



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…

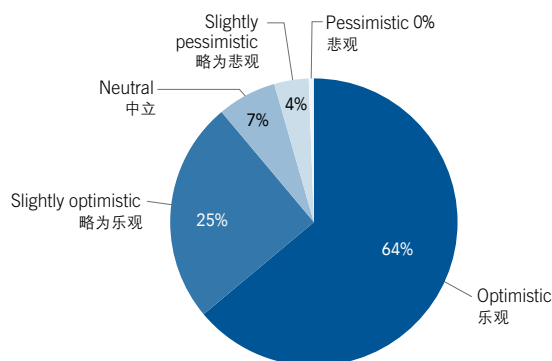
正值美中贸易关系正常化30周年之际的2008年，将会成为两国经贸关系强劲发展的重要一年。中美经贸关系有着牢固的基础，贸易额稳步增长达到3500亿美元，创造了空前纪录，美中两国政府之间的对话密切而深入。然而，可能影响这一关系持续发展的问题依然存在。在美国，持续、巨大且不断增长的双边贸易赤字在美国经济放缓以及总统大选的背景下，助长了美国国内贸易保护主义。在中国，提高经济可持续发展能力和效率的迫切要求，有关中国在加入世界贸易组织谈判中对国外利益做了太多让步的言论，令人感到不安的高通胀率，这些因素都在促使类似的紧缩性经济政策的出台。美中经贸关系现在需要一个后WTO路线图，以使两国能够面对老问题中出现的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

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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一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.

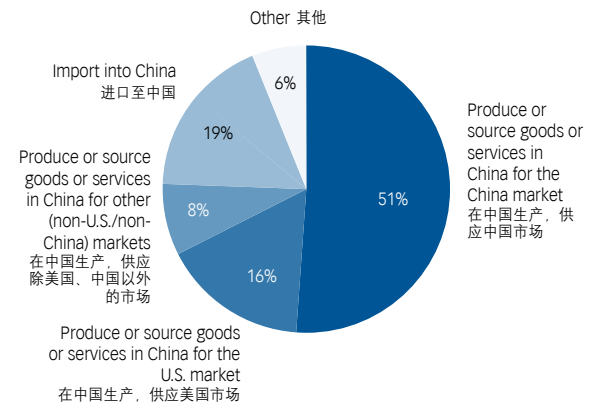
For business law, 2007 was an important year.

