销售利润达到人民币8,552亿元，比2005年增加了25%。

根据中国的入世承诺，中国零售市场于2004年12月11日向外国投资者全面开放。此后，针对外资零售商在选址、股东持股比例及外资店铺数量方面的限制逐渐减少。在2006年的中国零售商前100名强中有11家外资零售商位列其中。同年，外资零售商在华新开店数超过百家。

然而，对外资零售商的不平等待遇及缺乏透明度的作法在一些政府管理工作中仍然存在，致使外资零售商在华发展受限，而且外资零售商也无法充分发挥其优势，推动中国零售业的发展。

外资零售商在华的业务发展为推动中国零售业发展作出很大贡献，主要体现在提升零售业的服务水平、创建安全清洁的购物环境、推动供应链发展和刺激国内消费等方面。这一切都有利于保持中国国民经济可持续发展的健康发展势头。中美商会强烈呼吁相关主管部门能与零售业密切合作，为国内外零售商创建一个公平公开的市场环境。

具体关注

审批程序中的国民待遇

商务部在2004年颁布的《外商投资商业领域管理办法》（《商业领域办法》）对外资零售商规定了不同于国内零售商的审批程序。如果一家外资零售商已开设了30家店铺，每家店的经营面积超过300平方

米，其计划开设新店的申请必须经由市级、省级和中央三级政府商务部门的审批。在得到商务部最终审批同意后，方可在登记机关（工商局）领取营业执照。相反，国内零售商则无需经过冗长的三级商务部门审批程序，直接向工商局申请新店的营业执照。

另外，外资零售商在出售一些特定商品也面临诸如此类的不平等待遇。特定商品包括药品、农药、农膜、化肥、成品油、粮食、植物油、食糖、棉花、烟草、CD和DVD光盘等。外资零售商必须获得中央政府部门颁发的特殊许可证和执照才可以销售上述产品，而内资零售商只需地方政府部门审批，显然外资企业的申请审批程序相较于内资零售商来说要繁褥很多。

内资和外资零售商在审批程序方面的不同有悖于国民待遇的原则，因此应该予以取消。

外资股东持股比例的限制

针对外资股东持股比例，发改委最新颁布的《外商投资产业指导目录》和《商业领域办法》均设限过高。例如，《商业领域办法》规定若同一外国投资者在境内累计开设店铺超过30家店铺，经营来自不同供货商的品牌的特定商品，外国投资者的出资比例不得超过49%。香港和澳门的投资者出资比例略高一些，不得超过65%。上述特定商品包括药品、农药、农用地膜、化肥、成品油、粮食、植物油、食糖和棉花等。

中美商会建议放宽对外国投资者的持股比例限制。

烟草限制

2007年3月7日，国家发改委颁布了新的《烟草专卖许可证管理办法》。其中明确规定，外商投资的商业企业不得从事烟草专卖品批发或者零售业务。其结果是，目前已被授权销售烟草产品的所有外资零售商在2008年下半年现有许可证到期后，将无权销售此类产品。

cited include pharmaceuticals, pesticides, agricultural films, fertilizers, refined oils, food, vegetable oil, sugar and cotton, among others.

AmCham recommends easing this ownership restriction for foreign investors.

Restrictions on Tobacco

On March 7, 2007, the National Development and Reform Commission (NDRC) issued new rules on tobacco licensing. These state that foreign commercial enterprises are not allowed to conduct wholesale or retail business related to tobacco. Consequently, no foreign invested retailers that currently sell tobacco products will be authorized to sell these products after their current permits expire in late 2008.

This restriction puts foreign stores at a disadvantage to their domestic competitors. AmCham therefore 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 stating that the proposed site complies with the city's commercial zoning plan. In practice, MOFCOM requires the city to complete its commercial zoning plan and submit the plan for the record. If this requirement is not fulfilled, MOFCOM dismisses a foreign retailer's new site application due to their failure to comply with the local commercial zoning plan, effectively blocking the foreign retailer from opening any stores in that city. In some areas where there are commercial zoning plans, a public hearing process also is required. In total this process can add up to three months to the approval process.

In contrast, domestic retailers are not required to submit their new site applications to MOFCOM for examination and approval. Since they are not subject to this restriction they may open stores in cities where commercial zoning plans do not exist.

This requirement placed on foreign retailers effectively circumvents China's WTO commitments with respect to lifting all geographic limits for foreign retailers.

Concerns on the Big Box Law

Chinese government agencies have worked together and completed a draft law for a zoning regulation on large scale commercial facilities ("Big Box Law"). The law is currently in the hands of the Legislative Office of the State Council. It is said that upon issuance of this regulation, the request for zoning approval and public hearings will be applied to all large retailers including local retailers. But it is very possible that local retailers will be required to gain approval only from the local government, while foreign retailers will need to go all the way up to central government agencies. In addition, most of the stores opened by local retailers are small and may never reach the scale that would trigger this approval process, while foreign retailers often open large-scale stores and as a result have to go through the lengthy approval process.

AmCham urges lawmakers to adhere to the principle of equal treatment of foreign and domestic retailers. We also urge lawmakers to improve transparency by inviting the public to comment on the draft and to speed up the current legislation process. ■

Recommendations

- MOFCOM and its local counterparts should increase transparency and simplify the current approval process.
- Revise the Measures for Commercial Sectors and other related regulations in line with China's WTO commitments and common international practices:
 - Lift the approval process and allow foreign retailers to open stores upon registration, just as domestic retailers can.
 - Lift the ownership restrictions on foreign retailers that open more than 30 stores in China and sell certain commodities as provided in Article 18 of the Measures for Commercial Sectors.
 - Lift the restrictions on types of merchandise such as pharmaceuticals and tobacco. At the very least, AmCham urges that regulations on the distribution of these restricted goods be applied equally to Chinese and foreign retailers.
- Formulate and promulgate the Big Box Law as quickly as possible to ensure that foreign and domestic retailers are treated equally concerning the compliance on urban development planning.

此项限制使外资零售商与内资同行相比处于竞争劣势。商会因此恳请取消此项限制。

商业网点规划审批

根据《商业领域办法》，申请新店时，外资零售商须提供店铺所在地政府出具的符合城市发展及城市商业发展要求的说明文件。实际操作中，商务部要求相关市级政府部门制定商业网点规划并上交商务部备案。如果相关部门没有制定商业网点规划或未提交备案，外资零售商申请在该地区或城市开设新店时，商务部将以不符合当地商业网点规划为由，对外资零售商开设新店的申请不予批准。而且在一些已经制定了商业网点规划的地区，还要求举行公众听证会，整个申请审批过程所需时间会因此多增加三个月之久。

相比之下，内资零售商则无需将新店选址申请递交商务部审批。由于不受限，它们甚至可以在尚未制定商业网点规划的城市开设新店。

此项对外资零售商的规定违反了中国对所有外资零售商在华经营解除地域限制的入世承诺。

大型商业网点规划立法的相关问题

相关中国政府部门已共同起草了《大型商业网点规划管理条例》（“商业网点规划条例”），并已递交国务院法制办。据了解，此条例颁发后，包括内资零售商在内的所有大型零售商如开设大型商业网点均需申请商业网点规划的审批，并需举办公众听证会。但是，很有可能内资零售商仍只需当地政府部门审批，而外资零售商则必须通过各级政府逐级报到国家商务部获得最终审批。此外，内资零售商开设的店铺一般规模较小，可能不会达到条例规定的大型商业网点条件，从而不需要办理任何审批手续，而外资零售商开设的店铺通常规模较大，因而必须经过冗长的审批程序。

中美商会恳请中国相关立法部门能够遵循内外资零售商平等对待的原则。我们也呼吁相关部门能够通过公开征求对草案的意见从而增加立法透明度，加快现有立法进程。 ■

建议

- 商务部及地方商务部门应提高工作透明度并简化现有审批程序。
- 修订《外商投资商业领域管理办法》及其它相关规定，以实现中国的入世承诺和符合国际惯例。
 - 取消审批程序，并允许外资零售商享受与国内零售商同等的权利，即一经工商注册，均可直接开店。
 - 取消针对在华开设30家店铺以上、销售《外商投资商业领域管理办法》第18条规定的特定商品的外资零售商的外资持股比例限制。
 - 取消特定商品的经营限制，例如药品和烟草等。商会在此呼吁，有关受限商品经营的规定至少应平等适用于中外零售商。
- 加快制定并实施《大型商业网点规划管理条例》，以确保内外资零售商在网点规划审批方面享受平等待遇。

Transportation and Logistics

A nation's logistics industry can be seen as the circulatory system of its economy. The inefficient movement of goods between producers, service providers and consumers impairs economic growth and makes nearly every industry operate at less than maximum efficiency. The focus of China's government efforts has been heavily weighted toward providing new infrastructure capacity—roads, airports, railways and ports. This investment in infrastructure, while necessary, is not yet sufficient to meet the needs of China's booming economy. Reform of the legal and regulatory superstructure governing the transportation and logistics industry is urgently needed.

China's logistics industry is fragmented, inefficient, expensive and overregulated. China has tens of thousands of logistics firms, most of them small, poorly organized and not highly modernized. The logistics industry is regulated by a patchwork of national regulatory authorities including the Ministry of Commerce (MOFCOM), the Civil Aviation Administration (CAAC), the Ministry of Communications (MOC), the Ministry of Railways (MOR) and even the newly created State Postal Bureau (SPB), among others. It is also subject to local protectionism that inhibits development of the efficient national networks that China's economy needs.

Foreign logistics companies are restricted with burdensome requirements for registered capital, vehicles and facilities they must have before including the term "logistics" in their scope of business. However, a local company with little more than a few trucks can call itself a "logistics" company.

China's government has taken some tentative steps toward dealing with these many problems, most notably the formation of a cross-ministerial working group on logistics, but more urgent action and fundamental reform are needed. Foreign logistics service providers, who have much technology, experience and investment to offer, should be included in the consultative process. AmCham believes that further deregulation needs to occur. The boundaries between different regulatory bodies must be clarified at the same time that unnecessary regulations are eliminated and streamlined.

Significant Developments

Much progress in liberalization was made early in the decade following China's accession to the WTO. Restrictions on investment in most logistics sectors were lifted so that foreign firms could establish themselves as wholly foreign-owned enterprises (WFOEs). A US\$5 million capital requirement for foreign-owned logistics companies was officially dropped. The government also implemented guidelines for the approval of foreign-invested logistics companies and a set of national standards for logistics enterprises. However, local authorities still cite the US\$5 million capital requirement as justification for denying approvals, even though the statute is no longer valid. In the last two years, progress toward liberalization has slowed and in some cases even reversed.

An excellent illustration of the mixed signals that China sends about improving the logistics sector is the January 2007 creation of the SPB. SPB began asserting its authority over the express delivery services industry despite the fact that the industry is already regulated by MOC, MOFCOM, Customs and CAAC. The SPB created a new information reporting system for the industry and drafted impractical new standards that ignore the real-world business operations of sophisticated express delivery firms. The organization has also promised to create a new licensing system for the industry.

While SPB's actions may be appropriate and necessary to regulate the mass of small, poorly capitalized, domestic document delivery companies that are active in China's major cities, AmCham believes their plan to impose the same solutions on large, integrated suppliers of express delivery services to China's leading industrial and service firms is inappropriate and inefficient.

Specific Issues

Market Access

Recent drafts of China's Postal Law would exclude FIEs from the domestic express document delivery business. This discriminatory provision against the foreign-invested enterprises is not in line with

运输和物流

物流业被看作是一个国家经济的循环体系。生产商、服务提供商和消费者之间低效率的货物运转会影响经济增长速度，而且使各个行业都无法以高效运营。中国政府工作重点是加强新的基础设施能力（公路、机场、铁路和港口）。这种基础设施投资虽然非常必要，但仍然不能满足中国经济急速发展的需要。同时，对于运输和物流行业的法律和监管部门的行政体制改革也亟需进行。

中国的物流行业分散，效率低，成本高，而且受到过于严格的监管。中国有成千上万的物流公司，其中大部分规模都很小，运营混乱，而且现代化程度不高。物流行业接受多个国家机构的监管，包括商务部（MOFCOM）、民航管理总局（CAAC）、交通部（MOC）、铁道部（MOR），甚至还包括新成立的国家邮政总局（SPB）。同时还受到地方保护主义的制约，严重制约了中国经济所需要的全国范围内的高效运输网络的发展。

为了将“物流”纳入其经营范围，外国物流公司需要满足有关注册资本、车辆和设施等诸多繁杂的限制性要求。而同时，只有几辆车的本土公司就可以自称为“物流”公司。

中国政府虽然采取了一些临时措施处理这些问题，比较有代表性的是成立了跨部的物流工作小组，但亟待解决的问题是采取更多的措施和根本性的改革。可提供许多技术、经验和投资的国外物流服务供应商应当被纳入咨询程序。中美商会认为需要进一步缩小国家对物流业的管理职能范围，在消除和简化不必要的监管的同时，必须界定不同监管机构间的职权范围。

重大进展

从中国加入世界贸易组织至今，中国在市场准入方面取得了重大进展。大部分物流行业的投资限制条件被取消，外国公司可以在华成立外商独资企业（WFOE），降低了针对外国物流公司500万美元的注册资本要求。政府还制定了外商投资物流公司审批指导方针和物流企业国家标准。尽管如此，中国

一些地方机构依然按照500万美元的资本要求执行审批程序，虽然这一规定已不再有效。近两年，在放宽物流行业准入方面进展放缓，甚至有些方面发生了倒退。

中国正在逐步改善对物流行业的管理，国家邮政总局在2007年1月正式成立，就是极好的例证。国家邮政总局已经开始主张其对快递服务行业的权限，尽管该行业也属于交通部、商务部、海关和民航管理局的监管范畴。国家邮政总局为快递服务行业创建了新的信息报告系统，起草了新标准，但由于忽视了成熟快递公司的实际业务运营情况，此标准有些比较理论化。同时该机构已承诺为该行业制订新的许可制度。

对于大多数活跃在中国主要城市的小规模、资本化程度低的国内快递企业来说，国家邮政总局对其的监管措施可能是恰当和必要的，但商会认为，将同样的监管措施适用于大型综合快递服务供应商是不恰当的，也是缺乏效率的。

具体问题

市场准入

新近的《中国邮政法》草案禁止外商投资企业从事国内信件快递业务。这个针对外商投资企业的歧视性规定不符合中国在WTO服务贸易具体承诺减让表中所作的承诺，亦与中国在服务贸易具体承诺减让表和服务贸易总协定中所作的国民待遇承诺相矛盾。此外，对于外国资本的限制减少了有效竞争，对国内企业提高服务质量也无任何帮助。

新的邮政法草案没有明确基本邮政服务专营权的范围，以及是否将由中国邮政专营此项服务。国家邮政总局官员在不同场合下表示，他们拟按重量界定专营权，这与用重量与资费相结合的双重标准界定专营权的国际惯例不一致。给予中国邮政对所有低于某一重量的邮件的专营权，将会大大损害数以百计的为客户提供优质服务的快递公司的利益。按照国际通行做法将资费考虑在内，将会明晰这些争论。

China's commitment under the WTO Schedule of Specific Commitments on Services and conflicts with the Chinese "National Treatment" promise in the Schedule of Specific Commitments on Services and General Agreement on Trade in Services. In addition, restricting foreign capital reduces beneficial competition, which will discourage domestic enterprises from improving their services.

Recent drafts of the postal law also leave ambiguous the scope of the monopoly on basic postal services that should be reserved to China Post. SPB officials on different occasions have expressed their intention to define the monopoly by weight, which is not in line with the international practice of defining the monopoly by both weight and price. Granting China Post a monopoly on all shipments below a certain weight will greatly damage the interests of hundreds of express firms who provide premium delivery services to business customers. Taking price into account, in line with international standards, would clarify these differences.

Standards

China has been developing a series of very theoretical "national standards" for the logistics industry with no real input from international logistics companies operating in China. An example is The Classification and Evaluation Indicators for Logistic Enterprises (GB/T 19690-2205). These standards take the number of trucks and warehouses owned by a logistics enterprise as the main criteria for rating (the more hard assets and people employed, the higher the rating). China's new Express Industry Service Standards (ESS) (YZ/T 0128-2007), which took effect January 1, 2008, were also drafted with little input from the industry. A draft of the ESS was published for public comment, but few comments from the industry were adopted and the ESS standards contain provisions that are far out of line with common international practice in the industry. The standards are the first Express Delivery Services (EDS) industry standards in the world. SPB and the Ministry of Labor and Social Security are currently consulting with the industry on the draft Express Industry Labor Standards, which would also be unique in the world market. The standards, as currently drafted, do not meet the needs of established logistics service providers or their Chinese workers.

City Access

Most Chinese cities restrict the access of delivery vehicles to downtown areas during daytime hours. This is a problem for all logistics firms except Express Mail Service of China Post. In many cities, these restrictions also apply to time and temperature sensitive products, including food and drugs. These restrictions result in the delivery of these products in small, inefficient vehicles that lack temperature controls. This has negatively affected food and drug safety throughout China.

Customs Clearance

The customs clearance environment has been improved in recent years, especially since China's accession to the WTO. However, there are still some customs-related issues that constrain further development of the logistics industry and especially the time-sensitive express delivery industry. For example, as express carriers must move goods in non-regular working hours, they require the customs to provide facilitation during non-regular working hours. AmCham believes that paperless declaration would be an excellent solution to this problem.

Air Freight Sales Agency Licenses

To book space on Chinese airlines, freight forwarders must either obtain an Air Freight Sales Agency license from the China Air Transport Association (CATA) or book space through a license holder. WFOEs are not eligible to obtain this CATA license, which means that WFOE freight forwarders are impaired in their ability to conduct freight forwarding business. This runs contrary to the terms that China agreed to for its WTO accession package.

VAT Invoices for Transportation Services Issued by Third Party Logistics (3PLs) and Fourth Party Logistics (4PLs) Companies

Current policies require foreign invested companies to own vehicles if they wish to issue VAT invoices for transportation. This restriction limits the growth of the 3PL business in China. In turn this hampers the ability of 3PL providers 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.

