



Part Two

Industry Issues

具体行业问题

Agriculture and Food

China is the fourth-largest export market for U.S. agricultural products. In 2007, the U.S. exported over US\$8.8 billion of agricultural and fish products to China, making the U.S. China's largest supplier of agriculture products. The U.S. provides China with raw materials such as soybeans, cotton and hides destined for processing. Simultaneously, China's exports of agricultural and fish products to the U.S. continue to grow with a total value that exceeded US\$4.9 billion in 2007. China's exports to the U.S. consist largely of fish, vegetables and various processed foods. The continued expansion of agricultural trade between the two countries is a testimony to the comparative advantages China and the U.S. have in the production and processing of various agricultural goods.

In 2007, food safety issues came to the attention of the general public and among bilateral trade issues between the United States and China. Contaminated and mislabeled products originating in China led both countries to re-evaluate the role of food safety in the regulation of imports and exports. As a result of heightened inspection on each side, trade disruptions and delays occurred as changes instituted to inspection regimes were implemented. In a number of cases, trade disruptions appeared to be based on politics and not upon sound science.

While the Chinese Government has made a number of efforts to improve the control and efficiency of its food safety apparatus, a number of problems persist. Technical barriers to trade continue to impede imports of certain products into China and non-transparent trade rules that limit opportunities create uncertainty for U.S. exporters.

In late 2007, China issued a new Foreign Investment Catalogue that moved a number of agricultural processing businesses to the "restricted" category and limited new investment in some of these businesses to minority-only shares. The Chinese Government has also asserted itself throughout the year in an effort to limit food price increases in ways that may affect the operations of foreign firms in China. AmCham members are concerned that limiting foreign investment in China's agricultural sector and actively trying to manage food prices through administrative measures will limit competition and efficiencies in the industries concerned, which will ultimately lead to higher prices for consumers.

Significant Developments

Food safety issues have taken center stage in the bilateral agricultural and food trade between the U.S. and China. In the wake of concerns over the quality of Chinese food exports to the U.S. and elsewhere in 2007, China moved swiftly to address supervision of its food supply chain. A wide range of government actions included development of a special plan on national food safety, establishment of a working group led by former Vice Premier Wu Yi to coordinate inter-ministry cooperation and the creation of new regulations, and benchmarks for food safety and quality.

The draft Food Safety Law was submitted and approved by the State Council on October 31, 2007. It then went to the National People's Congress Standing Committee on December 26, 2007, at its 31st Conference and, at the time of this writing, was still awaiting final approval. If the final version is approved, the law will establish a new framework for evaluating food safety issues, from the certification and licensing of food companies to procedures for carrying out food recalls. In November 2007, China announced a large revision to its food inspection protocol by agreeing to bring 600 food safety inspection standards in line with international guidelines by 2010.

In addition to domestic actions, China has cooperated with its trading partners on bilateral initiatives to improve food safety. The U.S. Department of Health and Human Services (HHS) has held technical seminars in addition to increased regular communications with both China's State Food and Drug Administration (SFDA) and China's inspection authority, the General Administration for Quality Supervision, Inspection and Quarantine (AQSIQ). AQSIQ and U.S. Department of Agriculture (USDA) have also consulted on the safety of meat and poultry products.

Importantly, HHS and AQSIQ signed a memorandum of understanding on food and feed that aims to increase the level of safety in traded products. China has also taken similar steps with the relevant agencies of its EU and ASEAN trading partners. The full impact of these actions will not be clear for some time, but they are all clearly steps in the right direction and will gradually improve the quality of both domestic and export foodstuffs.

农业与食品

中国是美国农产品的第四大出口市场。2007年，美国向中国出口了逾88亿美元的农产品和鱼制品，成为中国最大的农产品供应国。美国向中国提供多种原粮和原材料，如大豆、棉花和用于加工的皮革。同时，中国对美国的农产品和鱼制品出口额持续增长，2007年的出口总额超过49亿美元。中国向美国出口的产品主要包括鱼类、蔬菜和各种加工食品。中美两国农业贸易的不断扩大证明了双方在各种农产品生产和加工方面具有各自的相对优势。

2007年，食品安全问题成为大众关注的焦点，也成为了中美两国双边贸易问题之一。产自中国的受污染以及贴有误导性标签的产品使得两国重新评估了食品安全在进出口管理中所扮演的角色。由于双方均加强了监查力度，贸易中断和延迟现象随着监查机制的调整而出现。在很多情况下，贸易中断似乎都由政治因素引发，而并非出于合理的科学因素。

虽然中国政府已经做出巨大努力加强其食品安全部门的监管力度，并不断提高效率，但问题仍在不断出现。技术性贸易壁垒仍然使某些产品无法进口到中国，而非透明的贸易规则限制了贸易机遇的产生，为美国出口商带来了不确定性因素。

2007年末，中国发布了新的外商投资产业指导目录，将许多农产品加工行业纳入了“限制”范围，且在此类企业的新投资项目中，外资只能参股。此外，过去一年中，中国政府为控制食品价格的持续上涨，采用了一些可能影响外资企业正常营运发展的方式。中美商会的会员担心限制外商对中国农业的投资，以及过多通过行政手段对食品价格进行管制将会降低相关行业的竞争力和效率，最终将使消费者面临更高的物价水平。

重大进展

食品安全问题已经成为中美两国农业和食品双边贸易的焦点。2007年，由于中国出口到美国以及其他国家的食品质量问题引起广泛关注，中国立即着手加强了对食品供应链的监管力度。政府采取了全面

措施，包括针对国家食品安全制定了特别计划、建立了由国家副总理吴仪女士领导的工作小组，以对各部之间的合作进行协调，此外还出台了新的食品安全质量法规与标准。

2007年10月31日，交由国务院审议的《食品安全法（草案）》通过审批。2007年12月26日，全国人大常委会第三十一次会议对《食品安全法（草案）》进行审议，最终批复在撰写此文时仍在等待中。如果最终法案获得通过，将为全面评估食品安全（从食品企业的认证和授权到食品召回执行程序）建立新的框架。2007年11月，中国宣布将对其食品检测议定书做出重大修订，同意到2010年，力求使600项食品检测标准与国际接轨。

除了在国内采取的行动外，中国还与其贸易合作伙伴就双边计划展开合作，以进一步改善食品安全。除了加强与中国国家食品药品监督管理局、中国检测机构国家质量监督检验检疫总局的正常交流外，美国卫生和福利部（HHS）还举办了技术研讨会。中国国家质检总局与美国农业部还就肉类和禽类产品的安全进行了磋商。

重要的是，美国卫生和福利部和中国国家质检总局就食品与饲料签署了旨在提高贸易产品安全性谅解备忘录。中国与其欧盟和东盟贸易合作伙伴的相关机构也建立了类似合作。这些合作可能在短期内无法产生立竿见影的效果，但其已向着正确的方面迈进，将会逐步提高国内食品和出口食品的质量。

具体问题

美国出口商所关注的具体农业问题主要是，他们通常会因陷于政府所采取的各种政策和行政措施之中，有些措施不仅从风险角度无法证明其实施的合理性，而且有悖于与中国所做出的让外国投资者享有国民待遇的入世承诺。

牛肉市场准入

尽管中国在2006年4月中美商贸联委会会议期间，

Specific Issues

Specific agricultural issues that concern U.S. exporters generally fall into the categories of measures that lack risk-based justification and those that appear to run counter to China's WTO commitment to national treatment for foreign investors.

Beef Access

Since 2003, China has continued its complete ban on U.S. beef despite the offer during the April 2006 Joint Commission on Commerce and Trade (JCCT) meeting to re-establish U.S. beef import eligibility. When both sides failed to reach a bilateral agreement to re-establish the beef trade, China unilaterally published a list of requirements for the conditional resumption of U.S. beef shipments in July 2006.

U.S. industry and government agreed that the conditions put forth by China were commercially unviable and did not conform with international guidelines on safely traded bovine products and effective risk mitigation measures. In the meantime, the U.S. cattle population received a controlled risk status by the World Organization for Animal Health (OIE) in May 2007, which allows for the trade of all beef and beef products with effective removal of specified risk materials.

China improved on its offer of U.S. beef access in the summer of 2007 to include bone-in beef from U.S. cattle younger than 30 months old, but the conditions still fall short of OIE guidelines. China could eliminate the discrepancy in standards on beef by adopting the global OIE standards for trade in beef products.

Ractopamine in Pork

China has delisted eleven U.S. pork plants from exporting to China since early 2006 due to the residual presence of Ractopamine, an FDA-approved Beta Agonist feed ingredient widely used in the hog industry in the U.S. During the third Strategic Economic Dialogue (SED) in December 2007, six U.S. pork plants were returned to the list of eligible exporters. However, international experts working under the auspices of the CODEX Alimentarius Commission, an international food-standards organization, have endorsed the safety of the proper use of Ractopamine and the feed ingredient has reached Step 8 in the overall CODEX approval process.

Ractopamine is a swine feed ingredient that directs nutrients to increase the amount of lean meat in high value cuts and improves production efficiency. It is estimated that Ractopamine is used by approximately 70 percent of all U.S. pork producers and is accepted as safe by more than 24 countries including the U.S., Japan, South Korea, Australia and Canada.

The delisting of certain U.S. plants as a result of the use of Ractopamine appears to be based on questionable logic. China has experienced severe problems with the abuse of animal health products, including the Beta Agonist Clenbuterol. Due to past food safety crises involving human casualties resulting from the ingestion of tainted pork, China banned the use of all Beta Agonists in 2002. China has justified the delisting of U.S. pork plants based on its existing domestic ban. The U.S. has argued that given the significantly different properties of Clenbuterol from Ractopamine, China should complete a risk assessment of the safety of the latter and establish a safe tolerance for the presence of the feed ingredient in meat products.

It is ironic that in a year when China's pork prices have risen to record high levels, competitive imports from the United States have been limited due to China's position on Ractopamine. While respectful of China's domestic issues with the abuse of unapproved animal health products in the swine industry, AmCham contends that Ractopamine is safe and there needs to be a harmonizing of residual levels for Ractopamine in pork between both countries.

Zero Pathogens in Red Meat and Poultry

China continues to enforce pathogen standards on imported meat and poultry that are unscientific and differ from those of CODEX. Specifically, China maintains a zero tolerance standard for common pathogens such as salmonella and listeria in uncooked red meat and poultry. The complete elimination of these enteropathogenic bacteria is generally considered unachievable without first subjecting raw meat and poultry to irradiation.

Global experts consider China's position to be both unscientific and commercially unviable. Furthermore, this policy constitutes a continued risk to U.S. exporters who are uncertain of when findings may result in product rejection. Pathogen detections, plant delistings and warnings issued against U.S. plants increased substantially during 2007, resulting in a severe disruption of the U.S. pork and poultry trade with the PRC during a time of unprecedented demand and need. Evidence suggests that domestic

同意恢复美国企业对中国的牛肉出口，但自2003年来，全面禁止进口美国牛肉的问题尚未得到完全解决。在双方未能达成有关重新建立牛肉贸易的双边协议后，中国于2006年7月单方面公布了有条件恢复美国牛肉进口的一系列要求。

美国业界和政府一致认为，中方提出的要求在商业操作上不具有可行性，同时也不符合牛肉产品安全交易和风险控制的国际准则。同时，世界动物卫生组织于2007年5月认定美国为疯牛病可控风险的国家，允许通过有效去除其特定的风险物质来实现所有牛肉的贸易。

2007年夏季，中国调整了其对美国牛肉准入的条件，允许进口美国育龄期不满30个月的小牛带骨牛肉，但条件仍然不符合世界动物卫生组织的指导原则。中国可采用世界动物卫生组织有关牛肉产品贸易的全球标准，以此消除牛肉贸易标准方面的差异。

猪肉中的莱克多巴胺

自2006年初以来，中国因在猪肉中发现莱克多巴胺残留而将11家美国猪肉生产企业从其进口商名单中删除。莱克多巴胺是美国食品和药品管理局(FDA)批准的乙型受体素饲料成分，在美国养猪业被广泛使用。在2007年12月的中美第三次战略经济对话中，中国恢复了其中被禁的6家美国猪肉生产企业的进口商资格。然而，国际食品法典委员会的国际专家已经认可了适量使用莱克多巴胺的安全性，这种饲料成分已经进行到食品法规委员会审批程序的第8步。

莱克多巴胺是一种猪饲料成分，能够令营养成分转化瘦肉，从而提高精肉的产出率。估计美国有约70%的猪肉生产商都使用莱克多巴胺，包括美国、日本、韩国、澳大利亚和加拿大在内的超过24个国家都认可了其安全性。

由于使用莱克多巴胺，美国猪肉生产企业被从进口名单中删除，这一作法的合理性似乎还有待商榷。中国就曾由于滥用动物保健产品（包括乙型受体素克伦特罗）而出现严重的问题。而且鉴于曾发生过因食用问题猪肉而导致人员病亡的食品安全问题，中国于2002年出台了包括所有乙型受体素使用的禁

令。根据目前的国内禁令，中国将美国猪肉生产企业从进口商名单中删除。但美国表示鉴于克伦特罗和莱克多巴胺在属性上有很大的差异，中国应对后者的安全性进行风险评估，并就肉制品中莱克多巴胺残留制定安全耐受度标准。

正当中国猪肉价格不断创下历史新高时，具有竞争力的美国猪肉却由于中国对莱克多巴胺的政策受到了限制。虽然我们对中国养猪业滥用未经批准的动物保健产品的国内问题表示一定的理解，但中美商会认为莱克多巴胺是安全的，中美两国有必要对猪肉中莱克多巴胺残留量进行协商。

牛羊肉和禽类产品中无病原体

中国目前对进口肉类和禽类产品执行的病原体标准与食品法典委员会要求的标准有较大不同。具体而言，中国一直对生牛羊肉和禽类产品中沙门氏菌和李斯特菌等常见病原体采用零耐受标准。但通常而言，如果不首先将生肉和禽类产品进行辐射处理，完全消除这些肠道致病菌是不可能的。

国际专家都认为中国对此标准的制定不够科学合理，在商业上无法实现。此外，这一政策对美国出口商也构成了持续的风险，他们不知道其产品何时会因发现这些病原体而被禁。在2007年，病原体检测、停止美国企业进口、向美国企业提出警告等事件明显增加，使得在中国国内需求空前高涨的关键时刻，美国对中国的猪肉和禽类产品贸易却出现了严重干扰。与此同时证据显示，国内实施病原体零耐受标准收效甚微。而中国对某些重金属、兽药和其他残留仍采用最大残留限量标准，这与食品法规委员会及其他国际标准不相一致。

“非同步”植物生物技术审批

中国要求用于进口的新生物技术产品必须先在中国获得全面的使用批准，方能递交申请。这种“非同步审查”程序与其他大多数国家都有着很大的差别，会使中国的进口审批过程滞后数年之久。

多性状（混合性状）生物技术产品

中国在多性状产品（两种或两种以上单一性状生物

enforcement of the zero tolerance pathogen standard is weak to non-existent. China also maintains maximum residue levels (MRLs) for certain heavy metals, veterinary drugs and other residues that are inconsistent with CODEX and other international standards.

Asynchronous Plant Biotechnology Approvals

China requires that new biotechnology products intended for import receive full approval for use in exporting countries before an application can be submitted. This “asynchronous review” process is significantly different from that used in most other countries and can create a lag of several years for the approval of imports.

Multiple Trait (Stacked Event) Products of Biotechnology

China lacks an official policy on the approval and regulation of multiple trait events, i.e., multi-trait biotech products that can be derived from the conventional crossing of two or more single-trait biotech varieties. China does not have a regulatory policy for stacked-event products that is science-based and takes into account existing reviews of single-trait products.

Quotas and Registrations

Importers of U.S. poultry products must acquire an Auto Registration Form from the Ministry of Commerce (MOFCOM). This auto registration has been issued to less than 150 companies in China and is extremely difficult to obtain. It is in effect a hidden quota by which MOFCOM controls the total amount of imports. In addition, the process by which MOFCOM grants approvals is not transparent.

China has implemented a tariff rate quota (TRQ) system for a number of agricultural products according to its WTO commitments. However, some aspects of the administration of these TRQs hinder rather than facilitate trade. The size of TRQ allocations for commodities such as sugar and corn is too small to be commercially viable. Small TRQ allocations discourage imports of bulk commodities, which are only competitive when sourced in market-sized cargoes, not the smaller sizes issued to quota holders. Additionally, the government does not publish a list of quota holders once the allocations have been made, which complicates marketing efforts for U.S. suppliers.

Transparency in China's Agricultural Regulations and Administration

China's agricultural sector has experienced tremendous liberalization over the past several years in terms of both trade and production policy. Challenges remain, however, and while AmCham applauds the progress to date, there is concern that China is taking a step backwards in terms of transparency and fair enforcement of rules. For example, China's rules on the collection of value added tax (VAT) are opaque and applied inconsistently and unpredictably. Domestic agricultural product is sometimes subject to a lower VAT rate than its imported equivalent, which runs counter to China's national treatment obligations.

China has recently imported large quantities of pork, vegetable oil and soybeans to be placed in government reserves. These products were imported VAT-free. There is a fear that such products will eventually be released, VAT-free, into the hands of domestic champions in their respective industries. This would depress margins for other industry players, whether domestic or foreign, and unfairly reward these select few companies. China's VAT policy should be more transparent and predictable, and fairly enforced.

Quarantine regulations are also enforced inconsistently across China and used as unscientific barriers to trade. In 2007, shipments of U.S. product were either rejected or delayed at entry as AQSIQ inspectors in a number of specific ports scrutinized U.S. shipments in what appeared to be a retaliatory manner directly related to problems of Chinese products being detained for food safety violations on entry into the U.S. Such delays can be extremely costly. For example, the detention of a single shipload of soybeans can cost a U.S. shipper up to US\$100,000 per day in vessel demurrage charges. Chinese quarantine authorities, armed with Decree 73, are empowered to reject shipments of agricultural goods simply because the goods do not comply with onerous Chinese food standards. These moves introduce a tremendous amount of risk for shippers of U.S. agricultural products.

Investments in Agricultural Industries

The National Development and Reform Commission (NDRC) and MOFCOM released China's revised Foreign Investment Catalogue in November 2007. Newly added to the restricted list of industries are the breeding and seed development of all crops. Only the breeding of grains, oilseeds and cottonseeds was

技术变种通过常规杂交而衍生出的多性状生物技术产品)的审批和监管方面缺少官方政策。中国对于混合性状产品没有制定以科学为基础的、将现有单一性状产品审查考虑在内的监管政策。

配额与登记

进口美国禽类产品的公司必须获得中国商务部的自动登记表。获得自动登记表是件非常困难的事情,商务部只向中国不足150家企业分发这种自动登记表。这实际上是商务部用来控制进口总量的一种隐性配额。此外,商务部的审批程序相对缺乏的透明性。

根据入世承诺,中国已对许多农产品采取了关税配额(TRQ)机制。然而,这些关税配额管理的一些方面不是推动,而是阻碍了贸易的发展。对糖、玉米等商品分配的关税配额过少,相对缺乏商业价值。因为分配的关税配额过少会遏制大宗商品的进口,这些商品只有在大规模采购时才具有竞争优势,可配额持有者只能获得的少量配额。此外,在完成配额分配后,政府并不公布配额持有者名单,这使得美国供应商更加无法应对复杂多变的市場。

中国农业监管的透明度

过去数年来,中国在农业包括贸易与生产领域的开放上取得了重大进展,但挑战仍然存在。虽然中美商会对目前的进展表示赞赏,但仍关注中国在透明度和公平执法方面的进展情况。例如,中国对于增值税的征收就缺乏透明度,且在执行中存在随意性。甚至有时,国内农产品的增值税率比同类进口产品还低,这有悖于中国的国民待遇承诺。

中国最近进口了大量猪肉、植物油和大豆,作为政府储备。这些产品在进口时免除了增值税。有人担心这些产品最终会以免增值税的方式转让给各自行业的国内龙头企业。这会压低其他行业竞争者(包括国内和国外企业)的利润率,使这些极少数公司获得不公平的竞争优势。中国的增值税政策应当更加透明、更具可预知性,同时应公平执法。

中国各地在执行检疫规定方面差异也很大,成为不合理的贸易壁垒。2007年,美国发运产品在入境时

不是被拒,就是被拖延,因为很多地方港口的国家质检总局检查人员对美国发货都要进行详加检查,似乎是对美国扣留因食品安全违规的中国产品的报复行为。这种滞延代价可能极高。例如,扣留一船大豆,美国发货商就需要支付每天10万美元的船舶滞期费。根据第73号法令,中国检疫机构有权拒绝农产品货物的入境,而拒绝入境的理由仅因为这些货物不符合中国繁杂的食品标准,这给美国农产品发货商带来了巨大的风险。

农业投资

中国国家发展和改革委员会和商务部于2007年11月发布了修订后的中国投资指导产业目录。所有农作物的选育和种子开发被划入限制类投资产业范围,而之前仅谷类、含油种子和棉籽的选育被列入限制类范围。豆粕和大豆油加工此次被列入限制类名单,任何该领域的新外商投资都只能参股。此外,植物油精炼仍在限制类范围内,目前外资也仅限于参股。玉米以及玉米制品的加工也被加入限制类名单中。

谷类、棉花、植物油、食用糖和化肥的批发零售和物流仍在限制范围内。但根据新目录,外商投资企业可以设立不超过30家的分店,否则必须由中方控股。这一新规定似乎违反了中国人世承诺——即2006年12月11日后,中国允许外商设立独资公司从事这些产品的批发和代理销售。

中美商会担心限制诸多农业产业的外商投资会减缓中国农业的改革开放进程。据商务部《国别贸易投资环境报告》统计,2006年中国农业产业的外商投资比2005年同比减少16.5%。如果中国希望缩小城乡收入差距,就有必要扩大国内企业和外商对农业产业的投资。此外,限制外商对农产品加工行业的投资会影响政府致力于降低食品价格的计划。

一方面,国家发改委要求所有植物油加工企业充分发挥其生产能力,以降低价格,但同时却在限制外商的投资行为。总而言之,中美商会认为投资指导产业目录中的关于农业部分的新增限制无益于中国改革开放的推进,也无益于中国农业市场高效运作的发展。 ■

restricted in the previous catalogue. The processing of soybeans into meal and oil was moved to the restricted list and any new investment by foreigners in this industry is limited to minority stakes. In addition, vegetable oil refining remains in the restricted category, but foreigners are now limited to minority shareholdings only. The processing of corn and corn-based products was also added to the restricted list.

Wholesale retailing and logistics of grain, cotton, vegetable oils, edible sugars and chemical fertilizer remained on the restricted list. However, a foreign company is limited to a presence of less than 30 stores unless it agrees to assume a minority shareholding. The new ruling appears to violate China's WTO commitments to allow foreigners to set up wholly owned companies to engage in wholesale and agency sales of these products after December 11, 2006.

AmCham is concerned that restricting foreign investment in a number of agricultural industries will serve to slow the reform and opening up of Chinese agriculture. Foreign investments in Chinese agricultural industries fell by 16.5 percent in 2006 year-on-year from 2005, according to MOFCOM's Foreign Market Access Report. More domestic and foreign agricultural investment is needed if China is to narrow the income gap between urban and rural areas. In addition, restricting foreign investments in agricultural processing will jeopardize the government's efforts to cool down food prices.

On one hand, the NDRC has asked all vegetable-oil processors to run at full capacity to lower prices, while at the same time it has restricted foreigners' freedom to invest. Overall, AmCham views the new restrictions included in the investment catalogue as a step backwards in China's opening up and detrimental to the working of efficient agricultural markets. ■

Recommendations

- Encourage China to ensure that domestic and import inspections and enforcement are uniform in practice and policy.
- Eliminate the ban on the importation of U.S. beef and establish an import regime consistent with OIE standards.
- Establish Maximum Residual Levels (MRLs) for Ractopamine in imported pork in accordance with CODEX draft standards.
- Do not use technical barriers to trade as

retaliatory measures to food and product safety disputes with the U.S.

- Develop and enforce phytosanitary measures that are science-based and practical, thereby eliminating these as non-tariff trade barriers for U.S. agricultural products.
- Abolish non-transparent quotas and registration systems and ensure that TRQ allocations are large enough to be commercially viable.
- Cancel the auto registration system for poultry imports.
- Ensure equal treatment for imports and domestic products in terms of VAT enforcement.
- Reconsider restrictions on foreign investment in agricultural industries introduced in the November 2007 Foreign Investment Catalogue and eliminate equity caps for foreign investors in such industries.

建议

- 敦请中国政府对国产与进口产品的检查，应遵从政策制定和执法实践中的一致性。
- 取消对美国牛肉的进口禁令，并建立符合世界动物卫生组织标准的进口制度。
- 针对进口猪肉中的莱克多巴胺，制定符合CODEX标准草案的最大残留限量标准；
- 不利用技术性贸易壁垒作为对中美食品和产品安全纠纷的报复性措施。
- 制定并采取科学、实际的植物检疫措施，从而消除对美国农产品的非关税贸易壁垒。
- 取消缺乏透明度的配额和登记机制，提高关税配额。
- 取消禽类进口的自动登记制度。
- 确保在征收增值税时，对进口与国产产品给予平等对待；
- 考虑调整2007年11月外商投资产业指导目录中对农业产业外商投资的限制，并取消对这些行业外国投资者的不公平待遇。



Civil Aviation

2

In recent years U.S. aerospace suppliers and airlines have been actively promoting trade and services and have been offering advanced technologies and training programs to Chinese aviation groups. These groups include regulatory agencies, airline/aircraft operators, maintenance and repair companies, and aircraft, engine and component manufacturers. In 2006, U.S. aviation companies collectively exported US\$5.6 billion to China and imported US\$133 million from China.

China's civil aviation sector is expected to grow at an annual rate of 10 percent over the next 20 years. This correlates to a total of 3,400 new aircraft worth US\$340 billion. The Chinese Government has been pushing for balanced geographical growth of the sector, suggesting that regional routes serving western and remote regions of China will need to increase at a higher rate if they are to keep pace with the faster-growing eastern routes. However, many challenges to healthy and sustainable growth remain.

First, approximately 70 percent of the country's airspace is controlled by the military. These restrictions cause serious air traffic congestion on trunk routes and preclude the development of an efficient general aviation sector. Second, foreign airlines flying into China pay higher landing fees and ground service charges than do domestic airlines and foreign business aircraft operators also pay extra "compensation fees." Third, foreign investors in the aviation industry are restricted to holding a minority share in joint venture companies. Finally, Chinese aviation industry and government officials continue to face difficulties in obtaining U.S. visas and access to certain technologies is limited due to U.S. export restrictions.

Many of these issues are being addressed by AmCham-China's Aviation Cooperation Program (ACP). Through this program, American aerospace companies have established a positive and mutually beneficial relationship with China's government regulators and ministries, including the General Civil Aviation Administration of China (CAAC). AmCham-China is committed to continuing this cooperative approach to addressing the challenges faced by both our member companies and the government as we work together to build a healthy and sustainable aviation market in China.

Significant Developments

The U.S. and China signed an expanded air service agreement in July 2007. The agreement will effectively increase revenue flights between the two countries beyond the current level of 140 flights per week, potentially reaching 320 weekly flights by 2012. Several U.S. airlines have already received new or additional routes as a result of this program.

Last year was the third year that the U.S. Trade Development Agency (TDA) funded the ACP. The total TDA funding for 2007 was US\$1.69 million. These funds supported ACP's efforts to:

1. Assist China in its "Preliminary Study of an Air Traffic Flow Management System;"
2. Conduct "CAAC Transport Aircraft Continued Airworthiness, Maintainability Analysis & Certification" training;
3. Conduct a study on catalyzing growth in China's regional and general aviation markets; and
4. Continue the CAAC/Airlines Executive Management Development Training Program (EMDT). The program is to be conducted both in China and in the United States. In June 2007, 35 CAAC and airline executives attended the program, focusing on managerial, leadership, technical and operational development issues. The program greatly enhances the aviation collaboration between the U.S. and China and improves China's aviation operations.

China has successfully demonstrated Required Navigation Performance (RNP) technology for airliners to fly in and out of terrain-challenging airports such as Jiuzhaigou, Lhasa and Linzhi. In addition, Reduced Vertical Separation Minimum (RVSM) has been successfully implemented in China's main air routes, resulting in improved air traffic capacity.

CAAC officials visited the U.S. Federal Aviation Administration (FAA) in October 2007 to exchange views on ensuring aviation safety while developing the overall aviation industry.

CAAC recently announced a plan to increase subsidies for regional airlines serving remote airports as well as for airports that are less traveled. The result will be greater air service availability for smaller cities

民用航空

近年来，美国航空业的供应商和航空公司一直都在积极地推动中美两国间贸易和服务的发展，并与中国航空监管机构、航线/飞机运营商、维护和修理公司以及飞机、发动机和元件制造商等合作，向其提供先进技术和培训项目。2006年，美国航空企业对中国的总出口额为56亿美元，从中国的总进口额是1.33亿美元。

预计未来20年，中国的民用航空业将会以每年10%的速度增长。这就意味着在此期间，新购飞机需求量将达到3,400架，价值3,400亿美元。同时，中国政府一直在力争中国航空业能够保持地域间均衡的增长，因此若服务于中国西部和偏远地区的地区性航线要与增长较快的东部航线的发展并驾齐驱，则必须保持更快的增长速度。然而，健康的可持续增长仍然面临着重重挑战。

首先，中国大约有70%的空域都被提供为军用，这就造成了主航线上严重的空中交通拥堵，限制了通用航空产业的发展。其次，飞往中国的外国航空公司要缴纳比国内航空公司更高的起降费和地面服务费，而且外国公务飞机运营商还要支付额外的“补偿费”。第三，航空业的外国投资者在合资公司中只限于持有少数股权。最后，中国航空业和政府官员在获得美国签证方面仍然面临着困难，而且由于美国的出口管制政策，对某些技术的使用权也是有限的。

中国美国商会开展的“航空合作项目”（ACP）正致力于解决以上的其中的一些问题。通过该项目，美国航空企业与中国的政府监管机构和部门（包括中国民航总局）建立了积极平等互利的关系。中国美国商会继续致力于这一合作机制，努力解决商会成员公司和政府部门在共同建立一个健康并可持续发展的中国航空市场过程中所面临的挑战。

重大成果

2007年7月，美国和中国签订了扩展航空服务协议。该协议将在当前两国之间每周140个航班的水平上，

有效地增加航班数量，到2012年可能会达到每周320个航班。由于此协议的执行，若干美国航空公司已经获得新的或额外的航线。

2007年是美国贸易发展署（TDA）资助中国美国商会开展ACP项目的第三年。美国贸易发展署提供总额为169万美金的资金用于支持ACP项目2007/2008年的活动：

1. 协助中国进行“空中交通流量管理系统的初步研究”；
2. 开展“CAAC运输飞机持续适航、可维护性分析和证明”培训；
3. 进行有关促进中国支线和通用航空市场增长的研究；
4. 继续开展中国民航总局/航空公司行政管理发展培训项目（EMDT）。项目将在中国和美国两地进行。2007年6月，35名中国民航总局和航空公司行政主管人员参加了该项目，培训重点在于如何解决管理、领导力建设、技术和经营发展等问题。该项目大大促进了中美两国之间的航空合作并提高了中国的航空运营水平。

中国成功地掌握了航空执飞九寨沟、拉萨和林芝等地形复杂的机场所需的RNP精密导航技术。此外，缩小垂直间隔最低标准（RVSM）已在中国的主要航线成功实施，增加了航空交通容量。

2007年10月，中国民航总局官员参观了美国联邦航空管理局（FAA），并与其就如何在发展整个航空业的同时确保航空安全等问题交流了看法。

中国民航总局最近宣布了一项计划，对服务于偏远地区的支线航空公司以及客运量较少的机场提供补贴。这将增加小城市的航班，同时也给飞机和机场服务的相关供应商带来了更多的商业机会。此外，中国民航总局正在考虑修订《机场收费规定》，以使在特定中国机场开展运营的国际运营商和国内运营商支付相同的机场费用。

and more sales opportunities for suppliers of this class of aircraft and airport services. In addition, a revised version of the “Airport Charges Regulation” is being considered by CAAC to equalize airport charges paid by international carriers with domestic carriers operating in selected Chinese airports.

Specific Issues

Air Traffic Control Capacity

Currently major airports, including Beijing Capital International Airport, Shanghai Hongqiao International Airport and Guangzhou Baiyun International Airport are operating at or reaching maximum capacity for takeoff and landings due to limited civil airspace. Airlines have limited and narrow air corridor entry points. Further, en-route congestion is increasing, leading to lengthy departure delays and operational problems. The worsening flight delays in Beijing and Shanghai have a ripple effect, not only in China, but also on the worldwide airline transportation system.

Starting in August 2007, CAAC began to reduce the number of flights into and out of the Beijing Capital International Airport from 1,050 to 1,000 flights per day in order to ensure safety and on-time takeoffs and landings. However, slot coordination for takeoff and landing is not yet being handled according to international best practices. Although the operation of the third terminal and runway will alleviate airport ground and air traffic problems to a degree, limited civil airspace will continue causing air traffic congestion in and around Beijing and other airports.

Adapting to the International Civil Aviation Organization’s airspace classification methodology and applying state-of-the-art air traffic management (ATM) technologies such as GNSS (Global Navigation Satellite System), ADS-B (Automatic Dependent Surveillance – Broadcast), and GBAS (GPS Ground-based Augmentation System) would partially solve the problem of congestion. Nonetheless, expanding civil airspace relative to military control should remain the top priority and overall solution to this problem. Several ACP projects are helping the CAAC and other government units understand how a better balance and co-existence between civilian and military-controlled or managed airspace can be accomplished. These projects and programs are important and should continue while government-to-government cooperation needs to increase so as to accelerate the process.

High Operating Costs

Foreign carriers, including airlines, cargo operators and business charter operators, face high operating costs in China. This stems from several factors that collectively limit industry efficiency. Foreign carriers are mandated to hire local staff from Foreign Aviation Services Company (FASCO), a designated employment agency, which provides non-competitive services. Further, the method of calculating aviation fuel rates charged at major airports is not transparent and consists of a base differential which is not market-linked, while equipment rental fees are also not transparent at the Beijing airport.

The resulting high operating costs reduce the profitability of foreign airlines providing services to major Chinese airports. As a result, these airports, which are competing for recognized industry status as “global aviation hubs” with other international airports in the region, are at a strategic disadvantage. Thus both foreign air carriers serving China and China’s airports suffer from a competitiveness standpoint.

General Aviation Development

General Aviation (GA) is vital to the healthy development of the entire aviation market. Around the world, over 320,000 GA aircraft are in operation, flying in excess of 35 million hours per year. But in China, there are only about 500 GA aircraft, flying around 70,000 flight hours per year. AmCham believes the development of GA is critical to China’s development for the following reasons:

1. GA is an important foundation for the entire aviation system as it serves as a “feeder” of experienced aviation personnel including pilots, mechanics, etc.
2. The development of western, central and northeastern China requires massive infrastructure expenditure. GA is the most economical approach because the cost of building a GA airport is less than that of building a two-kilometer highway. On a cost-benefit basis the advantages are clear.
3. GA stimulates economic development and job creation. The total impact of GA exceeds US\$150 billion and 1.32 million jobs per year in the U.S. and given China’s geographical terrain and population dimensions, a very large market opportunity exists here as well.

There are, however, several factors hindering the development of GA in China, including airspace

具体问题

空中交通管理能力

由于目前有限的民用空域，包括北京首都国际机场、上海虹桥国际机场和广州白云国际机场在内的主要机场都已经达到或接近其最大的起降次数。航空公司的空中走廊出入点有限，同时由于航路的拥堵不断加剧，导致出发时间延误过长和相关的操作问题。北京和上海日益恶化的航班延误情况对国内和全球航空运输系统都具有波及效应。

自2007年8月开始，中国民航总局开始将出入北京首都国际机场的航班数从每日1,050航班减少到1,000航班，以确保安全和准时起降。然而，起降的机位协调工作仍未能采用国际最佳做法。尽管预期的第三航站楼和第三跑道投入运营将会在某种程度上缓解机场地面和空中交通问题，可有限的民用空域将继续导致北京和其它机场面临空中交通拥塞。

采用国际民航组织的空域分级方法并应用最新的空中交通管理（ATM）技术，如GNSS（全球导航卫星系统）、ADS-B（广播式自动相关监视）和GBAS（GPS陆基增强系统）等，会部分解决拥塞的问题。然而，增加民用空域相对于军用空域的比例仍然是当务之急，也是解决此问题的根本方案。ACP项下的多个研究项目正在协助中国民航总局和其它政府部门了解如何实现民用与军用空域之间的相对平衡和共存。这些项目和计划具有重要意义，应当持续下去，同时也应加强政府间的合作，进一步推动这一进程。

高运营成本

国外飞机外国运营商（航空公司、货运公司和商业包机运营企业）在华的运营成本很高。这归因于多个限制行业效率的因素。外国运营商被强制要求从外航服务公司（FASCO）雇用当地人员。这是指定的职业介绍机构，提供非竞争服务。此外，在主要机场，收取的航空燃油费的计算方法并不透明，而且是由非市场因素的基数构成。在北京机场，设备租赁费也缺乏透明度。

由此导致的居高不下的经营成本，削弱了在中国主

要机场提供服务的外国航空公司的盈利能力。因此，在其与该地区其它机场竞争“全球航空枢纽”机场地位时，处在不利的战略地位。因此，无论是在中国开展服务的外国航空运营商，还是中国境内的机场都将会因缺乏竞争力而蒙受损失。

通用航空业的发展

通用航空（GA）对于整个航空市场的健康发展具有至关重要的意义。在全球范围内，有超过32万架通用飞机投入运营，每年的飞行时间超过3,500万小时。但在中国，大约只有500架通用飞机，每年的飞行时间约为70,000小时。中美商会认为通用航空业务的发展对于中国的发展具有重大意义，原因如下：

1. 通用航空是整个航空系统的重要基础，因为它是飞行员和机械师等富有经验的航空人员的“供应站”。
2. 中国西部、中部和东北地区的发展需要大量的基础设施投入。通用航空是最经济的途径，因为建设一个通用航空机场的成本低于建设两公里高速公路的成本。从成本效益上看，具有明显优势。
3. 通用航空业能刺激经济发展，创造就业机会。在美国，通用航空每年所产生的效益超过1500亿美元，创造132万个工作岗位。鉴于中国的地形地貌和人口规模，通用航空在中国同样存在非常大的市场机会。

然而，有几个因素阻碍着通用航空业在中国的发展，其中包括空域限制和对飞机、配件和设备征收的高额进口税和增值税。当前的综合税率是21.68%，影响了通用航空业的发展。

对投资的限制

自2000年加入世界贸易组织（WTO）以来，中国一些主导的产业市场逐渐向外国投资者开放。然而，在航空产业，相关法规依然限制外国投资，外方只能在合资公司中持少数股权。此外，外国投资只能取得A级和B级空运销售代理许可证。这些限制规定阻碍了外国投资者对中国航空公司、飞机制造商和服务提供商的投资（资本和技术）。

restrictions and high import- and value-added taxes for aircraft and supporting spares and equipment. The current combined tax rate is 21.68 percent, providing an obstacle to development.

Restrictions on Investment

Since accession to the World Trade Organization (WTO) in 2000, China has gradually opened its key market sectors for foreign investment. Nevertheless, in the aviation sector, foreign investment is still restricted by regulations limiting joint venture companies to minority positions. In addition, foreign investment is limited to obtaining Class A and Class B Air Freight Sales Agency licenses. These restrictions discourage investment (capital and technology) in Chinese airlines, aviation manufacturers and service providers.

Visas and Export Controls

Overall, there has been some improvement in the implementation of the U.S. visa policy over the past two years. The number of business and tourist visas issued to Chinese nationals in 2006 was 18 percent higher than 2005; however, the wait time of 20 to 30 days for a visa interview is still too long and causes inefficiencies. While staffing has increased in recent years, the complicated visa process continues to discourage potential customers and partners from traveling to the United States. This continues to weigh on the competitiveness of U.S. companies, disrupting many planned delegation and customers visits, as other countries offer much easier visa procedures. The current visa policy is not selective enough in determining which category of applicants needs to go through the fingerprinting requirements and aviation-related travelers (business and government) seem to be disproportionately running into visa problems.

U.S. export controls continue to impact U.S. aerospace companies' competitiveness in China. This situation is made more acute because non-U.S. companies face stricter export control levels. (For more detail, see the chapter on Export Controls). ■

Recommendations

For the Chinese Government

- AmCham urges the State Commission of Air Traffic Management to adopt the International Civil Aviation Organization's

airspace classification methodology to make more airspace available for commercial use.

- AmCham urges the Air Traffic Management Board (ATMB) to accelerate deployment of state-of-the-art ATM technologies in near-term airport and airspace expansion and modernization projects.
- AmCham urges the Civil Aviation Administration of China (CAAC) to ensure transparent cost structures for fuel and equipment rental at major airports, and allow foreign carriers to employ staff from open talent markets.
- Reduce the import duty and value added tax for GA aircraft.
- Encourage foreign investment in capital and technologies in Chinese airlines, aviation manufacturers and service providers.

For the U.S. Government

- Please refer to Visa section for specific recommendations.
- Please refer to Export Controls section for specific recommendations.

签证和出口控制

总体上，最近两年美国签证政策在执行方面有了一定的改善。2006年向中国公民签发的商务和旅游签证的数量比2005年高18个百分点，但是，20至30天的签证面试等待时间仍然过长。虽然近年来，签证处的人员配备有所增加，但复杂的签证程序仍然阻碍了潜在的客户和合作伙伴到美国的旅行。这继续对美国公司的竞争力产生着不利影响，由于其它国家在不断简化签证程序，致使许多计划中的代表团和客户取消访美计划。在确定需要经过指纹识别检查的申人类别时，当前的签证政策缺乏充分的选择性，使航空业的相关旅行者（商务和政府人员）似乎总是遇到签证问题。

美国的出口管制政策仍然影响美国航空企业的在华的竞争力。由于非美国企业面临较严格的出口审查，使这种形势变得更加严峻。（更多详细内容，请参见出口管制章节）。 ■

建议

对中国政府

- 商会呼吁国家空中交通管制委员会采用国际民航组织的空域分类方法，以使更多的空域用于商业用途。
- 商会呼吁空中交通管制委员会在近期的机场和空域扩展、现代化项目中加快部署和使用最新的ATM技术。
- 商会呼吁中国民航总局确保主要机场的燃油和设备租赁成本结构透明，并允许外国运营商从开放的人才市场中招聘员工。
- 降低通用航空飞机的进口关税和增值税。
- 鼓励外国投资者以资本和技术的形式投资中国的航空公司、飞机制造商和服务提供商。

对美国政府

- 具体建议请参见签证部分。
- 具体建议请参见出口管制部分。

Construction, Engineering and Design

The construction industry, a mainstay of the Chinese economy, has undergone unprecedented growth in recent years. Ongoing infrastructure development, driven by the 2008 Olympics in Beijing and the 2010 World Expo in Shanghai, will continue to play a significant role in raising the quality level and expanding the use of innovative contractual and financial models to improve the standard and efficiency of construction activity in China.

Significant Developments

In the past year, the Ministry of Construction (MOC) has issued the following rules and regulations governing the operations of foreign construction, engineering and design companies: Regulations Governing the Management of Qualifications for Construction Supervision Enterprises (Decree 158) and its Implementation Rules (Circular 190); the Regulations Governing the Management of Qualifications for Construction Enterprises (Decree 159) and its Implementation Rules (Circular 241); and the Regulations Governing the Management of Qualifications for Construction Survey and Design Enterprises (Decree 160) and its Implementation Rules (Circular 202).

The much anticipated Regulation Governing the Management of Foreign-invested Engineering Services Enterprises (Decree 155), which was directed at foreign-invested construction, tendering, supervision and cost advisory enterprises, was issued in March 2007. The MOC and its local counterparts have not begun accepting applications submitted under Decree 155 and are not expected to do so until the Implementation Rules for Decree 155 are issued.

The MOC also issued the Qualification Standards for Engineering Design (Circular 86) in March 2007, which superseded Circular 22. Companies applying for design qualifications under Decrees 114 and 160 must be sure to comply with Circular 86 as well.

Unlike Decrees 113, 114 and 155, which apply only to foreign-invested enterprises (FIEs), Decrees 158, 159 and 160 and their corresponding Implementation Rules apply to both domestic and foreign-invested construction supervision enterprises, construction

enterprises, construction survey enterprises and design enterprises. Therefore, FIEs must comply with both sets of regulations (e.g., Foreign-Invested Design Enterprises (FIDEs) must comply with Decrees 114 and 160 and Circulars 86 and 202).

Specific Issues

Construction Works Sector – Decree 113

Decree 113 delineates the necessary qualifications and requirements that foreign construction companies must have before they can undertake construction activities in China. Specifically, a foreign construction company must establish a local presence by setting up some form of Chinese legal entity (either a wholly foreign-owned enterprise (WFOE) or a Sino-foreign joint venture). After its establishment, this Chinese legal entity must apply for the appropriate construction grade qualification so that it becomes a Foreign-Invested Construction Enterprise (FICEs).

Separate Qualification Standards

The grade qualification determines the maximum size and scale of projects that a construction enterprise may undertake. In March 2007, the MOC issued the Qualification Standards for Special Class Main Contractors (Circular 72), which updated the Qualification Standards for Special Class Main Contractors. Circular 72 divided the universal qualification standards for construction enterprises that were put forth in Circular 82 by the MOC in April 2001. This divided system, in which Circular 72 applies to Special Class Main Contractors and Circular 82 applies to all other grades of main contractors as well as all specialty contractors and labor sub-contractors, will remain in existence until the MOC updates the rest of Circular 82 to make it consistent with Circular 72. AmCham urges the MOC to integrate the system and clarify the situation before the transition period ends.