#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

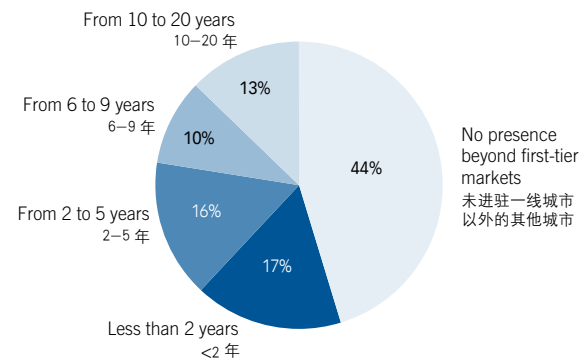
2

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

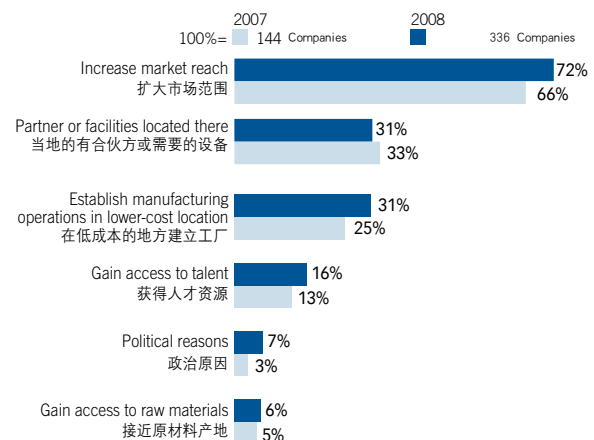


Source: 2008 AmCham Business Climate Survey
资料来源: 2008 年中美商会商务环境调查

3

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

企业向二、三线城市扩展的原因



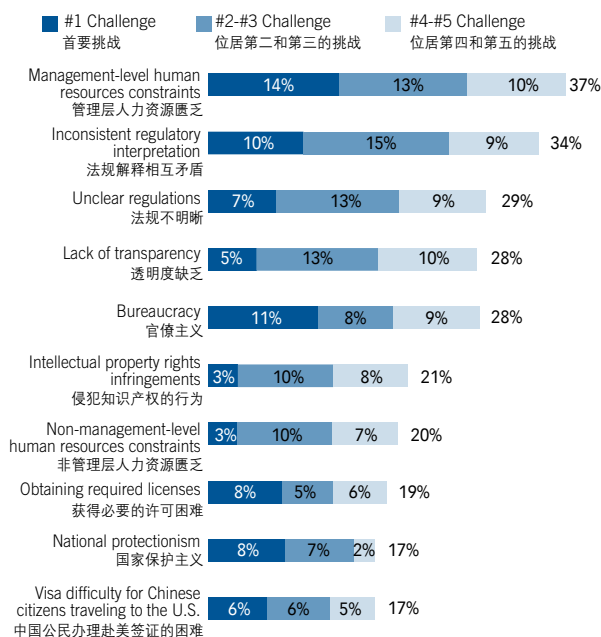
Source: 2007-08 AmCham Business Climate Surveys
资料来源: 2007-08 年中美商会商务环境调查

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

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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

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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

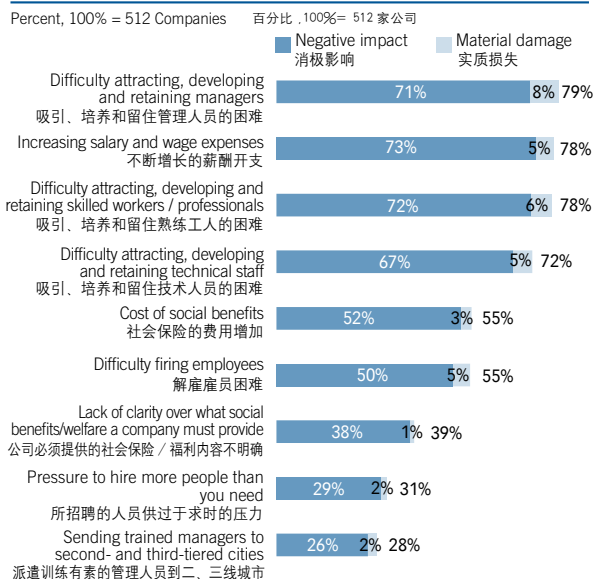
Developments included the promulgation of the Antimonopoly Law, the Labor Contract Law, the Enterprise Income Tax Law, the *Revised Catalogue Guiding Foreign Investment in Industry* and the new Property Law. These carried significant implications for a number of sectors. AmCham commends the Chinese Government 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

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Economic and Political Overview

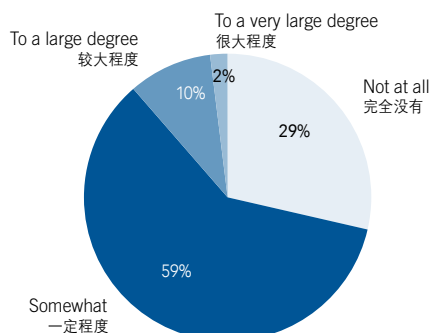
In 2007, China's policymakers continued to shift the focus of Chinese development and growth objectives to emphasize quality—"comprehensive, balanced and sustainable" growth—and greater investment in innovation and energy-efficient development. The need for this important "rebalancing" reflects the increasingly 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



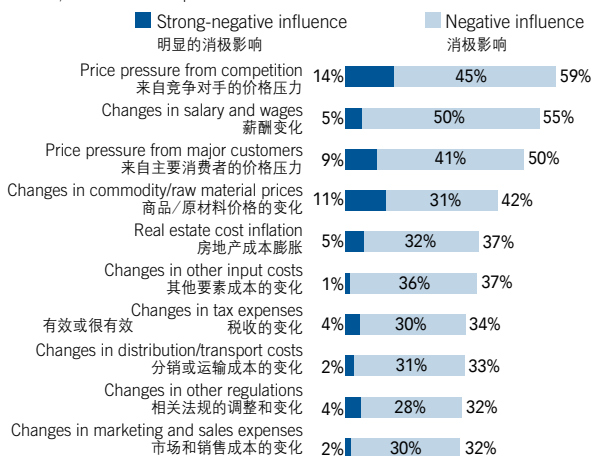
Source: 2008 AmCham Business Climate Survey
资料来源: 2008 年中美商会商务环境调查