标准

中国一直在制订一系列物流行业“国家标准”，但很少听取在华开展经营的跨国物流公司提供的意见和建议。其中一个例子是“物流企业分类和评估指标（GB/T 19690-2205）”。这些标准把物流企业拥有的卡车和仓库的数量作为评级的内容标准之一（资产和人员越多，评级越高）。2008年1月1日起生效的中国新的快递行业服务标准（ESS）（YZ/T 0128—2007），行业意见建议的参与也很少。ESS草案曾被公开征求公众意见，但几乎没有行业意见被采纳，而且ESS标准中一些规定与行业内的国际惯例极不相符。该标准是世界上第一部快递服务（EDS）行业标准。国家邮政总局和劳动和社会保障部目前正就《快递业务员国家职业标准》草案进行行业咨询。该标准在国际市场上也将是独一无二的。目前起草的标准不能满足现有物流服务供应商或其中国员工的需要。

城市准入

中国大部分城市限制送货车辆在白天进入市区。这对于除中国邮政的邮政特快专递之外的所有物流公司来说都是个问题。在许多城市中，这些限制规定还适用于对时间和温度敏感的产品，包括食品和药品。这些限制规定使得企业只能用无温控设备的小排量车运送这些产品，这对遍及中国各地的食品和药品安全都有不利影响。

通关

近年来，尤其是加入世界贸易组织以来，通关环境有所改善。然而，仍然有某些与海关有关的问题抑制了物流行业的进一步发展，对有时间要求的快递行业尤其如此。例如，由于快递运营商始终必须在非常规工作时间内运输货物，它们希望海关在非常规工作时间内提供便利。中美商会认为，对于此问题来说，无纸化通关是个极好的解决方案。

空运销售代理资格认可证书

要在中国航线上预定舱位，货运代理人必须从中国航空运输协会取得“空运销售代理”资格认可证书或通过已经取得证书的公司预定舱位。外商独资企业没有资格取得此中国航空运输协会的证书，这意味着外商独资的货运代理企业从事货物转运业务的

能力被削弱了。这有悖于中国的人世承诺。

第三方物流公司和第四方物流公司开具的运输服务增值税发票

按当前政策的要求，如果想要开具运输业增值税发票，外商投资公司就要拥有车辆，这一要求限制了第三方物流业务在中国的增长。第三方物流，作为通过提供以货车运输和配送货物供应链服务中核心业务的一部分，对其发展的限制，直接影响着中国进、出口商的成本效益。

透明度

总体而言，物流行业的法规和规定是公开的，为公众所知。相比过去，在通过新的法律和法规之前，中国政府机构更倾向于征求外国公司的意见，只是很多时候，征询活动经常在关键决策做出之后，令征询活动成为形式，缺乏效率。透明度也因机构而异，差异很大。比如商务部，针对有关“国际货运代理人”的新法规征询活动就做得非常好。

建议

- 对外商投资企业和国内物流公司适用相同的注册资本要求。
- 对外商投资物流公司的分支机构规定应与其他行业相同。
- 在国内信件快递业务中给予外商投资企业同等的机会。
- 按照重量和价格准确地界定邮政专营权。
- 在法律、法规和标准的起草和审议过程中提高透明度，并鼓励企业更多地参与。
- 通过提供更宽松的城市准入规定和更简便的通关手续，改善经营环境。
- 对食品和药品等对时间和温度敏感的产品实施的城市准入限制规定予以取消。
- 废除货物运输管理中有关所使用的车辆类型的新法规，从而减少对外国公司提供服务能力的影响。
- 鼓励外商投资企业（使用先进系统和技术的）收购效率低下的国内运输和物流企业，促进物流行业做强做大。

Transparency

In general the rules and regulations governing the logistics industry are known and available to the public. Chinese government agencies are much more likely than they were in the past to consult with foreign firms before passing new laws and regulations, but too often that consultation occurs only after key issues have already been decided, so the consultations become *pro-forma* and ineffective. The degree of transparency varies widely by agency. MOFCOM, for example, has done an excellent job of consulting with industry on proposed new regulations for International Freight Forwarders. ■

Recommendations

- Apply the same registered capital requirements to both foreign invested and domestic logistics companies.
- Apply the same branching rules to foreign invested logistics companies that are permitted in other industries.
- Allow FIEs equal opportunities in the domestic express letter business.
- Narrowly define the postal monopoly by weight and price.
- Increase transparency and encourage more involvement by enterprises in draft and review process of laws, regulations and standards.
- Improve the business environment by providing easy city access and improved customs clearance.
- Remove city access restrictions on time and temperature sensitive products such as food and drugs.
- Remove the new regulations in the administration of cargo transportation on the type of vehicles to be used so as not to impact foreign companies' ability to provide services.
- Encourage consolidation in the logistics industry by granting incentives to foreign invested companies (who use advanced systems and technology) to acquire inefficient Chinese transportation and logistics companies.





Part Three

Provincial / City Issues

具体城市问题

Provincial Investment Environment

In 2007, nearly US\$80 billion in foreign direct investment (FDI) went to the development of operations in both manufacturing and services sectors in China. As in the past, the majority of investment went to the first-tier cities (Beijing, Shanghai and Guangzhou), with the larger of the second-tier cities also attracting substantial amounts of FDI. While many cities attempt to define themselves as “second-tier,” Western experts agree that second-tier cities are characterized as “emerging markets” typically located near the first-tier cities, which are often afforded specific political, economic or social benefits by Chinese central or provincial governments not afforded to other cities. These are predominantly cities with mature infrastructures, economies and skilled domestic labor pools located in the Bohai Rim in Northeast China; the Yangtze River Delta, extending westward from Shanghai; and the Pearl River Delta in Guangdong Province.

The net result of the FDI inflows, as well as government investments in fixed assets throughout the country, is that cities across the Chinese landscape are becoming wealthier, with double-digit annual growth rates that match the nation as a whole. With increased growth, though, comes a host of nuanced policy-development and enforcement issues that administrators at every level of government in China need to address in order to maintain FDI inflows into their cities.

Significant Developments

Increasingly, FDI is moving outward 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. For instance, according to the Shanghai Municipal Statistics Bureau, most of Shanghai’s GDP came from secondary industries in the early 1980s. Secondary industries are predominantly light manufacturing operations and labor-intensive production, including textiles, chemicals, shoes and toys.

Tertiary industries develop in areas as populations become more affluent and better educated. This reflects a “not-in-my-backyard” attitude to the noise, pollution and commotion attached to labor-intensive

industries, as well as a desire for better educated people to move up the economic ladder into “white-collar” jobs. As a result, secondary industries move to smaller, less wealthy cities.

The World Bank showed in its 2006 report *China Governance, Investment Climate, and Harmonious Society: Competitiveness Enhancements for 120 Cities in China* a direct correlation between the wealth of a city and the value of FDI invested in the location. Locations with annual GDP per capita greater than RMB40,000 attract more capital-intensive investments than locations with lower GDP per capita. Shanghai, for example, had an annual GDP per capita of more than RMB57,000. This is reflected in the rise of its tertiary industries. Interestingly, a fair number of smaller cities that experts agree to define as second-tier cities would actually be considered first-tier if the first-tier city definition were limited to GDP per capita, including Suzhou, Wuxi, Dalian and Qingdao. These cities are also seeing a movement away from labor-intensive and/or polluting industries to tertiary sectors.

Industries that require less capital to start up and run have already moved, or are currently moving to, larger second- and third-tier cities like Nanjing, Shenyang and Wuhan. Even more pronounced is the overwhelming move to poorer fourth- and fifth-tier cities like Anqing in Anhui Province, Hengyang in Hunan Province and Jingzhou in Hubei Province.

The Challenges of Wealth Creation and Distribution to FDI

China’s Central Government and local governments should be applauded for the role they have played in lifting a sizable proportion of the population out of poverty in a matter of decades and in helping develop a burgeoning middle class. However, the increasing wealth of the first-tier cities and the investment spill-over into adjacent areas in the Bohai Rim, the Yangtze River Delta and the Pearl River Delta have presented significant policy challenges for China’s national and local governments. Environmental degradation and citizens’ quality-of-life expectations in the first-tier cities require development of new policies and greater, more consistent enforcement of current regulations.

省市投资环境

2007年,中国制造业和服务业共吸引了近800亿美元的外商直接投资。尽管外资主要集中在中国一线城市(北京、上海和广州),较大的二线城市也吸引了数量可观的外资。尽管不少城市都自认为属于“二线城市”,但一般西方专家认为二线城市主要指距离一线城市较近的“新兴市场”,而一线城市通常能享受到更多的中央政府或省政府给予的政治、经济或社会方面的政策倾斜。这类城市主要包括东北环渤海经济圈、上海以西的长三角和广东的珠三角地区,这些地区基础设施,经济发展更成熟,具有技术水平较高的劳动力资源。

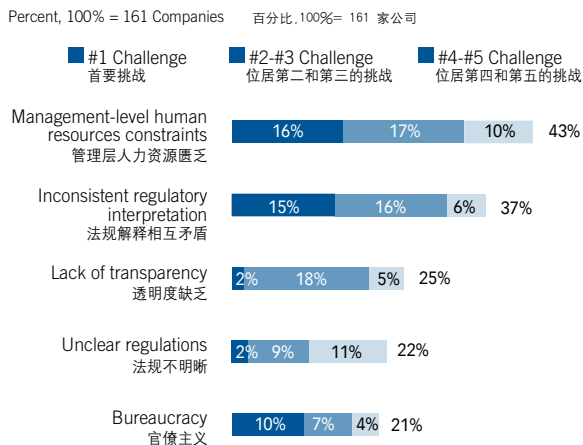
外商直接投资以及政府在全国各地固定资产投资的直接结果是遍布中国各地的城市更加富裕,且年经济增长率两位数字。但随着经济增长加快,政策制定和执行方面均出现很多微妙的问题。为保证这些城市能够继续吸引外资,中国各级政府皆有必要解决这些问题。

主要变化

目前,外商直接投资越来越明显地从一线城市向内地转移。当二线城市以及所谓“X”线城市(即三,四,五线城市)得到的投资额增加时,流向一线城市的外资性质上也在发生变化。例如,根据上海市统计局的

Top Business Challenges in 2nd/3rd-tier Cities

在二、三线城市运营的主要挑战



Source: 2008 AmCham Business Climate Survey
资料来源: 2008 年中美商会商务环境调查

统计数据,上世纪八十年代早期,上海GDP主要来自第二产业,包括纺织、化工、制鞋、玩具等轻工制造和劳动力密集型产业。

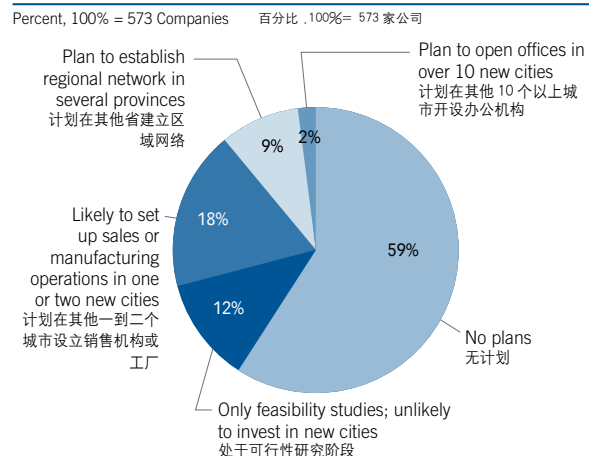
随着人们生活的改善,教育程度的提高,第三产业也得到发展。受到更好教育的人希望在经济水平上更上层楼、实现成为白领的愿望。结果,第二产业逐步转移到那些规模小、富裕程度稍次的城市。

世界银行在其《政府治理、投资环境与和谐社会:中国120个城市竞争力加强》2006年度报告中显示,城市的收入水平与外商直接投资水平存在直接关联性。人均GDP超过4万元人民币的地方比人均低于这个水平的地方能吸引更多的资本密集型投资。例如,上海人均GDP超过5.7万元,上海第三产业增长也反映了这一点。有意思的是,如果仅根据人均GDP标准,相当一批专家们称之为二线的城市实际上也可视为一线城市,这些城市包括苏州、无锡、大连和青岛。这些城市也出现了由劳动力密集型和/或污染严重的产业向第三产业跨越的趋势。

需要较少启动资金的产业已经或者正在向南京、沈阳、武汉这样更大的二,三线城市转移。更突出的是这类产业开始大规模向安徽安庆、湖南衡阳、湖北荆州等更不富裕的四,五线城市转移。

In 2008, excluding the 1st-tier cities, does your business plan to expand beyond current locations into 2nd- and 3rd-tier cities?

在2008年,除一线城市外,是否计划将业务扩展到二、三线城市



Source: 2008 AmCham Business Climate Survey
资料来源: 2008 年中美商会商务环境调查



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 stresses the need for attention on the following issues:

- Enforcement of intellectual property rights (IPR)
- Reduction in pollution levels in cities
- Greater transparency and a streamlining of investment regulations
- Development of human resources and a revision of residency requirements
- Transportation logistics development and reduction of traffic congestion

Enforcement of Intellectual Property Rights (IPR)

The regional and city reports in this section illustrate that IPR is of greatest concern to investors in the first-tier cities Shanghai, Beijing and Hong Kong. In these municipalities, investment values per capita are highest and companies feel they have the most to lose with unauthorized use of designs and content by other companies. While all reports cite an overall improvement in IPR enforcement, challenges in the broad-based and consistent application of IPR laws remain.

Clearly, IPR infringement does not only occur in first-tier cities—China’s smaller, less wealthy cities also see abuses. As there are proportionally fewer American companies invested in the “x-tier” cities than in the first-tier, this issue has been less high profile in the international business community. This, however, is beginning to change with the spread of investment.

Reduction in Pollution Levels in Cities

Shanghai, Beijing and Tianjin rate increased levels of water and air pollution as high priority policy issues. In many northern Chinese cities, the use of coal to power electric generation plants, as well as private residences, has created particulate residues

that cause residents commonly to complain of upper respiratory afflictions.

With the increased wealth of these cities, the number of cars on city roadways has dramatically risen in recent years. Most of the vehicles have no catalytic converters and use low-grade gasoline. Trucks transiting through the cities from outlying areas have a disproportionately higher contribution to air pollution. City reports that cite pollution as a main concern advise better enforcement of exhaust standards for automobiles and pollution controls for industry.

Greater Transparency and a Streamlining of Investment Regulations

According to regional reports from locations like Chengdu and Tianjin, greater transparency of local governments’ economic development guidelines on business investment is paramount. For instance, the Tianjin Government has yet to publish its comprehensive plans for the various geographic areas within the Binhai New Area, and the government has not made it clear which industries may be given preferential tax treatment and incentives. The Northeast regional report also cites a need to clarify the incentives and support available to foreign investors to aid companies in planning their investment projects.

The Shanghai Government also needs to streamline its investment approval process, as well as create a one-stop office location where interested parties can obtain information about investing in the municipality. As we point out in the Shanghai section, today the amount of paperwork required to invest in the city can total as many as 50 applications among 22 different agencies.

Development of Human Resources and a Revision of Residency Requirements

Most of the regions and cities in this year’s White Paper reported an overriding need for local and national-level government to develop policies to attract and develop the skills of local staff. Tianjin, in particular, cited a need for training services for employees in the city’s growing services sector. Companies in Chengdu, with its push toward high-end IT services, require policies that attract English-speaking professionals and encourage local professionals with such language skills to remain in the area.

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。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,现行法规得到更有力、更规范的执行。由于基础设施改善,农村和贫困城市工人的涌入,以及外国投资的进入,开始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区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资流入中国的关键性政策问题。中美商会主要强调下列问题:

- 知识产权保护的执行
- 减少城市污染
- 提高投资法规透明度,简化相关条例
- 开发人力资源,修改户籍制度
- 发展运输物流,缓解交通拥堵

知识产权的执法力度

本章地区和城市的内容显示,在北京、上海、香港这样的一线城市,投资者对知识产权问题更为关注。这些城市人均投资创造的价值最高,公司认为,其他公司在无授权情况下使用其设计和“内容”给它们带来的损失最大。所有报告都指出,总体上知识产权保护执法情况有所改善,但在广泛的、规范的知识产权保护执法方面仍然存在挑战。

很明显,知识产权侵权现象不仅在一线城市存在。中国收入水平较低的小城市也有侵权行为。由于相比一线城市,“X”线城市美资公司数量较少,因此该问题在国际商务中并不明显。但随着投资范围的扩大,情况将会发生变化。

减少城市污染

上海、北京和天津将水和空气污染治理视为优先考虑的政策性问题。华北许多城市使用煤电和居民使用燃煤带来的粉尘造成了许多人上呼吸道感染。

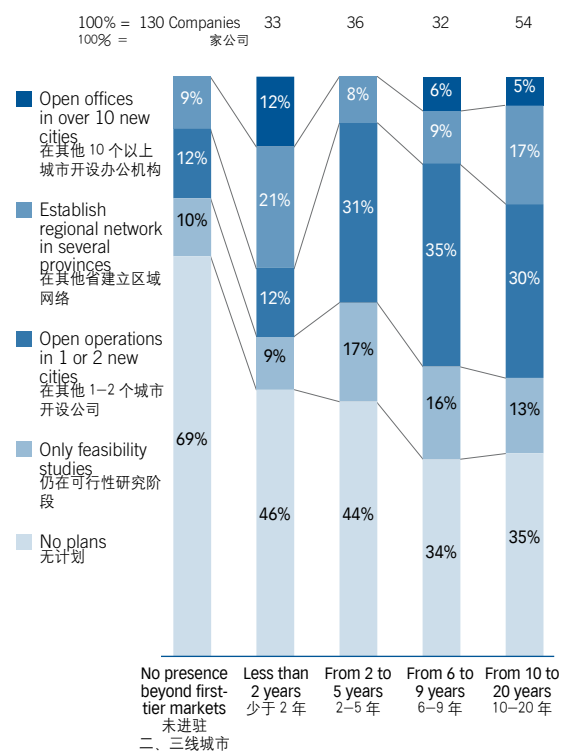
随着这些城市富裕程度的提高,近年市区公路上的汽车迅速增加。部分汽车没有净化器,使用低档汽油,穿城而过的卡车也加剧了空气污染程度。城市章节将污染列为重点关注问题,建议加强汽车排放标准和工业污染监控的执法力度。

提高投资法律法规透明度,简化相关条例

根据成都、天津等地区的相关报告,提高地方政府对促进当地投资发展的指导性政策透明度的缺乏是非常重要的问题。例如,天津市政府颁布滨海新区总体规划时,在其具体执行措施中尚未制定相应的鼓励政策,也未明确可以享受税收优惠政策的产业类别。东北地区同样也需明确给予外国投资者优惠政策和支持措施,以利于外资公司对其投资项目作出良好规划。

上海市政府也应该简化投资审批程序,建立一站式服务点,使有兴趣的公司获得当地投资信息。在报告的上海章节中,我们指出,目前在上海投资所需的手续包括向22家机构提交多达50份申请表。

Expansion plans to 2nd-/3rd-tier cities by respondents' length of time in secondary cities
鉴于在二线城市开展业务的时间,企业计划在二、三线城市继续扩展业务的情况



Source: 2008 AmCham Business Climate Survey
资料来源: 2008年中美商会商务环境调查

Shanghai simply has a skills shortage that is hampering the development plans of a great many foreign-invested companies. The restriction on the transfer of residence permits of potential employees from one Chinese city to another under the *hukou* system also places a great strain on employers in Shanghai and Hong Kong.

