

2023 Policy Priorities

Overview: (1) Maintain channels for commercial engagement, (2) Advocate for clear and consistent policies, and (3) Expand market access.

Theme 1: Engagement

Maintain channels for commercial engagement and meaningful exchange while separately addressing national security concerns and values-based differences where possible.

- Success in China is vital to the long-term competitiveness of US business globally. Profits from business in China support R&D and innovation of American firms, giving them the edge to remain global leaders in their respective industries.
- The early months of 2023 saw further deterioration in US-China bilateral relations. The cancellation of high-level discussions removed an opportunity for both countries to make progress on a range of issues.
- Rising tensions between the US and China remains a top business challenge cited by members. Furthermore, three-quarters of companies report being directly impacted by the US-China relationship and 46% of members expect the relationship to deteriorate in 2023, up from 24% in 2022.
- Protecting American business activity and access to the second-largest economy in the world will help American companies maintain a strong global position and continue to contribute positively to the US economy. In order to support the global competitiveness of American brands, it is important to keep commercial lanes open for business between the US and China.
- Bilateral dialogue is an essential step given developments over the past few years and the elimination of most previous forums for conversation, but any resumption should be results-oriented and substantive.
- The foreign business community has a role to play in communicating the reality of operating in the Chinese market in an accurate, objective, and timely manner to both governments. AmCham China member companies have long histories of successful and responsible work in China.
- AmCham China is available and willing to serve as a resource to both the Chinese and US governments in order to communicate the challenges and opportunities our member companies encounter.

To that end, government access for AmCham China and our member companies is essential. In this regard we recommend that:

- Both sides prioritize high level engagement to address longstanding concerns over national security, law enforcement, and values-based differences, while empowering working level officials to engage with their counterparts on less sensitive issues to widen the lines of communication available for cooperative discussions.

- Where national security concerns exist, they should be addressed directly between US and Chinese government counterparts while avoiding unnecessary impediments and escalations.
- Concerns around issues of economic security should be communicated clearly on both sides, including consultation with the business community to assess the genuine issues faced by the private sector and the experiences of companies on the ground.
- The Chinese government should prioritize greater access for AmCham China and their members to address both general industry-wide challenges and also technical issues relating to normal business operations.
- Both sides should look for ways to accelerate a restart of people-to-people exchanges through continuing to remove hurdles for visa issuance and travel.

Theme 2: Policy Clarity

Advocate for clear and consistent policies at all levels of government along with transparent policy implementation directives and intentions.

- Inconsistent/unclear regulations and enforcement have continued to be major challenges for AmCham China members over the past decade. In our 2023 member survey, both “inconsistent regulatory interpretation and unclear laws & enforcement” and “regulatory compliance risks” remained among the top five business challenges of AmCham China members. Furthermore, members continue to report an increasingly pessimistic view of China’s regulatory environment, with a 5% increase between 2022 and 2023. Greater policy transparency is a critical need to drive new investment among our members.
- Companies specifically note that uneven enforcement and interpretation of new regulations is a core concern when formulating their national and global compliance strategies. When policies are vague or conflicting at a national level, localities may pursue inconsistent implementation strategies and timelines.
- Conflicting policies have also led to lackluster implementation of legislation such as the Foreign Investment Law, which was widely celebrated by the business community after it took effect in 2020. AmCham China members generally have yet to see an extension of national treatment to foreign firms in China and remain concerned about the unfair treatment impacting foreign firms.
- On the US side, long-rumored policies of outbound investment reviews continue to concern our members, for whom compliance in both jurisdictions is of the utmost importance. Timely and clearly communicated regulations will help members to plan ahead and optimize their global business strategy.

In this regard we recommend:

- Increased focus on policy communication and clear enforcement guidelines by both the Chinese and US governments.
- Consult MNCs when proposing key industry regulatory changes and normalize grace periods for policies likely to drastically disrupt market operations in order to allow companies sufficient time to implement necessary changes and reduce the potential for violations.

- Focused and clear guidance from China’s central government to ensure that regional differences in enforcement or implementation timelines do not cause unnecessary disruptions for companies with a large presence in China.

Theme 3: Market Access

Expand market access for foreign-invested enterprises through continued efforts addressing ongoing concerns such as non-tariff barriers, the negative list, procurement restrictions, and unfair treatment in favor of SOEs and domestic companies generally.