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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

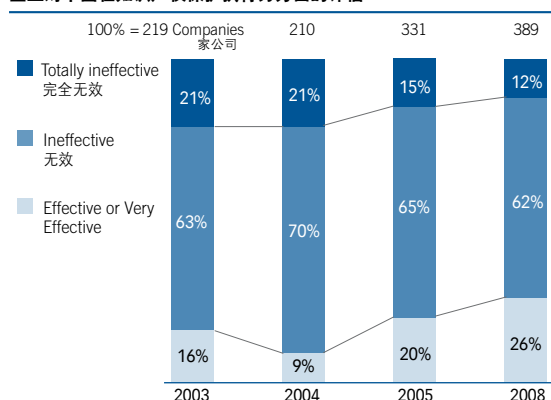


Source: 2008 AmCham Business Climate Survey
资料来源: 2008 年中美商会商务环境调查

9

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



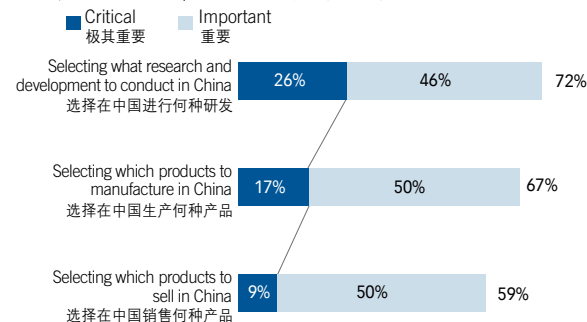
Source: 2003-05 & 2008 AmCham Business Climate Surveys
资料来源: 2003-05 与 2008 年中美商会商务环境调查

10

How important of a factor is IPR when.... 在下述情况下, 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.

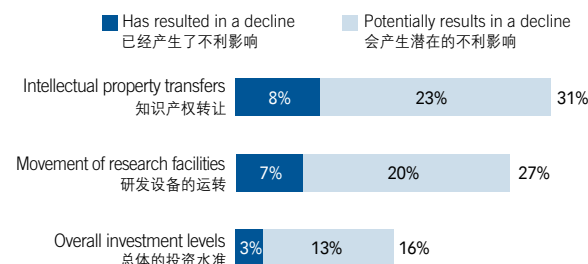
The U.S.-China trade deficit will continue to grow as long as China remains the point of final assembly for many products imported from other countries. China has, in effect, acquired shares of the trade deficit formerly held by other Asian countries. Growing imports from China do not displace U.S. goods; 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

Percent, 100% = 373 Companies

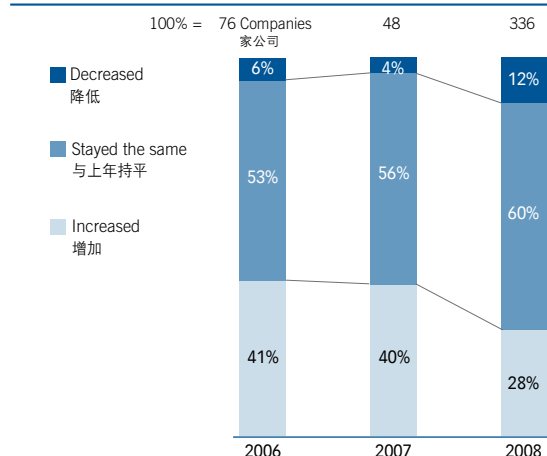
百分比, 100% = 373 家公司



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 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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中美经贸关系

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,因为商会注意到中美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“全面协调可持续发展”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：

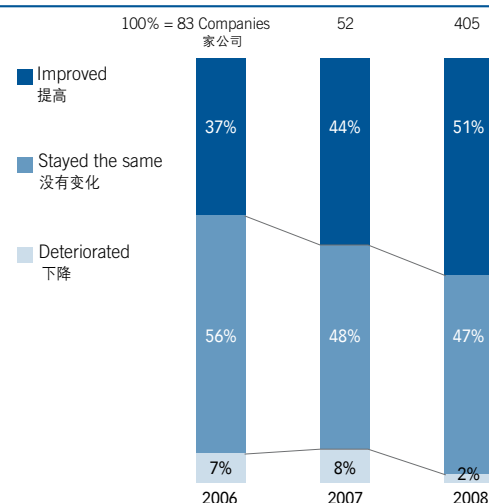
贸易赤字

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.