Another pressing residency requirement involves the restrictions on the length of stay of foreign professionals in China as well as the difficulty of renewing their visas. Similarly, Chinese professionals who must work in Hong Kong are constrained in their ability to travel to the city for business meetings, training or short-term developmental assignments.

Transportation Logistics Development and Reduction of Traffic Congestion

A clear after-effect of the increased wealth in first-tier cities and wealthy second-tier cities is the number of automobiles currently on the road and being added to streets every day. In 2007, 443,000 new motor vehicles were sold in Beijing, an increase of 13.2 percent over 2006. This brings the total number of vehicles on Beijing's roads to well over three million, not including the many vehicles from other provinces that visit Beijing or transit through it. In addition to exacerbating existing levels of air pollution, vehicular activity has created congestion that is making transport of goods through municipalities increasingly difficult and expensive.

Further transportation issues remain throughout the country. The Shanghai and Beijing city reports both urge better driver education, stricter enforcement of regulations and more parking facilities. Similarly, the Tianjin report expressed a concern about the additional traffic congestion caused by the large number of mixed-use projects in the urban core particularly with regard to inadequate on-site parking.

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, unexpected consequences from rapid economic growth coupled with a lack of policy development and enforcement in the key areas mentioned in this chapter have created barriers to American businesses' ability to benefit China's economy and citizenry. ■

开发人力资源,修改户籍制度

今年白皮书中涉及的大部分地区和城市都要求地方和中央政府制定吸引和开发本地员工技能的政策,尤其在天津,其服务业迅速发展,急需对相关人员提供大量培训。在着力推动高端信息技术服务业发展的成都市,公司要求制定吸引能讲英语的专业技术人员、出台鼓励留住具有外语能力的本地专业人员的政策。

上海面临技术人才短缺的问题,并已影响到许多外资公司发展规划。现行的中国户籍制度,员工户口城市间的迁受限制,已给在上海和香港的雇主带来很大压力。

另一个亟待解决的居留问题是对外籍人士在华停留时间的限制和难以延长签证。同样,需到香港工作的中国内地人士也难以赴港出席商务会议、参加培训或完成短期开发任务。

发展运输物流,缓解交通拥堵

一线城市和富裕的二线城市财富日益增加,带来的一个明显的现象是道路上汽车数量正在不断增加。2007年,北京新增机动车44.3万辆,较上年增长13.2%。不包括来京或过境的外地车辆,北京机动车总量已超过300万辆。除加剧空气污染外,机动车出行还造成交通拥堵,使各城市货物流通变得越发困难,成本增加。

中国全国都存在交通问题。上海和北京的城市报告均敦促加强对驾车者的教育,更严格地执行有关法规,并增加停车场所。同样,天津市报告对由于停车位短缺,市中心大量多用途场所加剧交通拥堵的问题表示担忧。

总结

中国一、二线城市收入水平日益增长,随着在华投资增加,外商提出的建议越来越反映一个日趋复杂的经济环境,这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,在为美国公司创造商业机会方面做了大量工作。但与此同时,经济快速增长带来的意想不到的新挑战,

加之本章所述的关键领域政策尚未完善,执行力不足,无法发挥美国公司应有的作用使中国经济和中国的消费者从中获益。 ■

Beijing

This year Beijing will host China's first Olympic Games, a long-awaited opportunity for the country and its people to demonstrate their hospitality and show the impressive results of the three decade-old Reform and Opening policy. The 2008 Beijing Olympics will put the city of Beijing and its residents on display before the more than 1.5 million estimated visitors and countless viewers around the world. The careful preparation for the Games, as well as the enormous investment in Beijing's infrastructure over recent years—including much that was designed specifically for the Olympics—is expected to leave a positive impression on those who observe the Games in person and from afar.

Today Beijing is an international metropolis and the political, educational, scientific and cultural center of the world's most populous country. The city is China's number one tourist destination and, combined with its neighbor Tianjin, the country's most important transportation hub. In addition to its cultural, political and transport importance, Beijing is a major center for manufacturing and business services, and the headquarters of nearly all of China's top financial institutions.

In 2007, Beijing's GDP exceeded RMB900 billion, an increase of 12.3 percent over the prior year. Per capita GDP was RMB56,044, or approximately US\$7,370. Service industries constituted more than two-thirds of GDP at RMB642 billion. Within this category, the fastest growing sectors were information and computer services and software development (up 18.6 percent collectively); leasing and commercial services (up 31.7 percent); technical and geological services (up 23.1 percent); and education (up 12.5 percent).

Business success and rising tax revenue means the finances of the Beijing Municipal Government are growing at a healthy pace. Beijing's fiscal revenues totaled RMB149 billion, up 33.6 percent on the previous year and 1.8 times higher than in 2002. Income taxes from businesses and individuals were up sharply, at 44.6 percent and 32.2 percent respectively. Profits of the larger businesses in the service sector were RMB277 billion, 2.4 times higher than 2006.

Beijing welcomes foreign investment. Its commercial officials have a generally sophisticated understanding

of international and domestic business issues and dynamics, which is usually translated into supportive actions. There are ongoing efforts to reduce bureaucratic, administrative and regulatory obstacles to foreign business entry and expansion, except in areas subject to nationally mandated restrictions. It should be noted, however, that there remain opportunities to further reduce bureaucratic impediments through increased efficiency and more liberal interpretation of laws and regulations.

Government transparency in Beijing is good and improving; the municipal government's website (www.beijing.gov.cn) is content-rich and user-friendly. Beijing's strong economy, cultural and educational richness, and position at the commanding heights of China's politics and economy give Beijing a unique combination of attributes that appeal to foreign businesses. In 2007, the city attracted US\$5.07 billion of utilized foreign investment, an increase of 11.3 percent over 2006.

AmCham-China enjoys a productive and candid relationship with the Beijing Municipal Government. Since 2004, Vice Mayor Lu Hao has engaged in a constructive dialogue with AmCham, as have many of his colleagues in the city's functional bureaus. AmCham is grateful for the insights and information provided by these officials, and for their responsiveness to the concerns of American business.

For all of Beijing's assets, the city is faced with challenges and opportunities that, if met, will make it even better. This chapter addresses some of them.

Specific Issues

Transportation

Beijing continues to invest heavily in public transportation, a critical development in a city with significant congestion. In 2007, rail transport lines were increased by 66.6 kilometers (km) to 142 km, with an additional 102 km under construction. By the start of the Olympics, Beijing will have a total of 200 km of rail and subway lines. We applaud recent fare reductions and reforms of the ticket system, which have made public transportation more convenient and affordable. Given the city's size, and the congestion of its roads, these are most welcome

北京

今年奥运会将在北京举行，这是中国首次举办奥运会。对于这个国家及其人民而言，这意味着一次期待已久的机遇。他们将不仅向世人展示自己的热情好客，而且也将呈现中国改革开放三十年以来所取得的深刻变化。2008北京奥运会将向约150多万来宾和无以计数的观众展现北京这座城市及其居民的风采。北京为此次奥运会的举办做出精心筹备。近年来，北京在基础设施方面进行了大量投资，尤其是专为奥运会的设施建设，以期能给亲临北京赛事的观众以及其他观众留下积极的印象。

作为世界上人口最多国家的政治、教育、科学和文化中心，今天的北京是一座国际大都市。北京聚集中国最多的游客，并与近邻天津一道构成中国最重要的交通枢纽。除文化、政治和交通的重要性之外，北京也是制造业和服务业的主要中心之一，以及几乎所有中国重要金融机构的总部所在地。

2007年，北京的GDP值超过9,000亿人民币，比上年增长12.3%。人均GDP达到5.6044万人民币或近7,370美元。服务业GDP值6,420亿人民币，占总值三分之二以上。在服务业中，增长最快的行业是信息和计算机服务及软件开发（共增长18.6%）、租赁和商业服务（增长31.7%）、技术和地理服务（增长23.1%）以及教育（增长12.5%）。

企业的成功发展和税收收入的不断增加使北京市政府的财政收入稳步增长。全市地方财政收入为1,490亿人民币，比上年同期上升33.6%，是2002年的1.8倍。企业和个人所得税收入也大幅提高，幅度分别为44.6%和32.2%。服务领域中规模型企业利润总额为2,770亿人民币，比2006年高出2.4倍。

北京欢迎国外投资。负责经济发展的相关政府官员对国际和国内的经济问题及发展态势普遍具有深入地认识，这种认识通常会转化成实质性的支持与理解。北京也正在努力减少外资进入和发展的官僚主义、行政及监管壁垒。当然，国家强制性规定的领域除外。不过仍须指出，工作效率的提高和法律法规的从宽性解释，使进一步减少官僚政治的壁垒的机会仍然存在。

北京政府的透明度良好且在日益改善。北京市政府网站内容丰富、易于使用(www.beijing.gov.cn)。北京的经济富有活力、文化和教育底蕴浓厚，在中国政治和经济领域都拥有举足轻重的地位。北京这种独特的资源组合足以吸引外资的涌入。2007年，北京实际利用外资50.7亿美元，比2006年增长11.3%。

中国美国商会和北京市政府已建立坦诚良好的关系。从2004年起，中国美国商会和北京市政府开始启动建设性对话，陆昊副市长及诸多职能部门官员已多次参与。北京市政府官员不仅与商会会员分享他们的理解与看法，并积极反馈了美国企业关心的诸多问题。中国美国商会对此表示诚挚的感谢。

尽管如此，我们看到北京仍然面临着种种挑战和机遇，如果能够成功应对，北京的发展会更好。下文将讲述其中一些挑战和机遇。

具体问题

交通

北京持续在公共交通方面大力投资。对于一个交通堵塞严重的城市而言，公共交通至关重要。2007年，轻轨线延长66.6公里，达142公里；撰写此文之时，102公里的轻轨在建。预计奥运会开始前，北京轻轨和地铁总长将达到200公里。我们赞赏最近车票价降价和票务系统的改革措施，公共交通因此更加便捷而且费用便宜。尤其对于北京面积大、路况堵塞严重的情况，我们认为上述措施十分及时，也希望这种高效的交通模式得到进一步发展。

首都机场3号航站楼是全球最大的单体航站楼，这将改进空运效率并提升旅客的舒适度。我们同样期待北京至天津高速铁路及高速公路的完工。这将给两座城市的居民提供更多的商业机会。

不过，北京仍然面临道路严重堵塞的困扰。2007年，北京市场新售车辆44.3万辆，比2006年增加13.2%。即使外省来京或经停车辆不计，北京路面车辆总数仍远超三百万辆。众多设计不合理的十字路

developments and AmCham encourages further expansion of this efficient mode of transportation.

The newly completed addition to Capital International Airport is the largest single structure terminal in the world, and is certain to improve the efficiency of Beijing's air links and increase travelers comfort. We also look forward to the completion of the high-speed train line to Tianjin and the new Beijing-Tianjin expressway, both of which will expand the business opportunities in both cities.

Nevertheless, Beijing continues to be plagued by severe road congestion. In 2007, 443,000 new motor vehicles were sold, an increase of 13.2 percent over 2006. This brings the total number of vehicles on Beijing's roads to well over three million, not including the many vehicles from other provinces that visit Beijing or transit through it. Beijing's many poorly designed intersections, together with the rapidly growing number of private vehicles, translate to slow travel times and regular traffic jams.

The government has rejected calls to limit the number of vehicles on Beijing's streets, which adds urgency to the need to find more effective means of improving traffic flow. These might include better driver education, stricter enforcement of regulations, more parking facilities and incentives for car pooling.

Beijing's best solution to these problems is to improve public transportation and increase its share of the city's total transportation load from the 29.8 percent share at the end of 2005. The mid-term goal should be to reach the 60 percent level of New York, Paris and London, with Tokyo's 87 percent the end goal.

Air Quality

By official Chinese standards, Beijing's "blue sky" days increased by five in 2007 to 246. There remain, therefore, 119 days of the year when air quality is unsatisfactory or worse (in fact, the Air Pollution Index reached 500 on December 28, 2007—the maximum level). It is not surprising that Beijing residents commonly complain of upper respiratory afflictions.

The Beijing Government has taken some serious steps to reduce pollution. For example, this year *Time* magazine reported that nearly 60,000 of the worst polluting coal-fire burners were switched to more environmentally friendly options like natural gas. This is but one in a string of steps the government has taken so far.

AmCham recognizes that there has been some progress, and encourages further efforts to improve air quality, such as replacing traditional vehicles in government passenger car fleets with environmentally friendly hybrid vehicles. Upgrading inefficient and polluting engines in the trucks that serve and pass through Beijing will do a great deal to reduce the vehicle emissions that these trucks are disproportionately responsible for. In addition, Beijing should eliminate the use of coal for home heating and cooking in the vast countryside that surrounds its urban center.

Water

Beijing has insufficient water resources for a city its size and has chosen to import water from the south in an expensive and controversial engineering project. While this will add significantly to the water available for individuals and industry, conservation and demand-control measures are nonetheless very important. AmCham repeats last year's recommendations, including planting more drought-resistant plants, more efficient irrigation techniques and increases in water-usage fees for urban and business consumers. In addition, we suggest that all of Beijing's hotels be required to adopt programs that encourage guests to save water and to use towels and linen more than once. Finally, we hope to see all of Beijing's wastewater treated. Currently, the rate is 92 percent in the urban areas but only 47 percent in rural areas, up just two percent and five percent, respectively, over the past two years.

Intellectual Property Rights

The current level of IPR enforcement in Beijing, as elsewhere in China, remains problematic despite stronger measures taken in recent years to improve it. Counterfeiting is still common and involves a wide range of products ranging from DVDs and computer software to household appliances and electronics, and even food products. 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.

Improving IPR enforcement should be an ongoing focus of Beijing's government, as it should be around the country. But it is particularly important in the country's capital, which is where China's laws are made. Beijing Mayor Wang Qishan stated the city's intentions in a February 21, 2006, meeting:

口和快速增长的私家车数量，是车行缓慢和交通堵塞屡治不愈的主要原因。

政府未能接受限制路面车辆的呼吁，因此北京急需更有效的途径以缓解交通压力。比如建议考虑加强司机教育、实施更严格的规章、增加停车设施和鼓励合理合法的拼车行为。

对于北京而言，改善公共交通是解决上述问题的最佳方案。公共交通在全市交通负荷中的比例应从2005年底的29.8%提升到更高水平。中期目标应为60%，即纽约、巴黎和伦敦的水平，最终目标为87%，即东京水平。

空气质量

根据中国官方标准，2007年北京“蓝天”天数达到246天，比上年增加五天。因此，一年中仍有119天空气质量不尽人意或很差。（如2007年12月28日，当天空气污染指数达到500）。难怪北京居民通常会抱怨上呼吸道感染。

北京市政府已开始大力治理污染。《时代》周刊今年报道，北京市近六万个高污染的煤炉已被使用天然气等环保燃料的设备取代。此外，政府还采取了其它诸多措施。

中国美国商会非常认可所取得的进展，同时希望北京政府采取更多措施，以改善空气质量。例如以环保型混合动力汽车取代政府专用车队中的传统车辆。通过更新北京市内及途经北京的卡车所使用低效污染的发动机，可以大大减少污染物的排放。此外，应该终止燃煤在京郊家用取暖和烧饭的使用。

水

北京自身的水资源无法满足其自身规模的需要，只能借助造价高且富有争议性的工程项目从南方调水。尽管此举能更好满足个人和企业的用水需求，但节约用水和需求控制措施也很重要。中国美国商会重申去年的建议，包括种植更多抗旱植物、采用更有效的灌溉技术以及针对城市及企业用户提高水费。此外，我们建议北京所有酒店实施鼓励客人节水和多次使用房内毛巾的计划。最后，我们希望北京能实现全部污水的处理。目前市区污水处理率92%，而农村只有47%，与两年前相比仅分别提高2%和5%。

知识产权

尽管近几年北京政府采取了各项有力措施，但与中国其它地区一样，知识产权执法方面仍然问题重重。制假仍然很普遍，涉及DVD光碟、电脑软件、家用电器和电子甚至食物等诸多类产品。不仅给知识产权持有人造成经济损失，也引发了大量产品安全问题。此外，针对创新这一中国政府确定的重点发展目标，加强知识产权执法也能对其发挥一定的促进作用。

加强知识产权执法应该是北京市政府及中国各地政府的一项长期工作重点。作为首都和立法之地，此举对于北京具有特殊重要性。王岐山市长在2006年2月21日的会议上公开表示北京的决心：“北京市政府将一如既往地加强北京市场上知识产权保护的力度，同时也将继续依法保护知识产权。”

中国美国商会欢迎政府为改善北京的立法环境所作出的上述努力和其它诸多努力，并希望看到持续进展。

古迹维护和建筑

中国美商会再次建议政府将北京老城保护放到工作首位。除主要历史遗迹外，也包括胡同这一具有历史价值的居民社区。建议执行2002年制定的《北京旧城25片历史文化区保护规划》，以实现上述目标。

令人遗憾的是，这份规划未能得到部分官员的重视。相反，他们有时违背规章，擅自批准建筑项目。古迹维护不仅事关保护文化，而且能帮助北京发挥其作为旅游目的地和会展举办地的最大潜力。许多居住在北京的中国美国商会成员对北京历史悠久的街区情有独钟，也非常支持对其采取维护措施。

北京政府已认识到这一问题，启动了“旧房改造”工程。政府预算投入2.5亿元，提供财经支持与技术咨询，用于对40条胡同，1,474个院落的整体修缮。当房屋修缮完毕后，这次工程涉及的9,635户居民仍可选择回原地居住。中国美商会希望此工程尽可能的保护古老建筑与其材料，并扩展到北京其它区域。

The Beijing Municipal Government will continue to expand the intensity of its protection of intellectual property in the Beijing market, and will continuously protect intellectual property in accordance with the law.

AmCham welcomes these and other efforts to improve Beijing's legal environment and hopes to see continued progress on this front.

Historical Preservation and Architecture

AmCham again recommends giving the highest priority to the preservation of the Old City of Beijing, including not only the major public historical structures, but also the historical *hutong* neighborhoods. This can be accomplished with full implementation of the 2002 "Conservation Plan for the 25 Historic Areas in Beijing Old City." Unfortunately, this plan is sometimes ignored by officials who approve development projects inconsistent with the statute. Historical conservation is not only a matter of culture, but is also vital to realizing the full potential of Beijing as a destination for tourism, conferences and conventions. Many AmCham members who live in Beijing are particularly appreciative of the city's historical neighborhoods and strongly support their preservation.