The concerns mentioned in previous White Papers regarding the upgrading of qualifications were eased somewhat by Circular 241, which provides that there is no time limit preventing construction enterprises from applying for an upgrade. While AmCham is pleased that design companies with several general

建筑、工程和设计

作为中国经济的支柱产业之一,建筑业近年来经历了前所未有的增长。在2008年北京奥运会和2010年上海世博会的推动下,基础设施建设持续发展,并继续在提高创新性合约与融资模式的质量水平、扩大应用等方面发挥重要的作用,进而提高中国建筑业行为的标准和效率。

重大成果

去年,建设部(MOC)颁布了旨在规范外国建筑、工程和设计公司业务经营的以下法规和规定:《工程监理企业资质管理规定》(第158号令)及其实施细则(第190号通知);《建筑业企业资质管理规定》(第159号令)及其实施细则(第241号通知);《建设工程勘察设计资质管理规定》(第160号令)及其实施细则(第202号通知)。

被寄予了很高期望的《外商投资建设工程服务企业管理规定》(第155号令),作为专门针对外商投资的建筑、招标代理、监理和造价咨询企业的一项规定,于2007年3月颁布。建设部及其地方部门尚未开始受理依据第155号令提交的申请,预期在第155号令实施细则颁布之后,方会开始受理申请。

建设部还于2007年3月颁布了《工程设计资质标准》(第86号通知),其取代了第22号通知。依据第114号令和第160号令申请设计资质的商会成员还必须遵守第86号通知。

与第113号令、第114号令和第155号令只适用于外商投资企业(FIE)不同,第158号令、第159号令和第160令及其相应的实施细则同时适用于内资和外商投资的工程监理企业、建筑企业、工程勘察设计企业。因此,外商投资企业必须遵守两套法规(例如,外商投资设计企业必须遵守第114号令和第160号令以及第86号通知和202号通知)。

具体问题

工程建筑领域——第113号令

第113号令规定了外国建筑企业要在我国从事建筑活动所必需具备的资格和必要条件。特别是,外国建筑企业必须在中国境内设立某种形式的中国法律实体(外商独资企业(WFOE)或中外合资企业)。成立后,此中国法律实体必须申请适当等级的建筑业企业资质,以成为一家外商投资建筑业企业(FICE)。

单独的资质标准

资质等级决定了建筑业企业可以承接的项目的最大规模。2007年3月,建设部颁布了《施工总承包企业特级资质标准》(第72号通知),修订了《施工总承包企业资质等级标准》。第72号通知把2001年4月建设部在第82号通知中提出的建筑企业通用资质等级标准进行了划分。在这个划分后的体系中,第72号通知适用于特级资质总承包企业,而第82号通知适用于所有等级的总承包商以及行业承包商和劳务分包商。同时这种政策不衔接的情况将会延续直至建设部对第82号通知其余配套政策的制定与完善。中美商会非常希望建设部有关部门能够保持此法规政策的连贯性,并在其颁布实施之前予以阐述说明。

第241号通知一定程度上缓解了往年白皮书中提到的有关资质升级问题的担忧。该通知规定,建筑企业申请资质升级是没有时间限定的。虽然商会很高兴在中国有若干总承包业绩的设计企业可以从一级或二级起步,但对在以前白皮书中提到的有关市场准入、注册资本要求过高、业绩要求、联合体的使用以及人员和经验要求的担忧仍然存在。

工程设计领域——第114号令

第114号令规定了外国工程设计公司在中国从事设计活动所需条件和应取得的资质。为在中国承接设计工程,外国工程设计公司必须在中国境内设立某种形式的中国法律实体(外商独资企业或中外合资企业)。一旦设立后,此中国法律实体必须申请适当的设计资质,以成为外商投资建筑工程设计企业。与建筑服务不同,外国工程设计公司就有机会承接境外设计工程,根据第78号令,如果外国工程设计公司在境外服

contracting track records in China can start from Grade A or Grade B, the concerns mentioned in previous White Papers regarding market exclusions, excessive registered capital requirements, track record requirements, the use of consortia, personnel and experience requirements remain unresolved.

Engineering and Design Sector – Decree 114

Decree 114 sets out the steps to be taken and the qualifications to be obtained for foreign engineering and design companies to undertake design activities in China. In order to undertake design works in China, a foreign engineering and design company must establish a local presence by setting up some form of Chinese legal entity (either a WFOE or a Sino-foreign joint venture). Once established, this Chinese legal entity must apply for the appropriate design qualification so that it becomes a FIDE. Unlike construction services, the opportunity exists for foreign engineering and design companies to undertake design work offshore insofar as Decree 78 allows foreign engineering and design companies to work in cooperation with locally qualified engineering design institutes where the offshore services involve engineering design beyond the basic initial conceptual design stage.

Decree 114 Implementation Rules

AmCham members welcomed the issuance and subsequent acceptance of applications under the final Decree 114 Implementation Rules (Circular 18). Although Circular 18 is a marked improvement, pressing questions and uncertainties remain.

Personnel Requirements

Circular 18 allows FIDEs to “temporarily” meet the requirement that 25 percent of their foreign technical personnel be qualified as either registered architects or registered engineers in China by hiring Chinese nationals who are PRC-registered architects or engineers. Similarly, FIDEs may meet the minimum percentage requirement for PRC-registered key technical personnel by employing Chinese technicians. In addition, Circular 18 relaxes the six-month residency stipulation if it cannot be met “temporarily.”

AmCham welcomes these moves, but is concerned about the use of the word “temporarily,” which implies an element of discretion on the part of the MOC and leads to considerable uncertainty

for foreign engineering and design companies in planning their long-term operations in China. AmCham strongly urges the MOC to remove this word and make the change permanent.

Upgrading of Qualifications

Decree 160 removed the practice of making FIDEs first obtain a temporary qualification certificate and then wait two years before applying to upgrade to the next qualification grade that existed under Decree 114. Under Decree 160, Grade A and Special Class construction enterprises are allowed to apply for Grade A design qualifications in their initial applications using their previous contracting track records in China. However, Circular 202 does much to mitigate the progress made by Decree 160 because FIDEs are prohibited from starting at Grade A or above. Moreover, Circular 202 requires that only design works included in general contracting track records be used when applying for Grade A design qualifications. The majority of FIDEs – especially those new to China or those that focus solely on engineering and design activities – do not enjoy the newly relaxed rules. While AmCham applauds the MOC for introducing Decree 160 in accordance with international practices, it urges the MOC to allow all FIDEs to enjoy the relaxed rules and apply for Grade A qualifications in their initial applications.

Use of Consortia

A common approach to infrastructure procurement internationally is to award large infrastructure projects to a consortium of contractors. The PRC Construction Law permits two or more contractors to jointly undertake construction projects. However, contrary to international practice, all consortiums are limited to undertaking work within the lowest qualification grade held by any of the individual consortium members. AmCham is disappointed with this limitation because international best practice assesses the capability of the consortium on the combined experience and resources of the consortium members and is not restricted by the lack of experience or resources of the perceived weaker partner.

Although the PRC Construction Law is silent on the consortium issue relating to design activities, the MOC and its local counterparts will most likely limit the work of design and survey consortia in much the same way as it has done for contractors in practice. AmCham urges the MOC to release rules governing non-contractor consortia to clarify the situation.

务超出提供建设工程初步设计(基础设计)的情况下,外国工程设计公司应与国内符合资质的工程设计单位合作。

第114号令实施细则

中美商会成员欢迎第114号令实施细则(第18号通知)最终的颁布及实施。尽管第18号通知有了显著的进步,但亟待解决的问题和不确定性仍然存在。

人员要求

第18号通知允许外商投资设计企业暂不满足114号令第十五条要求时,可以通过聘用中国注册建筑师、注册工程师以满足114号令对取得中国注册建筑师、注册工程师资格的外国服务提供者人数达到注册执业人员总数25%的要求;对114号令中具有相关专业设计经历的外国服务提供者人数的要求,可以聘用具有中国国籍的专业技术人员代替。而且第18号通知还放宽了对外国服务提供者六个月居住期的要求规定。

中美商会欢迎这些变化,但也很担心“暂时”这个词的使用,它某种程度上暗示着建设部有自行裁量的可能性,这将给外国工程设计公司在中国的长期经营规划带来相当大的不确定性。商会强烈呼吁建设部取消此词的使用,允许永久性放宽这些限制。

资质升级

第160号令废除了第114号令所规定的外商投资设计企业申请升级到上一级资质等级,应在取得临时资质证书两年后的这一惯例。依据第160号令,一级和特级建筑企业可以在初次申请时,凭其在中国的承包业绩申请甲级设计资质。然而,第202号通知在很大程度上削弱了第160号令所取得的进展,因为外商投资设计企业是不得从甲级或以上资质起步。此外,第202号通知还要求,在申请甲级设计资质时,只能使用总承包业绩中所含的设计工程。多数外商投资设计企业,尤其是新到中国的企业或只从事工程设计的企业,不能享受新放宽的规定。虽然商会赞成建设部按照国际惯例推行第160号令,并呼吁建设部让所有的外商投资设计企业享受放宽的规定,并在初次申请中就可申请甲级设计资质。

联合体的使用

国际上常见的基础设施承包模式是把大型基础设施项目承包给承包商联合体。《中国建筑法》允许两个或两个以上的承包商联合承接建筑项目。然而,与国际惯例不同的是,所有联合体都只限于承接联合体单个成员所持有的最低资质等级范围内的工程。中美商会对此限制感到失望,因为国际最佳做法是依据联合体成员的综合经验和资源来评价联合体的能力,并不会因某一实力较弱的成员缺乏经验或资源而受到限制。

尽管《中国建筑法》对有关设计项目的联合体问题没有做出任何规定,但建设部及其地方部门很有可能参照其在实践中对承包商的限定而对勘测设计联合体的工作加以限制。商会呼吁建设部出台有关非承包商联合体的规定,予以澄清。

非国民待遇

第160号令适用于国内设计企业和外商投资设计企业,其明确规定对新成立的设计企业不需有以往业绩要求。然而依据第114号令及其实施细则,外国投资者在首次申请设计资质时必须提供至少两项以往的海外设计工程业绩。这与建设部宣称的“公平竞争”不符,因此,商会呼吁建设部采取措施,以使外国和国内企业享受同等待遇。

建筑工程及工程设计领域的并购行为

资格重新核定

建设部建筑市场司于2007年9月发布了《关于建设工程企业改制、重组、分立等情况资质核定有关问题的通知》(第229号通知)。第229号通知旨在阐明在中国勘察设计、施工、监理企业和招标代理机构在改制、重组、分立和合并过程中涉及的资格重新核定问题。依据第229号通知,建设工程企业改制、重组、分立,申请办理企业资质,按照有关规定重新进行核定。同样,如果收购或股权转让(即国内企业转为外商投资企业或反之亦然)后,企业性质发生变化,相关的资质申请也将由相关建设行政主管部门审查。如果在收购或股权转让后,新成立的企业想申请原企业拥有的资质,可不提交代表工程业绩

Non-National Treatment

Decree 160, which applies to both domestic design enterprises and FIDEs, expressly stipulates that there is no track record requirement for newly established design enterprises. Yet under Decree 114 and its Implementation Rules, foreign investors are required to provide at least two overseas design track records on their initial applications for design qualifications. This is inconsistent with the MOC's avowed "level playing field" and, as such, AmCham urges the MOC to take steps to make the situation equal for both foreign and domestic parties.

Re-qualification Regarding M&A in the Construction Works and Engineering and Design Sectors

The Market Department of the MOC issued a Notice on Qualification Ratification Involving Restructuring, Reorganization and Split (Circular 229) in September 2007. Circular 229 sought to clarify re-qualification issues involved in the restructuring, reorganization, splitting and merging of survey, design, construction, supervision and tendering agency enterprises in China. According to Circular 229, when an enterprise is split up or split off and the surviving enterprise(s) and/or new enterprise(s) apply for the relevant qualifications, all such applications will be subject to review by the competent construction administrations. Similarly, if an acquisition or equity transfer (i.e., converting a domestic enterprise to a FIE or vice versa) changes the nature of an enterprise, the relevant application for qualifications will be reviewed by the appropriate construction administration. If after such an acquisition or equity transfer occurs a newly established enterprise wishes to apply for a qualification possessed by the original enterprise, it may not be required to provide materials to establish a track record. However, for any case in which foreign investors acquire domestic enterprises, Decree 113, Decree 114 and Decree 155 shall apply. Thus, the risk of losing the qualification held by a Chinese company acquired by foreign investors remains unchanged, and the benefits from Circular 229 are somewhat illusory.

Project Management Sector – Circular 200

For several years, foreign construction, engineering and design companies provided project management services and expertise for foreign and Chinese developers. This practice thereby benefited Chinese contractors and developers due to the extensive

transfer of project management technology and expertise. This situation changed with the adoption of Circular 200 on December 1, 2004, which required that project management services be provided by local entities holding specific construction-related qualifications such as design, tendering agency, construction, supervision or cost consultancy qualifications. Therefore, Circular 200 serves as a barrier to market entry for foreign project management companies because only FICEs, FIDEs and other foreign-invested construction services enterprises qualified under Decree 155 are allowed to provide project management services. By requiring project management companies to undergo the formal qualification process in a specific area to meet the registered capital, minimum personnel and track record requirements, foreign project management companies have been severely disadvantaged and the transfer of technology to Chinese contractors and consultants has been significantly hampered. While Decree 155 may provide an alternative path, implementation rules have yet to be issued, so this door remains closed.

EPC Project Management Model

As part of its approach to improve construction quality and efficiency and to develop engineering, procurement and construction (EPC) contracting in China, the MOC issued Order 30 in February 2003 and Order 161 in July 2003. These Guidance Opinions appear to permit EPC contracting provided the EPC contractor holds an appropriate design qualification and sub-contracts the construction activities to an appropriately qualified contractor. Since the MOC has not taken further action to encourage the adoption of the EPC and project management models of contracting in China, these Guidance Opinions are not official pieces of legislation. In this regard, it is somewhat ironic that many Chinese contractors are undertaking EPC contracts in Africa, India and the Middle East, yet are unable to obtain experience of this type of contracting in their own country. AmCham urges the MOC to codify the position of EPC contracting more clearly.

The construction, engineering and design sectors in China will continue to have high growth for several years to come. Many international construction, engineering and design companies have come to China to take part in this development and provide technical and managerial support for Chinese enterprises. Unfortunately, the restrictions contained within Decree 113, Decree 114 and Circular

资料。然而，对于任何外国投资者收购国内企业的情况，第113号令、第114号令和第155号令都适用。因此，中国公司在被外国公司收购后仍然面临可能失去其原有资质的风险，这使得第229号通知带来的益处化为乌有。

项目管理领域——第200号通知

近年来，外国建筑和工程设计企业为外国和中国开发商提供了项目管理服务和专门技术。中国的承包商和开发商因项目管理技术和专门技术的大量转让而从中获益。随着2004年12月1日第200号通知的颁布，这种形势发生了变化。该通知要求项目管理服务由持有设计、招标代理、建筑、监理或造价咨询资质等相关特定工程资质的当地实体提供。第200号通知成为外国项目管理公司进入市场的障碍，因为只有符合第155号令规定资格的外商投资建筑企业、外商投资设计企业和其他外商投资建筑服务企业才可提供项目管理服务。由于按照规定，项目管理公司须办理特定业务领域的资质正式审批手续，以满足注册资本、最低人员和以往业绩要求，这使得外国项目管理公司处于严重不利的地位，大大阻碍了其向中国承包商与顾问公司进行的技术转让。虽然第155号令可提供替代途径，但实施细则尚未颁布，因此大门仍然是关闭的。

EPC项目管理模式

EPC总承包(设计、采购和施工)是提高建筑质量与效率的重要模式，建设部于颁布了第30号令(2003年2月)和第161号令(2003年7月)。这些指导意见似乎允许EPC总承包，条件是EPC承包商持有适当的设计资质并将施工工程分包给持有适当资格的承包商。由于建设部没有采取进一步措施以鼓励在中国采用EPC和项目管理承包模式，这些指导意见还不是正式的立法。在这方面，颇有意味的是，许多中国公司在非洲、印度和中东承接EPC合同，然而却无法在本国获得此类承包经验。商会呼吁建设部更加清晰地将来EPC承包的地位法律化。

中国建筑与工程设计行业在未来若干年中仍将继续保持高速增长。许多国际建筑与工程设计公司来到中国参与此发展，并为中国企业提供技术和管理支持。然而，第113号令和第114号令及第200号通知中

的限制性规定剥夺了中国承包商、设计企业和项目管理企业获得世界级竞争优势所需要的全套专门技术和人才的机会。此外，这些限制性规定阻碍了建设部有关中国建筑与工程设计企业达到国际标准的目标的实现。

2007年，建设部开始受理设计施工一体化资质申请，进一步促进总承包业务在中国的开展。建设部分别于2006年3月和2006年9月颁布了设计与建筑企业的相关资质标准和相关的实施细则。目前，满足资本和人员要求的企业可以申请设计资质、施工资质或设计施工一体化资质。具有该等设计施工一体化资质的企业可以承揽建筑智能化工程、消防工程、建筑装饰装修工程和建筑幕墙工程的设计、施工、咨询、项目管理和总承包服务。商会呼吁建设部通过颁布中国其它工程类型的设计施工一体化资质标准来推广这种做法。 ■

建议

工程建筑领域——第113号令

- 参照国际通行做法，可考虑允许利用母公司的财力、担保或其它保证协议作为一种替代方案，部分或全部取代过高的注册资本要求。
- 允许联合体内的建筑公司在单个成员公司的最高资质等级范围内承接工程。

工程设计领域——第114号令

- 通过删除“暂时”一词阐明第18号通知，并因此使放宽的规定成为永久性规定。
- 允许外商投资设计企业在首次申请中即可申请甲级设计资质。
- 在确定资质等级时，允许考虑外商投资设计企业母公司和关联公司的以往业绩。
- 参照国际通行做法，允许联合体内的设计企业以联合体成员持有的最高资质等级承接工程。

外商投资建筑服务领域——第155号通知

- 尽快颁布第155号令实施细则，并开始受理依

200 deprive Chinese contractors, designers and project managers of the full range of expertise and exposure to the talent needed to become world class competitors. Moreover, these restrictions hinder the MOC's desired goal of achieving international standards for Chinese construction, engineering and design enterprises.

The MOC took further steps towards promoting general contracting in China when it began accepting applications for integrated design and construction qualifications in 2007. The MOC issued the relevant qualification standards for integrated design and construction enterprises as well as the associated implementation rules in March 2006 and September 2006, respectively. At present, enterprises with the required capital and personnel may apply for design qualifications, construction qualifications, or integrated design and construction qualifications. Enterprises with such integrated design and construction qualifications are permitted to provide design, construction, consultancy, project management and general contracting services for the design and construction of construction intelligence works, fire prevention works, construction decoration works, and construction facade works. AmCham urges the MOC to extend this practice by issuing qualification standards for integrated design and construction qualifications for other types of works in China. ■

qualification in their initial applications.

- Include the track record of the parent and affiliated companies of FIDEs when determining qualification grades.
- Allow design companies working in a consortium to undertake works at the highest qualification grade held by a consortium member as is the international norm.

Foreign-Invested Construction Services Sector - Circular 155

- Issue Decree 155 Implementation Rules as soon as possible and start accepting applications to establish foreign-invested supervision, cost consultant and tendering agency enterprises under Decree 155.
- Remove the requirement that only FICEs, FIDEs or other foreign-invested construction services enterprises qualified under Decree 155 be allowed to provide project management services and engage in project management activities.

Recommendations

Construction Works Sector – Decree 113

- Use the fiscal strength of the parent company, bonding or another guarantee arrangement as an alternative to, or partial or complete replacement of, overly high registered-capital requirements as is the international norm.
- Allow construction companies working in a consortium to undertake work within the highest of the individual companies' qualification grades.

Engineering and Design Sector – Decree 114

- Clarify Circular 18 by removing the reference to “temporarily,” thereby allowing the relaxations to become permanent.
- Allow FIDEs to apply for Grade A design

据第155号令提出的成立外商投资监理企业、造价咨询和招标代理机构的申请。

- 废除只有符合第155号令规定资格的外商投资建筑企业、外商投资设计企业和其他外商投资建筑服务企业才可以提供项目管理服务并从事项目管理活动的要求。



Cosmetics

After more than ten years of rapid development, China has become Asia's second-largest cosmetics market after Japan, and the eighth-largest in the world. According to the 2006 China Light Industry Year Book issued by the China Light Industry Federation, the nation's cosmetics market reached RMB107.5 billion (US\$14.5 billion) in 2006. This booming cosmetics industry has promoted development of other industries including research and development, packaging materials production, publications, advertising and retail and distribution services. It has also brought investment from an increasing number of foreign cosmetics companies who recognize the potential of China's burgeoning cosmetics market. Despite some progress on policy transparency and process, the industry still faces restrictive and complicated regulations that hinder its continued growth in China.

Significant Developments

AmCham acknowledges the ongoing efforts made by government authorities to address some of the industry's challenges. The General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) and the Ministry of Health (MOH) jointly announced in August 2007 that they would modify the management procedure for cosmetics imported from areas affected by the presence of Bovine Spongiform Encephalopathy (BSE). Starting from August 31, 2007, importers are no longer required to provide the "Cosmetics Certificate of BSE" issued by health departments and other authorized agencies in BSE countries when applying for a hygiene permit from MOH or requesting an inspection and quarantine with local China Inspection and Quarantine (CIQ) offices.

AmCham also applauds MOH and AQSIQ for providing industry the opportunity to contribute their expertise to new draft regulations. After seeking public comments, MOH issued the updated Hygienic Standard for Cosmetics in January 2007, which went into effect July 1, 2007. Both MOH and AQSIQ published a draft Cosmetic Labeling Supervision Regulation on their official websites and solicited public comments. AQSIQ has since published the final Cosmetic Labeling Supervision Regulation.

Specific Issues

The cosmetics industry's main concerns are restrictive and complicated regulations, and the unequal treatment in regulatory procedures between domestic and imported cosmetics. The authorities have drafted more and more restrictive regulations that do not address lingering inconsistencies between the treatment of local-owned versus international companies. Furthermore, the regulatory situation for both domestic and imported cosmetics is becoming increasingly complicated, making it difficult for companies to track the rules and ensure they remain in compliance.

New Product Registration

The pre-market registration procedure for imported non-special-use cosmetics increases the workload and financial responsibility for international cosmetics companies, potentially delaying new product introductions to the Chinese market anywhere from four months to a year. Recently MOH issued several regulations and rules about new product registration but did not provide an adequate transition period for their implementation. This kind of incomplete regulatory process disproportionately affects the imported cosmetics industry and further delays the entrance of time-sensitive products into China's market. The industry urges government authorities to follow China's WTO and Technical Barriers to Trade rules regarding National Treatment.

AmCham feels that MOH's requirement for new ingredient registration and formula re-registration upon any slight change is unnecessarily burdensome and unreasonable. Without clear guidelines specifying exactly which ingredients are considered "new" and what documentation is sufficient to support the safety of a new ingredient, companies cannot prepare and collect information in advance, adding significant delays to the product registration process. Having to re-register a formula that has undergone only small changes is costly and time consuming and will delay the improvement of formulas. This situation affects both domestic and international cosmetic companies.

化妆品

经 过十多年的快速发展，中国已经成为亚洲第二大的化妆品市场，仅次于日本，在全球位列第八。根据中国轻工业协会发布的《2006年中国轻工业年鉴》，2006年中国化妆品市场规模已经达到1075亿人民币（约合145亿美元）。高速发展的化妆品业也促进了其他行业的发展，包括研发、包装材料生产、出版、广告以及零售和分销服务业。这也促使越来越多的外国化妆品公司到中国投资，他们认识到中国这个新兴的化妆品市场具有巨大潜力。就行业所处的政策环境而言，总体而言，在政策透明度和政策执行方面取得了一些进步，但法律法规中存在的交叉重叠和过多的限制将会影响中国化妆品市场的持续性发展。

重大进展

中美商会感谢中国政府一直以来为解决化妆品行业面临的挑战所做出的努力。国家质检总局和卫生部的相关部门于2007年8月发表联合声明，宣布他们将调整对从“疯牛病”（BSE）疫区进口的化妆品的管理措施。从2007年8月31日开始，进口商在向卫生部申请卫生许可批件或向地方检验检疫局（CIQ）申请进口化妆品检验检疫证明时，无需再提供由发生“疯牛病”国家或地区卫生部门和其他授权机构提供的无“疯牛病”证书。

中美商会感谢卫生部和国家质检总局在起草制定新法规时，对公众及行业进行公示，使行业有机会提出专业意见和建议。在征集公众意见后，卫生部于2007年1月出台了新版的《化妆品卫生规范》，该规范已于2007年7月1日生效。卫生部和国家质检总局都在他们的官方网站上发布了化妆品标签标识管理方法的草案并征求公众意见。国家质检总局随后发布了最终的《化妆品标识管理规定》。

行业面临的具体问题

目前化妆品行业关注的主要问题包括：各项法规的交叉重叠和限制过多；国产和进口化妆品在监管程序上的不平等待遇。最近各监管部门起草了许多新

的限制性的法规，不仅未能解决国产和进口化妆品在监管程序上的不平等待遇问题，而且使化妆品行业的法规环境变得更为复杂，使化妆品企业完全遵从执行法规的难度不断加大。

新产品注册

针对进口非特殊用途化妆品的上市前审批程序，巨大的增加了国际化妆品企业的工作量和财务成本，致使新产品进入中国消费市场的时间也因此拖滞四个月至一年。最近卫生部在进口非特殊用途化妆品的注册方面又颁布了一些新的规定，但这些新的规定在实施前并没有给予企业适当的过渡期。这种不完善的法规程序给进口化妆品带来了负面的影响，使季节性很强的产品更加难以适时进入中国消费市场。业界敦请相关政府部门履行中国入世以及《技术性贸易壁垒(TBT)》关于“国民待遇”的承诺。

根据卫生部有关规定，“新原料”审批和产品配方发生任何微小变化就必须重新注册，中美商会认为这一要求过于严格，不尽合理，给国产化妆品企业和进口化妆品企业都带来了不利的影晌。由于“新原料”的定义和标准不清晰，以及对如何证明“新原料”的安全性缺乏统一的标准，企业无法事先收集和准备有效的资料，这使产品审批的程序变得更加冗长。此外重新注册有微小变化的配方从费用和时间上都加大了企业的负担，影响了企业不断改进配方的积极性。

双重标准以及《化妆品卫生规范》2007版的色素问题

目前卫生部和国家质检总局实施着两套不同的化妆品标准。卫生部于2007年1月发布了新版《化妆品卫生规范》，而国家质检总局仍使用1987年发布的《化妆品卫生标准》，即国标7916-87。由于国标7916-87已有二十年未作更新，因此其中许多规定都已过时，不符合化妆品行业目前的发展水平。此外，该标准的许多规定与《化妆品卫生规范》2007版相矛盾，化妆品企业无法按照相互矛盾的要求进行生产。

Dual Standards Adopted and Colorant Issue of the New Hygienic Standard for Cosmetics

Currently MOH and AQSIQ are mandating two different cosmetic standards. MOH issued the new Hygienic Standard for Cosmetics in January 2007, while AQSIQ is still using the Hygienic Standard for Cosmetics issued in 1987 (specifically GB7916-87). Since GB7916-87 has not been updated for 20 years, most provisions are outdated and incongruent with the current level of development in the industry. Moreover, many requirements of GB7916-87 conflict with those of the 2007 Hygienic Standard for Cosmetics. Cosmetics manufacturers simply cannot produce products that comply with conflicting requirements.

Based on the EU Cosmetics Directive, MOH updated the Hygienic Standard for Cosmetics Edition 2002, issued the new version in January 2007 and implemented it on July 1, 2007. However, the new Hygienic Standard for Cosmetics cites both EU and U.S. regulations for cosmetic colorants and for some colorants, even the purity requirements for food colorants are cited. Although the colorant requirements of the new Hygienic Standard for Cosmetics now exceed U.S. and EU requirements, no safety benefits for Chinese consumers have been realized. Instead, the requirements have become a barrier to registering imported cosmetics. The industry urges MOH to reconsider and modify the purity criteria for colorants on a strictly scientific basis as early as possible.

SPF Labeling – The Upper Limit of SPF

Protecting their skin from the sun has always been important to Chinese consumers and fundamental to how they choose skin products. The SPF (sun protection factor) on sunscreen products imported from many countries in Europe and Japan exceeds SPF50+ and the U.S. FDA recently issued a proposed monograph on sunscreens also allowing this. Yet Chinese labels can show a maximum of only SPF30+ according to current labeling regulations.

Cosmetics companies are eager to find ways to guarantee public safety. According to studies conducted by experts in the EU and elsewhere, SPF30+ is insufficient to protect skin from overexposure to the sun. Consumers with very sensitive skin and children are advised to use products with high SPF index. Labeling SPF50+ is accepted by the international marketplace and

complies with international industry practice. It also allows consumers to identify the correct SPF and buy the right product.

Multiple Regulation and Administration on Cosmetics Labeling

Current regulations for cosmetics labeling are overly restrictive and complicated. While the revised National Standard of Cosmetic Labeling (GB5296) is awaiting final approval and expected to be issued in the near future, AQSIQ recently issued the Cosmetics Labeling Supervision Regulation. AQSIQ is also working to establish industry and national standards for cosmetics claims testing protocols. At the same time, MOH drafted another version of the Cosmetics Labeling Supervision Regulation and is planning to publish it soon.

AQSIQ's Cosmetics Labeling Supervision Regulation requires products to have Chinese labels showing a complete ingredients list and production place, along with information related to "repackaging." However, the definitions of some terms such as production place and "repackaging" are unclear and the implementation details are not yet available.

Under MOH's draft Cosmetics Labeling Supervision Regulation, additional information about contract manufacturers is now required, ingredient claims are much stricter and a positive list and a negative list for product claims are stipulated.

The cosmetics industry thinks Chinese regulations should allow claims that are based on sound scientific evidence and in accordance with the regulatory definition of a cosmetic. In this way, companies are free to innovate and to provide products that can be distinguished on the basis of ongoing technological advances.

The industry believes the multiple regulations by separate government bodies are not in line with the Chinese government's ongoing efforts to simplify and create a consistent regulatory environment. We anticipate major compliance difficulties that will increase costs for both international and domestic companies and ultimately reduce the benefits these products could bring to Chinese consumers.

Electronic Supervision System

Under the terms of a joint AQSIQ, State Administration of Industry and Commerce

《化妆品卫生规范》2007版是卫生部借鉴欧盟《化妆品规程》，对《化妆品卫生规范》2002版所做作的更新，于2007年1月发布，2007年7月1日起开始施行。新版《化妆品卫生规范》在限用着色剂方面引用了欧盟和美国两方面的要求，对某些限用着色剂甚至引用了欧盟和美国对食品用着色剂的要求。尽管新版《化妆品卫生规范》对限用着色剂的要求超越了美国和欧盟，但并不能给中国消费者带来更多的使用安全，相反，这种苛刻的要求变成了进口化妆品审批的一个壁垒。业界希望卫生部在科学的基础上尽早重新考虑并修改对限用着色剂的纯度要求。

化妆品防晒指数（SPF）的标识——SPF值上限

保护皮肤免受阳光侵害一直是中国消费者十分关注的问题，也决定着他们对化妆品的选择。目前从许多欧盟国家和日本进口的防晒产品SPF值标识的上限为SPF50+，美国FDA最近发表的防晒专著也提议标注SPF50+。然而依照中国现行的防晒产品SPF标识规定，防晒指数SPF标识的上限最高只能是SPF30+。

遵照消费者安全第一的宗旨，化妆品公司积极寻找方法以保证消费者的安全性。欧盟和其他国家专家所进行的相关研究表明，防晒指数标识为SPF30+的防晒产品不能为敏感性肌肤消费者和儿童提供足够保护，因此建议他们使用高SPF值的防晒产品。SPF50+上限的标识已被多数国家广为采纳，同时也符合国际化妆品行业的发展趋势。此外，SPF50+上限的标识也有助于消费者正确判断SPF指数，从而购买合适的产品。

化妆品标签标识的多重管理和多重法规

目前化妆品标签标识方面的法规限制过多，非常复杂。修订后的国标GB5296.3《消费品使用说明—化妆品通用标签》即将颁布，而在此之前，国家质检总局颁布了《化妆品标识管理规定》。目前国家质检总局正致力于建立化妆品功效检测方面的行业标准和国家标准。与此同时，卫生部也起草了《化妆品标签标识管理规范》，计划很快就颁布实施。

在质检总局颁布的《化妆品标识管理规定》中要求

化妆品必须标注中文成分表和实际产地以及与分装化妆品相关的信息，但是实际产地和分装化妆品的定义并不明确，并且该法规的实施细则还未出台。

在卫生部的《化妆品标签标识管理规范》草案中，新增加了标注与委托生产相关的信息的要求，对成分的宣称也将进一步受到限制，此外还列出了可以使用的化妆品宣称用语清单和禁止使用的化妆品宣称用语清单。

业界认为企业应被允许使用有科学依据和符合化妆品定义的宣称用语，以便企业能够自由创新，并持续不断地生产出更先进的产品。

业界认为在化妆品标签标识方面的多重管理和多重法规与中国政府简化与统一法规的一贯努力相违背。多重法规的存在必将给国外和国内的化妆品企业带来执行法规的巨大困难，并导致产品成本提高，最终将损害中国消费者的利益。

化妆品电子监管系统

根据2007年11月国家质检总局（AQSIQ）、国家工商行政管理总局（SAIC）和商务部（MOFCOM）联合发布的通知，一些国产化妆品被纳入了产品质量电子监管系统，其中包括护肤品、洗发水、护发素、洗手液和沐浴剂。生产厂家被要求在2008年12月31日前，在上述产品的销售包装上加贴或打印电子监管码，没有电子监管码的产品不能上市销售。为了申请电子监管码，生产厂家需按照要求向政府部门指定的一家第三方公司提供有关产品的商业信息。据介绍，这一新的产品质量电子监管系统的目的是打击假冒产品。

化妆品行业认为在目前的市场环境下，打击假冒的确是非常重要的工作。但是，我们呼吁政府有关部门重新慎重考虑对化妆品采用电子监管赋码的方式来打击假冒的做法。主要的原因是在化妆品的单个销售包装上打印电子监管码不具有技术可行性。根据目前的技术评估，许多化妆品包装都因为包装材料 and 打印不匹配或者包装形式的多样性而无法打印电子监管码。而且，一品一码的赋码方式会极大地增加生产成本，一个中等规模的化妆品企业会因此

(SAIC) and Ministry of Commerce (MOFCOM) announcement in November 2007, some locally made personal-care products, such as skin care, hair care and body and hand wash products, are now regulated by the Electronic Supervision System. By December 31, 2008, manufacturers are required to print or stick additional electronic identification barcodes on each sales unit. Products without barcodes will not be allowed on store shelves. Manufacturers must submit business information to a government-designated, third-party company to apply for a barcode for each sales unit. This new system is intended to fight counterfeit products.

The cosmetics industry agrees that anti-counterfeiting measures are very important in China's current business environment. However, we urge the authorities to reconsider adopting the requirement for the cosmetic sector in this manner. Technically speaking, printing the barcode on each sales unit or package is not feasible. Based on current technical assessments, the barcode cannot be printed on many cosmetic product packages due to incompatible packaging materials or various package design styles. Moreover, the product-by-product coding will increase production costs significantly, amounting to total cost increases in millions of RMB for medium-sized manufacturers. The increased costs will be shifted to consumers and will lead to a higher Consumer Price Index (CPI).

Apart from the technical difficulties and cost implications, the industry believes that the barcoding system needs to be reviewed to verify its effectiveness. We think manufacturers acting illegally could easily counterfeit the barcode, thereby negating the program's intention.

Since the cosmetics industry considers the newly launched Electronic Supervision System to be a typical administrative permission, under the Administrative Permission Law we ask the authorities to confirm that the current procedure is in line with the relevant requirements. In particular, we are concerned about the involvement of a third-party company in the permission process and believe that is not appropriate.

Dual Plant Licensing System

MOH and AQSIQ have two different systems to register and audit cosmetic manufacturing sites in China and license codes from both must be included on retail package labels to indicate that a plant has

official government approval. As a result, applicants must undertake lengthy and duplicate efforts through two different government authorities step-by-step, from the provincial to the central level, to comply with the licensing requirements.

The cosmetics industry believes that production capability and hygiene control are two aspects of the quality assurance system that cannot be separated and that a single management system should be established in China. Such a system would allow the industry to greatly reduce unnecessary costs that it now dedicates to managing two artificially divided systems. It would also lower the government's costs for regulatory control and would make the regulatory requirements more transparent and easier to follow.

Consumption Tax

China's tax and duty structure on cosmetics make retail prices as much as 40 percent higher than other markets. With more PRC citizens traveling outside China, the industry is losing sales to competitor markets as travelers increasingly purchase cosmetic products overseas. The Chinese government similarly loses a large amount of VAT tax revenue. The industry is particularly concerned about the 30 percent consumption tax levied on make-up and fragrances. Given that cosmetics have become daily-use products for many Chinese consumers, we believe it is not appropriate to categorize cosmetics as luxury goods subject to consumption tax.

Advertising Regulations

Several regulations governing advertising practices in China's cosmetics industry are overlapping, inconsistent and ambiguous. Regulations on Administration of Print Ads (2005), the Advertising Law (1995), Regulations and Administration on Cosmetic Advertisements (1993) and the Anti-Unfair Competition Law (1993) all regulate advertising in the cosmetics industry. Some items concerning the same issues in these laws and regulations duplicate and/or are inconsistent with one another, while others are ambiguous and leave room for subjective interpretation. Inconsistent interpretations on the national and local levels by Administrations of Industry and Commerce have cost foreign and domestic firms high levels of resources and investment. As a result of increased costs, consumers see unnecessarily higher prices.

China's growing cosmetics market provides the sector

每年增加成本数百万元人民币。可以预见，增加的成本会转嫁给消费者，从而会成为推动消费价格指数（CPI）上涨的因素。

除了技术困难和生产成本问题，化妆品行业认为电子监管体系对于打假的有效性值得重新审视。我们认为造假的不法企业可以轻易伪造电子监管码，使这项工作根本无法实现打假的目的。

化妆品行业认为新的产品质量电子监管体系是一种典型的行政许可行为，我们请求政府部门根据《行政许可法》确认现有做法是符合相关要求的，特别需要关注的是，我们对于一个第三方公司介入行政许可的过程中感到担心，我们认为这是不合适的。

工厂的双重注册审查制度

卫生部和国家质检总局采用两种不同的体系来注册和定期审查在华的化妆品生产工厂。两种许可证编号都必须标识在产品销售包装上面，表明该工厂已经获得中国相关政府部门的正式批准。企业不得不花费大量的时间和精力，经过省级和国家两级政府机构审批，逐一通过两种不同的许可认证体系。

业界认为，生产能力和卫生控制是质量保证体系中不可分割的两个方面，应该建立一个单一的管理体系来整合这些规定。通过这种整合，中国化妆品行业可以极大地减少为应对双重注册审查而投入的不必要的成本，政府部门也可以相应地降低注册审查的成本。这也将使注册审查的要求更加透明和易于遵守。

消费税

中国对化妆品实行的税收、关税制度使得中国市场的零售价格远远高于其它市场，差距达40%。随着更多的中国公民去境外旅游并在海外购买化妆品，相当一部分购买力从中国市场流失到了竞争市场，中国政府也相应损失了一大笔增值税的收入。业界特别关注对彩妆类和香水类产品征收的30%的消费税。考虑到化妆品已成为中国消费者的日用产品，我们认为将化妆品归类为奢侈品并继续征收消费税已不恰当。

化妆品广告管理法规

有关中国化妆品广告管理的几部法规内容有所重叠，且存在不一致性和模糊性。《印刷品广告管理办法》（2005年）、《广告法》（1995年）、《化妆品广告管理办法》（1993年）和《反不正当竞争法》（1993年）都是管理化妆品广告的法规。但是，这些法规中针对同一事项的某些条款有所重叠，而且/或者有出入，有一些条款表述模糊，给实际操作留下了较大的随意解释的余地。而且，国家和地方工商管理部門对这些法规的解释常常不一致，致使国外和国内的化妆品企业为此投入了巨大的资源和费用。由于成本上升，导致消费者购买产品的价格也无谓地提高了。

中国正在快速发展的化妆品市场为该行业提供了巨大的发展和投资机会。但能否实现这样的发展，让业界和消费者同时获益，很大程度上取决于政府部门是否能建立一套统一、高效和透明的监管体系。对进口和国产化妆品实行不同标准，多重管理和多重法规并存，以及法规的限制性过大，严重地阻碍了中国化妆品市场按照世贸组织的规则自由运作，影响了中国化妆品行业的整体发展。 ■

建议

- 促进化妆品法规的简化和统一，使法规环境更有利于中国化妆品市场的蓬勃发展，使中国化妆品行业更具国际竞争力。
- 简化进口非特殊用途化妆品的备案制度，或者将其与国产非特殊用途化妆品的备案制度完全统一，以加快先进、时尚的产品进入中国消费市场的速度。
- 在科学的基础上重新考虑对限用着色剂的纯度要求，以及对“新原料”审批和对仅有微小变化的配方重新进行注册的要求，以促进国际化妆品法规的和谐统一。
- 统一目前卫生部和国家质检总局采用的两套不同的强制性化妆品标准，为企业营造一个更有效的运营环境。
- 将化妆品防晒指数标识上限提高到SPF50+，以更好地保护消费者，并与国际化妆品行业的发展趋势相一致。

with great development and investment potential. However, neither industry nor the consumer will be able to benefit from these gains unless China can develop a consistent, efficient and transparent regulatory system. The separate standards for imported and domestic cosmetic products, inconsistent and subjective regulations, and excessive procedures and costs directed at foreign companies seriously hinder the liberalization of the cosmetics market in accordance with WTO guidelines and the general development of China's cosmetics industry. ■

Recommendations

- Promote a more simplified and consistent regulatory environment to nurture a vibrant Chinese cosmetic market, which will in turn be more competitive in the international market.
- Simplify the notification system for imported non-special-use cosmetics or unify it with that for domestic non-special-use cosmetics to speed up the entrance of advanced, fashionable products into the Chinese market.
- Re-consider the criteria for colorants' purity and for "new ingredients" as well as the requirement for re-registering a formula with any slight change. The criteria should be based on scientific research to promote global regulatory harmonization.
- Unify the two different compulsory cosmetics standards that are currently adopted by MOH and AQSIQ to create a more efficient operation environment for the companies.
- Increase the upper limit of the SPF index to SPF50+ to better protect consumers and be in line with international industry practice.
- Unify the regulations and standards on cosmetics labeling to facilitate the companies' compliance. Allow claims that are based upon sound scientific research and are in accordance with the regulatory definition of a cosmetic to encourage product innovation and technology advancement.
- Reconsider implementing the electronic supervision system on cosmetic products and postpone enforcement until the practice is proven to be effective, feasible and appropriate.
- Unify the dual plant licensing system to streamline the requirements and

help establish a sound and robust plant management system in China.

- Reduce the consumption tax rate for makeup and fragrance to improve the pricing competitiveness of China's cosmetic market.
- Revise outstanding laws and regulations on advertising in the cosmetics industry to comply with the 1995 Advertising Law as well as international industry-norms to boost the development of China's cosmetics industry.

- 统一化妆品标签标识管理的法规和标准，以利于企业遵守和执行。允许企业使用有科学依据和符合化妆品定义的宣称用语，以鼓励产品创新和技术进步。
- 慎重考虑并暂缓对化妆品实施电子监管，认真评估该项新规的有效性、可行性和合理性。
- 统一对工厂的双重注册审查，建立一个更加健全、有效的工厂管理体系。
- 降低彩妆类和香水类产品的消费税率，以提高中国化妆品市场的价格竞争力。
- 修订相关化妆品广告管理法规，使其与1995年的《广告法》以及国际化妆品行业的惯例相一致，以推动中国化妆品行业的发展。



Dietary Supplements

The term “dietary supplement” refers here to products classified as health foods in China, food supplements in the EU, vitamin and mineral supplements under the global food code (CODEX) and similar types of products as applicable. Dietary supplements are recognized as a category of food product that includes vitamins, minerals, amino acids, protein powders, herbs/botanicals and other dietary ingredients. They are generally consumed daily and have proven to be safe and effective. Supplements can be taken as tablets, capsules, soft-gel liquid capsules, effervescent tablets, powders, liquids and in a variety of other forms.

The U.S. dietary supplement industry is currently the largest and most developed in the world, with a 2006 value of more than US\$23 billion. The size and success of the industry is due to a number of factors including the quality and effectiveness of the products, consumer demand for healthier lifestyles, increased healthcare costs and national law that recognizes the benefits of supplementation to help reduce healthcare costs. More than 60,000 products are available to U.S. consumers. It is estimated that more than 68 percent of the U.S. population (more than 200 million people) consume dietary supplements regularly.

The U.S. system of notification, as opposed to registration, balances consumer access with appropriate safeguards and delivers healthcare benefits at a reduced cost. Consumers are able to benefit from new ingredients because U.S. law imposes a maximum 75-day review period.

U.S. consumers are better informed because of a national law that allows structure/function claims based on the dietary ingredients presence in a dietary supplement product. This structure/function claim is based on current scientific knowledge of the ingredients and does not require a registration. The law maintains a rational approach to the use of scientific knowledge for structure/function claims by recognizing a diverse pool of global scientific sources (e.g., NIH Studies and Commission E monographs). This approach helps to minimize costs to the consumer while still providing the appropriate safeguards.

China’s dietary supplement industry began approximately 20 years ago and is now estimated to be worth approximately US\$6 billion in annual sales. Thus the industry is young compared with the U.S. and about one-fourth its size. Although China’s dietary supplement industry is still developing, the potential for sizeable growth is significant due to China’s rapid economic growth and increasing consumer demand for natural products that promote health and overall wellness. The U.S. and China have a dynamic relationship in regard to the dietary supplement industry. China ranks first in supplying low-cost raw materials for the industry while the U.S. ranks first in manufacturing and marketing finished products. China currently exports upwards of 70 percent of the raw materials used by U.S. dietary supplement manufacturers.

U.S. and Chinese manufacturers and suppliers would benefit equally from a change in regulations that would not only increase business opportunities for Chinese suppliers and distributors, but also benefit Chinese consumers by providing access to an expanding range of dietary supplements that promote health and wellness.

Specific Issues

AmCham understands that China’s regulators have set up the current system in order to protect consumers from fraudulent and unsafe products. However, it is our opinion that the current system suffers from a lack of transparency and regulatory contradictions that stifle industry growth. Furthermore, this system has established unequal terms with regard to market access between the U.S. and China. As the United States’ number one trading partner, China and its dietary supplement industries and suppliers are able to export to the U.S. market with minimal interference. The U.S. Food and Drug Administration (FDA) notification system requires Chinese manufactures and suppliers to register with FDA and to give notice at least eight hours prior to shipments arriving at the intended U.S. port. Both of these requirements are free of charge and are available online. However, U.S. dietary supplement manufacturers and suppliers attempting to access the China market are faced with more restrictive and costly regulations.