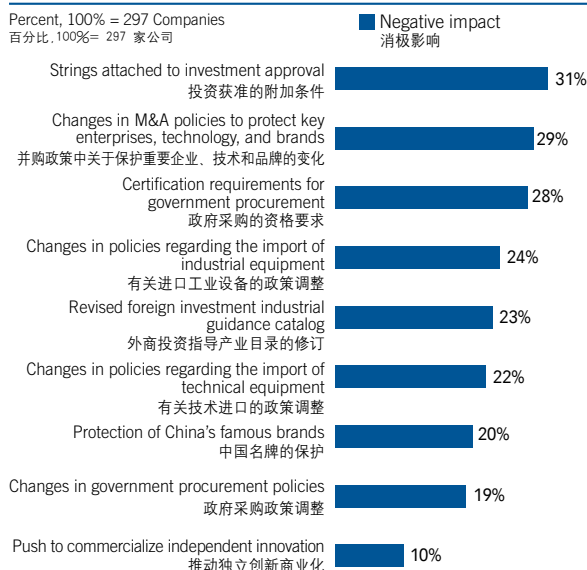
Refrain from addressing trade concerns by enacting legislation with the intent of forcing currency revaluation

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

Percent, 100% = 297 Companies
百分比, 100% = 297 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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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 and 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中国、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，美国公司在中国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，中国应当创建一个鼓励创新、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。

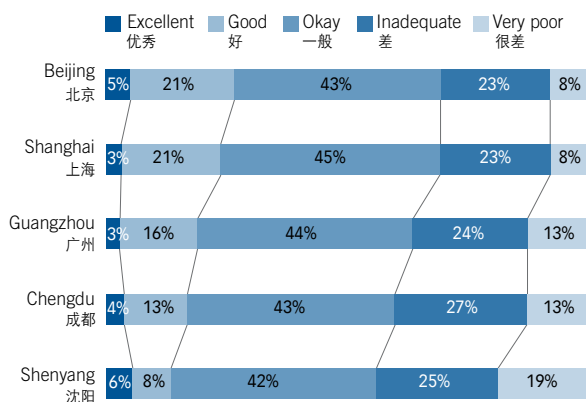
中美商会对中国旅游者赴美团体旅游的前景感到欣慰。美国将成为受欢迎的旅游目的地,旅游业也将成为改善两国贸易平衡状况的重要因素。中国旅游业呈爆炸式增长,赴美旅游业的发展将进一步加重使领馆现有有限资源的负担。除非增加领事机构人员、改善办公条件,否则赴美旅游业签证申请将面临资金严重不足的问题。中美商会对这一状况可能影响其它种类签证的签发感到关切。

“签证安全建议”(SAO)程序和3至5周的额外等候时间,以便对那些目前在一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

Percent, 100% = 413 Companies 百分比, 100% = 413 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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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.

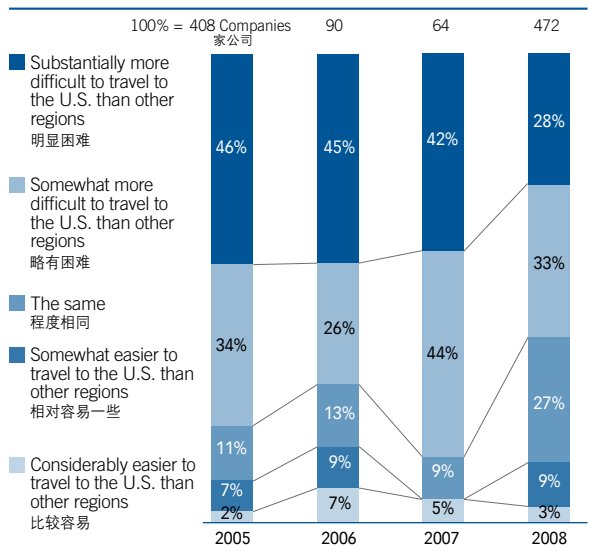
AmCham strongly advocates for increased Congressional funding and State Department initiatives to increase funding for consular facilities and staffing to reduce visa appointment wait times.