The Beijing Government's recognition of these issues is reflected in the 2007-2008 Old House Renovation project, which aims to provide financial assistance and technical advice for the renovation of 1,474 courtyards in 40 *hutongs*. This ambitious program, with a budget of RMB250 million, will allow 9,635 households to have the option of remaining in their current homes. AmCham hopes that it will successfully preserve old structures and materials whenever possible, and that it will be expanded to other parts of Beijing.

In recent years Beijing has seen the rise of impressive new buildings whose architecture has attracted global attention. Examples include the National Opera House, the National Stadium, the National Aquatics Center, the CCTV Tower and the new wing of Capital Airport. AmCham applauds Beijing for welcoming these architecturally adventurous buildings, which add drama and beauty to the city's landscape.

Beijing – Tianjin Corridor

The new expressway and high-speed rail line that will connect Beijing and Tianjin this year will facilitate even greater integration between these two great

cities. AmCham hopes that both cities will work hard to facilitate new business along this important corridor.

Summary

This brief survey does not do justice to the complex history, challenges and achievements of Beijing, nor to the dynamic and generally positive relationships between U.S. businesses and their adoptive home in China's capital. It does not address, for example, the implications of the impressive 13.9 percent growth in per capita disposable income to RMB21,989 in 2007; explore the challenges and opportunities in public health and education nor examine the implications of rising costs for businesses.

AmCham believes that the Beijing Municipal Government continues to make extraordinary progress in developing the city's infrastructure and promoting economic growth, and is implementing many positive measures to improve the business and human environment. By considering the recommendations in this paper, Beijing will be able to fully realize its stated goal of becoming an "international, modern and dynamic" city that also evidences "indigenous character and historical roots," and is "livable" and "humanistic." ■

Recommendations

- Continue the aggressive expansion of public transportation.
- Undertake tougher measures to control traffic congestion.
- Support the adoption of cleaner vehicle emissions technology.
- Implement demand-control mechanisms and improve irrigation technology to reduce water consumption.
- Achieve the 100 percent waste water treatment goal.
- Improve bureaucratic efficiency.
- Rid Beijing's retail outlets of counterfeit goods by strong enforcement of existing IPR laws and regulations.
- Work with the Tianjin Government to find new synergies and business opportunities for the two cities.
- Implement and enforce adherence to the "Conservation Plan for the 25 Historic Areas in Beijing Old City."
- Continue to engage AmCham in frank and constructive dialogue.

近几年一些大型建筑在北京陆续落地，其建筑风格全球瞩目。例如国家大剧院、国家博物馆、国家游泳中心、中央电视台和首都机场新航站楼。中国美国商会赞赏北京勇于尝试引入新的建筑设计，也相信这些会给北京风景平添若干色彩和美感。

北京—天津长廊

今年，随着北京—天津全新高速公路和高速铁路的完工，两大城市之间的关系将更加密切。中国美国商会期待出现更多机遇，并希望两座城市能齐心协力，共同推动这条重要经济长廊的发展。

结论

这份简短的报告既不足以解释北京所经历的复杂历史、面临的种种挑战及取得的各项成绩，也不足以展示美国企业和他们在中国首都这一第二故乡之间的互动而积极的关系。比如，报告未解释2007年人均可支配收入增长13.9%，并达到21,989元意味着什么；没有探讨公共卫生和教育领域面临的机遇和挑战；也没有分析成本上升对企业的影响。

中国美国商会相信，北京市政府将在发展基础设施和促进经济增长方面，再接再厉，继续取得辉煌成绩；也相信北京政府正在为改进商务环境和人文环境采取诸多积极措施。希望酌情考虑本报告中的建议，这将有益于北京完全实现其公开的目标，即成为一座“富有活力的国际化现代”都市，既具备“本土特征和历史根源”又“适合人居”而“具有人性化”。 ■

建议

- 继续大力发展公共交通。
- 采取更有力措施，对交通堵塞加大管理力度。
- 支持使用清洁车辆排放技术。
- 执行需求调控机制并改进灌溉技术，以减少水消费。
- 实现污水处理百分百的目标。
- 提高政府工作效率。
- 确保知识产权法律法规强有力的执行，以清除北京零售网点的盗版商品。

- 与天津市政府合作，寻找有利于双方发展的新合力和新商机。
- 执行并强制推行《北京旧城25片历史文化区保护规划》。
- 继续与中国美国商会坦诚而有建设性的对话。

Chengdu

In 2007, Chengdu experienced its fastest growth since 1994 with annual GDP exceeding RMB332 billion, an increase of 15.3 percent over 2006. Foreign trade exceeded US\$9.5 billion with US\$5.7 billion in exports, an increase of 36.9 percent year-on-year and 13 percent higher than the national average. At the end of 2007, 124 Fortune 500 companies had established offices in Chengdu. Combined with economic and trade relations with 175 different countries and regions, and seven foreign consulates, Chengdu has emerged as the key city in southwest China.

Significant Developments

In June 2007, the State Council appointed Chengdu and the Chongqing Municipality as the first national experimental zones for urban-rural reform. The appointment allows the two cities increased flexibility to experiment with new development mechanisms to reduce the disparity between urban and rural populations in central and western China. Chengdu has responded by moving forward aggressively in export-oriented industrial clustering (creating zones within the city designed to promote specific export industries through incentives). Some of the prominent industries the government has promoted through this practice have included electromechanical and high-tech products, and to a lesser extent, software, shoes, pharmaceutical, and agricultural goods.

There have been developments in daily life issues as well. In response to traffic congestion, Chengdu city planners have promised aggressive and proactive interim methods to reduce the congestion while the first two lines of the city's future seven-line subway system are under construction. Chengdu's logistics capacity will greatly increase with the major expansion of railways and highways. Seven additional lines will connect Chengdu to Lanzhou, Xi'an, Xining, Geermu, Lhasa, Kunming and Chongqing, while two river ways will be constructed to increase water traffic to Shanghai and Beihai. Finally, plans are in place to attract 13 additional international airlines to the city within the next five years.

Specific Issues

Healthcare Services

In 2007, Chengdu welcomed Huaxi Hospital's opening of the "Golden Card International" service to meet foreign resident and visitors' health needs. Improvements included an increase in English-speaking staff and standard Western medical services. In addition, Huaxi has teamed with China Life Insurance to provide local medical insurance to foreigners living in Chengdu.

The assurance of high-quality healthcare is a constant concern for foreign corporations seeking expansion into overseas markets. Firms' ability to assure foreign employees that their personal and family healthcare needs will be properly met is critical to attracting and keeping talent in cities like Chengdu. While the "Golden Card" initiative is a welcome development, it is available to only members of Huaxi Hospital. China should strive to establish a mechanism allowing domestic medical facilities to receive reimbursement from international insurance providers. This would require both medical services and treatment documentation to be in line with international standards for payment approval.

Environmental Protection

In 2007, Chengdu and Chongqing Municipality were also approved to be the first national experimental zones for overall urban-rural reform. Consequently, greater independence has been provided to the local governments of these two cities to establish their own development strategy and policies. The current transitional period requires a proactive approach by foreign investors to understand the shifting investment climate, especially regarding the environment.

Chengdu has implemented stringent environmental permitting, zoning, remediation of contaminated land, off-site liability, recycling water and other policies that create additional liabilities to foreign investors. FIEs will find that policies and enforcement vary greatly depending on the FIE's size, location, local departments, industry and interactions with officials. Due to lack of transparency or well-defined

成都

2007年是成都取得1994年以来经济发展最快的一年。GDP超过3,320亿元,比2006年增长15.3%。进出口额超过95亿美元,其中出口57.1亿美元,较上年增长36.9%,高出全国平均水平13个百分点。截至2007年底,全球500强企业已有124个在成都设立分支机构。175个国家与地区与成都建立了经贸关系,7个国家在成都开设领事馆,成都已成为中国西南地区的重要城市。

主要变化

2007年6月,国务院确定成都和重庆两市为全国首个统筹城乡综合配套改革试验区。这一举措使两市在建立新的发展机制、缩小中西部城乡差别方面享有更大的灵活性。成都积极响应国务院给予的这一政策,大力推进行业集聚化(通过激励措施在市区内建立促进出口的工业园区)。政府通过此举着力促进的行业包括机电和高科技产业,而软件、制鞋、制药和农产品行业也在不同程度的获得推进。

人们的日常生活方面也出现一些变化。为解决交通拥堵问题,成都市规划者承诺采取积极主动的临时性办法缓解交通拥堵,目前计划修建的七条地铁线中已开工建设两条。随着铁路和公路建设的迅速扩展,成都的物流能力将大大提高。七条线路将连接成都与兰州、西安、西宁、格尔木、拉萨、昆明和重庆,两条水路交通将提高成都与上海和北海间的水上运输能力,13条国际航线计划在今后五年内开通。

具体问题

医疗服务

2007年,成都市迎来了华西医院增设的金卡国际服务,为外籍居民和游客提供医疗服务。采取的改进措施包括增加讲英语的工作人员,提供规范的西医服务。此外,华西医院还与中国人寿合作,为居住在成都的外籍人士提供本地医疗保险。

高质量的医疗保障一直是寻求拓展海外市场的外国

公司关心的问题。公司能否保证外籍雇员个人和其家庭成员的医疗问题得以妥善解决,对他们能否在成都这样的城市吸引和留住人才至关重要。金卡计划值得欢迎,但只有华西医院的会员能够享受。中国应该建立一种机制,允许境内医疗机构与国际保险公司合作,并按照国际医疗费用的审批标准,提高医疗服务质量,规范医疗文件的管理制度。

环境保护

2007年,成都和重庆两市被批准为全国首个统筹城乡综合配套改革试验区。因此,两市的政府在制定发展战略和政策方面享有更多的自主权。目前的过渡期需要外国投资者采取更为主动的态度,及时了解投资环境的变化,尤其在环境保护方面。

成都在发放环境许可证、区块划分、污染土地治理、地段周边责任、循环水及其它政策方面执行得过于严格,给外国投资者带来额外负担。各地政策及其执行因外资企业的规模、所在地、当地部门、行业以及与地方官员的关系等不同而产生很大的差异。如由于缺乏透明度或明确的标准,“环境灾害”的定义具有极大的灵活性,官员可以在任何其认为需要的时候运用这一法规。执法不统一影响了外商投资环境的建设。 ■

建议

- 建立境内医疗机构与国际保险公司的合作机制,并按照国际医疗费用的审批标准,提高医疗服务质量,规范医疗文件的管理制度。
- 建立透明的监测报告体系,监控、统计城市空气和水质量数据。

parameters, the term “environmental hazard” is extremely flexible, allowing officials to apply rules as they deem necessary. Having non-uniform implementation is a hindrance to a vibrant and dynamic foreign investment environment. ■

Recommendations

- Establish a mechanism allowing domestic medical facilities to reimburse international insurance providers directly. In addition, improve medical services and documentation to international standards for payment approval.
- Establish a transparent reporting system to monitor and report statistics on air and water quality throughout the city.



Hong Kong SAR

The Hong Kong Special Administrative Region (SAR) celebrated the 10th anniversary of its return to China's sovereignty in July 2007. During the third-quarter of 2007, GDP totaled HK\$413 billion, rising 6.2 percent. Hong Kong continues to be a leading world financial and regional business center under the "one country, two systems" principle.

AmCham members in Hong Kong are overwhelmingly pleased with the systems in place. AmCham Hong Kong's "Business Outlook Survey" found 98 percent of respondents to be satisfied or very satisfied with business conditions in Hong Kong. Today, more than 250 of the 1,200 regional headquarters in Hong Kong are U.S. in origin, attracted by Hong Kong's strong and sophisticated Common Law legal system, low and simple tax system, free flows of information and capital, and world-class communications, transport and financial services infrastructure. These features give Hong Kong the distinction of being a recognized market economy, trusted by U.S. investors and a party to hundreds of international treaties based on its reputation as an independent economy

The U.S. is the fourth-largest market for Hong Kong's exports, and the city is a major market for U.S. goods including jewelry of precious metal (excluding silver), frozen chicken parts and edible offal, non-industrial diamonds, preserved equine hides and skins, integrated circuits and data processing machine accessories. In terms of inward direct investment, the U.S. is Hong Kong's largest investor in insurance (34 percent); the second-largest in the wholesale, retail and import/export trades (15 percent); and in financial institutions other than banks and deposit-taking companies (12 percent).

China is the largest source of direct investment in Hong Kong. The city is the PRC's main conduit for international trade and investment. This is the result of two separate factors. First, it is a channel for both mainland and overseas Chinese investments into and out of China. Second, it is China's largest re-export outlet and the first port of call for most mainland companies emerging into the world's markets. To illustrate this point, more than 2,000 mainland enterprises currently operate in Hong Kong, with assets totaling some US\$220 billion. In 2007, the

total volume of Hong Kong's global exports, including re-exports from China, rose 8.3 percent.

As part of the Pearl River Delta Economic Zone (PRD), Hong Kong is a key part of China's most dynamic manufacturing center. The PRD also includes the portion of Guangdong Province including Guangzhou, Shenzhen, Zhuhai, Foshan, Jiangmen, Dongguan, Zhongshan, parts of Huizhou, parts of Zhaoqing, and the Macau SAR.

It is estimated that Hong Kong companies employ 11 million mainland Chinese workers in the Mainland. Of these, 10 million work in the PRD. Furthermore, almost 500,000 Hong Kong residents work in the Mainland, concentrated mostly in the PRD's 70,000 factories. A major and unique issue in Hong Kong is that it is easier for most foreign workers to get a visa for Hong Kong than it is for residents of Mainland China; a significant disadvantage for Hong Kong's continually labor-starved economy. Since 1979, Hong Kong has been the source of about two-thirds of the cumulative FDI in the PRD.

As Hong Kong's Chief Executive Donald Tsang enunciated in his October 2007 Policy Address, the city's political and business leaders widely view complacency as the greatest threat to the city. This is a reflection of it being a mature economy, where the problem tends to be most acute. AmCham highlights Hong Kong's proposed competition law, pharmaceutical patents and PRC staff visas as issues the city needs to address in order to not fall victim of complacency.

Specific Issues

Hong Kong's Competition Law

Under pressure from the World Trade Organization and after extensive public consultation, Hong Kong's government recently announced its intention to draft a new competition law. The precise objective, scope and features of the new law remain open issues and will face further public discussion once a draft is released. AmCham has three major areas of concern: that a competition law is contrary to Hong Kong's traditional *laissez faire* spirit; that the law not be used to "target" specific business sectors; and

香港特区

2007年7月，香港特别行政区（特区）庆祝回归中国10周年。根据最新统计数据，2007年第三季度，香港国内生产总值达4,130亿港元，增长6.2%。香港在“一国两制”下继续成为世界主要金融中心和地区商业中心。

香港美国商会成员对香港现行各项体制至为满意。根据香港美国商会《商业展望调查》，98%的受访者对香港商业环境表示满意或非常满意。目前，在港的1,200个公司地区总部中有250多家是美资公司。吸引这些公司的是香港完备健全的法制体系、简单的低税制、信息与资本自由流动以及最先进的通信、交通和金融服务基础设施。这些优势极大提升了香港作为成熟市场经济的地位，也藉此以其独立经济体的良好声誉获得了美国投资者信任，成为许多国际条约的缔约方。

美国是香港第四大出口市场，香港也是包括珠宝首饰贵金属（包括银）、冻鸡及杂碎、非工业用钻石、加工后的马/驴的皮革皮毛、集成电路以及数据处理设备零件等美国货物的主要市场。以对香港直接投资而言，美国是香港最大的保险业投资者（占34%），第二大批发、零售和进出口贸易投资者（15%）和第二大非银行和储蓄公司类金融机构的投资者（12%）。

中国是香港最大的直接投资来源地。香港是中华人民共和国主要的国际贸易与投资渠道。形成这一状况的有两个因素。首先，香港是内地和海外华人资金流入和流出中国的通道。第二，香港是中国最大的再出口港口以及大部分内地公司进入世界市场的第一站。目前在香港营运的内地企业达2000多家，总资产达2,200亿美元，就能说明这一点。2007年，香港对全球出口总额，包括来自中国内地的再出口增长了8.3%。

香港地处珠江三角洲，是中国最具活力的制造业中心的重要组成部分。珠三角还包括广东省的广州、深圳、珠海、佛山、江门、东莞、中山、惠州和肇庆的一部分以及澳门特区。

据估计，在内地的港资公司吸纳了1,100万内地工

人，其中1000万在珠江三角洲地区。此外，约有50万香港人在内地工作，他们主要集中在珠江三角洲的70,000家工厂中。在香港一个重要而独有的现象，即大多数外国人通常比大陆人员更容易获得香港的签证。这使得劳动力严重短缺成为香港经济发展的一大劣势。1979年以来，珠江三角洲地区外商直接投资总额的三分之二来自香港。

香港特首曾荫权在2007年10月发表的政策讲话中表示，香港政界工商界领袖普遍认为，自满心态是香港面临的最大的威胁。这反映出香港是一个成熟的经济体，而一个成熟经济体面临的问题总是最为突出的。香港美国商会认为，香港要避免沦为自满心态的受害者，需要解决的主要问题包括正在酝酿的竞争法、药品专利以及中华人民共和国人员签证问题。

主要变化及具体问题

香港竞争法

香港特区政府受到来自世贸组织的压力，经过广泛的公开咨询，最近宣布准备起草一部新的竞争法。新竞争法立法目标、范围及特点目前尚未定论，而且草案一旦公布，还将面对公众的进一步讨论。在这个问题上，香港美国商会关心的有三个问题：该法是否违背了香港传统的不干预政策精神；竞争法是否针对特定的商业群体；竞争法试图根本改变现行的市场结构，可能动摇香港经济的稳定。

香港政府宣布，将在下列前提下推动新竞争法立法程序，即该法将包含以下关键性的原则和宗旨：（1）增强市场效率；（2）适用于各个行业；（3）只针对扭曲市场的行为（而非市场结构）；（4）促进具有充分依据的执法行动以及（5）提供公正透明的司法裁判。香港美国商会对此表示支持。

药品专利联系

香港药品专利保护与药品登记体制间缺乏“联系”或协调。这一漏洞导致非专利持有者对一项已经有效的专利可以实施药产品登记，因为根据有关法律

that the law potentially destabilizes the economy by attempting to fundamentally reform the existing market structures.

AmCham supports the Hong Kong Government’s announcement to proceed with the new competition legislation to the extent that the final law incorporates these key principles and objectives: (1) enhances market efficiency; (2) applies across all sectors; (3) targets only market-distorting conduct (and not market structures); (4) promotes well-grounded enforcement actions; and (5) provides for fair and transparent adjudication of claims.

Pharmaceutical Patent Linkage

There is a lack of “linkage” or coordination between Hong Kong’s systems for pharmaceutical patent protection and pharmaceutical product registration. This loophole allows for a pharmaceutical product registration application on an already valid patent because there is currently no power under the relevant ordinance and subsidiary legislation to reject such an application or the revocation of a product registration on grounds of patent infringement. Instead, the existing patent holder must seek a remedy through litigation.