膳食补充剂

本文中所述“膳食补充剂”指分类如下的产品：中华人民共和国的保健食品，欧盟国家的食品补充剂，国际食品法典目录（codex）中提到的维生素和矿物质补充剂，及其他适用的类似产品。膳食补充剂被认为是包括维生素、矿物质、氨基酸、蛋白粉、香草/药草及其它膳食成份在内的一种食品种类。膳食补充剂通常是口服，并被证明是安全和有效的。膳食补充剂可通过多种形式服用，包括片剂、胶囊、软胶囊、泡腾片、粉剂、液剂及其它多种形式。

美国的膳食补充剂产业是目前世界上最大和发展最好的。2006年美国膳食补充剂产业总产值超过230亿美元。美国此产业的大规模成功发展主要归结为几个因素，如产品质量、产品功效、对健康生活方式的消费需求、日益增长的健康护理费用及国家法律对膳食补充剂有益于帮助降低医疗保健费用的认可。美国消费者可供选择的膳食补充剂产品达六万多种。据估计，美国有68%以上的人口（两亿多人）定期服用膳食补充剂。

美国的通告体系与注册体系相辅相成，使消费者使用膳食补充剂产品的安全方面得到适当保护，同时提供低费用的保健服务。消费者可以从膳食补充剂产品的新配方中获益，因为美国法律规定，对膳食补充剂新产品的审批期限最多不能超过75天。

美国消费者能更好地了解膳食补充剂产品的功效，因为美国国家法律允许膳食补充剂产品根据其成分做相关功效声明。这些关于成分功效的说明基于现有的相关营养成分的科学知识因而不需要登记注册。法律通过援引诸如美国国立卫生研究院和德国草药专论等全球多家权威科学机构的科研成果，合理的引用科学知识对补充剂产品成分功效予以说明。这种做法不仅有利于消费者将花费降到最低，同样适当地保障了消费者的安全。

中国的膳食补充剂产业大约于二十年前开始起步，估计目前年销售额约为60亿美元。因此，中国的膳食补充剂产业与美国相比仍然不够成熟，生产和市

场规模也仅有美国产业的四分之一左右。尽管中国的膳食补充剂产业仍然处于发展阶段，但由于中国经济的飞速发展以及对有益于身体全面健康的天然产品的消费需求日益增长，膳食补充剂产业发展的潜力巨大。在膳食补充剂产业方面，中美两国的关系一直非常活跃。中国在提供此产业所需低成本原材料方面具有天然优势，而美国则在生产和营销膳食补充剂制成品方面占据绝对领先的地位。目前美国膳食补充剂生产商所使用的原材料，从中国进口的已高达70%以上。

如果对现有的法规条例进行适当调整和完善，会使中美双方的生产商和供应商共同获益。因为这不仅能为中国的供应商及经销商带来更多的商机，同时也可以通过扩大和促进健康膳食补充剂的选择范围，使中国的消费者获益。

具体问题

中国美国商会理解，中国的立法机构建立现行法规体系的目的是为了保护消费者不受假冒伪劣和 unsafe 产品的危害。然而，我们的观点是目前的体系缺乏透明度，且政策法规相互矛盾，严重阻碍了膳食补充剂产业的发展。此外，该体系在中美市场准入方面设立了不平等条款。例如，作为美国的第一大贸易伙伴，中国、其膳食补充剂产业及供应商能够在市场干预最小的情况下将其产品出口到美国市场。美国食品与药品监督管理局（FDA）的通告体系要求中国的生产商和供应商在FDA进行注册，然后在货物抵达预定美国港口前至少八小时发出通知即可。注册和通知这两项要求均可通过互联网在线操作完成，且美方不向中方收取任何费用。然而，美国膳食补充剂的生产商和供应商若要进入中国市场，则要面临很多限制和过高的政策性费用。

会员关注的焦点集中在中华人民共和国国家食品药品监督管理局（“国家药监局”）的产品注册程序，许可健康声明及成分功效限制等方面。此外，对直销行业的限制也阻碍了营养保健品产业的发展。从国际范围来看，直销业是营养保健品产业及

Areas of concern are the State Food and Drug Administration PRC (SFDA) product registration process, allowable health claims and ingredient potency restrictions. Furthermore, restraints on the direct sales industry also impede natural industry growth. Internationally, direct selling is a vital and integral part of the industry and its overall development. Addressing the above issues will enable China's dietary supplement sector to take full advantage of the progressive research and development, advancements in manufacturing techniques and merchandising and business development best practices that foreign companies offer.

SFDA Product Registration

Prior to market entry, manufacturers must register dietary supplements with the SFDA. The process requires enormous investments of both time and money. A typical registration can take up to two years to complete and cost upwards of US\$50,000. However, if the ingredient or product is new to the market, it can take as long as five years and up to US\$500,000. After market entry, the registration is valid only for five years and then must be renewed, which adds unnecessary regulatory processing to a product that has already been in the market without alteration. Since the SFDA began issuing registrations in 2003, 2008 will be the first time companies will be renewing expiring registrations. According to the SFDA, it should take only 20 days to re-register a product.

The global dietary supplement industry is continuously evolving and improving due to scientific and technological advancements. Because of the lengthy registration process, enterprises are unable to introduce new products rapidly or reposition product lines to best suit consumer demands. This results in a significant reduction in the variety of products that offer the latest developments in nutritional science and manufacturing technology.

Health Claims

The SFDA has a list of 27 approved functional claims that marketers of dietary supplements are allowed to make. Dietary supplements can only apply these claims to their products after going through a lengthy testing process including animal and human testing, which is very similar to the approval process for pharmaceuticals. There are two main issues with this current list. The first issue is that the list of 27

functions is non-comprehensive with regard to what dietary supplements are known to support. For example, Glucosamine and Chondroitin ingredients have years of solid scientific research from a variety of international sources to support human joint health, but "joint health" is not an approved function. Second, regardless of whether or not an ingredient has been tested and known to have a specific function, it nevertheless has to go through all testing procedures every time an application is submitted. This is redundant and adds time and fees to the registration process. If an ingredient has already been established to have a certain function, it should not have to undergo new testing each time a company wants to register it. A more practical solution would be to adopt a structure/function claim system based on a list of approved ingredients and their known functions according to scientific evidence.

Potency Levels

SFDA has potency-level restrictions for nutritional supplements that do not always coincide with current dietary supplement research. For example, the latest research indicates that pregnant women should supplement their daily diets with the following substances to meet their increased nutritional needs: calcium (Ca) 1300mg, iron (Fe) 25mg and folic acid (acidum folicum) 800mcg. SFDA's Regulations for Application and Evaluation of Nutritional Supplements subsection IV states, "Supplements should be reduced by 1/3 to 2/3 of the recommended dosage for pregnant women." Per SFDA regulations on daily intakes, calcium would be reduced by 50 percent, iron by 48 percent and folic acid by 67 percent. With potency limitations in place, there is no room for the industry to adjust potencies to match current research. Also, these limitations become a trade barrier to foreign companies that have time-tested, scientifically based products that have been used for decades in the U.S. and other countries if their products exceed SFDA's current potency limitations.

Summary

China's dietary supplement industry has great potential and a growing number of consumers are interested in purchasing products that will enhance their overall health. China would benefit greatly from a more open and transparent regulatory system. Free and open access to dietary supplements benefits the government, the industry and, most importantly, the consumer. For example, an October 2007 report

其全面发展过程中至关重要且不可分割的一部分。上述问题的解决，将有助于中国膳食补充剂产业能充分利用不断进步的研究开发成果，先进的生产技术、合理的商业机制以及外资公司提供的最佳的实践经验等。

国家食品药品监督管理局产品注册

进入市场之前，生产商必须就膳食补充剂产品向国家食品药品监督管理局申报注册。此过程需要投入大量的财力。一个典型的注册程序通常需要两年时间，费用达五万美元以上。同时，如果该原料或产品是初次上市，注册时间要需五年，费用更达五十万美元。经过批准的产品进入市场后，由于注册的有效期只有五年，五年之后必须重新进行注册，这实际上会给已经注册上市且并无任何变化的产品增加了不必要的行政规范过程。国家食品药品监督管理局于2003年开始受理和批准注册申请，2008年相关企业将会在注册认证期满后开始首次重新注册。根据国家食品药品监督管理局的规定，产品的重新注册应该仅需二十天的时间。

随着科学技术的不断发展，世界膳食补充剂产业也在持续地发展。然而，由于在中国注册过程过于冗长，膳食补充剂生产企业无法通过快速推出新产品或调整产品生产线来最大程度地满足消费者的需求。这将会导致应用了营养科学及生产技术方面最新发展成果的此类膳食补充剂产品在市场上的大幅度地减少。

产品健康功效声明

国家食品药品监督管理局列出了一份列有27种膳食补充剂营销商被许可使用的产品功效声明的清单。只有在通过了包括动物测试和人体测试在内的冗长的检测过程后，膳食补充剂才可使用上述27项产品功效说明。整个测试过程与药品获批过程类似。现行的这份功能清单存在两个主要问题。第一，就膳食补充剂已知所应具有的功能来说，上述27项产品功效的声明很不全面。例如，氨基葡萄糖和软骨素成分多年来已被各类国际科学研究证明有利于人体关节健康，但“关节健康”却未包括在所列功效清单。第二，一种成分不管是否通过检测已得知其具有某种功效，但该产品在每次提交注册申请时仍然

需要通过所有的检测程序。这种不必要的重复性做法为注册过程增加了额外的时间和费用。如果某种膳食补充剂成分已经被证实具有某种功效，届时公司每次对其进行注册时就不必再通过测试。根据已获批成分的清单及其经过科学证实的已知功效，建立一种新的功效声明体系，这将是一种更为实际的解决方法。

效力水平

国家食品药品监督管理局对营养补充剂效力水平的约束有时并不符合当前膳食补充剂的研究结果。例如，最新研究表明，孕妇应当在日常饮食外补充以下物质以满足其日益增长的营养需求：钙1300毫克，铁25毫克及叶酸800微克。国家食品药品监督管理局《关于营养补充剂的申请评估规则》第四小节规定：“孕妇服用的补充剂剂量应减至建议剂量的1/3至2/3。”根据国家食品药品监督管理局对每日摄入量的规定，钙将被减半，铁减少48%，叶酸减少67%。有了这样的效力约束，膳食补充剂产业将无法根据最新的研究成果调整效力。而且，如果外资公司的产品超出了国家药监局目前对效力水平的约束，上述约束将会对其构成贸易壁垒，即使这些外资公司的产品都经过了时间检验和科学证实并在美国及其他国家已被使用几十年。

结论

中国膳食补充剂产业有着巨大的潜力，越来越多的消费者有意购买膳食补充剂产品以增进全面健康。中国也将会从一个更加开放和透明的规范体系中获益。对膳食补充剂市场实行更加自由和开放的政策不仅有利于政府及相关产业，更重要的是可以让消费者获益。比如，美国同行评审刊物《营养期刊》2007年10月的一篇报告得出结论：服用膳食补充剂的人普遍比没服用的更加健康。此外，美国保健服务研究集团Lewin Group得出结论说，膳食补充剂为美国政府节省了数十亿美元的医疗开支，部分原因是由于膳食补充剂产业在消费者中推广了健康产品和健康的生活方式。然而，由于目前中国的制度体系发展过于缓慢，中国尚未能享受到所有这些益处。 ■

in the U.S. peer-reviewed publication *Nutrition Journal* concluded that the health of people who used dietary supplements was generally better than non-supplement users. Furthermore, the Lewin Group, a U.S. healthcare and human services research group, concluded that dietary supplements were responsible for saving the U.S. government billions of dollars in medical expenses partly because the dietary supplement industry had helped to promote healthy products and lifestyles to consumers. However, the current regulatory system is evolving too slowly to allow China to enjoy all of these benefits. ■

Recommendations

- Replace SFDA's product registration process with a notification system like that in the U.S. Access should be based on a list of approved ingredients. Notification would eliminate the need for re-registration and free up SFDA personnel and resources to enforce market surveillance, which would enhance consumer protection.
- Adopt a function/structure claim system that allows for a broad range of claims to be made about dietary supplement ingredients based on scientific evidence.
- Overhaul dietary supplement ingredient potency restrictions or, at a minimum, alter the strict restrictions so that they become recommendations that serve as guidelines. We urge that the recommendations be made more flexible to coincide with the latest in nutritional science recommendations.

建议

- 参照美国的通告体系，取代国家食品药品监督管理局的产品注册程序。市场准入应基于获得批准的膳食补充剂成分清单。通告体系将使企业不必重复注册程序，同时使国家食品药品监督管理局的集中更多的人力资源以加强市场监管，进一步增强对消费者合法权益的保护。
- 采用新的功效声明体系，允许经科学证明的膳食补充剂成分使用范围更广的功效声明。
- 修改膳食补充剂成分效力约束条款，或至少调整较为严格的条款，使其成为指导性建议。我们强烈希望这些建议能更加灵活，以期符合最新的营养科学的建议。



Direct Sales

The government first issued direct-selling regulations in 2005 and began to approve license applications the following year. Direct-selling operations in China began in 2007. Also that year, China's Ministry of Commerce (MOFCOM) and the State Administration of Industry and Commerce (SAIC) held meetings separately with AmCham to exchange views on the direct-selling issues raised in the 2007 White Paper and to discuss the problems and difficulties encountered in the course of the license application process and in commencing company operations. AmCham appreciates and respects the Chinese Government's efforts to support the development of the direct-selling industry in China.

Despite facing many challenges, including a slow-moving application process and a high burden of service center requirements, AmCham member companies in the direct-selling industry remain enthusiastic about market prospects in China. As a whole the industry has invested hundreds of millions of dollars in the Chinese market and most industry executives remain hopeful that China will fully comply with its World Trade Organization (WTO) obligations and bring direct selling regulations in line with international best practices.

Significant Developments

Since the Direct Selling Administration Regulations were promulgated in August 2005, MOFCOM has approved and issued 21 direct-selling licenses. Of these, 19 companies have completed the review and filing process for their service centers. However, in 2007 only six companies obtained direct-selling licenses and no application has been approved since May 2007. According to the information available within MOFCOM's direct-selling industry administration management system, 15 companies have made public statements for direct-selling applications but have not yet been approved. In addition to those companies, at the time of this writing the number of companies that have not made public statements but are still awaiting MOFCOM's approval is unknown.

Although the Regulations indicate that the approval process takes 90 days, the 21 companies that have

received licenses waited between four and 12 months for MOFCOM approval. Most applicants spent over a year completing the approval process from submitting their application until they were formally permitted to begin direct sales. Other companies are still waiting for approval with little clarity on timing or what needs to be done to complete the process.

Specific Issues

Service Center Establishment

Meeting service center requirements is the biggest challenge for companies submitting their direct selling application and these requirements are also difficult for companies to fulfill once their business is up and operating.

The legislation specifies that a direct selling company operating in a specific province must also operate a provincial branch office there. In addition, there must be a "service center" in each urban district in which a direct seller sells products, which would require 2,861 service centers to cover all of China's urban districts. AmCham believes that requiring a service center in each urban district is unnecessary and overly burdensome to companies. At present, most companies approved are permitted to sell in only one province or city in China, significantly restricting their ability to expand. More importantly, since direct selling takes place away from fixed locations, these geographical restrictions make it nearly impossible for companies to ensure that their direct sellers are in compliance. To comply with the direct-selling license geographical restrictions, companies must simultaneously adopt two different business models to meet the requirements of direct sales and non-direct sales in different districts.

AmCham believes that the Chinese Government should increase the transparency and simplify the approval and establishment process for service centers. Decisions about when to expand service centers should be left to each company, based on its stage of development.

AmCham asks the government to consider four suggestions regarding the service center approval process, as summarized below:

直销业

如果说2005年是直销的立法年，2006年是直销申请的第一年，那么，2007年才是中国直销行业真正开始运营的一年。2007年商务部及国家工商总局的相关部门分别和中国美国商会就2007白皮书中提到的有关直销的问题交换了意见，对企业在直销申请和经营过程中所遇到的问题进行了讨论。中国美国商会赞赏并感谢中国政府为此所做的努力。

尽管存在着直销审批的过程缓慢、直销网点的设立困难等许多挑战，但从事直销的中国美国商会成员企业对中国市场的前景仍充满信心，许多企业在中国市场已投资了数亿美元，而且大多数业界高管都认为中国会全面履行世贸承诺，使直销规定最大程度地符合国际惯例。

最新进展

自从2005年8月《直销管理条例》（以下简称“条例”）颁布以来，商务部已经批准并颁发了直销经营许可证的企业共21家，其中19家企业完成了服务网点的核查报备工作。其中在2007年，只有6家企业的申请获得批准，并且自2007年5月以来，再没有一家企业获得批准。商务部直销行业管理系统的公开信息显示，还有15家已经发表了直销申请声明的企业尚未获得批准。到目前为止，除以上提及的公司，尚未公布申请声明，仍然在等待商务部审批的企业数量也无从知晓。

《条例》规定了90天的审批时限，目前获批的21家企业用了4—12月获得商务部的批准，加上服务网点核查报备的时间，从提交申请到可以正式从事直销活动，多数企业花费在审批流程中的时间长达一年以上。尚未获得批准的企业仍在等待，而且没有得到任何明示何时可以获批，或还需做哪些工作才能结束这一审批过程。

行业面临的主要问题

“服务网点”设立

达到服务网点的设立要求是企业申请直销时遇到的最

大困难，也是网点实际运营中遇到的困难。

《条例》规定直销公司必须在每个从事直销活动的省设立省级分支机构，此外，必须在直销员销售产品的每个城区设立一个“服务网点”，这就意味着如果想覆盖中国所有的城区，需要建立2861个服务网点。中国美国商会认为要求在每个城区设立服务网点的规定是不必要的，也会加重审批和企业运营的负担。目前获批的企业中，绝大多数企业获批的地区仅为一个省或一个城市，这严重地制约了企业有效地扩大业务的能力。更为重要的是，由于直销是在固定营业场所之外进行，因而要求企业保证其直销员遵守这些地域限制几乎是不可能的。为了遵守直销牌照所规定的地理限制，企业就必须采取两种经营模式以分别符合直销地区和非直销地区的要求。

中国美国商会认为服务网点的审批和设立流程应加大透明度、简化审批流程，关于何时拓展服务网点应当留给企业根据自身的发展情况自行决定。

对服务网点的审批，中国美国商会敦请中国政府重新考虑如下建议：

1. 在一个省/市设立多少个服务网点，应视企业的业务发展而定。不必规定在每一个城区必须设立一个网点才可以获得直销许可；
2. 为了加快审批速度，建议服务网点的拟建方案由省级商务部门审批，或者由市级部门审批，而无需区/县商务部门审批；
3. 根据《条例》，服务网点的审批应看其是否设在符合规定的地区，是否能方便消费者了解价格和退换货，然而这个要求在各地有着不同的理解和执行，例如有些地区甚至对服务网点面积也设置了最低要求，这给企业增加了巨大的负担。商会认为各地的执行应加大透明度并统一标准；
4. 简化已经获得直销许可证的企业进入新的省/市的审批流程，建议只需由拟进入的省/市审批服务网点设立方案，商务部即可批准在该省/市设立省级分支机构，同时在服务网点经该省/市核查并在商

1. AmCham believes that the number of service centers required in any one city or province should depend on a company's stage of development and expansion. Therefore, regulations should not require companies to set up one service center in each district as a condition to obtaining a direct selling license in that city.
2. To speed the approval process, AmCham urges limiting the service center plan approval process to the provincial or city level and eliminating the need for approvals at the district or county.
3. Regulations specify that the service center role is merely to process product returns and provide price and product information to consumers, yet this requirement is still subject to inconsistent regional interpretation and implementation. For example, some districts have minimum size requirements that create undue burdens for companies. AmCham urges more transparency and consistency of implementation.
4. In order to simplify the process for direct-selling companies that have licenses but wish to expand into other areas, AmCham urges the government to limit the service center plan approval to the new province or new city level only. We suggest that MOFCOM permit companies to set up a provincial branch, which can operate direct sales immediately upon confirmation of their service centers by the province or city and filed with MOFCOM.

Compensation Restrictions

The compensation regulations drastically restrict the ways that direct selling companies can compensate their sales force. Contrary to general industry practice, direct sellers are not allowed to develop networks of sellers. In addition, there is a cap that limits compensation based on personal sales to 30 percent of revenue. That requirement inhibits direct selling companies from motivating their sales representatives through traditional means. Furthermore, the cap applies to all types of income, including commissions, bonuses, rewards and other economic benefits. This puts direct-selling companies in China at a great disadvantage relative to businesses using other distribution channels; for example, retail sellers and the insurance industry are not saddled with such restrictions. Under general business practices, 50 percent of the retail price covers distribution costs, including commissions and

overhead. Aside from Korea, which has a commission cap, no other country limits the income received by direct selling agents. Korea's cap, based on company sales rather than personal sales, also is more narrowly defined than China's and allows for greater economic reward of salespeople.

The regulations restrict the basis for compensation to the price of the products, eliminating a company's ability to give incentives to salespeople to conduct marketing campaigns and sell services. The move is also a significant departure from international practice. The United Nations' Consumer Product Code (CPC) has an internationally accepted definition of direct selling under which salespeople may earn compensation from the sales of both products and services. In essence, providing services is essential to the direct selling business worldwide.

Limited Product Categories Permitted for Direct Selling

Presently the Regulations limit direct-selling companies to products from five categories including cosmetics, dietary supplements, cleaning products, health exercise equipment and small kitchenware. It is in the best interests of China's manufacturing and direct selling industries' development to increase product categories in line with international common practice.

National Treatment Issues

The regulations require that foreign-invested companies have at least three years of direct selling experience in other markets before applying for a direct selling license in China. Because there is no similar restriction for domestic companies, this regulation unfairly discourages foreign-invested enterprises from participating in the direct selling channel in China. AmCham is concerned that this regulation runs counter to China's "national treatment" obligations under its WTO accession agreement and urges relevant authorities to remove the restriction.

In summary, China stands to benefit greatly from introducing direct selling as a distribution channel for consumers. Direct selling helps to alleviate unemployment in developing regions and provides products that are unavailable through other channels. AmCham strongly urges regulatory authorities to work with industry participants to bring China's direct selling business more in line with international

务部备案后，企业即可开展直销业务。

报酬限制

《条例》对企业给付其直销员报酬的方式做了严格的限制，与大多数业界的作法相反，规定直销员不得发展推销网络，另外还规定直销员获得报酬的上限不得超过其个人销售额的30%，使得直销企业不能采用其传统的方式充分地调动其销售代表的积极性。而且，该报酬上限适用于各类收入，包括佣金、奖金、奖励及其它所有经济所得，这使中国的直销企业与利用其它分销渠道的公司相比处于极大劣势地位。例如，零售业或保险业就不受此种约束。分销成本，包括佣金和销售管理费用占零售价格的50%，这是相当普遍的商业惯例。除了韩国有报酬上限规定外，没有任何一个国家对于直销代理的收入做限制。与中国相比，韩国的上限是根据公司的销售总额，而非个人的销售额而定，并且所适用的范围较小，允许销售人员获得更多的经济利益。

《条例》还把报酬的基础仅限于产品本身，这使企业基本无法激励销售人员提供营销宣传或推销的服务，也与国际通行作法相去甚远。联合国的《消费品代码》对直销有一个国际普遍接受的定义。根据这一定义，推销员可以从推销产品和服务两方面获得报酬。本质上说，全球的直销业都以提供服务为根本。

准许直销的产品类别有限

目前的《条例》将产品限定为5个类别，包括化妆品、保健食品、保洁用品、保健器材、小型厨具。按照国际惯例增加产品种类将使中国制造业和直销业的发展获益。

国民待遇问题

《条例》要求外资企业在中国申请直销营业许可之前必须具有在中国境外市场从事三年以上直销业务的经验。因为对国内企业没有类似要求，所以该规定构成了对外资企业进入中国直销渠道的不公平歧视。中国美国商会的关注是，这一规定不符合中国入世协议中“国民待遇”的义务，并敦促相关政府机构取消这一限制。

总之，中国引入直销这种方便消费者的分销方式，

并从中受益。直销有助于缓解中国发展中地区的失业问题，并提供其它分销渠道所不能提供的产品。中国美国商会强烈希望政府有关部门与业界合作，使中国直销业的发展更加符合国际惯例，并履行中国在此领域的世贸承诺。

建议

- 修改直销条例使其与中国的入世承诺和国际惯例相一致。
- 增加审批程序的透明度，简化审批流程，及时告知企业审批进度，加快审批速度。
- 取消报酬限制，减少直销企业对其销售人员的激励力度受到的不必要限制。
- 允许直销员从销售支持服务中获取报酬。
- 将要求在每个城区建立一个服务网点的规定修改为在每个城市建立一个，并确保各地的要求与国家的规定相一致。
- 取消服务网点需要获得区和县级的审批，改为报备。
- 按照国际惯例增加产品类别。
- 取消对外资企业的三年境外直销经验要求，使直销业中国内外资企业获得同等的国民待遇。

practices and to fulfill China's WTO commitments in the area. ■

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Recommendations

- Revise direct-selling regulations to bring them in line with China's commitments and common international practices.
- Increase transparency, simplify the approval process, duly inform companies regarding the approval progress and increase the speed of approvals.
- Eliminate restrictions on compensation that unnecessarily undermine the ability of direct-selling companies to motivate salespeople.
- Allow direct sellers to receive remuneration for sales support services.
- Revise requirements for having a service center in each district to one per city and ensure local requirements are consistent with national regulations.
- Eliminate the need for approval of service centers at the district and county level, and require reporting only.
- Increase product categories in line with international common practice.
- Remove the requirement that foreign-invested companies have three years' direct-selling experience outside of China and promote non-discriminatory, equal treatment for foreign and domestic companies in the direct selling business.



Environmental Sustainability, Climate Change and the Environment

From 1978 to 2000, the Chinese economy grew an average of nine percent annually while energy demand grew at four percent. Today, economic growth continues at about the same pace but energy demand growth has surged to 13 percent. Based on these consumption figures and China's limited natural energy reserves, China must now rely on international markets for more of the fossil fuels it consumes. China imports 40 percent of its oil (approximately three million barrels per day) and in 2003 replaced Japan as the world's second largest petroleum consumer.

According to some reports, China's carbon dioxide emissions now exceed those of the U.S. by approximately eight percent, putting China at the top of the list of CO₂-emitting countries. Furthermore, even the most conservative estimates show similar results. Following the U.S. and China, the EU is in third place, with a volume of emissions about half that of China. After these three are Russia, India and Japan.

Water pollution is also cause for serious concern; water security and conservation are increasingly critical issues that cannot be ignored. In dry Northern China, the water table is dropping one meter per year due to over-pumping and authorities continue to divert water from agriculture to service local industry. In the 11th Five-Year plan, along with energy reduction goals, China has declared a water consumption per unit industrial added value decrease of 30 percent. The coefficient for water use efficiency in irrigation is to be raised to 0.5 and the comprehensive utilization rate of solid wastes to 60 percent.

The assessment at the end of the 10th Five-Year Plan (2001–05) concluded that China's emissions of SO₂ and soot were respectively 42 percent and 11 percent higher than the targets set at the beginning of the plan. China is now the largest source of SO₂ emissions in the world. Recent trends in energy consumption, particularly increased coal use, provide a plausible explanation for the increase in SO₂ emissions.

As prosperity continues and China grows, so does urbanization. Urban residential energy consumption has grown dramatically and now accounts for almost 30 percent of China's total energy demand. This will continue to grow with increasing urbanization rates in the coming years.

Energy Supply

China has added electrical power generation capacity at unparalleled rates. China intends to rely on its plentiful supply of coal for expanding industrial and electric power generation needs. According to the Energy Information Administration (EIA), China, together with India, will account for 85 percent of the projected rise in coal use in the developing world and nearly 70 percent of the total world demand for coal over the next 20 years.

Coal as a share of China's overall energy consumption will decline but the absolute demand for coal is expected to exceed 20 million tons annually over the next five years.

Although many of China's older coal-fired plants are inefficient, the newer ones often have higher efficiencies and, it is reported, compete well, if not better than, U.S. plants on a grams-coal-consumed to kilowatt-hour (kWh) produced basis. However, many coal fired power plants lack (or fail to operate) adequate pollution control equipment. Industries that burn coal directly (such as steel and cement) are subject to sulfur taxes, but these are generally not significant enough to serve as disincentives. Nitrogen dioxide (NO₂) is regulated, while mercury was not as of this writing.

Renewable energy currently accounts for less than one percent of China's total energy capacity, but the government plans to raise this figure to 12 percent by 2020 under the Renewable Energy Utility Promotion Law.

With its entry into the World Trade Organization (WTO) in November 2001, the Chinese Government made a number of specific commitments to trade

环境可持续性、气候变化及环境

自 1978年至2000年，中国经济年平均增长率为9%，而能耗需求增长为4%。今天，经济继续以大致相同的速度增长，但对能源的需求却急速增长至13%。根据上述消费数据及中国有限的自然能源储量，中国现在必须依赖国际市场获得其消费所需的化石燃料。中国40%的石油依赖进口（大约每天进口300万桶），并于2003年取代日本成为世界第二大石油消费国。

根据一些报道，中国现在的二氧化碳排放量超过美国大约8个百分点，使中国位居二氧化碳排放量排名之首。而且，即使是最保守的估计也显示了类似的结果。紧随美国和中国，排在第三位的是欧盟，其排放量大约是中国的一半。排在它们之后的分别是俄罗斯、印度和日本。

水污染也是受到高度关注的问题；水安全和节水问题日益成为不可忽视的关键问题。在干旱的中国北方地区，由于抽水过度，地下水位以每年一米的速度在下降，有关部门继续把农业用水源转为工业用水源。在“十一·五”计划期间，随着节能目标的确定，中国宣布单位工业增加值水耗量将减少30%。灌溉水利用系数将提高0.5%；固体废物综合利用率将提高至60%。

“十·五”计划（2001年至2005年）未开展的评估最近得出结论，中国的二氧化硫和煤烟排放量分别比计划开始时制定的目标高出42%和11%。中国现在是世界上最大的二氧化硫排放源。对此中国给出了似乎是合理的解释，称这是由于能源消费的最新趋势，特别是煤炭使用量的增加而导致二氧化硫排放量的上升。

由于经济持续繁荣，中国在不断发展，城市化进程也在继续。城市居民的能源消费有了极大增长，现在占中国全部能源需求的30%。随着未来几年城市化率的不断提高，能源消费还将继续增长。

能源供给

中国的发电容量以空前的速度增加。中国想依靠其

丰富的煤炭供给来满足不断扩大的工业需求和发电需求。根据美国能源信息管理局（EIA）的数据，今后20年间，中国和印度使用的煤炭将占发展中国家预测增长量的85%，占世界全部煤炭需求量的近70%。

煤炭占中国全部能源消费的份额将会下降，但在今后五年对煤炭的绝对需求量预计每年超过2,000万吨。

虽然中国很多老旧燃煤工厂效率低，但新建的工厂则效率较高。平均而言，据报道称，按煤炭消费克数与千瓦时的发电量之比计算，中国的燃煤工厂即使比不上美国工厂，也至少可以相提并论。然而，许多燃煤电厂缺少（或者未能运行）足够的污染控制设备。直接燃煤的各个行业（比如钢铁和水泥行业）要缴纳硫税，但这些税赋对制止污染收效甚微。二氧化氮受到管制，但汞却不在管制之列。

目前，可再生能源占中国能源总量的比重不到1%，但根据《可再生能源利用促进法》，政府计划在2020年前把这一比例提高至12%。

中国于2001年11月加入世界贸易组织（WTO），中国对贸易和投资自由化做出了许多具体的承诺，中美商会强烈要求中国全面履行这些承诺。这些承诺将实质性地向外国开放经济。在能源领域，这将意味着取消或者大力降低许多资本货物的关税并最终向外国竞争者开放石油产品的零售业务。目前，外国公司在国内煤炭和发电行业的参与度估计还不到1%。

天然气

2007年9月，中国国家发展与改革委员会（国家发改委）发布了一项新的政策，意在优先利用天然气，加强定价控制，更有效地管理需求。总的意图是平衡供求，同时大力促进节能。这就在某些行业之间造成了不一致的情况，因为这些行业既受该项政策的影响，又受外商投资目录中鼓励发展行业的标准

and investment liberalization, which AmCham strongly urges China to implement fully. These commitments will substantially open the economy to foreign involvement. In the energy sector, this will mean lifting or sharply reducing tariffs on many capital goods and eventually opening retail sales of petroleum products to foreign competition. The participation of foreign companies in the domestic coal and power generation sectors is currently estimated at less than one percent.

Natural Gas

In September 2007, The National Development and Reform Commission (NDRC) announced a new policy intended to prioritize natural gas usage, tighten pricing controls and manage demand more efficiently. The general intent is to balance supply and demand while promoting greater energy efficiency. This has created inconsistencies between the industries affected both by this policy and by the criteria set forth in the Encouraged Industry category of the *Foreign Investment Catalogue* and Hi-tech Enterprise status.

Implementation and interpretation are largely left to an undefined mix of provincial and municipal authorities and commercial enterprises. The NDRC project approval itself will likely not ensure an adequate supply of natural gas. Commercial enterprises, such as local gas distribution companies, in turn are reluctant to enter into long-term guaranteed supply agreements due to the uncertainty surrounding long-term government policy. This long-term supply uncertainty may result in decreased levels of capital investment. Improved specificity around policy and allocation mechanisms would benefit long-term investors.

Coal-Bed Methane (CBM)

Coal-bed methane production capacity is targeted to reach five billion cubic meters by 2010 under the 11th Five-Year Plan. The burgeoning opportunity in China to harness CBM for commercial, industrial and residential energy use has seen the emergence of companies eager to take advantage of the new market. These have developed throughout the country, but are centered mainly in Shanxi, the core of China's coal industry. Raw CBM, once purified, is the same chemical constituent as natural gas and proves a fitting supplement to China's natural

gas supply infrastructure. China already uses more compressed natural gas (CNG) for vehicles than any other country and CBM could add to the CNG supply for vehicles and domestic household consumption.

Combined Heat and Power

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

For example, coke oven gas (~60 percent hydrogen and 23 percent methane) is produced as a by-product from the coking processes. According to China Coal Resource, China produced nearly 300 million tons of coke in 2006, about 50 percent of the global production. Most Chinese coking plants built in recent years use gas recovery technology. It is estimated, however, that as much as 10 percent of total recoverable coke oven gas is still flared, and if recovered for power generation, could produce 10 gigawatts (GW) of electricity, or about 1.6 percent of total Chinese power capacity. Additional gas turbine CHP systems could be further deployed to capture a portion of this opportunity.

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

Renewable Energy

In 2006, China's reported total renewable energy totaled approximately eight percent of non-

及高新企业标准的影响。

政策的执行和解释在很大程度上交给了没有明确界定的省市部门和商业企业。国家发改委的项目批文并不代表可以确保足够的天然气供应。而商业企业，比如地方的天然气销售公司，由于国家长期政策的不确定性，并不愿意签订长期保证供应协议。这种长期供应的不确定性可能会导致资本投资水平的下降。提高有关政策和配给机制的明确性将有益于长期投资者。

煤层气 (CMB)

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

热电联产

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

例如，焦炭炉气（含60%的氢和23%的甲烷）是炼焦过程中的副产品。根据《中国煤炭资源》的数据，2006年中国生产焦炭接近3亿吨，大约是全球产量的50%。中国近几年建造的炼焦厂大多都使用了煤气回收技术。不过，据估计，全部可回收的焦炭

炉气中仍然有多达10%的炉气被排放，如果回收用于回收发电，可以产出10千兆瓦电量，大约占中国全部发电量的1.6%。另外，还可以进一步配置燃气涡轮CHP系统，以便获得部分的利用机会。

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

可再生能源

据报道，2006年中国的可再生能源总量大约占不可再生能源产量的8%，大致相当于9亿吨煤。到2010年，中国计划使可再生能源占到其能源总量的10%。到2020年，中国计划开发120千兆瓦可再生能源，这可能占中国全部能源供给的12-16%。中国要实现2020年可再生能源方面的宏伟目标，可能需要的投资规模估计超过2000亿美元。

生物能

尽管生物能没有出现在多数统计资料中（因为没有进行交易而只是在当地得到利用），但据估计，它提供的能源量占中国目前主要能源的近10%——这是其他主要经济体国家中最大的比例。中国的生物能大多用作当地的家用燃料或者用于生产沼气（甲烷）。2006年，中国农村的沼气产量估计为1.7亿立方米。

2007年9月，中国把生物能特别是液体生物燃料确定为其可再生能源计划的重要组成部分，包括研发和商业化计划。这方面进展的主要事例就是2007年在广西投入试生产的、产能为20万公吨的大规模非粮食基燃料乙醇生产厂。木薯被确认为该厂的主要原料，因为木薯可以生长在边际性荒地，不会与粮食作物争地。2006年，中国乙醇产量为350万吨，其中燃料乙醇产量为130万吨，位列全球第三。

中国的“国家燃料乙醇开发计划”为2010年确定的燃料乙醇目标是300万吨，到2020年这一目标提高到1500万吨。

从监管的角度来说，中美商会认为，以下建议将有助于为更加稳定和透明的生物能投资环境奠定基础。

renewable energy generation, roughly the equivalent of 900 million tons of coal. By 2010, China plans for renewable energy to account for 10 percent of its energy. And by 2020, China plans to develop 120GWs of renewable energy, which could account for 12 to 16 percent of China's total energy supply. China's ambitious goals for renewable energy may require an estimated investment exceeding US\$200 billion by 2020.

Biomass

Although it does not appear in most statistics (because it is not traded but utilized at local levels), biomass is estimated to provide nearly 10 percent of China's present primary energy—the largest percentage of any major economy. Most of the biomass in China is consumed for local cooking fuels or for the production of biogas (methane). In 2006, estimated biogas production in villages was 170 million cubic meters.

In September 2007, China established bio-energy and liquid biofuels in particular, as an important component of their renewable energy plans, increasing R&D and commercialization programs. A leading example of the progress being made is a commercial scale, non-grain ethanol plant that was commissioned in 2007 in Guangxi Province with 200,000 MT of capacity. Cassava was identified as a favorable feedstock for the plant since it grows in otherwise marginal farming regions and does not compete for land with food crops. In 2006, China's ethanol production was 3.5 million tons, of which fuel ethanol output was 1.3 million tons, the third largest such output globally.

China's "National Fuel Ethanol Development Plan" sets a 2010 target for fuel ethanol at three million tons, increasing to 15 million tons by 2020.

From a regulatory perspective, AmCham endorses the following recommendations to help lay the groundwork for a more stable and transparent biomass investment environment.

- Provide a steady and predictable biomass regulatory environment and avoid sudden policy shifts that discourage technology transfer and investment. For example, the suddenness of the 2007 grain-based ethanol moratorium and ownership restrictions has had a dampening effect

on both domestic and foreign investment in the industry.

- Improve enforcement of long-term biomass supply contracts to justify capital investments by reducing risks in pricing mechanisms and supply continuities.
- Clarify and/or enforce existing regulations, for example licensing of fuel ethanol producers.

Wind

Wind power presents a significant clean energy opportunity for China. With global sales of wind power totalling approximately US\$11 billion in 2005, it is expected that China will play an increasingly important role, both as a manufacturing base for related generation equipment and in the installation of new generating capacity. China's original goal in the 11th Five-Year Plan was for 5GW installed capacity by 2010. This was met ahead of schedule in 2007 and the goal was revised to 20GW. An obstacle to achieving this goal is the challenge of land availability for wind farms with consistently high wind speed, which tend to be far from population centers.

Solar

Currently, several technologies have been used to harvest solar energy. Solar-generated energy is relatively expensive, but that has not stopped the industry from growing rapidly in China. Recently, several Chinese solar companies, including Suntech, the world's largest solar module manufacturer, have listed on public stock markets. These companies will continue to have an increasingly significant impact on the global solar market, as well as American solar companies in and outside of China. It is expected that ongoing incremental efficiency gains coupled with increasingly scaled production and government support will continue to make solar a mainstream technology.

Energy Demand

China's energy demand has surged since the beginning of the new millennium. In 2003, China's energy demand was 60 quadrillion British thermal units, or about 14 percent of the global total, making it the world's second largest energy consumer behind the United States. From a pure consumption projection perspective, demand for electricity is expected to grow by an average annual rate of 4.3

- 提供一个稳定而且可预测的生物能监管环境，避免突然的政策改变而影响技术转让和投资。例如，2007年突然发生的暂停生产粮食基燃料乙醇项目以及对其所有权的限制，对该行业的国内外投资产生了不利影响。
- 通过减少定价机制和供应连续性方面的风险，提高长期生物能供应合同的执行力度，以证明资本投资的正确性。
- 澄清和/或执行现有的法规，例如燃料乙醇生产者许可制度。

风能

风能为中国提供了重要的清洁能源机会。2005年全球销售额大约为110亿美元，无论作为有关风能设备的生产基地还是在新装机容量方面，中国有望在整体上发挥日益重要的作用。中国“十一·五”计划的最初目标是到2010年装机容量达到5千兆瓦，这一目标已于2007年提前达到，并修改为20千兆瓦。实现这一目标的主要难题是提供足够的风电场场地，因为风电场既要有持续的高风速又要远离人口中心区域。

太阳能

目前，已经有几种技术可用来生产太阳能。太阳能源比较昂贵，但是这并没有阻止这一行业在中国的快速发展。最近，中国的几家太阳能公司在股票市场上市，其中包括世界最大的太阳能电池制造商——尚德太阳能电力有限公司（Suntech）。这些公司以及中国境内外的美国太阳能企业将会继续对全球太阳能市场产生日益重大的影响。据预期，随着太阳能效率的不断提高，加上日益扩大的生产规模及政府支持，有望继续使太阳能技术成为一种主流技术。

能源需求

自新千年开始，中国的能源需求急速上升。2003年，中国的能源需求为60千兆英热单位，约占全球总量的14%，使中国成为美国之后的世界第二大能源消费国。从纯粹的消费预测角度来说，从现在到2025年间，电力需求有望以年均4.3%的增长率增长。此外，根据美国能源部的数据，到2010年，每

年电力消费量将达到近2万亿千瓦时；到2020年将达到近3万亿千瓦时。

很明显，中国要实现目标，集中精力降低能源需求至关重要，而节能显然是最洁净也是最廉价的燃料形式。中国显然是着眼于长期的目标和效率，这一点可从“十一·五”计划中反映出来，但是，中国实际上有很大的机会超过其自己制定的目标。根据麦肯锡（McKinsey）全球学院最近的一份研究报告（《中国能源生产力跳跃发展》2007年7月），按照目前政策，中国到2020年可能实现能源需求低于预测的23%，这反过来又将减少石油进口达15%，并将以高达20%的比例超额完成二氧化碳减排目标。

工业部门

相对于发达地区，中国的整体能源强度（生产单位GDP所用的能源）较高，反映出服务行业与重工业的比率相对较低。据估计，中国产出了全球5%的GDP，却消耗了全球能源总量的大约14%。从现在到2020年，工业部门的能源需求有望以每年3.8%的速度增长，占全球总需求的23%。通过热回收包括热电联合系统，以及电机节能计划，工业部门可以实现大副度的能源节约。

建筑部门

从现在到2020年，住宅建筑行业能源需求估计将以每年4.1%的速度增长；商业建筑行业能源需求估计以每年7.1%的速度增长，到2020年将增长三倍。因此，建筑行业具有巨大潜力发生积极改变，通过减少资源使用量，在节能的同时提高盈利能力。

在中国，无论是在专业层面还是在消费者层面，有关建筑节能的知识都很少。建筑物的能源利用与建筑类型以及所属的地理气候地带密切相关。建筑设计和用途的多样性，更长的生命周期，都给节能措施的制定提出了挑战。

谈及购买节能产品和服务，设计师、开发商、建筑师、承包商和消费者都要面对大量信息，名目繁多的产品和严格的执行期限。虽然政府规定了对主要产品和系统的要求，但是实际的产品性能与生产厂

percent through 2025. Furthermore, according to the U.S. Department of Energy, annual electricity consumption will reach nearly two trillion kWh by 2010 and nearly three trillion kWh by 2020.

It is obvious that a focused effort of demand reduction is critical for China to meet its goals given that energy efficiency is clearly the cleanest—and cheapest—form of fuel. China is clearly focused on longer-range goals and efficiency, as reflected in the 11th Five Year Plan, but, realistically, it also has a huge opportunity to exceed its own targets. According to a recent McKinsey Global Institute study (*Leapfrogging to Higher Energy Productivity in China*, July 2007), China could realize energy demand 23 percent below projections under current policy for 2020. This in turn would result in 15 percent lower oil imports and exceeding CO₂ reduction goals by up to 20 percent.

Industrial sector

China's overall energy intensity (the energy used to generate one unit of GDP) is high relative to developed regions, reflecting the relatively low ratio of service industries to heavy industry. It is estimated that China generates five percent of global GDP while consuming about 14 percent of total global energy. Demand in the industrial sector is expected to grow by 3.8 percent per year through 2020, representing 23 percent of the global total. Significant efficiency can be created in this sector through heat recovery, including combined heat and power systems, and motor efficiency initiatives.

Building sector

Residential building sector energy demand is growing at an estimated rate of 4.1 percent per year through 2020, and the commercial building sector energy demand is growing at an estimated rate of 7.1 percent annually, essentially tripling by 2020. The building sector therefore has a considerable potential for positive change. It can become more efficient - through reduced resource usage - while also becoming more profitable.

In China, knowledge regarding building energy efficiency is low, both professionally and at the consumer level. Energy use in buildings is strongly related to the building type and the geographical climate zone. The diversity of building design and use, in addition to extended life cycles, poses a

challenge for the prescription of energy conservation measures.

Designers, developers, architects, contractors and consumers face an overwhelming amount of information, multiple products and tight timelines when it comes to purchasing energy efficient products and services. Though the government has regulated requirements for the main products and systems, there are great differences between actual product performance and manufacturer claims. No comprehensive guides exist to support the choices for selecting materials. In addition, the lack of third-party laboratory and certification organizations hinders the whole decision making process. Without effective supervision and certification, products that do not meet national standards easily pass the approval process. Products are also retested for different customers, projects and locations, which raises the cost for the both manufacturers and customers.

Specific solutions are needed for each situation including the construction of new buildings, renovation of existing buildings, small family houses and large commercial complexes. In addition, the local availability of materials, products, services and the local level of technological development are all key variables. This creates a real challenge in China, where the interpretation of current codes alone varies greatly among technical professionals.

Energy consumption can be reduced via a number of measures like thermal insulation, high performance windows, building automation, HVAC designs, lighting designs, solar shading, airtight structural details, ventilation and heat/cold recovery systems supported with the integration of renewable energy production in the building. These strategies apply to buildings in both warm and cold climates.

Energy-conservation codes for residential buildings in China (the new "Design Standard for Energy Efficiency of Residential Buildings in Severe Cold and Cold Zones" and the new "Design Standard for Energy Efficiency of Residential Buildings in Hot Summer and Cold Winter Zones") are now under revision, since 2006 energy efficiency levels have risen significantly by about five to 15 percent. The "Energy Conservation Codes for Industrial Building" were launched at the end of 2007. Also, the Ministry of Commerce and other government agencies have issued several regulations and laws to improve the

商所声称的还有很大的差距。目前也没有综合的指南为材料选择提供支持。另外，由于缺乏第三方实验室和认证组织，也影响了整个决策过程。因为没有有效的监督和认证，不符合国家标准的产品也能轻易通过审批。另外，产品还要针对不同的客户、项目和地点进行重新检测，这就增加了生产厂商和客户双方的成本。

对新建筑工程、现有建筑翻修、小型家庭住宅和大型商业联合体等各种情况，都需要有具体的解决方案。另外，当地获得材料、产品和服务的能力、以及当地的技术发展水平也都是关键的变量。这对于中国是一个真正的挑战，因为在中国仅对现有法规的解释在专业技术人士之间就存在很大不同。

能够降低能源消耗的措施有很多，包括热绝缘、高性能窗户、建筑自动控制、采暖通风与空调设计、照明设计、遮阳、密封的结构元件、通风以及受到建筑内可再生能源集成系统支持的热/冷回收系统。这些策略既适用于温暖气候区的建筑也适用于寒冷气候区的建筑。

中国的住宅建筑节能条例（新的《寒冷和极寒冷地区住宅建筑节能设计标准》和新的《夏热冬冷地区住宅建筑节能设计标准》）现正在修订中；自2006年以来，中国的节能水平提高了大约5%–15%。2007年底，中国出台了《工业建筑节能条例》。另外，商务部和其它政府部门也出台了多部法律法规，旨在改进对现有法规和标准的执行情况。

制定有关可持续建筑和法规执行的国家标准（比如中国绿色建筑认证、LEED、Earth Advantage等）具有至关重要的意义，以引导该行业采取正确的行为，鼓励节能建筑。在这方面，影响市场机制和鼓励研发项目以及开展政府企业合作都极为重要。 ■

建议

- 提高能源政策、供给、可用性及定价机制的透明度。
- 有效地衔接天然气利用政策和其它政策，如“受鼓励行业”、“高科技企业”范畴

等；逐步淘汰中央控制的配给机制并逐步引入市场定价。

- 通过监管改革鼓励工业热电联产，制定法律框架允许企业将电力销售给电网。
- 提供一个稳定而且可预测的生物能监管环境，避免突然的政策改变而影响技术转让和投资。例如，2007年突然暂停粮食基燃料乙醇的生产项目以及施加的所有权限制，对该行业内的国内外投资产生了不利影响。
- 在清洁技术项目的投资和研发方面加大透明度和指导。制定长期的国家政策以及地方实施条例，鼓励可再生能源的发展。
- 加大工作力度，确保当前的建筑节能标准得到正确地贯彻执行。制定可持续建筑的国家标准以鼓励节能建筑。进一步影响市场机制，鼓励研发项目和行业内的政府企业合作。
- 加大力度鼓励利用现有技术，如照明设计、窗户替换、绝缘、控制系统和HVAC升级等，更新建筑物的节能设施。
- 继续制定和出台全国性的“绿色”产品和建筑标志计划。
- 增加对环保节能型产品的需求。

enforcement of the current energy efficiency codes and standards.