- AmCham China has for many years highlighted the persistent challenges FIEs face in the China market including state intervention in the economy, restrictive market access policies, IP rights violations, pressure to transfer technology, and an often opaque and discriminatory regulatory environment.
- China recognizes that while foreign-invested enterprises account for less than 3% of the country's total enterprises, creating two-fifths of China's foreign trade, one-sixth of its tax revenue and nearly one-tenth of its urban employment.¹
- 60% of members highlight “market access” as the most concerning aspect of unfair treatment in the Chinese market. Members report that they would increase investment in China if they feel they had greater market access.
- Despite the gradual shortening of industries included on the annual negative lists, both implicit and explicit barriers exist for foreign-invested enterprises in China. While AmCham China encourages the Chinese government to continue to narrow the negative list, many companies note that barriers to entry take many forms other than inclusion on the negative list.
- AmCham China has advocated for greater access to government procurement opportunities since China ascended to the WTO. Lack of access to government procurement opportunities more than 20 years later remains a large hurdle for foreign companies in China. While select regions allow foreign-invested enterprises with production facilities in China to bid on volume-based procurement contracts, companies report that local competitors have the upper hand in the final selection process. In many regions and sectors, companies have reported being told that government agencies can no longer allow a foreign-invested enterprise to provide products.

In this regard we recommend:

- The Chinese government ensure that any market access commitments are accompanied by actions that guarantee a level playing field for all firms within those industries, regardless of the nationality of their shareholders. The Chinese government should abandon the use of implicit, unpublished, or internal guidance to replace US or other foreign-made products/services with domestically-made equivalents.

¹ <https://cdo.developpress.com/?p=13800>

- The Chinese government opens its markets to FIEs on equal terms in emerging sectors without requiring companies to share their IP with local firms or market regulators under the guise of safety or standard operating procedures.
- Commitments to meaningful reform by the Chinese government include clear benchmarks, timelines, and intensive monitoring to ensure lasting changes to China's legal and regulatory architectures and impartial implementation of laws and regulations. Similarly, coordinated and consistent policy development, implementation, and enforcement between Chinese government ministries must be prioritized.
- Laws and regulations, enforcement activities, approval processes, procurement preferences, and other requirements that treat foreign-invested entities, products and services less favorably than domestic firms in the China market be eliminated.
- The US and Chinese governments adhere to globally accepted trading rules, support and strengthen the existing multilateral trade regime, and avoid protectionist tendencies.

2023 年政策重点

概述：(1) 畅通政商沟通渠道；(2) 倡导明确统一的政策；(3) 扩大市场准入。

主题一：扩大商界参与

畅通商界参与沟通和建言献策渠道，推动解决双边在国家安全问题和价值观层面的分歧。

- 在中国市场的成功对于美国企业的保持全球长期竞争力至关重要。在华业务的利润支持美国企业的研发和创新，从而在各自的行业中保持全球领先的优势。
- 中美双边关系在 2023 年初的几个月间进一步恶化。高级别会晤的取消使中美两国失去了在一系列问题上开展沟通和交流的机会。
- 中美之间日益紧张的关系仍然是会员企业所面临的首要商业挑战。根据商会 2023 年《中国商务环境调查报告》，四分之三的受访企业表示已经受到中美关系的直接影响。展望 2023 年中美双边关系的前景，46%的受访企业预测两国关系将继续恶化，而这一比例在 2022 年仅有 24%。
- 保护美国企业在华商业活动，并使其能平等进入中国这一世界第二大经济体将有助于美国企业保持领先的全球地位，继续为美国经济做出贡献。健康的中美商业关系对于维护美国品牌的全球竞争力非常重要。
- 有鉴于过去几年内中美两国间的大多数交流活动都被取消，恢复双边沟通是极为必要的。重启后的双边对话应以结果为导向，具有实质性意义。
- 外国商界可以通过准确、客观和及时的方式向两国政府传达在华市场经营的现状，发挥其独特作用。许多中国美国商会的会员企业都拥有在华经营的成功经验和高度负责的工作态度。
- 中国美国商会随时愿意为中美两国政府搭建交流平台，向两国政府分享会员企业所遇到的挑战和机遇。

因此，保持同政府的沟通对于中国美国商会和我们的会员企业至关重要。在这一方面，商会建议：

- 双方应优先推动高层接触，解决涉及国家安全、执法和价值观分歧方面的长期关切。同时授权工作级别的官员就不太敏感的问题与同行接触，以拓宽合作讨论的沟通渠道。
- 若有关乎到国家安全的问题，中美两国政府的对口部门应直接解决这些问题，避免不必要的延宕和升级。
- 中美双方应明确沟通对经济安全问题的关切，包括听取商界的意见建议，评估私营部门面临的实际问题，并深入了解企业在华运营的实际情况。