International best practices require the applicant for product registration to check a box declaring that its product does not infringe third parties’ rights. The PRC adopted this cost-effective, self-declaration approach recently when it reformed its pharmaceutical laws and regulations. Hong Kong cannot afford to lag the PRC on this issue. “Patent linkages” have long been established in the U.S. and Canada. The EU does not have patent linkage, though its data exclusivity lasts longer than Hong Kong’s, ranging from six to ten years depending on country.

Hong Kong has an obligation to safeguard intellectual property rights as a signatory to the Paris Convention for the Protection of Intellectual Property and the Agreement on the Trade Related Aspects of Intellectual Property Rights Protection. Hong Kong’s continuing inability to fully safeguard pharmaceutical patent rights discourages investment by international firms and will hamper local innovation. This obviously runs counter to Hong Kong government’s stated desire to make Hong Kong the world’s Traditional Chinese Medicine (TCM) capital.

PRC Staff Visa Issues

Despite recent positive steps, Hong Kong and PRC restrictions on visas and visa processing for PRC-national staff traveling to or working in Hong Kong continue to be very restrictive, with a negative impact on Hong Kong’s international competitiveness. PRC-national employees in Hong Kong are constrained in their ability to travel to and from Hong Kong for business meetings, training and short-term developmental assignments. Specialized PRC professionals, except in the limited areas of finance and IT, cannot obtain work visas to fill positions in multinational companies in Hong Kong, even when equivalent local professionals are not available.

The difficulty to obtain multiple-entry visitor or work visas on a timely basis, as compared to non-PRC nationals, forces companies to use locations other than Hong Kong as sites for business meetings, special projects and normal developmental and training assignments. All of these limitations on visas for PRC nationals damage the city’s competitiveness and attractiveness as a place to establish regional business centers.

Hong Kong has made recent improvements in training programs for local staff, plus “special talent scheme visas” and “professional visas” for PRC-nationals. These special visas are positive steps but they are limited in scope, inflexible and often difficult to acquire.

The Hong Kong and PRC government authorities should continue to address PRC-national staff visa issues to improve mutually beneficial business development activities and to allow Hong Kong-based companies to offer the same training and development opportunities to their PRC-national staff as they do to all of their employees. ■

Recommendations

Hong Kong’s Competition Law

- The law should clearly state a market efficiency objective. AmCham endorses the Competition Policy Review Committee’s articulation of the law’s objective as “enhancing economic efficiency and the free flow of trade, thereby also benefiting consumer welfare.”

和附属法律，任何机构都无权以专利侵权为理由拒绝实施或取消产品登记。相反，现行专利持有者必须通过司法程序寻求解决办法。

国际上最好的做法是要求产品登记申请人向审查机构声明，该产品不侵犯第三者权利。中华人民共和国最近在修改有关药品法规时，采取了这一成本效益较高的自行声明的做法。香港在此问题上不应该落后。美国、加拿大很早就采取了“专利联系”的做法。欧盟没有采用这一做法，尽管欧盟对数据排他性的年限要求要比香港长，根据不同国家从6年到10年不等。

作为保护知识产权巴黎公约和知识产权保护贸易相关问题协定的签约方，香港有义务保护知识产权。香港对知识产权缺乏充分保护的做法如果继续下去，将使国际公司信心受到打击，影响香港本地的创新。这明显不符合香港政府公开表明使香港成为世界中医之都的愿望。

中华人民共和国人员签证问题

尽管香港近期采取了一些积极步骤，香港与中华人民共和国对内地人员赴港旅行和就业的限制依然十分严格，这对香港国际竞争力产生了消极影响。在港内地雇员出入香港参加商务会议、培训和执行短期开发任务时能力受到限制。除金融、信息技术等有限领域外，即使当地同等水平的专业人员不够，内地专业人员向在港跨国公司申请职位却无法得到香港工作签证。

与非中华人民共和国公民相比，中华人民共和国内地人员难以及时获得多次有效访客或工作签证，迫使公司到其它地方召开商务会议、实施特别项目、进行正常的开发和培训任务。所有这些针对内地公民的签证限制措施影响了香港的竞争力和建立地区商务中心的吸引力。

最近，香港改进了为本地人员进行培训的做法，还实施了对内地公民的“特别精英计划签证”和“专业人员签证”。这些特别签证的做法是积极的，但范围有限，缺乏灵活，且获得签证经常十分困难。

香港和中国政府有关部门应继续解决内地公民的签证问题，以促进互利的商务开发活动，使在港公司向对所有雇员提供培训和开发机会一样，向其雇用

的内地人员提供培训和开发机会。

建议

建香港竞争法

- 该法应明确确定市场效率目标。香港美国商会支持香港竞争力政策审查委员会所提出的：该法目标应为“加强经济效率和贸易自由流动，进而也提高消费者福利。”
- 新法应改变现行的行业有别的竞争机制，实施适用于所有市场主体的竞争机制。
- 该法的对象应为损坏性行为而不是试图管理兼并和垄断行为。
- 该法不应列出一系列受到禁止的行为，而应仅仅表示禁止任何导致不合理地限制竞争的行为。
- 该法应由具备有关问题专业知识和公诉能力的独立机构执行。
- 所有诉讼案的裁决应该透明并接受香港法院的司法审核。

药品专利联系

- 香港政府应采取措施保护药品专利权，包括通过修正案要求申请人公开申明其产品的状况，拒绝或取消基于虚假申报而进行的产品登记申请。
- 药品与毒品署现行做法是颁发药品/产品注册许可证授权该产品“在香港境内销售”。由于香港注册的产品可能违反其他法律和利益，应停止这一做法，注册许可证应仅申明该产品业已注册。

中华人民共和国人员签证

- 香港特区政府应简化签证申请程序，使快速批准程序规范化，颁发一年多有效签证。
- 中华人民共和国政府应颁发具备多次出境签注的通行证，放宽内地人员进入香港的时间期限。
- 香港特区政府应向内地人员颁发一至三年有效的工作许可证。

- The new law should supplant the existing sector-specific competition regime and apply across all market sectors.
- The law should target harmful conduct, rather than attempt to regulate mergers and monopolies.
- Rather than set out a list of prohibited types of conduct, the law should simply state a general prohibition against any conduct that has the effect of unreasonably restraining competition.
- The law should be enforced by an independent agency with subject matter expertise and prosecutorial discretion.
- Claims should be transparently adjudicated and subject to judicial review in Hong Kong courts.

Pharmaceutical Patent Linkage

- The Hong Kong Government should take measures to safeguard pharmaceutical patent rights, including an amendment requiring applicants to declare the patent status of their products and to reject or revoke product registration applications based on false declarations.
- It is the current practice of the Pharmacy and Poisons Board to issue a Certificate of Drug/Product Registration authorizing products “to be marketed for use within Hong Kong.” Because a product registered in Hong Kong may violate other legal provisions and interests, this practice should be discontinued and registration certificates should simply state that the product is registered.

PRC Staff Visas

- The Hong Kong SAR Government should simplify the visa application process, standardize lead-time for visa approval and issue multiple-entry visas valid for one year.
- The PRC Government should issue passports with multiple-exit visas permitting PRC-national staff a wide timeframe for entering Hong Kong.
- The Hong Kong SAR Government should issue work permits to PRC-national staff valid for stays of one to three years.
- The PRC Government should make multiple-exit permits available to PRC-national

staff possessing Hong Kong work permits. Provisions should also be made to enable PRC passports to be renewed in Hong Kong.

- 中华人民共和国政府应允许持有香港工作许可证的内地人员获得多次出境许可。同时应允许在香港更新中华人民共和国护照。



Northeast (Dongbei) Region

Three years into the implementation of China's northeast rejuvenation program, the provinces included in the plan are still struggling with many long-standing problems. The program was designed to restructure and invigorate the economies of the three provinces that comprise the Northeast region, or "Dongbei": Liaoning, Jilin and Heilongjiang. A recent report published by the Chinese State Council acknowledged that problems continue to persist.

While the program was intended to address some of the long-term challenges facing the northeast, the short-term outcome has failed to meet expectations, despite accelerated economic growth and progress made in restructuring state-owned enterprises (SOE). The success of the northeast's rejuvenation will hinge on future efforts in addressing entrenched structural problems in the region. Although central government support for the area remains, it may be limited by increasing competition from other regional development programs in western and central China.

Significant Developments

The most recent policy package from the State Council in its "Plan for Rejuvenating the Northeast Region" focuses on enhancing the competitiveness of the existing industrial resources in Dongbei's three provinces. Earlier efforts have brought industrial investment funds, preferential policies for investment, write-offs of tax arrears for firms, as well as numerous other fiscal measures to support the northeast's business community. The State Council claims that marked progress has been made in this rejuvenation effort, but persistent problems that seem to require additional attention in northeastern China suggest otherwise.

The State Council has cited this campaign as a 10- to 15-year project, after which it hopes that the northeast will achieve a level of economic development that puts this regions at the head of the economic pack nationally. The State Council wants to foster the development of highly competitive firms in the equipment-manufacturing sector and the new raw materials and energy sectors. The Council also wants to create an agricultural-product processing base and a "base for technological research and innovation." In reality, this means that the State

Council wants to boost the competitiveness of core industries in the region and to see a return on the billions of RMB it has invested in there in support of "research" activities.

SOE restructuring is crucial to the rejuvenation of the old industrial bases in the northeast. Wang Zuji, head of Jilin's development and reform commission, was quoted in a recent *China Economic Times* article saying that such restructuring was necessary. Wang cited the poor institutional environment as one of the major reasons for the region's loss of competitiveness. Particularly, the rigid institutional environment has discouraged entrepreneurship and the emergence of new industries, suppressing the development of the private economy and foreign-invested businesses. SOE restructuring, which involves either partial or total privatization, is considered the only solution to the problem. Since 2005, Jilin province alone has completed the restructuring of 816 SOEs, reducing the state's holdings in these firms to 25.9 percent.

The recent State Council report, *Three Year Evaluation of the Northeast's Rejuvenation*, claimed that 2004, 2005 and 2006 represented one of the best and fastest-developing periods in the region's history. This statement is accurate when considering the extent of government support the region has received and the magnitude of the economic stimulus that such policies have entailed. During the past three years, an unprecedented amount of preferential government policies have been accorded to the three northeast regions. These include a pilot value-added tax (VAT) reform scheme that allows input tax credit on fixed assets, the write-off of corporate debts accumulated before 1997 and discounted loans.

The combination of various supporting policies has fuelled economic growth in the three provinces, with their average annualized growth rate during 2004-2006 reaching 12.6 percent, some 2.6 percentage points higher than the corresponding figure for the previous three-year period. On average, the three provinces' gross domestic product (GDP) growth rate during the three years were 2.2, 1.8 and 2.8 percentage points higher than the national average in 2004, 2005 and 2006 respectively. During these three years, much of the growth was driven by fixed-asset investment, which surged 33.5 percent, 39.3 percent and 37.4 percent. All of these figures

东北地区

中国东北老工业基地振兴战略实行三年来，东北三省依然要面对许多业已存在，且难以解决的问题。此项旨在调整和刺激东北经济的计划包括辽宁、吉林、以及黑龙江三个省。中国国务院近期发布的一份报告也指出，东北三省的这些问题将会继续存在。

虽然振兴战略意在解决东北三省面临的某些长期存留的经济问题，改制后国有企业的经济也出现了增长和进步，但是，改制过程中出现的短期效果与当初的设想相差甚远。所以，我们认为，在未来阶段内，经济振兴战略的最终成功应取决于着力解决东北地区根深蒂固的产业结构问题。但不容忽视的一点是，尽管中央政府将会继续支持这一地区的经济，但是随着其对中国中西部地区的经济支持计划的出台，对东北地区的支持力度也许会减弱。

重大进展

国务院关于“东北老工业基地振兴战略”出台的最新一揽子政策中，强调的重点就是要提高东北三省现有产业资源的竞争力。振兴战略在早期实施阶段引进了工业投资资金；制定了投资优惠政策；豁免了企业的欠税；向企业提供了多项财政支持措施。国务院认为，振兴战略在实施过程中取得了一定的效果，但是，东北地区依然存在长期无法解决，需要特别关注的问题。

国务院把东北老工业基地振兴战略比作一场持续“十年至十五年”的战役。这场战役之后，他们希望东北地区的经济能够发展到一定水平，可以雄踞全国前列。国务院鼓励提高装备制造业、新材料和能源产业的竞争力。他们还计划建立“农产品加工基地和技术研究与创新基地”。事实上，国务院希望推进东北地区核心产业竞争力，也希望看到投入到该地区支持研究活动的数十亿人民币所带来的回报。

对国有企业的改制是振兴东北老工业基地的关键。在最近出版的《中国经济时报》的一篇文章中，吉林发改委主任王祖继提到改制是非常有必要的。他还提到落后的制度环境是东北地区失去竞争力的主

要原因之一。尤其是在其僵化的体制下，无法产生企业家，也不可能出现新的产业，同时还阻碍了民营经济和外资企业的发展。对国有企业通过部分或全部私有化的改制，被认为是解决问题的唯一方法。自2005年以来，仅吉林就完成了对816家国有企业的改制，在这些企业中，国有资产占有比例减至25.9%。

最近，国务院发布了《东北振兴三年评估报告》。报告声称，2004年至2006年是东北地区经济发展历史上最好最快的时期之一。考虑到中央政府对这一地区的支持力度以及颁布的一揽子刺激经济政策，我们认为此报告的内容是准确的。在过去的三年内，政府给予了东北三省大量前所未有的优惠政策，诸如增值税改革中允许固定资产抵扣所含增值税税金；减免企业贷款和1997年以前的企业债务等。

多种扶持政策的联合出台刺激了三省经济的飞速发展。2004年、2005年和2006年，东北三省地区生产总值分别为1.51、1.71和1.97万亿元，同比增长12.3%、12.0%和13.5%；东北三省实施振兴战略以来，三年GDP年平均增速为12.6%，比实施振兴战略前三年（2001年—2003年）增速提高了2.6个百分点。2004—2006年间，三省GDP的年平均增长率为12.6%，比前三年高出2.6个百分点，也高出前三年全国当年增速2.2个、1.8个和2.8个百分点。2004—2006年，固定资产投资拉动了大部分经济增长，三省固定资产投资分别同比增长33.5%、39.3%和37.4%，均高出全国当年增速；三省固定资产投资占全国的比重由2003年的7.6%，同比提高到10.0%。

根据国务院报告，在过去的三年里，尽管东北三省的经济出现明显而强劲的增长，但是保持长期竞争力的能力不足。

国内经济总量比重下降

在2004—2006年间，东北三省取得了高于全国平均水平的经济增长率，但是，东北三省GDP总量占全国GDP总量的比重仍呈下降趋势。2003至2006四年

were above the national average. As a result of this heavy investment, the three provinces' share of the country's total fixed-asset investment rose from 7.6 percent in 2003 to 10 percent in 2006.

Despite the apparently strong economic growth over the past three years, the long-term competitiveness of the northeast remains weak, according to the State Council report.

Declining Share of National GDP

Even though the northeast region achieved above-average economic growth in 2004-2006, its share of the country's GDP actually declined steadily over this period, from 9.6 percent in 2003 to 9.3 percent in 2004, 8.7 percent in 2005 and 8.6 percent in 2006. This is largely a reflection of the widening development gap between the northeast and China's most developed regions. One measure used by the Chinese Government to illustrate this point is by presenting the gap between the combined size of the northeast economies and that of an advanced province like Guangdong. Despite rapid growth in Dongbei in recent years, this gap has widened drastically, with the GDP ratio between the three provinces and Guangdong declining from 80.3 percent in 2003 to 77.1 percent in 2004, 76.6 percent in 2005 and 58.3 percent in 2006.

Specific Issues

State Sector

The state sector remains a significant part of the Dongbei regional economy despite recent shareholding reform, a process that entails partial or complete privatization. Although the three provinces have completed the restructuring of most of the SOEs officially scheduled for reform, the industrial value added from the state sector in Liaoning, Jilin and Heilongjiang still accounts for 53, 63 and 66 percent of their respective provincial total. This exceeds the national average by 17.3, 27.3 and 30.3 percent respectively. This is problematic because the lack of private participation in the regional economy is believed to suppress innovation and competition to the detriment of its long-term competitiveness.

Low Profitability

With the exception of oil and natural gas exploitation, power generation and transmission, transport equipment manufacturing and black metal smelting, industries in the northeast have reported very low

profitability. More than 70 percent of the industrial profit in the three provinces was generated by oil and natural gas exploration firms in 2006, all of which are centrally controlled SOEs that report to headquarters in Beijing. Overall profitability in the northeast only increased 22.5 percent year-on-year in 2006, which was 8.5 percentage points lower than the national average.

Financial Environment

Bad debts that SOEs owe in the northeast approach RMB140 billion (US\$18.2 billion), accounting for almost half of all total bad debts in the region. The existence of such a huge amount of bad debt in the banking sector, combined with a deteriorating credit environment, has discouraged banks from lending to local firms and led to a large exodus of capital from the region. Since 2004, the region's deposit-loan discrepancy—which measures the excess amount of deposits that are not loaned by banks—has been increasing steadily and reached RMB858.1 billion at the end of 2006.

External Economy

Despite above-average growth in foreign direct investment (FDI) in the region, the northeast's combined share of nationwide FDI was merely 12.2 percent in 2006. This level was significantly less than the 20.9 percent in Guangdong and the 14.4 percent in Shandong. The region's foreign trade is also minimal, accounting for just 3.9 percent of the national total and less than a third of that of Guangdong province. ■

Recommendations

- Clarify the incentives and support available to the foreign investment community as a step towards improving the predictability of the operating environment.
- Extend “experimental” reforms underway in Tianjin to key cities in northeastern China to make financial and commercial transactions easier.
- Strengthen efforts to integrate the regional economy in the northeast with other commercial centers around the country through continued trade promotion and inter-regional cooperative events.