Developing national benchmarks on sustainable buildings and code enforcement (e.g., China Green Building Certification, LEED and Earth Advantage) are essential requirements to encourage energy efficient buildings. Influencing market mechanisms and encouraging research and development projects, as well as public-private partnerships, are of paramount importance in this endeavor. ■

Recommendations

- Improve the clarity and transparency of energy policy, supply, availability and pricing mechanisms.
- Harmonize the Natural Gas Utilization Policy with other programs such as “Encouraged Industry” and “Hi-tech Enterprise” categories and gradually phase-out centrally controlled allocations consistent with the phase-in of market-based pricing.
- Encourage industrial cogeneration through regulatory reform, creating a legal framework for companies to sell power back to the electricity grid.
- Provide a steady and predictable biomass regulatory environment and avoid sudden policy shifts that discourage technology transfer and investment. For example, the suddenness of the 2007 grain-based ethanol moratorium and ownership restrictions has had a negative effect on both domestic and foreign investment in the industry.
- Provide greater transparency and guidance in investment and development of clean technology projects. Create long-term national policies together with local implementing regulations that encourage the development of renewable energy.
- Increase efforts that ensure current building standards for energy efficiency are implemented correctly and enforced. Develop national benchmarks on sustainable buildings in order to encourage energy efficient buildings. Further influence market mechanisms and encourage research and development projects, as well as public-private partnerships in the sector.

- Increase efforts to encourage energy efficient building retrofits using available technologies such as lighting design, window replacement, insulation, control systems and HVAC upgrades.
- Continue the development and roll-out of a national “green” product and building labeling program.
- Increase the demand for products that meet energy efficient and environmentally friendly performance levels.



Financial Services

This year for the first time, the AmCham White Paper includes a separate subsection on the financial services sector, including policy papers on banking, insurance and investment services. This new focus reflects the importance of China's financial sector to the future development of a large-scale, modern domestic economy. The United States and China have established a new high-level exchange on economic, investment and trade issues within the framework of the Strategic Economic Dialogue (SED) that participants hope will move China beyond the commitments of its World Trade Organization (WTO) accession. The continued opening of China's financial services sector is a key element of the SED.

During the past five years, China's State Council has paid significant attention to the reform and restructuring of China's financial services sector. Large state-owned banks and insurance companies have moved away from direct ownership and control by the Ministry of Finance (MOF) and other state agencies through jumbo IPOs on domestic and foreign stock exchanges. Foreign banks and insurance companies have been allowed for the first time to take minority stakes in Chinese financial institutions and to form strategic marketing partnerships for services such as consumer credit cards. By some estimates, market ownership of China's key financial institutions has risen from zero in 2003 to some 30 percent today. At the same time, balance sheets have improved, non-performing loan portfolios reduced, governance strengthened and customer services expanded.

Despite these reforms, China's financial services sector remains one of the most tightly controlled parts of the economy. Licenses and market access for American banks, insurance companies and investment companies remain difficult and costly to attain. Direct controls have been replaced by a growing body of laws and administrative regulations, some of which contain provisions that severely limit access to the domestic financial services market by foreign competitors. Foreign exchange controls, while loosened somewhat under the pressure of mounting foreign exchange reserves, have actually been expanded in some areas.

The effect of maintaining controls on the operations of foreign financial institutions and foreign exchange

flows has been the continuing isolation of China's capital markets from the global financial system. Discriminatory regulatory measures, such as high capital requirements for branching or foreign equity limits, are designed to protect inefficient domestic institutions from foreign competition, thereby slowing the reform and restructuring of the entire financial sector and its successful integration with the global economy.

The three sections presented below offer a detailed review of China's post-WTO financial sector and additional steps that are needed to further open and reform the sector.

Commercial Banking

December 2006 saw the culmination of China meeting its final WTO membership obligations in the banking sector. China's State Council has issued new rules that govern China's banking sector and foreign banks that participate within this sector. These changes were welcomed for both the spirit in which they were promulgated and for the practical changes they brought forth. However, meeting WTO commitments does not signal the end of change, but rather the beginning of the creation of an excellent financial system inside China. Concurrent with the number of positive steps taken in 2007, banking sector liberalization should proceed towards realizing China's aspiration to have a competitive and strong banking system that rivals any in the world.

Significant Developments

Chinese authorities understand that a sound and well-developed financial system is essential to the overall reform of its economy. To this end, the authorities are to be congratulated for the most recent reforms implemented in December 2006, such as allowing foreign banks to incorporate their operations as local Chinese entities. In addition, there were new regulations put forth for foreign banks that chose not to locally incorporate that will have a significant impact even for those banks that chose local incorporation. Several new benefits under the change in rules are product development, branch expansion and the removal of geographic restrictions.

Nonetheless, several other changes were not positive

金融服务

中美商會白皮書今年首次專門增加了一個章節，以闡述金融服務行業相關內容，包括銀行業、保險和投資服務的相關政策文件。這一新的調整側面地反映了中國金融業對於未來國內現代、規模性經濟發展的重要性。中美兩國在戰略經濟對話（SED）框架內就經濟、投資和貿易的相關問題建立了高層交流磋商機制，雙方都希望藉此推動中國全面實現其入世承諾。中國金融服務業的持續開放是戰略經濟對話的關鍵內容。

過去五年中，中國國務院非常重視中國金融服務行業的改革和重組。大型的國有銀行和保險公司不再由財政部直接管控，其他國有的機構也在國內外證券交易市場進行了大規模的首次公開募集。中國首次允許外國銀行和保險公司在中國的金融機構中持有少數股權，允許與中國金融機構成為金融服務方面的市場戰略合作夥伴，比如在消費信貸卡領域。據估計，中國主要金融機構的市場所有權比例已經從2003年的0%上升到目前的30%。同時，資產負債表也得以改善，不良貸款下降，公司治理加強，客戶服務得以提升。

儘管實施了這些改革措施，中國的金融業仍然是控制最緊的經濟發展領域之一。外國銀行、保險公司和投資公司在獲得許可證和市場准入方面依然困難，且其代價很高。日益發展的法律和行政法規代替了政府對該行業的直接管控，其中就包括關於嚴格限制外國競爭者進入國內金融服務市場的規定。雖然在外匯儲備日益增多的壓力下，外匯管制有所放寬，但實際上在某些方面却在緊縮。

對外資金融機構市場運營及外匯流動的持續監管，將不斷地使中國的資本市場與全球的金融體系相隔離。對於設立分支機構的高額註冊資本要求，外資股權限制等不公平的監管措施旨在保護低效率的國內機構免受來自外國的競爭，因而延緩了整個金融行業的改革和重組，影響了其成功地融入全球經濟的速度。

以下三個部分對中國入世後的金融業進行了回顧，

並提出了該行業進一步開放和改革所需要採取的一些措施。

商業銀行

2006年12月，中國履行了其在金融行業的最后一項入世義務。中國國務院頒布了關於管理中國的銀行業和參與此行業的外資銀行的新規定。無論是頒布這些規定所秉承的精神還是它們所帶來的實際改變，都受到了歡迎。然而，實現入世承諾並不表示變革的結束，而是中國創建完善的金融體系的開始。2007年，在採取了許多積極措施的同時，銀行業領域自由化應當朝着實現中國擁有可以與世界上任何銀行業體系相媲美的具有競爭力的強大銀行業體系的願望而繼續進行。

重大進展

中國政府非常清楚健全成熟的金融體系對於其總體經濟改革來說是不可或缺的。為此，相關部門於2006年12月實施了新的條例，如允許外資銀行以中國法人實體的形式設立本地經營機構等，我們對此表示祝賀。此外，中國還頒布了有關非法人外資銀行的相應法規。這些法規，甚至對於選擇在本地設立法人經營機構的外資銀行都產生了重大影響。法規變化所帶來新的若干好處包括產品開發、分行擴張和取消地區限制。

然而，對於在中國從事經營的外資銀行來說，也有其一些不利的變化。國家外匯管理局（SAFE）將短期外債餘額指標削減了40%，使得外資銀行單獨申請外債配額進行離岸融資的難度加大。此外，許多非法人註冊的外資銀行必須增加註冊資本，其中許多銀行可能要增加到其目前註冊資本的兩倍，同時隨着中國銀行業法規出現這些變化，政府主管部門要面對許多依法提出的新申請，因此銀行業監管機構目前已經是超負荷工作，不僅延遲了各種類型的申請審批，而且由於工作負荷大，甚至監管機構有時會勸退對於某些業務項目審批的申請。最後，外國銀行獲得人民幣流動資金來源的能力有限。

for foreign banks operating in China. The State Administration of Foreign Exchange (SAFE) cut back offshore debt quota by as much as 40 percent, a decision that adversely affected the ability of foreign banks to fund their balance sheets profitably. Further, a number of foreign banks that did not locally incorporate were required to increase their capital, with many having to double their capital base. With these changes to banking regulations in China, the authorities are faced with numerous new applications for various approvals that are otherwise mandated. Consequently, banking regulators are now overburdened to the extent that approval for any type of request takes an extraordinary amount of time, and requests for approvals of certain business items are at times discouraged by regulators because of their workloads. Finally, the ability to source local currency Renminbi (RMB) funding remains problematic.

Specific Issues

Regulatory Capacity and Depth

Rapid but positive change in the banking sector because of new regulations significantly increased the workload for regulators. The new ability to incorporate locally, requirements for additional capital, newly introduced internet banking requirements and the plethora of submissions required by regulators in areas such as personnel changes, product offerings and new branch requests create an administrative burden for both the regulators and the regulated. AmCham believes that regulator attention to the following areas would enhance the commercial banking climate:

- Separate approvals for individual branches of the same foreign bank for business lines (such as derivative licenses) that were previously approved.
- Unequal treatment by regulators in locations where a foreign bank may not have a branch. Authorities such as SAFE sometimes disallow certain transactions in foreign currency because of the lack of a branch office. This runs counter to the current regulations.
- Approvals are often required from numerous regulatory agencies that have different approaches to the approval process and different interpretations of rules and regulations.

Funding of Foreign and Local Currency

SAFE significantly cut offshore debt quota limits for banks in 2007. This has had a significant impact on the ability of foreign banks to fund

balance sheets profitably. Most foreign banks borrow funds through their regional treasury center, often located in Hong Kong or Singapore. However, borrowing outside China is subject to limits imposed by SAFE and the inability of foreign banks to obtain adequate funds at a profitable rate in lieu of domestic foreign deposits places them at a significant disadvantage. AmCham understands the initial rationale behind SAFE's decision to limit offshore funds coming into China, which was to inhibit money coming in from abroad directed towards speculative investments such as in real estate or shares. However, legitimate transactions such as trade finance and project and infrastructure lending should be excluded when assigning offshore debt quota. China does have legitimate concerns over the percentage of short-term overseas debt to total foreign obligations, but the arbitrary nature of assigning quotas to foreign financial institutions lacks transparency and is applied without regard to transaction types.

Even if allocation of offshore debt quota presented no obstacles to obtaining cost effective funds from abroad, the method by which the China Banking Regulatory Commission (CBRC) calculates borrowings from head office, offshore branches and affiliates impacts foreign banks' ability to manage within the required prudential liquidity ratio. These types of borrowings are required to be calculated as maturities within one month regardless of tenure. Therefore, a six-month loan matched with a six-month borrowing of funds from a head office by default creates an illiquid position on the balance sheet even though no mismatch of assets and liabilities actually occurs.

As an alternative to borrowing from sources outside China, the authorities are attempting to foster the creation of a domestic foreign currency money market. Thus far, this market has proved to be thin and illiquid, and the demands for money to fund both foreign currency assets and to swap foreign currency for RMB (see below) aggravate the orderly flow of funds within the market at competitive rates. In order to assist in the creation of this money market, the authorities should ensure a degree of liquidity that makes borrowing competitive with offshore money. This action, coupled with adjustments to the offshore debt quota scheme, will result in a more orderly and competitive foreign currency market.

RMB funding is fragmented and inefficient. Other than corporate and retail deposits, there are limited liquid sources of RMB funds available to foreign banks. The first is through the China Foreign

具体问题

监管能力和监管深度

由于新法规的实施大大增加了监管机构的工作量，从而使银行业的相关部门发生了快速而积极的变化。申请注册法人银行资格、资本追加的要求、新推行的网上银行，以及监管机构在人事变动、产品出售和新分行成立申请等方面要求提供过多的文件等，给监管机构和被监管机构都带来了行政负担。中美商会认为，监管机构关注以下问题，将有助于改善商业银行的运营环境：

- 对同一外资银行的个别下属分行从事以前已审批的业务（例如衍生产品执照）要求另行审批。
- 监管机构在外资银行没有设立分行的地方给予其不平等待遇。因为没有分行存在，国家外汇管理局等主管部门有时会不允许某些外币交易。这与现行法规相悖。
- 经常要求得到众多监管机构的审批，而这些监管机构采用的审批程序各不相同，对法规规定的解释也存在差异。

融资—外币和本币

2007年，国家外汇管理局大大削减了银行的外债配额，这对于外资银行低成本融资的能力具有重大影响。许多外资银行通过其地区资金管理中心借入资金，这些中心一般都位于香港或新加坡。然而，从中国境外借款要在国家外汇管理局规定的限额内，而且外资银行无法以优惠的利率取得充足的资金以替代国内外币存款，这使它们处在严重不利的地位。中美商会明白国家外汇管理局做出限制境外资本进入中国之决定的根本原因，即为了阻止境外用来进行房地产或股票等投机性投资的资金进入中国。然而，在分配外债配额时，贸易融资及项目和基础设施贷款等合法交易应当排除在外。中国确实对短期外债占总外债的比例存在合理的担忧，但是向外国金融机构分配配额的任意性质缺乏透明度，而且也不考虑交易类型。

即使外债配额的分配不对从境外取得低成本的资金构成障碍，中国银行业监督管理委员会（CBRC）计算外国银行从其总部、境外分行和关联机构借

款的方法也影响其将借款控制在必要的稳健流动比率范围内的能力。无论其使用期限多长，这些类型的借款都必须作为在一个月到期的借款核算。因此，即使并未发生资产和负债不匹配的情况，在默认的情况下，与从总部借入的为期六个月的资金相对应的六个月期贷款都会在资产负债表上造成流动性不足的状况。

作为从中国境外借款的替代方案，主管部门正尝试鼓励建立国内外币货币市场。事实证明，此市场迄今都很薄弱，流动性差，投资外币资产和美元与人民币掉期交易（见下文），所需要的货币恶化了资金以有竞争力的利率在市场内的有序流动。为了帮助创建此货币市场，主管部门应当确保使借款可与境外资金竞争的流动性程度。这一措施，结合对外债配额计划的调整，将会使外币市场更加有序和有竞争力。

人民币（RMB）资金不成体系，效率低。除了企业和零售存款，外国银行只有有限的人民币流动资金来源可用。第一个来源是通过中国外汇交易中心（CFETS）获得。这些资金的利率有竞争力，但银行只能借得仅限于其本地资本的小倍数的数额。资本金较少的外国银行明显处在不利的地位。第二个来源是国内美元和人民币掉期交易。在这个市场上，由于国内外币货币市场流动性差，外币以溢价定价，利率没有吸引力。由于外国银行还面临着缺乏资金来充实其外币账户的事实，更加剧了这种情况。最后是关于与银行的双向协议：当前利率不稳定，人民币通常是在上海银行间同业拆放利率（SHIBOR）基准利率基础上以溢价定价。虽然SHIBOR是个很好的基准，但在外资银行试图从本地银行双向借款时，它通常是个象征性指标。

为了使银行间国内货币借款符合国际标准，主管部门应当考虑放宽或消除对于外国银行可以通过中国外汇交易中心借款数额的上限，提高或完全取消外债配额，这样国内美元和人民币掉期交易就会成为更加以市场为导向的替代方案；主管部门应采取措施，确保上海银行间同业拆放利率成为有效的市场驱动利率，而不是象征性指标，并允许外国银行从其它人民币头寸可能有盈余的外国银行双向借款。此外，中国人民银行应当考虑在履行央行的职能之

Exchange Trading System (CFETS). These funds are available at competitive rates; however, the amount banks can borrow is limited to a small multiple of their local capital. Foreign banks with smaller capital bases are at an obvious disadvantage. A second source is onshore U.S. dollar to RMB swaps. In this market, rates are not attractive because of the illiquidity of the domestic foreign currency money market that prices foreign currency at a premium. This is exacerbated by the fact that foreign banks also face foreign currency shortages to fund their foreign currency books. Lastly are bilateral arrangements with banks: currently rates are spotty and the RMB is usually priced a premium over the Shanghai Interbank Offered Rate (SHIBOR) benchmark reference rate. While SHIBOR is a good benchmark, it is usually a symbolic indicator and not readily available when foreign banks attempt to borrow bilaterally from local banks.

To make inter-bank domestic currency borrowing consistent with international norms, the authorities should consider easing or eliminating caps placed on the amount foreign banks can borrow through CFETS; increase or eliminate altogether the foreign debt quota so that onshore U.S. dollar to RMB swap transactions become a more market-driven alternative; undertake measures to ensure SHIBOR becomes an effective market-driven rate rather than a symbolic indicator; and allow foreign banks to borrow bilaterally from other foreign banks that may be in an RMB surplus position. In addition, the People's Bank of China (PBOC) should consider playing the vital role of market maker and lender of last resort to provide liquidity to the financial system, in addition to performing its central bank functions.

Capital Requirements for Non-Locally Incorporated Banks

For banks that have no strategic interest in incorporating locally but are focused on providing wholesale commercial banking services, capital requirements should fall within the norms of other world-class international financial centers. The current requirement of a minimum RMB200 million before a first branch in China can conduct foreign exchange transactions presents a barrier to entry that prohibits all but the largest U.S. banks from entering the Chinese market.

When approving a foreign branch in China, the authorities should consider the financial strength and resources of the applicant's head office (including compliance with BIS capital guidelines), projected capital position, the historical performance and future prospects. Further, the local regulators should

take into account the supervisory regime in the applicant's home country, its regulatory powers and the frequency of supervisory examinations.

This move would require CBRC and other regulatory agencies to evaluate the applicant's capital adequacy, asset quality and liability management. Additional regulatory capacity and depth are required to move in this direction of analysis. This methodology of assessing capital adequacy is in line with the practices of other major financial centers such as New York, Tokyo, London and Hong Kong. Although several other markets within Asia require a minimum amount of capital, as China aspires to world-class status, the best practices of the current major financial centers should be considered.

Ownership Restrictions of Local Banks by Foreign Locally Incorporated Banks and Branches of Foreign Banks

Currently, ownership of a local Chinese bank is limited to a 20 percent share by a single foreign entity and a 25 percent collective share by all foreign entities. Chinese authorities welcome foreign investment into domestic banks in order to work with local management to introduce new methods of risk management, technology and product development.

Foreign banks that have incorporated locally should be allowed to wholly acquire local banks in accordance with local laws allowing any domestic bank to acquire another. Further, non-locally incorporated banks should be able to acquire a higher ownership stake in local banks in accordance with norms established in world-class financial centers. The goals of improved management, technology and risk management are not fully realized by limiting foreign banks from obtaining higher stakes in local banks.

Debit and Credit Card regulations

Current CBRC and PBOC regulations are inconsistent and unclear regarding the requirement for banks to migrate debit/credit card systems onshore. In addition, no specific time frame has been given for this requirement.

Regulatory Clarity on Foreign Bank Participation in the Securities Industry

Foreign banks, particularly those with extensive experience in countries with developed financial markets, can make significant contributions to the development of China's securities industry. Current

外，发挥做市商和最后贷款人的至关重要作用，以为金融系统提供流动性。

对非本地法人银行的资本要求

对于在本地注册无战略发展要求，但以批发商业银行业务为主的银行，资本要求应当适用其他世界一流跨国金融中心的标准。当前的要求是在首个中国分行可以办理外汇业务之前最低为2亿元人民币，这构成了入市障碍，影响了除最大的那些美国银行外的所有其它银行进入中国市场。

在审批欲在中国成立的外国分行时，主管部门应当考虑申请人总部的财务实力和资源（包括遵守国际清算银行资本指导原则的情况）、预计的资本头寸、以往业绩和未来的前景。此外，当地监管机构还应当考虑申请人本国的监督制度、其监管力度和监督检查的频率。

这种策略会要求中国银行业监督管理委员会（CBRC）和其它监管机构对申请人的资本充足率、资产质量和债务管理进行评价。为了进行分析，还需要有更大的监管力度和深度。这种评价资本充足率的方法符合纽约、东京、伦敦和香港等其它主要金融中心的做法。尽管亚洲有若干个其它市场要求最低资本数额，由于中国渴望取得世界一流地位，应当考虑采纳当前主要金融中心的最佳做法。

对于外资法人银行及外资银行分行在本地银行中的所有权比例的限制

当前，单个外资实体在中国本地银行中的所有权不能超过20%，全部外资实体的总体份额不能超过25%。中国政府欢迎外国投资国内银行，以与本地管理层合作，引入新的风险管理、技术和产品开发方法。

主管部门应当允许在当地注册的外国银行按照允许国内银行收购另一家银行的地方法律规定整体收购当地银行。此外，非本地注册的银行应当能够按照世界一流金融中心制定的标准收购当地银行的较高股权份额。限制外资银行取得当地银行的较高股权份额会影响完全实现改善管理、技术和风险管理的目标。

借记卡和贷记卡规定

目前，中国银行业监督管理委员会和中国人民银行有关银行向境内迁移借记/贷记卡系统的要求是不一致的，也是不明确的。此外，对于此要求也没有给出具体的实施时限。

关于外资银行参与证券行业的监管透明度

外资银行，尤其是在发达的金融市场的国家有丰富经验的那些银行，可以对中国证券行业的发展做出巨大的贡献。有关外资公司能够在多大范围内与当地公司合作或者以其它方式在此行业中发挥作用，现行法规中并未明确。

总结

中国政府和银行业监管机构在过去的一年内有了极显著的进步。在对银行业法规的修订过程中表现了他们对解决与金融商业银行服务内容有关的重组问题的决心，对中国银行业进行改革方面的远见，以及制定市场参与者相关法规时的清醒认识。要建立世界一流的金融中心和有竞争力的先进金融体系，中国加入世界贸易组织及其履行入世承诺的最终步调都是值得称赞的。要使中国成为国内利益相关者和参与者受益的金融市场，主管部门应当确保外国金融机构能够平等自由地进入中国市场，以便其更好地服务于当地银行的零售和企业客户。

建议

- 简化监管程序，只限于审批那些可能会给金融体系造成系统性风险和破坏的主要项目。
- 重新考虑外债配额。以取消或至少免除贸易融资和项目贷款的外债配额限制。在计算流动比率时，消除对于总部和关联公司借款的歧视性待遇。或者，努力使国内外币市场更具有流动性，使其具有更大的深度和更高的效率。通过解决这个问题，主管部门可以同时启动将会确保人民币资金稳定、经济有效供给的改革。

regulations are unclear as to the extent to which foreign firms will be able to partner with local firms or otherwise play a role in this industry.

Summary

China's government and banking regulators made bold progress this past year. Changes to banking regulations have shown determination to address restructuring issues related to the commercial banking segment of the financial sector, vision in the direction China intends to take on banking reform and clarity in outlining the new rules and regulations for market participants. To develop an advanced and competitive financial system with world-class financial centers, China's entry into the WTO and its final steps to satisfy its WTO commitments are laudable. To make China a financial market that benefits all domestic stakeholders and participants, the authorities should ensure that foreign financial intuitions have equal and unfettered access to the Chinese market in order to better serve local retail and corporate purchasers of banking services.

Recommendations

- Streamline the regulatory process and limit the requirements for approvals only to those major items that could possibly create systemic risks and disruptions to the financial system.
- Reconsider offshore debt quotas with a view towards eliminating or, at a minimum, exempting from the quotas all trade finance and project lending. Eliminate the discriminatory treatment of offshore borrowings from head office and affiliates when calculating liquidity ratios. Otherwise, work to make the domestic foreign currency market more liquid with more depth and efficiency. By addressing this issue, the authorities can concurrently institute reforms that will ensure a stable and cost effective supply of RMB funding.
- Eliminate capital requirements for non-locally incorporated banks. Apply global financial best practices to banks that operate principally in the wholesale market. This will ensure equal treatment in the various markets, including CFETS, where RMB funding is available at more competitive rates.
- Eliminate ownership caps for locally incorporated banks. These caps should likewise be eliminated for non-locally

incorporated banks. At a minimum, for the latter class of foreign banks, caps should be significantly increased.

- Clarify regulatory requirements and a timetable for card systems to be migrated onshore.
- Enable foreign firms to play a role in the securities industry, thus leveraging foreign firms' experiences worldwide to create world-class financial centers in China.
- Lift restrictions that prohibit foreign banks and subsidiary banks from trading corporate bonds, to help further develop the domestic bond market.

Insurance

The insurance industry in China has grown at a compound annual growth rate of over 20 percent in the past 10 years. Featured prominently during China's 11th Five-Year Plan (2006-2010), insurance is recognized by the Chinese government as an important industry for supporting the national goals of sustainable growth and a harmonious society. Given China's double-digit GDP growth but relatively low insurance penetration of 2.8 percent (insurance premiums as a percentage of GDP), the potential for further growth in the insurance industry is tremendous.

The end of the five-year transition period for China's accession to the WTO in December 2006 provided an opportunity to usher in a new beginning for foreign companies to participate in China's insurance markets. The Chinese Government has taken a number of positive steps to comply with its WTO commitments. There remain, however, market access barriers to foreign participation, which raise questions as to their WTO consistency as well as compatibility with China's goals of integration with the global economy and development of global financial markets. These barriers deny Chinese businesses and individuals access to the products and services that American insurance companies can provide.

Significant Developments

There have been a number of positive developments in the insurance regulatory environment in the past year. Many new rules have been promulgated in an ongoing effort to improve the regulatory framework. Noteworthy regulations included guidelines on the development of insurance intermediaries, measures

- 取消对于非本地法人银行的资本要求。对主要从事批发业务的银行适用国际金融业最佳做法。这将确保在能够以更有竞争力的利率获得人民币资金的各个市场（包括中国外汇交易中心）享有同等的待遇。
- 取消对于本地法人银行的所有权限制。对于非本地法人银行的这些上限同样也应当取消。至少应当大大增加后一类外国银行的上限。
- 阐明要迁移到境内的卡系统的监管要求和时间表。
- 使外国公司能够在证券行业中发挥作用，从而利用外国公司在全球范围内的经验在中国创建世界一流的金融中心。
- 取消禁止外资银行及其附属银行买卖公司债券的限制规定，以帮助进一步发展国内债券市场。

保险

过去10年间，中国的保险行业以超过20%的年复合增长率增长。在中国第11个五年计划期间（2006-2010），其地位更加突出，保险业被中国政府确认为支撑可持续增长和和谐社会的国家目标的重要行业。鉴于中国的国内生产总值以两位数的速度增长，而保险深度却只有较低的2.8%（保险费占国内生产总值的百分比），因此保险行业进一步增长的潜力巨大。

2006年12月，中国入世的五年过渡期结束，开创了外国公司进入中国保险市场的新机遇。中国政府采取了许多积极的措施以遵守其入世承诺。然而，外国公司要进入市场，仍然面临着许多障碍，这似乎与世界贸易组织的要求以及中国全球经济一体化和发展全球金融市场的目标不一致，使得中国企业和个人无法获得美国保险企业提供的产品和服务。

重大进展

去年，保险监管环境中有许多积极的改善。为了持续改善监管框架，中国颁布了许多新规定。值得关注的法规包括关于发展保险中介代理机构的指导方

针，养老保险业务管理方法（即个人、团体和企业年金）和保险资金海外投资规定。有关外国公司市场准入方面的重大进展描述如下：

一般保险

2007年5月，中美战略经济对话之后，中国主管部门允许包括美国公司在内的若干外国一般保险商将其在中国的分支机构转化为本地注册的子公司。同时，中国主管部门允许若干外国一般保险商在中国成立各种不同法律形式的新经营机构，如分公司、子公司或合资公司等。

分保

按照中国的入世承诺，中国保险监督管理委员会（中国保监会）逐步取消了给中国再保险公司仅存的5%法定分保比例。

保险中介代理机构

中国保监会按照中国的入世承诺允许设立外商独资保险经纪公司。

合格境内机构投资者

至少有两家外商投资保险公司和将近20家中国保险公司经批准获得以外汇资金投资香港股票市场的合格境内机构投资者资格。

具体问题

分支机构审批中的国民待遇

虽然就境内设立分支机构而言，中国法规并未正式区分中资和外资的保险公司，但据中美商会成员的反映，他们被告知，不能一次提交多个分支机构设立申请，即便提交，也不会被同时审批。没有任何商会成员曾经同时获得多个分支机构设立的批文。同时，中资保险公司，即使是新成立的，也能同时取得了多个分支机构设立批文，使他们能够快速建立跨省或全国分支机构网络。例如，一个新保险商自其成立不到三年的时间以来，已经获得了将近30个分支机构许可证。这些许可证中有许多是在短

for managing pension insurance business (i.e., individual, group and enterprise annuities) and rules for investing insurance funds overseas. Significant developments with respect to market access for foreign companies are described below.

General Insurance

Following the U.S.-China Strategic Economic Dialogue in May 2007, Chinese authorities allowed several foreign general insurers, including U.S. companies, to convert their branches in China into locally incorporated subsidiaries. Meanwhile, several foreign general insurance companies were allowed to establish new operations in China in various legal forms such as branch, subsidiary or joint venture.

Reinsurance

Consistent with China's WTO commitments, the China Insurance Regulatory Commission (CIRC) phased out the remaining five percent mandatory reinsurance cession to China Re.

Insurance intermediaries

CIRC, in compliance with China's WTO commitments, allowed wholly foreign-owned insurance brokerages.

QDII

At least two foreign-invested life insurance companies, along with nearly 20 Chinese insurers, were approved for the Qualified Domestic Institutional Investor (QDII) status to invest foreign exchange funds in the Hong Kong stock market.

Specific Issues

Allowing National Treatment for Branch Approvals

Although Chinese regulations make no formal distinction between Chinese-invested and foreign-invested insurance companies with respect to in-country branching, AmCham members continue to report that they are told by local and national CIRC officials that multiple branch applications cannot be submitted simultaneously or, if so submitted, the applications will not be concurrently reviewed and approved. No AmCham members have been able to obtain branch approvals concurrently. Meanwhile, Chinese-invested insurance companies, even newly established ones, have obtained multiple concurrent branch approvals, enabling them to rapidly build

multi-provincial or national branch networks. For instance, one new domestic insurer has received nearly 30 branch licenses since its establishment less than three years ago. Many of those licenses were granted in batches within a short period of time; some of them on the same day.

AmCham members believe that there are structural and procedural explanations for the disparate treatment that they face. Specifically, branch and other license applications by foreign-invested insurance companies, even those that enjoy legal-person status in China, are subject to supervision by CIRC's International Department, a layer of scrutiny that does not apply to Chinese-invested insurance companies. CIRC's Development and Reform Department appears to have extensive responsibilities, both for centralizing market entry-exit of Chinese legal-person insurance companies and for promoting the development of China's insurance industry. AmCham members are concerned that the Development and Reform Department tends to favor expanded market-entry for Chinese-invested insurance companies over foreign-invested insurance companies, even if this ultimately results in the slower development of the insurance industry and disadvantages the interest of insured.

In addition, CIRC appears to maintain separate procedures for applications by foreign-invested insurance companies compared to Chinese-invested insurance companies. All applications by foreign-invested insurance companies must be submitted by their head office and are subject to CIRC approval. By contrast, Chinese-invested insurance company applications can be submitted by branches, and branch applications need only to be reviewed by CIRC local bureaus instead of CIRC headquarters. Chinese-invested insurance companies are also entitled to simpler and faster procedures for the establishment of sales offices and for registration of branches and sub-branches.

AmCham believes that these distinctions lack a reasonable basis and are incompatible with China's WTO national treatment obligations. Foreign insurance companies should be allowed to enjoy national treatment by receiving new branch licenses on a concurrent basis.

Relaxing Restrictions on Reinsurance Arrangements

As it phased out the remaining five percent mandatory reinsurance cession to China Re, CIRC instituted a new set of rules on reinsurance arrangements, some of which are inconsistent

期内成批授予的，其中有一些还是在同一日内授予的。

商会成员认为它们所面临的这种不平等待遇还有其结构上和程序上的原因。尤其是，即使外商投资保险公司在中国享有法人资格，它们所提出的分支机构和其它许可证申请也要受中国保监会相关部门的监督，而这一审查是不适用于中资保险公司的。中国保监会有些部门职责过于广泛，既集中管理中国法人保险公司的入市与退市，还要负责推动中国保险行业的发展。商会成员担心，这不仅最终会导致保险行业的发展速度放缓，并损害被保险人的利益，而且这些部门仍倾向于给中资保险公司比外商投资保险公司多的市场准入机会。

此外，中国保监会似乎对外商投资保险公司提出的申请适用不同于中资保险公司的单独程序。外资保险公司提出的所有申请都必须由其总部提交，而且须经中国保监会审批。中资保险公司的申请可以由分支机构提交，而且分支机构申请只需要由地方保监会审查。对于销售办事处的设立和分支机构及分理处的注册登记，中资保险公司还有权适用更简单更快捷的程序。

中美商会认为这些不同程序的适用缺乏合理的依据，与中国入世的国民待遇义务相矛盾。应当允许外国保险公司以同时获得新分支机构许可证的方式享受国民待遇。

放宽对于分保协议的限制

由于逐步取消了给中国再保险公司的仅存的5%的再保险法定分保比例，中国保监会制定了一套新的有关分保协议的法规，其中有一些与国民待遇原则相矛盾而且/或者实施起来很繁缛。

对于涉及外国保险商的分保业务的更多严格要求

为了加强对分保业务的监管，中国保监会颁布了若干有关分保协议的法规。但是，适用外资公司的标准似乎更为严厉。例如，在进行合约分保或临时分保过程中，保险公司必须首先向中国至少两家专业再保险商发出要约，而且要约分保的数额必须至少是全部分出业务的50%。此外，外资保险商要与关联

公司承接分保业务，就必须经过中国保监会的严格审批。它们必须提供大量的证明文件，包括过去三年的年度报表、相关监管机构签发的偿债能力证明和标准普尔、穆迪或贝斯特公司对其做出的评级。国内公司则不受此要求约束。

此外，2008年1月1日起生效的有关再保险业务安全性的新规定要求，包括外资公司在内的非国有保险商要成为首席再保险接受人或合约再保险业务的最大份额接受人，就必须具有相当于标准普尔A级以上的评级。除非是国有公司，否则其它再保险接受人必须具有相当于标准普尔BBB级以上的评级。当然，中国国有保险公司不适用该等评级要求。按照世贸组织的国民待遇原则，中国保监会应当统一国内和国外公司之间对再保险商的要求标准。从长远的观点来看，对再保险商实行统一标准将有助于中国公司变得更加有竞争力。

关于向单个再保险商分出业务的80%硬性规定

现行的再保险法规规定，每一危险单位分给同一家再保险分入公司的业务，不得超过直接保险业务保险金额或者责任限额的80%。虽然此要求可能有助于分散风险，但增加了成本，并且给再保险业务造成了困难。例如，当分出数额超过风险单位的80%时，如果不能找到至少两个再保险接受人，分出公司就无法承接该业务。商会认为，要支持中国保险业务的增长，中国保监会就应放宽对于分给每个再保险商的80%业务金额的规定。

放宽保险商的投资渠道

去年，中国主管部门逐渐放宽了保险公司的投资渠道，使得保险资金能够为了社会和被保险人的利益而得以更加有成效地分配。2007年颁布的《保险资金境外投资管理暂行办法》取消了以前过高的总资产要求。截至2007年底，至少有两家外商投资人寿保险公司、一家美国公司和将近20家国内公司取得了合格境内机构投资者资格。然而，美国保险公司在申请合格境内机构投资者资格和保险资金境外投资许可过程中仍然面临延误情况和困难。

同时，在建立资产管理企业方面，由于要求有在中国的经营经验和很高的总资产水平，美国公司同样

with the principle of national treatment and/or cumbersome to implement.

More stringent requirements for reinsurance business involving foreign insurers

CIRC has issued several regulations on reinsurance arrangements in an effort to strengthen supervision of the reinsurance business. Foreign companies, however, appear to be subject to more stringent standards. For instance, in conducting treaty or facultative reinsurance, direct insurers are required to make first offers to at least two professional re-insurers in China and the amount offered must be at least 50 percent of the total ceding business. In addition, a foreign-invested insurer has to undergo a rigorous CIRC approval process to undertake reinsurance business with an affiliated company. They are required to provide extensive supporting documents such as annual reports for the past three years, a solvency certificate issued by the relevant regulators and ratings by S&P, Moody's or AM Best. Domestic companies are not subject to such requirements.

Furthermore, the new rules on the security of reinsurance businesses, effective January 1, 2008, require that non-state-owned insurers, including foreign companies, must have ratings above the equivalent of S&P A- to be qualified as the principal re-insurer or re-insurer with the largest share for treaty reinsurance. And other receiving re-insurers must have ratings above the equivalent of S&P BBB unless they are state-owned companies. Chinese state-owned insurance companies, by definition, are not subject to such rating requirements. Consistent with the WTO principle of national treatment, AmCham believes that CIRC should standardize requirements for re-insurers between domestic and foreign companies. In the long run, unified standards for re-insurers will help Chinese companies become more competitive.

Rigid 80 percent rule on business ceded to a single re-insurer

Current reinsurance rules require that each risk-unit ceded to a single re-insurer may not exceed 80 percent of the sum insured or the liability limit of the direct insurance business. While this requirement may help spread risks, it increases costs and creates difficulty for the reinsurance business. For instance, when the ceding amount exceeds 80 percent of a risk unit, the ceding company would have to decline the business if it is unable to find at least two receiving re-insurers. AmCham believes that to support the

growth of the insurance business in China, CIRC should relax the 80 percent rule on business ceded to a single re-insurer.

Broadening Investment Channels for Insurers

In the past year, Chinese authorities have gradually broadened investment channels for insurance companies, enabling insurance funds to be more productively allocated to the benefit of society and the insured. "The Provisional Measures for Managing Investment of Insurance Funds Overseas," issued in July 2007, eliminated previous requirements for excessively high total assets. As of the end of 2007, at least two foreign-invested life insurers, one U.S. company and nearly 20 domestic companies had received QDII status. U.S. insurance companies, however, continue to encounter delays and difficulties applying for QDII quotas and permission to invest insurance funds overseas.

Meanwhile, with respect to establishing asset management businesses, U.S. companies are also at a disadvantage because of requirements for operational experience in China and high total assets levels. The "Provisional Regulations on the Administration of Insurance Assets Management Companies" (2004) require that at least one shareholder or founder be an insurance company or insurance holding company with at least eight years of experience in the insurance business. In addition, they must have net assets of at least RMB1 billion and total assets of at least RMB5 billion or RMB10 billion if the shareholder or founder is an insurance holding company or life insurance company. The insurance business requirements refer only to operations in China with no recognition of the experience of an overseas parent company. The requirements for net assets and total assets are also excessively high and have no direct bearing on the capacity to engage in the insurance asset management business. Those requirements put smaller and/or newer companies to the China market at a disadvantage, even if their parent companies have long and extensive records of successfully investing insurance funds.

AmCham urges the regulators to optimize the requirements for asset management companies by eliminating the China-specific experience and high assets requirements and to simplify and make more transparent the procedures for applying for QDII quotas and permission to invest insurance funds overseas.

处在不利的地位。《保险资产管理公司管理暂行规定》（2004年）要求应当至少有一家股东或者发起人为保险公司或者保险控股公司，而且其经营保险业务8年以上，净资产不低于10亿元人民币；总资产不低于50亿元人民币，而且如果该股东或者发起人是保险控股公司人寿保险公司，其总资产应不低于100亿元人民币。保险业务要求仅涉及在中国的经营机构，不承认境外母公司的经验。对于净资产和总资产的要求同样过高，而且对于从事保险资产管理业务的能力没有直接影响。这些要求对新进入中国市场的和/或规模较小的公司不利，即使其母公司拥有大量长期成功投资保险资金的记录亦如此。

中美商会呼吁监管机构取消中国经营经验和高额资产要求，优化对资产管理公司的要求，并且简化合格境内机构投资者配额和保险资金境外投资许可的申请手续，并使之更加透明。

通过允许人寿和非人寿公司之间的交叉销售来扩展分销渠道

过去，依据严格区分人寿和非人寿保险业务的监管原则，不允许人寿和非人寿保险公司从事交叉销售，即使与关联公司也不行。然而，作为鼓励金融集团公司发展工作的一部分，中国保监会批准了若干国内保险公司在其人寿和一般保险业务子公司之间进行交叉销售。中美商会认为，人寿和非人寿保险公司之间的交叉销售是经济有效的分销渠道。它可以提高人寿和非人寿保险销售人员的生产力，通过提供更多的产品和服务来改善客户服务，因为交叉销售可以销售更多的产品，有可能获得更高的收入，从而提高了销售人员的士气，出售更多险种保单，提高了客户保留率。简而言之，交叉销售对于保险公司、其客户和销售人员来说是个双赢的解决方案。

目前，中国保监会似乎将集团公司结构作为审批人寿和非人寿公司之间交叉销售的标准。由于监管限制，外国保险公司尚不能将其在中国的经营机构组建为集团公司。因此，外国保险公司不能从事交叉销售。中美商会认为，监管机构应当放宽集团公司资格条件，至少允许外商投资保险公司与其在中国的关联公司之间进行交叉销售。

开放法定汽车保险业务

虽然机动车第三者责任强制保险（MTPL）并非中国人世承诺的一部分，近年来汽车保险需求的快速增长要求外商投资保险公司加入到第三者责任强制保险业务中来，以支持汽车保险市场的发展。允许外国一般保险公司进入第三者责任强制保险市场会对中国的消费者和保险行业产生积极的影响，原因有很多：

首先，外国一般保险公司可带来丰富的经验，它们在许多发达和发展中国家开展有类似汽车保险业务。外国公司可以利用其在全球范围内控制汽车风险和定价方面的大量经验，给中国新兴的第三者责任强制保险行业带来效率和可持续性。其次，外国一般保险公司可以把它们在销售、客户服务和理赔方面的最佳做法带给中国新兴的第三者责任强制保险行业。外国保险公司可以对该行业做出巨大贡献，因为它们寻找以公平快速的方式处理汽车事故和索赔的最佳方法。最后，通过允许外国公司参与，可以将竞争引入第三者责任强制保险行业中从而降低成本、改善服务和增强该行业实力。

因为有在汽车保险方面的大量实践经验，外商投资保险公司可以给中国汽车保险市场的可持续增长做出很大贡献。商会认为，中国保监会应当考虑允许外商投资保险公司提供机动车第三者责任强制保险。

总结

虽然中国为实现其入世承诺而采取了很多重要措施，但在某些情况下，由于措施的落实未完全与入世义务的目标或精神相一致，许多的市场准入障碍依然存在。减少市场准入障碍不仅会刺激中国保险市场的发展，还会使中国消费者受益。

建议

- 在申请新的分支机构设立许可证过程中，外国保险公司享受与中国公司同等的国民待遇。

Expanding Distribution Channels by Allowing Cross-selling Between Life and Non-life Insurers

In the past, under the regulatory principle of strict separation of life and non-life insurance operations, life and non-life insurance companies were not allowed to engage in cross-selling, even with an affiliated company. However, as part of an effort to encourage the development of financial group companies, the CIRC has approved cross-selling in several domestic insurance group companies between their life and general insurance subsidiaries. AmCham believes that cross-selling between life and non-life insurers is a cost-effective distribution channel that can increase productivity of both life and non-life sales forces, improve customer services by making a wider range of products and services available, increase customer retention and renewal ratios because multi-line policies are sold, and improve sales force morale and retention because they have a wider range of products to market and a higher income potential. In short, cross-selling is a win-win solution for insurance companies, their customers and their sales forces.

Currently a group-company structure appears to be the criterion used by the CIRC for approving cross-selling between life and non-life companies. Because of regulatory constraints foreign insurance companies are not yet able to structure their operations in China as group companies. As a result, foreign insurers are excluded from cross-selling. AmCham believes that regulators should ease the group-company qualification, at least to the extent of allowing foreign-invested insurance companies to engage in cross-selling with their affiliates in China.

Opening Mandatory Automobile Insurance Business

While mandatory third-party liability (MTPL) automobile insurance was not part of China's WTO accession commitments, the rapid growth in demand for automobile insurance in recent years calls for the inclusion of foreign-invested insurers in the MTPL business to support the development of the automobile insurance market. Allowing foreign general insurance companies to enter the MTPL market would positively affect both consumers and the insurance industry in China for many reasons.

First, foreign general insurance companies bring experience with similar automobile insurance schemes in many developed and developing countries. By leveraging their significant

knowledge in managing automobile risks and pricing worldwide, foreign companies could bring efficiency and sustainability to the young MTPL industry in China. Second, foreign general insurance companies can bring their best practices in sales, customer service and claims processing to China's nascent MTPL industry. Foreign insurers can contribute greatly to the industry as it searches for the best ways to handle automobile accidents and claims in a fair and expedited manner. Finally, introducing competition in the MTPL business by allowing foreign participation would help lower costs, improve services and strengthen the industry.

With significant experience and best practices in automobile insurance, foreign-invested insurers have much to offer to the sustainable growth of the automobile insurance market in China. AmCham believes that the CIRC should consider allowing foreign-invested insurers to provide MTPL automobile insurance.

Summary

While China has taken important steps to meet its WTO commitments, significant market-entry barriers remain, in some cases due to implementation that is not fully consistent with the intent or spirit of WTO obligations. The removal of remaining barriers would not only stimulate the growth of China's insurance market but also benefit Chinese consumers.