- 中国政府应优先考虑为中国美国商会及其会员企业创造更多的政企交流机会，以解决企业在日常运营中面临的行业性挑战和相关技术性问题。
- 中美双方应寻求便利签证签发和国际差旅的有效途径，加速恢复两国人文交流。

主题二：增强政策的明确性

倡导各级政府制定明确统一的政策，以及透明的政策执行指令和目的。

- 在过去十年中，不一致/不明确的法规和执法仍然是中国美国商会会员面临的主要挑战。在商会 2023 年《中国商务环境调查报告》中，“不一致的监管解释和不明确的法律和执法”以及“监管合规风险”仍然位列商会会员企业面临的前五大商业挑战。此外，会员企业对中国的监管环境表现出愈加悲观的看法，该比例从 2022 年到 2023 年间增加了 5%。提高政策透明度是会员企业推动新投资的最迫切需求。
- 在华企业特别指出，在其制定国家和全球合规战略时，新法规执行和解释的不一致是企业面临的一个核心问题。当国家层面的政策含糊不清或相互冲突时，各地可能会采取不同的实施策略和时间安排。
- 政策间相互冲突导致《外商投资法》等立法的实施效果不及预期。《外商投资法》在 2020 年生效后曾受到了商界的广泛赞誉。但大多数商会会员企业尚未感受到国民待遇的提升，并对外资企业遇到的不公平待遇感到担忧。
- 在美国方面，传闻已久的境外投资审查政策令商会会员企业感到担忧。对会员企业来说，确保在两个司法管辖区的合规性至关重要。及时、明确的法规将帮助会员企业提前规划并优化其全球商业战略。

因此，商会建议：

- 中国和美国政府应更加注重政策沟通并明确执法规则。
- 在提出会对行业有重大影响的政策调整时应咨询跨国公司的意见，并为可能严重影响市场运转的政策规定宽限期，使企业有足够的调整时间，降低违规可能性。
- 中国政府应提供重点突出且明确清晰的指导，确保执法或实施时的区域差异不会对有大量在华业务的企业造成不必要的干扰。

主题三：扩大市场准入

通过继续努力解决非关税壁垒、负面清单、采购限制以及对国有企业和国内企业的不公平待遇等持续存在的问题，扩大外商投资企业的市场准入。

- 中国美国商会多年来一直强调外商投资企业在华市场面临的持续挑战，包括国家对经济的干预、限制性市场准入政策、知识产权侵犯、技术转让压力，以及长期非透明、歧视性的监管环境。
- 中国应认识到，虽然外资企业占全国企业总数的 3%，但创造了中国五分之二的外贸、六分之一的税收和近十分之一的城镇就业。
- 在中国市场遇到的一系列不公平待遇问题中，60%的受访企业强调“市场准入”仍然是最令人担忧的议题。2023 年《中国商务环境调查报告》显示，若能扩大市场准入，五分之三的受访企业将考虑增加在华投资。
- 尽管列入年度负面清单的行业逐渐减少，但外商投资企业在中国仍然面临许多隐性和显性壁垒。商会鼓励中国政府继续缩小负面清单的范围。然而许多会员企业指出，除负面清单之外，市场准入还有许多其他形式的障碍。
- 自中国加入世贸组织以来，商会一直提倡增加外商投资企业参与政府采购项目的机会。二十多年过去了，无法参与政府采购项目仍然是在华外企面临的一大障碍。虽然部分地区允许在中国有生产设施的外商投资企业参与竞标某些基于一定数量的采购合同，但外资企业发现本土竞争企业将占据上风最终入选。在许多地区和部门，会员企业被告知政府机构不再允许采购外商投资企业生产的产品。

因此，商会建议：

- 中国政府应在确保履行市场准入承诺的同时，保证行业内所有企业都能享受到公平的市场环境，无论企业股东是什么国籍。中国政府应取消含糊不清的、未公布的或内部的指导意见，停止用国内制造的同等产品/服务取代美国或其他外国制造的产品/服务。
- 中国政府应在平等条件下向新兴行业的外商投资企业开放市场，不应以安全或标准操作程序为由，要求外商投资企业与当地企业或市场监管机构分享其知识产权。
- 为保证中国法律和监管架构改革对中国市场产生长期的积极影响，中国应对改革的标准、时间表和监督程序做出明确承诺，同时确保公平一致地执行法律法规。同样，中国政府各部委应重视加强在政策的制定、实施和执行上的协调一致。
- 破除在华市场对外商投资实体、产品和服务与国内企业待遇不一致的法律法规、执法行为、审批程序、采购优惠和其他要求在内的壁垒。