间分别为9.6%、9.3%、8.7%、8.6%。这些数字在很大程度上反映了东北地区和中国经济最发达地区的日益扩大的经济发展的差距。中央政府用东三省的总体经济规模与以广东为代表的发达省份之间的差距为例，予以进一步说明。在最近几年内，尽管东北经济出现了飞快的增长，但是这种差距却在日渐扩大，2004年、2005年和2006年，东北三省的GDP只分别相当于广东省当年GDP总量的77.1%、76.6%和58.3%。

具体问题

国营企业

最近，虽然实行了部分或全部私有化的股权改革，国有企业仍然是东北地区经济的重要组成部分。按照改革进程，东北三省已经完成大部分国有企业的改制工作，但是辽宁、吉林、黑龙江的国有及国有控股工业增加值却分别只占本省总产值的53%、63%以及86%。与全国平均水平相比，分别高出了17.3%、27.3%、以及30.3%。这些数字并不令人乐观，一般人们会认为，如果没有民营经济的参与，一个地区的经济会缺少创新意识和竞争力，从而影响了其长期竞争力。

低效益

据报道，除了石油与天然气开采业，发电生产与供应、交通运输设备制造业以及黑色金属冶炼行业外，东北地区其他行业的效益低迷。2006年，三个省份70%以上的产业利润都来自石油与天然气开采，而且它们都属于中央直属企业，总部设在北京。与上年同期数字相比，2006年东北地区工业实现利润仅增长了22.5%，比全国平均水平还低了8.5个百分点。

金融环境

东北地区国有及国有控股企业的不良贷款余额近1,400亿元人民币（合182亿美元），占整个东北地区不良贷款总额的近50%。巨额不良资产以及亟待改善的信用环境导致银行无法向企业提供贷款，资金大量沉淀和外流，2004年以来，东北三省存贷差逐年以上千万元增加，截至2006年底高达8581亿元人民币。

外来经济

2006年，尽管外商直接投资高于平均增长水平，但是东北三省实际利用外资占全国的比重为12.2%，与广东的20.9%以及山东的14.4%相比，这个数字还是过低。东北三省的进出口贸易总量较小，仅占全国的3.9%，不及广东省的1/3。

建议

- 首先向外国投资者阐明鼓励和支持性政策的内容，以此营造一个可预知的运营环境。
- 将天津滨海新区金融改革试验区延伸至东北的主要城市，使得金融和贸易方面的事务处理起来更加便捷。
- 通过增进贸易往来和地区间的合作，努力促进东北地区和周边国家商业中心的区域经济一体化的发展。

Shanghai

In 2007, Shanghai's strong economy underpinned an improving investment climate for U.S. businesses. Contributing factors include greater customs transparency, expanded infrastructure and incremental improvements in the general business operating environment. Shanghai's attraction for American business continues to be strong growth, openness to foreigners and financial sophistication. Even with the municipal government's measures to slow overall growth, Shanghai has clear plans to expand the service sector, elevate the industrial sector and enhance regional collaboration.

Shanghai municipality posted its 16th year of solid economic growth in 2007 with fiscal revenues of US\$28.8 billion, a 31.4 percent rise over 2006. A highlight of 2007 was the rapid rise of the Shanghai Stock Exchange, which rose 97 percent in 2007, hitting an all-time high in October. Driven by fears of an emerging bubble, efforts that began in 2006 to control and maintain the city's rapid growth at a sustainable level were broadened during 2007. Despite these ongoing efforts, total two-way foreign trade rose to US\$480 billion and foreign direct investment rose to US\$7.9 billion, an 11 percent increase from 2006, while contracted overseas investment reached a record US\$14.9 billion.

Reinforcing Shanghai's position as a top business center in Asia, 88 percent of respondents in AmCham Shanghai's *2007 China Business Report* reported higher revenues in 2007 over 2006, though the cost of doing business in Shanghai also rose over the same period. A key emerging trend for businesses is a growing interest to expand their operations into second- and third-tier cities. Many cite access to new markets as the top cause for exploring expansion, ahead of costs.

The biggest challenge to U.S. businesses in Shanghai remains human resources, but unclear regulations, inconsistent regulatory interpretation, lack of transparency, bureaucracy and intellectual property rights all persist as significant issues. The tight human resources market and resulting rise in salaries and wages had the largest negative influence on margins. But the Shanghai Government took steps in 2007 to improve the overall business environment, including working with AmCham to

improve transparency and ease certain regulatory hurdles. AmCham looks forward to continuing its strong partnership with the Shanghai Government to address issues of importance to U.S. companies.

Significant Developments

With an eye on the 2010 World Expo, significant improvements to the city's infrastructure are underway. In 2007, Shanghai inaugurated more than 100 kilometers of new subway track, making it the world's seventh-longest subway network. New D-series CRH trains were launched between Shanghai and other cities in the Yangtze River Delta, dramatically shortening travel times. The Changjiang Bridge, linking mainland Shanghai and its two biggest islands, and the Shanghai World Financial Center (Mori Building) – mainland China's tallest – were both topped out in 2007.

As Shanghai focuses on continually improving its investment climate for foreign businesses, the city has made strides towards easing business operations for U.S. companies. Shanghai Customs, working with the AmCham Shanghai Customs Liaison Program, addressed the most pressing concerns of U.S. businesses through a series of briefings, workshops and discussions in 2007. During the year, Shanghai Customs launched its English-language website, opened a hotline for Customs support and began a pilot paperless clearance system. These actions improve business operations for American companies and increase the transparency of Shanghai Customs.

Communications between U.S. companies and the Shanghai Government continued improving in 2007. Working together with the Shanghai Municipal People's Government Foreign and Economic Trade Commission (SMERT), AmCham Shanghai organized a series of events for members to meet Shanghai district mayors and officials. AmCham applauds SMERT's recent initiative seeking the Chamber's comments on the new Foreign Investment Catalogue and its perspective on "modern logistics."

Shanghai has continued its gradual improvement in the overall environment for IPR protection. A database for logging all IPR complaints in Pudong was launched in 2006 and expanded to all 19

上海

2007年上海经济的强劲增长为美国企业持续创造了一个日趋良好的投资环境。其主要原因包括包括关税透明度提高、基础设施发展及整体商业运营环境的改善。对于美国企业而言，上海的吸引力仍然在于其强劲的经济增长、开放的市场环境和发达的金融行业。虽然上海市政府采取了控制经济过快增长的措施，但对继续扩大服务业、提升产业发展和加强地区合作等方面的规划非常明确。

截至2007年，上海经济连续16年保持稳健增长，财政收入达到288亿美元，比2006年增长31.4%。上海证券交易所的快速发展是2007年一个引人注目的焦点。2007年上交所交易额增长97%，10月份创下历史新高。尽管出于对泡沫经济的担心，市政府2007年扩大实施了其在2006年启动的，旨在保持经济稳步增长的一系列措施，但2007年上海外贸总额仍然上升到4,800亿美元，外商直接投资达到79亿美元，比2006年增长11%，外商合同投资额也创下149亿美元的历史新高。

根据上海美国商会《2007中国商业报告》，88%的受访者表示尽管在沪经营成本有所增加，但其在2007年的收入仍然超过2006年。这一调查结果进一步显示了上海作为亚洲顶级商业中心的地位。越来越多的企业将业务拓展到二线和三线城市，这是当前正在出现的一个主要趋势，不过同时许多案例表明企业寻求扩展的最主要原因是开拓新的市场，而非成本因素。

人力资源仍然是美国企业在中国面临的巨大挑战。但法规不明确、法规解释不一致、透明度欠缺、官僚主义和知识产权等也依然是重要的问题。人力资源的紧缺和随之而来的薪酬和工资的上涨影响了企业利润的增长。但我们看到，上海政府在2007年采取改善整体经营环境的措施，包括与上海美国商会在增加透明度和减少某些监管壁垒方面进行的合作。上海美国商会期待与上海市政府保持密切的伙伴关系，以期解决美国企业关心的重要问题。

重大发展

着眼于2010世博会，上海市正在全面改善其基础设施。

2007年，上海新开通地铁总长达到100多公里，其地铁网络规模由此位居世界第七。上海和长江三角洲其它城市之间开通了动力车组，极大缩短了通行时间。连接上海本土和其两大岛屿的长江大桥及上海环球金融中心（森大厦株式会社）均在2007年封顶。

上海继续关注外商投资环境的改善，在为美国企业创造轻松的运营环境等方面取得重大进展。2007年，上海海关和上海美国商会开展合作，通过举办一系列简报会、研讨会和座谈会，提交了美国企业面临的最为迫切的一些问题。同年，上海海关还推出了英文版的网站，开通海关服务的热线电话，并启动无纸通关的试点系统。这些举措便利了美国企业的商业运营，增加了上海海关的透明度。

2007年，美国企业与上海政府之间的沟通不断改善。上海美国商会与上海市对外经济贸易委员会共同举办了一系列活动，使商会成员企业有机会与上海市各区区长及其他官员见面。近期，上海市对外经济贸易委员会征求了商会成员对新公布的《外商投资产业指导名录》的意见，并听取了会员对“现代物流业”的发展前景的建议，对此，上海美国商会表示非常赞赏。

上海在改善知识产权保护的整体环境方面取得进一步进展。2006年，浦东保护知识产权举报投诉服务中心正式成立；至2007年，类似机构已发展至上海19个区县。另外具有重要意义的事件还包括：张江高科技园区知识产权投诉热线的启动；上海市公安局经济犯罪侦查总队与中国优质品牌保护委员会举办回顾关于“加强沟通协作的会晤纪要”讨论会，以加强合作，分享成功经验。

上海电信根据中国美国商会《2007年度白皮书》的建议，在2007年成功发行了全新高速拨号网卡以改进互联网的连接性。

《2007年中国商业报告》的多数受访者指出，上海生活的整体质量对其聘用并留住外籍经理人才及其投资的增加与否发挥着积极的影响。

Shanghai districts in 2007. Other 2007 milestones include the launch of an IPR complaint hotline in the Zhangjiang Hi-Tech Park and the renewal of the Shanghai Economic Crime Investigation Department's (ECID) MOU with China's Quality Brands Protection Committee (QBPC) to improve cooperation and share best practices.

Following the recommendations in the 2007 White Paper, Shanghai Telecom successfully launched new high-speed dial-up internet cards to improve internet connectivity in 2007.

A majority of respondents in the *2007 China Business Report* say that overall Shanghai quality of life has a positive affect on their ability to recruit and retain top non-Chinese managers and on investment expansion decisions.

Areas identified by AmCham members where business and government might continue to improve channels of communication and share best practices include: energy supply stability, internet connectivity, traffic and transportation, airport infrastructure and environmental protection/air quality.

Specific Issues

Yangtze River Delta Region

Three Yangtze River Delta (YRD) cities – Nanjing, Hangzhou and Wuxi – made AmCham Shanghai members' top 10 listing of second and third-tier cities under investment consideration. The YRD, led by Shanghai and encompassing parts of Jiangsu and Zhejiang Provinces, is one of China's economic powerhouses. In 2006, the YRD accounted for nearly a quarter of China's GDP, US\$608.9 billion, with Shanghai boasting an annual GDP of US\$132 billion. AmCham is encouraging the Shanghai, Jiangsu and Zhejiang governments to work together and achieve greater regional integration within the YRD.

AmCham emphasizes the need to build on the ideas outlined by former Shanghai Party Secretary Xi Jinping in his March 2007 speech on increasing regional links within the YRD. Greater integration within the YRD, leading to the eventual creation of a unified YRD-province, is necessary to maintain the YRD's competitive edge in China and the Asia-Pacific region, he said.

Combining Shanghai and the rest of the YRD into one provincial-level region could bring synergies

in areas such as customs, education and training, human resources, IPR protection, tax, transportation and logistics, and visa processing. These synergies would benefit both the regional governments and U.S. companies invested in the region by reducing bureaucracy, streamlining numerous business processes and improving distribution within the YRD.

In August 2007, representatives from the China Investment Promotion Agency under the Chinese Ministry of Commerce, the China International Investment Promotion Center and AmCham Shanghai signed a Memorandum of Understanding to establish a partnership to promote the annual China International Fair for Investment and Trade. AmCham is honored to play a key role in promoting this major investment event to the foreign business community in the YRD region.

Talent Scarcity

Unfortunately, Shanghai's rapid economic expansion in 2007 did little to relieve the municipality's fiercely competitive human resources market. In the *2007 China Business Report*, the key HR aspects affecting up to 80 percent of respondents were difficulty attracting, developing and retaining skilled and professional workers and management staff, and to a slightly lesser extent, technical staff. Rising salaries and concerns over the implementation of the new Labor Contract Law and Employment Promotion Law were also significant issues.

AmCham is pleased to note that the Shanghai Government has acknowledged the talent shortage affecting foreign and domestic companies within the city. AmCham supports moves by the Shanghai Government to work with educational institutions and corporations to build capacity by improving the quality of higher education and expanding access to vocational education programs. AmCham encourages the Shanghai Government to continue these programs and improve other aspects of human resources management, including local residency restrictions on employees with non-Shanghai *hukous* and visa arrangements for foreign staff.

Maintaining Shanghai's Investment Edge

AmCham is encouraged by the general overall improvement in Shanghai's investment climate, but Chamber members continue to voice concerns over bureaucracy, lack of transparency and

商会成员指出应在能源供应的稳定性、互联网的连接性、交通和运输、机场的基础设施及环境保护或空气质量等领域，继续与政府保持良好沟通，分享最佳实践经验。

具体问题

长江三角洲地区

长江三角洲的城市：南京、杭州和无锡入围上海美国商会成员考虑投资的十大二线和三线城市。长江三角洲以上海为龙头，覆盖江苏和浙江两省的部分地区，现已成为中国经济发展的引擎。2006年长江三角洲地区的GDP达到6,089亿美元，占全国GDP总值的近四分之一，其中上海的GDP高达1,320亿美元。上海美国商会正着手促进上海、江苏和浙江三地政府共同努力，以实现长江三角洲地区更紧密的融合。

上海美国商会强调，必须着手实施上海市前市委书记习近平在2007年三月讲话中提到的进一步推动长江三角洲地区联动发展的战略。长江三角洲地区的紧密融合将有助于长江三角洲地区的共同发展，这对于保持该地区在中国及亚太地区的竞争优势而言是必要的。

包括上海在内的长江三角洲的经济融合将有助于发挥该地区在诸多方面的合力，例如关税、教育和培训、人力资源、知识产权保护、税收、交通和物流以及签证审批。这些合力将有助于减轻官僚主义、精简繁复的业务流程并改进地区内的分销体系，从而使地区政府及在该地区投资的美国企业获益。

2007年8月，中国商务部投资促进事务局、中国国际投资促进中心和上海美国商会的代表签署了谅解备忘录，旨在建立伙伴关系以推动年度中国国际投资贸易洽谈会的发展。能向在长江三角洲地区的外国企业界宣传此项盛事，上海美国商会感到很荣幸。

人才短缺

不幸的是，上海经济2007年的快速发展，丝毫未能缓解这座城市人才市场过于激烈的竞争压力。根据上海美国商会《2007年中国商业报告》，近80%的受访者认为人力资源方面的问题主要是吸引、培养和保留熟练技术工人和管理型人才非常困难，技术人

员相应次之。薪酬上涨以及对新《劳动合同法》和《就业促进法》实施的关注也成为重要问题。

上海美国商会很高兴的注意到，上海政府已认识到人才短缺对该市内外资企业发展的制约。商会支持上海政府与教育机构和公司合作，通过提高高等教育的质量和普及职业教育项目而提高能力建设。商会鼓励上海政府坚持这些项目，并改进人力资源管理的其它方面，包括非上海户口的员工面临的本地居住限制及外国员工的签证安排等。

保持上海的投资优势

上海投资环境的总体改善令上海美国商会大为鼓舞，但商会成员指出仍存在官僚主义、透明度缺乏和法规不一致等问题。上海郊区和县级政府对法规的解释不一致，同时缺少了解这种差异的明确途径是企业成员担心的主要问题之一。

上海美国商会强调需向外资企业提供明确透明的投资法规。例如，商会赞赏上海海关在2007年创建英文网站，使美国企业可以更加便捷的获取海关的相关政策法规和信息。商会在期待2008年该网站完整版的建成，鼓励上海其它政府部门效仿海关这一做法的同时，仍强调应采取更多措施以实现完全透明。

商会针对上海浦东区外资的一项调查显示，缺乏一站式投资服务机构是外商投资者面临的最关切的问题。商会希望通过设立一个单独机构，作为投资上海相关信息的中心平台，从而能够继续推动一个真正的一站式的投资服务机构的建立。目前，在沪投资所需文件来自22个不同机构，达55份申请表。令商会大受鼓舞的是，上海市对外经济贸易委员会正在积极推动上海各区区长和商会成员建立联系并组织见面会。商会也期待着2008年上海能在建立一站式投资服务机构方面取得更多进展。

知识产权保护

上海美国商会《2007年中国商业报告》指出，知识产权保护仍然是外企最关心的商业问题，而且一半受访企业对中国在2007年加强知识产权保护方面所作的努力，感受不到明显的变化。

上海美国商会承认上海政府在监督和执行知识产权保护方面的持续性努力。2007年一项值得关注的进

inconsistent regulations. A chief concern among member companies is the inconsistent interpretation of regulations by different district governments around Shanghai and the lack of a clear resource to understand the different interpretations.

AmCham emphasizes the need for clear and transparent access to investment regulations to foreign companies. As an example, the Chamber applaud the launch of the Shanghai Customs Administration's English-language website in 2007, as it gives U.S. businesses easier access to customs policies and regulations. We look forward to the full version of the website in 2008 and encourages other Shanghai government agencies to follow Shanghai Customs' lead, but still emphasizes the need for additional steps to be taken to ensure full transparency.

An AmCham survey of foreign investors in Shanghai's Pudong district identified the absence of a one-stop investment services agency as one of their most pressing concerns. AmCham continues to push for a true one-stop investment services agency through the establishment of a single government entity that will serve as a central source of information on investing in the city. Today, the amount of paperwork required to invest in Shanghai can total as many as 50 applications among 22 different agencies. AmCham is encouraged by SMERT's active role in organizing introductory meetings between Shanghai district mayors and AmCham members and looks forward to increased progress towards a one-stop investment services agency in 2008.

IPR Protection

As noted in the *2007 China Business Report*, IPR protection remains a top business concern for foreign companies, with half of those surveyed for the report saying they felt few changes had occurred in China's enforcement of IPR protection during 2007.

AmCham acknowledges the ongoing efforts by monitoring and enforcement agencies to increase IPR protection around Shanghai. A notable achievement in 2007 was the inauguration of a telephone hotline to report IPR violators. AmCham highlights Shanghai's continuing move to modernize and improve the efficiency and efficacy of IPR protection throughout the year.

The Pudong District Police Department inaugurated an electronic IPR database in 2006 that was

expanded to the rest of the municipality and neighboring jurisdictions in 2007. The database allows policing agencies and judicial offices to track and compare IPR complaints across the region. AmCham welcomes this system, although cases currently are only being entered into the database at the time a punishment is issued. AmCham strongly encourages all participating agencies and offices to begin entering IPR complaints at the moment they are reported to improve the effectiveness of IPR enforcement.