Recommendations

- Allow foreign insurance companies to enjoy national treatment by granting new branch licenses on a concurrent basis.
- Standardize requirements for reinsurance businesses between domestic and foreign companies and relax the 80 percent rule on the amount ceded to a single re-insurer.
- Simplify the procedures for applying for permission to invest insurance funds overseas and optimize the standards for asset management companies by eliminating requirements for long China-specific operational history and high assets.
- Allow foreign-invested insurance companies to cross-sell between their affiliated life and non-life insurance companies.
- Allow foreign-invested insurers to provide mandatory third-party liability automobile insurance.

- 使对国内和外国公司之间的再保险业务的要求标准化，放宽对分保给每个再保险公司80%的数额限制。
- 简化保险资金境外投资许可的申请手续，优化有关资产管理公司的标准，取消对于长期在华经营经验和高额资产的要求。
- 允许外商投资保险公司在其人寿和非人寿保险关联公司之间进行交叉销售。
- 允许外商投资保险公司提供机动车第三者责任强制保险。

投资服务

中美商会认为，中国经济的持续增长将要求中国的投资服务领域不断地扩大和细化，以实现股权、债务和资本流动在国内、区域和全球范围内的流动，发挥其最有效的作用。投资服务在本文中被定义为包含非银行业务或非保险业务的金融服务，如并购咨询业务、有价证券承销业务、资产管理（共同基金）、交易（证券、货币、期货）和另类投资（私募股权、风险资本和对冲基金）。

中国的入世协议中有关于向外国投资部分开放银行业和保险领域的具体规定。然而，该协议没有涉及更大范围的投资服务。美国财政部长保尔森把进一步开放金融服务领域作为中美战略经济对话的主要目标。因此，目前是重新评价影响投资服务的监管、政策和市场准入问题的一个重要阶段。

中国的投资服务领域要遵从许多日趋完善也日益复杂的投资法律和法规，其中有许多专门针对从事该行业的外资公司。此外，涉及公司范畴更广的商业法律最近做出的一些变更对投资服务领域也有着重大影响，特别是《反垄断法》、《税法》和最新修订的《外商投资产业指导目录》，这些都是在2007年颁布的。

本文对于投资服务领域近期发展趋势的回顾，主要集中在以下三个领域的监管环境和外商市场准入方面：即证券、并购和私募股权/风险资本。

证券

2007年，尽管上海和深圳A股市场大涨，还是有若干重大问题决定性的影响着对证券市场前景。首先是中国公司在中国境外进行首次公开发行的能力（目前，海外首次公开发行受中国政府政策和许多新法律的限制）。第二，外国公司和投资者尚未有权进入国内证券市场。最后，美国投资银行、证券经纪、共同基金、资产管理公司、融资租赁公司和其它投资服务公司在中国的经营范围和市场准入方面面临着严格限制。

对境外上市的限制

2007年，中国企业的境外首次公开发行的数量明显减少。各种不同的法规，加之高度复杂和模棱两可的登记和申请程序，都使中国私营企业的海外上市之路变得日益艰难。政府明确鼓励大型的国有集团和小型私营企业在国内而不是在海外证券市场上市。

2007年，虽然有接近20家公司在纽约证券交易所和纳斯达克上市，比起同期在中国大陆交易所上市的200多家公司，这个数字是极低的。其原因包括美国对于上市的较高要求，中国本地股票市场给予上市公司的高估值，以及限制中国公司境外首次公开发行的政府政策和法规。

从历史上看，国外资金来源（例如风险投资公司、对冲基金、私人投资者等）并不是直接投资于中国公司，而是投资于在中国拥有资产的特殊目的公司（SPV）。这些境外特殊目的公司位于开曼群岛或英属维尔京群岛等免税的司法辖区。这样做的主要理由是它绕过了中国复杂的法律制度，还使外国投资者容易退出（即，境外特殊目的公司在纳斯达克或纽约证券交易所上市是相对容易的）。

2006年9月8日生效的新《关于外国投资者并购境内企业的规定》（简称“外商并购规定”）对于上市交易结构作了限制。依据新的法律规定，现在设立特殊目的公司和/或境外首次公开发行都需要由商务部和中国证券监督管理委员会（中国证监会）审批。总体而言，人们仍然不清楚该法规涵盖何种类型的交易，以及何时需要商务部和中国证监会审批。因此，大大拖

Investment Services

AmCham believes that the continued growth of China's economy will require continued expansion and differentiation of China's investment services sector in order to facilitate the flow of equity, debt and capital to their most efficient applications, both internally within the domestic economy and on a regional and global scale. "Investment services" is defined here to include non-banking or non-insurance financial services such as mergers and acquisitions advisory, securities underwriting, asset management (mutual funds), trading (securities, currency, futures) and alternative investments (private equity, venture capital, hedge funds).

China's WTO Accession Agreement had specific provisions that partially opened the banking and insurance sectors to foreign investment. The agreement, however, did not address a broad spectrum of investment services. U.S. Treasury Secretary Henry Paulson has made further opening of the financial services sector a major objective of the SED between the United States and China. This is therefore an important time to reassess the regulatory, policy and market access issues that impact investment services.

China's investment services sector is subject to a growing and increasingly complex body of specialized investment laws and regulations, many of which are specific to foreign companies operating in the sector. In addition, several recent changes in the broader body of corporate and commercial law have significant implications for the investment services sector, notably the Antimonopoly Law, the Tax Law and the most recent revisions of the *Foreign Investment Catalogue*, all issued in 2007.

This review of recent trends in the investment services sector focuses on the regulatory environment and foreign market access in three sub-sectors: securities, mergers and acquisitions, and private equity/venture capital.

Securities

In 2007, despite surges in both the Shanghai and Shenzhen A-share stock markets, several major issues dominated the securities landscape. First is the ability of Chinese companies to conduct an IPO outside of China (currently overseas IPOs are constrained by Chinese government policies and a number of recent laws). Second, foreign companies and investors do not yet have access to the domestic securities markets. Finally, U.S. investment banks, securities

brokerages, mutual funds, asset management firms, financial leasing firms and other investment services companies face severe restrictions on the scope of their business and market access in China.

Restrictions to Offshore Listings

Chinese companies' offshore IPOs were significantly curtailed in 2007. Various regulations, compounded by a highly complex and ambiguous registration and filing process, have made it increasingly difficult for privately owned Chinese companies to list overseas. Both large state-owned conglomerates and small privately owned companies are explicitly encouraged to place their listings on domestic stock markets, rather than overseas.

While close to 20 companies listed on the NYSE and on Nasdaq in 2007, these figures are extremely low compared to the 200+ listings in the mainland China bourses during the same period. Reasons for this include the higher listing requirements in the U.S., high valuations given to companies in the local Chinese stock markets and government policies and regulations that restrict international IPOs for Chinese companies.

Historically, foreign sources of capital (e.g., venture capital firms, hedge funds and private investors) did not invest directly in PRC firms. Instead, they made investments in offshore special-purpose vehicles (SPVs) that owned assets in the PRC. These offshore SPVs were located in tax-free jurisdictions such as the Cayman Islands or the British Virgin Islands. The primary rationale behind this structure was that it bypassed the complex legal regime in China and also facilitated easy exit by the foreign investors (i.e., it was relatively easy for the offshore SPV to list on Nasdaq or the NYSE).

The new "Regulations on Acquisitions of Domestic Enterprises by Foreign Investors" ("Foreign M&A Regulations") that went into effect on September 8, 2006, put limitations on the transaction structure described above. According to the new laws, setting up an SPV and/or an overseas IPO now requires approvals by the Ministry of Commerce (MOFCOM) and the China Securities Regulatory Commission (CSRC). Overall, confusion remains about what types of transactions are covered by the regulations, and when MOFCOM or CSRC approvals are required. As a result, there are major delays in deal execution and exit uncertainty. Other Chinese regulations, including Circular 75 and Notice #106 have added further complexity to offshore listings.

延了交易的执行，使退出不明确。其它中国法规，包括中国保监会的第75号和第106号通知在内，都进一步增加了境外上市的复杂性。

限制规定的影响

尽管我们可以把推出更严格规定的举措理解为是对有关中国资产过快流出中国的批评的回应，是出于阻止避税或鼓励大型国有公司在国内上市的愿望，但该限制规定还是引起了担忧。限制规定非常严厉，而且程序相对不透明、复杂而且有时是模棱两可的。

商务部及其省级和地方政府部门是所有对外业务审批的主要监管部门。从集中管理外资并购和首次公开发行审批程序、减少因以前的制度导致的矛盾的角度来看，这是积极的措施。然而，目前商务部需要审批为数更多的全国性交易，这种集中给商务部在北京的资源带来了压力，导致交易在审批过程中出现进一步延误。此外，如前面所提到的，人们不清楚哪些交易必须送交商务部审批，哪些是属于中国证监会的审批范围。

所有这些因素结合在一起，实际上为寻求在中国境外首次公开发行的中国公司“关闭了水龙头”。纽约证券交易所和纳斯达克等美国证券交易所将会因为这些法规丧失很多机会，外国投资者也蒙受了损失，因为除了通过配额很小的合格境外机构投资者（QFII）之外，它们无法投资于中国国内企业。中国公司也会受影响，因为国外证券交易所在公司治理、流通性、流动性和稳定性方面具有更大的优势，但由于限制规定，中国本地公司越来越难以企及。中国和国外的律师们目前正在寻找创造性的方法，以创造能够使中国公司在境外上市的交易结构（主要是通过反向并入公开上市的空壳公司）。然而，这并不利于中国公司，因为它们导致境外上市的成本（尤其是律师费）大大增高。

境内上市

在阻止境外上市的同时，中国法规使国内公司在国内上市相对容易，但是对于外商投资企业来说，情况并非如此。自从2006年7月上海证券交易所重新允许首次公开发行股票后，市场有了极大的增长。中

国鼓励计划在境外上市的国内公司在国内A股市场上市，对于大型国有企业，则鼓励它们同时在上海A股市场和香港H股市场两地上市。因此，对于中国投资者和股东来说，通往公开市场的退出途径相对畅通。

遗憾的是，外商投资企业和外国投资者目前无权进入国内首次公开发行市场。五年前中国曾进行早期的外商投资企业上市试验，但在2004年停止一切首次公开发行后，中国证监会实际上已不再批准更多外商投资企业上市。2006年7月，首次公开发行市场重新开放，但并没有允许新的外商投资企业上市。2007年12月，在战略经济对话的背景下，中国政府表达了允许某些大型外国公司及其在华子公司进入国内股票和债券市场的意愿。中国证监会最近表示，它将重新受理外商投资企业在国内A股市场上市的申请。中美商会支持向外国投资者开放国内证券市场，并希望中国证监会加速外商投资企业上市的审批过程。中国国内证券市场的开放是中国资本市场和全球市场长期融合过程的重要一步。

投资服务公司的市场准入

中国在经历最初的向外国证券交易公司的“开放”期后，中国证监会于2005年暂停批准设立新的证券相关业务合资公司。2007年5月，美国财政部长保尔森得到中国证监会关于取消暂停规定的承诺，截至2007年年底，北京正在审批两家新证券合资公司的设立申请。尽管有来自美国和欧盟的压力，向外国公司重新开放证券交易行业的过程仍然极其缓慢。

商务部于2007年10月31日颁布了修订后的《外商投资产业指导目录》，将对于外商投资服务公司的限制条件法律化和扩大化。从目录中得出的与证券业相关的结论如下：

1. 外商投资证券公司仅限于承销A股股票和承销并交易B股股票、H股股票以及政府和企业证券。合资证券公司中外商的最大持股比例限制在33%以内；
2. 股票投资基金（共同基金公司）仍然在限制名单上，外商持股比例限制在49%以内；
3. 期货交易公司在限制名单上，仅限于持有少数股权；

Impact of Restrictions

While one could interpret the introduction of stricter rules as a response to criticism that Chinese assets are flowing out of the country too quickly, a desire to stem tax avoidance or to promote domestic listings for large state-owned firms, the rules raise some major concerns. The restrictions are very stringent, and the process is relatively opaque, complex and, at times, ambiguous.

MOFCOM and its provincial and local branches are the main regulatory umbrella for approval of all foreign transactions. This is positive step from the point of view of centralizing the foreign M&A and IPO approval process, and reducing the inconsistencies that resulted from the previous system. However, MOFCOM is now reviewing more deals at the national level and this centralization has put a strain on MOFCOM's resources in Beijing, causing additional delays in moving transactions through the approval process. In addition, as mentioned earlier, there is confusion as to which deals must be approved in Beijing and what falls under the CSRC's ambit.

The combination of all of these factors has effectively "turned off the tap" for Chinese companies seeking an IPO outside of China. American stock exchanges such as the NYSE and Nasdaq have a lot to lose from these regulations. Foreign investors lose because they cannot invest in domestic Chinese companies other than through the relatively small QFII quotas. Chinese firms also lose because foreign stock exchanges have the benefit of higher corporate governance, marketability, liquidity and stability – factors that will now be increasingly inaccessible to local Chinese companies due to the restrictions. Foreign and PRC lawyers are currently finding creative ways to create transaction structures that will allow Chinese companies to list overseas (mainly through reverse mergers into publicly traded shells). However, this does not benefit Chinese companies, as their cost of listing overseas (particularly legal expenses) has risen substantially.

Onshore Listings

While discouraging overseas listings, Chinese regulations make it comparatively easy for domestic companies to list domestically, but this is not the case for foreign-invested enterprises (FIEs). Since the Shanghai stock exchange reopened for IPOs in July 2006, the market has witnessed tremendous growth. Domestic companies planning overseas listings have been encouraged to list on the domestic A-share market or in the case of large state-owned companies

to do a dual listing on the A-share market in Shanghai and on the H-share market in Hong Kong. Thus, for Chinese investors and equity owners, the exit path to the public market is relatively clear.

Unfortunately, FIEs and foreign investors currently have no access to the domestic IPO market. Following early experiments with FIE listings five years ago, the CSRC effectively closed the market to further FIE listings in 2004 when all IPOs were closed down. The re-opening of the IPO market in July 2006 did not allow new FIE listings. In December 2007, in the context of the SED, the Chinese government signaled a willingness to give certain large foreign corporations and their China-based subsidiaries access to the domestic stock and bond markets. The CSRC has recently indicated that it would reopen applications for FIE listings on the domestic A-share market. AmCham supports the opening of domestic securities markets to foreign investors and urges the CSRC to move expeditiously with the review and approval of new FIE listings. The opening of China's domestic securities markets is an important step in the long-term integration of China's capital markets with global markets.

Market Access by Investment Services Firms

After an initial period of "openness" to foreign securities trading firms, in 2005 the China Securities Regulatory Commission (CSRC) placed a moratorium on the formation of additional joint ventures in securities-related businesses. In May 2007, U.S. Treasury Secretary Paulson secured a pledge from CSRC to lift the moratorium and by the end of the year, two applications for new securities joint ventures were being reviewed by Beijing. Despite pressure from the U.S. and EU the process of re-opening the securities trading industry to foreign firms has been extremely slow.

A revised *Foreign Investment Catalogue* promulgated by MOFCOM on October 31, 2007, codified and extended restrictions on foreign investment services companies. The relevant, securities-related conclusions from the catalogue include the following:

1. Foreign invested securities companies are limited to underwriting A-shares and underwriting and transacting B-shares, H-shares, and government and corporate securities. Maximum foreign equity participation in securities joint ventures continues to be limited to 33 percent;
2. Stock investment funds (mutual fund companies), remain on the restricted list with foreign equity participation limited to 49 percent;

4. 融资租赁公司、财务公司、投资信托公司与货币经纪公司和银行及保险公司一起，仍然在限制名单上。

中国需要跨出其入世协议的投资服务部分规定的“最低市场准入框架”，这是很重要的。中美商会拥护美国财政部长保尔森通过战略经济对话，为促进这个重要的领域向美国公司开放而不懈努力。近期股票市场的波动和中国国内市场的高估值说明了限制资本流动和将中国证券市场隔离于全球证券市场和国际资本流动之外的问题。我们认为，美国公司可能可以在促进中国资本市场的稳定性、质量和市场效率方面发挥至关重要的作用。

总结

中美商会鼓励中国中央政府修订对于境外机构及上市的限制。此外，需要让审批程序更简单、更快捷。修订这些限制条件会使外国投资者受益，同时也会使本地合作伙伴和行业——尤其是刚起步的公司受益。我们支持重新允许外商投资企业在国内A股市场上市以及允许更多的外国投资者和企业进入国内证券市场的举措。中美商会大力支持本地股票市场透明、高效的发展，并且认为，美国金融服务公司承销首次公开发行股票、创建共同基金和自由投资能力的增强将促进稳定和良好的公司治理，并有助于减少股市周期性。

并购

自2006年9月8日《关于外国投资者并购境内企业的规定》（简称“外商并购规定”）生效以来，直接适用于外资在中国的并购业务的行政法规几乎没有发生变化。中美商会在2007年的白皮书中对该法规做了相关评价。从那时起，再没有颁布有关外资并购的实施细则。中国法制改革方面德高望众的领导人、全国人民代表大会常务委员会副委员长成思危在2007年11月指出，20个有关外资并购业务的新实施细则将在2008年8月1日之前《反垄断法》生效时颁布。据成思危副委员长说，这些实施细则将会阐释“国家经济安全”，制定“交易定价公平”指导方针，并在总体上“确保外资并购交易在不威胁中国经济安全的条件下促进其经济增长。”

虽然中美商会欢迎并购监管制度的统一和解释，但企业和金融投资者担心新的实施细则会以过度宽泛和含糊的方式解释“国家安全”，会增设新的中央政府机构来审批中国行业协会和竞争者反对的交易。根据2006年的法规，实质上商务部和国家发展和改革委员会（国家发改委）已被授权审查和拒绝几乎所有的外国收购行为。

制定更多的交易定价指导方针也可能被证明是有问题的。外资收购国有公司已经受国务院国有资产监督管理委员会（国资委）的法规约束，即股权收购价格不得低于净资产价值的90%。此外，根据财政部强制实行的规定，从资产管理公司收购的股权必须满足注册资本60%的最低定价要求。这些规定已经限制了外资收购和重组拥有大量资产但亏损的廉价出售的国有企业。将定价指导方针的适用范围扩大至中国的私营公司或制定“公允市价”指导方针的人为监管规则，会取代留给资本市场来做出并且由相关各方磋商的最好决定。

此外，去年颁布了若干重要的国家法律和法规以及重新修订《外商投资产业指导目录》，其中涉及有关外资收购，间接对监管环境产生影响的最重要的法律是新的《反垄断法》。

影响外资并购业务的《反垄断法》规定

2007年8月30日，全国人民代表大会常务委员会表决通过了《中华人民共和国反垄断法》。该法将于2008年8月1日生效。《反垄断法》禁止“具有或者可能具有排除、限制竞争效果的经营者集中”。此外，该法规定设立反垄断委员会负责制定具体的反垄断指导方针，并设立反垄断执法机构（AMEA）来执行本法及其它实施细则。这两个机构都受国务院的直接监督。

“经营者集中”包括企业经营者之间的并购或一个经营者有效地控制另一个经营者。《反垄断法》本身并没有规定什么构成垄断性或反竞争的经营者集中，但在生效日期之前颁布的实施细则有可能会做出相关规定。

中美商会欢迎制定专门统一的反垄断法律法规以管理国内和国外公司。实际上，2007年美国商会白

3. Futures trading companies are on the restricted list and limited to a minority equity position; and
4. Financial leasing companies, finance companies, investment trust companies, and currency brokerages remain on the restricted list, along with banks and insurance companies.

It is important for China to move beyond the “minimum market access frameworks” laid out in the investment services section of its WTO Accession Agreement. AmCham supports the continued efforts of U.S. Treasury Secretary Paulson, working through the SED, to open up this important sector to U.S. firms. Recent stock market volatility and the high valuation of China’s domestic markets illustrate the problems of restricting the flow of capital and cordoning off China’s securities market from global securities markets and international capital flows. We believe that U.S. firms could therefore play a vital role in promoting stability, governance and market efficiency in China’s capital markets.

Summary

AmCham encourages China’s Central Government to revise its restrictions on offshore structures and listings. In addition, the approval process needs to be made simpler and quicker. Revising these restrictions would benefit both foreign investors and, concurrently, local partners and industry – particularly early stage companies. We support the re-opening of FIE listings on the domestic A-share market and increased access to domestic securities markets by foreign investors and corporations. AmCham strongly supports the transparent and efficient development of local stock markets, and feels that the increased ability of U.S. financial services firms to underwrite IPOs, create mutual funds and freely invest will promote stability, good governance and help mitigate stock market cyclicity.

Mergers and Acquisitions

There has been little change in administrative regulations directly applying to foreign mergers and acquisitions in China since the Foreign M&A Regulations came into effect on September 8, 2006. AmCham commented extensively on those Regulations in its 2007 White Paper. Since that time, no further implementing regulations on foreign acquisitions have appeared. Cheng Siwei, vice chairman of the Standing Committee of the National People’s Congress and a senior and respected leader of regulatory reform, indicated in November 2007 that a series of 20 new implementing regulations on foreign M&A activity will be issued prior to August 1,

2008, when the Antimonopoly Law comes into effect. According to Cheng, these implementing regulations will define “national economic security,” establish guidelines for the “fairness of deal pricing” and generally “ensure that foreign M&A deals promote China’s economic growth without threatening its economic security.”

While AmCham welcomes the unification and clarification of the M&A regulatory regime, there are concerns among both corporate and financial investors that the new implementing regulations may interpret “national security” in an overly broad and vague manner, erecting additional layers of central government review and approval of any deal opposed by Chinese industry associations and competitors. MOFCOM and the NDRC are already empowered to review and reject virtually any foreign acquisition under the 2006 regulations.

The establishment of further deal pricing guidelines could also prove problematic. Foreign acquisitions of state-owned companies are already subject to a SASAC rule that the equity acquisition price may not be less than 90 percent of net asset value. In addition, under rules imposed by the Ministry of Finance, equity purchased from asset management companies must meet a minimum pricing requirement at 60 percent of registered capital. These rules already restrict foreign acquisition and restructuring of distressed state-owned companies that are asset-heavy but losing money. Extension of pricing guidelines to foreign acquisitions of privately owned Chinese companies or artificial regulatory formulas establishing guidelines for “fair market value” would pre-empt decisions that are best left to the capital market and to negotiation by the parties concerned.

In addition, the past year has seen the promulgation of several national laws and regulations and a revised *Foreign Investment Catalogue* that contain important changes to the indirect regulatory environment for foreign acquisitions, foremost among which is the new Antimonopoly Law.

Provisions of the Antimonopoly Law Impacting Foreign M&A Activity

On August 30, 2007, the NPC Standing Committee adopted the “Antimonopoly Law of the People’s Republic of China,” which comes into effect on August 1, 2008. The Antimonopoly Law prohibits “concentrations which result in or could result in the elimination or restriction of competition.” The law further establishes an Antimonopoly Commission

皮书倡导制定统一的反托拉斯监管制度，以取代2006年法规中只适用于外国投资者的反垄断规定。

《反垄断法》的实施细则应当包括2006年外资并购法规第五章的修订内容，以将外资并购的反垄断审查标准与中国内资公司并购审查标准及即将颁布的《反垄断法》的实施细则中有关反竞争经营者集中的定义统一起来。也就是说，适用于国内和国外公司的统一的单一反垄断制度应当取代2006年外资并购法规中反垄断规定，而不仅仅是在该类规定之上建立一个新的层次。

外国投资者担心的另一个领域是即将依据《反垄断法》规定建立的反垄断执法机构未来的组织和权限范围。目前尚不清楚此机构是否为独立机构，并且单独受国务院领导，或者其办公室是否将设置在商务部、国家发改委、国家工商行政管理总局（SAIC）及其它国家和地方机构的现有项目审批机构内。第10条规定反垄断执法机构“可以授权省、自治区、直辖市人民政府相应的机构，依照本法规定负责有关反垄断执法工作。”

关于反垄断执法机构的权力是否将扩大到对外资收购行为是否符合“国家经济安全”的认定，《反垄断法》也没有明确。中美商会认为，“国家安全”的范围应当进行狭义界定，只适用于对国防和国家安全有直接影响的行业和业务，而把其它单纯的民用行业排除在外。此外，商会主张通过实施细则这种透明的方式来解决这些不确定性，并应努力将“国家安全”的认定工作与反垄断执法程序和本地行业协会和公司的贸易保护主义利益分开。

私募股权和风险资本

从2006年9月修订后的并购法规的颁布，到引入以人民币计价的投资基金，中国监管机构一直在不断地督促制定相关法律，为私募股权和风险资本创造更加规范和透明的投资前景。虽然这些法规的精神似乎具有积极意义，但它们留给许多投资者的只是有限的选择权、交易结构和退出策略，最终为国内外的投资者创造了不平等的投资环境。

重大进展

首先是引入《公司法》修订版的第20条，该条为少

数股东起诉控股股东提供了明确的依据。第20条有助于为全体股东建立公平待遇——尤其考虑到私募股权/风险投资者的许多在华投资项目都属于此投资类别。更进一步而言，私募股权/风险资本基金能够创造在某些情况下给其普通股股权优惠待遇的契约安排。

其二是放宽了有限责任公司（LLC）转化为股份有限公司（JSC）或外商投资股份有限公司（FIJSC）的管理规定。在为首次公开发行退出做准备的过程中通常需要这个步骤。在2007年之前，在内资有限责任公司转化为股份有限公司或外商投资股份有限公司后，在上市前三年还必须有盈利，即使该有限责任公司在重组之前已经有三年的盈利记录。然而，目前投资要求已经重新设定，前三年都盈利的有限责任公司可以在转化为股份有限公司（JSC）或外商投资股份有限公司（FIJSC）之后一年内上市，条件是它们在首次公开发行前最后一年仍然是盈利的。这实际上使许多公司的首次公开发行退出的时间提前了两年。

其三是出现了在中国境内注册的以人民币计价的私募股权/风险投资基金。中国政府一直在推广人民币基金，而且从表面看应当给国内外投资者带来相当大的好处，包括：

- 取消基金税，以避免对基金和投资双重征税；
- 通过简化项目审批过程来缩短交易周期。

虽然这些好处应当由国内外投资者分享，但实际上，人民币基金并没有给这两类投资人提供公平的赛场。

例如，仅限于中国投资者购买的人民币基金是允许享受税收优惠和监管要求转嫁的。然而，人民币基金中存在外资则会造有关外商投资风险资本（FIVC）要缴纳多少层次的税赋的不确定性。外商投资风险资本可能在投资和基金层面上都要纳税，然后汇出利润还要缴纳额外的扣缴税。税收待遇的不确定性延缓了新的以人民币计价的外商投资风险资本的设立，所以大部分外国风险资本资金仍然在境外，而且宁愿通过境外机构退出其证券投资。

人民币基金的另一个优势应当是快速的审批程序。

to formulate specific antimonopoly guidelines and an Antimonopoly Enforcement Agency (AMEA) to enforce the law and additional implementing regulations. Both agencies operate under the direct supervision of the State Council.

The term “concentration” includes mergers and acquisitions among business operators or effective control of one business operator by another. The Antimonopoly Law itself does not define what constitutes a monopolistic or anti-competitive concentration, but it is likely that implementing regulations to be published prior to the effective date of the law will do so.

AmCham welcomes the establishment of a single, unified set of antimonopoly laws and regulations governing both domestic and foreign companies. Indeed, the 2007 White Paper advocated the establishment of a unified anti-trust regulatory regime in place of the antimonopoly provisions of the 2006 regulations, which apply only to foreign investors. Implementing regulations for the Antimonopoly Law should include revision of Chapter Five of the 2006 Foreign M&A Regulations to unify the criteria for antimonopoly review of foreign acquisitions with the review criteria for acquisitions by domestic Chinese companies and with the definitions of anti-competitive concentration in the forthcoming implementing regulations for the Antimonopoly Law. That is, a single, unified antimonopoly regime that applies to both foreign and domestic investors should replace or supercede the discriminatory antimonopoly provisions of the 2006 Foreign M&A Regulations and not simply be layered on top of those provisions.

Another area of concern for foreign investors is the future structure and scope of authority of the AMEA that is to be established under the Antimonopoly Law. It is still not clear whether this agency will be independent and report separately to the State Council or whether its offices will be embedded in the existing project approval structures of MOFCOM, NDRC, SAIC and other agencies at the national and local levels. The language of Article 10 states that the AMEA “may authorize the corresponding agencies of the People’s Government of each province, autonomous region, and municipality... to be responsible for the relevant anti-monopoly enforcement tasks as specified herein.”

The Antimonopoly Law is also not clear regarding whether the powers of the AMEA will extend to determination of whether or not foreign-invested acquisitions are consistent with “national economic security.” AmCham believes that the scope of “national

security” should be defined narrowly to apply only to those industries and transactions which have a direct bearing on national defense and state security, while excluding other purely civilian industries. AmCham furthermore advocates that these uncertainties should be addressed in a transparent manner by the implementing regulations and that efforts should be made to separate the determination of “national security” from the antimonopoly enforcement process and from the protectionist interests of local industry associations and companies.

Private Equity and Venture Capital

From the revised M&A regulations promulgated in September 2006, to the introduction of RMB-denominated investment funds, China’s regulatory agencies continue to push for laws creating a more regulated and transparent investment landscape for private equity and venture capital. Though the spirit of these regulations appears to be of a positive nature, they leave many investors with limited investment options, deal structures and exit strategies ultimately creating an unequal investment environment for foreign and domestic investors.

Significant Developments

One improvement was the introduction of Article 20 of the revised Company Law, which provides a clear basis for minority action against controlling shareholders. Article 20 has been helpful in establishing fair treatment for all shareholders – especially given that PE/VC investors fall into this investment class for many of their investments in China. Taking this one step further, PE/VC funds have been able to create contractual arrangements that give their common stock holdings preferential treatment in some cases.

Another welcome change was the relaxation of rules governing the conversion of Limited Liability Corporations (LLC) to Joint Stock Corporations (JSC) or Foreign Invested Joint Stock Companies (FIJSC). This is a step often required in preparation for an IPO exit. Prior to 2007, companies were required to have three years of pre-listing profitability after the conversion of a domestic LLC to a JSC or FIJSC, even if the LLC had three years profitability prior to the restructuring. However, now the investment clock has been reset and those LLC companies with three years prior profitability are allowed to list within one year after the conversion to a JSC or FIJSC, but only if they remain profitable in the final year prior to IPO. This has in effect put many companies two years closer to their IPO exits.

国内人民币基金无须通过国家外汇管理局和商务部等的审批即可完成境内交易。然而，只有当人民币基金是纯国内基金而且只有中国投资者的时候，才有这个优势。依据现行法规，一旦外国投资者进入，就需要接受以前的全部监管审批。外商投资的私募股权/风险资本基金面临着不合理的政府审批障碍，而其国内竞争对手则无此约束。

国内人民币基金这个表面上看来具有吸引力的投资工具也有许多不确定性。国内投资者可以在很少或没有监督的情况下设立基金。假使说外商投资基金被过度监管和限制，对于国内基金的监管则是过于宽松。中国对于国内的本地基金投资者的监管保护仍然很弱，而且强制执行最多也是断断续续的。

通过为外国和国内私募股权和风险资本投资者提供一个公正、平等的赛场，中国将获得更多的资本来为新技术开发及行业重组与合并提供资金。此外，国内私募股权/风险资本领域也会因更多地采用全球投资标准和惯例而受益。 ■

建议

- 中美商会鼓励放宽和修订对于境外特殊目的公司组织和上市的限制。此外，需要使境外上市审批程序更简单、更快捷。
- 中美商会支持重新允许外商投资企业在A股市场首次公开发行上市及跨国公司和外国公司更多地进入国内证券市场。
- 支持通过与美国的战略经济对话进一步开放金融服务领域。
- 对于用“国家安全”作为外资并购的审批标准，应当尽可能以狭义的方式明确界定和应用，以避免助长贸易保护主义。
- 国务院应当避免规定严格或最低的股权和资产定价标准，而且不应当将旨在保护国有资产的现有定价指导方针的适用范围扩大至涉及私营公司的交易。未来的实施细则应当把“公允市价”留给市场和双方间的直接谈判来确定。
- 外资并购法规中规定的反垄断审查标准应当

被即将颁布的《反垄断法》实施细则中规定的经营者集中定义和审查标准所取代。一套统一的法律定义和审查标准应同等适用于国内和国外投资者。

- 中美商会建议，中国为希望筹集人民币私募股权和风险资本基金的国外和国内投资者创造公平的赛场。相关规定应当清楚阐明，而且应当对所有投资者适用统一的税收优惠、基金结构和监管审批要求。
- 应当考虑修订私募股权和风险资本基金税收制度，消除关于双重征税的不确定性。

Another important development in the last year has been the emergence of RMB-denominated PE/VC funds registered onshore in China. RMB funds have been increasingly promoted by the Chinese government and on the surface should offer significant advantages to both foreign and domestic investors, including:

- Elimination of taxes at the fund level to avoid double taxation on the fund and investment; and
- Speedier transaction cycles through simplification of the project approval process.

While these advantages should be shared by both foreign and domestic investors, in practice RMB funds do not offer an equal playing field for both investor classes.

For example, RMB funds that are limited to Chinese investors are allowed tax advantages and regulatory pass-throughs. However, the presence of any foreign investment in the RMB fund creates uncertainty regarding how many layers of taxes the Foreign Invested Venture Capital (FIVC) fund are subject to. FIVC may be taxed at both the investment level and the fund level, and are then subject to an additional withholding tax on repatriated profits. The uncertainty over tax treatment has slowed the establishment of new RMB-denominated FIVC so that most foreign venture capital funds remain offshore and prefer to exit their portfolio investments through offshore vehicles.

The other advantage of RMB funds should be the speedy approval process. Domestic RMB funds do not have to seek approval through agencies such as SAFE and MOFCOM in order to complete their onshore deals. However, this advantage only applies if the RMB fund is purely domestic and includes only Chinese investors. According to the current rules, once a foreign investor enters, all the previous regulatory approvals apply. Foreign-invested PE/VC funds face steep government approval hurdles that do not apply to their domestic competitors.

There are also many uncertainties with domestic RMB funds, which on the surface appear to be an attractive investment vehicle. Domestic investors are permitted to set up funds with little or no supervision. If foreign-invested funds are over-regulated and restricted, regulations on domestic funds are entirely too lax. China's regulatory protection for domestic investors in local funds remains weak and enforcement intermittent at best.

By allowing a fair and equal playing field for both

foreign and domestic private equity and venture capital investors, China would bring in more capital to help finance the development of new technology and the restructuring and consolidation of industry. Further, the domestic PE/VC sector would also benefit from greater exposure to global investment standards and practices. ■

Recommendations

- AmCham encourages the relaxation and revision of restrictions on offshore SPV structures and listings. In addition, the approval process for offshore listings needs to be made simpler and quicker.
- AmCham supports the re-opening of the A-share market to IPO listings by Foreign-Invested Enterprises and increased access to domestic securities markets by international companies and foreign investors.
- Support the further opening of the financial services sector through the SED with the United States.
- The use of “national security” as a standard for the approval of foreign acquisitions should be defined and applied as narrowly and clearly as possible to avoid encouraging protectionism.
- The State Council should avoid setting rigid standards or minimums for equity and asset pricing and should not extend existing pricing guidelines designed to protect State assets to transactions involving privately owned companies. Future implementing regulations should leave determination of “fair market value” to the market and to direct negotiations between parties.
- The criteria for antimonopoly review specified in the Foreign M&A Regulations should be superseded by the definition of “concentration” and review criteria in the forthcoming implementing regulations of the Antimonopoly Law. A unified set of legal definitions and review criteria should apply equally to both domestic and foreign investors.
- AmCham recommends that China create a level playing field for both foreign and domestic investors that want to raise RMB private equity and venture capital funds. Rules should be spelled out clearly and tax incentives, fund structures and regulatory approvals should be unified for all investors
- A revised tax regime should be considered for private equity and venture capital funds that removes uncertainties regarding double taxation.



Forestry and Forest Products

Forestry and forest products have the potential to significantly affect the U.S.-China trade imbalance, yet numerous barriers to greater trade flows remain. The American forestry and forest products sector has voiced a wide range of concerns and issues about China's use of an array of industrial and trade policies that promote the rapid expansion of its paper and wood processing industries. The result has been a substantial growth of China's production and exports in a short time and a corresponding drop in market opportunities for U.S. manufacturers.

This development is somewhat counterintuitive since China does not have the fiber resources necessary for a competitive forest products industry and is largely dependent on imported fiber. China's support for domestic product exporters in higher-value areas has effectively restricted opportunities for U.S. producers and exporters.

Even with its limited forest resources, China has developed the fastest growing forest products industry in the world. It has achieved this position by instituting policies that promote the expansion and construction of new production capacity. In addition, it has imported a considerable amount of raw material in the form of logs, chips, wood pulp and recovered paper to make up for the inadequate domestic supply.

China's imports from the U.S. increasingly consist of raw materials such as wood pulp and recovered paper to supply the domestic paper industry; and of logs and lumber for manufacturing solid wood products including veneer, furniture and similar products. In 2006, China's imports of these raw materials from the U.S. amounted to US\$2.2 billion, or 78 percent of total U.S. forest product shipments to China, yet imports of higher value-added products have stagnated.

Significant Developments

In 2007, the United States requested the establishment of a dispute settlement panel at the World Trade Organization (WTO), challenging a number of subsidy practices maintained by China. This move led to an agreement between China and

the U.S. for China to eliminate certain subsidies prohibited under WTO regulations.

AmCham is encouraged by China's adoption of U.S. design values and grading rules for common species of U.S. softwood dimension lumber into its revised GB50005-2003 Design Code and the GB50206 Inspection Code. We are also pleased to see the inclusion of fire safety design requirements for three-story wood-frame construction in the China Timber Structure Design Code and China Building Fire Safety Design Code (GB16).

While China's engagement with U.S. officials in the Strategic Economic Dialogue (SED) talks aimed at developing a bilateral agreement on illegal logging and associated trade, China is still encouraged to take greater responsibility for the actions of Chinese firms that trade in logs sourced from regions that do not practice sustainable forestry. AmCham welcomes the groundbreaking December 2007 Memorandum of Understanding between the U.S. and China to combat illegal logging and associated trade and to promote sustainable forest management.

Specific Issues

Subsidies

The Chinese government employs direct and indirect subsidies such as grants, interest loan subsidies, debt forgiveness and tax concessions to prop up state-owned enterprises, introduce new technology and expand or build new capacity. Should these practices persist, American firms will remain at a distinct competitive disadvantage against Chinese enterprises when competing in the Chinese, U.S. and other international markets.

Quality Conformity

The China design code for materials quality conformance has no requirements for dimension lumber, wood-based structural panels and preservative-treated wood. This absence creates quality problems for wood products and compromises safety for structures built with such non-conforming structural products. Additionally, the absence of formal recognition of U.S. certification

林业及林产品

林业及林业产品极具影响美中贸易平衡的潜力，但加强双方贸易往来仍存在诸多障碍。就中方通过各种行业和贸易政策，鼓励中国的造纸和木材加工行业的快速发展，美国林业及林产品行业表达了关注并列举出广泛存在的问题。目前中国造纸和木材加工行业短时间内得到显著增长，而同一时期美国相关产业在市场上的机遇却在减少。

这一发展略有异常，因为中国并不具备有竞争性的林产品行业应有的纤维资源，而是主要依靠进口。中国对国内出口商在高附加值产品方面的支持一定程度的限制了美国生产商和出口商的机会。

尽管森林资源有限，中国林产品行业的发展速度却是世界上最快的。究其原因，是因为中国出台了提高和增加生产能力和建设的政策。另外，中方还大量进口原木、木屑、纸浆等原料以及回收纸，以弥补国内供应的不足。

在中国从美国进口的产品中，用以供应国内造纸行业的纸浆及回收纸等原材料越来越多，另外还包括用于生产实木产品，例如单板，家具及类似产品的原木和锯材。2006年中国从美国进口的这类原材料达22亿美元，占当年美国对华出口林产品总量的78%。与此同时，中国从美国进口的高附加值产品则停滞不前。

重大的进展

2007年，美国就中国实行的许多补贴做法，向世界贸易组织成立的争端解决小组提出磋商请求。之后，中美双方就中国取消世贸组织规则禁止的某些补贴问题达成协议。

中美商会对中国在修订的《木结构设计规范》（GB50005-2003）及《木结构工程施工质量验收规范》（GB50206）中，纳入美国常用针叶材树种规格材的设计强度指标以及分等标准感到鼓舞。我们同时也高兴地看到中国的《木结构设计规范》和《建筑设计防火规范》规定包括了针对三层以及三层以下轻型木结构建筑的防火设计要求。

尽管中国与美国政府举行的战略经济对话旨在就非法采伐及相关贸易问题达成双边协定，我们仍希望对中国原木贸易商与未实施可持续森林发展政策的地区所进行的贸易行为承担更大的责任。中美商会欢迎美中双方2007年12月达成的具有开拓意义的打击非法采伐及相关贸易、促进森林管理可持续发展的谅解备忘录。

具体问题

补贴

中国政府为扶持国有企业发展，引进新技术，扩大或新建生产能力，实行拨款、信贷补贴、免债、减税等直接和间接补贴。如果这一做法得以持续，美国公司将在中国、美国及其他国际市场中的竞争明显处于不利地位。

质量标准

中国的相关标准，缺乏对结构用林产品，包括对格材，木基结构板材以及防腐木材等第三方质量认证以及认证标识的强制性规定，由此对产品的质量带来了隐患，影响了建筑物的安全性能。此外，缺乏对对美国质量认证机构及其颁布的产品认证标识正式认可，导致假冒建筑材料逐渐增多，以及标识混乱的问题。

防火安全设计要求

此前得到认可的木结构防火设计没有正确地纳入《住宅设计规范》中。因此，根据这一标准，木结构住宅的使用仍然受到限制。这种在不同标准中，对防火设计要求的不统一，不公正地影响了设计和建筑设计人员对于木结构住宅的接受度。此外，中国的建筑标准限制了多层（三层以上）木结构住宅以及重型木结构建筑的应用，而这两种建筑方式多年来在很多国家都得到了成功运用。

非法采伐

许多地区非法采伐的大量廉价木材造成全球软木木

agencies and their grading marks has led to increased counterfeiting of building materials and misleading labeling.

Fire Safety Design Requirements

Previously recognized fire safety design requirements have not been properly incorporated in the existing China Residential Building Code. As such, the application of wood-frame construction, based on current residential building codes, is restricted. This inconsistency in fire design requirements unfairly impedes the general acceptance of wood-frame construction among design and construction professionals. In addition, Chinese building codes restrict the construction of multistory (above three-story) residential buildings and heavy timber construction, two methods that have been used successfully for many years in numerous countries.

Illegal Logging

An abundance of low-cost, illegally harvested timber from a number of regional sources has placed downward price pressures on softwood lumber globally and has severely restricted U.S. trade opportunities in China. As the world's second-largest importer of wood, China serves as a conduit for vast quantities of illegal softwood timber from several of these regional sources.

For example, a significant percentage of Russian logs entering China are of suspicious origin, possibly from areas where there is excess cutting and unauthorized harvesting, or are undocumented/unreported exports. China's hardwood log imports also come from countries with significant illegal logging problems, including Indonesia and Burma. Activities such as illegal logging, associated prohibited types of border trade and the use of illegally obtained timber in manufacturing distorts international trade and reduces the market opportunities for U.S. suppliers.

Miscellaneous Non-Market Practices

Other non-market practices, such as fraudulent labeling and stamping of Chinese hardwood plywood attempt to avoid tariffs by misclassifying hardwood plywood products destined for the U.S. market and lower the price of Chinese hardwood plywood, making it more difficult for U.S. companies to compete. ■

Recommendations

- Phase out subsidies provided by the Chinese government to the domestic forest products industry, particularly those that distort, or have the potential to distort, international trade and investment.
- Adopt internationally recognized materials quality conformance standards, such as grade-stamp requirements for dimension lumber, wood-based structural panels and preservative-treated wood to ensure consumer safety.
- Incorporate residential fire safety design requirements for multi-story buildings and heavy timber construction into the China Fire Code and the China Residential Building Code.
- Continue the ongoing cooperative efforts between the U.S. and China to combat illegal logging and associated trade through the SED forum.

材价格下降，极大限制了美国在华贸易机会。作为全世界第二大木材进口国，中国成为来自上述地区的大量非法软木木材的流通渠道。

例如，相当一部分进入中国的俄罗斯原木其来源是可疑的，这些木材可能来自过量采伐或非法采伐的地区，或是未列入统计范围或上报的出口产品。中国的硬木原木进口也来自非法采伐问题相当严重的国家，如印尼、缅甸。非法采伐、相关的受到禁止的边境贸易以及在制造业使用非法获得的木材等活动扭曲了国际贸易关系，减少了美国供应商的市场机会。

其它非市场行为

其它非市场行为，如中国硬木复合木板贴假标签、盖假章，通过混淆出口美国市场的硬木复合板分类以逃税，以及降低中国硬木复合板价格，这些都使美国公司参与竞争变得更加困难。 ■

建议

- 取消中国对国内林产品行业的补贴，特别是那些扭曲或可能扭曲国际贸易和投资关系的补贴。
- 采用国际认可的材料质量通行标准，例如，实施对规格材、木基结构板材及防腐处理木材的质量认证标识要求，以确保消费者安全。
- 将多层建筑及大型木建筑住宅防火安全标准纳入中国防火安全标准和中国住宅建筑标准中。
- 通过美中战略经济对话平台，继续进行打击非法采伐及相关贸易的合作。

Healthcare, Medical Equipment and Devices

The year 2007 marked an increased and welcomed focus on healthcare by the Chinese Government. The government has made an unprecedented commitment to improve and expand the quality and breadth of healthcare through a reform scheme anchored by a new national basic healthcare service system covering every citizen in China by 2020. This effort, driven by the State Council Inter-Ministerial Healthcare Reform Group, has come in response to reports the group solicited from international and domestic consultants and think tanks. The aggressive 2020 goal sits atop the four major pillars of the draft scheme, which include:

1. Improving public health;
2. Enhancing the medical insurance and welfare system;
3. Improving hospital quality and efficiency through enhanced management and oversight; and
4. Improving basic medical services.

The above proposal has been issued as a draft for comment. Key stakeholders and contributors to the reform process include AmCham member companies that service and support medical services in China, such as pharmaceutical companies, device providers and investors in healthcare services. For this reason, AmCham enthusiastically supports these goals and would like to raise the following issues that directly relate to the industry, as they may become barriers to achieving the stated goals.

Specific Issues

Technology and Innovation

Achieving the goals of the proposed reform agenda will require more government investment and training of personnel, particularly in the areas of primary care and management. It will also require innovative technology, products and processes. We believe that the government should take full advantage of available innovations in technology.

Efficient Product Registration Processes

The primary responsibility of the State Food and Drug Administration (SFDA) is to control market entry for medical products. There is currently a

backlog of thousands of new product registration applications and renewal applications, some of which have been delayed for more than a year. In the worst cases, the registration approval process takes three times as long as the SFDA sets forth in its own registration-review schedule.

We understand that recent worldwide focus on product quality has consumed the attention of this agency, further delaying the product registration process. The U.S. Food and Drug Administration (FDA) recently signed a Memorandum of Understanding with the SFDA, which includes the deployment of FDA inspectors to help ensure the safety of Chinese food, drug and device exports. It would be productive to consider using FDA experts to help expedite U.S. product registration applications at the SFDA.