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

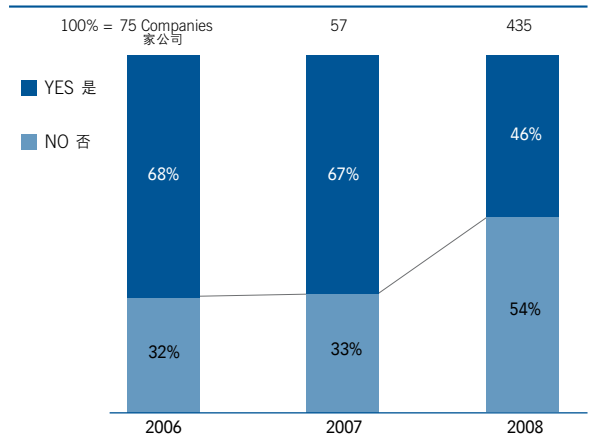


Source: 2005-08 AmCham Business Climate Surveys
资料来源: 2005-08 年中商会商务环境调查

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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

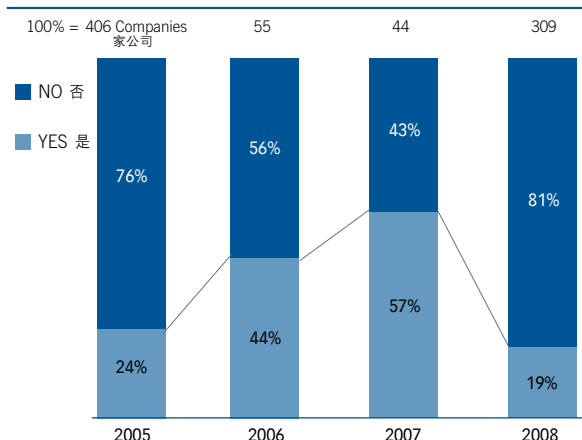


Source: 2006-08 AmCham Business Climate Surveys
资料来源: 2006-08 年中商会商务环境调查

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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

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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：

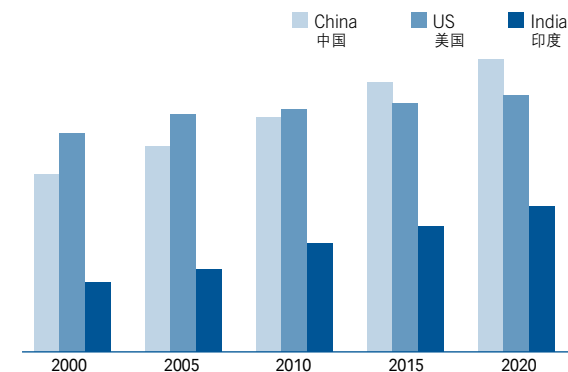
- 在目前劳动力市场中，吸引和保留优秀人才并调动其积极性以适应企业需要变得日益困难。
- 尽管新劳动合同法已在2008年1月颁布，但缺少执行细则。因此在华企业很难调整企业政策，使其既对员工体现公正又能满足企业保持管理、控制和业务发展政策的合理需求。
- 中美商会承认并支持保护工人的权利，包括雇员成立工会的权利，以及加入符合中国法律和被国际劳工组织所认可的工会组织的权利。我们也支持保护雇员、雇主和工会的权利。同时我们深信有关劳动的法律法规将会在全国范围内保持一致而统一的有效执行。

我们很高兴有此建言机会，也恳请中国政府对下文中所提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

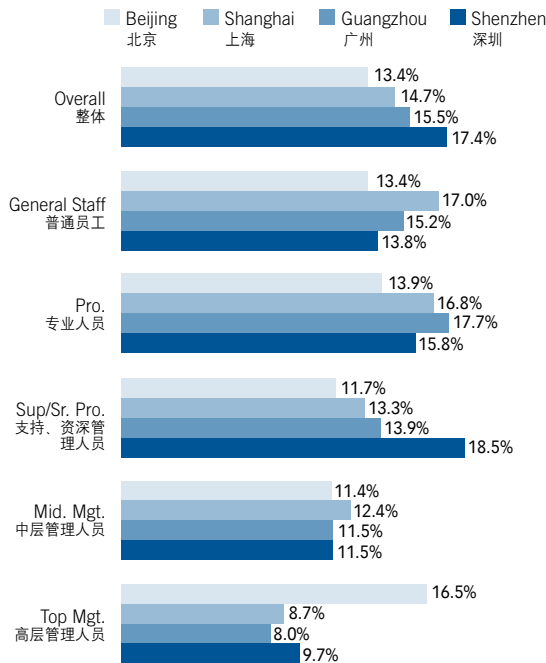
in specific provinces. As a result, *hukou* restrictions hinder qualified graduates from moving to companies in other provinces where their skills are needed. This is especially true for FIEs, which have few mechanisms available to enable *hukou* transfers. In addition, the lack of portability between 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。