Results of the Shanghai ECID's year-old effort with QBPC began to show in 2007. In what is now China's largest counterfeit auto parts case to date – worth an estimated RMB120 million – the Shanghai ECID initiated the investigation of a suspicious warehouse. While the investigation was ongoing, the ECID froze the assets of the involved parties and transferred the case to police for further investigation and prosecution. The QBPC considers the case to be one of the ten best IPR protection cases of 2007. AmCham applauds the initiative taken by the Shanghai ECID but emphasizes the need for ECID and other agencies involved in IPR protection to continue their proactive approach to protecting IPR in 2008.

Improving Quality of Life: Traffic, Healthcare and Food Safety

At AmCham Shanghai's annual appreciation dinner, Shanghai Mayor Han Zheng revealed his plan to tackle traffic congestion and address other quality of life issues in the city. AmCham commends the Mayor's plans to alleviate traffic through improved public transportation and his other initiatives to improve air quality and expand greenspace throughout the municipality.

AmCham recommends that the city government increase both education and enforcement of traffic laws and is worried about the lenient enforcement of general traffic laws in Shanghai. AmCham proposes stronger educational initiatives to instruct the city's drivers on the rules of the road while simultaneously implementing more severe punishments for traffic violations in order to improve general traffic flow and the safety of drivers, cyclists and pedestrians.

AmCham has concerns that the high volume of visitors to Shanghai's 2010 World Expo could overwhelm the city's healthcare facilities. AmCham advocates a general improvement and expansion in healthcare facilities, especially those marketing

展是开通了举报知识产权侵权的热线电话。商会认为上海在促进知识产权保护的现代化和提高效率和绩效方面做出的持之以恒的努力是显著的。

浦东区警察局2006年启动知识产权电子数据库,2007年上海市各市区和区县也开始陆续采纳这一作法。该数据库允许司法和执法部门共同追踪并比照本区的知识产权诉讼案件。商会欢迎这个系统的建立,尽管目前案例只能在宣判书公布后才能被输入数据库。商会积极鼓励各有关机构在诉讼上报时即将案例输入数据库,以加强知识产权执法的有效性。

上海市公安局经济犯罪侦察队与中国优质品牌保护委员会经过一年的努力,其合作结果在2007年得以展示。在中国迄今为止最大一起,涉案金额预计超过1.2亿元的反盗版汽车零部件案件中,上海市公安局经济犯罪侦察队从调查一处可疑仓库入手,在侦察过程中冻结相关当事人资产后,将此案转交给警方作进一步调查和指控。中国优质品牌保护委员会称此案为2007年十大最成功的知识产权保护案之一。商会赞赏上海市公安局经济犯罪侦察队的积极主动性,同时仍强调上海市公安局经济犯罪侦察队和其它知识产权保护机构在2008年应继续采取积极措施,保护知识产权。

改善生活质量: 交通、医保和食品安全

在上海美国商会的年度答谢晚宴上,上海市市长韩正谈及了解决交通堵塞和其它影响市民生活质量的问题的计划。对韩正市长提出的通过改善公共交通以缓解交通压力,以及改进空气质量和扩大市内绿地面积等提议,商会给予高度评价。

上海美国商会建议市政府加大对交通法规的宣传教育 and 实施力度。商会对上海整体交通法规实施不严格的现象表示担忧。商会提议在对交通违规现象加大惩罚力度的同时,针对司机加强道路规章的宣传教育,以缓解整体交通压力,保障司机、骑自行车的人及行人的人身安全。

上海美国商会担心2010上海世博会举行之际大量涌入的访客,可能使这座城市的医疗保健设施超负荷运转。商会倡导从整体上改进并扩建医疗设施,尤其是那些标榜为国际标准的医院,使其能够应对更多病人,包括不会讲中文的外国游客。 ■

建议

扩大地区一体化

- 制定长江三角洲地区一体化发展的时间表及相关执行计划。

新的职业和技术培训项目

- 与公司及教育机构合作开展职业培训项目,重点培训外资企业工人所急需的技能。

简化投资程序

- 建立针对外资的一站式投资服务中心,负责向外国投资者提供所有申请和审批的服务。

加强知识产权保护

- 借助公众宣传活动,加大执法力度,以打击公众购买盗版、伪劣产品的行为及相关的销售行为。

交通法宣传

- 在全市范围内启动宣传活动,旨在转变司机、骑车人和行人不尊重交通法规的现状。同时提高罚金金额且/或没收多次违反交规的司机的驾照,以加大执法力度。

基本医疗改进

- 雇用更多会讲英语的医务人员,以应对2008年北京奥运会及2010年世博会期间的大量访客。执行国际最佳实践经验,以确保设备清洁和医务人员的卫生清洁。

themselves as international-standard medical services, allowing the system to handle a high volume of patients, including non-Chinese speaking visitors. ■

Recommendations

Greater regional integration

- Create a timeline and implementation plan for full regional integration and the formation of a single YRD province.

New vocational and skill training programs

- Partner with corporations and educational institutions to create vocational training programs focusing on the skills that are in high demand among foreign and domestic companies.

Full streamlining of the investment process

- Create a one-stop investment service center for foreign investors. The agency would be charged with providing all applications and approvals to foreign investors.

Increased IPR protection

- Use public education campaigns and increased policing to discourage public consumption of pirated or counterfeit goods and the sale of those goods.

Traffic law education

- Begin a citywide marketing and education campaign focused on changing the disregard that drivers, cyclists and pedestrians show for traffic laws. Step up policing with increased fines and/or suspended licenses for drivers who repeatedly violate traffic laws.

General healthcare upgrade

- Hire more English-speaking healthcare staff to cope with the high volume of visitors during the 2008 Beijing Olympics and 2010 World Expo. Adopt international best practices in both the cleanliness of facilities and hygiene of medical workers.



South China

AmCham defines the South China region as the provinces of Guangdong, Fujian, Hainan and Guangxi. This region continues to enjoy a thriving, diverse economy with global reach. U.S. companies, like their international and local counterparts, report nearly unparalleled levels of profitability and optimism about their future. Broadly speaking, the business environment in South China remains excellent.

Significant Developments

Over the past year, a new phase of the Chinese Government's development agenda has been articulated. The push for "scientific development" and a gradual transition away from energy-intensive and environmentally degrading industries, an increasing focus on high value-added manufacturing, as well as encouragement of the services sector, has manifested itself in several areas highly relevant to U.S. businesses in South China; a region known as the "workshop of the world."

A major component of this initiative can be seen in ongoing trends tracked by AmCham South China's annual *Special Report on the State of Business in South China*. In 2003, 65 percent of respondents reported being involved in manufacturing for export and only 35 percent indicated that they provided services for the local or international market. In 2006, these numbers had shifted to 54 percent manufacturing and 46 percent services. The first quarter of 2007 marked the first time services surpassed manufacturing, with only 49 percent of survey respondents reporting manufacturing and slightly more than 50 percent providing services.

These numbers are a clear demonstration that the evolutionary goals set by the PRC Government are succeeding and should continue to do so in South China through 2008 and beyond.

This trend towards a more service-oriented economy can be reasonably explained by the tendency of manufacturing operations to add sales, support and administrative layers to their existing operational scope in order to increase their participation in the local economy. In some cases, this transition has led to an almost undivided focus on capturing

market share in the local Chinese economy in lieu of exporting goods. According to AmCham South China's study, the top three operational priorities for companies in 2007 were "overall China business activities," "services provided in China" and "expansion of existing China facilities."

Similarly, nearly 90 percent of respondents indicated planned reinvestment of profits into their South China operations, with 65.1 percent planning to reinvest up to US\$10 million, 13.5 percent planning to reinvest US\$10 million to US\$50 million and nine percent planning to reinvest in excess of US\$50 million each.

Finally, 93 percent of respondents were profitable in 2007, or expected to be within two years or less. The remaining seven percent expect to reach profitability within three to five years.

These consistently positive trends and the active responses of regional governments will ensure South China's continued status as a competitive and lucrative area of operations in the PRC. The shift to new development priorities is already underway and the relatively painless transition is a testament to the efficacy of all levels of the South China leadership.

Specific Issues

The 2007 *Special Report* indicated a government approval rating of 91 percent in South China. Despite this highly positive and optimistic overall outlook, there have been some issues over the past year that have adversely affected many U.S. companies operating in South China.

Processing Trade and Value Added Tax (VAT) Rebate Changes

Chief among the issues in this region have been the widely reported changes to the processing trade and VAT rebate policies. These changes took effect in three stages during 2007 via Announcements 17 and 44, both led by the Ministry of Commerce, and the Circular of the Ministry of Finance and the State Administration of Taxation (No. 90). Each change became effective within between eight and 20 working days of announcement. Consequently, affected industries had little time to prepare for or

华南

本文所述的华南地区包括广东、福建、海南和广西四个省区。该地区持续呈现全球经济多元化所带来的繁荣。调查显示，和其他跨国及本地企业一样，美国企业对其利润水平和发展前景表现空前乐观。总体而言，华南地区的商务环境保持良好。

重大发展

在过去的一年中，中国政府的发展规划进入了一个新阶段。事实证明，在积极推进“科学发展观”与逐步过渡到远离能源密集型和环境消耗型产业的影响下，被誉为“世界加工车间”的华南地区集中发展高附加值制造业和鼓励服务业方面都与美国企业的参与密不可分。

这一举措的主要组成部分可以在华南美国商会的年度《华南地区经济情况特别报告》中看到。2003年，65%的受访者表示从事出口制造业，仅有35%的人表示他们为本地或国际市场提供服务。到2006年，以上数字已经变化到制造业54%，服务业46%。截止到2007年第一季度的调查数字首次显示服务业超过制造业：49%的受访者表示他们从事制造业，而有逾50%的人来自服务性行业。

这些数字是中国政府确立的逐步发展目标取得成功的显著例证。2008年及其后一段时期，这一趋势还将在华南地区得以持续。

这种以服务导向型为主的经济发展趋势，可以合理地解释为：制造企业在现有的经营范围内增加销售、运营支持层次的投入，以提高其对地方经济的参与。在某些情况下，这种转变也促使公司运营战略的调整：由争取中国市场份额代替全部货物出口。根据华南美国商会的研究，2007年度公司运营的首要三项活动为“全中国区业务活动”“在中国提供服务”和“扩大现有在中国的设施”。

同样，近90%受访者表示他们计划将其在该地区的利润再投资，其中61.5%计划再投资总额1000万美元，13.5%计划再投资总额为1,000万到5,000万美元，还有9%计划再投资总额将超过5,000万元。

最后，93%受访者表示已经在2007年实现盈利，或预计未来两年内实现盈利。剩余7%的人预计在未来3-5年内实现盈利。

这些持续正面的发展趋势和地区政府的积极响应，将确保华南地区依旧是中国境内保持较强的竞争力的地区。向新目标的发展转移已在进行中，而这期间相对平稳的过渡则是华南地区各级领导功绩的有力佐证。

具体问题

2007年度“特别报告”显示有91%的受访者表示赞赏中国政府的工作。尽管整体发展非常积极和乐观的，但去年仍然有一些问题对在该地区经营的美国企业造成了不良的影响。

加工贸易和增值税（VAT）退税变化

该地区广泛反映的首要问题是加工贸易和增值税退税政策的变化。这些政策通过商务部第17号和44号公告（2007年），以及财政部与国家税务总局联合发布的第90号文件，分三个阶段实施。每项政策在上述公告和文件发布后的8-10个工作日内就开始实行。因此，受影响的行业很少有时间做准备或采取一些措施减轻所造成的负担。而且据一些非正式的消息，2008年更多不利的变化将继续影响这一地区的企业。

显而易见，这些变化的产生与中国的国家目标密切相关。中国的发展目标是从原有的出口导向型的经济向自主创新为主导的经济体系转型。但是，短时间内全面执行可能会引发某些问题，因为政策的调整未能事先通知，所以很多企业因为准备不足产生巨大的计划外的开支。将企业从被影响地区，如珠三角地区，转移到优先发展地区（如广西）是很多公司可能采取的战略选择。但这种选择难以在短时间内得以实施，因为企业的搬迁需要在审慎性评估、经营管理和计划编制方面投入大量的时间和精力。

mitigate the resulting burdens. Rumors of further changes in 2008 stand to further adversely impact companies in the region.

It seems reasonably evident that the impetus for these changes is linked to China's national objectives to transition from an export-oriented economy to a domestic innovation-oriented economy. However, full compliance may be problematic since with little advance notice of the policy changes, many companies incurred significant and unplanned expenses. While moving operations from affected areas such as the Pearl River Delta to preferential development areas (such as Guangxi) is an option that many companies will pursue, these shifts are unlikely to be feasible in a short time-frame due to time and effort demanded by the due diligence, administration and planning efforts involved in relocating operations.

Intellectual Property Rights (IPR)

IPR protection is an ongoing concern for all companies, including U.S. companies operating in South China and will continue to be as the shift into a more service-oriented economy brings with it an increased reliance on intellectual property. At the macro level, the Chinese Government is making significant efforts to address IPR issues through both legislative and operational improvements. Still, the highly localized nature of enforcement continues to be a talking point on the agendas of many U.S. companies.

Summary

While AmCham South *China's Special Report* found a 91 percent positive approval rating for the local and regional governments in South China, regulatory issues were most commonly listed as the biggest perceived challenge to the continuing success of respondents over the next three years. This has been interpreted as a sign that the overall regulatory situation continues to improve, but, at the same time, remains fluid. Incidents such as the short notices given for the Processing Trade and VAT regulations changes are offset by the groundbreaking participatory drafting cycle of the new Labor Contract Law, which AmCham continues to support. In fact, AmCham South China continues to support the new labor law as the "best possible law that represents the interests of all affected because of the intensive dialogue held with the community throughout the development process." ■

Recommendations

- Provide more advanced warning and/or more forgiving "grandfathering" of new regulations, thus allowing U.S. companies to better plan strategies that benefit not only the companies themselves, but also the development goals of China.
- Give U.S. companies more opportunities to engage in the discussion of proposed regulatory and legal changes, which will instill further confidence in the South China governments and, AmCham hopes, also result in more comprehensive and effective laws.

知识产权 (IPR)

知识产权保护是所有企业，包括美资在华南地区的企业，都持续关注的问题。而且向以服务业为主导方向发展的经济，将会更多的依赖自主知识产权。在宏观层面上，中国政府通过立法和执法的不断改善，正在为解决知识产权问题做出巨大努力。尽管如此，各自为政的地方执法仍然是许多美国企业所关注的问题。

结论

在华南美国商会的“特别报告”中显示，华南地区各级政府的工作得到91%的受访者的赞赏，但监管问题仍是受访者能够在未来三年保持成功与否的最大挑战。这或许可以理解为：整体的监管形势持续向好的方向发展，但同时，仍存在不确定性。比如加工贸易和增值税法规变化前仅留有限时间通知等事件的负面影响，被商会一直支持的新修订的劳动合同法产生的积极影响所取代。事实上，华南美国商会将会一如既往的支持新劳动合同法，它被称为“代表各方利益的最具民意的法律，因为其在修订的过程中积极听取社会各群体的意见和建议”。■

建议

- 提供相对较长的事先预警时间和/或在实行新法规之前有较合理的过渡期，允许美国企业更好的规划战略部署，这不仅有利于公司本身，且更有利于中国的整体发展目标。
- 给予美国企业更多参与法律法规变化的讨论机会，这将进一步增加华南地区政府的信心，商会也希望这样可以推进更多全面有效的法律法规的制定。

Tianjin

Tianjin, with almost 10 million residents, is one of China's four provincial-level municipalities and largest cities. Located only 100 miles southeast of Beijing, Tianjin is home to one of the country's largest seaports. Its location and strong industrial base have spurred an economy focused heavily on manufacturing, with concentrations in microelectronics, automobiles, pharmaceuticals and food.

While these industries and others in the manufacturing sector continue to drive the economy, the service sector is growing to support both this business base and Tianjin's increasingly wealthy residents. Recent central government initiatives have focused on the development of financial institutions there.

Significant Developments

With the first anniversary of the creation of the Binhai New Area, government and industry placed an increased focus on development plans for the area. The Binhai New Area is comprised of the Hangu, Tangu, Dagang and parts of the Dongli and Jinnan districts of the city. Although, it does not include downtown Tianjin, development in the Binhai New Area will drive additional development in the urban core to support investment in greater Tianjin. For example, seven new five-star hotels opening over the next three to four years have been announced and many international banks are expanding their presence in the city. A number of mixed-use office and retail developments similar to those built in Hong Kong, Beijing and Shanghai are currently under construction by foreign developers.

To capitalize on the existing port area, a portion of the newly reclaimed Dongjiang Port was opened in 2007. In addition, a number of land parcels were sold by the government to domestic developers in the new Xianglouwan CBD area in the Tangu district adjacent to the river. The investment in port expansion should keep Tianjin among the top ports, measured by container and bulk cargo volumes. The expansion created additional space for docking, warehousing and other logistics functions as well as space for commercial buildings.

Aerospace investment is currently increasing in Tianjin, already home to a renowned aerospace university. A new airport terminal is expected to open in May 2008 and investments in logistics and other sectors have recently been made in the airport area, including Airbus' first final assembly line outside of Europe.

In early 2008, the U.S. Chamber of Commerce, the Tianjin Municipal People's Government and AmCham-China hosted the China-U.S. Financial Reform and Innovation Summit in Tianjin. The Summit was successful in bringing together business and government and included leaders from banking, insurance, real estate and other financial-services related fields.

Specific Issues

Binhai New Area

While the Binhai New Area plan is often trumpeted as a positive step for Tianjin, there is little concrete information available on its precise ramifications for the city. We encourage the government to share comprehensive plans for the various geographic areas within the Binhai New Area, including publishing achievable two-, five-, 10- and 20-year goals. AmCham encourages the government to highlight locations or sectors in which it welcomes or encourages outside investment. AmCham also would like to learn more about specific tax rates and other incentives for businesses to set up local operations. Further, AmCham would like to understand whether there is a specific authority that can fast-track such investments.

AmCham urges easier access to information regarding the new Xianglouwan business area in Tangu, including how the government envisions this area will interact with the Tianjin Economic Technological Development Area (TEDA) financial district, the rest of the Binhai New Area and the downtown districts within Tianjin City.