In late 2007, the SFDA published draft regulations for the Management and Supervision of Medical Devices. AmCham appreciates the open manner in which the SFDA solicited comments on the draft from all constituencies and looks forward to further discussions with the SFDA after the revised draft has been circulated. We hope it will include ways to improve the efficiency of the registration and supervision process.

The SFDA should also work with other government agencies under the umbrella of the State Council to eliminate redundant multiple licensing of the same medical products. One competent authority should administer one license that would encompass all requirements for importation and sales of medical products in China.

We urge:

1. Better efficiency in the registration process. Authorities should develop a clearly mandated timeframe for the testing, document review and approval process, supported with a sufficient number of review personnel who are adequately trained for their jobs.
2. More simplicity in the re-registration and change-of-registration processes. The government should consider adopting a simple notification process for re-registration and a change in the application

医疗设备、器械与健康保险

2007年，中国中央政府对医疗卫生体制给予了加大的关注，这是一件可喜的事情。中国政府做出了前所未有的承诺，致力于2020年前建立一个覆盖所有中国公民的全新国民基本医疗卫生服务体制，并通过以此为重心的改革计划改善医疗卫生服务的质量，拓展医疗卫生服务的广度。此计划由国务院深化医药卫生体制改革部际协调工作小组牵头，是对该工作小组根据委托国际和国内顾问和智囊团设计医改方案的报道的回应。关于这一远大的2020目标，初步方案包含四大方面，分别为：

1. 改善公共卫生体系；
2. 健全医疗保险和福利体系；
3. 通过加强监督和管理机制提高医院服务质量与效率；
4. 改善基本医疗服务。

以上提议草案已发布，以征求各界意见。与这一改革过程的利益相关者、及对此作出贡献的组织包括给与中国医疗服务支持及服务的中美商会会员公司，如制药企业、设备及器械供应商和医疗卫生服务投资者。正因为如此，中美商会积极支持这些目标，并希望提出以下与该行业直接相关的问题，因为这些问题可能会成为实现相关目标的障碍。

具体问题

科技与创新

若要实现医改提议议程的目标，政府需要投入更多资源和加强人员培训，尤其是在基础护理和管理方面。同时还需要创新的科技、产品与程序。我们认为，如果政府希望能够充分利用有效的创新科技，应解决以下问题：

高效的产品注册程序

国家食品药品监督管理局的首要任务是控制医疗产品进入市场的制度。目前有数千份新产品注册申请和续期注册申请等候审批，其中一些已经拖延了一年多。甚至有些注册审批程序所花费的时间超过了

国家药监局在其注册审核程序中明确规定期限的三、甚至四倍之多。

我们明白最近全球对产品质量的关注已经分散了国家药监局的注意力，引致进一步延误了产品注册程序。美国食品和药品管理局(FDA)最近与中国国家药监局签署了一份谅解备忘录，其中包括将派遣FDA监督员来帮助确保中国出口食品、药品和器械的安全。如果能够考虑利用FDA的专家来帮助加速对在美国已注册的产品在中国国家药监局注册申请的审批程序，将是极具建设性的举措。

在2007年底，国家药监局发布了《医疗器械监督管理条例（修订草案）》。对于国家药监局就草案公开向所有有关单位征求意见的态度，中美商会甚为赞赏，我们也提供了建议，并期待着在再修订的草案发布后与国家药监局开展进一步探讨。我们希望修订草案将把如何提高注册与监督程序效率的方法纳入其中。

此外，国家药监局还应在国务院的统筹下与其他政府部门进行合作，以消除对同一种医疗产品的多个重复的注册要求。一个主管部门应负责一张统一许可证，该许可证应包含在华进口和销售医疗产品所需的全部要求。

我们呼吁：

1. 提高注册程序效率。当局应明确规定检测和文件审批程序的期限，配以充足的、有足够培训和能够胜任其工作的审核人员。
2. 简化重新注册和变更注册程序。对于重新注册以及所供应产品调整相对较小的变更注册申请，政府应考虑采用一种简单的备案流程机制。
3. 考虑采用质量管理体系以替代产品型式测试。型式测试会延长这一过程所需的时间，而在保证产品安全和质量方面也不及质量管理体系方式可靠。
4. 取消对进口产品施加差异性限制要求。应当取消的限制包括：对能够接收进口医疗器械的港口的限制；额外检测与审查；以及在抵达港口时需要出示注册原件的规定。

for relatively small adjustments in product offerings.

3. The consideration of the use of quality management systems as opposed to type testing for products. Type testing slows the process and is not as reliable in ensuring product safety and quality as using the quality management systems approach.
4. Removing differentially restrictive requirements for imported products. Restrictions that should be removed include the limitation of ports eligible to receive imported medical devices; extra testing and inspections; and the need to show original registration documentation at the port of arrival.
5. Ensuring the confidentiality of documentation and other product design criteria.
6. Considering the use of U.S. FDA personnel at the SFDA to help explain and expedite registration applications for U.S. products that already have FDA approval.

Other detailed comments on the proposed draft regulation have been submitted to the SFDA and are available upon request.

Reducing the High Cost of Healthcare

The quest to reduce the high cost of healthcare is a global concern. It is especially acute in China, where healthcare costs have been increasing at record rates. The National Development and Reform Commission (NDRC), as well as certain municipal governments, have been exploring ways to reduce the high price of healthcare. However, when reviewing approaches to cost-reduction, it is important to take a long-term view, looking not only at the cost of single services or individual devices, but also at the efficiency of the overall approach.

There are times when technologies that may be more expensive in the short-term can lead to longer term efficiencies and a reduction in overall healthcare costs. Therefore, we strongly urge against a simplistic approach of product price controls. The goals of cost control could be better achieved by focusing instead on reimbursement levels.

A well thought-out system that encourages healthcare supplier efficiencies through managing government or third-party payer reimbursements would have significant advantages. It would encourage overall system efficiencies, while leaving flexibility for consumers who want to supplement reimbursement levels so they can access extra services. This would

make for a more efficient overall system with tailored service options that can meet the needs of various segments of society.

Recently, the NDRC issued a draft regulation on markups of medical devices, with the objective of lowering the cost of healthcare and reducing the level of corruption in the supply chain. These are worthy objectives that AmCham supports. However, as drafted, these regulations require manufacturers to provide the NDRC with a large volume of detailed pricing information, some of which is typically confidential business information.

AmCham recognizes that public transparency is necessary to achieve the above goals, but such transparency should not include normally confidential information. In addition, we urge the NDRC to make sure the regulations allow for a level playing field between domestic industry and foreign companies (importers). AmCham maintains that markups of imported goods should be measured starting from an importer's first sale price in China (no matter whether the importer is a distribution subsidiary of an offshore manufacturer or its appointed national distributor). This first on-sale-in-China price would be most analogous to the domestic manufacturer's ex-factory price. We also urge the NDRC to consider longer term solutions to reducing healthcare costs.

Fair and Transparent Tendering Process

Tendering is widely used as an approach to assure good purchase practices for medical equipment, devices and pharmaceuticals. To be effective, however, it is essential that the tendering process be fair and transparent. Each tender should be specific to a defined purchase and should represent an assured purchase quantity. Open-ended tenders with no guarantee of purchase quantity make it difficult for manufacturers to offer the most aggressive pricing and, under current practices, there are no assurances that actual purchasers will make timely payments. In addition, there are minimal consequences to selection committees should they not choose the optimum technology for the user. We firmly believe that tendering based only on lowest price will never yield optimum results for the system.

Encouraging Private Investment to Supplement the Government's Investment in Healthcare Delivery

Currently, investment in Medical Service

5. 确保文件资料和其他产品设计标准的机密性。
6. 考虑在国家药监局使用美国FDA派遣的人员，帮助说明和加快已经获得FDA批准的美国产品的注册申请程序。

其他关于监督管理条例的详细意见已提交至国家药监局，如有要求，可提供文本。

降低医疗卫生服务的高昂费用

如何降低医疗卫生服务的高昂费用是一个全球都关注的问题。而这在中国尤为突出，中国医疗卫生服务费用的增长速度不断创下历史新高。中国国家发展和改革委员会以及一些市级政府已经开始探索如何才能降低医疗卫生服务居高的价格。但在研究降低费用的方法时，重要的是要有长远的眼光，不仅要目光放在降低单个服务或器械的费用上，还要关注总体方法的效率。

有时，一些科技在短期内或许会价格偏高，但长远而言却能够有效降低总体医疗卫生服务的费用。因此，我们强烈呼吁不要单纯地进行产品价格管制。通过重点改善报销水平能够更好地实现控制费用的目标。

通过对政府或第三方的报销政策进行管理来鼓励医疗卫生服务供应商提高效率，这种经深思熟虑后成形的机制会带来巨大的优势。这有助于提升系统的整体效率，同时为希望对报销金额进行补充的消费者带来了灵活性，使他们能够享有其他的个人化服务。这样，一个更有效的整体体系就会应运而生，其量身定制的服务选择能够满足社会各个阶层的需求。

最近，国家发改委发布了医疗器械加价规定草案，旨在降低医疗卫生服务的费用并打击供应链中存在的贪污腐败行为。这些都是中美商会所支持的有价值的目标。然而，依照草案规定，要求生产商向国家发改委提供大量详细的定价资料，其中包括一些典型的机密商业信息。

商会深知要实现以上目标，需要公众透明度，但这种透明度不应包括通常是机密的商业信息。此外，我们希望国家发改委能够通过该法规为国内企业与国外企业（进口商）建立一个公平竞争的平台。商会认为，进口商品的加价应当以进口商在中国境内

的第一个售价为出发点进行衡量（不管该进口商是离岸生产商的分销附属机构抑或是其指定的全国分销商）。这种在中国的第一个售价与国内生产商的出厂价最具可比性。我们还建议国家发改委能够考虑更为长远的解决方案来降低医疗卫生服务费用。

公平、透明的招标程序

为了确保良好的医疗设备、器械和药品采购行为，招标是一种普遍采用的方式。但是为了发挥有效作用，就有必要保证招标程序的公平与透明。每次招标都应具体针对一个详细说明了的采购计划，同时应确定采购量。没有采购量担保的公开招标使得生产商难以提供最具竞争力的价格。目前的实际做法，是完全没有实际采购量和及时付款的保证。此外，如果评标委员不为广大用者选择最优的科技，他们也无须承担任何后果。我们坚信，只基于最低价的招标决不会为该体系带来最佳的效果。

鼓励私人投资医疗卫生服务领域，以补充政府的投资

目前，根据国家发改委的投资目录，对医疗服务设施的投资属于限制性范畴。这意味着，尽管其投资能造福于社会，在医疗卫生服务领域进行投资的投资者无法享受到制造业和高科技等鼓励投资领域所提供的一系列优惠政策。这些优惠政策包括所得税和营业税的减低，进口设备免关税，国内生产的大型设备可免增值税，外商独资的权利（目前外资股份比例限制为70%），以及无需中央再次批准即可根据市场需求扩大业务。

医疗卫生领域的私人投资具有如下优点：

1. 使政府能够把重点集中在解决更广大人数的基本医疗保健问题，同时鼓励私人投资提供公共体系所不具备的补充性服务；
2. 能够较早地在试点和示范项目中采用创新的医疗卫生服务提供模式，在此基础上，政府可考虑未来在进行一定规模的试点后加以采纳；以及
3. 促进具有社会责任感的私人投资者能够对公共卫生、教育与应急以及慈善护理做出贡献。

商业健康保险的必要性

对鼓励私人投资医疗卫生领域而言，最重要的就是

Establishments is considered a restricted category according to the *Foreign Investment Catalogue*. This means private investors in healthcare services receive none of the incentives available to investors in other encouraged areas of high technologies, despite the fact that they may bring benefits to society. These incentives include income and business tax reductions, duty exemptions on imported equipment, the right to a wholly foreign-owned investment (now limited to 70 percent foreign ownership) and the right to expand in response to market demand without needing re-approval at central levels.

Some of the benefits that private investment in healthcare would bring include:

1. Allowing the government to focus on basic care to the broadest number of people, while encouraging private investment to provide supplementary services not available in the public system;
2. Allowing for early adoption of innovative healthcare delivery models in pilot and demonstration programs that the government could consider for future adoption after limited trials; and
3. Facilitating contributions from socially responsible private investors to public health, education and emergency response, as well as charity care.

The Need for Commercial Health Insurance

Most important to the encouragement of private investment in healthcare would be the development of a robust commercial health insurance industry. Employers and individuals should be allowed to buy private health insurance to supplement the Government's Basic Medical Insurance reimbursement. The government's reimbursement should reflect a universally guaranteed basic level of service available in the public system, but also allow for additional levels of service from private providers. The portion of prices exceeding the government reimbursement rate would be payable by private insurers or by individuals out of pocket, should they choose to seek private providers. ■

Recommendations

- Encourage the introduction and use of innovative products and processes to reduce the cost of healthcare and improve results.

- Improve product safety and reliability by relying on quality management systems rather than type testing for product registration.
- Eliminate redundant licensing requirements by different government agencies.
- Simplify the product re-registration and registration change processes. Require "filing" rather than complete registration process.
- Do not require differential registration processes for foreign companies.
- Consider collaboration with U.S. FDA to expedite product registration applications.
- Do not limit the ports available for importation of medical equipment and devices.
- NDRC price reporting should equate first on-sale prices in China by importers to the ex-factory price of domestic manufacturers and should not require the submission of confidential business information.
- Private healthcare enterprises should be included in the "Encouraged Investment" list of the NDRC's Investment Catalogue and be given preferential tax incentives.
- Commercial health insurance should be encouraged and allowed to supplement reimbursement by social health insurance. This type of supplemental insurance should be portable for patients to use at institutions of their choice.

要发展一个健全的商业健康保险行业。应当允许雇主与个人购买私人健康保险，作为补充政府基本医疗保险的报销机制。政府的报销机制反映了公共体系所提供的、保证全民享有的基本服务水平，但也应允许私人服务供应商提供其他等级的服务。如果选择私人服务供应商，超过政府报销范围的那部分费用可由私营保险公司支付，或由个人自负。 ■

建议

- 鼓励引入和采用创新的产品和流程来降低医疗卫生服务的费用并提升效果。
- 在产品注册程序中以质量管理体系取代型式测试来提高产品安全性和可靠性。
- 消除不同政府部门的重复管理的注册要求。
- 简化产品重新注册和产品变更注册程序，以“备案”方式来代替整套的注册程序。
- 取消对国外企业采取不同的注册程序。
- 考虑与美国FDA合作，以加快产品注册申请程序。
- 不要限制接收进口医疗器械和设备的港口。
- 国家发改委的价格汇报机制应当将进口商在中国的第一个售价与国内制造商的出厂价相对应；同时，也不应该需要提交保密的商业讯息。
- 私人医疗卫生企业应纳入国家发改委投资目录的“鼓励投资”名单，并享有优惠的税收鼓励政策。
- 商业健康保险应受到鼓励，允许其作为社会健康保险报销机制的补充。这种补充性保险应可以有移动性，以便于患者在其选定的机构中使用。

Information and Communications Technology

China's Information and Communications Technology (ICT) market is now among the world's largest, with its fast growth expected to continue in the near term. The industry has become a significant and essential contributor to China's economic development.

Now that China's basic telecom networks and IT infrastructure are largely in place, the next stage of the industry's development is to focus on promoting value-added ICT services and an environment that fosters and protects the innovations involved in creating those products. Value-added ICT services (including Protocol–Virtual Private Network and Voice over Internet Protocol) enable enterprise productivity and the creation of high value-added service industries. The innovation of ICT is essential to the continued development of these industries.

To achieve these goals, China's ICT industry must overcome the following four challenges:

Highly Restricted ICT Value-added Services (VAS) Market Monopolized by Incumbent Carriers

As international markets have shown, incumbent basic network operators, because of their sheer size, are generally not VAS innovation drivers. Rather, the incumbent operators best play the role of “enablers” who provide basic network and platform infrastructure upon which smaller, more nimble players—including vendors, independent software vendors, systems integrators and internet content providers—then develop and deploy innovative VAS. As a result, ensuring market access so that these smaller players can offer VAS on an incumbent carrier's network is essential to future market development, service innovation and for consumers to realize the full benefits of the substantial infrastructure network investments China has made.

Opaque Process for Setting Technology Standards that is Non-market Driven and Impedes Efficient Investment

Experience in China and other markets demonstrates the benefits of allowing standards to be driven by the market and adopted under global norms. Ultimately, this process creates an environment

that fosters high-tech companies and innovation, and drives economies of scale in the ICT industry. Leading Chinese technology firms already export products built to global standards, contribute substantially in global standard-setting bodies and innovate in the development of new technologies. The success these companies have achieved shows how China can benefit from an open and transparent standard setting process at home and participation in global standard-setting initiatives abroad. Chinese consumers of technology, including end-users, enterprises and the government, also benefit from lower costs and access to the most advanced products when China adopts global standards.

Continuing Substantial Infringement of Intellectual Assets Destroys Innovation Value

Protecting intellectual property is a fundamental prerequisite to the healthy development of the ICT industry. For foreign firms to place research and development (R&D) functions in China and for Chinese firms to invest in innovation, they must be assured that the intellectual property they develop will be protected. The opportunity cost of failing to protect intellectual property is lost R&D jobs, reduced investment in high-tech industries by both foreign and Chinese players, and lost innovation opportunities.

Government Protected Market Distorts Competition and Impedes Informatization of the State Sector

Innovation thrives on competition. Barriers to market access or restrictions on purchasing by government, state-owned companies, or industry and consumers at large, reduces the incentive to innovate, raises costs for both foreign and Chinese producers, and limits access to and effective utilization of the most advanced high-tech products by China's key institutions, agencies and companies.

Unresolved, these four challenges will undermine China's innovation and “informatization” aspirations.

AmCham commends China's leadership for correctly identifying the importance of innovation in the information industry to overall

信息与通信技术

目前，中国已跻身于世界最大的信息通信技术（ICT）市场之列，预计近期该市场仍将保持快速发展势头。信息通信技术产业已经成为推动中国经济发展的重要因素。

目前，中国的基础电信网络和IT基础设施已基本建成，未来产业的发展将主要集中在信息通信技术服务的增值业务，并在产品开发中为培育和保护技术创新营造良好的环境。信息通信技术服务的增值业务（包括协议—虚拟专用网络和IP电话等）可以帮助企业提高生产率，推动高附加值服务业的发展，信息与通信技术的创新对服务业持续发展及其重要。

为了实现上述目标，中国的信息通信技术产业必须应对以下四项挑战：

对信息通信技术服务增值业务市场限制过多，而且被主导电信运营商所垄断。

国际市场的情况表明：基础网络的主导运营商由于其绝对的规模水平，一般不能成为创新通信增值业务的推动者。主导运营商主要起到“赋予者”的作用，他们提供基础网络和平台的基础设施，供灵活的小企业，即厂商和独立软件开发商（包括独立软件开发商、战略信息系统开发商和互联网内容提供商）开发和应用电信增值创新业务。因此，保证市场开放，使小企业在主导运营商提供的网络上开展电信增值业务，对市场未来的发展和服务业的创新、以及吸引客户都至关重要，可以使中国在网络基础设施方面的巨大投资产生最大的效益。

无论是无线通讯，移动电视还是家用电器，其技术标准设立过程都缺乏透明度，不按市场规律运作，影响了投资效益。

中国和世界其他市场经验表明，遵从市场规律和国际规范所设立的标准会产生诸多益处。而且最终可以营造出一个有利于培育高科技公司和促进创新活动的环境，推动信息通信技术领域规模经济的发展。中国主要的技术公司已经在出口按照国际标准生产的产品，它们对国际标准设置机构作出了重要贡献，也在研发新技术方面不断的创新。这些公司

取得的成功表明：建立开放和透明的标准设立程序以及参与国际标准的设立活动有益于中国。而且中国采用国际标准，将使中国的电信技术消费者，包括终端用户、企业和政府从低成本、高技术的产品中获益。

知识财产不断受到严重侵犯，破坏了创新的价值

信息通信技术产业的健康发展首先基于对知识产权的保护。外国公司将研发业务转向中国市场以及中国公司在投资创新产业时，他们必须确信所开发的知识产权将受到保护。如果未能保护好知识产权，其所带来的机会成本将包括研发工作机会的减少，中外企业对高科技产业的投资减少，创新机会的丧失。

政府保护下的市场扰乱了竞争，影响了政府部门的信息化进程

竞争推动创新。给市场进入设置障碍，限制政府和国有公司的采购行为，限制一般行业和消费者的购买行为，不仅使创新丧失动力，增加中外生产商的成本，而且影响中国重要机构、部门和公司获得最先进的高科技产品并加以有效利用。

若以上挑战得不到解决，中国的技术创新和“信息化”努力将遭受挫折。

中美商会赞赏中国对创新在信息产业、整体工业发展及经济增长方面重要性的正确认识。“信息化”被视为高效政府的重要内容和中国企业及社会可持续发展的关键动力。这一主题对自主创新和和谐社会的规划至关重要。我们欢迎中国积极鼓励进一步投资研发和促进其他高附加值的经济活动，进而增强全球的创新能力。中国将在2020年建成创新型社会的目标，引起了对“自主创新”的内在涵义和适用范围的关注。某些政策措施的努力，因其限制了市场竞争，有可能给创新带来负面影响。

中美商会关注的是，自主创新与和谐社会的规划实际上并没有得到国有主导电信运营商和负责信息通信技术产业的管理部门的高度赞同。人们越来越多

industrial advancement and economic growth. “Informatization” is seen as a key driver of sustainable development for Chinese enterprises and society, as well as a key component of efficient government. These themes are essential to both the Indigenous Innovation and the Harmonious Society programs. We welcome China’s drive to further encourage investments in R&D and other high value-added economic activities, thereby enhancing global innovation capacity. China’s goal of establishing an innovative society by 2020 has raised concerns around the meaning and application of “indigenous innovation.” Certain policy and regulatory efforts have the potential to impact innovation adversely by inhibiting market competition.

AmCham is concerned that the Indigenous Innovation and Harmonious Society programs are not being embraced in practice by the state-owned, incumbent telecom operators and regulatory bodies responsible for the ICT industry. There is growing concern that the campaign to promote “indigenous innovation” is being applied to industrial policies and measures that systematically favor products and services of Chinese companies over those of foreign invested companies. This preference can be seen in a number of areas ranging from the development of national standards and conformity assessment to competition policy and local favoritism in government procurement.

Telecom value-added services provide a case in point. Now, over six years after WTO accession, the telecom and information VAS markets are technically open but in practice remain tightly closed. As evidenced by the long-awaited Telecom Law, supporting regulations that would enable and encourage telecom and IT investment, competition and innovation at the service-level have not been forthcoming. Legacy policies and regulations are opaque and fragmented, and remain oriented toward limiting services competition and protecting the monopoly positions and revenues of state-owned basic network owners. For all intents and purposes, to date reform has been slow and foreign investment (with the exception of pure financial investments via small portfolio shareholdings in listed companies) has been minimal.

The inability of both foreign and private Chinese companies to access the market stifles service innovation and has resulted in an unhealthy level of price competition as price is the only mechanism businesses have to try to win market share. Despite

the fact that the number of operators is few (two mobile and two fixed) and basic penetration rates still have much room to grow, the price wars among the players are among the most intense anywhere. Although price reductions are generally good for consumers, rampant price wars are not. The ongoing price wars and the growing competitive and profitability imbalance of the incumbent players, are evidence that the industry is failing to innovate and define competitive advantages along dimensions of innovation rather than price.

This legacy of inertia in the ICT industry has caused a number of negative results including:

- Constrained availability of critical enterprise information services and consumer value-added services;
- Investment delays and fragmented implementation of next-generation networks and systems;
- Lost entrepreneurial activity and R&D investment in technology-based products and information services; and
- Unhealthy price competition and declining industry profitability that encourages protectionist behaviors, disrespect for innovation and IP assets, and copy-cat behavior in product development.

These negative impacts are hurting both foreign and private domestic players in China’s information industry. More importantly, they are hurting Chinese businesses and consumers who would benefit from vibrant and robust ICT products and services to improve their competitiveness and personal livelihoods.

Bold liberalization of the ICT value-added service markets is one key measure that government authorities should undertake in order to overcome the established inertia of the industry and stimulate service- and product-level innovation by both incumbent players and new entrants.

Specific Recommendations for the IT Sector

Market Access Carriers in ICT Value-Added Services

- Substantially expand the set of permissible value-added services in order to enable genuine and spirited foreign and private participation in the telecom and information value-added services sectors. International IP of Virtual Private Network

地担忧，在推进“自主创新”活动中所实施的工业政策和相关措施，正在有计划地帮助中国产品和服务超越于外国公司的产品和服务。这种倾斜在一些领域可以看到，比如设立国家标准，竞争政策的一致性评估方面和政府采购中的地方性照顾等。

电信增值业务就是一个典型的例子。中国已加入WTO 6年多，从技术上说，其电信和电信增值业务市场已经开放，但在实务层面上仍处于关闭状态。比如期待已久的电信法，有关推动和鼓励对电信和IT服务业投资、竞争和创新的配套法规一直迟迟未能出台。现存的政策和法规又缺乏透明度和完整性，限制了服务业竞争，依然保护了国有基础网络公司的垄断地位和收入。由于种种原因，改革进度至今仍然缓慢，外国投资（除了对上市公司小份额股权进行的单纯财务投资外）仍处于最低水平。

外国公司和中国民营公司无法进入市场使服务业的创新受到了抑制，同时使价格竞争发展到了不健康的程度，因为价格成为了企业赢得市场份额的唯一途径。尽管运营商为数不多（只有2个移动通讯运营商和2个固定通讯运营商），而且渗透率还有很大的增长空间，企业之间的价格战还是愈演愈烈。虽然降价对消费者总体而言是件好事，但价格战过于频繁却并非好事。持续的价格战，不断加剧的竞争和收益间的不平衡，说明行业已经无法通过创新而只能选择价格来确立其竞争优势。

信息通信技术产业发展的这种传统惯性，带来的相关的负面结果：

- 重要的企业信息服务业务和客户增值业务的提供受到限制；
- 投资被延迟，下一代网络和系统的应用不配套；
- 创业者的创造动力消失，不再投资于技术产品和信息服务的研发；
- 不健康的价格竞争和行业效益下降鼓励了保护主义行为，不重视创新和知识产权资产，在产品开发中出现盲目照搬的行为。

这些负面影响损害了中国信息行业中的国外和国内的民营企业，更重要的是伤害了中国的企业和消费者。因为健康富有活力的信息通信技术产品和服务本应使他们获益，增强其竞争力，提高他们的个人生活水平。

要大胆开放信息通信技术增值业务市场，这是一项

政府当局应当采取的根本性措施，以此来改变行业不良惯性的发展状态，刺激主导企业和新加入的企业在服务和产品方面的创新。

关于IT行业面临问题的相关建议：

信息通信技术增值业务的市场准入壁垒

- 大力扩大可经营的增值业务的范围，使真正富有活力的外资和民营公司进入电信和信息增值业务领域。虚拟专用网络（VPN）的国际IP业务应当被纳入可经营的增值业务范围之内。
- 界定许可的服务业务时，应使用否定语句结构使定义一目了然，明白无误。比如，“除了基本网络准入和传输服务业务之外，其他任何服务业务都被视为‘增值业务’”。
- 提高《外商投资电信企业管理规定》（FITE）中增值业务的外资参股上限，允许其控股，减少体制上和运作中的复杂性，最好是按全球的惯例提高到100%。
- 减少或取消针对外商投资电信企业的资本要求。
- 制定一套明确的定价和供给的综合制度，与国际惯例接轨，确保获得许可的外商投资电信企业可以及时、公平、规模性地进入关键的电信接入和传输网络设施，使他们开展增值业务成为可能。
- 区分敏感和非敏感增值业务，对敏感增值业务的控制程序进行规定；允许扩大非敏感业务的运作范围。

基本理念—健全的信息通信技术增值业务市场，对长期市场发展，对中国成为业务运营中心和发展服务外包产业的规划，对服务业的创新，对企业提高生产力和新兴的媒体产业的健康发展，都至关重要。

透明度缺乏，新的信息通信技术业务批准滞缓

- 建立审批所有新技术的透明的体系，确保审批过程公平合理，公司和消费者能够提供意见和建议。
- 克服官僚作风，精简审批新技术的机构，防止官僚作风和部门权益之争阻碍技术创新。
- 不应拖延发放多技术和多运营商的第三代（3G）移动通信的经营许可证，制定政策时在频段分配和市场准入方面要对所有的市场竞争企业一视同仁。
- 在3G频段分配时要技术中性化，以产生更多的竞

(VPN) services should be among the permissible VAS.

- Use negative syntax to define the permissible services so that definitions are explicitly clear and understandable to all. For example, “Any service other than basic network access and transmission services is considered a “Value-Added Service.””
- Raise the foreign equity cap in VAS Foreign Investment in Telecommunications Enterprises (FITE) sufficiently so as to permit control and reduce organizational and operational complexity—ideally to 100 percent, as is the norm globally.
- Reduce or eliminate the capitalization requirements for FITEs.
- Enact a clear and comprehensive set of pricing and provisioning rules that are in line with international norms for assuring timely and equitable wholesale access by licensed FITEs to critical telecom access and transmission network facilities they need to enable their value-added services.
- Distinguish between sensitive and non-sensitive value-added services and define control procedures for sensitive value-added services; permit wider operations scope for non-sensitive services.

Rationale – *A robust ICT value-added services market is critical to long-term market development, the success of China’s operations hub and off-shoring/outsourcing programs, service innovation, enterprise productivity and the healthy development of the new media industry.*

Lack of Transparency and Delays in Licensing New ICT Services

- Establish a transparent system applicable to the licensing of all new technologies to ensure the fairness of the process and the ability of companies and consumers to provide input.
- Streamline the bureaucracy and reduce the number of agencies involved in licensing new technologies in order to ensure that innovation is not hampered by bureaucratic inertia or infighting between agencies.
- Release third generation (3G) licenses for multiple technologies and multiple carriers without delay and establish policies that are fair to all market players in terms of spectrum allocation and market access.
- Make 3G spectrum allocation technology-neutral to generate more competition and service innovation, and to allow the market to drive technology evolution.

- Provide carriers with full service licenses for fixed and mobile services in line with global trends and service integration.

Rationale – *Transparent and systematic licensing processes are essential for smooth market operations and efficient investment decisions by market players. Lack of clarity and confusion over the future of standards creates increased risk of planning mistakes and irrational and/or misguided investments.*

Lack of Transparency, Delays and Unhealthy Bureaucratic Intervention in Processes for Technical Standards Development

- Let markets decide the outcome on standards issues. China has a healthy innovation engine with many companies and institutions attempting to create standards across all types of ICT products. Left to themselves, domestic standards bearers are sure to emerge as the sector evolves. Bureaucratic involvement in the standards environment is preventing both domestic and international players from creating optimal standards for the Chinese market.
- Participate actively in international standards-setting bodies.
- Adopt international standards to the greatest extent possible.
- Embrace openness in developing IT standards. Openness allows any interested party to contribute to proposals and thereby make it possible to base decisions on a near consensus.
- Ensure that the standards-setting process in China is transparent, allowing for non-discriminatory public consultation of all stakeholders so that foreign and domestic players can participate.

Rationale – *Nationally mandated standards rarely succeed in the market. China boasts a large number of institutions and companies capable of generating viable standards as long as market forces and industry associations are allowed to work properly (free of bureaucratic involvement) and international standards bodies are used appropriately.*

Ineffective Enforcement of IPR

- Improve intellectual property protection enforcement.
- Support local authorities in enforcing intellectual property protections to the full extent of the law.

争和业务创新，让市场来推动技术革新。

- 按照全球发展趋势和业务整合的需要，向运营商发放固定和移动业务的全业务牌照。

基本理念—透明的、制度化的许可审批程序对市场的顺利运行和市场竞争者有效的投资决策都至关重要。如果对于未来标准不能加以明确和出现认识上的混淆，则大大增加规划失误和不合理和/或受误导的投资的风险。

技术标准制定中的透明度缺乏，过程延滞和部门官僚政治的干预

- 让市场来主导有关标准问题的结果。中国具有良好的创新动力，许多公司和机构都在为各种信息通讯技术产品创立标准。如果顺其自然的发展，国内的主导性标准一定会随着该行业的发展而出现。如果官僚政治介入制定标准的领域，将阻碍国内国际的行业企业创立适合中国市场的最佳标准。
- 积极参与国际标准设置组织。
- 尽可能地采用国际标准。
- 赞同放开IT标准的制定工作。只有放开，感兴趣的各方才会进言献策，才能根据大多数人的一致意见进行决策。
- 确保中国的标准设置制度透明化，准许各利益相关方进行无歧视性的公开咨商，使外国和国内的竞争者能够参与。

基本理念—由国家颁布实施的标准在市场上很少获得成功。中国拥有为数众多的机构和公司，如果允许市场和行业协会真正发挥作用（不受官僚部门的阻挠），加上适当利用国际标准组织资源，这些机构和公司能够提出合适可行的标准来。

知识产权保护工作执法不力

- 加强知识产权保护的执法力度。
- 支持地方政府部门最大限度的执行法律。
- 对侵犯其他公司设计的产品，政府一律不予审批。
- 着手解决民营企业和国有企业中未经许可使用软件的问题。

基本理念—中国信息通讯技术产业的持续健康发展取决于知识产权保护的加强和落实。不断地严格实

施知识产权保护对国内外从事技术创新的公司来说都是件好事。

违反竞争原则，政府不公开地采购IT产品并对外国厂商造成不公平

- 中国政府应当把外商投资企业（FIE）的贡献视为中国经济不可或缺的一部分，对外商投资企业在当地市场销售的产品和服务给予国民待遇。
- 中国自主创新的政策应当透明化，不应将其作为市场准入政策，限制外国公司参与政府采购。
- 在政府采购招标中，应基于市场和业绩，技术的中立性，和总体的价格条件确定中标者，而不应考虑其他因素。
- 不应该有全国性比例要求。

基本理念—政府只有通过公平合理的采购活动才能够以最低的价格获得最好的技术，促进竞争，激励所有市场参与者积极创新。 ■

- Ensure products that infringe on designs of other companies are not issued official-type approvals.
- Address the under-licensing of software by private and state-owned enterprises.

Rationale – *Continued, healthy development of the ICT industry in China depends on improved enforcement of IPR protections. Consistent and rigorous enforcement of IPR protection is good for both innovative Chinese and foreign companies.*

Implicit Government Procurement Practices for IT Products that are Anti-competitive and Unfair to Foreign Vendors

- The Chinese government should recognize Foreign Invested Enterprise (FIE) contributions as an integral part of the Chinese economy including the national treatment of FIE products and services sold on the local market.
- China's self-reliant innovation policy should be transparent and should not be used to restrict market access or keep foreign companies out of government procurement.
- Winners of procurement bids should be market- and merit-based, on technologically neutral and overall best value terms, rather than based on other considerations.
- There should be no national content requirements.

Rationale – *Fair government procurement practices ensure that the government receives the best possible technology at the lowest possible price and increases competition and the incentive for all market players to innovate.* ■



Legal Services

Three of the top five business challenges cited by AmCham member companies in China are related to the Chinese legal system. The issues outlined in AmCham's annual China business climate survey include unclear regulations, inconsistent regulatory interpretations and a lack of transparency. The systemic changes required to tackle these broad-reaching issues can only come about with the dedicated involvement of a vibrant, professional and experienced community of legislators, regulators, judges, public and private legal practitioners and academics. Foreign lawyers have long participated in this community and continue to seek opportunities for greater cooperation. Their involvement can provide international expertise that can only serve to add voices to the discussion of experts.

Specific Issues

Role in Regulatory Development

The year 2007 was an important one for the legal community in China, punctuated by the issuance of several long-awaited pieces of legislation, including the Labor Contract Law and the Antimonopoly Law. Members of the foreign legal community were pleased to be included in working groups and comment teams for both of these laws, and continue to welcome the opportunity to participate in the drafting of implementing rules and measures. Timely publication of draft legislation, as well as sufficient notice regarding comment periods, would facilitate such efforts.

Scope of Participation

Chinese companies are increasingly feeling the impact of foreign regulatory standards and intellectual property regimes on their businesses. This trend will only deepen as more Chinese companies look outside of the country for growth and expanded opportunities. With regard to cross-border dealings, foreign lawyers in China have proven to be an invaluable resource for Chinese companies and local lawyers alike. Foreign lawyers in China provide strong support for Chinese companies looking to expand and raise financing outside China. They do this by tapping into global legal networks, leveraging

experience in other jurisdictions and providing comparative analysis.

However, the true potential benefit of this resource pool and cooperation between local lawyers and the foreign legal community is hindered by limitations faced by foreign firms on hiring and defining the scope of their practice in China. Current regulations permit foreign law firms to employ Chinese staff, however, they require that such employment take the form of a secondment from one of the permitted employment agencies. In addition, regulations require that Chinese nationals holding licenses to practice law must suspend such licenses for the duration of employment with the foreign firm.

These restrictions discourage Chinese lawyers from joining foreign firms, effectively closing off an important source of training and professional development that would be beneficial to the growing legal profession in the PRC. The inability to form partnerships or other types of dedicated cooperative relationships also limits the growth of domestic firms and their ability to develop wider skill sets, particularly those suited to cross-border dealings.

In terms of scope of practice, foreign firms may provide "information on the impact of the Chinese legal environment," as per China's WTO commitments, but are prohibited from issuing "specific opinions or assessments on the application of Chinese law" when furnishing information on the Chinese legal environment. These practice restrictions create ambiguity as to what foreign lawyers can and cannot do, and unnecessarily bifurcate the foreign and local legal community in a way that is often fractious and detrimental to client requirements.

AmCham would welcome a renewed dialogue with Chinese authorities, including the Ministry of Justice, on the further liberalization of the market so that lawyers, both foreign and Chinese, can serve the full complement of client needs both within and outside of China. Such liberalization would be in line with the growing trend toward internationalization of the legal profession.

法律服务

中美商会年度商务环境调查显示：在华经营的商会成员公司所面对的前五大商业挑战中，有三点与中国的法律体系有关。其中包括：法规不明晰、解释不一致、缺乏透明度。为了解决这些涉及广泛的问题，需要引入系统性的变革。而要实现这些变革，则必须要有立法者、监管者、法官、公共和私人律师事务所律师、以及专家学者等充满活力的、专业的、经验丰富的群体的积极参与。长期以来，外国律师一直是这一群体中的成员，并不断寻求更多合作的机会。他们能够利用其国际专业知识，在专家讨论中提出建设性的意见。

具体问题

在法规制定中的作用

对于中国的法律界而言，2007年是极为重要的一年。在这一年中，中国颁布了许多众盼已久的法律，其中包括《劳动合同法》和《反垄断法》。国外法律界人士非常高兴能够参与这两部法律的相关工作，并为之提出意见建议，同时也期待能够进一步有机会参与其实施细则的制定。及时公布法律草案以及相对充足的意见征求时间，将有助于推动这项工作的开展。

参与范围

中国企业正越来越明显的感受到国外监管标准和知识产权体制对其业务的影响，而且随着越来越多的中国企业不断寻求国际发展与扩展机会，这种趋势会日益加深。在跨境交易方面，对中国国内企业和本土律师而言，在华的外国律师都是不可或缺的资源。在华外国律师为希望进入国际市场和寻求国际融资的中国企业提供了巨大的支持。他们通过利用其全球法律网络、凭借其在其他司法管辖区的经验、以及提供比较分析服务，帮助中国企业实现其目标。

然而，由于外国律师事务所在聘用人员以及界定其在中国执业范围中所面临的种种限制，使这一不可或缺的资源无法给本土律师与国外法律界之间的合作

带来现实的潜在意义。现行法律法规允许外国律师事务所聘请中国员工，但却规定只能所批准的职业中介以借调方式聘用中国员工。此外，相关法规还要求持有法律执业许可的中国公民在受聘外国律师事务所期间暂停其执业许可。

这些限制规定妨碍了中国律师加入外资律师事务所，中国的法律行业也因此无法获得重要的培训资源，能够促使其向专业化发展。同时，由于无法建立合伙关系或其他类型的专门的合作关系，从而也限制了内资律师事务所的发展，影响了其提高更全面的专业能力，尤其是那些善于处理跨境交易的人才的能力。

在执业范围方面，按照中国的人世承诺，外资律师事务所还可“提供有关中国法律环境影响的信息”，但在就中国法律环境提供信息时却不得发表“与中国法律应用相关的具体意见或评价”。这些执业限制使外国律师无法清楚地界定何谓“可做”与“不可做”，并往往人为的将外国法律群体和本土法律群体进行了不必要地划分，常常令客户难以接受。

就市场的进一步开放的问题，中美商会由衷地欢迎能够与司法部在内的中国有关主管部门开展新一轮的对话，以使国外律师和中国律师能够形成优势互补，更好地满足国内外客户的各种需求。这种市场开放适应了法律业不断国际化的发展趋势。

争议解决

根据适用的法律法规，外国律师不得在仲裁活动中就中国法律的应用发表意见。这一规定有悖于国际仲裁程序的基本原则。在几乎所有的主要司法管辖区，仲裁各方都能够自行选择律师，而不受其执业的地理限制约束。

此外，试图限制美国以及国际律师事务所在仲裁程序中代表委托人出庭，会使得大多数跨国公司坚持在中国境外进行仲裁。这会给中国国际经济贸易仲裁委员会的声誉以及中国作为国际仲裁中心的发展带来负面影响。

Dispute Resolution

Under applicable regulations, foreign lawyers are not permitted to present opinions on the application of Chinese laws in arbitration activities. This provision is inconsistent with the basic principles of international arbitration procedures. In nearly all major jurisdictions, the parties to arbitrations are free to select their advocates without regard to geographical limitation about where they can practice law.

Moreover, attempted restrictions on access to representation by U.S. and international law firms in arbitration proceedings encourages most multinational firms to insist on arbitration outside of China. This negatively affects the China International Economic and Trade Arbitration Commission's reputation and China's development as a world-class international arbitration center.

At the end of 2007, the Shanghai Arbitration Commission launched a Financial Arbitration Centre to handle banking and finance-related commercial disputes, as part of Shanghai's larger goal of being a world-class financial capital. The commission named 14 foreign citizens resident in Shanghai as arbitrators. This actually contradicted the aforementioned rules, so these foreigners would not be allowed to represent clients in such an arbitration proceeding. The aim of developing Shanghai into a financial dispute resolution center is undercut by these post-WTO restrictions and also sends a message to overseas companies that the playing field is not level in China.

Foreign law firms are also banned from completing "registration, amendment, application, filing, and other procedures with Chinese government agencies." In almost no other jurisdiction would these activities be regulated as the practice of law. Indeed, even in China, any Chinese or foreign citizen may handle these matters when authorized by a party. Moreover, the term "and other procedures" is so open-ended that it could bar foreign lawyers from any contact with a Chinese government agency, depriving companies of the right to have such contacts handled by their preferred advisors.

Personnel

China continues to limit foreign legal firms from selecting their representatives and office staff. Law firms are complex enterprises that employ a variety of skilled professionals whose jobs do not always

require admission to the bar. Indeed, foreign law firms in China often need to employ professional translators and interpreters, experienced paralegals, information technology managers and even law firm management specialists. These skills, especially in the specialized form required by law firms, are not always readily available in China.

The ability of foreign law firms to hire non-legal foreign staff is currently very restricted. Registered foreign firms should be free to employ foreign nationals according to their needs and judgment regardless of the seniority of the employee. Further provisions must be made to permit skilled personnel, in addition to members of the bar, to obtain the visas and work permits necessary to be employed as permanent resident employees of the representative offices of registered foreign law firms.

Heads of Offices

Regulations require foreign law firms that establish representative offices in multiple cities to assign a different partner to head each office. This rule imposes an unreasonable burden on foreign law firms and, contrary to the WTO's General Agreement on Trade in Services, creates a barrier to trade in providing legal services. Allowing a single partner to assume responsibility for multiple offices would satisfy the legitimate concerns of Chinese authorities regarding competence and quality of service.

This has a longer-term detrimental effect on the market in that it increases the cost of operating in China and is likely to decrease the diversity of foreign law firms that incorporate domestically. Specifically, increased operating costs deter new firms from entering the market and force existing firms with small- or medium-sized practices to either invest significantly in China or close down operations in the country. Further, where it is an objective to encourage foreign law firms to expand into secondary cities to facilitate foreign investment, the cost of redundant office heads is likely to discourage such expansion since the benefits of building a practice in new cities may only be realized in the long-term.

Summary

As confirmed by AmCham member companies in the most recent China business climate survey, the most critical issues facing companies today in China relate heavily to the arena of the law; namely unclear regulations, inconsistent regulatory

2007年末，上海仲裁委员会成立了金融仲裁院，专门处理银行业和金融业相关商事争议。此举旨在推动上海成为世界一流的金融中心。上海仲裁委员会任命14位在沪居住的外籍人士担任仲裁员。由于与上述规定相抵触，实际上这些外籍仲裁员将不得代表其客户在此类仲裁程序中出庭。这些后WTO时期的限制影响了将上海打造为金融争议解决中心的目标，同时也向外国公司表明中外公司仍无法在同一个舞台上竞技。

此外，外国律师事务所还不得代表委托人“向中国政府机关办理登记、变更、申请、备案手续以及其他手续”。几乎没有其他司法管辖区将这些活动作为法律活动进行监管。实际上，即便是在中国，只要获得一方的认可，任何中国公民或外籍人士都可以处理这些事务。同时，“以及其他手续”这一表述过于宽泛，限制了外国律师与中国政府机关任何形式的接触，从而使其丧失了作为企业首选顾问与中国政府部门进行接触的权利。

人事

中国仍然限制外国律师事务所自行聘用其代表和工作人员。律师事务所人员的构成相对复杂，需要聘请各种不同技能的专业人才，他们并非全部需要律师执业许可。实际上，在华外国律师事务所往往需要聘请专业翻译和口译经验丰富的律师助理、信息技术管理员，甚至是律师事务所管理的专才。而在中国往往很难找到这些人才，尤其是律师事务所需要的专门人才。

目前，外资律师事务所聘请非法律专业外籍工作人员也受到一定限制。已登记的外资律师事务所应当可以根据其需要自行决定和聘请外籍工作人员，而不应受员工资历的限制。除了执业律师外，中国还须制定进一步的规定允许优秀外籍人才能够获得必要的签证和工作许可，使其可以接受聘用，作为已登记注册的外资律师事务所代表处的常驻雇员。

代表处负责人

根据相关规定，在多个城市设立代表处的外资律师事务所必须指定不同的合伙人负责各个代表处的运营。这一规定给外资律师事务所带来了不合理的负担，同时也有悖于世界贸易组织的《服务贸易总协定》，给法律服务贸易设置了障碍。允许一名合伙

人负责多个代表处的工作，在一定程度上将能够消除中国有关主管部门对于律所业务能力和服务质量的顾虑。

这一规定还会对市场造成更持久的不利影响，增加外资律师事务所在华经营的成本，却减少了在华成立外资律师事务所的人员选择范围。具体地说，运营成本增加会阻碍新的律师事务所进军中国市场，而对现有的中小律师事务所而言，他们或者必须加大在华投入，或者不得不终止在华业务。此外，尽管中国鼓励外资法律业务拓展至二级市场以推动外商投资，但是由于需要另行聘请办事处负责人，其增加的成本影响了这些扩张计划，因为新城市设立的代表处在短期内很难获利。

结论

正如中美商会成员公司在今年中国商业环境会员调查中所证实的一样，如今在华企业所面临的最迫在眉睫的问题很大程度上涉及法律行业，即法规不明晰、监管解释不一致以及透明度缺乏。要解决这些系统性问题，一个充满活力的多元化法律团体必不可少。长期以来，外国律师已经积极参与其中，也希望中国政府能够放宽对执业范围和人员聘用方面的限制，从而使这个多元化的法律群体能够为中国的发展做出更大、更积极的贡献。 ■

建议

- 继续听取包括外国律师在内的法律群体就立法草案提出意见及建议，并进行比较分析。
- 在外国律师和包括司法部在内的中国有关部门之间就法律市场的开放问题开展新一轮对话。
- 允许外国和本地律师之间采取新的合作模式。
- 放宽对受聘于已登记注册的外资律师事务所的律师的执业限制。

interpretations and lack of transparency. Tackling these systemic problems necessarily requires a vibrant and diverse legal community. Foreign lawyers have long been active in this regard and are hopeful that certain restrictions on practice scope and hiring will be loosened so as to permit an integrated legal community the means of making an even more significant and positive impact on China's development. ■

Recommendations

- Continue to invite the legal community, including foreign lawyers, to provide comments and comparative analysis on draft legislation.
- Renew the dialogue amongst foreign lawyers and the Chinese authorities, including the Ministry of Justice, regarding liberalization of the legal market.
- Permit new cooperative structures among foreign and local lawyers.
- Loosen practice restrictions on lawyers working for foreign registered law firms.