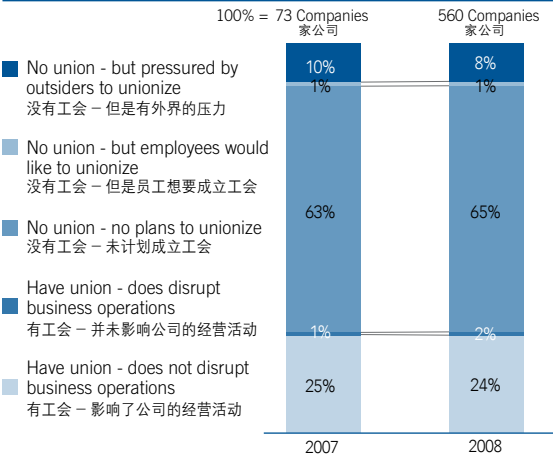
建议

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。因此在华外企在实施该法时，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

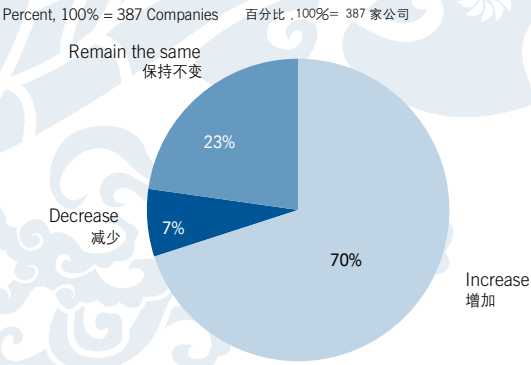
中美商会认为在华竞争的所有企业均应平等保护员工权利。绝大多数在华美企已采取大量措施，确保良好的工作环境并与员工之间保持和睦关系。此外，多数美国企业的工作场所的规则和实践的确有效的保护了员工权利。

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

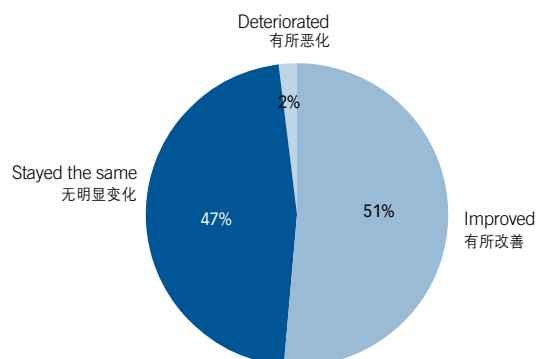
——全球反假冒集团（GACG），对公安部经济犯罪侦查局为加强知识产权刑事执法力度所做的工作予以表扬。全球反假冒集团之前还称赞了中国海关2006年所做的知识产权边境执法工作。

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%的被

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

Percent, 100% = 405 Companies 百分比, 100% = 405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

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

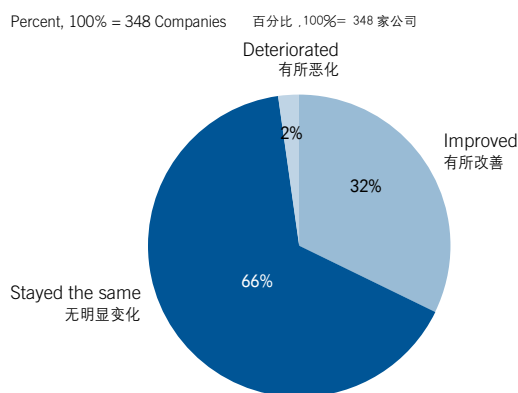
去年,中国采取了积极的措施来改善版权保护和执法,但是,要改变总体知识产权(包括版权)保护环境,其刑事执法力度仍然不足。