Business Environment

We encourage additional investment in training services for service sector employees, including

天津

拥有近1000万居民的天津市，是中国四大直辖市之一，也是中国最大的城市之一。天津座落于北京东南100英里处，拥有国内最大的海港。其地理位置和强大的工业基础使天津建立了以制造业为主的经济体系，其中微电子、汽车、医药和食品是其支柱产业。

在制造业产业继续成为推动天津经济发展的驱动力的同时，服务业也正在迅速发展，其商业基础来源于日益富裕的天津居民。与此同时，中央政府近期已经出台的诸多政策都集中在如何促进当地金融机构的发展方面。

重大发展

随着滨海新区创建一周年的到来，政府及业界都对该地区的开发计划予以了更高的关注。天津滨海新区包括天津市的汉沽区、塘沽区、大港区以及东丽区和津南区的一部分。尽管不包括天津市区，但滨海新区的发展仍会推动中心市区的进一步发展，从而为在天津其他地区的投资提供支持。例如，已有7家新的五星级酒店宣布未来3-4年内天津开业，而众多国际性银行也正积极地在天津扩展其业务。各大国外开发商也正在当地兴建可与香港、北京和上海相媲美的若干多功能办公与住宅项目。

为了充分利用现有港区，新近填海造陆修建的东疆港已于2007年部分投入使用。此外，政府将塘沽区临河的新建响螺湾中央商务区内的若干地块出售给了国内开发商。投资港口扩建使天津港在集装箱和散货吞吐量方面继续保持各大港口前列。扩建还为码头、仓库和其他物流设施以及商务楼创造了更多发展空间。

目前，天津的航空航天领域的投资也在不断增长，一所知名航空航天大学已经落户天津。新的机场航站楼有望于2008年5月建成通航，最近在机场区域的物流及其他领域的投资项目也接踵而至，其中包括空中客车在欧洲以外地区建立的第一条总装线。

2008年初，天津市人民政府、中国美国商会和全美商会在天津共同主办了“中美金融改革与创新峰

会”。此次峰会获得了巨大的成功，政府与企业代表共聚一堂，来自银行、保险、房地产以及其他金融服务相关领域的领袖出席了峰会。

具体问题

滨海新区

虽然人们普遍认为滨海新区将积极带动天津的发展，但有关其具体的规划及实施内容方面的信息极少。我们促请政府能够公布关于滨海新区各个区域的全面规划，包括公布实两年、五年、甚至十年和二十年可行性目标。天津美国商会希望政府能够明确欢迎或鼓励外来投资的区域或领域，同时希望了解更多针对将在滨海新区开设业务的企业的相关税率以及其他激励政策。此外，天津美国商会还希望了解是否有一个专门的管理部门能够为此类投资提供一个快速通道。

另外，天津美国商会希望能有更为畅通的渠道来，以了解关于新建的塘沽响螺湾商务区的信息，包括政府如何有效推进该商务区与天津经济技术开发区的金融服务区、滨海新区其他区域以及天津市区的共同发展。

商业环境

商会鼓励为服务业从业人员的培训投入更多资金，其中包括餐饮服务员工以及一些创造性行业的员工。这将提升总体服务质量，为企业在这些领域扩大业务奠定基础。

商会认为有必要开通更多飞往天津滨海国际机场的航线，尤其是国际航班。更多航线的开通将使乘客能够更容易、方便地到达天津，从而直接惠及当地发展。新航站楼应该包括诸如其他国家一流国际机场所能提供的餐饮及其他服务设施，而现有航站楼目前欠缺这些基本服务。

基础设施

地铁建设和道路修建已取得了良好的进展。但是，

hospitality and food service staff, as well as creative services industry employees. This will increase the overall quality of service and help companies prepare for the opening of additional businesses in these sectors.

We believe there is a need for additional flight routes to the Tianjin Binhai International Airport, particularly for international flights. More routes would directly benefit Tianjin by making access to the city easier and more convenient. The new terminal should include food, beverage and other service amenities currently available in world-class international airports outside of Mainland China. Currently, these basic services are lacking at the existing terminal.

Infrastructure

Good progress has been made on subway construction and road work. However, as Tianjin's economy and car ownership rates grow, the city requires continued investment. AmCham would like to see additional subway lines built that are well integrated with bus networks to improve traffic. Public transport alone will not solve Tianjin's traffic problems, additional parking facilities within the city's key business and entertainment areas are also needed and a periodic express train along the Binhai light rail line would encourage increased ridership between the downtown areas and TEDA. The current trip takes more than 40 minutes due to frequent stops, discouraging some commuters from using the system.

AmCham welcomes the completion of the Beijing-Tianjin high speed rail, planned to begin commercial operation in July 2008. Additional links should be built between Tianjin and Beijing, as the existing road network is crowded and dangerous, particularly as a result of heavy use by large trucks transporting shipping containers and other goods.

Urban Planning

There is concern that the large number of mixed-use projects in the urban core will lead to additional traffic congestion, particularly because few of these projects offer adequate on-site parking. AmCham encourages a review of the development density, building code parking requirements and timing of major projects in the city center. In addition, the Chamber recommends increased transparency of the government's urban development plans, potentially

through the creation of a money-generating urban planning museum, similar to those in Beijing and Shanghai.

Preservation of Heritage Architecture

Tianjin has a rich stock of historical buildings from the colonial period that could become major domestic and international tourist draws. While Tianjin has been fortunate that to date much of this period-architecture remains, there are recent examples of large sections being destroyed and replaced by incongruous and bland commercial development. We encourage the preservation of all remaining historical buildings and the implementation of policies that encourage local and foreign businesses to use them for residential, office, retail and boutique hotel uses.

Environment

The downside of Tianjin's strong manufacturing base is that air and water quality are often sacrificed. As the city transitions away from its traditional manufacturing base and residents become increasingly aware of the importance of a clean environment, Tianjin needs to address this issue quickly. Poor air and water quality are key complaints, but so are a lack of green space and the limited access to the city's riverside area, which appears to be perpetually under construction.

AmCham recommends better enforcement of exhaust standards for automobiles and pollution controls for industry. Additionally, we believe enhanced bicycle-only lanes and a greater number of dedicated bus lanes would increase transportation options for residents. The alternative is a continued increase in the number of private cars and taxis for the public's transportation needs, something that will harm air quality. AmCham believes the city should aggressively preserve existing green areas and champion the development of new parks and other areas to make the city more livable.

Tourism

Tianjin is located near Beijing, one of the top foreign and domestic tourist destinations in the country. With improved transportation links, it will be increasingly convenient for travelers to combine a visit to Tianjin with a trip to the capital. The city currently lacks a well defined and publicized plan to attract tourists to the city's attractions (including the

随着天津经济的发展和私家车拥有率的提高，天津需要持续投资。天津美国商会希望能够修建更多地铁线路，与公交网络相结合，改善交通状况。仅仅依靠公共交通体系无法解决天津的交通问题，同时也有必要在市内主要商业和娱乐区建设更完善的停车设施，此外，在滨海轻轨线路开通定期快速列车则能够促使更多的人往返于市区和经济技术开发区。目前由于停站过多，单程就需要花费40多分钟，使得一些乘客对乘坐轻轨“望而却步”。

天津美国商会对北京-天津高速铁路的完工表示欢迎，该铁路计划将于2008年7月开始商业运营。由于现有的公路网络拥堵问题严重，而且十分危险（尤其是在运送集装箱和其他货物的大型卡车频繁使用的情况下），因此应该加快建设天津和北京之间的其他通行路线。

城市规划

有人担心中心市区大量的多功能开发项目会使交通更加拥堵，尤其是这些项目中只有极少数能够提供充足的场内停车设施。天津美国商会希望对市中心的开发密度、建筑停车需求以及大型项目的兴建时间进行重新审核。此外，商会建议应该提高政府城市发展规划的透明度，例如可参照北京和上海建立营利性城市规划博物馆来达到这一目的。

历史遗留建筑的保存

天津拥有大量殖民时期遗留的历史建筑，这将会成为对国内外游客的巨大吸引力。虽然很幸运，迄今为止天津许多该时期的建筑都还得以保存，但是近来却有大规模的历史建筑在被毁掉，被不协调、千篇一律的商业开发项目所取代。我们希望政府能够对所有这些遗留的历史建筑加以保护，并制定相关政策鼓励当地以及国外企业将这些历史建筑用作住宅、办公楼和精品酒店。

环境

由于天津是重要的生产基地，空气和水的质量受到了严重的影响。随着天津传统制造业基地的转型，居民也越来越意识到清洁环境的重要性，天津需要迅速解决这一问题。空气质量和水质差是居民主要的投诉原因，同时缺少绿地、缺少进入河滨区域（似乎已经兴建了许久）的通道也是问题之一。

天津美国商会建议针对汽车更有效地实施排放标准，对工业采取更严格的污染控制措施。此外，扩大非机动车道、增加公交车专用车道将有助于增加居民的出行选择。同时继续增加私家车和出租车的数量也可以满足大众的交通需求，但这样做将会损害空气质量。商会认为，天津应积极保护现有绿地，并推动开发兴建新公园以及其他能够使城市更适于居住的场所。

旅游

天津毗邻国内以及国外游客的首选国内旅游城市之一——北京。随着交通网络的改善，游客在北京旅游期间能够更方便地前往天津游览。天津目前缺乏详细的宣传计划来吸引游客前来观光旅游（景点包括长城、大运河、盘山、渤海、杨柳青、市内殖民时期的建筑等）。此外，还缺少精美的外语（英语、日语和韩语）材料来向外国游客与居民宣传这座城市。 ■

建议

滨海新区

- 公布滨海新区的全面规划，并以两年、五年、甚至十年和二十年的重要项目计划展示其对当地企业的深远影响。明确政府重点鼓励投资的地区。公布关于塘沽响螺湾商务区开发的详细资料，并突出它将如何与天津经济技术开发区以及中心市区其他现有商务区的相互促进。

商业环境

- 投入更多资金对服务业从业人员进行培训。开通更多飞往天津滨海国际机场的航线，并确保新的机场航站楼能够提供与其他国际机场相当的便利服务设施。

基础设施

- 增加车道或其他线路以改善天津与北京的公路网络。地铁路线与公交路线相结合，应建设公交专用道以缩短乘客的通勤时间、鼓励更多人乘车。需要建设更多停车设施。

Great Wall, the Grand Canal, Mt. Panshan, the Bohai Sea, Yangliuqing and the city's colonial architecture). Additionally, there is a lack of good foreign language (English, Japanese and Korean) informational material to help promote the city to foreign visitors and residents. ■

Recommendations

Binhai New Area

- Publicize comprehensive plans for Binhai New Area and its implications for local businesses with achievable two, five, 10 and 20-year milestones. Highlight areas where the government encourages investment. Publish more information regarding the Xianglouwan development in Tangu and highlight how it will interact with other existing business areas in TEDA and central Tianjin city.

Business Environment

- Invest in training programs for service-sector workers. Push for more flight routes to the Binhai International airport as well as ensuring the new airport terminal has comparable amenities to other international airports.

Infrastructure

- Improve the road network linking Tianjin to Beijing by adding more lanes or additional routes. Subway lines need to be integrated with bus lines and additional bus-only lanes should be built to speed commuters' trips and encourage ridership growth. Additional parking facilities are needed.

Urban Planning

- Create a more open environment related to urban planning so business can understand plans for new infrastructure, buildings and business districts. Open a revenue-generating urban planning center where upcoming developments can be shared and visitors would have access to an overall picture of the city, past and future.

Preservation

- Implement a policy that preserves both Tianjin's rich stock of colonial period buildings and gives businesses access to the structures for business and residential uses.

Environment

- Relocate manufacturing, power generation and other pollution sources away from the key urban areas. Improve quality of life issues related to green space, accessibility to the riverside and air and water quality issues. Encourage bicycle ridership by increasing the number of bicycle lanes and their level of safety.

Tourism

- Create a strategy to attract domestic and foreign tourists to visit Tianjin's attractions; this plan should include creating more venues of interest for people to visit. Develop material that explains these attractions and compliments a tourist's visit to them.

城市规划

- 建立更加公开的城市规划氛围，使企业能够了解新基础设施、建筑和商务区的规划。开设营利性城市规划中心，从而与公众分享未来的发展项目，使游客能够了解城市全貌，包括城市的过去与未来。

历史遗产保存

- 实施相关政策，保护天津大量的殖民时期遗留建筑，并使企业能够将这些建筑用作办公楼和住宅。

环境

- 将制造企业、发电站以及其他污染源迁出主要的市区。改善人们的生活质量，增加绿地、开通进入河滨的通道并改善空气和水的质量。通过增加非机动车道并提高其安全性来鼓励人们骑车出行。

旅游

- 制定战略吸引国内外游客游览天津；该计划应包括建立更多能够引起人们兴趣的场所。编写相关材料对这些景点进行说明，并鼓励游客前往参观。

Abbreviations 缩写表

3G	Third-Generation	EMDT	Executive Management Development Training Program
4G	Fourth-Generation	FASCO	Foreign Aviation Services Company
3PL	Third Party Logistics	FDA	Food and Drug Administration
4PL	Fourth Party Logistics	FDI	Foreign Direct Investment
ACP	Aviation Cooperation Program	FIDE	Foreign-Invested Design Enterprises
ADS-B	Automatic Dependent Surveillance–Broadcast	FICE	Foreign-Invested Construction Enterprise
AMEA	Antimonopoly Enforcement Agency	FIE	Foreign-Invested Enterprise
AML	Antimonopoly Law	FIJSC	Foreign-Invested Joint Stock Companies
APA	Administrative Procedure Act	FIVC	Foreign-Invested Venture Capital
APA	Advanced Pricing Agreement	FITE ...	Foreign Investment in Telecommunications Enterprises
API	Active Pharmaceutical Ingredients	FOB	Free on Board
AQSIQ	Administration for Quarantine, Inspection and Quality	FY	Financial Year
ASEAN	Association of Southeast Asian Nations	FX	Foreign Exchange
ATM	Air Traffic Management	GA	General Aviation
ATMB	Air Traffic Management Board	GACG	Global Anti-Counterfeiting Group
BIS	U.S. Bureau of Industry and Security	GAPP	General Administration of Press and Publications
BOCOG	Beijing Organizing Committee for the Olympic Games	GBAS	Ground-based Augmentation System
CATA	China Air Transport Association	GDP	Gross Domestic Product
CAAC	Civil Aviation Administration of China	GMP	Good Manufacturing Practice
CBRC	China Banking Regulatory Commission	GNSS	Global Navigation Satellite System
CCC	China Compulsory Certificate	GPA	Government Procurement Agreement
CFETS	China Foreign Exchange Trading System	GPL	Government Procurement Law
CIQ	China Entry-Exit Inspection and Quarantine Bureau	GW	Gigawatts
CIRC	China Insurance Regulatory Commission	HHS	Health and Human Services
CMC	Chemistry, Manufacturing and Control	HR	Human Resources
CNTA	China National Tourism Administration	HS	Harmonized System
CPC	Consumer Product Code	IA	Intellectual Asset
CPI	Consumer Price Index	ICT ..	Information and Communications Technology
CPSC	Consumer Product Safety Commission	ICP	Internet Content Providers
CSR	Corporate Social Responsibility	IMPs	Internet Information Providers
CSRC	China Securities Regulatory Commission	IPO	Initial Public Offering
CTA	Clinical Trial Application	IPR	Intellectual Property Rights
CTO	China Trademark Office	ISP	Internet Service Provider
CVP	Corporate Visa Program (AmCham)	IT	Information Technology
DHS	U.S. Department of Homeland Security	JCCT	Joint Commission on Commerce and Trade
DOC	U.S. Department of Commerce	JSC	Joint Stock Corporations
ECID	Shanghai Economic Crime Investigation Department	JV	Joint Venture
EDS	Express Delivery Service	LLC	Limited Liability Company
EIA	Energy Information Administration	M&A	Mergers and Acquisitions
EIT	Enterprise Income Tax	MRL	Maximum Residue Levels
EPC	Engineering Procurement and Construction	MCA	Ministry of Civil Affairs
ESCO	Energy Service Companies	MDCP ...	Market Development Cooperator Program
ESS	Express Industry Service Standards	MII	Ministry of Information Industry
EU	European Union	MOA	Ministry of Agriculture
FAA	U.S. Federal Aviation Administration	MOLSS	Ministry of Labor and Social Security
		MNC	Multinational Corporation/Company
		MPS	Ministry of Public Security

MOC	Ministry of Construction	SHIBOR	Shanghai Interbank Offered Rate
MOC	Ministry of Communications	SIPO	State Intellectual Property Office
MOF	Ministry of Finance	SME	Small and Medium-sized Enterprise
MOFCOM	Ministry of Commerce	SMERT.....	Shanghai Municipal People's Government Foreign and Economic Trade Commission
MOH	Ministry of Health	SOE	State-Owned Enterprise
MOJ	Ministry of Justice	SPB	State Postal Bureau
MOR	Ministry of Railways	SPV	Special Purpose Vehicles
MOU	Memorandum of Understanding	TBT	Technical Barriers to Trade
MTPL	Mandatory Third-Party Liability	TCM	Traditional Chinese Medicine
NCA	National Copyright Administration	TDA	U.S. Trade Development Agency
NDRC.....	National Development and Reform Commission	TD-SCDMA	Time Division Synchronous Code Division Multiple Access
NHT	New and High-Tech	TEDA.....	Tianjin Economic Technological Department Area
NPC.....	National People's Congress	TMO	Trademark Office
NGO	Non-Governmental Organization	TPCC	Trade Promotion Coordinating Committee
OECD	Organization for Economic Cooperation and Development	TRIPS.....	Trade-Related Aspects of Intellectual Property Rights
OIE	Office International des Epizooties/World Organization for Animal Health	TRQ	Tariff Rate Quota
PBOC	People's Bank of China	U.S.	United States
PEC	President's Export Council	USDA	U.S. Department of Agriculture
PEL	Partnership Enterprise Law	USFAA	U.S. Federal Aviation Administration
Pharma	Pharmaceutical	USFCS	U.S. Foreign Commercial Service
POA	Power of Attorney	USG	U.S. Government
PRD	Pearl River Delta	USITO	U.S. Information Technology Office
PRC	People's Republic of China	USTDA	U.S. Trade and Development Agency
QBPC	Quality Brands Protection Committee	VAS	Value-Added Services
QDII	Qualified Domestic Institutional Investors	VAT	Value-Added Tax
QFII	Qualified Foreign Institutional Investors	VEU	Validated End-User
R&D	Research and Development	VPN	Virtual Private Network
RNP	Required Navigation Performance	WCO	World Customs Organization
RVSM	Reduced Vertical Separation Minimum	WFOE	Wholly Foreign-Owned Enterprise
SAC	Standards Administration of China	WIPO.....	World Intellectual Property Organization
SAFE	State Administration of Foreign Exchange	WLAN	Wireless Broadband
SAIC	State Administration of Industry and Commerce	WTO	World Trade Organization
SAC.....	Standards Administration of China	YRD	Yangtze River Delta
SAO	Security Advisory Opinion		
SAR	Special Administrative Region		
SARFT.....	State Administration of Radio, Film and Television		
SASAC.....	Special Administration of Industry and Commerce		
SAT	State Administration of Taxation		
SAWS	State Administration of Work Safety		
SCLAO.....	State Council's Legislative Affairs Office		
SED	Strategic Economic Dialogue		
SEPA	State Environmental Protection Administration		
SFDA	State Food and Drug Administration		