Media and Entertainment

In the spirit of cooperation that characterizes the Olympic Games, AmCham recommends that the Chinese Government increase its efforts to adhere to a set of principles for ensuring open Olympic media access. We respectfully offer a framework for these principles below, building on the publicly stated positions of Chinese officials as we understand them. Moreover, we hope that the same spirit will continue to govern the future course of regulation of the media sector in China.

Proposed Principles of Open Olympic Media Access

- In the spirit of international friendship, peace and harmony, the Beijing Organizing Committee for the Games of the XXIX Olympiad (BOCOG) and related departments of government at both the central and municipal level should pledge to create and maintain an open environment for media activities during the 2008 Games.
- The true meaning of a “high-tech Olympics” is one in which the potential of advanced technologies is maximized to create an objective and balanced presentation of all of the activities taking place surrounding the Games, unburdened by onerous controls and restrictions.
- In the words of Premier Wen Jiabao, the “complete freedom to report” is consistent with the positive message of the international Olympic movement and the widely shared goal of providing an objective and balanced understanding to the world of what is happening in China.
- The positive message of “One World, One Dream” requires that athletes, officials, spectators and the media all have full participation and enjoyment of the Games so that the Beijing Olympics can be a true spectacle for the global audience.

Both BOCOG and the Ministry of Foreign Affairs have been helpful and constructive in living up to the Olympic spirit. Unfortunately, in some cases other departments have not fully respected China’s commitments during the Olympic period. In Beijing and elsewhere, reporters have been harassed while trying to work and authorities have closed some areas citing vague security concerns. In other areas, our members believe that media regulations have become tighter and less transparent. We note that

imported films and entertainment performances have been significantly curtailed in this Olympic year. New regulations restricting online video creation and distribution also represent a backward step for media in China. Regulations from the State Administration of Foreign Exchange limiting the use of offshore Special Purpose Companies, though not aimed only at the media sector, have had an important chill effect on innovation by making it more risky for international funds to invest.

Generally, the last few years have seen a proliferation of China’s media outlets but no significant market liberalization, limiting the potential of what numerous government officials have called a vital pillar of the economy. In the absence of clear regulatory frameworks, rapid growth has also brought corruption, unfair competitive practices and a lethal over-capacity that makes it very hard for new market entrants to survive. In many instances, these distortions persist because regulators themselves remain deeply involved in the conduct of business in an apparent conflict of interest.

AmCham suggests that the critical missing ingredient for a healthy 2008 Olympics, as well as sustained market growth, is the active involvement of a neutral regulator. We believe that some simple measures would greatly strengthen the industry:

- Improve the transparency of the regulatory process and take measures to ensure that regulations are consistent with China’s World Trade Organization (WTO) commitments. The government should allow foreign companies to comment on draft regulations and they should remove ambiguity, wherever possible, about the rights and responsibilities of overseas investors.
- Promptly issue laws and regulations that have been pending, in some cases for decades, and clarify regulatory authority over the media sector, especially by sharpening lines now blurred between the Ministry of Information Industry (MII) and the State Administration of Radio, Film and Television (SARFT), as well as the other agencies.
- Ensure that regulatory agencies do not also compete in the industries they regulate. Xinhua is a prime example of this in the current market.

媒体与娱乐业

本着奥运的合作精神，中美商会建议中国政府加大力度，坚持贯彻确保奥运媒体采访自由的原则。按照我们所理解的中国官员公开表示的立场，我们谨此提供这些原则的框架。此外，我们希望，中国在未来对媒体行业的监管过程中亦能继续秉承这一精神。

奥运媒体采访自由原则的建议

- 本着国际友谊、和平与和谐的精神，北京第二十九届奥运会组织委员会（北京奥组委）以及中央和北京市的相关政府部门在2008年奥运会期间应保证创造并保持一个开放的媒体活动环境。
- “科技奥运”的真正含义是指：最大限度地挖掘先进技术的潜力来客观和公正地反映与奥运会相关的一切活动，没有繁缛的控制和限制条件。
- 如温家宝总理所讲，“完全报导自由”是与国际奥林匹克运动传递的积极精神和让世界对中国的一切有客观公正的了解的共同目标是一致的。
- “同一个世界，同一个梦想”的奥运主题希望运动员、政府官员、观众和媒体的全面参与并充分享受奥运会的乐趣，进而使北京奥运会真正成为全球所关注的盛会。

北京奥组委和外交部在弘扬奥林匹克精神方面一直都发挥着有益的、具有建设性的作用。然而在某些情况下，一些部门并没有充分重视中国就奥运所作出的相关承诺。在北京和其他一些地方，记者们在努力工作时受到干扰，而有关部门以含糊的安全问题为借口关闭了某些区域。在其它方面，会员认为媒体监管比以往更加严紧，透明度也不如以前了。我们注意到，在本奥运年度，进口电影和娱乐表演减少很多。限制网上视频创作和传播的新法规对于中国媒体而言也意味着退步。国家外汇管理局颁布的关于限制使用境外特殊目的公司的规定尽管不是针对媒体行业，但对创新产生了寒蝉效应，因为它加大了国际资本投资所面临的风险。

总而言之，尽管近几年中国的媒体行业发展迅速，但没有出现比较重大的市场开放举措，因而限制了媒体产业，这一被众多政府官员称之为重要经济支柱

产业的发展潜力。由于缺乏明确的监管框架，快速增长的同时也产生了腐败、不公平竞争和使新进入市场者很难生存的致命的产能过剩等问题。在许多情况下，这些被扭曲的市场现象之所以持续存在，是因为监管机构深陷于有明显利益冲突商业行为之中。

中美商会认为，健康的2008年奥运会以及持续发展的市场所缺少的关键因素是中立的监管机构的积极参与。我们认为，通过采取一些简单举措就会大大增强该行业的发展。

- 提高监管过程的透明度，并采取措施确保各项规定与中国的人世承诺相一致。政府应当允许外国公司对相关法规草案发表意见，而且若可能，应当删除有关境外投资者权利和责任的有歧义的规定。
- 尽快颁布一直在酝酿但仍未通过的法律和法规，并明确媒体行业的监管机构，尤其是界定信息产业部（信产部）和国家广播电影电视总局（广电总局）及其它机构之间目前模糊不清的权限范围。
- 确保监管机构不参与其监管的行业的商业竞争活动。新华社就是目前市场中的主要实例。
- 放宽外商投资公司的市场准入条件，以此作为减少知识产权侵权行为的方法。这在正版DVD和CD的分销中尤为重要，守法的大型零售商没有资格取得零售合法产品的许可证，而非法的销售渠道却在迅速增加。

去年以来，媒体和娱乐业取得了显著的发展。例如：

- 新的试行法规极大的提高了外国新闻记者的独立性。
- 国家和地方政府投资新建世界一流的体育、文化和娱乐场馆，用以不久将要举办的各种演出和赛事。
- 出现了数千个由用户生成内容的网站，并且经营都很成功。
- LCD广告等新的媒体格式发展兴盛。

- Improve market access for foreign-invested firms as a way of reducing intellectual property infringement. This is especially important in the distribution of legitimate DVDs and CDs; large, law-abiding retailers are ineligible for licenses to retail legitimate products, while the illegal channels proliferate.

Since last year, notable developments in media and entertainment have taken place, including:

- New trial regulations greatly expanded the independence of foreign news reporters.
- National and local governments invested in new, world-class sports, cultural and entertainment venues, which soon will need to be filled with performances and competitions.
- Thousands of websites with user-generated content emerged and are operating successfully.
- New media formats, like liquid crystal display (LCD) advertising, are thriving.

However:

- Xinhua remains both an industry regulator and monopolist distributor in news and financial information, and at the same time has attempted to use its position as regulator to extract proprietary commercial information from domestic competitors in developing its own new products and services.
- AmCham's recommendation from last year's White Paper that the General Administration of Press and Publications (GAPP) abolish its rule allowing almost blanket "republishing" of copyrighted material still has not been implemented. This remains a serious impediment to the growth of online media in particular.
- Foreign equity caps in telecom value-added services, new media and live entertainment remain in place and are not healthy for the industry.
- Distribution of American films has all but stopped and more censorship and tightening of content on TV have impeded market access in content production.
- The Chinese Government has not taken full advantage of extensive efforts by the U.S. government to use dialogue and negotiated settlements to issues of contention pertaining to various industries, leaving formal legal measures, such as WTO cases as the only avenue for resolution. We look forward to continuation of the Strategic Economic Dialogue process, which had a promising start in 2007.

Overall, the media and entertainment industry would benefit from significant efforts by the State Council to "clean up" existing regulations and regulatory structures in order to make them consistent with the current situation of domestic industries, generally accepted international practices and China's WTO commitments. Such efforts could include:

- Accelerating open discussion of the Telecom Law and its implementation regulations, and promptly moving the draft through to the National People's Congress.
- Broadening the scope of "value-added services" in telecommunications and distribution and retailing services in publications that are open to foreign investment and issuing clear guidelines for the approval of such ventures.
- Establishing clearer lines of authority among the MII, SARFT, Ministry of Culture, GAPP, State Council Office of Information, as well as other agencies involved with the regulation of media and entertainment, and clarifying a regulatory drafting and promulgation process that is transparent and allows for public comment.
- Improving intellectual property protection through a stronger copyright regime, better regulation of online content and, above all, improved market access for legitimate products.
- Supporting the issuance of technical standards directly by industry associations through a collaborative process with industry and making standards mandatory only when they have important public health and safety implications.

News and Financial Services

Issues

1. New Xinhua regulations on news and financial services information providers are inconsistent with China's WTO commitments and Xinhua continues to use its dual status as competitor and regulator to control important segments of domestic markets and to strengthen its own new product offerings.
2. Violations of intellectual property are rampant, and enforcement is weak or nonexistent.

Recommendations

- Engage in a consultative process of drafting new regulations that would create a level playing field for foreign companies.

然而：

- 新华社仍然既是行业监管部门，又是具有垄断地位的新闻和金融信息的分销机构，并且同时试图利用其作为监管部门的地位，从国内竞争者那里获取专有的商业信息以开发其新产品和服务。
- 中美商会在去年的白皮书中曾建议新闻出版总署（GAPP）废止其允许直接“再版”有版权的资料的规定，但建议尚未得到采纳。这同时也对网络媒体的发展的带来严重影响。
- 对外商投资在电信增值服务、新媒体和演出娱乐业中的上限规定仍然存在，不利于行业发展。
- 美国电影的发行几乎停止，针对电视节目内容的更多审查制度和控制措施阻碍了内容生产的市场准入。
- 中国政府没有充分利用美国政府所作出的广泛努力，利用对话和协商解决办法等方式来解决各种行业相关问题，使正式的法律手段（如WTO投诉）成为唯一的解决方法。我们期待着战略经济对话的继续进行，该机制在2007年已经有了良好的开端。

总之，国务院旨在“清理”现有法规和监管部门结构的重大举措将使媒体娱乐业受益，使其符合国内行业的当前形势、通行的国际惯例和中国的入世承诺。诸如此类的工作可能会包括：

- 加速对电信法及其实施细则的公开讨论，并尽快将草案提交给全国人民代表大会审议。
- 扩大允许外商投资的电信“增值服务”和出版物分销和零售服务的范围，并就有关此类企业的审批颁布明确的指导方针。
- 在信产部、广电总局、文化部、新闻出版总署、国务院新闻办公室以及其它参与媒体和娱乐业监管的机构之间界定比较明确的职责范围，并明确规定一个透明的、允许公众参与意见的法规起草和颁布的程序。
- 通过加强版权制度、改进在线内容监管，以及放宽合法产品市场准入条件等措施来加强知识产权保护。
- 鼓励由行业协会在开展行业咨询的基础上直接颁布技术标准，只有当相关标准涉及重大的公共健康和安全问题时，再制定强制性标准。

新闻和财经服务

问题

- 1、新华社关于新闻和财经服务信息提供商的新规定，与中国的入世承诺不相符，而且新华社继续利用其作为竞争者和监管部门的双重地位控制国内市场的重要领域并加强其新产品的发行。
- 2、知识产权侵权行为猖獗，执法力度弱或甚至得不到执行。

建议

- 参与可能会给外国公司创造公平竞争环境的新法规的草拟咨询过程。
- 取消“廉价再版规定”。
- 允许外国新闻公司雇用中国资深记者。
- 在新闻服务行业的监管和竞争行为之间划出明确的界限，制止新华社的垄断行为。

平面媒体

问题

- 1、平面媒体公司建立了利润中心（广告和发行），并合法地从内容生产实体中分离出来。然而，没有相应的法规来批准行业中的这种新兴的业务模式。
- 2、书籍和期刊的零售和分销远远落后于国际标准。目前，WTO规定允许外国资本进入零售和分销环节，但审批的行政程序拖沓，规定依然不明确。迄今，在数百家申请外商投资零售和分销许可证的公司中，只有少数得到了批准。
- 3、外国媒体公司可以通过版权合作的方式与中国杂志合作，但有关此类版权合作的规定和条例尚不明确，申请和审批过程也不清楚。而且，目前没有任何申请被受理。明晰上述问题会有助于政府规划行业的发展。

建议

- 取消“普通”和“批发”分销许可证分类，因为实际上这对外商投资构成了壁垒。

- Eliminate the “cheap republishing rule.”
- Allow foreign news companies to hire Chinese credentialed reporters.
- Draw clear lines between regulation and competition in the news services segment, ending the Xinhua monopoly.

Print Media

Issues

1. Print media companies have created profit centers (advertising and distribution) and legally disassociated them from content producing entities. However, no regulations have emerged to ratify such emergent business models in the industry.
2. The retail and distribution of books and periodicals is far behind international standards. WTO provisions now allow foreign investment in retail and distribution, yet the administrative process is too slow in approval and the regulations remain unclear. To date only a handful of the hundreds of companies that have applied to establish foreign-invested retail and distribution licenses have received approval.
3. Foreign media companies may cooperate with Chinese magazines through copyright cooperation, but the rules and regulations for this copyright cooperation are not clear, and the process for application and approval is unclear. It also appears that no applications are currently being accepted. Clarity around these issues would help government authorities shape industry development.

Recommendations

- Eliminate classifications of “general” and “wholesale” distribution licenses, as they appear to present a *de facto* barrier for foreign investment.
- Allow foreign publishers to establish representative offices in China directly rather than under their non-publishing subsidiaries.
- Standardize regulations and practices for copyright royalty reporting at state-owned publishers.
- Accelerate the administrative process for approving foreign investment in the retail and distribution of books and periodicals.
- Clarify how foreign publishers may cooperate with Chinese publishers.

Online Media

Issues

1. Traffic statistics for China’s internet sites have been so manipulated and misrepresented that advertisers no longer believe anyone’s numbers and therefore many will not purchase ads on smaller niche sites. This is strangling industry innovation.
2. Copyright theft is rampant and creates a significant disincentive for new investment.
3. MII has adopted the narrowest possible interpretation of WTO commitments on value-added services and, by extension, internet content providers (ICPs). Applications to establish foreign-invested ICPs have not been accepted, and MII has issued confusing notices about the rights of foreign-invested companies to engage in contractual relationships with Chinese ICPs.
4. Heavy investment is being made in video services and online content, but regulation in this area is confusing.

Recommendations

- Support online auditing through government neutrality in auditor selection and statements of support for transparency and metrics-based advertising models.
- Support the development of third-party companies that serve advertising and compile user statistics.
- Clarify GAPP’s Copyright Center role, and the legality of linking, framing, pasting text and other uses of copyrighted content.
- Commit to approve at least 20 new ICP joint ventures in 2008. Expand the scope of permissible services in the *Catalogue of Classification of Telecommunications Services, Value Added Telecom and ICP Services*. Increase the foreign equity cap to 100 percent and accept applications.
- Provide swift and comprehensive government clarification of the new regulations limiting online video to government-controlled entities.

- 允许外国出版商在中国直接设立代表处，而不是在其非出版业子公司下设立。
- 规范国有出版商的版税报告行为，并健全相关法规。
- 加速外商投资书籍、期刊零售和分销环节中的行政审批程序。
- 明确规定外国出版商可以与中国出版商合作的模式。

网络媒体

问题

- 1、中国的因特网网址的访问流量统计数字被操纵和歪曲，以至于广告商们不再相信任何方面的统计数字，因此许多广告商不会在利基网站上购买广告位。这种现象正在扼杀行业创新。
- 2、盗版猖獗，打击了新投资者的积极性。
- 3、关于增值服务和因特网内容提供商（ICPs）（从引申意义上）的入世承诺，信产部给予了最狭义的解释。要求成立外商投资因特网内容提供商的申请还不予受理，而且信产部就外商投资公司与中国ICP建立合同关系的权利颁布的若干通知令人费解。
- 4、视频服务和在线网络内容正在吸收大量投资，但相关法规却模糊不清。

建议

- 政府通过选择中立性的审计人员，及对透明规范广告模式的提倡来支持联网审计。
- 支持提供广告和用户统计服务的第三方公司的发展。
- 明确新闻出版总署版权中心的职能，并对版权内容使用中链接、拷贝、引用原文及其它方面的合法性加以明确。
- 承诺在2008年至少审批20个新的ICP合资公司。扩大电信服务、增值电信和ICP服务分类目录中可允许服务的范围。将外商所占股权上限提高到100%并受理申请。
- 对于仅限国有控股实体播放网络视频的新法规，政府应及时和全面地予以解析。

广播和数字媒体

问题

- 1、《电信法》的出台再一次被推迟，而且增值服务、交互式网络电视和因特网等方面的法规不完善、不透明。
- 2、电影和电视市场准入所受到的阻碍包括任意的配额、对于电视上外国电视节目播放的内容、时间的限制及其它行政法规。
- 3、2006年底台湾地震后海底光纤电缆断裂，说明中国需要更多地与国际互联网连接，包括北海岸的电缆接岸。

建议

- 尽早颁布《电信法》，承诺尽快明确实施细则，并采用对所有利益相关方公开的咨询程序。执行网络互连和接入的国际标准。
- 在采用技术中性政策的同时，统一制订明确的3G和无线宽带（WLAN）许可证发放时限和方法。
- 对于数字媒体经营（数字电缆、PPV、IPTV、DMB等）规定参与范围，并阐明监管职责。包括允许外商参与经营、减少对外国节目内容的限制并统一制订内容管理的指导方针。
- 增加电影配额，重述允许成立合作制片合资公司的规定，增加日常和黄金时段节目播出最大时限，以此减少对于外国节目内容的限制。

演出娱乐业

问题

- 1、中国法规禁止外国娱乐场所管理公司或外国演出公司在中国相关行业中拥有超过49%的股权份额。
- 2、虽然全球大部分国家和城市都采取激励措施，以吸引大型娱乐场所和竞赛项目活动公司数十亿美元的投资，但是中国不允许这些公司拥有对管理层的控制权或开展本地化经营，因此它们很难在中国成功的发展相关的业务。

Broadcast and Digital Media

Issues

1. The Telecom Law has again been delayed, and regulation in value-added services, IPTV and the internet is woefully incomplete and opaque.
2. Market access for film and television has been hampered by arbitrary quotas, restrictions on foreign content on television, time restrictions and other administrative regulations.
3. The rupture of the undersea fiber cable after the earthquake in Taiwan near the end of 2006 illustrates the need for more international internet connectivity in China, including north coast cable landings.

Recommendations

- Issue the Telecom Law without further delay. Commit to an accelerated timeline for articulation of detailed regulations and adopt a consultative process that is open to all stakeholders. Adopt international norms for interconnection and access.
- Articulate a clear licensing timeline and process for 3G and wireless broadband (WLAN) licensing while adopting a policy of technology neutrality.
- Specify scopes for participants and clarify regulatory roles over digital media operations (including digital cable, PPV, IPTV and DMB). This includes permitting foreign participation in operations, reducing restrictions on foreign content on these channels and articulating content control guidelines.
- Reduce restrictions on foreign programming content by increasing cinematic quotas, reinstating rules permitting the establishment of co-production joint venture companies and increasing time limits on maximum daily and primetime programming.

2. While most countries and cities around the globe are providing incentives to attract the billions of dollars in investments by the large venue and event companies, China makes it difficult for these companies to build viable businesses in China by denying them control over the management or the local operations. ■

Recommendations

- Remove equity caps on foreign participation in sports and entertainment venues and performance groups.
- Support the operation and/or privatization of professional sports leagues to promote the commercialization and competitiveness of teams and athletes.

Live Entertainment

Issues

1. PRC regulations prohibit a foreign venue management company or foreign performance company from owning more than 49 percent in related industries in China.

建议

- 取消对外资在体育和娱乐表演场所管理公司和演出公司中所持有的股权上限的限制。
- 支持专业体育团体的运营和/或私有化，以提高团队和运动员的商业化程度和竞争能力。



Pharmaceuticals

AmCham recognizes and appreciates the efforts of the Chinese Government to improve the business and investment environment for innovative industries. However, certain systemic issues related to insufficient healthcare funding, drug prescription and dispensing practices, hospital bidding procedures, government pricing and reimbursement policies, inadequate protection of clinical data and pharmaceutical counterfeiting continue to hamper growth in this sector and do not serve Chinese patients best interests.

Specific Issues

Healthcare Funding

China contributes a relatively small percentage of its GDP to healthcare as compared to other countries of comparable economic development. The majority of Chinese patients pay a significant percentage of their healthcare expenses out-of-pocket. AmCham supports the Chinese Government's effort to expand public health insurance and encourages a greater uptake of private health insurance. Comprehensive reform of the healthcare sector will improve the quality and accessibility of medical care in China.

Government Pricing and Reimbursement Policies

Pharmaceutical products have special commodity status in China and thus many are subject to price controls. In 1997, pharmaceutical price jurisdiction was vested in the National Development and Reform Commission (NDRC). The NDRC maintains tiered pricing for patented, innovative and generic products. AmCham encourages the Chinese Government to closely collaborate with America's pharmaceutical companies to evaluate and implement a different pricing policy for innovative products.

The Ministry of Labor and Social Security maintains the national drug reimbursement list. According to Chinese law, the list should be updated every two years, however, the current list has not been updated since 2004. As a result, many new, innovative products that have received marketing approval in China are not yet widely available to patients.

Prescribing and Dispensing Practice

Unlike most large economies, China permits hospitals and physicians to both prescribe and dispense medicine. Approximately 80 percent of total pharmaceutical products are sold through hospital pharmacies. This practice allows doctors and hospitals to profit from the medicines they prescribe. As a result, doctors have a financial motivation to prescribe products that yield the greatest return as opposed to prescribing products solely on the basis of medical need. Inadequate funding for hospital and physician services serves only to exacerbate the problem. Since patient fees for medical services are low, doctors and hospitals supplement their income by charging large mark-ups on medicines.

The revenue available to hospitals and medical professionals through the linking of prescription and dispensing practices significantly distorts the sale of Chinese pharmaceutical products through the promotion of sales in high-profit yielding pharmaceuticals. It also leads to over-prescribing and patients often receive multiple prescriptions per hospital visit. Over-prescribing can have adverse health consequences such as drug resistance and dangerous drug interactions, and is clearly in the interest of neither patients nor the country.

Hospital Administration

Hospital bidding began in China with pilot projects in 1999 and has expanded to include more than 80 percent of all hospitals today. Under this structure, hospitals purchase between 75 percent and 100 percent of their pharmaceutical portfolio through competitive bidding. At the same time it began hospital bidding, the NDRC also removed controls on each separate profit margin within the distribution chain on pharmaceuticals, thereby allowing hospitals to increase their proportion of the total profit margin. While this process gives hospitals greater discounts on medicines, the cost savings are not passed on to patients.

Consumer criticism of the high cost of medicine has driven the government to cut prices, but, until recently, very little was done to address the disparity between ex-factory and retail prices. In June 2006,

制药业

中美商会对中国政府在改善创新产业的商业和投资环境方面所做出的努力表示赞赏。然而，一些与医保资金匮乏、开方与配药模式、医院招标程序、政府定价和补偿政策、临床数据保护不当以及药物制假相关的系统性问题仍然妨碍着制药领域的发展，同时也不利于保护中国广大患者的利益。

具体问题

医保资金

与其他经济发展水平相当的国家相比，中国的医疗卫生服务投入占GDP的比例相对较小。中国大多数患者仍需承担大部分医疗费用。对于中国政府大力发展公共医疗保险，中美商会表示欢迎，同时也鼓励中国政府能够积极促进私人医疗保险的发展。医疗卫生领域的全面改革将改善中国的医疗服务质量并提高医疗保险的覆盖率。

政府定价与补偿政策

在中国，药品被视为特殊商品，相当一部分受到价格管制。1997年，中国国家发展和改革委员会（国家发改委）接管药品定价职责。国家发改委一直对专利药、新药和仿制药采取分级定价的方式。中美商会促请中国政府能够与美国制药公司密切合作，评估新药并对其实施不同的定价政策。

中国劳动和社会保障部继续执行全国基本医疗保险药品目录。根据中国法律，该目录应每两年调整一次，但自2004年以来，现行目录一直没有调整。因此，许多已经获准在中国销售的新药仍未被纳入目录，使患者得以广泛使用。

处方和配药

与多数大的国家不同，中国允许医院和医生开方和配药。约80%的药品在医院药房中出售。这种模式使医生和医院从其开方的药品中获利，医生往往不是基于病人需要开方，而是出于经济利益的驱动，开方时较多选择可给自己创造最大回报的药品。另

外，医院和诊所资金匮乏又使得这一问题雪上加霜，较低的诊疗费使医生和医院转向通过赚取药品大幅差价作为补充收入的来源。

在这种开方配药相结合的模式下，中国的医院和医生更愿意开配高利润额的药品，从而提高收入，这使得中国药品的销售额严重失实。同时，这种体系也会诱发处方过量的现象，患者每次看病医生往往都会开具过量的处方。处方过量会带来抗药性和危险的药物相互作用等副作用，无疑，这既无法造福于广大患者，也不符合中国的国家利益。

医院管理

医院集中招标采购于1999年开始在中国试行，目前80%以上的医院已采用这种模式。在这种体制下，医院75%以上的药品均通过招标采购。在开始实行医院集中招标采购的同时，国家发改委还取消了对药品配送链中各种产品单独利润率的管制，从而提高医院总利润率的比例。虽然此举使医院享受更大的药品折扣，但医院成本降低并没有使广大患者受益。

消费者对药品价格过高的抱怨使中国政府不断采取降价措施，但直到最近，也未能缩小药品出厂价和零售价之间的价差。2006年6月，国家发改委规定医疗机构的药品加价率不得超过15%。尽管国家发改委对数家医疗机构进行了审计，并开通了热线使消费者参与举报违规加价行为，但中国政府对如何保证医疗机构能够长期遵守相关规定所采取的有关措施尚不甚明确。遗憾的是，现行政策还没有考虑加价限制给医院带来的收入下降问题；为了弥补利润亏损，医院通过提高开方数量和填补药量差异来保证“符合”加价限制政策的规定。

医疗代表

医疗代表是使医疗专业人士了解新药的最佳途径，几乎被世界所有市场使用和认可。医疗代表发挥着许多重要的作用，其中包括：

- 确保开方的医生全面了解药物的正确用法；
- 在药品上市后提供关于药品使用和发生不良反应

the NDRC imposed a cap of 15 percent on hospital pharmaceutical mark-ups. Although the NDRC has conducted a few hospital audits and established a hotline to report excessive mark-ups, it is unclear how the government intends to ensure compliance over the long term. Unfortunately, the current policy does not account for hospitals' lost revenue as a result of the cap. To compensate for lost profits, hospitals have an incentive to "comply" with the policy by increasing the total number of prescriptions and making up the difference in terms of volume.

Medical Representatives

The medical representative is used internationally in almost all markets and recognized as the best way to educate healthcare professionals about new medicines. The medical representative fulfills many important functions, including:

- Ensuring that prescribing physicians are fully informed on the proper use of medications;
- Providing key information on the use and adverse events of medicines post-launch; and,
- Keeping the physician informed on the latest advances and developments in key therapeutic fields.

Chinese officials have increasingly accepted the important role of medical representatives over the past decade. However, as part of the on-going anti-commercial bribery effort, some local government agencies and hospitals have introduced measures to curb corruption by banning medical representatives from certain hospitals. Although this problem is less severe today than it was 18 months ago, some hospitals still maintain "anti-representative" policies. AmCham supports the government's desire to improve the operating environment in China, but is concerned that this policy does not sufficiently consider the long-term interest of physicians or patients in China and may actually decrease transparency by making it more difficult to detect abusive practices in the system.

To ensure responsible behavior among multinational companies, the pharmaceutical industry in China adopted a code of conduct to guide the sales and marketing practices of international pharmaceutical companies in China, to which all companies sign and adhere. By the end of 2007, over 7,000 medical representatives had been trained and certified on the code, with a further 10,000 to be trained and certified in 2008.

Clinical Trial Application Approval

Although recently improved, China's Clinical Trial Application (CTA) submission requirements remain unduly burdensome. The CTA requirements include comparatively extensive pre-clinical, clinical and Chemistry, Manufacturing and Control (CMC) requirements. The State Food and Drug Administration (SFDA) does not permit applicants to supplement filings as new information is discovered or made available. In addition, the regulatory agency repeatedly mandates the same procedures for every clinical protocol with no abbreviated process. In fact, the average time required to obtain a clinical trial approval in China remains about one year, with some approvals taking 18 months, versus a range of 11-25 weeks for other countries in the region. Taken together, these requirements make it extremely difficult to integrate Chinese patients into regional or global trials intended to expedite the availability of meaningful new therapies in China.

Regulatory Data Protection

Following its accession to the WTO in 2001, China revised its laws to incorporate concepts from Article 39.3 of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Article 39.3 provides that a country must protect data submitted in the context of a drug registration application from unfair commercial use. Loopholes in China's current regulatory environment allow for unfair commercial use of safety and efficacy data generated by AmCham member companies.

The Implementation Regulation of the Drug Administration Law and the Drug Registration Regulation established a six-year protection period for test data of products containing a new chemical ingredient against unfair commercial use; the SFDA is responsible for upholding this law. Unfortunately, the current law is ambiguous as to how data exclusivity is implemented, for example certain key concepts such as "new chemical ingredient" and "unfair commercial use" remain undefined.

China's regulatory procedures permit the SFDA to grant marketing approval to products that previously have been approved outside of China. Applicants can submit published material and reference regulatory decisions by foreign regulatory agencies as justification for approval. Limited local clinical trials are required for marketing these products.

事件的重要信息；

- 以及使医生了解重要治疗领域的最新进展。

过去十年来，中国政府已经逐渐认识到医疗代表的重要作用。但是，在目前反商业贿赂行动下，一些地方政府部门和医疗机构采取措施，禁止医疗代表与医疗结构接触，以此来遏制贪污腐败。虽然现在这一问题已不如18个月前那么严重，但一些医疗机构仍然继续采取“反对医疗代表”的政策。中美商会支持中国政府力求改善中国经营环境的决心，但认为这一政策并未充分考虑中国医生或患者的长远利益，实际可能会加大对系统内滥用政策行为的鉴别难度，从而使透明度降低。

为了确保跨国公司履行其社会责任，中国的制药业推出了“行为守则”，所有公司均签署并严格遵守，“行为守则”还用于指导在华经营的国际制药公司的销售与市场行为。到2007年末，7000多名医疗代表接受了与该守则相关的培训并获得认证，2008年还将有1万名医疗代表加入这一行列。

临床试验申请审批

虽然最近情况有所好转，但中国的临床试验申报要求仍然相当繁复。临床试验申报包括大量的临床前、临床以及化学、生产和控制（CMC）要求。中国国家食品药品监督管理局（药监局）不允许申请者就发现的或公布的新资料进行补充申报。此外，药监局规定，每一份临床试验送审资料都必须反复经过同样的审批程序，不得简化。在中国获得临床试验许可的平均时间实际约为一年，有些甚至需要18个月，而其他国家约为11至25周。总体而言，这些要求使得制药公司很难将中国患者纳入其地区性或全球性临床试验中，以加快具有深远意义的新疗法在中国的推出。

监管数据保护

2001年入世后，中国修订了其相关法律，纳入了《WTO与贸易相关知识产权协议》（TRIPS）第39.3条中的概念；第39.3条规定，成员国必须对药品登记申请时提交的数据进行保护，确保其免受不公平的商业使用。中国目前监管环境中的漏洞使商会成员公司的安全性和效用数据可能用于不公平的商业用途。

《药品管理法实施条例》和《药品注册管理办法》规定，为避免不公平商业用途，包含一种新化学成分的产品测试数据享有六年保护期。遗憾的是，现行法律并未对如何执行数据专有权做出明确规定，例如，“新化学成分”和“不公平商业用途”等一些关键性概念仍然没有明确的定义。

根据中国的监管程序，药监局有权向已在中国境外已经获得批准的产品发放销售许可。申请者可提交公开发表的资料和外国监管机构做出的参考性监管决策以求获得许可。只有为数不多的产品才需要在当地进行临床试验。

中美商会认为，中国对已公开发表的资料以及境外监管机构的批准意见的尊重表明了其对原药品开发商临床数据的信任。但这种程序的全面性有待考证，因为仅凭已发表的数据往往不足以证实产品的安全性和功效，通常只是对最初呈交数据的概括。为了证明产品的安全性和效用，原始数据是十分必要的。对概括性数据或境外监管部门批准意见的信赖反倒让非原药品开发商受益，有失公正，因为这些厂商无需投入大量的人力物力就可以拥有自己的临床试验数据。

实际上，在一种复方药在美国或欧洲获批后，药监局就会收到大量关于该药的销售申请。原药品开发商可能是第一家向药监局提交申请的厂商，但也有可能被其他药厂抢先一步。根据现行规定，非原药品开发商具有巨大的优势，这有悖于国际准则。药监局已经做出解释，《药品注册管理办法》的数据保护规定在中国获得销售许可后开始生效，由此可能最长需要花费四年时间。在此期间，中国国内的制药公司也可向药监局呈交申请。任何在此期间获批开展临床试验的公司都能够通过监管程序，即便是在原药品开发商获得销售许可之前。这会造成数家公司推出同样的产品——原药品开发商的数据专有权没有得到有效的保护。这种体制对原药品开发商而言有失公正，也有悖于旨在鼓励创新和投资的国际制药标准。

假药

虽然中国政府已采取一系列打击药物制假的行动，但国内市场假药充斥，甚至被售往国际市场，情形仍十分堪忧。

AmCham views China's deference to published material and regulatory decisions by agencies outside of China as reliance on clinical data developed by originator companies. This process is problematic because the published data alone is usually insufficient to prove the safety and efficacy of a product and often merely summarizes the original filing. Original data is necessary to demonstrate product safety and efficacy. Reliance on summary data or approvals in countries outside of China conveys an unfair commercial advantage to non-originator companies because non-originator companies do not incur the cost of generating their own clinical data.

In practice, the SFDA receives numerous applications for marketing approval of a compound once it is approved in the United States or Europe. The originator's application may or may not be the first application SFDA receives. Current regulations make this a significant advantage for non-originator companies, and are inconsistent with international norms. SFDA has interpreted the data protection provision of the Drug Registration Regulation to apply after marketing authorization is granted in China, which can take up to four years. During this period additional applications from Chinese companies can be submitted to the SFDA. Any company that receives authorization to begin clinical trials during this period—even before marketing approval is granted to the originating company—is permitted to complete the regulatory process. This can result in multiple companies entering the market with the same product—with no effective data exclusivity rights for the originator. This practice is unfair to originator companies and inconsistent with international pharmaceutical norms designed to encourage innovation and investment.

Counterfeit Pharmaceuticals

While the Chinese Government has undertaken a series of actions to combat drug counterfeiting, the prevalence of counterfeit drugs within, and originating from, China nevertheless remains a substantial concern.

Pharmaceutical counterfeiting is first and foremost a drug safety issue. Thus, the adequacy of China's response to pharmaceutical counterfeiting must be measured against the framework of laws that regulate the various links in the drug manufacturing and supply chain. In that regard, China has yet to enact laws that address all aspects of drug counterfeiting

activity or to provide the kind of enforcement resources and commitment necessary to combat this growing problem. For example, although China's drug laws prohibit "fake" medicines, criminal liability is conditioned upon proof of harm, a statutory requirement that requires evidence of a serious defect in quality. This burdensome and excessive evidentiary requirement all but precludes criminal prosecution against counterfeiters under China's drug laws.

To help resolve these issues, China should amend its drug laws to prohibit and criminalize the manufacture, distribution, import or export of any pharmaceutical that is deliberately mislabeled as to source or identity (consistent with the WHO definition of a counterfeit medicine), without the need to prove harmful effects or deficient quality. In addition, China could create an interagency pharmaceutical task force of law enforcers, regulatory authorities and customs agents to ensure adequate coordination among the various authorities with relevant oversight and enforcement responsibilities. Each of these officials must be given the investigative powers and mandate to prosecute all links in the counterfeit drug chain, including manufacturers, wholesale and retail distributors, and exporters of counterfeit medicines and related packaging and raw materials.

Another important factor contributing to the pervasiveness of drug counterfeiting is how Chinese chemical manufacturers are producing bulk active pharmaceutical ingredients (API) that are subsequently used in the manufacture of counterfeit drugs. The SFDA clearly recognizes the importance of patient health and safety, since it regulates chemicals that will be used in finished pharmaceuticals goods, but chemical companies ignore SFDA requirements by advertising their API products on commercial websites in bulk form under the "medicinal use" category instead of adhering to SFDA Good Manufacturing Practice (GMP) regulations. Chemical manufacturers are selling and shipping API products to locations within China and abroad either without regard for their intended use or in flagrant violation of existing Chinese regulations that place them under SFDA oversight. These unregulated and unethical practices by chemical companies contribute significantly to, and in some cases aid and abet, the counterfeit drug trade. More troubling is that the unregulated distribution of API exposes patients to serious and significant health risks and degrades consumer confidence in the global pharmaceutical supply chain. ■

在药品安全问题中，药物制假首当其冲。因此，必须以监管药品生产和供应链各个环节的法律框架来衡量中国对药物制假问题采取的应对措施的充分性。就这点而言，中国仍未就药物制假活动的各个出台法律，也未提供此类必要的执法资源和做出必要的承诺来打击这一日益猖獗的问题。例如，尽管中国的药品法律法规严禁“假”药，但必须根据伤害证据确定刑事责任，法律要求有证据证明药品质量存在严重问题。这种繁复、过于严格的取证要求几乎使制假者逃脱中国药品法律法规的制裁，免遭刑事起诉。

为了解决这一问题，中国应当修订其药品法律法规，禁止任何故意错标来源或名称的药品（符合WHO对假药的定义）的生产、配送和进出口，将这些行为归为刑事犯罪，并取消需要证明其伤害作用或有质量问题的要求。此外，中国可成立由执法部门、监管机构和海关共同组成的部门间药品特别行动小组，以确保各有关监管和执法机构之间能够实现充分的协调。其中每一位小组成员都必须有权对药物制假的各个环节（包括假药和相关包装和原材料制造商、批发和零售商，以及出口商）进行调查和起诉。

假药泛滥的另一大成因就在于中国化学品厂商正在大批量生产制假所需的原料药。药监局已经制定有关成品药中化学品使用的规定，这表明其已明确意识到患者健康和安全性的重要性。然而，一些化学品厂商并未遵循药监局有关药品生产质量规范证书的规定，反而将其生产的原料药作为“医用”类在商业网站上大肆宣传，漠视药监局的有关要求。这些化学品生产商或对原料药的预期用途不闻不问，或悍然选择不去履行可能会迫使其接受药监局监管的中国现行法规，肆无忌惮地向国内外销售和运输原料药。化学品生产商这种违规的不道德行为极力推动着假药贸易的发展，有时甚至助长和纵容了假药贸易的气焰。更令人担忧的是，原料药的分销规管不力既打击了消费者对全球药品供应链的信心，又给患者带来了严重的健康风险。 ■

建议

- 中美商会呼吁中国政府与重要的行业利益相关者合作，共同为建立资金保障可持续的医疗体制制定长期解决方案。
- 中美商会呼吁劳动和社会保障部定期更新全国基本医疗保险药品目录，以确保中国患者能够及时享受最新治疗。
- 中美商会呼吁中国政府逐步实现开方与配药职能的分离。
- 促进新药的合理使用，纠正由目前集中招标采购和医疗机构管理行为所造成的低效率模式。
- 认可创新产业的行为守则，并将之（或类似模式）延伸至中国整个制药行业。商会希望与中国卫生部通力合作，促进这一模式的发展，也愿意在成功实施这一模式所必需的培训工作中提供帮助。
- 为了减少一些繁复的要求，中美商会建议药监局制定与国际公认标准接轨的新规定。
- 为了避免原药品开发商数据遭到不公平的商业使用，商会建议药监局制定新规定，与国际公认的数据保护监管程序保持一致。
- 中美商会建议中国商务部和全国整规办与业界联手，找出遏制中国假冒伪劣原料药生产与分销的方法。

Recommendations

- AmCham urges the Chinese Government to collaborate with key industry stakeholders to develop long-term solutions for a financially sustainable healthcare system.
- AmCham urges the Ministry of Labor and Social Services to update the national drug reimbursement list to ensure Chinese patients have access to the latest, most advanced treatment options.
- AmCham urges China to consider gradually separating prescription and dispensing functions.
- Promote the rational use of innovative medicines and correct inefficiencies that occur as a result of current bidding and hospital administration practices.
- Endorse the innovative industry's code of conduct and extend it, or a similar effort, to the entire pharmaceutical industry in China. We would like to work with the Ministry of Health to promote such an effort and are willing to assist in the requisite training that would be required for successful implementation.
- In order to mitigate some of these arduous requirements, AmCham recommends that SFDA develop new practices in line with internationally accepted requirements.
- In order to prevent unfair commercial use of the originator's data, AmCham recommends that SFDA develop new practices in line with internationally accepted regulatory data protection procedures.
- AmCham recommends that China's Ministry of Commerce and the Market Order Rectification Office work collaboratively with industry to identify ways to reduce the manufacture and distribution of counterfeit API in China.



Real Estate

The relationship between real estate and China's economic growth is a vital one. The real estate sector contributes a large portion to the country's total investment in fixed assets, second only to infrastructure. After modest slowing in 2006, real estate investment—and prices—in China increased dramatically during 2007. According to national statistics, as of the end of the third quarter of 2007, real estate development contributed more than 10 percent to China's GDP.

Market insiders believe that the slowdown in 2006 was a result of the immediate influence of a series of curbing policies issued by the Chinese Central Government. While governmental policies certainly affected the market, actual supply and demand forces are a more important factor. Despite government attempts to throttle back, speeding market forces helped to fuel the real estate market's 2007 bounce-back in both investment and prices. These exuberant conditions led in part to further government attempts to restrict foreign investment in real estate at intervals throughout 2007 and a partial easing of price increases in several markets in early 2008.

Investment in real estate development in the first nine months of 2007 amounted to approximately US\$216 billion, representing a 30 percent increase over the same period last year. Foreign direct investment (FDI) in real estate in the first half of 2007 was US\$3.6 billion, an increase of 68.7 percent year-on-year (y-o-y), but still only 1.8 percent of the total investment in real estate. This statistic highlights how much the Chinese real estate market remains dominated by local investors and developers, with foreign investment and development unlikely to exert tremendous influence.

Rapid urbanization is projected to continue unabated and will continue to drive development demand. It is projected that by 2020 up to 75 percent of a population of 1.45 billion people will live in urban centers. Experts generally agree that in the coming 12 months, China's real estate market will continue to grow at its unrelenting pace.

Developments in 2007 highlight three key issues for the real estate sector in China:

- The continuing climate of restrictive regulations and tax policies designed to cool a robust market and the disproportionate focus on controlling foreign investment have combined to create a very restricted operating environment. In addition, the bar to market entry has been raised with the new requirements for significantly higher upfront capital investment. Conducting business in real estate in China is now much more difficult than it was in the past.
- The continuing lack of transparency and inconsistent application of policy and regulations at many levels remains a business impediment.
- Sustainability is emerging as an increasingly important issue in the development sector for domestic and foreign companies alike and will be a factor in the future.

Significant Developments

In 2007, there was a rapid escalation of investment activity in all real estate sectors, including residential, office, retail and industrial, which helped to set the stage for the ensuing tightening of the market. For example, in the first half of the year national housing prices rose approximately 16.3 percent, while in some individual markets prices were up as much as 42 percent y-o-y. Transaction volumes were also up significantly. The average Grade A office rental rate was also up 14 to 15 percent on a y-o-y basis in major cities like Shanghai and Beijing.

Average land prices in China's 70 largest cities rose by 12.8 percent in the first three-quarters of 2007 and record-breaking land prices remained an undercurrent throughout many of China's major cities through the end of the year. The tight supply of available land in China's major cities continued to fuel a steady land price escalation.