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被视为足以构成“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。

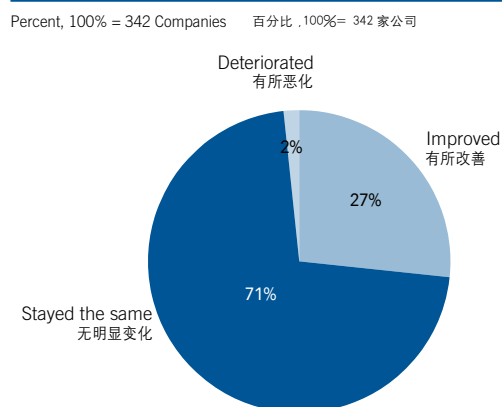
In the last year, China's PUBLIC SECURITY enforcement of IPR for my organization has... 过去的一年,中国保护知识产权的公安执法情况



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

25

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 and 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和执法能力。

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入国。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,中国国家标准化管理委员会(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.

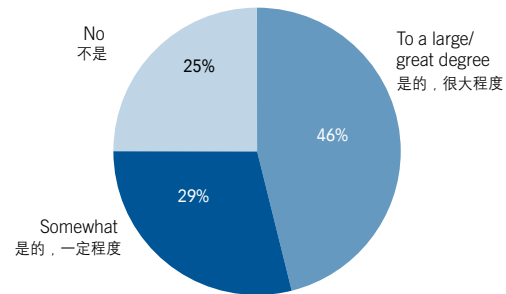
Recently there have been various technical exchanges and talks between former Vice Premier Wu and U.S. Treasury Secretary Henry Paulson. In addition, the two countries signed a cooperative agreement for food and drug safety at the Strategic Economic Dialogue (SED) in December 2007, which calls for a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

前言

2007年,食品、药品和玩具等产品的安全 and 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 and 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,但这些问题发生的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 and 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 and 产品质量 and 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 and 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 and 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 and 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增值链的速度,阻碍他们进入质量 and 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 and 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 and 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 and 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.

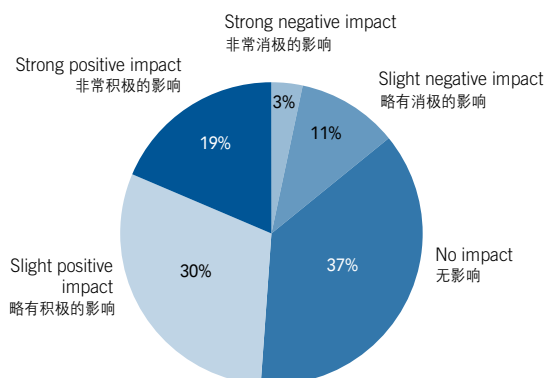
For the U.S. Government

- 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



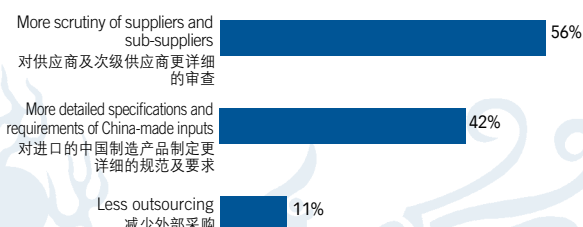
Source: 2008 AmCham Business Climate Survey
资料来源: 2008 年中美商会商务环境调查

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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



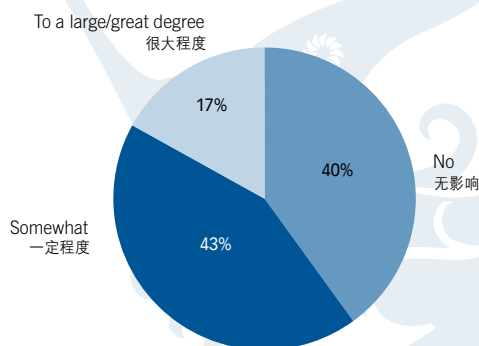
Source: 2008 AmCham Business Climate Survey
资料来源: 2008 年中美商会商务环境调查

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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，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，对于那些不得不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中国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，公众可获取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资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年提交了对该草案的意见。

《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 must 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。商会建议可就此修改此实施条例，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由自愿提供的，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

取相关法规和政策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。过去的一年里的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 and 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。