Escalating land and real estate prices are increasingly creating a catalyst for the movement of foreign manufacturers from China's major cities to hot second-tier cities. The prime second-tier destinations for foreign real estate investments remain Chengdu, Dalian, Hangzhou, Suzhou and Nanjing. Even some second-tier cities such as Suzhou, are already showing signs of their own land-availability challenges. Evidence also suggests the current trend of a limited

房地产

房地产发展和中国经济增长紧密相关。房地产业在全国固定资产投资中所占比重非常大，仅次于基础设施投资。在继2006年小幅减缓之后，中国的房地产投资及房地产价格在2007年迅猛增长。国家统计局结果显示，截至2007年第三季度末，房地产发展对中国国内生产总值的贡献率为10.13%。

行业人士认为，2006年的发展减缓是由于中国政府出台了一系列限制性政策。政府政策当然会影响市场，然而实际的供求关系才是最重要的因素。尽管政府试图控制房地产行业的发展速度，但是，快速增长的市场需求却使房地产市场在2007年大幅反弹，房地产投资和房地产价格都增长迅猛。这些相对过热的发展在某种程度上促使中国政府进一步加大了调控力度，2007年政府相继推出限制外商投资房地产业的政策，2008年初期一些房地产市场的价格开始出现松动。

在2007年前九个月中，房地产开发的投资总额攀升至2160亿美元左右，与去年同期相比增长30%。2007年上半年中国房地产业的外商直接投资为36亿美元，虽然与上年同期相比增长68.7%，但仍然仅占行业总投资额的1.8%。这些统计数字充分显示，中国房地产市场基本由中国本地投资商和开发商主导，海外投资商和开发商很难在其中发挥较大的影响。

持续快速的城市化进程，将继续带动房地产开发需求的增长。按计划，到2020年全国14.5亿人口中会有高达75%的人在城市中生活。专家们基本认为，在接下来的十二个月中，中国的房地产市场将继续快速增长。

2007年的发展突出了中国房地产业所面临的三个关键问题：

- 旨在为过热市场降温的限制性规定和税收政策的不断出台，以及不适当地加大外商投资调控力度等一系列做法，给运营环境带来了极大的限制性。另外，现在对前期资本投入的要求也大大提高。随着这些新要求的出台，市场准入的门槛已经被进一步抬高。

- “透明度”的一贯缺乏以及政策法规在各层面适用时出现的不一致性，将继续阻碍着产业的发展。
- 可持续性发展问题对国内外开发企业变得越来越重要，而且是影响未来其发展的重要因素。

重大进展

2007年，包括民用、商用、房地产零售业和建筑业在内的所有房地产相关行业的投资都在快速增长，这将使政府对房地产市场调控的进一步加强。例如，上半年，全国房价上涨了约16.3%，而某些房地产市场的市场价格与去年同期相比竟增长了42%，上海和北京等主要城市中的平均甲级写字楼租金与去年同期相比也上升了14%到15%。

2007年前三个季度，中国70个最大城市的平均土地价格增长了12.8%，到2007年年底中国许多大城市的土地价格持续创出新高。中国主要城市可用土地的有限供应，也继续推动着土地价格的稳步攀升。

在不断攀升的土地和房地产价格的进一步驱动下，外国开发商开始把投资重点从中国主要城市转向房价热涨的二级城市。外国房地产投资的主要城市为成都、大连、杭州和南京。但目前像苏州等一些二级城市也已经开始出现土地供应不足的迹象。事实还证明，当前的发展趋势，如土地供应的受限、可用土地的缩减、劳动力成本的增加和劳动力的短缺、以及物流和交通成本的增加等，不断迫使中国的一些开发商考虑转向那些成本较低的国家，比如越南和印度。

各种规定和限制持续增多，进一步影响市场发展

如果要了解2008年影响国内外房地产投资商的相关问题，只需要关注一系列新的房地产政策和法规的发展，这些政策和法规大多数旨在在进一步加强对房地产业的管理。

首先，在调整产品结构和控制发展速度方面，2006年出台和实施的一些政策在2007年已经开始显现作用。比较显著的方面包括：

land supply, less available space, labor cost increases and labor shortages, along with increasing logistic and transportation costs, continue to pressure certain manufacturers in China to consider lower-cost countries like Vietnam and India.

Regulations Continue to Accumulate and Influence the Market

To understand the issues affecting both foreign and domestic real estate investors in 2008, one need only look at the lengthy list of new policies and regulations for the sector, most of which escalate and intensify restrictions.

First, implementation of some of the measures imposed in 2006 has begun to have a greater effect in moderating the product mix and the rapid pace of development in 2007. Notable examples included:

- For new residential construction, at least 70 percent of new units must be smaller than 90 square meters in order to promote availability of affordable housing;
- For project borrowing, debt can be raised only when a Foreign Invested Enterprise's (FIE) registered capital is paid up; and
- For residential purchasers, down payments increased to 30 percent or more for a first home. For a second home, down payments increased to 40 percent and interest rates for these mortgages were set at 110 percent of the regular rate. The definition of a "second home" was also tightened.

Second, on a more positive note, after years of discussion and debate, the Real Property Law was signed and went into effect in mid-2007. While the Constitution had previously recognized private property rights (Article 14 provides "Citizens' lawful private property is inviolable"), there was no statute addressing property rights issues in an integrated manner. The real impact of this new law is modest today and the legislation does not have a major impact on foreign interests in real estate. A remaining issue that has been lurking for some time is how renewals of land use rights will be handled at the expiration of the current terms. The new law notes that the terms for land used for residences will be automatically renewed at expiration (Article 149), but does not address whether a renewal fee will be due and, if so, how it will be calculated. Thus, an issue of keen interest to owners of land use rights remains unresolved as of the date of this writing.

Third, beginning in early 2007, regulators imposed additional land-use fees on land earmarked for new construction, which exacerbated already rising land costs. Some of the most significant regulatory actions included:

- Tripling the Land-Use Tax with the addition of a provision that now allows the tax to apply to FIEs in addition to domestic companies;
- Re-imposition and strengthening the Land Value-Added Tax;
- Increasing the Business Tax to five percent on the total price for residences owned less than five years, and on the gain (price sold minus price paid) for "non-ordinary" residences owned longer than five years (in 2005, the time period specified was two years);
- Increasing applicable rates of Farmland Occupation Tax with the addition of a provision that now allows the tax to apply to FIEs as well as domestic companies; and
- Implementation of previously announced measures to discourage leaving land "idle" longer than the specified development period. The new rules—announced in early 2008—include a levy equal to 20 percent of the land transfer fee if land is left idle more than one year but less than two years, as well as taking back the land if it is left untouched for two years or more.

Fourth, the State Council continues to emphasize the need to use land efficiently and to demand that local government authorities re-examine development projects to ensure they strictly comply with the land use terms and building requirements.

The general intent of all these measures was to cool the red-hot market by discouraging speculative investment and encouraging the maintenance of an adequate land supply to meet ordinary housing needs.

Government Approvals of Foreign Investment Becoming Increasingly Difficult

The Central Government's response to the robust market include continued tightening of domestic and foreign opportunities for real estate investment and development in a new round of regulations in 2007.

In May 2007, the State Administration on Foreign Exchange (SAFE) and the Ministry of Commerce (MOFCOM) issued the "Notice on Further Strengthening and Regulating the Examination,

- 对于新建住宅楼，必须保证70%的住宅单元面积小于90平方米，目的在于提供更多消费者经济能力可以承受的楼房的数量；
- 对于项目借款，只有当外商投资企业全部缴付注册资本金之后才可以申请；
- 对于住宅楼购买者，如果是购买第一套住房，首付款需要达到购房全款的30%或者更高，如果是购买第二套住房，首付款则至少达到40%以上，并且抵押贷款的利率为正常贷款利率的110%。而且，“第二套住房”的定义更加严格。

其次，从积极的角度而言，经过多年的讨论和争论，《物权法》终于在2007年颁布实施。在这之前，虽然《宪法》已经认可了私有财产权（第14条规定“公民的合法的私有财产不受侵犯”），但却没有一部法律完整地阐述财产权问题。这部新法律的真实影响尚未全面体现，房地产业的外国人利益也并未因此产生大的影响。但一个长期潜在的问题是，如何在现有土地使用权期限届满之后解决土地使用权的续期问题。虽然新法律规定，住宅建设用地使用权期限届满时，自动续期（149条），但对于是否应当缴纳续期费的问题以及如何计算续期费的问题，新法律却没规定。因此，截至本文完稿之时，这一涉及所有土地使用权人切身利益的问题仍然未得到解决。

第三，自2007年初，主管部门开始对用于新建项目的土地征收额外的土地使用费，这又进一步增加了已经高起的土地成本。一些最主要的限制性规定包括：

- 土地使用税增长三倍，并且该税项将同时适用于国内企业和外商投资企业。
- 强化并重新征收并土地增值税。
- 对居住时间不足五年的房屋所有人，按照房屋总价的百分之五征收营业税；对居住时间超过五年的“非普通”性住宅所有人的收益征收营业税，税率为其收益额（卖出价减去买入价格）的百分之五。（在2005年，规定的时间期为两年。）
- 增加耕地占用税的征收额度，并且该税项同时适用于国内企业和外商投资企业。
- 实施之前颁布的规定，以防止土地时间闲置超过规定的开发期限。2008年初新颁布的规定进一步明确：如果土地闲置时间超过一年但不足两年，则应对该闲置的土地征收土地闲置税，征收额度为土地转让费的百分之二十；如果土地闲置达两年或两年以上，则要收回该土地。

第四，国务院继续强调必须有效利用土地，要求各地政府部门重新审查土地开发项目，以确保土地开发项目符合土地使用规定和建设要求。

所有这些措施的主要目的在于通过抑制投机性投资行为，以及鼓励维持适当土地供应以满足普通住房的要求等方法，给过热的房地产市场降温。

外国投资获得中国政府批准的难度加大

作为中央政府对发展过猛的房地产市场的回应措施，2007年中国通过了一系列政策法规，来减少国内外房地产商开发和投资的机会。

2007年5月，国家外汇管理局和商务部联合颁布了《关于进一步加强、规范外商直接投资房地产业审批和监管的通知》（商资函50号）。该商资函规定，地方审批部门批准设立外商投资房地产企业，应即时依法向商务部备案。未完成商务部备案手续的公司没有资格进行外汇结算。

商资函50号文强化了第171号文件的规定，并且进一步作出规定，外国投资商在申请设立外资房地产公司之前，必须获得土地使用权或建筑物所有权，又或者已经签署了获得土地使用权或建筑物所有权的协议。

国家外汇管理局颁布了《汇综发130号文》，其中规定，在2007年6月1日之后在商务部登记的外商投资房地产公司不再允许使用外债来投资项目或进行其他运作。因此，项目融资只能考虑股权和人民币来源。（在以前，一家外商投资企业能够从国内外两个渠道借款，而且借款数额可基本等同于注册资本和总投资额之间的差额。然而，现在这种情况不再适用于在国家外汇管理局备案的外资房地产企业。）

最后，2007年11月公布的新的《外商投资产业指导目录》包含了几项影响房地产业的变化。指导目录中不再有鼓励外商投资房地产的内容（之前还鼓励外商投资普通居民住房）。大规模土地开发、高档宾馆、别墅、写字楼以及展馆等领域内的投资继续受到限制，高尔夫球场投资项目现在已被禁止。限制性目录中新增的一项规定是针对房地产二级市场交易投资的。有关房地产二级市场交易，在法律上没有一个准确定义，但是业内人士将该术语解释

Approval, and Supervision of Foreign Direct Investment in Real Estate Industry” (Circular 50). The circular provided that the approval for foreign investment of real estate projects obtained from local MOFCOM counterparts must be filed and reported to MOFCOM. Companies failing to complete such filing processes become ineligible to apply for foreign exchange settlement.

Circular 50 reinforced Circular 171 and, among other provisions, also provided that a foreign investor must obtain land use rights or building ownership, or have entered into a sale and purchase agreement to obtain such rights or ownership, before it may apply to establish a foreign-invested real estate company.

SAFE issued Circular 130, stipulating that a foreign-invested real estate company registering with MOFCOM after June 1, 2007 is no longer allowed to use foreign debt to fund its projects or operations. Thus, funding for such projects will need to come from equity and RMB sources. (Previously, an FIE could borrow an amount equal to the difference between its registered capital amount and total investment level from either foreign or domestic sources. However, this is no longer the case for real estate FIEs registering with SAFE.)

Finally, the new *Foreign Investment Catalogue*, published in November 2007, contained several changes affecting real estate. There is no longer any category of foreign investment in real estate that is “encouraged” (as affordable housing had been previously). Investment in golf course development is now banned, while investment in large-scale land development, high-end hotels, villas, office towers and exhibition malls continues to be restricted. A new addition to the restricted category is investment in transactions involving “secondary” real estate transactions. There is no legal definition of the term, but practitioners interpret it to refer to transactions in real estate involving sale and lease of buildings following completion of construction. However, investment in development projects is not identified as restricted and therefore by inference, it is permitted.

The net result of these new regulatory hurdles is an even further restricted climate for foreign companies who desire to participate in the Chinese real estate market. In addition, the bar to market entry has been raised with the new requirements for significantly higher upfront capital investment. Both have made real estate business much more difficult to do in China.

Specific Issues

Growing Restrictions on Foreign Investors/Developers in China’s Real Estate Market

The accumulation of regulatory restrictions—some targeted at both domestic and foreign companies and others specifically targeted to foreign companies—make it increasingly difficult to participate and effectively compete in the China real estate market. For example, the PRC’s reluctance to allow wholly foreign-owned enterprises (WFOEs) to acquire existing properties, especially those priced more than US\$100 million, as well as the approval of other real estate FIEs, makes it nearly impossible to conduct business transactions in a timely manner.

One first-tier city government dragged its feet for one year on a 90,000-square-meter building acquisition in the CBD. The seller could not wait for six to 12 months and instead sold to a domestic buyer who did not need to set up a WFOE requiring the Ministry of Finance’s approval. Such lengthy delays make it impossible to successfully transact business. There needs to be a way to form WFOEs/FIEs in a reasonable (two to three month) timeframe. Furthermore, the inconsistency in enforcing the rules of the game—especially in the new regulatory environment—needs to be eliminated and replaced by a set of reliable and common practices. AmCham urges the government not to focus real estate regulations disproportionately on foreign developers and investors when trying to cool the market.

Continuing Lack of Transparency and Reliable Real Property Information, Market Data and Enforcement of Rights

This issue was highlighted in the 2007 White Paper, yet scant progress was made on the recommendations to the Chinese Government. Therefore, it is noted again this year. The existing system for the registration and prioritization of interests in real property (i.e., land use rights, leases, mortgages and other rights and interests relating to the ownership and establishment of third party liens in real property) is currently vague and not consistently enforced on a national basis. Moreover, availability of accurate information is limited. As a result, many instances arise where holders of real property interests or liens suffer hardships and potential damages.

为：建设完工之后的楼房销售和租赁业务。然而，该目录并没有明确将开发项目投资纳入限制范围，因此可以解释为允许开发项目投资。

这些新调控举措所产生的最终结果，将希望参与中国房地产市场发展的外资企业置于一个更受限制的环境。同时，对前期资本投资的要求也大大提高，使得市场进入的门槛也被进一步抬高。上述两方面使得中国房地产业务更加举步为艰。

具体问题

对投资中国房地产市场的外国投资商/开发商的限制越来越多

限制性规定不断增多——一些规定是同时针对国内企业和外国公司的，而有些规定则是专门针对外国公司的——这使得外国公司不仅更加难以参与中国房地产市场，而且更加难以在中国房地产市场中开展有效竞争。例如，中国政府不愿让外商独资企业收购现有房产项目，尤其是那些价格超过1亿美元的项目，中国政府也不愿批准其他外商投资的房地产公司，因此及时进行房地产交易几乎没有可能。

某个一线城市的政府，拖滞了一年的时间，用于一个位于中心商务区的9万平方米楼盘收购项目的审批。卖方无法忍受六到十二个月的等待期，就直接将其卖给了一家国内买家，因为国内买家无需设立一个需要财政部批准的外商独资企业。如此长时间的拖延使得交易根本无法完成。所以，需要找到一种在合理时间内（两至三个月）设立外商独资企业/外商投资企业的解决办法。另外，在新监管环境下，游戏规则在执行中存在不一致问题，需要采取一系列可靠、通用的做法来解决问题和取代现行做法。中美商会促请中国政府在给房地产市场降温的过程中，不要过分地把外国开发商和投资者当作调控的重点。

持续缺乏透明度，缺乏可靠的地产信息、市场数据，权利的落实不到位

这个问题在2007年白皮书中被强调过，但是，提供给中国政府的相关建议并不多。所以，今年又一次涉及这个问题。现有的房地产权益登记和优先顺序制度（如土地使用权、出租权、抵押权和有关所有权的其他权利和利益以及物权中的第三方质权的

设定等）很模糊，在全国范围内的实施不一致。而且，提供的信息准确性有限。结果，使很多房地产权益所有人或质权人遭遇困难和面临潜在风险。

在当前实践中，有关房地产权益登记的法规和规章往往是由地方政府部门发布和管理的，结果导致各地的规章复杂多样，存在混乱，地方相关部门往往也不总是予以遵守。而且，在执行登记的权益时，地方法院并不能完全按照法律执行。

中国强调可持续性/绿色建筑，对房地产行业有重大影响

根据世界银行的统计，到2015年，全世界在建楼房有百分之五十会在中国，而且中国所有居民住房和商业楼房的百分之五十都将在2000年之后建成的。面对如此巨大的变化，可持续性建筑为中国带来了难得的特殊机遇，中国可以通过具体措施来改善自己的环境。公众对这一问题的不断关注和政府的反复强调，使得可持续性建筑成为去年政府和公众首要考虑的问题。

例如，由建设部发起，其他国家部门以及相关的外国政府、国际组织和协会共同举办的“第三届国际智能、绿色建筑与建筑节能大会暨新技术与产品博览会”举办之后，中国出台了《中国国家绿色建筑评估标准和绿色建筑评估的初步实施》。随着2008年3月31日至4月2日即将在北京举办的第四届国际大会，这一良好的趋势还将得以持续发展。

但是快速而失控的发展所带来的负面作用非常严重并在不断恶化，因此，至关重要的是，要持续不断地采取实际行动，在从节约能源到制定和实施建筑标准等各个领域取得实际效果。 ■

建议

- 中美商会呼吁中国政府在调控房地产市场时使用更加公平的方法，而不应过度地对外国开发和投资公司，尤其在成立外商投资企业、外商独资企业、合资企业以及类似的投资企业方面设置障碍。
- 我们呼吁改善咨询机制，以便中国政府在制定新政策时能够听取来自国外房地产业的

Under present practices, the rules and regulations for the registration of real property interests are issued and administered on a local basis, producing a complex multiplicity of local regulations that are confusing and not always observed by the local authorities. Moreover, when enforcing such registered interests, local courts do not always apply the laws consistently.

The Emergence of a Chinese Sustainability/Green-building Emphasis Looms Large over the Industry

According to the World Bank, by 2015, 50 percent of the buildings under construction in the world will be in China and 50 percent of all residential and commercial buildings in China will have been built post-2000. In the face of this dramatic transformation, sustainable building presents China with a unique and enormous opportunity to make concrete progress in the effort to improve its environment. Increased public attention and government rhetoric propelled the issue to the forefront of government and public awareness in the past year.

For example, the Third International Conference on Intelligent, Green and Energy-efficient Building & New Technologies and Products Expo, initiated by the Ministry of Construction and co-hosted by other state-level bodies, together with related international governments, organizations and associations, resulted in the publication of the “China National Evaluation Standard for Green Building and initial implementation of the Green Building Assessment.” This trend continued with the Fourth International Conference held in March-April 2008 in Beijing.

But the negative effects of rapid and uncontrolled development are severe and worsening, and it is critical that real action continues so that results can be achieved in disparate areas from energy consumption to establishment and enforcement of building standards. ■

Recommendations

- AmCham urges the Chinese Government to seek more equitable ways to moderate the real estate market that do not disproportionately penalize foreign development and investment companies, especially in the formation of FIEs, WFOEs, JVs and similar investment structures.

- We urge improvement in the consultative mechanism for the Chinese Government to seek expert input and advice from the leading foreign real estate industry resources when developing new policies—whether restrictive or incentives—using AmCham as one key resource.
- Standardizing government processing for common approval processes across all governmental jurisdictions would improve the investment climate.
- AmCham urges increased reliability, accuracy and accessibility of real property information sources for all real estate sectors including residential, industrial, retail and office. A national scheme for the registration of real property interests together with guidelines for the enforcement thereof that should be applied consistently across all jurisdictions.
- We urge acceleration of the development and enforcement of sustainable building standards to reduce energy demands and environmental degradation.
- Use incentives in addition to regulatory changes.
- Include changes that provide incentives for building owners and property management companies to reduce operating costs through application of green building technologies.

看法和建议，不论其是限制性的还是鼓励性的。中美商会可以成为主要资源平台。

- 政府办事程序应标准化，保持所有政府部门的批准程序一致，以此来改善投资环境。
- 中美商会呼吁提高包括民用、工业用房、商业和写字楼在内的所有房地产相关部门信息来源的可靠性、准确性和可获得性。对房地产收益进行登记的国家规划以及实施该项规划的指导方针，应当在所有地区得到一致的贯彻落实。
- 我们呼吁加速建立和实施可持续性建筑标准，以降低能源需求和遏制环境退化。
- 在法规调整之外，使用更多的激励机制。
- 做出相关修改，激励业主和物业管理公司运用绿色建筑技术来降低运营成本。



Retail

2

Chinese consumers will be crucial to the transformation of China's economic structure from a manufacturing to a service-based economy. The 11th Five-Year Plan, which calls for structural transformation and growth of the service sector, highlights this point. Additionally, improvements to the retail environment and related services will stimulate greater domestic demand, reducing China's dependence on foreign trade.

In 2006, the total consumption of retail commodities reached RMB7.6 trillion, an increase of 13.6 percent from 2005. It is estimated that from 2007 to 2010, the growth rate will remain steady at eight to 10 percent per year, and total retail sales will reach RMB20 trillion in 2020. The total sales revenue of the top 100 retailers reached RMB855.2 billion, an increase of 25 percent from 2005.

China fully opened its retail market to foreign investors on December 11, 2004, in accordance with its World Trade Organization (WTO) commitments. Since then, restrictions on location, proportion of ownership and the number of foreign-funded outlets have been lifted. Among the top 100 retailers of 2006, 11 of them are foreign invested. In 2006, foreign invested retailers opened more than 100 new stores in total.

However, discriminatory treatment of foreign retailers and lack of transparency remain in certain areas of governmental administration and this has restricted the expansion of foreign retailers and limited foreign investors from contributing their full expertise to the advancement of China's retail industry.

China benefits greatly from foreign retailers' business operations in China. They help to enhance the level of retail service, create a safe and clean shopping environment, contribute to developing the supply chain and stimulate domestic consumption. In the process they help to maintain sustainable and healthy development of the national economy. AmCham strongly urges regulatory authorities to work closely with the retail industry to create a fair and open environment for both domestic and foreign retailers.

Specific Issues

National Treatment in the Approval Process

The Measures for the Administration on Foreign Investment in the Commercial Sector ("Measures for Commercial Sectors") regulation issued by the Ministry of Commerce (MOFCOM) in 2004 reveal some unequal treatment for foreign and domestic retailers. For example, if a foreign retailer opens more than 30 stores with the business area of each store exceeding 300 square meters and would like to open another new store, the new store application must be examined and approved by three levels of government – city, provincial and central. Only after securing MOFCOM approval can a business obtain a license from the registration authority (AIC). In contrast, domestic retailers are allowed to apply directly to AIC for a new store business license without having to undergo the lengthy three-level commerce department approval process.

Similar discriminatory treatment also applies to sellers of certain merchandise including pharmaceuticals, pesticides, mulching film, chemical fertilizers, processed oils, grain, vegetable oil, sugar, cotton, tobacco, CDs and DVDs. In order to sell these products, foreign retailers must obtain special permits and licenses from central government agencies, meaning the process takes them far longer than it does domestic retailers, who need only deal with local government agencies.

The disparity in the approval process for foreign retailers and domestic retailers is incompatible with the principle of national treatment and therefore should be lifted.

Restrictions on Ownership

Ownership limitations in the Foreign Investment Catalogue recently issued by NDRC and the Measures for Commercial Sectors are also overly restrictive. For example, a foreign retailer that opens more than 30 stores in China selling certain commodities of different brands and from different suppliers cannot be more than 49 percent foreign owned. The limit is somewhat higher for Hong Kong and Macao investors at 65 percent, but still too low. The commodities

零售业

在中国从以制造业为主向服务业为主的经济结构转型进程中，中国消费者将发挥至关重要的作用。同时在十一五规划涉及经济结构转型和发展服务型经济的相关内容中也强调了这一点。此外，零售环境及相关服务的改善将促进国内需求的增长，并减少中国对外贸的依存度。

2006年中国商品零售总额达到了人民币7.6万亿元，比2005年增加了13.6%。预计从2007年到2010年间，年增长率将保持在8-10%，2020年，零售业销售总额将达到20万亿元。2006年排名前100位的零售商总销售利润达到人民币8,552亿元，比2005年增加了25%。

根据中国的入世承诺，中国零售市场于2004年12月11日向外国投资者全面开放。此后，针对外资零售商在选址、股东持股比例及外资店铺数量方面的限制逐渐减少。在2006年的中国零售商前100名强中有11家外资零售商位列其中。同年，外资零售商在华新开设店铺总数超过百家。

然而，对外资零售商的不平等待遇及缺乏透明度的作法在一些政府管理工作中仍然存在，致使外资零售商在华发展受限，而且外资零售商也无法充分发挥其优势，推动中国零售业的发展。

外资零售商在华的业务发展为推动中国零售业发展作出很大贡献，主要体现在提升零售业的服务水平、创建安全清洁的购物环境、推动供应链发展和刺激国内消费等方面。这一切都有利于保持中国国民经济可持续发展的健康发展势头。中美商会强烈呼吁相关主管部门能与零售业密切合作，为国内外零售商创建一个公平公开的市场环境。

具体关注

审批程序中的国民待遇

商务部在2004年颁布的《外商投资商业领域管理办法》（《商业领域办法》）对外资零售商规定了不同于国内零售商的审批程序。如果一家外资零售商已开设了30家店铺，每家店的经营面积超过300平方

米，其计划开设新店的申请必须经由市级、省级和中央三级政府商务部门的审批。在得到商务部最终审批同意后，方可在登记机关（工商局）领取营业执照。相反，国内零售商则无需经过冗长的三级商务部门审批程序，直接向工商局申请新店的营业执照。

另外，外资零售商在出售一些特定商品也面临诸如此类的不平等待遇。特定商品包括药品、农药、农膜、化肥、成品油、粮食、植物油、食糖、棉花、烟草、CD和DVD光盘等。外资零售商必须获得中央政府部门颁发的特殊许可证和执照才可以销售上述产品，而内资零售商只需地方政府部门审批，显然外资企业的申请审批程序相较于内资零售商来说要繁褥很多。

内资和外资零售商在审批程序方面的不同有悖于国民待遇的原则，因此应该予以取消。

外资股东持股比例的限制

针对外资股东持股比例，发改委最新颁布的《外商投资产业指导目录》和《商业领域办法》均设限过高。例如，《商业领域办法》规定若同一外国投资者在境内累计开设店铺超过30家店铺，经营来自不同供货商的不同品牌的特定商品，外国投资者的出资比例不得超过49%。香港和澳门的投资者出资比例略高一些，不得超过65%。上述特定商品包括药品、农药、农用地膜、化肥、成品油、粮食、植物油、食糖和棉花等。

中美商会建议放宽对外国投资者的持股比例限制。

烟草限制

2007年3月7日，国家发改委颁布了新的《烟草专卖许可证管理办法》。其中明确规定，外商投资的商业企业不得从事烟草专卖品批发或者零售业务。其结果是，目前已被授权销售烟草产品的所有外资零售商在2008年下半年现有许可证到期后，将无权销售此类产品。

cited include pharmaceuticals, pesticides, agricultural films, fertilizers, refined oils, food, vegetable oil, sugar and cotton, among others.

AmCham recommends easing this ownership restriction for foreign investors.

Restrictions on Tobacco

On March 7, 2007, the National Development and Reform Commission (NDRC) issued new rules on tobacco licensing. These state that foreign commercial enterprises are not allowed to conduct wholesale or retail business related to tobacco. Consequently, no foreign invested retailers that currently sell tobacco products will be authorized to sell these products after their current permits expire in late 2008.

This restriction puts foreign stores at a disadvantage to their domestic competitors. AmCham therefore urges the elimination of the restriction.

Commercial Zoning

According to the Measures for Commercial Sectors, when applying for a new site foreign retailers must produce written confirmation from the local government stating that the proposed site complies with the city's commercial zoning plan. In practice, MOFCOM requires the city to complete its commercial zoning plan and submit the plan for the record. If this requirement is not fulfilled, MOFCOM dismisses a foreign retailer's new site application due to their failure to comply with the local commercial zoning plan, effectively blocking the foreign retailer from opening any stores in that city. In some areas where there are commercial zoning plans, a public hearing process also is required. In total this process can add up to three months to the approval process.

In contrast, domestic retailers are not required to submit their new site applications to MOFCOM for examination and approval. Since they are not subject to this restriction they may open stores in cities where commercial zoning plans do not exist.

This requirement placed on foreign retailers effectively circumvents China's WTO commitments with respect to lifting all geographic limits for foreign retailers.

Concerns on the Big Box Law

Chinese government agencies have worked together and completed a draft law for a zoning regulation on large scale commercial facilities ("Big Box Law"). The law is currently in the hands of the Legislative Office of the State Council. It is said that upon issuance of this regulation, the request for zoning approval and public hearings will be applied to all large retailers including local retailers. But it is very possible that local retailers will be required to gain approval only from the local government, while foreign retailers will need to go all the way up to central government agencies. In addition, most of the stores opened by local retailers are small and may never reach the scale that would trigger this approval process, while foreign retailers often open large-scale stores and as a result have to go through the lengthy approval process.

AmCham urges lawmakers to adhere to the principle of equal treatment of foreign and domestic retailers. We also urge lawmakers to improve transparency by inviting the public to comment on the draft and to speed up the current legislation process. ■

Recommendations

- MOFCOM and its local counterparts should increase transparency and simplify the current approval process.
- Revise the Measures for Commercial Sectors and other related regulations in line with China's WTO commitments and common international practices:
 - Lift the approval process and allow foreign retailers to open stores upon registration, just as domestic retailers can.
 - Lift the ownership restrictions on foreign retailers that open more than 30 stores in China and sell certain commodities as provided in Article 18 of the Measures for Commercial Sectors.
 - Lift the restrictions on types of merchandise such as pharmaceuticals and tobacco. At the very least, AmCham urges that regulations on the distribution of these restricted goods be applied equally to Chinese and foreign retailers.
- Formulate and promulgate the Big Box Law as quickly as possible to ensure that foreign and domestic retailers are treated equally concerning the compliance on urban development planning.

此项限制使外资零售商与内资同行相比处于竞争劣势。商会因此恳请取消此项限制。

商业网点规划审批

根据《商业领域办法》，申请新店时，外资零售商须提供店铺所在地政府出具的符合城市发展及城市商业发展要求的说明文件。实际操作中，商务部要求相关市级政府部门制定商业网点规划并上交商务部备案。如果相关部门没有制定商业网点规划或未提交备案，外资零售商申请在该地区或城市开设新店时，商务部将以不符合当地商业网点规划为由，对外资零售商开设新店的申请不予批准。而且在一些已经制定了商业网点规划的地区，还要求举行公众听证会，整个申请审批过程所需时间会因此多增加三个月之久。

相比之下，内资零售商则无需将新店选址申请递交商务部审批。由于不受限，它们甚至可以在尚未制定商业网点规划的城市开设新店。

此项针对外资零售商的规定违反了中国对所有外资零售商在华经营解除地域限制的入世承诺。

大型商业网点规划立法的相关问题

相关中国政府部门已共同起草了《大型商业网点规划管理条例》（“商业网点规划条例”），并已递交国务院法制办。据了解，此条例颁发后，包括内资零售商在内的所有大型零售商如开设大型商业网点均需申请商业网点规划的审批，并需举办公众听证会。但是，很有可能内资零售商仍只需当地政府部门审批，而外资零售商则必须通过各级政府逐级报到国家商务部获得最终审批。此外，内资零售商开设的店铺一般规模较小，可能不会达到条例规定的大型商业网点条件，从而不需要办理任何审批手续，而外资零售商开设的店铺通常规模较大，因而必须经过冗长的审批程序。

中美商会恳请中国相关立法部门能够遵循内外资零售商平等对待的原则。我们也呼吁相关部门能够通过公开征求对草案的意见从而增加立法透明度，加快现有立法进程。 ■

建议

- 商务部及地方商务部门应提高工作透明度并简化现有审批程序。
- 修订《外商投资商业领域管理办法》及其它相关规定，以实现中国的入世承诺和符合国际惯例。
 - 取消审批程序，并允许外资零售商享受与国内零售商同等的权利，即一经工商注册，均可直接开店。
 - 取消针对在华开设30家店铺以上、销售《外商投资商业领域管理办法》第18条规定的特定商品的外资零售商的外资持股比例限制。
 - 取消特定商品的经营限制，例如药品和烟草等。商会在此呼吁，有关受限商品经营的规定至少应平等适用于中外零售商。
- 加快制定并实施《大型商业网点规划管理条例》，以确保内外资零售商在网点规划审批方面享受平等待遇。

Transportation and Logistics

A nation's logistics industry can be seen as the circulatory system of its economy. The inefficient movement of goods between producers, service providers and consumers impairs economic growth and makes nearly every industry operate at less than maximum efficiency. The focus of China's government efforts has been heavily weighted toward providing new infrastructure capacity—roads, airports, railways and ports. This investment in infrastructure, while necessary, is not yet sufficient to meet the needs of China's booming economy. Reform of the legal and regulatory superstructure governing the transportation and logistics industry is urgently needed.

China's logistics industry is fragmented, inefficient, expensive and overregulated. China has tens of thousands of logistics firms, most of them small, poorly organized and not highly modernized. The logistics industry is regulated by a patchwork of national regulatory authorities including the Ministry of Commerce (MOFCOM), the Civil Aviation Administration (CAAC), the Ministry of Communications (MOC), the Ministry of Railways (MOR) and even the newly created State Postal Bureau (SPB), among others. It is also subject to local protectionism that inhibits development of the efficient national networks that China's economy needs.

Foreign logistics companies are restricted with burdensome requirements for registered capital, vehicles and facilities they must have before including the term "logistics" in their scope of business. However, a local company with little more than a few trucks can call itself a "logistics" company.

China's government has taken some tentative steps toward dealing with these many problems, most notably the formation of a cross-ministerial working group on logistics, but more urgent action and fundamental reform are needed. Foreign logistics service providers, who have much technology, experience and investment to offer, should be included in the consultative process. AmCham believes that further deregulation needs to occur. The boundaries between different regulatory bodies must be clarified at the same time that unnecessary regulations are eliminated and streamlined.

Significant Developments

Much progress in liberalization was made early in the decade following China's accession to the WTO. Restrictions on investment in most logistics sectors were lifted so that foreign firms could establish themselves as wholly foreign-owned enterprises (WFOEs). A US\$5 million capital requirement for foreign-owned logistics companies was officially dropped. The government also implemented guidelines for the approval of foreign-invested logistics companies and a set of national standards for logistics enterprises. However, local authorities still cite the US\$5 million capital requirement as justification for denying approvals, even though the statute is no longer valid. In the last two years, progress toward liberalization has slowed and in some cases even reversed.

An excellent illustration of the mixed signals that China sends about improving the logistics sector is the January 2007 creation of the SPB. SPB began asserting its authority over the express delivery services industry despite the fact that the industry is already regulated by MOC, MOFCOM, Customs and CAAC. The SPB created a new information reporting system for the industry and drafted impractical new standards that ignore the real-world business operations of sophisticated express delivery firms. The organization has also promised to create a new licensing system for the industry.

While SPB's actions may be appropriate and necessary to regulate the mass of small, poorly capitalized, domestic document delivery companies that are active in China's major cities, AmCham believes their plan to impose the same solutions on large, integrated suppliers of express delivery services to China's leading industrial and service firms is inappropriate and inefficient.

Specific Issues

Market Access

Recent drafts of China's Postal Law would exclude FIEs from the domestic express document delivery business. This discriminatory provision against the foreign-invested enterprises is not in line with

运输和物流

物流业被看作是一个国家经济的循环体系。生产商、服务提供商和消费者之间低效率的货物运转会影响经济增长速度，而且使各个行业都无法以高效运营。中国政府工作重点是加强新的基础设施能力（公路、机场、铁路和港口）。这种基础设施投资虽然非常必要，但仍然不能满足中国经济急速发展的需要。同时，对于运输和物流行业的法律和监管部门的行政体制改革也亟需进行。

中国的物流行业分散，效率低，成本高，而且受到过于严格的监管。中国有成千上万的物流公司，其中大部分规模都很小，运营混乱，而且现代化程度不高。物流行业接受多个国家机构的监管，包括商务部（MOFCOM）、民航管理总局（CAAC）、交通部（MOC）、铁道部（MOR），甚至还包括新成立的国家邮政总局（SPB）。同时还受到地方保护主义的制约，严重制约了中国经济所需要的全国范围内的高效运输网络的发展。

为了将“物流”纳入其经营范围，外国物流公司需要满足有关注册资本、车辆和设施等诸多繁杂的限制性要求。而同时，只有几辆车的本土公司就可以自称为“物流”公司。

中国政府虽然采取了一些临时措施处理这些问题，比较有代表性的是成立了跨部的物流工作小组，但亟待解决的问题是采取更多的措施和根本性的改革。可提供许多技术、经验和投资的国外物流服务供应商应当被纳入咨询程序。中美商会认为需要进一步缩小国家对物流业的管理职能范围，在消除和简化不必要的监管的同时，必须界定不同监管机构间的职权范围。

重大进展

从中国加入世界贸易组织至今，中国在市场准入方面取得了重大进展。大部分物流行业的投资限制条件被取消，外国公司可以在华成立外商独资企业（WFOE），降低了针对外国物流公司500万美元的注册资本要求。政府还制定了外商投资物流公司审批指导方针和物流企业国家标准。尽管如此，中国

一些地方机构依然按照500万美元的资本要求执行审批程序，虽然这一规定已不再有效。近两年，在放宽物流行业准入方面进展放缓，甚至有些方面发生了倒退。

中国正在逐步改善对物流行业的管理，国家邮政总局在2007年1月正式成立，就是极好的例证。国家邮政总局已经开始主张其对快递服务行业的权限，尽管该行业也属于交通部、商务部、海关和民航管理局的监管范畴。国家邮政总局为快递服务行业创建了新的信息报告系统，起草了新标准，但由于忽视了成熟快递公司的实际业务运营情况，此标准有些比较理论化。同时该机构已承诺为该行业制订新的许可制度。

对于大多数活跃在中国主要城市的小规模、资本化程度低的国内快递企业来说，国家邮政总局对其的监管措施可能是恰当和必要的，但商会认为，将同样的监管措施适用于大型综合快递服务供应商是不恰当的，也是缺乏效率的。

具体问题

市场准入

新近的《中国邮政法》草案禁止外商投资企业从事国内信件快递业务。这个针对外商投资企业的歧视性规定不符合中国在WTO服务贸易具体承诺减让表中所作的承诺，亦与中国在服务贸易具体承诺减让表和服务贸易总协定中所作的国民待遇承诺相矛盾。此外，对于外国资本的限制减少了有效竞争，对国内企业提高服务质量也无任何帮助。

新的邮政法草案没有明确基本邮政服务专营权的范围，以及是否将由中国邮政专营此项服务。国家邮政总局官员在不同场合下表示，他们拟按重量界定专营权，这与用重量与资费相结合的双重标准界定专营权的国际惯例不一致。给予中国邮政对所有低于某一重量的邮件的专营权，将会大大损害数以百计的为客户提供优质服务的快递公司的利益。按照国际通行做法将资费考虑在内，将会明晰这些争论。

China's commitment under the WTO Schedule of Specific Commitments on Services and conflicts with the Chinese "National Treatment" promise in the Schedule of Specific Commitments on Services and General Agreement on Trade in Services. In addition, restricting foreign capital reduces beneficial competition, which will discourage domestic enterprises from improving their services.

Recent drafts of the postal law also leave ambiguous the scope of the monopoly on basic postal services that should be reserved to China Post. SPB officials on different occasions have expressed their intention to define the monopoly by weight, which is not in line with the international practice of defining the monopoly by both weight and price. Granting China Post a monopoly on all shipments below a certain weight will greatly damage the interests of hundreds of express firms who provide premium delivery services to business customers. Taking price into account, in line with international standards, would clarify these differences.

Standards

China has been developing a series of very theoretical "national standards" for the logistics industry with no real input from international logistics companies operating in China. An example is The Classification and Evaluation Indicators for Logistic Enterprises (GB/T 19690-2205). These standards take the number of trucks and warehouses owned by a logistics enterprise as the main criteria for rating (the more hard assets and people employed, the higher the rating). China's new Express Industry Service Standards (ESS) (YZ/T 0128-2007), which took effect January 1, 2008, were also drafted with little input from the industry. A draft of the ESS was published for public comment, but few comments from the industry were adopted and the ESS standards contain provisions that are far out of line with common international practice in the industry. The standards are the first Express Delivery Services (EDS) industry standards in the world. SPB and the Ministry of Labor and Social Security are currently consulting with the industry on the draft Express Industry Labor Standards, which would also be unique in the world market. The standards, as currently drafted, do not meet the needs of established logistics service providers or their Chinese workers.

City Access

Most Chinese cities restrict the access of delivery vehicles to downtown areas during daytime hours. This is a problem for all logistics firms except Express Mail Service of China Post. In many cities, these restrictions also apply to time and temperature sensitive products, including food and drugs. These restrictions result in the delivery of these products in small, inefficient vehicles that lack temperature controls. This has negatively affected food and drug safety throughout China.

Customs Clearance

The customs clearance environment has been improved in recent years, especially since China's accession to the WTO. However, there are still some customs-related issues that constrain further development of the logistics industry and especially the time-sensitive express delivery industry. For example, as express carriers must move goods in non-regular working hours, they require the customs to provide facilitation during non-regular working hours. AmCham believes that paperless declaration would be an excellent solution to this problem.

Air Freight Sales Agency Licenses

To book space on Chinese airlines, freight forwarders must either obtain an Air Freight Sales Agency license from the China Air Transport Association (CATA) or book space through a license holder. WFOEs are not eligible to obtain this CATA license, which means that WFOE freight forwarders are impaired in their ability to conduct freight forwarding business. This runs contrary to the terms that China agreed to for its WTO accession package.

VAT Invoices for Transportation Services Issued by Third Party Logistics (3PLs) and Fourth Party Logistics (4PLs) Companies

Current policies require foreign invested companies to own vehicles if they wish to issue VAT invoices for transportation. This restriction limits the growth of the 3PL business in China. In turn this hampers the ability of 3PL providers to improve the cost efficiency of China's importers and exporters by providing a total cargo supply chain service with trucking and distribution as part of the core services.

标准

中国一直在制订一系列物流行业“国家标准”，但很少听取在华开展经营活动的跨国物流公司提供的意见和建议。其中一个例子是“物流企业分类和评估指标（GB/T 19690-2205）”。这些标准把物流企业拥有的卡车和仓库的数量作为评级的内容标准之一（资产和人员越多，评级越高）。2008年1月1日起生效的中国新的快递行业服务标准（ESS）（YZ/T 0128—2007），行业意见建议的参与也很少。ESS草案曾被公开征求公众意见，但几乎没有行业意见被采纳，而且ESS标准中一些规定与行业内的国际惯例极不相符。该标准是世界上第一部快递服务（EDS）行业标准。国家邮政总局和劳动和社会保障部目前正就《快递业务员国家职业标准》草案进行行业咨询。该标准在国际市场上也将是独一无二的。目前起草的标准不能满足现有物流服务供应商或其中国员工的需要。

城市准入

中国大部分城市限制送货车辆在白天进入市区。这对于除中国邮政的邮政特快专递之外的所有物流公司来说都是个问题。在许多城市中，这些限制规定还适用于对时间和温度敏感的产品，包括食品和药品。这些限制规定使得企业只能用无温控设备的小排量车运送这些产品，这对遍及中国各地的食品和药品安全都有不利影响。

通关

近年来，尤其是加入世界贸易组织以来，通关环境有所改善。然而，仍然有某些与海关有关的问题抑制了物流行业的进一步发展，对有时间要求的快递行业尤其如此。例如，由于快递运营商始终必须在非常规工作时间内运输货物，它们希望海关在非常规工作时间内提供便利。中美商会认为，对于此问题来说，无纸化通关是个极好的解决方案。

空运销售代理资格认可证书

要在中国航线上预定舱位，货运代理人必须从中国航空运输协会取得“空运销售代理”资格认可证书或通过已经取得证书的公司预定舱位。外商独资企业没有资格取得此中国航空运输协会的证书，这意味着外商独资的货运代理企业从事货物转运业务的

能力被削弱了。这有悖于中国的人世承诺。

第三方物流公司和第四方物流公司开具的运输服务增值税发票

按当前政策的要求，如果想要开具运输业增值税发票，外商投资公司就要拥有车辆，这一要求限制了第三方物流业务在中国的增长。第三方物流，作为通过提供以货车运输和配送货物供应链服务中核心业务的一部分，对其发展的限制，直接影响着中国进、出口商的成本效益。

透明度

总体而言，物流行业的法规和规定是公开的，为公众所知。相比过去，在通过新的法律和法规之前，中国政府机构更倾向于征求外国公司的意见，只是很多时候，征询活动经常在关键决策做出之后，令征询活动成为形式，缺乏效率。透明度也因机构而异，差异很大。比如商务部，针对有关“国际货运代理人”的新法规征询活动就做得非常好。

建议

- 对外商投资企业和国内物流公司适用相同的注册资本要求。
- 对外商投资物流公司的分支机构规定应与其他行业相同。
- 在国内信件快递业务中给予外商投资企业同等的机会。
- 按照重量和价格准确地界定邮政专营权。
- 在法律、法规和标准的起草和审议过程中提高透明度，并鼓励企业更多地参与。
- 通过提供更宽松的城市准入规定和更简便的通关手续，改善经营环境。
- 对食品和药品等对时间和温度敏感的产品实施的城市准入限制规定予以取消。
- 废除货物运输管理中有关所使用的车辆类型的新法规，从而减少对外国公司提供服务能力的影响。
- 鼓励外商投资企业（使用先进系统和技术的）收购效率低下的国内运输和物流企业，促进物流行业做强做大。

Transparency

In general the rules and regulations governing the logistics industry are known and available to the public. Chinese government agencies are much more likely than they were in the past to consult with foreign firms before passing new laws and regulations, but too often that consultation occurs only after key issues have already been decided, so the consultations become *pro-forma* and ineffective. The degree of transparency varies widely by agency. MOFCOM, for example, has done an excellent job of consulting with industry on proposed new regulations for International Freight Forwarders. ■

Recommendations

- Apply the same registered capital requirements to both foreign invested and domestic logistics companies.
- Apply the same branching rules to foreign invested logistics companies that are permitted in other industries.
- Allow FIEs equal opportunities in the domestic express letter business.
- Narrowly define the postal monopoly by weight and price.
- Increase transparency and encourage more involvement by enterprises in draft and review process of laws, regulations and standards.
- Improve the business environment by providing easy city access and improved customs clearance.
- Remove city access restrictions on time and temperature sensitive products such as food and drugs.
- Remove the new regulations in the administration of cargo transportation on the type of vehicles to be used so as not to impact foreign companies' ability to provide services.
- Encourage consolidation in the logistics industry by granting incentives to foreign invested companies (who use advanced systems and technology) to acquire inefficient Chinese transportation and logistics companies.



